

FISH AND WILDLIFE MISCELLANEOUS—PART 3

HEARINGS BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS

SECOND SESSION

ON

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

CANADIAN GREAT LAKES FISHING BRIEFING
JUNE 6, 1978

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

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

ANADROMOUS FISH IN LAKE CHAMPLAIN
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Mr. PRELOZNIK. Mr. Chairman, Mr. Gordon left, to take the plane at 1:30. We are wondering if the Chair would permit us to consolidate his testimony with that of Mr. Bigboy's, who is scheduled to appear later. I will be happy to make appearances for both at that time.

Mr. LEGGETT. Next we have the Michigan Department of Natural Resources, Mr. Howard Tanner, director, with Mr. John Scott of the fisheries division.

Nice to have you folks here. We appreciate your answers to previous questions.

Your statement will be included in our record and though you read it. I would appreciate your proceeding to highlight it.

Do you favor the bill?

STATEMENT OF HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES, ACCOMPANIED BY JOHN SCOTT, FISHERIES DIVISION

Mr. TANNER. No, I do not.

Mr. LEGGETT. How about Mr. Scott, does he favor the bill?
[Laughter.]

[The following was received for the record.]

STATEMENT OF DR. HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman and members of the committee, I am Dr. Howard A. Tanner, director of the Michigan Department of Natural Resources. My academic training was in the field of fisheries biology and limnology. I have held teaching, research and administrative posts at the Colorado State University and Michigan State University; and I have served as chief of the fisheries division of the Department of Natural Resources in Michigan.

I wish to offer comments on H.R. 12531 introduced by Mr. Ruppe on May 3, 1978—a bill to amend the Great Lakes Fisheries Act of 1956; and to urge this committee to reject proposed amendments to H.R. 12531 which have recently been brought to my attention.

H.R. 12531, as introduced, would require the preparation of a comprehensive report concerning conservation and management of the Great Lakes fisheries, and establish federal support for fisheries monitoring and hatchery programs for the Great Lakes.

Basically, Mr. Chairman, we support H.R. 12531. As a matter of fact, the Great Lakes Fishery Commission, through its technical committees for each of the Great Lakes, is now considering the preparation of a report and plan for management and utilization of the fisheries resources of these vast inland seas. Therefore, we welcome Mr. Ruppe's interest in this regard because, if the bill passes the Congress, it will complement and expedite completion of this important task by the Great Lakes Fishery Commission.

Also, Mr. Ruppe's plan to increase and fund additional monitoring of recreational, commercial and Indian fishing is commendable. While Michigan and the other Great Lakes states carry on extensive monitoring programs now, additional needs and broader coverage have been indicated and recommended to the Great Lakes Fishery Commission. Clearly, this type of information is critical to rational and intelligent management and allocation of the fisheries resources; and funds to implement fisheries monitoring programs do not always receive favorable reception in our state legislative forums.

Finally, Mr. Ruppe's bill would provide \$50 million for the construction of new fish hatcheries to be operated by the states. I believe there is a need for additional hatcheries in the Great Lakes. In Michigan we are presently renovating most of our hatcheries, at a cost exceeding \$12 million, to provide additional fish for the Great Lakes and inland waters.

While I believe that hatcheries should be State-owned and managed, operational funds are becoming increasingly scarce for such purposes. Therefore, not only do we

support federal funding for construction, but also a federal role in maintenance and operational costs as well.

If a federal role is questioned in this area, Mr. Chairman, I would like to point out that the Great Lakes are within a day's drive of 50 million people. In Michigan, our Great Lakes recreational fisheries contribute more than \$250 million annually to the economy of the State. Moreover, these fisheries not only provide recreation but also supply more than 30 million pounds of food annually to recreational anglers, their friends and relatives.

Mr. Chairman, I would now like to address the proposed amendments to H.R. 12531 that have been brought to my attention. Frankly, I do not know the legislative status of the amendments and can only comment upon a discussion draft dated June 30, 1978, as provided by the committee staff.

Both Title I and Title II, the latter designated as the "Michigan Indian Fishing Rights Act of 1978", thrust at an Indian fishing problem we are experiencing in Michigan.

Before commenting on the amendments, please bear with me so that I can offer a perspective of this problem. If the committee wishes to have additional information, I have attached copies of the testimony offered by myself and Mr. John Scott, chief of the fisheries division, at the subcommittee's hearing on this issue in Petoskey, Mich., on January 13, 1978. Also, Mr. Chairman, I wish to put in the record Senate Concurrent Resolution No. 265 introduced in the Michigan State Senate on October 27, 1977. This resolution details important information on several treaties between the United States and the Ottawa and Chippewa Indians which ceded vast amounts of Michigan lands to the United States between 1836 and 1855. The resolution is appended to a copy of my testimony.

A fair and impartial reading of this resolution and, indeed, of the 1836 Treaty of Washington (7 Stat. 491), Treaty of Sault Ste. Marie of July 31, 1855 (11 Stat. 621) and the Treaty of Detroit of August 2, 1855 (11 Stat. 631) would, I submit, lead one to conclude that Ottawa and Chippewa Indian fishing rights in Michigan were extinguished long ago.

Nevertheless, encouraged by recent court decisions favoring Indians fishing rights throughout the country, the Department of Interior and certain Indian tribes in Michigan are, through filing of a lawsuit, seeking to create or renew such fishing privileges. The nature and extent of this litigation is found on pages 3 and 4 of my earlier testimony to the subcommittee and I quote:

"In April 1973 the U.S. Attorney filed a complaint against the State of Michigan in the Federal District Court in Grand Rapids, Michigan, on behalf of the Bay Mills Indian Community. This lawsuit was filed without any prior notice to the State of Michigan or any attempt by any entity of the Federal Government to negotiate a settlement of a presumed dispute over Indian fishing rights. As a matter of fact we were, at the time the lawsuit was filed, trying to accommodate some interests in the fisheries directly with Indian communities.

Nonetheless, the lawsuit was filed and the Federal court ultimately granted leave to the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians to become plaintiff-intervenors in the suit. Attempts by organized sportsmen's groups to intervene in the suit on behalf of the State have failed, however.

The plaintiffs have requested the court to assume jurisdiction in this litigation and declare:

1. That the Bay Mills Indian Community has the sole and exclusive right to regulate the taking of fish on the Indian communities' reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation;

2. That the Indian communities have a federally protected, reserved right to take fish from all waters of the Great Lakes adjacent to lands ceded by the Treaty of 1836; and that the State is without jurisdiction or authority to regulate Indian communities and their members in the exercise of the treaty right to fish for commercial and subsistence purposes in the ceded waters of the Great Lakes.

3. That the state has a duty to exercise its police power to regulate sport and commercial fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indian communities and their members, in order to assure that the Great Lakes fisheries resources are protected and that there is available to Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture.

Therefore, pursuant to the 1836 Treaty of Washington between the Ottawa and Chippewa Indian nations and the United States, the plaintiffs are claiming superior rights to the fisheries resources of all waters of Lake Michigan north of Grand Haven; all waters of Lake Huron north of Alpena; and all waters of Lake Superior

east of Marquette. This, Mr. Chairman, constitutes one-half of Michigan's Great Lakes waters."

The litigation is continuing and probably a definitive conclusion will not be reached for many years because of anticipated appeals. While I believe we have a very strong case before the Federal court, I cannot be very optimistic about a judgment handed down favoring our position; nor can I foresee a timely judicial resolution to a growing problem of unlimited and unregulated Indian fishing now occurring in Michigan waters of the Great Lakes. Some restored fish stocks have already been depleted by Indian fisheries and Indians are expanding their operations into other waters. The number of Indians participating in such fisheries grows, literally daily, through the benevolence of the Bureau of Indian Affairs which administratively, apparently, has carte blanche to issue fishing identification cards to anyone offering only the slightest pretence of being of Indian parentage. This, Mr. Chairman, I submit should be of urgent concern to the Congress of the United States. If it is proven or held that fishing privileges derive to Indians, I suggest that the Solicitor of the Department of the Interior and the Bureau of Indian Affairs will make more of a mockery of the Code of Federal Regulations and the Wheeler-Howard Indian Reorganization Act of 1934 governing qualifications of Indians for certain federal aid and fishing privileges.

We have been encouraged by Mr. Ruppe's concern and efforts to resolve this problem. While I believe a congressional solution is most appropriate, the amendments I have received are most emphatically not the answer. Quite candidly, I would prefer to take our chances in court rather than accept a solution as has been prepared in these amendments.

Title I would establish a hierarchy of advisory committees and federal involvement in the management and regulation of our fisheries; and the established roles of the states and the Great Lakes Fishery Commission would be at best vague, and at worst—obliterated. The proposals in this title are, apparently, patterned after the Fisheries Conservation and Management Act of 1976 which, among other provisions, established Regional Management Councils to deal with and resolve fisheries problems in territorial waters of the United States (oceans). The Great Lakes, Gentlemen, are not, by definition, U.S. "territorial" waters. The bottomlands and the fisheries resources of the Great Lakes are, by law and international treaty, declared to be the property of the States, within established boundaries, and (Canadian waters excepted, of course). The ownership question, therefore, was long ago resolved and application of the Fisheries Conservation and Management Act of 1976—in any form—to the Great Lakes is inappropriate. I can assure the Committee, also, that my colleagues in the other Great Lakes states will not willingly cede their jurisdictional and management responsibilities on the Great Lakes to an advisory committee, regional management council, or to the Federal Government.

For the past 15 to 20 years the Great Lakes States and Canada—working directly among themselves or through the Great Lakes Fishery Commission—have proven that the fisheries resources can be restored and effectively managed cooperatively. Contrary to opinions held in some quarters, complementary controls and programs between the two countries, and the province and states have been implemented in sport and commercial regulations, fish plantings, exchange of services, stock assessment and research activities.

The Indian fishing dispute in Michigan, as serious as it is, should not be regarded as an open invitation by us for federal or other hierarchical involvement in our fisheries management programs. If an Indian fishing right is proven in the courts or established by law, the State of Michigan is fully prepared and competent for accommodating Indian interests in the fisheries.

Title II of the amendments—and I will be brief, Mr. Chairman—addresses, specifically, the Indian fishing problem in the State of Michigan. It would set aside certain areas of the Great Lakes subject, essentially, to exclusive fishing rights and management by Indian tribes. Not only does it ignore riparian rights or privileges in such areas; but it would result in a taking without just compensation or equity in law. I'm certain that even a most unfavorable decision to Michigan in our Federal court case would not recognize such exclusivity and special interest legislation.

Beyond the area designations and provision for exclusive fishing rights and management authority, the amendments would, through a licensing system, provide Indian participation in commercial fisheries in areas and under quotas of fish which far exceed their historical record in Michigan. There is simply no basis in fact or rationale that would legitimize accommodating an Indian fishery in the magnitude contemplated in this legislation. If imposed on existing state laws regulating recreational and commercial fishing, the proposed legislation would be an administrative nightmare.

Mr. Chairman and members of the committee, I strongly urge you to reject the title I amendments to H.R. 12531 as I understand them as offered or proposed to be offered. As an alternative to title II of the amendments, I urge you to reject those that have been proposed—or will be proposed—and consider, instead, a draft which is attached to my testimony. However, I submit these for discussion purposes only because we have not as yet consolidated public and political opinions on them in Michigan.

Mr. Chairman, I sincerely appreciate the opportunity to appear before you and your committee to address this most important issue; and I most appreciate your indulgence in hearing out this length testimony. Because I believe the prospect of unlimited and unregulated Indian fishing is one of the most serious conservation issues facing our state, perhaps you can understand why I felt it necessary to appear here today and present my views on this critical problem.

May I assure you that we stand ready to work with you, the committee and staff to seek an equitable and reasonable solution to this problem.

Thank you.

MICHIGAN STATE SENATE, 1977 JOURNAL OF THE SENATE NO. 111, OCTOBER 27,
1977

SENATE CONCURRENT RESOLUTION NO. 265.

Senator DeGrow offered the following concurrent resolution:

A concurrent resolution urging the Michigan delegation to the United States Congress to support H.R. 9054 of the United States Congress.

Whereas, The Ottawa and Chippewa Indians of Michigan and the United States entered into and signed a treaty at Sault Ste. Marie, Michigan, on July 31, 1855, (11 Stat. 621); and

Whereas, Article 3 of said treaty provided that "The Ottawa and Chippewa Indians hereby release and discharge the United States from all liability on account of former treaty stipulations, it being distinctly understood and agreed that the grants and payments hereinbefore provided for are in lieu and satisfaction of all claims, legal and equitable on the part of said Indians jointly and severally against the United States, for land, money or other things guaranteed to said tribes or either of them by the stipulations of any former treaty or treaties; excepting, however, the right of fishing and encampment secured to the Chippewas of Sault Ste. Marie by the treaty of June 16, 1820"; and

Whereas, Article 1 of the Treaty of August 2, 1855, (11 Stat. 631) between the Chippewa Indians of Sault Ste. Marie and the United States provided that: "The said Chippewa Indians surrender to the United States the right of fishing at the falls of St. Mary's and of encampment, convenient to the fishing ground, secured to them by the treaty of June 16, 1820"; and

Whereas, It has been judicially determined that "By the terms of the Treaty of 1855 the Indians, in consideration thereof, released the United States from all liability on account of former treaty stipulations and from all claims, etc., guaranteed to them by the same . . . In other words, the Treaty of 1855, after its conclusion, took the place of the Treaty of 1836, but did not take away from the Indians anything which they had already received under the latter treaty. The government was thereby released from the payment of any annuities in the future, and was also released from its other obligations under the treaty which were to be performed in the future." (*Ottawa and Chippewa Indians v. United States*, 42 Ct. Cl. 240, 246-47, 1907); and

Whereas, It has been judicially determined that "Article 3 of the Treaty of July 31, 1855 (11 Stat. 621) was an accord and satisfaction of the liabilities of and claims against the United States under the stipulations of all former treaties (except the Treaty of June 16, 1820, providing for fishing rights). In the years from 1785, when the first treaty was made with the plaintiffs, until the Act of March 3, 1871 (16 Stat. 556), the United States entered into forty-four treaties with the plaintiffs, of which thirty-three were concluded prior to the Treaty of July 13, 1855. The defendant's obligations under these thirty-three treaties were not exclusively and strictly legal obligations, but involved other matters such as protection of the Indians' life and property, protection of the Indians' hunting and fishing rights and recognition of their boundary lines. These and other future obligations were the liabilities from which the United States sought to be released. Therefore, the provisions made for the plaintiffs under the Treaty of July 31, 1855, do not constitute either new or additional considerations for the land cessions made pursuant to the Treaty of March 28, 1836." (26 2nd Cl. Comm. 538, 553-54); and

Whereas, The Ottawa and Chippewa Indians of Michigan filed claim before the Indians Claims Commission seeking compensation from the United States for land cessions in the Treaty of July 31, 1855 (7 Stat. 207), and the Treaty of March 28, 1836 (7 Stat. 491);

Whereas, The Indian Claims Commission ordered "... that the plaintiffs have and recover from the defendant (United States) on behalf of the 'Ottawa and Chippewa Nations of Indians' who negotiated the treaties of July 6, 1820, (7 Stat. 207), and March 28, 1836, (7 Stat. 491), as a final award in these dockets the sum of \$10,109,003.55. Dated at Washington, D.C. this 15th day of March 1972." (*Bay Mills Indian Community, et al. v. United States*, Docket Nos. 18-E and 58, 27 Ind. Cl. Comm. 94, 97); and

Whereas, The award did not include specific compensation for the release of Indian plaintiffs of all claims arising from the treaties of July 31, 1855 (11 Stat. 621) and August 2, 1855 (11 Stat. 631), and therefore, descendants of the treaty signatories may have a legal basis for further compensation by the United States; and

Whereas, The United States, in amended complaints filed before the Federal District Court in Grand Rapids in 1973, *United States of America v. State of Michigan*, Civil Action No. M26-73, declares:

1. That the Chippewa Indians have the sole and exclusive right to regulate the taking of fish on the reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation.

2. That the Chippewa Indians have a federally protected, reserved right to take fish from all waters of Lake Superior east of Marquette, all waters of Lake Michigan north of Grand Haven, and all waters of Lake Huron north of Alpena; and that the State is without jurisdiction or authority to regulate Indians in the exercise of treaty rights to fish for commercial and subsistence purposes.

