S. HRG. 108–563

NATIVE AMERICAN FISH AND WILDLIFE RESOURCES MANAGEMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 2301

TO IMPROVE THE MANAGEMENT OF INDIAN FISH AND WILDLIFE AND GATHERING RESOURCES

APRIL 29, 2004
WASHINGTON, DC

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NATIVE AMERICAN FISH AND WILDLIFE RESOURCE MANAGEMENT ACT

WEDNESDAY, APRIL 29, 2004

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

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

Present: Senators Inouye and Smith.

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

Senator INOUYE. The Senate Committee on Indian Affairs meets this morning to receive testimony on S. 2301, a discussion draft bill that was introduced on April 7, 2004 to provide for support for the activities of tribal governments in managing fish and wildlife and gathering resources.

The Native American Fish and Wildlife Resources Management Act of 2004 was developed by Indian tribes and the tribal organizations they charter to provide for the prudent management of fish and wildlife resources, as well as by Alaska Native governments and organizations. The act builds upon the foundation of earlier measures, some of which have been enacted into law, which are designed to more specifically address the nature of the United States' trust responsibilities as they relate to the natural resources that are held in trust.

Tribal governments are the principal stewards of the natural resources of tribal lands. For thousands of years before European contact, tribes also served as the responsible stewards of the natural resources on millions of acres of land that were under their dominion and control. There were no shortages of resources in earlier times because the tribes regulated fishing and hunting and gathering in a manner that would assure the protection and conservation of our precious natural resources.

They harvested only what was necessary for their subsistence and for those with whom they traded. But then came the massive influx of those who came to settle in America. With their westward expansion came the clear-cutting of forests, the resulting erosion of land, and the introduction of chemicals to foster the growth of agricultural crops that began to affect the quality of water in the streams and rivers and even the ocean, and later the construction of dams to provide electricity.

All of these developments have had a devastating impact on the fish and wildlife and the habitat that is their home and which Indian tribes and other concerned citizens seek to preserve and protect. We have been for many years now at a critical juncture in maintaining the health and the very survival of wild species. The list of species that are threatened or endangered continues to grow and tough economic decisions have to be made.

For instance, today on the front page of the Washington Post we read about a new rule being proposed by the National Marine Fisheries Service which announces that the Administration will now count hatchery-bred fish when it decides whether stream-bred wild salmon are entitled to protection under the Endangered Species Act.

The bill that is the subject of the testimony we will receive today was largely drafted in Indian country by those who have expertise in the management of fish and wildlife resources. It is a work in progress, but I think it is important to note that this bill is not intended to, nor will it affect either an expansion or diminishment of tribal rights. What it is designed to do is provide support for what tribal governments are doing every day with increasingly limited resources to protect fish and wildlife, not only for the domestic consumption and subsistence uses of its citizens, but protecting these precious resources for all of our Nation's citizens.

In many areas of the country, tribal governments are working with Federal agencies and State governments to develop and implement management schemes that will preserve fish and wildlife resources and foster the healthy growth of fish and wildlife populations. Each government has the responsibility of managing fish and wildlife resources within their respective jurisdictions, but working together Federal agencies and State and tribal governments are far better equipped to provide protections for fish and wildlife that do not honor jurisdictional boundaries, as for instance when the various species of salmon return from the ocean to their streams of origin to spawn.

So we must all work together, and tribal governments must have the resources to carry on their traditions of responsible stewardship.

[Text of S. 2301 follows:]

II

108TH CONGRESS
2D SESSION

S. 2301

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

IN THE SENATE OF THE UNITED STATES

APRIL 7, 2004

Mr. INOUYE introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Fish and Wildlife Resources Management Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Definitions.

TITLE II—TRIBAL FISH AND WILDLIFE PROGRAMS

Sec. 201. Management of Tribal Fish and Wildlife Programs.
Sec. 202. Education in Tribal Fish and Wildlife Resource Management.
Sec. 203. Tribal Fish Hatchery Assistance Program.

TITLE III—ALASKA NATIVE FISH AND WILDLIFE PROGRAMS

Sec. 301. Management of Native Fish and Wildlife Programs in Alaska.
Sec. 302. Subsistence Resources and Management Planning.
Sec. 303. Alaska Native Seafood and Resource Marketing Assistance Program.

TITLE IV—TRIBAL SEAFOOD AND RESOURCE MARKETING ASSISTANCE PROGRAM

Sec. 401. Establishment of Tribal Seafood and Resource Marketing Assistance Program.
Sec. 402. Market Development Loan and Grants Program.

TITLE V—TRIBAL BUFFALO CONSERVATION AND MANAGEMENT
[to be developed]

TITLE VI—MISCELLANEOUS PROVISIONS.

Sec. 601. Authorization of Appropriations.
Sec. 602. Regulations.
Sec. 603. Savings.
Sec. 604. Severability.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

Congress finds that—

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

(2) Indian tribes exercise governmental authority over their citizens and their lands, and retain all aspects of their inherent sovereignty not explicitly ceded to the United States;

(3) the wise use and sustainable management of tribal fish and wildlife resources has a direct effect on the economic security and health and welfare of Indian tribes;

(4) Indian tribes retain the sovereign governmental authority to exercise some aspects of civil jurisdiction over non-members on their reservations, including the exercise of some aspects of civil jurisdiction on non-trust lands;

(5) Federal canons of construction require that any modification of a treaty must be expressly provided for by the Congress;

(6) the United States has a trust responsibility to protect, conserve, and manage tribal natural resources, including fish and wildlife and gathering resources, consistent with the rights reserved by Indian tribes as reflected in treaties and other agreements with the United States, and judicial decrees;

(7) the United States trust responsibility extends to all Federal agencies and departments, and absent a clear expression of Congressional intent to the contrary, the United States has a duty to administer Federal fish and wildlife conservation laws and resource management programs in a manner consistent with its fiduciary obligation to honor and protect the rights reserved by Indian tribes as reflected in treaties and other agreements with the United States, and judicial decrees;

(8) Federal statutes and regulations affecting tribal fish and wildlife resources and management activities shall be interpreted in accordance with long-standing principles of Federal-Indian law, statutes, and judicial decrees which inform the relationship between Indian tribal governments and the United States;

(9) the United States recognizes that fish and wildlife resources located on tribal lands, in regional tribal resource management areas, and in ceded territory in which hunting, fishing, and gathering rights reserved by Indian tribes in treaties and other agreements with the United States, and in judicial decrees, continue to provide sustenance, cultural enrichment, and economic stability for Indian tribes through employment in resource management occupations;

(10) Indian tribal governments retain sovereign governmental authority and jurisdiction to regulate hunting and fishing activities on tribal lands as well as governmental authority to regulate the hunting and fishing activities of tribal citizens on lands outside of reservation boundaries;

(11) Indian tribal governments serve as co-managers of fish and wildlife resources with govern-

ments of other tribes, States, and the United States, sharing management responsibilities for fish and wildlife resources pursuant to treaties and agreements with the United States, statutes, and judicial decrees;

(12) since time immemorial, Indian cultures, religious beliefs and customs have centered around their relationships with fish, wildlife, and gathering resources, and Indian people have relied on these resources for food, shelter, clothing, tools, and trade;

(13) Indian fish and wildlife resources are renewable and manageable natural resources that are among the most valuable tribal assets and which are vital to the well-being of Indian people;

(14) Indian lands contain millions of acres of natural lakes, woodlands, and impoundments, thousand of perennial streams, and tens of millions of acres of wildlife habitat;

(15) Indian and Alaska Native fish and wildlife programs contribute significantly to the conservation and enhancement of fish, wildlife, and gathering resources, including those resources which are classified as threatened or endangered;

(16) Federal, State, and tribal fish hatcheries produce tens of millions of salmon, steelhead, wall-

eye, and other fish species annually, benefitting both Indian and non-Indian sport and commercial fisheries in the United States and Canada, and serving Indian subsistence and ceremonial needs;

(17) Indian reservations and Alaska Native communities continue to suffer from the highest rates of unemployment in the nation, and the current economic infrastructure and capital base of many tribes and Native communities does not provide adequate support to take advantage of economic opportunities;

(18) comprehensive and improvement management of Indian fish and wildlife resources will yield greater economic returns, enhance Indian self-determination, strengthen tribal self-governance, promote employment opportunities, and improve the social, cultural, and economic well-being of Indian and neighboring communities;

(19) the United States has a responsibility to provide assistance to Indian tribes to—

(A) enable integrated management and regulation of hunting, fishing, trapping, and gathering activities on tribal lands, including the protection, conservation, and enhancement of resource populations and habitats upon

which the meaningful exercise of Indian rights depend;

(B) develop integrated resource management plans, cooperative management agreements, and regulations addressing hunting, fishing, trapping, and gathering activities on tribal lands, including the protection, conservation, and enhancement of resource populations and habitats upon which the meaningful exercise of subsistence activities depend;

(C) maintain fish hatcheries and other facilities and structures required for the prudent management, enhancement, and mitigation of fish and wildlife resources; and

(D) assist Indian tribal governments in developing and enhancing economic opportunities associated with the conservation and management of fish and wildlife resources;

(20) the United States is committed to the goal of supporting and enhancing tribal self-government, tribal self-sufficiency, and the economic development of Native communities as expressed through numerous Federal statutes; and

(21) while the existing network of Federal laws and programs provide a framework for the protec-

tion and management of Indian fish and wildlife resources, gathering resources, and the operation and maintenance of Indian fish production programs and facilities, an integrated and comprehensive approach to these programs will help to ensure the coordination of Federal agency activities with those of Indian tribal governments as well as the efficiency and effectiveness of Federal and tribal government programs.

SEC. 102. PURPOSES.

The purposes of this Act are—

(1) to reaffirm and protect Indian hunting, fishing, trapping, and gathering rights, and to provide for the conservation, prudent management, enhancement, orderly development, and wise use of the resources upon which the meaningful exercise of Indian tribal rights depend;

(2) to enhance and maximize tribal capability and capacity to meaningfully participate in managing fish and wildlife resources for the continuing benefit of Indian people, and in co-managing shared resources for the benefit of the Nation, in a manner consistent with the exercise of tribal hunting, fishing, trapping, and gathering rights and the United States trust responsibility to protect the rights re-

served by Indian tribes in treaties with the United States and tribal resources;

(3) to support the Federal policy of Indian self-determination and tribal self-governance by authorizing and encouraging government-to-government relations and cooperative agreements amongst Federal, State, local, and tribal governments, as well as international agencies and commissions responsible for multijurisdictional decision-making regarding fish and wildlife resources;

(4) to authorize and establish an Indian Fish Hatchery Assistance Program that may be administered by Indian tribal governments to address Indian hatchery needs and fulfill tribal co-management responsibilities;

(5) to authorize and establish an Indian Fish and Wildlife Resource Management Education Assistance and Cooperative Research Unit Program to promote and develop full tribal technical capability and competence in managing fish and wildlife resource programs and to authorize the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture, and other Federal agencies to enter into cooperative agreements with Indian tribal governments and tribal organizations, colleges, uni-

versities, and nonprofit organizations for the administration of tribal fish and wildlife cooperative research units;

(6) to establish a buffalo conservation and management program; and

(7) to authorize and establish an Indian Seafood and Resource Marketing Assistance Program within the Department of Commerce, to provide assistance to and support for the efforts of tribal governments to develop and enhance domestic and international markets for seafood, seafood products, and other natural resources.

SEC. 103. DEFINITIONS.

For purposes of this Act—

(1) the term ''Bureau'' means the Bureau of Indian Affairs within the U.S. Department of the Interior;

(2) the term ''ceded territory'' means land ceded by an Indian tribe or tribes in a treaty with the United States upon which the tribe or tribes retain hunting, fishing, and gathering rights;

(3) the terms ''co-management'' or ''cooperative management'' mean a process involving two or more governments or governmentally-chartered entities jointly exercising their respective jurisdiction over or

responsibilities for the management or use of a fish or wildlife resource during some phase of the life cycle of that resource;

(4) the term ''cooperative agreement'' means a written agreement entered into by two or more governments or parties agreeing to work together to actively protect, conserve, enhance, restore, or otherwise manage fish and wildlife resources;

(5) the term ''Indian fish hatchery'' means any single-purpose or multi-purpose facility in which the spawning, hatching, rearing, holding, caring for, or stocking of fish takes place including related research and diagnostic fish health facilities, and which is—

(A) owned or operated by an Indian tribal government, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service on Indian lands;

(B) owned or operated by any government agency pursuant to Federal statute and has as one of its purposes the mitigation, compensation, restoration, or recovery of fish resources subject to reserved tribal treaty rights and for which an Indian tribe has entered into a cooperative agreement or for which an Indian tribe

has petitioned the administering agency to enter into a cooperative agreement for the co-management of fish resources;

(C) owned or operated by a State government or a State institution of higher education, and for which an Indian tribe or tribes have entered into a cooperative management agreement;

(6) the term ''fish hatchery maintenance'' means work that is required at periodic intervals to prolong the life of a fish hatchery, hatchery components, and associated equipment, in order to prevent the need for premature replacement or repair;

(7) the term ''fish hatchery rehabilitation'' means non-cyclical work that is required to address the physical deterioration and functional obsolescence of a fish hatchery building, structure, or other facility component, or to repair damage, or to repair damage resulting from aging, natural phenomena, and other causes, including work to repair, modify, or improve facility components to enhance their original function, the application of technological advances, and the replacement or acquisition of capital equipment, such as, among others, fish distribution tanks, vehicles, and standby generators;

(8) the term ''forest land management activity'' has the same meaning given to such term in section 304(4) of the Indian Forest Resources Management Act (25 U.S.C. 3103(4));

(9) the term ''Indian'' means a member of an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

(10) the term ''Indian fish and wildlife organization'' means a commission, authority, or other entity chartered by one or more Indian tribal governments for the purpose of representing or coordinating tribal interests in pursuing resource management or rights protection goals and strategies;

(11) the term ''Indian fish and wildlife'' means any species of animal or plant life for which Indians have a right to fish, hunt, trap, or gather for subsistence, ceremonial, recreational, or commercial purposes, or for which an Indian tribal government has management or co-management responsibilities;

(12) the term ''Indian lands'' means all land within the limits of any Indian reservation which is held in trust by the United States, a former Indian reservation in the State of Oklahoma, dependent Indian communities within the borders of the United

States whether within or without the limits of a State, and all Indian allotments for which there is a restriction against alienation;

(13) the term ''Indian reservation'' means any reservation of land for an Indian tribe established pursuant to treaties, Acts of Congress or Executive Orders, public domain Indian allotments, former Indian reservations in Oklahoma, and dependent Indian communities within the borders of the United States whether within or without the limits of a State;

(14) the term ''Indian tribe'' means an Indian tribe as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(15) the term ''integrated resource management plan'' means a plan developed pursuant to the process used by a tribal government to assess resources and to identify comprehensive management objectives including the quality of life, production goals, and landscape descriptions of all designated resources that may include, but are not limited to,

water, fish, wildlife, forestry, agriculture, minerals, recreation, community, and municipal resources, and may include tribal codes and plans related to such resources;

(16) the term ''regional resource management areas'' means those areas in which an Indian tribal government as a right to fish, hunt, gather, or trap for subsistence, ceremonial, or commercial purposes, or in which an Indian tribal government has management or co-management responsibilities;

(17) the term ''reserved rights'' means those rights and authorities of an Indian tribal government retained by the Indian tribe in treaties with the United States, including the right to continue to harvest natural resources within ceded lands and customary use areas and the access necessary to exercise those rights;

(18) the term ''resource management activities'' means all activities performed in managing tribal fish, wildlife, gathering, and related outdoor recreation and resources, including but not limited to—

(A) the conduct of fish and wildlife population and life history investigations, habitat investigations, habitat mitigation, enhancement,

rehabilitation and restoration projects and programs, harvest management, and use studies;

(B) the development and implementation of surveys, inventories, geographic information system programs, and integrated resource management plans for Indian lands, regional resource management areas or traditional use areas;

(C) fish production and hatchery management;

(D) the development, implementation, and enforcement of tribal fish and wildlife codes, ordinances and regulations;

(E) the development of tribal conservation programs, including employment and training of tribal conservation enforcement officers;

(F) judicial services;

(G) public use and information management and general administration; and

(H) participation in joint or cooperative management of fish and wildlife resources on a regional basis with Federal, State, tribal, local, or international authorities;

(19) the term ''Secretary'' means the Secretary of the U.S. Department of the Interior;

(20) The term ''seafood'' means any plant or animal that may be gathered, collected, or harvested in marine or fresh water;

(21) The term ''traditional use area'' means lands that Indian tribes and their members have historically, culturally, and geographically used for spiritual, social, political, economic, and sustenance purposes;

(22) The term ''tribal co-management'' means the sharing of decision-making, resource information, and management responsibilities with one or more governments in local, regional, national, and international fish and wildlife resource management processes;

(23) The term ''tribal government'' means the governing body of an Indian tribe; and

(24) The term ''tribal organization'' has the meaning given to such term in section 4 of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b), including tribal fish and wildlife organizations.

TITLE II—TRIBAL FISH AND WILDLIFE PROGRAMS

TRIBAL MANAGEMENT OF INDIAN FISH, WILDLIFE, AND GATHERING RESOURCES

SEC. 201. MANAGEMENT OBJECTIVES.

(a) Consistent with provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.), the Secretary shall support tribal administration of Indian fish and wildlife resource management activities to achieve the following objectives:

(1) To carry out the government-to-government relationship between Indian tribal governments and the United States in the management of Indian fish and wildlife resources.

(2) To protect Indian hunting, fishing, and gathering rights reserved by Indian tribe in treaties with the United States, or guaranteed to Indian tribes by the United States through statute, Executive Order, or court decree.

(3) To provide for the development and enhancement of the capacities of Indian tribal governments to manage Indian fish and wildlife resources.

(4) To protect, conserve and enhance Indian fish and wildlife resources that are important to the

subsistence, cultural enrichment, and economic development of Indian communities.

(5) To promote the development and use of Indian fish and wildlife resources for the maximum benefit of Indian people, by managing tribal resources in accordance with tribally-developed integrated resource management plans which provide for the comprehensive management of all natural resources.

(6) To selectively develop and increase production of certain fish and wildlife resources.

(7) To support the inclusion of tribal co-management or cooperative activities in local, regional, national, or international decision-making processes and forums.

(8) To develop and increase the production of fish, wildlife, and gathering resources so as to better meet tribal subsistence, ceremonial, recreational, and commercial needs.

(b) MANAGEMENT PROGRAM.—

(1) In order to achieve the objectives set forth in subsection (a), the Secretary, in full consultation with Indian tribal governments and tribal organizations, shall establish the Tribal Fish and Wildlife Resource Management Program which shall be ad-

ministered consistent with the provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.).

(2) The Secretary shall promote tribal management of tribal fish, wildlife, trapping, and gathering resources, and implementation of this Act, through contracts, cooperative agreements, or grants under the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.), or other Federal laws.

(3) Upon the request of an Indian tribal government or tribal organization, the Secretary shall enter into a contract, cooperative agreement, or a grant under the Indian Self-Determination and Educational Assistance Act with the tribal government or tribal organization to plan, conduct, or administer any program of the Department of the Interior, or portion thereof, which affects tribal fish and wildlife resources and which is currently administered by the Secretary without regard to the agency or office of the Department of the Interior or the organizational level within the Department.

(4) Upon the request of an Indian tribal government or tribal organization, the Secretary shall enter into a cooperative agreement with the tribal

government or tribal organization to address management issues affecting tribal fish and wildlife resources.

(c) MANAGEMENT ACTIVITIES.—Tribal fish and wildlife resource management activities carried out under the program established in subsection (b) may include, but shall not be limited to—

(1) the conduct of fish and wildlife population and life history investigations, habitat investigations, habitat mitigation, enhancement, rehabilitation and restoration projects and programs, harvest management, and use studies;

(2) the development and implementation of integrated resource management plans for tribal lands or regional resource management areas, surveys, and inventories;

(3) fish production and hatchery management;

(4) the development, implementation, and enforcement of tribal fish and wildlife codes, ordinances, and regulations;

(5) the development of tribal conservation programs, including employment and training of tribal conservation enforcement officers;

(6) judicial services;

(7) public use and information management and general administration; and

(8) participation in joint or cooperative management of fish and wildlife resources on a regional basis with Federal, State, tribal, and local or international authorities.

(d) SURVEY AND REPORT.—

(1) Upon the request of an Indian tribal government, the Secretary shall cause to be conducted a survey for the reservation of that tribal government, which shall include but not be limited to—

(A) a review of existing tribal codes, ordinances, and regulations governing the management of fish and wildlife resources;

(B) an assessment of the need to update and revise tribal codes, ordinances, and regulations governing tribal fish and wildlife resource protection and use;

(C) a determination and documentation of the needs for tribal conservation officers, tribal fisheries, and wildlife biologists, and other professionals to administer tribal fish and wildlife resources management programs;

(D) an assessment of the need to provide training to and develop curricula for tribal fish

and wildlife resource personnel, including tribal conservation officers, tribal fisheries, and wildlife biologists, and other professionals to administer tribal fish and wildlife resource management programs;

(E) an assessment of the need for training of Federal agency staff in matters pertaining to Federal-tribal relations and the significance of fish and wildlife to tribal communities;

(F) an assessment of the effects of Federal resource management activities on tribal fish and wildlife resources; and

(G) a determination and documentation of the condition of tribal fish and wildlife resources.

(2) The Secretary is authorized to enter into contracts or provide grants to Indian tribal governments or tribal organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of carrying out the survey.

(3) Within one year of the date of enactment of this Act, the Secretary shall submit to the Congress a report on the results of the survey conducted under the authority of subsection (1) of this section.

(e) TRIBAL FISH AND WILDLIFE RESOURCE MANAGEMENT PLANS.—

(1) In order to fulfill the management objectives set forth in subsection (a), a tribal fish and wildlife resource management plan shall be developed and implemented in the following manner:

(A) pursuant to a self-determination contract or self-governance compact under the authority of the Indian Self-Determination and Education Assistance Act, an Indian tribal government may develop or implement a tribal fish and wildlife management plan.

(B) Subject to the provisions of subparagraph (C), the tribal government shall have broad discretion in designing and carrying out the planning process.

(C) If a tribal government elects not to contract for the development or implementation of a tribal fish and wildlife management plan, the Secretary shall develop and implement the plan in consultation with the affected tribal government.

(D) Whether developed directly by the tribal government or by the Secretary, the plan shall—

(i) determine the condition of fish and wildlife resources and habitat conditions;

(ii) identify specific tribal fish and wildlife resources goals and objectives;

(iii) establish management objectives for fish and wildlife resources;

(iv) define critical values of the tribal government and its members and provide for comprehensive management objectives;

(v) be developed through public meetings;

(vi) use the public meeting records, existing survey documents, reports, and other research from Federal agencies and tribal colleges, State or community colleges, or other tribal education or research institutions; and

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

(2) Tribal fish and wildlife management plans developed and approved under this section shall govern the management and administration of tribal fish and wildlife resources by the Bureau of Indian Affairs and the Indian tribal government.

(f) TRIBAL MANAGEMENT IN REGIONAL RESOURCE MANAGEMENT AREAS.—

(1) REVIEW.—To achieve the objectives set forth in section 210(a), the Secretary and the Secretaries of Commerce and Agriculture shall review existing programs involving the multi-jurisdictional management of fish, wildlife and gathering resources in regional resource management areas, for the purpose of determining the need for Indian representation, program adequacy and staffing needs to appropriately represent the interests of member tribes.

(2) CONTRACTS OR GRANTS.—The Secretary is authorized to enter into contracts or provide grants to Indian tribal governments or tribal organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of completing this review.

(3) REPORT.—Within one year of the date of enactment of this Act, the Secretary, in consultation with the Secretaries of Commerce and Agriculture, shall submit a report to the Congress based upon the review conducted under subsection (1) of this section assessing fish and wildlife program adequacy and staff needs, and the condition of fish and wild-

life resources in regional resource management areas.

(g) ASSISTANCE.—The Secretary is authorized to provide financial and technical assistance to enable Indian tribal governments to—

(1) update and revise tribal codes, ordinances, and regulations governing tribal fish and wildlife resource protection and use;

(2) employ tribal conservation officers, tribal fisheries and wildlife biologists, and other professionals to administer Indian fish and wildlife resource management programs;

(3) providing training for tribal fish and wildlife resource personnel including tribal conservation officers under a curriculum that incorporates law enforcement, fish and wildlife conservation, identification and resource management principles and techniques; and

(4) enable tribal governments and tribal conservation agencies to enter into cooperative law enforcement agreements, which may include provisions for additional training and cross-deputization of tribal law enforcement staff, with local, State, and Federal jurisdiction for the enforcement of laws and regulations pertaining to fish and wildlife resources.

(h) FEDERAL ACTIVITIES.—

(1) CONSULTATION AND COORDINATION.—In conducting management activities under their respective authorities, the Secretary, in coordination with the Secretaries of Commerce and Agriculture, shall—

(A) consult with and seek the participation of Indian tribal governments on matters affecting tribal fish and wildlife resources in a manner consistent with the United States trust responsibility and the government-to-government relationship between Indian tribal governments and the United States;

(B) ensure that Federal agency staff are adequately trained in issues pertaining to impacts of agency actions on tribal fish and wildlife resources;

(C) investigate opportunities for Indian tribal governments to perform land management activities on Federal land which affect tribal fish and wildlife resources;

(D) develop a formal, written assessment of how Federal resource management activities are affecting tribal use of and access to tribal fish and wildlife resources; and

(E) include rights reserved by tribal governments in treaties with the United States in assessments of environmental baselines.

(2) PROTECTION OF INFORMATION.—Notwithstanding any other provision of law, the Secretary shall not disclose, nor cause the disclosure of any information conveyed to an agency under the Secretary's administrative responsibilities pursuant to this Act to any person, party, or entity, including other Federal agencies, that is made available to the Secretary by an Indian tribal government or a member of an Indian tribe and which is—

(A) related to the administration of the United States trust responsibility for Indian lands and resources; and

(B) declared by the tribal government or individual member of an Indian tribe to be culturally-sensitive, proprietary, or in any manner confidential.

(3) FEES AND ACCESS.—Upon the request of an Indian tribal government, the Secretary and the Secretary of Agriculture are authorized to—

(A) provide fish and wildlife resources to an Indian tribal government from Federal lands administered by agencies under their respective

1 administrative responsibility without permit or
2 charge to the Indian tribe having an historical
3 relationship to such lands, so long as—
4 (i) an agreement is entered into be-
5 tween the Indian tribal government and
6 the Secretary or Secretary of Agriculture
7 which contains sufficient information and
8 conditions regarding the location, quantity,
9 timing, and methods associated with the
10 provision of fish and wildlife resources to
11 ensure compatibility with applicable agency
12 management plans; and
13 (ii) the request does not adversely af-
14 fect the ability of the agency to carry out
15 its responsibilities under the applicable
16 management plan;
17 (B) provide access to Federal lands under
18 their respective administrative responsibility for
19 tribal traditional cultural or customary pur-
20 poses without permit or fee; and
21 (C) temporarily close to general public use,
22 one or more specific portions of Federal lands
23 under their respective administrative respon-
24 sibility in order to protect the privacy of the ac-
25 tivities referenced in subsection (B), provided

that any such closure shall be limited to the smallest practicable area for the minimum period necessary in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act (42 U.S. C. 1996).

(4) EFFECT ON EXISTING RIGHTS.—Nothing in this section shall be construed to limit, modify, or amend existing rights of any Indian tribal government under treaty, statute, or other agreement to access and use fish and wildlife resources.

SEC. 202. EDUCATION IN TRIBAL FISH AND WILDLIFE RESOURCE MANAGEMENT.

(a) COOPERATIVE RESEARCH AND TRAINING PROGRAM.—

(1) The Secretary, the Secretary of Agriculture, the Secretary of Commerce, or other Federal agencies as appropriate, are authorized to enter into cooperative agreements with colleges and universities, tribal community colleges, Indian tribal governments, and tribal organizations, and with nonprofit organizations, for the establishment of cooperative research and training units.

