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Comment 548-Quinault Indian Nation



Quinault Indian Nation

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DSC-P

Olympic National Park General Management Plan
National Park Service
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P.O. Box 25287
Denver, Colorado 80225

Pacific West Region
Jonathan Jarvis
1111 Jackson St. Suite 7000
Oakland, CA 94607

RE: Quinault Indian Nation second comments on Draft Olympic National Park
General Management Plan

In addition to those comments submitted by the Quinault Indian Nation ("Nation") on September 25, 2006, presented in person to Olympic National Park Superintendent, Bill Laitner, we submit the following additional comments on the Draft Olympic National Park General Management Plan for your consideration.

Treaty Rights and the Park's Trust Responsibility to the Nation

We again stress the importance of the Plan's recognition of the Nation's treaty-reserved, federally-guaranteed rights to fish, hunt and gather, as described fully in our letter of September 25, 2006, and the trust responsibility the Department of Interior has to the Nation, a federally-recognized Indian tribe. As an agency within the Department of Interior, the National Park Service is a federal trustee to the Nation, the Nation's treaty rights, and the resources upon which the Nation relies to exercise its treaty rights.

In 2000, President Clinton enacted Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," which is still in effect. It requires all agencies to adhere to the following criteria when formulating and implementing policies that have tribal implications:

Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Quinault Indian Nation General Management Plan Comments

b. With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

c. When undertaking to formulate and implement policies that have tribal implications, agencies shall:

1. encourage Indian tribes to develop their own policies to achieve program objectives;
2. where possible, defer to Indian tribes to establish standards; and
3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

(See Attached, Section 3.)

Similarly, the Secretary of the Interior issued Secretarial Order #3206 on June 5, 1997, regarding "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," also still in effect. It states that, "This Order shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable." (See Attached, Section 10). Among other provisions, the Order requires the Park to "work directly with Indian Tribes on a government-to-government basis to promote healthy ecosystems."

The Nation's adjudicated usual and accustomed treaty fishing and shellfishing areas include the Olympic National Park. Therefore, the General Management Plan and subsequent plans, including implementation of this General Management Plan, must protect, and not conflict with, the Nation's treaty rights.

We pointed out in our letter dated September 25, 2006, and during a government-to-government consultation meeting with Superintendent Bill Laitner, that statements in the General Management Plan, on their face, conflict with the Park's fiduciary obligation to the Nation as a trustee. Specifically, explicit and implicit assertions that the Park has co-management responsibilities over fish and shellfish harvest are unacceptable and must be stricken from the Plan. The Nation and the State of Washington, through its Department of Fish and Wildlife ("WDFW"), share these obligations. The Park has no legal role over harvest management. The Nation understands the Park is currently negotiating a second agreement with the WDFW regarding Intertidal Harvest Management of razor clams and other intertidal species within the Park. As a trustee to the Nation, with a fiduciary responsibility to protect the Nation's treaty rights to these resources, **the Park must cease these negotiations immediately and have further government-to-government consultation with the Nation on this specific issue.** The Park's assertion of co-management responsibilities in the Plan harms the Nation's treaty-protected interests and it must engage in further consultation on this issue. The Park cannot fulfill its role as trustee while in the role of co-manager as there is an inherent conflict of interest between

the two roles. To support this position, we attach correspondence from the WDFW to the Park explaining the respective roles of the two agencies.

Mr. Laitner requested specific comments on pages 133-136 relating to Olympic Peninsula Tribes. We recommend adding language that specifically acknowledges that Tribes' treaty shellfishing rights. We also recommend the Plan explain the nature of the Park's trust responsibility to the affected Tribes. **The Park has a heightened duty and fiduciary obligation to not only acknowledge these treaty rights, but to take clear, meaningful steps to protect them throughout the Plan.** The Nation's interests must be elevated above those of the general public and the Plan should explicitly state this. Therefore, the statements by Park representatives that they must balance the need for access by the public with the goal of resource protection are misguided. The balance must weigh in favor of resource protection when treaty rights are implicated.