3. That the State has a duty to exercise its police power to regulate sport and commercial fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indians, in order to assure that the Great Lakes fisheries resources are protected and that there is available to the Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture; and

Whereas, In the subject litigation the United States is not seeking Indian rights solely on reservations or at usual and accustomed places off reservations but, rather, Indian rights to more than half the land and water area of Michigan ceded by the 1836 treaty. Moreover, the United States Government contends that the Indians do not hold these rights in common with all other citizens but, rather, that they hold them exclusively; and the United States is seeking to secure for the Indians the rights deriving from all the usual privileges of occupancy including fishing, hunting, and other common activities; and that such Indian rights are not subject to monetary compensation; and

Whereas, The State has invested millions of dollars to restore the Great Lakes fisheries and that the fisheries contribute over \$250 million annually of the economy of the State; and

Whereas, The State has moved aggressively and effectively to prevent overfishing of restored fisheries resources by either sport or commercial fishermen; and

Whereas, Pending resolution of the litigation in Federal Court, the Indian tribes, acting pursuant to assumed treaty rights and unsubstantiated legal contentions, have greatly expanded commercial fishing activities in contravention of State laws and regulations; and

Whereas, The unregulated Indian fishing has led to depletion of lake trout and other species in some areas of the Great Lakes and, unless regulated, other fish populations will be destroyed; and

Whereas, Large quantities of fish containing unsafe levels of environmental contaminants are being sold by Indians to an unsuspecting public; and

Whereas, Violent confrontations between Indians and non-Indians have erupted over fishing rights; and

Whereas, The State, by its Natural Resources Commission, has consistently maintained that nondiscriminatory regulation of off-reservation hunting and fishing by Indians is necessary and reasonable to assure the conservation, wise utilization and equal accessibility of the natural resources for the present and future enjoyment of all citizens; and

Whereas, H.R. 9054 introduced in the first session of the 95th Congress, if enacted into law, "... directs the President to abrogate all treaties entered into by the United States with Indian tribes in order to accomplish the purposes of recognizing that in the United States no individual or group possesses subordinate or special rights, providing full citizenship and equality under law to Native Americans,

protecting an equal opportunity of all citizens to fish and hunt in the United States, and terminating Federal supervision over the property and members of Indian tribes, and for other purposes"; and

Whereas, The United States Department of Interior, in *United States v. State of Michigan*, Civil Action No. M26-73, is relitigating the matter of Indian rights and claims deriving from the Ottawa and Chippewa treaties of 1820 and 1836 in which the Federal Government's case did not prevail before the Indian Claims Commission; and

Whereas, The Federal Government filed said law suit against the State based on the premise that reserved Indian fishing and hunting rights were not released in former treaties and that such rights were not compensable; and

Whereas, The United States Court of Claims has held that Indian hunting and fishing rights were released by the treaties of 1820 and 1836; and

Whereas, The Indian Claims Commission has awarded \$10 million to descendants of the Ottawa and Chippewa Indian Nations as just compensation for rights and land cessions deriving from the 1820 and 1836 treaties and, therefore, determined that such rights and cessions are indeed compensable; now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Michigan Legislature urges the President of the United States to direct the Secretary of the Department of Interior to cease current legal action against the State of Michigan and, instead, file a claim before a tribunal of competent jurisdiction, in behalf of the Ottawa and Chippewa Indians of Michigan, seeking compensation for said Indians arising from the treaties of July 31, 1855 and August 2, 1855; and be it further

Resolved, That the Michigan congressional delegation be urged to support H.R. 9054, and urge the Congress to resolve that the existing nationwide trend toward superior rights for Indians deriving from treaties of indefinite or perpetual duration and founded on different conditions in different times is not a durable system, since it is based on discrimination; and be it further

Resolved, That copies of this resolution be transmitted to each member of the Michigan delegation in the United States Congress.

Pursuant to rule 32, the concurrent resolution was referred to the Committee on Senate Business.

Senator O'Brien was named a co-sponsor of the concurrent resolution.

TITLE II—INDIAN FISHING RIGHTS IN MICHIGAN

SEC. 201. DEFINITIONS

As used in this title:

(1) The term "Indian" means any individual who is a member of a Chippewa tribe referred to in section 202(a).

(2) The term "Indian territorial waters" means the waters and associated waters described in section 202(a).

(3) The term "State" means the State of Michigan.

(4) The term "State waters" means the waters of the State other than Indian territorial waters.

(5) The term "Exclusive fishing rights" means the right of Indians to regulate commercial fishing and subsistence fishing by Indians as provided in section 202(a); and the right to regulate commercial fishing by non-Indians; but does not include the right to regulate recreational fishing by non-Indians.

(6) The term "Exclusive management authority" means the right to manage Indian fisheries in the Indian territorial waters in accordance with a conservation code adopted by the tribe(s); and to develop and implement a fisheries management program, plan or project for Indian territorial waters.

(7) The term "Conservation code" means those tribal laws, rules and regulations governing the conduct of Indian fishermen for purposes of insuring in perpetuity the conservation and wise utilization of the fisheries resources.

(8) The term "tribe(s)" means members of the Bay Mills Indian Community, the Sault Ste. Marie Indian Community, and the L'Anse Indian Reservation.

SEC. 202. EXCLUSIVE INDIAN FISHING RIGHTS

(a) Chippewa Tribes on Reservations:

(1) Provided that the Chippewa tribe of the L'Anse (Michigan) Indian Reservation adopts a conservation code as provided in section 201, such tribe shall have exclusive fishing rights within the waters on the reservation and the associated waters of Keweenaw Bay in Lake Superior south of a line between the northern-most point on the boundaries of the reservation on each side of such Bay. The tribe has exclusive

management authority over such fisheries which shall be exercised in accordance with the provision of a conservation code.

(2) Provided that the Chippewa tribes of the Bay Mills Indian Community and the Sault Ste. Marie Indian Community adopt conservation codes as provided in section 201, such tribes shall have exclusive fishing rights within the waters of the Bay Mills Indian Reservation and the associated waters of Whitefish Bay in Lake Superior south of a line extending from the mouth of the Tahquamenon River due east to the international boundary line between the United States and Canada, thence southeasterly along such boundary line to a line extending due north from Cedar Point, Michigan. The tribes have exclusive management authority over such fisheries which shall be exercised in accordance with the provisions of a conservation code.

(b) Approval of Conservation Codes, Fisheries Management Programs, Plans and Projects: To assure protection of the environment and prevent impairment of the fisheries resources, any conservation code, fisheries management program, plan or project adopted or developed by a tribe shall be approved by the State before the tribe exercises the exclusive fishing rights or exclusive management authority provided in section 202.

(c) Enforcement: Each tribe described in subsection (a) shall enforce all laws and regulations adopted by it with respect to the management of the fisheries within the respective Indian territorial waters. Nothing in this subsection shall be deemed to preclude the enforcement of such laws and regulations by the State on behalf of the tribe if the tribe requests the State to do so and the State agrees.

(d) Fisheries Management Assistance: The State may, upon request by any tribe, assist or advise the tribe with the development of a conservation code and provide such information and other assistance as may be reasonable, necessary and appropriate in the Indian territorial waters. It is the intent of this legislation that the State should, within reasonable limits and to the extent practicable, advise and assist the tribes with management of the Indian fisheries including, but not limited to, planting of fish for purposes of conservation, rehabilitation and wise utilization of the fisheries resources in Indian territorial waters.

SEC. 203 ACCESS OF INDIANS TO FISH IN OTHER THAN INDIAN TERRITORIAL WATERS

(a) Access During Transition Period—(1) Except as provided in paragraph (2), during each of the years in the 5-year period beginning on January 1, 1979, (hereinafter in this section referred to as the "transition period"), the State, in the management of its fisheries shall take such action as may be necessary and appropriate to ensure, to the maximum extent practicable, that Indians have the opportunity to harvest within the State waters the following quantities of fish:

(a) Whitefish, 600,000 pounds; (b) Lake Trout, 200,000 pounds; (c) Chubs, 200,000 pounds; and (d) Round Whitefish, 30,000 pounds.

(2) If for any year during the transition period the State, on the basis of conservation considerations, determines that the quantity specified in paragraph (1) for any species of fish is more than 20 percent of the total amount of such species which should be harvested for recreational and commercial uses during that year within the State waters, the State may proportionally reduce the quantity for such year.

(3) The State shall impose on Indians such restrictions as are imposed on non-Indians, consistent with fishery conservation programs and optimum utilization of the fisheries resources, as may be necessary and appropriate to carry out the purpose of this subsection, including, but not limited to, issuance of commercial fishing licenses only to qualified Indians, such licenses being the property of the State and non-transferable; establishment of certain zones within the State waters for fishing by Indians; fixing the amount of fish to be taken by species; designating the areas in which Indians shall be permitted to fish; specifying the season and the depths where the Indians may conduct commercial fishing; specifying the methods and kind and amount of fishing gear which the Indians may use; and specifying other conditions, terms and restrictions which are deemed to be necessary in carrying out the provisions of this subsection, including but not limited to the right to inspect the Indians' fishing operations in the State waters, on board or ashore.

(b) Access After Transition Period: (1) Subject to paragraph (2), after the close of the transition period, the State shall determine if additional commercial fishing licenses should be issued to harvest available fish stocks in the State waters. If the State determines that additional licenses are required, it shall give preference to qualified Indians in issuing additional commercial fishing licenses. Provided, however, that the number of licenses so issued shall not exceed twenty percent of the total number of licenses issued by the State in any single year; and provided further that any licenses issued are subject to the provisions of Section 203(2) and (3). (2) To

achieve the proportion of licenses issued to qualified Indians as provided in this paragraph there are authorized to be appropriated to the Department of the Interior funds to assist the State in purchasing commercial fishing licenses, gear and equipment from non-Indians for transfer to qualified Indian commercial fishermen.

(c) Verification—For purposes of carrying out this section, the State may require such verification, in the form of qualification cards or other documentation issued by the tribes referred to in section 202(a), as may be sufficient to satisfy the State that any applicant for, or any holder of, a commercial fishing license issued pursuant to this section is an Indian.

SEC. 204. DISCLAIMER

Except as specifically provided in this title, nothing in this title shall be deemed to affect in any manner the jurisdiction of the State within the State waters or the Indian territorial waters.

SEC. 205. SETTLEMENT OF LANDS UNDER TREATY

All of the State of Michigan waters of the Great Lakes and any associated connecting waters and all of the rivers, streams, creeks and drains and all inland lakes, ponds, impoundments and any other surface or subterranean waters in the State of Michigan included within the boundaries of the Treaty of Washington of March 28, 1836, between the Ottawa and Chippewa nations of Indians and the United States, except for those waters included within the boundaries of Indian reservations or associated with such reservations or other waters designated as Indian territorial waters as described in this Title, shall be considered as lands and shall be considered as having been "required for settlement" under the terms of Article Thirteenth of the aforementioned Treaty. All other State of Michigan waters not the subject of this treaty likewise shall be considered as having been "required for settlement"; and any Indian fishing rights reserved in any other treaty respecting the waters of the State of Michigan, other than those specified in this Title, are rescinded. Such "settlement" here in described shall be considered as having taken place as of March 28 in the year 1836 for all State of Michigan waters.

STATEMENT OF DR. HOWARD A. TANNER, DIRECTOR, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman and members of the subcommittee, I am Dr. Howard A. Tanner, Director of the Michigan Department of Natural Resources. My academic training was in the field of fisheries biology, and I have served as a former Chief of the Fisheries Division of the Department of Natural Resources. I wish to relate the problems and issues my agency has concerning treaty Indian fishing rights in Michigan.

By way of introduction, I wish to acquaint you with the Department's involvement in management of the Great Lakes fisheries in recent years.

A culmination of events, including the combined effects of the parasitic sea lamprey and an over-exploitive commercial fishery preceding and during the 1950's, brought about the collapse of lake trout and whitefish populations in the upper Great Lakes. The commercial fisheries, having lost two of the most valuable food fishes, subsequently turned to intensive harvest of lake herring, chubs, yellow perch and walleye. These species became depleted also as a result of overexploitation and the competitive effects of alewives which reached maximum abundance in the mid 1960's when massive die-offs of this species littered the beaches of the Great Lakes causing great economic losses to the tourist and resort industries of Michigan.

At that time there was significant interest in developing an industrial fishery to produce fish meal and oil from the low-value alewife—an interest, incidentally, that was promoted intensively by the then United States Bureau of Commercial Fisheries.

Michigan declined development of such an industrial fishery, maintaining that ongoing international, state and federal efforts had been successful in controlling lamprey, and that newly planted lake trout were utilizing the alewives as food; and that plantings of other predator fish, like lake trout, could yield a high quality and economically productive recreational fishery.

Therefore, in 1966 the State of Michigan made a major policy decision to initiate a program to rehabilitate the fisheries resources of its Great Lakes. To supplement the sea lamprey control and lake trout rehabilitation programs underway by the United States and Canadian Governments, Michigan introduced coho and chinook salmon from the Pacific. We are revamping our entire hatchery system at a cost of \$11.7 million to produce these new species along with increased numbers of steelhead, rainbow and brown trout, and Atlantic salmon.

Legislation was enacted that provided authority to limit the number of commercial fishermen, apply controls over the harvest of fish from the Great Lakes, limit areas and depths that could be fished, designate species which could be caught, and limit the use of the destructive and wasteful gill net.

Finally, we sought and received less emphasis from the Federal Government in development of the Great Lakes commercial fisheries and more emphasis from the then U.S. Bureau of Sport Fisheries and Wildlife.

Our program has been tremendously successful. Our hatcheries have produced and planted over 100 million salmonids in the Great Lakes since 1966. The annual cost of hatchery operations is about \$3 million. These operational costs are largely paid from revenue received from sport fishing licenses. Approximately 45 percent of the funds to remodel and rebuild Michigan hatcheries have been in the form of Federal aid administered by such agencies as the Upper Great Lakes Regional Commission, Economic Development Administration, Bureau of Outdoor Recreation and the Fish and Wildlife Service. In 1976 about 2.8 million angler days of effort were spent by sport fishermen on the Great Lakes and tributary streams fishing for trout and salmon; and 4.4 million angler days of effort were expended by anglers fishing for species other than trout and salmon. Trout and salmon fishermen alone accounted for an estimated catch of 845,000 lake trout, 500,000 steelhead, 748,000 coho salmon, and 742,000 chinook salmon. The value of the Great Lakes trout and salmon fisheries is estimated at \$250 million annually—values produced in goods and services alone.

Regulation of the commercial fisheries has also been largely successful. By applying limited entry, catch quotas, area restrictions, gear restrictions, etc., the commercial fishery has gained financial stability from a situation in 1967, when about 85 percent of the 400 licensed commercial fishermen grossed less than \$10,000 annually from sale of their catch, to the situation today where most of the 200 or so licensed fishermen gross over \$50,000 annually from their catches. With the restrictions we have witnessed a resurgence of whitefish and perch populations and many other species have shown pronounced improvement in abundance since 1970.

Through rather intensive management and commercial fishery controls the Great Lakes have been converted from being almost a biological liability to being an immense economic asset. This multimillion dollar public resource has emerged in only a 10-year period, 1966-76. Even the nuisance fish, the alewife, is now a major food fish for the high value trout and salmon. For the first time in the history of the Great Lakes fishery, a situation exists suitable for the promotion of a coexistent sport and commercial fishery. Also, the value of the fishery resource exerts considerable pressure for improved water quality in the Great Lakes, which results in many other public and private benefits.

One final point in the way of introduction. The Great Lakes States, in particular Michigan, have exclusive management jurisdiction over their waters. This perhaps was not previously the case and the States were regarded as poorly organized, and coordinated to implement effective management programs. I should add, that this view is still held by some Federal officials and is used as an argument to support the constant pressure exerted by Federal agencies to usurp management responsibilities.

I want to assure this committee, however, that the Great Lakes States will not forfeit their fisheries management responsibilities and jurisdiction. We have adequately demonstrated that common management goals and plans can be implemented jointly either through the Great Lakes Fishery Commission or directly through negotiations and agreements among the various States. Complementary controls and programs have been achieved in sport and commercial fishing regulations, fish plantings, exchange of fish and services, stock assessment and research activities.

With that introduction and background, I would now like to address the subject at hand.

In April 1973 the United States Attorney filed a complaint in the Federal District Court in Grand Rapids, Mich., on behalf of the Bay Mills Indian Community. This lawsuit was filed without any prior notice to the State of Michigan or any attempt by any entity of the Federal Government to negotiate a settlement of a presumed dispute over Indian fishing rights. As a matter of fact we were, at the time the lawsuit was filed, trying to accommodate some interests in the fisheries directly with Indian communities.