(2) In order to facilitate the full development of research and training units and to support the educational objectives of this title, the Secretary, and

the Secretaries of Agriculture and Commerce, as well as other Federal agencies, shall—

(A) assign appropriate scientific personnel to serve at the cooperative unit, through the agreement of the cooperating parties;

(B) apply Indian preference in hiring policies;

(C) provide financial assistance, including reasonable compensation, for the work of researchers on fish and wildlife ecology and resource management projects funded under this Act or other authorizing legislation;

(D) supply equipment for the use of cooperative unit operations;

(E) provide for the incidental expenses of Federal personnel and employees of cooperating tribal governments and tribal organizations associated with cooperative units; and

(F) integrate cooperative research unit programs with the training and educational opportunities and programs of Indian community colleges to the greatest extent possible.

(b) SCHOLARSHIP PROGRAM.—

(1) The Secretary is authorized to provide natural resource management scholarships to Indians en-

rolled as full-time students in accredited programs for post-secondary and graduate natural resource management-related fields of study.

(2) A natural resource management scholarship recipient shall be required to enter into an obligated service agreement in which the recipient agrees to accept employment, following the completion of the recipient's course of study, with an Indian tribal government, a tribal organization, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service for one year for each year the recipient receives scholarship assistance.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited post-secondary or graduate institution.

(c) FISH AND WILDLIFE EDUCATION OUTREACH.—The Secretary shall conduct, with the full and active participation of Indian tribal governments, a natural resource education outreach program to explain and stimulate interest in all aspects of tribal natural resource management and to generate interest in natural resource management

careers, such as fisheries or wildlife biologists or in natural resource management.

(d) POSTGRADUATE RECRUITMENT.—The Secretary shall establish and maintain a program to attract professional Indian fish and wildlife biologists, as well as professionals in other natural resource management fields, who have graduated from post-secondary institutions or graduate schools for employment by Indian tribal governments, tribal organizations, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service, in exchange for the Secretary's assumption of all or a portion of the professional's outstanding educational loans, depending upon the period of employment.

(e) FISH AND WILDLIFE BIOLOGIST INTERN PROGRAM.—

(1) The Secretary shall, with the full and active participation of Indian tribal governments, establish a Fish and Wildlife Resources Intern Program for at least 20 Indian fish and wildlife resources intern positions.

(A) Intern positions shall be in addition to the forester intern positions authorized in section 314(a) of the National Indian Forest Resources Management Act (25 U.S.C. 3113(a)).

(B) Individuals selected to participate in the intern program shall be enrolled full-time in approved post-secondary institutions or graduate schools in curricula leading to advanced degrees in natural resource management-related fields.

(C) The Secretary shall pay all costs of tuition, books, fees, and living expenses incurred by Indian interns in natural resource management programs while attending approved study programs.

(D) An Indian fish and wildlife resources intern shall be required to enter into an obligated service agreement to serve in a professional fish or wildlife resources management-related capacity with an Indian tribal government, a tribal organization, the Bureau of Indian Affairs, or a U.S. Fish and Wildlife Service program serving tribal fish and wildlife resources management objectives, for one year for each year of education for which the Secretary assumes the intern's educational costs under subsection (2).

(E) An Indian fish and wildlife resources intern shall be required to report for service to

the employing entity during any break in the intern's course of study of more than 3 weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service.

(f) COOPERATIVE EDUCATION PROGRAM.—

(1) The Secretary shall maintain a cooperative education program for the purpose of recruiting promising Indian students who are enrolled in secondary schools, tribal colleges, community colleges, and other post-secondary institutions or graduate schools for employment as professional fisheries or wildlife biologists or other resource management related professional positions with an Indian tribal government, a tribal organization, the Bureau of Indian Affairs, or with the U.S. Fish and Wildlife Service serving or benefitting Indian lands.

(2) The Secretary shall pay all costs for tuition, books, and fees of an Indian student who is enrolled in a course of study at an educational institution with which the Secretary has entered into a cooperative agreement, and who is interested in pursuing a career with an Indian tribal government, tribal organization, the Bureau of Indian Affairs, or the U.S.

Fish and Wildlife Service serving or benefitting Indian lands.

(3) Financial need shall not be a requirement to receive assistance under the program authorized in paragraph (1).

(4) A recipient of assistance under the program authorized in paragraph (1) shall be required to enter into an obligated service agreement to serve as professional fish or wildlife biologist or other resource management related professional with an Indian tribal government, a tribal organization, the Bureau of Indian Affairs, or the U.S. Fish and Wildlife Service, for one year for each year that the Secretary assumes the recipient's educational costs pursuant to paragraph (2).

(g) PUBLIC EDUCATION REGARDING TRIBAL FISH AND WILDLIFE RESOURCES.—

(1) The Secretary is authorized to establish within the Secretary's office the position of Tribal Education Coordinator to—

(A) enhance communications between Indian tribal governments and the United States relating to the management of tribal fish and wildlife resources or the role of tribal govern-

ments in the co-management of fish and wildlife resources; and

(B) implement a program to educate the public about the sovereign status of Indian tribal governments and the rights reserved by tribal governments in treaties with the United States, as well as the benefits of constructive relations among tribal governments, State, and local governments, and Federal agencies;

(2) The responsibilities and duties of the Tribal Education Coordinator shall include—

(A) the development of an educational program for local and State governments and Federal agencies regarding the United States obligations to support and implement treaties, statutes, executive orders and court decrees related to the management of fish and wildlife resources;

(B) encouraging Federal agencies and State governments to establish and pursue cooperative and collaborative government-to-government relationships with Indian tribal governments in the management of natural resources; and

(C) providing reports to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives by September 30th of each year on the progress of the Tribal Education Coordinator in carrying out these activities.

(h) ADEQUACY OF PROGRAMS.—The Secretary shall provide administrative oversight of the programs described in this section until a sufficient number of Indian personnel are available to administer tribal fish and wildlife resource management programs on tribal lands and resource management areas.

(i) OBLIGATED SERVICE; BREACH OF CONTRACT.—

(1) OBLIGATED SERVICE.—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this section, the Secretary shall promulgate such regulations as are necessary to provide for an offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(2) BREACH OF CONTRACT.—Where an individual fails to accept a reasonable offer of employment

in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided to the individual by the Secretary, pro rated for the amount of time of obligated service that was performed, together with interest on such amount which would be payable if at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Secretary of the Treasury.

SEC. 203. TRIBAL FISH HATCHERY ASSISTANCE PROGRAM.

(a) PROGRAM.—The Secretary, in consultation with the Secretary of Commerce, and with the full and active participation of Indian tribal governments, shall establish and administer a Tribal Fish Hatchery Assistance program for the production and distribution of fish of the species, strain, number, size, and quality to assist Indian tribal governments to develop tribal hatcheries and enhance fshery resources on tribal lands to meet tribal resource needs, including but not limited to tribal subsistence, ceremonial and commercial fishery needs.

(b) REPORT.—Within one year of the date of enactment of this Act, the Secretary, in consultation with the Secretary of Commerce, and with the full and active par-

ticipation of Indian tribal governments, shall submit a report to the Congress which shall—

(1) identify the facilities that comprise the Tribal Fish Hatchery Program;

(2) the maintenance, rehabilitation, and the construction needs of such facilities;

(3) identify criteria and procedures to be used in evaluating and ranking fish hatchery maintenance and rehabilitation project proposals submitted by Indian tribal governments; and

(4) provide a plan for the administration and cost-effective operation of the Tribal Fish Hatchery Assistance Program.

(c) CONTRACTS.—The Secretary, and the Secretary of Commerce, are authorized to enter into a contract or annual funding agreement under the authority of the Indian Self-Determination and Educational Assistance Act with an Indian tribal government to plan, conduct, and administer the Tribal Fish Hatchery Program, or any portion of the Program.

(d) FISH HATCHERY OPERATING AGREEMENTS.—Upon the petition of an Indian tribal government or a tribal organization seeking to co-manage a facility or complex of facilities, the Secretary, and the Secretary of Commerce, are authorized to enter into agreements with enti-

ties owning or operating hatcheries defined under section 103(5)(B) of this Act and an Indian tribal government or tribal organization which provides for the manner in which each hatchery facility is to be operated so as to mitigate or recover tribal fish resources subject to rights reserved by the tribal government in treaties with the United States.

TITLE III—ALASKA NATIVE FISH AND WILDLIFE PROGRAMS

SEC. 301. DEFINITIONS.

For purposes of this title—

(1) the term ''Alaska Native'' means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof, including, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is, or, if deceased, was regarded as an Alaska Native by any village or group, as defined in section 1602(b) of the Alaska Native Claims Settlement Act;

(2) the term ''Native village'' means ''any tribe, band, clan, group, village, community, or association in the State of Alaska listed in sections 1610 and 1615 of this title, and which the Secretary determines was, on the 1970 census enumeration date, composed of twenty-five or more Natives'' as defined in section 1602(c) of the Alaska Native Claims Settlement Act;

(3) the term ''Regional Corporation'' means an Alaska Native Regional Corporation established under the laws of the State of Alaska as defined in section 1602(g) of the Alaska Native Claims Settlement Act;

(4) the term ''Village Corporation'' means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or non-profit corporation to hold, invest, manage, and/or distribute lands, property, funds, and other rights and assets for and in behalf of a Native Village as defined in section 1602(j) of the Alaska Native Claims Settlement Act; and

(5) the term ''Alaska Native fish and wildlife organization'' means a commission, authority or other entity chartered for the primary purpose of as-

sisting in the development of tribal natural resource management capacity and technical capabilities.

SEC. 302. MANAGEMENT OF ALASKA NATIVE TRIBAL GOVERNMENT INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PROGRAMS IN ALASKA.

(a) MANAGEMENT OBJECTIVES.—Consistent with provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.), the Secretary shall support tribal administration of Indian fish and wildlife resource management activities to achieve the following objectives:

(1) To carry out the government-to-government relationship between Indian tribal governments and the United States in the management of Indian fish and wildlife resources.

(2) To provide for the development and enhancement of the capacity of Indian tribal governments to participate in management of Indian fish and wildlife resources.

(3) To protect, conserve and enhance Indian fish and wildlife resources.

(4) To promote the development and use of Indian fish and wildlife resources for the maximum benefit of Alaska Native people, by managing Indian

fish and wildlife resources in accordance with tribally-developed integrated resource management plans which provide for the cooperative management of all natural resources within tribal lands.

(5) To selectively develop and increase production of certain Indian fish and wildlife resources.

(6) To support the inclusion of Alaska Native tribal co-management or cooperative activities in local, regional, State, national, or international decision-making processes and forums.

(7) To develop and increase the production of fish, wildlife and gathering resources so as to better meet Alaska Native subsistence, ceremonial, recreational and commercial needs.

(b) MANAGEMENT PROGRAM.—

(1) In order to achieve the objectives set forth in subsection (a), the Secretary, in full consultation with Indian tribal governments and Alaska Native fish and wildlife organizations, shall establish the Alaska Native Fish and Wildlife Resource Management Program which shall be administered consistent with the provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.).

(2) The Secretary shall promote meaningful Indian tribal government involvement in the management of Indian fish and wildlife resources, and implementation of this Act, through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Educational Assistance act (25 U.S.C. 450b et seq.), or other Federal laws.

(3) Upon the request of an Indian tribal government or Alaska Native fish and wildlife organization, the Secretary shall enter into a contract, compact, cooperative agreement, or a grant under the Indian Self-Determination and Educational Assistance Act with the Indian tribal government or Alaska Native fish and wildlife organization to plan, conduct, or administer any program of the Department of the Interior, or portion thereof, which affects Indian fish and wildlife resources, and which is currently administered by the Secretary without regard to the agency or office of the Department of the Interior or the organizational level within the Department.

(4) Upon the request of an Indian tribal government or Alaska Native fish and wildlife organization, the Secretary shall enter into a cooperative

agreement with the tribal government or Alaska Native fish and wildlife organization to address management issues affecting Indian fish and wildlife resources.

(c) MANAGEMENT ACTIVITIES.—Indian fish and wildlife resource management activities carried out under the program established in subsection (b) may include, but shall not be limited to:

(1) the conduct of fish and wildlife population and life history investigations, habitat investigations, habitat mitigation, enhancement, rehabilitation and restoration projects and programs, harvest management, and use studies;

(2) the development and implementation of integrated resource management plans for tribal lands or traditional use areas;

(3) fish and other aquatic species production and hatchery management;

(4) the development, implementation, and enforcement of Indian tribal government fish and wildlife codes, ordinances, and regulations;

(5) the development of Indian tribal government conservation programs, including employment and training of tribal conservation enforcement officers;

(6) judicial services;

(7) public use and information management and general administration; and

(8) participation in joint or cooperative management of fish and wildlife resources on a regional basis with Federal, State, tribal, and local or international authorities.

(d) SURVEY AND REPORT.—

(1) Upon the request of an Indian tribal government, the Secretary shall cause to be conducted a survey of the traditional use area of that tribal government, which shall include but not be limited to:

(A) a review of existing Indian tribal government codes, ordinances, and regulations governing their members and others in relation to the management of Indian fish and wildlife resources;

(B) an assessment of the need to update and revise Indian tribal government codes, ordinances, and regulations governing Indian fish and wildlife resource protection and use;

(C) a determination and documentation of the needs for tribal conservation officers, tribal fisheries and wildlife biologists, tribal fisheries

and wildlife technicians, and other professionals to administer and implement Indian fish and wildlife resources management programs;

(D) an assessment of the need to provide training to and develop curricula for tribal fish and wildlife resource personnel, including tribal conservation officers, tribal fisheries and wildlife biologists, tribal fisheries and wildlife technicians, and other professionals to administer and implement tribal fish and wildlife resource management programs. Such curricula shall include the incorporation of traditional ecological knowledge as well as the traditional;

(E) an assessment of the need for training of Federal agency staff in matters pertaining to the relations between the United States and Indian tribes and the significance of Indian fish and wildlife to Native villages;

(F) an assessment of the effects of Federal and State resource management activities on Indian fish, and wildlife resources; and

(G) a determination and documentation of the condition of those Indian fish and wildlife resources.

(2) The Secretary is authorized to enter into contracts, compacts, or provide grants to Indian tribal governments or Alaska Native fish and wildlife organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of carrying out the survey.

(3) Within one year of the date of enactment of this Act, the Secretary shall submit to the Congress a report on the results of the survey conducted under the authority of subsection (1) of this section.

(e) INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PLANS.—

(1) In order to fulfill the management objectives set forth in subsection (a), an Indian fish and wildlife resource management plan shall be developed and implemented in the following manner:

(A) Pursuant to a self-determination contract or self-governance compact under the authority of the Indian Self-Determination and Education Assistance Act, an Indian tribal government or an Alaska Native fish and wildlife organization may develop or implement an Indian fish and wildlife management plan.

(B) Subject to the provisions of subparagraph (C), the Indian tribal government shall

have broad discretion in designing and carrying out the planning process.

(C) If an Indian tribal government elects not to contract for the development or implementation of a tribal fish and wildlife management plan, the Secretary shall develop and implement the plan in consultation with the affected tribal government.

(D) Whether developed directly by the tribal government or by the Secretary, the plan shall—

(i) determine the condition of Indian fish and wildlife resources and habitat conditions;

(ii) identify specific Indian fish and wildlife resources goals and objectives;

(iii) establish cooperative management objectives for Indian fish and wildlife resources;

(iv) define critical values of the Indian tribal government and its members and provide for comprehensive management objectives;

(v) be developed through a public meeting process;

(vi) apply the public meeting records, existing survey documents, reports, and other research from Federal and State agencies, community colleges, or other education or research institutions; and

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

(2) An Indian fish and wildlife management plan developed and approved under this section shall govern the management and administration of Indian fish and wildlife resources by the Bureau of Indian Affairs and the tribal government.

(f) TRIBAL MANAGEMENT IN TRADITIONAL USE AREAS.—

(1) REVIEW.—To achieve the objectives set forth in section 302(a), the Secretary and the Secretaries of Commerce and Agriculture shall review existing programs involving the management of Indian fish and wildlife resources in the traditional use areas of Indian tribal governments, for the purpose of determining the need for the meaningful involvement of tribal governments, program adequacy, and staffing needs to appropriately represent the interests of tribal governments.

(2) CONTRACTS OR GRANTS.—The Secretary is authorized to enter into contracts, compacts, or provide grants to Indian tribal governments or Alaska Native fish and wildlife organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of completing this review.

(3) REPORT.—Within one year of the date of enactment of this Act, the Secretary, in consultation with the Secretaries of Commerce and Agriculture, shall submit a report to the Congress based upon the review conducted under subsection (1) of this section assessing fish and wildlife program adequacy and staff needs, and the condition of Indian fish and wildlife resources in the traditional use areas of tribal governments.

(g) ASSISTANCE.—The Secretary is authorized to provide financial and technical assistance to enable Indian tribal governments to—

(1) update and revise tribal government codes, ordinances, and regulations governing Indian fish and wildlife resource protection and use;

(2) employ tribal conservation officers, tribal fisheries and wildlife biologists, tribal fish and wildlife technicians, and other professionals to admin-

ister and implement Indian fish and wildlife resource management programs;

(3) provide training for tribal fish and wildlife resource personnel including tribal conservation officers under a curriculum that incorporates law enforcement, fish and wildlife conservation, identification and resource management principles and techniques. Such curricula shall also include the incorporation of traditional ecological knowledge as well as the traditional management strategies and techniques of Alaska Native people; and

(4) enable tribal governments and Alaska Native fish and wildlife organizations to enter into cooperative law enforcement agreements, which may include provisions for additional training and cross-deputization of tribal law enforcement staff, with local, State and Federal jurisdiction for the enforcement of laws and regulations pertaining to Indian fish and wildlife resources.

(h) FEDERAL ACTIVITIES.—

(1) CONSULTATION AND COORDINATION.—In conducting management activities under their respective authorities, the Secretary, in coordination with the Secretaries of Commerce and Agriculture, shall—

(A) consult with and seek the participation of Indian tribal governments on all matters affecting Indian fish and wildlife resources in a manner consistent with the United States trust responsibility,

(B) ensure that Federal agency staff are adequately trained in issues pertaining to impacts of agency actions on Indian fish and wildlife resources;

(C) investigate opportunities for Indian tribal governments to perform cooperative land management activities on Federal and other lands that affect Indian fish and wildlife resources; and

(D) develop a formal, written assessment of how Federal resource management activities are affecting tribal use of and access to Indian fish and wildlife resources and the traditional use areas of Indian tribal governments.

(2) PROTECTION OF INFORMATION.—Notwithstanding any other provision of law, the Secretary shall not disclose, nor cause the disclosure of any information conveyed to an agency under the Secretary's administrative responsibilities pursuant to this Act to any person, party, or entity, including

other Federal agencies, that is made available to the Secretary by an Indian tribal government or a member of an Indian tribe and which is—

(A) related to the administration of the United States trust responsibility for Indian lands and resources; and

(B) declared by the tribal government or individual member of an Indian tribe to be culturally-sensitive, proprietary, or in any manner confidential.

(3) FEES AND ACCESS.—Upon the request of an Indian tribal government, the Secretary and the Secretary of Agriculture are authorized to—

(A) provide fish and wildlife resources to an Indian tribal government from Federal lands administered by agencies under their respective administrative responsibility without permit or charge to the Indian tribe having an historical, cultural, or geographical relationship to such lands, so long as—

(i) an agreement is entered into between the Indian tribal government and the Secretary or Secretary of Agriculture which contains sufficient information and conditions regarding the location, quantity,

1 timing, and methods associated with the
2 provision of Indian fish and wildlife re-
3 sources to ensure compatibility with appli-
4 cable agency management plans; and
5 (ii) the request does not adversely af-
6 fect the ability of the agency to carry out
7 its responsibilities under the applicable
8 management plan;
9 (B) provide access to Federal lands under
10 their respective administrative responsibility for
11 tribal traditional cultural or customary pur-
12 poses without permit or fee; and
13 (C) temporarily close to general public use,
14 one or more specific portions of Federal lands
15 under their respective administrative respon-
16 sibility in order to protect the privacy of the ac-
17 tivities referenced in subsection (B), provided
18 that any such closure shall be limited to the
19 smallest practicable area for the minimum pe-
20 riod necessary in a manner consistent with the
21 purpose and intent of the American Indian Re-
22 ligious Freedom Act (42 U.S.C. 1996).
23 (4) EFFECT ON EXISTING RIGHTS.—Nothing in
24 this section shall be construed to limit, modify, or
25 amend existing rights of any Indian tribal govern-

ment under statute or other agreement to access and use Indian fish and wildlife resources.

SEC. 303. ALASKA NATIVE TRIBAL GOVERNMENT SEAFOOD AND RESOURCE MARKETING ASSISTANCE PROGRAM.

(a) The Secretary of Commerce shall establish an Alaska Native Seafood and Resource Marketing Assistance Program to enable participating Indian tribal governments and Alaska Native fish and wildlife organizations to develop the necessary infrastructure and marketing systems to effectively promote their products domestically and internationally.

(b) Within one year of the date of enactment of this Act, working with participating Indian tribal governments, the Secretary of Commerce shall develop and submit a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation to provide subsidies and other Federal support, permissive taxing and coordinated training, promotions, and Alaska Native Tribal product labeling as well as other initiatives, that hold the potential to significantly enhance the ability of tribal governments to assure that fair and equitable prices are associated with seafood, bison, rein-

deer, muskox, yak, and other produced and harvested natural resources related products.

(c) Within one year of the date of enactment of this Act, the U.S. Food and Drug Administration, in consultation with Indian tribal governments, shall prepare a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation that would enable Indian tribal governments to be recognized as competent processing authorities as well as recommendations for the provision of technical assistance to tribal enterprises so as to ensure that seafood, buffalo, reindeer, muskox, yak, and other harvested natural resource products are safe for consumption.

TITLE IV—TRIBAL SEAFOOD AND RESOURCE MARKETING ASSISTANCE PROGRAM

SEC. 401. ESTABLISHMENT.

(a) The Secretary of Commerce shall establish a Tribal Seafood and Resource Marketing Assistance Program to enable participating Indian tribal governments and tribal organizations to develop the necessary infrastructure and marketing systems to effectively promote their products domestically and internationally.

(b) Within one year of the date of enactment of this Act, working with participating Indian tribal governments, the Secretary of Commerce shall develop and submit a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation to provide subsidies and other Federal support, permissive taxing and coordinated training and promotions, as well as other initiatives, that hold the potential to significantly enhance the ability of tribal governments to assure that fair and equitable prices are associated with harvested natural resources and seafood products.

(c) Within one year of the date of enactment of this Act, the U.S. Food and Drug Administration, in consultation with Indian tribal governments, shall prepare a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation that would enable Indian tribal governments to be recognized as competent processing authorities as well as recommendations for the provision of technical assistance to tribal enterprises so as to ensure that seafood and other harvested natural resource products are safe for consumption.

(d) Health Issues. [to be developed]

SEC. 402. MARKETING DEVELOPMENT GRANTS AND LOAN PROGRAM. [to be developed]

(a) GRANTS FOR MARKET RESEARCH AND PILOT PROGRAMS.

(b) LOANS FOR INFRASTRUCTURE DEVELOPMENT.

TITLE V—TRIBAL BISON CONSERVATION AND MANAGEMENT [to be developed]

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. REGULATIONS.

Except as otherwise provided by this Act, the Secretary shall promulgate final regulations for the implementation of this Act within 18 months of the date of enactment of this Act with the full and active participation of Indian tribal governments.

SEC. 602. SEVERABILITY.

If any section or provision of this Act is held invalid, it is the intent of the Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. 603. SAVINGS.

(a) Nothing in this Act shall be construed to—

(1) diminish or expand the United States trust responsibility for tribal fish and wildlife resources, or any legal obligation or remedy arising out of the United States trust responsibility;

(2) alter, abridge, repeal, or affect any valid, existing agreement between an agency of the United States and an Indian tribal government;

(3) alter, abridge, diminish, repeal, or affect the reserved rights of any Indian tribal government established by treaty, executive order, or other applicable laws or court decrees.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

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

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Senator INOUYE. Now, may I call upon our first panel. The first panel consists of the chairman of the Northwest Indian Fisheries Commission of Olympia, Washington, Billy Frank, Jr.; the chairman of the Columbia River Inter-Tribal Fish Commission of Portland, OR, Olney Patt, Jr.; and the chairman of the Southwest Tribal Fisheries Commission of Lakeside, AZ, Mr. Arthur "Butch" Blazer.

May I first call upon Chairman Frank.

STATEMENT OF BILLY FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION

Mr. FRANK. Good morning, Mr. Chairman. I am Billy Frank, chairman of the Northwest Indian Fish Commission for the last 25 years. It is an honor to be here today with members of the committee, as well as our chairman.

On behalf of our 20 tribes of the Northwest Indian Fish Commission we are pleased to appear before the Senate Committee on Indian Affairs to provide supportive comments on the Native American Fish and Wildlife Management Act.

Today, we will provide some general comments with the intention of providing more specific comments pertinent to S. 2301 over the coming weeks. We sincerely thank you and your staff for your extensive investment of time and energy in this legislation. We commend you.

Tribes have managed fish and wildlife resources for thousands of years. Our treaties are now 150 years old in the Northwest. In *United States* v. *Washington,* one of our cases that was brought by the *United States* v. *Washington* in 1974 is now 30 years old. Out of that case, confirmed by the United States Supreme Court in 1979, came many legal principles as other principles of our tribes.

One was the co-management of our tribes, that we use to set regulations and work with all of our tribes. Out of that came the Northwest Indian Fish Commission, an arm of all the tribes, to coordinate all of our fishery issues, internationally and 200 miles out in the ocean. So we are managers.

We need funding. We need Congress to come forward with legislation to give us funding for what we do as managers. We need training and education. We need legal support, technical and policy-level coordination support, and public opinion support.

Tribes are good fish and wildlife managers. They always have been. We are not asking for anything we are not already supposed to have—to fish, hunt, gather and manage. It should not scare anyone. We are not trying to take over Federal lands or anything else. We are looking for ways to work together for common benefits.

We gather berries from Canada clear down into Mexico on the Cascade Range, that runs south from Canada. That is where we have our ceremonies—up in the mountains on Federal lands. The range of the mountains are all Federal lands. It is protected by our Federal Government. But on that mountain they have signs that these areas are set aside for treaty Indian rights, for camping, for ceremonies. They have parks. They have real nice places for us to camp and have fires and gather our medicines, as well as our berries.

It is a place for Indian people to come and drive around and think back of the memories of the many times that they have camped in that mountain. My brother and I drive there at least five or six times a year and just drive through the roads and think of all the memories of our past, of our grandmas and grandpas, and our children that played and enjoyed that mountain.

We have memoranda of understandings; we have agreements with the Federal agencies that protect that land—for not only us, but for everyone, all the public; not only for the 20 tribes that I represent—it goes clean into Oregon and the Yakimas on the other side of the mountain. All of our people enjoy that range of mountain that is Federal lands. This bill would enhance all of that that I am talking about.

We need protection. We need protection. I talked about the Federal funding. We are looking out into the next 100 or 200 years of protection and managing the resource in our country, in our own backyards. We have agreements with the big business of the State of Washington. We have agreements with the timber industry on timber fish and wildlife. We have agreements with in-stream flows, with the utilities on our rivers. We have hundreds and hundreds of rivers and streams. We have agreements with the agriculture people, as well as a lot of our people that live on our watersheds.

The Indian tribes are on those watersheds 24 hours a day. We are there managing 24 hours a day. We live there. We have coalitions of all people of the State of Washington. We have coalitions of environmentalists. We have coalitions of agriculture people, farmers, and timber people. We have shellfish agreements out into the Puget Sound and along the Pacific Coast. We are working with the Federal agencies as partners, as well as the State of Washington and all their agencies.

So we welcome and support this bill today, S. 2301. As you said, it is working. In order for us all to work together and make things happen, we have to sit down and try to get creative in the language that we do not hurt anybody. We have to get creative as thinkers and put thought into what we are talking about; thought into talking for the fish; talking for the animals; talking for the resource. How do we all talk and protect them at the same time and find a balance out there, with all the people that are moving into our country?