As we pointed out in our meeting, although the Plan explicitly recognizes and discusses treaty rights between pages 133 and 136, the Plan falls short of adequately protecting the Nation's treaty interests. Acknowledgement of the Nation's treaty rights is not a three-page endeavor. Rather, the Nation's treaty rights, and the Park's trust responsibility to protect them, are fundamental facts that must become philosophically foremost in the Park's activities.

Additionally, on page 48, the Plan states the National Park Service does not manage Indian assets and that the overriding mandate is to manage the park consistent with park laws and regulations. This statement disregards the Park's responsibility to protect Indian assets within the Park—the fish, shellfish, wildlife, and other natural resources upon which the Nation relies to exercise its treaty rights.

Preferred Alternatives

By choosing Preferred Alternative D, the Plan document asserts that a balance of the Park's objectives to allow for public access and protect natural resources has been achieved. Nowhere in the alternatives evaluations does the document state how the Park considered tribal interests in seeking this balance. This omission has caused the Park to choose an alternative approach that is harmful to the interests of the Nation and its treaty-protected resources. For example, selection of Alternative D will perpetuate practices in the Quinault River floodplain that have contributed to disrupted and degraded physical natural habitat forming processes that are causing significant loss of the Nation's salmon resources. Adoption of Alternative D in the General Management Plan will restrict the Park to activities that will not fully protect the natural resources of the Park. We believe the Plan must allow maximum flexibility for the Park to act in its role as Trustee in protecting resources of particular interest to the Nation.

By selecting alternative D, the Park retains the option to maintain and protect infrastructure and access over fish and wildlife habitat. The selection of Preferred Alternative D is therefore inappropriate as it fails to maintain, protect, and restore the most basic natural processes that support healthy forested river valley ecosystems and

critical habitat for fish and wildlife. In addition, Alternative D conflicts with many of the Park's own desirable conditions that were identified in the draft general management plan.

As an acceptable alternative, the Nation will require consultation with the Park to develop as partners, "specific" management plans for the Quinault and Queets River watersheds in lieu of both the General Management Plan and if deemed necessary, subsequent plans such as the Wilderness Management Plan.

Harvest Management

One area the Nation disagrees with the Plan is with regard to the no-harvest restrictions. This approach is justifiable for conservation needs, but may not be the best approach overall. First, the Nation takes issue with the lack of scientific basis for the no-harvest decision. Both the State and Nation, as co-managers, dispute the Park's rationale for such a stringent limitation.

The Nation manages fish and wildlife for harvest of these traditionally harvested species and expect to continue to do so. A basic requirement of any successful species is the presence of surplus reproductive capacity. All successful species must be able to reproduce at levels in excess of replacement (i.e., greater than one progeny per reproducing adult) in order to recover the population following natural reductions in the population (e.g. disease outbreaks). The presence of surplus reproductive capacity provides opportunity for harvest in most years. This same surplus is essential for the support of other fish-eating species such as eagles and bears. Sustainable long term human harvest of salmonid fishes is documented by several thousand years of utilization by the Tribes combined with the documented abundance of these species when settlement by non-Indian people began over 150 years ago. The tendency of the Park to stop all human harvest within the Park is counter to this biological reality. It is inappropriate to address population reductions that are not due to human harvest through restrictions on human harvest. As an example, stopping all human harvest in the Puyallup River Basin will not correct the huge damage done to the river's productive capacity by dikes and other actions to protect human intrusions into the floodplain.

This is probably best illustrated with ungulates (elk and deer) in that the creation of "no harvest" zones alters their behavior. When elk discover an area where they are not subject to predation, they spend too much time in those areas degrading the habitat through overgrazing. The Nation has a tagged herd of elk that spends over 90% of its time in the Park, emerging only in the late winter and early spring when the forage is gone in the Park and they are nearly starving. These elk are gaunt and display reduced reproduction compared to those animals living most of the time outside of the Park. These animals respond to both tribal and non-tribal hunting seasons by migrating into the Park. This over utilization of a small part of their habitat is detrimental to the elk, their habitat, and the ecosystem.