Nonetheless, the lawsuit was filed and the Federal court ultimately granted leave to the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians to become plaintiff-intervenors in the suit. Attempts by organized sportsmen's groups to intervene in the suit on behalf of the State have failed, however.

The plaintiffs have requested the court to assume jurisdiction in this litigation and declare:

1. That the Bay Mills Indian Community has the sole and exclusive right to regulate the taking of fish on the Indian communities' reservations—including the fishing grounds of Whitefish Bay; and that such rights are entirely free from State regulation;

2. That the Indian communities have a federally protected, reserved right to take fish from all waters of the Great Lakes adjacent to lands ceded by the Treaty of 1836; and that the State is without jurisdiction or authority to regulate Indian communities and their members in the exercise of the treaty right to fish for commercial and subsistence purposes in the ceded waters of the Great Lakes.

3. That the State has a duty to exercise its police power to regulate sport and commercial fishing by persons without treaty rights in the ceded waters of the Great Lakes, in cooperation with the Indian communities and their members, in order to assure that the Great Lakes fisheries resources are protected and that there is available to Indians sufficient fish for maintenance of a livelihood, their subsistence, and the exercise of their traditional culture.

Therefore, pursuant to the 1836 Treaty of Washington between the Ottawa and Chippewa Indian Nations and the United States, the plaintiffs are claiming superior rights to the fisheries resources of all waters of Lake Michigan north of Grand Haven; all waters of Lake Huron north of Alpena; and all waters of Lake Superior east of Marquette. This, Mr. Chairman, constitutes one-half of Michigan's Great Lakes waters.

The litigation is continuing and probably will not be concluded for many years because of anticipated appeals.

Meanwhile, some restored fish populations have been depleted and many others are threatened owing to increased—and unregulated—Indian fishing. The Bureau of Indian Affairs has, to date, issued more than 125 identification cards entitling alleged Indians to unrestricted fishing for commercial and subsistence purposes. The number of individuals involved in the Indian gill net fisheries approximates the number of non-Indians licensed to fish commercially in Michigan waters of the Great Lakes. Last year the Indian fishermen landed more than 300,000 pounds of whitefish and more than 200,000 pounds of lake trout—a species which has been closed to commercial fishing since the 1960's because of prior overfishing. Many of the lake trout now being caught exceed the Federal Food and Drug Administration's allowable limits for certain environmental contaminants, and the fish are being sold to an unsuspecting public.

It has become obvious that a timely resolution of this matter cannot be obtained in the courts. Before it is, the fisheries resources could be destroyed. Therefore, we believe that Congress must act to restore control of off-reservation Indian fishing to the States. I make this statement for the following reasons:

First, Indian claims to hunting and fishing rights—and other resources as well—are seemingly endless and pervade many areas of the United States. I take note, too, that the Congress has recently extended the statute of limitations for such claims for an additional 5 years. Therefore, we in Michigan and officials of other States can anticipate legal challenges ad infinitum at considerable strain on our financial and legal resources.

Secondly, a single fish and wildlife management authority is absolutely essential to rational utilization, allocation, and conservation of natural resources. Given the trust responsibility that the Department of the Interior has for Indian tribes, in the context of our present litigation I can foresee the expansion of the Indian fisheries and the regression of non-Indian regulation of off-reservation hunting and fishing by Indians is necessary and reasonable to assure the conservation and wise utilization of the resources for the present and future enjoyment of not only Indians but all other persons entitled to them.

We observe the Federal Government's intrusion into traditional and legal State prerogatives relating to management of renewable natural resources. Based on an ever-changing Indian policy and trust responsibility, the Federal Government now is fostering "self-determination" for Indian people. Put another way, the policy of self-determination translates into the establishment of a separate nation within a nation and superior rights for a small segment of our society. Confronted with the legal and financial resources of the Federal Government, I predict a steady erosion of States' rights and chaos in development and conservation of our natural resources.

In conclusion, I submit that Congress must act forthrightly to restore order to a truly irrational process. Congressman Cunningham has introduced H.R. 9054 in the House of Representatives which, if enacted, directs the President to abrogate all

treaties entered into by the United States with Indian tribes. Perhaps Mr. Cunningham's bill is too strong and does not provide for the needs of Indians in other areas such as health, education, and their general welfare. Nonetheless, the Congressman makes his point because, being from the State of Washington which is in the throes of chaos over unregulated Indian hunting and fishing, he offers a means to restore order and prevent depletion of the fisheries resources.

Mr. Meeds, also from the State of Washington, has introduced H.R. 9950—the "Omnibus Indian Jurisdiction Act of 1977." Mr. Meeds' bill is moderate, comprehensive, and would meet our needs in Michigan. It would recognize Indian rights on reservations but would restore to the State the power to equally apply hunting and fishing regulations to all persons without regard to their status as Indians or non-Indians.

This bill, as you know, has been referred jointly to the committees on Interior and Insular Affairs, the Judiciary, and Merchant Marine and Fisheries.

May I urge your consideration and enactment of H.R. 9950.

Thank you for the opportunity to address this most serious and important matter.

STATEMENT OF JOHN A. SCOTT, CHIEF, FISHERIES DIVISION, MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Mr. Chairman, my name is John A. Scott and I am chief of the Fisheries Division, Michigan Department of Natural Resources, Lansing, Mich.

Among other duties, my Division is responsible for recommending policies and implementing programs to protect and propagate the fisheries resources of the State of Michigan. With the advent of the Indian fisheries, my job has become quite difficult. However, that is not important. What is important is the support of Michigan citizens to restore the Great Lakes fisheries. That support has been enthusiastic and effective; and millions of dollars have been invested to create the best trout and salmon fisheries anywhere in the world. As Dr. Tanner points out, Michigan's Great Lakes recreational fisheries contribute more than \$250 million annually to the economy of the State. Moreover, these fisheries not only provide recreation but also supply more than 30 million pounds of food annually to recreational anglers, their friends and relatives. In addition, Michigan's commercial fishery yields an annual \$25 million economic return. Some fish stocks of commercial importance are responding favorably to scientific management and regulation, and even higher yields are predicted.

The existing unregulated Indian fisheries, as well as their predictable expansion, jeopardize our progress and investments in restoration of the Great Lakes fisheries resources. That is my concern and the subject I wish to address.

The existing Indian fisheries and their attendant biological, sociological and political implications have raised havoc in the administration and management of the fisheries. In some areas, the Indian fisheries have depleted some restored fish populations. I'll expand on that later.

Acting on the basis of assumed treaty fishing rights and unsubstantiated legal contentions, Indians have expanded their fishing activities outside of Whitefish Bay to Munising, Grand Marais and Little Lake Harbor in Lake Superior; to the Les Cheneaux Islands, St. Martin's Bay, and St. Ignace areas of northern Lake Huron; to Epoufette, Naubinway, Manistique, Garden Peninsula, Little Traverse Bay, and Grand Traverse Bay of Lake Michigan; and to inland lakes.

The accelerated fishing is, in many cases, aided and abetted by non-Indian licensed commercial fisherman who, having found an opportunity to circumvent state fishing regulations, either enter the fishery on the pretence of being an Indian having alleged treaty Indian fishing rights, or they provide vessels and gear for the Indian fishery. Non-Indian wholesale fish dealers—often times being licensed commercial fishermen as well—offer a ready, profitable outlet for Indian-caught fish.

Because higher courts have failed to provide lucid decisions on the extent of treaty fishing rights, and because considerable litigation is pending or ongoing, cases are brought before trial courts by local prosecutors who are not prepared to brief and argue the complicated legal issues and court decisions involved in Indian treaties. Consequently, court opinions are either inconsistent among judicial jurisdiction or worse, indecisive. Therefore, enforcement of State fishing laws and regulations is in limbo throughout large areas of the state.

Mr. Chairman, your committee has requested specific facts and figures relating to this matter. I wish we could provide them, but is extremely difficult to do so. I'll try to illustrate why that is the case.

Normal fisheries reporting systems are not reliable principally because the Indians do not want their activities observed and because Indian-caught fish are often

comingled with fish landed by non-Indian commercial fishermen or bought by wholesale fish dealers.

Many Indian fishing operations occur at night; "in-and-out" type fishing makes monitoring difficult; and sales of fish occur at points of landing or fish are shipped directly out of state before a record or observation of the catch can be made.

Department personnel attempting to monitor the Indian fisheries are often met with obscenities and antagonism. Consequently, there is an absence of solid information on catches and, deriving therefore, an inability to determine the effects of this added exploitation on the fisheries resources.

Because the process of fish stock depletion is an insidious phenomenon, occurring over time and space, it is not always readily detectable through normal sampling and assessment techniques. These techniques measure relative abundance of a stock over a period of years based on standard sampling procedures. We can detect about a 25 percent change in abundance 90 percent of the time only after we sample the population annually for several years. Therefore, taking into account and compensating for deviations in time, temperature, distribution of fish, and weather, depletion could occur before it is detected and measured. After depletion occurs, collapse of a fish stock is usually rapidly accelerated. Hence, this is another reason why the specific facts and figures resulting from Indian fishing are difficult to provide.

I will provide you some information we have obtained, however.

Recently we observed an Indian gill net fishery operating in Whitefish Bay in Lake Superior. There were thirty individuals involved using large mesh gill nets fishing from 16-foot to 18-foot boats; and most of the fishermen fished only a few days each week. In a 5-month period we conservatively estimated the catch to have been 75,000 lake trout weighing 300,000 pounds in addition to 300,000 pounds of whitefish we estimated were caught.

Over the last five years we have planted well over 400,000 lake trout in Whitefish Bay. Our research this year in the Bay indicates there has been a 90-percent reduction in the abundance of lake trout as a result of the Indian fishery. Our catch of lake trout per unit of sampling effort recently has been as follows: In 1974 we captured 5,334 trout; 876 in 1975; 418 in 1976; and about four trout in 1977.

Further, we observe federal support and financing of a fish processing plant. Over the Michigan Department of Natural Resources' objections, that requires fish from Whitefish Bay, an area long exposed to overexploitation of its fisheries resources and biologically incapable of sustaining the production required to keep the plant in operation.

Other areas of fish stock depletion are becoming apparent. In northern Lake Huron, where only recently have we begun the tedious process of restoring lake trout populations, our stock assessment and research indicate a process occurring analogous to that of Whitefish Bay. Some background information is in order to explain my point.

A combination of sea lamprey predation and intensive commercial fishing in the 1940's resulted in the virtual extinction of lake trout from Michigan's waters of Lake Huron. While yet abundant, lake trout had supported valuable commercial and recreational fisheries, and as a fish predator had exerted restraint and balance on non-predatory species. Without this restraint smelt and alewives, exotic species, proliferated mainly at the expense of important native species such as chubs, herrings and yellow perch. Because of their great value for food, recreation and biological control on other fish, a management program comprising sea lamprey control, the elimination of non-selective commercial fishing gear and stocking was begun in the early 1970's to restore the lake trout to its former position in Lake Huron.

Lake trout stocking at a lakewide annual rate of approximately one million fish began in 1973. Where possible the planting stock was ferried to and released over reefs and shoals, which had once been used by native lake trout for spawning. Experience in Lakes Michigan and Superior had demonstrated the need for stocking on spawning grounds to establish a homing instinct so that when mature, lake trout would return and spawn on areas favorable for reproduction. With sea lamprey control and a ban on gill nets both established by 1970, the major obstacles to restoration appeared to have been passed. Hence it was expected that the planted stock would grow, mature, spawn on favorable grounds, and in time self-perpetuating stocks of lake trout would develop.

Fishery surveys in Lake Huron have shown that in general survival and growth of the planted lake trout have been good. Female lake trout are not expected to spawn until they have attained an age of six or seven years, and therefore large scale spawning is not expected until 1979-80. However, it is now apparent that in the St. Ignace area of northern Lake Huron, where an extensive gill net fishery is

operating under alleged Indian rights, lake trout are being overfished to the extent that too few will survive to maturity.

During the first year of gill net fishing in the St. Ignace area, mortality on lake trout from the first stocking was estimated at 91 percent. In comparison annual mortality at adjacent areas, Cedarville and Cheboygan, averaged 44 percent. The difference between these rates is a measure of the effects of the Indian fishery on the planted stock. The second planting of lake trout, those released in 1974, has also shown high mortality in comparison with unfished areas.

Lake trout habitat in the St. Ignace area is considered to be excellent, and, indeed, assessment catches of smaller lake trout from this area are within the range of catches taken from other northern areas. However, after lake trout reach a commercial size of 2-4 pounds, their abundance at St. Ignace is very low. Clearly, only a prescribed amount of lake trout are stocked in any one area, and those fish caught are not available for spawning.

During 1973-76 an annual average of 164,000 lake trout was stocked within a twelve mile radius of St. Ignace. Approximately three years are required for lake trout to reach a commercial size and during this time mortality from natural causes would be expected to approximate 35 percent each year. Therefore, by the time a commercial size is reached about 45,000 trout would be alive from the stocking of 164,000. An additional 3 to 4 years are required for the females to reach maturity and spawn, but at the 90 percent mortality rate observed at St. Ignace only five lake trout out of the 45,000 would survive to a spawning age. Three spawning shoals have been stocked in the St. Ignace area, and a complement of five spawners divided between three spawning shoals would obviously result in an impossible circumstance for reproduction.

Restoration of naturally reproducing stocks of lake trout in Lake Huron would be difficult and costly even without an unrestricted gill net fishery. Lake trout must survive to a relatively old age before maturation is reached, and each year some are lost to natural causes such as disease, as well as to predation from the residual sea lamprey population. Sea lamprey control in Lake Huron costs approximately \$1 million each year, and to this must be added the cost of stocking, assessment and administration. If these costs are prorated to the numbers of spawners produced, each spawner would represent an investment of about \$200, assuming 10,000 fish out of each year's stocking would survive to a spawning age under optimum conditions. Commercial harvest and sale of such fish for their \$4 each wholesale value is economically absurd. Likewise, the intensive fishing of immature lake trout, which results in inadequate spawning escapement, defeats the purpose of sea lamprey control and lake trout restoration. The best spawning grounds in Lake Huron are along its north shore, and any progress in rehabilitation of the lake trout stocks is now dependent upon a reduction in the gill net fishery.

The establishment of the fish processing plant and, as Dr. Tanner notes, the planting of lake trout in Whitefish Bay by the U.S. Fish and Wildlife Service on the basis of a seemingly misplaced "trust" responsibility affronts one's intelligence when viewed in the context of an, as yet, unproven legally extant Indian treaty fishing right.

Moreover, the Bureau of Indian Affairs has issued more than 125 identification cards to members of the Bay Mills Indian Community and the Sault Ste. Marie Band of Chippewa Indians—entitling the holders to unlimited fishing for commercial and subsistence purposes. These cards have been issued under highly questionable legal authority as required by the Wheeler-Howard Indian Reorganization Act, and no individuals of unproven—and qualifiable—Indian ancestry. Those which have been contested in our courts have been determined to have no treaty fishing rights.

If the courts ultimately rule that the Ottawa and Chippewa Indians have no treaty reserved right to fish in Michigan, the federal government must assume the responsibility for having again led Indian people down the "trail of tears" and broken promises.

More recently we have witnessed the adoption of so-called Indian "Conservation Codes" which profess to establish means to protect and manage in perpetuity the fisheries resources for the benefit of the tribes. Upon close examination these "codes" do not provide direct and meaningful controls on fishing because they are founded on historical regulations which did nothing more than accelerate the collapse of virtually every major fish stock in the Great Lakes.

It has become evident that the Federal Government is seeking broad new areas of responsibility and administrative control through reestablishing Indian trusts in a series of favorable court decisions. In western states the Federal Government has firmly established the trust concept on Indian reservation lands. Apparently the

Federal right to manage fish and wildlife on these lands is not even questioned by the states. Recent decisions affecting tribes in Oregon and Washington have granted Indians right to fish in their "usual and accustomed places" off reservations. The states claim that granting Indians these new rights will endanger the resource—thus laying the necessary grounds for establishing a federal trust to ensure preservation of both the Indian treaty rights and the resource itself.

Concepts established in the state and federal courts involving treaty rights of Indians in Oregon, Washington, and Idaho have leapfrogged across the nation and are now showing up in cases involved the States of Minnesota, Wisconsin, Michigan and New York. In each, the concepts are expanded that further erode the state's right to manage its natural resources and govern the activities of its citizens. The most recent case in Michigan *United States of America, Plaintiff vs State of Michigan, Defendant* has been expanded to the point that it now represents the largest and boldest attempt by the Federal Government to expand Indian rights at the expense of the citizens of a particular State.