We will work with the local government, the planners, and all. We have big water problems throughout our country and we have to address these very important things. Our tribes stand ready to do that, sir.

We want to thank you and the committee, especially you, Senator, for being our person that always cares about Indian treaties and Indian rights and our people.

Thank you.

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

Senator INOUYE. I thank you very much, Chairman Frank.

May I call upon Chairman Patt.

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

Mr. PATT. Mr. Chairman, members of the committee, on behalf of the Columbia River treaty tribes I would like to thank you for this opportunity to provide testimony on the Native American Fish and Wildlife Resource Management Act of 2004.

My name is Olney Patt, Jr. and I am the executive director of the Columbia River Inter-Tribal Fish Commission, a Commission formed by resolution of the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakima Nation, for the purpose of coordinating fishery management policy and providing technical expertise essential for the protection of the tribes' treaty-protected fish resources.

Both independently and through their Commission process, the Columbia River treaty tribes have worked cooperatively and with some success with the states and Federal agencies, as well as with private landowners to restore populations of the shared salmon resource. The Columbia River treaty tribes see this bill as an opportunity to provide a framework for tribes to deal with specific on-reservation resource management issues, as well as to provide a national framework that can allow tribes, states and the Federal Government to also successfully address regional management issues of shared natural resources.

I will focus on a couple of key elements of this bill in my testimony today, and I will supplement the record with additional written testimony within a few weeks.

Since 1977, our Commission has contracted with the BIA under the Self-Determination Act, Public Law 93–638, to provide technical expertise essential for the protection of the tribes' treaty-protected fish resources. What we have learned during this time is that through better regional coordination and cooperation, we can spend more time working with state and Federal land and water managers on developing shared resource management strategies and less time in court.

Since the tribes formed the Commission, we have seen the development and implementation of a cooperative harvest management plan for the Columbia River. In the late 1960's and through the 1970's, the tribes spent much time in court debating how the tribes and States should share the conservation burden of the shared salmon resource. By the late 1980's, the tribes and States had come up with an agreement on a plan for co-management of this resource. This plan, though currently under revision, has largely replaced the annual litigation over the conservation and harvest management of the shared salmon resource that originates in the Columbia River.

In the early 1980's, we witnessed a dangerous coast-wise decline in Chinook salmon stocks from Southeast Alaska through British Columbia and throughout the Pacific Northwest. The need to deal with this conservation crisis helped to push the United States and Canada to reach an agreement on the Pacific Salmon Treaty of 1985. Under the treaty, there is now a management structure through which the parties can share technical information and de-

velop strategies to deal with the management problems concerning the shared salmon resource.

The Columbia River treaty tribes, along with the Western Washington treaty fishing tribes were significant participants in the negotiation of that treaty and continue to play a significant role in its implementation.

Each of the examples I have outlined deal with complex multijurisdictional management issues. This bill by specifically allowing tribes to opt in to the resource inventory and planning process recognizes the needs of the individual tribes within regions and across the continent. This bill does not force any tribe to undertake the resource inventory and management planning process provided in this bill.

Undertaking a resource inventory and survey could only occur at the request of the tribe. The development of the resource management plan would then follow at a pace set by each individual tribe. Nor would this bill require any tribe to abandon a current management plan, co-management agreements, or any other working resource management plan. It does offer the promise of a structure and the resources that can be utilized by the tribes at their option in developing new plans or in revising old management plans.

I would like to note one important element in this bill. Section 202 of the bill provides a framework to increase the educational opportunities for tribal members to gain the knowledge and training necessary to manage tribal resources. It also provides an opportunity for tribes to coordinate and cooperate with other tribes, with universities and others as appropriate on technical and scientific issues associated with resource management.

We see great promise in the development of tribal cooperative research units at universities across the country. Within the Columbia River Basin, the Commission, working with its members tribes, identified a critical regional need for additional facilities to handle genetics work associated with regional management restoration activities.

On behalf of its member tribes, the Commission entered into a memorandum of agreement with the University of Idaho to cite these facilities at the University's aquaculture research facility. Building upon that agreement and acknowledging the desire of other tribes in the basin to participate in the opportunities offered by our arrangement with the University, we have worked with the University to outline a memorandum to establish a cooperative research unit that other tribes can join as well.

The formation of that tribal cooperative research unit at the University of Idaho provides several benefits. It allows the tribes to have their own staff driving the research agenda and working on resource issues of importance to the tribe. It offers tribal staff the opportunity to reach out to the non-tribal community through teaching assignments at the University. It provides a place for tribal members attending the University to take on undergraduate or graduate degree research work.

All of this would be accomplished in a cooperative, coordinated research forum that could include other state or Federal researchers. I would note that it is important that we ensure that the opportunities laid out for tribal students in this section of the bill, es-

pecially as to the development of the cooperative research unit system, are integrated with the opportunities and work of the Indian college system.

For the reasons I have laid out in my testimony today, the Columbia River treaty tribes support the general concepts and opportunities provided in the language of the Native American Fish and Wildlife Resource Management Act of 2004. We would welcome the opportunity to work with you, other members of the committee, and with your staff to fine-tune the bill to ensure that it meets the needs of all the tribes within the United States and to ensure its passage here in Congress.

Thank you.

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

Senator INOUYE. I thank you very much, Chairman Patt.

Chairman Frank and Chairman Patt, both of you have very eloquently described the successes that your commissions have had in developing and establishing relationships with the Federal Government and the State and county governments. Does this measure do that also, to enhance and encourage tribal commissions or tribal governments to establish these relationships?

Chairman Frank.

Mr. FRANK. Yes; it does. We see this bill as a very important step for the U.S. Congress to assure us that we will be managers of the resource and enhance our ability to manage just like the States do. We are all part of it and we work together to make that happen. We have so many agreements in the last 30 years that I talk about of co-management. This bill will enhance all of the agreements that we have put together.

Senator INOUYE. Chairman Patt.

Mr. PATT. Yes; I believe so. The tribes have been major parties to all of the decisionmaking processes in the Northwest. In many cases, we find that we have to reestablish our place at the table with each new process. This bill carves out a place for the tribes to be at that table at all times.

We have been major parties, as I pointed out, to the Pacific Salmon Treaty, *United States* v. *Oregon,* the major management plan for the Columbia River Basin and so forth.

Senator INOUYE. So this bill, if passed, would give you a foundation of laws that would protect these relationships?

Mr. PATT. Yes.

Mr. FRANK. Yes.

Senator INOUYE. Do you believe that without tribal involvement or tribal commission involvement in the management of resources, the overall health of the resources will suffer? Is this something that just the Federal Government can do?

Mr. PATT. No; I believe because of the nature of the Federal Government personnel in the region, it is often necessary to reeducate new people who are coming in, say, for instance in the Fish and Wildlife Service, NOAA and all of the various Government agencies we work with; the Forest Service, BLM, as to treaty rights and to educate them on existing agreements. Often when these Federal officials are well educated on the tribes' role in the regional management process, they are reassigned. So this is kind of an ongoing process.

Senator INOUYE. Chairman Frank, this measure calls for programs such as seafood marketing programs. Why do you think that these programs would provide assistance of value to tribes?

Mr. FRANK. I think that it will give us an opportunity to put our marketing schemes forward with the Federal Government. Marketing right now with Indian tribes in the Northwest and our fishery is at about the lowest level that I can think of right now. No one wants to buy our salmon. There is so much salmon out there now. They call it Atlantic salmon. They are penned salmon. We Indian tribes in the Northwest, we are catching Pacific salmon. They are wild. So we do not have a market for that. This will give us an opportunity to expand our market into the Federal system and start supplying, maybe working with the Army or whoever it might be. It is a great opportunity for us.

Senator INOUYE. In my opening statement, I referred to an article that appeared in the Washington Post about the counting of salmon by using the hatchery-bred salmon as part of the count. What do you think about that?

Mr. PATT. We have not had a chance to look at the full proposal of the Federal Government. I have only just read the article myself. What it represents to us is maybe another changing of the rules. We have been dealing with NOAA Fisheries and the Fish and Wildlife Service extensively on different listed species, from bull trout to salmon and steelhead stocks. It seems to me that this is kind of an all-or-nothing approach. We have struggled with NOAA Fisheries and the Fish and Wildlife Service in our efforts to restore salmon, using appropriate stocks and the wise use of artificial production. We have been hamstrung at every turn by the scientific certainty that they are demanding, such as the hatchery genetic management plans that are necessary in order for us to implement any artificial production measure.

This seems to turn that whole rule clear around to where there is going to be no distinction between wild and hatchery-reared fish. So there are many, many facets of this, one of which is a bill by Norm Dicks to mark all hatchery-bred fish at federally funded hatcheries. If those are going to be part of the listed species, there is going to be some considerable discussion about that.

Mr. FRANK. Senator.

Senator INOUYE. Chairman Frank.

Mr. FRANK. If I could comment. They have a new rule that they are trying to put together. They have to be very careful what they are doing. I mean very careful because the wild salmon in the Pacific Northwest are still wild. If the rule says everything is going to be hatchery, then there will not be any in-stream flows; there will not be any timber, fish and wildlife agreements in the Northwest to grow trees and have shade along the streams and the temperature of the water and the gravel in the streams; debris in the stream, logjams.

They have to be very careful what direction they are going when they talk about wild salmon and artificial salmon. This is very dangerous ground. It better be well thought out when they do something like that, because we have a lot of agreements in the Northwest with our neighbors, and working together and trying to find a balance on wild and artificial. We have hatchery reform that has

been taking place in our country. It is very serious. The Federal Government is involved in that, NOAA, all of us, the State of Washington and all of our tribes.

So we feel that we are going forward. We are taking steps to make the hatcheries reform to wild and how they can work together in our country.

Senator INOUYE. In other words, do you believe that if this new rule is put into effect without consultation with tribal governments and commissions, it may place the wild salmon in jeopardy?

Mr. PATT. As I said, I have not had a chance to look at it, but yes, I believe so. I believe just as Mr. Frank has stated, that it will probably loosen up rules. Right now we have a major issue in the Columbia Basin on summer spill. I think this may be geared toward that as the NOAA Fisheries and the Bonneville Power Administration has canceled a couple of meetings with us in the last two weeks. Those meetings were intended to bring this proposal to us on summer spill. I suppose this would be a way around that.

Senator INOUYE. May I request that both your commissions look into this matter and share with us your thoughts on this?

Mr. PATT. Yes.

Mr. FRANK. Yes; we will, absolutely.

Senator INOUYE. Senator Smith.

STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman. It is a pleasure to be with you today and express my support for the Native American Fish and Wildlife Resources Management Act. I have a longer opening statement. In the interest of time, I will put it in the record.

[Prepared statement of Senator Smith appears in appendix.]

Senator SMITH. I believe that what underpins this act is the natural stewardship Native Americans feel to the environment. Their actions are borne out by a millennia of history in managing their lands and their resources. I think no matter what the law is, their conduct will be above and beyond that law because that is part of their culture and their history that is unchangeable.

I would—as one familiar with many of the issues Mr. Frank and Mr. Patt are discussing here—like to welcome them both as Northwesterners. Mr. Patt is a neighbor in Warm Springs, OR. I would express at least my view that in terms of hatchery fish, the management of hatcheries needs to be done very carefully and to the highest of standards. If done so, it can be done in a way that is consistent with preserving wild fish.

It is my understanding that the highest scientific practices require that hatchery fish come from the eggs and the milt of last year's wild fish. I have not heard scientists describe a genetic difference between those fish 1 generation or 1 year removed from the other as being genetically inferior or somehow inappropriate to be in the ocean or in our rivers, but some believe that they are. I do not think it is an either/or equation. I think we can have both if it is done carefully and to high scientific standards.

As to the whole issue of spill, I hope what is being done is attention being given to hard data as to what provides the greatest sur-

vivability, improves the survival of the fish that are migrating to the ocean. I have been shown data that suggests that spilling them actually heightens their mortality. More of them have gas bubble disease. They float, they get picked off, they are made more vulnerable than by some of the other means to get them through or past the dams, which at the same time can produce electricity.

The only thing I am saying is if you save more fish by running the dams and spilling less, and you could also create electricity, it seems to me that reasonable people and courts looking at facts can experiment to find out what the truth is. I think everyone approaching this issue needs to have as their objective saving fish and producing the energy that we desperately need to improve economic opportunity in Washington, Oregon, and Idaho, where we have some of the highest unemployment rates in the country. That rate does not come down if energy production fails to go up, or if energy prices remain high.

So what I am being told is there is hard data, objective science which suggests you can produce energy and save more fish. I think that is a worthy thing to do. It speaks for itself. No one, and myself among them, wants to stop spilling if it means we destroy a species. I just simply want to know what the facts are. I think that is what I am hearing from many of you, along with a word of caution. Be careful. I share that.

Thank you, Mr. Chairman.

Senator INOUYE. Thank you very much, Senator Smith.

Mr. FRANK. Senator.

Senator INOUYE. Yes; Chairman Frank.

Mr. FRANK. I would just add to that, Senator Gordon Smith from Pendleton, OR. I am proud of what has taken place with all the tribes in Oregon. I have been down to visit them and working with the farmers and working with the state, as well as within the reservation or adjoining the reservation. You have a lot of water flowing now, and working together is very positive.

Now, the hatcheries, I would hope that the United States would give very long thought about hatcheries reform or hatchery rule or whatever they are talking about, because we in the Northwest, all of us, we are talking about the next 100 years. We are not talking about a quick fix like a rule. We are talking about getting the people and the public behind everything that we are doing as far as hatchery reform, and try to find that balance, as our Senator from Oregon was talking about, and to have time to do that.

Now, I hope if a rule comes out that they give a lot of thought to hatchery and wild salmon.

Senator SMITH. Absolutely.

Mr. PATT. Senator Smith, we also have been striving to come up with some good numbers on the curtailment of summer spill. One of the big hurdles in doing that is BPA's regional battle cry of $77 million to save 24 fish. That has not helped the effort at all. However, we are working with NOAA Fisheries and we think we are coming closer to some agreement on the juvenile mortalities.

I was just told that our staff will be meeting with your staff tomorrow morning to go over some of those numbers.

Senator SMITH. We look forward to that.

Senator INOUYE. I thank you very much, Chairman Frank and Chairman Patt.

Our next panel, the executive director of 1854 Authority of Duluth, MN, Sonny Myers; the attorney-policy analyst of the Great Lakes Indian Fish and Wildlife Commission of Odanah, WI, James Zorn; the executive director of the Native American Fish and Wildlife Society of Broomfield, CO, Ira New Breast.

Mr. Myers.

STATEMENT OF SONNY MYERS, EXECUTIVE DIRECTOR, 1854 AUTHORITY

Mr. MYERS. Thank you. Mr. Chairman, members of the committee, my name is Sonny Myers. I am the executive director of the 1854 Authority. What we are is we are an intertribal natural resource management organization that implements the off-reservation hunting, fishing and gathering rights of the Grand Portage and the Bois Forte Bands of the Lake Superior Chippewa in the area that was ceded in the Treaty of 1854. So we are up in northeastern Minnesota.

I would like to thank the committee for the opportunity to comment on this important piece of legislation. I consider it an honor to be here today. I would also like to make a special note to the committee staff who have been working very hard, been very active in gathering actual tribal input. It seems like the current draft is a direct reflection of what the tribes have been trying to bring forth. And also from my perspective, their understanding of the real-world political processes, how these things actually work and moving these things along, has been very, very helpful because I am a little bit new at this process.

As everyone in this room is aware, great things have been happening in Indian country relating to tribes' ability to oversee its own members and also to oversee its own reserve resources; 15 years ago, I am speaking from Minnesota, at least from our perspective, a Band member would have been arrested and actually was arrested for moose hunting off the reservation. Now, the right was there, but now today we are actually at the table not only participating in the discussions, but providing valuable input into harvest quotas that are set for both the State and tribal hunters.

Ten years ago, a bi-national effort to protect the waters of Lake Superior was brought forth. That meant every jurisdiction was at the table, except for the tribes. Actually now today we are not only at the table, as well as other tribal organizations, but in many cases tribal staff are key members of working committees there.

Really, about 5 years ago, things are a little stickier in the fishery realm; there is a stigma attached to fish and Indians back home, but the concept of cooperating on a fisheries information gathering effort with State folks did happen, but it was a real grudging affair. As I speak, last night and tonight members of my staff will actually be out there working in a very cooperative, friendly manner on gathering that type of information.

I just wanted to say that. You know, it has really been our charge or our commission to champion the tribes' rightful place among the stakeholders in managing the shared resources in the area that has been reserved in the 1854 Treaty area.

So indeed, great things have been happening. I wanted to make note of that because we are very thankful for the foundations that have been laid and the groundwork by many of the people, especially out in the Northwest, and some of my colleagues here from Wisconsin, sort of laid the groundwork for our successes in Minnesota. But also as everyone in here is aware, there is a constant striving or a constant effort to erode the sovereignty that the tribes are working very hard to maintain.

Hence, we think this Native American Fish and Wildlife Resource Management Act will hopefully be a means to take or move tribal fish and wildlife management to its rightful place.

So I just have a few comments on the proposed legislation, why we think it is necessary and hopefully these things will be addressed and are addressed in the proposed legislation. We think it is necessary because it expressly recognizes that Indian tribes must have a role in managing ceded territory of fish and wildlife resources. Not only should the tribes be at the table, but as time is telling, it is actually a benefit to have the tribes at the table when discussing these resource issues.

Statutory acknowledgment of these treaty rights is necessary because the rights are too often subordinated to the interests of others who have no treaty rights, but have strong political influence. Even though we are gaining ground in respect, very often and most often we are lumped in with other special interest groups when it comes to frameworks in which to provide comments and to be part of the process.

Last, I just want to say that we are sensitive to the concerns of others, the tribes are, but we must ensure that the quality and the quantity of the fish, game and traditional plants, and the access to them, is not diminished because of land management practices that do not consider treaty rights. I wanted to quantify "access" to mean that is both the physical access of actually getting to an access, and also some of the methodologies. This is especially a concern for us in our lands which are managed by the Federal Government. The 1854 Treaty encompasses both a national forest and a designated wilderness area, so we are talking a large portion of the 1854 Treaty area where the Band members hunt, fish and gather is managed by the Federal Government.

So last, I will just close with this legislation hopefully should not be construed as a replacement for what is going on, but really hopefully what it would do it really would enhance what is going on and further the cause of establishing the tribes' rightful place among the stakeholders in managing these shared resources that have been reserved.

My ancestors had the foresight to reserve those rights and we are thankful for that. We are beneficiaries of some very explicit treaty language for ceded territories, and hopefully we can have the foresight to preserve those rights.

Again, I would like to thank the committee for the work that has already been completed, and I really look forward to bringing this important legislation to fruition.

Thank you.

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

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

Mr. Zorn.

STATEMENT OF JAMES ZORN, ATTORNEY-POLICY ANALYST, GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION

Mr. ZORN. Thank you, Mr. Chairman, Senator Smith, other members of the committee. Again, it is a great honor to come before this committee and talk about this important matter. As you recall, last June 3 we had an oversight hearing where tribes and tribal organizations from around the Nation came and helped to present a record for this committee as to what Indian tribes and their agencies are doing out there to protect natural resources and to help tribes exercise their sovereignty over those resources.

The Great Lakes Indian Fish and Wildlife Commission is an agency of 11 Chippewa tribes located in Minnesota, Wisconsin, and Michigan. All of those tribes have signed treaties with the United States whereby they ceded a large section of land in those areas, and in those treaties they specifically reserved the right to continue to hunt, fish and gather—in essence to continue their life-ways on the lands that were ceded.

The tribes' rights include the right to regulate their own members and to play a role in the management of those natural resources that are subject to the rights, as well as in protecting the habitats and ecosystems that support the resources that are harvested.

So that is our perspective here today. We offer our written testimony. We will let that go in the record and we will just offer some thoughts now orally to highlight what is in the testimony, and we hope that our June 3 testimony also is brought into this record, or at least considered.

We are extremely grateful to the committee and the committee staff, as well as to the tribes from around the Nation and their staff, for the hard work that has gone into developing this bill. It is very clear that this committee listened very carefully to the tribes, not only on June 3, but about 10 or 12 years ago when a previous version of this bill was being kicked around and being considered. There is great sensitivity by this committee to the needs in Indian country and this bill reflects that.

What this bill, in our view, is really about is identifying the Federal role to support and assist the tribes as they play their proper role in natural resource management particulary within tribal communities, where the tribal governments have the most important role to play, as well as with other tribes, perhaps with whom they share use areas like in our situation with the ceded territories and in the Northwest. I think we often forget that the term "co-management" also includes management among the tribes. This is a very important aspect that the bill properly recognizes.

And, ultimately, the proper rule with other governments and with the larger community, beyond the tribal community, because these natural resources are shared by everyone. The tribes want to play their role in protecting the natural resources and in sustainable populations of natural resources for generations to come, not just for them, but for their neighbors.

As I understand this bill and as I understand how it is drafted, the tribes are not asking for any rights or responsibilities that they

do not already have. Each tribe has the rights that it has, and those rights simply are what they are. The bill then is really, in our view, a tool to help the tribes realize and achieve their rights as governments to be involved in natural resource management activities, both on the reservation and off the reservation where existing tribal rights and responsibilities attach.

Senator Inouye, to use a phrase that was used many years ago in Wisconsin, we view this bill as Congress helping "cast the light," so to speak, on the Federal Government's proper role, particularly the executive branch's proper role, in honoring and supporting tribal rights and management responsibilities both on and off the reservation, in fulfilling the purposes of the Self-Determination Act to get the funds and the responsibilities for running those programs down to the tribes themselves, and not to a Federal bureaucracy, and to ensure that wherever Federal authority is carried out, by whatever Federal agency, those agencies and that authority is carried out in a way that does not infringe upon the tribes' rights, and in fact honors them and helps support them.

This really is not just about tribes. It is about the Nation as a whole. As we recently found out in a strategic planning process with the Fish and Wildlife Service's Fisheries Program, partners and stakeholders from around the Nation—from the Federal Government, State governments, non-governmental organizations and tribes—got together and talked about the crises that are facing this Nation's natural resources, particularly aquatic habitats. There is a call now for a national aquatic habitat initiative because of common problems faced around the country, particularly with invasive species, habitat loss and so on.

In that strategic planning process, there was the practical, if not legal, recognition that the tribes need to be there; that the job cannot be done without tribes. Tribes control a great deal of land and resources on the reservation. And, they play a great role where they have ceded territory rights in ensuring the sustainability of resources. The partners uniformly recognized that tribes need to be at the table if this Nation is to succeed in passing on the legacy of natural resources that we inherited, if not a better one.

With those background comments, we have a few particular comments on the bill's provisions. I will just highlight them briefly. First of all, we hope the bill does not result in the creation of a new bureaucracy within the Department of the Interior. We just hope that the committee assesses that. We understand that there is a dialog between tribes and the committee, and there will be a dialog with the Interior Department as this bill moves forward. This is just something we want to keep in mind—The purpose of the bill is to get the funds and responsibilities out to the tribes. We should be careful not to keep them within the Federal agencyif a tribal natural resources management program is created within Interior.

Second, we understand there may be some prospective issues with the bill that involve the dilemma that Federal agencies face. We call it the dual mandate dilemma, where Congress legislates particular responsibilities for an agency, such as for the Forest Service with national forests, saying this is your job. The statute says this is what the agency must do. Yet there is the separate stovepipe of obligations of each agency with respect to the tribes'

reserved treaty rights, where that agency must honor those rights, and must carry out its responsibility and authority under the other specific act in a way that is consistent with those rights.

It is not a matter of taking over the Federal lands from a tribal perspective, especially the lands off the reservation. It is a matter of having the Federal agency recognize tribal rights, making sure those rights are implemented, and making sure the Federal land is managed in a way that does not infringe upon those rights and supports the habitats of the natural resources that are subject to the rights. So we do not think that this is a big problem and we offer our experience with the Forest Service and with the National Park Service over the last 10 to 15 years as examples of how things might work out.

In terms of how the Self-Determination Act funding might fit in that circumstance, our agreement with the Forest Service, for example, is that the Forest Service will recognize and assist the tribes in implementing their treaty gathering rights. Yet when it comes time to getting positions on our staff to deal with the Forest Service, the Forest Service will say—"we do not have the funds; we are not authorized to give you funds." In fact, we were turned to the part of the Forest Service called State and Private Forestry to look for those funds. So our hope is that through this act we can then say, when we have our arrangements set, that the Self-Determination Act can help give us our infrastructure on the tribal side that we need to help implement that agreement.

Second, in terms of the natural resource management planning and other requirements of the act, we certainly hope that the act is not intended to require the tribes to change their natural resource management traditions or methods, or to change or alter their existing management plans, to either conform to the bill's requirements as a prerequisite for the exercise of retained tribal sovereign prerogatives to carry out those natural resource management activities or as a prerequisite for Self-Determination Act funding or technical assistance. Let's make sure we do not slide backwards through this bill. Let's make sure that we use the foundation we have, move forward, and bring more funds and more tribes into the assistance that the Federal Government should be providing.

Finally, I know that there are portions of the bill that need to be developed, in particular with respect to health issues and the idea that "what good are these natural resources if they are not safe for tribal members to consume." The Commission offers its assistance to help develop those provisions. It could be somewhat complex, given that this calls into question perhaps the FDA-type responsibilities about the safe handling and processing of foods and so on. But it also carries issues like Mr. Frank identified, such as the idea of wholesome tribal wild rice harvested from nature. The rice is good; it is clean. It is probably about $10 more a pound than California-grown paddy rice, which might be genetically modified, and tribes are at a tremendous competitive disadvantage because of that type of situation. So perhaps this bill could help.

With those comments, we submit our written testimony for the record. We continue to engage in the dialog with the staff and the

other tribes, and we certainly thank the committee for its attention to this matter.

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

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

Mr. New Breast.

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

Mr. NEW BREAST. Hello, Mr. Chairman. Thank you for this honor and opportunity for the Society to speak before the committee today.

We would like to first again express our gratitude for the committee's interest and hard work, particularly the staff, and also recognize the dedication of the working group that has put together much of the language that encompasses the bill.

Our statements are fairly short. The Society, of course, is a national nonprofit organization that encompasses assisting tribes for informational networking, education and scientific purposes. Ours is not necessarily an advocacy organization, but we do have short comments that we would like to put into the record.

The bill that we are discussing here today obviously does face a number of challenges, the scope of which is vital in every aspect that is contained within the language of the bill, but it is broad. Because it is broad, there are many challenges that arise with the overall future and success of the bill. We have confidence in the working group that is addressing these things, but we would like to encourage that all concerned recall the original theme of the bill from the 1993 history to the recent Portland 2003 January discussions, is to address fundamental fish and wildlife conservation management. So in the bill, quite possibly explore avenues to narrow the focus of the bill, to encompass that theme and keep it in mind. Of course, that is as we discuss and try to consider what challenges may face the bill for the future.

Ultimately, the success of the bill, of this endeavor, will be measured by the eventual funding for this language of the bill. In particular, the achievement of this will be in the term of permanent funding. We understand the parameters that are affecting the strategies in the withholding of identifying funding for this bill, and hope for the future as we go forward that this may be realized in the future.

As an example of what the funding might look like, for over more than 500 Federally recognized tribes, and to realize the intent of the bill and proceed productively, the numbers that will have to be realized to provide base funding for tribes will have to be in the hundreds of millions. We realize this may be sometime in the future. But that keeps in mind from an individual standpoint as a former Director of the Blackfeet Fish and Wildlife Department, we remember this bill, and remember what the hopes that it had entailed basically to provide tribes with the funding capability to manage their fish and wildlife programs, their resource. So we encourage the committee and the working group as they move along to keep that in mind as we move along.

Certainly, the Society supports the tribes in their efforts to realize this type of legislation, and particularly because we are so

strong as an informational networking group, we encourage the use of the Society to disseminate some of the information to the tribes. I would like to point out that many tribes do not want organizations. They are in some respects independent, and so find it difficult at times to have their voice heard in different forums. So they look to the Society to perhaps provide that gap of information.