By eliminating non-tribal harvest of various species, the Plan unnecessarily creates the perception by non-Indians that Indian harvest is improper or unfair. The Nation does not want to be put into a position appearing to have "special rights," which often generates more hatred and prejudice. Also, it would be helpful to create an opportunity to educate the public on the Treaty-reserved harvest as well as tribal culture. We encourage the Park to consider limited access for non-tribal harvest. We agree that unlimited access may be an inappropriate approach, but alternatively the Park should consider some form of limited access/limited harvest. The Park could provide a certain number of permits per year for non-Indian harvest activities. These access permits would be available at the ranger stations, and this would allow an opportunity for education on why the permits are required and an explanation of the Tribal culture and harvest management. The permitting process could also be used to provide education on the life history of targeted species and how these coastal resources are managed. These permits could be issued on a first come – first served basis or through an annual application approach with random allocation.

Roads Management

The Park has acknowledged that roads can be detrimental to ecological processes, but does not plan any measures to reduce or eliminate those detrimental effects. The road systems within floodplains are the most damaging through their effects on riverine processes, but roads on unstable landforms can be very damaging as well. To a certain extent, some type of road system is necessary to access the Park, but given the known ecological risk of roads, the GMP must include actions to move the road systems outside of the floodplains. The Plan should describe the use of a cooperative strategy with the State, Counties, and Tribes to accomplish this task while protecting the treaty right interests of the Nation.

Public Education

The Nation is very interested to work with the Park to display our tribal culture in the Park so Park visitors can learn about the cultural and spiritual significance of the incredible lands we traditionally lived on and used within the Park's boundaries. We recommend creating a longhouse to be used explain traditional ceremonies and customs. We offer to work with the Park to this end and to bring tribal members to the Park to assist with interactive education.

Additionally, we recommend the Park begin the education process now by putting up informational signs around the lodge describing the unstable slopes and the ocean erosion would lay the ground work for the relocation. In addition, this educational system needs to provide information on the detrimental effects any actions to retain the existing sites would cause. It needs to be explained that hard surfaces along the ocean will degrade the sand beach to the detriment of the razor clams and other sea life dependant on the current sand beach.

Collaboration Between the Nation and Park

The Nation is interested to form a long-term working relationship to address our ongoing concerns over the Plan, its implementation, and other issues affecting the Nation as a neighbor to the Park. We want to establish a meaningful consultation process that will result in meeting both the Park's goals and the Nation's goals. From the Nation's perspective, consultation means respectful, effective communication in a cooperative process that works toward a consensus, before a decision is made or an action is taken. Consultation can be contrasted with two other forms of communication: notification and obtaining consent. Notification focuses on providing information, so potentially affected parties have the chance to respond to a pending action. In our experience, the Nation is often notified after basic decisions have already been made and there is generally no formal follow-up. The Navajo Nation made the distinction very clear in a 1993 memorandum: "The majority of agencies with which we are familiar do not distinguish between 'notification' and 'consultation,' and consider the former as adequate to meet their mandates for the latter. This neither meets the letter or spirit of the consultation requirements of the laws mandating consultation." We agree and hope this explanation is useful in structuring our future consultation discussions.

To that end, we propose setting up a process for regular, ongoing government-to-government consultation that includes bi-monthly meetings that include technical staff and appropriate policy representatives from each government. The Nation proposes to work together with the Park to prioritize issues to discuss and actions to pursue using the following framework for our government-to-government consultation discussions:

1. The Park and Nation meet on the basis of political equality to discuss, negotiate, and mutually agree on:
 - A. Principles and procedures for dealing with one another,
 - B. An agenda of issues and concerns which each party believes requires intergovernmental cooperation and action,
 - C. The idea that both parties accept the basic notion of mutual respect, cooperation and compromise, sovereign equality and reciprocity.
2. The definition of government-to-government relations requires that each party accept the sovereignty of the other, unconditionally.
3. Internal interference is strictly prohibited by either party.
4. Good faith may serve as the foundation for agreement, but a third party observer or arbitrator may be necessary to ensure agreement compliance.

