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FISH AND WILDLIFE MISCELLANEOUS—PART 3

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

CANADIAN FISHERIES AGREEMENT (H.R. 12571)
MAY 8, 1978

CANADIAN GREAT LAKES FISHING BRIEFING
JUNE 6, 1978

GREAT LAKES FISHERIES (H.R. 12531)
JULY 12, 1978

WATER BANK (H.R. 1653)—DUCK STAMP (H.R. 12595, H.R. 13371, H.R. 13372) ACTS
JULY 17, 1978

ANADROMOUS FISH IN LAKE CHAMPLAIN (H.R. 13392, S. 415)
AUGUST 4, 1978

Serial No. 95–46

Printed for the use of the Committee on Merchant Marine and Fisheries

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CONTENTS

CANADIAN FISHERIES AGREEMENT

Page

Hearing held—May 8, 1978 1
Text of H.R. 12571 3
Statement of—
Beasley, Henry, National Marine Fisheries Service, Department of Commerce 6
Blondin, Carmen, National Marine Fisheries Service, Department of Commerce 6
Colson, David A., Legal Adviser's Office, Department of State 6
Cutler, Ambassador Lloyd, Chief Negotiator, United States-Canadian negotiations, Department of State 6
Prepared statement 7
Dykstra, Jacob J., president, Point Judith Fishermen's Cooperative Association, Inc 35
Haugen, Henry, attorney, representing Fishermen's Marketing Association, Seattle, Wash 37
Marshall, Douglas, Department of State 6
McKernan, Ambassador Don, Special Negotiator for United States-Canadian Salmon Fisheries, Department of State 6
Negroponte, Ambassador John D., Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State 6
Norris, Tom A., vice chairman, New England Council 46
Rouse, John, Country Director for Canadian Affairs, Department of State. 6
Sloan, Lucy, executive secretary, National Federation of Fisherman 34
Stafne, Scott, counsel, representing Washington Trollers Association 38
Voss, Charles, executive director, Association of Northwest Steelheaders, and western director, American League of Anglers 42
Communications submitted—
Apollonio, Spencer: Letter of December 9, 1977, to John D. Negroponte 46
Haugen, Henry: Letter of May 5, 1978, to Hon. Robert L. Leggett 38

CANADIAN GREAT LAKES FISHING BRIEFING

Hearing held—June 6, 1978 47
Statement of—
Blanton, Lt. Cmdr. Alex, U.S. Coast Guard 50
Frank, Richard A., Administrator, National Oceanic and Atmospheric Administration 59
Hoinkes, Mary Elizabeth, Assistant Legal Adviser, Oceans, Environment and Scientific Affairs, Department of State 50
Latta, Hon. Delbert L., a Representative in Congress from the State of Ohio 48
McEwen, Hon. Robert C., a Representative in Congress from the State of New York 48
Negroponte, John, Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State 50
Overton, Capt. Robert H., III, U.S. Coast Guard 50
Rouse, John H., Jr., Director, Canadian Affairs, Department of State 50
Ruppe, Hon. Philip E., a Representative in Congress from the State of Michigan 48

GREAT LAKES FISHERIES

Hearing held—July 12, 1978 61
Text of H.R. 12531 64

GREAT LAKES FISHERIES—Continued

Page

Report from—
Interior Department 74
Discussion Draft—amendment to H.R. 12531 as offered by Mr. Ruppe 77
Statement of—
Conlin, Michael, Chief, Division of Fisheries, Illinois Department of Conservation 176
Prepared statement 175
Duhamel, Arthur, spokesman for the Leelanau Indians 154
Prepared statement 157
Fetterolf, Carlos M., Jr., executive secretary of the Great Lakes Fishery Commission 186
Prepared statement 177
Fleishman, Charles D., director of Communications, American Fishing Tackle Manufacturers Association 198
Goodwin, George, Deputy Assistant Secretary for Indian Affairs, Department of the Interior 110
Prepared statement 109
Gordon, Daniel F., Red Cliff Band of Lake Superior Chippewa Indians 158
Green, Daniel, attorney, Sault-Ste. Marie Tribe of Chippewa Indians 154
Greenwalt, Lynn A., Director, U.S. Fish and Wildlife Service, Department of the Interior 107
Prepared statement 106
LeBlanc, Arthur L., tribal chairman, Bay Mills Indian Community 154
Prepared statement 155
Ottawa Sportsmen's Club, Inc 201
Additional statement 204
Preloznik, Joseph F., attorney for Red Cliff and Bad River Bands of Chippewa Indians 154
Radonski, Gilbert C., executive secretary, Sport Fishing Institute 192
Scott, John, Fisheries Division, Michigan Department of Natural Resources 124
Prepared statement 134
Steketee, Peter W., attorney, Grand Rapids, Mich., on behalf of Michigan United Conservation Clubs 168
Prepared statement of Jan. 13, 1978 170
Prepared statement of July 12, 1978 168
Tanner, Howard A., director, Michigan Department of Natural Resources 124
Prepared statement 131
U.S. Section of the Great Lakes Fishery Commission 184
Washington, Thomas L., executive director, Michigan United Conservation Clubs 168
Additional material supplied—
Fetterolf, Carlos M., Jr.: Briefing to the Conference of Great Lakes Congressmen by the U.S. Section of the Great Lakes Fishery Commission ... 179
Tanner, Howard A.:
Indian fishing rights in Michigan 129
Michigan State Senate Concurrent Resolution No. 265 127
Communications submitted—
Berle, Peter A. A.: Letter of July 10, 1978, to Hon. Robert L. Leggett 196
Dakota, Frederick: Letter of July 13, 1978, to Committee on Merchant Marine and Fisheries 200
Earl, Anthony S.: Letter of July 25, 1978, to Hon. Robert L. Leggett 197

WATER BANK—DUCK STAMP ACTS

Hearing held—July 17, 1978 207
Text of—
H.R. 1653 209
H.R. 12595 211
H.R. 13371 213

WATER BANK—DUCK STAMP ACTS—Continued
Page
H.R. 13372 ... 211
Reports from—
H.R. 1653:
Agriculture Department ... 209
Interior Department ... 209
H.R. 12595:
Interior Department ... 211
U.S. Postal Service ... 213
Statement of—
Berger, Michael E., Assistant Conservation Director, National Wildlife Federation ... 247
Prepared statement ... 244
Bobb, Leslie, president, Houston Sportsmen's Club ... 214, 217
Boothby, Charles, director of Public Affairs, National Association of Conservation Districts ... 249
California Waterfowl Association ... 256
Denny, Weldon B., Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture ... 231
Eckhardt, Hon. Bob, a Representative in Congress from the State of Texas ... 214
Greenwalt, Lynn, Director, U.S. Fish and Wildlife Service, Department of the Interior ... 222
Prepared statement on Duck Stamp ... 222
Prepared statement on Water Bank Act ... 225
Knox, Neal, executive director, Institute for Legislative Action, National Rifle Association of America ... 257
Poole, Daniel A., president, Wildlife Management Institute ... 240
Additional material supplied—
Agriculture Department:
Amount allocated SCS ... 237
Amount needed for request on hand ... 236
Authorization and land agreements ... 239
Appropriations and obligations ... 235
Means of notifying farmers ... 237
Rate of wetlands ... 238
Requests received ... 236
Types of wetlands and cost ... 239
Water Bank Act funding ... 235
Withdrawn land from cultivation ... 233
Berger, Michael E.:
Migratory bird hunting fees (Resolution No. 24) ... 246
Water bank plan (Resolution No. 26) ... 246
Wetlands acquisition (Resolution No. 15) ... 246
Gottschalk, John S.:
Excerpt from Migratory Wildlife Committee Report, 1976, IAFWA ... 255
Water bank (Resolution 3, 1977) ... 256
Communications submitted—
Ciccone, Charles V.: Letter of May 2, 1978, to Hon. John D. Dingell ... 252
Gottschalk, John S.:
Letter of July 14, 1978, to Robert L. Leggett ... 254
Letter of July 17, 1978, to Hon. Robert L. Leggett ... 255

ANADROMOUS FISH IN LAKE CHAMPLAIN

Hearing held—August 4, 1978 ... 259
Text of—
H.R. 13392 ... 259
S. 415 ... 259
Reports from—
Commerce Department ... 260
Interior Department ... 260

ANADROMOUS FISH IN LAKE CHAMPLAIN—Continued

Page

Statements of—
Cook, Dr. Robert S., Deputy Director, U.S. Fish and Wildlife Service, Department of the Interior 283
Jeffords, Hon. James M., a Representative in Congress from the State of Vermont 261
New York State Department of Environmental Conservation 293
Parisot, Thomas J., Chief, Office of Program Development—Fisheries, Department of the Interior 283
Additional material supplied—
Grieb, Jack R.: Colorado streams proposed for future land acquisition for public lease agreements 288
Jeffords, Hon. James M.: A strategic plan for development of salmonid fisheries in Lake Champlain, by Lake Champlain Fish and Wildlife Policy Committee and Technical Committee 267
Communications submitted—
Diamond, Henry L.: Letter of August 10, 1973, to Hon. Paul N. McCloskey, Jr 291
Grieb, Jack R.: Letter of July 20, 1978, to Hon. Paul N. McCloskey, Jr 287
Parker, Carl E.: Letter of September 7, 1978, to Hon. Paul N. McCloskey, Jr 289
Thomas, Earl M.: Letter of August 15, 1978, to Hon. Paul N. McCloskey, Jr.. 299

CANADIAN FISHERIES AGREEMENT

MONDAY, MAY 8, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1334, Longworth House Office Building, Hon. Robert L. Leggett (chairman of the subcommittee) presiding.

Present: Representatives Leggett, AuCoin, and Emery.

Mr. LEGGETT. The meeting of the Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order.

This morning, the subcommittee will hold hearings on legislation to give congressional approval to the United States-Canadian Fisheries Agreement for 1978 which was effected by an exchange of diplomatic notes between the two countries dated April 20 and April 11, 1978.

This agreement was transmitted by the President to the Congress on May 1. In his message the President made it clear that it was not a Governing International Fishery Agreement—known as a GIFA—within the terms of the Fishery Conservation and Management Act and, as was the case with the 1977 reciprocal agreement, positive congressional action therefore is required to bring the 1978 reciprocal agreement into force.

Finally, the President requested that the Congress give favorable consideration to the agreement at an early date in order to establish the legal basis for the continuation of reciprocal United States-Canadian fisheries during 1978.

Pursuant to the President's request, colleagues Forsythe and Trible joined me on May 4 in introducing H.R. 12571. Briefly explained, H.R. 12571 would rewrite section 5(a) of the Fishery Conservation Zone Transition Act to give congressional approval to the 1978 agreement, as contained in the President's message to the Congress. It would provide that the agreement would be in force and effect with respect to the United States from January 1, 1978, until December 31, 1978, unless the two Governments mutually agree to extend it or until 45 days following notice by either party that it intends to withdraw from the agreement or upon entry into force of a comprehensive long-term agreement, whichever occurs first.

During this period, nationals and vessels of Canada could fish within the 200-mile fishery zone of the United States. They could also fish for anadromous species and Continental Shelf fishery

resources beyond the zone in accordance with the provisions of the agreement, notwithstanding the requirements of title II of the Fishery Conservation and Management Act, which has to do with foreign fishing and international fishery agreements.

In other words, our 200-mile Fishery Zone Act, which applies to countries that have entered into GIFA's with us, would not apply with respect to nationals and vessels of Canada fishing within this zone. The agreement itself would control and regulate such fishing.

Finally, it should be pointed out that the 1977 Reciprocal Fisheries Agreement expired on December 31, 1977. The new agreement will come into force and effect on the date of the later of the two notifications, when each government has notified the other of the completion of its internal procedures in accordance with its domestic laws.

The 1978 agreement would continue the provisions of the 1977 agreement with a few modifications, all of which are contained in the annex to the agreement.

The annex rewrites article V of the agreement only, which has to do with salmon fishing in the Pacific coast area.

In summary, there are only two major changes provided by the new agreement. First, Canadian vessels trolling for salmon between 3 and 12 miles off the U.S. coast in the area of Bonilla Point and Tatoosh Island and Carroll Island will be able to fish farther south than they did last year. Second, Canadian troll vessels when coming into the U.S. zone off the coast of Washington, north of La Push, will be able to have on board Chinook salmon between 26 inches and 28 inches, again a modification of the status quo we have enjoyed over the past years.

It is my understanding that because of the failure of the Canadian Government to take certain actions in the Swiftsure Bank area of British Columbia that the United States does not now have to honor these two more favorable conditions.

I would hope that the witnesses to be heard this morning from the Departments of State and Commerce will gc into this particular matter in more detail when they testify.

I might state that the committee is very much concerned that the new reciprocal agreement has an exception to the GIFA procedure which modifies the status quo that we enjoyed last year. For that reason we are quite concerned about these agreements at this time.

[The bill follows:]

95TH CONGRESS
2D SESSION

H. R. 12571

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1978

Mr. LEGGETT (for himself, Mr. FORSYTHE, and Mr. TRIBLE) (by request) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Fishery Conservation Zone Transition Act in order to give effect to the Reciprocal Fisheries Agreement for 1978 between the United States and Canada.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the Fishery Conservation Zone Transition Act (Public Law 95-73; 91 Stat. 283) is amended to read as follows:

"(a) CONGRESSIONAL APPROVAL.—The Congress hereby approves the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the

Government of Canada (hereinafter in this section referred to as the 'Agreement') as contained in the message to Congress from the President of the United States dated May 1, 1978. The Agreement shall be in force and effect with respect to the United States from January 1, 1978, until such later date in 1978 as may be determined pursuant to the terms of the Agreement.".

95TH CONGRESS
2D SESSION

H. R. 12571

A BILL

To amend the Fishery Conservation Zone Transition Act in order to give effect to the Reciprocal Fisheries Agreement for 1978 between the United States and Canada.

By Mr. LEGGETT, Mr. FORSYTHE, and Mr. TREBLE

MAY 4, 1978
Referred to the Committee on Merchant Marine and Fisheries

Mr. LEGGETT. It is a real pleasure to welcome this distinguished cast here today.

Mr. Bonker.

Mr. BONKER. I wonder if I may be allowed to make a brief statement?

Mr. LEGGETT. Certainly. You are recognized.

Mr. BONKER. The State Department's actions in renegotiating a fishing agreement with Canada are reprehensible. The proposed agreement before this committee would allow Canadians to fish for Pacific salmon within the 200-mile fishery conservation zone. That is unlawful. Pacific salmon is a fully utilized species. There is no surplus available for foreign harvest. Every Pacific Northwest domestic user group except one, Indians, has been curtailed severely because there are not enough salmon available to allow unrestricted fishing.

There is a provision in this agreement before us that provides for an expansion of the Canadian fishing area off the coast of Washington. That is unlawful. The traditional southern boundary for Canadian fishing effort in the area between 3 and 12 miles off the coast has been Carroll Island. This agreement proposes to move that line 65 miles south to encompass over three-quarters of Washington's coastline.

This agreement provides for Canadian fishermen to fish in our fishery conservation zone under different rules than those under which domestic fishermen must fish. That is unlawful. The provision to allow Canadian trollers to have 26- to 28-inch salmon aboard in U.S. waters is against regulations established by the Pacific Council for domestic fishermen, and the law clearly provides that foreign fishing within the zone be accomplished under the same regulations that apply to domestic fishermen.

It is a fact that the national interest extends beyond the Pacific Northwest. But it is also a fact that the law applies to everyone, equally to high officials of government as to the beleaguered salmon fishermen of my State.

Why are they beleaguered? As a result of the enactment of the Fishery Conservation and Management Act, the Pacific Council has regulated them more severely than ever before in history, both for conservation and to meet the dictates of a Federal court decision to provide half the fish resources to Indians; has proposed to eliminate many from the fishery; has limited the area they are allowed to fish; and has changed their patterns of fishing. In the meantime, Canadian trollers continue to harvest nearly 200,000 salmon off our coast each year.

Canada is a valued ally and that great nation's fish resources intermingle with ours in both her waters and ours. Fish do not understand, nor respect, arbitrary national boundaries. But the key to continuing mutual respect between the United States and Canada is for each to recognize the validity of the laws of the other.

That is not true of this proposed agreement. I have communicated that message to the President and the State Department in the strongest possible terms. I hope this committee does not countenance the actions of the State Department to ignore the provisions of the statute.

In Federal district court in Seattle, Wash., on Friday of last week, Judge Vorhees stated the absurdity of Federal agencies enforcing Federal treaties but not enforcing Federal statutes.

Provisions in the 200-mile limit law clearly provide for continued foreign fishing, but only on underutilized species. Pacific salmon, as I have said, do not qualify.

So now the court agrees and the State Department must acquiesce. I hope any new agreement now negotiated can maintain the national interest but under no circumstances to the detriment of the Pacific Northwest and the Pacific salmon. And certainly any agreement must attempt to adhere to the provisions of the FCMA rather than attempt to exclude Canada because of the perception by the State Department that that ratio is somehow immune from the statute that applies to all other nations. Thank you.

Mr. LEGGETT. Thank you, Mr. Bonker.

We are very pleased to have three distinguished ambassadors, all extraordinarily knowledgeable in fisheries matters, Ambassador Lloyd Cutler, Chief Negotiator, United States-Canadian negotiations; Ambassador John D. Negroponte, Deputy Assistant Secretary for Oceans and Fisheries Affairs; and Ambassador Don McKernan, Special Negotiator for United States-Canadian salmon fisheries

You will be followed by Lucy Sloan, representing the National Federation of Fishermen; and Scott Stafne, counsel to several Northwest coast salmon fishery associations.

Ambassador Cutler, I will defer to you at this point.

STATEMENT OF AMBASSADOR LLOYD CUTLER, CHIEF NEGOTIATOR, UNITED STATES-CANADIAN NEGOTIATIONS, ACCOMPANIED BY AMBASSADOR JOHN D. NEGROPONTE, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS; AND AMBASSADOR DON McKERNAN, SPECIAL NEGOTIATOR FOR UNITED STATES-CANADIAN SALMON FISHERIES; MR. CARMEN BLONDIN AND MR. HENRY BEASLEY, NATIONAL MARINE FISHERIES SERVICE; MR. DAVID A. COLSON, LEGAL ADVISER'S OFFICE, DEPARTMENT OF STATE; MR. JOHN ROUSE, COUNTRY DIRECTOR FOR CANADIAN AFFAIRS; AND MR. DOUGLAS MARSHALL, ON BEHALF OF THE DEPARTMENT OF STATE

Ambassador CUTLER. Mr. Chairman, I am happy to be here despite these initial rebukes.

There is a line in "Through the Looking Glass" that says, "Sentence first, trial later" but my main business is being a lawyer, and a lawyer never gives up until he has his own shot at addressing the court, and I am going to try to do that now.

I was asked by Mr. Carter to take on the job of the long-term maritime boundary and resource negotiations with Canada. The salmon aspects of that were to be none of my business, and the interim aspects. But inextricably all these issues are bound together and I find myself defending both an interim agreement and portions of the agreement relating to salmon. I do that enthusiastically because I believe that this interim agreement is a fair agreement, it is not only in the interests of the United States as a whole, it is in the interests of the Pacific Northwest and it is in the interest of the salmon trollers specifically.

I have a prepared statement which is before you, I believe.

Mr. LEGGETT. Your statement will be included in the record as though you fully read it.

[The information follows:]

STATEMENT OF LLOYD N. CUTLER, SPECIAL REPRESENTATIVE FOR MARITIME BOUNDARY AND RESOURCE NEGOTIATIONS WITH CANADA

Mr. Chairman, Members of the Committee: I am Lloyd N. Cutler, Special Representative for Maritime Boundary and Resource Negotiations with Canada. I was appointed to this responsibility on July 27 and took the oath of office on August 1, 1977. I am accompained today by Ambassador Donald L. McKernan, head of the U.S. delegation for United States-Canada salmon interception talks; by Ambassador John D. Negroponte, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs; by Messrs. Carmen Blondin and Henry Beasley of the National Marine Fisheries Service; by Mr. David A. Colson of the Legal Adviser's Office of the Department of State; by Mr. John Rouse, the Department's Country Director for Canadian Affairs; and by Mr. Douglas Marshall, who has worked with me since I took on this task.

I come before you today to describe for you the United States-Canada Reciprocal Fisheries Agreement for 1978, and to urge that your Committee recommend to the House that this agreement be favorably considered and brought into force by appropriate Congressional action.

This interim agreement for 1978 is basically a continuation of the 1977 interim agreement which was approved by the Congress last year, and which expired on December 31, 1977. There are two areas in which the 1977 agreement has been modified for this year.

The first area relates to establishment of two joint consultative committees, one for the east coast and one for the west coast. The United States panel for each of these committees will have on it representatives of the Regional Fishery Management Councils that are responsible for the fisheries involved in our negotiations with Canada, of the Department of State, and of the National Marine Fisheries Service of the Department of Commerce. These consultative committee sections will meet at least quarterly to discuss at a working level the various fisheries issues that are of mutual concern to the two countries. More frequent meetings of the committee may be requested by either party. A procedure is established to address differences arising under the agreement through the consultative committees. We believe that this arrangement will do much to help resolve immediate problems as they arise relating to our fisheries of mutual concern.

The second area in which the 1978 agreement differs from the 1977 interim agreement is in the provisions relating to salmon troll fishing in the U.S. zone by Canadian vessels. Under the terms of the 1978 agreement the United States agreed to allow Canadian vessels fishing in our zone to have on board 26-inch salmon caught in the Canadian zone under reporting, accountability and enforcement procedures to ensure against taking of undersized fish in U.S. waters. We also agreed to permit Canadian vessels to troll for salmon in the 3-mile to 12-mile zone in an area that extends substantially further south than was the case in 1977. Both the widened fishing area and the 26-inch provision are conditional upon the Canadian Government closing the Swiftsure Bank area of British Columbia statistical area 21 during the period April 15 through June 14, if the United States concludes that there is a conservation reason for such a closure, and it was agreed that the expanded area would not provide for an increase in the total Canadian salmon troll effort in the United States zone.

After consultations with Canadian fisheries authorities and examination of the data available, the United States did conclude that the area should be closed and formally advised the Canadian Government of our conclusion on April 14 and again on April 21. Canada has not, as of today, closed that area to Canadian fishermen. The United States has, therefore, notified Canada and issued instructions to National Marine Fisheries Service and Coast Guard enforement authorities that all salmon trolling in the U.S. zone will be conducted on the same terms as during 1977.

I am aware of the complexity and of the difficulties surrounding the salmon trolling issue and of the great concern of the American salmon fishermen on the West Coast, and of their representatives in the Congress. This 1978 interim reciprocal agreement clearly is not a totally satisfactory arrangement, nor was the 1977 interim agreement. Both last year's agreement and the present agreement under consideration admittedly do not resolve all ourstanding fisheries problems. They only limit dislocation and buy time while we attempt to work out longer-term

agreements for all the boundary and fisheries problems which exist between Canada and the United States.

I and my Canadian counterpart, Ambassador Marcel Cadieux, have worked with our respective delegations and advisers since the beginning of last August to try to reach mutually acceptable understandings on boundaries, offshore hydrocarbon, and fisheries issues. We were able in mid-October to sign a joint report, which was made available at that time to the Congress, outlining a set of agreed principles for a long-term agreement and detailing a joint commission structure for the management and exploitation of the fisheries resources of mutual interest. That joint report was approved by both Governments and since October we have striven to agree on the specific details of such a long-term agreement.

I believe that we have made substantial progress, and that agreement is possible in 1978. There are, however, difficult remaining issues where our differences with Canada are substantial. By the end of 1977 it became apparent that we could not resolve those issues in time to have the long-term agreement in place this year. Therefore, it was felt necessary to again resort to interim agreements. Our 1977 experience with the interim agreement had revealed a number of areas where we felt the arrangement was not completely satisfactory. Canada also had a number of areas which it felt should be changed from the 1977 arrangement. As you might expect, the things we wanted changed were things Canada found difficult or impossible to accept, and the reverse was true with respect to the changes Canada desired in the interim arrangements. As a practical matter, therefore, we finally agreed to extend the 1977 arrangements with the fewest possible changes, in order not to become bogged down in the interim agreement over the same issues which in fact are the subject of the long-term negotiations. The result is the agreement before this committee for consideration.

I do not claim that it is a perfect agreement, or even that it is a truly satisfactory agreement. I do submit, however, that in the circumstances it is an acceptable agreement and one which the Congress should approve and bring into force. The agreement accomplishes two important things in my view.

First, it permits the continuation of reciprocal fisheries by each country in the fisheries zone of the other. These fisheries are of substantial value to both sides, and the disruption or cessation of them would bring great hardship to the fishing communities and groups participating in them. The economic dislocation would be severe on both coasts and in both countries.

Second, this agreement will help to maintain the necessary atmosphere for continuation of the negotiations toward a long-term agreement. I would point out that this is true not only with respect to the negotiations in which I have been involved, but also with respect to the salmon interception negotiations which are under the leadership of Ambassador Donald McKernan on our side.

In my view this interim agreement to maintain reciprocal fishing by United States and Canadian fishermen in each other's waters is not only an appropriate expression of the close, interdependent relationship we enjoy with Canada but an important bridge to a long-term cooperative fisheries and boundaries agreement which will best serve the interests of the maritime communities of both countries. I urge the committee to give prompt and favorable consideration to the legislation required to bring the agreement formally into force. The Government of Canada can bring the agreement into full effect by executive action as soon as the U.S. legislative process is completed. Prompt action on our part would assist in removing uncertainty over the coming months and in laying the foundation for successful long-term negotiations which will be actively resumed in the next few weeks.

I will be happy to explain in greater detail any points which the committee may wish and to answer any questions you may have.

Ambassador CUTLER. I will skip through that in light of the main issues raised by the chairman and Mr. Bonker.

This interim agreement for 1978 is basically a continuation of the 1977 interim agreement which was approved by the Congress last year, and which expires on December 31, 1977. There are two areas in which the 1977 agreement has been modified for this year.

I want to say to Mr. Bonker that interim agreements which are to be ratified by the Congress, as in effect amendments to the 1976 statute cannot fairly be described as illegal in any sense of the word. If they are subject to ratification, and the Congress ratifies in

the form of an amendment to the 1976 statute, there is certainly nothing illegal about that. As I understand it——

Mr. BONKER. I would also mention we had a district court ruling over the weekend which I think upholds the charge that the State Department is acting illegally. Certainly, Congress can move to ratify an agreement negotiated by State. And, normally that is done without question. The point is, any negotiated agreement should be based on the statute rather than a perception that Canada is a special case.

Ambassador CUTLER. I beg to differ or at least qualify that, Mr. Bonker. All the court did was say that until Congress acted, in its view the government, the executive branch, could not exercise a right of discretionary enforcement vis-a-vis the Canadians. There is nothing in that court decision that would affect the terms of this interim agreement if the Congress indeed does enact it as an amendment to the 1976 statute.

The court decision is there, it is being appealed, it is exactly the opposite of a court decision permitting the same interim application or interim discretionary enforcement last year. We respectfully believe it is wrong but that will be decided by the court.

In any event, that affects only the interim period up to the time that the Congress decides either to ratify this agreement as an amendment to the 1976 statute or not to ratify it.

Mr. BONKER. Mr. Chairman, if I may pursue that point.

The law requires that you submit to the Congress a Governing International Fishing Agreement that spells out the terms of any new agreement with foreign countries and brings existing agreements into conformity with the Fishery and Conservation Management Act.

We have been functioning now for 4 months without any agreement. I think it does not take an attorney to know that in that period there is no governing authority. That is where you apparently have come up with discretionary powers to dictate terms not only to maintain the status quo, but to modify the status quo during this period. I think these were some of the questions raised by the Troll Association when it brought suit.

Ambassador CUTLER. Mr. Bonker, this is not a GIFA that we have made with Canada. We have four boundary disputes with Canada as to where the 200-mile resource line actually goes, as between our two countries. One of those is in the Juan de Fuca Strait. The State Department under the statute is given authority, as I understand it, to negotiate what is to happen in disputed boundary areas, subject of course to the action of the Congress to approve any such agreement.

Last year the interim agreement was negotiated, I think, in January and February. It was not ratified by the Congress until June or July. During that period we took the position, I think with the backing of all fishermen, that pending ratification of an agreement which, as we understood it, all fishermen wanted, it was appropriate for the executive authority to exercise discretion as to whether or not to enforce against the Canadians when the Canadians were permitting us under this agreement to fish in their waters pending the time it took for Congress to act.

This year we were a bit later. It was not until April that we were able to conclude an interim agreement with the Canadians. The reasons for that are complex. They relate primarily to the fact that we were concentrating on the effort to arrive at a long-term agreement, again subject to the ratification by both houses of the Congress, which would make these year-to-year helter-skelter interim negotiations unnecessary.

We moved as quickly as it was possible to persuade the Canadians to move. They had some doubt whether it was in their interest to have an interim agreement at all. During the first 5 months of this year they have permitted us to fish in their waters, and the Washington State Ground Fishermen take very substantial advantage of that privilege. The Canadian season for fishing in our waters just about begins on May 1, so we are in a position where we have taken advantage of the Canadian discretion, and the issue is: Should we exercise similar discretion on our side pending congressional action?

That is not the central issue before you, of course, because your question is: Should you act or not act? And the courts will decide whether it is appropriate for us to exercise this discretion pending a fair opportunity for the Congress to act.

Mr. LEGGETT. According to the letter of the law, foreign countries, Canada being one, are only allowed to fish within our 200-mile zone if they have a permit and a GIFA in effect. Last year of course it was to our mutual advantage that we reciprocally winked at the law for a period, which we did, and then we passed the interim agreement which had no continuation provisions after December 31.

The agreement then expired. We hoped we could negotiate a long-term agreement, a long-term GIFA, because we obviously have interests in the Canadian area and they have interests in our area. But I think you can at least make the allegation that we have reciprocally allowed illegal fishing in each others zones up to this point.

There is a law case now pending to determine whether or not there is a degree of executive discretion which would in fact validate that activity, by either tacit nonaction or otherwise, while you are negotiating.

So there are some thin reeds upon which you are operating. I do not mean to resolve the legal controversy, but when Mr. Bonker says it is illegal, he is not totally and completely and irreparably, palpably wrong.

Ambassador CUTLER. I will accept that judgment, Mr. Chairman.

Mr. Chairman, I certainly have no reason and no wish to get into a conflict with Mr. Bonker, whose vote I realize we need very much on this committee. But the legislative process takes time, the negotiating process takes time, there are four boundary disputes, and fishing seasons wait on no man. What are we to do. We had to do something this spring.

Mr. LEGGETT. The burden is on you, Mr. Ambassador, and your associates, to prove to us that it is to our advantage to approve this agreement even though you have modified the status quo from last year.

Ambassador CUTLER. Yes, sir.

Mr. LEGGETT. You can have as much time as you need in order to prove your case.

Ambassador CUTLER. Thank you, sir.

I will skip over the first part of page 2, Mr. Chairman, dealing with the creation of consultative committees to deal with particular problems under this interim agreement as they arise. I think everyone concerned agrees that is a helpful step. It is a forerunner of what we would have under the long-term agreement and, as far as I know, no one objects to it.

Turning to page 3, the second area in which the 1978 agreement differs from the 1977 interim agreement is in the provisions relating to salmon troll fishing in the U.S. zone by Canadian vessels. By way of background, I want to recall to you some of the circumstances that Mr. Bonker referred to about the provision of the 1977 agreement which permitted the Canadians to fish, troll for salmon, off the coast of the United States and contained general principles providing that they would be allowed to have approximately the same effort as in the preceding year, 1976.

However, under a decision of Judge Boldt, with which you are all familiar, Judge Boldt ruled under some ancient treaties between the Indian tribes and the United States that the Indians were entitled to conduct a substantially higher amount of inshore fishing in or near the river mouths than they were then being permitted to conduct.

In order to accommodate that requirement, the Pacific Council made changes in the trolling seasons and trolling requirements offshore which had the effect of reducing the fishing opportunities for offshore trollers in favor of inshore fishing. It allowed the escapement of more salmon from the Puget Sound and the areas outside Juan de Fuca Strait so more could come inside and be caught inside.

Mr. LEGGETT. I will ask you a question at that point. Are you aware of any debate which occurred in the Congress at the time of the approval of the 200-mile act that indicated that it was the intent of Congress, not having control of the inland waters of a State under the act, to consider reduction of fishing opportunities for high-seas fishermen as a result of the enactment of that limitation because of inland water take.

Ambassador CUTLER. I am not aware, Mr. Chairman, but perhaps one of the lawyers or——

Mr. LEGGETT. Is there anybody in the room who is aware of one word that was said in any public session, either in the House or Senate?

Ambassador MCKERNAN. I would like, Mr. Chairman, to state that the law itself provides for conservation allocation——

Mr. LEGGETT. That is not the question I asked. Is there anyone who has heard anyone with respect to the restriction of fishing opportunities on the high seas because of inland water take which was not under the jurisdiction of the Fishery Management Council?

Ambassador CUTLER. Apparently no one here is aware, sir.

Mr. LEGGETT. The record will so show.

Ambassador CUTLER. I suppose Judge Boldt's decision essentially interpreted treaty rights——

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Mr. LEGGETT. Judge Boldt's decision predated the 200-mile act, isn't that correct?

Ambassador CUTLER. I do not believe that is correct.

Mr. LEGGETT. It was 1974?

Ambassador CUTLER. Not his later decision.

Mr. LEGGETT. So we had that before us and we knew the problems they were having in the inland waters?

Ambassador CUTLER. That is correct.

Mr. LEGGETT. At the time of the enactment of this law and in spite of that we said excactly nothing. The question was never raised. Isn't that correct?

Ambassador CUTLER. You may very well be right. I defer to you.

Mr. BONKER. I think he makes a valid point because one of the fundamedntal problems we have with the Pacific Management Council and its policies—and now as it has become involved in international negotiations—is that our intent was not to bring outside fishermen within the jurisdiction of the Federal court ruling on the Indian fishing rights. As one member who sat on this committee, I can say it was never our intent to bring the outside fishermen under this jurisdiction. I have always felt that the management council moved a little precipitously and perhaps harshly to impose restrictions on outside fishermen in an effort to resolve problems of the Indian fishermen. One section of the statute, 303(2), merely says that the Management Council plan shall contain a description of the treaties along with a variety of other things. There is nothing in that provision, or anywhere else in the statute that says that the Management Council shall comply with Federal court decisions. Until we resolve that basic conflict, we are going to run into these problems on the international scale as well.

Ambassador CUTLER. I was about to make just that point. What the Pacific Council did in response to Judge Boldt's second decision cut down very substantially the fishing opportunities of all offshore trollers—American as well as Canadian—off the State of Washington coast.

The Canadians argued, as you know, that that action was a breach of their rights under the 1977 interim agreement because the 1977 agreement contained provisions reflecting the right of each side to continue its present levels of fishing, which for this purpose were the 1976 level.

They argued that the effect of the new regulations was to reduce the fishing opportunities of all offshore trollers including the Canadians for the benefit of all the inshore fishermen, all of whom including the Indians were American. So that looking at it as a Canadian-American balance it was their position that the 1977 agreement had been violated.

The Canadians took up that position at the highest level in cabinet discussions between members of their cabinet and members of the United States cabinet but were unable to obtain any redress during 1977. It then became a sine qua non of any 1978 interim agreement to adjust the Canadian trolling rights off the Washington coast in some way that would recognize the original principle of continuing the previous levels of fishing. What we did in the 1978 agreement that stands before you now, in consideration of a conservation effort the Canadians were to make in their waters in

the Swiftsure Bank area, where a great many American river salmon pass through, was to agree to several new provisions, one of which was to allow Canadian vessels fishing in our zone to have on board 26-inch salmon—they have a 26-inch limit on their side while we have a 28-inch limit—caught in the Canadian zone under reporting, inspection and enforcement procedures to insure against the taking of fish under 28 inches in U.S. waters.

They must radio to the Coast Guard as they come in our waters how many underized fish, 26- to 28-inch fish, they have on board, and they are subject to inspection while they are in U.S. waters, and if they have either too few undersized fish than reported, which would suggest they intended to catch some undersized fish in U.S. waters, or if they have too many fish, more than they had reported, which would suggest they had indeed caught some undersized fish in U.S. waters, they would be subject to U.S. enforcement procedures.

We also agreed to permit Canadian vessels to troll for salmon in the 3- to 12-mile zone in an area farther south than the case in 1977. We did provide, however, that this expansion of area was not to provide for an increase in the total Canadian salmon troll effort in the U.S zone.

Mr. LEGGETT. What do you mean by that?

Ambassador CUTLER. What we mean by that is that even though the Canadians have a wider area in which to catch salmon off the Washington coast, they are not to catch more salmon than they did in the years preceding these interim agreements, such as 1976.

Mr. LEGGETT. That does prejudice their people who are in that 65-mile area, does it not?

Ambassador CUTLER. You mean the American fishermen?

Mr. LEGGETT. Yes.

Ambassador CUTLER. It is hard to say whether it would prejudice them or not. I would have to have Ambassador McKernan answer that question. There is no restriction on the American fishermen operating in that area.

Mr. LEGGETT. But if it increases the number of boats——

Ambassador CUTLER. I do not think we believe it is a level of boats that would substantially reduce a U.S. catch.

Mr. LEGGETT. Based on probabilities, there is a difference in the competition level between 5 and 50 people.

Ambassador CUTLER. That is probably true, Mr. Chairman, but it was necessary in order to have an interim agreement to give some recognition to the fact that the net result in 1977, when we transferred a certain amount of escapement from offshore to inshore was to reduce aggregate Canadian fishing opportunities and increase aggregate U.S. fishing opportunities, counting the inshore fishing.

It was just as hard on Mr. Bonker's constituents as on the Canadians, but the Canadians did have a point, one that we could not do much about because of the decision, that the net effect was to increase the U.S. catch at the expense of the Canadian catch, and all of this of course is in the context of this extremely complex long-term salmon interception negotiations in which each side is going to allow the other side to catch a certain number of salmon offshore that are destined for the other country's rivers.

May I ask Mr. McKernan to comment?

Mr. LEGGETT. Yes.

Ambassador MCKERNAN. You raised the point, Mr. Chairman, about the increase in Canadian effort down the coast and the competition with the American fishermen in that extended area. You are correct. Of course, there is some minor but still perhaps significant increase in effort in that area. But keep in mind that the American fishermen in the north then have less competition.

Mr. LEGGETT. But that is trading off during a status quo time period when we are trying to reach resolution. That is like selling F-16's at the wrong time.

Ambassador MCKERNAN. I do not know about F-16's, but we asked our scientists to look at that when we tried to find some resolution of the problem, because our effort, of course, was to try to provide an atmosphere and a basis for continuing our interception agreements and our scientists pointed out that the stocks of salmon which go into Puget Sound under these circumstances would to some extent be helped because the concentration of Canadian effort would be spread out, that is, the same amount of effort spread out over a greater area, and that, in fact, it was their view there would be a difference of Canadian catch of an insignificant amount since most of the fish they catch on the Canadian as well as the American side are of U.S. origin, our ultimate goal of attempting to restrict the Canadian catch was in our mind, and we thought this was a good way to do this and it satisfied the problem that the Canadians saw at that time.

Mr. AUCOIN. I have a question at this point. If that is such an insignficant amount, then why does it represent a concession to the Canadians? You cannot have it both ways. On the one hand, we have been told today these concessions are necessary in order to assure the Canadians that they will have an opportunity to bring their harvest back to the levels they enjoyed before they felt aggrieved. I might add parenthetically that most of our domestic trollers feel we should give them the same kind of consideration, but that is not the point.

One of the concessions apparently is this extended boundary. You are saying that is a concession, on the one hand, and yet now you are saying it is going to be insigificant in terms of take. It cannot be both ways. Either it is significant or it is not significant. Either the Canadians are getting something meaningful or they are not. I think what we are dealing with here is very significant, and you cannot tell me that by extending the fishing area southward you are going to increase the U.S. take. I think it is clear it is going to be decreased. I would suggest it is going to be decreased substantially.

Mr. LEGGETT. You can respond to that.

Ambassador MCKERNAN. In the long run, in my judgment, it is going to increase the opportunity for Americans to take fish, not decrease it. Temporarily it does provide the Canadians with a greater area in which to fish, and there is no question about it but what their effort will be spread out over a greater area. In fact, there may be very small increases in the Canadian catch, but our scientists have told me in working with the Canadians, so long as the effort was held the same, it was insignificant. It applied the

effort perhaps to some slightly different mix of stocks of fish, but in fact the amount of increase was relatively small and/or insignificant.

Why did the Canadians want that? They felt they had to be redressed from their problem as they saw it in 1977.

Mr. AuCoin. How did you pull the wool over their eyes?

Ambassador McKernan. I did not.

Mr. AuCoin. How did you fool them into thinking this was something that was going to redress their grievance?

Ambassador McKernan. Keep in mind the Canadians have a number of objectives. One is to point out that the United States was willing to negotiate this issue. In 1977 we had not negotiated it. In the Canadian view we had unilaterally imposed our own point of view, and in 1978 we were attempting to bring about a redress, a rebalance of this. Part of it was simply for the Canadians to feel they had a say in where and when and how they were going to fish.

Mr. AuCoin. You are saying it is enough just to make Canada feel good; we did not really give them much?

Ambassador McKernan. I do not think we gave them much, yes.

Mr. AuCoin. Despite the fact that Canada feels good about the fact that we were willing to talk about it?

Ambassador McKernan. Canada felt that in 1977 there was unilateral action by the United States. In 1978 there was negotiation by the United States, and Canada did want negotiation.

Mr. AuCoin. Mr. Chairman——

Mr. Leggett. You can reserve your time.

Let me ask this, Ambassador McKernan: Your scientists gave you some advice that insignificant numbers would be taken in this 65-mile zone. What estimate do your scientists give you as the insignificant number that would be taken?

Ambassador McKernan. The increases, Mr. Leggett, what they indicated was, there would be very small if not insignificant increases in the Canadian catch because of the increased area they were being permitted to fish in.

Keep in mind even if the Canadians are taken out of all areas of the United States they are going to be taking U.S. fish anyway. The same fishermen fishing off Vancouver Island are going to take 83 percent of the Chinook salmon of U.S. origin on the Canadian side. So in that whole area there is mostly fish from U.S. hatcheries and streams. So wherever that Canadian effort is, it is still going to be fishing in the same pool of fish.

Mr. Leggett. Did they give you any estimate as to the numbers?

Ambassador McKernan. The increases?

Mr. Leggett. The number of fish that would be taken this year as compared to last year in this area.

Ambassador McKernan. Their estimate was it was insignificant.

Mr. Leggett. That is our scientists' estimate?

Ambassador McKernan. Yes. The increases, not the numbers they would take, but the increase over fishing down to Carroll Island inside up to 3 miles. Keep in mind the Canadians could fish, under the 1977 agreement, outside of 12 miles clear down throughout the whole area of fishing.

Mr. LEGGETT. In that 65-mile stretch, insignificant numbers of fish will be taken there?

Ambassador MCKERNAN. An insignificant increase over what they would take if they were restricted to the area north of Carroll Island.

Mr. BONKER. Mr. Chairman, I have some statistics based on historical catches in this area. In 1970, Canadian trollers harvested 650,000 salmon when they fished all the way down to the Columbia River, so we negotiated an agreement in 1973 to set the line of southernmost penetration by Canadians at Carroll Island. That reduced their catch to an average of 200,000 per year. Extending that line now another 65 miles south toward the Columbia River will provide Canadian trollers an increased catch of salmon which is going to be substantial if historical statistics are any indication.

Ambassador MCKERNAN. Keep in mind at this particular time there may be a great deal more Canadian effort. Furthermore, there are concentrations of fish from about Grays Harbor down to the Columbia River. This is where our enormous sport fishery, charter boat fishery, take place. Fish do congregate in that area, but keep in mind that part of this agreement was that the Canadian effort would not increase so that what we were doing was spreading the Canadian effort out over a greater area along the Washington coast, further south, in this small area from 3 to 12 miles and it was in that particular 3- to 12-mile area from Carroll Island on down to somewhat north or just about to Copalis Beach and north of Grays Harbor.

That is the area we are talking about and that is the area where the biologists of the State of Washington and the National Marine Fishery Service indicated to me that that would be relatively insignificant but yet they did not come up with a precise number of terms of an increase in salmon that would be taken in that area. They indicated there would be some benefits to Puget Sound stocks, benefit from spreading out this effort by the Canadians, particularly if we could keep the Canadians to the recorded effort of about 5,000 boat days being recorded as being fished off the U.S. coast in the past few years.

Mr. LEGGETT. What you are doing is trading off fish in the 65-mile area for Puget Sound stocks, is that correct?

Ambassador MCKERNAN. To some extent that is true.

Mr. LEGGETT. Is there any way you can make an argument that this is a good deal, from either Mr. Bonker, or Mr. AuCoin's view? How about in the short run?

Ambassador MCKERNAN. In the long run; yes.

Mr. AUCOIN. How long would you estimate?

Ambassador MCKERNAN. The agreement that is before you at the present time calls for a completion of the interception agreement by the end of 1978. We are very close to agreement at the present time. We have to get both sides down to the table. When that is done, then we begin to put a lid on the Canadian interception of U.S. fish, not only off the United States, but off Canada as well. This is most certainly in the interest of your fishermen; very much so.

Mr. AUCOIN. Do you expect that agreement to be reached by the end of this year?

Ambassador McKernan. Yes; unless there is no interim agreement. If that is so, there will be no negotiation.

Mr. AuCoin. Agreement in hand is one thing. Another question is, what is the content of that agreement?

You are telling this committee that it is conceivable we may have a salmon interception agreement at the end of this year. I must tell you, and I mean this without acrimony, that if that agreement in any way reflects the priorites I see in the interim agreement, I haven't very much hope for what one permanent interception agreement may hold out to the U.S. fishermen.

Ambassador McKernan. Mr. AuCoin, I want to point out one thing with respect to that. I would hope that you change your view because throughout our negotiations with Canada on the interception agreement we have had a large delegation of U.S. fishermen representing all the various areas including the troll salmon, including the State of Oregon, and fishermen from the State of Oregon. We made certain they were part of the delegation. We proceeded on the basis of agreement with them in terms of our direction, and we certainly would not want to bring before Congress an agreement that was not in the interests of our fishermen as well as other salmon fishermen along the coast.

Mr. Leggett. Was the tradeoff of the coastal salmon for the Puget Sound salmon at the expense of American fishermen or Canadian fishermen?

Ambassador McKernan. It was really suggested by me and at the time when I discussed this I had approximately 30 advisers with me, including representatives of the troll salmon. I don't know whether they were the right representatives or not, but they were representatives we attempted to choose at that time. In fact, I believe there were two representatives of the troll salmon fishermen that were with me and while nobody particularly liked what we were coming up with, they all understood that it was necessary to get this particular part of the interim agreement that deals with troll salmon for 1978 so as to get on with the job of finding a solution to the problem.

Mr. Leggett. Do you have any troll fisherman from Mr. AuCoin's or Mr. Bonker's districts who agreed to this 65-mile figure?

Ambassador McKernan. I believe so, but forgive me if I don't recall exactly where they were from.

Ambassador Cutler. I am delighted to have Ambassador McKernan deal with all salmon questions. I am glad I don't have his job. It is enormously complex and difficult.

Mr. Leggett. We tried to separate the boundary issues from the salmon issues. How you allowed yourself to get in this position, I don't know.

Ambassador Cutler. Only because time, tide, and fish wait for no man. We have the 1978 season to resolve.

Last year what the Canadians alleged they lost as a result of the Pacific Council salmon regulations offshore was something on the order of 40,000 fish. Ambassador McKernan says that is an overstatement. They probably didn't lose that many, but on an issue of 40,000 fish they have constituents just like Mr. Bonker's and Mr. AuCoin's constituents.

On an issue like that, the whole question of reciprocal fishing back and forth, whether Maine fishermen are going to be allowed to catch redfish in clearly Canadian waters; whether Mr. Tom Norris will be allowed to go to catch cod and haddock in Canadian waters; whether the Washington State ground fishermen may fish in British Columbia waters depends on whether we can work out a mutually satisfactory arrangement about 40,000 fish.

I said when I took this job in the beginning I think there are more pieces of paper in the Government and more transcripts, more pages of transcript, than there are fish out there. Somehow or other, we have got to see the larger interest.

Mr. LEGGETT. Is the intent of this agreement to give the Canadians 40,000 more fish?

Ambassador MCKERNAN. No; it is not. The intent of the agreement is to negotiate some recognition of the Canadian position that the United States did not carry out the 1977 agreement, albeit for reasons beyond its control.

Mr. LEGGETT. Did the Canadians believe this agreement would give them more fish than they got last year?

Ambassador MCKERNAN. You are talking about the 1978 agreement.

Mr. LEGGETT. Yes.

Ambassador MCKERNAN. Than they got last year. I believe the Canadians feel this will give them perhaps a slightly better opportunity, but their view was that the interim agreements that we had in place before 1977 provided a balance of our salmon interests.

Keep in mind we have interceptions by the United States of Fraser River fish by somewhat the same fishermen, both pink salmon and sockeye, and in the north the United States intercepts—that is in southeastern Alaska—we intercept sockeye and pink salmon from northern British Columbia streams.

So that what we had was a very delicately tuned balance between the two countries as a basis for our continuing our negotiations.

In 1977 we upset that balance. What we did was unilaterally make some changes, primarily politically in my judgment, the Canadians found very difficult to accept.

So, when we tried to redress that it was our intent to negotiate, but to give them, in terms of fish, an insignificant or practical "no additional fish," but to give them what they consider to be important in reestablishing that balance that had been so delicately arrived at in earlier years and which they felt the United States had upset by its unilateral action in the fish remanagement plan that was put into effect in 1977.

Mr. BONKER. May I try to put the issue in perspective?

We appreciate the need to pull together all the issues, the State options involved, and migratory patterns of our domestic salmon species.

What we are faced with today is a short-term agreement that was intended to carry on a status quo so we could negotiate a permanent agreement with Canada that would take into consideration these broader questions.

It is my understanding that this short-term agreement according to the Ambassador is simply a matter of compensating Canada for

restrictions imposed last year by the Pacific Management Council. Since the Council restricted the time the Canadians can fish off our coast, State Department wants to compensate them by giving them an extended fishing area within which they can fish.

Those are the modified terms.

Our trollers were faced also with the same Council restrictions which, as you know, Mr. McKernan, I have opposed all along. It was not the intent of this committee to set up a regulatory agency to restrict domestic fishing off our coastal areas. It was our intent to help to protect a resource in a more constructive way than it had been in the past.

Not only do our trollers now have to comply with those Council restrictions but, because the Canadians must also comply with those same restrictions, State Department proposes to compensate them because they cannot continue to fish at the same level and the same patterns as before.

In effect, what we are saying to our fishermen is that they must continue to comply with the Council regulations with a corresponding reduction in harvest levels, but the Canadians should not have to experience similar reductions. That is the inherent unfairness in this particular agreement, and that is why I can't support it.

We are asking our fishermen to undergo sacrifices that Canadians fishing in the same waters don't have to experience.

Mr. AuCoin. Is it not the gentleman's interpretation that we are not only telling the Canadians they do not have to share in the sacrifice, but that we are willing to make up for whatever losses there may be for the Canadian fishing industry?

Mr. Leggett. It is insignificant.

Mr. AuCoin. We are making an effort to allow them to catch up and compensate them.

Ambassador Cutler. I don't think that is true. There is no effort to restore to them fish they say they lost in 1977. It is an effort to improve their opportunity to maintain their 1976 fishing level in 1978.

Mr. AuCoin. But the U.S. fishing industry would pose this question. Who is doing anything to allow them to reach levels that they may have had prior to the decision? Who is speaking for them? Because the answer is no one, you have a U.S. industry in a squeeze play which you have complicated by this agreement.

Ambassador Cutler. I would point out to you the United States gained at the expense of Canada—your fishermen may have been hurt by Judge Boldt's decision, but that simply transferred fish from your fishermen and the Canadian fishermen offshore to 100 percent U.S. fishermen inshore. Now, that may be an injustice to your constituents, and I am sure they think it is just as the Canadians think it is an injustice to them but as between the United States and Canada, the United States increased its share of those fish at the expense of Canada.

That is what they say happened.

The only real answer we can make to that is it happened because of the judge's decision, which is beyond the control of all of us in interpreting a treaty.

I wonder if I could go on, sir, to make clear that this concession that we are discussing has not been granted?

I said in the beginning that it was an exchange for a quid that Ambassador McKernan negotiated, namely, that the Canadians would close the Swiftsure Bank, which is on their side of the boundary line just southwest of Vancouver Island, outside of Juan de Fuca Strait during the period from April 15 to June 14 when normally a substantial number of small salmon or "shakers" are passing through that area. They are American River salmon and the agreement provided the Canadians would discuss with us whether there is a conservation need to close that area during that 2 months' period.

It is further provided that if we felt there was a conservation need and they did not close, we had no obligation to grant the more favorable terms that are contained in the 1978 interim agreement. The Canadians did have discussions with us. They submitted data to us indicating that a relatively small number of small fish were present in the area. They stated they did not think it was necessary for conservation reasons to close.

We told them, after consulting our experts, we did think it was necessary to close. They did not close by May 1 when our fishing season opened and, as a result, we notified them and we notified the Coast Guard that they would only be allowed to exercise the 1977 fishing privileges in trolling starting May 1 and not the 1978 one. That is the situation as it now stands. The Canadians have not been allowed to go below Carroll Island and have not been allowed to fish in any area that they were not permitted to fish in in 1977.

Mr. LEGGETT. Since they violated——

Ambassador CUTLER. They did not violate, if I may interrupt. They did not provide the quid.

Mr. LEGGETT. Since they did not provide the quid and since fish wait for no man and since those fish in that quid are gone, necessarily the fish in the flow are gone for them, too?

Ambassador CUTLER. That is correct.

Mr. LEGGETT. So what we are talking about then is really a moot point.

Ambassador CUTLER. It is not entirely moot, Mr. Leggett, depending on what the Canadians do. We asked them to close for the period April 15 to June 14. We are now at May 8.

Mr. LEGGETT. Is that an addendum to the prior agreement?

Ambassador CUTLER. No, sir. There is a provision in this agreement saying they would consider closing for the period April 15 to June 14, and if they did not close when we felt there was a conservation need to do so, during that period, then we have no obligation to provide the better terms. Certainly as long as they do not close, we will not provide the better terms. In the event they should close for a significant part of that period up to June 15, then we would have to decide what an appropriate response on our side is. We would have no obligation, but if we took a response that was greater than the quid that was not provided for the quo, that might be regarded by them as unreasonable.

Mr. LEGGETT. Is it your understanding that you have discretion to provide the quo in the event they provide additional quo in another area?

Ambassador CUTLER. We would consider providing much less quo because the days from April 14 have gone. We might not let them

go as far south. We might take away other terms. We would then feel that while we had no obligation to provide them any better terms, we would in good conscience be required to consider what the cost of their failure to provide the quid had been and then limit them appropriately.

I don't think it would be right to limit them on the theory we never should have made the concession in the first place.

Mr. LEGGETT. Isn't this clearly precarious to the fishing opportunities of the folks in a 65-mile area? Here you have made an agreement. The agreement has a condition. Now you are talking about a further condition and an action on our part which is as yet undetermined and you indicate that depends on what is significant. We have already had Mr. McKernan's view on what is insignificant so we can infer from that what might be significant. That leaves us in a situation where we are trying to attain status quo. We seem to be developing almost by design extraordinarily rocky shoals along the coast of Washington.

Ambassador CUTLER. The issue, I would respectfully remind you, Mr. Chairman, is, in the Canadian view, after having agreed to maintain the status quo, we did not do so in 1977. What I am trying to preserve is an ability to negotiate and find a reasonable, mutually satisfactory solution for 1978 that will permit us to negotiate a long term agreement under which we won't have these problems month by month and year by year.

Mr. LEGGETT. A simple extension of last year's agreement?

Ambassador CUTLER. A simple extension in the Canadian view would obligate us to permit them an opportunity to catch as much fish as they caught in 1976, and they would not simply sign an extension of last year's agreement without clarifying that issue, as we have attempted to do.

Now, because of their own internal political problems with their fishermen and the disagreement as to the conservation need on Swiftsure Bank, they have lost the opportunity to get all that has been negotiated in that agreement, but should they close tomorrow, I think in good conscience we would be required then to consider what terms, less favorable than terms they would have had had they closed on April 15, would then be appropriate.

We are perfectly prepared to consult the committee before entering into any such commitment.

Mr. LEGGETT. Since we have this confusion why don't we simply say, "since the condition precedent did not obtain, the board's the play."

Ambassador CUTLER. If you do that, which I think you are free to do, I think you do serious harm to the overall negotiating posture.

Mr. LEGGETT. But you have almost reached an agreement?

Ambassador CUTLER. We have almost reached an agreement, yes, that is true, but until you have an agreement "almost" isn't very good.

What could easily happen if we do not adjust this situation amicably during 1978, is an end to all reciprocal fishing on both coasts for the balance of 1978 and perhaps longer.

Mr. AUCOIN. Under what authority would the Ambassador make adjustments if the Canadians come in with a late decision that

they are going to close the Swiftsure Bank area of British Columbia.

I assume we are being asked to approve a temporary, interim fishing agreement. The terms of that agreement spell out a timeframe in which the Swiftsure area off British Columbia would be closed. They have not obliged our request. If they do so later in the year and Congress passes this agreement, what authority do you have to make these adjustments that you refer to?

Ambassador CUTLER. This agreement, Mr. AuCoin, which would come if you approved it, would be an amendment of the 1976 statute. It provides in paragraph 6 for a negotiation and adjustment—that is on page 3 of the agreement itself——

Mr. AUCOIN. Would those adjustments come back before this committee? Require the approval of this committee?

Ambassador CUTLER. We would certainly be prepared to consult the committee before agreeing on any adjustments.

Mr. AUCOIN. Is it required that you come back for our approval?

Ambassador CUTLER. That is a matter for you to decide when you amend the statute. The bill has been drafted by the committee and not by us, but I would point out to you that the seasons are running and if some sort of formal approval were required or if we had 30-day waiting periods or something like that, that that could use up the season—for example, this present season the fishery closes June 15. It runs only from May 1 to June 15. The opportunity could be gone if there is a formal waiting period.

Then there is a second season later in the year where we have a similar issue.

I would be willing to say we would come back and consult the committee in an informal manner before we make any commitments of any kind of this type. In whatever way the committee wishes to be consulted, I assure you that since we must come back to you for approval of the long-term agreement, we are unlikely to ignore your wishes.

Mr. BONKER. Ambassador, you really have a way of complicating the law that we set up to protect our fishermen from foreigners. What you have come forth with is an agreement that really expands foreign fisheries off the coast of Washington. I don't think I could support this amendment to the statute. We have provided in the statute for negotiation of GIFA's so we could bring all existing agreements with foreign governments into conformance with the basic law. Now you suggest we don't proceed—that we proceed instead with an amendment to the law to provide for foreign fishing that is not legal under strict interpretation of the FCMA.

What is wrong with negotiating a long-term agreement with Canadians, as we have now with other foreign governments, and bringing that GIFA before this committee for examination? And while that process is underway the status quo could be maintained.

I personally don't want to get into an amendatory process to the 1976 statute. We have provided for GIFA's and we ought to think of that. We should have no executive agreements or protocols, but simply a GIFA to act on in conformance with the objectives of this law.

Ambassador CUTLER. I hope this will be the last interim agreement we will have. We are working on two such long-term agree-

ments, one dealing with salmon and one dealing with everything else, but we have the seasons of 1978 to contend with. There is just as much riding for your salmon fishermen and for the groundfish fishermen of the State of Washington who fish in admittedly British Columbia waters on a satisfactory resolution of these long-term issues. It is not simply one fisherman's issue.

Mr. BONKER. There is no reason why we can't proceed with what we had last year. There is no reason why we cannot and should not maintain the status quo.

Ambassador CUTLER. The Canadian position, sir, is that the United States is in violation of last year's agreement or that last year's agreement, interpreted as we interpret it, is unsatisfactory to them and they won't sign a new one.

Mr. BONKER. What you have brought to this committee is unsatisfactory to us.

Mr. LEGGETT. Let me ask this: Canada agrees to consult with the United States about conservation needs and to close this area to all salmon fishing from April 15, 1978 to June 14, 1979. The United States concludes there is a need to close the fisheries during this period, which apparently we did, but Canada did not do so.

The United States shall have no obligation to stop Canada fishing in Canada's water without specific terms beyond the 1977 agreement.

What you are saying is, since the provision says we shall not have an obligation, the other side of that would be that you would have discretion.

What you previously said to Mr. AuCoin is that you would not negotiate any new agreement on this point unless you come back to Congress. Is that right?

Ambassador CUTLER. I said I would be happy to consult the committee before we grant any salmon trolling privileges better than the 1977 privileges. I am concerned about a provision saying that we must have the approval, let us say, of one house of Congress under a 30-day or 60-day veto provision because, by that time at least the first half of the trolling season will be over.

Mr. FORSYTHE. You have pointed up several times that the east coast is also involved. I would like to note about $3.5 million in American fisheries were taken in Canadian waters off the Atlantic coast and about $15.7 million of products in the disputed area. If what we do undermines the long-term agreement, we have a very serious problem for the east coast.

I am reminded that Ambassador McKernan and I lived through the laws of the sea efforts. Frankly, without keeping those concerns very much in mind, I hope the committee doesn't let the current effort fall apart on the basis of what really is an internal problem within the United States between the Indian Treaty fishery and the American troll fishery. I am sure Mr. Emery will have some comment since he is closer to the east coast of Canada than I am, but we do have to keep active on the committee as we try to find ways to get a long-term agreement, which really is the only way we can go. I think we also should be reminded that the boundary problems are of such long standing as to expect I suppose an easy and early agreement is rather remarkable.

Mr. AuCoin. I think it is also important for the committee to remember what we were told a year ago upon the occasion of the approval of the 1977 interim agreement. What we were told a year ago when we pressed the point as to whether or not that agreement increased the Canadian fishing effort in our waters was that it would not.

We were told that that satisfied the Canadians. That all they wanted was an interim agreement to carry them through to a permanent agreement. Now we are being told that is not the case. Canada suddenly has had a change of heart and wants a greater percentage of effort or opportunity, or what we are going to see is the ruination of the permanent agreement.

That is just what this committee was told a year go and that ought to be kept in mind when we consider whether or not we are running serious risks of jeopardizing the permanent agreement.

Mr. Forsythe. I think it is important to note that the 1977 agreement was not finally resolved by Congress until around mid-July. It was June 29, I think, when it was considered in the Senate and that did not take it through to the White House. So we aren't talking about having had a year to get through what I think we recognize as a difficult situation.

Ambassador Cutler. I appreciate your remarks earlier, but I was appointed on the first of August. We arrived at substantial agreement on the basic elements of a long-term treaty in October. We then faced the really hard problem, not the conceptual problems, but, how we were going to divide up the fish, both as to management and percentage shares, and some of these raise difficult issues of reciprocal fishing. That has taken a long time on both sides, partly because we have tried to involve every element of the fishing industry, the Canadians have also, and every fisherman cares deeply about his particular rights. There just have to be balances achieved on both sides.

We were prepared to go ahead and finish in February and March. The last few problems were admittedly very difficult and had we finished them as Canada wanted we probably would have left our fishermen feeling quite unhappy. They felt the need to back off for the balance of this spring for their upcoming elections, since any agreement you brought into an election was going to be attacked by somebody.

Mr. Leggett. Is your long-term negotiated agreement bringing a line 65 miles south of Carroll Island?

Ambassador Cutler. No. I want Mr. McKernan to answer that because offshore salmon trolling gets handled in an entirely different way under a different agreement which will be concluded at the same time.

Ambassador McKernan. The answer to your question is no, we do not. That was an ad hoc one-time arrangement to provide a readjustment of what was considered to be an imbalance by the Canadians and put us in a position so that we could negotiate an agreement which would benefit the trollers and other salmon fishermen of the coasts of Washington and Oregon.

I would like to address that, if I may. I would like to address the reason I feel very strongly it is in the interest of the constituents of Mr. Bonker and Mr. AuCoin to agree to this particular agreement.

The reason for that is that the game on the west coast salmon negotiation is the interception by each country of each other's salmon. There are three major areas. One is in northern Puget Sound and deals with the sockeye and pink salmon of the Fraser River. There we intercept the vast majority of salmon from the Fraser River. In the north, in southeastern Alaska, we intercept the salmon from the Nass and Skena Rivers of Canada, and some pink salmon, and in some years they intercept some from us, but much less. An agreement means that we limit our interceptions in those two areas, and Canada limits her interceptions in the area of Vancouver Island that is so important to our salmon fishermen. Our fishermen cannot go ahead. In fact, our State legislatures will not go ahead with enhancement programs without an interception agreement. In my judgment there will be none unless we come up with a reciprocal agreement that is not only agreeable to us but it must also be agreeable to Canada. It takes two of us to negotiate.

Mr. AuCoin. Mr. Chairman, I do not think anyone disagrees with that last statement. Obviously we need it. Obviously the interception problem needs to be resolved. But what has happened to put the agreement in jeopardy and require a document of the kind which you brought before the committee today. I do not understand what is so precarious about the negotiations on that permanent agreement that we have to make concessions of this kind. This is especially so since we were told just 1 year ago that the approval of the 1977 interim agreement would carry us through to a permanent agreement.

I do not understand why we have to make these concessions now and why the failure to make these concessions would jeopardize what we are trying to seek in terms of a permament agreement.

Ambassador McKernan. Our salmon management plan that was enacted last year put additional restrictions on the Canadians, and they were unwilling to accept.

Mr. AuCoin. And there are a lot of domestic U.S. fishermen who feel precisely the same way.

Ambassador McKernan. I understand so.

In response to some comments Mr. Bonker made, the inequities of the situation are far worse than he mentioned because our salmon that we produce in our streams are being taken by the thousands off Canada by Canadian fishermen in their waters where they can have absolute control. The only way for us to control——

Mr. AuCoin. I think Mr. Bonker and I understand that painfully well.

Ambassador McKernan. What we need is an agreement that it is satisfactory to the Canadians as well as to ourselves, and once we get that then we can go on with the job of putting limitations in these three critical areas, limitations which will provide great advantages to our salmon troll fishermen.

Mr. AuCoin. You still have not told me what it is that jeopardizes a permanent agreement that requires concessions of the kind you are proposing here.

Ambassador Cutler. May I take a try at this?

I am new to this game. I did not begin until August.

Mr. AuCoin. I have a great respect for what you were going through, sir.

Ambassador Cutler. I would say although I was not to have responsibility for interim arrangements for salmon interception, I would say that fully a third of the time that I have put in on these problems—and that includes the boundaries, the oil, the fish and everything else—fully a third of my time has gone into dealing with this very deep Canadian feeling at the highest levels of their cabinet in government that we made an agreement in 1977 and we did not stick to it. And what are we going to do about that, and how are we going to work that out from here on? That is the serious problem.

It is one we must recognize. You are not responsible and we are not responsible for Judge Boldt's decision. That is the third branch of our government, and we do our best to explain that to the Canadians. But seen from their eyes it is a fact that the result of the decision as interpreted by the council was to increase U.S. fishing opportunities overall, not your fishermen but the inshore fishermen, at the expense of the Canadians.

We are doing our best in order to provide the atmosphere for a long-term agreement based on mutual trust to recognize that point.

Mr. AuCoin. The problem I have with that is that these things were known a year ago. I think the Management Council's initial plan based on the Boldt decision was known a year ago when the 1977 interim agreement was passed by this committee.

Ambassador Cutler. Known when it was signed. There was a second and intervening Judge Boldt decision that created the problem.

Mr. AuCoin. I would only say that it seems to me that reasonable people—and I assume all diplomats are reasonable people—ought to be able to understand a totally unknown and unexpected event which the Boldt decision clearly was. It caught this country just as much by surprise as it did the Canadians. We are paying a price for that decision just as they are, and I cannot understand why you cannot make that point clear to the Canadians.

Ambassador Cutler. Sir, I have tried, and if you can find a better man I will happily turn it over.

Mr. AuCoin. I am not making a personal remark. I think you understand that.

Ambassador Cutler. My suggestion, Mr. Chairman, is that at some point we enter into an executive session. I would like to discuss a little further what kind of commitment we could make to you for consultation and also to discuss this new decision and the current appellate status of that and what may happen if we do not succeed in reversing the decision before the decision is mooted by some action of this committee.

Mr. Leggett. We can do that at the appropriate time. This might be it. Do you have anything further that you have not covered that is in your prepared remarks?

Ambassador Cutler. I think I have covered almost everything.

Mr. Leggett. I think we all pretty well understand what is to be derived from both the interim and long-term agreements, so I do not think we need to rehash that.

Ambassador CUTLER. I do not think we need to go into that. I want to call your attention only to the fact if we are not successful in reversing the court decision in which we now have a say and if the Congress has not acted on the interim agreement, we run a very substantial danger that a time could arise within the next few weeks in which we have no reciprocal agreement on either coast across the board.

Mr. LEGGETT. So that we avoid any confidences that we might exchange in any executive meeting, I would think it might be well were we to hear from the other witnesses first, then we do not get into any dangers of cross-examining on points that might be privileged.

Mr. BONKER. I have just one final question of the Ambassador.

You are faced with a clear obstacle. The District Federal Court decision enjoined State from implementing any agreement prior to Congressional action. This committee must act to consummate the agreement. Frankly, I am not prepared to do so, and I am convinced that I can, if necessary, muster the support to amend the agreement before it is reported out by the committee.

Ambassador CUTLER. The court decision would be mooted if the Congress approved the agreement.

Mr. LEGGETT. That is true. If the Canadians are not obliging our request that fishing be curtailed off Swiftsure Bank, which prompted your decision to enforce the terms of our previous agreement concerning how far south they can go in their fishing activity off that coast, it seems to me there is a provisional tradeoff for the time being because you submitted to this Subcommittee an agreement that incorporates both these concessions. If Canada is not going to comply with one and we are with the other, then we are at something of a standoff. So I am wondering why we cannot proceed with another short-term agreement continuing the status quo and allowing you more time to negotiate a permanent agreement.

It seems to me if we can proceed on that basis, as long as they are going to fish off Swiftsure Bank anyway——

Ambassador CUTLER. If they continued fishing off Swiftsure Bank, you would be entirely right, and the whole question of whether there would be better salmon trolling terms for Canada in 1978 than 1977 would become academic. There would not be better terms. However, should they stop fishing off Swiftsure Bank, we have to decide what the appropriate response on our side is. That is the issue I would like to discuss in executive session.

Mr. LEGGETT. Mr. Emery.

Mr. EMERY. Unfortunately, this seems to be one of those occasions where fishing interests on one coast and fishing interests on the other coast, having similar goals in mind, are in disagreement on the vehicle. I think it would be a lot better for the Americans if we could go into this question with totally unified procedures. Unfortunately for our east coast, the treaty seems to treat us pretty well while our friends on the west coast have a continuing problem.

I think we all have mutual interests in resolving questions amicably and as quickly as possible. I would feel more comfortable if we could find some interim solution that would address itself to the

34-367 O - 78 - 3

problem the gentleman from Washington and the gentleman from Oregon have expressed concern about.

I wonder if there is any practical way that we might be able to negotiate an agreement on the east coast separately from an agreement on the west coast in such a way that would allow us to resolve those questions we are pretty close to solving and maybe hold out for a better deal for continuing discussion of those matters that we have not yet been able to resolve. Has there been any meaningful discussion of the possibility of splitting the solution in such a manner?

Mr. LEGGETT. I am going to suspend the answer to that question until we go into executive session, which will be advantageous.

Mr. EMERY. I am very interested in going into executive session but I think it would be good to have a response in open discussion.

Ambassador CUTLER. I can answer that briefly, Mr. Chairman. We have explored that possibility with the Canadians, both with reference to the long-term agreement—that we have a long-term agreement on one coast if we cannot agree on the other—and with reference to short-term agreements.

The Canadian position to date is that it must all be done as a single package, and that is essentially because, Mr. Emery, no agreement is going to be entirely satisfactory to all constituencies on either coast, and the Canadians are not willing to require everyone on one coast to go along with an agreement if everyone on the other coast is allowed to keep on fighting.

Mr. EMERY. We will explore that in greater detail later on in executive session. I am obviously most interested in the resolution of the disputes on the east coast, my State being the boundary between the United States and Canada.

In looking over some of the 1976 figures, I find the results interesting. The United States fishing in Canadian waters landed about $7 million. Canada landed about $3.4 million from United States waters. The United States landed about $9 million in the disputed zone. The Canadians landed about $17 million from the disputed zone, primarily in scallops.

The optimum sustainable yield is about $56 million worth of seafood product. That shows there is a great deal at stake on the east coast for both sides. There is room for expansion, and tremendous value in fishery resources, which needs to be properly managed.

Before I explore the meaning of those numbers any more, do you have the 1977 update? Do you have any 1977 figures?

Ambassador CUTLER. I will have to ask Mr. Blondin if he has. My impression is the numbers are substantially larger perhaps because of increases in the price of fish.

Mr. EMERY. But do you not have those figures with you?

Ambassador CUTLER. Mr. Blondin.

Mr. BLONDIN. We do not have the figures with us, Mr. Emery, but I think as Ambassador Cutler, this has been largely determined by what the market price is. I think geneally the optimum yield for the year is going to remain the same. Perhaps for scallops it might come down a bit, but in general for those species it should remain the same.

Mr. EMERY. Can you provide us for the record with the latest figures? I am primarily interested in seeing how the Americans and the Canadians have balanced out in this disputed area.

[The information was not available at time of printing:]

Ambassador CUTLER. I think the scallop fishing alone is well over $30 million.

Mr. EMERY. It has expanded that much. As you are well aware, we have had some domestic difficulties in the last couple of months with respect to the haddock and codfish quotas which have been imposed on domestic fishermen. One of the reasons that we have been faced with quotas is uncertainty over the size of the stocks. Obviously this disputed zone is very important, some of which is breeding ground and some of which is primarily for catching these species. Has there been any dissatisfaction, I should say, with the proposed restriction on either American and Canadian fishermen for those species of haddock and codfish especially? Are those all pretty much in the agreement?

Ambassador CUTLER. If you are speaking of the 1978 allotments, I would like Mr. Negroponte to speak to that because the Canadians are indeed concerned about some of the recent actions of the New England Council.

With respect to the long-term agreement, we have arrived at an essential understanding subject to everything else being resolved both as to management—and it would be U.S. management throughout Georges Bank of virtually all of the groundfish.

Mr. EMERY. That has previously been agreed to by both sides?

Ambassador CUTLER. Yes, subject to the entire agreement being worked out, and also we are within a percentage point or two on percentage allocations for each side.

Mr. EMERY. What are those percentage allocations?

Ambassador CUTLER. I believe we submitted them last time. It has been a month or more since I have been back to this, but they are of the order of something like 85 percent United States with respect to codfish and in the neighborhood of 80 percent with respect to haddock.

Mr. EMERY. What are the primary concerns that the Canadians have expressed with respect to the New England Regional Fisheries Council proposal?

Ambassador NEGROPONTE. We do not know in detail, Mr. Emery. In our last meeting with the Canadians on the 28th of April when we were discussing this problem on the Swiftsure Bank, they also raised the question of New England fisheries cod and haddock regulations that were put into effect recently, and expressed the desire to consult about these plans as soon as possible, and under the language of this interim agreement there is provision for consultative committees, as you know, both on the west and east coasts, and tentatively I believe a meeting has been scheduled for the 25th and 26th of this month to go over their problems.

Let me just add that their problem with respect to New England has been a problem they have been raising all along, which is the fact that our decisionmaking process with respect to fisheries matters is just plain different from theirs. In fact, the people who negotiate on their behalf are usually the people who write their

fishing regulations. Whereas we have this 2- or 3-tiered system, if you will, with a regional council playing a strong role in the regulatory process, they simply have been concerned traditionally ever since the law was passed that there were council activities that were beyond the purview of the executive branch.

Mr. EMERY. I guess I would share some of those very concerns. We run into an interim difficulty, which is not our responsibility directly, with the treaty, but our councils have made recommendations based on their best knowledge, We have found that through the Commerce Department the Fishery Service has insisted on overruling council decisions. This has caused internal problems. It may result in councils around the country losing control of the management.

Getting back to the central question, what is it that most concerns the Canadians, the question of bureaucracy not being responsive to what they consider fishery management, the fact our system is different from theirs, or a worry that we are not doing a very good job at conservation.

Mr. LEGGETT. We are going to suspend the answer because the chairman of the full committee wants this room at 12 o'clock. We will recess until 1:30, at which time you will be recognized, unless you cannot be here at 1:30, in which case I will make an exception and allow an answer.

Mr. EMERY. If the chairman will allow me to continue questioning——

Mr. LEGGETT. You will be recognized with the same three witnesses, and we will hear from the private witnesses. Then at some point we will go into executive session.

We will recess until 1:30.

[Whereupon, at 12 noon, the subcommittee recessed, to reconvene at 1:30 p.m. of the same day.]

AFTERNOON SESSION

Mr. LEGGETT. The subcommittee will come to order.

When the subcommittee recessed we had Ambassador Cutler, and others, about to respond to a question posed by Mr. Emery. Do you remember the question, Mr. Cutler, or would you like to have the question stated again?

Ambassador CUTLER. Mr. Emery had asked, I believe, about the Canadian objections to the 1978 cod and haddock actions of the New England Council.

I was not, unfortunately, at the meeting with the Canadians at which they presented their points. Mr. John Rouse of the Canadian Desk of the State Department is here and perhaps he could join me for the moment.

Mr. LEGGETT. We know Mr. Rouse. He is highly reliable. We are pleased to have him.

Ambassador CUTLER. But in essence the Canadians were concerned that recent actions of the New England Council setting first daily and then weekly catch quotas per vessel for American vessels were going to end up in a larger catch than the quarterly share of the MSY that had been set for the year or the total allowable catch.

They were also concerned that to date there has been no TAC or other measure to limit effort in the scallops fishery on Georges Bank.

I understand since the Canadians were here the National Marine Fishery Service at the Washington level has taken an action that reduces the catches per boat that were permitted by the New England Council.

We are to meet with Ambassador Cadieux and the Canadian team in Ottawa on Thursday and perhaps on Friday to go over all of the issues that have arisen under the interim agreement, and then there is going to be a meeting of the new consultative committee that has been created under the tentative interim agreement in which our representatives will include representatives of the councils.

That committee I believe is to meet around the 25th and 26th of May. The Canadians are also concerned about the levels of pollock fishing and also that there was no, in their view, consultation between the U.S. side and the Canadian side before these recent actions of the New England Council.

John, is there anything you want to add?

Mr. ROUSE. That covers it very well.

Mr. EMERY. I think the other question I touched on before lunch was the difficulty that the Canadians may or may not be having in figuring out exactly how we are trying to manage our management plan; in other words, the activities of the council with respect to the activities of National Marine Fisheries Service in the Commerce Department. Has the difference in bureaucratic structure caused any significant difficulties either in a practical sense, in getting together, working out agreements, or are the Canadians able to adapt our system versus their system?

Ambassador CUTLER. I would say, Mr. Emery, the Canadians are adapting to the facts of life of our system. As you know, they have both a parliamentary and a Federal system in which the executive in that sense speaks with far more authority for the entire government than our executive can speak.

They do have an even greater regional problem than we have because the provinces do exercise a much wider degree of power even over what we would consider to be interstate and foreign commerce than our states. They normally negotiate at the federal level with ministerial decisions before and during the negotiations. They understand, they have lived with us a long time, our tripartite and our Federal system, and they are coming to understand the existence of the councils and the way in which power is divided between the councils and the Federal authorities.

Indeed, I have been told that some of the Canadian fishermen think the council system is a pretty good system and they may try to get some such legislation in Canada, but that is highly unofficial.

Mr. EMERY. Following directly on this point, in the communication between the Government of the United States and the Government of Canada with respect to this ongoing process, have the Canadians been asked to look directly to the Commerce Department or have they been asked to look directly to the New England Regional Fisheries Council in this case for policy guidance?

I ask that question in the context that we understand in the agreement the lion's share would be given to the Council and not to the Commerce Department. I can see where that might cause confusion.

Ambassador CUTLER. Yes. Both in the consultative committee provisions of the current draft interim agreement and in the long-term agreement we provide that the U.S. side will be a mix of Federal officials, Commerce and State, and regional council officials from the councils that are interested, different ones on the east coast, of course, from on the west coast. In the memo concerning the kind of draft legislation we thought the Congress might wish to adopt if it approved the long-term agreement, we had proposed that the basic power rest in the Council members of this new international commission so that anything not approved by the Council members in their capacity serving on the commission, anything not approved by them could not be overridden by the Federal authorities except to the limited extent that the Secretary of Commerce today has power to override a council decision.

Mr. EMERY. Following up on that particular point, how confusing or complicated does it make it, what additional problems are caused when the New England Regional Fisheries Council, in this specific incident, establishes a conservation and management guideline which is then overruled by the Commerce Department? Doesn't this interreaction between two authorities send some confusing signals to the negotiators from Canada? What complications does that cause?

Ambassador CUTLER. It may send some confusing signals. On the whole, the negotiators, being Federal authorities, prefer to deal with the American Federal authorities, and I would suppose they welcome whatever power the American Federal authorities have to override council decisions.

Mr. EMERY. It just occurs to me if the Council makes a decision and that decision will substantially affect the species that may or may not exist or migrate through the disputed area, then the Commerce Department continually revises them or overrules them or delays them, it is going to be very difficult for the Canadians to decide exactly what tack our management is going to take when the whole thing settles down.

It seems to me that would hopelessly complicate final decision simply because the Canadians are not going to have a tremendous amount of confidence in what they may be faced with. I throw that out as an observation.

Ambassador CUTLER. I think the point is valid and I think the solution may well lie in greater internal consultation within the two echelons of the U.S. Government before a decision is taken, plus consultations with the Canadians where their interests are concerned before the decision is taken.

Mr. EMERY. One final comment. I am about ready to introduce legislation that would clarify the relationship between the Management Councils and the Commerce Department. I won't go into a great lobbying effort on my bill today. I would like to send you a copy of it and get your comments as to whether you think the clarification that I have in mind and the specified legal action both

sides could take would be helpful or harmful in delineating the responsibilities and the duties of these two agencies.

Ambassador CUTLER. I would be glad to, sir. I think there is room for improvement. I am having enough trouble on the international aspect. I am not about to get in between the fishermen and the domestic authorities.

Mr. EMERY. You really should not. I guess what I am looking for from you is as to whether some guidance is necessary or unnecessary or helpful or harmful.

Ambassador CUTLER. I would be happy to give you our views.

Mr. EMERY. I have no further questions at this time.

Mr. LEGGETT. It appears that we have a vote on the floor. But prior to leaving, Mr. Mannina has a question.

Mr. MANNINA. Mr. Cutler, in 1977 the Canadians harvested roughly 17,090 metric tons of fish off the Atlantic coast. The chart provided by the National Fisheries Service did not indicate any 1978 allocation has been made. However, the total unallocated fish in 1978 is 11,000 metric tons. Does that mean the Canadians will be accepting a reduction in their level of harvest in 1978, or will there be some internal changes of allocations to other nations in order to accommodate the Canadians?

Ambassador CUTLER. I do not have those figures, Mr. Mannina, and perhaps the NMFS people should answer these questions. But the basic theory of the agreement is that existing patterns and levels of fishing will be continued within the undisputed waters of each side and within the disputed area. The reference point for most of these allocations has been the most recent ICNAF allocation, just before ICNAF from our point of view went out of existence.

Mr. MANNINA. If that is in fact the understanding, and if this chart is accurate, it means the United States does have enough reserve fish for the Canadians.

Mr. BLONDIN. Thank you, Mr. Cutler.

Mr. Mannina, I do not have all the figures before me, but what Mr. Cutler has said is in my understanding accurate, that we were going to provide to the Canadians in accordance with the figures that were arrived at under the last negotiations at ICNAF, and in fact where we had reductions occur in the foreign allocations, that is with other third countries, this has not affected the Canadian allocations. They are being reserved at levels they were in the past.

Mr. LEGGETT. Why don't we recess for a few minutes so the Members can go vote.

[Short recess taken.]

Mr. LEGGETT. The meeting of the subcommittee will please come back to order.

When we suspended, Mr. Mannina was asking a question.

Mr. MANNINA. Thank you, Mr. Chairman.

It would appear from the data supplied by NMFS that if the 1976 ICNAF quotas are indeed provided to the Canadians, there will be fishing in excess of the optimum yield for certain fisheries. Perhaps you would like to respond to that now or for the record.

Mr. BLONDIN. Mr. Chairman, I might say what Mr. Mannina has addressed does appear to be a problem, particulary where one looks at the mackerel fishery, at least a problem with figures, consider-

ing that—I do not have figures before me but my understanding is that the Canadians under the 1967 ICNAF figures would have 5,000 tons of mackerel, and I believe the surplus identified for 1978 is something on the order of 1,200 tons.

This would appear to create somewhat of a problem if Canada were to continue fishing at that level. But I think what we have to keep in mind is that the Canadian fishermen have not in fact been catching very much mackerel. Our records show, for example, last year they caught about 5 tons in August, which seems to be the only mackerel that was actually taken.

I will, if you wish, have provided for the record all of the data here including your catches, if they are in fact beyond the 5 tons.

Mr. MANNINA. That would be helpful.

[The information was not received at time of printing.]

Mr. MANNINA. Mr. Cutler, is the State Department prepared to go to the Canadians if they attempt to expand their quota beyond the surplus for mackerel and try to hold them to the 1,200 tons surplus and to prevent overfishing.

Ambassador CUTLER. We would be required under the terms of the agreement, Mr. Mannina, to take up that kind of issue in consultation with the Canadians and see what kind of arrangement could be worked out.

There are, as you know, substantial U.S. fisheries maintained in Canadian waters that are beyond the disputed boundary area, and they would have to be taken into account. We would have to negotiate that kind of issue with the Canadians. As Mr. Blondin indicated, it does not appear to be a practical problem at the moment.

Mr. LEGGETT. Thank you.

Are there other questions of these witnesses at this point?

If not, we will move to Ms. Sloan representing the National Federation of Fishermen.

Mr. Blondin, if you have the information on the dollar value of the catches last year in the respective areas, by coast and by nationality, Canada and U.S. that would be helpful to us.

Mr. BLONDIN. We will try to provide that for the record. I know we do not have the data worked up at the moment, but I do not think it would take too much effort.

[The information was not received at time of printing.]

STATEMENT OF MS. LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF FISHERMEN, ACCOMPANIED BY HENRY HAUGEN, ATTORNEY, REPRESENTING FISHERMEN'S MARKETING ASSOCIATION, SEATTLE, WASH.; JACOB J. DYKSTRA, PRESIDENT, POINT JUDITH FISHERMEN'S COOPERATIVE ASSOCIATION, INC., GALILEE ROAD, NARRAGANSETT, R.I.; CHUCK VOSS, REPRESENTING THE NATIONAL FEDERATION OF FISHERMEN; AND MR. SCOTT STAFNE, COUNSEL, REPRESENTING WASHINGTON TROLLERS ASSOCIATION

Ms. SLOAN. We certainly appreciate the interest the committee is taking in this proposal. I was reviewing briefly what I said last year when we went over the proposed Canadian agreement, and I do not know if we have really changed a whole lot. The problem does not seem to have changed.

We have heard a lot today from Ambassador Cutler about the Canadian position, and I must say at this point I have a clearer idea of the Canadian position than I do of the U.S. position, other than to get an agreement. One of the things that interests me is that there has been a great deal of discussion about the loss of reciprocal rights in 1978. That is certainly a possibility, but we also went through that same ballet and same concern last year, and it seems to me, as I am sure you gentlemen will recall, we have gone through it for years—all about the disasters of not getting a Law of the Sea Treaty. The world has not yet come to an end about that.

Jake Dykstra said even before the 200-mile law was passed, dealing with the Soviets and the Japanese would be a Sunday school picnic compared to dealing with the Canadians, and once again he was right. We can see it from all this Committee has had to do with the Canadian agreements.

Ambassador Negroponte said it was a different proposition in the U.S. Government from the Canadian Government in who is doing the negotiating, and it is true. They are using fish people; we have diplomats. The Canadians' mandate is much clearer to pay attention to the fishermen rather than just to get an agreement. NFF members' opinions range all the way from opposition to the interim agreement and concern about the nature of the long-term agreement to some support for the concept among those of the groundfish fishermen from Washington in particular and our albacore fishermen who fish off Canada. There are some who support the Canadian agreement if we go back to certain provisions in the 1977 interim agreement, which is what Scott will talk about.