So when we are talking about strategies in the development of this bill, and how we are incorporating all of the tribes, it would be in their interest to be able to at least have the benefit of understanding what those strategies are, rather than seeing the end product of what those strategies were trying to achieve, knowing that the overall effort is one for the benefit of all the tribes in their fish and wildlife interests.

That concludes the Society's comments for today.

Thank you.

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

Senator INOUYE. I thank you very much.

All of you have suggested that this measure provides a statutory recognition of treaty rights. In essence, this bill does not create any further rights for Indian tribes. However, it will provide funds that would make it possible to implement these rights. Is this bill necessary to do that? Or can you just carry on the way you are now?

Mr. MYERS. I can take a shot at that. I think it is necessary. There is really limited amount of money, at least in our perspective; I should not say our perspective, the tribal perspective; there are not a lot of funds available to actually do work. We are not looking to create new levels of bureaucracy or new programs or whatever. But the funds are limited on a major scale.

That is one of the reasons, I guess every time I come out here I may sound like a broken record, but I champion the Circle of Flight program, and on the grand scale it is relatively meager dollars, what it does on the ground is really allows the tribes to become a player out there in the ceded territories. We cooperate with the Federal Government. We cooperative with country governments, state governments. There are private organizations like Ducks Unlimited, as well as individuals who are just interested in a certain resource.

So I guess hopefully what this bill would do would maybe expand some of those areas where funding may become available. Even that one sort of gets put on the cutting floor every year. But again, on the grand scale, a meager amount of dollars, but on the ground where the tribes are actually working, it has just done amazing things for us.

Senator INOUYE. So you consider the important element to be funding?

Mr. MYERS. Certainly a part of it. We could have the statutory framework to say, yes, we are tribes and we have the rights out there, and that is all fine and dandy, which helps, but it is certainly nice to have some funds available to actually participate in those processes. I do not think anyone is looking for expanded programs, but it would really be nice to have some dollars to hit the ground and work on the resources with.

Senator INOUYE. Mr. Zorn.

Mr. ZORN. To endorse and to add to what Mr. Myers said, the bill certainly is necessary from the perspective of Congress directing Federal agencies to recognize the Federal Government's trust and treaty obligations. We often hear from agencies that "oh, it is not within our organic statute," say the Army Corps of Engineers about the issuance of 404 permits, "it is not within our statutes here to look at tribes and their treaty rights as anything else other than a public interest-type criteria." The Corps needs to recognize that the Federal Government does have unique obligations towards tribes. In that sense, this bill would be very necessary and very helpful to get those other agencies to recognize and implement the Federal Government's trust and treaty obligations.

Then the bill is also necessary in the context of the larger picture forboth congress and executive branch in terms of the standing of tribal natural resource management programs, that they are a congressionally recognized, important aspect of tribal sovereignty and that they should get the attention they deserve, hopefully within Interior as well as within other agencies. And the bill would allow the tribes and others to do the battle for the budget. We can no longer hear that, well, natural resources are over here; no they are here; they are center stage; they are part and parcel of tribal sovereignty and a very important part. So in that sense, the bill is very necessary.

Will the tribes continue, as Senator Smith said, to do what they have done for millennia without this bill? They certainly will. Will this bill help them do a better job and help this Nation do a better job and get better results for this Nation's natural resources? This bill will certainly help and is necessary.

Senator INOUYE. Mr. Zorn, in your written testimony, you spoke of the dual management dilemma. Can you give us an example of that?

Mr. ZORN. For example, the national forests, as Mr. Myers said. They are part of the public land-base off the reservations where the tribes may exercise their treaty-reserved hunting, fishing, and gathering rights. The tribes went to the national forest and said, look, we think we can gather some wild plants here for medicinal, cultural and other purposes like we have always done, including wild rice. You would face potentially the argument that the National Forest Management Act, the Four Corners statute of that agency, did not say anything about the Forest Service recognizing and implementing these rights and honoring these rights. It provided no guidance to the agency as to how the Forest Service should exercise its Federal management responsibility over those lands to make sure those tribal rights were indeed honored.

So we sometimes will face the issue where the agency will say, "we have this job to do that Congress gave us, but Congress has provided us no guidance as to that other stovepipe of the trust and treaty obligations."

Senator INOUYE. Mr. New Breast, how do you view this bill as assisting your organization?

Mr. NEW BREAST. One of the mechanisms of assistance that this bill would do in regard to creating the type of base funding that is needed throughout Indian country is raise capacity for all aspects of the infrastructure of an organization, whether they are

tribal fish and wildlife or they are broader Indian organizations. In that, they raise the capacity. They also inherently imbue far more capability to productively interact on a cooperative basis, whether it is collaboration that translates into cooperative agreements, memoranda of agreements.

For instance, from personal experience, the Blackfeet Tribe got themselves involved with an international cooperative agreement which dealt with the Canadian Government, provincial and Federal; dealt with Canadian tribes; and dealt with the U.S. Fish and Wildlife Service. The national parks were also involved in this agreement. It all had to do with recovering the endangered bull trout in the St. Mary drainage of Montana. Through that cooperative effort, there existed very little funds. But through the united effort, much work has been able to be done. On a scientific basis, we were able to put together all of our information in one area so that we could effectively address that resource. So it continues to be a success up in Montana, and that is one example.

The Acoma of New Mexico worked very cooperatively with both the U.S. Fish and Wildlife Service and Federal agency law enforcement, as well as the New Mexican entities. These type of cooperative efforts serve only to be enhanced. What we face today is nationally, regardless of who the entity is that is managing the fish and wildlife, is a steady decrease in the interest in the viability of our fish and wildlife resource. So tribes just look to try and play their part in that overall role of united effort to see the best interests of fish and wildlife.

So that is how I see the priorities being directed as an endeavor for not only the tribes, but as they outreach to other entities as well.

Senator INOUYE. Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

As I have listened to the testimony, it does seem to me that this bill is important because it gives the tribes an authoritative voice, though not a veto, in the formulation of Federal natural resource policy. I think that that is an authoritative voice that is long overdue in being heard on a government-to-government basis.

So I had intended in my opening statement to express support for the Native American Fish and Wildlife Resources Management Act of 2004, and my able assistant has pointed out to me I expressed support for the current statute, the National Indian Forest Resource Management Act. So for the record, I correct that and simply conclude my part in the hearing today by saying I hope that this new Act will further add to the discussion of self-determination and self-governance of Native Americans.

Thank you, sir.

Senator INOUYE. I thank you very much.

This bill may have an impact upon every tribe in this Nation. Are there any exceptions that might be anticipated? Are your problems the same as the problems of the Northwest or the Southeast?

Mr. ZORN. If I may, Mr. Chairman.

Senator INOUYE. Sure.

Mr. ZORN. The tribes' situation with natural resource management and natural resource management activities are very similar, but each tribe has its own bundle of rights, responsibilities and

sovereign prerogatives. As we know, a tribe retains that authority which they have not voluntarily relinquished, or Congress in the exercise of its plenary power has not taken away. Each treaty needs to be looked at in its own particular circumstance, own particular terms, own particular historical examination of what that treaty was intended to mean and what it actually does mean.

So in that sense, there certainly are individual tribal needs that may be different from tribe to tribe. There certainly are different regional needs. I do think that that is one thing that we must pay attention to in this bill, that as you try to paint with as broad a stroke as possible to handle some of these very similar problems, that you make sure that no tribe's individual sovereign prerogatives are left out of the picture here in some way. I think some care is going to have to be given to that.

Mr. NEW BREAST. Mr. Chairman, just as we often see that good science provides the answer to many difficult questions, just as I mentioned earlier, the topic of fundamental fish and wildlife conservation management being the theme to direct that, despite the differences, if you will, inherent differences of tribes in regard to what their cultural situation is, their relationship to the resident habitat and the resources, that general theme will provide the guidance, the beacon that needs to come through and reach the needs of the tribes.

Senator INOUYE. I thank you, gentleman, very much for your contributions. May I assure everyone here that all of your prepared statements will be made part of the record.

And before I forget, the record will be kept open until May 31, so if you wish to make addendums or corrections, please feel free to do so.

Our final panel consists of the first chief of Stevens, Stevens Village, AK, Randy Mayo, accompanied by the Natural Resource and Environmental Program director of Stevens Village, Dewey Schwalenberg; and the director of the Business and Sustainable Development Central Council Tlingit and Haida Tribes of Alaska, Juneau, AK, Gordon Jackson; and the president of the Inter-Tribal Bison Cooperative, Rapid City, SD, Ervin Carlson, accompanied by the Inter-Tribal Bison Cooperative of Rapid City, Fred Dubray.

Mr. Mayo.

STATEMENT OF RANDY MAYO, FIRST CHIEF OF STEVENS VILLAGE, AK, ACCOMPANIED BY DEWEY SCHWALENBERG, NATURAL RESOURCE/ENVIRONMENTAL PROGRAM DIRECTOR

Mr. MAYO. Thank you, Chairman Inouye, members of the committee, honored guests, for this opportunity to testify before you here in the oversight hearing on S. 2301, a discussion draft bill that would improve the management of Native American fish and wildlife and gathering, and for other purposes.

I am honored by this invitation to present oral testimony to the committee. Our written testimony has already been submitted by our tribal natural resource director, Dewey Schwalenberg, seated here to my left.

I speak today in support of this bill and on behalf of my 215 tribal members, and for the other community residents of Stevens Vil-

lage, who would stand to benefit from the resource management and protection that this bill will provide to my community.

Stevens Village is located 90 air miles north of Fairbanks on the north bank of the Yukon River. There are 30 households in the village and 90 residents. Most are tribal members and shareholders in the Dinyee Native Village Corporation. I am the vice president of the Dinyee Corporation. The remainder of the tribal members reside in Fairbanks or other communities because they need to have work, which is difficult to find in the village.

Many of our members would like to live in the village and most do use fish and wildlife and forestry resources from our traditional lands during certain seasons of the year. There are no roads to Stevens Village. Transportation is by small plane, by boat up the Yukon River from the Yukon River Bridge on the Dalton Highway, 27 miles downstream from the village, or by snow machine or dog sled to the bridge in the winter. Barges come up the river twice a year to deliver fuel and construction materials. Air freight for personal goods to the village is 45 cents per pound. None of the houses have sewer and water, but we do have treated water and sewer to the school and water plant.

The school has 13 students from preschool to 12th grade. The Council is the largest employer in the village and we have seven full-time workers and 12 to 15 seasonal workers. The tribal lands and natural resources program employs most of our workers for fisheries, wildlife, forestry and environmental projects. Without the resource program, the community would have little employment. Funding for these programs has been challenging to maintain. Periodic grants have kept the program going for the past six years, but permanent funding is necessary soon or we will lose this portion of our economy.

Our people are very much dependent upon the salmon that comes up-river in the summer and on moose that live around the village. The moose population is at a very low level and we have taken steps to begin raising buffalo to supplement our meat supply.

To provide the technical comments on this bill, I will ask Mr. Schwalenberg to use the rest of our time to highlight our technical testimony.

Thank you.

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

Senator INOUYE. Mr. Schwalenberg.

Mr. SCHWALENBERG. Thank you, Chief Mayo, and thank you, Mr. Chairman.

Our written testimony will explain what type of programs that the tribe up in the Yukon River area actually undertakes. What I would like to talk a little about this morning is the genesis of where the tribal authority for managing resources comes from in Alaska.

As you know, in the bill there is a title III section on Alaska Native Fish and Wildlife Programs, and I think a lot of people do not understand that each tribe in Alaska does have a constitution. The tribal government in Stevens Village's constitution was passed in 1939 and approved by the Secretary of Interior, and it was amended in 1990. Under the provisions of the constitution, we see that one of the critical responsibilities of tribal government is manage-

ment of natural resources for and on behalf of the benefit of its people. So that is where the tribe assumes is authority to manage resources.

Stevens Village is also a government in the town site and the only government, only municipal government, and therefore has responsibilities of managing resources and the well-being of its people in pretty much about 3,000 acres of land.

So what type of management program the Stevens Village Council has put together has been one of managing the moose populations, wildlife, fisheries, environmental testing of its waters and its resources, and above all putting together employment opportunities for its people.

So we serve as program director and managers to train local people in how to conduct research technician activities, how to collect traditional harvest data. We work cooperatively with the State of Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service refuge program. We work cooperatively on aerial moose surveys. We did a northern pike radiotelemetry project for about 6 years that indicated there was negative impact on large quality fish populations, which in turn led to the State of Alaska Board of Fish making some regulatory changes that benefitted the tribes, its members and also the State residents.

We do the same thing with the Subsistence Board for moose hunting regulations and the bear hunting regulations that the tribal government determined were necessary through our research, were taken to the Board of Subsistence. The Board of Subsistence passed those regulations.

So the tribes in Alaska are not attempting to develop a brand new system. They are using the existing system out there that protects the resources. What we are asking for in this bill is the fact that the Federal Government recognize the contribution that the tribal governments are making and recognize the struggle that these tribal governments in Alaska are making, and hopefully we will be able to find some permanent funding so that these programs would be able to become more institutionalized in a cooperative manner with State and Federal.

But in conclusion, what I would like to do is just tell you one quick anecdote an elder in the village told me when I questioned when I first showed up there 12 years ago. I questioned the management, whether people knew professional management, et cetera. I really did not know. I was naive. So one of the elders told me about an experience. He was up one of the tributary rivers in the late fall. The water levels had receded and there was a beaver dam with a beaver pool. He said, behind the beaver pool all the whitefish and the pike were trapped in that beaver pool. I said, well, what did you do? And he said, well, I opened it up so that they could get out.

So people historically have known how to manage their resources. He opened that beaver dam up so those whitefish could get back to the main stem of the Yukon River and survive the winter, because back in the shallow waters of a beaver pond they are going to freeze to death over winter.

It is just one of these anecdotes after another that indicate to me that tribes and the Native people of Alaska have always partici-

pated in resource management. It was a traditional sense of management, and that is what we have done in our program. We have incorporated those traditional values and management practices into our scientific programs, and that is why we feel they are so successful.

So we are very supportive of this bill. One technical question I brought up in S. 2105 is the term "Alaska Native fish and wildlife organizations." I noticed in our attempt to bring this bill before you, we have put Alaska Native Claims Settlement Act and we have put the Indian Self-Determination Act provisions together in the title III Alaskan section, so that all of those provisions together make this portion of the Act. I did notice one thing in section five where it says, the term "Alaska Native fish and wildlife organization means commission authority or other entity chartered for the primary purpose." We believe strongly in the Indian self-determination that that should read, "authority or other entity chartered by one or more tribes for the primary purpose."

If we do not keep the tribes involved in this explicitly, we are going to find out that the tribes will end up as normal not receiving any of the benefits of this act. The tribes can cooperate with their village corporations and regional corporations to conduct management activities, but we would like to see that tribal language in this bill.

Thank you very much.

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

Senator INOUYE. I thank you, sir.

Mr. Jackson.

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

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

My name is Gordon Jackson. I am the director of business and Sustainable Development for the Central Council of Tlingit and Haida Indians of Alaska, with 24,000 members located throughout the Pacific Northwest.

I also provide staff support to the Southeast Alaska Inter-Tribal Fish and Wildlife Commission. I am also the Chairman of the Board of Kake Travel Corporation.

We have provided written testimony and rather than read it, I am just going to provide some information in supplement for the record. I think that a lot of folks that talked about the bill, I really appreciate the opportunity to be part of this. I have been in Portland and have spoken to various members of the group behind me by e-mail or by teleconference. I think that the bill has come a long ways. It is getting better every time a draft is developed. I think that by the time it gets through the whole process, I think it is going to be a very good piece of legislation.

As the director of business and sustainable development in southeast Alaska, I find that job relatively tough. Over the last several years, we have developed economic summits in several communities in southeast Alaska from Prince of Wales Island to Angoon and Hoonah. We find a number of things relating to the needs of the communities almost the same. Some of the items that have

been developed over the last several years is that we find that the logging economy is getting smaller and smaller. As the Native corporations complete the harvesting of their land, we have lost thousands of jobs in village Alaska. That is in contrast to the big boom of the 1990's. Hundreds of people are out of work in the communities relating to logging.

In addition to the downturn of the logging economy, there is a huge downturn in the fishing industry that continues in villages today with the loss of processors and markets, primarily due to the influx of farmed salmon throughout the world. Farmed salmon has taken over the market for wild salmon, and I think it has been devastating throughout the Pacific Northwest.

There has been little penetration of tourism in rural communities in southeast Alaska, although there is going to be almost 900,000 off-loaded in Juneau, relatively little of them trickle in to the smaller communities of southeast Alaska. I think that the prospects of getting any kind of those jobs are really small.

So the unemployment rate in smaller village Alaska is very high. The prospects for any kinds of huge economic development activity is very small.

Because of the decline in the fishing community and the commercial fishing in our communities, and the need to address subsistence consistently in southeast Alaska, we in the Central Council developed a southeast Alaska Inter-Tribal Fish and Wildlife Commission. We wanted to address subsistence and commercial fishing. We patterned our organizational structure based on the Columbia River Inter-Tribal Fish Commission and Northwest Indian Fish Commission. All of our members joined this Commission by resolution, and have made this organization very strong and have upheld our responsibilities to address these many things.

We have done a number of things over the last couple of years since the organization was organized. We have worked cooperatively with many organizations, including the Migratory Bird Council. Several years ago, the Migratory Bird Treaty organized a cooperative body that is composed of all of the regional village and regional tribal organizations, and the state and Federal Government. You have a great big cooperative body that figures out the seasons for taking of migratory birds up and down the Pacific Northwest and Alaska.

We have addressed through cooperative associations the Marine Mammal Act, where members of the body of the association in Alaska addresses marine mammals up and down the coast of Alaska. We have been monitoring the Pacific Salmon Treaty. Lots of our fish originate from the Great Columbia River Basin. Earlier today you heard folks talking about spill over the Columbia River. That affects the fish for the tribes in Oregon and Washington. It also affects the return of the Chinook salmon in southeast Alaska, which come in great numbers and used to come in millions of numbers throughout the coast of southeast Alaska. Whatever happens on the Columbia River negatively also negatively affects the people in southeast Alaska.

We have worked to develop a plan to work cooperatively with the State of Alaska. We have been monitoring the cruise ships that go through southeast Alaska that have been known to dump gray

water throughout the interior surfaces of southeast Alaska that affect not only the wild salmon, but our subsistence way of life, so we are monitoring that very carefully.

Addressing commercial fishing has been relatively rough. I grew up in that industry. In my short lifetime, I witnessed huge problems in the downfall of this industry. When I was young, that industry was the number one employer in southeast Alaska. Today, that is struggling. Last year, I provided on June 3 some really depressing figures relating to the downfall of that industry in southeast Alaska. The limited entry permit system came into existence in the 1970's. That provided the right for many of the people to fish in southeast Alaska. In the 1970's, the community of Kake received 29 limited entry permits. They have eight active permits now. The community of Angoon received 27 active permits. They now have one active permit. The community of Hoonah had 53 limited entry permits. They now have four active permits.

There are few processors available in the villages, and this will not get any better this year, with two more processors announcing the fact that they are going to be leaving southeast Alaska. This is due to a whole bunch of things relating to the market in wild salmon. Like I said earlier, the inundation of farmed salmon throughout the world has had a devastating impact on the marketing of wild salmon in Alaska.

Another thing that has been really affecting the fishing community in southeast Alaska is the loss of halibut IFQs. One huge example of this loss is that in the community of Kake, the National Marine Fisheries Service told us last week when we were working on a piece of legislation in the State legislature that the community of Kake started out with 300,000 pounds of halibut IFQ, with the IFQ ability to sell those IFQs that came along with the rule and regulation, they now have only 100,000 pounds. It basically means 200,000 pounds of halibut has been lost through the sale of the individual fishing quota for halibut.

Now, the National Marine Fisheries Service through the North Pacific Fisheries Management Council has adopted a rule and regulation that allows communities to buy as a first right any halibut or black cod quota that leaves the community. We have been working on ways to implement that and have worked on loans relating to it because we feel very strongly about the local control of fisheries. I think that that will do a heck of a lot to keep the halibut quota within the community.

I think that, in looking at a lot of the provision of S. 2301, I think that a lot of it will address many of the items relating to what is needed in the Pacific Northwest, for instance, marketing of Alaska and Pacific Northwest wild salmon.

The markets have been in a dump the last 5 to 10 years. The loss of that market to farmed salmon is a direct result of a number of things, including not only marketing, but also different value-added products and other things like keeping the fish cold and making sure that the quality is good. But that provision, I think, is great. I think that anything that relates to marketing of salmon is good. The more markets we open up domestically on a national level and international level I think is pretty good.

S. 2301 is a good step toward self-sufficiency and self-determination. Mr. Chairman, I thank you very much for giving me the opportunity to comment on this. I think as we go through the process it will be much improved. We look forward to its implementation and enactment.

Thank you very much.

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

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

And now may I call on President Carlson.

STATEMENT OF ERVIN CARLSON, PRESIDENT, INTER-TRIBAL BISON COOPERATIVE, ACCOMPANIED BY FRED DUBRAY, INTER-TRIBAL BISON COOPERATIVE, RAPID CITY, SD

Mr. CARLSON. Good morning, Honorable Senator. I thank you for allowing me here to speak and present this morning.

For the record, my name is Ervin Carlson. I am the president of the Inter-Tribal Bison Cooperative, a nonprofit organization. We are comprised of 53 federally recognized tribes across 18 States. I am honored to present this testimony on behalf of the ITBC members in support of passage of S. 2301.

The ITBC commends the committee's efforts to finally acknowledge and reaffirm the special relationship that exists between Native Americans and the fish and wildlife of this country.

Native Americans have long believed they exist as co-owners of this Earth, with fish and wildlife. S. 2301 provides Native Americans an opportunity to develop the capacity and access to resources to protect, preserve and enhance fish and wildlife resources, including buffalo. While ITBC strongly supports and endorses S. 2301 as it applies to all fish and wildlife resources, my following remarks are specific to buffalo as ITBC's primary objective is to assist tribes with restoring and enhancing buffalo on Indian lands.

Historians estimate that approximately 30 million to 80 million buffalo thrived on the Great Plains of the United States for many centuries, before they were hunted by the non-Indian to near-extinction in the 1800's. Native Americans of the Great Plains thrived on the abundant buffalo prior to being relocated and restricted to Indian reservations.

For many generations, buffalo ensured the survival of Native Americans of the Great Plains. Naturally, this coexistence of Native Americans and buffalo on the Great Plains resulted in the longstanding spiritual and cultural connection between Native Americans and buffalo.

Buffalo provided Native Americans with food, shelter, clothing and essential tools, and ensured the continuance of their subsistence way of life, resulting in a self-sufficient existence that was devastated along with the destruction of the buffalo herds.

The lifestyle of the tribes dominated by interaction with the natural world was profoundly impacted by the needless loss of the buffalo that most tribes still consider to be a holocaust. While Native Americans of the Great Plains have been forced away from their customary subsistence lifestyle, their profound respect for buffalo remains. Buffalo remains an integral part and component of the cultural and religious beliefs and ceremonies of Native Americans.

The passage of time has not diminished the spiritual and cultural connection that we Native Americans have with buffalo, and a strong desire exists among Native Americans to repopulate Indian lands with healthy buffalo. In 1992, seven tribes committed to this, to preserving the sacred relationship between buffalo and Native Americans, and established the ITBC as an effort to restore buffalo to Indian lands.

ITBC focused its restoration efforts on reservation lands that often did not sustain other economic or agricultural efforts. Lands that were unproductive for farming or raising livestock were and still are suitable for buffalo. ITBC began actively restoring buffalo to Indian lands upon the receipt of limited grant funding from the Department of the Interior.

The organization began with seven founding tribes and approximately 1,500 animals. Today, 53 tribes have joined ITBC and 35 of those tribes have various sizes of herds, with approximately now 15,000 animals. However, the restoration efforts remain in the infancy stages as the buffalo herds have not yet developed to a degree to overcome the loss to the tribal cultures as many herds are comprised of very few animals and many herds remain vulnerable to limited resources for proper management.

Many ITBC member tribes desire to raise buffalo only as a spiritual and cultural effort. These tribes wish to cultivate their religious and spiritual connections to the buffalo and are not interested in commercial marketing of the buffalo for economic development efforts. However, some of these tribes are interested in the harvest of buffalo only for the purpose of feeding tribal members. Therefore, while ITBC's restoration efforts remain paramount, numerous ITBC member tribes that have maintained viable buffalo herds are now interested in developing the means to provide buffalo to Native American populations as a healthy food source.

Native Americans currently suffer from the highest rates of type 2 diabetes and they also suffer at extreme rates from cardiovascular and various other diet-related diseases. Studies indicate that type 2 diabetes commonly emerges when a population undergoes radical diet changes. Native Americans have been forced to abandon traditional diets rich in wild game, buffalo and plants. Based on current data, it is safe to assume that disease rates of Native Americans are directly impacted by a genetic inability to effectively metabolize modern foods. Range-fed buffalo meat is low in fat and cholesterol and is compatible to the genetics of Indian people. ITBC strives to develop an educational initiative to reintroduce buffalo into the diets of Native Americans to combat the high rates of diet-related diseases.

With that history as to the buffalo there, I would also like to talk about our support for S. 2301. ITBC supports the passage of Federal legislation that acknowledges the significant relationship between Native Americans and the fish and wildlife resources located on Indian lands. Native Americans coexisted with fish and wildlife in this country for many centuries. The rights of tribes to continue with hunting, fishing and gathering wildlife resources has been recognized and guaranteed in Indian treaties between tribes and the United States.

S. 2301 will acknowledge the inherent sovereign authority of tribes to manage fish and wildlife resources within their respective jurisdictions, and provide tribes with the means to develop and achieve meaningful management objectives. Legislation specifically authorizing tribes to manage fish and wildlife resources is consistent with the promotion of tribal self-determination.

Additionally, ITBC believes S. 2301 will foster the sound management of tribal fish and wildlife resources, that in turn will have a positive effect on tribal economies. S. 2301 solidifies the trust duty of the United States to ensure proper management of tribal fish and wildlife resources.

S. 2301 will provide critical funding to allow Native American tribes to investigate and inventory fish and wildlife resources, and then to develop the capacity to effectively manage those resources. Upon proper identification of resources, tribes will be empowered to address the protection, conservation and enhancement of fish and wildlife. Presently, many tribes have not developed regulatory schemes for their fish and wildlife resources such as buffalo, and do not have the trained personnel to best protect these resources. S. 2301 will allow tribes to develop effective management plans that will maximize the production of fish and wildlife, including buffalo, to better meet tribal subsistence, ceremony, recreational and commercial needs.

Additionally, S. 2301 will create employment opportunities for tribal members in wildlife management positions. S. 2301 also establishes a framework for the long-range goal of some ITBC member tribes to commercially market buffalo meat through the authority, to develop certification standards, and marketing initiatives. ITBC member tribes have been frustrated with the inability to coordinate with the Secretary of Agriculture to furnish tribally produced, range- fed buffalo to the food distribution program for Indian reservations. S. 2301 would allow ITBC member tribes to develop an alternative, tribally controlled program to distribute natural range-fed buffalo to Native American populations.

Additionally, S. 2301 requires the Secretary of Agriculture to consult with tribes to allow tribes meaningful participation in USDA programs and to improve the diet-related health conditions of Indian people.

Finally, S. 2301 would allow ITBC and its member tribes the resources to offer meaningful alternatives to the needless killing of Yellowstone-area buffalo.

In conclusion, the passage of S. 2301 will ensure that the critical efforts of ITBC to restore buffalo to Indian lands will continue. Currently, ITBC has been funded only by yearly grants with no assurance of continuous funding. Although ITBC has made significant and admirable progress to restore buffalo to Indian lands, the herds remain in stages of infancy. Consistent and adequate funding is critical to continue with the restoration efforts.

S. 2301 will allow tribes to achieve the goal of providing healthy range-fed buffalo to American Indian populations to combat diet-related diseases. Most importantly, S. 2301 will allow tribes to restore and manage buffalo herds on their tribal lands in a manner that is compatible with the economic goals and the spiritual and cultural beliefs of the tribes.