5. Government-to-government relations between Indian Governments and the U.S. government or agencies thereof are, by definition, bilateral unless multi-lateral relations or negotiations are first formalized.

Finally, the Nation requests additional government-to-government consultation regarding the next iteration of the General Management Plan. Specifically, we request to review and provide comments on, and discuss through government-to-government consultation, the final draft Plan **prior to** its becoming formally Final.

The Nation looks forward to establishing a clear path of communication with the Park and regular government-to-government consultations on these and other Park issues of concern to the Nation rather than invoking other legal remedies. As a starting point, we believe it is imperative that the concerns we have raised are addressed through additional discussions and action by the Park. Of utmost importance is addressing the Park's assertion of harvest management responsibilities. We look forward to the Park's written response to our comments and concerns and further discussions on this matter.

Sincerely,



Fawn R. Sharp
President

cc: Richard Laitner, ONP Superintendent
Senator Patty Murray
Senator Maria Cantwell
Congressman Norm Dicks
Governor Christine Gregoire
State Senator James Hargrove
State Rep. Lynn Kessler
State Rep. Jim Buck
Bureau of Indian Affairs, Portland
Quileute Nation Council
Quinault Indian Nation Council/QDNR
Hoh Tribal Council/NRD
Makah Tribal Council/NRD
Jamestown S'Klallam Tribal Council/NRD
Lower Elwah Klallam Tribal Council/NRD
Port Gamble S'Klallam Tribal Council/NRD
Skokomish Tribal Council/NRD
Point No Point Treaty Council
Northwest Indian Fisheries Commission
Cmr. Mike Doherty, Clallam County
Mayor of Forks, Nedra Reid

Quinault Indian Nation General Management Plan Comments

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State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

August 7, 2002

Mr. David K. Morris, Superintendent
Olympic National Park
600 East Park Avenue
Port Angeles, Washington 98362-6757

Dear Mr. Morris:

Thank you for your April 8, 2002, letter concerning the working relationship between the Olympic National Park (ONP) and the Washington Department of Fish and Wildlife (WDFW), and our efforts to strengthen and clarify our respective roles and responsibilities. I, too, appreciated the opportunity to meet with ONP staff and discuss the issues related to science, harvest management, and enforcement of fisheries resources within the ONP.

We have received the ONP's June 5, 2002, draft proposal for a General Agreement between the ONP and WDFW. We have spent considerable time reviewing the draft, both internally and with the Attorney General's Office. Our review focused on its intent, its legal ramifications, and its effect on our ability to carry out what we believe are WDFW's statutory obligations. Before I address the rationale regarding the modifications we are proposing to make, I would like to describe why we believe we have a definitive role in managing shellfish within the ONP.

In 1986, Congress extended the Park boundaries to include the tidelands (and islands) along the Pacific Ocean between the Makah and Quinalt Indian reservations, except for tidelands directly in front of the Hoh, Ozette, and Quileute Indian reservations. Section 251n of the 1986 law included the following language that we believe preserved state jurisdiction on the tidelands, in contrast to the general presumption of state laws contained in the Olympic National Park Organic Act:

Provided, That such lands as are identified in this paragraph shall continue to be open to fishing and to the taking of shellfish in conformity with the laws and regulations of the State of Washington.

In 1988, when the state deeded the tideland strip to the United States, it included this same language as a covenant in the deed. Our interpretation of the 1986 language is based in part upon our research regarding the meaning of the "in conformity with the laws and regulations" language as well as that language's use in other statutes involving the National Park Service and the

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Mr. David K. Morris
August 7, 2002
Page 2

Department of Interior. Our interpretation is also supported by the legislative history of the 1986 amendment. When the 1986 amendment was presented to the House for approval, Representative Vento explained, in a floor statement, that the language was added to ensure that "the authority of the State of Washington shall continue to be what would be in the absence of legislation."

As a result of our research on this issue, we believe that since state laws and regulations apply to the taking of shellfish on tidelands included in the deed, we have a responsibility to acquire the necessary biological information for resources that have an anticipated harvest before promulgating such regulations. Adequate monitoring, sampling, and enforcement of the catch would also be necessary to properly manage the resource.