The lands ceded in the Treaty of 1836 encompass more than half of the land and water area of our State. We have learned that the U.S. Government felt that the Michigan case was different than those in western states because in the State of Washington the Indian rights were held in common with all citizens, while Michigan the Indian rights sought to be upheld were exclusive to the Indians and not shared with all other citizens.

The major points of the U.S. Government's case need to be carefully reviewed. First, they are not seeking Indian rights on reservations or at usual and accustomed places off reservations; but, rather, Indian rights on all ceded lands covered by the Treaty of 1836. Second, the U.S. Government is not claiming that the Indians hold these rights in common with all other citizens; but that they hold them exclusively. Third, the U.S. Government is seeking to secure for the Indians hunting and all the usual privileges of occupancy including fishing and utilization of the natural environment in many ways (which we could assume to include farming, berry picking, mining, and practically any other common activity). Finally, the U.S. Government contends that these Indian treaty rights are not subject to monetary compensation.

Therefore, we are directly confronted with an Indian claim to one-half of the entire fisheries resources of the state at the expense of the rights and privileges of all our citizens.

Garrett Hardin, a noted ecologist, expressed well the dilemma we all face in this matter in a recent article entitled "Living on a Lifeboat". I quote Dr. Hardin:

"It is literally true that we Americans of non-Indian ancestry are the descendants of thieves. Should we not, then, 'give back' the land to the Indians; that is, give it to the now-living Americans of Indian ancestry? As an exercise in pure logic I see no way to reject this proposal. Yet I am unwilling to live by it; and I know no one who is. Our reluctance to embrace pure justice may spring from pure selfishness. On the other hand, it may arise from an unspoken recognition of consequences that have not yet been clearly spelled out."

Hardin goes on to point out that even the present Europeans have no better title to their land; and when we look around the world, the present owners of nearly all property and resources trace their claims to the spoils of relatively recent conquest. Hardin concludes:

"We are all descendants of thieves, and the world's resources are inequitably distributed, but we must begin the journey to tomorrow from the point where we are today. We cannot remake the past. We cannot, without violent disorder and suffering give land and resources back to the 'original' owners—all of whom are dead anyway."

Thank you, Mr. Chairman, for the opportunity to present my views on this issue.

Mr. TANNER. Prior to my prepared remarks——

Mr. LEGGETT. Are you prepared to outline a solution?

Mr. TANNER. No, but I would like to be a part of one.

Mr. LEGGETT. Would you like to be a part of one?

Mr. TANNER. I would like to be a part of one, yes.

Mr. RUPPE. The solution, not the problem.

Mr. LEGGETT. We would be pleased to have whatever recommendations you might have, and to consider them.

Mr. TANNER. I have a prepared text. Based on some of the questions, and some of the testimony this morning, I would like to briefly comment on that first.

First of all, let me say I am Howard A. Tanner, director of the Michigan Department of Natural Resources. My background and experience is in the field of fisheries biology and limnology, and I have had experience in teaching, research, and administration prior to my present position.

Mr. LEGGETT. Are the Lake Michigan fish still contaminated with PCB's?

Mr. TANNER. Many of them are.

Mr. LEGGETT. How about whitefish?

Mr. TANNER. Probably has the lowest level of any species.

Mr. LEGGETT. How about the trout?

Mr. TANNER. Particularly the larger and older trout have some of the highest levels.

As a general statement, the fatty and older fish have the highest levels of PCB's.

Mr. LEGGETT. Are the trout taken commercially?

Mr. TANNER. Not under our regulations. They are taken commercially.

The impression I was left with this morning from the questions and answers given is that there was a lack of appreciation of the amount of information that is available to the Great Lakes Fishery Commission.

Now, if you had a systematized set of questions in which we could outline any reasonable approach—if we talked about a species in one of the Great Lakes, we could give you chapter and verse on numbers of fish harvested by various categories of fishermen, numbers of fish available under optimum yield. We can tell you by sampling area. The whole lake is so divided.

Michigan has done a great deal of research and monitoring. We are not as devoid of information as the tenor of the questions and answers would have left you to believe this morning. It is difficult to come into a situation as complex as the Great Lakes fisheries, and hit it with a scattergun, if you will permit me to call it that, of questions, and expect a useful pattern of answers to emerge.

To conclude that the information is lacking, or scarce, is erroneous. Obviously we do not have all of the answers, or detailed an answer as we would like to have. I did not want you to be left with the impression we were as devoid of information which seemed to emerge this morning.

Mr. LEGGETT. You can tell from our questions that we are devoid of information.

Mr. TANNER. I can appreciate that.

Mr. LEGGETT. We do the best we can with the facts that are available. Of course, we do understand there are different levels of information.

Obviously, from the morning session, it was apparent that the State of Michigan had more information about the fishery than the Fish and Wildlife Service.

As Members of Congress, we are responsible to people to attempt to solve human problems. And so we do as best we can with the tools we have available through our various State and Federal agencies. So, we came up with this bill.

Then we encounter the pride of authorship issue. Many times if it is not an administration bill, or has not been cleared with

several agencies or has not had a year of massaging several agencies or has not Federal agencies will come up and oppose the bill. They have reasons that many times may stick to the ceiling, and sometimes they fall down.

So we do intend to solve as many problems as we can. If we are not asking the right question, I hope you will correct them, and provide the right answers to them. If we have our hearings skewed in some way, I hope you straighten us out, and indicate to us the nature and extent of the problem, and the nature of the manner the Federal Government should proceed with the solution.

Mr. TANNER. Thank you, Mr. Chairman.

Obviously, that is more of an assignment than I was prepared for.

Mr. LEGGETT. You just think I was scattered this morning. [Laughter.]

Mr. TANNER. You mentioned pride of authorship. Probably what I am about to say would come under State pride. Please recall the management of the upper three Great Lakes is about 74 percent within the jurisdiction of the State of Michigan. We do manage these waters, and have for a substantial period of time.

It is not perhaps surprising that Michigan is in the forefront of the problems. I hope we can be in the forefront of the solutions.

Basically, I urge the committee to reject the proposed amendments, particularly those in what I would term title II of this bill, House bill 12531.

I believe there are some good elements in Mr. Ruppe's proposals, and I commend him for them. Certainly, we can logically argue for additional information from research and monitoring in order to most appropriately manage the fisheries of the very large, what I would term inland seas.

A plan to increase funding for commercial Indian fishing, all kinds of fishing, is very commendable. The construction of fish hatcheries, I am most interested in hatcheries that would become State fish hatcheries, but need not be so limited. But it recognizes a fact, that is, the kinds of fisheries that are yielding the most in terms of human benefit can generally be grouped under salmon, trout, whitefish species, that family.

We can do a lot, create much higher levels of fish populations than we presently have.

If you ask me what is the potential for trout production, salmon production, I could not tell you. But I could tell you it is far, far above the current levels, so far above that we do not for the moment have to concern ourselves with a danger of exceeding the carrying or productive capacity of these lakes.

Some of these things we can do with hatcheries, salmon, for example. Chub, herring, perch; no. There are no hatcheries that produce these kinds of fishes in this country. There is a lack of expertise in this country.

So, coupled with capability of adding to these fish stocks by hatchery production has to be a recognition that many of the species must be managed on the basis of self-sustaining natural population and harvest, and allocation of those stocks have to take those into consideration.

Now, one term dealing with hatchery production is called put and take. That in itself has to be analyzed. Sometimes it costs us more—you put in more than you take out. You seek situations that maximize the take and minimize the put. That is the basis of our present system.

We recognize that basically it has to be from a hatchery source, but in terms of numbers of fish, dollars of good to the public, it is a way of maximizing the productive capability of that vast array.

Now, I would like to qualify in my remarks to this extent. These amendments came to me and my staff late last week. That was the first we had seen them. As recently as noon yesterday, in conversations with your committee staff, I learned of some modifications.

Perhaps with more time, perhaps with more study, we could give some slight different inflection to our testimony. From the way we understand it now, we have to be in opposition, particularly in title II.

The concept of committees, one for each lake, with substantial authority, not just to collect data, or to develop management plans, but to impose those management plans as management goals upon the various States, in my case, specifically Michigan, as a ruling procedure is totally unacceptable.

Mr. LEGGETT. How about the 50-percent licenses for Indians?

Mr. TANNER. You lead me into some of my remarks that I would put toward the last of my testimony.

Mr. LEGGETT. Go ahead and put them any place you want to.

Mr. TANNER. I will put them in now.

We believe there is much that can be done for the Indian fisherman. We would like to be a part of that. We are extremely constrained by the fact that we are in litigation. We did not seek that litigation. The Federal Government chose to sue us on behalf of the Indians, with no prior notification whatsoever. We are in that court, and we will pursue it with a good deal of optimism.

But that does not mean that, particularly with a Federal assist in buy-out, for example, of existing commercial businesses that there is not an opportunity for Indian fishermen to be accommodated, at least to a substantial degree.

So we do not reject that as a concept. We think there are ways that that could be achieved.

I do not have the magic answers, but those are—at least seem to us to be productive areas to be explored, and negotiations should be serious.

I will skip over part of this. We obviously face a long, difficult litigation. However it comes out, there is no quick and ready answer to it. Our basic concern has to be with the resource.

We believe that we have served the collective fishery resources of those portions of the Great Lakes where our responsibility lies, we believe we have served them well. And we believe that we have that capability to continue to do so.

One of our principal problems has been the denial by various Indian groups that the State has the authority to regulate these fisheries. These fisheries, as was recited this morning, have been first destroyed by a combination of overfishing and sea lamprey, and they have been substantially restored. The restoration was not easy. It has taken a lot of work, competence, and money. These

fishery resources, as I have said earlier, have a long way to go to optimum.

Mr. LEGGETT. Do you believe the State ought to manage these resources?

Mr. TANNER. As they have in the past, yes, sir.

Mr. LEGGETT. How long have you managed these resources?

Mr. TANNER. One hundred years.

Mr. LEGGETT. You have a checkered record on that, have you not?

Mr. TANNER. I cannot become responsible for what preceded actually 1964, because prior to that time de facto management, in my opinion, was carried on by the Fish and Wildlife Service, or its predecessor.

Michigan, for the first time, actively had management control at that time, and exercised it ever since, we think, quite well.

Mr. LEGGETT. Did the Michigan Supreme Court say you had management authority over all people in the State taking fish, or not?

Mr. TANNER. It is on the question of whether we have the authority to control the Indians. Under certain circumstances, the Michigan Supreme Court held that we did not.

Mr. LEGGETT. Under commercial circumstances?

Mr. TANNER. Just Indian take.

Mr. LEGGETT. Only for conservation purposes.

Mr. TANNER. And on certain waters.

Mr. LEGGETT. Counsel is now telling me the holding of the case. Would you like to describe that for the record?

Mr. THORNTON. In brief, the legal decision is clouded for a variety of reasons, primarily related to the fact the two cases in the Michigan Supreme Court involved criminal actions, and not civil actions; but based on the litigation in the criminal actions, the Michigan Supreme Court upheld the application of the reservation of fishing rights to a variety of Indian groups in Michigan pursuant to several 19th century treaties.

The State of Michigan did not have the authority to regulate Indians in the same way that they regulate non-Indians. The court did indicate, citing the Washington State cases, that the State of Michigan does have the authority to regulate Indians for conservation purposes under the standards outlined in those previous decisions.

The remaining legal decision that was not decided by the Supreme Court of Michigan was whether in fact Michigan regulations relating to gill netting and other aspects of Indian fishing could be sustained.

One of the reasons the State of Michigan has not attempted to determine that was because of the standard of proof in a criminal case; and those are the pending issues as I understand it, in the civil litigation.

Mr. LEGGETT. As I understand it, the power of the State is different than was determined in the *California Trinity* case, where they determined the State of California had, in fact, no authority to control Indian taking under the statutory rights.

Mr. THORNTON. That is true. The decision is closer, to the *Boldt* decision in Oregon. The court said special rights are reserved for

Indians, but Indians cannot be regulated in the same way non-Indians are regulated. Otherwise, what do those treaties mean?

Mr. LEGGETT. *Boldt* said 50 percent each.

Mr. THORNTON. Rights were reserved in common with other citizens.

In the Michigan case, that precise language does not exist. I believe those rights are shared with non-Indians. The Indian position, as I understand it, is that because of the absence of that language, the *Boldt* 50-percent split would not apply.

I could be corrected here.

Mr. TANNER. Our interpretation is that the Indian position demands a superior right, not an equal right.

Mr. LEGGETT. That is what you are resisting?

Mr. TANNER. That, and we are insisting upon the ability for us to regulate and monitor all take from the fisheries. At the present time we are unable to get realistic statistics from any source as far as the Indian fishery is concerned. We see it expanding in numbers and geographically. We see the Bureau of Indian Affairs issuing more and more licenses.

Let me tell you some things——

Mr. LEGGETT. The Fish and Wildlife Service did admit the taking ought to be regulated here today in Lake Michigan and all the Great Lakes, but they were strangely silent as to who was going to do that regulating under existing court decisions.

Mr. TANNER. The fishery, by high sea standards, is a small one. The gear is sophisticated, and the ability to take from these stocks is excessive. It is very easy to overfish these stocks. Most ocean-bordering States have not been able to do what we did, limit the number of people participating in the commercial fishery. We have been able to assign quotas for areas as to how many fish can be caught.

Second, we have gone a long way in restricting gear in a manner which makes the commercial fishery compatible with the sport fishery. We have not gone as far as we would like on the latter part, because we are still in court.

All of Lake Huron we have been able to eliminate the gear, specifically the gill net, which we have judged to be interfering with our ability to manage the two kinds of fisheries alongside of one another.

Mr. LEGGETT. There is no doubt about the fact that prior to the time the Federal Government invested some \$38 million, the lake trout had descended to a take in 1963 of 120,000 pounds and whitefish descended to 178,000 pounds. Whitefish are up to 4.5 million pounds now, which is five or six times higher than its lowest level. Trout is up about four or five times from its lowest level.

Do you have more current statistics than those?

Mr. TANNER. Sure.

Mr. LEGGETT. What was the take of lake trout for the last 3 years?

Mr. TANNER. Which lake?

Mr. LEGGETT. Well, all the Great Lakes.

Mr. SCOTT. Commercially, Mr. Chairman?

Mr. LEGGETT. Total commercial catch.

Mr. SCOTT. Dr. Tanner pointed out, lake trout are not a commercial species in Michigan, and therefore would not normally appear in the statistics you have presented there. We know lake trout are being caught and marketed, and we can only estimate at what the commercial magnitude of that is.

Mr. LEGGETT. I have a chart called appendix 5 from the GAO. I do not have any information for the last 3 years. However that chart was compiled, and however fragile the base, all I am asking, do you have information to bring those charts up to date?

Mr. SCOTT. Not that we can verify, sir.

I would like to, if I may, elaborate on this statistic. Lake trout are illegal for commercial purposes. We know they are taken.

Mr. LEGGETT. I would hope they would be illegal with this small poundage available.

Mr. SCOTT. The fishermen are not reporting them. We are trying to make a case against gill nets. They are not reporting them, either. We cannot give you any good statistics based on reported catch, or lack thereof for the last 3 years. We can only give you an estimate. There is probably in excess of 1 million pounds a year of illegally caught lake trout being marketed.

Sport fishery, where we conduct a census, about 600,000 lake trout are caught in the sport fishery annually. At an average weight of 5 pounds, that is 3 million pounds of lake trout in Lakes Superior, Michigan, and Huron.

In addition to that, there is an Indian catch of lake trout, and again statistics are very difficult to come by, because they do not report them.

Mr. LEGGETT. I was trying to figure out whether or not the \$50 million spent by the Federal Government was really responsible for the restoration of the fishery in these lakes.

Mr. TANNER. I would like to respond.

By international treaty, there were two principal chores, to control the fishery and reestablish the lake trout. Those were attempted by the Federal Government. The longstanding research eventually arrived at a solution, a method of killing sea lampreys, an effective method of controlling their numbers. Sea lamprey control is a foundation stone of any fisheries management in the Great Lakes. It is absolutely essential we keep sea lamprey level at a low level. That has to be done every year, and it costs money. Without it, we have nothing.

The second one was to restock the lake trout. That mainly meant hatchery production and distribution. All the lake trout I am aware of that are produced in hatcheries are produced in Federal hatcheries, and have substantially restored the numbers of lake trout.

Now, we can get into a series of questions on whether or not they are self-sustaining, whether or not they are spawning. I will be glad to respond to such questions.