We are still not confident that the object of the exercise is to get the best deal for the U.S. fishermen. We are still not convinced of that. I think that we would all be well advised to consider that the world may very well not come to an end if we do not get an agreement with the Canadians. I doubt very much we will break off diplomatic relations with the Trudeau government, or whatever government succeeds it.

Scott can give you information about the International Salmon Trollers Conference, which is United States and Canadian fishermen working together to try to resolve some of the problems that perhaps some of the United States and Canadian Government people have so far not been able to resolve. I am not saying this is going to be a whopping success in light of the difficulty which government negotiators have had, but rather, the fishermen themselves are taking more interest all the time and that they too are looking for solutions. They are not seeking to object just for the sake of objecting. They are looking to solve the problem too.

I think that we will start with Jake and his discussion from the New England perspective.

Mr. LEGGETT. It is very nice to have you here.

STATEMENT OF JACOB J. DYKSTRA

Mr. DYKSTRA. I am not in an enviable position, Mr. Chairman, because I have not been too happy about agreements with the Canadians. But as you will hear later on, there is a great deal of division among the members of NFF and among the U.S. fishermen as to whether this interim agreement should become law. In

view of that, I do not think I am going to oppose the agreement but just say that the acceptance of it is really out of consideration for some of the other segments of the fishery.

I do have a couple of concerns, just very briefly. I would like to go back to the mackerel thing. It has been said it does not appear to be a practical problem, but these allocations in 1976 were made at a time when there was extensive foreign fishing. Actually, these allocations at that time, when there were huge allocations to some of the other foreign countries, were more or less token allocations to Canada. But I think that to take the mackerel as an example, when we sit down in our consultative group with the Canadians this is going to be one of the contentious issues on the east coast.

Our Mid-Atlantic Council has put together a mackerel plan. It has had some difficulty with the Commerce Department here in Washington, but I understand those difficulties have hopefully been overcome. Within something like 45 days conceivably there could be a council mackerel plan in place. This plan would call for an allocation of 9,000 tons to recreational fishermen and 5,000 tons to commercial fishermen. If that should become law and their agreement should become law, then I do think we have a very difficult decision of whether to overfish the mackerel stock according to the wishes of the Mid-Atlantic Council at least, or whether to give the 5,000 tons to the Canadians and stop the U.S. fishermen from fishing at all. So conceivably there could be Canadian fishermen just outside 12 miles in Maine, Rhode Island or New Jersey fishing for fish while the U.S. fisherman is shut off.

The Canadians I think understand that out of this stock, which is a mutual stock with the Canadians, you could possibly take up as high as 100,000 tons, so we are very far apart in our estimate of what the available catch is. The rumors are flying thick and fast that the Canadians in return for some other considerations are anticipating or negotiating to give an Eastern bloc country a substantial amount of mackerel, which would be caught, incidentally, by Canadian vessels and offloaded on foreign ships and conceivably they could ask whether they would do this in the U.S. zone, which would give us a handy problem at the moment.

Mr. LEGGETT. The old joint venture trick.

Mr. DYKSTRA. I think there really are concerns, that it is not there is no problem, this could present a very difficult problem.

The other thing I wanted to say, we are not talking about the long-term agreement here today, and I do not want to bring up the terms of that agreement but only to say that some of the things that have already been negotiated are entirely unsatisfactory to me and what has transpired so far I would vigorously oppose. I am speaking for myself personally in that statement, not for anyone else at all. But I do want it to be presented here that the salmon fishermen are screwing this thing up and that everybody on the east coast very much wants to see the long-term agreement, as it is shaping up, become law, because I do not think it is in the best interest of my fishermen at all. That is all I have to say.

Mr. LEGGETT. That is one reluctant acceptance noted for the record, with caveats on a number of issues in the long-term agreement.

Lucy, you have not yet come out either with a reluctant acceptance or rejection.

Ms. SLOAN. For obvious reasons. I have people here better qualified to speak.

Mr. LEGGETT. Do you want to defer to Mr. Haugen?

STATEMENT OF HENRY HAUGEN

Mr. HAUGEN. I am Henry Haugen, a lawyer from Seattle, Wash. I am representing today the groundfish interest on the west coast which consists of the Fishermen's Marketing Association of Eureka, Calif., and the Fisherman's Marketing Association of Washington, Inc. This represents all the organized trawl vessel owners between Monterey, Calif., and the Canadian border.

In addition, I am representing the views of the processors who handle Canadian groundfish: New England Fish Co., Seattle, Wash., processor; Bornstein Seafoods, Inc., Bellingham, Wash., processor; Dahl Fish Co., Bellingham, Wash., processor; Dalgety Seafoods, Everett, Wash., processor; and Main Fish Co., Seattle, Wash., processor.

We are in favor of the 1978 interim agreement with a proviso which I will touch on shortly.

This is an important fishery to our organizations. It is valued at some $8 million per year. It accounts for 65 percent of the groundfish landings in the State of Washington. We need some type of international agreement if we are to continue this fishery. There is strong interest on the part of trawl fishermen all up and down the west coast because if we are not allowed to fish in Canadian waters, it will disrupt other fisheries where the vessels will have to go.

We not only need an agreement, we need it quickly. We think that one of the two substantive changes in the 1978 agreement, that is, the establishment of the consultative committee, is a very sound and valid concept. We have day-to-day fishing management problems which we must address, and which this consultative committee will allow us to do. Therefore, we urge not only approval but prompt approval.

There are problems with the 1978 interim agreement in the second substantive change—that is in the salmon troll problem. We have discussed that this morning. I would suggest that there is a solution which is acceptahble to all the fishing interests on the west coast and to the Federal Executive Government.

If a proviso were inserted that in view of the Canadian failure to close the Swiftsure Bank salmon fishery on April 15 as contemplated in the 1978 interim agreement, that no Canadian trolling on terms more favorable than that contained in the 1977 agreement would be authorized without prior consultation by the State Department with this subcommittee, then I believe all fishing groups before you today can support the 1978 interim agreement.

We would, of course, understand that the subcommittee would be reluctant to approve Canadian salmon trolling below Carroll Island. At the same time there may be circumstances under which even this subcommittee would agree that it should be accomplished. Therefore, with this proviso it is our position that it should be approved quickly. That proviso can either be handled in your

committee report or by means of an oral understanding between you and Mr. Cutler.

[The letter follows:]

SEATTLE, WASH., *May 5, 1978.*

Hon. ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN LEGGETT: On behalf of the fishing vessel owners and the domestic buyers and processors of the West Coast groundfish industry who are directly concerned, I am pleased to recommend congressional approval of the Reciprocal Fisheries Agreement Between the Government of the United states and the Government of Canada, signed in Washington on April 11, 1978. This Agreement is for 1978 only and, in general, continues the 1977 Reciprocal Fisheries Agreement, with a view to maintaining existing fishing patterns.

For many years, fishing vessels of the United States have taken groundfish off the coast of British Columbia, delivering their catch to facilities in the united states for processing and distribution. In the recent past, approximately 60 U.S. flag deep water trawling vessels have been engaged in this fishery, taking 9,000 metric tons of groundfish per year or approximately 50 percent of the total catch in these waters. There are 5 major shoreside facilities which handle this product and these deliveries account for 65 percent of the total Washington deliveries. The estimated annual value of this fishery is $8 million. More importantly, the developed patterns of groundfish fishing on the entire West Coast are mutually dependent and a disruption in one area will cause a further disruption in other areas.

With the extension of Canadian fisheries jurisdiction under the Territorial Sea and Fishing Zones Act as implemented by Canadian Order-in-Council P.C. 1977-1, it is necessary and desirable that this fishery be continued by means of an agreement with Canada. Negotiations for a long term agreement have been conducted since 1977 and significant progress has been made. The 1978 Agreement now before you is intended to maintain the status quo as did the 1977 Agreement while negotiations continue. The State Department has involved our groundfish industry in the negotiations to a significant degree and we are well satisfied that our views and interests have been faithfully reflected in the 1978 Agreement. We are particularly pleased that a Pacific Coast Consultative Committee is to be formed to consider the day-to-day problems of fishery management under the Agreement. There is an immediate need for such a structure in the groundfish fishery and hence we strongly support prompt congressional aproval.

I am authorized to state that the following fully support this statement in favor of the 1978 Reciprocal Fisheries Agreement:

Fishermen's Marketing Association of Washington, Inc. representing trawl vessel owners of the State of Washington.

Fishermen's Marketing Association, Inc.—Eureka, California representing trawl vessel owners, San Francisco to Ilwaco, Washington.

New England Fish Company, Seattle, Washington—Processor.
Bornstein Seafoods, Inc., Bellingham, Washington—Processor.
Dahl Fish Company, Bellingham, Washington—Processor.
Dalgety Seafoods, Everett, Washington—Processor.
Main Fish Company, Seattle, Washington—Processor.

Very truly yours,

HAUGEN & THOREEN,
HENRY HAUGEN,
Attorneys for Fishermen's Marketing Association of Washington, Inc.

Mr. LEGGETT. That was very helpful. Thank you.

STATEMENT OF SCOTT STAFNE

Mr. STAFNE. Since the inception of the Fishery and Conservation Act, my law practice has been devoted exclusively to the representation of fishermen's organizations under this law. I represent groups in addition to salmon fishermen. I represented halibut and black cod fishermen. I represent salmon fishermen in the States of Alaska, Washington, Oregon, and California.

I would like to talk to you today on behalf of the Washington Trollers Association and the Alaska Long-Line Fishermen's Association. I believe some of the objections that I note for these two groups will be applicable to all of my clients and to fishermen generally.

As regards the proposed agreement, we believe it is (1) bad for the salmon fishermen; (2) bad for the salmon resources; and (3) we are concerned that the Department of State's actions in attempting to implement this agreement raise serious questions about the future effectiveness of the FCMA for American fishermen.

With regard to the first two points, I would like to point out that the agreement provides for an increased fishing area with no adequate restrictions on effort. As regards the effort restriction, if you will take a look at paragraph 3 of the annex, you will see it refers to article II, paragraph 3 of the 1977 reciprical agreement, which provides simply that fishing by nationals and vessels of each party in the zone of the other shall continue in accordance with existing patterns with no expansion of effort or initiation of new fisheries.

In 1970 the Canadians had 14,190 boat days in this area. In 1975 the Canadians, according to tag recoveries, took approximately 40 percent of the coho taken off the coast of Washington. You do not have to be a lawyer to realize that the Canadians can argue that 3,000, 4,000, 5,000 boat days is permissible under the terms of the agreement. If you take a look at our State Department negotiators' position with the regard to last year's 1977 agreement, namely that the Canadians took with regard to violations of the agreement, you may come up with a similar circumstance next year.

We are disturbed about this because the resource is already in bad shape.

Mr. LEGGETT. Is that 14,190 boat days in 1977?

Mr. STAFNE. No, it was 1970.

Mr. LEGGETT. How much in 1977?

Mr. STAFNE. Reported 3,000 but I think you will find out the Department of State feels this is not an accurate figure.

Mr. LEGGETT. How many boats?

Mr. STAFNE. I do not know.

We are concerned because the resource already is in bad shape. As you are aware, many domestic salmon fisheries have been closed. My clients from 1976 to 1977 took a 35-percent reduction in their total landings as a result of the Pacific Council's troll regulations. I might add at this point I believe those troll regulations were as invalid to them under the law as they are or were to the Canadians. I suggest that before we institute the agreement proposed by the Department of State, which has in this instance attempted to act as legislators and the judiciary, we should attempt to determine whether or not the agreement for 1977 had in fact been violated. Of course, under article III of our constitution and the Fishery Management Act, which was so ably written, the Canadians could have had judicial review if there had been a violation, the same type of review domestic fishermen are required to seek.

In that case what would have happened, damages might have been awarded and those damages awarded would not have been very great. I think we are talking about a $1,500,000 instead of expanding effort in an already overcrowded fishery. I suggest to

the Department of State that this might be a more appropriate way to handle the problem. However, the Department of State was not interested in this, and instead attempted to implement these regulations after they had been informed on several occasions of their illegality. Unfortunately, they forced us to file suit at great cost to my clients. As you know, they have now appealed at further cost to my clients. Their argument is simply it is an admitted violation of the law, but they have prosecutorial discretion to act in direct violation of 16 U.S.C.A. 1821(c), which states the United States shall not enter into any agreement of this type.

They needed your approval, and that is what the court told them.

I believe that the conservation of the resource could be achieved without unnecessarily exacerbating the already overcrowded salmon fisheries of the Pacific Northwest by your invocation in law of section 1(c) of the 1978 agreement. As you know, section 1(c) is that provision which states that if the Canadians fail to make the proper conservation measures, the United States will revert back to the terms of the 1977 agreement.

I think that will help to alleviate the fishermen's first two concerns. But the third concern regarding the actions of the Department of State has got to be a fundamental concern of all fishermen.

I just want to take a few minutes of your time to explain why the Department of State is in this position now with the Federal court injunction against them.

I also would like to point out that the agreement that fishermen—not the agreement that was negotiated and is before you now—I know of only one fishing group that was not really represented in regard to this agreement, and that is this salmon trollers. Mr. Bob Gay, who has been the WTA bilateral negotiator for a long time—and I would like to point out these bilateral negotiations have gone on for approximately 17 years, probably almost as long as the LOS, but Mr. Gay told me he had asked to see, Mr. Cutler, and he was told that would not be necessary because the agreement would deal with autumn fish primarily.

In retrospect, the agreement only deals with salmon and we didn't have our input and consequently I think the consequences here for the future also have national significance when you talk about fishermen.

First of all, this isn't an isolated case. This is a consistent practice of the Department of State. They are consistently provisionally implementing agreements that must be approved by law.

Now, some of the agreements my clients don't have any trouble with like IMPFC, but this is the second time they have provisionally implemented this 1978 agreement and we don't want it done again. I trust our lawsuit will make clear that we want our opportunity to address you no matter what you decide.

The other thing that disturbs us is, if the State Department is successful here in pushing this through this agreement by their cries of "national emergency," they will have been able to get around the provisions of the act.

I would like to quote briefly from your own committee report of the FCMA to the House regarding the congressional oversight provision.

"These bilateral agreements have many variations, but the theme is always the same."

As we heard this morning, quid pro quo:

There is no recognition that fishery resources are exhaustible or that they should not be exploited to the point of total destruction except in return for concessions from the United States that will run our foreign fishing more efficiently and profitably.

The role of the American fisherman during these bilateral negotiations, vital as they are to his welfare, has been effectively limited to that of observer and beneficial adviser to the State Department negotiators. The role of Congress has been limited by reason of the decision not to submit such agreements to the ratification process to one of oversight. Such oversight is invariably after the fact and in a climate which is not conducive to a meaningful profit of what should have been accomplished in the negotiations series. What was actually agreed to in order to assure our fishery resources receives maximum protection.

I guess by the cries of "emergency" we are in exactly that same position here.

All too often in the many oversight hearings which have been held during the past decade, the negotiators' stock position has been in effect: "This was the best deal we could get under the circumstances." The state of our fisheries today clearly demonstrates that the best was frequently not good enough. It is also clear that most of these agreements could not have withstood the ratification process had the constitutional role been followed. It is for briefly these described reasons that there is an overwhelming need to ensure that the utterly bankrupt negotiating procedures of the past decade are not repeated after the enactment of the facts.

Even the clearcut and uniform requirements embodied in section 201 which will govern all agreements authorizing foreign fishing, it is unlikely that either house of Congress will be compelled to disapprove an agreement. Section 106 would simply guarantee the requirements of section 201 are religiously followed in the future.

This provision is emasculated if this type of treatment continues in the future.

Finally, I think I would add a note that at this time I am representing some salmon fishermen, but you have no assurance that on the east coast, the west coast, the south—I guess we don't have a sea on the north, but you have no assurance next time it won't be some other fishermen group, and I hope that regardless of what you do, you indicate your displeasure to the State Department because they have put us all in an unfortunate mess.

I would repeat, however, that we could best support an invocation of such a 1(c) bylaw.

Thank you.

Mr. LEGGETT. Thank you very much.

Now we will hear from the anglers and the steelhead people. However, we have to vote at this point. This is the last item that is up today, so we will vote on this and be right back.

[Recess taken from 2:55 until 3:10 p.m.]

Mr. LEGGETT. The subcommittee will come back to order.

Mr. STAFNE. I would like to make a comment. Don McKernan spoke with me and mentioned that my 40-percent figure for coho in 1975 may not be accurate.

Mr. LEGGETT. What is that?

Mr. STAFNE. I don't know. I will submit the affidavit to you.

His argument makes sense because it was based on tag studies and Canadians don't land their fish in this country. I would point

out Dr. Matthews, a biologist for the University of Washington, the author of some 50 publications, and a salmon troller himself, has estimated it was about 50 percent in 1970.

Mr. LEGGETT. The record will so show.

Mr. Voss, you represent the steelhead and the angler folks?

STATEMENT OF CHARLES VOSS, EXECUTIVE DIRECTOR, ASSOCIATION OF NORTHWEST STEELHEADERS, AND WESTERN DIRECTOR, AMERICAN LEAGUE OF ANGLERS

Mr. Voss. I represent the Northwest Steelheaders who operate in Oregon, Washington, Idaho, and California. Also the American League of Anglers.

Today, of course, it is kind of difficult for me to follow Scott because he knows the problem well and then we get to a situation where there is a vocation versus avocation situation with the fish.

It is one of those things that makes it terribly difficult for me to start from a particular platform.

Mr. LEGGETT. Tell me which way you vote first. He votes no. We have a qualified yes and a firm yes.

Mr. Voss. You get a firm no from me, Mr. Chairman, and I would like to just say a couple of things on why we feel a firm no.

The first thing is maintaining native stocks. The No. 1 thing in our life is to save steelheads.

As you probably know, Mr. Chairman, the steelhead is a rainbow trout that goes to sea and we don't like to have them identified alongside a salmon.

Sometimes they look alike and sometimes hit the market known as summer salmon. But let me give you an example of what happens to us. There is no question, many of our people fish along the Columbia River and its tributaries, both on the Oregon and Washington side and even up to Idaho. Recently there was agreement on the Columbia River by all parties. That is commercial, Indians, and sportsmen, and in that agreement the Indians decided that they would not target on steelheads and that was fine by us. They testified back here in Washington, the Yakima Tribe did, that they wouldn't fish upon the summer steelhead or the summer chinook simply because they were in great jeopardy, and we can't.

The river is closed to all of us, commercial and sports and Indians alike.

Last year the Indians were in the river and killed 30,000 steelheads or 289,000 pounds. When we asked them why they did that, they said "The fall Chinook didn't come in so we took the steelhead."

There are a lot of parallels to that, all of which shouldn't go into this microphone.

Mr. LEGGETT. I understand that steelheads weigh 10 pounds apiece?

Mr. Voss. Some up to 20.

The problem with that is this: I mentioned fall Chinook. The problem with that is that to our way of thinking the sportsmen, this agreement we are talking about, the suggestion that the Canadians move all the way down to Grays Harbor to fish, as far as they are concerned, they want to fish upon stocks of Chinooks.

The agencies say 40 percent of the Chinook going up the tributaries of the Columbia River are caught by the Canadians. That, I am sure, can be substantiated by the Department of Fisheries in the State of Washington.

Now, what really concerns me is that the Indians did not get their share of that fish so consequently they destroyed steelhead instead and that really bothers us.

Frankly, we don't fish upon those fall Chinooks simply because we cannot catch them. But, it is a fish that is dedicated first to the trollers naturally and they come in and the gill netters get a shot at them and then they go over into the Indian nets. It did not work last year and it really damaged our fishery.

That is what concerns us. Our people in Puget Sound are highly upset with the idea that there is a possibility that they are swapping coho for Chinooks. I represent river fishermen and boat fishermen and we are very much concerned about this. We have heard tribes tell us off the west coast of Washington they don't want us out there and want to put perimeters around their rivers going to the Pacific Council and suggesting that giant perimeters be established around the rivers so no one of us can fish, whether it be sportsmen or commercial. For some reason we are bringing Canadians down.

I think that the problem lies with the fact that I am sitting here listening to the salmon fishery being divided up among commercial fishermen. That is what really bothers me. If we went back to your state, Oregon, Washington or Idaho and if the citizens who listen to the fact that this is being divided up among commercial users, the natural resource of several states, it would be very bothersome because just in Oregon and Washington alone there are a million punch card salmon fishermen. I think that is about all I have to say, Mr. Chairman.

Mr. AuCoin. I understood everything you said in your testimony. You have made it absolutely clear and I think we are largely in agreement as you could tell if you were here earlier today.

You mentioned something about perimeters, which the management council indicated that it was thinking about imposing. Can you amplify on that? I am wondering if we are being prepared for another peculiar regulation that comes out of the blue sky and stuns all of us?

Mr. Voss. I am a member of the Salmon Panel of the Pacific Council. On that panel sit four Indian tribes. One representing the tribes on the Olympic Peninsula along with the upriver tribes. The Yakimas are represented, the Nez Perce and there is another tribe represented there, but their feeling was they would like a five or ten mile perimeter around the Columbia River because they considered it a nursery area and wanted everyone out of there.

This is strictly on the panel I am on.

From that point it was suggested further up, up in some of the rivers that empty out into the Pacific Ocean from the Olympic Peninsula, the Indians felt that the sportsmen and the trollers and the charter boats were in there taking their fish as they come into salt before they get to fresh. If there is not enough water coming down, they won't move and the trollers wipe them out.

I am very much surprised the Indians are not represented here today. I am very much surprised because they do want to protect all those waters up and down that Washington coast.

To answer your question, I don't think that you are going to receive a surprise because we pretty well put it down.

Mr. AuCoin. I am delighted to hear that. There is some good news.

Thank you very much.

Mr. Leggett. Are there other qustions?

Mr. Emery. I guess I would like to address a couple of comments relative to the pitfalls of the proposed agreements as they see them from the standpoint of the northeast and more particularly the New England fishermen. I know there are a variety of points which are either partially agreeable or totally agreeable and some not agreeable at all, but I would like to see what are the pitfalls and what you think we ought to be looking out for.

Mr. Dykstra. Are you thinking of the long or short-term agreement?

Mr. Emery. Primarily the long-term agreement, but I would like your reflections on both. One might determine the fate of the other since they are both relevant.

Mr. Dykstra. The short-term agreement first.

Last year I appeared on last year's agreement and I think I raised this question then of the agreement saying there would be no institution of new fisheries or expansion of present fisheries and there are at least four species, the ICNAF agreement is one, and they did constitute new fisheries in several cases. This is one of the things that bothers me.

Mr. Emery. What species?

Mr. Dykstra. Butterfish and squid, I believe they had both of those they had not fished. The other species involved were mackerel and herring. Perhaps herring shouldn't be included because we had had some reciprocal agreement on those, but, unlike the groundfish where we had reciprocal arrangements all along, these did not have a reciprocal arrangement.

Of course, one thing that does bother me is that there are substantial groups on the west coast, as you heard, that are not happy with the treatment. It has always been my policy and I think the policy of NFF if we could get some changes to agreements like this when it was unsatisfactory to other groups we are associated with, we would try to go ahead and do that.

As you all know, on the other hand, we have groundfish fishermen, redfish fishermen on the east coast, halibut fishermen, albacore fishermen and so on on the west coast who feel this agreement would be beneficial to them so, as I said, on balance I think maybe we come down to accepting it.

Mr. Emery. Your primary concern about the short-term agreement is the opening up of additional fisheries for species under the ICNAF rules and regulations you would not like to see opened up.

Mr. Dykstra. A concern of mine too is I have been unhappy with the long-term agreement and I feel the only way we can get the long-term agreement which would be acceptable is to back completely away from the present situation and make a completely fresh start.

So I think in many ways and in many species we have been sort of nickled and dimed to death in the present long-term agreement and the passage of this short-term agreement is being touted as being helpful in finalizing that long-term agreement and I would just as soon not help it to be finalized. That is why I am not too happy about that aspect of this.

Mr. EMERY. I have been in contact with my ground fishermen and a variety of others in the state of Maine who are nervous to say the least, about what gets put into the final agreement. Nevertheless, it does give the United States primary management authority in most cases for ground fish and I think that is important.

I would like to hear your specific ideas on what you think northern or New England fishermen should be wary of and what you think is harmful and if you are not very much satisfied with the negotiations; what specific changes do you want to see with regard to the New England fishermen?

Mr. DYKSTRA. Without getting into specific details of species, because I don't think this is the place to do that, I would say I just don't like where we are coming down on the boundary.

I think we can do better. This is a matter of opinion among State Department lawyers, as well as other people, but I am not satisfied with that.

The other thing is that I feel that, looking at the Canadian fishing industry, the fishing on the ground, the processing and the marketing versus the fishing industry in New England, that the fishing industry in the Canadian Maritime has had massive assistance from its government and that, because of this, it has been able throughout to better exploit the species and the U.S. fishermen.

Mr. EMERY. I wholly agree with you. We can't really expect to build into a treaty a more satisfactory agreement for the United States simply because we haven't been doing a very good job with developing onshore and offshore facilities, whereas the Canadians have been very involved for a long time. That points up another problem we have.

Mr. DYKSTRA. I think what we are doing in this long-term treaty is perpetuating a situation which is totally unsatisfactory to the U.S. fishermen; that the U.S. fisherman has been overwhelmed because of conditions beyond his control and because of nonsupport and what we are being asked to do is to put this in concrete and perpetuate it forever and if we don't call a halt to it now and sit down with these people and say, "This situation that we are presently in is wrong, and it is wrong for these reasons, and we want some redress now, and you people are completely overwhelming us in our market," and so on, if we don't sit down and talk about that now—we simply sit down and say because the Canadians have overwhelmed us and here we are, they are dominant in several species on the ground and there is nothing we can do about it, we will sign a long-term agreement which says they will continue to be dominant, that is where we will be forever, amen, and I won't accept it.

Mr. EMERY. We want an opportunity for our fishermen to improve—for our government to provide fishermen with equipment

and the opportunity to do the thing they can do in comparison with the Canadians.

Mr. LEGGETT. If you will suspend for a moment, we will continue this after the executive session.

All in favor of giving the chairman discretionary authority to go into executive session say aye. Opposed no.

The ayes have it and it is unanimous. The Chair will exercise its discretion to have the subcommittee move into executive session at this point.

[The following was submitted for the record:]

NEW ENGLAND REGIONAL
FISHERY MANAGEMENT COUNCIL,
Peabody, Mass., December 9, 1977.

Mr. JOHN D. NEGROPONTE,
Deputy Assistant Secretary for Oceans and Fisheries Affairs,
Department of State, Washington, D.C.

DEAR MR. NEGROPONTE: This is to advise you of the recommendation of this Council on the management of fisheries resources in the northwest Atlantic and the U.S. Fishery Conservation Zone with reference to the current U.S.-Canadian maritime boundary and marine resources negotiations.

In the probable absence of a conclusion of the negotiations by January 1, 1978, and because it would be detrimental to the fisheries resources to allow unregulated and unlimited fishing in the fishing area under dispute, the Council recommends the extension into 1978, as long as necessary, of the existing Reciprocal Fisheries Agreement. The Council recommends extension of the agreement for the east coast only, if necessary. The Council understands the agreement would be extended only until the current negotiations were successfully concluded and implemented.

The Council makes this recommendation with the condition that the applicable quotas for U.S. and Canadian catches in 1978 remain the same as those in 1977. If, for any reason, adjustments must be made in those quotas, then adjustments shall apply equitably, on a pro rata, to the fishing vessels of both countries, and shall apply on a pro rata basis to those fishing areas in which the vessels are entitled to fish under the provisions of the Reciprocal Fisheries Agreement.

Further, the Council makes this recommendation with the condition that within the disputed area the appropriate surveillance, inspection or law enforcement authorities of the United States and Canada shall have the right to board and inspect the vessels and fishing operations of the other country under mutually agreed upon, appropriate conditions for such surveillance or inspection. The inspection officers shall take no enforcement action against vessels of the other country, but shall submit direct reports of their inspections to the appropriate authorities of the flag country.

Sincerely yours,

SPENCER APOLLONIO,
Executive Director.
(for Edward J. MacLeod, Chairman).

STATEMENT OF TOM A. NORRIS, VICE CHAIRMAN, NEW ENGLAND COUNCIL

Without a fisheries agreement both short term and long term U.S. fishery in Canadian waters would more than likely close: the Canadians, however, would still enjoy fishing privileges in the disputed area under their own domestic regulations. U.S. fishermen would have to fish on all of Georges Bank including the disputed zone at the restriction quotas set by the New England Council.

The U.S. fishermen enjoy a viable fishery under the 1977 short term agreement for Ocean Perch (Red Fish) Haddock, Cod, and Pollock, and other incidental catches in Canadian waters. We feel that a fishery agreement is in the best interests of the U.S. east coast fishery.

[Whereupon, at 3:30 p.m., the subcommittee proceeded in executive session.]

CANADIAN GREAT LAKES FISHING BRIEFING

TUESDAY, JUNE 6, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:20 p.m., in room 1334, Longworth House Office Building, Hon. Robert L. Leggett (chairman of the subcommittee) presiding.

Present: Representatives Leggett, Forsythe, Emery, and Hughes.

Staff present: Ernest J. Corrado, chief counsel; Ned P. Everett, counsel; Robert D. Thornton, counsel; and George J. Mannina, Jr., professional staff, minority.

Mr. LEGGETT. The subcommittee will please come to order.

Yesterday it was brought to my attention that the Department of State has rendered an interpretation that section 307 of the Fishery Conservation and Management Act of 1976—which makes it unlawful for any vessel other than a vessel of the United States to engage in fishing within the boundaries of any State—is applicable to the waters of the Great Lakes States. As a result of this interpretation, it is my understanding that U.S. Coast Guard vessels have been instructed to prevent Canadian vessels from engaging in fishing within the boundaries of any of these States.

Naturally, this came as quite a shock to the committee. As I am sure the members of this subcommittee will agree, it was never the intention of the committee that this act be construed to the extend to the States of the Great Lakes. In fact, in no place in the act is the Great Lakes mentioned. The act speaks of coastal States, and of providing for the protection and conservation of the marine resources of the zone contiguous to these coastal States. Moreover, of the eight regional fishery management councils created by the act, which range from the North Atlantic to the Western Pacific, nowhere in the makeup of the councils concerned is there any mention of the States of the Great Lakes.

Consequently, in view of the foregoing, I thought it necessary that the subcommittee have representatives of the State Department appear before us today and explain how they came up with such an interpretation, to explain the details pertaining to the enforcement of the act as it applies to the Canadian vessels in the Great Lakes, and to also update the committee on the effects of these recent developments on the long-term negotiations underway to resolve the maritime boundary and resource issues between our two countries.

I ask that the statement of the ranking minority member of the committee be inserted in the record at this place, if there are no objections.

[The statement follows:]

STATEMENT OF HON. PHILIP E. RUPPE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, thank you very much for calling this hearing on such short notice. The problem which has developed because of the decision by the U.S. Government to apply restrictions on Canadian recreation fishing vessels found in U.S. waters of the Great Lakes requires immediate attention.

I will be very brief in this statement, but I do want to make the point most emphatically that I firmly believe the State Department and the Coast Guard have interpreted the Fishery Conservation and Management Act of 1976 improperly in imposing its section 307 on Canadian recreation fishermen in the U.S. waters of the Great Lakes. It is clearly not the intent of the act to apply its requirements to the Great Lakes, the legislation deals with marine not fresh water fisheries. It establishes fisheries councils for the coastal States, not the Great Lakes States. It applies to a zone contiguous to the territorial sea of the United States and extending from the seaward boundaries of each of the coastal States and such language clearly cannot apply to the Great Lakes. And it is also very clear that the waters of the Great Lakes are waters of the individual States, not U.S. waters, for the purposes of this act.

Furthermore, I understand that last evening Canadian television presented this issue and featured the Canadian Minister of Fisheries in an address to the Canadian Parliament. That gentleman indicated that the United States had chosen to take action against Canadian recreation fishermen on the Great Lakes, but that the Canadian Government would not take similar action against U.S. recreation fisherman at least in part because those fishermen represent substantial tourist dollars to Canada.

We now find ourselves in a position where there is no important economic problem for the United States in applying this act to Canadian fishermen, the Canadians aren't going to reciprocate, and all we will be left with is the appearance of being heavy handed. The present U.S. Government position cannot be looked upon as serving long-term good relations with our friends to the North.

Unless there is some motive of which I am not aware, there seems little reason for the State Department and the Coast Guard to interpret the Fishery Conservation and Management Act so narrowly as to affect Canadian recreation fishermen in U.S. waters of the Great Lakes. Perhaps the announcement yesterday by the Canadian Fisheries Minister can provide the basis for a modification in the U.S. position. I strongly urge reconsideration of our position.

Mr. LEGGETT. I note we have some colleagues present here today. Del, do you and Bob want to express yourselves?

STATEMENT OF HON. DELBERT L. LATTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, ACCOMPANIED BY HON. ROBERT C. McEWEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LATTA. I am here as a witness.

Mr. LEGGETT. You are recognized at this point. Unless you want to cross examine, you can hold your fire.

Mr. LATTA. I just want to commend you on your very prompt action. I think that Canada has responded favorably to the problem.

Since I brought this to the attention of the House yesterday, I received notification, I think it was last night, from the State Department, that Canada is not going to confiscate American boats going into Canadian waters in the Great Lakes, and they were going to permit us to fish there without interruption.

And to affirm this, let me read just a short statement on UPI wire, Canada decided not to retaliate against the U.S. ban on Canadians, and welcomed American fishermen on its side of the Great Lakes today in a move to bolster its sagging tourist industry. Canadian waters are in fact opened to the recreation, the sport fishermen, at the moment, and for the foreseeable future, LeBlanc said yesterday.

So Canada has already taken action.

Now, it seems to me that it is up to the State Department to take action, and this whole matter can be resolved.

Mr. LEGGETT. It is an extraordinarily civilized viewpoint they present.

Mr. LATTA. I would have to agree.

Mr. LEGGETT. Bob McEwen, a very distinguished colleague, likewise.

Mr. MCEWEN. I want to thank you and your subcommittee for promptly calling this hearing.

The sport fishery in my district is located at the eastern end of Lake Ontario, and includes all of the U.S. part of the international section of the St. Lawrence River, some 100 miles from Lake Ontario to the 45th meridian. The largest sport fishery is our bass fishery, and the bass season opens on the 17th of this month. This ban has caused a grat deal of uncertainty as to what is going to happen.

I see gentlemen here from the Coast Guard. While we are trying to resolve this matter, I hope they may find many important missions that will engage their attention, time and effort, rather than having to devote too much time to apprehending Canadian sport fishing vessels in the American waters of the Great Lakes and St. Lawrence River.

Mr. Chairman, let me just cite the case of the Bass Anglers Sportsmen Society. That society is, if you will, to sport fishing what the PGA is to golf. These are the professional bass sport fishermen. They are coming from all over the United States to the village of Alexandria Bay in the Thousand Islands section of the St. Lawrence River. It is on the New York State side of the river. There are more than 200 sportsmen coming from scores of States.

They are already calling from Colorado and California, to name just two States. They are asking if they will be able to fish in Canadian waters.

Like Mr. Latta, I appreciate the announcement of Canada's Minister of Fisheries, Mr. LeBlanc, who said Canada does not intend to retaliate. The society is counting like many sports fishermen who come into the area, that their members will be able to get a license from both New York State and Ontario, so that when they are in that Thousand Islands area, they will not have to worry about where the international line is. They can pursue the sport of fishing.

I appreciate your opening comments, that we did not envision this act of 1976 as embracing the Great Lakes. There is no regional council for the Great Lakes——

Mr. LEGGETT. Well, as I understand it, in the Great Lakes there is no fishery conservation management zone in any respect, shape or form. The 200-, 12-, and 3-mile fishery zones do not apply be-

cause when one leaves U.S. waters he is immediately in Canadian waters. And so this is an entirely different situation than the conservation zones.

Mr. McEwen. And, Mr. Chairman, it has been pointed out to me, they are State waters out to the international line, that they are not considered Federal waters.

Mr. Leggett. There is no Federal ownership in that area, therefore, no Federal mission.

Mr. McEwen. I think that this raises a real question as to, by what right Federal enforcement is coming in on these fisheries. Jurisdiction over these waters is wholly within the contiguous Great Lakes State, and the Province of Ontario.

Mr. Leggett. Right.

Mr. McEwen. That is something that I hope would be considered at this hearing today. I would like to know how the State Department may look upon that.

Mr. Leggett. Then, it may be well if we hear now from the distinguished Deputy Assistant Secretary of State, Ambassador Negroponte.

STATEMENT OF JOHN NEGROPONTE, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY JOHN H. ROUSE, JR., DIRECTOR, CANADIAN AFFAIRS; MARY ELIZABETH HOINKES, ASSISTANT LEGAL ADVISER, OCEANS, ENVIRONMENT AND SCIENTIFIC AFFAIRS; CAPT. ROBERT H. OVERTON III, U.S. COAST GUARD; AND LT. COMDR. ALEX BLANTON, U.S. COAST GUARD

Ambassador Negroponte. Thank you very much.

I would like to introduce my staff, John H. Rouse, Jr., Director, Canadian Affairs, Department of State. Mary Elizabeth Hoinkes, Assistant Legal Adviser, Oceans, Environment and Scientific Affairs, Department of State; Capt. Robert H. Overton III, U.S. Coast Guard.

I have no prepared statement, Mr. Chairman, but I would like to make a couple of points at the outset, then perhaps we can turn our energies toward seeking some kind of way to solve this problem.

First of all, there have been some stories to the effect that this was an escalation on the part of the United States, in our overall dispute with Canada, over the question of fishing rights within our respective territories, or within our respective jurisdictions. And that is absolutely incorrect.

This interpretation that has been made by the executive branch was not in any way intended to escalate the situation, and we greatly value the continuing cooperation on the whole variety of fields in the Great Lakes that we are engaging in with the Government of Canada.

Mr. Leggett. In spite of everything we have heard, or seen in the newspapers, we will determine as a matter of fact that we have not escalated.

Ambassador Negroponte. Thank you, Mr. Chairman.

Secondly, with respect to the question of the interpretation of the act, our view was that section 307, our graph 2-A——

Mr. LEGGETT. Just a second please. Let us get to that.

Ambassador NEGROPONTE. It is section 307, 2-A.

Mr. LEGGETT. OK, section 307(2) says that it is unlawful:

> For any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—
>
> (A) Within the boundaries of any State; or
>
> (B) Within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c).

Let me ask you this. Did the State Department ever determine that any boat should have a permit from Canada to fish in the Great Lakes, a part of which has been designated as a portion of any State?

Ambassador NEGROPONTE. Mr. Chairman, if I may, I do not think that that question has ever arisen. But if I could add——

Mr. LEGGETT. Have you instructed the Coast Guard to pick up any Canadian boats fishing without a permit in that area, up to this point?

Ambassador NEGROPONTE. It was covered, Mr. Chairman, by the question of Canadian recreational fishing. It is covered under article XII of our Interim 1977 Reciprocal. The question was dealt with explicitly there, and it was our feeling that that provision, combined with——

Mr. LEGGETT. Was that one of the agreements that was exempted from terminating?

Ambassador NEGROPONTE. No.

Mr. LEGGETT. So that has terminated, and you have winked at that, up to this point. And as a result, since you have winked at the enforcement of that law, in this year, the inference would be that unless we want to escalate, we should continue to wink.

Ambassador NEGROPONTE. Not exactly, Mr. Chairman.

Mr. LEGGETT. You can go back and state your prima facie case?

Ambassador NEGROPONTE. Let me ask Ms. Hoinkes to address some of those points.

Ms. HOINKES. Thank you, Mr. Chairman.

I think a little more explanation on that point might be helpful.

Pending entry into force of the 1977 Interim with Canada, there were a few days in which discretion in enforcement was followed, pending the congressional approval of the 1977 Interim with Canada, which made specific reference to recreational fishing by vessels of each party in all waters.

That same provision is contained in the 1978 Interim Agreement, which has now, unfortunately——

Mr. LEGGETT. But that expired, did it not?

Ms. HOINKES. The 1977 agreement expired on the 31st of December.

Mr. LEGGETT. What agreement is there for 1978?

Ms. HOINKES. We have negotiated an agreement, now lying before the Congress.

Mr. LEGGETT. It is really worthless, is it not?

Ms. HOINKES. Well, Mr. Chairman——

Mr. LEGGETT. You have, in fact, been winking at the law, with respect to recreational and other fisheries up to this point, have you not?

Ms. HOINKES. I cannot join in your characterization, but I would say that the effect has been to comply with provisions of an agreement which is lying before the Congress.

The situation, we feel, is quite different now.

Mr. LEGGETT. You failed to enforce the law, is that not right?

Ms. HOINKES. Indeed——

Mr. LEGGETT. You are trying not to rock the boat; you are trying not to escalate; you are trying to be diplomatic; you are trying to promote friendships with our northern neighbor, and you are doing very good. As a result, you did not instruct the Coast Guard that until the Congress approves this agreement you shall apply the plain meaning of the fishery conservation management law.

Ms. HOINKES. That is absolutely correct. We have not applied the provisions of section 307, the prohibition on foreign vessels fishing within State boundaries, and had so informed the Canadians at the time we entered into the agreement, and transmitted it to the Congress.

At that time I believe we had consultations with the committee, and the committee was aware that pending congressional action, that would be the application given. There is, however, a slightly different situation at this point, because in response to the Canadian's advice to us that they would not apply the terms of the agreement any further. We have responded to them that in fact we have no choice but to strictly apply the provisions of our domestic law.

Mr. LEGGETT. You are consulting with the subcommittee, just like regulation, are you not?

Ms. HOINKES. Of course.

Mr. LEGGETT. During the first part of this year, you used that as a justification for, in fact, abating full endorsement of the law?

Ms. HOINKES. Absolutely.

Mr. LEGGETT. Now, we have asked you to come up here, and we want to talk to you. Our purpose here is to appropriately enforce this law.

Mr. FORSYTHE. it seems to me there is one central issue, and as the chairman stated in his opening remarks, there is a different interpretation, regarding the application of the Act to the Great Lakes really is the thing that we are concerned with today.

While we may disagree on that I would hope that we could focus on how to resolve this particular issue.

There apparently is a real disagreement as to just what the intent of Congress was. I think there is language that could permit the interpretation the State Department has given it, although certainly I think it goes beyond what this committee, and the House intended.

That is where we are. I would hope that we could settle this without trying to go into a much broader field.

Mr. Chairman, thank you.

Mr. LEGGETT. Mr. Hughes?

Mr. HUGHES. I have to agree. I think the issue was set forth right at the very beginning of your statement. The very act that we are talking about starts out by defining the fishery conservation zone.

Mr. LEGGETT. Of course, this section here does say that it is unlawful for any vessel, other than a vessel of the United States, and for the owner or operator of any vessel, other than a vessel of the United States, to engage in fishing within the boundaries of any State, or within the fishery conservation zone, unless such fishing is authorized and conducted in accordance with valid and applicable permit.

Of course, the way this reads, unless such fishing is authorized and conducted in accordance with the valid and applicable permit, it modifies only subsection (b). And the way this reads, it is unlawful for any person——

Mr. FORSYTHE. The only issue is fishing within the boundaries of any State.

Mr. LEGGETT. What this says, if you read it precisely, is that it is unlawful for any foreign nation to fish within the boundaries of any State, period. It is not what we intended, but it is what it says.

Mr. LATTA. I think we have to go back and look at the purpose of the whole act. And at the outset, it sets forth the scope of the act, and to pick out one particular section and apply it out of context, is something else. It is a little bit ridiculous.

I think the gentleman ought to go ahead and read.

Mr. HUGHES. I think the point has already been made, and there is no sense in belaboring it. I think it has to be read in context. The act deals with the fishery conservation zone. It has no application whatsoever to State waters. You cannot pick out one section of the bill without considering it in context.

Mr. LEGGETT. What we had in mind was State waters within the 3-mile limit. And obviously, the Federal Government cannot give a permit to fish within a State's 3-mile limit. But we reserve the right for the Federal Government to give a permit in the area from 3 to 200 miles beyond, and that was the fishery conservation management zone.

When we refer to State waters here, obviously, we did not refer to State waters that are not contiguous on a fishery conservation management zone.

Mr. HUGHES. If the gentleman would yield. It is the FCZ contiguous to the territorial waters that we are regulating.

Mr. LEGGETT. We are regulating the territorial sea, and obviously, there is no intent to regulate the State waters that are not contiguous to the fishery conservation management zone. And that must be so interpreted.

Mr. MCEWAN. Mr. Chairman, on this question of, and I quote, the words, "valid and applicable permit," I think you pointed out that the Secretary of State could not issue a permit for State waters.

Mr. LEGGETT. Right.

Mr. MCEWAN. May I say to our friends from the State Department, there are, I am sure, scores and scores of Canadian citizens who, right at this very moment, hold valid New York State nonresident fishing licenses, to fish in the waters of the St. Lawrence and

Lake Ontario. They have paid the prescribed fee, because our license year begins in the fall and ends in the fall.

So many of them already have licenses.

Mr. LEGGETT. In fact, they do have a form of State permit.

Mr. MCEWAN. They have purchased their State nonresident fishing licenses. Licensing has nothing to do with citizenship. Anyone from outside the State can buy a nonresident license. Canadians have purchased those licenses, believing fully that they could be honored.

Mr. LEGGETT. Certainly, the interpretation of the act, where we have not asserted any jurisdiction in this area up to this point, bears strong powers of persuasion with this convening authority.

Mr. Ambassador?

Ambassador NEGROPONTE. I do not want to escalate. I want to get back to my Mexican colleagues, with whom I have been holding the negotiations, in an effort to forestall a similar crisis with them, 6 months hence.

But without belaboring the point of differing legal interpretation, my understanding is that while this may have been the intention of the House, in the first instance, that there was a question of the continuation of the Bartlett Act, which banned such fishing, and that this was taken up to the Senate version of the legislation, and that in effect, this is the continuation of the provisions of the old Bartlett Act, which is the executive branch.

In the past, this was consistently interpreted to be a ban on certain kinds of fishing, even in the Great Lakes. Be that as it may, we are—and I have been—instructed to seek a way to resolve this problem.

I do not come today, we have not gotten our act fully together, to be quite frank with you, but we are prepared to do so in the next couple of days. And we have been considering a couple of alternative ways of resolving this problem.

Perhaps one way would be to get some exchange of notes, which we could do, with the Canadians, over the next couple of days, which would make explicit the exemption of recreational fishing in the Great Lakes, to our present interpretation, and that perhaps could be tacked on to the current deliberations of our Interim Reciprocal Agreement, which I believe we are going to be taking up with the Senate next Tuesday, by the Senate Foreign Relations Committee.

So that would be one alternative.

Mr. LEGGETT. Certainly, the committee would respect whatever alternatives might be pragmatic, in the interests of diplomacy with a contiguous country. We would like to resolve this matter with minimum difficulty on both sides.

I do not believe there is a war on fish, and contrary to what the newspapers may be saying, I think that our negotiators have worked very effectively. And we are almost together.

And it just so happens that fish tempers, as amplified by fishermen, and sometimes the politicians representing fishermen, have displayed themselves over the past several days. Certainly, that is part of the mood that helps us reach a resolution in this matter.

And I would hope that the problems can be resolved with minimum injury to Canada, because they are the ones that accelerated.

The way I look at the numbers, considering the fact that we have both been fishing in the disputed area where the big fishery is located in the Atlantic, it appears that, based on probability, were the abatement in fishing and reciprocal waters continued for years, Canada would be the loser by a magnitude of several million dollars annually, which is a difference in our favor.

Certainly, that is not exactly to their advantage to do that, and the matter should be resolved.

Mr. Forsythe?

Mr. FORSYTHE. Thank you for yielding.

There is one area that it seems to me we should be concerned about.

As I understand it, there is no issue in relation to the commercial fishing in the Great Lakes waters. Neither nation fishes in the other's waters commercially and there is a nonissue in that regard.

Mr. LEGGETT. Neither has been able to develop a commercial fishery.

Mr. FORSYTHE. But it is a nonissue and I would think we ought not to take any steps to move into Federal regulation of commercial fishing within those waters.

Mr. Ambassador, is it your view that commercial fishing is regulated by Public Law 94–265?

Ambassador NEGROPONTE. Well, I do not think the issue is one of seeking to manage the resources in any way, Mr. Forsythe. It was a question of the prohibition on entry, which I gather has been interpreted as being one Federal authority, since, ever since the Bartlett Act, if I am not mistaken. But I do not think there is any intention of suggesting the actual management of the resources be enhanced, other than the State authorities.

Mr. LEGGETT. The Bartlett Act was repealed by the FMCA.

Mr. HUGHES. Mr. Chairman?

Mr. LEGGETT. Yes?

Mr. HUGHES. How could the State Department rely upon the Bartlett Act. It was repealed by the 1976 Fishery Conservation and Management Act, in which the conservation zone is clearly set forth.

Ambassador NEGROPONTE. As I mentioned earlier, it is the view of some, at least, that this particular provision was in effect a successor provision, not similar to the Bartlett Act. This was the point I made earlier.

Mr. HUGHES. I do not think anything, Mr. Ambassador, in the legislative history ever suggested that we intended to exercise Federal jurisdiction over the Great Lakes' waters. I do not know of any place, at any time, during the discussions on that bill, where it was suggested that it was our intent to regulate fishing in the Great Lakes. And therein lies the problem.

I share my colleagues' concerns in trying to resolve this in the most diplomatic fashion. I just hope that we do not continue to indicate that there is an intent to exercise Federal jurisdiction in this area.

Mr. LEGGETT. By literal translation, of course, we could affect the boundary waters. However we did not intend to cover that. That is not part of the history.

Mr. McEwen. On that point, I cite the district of our colleague, Congressman James Oberstar, who is over before the Rules Committee. This does affect some of his district's lakes.

I do not know exactly how many. Three or four that he mentioned at least in the boundary waters canoe areas where the international line passes through those lakes. This ban does have an effect up there.

So if there is anyone planning to fish from a canoe in that area—be sure they stay on their own side of the waters.

This literally reaches from beyond the Great Lakes right through to where the international section of the St. Lawrence ends and the river becomes all Canadian.

Mr. Latta. Mr. Chairman?

Mr. Leggett. Yes.

Mr. Latta. I think the suggestion the Ambassador has put forward is a good one on exchanging notes. But I think counsel for this committee also suggested an amendment to another bill that this committee passed and is pending in the Senate, would further clarify this as a matter of law. And I would subscribe to that very, very much.

Mr. Leggett. Well, it is beyond our control at this point. Anything they want to do in the Senate, of course, they can do as long as it is not utterly silly.

Does counsel have any views?

Mr. Hughes. Let me just say that I do not know about what can be done on the Senate side, but I would hope that the State Department would take another look at their interpretation, after having discussed the matter with this committee and perhaps examining once again the legislative history.

Mr. Forsythe. Will the gentleman yield at that point?

Mr. Hughes. Yes.

Mr. Forsythe. On the Senate side, the Bartlett Act was not repealed. The conference language which retains sections of the Bartlett Act and which the State Department is relying on, unfortunately does not have a legislative history which clarifies the intent.

I fully agree with what you have said, Mr. Chairman, regarding the Congress intent. I do not think in context it can be applied as the State Department suggests. But we do have a situation where it has been interpreted as providing the basis for the action that was taken by the State Department. How we get out of this box, of course, is the issue before us. It seems to me that an exchange of diplomatic notes combined with a clarification of the legislation could clear the whole thing up. I just hope that we do not muddy the waters any further.

Mr. Leggett. Under subsection 3(11), the term "fishing vessel" means "any vessels, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—(a) fishing . . ." So I presume on the basis of that definition, we can exclude canoes.

Mr. Mannina. You can exclude the Great Lakes by that definition.

Mr. Leggett. How do we do that?

Mr. MANNINA. You exclude the Great Lakes by, Mr. Chairman, because section 307(2)(a) says, "No foreign vessel may engage in fishing."

The definition of fishing is to catch fish. The definition of fish is finfish and other marine animals. The word marine modifies finfish. We are talking about marine fish, not the fresh water fish of the Great Lakes.

Furthermore, if you look at the conference report, section by section analysis, it says that the committee adopted the House and Senate definition of fish. The House and Senate definition of fish, according to each body's section by section analysis indicates that both House were focusing on living marine resource, not freshwater resources.

Mr. LEGGETT. We will put that in writing and send that over to the Ambassador. It might help.

We want to call a truce with the State Department.

Mr. CORRADO. Mr. Ambassador, with respect to your comments concerning the Bartlett Act, what is the State Department's interpretation of the Bartlett Act when it was applicable with respect to commercial vis-a-vis sport fishing?

Did it apply to sport fishing, too? Because, it was never my impression that it did.

Mr. LEGGETT. Mr. Negroponte was not with the State Department at that point.

Mr. CORRADO. He has learned counsel on each side.

Ambassador NEGROPONTE. One of our colleagues from the Coast Guard is here to address this, but I know that this very same definition of fish that Mr. Mannina referred to was the same definition as occurred in the Bartlett Act, and that the Federal Government has been engaged in certain kinds of enforcement activities in the Great Lakes, apparently at the request of various constituencies out there—I think Ohio is among them—in the Great Lakes. And perhaps to clear that aspect of the situation, I could ask Mr. Blanton to briefly address that point, Mr. Chairman.

Mr. LEGGETT. The Coast Guard participates in the debate at their peril.

Commander BLANTON. Thank you for the warning.

We have been enforcing the—we had been enforcing the Bartlett Act in the Great Lakes.

Mr. LEGGETT. Recently?

Commander BLANTON. Since 1973.

Mr. LEGGETT. Not recently, though?

Commander BLANTON. Not since the repeal, sir.

Mr. LEGGETT. All right.

Commander BLANTON. The language of the Bartlett Act on the prohibition was foreign vessels were prohibited from engaging in the fisheries. And that language has been interpreted not to include recreational fishing except that recreational fishing engaged in from a commercial fishing vessel. That had been a uniform interpretation of that phrase.

Mr. CORRADO. It did not apply to recreational fishing then, the sport fishing?

Commander BLANTON. That is correct because the legislative history of the Bartlett Act did not support inclusion of recreational

fishing from recreational vessels within the meaning of that term, engaging in the fisheries. Whereas I believe it is quite clear in the FCMA that recreational fishing included——

Mr. LEGGETT. Other limitations?

Mr. HUGHES. What was meant by recreational fishing from commercial vessels? Do you mean boats where for a fee you take individuals fishing?

Commander BLANTON. The only two cases that I know of that were prosecuted under that interpretation were recreational fishing by the crew of a large foreign fishing trawler.

I cannot speculate as to the effect it would have, for example, on a boat. I think it would probably—I think the definition or interpretation would have reached that type of fishing also.

Mr. HUGHES. How about a charter boat? Is that a commercial boat?

Commander BLANTON. We could speculate that it was. You will recall that the Bartlett Act only applied to foreign vessels as well. And we have not——

Mr. HUGHES. It sounds to me like it is just as well that we repealed the Bartlett Act.

Mr. LEGGETT. This history is very interesting to the subcommittee, and I am sure very helpful to the State Department. Counsel will get together and send an analysis down there. Some of our views on the legislative history might be helpful in preparing your note and hopefully we can resolve this matter.

Ambassador NEGROPONTE. That would be very helpful indeed, Mr. Chairman. We will keep in touch with the committee over the next couple of days in an effort to work this problem out as quickly as possible.

Mr. LATTA. Mr. Chairman, may I ask the Ambassador a question?

Mr. LEGGETT. Certainly.

Mr. LATTA. In view of the fact that Canada has taken the action of last night, and in view of the fact that we have the Coast Guard here, can we assume in this interim period, between now and the time this is worked out, that we are not going to be stopping Canadian fishermen from coming into United States waters in the Great Lakes?

Ambassador NEGROPONTE. The present instructions, sir, to prohibit them from coming into our waters under State jurisdiction, and that will have to be our position until we have had an opportunity to reconsider it.

Mr. LEGGETT. I would suggest that that is the current instruction, that we work at night and reconsider that.

Mr. LATTA. Work until it is resolved.

Mr. LEGGETT. Let me ask this. Have any boats been stopped? How many boats do you have out right there?

Captain OVERTON. We have our vessels out on normal patrol.

Mr. LEGGETT. You have no abnormal patrols going?

Captain OVERTON. We have no extra units out there.

Mr. LEGGETT. We do not expect to hear about any abnormal patrols.

Mr. MCEWEN. Mr. Ambassador—let me tell you, if you people would be where my wife is right now, at our home on the St.

Lawrence shore where the phone is incessantly ringing, you would change your mind. That phone has not stopped ringing.

Let me say to the Coast Guard, they will call you worse than hooligans up there if you grab those Canadians. I just want to tell you straight out that you could jeopardize all the good international relations that we have in that area.

Again, I cite the BASS tournament. They are scared to death that they are going to make that trip and then find that the Government of Canada has, through misunderstanding, misread it and countered with a ban on our people.

Mr. LEGGETT. Mr. McEwen, tell them to pack up.

Mr. MCEWEN. I will tell them to pack up and to come to the St. Lawrence.

Mr. LEGGETT. We will resolve this in a diplomatic fashion, Mr. Ambassador.

The meeting will stand adjourned.

[The following was submitted for the record:]

STATEMENT OF RICHARD A. FRANK, NOAA

The following statement was issued on June 19, 1978 by Richard A. Frank, Administrator, National Oceanic and Atmospheric Administration, concerning Canadian fishing on the Great Lakes pursuant to the requirements of the Fishery Conservation and Management Act of 1976: Canada has suspended provisional application of the United States/Canada reciprocal fishing agreement and the United States has responded by also suspending application of the agreement. Questions have been raised regarding whether recreational vessels of the two nations could continue to fish in the Great Lakes. The Department of Commerce has determined that Canadian vessels may engage in freshwater fishing in the Great Lakes and other freshwaters of the United States, subject, of course, to pertinent state and local regulatory and licensing requirements.

[Whereupon, at 4:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

34-367 O - 78 - 5

GREAT LAKES FISHERIES

WEDNESDAY, JULY 12, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:28 a.m., in room 2257 Rayburn House Office Building, Hon. Robert L. Leggett, presiding.

Present: Representatives Leggett, Forsythe, Ruppe, Bonior, and AuCoin.

Staff present: George J. Mannina, Jr., professional staff, minority; Bud Nagelvoort, professional staff, minority; Robert D. Thornton, counsel; Michael A. Ingrao, research assistant.

Mr. LEGGETT. The meeting of the subcommittee will please come to order. Sorry for the delay. We had some votes on the floor. Today, the subcommittee begins hearings on H.R. 12531, legislation introduced by colleague Ruppe. This bill and draft amendments to it, attempt to resolve conflicts between competing users of the Great Lakes fishery resources.

The bill provides for the establishment of a fishery research and monitoring program for the Great Lakes and for the expansion of the present hatchery facilities in the Great Lakes. The draft amendments to this bill, which I understand have been circulated to all witnesses, would in brief do the following:

One, set aside certain Michigan waters of the Great Lakes as traditional Indian fishing waters and make them subject to Indian control;

Two, require that the State of Michigan issue 50 percent of its commercial fishing licenses to Indians;

Three, provide for a transition period of 5 years in which Indians would be allowed to catch specified numbers of fish;

Four, firmly establish the authority of the State to manage the fisheries in its waters; and,

Five, provide for the establishment of a management committee for each Great Lake.

I believe that it is helpful to review the historical and legal setting to determine where we are today.

As everyone is painfully aware, the Great Lakes fishery resources has declined precipitiously since the end of the 19th century when the lakes supported a substantial commercial fishery.

The decline of the resource is attributed to overfishing and to the appearance of the sea lamprey. Attaching themselves to ships, working their way through the locks and canals, this parasitic

ocean fish made a shambles of the Lake Michigan fishery by the late 1940's. A decade later, sea lamprey were entrenched throughout the eastern third of Lake Superior and making their way all along the northern shore and into the western end.

Facing the total destruction of the fishery resource, the United States and Canada responded to the crisis by establishing the Great Lakes Fishery Commission in 1955. Between 1958 and 1976, the commission had invested $36.6 million in what proved to be a dramatically successful effort to control the insidious lamprey.

Lamprey populations now have been reduced on the order of 85 to 90 percent, but continued control and vigilance will be necessary, and will require an annual Federal investment of $4 to $5 million unless other means of control are found.

With the reduction of the lamprey populations, the Federal Government and the Great Lakes States embarked on an aggressive program to revitalize the decimated Great Lakes fishery stocks. Despite the introduction of hatchery-reared lake trout, the Pacific coast salmon, the overall reduction of the fishery resources has exacerbated conflicts between recreational, Indian, and commercial users of these resources.

These conflicts have become more severe with a series of legal decisions interpreting several 19th century treaties to reserve special fishing rights for northern Michigan Indian tribes. In two separate criminal actions, the Michigan Supreme Court has decided that northern Michigan treaty Indians are not subject to regular State fishing regulations. In *People* v. *LeBlanc,* the court reversed the conviction of a Chippewa Indian for fishing without a commercial license and for fishing with a prohibited gill net. The court held that an 1836 treaty, in which the Chippewas ceded most of Michigan to the United States, reserved fishing rights for the Indians in the ceded waters of Lake Michigan.

The court did say that Indian fishing may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians. The appropriate standard requirement means that the State must demonstrate that its regulation is a reasonable and necessary conservation measure and that its application to the Indians is necessary in the interest of conservation.

It has never been determined whether the Michigan gill net prohibition can be sustained under these standards. A civil suit proceeding in a district court in Michigan would resolve many of the outstanding legal questions. The State of Michigan continues to maintain that any reserved fishing rights were extinguished by the terms of the 1836 and 1855 treaties.

The net effect of the *LeBlanc* decision is to create a substantial uncertainty as to whether Michigan can enforce its fishing regulations on treaty Indians in any of the waters ceded by Indians under the 19th century treaties. The ceded waters make up more than half of the Michigan territorial waters of the Great Lakes which, in turn, are about 64 percent of the U.S. waters of the Great Lakes. At this point, I recognize the ranking minority member of the Merchant Marine and Fisheries Committee, who can make whatever statement he wants.

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

I am particularly pleased that we have the opportunity to follow up the hearing held in Petoskey, Mich., last January, with today's hearing on H.R. 12531, which evolved, along with amendments I will propose, from that 39 witness, a 1-day event very effectively chaired by Mr. Oberstar.

Unfortunately, the printed hearing record for Petoskey did not arrive from the printers until Monday of this week, partly because the committee asked a number of followup questions of the Michigan Department of Natural Resources and the Department of the Interior, which took quite an amount of time to respond to. But then there is nothing simple about this issue.

As those who have followed the issue closely are aware, on introducing H.R. 12531, I placed a statement in the Congressional Record explaining the logic of the bill and also describing in general terms amendments to it which I intended to have prepared.

Those amendments are included in the members' briefing materials; copies were mailed to State, Indian, and sport fishing agencies and organizations in the past 2 weeks, and I hope and expect that our witnesses today will comment on the amendments as well as on H.R. 12531.

A few copies of the amendments are available for those who want them.

Mr. Chairman, at this point I would like to have the bill, H.R. 12531, and the amendments entered into the hearing record, with one correction to the amendments:

In section 203, paragraph (a)(2)(B) and paragraph (b)(B) should read the same as paragraph (a)(1)(B).

I would also call the members' attention to the last sentence of the first page of the briefing memorandum, which should read: "Management plans would be binding on the States and Indians only where significant overlapping of the fishery exists between reserved Indian waters and State waters."

[The following was received for the record:]

95TH CONGRESS
2D SESSION

H. R. 12531

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1978

MR. RUPPE introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Great Lakes Fisheries Act of 1956 in order to require the preparation of a comprehensive report concerning the conservation and management of the Great Lakes fisheries, to establish a hatchery and a fisheries monitoring program for the Great Lakes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Great Lakes Fisheries Act of 1956 (16 U.S.C. 931–939c) is amended—

(1) by adding at the end thereof the following new sections:

"SEC. 15. (a) The United States Section, after carrying out such research and investigations as it deems appropriate, shall prepare a preliminary report containing—

"(1) a description of each Great Lakes fishery, including, but not limited to—

"(A) the life-cycles of the species of fish involved;

"(B) the seasonal migrations, if any, and the spawning areas of such species;

"(C) the recreational and commercial activities associated with the fishery including, with respect to each such activity, the catch, the number of boats and fishermen involved, the gear used, seasonal variations, and the economic significance of the activity;

"(D) the cost likely to be incurred in the management of the fishery; and

"(E) the nature and extent of Indian treaty fishing rights in the fishery, if any;

"(2) a description, and an assessment of the effectiveness, of—

"(A) the conservation and management being implemented with respect to each Great Lakes fishery by the Great Lakes State or States involved in that fishery, and

"(B) existing programs (including but not limited to, fish hatchery construction and predator

control) being carried out or funded by Federal agencies with respect to such fishery;

"(3) an assessment and specification of the present and probable future condition of, and the maximum sustainable yield and the optimum sustainable yield from, each Great Lakes fishery, taking into consideration, among other things, habitat improvement, improved research and monitoring, and the optimum expansion of hatchery facilities;

"(4) an evaluation of present and foreseeable effects which water pollution and related air pollution, and the implementation of coastal zone management plans, may have on existing Great Lakes fisheries;

"(5) an evaluation of the potential for the establishment of new Great Lakes fisheries including the introduction of new species and new utilization of established species; and

"(6) the recommendations of the United States Section regarding—

"(A) suggested conservation and management actions which should be implemented by the appropriate Great Lakes States with respect to each Great Lakes fishery,

"(B) the establishment of new Great Lakes fisheries, and

"(C) actions which should be taken by the appropriate Great Lakes States to protect the Great Lakes fisheries—

"(i) through the reduction or elimination of water pollution and related air pollution; and

"(ii) in developing and implementing coastal zone management plans.

"(b) The United States Section shall submit to each advisory committee appointed under section 4 those parts of the preliminary report prepared under subsection (a) which pertain to Great Lakes fisheries for which the advisory committee is responsible. Each advisory committee may, within sixty days of the receipt of such parts of the report, submit to the United States Section such related comments and views as it deems appropriate.

"(c) The United States Section, after taking into account comments and views received from the advisory committees under subsection (b), shall prepare a final report containing the matters specified in subsection (a) and shall submit copies of the final report to the Great Lakes States, to the Congress, and to the Secretary of the Interior not

later than eighteen months after the date of the enactment of this section.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out this section.

"(e) For purposes of this section—

"(1) The term 'conservation and management' refers to all of the rules, regulations, conditions, methods, and other measures which are—

"(A) required to establish, rebuild, restore, enhance, or maintain, and which are useful in establishing, rebuilding, restoring, enhancing, or maintaining, any Great Lakes fishery; and

"(B) designed to assure that—

"(i) recreational benefits may be obtained on a continuing basis, and that a supply of food and other products may be taken,

"(ii) irreversible or long-term adverse effects on Great Lakes fisheries are avoided, and

"(iii) there will be a multiplicity of options available with respect to future actions of these resources.

"(2) The term 'Great Lakes fishery' means one or more stocks of fish and their habitats within one or

more of the Great Lakes which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

"(3) The term 'optimum', with respect to the yield from each Great Lakes fishery, means the amount of fish—

"(A) which will provide the greatest overall benefit to the Great Lakes area, with particular reference to recreational opportunities and food production; and

"(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery as modified by any relevant economic, social, or ecological factor.

"SEC. 16. (a) Each Great Lakes State which establishes and implements a fisheries monitoring program meeting the requirements of subsection (b) shall be eligible for funds appropriated pursuant to subsection (c).

"(b) A fisheries monitoring program shall provide—

"(1) for a sampling program to measure the locations, numbers, sizes, age classes, and migrations of each species of fish in the Great Lakes over which the State has jurisdiction;

"(2) for a program to determine the total catch of each such species of fish by each of the following classes of persons:

"(A) commercial fishermen other than those counted under subparagraph (C);

"(B) recreational fishermen;

"(C) Indian fishermen with respect to catches for commercial purposes; and

"(D) Indian fishermen with respect to catches for subsistence purposes; and

"(3) for an annual report to the United States Section of the findings made under paragraphs (1) and (2).

"(c) (1) There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to assist Great Lakes States in the establishment and implementation of fisheries monitoring programs under this section.

"(2) Amounts appropriated pursuant to paragraph (1) shall be apportioned among the Great Lakes States eligible for such amounts by the Secretary of the Interior. The amount of any such appropriation which shall be apportioned to an eligible State shall be equal to an amount which bears the same relationship to the amount appropriated as the area of the Great Lakes within the jurisdiction of

such State bears to the area of the Great Lakes within the jurisdiction of all eligible States.

"SEC. 17. (a) There are authorized to be appropriated to the Secretary of the Interior, $50,000,000 for the construction of Great Lakes fish hatcheries, as provided in this section.

"(b) The Secretary of the Interior may, after the preparation of the final report by the United States Section under section 14(c), select locations for, and provide for the construction of, fish hatcheries for the Great Lakes, with funds appropriated pursuant to subsection (a). The selection of such locations shall be based on—

"(1) recommendations contained in such report; and

"(2) proximity to waters proposed to be stocked with fish.

Construction of a fish hatchery shall be authorized by the Secretary only after he has been assured by the Governor of the Great Lakes State in which the hatchery is proposed to be located that such State will operate and maintain the hatchery and provide the necessary funds for the operation and maintenance of the hatchery.

"(c) Fish raised in a hatchery constructed with funds appropriated pursuant to subsection (a) shall be placed in the Great Lakes in locations selected by the United States

Section based on recommendations of the Great Lakes States which are in proximity to such hatchery. No distribution of fish under this subsection shall discriminate against Indians.".

(2) by amending section 13 by inserting "(other than section 15" immediately after "Act".

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 11 1978

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Your Committee has requested the views of this Department on H.R. 12531, a bill "To amend the Great Lakes Fisheries Act of 1956 in order to require the preparation of a comprehensive report concerning the conservation and management of the Great Lakes fisheries, to establish a hatchery and a fisheries monitoring program for the Great Lakes, and for other purposes," and on proposed amendments to this bill with the stated purpose of resolving the issue of Treaty Indian fishing rights in Michigan.

We strongly recommend against enactment of this legislation and the proposed amendments for the reasons stated herein.

H.R. 12531 would amend the Great Lakes Fisheries Act of 1956 (16 U.S.C. 931-939c) by adding three new sections. New section 15 would require the United States' section of the Great Lakes Fishery Commission to carry out research and investigations on the status of the Great Lakes' fishes and fisheries. Such sums as may be necessary are authorized to be appropriated for this purpose. New section 16 would provide such sums as are necessary to the Secretary of the Interior for State grants for a fisheries monitoring program. New section 17 would provide $50 million to the Secretary of the Interior for the selection of fish hatchery sites and to provide for the construction of fish hatcheries. Authorization for construction would be contingent upon State agreement to maintain the facility with State funds.

The proposed amendments to H.R. 12531 (hereinafter referred to as the Ruppe Amendments) would in Title I, (1) establish five Great Lakes Advisory Committees, which are authorized to prepare specified reports concerning fishing activities and develop fishery management and conservation plans; (2) provide for funds to Great Lakes States which establish and implement fisheries

monitoring programs; and (3) authorize $50 million to the Department of the Interior for the construction of Great Lakes fish hatcheries. Title II of the Ruppe Amendments, entitled the "Michigan Indian Fishing Rights Act of 1978" contains various provisions regarding the rights of Indians to fish in the Great Lakes.

We object to enactment of H.R. 12531 because:

1. The bill does not adequately address the international aspects of Great Lakes fishery resources. About 36 percent of the Great Lakes are in Canada, and if Lake Michigan (which is wholly within the United States) is excluded, about 47 percent of the Great Lakes are in Canada.

There are already extant two international agencies involved in matters affecting Great Lakes fisheries. One, the International Joint Commission which dates back to 1909, is the main institution through which Canada and the United States cooperate in resolving problems dealing with water levels, power generation, and air and water pollution. The second is the Great Lakes Fishery Commission which works closely with the Great Lakes States, the Province of Ontario and the Federal fish and wildlife agencies of the two countries. Its major responsibilities are (1) to develop coordinated research programs and recommend measures which will permit the maximum sustained productivity of fish stocks of common concern, and (2) to formulate and implement a program to eradicate or minimize sea lamprey populations.

2. The bill does not recognize the Indian tribes with fishing rights in the Great Lakes, and does not provide for participation of these tribes in the decision-making process. For example, section 15(a)(1)(E) of the proposed bill directs the United States to prepare a preliminary report concerning "the nature and extent of Indian treaty rights in the fishery, if any...". Such a report could have a major impact on Indian treaty and fishing rights in the Great Lakes area.

We object to using legislation of this type to resolve rights of Indians, particularly since the affected Indians are not provided an opportunity to participate in the process, and since we have not had ample time to fully examine the nature and scope of the issues involved.

3. Fishery management plans similar to or overlapping those called for in H.R. 12531 already exist or are authorized:

a) The Great Lakes States have plans. The sport fisheries sections were developed under the Federal Aid in Fish Restoration Act (16 U.S.C. 777-777k). Other plans were funded under the Anadromous Fish Conservation Act.

b) The Fish and Wildlife Service has a plan for its role in "A National Program for the Conservation and Enhancement of the Fishery Resources of the Great Lakes", which was drafted in 1974, and updated in 1977 and approved by the Great Lakes States and the Great Lakes Fishery Commission.

c) Canada has a Federal-Provincial plan for Ontario which includes the Canadian portion of the Great Lakes.

d) The Great Lakes Basin Commission is preparing a comprehensive plan for the United States portion of the Great Lakes, which will examine, among others, (1) effects of water quality management plans on the Great Lakes Basin; (2) effects of Basinwide toxic substances control strategies; (3) restoration and rehabilitation of the Great Lakes; and (4) a Great Lakes fisheries strategic plan.

4. H.R. 12531 authorizes such sums as may be necessary for grant-in-aid programs to States for fishery monitoring programs. We would like to point out that the Anadromous Fish Conservation Act of 1965 (16 U.S.C. 757a-757f), as amended, and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-754), as amended, currently provide for monitoring activities.

5. The $50 million authorized for hatchery construction may not be necessary. State fish hatchery construction in the Great Lakes has been and is being funded under the Anadromous Fish Conservation Act, as amended, with respect to fish which ascend streams to spawn. Further, the bill does not adequately address the potential ecological effects of increased fish hatchery production on the Great Lakes.

34-367 O - 78 - 6

With respect to the Ruppe Amendments, the objections we cite above with respect to H.R. 12531 are applicable here also. In addition, the proposed amendments would change the purpose and scope of the Great Lakes Fisheries Act, a result which we view as undesirable. Moreover, as stated above, we strongly object to the attempted resolution of Indian treaty rights in this manner, particularly in light of the lack of opportunity for this Department or the affected tribes to fully evaluate the proposed amendments in light of the outstanding Treaty right issues.

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

Sincerely,

Robert L. Herbst

Assistant SECRETARY

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[DISCUSSION DRAFT]

7/10/78

Amendment to H. R. 12531, As Introduced

Offered by Mr. Ruppe

Strike out all after the enacting clause and insert the following:

TITLE I-GREAT LAKES FISHERIES ACT OF 1956

SEC. 101. AMENDMENTS TO ACT OF 1956.

The Great Lakes Fisheries Act of 1956 (16 U.S.C. 931-939c) is amended-

(1) by adding at the end thereof the following new sections:

``Sec. 15. [(a) Purposes and policies].

``(b)(1) There are established 5 Great Lakes Advisory Committees as follows:

``(A) Lake Superior Advisory Committee.-The Lake Superior Advisory Committee shall have 9 members of which 4 shall be appointed by the Governor of Michigan, 1 shall be appointed by the Governor of Wisconsin, 1 shall be appointed by the Governor of Minnesota, and 3 shall be appointed by the Secretary under paragraph (2).

``(B) Lake Michigan Advisory Committee.-The Lake Michigan Advisory Committee shall have 11 members of which 4 shall be appointed by the Governor of

Michigan, 2 shall be appointed by the Governor of Wisconsin, 1 shall be appointed by the Governor of Illinois, 1 shall be appointed by the Governor of Indiana, and 3 shall be appointed by the Secretary under paragraph (2).

``(C) Lake Huron Advisory Committee.-The Lake Huron Advisory Committee shall have 7 members of which 5 shall be appointed by the Governor of Michigan and 2 shall be appointed by the Secretary under paragraph (2).

``(D) Lake Erie Advisory Committee.-The Lake Erie Advisory Committee shall have 7 members of which 4 shall be appointed by the Governor of Ohio, 1 shall be appointed by the Governor of Michigan, 1 shall be appointed by the Governor of New York, and 1 shall be appointed by the Governor of Pennsylvania.

``(E) Lake Ontario Advisory Committee.-The Lake Ontario Advisory Committee shall have 5 members who shall be appointed by the Governor of New York.

``(2) The Secretary shall appoint to each of the Lake Superior, Lake Michigan, and Lake Huron Advisory Committees 3 individuals who are members of Indian tribes or other recognized Indian groups which have fishing rights within the respective Great Lakes.

``(3) Each Governor, in selecting individuals for

appointment under paragraph (1), shall give due consideration to the interests, within the Great Lake concerned, of-

``(i) recreational fishing;

``(ii) the commercial fishing; and

``(iii) the public.

``(4) Each member appointed to a Committee shall serve for a term of 4 years and is eligible for reappointment. A vacancy on any Committee shall be filled in the manner in which the original appointment was made.

``(5) Each committee shall elect a Chairman from among its members.

``(c)(1) For purposes of carrying out its duties under this Act, each Committee may-

``(A) secure directly from any department or agency of the United States information necessary to enable it to carry out such duties, and, upon request of the Chairman of the Committee, the head of such department or agency shall furnish such information to that body;

``(B) accept, use, and dispose of gifts or donation of services or property;

``(C) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; and

``(D) utilize, on a reimbursable basis or otherwise, the personnel and facilities of departments and agencies of the United States and agencies of the appropriate Great Lakes States.

``(2)(A) Each Committee may appoint and fix the pay of such staff as it deems desirable.

``(B) The staff of each Committee may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rate, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

``(C) Each Committee may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

``(D) The members of any Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which

they are engaged in the actual performance of duties vested in the advisory committee.

``(E) While away from their homes or regular places of business in the performance of services for the Committee, members thereof shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

``(3) The Secretary shall provide to each Committee such administrative and technical support services as are necessary for the effective functioning of such Committee.

``(4) The Administrator of General Services shall furnish each Committee with such offices, equipment, supplies, and services as the Administrator is authorized to furnish any other agency or instrumentality of the United States.

``(d) Each Committee shall prepare, and from time-to-time thereafter revise as appropriate-

``(1) a description of each fishery within the Great Lake with which it is concerned, including, but not limited to-

``(A) the recreational and commercial activities associated with the fishery including, with respect to each such activity, the catch, the

number of boats and fishermen involved, the gear used, seasonal variations, and the economic significance of the activity;

``(B) the cost likely to be incurred in the management of the fishery; and

``(C) the nature and extent of Indian treaty fishing rights in the fishery, if any;

``(2) a description, and an assessment of the effectiveness, of-

``(A) the conservation and management being implemented with respect to each such fishery by each State and Indian tribe or group, if any, involved in that fishery, and

``(B) existing programs (including but not limited to, fish hatchery construction and predator control) being carried out or funded by Federal departments and agencies with respect to such fishery;

``(3) an assessment and specification of the present and probable future condition of, and the maximum sustainable yield and the optimum yield from each such fishery, taking into consideration, among other things, habitat improvement, improved research and monitoring, and the optimum expansion of hatchery facilities;

``(4) an evaluation of the present and foreseeable effects which water pollution and air pollution, and the implementation of coastal zone management plans, may have on each such fishery;

``(5) an evaluation of the potential for the establishment of new fisheries within the Great Lake, including the introduction of new species and new utilization of established species; and

``(6) recommendations regarding-

``(A) suggested conservation and management actions which should be implemented by the appropriate States with respect to each such fishery,

``(B) the establishment of new fisheries,

``(C) actions which should be taken by the appropriate State or States to protect existing or planned fisheries-

``(i) through the reduction or elimination of water pollution and air pollution, and

``(ii) in developing and implementing coastal zone management plans; and

``(D) actions which should be taken by Federal departments and agencies and Indian tribes or groups to protect existing or planned fisheries.

``(e)(1) Each Committee shall identify each of the

fisheries described by it under subsection (d)(1) which-

``(A) is entirely or substantially within Indian reserved waters;

``(B) is in part within Indian reserved waters and 25 percent or more of the annual harvest from the fishery occurs, or can occur, within such waters; or

``(C) is in part within Indian reserved waters and less than 25 percent of the annual harvest from the fishery occurs, or can occur, within such waters.

``(2)(A) Any fishery which is identified by a Committee under paragraph (1)(A) shall be subject to the exclusive management authority of the appropriate Indian tribe or group in accordance with the Michigan Indian Fishing Rights Act of 1978.

``(B) Any fishery which is identified by a Committee under paragraph (1)(B) shall be subject to the management authority of the State or States concerned but such management shall be carried out in accordance with a fishery management plan prepared under subsection (f) and promulgated under subsection (g).

``(C) With respect to any fishery which is identified by a Committee under paragraph (1)(C), the Committee shall prepare, for the consideration of the States and any Indian tribes or groups concerned, a fishery management plan for such fishery under subsection (f).

``(f)(1) Each Committee shall prepare, for each fishery identified by it under subsection (e)(1)(B) and (C), a fishery management plan which is consistent with the purposes and policies set forth in paragraph (2) and with the plan requirements set forth in paragraph (3).

``(2) The conservation and management measures contained in any fishery management plan prepared under this subsection shall-

``(A) prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery;

``(B) be based upon the best scientific information available;

``(C) to the extent practicable, provide for the management of an individual stock of fish as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination;

``(D) take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

``(E) minimize costs and avoid unnecessary duplication.

``(3) Each fishery management plan prepared under this subsection shall be consistent with section 204 of the Michigan Indian Fishing Rights Act of 1978 and shall contain-

``(A) a detailed description of the fishery, including, but not limited to, the factors referred to in subsection (a)(1) and (2);

``(B) an assessment and specification of the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and the inclusion of a summary of the information utilized in making such specification;

``(C) the establishment of limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

``(D) prohibitions, limitations, conditions, or requirements for the use of specified types and quantities of fishing gear, fishing boats, or equipment for such boats, as may be necessary and appropriate;

``(E) if necessary for the conservation and management of the fishery, the establishment of a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system the Committee takes into account-

``(i) thepresent participation in the fishery,

``(ii) the historical fishing practices in,

and dependence on, the fishery,

``(iii) the economics of the fishery,

``(iv) the capability of boats and fishermen involved in the fishery to engage in other fisheries,

``(v) the cultural and social framework relevant to the fishery, and

``(vi) any other relevant consideration;

``(F) the establishment of seasonal restrictions, if necessary, relative to the fishery; and

``(G) requirements for planting of fish necessary for the conservation and management of the fishery.

``(g)(1) No identification of a fishery made under subsection (e)(1) and no fishery management plan prepared under subsection (f) has force and effect unless the Committee concerned-

``(A) publishes in the Federal Register notice that the preliminary identification has been made or the preliminary plan has been prepared, and of the offices at which copies thereof, as required under paragraph (2), are available;

``(B) affords interested persons a period of not less than 30 days after the date of publication under subparagraph (A) within which to submit orally, or in writing, data, views, or comments on the preliminary

identification or plan; and

``(C) publishes in the Federal Register the final identification or final plan, and after considering the data, views, or comments presented during such 30-day period and any other relevant information.

``(2) After making any such preliminary fishery identification or preparing any such preliminary fishery management plan, the Committee shall make copies of the identification or plan, together with the data and other information on which the identification or plan is based, available to the public at the appropriate offices of the Department of the Interior, the States concerned, and the Committee.

``(3) Upon compliance by the Committee concerned with the procedures in paragraphs (1) and (2) with respect to any fishery identification made under subsection (e)(1) or any fishery management plan prepared under subsection (f)-

``(A) such identification shall have force and effect for the purpose of this section and the Michigan Indian Fishing Rights Act of 1978; and

``(B) such plan shall have force and effect with respect to the fishery concerned unless a petition for judicial review is filed pursuant to paragraph (4).

``(4) Any final fishery identification and any final fishery management plan shall be subject to judicial

review to the extent authorized by, and in accordance with, chapter 7 of title 5. United States Code, if a petition for such review is filed within 30 days after the date of publication of the identification or plan is made under paragraph (1)(C), except that (A) section 705 of such title is not applicable, and (B) the appropriate court shall only set aside any such identification or plan on a ground specified in section 706(2)(A), (B), (C), or (I) of such title.

``(5) Any fishery management plan with respect to which a petition for judicial review is not timely filed, or, if petition is filed, is sustained by the review court, shall be implemented by the State or State concerned.

``(h) There are authorized to be appropriated such sums as may be necessary to carry out this section.

``(i) For purposes of this section-

``(1) The term `conservation and management' refers to all of the rules, regulations, conditions, methods, and other measures which are-

``(A) required to establish, rebuild, restore, or maintain, and which are useful in establishing, rebuilding, restoring, or maintaining, any fishery; and

``(B) designed to assure that-

``(i) recreational benefits may be obtained from the fishery on a continuing basis, or a supply of food and other products may be taken on a continuing basis, or both.

``(ii) irreversible or long-term adverse effects on the fishery are avoided, and

``(iii) there will be a multiplicity of options available with respect to future utilization of these resources.

``(2) The term `Committee' means any Great Lake Advisory Committee established by subsection (b).

``(3) The term `fishery' means one or more stocks of fish and their habitats within one or more of the Great Lakes which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

``(4) The term `Indian reserved waters' has the same meaning as is given to such term in section 202(4) of the Michigan Indian Fishing Rights Act of 1978.

``(5) The term `optimum', with respect to the yield from each fishery, means the amount of fish-

``(A) which will provide the greatest overall benefit to the Great Lakes area concerned, with

particular reference to recreational opportunities, or to food production, or both; and

``(E) which is prescribed as such on the basis of the maximum sustainable yield from such fishery as modified by any relevant economic, social, or ecological factor.

``Sec. 16. (a) Each Great Lakes State which establishes and implements a fisheries monitoring program meeting the requirements of subsection (b) shall be eligible for funds appropriated pursuant to subsection (c).

``(b) A fisheries monitoring program shall provide for-

``(1) a sampling program to measure the locations, numbers, sizes, age classes, and migrations of each species of fish in the Great Lakes over which the State has jurisidiction;

``(2) a determination of the total catch of each such species of fish by each of the following classes of persons:

``(A) commerical fishermen other than those counted under subparagraph (C);

``(B) recreational fishermen;

``(C) Indian fishermen with respect to catches for commercial purposes; and

34-367 O - 78 - 7

``(D) Indian fishermen with respect to catches for subsistence purposes; and

``(3) an annual report to the Commission of the findings made under paragraphs (1) and (2).

``(c)(1) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to assist Great Lakes States in the establishment and implementation of fisheries monitoring programs under this section.

``(2) Amounts appropriated pursuant to paragraph (1) shall be apportioned among the eligible Great Lakes States by the Secretary. The amount of any such appropriation which shall be apportioned to an eligible State shall be equal to an amount which bears the same relationship to the amount appropriated as the area of the Great Lakes within the jurisdiction of such State bears to the area of the Great Lakes within the jurisdiction of all eligible States.

``Sec. 17. (a) There are authorized to be appropriated to the Department of the Interior $50,000,000 for the construction of Great Lakes fish hatcheries, under this section.

``(b) The Secretary shall, after taking into account the results of the action undertaken by the Great Lakes Advisory Committees under section 15(d), select locations

for, and provide for the construction of fish hatcheries for the Great Lakes, one or more of which may be operated and maintained by Indian tribes or groups and the cost of such operation and maintenance shall be assumed by the Secretary. The selection of such locations shall be based on-

``(1) the recommendations of such Committees; and

``(2) proximity to waters proposed to be stocked.

Construction of a fish hatchery shall be authorized by the Secretary only after he has been assured that the State in which the hatchery is proposed to be located will provide the necessary funds for the operation and maintenance of the hatchery.

``(c) Fish raised in a hatchery constructed with funds appropriated pursuant to subsection (a) shall be placed in the Great Lakes in locations which will best achieve the recommendations made under section 15(d) and the objectives of any fishery management plan prepared under section 15(f). No distribution of fish under this subsection shall discriminate against Indians.''

TITLE II-INDIAN FISHING RIGHTS IN MICHIGAN

SEC. 201. SHORT TITLE.

This title may be cited as the ``Michigan Indian Fishing Rights Act of 1978''.

SEC. 202. DEFINITIONS.

As used in this title-

(1) The term ``Act of 1956'' means the Great Lakes Fisheries Act of 1956.