As a result of our conclusion that the state has a responsibility to manage the shellfish resources in the tidal areas included in the deed, we also must comply with our statutory responsibilities under state law which include:

RCW 77.04.012: Wildlife, fish, and shellfish are the property of the state. The commission, director, and the department shall preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.

RCW 77.04.120: The director shall investigate the habits, supply, and economic use of foodfish and shellfish in state and offshore waters.

Finally, as a result of our determination that we have a management responsibility on the deeded tidelands, we believe that we have legal obligations to comply with the Shellfish Implementation Plan adopted by the Court in the *U.S. v. Washington*, Sub-proceeding No. 89-3, and the related stipulation between the state of Washington and the Quinault Indian Nation, by developing management plans for shellfish resources as needed with the affected coastal treaty Indian tribes.

WDFW certainly understands, appreciates, and respects the federal authorities and jurisdictions of the National Park Service as it pertains to the lands within the Olympic National Park. We share many common goals relative to providing public enjoyment of the intertidal zone of the Pacific Coastal area. We understand that the ONP has independent goals relative to maintaining the aquatic and terrestrial ecosystems and that any harvest opportunities must be carefully weighed against these other, and sometimes, independent goals and policies of the Park.

We desire to construct a working agreement that focuses more on how we intend to work together to meet our respective responsibilities and less on describing each of our authorities. The draft we have proposed deals strictly with the management of razor clams on Kalaloch

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Beach. It is limited in duration so that we have an opportunity to build upon our successes and provide opportunities to revise or add areas of agreement in the future. It is founded on the belief that in order to be successful in managing the resource, including working with the tribes, a joint approach needs to be adopted by both WDFW and the ONP.

Regarding the so-called "Required Clauses" that were included within the ONP's previous draft, we have deleted those provisions. I suggest that we have our respective legal representatives work out those details. Assistant Attorney General Matt Love can be reached at (360) 753-6204. We may need another meeting to discuss these issues and do some additional drafting. If you have additions or modifications to the language we have proposed, we would be happy to consider them. Please have your staff contact Michele Robinson at (360) 586-6129, ext. 211, with any proposed changes.

As for this management cycle, I suggest that the stock assessment work, the negotiations with the tribes, and the season setting and associated work, including monitoring and enforcement, be accomplished using joint teams of ONP and WDFW representatives.

I also appreciate the good working relationship we have had over time. I think we have an opportunity to greatly enhance our relationship and our successes, and that is the spirit in which we make our proposal to you.

Sincerely,



Philip Anderson, Special Assistant
Intergovernmental Resource Management

PA:dak

Enclosure

cc: Matt Love, AAG
Michele Robinson, WDFW
Dan Ayres, WDFW

SECRETARIAL ORDER #3206

Subject: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

Sec. 1. Purpose and Authority. This Order is issued by the Secretary of the Interior and the Secretary of Commerce (Secretaries) pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531, as amended (the Act), the federal-tribal trust relationship, and other federal law. Specifically, this Order clarifies the responsibilities of the component agencies, bureaus and offices of the Department of the Interior and the Department of Commerce (Departments), when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights, as defined in this Order. This Order further acknowledges the trust responsibility and treaty obligations of the United States toward Indian tribes and tribal members and its government-to-government relationship in dealing with tribes. Accordingly, the Departments will carry out their responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Departments, and that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species, so as to avoid or minimize the potential for conflict and confrontation.

Sec. 2. Scope and Limitations. (A) This Order is for guidance within the Departments only and is adopted pursuant to, and is consistent with, existing law.

(B) This Order shall not be construed to grant, expand, create, or diminish any legally enforceable rights, benefits or trust responsibilities, substantive or procedural, not otherwise granted or created under existing law. Nor shall this Order be construed to alter, amend, repeal, interpret or modify tribal sovereignty, any treaty rights, or other rights of any Indian tribe, or to preempt, modify or limit the exercise of any such rights.