ITBC believes that this legislative effort is long overdue and strongly urges its passage. And also we would urge to incorporate some appropriate language in there to ensure that the buffalo are protected and managed in a manner compatible to the tribal interests.

Thank you.

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

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

Chief Mayo, I have listened to your testimony very carefully. You speak of your village being landlocked during the wintertime. There is no highway connecting you to the rest of Alaska. There is no air base and a barge goes up there twice a year, and they charge you 45 cents a pound, and your unemployment is high. How many people live in Stevens Village?

Mr. MAYO. Probably about 90 to 100, give or take the 10 people that go back and forth or so.

Senator INOUYE. So the population of your community is 90 people?

Mr. MAYO. Just in our community, but we have a great many tribal members living all over, Fairbanks, Anchorage, down in the Lower 48, that because of economic and educational opportunities have had to move.

Senator INOUYE. And you believe that this measure will address your conditions?

Mr. MAYO. I believe it would really help in rebuilding our community through the different aspects that this bill would do. Even though we sound very remote and a very small community, with the coming of the oil pipeline and road, that caused a great impact by people coming in to our area and competing for a very limited subsistence resource.

In the first place, we have to develop a resource program there, and also this would really help us, and the educational and training aspects of providing employment, but also get our elders involved to start training and give insight to our younger tribal members in the cultural and spiritual aspects in our relationship with the land and animals around us.

It would really give them some identity and a foundation to get out there in the world and seek higher education to start learning the western biological aspects of resource management. And also, in the ways of some of the marketing of seafood and bison section of it, that eventually we have to start becoming self-sufficient. We see that down the road this would provide culturally relevant economic development opportunities for us.

I also serve as the Chairman of the Council of Athabascan Tribal Governments, a 10-member inter-tribal consortium. In fact, I recognize two tribal members that have gone out and have come back to the communities and are offering some of their educational training to the efforts of looking after our natural resources and lands surrounding our communities. If I could recognize Craig Fleener and Ben Stevens here, if they are still here. They had to leave to another meeting.

We also have a lot of our younger high school kids that are very interested. They want to stay at home, but the opportunities are very limited. We are entering a new economy now, and that being

a more and more cash-based economy. For years, like I mentioned, we have to develop a program because of the impacts coming off of this oil pipeline road. Even in the wintertime, a lot of recreationists and just competition for a limited resource already that a lot of our people do want to move back.

I myself, my family had to move for economic and educational reasons, and after being out in the world quite a few years, I found my way back home and I am now raising my family in our ancestral homeland. We had cobbled our resource program together with an unsteady funding base for quite a few years now, with the help of our Director who is also trained, and other younger tribal members, we jus get by on whatever we can raise to ensure that we look out for these resources in the most traditional manner in contemporary times as possible, and reaffirm our relationship with these animals through our tribal governance.

We have been for many years working as cooperative managers with the Fish and Wildlife Service. We are located in the Yukon Flats National Wildlife Refuge, so we work as cooperative managers with these folks, and also with the state Department of Fish and Game, and as Dewey here had mentioned, that we work within the existing system up there to affect regulation and change based on the collection of scientific data. In this way, we try to insert a lot of our traditional knowledge and science, just our understanding of the resources and lands around us, through our program here.

So I see this would really help us out in the long run.

Senator INOUYE. I thank you very much, Chief.

Mr. Schwalenberg, what role do Alaska Natives have at this moment in developing regulatory programs to manage fish and wildlife programs? Do they have any role?

Mr. SCHWALENBERG. Currently, the role of Alaska Natives in the management regime is an advisory role to the existing Game Board of Fish through an advisory council or through the subsistence board through rural advisory councils. Native people also form comanagement entities with Federal agencies such as the Whaling Commission or the Sea Harbor Commission, the Sea Otter Commission, where the agencies work directly with Native subsistence users to form these working groups. And then the management that is developed through those groups is implemented by the state and Federal agencies.

The tribes themselves have no position on any of these commissions or entities. Tribal governments do not have a seat at the table, but Native people do. So the regime is pretty much involved Native people, but has ignored the tribal governments and their specific governing role.

Senator INOUYE. But tribal people have what role? Advisory only?

Mr. SCHWALENBERG. Yes; everybody is in an advisory capacity within the existing regime.

Senator INOUYE. Would this change the situation, this bill?

Mr. SCHWALENBERG. We do not believe that it is going to change that situation because the tribes are not intending to exercise any authority over the State or Federal management of resources. The tribes are intending to manage resources for the benefit of their

people and they will do it in a cooperative manner because, as an example, the corporation lands, Stevens Village has a land-use plan and has a land-use agreement with its village corporation. The village corporation has 136,000 acres around the village, and the tribe serves as the managing entity that manages the resources within those corporation lands. The Doyan Regional Corporation throughout the Yukon Flats has about 2.4 million acres of lands, and we work cooperatively with them.

So the bill does not recognize any authority that the tribal governments do not currently have, nor does it diminish any of the authority that the tribal government has because of its sovereignty and its constitutional provisions. So the Government recognizes that the lands that it has authority on, and where it does not have legal authority, it develops cooperative management agreements and then participates in the management.

Senator INOUYE. Thank you very much.

Mr. Jackson, you spoke of your high unemployment rates and that fish and wildlife, fishing especially, may be the only source of food and employment you have. What has been your experience with co-management agreements regarding the management of fish and wildlife?

Mr. JACKSON. Our experience has been very positive. At the table, for instance, at the Migratory Bird Treaty, the state and Federal Government work with tribal governments in the development of a plan relating to migratory birds in Alaska. And we developed rules and regulations relating to it. We worked all these policies out amongst one another. I think it works very good in the case, along with marine mammals.

In many cases, many communities initiate these kind of things. For instance, last year I could tell you about Kanalku Creek on Admiralty Island in Southeast Alaska, the runs of red salmon, sockeye salmon were going low. They decided at the local level that they would not take any of those sockeye salmon until the runs came back. With the state and Federal Government, they developed a plan, initiated by local folks that would do that. Everybody has basically watched that creek and managed it together.

So I think in my experience in Alaska, it has been real positive if everybody understands their role. I know there has been a lot of debate relating to that. It only breaks down when one party does not understand their duties and responsibilities. As long as everybody understands their role, I think it works fairly decently and you are able to work out the kinks.

Senator INOUYE. Do you believe that this legislation would encourage the continuation of such co-management agreements?

Mr. JACKSON. I think it would. There is adequate provision in the legislation that allows for cooperative agreements among everyone.

Senator INOUYE. Thank you.

Mr. Carlson, you spoke of your buffalo herd increasing from 1,500 to 15,000, and you mentioned that you were receiving a grant per year. How much do you receive?

Mr. CARLSON. Our funding is through the Department of the Interior. In the past year, we received $2.2 million, but this is funding that is just yearly funding and subject to change at any time or not be there. That is a real problem to ITBC.

Senator INOUYE. So you received $2.6 million last year?

Mr. CARLSON. $2.2 million.

Senator INOUYE. $2.2 million. What would you need to increase your herd further?

Mr. CARLSON. We have 53 member tribes as of now, and just to speak on the money that we need, the $2.2 million sounds like maybe a lot of money, but in fact when it is distributed out between the needs of the 53 tribes, it does not cover that. I believe a two percent increase would help the tribes to get the herds to a sustainable amount.

Senator INOUYE. In order to implement the provisions of this measure, obviously it would necessitate funds. I would like to receive from all of the witnesses today some indication of what level of funding would be necessary to reasonably put this bill into effect. We would like to know what we are talking about as to what the level of funding may look like. I am certain my colleagues would like to know.

Yes, sir?

Mr. CARLSON. As to ITBC and to the restoration efforts, I would like to answer the question that was asked a little earlier about the funding, and also to this which you are asking now. With ITBC, we take the proposals from those 53 tribes, and they put down their needs of funding that they need. Currently, that need would be $20 million. So the $2.2 million is far below the $20 million that is needed.

Senator INOUYE. With that, I would like to thank all of you for your testimony today. It has been extremely helpful. As I indicated earlier, the record will be kept open until May 31. If you have any addendums or corrections to make, please submit them to the committee.

With that the hearing is adjourned.

[Whereupon, at 12:08 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Thank you, Mr. Chairman. I would like to thank our witnesses for testifying today on the Native American Fish and Wildlife Resources Management Act of 2004. I hope today's hearing will further add to the discussion of self-determination and self-governance.

Effective development and poverty alleviation often hinges on improved tribal control. Empowering tribes with culturally appropriate means to enhance and maximize tribal capability and capacity in managing fish and wildlife resources is in the interest of all Americans. I am committed to supporting the economic development of Native communities through such economic opportunities as natural resource development and the conservation and management of fish and wildlife resources.

Tribes have a close relationship with fish and wildlife that goes much further than the Federal stewardship. Indian people must live with- the consequences of their action or inaction. This intimacy has built strong cultural and traditional ties to fish and wildlife that have existed for thousands of years. Thus, tribes are much better able to manage their resources.

This legislation is an excellent step toward decentralization of Federal control to tribal management. The National Indian Forests Resource Management Act [NIFRMA] of 1990 is an excellent precedent to the benefits of such decentralization. Tribes today manage their own forests at such an innovative and sustainable level that many are entering into stewardship agreements to help manage our national forests with the U.S. Forest Service.

Tribes have only been able to develop such expertise in managing their resources with the help of such pioneering legislation as NIFRMA. Today's hearing will provide insight into Native American Fish and Wildlife Resource Management Act of 2004 as another excellent piece of legislation toward self-determination and economic opportunity for Native Americans.

Mr. Chairman, thank you for holding this hearing and I most interested in today's testimonies. I look forward to working with tribal leaders, administrators, and other stakeholders in achieving a better management of Native American fish and wildlife resources. Thank you.

PREPARED STATEMENT OF ERVIN CARLSON, PRESIDENT INTERTRIBAL BISON COOPERATIVE

Good Morning, Honorable members of the Senate Committee on Indian Affairs. My name is Ervin Carlson and I am the president of the InterTribal Bison Cooperative [ITBC], a nonprofit organization comprised of 53 federally recognized tribes across 18 States of the United States. I am honored to present this testimony on behalf of the ITBC member tribes in support of passage of S. 2301. ITBC commends this committee's efforts to finally acknowledge and reaffirm the special relationship that exists between Native Americans and the fish and wildlife of this country. Na-

tive Americans have long believed they exist as co-owners of this earth with fish and wildlife. S. 2301 provides Native Americans an opportunity to develop the capacity and access the resources to protect, preserve and enhance fish and wildlife resources including buffalo. While ITBC strongly supports and endorses S. 2301, as it applies to all fish and wildlife resources, my following remarks are specific to buffalo as ITBC's primary objective is to assist tribes with restoring and enhancing buffalo on Indian lands.

Historians estimate that approximately 30 to 80 million Buffalo thrived on the great plains of the United States for many centuries before they were hunted by the non-Indian to near extinction in the 1800's. Native Americans of the Great Plains thrived on the abundant buffalo prior to being relocated and restricted to Indian reservations. For many generations, buffalo insured the survival of Native Americans of the Great Plains. Naturally, this co-existence of Native Americans and buffalo on the Great Plains resulted in the longstanding spiritual and cultural connection between Native Americans and buffalo. Buffalo provided Native Americans with food, shelter, clothing and essential tools and insured the continuance of their subsistence way of life resulting in a self sufficient existence that was devastated along with the destruction of the buffalo herds. The lifestyle of the Tribes, dominated by interaction with the natural world, was profoundly impacted by the needless loss of the buffalo that most Tribes still consider to be a holocaust.

While Native Americans of the Great Plains have been forced away from their customary subsistence lifestyle, their profound respect for buffalo remains. Buffalo remain an integral component of the cultural and religious beliefs and ceremonies of Native Americans.

1 The passage of time has not diminished the spiritual and cultural connection between Native Americans and buffalo and a strong desire exists among Native Americans to repopulate Indian lands with healthy buffalo.

In 1992, seven tribes, committed to preserving the sacred relationship between buffalo and Native Americans established the ITBC as an effort to restore buffalo to Indian lands. ITBC focused its restoration efforts on reservation lands that often did not sustain other economic or agricultural efforts. Lands that were unproductive for farming or raising livestock were and still are suitable for buffalo. ITBC began actively restoring buffalo to Indian lands upon the receipt of limited grant funding from the Department of the Interior. The organization began with the 7 founding tribes and approximately 1,500 animals. Today, 53 tribes have joined ITBC, 35 of them have buffalo herds of various sizes with a total of approximately 15,000 animals. However, the restoration efforts remain in infancy stages, as the buffalo herds have not yet developed to a degree to overcome the loss to the tribal cultures, as many herds are comprised of very few animals and many herds remain vulnerable due to limited resources for proper management.

ITBC's primary focus remains on the restoration of buffalo to those Indian reservation lands that can sustain them to reestablish the sacred relationship between tribes and buffalo. Although ITBC has been successful in its 10 years of existence with restoring buffalo in limited numbers to some Indian lands, many other tribes desire the means to establish sound buffalo herds, but lack the resources to fulfill that desire.

Many ITBC member tribes desire to raise buffalo only as a spiritual and cultural effort. These tribes wish to cultivate their religious and spiritual connections to the buffalo and are not interested in commercial marketing of the buffalo for economic development efforts. However, some of these tribes are interested in the harvest of buffalo only for the purpose of feeding tribal members. Therefore, while ITBC's restoration efforts remain paramount, numerous ITBC member tribes that have maintained viable buffalo herds are now interested in developing the means to provide buffalo to Native American populations as a healthy food source.

Native Americans currently suffer from the highest rates of Type 2 diabetes and they also suffer at extreme rates from cardio vascular and various other diet-related diseases. Studies indicate that Type 2 diabetes commonly emerges when a population undergoes radical diet changes. Native Americans have been forced to abandon traditional diets rich in wild game, buffalo, and plants. Based on current data, it is safe to assume that disease rates of Native Americans are directly impacted by a genetic inability to effectively metabolize modern foods. Range fed buffalo meat is low in fat and cholesterol and is compatible to the genetics of Indian people. ITBC strives to develop an educational initiative to reintroduce buffalo into the diets of Native Americans to combat the high rates of diet-related diseases.

Additionally, ITBC strives to develop processes to facilitate providing tribally raised range-fed buffalo to Native Americans dependent on Federal food distribution programs. Currently, buffalo meat provided to Native Americans living on Indian reservations is often not natural range fed buffalo but grain-fed buffalo raised by

non-Indians. Grain feeding buffalo compromises the health benefits of the buffalo food products. Without adequate funding, ITBC cannot insure that Native American populations are provided range fed buffalo produced by Native American tribes.

In addition to buffalo restoration and providing range-fed buffalo to Native American populations as a healthy food source, some ITBC member tribes are interested in utilizing buffalo for tribal economic development efforts. Thus, ITBC has now undertaken efforts to, insure that ITBC member tribes have opportunities to develop economically sustainable buffalo herds through the development of marketing initiatives. The current sizes of Tribal buffalo herds limit achieving economic sustainability of the herds and of the buffalo projects providing tribes with economic benefit. However, with adequate funding to develop sustainable herds, commercial marketing of buffalo remains an important goal for many ITBC member tribes.

Since its inception in 1992, ITBC has participated in the longstanding debates of the Greater Yellowstone Inter-Agency Brucellosis Committee [GYIBC], an organization established to address the risk of Yellowstone National Park buffalo transmitting brucellosis to livestock. Yellowstone National Park buffalo possess pure bison bison genus genetics, unlike other North American strains that indicate cross-breeding with cattle. ITBC desires to transfer excess Yellowstone buffalo to tribal lands as part of ITBC's restoration efforts. However, Yellowstone buffalo have been determined to be at risk of brucellosis and the current policy of the GYIBC has been to kill buffalo that wander out of the Yellowstone Park for feeding purposes.

ITBC has recently obtained a non-voting seat on the GYIBC with the intention of supporting alternatives to address the Yellowstone buffalo brucellosis concern including the development of more effective vaccinations and quarantine facilities for testing and treatment. ITBC remains hopeful that Yellowstone buffalo, upon successful treatment to diminish brucellosis concerns, may be transferred to tribal lands.

ITBC supports the passage of Federal legislation that acknowledges the significant relationship between Native Americans and the fish and wildlife resources located on Indian lands. Native Americans co-existed with fish and wildlife in this country for many centuries. The rights of tribes to continue with hunting, fishing, and gathering wildlife resources has been recognized and guaranteed in treaties between tribes and the United States. S. 2301 will acknowledge the inherent sovereign authority of tribes to manage fish and wildlife resources within their respective jurisdictions and provide tribes with the means to develop and achieve meaningful management objectives.

Legislation specifically authorizing tribes to manage fish and wildlife resources is consistent with the promotion of tribal self-determination. Additionally, ITBC believes S. 2301 will foster the sound management of tribal fish and wildlife resources that in turn will have a positive effect on tribal economies. S. 2301 solidifies the trust duty of the United States to insure proper management of tribal fish and wildlife resources.

S. 2301 will provide critical funding to allow Native American tribes to investigate and inventory fish and wildlife resources and then to develop the capacity to effectively manage those resources. Upon proper identification of resources, tribes will be empowered to address the protection, conservation and enhancement of fish and wildlife. Presently, many tribes have not developed regulatory schemes for their fish and wildlife resources, such as buffalo, and do not have the trained personnel to best protect these resources. S. 2301 will allow tribes to develop effective management plans that will maximize the production of fish and wildlife, including buffalo, to better—meet tribal subsistence, ceremonial, recreational and commercial needs. Additionally, S. 2301 will create employment opportunities for Tribal members in wildlife management positions.

S. 2301 also establishes a framework for the long-range goal of some ITBC member tribes to commercially market buffalo meat through the authority to develop certification standards and marketing initiatives. ITBC member tribes have been frustrated with the inability to coordinate with the Secretary of Agriculture to furnish tribally produced range-fed buffalo to the Food Distribution Program for Indian reservations. S. 2301 would allow ITBC member tribes to develop an alternative tribally controlled program to distribute natural range fed buffalo to Native American populations. Additionally, S. 2301 requires the Secretary of Agriculture to consult with tribes to allow tribes meaningful participation in USDA programs and improve the diet related health conditions of Indian people.

Finally, S. 2301 would allow ITBC and its member tribes the resources to offer meaningful alternatives to the needless killing of Yellowstone Area buffalo.

Passage of S. 2301 will insure that the critical efforts of ITBC to restore buffalo to Indian lands will continue. Currently, ITBC has been funded only by yearly grants with no assurance of continuous funding. Although ITBC has made signifi-

cant and admirable progress to restore buffalo to Indian lands, the herds remain in stages of infancy and consistent and adequate funding is critical to continue with restoration efforts. S. 2301 will allow Tribes to achieve the goal of providing healthy range-fed buffalo to American Indian populations to combat diet related diseases. Most importantly, S. 2301 will allow Tribes to restore and manage buffalo herds on their Tribal lands, in a manner that is compatible with the economic goals and the spiritual and cultural beliefs of the tribes.

ITBC believes this legislative effort is long overdue and strongly urges passage.

PREPARED STATEMENT OF RANDY MAYO, FIRST CHIEF, STEVENS VILLAGE IRA COUNCIL

Chairman Inouye, members of the committee honored guests, thank you for this opportunity to testify before you during the oversight hearing on S. 2301, a discussion draft bill that would improve the management of Native American fish and wildlife and gathering, and for other purposes. I am honored by this invitation to present oral testimony to the committee. Our written testimony has already been submitted by our tribal natural resource director, Dewey Schwalenberg seated here to my right. I speak today in support of the this bill in behalf of my 215 tribal members and for the other community residents of Stevens Village who stand to benefit from the resource management and protection that this bill will provide to my community. Stevens Village is located 90 air miles North of Fairbanks, AK on the North bank of the Yukon River. There are 30 households in the village and 90 residents. Most are Tribal members and share-holders in the Dinyee Native Village Corporation. I am the vice president of the Dinyee Corporation. The remainder of the tribal members reside in Fairbanks or other communities because they need to have work which is difficult to find in the village. Many of our members would like to live in the village and most do use fish, wildlife, and forestry resources from our traditional lands during certain seasons of the year. There are no roads to Stevens Village. Transportation is by small plane, by boat up the Yukon River from the Yukon River Bridge on the Dalton Highway 27 miles down stream from the village or by snow machine or dog sled to the Bridge in the winter. Barges come up the River twice a year to deliver fuel and construction materials.

Air freight for personal goods to the village is 45 cents per pound. None of the houses have sewer and water but we do have treated water and sewer to the school and water plant. The school has 13 students from pre-school to 12th grade. The Council is the largest employer in the village and we have 7 full-time workers and 12–15 seasonal workers. The tribal Lands and natural resource program employs most of our workers for fisheries, wildlife, forestry, and environmental projects. Without the resource program the community would have little employment. Funding for these programs have been challenging to maintain. Periodic grants have kept the program going for the past 6 years but permanent funding is necessary, soon or we will loose this portion of our economy. Our people are very much dependant upon the Salmon that comes up-river in the summer and on moose that live around the village. The moose population is at a very low level and we have taken steps to begin raising buffalo to supplement our meat supply.

To provide the technical comments on the bill I will ask Mr. Schwalenberg to use the rest of our time to highlight our technical testimony.

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

Mr. Chairman, Vice Chairman and distinguished committee members:

My name is Ira New Breast. I am the executive director of the Native American Fish and Wildlife Society and an enrolled member of the Blackfeet Tribe of Montana. I would like to respectfully thank you for the opportunity to present testimony to the Senate Committee on Indian Affairs on the development of the "Native American Fish and Wildlife Management Act of 2004." I am grateful that the discussion draft Bill has been presented to tribes, tribal organizations and others for comments and appreciate this committee's willingness to listen to and work with such entities to make this legislation the best that it can be.

The society is a national non-profit organization, established in 1982, whose mission is to assist Native American and Alaska Native Tribes with the conservation, protection and enhancement of their fish, wildlife, habitat and cultural resources. The Society strives to assist tribes in their development and implementation of sound laws, regulations, policies and practices that preserve and protect fish and wildlife resources, are consistent with and enhance cultural traditions and values

and improve the general welfare of Indian peoples through fish and wildlife related educational activities.

As a national organization the Society has a unique national perspective, all tribes have distinctive perspectives and interests with a variety of fish and wildlife resources, diverse habitats and signature approaches to management. Our organization is not a substitute for important government-to-government relationships with tribes, we do offer forums in which Federal agencies can initiate outreach to that end. The Society does not act in representation or proxy of individual tribes. The Society does have mechanisms to facilitate astute tribal deliberation to planning, development and operational efforts surrounding fish and wildlife in Indian country.

As an individual, I have 16 years experience working in the field managing fish and wildlife. For 12 of those years my work activities have included nearly all aspects of tribal fish and wildlife conservation management, they extend into administration, law enforcement, policy and regulatory development, fund raising, and local to national representation. My experience has led me to witness first-hand the in depth needs that exist and depend in order to support management by tribes for their fish and wildlife resource. From this grassroots perspective I recall the history of the proposed legislation and continue to hope for the original purpose and intent.

While development of the Native American Fish and Wildlife Resources Management Act is a strong statement of the Federal Government's commitment to Indian resources, tribes need the Federal Government to reinforce their management capabilities by and through a renewed and clarified commitment to tribal fish and wildlife resources, further defining the application of trust responsibility in the arena of Tribal fish and wildlife relationships. Funding cuts, reductions in programs and inequities or inconsistencies in budgeting and support perpetuates a lukewarm and uncertain commitment by the Federal Government and cause difficulties for tribes in properly managing natural resources. General Federal conservation and management programs targeting resource protection on a broader, national scale do not provide a consistent support mechanism upon which strong and effective tribal conservation and management programs can be built. Tribes need legislation to help resource management on Indian lands. Without specific devotion to the fundamental management of Indian resources, shortfalls and gaps will continue and resources will suffer.

The Society can attempt to provide its perspective on the challenges facing tribes as they strive to develop and sustain fish and wildlife management programs on tribal lands or for tribal resources. If legislation is to effectively respond to the challenges, the bill as currently drafted needs to be narrowed and refined, identifying support mechanisms for on-the-ground management and conservation of fish and wildlife in Indian country. The bill needs to focus on fundamental fish and wildlife conservation management and should not be diverted for other purposes. While support of special and specific interests are valid in certain areas of Indian country, S. 2301 attempts to achieve too much and should not dilute the basic unmet needs that exist for many Indian tribes. Legislation and funding for core tribal fish and wildlife management programs should be stabilized, made equitable and consistent between tribes, and not be provided on a sporadic, competitive basis. In anticipation of objections to the success of the S. 2301, strategic foresight may prudently include a streamline structure consistent with the original intent, theme and title of this legislation.

In the event that the legislation is enacted, S. 2301 does not identify funding sources and will likely go unfunded, distinctive special issues or needs may find a higher degree of success on an individual basis or practical channel. Special issues and needs may likely be best effective and given attention in a bill suited to the particular issues or needs. Unique interests should be addressed, but should be addressed in regards and in deference to affected representatives and unmet needs that do not exist for other tribes. Tribes must be afforded equitable opportunity reflected by their unique circumstances across the nation, as each tribe has some level of unmet resource management needs. Resource needs that exceed fundamental fish and wildlife conservation management needs (like the need for enforcement officers, scientific capacity or operational assets) may be dealt with on an alternative basis.

The Society is encouraged by the emphasis on resource education as it is consistent with the priorities of the Society. This bill will take a leap forward in supporting sorely needed educational programs in tribal fish and wildlife management. it may be possible to combine some of the education provisions and to review the programs relative to current, similar programs.

Fundamental tribal fish and wildlife conservation management should be supported and funded by the Federal Government on a permanent, non-exclusive and equitable basis, to secure adequate resources, and truly make this a success. Over the years, conservation and management programs for States and U.S. territories,

funded by Federal dollars, do not translate into conservation and management benefits for Indian country. This legislation will demonstrate for tribes equity in their part to manage vital natural resources that benefit the American people. We look forward to working with the committee to identify this resolve and to implement or reinforce programs for the benefit of tribal natural resources. Thank You.

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

Mr. Chairman, members of the committee, on behalf of the Columbia River treaty tribes, I would like to thank you for this opportunity to provide testimony on the Native American Fish and Wildlife Resources Management Act of 2004. My name is Olney Patt, Jr. and I am the executive director of the Columbia River Inter-Tribal Fish Commission. The Commission was formed by resolution of the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon and the Confederated Tribes and Bands of the Yakama Nation for the purpose of coordinating fishery management policy and providing technical expertise essential for the protection of the tribes' treaty-protected fish resources. Both independently and through their Commission process, the Columbia River treaty tribes have worked cooperatively, and with some success, with the States and Federal agencies, as well as with private landowners, to restore populations of the shared salmon resource. The Columbia River treaty tribes see this bill as opportunity to provide a framework for tribes to deal with specific on-reservation resource management issues as well as to provide a national framework that can allow tribes, states and the Federal Government to also successfully address regional management issues where there are shared natural resources.

I want to note that I will focus on a couple of key elements of this bill in my testimony today and that I will supplement the record with additional written testimony within a few weeks.

Since 1977, our Commission has contracted with the BIA under the Indian Self-Determination Act (P.L. 93–638) to provide technical expertise essential for the protection of the tribes' treaty-protected fish resources. Through a governing body of leaders from four tribes working together to protect their treaty fishing rights and a staff of biologists, hydrologists, law enforcement personnel, and other experts advising tribal policymakers, this Commission has demonstrated that tribes are able to coordinate with a multitude of parties on a regional, national, and international level. What we have learned during the history of the Commission is that through better regional coordination and cooperation, we can spend more time working with state and Federal land water mangers on developing shared resource management strategies and less time in court.

Since the tribes formed the Commission, we have seen the development and implementation of a cooperative harvest management plan for the Columbia River. In the late 1960's and through the 1970's, the tribes spent much time in court debating how the tribes and states should share the conservation burden of the shared salmon resource. By the late 1980's, the tribes and states had come to an agreement on a harvest plan for co-management of this resource, with some agreement on production programs. This plan, though currently under revision, has largely replaced the annual litigation over the conservation and harvest management of the shared salmon resource that originates in the Columbia River.