(2) The term ``Indian'' means any individual who is a member of a Chippewa tribe referred to in section 203(a) or who is a Michigan Chippewa Indian or Michigan Ottawa Indian for purposes of section 203(b).

(3) The term ``fishery'' has the same meaning as is given such term in section 15(i)(3) of the Act of 1956.

(4) The term ``Indian reserved waters'' means the waters described in section 203(a) and (b).

(5) The term ``Secretary'' means the Secretary of the Interior.

(6) The term ``State'' means the State of Michigan.

(7) The term ``territorial waters'' means the waters of the State other than Indian reserved waters.

(8) The term ``Treaties'' means the Treaty of Washington of March 28, 1836, and the Treaty of Detroit of 1855 between the United States and the Ottawa and Chippewa Nations.

SEC. 203. INDIAN FISHING RIGHTS AND MANAGEMENT AUTHORITY.

(a) Chippewa Tribes on Reservations.-(1) The Chippewa

tribe of the L'Anse Indian Reservation, Michigan, has with respect to the waters of Keweenaw Bay in Lake Superior south of a line between the northern-most points on the boundaries of the reservation on each side of such Bay-

(A) exclusive commercial fishing rights except as such rights may be limited in any fishery under a fishery management plan implemented pursuant to section 15(g) of the Act of 1956; and

(B) exclusive fishing rights and exclusive management authority with respect to any fishery identified under section 15(e)(1)(A) of the Act of 1956, except that not less than 10 percent of annual optimum yield of any lake trout fishery, if so identified, shall be made available for recreational fishing on a nondiscriminatory basis.

(2) The Chippewa tribe of the Bay Mills Indian Reservation, Michigan and the Sault Ste. Marie Tribe of Chippewa Indians, Michigan together have with respect to the waters of Whitefish Bay in Lake Superior encompassed within an area whose northern boundary is a line extending from Whitefish Point directly east to the Canadian-United States boundary, then following that international boundary southeasterly to a point directly north of Cedar Point, then following a line directly south to Cedar Point-

(A) exclusive commercial fishing rights except as such rights may be limited in any fishery under a fishery management plan implemented pursuant to section 15(g) of the Act of 1956; and

(B) exclusive fishing rights and exclusive management authority with respect to any fishery identified under section 15(e)(1)(A) of the Act of 1956.

(b) Certain Other Chippewa and Ottawa Indians.-The individuals who are not members of a tribe referred to in subsection (a) but who are enrolled with the Bureau of Indian Affairs as Michigan Chippewa Indians or as Michigan Ottawa Indians subject to the Treaties have, collectively, with respect to the waters of Lake Michigan within the area the outer boundary of which begins at the a point on the shoreline of Lake Michigan established by the extension of the line represented by the east-west road entering the community of Good Hart in Emmet County, Michigan, thence due west 8 miles, thence due north 10 miles, thence due east to the shoreline of Lake Michigan, and then along such shoreline southward to the beginning point-

(A) exclusive commercial fishing rights except as such rights may be limited in any fishery under a fishery management plan implemented pursuant to

section 15(g) of the Act of 1956; and

(B) exclusive fishing rights and exclusive management authority with respect to any fishery identified under section 15(e)(1)(A) of the Act of 1956.

(c) Fishery Management Organizations.-Subject to the approval of the Secretary, the exclusive management authority granted under subsections (a) and (b) shall be exercised on behalf of the tribes and individuals described in such subsection by fishery management organizations established by the respective tribes and individuals.

(d) Fishery Management Plans.-The fishery management organizations described in paragraph (c) shall have the responsibility for the preparation of a management plan for the fisheries with respect to which they exercise management authority. Each plan shall be consistent with the fishery conservation and management stardards, and contain such procedures and other plan requirements, as are specified in section 15(f) of the Act of 1956.

(e) Enforcement.-Each fishery management organization designated under subsection (c) shall enforce all laws and regulations adopted by it with respect to the management of fish within the fishery over which it has exclusive management authority. Nothing in this subsection shall be

deemed to preclude the enforcement of such laws and regulations by the State on behalf of any such organization if the organization requests the State to do so and the State so agrees.

(f) Federal Fishery Management Assistance.-Each Federal department or agency having authority over programs relating to fisheries management shall, upon the request by any fishery management organization designated under subsection (c), provide to such organization such information and other assistance as may be necessary and appropriate.

SEC. 204. ACCESS OF INDIANS TO FISH IN OTHER THAN RESERVED WATERS.

(a) Access During Transition Period.-(1) Except as provided in paragraph (2), during each of the years in the 5-year period beginning on January 1, 1979 (hereinafter in this section referred to as the ``transition period''), the State, in the management of its fisheries, shall take such actions as may be necessary and appropriate to ensure, to the maximum extent practicable, that Indians have the opportunity to harvest within the territorial waters the following quantities of fish:

	1979	1980	1981	1982	1983
(A) Lake trout	500,000	335,000	165,000	83,000	-0-
(B) Whitefish	600,000	400,000	200,000	100,000	-0-
(C) Round Whitefish	30,000	20,000	10,000	5,000	-0-

	(Menominees)				
(I)	Chub	200,000	133,000	67,000	33,000	-0-
(E)	Herring	20,000	13,000	7,000	3,000	-0-
(E)	Perch	120,000	80,000	40,000	20,000	-0-

(2) If for any year during the transition period the State, on the basis of conservation considerations and with the concurrence of the Secretary, determines that the quantity specified in paragraph (1) for any species of fish is more than 30 percent of the total amount of such species which should be harvested for recreational, commercial, and subsistance uses during that year from the waters ceded to the United States under the Treaties, the State may reduce the quantity specified in paragraph (1) for such year, but only in the same proportions that it reduces the total quantity taken by all other fishermen.

(3) In order to aid Indians in the harvest of the quantities set forth in paragraph (1), the State may set aside certain zones within the territorial waters for fishing by Indians, and shall allow the use of gill nets only after a determination by the State as to the capability of areas of the fishery concerned to accomodate limited gill netting so as to avoid undue depletion of desirable species and adverse and serious affect on recreation fishing for such species. If during any one year Indians are not able to harvest the quantitites designated of the various species, during the following

year they may fish where they choose in the waters ceded to the United States undr the Treaties using traditional Indian methods for the harvest of the current year's allocation in addition to harvesting by such methods any balance of unharvested allocation from the preceding year. Gill netting shall be allowed only under direct control by the State and at specific times and in specific locations as designated by the State subject to above considerations.

(4) The allocation to individual Indian fishermen of the designated number of pounds of each species specified in paragraph (1) shall be determined by the Secretary after considering, among other factors, the historic fishing effort by Indian fishermen as indicated by invoices, tax records, or other evidence of participation in the fishery, and blood quantum. Such evidence shall include information accumulated from fishing effort for calendar year 1977 and earlier years.

(b) Commercial Fishing Licenses.-(1) The State shall make State commercial fishing licenses available to Indians on the following basis:

(A) In 1979, a minimum of 20 percent of such licenses issued.

(B) In 1980, a minimum of 30 percent of such licenses issued.

(C) In 1981, a minimum of 42 percent of such licenses issued.

(D) In 1982, a minimum of 45 percent of such licenses issued.

(E) In 1983 and each year thereafter, a minimum of 52 percent of such licenses issued.

(2)(A) The Secretary shall determine the eligibility of individual Indian fishermen and shall qualify Indian fishermen for such licenses on an annual basis in the manner set forth in subsection (a)(4), except that evidence shall include information accumulated regarding the fishing effort for 1978 and such other years as may be appropriate.

(B) The holders of such licenses shall be subject to all regulations which the State imposes on non-Indian holders of similar licenses, except that such licenses shall be issued free of charge by the State to Indians who qualify for such licenses.

(C) In any year in which the Secretary does not qualify numbers of Indians for State commercial licenses sufficient to comprise the percentage to which Indians are entitled, the State may issue such unclaimed licenses to non-Indians.

(3) To achieve the proportion of licenses issued to qualified Indians as provided in paragraph (1) there are

hereby authorized to be appropriated to the Secretary such funds as may be necessary to assist the State in purchasing commercial fishing licenses, gear and equipment from non-Indians for transfer of such licenses to qualified Indian commercial fishermen.

(4) If the State does not meet or surpass the Indian licensing objectives of paragraph (1), the pounds of fish to be taken each year by unlicensed Indian fishermen described in subsection (a)(1) shall be increased by an amount determined by multiplying the amount for 1979 set forth in subsection (a)(1) by the percentage by which the State fails to meet the licensing goal set forth in paragraph (1) for the year concerned; except that if the Secretary fails to qualify a sufficient number of Indians to meet the licensing goals set forth in paragraph (1), the pounds of fish to be taken each year by unlicensed Indian fishermen shall be reduced by an amount determined by multiplying the amount set forth in subsection (a)(1) for 1979 by the percentage by which the qualified number fails to meet the licensing goal for the year concerned.

(5) If the State issues less than 200 commercial fishing licenses for any year after 1978, the number of such licenses made available to Indians in any such year shall not be less than the number obtained by multiplying the percentage in paragraph (1) for such year by 200.

except that if the number of State licenses issued is less than the number so obtained (A) Indians shall be entitled to 100 percent of the licenses issued by the State for that year, and (B) unlicensed Indians shall be entitled to catch for that year the number of pounds of fish set forth in subsection (a)(1) for the year 1979 but allocated as provided for in subsection (a)(4), but the most recent years as well as 1977 and earlier shall apply in determining such allocation.

SEC. 205. DISCLAIMER.

Except as specifically provided in this title, nothing in this title shall be deemed to affect in any manner the jurisdiction of the State within the territorial waters or the reserved waters.

SEC. 206. SETTLEMENT OF LANDS UNDER TREATY.

All territorial waters included within the boundaries described in the Treaty of of Washington of 1836 shall be considered as lands for purposes of applying such Treaty and such lands shall be considered as having been required for settlement under the terms of Article Thirteenth of such Treaty and settled on March 28, 1841.

Mr. RUPPE. I won't go into details on either the bill or the amendments, but for the benefit of those who have not seen either, I offer this brief explanation:

H.R. 12531 establishes a research and monitoring program for the Great Lakes to determine the optimum yield of the fisheries of those bodies of water, and provides for a hatcheries program to assist the Great Lakes States in developing their fisheries to reach those levels of optimum yield.

The amendments are an attempt to resolve a serious problem in the upper Great Lakes which relates to Treaty Indians' fishing rights, in a manner that takes advantage of enhanced fisheries to allow Indians to meet their needs while avoiding disruption of an economically very important recreation fishery and the non-Indian commercial fishery in those waters.

In the process, certain Indian reservation-associated waters would be reserved for substantial Indian control; Indians would be provided with 50 percent of the Michigan commercial fishing licenses in 5 years; during the transition period, Indians would be allocated certain numbers of pounds of fish to be taken from Michigan territorial waters; and the State would have its exclusive right to manage the fisheries in its territorial waters clearly and distinctly reestablished.

To accomplish this objective requires Northern Michigan Treaty Indians to give up fishing rights which they claim to have under their treaties with the United States, but the extent of which, while addressed in State courts, has not been determined by the Federal courts, for legislatively established reserved waters and opportunities for State-regulated commercial fishing. The State, on the other hand, must give up control of those Indian reserved waters, and it must provide Indians with a 50-percent share of the commercial fisheries in Michigan waters of the Great Lakes.

The most difficult problem in developing these amendments is to make them attractive enough for the Indians to accept while avoiding requirements from the State so onerous that they are unacceptable to the State. I somewhat facetiously suggested at Petoskey that this issue required the wisdom of Solomon. I am not now certain that his wisdom would be sufficient.

In addition to the fisheries problems between Indians and the State, as if those were not enough, unfortunately also rearing their ugly heads are the problems of State versus Federal management and pollution. The State, by regulation, has banned the use of gill nets as a measure to protect lake trout stocks.

State fisheries biologists are good; they are competent; and they have made what I am certain is a sound decision in this regard.

The Secretary of the Interior, on the other hand, advises the committee, in response to a question at Petoskey, that gill nets can be used if properly managed. Well, the State doesn't mind this attitude too much if the Feds do not have any authority to impose it on Michigan fisheries management plans. But this specter hovers in the background.

Pollution in the Great Lakes exists in a number of forms; and affecting the fisheries significantly are toxic substances such as PCB's and pesticide residues. Hopefully, the levels of those sub-

stances will continue to decline sufficiently that they will not control fisheries management decisions.

Should Indians accept this proposal in the terms of my amendments?

I firmly suggest they should in principle, if not in detail, at the present time. Perhaps the greatest risk to them relates to possible success in the Federal courts. If they win restricted fishing rights, or rights restricted only by limits for conservation purposes, but which limits would protect the fisheries for Indian use as in the *Boldt* decision, then I believe there will be a far more powerful political groundswell to abrogate the treaties in Michigan than exists at the present time; and it is very strong, believe me.

Abrogation would require compensation to be sure, but it would also mean an end to some of the unique rights held by Michigan Treaty Indians.

Should the State of Michigan accept this proposal in the terms of my amendments?

The Michigan Department of Natural Resources has accepted the general principles of the amendments, but does not like the present details. I believe they are being realistic in deciding that they stand to lose much in the Federal courts, but can protect the interests of Michigan citizens with a small sacrifice of direct jurisdiction in exchange for firm control of most of Michigan's territorial waters. They want and need stability to manage the fisheries effectively and they will not have it for years if the issues continue to be contested in the courts.

Mr. Chairman, I want to see this issue resolved in a manner that provides justice to Michigan Indians yet recognizes more than 100 years of control by the State of the fisheries in its waters and development of a very substantial and important recreation fishery in those waters in more recent years.

With unresolved questions on both sides, now is the time to move to a solution that resolves the issues in a manner with which both parties can live. I am very anxious to hear the statements and pursue an equitable solution to the problem.

Again, Mr. Chairman, I would like to thank you and our other colleagues here this morning to take the time to hold and participate in this hearing.

Mr. LEGGETT. Thank you very much.

I appreciate your courage and aggressiveness in bringing this legislation to the subcommittee. I look at it without any preconceived position.

Whenever there is talk about Indian treaty rights, State rights, or control of fish and fishing licenses, everybody's blood pressure seems to accelerate.

We want to get the facts. We want to see what the legal rights are, based on lower court decisions; what they might be based on other court decisions; how folks determine on which programs they would like to gamble; how the various agencies determine they want to effect management; what might appear to be fair and equitable in an altruistic sense; and what might be positive in terms of a legislative resolution.

Perhaps all of this equals stalemate. I do not know. It is a sticky wicket, and it is a very interesting way to commence our hearings in July.

So we welcome at this point the Director of the U.S. Fish and Wildlife Service, Mr. Lynn Greenwalt, informed in matters of this type. Perhaps he can shed some light.

Your statement will appear in the record as though you read it.

[The following was received for the record:]

STATEMENT OF LYNN A. GREENWALT, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

I appreciate this opportunity to appear here today to discuss H.R. 12531, a bill to amend the Great Lakes Fishery Act of 1956. This legislation requires the preparation of a comprehensive report on the status and needs of the Great Lakes' fishery, authorizes Federal financial assistance to the Great Lakes States for fish monitoring and provides for Federal hatchery construction to increase fish stocking in the Great Lakes.

Mr. Chairman, the Administration is opposed to enactment of this bill. This position is based on two facts. First, adequate authority presently exists to undertake the type of activities called for in the bill. Second, the legislation does not recognize the international interests that must be considered in any program affecting the Great Lakes.

The Great Lakes and their fishery resources are shared by the United States and Canada. Lake Michigan lies entirely within the United States, however, about 47 percent of the waters of the other four lakes are in Canada. Political boundaries divide the Great Lakes into areas adninistered by eight States and one Province.

The Great Lakes' resources were much different one hundred years ago—even just fifty years ago. Land and water use practices have changes over the years causing major changes in the ecology of the lakes. Fish populations are different today. Once abundant species such as blue pike and Atlantic salmon have declined or have become extinct. Invaders such as the sea lamprey and alewife have flourished.

In the early 1950's, in recognition of the urgency of controlling the parasitic sea lamprey and restoring the Great Lakes fishery, the United States and Canada joined together in a coordinated research and restoration program.

The Convention on Great Lakes Fisheries was negotiated and entered into force in October 1955. The next year, the Great Lakes Fishery Act gave statutory implementation to the Convention for the United States. Under the terms of the Convention, the two nations established a Great Lakes Fishery Commission to formulate and coordinate research programs, advise governments on measures to improve the fishery and to implement sea lamprey control programs. The Great Lakes Fishery Act sets forth the procedures for the United States Section to carry out programs under the Convention including appointment and compensation of commissioners, advisory committee and a Secretariat; acquisition of real propery; construction, operation and maintenance of sea lamprey works; and, coordination and consulation with State and Federal agencies.

The Fish and Wildlife Service is very much involved in activities affecting the Great Lakes and has had a longstanding interest in the welfare of the Great Lakes fishery. Federal fish stocking began in the lakes in 1873. In 1872, the United States Fish and Fishery Commission established the Craig Brook Atlantic salmon hatchery in Maine and the McCloud River chinook salmon station in California. The following year, Atlantic and chinook salmon were planted in Lake Ontario. Commerical fishing statistics have been collected since 1889. A research program, including fish stock assessment, began in 1927, when our Great Lakes Fishery Laboratory was established at Ann Arbor, Mich. Sea lamprey research and control started shortly after the end of World War II. The Service operates three lake trout hatcheries in Michigan whose entire annual production of 5.6 million trout are stocked in the Great Lakes. The new Allegheny National Fish Hatchery in Pennsylvania is providing about 630 thousand lake trout annually for Lakes Erie and Ontario. Funding has been provided for a new lake trout hatchery at Iron River, Wisconsin. Annual production will be 3.5 million trout. In addition, part of the procduction of three other national fish hatcheries goes into the Great Lakes. Annual stocking from these facilities varies from 1 to 5 million sauger and walleye destined for Lakes Erie and Superior. Since the early 1950's Federal aid funds have been available to the States for management and restoration of sport fish under the Federal Aid in Fish

Restoration Act. In 1965, additional Federal grant-in-aid funds became available to State and other non-Federal interests for conservation, development and enhancement of the Nation's anadromous fish, including those of the Great Lakes. Since 1967, under the Anadromous Fish Conservation Act, over $11 million have been provided to Great Lakes States. Over 80 percent of these funds have been spent for fish rearing facilities and anadromous fish culture.

We are, of course, very much involved in other aspects of the Great Lakes, particularly as related to envirnomental assessments of Federal developmental activities.

H.R. 12531 requires the U.S. section of the Great Lakes Fishery Commission to prepare a comprehensive report on the status of the Great Lakes' fishery, factors affecting the fishery and recommendations for obtaining optimum sustainable yields for each of the Lakes. The report is to be submitted to the Secretary of the Interior and the Congress within 18 months of enactment of the bill.

Although the Commisstion has no comprehensive report such as called for in the legislation, it has made significant progress in insuring that the various jurisdictions have intregrated mutually acceptable management programs. Each of the eight Great Lakes States has such plans. The sport fishery sections were developed partly with Dingell-Johnson Federal Aid in Fish Restoration program funds. Some plans regarding fishes that ascend streams to spawn have been funded under the Anadromous Fish Conservation Act. Canada has a Federal-Provincial plan for Ontario which includes the Canadian portion of the Great Lakes.

The Service has a plan for its role in the Great Lakes which has the approval of the Great Lakes States and the Great Lakes Fishery Commission. The Great Lakes Basin Commission, a United States Commission established in 1967 by Congress under the Water Resources Planning Act (Public Law 89–80), is preparing a comprehensive plan for the United States portion of the Great Lakes as a second stage to its "Great Lakes Basin Framework Study."

H.R. 12531 authorizes a Federal grant-in-aid program with the States for a fisheries monitoring program. Funds appropriated to the Secretary of the Interior are to be apportioned to each of the Great Lakes States in proportion to the area of the Great Lakes within the jurisdiction of such States. The Service, the States and the Province of Ontario have been monitoring the fisheries of the Great Lakes for 20 years. In fiscal year 1978, an estimated $4 million will be spent on this activity. The Lake States will spend $1.9 million, the Fish and Wildlife Service $1.3 million, and the Province of Ontario $0.8 million.

The final provision of H.R. 12531 is an authorization of $50 million for Federal hatchery construction in Great Lakes States that agree to provide funds and manpower to operate and maintain such hatcheries. Currently 31 State and 7 Federal Fish Hatcheries are producing fish for stocking in the U.S. waters of the Great Lakes. Not all of the fish reared at these hatcheries go into the Great Lakes. Some are stocked in other waters. This year, about 25 million salmon and trout will be stocked in the U.S. Great Lakes. About 25 percent will be stocked from National Fish Hatcheries and 75 percent from State hatcheries. Of the fish stocked from State hatcheries, 60 percent will come from facilities which were constructed or enlarged with partial funding from Federal grants. This percentage will increase upon completion of the New York State hatchery at Altmar in Oswego County. This facility is designed to produce over 5 million trout and salmon annually by 1980, a significant part of which will be stocked in the Great Lakes. This $11.3 million hatchery will be financed by $6 million in State funds, $3 million from Interior's Heritage Conservation and Recreation Service, and $2.3 million from the Fish and Wildlife Service under provisions of the Anadromous Fish Conservation Act.

Mr. Chairman, there has been and will continue to be a great deal of planning for the Great Lakes. A strategic plan for the basin and comprehensive fishery resource plans for each of the Lakes should be completed during fiscal year 1979.

Although there is need to intensify monitoring activities, a new federally funded program is not required.

As for the need for additional fish hatcheries, we recommend waiting until the comprehensive plans are completed for the conservation of the fisheries.

This concludes my prepared statement Mr. Chariman. I would be pleased to answer any questions you might have. Thank you.

STATEMENT OF LYNN GREENWALT, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. GREENWALT. Thank you, Mr. Chairman.

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I shall paraphrase my statement, if I may, Mr. Chairman, in the interest of time, and then present myself for questions from the chairman and members of the committee.

I might say that the history of the fisheries in the Great Lakes, I am sure, will be covered in some detail by representatives of the Great Lakes Fishery Commission, who can do it with more accuracy than I. Biologically, it is safe to say the fishery in the Great Lakes today is not as it once was. Things have changed a great deal over the years.

As a result, a multitude of problems have developed, as you have identified, and this legislation being considered here today is one of the efforts being made to resolve those conflicts, to resolve those differences.

Mr. Chairman, I must say specifically and categorically that the administration is opposed to enactment of the bill for two reasons.

First, there is adequate authority to undertake many of the kinds of activities called for in the bill. Second, the legislation does not recognize the international interests that must be considered in any program affecting the Great Lakes. Obviously the involvement and the responsibilities of our neighbor to the north, Canada, and its provinces require that we share these fishery resources and responsibility for their management.

In terms of the fundamentally biological circumstances with which I feel some familiarity and which are so appropriate to discuss, I can say to you that the efforts of the Great Lakes Fishery Commission and the U.S. interests, including the several States, have been reflected in a variety of programs, including a major hatchery program comprising 31 State hatcheries and seven Federal hatcheries involved in stocking U.S.waters.

There have been remarkable strides made in restoring some of the fisheries in the Great Lakes, most notably, I think, the coho salmon introduction,

There have been some very comforting advances made in the reestablishment of lake trout. The lake trout is no longer in danger of extinction and its stocks are plentiful, but not abundant. However the lake trout are coming back. This has been due largely to the efforts internationally to control the sea lamprey. This parasite came in, incidentally, when the Great Lakes were opened to marine navigation, and had a catastrophic effect on the natural fishery of the Great Lakes.

Mr. Chairman, the point should be made that whatever is done must be done with the recognition that political and legal determinations become academic if the resources are gone. Whatever is done must be against the canvas, if you will, of assuring that the fishery resources of the Great Lakes are available, that there are enough there to withstand proper exploitation. This must, in my judgment, be the fundamental criterion, because any political or legislative remedy becomes academic if the resource cannot support it.

Mr. Chairman, it is important to understand the relationship that has been established over the years between the two nations involved. They contribute not only in funds but in personnel to help manage this great resource. There has been real and long standing cooperation between the Federal Government and the

States involved. The mechanism is there for very effective and productive biological research and development of information which has, in fact, been carried out in the Great Lakes for very many years.

I think the problem confronting the committee and, indeed, all the agencies involved, is one of proper allocation of a fundamentally scarce resource which is itself in some state of confusion, if not jeopardy, by virtue of the uncertain biological state of the several Great Lakes.

I persent myself, Mr. Chairman, as representing the administration insofar as the biology of the Great Lakes is concerned. I would suggest, with the chairman's approval, that perhaps it would be well for the other representative of Interior, Mr. Goodwin, from the Bureau of Indian Affairs, to join me. We can answer questions relating to the Indians and the biology of the Great Lakes.

Mr. LEGGETT. Why do we not hear from your colleague, George Goodwin, Deputy Assistant Secretary for Indian Affairs?

George, very nice of you to come before the subcommittee. Your statement will appear in the record at this point. You can summarize it if you care to.

[The following was received for the record:]

STATEMENT OF GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR—INDIAN AFFAIRS,

The bill contains two proposals for the U.S. section of the Great Lakes Fishery Commission, which was established by the 1954 United States-Canada Convention: (1) preparation of a comprehensive report concerning the conservation and management of the Great Lakes fisheries, and (2) establishment of hatchery and fisheries-monitoring programs for the Great Lakes, The mechanisms for accomplishing such objectives already exist, as explained in the Department's report. However, all of the entities involved in management of the Great Lakes fisheries must be recognized and involved in these processes, as well as in the consideration of conditions, methods, and measures required to preserve and enhance the Great Lakes fisheries.

Most particularly, Indians of the Great Lakes, who have treaty fishing rights there, must have a meaningful voice in these processes. In many instances these Indians are engaged in regulation and other management measures in the Great Lakes pertaining to their fisheries. The bill omits Indian tribes and their members from any such consideration.

Further, the bill commits to the Great Lakes Fisheries Commission the determination of the nature and extent of Indian treaty rights in the Great Lakes fisheries. The provision disregards the Federal trust responsibility by assigning the determination of the nature and extent of Indian treaty rights to the commission members who are representatives of the State agencies and interests adversary to the tribes involved in the current federal litigation.

The fishing rights conferred by the Treaty of March 28, 1836, have been addressed by the Michigan Supreme Court and are presently in litigation in the Federal district court in Michigan. It is only fitting that the present litigation be allowed to proceed to conclusion without this bill's interference, and that the parties be allowed to pursue their efforts to settle the current litigation, if they can reach agreement, in the proper context of the lawsuit or other negotiating forum.

The BIA is and must remain wholly and unalterably opposed to any effort to legislate important treaty rights without ample opportunity to fully develop and explore the issues and options.

As a point of information I will note for you that several of the tribes now have tribal conservation commissions which, with the advice of Federal fishery biologists, manage their members' fishing. Their gillnet fisheries target on whitefish, and catch a few lake trout and chubb. Their commercial fisheries take place both in the bays under exclusive Indian jurisdiction and in outer waters or the lakes where Indians fish in common with other users of the Great Lakes' resources.

Setting aside the major problem posed by the bill in the determination of Indian treaty rights, other aspects present problems for these Indians. Not least among the problems is the bill's heavy emphasis on recreational fisheries with the apparent

intent that they receive priority over Indian treaty fishing rights; omission of Indian tribes from participation in the fish catch monitoring programs; and appropriation exclusively for State construction and operation of fish hatcheries. In the latter case, Indians are excluded from participation in deciding whether a hatchery might be desirable from a resource utilization or biological point of view, as well as from developing and operation tribal facilities.

This committee has provided us with the prepared amendments to H.R. 1253 which, among other things, establish five advisory committees to the Commission for management of the fisheries for the three Great Lakes where Indian treaty fishing rights have application. We support the Administration view that additional advisory committees are not necessary.

The prepared amendments contain a title II for H.R. 1253 which would be cited as the "Michigan Indian Fishing Rights Act of 1978". This consists primarily of a regulatory scheme which would designate certain waters of the Great Lakes bordering Michigan as "Indian reserved waters" where Indian organizations would regulate and control exclusive Indian fisheries. Further, it would define the number of fish which Indians would have a right to harvest in waters other than "reserved waters" over the five years succeeding enactment. At that time Indians would, by the terms of the Act, own at least 50 percent of commercial fishing licenses issued by the State of Michigan. The value of such licenses is not explained.

Discussion draft section 206 raises the most serious question for the BIA, in its trustee capacity and as a coplaintiff in litigation with Great Lakes tribes. By defining the word "settlement" and determining its application to the territorial waters described in the Treaty of 1836, the draft amendment would substantially moot the current litigation. It would appear to have the effect of extinguishing those treaty fishing rights, and jurisdiction over tribal members' fishing, reserved to Indians under the Treaty.

It is our position that it is premature to define the extent of Indian fishing rights, by the studies proposed in the bill or by the methods proposed in the draft amendments. As we point out in our report on H.R.1253, if it is appropriate to define Indian treaty property rights by legislation, it should only occur after serious and lengthy consultation with and concurrence of the Indians and the Federal agencies in which the trust responsibility is reposed. We feel it is especially inappropriate at this time to legislate the extent of the fish harvest by Michigan Indians since that very question is in litigation in the State of Michigan.

The bill's major impact, in our view, is in the vehicle it provides to the States and non-Indian citizens of the Great Lakes to limit and modify Indian treaty fishing rights. We firmly believe these issues will best be resolved in the context of the ongoing litigation or other unforced negotiating processes of the parties' mutual choice.

Thank you.

STATEMENT OF GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. GOODWIN. Thank you, Mr. Chairman and members of the committee.

I, too, will summarize my comments.

My comments are addressed primarily to Indian treaty rights in the fisheries of the Great Lakes waters.

The bill contains two proposals for the U.S. section of the Great Lakes Fishery Commission, which was established by the 1954 United States-Canada Convention. One is the preparation of a comprehensive report concerning the conservation and management of the Great Lakes fisheries. The second is the establishment of hatchery and fisheries monitoring programs for the Great Lakes.

One of the concerns we do have is that all of the entities involved in management of the Great Lakes fisheries must be involved in these processes. Most particularly, the Indians of the Great Lakes who have treaty fishing rights there, must have a meaningful voice in the process.

Many of the Indians now are engaged in regulation—or self-regulation, at the tribal level and are regulating their own members. The bill, however, omits Indian tribes and their members from consideration.

The bill commits to the Great Lakes Fisheries Commission the determination of the nature and extent of Indian treaty rights in the Great Lakes fisheries. This provision disregards the Federal trust responsibility by assigning the determination of the nature and extent of Indian treaty rights to the commission members who are representatives of State agencies and interests that have been traditionally adversary to Indian tribes' rights and which are involved in ongoing litigation.

The fishing rights conferred by the treaty of 1836 have been addressed by the Michigan Supreme Court and are presently in litigation in the Federal District Court in Michigan. I think it is only proper that the present litigation be allowed to proceed into conclusion without this bill's interference. I understand the present status; hearings have been held in Judge Fox's court; and we are awaiting the decision.

The administration is and must remain wholly and unalterably opposed to any efforts to legislate important treaty rights without ample opportunity to fully develop and explore issues and options.

As a point of information and to expand on what I mentioned earlier, several of the tribes in the areas now have self-regulating mechanisms through tribal conservation commissions, or subcommittees for game and fish management who act with the advice of the U.S. Fish and Wildlife Service on the managing of the take by individual tribal members.

Setting aside the major problem posed by the bill in the determination of treaty rights, other aspects do present some problems. They include the heavy emphasis on recreational fisheries which, in our view, receive priority over Indian treaty fishing rights.

We also are concerned with the omission of Indian tribes from participation in the fish catch monitoring programs. And we are concerned about appropriation exclusively for State construction and operation of fish hatcheries.

In the latter case, Indians are excluded from participation in deciding whether a hatchery might be desirable from a resource utilization or biological point of view, as well as from developing and operating tribally owned facilities.

We have reviewed the amendments on the five advisory committees. The administration's position is that additional advisory committees are not needed. With regard to the amendments on the five advisory committees, it is consistent with the view that further advisory committees are not needed.

The prepared amendments contain a title II for H.R. 12531, which would be titled the Michigan Indian Fishing Rights Act of 1978. This regulatory scheme would designate certain waters of the Great Lakes, bordering Michigan, as Indian reserved waters where Indian organizations would regulate and control exclusive Indian fishing; further, it would define the number of fish which Indians would have a right to harvest in those waters—waters other than reserved waters over the 5 years succeeding enactment. At that

time, Indians would, by terms of the act, own at least 50 percent of the commercial fishing licenses issued by the State of Michigan.

The discussion draft of section 206 raises a serious question for the Department in its trustee capacity and as a coplaintiff in litigation with Great Lakes tribes. By defining the word "settlement" and determining its application, the territorial waters described in the treaty of 1836, the draft amendment would substantially moot the current litigation. It would appear to have the effect of extinguishing those treaty fishing rights, and jurisdiction over tribal members' fishing, reserved to the Indians under the treaty.

It is our position that it is premature to define the extent of Indian fishing rights by the studies proposed in the bill or by the methods proposed in the draft amendments.

As we point out in our report on H.R. 12531, if it is appropriate to define Indian treaty property rights by legislation, it should only occur after serious and lengthy consultation with the concurrence of the Indians and the Federal agencies in which the trust responsibility is reposed; we also feel it is especially inappropriate at this time to legislate the extent of the fish harvest by Michigan Indians since that very question is in litigation in the State of Michigan.

The bill's major impact is in the vehicle it provides to the States and non-Indian citizens of the Great Lakes to limit and modify Indian treaty fishing rights. We firmly believe these issues will be best resolved in the context of the ongoing litigation or other unforced negotiating by the parties' mutual choice.

I have been provided a notice by staff that the Federal district court is currently in recess. More testimony is yet to be taken by the court before the case will be ready for decision by the court. It is anticipated that the trial will be reconvened in the immediate future.

Thank you.

Mr. LEGGETT. Well, as far as this subcommittee is concerned, we really are not concerned with whether or not cases are in or out of court. Sometimes we try to avoid complex ad infinitum litigation. And whatever we think needs to be determined based on the record before us, why we intend to move on that.

I think supporting theory of litigation is to allow all the trials to proceed based on the current state of the law, and try to figure out what legislators had in mind at the time they originally enacted it.

Being in this business 20 years, we know that many times folks do not have much in mind when they are enacted.

Therefore, many times what we do is abdicate responsibilities to judges that are utterly frustrated trying to figure out what the congressional intent of either House was.

I have heard the testimony of both of you, and I am still totally and completely uneducated as to exactly what the problem is. That merely indicates we are dealing with a dicey problem.

I have to ask you, Mr. Goodwin, how many Indians are involved? How many members of these Treaty Tribes are there? And how many tribes?

Mr. GOODWIN. I do not have the exact information.

Mr. LEGGETT. You do not know the number of tribes?

Mr. GOODWIN. Well, I can name them. The Sault Ste. Marie, the Bay Mills Indian Community, Keweenaw Bay, in Michigan. And there is a proposal for the group at Leeleanau, the Ottowa group.

In Wisconsin, we have——

Mr. LEGGETT. That was six in Michigan.

Mr. GOODWIN. Wisconsin, Red Cliff group, the Bad River group, and other parties of the 1854 treaty, and other treaties similar to that. I do not have the names and numbers before me.

We also have immediately on the lake a group at Grand Portage in Minnesota, that would be affected by this act.

Mr. LEGGETT. How about in New York?

Mr. GOODWIN. At this point the Department has not really explored whether the Indians have any rights for fishing in that area to any extent, and come up with any conclusions, nor have the tribes in that area exerted any rights they feel to fishing rights within the Great Lakes.

Mr. LEGGETT. Does this legislation relate to the New York Indians, too?

Mr. GOODWIN. It would seem that the Great Lakes advisory committees would have some regulatory effect on any rights expressed by groups on the other lakes.

Mr. LEGGETT. How about Indiana? Does it not have frontage on the lake?

Mr. GOODWIN. Yes.

Mr. LEGGETT. Are they included?

Mr. GOODWIN. Currently there are no federally recognized Indian groups in Indiana.

Mr. LEGGETT. Might they be created?

Mr. GOODWIN. I doubt it at this point.

Mr. LEGGETT. How about Ohio?

Mr. GOODWIN. We have no recognized groups in Ohio.

Mr. LEGGETT. What about Canada? Does Canada have Indian groups?

Mr. GOODWIN. Yes.

Mr. LEGGETT. What is the Canadian law vis-a-vis the Indians up there?

Mr. GOODWIN. I am not certain of their current policy on that. I am sure we can contact the Canadian Government.

Mr. LEGGETT. You do not know what the Canadian problem is?

Mr. GOODWIN. We do not know the current Canadian position on treaty rights. I would not venture to provide that right now.

Mr. LEGGETT. Does the Ruppe legislation attempt to resolve the problem of disappearance of fish in Canada, too?

Mr. GOODWIN. I do not think so, not in my view.

Mr. LEGGETT. Does your legislation, Phil, just manage the fish on our side of the lakes?

Mr. RUPPE. Yes. We very modestly contained it to the American side.

Mr. LEGGETT. How many Indian fishermen do we have on the lake, Mr. Goodwin?

Mr. GOODWIN. It is estimated in this area there are about 120 commercial fishermen.

Mr. LEGGETT. For how long a period of time were they commercial fishermen?

Mr. GOODWIN. As I understand it, many of them were fishing commercially previously to the Michigan Supreme Court case which clarified their right to fish. Many of them were doing it without any tribal regulation. Many of them were doing it at night, when there was no problem, or when they could do it without problems with enforcement.

And I think the Michigan Supreme Court tended to bring that out, presented a problem that the tribes then begin to self-regulate, and attempted to manage.

Mr. LEGGETT. What did these 120 commercial fishermen do when the lamprey invaded the lake?

Mr. GOODWIN. I have no record of that with me.

Mr. LEGGETT. Is that not important?

Mr. GOODWIN. Yes, I think it is.

Mr. LEGGETT. If you are trying to understand the problem, do you not need to know the problem? Were they wiped out by the lamprey?

Mr. GOODWIN. I could not provide that now.

Mr. LEGGETT. Mr. Greenwalt, what happened to the fisherman?

Mr. GREENWALT. I cannot answer with authority to that. The fishery resource declined very rapidly after the lamprey gained a foothold in the lake. The upshot——

Mr. LEGGETT. Do you have any estimate of the number of commercial fishermen on the lakes, Indian or other?

Mr. GREENWALT. Prior to the lamprey?

Mr. LEGGETT. Right.

Mr. GREENWALT. I do not. I suspect Mr. Fetterolf of the Great Lakes Fishery Commission will have it.

Mr. LEGGETT. Do you know how many commercial fishermen the lamprey invaded?

Mr. GREENWALT. No, I do not.

Mr. LEGGETT. How many commercial fishermen do we have on the lakes at the present time, Indian and otherwise?

Mr. GREENWALT. I am not aware of the numbers of commercial fishermen. Much of the fishery in the Great Lakes—at least on the U.S. side—at the time the lamprey became a problem in that it reduced the salmonid species was restricted to sport fishing. Commercial fishing was reduced by State regulation to the point where it was almost nonexistent.

The principal fishery, even now, is sport fishery. The compostion of fish stocks in the Great Lakes changed dramatically over the last several years, particularly after the lamprey measures became effective.

Mr. LEGGETT. How many tons of fish were taken there last year?

Mr. GREENWALT. I am not really sure. About 10 million pounds commerically, in the United States.

Mr. LEGGETT. What is that, 5,000 tons?

Mr. GREENWALT. Yes.

Mr. LEGGETT. OK.

How much of that 5,000 tons was taken commerically?

Mr. GREENWALT. All of it.

Mr. LEGGETT. And how much was taken in by the sport fisherman?

Mr. GREENWALT. We have no idea what the take by the sport fisherman is.

Mr. LEGGETT. You have no estimate, whatsoever?

Dr. KINNEY. 1 million pounds in the Upper Lakes. Michigan could verify that.

Mr. GREENWALT. This is Dr. Edward Kinney.

Mr. LEGGETT. Can you give me a figure on lake trout taken by sport fishermen? How about lamprey? Does anybody take those?

Mr. GREENWALT. Only the Fish and Wildlife Service.

Mr. LEGGETT. How many pounds did you take last year?

Mr. GREENWALT. We are taking them individually in the larval stage so we can interrupt the life cycle.

Dr. KINNEY. We have caught 4,500 adults to date.

Mr. LEGGETT. You mean this year?

Dr. KINNEY. There will be 1 more week. We run through July 13.

Mr. LEGGETT. Now, how much coho salmon is taken? That is the 5,000 tons we are talking about?

Dr. KINNEY. I think Michigan could give you a better answer than I could.

Mr. LEGGETT. We do not have a lot of facts to go on here.

Mr. GOODWIN. Mr. Chairman, I would like to add, for the record, some additional information regarding the 120 fishermen that we cited earlier. That is the number of licensed fishermen at Bay Mills. There may be some additional. I do not have the exact numbers at Sault Ste. Marie, or elsewhere.

We do have representatives here today who can provide information on that.

In addition to those numbers, I think it is important for the committee to know that some of these 120 licensed fishermen may be using rowboats. Some may be motorized craft, and some could maybe be a tugboat, or two, involved here.

But I think at this point for the record we want to make that point, there is no standardized method of take by commerical fishermen.

Mr. LEGGETT. George, did you participate in these hearings in Michigan?

Mr. MANNINA. Yes.

Mr. LEGGETT. Where is your standard analysis?

Mr. MANNINA. The data was less than complete. The statistical information with respect to maximum sustainable yield, optimal yield, the level of recreational harvest, the commerical harvest, et cetera, was not complete.

Mr. LEGGETT. That was January 13, and it is not complete to today; is that right?

Mr. MANNINA. Yes.

Mr. LEGGETT. We can deal with unknowns, but it makes equations very complicated.

Mr. FORSYTHE. I have just a few questions.

I understand that in the Whitefish Bay area there is serious depletion, or we need additional hatcheries or do we have sufficient hatcheries to rebuild the resource.

Mr. GREENWALT. Mr. Chairman and Mr. Forsythe, I think the answer is yes, we can profitably use more hatcheries. One must recognize there are limitations to the expectations one can have

with hatchery additions to a fishery. The success thus far with lake trout has been principally through hatchery operations.

We have been able to develop a population of lake trout that is generally, but not throughout the entire Great Lakes self-sustaining.

It does not necessarily provide for a substantial harvestable surplus at this point. To do that, and quickly, would require hatchery intervention. I think it is fair to point out that as attempts progress to inject larger and larger numbers of hatchery-produced fish into the situation like the Great Lakes, the situation becomes complex, because there are varied kinds of fish in the Great Lakes. These can compete with one another and nullify the effect of hatcheries. We have discussed these problems in these kinds of circumstances before.

I would say yes, hatcheries present part of the solution that should not be overlooked.

Mr. FORSYTHE. Would you care to estimate the extent of expansion which may be necessary?

Mr. GREENWALT. I hesitate somewhat to hazard that kind of guess. At this point, there are about 38 hatcheries on the U.S. side. The Fish and Wildlife Service is now working on one or two more. It is a thing the precise number of which would depend on a variety of circumstances: what kind of fish would be desirable to produce, in what numbers, over what period of time?

But I would obviously defer to Mr. Fetterolf of the Great Lakes Fishery Commission in this area.

An increase in number of hatcheries would have a potential, and a very real one, in my judgment, for solving part of the problem.

Mr. FORSYTHE. Are you telling me that hatcheries, while they supply a stock of fish, will not solve the problem of establishing self-sustaining population?

Mr. GREENWALT. Obviously not.

Mr. FORSYTHE. In that regard, the fishery must be managed as a whole.

Mr. GREENWALT. I think one of the considerations that has to be addressed, and is being addressed by the Great Lakes Fishery Commission at present, is a determination of what one wants to achieve with fisheries in the Great Lakes.

For example, the development of a self-sustaining population of lake trout for sport fishing presupposes a certain level of effort.

To develop lake trout population to sustain sport and commerical fishing has another set of dimensions insofar as hatcheries are concerned. The regulation of take is very important.

The opportunity presented for commercial utilization of other kinds of fish should be exploited. This presents another challenge to the Administrator in that one must encourage commercial fishermen to take other kinds of fish. This presupposes a market for such fish.

Hatcheries alone will not solve the problem. I suggest that whatever method is used, the present mechanism or proposed legislation, it should be based upon an agreed upon idea of what people want the Great Lakes fishery to achieve.

Mr. FORSYTHE. Once you attempt to manage a natural resource, you must manage the entirety. It has to be comprehensive and

have methods of regulating the take, as well as the supply, and the fishery.

Mr. GREENWALT. Absolutely. Having intervened in some fashion in the natural regimes, which has been done for many years, one cannot give up because he bought the whole package.

Mr. FORSYTHE. That just adds to our lack of data and information. Trying to solve problems, without knowing where we are trying to go, is very difficult.

Mr. GREENWALT. Right.

Mr. FORSYTHE. Thank you, Mr. Chairman.

Mr. LEGGETT. From the earlier hearing, counsel has provided to me statistics showing that commercial Indian fishermen in 1976 took 65,000 pounds, and licensed commercial fishermen, 12 million pounds. About 5 percent.

The next year, 1 million as compared to about 12 million. There they took about 10 percent.

Sportsmen are estimated to have taken 25 million pounds, which is roughly twice the commercial take.

Is that generally the situation?

Mr. GREENWALT. The reference is to the Great Lakes as a whole. I think that is a fairly good estimate.

Mr. LEGGETT. Do you agree, Mr. Greenwalt, that all fisheries should be managed?

Mr. GREENWALT. You asked one of those very interesting questions. I would say no, not all fisheries need be managed.

Mr. LEGGETT. Do all fisheries in the Great Lakes need to be managed?

Mr. GREENWALT. Absolutely. I think so.

Mr. LEGGETT. Apparently, a lot of alewives is taken which I understand is a fishmeal species.

Mr. GREENWALT. Yes, a fish which enjoys very erratic population levels.

Mr. LEGGETT. Third to half of tonnage in the Great Lakes is this fishmeal alewives. The statistics that we have here from a GAO report, show that for coho salmon, 1.4 to 2.4 million tons was taken the late sixties. Then in 1971, the coho virtually disappeared, and they have disappeared through the publishing of this report in 1975, unles you count 1,000 pounds as a presence.

So, what is your estimate of the amount of coho salmon now currently in the Great Lakes?

Mr. GREENWALT. Doctor Tanner pointed out to me, the record shows that cohos have not been sold since 1971. We have no Great Lakes estimate of take or landings of coho salmon. They have been a sport fish since that time, and a very successful one at that.

Mr. LEGGETT. Are the Indians now taking coho salmon commercially?

Mr. GOODWIN. As I understand it, the target for the Indian fishermen is the whitefish.

Mr. Ruppe?

Mr. RUPPE. Thank you very much.

Mr. Greenwalt, just to cover a point—this is a limited fishery. That is why we want to see it survive.

In discussing the Great Lakes fishery, some question about the self-sustaining character of the fishery has been raised. There is

some reproduction in Lake Superior, but little or none in Lake Michigan or Huron; is that correct?

Mr. GREENWALT. Of which species?

Mr. RUPPE. Lake trout.

Mr. GREENWALT. I think that is the case. We are moving toward self-sustaining populations as you move eastward in the Great Lakes, but we have not succeeded.

Mr. RUPPE. In Lake Michigan and Lake Huron there is really nothing self-sustaining?

Mr. GREENWALT. Right.

Mr. RUPPE. That would indicate to me we need an enhancement program in the years ahead, and also a significant research program, since we do not seem to know at this time really why reproduction is not taking place, or exactly the size of the fishery that could be established on the Great Lakes.

Mr. GREENWALT. You are quite right. We do not know the size of the trout fishery that could be established in the Great Lakes because we have never addressed that kind of a question. How large a trout fishery could one make, and what would one give up in order to do so? I think these are very germane questions.

The need for supplemental production, hatcheries, to continue to harvest lake trout is quite clear. The development of a self-sustaining population is a splendid objective as far as it goes.

A self-sustaining level of population may not provide for very much harvest, certainly not a commercial harvest of any great size. A self-sustaining population to provide harvestable surplus of a given size can be done. That is one of the questions.

Mr. RUPPE. If we do not have the answers, I must confess I have some difficulty understanding the opposition of the Department to the committees I have suggested be established in the legislation. We have a lot of unanswered questions. These committees could address them. They have not been addressed since the beginning of the enhancement program in 1962, and 15 years having gone by, I would think the funding and importance of the committees should be enhanced, if anything.

Mr. GREENWALT. I cannot disagree in principle. There has been a deal of information developed, a good deal of research done. What has not been accomplished, and certainly is being addressed even now, is to ascertain exactly what ought to be accomplished with the fisheries in the Great Lakes.

We have known a good deal about ongoing activities as they relate to the fish of the Great Lakes. The States, among others, have kept track of commercial fishery. We have not been able to keep track of sport fishery with great accuracy. But I think the fundamental thing that must be done in any of these efforts, and again is being addressed with the Great Lakes Fishery Commission, is to decide what everybody wants to have happen with the Great Lakes.

Mr. RUPPE. Does that not provide for advisory committees on paper?

Mr. GREENWALT. Yes.

Mr. RUPPE. Are they established at the present time?

Mr. GREENWALT. Yes.

Mr. RUPPE. My understanding is they are not widely used.

Mr. FETTEROLF. The Lake Superior one is.

Mr. RUPPE. How about Lake Huron?

Mr. GREENWALT. The others are not active, but they are in place.

Mr. RUPPE. So is the morgue, but that is not too helpful.

You have indicated there are a lot of unanswered questions as to what species should be utilized, who makes those determinations, the Great Lakes Fishery Commission, or do we utilize these advisory committees?

It would seem to me this is a place where these committees would have a very important role to play. I would think that they could be a significant help, rather than simply leaving it to the Commission itself to make these ascertainments and, to a large measure, they have not been done.

Mr. GREENWALT. I do not disagree at all. One of the concerns of the administration is developing a mechanism that brings the Canadians into the whole process.

Mr. RUPPE. If we take the committee structure in place, or the one I have suggested in my bill, there is no reason why they cannot interface with the Canadians, like your commission or committees could interface today.

Mr. GREENWALT. Obviously there is no reason it could not. I think the important thing is that mechanism, that interface, be as absolutely assured as possible.

One of the worst things that could happen is for us to do one thing and the Canadians to do another thing completely different.

Mr. RUPPE. I should think the cooperative spirit which has existed should persist.

You indicated the fishery really today has to be managed considerably, the equipment available to harvest the fish, for example.

Would you care to venture who should conduct that management?

Mr. GREENWALT. I think it must be a cooperative venture.

Mr. RUPPE. Between whom and whom?

Mr. GREENWALT. States and Federal Government.

Mr. RUPPE. Has it not been pretty much a State responsibility?

Mr. GREENWALT. It has been, and I think it should remain in that context with some mechanism to assure that the impacts of those elements of State management do not conflict with one another. I do not believe—I say this with great conviction—that there is any role for the Federal Government to manage fisheries in the Great Lakes. I think that would be a terrible waste of talent and complete abrogation of the idea that the greater part of the fisheries management impact in the Great Lakes has been, is now, and should be in the future, a State responsibility.

Mr. RUPPE. Mr. Goodwin, you, too, have indicated your opposition to the establishment of the advisory committee system that I have suggested in my legislation.

Would you also agree that the Great Lakes Fishery Commission, while calling for the establishment of committees, does not widely use them?

Are you aware of the use of the committees established?

Mr. GOODWIN. I am not aware of the use of those committees that you refer to.

Mr. RUPPE. Why would you be opposed to the committees——

Mr. GOODWIN. I am saying——

Mr. RUPPE. You have indicated you oppose the establishment of committees as I have identified them in my bill.

Mr. GOODWIN. For the reasons it is unclear to us what extent Indians would have involvement in those committees.

Mr. RUPPE. I would envision no committee without participation of the Indian community. One can argue over the number and percentage. I think the system could not be effective without a strong representation by the Indian community.

Obviously you could get frozen out of the future direction of the lakes.

You have pretty much indicated that—is it fair to say your basic position or the position of the BIA would be to let the litigation presently in Judge Fox's court run its course?

Mr. GOODWIN. Yes; that is our basic premise.

Mr. RUPPE. What bothers me—first of all, you may win. If you lose, you are not doing so well. The litigation could run on a number of years before a final solution. Would you say that is fair to suggest, by the time the appeals are concluded?

Mr. GOODWIN. Yes.

Mr. RUPPE. What concerns me is that in the meantime the State is reluctant to enhance the fishery I suspect in some areas. Some areas the Indian community fishes in have been hard hit and do not have sustained yield even comparable to what they had a few years ago.

I do notice that the Fish and Wildlife Service testified in Petosky, Mr. Pycha, I believe, a U.S. Fish and Wildlife Service representative, and I quote:

> In Whitefish Bay, the drastic decline that began in 1975 continued. Number abundance in the spring of 1977 was only 7 percent of that in 1975 and was lower than in 1962. Abundance of 25-inch and larger trout was the lowest since 1964. Not a single 29-inch or longer length trout was taken in spring assessment sampling. This indicates that the catch or abundance was substantially less in 1965 that it was even in 1962. I believe that 1962 was a very low year, about the beginning here of the enhancement program.

What I am getting at, it seems to me Whitefish Bay population is very low today and there is a number of years ahead of us before the final litigation is resolved. It seems to me the Indian community is not the winner in all this. I am not suggesting they be a loser, but it would seem to me any kind of a compromise would be somewhat in the interests of the Indian community. The Whitefish Bay fishery seems to be terrible condition and is not sustaining even what it was back in its worst days after 1962.

So that kind of a status quo, wait it out or hang tight, would seem to me not to be particularly useful, at least for the short-term goals of the Indian community.

Mr. GOODWIN. I would agree with that.

I would like to point out, too, in the south-regulating mechanisms I spoke about earlier and provided in the testimony, the tribes in regulating their members, do take the advice of the Federal Fish and Wildlife people and State people serving as advisors to the tribe, either the conservation commission or tribal committees, on fish and game. So if there was some advice coming from the

Federal Fish and Wildlife people, they would advise to the tribe that fishing for certain species of fish be limited or cut off entirely.

You may want to get further clarification from the tribes that will be testifying today. I am sure the tribes would cooperate.

Mr. RUPPE. Well, do you know if the Fish and Wildlife Service or Federal Government gives suggestions to the Indian tribes as to the licensing arrangement or number of licenses?

Mr. GREENWALT. I do not think it is characterized in terms of licenses so much as it is how many fish are to be taken and how much they are allotted within the fishery.

Mr. RUPPE. They do make a recommendation or suggestion?

Mr. GREENWALT. Yes, we make general recommendations about what should be taken from the fishery resource. We do not, so far as I know, in any instance suggest to the tribes how they should accomplish this.

Mr. RUPPE. Do you have a followup mechanism to see whether the recommendations that you put forth are carried out?

Mr. GREENWALT. We carry out the periodic stock assessments referred to by Mr. Pycha in his testimony to ascertain the status of the fish populations. In many cases, it is influenced by more than just the take by the Indians or anyone else.

We also monitor the Indian take generally to make sure they are serving their own self-interest. In the case of Whitefish Bay, we developed a fishery management plan designed to accommodate the variations in the fishery scheme and to enable the Indians to regulate their own fishery based on the information from their own harvest figures, and so on.

Mr. RUPPE. I cannot agree with that.

Looking at 1977 figures, numbers only 7 percent, less than 10 percent of that of 1975, 2 years preceding, one could say either the recommendations left a little bit to be desired——

Mr. GREENWALT. Or there may have been some other factor in play.

Mr. RUPPE. Such as?

Mr. GREENWALT. Other fishery involved. There may have been another factor affecting the fishery. I suggest this without knowing, but it is possible to have some other influence other than just the Indian fishery affecting the fish population as a whole. I will ask to see whether or not one of the staff, perhaps, Dr. Kinney, would care to comment on the circumstance described by Mr. Ruppe.

Dr. KINNEY. That certainly points toward the fishery. Our own people did the population assessment. There could be other factors, such as sea lamprey.

Mr. RUPPE. I think sea lamprey would not play such an important role in that Whitefish Bay in that period.

Do you recall?

Mr. GREENWALT. Dr. Kinney?

Dr. KINNEY. What did Dr. Pycha say?

Mr. RUPPE. It was a record submission according to the staff so we do not have that information. I am sorry.

Mr. GREENWALT. I think the point, Mr. Ruppe, one of the problems all of us have to face is that regulation has to be effective and

it has to be monitored to be effective. Absent that, one grapples in the dark.

Mr. RUPPE. OK. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Bonior?

Mr. BONIOR. I think Mr. Leggett asked a question earlier but let me ask it again.

Is there any way we have any data on this whole problem as it relates to Canada? It seems to me we have to do the whole issue.

Mr. GREENWALT. I agree completely.

Perhaps the group from the Great Lakes Fishery Commission may be able to shed some light on that.

Mr. BONIOR. Then I will save my questions for him, Dr. Tanner, and other representatives.

Mr. LEGGETT. Mr. Thornton, do you have any bright questions to ask at this point?

Mr. THORNTON. Of course, I characterize it as a bright question.

I do have one question on the issue which was explored at the Michigan hearings concerning the use of gill nets. Your department has taken the position that gill netting can be regulated so it is not destructive. The State has very strenuously taken the opposite position.

Do you have an explanation as to why two biologists have such differing opinions in this matter?

Mr. GREENWALT. I will turn to my fishery specialist. I do not have sufficient knowledge to tell you why one would argue against the other.

Mr. BONIOR. May I interrupt?

In answering that question, could you address the sentence in your statement on page 3, "Their gill net fisheries target on whitefish, and catch a few lake trout and chub."

What are you talking about as far as "few"?

Mr. GOODWIN. You are making reference to my statement. I am referring to what is brought out in the earlier reading of the figures. I believe we indicated there that about 5 to 10 percent, depending on the year, was the commercial take by Indians.

Mr. LEGGETT. Is there a split in the biologists between the State and the Federal biologists?

Dr. KINNEY. I think they may be split down the middle. I believe that seven or eight Lake States do allow gill netting. I am referring particularly to Lake Erie where we have a very low yield on perch population at this time. With regard to Lake Erie, Canada and Ohio do allow gill netting of perch. Michigan does not. Pennsylvania and New York both permit gill netting, but the size of the nets is regulated to allow sufficient escape. In Lake Erie, regulating the size of gill nets has resulted in an increase in the number of the spawning population of perch.

Mr. LEGGETT. Does Michigan allow gill netting, too?

Mr. THORNTON. For whitefish.

Mr. SCOTT. Mr. Chairman, we would be very pleased to respond to many of these questions that have come up when we have our chance to testify.

Mr. LEGGETT. The thing is we are so excited to get the facts.

Well, we have to go vote now on this billion dollar park bill. Then we will be back here for about 10 minutes. We will adjourn at noon until about 2 o'clock.

[Short recess.]

Mr. LEGGETT. The meeting of the subcommittee will please come back to order.

As I recall, before we recessed, we had just completed questioning of both of the two administration witnesses.

George wants to ask a question.

Mr. MANNINA. Lynn, Mr. Ruppe's bill speaks in terms of exclusive Indian management for Whitefish Bay and Keweenaw Bay on the basis that certain species of fish are found and harvested exclusively in those waters.

Would you concur lake trout and whitefish are found exclusively in those waters and harvested exclusively in those waters?

Mr. GREENWALT. If I understand you correctly, the point is that the stocks exploited by the Indians are confined to Whitefish Bay, and are not influenced by migration?

Mr. MANNINA. Same with Keweenaw Bay.

Dr. KINNEY. I will defer to the commission. They know more about the lower lakes.

Mr. LEGGETT. They will suspend giving the answer until they testify.

Mr. GREENWALT. I think that is a germane question to ask them. I think the nature of the question is very important to the whole issue. If the fish migrate in and out, one cannot necessarily control their exploitation solely by controlling the harvest in one place as opposed to the whole of the lake. That is very important for one to understand.

Mr. LEGGETT. Thank you very much, gentlemen.

Now, it is a few minutes before the hour. Are there any witness here whose testimony is short?

[No response.]

Mr. LEGGETT. I understand some people have to make a 1:30 airplane. Who are they?

Do we have the Red Cliff Band of Lake Superior Chippewa Indians?

Mr. PRELOZNIK. I am going to represent them. Mr. Gordon, who was here, left to take the 1:30 flight. When you adjourned to take the vote, you stated that the hearing would be adjourned until 2 p.m.

Mr. LEGGETT. I think we will recess until 2 o'clock, at which time we will proceed with Mr. Ruppe's legislation and, hopefully, he will be back, too.

[Whereupon, at 11:57 a.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. LEGGETT. The meeting of the subcommittee will please come back to order.

We now have scheduled the Red Cliff Band of Lake Superior Chippewa Indians, Mr. Daniel Gordon.

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Mr. PRELOZNIK. Mr. Chairman, Mr. Gordon left, to take the plane at 1:30. We are wondering if the Chair would permit us to consolidate his testimony with that of Mr. Bigboy's, who is scheduled to appear later. I will be happy to make appearances for both at that time.

Mr. LEGGETT. Next we have the Michigan Department of Natural Resources, Mr. Howard Tanner, director, with Mr. John Scott of the fisheries division.

Nice to have you folks here. We appreciate your answers to previous questions.

Your statement will be included in our record and though you read it. I would appreciate your proceeding to highlight it.

Do you favor the bill?

STATEMENT OF HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, ACCOMPANIED BY JOHN SCOTT, FISHERIES DIVISION

Mr. TANNER. No, I do not.

Mr. LEGGETT. How about Mr. Scott, does he favor the bill? [Laughter.]

[The following was received for the record.]

STATEMENT OF DR. HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman and members of the committee, I am Dr. Howard A. Tanner, director of the Michigan Department of Natural Resources. My academic training was in the field of fisheries biology and limnology. I have held teaching, research and administrative posts at the Colorado State University and Michigan State University; and I have served as chief of the fisheries division of the Department of Natural Resources in Michigan.

I wish to offer comments on H.R. 12531 introduced by Mr. Ruppe on May 3, 1978—a bill to amend the Great Lakes Fisheries Act of 1956; and to urge this committee to reject proposed amendments to H.R. 12531 which have recently been brought to my attention.

H.R. 12531, as introduced, would require the preparation of a comprehensive report concerning conservation and management of the Great Lakes fisheries, and establish federal support for fisheries monitoring and hatchery programs for the Great Lakes.

Basically, Mr. Chairman, we support H.R. 12531. As a matter of fact, the Great Lakes Fishery Commission, through its technical committees for each of the Great Lakes, is now considering the preparation of a report and plan for management and utilization of the fisheries resources of these vast inland seas. Therefore, we welcome Mr. Ruppe's interest in this regard because, if the bill passs the Congress, it will complement and expedite completion of this important task by the Great Lakes Fishery Commission.

Also, Mr. Ruppe's plan to increase and fund additional monitoring of recreational, commercial and Indian fishing is commendable. While Michigan and the other Great Lakes states carry on extensive monitoring programs now, additional needs and broader coverage have been indicated and recommended to the Great Lakes Fishery Commission. Clearly, this type of information is critical to rational and intelligent management and allocation of the fisheries resources; and funds to implement fisheries monitoring programs do not always receive favorable reception in our state legislative forums.

Finally, Mr. Ruppe's bill would provide $50 million for the construction of new fish hatcheries to be operated by the states. I believe there is a need for additional hatcheries in the Great Lakes. In Michigan we are presently renovating most of our hatcheries, at a cost exceeding $12 million, to provide additional fish for the Great Lakes and inland waters.

While I believe that hatcheries should be State-owned and managed, operational funds are becoming increasingly scarce for such purposes. Therefore, not only do we

support federal funding for construction, but also a federal role in maintenance and operational costs as well.

If a federal role is questioned in this area, Mr. Chairman, I would like to point out that the Great Lakes are within a day's drive of 50 million people. In Michigan, our Great Lakes recreational fisheries contribute more than $250 million annually to the economy of the State. Moreover, these fisheries not only provide recreation but also supply more than 30 million pounds of food annually to recreational anglers, their friends and relatives.

Mr. Chairman, I would now like to address the proposed amendments to H.R. 12531 that have been brought to my attention. Frankly, I do not know the legislative status of the amendments and can only comment upon a discussion draft dated June 30, 1978, as provided by the committee staff.

Both Title I and Title II, the latter designated as the "Michigan Indian Fishing Rights Act of 1978", thrust at an Indian fishing problem we are experiencing in Michigan.

Before commenting on the amendments, please bear with me so that I can offer a perspective of this problem. If the committee wishes to have additional information, I have attached copies of the testimony offered by myself and Mr. John Scott, chief of the fisheries division, at the subcommittee's hearing on this issue in Petoskey, Mich., on January 13, 1978. Also, Mr. Chairman, I wish to put in the record Senate Concurrent Resolution No. 265 introduced in the Michigan State Senate on October 27, 1977. This resolution details important information on several treaties between the United States and the Ottawa and Cippewa Indians which ceded vast amounts of Michigan lands to the United States between 1836 and 1855. The resolution is appended to a copy of my testimony.

A fair and impartial reading of this resolution and, indeed, of the 1836 Treaty of Washington (7 Stat. 491), Treaty of Sault Ste. Marie of July 31, 1855 (11 Stat. 621) and the Treaty of Detroit of August 2, 1855 (11 Stat. 631) would, I submit, lead one to conclude that Ottawa and Chippewa Indian fishing rights in Michigan were extinguished long ago.

Nevertheless, encouraged by recent court decisions favoring Indians fishing rights throughout the country, the Department of Interior and certain Indian tribes in Michigan are, through filing of a lawsuit, seeking to create or renew such fishing privileges. The nature and extent of this litigation is found on pages 3 and 4 of my earlier testimony to the subcommittee and I quote:

"In April 1973 the U.S. Attorney filed a complaint against the State of Michigan in the Federal District Court in Grand Rapids, Michigan, on behalf of the Bay Mills Indian Community. This lawsuit was filed without any prior notice to the State of Michigan or any attempt by any entity of the Federal Government to negotiate a settlement of a presumed dispute over Indian fishing rights. As a matter of fact we were, at the time the lawsuit was filed, trying to accommodate some interests in the fisheries directly with Indian communities.

Nonetheless, the lawsuit was filed and the Federal court ultimately granted leave to the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians to become plaintiff-intervenors in the suit. Attempts by organized sportsmen's groups to intervene in the suit on behalf of the State have failed, however.

The plaintiffs have requested the court to assume jurisdiction in this litigation and declare:

1. That the Bay Mills Indian Community has the sole and exclusive right to regulate the taking of fish on the Indian communities' reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation;

2. That the Indian communities have a federally protected, reserved right to take fish from all waters of the Great Lakes adjacent to lands ceded by the Treaty of 1836; and that the State is without jurisdiction or authority to regulate Indian communities and their members in the exercise of the treaty right to fish for commercial and subsistence purposes in the ceded waters of the Great Lakes.

3. That the state has a duty to exercise its police power to regulate sport and commercial fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indian communities and their members, in order to assure that the Great Lakes fisheries resources are protected and that there is available to Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture.

Therefore, pursuant to the 1836 Treaty of Washington between the Ottawa and Chippewa Indian nations and the United States, the plaintiffs are claiming superior rights to the fisheries resources of all waters of Lake Michigan north of Grand Haven; all waters of Lake Huron north of Alpena; and all waters of Lake Superior

east of Marquette. This, Mr. Chairman, constitutes one-half of Michigan's Great Lakes waters."

The litigation is continuing and probably a definitive conclusion will not be reached for many years because of anticipated appeals. While I believe we have a very strong case before the Federal court, I cannot be very optimistic about a judgment handed down favoring our position; nor can I forsee a timely judicial resolution to a growing problem of unlimited and unregulated Indian fishing now occurring in Michigan waters of the Great Lakes. Some restored fish stocks have already been depleted by Indian fisheries and Indians are expanding their operations into other waters. The number of Indians participating in such fisheries grows, literally daily, through the benevolence of the Bureau of Indian Affairs which administratively, apparently, has carte blanche to issue fishing identification cards tp anyone offering only the slightest pretence of being of Indian parentage. This, Mr. Chairman, I submit should be of urgent concern to the Congress of the United States. If it is proven or held that fishing privileges derive to Indians, I suggest that the Solicitor of the Department of the Interior and the Bureau of Indian Affairs will make more of a mockery of the Code of Federal Regulations and the Wheeler-Howard Indian Reorganization Act of 1934 governing qualifications of Indians for certain federal aid and fishing privileges.

We have been encouraged by Mr. Ruppe's concern and efforts to resolve this problem. While I believe a congressional solution is most appropriate, the amendments I have received are most emphatically not the answer. Quite candidly, I would prefer to take our chances in court rather than accept a solution as has been prepared in these amendments.

Title I would establish a hierachy of advisory committees and federal involvement in the management and regulation of our fisheries; and the established roles of the states and the Great Lakes Fishery Commission would be at best vague, and at worst—obliterated. The proposals in this title are, apparently, patterned after the Fisheries Conservation and Management Act of 1976 which, among other provisions, established Regional Management Councils to deal with and resolve fisheries problems in territorial waters of the United States (oceans). the Great Lakes, Gentlemen, are not, by definition, U.S. "territorial" waters. The bottomlands and the fisheries resources of the Great Lakes are, by law and international treaty, declared to be the property of the States, within established boundaries, and (Canadian waters excepted, of course). The ownership question, therefore, was long ago resolved and application of the Fisheries Conservation and Management Act of 1976—in any form—to the Great Lakes is inappropriate. I can assure the Committee, also, that my colleagues in the other Great Lakes states will not willingly cede their jurisdictional and management responsibilities on the Great Lakes to an advisory committee, regional management council, or to the Federal Government.

For the past 15 to 20 years the Great Lakes States and Canada—working directly among themselves or through the Great Lakes Fishery Commission—have proven that the fisheries resources can be restored and effectively managed cooperatively. Contrary to opinions held in some quarters, complementary controls and programs between the two countries, and the province and states have been implemented in sport and commercial regulations, fish plantings, exchange of services, stock assessment and research activities.

The Indian fishing dispute in Michigan, as serious as it is, should not be regarded as an open invitation by us for federal or other hierarchal involvement in our fisheries management programs. If an Indian fishing right is proven in the courts or established by law, the State of Michigan is fully prepared and competent for accommodating Indian interests in the fisheries.

Title II of the amendments—and I will be brief, Mr. Chairman—addresses, specifically, the Indian fishing problem in the State of Michigan. It would set aside certain areas of the Great Lakes subject, essentially, to exclusive fishing rights and management by Indian tribes. Not only does it ignore riparian rights or privileges in such areas; but it would result in a taking without just compensation or equity in law. I'm certain that even a most unfavorable decision to Michigan in our Federal court case would not recognize such exclusivity and special interest legislation.

Beyond the area designations and provision for exclusive fishing rights and management authority, the amendments would, through a licensing system, provide Indian participation in commerical fisheries in areas and under quotas of fish which far exceed their historical record in Michigan. There is simply no basis in fact or rationale that would legitimatize accommodating an Indian fishery in the magnitude contemplated in this legislation. If imposed on existing state laws regulating recreational and commerical fishing, the proposed legislation would be an administrative nightmare.

Mr. Chairman and members of the committee, I strongly urge you to reject the title I amendments to H.R. 12531 as I understand them as offered or proposed to be offered. As an alternative to title II of the amendments, I urge you to reject those that have been proposed—or will be proposed—and consider, instead, a draft which is attached to my testimony. However, I submit these for discussion purposes only because we have not as yet consolidated public and political opinions on them in Michigan.

Mr. Chairman, I sincerely appreciate the opportunity to appear before you and your committee to address this most important issue; and I most appreciate your indulgence in hearing out this length testimony. Because I believe the prospect of unlimited and unregulated Indian fishing is one of the most serious conservation issues facing our state, perhaps you can understand why I felt it necessary to appear here today and present my views on this critical problem.

May I assure you that we stand ready to work with you, the committee and staff to seek an equitable and reasonable solution to this problem.

Thank you.

MICHIGAN STATE SENATE, 1977 JOURNAL OF THE SENATE NO. 111, OCTOBER 27, 1977

SENATE CONCURRENT RESOLUTION NO. 265.

Senator DeGrow offered the following concurrent resolution:

A concurrent resolution urging the Michigan delegation to the United States Congress to support H.R. 9054 of the United States Congress.

Whereas, The Ottawa and Chippewa Indians of Michigan and the United States entered into and signed a treaty at Sault Ste. Marie, Michigan, on July 31, 1855, (11 Stat. 621); and

Whereas, Article 3 of said treaty provided that "The Ottawa and Chippewa Indians hereby release and discharge the United States from all liability on account of former treaty stipulations, it being distinctly understood and agreed that the grants and payments hereinbefore provided for are in lieu and satisfaction of all claims, legal and equitable on the part of said Indians jointly and severally against the United States, for land, money or other things guaranteed to said tribes or either of them by the stipulations of any former treaty or treaties; excepting, however, the right of fishing and encampment secured to the Chippewas of Sault Ste. Marie by the treaty of June 16, 1820"; and

Whereas, Article 1 of the Treaty of August 2, 1855, (11 Stat. 631) between the Chippewa Indians of Sault Ste. Marie and the United States provided that: "The said Chippewa Indians surrender to the United States the right of fishing at the falls of St. Mary's and of encampment, convenient to the fishing ground, secured to them by the treaty of June 16, 1820"; and

Whereas, It has been judically determined that "By the terms of the Treaty of 1855 the Indians, in consideration thereof, released the United States from all liability on account of former treaty stipulations and from all claims, etc., guaranteed to them by the same . . . In other words, the Treaty of 1855, after its conclusion, took the place of the Treaty of 1836, but did not take away from the Indians anything which they had already received under the latter treaty. The government was thereby released from the payment of any annuities in the future, and was also released from its other obligations under the treaty which were to be performed in the future." (*Ottawa and Chippewa Indians* v. *United States,* 42 Ct. Cl. 240, 246–47, 1907); and

Whereas, It has been judically determined that "Article 3 of the Treaty of July 31, 1855 (11 Stat. 621) was an accord and satisfaction of the liabilities of and claims against the United States under the stipulations of all former treaties (except the Treaty of June 16, 1820, providing for fishing rights). In the years from 1785, when the first treaty was made with the plaintiffs, until the Act of March 3, 1871 (16 Stat. 556), the United States entered into forty-four treaties with the plaintiffs, of which thirty-three were concluded prior to the Treaty of July 13, 1855. The defendant's obligations under these thirty-three treaties were not exclusively and strictly legal obligations, but involved other matters such as protection of the Indians' life and property, protection of the Indians' hunting and fishing rights and recognition of their boundary lines. These and other future obligations were the liabilities from which the United States sought to be released. Therefore, the provisions made for the plaintiffs under the Treaty of July 31, 1855, do not constitute either new or additional considerations for the land cessions made pursuant to the Treaty of March 28, 1836." (26 2nd Cl. Comm. 538, 553–54); and

Whereas, The Ottawa and Chippewa Indians of Michigan filed claim before the Indians Claims Commission seeking compensation from the United States for land cessions in the Treaty of July 6, 1820, (7 Stat. 207), and the Treaty of March 28,1836 (7 Stat. 491); and

Whereas, The Indian Claims Commission ordered ". . . that the plaintiffs have and recover from the defendant (Unites States) on behalf of the 'Ottawa and Chippewa Nations of Indians' who negotiated the treaties of July 6, 1820, (7 Stat. 207), and March 28, 1836, (7 Stat. 491), as a final award in these dockets the sum of $10,109,003.55. Dated at Washington, D.C. this 15th day of March 1972." (*Bay Mills Indian Community, et al.* v. *United States,* Docket Nos. 18–E and 58, 27 Ind. Cl. Comm. 94, 97); and

Whereas, The award did not include specific compensation for the release of Indian plaintiffs of all claims arising from the treaties of July 31, 1855 (11 Stat. 621) and August 2, 1855 (11 Stat. 631), and therefore, descendants of the treaty signatories may have a legal basis for further compensation by the United States; and

Whereas,The United States, in amended complaints filed before the Federal District Court in Grand Rapids in 1973, *United States of America* v. *State of Michigan,* Civil Action No. M26–73, declares:

1. That the Chippewa Indians have the sole and exclusive right to regulate the taking of fish on the reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation.

2. That the Chippewa Indians have a federally protected, reserved right to take fish from all waters of Lake Superior east of Marquette, all waters of Lake Michigan north of Grand Haven, and all waters of Lake Huron north of Alpena; and that the State is without jurisdiction or authority to regulate Indians in the exercise of treaty rights to fish for commercial and subsistence purposes.

3. That the State has a duty to exercise its police power to regulate sport and commerical fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indians, in order to assure that the Great Lakes fisheries resources are protected and that there is available to the Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture; and

Whereas, In the subject litigation the United States is not seeking Indian rights solely on reservations or at usual and accustomed places off reservations but, rather, Indian rights to more than half the land and water area of Michigan ceded by the 1836 treaty. Moreover, the United States Government contends that the Indians do not hold these rights in common with all other citizens but, rather, that they hold them exclusively; and the United States is seeking to secure for the Indians the rights deriving from all the usual privileges of occupancy including fishing, hunting, and other common activities; and that such Indian rights are not subject to monetary compensation; and

Whereas, The State has invested millions of dollars to restore the Great Lakes fisheries and that the fisheries contribute over $250 million annually of the economy of the State; and

Whereas, The State has moved aggressively and effectively to prevent overfishing of restored fisheries resources by either sport or commercial fishermen; and

Whereas, Pending resolution of the litigation in Federal Court, the Indian tribes, acting pursuant to assumed treaty rights and unsubstantiated legal contentions, have greatly expanded commercial fishing activities in contravention of State laws and regulations; and

Whereas, The unregulated Indian fishing has led to depletion of lake trout and other species in some areas of the Great Lakes and, unless regulated, other fish populations will be destroyed; and

Whereas, Large quantities of fish containing unsafe levels of environmental contaminants are being sold by Indians to an unsuspecting public; and

Whereas, Violent confrontations between Indians and non-Indians have erupted over fishing rights; and

Whereas, The State, by its Natural Resources Commission, has consistently maintained that nondiscriminatory regulation of off-reservation hunting and fishing by Indians is necessary and reasonable to assure the conservation, wise utilization and equal accessibility of the natural resources for the present and future enjoyment of all citizens; and

Whereas, H.R. 9054 introduced in the first session of the 95th Congress, if enacted into law, ". . . directs the President to abrogate all treaties entered into by the United States with Indian tribes in order to accomplish the purposes of recognizing that in the United States no individual or group possesses subordinate or special rights, providing full citizenship and equality under law to Native Americans,

protecting an equal opportunity of all citizens to fish and hunt in the United States, and terminating Federal supervision over the property and members of Indian tribes, and for other purposes"; and

Whereas, The United States Department of Interior, in United States v. State of Michigan, Civil Action No. M26–73, is relitigating the matter of Indian rights and claims deriving from the Ottawa and Chippewa treaties of 1820 and 1836 in which the Federal Government's case did not prevail before the Indian Claims Commission; and

Whereas, The Federal Government filed said law suit against the State based on the premise that reserved Indian fishing and hunting rights were not released in former treaties and that such rights were not compensable; and

Whereas, The United States Court of Claims has held that Indian hunting and fishing rights were released by the treaties of 1820 and 1836; and

Whereas, The Indian Claims Commission has awarded $10 million to descendants of the Ottawa and Chippewa Indian Nations as just compensation for rights and land cessions deriving from the 1820 and 1836 treaties and, therefore, determined that such rights and cessions are indeed compensable; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Michigan Legislature urges the President of the United States to direct the Secretary of the Department of Interior to cease current legal action against the State of Michigan and, instead, file a claim before a tribunal of competent jurisdiction, in behalf of the Ottawa and Chippewa Indians of Michigan, seeking compensation for said Indians arising from the treaties of July 31, 1855 and August 2, 1855; and be it further

Resolved, That the Michigan congressional delegation be urged to support H.R. 9054, and urge the Congress to resolve that the existing nationwide trend toward superior rights for Indians deriving from treaties of indefinite or perpetual duration and founded on different conditions in different times is not a durable system, since it is based on discrimination; and be it further

Resolved, That copies of this resolution be transmitted to each member of the Michigan delegation in the United States Congress.

Pursuant to rule 32, the concurrent resolution was referred to the Committee on Senate Business.

Senator O'Brien was named a co-sponsor of the concurrent resolution.

TITLE II—INDIAN FISHING RIGHTS IN MICHIGAN

SEC. 201. DEFINITIONS

As used in this title:

(1) The term "Indian" means any individual who is a member of a Chippewa tribe referred to in section 202(a).

(2) The term "Indian territorial waters" means the waters and associated waters described in section 202(a).

(3) The term "State" means the State of Michigan.

(4) The term "State waters" means the waters of the State other than Indian territorial waters.

(5) The term "Exclusive fishing rights" means the right of Indians to regulate commercial fishing and subsistence fishing by Indians as provided in section 202(a); and the right to regulate commercial fishing by non-Indians; but does not include the right to regulate recreational fishing by non-Indians.

(6) The term"Exclusive management authority" means the right to manage Indian fisheries in the Indian territorial waters in accordance with a conservation code adopted by the tribe(s); and to develop and implement a fisheries management program, plan or project for Indian territorial waters.

(7) The term "Conservation code" means those tribal laws, rules and regulations governing the conduct of Indian fishermen for purposes of insuring in perpetuity the conservation and wise utilization of the fisheries resources.

(8) The term "tribe(s)" means members of the Bay Mills Indian Community, the Sault Ste. Marie Indian Community, and the L'Anse Indian Reservation.

SEC. 202. EXCLUSIVE INDIAN FISHING RIGHTS

(a) Chippewa Tribes on Reservations:

(1) Provided that the Chippewa tribe of the L'Anse (Michigan) Indian Reservation adopts a conservation code as provided in section 201, such tribe shall have exclusive fishing rights within the waters on the reservation and the associated waters of Keweenaw Bay in Lake Superior south of a line between the northern-most point on the boundaries of the reservation on each side of such Bay. The tribe has exclusive

management authority over such fisheries which shall be exercised in accordance with the provision of a conservation code.

(2) Provided that the Chippewa tribes of the Bay Mills Indian Community and the Sault Ste. Marie Indian Community adopt conservation codes as provided in section 201, such tribes shall have exclusive fishing rights within the waters of the Bay Mills Indian Reservation and the associated waters of Whitefish Bay in Lake Superior south of a line extending from the mouth of the Tahquamenon River due east to the international boundary line between the United States and Canada, thence southeasterly along such boundary line to a line extending due north from Cedar Point, Michigan. The tribes have exclusive management authority over such fisheries which shall be exercised in accordance with the provisions of a conservation code.

(b) Approval of Conservation Codes, Fisheries Management Programs, Plans and Projects: To assure protection of the environment and prevent impairment of the fisheries resources, any conservation code, fisheries management program, plan or project adopted or developed by a tribe shall be approved by the State before the tribe exercises the exclusive fishing rights or exclusive management authority provided in section 202.

(c) Enforcement: Each tribe described in subsection (a) shall enforce all laws and regulations adopted by it with respect to the management of the fisheries within the respective Indian territorial waters. Nothing in this subsection shall be deemed to preclude the enforcement of such laws and regulations by the State on behalf of the tribe if the tribe requests the State to do so and the State agrees.

(d) Fisheries Management Assistance: The State may, upon request by any tribe, assist or advise the tribe with the development of a conservation code and provide such information and other assistance as may be reasonable, necessary and appropriate in the Indian territorial waters. It is the intent of this legislation that the State should, within reasonable limits and to the extend practicable, advise and assist the tribes with management of the Indian fisheries including, but not limited to, planting of fish for purposes of conservation, rehabilitation and wise utilization of the fisheries resources in Indian territorial waters.

SEC. 203 ACCESS OF INDIANS TO FISH IN OTHER THAN INDIAN TERRITORIAL WATERS

(a) Access During Transition Period—(1) Except as provided in paragraph (2), during each of the years in the 5-year period beginning on January 1, 1979, (hereinafter in this section referred to as the "transition period"), the State, in the management of its fisheries shall take such action as may be necessary and appropriate to ensure, to the maximum extent practicable, that Indians have the opportunity to harvest within the State waters the following quantities of fish:

(a) Whitefish, 600,000 pounds; (b) Lake Trout, 200,000 pounds; (c) Chubs, 200,000 pounds; and (d) Round Whitefish, 30,000 pounds.

(2) If for any year during the transition period the State, on the basis of conservation considerations, determines that the quantity specified in paragraph (1) for any species of fish is more than 20 percent of the total amount of such species which should be harvested for recreational and commercial uses during that year within the State waters, the State may proportionally reduce the quantity for such year.

(3) The State shall impose on Indians such restrictions as are imposed on non-Indians, consistent with fishery conservation programs and optimum utilization of the fisheries resources, as may be necessary and appropriate to carry out the purpose of this subsection, including, but not limited to, issuance of commercial fishing licenses only to qualified Indians, such licenses being the property of the State and non-transferable; establishment of certain zones within the State waters for fishing by Indians; fixing the amount of fish to be taken by species; designating the areas in which Indians shall be permitted to fish; specifying the season and the depths where the Indians may conduct commercial fishing; specifying the methods and kind and amount of fishing gear which the Indians may use; and specifying other conditions, terms and restrictions which are deemed to be necessary in carrying out the provisions of this subsection, including but not limited to the right to inspect the Indians' fishing operations in the State waters, on board or ashore.

(b) Access After Transition Period: (1) Subject to paragraph (2), after the close of the transition period, the State shall determine if additional commercial fishing licenses should be issued to harvest available fish stocks in the State waters. If the State determines that additional licenses are required, it shall give preference to qualified Indians in issuing additional commercial fishing licenses. Provided, however, that the number of licenses so issued shall not exceed twenty percent of the total number of licenses issued by the State in any single year; and provided further that any licenses issued are subject to the provisions of Section 203(2) and (3). (2) To

achieve the proportion of licenses issued to qualified Indians as provided in this paragraph there are authorized to be appropriated to the Department of the Interior funds to assist the State in purchasing commercial fishing licenses, gear and equipment from non-Indians for transfer to qualified Indian commercial fishermen.

(c) Verification—For purposes of carrying out this section, the State may require such verification, in the form of qualification cards or other documentation issued by the tribes referred to in section 202(a), as may be sufficient to satisfy the State that any applicant for, or any holder of, a commercial fishing license issued pursuant to this section is an Indian.

SEC. 204. DISCLAIMER

Except as specifically provided in this title, nothing in this title shall be deemed to affect in any manner the jurisdiction of the State within the State waters or the Indian territorial waters.

SEC. 205. SETTLEMENT OF LANDS UNDER TREATY

All of the State of Michigan waters of the Great Lakes and any associated connecting waters and all of the rivers, streams, creeks and drains and all inland lakes, ponds, impoundments and any other surface or subterranean waters in the State of Michigan included within the boundaries of the Treaty of Washington of March 28, 1836, between the Ottawa and Chippewa nations of Indians and the United States, except for those waters included within the boundaries of Indian reservations or associated with such reservations or other waters designated as Indian territorial waters as described in this Title, shall be considered as lands and shall be considered as having been "required for settlement" under the terms of Article Thirteenth of the aforementioned Treaty. All other State of Michigan waters not the subject of this treaty likewise shall be considered as having been "required for settlement"; and any Indian fishing rights reserved in any other treaty respecting the waters of the State of Michigan, other than those specified in this Title, are rescinded. Such "settlement" here in described shall be considered as having taken place as of March 28 in the year 1836 for all State of Michigan waters.

STATEMENT OF DR. HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman and members of the subcommittee, I am Dr. Howard A. Tanner, Director of the Michigan Department of Natural Resources. My academic training was in the field of fisheries biology, and I have served as a former Chief of the Fisheries Division of the Department of Natural Resources. I wish to relate the problems and issues my agency has concerning treaty Indian fishing rights in Michigan.

By way of introduction, I wish to acquaint you with the Department's involvement in management of the Great Lakes fisheries in recent years.

A culmination of events, including the combined effects of the parasitic sea lamprey and an over-exploitive commercial fishery preceding and during the 1950's, brought about the collapse of lake trout and whitefish populations in the upper Great Lakes. The commercial fisheries, having lost two of the most valuable food fishes, subsequently turned to intensive harvest of lake herring, chubs, yellow perch and walleye. These species became depleted also as a result of overexploitation and the competitive effects of alewives which reached maximum abundance in the mid 1960's when massive die-offs of this species littered the beaches of the Great Lakes causing great economic losses to the tourist and resort industries of Michigan.

At that time there was significant interest in developing an industrial fishery to produce fish meal and oil from the low-value alewife—an interest, incidentally, that was promoted intensively by the then United States Bureau of Commercial Fisheries.