(C) This Order does not preempt or modify the Departments' statutory authorities or the authorities of Indian tribes or the states.

(D) Nothing in this Order shall be applied to authorize direct (directed) take of listed species, or any activity that would jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat. Incidental take issues under this Order are addressed in Principle 3(C) of Section 5.

(E) Nothing in this Order shall require additional procedural requirements for substantially completed Departmental actions, activities, or policy initiatives.

(F) Implementation of this Order shall be subject to the availability of resources and the requirements of the Anti-Deficiency Act.

(G) Should any tribe(s) and the Department(s) agree that greater efficiency in the implementation of this Order can be achieved, nothing in this Order shall prevent them from implementing strategies to do so.

(H) This Order shall not be construed to supersede, amend, or otherwise modify or affect the implementation of, existing agreements or understandings with the Departments or their agencies,

bureaus, or offices including, but not limited to, memoranda of understanding, memoranda of agreement, or statements of relationship, unless mutually agreed by the signatory parties.

Sec. 3. Definitions. For the purposes of this Order, except as otherwise expressly provided, the following terms shall apply:

(A) The term "Indian tribe" shall mean any Indian tribe, band, nation, pueblo, community or other organized group within the United States which the Secretary of the Interior has identified on the most current list of tribes maintained by the Bureau of Indian Affairs.

(B) The term "tribal trust resources" means those natural resources, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, and executive orders, which are protected by a fiduciary obligation on the part of the United States.

(C) The term "tribal rights" means those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and which give rise to legally enforceable remedies.

(D) The term "Indian lands" means any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Sec. 4. Background. The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from other entities that deal with, or are affected by, the federal government. This relationship has given rise to a special federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

The Departments recognize the importance of tribal self-governance and the protocols of a government-to-government relationship with Indian tribes. Long-standing Congressional and Administrative policies promote tribal self-government, self-sufficiency, and self-determination, recognizing and endorsing the fundamental rights of tribes to set their own priorities and make decisions affecting their resources and distinctive ways of life. The Departments recognize and respect, and shall consider, the value that tribal traditional knowledge provides to tribal and federal land management decision-making and tribal resource management activities. The Departments recognize that Indian tribes are governmental sovereigns; inherent in this sovereign authority is the power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights and protect tribal trust resources. The Departments shall be sensitive to the fact that Indian cultures, religions, and spirituality often involve ceremonial and medicinal uses of plants, animals, and specific geographic places.

Indian lands are not federal public lands or part of the public domain, and are not subject to federal public land laws. They were retained by tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

Because of the unique government-to-government relationship between Indian tribes and the United States, the Departments and affected Indian tribes need to establish and maintain effective working relationships and mutual partnerships to promote the conservation of sensitive species (including

candidate, proposed and listed species) and the health of ecosystems upon which they depend. Such relationships should focus on cooperative assistance, consultation, the sharing of information, and the creation of government-to-government partnerships to promote healthy ecosystems.

In facilitating a government-to-government relationship, the Departments may work with intertribal organizations, to the extent such organizations are authorized by their member tribes to carry out resource management responsibilities.

Sec. 5. Responsibilities. To achieve the objectives of this Order, the heads of all agencies, bureaus and offices within the Department of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce, shall be responsible for ensuring that the following directives are followed:

Principle 1. THE DEPARTMENTS SHALL WORK DIRECTLY WITH INDIAN TRIBES ON A GOVERNMENT-TO-GOVERNMENT BASIS TO PROMOTE HEALTHY ECOSYSTEMS.

The Departments shall recognize the unique and distinctive political and constitutionally based relationship that exists between the United States and each Indian tribe, and shall view tribal governments as sovereign entities with authority and responsibility for the health and welfare of ecosystems on Indian lands. The Departments recognize that Indian tribes are governmental sovereigns with inherent powers to make and enforce laws, administer justice, and manage and control their natural resources. Accordingly, the Departments shall seek to establish effective government-to-government working relationships with tribes to achieve the common goal of promoting and protecting the health of these ecosystems. Whenever the agencies, bureaus, and offices of the Departments are aware that their actions planned under the Act may impact tribal trust resources, the exercise of tribal rights, or Indian lands, they shall consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. This shall include providing affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes. To facilitate the government-to-government relationship, the Departments may coordinate their discussions with a representative from an intertribal organization, if so designated by the affected tribe(s).