Basically, we have a very large population of lake trout, not as large as we could have, but many times more than we had at the low ebb in the late fifties and early sixties.

We think that the whole concept of the management committee—the advisory committees as a management unit, federally financed, federally staffed, is totally inappropriate and unacceptable.

Some of the other things in title II, we think they go too far. We do not know where a reasonable basis for the quotas proposed in the transition stage for Indian fisheries have arrived at.

We do not believe there is any background to warrant that high percentage.

Mr. LEGGETT. Are you talking about the 50 percent?

Mr. SCOTT. The levels in the transition period of so many fish are extremely high.

Mr. LEGGETT. I see.

Mr. TANNER. We think the transition period is a useful technique. We think that a reasonable quota could be allocated. We simply think those proposed are too high.

The idea of exclusive fishing rights is going to run into the rights of others. As yet it is unestablished what are the riparian rights. Supposing you were a non-Indian engaged in a resort industry, and somebody, by congressional action, comes along and says, "This piece of the Great Lakes in front of you is no longer available to you, but assigned to another group of people," you are going to run into extraordinary difficulty.

Mr. LEGGETT. Does Mr. Ruppe's bill provide for that?

Mr. TANNER. Yes; it does.

I would like to leave some time for Mr. Scott to speak specifically on fishery questions as they relate to capabilities, they relate to regulation, they relate to the history that we have had in fish management with the cooperation of other States, through a different kind of a committee, a fisheries technical committee, that exists in the States which was not referred to this morning, and to in any other way provide you useful information on the status of the Great Lakes fisheries.

I will still, obviously, be pleased to respond to further questions.

Mr. LEGGETT. Mr. Scott?

Mr. SCOTT. I am not certain what task the Director has left me with.

There is a mechanism to resolve difficulties, to coordinate fisheries management, and fisheries research. We have used that forum very successfully in the past 15 to 20 years.

Mr. Fetterolf is here from that Commission to give you further information on it. Sometimes we work directly through the Great Lakes Fishery Commission, sometimes the technical lake committees, which are not the advisory committees Mr. Ruppe's bill is identifying, but technical people from various agencies, including the Fish and Wildlife Service. Sometimes we work between or among States.

A recent example is the management of the chub fishery of Lake Michigan. We did it very successfully. We coordinated our research programs, exchanged services, exchanged fish in many cases, and the idea these States are poorly organized and cannot conduct coordinated work on the Great Lakes is erroneous. It is simply a myth for modern purposes.

Dr. Tanner pointed out we had been extremely successful and, as a matter of fact, the lead agency in the Great Lakes in restoring many of the fish populations. Some of the things we did was to import and introduce the coho salmon, a fishery worth \$200 million annually, of value to the citizens of our State.

We have very important recreational fisheries, and we have worked darn hard to get to that point.

The question came up relative to gill nets, and the seeming difference among biologists whether or not gill nets are selective or nonselective. It is true gill nets in some cases can be selective, depending on the size of the mesh, areas or depths, and the species targeted.

By and large, the large mesh gill net, has a four-and-a-half stretch mesh in it, has been the traditional type of net in the Great Lakes for 100 years, for the taking of whitefish and lake trout. These two species exist in the same waters, at essentially the same time throughout the year, and the gill nets catch whitefish and lake trout with equal facility.

Therefore, in that sense, they are not selective. That has been one of the reasons we have been trying to ban them in the Great Lakes. It ties into restoring lake trout.

In 1968 we went to extensive efforts to make our case against gill nets, and we have proved our case. We made well over 300 rides, and observed what was taken in gill nets; and we found that as they were used traditionally, historically, they were nonselective. I do not know how else to put it, Mr. Chairman. That is our position.

There is no difference of opinion among Michigan biologists on that issue. There are, in fact, alternative means to harvest allowable stocks of whitefish and many other species. It does not require nonselective gear like gill nets. That is what we have been trying to lead the other agencies to do in our wake.

As a matter of fact, the State of Indiana has banned large mesh gill nets. The State of Illinois has banned them. Wisconsin regulates them very closely by area and time. Minnesota has banned them, except in a permit fishery.

Contrary to what was said earlier this morning, Ohio does not permit small mesh gill nets for perch. They are not allowed there. Ontario, on the other hand, does. There is a great deal of consensus on gill nets among the Great Lake States.

Mr. LEGGETT. Mr. Bonior?

Mr. BONIOR. Could you go into the whole question of how the Canadians have been dealing with this problem? I assume they have similar problems.

Mr. TANNER. I will be glad to say what I can. Let me start out by clarifying a point which may be necessary.

Contrary to high seas fisheries, there is no intermingling of Canadian and U.S. commercial fishermen. They do not legally fish on our side of the line, and we do not legally fish on their side of the line. And as far as I know, that is universal, and has been for a long, long period of time. It is a different situation than you would sometimes encounter on the coast.

There are many tribal reservations on the Canadian side, particularly in the vicinity of Georgian Bay, and on the northern shore of Lake Superior. Many of these tribal groups do participate in the commercial fisheries of Canada, and they receive some sort of Government assistance.

I hesitate to label it an artificial price of subsidy, but there are various kinds of governmental assistance applied to these groups in their pursuit, and their marketing of their catch.

Beyond that, I really do not think I could go. I am not that knowledgeable about it.

Let me point out something that characterizes the difference between the Canadian approach to fish management as opposed to ours.

They, by contrast to this country, are very sparsely populated. With a good deal of Government effort support they have built an inland fishery resort business—call it a fly-in, or whatever. We brag about 11,000 lakes in Michigan. There are 250,000 lakes in Ontario.

Now, if they turn their Great Lakes waters to a recreational type of fishery, they are in competition with another segment of their society already established. They have generally chosen to have recreational fishing in a secondary role, with commercial fishing in the dominant role as far as their Great Lakes waters are concerned.

We, on the other hand, have found in our land waters intensely occupied, competing with all kinds of uses, and have, in the last 15, 20 years, have gone to the Great Lakes for sport fishing. So these various goals are not—well, they are not 100 percent compatible.

True, the line is an imaginary political line, not a physical line. On the other hand, there are also some physical characteristics. It is extremely deep water. Most of these fishes are generally confined to 100-, 200-foot depths. There is a reason why fish stocks do not stray back and forth substantially. To a degree, they stay in the shore waters.

What I am trying to do is describe the two countries' approach to Upper Great Lakes and Lower Great Lakes, as well, how and why they do it, and express the degree of capability.

Mr. BONIOR. I think that has been very helpful. On page 4 of your statement, you say "take our chances in court, rather than accept a solution as has been presented in these amendments."

Are you prepared to wait out the Federal court decision, and move from that point, or do you have any solutions at this point?

Mr. TANNER. If it comes to a point between this solution and waiting it out, I guess we would choose to wait it out.

Mr. BONIOR. What other alternatives can you put forward?

Mr. TANNER. Let me say this. I believe that we collectively can and should go farther than we have in accommodating Indian fishery. I believe there is much that government—and it is not confined to Federal Government—can do to assist this. It runs the gamut from buying into a limited licensing situation in Michigan. We have a limited number of licenses.

A license to fish in Michigan is of increasing value, and that is our management goal, to make each commercial fishing enterprise a highly productive, economic unit, rather than fish until the last fish is caught. The attitude that characterizes an unregulated fishery.

We think it is logical to expect Indians need training. They need gear. They need, as I mentioned, a license, and probably some help in marketing. But all of this must be done in the overall fabric of very carefully developed management strategies we believe are already in place.

To deny the State authority, to resist monitoring, to fail to report entries in the face of everything that we know that we learned through bitter experience to promulgate the fisheries the way that they are, and aspire to the high ceiling of productivity that we believe is possible.

Mr. BONIOR. If I were a native Indian whose family has been fishing these waters for decades, I guess I would be concerned with the statement you make, that they need training, and they need other types of so-called modern——

Mr. TANNER. Let me elaborate.

Mr. BONIOR. I wish you would.

Mr. TANNER. One of the difficulties in shifting from a gill net fishery to impounding gear, it takes a good deal of skill. It requires a bigger boat, and investment. To set in the proper manner a trap net in 100 to 200 feet of water, it is a marvel to see done, and it is not something you can go out and throw a net over the side of the boat and expect to fish. That is what I meant by training.

It could go farther than that, preparation of fish, designing them toward certain markets.

Mr. BONIOR. Are there discussions between the Department, the State, and the Indian tribes concerned?

Mr. TANNER. No; there are not discussions.

Mr. BONIOR. Were there discussions?

Mr. TANNER. There were.

Mr. BONIOR. When were they broken off?

Mr. TANNER. Prior to my time, but basically I would not exaggerate those discussions, I think those discussions probably left a lot to be desired.

Nevertheless, discussions, at least between the Bay Mills community and our Department were underway.

Mr. BONIOR. Now?

Mr. TANNER. No; prior to the Federal suit, which landed on us as a surprise, and which disrupted any negotiations that were there. And more important than that, has prevented any renewal of negotiations.

We did not seek that lawsuit. We were astounded they would throw us into Federal court without notification.

Mr. BONIOR. I have no further questions.

Thank you.

Mr. LEGGETT. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

From your testimony, I gather the one thing you do like in Mr. Ruppe's bill is the money.

Mr. TANNER. I think that is a fair statement.

Mr. FORSYTHE. That is about as far as your support goes.

In other words, it is your view that through State management, and through the Great Lakes Fishery Commission, you should gain the right to total management of the resources, and that anything short of total management is not going to work.

Mr. TANNER. That is essentially my statement, sir.

Mr. FORSYTHE. One thing, there seems to be considerable haziness as to whether there was anything as far as a master plan for the Great Lakes.

Do you think that that is as void as it seemed to come from Mr. Greenwalt?

MR. TANNER. I would like to speak in an introductory way to that, and then turn it over to Mr. Scott.

The lake trout rehabilitation is, in a way, a dilemma. We have succeeded in managing in many areas, particularly Lake Michigan and Huron, lake trout stocks to a point where we can put mature fish over the traditional spawning grounds, observe the fish spawning, collect the eggs they spawn, bring them into the hatchery and hatch the eggs.

We have searched the lake for a number of years now, and we do not find any reproduction occurring naturally. As you begin to talk about goals, we are soon facing a decision of whether or not we are content to go with a hatchery product, and be completely dependent, at whatever level we establish, on hatchery dollars, if you will, or whether we will continue to pursue the goal of a self-sustaining lake trout species, lake trout stock, and a management procedure designed to do that.

It will make quite a difference how we manage when we decide whether or not to go beyond the present level.

Realistically we cannot go beyond the present level without additional hatchery levels.

MR. FORSYTHE. Nationally, so far as trout are concerned we are generally on a put and take operation.

MR. TANNER. I am aware of that. We are managing on the basis of natural reproduction now. We are sure Mr. Greenwalt is correct, there is a significant natural reproduction in Lake Superior. We are unable to explain why there is none in Lake Michigan and Lake Huron.

MR. FORSYTHE. Mr. Scott.

MR. SCOTT. If I may follow up on that one, perhaps there is a problem with put and take type management. As a matter of fact, we in Michigan got out of that type of management well over 10 years ago.

We are, however, managing hatchery fish on a put, grow and take basis, which I think is more accurate. Our rule of thumb is we get more pounds back than we plant. Unless we can justify the program on that basis, the fish will not be planted. So far it has worked very well for us.

In dollar terms, generalizing on the various species we raise in the hatcheries, for every dollar invested we get \$50 to \$20 generated in economic returns. So that is how we manage that situation.

We are going as far as we can, I think, at this point in trying to reestablish self-sustaining populations of lake trout in the Great Lakes. We stock them on former reefs. We are researching them to find the factors limiting natural reproduction, and frankly, in the past 5 or 6 years we have no answer. That does not mean it should not be a goal.

We have to know how much money we are willing to invest in that activity.

The Canadians want natural self-sustaining populations. I could justify on simply a put, grow, and take situation, dollars invested and dollar return.

As far as a management plan goes, Mr. Forsythe, there are various management plans written up by the various agencies. I think most importantly, however, there is a commonality of thought among fisheries administrators and managers in the Great Lakes. That, in essence, is a plan.

We work, as I mentioned earlier, through the Great Lakes Fishery Commission. There is a commonality having to do with limiting participation in commercial fishing. Most agencies have gone that route to some extent. Most agencies have gone to gear restrictions in one form or another. Most agencies are involved now in setting quotas and allowable harvest. Most agencies are on a hatchery expansion program, and we have discussed these things among ourselves.

There is a commonality in species, areas planted, planting rates, and those sorts of considerations. All agencies are aggressively pursuing a pollution control program. Fisheries biologists are not directly involved, but impact on it. All agencies are, in one way or another, protecting or enhancing the aquatic habitat.

So if perhaps that is not set down in a written plan in detail any place, but it is there and it is working. The Great Lakes Fishery Commission, as noted in Docket Tanner's testimony, is now considering the establishment of a fishery management plan for the Great Lakes. Ontario already has one.

Mr. FORSYTHE. One other question. Going back to another area discussed with Mr. Greenwalt, these two bays, Whitefish Bay and Keweenaw Bay, are apparently where the basic problems are. Are those stocks isolated in the bays—can they be managed—as independent stocks.

Mr. SCOTT. There is some intermixing, but I do not think it is to the extent they cannot be considered discreet stocks and managed appropriately. There is some swimming in and swimming out. Perhaps it may balance.

Mr. FORSYTHE. I forgot which one stated that you suspected there is as much as one-quarter of the lake trout that are commercially fished, and not reported. Where are they being taken?

Mr. SCOTT. All over.

Mr. FORSYTHE. Not only by Indians?

Mr. SCOTT. Not only by Indians.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. Maybe those PCB's are making all those fishermen forgetful.

Mr. Ruppe?

Mr. RUPPE. Thank you very much.

Mr. Tanner, I gather you really oppose the committee arrangement that I have established in the legislation I have introduced.

Is it because the committee established under the Great Lakes Fishery Commission are technical and the committees I have identified get into the management function of the fishery?

These committees do exist at the present time, and I presume you oppose one and are silent about the other for specific reasons?

Mr. TANNER. The Technical Committee is more acceptable than the committee you have proposed. The real objection is their authority that exceeds the collection and compilation of data.

Mr. RUPPE. What type of authorities do the committees have now that have been or are legally capable of being established by the Great Lakes Fishery Commission?

Mr. TANNER. The existing committees, and perhaps Mr. Scott can better answer than I because I have not served on them for 10 years now, but they provide for a coordination of State management. For example, let us take Lake Michigan.

As I recall, Michigan has got about 61 percent of Lake Michigan, and Wisconsin 30, Illinois 6, Indiana maybe 2. Nevertheless, we come together to see where we are mutually supporting and potentially in conflict.

The people that do that are the biologists, are the technologists that are capable of understanding and delivering answers to this kind of fishery. It is not a generalized committee composed of citizens representing various groups, but people working day to day on the problems. They come forward collectively, which I think is most apt to be the kind of management that—I guess I had better term them as suggestions.

Mr. RUPPE. Do they have management authority?

Mr. TANNER. They do not.

Mr. RUPPE. They are strictly advisory or recommending in character?

Mr. TANNER. Right.

Mr. RUPPE. You mentioned that you were very much opposed to the Indian people having exclusive authority over any area in terms of management of fishery.

As I recall, the legislation I introduced would set aside 10 percent of the catch for noncommercial purposes on a nondiscriminatory basis.

Would that not give the sport fishermen both within and without the Indian community, a reasonable opportunity to fish within Whitefish Bay, Keweenaw Bay or other areas within or considered to be within the Indian reservation waters?

Mr. TANNER. Two answers.

First, any time that there is a determination—and I will assume by that I mean a legal determination—that there are, in fact, waters where Indians have a superior right to the fishery stocks available, we will recognize those rights and we will function in any appropriate manner, whatever is specified.

Second——

Mr. RUPPE. Short of that, you do not want to give any authority away?

Mr. TANNER. Right.

Second, I guess it would come down to the question of numbers. We do not think 10 percent is realistic.

Mr. RUPPE. Do you have another number?

Mr. TANNER. Forty, fifty percent.

One thing I should have prefaced all my remarks with, I have a relatively new set of amendments to consider. I do not act independently. I am responsible to a commission and, secondly, I am responsible to the Michigan public, and I am constrained in my remarks by acknowledging that we have not had time to touch any of those bases.

Mr. RUPPE. You did indicate that while you were not particularly sanguine about the outcome of the case, you would, in all honesty, prefer the court decision over the legislation, is that correct?