Michigan declined development of such an industrial fishery, maintaining that ongoing international, state and federal efforts had been successful in controlling lamprey, and that newly planted lake trout were utilizing the alewives as food; and that plantings of other predator fish, like lake trout, could yield a high quality and economically productive recreational fishery.

Therefore, in 1966 the State of Michigan made a major policy decision to intitiate a program to rehabilitate the fisheries resources of its Great Lakes. To supplement the sea lamprey control and lake trout rehabilitation programs underway by the United States and Canadian Governments, Michigan introduced coho and chinook salmon from the Pacific. We are revamping our entire hatchery system at a cost of $11.7 million to produce these new species along with increased numbers of steelhead, rainbow and brown trout, and Atlantic salmon.

Legislation was enacted that provided authority to limit the number of commercial fishermen, apply controls over the harvest of fish from the Great Lakes, limit areas and depths that could be fished, designate species which could be caught, and limit the use of the destructive and wasteful gill net.

Finally, we sought and received less emphasis from the Federal Government in development of the Great Lakes commercial fisheries and more emphasis from the then U.S. Bureau of Sport Fisheries and Wildlife.

Our program has been tremendously successful. Our hatcheries have produced and planted over 100 million salmonids in the Great Lakes since 1966. The annual cost of hatchery operations is about $3 million. These operational costs are largely paid from revenue received from sport fishing licenses. Approximately 45 percent of the funds to remodel and rebuild Michigan hatcheries have been in the form of Federal aid administered by such agencies as the Upper Great Lakes Regional Commission, Economic Development Administration, Bureau of Outdoor Recreation and the Fish and Wildlife Service. In 1976 about 2.8 million angler days of effort were spent by sport fishermen on the Great Lakes and tributary streams fishing for trout and salmon; and 4.4 million angler days of effort were expended by anglers fishing for species other than trout and salmon. Trout and salmon fishermen alone accounted for an estimated catch of 845,000 lake trout, 500,000 steelhead, 748,000 coho salmon, and 742,000 chinook salmon. The value of the Great Lakes trout and salmon fisheries is estimated at $250 million annually—values produced in goods and services alone.

Regulation of the commercial fisheries has also been largely successful. By applying limited entry, catch quotas, area restrictions, gear restrictions, etc., the commercial fishery has gained financial stability from a situation in 1967, when about 85 percent of the 400 licensed commerical fishermen grossed less than $10,000 annually from sale of their catch, to the situation today where most of the 200 or so licensed fishermen gross over $50,000 annually from their catches. With the restrictions we have witnessed a resurgence of whitefish and perch populations and many other species have shown pronounced improvement in abundance since 1970.

Through rather intensive management and commercial fishery controls the Great Lakes have been converted from being almost a biological liability to being an immense economic asset. This multimillion dollar public resource has emerged in only a 10-year period, 1966–76. Even the nuisance fish, the alewife, is now a major food fish for the high value trout and salmon. For the first time in the history of the Great Lakes fishery, a situation exists suitable for the promotion of a coexistent sport and commercial fishery. Also, the value of the fishery resource exerts considerable pressure for improved water quality in the Great Lakes, which results in many other public and private benefits.

One final point in the way of introduction. The Great Lakes States, in particular Michigan, have exclusive management jurisdiction over their waters. This perhaps was not previously the case and the States were regarded as poorly organized, and coordinated to implement effective management programs. I should add, that this view is still held by some Federal officials and is used as an argument to support the constant pressure exerted by Federal agencies to usurp management responsibilities.

I want to assure this committee, however, that the Great Lakes States will not forfeit their fisheries management responsibilities and jurisdiction. We have adequately demonstrated that common management goals and plans can be implemented jointly either through the Great Lakes Fishery Commission or directly through negotiations and agreements among the various States. Complementary controls and programs have been achieved in sport and commercial fishing regulations, fish plantings, exchange of fish and services, stock assessment and research activities.

With that introduction and background, I would now like to address the subject at hand.

In April 1973 the United States Attorney filed a complaint in the Federal District Court in Grand Rapids, Mich., on behalf of the Bay Mills Indian Community. This lawsuit was filed without any prior notice to the State of Michigan or any attempt by any entity of the Federal Government to negotiate a settlement of a presumed dispute over Indian fishing rights. As a matter of fact we were, at the time the lawsuit was filed, trying to accommodate some interests in the fisheries directly with Indian communities.

Nonetheless, the lawsuit was filed and the Federal court ultimately granted leave to the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians to become plaintiff-intervenors in the suit. Attempts by organized sportsmen's groups to intervene in the suit on behalf of the State have failed, however.

The plaintiffs have requested th court to assume jurisdiction in this litigation and declare:

1. That the Bay Mills Indian Community has the sole and exclusive right to regulate the taking of fish on the Indian communities' reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation;

2. That the Indian communities have a federally protected, reserved right to take fish from all waters of the Great Lakes adjacent to lands ceded by the Treaty of 1836; and that the State is without jurisdiction or authority to regulate Indian communities and their members in the exercise of the treaty right to fish for commercial and subsistence purposes in the ceded waters of the Great Lakes.

3. That the State has a duty to exercise its police power to regulate sport and commercial fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indian communities and their members, in order to assure that the Great Lakes fisheries resources are protected and that there is available to Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture.

Therefore, pursuant to the 1836 Treaty of Washington between the Ottawa and Chippewa Indian Nations and the United States, the plaintiffs are claiming superior rights to the fisheries resources of all waters of Lake Michigan north of Grand Haven; all waters of Lake Huron north of Alpena; and all waters of Lake Superior east of Marquette. This, Mr. Chairman, constitutes one-half of Michigan's Great Lakes waters.

The litigation is continuing and probably will not be concluded for many years because of anticipated appeals.

Meanwhile, some restored fish populations have been depleted and many others are threatened owing to increased—and unregulated—Indian fishing. The Bureau of Indian Affairs has, to date, issued more than 125 identification cards entitling alleged Indians to unrestricted fishing for commercial and subsistence purposes. The number of individuals involved in the Indian gill net fisheries approximates the number of non-Indians licensed to fish commercially in Michigan waters of the Great Lakes. Last year the Indian fishermen landed more than 300,000 pounds of whitefish and more than 200,000 pounds of lake trout—a species which has been closed to commercial fishing since the 1960's because of prior overfishing. Many of the lake trout now being caught exceed the Federal Food and Drug Administration's allowable limits for certain environmental contaminants, and the fish are being sold to an unsuspecting public.

It has become obvious that a timely resolution of this matter cannot be obtained in the courts. Before it is, the fisheries resources could be destroyed. Therefore, we believe that Congress must act to restore control of off-reservation Indian fishing to the States. I make this statement for the following reasons:

First, Indian claims to hunting and fishing rights—and other resources as well—are seemingly endless and pervade many areas of the United States. I take note, too, that the Congress has recently extended the statute of limitations for such claims for an additional 5 years. Therefore, we in Michigan and officials of other States can anticipate legal challenges ad infinitum at considerable strain on our financial and legal resources.

Secondly, a single fish and wildlife management authority is absolutely essential to rational utilization, allocation, and conservation of natural resources. Given the trust responsibility that the Department of the Interior has for Indian tribes, in the context of our present litigation I can foresee the expansion of the Indian fisheries and the regression of non-Indian regulation of off-reservation hunting and fishing by Indians is necessary and reasonable to assure the conservation and wise utilization of the resources for the present and future enjoyment of not only Indians but all other persons entitled to them.

We observe the Federal Government's intrusion into traditional and legal State prerogatives relating to management of renewable natural resources. Based on an ever-changing Indian policy and trust responsibility, the Federal Government now is fostering "self-determination" for Indian people. Put another way, the policy of self-determination translates into the establishment of a separate nation within a nation and superior rights for a small segment of our society. Confronted with the legal and financial resources of the Federal Government, I predict a steady erosion of States' rights and chaos in development and conservation of our natural resources.

In conclusion, I submit that Congress must act forthrightly to restore order to a truly irrational process. Congressman Cunningham has introduced H.R. 9054 in the House of Representatives which, if enacted, directs the President to abrogate all

treaties entered into by the United States with Indian tribes. Perhaps Mr. Cunningham's bill is too strong and does not provide for the needs of Indians in other areas such as health, education, and their general welfare. Nonetheless, the Congressman makes his point because, being from the State of Washington which is in the throes of chaos over unregulated Indian hunting and fishing, he offers a means to restore order and prevent depletion of the fisheries resources.

Mr. Meeds, also from the State of Washington, has introduced H.R. 9950—the "Omnibus Indian Jurisdiction Act of 1977." Mr. Meeds' bill is moderate, comprehensive, and would meet our needs in Michigan. It would recognize Indian rights on reservations but would restore to the State the power to equally apply hunting and fishing regulations to all persons without regard to their status as Indians or non-Indians.

This bill, as you know, has been referred jointly to the committees on Interior and Insular Affairs, the Judiciary, and Merchant Marine and Fisheries.

May I urge your consideration and enactment of H.R. 9950.

Thank you for the opportunity to address this most serious and important matter.

STATEMENT OF JOHN A. SCOTT, CHIEF, FISHERIES DIVISION, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman, my name is John A. Scott and I an chief of the Fisheries Division, Michigan Department of Natural Resources, Lansing, Mich.

Among other duties, my Division is responsible for recommending policies and implementing programs to protect and propagate the fisheries resources of the State of Michigan. With the advent of the Indian fisheries, my job has become quite difficult. However, that is not important. What is important is the support of Michigan citizens to restore the Great Lakes fisheries. That support has been enthusiastic and effective; and millilons of dollars have been invested to create the best trout and salmon fisheries anywhere in the world. As Dr. Tanner points out, Michigan's Great Lakes recreational fisheries contribute more than $250 million annually to the economy of the State. Moreover, these fisheries not only provide recreation but also supply more than 30 million pounds of food annually to recreational anglers, their friends and relatives. In addition, Michigan's commercial fishery yields an annual $25 million economic return. Some fish stocks of commercial importance are responding favorably to scientific management and regulation, and even higher yields are predicted.

The existing unregulated Indian fisheries, as well as their predictable expansion, jeopardize our progress and investments in restoration of the Great Lakes fisheries resources. That is my concern and the subject I wish to address.

The existing Indian fisheries and their attendant biological, sociological and political implications have raised havoc in the administration and management of the fisheries. In some areas, the Indian fisheries have depleted some restored fish populations. I'll expand on that later.

Acting on the basis of assumed treaty fishing rights and unsubstantiated legal contentions, Indians have expanded their fishing activities outside of Whitefish Bay to Munising, Grand Marais and Little Lake Harbor in Lake Superior; to the Les Cheneaux Islands, St. Martin's Bay, and St. Ignace areas of northern Lake Huron; to Epoufette, Naubinway, Manistique, Garden Peninsula, Little Traverse Bay, and Grand Traverse Bay of Lake Michigan; and to inland lakes.

The accelerated fishing is, in many cases, aided and abetted by non-Indian licensed commecial fisherman who, having found an opportunity to circumvent state fishing regulations, either enter the fishery on the pretence of being an Indian having alleged treaty Indian fishing rights. or they provide vessels and gear for the Indian fishery. Non-Indian wholesale fish dealers—often times being licensed commercial fishermen as well—offer a ready, profitable outlet for Indian-caught fish.

Because higher courts have failed to provide lucid decisions on the extent of treaty fishing rights, and because considerable litigation is pending or ongoing, cases are brought before trial courts by local prosecutors who are not prepared to brief and argue the complicated legal issues and court decisions involved in Indian treaties. Consequently, court opinions are either inconsistent among judicial jurisdiction or worse, indecisive. Therefore, enforcement of State fishing laws and regulations is in limbo throughout large areas of the state.

Mr. Chairman, your committee has requested specific facts and figures relating to this matter. I wish we could provide them, but is extremely difficult to do so. I'll try to illustrate why that is the case.

Normal fisheries reporting systems are not reliable principally because the Indians do not want their activities observed and because Indian-caught fish are often

comingled with fish landed by non-Indian commercial fishermen or bought by wholesale fish dealers.

Many Indian fishing operations occur at night; "in-and-out" type fishing makes monitoring difficult; and sales of fish occur at points of landing or fish are shipped directly out of state before a record or observation of the catch can be made.

Department personnel attempting to monitor the Indian fisheries are often met with obscenities and antagonism. Consequently, there is an absence of solid information on catches and, deriving therefore, an inability to determine the effects of this added exploitation on the fisheries resources.

Because the process of fish stock depletion is an insidious phenomenon, occurring over time and space, it is not always readily detectable through normal sampling and assessment techniques. These techniques measure relative abundance of a stock over a period of years based on standard sampling procedures. We can detect about a 25 pecent change in abundance 90 percent of the time only after we sample the population annually for several years. Therefore, taking into account and compensating for deviations in time, temperature, distribution of fish, and weather, depletion could occur before it is detected and measured. After depletion occurs, collapse of a fish stock is usually rapidly accelerated. Hence, this is another reason why the specific facts and figures resulting from Indian fishing are difficult to provide.

I will provide you some information we have obtained, however.

Recently we observed an Indian gill net fishery operating in Whitefish Bay in Lake Superior. There were thirty individuals involved using large mesh gill nets fishing from 16-foot to 18-foot boats; and most of the fishermen fished only a few days each week. In a 5-month period we conservatively estimated the catch to have been 75,000 lake trout weighing 300,000 pounds in addition to 300,000 pounds of whitefish we estimated were caught.

Over the last five years we have planted well over 400,000 lake trout in Whitefish Bay. Our research this year in the Bay indicates there has been a 90-percent reduction in the abundance of lake trout as a result of the Indian fishery. Our catch of lake trout per unit of sampling effort recently has been as follows: In 1974 we captured 5,334 trout; 876 in 1975; 418 in 1976; and about four trout in 1977.

Further, we observe federal support and financing of a fish processing plant. Over the Michigan Department of Natural Resources' objections, that requires fish from Whitefish Bay, an area long exposed to overexploitation of its fisheries resources and biologically incapable of sustaining the production required to keep the plant in operation.

Other areas of fish stock depletion are becoming apparent. In northern Lake Huron, where only recently have we begun the tedious process of restoring lake trout populations, our stock assessment and research indicate a process occurring analogous to that of Whitefish Bay. Some background information is in order to explain my point.

A combination of sea lamprey predation and intensive commercial fishing in the 1940's resulted in the virtual extinction of lake trout from Michigan's waters of Lake Huron. While yet abundant, lake trout had supported valuable commercial and recreational fisheries, and as a fish predator had exerted restraint and balance on non-predatory species. Without this restraint smelt and alewives, exotic species, proliferated mainly at the expense of important native species such as chubs, herrings and yellow perch. Because of their great value for food, recreation and biological control on other fish, a management program comprising sea lamprey control, the elimination of non-selective commercial fishing gear and stocking was begun in the early 1970's to restore the lake trout to its former position in Lake Huron.

Lake trout stocking at a lakewide annual rate of approximately one million fish began in 1973. Where possible the planting stock was ferried to and released over reefs and shoals, which had once been used by native lake trout for spawning. Experience in Lakes Michigan and Superior had demonstrated the need for stocking on spawning grounds to establish a homing instinct so that when mature, lake trout would return and spawn on areas favorable for reproduction. With sea lamprey control and a ban on gill nets both established by 1970, the major obstacles to restoration appeared to have been passed. Hence it was expected that the planted stock would grow, mature, spawn on favorable grounds, and in time self-perpetuating stocks of lake trout would develop.

Fishery surveys in Lake Huron have shown that in general survival and growth of the planted lake trout have been good. Female lake trout are not expected to spawn until they have attained an age of six or seven years, and therefore large scale spawning is not expected until 1979–80. However, it is now apparent that in the St. Ignace area of northern Lake Huron, where an extensive gill net fishery is

operating under alleged Indian rights, lake trout are being overfished to the extent that too few will survive to maturity.

During the first year of gill net fishing in the St. Ignace area, mortality on lake trout from the first stocking was estimated at 91 percent. In comparison annual mortality at adjacent areas, Cedarville and Cheboygan, averaged 44 percent. The difference between these rates is a measure of the effects of the Indian fishery on the planted stock. The second planting of lake trout, those released in 1974, has also shown high mortality in comparison with unfished areas.

Lake trout habitat in the St. Ignace area is considerd to be excellent, and, indeed, assessment catches of smaller lake trout from this area are within the range of catches taken from other northern areas. However, after lake trout reach a commercial size of 2–4 pounds, their abundance at St. Ignace is very low. Clearly, only a prescribed amount of lake trout are stocked in any one area, and those fish caught are not available for spawning.

During 1973–76 an annual average of 164,000 lake trout was stocked within a twelve mile radius of St. Ignace. Approximately three years are required for lake trout to reach a commercial size and during this time mortality from natural causes would be expected to approximate 35 percent each year. Therefore, by the time a commercial size is reached about 45,000 trout would be alive from the stocking of 164,000. An additional 3 to 4 years are required for the females to reach maturity and spawn, but at the 90 percent mortality rate observed at St. Ignace only five lake trout out of the 45,000 would survive to a spawning age. Three spawning shoals have been stocked in the St. Ignace area, and a complement of five spawners divided between three spawning shoals would obviously result in an impossible circumstance for reproduction.

Restoration of naturally reproducing stocks of lake trout in Lake Huron would be difficult and costly even without an unrestricted gill net fishery. Lake trout must survive to a relatively old age before maturation is reached, and each year some are lost to natural causes such as disease, as well as to predation from the residual sea lamprey population. Sea lamprey control in Lake Huron costs approximately $1 million each year, and to this must be added the cost of stocking, assessment and administration. If these costs are prorated to the numbers of spawners produced, each spawner would represent an investment of about $200, assuming 10,000 fish out of each year's stocking would survive to a spawning age under optimum conditions. Commercial harvest and sale of such fish for their $4 each wholesale value is economically absurd. Likewise, the intensive fishing of immature lake trout, which results in inadequate spawning escapement, defeats the purpose of sea lamprey control and lake trout restoration. The best spawining grounds in Lake Huron are along its north shore, and any progress in rehabilitation of the lake trout stocks is now dependent upon a reduction in the gill net fishery.

The establishment of the fish processing plant and, as Dr. Tanner notes, the planting of lake trout in Whitefish Bay by the U.S. Fish and Wildlife Service on the basis of a seemingly misplaced "trust" responsibility affronts one's intelligence when viewed in the context of an, as yet, unproven legally extant Indian treaty fishing right.

Moreover, the Bureau of Indian Affairs has issued more than 125 identification cards to members of the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians—entitling the holders to unlimited fishing for commercial and subsistence purposes. These cards have been issued under highly questionable legal authority as required by the Wheeler-Howard Indian Reorganization Act, and no individuals of unproven—and qualifiable—Indian ancestry. Those which have been contested in our courts have been determined to have no treaty fishing rights.

If the courts ultimately rule that the Ottawa and Chippewa Indians have no treaty reserved right to fish in Michigan, the federal government must assume the responsibility for having again led Indian people down the "trail of tears" and broken promises.

More recently we have witnessed the adoption of so-called Indian "Conservation Codes" which profess to establish means to protect and manage in perpetuity the fisheries resources for the benefit of the tribes. Upon close examination these "codes" do not provide direct and meaningful controls on fishing because they are founded on historical regulations whch id nothing more than accelerate the collapse of virtually every major fish stock in the Great Lakes.

It has become evident that the Federal Government is seeking broad new areas of responsibility and administrative control through reestablishing Indian trusts in a series of favorable court decisions. In western states the Federal Government has firmly established the trust concept on Indian reservation lands. Apparently the

Federal right to manage fish and wildlife on these lands is not even questioned by the states. Recent decisions affecting tribes in Oregon and Washington have granted Indians right to fish in their "usual and accustomed places" off reservations. The states claim that granting Indians these new rights will endanger the resource—thus laying the necessary grounds for establishing a federal trust to ensure preservation of both the Indian treaty rights and the resource itself.

Concepts established in the state and federal courts involving treaty rights of Indians in Oregon, Washington, and Idaho have leapfrogged across the nation and are now showing up in cases involved the States of Minnesota, Wisconsin, Michigan and New York. In each, the concepts are expanded that further erode the state's right to manage its natural resources and govern the activities of its citizens. The most recent case in Michigan *United States of America, Plaintiff* vs *State of Michigan, Defendant* has been expanded to the point that it now represents the largest and boldest attempt by the Federal Government to expand Indian rights at the expense of the citizens of a particular State.

The lands ceded in the Treaty of 1836 encompass more than half of the land and water area of our State. We have learned that the U.S. Government felt that the Michigan case was different than those in western states because in the State of Washington the Indian rights were held in common with all citizens, while Michigan the Indian rights sought to be upheld were exclusive to the Indians and not shared with all other citizens.

The major points of the U.S. Government's case need to be carefully reviewed. First, they are not seeking Indian rights on reservations or at usual and accustomed places off reservations; but, rather, Indian rights on all ceded lands covered by the Treaty of 1836. Second, the U.S. Government is not claiming that the Indians hold these rights in common with all other citizens; but that they hold them exclusively. Third, the U.S. Government is seeking to secure for the Indians hunting and all the usual privileges of occupancy including fishing and utilization of the natural environment in many ways (which we could assume to include farming, berry picking, mining, and practically any other common activity). Finally, the U.S. Government contends that these Indian treaty rights are not subject to monetary compensation.

Therefore, we are directly confronted with an Indian claim to one-half of the entire fisheries resources of the state at the expense of the rights and privileges of all our citizens.

Garrett Hardin, a noted ecologist, expressed well the dilemma we all face in this matter in a recent article entitled "Living on a Lifeboat". I quote Dr. Hardin:

"It is literally true that we Americans of non-Indian ancestry are the descendants of thieves. Should we not, then, 'give back' the land to the Indians; that is, give it to the now-living Americans of Indian ancestry? As an exercise in pure logic I see no way to reject this proposal. Yet I am unwilling to live by it; and I know no one who is. Our reluctance to embrace pure justice may spring from pure selfishness. On the other hand, it may arise from an unspoken recognition of consequences that have not yet been clearly spelled out."

Hardin goes on to point out that even the present Europeans have no better title to their land; and when we look around the world, the present owners of nearly all property and resources trace their claims to the spoils of relatively recent conquest. Hardin concludes:

"We are all descendants of thieves, and the world's resources are inequitably distributed, but we must begin the journey to tomorrow from the point where we are today. We cannot remake the past. We cannot, without violent disorder and suffering give land and resources back to the 'original' owners—all of whom are dead anyway."

Thank you, Mr. Chairman, for the opportunity to present my views on this issue.

Mr. TANNER. Prior to my prepared remarks——

Mr. LEGGETT. Are you prepared to outline a solution?

Mr. TANNER. No, but I would like to be a part of one.

Mr. LEGGETT. Would you like to be a part of one?

Mr. TANNER. I would like to be a part of one, yes.

Mr. RUPPE. The solution, not the problem.

Mr. LEGGETT. We would be pleased to have whatever recommendations you might have, and to consider them.

Mr. TANNER. I have a prepared text. Based on some of the questions, and some of the testimony this morning, I would like to briefly comment on that first.

First of all, let me say I am Howard A. Tanner, director of the Michigan Department of Natural Resources. My background and experience is in the field of fisheries biology and limnology, and I have had experience in teaching, research, and administration prior to my present position.

Mr. LEGGETT. Are the Lake Michigan fish still contaminated with PCB's?

Mr. TANNER. Many of them are.

Mr. LEGGETT. How about whitefish?

Mr. TANNER. Probably has the lowest level of any species.

Mr. LEGGETT. How about the trout?

Mr. TANNER. Particularly the larger and older trout have some of the highest levels.

As a general statement, the fatty and older fish have the highest levels of PCB's.

Mr. LEGGETT. Are the trout taken commercially?

Mr. TANNER. Not under our regulations. They are taken commercially.

The impression I was left with this morning from the questions and answers given is that there was a lack of appreciation of the amount of information that is available to the Great Lakes Fishery Commission.

Now, if you had a systematized set of questions in which we could outline any reasonable approach—if we talked about a species in one of the Great Lakes, we could give you chapter and verse on numbers of fish harvested by various categories of fishermen, numbers of fish available under optimum yield. We can tell you by sampling area. The whole lake is so divided.

Michigan has done a great deal of research and monitoring. We are not as devoid of information as the tenor of the questions and answers would have left you to believe this morning. It is difficult to come into a situation as complex as the Great Lakes fisheries, and hit it with a scattergun, if you will permit me to call it that, of questions, and expect a useful pattern of answers to emerge.

To conclude that the information is lacking, or scarce, is erroneous. Obviously we do not have all of the answers, or detailed an answer as we would like to have. I did not want you to be left with the impression we were as devoid of information which seemed to emerge this morning.

Mr. LEGGETT. You can tell from our questions that we are devoid of information.

Mr. TANNER. I can appreciate that.

Mr. LEGGETT. We do the best we can with the facts that are available. Of course, we do understand there are different levels of information.

Obviously, from the morning session, it was apparent that the State of Michigan had more information about the fishery than the Fish and Wildlife Service.

As Members of Congress, we are responsible to people to attempt to solve human problems. And so we do as best we can with the tools we have available through our various State and Federal agencies. So, we came up with this bill.

Then we encounter the pride of authorship issue. Many times if it is not an administration bill, or has not been cleared with

several agencies or has not had a year of massaging several agencies or has not Federal agencies will come up and oppose the bill. They have reasons that many times may stick to the ceiling, and sometimes they fall down.

So we do intend to solve as many problems as we can. If we are not asking the right question, I hope you will correct them, and provide the right answers to them. If we have our hearings skewed in some way, I hope you straighten us out, and indicate to us the nature and extent of the problem, and the nature of the manner the Federal Government should proceed with the solution.

Mr. TANNER. Thank you, Mr. Chairman.

Obviously, that is more of an assignment than I was prepared for.

Mr. LEGGETT. You just think I was scattered this morning. [Laughter.]

Mr. TANNER. You mentioned pride of authorship. Probably what I am about to say would come under State pride. Please recall the management of the upper three Great Lakes is about 74 percent within the jurisdiction of the State of Michigan. We do manage these waters, and have for a substantial period of time.

It is not perhaps surprising that Michigan is in the forefront of the problems. I hope we can be in the forefront of the solutions.

Basically, I urge the committee to reject the proposed amendments, particularly those in what I would term title II of this bill, House bill 12531.

I believe there are some good elements in Mr. Ruppe's proposals, and I commend him for them. Certainly, we can logically argue for additional information from research and monitoring in order to most appropriately manage the fisheries of the very large, what I would term inland seas.

A plan to increase funding for commercial Indian fishing, all kinds of fishing, is very commendable. The construction of fish hatcheries, I am most interested in hatcheries that would become State fish hatcheries, but need not be so limited. But it recognizes a fact, that is, the kinds of fisheries that are yielding the most in terms of human benefit can generally be grouped under salmon, trout, whitefish species, that family.

We can do a lot, create much higher levels of fish populations than we presently have.

If you ask me what is the potential for trout production, salmon production, I could not tell you. But I could tell you it is far, far above the current levels, so far above that we do not for the moment have to concern ourselves with a danger of exceeding the carrying or productive capacity of these lakes.

Some of these things we can do with hatcheries, salmon, for example. Chub, herring, perch; no. There are no hatcheries that produce these kinds of fishes in this country. There is a lack of expertise in this country.

So, coupled with capability of adding to these fish stocks by hatchery production has to be a recognition that many of the species must be managed on the basis of self-sustaining natural population and harvest, and allocation of those stocks have to take those into consideration.

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Now, one term dealing with hatchery production is called put and take. That in itself has to be analyzed. Sometimes it costs us more—you put in more than you take out. You seek situations that maximize the take and minimize the put. That is the basis of our present system.

We recognize that basically it has to be from a hatchery source, but in terms of numbers of fish, dollars of good to the public, it is a way of maximizing the productive capability of that vast array.

Now, I would like to qualify in my remarks to this extent. These amendments came to me and my staff late last week. That was the first we had seen them. As recently as noon yesterday, in conversations with your committee staff, I learned of some modifications.

Perhaps with more time, perhaps with more study, we could give some slight different inflection to our testimony. From the way we understand it now, we have to be in opposition, particularly in title II.

The concept of committees, one for each lake, with substantial authority, not just to collect data, or to develop management plans, but to impose those management plans as management goals upon the various States, in my case, specifically Michigan, as a ruling procedure is totally unacceptable.

Mr. LEGGETT. How about the 50-percent licenses for Indians?

Mr. TANNER. You lead me into some of my remarks that I would put toward the last of my testimony.

Mr. LEGGETT. Go ahead and put them any place you want to.

Mr. TANNER. I will put them in now.

We believe there is much that can be done for the Indian fisherman. We would like to be a part of that. We are extremely constrained by the fact that we are in litigation. We did not seek that litigation. The Federal Government chose to sue us on behalf of the Indians, with no prior notification whatsoever. We are in that court, and we will pursue it with a good deal of optimism.

But that does not mean that, particularly with a Federal assist in buy-out, for example, of existing commercial businesses that there is not an opportunity for Indian fishermen to be accommodated, at least to a substantial degree.

So we do not reject that as a concept. We think there are ways that that could be achieved.

I do not have the magic answers, but those are—at least seem to us to be productive areas to be explored, and negotiations should be serious.

I will skip over part of this. We obviously face a long, difficult litigation. However it comes out, there is no quick and ready answer to it. Our basic concern has to be with the resource.

We believe that we have served the collective fishery resources of those portions of the Great Lakes where our responsibility lies, we believe we have served them well. And we believe that we have that capability to continue to do so.

One of our principal problems has been the denial by various Indian groups that the State has the authority to regulate these fisheries. These fisheries, as was recited this morning, have been first destroyed by a combination of overfishing and sea lamprey, and they have been substantially restored. The restoration was not easy. It has taken a lot of work, competence, and money. These

fishery resources, as I have said earlier, have a long way to go to optimum.

Mr. LEGGETT. Do you believe the State ought to manage these resources?

Mr. TANNER. As they have in the past, yes, sir.

Mr. LEGGETT. How long have you managed these resources?

Mr. TANNER. One hundred years.

Mr. LEGGETT. You have a checkered record on that, have you not?

Mr. TANNER. I cannot become responsible for what preceded actually 1964, because prior to that time de facto management, in my opinion, was carried on by the Fish and Wildlife Service, or its predecessor.

Michigan, for the first time, actively had management control at that time, and exercised it ever since, we think, quite well.

Mr. LEGGETT. Did the Michigan Supreme Court say you had management authority over all people in the State taking fish, or not?

Mr. TANNER. It is on the question of whether we have the authority to control the Indians. Under certain circumstances, the Michigan Supreme Court held that we did not.

Mr. LEGGETT. Under commercial circumstances?

Mr. TANNER. Just Indian take.

Mr. LEGGETT. Only for conservation purposes.

Mr. TANNER. And on certain waters.

Mr. LEGGETT. Counsel is now telling me the holding of the case. Would you like to describe that for the record?

Mr. THORNTON. In brief, the legal decision is clouded for a variety of reasons, primarily related to the fact the two cases in the Michigan Supreme Court involved criminal actions, and not civil actions; but based on the litigation in the criminal actions, the Michigan Supreme Court upheld the application of the reservation of fishing rights to a variety of Indian groups in Michigan pursuant to several 19th century treaties.

The State of Michigan did not have the authority to regulate Indians in the same way that they regulate non-Indians. The court did indicate, citing the Washington State cases, that the State of Michigan does have the authority to regulate Indians for conservation purposes under the standards outlined in those previous decisions.

The remaining legal decision that was not decided by the Supreme Court of Michigan was whether in fact Michigan regulations relating to gill netting and other aspects of Indian fishing could be sustained.

One of the reasons the State of Michigan has not attempted to determine that was because of the standard of proof in a criminal case; and those are the pending issues as I understand it, in the civil litigation.

Mr. LEGGETT. As I understand it, the power of the State is different than was determined in the *California Trinity* case, where they determined the State of California had, in fact, no authority to control Indian taking under the statutory rights.

Mr. THORNTON. That is true. The decision is closer, to the *Boldt* decision in Oregon. The court said special rights are reserved for

Indians, but Indians cannot be regulated in the same way non-Indians are regulated. Otherwise, what do those treaties mean?

Mr. LEGGETT. *Boldt* said 50 percent each.

Mr. THORNTON. Rights were reserved in common with other citizens.

In the Michigan case, that precise language does not exist. I believe those rights are shared with non-Indians. The Indian position, as I understand it, is that because of the absence of that language, the *Boldt* 50-percent split would not apply.

I could be corrected here.

Mr. TANNER. Our interpretation is that the Indian position demands a superior right, not an equal right.

Mr. LEGGETT. That is what you are resisting?

Mr. TANNER. That, and we are insisting upon the ability for us to regulate and monitor all take from the fisheries. At the present time we are unable to get realistic statistics from any source as far as the Indian fishery is concerned. We see it expanding in numbers and geographically. We see the Bureau of Indian Affairs issuing more and more licenses.

Let me tell you some things——

Mr. LEGGETT. The Fish and Wildlife Service did admit the taking ought to be regulated here today in Lake Michigan and all the Great Lakes, but they were strangely silent as to who was going to do that regulating under existing court decisions.

Mr. TANNER. The fishery, by high sea standards, is a small one. The gear is sophisticated, and the ability to take from these stocks is excessive. It is very easy to overfish these stocks. Most ocean-bordering States have not been able to do what we did, limit the number of people participating in the commercial fishery. We have been able to assign quotas for areas as to how many fish can be caught.

Second, we have gone a long way in restricting gear in a manner which makes the commercial fishery compatible with the sport fishery. We have not gone as far as we would like on the latter part, because we are still in court.

All of Lake Huron we have been able to eliminate the gear, specifically the gill net, which we have judged to be interfering with our ability to manage the two kinds of fisheries alongside of one another.

Mr. LEGGETT. There is no doubt about the fact that prior to the time the Federal Government invested some $38 million, the lake trout had descended to a take in 1963 of 120,000 pounds and whitefish descended to 178,000 pounds. Whitefish are up to 4.5 million pounds now, which is five or six times higher than its lowest level. Trout is up about four or five times from its lowest level.

Do you have more current statistics than those?

Mr. TANNER. Sure.

Mr. LEGGETT. What was the take of lake trout for the last 3 years?

Mr. TANNER. Which lake?

Mr. LEGGETT. Well, all the Great Lakes.

Mr. SCOTT. Commercially, Mr. Chairman?

Mr. LEGGETT. Total commercial catch.

Mr. SCOTT. Dr. Tanner pointed out, lake trout are not a commercial species in Michigan, and therefore would not normally appear in the statistics you have presented there. We know lake trout are being caught and marketed, and we can only estimate at what the commercial magnitude of that is.

Mr. LEGGETT. I have a chart called appendix 5 from the GAO. I do not have any information for the last 3 years. However that chart was compiled, and however fragile the base, all I am asking, do you have information to bring those charts up to date?

Mr. SCOTT. Not that we can verify, sir.

I would like to, if I may, elaborate on this statistic. Lake trout are illegal for commercial purposes. We know they are taken.

Mr. LEGGETT. I would hope they would be illegal with this small poundage available.

Mr. SCOTT. The fishermen are not reporting them. We are trying to make a case against gill nets. They are not reporting them, either. We cannot give you any good statistics based on reported catch, or lack thereof for the last 3 years. We can only give you an estimate. There is probably in excess of 1 million pounds a year of illegally caught lake trout being marketed.

Sport fishery, where we conduct a census, about 600,000 lake trout are caught in the sport fishery annually. At an average weight of 5 pounds, that is 3 million pounds of lake trout in Lakes Superior, Michigan, and Huron.

In addition to that, there is an Indian catch of lake trout, and again statistics are very difficult to come by, because they do not report them.

Mr. LEGGETT. I was trying to figure out whether or not the $50 million spent by the Federal Government was really responsible for the restoration of the fishery in these lakes.

Mr. TANNER. I would like to respond.

By international treaty, there were two principal chores, to control the fishery and reestablish the lake trout. Those were attempted by the Federal Government. The longstanding research eventually arrived at a solution, a method of killing sea lampreys, an effective method of controlling their numbers. Sea lamprey control is a foundation stone of any fisheries management in the Great Lakes. It is absolutely essential we keep sea lamprey level at a low level. That has to be done every year, and it costs money. Without it, we have nothing.

The second one was to restock the lake trout. That mainly meant hatchery production and distribution. All the lake trout I am aware of that are produced in hatcheries are produced in Federal hatcheries, and have substantially restored the numbers of lake trout.

Now, we can get into a series of questions on whether or not they are self-sustaining, whether or not they are spawning. I will be glad to respond to such questions.

Basically, we have a very large population of lake trout, not as large as we could have, but many times more than we had at the low ebb in the late fifties and early sixties.

We think that the whole concept of the management committee—the advisory committees as a management unit, federally financed, federally staffed, is totally inappropriate and unacceptable.

Some of the other things in title II, we think they go too far. We do not know where a reasonable basis for the quotas proposed in the transition stage for Indian fisheries have arrived at.

We do not believe there is any background to warrant that high percentage.

Mr. LEGGETT. Are you talking about the 50 percent?

Mr. SCOTT. The levels in the transition period of so many fish are extremely high.

Mr. LEGGETT. I see.

Mr. TANNER. We think the transition period is a useful technique. We think that a reasonable quota could be allocated. We simply think those proposed are too high.

The idea of exclusive fishing rights is going to run into the rights of others. As yet it is unestablished what are the riparian rights. Supposing you were a non-Indian engaged in a resort industry, and somebody, by congressional action, comes along and says, "This piece of the Great Lakes in front of you is no longer available to you, but assigned to another group of people," you are going to run into extraordinary difficulty.

Mr. LEGGETT. Does Mr. Ruppe's bill provide for that?

Mr. TANNER. Yes; it does.

I would like to leave some time for Mr. Scott to speak specifically on fishery questions as they relate to capabilities, they relate to regulation, they relate to the history that we have had in fish management with the cooperation of other States, through a different kind of a committee, a fisheries technical committee, that exists in the States which was not referred to this morning, and to in any other way provide you useful information on the status of the Great Lakes fisheries.

I will still, obviously, be pleased to respond to further questions.

Mr. LEGGETT. Mr. Scott?

Mr. SCOTT. I am not certain what task the Director has left me with.

There is a mechanism to resolve difficulties, to coordinate fisheries management, and fisheries research. We have used that forum very successfully in the past 15 to 20 years.

Mr. Fetterolf is here from that Commission to give you further information on it. Sometimes we work directly through the Great Lakes Fishery Commission, sometimes the technical lake committees, which are not the advisory committees Mr. Ruppe's bill is identifying, but technical people from various agencies, including the Fish and Wildlife Service. Sometimes we work between or among States.

A recent example is the management of the chub fishery of Lake Michigan. We did it very successfully. We coordinated our research programs, exchanged services, exchanged fish in many cases, and the idea these States are poorly organized and cannot conduct coordinated work on the Great Lakes is erroneous. It is simply a myth for modern purposes.

Dr. Tanner pointed out we had been extremely successful and, as a matter of fact, the lead agency in the Great Lakes in restoring many of the fish populations. Some of the things we did was to import and introduce the coho salmon, a fishery worth $200 million annually, of value to the citizens of our State.

We have very important recreational fisheries, and we have worked darn hard to get to that point.

The question came up relative to gill nets, and the seeming difference among biologists whether or not gill nets are selective or nonselective. It is true gill nets in some cases can be selective, depending on the size of the mesh, areas or depths, and the species targeted.

By and large, the large mesh gill net, has a four-and-a-half stretch mesh in it, has been the traditional type of net in the Great Lakes for 100 years, for the taking of whitefish and lake trout. These two species exist in the same waters, at essentially the same time throughout the year, and the gill nets catch whitefish and lake trout with equal facility.

Therefore, in that sense, they are not selective. That has been one of the reasons we have been trying to ban them in the Great Lakes. It ties into restoring lake trout.

In 1968 we went to extensive efforts to make our case against gill nets, and we have proved our case. We made well over 300 rides, and observed what was taken in gill nets; and we found that as they were used traditionally, historically, they were nonselective. I do not know how else to put it, Mr. Chairman. That is our position.

There is no difference of opinion among Michigan biologists on that issue. There are, in fact, alternative means to harvest allowable stocks of whitefish and many other species. It does not require nonselective gear like gill nets. That is what we have been trying to lead the other agencies to do in our wake.

As a matter of fact, the State of Indiana has banned large mesh gill nets. The State of Illinois has banned them. Wisconsin regulates them very closely by area and time. Minnesota has banned them, except in a permit fishery.

Contrary to what was said earlier this morning, Ohio does not permit small mesh gill nets for perch. They are not allowed there. Ontario, on the other hand, does. There is a great deal of consensus on gill nets among the Great Lake States.

Mr. LEGGETT. Mr. Bonior?

Mr. BONIOR. Could you go into the whole question of how the Canadians have been dealing with this problem? I assume they have similar problems.

Mr. TANNER. I will be glad to say what I can. Let me start out by clarifying a point which may be necessary.

Contrary to high seas fisheries, there is no intermingling of Canadian and U.S. commercial fishermen. They do not legally fish on our side of the line, and we do not legally fish on their side of the line. And as far as I know, that is universal, and has been for a long, long period of time. It is a different situation than you would sometimes encounter on the coast.

There are many tribal reservations on the Canadian side, particularly in the vicinity of Georgian Bay, and on the northern shore of Lake Superior. Many of these tribal groups do participate in the commecial fisheries of Canada, and they receive some sort of Government assistance.

I hesitate to label it an artificial price of subsidy, but there are various kinds of governmental assistance applied to these groups in their pursuit, and their marketing of their catch.

Beyond that, I really do not think I could go. I am not that knowledgeable about it.

Let me point out something that characterizes the difference between the Canadian approach to fish management as opposed to ours.

They, by contrast to this country, are very sparsely populated. With a good deal of Government effort support they have built an inland fishery resort business—call it a fly-in, or whatever. We brag about 11,000 lakes in Michigan. There are 250,000 lakes in Ontario.

Now, if they turn their Great Lakes waters to a recreational type of fishery, they are in competition with another segment of their society already established. They have generally chosen to have recreational fishing in a secondary role, with commercial fishing in the dominant role as far as their Great Lakes waters are concerned.

We, on the other hand, have found in our land waters intensely occupied, competing with all kinds of uses, and have, in the last 15, 20 years, have gone to the Great Lakes for sport fishing. So these various goals are not—well, they are not 100 percent compatible.

True, the line is an imaginary political line, not a physical line. On the other hand, there are also some physical characteristics. It is extremely deep water. Most of these fishes are generally confined to 100-, 200-foot depths. There is a reason why fish stocks do not stray back and forth substantially. To a degree, they stay in the shore waters.

What I am trying to do is describe the two countries' approach to Upper Great Lakes and Lower Great Lakes, as well, how and why they do it, and express the degree of capability.

Mr. BONIOR. I think that has been very helpful. On page 4 of your statement, you say "take our chances in court, rather than accept a solution as has been presented in these amendments."

Are you prepared to wait out the Federal court decision, and move from that point, or do you have any solutions at this point?

Mr. TANNER. If it comes to a point between this solution and waiting it out, I guess we would choose to wait it out.

Mr. BONIOR. What other alternatives can you put forward?

Mr. TANNER. Let ne say this. I believe that we collectively can and should go farther than we have in accommodating Indian fishery. I believe there is much that government—and it is not confined to Federal Government—can do to assist this. It runs the gamut from buying into a limited licensing situation in Michigan. We have a limited number of licenses.

A license to fish in Michigan is of increasing value, and that is our management goal, to make each commercial fishing enterprise a highly productive, economic unit, rather than fish until the last fish is caught, the attitude that characterizes an unregulated fishery.

We think it is logical to expect Indians need training. They need gear. They need, as I mentioned, a license, and probably some help in marketing. But all of this must be done in the overall fabric of very carefully developed management strategies we believe are already in place.

To deny the State authority, to resist monitoring, to fail to report entries in the face of everything that we know that we learned through bitter experience to promulgate the fisheries the way that they are, and aspire to the high ceiling of productivity that we believe is possible.

Mr. BONIOR. If I were a native Indian whose family has been fishing these waters for decades, I guess I would be concerned with the statement you make, that they need training, and they need other types of so-called modern——

Mr. TANNER. Let me elaborate.

Mr. BONIOR. I wish you would.

Mr. TANNER. One of the difficulties in shifting from a gill net fishery to impounding gear, it takes a good deal of skill. It requires a bigger boat, and investment. To set in the proper manner a trap net in 100 to 200 feet of water, it is a marvel to see done, and it is not something you can go out and throw a net over the side of the boat and expect to fish. That is what I meant by training.

It could go farther than that, preparation of fish, designing them toward certain markets.

Mr. BONIOR. Are there disscussions between the Department, the State, and the Indian tribes concerned?

Mr. TANNER. No; there are not discussions.

Mr. BONIOR. Were there discussions?

Mr. TANNER. There were.

Mr. BONIOR. When were they broken off?

Mr. TANNER. Prior to my time, but basically I would not exaggerate those discussions, I think those discussions probably left a lot to be desired.

Nevertheless, discussions, at least between the Bay Mills community and our Department were underway.

Mr. BONIOR. Now?

Mr. TANNER. No; prior to the Federal suit, which landed on us as a surprise, and which disrupted any negotiations that were there. And more important than that, has prevented any renewal of negotiations.

We did not seek that lawsuit. We were astounded they would throw us into Federal court without notification.

Mr. BONIOR. I have no further questions.

Thank you.

Mr. LEGGETT. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

From your testimony, I gather the one thing you do like in Mr. Ruppe's bill is the money.

Mr. TANNER. I think that is a fair statement.

Mr. FORSYTHE. That is about as far as your support goes.

In other words, it is your view that through State management, and through the Great Lakes Fishery Commission, you should gain the right to total management of the resources, and that anything short of total management is not going to work.

Mr. TANNER. That is essentially my statement, sir.

Mr. FORSYTHE. One thing, there seems to be considerable haziness as to whether there was anything as far as a master plan for the Great Lakes.

Do you think that that is as void as it seemed to come from Mr. Greenwalt?

Mr. TANNER. I would like to speak in an introductory way to that, and then turn it over to Mr. Scott.

The lake trout rehabilitation is, in a way, a dilemma. We have suceeded in managing in many areas, particularly Lake Michigan and Huron, lake trout stocks to a point where we can put mature fish over the traditional spawning grounds, observe the fish spawning, collect the eggs they spawn, bring them into the hatchery and hatch the eggs.

We have searched the lake for a number of years now, and we do not find any reproduction occurring naturally. As you begin to talk about goals, we are soon facing a decision of whether or not we are content to go with a hatchery product, and be completely dependent, at whatever level we establish, on hatchery dollars, if you will, or whether we will continue to pursue the goal of a self-sustaining lake trout species, lake trout stock, and a management procedure designed to do that.

It will make quite a difference how we manage when we decide whether or not to go beyond the present level.

Realistically we cannot go beyond the present level without additional hatchery levels.

Mr. FORSYTHE. Nationally, so far as trout are concerned we are generally on a put and take operation.

Mr. TANNER. I am aware of that. We are managing on the basis of natural reproduction now. We are sure Mr. Greenwalt is correct, there is a significant natural reproduction in Lake Superior. We are unable to explain why there is none in Lake Michigan and Lake Huron.

Mr. FORSYTHE. Mr. Scott.

Mr. SCOTT. If I may follow up on that one, perhaps there is a problem with put and take type management. As a matter of fact, we in Michigan got out of that type of management well over 10 years ago.

We are, however, managing hatchery fish on a put, grow and take basis, which I think is more accurate. Our rule of thumb is we get more pounds back than we plant. Unless we can justify the program on that basis, the fish will not be planted. So far it has worked very well for us.

In dollar terms, generalizing on the various species we raise in the hatcheries, for every dollar invested we get $50 to $20 generated in economic returns. So that is how we manage that situation.

We are going as far as we can, I think, at this point in trying to reestablish self-sustaining populations of lake trout in the Great Lakes. We stock them on former reefs. We are researching them to find the factors limiting natural reproduction, and frankly, in the past 5 or 6 years we have no answer. That does not mean it should not be a goal.

We have to know how much money we are willing to invest in that activity.

The Canadians want natural self-sustaining populations. I could justify on simply a put, grow, and take situation, dollars invested and dollar return.

As far as a management plan goes, Mr. Forsythe, there are various management plans written up by the various agencies. I think most importantly, however, there is a commonality of thought among fisheries administrators and managers in the Great Lakes. That, in essence, is a plan.

We work, as I mentioned earlier, through the Great Lakes Fishery Commission. There is a commonality having to do with limiting participation in commercial fishing. Most agencies have gone that route to some extent. Most agencies have gone to gear restrictions in one form or another. Most agencies are involved now in setting quotas and allowable harvest. Most agencies are on a hatchery expansion program, and we have discussed these things among ourselves.

There is a commonality in species, areas planted, planting rates, and those sorts of considerations. All agencies are aggressively pursuing a pollution control program. Fisheries biologists are not directly involved, but impact on it. All agencies are, in one way or another, protecting or enhancing the aquatic habitat.

So if perhaps that is not set down in a written plan in detail any place, but it is there and it is working. The Great Lakes Fishery Commission, as noted in Docket Tanner's testimony, is now considering the establishment of a fishery management plan for the Great Lakes. Ontario already has one.

Mr. FORSYTHE. One other question. Going back to another area discussed with Mr. Greenwalt, these two bays, Whitefish Bay and Keweenaw Bay, are apparently where the basic problems are. Are those stocks isolated in the bays—can they be managed—as independent stocks.

Mr. SCOTT. There is some intermixing, but I do not think it is to the extent they cannot be considered discreet stocks and managed appropriately. There is some swimming in and swimming out. Perhaps it may balance.

Mr. FORSYTHE. I forgot which one stated that you suspected there is as much as one-quarter of the lake trout that are commercially fished, and not reported. Where are they being taken?

Mr. SCOTT. All over.

Mr. FORSYTHE. Not only by Indians?

Mr. SCOTT. Not only by Indians.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. Maybe those PCB's are making all those fishermen forgetful.

Mr. Ruppe?

Mr. RUPPE. Thank you very much.

Mr. Tanner, I gather you really oppose the committee arrangement that I have established in the legislation I have introduced.

Is it because the committee established under the Great Lakes Fishery Commission are technical and the committees I have identified get into the management function of the fishery?

These committees do exist at the present time, and I presume you oppose one and are silent about the other for specific reasons?

Mr. TANNER. The Technical Committee is more acceptable then the committee you have proposed. The real objection is their authority that exceeds the collection and compilation of data.

Mr. RUPPE. What type of authorities do the committees have now that have been or are legally capable of being established by the Great Lakes Fishery Commission?

Mr. TANNER. The existing committees, and perhaps Mr. Scott can better answer than I because I have not served on them for 10 years now, but they provide for a coordination of State management. For example, let us take Lake Michigan.

As I recall, Michigan has got about 61 percent of Lake Michigan, and Wisconsin 30, Illinois 6, Indiana maybe 2. Nevertheless, we come together to see where we are mutually supporting and potentially in conflict.

The people that do that are the biologists, are the technologists that are capable of understanding and delivering answers to this kind of fishery. It is not a generalized committee composed of citizens representing various groups, but people working day to day on the problems. They come forward collectively, which I think is most apt to be the kind of management that—I guess I had better term them as suggestions.

Mr. RUPPE. Do they have management authority?

Mr. TANNER. They do not.

Mr. RUPPE. They are strictly advisory or recommending in character?

Mr. TANNER. Right.

Mr. RUPPE. You mentioned that you were very much opposed to the Indian people having exclusive authority over any area in terms of management of fishery.

As I recall, the legislation I introduced would set aside 10 percent of the catch for noncommercial purposes on a nondiscriminatory basis.

Would that not give the sport fishermen both within and without the Indian community, a reasonable opportunity to fish within Whitefish Bay, Keweenaw Bay or other areas within or considered to be within the Indian reservation waters?

Mr. TANNER. Two answers.

First, any time that there is a determination—and I will assume by that I mean a legal determination—that there are, in fact, waters where Indians have a superior right to the fishery stocks available, we will recognize those rights and we will function in any appropriate manner, whatever is specified.

Second——

Mr. RUPPE. Short of that, you do not want to give any authority away?

Mr. TANNER. Right.

Second, I guess it would come down to the question of numbers. We do not think 10 percent is realistic.

Mr. RUPPE. Do you have another number?

Mr. TANNER. Forty, fifty percent.

One thing I should have prefaced all my remarks with, I have a relatively new set of amendments to consider. I do not act independently. I am responsible to a commission and, secondly, I am responsible to the Michigan public, and I am constrained in my remarks by acknowledging that we have not had time to touch any of those bases.

Mr. RUPPE. You did indicate that while you were not particularly sanguine about the outcome of the case, you would, in all honesty, prefer the court decision over the legislation, is that correct?

Mr. TANNER. Over the present legislation.

Mr. RUPPE. You did indicate whatever Indian rights were established by law, the State is fully prepared and competent for accommodating Indian rights in the fisheries. In other words, win, lose or draw, you will accommodate the court's decision?

Mr. TANNER. Obviously we will do as the court dictates.

Mr. RUPPE. Well, on page 2 of your suggested recommendations, you do speak of the Indian management rights in Keweenaw Bay and Bay Mills or Whitefish Bay. You do so on the premise or on the condition that the Indians develop a conservation code, is that correct?

Mr. TANNER. Mr. Scott wrote that.

Mr. SCOTT. Yes, sir, that is true.

Mr. RUPPE. On page 3, you mention that this conservation code cannot come into place until it is approved by the State.

Mr. SCOTT. Yes, sir.

Mr. RUPPE. In effect, the Indians can only manage their fishery by the approval of the State, and if they do not manage as the State suggests, they would not have authority whatsoever, but in any event they would have lesser authority than they probably have today.

Mr. SCOTT. Mr. Ruppe, I do not see it quite that way. I see it that the State has approval of the management plan or whatever. I think there are good and valid reasons for that.

Mr. RUPPE. I am not arguing the reasons. Right now, the Indian community can fish Whitefish Bay and Keweenaw Bay if they choose. Under the suggestion you would have here, their ability to fish those areas would be contingent upon conservation codes approved by the State, is that not correct?

Mr. SCOTT. That is correct.

Getting away from fishing for a moment, a management plan implies many things. If the Indians were to choose to develop a code that authorizes the planting of grass carp, or some other exotic species, we want to have a voice in it.

Mr. RUPPE. On the other hand, you can play that game both ways. You can say frankly we would not approve the code until such time you agree to take fish that are 4 feet wide and 9 feet tall. Both sides are in a position to be perfectly silly if they so choose.

Once the State has a right to veto a plan, a State can set any conditions thereto they choose.

I am not suggesting you would. You have done a splendid job of managing the fishery.

Mr. SCOTT. These were put forth as suggestions. If you want to tie a conservation ethic to the wording here, that is fine.

Mr. RUPPE. I think, quite frankly, the difficulty is that the courts would be inclined to interpret, and the Indians would be inclined to suggest that language is probably a taking of the rights they have today.

The last thing, as you have indicated on pages 6 and 7, you would like to have language adopted which says all of the State of

Michigan waters of the Great Lakes shall be considered as having been "required for settlement."

In effect, does that not fly in the face of the LeBlanc case where the Michigan Supreme Court ruled otherwise?

Mr. SCOTT. It does indeed.

Mr. RUPPE. Is that not an abrogation of the treaty? You would almost have to have the concurrence of the Indian community or a feeling they were getting a reasonable deal, I would think, or we are all in trouble.

The difficulty is, it seems to me—and I can appreciate it—as Dr. Tanner said, the State can take the suit and live with the results, as indeed I guess we all have to. The State can push their own legislation or amendments they have suggested. The effect, however would be a taking and abrogation of the treaty. I think the Congress would not pass the amendments on that basis.

The third thing, we can negotiate akin to the bill I introduced. Essentially the bills that the State has suggested in the past, putting all fishing under State authority, really is either a taking or abrogation of previous treaty arrangements, or both. And Congress would not pass those bills.

We are at a dead head. The Congress, in view of the human rights discussions we have worldwide, would be most reluctant to intervene with rights of minorities within these United States. I just do not see the Congress in this or the next or the session thereafter passing legislation that could be looked at as taking, as abrogation.

Mr. TANNER. In response, our position is that whatever treaty rights there may be or may not be have not been established. That is the question at hand. Until that is established in some manner, we are not prepared to concede those treaty rights, however they are described, do exist.

In regards to our draft, the question of declaring the lands to be settled, I believe the same language occurs in your bill.

Mr. RUPPE. My bill contains participation by Indians actively with rights on the councils that the State is not prepared to give them.

Mr. TANNER. I do not believe we said we were not prepared to give them a voice in mangement. Since I rejected the whole committee—basically, I guess I sound like a technocrat. There are many groups that give us advice. When the chips are down, the biologists, the technologists who are seeking to maximize the conservation ethic and manage the resource in light of that ethic has to rule.

Mr. RUPPE. If the Indians do not have a voice, the State would be inclined to manage one way. If I were a member of the Indian community or a lawyer for the Indian community, I would be inclined to be concerned about it since the Indian interest in that fishery is different.

Again I do not blame them either.

Mr. TANNER. In answer to that question, what I attempted in a rather foggy way perhaps to outline, it seems to me, and there is no magic answer, but it seems to me the Indian interest is principally a commercial one. We are attempting to manage our fisheries

so we have a compatible allocation between sport and commercial harvests.

We believe that, generally, if not exclusively, the role that could be assigned in the harvest of fish to the Indian groups lies on the commercial half of the formula.

We suggested that there are ways over a transition period that more can be done to accommodate Indian participation in Michigan's commercial fishery. It has to be done in the overall context of the management philosophy of the State.

Mr. RUPPE. Thank you very much.

Mr. LEGGETT. Mr. Mannina.

Mr. MANNINA. Just a few quick questions, Mr. Chairman.

Mr. Tanner, with respect to Whitefish Bay and Keweenaw Bay, could you tell us what the MSY for whitefish in Whitefish Bay is?

Mr. TANNER. About 300,000. We express our statistics in pounds.

Mr. MANNINA. Do you have an estimate for the OY?

Mr. SCOTT. 200,000.

Mr. MANNINA. Do you have data the Indian catch of whitefish?

Mr. SCOTT. In Whitefish Bay?

Mr. MANNINA. Yes, sir.

Mr. SCOTT. Nothing that I can rely on.

Mr. MANNINA. What about the non-Indian commercial catch?

Mr. SCOTT. 200,000 pounds a year the last 10, 20 years.

Mr. MANNINA. Recreational catch?

Mr. SCOTT. Virtually nothing.

Mr. TANNER. It is really not a recreational species.

Mr. LEGGETT. What would the range of the Indian take be? Obviously, zero to 3,000 but can you sharpen that up a bit?

Mr. TANNER. Our difficulty is we are not supplied with data by the Indians. They deny our ability to regulate and deny access to statistics and presence on the boats.

Mr. LEGGETT. You had statistics before, did you not? Are there more boats out there than before?

Mr. TANNER. The best evidence we have this morning was cited by Mr. Greenwalt, and we have the same kind of evidence, the numbers of fish present have declined drastically in the last 5 years. We think that is an indication of overharvest.

The other indication, the activities of the Indian groups have now moved out of Whitefish Bay into other areas. We think they find it unproductive as well.

Mr. MANNINA. In January of this year we requested the same information. What you submitted for the record was information on something called the commercially sustainable yield, which gave us neither maximum sustainable yield or optimum yield. It was provided for Whitefish Bay and Keweenaw Bay by species.

However, what catch was supplied for Indians and other fishermen, was provided by lake and not by species thus preventing us from making a comparison. Furthermore, there were several instances where you noted that data was not available.

Could I renew the request that you provide the data I just requested for whitefish for each fishery in which Indians participate.

Also, during the last hearing, you indicated you had an analysis of what your view was as to the deficiencies of Indian conservation

codes that you would submit. We have not received that analysis and would be grateful if you could supply that.

Mr. SCOTT. Sorry. I thought we had submitted those.

Mr. MANNINA. No problem at all.

During the last hearing we raised the issue if you were acting on the regulations which authorize the Secretary, upon request of the Governor, to regulate Indian fishing for conservation purposes.

Have you further investigated that?

Mr. TANNER. To this extent, we looked at that and made the decision that were we to go that route, that it would be very quickly labeled discriminatory since we have not been completely successful in eliminating the gill net from the non-Indian fishery. We are subject to another court procedure, basically a contest between ourselves and non-Indian commercial fishermen, although there are some Indians involved. We felt that as quickly as we attempted to go that route on the Indian fishery, it would be blatantly discriminatory.

Mr. MANNINA. However, if there is a present threat to the resource which I gather is your position, would it not be in the best interest of the resource to pursue any opportunity to protect that resource?

Mr. SCOTT. In the case of Whitefish Bay, it is after the fact. The fish are gone.

Mr. MANNINA. For lake trout. I assume there are whitefish in Whitefish Bay, and also in Keweenaw Bay.

Mr. SCOTT. Lake trout in Whitefish Bay is a swim-in proposition. Our indications are that production of whitefish is declining rapidly.

I think Mr. Tanner has stated our case. Until we can get an order, an opinion out of our current litigation, that regulation would be highly discriminatory.

Mr. MANNINA. Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, gentlemen.

In the event that you determine that the subcommittee can be helpful in your management problems, I would appreciate your being in touch with us.

Next we will have a panel comprised of Mr. Daniel Green, Mr. Arthur LeBlanc, Mr. Joseph Preloznik, and Mr. Arthur Duhamel, all representing Indian groups.

STATEMENTS OF PANEL CONSISTING OF DANIEL GREEN, ATTORNEY, SAULT-STE. MARIE TRIBE OF CHIPPEWA INDIANS; ARTHUR L. LEBLANC, TRIBAL CHAIRMAN, BAY MILLS INDIAN COMMUNITY; JOSEPH F. PRELOZNIK, ATTORNEY FOR RED CLIFF AND BAD RIVER BANDS OF CHIPPEWA INDIANS; AND ARTHUR DUHAMEL, SPOKESMAN FOR THE LEELANAU INDIANS

Mr. LEGGETT. Please give me your names and what Indian tribes you represent.

Mr. DUHAMEL. I am Arthur Duhamel. I am representing, erroneously in this case, representing the position of the Grand Traverse Band of Ottawa/Chippewa Indians.

Mr. LEGGETT. Counsel does not have that on my list here.

Mr. THORNTON. He is the representative of the Leelanau Indians, Inc.

Mr. LEGGETT. How do you spell your last name?

Mr. DUHAMEL. D-u-h-a-m-e-l.

Mr. LEGGETT. Is that your last or first name?

Mr. DUHAMEL. Last. Arthur is my first name.

Mr. LEGGETT. Your position with that particular tribe is what?

Mr. DUHAMEL. Well, presently for these purposes, I am their spokesman.

Mr. LEGGETT. You are a member of the tribe?

Mr. DUHAMEL. Exactly.

Mr. LEGGETT. Next gentleman?

Mr. LEBLANC. For the matter of introduction, I am Arthur LeBlanc, tribal chief of the Bay Mills Indian Community.

Mr. LEGGETT. Next gentleman?

Mr. Preloznik. Joe Preloznik. I am an attorney and represent the Red Cliff Band of Lake Superior and the Bad River Band of Chippewas. Mr. Gordon was to give a presentation for the Red Cliff Band but as I indicated earlier, he had to leave. Mr. Bigboy, chairperson of the Bad River Band, also left to take the 1:30 flight.

Mr. LEGGETT. Would you give me the spelling of your last name?

Mr. PRELOZNIK. P-r-e-l-o-z-n-i-k.

Mr. LEGGETT. Next gentleman?

Mr. Green. Daniel Green, tribal attorney, for the Sault-Ste. Marie Tribe of Chippewa Indians, appearing instead of Mr. Lumsden who is unable to be present today.

Mr. LEGGETT. I suppose all you folks support this bill?

Mr. DUHAMEL. I think you will find out in a moment.

Mr. LEGGETT. You may proceed in any order you wish.

Mr. LEBLANC. I have a prepared statement.

Mr. LEGGETT. All of your statements will appear as though they have been read.

[The following were received for the record:]

STATEMENT OF ARTHUR L. LEBLANC

In addressing the honorable members of this subcommittee, I am speaking for the members of the Bay Mills Indian Community, whose ancestors negotiated and signed a treaty with the United States which is the actual subject of this hearing—the treaty of March 28, 1836. I am Arthur LeBlanc, and I am the chairman of the Bay Mills Indian community.

Six months ago, I addressed this Subcommittee at its hearing in Petoskey, Michigan. I spoke at some length to explain why Congressional action was neither necessary nor appropriate to resolve the continuing litigation between the Bay Mills Indian community and the State of Michigan concerning the present-day extent of the right to fish guaranteed by the treaty of 1836. My remarks then are the preface and background for my statement today.

The prosisions of H.R. 12531, as I understand them, are unnecessary, for there already exists under present law the authority and means to prepare a comprehensive report concerning the conservation and management of the Great Lakes fisheries, to finance additional fish hatcheries, and to encourage with financial incentives the undertaking of fish monitoring programs by Great Lakes States.

However, these laudable and unobjectionable purposes are not the real purpose of the proposed legislation, as even a cursory analysis will reveal. The only new element in H.R. 12531 is its references to the existence of Indian treaty fishing. The references are few in number, but crucial to the Bill and its proposed amendments, which were described by its sponsor upon the bill's introduction on May third of this year. Those references imply that the very existence of an Indian fishery guaranteed by treaty is (1) devastating to the fishery as a whole, and (2) requires intensive

34-367 O - 78 - 11

monitoring by the States, remedial plants of fish, and regulation other than by the tribal conservation committees.

These implications of the Bill are not based upon prior testimony to this Subcommittee in January, for few facts, but much opinion, were provided then. Nor are they based upon an intensive study of the fishery by any agency or entity, public or private, for such a study is the stated purpose of this Bill. Indian fishing under treaty has been tried in the court of public opinion, and its verdict is that Indian fishing is guilty of impairing the resource. The sentence to be imposed is abrogration of the treaty under which Indian people fish.

I have seen the discussion draft of the proposed amendments to H.R. 12531. That draft imposes the sentence of abrogation to which I refer through its proposed Michigan Indian Fishing Rights Act of 1978. Whatever inducements are offered through that proposal or any other, the opposition of the Bay Mills Indian community to its passage will remain. I am certain that our opposition is expected, but I would like to reacquaint you with the situation in Michigan under present law. It should then be clear to you why congressional action—even if all the assumptions of H.R. 12531 as to the evil presented by Indian treaty fishing were even half correct—is simply not necessary.

The Michigan Supreme Court held in *People* v *A. B. LeBlanc* that Indian fishing under the treaty of March 28, 1836, is subject to regulation by the State of Michigan when such regulation is necessary to conserve a fish species and the conservation objective cannot be achieved by regulation of the non-Indian fishery alone, and such regulation does not discriminate against Indian treaty fishermen. That decision was not appealed by either side and is the law of the State of Michigan. That right of the State to regulate Indian treaty fishing has not been enjoined or altered by the Federal District Court for the Western District of Michigan, before which the case of *United States* v *State of Michigan* not sits. Any conservation threat to the fishery in any of the waters adjoining land ceded by the treaty of 1836 can be prevented by the State through the exercise of its regulatory authority confirmed by the Michigan Supreme Court.

There exists yet another mechanism by which the State of Michigan can prevent any possible threat to the fisheries in its waters by Indian treaty fishing. That mechanism is provided by part 256 of title 25 of the Code of Federal Regulations. In essence, that chapter allows the Governor of a State to request the Secretary of the Interior to impose regulations upon the fishing of treaty fishermen—both on and off reservations—if necessary to protect the fishery resource from overharvest. The only portion of that chapter now in effect, upon the request of the State of Michigan, is the provision of identification cards by the Secretary to treaty fishermen.

It should be evident that any concern that the State of Michigan now has for the future of its fishery can be met by action of the State itself through the implementation of the legal avenues which currently exist. Any State protestation that such avenues are inadequate to deal with Indian treaty fishing are premature, for they have never been utilized by the State up to this point. This Subcommittee should therefore view with scepticism any request for another remedy to be provided by the Congress of the United States.

This subcommittee should further refer the provisions of H.R. 12531, if they should be amended as indicated in the discussion draft, to the Appropriations Committee and the Interior and Insular Affairs Committee of the House. These amendments do more than provide for Great Lakes Advisory Committees with the power to promulgate fishery management plans; they abrogate the off-reservation treaty rights of all Great Lakes tribes by implication and they abogate the treaty of March 28, 1836, explicitly. Such action must be reviewed by the committee which has been charged by the House with responsibility for review and approval of all proposed legislation affecting the Indian tribes which are the wards of the United States and by the committee which has been charged by the House with responsibility for review and approval of all legislation which will cause the Congress to expend public moneys. I can promise you, the expense of abrogation of treaty rights will be astronomical.

It cannot be emphasized too strongly that the Bill, as proposed and as to be amended, completely subverts the judicial process. At the last hearing of this subcommittee in Petoskey, trial in *United States* v *State of Michigan* was scheduled to begin on February 27, 1978. I emphasized then the inappropriateness of Congressional intervention in a matter which was already under the full and careful consideration of a coequal branch of the Government—the Federal judiciary. I emphasize that point again today. Trial was interrupted by the illness of the presiding judge and has not yet resumed. That fact does not, however, provide justification to the Congress to substitute its own determination as to the proper

resolution of litigation for that of the court. When that lawsuit was instituted, the United States was the only plaintiff, acting in its trustee capacity for the Bay Mills Indian community, in alleging that the State of Michigan had acted so as to deprive the community of the ability to exercise the right to fish under the Treaty of March 28, 1836. Now, the United States is being asked to completely reverse its position and to act to abrogate the very treaty upon which it once filed suit. That about face is a breach of the trust upon which the Bay Mills Indian community has relied for 5 years of litigation. It cannot be justified.

When all the rhetoric and high-sounding phrases are ignored, the Bill and its proposed amendments is nothing more nor less than a artfully fashioned attempt to rid Great Lakes States, and the State of Michigan in particular, of having to concern themselves with developing reasonable and workable solutions with the Indian treaty tribes within their boundaries, by the drastic act of terminating the treaties upon which a culture and economy have been based for centuries.

Many horrible acts were committed in the past by well-meaning whites which were supposed to benefit Indian people. Passage of the proposed solution to the "conflicts which exist between the State of Michigan and certain Treaty Indians of Michigan relative to fishing rights in Michigan water of the Great Lakes" may be motivated with the best of intentions, but it will destroy our culture and further impoverish our people. We do not intend that such a price for a peaceful resolution of the "conflict" will be paid by us. You have no right to even consider asking us to pay it. In the words of the United States Supreme Court, a treaty between the United States and an Indian tribe is the "solemn word" of the Nation. We demand that the solemn word of the Nation be kept, and that the treaty of March 28, 1836 be as much honored by the Congress of the United States as it is by us.

STATEMENT OF ARTHUR DUHAMEL FOR THE LEELANAU INDIANS

Gentlemen, it is the position of the Indian people that I represent here today that—first and foremost . . .

H.R. 12531 seeks a political solution to an entirely legal problem. We have faith and confidence in the higher courts of the nation to arrive at a rational conclusion with respect to our petitions for recognition of a basic Indian right and therefore we are entirely in opposition to legislation which seeks to circumvent the great promise that only the United States can fulfill. If the United States will not, or by devious political legislation, cannot—fulfill its fudiciary trust relationship then this, to us, means the very end of a once magnificient group of people.

I quote from the Position paper submitted by the National Congress of American Indians to the subcommittee hearing held at Petoskey, Michigan, January 13, 1978:

"Any legislative action on this issue at this time is not only inappropriate but is again an attempt to circumvent sound judicial decisions. In fact, such legislative action could possibly lead to legal suits against the government for breach of the fiduciary trust relationship. Those who would support legislation which would subject tribes to state regulations are desperately attempting to force Indian people to give up their last protections of a distinct culture which have often provided them with the bare essentials of life. When the white man took land from the Indians, Native Americans were only left with treaties. The proponents of such anti-Indian action would like to see the American Indian disappear altogether, which is hardly a reasonable solution to conflicts in Indian Affairs."

We concur with the above.

In my own testimony at the same hearing I alluded to the apprehension Chief Seattle felt in 1855 that "the white men are not speaking straight." We are convinced that this proposed legislation still does not "speak straight." We are further convinced that only the proper judicial tribunals can speak straight and we therefore reiterate our belief that an entirely legal controversy must and can be resolved in the Federal District Court for the Western District in Grand Rapids, Michigan in due time. I urge everyone concerned to await the decision in this case.

Now then, we further believe that whenever you legislate against someone—you are actually legislating for someone. As I perceive it, Mr. Ruppe's constituency does not seem to include the Indian people. In an article entitled "Racism and Fishing Rights," authored by John V. Moore, and published in The Nation on September 17, 1977, I quote directly from the opening paragraph:

"The Native peoples of Michigan, with almost no allies in their home state are apparently winning their legal struggle for fishing rights against the combined forces of the Michigan United Conservation Clubs, the state's Department of Natural Resources, the American Fishing Tackle Manufacturer's Association, and the Great Lakes Charter Boat Association. Whether or not they will win in fact remains to be seen. Even the direct participants in the struggle, amidst the literal gunshots,

the splintering of canoes, the ripped nets, and the nightly armed guerrilla (white) raids on Little Traverse Bay, seem not to preceive very clearly the long-term consequences of decisions now dragging through State and Federal Courts in an atmosphere of nationwide controversy."

Now according to Mr. Ruppe's introduction to H.R. 12531, as published in the Congressional Record, dated May 3rd, 1978, this legislation "is also the first step in the resolution of a potentially explosive problem." Just what is this "potentially explosive problem?" We view it as merely the reaction of those groups and agencies who form the greater portion of Mr. Ruppe's constituency, and the only solution to the acts of vandalism and vigilante goonism by non-Indians is the proper enforcement of already existing criminal and civil laws. This criminality has been practiced on Indian fishermen because we dare to catch a few fish on which to subsist and sell. The exclusive allocation of fish by the Michigan DNR to white folks is entirely discriminatory and contrary to court decisions. H.R. 12531 is premature. *United States* v *Michigan* will ultimately be the controlling factor in determining the extent of Indian fishing rights. There is a built-in legal safeguard to possible fish depletion in the language of *People* v *LeBlanc:* The State may regulate Indian fishing, but only if:

(a) it is necessary for the preservation of the fish protected by the regulation;

(b) the application of the regulation to the Indians holding the off-reservation fishing right is necessary for the preservation of the fish protected;

(c) and the regulation does not discriminate against the Treaty Indians.

Nor has there been any showing that Indian regulation of treaty fishing is inadequate. The United States Supreme Court has also recognized the inherent sovereignty of Indian tribes. This Bill attacks that sovereignty by depriving the tribes the right to regulate their own people and the fishing operations of tribal members. The Indian tribes can effectively maintain stocks of lake trout with the aid and cooperation of the Department of Interior, as already has been done in Whitefish Bay.

Dealing with some specific provisions mentioned in the proposed amendments, I wish to conclude, generally that:

1. Historically, we already have been forcibly removed, pushed and packed into the small area called Peshawbestown. The intent of H.R. 12531 is little else but the continuation of that policy, to deny us the right to fish in the ceded area by creating other, smaller fishing reserves removed from the area in which we live.

2. Even if H.R. 12531 becomes law, there is no provision for the Grand Traverse Band to fish their traditional area—a concession to local, powerful sporting interests.

3. The "potentially explosive problem" Mr. Ruppe speaks of can be resolved through existing laws by vigorous prosecutions of non-Indian vigilantes against treaty fishermen.

4. Sec. 206. *Settlement of Lands Under Treaty* is totally offensive to the Indian tribes, as this section would, in effect abrogate the Treaty of 1836.

5. The state would be empowered to be the regulatory agency over Indian fishing, contrary to Supreme Court decisions.

6. The "Duhamel decision" which prohibited me, a treaty fisherman, from fishing in Grand Traverse Bay because of an alleged danger of depletion of the fishery, thereby implicitly meaning, that no commercial fishing should be allowed, Indian or non-Indian, didn't persuade the DNR from conferring a special permit to a non-Indian commerical fishing venture to catch 50,000 pounds of fish this year, within a hundred yards from the shoreline of Peshawbestown, in Grand Traverse Bay.

7. If treaties are modified by legislation enabling the State to license, regulate and assign fishing areas to Treaty Indians, the danger exists that the ultimate result would be to continue the oppressive practices the DNR has already directed toward the Indian tribes.

8. And finally, H.R. 12531 creates another vast bureaucracy, with only a small minority included in its structure.

Gentlemen, through me, the Grand Traverse Band of Ottawa/Chippewa Indians have spoken.

Statement of Daniel F. Gordon*

The Red Cliff tribe occupies a reservation of the northern tip of the Bayfield Peninsula in Wisconsin and enjoys an extensive coastline on Lake Superior and the

* Made by Daniel F. Gordon, an enrolled member of the Red Cliff Band of Lake Superior Chippewa Indians presently serving as Tribal Manager, on behalf of Mr. Richard Gurnoe, Tribal Chairman. This statement has also been adopted by Mr. Eugene Bigboy, Tribal Chairman, Bad River Band of Lake Superior Chippewa Indians, who was scheduled to speak at the July 12th hearing but could not do so.

waters of Chequamegon Bay. For generation, fishing in these water has provided the life blood of the tribe. In 1972, our treaty-protected interests in these waters were traditionally recognized in the *State* v *Gurnoe* decision.

I am appearing in response to the proposed amendments to the Great Lakes Fisheries Act of 1956, and specifically to title I of H.R. 12531. As to title II, it purports to deal solely with matters affecting the State of Michigan and the Indian tribes of that State, and I shall not comment on provisions of that act, since the affected tribes are represented here today. However, to the extent that a similar proposal might be contemplated with respect to matters affecting the State of Wisconsin, I would certainly reserve the right to comment further on the substance of title II.

I should say something first about the first time frame in which this matter, which affects the fundamental economy and life blood of the Red Cliff tribe, has been presented to the tribe. On July 5, the tribe received a copy of a text headed "H.R. 12531", consisting of 9 pages. The text contains virtually no reference to Indian fishing or to Indian tribes. Near the close of business on Friday, July 7, another text was delivered to the tribal office, consisting of 27 pages of text and including both titles I and II of the full bill which is before this subcommittee today.

I hope that the committee members will understand that, given the limited time available to study the complicated apparatus presented in this bill, the tribe cannot be prepared with a full or adequate comment. I certainly hope that the subcommittee will see fit to hold further hearings to insure the affected tribes, and all other interested parties, a full chance to respond intelligently to a complicated legislative package which would be a major impact on the livelihood, way of life and treaty-protected rights of Indian people. At the least I would hope that the subcommittee will grant additional time to the tribe to submit a detailed written statement for the record.

With that qualification aside, I should like to address a few of the major concerns that I have gleaned from a brief reading of the measure:

(1) SCOPE

The preamble of section 15 (title I) states that purpose of the section is to provide for the resolution of conflicts between the State of Michigan and "certain treaty Indians of Michigan", thus suggesting that the scope of what follows will be limited to Michigan concerns. Yet there is nothing in the subsequent text, creating and prescribing the functions of various Great Lakes committees, which limits the jurisdiction of these bodies to Michigan concerns. If the scope of title I were expressly limited, to make clear that powers of these committees extended only to matters affecting Michigan and the Michigan Indians, we should still wish to register strong objection to various provisions, because of the precedent such legislation might present. But we would defer to the views to the affected Indian tribes of Michigan, since it would be their rights, and their rights alone which would be directly affected.

As it is, the provisions of title I would appear to empower the relevant committees to take jurisdiction and make factual determinations over all fishing matters in the lake, affecting not only Michigan concerns but those of Wisconsin and Minnesota Indians as well. Since there is nothing in the stated purpose of the act which would justify this, at the least this very important question deserves verification.

(2) THE SUBSTITUTION OF A NEW FEDERAL BUREAUCRACY FOR FEDERAL COURTS

Beginning with section 15 (E)(1) title I would empower the relevant lake committees to identify and determine the extent of Indian reserved waters, the scope of fisheries located in those waters, and the consequence of state power over the management of those fisheries. Up to now these have been matters confided to the jurisdiction of the Federal courts. The Framers of the Constitution privided life time tenure and guaranteed compensation to Federal judges to insure that the Federal courts would serve as neutral forums for the resolution of precisely the kind of controversial and politically sensitive issues which are involved when Indian treaty rights are at stake. To suggest that because of controversy aroused in certain localities, fundamental issues of rights must be taken away from the Federal courts and confided to that of Federal agencies, freed of the rules of evidence and political impartiality, would seem to fly in the face of the fundamental principles of article III of the Constitution. Similar proposals were made when antidesegregation agitation was at its' height, namely, to strip the Federal courts of jurisdiction over certain kings of desegregation suits. Wisely, the Congress rejected such proposals, (and the challenge to the separation of powers they would have presented). In our opinion, the proposed transfer of power to a new Federal bureaucracy, whose factual

determination affecting Indian rights will be subject only to the narrow judicial review of administrative decision, would have the same affect as the earlier proposals and deserves the same ultimate decisions.

It shoud be noted that the proposed committees would not only lack the safeguards of impartiality provided by Federal courts, but that, as drafted, the preponderant membership of every committee would be determined by State Governors' appointment. Furthermore, the minority of Indians are to be appointed, not by the affected Indian tribes, but by the Secretary of the Interior. Thus, Indian people would be denied any effective forum to challenge the suitability of appointments to the committees. This may indeed provide a "flexible" means of resolving Indian fisheries controversies, but it hardly promises a fair one.

It also should be noted, that the American Indian Policy Review Commission, expressly created by Congress to make recommendations on Indian policy, devotes an entire task force, task force IV, to review various jurisdictional issues, including fishing rights. The task force, which utilizes the services of some of the most distinguished attorneys in Indian law, concluded after a thorough review of current litigation and case law, that the resolution of jurisdictional controversies was being effectively addressed by the courts, and that this was an area in which legislation would not be helpful. The review commission itself, emphasizing the desirability of a mechanism for facilitating voluntary agreements between State and tribes, also recommended against the use of legislation to impose such settlements.

That determination by a congressional commission, after years of study of the problem, appears to be ignored in the proposed bill.

(3) FISHING POLICY, ENERGY, LONG RANGE CONCERNS

Present fishing controversies between the states and Indian tribes overlap other controversies concerning the relative roles of commercial and recreational fishing. Title I recognizes these differences, but would have the affect of allowing the States, through their own appointments and effective control of committee membership, to make fundamental policy decisions concerning the relative importance of these two issues of the fisheries. At the Petoskey hearings, representatives of the state of Michigan, including the Director of the Department of Natural Resources, left no doubt that in their view the presentation of an effective commercial fishery held little priority when compared with the immediate economic gains to be realized from the recreational fishing industries.

The placing of priority on the recreational fishing industry would greatly prejudice the interests of the Indian fisherman. Furthermore, to determine the merits of the two usages of the fishery in terms of immediate economic gains, not only ignores the extent to which many of those gains are directly related to energy consumption, but also ignores the long term interests in preserving and enhancing the commercial fisheries, so as to provide a significant source of food in the lean years which the experts assure us lie ahead. Rather than creating administrative machinery which would allow the States to impose their own narrow policy determinations on a national resource like the Great Lakes, regardless of Indian treaty rights, at the least the legislation should specifically address energy and nutritional concerns in providing guidelines for the work of the committees. To place importance on the needs of future generations, rather than immediate dollar gain, is the Indian way. We suggest it is a good path to follow for the Nation as well.

In conclusion I would like to say that, in emphasizing the role of the Federal courts as the ultimate source of resolution, I do not mean that litigation should be, or is, the primary way in which Indian tribes and the State resolve their differences over the fishery. We have been, and continue to be engaged in various negotiations with the state of Wisconsin over our fishery. There are differences, but there are also some good faith efforts to solve them. Undeniably, part of the impetus of the State to negotiate in good faith is the threat of court action to vindicate our rights. Rather than helping to harmoniously resolve present controversies, the creation of the machinery proposed in this bill would remove the fundamental impetus to good faith negotiations, and enlarge, rather than narrow the scope of narrow conflict and bad feeling between the parties.

Provisions for enlarged appropriations for fish hatchery programs and for the study and cure of lake pollution might provide significant benefits to the Indian fishing tribes and to the fisheries as a whole. But these benefits should not have to be purchased by the forfeiture of our fundamental treaty rights.

I will close by reminding the subcommittee of the words of Supreme Court Justice Brown delivered almost 100 years ago in a case dealing with the Indian treaty right to hunt: "Not doubting for a moment that the preservation of game is a matter of

great importance, I regard the preservation of the public faith, even to the . . . Indian, as a matter of much greater importance".

Thank you for the chance to address you. This concludes my statement on behalf of the Red Cliff tribe.

Mr. LEGGETT. Who is representing the Congress of American Indians? They do not even want us to hold these hearings. I note that.

Mr. LEBLANC. They basically support our position. Our position is, of course, we are opposed to the bill. And I would divert from reading my statement at this point.

Mr. LEGGETT. How much are you folks taking?

Mr. LEBLANC. Well, I guess I am in the same position as—my attorney informs me that we have submitted our reports, which is a matter of record.

Mr. LEGGETT. Mr. Mannina, do you want to interpret these?

Mr. MANNINA. The information we have received indicates 124,733 pounds were taken in 1976.

Mr. LEBLANC. That is essentially correct.

Mr. LEGGETT. How about 1977?

Mr. MANNINA. It is by half-year. It is about 30,000 pounds, Mr. Chairman, from January to June.

Mr. LEBLANC. Yes.

Mr. LEGGETT. That is interesting. Fishing season starts in June.

Mr. LEBLANC. Mr. Chairman, I would also like to be able to refer some of these technical questions to my attorney, Ms. Cathy Turney, who is sitting directly behind me.

Mr. LEGGETT. All right.

Mr. LEBLANC. the questions that I cannot answer.

Mr. DUHAMEL. I can answer for the Ottowa Tribe. The answer is exactly none. If you use that figure, fine.

Mr. LEGGETT. We will put that down for your group, Mr. Duhamel.

Mr. Preloznik, how many have you taken?

Mr. PRELOZNIK. I am also handicapped by the same problem that Mr. Tanner referred to earlier. We were advised just last week, of the hearing that is taking place today. We were under the impression it would be limited to H.R. 12531. We did not receive copies of the proposed amendments until just a few days ago, and have not had an opportunity to prepare and submit a written analysis to the committee at this time.

Mr. LEGGETT. That is understandable.

Mr. PRELOZNIK. We would like to prepare a written statement and submit it to you at a future time.

Mr. LEGGETT. Certainly.

Mr. PRELOZNIK. Thank you.

[The material was not received at time of printing.]

Mr. PRELOZNIK. I would like to advise the committee that I represented both the Bad River Band and the Redcliff Band several years ago in a test case which was adjudicated in Wisconsin, which challenged the right of the State of Wisconsin to interfere with the Indian treaty rights to fish in Lake Superior. The Redcliff Band has a population of about 500 people, and the Bad River Reservation has a population of about 1,200 enrolled people.

When the State supreme court upheld their right to fish in Lake Superior, there was a great deal of consternation with the decision of the court that this was probably going to be a disaster for the fishing industry because it would permit the Bad River and Redcliff people to fish without regulation by the State of Wisconsin. However, this not borne out by the court decision.

The Wisconsin case does have a provision, and I will read that part only because there was some discussion here about unregulated Indian tribes, that the State retains jursdiction if there is a substantial depletion of the fish supply. The case was decided in 1970.

At no time has the State of Wisconsin ever taken the position that there is an endangered or depletion of fish supply. I do not believe the Indiana treaties are a threat, as some of the litigation that is proposed implies.

Now, it may, on a case-by-case basis, but I do not think it requires Federal legislation.

Mr. LEGGETT. Let me ask you this. How many commercial Indian fishermem do you represent?

Mr. PRELOZNIK. I tried to get the total figure at the present time. There are people who commercially fish, somewhere between 20 and 30.

One thing I think ought to be borne in mind, and I heard the testimony of Mr. Tanner when he was talking about commercial fishing, I think he is talking about a different kind of operation than most of the Indian community engages in. The ones I represented in the test case had a rowboat and a gill net, and they rowed out and dropped their nets. They will not take the great numbers of fish that the kind of commerical fishing you may find in other communities do other than Indian communities.

When the test case was taken to the supreme court, one fish that was caught was a sucker in a gill net, and that is what the whole fuss was about.

I think we ought to bear in mind while we say 20 or 30 commercial fishermen, this may not mean the type that normally comes to mind.

Mr. LEGGETT. Obviously, with the numbers of fish that are taken, and the way they are taken, we are dealing with rather de minimus numbers as far as a general scope of tonnage with which this subcommittee is familiar. There would have to be a large number of extraordinarily small boats, or extremely ineffective large boats.