On an international scale, in the early 1980's we witnessed a dangerous coastwide decline in Chinook salmon stocks from southeast Alaska, through British Columbia, and throughout the Pacific Northwest. The need to deal with this conservation crisis helped to push the United States and Canada to reach an agreement on the Pacific Salmon Treaty in 1985. Under the Treaty, there is now a management structure through which the parties can share technical information and develop strategies to deal with management problems concerning the shared salmon resource. The Columbia River treaty tribes, along with the western Washington treaty fishing tribes, were significant participants in the negotiation of that Treaty and continue to play a significant role in its implementation.

Now each of the examples I've outlined deal with complex, multi-jurisdictional management issues. More often than not, we would anticipate that individual tribes would use the management planning and resource inventory structure outlined in this bill to address on-reservation resource management issues. At the same time, this resource inventory and management planning process may have an application for shared resources off reservation, such as salmon. In either case though, this bill acknowledges the importance of the tribes to participate in the resource planning and management of resources they reserved to themselves through the treaty process with the United States, or that have been recognized through executive orders,

statutes, judicial decrees, or through other methods. Just as importantly, the structure and process laid out in the bill can help to prevent surprises to resource users on the a reservation or, particularly in the case of shared resources that may be taken by tribal members off-reservation, the planning process can help to prevent surprises for non-tribal members off-reservation.

This bill, by specifically allowing tribes to opt-in to the resource inventory and planning process, recognizes that the needs of individual tribes differ within regions and across the continent. This bill does not force any tribe to undertake the resource inventory and management planning process provided in this bill. Undertaking a resource inventory and survey would only occur at the request of a tribe, the development of a resource management plan would then follow at a pace set by each individual tribe. Nor would this bill require any tribe to abandon a current management plan, co-management agreements, or any other working resource management plan. It does offer the promise of a structure and the resources that can be utilized by all tribes, at their option, in developing new plans or in revising old management plans.

I would like to note an important element in this bill: Section 202 of the bill provides a framework to increase the educational opportunities for tribal members to gain the knowledge and training necessary to manage tribal resources. It also provides an opportunity for tribes to coordinate and cooperate with other tribes, with universities and with others as appropriate on technical and scientific issues associated with resource management.

We see great promise, both for tribes and for natural resource management, in the development of tribal cooperative research units at universities across the country. Within the Columbia River basin, this Commission, working with its member tribes, identified a critical regional need for additional facilities to handle genetics work associated with regional salmon restoration activities. On behalf of its member tribes, the Commission entered into a Memorandum of Agreement with the University of Idaho to site these facilities at the University's aquaculture research facility. Building upon that agreement, and acknowledging the desire of other tribes in the basin to participate in the opportunities offered by our arrangement with the University, we have worked with the University to outline a memorandum to establish a cooperative research unit that other tribes can join as well.

The formation of that tribal cooperative research unit with the University of Idaho provides several benefits: It allows the tribes' to have their own staff driving the research agenda and working on resource issues of importance to the tribe; it offers tribal staff the opportunity to reach out to the non-tribal community through teaching assignments at the University; and it provides a place for tribal members attending the University to take on undergraduate or graduate degree research work. All of this would be accomplished in a cooperative, coordinated research forum that could include other State or Federal researchers, as the tribes might determine is appropriate. I would note that it is important that we insure that the opportunities laid out for tribal students in this section of the bill, especially as to the development of the cooperative research unit system, are integrated with the opportunities and work of the Indian College System.

I also want to touch upon another section of the bill dealing with hatchery programs. As we've learned in the Pacific Northwest, hatcheries can be a part of the problem—but can also be a significant part of the solution—in ensuring the sustainability of a fishery resource. It all depends upon how the goals and objectives of a hatchery program are reached by a tribe or in some situations, by a tribe in coordination with other co-managers. The section of the bill that provides for assistance to the tribal hatchery programs is geared to dealing with both strictly on-reservation tribal hatchery program activities as well as situations where tribal hatchery programs may be located at least partially off-reservation. In addition, it provides an opportunity for a tribe, or tribes, to enter into cooperative agreements with Federal agencies to either co-manage a hatchery program or takeover the management of a hatchery program. In either case, we would anticipate that funding for such hatchery management or co-management programs would originate initially with the cooperating agency, either the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, and not originate within the programmatic budget of the Bureau of Indian Affairs. We could have already utilized these provisions within the Columbia River basin to enter into mutually beneficial cooperative programs but were hampered by the Federal agency's lack of Congressional authority to do so. This section of the bill would allow us to take advantage of such a cooperative venture in the future.

For the reasons I've laid out in my testimony today, the Columbia River treaty tribes support the general concepts and opportunities provided in language of the Native American Fish and Wildlife Resources Management Act of 2004. We would welcome the opportunity to work with you, other members of the committee and with your staff to fine tune the bill to ensure that it meets the needs of all of the tribes within the United States and to ensure its passage during this Congress.

TESTIMONY ON THE NATIVE AMERICAN FISH AND WILDLIFE MANAGEMENT ACT, S 2301

TO THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

April 29, 2004
Washington DC

BY BILLY FRANK, JR., CHAIRMAN
NORTHWEST INDIAN FISHERIES COMMISSION

Honorable Chairman and members of the Committee, on behalf of the member tribes of the Northwest Indian Fisheries Commission, we are pleased to appear before the Senate Committee on Indian Affairs to provide supportive comments on the Native American Fish And Wildlife Management Act (NAFWMA). Today, we will provide some general comments, with the intention of providing more specific comments pertinent to S. 2301 over the coming weeks. We sincerely thank you and your staff for your extensive investment of time and energy in this legislation.

This legislation provides opportunities to help encourage more positive relationships between the tribes and federal agencies, to strengthen collaborative efforts to effect good stewardship, strengthen the infrastructure of tribal natural resource management and marketing programs, support related tribal education and enhance public understanding about tribes and their priorities. These are all critical objectives, and there are many good reasons to support the principles of this legislation. One of the primary reasons is to encourage positive working relationships between the tribal governments and state and federal governments, as well as non-governmental entities. There are many excellent examples of "win-win" relationships when these entities make genuine efforts to work together. In the Pacific Northwest, for example, we have achieved worthwhile in-common objectives in the management of fish, wildlife and other natural resources through the co-management of harvest, enhancement and the restoration and protection of habitat.

Unfortunately, there are also cases in which there is supposed to be federal-tribal cooperation, but it hasn't materialized. We have had "up and down" relationships with various agencies, ranging from the Corps of Engineers to the U.S. Fish and Wildlife Service. There is need for Congress to direct all federal agencies, without exception, to work with tribes and fulfill federal trust obligations to the tribes. It has now been 30 years since the U.S. v. Washington decision, and 150 years since the signing of the treaties. It is

time for federal agencies to take their responsibilities and mutually beneficial opportunities to work with tribes seriously enough to work together on a regular basis, if we are to effectively meet the ongoing challenges to the natural resources that sustain us all.

The 20 Treaty Indian Tribes that direct and participate in the Northwest Indian Fisheries Commission's programs are located on the Washington Coast and throughout the Strait of Juan de Fuca, Hood Canal and the Puget Sound. Our tribes have long been known as the fishing tribes by others across the continent. We have always relied on salmon as well as other fish, wildlife, trees and plants for economic and cultural identity and purpose. We learn from our ancestors and we teach our children to respect and care for these resources because we know their health and well-being, and the habitat that sustains these resources, are directly connected with our own survival and quality of life.

Anyone who has listened to the tribes over the decades, or observed our actions as people of the land, realizes that we strive to be true to our heritage as natural stewards. S 2301 should be a tool to help enhance federal support for the Pacific Northwest tribes, as well as others, which will help bring continued improvement to our cooperative natural resource management programs. That support should include more direct and dependable funding for our management programs. It should include support for tribal education, public education and marketing of our harvests. Supporting viable marketing comes hand-in-hand with support for programs intended to restore and sustain fish and wildlife resources, and the habitat they need to survive. Tribes have distinguished themselves as outstanding managers, and support for their programs will benefit all citizens of the United States.

The tribes served by the Northwest Indian Fisheries Commission support the passage of NAFWMA, generally speaking, because this legislation will protect, enhance and clarify tribal management authority. Also, through this legislation, Congress will reassert its role as our special trustee, as stated in the U.S. Constitution.

Today, we will provide some fundamentals we believe are pertinent to this legislation. We do this because we are aware that the current bill is a work in progress, which is subject to ongoing change and we believe these fundamentals are important to retain.

- The United States has obligations and responsibilities for protection, proper management and enhancement of fish and wildlife resources.
- The federal government has outstanding obligations and responsibilities for the protection and proper management of fish and wildlife. These obligations are based on treaties, executive orders, statutes, and legal precedents, as well as the needs of tribal members as citizens of the U.S.
- These obligations extend beyond mere protection and management to insuring access, availability and suitability of natural resources for Indian people for commercial, subsistence and cultural uses.
- The federal obligation transcends mere paternalism, and must reflect various tribal interests and approaches. It must reflect a government-to-government approach which

respects tribal self-determination and self-governance. Tribes may be at different levels of understanding or interest, and the federal government must be positioned to meet the needs of the tribes on their terms, and not the terms of the federal bureaucracy.

- Tribal management capabilities must be strengthened and enhanced.
- Tribes are natural resource managers. Such management is culturally based, and predates written history. It is also embodied in treaties, court decisions and sometimes in legislation. Tribes are sovereign entities, and have primary management on-reservation and, in some areas, shared management off-reservation. As such it is important to understand that tribes must have clear authority to enforce natural resource regulations on all lands within reservation boundaries.
- Tribes must have clear authority to develop codes, enforce regulations, prosecute violators and otherwise manage all lands and waters under their authority.
- Tribal governments must be accorded policy standing and ability to fully participate in off-reservation inter-jurisdictional decision making.
- Without tribal involvement, overall natural resource management efforts will suffer, harming all interests in the state, region, and country. Tribal shellfish management programs, for example, are seen as a key to resolving critical off-reservation issues surrounding beach certification procedures. In addition, tribal enhancement planning efforts offer an increase in finfish and shellfish availability for both tribal and other users. Tribes have also extensively participated in a number of forums designed to protect treaty harvest and habitat protection rights. These efforts, which benefit Indian and non-Indian alike, will suffer without tribal infrastructure and capability.
- Provisions need to be in place that authorize the federal government to provide funding to tribes based on treaties, executive orders, or other federal obligations. Tribal natural resource management programs are second to none in their effectiveness and efficiency. But even the best programs face limiting factors, such as adequate and stable financial support.
- Often, tribes do not have clear, direct and specific access to funding sources such as Dingell-Johnson, Pittman-Robertson, Wallop-Breaux funds, forest legacy programs or Land and Water Conservation funds, even though tribal land and waters are factored into their funding equations. Funding should not have to come through the affected states, which may have different views of priorities and needs, and sometimes have objectives that differ from those of the tribes. Access to funds should be secured directly to the tribes, **even if alternate stable sources of funding must be provided.**
- It must be recognized that funding not only needs to be adequate in terms of amount, but also needs to be stable in its delivery to the tribes. One major problem tribes have faced over the past ten years has been fluctuations in funding due to inconsistent bureaucratic initiatives. Shortages caused by these and other problems create difficulties securing and retaining key staff. Tribes have seen a number of professional staff members leave their employ to take positions with collateral agencies offering more stability and pay.
- Tribal management skills and capabilities need to be enhanced. It is important for tribes to receive help with training and professional career development. Such assistance is critical if the tribes are to be successful in enticing Indian students into

the field of natural resource management and environmental protection. Tribal staff members need to keep current in their fields just like any other professional. Opportunities for further education and training and placement between federal agencies and tribes would be very useful to tribal programs.

- It is a federal as well as tribal responsibility to inform and educate the non-Indian public about Indian human rights and the many contributions tribes make toward public benefit. Improved public opinion resulting from such efforts will result in more collaborative spirit, less racism and less detraction from tribal achievement of their potential.

General Comments On The Draft Bill

As indicated, we intend to provide more specific input on this bill over the next few weeks, based on the foregoing fundamentals. Generally speaking, however, there is need for greater Congressional support for tribal fish and wildlife programs, ranging from more direct and increased funding support for natural resource management and related education programs to provide greater assistance in marketing of harvested resources.

We will likely reserve comment on the sections dealing with Alaska Fish and Wildlife, and Buffalo Management—assuming those programs do not negatively affect resources in our region. We consider tribal members in other regions our brothers and sisters and support their efforts whenever possible.

It is important for the definition of reserved rights to protect tribal rights that have never been relinquished by tribes—not just rights specifically reserved by treaty.

If the legislation calls for plans, surveys of resources, etc., such reports should be requested by tribes, and affected agencies should be directed to be responsive to those tribes within reasonable timeframes.

Most tribes with significant fish and wildlife resources have comprehensive plans and resource management programs in place. This is the case in the U.S. v. Washington Case Area, for example. The bill should not supercede or require modifications in plans that may already be in place, nor imply that such plans be in place as a precondition to tribal fish and wildlife management activities.

Reviews to determine where additional funding is needed to support tribal natural resource management programs should be government-wide, e.g., include the Environmental Protection Agency and other agencies as well as Interior, Commerce and Agriculture. Obviously, such reviews should also include full consultation with affected tribes, tribal-endorsed regional management forums, etc.

Education is critical to successful natural resource management. This legislation provides outstanding opportunities for the expansion of natural resource-related careers in Indian Country. It also provides an opportunity for the federal government to take a step toward meeting its responsibility in public education regarding the tribes. This is essential to the

advancement of Indian/non-Indian understanding and cooperation.

The Tribal Seafood Assistance Program addressed in the bill provides a good opportunity tribes can take advantage of, on a voluntary basis, to move forward with their marketing programs. There are serious problems in marketing that the federal agencies could help solve, with good direction from Congress. Support is needed to help establish new markets for tribal salmon, shellfish and other seafood, e.g., through federal contracts, such as the military, as well as through domestic and international marketing support. There should also be support for tribal programs related to fish certification, tribal product development and related research, e.g., through the National Marine Fisheries Service's products research program.

The bill could help reaffirm that fish resources are important to the entire nation and that habitat degradation and pollution problems affect the health of these resources. There should be reaffirmation that tribal resource harvest rights are affected by such environmental challenges and that the federal government has a responsibility to prevent such problems from occurring. As such there should be documentation of such problems and there should be federal support for related tribal research and education, including public education.

Grants for market research and pilot programs should be linked with the Tribal Seafood and Resource Marketing Assistance Program described in the bill. No-cost loans should also be available, and linked with reasonable documentation requirements. Resulting research could be made available to all tribes. These loans and grants should focus on expanding domestic and international markets and promotion of the sale of tribal products and resources. These loans and grants should also support the further development of tribal infrastructure, in support of tribal self-determination and economic advancement.

Conclusion

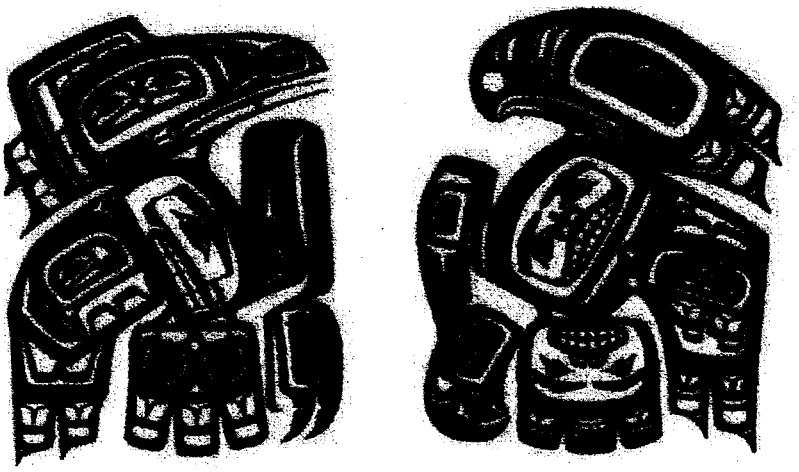
The Native American Fish and Wildlife Management Act is an important step forward for the federal/tribal relationship. We encourage its passage, with inclusion of changes suggested by tribes. If the Committee focuses on the main concepts we have spoken to, and makes them cornerstones for the Native American Fish and Wildlife Management Act, tribal fish and wildlife management will be greatly aided.

We stand ready to assist you in any way we can to make this a successful effort. A final suggestion would be to establish a formal work group to consider the issues addressed by S. 2301. Again, we wish to thank you and your staff for your outstanding work on this bill.

Before the
United States Senate
Committee on Indian Affairs

Legislative Hearing on S. 2301
108th Congress
2d Session

Central Council Tlingit Haida Indian Tribes of Alaska



Statement of
Gordon Jackson, Manager
Central Council Business and Economic Development
April 29, 2004

Good Morning Mr. Chairman, Mr. Vice-Chairman, and Members of the Committee:

Thank you for the opportunity to appear and comment upon S. 2301. My name is Gordon Jackson, and I am the Manager of the Central Council Tlingit Haida Indian Tribes Business and Economic Development Department in Juneau Alaska. Our Department is also staff for the Southeast Alaska Inter-tribal Fish and Wildlife Commission.

The Central Council Mission supports the intent of S.2301:

"Our mission is to preserve and enhance the economic and cultural resources of the Tlingit and Haida nations and to promote self-sufficiency and self-governance while providing a safety net of services for our citizens and protecting our inherent sovereign rights. We have a strong sense of pride in our rich heritage and we are dedicated to the use of fair and professional management systems as we strive to improve the quality of life for our citizens. We are determined to collaborate with others as we advocate the issues of our people."

The Purpose of the Southeast Alaska Inter-tribal Fish and Wildlife Commission also supports the intent of S. 2301:

"The Commission's purpose is to protect and advance the inherit legal rights of Alaska Natives to continue the customary and traditional uses of natural resources in Southeast Alaska."

I am here to speak in support of the Native American Fish and Wildlife Resources Management Act of 2004 (S.2301), introduced by Senator Inouye. Section 102. Purposes, of the Act clearly reflect our Tribes and Native organizations goals and needs in Alaska. The Federal Government Trust responsibilities towards Alaska Natives combined with our government-to-government relationship addressed in Section 101, Findings, clearly supports positive economic and cultural development partnerships under this Act.

We have attached for your review a couple of documents which reflect our work on behalf of our Tribal members in areas of business development; commercial fisheries development; and subsistence uses for our Native people. Throughout the process of representing our Tribal members we work to benefit all citizens of Alaska. Our

Department has coordinated numerous Economic Summits in Southeast Alaska to address our regional benefits of resource use and development. Per our Mission we collaborate with the Southeast Conference; local Tribes; State Department of Commerce and Economic Development; State Fish and Game; State Department of Labor; Denali Commission; U.S. Forest Service and National Parks to accomplish our common mission in Alaska of providing both economic and social benefits directly to individuals and City Governments. Many of our Tribal governments; Native and Regional Corporations have extensive experience in working with the U.S. Forest Service; Bureau of Indian Affairs: and National Parks with co-management type agreements, so re-affirming that relationship under S. 2301 is appropriate.

Our Department has produced many reports and documents which reflect our mission of economic development for our Southeast Alaska villages and community members. My testimony relies on the work and jobs we have produced as a result of our organizations Regional partnerships I have previously mentioned. Our work applied here is reflected in the Findings and Purpose of this Act. Our work is solely for building economic systems for our communities in Alaska and for our Tribal members. This is in areas of developing both a cash and subsistence economy as they balance one another in our people's lives in Alaska.

However, if you look at the Central Council analysis of the Denali Commission's Distressed Community list you will see that based upon our analysis and experience in working with communities in Alaska the unemployment and poverty rate is very high. For example, look at a few samples which reflect the economic state of our villages in Alaska:

Community	**Poverty Rate**	**Unemployment rate**
1. Angoon	27.9%	50%
2. Craig	9.8%	29.7%
3. Haines	7.9%	44.1%
4. Hoonah	16.6%	51.7%

5. Hydaburg	24.1%	66.3%
6. Kake	14.6%	49.5%
7. Klawock	14.2%	39.6%
8. Klukwan	1.5%	66.3%
9. Metlakatla	8%	49%
10.Pelican	4.7%	34.7%
11.Petersburg	5%	36.4%
12.Saxman	12.1%	47.9%
13.Yakutat	13.5%	28.2%

In our service to these communities we also consider the high cost of living in areas of food, clothing, shelter, water, sewer, power, fuel, medical and education. Unlike urban areas of America the only means of service is by boat or small airlines. This raises the cost of service immensely as we do not have the luxury of reaping the benefits of economy of scale in Alaska. For all of the communities listed commercial fishing and subsistence resources are the only means of generating food and jobs to our people.

Therefore, our Tribe and the Southeast Alaska Inter-tribal Fish and Wildlife Commission has worked extensively in promoting and development of commercial fishing opportunities and working to maintain and add new infrastructure needs in each of the villages we service. The goal is to help establish employment and job opportunities with resources that are readily available to our region, and an economic tax base for our community governments so they can also become self-sufficient with economic developments we may help provide.

This is why Sections 301; 302; 303; 401; and 402 are so vital to helping reduce poverty and unemployment to our fishermen and seasonal employment in Alaska.
In addition S.2301 supports our needs in the following ways;

- Subsistence fishing and hunting is the top issue of concern for Alaska Natives, but in the context of this bill, subsistence can add to the economic solution of our

people's poverty and unemployment by helping provide the ability of a family to make a living in rural Alaska.

- This bill balances economic health with community health -- It is well known that the best cure for social and economic poverty is employment.

- This bill supports the kind of economic development needed in our communities-- Native people taking responsibility for resource management.

- The opportunity of fish & wildlife resource development has multiple economic benefits and carries over to rural tourism opportunities-- the single fastest growing industry in Alaska. Natives, working as fish & wildlife managers, stewards of natural resources that will appreciate in value over time in fisheries and tourism opportunities.

- The bill supports common goals of self-determination and self-sufficiency. Natives are the best stewards of the land and resources of which we make a living. Natives are stable residents (i.e., not the typical transient seasonal worker).

- Natives in Alaska are principal land owners -- owning perhaps as much as 25% high quality habitat in Alaska, and should be entrusted with real joint responsibility under this bill.

- Natives, through ANCSA, own 44 million acres of a total of 377 million acres of all Alaska (which equals 12%) but if you consider the percentage of high quality habitat land, i.e., not ice fields, lakes and mountains, it is actually more like 20-25% of high quality habitat that we bring to the table of partnership under S. 2301.

In closing, we suggest that just as the funding for managing health programs came from continuing Indian Health Service appropriations, funding for this bill should come through 638 contracts/compacts with relevant federal agencies like Fish & Wildlife and U.S. Forest Service of which we have experience in working with in Southeast Alaska.

Thank you,

Gordon Jackson, Manager
Business and Economic Development

Attachments/ Supporting Statistical and Organizational documentation

Written Testimony to the
Senate Committee on Indian Affairs
S. 2301 Native American Fish and Wildlife Resources Management Act
By Millard J. (Sonny) Myers - 1854 Authority

Mr. Chairman, members of the committee, my name is Sonny Myers, I am the Executive Director of the 1854 Authority in Minnesota. The 1854 Authority is an inter-Tribal Natural Resource Management organization which implements the off-reservation hunting, fishing and gathering rights of the Grand Portage and Bois Forte Bands of the Lake Superior Chippewa in the territory ceded in the Treaty of 1854. The 1854 Ceded Territory is approximately 5 million acres of resource rich land in what is now northeastern Minnesota.

I would like to thank the committee for the opportunity to comment on S. 2301, the Native American Fish and Wildlife Resources Management Act, and I would also like to acknowledge the committees fine work in drafting a bill which reflects prior testimony and commentary from the Tribes. I would like to address two issues of a general nature concerning the proposed legislation and then close with a few specific comments.

In our region, there are some reservations that have a relatively small land base, and thus there may be limitations on the amount of resources by which to carry on the time honored traditions of hunting, fishing and gathering that are important to the Band members. The reality is a significant portion of such activities is conducted on these ceded lands. In fact, the 1854 Authority was created by the two Bands to specifically provide a mechanism for tribes to exercise these off-reservation activities.

Additionally, not all Band members who are partakers to such reserved rights live on or in close proximity to the reservations. There are various reasons why such a scenario exists, some may live elsewhere for economic reasons, some may have left for educational opportunities, or some simply were raised in another area for reasons only their ancestors could answer. Such is

the case for myself. For reasons unknown to me, my grandmother chose to marry a non Band member and move 150 miles south of her home and raise her family. I and my family still live in the same location as this is our home (as do many Band members), yet thanks to my ancestors foresight in reserving the expansive boundaries of the ceded lands, the majority of our hunting, fishing and gathering activities are still conducted on ceded lands.

My main point in all this is to show that, at least in the case of our member reservations, when it comes to carrying on our ancestral traditions of hunting, fishing and gathering, a large portion of such activities is conducted on non-Tribal or ceded lands. In a recent survey we conducted of Band members, we asked them where they hunt, fish and gathered. 68 % indicated they fished in the ceded territory, 50% stated they hunted in the ceded territory, and 32% said they gather plants and other resources in the ceded territory. While I don't want to undermine the extent and importance of reservation lands when it comes to these activities, it is apparent that the resources on ceded lands have become invaluable, and as these are all shared resources, it is important to protect, preserve and enhance these resources and integrate Tribal concerns into the overall scheme of things.

As we deal exclusively with non-reservation ceded lands. One of our on-going struggles, but also avenues of success has been cooperation with state, federal, and other agencies in protecting, preserving and enhancing the resources in northeastern Minnesota for all people. Recognition of the Tribes rightful place among all the stakeholders in managing these resources is a constant challenge, yet great progress has been made. It is our hope that passage of this bill could significantly strengthen that position.

I understand that this very issue has come up among the non-Tribal public as they are concerned that the Tribes would gain management responsibilities in areas that they see as off-limits. I also understand that not all tribes have such clearly defined off-reservation rights as is the case with us. Yet it should be possible to draft the bill in such a way as to flesh out these concerns and ensure that where Tribes do have such clearly defined rights, efforts to "co-

manage" are implemented.

A shining example of cooperative success is a Bureau of Indian Affairs program entitled Circle of Flight. Although this program has been slated for discontinuation the last couple of funding cycles and subsequently restored, it is a mechanism by which the Tribes in the Great Lakes region have been able to become players in natural resource management both on and off-reservation to the benefit of all people.

Since this programs inception in 1991, 7.9 million dollars has been distributed to 30 reservations and three inter-Tribal organizations for waterfowl and wetland enhancement projects. These dollars have leveraged an additional 20 million dollars in federal, state, private and tribal funding, yielding a match ratio of nearly 3 to 1. On the ground these projects have affected 200,000 acres of natural wild rice beds alone, which provides significant waterfowl feeding and nesting areas in the Great Lakes Region. Preservation of waterfowl producing habitat in the Great Lakes Region is important because of the habitat's contribution to the waterfowl resources of the Mississippi and Atlantic Flyways and the nation. Cooperation amongst all stakeholders can be accomplished to the benefit of all people and successful passage of this bill could greatly enhance this ability to other areas I am confident.

A little more local is the cooperative effort to manage moose in northeastern Minnesota. Each year, our member Bands, along with the Fond Du Lac band, and the State of Minnesota cooperate on conducting an annual survey to estimate the population and subsequently set harvest levels. This is an ongoing and essential component of moose management.

As with any resource, and especially when you are dealing with populations in a large area, there are always unanswered questions. Thus in the winter of 2002, the 1854 Authority, along with the Fond Du Lac Band, the Minnesota Department of Natural Resources, and the United States Geological Survey began a cooperative research project to learn more about this amazing animal and hopefully gain knowledge that will help to sustain populations in perpetuity.

The moose has become our most popular subsistence animal (due to its relative ease to hunt and sheer volume and quality of food). The state administers a once in a lifetime hunt which draws 10,000 plus applicants a year for approximately 230 available permits. For the non-hunter, the moose has become a north woods icon that is replicated through photography, carvings, stuffed animals, festivals, and more. We offer one of the limited amount of places in the nation where one can possible encounter a moose. My point here is the cooperative efforts of the federal, state, and tribal agencies will greatly benefit all who strive for an encounter with this amazing animal.