Except when determined necessary for investigative or prosecutorial law enforcement activities, or when otherwise provided in a federal-tribal agreement, the Departments, to the maximum extent practicable, shall obtain permission from tribes before knowingly entering Indian reservations and tribally-owned fee lands for purposes of ESA-related activities, and shall communicate as necessary with the appropriate tribal officials. If a tribe believes this section has been violated, such tribe may file a complaint with the appropriate Secretary, who shall promptly investigate and respond to the tribe.

Principle 2. THE DEPARTMENTS SHALL RECOGNIZE THAT INDIAN LANDS ARE NOT SUBJECT TO THE SAME CONTROLS AS FEDERAL PUBLIC LANDS.

The Departments recognize that Indian lands, whether held in trust by the United States for the use and benefit of Indians or owned exclusively by an Indian tribe, are not subject to the controls or restrictions set forth in federal public land laws. Indian lands are not federal public lands or part of the public domain, but are rather retained by tribes or set aside for tribal use pursuant to treaties, statutes, court orders, executive orders, judicial decisions, or agreements. Accordingly, Indian tribes manage Indian lands in accordance with tribal goals and objectives, within the framework of applicable laws.

Principle 3. THE DEPARTMENTS SHALL ASSIST INDIAN TRIBES IN DEVELOPING AND EXPANDING TRIBAL PROGRAMS SO THAT HEALTHY ECOSYSTEMS ARE PROMOTED AND CONSERVATION RESTRICTIONS ARE UNNECESSARY.

(A) The Departments shall take affirmative steps to assist Indian tribes in developing and expanding tribal programs that promote healthy ecosystems. The Departments shall take affirmative steps to achieve the common goals of promoting healthy ecosystems, Indian self-government, and productive government-to-government relationships under this Order, by assisting Indian tribes in developing and expanding tribal programs that promote the health of ecosystems upon which sensitive species (including candidate, proposed and listed species) depend.

The Departments shall offer and provide such scientific and technical assistance and information as may be available for the development of tribal conservation and management plans to promote the maintenance, restoration, enhancement and health of the ecosystems upon which sensitive species (including candidate, proposed, and listed species) depend, including the cooperative identification of appropriate management measures to address concerns for such species and their habitats.

(B) The Departments shall recognize that Indian tribes are appropriate governmental entities to manage their lands and tribal trust resources. The Departments acknowledge that Indian tribes value, and exercise responsibilities for, management of Indian lands and tribal trust resources. In keeping with the federal policy of promoting tribal self-government, the Departments shall respect the exercise of tribal sovereignty over the management of Indian lands, and tribal trust resources. Accordingly, the Departments shall give deference to tribal conservation and management plans for tribal trust resources that: (a) govern activities on Indian lands, including, for the purposes of this section, tribally-owned fee lands, and (b) address the conservation needs of listed species. The Departments shall conduct government-to-government consultations to discuss the extent to which tribal resource management plans for tribal trust resources outside Indian lands can be incorporated into actions to address the conservation needs of listed species.

(C) The Departments, as trustees, shall support tribal measures that preclude the need for conservation restrictions.

At the earliest indication that the need for federal conservation restrictions is being considered for any species, the Departments, acting in their trustee capacities, shall promptly notify all potentially affected tribes, and provide such technical, financial, or other assistance as may be appropriate, thereby assisting Indian tribes in identifying and implementing tribal conservation and other measures necessary to protect such species.