Mr. PRELOZNIK. Most of our people have very unsophisticated type of equipment. They do not have complicated equipment. This is why it produced a smile with me when we won our case. There were 500 sportsmen that gathered in the auditorium at Ashland and were telling us that we were destroying their fishing enterprise, their sporting fish.

I thought for a while that I heard a rather cavalier approach by some of the people to the treaty rights. I would just try to speak on behalf to the treaty rights. I would just try to speak on behalf of the groups that I represent, and I also represent the Monomaney Tribe. The Federal Government has had a role in determining treaty rights, and we argued the Monomaney case in the Redcliff and Bad River cases.

I have reviewed the list of the tribes extensively, and I have represented, off and on, most of the Indian community in Wisconsin the last 12, 13 years. I think we overlook the fact the treaty rights they acquired were only given after a great deal of cessation of lands in the State of Wisconsin.

If you look at what they have acquired, it is really a small parcel of land, up in the northern reaches of Wisconsin that no one wanted, and originally they pushed into Minnesota, where they resided and, after resisting, the State of Wisconsin conceded they may stay there and fish.

There are all kinds of little statements indicating what they base their livelihood on. There was not much more than fishing, a small amount of agriculture. But summer is July 31 to August 1, and if you sleep late you miss it. It is not the most desirable area to live in.

I think if we talk about abrogating those treaty, we ought to do it with a heavy heart, because I think the Indian community has not received a great deal for the cessation of all millions of acres in Wisconsin, and I do not think we should be taking about abrogation without weighing the fact there may be compensation in the other side for the taking of a very real property right.

Mr. LEGGETT. I do not think anyone here is talking about abrogation. What we are talking about is management.

Sometimes the problem with a lot of these tribal treaty rights is that they make a unitized kind of government very difficult.

We are trying to manage within a proper framework. Sometimes it is difficult. The subcommittee is generally against fractured management.

Of course, what that means is that ideally we try to either work in a hybridized type of an advisory group, or Indians would receive compensation, one of the ways Indian rights have been resolved in this country for a long period of time.

Mr. PRELOZNIK. May I comment?

I have a quote from the Wisconsin decision. In our situation, it is not reviving a right that was dormant, and the court coming along, and also establishing a right that was really nonexistent.

I am quoting.

As late as 1891, the Indian Agent in Ashland, when discussing the activities of the of the members of the Redcliff band, noted:

"* * * the waters of the lake yield a bountiful supply of excellent fish, and the surplus catch and all other surplus products find a ready market in the city of Bayfield. In capturing fish both gill nets and impoundments are employed. The natives own a small fleet of sailboats, and in navigating their little craft they display the confidence and skill of experienced sailors.

"In view of more than 300 years of fishing in the lake, and considering the activities of the bands after the treaty was enacted, we have no doubt but that it was the intention of the parties to the treaty for the Chippewa to retain fishing rights within the 1854 Agreement."

What had occurred, why we litigated this, was along came the conservation department of the State of Wisconsin a few years ago, they began arresting Redcliff and Bad River people, and confiscating their equipment, requiring them to post bonds, and then they just let the matter sit, did not prosecute for many, many years.

Now, the Indian community did not have the money at the time to go into court and argue all the niceties like you have to have

due process and speedy trial, and all that. Many of these matters sat in court 5, 6, 7 years.

One most recently dismissed, charges were brought 7 or 8 years ago. It was in that frame and in that setting that this litigation came to the attention of the Wisconsin Supreme Court.

The supreme court held that yes, these people had established a clear treaty right for many, many years, that the State may not interfere with.

Mr. LEGGETT. At the point, we will suspend to go vote on the exportation of uranium to Indian, and we will be back in about 10 minutes.

[Short recess.]

Mr. LEGGETT. The meeting will come back to order.

Mr. Preloznik?

Mr. PRELOZNIK. I think I had concluded my remarks.

Mr. LEGGETT. Let us hear from Mr. Daniel Green. How many fish has your group taken?

Mr. GREEN. I refer you to the testimony of the department of natural resources at the January 13 hearing; we can provide you with little better information than they provided. They indicated that the total Indian commercial harvest ran about 5 percent of the total harvest of lake trout. The precise accuracy of those figures may be argued, but the general range I do not think is disputed.

Mr. LEGGETT. How many commercial fishermen do you have?

Mr. GREEN. Eighty commercial fishermen.

Mr. LEGGETT. Eighty.

Mr. LEBLANC. We have about 40 or 50 at this time.

Mr. LEGGETT. Mr. Duhamel?

Mr. DUHAMEL. Ours is what is termed an unorganized tribe. I think they have been trying to field the full-time fishermen, and about seven or eight part-time fishermen.

Mr. GREEN. I would like to point out that this is the total number of individuals engaged in the industry. I am not talking about 80 licensed fishing enterprises, but 80 individuals who go out on the water.

Mr. LEGGETT. How many boats?

Mr. GREEN. Well, that information is contained in the January 13, 1978, hearing transcript. I believe there are three of four large commercial fish tugs operated by tribal members.

Mr. RUPPE. How large are they?

Mr. GREEN. Forty foot or less. In the smaller class, the 20- to 30-foot class, I believe 11 or 12 boats are operated. In the less-than-20-foot class there are approximately 25 additional boats operated. A total of 80 individuals work these boats, and that is similarly true with regard to the other organizations.

It was suggested earlier that the Indian fishing right is a resurrected right, a right that was not continuous, something that sprang from the supreme court and not something exercised prior to the *LeBlanc* decision. This is not true.

The Indian families who engage in fishing now have been so engaged for generations. It was not until the State of Michigan changed its management program from management primarily for commercial to management aimed at sports fishing purposes, in

the late 1960's and early 1970's, the issue of Indian fishing rights arose, because at that point people earning a living by fishing were deprived of that right.

During that span of years, the State of Michigan decreased the number of commercial fishing licenses issued from 1,500 to presently less than 200. In the course of that, a great many individuals were deprived of their livelihood, the smaller operators particularly, the 16-foot aluminum boat fishermen, largely the Indian people.

The 200 or so operators licensed by the State of Michigan now are all large commercial corporate fishing enterprises. The take from these operations is larger than the take from the small Indian fishing activity going on, and I think that is reflected in the fishing statistics that the department of natural resources has provided the committee.

I would wish to address one other point. I believe the chairman indicated he did not regard this bill as involving an abrogation of the 1836 treaty. The Sault Ste. Marie Tribe disagrees. The bill and its proposed amendments would significantly decrease the right that is retained by the Chippewa and Ottawa Indians under the 1836 treaty.

When you take away that right, you are abrogating it. It may not be complete elimination of the right, but the value of that right to the present members of the Indian communities, and future generations, is significantly reduced.

To say it is not an abrogation is highly inaccurate. We would maintain it is and would require compensation.

Mr. LEGGETT. We would not do anything to you for which we would not pay you.

Mr. GREEN. It is not possible to pay for the destruction of a way of life that has continued for generations in the past. The State talks about educating these people, teaching them how to fish differently from the way they have in the past, converting from gill net operations to trap nets. This is the destruction of a way of life. It is changing the way people live, subsist, and changing their culture. It is not amenable to a dollar figure. It does not work that way.

Mr. LEGGETT. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

Just one question to Mr. LeBlanc. You do represent the Bay Mills community, and that is the Whitefish Bay area, am I correct?

Mr. LEBLANC. Yes, sir, I do.

Mr. FORSYTHE. Do you agree with the assessment that we have heard from both the Fish and Wildlife Services and the State as to the depletion of the fisheries in the Whitefish Bay area?

Mr. LEBLANC. The trout species, yes, I will agree.

Mr. FORSYTHE. What about whitefish?

Mr. LEBLANC. Whitefish is somewhat down at this time for whatever reasons. We do not know at this time, whether they are going through a cycle—I am not a biologist. Whitefish are down.

But we do know that the lake trout population is down, and we have some very obvious reasons for this, that the department of natural resources, in planting their fish, have planted those fish on shores where there would be absolutely no reproduction. And they have not—back in 1962, they had planted as high as 225,000 fin-

gerlings in Whitefish Bay, which continually drop down to a figure of less than, I think it was 60,000—25,000. It was not until last year that, through our efforts with the Fish and Wildlife people, we were able to get 100,000 fingerlings planted on natural spawning grounds.

I understand this year the department of natural resources also has undertaken some effort to plant 28,000 in Whitefish Bay. Now, my contention is that these fish were never going to reproduce on the sandy shores where they were planted. In no way can they reproduce. They were going to die of old age if the Indians did not take them.

The Indians were responsible, partially but not entirely, for the depletion.

We have no enforcement. There is a hell of a lot of poaching going on by non-Indians, with no enforcement whatsoever.

Mr. FORSYTHE. Then your position, so far as whitefish are concerned, is that you do not necessarily think any depletion is a result of overfishing, but it results from natural factors.

Mr. LEBLANC. It might very well be a natural situation. As I said, I am no biologist.

I did go out with the Fish and Wildlife people in monitoring and surveying, sampling the small fish. Hopefully the whitefish will come back into the bay, and there is a lot of whitefish there today.

Mr. FORSYTHE. Have the Bay Mills Indians moved outside the bay in order to fish where there is the resource?

Mr. LEBLANC. Yes.

Mr. FORSYTHE. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Ruppe?

Mr. RUPPE. Did you indicate whether you have any firm figures as to the catch at the present time?

Mr. LEBLANC. We are monitoring, and have catch reports submitted to us. I do not have the figures with me today.

Mr. RUPPE. Can you sumbit them to us?

Mr. LEBLANC. Surely. We are monitoring incidental catches.

Mr. RUPPE. Is it not true on the whole the fishing has deteriorated rather substantially, and frankly, does not the commercial fishing you do there hit the stocks on the hard side?

Everything I read, and I frankly have not fished the bay, but read and heard is that the amount of fishing in Whitefish Bay has depleted the stocks, and has almost required the Indian community to go elsewhere to maintain any kind of a supply.

Mr. LEBLANC. I would say, Mr. Ruppe, there is a considerable stock of lake trout yet in Whitefish Bay. Those fish that have been depleted—the fish were planted by what we call onshore plantings, in the sand. There is no doubt about it, these fish have been depleted considerably.

Mr. RUPPE. Do you think the bay can take heavier gill netting than it takes today?

Mr. LEBLANC. Well, we are not anticipating continuing to fish for lake trout. We have closed the bay off. We are hoping to build the stock back up so some day we may once again fish lake trout.

Mr. RUPPE. You mentioned the traditional fishery. Again, I do not have the type of expertise you have. Really, the fishery in the Great Lakes declined, I would say, not because of the rules and

regulations of the DNR, but because of the sea lamprey and nylon gill nets.

Mr. LEBLANC. Well, I certainly got to agree the lamprey was an important factor.

Mr. RUPPE. How about the gill nets?

Mr. LEBLANC. Yes; but it is my conviction the gill net is a selective means of taking those fish. I do not think it was totally responsible for the taking of the stock.

Mr. RUPPE. I guess a small mesh gill net is a pretty tough machine to put in that water.

Mr. LEBLANC. Yes; but ordinarily fishermen use those in certain areas where certain species are available, in certain targeted areas, for herring, for example.

Mr. RUPPE. What bothers me, I have seen the fishing decline to almost nothing in my lifetime because of the lamprey, and it would suggest to me, and as most witnesses have stated, a fishery today needs to good deal of management, regardless of who is fishing. We don't have the kind of fisheries today that really permits fishing wherever it can be done.

I am not about to suggest you give up your legal rights. But I think frankly it is unfortunate that a way of compromising this can't be found so that a management plan can be developed in which the Indian community is well and fairly represented, the commercial catch is widely and further enhanced, and a way of sharing the same be developed.

Regardless of who wins the court case, I can foresee the case coming down with the fishery winding up a shambles. I guess the basic thrust of my legislation—the only merit I see in it so far today is that it has antagonized everybody—it is at least, in my view, a way of trying to reconcile the different forces, and bring them together. This may not be feasible in this bill, or on this day.

But I think a lack of a management plan, in which all bodies are represented, is a very unfortunate thing for the lakes in the long term, for both commercial and sports fishermen that want to use them.

Mr. LEBLANC. Mr. Ruppe, we are for a management plan, and we have had a developing management plan through the wildlife agency. We agree with this plan almost totally, and I think this plan will be implemented, and we have a means of carrying out the plan.

So we are not talking about a nonrestricted fishery. We are talking about a planned fishery.

We have a conservation code and regulations now. Unfortunately, we do not have a sophisticated enforcement agency as such. But I think that we are getting there. It is not as sophisticated as the State, I will admit, but we are doing our best to enforce our code and regulations.

Mr. RUPPE. Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, gentlemen, thank you very much.

Mr. DUHAMEL. We did not have a chance to submit our position paper——

Mr. LEGGETT. All those are included in the record.

Mr. DUHAMEL. Thank you.

Mr. LEGGETT. Thank you very much.

The Chair intends to adjourn at 5 o'clock. We have four witnesses left. We are going to have to split the time.

We have the Illinois Department of Conservation, the Great Lakes Fishery Commission, the Michigan United Conservation Clubs, and the Sport Fishing Institute.

Let us see the Michigan United Conservation Clubs, Mr. Washington wants to leave, as I understand it, so we will take him now.

You have 10 minutes.

STATEMENT OF THOMAS L. WASHINGTON, EXECUTIVE DIRECTOR, MICHIGAN UNITED CONSERVATION CLUBS, ACCOMPANIED BY PETER W. STEKETEE, ATTORNEY, GRAND RAPIDS, MICH.

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

My name is Thomas L. Washington. I am executive director of the Michigan United Conservation Clubs, Inc. It is a nonprofit corporation, with an excess of 100,000 members, most of which are sport fishermen, some of which are commercial fishermen.

With me is counsel Peter W. Steketee, of Grand Rapids, Mich., representing us in litigation pending before the Federal court, and other Indian matters which have been litigated in the State of Michigan.

I would defer to him at this time, but be prepared to answer questions.

Mr. LEGGETT. Your statement is in the record as though you read it.

[The following was received for the record.]

STATEMENT OF PETER W. STEKETEE ON BEHALF OF MICHIGAN UNITED CONSERVATION CLUBS, JULY 12, 1978

Mr. Chairman and members of the subcommittee, my name is Peter W. Steketee. I am an attorney in private practice in Grand Rapids, Michigan. I am here representing Michigan United Conservation Clubs. With me is Mr. Thomas L. Washington, Executive Director of MUCC.

MUCC is a Michigan non-profit corporation headquartered in Lansing and organized to "further and advance the cause of the environment and conservation in all its phases and to perpetuate and conserve the fish * * * of the State and to so manage the use of all natural resources that this generation and posterity will receive the maximum benefit from the same." MUCC has more than 100,000 members, most of whom engage in recreational fishing on the Great Lkaes and on the streams that flow into the Great Lakes and their tributaries.

We are here today to offer testimony on the amendment to H.R. 12531, as introduced and offered by Congressmen Ruppe. The bill is a bill to amend the Great Lakes Fisheries Act of 1956 in order to require the preparation of a comprehensive report concerning the conservation and management of the Great Lakes fisheries, to establish a hatchery and a fisheries monitoring program for the Great Lakes and for other purposes. The amendment contains in Title II legislation entitled "The Michigan Indian Fishing Rights Act of 1978," which recognizes certain Indian fishing rights, including exclusive commercial fishing rights in certain areas, and attempts to establish a mechanism for resolving conflicts between Indian and non-Indian fishermen.

MUCC has testified before the subcommittee before with respect to these matters. A copy of MUCC's written testimony submitted at the Petoskey High School Auditorium on January 13, 1978, is attached to today's written testimony as an exhibit.

In MUCC's earlier testimony, MUCC outlined the background of the present Indian fishing rights dispute in the State of Michigan and the reasons why MUCC believes that the proper Congressional response to the problem is to abrogate expressly Indian treaty fishing rights in the State of Michigan and to compensate the beneficiaries of Indian treaties for those rights, if they are shown to exist. We

will not repeat that testimony here. Instead, we will address our remaining comments to the amendment H.R. 12531.

MUCC's main concern over the amendment to H.R. 12531 relates to the timing of the proposed legislation. As the subcommittee is aware, there is presently pending in the United States District Court for the Western District of Michigan a suit entitled *United State, et al.* v. *Michigan, et al.,* No. M 26–73. This is a suit for declaratory and injunctive relief brought by the United States against the State of Michigan for determination of Indian treaty fishing rights under the Treaty of 1836. The subcommittee may not be aware of the fact that the trial in this case commenced earlier this year and ran for about four days. At the end of this period of time, the judge became ill. Fortunately, however, the judge is back on the bench, and it is our understanding that trial of the case will recommence soon. Another week's worth of testimony should complete the trial.

Under an earlier order of the Court, the question of whether Indian treaty fishing rights exist under the Treaty of 1836 has been segregated out for trial in the first phase of the litigation. If Indian treaty fishing rights are established in the first phase of the litigation, subsequent stages of litigation are contemplated in which a determination would be made on the extent to which the State of Michigan may regulate those Indian fishing rights. Also, an allocation of the fishery would probably be required in a later phase of the lawsuit if the Indians prevail in Phase I.

With this background, MUCC's main objection to substitute H.R. 12531 is that it prejudges the outcome of the federal lawsuits. It allocates substantial areas of the Great Lakes to Indians for their use (e.g., Whitefish Bay and the area of Lake Michigan off-shore Good Hart north approximately to Waugoshane Point) apparently in recognition of treaty fishing rights under the Treaty of 1836. However, MUCC believes that, if the pending federal litigation continues without interference, it will eventually be determined that no Indian fishing rights exist under the Treaty of 1836.

The potential unfairness of the substitute bill, then, arises from the fact that Congress, in an effort to resolve the Indian fishing rights dispute in Michigan, may determine prematurely that Indians have some claim under the Treaty of 1836 which the courts, if they are permitted to resolve the matters presented in Phase I of *United States* v. *Michigan,* may never recognize. Congress, in its hurry, may create areas of exclusive Indian fishing and impulse racial quotas on Michigan's licensing of commercial fishermen even though it eventually may be determined by the courts that no Indian fishing rights exist under the key Treaty of 1836.

Also, we wish to point out that the provisions of Section 204 of the substitute bill, which establish a racially based quota for the award of commercial fishing licenses by the State of Michigan, are offensive to the equal protection clause of the Fourteenth Amendment and appear to be in conflict with the Supreme Court's recent decision in the *Bakke* case. In this connection, there has never been any showing that the State of Michigan has ever discriminated against Indians in the award of commercial fishing licenses. The establishment of racial quotas in the award of such licenses amounts to illegal reverse discrimination.

Consequently, we urge the Congress to adopt a different policy. The Congress should act not to abrogate any Indian treaty fishing rights in the State of Michigan and to establish a method for compensating the beneficiaries of Indian treaties who are entitled to such compensation. We do not believe that the Congress should judge who is entitled to compensation and who isn't. In the case of the beneficiaries of the Treaty of 1836, it may very well be established that no Indian treaty fishing rights exist. In such event, the beneficiaries of that treaty should receive no compensation whatsoever. The question of the right to compensation and the amount of compensation ought to be left for resolution by the courts. The courts are better able to resolve questions of this kind than Congress.

On the other hand, if Congress does not see fit to abrogate Indian treaty fishing rights in the State of Michigan, it should adopt a go-slow policy with respect to Congressional efforts to resolve the existing dispute. By this we mean that Congress should await the outcome of Phase I of *United States* v. *Michigan.* When the trial is over, including any appeals, it will be known whether any Indian fishing rights exist under the Treaty of 1836 or not. If they do not exist, there is not need for legislation like H.R. 12531 in the area covered by the Treaty of 1836. The treaty area, of course, represents a substantial portion of the Michigan waters of the Great Lakes. If, on the other hand, the courts ultimately determine that Indian fishing rights do exist under the Treaty of 1836, then will be the time for Congress to step in with a compromise of some kind.

We thank you for the opportunity to express these views. We would be happy to answer any questions that you may have.

STATEMENT OF PETER W. STEKETEE ON BEHALF OF MICHIGAN UNITED CONSERVATION CLUBS, PETOSKEY HIGH SCHOOL AUDITORIUM, JANUARY 13, 1978

Mr. Chairman and Members of the Subcommittee, my name is Peter W. Steketee and I am an attorney. A am representing Michigan United Conservation Clubs before you today. With me is Mr. Thomas L. Washington, Executive Director of MUCC. After reading this prepared statement, both of us will be available to answer any questions you may have.

According to Congressman Ruppe's letter to Mr. Washington of December 9, 1977, notifying him of this hearing, "The purpose of the hearing is to delineate issues relating to treaty Indian fishing rights, with particular emphasis on problems in the State of Michigan. The hearing will focus on the appropriate role, if any, of the Congress and federal agencies in the resolution of these issues."

We will limit our remarks to the subject matter as defined by Congressman Ruppe.

MUCC is a Michigan non-profit corporation headquartered in Lansing and organized to "further and advance the cause of the environment and conservation in all its phases and to perpetuate and conserve the fish . . . of the State and to so manage the use of all natural resources that this generation and posterity will receive the maximum benefit from the same." MUCC has more than 100,000 members, most of whom engage in recreational fishing on the Great Lakes and on the streams that flow into the Great Lakes and their tributaries.

MUCC has been, and remains, deeply involved in the Indian fishing rights controversy in Michigan. It is the plaintiff in *MUCC* v. *Anthony, et al.,* Ottawa County Circuit Court, No. 2331, Michigan Court of Appeals Docket No. 77–1299. It was a friend of the court in *People* v. *LeBlanc,* 399 Mich. 31 (1977), when that case was argued to the Michigan Supreme Court. Finally, it is a friend of the court and has sought status as a party in *United States* v. *Michigan,* U.S. District Court for the Western District of Michigan, Northern Division, No. M26–73, the pending federal lawsuit involving the interpretation of the Treaty of 1836.

As a result of this close involvement in Indian fishing rights litigation in the State of Michigan, MUCC is well acquainted with the factual and legal background of the Indian fishing rights controversy.

MUCC believes that the starting point for answering the question posed by Congressman Ruppe in defining the issue before this Subcommittee today is to recall and clearly understand that the Indian fishing rights controvesy involves not just one, but many, Indian treaties. Thus, in Michigan, the fishing rights discussed in *People* v. *Jondreau,* 384 Mich. 539 (1971), derive from a different treaty than the alleged fishing rights discussed in *People* v. *LeBlanc,* 399 Mich. 31 (1977). Across the nation as a whole, treaties with Indian tribes were made from the founding of the Republic until the abolition of treaty-making with Indians in 1871. Throughout this long period, federal policy towards the Indians did not remain the same, but instead changed drastically from time to time.

In part because Indian treaty fishing rights arise from treaties which vary in language and purpose and which are not consistent among themselves, court interpretations of these treaties have created a hodge podge of conflicting rulings which often make sound fisheries management impossible.

Congress clearly has the power to abrogate or modify any existing treaty. Therefore, Congress has the power to make sense out of this confusion and to permit a return to scientific, soundly-based fisheries management. MUCC believes that Congress has a responsibility to exercise this power because the existing state of affairs is one which, if allowed to continue on its present course, will result in the collapse of our fisheries, an unwise, probably illegal, federal take-over of fisheries regulations from the states, and a worsening of relations between Indians and other in our society.

Much has been said before, and we assume that much will be said today, about the adverse impact of unregulated Indian fishing on the fisheries of the Great Lakes. We note that the Michigan Department of Natural Resources is represented here today and has a position on the agenda. We assume that the Department will outline for you in detail the threat that unregulated Indian fishing poses for the Great Lakes. Consequently, we will not summarize the abundant evidence that Indian fishing on the Great Lakes is destroying the resource upon which it is based. Suffice it to say that unregulated Indian fishing threatens the Great Lakes lake trout rehabilitation program; it threatens certain endangered or threatened species of fish with biological or commercial extinction; and it foists upon unsuspecting consumers fish tainted with certain poisonous chemicals in excess of FDA tolerances or guidelines.

The Indians sometimes claim that State regulation of non-Indian fishing alongside Indian or federal-Indian regulation of Indian fishing can achieve both protection of alleged Indian treaty fishing rights and protection of the public interest in the conservation of our fisheries. This is simply not true. In Michigan, at the present time, there is essentially no regulation whatsoever of Indian fishing in the waters of the Treaty of 1836. While it may be claimed that this void is the result of pending litigation which we may expect to see filled when the litigation is resloved, the litigation drags on for years and years. Indian promises to regulate themselves effectively are meaningless. They promise self regulation, but the fact is destruction of the fisheries. Because the State is prevented from effectively regulating Indian fishing and because non-Indian fishing and Indian fishing cannot be regulated separately, but instead must be regulated as a coherent, logical whole, there is a strong tendency in the Indian fishing rights controversy for the federal government to assume more and more power and for it eventually to take over regulation of the entire Great Lakes fishery.

There is evidence that certain federal officials indeed do wish to see a federal take-over of the regulation of the Great Lakes fisheries. We believe that Michigan DNR officials testifying here today will inform you of some of the details of this matter. We will not duplicate their testimony on this important point. However, we would like to point out that a federal take-over of the fisheries of the Great Lakes would be in express contravention of the will of Congress as spelled out in the Federal Submerged Lands Act, 43 USC 1301, and following. (Act of May 22, 1953, 67 Stat. 29.) Insofar as the Great Lakes are concerned, the Act quitclaimed title to and ownership of the beds of the Great Lakes within the boundaries of the State of Michigan to the State and declared it to be in the public interest that "the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they hereby are, . . . recognized, confirmed, established, and vested in and assigned to the respective States * * *"

The statute itself and the legislative history of the statute make it clear that the Great Lakes are covered by the Act. The legislative history of the statute makes it clear that the regulation of fisheries by states within the limitations of the Act was expressly contemplated, 43 USC 1311. For example, House Report No. 1778–H.R. 5992 (an earlier version of the bill which eventually became law), 80th Congress, 2nd Session, published at U.S. Code Congressional and Administrative News, 83rd Congress, First Session, pp. 1435–1436 says, "The fishing industry is one of the major industries in our country * * *.

Only the Congress can assure the States, and the widespread industries affected, that they will not be subject to federal control but will remain under State control. The Committee believes that they are entitled to such assurance from the Congress."

In addition, the Convention of Great Lakes Fisheries Between the United States of America and Canada of September 10, 1954, recognizes, in Article X, the rights of the states of the United States of America to make and enforce laws or regulations within their respective jurisdictions relative to the fisheries of the Great Lakes insofar as such laws or regulations do not preclude the carrrying out of the Great Lakes Fisheries Commission's duties.

Thus, in the mid-1950's Congress made a determination in the Great Lakes Submerged Lands Act that fisheries regulation in the Great Lakes was primarily a responsibility of the affected states. This determination is echoed in a treaty with Canada. This policy determination by Congress was both important and correct. Congress should not permit this important policy determination to be reversed at the federal agency level under the guise of federal protection or regulation of Indian treaty fishing rights.

The continuation of Indian treaty fishing rights into the 1970's and beyond not only endangers fisheries resources, but it sets Indians apart from non-Indians and forces and promotes distinctions and discriminations based solely on race. MUCC believes that these distinctions are unconstitutional, but this is based on a complicated legal argument which we will not make here. More importantly for present purposes, these distinctions are unfair and against public policy, and Congress should avoid them.

It is well established that treaties which violate the federal constitution are invalid. Thus, if the provisions of treaty violate the equal protection clause of the Fourteenth Amendment to the United States Constitution, the Constitution controls as the supreme law of the land.

Although the Fourteenth Amendment did not itself confer citizenship upon the Indians, with all of the rights and obligations of such citizenship, subsequent laws

have made Indians citizens. This grant of citizenship reflects a long-standing Congressional policy of integrating the Indians into American society. In 1871, for example, Congress legislated that the Indian tribes were no longer to be dealt with as separate nations, Act of March 3, 1871, c 120, § 1, 16 Stat. 556, 25 USC 71. Thus, Congress has the full power of the government to legislate with respect to the Indian tribes. In 1887, Congress provided for the allotment of tracts of reservation land to individual Indians, a policy which was continued and expanded by the Indian Reorganization Act of 1934, c 576, 48 Stat. 984, 25 USC 461, et seq., and further declared that, Indians to whom allotments have been made "shall have the benefit of and be subject to the laws, both civil and crininal, of the State or Terrritory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law." Act of February 8, 1887, c 119, § 6, 24 Stat, 390, 25 USC 349. Thus, it is clear that Indians who decided to receive allotments of land pursuant to the Congressional purpose of integration were not only to benefit from, but also to be obligated by, the laws of the state where they lived. In 1924, Congress made all Indians full citizens of the United States and, consequently, of the state where they reside. Act of June 2, 1924, 43 Stat. 253, incorporated into the Immigration and Nationality Act of 1952, § 301, 8 USC 1401(a)(2). As a result, as citizens, Indians have the rights and obligations of other citizens under the laws of the United States and of the several states.

As we have seen above and as we all know, the regulation of fishing within its boundaries is clearly a valid exercise of a state's police power. In exercising its police power, however, the equal protection clause of the Fourteenth Amendment prohibits a state from making distinctions between classes of people which are not reasonably related to a legitimate public purpose. Distinctions based on race have always been inherently suspect. See, for example, *Bolling* v. *Sharp,* 347 U.S. 497 (1954).

Aside from any constitutional infirmity, the enforcement of ancient treaty rights to fish is forcing, in modern times, in a two-tiered or three-tiered regulatory system in which sport fishermen are regulated in certain ways, commercial fishermen in certain other ways and Indians in yet third ways. Indian fishermen are not required to meet the ordinary regulations applicable to other sport or commercial fishermen. This difference in treatment rests solely on the accident of Indian identity—That is, on the accident of race. Thus, the classification is one based on race. Whether it is constitutional or not, making distinctions of this kind is perceived as unfair by the vast majority of people who are subjected to the tighter restrictions applicable to ordinary citizens. These people perceive the two-tiered or three-tiered system as one which is inherently unfair. Add to this a justified concern on the part of people everywhere that present regulation of Indian fishing is ineffective and that Indian fishing is destroying the resource upon which it is based and you have the ingredients for a very ugly confrontation and for an increasingly bitter conflict.

We cannot do justice to the subject without mentioning one specific aspect of the dispute over the Treaty of 1836 and the related Treaty of 1855. These treaties which are the subject of *People* v. *LeBlanc, supra,* and *United States* v. *State of Michigan, supra,* cover a large part of the Michigan waters of the Great Lakes. One of the options open to Congress in the present situation is to abrogate existing treaty fishing rights and to compensate the Indians for the "taking" of claimed rights in order to place Indians and non-Indians on an equal footing insofar as future enforcement of fishing laws is concerned. MUCC believes that a decision to abrogate treaty fishing rights and to order the compensation of the treaty beneficiaries for the taking of these rights would be a wise decision for Congress to make. However, Congress should be careful not to compensate people for "rights" which don't exist or to compensating them more than once for the taking of the same right. In the case of the Treaty of 1836, it is the position of MUCC that the Indians have given up any fishing rights in Article 3 of the Treaty of 1855 which says in language too clear to be mistaken:

"Article 3. The Ottawa and Chippewa Indians hereby release and discharge the United States from all liability on account of former treaty stipulations, it being distinctly understood and agreed that the grants and payments hereinbefore provided for are in lieu and satisfaction of all claims, legal and equitable on the part of said Indians jointly and severally against the United States, for land, money, or other thing guaranteed to said tribes or either of them by the stipulations of any former treaty or treaties, excepting, however, the right of fishing and encampment secured to the Chippewas of Sault Ste. Marie by the treaty of June 16, 1820."

In signing the Treaty of 1855, the Indians received additional compensation, and therefore, they have been compensated once for any treaty fishing rights which they gave up under Article 3. They should not be compensated again.

In conclusion, it is the position of MUCC that the Congress should abrogate existing Indian treaty fishing rights throughout the United States including, in particular, any that may exist in Michigan. It should compensate the beneficiaries of those rights with just compensation if a taking is involved, but not if one is not involved and not if compensation has already been paid at some time in the past. Congress, in acting in this fashion will have acted responsibly by reconfirming in the states the basic responsibility and power to regulate fisheries within their boundaries, by eliminating a grave threat to our fisheries resources and by striking a blow for fairness and equal protection of the laws within our society.

Mr. LEGGETT. Now, give me the bottom line first. Are you for Mr. Ruppe's enhancement developent cooperative program?

Mr. WASHINGTON. We are essentially opposed to this legislation.

Mr. LEGGETT. Mr. Ruppe has developed quite a broad base. That just shows the courage of Representatives from Michigan.

Of course, if you are a litigation lawyer, you probably want to stay there.

Mr. STEKETEE. Let me say something. Having had some close experience with it colors my thinking a little bit about the Michigan problem. The Federal litigation is not bound by LeBlanc.

It is my firm conviction that although perhaps not that of the trial court, clear heads will prevail, that such fishing rights do not exist. That is based on long hours spent in depositions when I believe a careful review of the history behind the treaty was accomplished.

Under the treaty of 1836 these rights do not exist. We regard what Congressman Ruppe is proposing as premature. Essentially what we are saying that in its haste the Congress may recognize fishing rights that the courts may ultimately reject.

In a sense, the Congress may force on the State of Michigan and the people of the State of Michigan a system consisting of exclusive—that certain areas are exclusively Indian that the court never would have recognized.

The area north of Good Hart in Northern Lake Michigan, as far as I can recall, there is absolutely no claim that that area is part of a traditional Indian reservation of any kind.

Now, the bottom line then is that you are, by this legislation, creating exclusive areas of Indian jurisdiction, and what are based on, we believe, a racially-based quota system for all the rest of the waters of the treaty of 1836.

Mr. LEGGETT. On the other hand, some day, somewhere, someplace you may come to love the decision.

Mr. STEKETEE. The proper course for Congress to take would be to abrogate these treaties outright, and to compensate those Indians who can show, first, that they have a right, and second, that it has some value.

If indeed the State of Michigan loses this litigation, then a compromise of some kind probably will be necessary, because at that point the State and the Indians, the United States, for that matter, are faced with one of these intolerable situations such as exists on the west coast, where we have a Federal district judge regulating a fishery on a day-to-day basis.

Mr. LEGGETT. It is a totally intolerable situation to which the Fish and Wildlife Service appears to be oblivious

Mr. RUPPE. Mr. Chairman, the difficulty is, intolerable as many people have seen it, there has been no legislation passed, and it is unlikely there will be.

Mr. LEGGETT. I am prepared to hear bills, if there are any west coast people with Ruppe courage.

Mr. STEKETEE. We view it as a partial abrogation. We would like to see complete abrogation, together with fair compensation. We do not want to see the Indians compensated for a right that does not exist.

As we say, that question is pending in the Federal litigation. Another week of testimony ought to complete the testimony on that question. The judge can decide. If he decides wrongly from the State's standpoint, the State can appeal, and vice versa.

Mr. LEGGETT. In all these areas you need enhancement programs, but I am not prepared to support extensive enhancement programs unless we have management capability. If there is too many people in the fishery, some of them have to be brought out given limited entry, or we could recognize grandfathering or establish properities between commercial and noncommercial.

If we do abrogate treaty rights, they have to be paid for. We figured out ways to compensate for things in the past. However, I think continued fractured management makes it very difficult for the Federal Government to put in large sums of money. We do not know how that management program is going to handle the total enhancement program.

Mr. RUPPE. I can appreciate your position. Basically you are saying if we win, we win. If we lose, we will then suggest a compromise.

Mr. STEKETEE. We suggest morally and historically we should win. We believe we will win if the court system responds as it should. There is an outside chance, of course, we will not win.

Mr. RUPPE. You and I know until the decision is forthcoming there is generally room for bargaining, negotiating, give and take.

Quite frankly, if one side wins, they are certainly not then going so say, "I will compromise half of what I won." If you win, you will not say to the Indians, "we will compromise away half of what you lost."

I think Dr. Tanner suggested the State is not, or is maybe less than sure about the outcome of that case, and the only thing I am saying, the legislation I introduced is an effort to compromise before the State might lose. I know you hope they do not.

Should you or the State lose, I do not see how you can expect, then, the Indians to come back and say, "I will now compromise."

I think if I were the attorney for the Indian group, I would say, "you took it to court, and you lost." I think it is unrealistic for you to expect the Indians to negotiate that type of solution, and I think the Congress will not pass that type of bill.

Forgetting whether I would be for you or against you, the west coast situation is described by many as intolerable, but certainly there is no legislation coming down the line to change what has been a judicial outcome. If the parties are not happy about the prospect of a judicial determination, I can only say this is the time to compromise.

In the area of human rights, we are talking about pulling Secretary Vance back from Moscow because they have arrested two reporters. I do not think this is a period of time that abrogation is sellable on Capitol Hill.

Mr. STEKETEE. We are talking about the rights of the majority.

Mr. RUPPE. We are talking about the law and what we did or did not give away 100 years ago.

Mr. STEKETEE. The *LeBlanc* decision is a little bit of social engineering.

Mr. LEGGETT. Is that Mr. LeBlanc back here?

Ms. TURNEY. His brother.

Mr. STEKETEE. None of the history was litigated, and what it is is social engineering. That puts us squarely in the Bakke context. If the courts are going to do this, they have to consider the other side of the coin. If you are going to make 50 percent of the fishermen Indians, those spaces available in this limited fishery to other people will not be——

Mr. RUPPE. I am neither a lawyer nor a judge, and I am not suggesting you have not got an excellent argument. You may win.

In case you do not win, it will be very difficult, I think, to come back and compromise after the case is concluded and after you may well have lost.

Mr. LEGGETT. The *Bakke* case is different. That is in my district, you see. [Laughter.]

That did come out with something for everybody. Certainly it is not exactly analogous considering the fact there does appear to be some body of law around the Great Lakes there indicating the Indians have something in the way of fishing rights in those treaties. Maybe that will be watered down. But we shall see.

Thank you very much. Very helpful.

Now, let us go to Michael Conlin, of the Illinois Department of Conservation.

Your statement will appear in the record as though you read it. Nice to have you here.

[The following was received for the record:]

STATEMENT OF MICHAEL CONLIN, CHIEF OF THE DIVISION OF FISHERIES OF THE ILLINOIS DEPARTMENT OF CONSERVATION

Mr. Chairman, distinguished members of the Committee, ladies and gentlemen. I am Michael Conlin, Chief of the Division of Fisheries of the Illinois Department of Conservation, representing Dr. David E. Kenney, Director of the Illinois Department of Conservation.

I am pleased to appear here today to present our views on the House of Representatives Bill 12531 which proposes to amend the Great Lakes Fisheries Act of 1956. The preparation of a Comprehensive Fisheries Management Plan for the Great Lakes is a task that the Illinois Department of Conservation does support. Included in the present bill is language providing for a substantial research program dealing with all aspects of the Great Lakes fisheries. Information gained from this research will be of significant value to all Great Lakes states charged with the statutory responsibility to protect, manage and enhance the fishery resource within their jurisdiction. Unfortunately, this bill, in its present form, creates a number of concerns to the Illinois Department of Conservation. One major short-coming of the bill is the lack of recognition of the extremely important role that each of the conservation agencies of the Great Lakes states must have in the formulation, implementation and enforcement of a Comprehensive Fisheries Management Plan for the Great Lakes. The composition of the proposed Great Lakes Advisory Committees in no way guarantees that members will have adequate knowledge of the fisheries resources and that such knowledge will be used in management decisions.

We believe that each of the conservation agencies of the Great Lakes states and the U.S. Fish and Wildlife Service must be given primary responsibility for the formulation and implementation of a Comprehensive Fisheries Management Plan for the Great Lakes. Such action would insure that the Plan would conform to state statutory responsibilities and that regulations could be enforced under existing state fish law enforcement codes.

The purpose of the bill, as stated in Section 15(a), does not address the issue of total Great Lakes fishery resource management for everyone's benefit but specifically directs the entire Great Lakes fishery management program towards the solution of conflicts which exist between the State of Michigan and certain Treaty Indians of Michigan relative to fishing rights in Michigan waters. This narrow approach to the utilization of the Great Lakes fishery resource (specifically Lake Michigan) is not acceptable to the Illinois Department of Conservation. We are opposed to sections of the present bill that permit unregulated harvest of Great Lakes fish by appropriate Indian tribes in reserved waters. Data presently available on lake trout populations, for instance, indicate that Indian harvest of this species has not been compatible with resource capabilities. Indians must conform to harvest and gear restrictions placed on other commercial fishing operations if comprehensive management of Great Lakes fish stocks is to be achieved.

Another area of concern to our Department is the proposed appropriation of funds for a fisheries monitoring program in proportion to the area of the Great Lakes within state jurisdiction. In Illinois, nearly 7 million people live in the northeast portion of the state. We are attempting to reduce the large deficit of angling opportunities in this area by enhancing our Lake Michigan fishery program. Increased federal financial assistance, based upon area and population, would assist us in this effort.

The proposal to utilize personnel and facilities of agencies of Great Lakes states as needed to provide assistance in the preparation of the Comprehensive Plan would create problems in the preparation of the Comprehensive Plan would create problems in our existing Lake Michigan Fisheries Management Program. Our Lake Michigan Project Staff would be unable to devote significant amounts of time to development of the Lake Michigan Advisory Committee's Plan without hiring additional personnel to carry out our existing management programs.

The use of state funds for the operation and maintenance of federally constructed fish hatcheries is another potential problem to our Department. We are currently taking steps to expand and modernize the Illinois Fish Hatchery System through recently authorized additional fishing license revenue. Securing additional funding for operation and maintenance of federally constructed hatcheries in Illinois would be difficult in the future due to a number of fiscal constraints.

In summary, the Illinois Department of Conservation basically supports H.R. 12531 in its original form but stands totally opposed to the proposed Title I and II amendments.

I wish to thank the Committee for this opportunity to express the Illinois Department of Conservation's views on the proposed bill and to express my appreciation for the Committee's concern regarding wise management of the valuable fisheries resources of the Great Lakes.

STATEMENT OF MICHAEL CONLIN, CHIEF, DIVISION OF FISHERIES, ILLINOIS DEPARTMENT OF CONSERVATION

Mr. CONLIN. Thank you.

The Illinois Department of Conservation obviously has an interest in this bill although we only have one of the Great Lakes bordering Illinois.

Mr. LEGGETT. That is to be passed or defeated?

Mr. CONLIN. We are opposed to the bill, sir.

We only have one Great Lake bordering Illinois, Lake Michigan, owning 6 percent of that, or 1 million acres.

We do support the proposed fisheries plan for the Great Lakes. This is a task we are currently undertaking in our own fisheries division. We think this is the only logical way to approach total lake management problems in Lake Michigan. We do support basically the original bill, but do oppose the proposed amendment.

Mr. LEGGETT. You do support the original bill?

Mr. CONLIN. Yes. But the amendments that we received last Friday, we do have problems with those because we see that as giving up State management rights to the Federal Government, and we do not think that is acceptable at all. We think that working through the Great Lakes Fishery Commission has been a positive step. We work on a continuing basis——

Mr. LEGGETT. Did you ever communicate your support of the bill to Mr. Ruppe prior to the time he offered amendments?

Mr. CONLIN. No. As I said, I do think that kind of information is necessary. I think more information is necessary, more assessment, more monitoring. We have increased our Lake Michigan program substantially. We have only been in that business a few years formally. We have three biologists full time now.

You do have my brief statement. I am here today representing the director of the Illinois Department of Conservation. Due to time constraints, if there are any questions, I will be happy to answer them.

Mr. RUPPE. We appreciate your testimony here.

Do you have any litigation going on in Illinois between the State and the Indian community?

Mr. CONLIN. No; we do not. However, there is an Indian community in Chicago.

Mr. RUPPE. In the absence of litigation, basically the status quo works pretty well for your people?

Mr. CONLIN. Yes.

Mr. RUPPE. Your interests would be more in enhancement, would it not, than probably anything else?

Mr. CONLIN. For both commercial and sport fishing, yes,.

Mr. RUPPE. And better research.

Mr. CONLIN. Exactly.

Mr. RUPPE. As far as the management is concerned, which is a rather obviously difficult problem between the Indian and the State over jurisdiction, what works now simply needs more of the same as far as you are concerned?

Mr. CONLIN. That is correct.

Mr. RUPPE. Does the State of Illinois undertake a planning program itself?

Mr. CONLIN. We are undertaking it in cooperation with the U.S. Fish and Wildlife Service.

Mr. RUPPE. Do you intend to go in the direction of a salmon program and trout enhancement program?

Mr. CONLIN. Yes.

Mr. RUPPE. All right. Thank you very much.

Mr. LEGGETT. Thank you very much. Very helpful. Appreciate your coming.

Next, the Great Lakes Fishery Commission.

Mr. Fetterolf, your two statements will appear in the record.

[The following were received for the record:]

STATEMENT OF CARLOS M. FETTEROLF, JR., EXECUTIVE SECRETARY OF THE GREAT LAKES FISHERY COMMISSION

Mr. Chairman, Committee members, ladies and gentlemen, I am Carlos M. Fetterolf, Jr., Executive Secretary of the Great Lakes Fishery Commission. The Commission has authorized me to present the following statement.

The Great Lakes Fishery Commission, created by convention between the U.S. and Canada, has been in operation since 1956. It has carried out the charge to control the parasitic sea lamprey that had practically wiped out the lake trout fisheries in the upper three Great Lakes. The history of its success in controlling the sea lamprey to a point where the fish can again survive is well known. As the sea lampreys were brought under control, the Commission began to concentrate on another of its charges, that of coordinating research among all the agencies having administrative responsibilites on the five lakes so that fish stocks could be brought to their optimum level and viable sport and commercial fisheries can be perpetuated.

The Commission's role is to lead, to be a cohesive force, and to provide the forums within which coordination of activities can take place. The Commission is the vehicle that can allow mutually-agreeable management programs beneficial to the fishery resource and fisheries to be developed. From a fishery situation in the 1950's which could only be termed "devasted", the commercial fishery of the Great Lakes has grown to an annual value in excess of $100 million, and the recreational fishery has grown to an annual value in excess of $350 million. This demonstrates that sea lamprey control and the fishery management and research programs of the eight Great Lakes States, the Province of Ontario, and the U.S. and Canadian Federal Government continue to be successful.[1]

The Great Lakes Fishery Commission endorses in principle the intent of H.R. 12531, as introduced by Mr. Ruppe on 3 May 1978, and offers the following comments.

The bill charges the U.S. Section to prepare a report describing the fishery of each Great Lake, assessing current fishery management programs, predicting present and future production under various scenarios, evaluating current and future environmental and fishery strategies, and recommending future protection and management programs for Great Lakes fisheries. This is essentially a fishery management plan.

The Commission in the past has charged its Lake Committees (consisting of a senior administrator from each fishery regulatory agency on a lake) to develop common management goals and objectives, important components of planning. The Commission's Council of Lake Committees, made up of all the Lake Committee members, both U.S. and Canadian, announced their unanimous position in March 1978 that a strategic fishery management plan for the Great Lakes is desirable and that such a plan should be developed by the Commission working with the Lake Committees.

The Commission responded positively in April 1978 and is in the process of working out the ways and means to develop an internationl Great Lakes fishery management strategic plan, under which interstate-international operational fishery management plans for each Great Lake will be refined. The plans will encompass all the points in Section 15(a) of H.R. 12531 and will include Canadian waters. The philosophy of the Commission is to view each lake as a water body, as an individual biological system undivided by jurisdictional boundaries, and to encourage management on a transboundary basis. Therefore, the U.S. Section is prepared to assume responsibility for development of the plans concurrently and in full cooperation with Canada. This will be achieved by working through the Lake Committees.

In developing the plans, the bill charges the U.S. Section to interact with its Lake Advisory Committes made up of four members, One representing each of four interests, commercial fishing, sport fishing, the public-at-large, and the state fishery management agency, from each state with management jurisdiction on each lake.

The U.S. Section is in the process of requesting the Governors of the Great Lakes States to review the current memberships and submit candidates for appointment by the U.S. Section. It is the intention of the Commission to seek comment and review on drafts of all plans from a spectrum of environmental agencies, organizations and the public in both countries. This will, of course, include the Lake Advisory Committees.

The Commission has not established a time schedule for develoment of the plans, because its prime concern is development of usable plans that have the support of the agencies with authority to implement them. Plans that don't have the support of the operating agencies will only occupy shelf space.

To develop usable strategic and operational plans could take three years. A senior fishery scientist coordinator with staff support would cost about $225,000 over this

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[1] Committee members who desire further information on the Commission are referred to the attached document, "Briefing to the Conference of Great Lakes Congressmen by the U.S. Section of the Great Lakes Fishery Commission, 7 November 1977".

period. If each state needs $20,000 for staff work and travel in association with development of plans for its waters of each Great Lake over the same period, the amount needed for state participation would be $260,000 (13 x $20,000), plus $80,000 for Ontario's waters.

Relative to stock assessment, catch inventory, and reporting requirements for a state to be eligible for financial aid to carry out these activities, the Commission, with the full cooperation of the states, province, and U.S. Fish and Wildlife Service, has already conducted an inventory of fishery agencies' stock assessment programs and needs. Cooperators have responded to the inventory and the comments are being synthesized. On completion, the Commission will recommend additional funding for appropriate fishery management and research agencies so that adequate assessment programs can be conducted and the information incorporated into management strategies and regulations.

The Commission recognizes the importance of hatcheries in rehabilitation of Great Lakes fish stocks and fisheries and acknowledges that increased stocking will hasten the recovery of certain species and increase catch. However, the Commission views development and maintenance of balanced fish communities supported by natural reproduction as the ultimate goal of its charge in the Convention. The biological carrying capacity and productivity of the lakes is finite, just as a farmer's field. The hatchery capability must be carefully tailored to the carrying capacity of the lakes.

The Commission is sponsoring a symposium on the application of genetics in fish hatcheries and Great Lakes fishery management. The need for increased hatchery production and the recommendations from the symposium relative to the genetic makeup of the fish produced in the hatcheries will be detailed in the strategic and operation fishery management plans.

The Commission appreciates the interest of the Committee in Great Lakes fisheries and the opportunity to comment on H.R. 12531. In summary, the Commission supports the three major parts of the bill: development of a fishery management plan; increased fish stock assessment and catch monitoring; and development of added hatchery capability; but points out that authority to pursue these programs already exists and that the bill does not recognize the international aspects of Great Lakes management.

The Commission has already committed to international programs on all three fronts and believes that the programs should be carried forward internationally, not by the U.S. Section alone.

Briefing to the Conference of Great Lakes Congressmen by the U.S. Section of the Great Lakes Fishery Commission*

The Great Lakes, shared between Canada and the United States, comprise the greatest reservoir of fresh water in the world. They stretch 800 miles east to west and 500 miles north to south. For more than a century they produced large quantities of valuable, high-protein fish of several different species. In the deepest lakes, Superior, Michigan, Huron, and Ontario, the cold-water species, lake trout, whitefish, and herring, were the most important. In Lake Erie, a shallower lake, the cool water species such as yellow perch, walleye, and blue pike were very important.

The Great Lakes fish fauna, excluding the 13 introduced species, consists of 39 species, many of which are forage species and shallow water inhabitants which do not occupy the vast, deep, cold, open water areas where the most important cold-water commercial species live. While some localized recreational fisheries had developed prior to 1955 when the Great Lakes Fishery Commission came into being through ratification of the Canada-U.S. Convention on Great Lakes Fisheries and subsequent enabling legislation (the Great Lakes Fishery Act, S. 3524), the lakes were best known for commercial production of lake trout, a food item in great demand.

By 1900 there was serious concern for the limited lake trout stock in Lake Erie, and in the 1930's Lake Ontario's lake trout were in difficulty. By the late 1930's early warning signs of further trouble, such as radically shifting fish community structure and abnormal dependence on dominant year classes, precipitated efforts to achieve a cooperative management agreement between the countries. By now sea lamprey, a marine predator, had been found in lakes Huron and Michigan, but World War II stalled further binational negotiations until the late 1940's when exploding sea lamprey populations were recognized as a catastrophe for lake trout in the upper lakes. This provided the momentum to recast and complete negotiations for a Convention on Great Lakes Fisheries between Canada and the United States, ratified in 1955, which established the Commission.

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* Presentation accompanied by 36 visual aids and presented by Carlos M. Fetteroff, Jr.

In the 1830's man helped the sea lamprey gain a foothold in the Great Lakes. Completion of the Erie Canal afforded sea lamprey access to Lake Ontario. It is unlikely that they entered by way of the St. Lawrence River. Completion of the Welland Canal permitted them to bypass Niagara Falls. They were apparently slow to take advantage of their opportunity, being noted in Erie in 1921, Huron in 1932, Michigan in 1936, and Superior in 1946.

Endemic to the North Atlantic Ocean, the animal adapted well to fresh water. They ascend tributaries to spawn and prefer a stoney, gravelly bottom where they excavate depressions and the females deposit up to 60,000 eggs each. Adults die after spawning. Eggs hatch into larvae called ammocetes, blind and toothless with a flexible, fleshy hood overhanging the mouth. Ammocetes live 3–16 years as filter-feeders in burrows constructed in soft sediments of tributaries. Transformation (metamorphosis) involves disappearance of the hood, development of teeth on the tongue and in the buccal funnel radiating in all directions from the mouth. Transformers, about the size of a lead pencil, move downstream to the lakes where they feed by attaching themselves to fishes, rasping a hole through the body covering and sucking body juices. Depending on site of attack, length of attachment, size of adult sea lamprey versus size of their prey, one feeding can be fatal, or a fish can withstand several attacks. Lake trout were primary targets of sea lamprey.

The lakewide decline of a fishery in relation to invasion of sea lamprey was followed best in Lake Superior where lake trout production held at 4 million pounds from 1930 to 1952. In the following ten years production dropped 95 percent while the numbers of sea lamprey caught at a fixed number of assessment weirs rose from 1,000 animals to 70,000. Considering that one sea lamprey can kill 40 pounds of fish in its 18 months as a predator, the decline in production is understandable. In Lake Michigan, 6 to 7 million pounds of lake trout had been harvested annually. During the height of the sea lamprey population surge, as they turned to other fish for food, not a single lake trout would be caught in a whole year's fishing.

By the mid-40's fisheries agencies recognized the urgent need for a control program. In 1948 a committee was established and the beginnings of a control program took shadowy shape. Initial efforts, led by the U.S. Fish and Wildlife Service, Ontario and Michigan, were experimental, tentative, and largely uncoordinated. Congress appropriated funds to study the life history of the animal, but there was no assured source of funding for control programs until the Great Lakes Fishery Commission was formed in 1956. At that time there was no question of the priority item, get the sea lamprey under control so rehabilitation and management of desirable fish populations could take place. The already underway programs defining life history and distribution, and development and testing of barriers were coordinated, refined, and expanded under Commission auspices. The U.S. Fish and Wildlife Service and the Canadian Department of Fisheries and Environment were selected as the Commission's agents to carry out control, survey, and research work. Three control headquarters were established: Sault Ste. Marie, Ontario; Marquette and Ludington, Michigan. Research was conducted from the Hammond Bay Biological Station, U.S. Fish and Wildlife Service, Millersburg, Michigan.

Initial control was by means of mechanical weirs and electromechanical barriers to prevent sea lamprey from ascending streams to spawn. At its peak in 1959, the program included about 135 barriers in the United States and Canada, but during spring-freshets or power failures the spawning-bound animals would bypass the structures.

Very early in the program the Commission decided that development of a chemical selectively toxic to sea lamprey larvae in streams would be an invaluable control tool. An intensive screening program commenced. Some 6,000 chemicals were screened by laboratory bioassay over a 7-year period at the Hammond Bay Station. Promising toxicants were field-tested in 1957 and 1958. Two chemicals (3-trifluoromethyl-4-nitrophenol (TFM) and 2′, 5-dichloro-4′-nitrosalicylanilide (Bayer 73) were selected as the primary lampricides.

After a stream has been surveyed, and on the basis of the number and maturity of larvae present it is determined chemical treatment is necessary, bioassays are conducted at the site in a laboratory trailer. Sea lamprey larvae and a sensitive fish are used as test animals to determine the "working range", the defined range of concentrations that must be maintained for a specified time (usually for several hours) through the treatment area to assure destruction of sea lamprey larvae without significantly affecting other fauna or flora. The chemical is truly selective. It's an amazing sight to see lamprey dying in the same water in which fishermen are catching trout. Routine stream treatments are carried out by pumping metered amounts of TFM or TFM plus a small amount (1–4 percent) of powdered Bayer 73 at

several pre-determined points on the river. The addition of inexpensive Bayer 73 reduces up to one half the amount of $6/pound TFM.

Chemical control was initiated in Lake Superior in 1958, expanded to Lake Michigan in 1960, to Lake Huron in 1966, and Lake Ontario in 1971. As chemical control progressed successfully, the electro-mechanical barriers were phased out, but enough were retained as assessment stations to obtain annual comparative quantitative measures of sea lamprey abundance for evaluation of control effectiveness.

In Lake Superior all known significant sea lamprey-producing tributaries had been treated once * by the fall of 1961 and the wounding rate on lake trout fell sharply. The following spring the number of sea lamprey caught at assessment stations dropped from 70,000 to 10,000. Similar phenomena occurred on the other lakes as rounds of treatment were completed.

The Commission is concerned that the control program is singularly dependent on chemicals, primarily TFM. Only one chemical manufacturer bids for the contract and the price has risen sharply. The average ammocete is now transforming in a shorter period than previously, presumably because of reduced competition for food and space. This requires more thorough surveys and more frequent treatments and emphasizes the need for alternative controls. The Commission is developing an integrated control program including permanent low-head barriers on selected streams and is sponsoring research into chemical attractants and repellents as well as chemosterilants.

In 1971, comprehensive studies of the immediate and long-term effects of lampricides in the environment were initiated. Results suggest that the effects are very small, that the chemical control program can continue, and that registration of the lampricides by EPA will be forthcoming upon completion of the required studies which have cost over $1.2 million to date. They have been conducted by the Fish Control Laboratory of the U.S. Fish and Wildlife Service at La Crosse, Wisconsin.

As the sea lamprey knocked off the important predators, another marine invader was finding fat pickings in the Great Lakes, the alewife. The spread of the alewife was slow, and because no *catastrophic* alewife problems had occurred in Lake Ontario in a century there was no alarm. However, as alewife populations exploded in lakes Huron and Michigan there were tremendous annual die-offs. Research never identified a conclusive, irrefutable reason for the mortalities. The dead and dying alewives plugged the water intakes of Chicago and other cities as well as several industries. Their rotting carcasses interferred with recreational boating and made swimming and shoreline living not only undesirable, but unbearable. Chicago spent large sums of money to clean its beaches daily as the stench carried inland to residential areas along the Gold Coast. Michigan developed automated equipment and handled the mess with bulldozers and dump trucks at state parks. The tourist industry lost many millions of dollars.

As the sea lamprey came under sufficient control the Commission coordinated the allocation and stocking of lake trout reared in Ontario and U.S. hatcheries. The great majority were produced by the U.S. Fish and Wildlife Service. The fish grew well and had good survival to chatchable size, but lake trout hatchery production capacity is far below the carrying capacity of the lakes even though 69 million had been planted by 1976.

The Commission views development and maintenance of balanced highly-desirable fish communities supported by natural reproduction as the ultimate goal of their charge from the Governments, and believes that stocking with hatchery-reared lake trout is an essential step towards achieving this goal and reestablishment of self-sustaining lake trout populations—a major Commission objective. Substantial stocks of lake trout have been established, but the present planting program as designed, combined with mortality, harvest, and unknown environmental factors, has not yet been sufficient to establish the desired level of natural reproduction by lake trout. To attain the stated objective of self-sustaining populations of lake trout, exploitation by recreational, commercial and native fisheries must be effectively controlled so that an adequate spawning stock is assured.

Led by Michigan's efforts, millions of hatchery-reared rainbow trout, brown trout, and Pacific salmon have been introduced into the lakes. They have produced spectacular recreational fisheries. These predators have fed on the over-abundant alewives and controlled their numbers. In addition, a commercial fishery for alewives to produce fishmeal has been developed, taking as high as 45M pounds a year from Lake Michigan. Some biologists estimate potential alewife production at 100M pounds for the State of Wisconsin alone if a market could be developed. From a situation which can only be termed "devastated", the annual value of the Great Lakes recreational fishery rose to $350M in 1975, the commercial fishery to $100M.

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* A round of control treatments.

The addition of 13 exotic species, some purposeful introductions, other accidental, to the slowly-evolving fish fauna of the lakes has created some undesirable species interactions. For example, on Lake Michigan, first lake herring, then smelt, then yellow perch production fell off dramatically as alewife production increased. Stability is slowly returning to the fish community structure under current management programs.

What are the duties of the Commission? Paraphrased: (a) formulate programs to determine need for measures to make possible the maximum sustained productivity of stocks of common concern and determine what measures are best adapted for such purpose; (b) coordinate research pursuant to such programs and, if necessary, undertake such research; (c) recommend measures based on findings; (d) formulate and implement program to control sea lamprey; and (e) publish on above subjects.

These duties, synonomous with the Commission's efforts to improve and perpetuate Great Lakes fishery resources, are carried out without regulatory authority in the following manner.

The Commission's 1978 budget is $4.6M: $4.4M for Sea Lamprey Control and Research and $206K for Administration and General Research. These amounts are contributed 50:50 for Administration and 69:31 U.S.: Canada for Sea Lamprey Control and Research. The latter ratio is based on the average historic value of the pre-sea lamprey lake trout catch in each country. The Commission in turn distributes the budget amounts to its Canadian Agent, the Canada Department of Fisheries and Environment, and its U.S. Agent, the U.S. Fish and Wildlife Service.

Who do we work with? It is obvious that the lakes are shared by Canada and the U.S., but what is not so obvious is that each of the eight Great Lakes States and the Province of Ontario are responsible for the fisheries in their piece of the lakes. They have fishery regulatory authority in their waters. There are a variety of management philosophies, strategies, and regulations extant, some complementary, some not. Since the fish don't recognize the political boundaries, it is the Commission's job to lead, to be a cohesive force, and provide the forum within which coordination of activities can take place and mutually agreeable programs can be worked out. We also maintain working relationships with state, provincial, academic, compact, and international bodies with responsibility for other water uses in the lakes.

The Commission has eight members, four from Canada and four from the United States. The U.S. members are appointed by the President to serve at his pleasure without compensation. One U.S. Commissioner is an official of the Federal Government. Another must be an employee of a State. The other two members must be residents of a Great Lakes State but each of the four Commissioners must be from a different State.

The U.S. Section is served by an advisory committee from each lake on which each bordering state may be represented by not more than four persons. In making appointments, the U.S. Section selects from a list proposed by the Government of each State giving due consideration to the interests of:

1. State agencies having juridiction over fisheries;
2. The commercial fishing industry;
The recreational fishery; and
4. The public-at-large.

The Commission has established the following central committees:

a. Scientific Advisory (A committee of senior governmental and academic scientists on which the Commission depends for synthesis of scientific opinion as well as advice);
b. Finance and Administration;
c. Sea Lamprey Control and Research; and
d. Management and Research.

Each central Committee includes a Commissioner from each country and they alternate biennially as chairman and vice-chairman.

The Commission has established six external technical committees, one for fish disease control and one for each of the five lakes. Lake Committees consist of a senior fishery administrator from each fishery management agency on a lake. They are assisted by experts and advisors of their choice and often create subcommittees to study special topics. Lake Committees develop and coordinate studies, encourage implementation of findings, and consider on their own initiative any management and research matter or those that may be referred to them by the Commission or through other Committees. If a Lake Committee endorses a report which includes recommendations that will impact its own organization's operations it can transmit the recommendations to the agencies on its own or submit to the Commission. If the Commission feels the study, conclusions and recommendations are worthy, the

Commission will endorse and transmit to the affected agencies. This latter course has been effective over the years.

Where do we stand today?

1. *Contaminants.* Many Great Lakes fish are over the Food and Drug Administration action levels for PCB, mercury, and dieldrin, and in Lake Ontario, Mirex. This situation casts a pall over the social and economic aspects of Great Lakes fisheris. It Creates a very real problem for commercial fishermen, processors, and retailers; a shadow of doubt in the minds of every consumer and sport fisherman; an added question for the fishery manager; a symbol of defeat for the water pollution control agencies; and a mark for every environmental management critic to flaunt as an example of the failure of the "system". It denies full use of the Great Lakes fishery resource. It also points up the need for renewed efforts on the part of water pollution control agencies and the pursuit of inventive strategies to correct this shameful situation.

FDA is now proposing to lower their action level for PCB in fish from 5ppm to 2ppm. This could have a far more serious effect on our fisheries than the FDA commercial fishery-based economic assessment estimates, because the recreational fisherman may decide that the fish are not worth catching. If this happens there will be a great drop in this $350M a year activity. The Commission has written FDA and the Conferences on Great Lakes Congressmen and Senators, urging careful reevaluation by FDA before taking this serious action.

2. *Fishery regulations and allocation of harvest.* The Commission and its expert committees are focusing on the subject problem on various lakes, dealing in particular with length limits on yellow perch and whitefish, quotas for lake trout, chubs, whitefish, yellow perch, and walleye, and allocation among jurisdictions. Management is impossible without control of harvest of those species which do not have adequate reproduction leading to sufficient recruitment to support optimum sustainable yields. Clarification of the legal rights of regulatory agencies to control the take by native fishermen is essential.

3. *Ecosystem quality.* The Commission has long recognized that to achieve rehabilitation of the Great Lakes ecosystem to the benefit of society there must be simultaneous restoration of chemical, physical, and biological quality. The International Joint Commission, charged with assisting the Governments in the implementation of the 1972 Canada-U.S. Great Lakes Water Quality Agreement, met jointly with this commission on October 20, 1977. We urged the IJC to adopt a broader concept than water quality alone, to start thinking ecosystem quality. This Commission is not concerned with overlap of areas of responsibility between the Commissions. The resource of the Great Lakes and the people of the Great Lakes region will be the beneficiaries if attainment of ecosystem quality becomes the identified and shared philosophy of the two Great Lakes international commissions. Such a sharing should increase cooperative achievement in the future.

4. *Rehabilitation and restoration of the Great Lakes.* This Commission interprets from its charge that the Governments desire rehabilitation of the fish populations, restoration of the value of fishery resources of the Great Lakes. Today, sea lamprey populations are under a degree of control in all of the Great Lakes which allows sufficient survival and growth of desirable species to produce a commercial and recreational fishery valued at almost a half-billion dollars annually. Following further rehabilitation efforts, the production of desirable species will be increased greatly, and the value of the fishery resource will be much higher. Our cooperators and the Commission are working on research programs and implementation of fishery management strategies to further rehabilitate the fishery resource. We are handicapped by contaminants in fish, insufficient natural reproduction by some species because of degraded water quality, continuing loss of habitat, an undesirable fish community structure and species mix, extinction of some species, loss of a variety of gene pools, inadequate laws to permit full control of harvest in some situations, and many other factors, some identified and some not.

The Commission also fees a responsibility for rehabilitation of Great Lakes values beyond the fish population. Literally billions of dollars have been spent on restoration of water quality, while less than 100 million has been spent in total on the efforts by agencies to rehabilitate the ecological resoures. It is now time for the governments to make a strong, irreversible and concerted commitment towards the ecological rehabilitation and restoration of the Great Lakes and towards an implementation program to achieve these ends. Beyond what the countries have committed to restoration of water quality, what should be done? There is no large-scale blueprint.

In September, 1977, this Commission activated a "Feasibility Study on Rehabilitation of the Great Lakes" and charged its Scientific Advisory Committee to produce a book which would serve to educate a larger public as to the feasibility of rehabilitation and, in general, how rehabilitation might be achieved if it appears to be feasible.

We have suggested to IJC that the expert committees of their Research Advisory Board collaborate with our scientists on this effort, and we believe that this initiative will provide the basis for plans of action.

5. *Future fishery management.* In 1974 the Commission, working with its cooperators, produced a Management Policy for Great Lakes Fisheries. We have made great progress on each policy point, but there's a long way to go. Success to date has been largely "engineered" and the recreational fisherman and the supporting businesses are reaping the benefits. The commercial fishing interests are suffering from a variety of ills: e.g., contaminants; state regulations favoring recreational fishing over commercial fishing; and an undesirable species mix of low value species available for commercial harvest. This latter point is well-illustrated by a figure from the recent GAO report, "The U.S. Great Lakes Commercial Fishing Industry—Past, Present, and Potential" which shows that from 1931 to 1940 43 percent of the catch was of high-value species. Now the high-value species make up 8 percent of the catch.

At the moment, the National Marine Fishery Service identifies only 12 species which, under current regulations, are capable of withstanding further commercial exploitation. All but one species listed are of low economic value. Not an encouraging situation, but a correctable one.

While the Commission has made great progress in its 21 years of effort, there's a lot of work left to be done.

Statement of the U.S. Section of the Great Lakes Fishery Commission by Carlos M. Fetterolf, Jr.

Mr. Chairman, Committee members, ladies and gentlemen, I am Carlos M. Fetterolf, Jr., Executive Secretary of the Great Lakes Fishery Commission. The U.S. Section has authorized me to present the following statement.

The U.S. Section of the Great Lakes Fishery Commission was apprised on 5 July that the Committee would hear comments on Representative Ruppe's 30 June discussion draft amendment to H.R. 12531, a 3 May 1978 bill to amend the Great Lakes Fishery Act of 1956. The Section is very pleased to have this opportunity to offer the following comments.

The members of the Great Lakes Fishery Commission have reviewed Mr. Ruppe's 30 June discussion draft amendment to H.R. 12531. It is the consensus of the Commissioners that the amendment provides for a cumbersome and expensive series of Lake Advisory Committees to the U.S. Section to do work that can be more efficiently, economically, and expertly handled by the existing Lake Committees of the Commission.

The draft amendment provides for establishment of Great Lakes Advisory Committees as follows:

	Interest groups	
	Commercial and sport fishing and the public	Indians
Lake Superior:		
Minnesota	1	[1] 1
Wisconsin	1	[1] 1
Michigan	4	[1] 1
Lake Michigan:		
Wisconsin	2	[1] 1
Illinois	1	.....
Indiana	1	.....
Michigan	4	[1] 2
Lake Huron:		
Michigan	5	2
Lake Erie:		
Michigan	1	.....
Ohio	4	.....
Pennsylvania	1	.....
New York	1	.....
Lake Ontario:		
New York	5	.....

[1] Distribution of Indian appointments among States is not clear.

Appointments from interest groups other than Indians are to be made by the Governors of the States, with Indian appointments by the Secretary of the Interior. The uneven distribution of members will be a sore point with state governments. The state fishery management agencies are not represented and Indians have over-representation.

Each Advisory Committee is charged to hire a staff, encouraged to work with state and federal agencies, and to produce a fishery management plan which has force in a Great Lake.

The draft amendment fails to recognize that four of the five Great Lakes are shared between Canada and the United States. The Province of Ontario and the eight Great Lakes states have fishery authority in their waters of the lakes. There is no federal jurisdiction over Great Lakes fishery management. Neither the state nor the provincial fishery management agencies are members of the proposed Lake Advisory Committees. It is difficult to imagine the States or Province supporting plans for which they only contribute data.

How can the plans have force when the States and Province have fishery management authority in their waters?

How can a Lake Advisory Committee hire a staff which can develop a management plan equally knowledgeable to one developed by the responsible agency?

The proposed structure and method of operation of the Lake Advisory Committees seems designed to promote competition and dissension, especially with "provision of federal administrative and technical support services as are necessary for effective functioning". This provision is a certain block to state cooperation: Federal intervention in an area of state responsibility.

The present operational structure of the Great Lakes Fishery Commission provides, for each Great Lake, a Lake Committee made up of a senior administrator representing each fishery regulatory agency on the lake. They are assisted by experts and advisors of their choice and often create subcommittees to study special topics. Lake Committees develop and coordinate studies, encourage implementation of findings, and consider on their own initiative any management and research matter or those that may be referred to them by the Commission or through other Committees.

These Lake Committees are working with the Commission to develop fishery management plans. They have the expertise, and, currently, the enthusiasm to do the job. The Commission would hate to dampen that enthusiasm by taking the job away from them. The Lake Committees work closely with U.S. and Canadian federal scientists and willingly accept technical support as long as their regulatory and management authority is not threatened.

The U.S. Section already has Lake Advisory Committees, members of which it appoints on recommendations of state governors. The Advisory Committees work as closely as they wish with the Lake Committees, and have made significant contribu-

tions. Advisory Committees, Lake Committees, the U.S. Section, the Commission and all fishery agencies share information and work together in an extremely cooperative manner.

The U.S. Section supports the provision of the draft amendment for compensation of Lake Advisory Committee members, and remarks on the incongruity that the members would be compensated, when Commissioners of the U.S. Section have served for 22 years with no compensation other than travel, meal, and lodging at government rates.

The U.S. Section recognizes that Section 15 of Mr. Ruppe's 30 June 1978 discussion draft amendment was drawn from Public Law 94-265, the Fishery Conservation and Management Act of 1976, enacted to conserve and manage the fishery resources found off the coasts of the United States by establishing a fishery conservation zone, the 200 mile limit. This legislation provided for Regional Councils to assume responsibility for fishery management in the fishery conservation zone.

There is a great difference in the management authority responsibilities between the sea coasts and the Great Lakes. On the sea coasts the states have management authority out to 3 miles, the Regional Councils and the Federal Government have management authority from 3 miles offshore to 200 miles offshore. In the Great Lakes, the states have fishery regulatory authority in the tributary streams, estuaries, shoreline areas, AND the offshore waters to the boundary of the next state or to the international boundary. As has been established prior to this time, the Fishery Conservation and Management Act of 1976 was not designed to apply to the Great Lakes.

In contrast, the Great Lakes Fishery Act of 1956 was designed specifically for the international-interstate waters and jurisdictional responsibilities of the Great Lakes. It is working well.

A comment on cost. The current total administrative budget of the Commission is $300,000, shared 50:50 with Canada. A single Regional Council budget approaches this figure. This amendment would in essence create five U.S. Regional Councils on the Great Lakes.

Relative to Title II of the draft amendment, dealing with Indian Fishing Rights in Michigan, the position of the Commission and the U.S. Section was made clear in its statement to this Committee's Hearing relative to Treaty Indian Fishing Rights, Petoskey, Michigan, 13 January 1978. Because the need to regulate total catch is fundamental to any well-designed, sound fishery management program, the Commission feels it is imperative that clear authority for regulation of total catch is established.

The U.S. Section points out that Wisconsin and Minnesota also have treaty Indian fishing rights disputes and that the total issue of Indian rights is of national importance. The U.S. Section believes that legislation on treaty Indian fishing rights in the Great Lakes should be separate legislation.

The U.S. Section of the Great Lakes Fishery Commission greatly appreciates the opportunity to comment on Mr. Ruppe's 30 June 1978 proposed amendment to H.R. 12531.

Mr. LEGGETT. Where are you from?

STATEMENT OF CARLOS M. FETTEROLF, JR., EXECUTIVE SECRETARY, GREAT LAKES FISHERY COMMISSION

Mr. FETTEROLF. Ann Arbor, Mich.

Mr. LEGGETT. Are you in Mr. Ruppe's district?

Mr. RUPPE. No. He is in a different end of the State.

Mr. FETTEROLF. I am an international employee. My salary is paid 50 percent by the United States and 50 percent by Canada.

The Great Lakes Fishery Commission, created by convention between the United States and Canada, has been in operation since 1956. It has carried out the charge to control the parasitic sea lamprey that had practically wiped out the lake trout fisheries in the upper three Great Lakes. The history of its success in controlling the sea lamprey to a point where the fish can again survive is well known. As the sea lampreys were brought under control, the Commission began to concentrate on another of its charges, that of coordinating research among all the agencies having administra-

tive responsibilities on the five lakes so that fish stocks could be brought to their optimum level and viable sport and commercial fisheries can be perpetuated.

The Commission's role is to lead, to be a cohesive force, and to provide the forums within which coordination of activities can take place. The commission is the vehicle that can allow mutually-agreeable manageable programs beneficial to the fishery resource and fisheries to be developed. From a fishery situation in the 1950's which could only be termed "devastated," the commercial fishery of the Great Lakes has grown to an annual value in excess of $100 million, and the recreational fishing has grown to an annual value in excess of $350 million. This demonstrates that sea lamprey control and the fishery management and research programs of the eight Great Lakes States, the Province of Ontario, and the United States and Canadian Federal Governments continue to be successful.

The Great Lakes Fishery Commission endorses in principle the intent of H.R. 12531, as introduced by Mr. Ruppe on May 3, 1978, and offers the following comments.

The bill charges the U.S. section to prepare a report describing the fishery of each Great Lake, assessing current fishery management programs, predicting present and future production under various scenarios, evaluating current and future environmental and fishing strategies, and recommending future protection and management programs for Great Lakes fisheries. This is essentially a fishery management plan.

The Commission in the past has charged its Lake Committees—consisting of a senior administrator from each fishery regulatory agency on a lake—to develop common management goals and objectives, important components of planning. The Commission's Council of Lake Committees, made up of all the Lake Committee members, both United States and Canadian, announced their unanimous position in March 1978 that a strategic fishery management plan for the Great Lakes is desirable and that such a plan should be developed by the Commission working with the Lake Committees.

In developing the plans, the bill charges the United States section to interact with its Lake Advisory Committees made up of four members—one representing each of four interests, commercial fishing, sport fishing, the public at large, and the State fishery management agency—from each State with management jurisdiction on each lake.

The United States section is in the process of requesting the Governors of the Great Lakes States to review the current memberships and submit candidates for appointment by the United States section. It is the intention of the Commission to seek comment and review on drafts of all plans from the full spectrum of environmental agencies and organizations and the public in both countries. This will, of course, include the Lake Advisory Committees.

The Commission has not established a time schedule for development of the plans, because its prime concern is development of usable plans that have the support of the agencies with authority

34-367 O - 78 - 13

to implement them. Plans that do not have the support of the operating agencies will only occupy shelf space.

To develop usable strategic and operational plans could take 3 years. A senior fishery scientist coordinator with staff support would cost about $225,000 over this period. If each State needs $20,000 for staff work and travel in association with development of plans for its waters of each Great Lake over the same period, the amount needed for State participation would be $260,000—13 times $20,000—plus $80,000 for Ontario's waters.

Relative to stock assessment, catch inventory, and reporting requirements for a State to be eligible for financial aid to carry out these activities, the Commission, with the full cooperation of the States, province, and United States Fish and Wildlife Service, has already conducted an inventory of fishery agencies' stock assessment programs and needs. Cooperators have responded to the inventory and the comments are being synthesized. On completion, the Commission will recommend additional funding for appropriate fishery management and research agencies so that adequate assessment programs can be conducted and the resulting information incorporated into management strategies and regulations.

The Commission recognizes the importance of hatcheries——

Mr. LEGGETT. I have not read the rest of your statement. You do not believe a bill is necessary to accomplish the objective, is that right?

Mr. FETTEROLF. We wish to point out that authority to pursue these programs already exists and the bill does not recognize the international aspects——

Mr. LEGGETT. Well, if you have any specific recommendations or amendments to the bill, we would appreciate having those because you are obviously a recognized authority in the area.

Mr. FETTEROLF. Sir, the U.S. section of the Great Lakes Fishery Commission has commented on Mr. Ruppe's June 30 discussion draft, and I would like to make those comments at this time.

Mr. LEGGETT. Can you summarize those?

Mr. FETTEROLF. It is the consensus of the commissioners that the amendment provides for a cumbersome and expensive series of Lake Advisory Committees to the U.S. section to do work that can be more efficiently, economically, and expertly handled by the existing Lake Committees of the Commission.

Appointments from interest groups other than Indians are to be made by the Governors of the States, with Indian appointments by the Secretary of the Interior. The uneven distribution of members will be a sore point with State governments. The State fishery management agencies are not represented and Indians have overrepresentation.

Each advisory committee is charged to hire a staff, encouraged to work with State and Federal agencies, and to produce a fishery management plan which has force in a Great Lake.

The draft amendment fails to recognize that four of the five Great Lakes are shared between Canada and the United States. The Province of Ontario and the eight Great Lakes States have fishery authority in their waters of the lakes.

There is no Federal jurisdiction over Great Lakes fishery management. Neither the State nor the Provincial fishery management

agencies are members of the proposed Lake Advisory Committees. it is difficult to imagine the States or Province supporting plans for which they only contribute data.

How can the plans have force when the States and Province have fishery management authority in their waters?

How can a Lake Advisory Committee hire a staff which can develop a management plan equally knowledgeable to one developed by the responsible agency?

In further summary, the U.S. section recognizes that section 15 of Mr. Ruppe's June 30, 1978, discussion draft amendment was drawn from Public Law 94-265, the Fishery Conservation and Management Act of 1976, enacted to conserve and manage the fishery resources found off the coasts of the United States by establishing a fishery conservation zone, the 200-mile limit. This legislation provided for regional councils to assume responsibility for fishery management in the fishery conservation zone.

There is a great difference in the management authority responsibilities between the sea coasts and the Great Lakes. On the sea coasts the States have management authority out to three miles, the regional councils and the Federal Government have management authority from 3 miles offshore to 200 miles offshore. In the Great Lakes, the States have fishery regulatory authority in the tributary streams, estuaries, shoreline areas, and the offshore waters to the boundary of the next State or to the international boundary.

Mr. LEGGETT. Only because this subcommittee straightened out the State Department.

Mr. FETTEROLF. Yes, recently, thank you.

As has been established prior to this time, the Fishery Conservation and Management Act of 1976 was not designed to apply to the Great Lakes.

In contrast, the Great Lakes Fishery Act of 1956 was designed specifically for the international-interstate waters and jurisdictional responsibilities of the Great Lakes. It is working well.

A comment on cost. The current total administrative budget of the Commission is $300,000, shared 50-50 with Canada. A single regional council budget approaches this figure. This amendment would, in essence, create five U.S. regional councils on the Great Lakes.

Relative to title II of the draft amendment, dealing with Indian fishing rights in Michigan, the position of the Commission and the U.S. section was made clear in its statement to this committee's hearing relative to treaty Indian fishing rights, Petoskey, Mich., January 13, 1978. Because the need to regulate total catch is fundamental to any well-designed, sound fishery management program, the Commission feels it is imperative that clear authority for regulation of total catch is established.

The U.S. section points out that Wisconsin and Minnesota also have treaty Indian fishing rights disputes and that the total issue of Indian rights is of national importance. The U.S. section believes that legislation on treaty Indian fishing rights in the Great Lakes should be separate legislaton.

We appreciate the opportunity of making these comments.

Mr. RUPPE. You do have committees in your organization?

Mr. FETTEROLF. Yes.

Mr. RUPPE. What type are they, technical or advisory?

Mr. FETTEROLF. The Lake Committees are technical committees made up of senior people from each State and Province with jurisdiction on a lake.

Mr. RUPPE. What about your advisory committees?

Mr. FETTEROLF. As discussed earlier this morning, the advisory committees are appointed by the U.S. section on recommendations of the Governors of each of the States. The Governors recommend from four interest groups, sport fishng, the public at large, commercial fishing, and State fishery management agencies.

Mr. RUPPE. Are those committees all appointed?

Mr. FETTEROLF. Yes.

Mr. RUPPE. Are they active?

Mr. FETTEROLF. They are in existence. The Lake Superior Advisory Committee is active.

Mr. RUPPE. The other four are not active?

Mr. FETTEROLF. They are not active. They are appointed and representatives attend some Lake Committee, interim and annual meetings.

Mr. RUPPE. Now, if there is to be a resolution of this problem and the advisory committees are not active, four out of five, how would the Indian voice be heard since I gather they are not represented on the committees as such, and I understand they are not represented individually on the committees?

Mr. FETTEROLF. That is true.

Mr. RUPPE. Four out of five, the advisory committee are not active. You say you have the proper vehicle for solving this problem.

How can you have that if there is no Indian participation, and four out of five of the advisory committees are not active?

Mr. FETTEROLF. It would take an amendment to the act of 1956 to provide for Indian representation.

Mr. RUPPE. What would it take to actually put four out of five committees in gear and moving 21 years after the bill was passed?

Mr. FETTEROLF. I am not sure exactly that those committees were provided for in the original bill.

Mr. RUPPE. Counsel informs me they were.

Mr. FETTEROLF. I think all it would take would be the suggestion from Congress, or from any interested party.

Mr. RUPPE. You do not need another suggestion from us to undertake compliance with the law.

Mr. FETTEROLF. I think your draft amendments will be enough stimulus to activate them.

Mr. RUPPE. You are very thoughtful. Well, your Commission has done a good job, and I am needling you a little bit.

What I am suggesting, it may not be necessarily the answer to solving this dispute—you are right when you say you need a cohesive management force for the fishery. I just think that we have to have some resolution of the Indian vis-a-vis the State problem, and we do not have it.

The courts are going to decide, and I think at that point, it will be very difficult to do any negotiating or compromising, because the winner is obviously not going to compromise. The suggestion is

made, whoever loses will suggest a compromise. I suggest whoever wins will be unsupportive of that suggestion.

Yes, you have done a good job. No, I am not sure the Commission as presently constituted is the vehicle for resolving the controversy.

Mr. FETTEROLF. The Commission does not pretend to be, sir.

Mr. RUPPE. That is why I would hope for a more positive view toward a solution of the problem, other than just using the Commission.

Mr. FETTEROLF. The Commission itself is much more concerned with the welfare of the fish stocks and the fisheries. But allocation of the resource among users is not of prime interest to the Commission. It is not a responsibility.

Mr. LEGGETT. But on the other hand, unless there is a proper allocation, then proper enhancement programs cannot be developed. As a result, the primary thing with which the Commission is concerned, the health of the fish stocks, might become in jeopardy.

These fractured, myopic views are only partially helpful.

Mr. FETTEROLF. I think we had a problem with semantics. I was mentioning allocation of the harvest among users. The Commission recommends quotas on catch, but allocation among users is not the Commission's business.

Mr. RUPPE. Actually we need a mechanism for allocation.

Mr. FETTEROLF. Within each jurisdiction, they do that themselves.

Mr. RUPPE. Your Commission does not do that?

Mr. FETTEROLF. No, sir.

Mr. RUPPE. I provide a vehicle for that purpose. We have to provide a vehicle, do we not, apart from the Commission, because that is not your function?

Mr. FETTEROLF. That is correct.

Mr. LEGGETT. Mr. Mannina?

Mr. MANNINA. Thank you, Mr. Chairman.

Mr. Fetterolf, would you comment on the observation made that fish were planted in the wrong location, which explains the decline of lake trout in Whitefish Bay?

Mr. LEGGETT. You can answer that yes or no, and explain it if you want to.

Mr. FETTEROLF. In a statement that I made for the Commission in Petosky, I went into the problems that the management agencies have had in the proper stocking of fish in the proper locations. Originally it was thought all you had to do is put the fish in the lake and they would have sense enough to find a place to reproduce. They did not. It is a problem with lake trout. They are long-lived fish. Five years it takes them to mature so you can discover if they will go to the proper place to spawn or not.

Originally many were stocked on the shores. Now, for over 50 percent of the lake trout stocked, attempts are made to carry them offshore and plant them over historically productive areas.

Mr. MANNINA. Is it your position the original planting program put the fish in the wrong place?

Mr. FETTEROLF. They put them in the lake, which is the right place. No one knows exactly where they should have been placed, and they still do not.

Mr. MANNINA. Thank you.

Mr. LEGGETT. Thank you.

Now we are down to our last witness, Mr Gilbert Radonski, Executive Secretary, Sport Fishing Institute.

STATEMENT OF GILBERT C. RADONSKI, EXECUTIVE SECRETARY, SPORT FISHING INSTITUTE

Mr. RADONSKI. Thank you for the opportunity to appear.

Mr. LEGGETT. Nice to have you here, Gilbert. Your statement will appear as if read. It is getting late. You can summarize that, if you care to.

[The following was received for the record:]

STATEMENT OF GILBERT C. RADONSKI, EXECUTIVE SECRETARY, SPORT FISHING INSTITUTE

Thank you, Mr. Chairman, on behalf of the Sport Fishing Institute (SFI) for the oportunity to appear before you and the other members of the Subcommittee considering H.R. 12531, a bill to amend the Great Lakes Fisheries Act of 1956. I am Gilbert C. Radonski, the Institute's Executive Secretary. The Institute is a non-profit, tax-exempt broadly-based conservation organization, staffed entirely by fisheries scientists, devoted to the protection, enhancement, and wise utilization of America's freshwater and marine aquatic resources, especially the fish populations and essential habitats. Our principle objective, by means of a program of ecological research, conservation education, and professional service, is to help develop and promote optimum opportunity for Americans to engage in healthful and rewarding recreational fishing. Our financial support comes from a broad range of manufacturers of fishing equipment and accessories and from many thousands of anglers and other concerned citizens.