Mr. TANNER. Over the present legislation.

Mr. RUPPE. You did indicate whatever Indian rights were established by law, the State is fully prepared and competent for accommodating Indian rights in the fisheries. In other words, win, lose or draw, you will accommodate the court's decision?

Mr. TANNER. Obviously we will do as the court dictates.

Mr. RUPPE. Well, on page 2 of your suggested recommendations, you do speak of the Indian management rights in Keweenaw Bay and Bay Mills or Whitefish Bay. You do so on the premise or on the condition that the Indians develop a conservation code, is that correct?

Mr. TANNER. Mr. Scott wrote that.

Mr. SCOTT. Yes, sir, that is true.

Mr. RUPPE. On page 3, you mention that this conservation code cannot come into place until it is approved by the State.

Mr. SCOTT. Yes, sir.

Mr. RUPPE. In effect, the Indians can only manage their fishery by the approval of the State, and if they do not manage as the State suggests, they would not have authority whatsoever, but in any event they would have lesser authority than they probably have today.

Mr. SCOTT. Mr. Ruppe, I do not see it quite that way. I see it that the State has approval of the management plan or whatever. I think there are good and valid reasons for that.

Mr. RUPPE. I am not arguing the reasons. Right now, the Indian community can fish Whitefish Bay and Keweenaw Bay if they choose. Under the suggestion you would have here, their ability to fish those areas would be contingent upon conservation codes approved by the State, is that not correct?

Mr. SCOTT. That is correct.

Getting away from fishing for a moment, a management plan implies many things. If the Indians were to choose to develop a code that authorizes the planting of grass carp, or some other exotic species, we want to have a voice in it.

Mr. RUPPE. On the other hand, you can play that game both ways. You can say frankly we would not approve the code until such time you agree to take fish that are 4 feet wide and 9 feet tall. Both sides are in a position to be perfectly silly if they so choose.

Once the State has a right to veto a plan, a State can set any conditions thereto they choose.

I am not suggesting you would. You have done a splendid job of managing the fishery.

Mr. SCOTT. These were put forth as suggestions. If you want to tie a conservation ethic to the wording here, that is fine.

Mr. RUPPE. I think, quite frankly, the difficulty is that the courts would be inclined to interpret, and the Indians would be inclined to suggest that language is probably a taking of the rights they have today.

The last thing, as you have indicated on pages 6 and 7, you would like to have language adopted which says all of the State of

Michigan waters of the Great Lakes shall be considered as having been "required for settlement."

In effect, does that not fly in the face of the LeBlanc case where the Michigan Supreme Court ruled otherwise?

Mr. SCOTT. It does indeed.

Mr. RUPPE. Is that not an abrogation of the treaty? You would almost have to have the concurrence of the Indian community or a feeling they were getting a reasonable deal, I would think, or we are all in trouble.

The difficulty is, it seems to me—and I can appreciate it—as Dr. Tanner said, the State can take the suit and live with the results, as indeed I guess we all have to. The State can push their own legislation or amendments they have suggested. The effect, however would be a taking and abrogation of the treaty. I think the Congress would not pass the amendments on that basis.

The third thing, we can negotiate akin to the bill I introduced. Essentially the bills that the State has suggested in the past, putting all fishing under State authority, really is either a taking or abrogation of previous treaty arrangements, or both. And Congress would not pass those bills.

We are at a dead head. The Congress, in view of the human rights discussions we have worldwide, would be most reluctant to intervene with rights of minorities within these United States. I just do not see the Congress in this or the next or the session thereafter passing legislation that could be looked at as taking, as abrogation.

Mr. TANNER. In response, our position is that whatever treaty rights there may be or may not be have not been established. That is the question at hand. Until that is established in some manner, we are not prepared to concede those treaty rights, however they are described, do exist.

In regards to our draft, the question of declaring the lands to be settled, I believe the same language occurs in your bill.

Mr. RUPPE. My bill contains participation by Indians actively with rights on the councils that the State is not prepared to give them.

Mr. TANNER. I do not believe we said we were not prepared to give them a voice in management. Since I rejected the whole committee—basically, I guess I sound like a technocrat. There are many groups that give us advice. When the chips are down, the biologists, the technologists who are seeking to maximize the conservation ethic and manage the resource in light of that ethic has to rule.

Mr. RUPPE. If the Indians do not have a voice, the State would be inclined to manage one way. If I were a member of the Indian community or a lawyer for the Indian community, I would be inclined to be concerned about it since the Indian interest in that fishery is different.

Again I do not blame them either.

Mr. TANNER. In answer to that question, what I attempted in a rather foggy way perhaps to outline, it seems to me, and there is no magic answer, but it seems to me the Indian interest is principally a commercial one. We are attempting to manage our fisheries

so we have a compatible allocation between sport and commercial harvests.

We believe that, generally, if not exclusively, the role that could be assigned in the harvest of fish to the Indian groups lies on the commercial half of the formula.

We suggested that there are ways over a transition period that more can be done to accommodate Indian participation in Michigan's commercial fishery. It has to be done in the overall context of the management philosophy of the State.

Mr. RUPPE. Thank you very much.

Mr. LEGGETT. Mr. Mannina.

Mr. MANNINA. Just a few quick questions, Mr. Chairman.

Mr. Tanner, with respect to Whitefish Bay and Keweenaw Bay, could you tell us what the MSY for whitefish in Whitefish Bay is?

Mr. TANNER. About 300,000. We express our statistics in pounds.

Mr. MANNINA. Do you have an estimate for the OY?

Mr. SCOTT. 200,000.

Mr. MANNINA. Do you have data the Indian catch of whitefish?

Mr. SCOTT. In Whitefish Bay?

Mr. MANNINA. Yes, sir.

Mr. SCOTT. Nothing that I can rely on.

Mr. MANNINA. What about the non-Indian commercial catch?

Mr. SCOTT. 200,000 pounds a year the last 10, 20 years.

Mr. MANNINA. Recreational catch?

Mr. SCOTT. Virtually nothing.

Mr. TANNER. It is really not a recreational species.

Mr. LEGGETT. What would the range of the Indian take be? Obviously, zero to 3,000 but can you sharpen that up a bit?

Mr. TANNER. Our difficulty is we are not supplied with data by the Indians. They deny our ability to regulate and deny access to statistics and presence on the boats.

Mr. LEGGETT. You had statistics before, did you not? Are there more boats out there than before?

Mr. TANNER. The best evidence we have this morning was cited by Mr. Greenwalt, and we have the same kind of evidence, the numbers of fish present have declined drastically in the last 5 years. We think that is an indication of overharvest.

The other indication, the activities of the Indian groups have now moved out of Whitefish Bay into other areas. We think they find it unproductive as well.

Mr. MANNINA. In January of this year we requested the same information. What you submitted for the record was information on something called the commercially sustainable yield, which gave us neither maximum sustainable yield or optimum yield. It was provided for Whitefish Bay and Keweenaw Bay by species.

However, what catch was supplied for Indians and other fishermen, was provided by lake and not by species thus preventing us from making a comparison. Furthermore, there were several instances where you noted that data was not available.

Could I renew the request that you provide the data I just requested for whitefish for each fishery in which Indians participate.

Also, during the last hearing, you indicated you had an analysis of what your view was as to the deficiencies of Indian conservation.

codes that you would submit. We have not received that analysis and would be grateful if you could supply that.

Mr. SCOTT. Sorry. I thought we had submitted those.

Mr. MANNINA. No problem at all.

During the last hearing we raised the issue if you were acting on the regulations which authorize the Secretary, upon request of the Governor, to regulate Indian fishing for conservation purposes.

Have you further investigated that?

Mr. TANNER. To this extent, we looked at that and made the decision that were we to go that route, that it would be very quickly labeled discriminatory since we have not been completely successful in eliminating the gill net from the non-Indian fishery. We are subject to another court procedure, basically a contest between ourselves and non-Indian commercial fishermen, although there are some Indians involved. We felt that as quickly as we attempted to go that route on the Indian fishery, it would be blatantly discriminatory.

Mr. MANNINA. However, if there is a present threat to the resource which I gather is your position, would it not be in the best interest of the resource to pursue any opportunity to protect that resource?

Mr. SCOTT. In the case of Whitefish Bay, it is after the fact. The fish are gone.

Mr. MANNINA. For lake trout. I assume there are whitefish in Whitefish Bay, and also in Keweenaw Bay.

Mr. SCOTT. Lake trout in Whitefish Bay is a swim-in proposition. Our indications are that production of whitefish is declining rapidly.

I think Mr. Tanner has stated our case. Until we can get an order, an opinion out of our current litigation, that regulation would be highly discriminatory.

Mr. MANNINA. Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, gentlemen.

In the event that you determine that the subcommittee can be helpful in your management problems, I would appreciate your being in touch with us.

Next we will have a panel comprised of Mr. Daniel Green, Mr. Arthur LeBlanc, Mr. Joseph Preloznik, and Mr. Arthur Duhamel, all representing Indian groups.

STATEMENTS OF PANEL CONSISTING OF DANIEL GREEN, ATTORNEY, SAULT-STE. MARIE TRIBE OF CHIPPEWA INDIANS; ARTHUR L. LEBLANC, TRIBAL CHAIRMAN, BAY MILLS INDIAN COMMUNITY; JOSEPH F. PRELOZNIK, ATTORNEY FOR RED CLIFF AND BAD RIVER BANDS OF CHIPPEWA INDIANS; AND ARTHUR DUHAMEL, SPOKESMAN FOR THE LEELANAU INDIANS

Mr. LEGGETT. Please give me your names and what Indian tribes you represent.

Mr. DUHAMEL. I am Arthur Duhamel. I am representing, erroneously in this case, representing the position of the Grand Traverse Band of Ottawa/Chippewa Indians.

Mr. LEGGETT. Counsel does not have that on my list here.

Mr. THORNTON. He is the representative of the Leelanau Indians, Inc.

Mr. LEGGETT. How do you spell your last name?

Mr. DUHAMEL. D-u-h-a-m-e-l.

Mr. LEGGETT. Is that your last or first name?

Mr. DUHAMEL. Last. Arthur is my first name.

Mr. LEGGETT. Your position with that particular tribe is what?

Mr. DUHAMEL. Well, presently for these purposes, I am their spokesman.

Mr. LEGGETT. You are a member of the tribe?

Mr. DUHAMEL. Exactly.

Mr. LEGGETT. Next gentleman?

Mr. LEBLANC. For the matter of introduction, I am Arthur LeBlanc, tribal chief of the Bay Mills Indian Community.

Mr. LEGGETT. Next gentleman?

Mr. Preloznik. Joe Preloznik. I am an attorney and represent the Red Cliff Band of Lake Superior and the Bad River Band of Chippewas. Mr. Gordon was to give a presentation for the Red Cliff Band but as I indicated earlier, he had to leave. Mr. Bigboy, chairperson of the Bad River Band, also left to take the 1:30 flight.

Mr. LEGGETT. Would you give me the spelling of your last name?

Mr. PRELOZNIK. P-r-e-l-o-z-n-i-k.

Mr. LEGGETT. Next gentleman?

Mr. Green. Daniel Green, tribal attorney, for the Sault-Ste. Marie Tribe of Chippewa Indians, appearing instead of Mr. Lumsden who is unable to be present today.

Mr. LEGGETT. I suppose all you folks support this bill?

Mr. DUHAMEL. I think you will find out in a moment.

Mr. LEGGETT. You may proceed in any order you wish.

Mr. LEBLANC. I have a prepared statement.

Mr. LEGGETT. All of your statements will appear as though they have been read.

[The following were received for the record:]

STATEMENT OF ARTHUR L. LEBLANC

In addressing the honorable members of this subcommittee, I am speaking for the members of the Bay Mills Indian Community, whose ancestors negotiated and signed a treaty with the United States which is the actual subject of this hearing—the treaty of March 28, 1836. I am Arthur LeBlanc, and I am the chairman of the Bay Mills Indian community.

Six months ago, I addressed this Subcommittee at its hearing in Petoskey, Michigan. I spoke at some length to explain why Congressional action was neither necessary nor appropriate to resolve the continuing litigation between the Bay Mills Indian community and the State of Michigan concerning the present-day extent of the right to fish guaranteed by the treaty of 1836. My remarks then are the preface and background for my statement today.

The provisions of H.R. 12531, as I understand them, are unnecessary, for there already exists under present law the authority and means to prepare a comprehensive report concerning the conservation and management of the Great Lakes fisheries, to finance additional fish hatcheries, and to encourage with financial incentives the undertaking of fish monitoring programs by Great Lakes States.

However, these laudable and unobjectionable purposes are not the real purpose of the proposed legislation, as even a cursory analysis will reveal. The only new element in H.R. 12531 is its references to the existence of Indian treaty fishing. The references are few in number, but crucial to the Bill and its proposed amendments, which were described by its sponsor upon the bill's introduction on May third of this year. Those references imply that the very existence of an Indian fishery guaranteed by treaty is (1) devastating to the fishery as a whole, and (2) requires intensive

monitoring by the States, remedial plants of fish, and regulation other than by the tribal conservation committees.

These implications of the Bill are not based upon prior testimony to this Subcommittee in January, for few facts, but much opinion, were provided then. Nor are they based upon an intensive study of the fishery by any agency or entity, public or private, for such a study is the stated purpose of this Bill. Indian fishing under treaty has been tried in the court of public opinion, and its verdict is that Indian fishing is guilty of impairing the resource. The sentence to be imposed is abrogation of the treaty under which Indian people fish.

I have seen the discussion draft of the proposed amendments to H.R. 12531. That draft imposes the sentence of abrogation to which I refer through its proposed Michigan Indian Fishing Rights Act of 1978. Whatever inducements are offered through that proposal or any other, the opposition of the Bay Mills Indian community to its passage will remain. I am certain that our opposition is expected, but I would like to reacquaint you with the situation in Michigan under present law. It should then be clear to you why congressional action—even if all the assumptions of H.R. 12531 as to the evil presented by Indian treaty fishing were even half correct—is simply not necessary.

The Michigan Supreme Court held in *People v A. B. LeBlanc* that Indian fishing under the treaty of March 28, 1836, is subject to regulation by the State of Michigan when such regulation is necessary to conserve a fish species and the conservation objective cannot be achieved by regulation of the non-Indian fishery alone, and such regulation does not discriminate against Indian treaty fishermen. That decision was not appealed by either side and is the law of the State of Michigan. That right of the State to regulate Indian treaty fishing has not been enjoined or altered by the Federal District Court for the Western District of Michigan, before which the case of *United States v State of Michigan* now sits. Any conservation threat to the fishery in any of the waters adjoining land ceded by the treaty of 1836 can be prevented by the State through the exercise of its regulatory authority confirmed by the Michigan Supreme Court.

There exists yet another mechanism by which the State of Michigan can prevent any possible threat to the fisheries in its waters by Indian treaty fishing. That mechanism is provided by part 256 of title 25 of the Code of Federal Regulations. In essence, that chapter allows the Governor of a State to request the Secretary of the Interior to impose regulations upon the fishing of treaty fishermen—both on and off reservations—if necessary to protect the fishery resource from overharvest. The only portion of that chapter now in effect, upon the request of the State of Michigan, is the provision of identification cards by the Secretary to treaty fishermen.

It should be evident that any concern that the State of Michigan now has for the future of its fishery can be met by action of the State itself through the implementation of the legal avenues which currently exist. Any State protestation that such avenues are inadequate to deal with Indian treaty fishing are premature, for they have never been utilized by the State up to this point. This Subcommittee should therefore view with scepticism any request for another remedy to be provided by the Congress of the United States.

This subcommittee should further refer the provisions of H.R. 12531, if they should be amended as indicated in the discussion draft, to the Appropriations Committee and the Interior and Insular Affairs Committee of the House. These amendments do more than provide for Great Lakes Advisory Committee with the power to promulgate fishery management plans; they abrogate the off-reservation treaty rights of all Great Lakes tribes by implication and they abrogate the treaty of March 28, 1836, explicitly. Such action must be reviewed by the committee which has been charged by the House with responsibility for review and approval of all proposed legislation affecting the Indian tribes which are the wards of the United States and by the committee which has been charged by the House with responsibility for review and approval of all legislation which will cause the Congress to expend public moneys. I can promise you, the expense of abrogation of treaty rights will be astronomical.