Finally, I would like to make several bulleted comments on the proposed legislation.

- The focus in the proposed legislation is on the department of Interior, but it should also strengthen the position of tribes' vis-a-vis the land management activities of other federal agencies that manage federal lands which are a part of a ceded territory in which treaty rights exist. For example, much of the Superior National Forest lies within the 1854 Ceded Territory. Should the US Forest Service be able to ignore treaty rights and resources in its forest management plans or should it have a statutory obligation to consider the ramifications its plans may have on those interests, much as it has an obligation to consider impacts on endangered species, water quality, historic sites, archeological resources and so on.

- The provisions of section 201(h)(1) of the bill will provide the level or awareness and scope of coordination necessary to involve tribes in management activities affecting treaty activities.

- The recognition of treaty rights in the bill should not be a basis for concern that tribal interests will be used to trump federal decision-making. Tribes believe that treaty rights cannot be ignored, not that treaty rights are the only interest to be considered when decisions are made.

- The proposed legislation is necessary because it expressly recognizes that Indian tribes must have a role in managing ceded territory fish and wildlife resources.

- The proposed legislation should make it clear that when it is determined that there is a treaty-based right to hunt, fish and gather on public lands within a ceded territory, then the United States has a trust responsibility to protect and preserve those treaty resources.

- Statutory acknowledgment of treaty rights is necessary because those rights are too often subordinated to the interests of others who have no treaty right but do have political influence.

- The 1854 Authority is sensitive to the concerns of others, but it must ensure that the quality and quantity of fish, game and traditional plants and access to them is not diminished because of land management practices that do not consider treaty rights.

Again, I would like to thank the committee for the work that has already been completed and also the opportunity to provide comment on this very important proposed legislation. We look forward to working with all to bring this to fruition.

End of Written Testimony.

Respectfully submitted by Millard J. (Sonny) Myers on this 26th day of April 2004.

Testimony by Dewey Schwalenberg, Director
Stevens Village Tribal Natural Resource/Environmental Program
To the
U.S. Senate Indian Affairs Committee
Oversight Hearing on S. 2301

April 29, 2004

Chairman Inouye, Members of the Committee, honored guests, thank you for this opportunity to testify before you during the Oversight Hearing on Senate 2301, a discussion draft bill to improve the management of Native American fish and Wildlife and gathering, and for other purposes. I am honored by this invitation to present oral and written testimony on this important matter and hope that my comments will contribute to the advancement of Tribal Government participation in the management of critical resources that protect and enhance the culture of Native Americans and Alaska Natives. These resources and Tribal management contribute significantly to conservation and use of these resources by all Americans.

Some of you may be familiar with testimony that I provided to the Committee in the past on this subject, when I was the Executive Director of the Native American Fish & Wildlife Society (NAF&WS) in the early 1990's, and again more recently during the Oversight Hearing on Subsistence on April 17, 2002, while working for the Stevens Village IRA Council, as their Natural Resource/Environmental Director, in Alaska. I continue to be actively involved in the development of Tribal fish and wildlife management capacity with the Interior Tribes of Alaska through my relationship with the Council of Athabascan Tribal Governments (CATG) and with the Inter-Tribal Natural Resource Coalition (ITNRC) made up of 37 Tribal Governments in the Tanana Chiefs (TCC) Region. My professional Tribal resource management career began twenty-four years ago with the Lac du Flambeau Band of Lake Superior Chippewa Indians during the tumultuous early years of the "Voigt Treaty Case" in the Great Lakes region. I feel fortunate that I am still part of the Tribal fish and wildlife management movement in my professional capacity. With the Committee's indulgence and with Tribal approval I would like to share some of the insight that I have gained concerning the resource management goals and objectives of the Tribal Governments that I have worked for and with.

Tribal interests nationwide in fish and wildlife management are geared predominantly towards protecting and preserving lands and resources to maintain the spiritual, cultural, and sustenance requirements of Tribal members. Management is a Tribal governance function based upon the Tribal Constitution as approved by the U.S. Department of Interior and involves a Federal Government Trust Responsibility based upon a government-to-government relationship. Tribes believe that these powers are protected by the U.S. Constitution and expect the federal agencies to adhere to provisions of law to protect their interests. Where Congressional action has not specifically restricted or prohibited management activities, the Tribe retains the right to exercise sovereign authority over lands and resources of importance to their members irrespective

of the ownership of those lands and resources. Tribes feel that the exercise of these governmental functions is a sacred trust that is essential to protecting lands and resources necessary to the Tribal members well being. To lose control of the land and resources is to lose their history, culture, traditions, and spirituality.

How Tribes exercise control over the management of resources has been the subject of intense scrutiny and discussion. In general, Tribes understand their rights to manage on Tribal lands, (those lands that are owned by Tribes or held in trust for Tribes by the federal government). What is less defined legally but is actively practiced throughout the country is the role of Tribes in "co-management" or cooperative management on lands and of resources owned or held by state, federal, private, or corporate entities. I believe that Tribes fully understand the implications of private ownership and respect this land status. However, where the Tribal interests come into conflict with other interests, the Tribes may choose to exercise self-governance principles to remedy these situations. Federal law provides for certain remedies for conflict resolution. Laws like the P.L. 93-638 Indian Self-Determination and Educational Assistance Act (ISDEAA), the Native American Graves Protection and Repatriation Act (NAGPRA), and the Alaska National Interest Land Conservation Act (ANILCA) have all been used to protect Tribal and Native peoples interests. For those Tribes that have protected treaty rights, their role in joint management has been more fully developed over the past thirty years through court cases and in management agreements. Tribes who were not included in treaties, or who had no reservation or trust lands set aside to meet the Tribes' needs, are challenged in the application of existing law in exercising resource management. The 229 Federally recognized Tribes in Alaska are experiencing this dilemma and have recently begun to explore laws like the Alaska Native Claims Settlement Act (ANCSA) to ascertain the role that Tribes can play as co-managers or cooperators with federal, state, corporation, and private land owners. Imagine what the Tribes felt when they recognized that under ANCSA Village Corporation "Lands and assets" were being "held on and in behalf of the Villages" and that Native Villages were defined as "Tribes". Thus Tribes have a role and status within ANCSA and in their lands and resources. Many creative and cooperative management activities are now being initiated based upon this new understanding and a common need for management. The location of Tribes to the resource and the Traditional Ecological Knowledge (TEK) that exists within the Tribal membership is a major contribution to increased management efficiency.

Tribes throughout the nation have delineated the lands that they consider to be traditional lands and of special interest. Under treaties, much of the land that was given up by the Tribes but which was still valuable for hunting, fishing, or gathering are referred to as ceded territory. Management on these lands has been more of a joint relationship between the landowners and the Tribes. Alaska management entities can greatly improve their management system by studying and applying key provisions of these models from other areas of the country. In order to better coordinate management on ceded territory the Tribes have established Indian Fish and Wildlife Organizations. These organizations are chartered by one or more tribes for the purpose of representing or coordinating Tribal interests in resource management with other management authorities. These organizations have a lengthy history of representing Tribal interests

effectively because of the close relationship that they have to the Tribes and the amount of control that Tribes exercise over these organizations. The organizations act as the technical arm of the Tribes in interacting with other technical entities and agencies.

In Alaska, the Tribes currently have little to no direct control over any fish and wildlife organizations, Boards, Commissions, or Councils nor do they have a seat at the management tables. The Federal Subsistence board, as an example, has no Tribal government position with any commensurate authority. The Federal Subsistence Board's Rural Advisory Councils also do not specifically provide Tribal government seats with the commensurate authority, although the Board makes the resource decisions that affect the Tribes' exercise of authority and control over its Tribal members. Tribes, therefore, feel excluded from the decision-making process.

Under Title III - Alaska Native Fish and Wildlife Programs of S. 2301 Native American Fish and Wildlife Resources Management Act, Alaska Tribal government participation in the improvement of the management of Indian fish, wildlife and gathering resources and for other purposes will be recognized. It is unlikely that all 229 federally recognized Tribal governments in Alaska would immediately take advantage of the opportunities that this Title provides as they would have to decide to build their resource management capacity to be able to participate. It is more likely that Tribes will develop cooperative partnerships with Native for-profit corporations, Native fish and wildlife organizations, and private landowners, such as Native allottees. Funding for management of fish and wildlife will thus be used within the lands that are closest to the villages and traditional lands. Tribal participation in this process will increase management efficiency by incorporating traditional harvest data and local expertise directly into the management process.

Educational opportunities under S. 2301will assist in expanding the base of professionally trained and career oriented Native people who will be more likely to be interested in returning to their local community to practice professional resource management. An example of the beginning interests in careers in natural resource management that we have seen in the Interior Alaska villages over the past five years is one Native person is completing a Masters degree in wildlife management, another younger Native person is enrolled in Dartmouth College seeking a bachelors degree in environmental and tribal programs, and a number of high school aged students have been experiencing on-the-job training as resource technicians and in resource economics/business opportunities. In the near future, additional scholarships and educational funding will be necessary to allow these and other interested students to pursue advanced education opportunities.

The exercise of self-determination has led to the CATG Tribes concluding negotiations with the U.S. Fish & Wildlife Service to allow for an Annual Funding Agreement under Title IV of P.L. 93-638 ISDEAA that will lead to Native fish and wildlife organizations assuming management activities within the Yukon Flats National Wildlife Refuge. In Stevens Village, the Tribal Council has operated a natural resource/ environmental program for the past ten years, which has completed cooperative

management projects with state and federal agencies. This research demonstrated pressures on resources within traditional lands. The State of Alaska Boards of Fish and Game, and the Federal Subsistence Board was able to take action to provide regulations of non-Native sport hunters and fishers, while the Tribe exercises control over Tribal members. The Council has developed a Tribal Public Safety Program that works cooperatively with the Alaska State Department of Public Safety, has trained its two police officers at the State Police Academy, and shares conservation law enforcement responsibility within the watershed tributaries to the Yukon River within the Tribe's traditional lands. The dissemination of federal subsistence moose harvest permits and the collection of the harvest data associated with the hunt has been contracted to the Stevens Village Tribal Natural Resource/ Environmental Program. Reports on the harvests by the rural residents, as well as Tribal members, are part of the data collected under this program. Aerial moose and wolf surveys, surveys of vegetation and forest inventory, and environmental testing of waters and subsistence foods have been ongoing for the past ten years. The data accumulated from these management efforts is compiled and stored in the Tribal Geographic Information System (GIS), which regularly shares information and maps with federal, Native Corporation, and state land and resource agencies. It is safe to assume that the interaction of Tribes and their fish and wildlife organizations with resource management agencies at the technical level is actively ongoing. The Title III provisions can only serve to assist in increasing the level of cooperation and the exchange of much needed resource information.

The most recent resource management development by Tribes involves the establishment of projects that increase the ability of the governments to create discretionary income for the purposes of self-funding local community needs. The Stevens Village Tribal Bison Project has been a recent initiative that will provide healthy meat and meat products to the community members as an alternative to moose meat, due to the declining moose population in the Yukon Flats area. The project was developed in response to the community's need for culturally sensitive economic development, and their desire to reintroduce a culturally and spiritually relevant resource. Processing, marketing, and sales of buffalo products also offer an opportunity for the community to interface with the non-Native business community and will generate revenues that can be returned to the Tribe for community development purposes. Stevens Village is a member of the Inter-Tribal Bison Cooperative, a national Indian Fish and Wildlife Organization that has helped their 54 member Tribes in building Buffalo herds, economic programs, and cultural activity. TITLE V of S. 2301 Tribal Bison Conservation and Management will also assist those Alaska Tribes that wish to re-establish their relationship with Bison. The re-introduction of Wood Bison, an indigenous species, into Alaska is one of the joint Tribal, State, and Federal projects that are in the planning process and could move forward faster with full Tribal participation as a result of this provision.

The Title III, Section 303, Alaska Native Tribal Government Seafood and Resource Marketing Assistance Program will be instrumental in providing economic incentives and financial support to allow additional Tribes to develop programs that will produce resource related products that can be marketed and sold to raise much needed

capital for these remote communities. Expansion of production, marketing, sales, and distribution networks will increase self-sufficiency of the Tribes and communities.

In conclusion, it has been my experience, as well as the experience of the Tribes that I work for and with, that management of resources is a vital function of local Tribal governance. Protection, conservation, and yes, preservation of lands and resources for the future use of Tribal members, rural residents, and state and federal citizens alike will require a clear cooperative management process that incorporates all users and management entities into a common purpose. Respect for the Tribal and Native position, culture, and unique status in Alaska will be the first step in improving the life, health, and well-being of the rural residents and the wise use of the resources that support this lifestyle. S. 2301 is the premiere piece of legislation that clearly articulates what the role of Tribal governments and their Native fish and wildlife organizations will be able to accomplish in the over-all scheme of things. With Congressional approval of this Bill positive change will occur.

Attached to this Testimony I have included a prepared draft of the TITLE III of S. 2301 that I provided to the Senate Indian Affairs Committee to assist in their deliberations concerning an Alaskan section in the legislation. I would be honored to answer any questions that might arise as a result of this Testimony.

Respectfully submitted by Dewey Schwalenberg, Director of Stevens Village Natural Resource/Environmental Program. E-mail; dschwalenberg@gci.net

TITLE III. ALASKA NATIVE TRIBAL FISH AND WILDLIFE PROGRAMS

SECTION. 301. FINDINGS

Congress finds that:

(1) the United States and Alaska Native Tribal governments have a government-to-government relationship;

(2) Alaska Native Tribal governments exercise governmental authority over their citizens and their lands, and retain all aspects of their inherent sovereignty not explicitly ceded to the United States;

(3) the wise use and sustainable management of Indian fish and wildlife resources has a direct effect on the economic security and health and welfare of Alaska Native Tribal governments;

(4) Alaska Native Tribal governments retain the sovereign governmental authority to exercise certain aspects of civil jurisdiction over members and, to a certain extent, non-members on tribal lands;

(5) the United States has a trust responsibility to protect, conserve, and manage resources important to Alaska Native Tribal governments, including fish and wildlife and gathering resources;

(6) the United States trust responsibility extends to all Federal agencies and departments, and absent a clear expression of Congressional intent to the contrary, the United States has a duty to administer Federal fish and wildlife conservation laws, resource management programs, and subsistence programs in a manner consistent with its fiduciary obligation to honor and protect the interests of Alaska Native Tribal governments;

(7) Federal statute and regulations affecting fish, wildlife, and gathering resources important to Alaska Native Tribal governments and management activities shall be interpreted in accordance with long-standing principles of Federal-Indian law, statutes, and judicial decrees which form the relationship between Alaska Native Tribal governments and the United States;

(8) fish and wildlife resources located on tribal lands, and in other traditional use areas continue to provide sustenance, cultural enrichment, and economic opportunity for Alaska Native Tribal governments;

(9) Alaska Native Tribal governments retain sovereign governmental authority and jurisdiction over their own Tribal members to regulate hunting, fishing and gathering activities on tribal lands;

(10) Alaska tribal government will serve as cooperating managers of fish, wildlife, and gathering resources with other Alaska Native Tribal governments, the State of Alaska, and the United States, sharing management responsibilities for fish, wildlife, and gathering resources pursuant to tribal/federal agreements, statutes and judicial decrees;

(11) since time immemorial, Alaska Native cultures, religious beliefs and customs have centered around their relationships with fish, wildlife and gathering resources, and Alaska Native people have relied on these resources for food, shelter, clothing, tools and trade;

(12) Alaska Native fish, wildlife, and gathering resources are renewable and manageable natural resources that are among the most valuable to Alaska Native Tribal governments and which are vital to the well-being of Alaska Native people;

(13) Tribal lands contain millions of acres of natural lakes, woodlands, and impoundments, thousands of perennial streams, and tens of millions of acres of wildlife habitat;

(14) Alaska Tribal natural resource programs contribute significantly to the conservation and enhancement of fish, wildlife and gathering resources, including those resources which are classified as threatened or endangered;

(15) Federal, State, and tribal fish hatcheries produce tens of millions of salmon and other fish species annually, benefiting both Indian and non-Indian sport and commercial fisheries in the United States and Canada, and serving Indian subsistence and ceremonial needs;

(16) Dependent Indian communities in Alaska continue to suffer from the highest rates of unemployment in the nation, and the current economic

infrastructure and capital base of the State of Alaska, ANCSA Corporations, and many Alaska Native Tribal governments does not provide adequate support for community infrastructure development, nor developing community economic opportunities;

(17) comprehensive and expanded management of fish, wildlife, and gathering resources important to Alaska Native Tribal governments will yield greater economic returns, enhance Indian self-determination, strengthen tribal self-governance, promote cooperation between Alaska Native Tribal governments, ANCSA corporations, and state and federal government agencies, provide employment opportunities, and improve the social, cultural, and economic well-being of local Native villages and regions;

(18) the United States has an obligation to provide assistance to Alaska Native Tribal Governments to:

(a) develop integrated resource management plans, cooperative management agreements with Native corporations, state and federal agencies and their respective regulatory boards and commissions, and regulations governing hunting, fishing, trapping and gathering activities on tribal lands, including the protection, conservation, and enhancement of resource populations and habitats upon which the meaningful exercise of Alaska Native subsistence activities depend;

(b) develop and maintain facilities and structures required for the prudent management, enhancement and mitigation of fish and wildlife resources; and

(c) assist Alaska Native Tribal Government in developing and enhancing economic opportunities associated with the conservation and management of Indian fish and wildlife resources;

(19) the United States is committed to the goal of supporting and enhancing tribal self-government, tribal self-sufficiency and the economic development of Native communities as expressed through numerous Federal statutes; and

(20) while the existing network of Federal laws and programs provide a framework for the protection and management of fish, wildlife, and gathering resources important to Alaska Native Tribal Governments, and

the operation and maintenance of Indian resource production programs, facilities, and structures, an integrated and comprehensive approach to these programs will help to ensure the coordination of Federal , state, and Tribal government activities and will foster cooperation and resource management between Alaska Native Tribal Governments and ANCSA corporations on their lands, to ensure the efficiency and effectiveness of Federal and Alaska Native Tribal government programs.

SECTION 302. PURPOSES. *The purposes of this Act are*

(1) to provide for meaningful involvement of Alaska Native Tribal Governments in the conservation, prudent management, enhancement, orderly development and wise use of the hunting, fishing, and gathering resources upon which the Alaska Native Tribal Governments depend;

(2) to enhance and maximize Alaska Native Tribal Government capability and capacity to meaningfully participate in managing fish and wildlife resources for the continuing benefit of Alaska Native people, and in cooperatively managing shared resources for the benefit of the Nation, in a manner consistent with the hunting, fishing, trapping and gathering needs of Alaska Native Tribal Governments, consistent with the United States' trust responsibility;

(3) to implement the Federal policy of Indian self-determination and tribal self-governance within the natural resource arena by authorizing and encouraging government-to-government relations and cooperative agreements amongst Federal, State, local and Alaska Native Tribal governments, and ANCSA corporations, as well as international agencies and commissions responsible for multi-jurisdictional decision-making regarding fish and wildlife resources;

(4) to authorize Alaska Native Tribal Governments to participate in an Indian Fish Hatchery Assistance Program (Title II, Section 203), Tribal Bison Conservation and Management Program (Title V), and the Tribal Seafood and Resource Marketing Assistance Program (Title IV) that will be administered by Alaska Native Tribal governments pursuant to the Indian Self-Determination and Education Assistance Ac to address the needs of Alaska Native Tribal Government to be included as cooperating partners in resource management activities;

(5) to authorize the participation of Alaska Native Tribal Governments in the establishment and operation of an Indian Fish and Wildlife Resource Management Education Assistance and Cooperative Research Unit Program to promote and develop full tribal technical capability and competence in managing Indian fish and wildlife resource programs and to authorize the Secretary of the Interior, the Secretary of Commerce, the Secretary of Agriculture and other Federal agencies to enter into cooperative agreements with Alaska Native Tribal Governments and Alaska Native fish and wildlife organizations, colleges, universities and nonprofit organizations for the administration of tribal fish and wildlife cooperative research units;

SECTION 303. DEFINITIONS

For purposes of this Act

(1) The term "Bureau" means the Bureau of Indian Affairs within the U.S. Department of the Interior.

(2) The term "traditional use area" means lands that Alaska Native Tribal Governments and their members have historically, culturally, and geographically used for spiritual, social, political, economic, and sustenance purposes.

(3) The term "cooperative management" means a process involving two or more governments or governmentally-chartered entities jointly participating in the management or use of a fish or wildlife resource.

(4) The term "cooperative agreement" means a written agreement entered into by two or more governments or parties agreeing to work together to actively protect, conserve, enhance, restore or otherwise manage fish, wildlife and other resources.

(5) The term "Indian fish hatchery" means any single-purpose or multi-purpose facility in which the spawning, hatching, rearing, holding, caring for or stocking of fish and other aquatic resources takes place, including related research and diagnostic fish health facilities, and which is:

(A) owned or operated by an Alaska Native Tribal Government, or which may be owned or operated by the Bureau of Indian Affairs, or the U.S.

Fish and Wildlife Service for the benefit of fisheries resources that are important to any Alaska Native Tribal Government;

(B) owned or operated by a State government or a State institution of higher education, and for which an Alaska Native Tribal Government or Governments have entered into a cooperative management agreement.

(6) The term "fish hatchery maintenance" means work that is required at periodic intervals to prolong the life of a fish hatchery, hatchery components and associated equipment, in order to prevent the need for premature replacement or repair.

(7) The term "fish hatchery rehabilitation" means non-cyclical work that is required to address the physical deterioration and functional obsolescence of a fish hatchery building, structure or other facility component, or to repair damage, or to repair damage resulting from aging, natural phenomena and other causes, including work to repair, modify, or improve facility components to enhance their original function, the application of technological advances, and the replacement or acquisition of capital equipment, such as, among others, fish distribution tanks, vehicles, and standby generators.

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

(9) The term "Native" means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Native. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group, as defined in section 1602(b) of the Alaska Native Claims Settlement Act.

(10) The term "Alaska Native Tribal Government" means the governing body of any federally recognized tribe, as defined in the Indian Self-determination and Education Assistance Act, and located within the

boundaries of the State of Alaska, which is also recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(11) The term "Native village" means "any tribe, band, clan, group, village, community, or association in Alaska listed in section 1610 and 1615 of this title, or which meets the requirements of this chapter, and which the Secretary determines was, on the 1970 census enumeration date (as shown by the census or other evidence satisfactory to the Secretary, who shall make findings of fact in each instance), composed of twenty-five or more Natives" as defined in section 1602(c) of the Alaska Native Claims Settlement Act.

(12)"Regional Corporation" means an Alaska Native Regional Corporation established under the laws of the state of Alaska in accordance with the provisions of this chapter " as defined in section 1602(g) of the Alaska Native Claims Settlement Act.

(13) The term "Village Corporation" means an Alaska Native Village Corporation organized under the laws of the State of Alaska as a business for profit or non-profit corporation to hold, invest, manage, and/or distribute lands, property, funds, and other rights and assets for and in behalf of a Native Village in accordance with the terms of this chapter" as defined in section 1602(j) of the Alaskan Native Claims Settlement Act.

(14) The term "Alaska Native fish and wildlife organization" means a commission, authority or other entity chartered by one or more Alaska Native Tribal Governments for the primary purpose of assisting in the development of tribal natural resource management capacity and technical capabilities.

(15) The term "Indian fish and wildlife" means any species of animal or plant life that is important to Alaska Native Tribal Governments and their members for sustenance, ceremonial, recreational or commercial purposes, or for which an Alaska Native Tribal Government wishes to exercise management or cooperative management responsibilities.

(16) The term "tribal lands" means all private lands owned by Alaska Native Tribal Governments, townsite lands owned by Alaska Tribal Governments, all reservation lands owned by a federally recognized tribe, all allotment lands held in trust by the United States, and owned by members

of a federally recognized Tribe in Alaska, and ANCSA corporation lands that are identified in an integrated resource management plan and in cooperative resource management agreements between an Alaska Native Tribal Government and an ANCSA corporation.

(17) The term "integrated resource management plan" means a plan developed pursuant to the process used by an Alaska Native Tribal Government to assess resources and to identify comprehensive management objectives including the quality of life, production goals and landscape descriptions of all designated resources that may include, but are not limited to, water, fish, wildlife, forestry, agriculture, minerals, recreation, community and municipal resources, and may include Alaska Tribal Government codes and ordinances and plans related to such resources.

(18) The term "resource management activities" means all activities performed in managing tribal fish, wildlife, gathering, and related outdoor recreation and resources, including but not limited to:

(A) the conduct of fish and wildlife population and life history investigations, habitat investigations, habitat mitigation, enhancement, rehabilitation and restoration projects and programs, harvest management, and use studies:

(B) the development and implementation of surveys, inventories, Geographic Information System (GIS) programs, and integrated resource management plans for Tribal lands or traditional use areas;

(C) fish and aquatic resource production and hatchery management;

(D) the development, implementation, and enforcement of tribal fish and wildlife codes, ordinances and regulations;

(E) the development of tribal conservation programs, including employment and training of tribal conservation enforcement officers;

(F) judicial services;

(G) public use and information management and general administration; and

(H) participation in joint or cooperative management of fish and wildlife resources on a local, regional, state, national, or international basis.

(19) The term "Secretary" means the Secretary of the U.S. Department of the Interior.

(20) The term "seafood" means any plant or animal that may be gathered, collected, or harvested in marine or fresh water aquatic environment.

(21) The term "tribal organization" has the meaning given to such term in section 4 of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b), as it pertains to Alaska Native Fish and Wildlife Organizations.

SECTION 304. MANAGEMENT OF ALASKA NATIVE TRIBAL GOVERNMENT INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PROGRAMS IN ALASKA.

(a) Consistent with provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.), the Secretary shall support tribal administration of Indian fish and wildlife resource management activities to achieve the following objectives:

(1) to carry out the government-to-government relationship between Alaska Native Tribal Governments and the United States in the management of Indian fish and wildlife resources;

(2) to provide for the development and enhancement of the capacity of Alaska Native Tribal Governments to participate in management of Indian fish and wildlife resources;

(3) to protect, conserve and enhance Indian fish and wildlife resources;

(4) to promote the development and use of Indian fish and wildlife resources for the maximum benefit of Alaska Native people, by managing Indian fish and wildlife resources in accordance with tribally-developed integrated resource

management plans which provide for the cooperative management of all natural resources within tribal lands;

(5) to selectively develop and increase production of certain Indian fish and wildlife resources;

(6) to support the inclusion of Alaska Native tribal co-management or cooperative activities in local, regional, state, national or international decision-making processes and forums; and

(7) to develop and increase the production of fish, wildlife and gathering resources so as to better meet Alaska Native subsistence, ceremonial, recreational and commercial needs.

(b) MANAGEMENT PROGRAM:

(1) In order to achieve the objectives set forth in subsection (a), the Secretary, in full consultation with Alaska Native Tribal Governments and Alaska Native fish and wildlife organizations, shall establish the Alaska Native Fish and Wildlife Resource Management Program which shall be administered consistent with the provisions of the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450b et seq.);

(2) The Secretary shall promote meaningful Alaska Native Tribal Government involvement in the management of Indian fish and wildlife resources, and implementation of this Act, through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Educational Assistance act (25 U.S.C. 450b et seq.), or other Federal laws;

(3) Upon the request of an Alaska Native Tribal Government or Alaska Native fish and wildlife organization, the Secretary shall enter into a contract, compact, cooperative agreement, or a grant under the Indian Self-Determination and Educational Assistance Act with the Alaska Native Tribal Government or Alaska Native fish and wildlife organization to plan, conduct, or administer any program of the Department of the Interior, or portion thereof, which affects Indian fish and wildlife resources, and which is currently administered by the Secretary

without regard to the agency or office of the Department of the Interior or the organizational level within the Department.