My purpose in appearing before you today, Mr. Chairman, is to comment on H.R. 12531, a bill to amend the Great Lakes Fishery Act of 1956.

Recently the Sport Fishing Institute's Board of Directors adopted the following resolution:

Be it resolved, that the Board of Directors of the Sport Fishing Institute, assembled in regular Annual Meeting at New Orleans, Louisiana, this 16th day of May, 1978, do herewith call on the Great Lakes Fishery Commission to formulate a Great Lakes Fishery Plan designed to address management of the fisheries of each lake as components of a comprehensive Great Lakes Fishery Plan, with each lake's fishery management plan to include as a minimum: (1) a complete description of the fishery, including gear, species, location, management costs, revenue, recreational interest, and existing fishery rights, (2) an assessment and specification of the fishery's present condition, maximum sustainable yield, and optimum yield, and an assessment and specification of the capacity and desire of the United States and Canada to harvest this optimum yield, and (3) recommendations for management of the fisheries.

As written on May 3, 1978 H.R. 12531 would accomplish the objectives of the SFI Board of Directors Resolution. Therefore, SFI strongly favors H.R. 12531.

Mr. B. C. Nagelvoort of the Professional Staff of the Committee on Merchant Marine and Fisheries has advised me that Subcommittee on this date will also informally consider amendments to H.R. 12531 offered by Mr. Ruppe of Michigan that have been circulated in discussion draft form. The proposed amendments are intended to resolve the Indian fishing rights problems of Michigan Indians. The Sport Fishing Institute sees the original H.R. 12531, which has well conceived objectives, as an attempt to solve a natural resource problem. On the other hand, we see the amendments in the discussion draft as an attempt to solve a social problem. Because we see the two issues as separate and distinct, SFI strongly urges Mr. Ruppe to reconsider his amendments to H.R. 12531 and submit them as separate legislation.

I would like to restrict my futher remarks to the need for the unamended version of H.R. 12531 as submitted on may 3, 1978.

We see H.R. 12531 expanding the role of the Great Lakes Fishery Commission (U.S. Section) from a narrow-scope mission of controlling sea lamprey to a broader mission which would involve the total fisheries resources of the Great Lakes. This proposed broadening of mission comes at a time when the sea lamprey program has become routine to the point where total administration of the program could easily be handled by the U.S. Fish and Wildlife Service (in U.S. waters).

Research and investigations of the status of Great Lakes' fishes and fisheries called for by section 15 of H.R. 12531 are sorely needed. The authority of the Great Lakes Fishery Commission to manage the fisheries of the Great Lakes is very limited. In the United States portion of the Great Lakes that authority rests with the eight individual Great Lakes States. The Federal role is limited to providing support services—research, stock assessment, sea lamprey control, hatcheries, and financial assistance. H.R. 12531, in our estimation, would not infringe on the authority of individual States to manage the fisheries within their jurisdiction.

One of the major Great Lakes fisheries role shouldered by the Federal Government has been fish stock assessment. The stock assessments have not been adequate. In a paper, titled "Report to the Great Lakes Fishery Commission on an Inventory of Great Lakes Fish-Stock Assessment Needs," by J. H. Kutkuhn and W. L. Hartman (December 1977, U.S. Fish and Wildlife Service, Ann Arbor, Michigan), the authors concluded:

Because evidence provided by the survey reported herein demonstrates overwhelmingly the pressing need for much more comprehensive assessment of Great Lakes fishery resources than is possible with funds now available, it is therefore recommended:

That the Great Lakes Fishery Commission, through communication with provincial, State, and Federal governments, begin immediately to address the urgent need for additional monies by which to upgrade the assessment—and thereby secure the protection and ensure the proper use—of all Great Lakes fishery resources. Because adequate assessment of Great Lakes fishery resources can only be achieved through the close cooperation of those management agencies representing jurisdictions that share many of these resources in common, it is further recommended:

That the Great Lakes Fishery Commission pursue the development by each agency of a resource-assessment policy that would state management philosophy as well as objectives, and thereby greatly facilitate the direction, character, division and coordination of interagency efforts to assess transboundary fish stocks.

Section 15(a)(3) of H.R. 12531 would provide for the proper assessment of each Great Lakes fishery.

The Sport Fishing Institute has noted that the Great Lakes States have opted for increasing allotment of the fisheries stocks to the recreational angler to maximize the social and economic benefits derived from these fisheries. Although we are pleased with this turn of events, it is apparent that for the fisheries to provide a sustained yield to the recreational angler sound scientific fisheries management practices will have to be employed. That is not to say that the States have not been practicing scientific fisheries management. The States have approximately 38,000,000 acres of the Great Lakes under their fisheries jurisdiction that are fished annually by 4,539,000 anglers (1975 data)—and the number of anglers is increasing each year. The enormity of the situation has exceeded the capacities of the States to deal with it. Section 15 calls for a report that describes the status of the fisheries, factors affecting the fisheries, and recommendations for obtaining optimum sustainable yields for each of the lakes. Such a report would go a long way in assisting the States with the management of the fisheries without infringing on their rights for sovereign management of the fisheries within their jurisdiction.

In November 1977, the SFI Board of Directors adopted the following Resolution:

Be it resolved, that the Board of Directors of the Sport Fishing Institute, assembled in regular Semi-Annual meeting, at Hamilton, Bermuda, this 8th day of November 1977, do herewith call upon the Secretary of Commerce to conduct a study of the direct, indirect, and induced economic activity associated with recreational fishing on the Great Lakes, so as to provide an appropriate data base, comparable to that available with respect to the commercial fisheries, for realistically assessing the likely economic impact of proposed governmental actions that may impact the recreational fisheries of the Great Lakes and the considerable industry they support.

SFI suggests that an economic survey of recreational fishing on the Great Lakes comparable to the recently completed survey of marine recreational fishing, titled "Economic Activity Associated With Marine Recreational Fishing," published by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (prepared by Centaur Management Consultants, Inc.; Contract No. 6—35195; June 1977) would satisfy the need for economic data. Such a survey is possible under Section 15(a)(1)(C) of H.R. 12531 and would fill a critically important data void.

In summary, Mr. Chairman, the Sport Fishing Institute urges favorable consideration of H.R. 12531 of May 3, 1978 by this Subcommittee and further urges that consideration of the fishing rights of Michigan Indians be treated as a separate and

distinct issue. The demands on Great Lakes fish stocks are limited at the present time, due in large part to contamination by chemicals such as polychlorinated biphenyls (PCB's)—in essence, the Great Lakes fish stocks are in a "grace period." When contaminants are better understood, or reach a level where they are not a factor in marketing the fish for unlimited human consumption, the competition for those fish will increase dramatically and their management will be done on a crisis basis in the absence of a fisheries plan. The Sport Fishing Institute submits that now is the time to begin development of a Great Lakes Fishery Plan so that as new demands come on line they can be handled in a systematic, logical basis.

Mr. RADONSKI. I will read the summary of my prepared statement, and make a small comment on it.

In summary, Mr. Chairman, the Sport Fishing Institute urges favorable consideration of H.R. 12531 as written on May 3, 1978 by this subcommittee——

Mr. LEGGETT. Wait a second. You say you support the bill?

Mr. RADONSKI. I stated as written on May 3.

Mr. LEGGETT. Whatever support Mr. Ruppe had at any time he effectively frustrated when he made his amendments.

Mr. RUPPE. I can sympathize with President Carter. My polls have gone down a lot faster than his, apparently. [Laughter.]

Mr. RADONSKI [continuing]. But further urges that consideration of the fishing rights of Michigan Indians be treated as a separate and distinct issue. The demands on Great Lakes fish stocks are limited at the present time, due in large part to contamination by chemicals such as polychlorinated biphenyls (PCB's)—in essence, the Great Lakes fish stocks are in a "grace period." When contaminants are better understood, or reach a level where they are not a factor in marketing the fish for unlimited human consumption, the competition for those fish will increase dramatically, and their management will be done on a crisis basis in the absence of a fisheries plan. The Sport Fisheries Institute submits that now is the time to begin development of a Great Lakes Fishery Plan so that as new demands come on line they can be handled in a systematic, logical basis.

Mr. Ruppe had a great deal of courage in introducing H.R. 12531, as it appeared on May 31, 1978, because contrary——

Mr. LEGGETT. Do you think he knuckled under when he put in these amendments?

Mr. RADONSKI. He is probably facing an issue which he feels has to be resolved. We see it as a social issue, we are more interested in the biological issue of the fish stocks.

You have heard conflicting testimony today. The U.S. Fish and Wildlife Service told you there was not a great deal of data. The State of Michigan said there was all the data one would need. I think the Fish and Wildlife Service statement is closer to the truth.

I think Mr. Ruppe's bill would serve Americans by providing management of very important fish stocks. We do not have a good stock assessment program for the Great Lakes. We do not know the harvest, recreational harvest, or economic significance of the recreational fishery to the Great Lakes.

I think all these matters would be well served.

Now, as was said earlier, the Indians would not harvest a great deal of fish in pounds. The recreational fishermen, the group we are interested in, will. They are fishing on these stocks on the absence of good fishing management plans.

We urge the original H.R. 12531 be considered favorably by this committee.

Mr. LEGGETT. It is one thing to authorize a program, and another thing to get the money. When you spawn a bill amidst lots of controversy, it makes it difficult to get all of the forces in line to get funds for programs.

Mr. RADONSKI. This is what has been holding up assessment of the stock in the Great Lakes, is lack of money. The Federal Government, at the Fish and Wildlife Service lab in Ann Arbor, has been doing stock assessment work. In a report they put out a year ago, they admit they are a long way from having good stock assessment data to do proper management.

Mr. LEGGETT. Ed?

Mr. FORSYTHE. Thank you.

You indicated the major problem as far as harvesting is sport fishing.

Mr. RADONSKI. Yes, the Great Lakes are primarily a recreational fishery now.

Mr. FORSYTHE. Are you supporting some kind of registration or licensing for sport fishermen in that fishery?

Mr. RADONSKI. They are all licensed.

Mr. FORSYTHE. Are they required to do any reporting?

Mr. RADONSKI. Well, they are not required to do reporting, but there can be statistical and census where they could define the approximate harvest by recreational fishermen.

Mr. FORSYTHE. I think universally that is one of the problems we are running into, particularly on the east coast.

How do we assess that as we approach all the problems?

Mr. RADONSKI. Our organization recently adopted a resolution that would favor a marine sports angler license, too.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. MR. RUPPE?

Mr. RUPPE. All kidding aside, the initial bill can stand by itself. Obviously the amendments were designed to achieve a somewhat different purpose, as you suggest, than the bill itself was, and certainly by design that is correct.

Your opinion is we need more monitoring, more research, and a better stock assessment program, better effort, much enhanced effort to increase the entire fishery on the Great Lakes, is that right?

Mr. RADONSKI. Yes.

Mr. RUPPE. That is where the basic bill I introduced would be a very positive vehicle, for that purpose?

Mr. RADONSKI. Yes. It had the flexibility that it could be implemented.

Mr. RUPPE. I gather your organization does not get into the tangle between the Indian community and the State as far as the fishery is concerned. Does your organization have any particular view as to Indian fishing rights? Are they a threat to your recreation fishing industry?

Mr. RADONSKI. The only conflicts would be in gear conflicts. Of course, it does not matter if it is an Indian commercial fisherman, or white commercial fisherman. If it is a gear conflict, it is a gear conflict. If they are overharvesting the stocks because of some

arbitrary figures a judge will provide, providing no consideration of the capability of the fishery, we would be against it.

It is what is good for the total fish stock.

Mr. RUPPE. In other words, you are saying there should be limitations on the use of various types of equipment, and limitation on the overall catch. Within that framework, you are prepared to live, as does any other organization?

Mr. RADONSKI. Yes.

Mr. RUPPE. You would, I assume, recognize that if the court came down against the Indians, the sport fishermen, in essence, would have a very major share of the fishery. If the Indian community won, sport fishermen would have a somewhat lesser portion of that fishery albeit a good one, and an even better one if an enhancement program were enacted.

Mr. RADONSKI. I do not know if the court came down in favor of Indians if it would have a great deal of impact on sport fishing. In certain areas it would.

Mr. RUPPE. In other words, you could have an impact in Keweenaw Bay, Whitefish Bay, maybe other areas. If that impact were confined to that area, then it would not be of great concern to you.

Mr. RADONSKI. I would guess it would not.

Mr. RUPPE. Therefore, as long as the other areas were managed carefully, your membership and your goal of a broadened recreation fishery would be met?

Mr. RADONSKI. Right.

Mr. RUPPE. Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you very much.

Now, the question comes as to what we do. I think that we will leave the hearing record open, and in the event we can develop a little stronger polarization with respect to what we can do, we may decide to do it. But obviously we are not looking forward to moving this legislation right at this point.

You have been a very attentive audience. Thank you very much.

The meeting will be adjourned.

[The following was received for the record:]

STATE OF NEW YORK,
DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
Albany, N.Y., July 10, 1978.

Hon. ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN LEGGETT: Thank you for the opportunity to comment on the subject of H.R. 12531 introduced by Congressman Ruppe.

While the expressed objectives of solving the problem of Indian fishing rights, establishing a fisheries management plan and monitoring system, and augmenting hatchery production for the Great Lakes are commendable, we must oppose passage of this bill and the amendments we have seen because they arrogate to a federal agency management responsibility and authority traditionally held by the individual Great Lakes States. Implementation of such a bill would duplicate the efforts of agencies and institutions already charged with management responsibility, including the natural resource agencies of the eight Great Lakes States and the International Great Lakes Fishery Commission. Nor is there any provision for Canadian input to the management of Lake Erie or Lake Ontario which New York shares with the Province of Ontario.

We have serious reservations about the possibility that a committee of laymen could determine future directions of Great Lakes management programs and ignore

the advice of trained fisheries experts who now dominate natural resource agencies and demand high technical standards of performance from their program staffs.

There is a compelling need for additional funding to improve fisheries management of the Great Lakes. Additional funds are needed to 1) conduct research on the impact of contaminants found in fish flesh on humans and other life forms which depend upon fish for food, 2) abate pollution, especially toxic industrial effluents, 3) conduct research on lamprey barriers and construct barriers on streams where lampreys reproduce, 4) acquire sport fishery statistics, 5) obtain and integrate data on fish population dynamics to attain total allowable catch for all important fish stocks without jeopardy to the forage base and 6) design and implement a continuous monitoring system to evaluate management measures and provide a technical basis for fine-tuning the system as required.

We are confident that existing institutional arrangements are sufficient to handle the work ahead—provided they are supported by adequate federal, state, provincial and local funding.

Sincerely,

PETER A. A. BERLE.

STATE OF WISCONSIN,
DEPARTMENT OF NATURAL RESOURCES,
Madison, Wis., July 25, 1978.

Re Wisconsin Department of Natural Resources Position Relative to HR 12531 an Amendment to the Great Lakes Fisheries Act of 1956.

Hon. ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Longworth House Office Building, Washington, D.C.

DEAR REPRESENTATIVE LEGGETT: We have reviewed both the May 3, 1978 version of HR 12531 and the discussion draft of a proposed amendment dated June 30, 1978. We strongly oppose passage of both the original bill and the proposed amendment.

Wisconsin has actively participated in and supported the Great Lakes Fishery Commission throughout its existence. We believe that the interstate, national and international coordination that the Commission provides is essential to ensure that state management programs address lakewide needs. We believe that the success of the Commission has demonstrated that the various states and provinces can develop programs to resolve problems of lakewide significance while retaining jursidiction over their territorial waters.

HR 12531 as introduced directs the Commission to initiate development of a comprehensive plan. Wisconsin has urged the Commission to initiate such a planning effort and the Commission has initiated this effort in cooperation with the states, provinces and the Great Lakes Basin Commission. Many of the elements of the plan outlined in HR 12531 have been or are in the process of being developed at present. Our major disagreement is that HR 12531 does not require that the Commission develop the plan with the assistance of the states, Canadian provinces, and the United States and Canadian Governments. To be capable of implementation, such a plan must be developed jointly by all jurisdictions. If Canada is not included a sound plan cannot be developed.

Wisconsin has had some degree of success in its efforts. The only acceptable management scheme for common stocks is one that addresses all users on an equitable basis. By creating specific Native American management areas, common areas, and non-Native American areas, with some managed jointly, and others independently, we further fragment jurisdiction, the factor that leads to most of our present conflicts. We strongly oppose this type of "solution."

We also see the expanded role provided for Advisory Committees 15(e)(2) ABC usurps the state's jurisdiction by providing for advisory committees to prepare management plans that the states *must* follow. We oppose this type of intrusion. The fact that the states successfully implemented the rehabilitation of Great Lakes fish stocks that are in demand by conflicting user groups demonstrates that we have carried out our responsibilities within our jurisdiction. Creating larger jurisdictions and usurping the state's authority will not resolve these problems.

The June 30, 1978 draft ignores the proven migratory behavior of many of the stocks of common concern in the Great Lakes by assuming these stocks can be confined for management purposes to geographically and politically identified waters. For some stocks and some fisheries this might be possible, however, for many the harvest in one political jurisdiction affects the future harvest in another.

We also oppose the increased role of the advisory committees and the criteria for their appointment. We have supported including Native American representatives

on the advisory committees. We do not, however, believe they should have greater representation than any state.

Creating new organizational structure is much more costly than using the existing organization. We believe this section clearly undermines the state's authority to manage water under its jurisdiction in that it charges the U.S. Section with the responsibility to make specific management decisions with the advice of the states.

Relative to the proposed June 30, 1978 amendment to HR 12531: Although this draft purports to address the resolution of management problems arising from treaty rights in Michigan we believe that, if adopted, such a solution would be forced on other Great Lakes states. We have been working with Wisconsin tribes to establish a reasonable management approach. By working within the existing commission, given appropriate funding, most of the objectives of this proposed legislation could be achieved.

We recommend that the Lake Committees be the mechanism for plan development and that extensive public input to the plans be obtained through modification of existing advisory committees.

Our past results show the ability of the states to manage.

Sincerely,

ANTHONY S. EARL, *Secretary.*

STATEMENT OF CHARLES D. FLEISHMAN, DIRECTOR OF COMMUNICATIONS, AMERICAN FISHING TACKLE MANUFACTURERS ASSOCIATION

Mr. Chairman, my name is Charles Fleishman and I am the Director of Communications for the American Fishing Tackle Manufacturers Association (AFTMA), a national trade association comprised of more than 400 manufacturers of fishing tackle and related outdoor accessories and gear. AFTMA is dedicated to scientific fisheries management and to the propagation of national fisheries and sport fishing. For almost 45 years, we have sought to help millions of fishermen to preserve our priceless natural outdoor heritage. In the process, we have also extended every effort to assure all Americans of equal access to fisheries resources.

We appreciate this opportunity to submit testimony related to the vital issue of establishing a comprehensive Great Lakes Fisheries Plan. Moreover, we welcome the chance to officially register our organizational support of the unamended version of H.R. 12531 which was submitted on May 3, 1978.

AFTMA's support of Congressman Ruppe's bill, as presently written is unqualified. We commend the thorough and visionary manner in which this legislation was prepared and presented. However, with all due respect, we would also like to record our opposition to the proposed amendments dealing with the resolutions of Indian Fishing Rights in some Great Lakes Waters. In our view, any attempt to incorporate the separate and distinct issues of scientific fisheries management and Indian rights in a single bill would be both incongruous and self-defeating. It is our feeling that the odds for passage for H.R. 12531 would be severly limited if, not impossible, if the amendment incorporating Indian fishing rights is allowed to accompany the legislation.

As we assess this entire matter, the original text of H.R. 12531 is a well-conceived and comprehensive attempt to solve a natural resource problem at a time that is especially propitious. On the other hand, we believe that the amendments dealing with Indian fishing rights, which are under discussion relative to this bill, represent an attempt to solve a complex social problem froth with unresolved litigation and widely differing interpretations of the inherent constitutional rights of individual state agencies and individual citizens.

Without attempting to deny the urgent need to achieve an equitable and lasting solution of the Indian fishing rights problems, we nevertheless urge Congressman Ruppe to reconsider his amendments to H.R. 12531 and to possibly submit them as separate legislation. If this course of action is pursued, we feel that the threat of delayed implementation of a much needed Great Lakes Fisheries Plan will be obviated. And while we find ourselves in broad disagreement with those who would support special off-reservation fishing rights to various Indian tribes throughout the nation, we firmly support the admission of all shades of opinion as debate on the "rights" issue proceeds. In the past we have actively supported other measures which sought to deal with Indian fishing rights, in general through giving states the right to treat all citizens equally in regard to utilization of our natural resources. We would hope that future legislation dealing with Indian fishing rights would closely follow the intent and approach of past legislation which has been introduced such as House Joint Resolution 522. We strongly feel that Congress must take the responsibility for setting the precedent under which states can begin to deal with Indian fishing rights.

In supporting the unamended version of H.R. 12531, we join with prestigious organizations such as the Sport Fishing Institute (SFI) who have previously asked the Great Lakes Fisheries Commission to formulate a comprehensive management plan that would include; (1.) a complete description of the fishery covering gear, species, location, management costs, revenues, recreational interests and existing fishery rights; (2.) a thorough review of the fishery's present condition, maximum sustainable and optimal yields and; (3.) recommendations for management of these fisheries.

Along with SFI, we also support the need for a Department of Commerce study which would provide an appropriate data base in support of a comprehensive economic survey of recreational fishing on the Great Lakes. Completion of such a survey is clearly possible under Section 15(a) (1), (C) of H.R. 12531. Moreover, a survey of this type would permit a realistic assessment of the possible economic effect of proposed governmental actions that might have considerable impact on the recreational fisheries of the Great Lakes and the sizable industry which they support. We strongly feel that it is time for all sectors of the government who deal with natural resources to begin viewing sport fishing in its appropriate role as a major industry which effects the lives of many persons in many communities, particularly those surrounding the Great Lakes. It is an industry which literally dwarfs the purely commercial interests which also utilize these resources. The participation figures alone in regard to the 63.9 million fishermen who utilize our nation's natural resources can no longer be overlooked as an inconsequential segment of our national economy.

As you know, Congressman Ruppe's bill calls not only for a substantial research program but also for complete monitoring of these fisheries and for establishment of a $50 million hatchery program. AFTMA not only endorses these projects without reservation, but we would submit that time is of the essence in converting these proposals into viable projects. At the moment, contamination from chemicals such as polychlorinated biphenyls (PCB's) has severely limited demands on Great Lakes fish stocks. But as unwelcome as this toxic hiatus is, it can actually be viewed as a helpful interlude if the time is used wisely to implement a rational plan for scientific management of these fisheries. Even now, significant progress is being made in eliminating contaminants. But, ultimate victory will be somewhat hollow if no rational management plan is in place once unlimited, widespread human participation and consumption is resumed. This is why development of a Great Lakes Fishery Plan must begin as soon as possible. As we see it, passage of H.R. 12531 is one sure way to assure rational management once these new demands become reality and begin to grow.

Those who would question the magnitude of the managerial problem should know that Midwestern states currently have some 38,000,000 acres of the Great Lakes under their fisheries jurisdiction. According to available 1975 data, these waters are annually fished by 4,539,000 anglers and that total continues to increase with each passing year. Even cursory reflection on these statistics points to a situation which defies rational management by the several states under existing conditions.

In aligning ourselves with those who support passage of the unamended version of H.R. 12531, we feel that we would be remiss if we did not comment briefly on our reasons for opposing suggested amendments dealing with Indian fishing rights. As previously stated, we feel the two issues are at present separate and distinct. However, if certain provisions in these amendments were to come into existence over a five-year period, we definitely feel that the true intent of this eminently sound fisheries management plan would be gravely distorted by legally sanctioned fishing "rights" which would make scientific fisheries management totally impracticable.

Those who might contest this viewpoint have only to review recent happenings in the Pacific Northwest. When Judge George H. Boldt ruled in 1974 that certain tribes had the right to take up to 50 percent of the harvestible runs of steelhead trout and salmon in the state of Washington, the immediate results of his decree were shocking. In this situation, the substitution of judicial review for rational fisheries management by appropriate state agencies precipitated a series of violent disputes involving Indians, state officials and irate sports fishermen. In the process, state fish management programs were thrown into catastrophic disarray. It is illogical to place the controls for sound management of our fisheries in the hands of those who are not qualified to carry out such a massive challenge. For more than a hundred years many fisheries in our country have been managed by the individual states and their professional teams of fishery biologists. To circumvent this historically sound approach to fisheries management and to substitute judicial, special

interest or laymen management decisions would produce a nation-wide crisis that could only result in ultimate chaos in protecting our finite natural resources.

For the purposes of the Subcommittee hearing, we do not feel that a lengthy inexpert review of pending litigation affecting Indian fishing rights would be appropriate or immediately pertinent. However, we do feel constrained to point out that the status of Indians as American citizens clearly assures their equal protection under the 14th Amendment to the U.S. Constitution. Any attempt to go beyond these constitutional guarantees in 1978 in order to recognize extra legal sovereignty in a Federal Republic is, in our view, an anachronistic contradiction. Furthermore, in those jurisdictions where such quasi sovereignty has been given temporary status, millions upon millions of non-Indians have been effectively deprived of due process and equal treatment. We can no longer allow 150-year-old treaties to dictate what must be done in regard to our natural resources any more than we would now allow age-old treaties to dictate our international trade with major trading partners. All states must now be given the right, through an act of Congress, to regulate the utilization of our natural resources on behalf of all citizens.

Mistreatment of Indians is an undeniable and shameful fact of history. However, sincere desires to redress these ancient wrongs cannot be used to trigger actions which will deplete finite resources and defeat rational approaches to scientific management. To us, the eventual solution to this very complex social problem must start with recognition of the fact that all citizens must be treated alike and all must be equally subject to both federal and state laws.

On behalf of the officers and members of the American Fishing Tackle Manufacturers Association, I want to thank the subcommittee for giving us this opportunity to make our organizational position known. If we can supply any additional information or assist the Committee in any way we shall be most happy to do so. Thank you.

KEWEENAW BAY INDIAN COMMUNITY,
KEWEENAW BAY TRIBAL CENTER,
Baraga, Mich., July 13, 1978.

Re Proposed H.R. 12531 as amended, or proposed to be amended.

Committee on Merchant Marine and Fisheries, United States House of Representatives, Room 1334, Longworth House Office Building, Washington, D.C.

GENTLEMEN: I am writing at this time as Tribal Chairman of the Keweenaw Bay Indian Community, a Federally chartered corporation exercising govermental jurisdiction over the L'Anse Federal Indian Reservation of Michigan, which is situated upon Keweenaw Bay of Lake Superior. Members of the Keweenaw Bay Indian Community will therefore be affected to perhaps a greater degree than any other Indian or non-Indian persons if the above bill is enacted. Both the Keweenaw Bay Indian Community government and its people are completely and unalterably opposed to the above proposed bill.

Congressman Philip E. Ruppe has ably represented the people of Northern Michigan during his several terms in office and he has on many occasions in the past been of great service to Indian people within his district. I fear, however, that the well-financed and carefully staged "public outcry" of sportman's groups and Michigan Department of Natural Resources officials has swayed the Congressman from the path of conscienceness and justice which he has followed in the past and to a position which may be popular with certain segments of Michigan's population and government but which certainly ignores the Constitutionally protected treaty rights of many Indian people, in this and many other states.

As reflected in the statement of Congressman Ruppe in the Federal Register of Wednesday, May 3, 1978, "In the 1700's and 1800's, the U.S. Government utilized treaties to secure Indian lands for settlement by non-Indians. Indian hunting and fishing rights were often a major element in those treaties."

There therefore can be no question in anyone's mind but that the preservation of hunting and fishing rights by my people and other Indian people in the various treaties affecting this area was a bargained for element of the agreements by which Indian people relinquished title to many hundreds of thousands of acres of the State of Michigan, and other States, to the United States in order to allow non-Indian settlement. A careful reading of the above proposed bill and its amendments illustrates with clarity that despite its "sugar coating" it has been proposed for only one purpose; that being to terminate or highly restrict treaty rights of Indian people to exercise a basic right necessary to their sustenance and economic well-being, the right to fish.

Although the above proposed legislation would be repugnant to Indian people under any circumstances, it is even more repugnant in view of the fact that it is based on the alleged premise of protecting and restoring the Great Lakes fishery

due to its alleged depletion, which, according to the author of the proposed legislation as stated in the Congressional Record, is not even the result of acts of Indian people who were not even allowed to exercise their treaty rights prior to 1971. As stated by the Congressman, it is not my people who depleted the fishery reserved by us as a treaty right, but rather,

"The enadvertant entry of the sea-lamprey to the Upper Great Lakes, along with commercial over-exploitation, led in the early 1950's to the virtual extinction of Lake Trout in Lake Michigan and Lake Huron, and to a dramatic decline in Lake Trout population in Lake Superior."

Responsible Tribal leaders have never asserted an exclusive right to the total Great Lakes fishery and always have been willing to share that fishery, in a peaceful and brotherly fashion, with all interested groups including sport fishermen and commercial fishermen. We deeply believe, however, that it would be most inequitable and dishonorale on the part of the U.S. Government if a bill such as H.R. 12531 were enacted since that legislation, regardless of Congressman Ruppe's assurances, would be the beginning of the end of Treaty protected fishing rights of Indian people. Even though certain minimal fishing rights are preserved within the legislation for Indian people, no assurance can be given that once Federal Treaties begin to be limited or abrogated by Federal legislation, that Federal legislation will not ultimately be enacted effectuating a complete termination of such rights at some point in the future.

There is no question among Michigan Indian fishermen nor, I might add, Michigan commercial fishermen, both Indian and non-Indian alike, that the Michigan Department of Natural Resources and certain groups of sports fishermen have as their ultimate the complete exclusion of commercial and Indian fishermen in the waters of this State. If the State government has made the decision, which they apparently have, that regardless of any other considerations the Great Lakes are to become "ponds" designed to be the private preserve of sports fishermen, despite the solemn assurances of the Federal Government contained within Treaties dating back to over 100 years ago, assistance in reaching that goal ought not be provided by the U.S. Congress.

Financial limitations have prevented representatives of the Keweenaw Bay Indian Community, and perhaps many other Tribal groups which would be affected by the above bill, from testifying before your committee in person. I can only hope that my efforts to state our position through this letter will be seriously considered even in view of our inability to attend.

Thank you for your consideration.

Very truly yours,

KEWEENAW BAY INDIAN COMMUNITY,
FREDERICK DAKOTA, *Chairman.*

STATEMENT OF OTTAWA SPORTSMEN'S CLUB, INC.

The Ottawa Sportsmen's Club, Inc., is a Michigan nonprofit corporation headquartered in Baraga, County, Mich., and organized to defend from waste the natural resources of our country, its soil, air and minerals, its forests, waters and wildlife and to further and advance the cause of the environment and conservation in all its phases, and to perpetuate and conserve the Fish and Wildlife with management by the states. To so manage the use of all natural resources that this generation and posterity will receive the maximum benefit from the same.

The Ottawa Sportsmen's Club has over 200 members and is affiliated with the Michigan United Conservation Clubs with over 100,000 members and the Northern Michigan Sportsmen's Association with over 5,000 members, most of whom engage in recreational fishing on the Great Lakes and on the streams that flow into the Great Lakes and their tributaries.

The Ottawa Sportsmen's Club, Inc., has been, and remains deeply involved in the Indian fishing and hunting rights controversy under the Treaties of 1837, 1842 and 1854, which involves the waters of Lake Superior from the Chocolay river at Marquette, Mich. west to the border of Canada and includes the States of Wisconsin and Minnesota. Testimony was given before the subcommittee hearing at Petoskey, Mich., on January 13, 1978. Extensive research has been done into the treaties of 1842 and 1854 which affect Keweenaw Bay and the western part of the Upper Peninsula of Michigan. Congress clearly has the power to abrogate or modify an existing treaty and under the Treaty of 1854 in the case of People V. Jondreau 384, Michigan 1971, the Michigan Supreme Court stated in its closing remarks "the Chippewa Indian Treaty does provide a safeguard. Under Article 11, the President may issue an order limiting or extinguishing the hunting and fishing rights of the

Indians. The four fish involved in this case will not upset the ecological balance, however, if in the future the number of fish being taken does constitute such a threat, we are convinced the President would take appropriate action."

At the time of the Jondreau decision in 1971, Keeweenaw Bay and surrounding areas and Lake Superior was on its way to a self sustaining fishery with management by the States. This is clearly indicated with the monitoring done by the Michigan Department of Natural Resources and the number of unclipped lake trout in Keweenaw Bay jumped from less tha 2% for the nature fish in prior years to 22% for the smaller, immature lake trout during the sports creel census during the winter ice fishery in 1978. This clearly indicates that with the large brood stock at the time of the Jondreau decision with the fisheries management by the State with controlled harvest, Keweenaw Bay and Lake Superior was well on its way to a low cost operation in regard to a self sustaining fishery in Lake Superior waters for the American taxpayers and sportsmen with the best fishery in the world. With the Jondreau decision in 1971, Keweenaw Bay was put into an uncontrolled situation with an uncontrolled harvest by Indian gill netting even during the spawning seasons. There were 10 tribal members fishing commercially in lower Keweenaw Bay and in 1978 the number was increased to 19. As a result of this uncontrolled harvest, the large brood stock has been extracted from Keweenaw Bay and other areas of Lake Superior which is clearly indicated with the size of the lake trout from monitor studies by the Michigan Department of Natural Resources and migration, mortality and movement studies by the Wisconsin Department of natural Resources (refer to "lake trout in Lake Superior") by George King and Bruce L. Swanson, Wisconsin Department of Natural Resources, Minnesota Department of Natural Rsources report by Dick Hassinger 'Analysis of Effects of Increased Extractions on Minnesota's Lake Superior Lake Trout Population'.

This information clearly indicates with the uncontrolled harvest with the Jondreau decision in 1971 Lake Superior has been put back into a high cost operation to the American taxpayer and sportsman with a put and take fishery with each lake trout harvested costing the taxpayers and sportsmen about $2.00 which is clearly indicated by checking costs and mortality, migration and movement studies by the Wisconsin Department of Natural Resources.

As you can clearly see from the attached enclosures, correspondence and testimony before the subcommittee hearing at Petoskey, Mich., the ecological balance of Lake Superior is being upset with this uncontrolled harvest by Indian gill netting under the Jondreau decision in the western part of the Upper Peninsula of Michigan, Wisconsin, and Minnesota on Lake Superior from Marquette, Michigan west to the border of Canada. An executive order by the President under article 11 of the Treaty of 1854, 10 Strat. 1109 putting the management of the fisheries and wildlife under the control of the States with a control harvest would cover the areas ceded under the Treaties of 1837 and 1842 from the Chocolay River at Marquette west to the border of Canada. This should also include upholding the Executive order by President Zachary Taylor on February 6, 1850 in which he revoked the hunting and fishing rights of the Indians under article 5 of the Treaty of 1837 and article 2 of the Treaty of 1842 and all of the said Indians remaining on the lands ceded aforesaid, are required to remove to their unceded lands.

The validity of this order is being tested by civil cases U.S.A. *v.* Ben Ruby and Sons, 72–C–366 and Lac Courte Oreilles *v.* Voigt, 74–C–313 before the United States District Court Western District of Wisconsin, Madison, Wis. The final argument on these cases was held on March 31, 1976 and to date no decision has been forthcoming from the U.S. District Court at Madison, Wis.

History of treaties of 1837, 1842 and 1854:

The western part of the Upper Peninsula of Michigan from the Chocolay River at Marquette, parts of Wisconsin and Minnesota west to the border of Canada was ceded by the Chippewa Indians of the Mississippi and Lake Superior to the United States by the treaties of 1837 and 1842. On February 6, 1850 President Zachary Taylor revoked the hunting and fishing rights under these treaties and ordered all of the said Indians remaining on the lands ceded as aforesaid, are required to remove to their unceded lands. A check of Presidential Executives orders (unnumbered series) 1789–1941, New Jersey Historical Records Survey, Work Projects Administration 1943 (cited on page 105 of U.S. Government Publications by Boyd and Rips); and Executive orders relating to Indian Reserves, From May 14, 1855, to July 1, 1902 (Washington Government Printing Office, 1902) and the letters received by the Bureau of Indian Affairs in the National Archives relating to the Minnesota superintendency and the Chippewa Agency for the period of the Fillmore administration fails to show no mention of an executive order by President Fillmore or his successors which reinstated Chippewa hunting and fishing rights revoked by Presi-

dent Zachary Taylor on February 6th 1850 Page 663, Vol V C. J. Kappler, part III Executive orders relating to reservations.

State of Michigan (No. 4) House of Representatives, Lansing, January 29, 1853. Joint Resolution relative to the Chippawa Indians of Lake Superior. Resolution, L'Anse Indians S-188 1853, Jan. 29 DAMQ. BBC. Archives page 1A through page 5A and page 1B through page 4B.

In this resolution, the non-Indian community of Keweenaw Bay area stated in part, "and whereas, the citizens residents in these vicinities unanimously desire the Chippewas aforesaid should remain among them and have petitioned in accordance with the desire of said Indians that their annuities should be paid them at L'Anse on Lake Superior, and whereas by requiring said Indians to remove from their residence, they would be obliged to abandon their farms, school houses and churches and their instructors would be brought into the vicinity of their natural enemies, the Sioux, and into permanent contact with their brethern who have as yet made little improvement and such removal would evidently tend to degenerate them and cause them to return to their former State, and to the pursuits of savage life".

Volume IV by United States Commission H. R. Schoolcraft page 462 and 463 extracts from the annual communication to Congress, of 26th November 1853.

By treaty, these Indians have a right to a home west of the Mississippi, should they desire to emigrate; but there is no prospect of there ever being willing to do so, and the citizens of Michigan, it is understood, entertain no desire to have them expelled from the country and home of their forefather. Suitable locations, it is understood, can be found for them in the State, where they can be concentrated under circumstances favorable to their comfort and improvement without detriment to State or individual interests—and early measures for that purpose should be adopted.

Treaty of 1854, 10 Stat. 1109 reservations were created for each of the signatory bands clause 1 through 6 which involved Lake Superior from Marquette, Michigan west to the border of Canada.

From precise wording in article 2, clause 1, the U.S. Government did not intend Keweenaw Bay to be part of the L'Anse Indian Reservation at the time the treaty was made, as about 80 percent of the lands along the shores had been disposed of by cash entries, Military Land Grants, Swampland Selections, and Canal Selections which consisted of over 5,600 acres from a survey by the Bureau of Land Management in 1977, of the lands disposed of by the U.S. Government prior to the proclamation of the treaty on January 29, 1885. This is in reference to article 2, clause 1, treaty of September 30, 1854 to continue the extraction rate of lake trout by Indian gill netting in lower Keweenaw Bay at the levels as indicated by the wholesale fish records, it will cost the American taxpayer and sportsmen in excess of $350,000.00 for a put and take commercial fishery in Keweenaw Bay in the future with no chance of a self sustaining fishery with low costs. This information from records obtained to date from the Michigan, Wisconsin, and Minnesota Departments of Natural Resources. At the present time this high cost operation will involve only a very small percentage of tribal members.

Department of Interior 52 ND annual report, June 30, 1921 a report on Lake Superior Chippewas in Wisconsin and Michigan by George Vaux Jr. "there is among them a very large admixture of white blood, and full-bloods are the exception rather than the rule."

From information to date, the Keweenaw Bay Indian Community as of tribal rolls 1936 upgraded all tribal members on the rolls at that time to full bloods no matter what the blood line. This information clearly indicates gross misuse of true Indian blood lines.

Approximately 90 percent of the unsold land in article 2, clause 1, treaty of 1854 is non-Indian ownership. As is the population. By survey of the Bureau of Land Management in 1977 a great number of tribal members do not reside on the reservation as described in article 2, clause 1.

Research clearly indicates the U.S. Congress has sent the Indian in the United States back and forth from self determination to termination over the past 100 years and made them second class citizens. Any approcah other than equal rights for all under the equal protection clause of the 14th amendment of the U.S. Constitution will only create a monster for future generations to deal with in regard to the future of our limited national resources with a high cost operation to the American citizens and taxpayers.

In the age of growing awareness of the need to preserve and protect our environment and future national resources with equal rights for all, the only place these issues can be settled is with the United States Congress and by the President of the United States. The Michigan Supreme Court was convinced this would be done in

their closing remarks of the Jondreau decision if the ecological balance is upset. To do it any other way is only on a piecemeal basis with the future of our environment and national resources at stake. We stress that our future national resources should be enjoyed by all with equal rights for all with protection of the same for the future. We are deeply opposed to the amendments I and II to H.R. 12531 submitted by Rep. Philip Ruppe on June 30, 1978 setting aside certain areas of the Great Lakes for exclusive Indian control and creating a Federal Fisheris Management presence in the Great Lakes waters.

RESOLUTION CONCERNING INDIAN FISHING

Whereas, essentially unregulated Indian gill net fisheries have demonstrably depleted lake trout populations in Keweenaw and Whitefish Bays and surrounding areas; and whereas legislation is being prepared for introduction in the Congress which would irrevocably place the fisheries resouces in Whitefish, Keweenaw Bays and other areas of the Great Lakes under Indian control in perpetuity; and whereas, this legislation would create a Federal Fishery Management presence on the Great Lakes which would jeopardize State management and law enforcement therein: therefore, be it resolved that the Michigan United Conservation Clubs oppose such legislation and further, that copies of this resolution be sent to Michigan's congressional delegation.

This resolution carried unanimously 100 percent with no debate on 4-16-78 MUCC Board of Directors meeting. The MUCC has over 100,000 members.

For further documentation, refer to testimony and brief of sub-committee hearing January 13, 1978 at Petoskey, Michigan by the Ottawa Sportsmen's Club, Inc. In closing, the Ottawa Sportsmen's Club would like to thank this committee for the opportunity of testifying before this committee in writing for the Congressional record on H.R. 12531 and amendments by Rep. Philip E. Ruppe Titles I & II.

Yours very truly,

RONALD MOILANEN, *President.*

STATEMENT OF THE OTTAWA SPORTSMEN'S CLUB, BARAGA, MICH.

We are here today as American citizens and members of the Ottawa Sportsmen's Club located in Baraga County, Mich. to give testimony V. depletion of our limited national resources.

Our case is to save Keweenaw Bay and Lake Superior, with equal rights for all. The primary purpose is regards to the Chippewa Indian Treaty of 1854 was to remove from the lands ceded by the treaty of 1842, those Indian people living thereon. To accomplish this, reservations were created for each of the signatory bands. Further, the hunting and fishing privileges granted to Michigan Indians by the 1842 treaty were revoked by President Zachary Taylor by Executive Order on February 6, 1850. Thus, the impact of the 1854 treaty as far as Michigan was concerned, was to establish only two reservation tracts.

From precise wording in article 2, clause 1, the U.S. Government did not intend Keweenaw Bay to be part of the L'Anse Indian reservation at the time the treaty was made, as about 80 percent of the lands along the shores, had been disposed of prior to the treaty.

In the case of *People* v. *Jondreau,* 384, Michigan 1971, the Michigan Supreme Court stated: "The people point out the fact that unlimited fishing rights could deplete our limited National resources. They rely on Puyallup, supra where the court held that the State could provide regulations that were reasonably necessary for the conservation of fish. In an age of growing awareness of the need to preserve and protect our environment this is an important consideration. However, unlike the treaty of 1855 considered in the Arthur case, the Chippewa treaty of 1854 does provide a safeguard. Under article 11, the President may issue an order limiting or extinguishing the hunting and fishing rights of the Indians. The four fish involved in this case will not upset the ecological balance. However, if in the future the number of fish being taken does constitute such a threat, we are convinced the President would take appropriate action".

The Michigan Department of Natural Resources in 1975 and 1976 monitored Indian gill netting in Keweenaw Bay Lake Superior. 43 lake trout per 1000 feet of gill net were landed in June, 1975, only 17 in June 1976. In 1975, 98 percent of the Indian fish checked by the DNR were fin clipped, which indicates they were hatchery reared stock planted in an effort to restore Lake Superior. Over 218,000 pounds of lake trout from Keweenaw Bay were sold to Michigan licensed wholesale fish dealers in 1976 and 1977 by the Indians from Kewenaw Bay. This is only a percentage of the catch as most fish are sold dockside.

From 1973 to 1976 Lake Superior creel census indicates Keweenaw Bay lake trout averaged 18". From all other Lake Superior ports the average was 23", a significant size difference. 38 percent of Wisconsin DNR tagged lake trout migrate on both sides of Michigan's Keweenaw Peninsula and throughout Lake Superior. Indian gill net fishing in Keweenaw Bay affects all areas of Lake Superior.

This information clearly indicates the withdrawal rate of hatchery reared lake trout by Indian gill netting, will prevent the rehabilitation of Lake Superior's lake trout fishery. These are only some of the issues involved in Baraga County, Mich. In an age of growing awareness of the need to preserve and protect our environment and future limited National resources, with equal rights for all under the 14th amendment of the U.S. Constitution, the only place these issues can be settled is with the U.S. Congress and by the President of the United States. To do it any other way is only on a piecemeal basis. With the future of our environment and limited national resources at stake, we stress that our future national resources should be enjoyed by all, with equal rights for all, with protection of the same.

[Whereupon, at 4:55 p.m., the subcommittee adjourned, subject to the call of the Chair.]

WATER BANK—DUCK STAMP ACTS

MONDAY, JULY 17, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT, OF THE
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 1334, Longworth House Office Building, Hon. Robert L. Leggett (chairman of the subcommittee) presiding.

Present: Representatives Leggett, Murphy, de la Garza, Rooney, Hughes, Dingell, Oberstar, and Forsythe.

Mr. LEGGETT. The Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order.

This morning the subcommittee will receive testimony on two important pieces of conservation legislation which are designed to assist in the conservation and protection of our migratory waterfowl resources.

One of these bills is H.R. 1653, which was introduced by colleagues Dingell, Forsythe, and Conte. This legislation would amend what is commonly known as the Water Bank Act to increase from $10 to $50 million the amount of funds authorized to be made available on an annual basis to the Secretary of Agriculture for payments to owners or operators of wetlands who enter into 10-year agreements with the Secretary to have such lands set aside for migratory waterfowl and other conservation related purposes.

The Water Bank Act had its inception in 1971. The wetlands set-aside under this act have traditionally been considered by many who are not aware of their importance as wastelands and a hindrance to economic developments. The fact is that these lands form a valuable link in the breeding, nesting, and wintering requirements of migratory waterfowl.

At present, prime waterfowl habitat is being destroyed at a rate of 350,000 acres annually and the U.S. Fish and Wildlife Service has determined that there are still remaining throughout the Nation nearly 10 million acres of prime wetlands in dire need of protection.

Since the inception of the water bank program, the act has provided for the setting aside of over 470,000 acres of waterfowl habitat. Although the program has been highly successful, it is running into a funding shortage. For example, in Colusa County, Calif., which is within my congressional district, there are approximately 6,000 acres of prime waterfowl habitat eligible to be included under the program, but which are not because of lack of funds.

Yet, these land are being drained and leveled at a rate of 10 percent per year to make room for cultivation and harvesting of rice. This problem is further compounded by the fact that these lands are eligible to receive payments of only $5 per acre under the act, whereas rice farmers in this area are receiving up to $120 per acre for similar lands used in the cultivation of rice.

It is my further understanding that because of this lack of adequate funds, there is a backlog of 736 requests awaiting approval which involve several hundred thousand acres of such lands.

These are just some of the problems associated with this program that we will be looking into during these hearings, and I hope the witnesses to be heard today will provide us with possible solutions to them.

The other bills to be heard this morning are H.R. 12595, by colleague Dingell, and an identical bill, H.R. 13372, by colleague Dingell and 22 other Members, and a similar bill, H.R. 13371, by colleague Dingell.

These bills are also designed to make more funds available for acquisition of wetlands. They will do this by authorizing an increase in the price of the duck stamp from $5 to $7.50 if the Secretary of the Interior determines that all of the funds in the migratory bird conservation fund have been obligated for expenditure during the preceding fiscal year.

In addition, the bills are designed to overcome a problem which has developed concerning the right of a Governor to veto the Secretary of the Interior's proposal for the acquisition of wetlands.

To accomplish this purpose, H.R. 13371 would repeal the veto provision in present law and in lieu thereof it would require the Secretary to consult with the Governor and the county in which the lands are located before recommending acquisition of lands within the county concerned.

H.R. 13372 would approach the problem by allowing the Governor's veto provision to remain in the law but it would authorize the Secretary of the Interior to prohibit the taking of migratory birds within any State whenever the Governor of the State concerned fails within a reasonable time to approve the proposal.

The primary reason for making more funds available under the act stems from the fact that habitat for migratory bird refuges and production areas for migratory waterfowl have undergone a tremendous increase in price. For example, from 1962 to date the average price of refuge lands has increased from $120 to $475 per acre; of waterfowl production areas in fee, from $30 to $288 per acre; and of waterfowl production area easements from $6 to $128 per acre.

In order to achieve the goal established by the Secretary of the Interior of acquiring an additional 1.95 million acres of prime migatory bird habitat, and waterfowl production areas, it is imperative that additional funds be made available for the purchase of such areas not only before they further accelerate in price but also before they are diverted to other uses.

The bills and departmental reports will appear in the record at this point.

[The information follows:]

[H.R. 1653, 95th Cong., 1st sess.]

A BILL To increase the maximum amount of aggregate payments which may be made in calendar years after 1976 to carry out conservation agreements under the Water Bank Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the last sentence of section 11 of the Water Bank Act (16 U.S.C. 1310) is amended to read as follows: "In carrying out the program, the Secretary shall not enter into agreements with owners and operators which would require payments to owners and operators under such agreements in excess of $10,000,000 in any calendar year before 1977 or in excess of $50,000,000 in any calendar year after 1976.".

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 24, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of February 10, for a report on H.R. 1653, a bill "To increase the maximum amount of aggregate payments which may be made in calendar years after 1976 to carry out conservation agreements under the Water Bank Act."

The Department of Agriculture recommends that this bill not be passed.

The bill provides that the last sentence of section 11 of the Water Bank Act, P.L. 91-559, be amended to read "In carrying out the program, the Secretary shall not enter into agreements with owners and operators which would require payments to owners and operators under such agreements in excess of $10,000,000 in any calendar year before 1977 or in excess of $50,000,000 in any calendar year after 1976." This language would raise the payment limit to $50,000,000 per year.

There does not appear to be any need for this increased authority. Average annual payments to participating producers for the past five years of the program are only $3,300,000 (including an estimate for FY 1978 of $6.1 million, which is likely to be high). This is well within the present $10,000,000 limitation. In addition, we will be looking at this program vis-a-vis the USDI wetlands program (Migratory Bird Conservation Program) in connection with the 1980 budget presentation to determine if some adjustments need to be made relating to the operation of these programs.

The Office of Management and Budget advises that there is no objection to the presentation of this report.

Sincerely,

BOB BERGLAND, *Secretary.*

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 21, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 1653, a bill "To increase the maximum amount of aggregate payments which may be made in calendar years after 1976 to carry out conservation agreements under the Water Bank Act."

We defer to the Department of Agriculture as to the merits of this bill.

H.R. 1653 would amend section 11 of the Water Bank Act (16 U.S.C. 1310) to increase the authorization ceiling for expenditures under the Act from $10 million to $50 million per year after 1976. Funds under this program are used by the Secretary of Agriculture to purchase 10 year leases on certain wetlands and adjacent upland in agricultural areas for preserving wetlands and improving habitat for migratory waterfowl and other wildlife.

The Fish and Wildlife Service of this Department has worked closely with the Agricultural Stabilization and Conservation Service of the Department of Agriculture since the Water Bank Act was passed. In addition to participating in numerous meetings with the ASCS personnel, the Fish and Wildlife Service, in 1976, prepared

recommendations concerning the future operation of the program. These recommendations included a listing of groups of States and counties in priority order in which the Water Bank program should be conducted. The program has complemented well the Interior programs in wetlands preservation. The Administration will be examining the Water Bank program vis-a-vis all wetlands preservation programs in connection with the fiscal year 1980 budget presentation to determine if any adjustments need to be made in the operation of these programs.

In his environmental message to Congress last year, President Carter expressed his concern over the rapid destruction of wetlands in this country. As the President pointed out, "The lasting benefits that society derives from these areas often far exceed the immediate advantage their owners might get from draining or filling them. Their destruction shifts economic and environmental costs to other citizens—often in other States—who have no choice in the decision to alter them."

We are losing some 300,000 acres of valuable wetlands each year. Without a doubt, the greatest pressure on wetlands is that they are being drained for agricultural purposes. There are several steps that the Administration is taking to preserve our wetlands, such as restricting financial support to proposed developments in wetlands areas and implementing the Federal Water Pollution Control Act program which regulates the filling and disposal of dredged materials on all waters or associated wetlands. However, where the wetlands are privately owned, the only means available for protection necessarily involve some form of payment to the land owner. Our options are to purchase the lands, purchase some form of perpetual easement or to lease the wetlands.

This Committee is, of course, quite aware of the Fish and Wildlife Service's wetland preservation program involving funds from the Migratory Bird Conservation Account. We believe the Water Bank program for leasing of agricultural lands has been a useful element of an overall wetlands preservation program for this Nation.

The Water Bank program is, however, quite limited in coverage. The Act contains a requirement that the program be limited to "important migratory waterfowl nesting and breeding areas." and further limits the scope of the program to wetland types 1 through 5, as described in Circular 39, "Wetlands of the United States," which are inland fresh wetland types exclusive of swamps and bogs. The constraints imposed by these criteria, waterfowl breeding areas and wetland types 1–5, effectively narrow the focus of the program to the Glaciated Prairie Region of the north central States where these wetland types occur. This area contains the principal waterfowl breeding grounds of the United States, but agricultural drainage continues to reduce the wetland base. Approximately 73 percent of the acreage presently protected under the Water Bank program is located in this region.

While the loss of wetland habitat in the Prairie Pothole Region is serious, some 35,000 to 60,000 acres annually, the greatest losses of wetland and adjacent upland vegetation are now occurring in the lower Mississippi River region, primarily in Arkansas, Mississippi and Louisiana. This is resulting from drainage and clearing of periodically flooded bottomland hardwoods. During the period from 1950 through 1969, more than 200,000 acres of bottomland hardwoods were cleared annually and placed in agricultural production. There is no indication that the annual rate of drainage and clearing has decreased to the present time. The Mississippi River bottomlands are among the most important breeding areas for wood ducks and are a major wintering area for many species of waterfowl and other migratory birds. Much of the most important bottomland hardwood habitat is ineligible for the Water Bank program because wetland types 6 and 7 (shrub and wooded swamp) are involved.

As we review our overall wetlands preservation program, we must consider all of the available tools for more adequately protecting this type of habitat. The Fish and Wildlife Service will continue to work closely with the Agricultural Stabilization and Conservation Service to insure that the activities of the two agencies complement and assist each other in the important wetland preservation efforts of the Nation.

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

Sincerely,

ROBERT HERBST,
Assistant Secretary.

[H.R. 12595 and H.R. 13372, 95th Cong. 2d sess.]

BILLS To increase the price of migratory-bird hunting and conservation stamps and to suspend the hunting of migratory birds in any State in which there has been a failure to approve an acquisition of wetlands

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act to supplement and support the Migratory Bird Conservation Act by providing funds for the acquisition of areas for use as migratory-bird sanctuaries, refuges, and breeding grounds, for developing and administering such areas, for the protection of certain migratory birds, for the enforcement of the Migratory Bird Treaty Act and regulations thereunder, and for other purposes", commonly known as the Migratory Bird Hunting Stamp Act (16 U.S.C. 718b; 48 Stat. 451), is amended by striking out the third sentence and inserting in lieu thereof the following: "For each stamp sold under the provisions of this section there shall be collected by the Postal Service $5, except as otherwise provided herein. The Secretary of the Interior may increase the amount to be collected for each such stamp during a fiscal year to a sum of not more than $7.50 if he determines that all amounts in the migratory bird conservation fund attributable to amounts appropriated pursuant to this Act for the preceding fiscal year and all amounts in such fund attributable to the sale of such stamps during the calendar year ending during such preceding fiscal year have been obligated for expenditure during such preceding fiscal year. The Secretary shall make such a determination as soon as possible after the end of each fiscal year. In making any such increase the Secretary of the Interior shall take into consideration, among other matters, the increased cost of lands needed for the conservation of migratory birds.".

SEC. 2. Section 3 of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat, and for other purposes" (16 U.S.C. 715k–5; 75 Stat. 813) is amended by adding at the end thereof the following new sentence: "The Secretary of the Interior shall prohibit the taking, killing, or possessing of any migratory bird in any State in which the Governor or the appropriate State agency fails within a reasonable period of time to approve a proposed acquisition of land with such moneys.".

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 14, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 12595, a bill "To increase the price of migratory-bird hunting and conservation stamps and to suspend the hunting of migratory birds in any State in which there has been a failure to approve an acquisition of wetlands" and H.R. 13371, a bill "To increase the price of the migratory-bird hunting and conservation stamps and to provide for consultation by the Secretary of the Interior with State and local authorities before migratory bird areas are recommended for purchase or rental."

We would not object to enactment of H.R. 13371 in preference to H.R. 12595 if amended as suggested herein.

H.R. 12595 and H.R. 13371 authorize the Secretary of the Interior to increase the price of the duck stamp up to $7.50 based upon needs and the unobligated balance of the previous year's receipts. H.R. 12595 directs the Secretary to prohibit the taking, killing or possession of any migratory bird in any State in which the Governor or the appropriate State agency fails to approve a proposed acquisition of land with Migratory Bird Conservation Account (MBCA) funds. On the other hand, H.R. 13371 amends the Migratory Bird Conservation Act to require the Secretary to consult with the appropriate unit of local government and the State Governor prior to the acquisition of migratory bird habitat with MBCA funds. The bill also repeals the provision in the Wetlands Loan Act that approval of the Governor of the State or appropriate State agency be obtained before acquiring migratory bird habitat using MBCA funds.

While we agree that legislation is necessary to increase duck stamp revenues, and overcome the problem of the loss of high priority migratory bird habitat because of the failure of a Governor or State to approve Federal acquisition of such lands, there are alternatives which should be considered.

First, we believe a mechanism should be provided for establishing the price of the duck stamp based on rural land values rather than an arbitrary maximum of $7.50.

Duck stamp receipts are used in their entirety for the direct and related costs of acquiring migratory bird lands, except for the cost of printing and sale of the stamps. The present $5.00 price of the stamp is insufficient to offset the 116 percent rise in rural land values since 1972, when the $5.00 fee was established. (See "Farm Real Estate Market Development", a semi-annual report published by the Department of Agriculture). Since 1961, when the Fish and Wildlife Service began an accelerated acquisition program, rural land values have increased 306 percent while the price of duck stamps has only increased by 67 percent. Thus we suggest the following language:

"Section 2 of the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718b) is amended by deleting the third sentence in its entirety and inserting in lieu thereof the following new sentence: 'For each such stamp sold under the provisions of this section there shall be collected by the Postal Service or the Department of the Interior, as appropriate, a sum as determined by the Secretary of the Interior based on a level which shall be adjusted annually from a base date of December 1971 to make the ratio between the stamp's price and the index of average per acre farm real estate values contained in the most recent United States Department of Agriculture's publication entitled 'Farm Real Estate Market Development', the same as the ratio between $5 and the index of average per acre farm real estate values as of a base date of December 1971: *Privided,* That, if the level required by this ratio is not a whole dollar, the price of the stamp shall be set at the next highest whole dollar: *And provided further,* That the price of the stamp shall not be increased or decreased by more than $1 in any single year beginning with the base date of December 1971'."

This proposal, had it been in effect today, would have resulted in an $11 duck stamp for the 1978–1979 hunting season. Revenues to acquire valuable migratory bird habitat resulting from this formula approach, assuming 2.4 million stamps sold, would result in an increase of $14.4 million. At the current stamp price of $5, receipts from stamp sales are estimated at $12 million.

The provision in H.R. 12595 prohibiting the taking of birds, will, in our view, possibly interfere with Indian hunting rights where those rights are not subject to State regulation, unnecessarily penalize both Indian and non-Indian hunters, still not necessarily result in the preservation of needed migratory bird habitat, and will likely reduce the amount of revenue from the sale of the duck stamp. We have no objection to the approach to this problem contained in H.R. 13371, particularly since it would make these Acts consistent with other wildlife land acquisition Acts. We note, however, that there is a technical error. The amendment to the Wetlands Loan Act will have little or no effect unless section 7 of the Migratory Bird Conservation Act (16 U.S.C. 715f) is deleted. Section 7 requires a State to have consented by law to acquisition by the United States of lands using MBCA funds. Thus, we recommend inclusion of the following language:

> "The Migratory Bird Conservation Act, as amended (16 U.S.C. 715 *et seq*) is further amended by deleting section 7 (16 U.S.C. 715f) in its entirety and redesignating the remaining sections as required."

In order to comply with a court stipulation agreed to by this Department, we recommend that Congress consider a possible amendment to the Migratory Bird Hunting Stamp Act to require all waterfowl hunters, not just those 16 years and older, to possess a valid duck stamp (*The Funds for Animals, Inc., et al.,* v *Morton, et al.,* Civil Action No. 74–1581 (D.N.J. 1974). Accordingly, the following amendment is suggested:

> "The first sentence of section 1 of the Act of March 16, 1934, as amended (16 U.S.C. 718a), is further amended by striking 'who has attained the age of sixteen years' after the word 'person'."

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

Sincerely,

BOB HERBST,
Assistant Secretary.

U.S. POSTAL SERVICE
LAW DEPARTMENT,
Washington, D.C., July 14, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This replies to your requests for the views of the Postal Service on H.R. 12595 and H.R. 13371, two bills proposing to permit an increase in the price of migratory-bird hunting and conservation stamps and to accomplish certain purposes with regard to the acquisition of wetlands.

The Postal Service role under the Migratory Bird Hunting and Conservation Act, which is administered primarily by the Department of the Interior, is to assist the Department in developing the migratory-bird hunting and conservation stamps and in making the stamps available for purchase by the public. Accordingly, our comments on the bill are limited to administrative matters relating to production and sale of the stamps. We defer to the Secretary of the Interior with regard to the merits of the proposal to give him discretionary authority to increase the stamp price, which is the same in both bills, and with regard to the bills' differing proposals relating to the acquisition of wetlands.

The bills appear to contain one serious technical problem which requires some adjustment. The first section would relate the proposed authority of the Secretary to adjust the price of the stamp to a fiscal year period. However, the period during which a single issue of the stamp is valid is not the current Government fiscal year period (October through September), but the period from July 1 of one year through June 30 of the next. When the Government fiscal year was changed in 1976, a decision was made to retain the existing stamp year in order for the period of validity of the stamp to bear a proper relation to hunting seasons. Accordingly, if the concept is approved to change from a stamp price fixed by law to one subject to a range of discretion, the drafting of the first section should be revised to enable whatever price is selected to continue to apply over the July 1–June 30 year.

In addition, we have noted that the next to the last sentence of the amendment proposed by the bills' first section would require the Secretary to determine the price of the stamp "as soon as possible after the end of the fiscal year." In order to allow for design and printing of a stamp that goes on sale on July 1, it is advisable to know the denomination to be printed on the stamp by the preceding January, about 6 months before the opening of sales.

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel, Legislative Division.

[H.R. 13371, 95th Cong., 2d sess.]

A BILL To increase the price of migratory-bird hunting and conservation stamps and to provide for consultation by the Secretary of the Interior with State and local authorities before migratory bird areas are recommended for purchase or rental

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2 of the Act entitled "An Act to supplement and support the Migratory Bird Conservation Act by providing funds for the acquisition of areas for use as migratory-bird sanctuaries, refuges, and breeding grounds, for developing and administering such areas, for the protection of certain migratory birds, for the enforcement of the Migratory Bird Treaty Act and regulations thereunder, and for other purposes", commonly known as the Migratory Bird Hunting Stamp Act (16 U.S.C. 718b) is amended by striking out the third sentence and inserting in lieu thereof the following: "For each stamp sold under the provisions of this section there shall be collected by the Postal Service $5, except as otherwise provided herein. The Secretary of the Interior may increase the amount to be collected for each such stamp during a fiscal year to a sum of not more than $7.50 if he determines that all amounts in the migratory bird conservation fund attributable to amounts appropriated pursuant to this Act for the preceding fiscal year and all amounts in such fund attributable to the sale of such stamps during the calendar year ending during such preceding fiscal year have been obligated for expenditure during such preceding fiscal year. The Secretary shall make such a determination as soon as possible after the end of each fiscal year. In making any such increase the Secretary of the Interior shall take into consideration, among other matters, the increased cost of lands needed for the conservation of migratory birds."

SEC. 2. (a) Section 4 of the Migratory Bird Conservation Act (16 U.S.C. 715c) is amended to read as follows:

"SEC. 4. The Secretary of the Interior may not recommend any area for purchase or rental under the terms of this Act unless the Secretary of the Interior—

"(1) has determined that such area is necessary for the conservation of migratory birds; and

"(2) has consulted with the county or other unit of local government in which such area is located and with the Governor of the State concerned or the appropriate State agency.".

(b) The last sentence of section 3 of the Act entitled "An Act to promote the conservation of migratory waterfowl by the acquisition of wetlands and other essential waterfowl habitat, and for other purposes" (16 U.S.C. 715k–5) is repealed.

Mr. LEGGETT. As our first witness today, I would like to welcome colleague Bob Eckhardt of Texas who is accompanied by Mr. Leslie Bobb, President of the Houston Sportsmen's Club. Bob, it is very nice to have you before the subcommittee. Your statement will appear in the record, as though you read it. You can speak extemporaneously, if you care to.

STATEMENT OF HON. BOB ECKHARDT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, ACCOMPANIED BY LESLIE BOBB, PRESIDENT, HOUSTON SPORTSMEN'S CLUB

Mr. ECKHARDT. I feel at home in this room. Thank you, Mr. Chairman, for the opportunity to testify here today on bills to amend the Migratory Bird Conservation Act. As a Representative of a Texas gulf coast district which harbors thousands of waterfowl hunters, I have a keen interest in the matter. I have with me today Mr. Leslie Bobb, president of the Houston Sportsmen's Club, who also will testify. I intend to limit my remarks to the subject legislation, and perhaps to make a few suggested changes. Mr. Bobb's testimony will deal with the interest of his organization and what such amendments would mean to waterfowl hunters in Texas.

First, let me say that I generally support amendment of the statute as outlined in H.R. 13371, rather than one of the provisions included in H.R. 12995 and H.R. 13372, which, incidentally, I have cosponsored.

Section 1 of H.R. 13371 would give the Secretary of the Interior authority to increase the cost of a migratory bird hunting stamp from $5 to $7.50 under certain conditions. I favor the discretionary approach, rather than arbitrarily increasing the cost. By doing it this way, the Secretary could increase the cost of the stamp until the fund is built up, and then drop it back to the statutory $5 cost.

The second point I would like to make on section 1 is that many Texas sportsmen, particularly those in the middle income class, would not object to such an increase, provided that they could be assured that part of the proceeds from the sale of stamps could return to Texas to provide habitat for the waterfowl and places where they could hunt at a reasonable cost. And this brings me to the focal point of my presentation.

Last year, the U.S. Fish and Wildlife Service proposed to purchase three important tracts of wetlands on the Texas gulf coast. The Service had more than $9 million allocated for the purchases in Texas, and all of the owners were willing sellers. There was no condemnation proposed, or even considered. The three tracts are the 54,500-acre McFaddin Ranch in Jefferson County; the 12,194-acre Sea Rim Marsh, also in Jefferson County, and the 2,375-acre

Smith Marsh in Matagorda County, all prime waterfowl habitat. In fact, the Fish and Wildlife Service ranks the McFaddin Marsh as fourth in priority and the Sea Rim Marsh fifth in priority.

However, as so often happens when the welfare of the general public is to gain, a monkey wrench was dropped in the works. The agency, as is its custom and desirably so, held a series of public meetings all along the Texas gulf coast to gain public input. Testimony generally supported the concept, except in Jefferson County, where the meeting was packed with waterfowl hunters who happened to hold expensive hunting leases on the McFaddin Ranch. They completely disrupted the meeting, with one hunter proclaiming:

> My grandfather had a private lease in that marsh; my father had a private lease in that marsh; I have a private lease in that marsh; and I want my son to have a private lease in that marsh.

Let me hasten to explain that these persons opposing the purchase are not middle-income hunters and sportsmen. They are affluent persons who can afford to pay $400 to $500 to hunt waterfowl during a 60-day season. They simply could see their own private hunting clubs going down the drain, with 40 percent of the marsh to be opened to the general public.

I met with the Houston Sportsmen's Club last August, along with a team from the Fish and Wildlife Service, who explained how the program worked. Again, at this meeting, there were interlopers from the Beaumont area who attempted to disrupt the meeting and to try to paint a false picture of how the refuge would operate. I adamantly insisted that I would do everything I could to assure that the full 40 percent of the marsh which can be statutorily opened to public hunting would be opened. The agency itself pledged that the full 40 percent would be opened in the McFaddin Marsh, though it made no commitment on the other two areas, since they are somewhat smaller.

Under the current statute (16 U.S.C. 715k-5), no purchase of lands can be consummated unless the Governor of the State in which the lands lie gives his approval. Governor Dolph Briscoe would not approve the sale until the Jefferson County Commissioners Court did so, and the court, which is the governing body of counties in Texas, voted against the purchase and Governor Briscoe vetoed the purchase of all three tracts.

There were some who argued at the county hearing that the county would lose money. This is not true. In fact, Jefferson County would have come out ahead, under provisions of section 515s of the statute, which provides reimbursement of the county of funds to make up for the tax loss. Presently, the total taxes on the McFaddin Ranch and the Sea Rim Marsh are only $69,958, while the county would have been reimbursed a total of $89,313 under the revenue-sharing formula for moneys collected as receipts on such federally owned lands. Furthermore, funds expended during the thousands of man-days spent hunting on the marsh in Jefferson County would have resulted in a significant impact upon the economy of the area.

I do not need to tell you the importance of maintaining the integrity and quality of these wetlands. For decades, duck stamp funds have been expended to acquire wetlands in the nesting

grounds of the north. One may ask: Are not adequate waterfowl wintering grounds just as necessary as waterfowl nesting grounds? I think the answer is clearly yes.

Hopefully, we have not finally lost the opportunity to acquire these purchases. Nature Conservancy has purchased the Smith Marsh, hoping to be able to hold onto it until Texas can approve its purchase. The Conservancy has an option on the Sea Rim Marsh, owned by a willing seller, Dempsie Henley, and we still may exercise that option. However, the Conservancy's option on the most important marsh of all, the McFaddin Ranch, has expired and its owners have it listed with a Houston real estate dealer. Company officials have told me, however, they would still prefer to see it in Federal ownership, rather than to sell it for possible use as an industrial or real estate development site. Acquisition of this beautiful area depends upon whether a willing private buyer can be found before the Fish and Wildlife Service has another opportunity to buy it.

Finally, I recommend adoption of section 2 of H.R. 13371, with a suggestion for a single change. I support the provision requiring consultation between the Fish and Wildlife Service and the local governmental body, as well as consultation between the agency and the Governor of the State involved, but I do not believe it desirable for the Governor of a State to upset an agreement between a willing buyer and a willing seller. Thus, I suggest that the last sentence in section 715k-5 be amended to read as follows—this is the present language:

> Provided further, that no land shall be acquired with moneys from the migratory bird conservation fund unless the acquisition thereof has been approved by the Governor of the State or appropriate State agency.

I would add:

> Except that approval by the Governor of such State shall not be required when the transaction is a voluntary one between a willing seller and the Fish and Wildlife Service.

I understand that litigation may be brought against one State which has exercised the veto authority of section 715k-5, challenging the right of that State on constitutional grounds. Amending the statute as I have suggested would avoid this problem.

In closing, I would like to comment briefly on the need for the agency to open up as much of such refuges for hunting as is biologically sound. With our ever-burgeoning population on the Texas coast, we are in critical need of recreational opportunities, especially for those in the low and middle income areas. These marshes could be comparable to our beaches and national forests, areas I like to call the "poor man's country club." With the ever-increasing costs of such recreation, with steel shot shells costing $10 to $12 per box, it becomes necessary that we make available as much such land for public hunting as possible.

H.R. 2329, which passed the House on June 19, and which I voted for, would remove the 40 percent limit on areas to be hunting, and leave it to the discretion of the Secretary of the Interior on how much of a refuge should be opened, depending upon what would benefit any particular species. I think this is a good approach. For instance, the pintail duck hunters on the Texas gulf coast, and

hunters for the past 2 years were permitted to harvest up to 10 pintails per day, depending upon the sex taken. It is entirely possible that one of our refuges could attract pintails in such numbers that the habitat itself could be damaged or destroyed. Furthermore, with such a population, botulism or other waterfowl disease could strike, decimating the flock. In such a case, it certainly would be desirable to open up the entire refuge to hunting, thus dispersing the birds to other areas.

Of course, that would be permitted in H.R. 2329, which has passed the House and is before the Senate committee.

I agree that we cannot statutorily set out limits of refuges to be opened to hunting, since each refuge must be managed individually. However, I am not sure that the Fish and Wildlife Service is permitting as much hunting as it possibley could. For instance, in the 64,000-acre St. Marks Wildlife Refuge in Florida, no hunting has been permitted until this year, when 12,000 acres will be opened to primitive hunting—archery and black powder weapons. None has been opened to the conventional hunter. It is understandable why the agency would not want to open it to watefowl hunting, since some 80,000 redheads, a species in short supply, winter there each year. However, there is no valid reason that I can find for prohibiting hunting of resident species, such as whitetail deer, squirrel, rabbit, and quail.

I want to urge that action be taken to insure that the maximum use of such areas, compatible with proper game management, be permitted by the agency. I see four possibilities:

One. The Secretary shall permit hunting in all wildlife refuges when he determines that such activity would not cause ecological damage to the refuge or to the species which utilize such refuge.

Two. That the Secretary be required to review periodically the public use permitted of all refuges.

Three. That public hearings be held in the areas affected before areas are designated as "hunting areas" or "nonhuman areas."

Four. That this subcommittee hold oversight hearings periodically to see that maximum public use of such refuges is being permitted, based upon proper game management practices.

Again, I deeply appreciate the opportunity to testify today and thank you for letting my constituent, Mr. Bobb, also testify.

Mr. LEGGETT. Thank you very much. That is a very helpful suggestion, lots of food for thought for our staff and for the subcommittee. We will be pleased to hear from Mr. Bobb at the present time.

STATEMENT OF LESLIE BOBB

Mr. BOBB. Thank you, Mr. Chairman, for the opportunity to testify before your subcommittee in support of legislation to amend the Migratory Bird Conservation Act. My name is Leslie Bobb, and I am president of the Houston Sportsmen's Club, Houston, Tex.

Our club is made up mostly of low- and middle-income men and women, with only $2 annual dues. So you can realize that our membership is comprised of what we laughly call "poor boy hunters and fishermen." During the many years of the club's existence, it has worked diligently for programs to protect and enhance the environment. We were active in Congressman Eckhardt's efforts to

protect the oyster reefs in Galveston Bay when he was in the Texas Legislature, as well as supported his efforts to clean up air and water pollution. Upon Mr. Eckhardt's recommendation, we were a plaintiff in a suit which brought to a halt a dam project which would have destroyed 12,500 acres of productive estuarine areas in the Galveston Bay system.

So you can readily see that my organization is one whose record is positive on behalf of saving what is beautiful in this country.

Along with Congressman Eckhardt, the Houston Sportsmen's Club joined with other environmentalists lasty summer in support of a wetlands acquisition program in Texas by the U.S. Fish and Wildlife Service. As the Congressman has related, Texas Gov. Dolph Briscoe shot us out of the saddle before we ever got a foot in the stirrup.

There are several points I would like to make that Congressman Eckhardt did not have time to talk about. First, as our record indicates, we recognize the need for preserving wetland habitat for migratory waterfowl, regardless of whether such areas are hunted or not. Wintering grounds are just as necessary to a healthy brood stock of a species of duck as are the nesting grounds in the frozen north.

Not only do these wetlands provide habitat for the hunted species such as ducks, geese, dove, and woodcock, but they also provide a home for other species of birdlife and animals. While most of our members hunt and fish, there are some who simply enjoy hiking in the outdoors, boating in clean waters, and watching birds and animals. Therefore, we are genuinely interested in the general question of keeping things in their natural state.

I would like to talk for a few moments about the need for public hunting areas, which these marshes could provide. Some 20 years ago, a fellow could day hunt for $10, with the duck blind and decoys furnished. Sometimes he could even get a guide for that. Today, we find that it costs $35 to $40 to day hunt. Two decades ago, one could get a membership in a waterfowl hunting club for $100. Well-to-do hunters who had the McFadden Ranch locked up were paying up to $700 per gun for the waterfowl season, I understand. The middle-income and low-income Texans simply cannot afford to hunt many days at $40 a day, and he cannot afford a $700 lease. So where is he to go?

On the upper Texas gulf coast, I know of only one good day hunting spot where one can hunt for $15. And that is the Barrow Ranch, very near the McFaddin Ranch. Acquisition of both the McFaddin Ranch and the Sea Rim Marsh would provide waterfowl hunting at a nominal fee for thousands who otherwise will never be able to hunt. It is extremely important to those I represent that this statute be amended in the way that Mr. Eckhardt has recommended.

I recognize that the hearings today deal with amending the Migratory Bird Conservation Act, but I think I would be derelict if I did no impress upon you the importance of these wetlands in other ways. As members of a congressional committee which deals with these issues, you may perhaps already have such data. For instance, 74 percent of the McFaddin Ranch is wetlands, with only 1 percent permanent water and the remaining 25 percent upland.

This means that 40,300 acres of this ranch is part of an ecosystem that plays host to America's most important fisheries—the shrimp and the menhaden. I will not go into detail on the value of the commercial shrimp industry, except to say that Texas harvests some 60 million pounds of shrimp tails annually, worth approximately $180 million at boatside, or approximately $540 million by the time they reach American dinner tables.

We recognize that commercial value. But as sportsmen, we also must make a point equally as important. The two species I mention, shrimp and menhaden, make up the mainstay of the diet of sport fishes which our members seek in the Texas bays and the Gulf of Mexico. Spotted sea trout, known in Texas as specks, the channel bass, called the redfish in Texas, the flounder and the Atlantic croaker all feed upon shrimp and menhaden. If these estuaries are permitted to become sites of polluting industries and weekend subdivisions, the habitat for food fish will be destroyed and what must follow is a decrease in the numbers of sport fish which we might catch.

Finally, let me stress the importance of waterfowl hunters to other Texas gulf coast. In the year from July 1, 1976, through June 30, 1977, Texas waterfowl hunters purchased 141,840 duck stamps, or about 6½ percent of the national total. And since the bulk of waterfowl which winter in Texas spend much of their time on the gulf coast, I believe we can assume that most of those stamps were purchased by hunters who hunt the coastal wetlands and bays.

The National Survey on Hunting and Fishing and Wildlife-Associated Recreation indicates that the Nation's waterfowl hunters spent approximately 72 million man-days afield, and Texans, which were 6.5 percent of this total, spent about 4,680,000 man-days. The survey also indicates that the Nation's waterfowl hunters spent approximately $949 million in 1975, and again, the 6.5 percent of those hunters in Texas spent a total of approximately $61,691,000, much of which was spent on the Texas coast for food, lodging, transportation, guns, and ammunition.

If we do not keep the habitat for the waterfowl and at the same time provide a spot for folks to hunt, this economic benefit could go down the drain with the marshes.

In closing, let me summarize my position. I urge you to amend the statute to delete the gubernatorial veto over purchase of such wetlands. Between a willing buyer and a willing seller, I do not think it to be desirable.

I support the increase in the cost of the waterfowl stamp, as proposed in H.R. 13371, but caution you that its acceptance is based in my organization upon the proposition that the gubernatorial veto be abolished so that some of our expenditures can return to Texas to provide habitat for waterfowl and a place for us to hunt them.

Amendment of the statute is required to do these things, as well as to assure a continued healthy condition of our productive wetlands for habitat, hunting, fishing and all the other outdoor activities which Americans enjoy.

Again, I deeply appreciate your letting me testify today. I hope that you will approve such legislation.

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Mr. LEGGETT. Thank you very much, Mr. Bobb. That is a very helpful statement. I was talking to counsel trying to understand exactly your point. Coming from the great ecological world of Jerry Brown, I really did not understand what your problem was, but I understand that you do have a conflict down there between perhaps the State administration's aspirations and ecological aspirations in this area. We will study that and see what we can do.

We will look at your statement, Bob, and see how we might perhaps modify some of our language.

Are there any other questions of my colleagues?

Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman. I want to thank our colleague Bob Eckhardt and Mr. Bobb for a very thoughtful presentation. I particularly liked the suggestion of allowing the sale on a willing seller basis to go forward without Governor's veto.

I would like to get your reaction to another proposal that is indexing the price of duck stamps to the average annual increase in rural land values. This would include some sort of cap on the annual increase. We will be hearing something about indexing in the course of these hearings. I would like your reaction—the Texas viewpoint. You are down the other end of the flyway from my home State of Minnesota.

Mr. ECKHARDT. Maybe Mr. Bobb would speak more authoritatively for people who are actually engaged in this. As I understand, this proposal would make the fee fluctuate with the price of land?

Mr. OBERSTAR. Yes. That is essentially correct.

Mr. BOBB. Sir, I do not see it—of course I have not put any study into it—as a very feasible way. I think that a fixed limit on our duck stamp increase would be appropriate.

Mr. OBERSTAR. It is getting more and more difficult to acquire habitats in Minnesota because farmers are finding land being grabbed up by developers. Apparently in your area it is being held by wealthy hunting interests.

Because farmers are unwilling to sell their land, there has to be some inducement to get them to sell. There has to be some means of providing enough money in the fund to acquire those priceless and vanishing habitat lands. So with land values having about tripled since 1961 while the price of the duck stamp has increased by about two-thirds, there simply is not enough money available. The fund is not keeping pace with the increase in land values. We have the problem of how to provide an inducement for farmers to sell land and not to turn marginal land into croplands which then, of course, require subsidies to compensate for their diminishing returns.

Mr. BOBB. I feel, sir, that the possibility exists too that if we had a situation where we could fluctuate the cost of the duck stamp, and if it went out of sight the sale of duck stamps would fall off too. So there is another dilemma.

Mr. OBERSTAR. There is no question about that. What if you had a cap, that the stamp could increase by only so much, perhaps $1 a year, 50 cents a year.

Mr. ECKHARDT. Don't you think, though, you have several fluctuating factors that affect this. No. 1, of course, is the price of land. No. 2, what will be the maximum take by duck hunters? As Mr.

Bobb says, it could get to a point of diminishing returns if the amount went too high. Of course, this is affected by an increasing number of duck hunters who are paying additional money for such stamps. Then you have the question of the ability of the public to pay, which would fluctuate with the cost of living.

So with all those variables perhaps your approach of an increase to a certain figure, at least within a certain figure, would be the best way to handle it from time to time. Certainly it does call for close oversight by this committee of whether or not the fund is viable, and I presume that is the main reason for this bill.

Mr. OBERSTAR. This is a complex problem with a number of troubling factors—increasing cost of land, unwillingness of farmers to sell, the conversion of that land into other uses that destroy it permanently as waterfowl breeding habitat, and then the price that the hunter has to bear for the increase in duck stamps.

Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, Mr. Oberstar.

Mr. Forsythe.

Mr. FORSYTHE. Thank you, Mr. Chairman.

I am intrigued with the proposition offered by my colleague from Minnesota and I wonder whether indexing this to inflation is what we are moving toward. As I understand the history of duck stamps, every time we have increased the price we have had a reduction in sales. But after a short period we have seen growth in stamp sales again. It seems to me the certainty of having a flat fee may be more salable, although it does require closer attention to the problem.

I appreciate both of your statements. I think they are very enlightening.

I would like to go back to you, Bob, on your suggestion in terms of the Governor's veto. I gather that you disagree with both 13371 and 13372.

Mr. ECKHARDT. Yes. I have some question about taking off the Governor's veto if there is to be exercised the right of eminent domain. It seems to me under those circumstances the Federal Government is exercising a force toward acquiring land which is not the normal force of a willing buyer and a willing seller. In a situation like that, at least conceivably there could be an inordinate amount of State land taken into these wetland areas. It might affect State policy in such a manner that the State should have a right to say: No, don't exercise unusual Federal power to acquire wetlands.

But it seems to me for the Governor to have the right to veto a willing sale where the Federal money is available to the Service, seems to me an undue influence by one branch of government with the willing agreement between another branch of government and a seller. That disturbs me.

On the other hand, the provisions that are set out in perhaps the most extreme of these bills—I don't know how seriously the remedy is urged in 13372—it seems to me to place a kind of punishment on all the hunters in a given State and on the resource of that State because the Governor is not willing to cooperate in the acquisition of wetlands in that State. I do not think Mr. Bobb, for instance, and his club, should be deprived of the acquisition of

lands within the State of Texas because, say Dolph Briscoe does not want a particular tract to be purchased.

I want to make it clear here that I think Dolph Briscoe acted perfectly sincerely in his action. He had the perfect right under the law to exercise the veto, but it does not seem to me that we should write into a statute a provision that if the Governor, exercising that right under statute, accomplishes the stopping of a sale, that the Houston Sportsmen's Club has to suffer as a result. It is a rather roundabout way to get another Governor to get the opportunity for more wetland, et cetera.

Besides that, I think we ought to try to get away from this one issue, a political situation where that kind of political remedy is required.

Mr. FORSYTHE. You feel that where a critical habitat is involved that the right of eminent domain should be available under some limited procedure.

Mr. ECKHARDT. That is right. I do not suggest any limitation on existing authority to acquire these wetlands, which I understand are presently acquired, either by a willing sale or eminent domain, although eminent domain is almost never needed to be resorted to. The only thing I am suggesting here is that the Governor's veto provision be taken off of a willing sale, not that the right of eminent domain would not still exist.

Mr. FORSYTHE. You advocate eminent domain subject to the Governor's veto.

Mr. ECKHARDT. Yes.

Mr. LEGGETT. Thank you very much. It is very helpful and we will carefully consider your advice.

Mr. LEGGETT. Next we are going to have Mr. Lynn Greenwalt, the Director of the U.S. Fish and Wildlife Service. I remind my colleagues we have six witnesses and we are going to be required to vacate this room by 12:30. Our aim will be to attempt to finish each witness within the time frame of 15 minutes. Each witness can either revise and extend the remarks or read the remarks if they must, and then the time will be split between the testimony and questions.

Mr. Greenwalt.

STATEMENT OF LYNN GREENWALT, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. GREENWALT. Thank you, Mr. Chairman.

It is a pleasure to be here and discuss these matters of particular importance to the Fish and Wildlife Service and to you and your committee.

Mr. LEGGETT. All of the statements today will be included in the record, so you can summarize those as best you might.

Mr. GREENWALT. Thank you, Mr. Chairman.

[The information follows:]

STATEMENT OF LYNN A. GREENWALT, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR ON DUCK STAMPS

Mr. Chairman, I appreciate the opportunity to appear here today to discuss legislation which would increase the price of the "duck stamp" and modify the role of the States in the migratory bird land acquisition program.

Mr. Chairman, H.R. 12595 and H.R. 13371 address two very real problems that have confronted the Service for a number of years. However, we are opposed to the approaches proposed in the bills to resolve these problems.

The first problem addressed is the buying power of the duck stamp. Except for the cost of printing and sale, duck stamp receipts are used for the acquisition of migratory bird habitat. The price of the duck stamp was last raised in 1972, from $3 to $5, in order to offset increased land prices which had occurred since the previous increase in the price of the stamp in 1959. Rural land values have increased 116 percent since 1972, and 306 percent since 1961, the beginning of the Service's accelerated acquisition program. During this 17-year period, the price of the duck stamp has been increased by only 67 percent.

H.R. 12595 and H.R. 13371 authorize the Secretary of the Interior to increase the price of the duck stamp up to $7.50 based upon needs and the unobligated balance of the previous years' receipts. Assuming sale of 2.4 million duck stamps, a $7.50 stamp would increase revenues by $6 million for a possible total of about $18 million annually. Although the 2.4 million sales figure has been used in recent budget estimates, actual sales have been somewhat lower in recent years. The number of stamps sold can vary significantly due to such things as habitat conditions on the breeding grounds and the consequent fall flight of waterfowl.