It cannot be emphasized too strongly that the Bill, as proposed and as to be amended, completely subverts the judicial process. At the last hearing of this subcommittee in Petoskey, trial in *United States v State of Michigan* was scheduled to begin on February 27, 1978. I emphasized then the inappropriateness of Congressional intervention in a matter which was already under the full and careful consideration of a coequal branch of the Government—the Federal judiciary. I emphasize that point again today. Trial was interrupted by the illness of the presiding judge and has not yet resumed. That fact does not, however, provide justification to the Congress to substitute its own determination as to the proper

resolution of litigation for that of the court. When that lawsuit was instituted, the United States was the only plaintiff, acting in its trustee capacity for the Bay Mills Indian community, in alleging that the State of Michigan had acted so as to deprive the community of the ability to exercise the right to fish under the Treaty of March 28, 1836. Now, the United States is being asked to completely reverse its position and to act to abrogate the very treaty upon which it once filed suit. That about face is a breach of the trust upon which the Bay Mills Indian community has relied for 5 years of litigation. It cannot be justified.

When all the rhetoric and high-sounding phrases are ignored, the Bill and its proposed amendments is nothing more nor less than a artfully fashioned attempt to rid Great Lakes States, and the State of Michigan in particular, of having to concern themselves with developing reasonable and workable solutions with the Indian treaty tribes within their boundaries, by the drastic act of terminating the treaties upon which a culture and economy have been based for centuries.

Many horrible acts were committed in the past by well-meaning whites which were supposed to benefit Indian people. Passage of the proposed solution to the "conflicts which exist between the State of Michigan and certain Treaty Indians of Michigan relative to fishing rights in Michigan water of the Great Lakes" may be motivated with the best of intentions, but it will destroy our culture and further impoverish our people. We do not intend that such a price for a peaceful resolution of the "conflict" will be paid by us. You have no right to even consider asking us to pay it. In the words of the United States Supreme Court, a treaty between the United States and an Indian tribe is the "solemn word" of the Nation. We demand that the solemn word of the Nation be kept, and that the treaty of March 28, 1836 be as much honored by the Congress of the United States as it is by us.

STATEMENT OF ARTHUR DUHAMEL FOR THE LEELANAU INDIANS

Gentlemen, it is the position of the Indian people that I represent here today that—first and foremost . . .

H.R. 12531 seeks a political solution to an entirely legal problem. We have faith and confidence in the higher courts of the nation to arrive at a rational conclusion with respect to our petitions for recognition of a basic Indian right and therefore we are entirely in opposition to legislation which seeks to circumvent the great promise that only the United States can fulfill. If the United States will not, or by devious political legislation, cannot—fulfill its fiduciary trust relationship then this, to us, means the very end of a once magnificent group of people.

I quote from the Position paper submitted by the National Congress of American Indians to the subcommittee hearing held at Petoskey, Michigan, January 13, 1978:

"Any legislative action on this issue at this time is not only inappropriate but is again an attempt to circumvent sound judicial decisions. In fact, such legislative action could possibly lead to legal suits against the government for breach of the fiduciary trust relationship. Those who would support legislation which would subject tribes to state regulations are desperately attempting to force Indian people to give up their last protections of a distinct culture which have often provided them with the bare essentials of life. When the white man took land from the Indians, Native Americans were only left with treaties. The proponents of such anti-Indian action would like to see the American Indian disappear altogether, which is hardly a reasonable solution to conflicts in Indian Affairs."

We concur with the above.

In my own testimony at the same hearing I alluded to the apprehension Chief Seattle felt in 1855 that "the white men are not speaking straight." We are convinced that this proposed legislation still does not "speak straight." We are further convinced that only the proper judicial tribunals can speak straight and we therefore reiterate our belief that an entirely legal controversy must and can be resolved in the Federal District Court for the Western District in Grand Rapids, Michigan in due time. I urge everyone concerned to await the decision in this case.

Now then, we further believe that whenever you legislate against someone—you are actually legislating for someone. As I perceive it, Mr. Ruppe's constituency does not seem to include the Indian people. In an article entitled "Racism and Fishing Rights," authored by John V. Moore, and published in *The Nation* on September 17, 1977, I quote directly from the opening paragraph:

"The Native peoples of Michigan, with almost no allies in their home state are apparently winning their legal struggle for fishing rights against the combined forces of the Michigan United Conservation Clubs, the state's Department of Natural Resources, the American Fishing Tackle Manufacturer's Association, and the Great Lakes Charter Boat Association. Whether or not they will win in fact remains to be seen. Even the direct participants in the struggle, amidst the literal gunshots,

the splintering of canoes, the ripped nets, and the nightly armed guerrilla (white) raids on Little Traverse Bay, seem not to perceive very clearly the long-term consequences of decisions now dragging through State and Federal Courts in an atmosphere of nationwide controversy.

Now according to Mr. Ruppe's introduction to H.R. 12531, as published in the Congressional Record, dated May 3rd, 1978, this legislation "is also the first step in the resolution of a potentially explosive problem." Just what is this "potentially explosive problem?" We view it as merely the reaction of those groups and agencies who form the greater portion of Mr. Ruppe's constituency, and the only solution to the acts of vandalism and vigilante goonism by non-Indians is the proper enforcement of already existing criminal and civil laws. This criminality has been practiced on Indian fishermen because we dare to catch a few fish on which to subsist and sell. The exclusive allocation of fish by the Michigan DNR to white folks is entirely discriminatory and contrary to court decisions. H.R. 12531 is premature. *United States v. Michigan* will ultimately be the controlling factor in determining the extent of Indian fishing rights. There is a built-in legal safeguard to possible fish depletion in the language of *People v. LeBlanc*: The State may regulate Indian fishing, but only if:

- (a) it is necessary for the preservation of the fish protected by the regulation;
- (b) the application of the regulation to the Indians holding the off-reservation fishing right is necessary for the preservation of the fish protected;
- (c) and the regulation does not discriminate against the Treaty Indians.

Nor has there been any showing that Indian regulation of treaty fishing is inadequate. The United States Supreme Court has also recognized the inherent sovereignty of Indian tribes. This Bill attacks that sovereignty by depriving the tribes the right to regulate their own people and the fishing operations of tribal members. The Indian tribes can effectively maintain stocks of lake trout with the aid and cooperation of the Department of Interior, as already has been done in Whitefish Bay.

Dealing with some specific provisions mentioned in the proposed amendments, I wish to conclude, generally that:

1. Historically, we already have been forcibly removed, pushed and packed into the small area called Peshawbestown. The intent of H.R. 12531 is little else but the continuation of that policy, to deny us the right to fish in the ceded area by creating other, smaller fishing reserves removed from the area in which we live.

2. Even if H.R. 12531 becomes law, there is no provision for the Grand Traverse Band to fish their traditional area—a concession to local, powerful sporting interests.

3. The "potentially explosive problem" Mr. Ruppe speaks of can be resolved through existing laws by vigorous prosecutions of non-Indian vigilantes against treaty fishermen.

4. Sec. 206 *Settlement of Lands Under Treaty* is totally offensive to the Indian tribes, as this section would, in effect abrogate the Treaty of 1836.

5. The state would be empowered to be the regulatory agency over Indian fishing, contrary to Supreme Court decisions.

6. The "Duhamel decision" which prohibited me, a treaty fisherman, from fishing in Grand Traverse Bay because of an alleged danger of depletion of the fishery, thereby implicitly meaning, that no commercial fishing should be allowed, Indian or non-Indian, didn't persuade the DNR from conferring a special permit to a non-Indian commercial fishing venture to catch 50,000 pounds of fish this year, within a hundred yards from the shoreline of Peshawbestown, in Grand Traverse Bay.

7. If treaties are modified by legislation enabling the State to license, regulate and assign fishing areas to Treaty Indians, the danger exists that the ultimate result would be to continue the oppressive practices the DNR has already directed toward the Indian tribes.

8. And finally, H.R. 12531 creates another vast bureaucracy, with only a small minority included in its structure.

Gentlemen, through me, the Grand Traverse Band of Ottawa/Chippewa Indians have spoken.

STATEMENT OF DANIEL F. GORDON*

The Red Cliff tribe occupies a reservation of the northern tip of the Bayfield Peninsula in Wisconsin and enjoys an extensive coastline on Lake Superior and the

* Made by Daniel F. Gordon, an enrolled member of the Red Cliff Band of Lake Superior Chippewa Indians presently serving as Tribal Manager, on behalf of Mr. Richard Gurnee, Tribal Chairman. This statement has also been adopted by Mr. Eugene Bigboy, Tribal Chairman, Bad River Band of Lake Superior Chippewa Indians, who was scheduled to speak at the July 12th hearing but could not do so.

waters of Chequamegon Bay. For generation, fishing in these water has provided the life blood of the tribe. In 1972, our treaty-protected interests in these waters were traditionally recognized in the *State v. Carnoe* decision.

I am appearing in response to the proposed amendments to the Great Lakes Fisheries Act of 1956, and specifically to title I of H.R. 12531. As to title II, it purports to deal solely with matters affecting the State of Michigan and the Indian tribes of that State, and I shall not comment on provisions of that act, since the affected tribes are represented here today. However, to the extent that a similar proposal might be contemplated with respect to matters affecting the State of Wisconsin, I would certainly reserve the right to comment further on the substance of title II.

I should say something first about the first time frame in which this matter, which affects the fundamental economy and life blood of the Red Cliff tribe, has been presented to the tribe. On July 5, the tribe received a copy of a text headed "H.R. 12531", consisting of 9 pages. The text contains virtually no reference to Indian fishing or to Indian tribes. Near the close of business on Friday, July 7, another text was delivered to the tribal office, consisting of 27 pages of text and including both titles I and II of the full bill which is before this subcommittee today.

I hope that the committee members will understand that, given the limited time available to study the complicated apparatus presented in this bill, the tribe cannot be prepared with a full or adequate comment. I certainly hope that the subcommittee will see fit to hold further hearings to insure the affected tribes, and all other interested parties, a full chance to respond intelligently to a complicated legislative package which would be a major impact on the livelihood, way of life and treaty-protected rights of Indian people. At the least I would hope that the subcommittee will grant additional time to the tribe to submit a detailed written statement for the record.

With that qualification aside, I should like to address a few of the major concerns that I have gleaned from a brief reading of the measure:

(1) SCOPE

The preamble of section 15 (title I) states that purpose of the section is to provide for the resolution of conflicts between the State of Michigan and "certain treaty Indians of Michigan", thus suggesting that the scope of what follows will be limited to Michigan concerns. Yet there is nothing in the subsequent text, creating and prescribing the functions of various Great Lakes committees, which limits the jurisdiction of these bodies to Michigan concerns. If the scope of title I were expressly limited, to make clear that powers of these committees extended only to matters affecting Michigan and the Michigan Indians, we should still wish to register strong objection to various provisions, because of the precedent such legislation might present. But we would defer to the views to the affected Indian tribes of Michigan, since it would be their rights, and their rights alone which would be directly affected.

As it is, the provisions of title I would appear to empower the relevant committees to take jurisdiction and make factual determinations over all fishing matters in the lake, affecting not only Michigan concerns but those of Wisconsin and Minnesota Indians as well. Since there is nothing in the stated purpose of the act which would justify this, at the least this very important question deserves verification.

(2) THE SUBSTITUTION OF A NEW FEDERAL BUREAUCRACY FOR FEDERAL COURTS

Beginning with section 15 (EX1) title I would empower the relevant lake committees to identify and determine the extent of Indian reserved waters, the scope of fisheries located in those waters, and the consequence of state power over the management of those fisheries. Up to now these have been matters confided to the jurisdiction of the Federal courts. The Framers of the Constitution provided life time tenure and guaranteed compensation to Federal judges to insure that the Federal courts would serve as neutral forums for the resolution of precisely the kind of controversial and politically sensitive issues which are involved when Indian treaty rights are at stake. To suggest that because of controversy aroused in certain localities, fundamental issues of rights must be taken away from the Federal courts and confided to that of Federal agencies, freed of the rules of evidence and political impartiality, would seem to fly in the face of the fundamental principles of article III of the Constitution. Similar proposals were made when antidesegregation agitation was at its height, namely, to strip the Federal courts of jurisdiction over certain kinds of desegregation suits. Wisely, the Congress rejected such proposals, (and the challenge to the separation of powers they would have presented). In our opinion, the proposed transfer of power to a new Federal bureaucracy, whose factual

determination affecting Indian rights will be subject only to the narrow judicial review of administrative decision, would have the same affect as the earlier proposals and deserves the same ultimate decisions.

It should be noted that the proposed committees would not only lack the safeguards of impartiality provided by Federal courts, but that, as drafted, the preponderant membership of every committee would be determined by State Governors' appointment. Furthermore, the minority of Indians are to be appointed, not by the affected Indian tribes, but by the Secretary of the Interior. Thus, Indian people would be denied any effective forum to challenge the suitability of appointments to the committees. This may indeed provide a "flexible" means of resolving Indian fisheries controversies, but it hardly promises a fair one.

It also should be noted, that the American Indian Policy Review Commission, expressly created by Congress to make recommendations on Indian policy, devotes an entire task force, task force IV, to review various jurisdictional issues, including fishing rights. The task force, which utilizes the services of some of the most distinguished attorneys in Indian law, concluded after a thorough review of current litigation and case law, that the resolution of jurisdictional controversies was being effectively addressed by the courts, and that this was an area in which legislation would not be helpful. The review commission itself, emphasizing the desirability of a mechanism for facilitating voluntary agreements between State and tribes, also recommended against the use of legislation to impose such settlements.

That determination by a congressional commission, after years of study of the problem, appears to be ignored in the proposed bill.

(3) FISHING POLICY, ENERGY, LONG RANGE CONCERNS

Present fishing controversies between the states and Indian tribes overlap other controversies concerning the relative roles of commercial and recreational fishing. Title I recognizes these differences, but would have the affect of allowing the States, through their own appointments and effective control of committee membership, to make fundamental policy decisions concerning the relative importance of these two issues of the fisheries. At the Petoskey hearings, representatives of the state of Michigan, including the Director of the Department of Natural Resources, left no doubt that in their view the presentation of an effective commercial fishery held little priority when compared with the immediate economic gains to be realized from the recreational fishing industries.

The placing of priority on the recreational fishing industry would greatly prejudice the interests of the Indian fisherman. Furthermore, to determine the merits of the two usages of the fishery in terms of immediate economic gains, not only ignores the extent to which many of those gains are directly related to energy consumption, but also ignores the long term interests in preserving and enhancing the commercial fisheries, so as to provide a significant source of food in the lean years which the experts assure us lie ahead. Rather than creating administrative machinery which would allow the States to impose their own narrow policy determinations on a national resource like the Great Lakes, regardless of Indian treaty rights, at the least the legislation should specifically address energy and nutritional concerns in providing guidelines for the work of the committees. To place importance on the needs of future generations, rather than immediate dollar gain, is the Indian way. We suggest it is a good path to follow for the Nation as well.

In conclusion I would like to say that, in emphasizing the role of the Federal courts as the ultimate source of resolution, I do not mean that litigation should be, or is, the primary way in which Indian tribes and the State resolve their differences over the fishery. We have been, and continue to be engaged in various negotiations with the state of Wisconsin over our fishery. There are differences, but there are also some good faith efforts to solve them. Undeniably, part of the impetus of the State to negotiate in good faith is the threat of court action to vindicate our rights. Rather than helping to harmoniously resolve present controversies, the creation of the machinery proposed in this bill would remove the fundamental impetus to good faith negotiations, and enlarge, rather than narrow the scope of narrow conflict and bad feeling between the parties.

Provisions for enlarged appropriations for fish hatchery programs and for the study and cure of lake pollution might provide significant benefits to the Indian fishing tribes and to the fisheries as a whole. But these benefits should not have to be purchased by the forfeiture of our fundamental treaty rights.

I will close by reminding the subcommittee of the words of Supreme Court Justice Brown delivered almost 100 years ago in a case dealing with the Indian treaty right to hunt: "Not contenting for a moment that the preservation of game is a matter of

great importance, I regard the preservation of the public faith, even to the . . . Indian, as a matter of much greater importance".

Thank you for the chance to address you. This concludes my statement on behalf of the Red Cliff tribe.

Mr. LEGGETT. Who is representing the Congress of American Indians? They do not even want us to hold these hearings. I note that.

Mr. LEBLANC. They basically support our position. Our position is, of course, we are opposed to the bill. And I would divert from reading my statement at this point.

Mr. LEGGETT. How much are you folks taking?

Mr. LEBLANC. Well, I guess I am in the same position as—my attorney informs me that we have submitted our reports, which is a matter of record.