(4) Upon the request of an Alaska Native Tribal Government or Alaska Native fish and wildlife organization, the Secretary shall enter into a cooperative agreement with the tribal government or Alaska Native fish and wildlife organization to address management issues affecting Indian fish and wildlife resources.

(c) MANAGEMENT ACTIVITIES. Alaska Native Tribal Government Indian fish and wildlife resource management activities carried out under the program established in subsection (b) may include, but shall not be limited to:

(1) the conduct of fish and wildlife population and life history investigations, habitat investigations, habitat mitigation, enhancement, rehabilitation and restoration projects and programs, harvest management, and use studies;

(2) the development and implementation of integrated resource management plans for tribal lands or traditional use areas, Geographic Information System (GIS) programs, surveys, and inventories;

(3) fish and other aquatic species production and hatchery management;

(4) the development, implementation, and enforcement of Alaska Native Tribal Government fish and wildlife codes, ordinances, and regulations;

(5) the development of Alaska Native Tribal Government conservation programs, including employment and training of tribal conservation enforcement officers;

(6) judicial services;

(7) public use and information management and general administration; and

(8) participation in joint or cooperative management of fish and wildlife resources on a regional basis with Federal, State, tribal, and local or international authorities.

(d) SURVEY AND REPORT.:

(1) Upon the request of an Alaska Native Tribal Government, the Secretary shall cause to be conducted a survey of the traditional use area of that Alaska Native Tribal Government, which shall include but not be limited to:

(A) a review of existing Alaska Tribal Government codes, ordinances, and regulations governing their members and others in relation to the management of Indian fish and wildlife resources;

(B) an assessment of the need to update and revise Alaska Tribal Government codes, ordinances, and regulations governing Indian fish and wildlife resource protection and use;

(C) a determination and documentation of the needs for tribal conservation officers, tribal fisheries and wildlife biologists, tribal fisheries and wildlife technicians, and other professionals to administer and implement Alaska Tribal Government Indian fish and wildlife resources management programs;

(D) an assessment of the need to provide training to and develop curricula for tribal fish and wildlife resource personnel, including tribal conservation officers, tribal fisheries and wildlife biologists, tribal fisheries and wildlife technicians, and other professionals to administer and implement Alaska Native tribal government Indian fish and wildlife resource management programs. Such curricula shall include the incorporation of traditional ecological knowledge as well as the traditional management strategies and techniques of Alaska Native people;

(E) an assessment of the need for training of Federal agency staff in matters pertaining to Federal-Alaska Native Tribal Government relations and the significance of Indian fish and wildlife to Native villages;

(F) an assessment of the effects of Federal and state resource management activities on Indian fish, and wildlife resources; and

(G) a determination and documentation of the condition of those Indian fish and wildlife resources.

(2) The Secretary is authorized to enter into contracts, compacts, or provide grants to Alaska Native Tribal Governments or Alaska Native fish and wildlife organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of carrying out the survey.

(3) Within one year of the date of enactment of this Act, the Secretary shall submit to the Congress a report on the results of the survey conducted under the authority of subsection (1) of this section.

(e) ALASKA TRIBAL GOVERNMENT INDIAN FISH AND WILDLIFE RESOURCE MANAGEMENT PLANS.:

(1) In order to fulfill the management objectives set forth in subsection (a), an Alaska Tribal Government Indian fish and wildlife resource management plan shall be developed and implemented in the following manner:

(A) pursuant to a self-determination contract or self-governance compact under the authority of the Indian Self-Determination and Education Assistance Act, an Alaska Native Tribal Government or an Alaska Native fish and wildlife organization may develop or implement an Alaska Tribal Government Indian fish and wildlife management plan.

(B) Subject to the provisions of subparagraph (C), the Alaska Native Tribal Government shall have broad discretion in designing and carrying out the planning process.

(C) If an Alaska Native Tribal Government elects not to contract for the development or implementation of an Alaska Tribal Government Indian fish and wildlife management plan, the Secretary shall develop and implement the plan in consultation with the affected Alaska Native Tribal Government.

(D) Whether developed directly by the Alaska Native Tribal Government or by the Secretary, the plan shall:

(I) determine the condition of Indian fish and wildlife resources and habitat conditions;

(ii) identify specific Indian fish and wildlife resources goals and objectives;

(iii) establish cooperative management objectives for Indian fish and wildlife resources;

(iv) define critical values of the Alaska Native Tribal Government and its members and provide for comprehensive management objectives;

(v) be developed through a public meeting process;

(vi) apply the public meeting records, existing survey documents, reports, and other research from Federal and state agencies, community colleges, or other education or research institutions; and

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

(2)Alaska Tribal Government Indian fish and wildlife management plans developed and approved under this section shall govern the management and administration of Indian fish

and \wildlife resources by the Bureau of Indian Affairs and the Alaska Native Tribal Government.

(f) TRIBAL MANAGEMENT IN TRADITIONAL USE AREAS:

(1) REVIEW: To achieve the objectives set forth in section 210(a), the Secretary and the Secretaries of Commerce and Agriculture shall review existing programs involving the management of Indian fish and wildlife resources in the traditional use areas of Alaska Native Tribal Governments, for the purpose of determining the need for the meaningful involvement of Alaska Native Tribal Governments, program adequacy and staffing needs to appropriately represent the interests of Alaska Native Tribal Governments.

(2) CONTRACTS OR GRANTS: The Secretary is authorized to enter into contracts, compacts, or provide grants to Alaska Native Tribal Governments or Alaska Native fish and wildlife organizations under the authority of the Indian Self-Determination and Educational Assistance Act for the purpose of completing this review.

(3) REPORT: Within one year of the date of enactment of this Act, the Secretary, in consultation with the Secretaries of Commerce and Agriculture, shall submit a report to the Congress based upon the review conducted under subsection (1) of this section assessing fish and wildlife program adequacy and staff needs, and the condition of Indian fish and wildlife resources in the traditional use areas of Alaska Native Tribal Governments,.

(g) ASSISTANCE: The Secretary is authorized to provide financial and technical assistance to enable Alaska Native Tribal Governments to:

(1) update and revise Alaska Native Tribal Government codes, ordinances, and regulations governing Indian fish and wildlife resource protection and use;

(2) employ tribal conservation officers, tribal fisheries and wildlife biologists, tribal fish and wildlife technicians, and other professionals to administer and implement Alaska Tribal Government Indian fish and wildlife resource management programs;

(3) provide training for tribal fish and wildlife resource personnel including tribal conservation officers under a curriculum that incorporates law enforcement, fish and wildlife conservation, identification and resource management principles and techniques. Such curricula shall also include the incorporation of traditional ecological knowledge as well as the traditional management strategies and techniques of Alaska Native people; and

(4) enable Alaska Native Tribal Governments and Alaska Native fish and wildlife organization to enter into cooperative law enforcement agreements, which may include provisions for additional training and cross-deputization of tribal law enforcement staff, with local, state and Federal jurisdiction for the enforcement of laws and regulations pertaining to Indian fish and wildlife resources.

(h) FEDERAL ACTIVITIES:

(1) CONSULTATION AND COORDINATION. In conducting management activities under their respective authorities, the Secretary, in coordination with the Secretaries of Commerce and Agriculture, shall:

(A) consult with and seek the participation of Alaska Native Tribal Governments on all matters affecting Indian fish and wildlife resources in a manner consistent with the United States' trust responsibility and the government-to-government relationship between Alaska Native Tribal Governments and the United States;

(B) ensure that Federal agency staff are adequately trained in issues pertaining to impacts of agency actions on Alaska Native Tribal Governments and Indian fish and wildlife resources;

(C) investigate opportunities for Alaska Native Tribal Governments to perform cooperative land management activities on Federal and other lands that affect Indian fish and wildlife resources;

(D) develop a formal, written assessment of how Federal resource management activities are affecting tribal use of and

access to Indian fish and wildlife resources and the traditional use areas of Alaska Native Tribal Governments;;

(2) PROTECTION OF INFORMATION: Notwithstanding any other provision of law, the Secretary shall not disclose, nor cause the disclosure of any information conveyed to an agency under the Secretary's administrative responsibilities pursuant to this Act to any person, party, or entity, including other Federal agencies, that is made available to the Secretary by an Alaska Native Tribal Government or a member of an Indian tribe and which is:

(A) related to the administration of the United States' trust responsibility for Indian lands and resources; and

(B) declared by the Alaska Native Tribal government or individual member of an Indian tribe to be culturally-sensitive, proprietary, or in any manner confidential.

(3) FEES AND ACCESS: Upon the request of an Alaska Native Tribal Government, the Secretary and the Secretary of Agriculture are authorized to:

(A) provide fish and wildlife resources to an Alaska Native Tribal Government from Federal lands administered by agencies under their respective administrative responsibility without permit or charge to the Indian tribe having an historical, cultural, or geographical relationship to such lands, so long as :

(B) (i) an agreement is entered into between the Alaska Native Tribal Government and the Secretary or Secretary of Agriculture which contains sufficient information and conditions regarding the location, quantity, timing, and methods associated with the provision of Indian fish and wildlife resources to ensure compatibility with applicable agency management plans; and

(ii) the request does not adversely affect the ability of the agency to carry out its responsibilities under the applicable management plan;

(B) provide access to Federal lands under their respective administrative responsibility for tribal traditional cultural or customary purposes without permit or fee;

(C) temporarily close to general public use, one or more specific portions of Federal lands under their respective administrative responsibility in order to protect the privacy of the activities referenced in subsection (B), provided that any such closure shall be limited to the smallest practicable area for the minimum period necessary in a manner consistent with the purpose and intent of the American Indian Religious Freedom Act (42 U.S.C. 1996);

(4) EFFECT ON EXISTING RIGHTS: Nothing in this section shall be construed to limit, modify, or amend existing rights of any Alaska Native Tribal Government under statute or other agreement to access and use Indian fish and wildlife resources.

SECTION 304. ALASKA NATIVE TRIBAL GOVERNMENT SEAFOOD AND RESOURCE MARKETING ASSISTANCE PROGRAM.

(a) The Secretary of Commerce shall establish an Alaska Native Tribal Government Seafood and Resource Marketing Assistance Program to enable participating Alaska Native Tribal Governments and Alaska Native fish and wildlife organizations to develop the necessary infrastructure and marketing systems to effectively promote their products domestically and internationally.

(b) Within one year of the date of enactment of this Act, working with participating Alaska Native Tribal Governments, the Secretary of Commerce shall develop and submit a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation to provide subsidies and other Federal support, permissive taxing and coordinated training, promotions, and Alaska Native Tribal product labeling as well as other initiatives, that hold the potential to significantly enhance the ability of Alaska Native Tribal Governments to assure that fair and equitable prices

are associated with seafood, bison, reindeer, muskox, yak and other produced and harvested natural resources related products.

(c) Within one year of the date of enactment of this Act, the U.S. Food and Drug Administration, in consultation with Indian tribal governments, shall prepare a report to the Committee on Indian Affairs of the U.S. Senate and the Committee on Resources of the U.S. House of Representatives, that contains recommendations for legislation that would enable Alaska Native Tribal governments to be recognized as competent processing authorities as well as recommendations for the provision of technical assistance to tribal enterprises so as to ensure that seafood, buffalo, reindeer, muskox, yak, and other harvested natural resource products are safe for consumption.

(d) Health Issues. [to be developed]

SECTION 305. MARKETING DEVELOPMENT GRANTS AND LOAN PROGRAM. From time to time, sums may be appropriated by Congress for the following activities as they are more fully developed:

(a) GRANTS FOR MARKET RESEARCH AND PILOT PROGRAMS.

(b) LOANS FOR INFRASTRUCTURE DEVELOPMENT.

(c) INVESTMENT CAPITAL TO DEVELOP MARKETING, SALES, DISTRIBUTION, AND CONSUMER COOPERATIVES.

Testimony of James E. Zorn, Policy Analyst
Great Lakes Indian Fish and Wildlife Commission

Mr. Chairman and Members of the Committee, my name is James E. Zorn, Attorney and Policy Analyst with the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). On behalf of GLIFWC's eleven member tribes, thank you for the opportunity to appear before you today to discuss S. 2301, the Native American Fish and Wildlife Resources Management Act of 2004.

S. 2301 would provide a federal statutory mandate for the preservation and enhancement of tribal fish, wildlife, wild plant and habitat management efforts. GLIFWC supports this initiative and the underlying goal of acknowledging – as a matter of federal law – the primacy of tribal self-regulation and self-governance of treaty-protected natural resources, both on and off the reservation.

S. 2301 would serve to implement the very core of federal Indian policy – the preservation of historically and culturally significant activities of Indian people, the fulfillment of federal promises made to the tribes by treaty, the protection of significant Indian economic activity, the enhancement of self-government by the tribes, the encouragement of government-to-government dealings between tribes, states and the federal government, and the promotion of education opportunities for Indian people.

On June 3, 2003, GLIFWC testified before this Committee to provide a detailed account of its activities as an intertribal agency exercising the delegated governmental authority of its members tribes with respect to the regulation and management of off-reservation natural resources protected by treaty. We ask that our previous testimony be incorporated for the record here as well.

In drafting S. 2301, the Committee clearly paid close attention to tribal comments provided at the June 3 oversight hearings. GLIFWC appreciates Committee's sensitivity and responsiveness to tribal concerns. Our comments here are offered in the spirit of working with the Committee and its staff to refine specific details and language as this measure proceeds through the legislative process.

1. Title I – General Provisions.

a. Section 101 – Findings. GLIFWC supports the bill's findings with the following suggestions:

- §101(3) – The term "wise use" may be viewed as "term of art" within social and political discourse on natural issues that carries unintended political or controversial connotations. Perhaps this subsection should simply refer to the "sustainable use and management of Indian fish and wildlife resources."

- §101(6) – GLIFWC is concerned that this finding may imply that specific treaty obligations, such as those contained in the Chippewa Treaties of 1836, 1837, 1842, and 1854, are a "subset" of the general trust responsibility rather than as distinct obligations.

Whatever else the trust responsibility might require, all branches of the federal government must exercise their respective authorities to meet the provisions and fulfill the purposes of each treaty. Federal agencies must understand their proactive duty to: i) understand the nature and extent of the particular treaty rights involved; and ii) ensure that those rights involved are protected and given full effect.

- §101(8) – While technically correct, it would be helpful if this or another finding would specifically direct that "Indian fish and wildlife resources, and associated resource management activities, shall not be impaired or diminished by federal statute, except to the extent expressly provided otherwise by Congress." GLIFWC offers this suggestion because of its experience with the attempted enforcement of federal laws of general applicability against either it as a tribal agency or against tribes attempting to exercise their retained sovereign prerogatives regarding their treaty rights.

- §101(10) – The bill generally utilizes the term "Indian fish and wildlife resources" as a convenient shorthand to capture the full range of activities and management interests involving the harvest of fish, wildlife and wild plants. This particular finding references only "hunting and fishing activities." Perhaps, given the appropriate definition of an "Indian fish and wildlife resource" contained §103(11), this finding should simply refer to "natural resource harvesting activities."

- §101(12) – This finding references "fish, wildlife and gathering resources." While tribal rights to harvest plant life are vitally important and are properly within the scope of the bill, those rights are covered by the definition of an "Indian fish and wildlife resource," which expressly includes plant life. In the interest of drafting clarity and consistency, perhaps references to "gathering" resources should be deleted in this subsection and elsewhere in the bill and that the term "Indian fish and wildlife resource(s)" be appropriately inserted. Alternatively, the term "gathering resources" could be changed to "plant resources" to describe the kind of resource, rather than the activity associated with the taking of the resource.

b. Section 102 – Purposes.GLIFWC supports the bill's stated purposes with the following suggestions:

- §102(1) – As with §101(3), the term "sustainable use" might be more appropriate than "wise use."

- §102(2) – As with §101(6), this subsection should not be drafted to imply that specific federal treaty obligations are merely a "subset" of the trust responsibility.

c. Section 103 – Definitions. GLIFWC supports most of the definitions, particularly the

definition of "resource management activities" in §103(18) which properly recognizes the requisite elements of a comprehensive tribal natural resource management program. GLIFWC offers a few definitional suggestions:

- §103(2) – "Ceded territory" rights should be defined to include "hunting, fishing, trapping and/or gathering rights."

- §103(11) – To maintain clarity and consistency with usages throughout the bill, the term to be defined should be "Indian fish and wildlife resource."

- §103(22) – As a matter of drafting clarity regarding "tribal co-management"activities, the word "or" should be substituted for "and" before "management responsibilities" and before "international" in this definition.

2. Title II – Tribal Fish and Wildlife Programs.GLIFWC views this Title as the heart of the bill for achieving increased and consistent federal recognition of and support for tribal natural resource management programs that are driven by the tribes themselves. Its major concern with this Title is the possible creation of a new bureaucracy within the Department of Interior that could: i) drain funding away from tribes rather than increasing the overall amount of Self-Determination Act funding available to them; and ii) improperly impose the Department of Interior's views into or oversight of existing tribal programs, particularly ceded territory programs that already provide effective tribal self-regulation in compliance with federal court orders.

a. Section 201(b) – Tribal Fish and Wildlife Resource Management Program Against the backdrop of these concerns, GLIFWC offers the following comments:

- §201(b)(1) – This subsection would reinforce the statutory authority of the Department of Interior to implement a "Tribal Fish and Wildlife Resource Management Program." This authority must be seen within the larger framework of the bill which is designed to promote tribal management programs. The Committee, either directly in the bill or at least in the legislative history, should make clear that Congress does not intend Interior to create or operate a bureaucracy that diverts the financial resources needed for tribes to operate their own management programs. To ensure that unnecessary bureaucracy is avoided, perhaps the bill could provide something to the effect of "the primary purpose of this Program is to maximize the transfer of financial resources to fish and wildlife programs of tribal and tribal organizations under the Self-Determination Act." From GLIFWC's perspective, the problem is not the lack of some programmatic compartment within Interior, but the chronic underfunding of tribal natural resources management programs themselves.

- §201(b)(3) – GLIFWC offers its experience with the recognition and implementation of

its member tribes' ceded territory treaty rights on a number of federal lands, most notably National Forests, as to what this section might require of federal agencies. GLIFWC and its member tribes do not expect to "take over" the management of off-reservation federal lands on which their ceded territory treaty rights attach. Rather, they seek recognition of those rights by the federal land manager involved, implementation of those rights under a system of tribal self-regulation, management of those lands in a manner that does not infringe upon those rights and that protects the habitats supporting the natural resources subject to the rights, and, finally, a thorough government-to-government consultation process on land management decisions affecting those rights.

After nearly two decades of assisting its member tribes to implement their ceded territory treaty rights, GLIFWC has worked with a number of federal agencies in resolving what might be called the "dual mandate dilemma" where the agencies have the concomitant responsibilities: i) to carry out specific Congressional directives establishing the particular federal stewardship involved; and ii) to honor specific treaty obligations and fulfill the trust responsibility. The role of Self-Determination Act funding and assistance has not been to allow tribes to assume the full range of federal land management responsibilities. Rather, it has been to provide the requisite tribal natural resource management infrastructure to secure recognition and implementation of the tribes' rights and to engage in ongoing consultation and specific cooperative management projects to ensure protection of those rights.

In this regard, GLIFWC refers the Committee to its June 3, 2003, testimony, particularly Section V [GLIFWC's Co-Management Activities] that discusses a comprehensive agreement between GLIFWC's member tribes and the USDA-Forest Service regarding the recognition and implementation of treaty-reserved gathering rights on a number of National Forests. GLIFWC will provide additional information to Committee staff on this agreement, as well as on recent interactions with the National Park Service's Apostle Islands National Lakeshore, to help illustrate: i) how federal lands can be managed to recognize and accommodate tribal rights without abdicating federal management and stewardship responsibilities; and ii) the role that Self-Determination Act funding and assistance can and should play in this context.

A key obstacle in this context has been the inability to access Self-Determination Act funding from agencies other the Bureau of Indian Affairs where the primary interaction is with some other federal agency. For example, the Forest Service has not identified a mechanism within its organic laws that parallels the Self-Determination Act and, for example, has been unable (or unwilling) to provide funds for a tribal forest ecologist/biologist to assist in the implementing the National Forest agreement. Similarly, when GLIFWC has sought the assistance of the USFWS for ceded territory spring fishery assessments, it has been compelled to pay over $67,000 of its own funds

since 1999 to secure the agency's services.

b. Section 201(d) – Survey and Report. The fact that the bill offers tribes the option to request assistance in conducting the contemplated survey is consistent with the bill's primary intent. A few changes might help to clarify this section:

- §201(d)(1) – GLIFWC presumes that the contemplated survey could be conducted in relation to tribal rights that exist beyond a reservation boundary, such as the ceded territory treaty rights of GLIFWC's member tribes or the reservation-based fishing rights that extend outside of reservation boundaries into Lake Superior for some of GLIFWC's member tribes whose reservations are located on the Lake's shoreline. As currently drafted, this subsection would limit the survey to "the reservation."

- §201(d)(1)(F) – The survey should be able to assess the effects that a broad range of federal activities, not just federal resource management activities, have on tribal fish and wildlife resources and tribal resource management activities. For example, a tribe may need to assess the effects of Army Corps of Engineers decisions regarding the issues of Clean Water Act Section 404 permits.

- §201(d)(3) – The subsection is either out-of-place or inappropriately drafted. It appears to be an inadvertent holdover from a previous draft of the bill.

c. Section 201(e) – Natural Resource Management Planning. Sound natural resource planning is a vitally important endeavor for tribes, and tribes carry out their planning functions in a wide variety of ways. However, in an unwelcome major departure from predecessor bills from a decade ago, this bill would require (i.e. "shall" not "may") tribes to develop a tribal fish and wildlife resource management plan. GLIFWC is uncertain whether this should be a requirement for those tribes and tribal organizations that already undertake extensive resource management activities, particularly those already being undertaken in compliance with federal court orders. At the very least, the bill should make clear that tribes are not required to c hange their natural resource management traditions or methods, or their existing management plans: i) to conform to the bill's requirements; ii) as a prerequisite for the exercise of retained tribal sovereign prerogatives to carry out resource management activities; or iii)as a prerequisite for Self Determination Act funding or technical assistance.

The bill also should recognize that practical restraints may in some instances impede the completion of a comprehensive natural resource planning process within the bill's contemplated three-year period. Resource management planning can be a complex undertaking that requires substantial funding, expertise and time. Tribal resource management authority may extend broadly to many species over a wide territory. For effective planning, much information must be gathered, priorities within the tribal community must be established, and many decisions must be made. And,

it frequently may be the case that insufficient funding or other constraints limit a tribe's ability to address all resources at once in the planning process. Given these practicalities, a tribe should not be penalized or adversely affected for not meeting the three-yearplanning deadline, especially for factors beyond a tribe's control.

Thus, in calling for a tribal planning process, the bill must make clear that it does not intend to limit the approaches available to tribes or to force tribes to change their resource management traditions. In addition, the bill should not prescribe a particular planning process for the tribes, including imposing a requirement for public meetings. For example, public meetings in the context of implementing federal court orders are redundant given that the matter has already been through a public litigation process and ongoing matters are subject to the continuing jurisdiction of the court. This is particularly true in the dynamics of state/tribal interactions in the ceded territory context where each sovereign has the primary responsibility of dealing with its respective citizens. Therefore, consistent with tribal sovereignty and with the requirements of each tribe's own law and procedures, tribes should have broad discretion in designing and carrying out the planning process. Similarly, tribes should have broad discretion in determining the tribal needs to be addressed by the plan, the scope and contents of the plan, and the design and implementation of the plan.

Finally, GLIFWC is confused about the relationship between §201(e) regarding the development of resource management plans and §201(f) regarding management in regional resource management areas. When read together, these subsections seem to imply that tribes and their properly delegated tribal organizations which carry out resource management activities in regional resource management areas cannot avail themselves of the resource management planning process set forth in §201(e). GLIFWC assumes that this is an unintended implication, and that tribes as well as their properly delegated tribal organizations like GLIFWC, should be able to avail themselves of the §201(e) planning process or to require the Secretary to undertake the planning on their behalf.

d. Section 201(h) – Federal Activities. This section should be drafted broadly to apply to all actions by any federal agency that affect Indian fish and wildlife resources or tribal resource management activities. In addition, the federal government's treaty obligations and trust responsibility toward tribes involve more than participation in a process or mere consideration of tribal interests when a federal decision is to be made. All federal agencies have the substantive obligation to: i) make decisions that live up to federal treaty obligations or that are otherwise protect the interest of the affected tribes; and ii) ensure that agency actions and decisions, of whatever nature, do not impermissibly interfere with tribal resource management activities or infringe upon reserved tribal rights.

e. Section 202 – Education in Tribal Fish and Wildlife Resource Management. As for the provisions of §202, GLIFWC defers to others having more experience and expertise with educational programs and institutions. Suffice it to say that GLIFWC strongly supports the education and training of biologists and technicians, law enforcement officers, and other

professionals who come from the communities and traditions that GLIFWC serves.

f. Section 203 – Tribal Fish Hatchery Assistance Program. This section authorizes the Secretary to establish and administer a Tribal Fish Hatchery Assistance program to, among other things, "assist Indian tribal governments to . . . enhance fishery resources on tribal lands." Several of GLIFWC's member tribes stock fish from tribal hatcheries in off-reservation waters adjacent to their reservations and within the ceded territory. This provision should be drafted appropriately to account for this aspect of tribal fishery enhancement programs, as well as for all aspects of tribal aquaculture programs.

3. Title IV – Tribal Seafood and Resource Marketing Assistance Program. GLIFWC understands that a number of issues must be considered in developing this title but is uncertain at this time how best to deal with them in this bill. For example:

- There are matters of public health involved with the handling and processing of fish and wildlife. For example, the FDA has adopted regulations prescribing procedures for the safe and sanitary processing and importing of fish and fishery products. In implementing these regulations, three of GLIFWC member tribes and the FDA have entered into agreements whereby the FDA recognizes concurrent tribal jurisdiction over the inspection of fish and fishery products harvested, processed and/or sold by tribal members and agrees to honor tribal fish processing regulations that parallel the federal standards. Another issue that faces GLIFWC's member tribes is whether wild venison may be served as part of federally or state funded nutrition programs or in tribal schools. The issue here involves the inability to conduct an ante-mortem inspection of wild animals.

- In the case of wild rice, there are marketing and labeling matters relating to tribally harvested wild rice from lakes and streams as opposed to "paddy" rice and potentially genetically-modified strains.

- Finally, there are other matters, such as mercury-contaminated fish, where tribal natural resource managers must cope with the consequences of the failure of our Nation as a whole to adequately control the sources of the particular toxic substance involved. GLIFWC and its member tribes can not at this point simple stop the sources of mercury pollution. However, based upon the comprehensive mercury contaminant testing program described in our June 3, 2003, testimony, they can help tribal members understand the risks associated with consuming contaminated fish and make informed decisions about where to fish and how much fish to eat.

In any event, GLIFWC looks forward to working with Committee staff and tribal representatives in considering these issues and how they might be addressed in the bill.

4. Title VI – Miscellaneous Provisions. The bill calls for the development and implementation of final regulations within 18 months of enactment. The bill should clearly provide that the agencies may not stop or retreat from their current Self-Determination Act commitments and obligations while regulations are being developed.

GLIFWC understands that the implementing agencies will have discretion in developing these regulations within the four corners of the bill's provisions. Ne vertheless, GL IFWC is concerned that the regulatory development process itself could become overly cumbersome and, given past experience with new regulations under previous amendments to the Self-Determination Act, unreasonably lengthy and time consuming. And, GLIFWC is concerned that the regulatory development process could become more focused on agency bureaucratic interests and preferences rather than on securing prompt and efficient funding for tribal programs. Quite simply, this process could drain already-limited resources away from funding tribal resource management activities rather than quickly focusing federal energy and programs on getting funds and assistance out to the tribes.

GLIFWC would appreciate the Committee's assistance in assuring that the goal of the regulatory development process is to support and secure the primacy of tribal self-regulation and self-governance of Indian fish and wildlife resources, both on the reservation and, where appropriate, off the reservation. Tribal natural resource management programs can not become either a political football or a "turf war" within or between federal agencies in this time of diminishing federal staff and budgets.

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