While the $7.50 stamp would be helpful, it is insufficient to meet acquisition needs. In fiscal year 1977, the Service reassessed its migratory bird habitat acquisition program. We found that an additional 1.9 million acres should be acquired to protect the migratory bird resource. These areas should be acquired within 10 to 15 years to prevent their destruction for other uses. The total cost was estimated to be $407 million at 1975 land prices. Annual appropriations of duck stamp revenues and wetland loan funds of between $27 to $41 million would be required to meet the goal. However, funding levels reached only $26 million in fiscal year 1977 and $22 million in fiscal year 1978. With land costs escalating at a conservative estimate of 7 percent annually, the stamp receipts, which have been decreasing, and the $82.6 million unappropriated balance in the Wetlands Loan Act will not provide the annual revenue to meet acquisition needs.

Linking the duck stamp price to unobligated carry over as is proposed in H.R. 12595 and H.R. 13371 has some administrative problems which could actually reduce needed income. Stamp receipts must be deposited and warranted by the Treasury prior to being obligated. In some years sizable duck stamp receipts are deposited in the Treasury too late in September to obligate in that fiscal year, thus possibly restricting the price of the stamp the following fiscal year. This could create an illusion of an unobligated balance. In addition, the timing is wrong. With a duck stamp year running July 1 to June 30 and a fiscal year ending September 30, the carry over could only be ascertained after the current duck stamp price has been set. Any adjustment in price could not take effect until the following July. By that time, the carry over would most likely have been spent and a money shortage would exist. We see no need for tying the price to unobligated carry overs when funds needed for migratory bird habitat preservation greatly exceed the additional revenues that would be generated by a maximum $7.50 stamp. Although there have been temporary unobligated balances in the Migratory Bird Conservation Account caused by late deposits, deferrals or last minute failure to acquire options on large tracts, funds have been consistently fully obligated within a two year time span.

The second issue addressed in the legislation relates to a requirement in the Wetlands Loan Act that no land can be acquired with Migratory Bird Conservation Account money unless the acquisition is approved by the Governor or appropriate State agency of the State in which the area lies. Furthermore, the Migratory Bird Conservation Act provides that the State in which the area lies must have consented by law to the acquisition. Most States have enacted unconditional consent legislation. From time to time, a proposed acquisition has been "vetoed" by the Governor. Recently, however, sizable acquisitions of high priority habitat have been disapproved, particularly in the States of North Dakota and Texas. In July 1977, the North Dakota legislature modified its consent statute to require certain procedural steps including county review prior to Governor's approval. This law also provided that any easement will terminate upon the death of the land owner or a change in ownership. These procedures add extensively to the cost and time requirements. Consequently, no fee acquisitions have been approved since the effective date of the North Dakota Act.

H.R. 12595 attempts to resolve this problem by motivating the Governor to approve all Migratory Bird Conservation Account acquisitions or accept the penalty of a closed migratory bird hunting season and other restrictions on taking and possession of migratory birds in his State. This provision penalizes not only Indian

hunting rights and the sport hunter, but also it would adversely affect game breeders, zoos, researchers and any other valid "possessions" of migratory birds. Conceivably, it could even impact attempts to control diseases such as DVE or fowl cholera where guns are used to scare, reduce or eliminate exposed birds.

Ironically, this provision could work against the purpose of increasing the price of the duck stamp. A $7.50 duck stamp would increase receipts by approximately $6 million. However, a waterfowl hunting season closure within a State because of an acquisition disapproval would reduce receipts. Reductions could be substantial if several State closures occurred among the top revenue producing States.

As I have said on many occasions, the Service cannot do the job of managing this Nation's wildlife resources without the cooperation and assistance of the States. We have always tried to be responsive to State desires, cooperative with them, and generally rely on their expertise in carrying out our programs. H.R. 12595, by legislating a penalty clause aimed directly at the hunters and conservation agencies of the State, could cause irreparable damage to these cooperative relationships and to all of the Service's programs.

H.R. 13371 addresses the land acquisition problem by amending the Wetlands Loan Act to eliminate the Governor or appropriate State agency consent provisions. The bill also amends the Migratory Bird Conservation Act to require consultation with the Governor of the State and the unit of local government in the State in which an acquisition using Migratory Bird Conservation Account funds is proposed. Except for a technical error, the approach in H.R. 13371 would overcome the problem of obtaining State consent of proposed migratory bird habitat acquisitions.

Mr. Chairman, we recommend amending H.R. 13371 to provide a formula for establishing the price of the duck stamp rather than establishing an arbitrary $7.50 stamp. Our proposal would tie the cost of the duck stamp to the National Index of Farm Real Estate Values prepared semi-annually by the Department of Agriculture. Under a formula approach, the price of the stamp would fluctuate with the price of land. If this approach was in effect today, it would result in an $11 stamp with yearly increases or decreases limited to no more than $1.

The amendment we propose would also require all persons, regardless of age, who hunt migratory waterfowl to possess a valid duck stamp. The law now relates to just those who are 16 years and older. We estimate the number of hunters under the age of 16 to be about 10 to 15 percent of the total number of waterfowl hunters, or about 300,000 individuals. Young hunters utilize the resource as much as hunters over the age of 16, yet these hunters are not required to possess a valid stamp. Thirty-six States now require that hunters under the age of 16 purchase hunting licenses. This proposal is equitable to other purchasers of duck stamps, since without it, they are subsidizing the recreation of those under the age of 16.

Based on the annual percentage increase in land prices since the last stamp price adjustment, and an average of 2.4 million stamps sold, the first year's receipts would be approximately $26 million. This is an increase of about $14 million over current receipts.

Mr. Chairman, a land value formula is a rational basis for establishing the price of the stamp. Waterfowl hunters have taxed themselves to provide for the acquisition of waterfowl habitat since 1934. The need to preserve wetlands and other waterfowl habitat has never been more critical than it is today. In the last 20 to 30 years, more and more of our wetland resources have been modified and destroyed by dredging, filling, draining or polluting. Available statistics indicate that the wetland acreage in the United States has decreased by 40 percent from the 127 million acres which originally existed. This resource is continuing to disappear at an alarming rate and the cost of acquiring such land continues to rise.

In order to preserve the purchasing power of duck stamp receipts, the Secretary of the Interior needs the authority contained in the amendment you have with the Department report on H.R. 12595 and H.R. 13371. We urge your favorable consideration of this approach.

In closing, I should say that I am aware of concerns that the approach we are proposing might price the stamp out of reach of the average hunter. It is a valid concern. We recognize that there may be some decline in sales as a result of an increased stamp price. However, a mechanism for keeping the purchasing power of the stamp equivalent to land prices seems more desirable than periodically raising the maximum stamp price. We have tried to avoid a significant impact on those required to purchase the stamp by limiting the maximum annual increase or decrease to no more than $1. We are not adverse to exploring other approaches, and I offer the assistance of my staff in this endeavor.

This concludes my prepared statement Mr. Chairman. I would be pleased to answer any questions you might have. Thank you.

STATEMENT OF LYNN A. GREENWALT, DIRECTOR OF THE FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR ON WATER BANK ACT

Mr. Chairman, I appreciate the opportunity to appear here today to discuss legislation to amend the Water Bank Act. The Act emphasizes wetland preservation in terms of benefits to migratory birds, particularly waterfowl, other resident wildlife, and related hydrological values. Funds under this program are used by the Secretary of Agriculture to purchase 10 year leases on certain wetlands and adjacent uplands in agricultural areas. The bill would amend section 11 of the Water Bank Act to increase the funding authorization ceiling for expenditures under the Act from $10 million to $50 million per year after 1976.

The Administration is opposed to enactment of H.R. 1653 on the basis that additional funding authorization is not necessary. We defer to the Department of Agriculture on the funding issue.

The Fish and Wildlife Service has worked closely with the Agricultural Stabilization and Conservation Service of the Department of Agriculture since the Water Bank Act was passed. In addition to participating in numerous meetings with the ASCS personnel, the Fish and Wildlife Service, in 1976, prepared recommendations concerning the future operation of the Program. These recommendations included a listing of groups of States and counties in priority order in which the Water Bank program should be conducted. The Program has complemented well the Interior programs in wetlands preservation. The Administration will be examining the Water Bank program vis-a-vis all wetlands preservation programs in connection with the fiscal year 1980 budget presentation to determine if any adjustments need to be made in the operation of these programs.

Mr. Chairman, in his environmental message to Congress, President Carter expressed his concern over the rapid destruction of wetlands in this country. As the President pointed out, "The lasting benefits that society derives from these areas often far exceed the immediate advantage their owners might get from draining or filling them. Their destruction shifts economic and environmental costs to other citizens—often in other States—who have no choice in the decision to alter them."

We are losing some 300,000 acres of valuable wetlands each year. Without a doubt, the greatest pressure on wetlands is that they are being drained for agricultural purposes. There are several steps that the administration is taking to preserve our wetlands, such as restricting financial support to proposed developments in wetlands areas and implementing the Federal Water Pollution Control Act program which regulates the filling and disposal of dredged materials on all waters or associated wetlands. However, where the wetlands are privately owned, the only means available for protection necessarily involve some form of payment to the land owner. Put simply, our options are to purchase the lands, purchase some form of perpetual easement or to lease the wetlands.

This Committee is, or course, quite aware of the Fish and Wildlife Service's wetland preservation program involving funds from the Migratory Bird Conservation Account. We believe the Water Bank Program for leasing of agricultural lands is an important element in an overall wetlands preservation program for this Nation. A program such as the Water Bank provides an economic incentive to the private agricultural land holder. Without such an incentive, the owner realizes little or no financial return from wetlands and will, therefore, readily convert them to a more economically beneficial use.

Although it is an effective tool to protect wetlands, the Water Bank program, in terms of coverage, is quite limited. The Act contains a requirement that the program be limited to "important migratory waterfowl nesting and breeding areas," and further limits the scope of the program to wetland types 1 through 5, as described in Circular 39, "Wetlands of the United States," which are inland fresh wetland types exclusive of swamps and bogs. The constraints imposed by these criteria, waterfowl breeding areas and wetland types 1–5, effectively narrow the focus of the program to the Glaciated Prairie Region of the north central states where these wetland types occur. This area contains the principal waterfowl breeding grounds of the United States, but agricultural drainage continues to reduce the wetland base. Approximately 73 percent of the acreage presently protected under the Water Bank Program is located in this region.

While the loss of wetland habitat in the prairie pothole region is serious, some 35,000 to 60,000 acres annually, the greatest losses of wetland and adjacent upland vegetation are now occurring in the lower Mississippi River region, primarily in Arkansas, Mississippi and Louisiana. This is resulting from drainage and clearing of periodically flooded bottomland hardwoods. During the period from 1950 through 1969, more than 200,000 acres of bottomland hardwoods were cleared annually and placed in agricultural production. There is no indication that the annual rate of

drainage and clearing has decreased to the present time. The Mississippi River bottomlands are among the most important breeding areas for wood ducks and are a major wintering area for many species of waterfowl and other migratory birds.

Much of the most important bottomland hardwood habitat is ineligible for the Water Bank Program because wetland types 6 and 7 (shrub and wooded swamp) are involved. As we review our overall wetlands preservation program, we must consider all of the available tools for more adequately protecting this type of habitat.

Mr. Chairman, in summation, the Fish and Wildlife Service considers the Water Bank program an effective method for preserving wetlands and we will continue to work with the Agricultural Stabilization and Conservation Service to insure that the Program continues to complement to the wetland preservation activities of the Fish and Wildlife Service.

That concludes my prepared testimony. I will be happy to answer any questions you may have.

Mr. GREENWALT. The complexity of the problem is as has been pretty well described earlier. Let me now describe, if I may, as quickly as I can, the administration's position. We support and recommend with some amendments, the concept of H.R. 13371. Among other things we recommend providing a formula for establishing the price of the duck stamp rather than setting an arbitrary ceiling of $7.50.

Our proposal would tie the cost of the duck stamp to the National Index of Farm Real Estate Values prepared semiannually by the Department of Agriculture. With this approach, the price of a stamp would fluctuate with the price of land, as has been suggested by Mr. Oberstar earlier. If this approach were in effect today, the result would be an $11 stamp for the 1978–79 hunting season, with yearly increases or decreases limited to no more than $1.

We also propose to require all persons, regardless of age, who hunt migratory waterfowl to possess a duck stamp. As you know, the act presently requires hunters 16 years of age or older to possess a duck stamp. We believe about 10 to 15 percent of the total number of waterfowl hunters are less than 16 years of age. That is about 300,000 individuals. We think relating the price of the stamp to the price of the land is a rational basis for establishing the stamp price. We urge your consideration to this approach.

I might say also, Mr. Chairman, we are concerned about the Governor's "veto"addressed by the amendment in H.R. 13371 to provide for consultation with the Governor and with local entities of government.

As you are aware, in order for Federal lands to be acquired in States of this country, the Migratory Bird Conservation Act requires State consent legislation. At present, virtually all States have specific consent legislation permitting the United States to buy land for migratory birds. In addition, the Wetlands Loan Act requires Governor approval before acquiring lands with Migratory Bird Conservation Accounts funds.

I think, as has been suggested earlier, the possibility of penalizing folks in a State by depriving them of the waterfowl season because the Governor "vetos" a proposed acquisition is unwarranted. It is not equitable. I think the approach in H.R. 13371 requiring consultation with the Governor in the exercise of land acquisition authority, is proper and appropriate and would eliminate some of the problems that have been alluded to earlier.

I must say in closing that I am aware of the concerns that the approach we are proposing might price the stamp out of the reach

of the average hunter. That is a valid concern. We also recognize that there may be some decline in sales as a result of an increase in the duck stamp price. However, a mechanism for keeping the purchasing power of the stamp equivalent to land prices seems more desirable than periodically raising the maximum stamp price. It is quite apparent that in order to discharge the responsibilities that we have in behalf of the migratory bird resource, we are simply going to have to have added funding in order to acquire the lands, both breeding and wintering, that are necessary for the sustaining of this very valuable resource.

Mr. Chairman, as always, we are not opposed to exploring other avenues to obtain these ends, and again as always, I offer the assistance of my staff in whatever way we can be helpful.

I would be delighted to answer any questions you or the committee may have, Mr.Chairman.

Mr. LEGGETT. I am looking at your table indicating the wetlands loan appropriation amounts, and the total amount of stamp receipts available. That indicates that in the early 1960's you received $3 million or $4 million per year in duck stamp receipts. Currently you are receiving about $11 million per year, so you are receving roughly 200 or 300 percent more than you were receiving in the earlier 1960's. The cost of living has only escalated roughly 150 to 170 percent in that period of time.

On the other hand, the appropriations in the wetlands loan program has remained relatively constant, so that your big problem does not appear to be in the gross from the duck stamps but in the lack of appreciation in the Congress of the increasing needs in these programs.

Mr. GREENWALT. I think, Mr. Chairman, it may be a little more complex than that. While the cost of living has indeed increased by 150 percent or so in that period of time, actual land values have increased by over 300 percent. In order to maintain the purchasing power of the duck stamp dollar, increased dollars must be made available.

I think we must also recognize that the wetland loan appropriation is fundamentally intended for breeding habitat, which is of uppermost importance. Mr. Eckhardt and his associate from the Sportsman's Club of Texas has made a very germane point, that is, it is also vitally important that we maintain the integrity of wintering areas. California is a classic example. Without these lands, we just continue to jeopardize the investment made in breeding habitat. If the birds do not have satisfactory wintering areas, then it becomes difficult to justify the continued acquisition of breeding areas.

Mr. LEGGETT. Are there any questions, Mr. Oberstar?

Mr. OBERSTAR. Thank you, Mr. Chairman.

I think critical to any acceptance of the concept of indexing the price of duck stamps is the concept of a cap on that increase, whether annual or cumulative.

How would you propose to put a limit on the price of duck stamps?

Mr. GREENWALT. Our proposal, is to provide for an annual increase limitation so that the stamp price does not fluctuate one way or the other by more than $1 in a given year.

Mr. OBERSTAR. That would give some certainty to hunters of the estimated cost.

Mr. GREENWALT. For the succeeding year, yes.

Mr. OBERSTAR. Of hunting.

Mr. GREENWALT. Yes. It would, of course not provide for an all-time or a long-term cap, which I think is the thing we need to avoid if we give credence to the idea that land values are escalating at an accelerating rate. We want, in the long run, to achieve a duck stamp price that is not woefully behind the times, in terms of the real value of lands which has been the case heretofore, as you pointed out.

Mr. OBERSTAR. Farmland values have skyrocketed as population has moved out of the cities and into these more sparsely settled lands. Prices are just going out of sight. Farmers can't acquire land. New farmers can't rent land or buy operating farms because they can't afford the land.

Mr. GREENWALT. That is correct. Alternative uses which yield immediate financial reward become very tempting. In the upper mid-west, farmers invested in lands a few years ago, with the idea that escalating crop prices would be advantageous to them over the long run. Prices failed to sustain themselves, and we find those very same landowners coming to us seeking our purchase of lands which they had acquired just a few years before. They cannot afford to hold them any longer in some cases.

Mr. OBERSTAR. On the other hand, the matter of diminishing returns from an increasing duck stamp is one that obviously is of concern to hunters and to you in the Service.

Having a sufficient amount of money to operate this program doesn't do you much good if the stamp prices increase to the point where people stop buying them. I feel that when the price gets to a certain level, then Congress ought to review it and give it another try.

Mr. GREENWALT. I think this might be an appropriate approach. Recognizing that the realistic key to the increase in the price of the duck stamp has to be the land value, and at some point along the scale of increasing costs of the duck stamp, a review by this committee or by the Congress, as a whole, would certainly be appropriate. It is possible, obviously, to price the stamp out of the reach of the agerage hunter, which in the end defeats its fundamental purpose.

I do not think anyone can predict with complete accuracy at what point one reaches the point of diminishing return, but it is a real consideration nonetheless, and I certainly would not be adverse to considering that kind of review process to make sure that the mechanism has not in fact become self-defeating in the process of its execution.

Mr. OBERSTAR. One final thought. It might be the time now to seriously consider abandoning the fiction of wetlands loan program and go forward with a substantive and well-financed acquisition program that doesn't depend on loaning money for what is obviously a program in the public interest.

Are you prepared to comment on that?

Mr. GREENWALT. I can comment on it from a personal point of view, Mr. Oberstar.

Obviously, the administration may have other ideas about such a program in terms of its fiscal impact on the United States. Let me say that it has become increasingly apparent over the years, and this was suggested also by Mr. Eckhardt's earlier testimony, that wetlands are perceived as being valuable for things other than just waterfowl. This is an ecological fact which we in the Service have recognized for some time but could not convey well to other people.

Said another way, wetlands are a national resource that deserve appreciation and retention for values that transcend simply fish and wildlife. Perhaps the proper way to accomplish this is to recognize them for what they are and be prepared to preserve them, because they are nationally valuable, by a program that involves as many people as possible. And I suggest, again from my own perspective, this may very well be general appropriations.

Mr. OBERSTAR. Thank you very much, Mr. Greenwalt.

Mr. LEGGETT. Mr. Forsythe.

Mr. FORSYTHE. Thank you, Mr. Chairman.

Lynn, I appreciate your testimony. I had the feeling when you were talking about $11 duck stamps, that you think we have too many duck hunters.

Mr. GREENWALT. No, I do not believe that we have too many duck hunters. Some people are apprehensive about duck hunters and duck hunting as a philosophy, but I am not one who thinks there are too many duck hunters by any stretch of the imagination.

Mr. FORSYTHE. What is your reaction to limiting the Governor's veto to eminent domain actions?

Mr. GREENWALT. Amending the Migratory Bird Conservation Act and the Wetlands Loan Act to negate the need for Governor's approval in cases where we are dealing with a willing seller would be acceptable. On occasion we do encounter those situations in which condemnation has been undertaken after purchase of the initial tracts. That may occur because of the presence of a tract or tracts of land which are important to the project, but for which there is no agreement on the part of the owner to sell that land. Under those circumstances, and in the interest of the integrity of the project, that is, its long-term usefulness, we have to have some provision for exercising the right of eminent domain. This does not happen very often, but it does happen occasionally. On some occasions, but very rarely, we have undertaken condemnation at the very outset, largely to clear title problems and this sort of thing. This situation should have no problem with any Governor in my judgment, but I do think we have to reserve at least the understanding that condemnation may be a legitimate use of the Federal power.

Mr. FORSYTHE. Such as to acquire in-holdings.

Mr. GREENWALT. I am speaking of in-holdings, with problems and things of this kind, yes, sir.

Mr. FORSYTHE. Do you have, and if you don't just right quick, the total planned refuge and the amount that is already acquired in refuge? Where are we in terms of a master plan?

Mr Greenwalt. In terms of a master plan for refuges, we are far from understanding what the end point ought to be. Refuges, in terms of the entire system, include a variety of kinds of habitats

and wildlife beyond migratory birds alone. In that context, I cannot say to you that we are 70 percent along the way or even 50 percent along the way because the needs of society, the needs of the resource into the future are very difficult to predict.

I can tell you, in terms of migratory birds, particularly waterfowl, ducks and geese, that we have remaining in the estimate of the Fish and Wildlife Service, about 1.9 million acres of habitat necessary to sustain a waterfowl population somewhat akin to that to which we have become accustomed. That figure presupposes that we will acquire land only as a last resort, when there is no other way to preserve the wildlife values of land.

We will exercise whatever opportunity we have to preserve it, including acquisition. We have worked this out very carefully with the States with the understanding that they will have some real responsibilities in this whole scheme of things, and that the Federal Government will retain a fundamental responsibility for acquiring breeding areas and wintering areas. We have spelled this out in some detail, and I think perhaps that information may have been provided to the committee in another context, but the point is we can identify where we need to be in the next 10 or 15 years. We know how much acreage is involved. At present estimate it will cost well over $400 million to get there. That is without considering future escalation of land prices. It is not a small effort. It is not a small thing to accomplish. It is a very important ideal to set out to achieve, and I think it is worth giving full consideration to this committee, and a variety of funding schemes to accomplish.

Mr. FORSYTHE. Apparently from the record just shown me, you are just about half way there.

Mr. GREENWALT. In terms of the 1.9 million acres remaining to be acquired under our migratory bird habitat preservation program, we have acquired about seven percent of our goal since fiscal year 1977 when the program was initiated.

Mr. FORSYTHE. Thank you.

Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, Mr. Forsythe.

Turning to the water bank program, are you authorized to make any comments on our escalation of the water bank program from $10 million to $50 million?

Mr. GREENWALT. I am authorized, Mr. Chairman, to do as I think is appropriate, and that is to defer the funding questions to Department of Agriculture which administers the program.

I might say that we have had a long and profitable association with the ASCS in this program and it is very complementary to the basic wetland preservation effort that we have made generally. There are some gaps in the program in terms of the kinds of wetlands that can be accommodated in the water bank program, and the areas in which wetlands can be brought into the water bank program.

I will say that in my own experience and that of several of my cohorts who have dealt with the water bank from its inception, it is a most useful tool, a very effective way of preserving wetlands that might not otherwise be retained in their natural state.

Mr. LEGGETT. Counsel questions whether or not we should include type 6 and 7 wetlands in the program.

Mr. GREENWALT. I think, Mr. Chairman, it would be very useful, at least from the waterfowl point of view, to include those areas. This would require increasing the number of wetland categories from its present five to seven, to include the wetland classifications, I think six and seven, which encompass shrub swamps and wooded swamps such as occur in the Mississippi delta. These types you have just described are very high quality waterfowl wintering areas, and they are disappearing, in the Mississippi flood plain, at a rate of 250,000 acres per year.

Mr. LEGGETT. Thank you very much. You have been very helpful.

Mr. GREENWALT. Thank you, sir.

Mr. LEGGETT. We are staying on our schedule.

The next witness is Mr. Weldon Denny, Deputy Administrator of Agriculture Stabilization and Conservation Service.

Mr. Denny, very nice to have you before the subcommittee.

As indicated, your statement will be included in our record.

STATEMENT OF WELDON B. DENNY, DEPUTY ADMINISTRATOR, STATE AND COUNTY OPERATIONS, AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. DENNY. Thank you very much. I have a short statement which will be made a part of the record. I will make an attempt to summarize this and even save a little more time.

H.R. 1653, of course, is a bill to increase the authorization of the water bank program from $10 million up to $50 million.

It is our recommendation, Mr. Chairman, that this limitation remain at $10 million. Our reasoning for this is that over the past 5 years——

Mr. LEGGETT. Your recommendation is what?

Mr. DENNY. Our recommendation is that the limitation remain at $10 million. Our reasoning for this is that over the past 5 years the average outlays have been only $3,300,000 annually, and that includes $6,100,000 as an estimate for 1978 outlays. Of course, this is well within the $10 million.

Unless there is a change in participation, based on the past several years of program administration, I can foresee no indication that we would overspend or have a request to exceed the $10 million that we now have.

Mr. LEGGETT. Let me ask you this: We have 736 requests on hand for funds: 8 in Arkansas; 22 in California; 88 in Louisiana; 85 in Maine; 147 in Michigan; 26 in Minnesota; 109 in North Dakota; and 181 in South Dakota. It is estimated that if all of these requests were funded, it would cost approximately $12.4 million, so in fact with your funding of $6.1 million, you are funding about half of the requests that have been made.

Mr. DENNY. The $6.1 million is estimated outlays for fiscal year 1978. As of May 31, 1978, we had $6 to $8 million remaining unobligated, to fund the $12.4 million of requests that have been made. Of course, as has been pointed out, the types of land are subject to certain criteria, and then you have a situation where SCS has to do the technical services on these projects, and even though all of them should be funded, I doubt that we could get around to SCS completing the work on all of them and get them all

funded within a given year. But, if SCS should complete the work on all of them, we would fund about 55 percent of the requests that have been made.

Mr. LEGGETT. SCS tells us that they have enough staff to handle these requests if they had funding to accomplish the result.

Mr. DENNY. I am sure this is correct, if they do and can, but our past experience has been that in no year have we ever come close to the $10 million, except in fiscal year 1977, when $15.5 million was obligated to reduce the backlog of requests for agreements, caused by rescission and deferral actions in fiscal years 1975 and 1976.

Mr. DINGELL. Mr. Chairman.

Mr. LEGGETT. Mr. Dingell.

Mr. DINGELL. Could I ask a question at this point?

Mr. Chairman, there are two questions here I think that are relevant.

The water bank has been administered by which part of the Department of Agriculture?

Mr. DENNY. By what is commonly known as the old ACP Division, now the Conservation and Environmental Protection Division, of ASCS.

Mr. DINGELL. Do they have a number of other projects and programs under their jurisdiction?

Mr. DENNY. Yes, sir, they do. They have water bank, ACP, FIP, ECM, and several other programs.

Mr. DINGELL. So what you have done under the water bank has been simply to utilize existing mechanisms and personnel at the Department of Agriculture; is that right?

Mr. DENNY. Yes, we have been utilizing that division.

Mr. DINGELL. So there has been no administrative hardship in terms of administering the water bank program since they are essentially administering what is really a compatible program to that on which the other programs under the jurisdiction of these particular agencies in the Department of Agriculture administer, is that right?

Mr. DENNY. That is correct.

Mr. DINGELL. The second question then is, are you now taking land out of cultivation in the Department of Agriculture through the soil bank or anything of that sort?

Mr. DENNY. Not on a permanent basis.

Mr. DINGELL. Not on what?

Mr. DENNY. Not on a long-term basis.

Mr. DINGELL. But you are taking some out each year, are you not?

Mr. DENNY. Oh, sure, under the wheat diversion program, set aside, and the feed grain programs.

Mr. DINGELL. You have two major programs down there——

Mr. DENNY. Yes.

Mr. DINGELL [continuing]. on which you are taking land out of cultivation?

Mr. DENNY. Yes, sir.

Mr. DINGELL. One is on wheat and one you said was on?

Mr. DENNY. On feed grains.

Mr. DINGELL. How many acres are you pulling out under each of these two programs?

Mr. DENNY. We anticipate about 11 million acres in wheat and about 10 million acres in feed grains.

Mr. DINGELL. What is the total amount of payments made under these two programs by the Department of Agriculture for withdrawing the land from cultivation?

Mr. DENNY. I would have trouble arriving at that figure because that boils down to what the market price is, and diversion payments that we make after that fact is known, how many acres that we really have out.

Mr. DINGELL. I see.

Could you submit to us, for the record, a further response indicating the precise amount that is now out and that you anticipate will be out at the end of the season?

Mr. DENNY. Sir; I will be happy to.

[The information follows:]

WITHDRAWN LAND FROM CULTIVATION

The Department has two programs under which acreage is being withdrawn from cultivation—voluntary diversions, and set-aside. Under the set-aside program, program participants are not paid for acreage withdrawn, but do receive price protection up to the announced target price for the respective commodities, and are eligible for loans, disaster payments, and deficiency payments.

For wheat and feed grains, the 11 million acres and 10 million acres anticipated to be withdrawn, respectively, was based on produce signup for the programs. Allowing for expected dropout, the actual acreage estimated to be withdrawn is about 10 million acres for wheat and 7.7 million acres for feed grains. The following table depicts these acreage estimates, the payment for voluntary diversion made to date and the estimates for disaster payments, and estimated deficiency payments that may be made depending on the market price/target price relationship to be determined later:

ACRES SET-ASIDE AND DIVERTED, 1978 CROPS

[Acres in millions]

Commodity	Set-aside acres	Diverted acres	Total
Corn	3.0	2.6	5.6
Grain sorghum	1.0	.3	1.3
Barley	.6	.2	.8
Total feed grains	4.6	3.1	7.7
Wheat	8.6	1.4 [1]	10.0

[1] Acreage diverted to haying and grazing.

TOTAL PROGRAM PAYMENTS, AND PROGRAM PAYMENTS TO DATE, 1978 CROPS

[In millions]

Commodity	1978 crop deficiency payments [1]	1978 crop disaster payments [2]	1978 crop diversion payments	
			As of July 13	Total for crop year
Corn	$122	$120	$151.3	$468.0
Grain sorghum	126	20	3.8	24.0
Barley	43	13	.7	11.0
Total feed grains	291	153	155.8	503.0
Wheat	716	175	1.4	25.0

[1] No payments to date. The payment rate cannot be determined until after 5 months of the respective 1978 marketing year for each commodity has elapsed.
[2] Negligible payments to date.

Mr. DINGELL. Would you also provide us with the amount of cash payments to the farmers under the particular programs?

Mr. DENNY. I will be happy to.

Mr. DINGELL. Does the Department of Agriculture have pending at this moment any legislative recommendations to the Congress for further withdrawal of lands from cultivation under Federal subsidy?

Mr. DENNY. No, sir, not to my knowledge.

Mr. DINGELL. Not at this time?

Mr. DENNY. No, sir.

Mr. DINGELL. Very well.

Mr. Chairman, I thank you.

Mr. LEGGETT. Thank you, Mr. Dingell.

Mr. Forsythe.

Mr. FORSYTHE. You have indicated that approval of these 736 projects will entail payments totaling $12.4 million.

I have another table here that would indicate you have spent or obligated all of the appropriations made under this program.

That would indicate that you have no more room for any further obligation?

Mr. DENNY. If I understood your question correctly, what you are saying is that we are up to the limit for this year?

Mr. FORSYTHE. The chart which I have before me indicates that out of the total appropriations from 1972 through 1978 of $64.6 million, $6.4 has been allocated to the SCS, $11.6 has been expended, and the $46.6 million remaining has been completely obligated.

Mr. DENNY. Congressman, I can't answer that, but I will be happy to furnish the answer.

Mr. FORSYTHE. Will you furnish for the record just where you do stand in this?

Mr. DENNY. Yes, sir, I will.

Mr. FORSYTHE. It seems to me that you don't have sufficient funds. I would also note that the chart I have was supplied by your department.

Mr. DENNY. I will be happy to furnish that.

[The information follows:]

APPROPRIATIONS AND OBLIGATIONS

Appropriations	Fiscal year total	ASCS	Allotted SCS
1972	$10,000,000	$9,047,000	$953,000
1973	10,000,000	9,000,000	1,000,000
1974	10,000,000	9,000,000	1,000,000
1975 [1]	2,143,530	1,707,883	435,647
1976	10,000,000	9,000,000	1,000,000
Transition quarter	2,500,000	2,250,000	250,000
1977	10,000,000	9,000,000	1,000,000
1978	10,000,000	9,000,000	1,000,000
	64,643,530	58,004,883	6,638,647

[1] $10,000,000 was appropriated for fiscal year 1975, but $7,856,470 was rescinded by Public Law 94–41 leaving a balance of $2,143,530.

Note.—SCS has received approximately $6,638,647 since inception of the program for technical assistance.

Obligations—Fiscal year

ASCS:	
1972	([1])
1973	$7,656,180
1974	3,772,680
1975	6,247,160
1976	3,529,320
Transitional Quarters	7,290,419
1977	15,530,563
1978 [2]	8,252,621
	[3] 52,278,943

[1] Calendar year 1972 agreements were recorded in fiscal year 1973.
[2] Total obligations as of June 30, 1978.
[3] Total obligations since inception of the program. As of June 30, 1978, $11.6 million of this amount has been expended, leaving a total obligated balance of $40.7 million. The unobligated balance in the States is $5,725,940. However, we have 686 requests on hand with an estimated payment value of $10,469,000.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. I think what Mr. Forsythe is saying is that in 1972 you were appropriated $10 million; in 1973, $10 million; in 1974 $10 million; in 1975, $2.1 million; in 1976, $10 million; the T quarter, $2.5 million; in 1977, $10 million; and in 1978, $10 million. When you come in and say we have only obligated $6.1 million for the last fiscal year, that may be correct, but the record is that, by and large, all of the appropriated money each year has been obligated.

The question then is, considering the fact that you have a backlog, and considering the fact that the price of land escalates, and if the program is good, why is not the Department of Agriculture asking for an increase in this program just as you are asking for an increase in the target price for rice, wheat and other kinds of programs?

You can provide a comprehensive analysis for the record.

Mr. DENNY. I will be happy to.

[The information follows:]

WATER BANK ACT FUNDING

Considering our past history of administering the program within the scope of technical services available, and the limited number of States fulfilling the intent of the Water Bank Act, the present funding level has been sufficient. Furthermore, it is the administration's position that $10 million is all we can afford for this program at this time. We believe that we can preserve the most valuable of our wildlife

wetlands with this level of funding. Considering our present budget deficit, we believe it imprudent to increase the funding authorization now.

Mr. LEGGETT. Mr. Oberstar.

Mr. OBERSTAR. No questions, Mr. Chairman.

Mr. LEGGETT. Thank you very much.

I look forward to receiving that analysis.

Mr. Dingell.

Mr. DINGELL. I apologize but there are some questions that I think need to be responded to.

Can you tell us how many requests your agency received from farmers to be included in the program last year, sir?

Mr. DENNY. Congressman, that is the one thing I do not have. I know that we have got something like 375,000 to 400,000 acres.

Mr. DINGELL. You have 736 yet unfunded, but I am curious how many requests you have had.

Mr. DENNY. I will have to get that figure for you, sir.

Mr. LEGGETT. That will be included in the information requested of you.

[The information follows:]

REQUESTS RECEIVED.

Our records show that approximately 1,100 requests were received in fiscal year 1977.

Mr. DINGELL. I think that would be most helpful, Mr. Chairman.

Can you tell me whether the 736 requests on hand will be funded or not, and if not, why will they not be funded? Is there a shortage of funds?

Mr. DENNY. Based on the past 5 years, as I mentioned, they would be funded.

Mr. DINGELL. They would be. I detect that, if my figures and calculations are correct, you would need something like $12,402,000, if you were to meet the requirements of all requests that you have on hand.

Is that a correct figure?

Mr. DENNY. I am not sure.

Mr. DINGELL. If it is not, would you advise us for the record?

Mr. DENNY. Yes, sir.

[The information follows:]

AMOUNT NEEDED FOR REQUEST ON HAND

Your figure of $12,402,000 is correct as of May 31; however, the June 30 printout, shows we have reduced the requests on hand by $1,933,000 to $10,469,000. We have $5,726,000 available to meet the requests on hand. This amount will take us through September 30, 1978. Those requests not funded this year will be the first ones considered under the 1979 Water Bank Program. Please keep in mind that all the agreements requested will not be eligible for contracts due to several circumstances such as: eligible ownership, purchase of land, change of ownership.

Mr. DINGELL. As I gather it, that is about $5.9 million more than you have for the actual carrying out of the program.

Can you tell us what is the farmers' response to the program; that is, the water bank program? It has been good, has it not?

Mr. DENNY. In the States of North Dakota, South Dakota, some I guess in Minnesota, the response has been heavy.

Mr. DINGELL. Sir?

Mr. DENNY. The response has been fairly heavy in those areas. There are 155 counties in 12 States that are involved. The response in the rest of the country is very spotty.

Mr. DINGELL. Can you indicate to us what has been the effort which SCS has put into this program? They got $1 for administration for every $9 that goes for the actual funding and carrying out of the program.

Has SCS or ASCS had any kind of public relations program, or has your agency?

Mr. DENNY. I am quite sure that the publicity from that standpoint, comes from ASCS.

[The information follows:]

AMOUNT ALLOCATED SCS

Each year, the 10 percent given to SCS, is reviewed, to be certain the full amount is needed. At the present time, SCS has a balance of $3,131,000 in their Water Bank fund, which is to be used, to service the contracts for the full 10 years. This figure will be reviewed, before the 1979 allocation for technical services is made, and if it is determined the full 10 percent is not needed, an adjustment will be made.

Mr. DINGELL. That is right.

Mr. DENNY. However, I am sure that as SCS carries out these technical services on various farms, that other farmers know about it.

Mr. DINGELL. Could you procure for us a statement of precisely what is being done in terms of notifying the farmers of this particular program.

Mr. DENNY. Yes.

[The information follows:]

MEANS OF NOTIFYING FARMERS

We use the news media, newsletter, leaflets, and slides, to publicize the Water Bank Program. Also, the Fish and Wildlife Organization is a great help in publicizing the program.

Mr. DINGELL. Isn't it a fact though that more requests, if received, could necessitate substantially increased levels of authorization?

Mr. DENNY. Yes, sir, if you have more requests, there is no question.

Mr. DINGELL. And if the information, regarding this program were more widely available, wouldn't it be fair that we can anticipate an increase in the number of requests for funding under the program?

Mr. DENNY. I am sure that the more the individual farmers understand and know about the program, the more apt they are to participate. However, this program that you are talking about has 10-year agreements, and as I stated before, farmers are somewhat reluctant in some areas to tie up land for a 10-year period.

Mr. DINGELL. Your unmet request for funding does indicate that there is a reservoir of folks, though, who like to utilize the program.

Mr. DENNY. Yes.

Mr. DINGELL. Am I correct?

Mr. DENNY. That is correct.

Mr. DINGELL. Can you give us a statement, not now but for the record, of the levels of rent paid for types 1, 2, 3, 4, and 5 of wetlands? I understand it runs around between $4 and $5 an acre, but I think you ought to indicate that.

Mr. DENNY. The rate on wetlands is an average of $5.

[The following was received:]

RATE OF WETLANDS

$5 an acre for types 3, 4, and 5 Wetlands.
$4 an acre if wetlands under USDI of State drainage easement.
Types 1 and 2 are considered as adjacent land in Water Bank agreements.

Range of per acre payment by State

	Dollars
Arkansas	5 to 6
California	8 to 10
Maine	5 to 35
Michigan	10 to 45
Louisiana	10 to 15
Minnesota	6 to 45
Mississippi	5
Montana	7 to 20
Nebraska	24 to 40
North Dakota	7 to 25
South Dakota	11 to 25
Wisconsin	10 to 40

Mr. DINGELL. An average of $5?

Mr. DENNY. On upland it is $32 to $34.

Mr. DINGELL. Has ASCS made an effort to adjust the rental fees paid to farmers to meet increasing land costs?

Mr. DENNY. I am sorry, I didn't understand.

Mr. DINGELL. Your land costs have increased.

Has ASCS made an effort to adjust rental fees paid to farmers by reason of increasing land costs?

Mr. DENNY. Yes, they were adjusted last year.

Mr. DINGELL. That means a downward adjustment in the amount of acreage coverage, does it not?

Mr. DENNY. That would be correct. However, we did not adjust old contracts, contracts that now exist.

Mr. DINGELL. Yes, but as these old contracts expire, and they are now about 4 years from expiration, you will need some significant increases in the level of funding to continue the same amount of acreage withdrawn; is that not a fact?

Mr. DENNY. That is correct.

Mr. DINGELL. Could you tell us the result, in terms of increased program requests, if ASCS were to include types 6 and 7 wetlands in the water bank program. Also indicate to us how much money would be needed to meet the demand, and for the record, could you also tell us please, what would occur or what could occur if your agency were to include wintering areas in the program, which I understand is permissible under the regulations, both as regards areas which could be brought in under the program as to the amount of acreage, and also the dollar cost?

You can submit that to us for the record. It would be much appreciated.

Mr. DENNY. I will be happy to do that. However, that provision is in the program now, and we do do it in the State of California.

[The information follows:]

TYPES OF WETLANDS AND COST

Types 6 and 7 wetlands are estimated to be between 10 to 11 million acres and if included in the Water Bank Program would cost considerably more money. If the wintering areas were to be included this would take more money, but we do not have data to support any cost estimate. The Secretary would have to broaden the scope of the program to include wintering areas.

In the State of California the primary benefits of the Water Bank Program are to provide breeding and nesting areas, although due to the climate some wintering is done here by certain waterfowl.

Mr. DINGELL. Could you state to us what your position would be with regard to the provision in Senator Humphrey's water bank bill which could require readjustment in rental fee payments after the fifth year of a 10-year agreement?

[The following was received:]

A legislation report on S. 3198 is in the process of departmental clearance. A copy will be provided to this committee as soon as it has been transmitted to the Senate.

Mr. DINGELL. Can you tell us what is the level of authorization as regards funds and as regards acreage that would meet the maximum reasonable amount of acreage that could be obtained by reason of farmers' attitudes and commitments, and by reason of the level of expenditures that you could make?

That one I do not want cleared through the Office of Management and Budget. I don't want to know that they oppose the bill. I already know that. I want to know what you folks think.

Do you utilize a system wherein moneys allocated to the States unable to fully utilize them are redistributed to other States?

Mr. DENNY. Yes, sir.

Mr. DINGELL. You do.

Could you give us, not now, but for the record, a brief description of how that particular program works, please?

[The information follows:]

AUTHORIZATION AND LAND AGREEMENTS

At the present funding level we feel we are able to enter into agreements with those landowners who have the most valuable wetlands. If the act is changed to include types 6 and 7 wetlands and provide for wintering, this would allow the expansion of the Water Bank Program in the Southern States of Louisiana, Mississippi, and Arkansas.

We periodically discuss with the Water Bank States their balance in allocation to be used by the end of fiscal year 1978. In June, after taking into consideration the number of requests, we contacted each State to discuss the use of their funds by the end of the fiscal year. After this discussion it was determined to decrease Nebraska's allocation and reallocate the money to South Dakota, California, North Dakota, Louisiana, and Arkansas. But the continued shifting of funds among States, we expect to utilize all of our money by the end of this fiscal year.

Mr. DINGELL. Mr. Chairman, I thank you. You have been very patient.

Mr. LEGGETT. This has been very helpful. If you have problems with any of those questions, counsel will clarify them.

We might have some to add to that.

Thank you very much, Mr. Denny. You have been very helpful.

Mr. DENNY. Thank you, sir.

Mr. LEGGETT. Next we have Daniel Poole, president of the Wildlife Management Institute.

Dan, nice to have you before the subcommittee.

STATEMENT OF DANIEL A. POOLE, PRESIDENT, WILDLIFE MANAGEMENT INSTITUTE

Mr. POOLE. Thank you, Mr. Chairman.

It will be a pleasure to accede to your request for brevity.

Mr. LEGGETT. Your statement is in the record.

[The information follows:]

STATEMENT OF DANIEL A. POOLE, PRESIDENT WILDLIFE MANAGEMENT INSTITUTE

Mr. Chairman, I am Daniel A. Poole, president of the Wildlife Management Institute. The Institute is a private conservation organization that has been dedicated to the wise use of our natural resources for more than six decades.

H.R. 1653

One of our special concerns is the fate of wetlands, a valuable resource that is abused today as it has been throughout the history of this nation. The Institute has been involved with the Water Bank since that program's inception in 1970. We are pleased to support H.R. 1653 which would expand that resource conservation effort.

It is essential to understand the premise upon which the Water Bank is founded. From the owner's point of view, wetlands often represent an economic liability. Were this not so, few would be drained. But for society, wetlands produce a host of values beyond dollar expression—fish, wildlife, flood water retention, ground water recharge, nutrient recycling, etc. These are values that private owners cannot convert to dollars in the marketplace. The Water Bank provides an opportunity for society to compensate private owners for maintaining public values associated with wetlands. In the absence of such incentives or other devices, landowners are reluctant to perpetuate public values.

The amount of time to assemble background information for this hearing has been short, but our information indicates that USDA can, in fact, use the additional funds that H.R. 1653 would authorize. Minnestoa and South Dakota, important Water Bank states, illustrate the point.

In South Dakota, the ASCS had 107 Water Bank applications that it could not fund this year. To do so, would have required $4,709,000 that was not available. Last year, we understand, South Dakota's ASCS office requested that it be allowed to increase upland payment rates to a maximum of $28 per acre, the present range being $11 to $25 per acre. The Washington ASCS office refused that request. Had payment rates for both uplands and wetlands been adjusted to be in line with recent land values, especially since 1974, the number of applications would have been substantially higher.

Information gathered by the Minnesota Department of Natural Resources indicates that upland payment rates in eight southcentral counties ranged from $25 to $45 per acre. But, to be competitive with average land rental in that same area, upland payment rates would have to be increased by at least 63 percent. For wetland payments to be competitive, Minnesota's DNR estimates thet they should be 500 to 800 percent higher than the current $5.00 per acre.

Another important factor also illustrates that low Water Bank payments have made that program less attractive. Approximately 11 percent of the contracts are being cancelled annually, according to USDA. The reason for both cancellations and lack of applications in some situations hinges on USDA's unwillingness to bring payment rates in line with current land values. An appropriate payment rate for new contracts and a readjustment for existing contracts after 5 years would help correct this problem. With additional funds and higher acreage payment rates, there should be ample opportunities for new contracts and a reduction in contract cancellations.

One other point deserves attention. The law clearly states that contracts may be terminated by the Secretary of Agriculture if in the public interest. The finding that USDA has agreed to an 11 percent cancellation rate raises serious questions. It appears that USDA is either: (1) cancelling contracts in the interest of the landowner, which is not permitted by law, or (2) writing contracts on wetlands that are not producing public values. In either case, this Committee should request a full explanation.

The proposed increase to $50 million for Water Bank contracts is appropriate and justified, in our opinion. Many wetlands still must be protected from degradation and destruction. Congress and several administrations, through various laws and executive orders, have made it clear that every federal agency has wetland protection responsibilities. The Water Bank program should remain in the Department of Agriculture and be funded at the new level proposed in H.R. 1653.

H.R. 12595, H.R. 13371 and H.R. 13372

The provision to authorize increases in the Duck Stamp price up to $7.50 seems in order to us. The buying power of the $5 stamp has been eroded considerably in recent years. But the need for wetland acquisition remains critical. It appears that it will be so until the last wetland area is either protected or drained.

We also support the repeal of governors' veto power over wetland acquisitions undertaken with Duck Stamp money. Governors do not have such authority over acquisitions made under any other law that we know of i.e. the Endangered Species Act and the 1956 Fish and Wildlife Act.

There are serious reservations, however, about the language in H.R. 12595 and 13372 which would prohibit migratory hunting in states where the governors fail to approve Duck Stamp acquisitions. That sems a bit harsh to us at a time when wildlife needs more friends and fewer enemies. We cannot afford to alienate anyone . . . in the states or in Congress. We recommend that this provision be dropped and that the language of H.R. 13371 be reported favorably.

Mr. POOLE. With respect to H.R. 1653 we endorse the proposal to increase the basic funding for the water bank program. I am pleased, at least from the remarks heard here, of the committee's intention to examine the desirability of extending the program, providing adequate funding, and including types 6 and 7 wetlands.

The loss of type 6 and 7 wetlands habitat is of great concern to wildlife agencies these days. We believe that it also would be helpful for the committee to examine the current authorized payments rates for both wetlands and uplands that are included in the program.

Another factor that is raising some concern is the annual cancellation of approximately 11 percent of the water bank contracts. There may be a mix of reasons responsible for that. Possibly one is the low payment rates for both the wetland areas and the supportive upland areas.

The law states that the contracts may be terminated by the Secretary of Agriculture, in the public interest. The 11 percent cancellation rate raises the question of whether the contracts are being canceled in the interests of the landowner which is not permitted by law, rather than in the interests of the Federal Government.

With respect to increasing the duck stamp price, we support the idea of increasing the stamp to $7.50. We feel favorably about the Fish and Wildlife Service's recommendation to strike the exemption for hunters aged less than 16. We also support the repeal of the Governor's veto power over wetland acquisition undertaken with duck stamp money and endorse the Fish and Wildlife Service's recommendation for an improved consulting process.

I thank you.

Mr. LEGGETT. You support getting rid of the Governor's veto. How do you feel about indexing the price?

Mr. POOLE. Not too favorably at the present. As we have said before, in testimony on subjects of this kind, we think what basically is needed is a look at the whole approach to the national water program. We have things that are happening through the Agriculture Committees and through the Agricultural Appropriation Sub-

committees that give landowners technical, financial and other kinds of encouragement to destroy wetland habitat that this committee and the companion committee in the Senate are trying to retain.

Mr. LEGGETT. How do we justify going from $10 to $50 million when we have been appropriating every year at $10, and it looks like the applications on hand may only exceed twice that much.

Mr. POOLE. The total figure, the ceiling to which it would be raised, of course, is subject to your judgment based on the information that is developed. I was pleased with the facts you brought out earlier in your comments. With what checking we have been able to do, we have also found that there are a number of unserviced water bank applications in some of the States.

Additionally, part of the funding could be used for a higher payment rate. The information available to us shows that the States have been recommending a higher rate payment, but this has been turned down by the ASCS.

The gentleman who preceded me said that the average ASCS payment in upland areas ranged, if I understood him correctly, $32 to $34 an acre. Our fieldman, who operates in the North Central States and is extremely well informed in this area, tells me that the present range in upland acreage payment rates has been from $11 to $25 an acre. Certainly, part of the funding increase could be used for higher payment rates.

Mr. LEGGETT. Let me ask counsel, how do we pay $11 and $25 per acre if we are limited to $5?

Mr. MANNINA. There are two payments, Mr. Chairman. The first is for wetland areas which are $4 or $5, per acre. There is another payment for adjacent areas. Payments for adjacent areas are established based on the purported rental value of the land.

Mr. LEGGETT. Those are not limited?

Mr. MANNINA. No, sir.

Mr. LEGGETT. Why would anybody set aside his lands in the water bank for $5 an acre? It seems to me that $5 is almost a nominal amount if he can use his land for anything valuable related to crops? Why wouldn't he drain it, plant it, and make some money off of it?

Mr. POOLE. The Minnesota Department of Natural Resources estimates that the wetland payments should be on the order of 500 to 800 percent higher than the current $5 per acre payment to make the water bank competitive with alternative land uses.

Mr. LEGGETT. $25 to $40 an acre rather than $5. I guess that is the reason why we are losing 11 percent a year.

Mr. POOLE. Yes.

Mr. LEGGETT. Of course, coming from California, I don't really understand this wetlands business quite as well as I should. The $5 keeps them from draining the land?

Mr. MANNINA. That is right.

Mr. POOLE. Of course, the associated uplands are really what produce the waterfowl in terms of the puddle ducks, the mallards, pintails, and what have you that nest on land rather than over water.

Mr. LEGGETT. Mr. Dingell.

Mr. DINGELL. No questions, Mr. Chairman. I am just glad to welcome our old friend Mr. Poole back.

Mr. LEGGETT. Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman.

Thank you, Dan, for, as always, an enlightening and penetrating observation on these important programs.

I would like to come back to the question of indexing the price of duck stamps to the cost of land values.

I realize what you are saying. I am not making an argument for the indexing. I am trying to explore it as an alternative to hear your thoughts. It seems to me that hinging hopes of protecting wetlands on other policies of the Federal Government is not an adequate way to protect those lands. We attempt to deal with it in the larger context of agricultural policy, more support payments. We are going to be missing the boat because those policies can turn around so fast with a change in the Secretary of Agriculture, who as one preceding did, says plant to the fences and the Government will support your prices. Those wetlands are going to disappear fast, as they have done in Minnesota, or when the cost-price squeeze gets too bad, and you take $2.65 corn, 100 bushels of corn to an acre, and that looks an awful lot better than $5 under the water bank program.

We have got to start thinking in terms of more effective programs, ones that are going to provide us the level of funding we need in order to set aside these lands, at the same time not getting the price of duck stamps too far out of reach. Putting a limitation on the annual increase, a cap on the total amount that stamps can increase within a period of years, and some sort of congressional veto control or a sunset law are options about which we ought to be thinking.

Mr. POOLE. It very well could be. I don't really have any way of knowing whether something more than $7.50 is acceptable today. I expect it might be. Additionally, we agree with the idea of requiring everyone that hunts waterfowl to have a stamp regardless of age. In that area, the Fish and Wildlife Service's figures show that some 10 to 15 percent of waterfowl hunters are less than 16 years of age, so there would be a potential there for increasing the funding.

Mr. DINGELL. Would the gentleman yield? Is there not another opportunity that lies before us, and that would be to require the dickeybird watchers and other good citizens that go on the refuges to get themselves a duck stamp just the same as any duck hunter that goes on there has to, so that they could make a meaningful contribution toward the enjoyment of the land?

Mr. OBERSTAR. That is a splendid idea.

Mr. DINGELL. I thank you.

Mr. POOLE. These various suggestions have been considered in the past and we have supported them faithfully, but they have not proceeded far. Additionally, the concern with the indexing, at least based on experience over the past few years, is that there is only one way the stamp price is going to go—increasingly higher and higher and higher. I was chuckling to myself with the suggestion that there would only be a plus or minus $1 a year variation in the stamp levy. I would expect that in 5 or 6 years they could come

back here and show that we have a minus 100 percent on the plus side, because of the inflationary spiral our country is experiencing.

Additionally, indexing again would place the burden on the waterfowl hunter, the very person who has carried most of the wetlands preservation program throughout the years. I know it is more difficult to get a handle on it, but through USDA, through the various kinds of agricultural programs they have down there they are needlessly destroying a good amount of habitat that otherwise could be kept in a natural condition.

Mr. OBERSTAR. As Lynn Greenwalt said, we have to consider these wetlands as natural resources, and revise our thinking on the wetlands accession program. We should have a program that it is not a loan program, not one shouldered by the hunter, who alone has to bear the burden of protecting these lands. We should make it a national program like so many others, and let us fund that out of general revenues. That makes good sense. We really ought to do that. We ought to be prepared to take that up very soon. The Chair is attempting to move these hearings along. I will not monopolize the time. Thank you very much for your excellent contribution.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. No questions, Mr. Chairman.

Mr. LEGGETT. Mr. Forsythe.

Mr. FORSYTHE. No questions. Thank you.

Mr. LEGGETT. As I understand it, we have two witnesses left here now.

Dr. Mike Berger of the National Wildlife Federation. Very nice to have you here, Mike.

[The information follows:]

STATEMENT OF MICHAEL E. BERGER, THE NATIONAL WILDLIFE FEDERATION

Mr. Chairman, I am Michael E. Berger, Assistant Conservation Director for the National Wildlife Federation which has its headquarters at 1412 Sixteenth Street, N.W., here in Washington, D.C. I am a professional conservationist with degrees in Wildlife Management and Resources Development. Ours is a nonprofit, nongovernmental organization which has independent affiliates in all 50 states, Guam, Puerto Rico, and the Virgin Islands. These affiliates, in turn, are made up of local groups and individuals who, when combined with associate members and other supporters of the Federation, number an estimated 3.5 million persons.

The NWF is dedicated to conservation education and emphasizes the concept that wildlife is a renewable resource only as long as suitable habitat is available. The Federation therefore is pleased to be able to comment on these measures which will affect the abundance of wetland areas so vital for the well-being of the continent's waterfowl and other wetlands-dependent wildlife.

Concerning the proposal to increase the price of the "Duck Stamp," the Federation adopted a pertinent resolution in 1968, and a copy is attached to this statement. This resolution implicitly recognizes the value of wetlands not only to waterfowl hunters, but to all Americans, and "expresses the conviction that efforts should be made to secure financing for migratory bird conservation programs from the general revenue fund because of the broad public interest in waterfowl before any additional fees are imposed upon hunters . . ."

I doubt that any knowledgeable conservationist is unfamiliar with the problems and needs of the wetlands acquisition program: rapid destruction of remaining wetlands, inavailability of sufficient funds, escalation of land prices and creation of road blocks by State. It has been estimated that about 10 million acreas of prime waterfowl wetlands are unprotected, and therefore subject to destruction. The U.S. Fish and Wildlife Service has established an objective of acquiring and/or protecting approximately 1.9 million acreas by 1987. They have estimated the cost of meeting this objective is about $650 million, and that under present law only $170 million will be available. This leaves a shortfall of about $480 million.

If only Duck Stamp receipts are to be relied upon, the price would immediately have to be raised to $30 and we would have to assume that the number of purchases would not decline. Neither of these occurrences is likely, nor appropriate. While I believe that the majority of waterfowl hunters would be more than happy to pay $7.50 for a Duck Stamp, this action, considered alone in light of established needs, would be token. Much more is necessary.

Congressional action in passing the Wetlands Loan Act was a step in the right direction. As you know, the National Wildlife Federation was one of the original supporters of this legislation and its extension. At present about $90 million remain in this fund. However, although the funds are authorized, Congress has been less than generous in appropriating them, and inflation has reduced the buying power of the remaining funds. Also, beginning in fiscal year 1984, 75 percent of Duck Stamp receipts are scheduled to be used to repay this loan, further slowing the acquisition program. The National Wildlife Federation feels that this authorization should be increased substantially and the payback provision revoked. If this cannot be done, postponement of the repayment until after the 1.9 million acres are acquired appears to be the most reasonable and honorable solution.

Another partial solution which deserves consideration is to require that at least one adult member of a group visiting a refuge, other than for hunting migratory waterfowl (fishing, photography, bird watching, camping, nature study, etc.), be in possession of a valid Duck Stamp. We do not have any estimate of how much income this proposal might generate, but would surely be worthwhile and most appropriate.

The point of inadequate funds aside, another major stumbling block to wetlands protection is the reluctance of some by states to permit wetland acquisitions or easements. In 1977 North Dakota passed legislation which provides that wetlands easements become void and must be renegotiated upon the death of the landowner or sale of the land. It is our understanding that South Dakota and Texas are considering similar legislation. In Minnesota the County Boards have been delegated the authority to approve or reject wetland acquisition; few if any have been approved recently. The Governor of Texas recently vetoed the acquisition of an important wetlands tract. Such legislative and administrative actions have effectively blocked movement toward achievement of the 1.9 million acre goal. And in the meantime, land prices escalate making the objective even more expensive.

The National Wildlife Federation feels that the legislative remedy proposed in H.R. 12595 is impractical and unreasonable. The consultation remedy suggested in H.R. 13371 is only common sense and good management and should be encouraged, but not by federal statute. It is our understanding that the major problem of the counties and states is loss of property tax revenues as a result of federal fee acquisitions. We recognize that federal payments are authorized in lieu of taxes. However we are also told that these payments are not always made, or are not made in full, because Congress does not appropriate sufficient funds. This money should be made available as soon as possible. If this is done, and Fish and Wildlife Service personnel are encouraged to cooperate and coordinate with counties and states, there should be little reason for them to object to acquisitions. If federal legislative remedy is still felt required, it should be limited to elimination of gubernatorial veto from only acquisitions from willing sellers. Good faith compliance in meeting all obligations is necessary to achieve the goals of the wetlands protection program.

Turning to H.R. 1653, the National Wildlife Federation shares the concerns of those who believe that the Water Bank Program is badly underfunded. The reports we get indicate that the principal prairie pothole country in the North Central States could use far more money than is available presently to negotiate long term agreements. In other words, the requests to participate would be forthcoming if funding were available.

Additional funds are required for two other important reasons: first, with land values rising constantly there should be provisions in the Program to periodically review and increase the level of payments made to participants to keep pace with inflation (as suggested by Senator Humphrey in her companion bill); second, consideration should be given to broadening the program to include eligibility of types 6, 7, and 8 wetlands. Were that done, some of the bottomland swamp wintering area for migratory waterfowl in the Mississippi River Basin, for example, which is being drained presently for agricultural production could be protected.

Just how much additional money will be needed to effectively and efficiently accomplish these tasks we cannot say. But it seems quite apparent that the current $10 million annual authorization should be increased several fold. Accordingly, the Federation supports the principal thrust of H.R. 1653.

The Federation appreciates the opportunity to make these remarks, and thanks the Committee for its interest in these important matters. I will be pleased to answer any questions you may have.

NATIONAL WILDLIFE FEDERATION

32D ANNUAL CONVENTION, HOUSTON, TEX., MARCH 8-10, 1968

Resolution No. 24

MIGRATORY BIRD HUNTING FEES

Whereas, proposals currently before the Congress would authorize the Secretary of the Interior to increase the price of the Migratory Bird Hunting Stamp from $3 to $5; and

Whereas, other recommendations have been made for the imposition of special permits for the hunting of migratory game birds other than waterfowl; and

Whereas, a decline in the number of hunters would be expected when the higher priced stamp and permit is required; and

Whereas, a further loss of public interest in the waterfowl resources would jeopardize existing and potential programs benefitting these resources;

Now, therefore, be it resolved, That the National Wildlife Federation, in annual convention assembled March 8, 1968, at Houston, Texas, hereby expresses the conviction that efforts should be made to secure financing for migratory bird conservation programs from the general revenue fund because of the broad public interest in waterfowl before any additional fees are imposed upon hunters, who also must bear the financial expenses of state wildlife projects.

NATIONAL WILDLIFE FEDERATION

32D ANNUAL CONVENTION, HOUSTON, TEX., MARCH 8-10, 1968

Resolution No. 26

WATER BANK PLAN

Whereas, hundreds of thousands of acres of wetlands are located in the United States; and

Whereas, many of these wetlands are essential to the welfare of waterfowl and to other wildlife; and

Whereas, the income from wetlands is essential to many of the farmers and ranchers who own them; and

Whereas, many of these wetlands will be drained unless they produce some income for the landowners; and

Whereas, drainage will result in the loss of critical wildlife habitat;

Now, therefore, be it resolved, That the National Wildlife Federation, in annual convention assembled March 8, 1968, at Houston, Texas, hereby expresses its recommendation that the Federal Government, through programs of the Departments of Agriculture or the Interior, develop, establish and maintain a Water Bank Plan to provide for annual payments to farmers for the preservation of suitable wetlands for wildlife habitat.

NATIONAL WILDLIFE FEDERATION

38TH ANNUAL CONVENTION, DENVER, COLO., MARCH 28-31, 1974

Resolution No. 15

WETLANDS ACQUISITION

Whereas, a long-range "emergency" Federal acquisition program was initiated in 1962 for the purpose of preserving 2,500,000 acres of critically-needed waterfowl wetlands; and

Whereas, the acquisition program is falling far short of the goal due to low levels of funding, opposition in some agricultural areas, inflated costs, and other factors; and

Whereas, these acquisitions are being financed by advances against receipts from future sales of Migratory Bird Hunting Stamps;

Now, therefore, be it resolved, That the National Wildlife Federation, in annual convention assembled March 28-31, 1974, in Denver, Colo., hereby reiterates its support of the acquisition program and recommends it be extended and given high

priority in efforts of the U.S. Fish and Wildlife Service to perpetuate flights of wild migratory waterfowl, important international resources.

STATEMENT OF MICHAEL BERGER, ASSISTANT CONSERVATION DIRECTOR, NATIONAL WILDLIFE FEDERATION

Mr. BERGER. Good morning, Mr. Chairman. It is always a pleasure to be here to discuss important resource issues with you and this committee.

Let me first address H.R.1653. We share the concerns of those who believe that the water bank program is badly underfunded. We understand that there are more people requesting to participate in the program than there are funds available to pay these people.

Additional funds are required for two other reasons. First, with land values rising constantly, there should be provisions in the program to periodically review and increase the level of payments made to participants to keep pace with inflation. This is a provision suggested by Senator Humphrey in her companion bill.

Second, consideration should be given to broadening the program to include eligibility to types 6, 7, and 8 wetlands. Were that done, some of the bottomland swamp hardwood wintering area of migratory waterfowl in the Mississippi River basin that are presently being drained for agricultural production, could be protected. We would not support any specific amount of money to be increased to accomplish these tasks, but it is apparent that the present $10 million figure is insufficient. Accordingly, we would support the thrust of this legislation.

Concerning the proposal to increase the price of the duck stamp, the Federation adopted a resolution in 1968 when consideration was being given to increasing the price from $3 to $5. The resolution is still pertinent. It "expresses the conviction that efforts should be made to secure financing for migratory bird conservation programs from the general revenue fund because of the broad public interest in waterfowl before any additional fees are imposed upon hunters * * *" I doubt that any knowledgeable conservationist is unfamiliar with the problems and needs of the wetlands acquisition program: rapid destruction of those wetlands remaining, the unavailability of sufficient funds to acquire in fee or easements, escalation of land prices, and the creation of roadblocks by the States concerned.

It has been estimated that about 10 million acres of prime wetlands are presently unprotected, and therefore are subject to destruction. The Fish and Wildlife Service has established an objective of acquiring and/or protecting approximately 1.9 million acres in the next 10 years, by 1987. They have estimated the cost of meeting this objective at about $650 million. Under present law only about $170 million will be available, and this will leave us with a deficit of about $480 million.

If only increases in the duck stamp were to be relied upon to achieve this figure, it would be necessary to increase the price to $30 per stamp right now, leave it there for the next 10 years, and assume that there would be no reduction in the number of people buying the stamps. I believe neither of these occurrences is very likely.

I believe the majority of duck hunters would be quite willing to pay $7.50 for a duck stamp, but this action, considered alone, in light of the facts and the needs, is token. We need to do much more.

Congressional action in passing the Wetlands Loan Act was a step in the right direction, and we supported this legislation. At present there is about $90 million left in this fund, and although the funds have been authorized, Congress has not been very generous in appropriating this money in a timely fashion, and inflation has reduced the buying power of those funds remaining.

Also, beginning in fiscal year 1984, 75 percent of the receipts from duck stamp sales are to be used to repay this loan. The Federation feels that this authorization should be increased substantially, and that the payback provision should be revoked. If this cannot be done, postponement of the payment until after the 1.9 million acres has been acquired appears to be the most reasonable and honorable solution.

Another partial solution which deserves consideration is one that Mr. Dingell mentioned just a few moments ago, that at least one adult member of any group visiting a refuge other than for hunting migratory waterfowl, that is those visiting refuges for fishing, photography, birdwatching, camping, or nature study, should be in possession of a valid duck stamp. I do not have any estimate of how much money this would generate, but it would surely be worthwhile and most appropriate.

The point of the inadequacy of funds aside, another major stumbling block to wetlands protection is the reluctance of some States to permit wetland acquisition or easements. In 1977 North Dakota passed legislation which provides that wetland easements become void and must be renegotiated upon the death of the landowner or the sale of the land. It is our understanding that South Dakota and Texas are considering similar legislation.

In Minnesota the county boards have been delegated the authority to approve or reject wetland acquisitions, and few if any have been accepted recently. The Governor of Texas recently vetoed the acquisition of an important wetlands tract in that State. Such legislative and administrative actions have effectively blocked movement toward achievement of the 1.9 million acre goal, and in the meantime land prices continue to escalate.

The National Wildlife Federation feels that the legislative remedy proposed in H.R. 12595 is impractical and unreasonable. The consultation remedies suggested in 13371 are only common sense and good management, and should be encouraged, but not by Federal statute. It is our understanding that the major problem of the counties and the States involved is the loss of property tax revenues as a result of Federal acquisitions.

We recognize that Federal payments are authorized in lieu of taxes. However, we are also told that these payments are not always made, or are not made in full, because Congress does not appropriate sufficient funds. This money should be made available as soon as possible. If this is done, and Fish and Wildlife Service personnel are encouraged to cooperate and coordinate with counties and States, there should be little reason for them to object to acquisitions. If Federal legislative remedy is still felt required, it

should be limited to elimination of gubernatorial veto only from acquisitions from willing sellers. Good-faith compliance in meeting all obligations is necessary to achieve the goals of the wetlands protection program.

Mr. Chairman, I thank you for this opportunity and I will be pleased to answer any questions you might have.

Mr. LEGGETT. Thank you very much, Mr. Berger. Your analysis is very helpful and your statistics are enlightening. I have no questions, myself.

Mr. Oberstar?

Mr. OBERSTAR. No questions.

Mr. LEGGETT. Mr. Dingell.

Mr. DINGELL. No, thank you.

Mr. LEGGETT. Mr. Forsythe.

Mr. FORSYTHE. No questions, but thank you very much.

Mr. LEGGETT. Our final witness will be Mr. Charles Boothby, Director of Public Affairs of the National Association of Conservation Districts.

Mr. Boothby, it is nice to have you here.

STATEMENT OF CHARLES BOOTHBY, DIRECTOR OF PUBLIC AFFAIRS, NATIONAL ASSOCIATION OF CONSERVATION DISTRICTS

Mr. BOOTHBY. Thank you, Mr. Chairman. I am Charles Boothby, Director of Public Affairs of the National Association of Conservation Districts. NACD is composed of the nearly 3,000 conservation districts and their state associations in the 50 states, Puerto Rico, and the Virgin Islands. Conservation districts are legal subdivisions of state government, organized under state statutes, with responsibilities for water conservation, soil erosion control, flood prevention and such other responsibilities as are assigned by the individual state laws.

NACD supports the concepts of the Water Bank Program and was instrumental in its initial enactment. We have supported appropriations for this program since its inception. Our present Policy Positions states, in part:

> Conservation districts recognize the ecological values of wetlands and the purposes they serve. The National Inventory of Wetlands now underway by the Fish and Wildlife Service is an important first step in identifying this resource.
>
> We support the Water Bank Program and the principles it represents. This concept will allow wetlands to remain in private ownership while recognizing public benefits through public expenditures.
>
> However, we believe that efforts to protect wetlands have been spotty and based on preservation of habitat for migratory waterfowl exclusively

The enabling legislation specifies that the Secretary has authority to enter into agreements with landowners and operators in important migratory waterfowl nesting and breeding areas for the conservation of water on specified farm, ranch, or other wetlands. We support this provision as it allows important wetlands owned by persons other than farmers and ranchers to be included in the program.

Based upon continuing studies of this program by our Recreation and Natural Environment Committee, we have some concerns about the program and its present administration. First, the level of payment to landowners is not keeping pace with average rental

costs of land. In practice, then, if the landowner can rent his land for crop production at a much higher rate than he can receive under a Water Bank contract, he will be very reluctant to enter into a 10-year Water Bank contract. We recommend that the payment rate he based on current land rental rates and that the contract be written in such a way that the rental rate be subject to renegotiation at least once during the 10-year period of the contract.

Second, because of the limited funding available under this program, only the most valuable wetlands are normally accepted under the program. During the planning process, landowners are made increasingly aware of the wildlife and ecological values of their wetlands. Once this process is complete, it only makes sense to us to provide for the extension of the contract beyond the 10-year period. We recommend that contracts be renegotiable and renewed in 5-year additional increments rather than the present 10-year extension.

Third, concern has been expressed in some states over the very brief sign-up period established for this program by ASCS. There have been instances where this has precluded participation. We would recommend that the sign-up periods be extended or left completely open.

We believe that this program is as necessary today as it was in 1970 when it was originally enacted. The constant conversion of agricultural lands to other uses maintains the economic incentives for the conversion of wetlands to agricultural use to maintain the inventory of agricultural land.

With realistic levels of payments, much more valuable wetland could be brought into the program. In North Dakota alone, it is estimated that 1½ times the present funding could be utilized in most years. In neighboring states, where payment levels are lower than in North Dakota, it is reported that present funds are not being used. Therefore, it appears to us that if funds are not being used, it is a systemic problem rather than a lack of need for the program.

Further, the basic legislation authorizes inclusion of wetland types I through V, as defined by U.S. Fish and Wildlife Circular 39. The ASCS Regulations, as we understand them at present, limit inclusion to wetland types III through V only. If these regulations could be changed to allow full legislative authorities to be exercised, with some state and local discretion as to the type wetlands which they feel are important, the program could become a much more effective force for the protection of important wetland values.

The program takes on even more importance in the total wetlands protection effort compared to other federal efforts in states such as North Dakota where recent state legislation gives counties virtual veto power over federal acquisition of wetlands. There has developed a strong opposition to federal acquisition due to the lack of payments in lieu of taxes. The Water Bank Program keeps this land in private ownership and on the tax rolls.

In summary, NACD supports the concepts of the Water Bank Program and strongly recommends that the funding authorization be increased as specified in H.R. 1653.

Mr. Chairman, I thank you for the opportunity to present the views of our association.

Mr. LEGGETT. Thank you very much, Mr. Boothby. As I read these numbers, it appears that we added in 1972, 37,000 acres; in 1973, 47,000 acres; in 1974, 91,000 acres; in 1975, 77,000 acres; in 1976, 58,000 acres; in 1977 we added 110,000 acres; and only 48,000 projected for this year.

Do you have any information on the number of acres that would fall out of the program each year?

Mr. BOOTHBY. I have no specific figures on the number of acres which drop out. However, I believe that the average size contract is somewhere in the vicinity of 100 acres, so that would begin to give you a handle on that.

Some States are pushing now any time there is either a change of ownership or something like that, that they be required to renegotiate the contract. There is developing additional concern in many States about this aspect of it. I do not have any figures. Our information is, as Mr. Poole pointed out, that there is this roughly 10 or 11 percent dropout. I suspect that it is a matter of cost, the opportunity for the landowner to get a much higher rental rate for his land for other purposes.

Mr. LEGGETT. Of the 100 acres average lease, how much is split between that $5 land and the higher priced Federal land that is adjacent?

Mr. BOOTHBY. Usually there is more adjacent land, so-called, than the actual wetland in the contract. Normally it would be my estimate 2 acres of upland to 1 acre of the wetlands itself.

Mr. LEGGETT. What are landowners required to do under their lease agreements?

Mr. BOOTHBY. It is my understanding if they break the agreement that they have to repay.

Mr. LEGGETT. What do they do to enhance the nesting, breeding, and wintering qualities of the land?

Mr. BOOTHBY. Normally it is a matter of leaving it alone. Very little actual work after perhaps some initial establishment of vegetation. There is very little in terms of maintenance cost beyond that to carry out his part of the agreement.

Mr. LEGGETT. Are they required to do any land management?

Mr. BOOTHBY. Normally not, to my knowledge.

Mr. LEGGETT. Mr. Forsythe.

Mr. FORSYTHE. Thank you, Mr. Chairman.

On page 3 you comment about the sign-up period. Are you saying that the Department does not want to offer much opportunity for sign-up.

Mr. BOOTHBY. Let me give you a case in point along that line. In Maine this year, due to pressures of other programs they got a late start in even opening up the program and advertising the fact the program was available. Still, with 13 counties, where the program operates in Maine they had 154 requests for inclusion of land within the program. Of this, there will be 30 to 50 contracts resulting from it. Many others will fall out due to the type of wetland or the type of land involved.

Mr. FORSYTHE. These are not 1-year contracts. Is there any reason for a limited sign-up period?

Mr. BOOTHBY. I would see no reason. It would seem to me the program has continued to be available. According to the testimony this morning, there has been a backlog of funds available. I see no reason at all for there being a sign-up period. It is my understanding in some States this has in fact been removed.

Mr. FORSYTHE. Then it is being done on a State-by-State basis?

Mr. BOOTHBY. Apparently.

Mr. FORSYTHE. That is interesting. Thank you very much.

Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Dingell.

Mr. DINGELL. Only to thank the witness. I think it is a very excellent statement.

Mr. LEGGETT. Mr. Oberstar.

Mr. OBERSTAR. I agree with Mr. Dingell.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. Nothing, Mr. Chairman.

Mr. DINGELL. I have a statement from the Library of Congress.

Mr. LEGGETT. Without objection, it will be included in the record.

[The statement follows:]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., May 2, 1978.

To: The Honorable John D. Dingell.
From: Economics Division.
Subject: Analysis of possible effects of proposed increase in price of "duck stamps". (Attention of Walt Sanders.)

In response to your request for an analysis of the possible effects of a proposed increase in the price of "duck stamps" (migratory bird hunting and conservation stamps) from the current $5.00 to $7.50, the following is forwarded.

Section 718, of title 16 United States Code states that every person "who has attained the age of sixteen years" shall not "take any migratory waterfowl unless at the time of such taking he carries on his person an unexpired Federal migratory-bird hunting stamp. . . ." These stamps, commonly referred to as "duck stamps", are issued and sold by the U.S. Postal Service under regulations prescribed by the Postmaster General. Under the statute, all money received for such stamps are accounted for by the Postal Service and paid into the Treasury of the United States and set aside as a special fund known as the migratory bird conservation fund which is administered by the Secretary of the Interior. The fee for such stamp is set in law. The price of the stamp was originally $1.00 as set in the Migratory Bird Hunting Stamp Act (March 16, 1934). Since then, the price has been increased to $2.00 on July 1, 1949; to $3.00 on July 1, 1959; and to its current $5.00 level on July 1, 1972.

Before examining the data and estimating revenue and demand elasticities for such stamps, some points should be emphasized. First, the revenue generated by duck stamp sales is influenced to some degree by the price of the stamp but also by other factors among which are changes in waterfowl population, changes in regulations, changes in weather, and other factors affecting waterfowl hunting population. In addition, since the revenue produced by duck stamp sales provides funding for the migratory bird conservation fund, it is possible that as the fund increases the waterfowl population, hunters are motivated to participate in duck hunting. However, when combined with other factors, the expected increase in sale of duck stamps attributable to an increase in the seasonal flock may not necessarily occur.

A report provided by the U.S. Department of the Interior, Fish and Wildlife Service (Office of Migratory Bird Management), a copy of which is enclosed, studies the probable effects of increasing the price of a duck stamp. However, this report was completed in 1974 and does not contain more recent data. It does show prices, number of stamps sold per year, revenue and percentage changes in sales and revenues from 1934–35 to 1972–73. The Report shows that increases in past duck stamp prices have not, in and of themselves, had a long term negative impact on sales and that in each prior increase in the price of the stamp, total revenues increased. Although the number of stamps sold have declined in periods immediately following each past increase in price, the decline attributable to the price in-

crease has not been as great as forecasted and the number of stamps sold thereafter have increased to at least previous levels. For example, in 1971–72, 12 years after the increase from $2.00 to $3.00, sales reached an all time high. However, in the year following the 1972 price increase from $3.00 to $5.00, sales again declined, but again, not as much as had been forecasted earlier. As expected, sales levels reached previous levels by 1974–75 and then continued to grow in 1975–76.

Latest available figures from the Department of the Interior show that in the 1975–76 stamp sale year, 2,206,356 stamps were sold. (See Table 5, page 46, in enclosed report entitled "Duck Stamps Sold Within States and Counties During Sales Years 1966–67 Through 1975–76.) In a separate memo, the Interior Department reports that 1976 gross receipts from duck stamps were $10,688,720.[1] (See attached.)

These data show that while some decrease in the number of stamps sold may be expected following an increase in the price of such stamps, the percentage loss in sales should be smaller than the percentage increase in the price of the stamp. Consequently, revenues from sales should increase even though the number of buyers decrease (all other things being equal).

Because variables other than the price of the stamp impact on the number of stamps sold, only rough estimate of an increase in the price of a duck stamp from $5.00 to $7.50 can be made. The following historical experience will be utilized to make such estimates:

a. The 1949, 100 percent increase in the price ($1.00 to $2.00) resulted in only an 8.1 percent reduction in sales in the first year (and an additional 2.6 percent reduction in the second year) but generated an 83.8 percent increase in revenues.

b. The 1959, 50 percent increase in the price ($2.00 to $3.00) resulted in a 25.3 percent reduction in sales in the first year but generated a 12.1 percent increase in revenues.

c. The 1972, 67 percent increase in the price ($3.00 to $5.00) resulted in a 10.1 percent reduction in sales in that year but close to a 50 percent increase in revenues.

Considering past experience and estimating a 2.3 million stamp sale with $11.5 million in receipts for 1977 (these figures are estimated from the 1976 levels), and assuming a high waterfowl population and liberal hunting regulations, then with another 50 percent increase in the price of the stamp ($5.00 to $7.50), the number of stamps sold could decrease between 10 and 20 percent (to 1,840,000 at a 20 percent decline) for the first and possibly the second year following the increase. However, revenues could increase immediately by 20 percent (from $11.5 million to $13.8 million) or more. Thereafter, depending on waterfowl population, weather, and other factors, variations in sales and revenues can occur but increases in both sales and revenues would probably take place in the long term.

It should be noted that dollar figures cited above are in current terms and thus do not reflect changes in purchasing power caused by inflation.

According to a survey conducted by the Department of the Interior, in 1970, the average seasonal expenditure per duck hunter equalled $84.47. The price of the stamp at that time ($3.00) constituted only 3.6 percent of such expenditures. Applying an inflation adjustment factor of 60 percent, the 1970 $84.47 would translate into $135.00 in early 1978. Thus, the current $5.00 stamp price constitutes 3.7 percent of the estimated average seasonal expenditure per hunter in 1978 dollars.

Should the stamp price increase to $7.50, then at today's price levels it would constitute 5.6 percent of average hunter expenditures. Of course, with the rate of inflation at a current annual rate of over 7 percent, the $7.50 figure would become a smaller share of the hunter's average expenditure as time passes before the legislation raising the price becomes effective and in subsequent years.

The material obtained from the Department of the Interior relating to this subject is forwarded herewith. This material includes information on other factors which influence duck hunting and stamp sales. In addition, it shows variations in sales and revenue that can occur at the same stamp price as a result of other factors.

CHARLES V. CICCONE, *Economist.*

Mr. LEGGETT. Gentlemen, thank you very much

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[1] The gross receipts figures in these data are not the product of the number of stamps sold in a stamp sales year times $5.00. This apparently reflects some reporting discrepancies plus changes in stamp sales year definitions.

The statements of Mr. John Gottschalk, executive vice president of the International Association of Fish and Wildlife Agencies, concerning these bills, will appear in the record at this point.

[The statement of National Association of Conservation Districts follows:]

INTERNATIONAL ASSOCIATION OF
FISH AND WILDLIFE AGENCIES,
July 14, 1978.

Mr. ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the International Association of Fish and Wildlife Agencies, I am pleased to present these comments on H.R. 13371, the bill to increase the price of the "Duck Stamp".

The Association recognizes that there is a real need for this legislation. The continuing decline in the amount and quality of the wetland habitat upon which the North American waterfowl resource is dependent is one basic factor. Another is the decline in the purchasing power of the dollar due to inflation. Together they create an urgent condition comparable to that which existed when the accelerated wetlands acquisition program was first established some twenty years ago. In fact, the situation is probably even more critical than it was at that time because there are fewer prime wetlands left today than there were twenty years ago. Further, it is an accepted fact that habitat destruction has continued, probably at an accelerated rate.

We are therefore, generally in favor of the proposed increase, and have so indicated officially by our approval of our Migratory Wildlife Committee's report and recommendation of September 24, 1976, (the relevant portion of which is attached to this letter.)

Notwithstanding our endorsement of the principal issue addressed by this legislation, we would like to call your attention to two potential problems it poses. The first has to do with the requirement that the increase cannot go into effect until the Secretary has determined that all funds previously made available have been obligated. Unless I misunderstand the manner in which this provision would apply, I suggest that it might effectively nullify the increase in the authorization. The reason is simply that the negotiations leading to the consummation of land transactions, particularly those involving the federal government, are frequently very time consuming. It is likely that there will be times when all of the funds previously appropriated will not have been obligated. The present language would then create an irresolvable dilemma, save that of going back to the $5.00 Duck Stamp. The language should make it clear that the Secretary would have at least two years in which to obligate the appropriated funds before there would be a reduction in Duck Stamp cost, or other penalty for that matter.

The second issue, which over the long run is the more serious, has to do with the repeal of the requirement that all acquisitions be approved by the Governor or the head of the state wildlife agency in the state in which the proposed acquisition is located. We are acutely aware of the frustrations that sometimes arise when the existing proviso for state approval prevents the establishment of an acquisition project, or delays one already in progress. Yet the potential problems from the proposed solutions appear to me to be even greater. For example, without a mandate for state clearance of federal projects we can see situations in which the federal government might be bidding against the state agency for the same area. It is easy to say that this would not happen because of the close working relationships between the state and federal wildlife agencies, but there are situations in the record where without the legislated clearance procedure there might well have been exactly that kind of competition. Moreover, it is essential that state and federal waterfowl restoration programs dovetail in all respects. The state approval is a basic means of mandating such coordination.

There is still another apprehension stemming from the dropping of the state approval that I suggest is very important. That is that the result of continued operation of the federal land acquisition program contrary to the expressed wishes of the people of the state as expressed through their Governor or director of their wildlife agency would soon place the entire program in that state in jeopardy. Local people feel that they have a right to be consulted and to have their views considered in these matters that so radically affect their life-styles, and in some cases community relationships in general. Usually the wetlands preservation program of the Fish and Wildlife Service has done a competent job of explaining its purposes. If effective state involvement is consistently precluded, especially by federal statute, it

seems inevitable to me that in those states where some of our most important wetlands occur, the state enabling legislation might be repealed. That this is not too far-fetched a fear is suggested by reference to the history of the federal refuge system. In the late 40's, outraged by the secretive methods used by Fish and Wildlife Service in establishing the Parker River National Wildlife Refuge, the people of that Commonwealth not only forced a material recession of lands taken, but secured the repeal of the essential state enabling legislation at the same time. The elimination of the state approval provision will lead to the same situation somewhere down the wetlands preservation road. In a word, the proposed remedy will be worse than the malady itself.

We appreciate the opportunity to comment on the legislation. It is indeed important in the long-range aspect of the conservation programs of the Nations.

Yours very truly,

JOHN S. GOTTSCHALK,
Executive vice president.

EXCERPT FROM MIGRATORY WILDLIFE COMMITTEE REPORT, 1976, IAFWA

The Committee discussed the significant decline in purchasing power of duck stamp dollars in recent years associated with inflationary increases in land prices. At the same time the loss of critically important wetlands continues at a high rate. If the waterfowl resource is to be maintained at or near current levels, the most important wetlands must be secured in the next few years before they are permanently lost. It was the general feeling of the Committee that the Service should proceed to seek an increase in the price of the duck stamp and that this effort should be supported by the States.

INTERNATIONAL ASSOCIATION OF
FISH AND WILDLIFE AGENCIES,
July 17, 1978.

Hon. ROBERT L. LEGGETT,
Chairman, Subcommittee on Fisheries and Wildlife Conservation and Environment, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Please consider this letter as the official view of the International Associaion of Fish and Wildlife Agencies on H.R. 1653, a bill to increase the authorization for the Water Bank. We are pleased to support this legislation, and while I am unable to give you a state by state analysis of the significance of the program because of lack of timely notification of the hearing, I can assure you with complete confidence that all our members would support the legislation. With a few changes in the bill, that support would become truly enthusiastic. For the record the Association has favored the Water Bank since before its inception, and it is certainly behind this new authorization.

There has been some criticism that the Water Bank is not doing the job it was intended to do. Where that is the case, it is primarily because of the unrealistically low payment rates that have been employed by the Department of Agruiculture. These rates, which are generally substantially below going commercial rentals, as well as amortized land costs, simply discourage many landowners from committing their property to this conservation program. It would be difficult and probably undesirable to establish specific payment schedules in legislation. However, it would be useful to develop legislative guidelines, perhaps tied to agricultural land price indices, in order to be sure that the rates, with time, do not become hopelessly out of line with current land values.

Such a procedure would take care of the initial payment rates. There is another problem, however, that needs to be addressed, having to do with both cancellations and rates of renewals, and the long-term effectiveness of the program. That is the need to up-date the payment rates periodically to keep pace with the inflation factor and thus provide that essential economic incentive which is fundamental to this program. If there is no periodic upgrading of the rates, the landowner, unless he has a deep emotional feeling for wildlife, and many of them do one way or the other, will soon feel that he is the victim of an inflexible procedure, and try to find ways of getting out.

The proposed authorization calls for a limit of $50,000,000 annually. Some have alleged that there is no need for a generous limit because the program has not demonstrated its ability to use funds at the current ceiling. We believe that if the Department of Agriculture were to work more closely with the state agencies and local organizations interested in securing the manifold benefits from this program, made the payment rates reasonable in terms of prevailing land prices both initially

and in later years, even the $50,000,000 figure would become a ceiling over the program. Therefore, we urge you to report out the bill with that figure as the authorized annual appropriation.