Mr. LEGGETT. Mr. Mannina, do you want to interpret these?

Mr. MANNINA. The information we have received indicates 124,733 pounds were taken in 1976.

Mr. LEBLANC. That is essentially correct.

Mr. LEGGETT. How about 1977?

Mr. MANNINA. It is by half-year. It is about 30,000 pounds, Mr. Chairman, from January to June.

Mr. LEBLANC. Yes.

Mr. LEGGETT. That is interesting. Fishing season starts in June.

Mr. LEBLANC. Mr. Chairman, I would also like to be able to refer some of these technical questions to my attorney, Ms. Cathy Turney, who is sitting directly behind me.

Mr. LEGGETT. All right.

Mr. LEBLANC. the questions that I cannot answer.

Mr. DUHAMEL. I can answer for the Ottawa Tribe. The answer is exactly none. If you use that figure, fine.

Mr. LEGGETT. We will put that down for your group, Mr. Duhamel.

Mr. Preloznik, how many have you taken?

Mr. PRELOZNIK. I am also handicapped by the same problem that Mr. Tanner referred to earlier. We were advised just last week, of the hearing that is taking place today. We were under the impression it would be limited to H.R. 12531. We did not receive copies of the proposed amendments until just a few days ago, and have not had an opportunity to prepare and submit a written analysis to the committee at this time.

Mr. LEGGETT. That is understandable.

Mr. PRELOZNIK. We would like to prepare a written statement and submit it to you at a future time.

Mr. LEGGETT. Certainly.

Mr. PRELOZNIK. Thank you.

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

Mr. PRELOZNIK. I would like to advise the committee that I represented both the Bad River Band and the Redcliff Band several years ago in a test case which was adjudicated in Wisconsin, which challenged the right of the State of Wisconsin to interfere with the Indian treaty rights to fish in Lake Superior. The Redcliff Band has a population of about 500 people, and the Bad River Reservation has a population of about 1,200 enrolled people.

When the State supreme court upheld their right to fish in Lake Superior, there was a great deal of consternation with the decision of the court that this was probably going to be a disaster for the fishing industry because it would permit the Bad River and Redcliff people to fish without regulation by the State of Wisconsin. However, this not borne out by the court decision.

The Wisconsin case does have a provision, and I will read that part only because there was some discussion here about unregulated Indian tribes, that the State retains jurisdiction if there is a substantial depletion of the fish supply. The case was decided in 1970.

At no time has the State of Wisconsin ever taken the position that there is an endangered or depletion of fish supply. I do not believe the Indiana treaties are a threat, as some of the litigation that is proposed implies.

Now, it may, on a case-by-case basis, but I do not think it requires Federal legislation.

Mr. LEGGETT. Let me ask you this. How many commercial Indian fishermen do you represent?

Mr. PRELOZNIK. I tried to get the total figure at the present time. There are people who commercially fish, somewhere between 20 and 30.

One thing I think ought to be borne in mind, and I heard the testimony of Mr. Tanner when he was talking about commercial fishing, I think he is talking about a different kind of operation than most of the Indian community engages in. The ones I represented in the test case had a rowboat and a gill net, and they rowed out and dropped their nets. They will not take the great numbers of fish that the kind of commercial fishing you may find in other communities do other than Indian communities.

When the test case was taken to the supreme court, one fish that was caught was a sucker in a gill net, and that is what the whole fuss was about.

I think we ought to bear in mind while we say 20 or 30 commercial fishermen, this may not mean the type that normally comes to mind.

Mr. LEGGETT. Obviously, with the numbers of fish that are taken, and the way they are taken, we are dealing with rather de minimus numbers as far as a general scope of tonnage with which this subcommittee is familiar. There would have to be a large number of extraordinarily small boats, or extremely ineffective large boats.

Mr. PRELOZNIK. Most of our people have very unsophisticated type of equipment. They do not have complicated equipment. This is why it produced a smile with me when we won our case. There were 500 sportsmen that gathered in the auditorium at Ashland and were telling us that we were destroying their fishing enterprise, their sporting fish.

I thought for a while that I heard a rather cavalier approach by some of the people to the treaty rights. I would just try to speak on behalf to the treaty rights. I would just try to speak on behalf of the groups that I represent, and I also represent the Monomaney Tribe. The Federal Government has had a role in determining treaty rights, and we argued the Monomaney case in the Redcliff and Bad River cases.

I have reviewed the list of the tribes extensively, and I have represented, off and on, most of the Indian community in Wisconsin the last 12, 13 years. I think we overlook the fact the treaty rights they acquired were only given after a great deal of cessation of lands in the State of Wisconsin.

If you look at what they have acquired, it is really a small parcel of land, up in the northern reaches of Wisconsin that no one wanted, and originally they pushed into Minnesota, where they resided and, after resisting, the State of Wisconsin conceded they may stay there and fish.

There are all kinds of little statements indicating what they base their livelihood on. There was not much more than fishing, a small amount of agriculture. But summer is July 31 to August 1, and if you sleep late you miss it. It is not the most desirable area to live in.

I think if we talk about abrogating those treaty, we ought to do it with a heavy heart, because I think the Indian community has not received a great deal for the cessation of all millions of acres in Wisconsin, and I do not think we should be taking about abrogation without weighing the fact there may be compensation in the other side for the taking of a very real property right.

Mr. LEGGETT. I do not think anyone here is talking about abrogation. What we are talking about is management.

Sometimes the problem with a lot of these tribal treaty rights is that they make a unitized kind of government very difficult.

We are trying to manage within a proper framework. Sometimes it is difficult. The subcommittee is generally against fractured management.

Of course, what that means is that ideally we try to either work in a hybridized type of an advisory group, or Indians would receive compensation, one of the ways Indian rights have been resolved in this country for a long period of time.

Mr. PRELOZNIK. May I comment?

I have a quote from the Wisconsin decision. In our situation, it is not reviving a right that was dormant, and the court coming along, and also establishing a right that was really nonexistent.

I am quoting.

As late as 1891, the Indian Agent in Ashland, when discussing the activities of the of the members of the Redcliff band, noted:

"* * * the waters of the lake yield a bountiful supply of excellent fish, and the surplus catch and all other surplus products find a ready market in the city of Bayfield. In capturing fish both gill nets and impoundments are employed. The natives own a small fleet of sailboats, and in navigating their little craft they display the confidence and skill of experienced sailors.

"In view of more than 300 years of fishing in the lake, and considering the activities of the bands after the treaty was enacted, we have no doubt but that it was the intention of the parties to the treaty for the Chippewa to retain fishing rights within the 1854 Agreement."

What had occurred, why we litigated this, was along came the conservation department of the State of Wisconsin a few years ago, they began arresting Redcliff and Bad River people, and confiscating their equipment, requiring them to post bonds, and then they just let the matter sit, did not prosecute for many, many years.

Now, the Indian community did not have the money at the time to go into court and argue all the niceties like you have to have

due process and speedy trial, and all that. Many of these matters sat in court 5, 6, 7 years.

One most recently dismissed, charges were brought 7 or 8 years ago. It was in that frame and in that setting that this litigation came to the attention of the Wisconsin Supreme Court.

The supreme court held that yes, these people had established a clear treaty right for many, many years, that the State may not interfere with.

Mr. LEGGETT. At the point, we will suspend to go vote on the exportation of uranium to Indian, and we will be back in about 10 minutes.

[Short recess.]

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

Mr. Preloznik?

Mr. PRELOZNIK. I think I had concluded my remarks.

Mr. LEGGETT. Let us hear from Mr. Daniel Green. How many fish has your group taken?

Mr. GREEN. I refer you to the testimony of the department of natural resources at the January 13 hearing; we can provide you with little better information than they provided. They indicated that the total Indian commercial harvest ran about 5 percent of the total harvest of lake trout. The precise accuracy of those figures may be argued, but the general range I do not think is disputed.

Mr. LEGGETT. How many commercial fishermen do you have?

Mr. GREEN. Eighty commercial fishermen.

Mr. LEGGETT. Eighty.

Mr. LEBLANC. We have about 40 or 50 at this time.

Mr. LEGGETT. Mr. Duhamel?

Mr. DUHAMEL. Ours is what is termed an unorganized tribe. I think they have been trying to field the full-time fishermen, and about seven or eight part-time fishermen.

Mr. GREEN. I would like to point out that this is the total number of individuals engaged in the industry. I am not talking about 80 licensed fishing enterprises, but 80 individuals who go out on the water.

Mr. LEGGETT. How many boats?

Mr. GREEN. Well, that information is contained in the January 13, 1978, hearing transcript. I believe there are three or four large commercial fish tugs operated by tribal members.

Mr. RUPPE. How large are they?

Mr. GREEN. Forty foot or less. In the smaller class, the 20- to 30-foot class, I believe 11 or 12 boats are operated. In the less-than-20-foot class there are approximately 25 additional boats operated. A total of 80 individuals work these boats, and that is similarly true with regard to the other organizations.

It was suggested earlier that the Indian fishing right is a resurrected right, a right that was not continuous, something that sprang from the supreme court and not something exercised prior to the *LeBlanc* decision. This is not true.

The Indian families who engage in fishing now have been so engaged for generations. It was not until the State of Michigan changed its management program from management primarily for commercial to management aimed at sports fishing purposes, in

the late 1960's and early 1970's, the issue of Indian fishing rights arose, because at that point people earning a living by fishing were deprived of that right.

During that span of years, the State of Michigan decreased the number of commercial fishing licenses issued from 1,500 to presently less than 200. In the course of that, a great many individuals were deprived of their livelihood, the smaller operators particularly, the 16-foot aluminum boat fishermen, largely the Indian people.

The 200 or so operators licensed by the State of Michigan now are all large commercial corporate fishing enterprises. The take from these operations is larger than the take from the small Indian fishing activity going on, and I think that is reflected in the fishing statistics that the department of natural resources has provided the committee.

I would wish to address one other point. I believe the chairman indicated he did not regard this bill as involving an abrogation of the 1836 treaty. The Sault Ste. Marie Tribe disagrees. The bill and its proposed amendments would significantly decrease the right that is retained by the Chippewa and Ottawa Indians under the 1836 treaty.

When you take away that right, you are abrogating it. It may not be complete elimination of the right, but the value of that right to the present members of the Indian communities, and future generations, is significantly reduced.

To say it is not an abrogation is highly inaccurate. We would maintain it is and would require compensation.

Mr. LEGGETT. We would not do anything to you for which we would not pay you.

Mr. GREEN. It is not possible to pay for the destruction of a way of life that has continued for generations in the past. The State talks about educating these people, teaching them how to fish differently from the way they have in the past, converting from gill net operations to trap nets. This is the destruction of a way of life. It is changing the way people live, subsist, and changing their culture. It is not amenable to a dollar figure. It does not work that way.

Mr. LEGGETT. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

Just one question to Mr. LeBlanc. You do represent the Bay Mills community, and that is the Whitefish Bay area, am I correct?

Mr. LEBLANC. Yes, sir, I do.

Mr. FORSYTHE. Do you agree with the assessment that we have heard from both the Fish and Wildlife Services and the State as to the depletion of the fisheries in the Whitefish Bay area?

Mr. LEBLANC. The trout species, yes, I will agree.

Mr. FORSYTHE. What about whitefish?

Mr. LEBLANC. Whitefish is somewhat down at this time for whatever reasons. We do not know at this time, whether they are going through a cycle—I am not a biologist. Whitefish are down.

But we do know that the lake trout population is down, and we have some very obvious reasons for this, that the department of natural resources, in planting their fish, have planted those fish on shores where there would be absolutely no reproduction. And they have not—back in 1962, they had planted as high as 225,000 fin-

gerlings in Whitefish Bay, which continually drop down to a figure of less than, I think it was 60,000—25,000. It was not until last year that, through our efforts with the Fish and Wildlife people, we were able to get 100,000 fingerlings planted on natural spawning grounds.

I understand this year the department of natural resources also has undertaken some effort to plant 28,000 in Whitefish Bay. Now, my contention is that these fish were never going to reproduce on the sandy shores where they were planted. In no way can they reproduce. They were going to die of old age if the Indians did not take them.

The Indians were responsible, partially but not entirely, for the depletion.

We have no enforcement. There is a hell of a lot of poaching going on by non-Indians, with no enforcement whatsoever.

Mr. FORSYTHE. Then your position, so far as whitefish are concerned, is that you do not necessarily think any depletion is a result of overfishing, but it results from natural factors.

Mr. LEBLANC. It might very well be a natural situation. As I said, I am no biologist.

I did go out with the Fish and Wildlife people in monitoring and surveying, sampling the small fish. Hopefully the whitefish will come back into the bay, and there is a lot of whitefish there today.

Mr. FORSYTHE. Have the Bay Mills Indians moved outside the bay in order to fish where there is the resource?

Mr. LEBLANC. Yes.

Mr. FORSYTHE. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Ruppe?

Mr. RUPPE. Did you indicate whether you have any firm figures as to the catch at the present time?

Mr. LEBLANC. We are monitoring, and have catch reports submitted to us. I do not have the figures with me today.

Mr. RUPPE. Can you submit them to us?

Mr. LEBLANC. Surely. We are monitoring incidental catches.

Mr. RUPPE. Is it not true on the whole the fishing has deteriorated rather substantially, and frankly, does not the commercial fishing you do there hit the stocks on the hard side?

Everything I read, and I frankly have not fished the bay, but read and heard is that the amount of fishing in Whitefish Bay has depleted the stocks, and has almost required the Indian community to go elsewhere to maintain any kind of a supply.

Mr. LEBLANC. I would say, Mr. Ruppe, there is a considerable stock of lake trout yet in Whitefish Bay. Those fish that have been depleted—the fish were planted by what we call onshore plantings, in the sand. There is no doubt about it, these fish have been depleted considerably.

Mr. RUPPE. Do you think the bay can take heavier gill netting than it takes today?

Mr. LEBLANC. Well, we are not anticipating continuing to fish for lake trout. We have closed the bay off. We are hoping to build the stock back up so some day we may once again fish lake trout.

Mr. RUPPE. You mentioned the traditional fishery. Again, I do not have the type of expertise you have. Really, the fishery in the Great Lakes declined, I would say, not because of the rules and

regulations of the DNR, but because of the sea lamprey and nylon gill nets.

Mr. LEBLANC. Well, I certainly got to agree the lamprey was an important factor.

Mr. RUPPE. How about the gill nets?

Mr. LEBLANC. Yes; but it is my conviction the gill net is a selective means of taking those fish. I do not think it was totally responsible for the taking of the stock.

Mr. RUPPE. I guess a small mesh gill net is a pretty tough machine to put in that water.

Mr. LEBLANC. Yes; but ordinarily fishermen use those in certain areas where certain species are available, in certain targeted areas, for herring, for example.

Mr. RUPPE. What bothers me, I have seen the fishing decline to almost nothing in my lifetime because of the lamprey, and it would suggest to me, and as most witnesses have stated, a fishery today needs to good deal of management, regardless of who is fishing. We don't have the kind of fisheries today that really permits fishing wherever it can be done.

I am not about to suggest you give up your legal rights. But I think frankly it is unfortunate that a way of compromising this can't be found so that a management plan can be developed in which the Indian community is well and fairly represented, the commercial catch is widely and further enhanced, and a way of sharing the same be developed.

Regardless of who wins the court case, I can foresee the case coming down with the fishery winding up a shambles. I guess the basic thrust of my legislation—the only merit I see in it so far today is that it has antagonized everybody—it is at least, in my view, a way of trying to reconcile the different forces, and bring them together. This may not be feasible in this bill, or on this day.

But I think a lack of a management plan, in which all bodies are represented, is a very unfortunate thing for the lakes in the long term, for both commercial and sports fishermen that want to use them.

Mr. LEBLANC. Mr. Ruppe, we are for a management plan, and we have had a developing management plan through the wildlife agency. We agree with this plan almost totally, and I think this plan will be implemented, and we have a means of carrying out the plan.

So we are not talking about a nonrestricted fishery. We are talking about a planned fishery.

We have a conservation code and regulations now. Unfortunately, we do not have a sophisticated enforcement agency as such. But I think that we are getting there. It is not as sophisticated as the State, I will admit, but we are doing our best to enforce our code and regulations.

Mr. RUPPE. Thank you, Mr. Chairman.

Mr. LEGGETT. Thank you, gentlemen, thank you very much.

Mr. DUHAMEL. We did not have a chance to submit our position paper—

Mr. LEGGETT. All those are included in the record.

Mr. DUHAMEL. Thank you.

Mr. LEGGETT. Thank you very much.