Finally, Mr. Chairman, we want to make sure that there is a clear understanding that the Association views the Water Bank program, not as a service to wildlife alone, important as that aspect may be. Rather we see the Water Bank as a means to secure a multiplicity of benefits, all of them related to the broad public interest. Water conservation, soil conservation, preservation of an essential component of a diverse rural landscape—all of these are important in the life of America. We urge you to improve and act favorably on this legislation.

Yours very truly,

JOHN S. GOTTSCHALK,
Executive vice president.

[Resolution 3, 1977]

WATER BANK

Whereas, wetlands continue to be destroyed by private landowner drainage; and

Whereas, farmers presently are plagued by huge stocks of grain and poor grain prices, and additional drainage of wetland acres would only aggravate this problem; and

Whereas, the water bank program has become extremely popular with landowners in the Northern Great Plains; and

Whereas, the water bank program has proven to be extremely valuable in flood prevention and soil and water conservation, and valuable to wildlife, especially migratory birds;

Now, therefore be it resolved, That the IAFWA hereby urges full and continuous funding of the Water Bank at the annual level of $50,000,000, with the administration of the program to remain in the U.S. Dept. of Agriculture.

Mr. LEGGETT. The meeting will stand adjourned.

[The following was submitted for the record:]

STATEMENT OF THE CALIFORNIA WATERFOWL ASSOCIATION

Gentlemen: The California Waterfowl Association is a state-wide nonprofit organization whose principal objectives are the preservation, protection and enhancement of California's waterfowl resource and the recreational opportunities which they provide. The Association directly represents the interests of millions of other Californians who are concerned with and benefit from these unique resources.

We appreciate the opportunity to present the views of the Association—which are strongly supportive of this legislation. Because our expertise is centered on the situation in California, our comments will be limited to the current situation in that State. However, we are sure that the U.S. Fish and Wildlife Service can provide similar data for other areas of the country.

During the past 100 years, the number of waterfowl on the Pacific Flyway has declined drastically. During the same period, the breeding grounds in Alaska, and the Northwest and Yukon Territories serving this Flyway have remained virtually unchanged. Even in British Columbia and Alberta the loss of breeding habitat has been nominal. What has changed is the reduction in the extent of California's wetlands from approximately 4,500,000 acres in 1854 to less than 450,000 acres today. In the opinion of the U.S. Fish and Wildlife Service this loss is the factor presently limiting waterfowl population of this Flyway and we concur with their conclusion.

According to California Department of Fish and Game banding studies, approximately 70 percent of the mallards and 50 percent of the cinammon teal harvested in California are raised here. The loss of 90 percent of our State's wetlands has obviously had a tremendous effect on the number of these species. However, this same habitat adverse affect served a dual role by providing wintering areas for all the waterfowl of this flyway. As a result, its loss is of critical importance to the entire west coast.

It is our understanding that similar losses are being experienced throughout the United States, although to date they have been less severe.

These considerations highlight the importance of not only increasing the amount of funding available annually through the Water Bank program, but also of increasing the scope of the program to include wintering habitat.

We would also like to point out that the Fish and Wildlife Service's conservation easement program in California's Central Valley shows great promise for those large contiguous wetland areas such as the Butte Sink or the Grasslands. However, this program is not designed to save the small pothole areas on numerous individual ranches which are also of key importance. An expanded Water Bank program aggressively implemented would have a dramatic effect in solving the problem of loss of this type of highly productive habitat.

The Associates appreciate the opportunity of providing this input and hopes that its comments prove helpful to the subcommittee.

STATEMENT OF NEAL KNOX, EXECUTIVE DIRECTOR, INSTITUTE FOR LEGISLATIVE ACTION, NATIONAL RIFLE ASSOCIATION OF AMERICA

Mr. Chairman, the National Rifle Association of America appreciates the opportunity to submit a statement of our views on H.R. 13371, introduced by Representative Dingell.

Hunting licenses, game togs, excise taxes and "duck stamps" have long been the principal source of revenue for Federal and State funded conservation programs. We are proud to say that our hunting constituency has generated millions of dollars for the protection and conservation of our renewable wildlife resources. We have strongly supported the concept embraced by the Migratory Bird Hunting Stamp Act requiring that those who take waterfowl contribute to its future replacement. Acquisition of migratory bird refuges and waterfowl production areas are essential if we are to keep ahead of advancing land development projects.

We fully understand the critical problem today in wetland acquisitions due to the accelerating cost of land. We must be able to compete in the marketplace against the dollars of developers. The National Rifle Association, therefore, fully supports increasing the price of the "duck stamp" from $5.00 to $7.50.

Research in this area has shown that when there is an increase in price, the number of hunters purchasing stamps decreases for a period of 1 to 2 years. Little concern has been voiced over this, for the revenues generated have always immediately increased. However, if more frequent and larger price hikes are suggested, we may arrive at a point of diminishing return; this is, the willingness and ability of waterfowl hunters to pay. We are concerned that the present proposed increase will decrease the number of waterfowl hunters more than the "duck stamp" price increases in the past, and for a longer period, due to the conjunction of the increase with the federally mandated use of steel shot. Not only does steel shot ammunition cost as much as twice the price of lead shot loads, many or most waterfowl hunters are concerned about gun damage caused by steel shot, and equally concerned about reduced performance and increased cripplings. Although the total number of hunter-days in steel shot flyways may not be decreasing, on a flyway-wide basis, there are indications that there is less hunter participation in the "hot spot" areas where steel shot must be used. Despite our support for the proposed cost increase, we are both aware and concerned about its possible impact when coupled with decreases in hunter numbers due to steel shot regulations.

Accordingly, we are extremely concerned that further increases without consideration of all pertinent factors would be counter-productive. Lynn Greenwalt, Director of the U.S. Fish and Wildlife Service, has proposed for the Administration that the future price of the "duck stamp" be tied to increases in the land price index. Mr. Greenwalt indicated that had this idea been incorporated at the time the stamp was increased from $3 to $5, the price today would be $11 with yearly increases of $1. Obviously there is a point where the price becomes totally unrealistic for the enjoyment and satisfaction of waterfowl hunting to be worth the price paid. Such an arbitrary method of increasing prices as suggested by the administration is totally unacceptable to NRA and its membership. It is better that Congress review requested increases, with supportive evidence, than leave it to the discretion of an agency whose desires to acquire additional wetlands may begin to overshadow those other incentives needed to preserve waterfowl hunting.

It is our understanding that the subcommittee is considering a proposal to lower the age required for purchasing "duck stamps" from 16 years to 14 years of age, or some other lower figure.

The NRA has willingly supported efforts by the States and Federal Government to raise revenues for conservation via the hunters. The NRA has long devoted much of its attention and many of its programs to the youth of this country in stimulating their interest in sport shooting.

As with almost every field of endeavor, its lease on life is the continuation of its ideas, philosophy and interests by our younger generation. Many youngsters are

introduced to hunting at a very young age by accompanying a parent or family friend on a hunting trip. As the child matures, he is introduced to the endless varieties of sporting activities. If he chooses to grow in his knowledge of hunting and sport shooting, most States require by the age of 16 that the youngster acquire a hunting license which often times is keyed to successful completion of a hunter safety training course. At that age, he is growning more independent and has more opportunities to earn "spending money" so that he will have the financial ability to pursue his interests. If a child is required to purchase a "duck stamp" at the price proposed in H.R. 13371 or at any new price in the future, as well as purchase all of the other equipment necessary for a safe and successful hunting trip, he is going to be discouraged before he begins, or the parent or other sponsor will be discouraged from taking the child.

I would think that the source of continued conservation support rests with an increasing rather than a declining participation in hunting by the public. I would not like to see proposals that would in effect discourage future hunter participation in good game management.

To encourage youthful interest in hunting, most States do not require youngsters under 16 years of age to apply for a hunting license; some States do not require licenses if the person is hunting in their own county or on their own property. I think that the costs of enforcing a requirement to purchase a duck stamp by this age group would more than offset the revenues gained.

One last comment concerns the issue of abolishing the Governor's veto as outlined in Part II of H.R. 13371. NRA agrees with the view expressed by Congressman Eckhardt, in his testimony before the subcommittee, that the right of a Governor to veto a land sale should be limited to cases where the seller does not voluntarily offer the land to the U.S. Fish and Wildlife Service. Abolishment of the Governor's veto in other cases would invite unconstitutional Federal intervention and would encourage the States to litigate against the U.S. Fish and Wildlife Service on any land transaction.

[Whereupon, at 12:10 p.m., the subcommittee adjourned.]

ANADROMOUS FISH IN LAKE CHAMPLAIN

FRIDAY, AUGUST 4, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION, AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m. in room 1334, Longworth House Office Building, Hon. Robert L. Leggett (chairman of the subcommittee) presiding.

Present: Representatives Leggett, Hughes, Forsythe, and McCloskey,

Also present: Ned P. Everett, counsel; George J. Mannina, Jr., minority professional staff member; Barbara A Wyman, assistant minority clerk; Michael Ingrao, research assistant; and Maravadel Zeeb, clerk.

Mr. LEGGETT. The meeting of the Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order.

This morning the subcommittee will hold hearings on H.R. 13392 and an identical bill, S. 415, legislation to amend the Anadromous Fish Consrvation Act to include fish in Lake Champlain that ascend streams to spawn. Immediately following the hearing, the subcommittee will go into an open markup session for the purpose of reporting this legislation and the duck stamp bill, H.R. 13372 to the full committee.

Congressman Jeffords of Vermont introduced H.R. 13392 on July 11, subsequent to the Senate passage on May 25 of an identical bill, S. 415.

[The bills and departmental reports follow:]

[H.R. 13392 and S. 415, 95th Cong., 2d sess.]

BILLS to amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Anadromous Fish Conservation Act, as amended (16 U.S.C. 757a-f), is amended by inserting immediately after the words "Great Lakes", wherever they appear therein, the words "or Lake Champlain".

34-367 O - 78 - 18

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., July 27, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department regarding H.R. 13392, a bill "To amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn."

This bill would broaden the scope of the conservation program authorized by the Anadromous Fish Conservation Act (Act) (16 U.S.C. 757a–757f) to include Lake Champlain. Lake Champlain presently supports excellent recreational fishing for a number of species including white fish, rainbow trout, walleye, lake trout, landlocked salmon, rainbow smelt, yellow perch, and northern pike.

In our opinion, it is not necessary to provide an additional Federal aid program for anadromous species of fish in Lake Champlain. We believe that existing programs are sufficient to provide whatever financial assistance may be necessary for the conservation and management of the fishery resources of Lake Champlain.

The Department of Commerce maintains an ongoing program for projects to conserve anadromous fish resources pursuant to the Act. Historically, sea-run Atlantic salmon were once found in Lake Champlain and because those fish are anadromous, Lake Champlain is already eligible for funding under the Act. Such funding could be used to assist the States in determining the feasibility of restoration efforts. At present, however, neither New York nor Vermont have any projects regarding Atlantic salmon in Lake Champlain.

The Department of Commerce recommends against enactment of H.R. 13392. We believe this bill would be an undesirable precedent and would lead to additional requests for similar modifications of the Anadromous Fish Conservation Act, weakening the overall effectiveness of this particular conservation program. For example, pressure could be generated to provide assistance under the Act to increase recreational fishing activities by stocking striped bass or other fish that swim upstream from lakes.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

C. L. HASLAM,
General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 3, 1978.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee has requested the views of this Department on H.R. 13392 a bill, "To amend the Anadromous Fish Conservation Act to include fish in Lake Champlain that ascend streams to spawn." This bill is identical to S. 415, which was passed by the Senate May 25, 1978.

We recommend against enactment of this legislation for reasons herein provided.

The subject bill's purpose is to include, under the Anadromous Fish Conservation Act (16 U.S.C. 757a–757f; 79 Stat. 1125), as amended, fish in Lake Champlain that swim up stream to spawn. This is accomplished by inserting "or Lake Champlain" after the words "Great Lakes" whenever they appear. We oppose this bill because it is unnecessary and not in accord with the purpose of the Anadromous Fish Conservation Act.

The term "anadromous" as used in the 1965 Act describes fish that swim up rivers from the ocean to spawn. An exception was made in this Act for Great Lakes species that swim up stream from a lake to spawn. This exception was made because at the time of the Act's passage the Great Lakes fishery had experienced a series of devastating disasters.

Since about 1940, overfishing, pollution and sea lampreys had caused a severe decline of high value species in the Great Lakes including lake trout, burbot, walleye, pike, muskie, bass, whitefish, lake herring and chub. By 1965, these highly valued species had all but disappeared. Only the alewife was still abundant, and

sport and commercial fishing seemed to be dead. Measures were necessary to restore biological productivity to useful fish species and alleviate problems of severe economic urgency.

Lake Champlain in no way resembles the Great Lakes as described above. It has excellent populations of whitefish, rainbow trout, walleye, lake trout, landlocked salmon, rainbow smelt, yellow perch and northern pike. Historical records report the presence of sea-run Atlantic salmon in Lake Champlain. Access was gained via the St. Lawrence and Richelieu Rivers from the Atlantic Ocean. Because those salmon are anadromous by strict definition, Lake Champlain is eligible for funding under the Act now. Funding could be used for research to determine if restoration is feasible, restoration efforts, and monitoring downstream migrants and returning adults. However, at the present, neither New York nor Vermont is conducting any projects under the Act on Lake Champlain.

If all fish that swim up stream flowing into Lake Champlain to spawn were to be considered anadromous under the Act, this precedent would open the way for other amendments to include numerous other waters now excluded from the Anadromous Fish Conservation Act, for example, striped bass or salmonoids that swim up stream from inland reservoirs to spawn.

At this time, State requests for funding of projects now eligible under the Anadromous Fish Conservation Act exceed the amount appropriated by 60 to 70 percent. The Fish and Wildlife Service avers that it could not handle the additional requests at present appropriation levels if the subject bill were passed.

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

Sincerely,

DAVID HALES,
Acting Assistant Secretary.

Mr. LEGGETT. The Anadromous Fish Conservation Act, which had its inception in 1965, authorized the Secretary of the Interior and the Secretary of Commerce to carry out programs for the purpose of conserving, developing, and enhancing within the several States the anadromous fishery resources of the Nation and for the purpose of conserving, developing, and enhancing the fish in the Great Lakes that ascend streams to spawn. The act authorizes to be appropriated $20 million per year for such purposes. Projects carried out under the act are cost shared with the States on a 50–50 basis, except when two or more States are involved in a project, in which case the Federal share of the cost of such project is 66⅔ percent.

The legislation under consideration today would amend the Anadromous Fish Conservation Act to include Lake Champlain under its coverage thereby making it clear that the States bordering on the lake, namely, Vermont and New York, are eligible to enter into agreements with, and receive financial assistance from the Secretary of the Interior or the Secretary of Commerce, as the case may be, for the development, enhancement, and conservation of fish found in the lake that ascend streams to spawn.

Jim, it is very nice to have you back again before the subcommittee.

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. JEFFORDS. It is a pleasure to be here this morning.

I would like to say I appear here not only on behalf of myself but Congressman McEwen, who enthusiastically supports this legislation.

I will ask that my statement be submitted in full and then I would just like to comment.

Mr. LEGGETT. It will be included in the record as though you read it.

[The information follows:]

STATEMENT OF HON. JAMES M. JEFFORDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VERMONT

Mr. Chairman, I am here to urge the Committee to act favorably on my bill, H.R. 13392, which would include Lake Champlain under the provisions of the Anadromous Fish Conservation Act. It is my understanding that the Committee intends to go into markup session shortly after this hearing and that there are positive indications that the bill will be before the full Merchant Marine Committee in the near future. I would like to express my appreciation to the distinguished Chairman, Mr. Leggett, for holding this hearing and for his willingness to consider the needs of New England to expand the Act to include Lake Champlain.

I would also note, Mr. Chairman, that the other body has acted on the companion measure to H.R. 13392, introduced by Senator Stafford of Vermont (S. 415). That measure, identical to the one before you today, was favorably reported by the Committee on Environment and Public Works unanimously, and passed by the full Senate.

If I might, I would like to address myself briefly to the goal, background and need for this legislation.

The goal of the Anadromous Fish Conservation Act is to restore severely depleted anadromous fish stocks and their habitats, to enhance existing anadromous fish populations and to create new fisheries where possible, for the benefit of sport and commercial fisheries. The initiative begun under the act, now 12 years old, has been an unqualified success, in that the estimated dollar value in terms of fishery benefits both sport and commercial has been over $440 million, resulting from outlays of less than $25 million over the same period. Non federal participants in the program include 29 State fishery agencies, universities and one Indian tribe. Grantees with individual projects receive up to 50 percent Federal funding for eligible projects; on multi-State cooperative projects the Federal share can be up to two-thirds of the necessary funding.

At present only certain coastal waters and the waters of the Great Lakes are eligible for the programs under the Act.

BACKGROUND

Lake Champlain is the 10th largest freshwater lake in the United States, and is often referred to as the smallest of the Great Lakes. It is over 100 miles long, 12 miles wide, has mean depth of 64 feet and a maximum depth of 400 feet. Being both interstate and international, 62 percent of its 436 square miles surface area is within Vermont, 35 percent in New York, and 3 percent in Quebec Province. It has an over 8,000 square mile basin which drains north via the Richelieu River through Canada. The land use patterns within the basin show that 60 percent of the basin is forested, 20 percent is in agricultural usage and the remaining 20 percent developed to other uses. About 450,000 people live in the basin.

Lake Champlain is widely used for water-based recreation of all types and with completion of the interstate highway system, the basin has become quite accessible to the major metropolitan areas of the northeast. Consequently, there has been substantial year-round and seasonal home development along the lake shores over the past decade. Problems of increased eutrophy are becoming more frequent as development pressures increase.

Although several regions of the lake are exhibiting increasing degradation in water quality, the quality of the water in the main lake remains high.

Mr. Chairman, for whatever reasons, the record of government neglect—particularly at the federal level—of Lake Champlain is clear. Historically, no major federal studies have been made on the lake. Lake Champlain was excluded from the Anadromous Fish Conservation Act of 1965 and also from the Coastal Zone Management Act of 1972. Sea Grant monies likewise are not available. Similarly, the widely publicized and intensive federal efforts over the past few years to study, "save", and manage the Great Lakes totally excluded Lake Champlain. Consequently, substantial federal monies have not been available in the past nor are they now available to learn of the processes of the lake upon which the formulation of sound rational management decisions depend. Clearly, this is a record of neglect.

It has long been recognized that there is an obvious need for interstate (and even international) arrangements to effectively mange the resources of the Lake Champlain basin. In 1949, New York and Vermont initiated the Interstate Commission on

the Lake Champlain Basin. This Commission is now inactive and no formal bi-state management efforts exist. The one exception to a general lack of interstate cooperation is the Lake Champlain Fish and Wildlife Technical Committee, and its parent committee, the Policy Committee. The Technical Committee consists of a Fisheries biologist from New York, Vermont, and the U.S. Fish and Wildlife Service. They meet about 8 times per year to discuss and formulate plans for the management of Lake Champlain fish. The Committee this past January produced a document called "A Strategic Plan for Development of Salmonid Fisheries in Lake Champlain", which I consider a thoughtful and well developed piece which could well serve as a basis for a major effort to bring recreational fishing for salmon, lake and steelhead trout within the reach of thousands of anglers within the Northeast U.S. This document, Mr. Chairman, has already been shared with your subcommittee's staff, and I will summarize its major points later in my testimony.

At this point, Mr. Chairman, I ask the Committee's permission to insert the entire document in the hearing record.

Mr. Chairman, despite lack of substantial federal funding and the paucity of effective bi-state cooperation in the past, there have been a number of modest research studies concerning Lake Champlain over the last decade. All these studies have extremely restrictive budgets and, in the large, were preliminary and baseline in nature. The Strategic Plan is apparently the most comprehensive assessment of the potential of the Lake in the regard which would relate to the expansion of the Anadromous Fisheries Conservation Act.

Lake Champlain basin is not eligible under the Act because "land-locked anadromous fish populations (except fish in the Great Lakes that ascend streams to spawn) may not be financed under the Act (Sec. 401.4). The Lake does not have a landlocked anadromous fish population as do the Great Lakes. In the history of Vermont, Lake Champlain has a considerable population of sea-run Atlantic salmon; however, by 1850 they had essentially disappeared. Actually, in 1850 Salmon (Salmo salar) abounded in the Lake and all its principal tributaries. By contrast, the Great Lakes never had a naturally occurring anadromous fishery except in Lake Ontario which supported a sea-run Atlantic salmon. By 1900, they had disappeared. All the important anadromous fish now on the Great Lakes were introduced by man.

THE DEVELOPMENT OF A MASTER PLAN

Early in 1973, the New York State Department of Environmental Conservation, Division of Fish and Wildlife, initiated work on long range plans to develop and maintain a diversified salmonid sport fishery to supplement the existing fisheries in Lake Champlain. Joint meetings of fisheries administrators and biologists from New York, Vermont, and Province of Quebec during 1972 emphasized the need and potential to rejuvenate the cold water fishery in Lake Champlain. The successful introduction of Pacific salmon in Lake Michigan, a limited lake trout fishery in Lake Champlain at Willsboro and a short lived, but exciting landlocked Atlantic salmon fishery in the lower Saranac River added impetus to the already growing demand of anglers to reestablish and develop a good recreational salmonid fishery in Lake Champlain. Vermont and New York agreed to actively pursue this long range goal within limits imposed by funding, current hatchery production levels and statewide priorities. Participants in these meetings agreed that development of this cold water fishery initially include only three species of salmonids: lake trout *Salveninus namaycush,* rainbow trout "steelhead" *Salmo gairdneri* and landlocked Atlantic salmon *Salmo salar.*

Later in 1973 groundwork was laid for the development of the Lake Champlain Fish and Wildlife Mangement Cooperative. Under agreement, New York and Vermont will work together with the U.S. Fish and Wildlife Service in a unified approach for the protection and management of the fish and wildlife resources of interstate significance in Lake Champlain. The goal of developing and maintaining a diverse salmonid fishery in Lake Champlain to supplement existing fisheries will become a major focal point for initial efforts of the Cooperative. Activities related to achieving this goal will be reviewed, evaluated and approved by its members.

THE PLAN: HISTORY, AND PROGRAM OBJECTIVES

Lake Champlain formerly supported indigenous populations of landlocked and/or sea run Atlantic salmon and lake trout. A report filed with the U.S. Fish Commission for 1873–1875 indicated up to 20 pounds, were rapidly depleted following encroachment by civilization with no authentic records of catches appearing since the last salmon stocking in 1873. Lake trout, native to the deeper areas of the lake, were recorded captured as early as 1817. However, sampling conducted during the

intensive biological survey of the Lake in 1929 by the New York State Conservation Department failed to yield a single specimen.

Restoration of both lake trout and salmon fisheries in the Lake was attempted during the latter 1800's through sporadic stockings of both species. These attempts were unsuccessful in reestablishing either species and efforts to stock lake trout or salmon in the lake were discontinued until the mid-1900's. In 1958, New York and Vermont began annually stocking moderate numbers of lake trout which did produce some lake trout fishing. Presently, the rainbow smelt *Osmerus mordax* provides the only major cold water sport fishery in the lake. The yellow perch is the most important warm water species, providing an important fishery in New York, Vermont and Quebec. Other important warm water sport fish species include the walleye, northern pike, bass and bullhead.

The goal of developing and maintaining a diverse salmonid fishery on the Lake to supplement existing fisheries will be accomplished initially by meeting the following specific objectives:

1. 8,000 lake trout averaging 5 pounds each.

2. Re-establish a landlocked Atlantic Salmon fishery by 1985 that will annually provide at least 41,000 additional man-days of fishing with an approximate yield of 12,200 Atlantic salmon averaging 4 pounds each.

3. Establish a "steelhead" rainbow trout fishery by 1985 that will annually provide at least 31,000 additional man-days of fishing with an approximate yield of 6,100 steelhead averaging 4 pounds each.

4. Maintain the rainbow smelt fishery at a level that will annually average at least 25,000 man-days of fishing with an approximate annual yield of 100,000 pounds.

A number of problem areas will have to be addressed for successful development and maintenance of this sport fishery, including: 1. Availability of adequate numbers of hatchery-reared salmonids; 2. Maintenance of an adequate forage base; 3. Control of sea lamprey, if needed; 4. Regulation of salmonid harvest; and 5. Administrative support.

Overall, the Lake has the potential to provide a sustained harvest of approximately 820,000 pounds of fish annually. If salmonids comprised 20–30 percent of the total yield, estimated salmonid harvest may reach 36,000 4–5 pound salmon and trout annually. This is basically a 5–10 year plan. The plan is designed to supplement but not replace the warmwater fishery located principally in the littoral regions of the lake. Once salmonids are well established, the Lake will provide a year round diversified warm and coldwater fishery in the lake and a seasonal coldwater fishery in selected streams.

In summary, development of a salmonid fishery in Lake Champlain would begin at a moderate level. This will permit development of adequate baseline data necessary to establish guidelines for building salmonid populations and evaluating their impacts upon the forage and other fisheries resources of the lake. Preliminary investigations are designed to determine the magnitude of the forage base and specific areas where initial stockings of salmonids would be most beneficial. Pilot studies will be utilized to evaluate the potential of the major tributaries as nursery and spawning areas in providing a successful salmon or steelhead stream fishery. The success of these pilot studies may then justify expansion into other streams and provide information on the need for acquiring additional public access through purchase of fishing rights and fishing access sites.

Thus, Mr. Chairman an effort, through this master plan has been going on since 1973, to develop a fishery, but work has been slowed because of limits imposed by inadequate funding, insufficient basic research on the lake and lack of programs and facilities for beginning and then managing an expanded fishery.

If the waters of Lake Champlain are included within those waters eligible for the competitive grant funds under the Anadromous Fish Conservation Act, then the States bordering the lake will have the opportunity to begin in earnest the initiation of efforts to implement the master plan.

Mr. JEFFORDS. Lake Champlain, as I am sure the committee is aware, is a large freshwater lake. It services many communities, many cities in the Northeast. Within a few hours' driving distance you have Boston, New York City, and of course Montreal to the north.

Thus, the purposes of the act which this bill intends to take advantage of would be greatly enhanced by its passage for millions

of people literally would have the advantage of cold water fisheries reestablished in Lake Champlain.

Lake Champlain is a beautiful lake and it sits up along the borders of northern Vermont and also has an international border with a very small percentage of the lake being in Canada. It has had a history of anadromous fishing. The early reports show that the Atlantic salmon used to run freely into Lake Champlain and into the rivers of Lake Champlain. However, through the encroachment of civilization gradually the cold water fisheries of Lake Champlain pretty much disappeared. That is the status today. Although a very limited amount of stocking is done in the area of landlocked salmon, lake trout and some steelheads, it is minimal.

The purpose of this bill would be to take advantge of the studies which have already been done under other acts and to carry forward the programs which have been developed under those acts to build a fish hatchery in the area to supply landlocked salmon, even eventually perhaps Atlantic salmon running back into the lake, lake trout, and steelheads, and at the same time preserving the somewhat abundant smelt population.

The lake is ready for this. The State of Vermont and the State of New York along with the Federal Government have spent millions of dollars freeing the lake from pollution. The water quality has been enhanced greatly. The rivers are now in a situation where they are adaptable to anadromous fish to spawn, and this bill would merely carry forward Federal programs which have already set the foundation for action here but with very limited funding.

I have read the testimony of the Department of the Interior which says this bill is unnecessary. I would like to talk to the fellow the Department talked to because he apparently knows where the fish are and I do not. He indicates there is an abundance of lake trout and landlocked salmon and rainbow trout in the lake. If there are, our fishermen do not know, and would like to know, where they are.

They say it would be impossihle without the expenditure of millions of dollars of international funds to reestablish the Atlantic salmon runs. Apparently they know something I do not know, either because the Richelieu River runs into St. Lawrence beyond any manmade streams that I am aware of so the possibility of establishing sea-run salmon, assuming we could reestablish sufficient population of smelt, is not at all out of the question, to my knowledge.

I differ very strongly with their testimony as I do not believe it accurately portrays the situation in Lake Champlain and would ask that the committee do adopt the position the Senate has taken, the one which we propose here, to include Lake Champlain within the anadromous fish.

Mr. LEGGETT. Thank you very much.

The next witness is going to be from Fish and Wildlife Service. They oppose the bill. I do not know why they do.

Apparently only about $5 million is appropriated, part by Interior and part by Commerce, and there is about a 70-percent overdemand for this $5 million. Maybe if more States were in the program we could get more funds appropriated.

Mr. JEFFORDS. Mr. Chairman, in my statement I asked to have included in the record the Lake Champlain Fish and Wildlife Technical Committee strategic plan, and I would like to do that.

Mr. LEGGETT. It is a long document but undoubtedly it is worthwhile.

[The information follows:]

A STRATEGIC PLAN

FOR DEVELOPMENT OF SALMONID FISHERIES

IN

LAKE CHAMPLAIN

Lake Champlain Fish and Wildlife

Policy Committee

and

Technical Committee

COOPERATING AGENCIES

New York State Department of Environmental Conservation
Division of Fish and Wildlife

Vermont Agency of Environmental Conservation
Department of Fish and Game

and

United States Fish and Wildlife Service

January 17, 1978

TABLE OF CONTENTS

Page

INTRODUCTION 1

SECTION I: STRATEGIC PLAN

HISTORY 2

GEOGRAPHY 3

Lake Champlain Map 3a

PROGRAM OBJECTIVES 3

METHODS AND PROCEDURES 4

DISCUSSION 5

Biological Potential 5

Rainbow smelt 5

Lake trout 6

"Steelhead" rainbow trout 7

Landlocked Atlantic salmon 9

Other Salmonids 10

Program benefit/costs 10

Cost Table 11

SUMMARY 12

Investigative Activity Schedule 13

A MASTER PLAN FOR DEVELOPMENT OF SALMONID FISHERIES IN LAKE CHAMPLAIN

INTRODUCTION

Early in 1973, the New York State Department of Environmental Conservation, Division of Fish and Wildlife, initiated work on long range plans to develop and maintain a diversified salmonid sport fishery to supplement the existing fisheries in Lake Champlain. Joint meetings of fisheries administrators and biologists from New York, Vermont and the Province of Quebec during 1972 emphasized the need and potential to rejuvenate the cold water fishery in Lake Champlain. The successful introduction of Pacific salmon in Lake Michigan, a limited lake trout fishery in Lake Champlain at Willsboro and a short lived, but exciting landlocked Atlantic salmon fishery in the lower Saranac River added impetus to the already growing demand of anglers to reestablish and develop a good recreational salmonid fishery in Lake Champlain. Vermont and New York agreed to actively pursue this long range goal within limits imposed by funding, current hatchery production levels and statewide priorities. Quebec, who could not actively contribute manpower and money, enthusiastically supported the idea of efforts to establish a salmonid fishery even though the development of this type of fishery would not directly benefit Canadian anglers fishing in Quebec waters of the lake. Participants of these meetings agreed that development of this cold water fishery initially include only three species of salmonids: lake trout Salvelinus namaycush, rainbow trout "steelhead" Salmo gairdneri and landlocked Atlantic salmon Salmo salar. Coho salmon Oncorhynchus kisutch and chinook salmon Oncorhynchus tshawytscha were not considered for introduction into Lake Champlain at this time because of their feeding characteristics. Voracious predators of these types could have devastating effects on the smelt population in Lake Champlain.

Later in 1973 groundwork was laid for the development of the Lake Champlain Fish and Wildlife Management Cooperative. Under agreement, New York and Vermont will work together with the U.S. Fish and Wildlife Service in a unified approach for the protection and management of the fish and wildlife resources of interstate significance in Lake Champlain. The goal of developing and maintaining a diverse salmonid fishery in Lake Champlain to supplement existing fisheries will become a major focal point for initial efforts of the Cooperative. Activities related to achieving this goal will be reviewed, evaluated and approved by its members. The ensuing strategic and operational plans for developing and maintaining this salmonid fishery reflect the views of this Cooperative.

SECTION I

STRATEGIC PLAN

HISTORY

Lake Champlain formerly supported indigenous populations of landlocked and/or sea run Atlantic salmon and lake trout. A report filed with the U. S. Fish Commission for 1873-1875 indicated the lake once provided a good salmonid fishery. Atlantic salmon were present in large numbers in the northern part of the lake and in some of the larger tributaries including the Great Chazy, Little Chazy, Salmon, Little Ausable, Ausable, Bouquet Rivers in New York and the Winooski, Lamoille, Missisquoi Rivers and Otter Creek in Vermont. These fish, often weighing up to 20 pounds, were usually taken by spears, weirs, seines, and occasionally by hook and line. Apparently stocks were rapidly depleted following encroachment by civilization with no authentic records of catches appearing since the last salmon stocking in 1873. Lake trout, native to the deeper areas of the lake, were recorded captured as early as 1817. However, sampling conducted during the intensive biological survey of Lake Champlain in 1929 by the New York State Conservation Department failed to yield a single specimen.

Restoration of both lake trout and salmon fisheries in Lake Champlain was attempted during the latter 1800's through sporadic stockings of both species. These attempts were unsuccessful in reestablishing either species and efforts to stock lake trout or salmon in the lake were discontinued until the mid-1900's. In 1958, New York and Vermont began annually stocking moderate numbers of lake trout which did produce some lake trout fishing. In 1968, several hundred lake trout were caught by anglers in the vicinity of Willsboro, New York. These fish were from lake stockings made by New York in 1960 and 1961. New York also created a limited salmon fishery in the lower reaches of the Bouquet and Saranac Rivers. These runs resulted from stocking Atlantic salmon fingerlings directly in upstream nursery areas which then produced salmon smolts for Lake Champlain.

Presently, the rainbow smelt Osmerus mordax provides the only major cold water sport fishery in the lake. This winter fishery in concentrated in New York waters, but is also productive to a lesser extent in Vermont waters. A limited commercial fishery for lake whitefish exists in Quebec waters. The yellow perch is the most important warm water species, providing both an important winter ice fishery and an open water fishery in New York, Vermont and Quebec. Other important warm water sport fish species include the walleye, northern pike, smallmouth bass, largemouth bass and bullhead.

GEOGRAPHY

Geographically, Lake Champlain occupies a north-south glaciated fault between the Adirondack Mountains to the west and the Green Mountains of Vermont to the east. It spans over 106 miles from the inlet south of Whitehall, New York to the outlet at the Richelieu River in the Province of Quebec. The lake, with a water surface area of 436 square miles and a mean depth of over 63 feet, has an extensive deep water area concentrated in its middle sections. This region of the lake is available and biologically capable for developing and maintaining a diversified salmonid sport fishery. Intensive investigations by the New York State Conservation Department in 1929 and the University of Vermont in 1970 have provided chemical and physical data indicating that Lake Champlain has the biological potential for development and maintenance of a sustained production of large numbers of harvestable salmonids.

Figure 1 depicts the approximate area in Lake Champlain in which the salmonid lake fishery is expected to develop. This area, encompassing 197 square miles or nearly 126,000 acres is that area in the lake from 50 to 400 feet deep that is considered primarily as salmonid habitat. Also depicted are some of the major tributaries that have the potential to contribute to the development of a salmonid fishery in the lake.

PROGRAM OBJECTIVES

The goal of developing and maintaining a diverse salmonid fishery on Lake Champlain to supplement existing fisheries will be accomplished initially by meeting the following specific objectives:

1) Re-establish a lake trout fishery by 1985 that will annually provide at least 45,000 additional man-days of fishing with an approximate yield of 18,000 lake trout averaging 5 pounds each.

2) Re-establish a landlocked Atlantic salmon fishery by 1985 that will annually provide at least 41,000 additional man-days of fishing with an approximate yield of 12,200 Atlantic salmon averaging 4 pounds each.

3) Establish a "steelhead" rainbow trout fishery by 1985 that will annually provide at least 31,000 additional man-days of fishing with an approximate yield of 6,100 steelhead averaging 4 pounds each.

4) Maintain the rainbow smelt fishery at a level that will annually average at least 25,000 man-days of fishing with an approximate annual yield of 100,000 pounds.

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To insure the success of this program and attain the goal, efforts must be expended under the direction of the Cooperative by participating agencies involved. Initial efforts will be towards meeting the major objectives stated at a level commensurate with state priorities, resources, manpower and funding. Successful development and long range maintenance of this sport fishery will depend upon the ability of participating agencies to handle a multitude of potential problem areas including:

1) Availability of adequate numbers of hatchery-reared salmonids to meet the requirements of a long range stocking program.

2) Maintenance of an adequate forage base capable of supporting sustained production of salmonids.

3) Access to the salmonid resources.

4) Control of the sea lamprey, if needed.

5) Capability of uniformly regulating the salmonid harvest corresponding to supply.

6) Administrative support and coordination, adequate funds, manpower, equipment and data processing facilities necessary to implement and conduct the overall program.

Overall program coordination will remain the function of the Cooperative through the actions of the Policy Committee. Specific responsibilities will be outlined by the Technical Committee and delegated to individual units participating in administrative and investigative activities.

METHODS AND PROCEDURES

Standard fishery survey techniques and gear will be utilized throughout the investigative phase of the program to meet objectives and provide baseline data necessary to develop and maintain a salmonid fishery in Lake Champlain. Deep water investigations will be conducted from research vessels equipped with the essential scientific apparatus necessary for data gathering. Techniques and gear will be standardized for all agencies participating in research activities wherever possible, to provide a sound and uniform data base and facilitate future data analysis and correlation. Data collection and processing will be designed for computer program analysis and storage. Rearing and stocking of salmonids for Lake Champlain will follow the most advanced and proven propagation and stocking techniques.

DISCUSSION

Development of the salmonid fishery for Lake Champlain will be directed towards the reestablishment of landlocked Atlantic salmon and lake trout and establishment of a steelhead fishery to acceptable levels within 10 years. This plan is designed to supplement but not replace the warmwater fishery located principally in the littoral regions of the lake. The abundant rainbow smelt provides an excellent winter fishery and is expected to be an important food item for salmonids. As predator populations increase some trade off is expected between yields of smelt and salmonids. The magnitude of predation will be extremely important but with a carefully designed fishery research and evaluation program, adjustments in salmonid stockings can be made to create an equilibrium that will insure anglers of a diversified coldwater fishery while maintaining the smelt as an important component of this fishery. Preliminary studies on the distribution of sea lamprey ammocoetes indicate that this species is present in some abundance. Its effect on the developing fishery will be assessed to determine if future control may be necessary. In effect, once salmonids are well established, Lake Champlain will provide a year round diversified warm and coldwater fishery in the lake and a seasonal coldwater fishery in selected streams.

Biological Potential

It is estimated that Lake Champlain has the potential to provide a sustained harvest of approximately 2.9 pounds of fish per acre or nearly 820,000 pounds of fish annually. This figure is based on a morpho-edaphic index for estimating potential fish production in northern temperate lakes. Assuming that this figure is a reasonable approximation of the yield which can be expected from Lake Champlain and that salmonids would comprise 20-30% of the total yield, estimated harvest of salmon and trout may reach 175,000 pounds annually. Using this as a base, annual yield to the sport fishery could reach 36,000 four to five pound salmon and trout annually. Maintenance of a fishery this size, in the absence of adequate natural spawning will require planting 690,000 yearling trout and/or salmon smolts annually. This number will be the total number of salmonids contributed annually to the entire lake by New York and Vermont combined. Both direct lake stockings and downstream migrants from tributary systems will be considered in meeting this total figure.

Rainbow Smelt

Consideration of smelt in the overall coldwater fisheries plan is necessary for several reasons. Most important, in terms of creating this fishery, smelt are expected to provide the principal forage base for future introductions of salmonids in Lake Champlain. Secondly, the winter smelt fishery provides recreation for numerous sportsmen and is consequently important to the economies of several shore communities in both Vermont and New York.

Although past studies of the smelt have been directed toward sound management of the fishery, knowledge of this species in Lake Champlain remains limited. As a result, and coincidentally because of limited availability of stocks, initial salmonid stocking rates will begin at modest levels. This allows for initial investigative efforts to be devoted to obtaining background information on smelt for comparison with similar information obtained after increased stocking has begun. Such information may not indicate whether decreases in the smelt population(s) were due to salmonid predation, year class failure or combinations of these or other factors. However, only four basic alternatives are possible with a declining smelt population and none of these requires knowledge of the causes for a decline. These actions are: reduction of salmonid stocking rates, increasing the harvest of salmonids, stocking of smelt and closing of the smelt fishery. Minimum information necessary for the management of the smelt fishery includes annual determinations of size, age composition, the relative abundance of smelt and measurements of the quality of the fishery.

To monitor the relative abundance of Lake Champlain smelt it is necessary to determine the spatial and seasonal distribution of smelt. Initially this will be accomplished by trawling, ichthyoplankton tows, gillnetting, seining, placement of burlap trays in suspected spawning areas and utilization of echogram images. These activities will take place from April through October during the first several years of investigation or until a sufficient knowledge of the age and racial composition of the smelt population(s) and an estimate of biomass of smelt available in the lake can be obtained. Subsequently, sampling would be reduced and indices of abundance would be used to provide the data necessary to maintain an equilibrium with the salmonid fishery and not reduce the present winter smelt fishery.

Winter creel surveys will be conducted in the traditional smelt fishery areas to gather additional data on the quality and extent of the winter smelt fishery. Such surveys will also be used to determine the age and race composition of smelt catches, the number of anglers utilizing the fishery and total winter harvest of smelt.

Food studies will be initiated to determine utilization of smelt by salmonid species. These studies will occur as the salmonid fishery develops in the lake or as the salmonids become available for capture.

Lake Trout

Initial research, management and propagation efforts will stress restoration of a lake trout fishery in Lake Champlain. Since this species may serve as a buffer between the sea lamprey and other introduced salmonids, early re-establishment of a respectable lake trout population is highly desirable. Secondly, lake trout may tend to rely less heavily on smelt as a forage than the landlocked salmon. In addition, at least a minimal supply of lake trout for stocking are already available annually to begin a pilot restoration program for this species. Attempts at lake trout restoration will produce a gradual numerical buildup in order to detect, assess and modify any possible detrimental effects to the existing winter smelt fishery in Lake Champlain.

As a result of current limitations on availability of lake trout for rearing and planting purposes, initial stocking rates approximated 50,000 yearlings annually. However, long range requirements call for annual plantings of 290,000 spring yearlings to restore a fishable population. Yield estimates indicate that annual harvests could reach 18,000 lake trout averaging about five pounds each. Possibilities will be explored for developing shore fisheries as well as open lake fisheries to enhance public fishing opportunities.

This plan requires that lake trout be propagated to spring yearling size for successful stocking and restoration of the species in Lake Champlain. Inadequate natural reproduction may require maintenance stockings of lake trout on an annual basis. Immediate needs are for selection of the strain(s) to be developed for Lake Champlain. New York and Vermont will mutually agree on stocking age and numbers of fish that will be compatible with other salmonid populations, forage fish levels and the smelt fishery. The possibility of discrete sub-populations of lake trout developing within Lake Champlain will be considered.

Lake trout growth and survival, natural recruitment and food habits will be monitored spring, summer and fall in Lake Champlain by standard gill net sampling and trawling efforts. The sampling period would extend from April into late fall. Survey techniques will be employed to evaluate open water and winter fisheries that develop for lake trout. Findings regarding the lake trout fishery will be evaluated in conjunction with other findings to achieve optimum management of lake trout in Lake Champlain. Management of this species should provide for an annual harvest that is in harmony with the lake trout population and its relationship to smelt, as well as other salmonid populations.

Currently there is no closed season for lake trout fishing in New York or Vermont waters of Lake Champlain. Both states require a minimum length of 15 inches. Present Vermont regulations stipulate that only two lake trout or two salmon or one of each can be taken daily. On October 1, 1977 a daily limit of five fish in combination for lake trout, landlocked salmon and trout went into effect for New York waters of Lake Champlain. This combination daily catch of five salmonids shall include no more than three lake trout or three landlocked salmon or three trout and will also go into effect for Vermont waters of the lake on January 1, 1978. Future lake trout fishing regulations may have to be adjusted to maintain optimum production and harvest of lake trout in relation to forage and competitive conditions.

"Steelhead" Rainbow Trout

As with restoration of a significant lake trout fishery in Lake Champlain, development and maintenance of a sizeable steelhead fishery is expected to depend heavily upon a realistic stocking program and careful selection of strains. Long range stocking requirements call for annual plantings of 250,000 steelhead smolts. Immediate plans call for attempts to establish steelhead runs and fisheries in the Salmon River and Putnam Creek in New York and the Winooski River in Vermont. Future plans include introduction of steelhead in Lewis Creek, Vermont and the Saranac River in

New York. Although 1974 plantings include 40,000 one and two year old steelhead, plants in the immediate future may utilize fingerling sizes until larger quantities of smolts become available. Unlike lake trout, the accessibility of fishermen to potential steelhead fishing sites along streams is of early concern under this plan.

It is expected that measurable steelhead fishing will develop only in those streams selected to receive steelhead stockings. Fishing should logically concentrate at locations where steelhead streams discharge into Lake Champlain and along upstream sites. Public access to these waters is necessary to fully utilize the benefits to be provided by such fisheries. This plan recognizes the early need for lease or purchase of lands providing for public access and fishing rights on steelhead streams. Likewise, if natural rearing ponds for steelhead are feasible, such waters should be purchased, leased or constructed in the near future.

In-stream survival, growth and residence time of steelhead stockings will be determined by electro-fishing or netting during spring, summer and fall. A simultaneous sampling of unmarked steelhead will provide an assessment of natural reproduction within streams receiving fin clipped plants.

Subsequent in-lake survival, growth, food habits and residence time will be monitored by netting and other survey techniques.

Fishing for steelhead will be most productive during the spring of the year with some good fall fishing expected. At this time adults will return from the lake and move up their "home" streams. These fish will provide opportunities for intensive fisheries to develop along steelhead streams. Accordingly, survey techniques will be used to determine use, harvest, economic benefits and costs, proper regulations and overall success of the program. Steelhead fishing will be evaluated in conjunction with other findings to arrive at optimum management of this species. Steelhead management must provide for a fishery that is compatible with both lake and stream conditions.

Present New York and Vermont fishing regulations permit year-round rainbow trout fishing in Lake Champlain. In Vermont, this is extended to include a section of the Winooski River and a small stretch of Lewis Creek. Vermont's Lake Champlain waters have no minimum size or daily limit. New York's regulations for Lake Champlain also apply to all tributary waters upstream to the first barrier impassable by fish. New York has a minimum length of nine inches and a daily limit of three trout (rainbow, brook, brown) within a combination daily limit of five trout, lake trout and landlocked salmon. Vermont will have similar regulations starting January 1, 1978.

Special steelhead fishing regulations pertaining to individual streams may become desirable in order to provide an optimum and orderly harvest. If additional protection of spawning stocks for natural reproduction, spawn taking, or young fish to encourage maximum smolt production becomes necessary, suitable regulations will be developed.

Promotion of steelhead fisheries will be contingent upon the potential of a given stream to sustain a given level of fishing pressure and harvest. The fishing potential of a steelhead stream should include both the potential of the fish resource and the stream environment to receive the impact of additional fishing pressure.

Landlocked Atlantic Salmon

The landlocked form of the Atlantic salmon has been selected for restoration in Lake Champlain. It is believed that this variety will have a greater tendency to remain in the lake and will probably provide a greater yield per smolt stocked than the progeny of sea run stocks.

Progress in restoration of Atlantic salmon and the level of the ensuing fishery will be determined by (1) the abundance, type and productivity of forage fishes and (2) sufficient numbers of hatchery-reared salmon to meet stocking requirements. Since smelt are typically a preferred food for landlocked salmon and also provide a highly prized ice fishery in Lake Champlain, predator-prey relationships between these two species will be of prime concern. Careful control and monitoring of salmon plantings will help to avoid an excessive build-up in the salmon population that could seriously endanger the smelt. Simultaneous monitoring of the smelt population will permit adjustments in salmon stocking or angling regulations to maintain a reasonable balance between both species.

Although primary focus is on the restoration of landlocked Atlantic salmon, future pilot tests with carefully selected sea run stocks should be considered. The feasibility for establishing runs to and from the North Atlantic via the Richelieu and St. Lawrence Rivers should be explored. This would establish the practicability of providing additional salmon fishing for somewhat larger fish without placing an added burden upon the forage fish resources of Lake Champlain.

Long range landlocked salmon stocking requirements are estimated at 150,000 hatchery-reared smolts annually. Since production capabilities of both states are currently limited, alternative methods for smolt production will be explored in an effort to partially meet these requirements on an interim basis. Possibilities include the use of smolt production capacity of high quality nursery areas of tributary streams and natural rearing ponds in which spring fingerling landlocked salmon have been planted. Natural or constructed rearing ponds feeding into potential salmon streams could increase the smolt production capacity of these waters. Automatic feeding devices might be used to supplement natural feeds in order to accelerate salmon growth, increase the yield and reduce the time required to produce smolts. Concurrent development of brood stocks will be necessary to meet spring fingerling needs.

Initially angling for landlocked salmon will develop at the mouths and in the lower sections of streams selected to receive fingerling plantings. A significant lake fishery is expected to develop as salmon increase in abundance and opportunities for successful angling improve. Current plans call for establishing salmon fisheries in the Ausable,

Bouquet and Saranac Rivers in New York and the Lamoille River in Vermont. Accordingly, sufficient public access should be provided on each stream up to the first barrier impassable to migrating salmon. Acquisition of lands for parking areas and easements for foot access to and along the streams are important to successful development of these fisheries. A review of the location and capacity of public and private boat access sites and harbors of refuge in relation to the developing lake fisheries will also be required.

Salmon planted in New York's tributaries to Lake Champlain will have to pass over or through barriers such as dams and turbines during the period of smolt outmigration. Survival will be affected and determination of losses and proposals for mitigation will be developed.

In stream production and residence time of salmon will be determined by electrofishing and netting surveys conducted seasonally. Salmon survival, growth, food habits, distribution and residence time will be monitored in Lake Champlain by standardized netting methods. Appropriate survey techniques will be used to gather data on harvests, angler utilization and benefit/costs.

New York and Vermont regulations now permit the taking of landlocked salmon 15 inches and greater at any time in Lake Champlain. A two fish daily limit in Vermont can represent an aggregate catch of salmon and lake trout. New York permits a daily limit of three landlocked salmon within a combination daily limit of five salmonids (landlocked salmon, trout, lake trout). Vermont waters of Lake Champlain will have the same daily limit as New York as of January 1, 1978.

Respective state regulations are in effect on tributaries to the lake. Regulatory changes may be required in the future as both stream and lake fisheries develop and, if needed, to offer additional protection to young salmon to increase smolt production.

Promotion of landlocked salmon fisheries will be done as information on seasonal distribution of the species becomes available. It is recognized that the capacity of the available fish resource and stream environment should be considered to avoid development of excessive pressure.

Possibilities to enhance public viewing opportunities at stream barrier jumping pools during salmon and steelhead migration periods will also be explored.

Other Salmonids

Development of localized shore, boat and stream fisheries utilizing brown trout Salmo trutta and/or brook trout Salvelinus fontinalis may be initiated to supplement and further diversify fisheries provided by steelhead trout, landlocked Atlantic salmon and lake trout. Brown and brook trout are presently established and routinely managed in the Lake Champlain watershed. Plantings of either or both of these species may be substituted for shortages or reductions in plantings of the three primary salmonids on a fish for fish basis subject to mutual agreement by both states. Combined plantings by New York and Vermont for these five species will not exceed 690,000 yearling trout and/or salmon smolts annually.

Program Benefit/Costs

Development of fisheries for lake trout, steelhead and Atlantic salmon will provide over 100,000 additional man-days of recreation for anglers on Lake Champlain annually. This is based on the assumption that three man-days of effort will be required for each 5 pounds of fish creeled. Utilizing expenditure figures obtained in the 1970 National Survey of Fishing and Hunting conducted by the U. S. Department of the Interior, Bureau of Sport Fisheries and Wildlife, it is expected that roughly $1,000,000 will be spent on this fishery annually. This fishery should in turn help to alleviate the generally depressed areas along Lake Champlain by creating a demand for goods and services associated with sport fishing for salmon and trout.

Table 1 presents a long range cost analysis schedule that estimates the anticipated costs necessary to develop this 15 year program. Based on an approximate cost estimate of $336,000 per year for Vermont and New York the benefit/cost ratio for the entire program will be approximately 3 to 1 during the initial years of development.

SUMMARY

This strategic plan establishes the framework and discusses considerations required to establish and perpetuate a highly attractive sport fishery for lake trout, Atlantic salmon, and rainbow trout in Lake Champlain. Requirements for reaching this goal are spelled out in detail in the "Operational" section of this master plan. Figure 2 provides a 15 year time chart indicating the anticipated long range course of operations in terms of broad investigative activities which are necessary to attain the goal of creating this quality salmonid fishery in Lake Champlain.

In summary, the development of a salmonid fishery in Lake Champlain, while approached with caution, will begin at a moderate level. This will permit development of adequate baseline data necessary to establish guidelines for building salmonid populations and evaluating their impacts upon the forage and other fisheries resources of the lake. Preliminary investigations are designed to determine the magnitude of the forage base and specific areas where initial stockings of salmonids would be most beneficial. Pilot studies will be utilized to evaluate the potential of the major tributaries as nursery and spawning areas in providing a successful salmon or steelhead stream fishery. The success of these pilot studies may then justify expansion into other streams and provide information on the need for acquiring additional public access through purchase of fishing rights and fishing access sites. Forage food studies will be initially concentrated on the spatial distribution, seasonal fluctuations and life history of smelt, now considered the primary food species for salmonids in the lake. However, these studies will not preclude the evaluation of the opposum shrimp, Mysis relicta, sculpin, Cottus sp., and Coregonus sp. (cisco and whitefish) since these potential forage species could act as buffer species for smelt. Stomach analysis will also provide information to determine relationships between salmon and trout and species providing the main warmwater fisheries.

As noted in Figure 2 major investigative activities were begun as scheduled in the spring of 1974. Each of the activities scheduled are subdivided and detailed into studies and jobs to provide the first five year operational plan described in Section II.

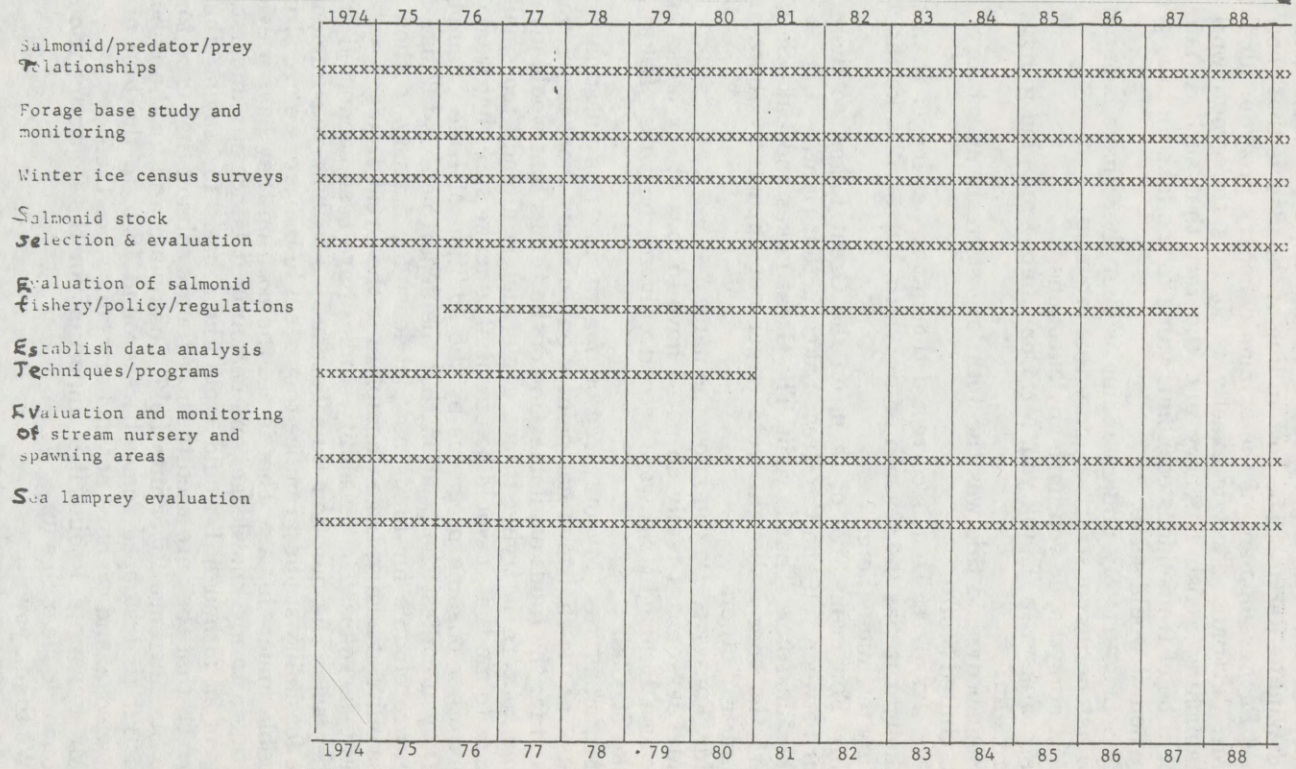
Table 1. Estimated Annual Costs for Lake Champlain Salmonid Fishery Development and Support Activities from 1974-1989 (Vermont and New York Combined).*

DEVELOPMENT**	
Planning, research and evaluation by Fisheries Units	$ 150,000
Research support activities, and materials provided by the Stream Improvement (Operations) Unit, Division of Aviation and Environmental Quality and Environmental Analysis Units.	10,000
Purchase, maintenance and replacement of research gear.	5,000
Data processing, storage and analysis.	10,000
SUB TOTAL	$ 175,000
SUPPORT	
Provision of adequate fish stocks by Fish Propagation Units.	130,000
Law Enforcement funding for Lake Champlain.	5,000
Evaluation, purchase (1972 bond issue) and development of additional fishing access sites and acquisition of fishing rights on Lake Champlain tributaries.	25,000
Promotion of the fishery (public relations).	1,000
SUB TOTAL	$ 161,000
GRAND TOTAL	$ 336,000

* Tentative general cost analysis for New York State and Vermont based on gross expected costs and subject to refinement on completion of operational planning. Annual expenditures based upon salary scale and buying power for year 1973.

** Major cost estimates in this section are 75% reimbursable to New York State and the State of Vermont by the Federal Government as provided for by the Dingell-Johnson Act of 1950.

Figure 2.. Lake Champlain Salmonid Development Plan - Investigation Schedule (1974-89)



Mr. LEGGETT. It is prepared by Vermont, New York, and Fish and Wildlife Service. The bottom line of the plan is that there is a basis for development of the salmonid fishery program up there?

Mr. JEFFORDS. That is exactly it. It lays the groundwork for establishing a fish hatchery and the fact that such a hatchery would be of tremendous economic value to the lake and the people to whom it would serve.

Mr. LEGGETT. My understanding is that there have been only a few hatcheries constructed under this program.

Mr. Forsythe, do you have any questions?

Mr. FORSYTHE. Thank you, Mr. Chairman. I am glad to have you here, Jim.

Somebody said this was the 10th largest freshwater lake within the United States.

Mr. JEFFORDS. That is correct. I thought it was bigger than that. I thought it was the seventh or the sixth, but I will take the word of my testimony here.

Mr. FORSYTHE. Five of them on the Great Lakes, so there are four between you and the Great Lakes; is that right?

Mr. JEFFORDS. That is right. The Great Lakes and Lake St. Clair were the ones I thought were larger but apparently there are a number of others.

Mr. FORSYTHE. Do you know the names?

Mr. JEFFORDS. I really do not. I have to look at my books again because I thought we were second only to the Great Lakes and Lake St. Clair.

Mr. FORSYTHE. My only reason for raising this question is because, as the chairman has pointed out, already there is an overdemand for the funds available. One of the things that would give me some concern is trying to cut a pie that is already too small. It seems to me that it would be essential to make sure that we do not hurt other ongoing programs by the addition of Lake Champlain.

Do you contest the position that the department is taking—that you are eligible for funds now, at least for a study to show the feasibility of adding Lake Champlain to the Great Lakes?

Mr. JEFFORDS. The feasibility studies have been conducted under other acts. The question then becomes as to how you implement the feasibility studies. I notice they seem to indicate we are already eligible under this act. That is not the position they have previously taken to my knowledge, and certainly it is not our understanding of it although I would state their basis for saying that is correct, that they are used to the Atlantic salmon that used to run the St. Lawrence River into Lake Champlain and up the tributaries. But that stopped somewhere around 1850, to the best of my knowledge, and we have not had any runs since then.

Mr. FORSYTHE. I think it is important for the Department of the Interior to clear this up.

We thank you.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. Thank you, Mr. Chairman.

I too would like to thank our colleague from Vermont. I wonder if you could share with us some of the reasons why Lake Champlain was excluded from the 1965 act? Are you aware of any?

Mr. JEFFORDS. I am not. I would have to say in all honesty maybe it escaped the attention of the Vermont delegation at that time. I really do not know whether they thought it was included and then found out later on the Department took the position it was not. I do not know. I wish I did.

Mr. HUGHES. You were not a member of the delegation at that time?

Mr. JEFFORDS. That is correct. That is the best we can determine. Maybe they thought it was at that time and found out later it was not.

We are either trying (1) to clarify for the record it is definitely a part of it, as the Department of Interior seems to say it is anyway; or (2) if it was not intended because it has actually more reasons than the Great Lakes to be an anadromous fish area because the Great Lakes historically did not have anadromous fish under the normal terminology of sea run at least in the salmon area.

So from the point of view of salmon, Lake Champlain historically has more of a claim to be under this act than do the Great Lakes.

Mr. HUGHES. I thank you for your testimony. I do not have any further questions.

Mr. LEGGETT. Mr. McCloskey.

Mr. MCCLOSKEY. I have no questions.

Mr. LEGGETT. If you want to come up here and sit at the table, Jim, we would be pleased to have you.

Mr. JEFFORDS. Thank you. I would be pleased to.

Mr. LEGGETT. The next witness is Dr. Robert Cook, Deputy Director of Fish and Wildlife Service.

STATEMENT OF DR. ROBERT S. COOK, DEPUTY DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY THOMAS J. PARISOT, CHIEF, OFFICE OF PROGRAM DEVELOPMENT-FISHERIES

Dr. COOK. I brought with me Mr. Tom Parisot, who is chief of our Program Development-Fisheries Office.

Mr. LEGGETT. Your statement will appear in the record as though you read it.

Dr. COOK. Mr. Chairman, I appreciate this opportunity to appear today to discuss H.R. 13392, a bill "To amend the Anadromous Fish Conservation Act of 1965 to include fish in Lake Champlain that ascend streams to spawn."

The Fish and Wildlife Service enthusiastically supports the idea of anadromous fish conservation. In fact, we are especially proud of the recent return of significant numbers of Atlantic salmon to the Connecticut River. This was the result of cooperation between Federal and State agencies, and such endeavors will always receive our full backing. However, enactment of H.R. 13392 is unnecessary.

In my statement today, I would like to first define the term "anadromous" and explain why an exception to this definition was made for Great Lakes species. Second, I will describe the Lake Champlain fishery resource and Federal-State management activities on the lake. Third, I will summarize our objections to the bill.

"Anadromous" describes fish that swim up rivers from the ocean to spawn. An exception was made in the 1965 Anadromous Fish Conservation Act for Great Lakes species that swim up streams

from a lake to spawn. I would like to explain the reason for this exception.

At the time of the act's passage, the Great Lakes' fishery resource was in terrible condition. Since about 1940, overfishing, pollution, and sea lampreys had caused a severe decline of high value species. Such Great Lakes species as the lake trout, burbot, walleye, pike, muskie, bass, whitefish, lake herring, and chub had all but disappeared by 1965. Only the alewife was still abundant. Obviously, sport and commercial fishing was all but dead. Something had to be done to restore useful fish species to these lakes, and the grant-in-aid program of the 1965 act provided the answer.

The situation in Lake Champlain is in no way analogous to that which I just described. It has excellent populations of whitefish, rainbow trout, walleye, lake trout, landlocked salmon, rainbow smelt, yellow perch and northern pike. We cannot see the same need for assistance as we saw in the Great Lakes.

At one time Atlantic salmon swam up the St. Lawrence and Richelieu Rivers to Lake Champlain. However, the only fish known to use this route in modern times is the American eel, a catadromous species. Because of the historical presence of Atlantic salmon in Lake Champlain, New York and Vermont are eligible for grant-in-aid under the Anadromous Fish Conservation Act. However, fishery biologists generally agree that it would be very difficult, if not impossible, to restore a sea-run Atlantic salmon population to Lake Champlain. An international effort involving millions of dollars would be needed to eliminate the barriers that presently exist to this fish's survival in its migration from the ocean approximately 500 miles upriver to Lake Champlain.

The alternative means of funding fishery programs in Lake Champlain is the Federal Aid in Fish Restoration Act, commonly known as the Dingell-Johnson Act. At the present time, there are two significant projects on the lake under this act: One is management and evaluation of the sport fishery, including evaluation of smelt, northern pike, walleye, lake trout, steelhead, and landlocked salmon; the other is the development, in cooperation with New York and Vermont, of a comprehensive fishery management plan for Lake Champlain. Vermont and New York received a total of $124,875 in fiscal year 1978 under the Dingell-Johnson Act.

I should also like to mention that the Service, through its Fishery Assistance Office in Montpelier, Vt., is spending an average of $35,000 per year on a lamprey survey on Lake Champlain. The objective of this is to determine the need for control programs. We are confident that our efforts and those of the two States are successfully maintaining the populations of landlocked salmon and other species mentioned previously.

If all fish that swim up streams to spawn were to be considered anadromous under the act, the precedent would be set for other amendments to include numerous other waters now excluded from the act. For example, we would expect pressure to stock striped bass or salmonoids that swim up streams from inland reservoirs to spawn.

Mr. Chairman, the fish in Lake Champlain appear to be thriving. This concludes my prepared statement. I would be pleased to answer any questions you may have. Thank you.

Mr. LEGGETT. Thank you very much. Let me ask you this. Did the Fish and Wildlife Service participate in the development of this strategic plan that is in our record at the present time?

Dr. COOK. Yes, we did.

I believe the plan pertains to establishing a salmonoid fishery to include landlocked salmon.

Mr. LEGGETT. I will yield to Mr. Jeffords at this point.

Mr. JEFFORDS. Mr. Chairman, first you made the statement. I wonder if you could enlighten me as to what physical barriers are between Lake Champlain and the Atlantic Ocean?

Dr. COOK. I will ask Mr. Parisot to answer that one. I am not familiar with the specifics.

Mr. PERISOT. In dealing with Atlantic salmon and other anadromous fish, we have to look at barriers, not just physical ones, but water temperature water quality and water pollution-type barriers. The general consensus of the biologists, not just Federal but State and private biologists, is that it would require large amounts of money to overcome the biological type of barriers.

Mr. JEFFORDS. There are no physical barriers, in other words?

Mr. PARISOT. Not that I am aware of.

Mr. JEFFORDS. There is a substantial and large run to the Atlantic?

Mr. PARISOT. Unfortunately I am not familiar with the geography so I cannot answer.

Mr. JEFFORDS [inaudible]. Perhaps the reason is the inability of the fisheries there to be able to sustain the Atlantic-run salmon because of insufficient fish for predators to be able to survive without destroying the fisheries. Isn't that the reason rather than the barriers?

Mr. PARISOT. That is another reason. Your original question addressed the barrier; but there are several factors that have to be considered, regardless of whether you are reestablishing the run itself or trying to establish those fish in the lake as part of the plan presently being considered.

Mr. JEFFORDS. With respect to the fishery there under other acts, are you now contesting those conclusions and saying that the conclusion there ought to be a fish hatchery, and there ought to be more salmon added is a wrong conclusion and incorrectly derived?

Mr. PARISOT. No, we are not arguing that point at all. The point is whether the Anadromous Fish Conservation Act is the appropriate act to fund that type of activity. The need for the fishery or the conclusions of the plans are not really being challenged or questioned.

Mr. JEFFORDS. Than you agree with the study?

Mr. PARISOT. I am not familiar with the study in detail, therefore I cannot say aye or nay. But in general I would probably tend to support it.

Mr. LEGGETT. The department is a coauthor of the study, is it not?

Mr. PARISOT. Yes.

Mr. LEGGETT. The plan did estimate that $1 million a year needs to be spent to alleviate the generally displaced areas along Lake Champlain associated with sport fishing for salmon and trout.

Does the department have any other program in mind which could accomplish the desired result pointed out in the report?

Dr. COOK. Other than direct State funding on use of D–5 funds, the answer is no. The plan describes in a general way the same type of program that took place in the Great Lakes.

Mr. LEGGETT. I understand.

The purpose of the bill is to try to expand that program into Lake Champlain. You apparently have some financial reasons why you think some other legislation might be available to accomplish this result but you do not particularly spell out any other plan.

Dr. COOK. The plan itself is sound but it is the means of financing it that we have concerns about.

Mr. LEGGETT. We funded this $20 million authorization at 25 percent of the authorization, about $5.5 million. Clearly there would be plenty of money to handle existing programs and Lake Champlain under the Anadromous Fish Conservation Act, would there not?

Dr. COOK. That is true, Mr. Chairman. The authorization is adequate, but the present level of appropriation is not. The difference is in the state of the resource at the present time that makes it different from the Anadromous Conservation Fish Act as it pertains to the Great Lakes situation.

Mr. LEGGETT. I understand it is a little different, but the report states that the fishery ought to be enhanced.

Dr. COOK. We are not arguing whether the fishery should be enhanced. We are concerned with the method of financing this enhancement.

Mr. LEGGETT. There are several ways to enhance it under this act. You are not limited to hatcheries, are you? You can enhance any way you want to do it. All you are saying is that enhancement of the Great Lakes is for other reasons than enhancement here. On the other hand, this is a vehicle to enhance the Lake Champlain fishery.

Dr. COOK. That is true, however, our concern is the precedent it sets for applying this same line of reasoning to any other body of water from which fish run upstream to spawn.

Mr. LEGGETT. I know, but we moved ahead so slowly with precedents in this area, and the funding as compared to the authorization is so inadequate, that I think there is good reason to have people pushing for more money into this program.

Mr. JEFFORDS. I want to point out they are arguing against themselves. First they say it is covered because it was anadromous fish territory; now they are saying it establishes a precedent.

Mr. LEGGETT. I think that is all the questions we have at this point.

The hearing will stand adjourned.

[The following was received for the record:]

Richard D. Lamm, Governor
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WILDLIFE
Jack R. Grieb, Director
6060 Broadway
Denver, Colorado 80216 (825-1192)

July 20, 1978

The Honorable Paul N. McCloskey, Jr.
House of Representatives
205 Cannon Building
Washington, D. C. 20515

Dear Mr. McCloskey:

The Division of Wildlife has reviewed the provisions of the proposed Natural Game Fish Stream Preservation Act of 1978 (H.R.13292) and is in strong support of its passage.

As you know, over the years there has been a gradual destruction of streams and rivers throughout the nation. In Colorado, as in other western states, this destruction has had a significant impact on trout streams. Many examples exist, such as those from early day mining, where the result has been the elimination of miles of trout fishing. Present day sources, such as commercial land development, water diversion projects, and modern mining activities, continue to impact our remaining quality streams. The results have added up and the biggest impact is on the sportsman, as well as the citizen, who wishes to enjoy the opportunities provided by our streams. The added benefit given by H.R.13292 in protecting streams against future impact would be beneficial.

Colorado has approximately 18,500 miles of flowing streams within its boundaries. Of this total, there was originally estimated to be over 14,000 miles of trout waters. The remaining were lower elevation streams which supported warm water fish species and other wildlife. It is now estimated that Colorado has approximately 8,700 miles of trout waters remaining, of which 6,300 miles are on public land and 2,400 miles on private land. A 1977 study shows that of those remaining 8,700 miles, over 1,500 miles have been impacted in the last 28 years.

As with most state wildlife agencies, the Colorado Division of Wildlife has an increasingly limited budget. Available monies are spent on a priority basis and in accordance with a five-year program plan. Presently, the objective of obtaining public access to trout streams, through either purchase or lease, has one of the highest budget priorities. While we are aggressive toward this objective, we have only limited funds. It is estimated that $3,000,000 annually could be spent over the next five years on a stream purchase/lease program. With current monies available to the Division, no more than $500,000 annually could be expected. If any portion of the remaining $2,500,000 could come from federal sources, a big impetus to the program would be assured.

Thank you for your efforts in this important endeavor. If you should require any additional information or support for H.R.13292, please let me know.

Sincerely yours,

Jack R. Grieb
Director

JRG:EK

DEPARTMENT OF NATURAL RESOURCES, Harris Sherman, Executive Director • WILDLIFE COMMISSION, Thomas Farley, Chairman
Sam Caudill, Vice Chairman • Roger Clark, Secretary • Jean K. Tool, Member • Vernon C. Williams, Member
Jay K. Childress, Member • Michael Higbee, Member • Wilbur Redden, Member

COLORADO STREAMS PROPOSED FOR FUTURE

LAND ACQUISITION FOR PUBLIC LEASE AGREEMENTS

The following trout streams within Colorado could be granted additional protection under the proposed bill. In attition, monies available would be used to purchease or lease lands controlling access to streams.

Name	Location	Miles	Rating
1. Colorado River	Granby to Kremmling	27	Excellent
2. Eagle River	Minturn to Eagle	27	Good
3. Roaring Fork	Aspen to Colorado River	42	Excellent
4. Crystal River	Redstone to Roaring Fork	17	Good
5. Fryingpan River	Ruedi Reservoir to Roaring Fork River	13	Excellent
6. Taylor River	Taylor Dam to Gunnison R.	28	Good
7. East Fork Gunnison River	Crested Butte to Almont	17	Excellent
8. San Juan River	Wolf Creek Pass to Pagosa Springs	20	Good
9. Lake Fork Gunnison R.	Lake City to Gunnison R.	45	Fair
10. Rio Grande River	Creede to Del Norte	39	Excellent
11. South Fork Rio Grande R.	West Creek Pass to South Fk.	15	Excellent
12. Arkansas River	Buena Vista to Parkdale	71	Good
13. Middle Fk. South Platte R.	Fairplay to Hartzel	16	Fair
14. South Fk. South Platte R.	Weston Pass to Hartzel	16	Fair
15. South Platte River	Hartzel to Deckers	52	Excellent
16. Terryall Creek	Jefferson to confluence with South Platte River	38	Good
17. North Fork Republican R.	West of Wray	14	Excellent
18. Poudre River	Rustic to Bellview	30	Good
19. North Platte River	West of Walden to Colorado Wyoming border	28	Excellent

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233

Peter A. A. Berle,
Commissioner

September 7, 1978

Honorable Paul N. McCloskey, Jr.
House of Representatives
205 Cannon Building
Washington, D.C. 20515

Dear Congressman McCloskey:

Herb Doig asked me to reply to your letter concerning your bill to provide federal assistance to states to help preserve premium game fish streams (H.R. 13292).

We corresponded with you between 1970 and 1974 while you were developing H.R. 3830, and I presented the enclosed statement to your Subcommittee on February 26, 1974. In general, our comments on H.R. 3830 are applicable to H.R. 13292.

We support H.R. 13292 and offer the following constructive criticism:

1. Access is mentioned at Line 7 on page 3, but your intent to make these streams accessible for public enjoyment would be strengthened by adding, "and providing access thereto" after the word "stream" at Line 23 on page 2.

2. Mention of a potential fee structure for public use of a stream at Lines 17-19 on page 3 may "turn off" some potential supporters of your bill. In general, it is seldom practical to collect fees on waters where there are multiple access points, even if it can be demonstrated that the cost of collection does not exceed income.

3. In our experience, it would be impractical for the state to contract management of a waterway to others. Neither the equipment nor management expertise are readily available outside natural resource agencies.

4. There is no commercial fishery on any New York stream which might be a candidate for assistance under your bill. Inland commercial fisheries in New York are confined primarily to the Great Lakes and the Hudson River.

5. We oppose any requirement for a citizens' advisory committee reporting to the Secretary of the Interior because we can see no useful function for such a group. Most of the functions contemplated in Lines 20-25 on page 4 and Lines 1-3 on page 5 are logical responsibilities of the Regional Fish Management Unit having jurisdiction over each water. Each of these units has responsibility for several counties and established communication lines with many consumer groups, none of which has ever displayed the slightest reticence at "telling us off" when they are displeased. We welcome this input and modify our activities to accommodate constructive criticism consistent with maintaining the integrity of the resource at issue.

Other functions mentioned in the referenced section of your bill are incorporated in the well-defined development, review and reporting process which must be followed in every federal aid project administered by the U.S. Fish and Wildlife Service in cooperation with the individual states. We assume that any funds appropriated by Congress and allocated to states pursuant to your bill would be handled by the Service . . . similar to the Dingell-Johnson Fish Restoration Act. This should be an adequate safeguard that funds are used as Congress intended.

Passage of your bill would enhance our network of more than 1,000 miles of game fish streams on which we have acquired fishing easements, parking areas and footpath rights-of-way. Specific application of the bill depends upon wording of the final version enacted into law.

Inasmuch as Michigan, Colorado and New York statements about H.R. 3830 were published back in 1974, we see no need to testify in support of H.R.13292 unless you feel otherwise. We think most other states would welcome the intended assistance.

Sincerely,

Carl Parker

Carl E. Parker
Chief, Bureau of Fisheries

CEP:ds
Enclosures
cc: H.E. Doig

STATE OF NEW YORK
DEPARTMENT OF
ENVIRONMENTAL CONSERVATION
ALBANY

HENRY L. DIAMOND
COMMISSIONER

August 10, 1973

Dear Pete:

Thank you for your letter concerning H.R. 3830 and the upcoming hearings.

I think this is an excellent legislative proposal. It is written broadly enough to mesh well with or augment other acquisition programs. For instance, I see it as an opportunity to purchase fee title to parcels of land under our present fishing rights program, key parcels along wild and scenic rivers, and to enlarge a public fishing area at Caledonia, the oldest state fish hatchery in the United States.

My staff gave your son much detailed information about our fishing rights program when he visited us last year. Assuming you have this data, I will not go into much detail here.

We began purchasing permanent fishing easements in 1935-36. The grand total is about 1,030 miles on 105 streams. There was a very successful initial burst of activity (see attached Journal of Forestry article), a slowdown after World War II, another burst of about 160 miles during the Park and Recreation Land Acquisition Bond Act of 1960 followed by another recent slowdown because of budgetary problems. The electorate approved another Bond Act last fall, and one of its segments is earmarked for purchase of 750 miles of fishing rights, but this will not be adequate to purchase all of the recommended water. And it has not been our policy to purchase fee title.

Your bill, if enacted into law, would enable us to purchase key parcels adjacent to prime trout waters which require protection not provided by the easement program. Headwater springs, large pools at the mouths of tributary streams, small nursery streams and buffer zones, and the Caledonia property appear to be logical alternatives should we be able to obtain $500,000 or more per year.

I will be glad to testify in support of the bill provided I can work it into my schedule. I would appreciate receiving the hearing schedule as soon as possible.

Again, Pete, you seem to have done your homework well. My staff is also pleased with the progress of H.R. 3830.

Sincerely,

Commissioner

Enclosure

Hon. Paul N. McCloskey, Jr.
Congress of the United States
House of Representatives
Washington, D. C. 20515

CEP:ds
cc: H. E. Doig (2)
C. E. Parker
HLD file

Statement of New York State
Department of Environmental Conservation

Mr. Chairman, I am Carl E. Parker, Chief, Bureau of Fisheries, Division of Fish and Wildlife, New York State Department of Environmental Conservation. My professional training was in fishery biology, but I spent the first seven years of my career with the Department purchasing public fishing easements and boat launching sites throughout New York, and later coordinated similar efforts of others for four years. With this background, I would like to brief the Subcommittee on New York's public fishing rights program and suggest some amendations and specific applications for H.R. 3830.

Purchase of fishing rights easements began in the winter of 1935-36 after the 1935 Legislature appropriated $100,000 from the Conservation Fund "to acquire fishing rights and approaches thereto by purchase or lease." Actually, most purchases have been consummated by permanent easement covering a swath 33-66 feet wide along either bank, and the stream bed. A few revocable dedications are also listed. The easements allow the public to walk a stream bank for the purpose of fishing only. The Department gains a right to do stream improvement work where we think it necessary.

The Division of Fish and Wildlife has always selected streams for purchase based on biological inventories. The Division of Lands and Forests made preliminary surveys, and handled purchase negotiations through World War II. The foresters purchased or placed under contract about 430 miles of easements by January 1, 1940. This was the most intensive phase of fishing rights purchase in the 39-year history of the program.

District Foresters continued purchases on many streams after World War II, but gradually reduced their activity in this field. The Division of Fish and Wildlife assumed responsibility for purchases and assigned not more than two men at any one time, whereas the Division of Lands and Forests had up to 20 men at once working on the program. By September 30, 1960 850 miles of fishing rights had been purchased for $561,093.

The electorate approved in 1960 a 75 million dollar Park and Recreation Land Acquisition Bond Issue for purchase of lands in various categories. Under one segment of this program, $500,000 was allocated for purchase of fishing rights. Approximately 2200 miles of trout water had been recommended for eventual purchase. By 1968 approximately 160 additional miles of easements had been acquired in 512 contracts (about 40 percent of the Bond Act target).

The most recent status report to December 31, 1973, corrected for old bookkeeping errors and rejected contracts, lists 975 miles of

fishing rights obtained in 2,703 proposals. Included in these proposals are 386 parking lots and 853 rights-of-way for pedestrian traffic. Approximately 315 major streams or tributaries are affected.

The program has become more sophisticated over the years. In 1935 a stream was rejected unless the reviewer felt 15 miles could be purchased. Units of a mile or less are acceptable today provided quality is high. Reviewers in 1935 leaned toward large streams stocked at the rate of 1000 trout per mile. Selections today depend more on the number of wild trout inventoried, the trout/non-trout ratio, quality of cover and shelter, and the forage base. But larger streams often grow trout more rapidly than smaller ones, contain larger individuals, provide more fishing opportunity, and offer more value per mile.

Prices have risen. They ranged from less than $500 per mile to $3,000 per mile on exceptional streams before World War II; from $1,000 to $4,000 per mile during the 1960's; and $2,500 to $15,000 per mile at present.

The outlook is for purchase of easements to continue indefinitely. River basin development and pollution abatement will modify present streams, creating special conditions which will warrant more purchases. A substantial backlog of recommendations has not yet been acted upon. Perpetual easements may, in time, cover the cream of game fish streams throughout the state, although only a small percentage of our 70,000 miles of streams will be affected.

We view H.R. 3830 as an extremely valuable means to augment our existing fishing rights program. The need is great. We estimate that not more than half the current Bond Act goal of 750 miles can be obtained with available funding (3 million dollars under Environmental Quality Bond Act of 1972).

Our program is essentially an easement program. Permanent easements are far superior to leases, but fee simple is even better. The flexibility of H.R. 3830 to permit outright purchase would be useful in special situations where the easement value might be tantamount to fee and the purchase instrument a judgment call, or where the landowner himself prefers to sell outright rather than continue paying property taxes. Headwater springs and buffer zones where land development would be detrimental to fish life would be appropriate outright purchases, as would large pools on big water at the mouths of high quality tributary streams, and select nursery areas or spawning grounds. Access to tailwater fisheries and to "name" game fish streams should command high priorities.

Access is mentioned on page 3 of the Bill at line 19, but it is unclear whether purchase of parking areas and footpath rights-of-way would be authorized. We think small parking areas every half mile or so may be necessary to handle anglers. Footpath rights-of-way from parking lot to stream bank, or along property boundary lines from road to stream, would be appropriate. Line 11 on page 3 might be amended to read, "streams and access thereto."

According to the text of the Bill, State agencies must show to the satisfaction of the Secretary of the Interior (lines 23-25 on page 3) (that) "the game fish population of the stream will be maintained at a level consistent with the natural reproduction and maintenance capacity". As a fisheries man, I would prefer to have it read "-- or maintenance capacity". One of our best special trout regulation areas on the Beaver Kill (a legendary Catskill stream) is devoid of natural reproduction, but sustains an excellent brown trout fishery through stocking at a level commensurate with maintenance capacity.

Our experience in recent years suggests the volume of contracts may run about 3.2 per mile -- or 32 landowners on a 10-mile stretch of stream. It will be difficult for State natural resource agencies to mount an appraisal and negotiation campaign on short notice to accommodate short-term grants. We had individual negotiators during the Bond Act of 1960 who purchased 10 miles in a year from voluntary vendors, but they were not common. Purchase of fishing rights is a very time-consuming task. Spreading funding over a longer period of time would accommodate the need to hire or train negotiators and gain experience on the job.

We question the need for a citizens' advisory committee reporting to the Secretary of the Interior. We anticipate that funds appropriated by Congress and allocated to states would be handled by

Regional Offices of the Bureau of Sport Fisheries and Wildlife much like Dingell-Johnson funds. There is a well defined development, review and reporting process for every approved project, which should be an adequate safeguard that funds are being appropriately used by the States. The needs for constructive criticism and up-to-date public information can be satisfied through other existing channels.

Mr. Chairman, the Department supports H.R. 3830 and will be glad to further assist the Subcommittee in its attempts to report out a bill which will help meet the needs of state natural resource agencies to manage their game fish streams.

THE STATE OF WYOMING

ED HERSCHLER
GOVERNOR

Game and Fish Department

CHEYENNE, WYOMING 82002

EARL M. THOMAS
DIRECTOR

cc- Ron H

August 15, 1978

Honorable Paul N. McCloskey, Jr.
United States Representative
205 Cannon Bldg.
Washington, D. C. 20515

Dear Congressman McCloskey:

On July 17th we received from you a letter and a copy of your bill, H.R. 13292, which would provide federal assistance to states willing to preserve premium game fish streams. First, we appreciate very much your consideration of our State of Wyoming in this matter and further appreciate greatly your request for our comments on the bill and your offer to have our comments included in the record of the hearings with reference to it.

As we understand this proposed legislation, any state could receive federal assistance in its effort to protect certain selected, premium game fish streams if the state could agree to maintaining said stream in its natural or pristine state and manage game fish in the designated stream for the benefit of a general public. The bill also places certain stipulations on the federal agencies requiring them to cooperate in coordinating federal management practices and activities in the selected watersheds to preserve the fishery.

It certainly appears to us that the intent of this legislation is to preserve premium game fish streams and is, therefore, very well intended. The preservation of water quality for all purposes is of primary concern to the Wyoming Game and Fish Department and the recognition of this need by others is always gratifying to us. We are afraid, however, that the bill, in its current form, would probably be of little benefit to the State of Wyoming. The main problem in Wyoming is our state's water right law and the fact that for water use to be considered beneficial under this law, it must be diverted from a stream. Even if we had unlimited additional funding, the dollars could not protect the water unless downstream appropriators rights would require the water to flow through a designated area. Any amount of money that is proposed probably would not help us to preserve an entire stream. While there are numerous areas in Wyoming where riparian rights, stream-bed rights and fishing access could be enhanced and obtained, we do not believe that this is the primary intent of the bill since it seems to be oriented more towards habitat

preservation. Streams in Wyoming are quite often affected by operations that are sometimes far removed from the area of concern such as stream channelization, upstream pollution, logging activity, mining development, etc. We frankly cannot see how any small sums of money such as those proposed could have much of an impact on these practices which in Wyoming have an extremely high income potential. The sum of $20,000,000 is proposed each year for two years terminating September 30, 1979. Only 6% of the sum can be granted to any one state. This could amount to approximately $1,200,000 per year. It is our assessment that with the current prices of land, this would hardly make any dent at all in some of our major stream problems. The termination date of September 30, 1979, would in any event not give us sufficient lead time to make detailed appraisals and articulate the necessary reports to qualify for the federal assistance proposed.

In summary, Wyoming's current state water law would prevent the program envisioned in H.R. 13292 from gaining many appreciable benefits for either the fishery or the general public which utilizes it. We believe that the relatively small amount of money to be appropriated under this act when divided among the many states would limit, to an appreciable degree, any action which could be efficiently accomplished. There could possibly be limited benefits for states with commercial fisheries on inland streams and that benefit is found in the clause that would permit a state to prohibit or limit commercial fisheries on any stream covered by the bill. We presume this could be any stream that had a small portion of its entirety covered by the bill. This could not benefit our State of Wyoming in any way that we can see.

Again, we appreciate very much the opportunity to consider this proposal in its entirety and appreciate further your request that we comment upon it.

Sincerely,

Earl M. Thomas

EARL M. THOMAS, DIRECTOR
WYOMING GAME AND FISH DEPARTMENT

EMT:saw

[Whereupon, at 10:20 a.m., the subcommittee proceeded to further business.]

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