In the event that the Departments determine that conservation restrictions are necessary in order to protect listed species, the Departments, in keeping with the trust responsibility and government-to-government relationships, shall consult with affected tribes and provide written notice to them of the intended restriction as far in advance as practicable. If the proposed conservation restriction is directed at a tribal activity that could raise the potential issue of direct (directed) take under the Act, then meaningful government-to-government consultation shall occur, in order to strive to harmonize the federal trust responsibility to tribes, tribal sovereignty and the statutory missions of the Departments. In cases involving an activity that could raise the potential issue of an incidental take under the Act, such notice shall include an analysis and determination that all of the following conservation standards have been met: (i) the restriction is reasonable and necessary for conservation of the species at issue; (ii) the conservation purpose of the restriction cannot be achieved by reasonable regulation of non-Indian

activities; (iii) the measure is the least restrictive alternative available to achieve the required conservation purpose; (iv) the restriction does not discriminate against Indian activities, either as stated or applied; and, (v) voluntary tribal measures are not adequate to achieve the necessary conservation purpose.

Principle 4. THE DEPARTMENTS SHALL BE SENSITIVE TO INDIAN CULTURE, RELIGION AND SPIRITUALITY.

The Departments shall take into consideration the impacts of their actions and policies under the Act on Indian use of listed species for cultural and religious purposes. The Departments shall avoid or minimize, to the extent practicable, adverse effects upon the noncommercial use of listed sacred plants and animals in medicinal treatments and in the expression of cultural and religious beliefs by Indian tribes. When appropriate, the Departments may issue guidelines to accommodate Indian access to, and traditional uses of, listed species, and to address unique circumstances that may exist when administering the Act.

Principle 5. THE DEPARTMENTS SHALL MAKE AVAILABLE TO INDIAN TRIBES INFORMATION RELATED TO TRIBAL TRUST RESOURCES AND INDIAN LANDS, AND, TO FACILITATE THE MUTUAL EXCHANGE OF INFORMATION, SHALL STRIVE TO PROTECT SENSITIVE TRIBAL INFORMATION FROM DISCLOSURE.

To further tribal self-government and the promotion of healthy ecosystems, the Departments recognize the critical need for Indian tribes to possess complete and accurate information related to Indian lands and tribal trust resources. To the extent consistent with the provisions of the Privacy Act, the Freedom of Information Act (FOIA) and the Departments' abilities to continue to assert FOIA exemptions with regard to FOIA requests, the Departments shall make available to an Indian tribe all information held by the Departments which is related to its Indian lands and tribal trust resources. In the course of the mutual exchange of information, the Departments shall protect, to the maximum extent practicable, tribal information which has been disclosed to or collected by the Departments. The Departments shall promptly notify and, when appropriate, consult with affected tribes regarding all requests for tribal information relating to the administration of the Act.

Sec. 6. Federal-Tribal Intergovernmental Agreements. The Departments shall, when appropriate and at the request of an Indian tribe, pursue intergovernmental agreements to formalize arrangements involving sensitive species (including candidate, proposed, and listed species) such as, but not limited to, land and resource management, multi-jurisdictional partnerships, cooperative law enforcement, and guidelines to accommodate Indian access to, and traditional uses of, natural products. Such agreements shall strive to establish partnerships that harmonize the Departments' missions under the Act with the Indian tribe's own ecosystem management objectives.

Sec. 7. Alaska. The Departments recognize that section 10(e) of the Act governs the taking of listed species by Alaska Natives for subsistence purposes and that there is a need to study the implementation of the Act as applied to Alaska tribes and natives. Accordingly, this Order shall not apply to Alaska and the Departments shall, within one year of the date of this Order, develop recommendations to the Secretaries to supplement or modify this Order and its Appendix, so as to guide the administration of the Act in Alaska. These recommendations shall be developed with the full cooperation and participation of Alaska tribes and natives. The purpose of these recommendations shall be to harmonize the government-to-government relationship with Alaska tribes, the federal trust responsibility to Alaska tribes and Alaska Natives, the rights of Alaska Natives, and the statutory missions of the Departments.

Sec. 8. Special Study on Cultural and Religious Use of Natural Products. The Departments recognize that there remain tribal concerns regarding the access to, and uses of, eagle feathers, animal parts, and other natural products for Indian cultural and religious purposes. Therefore, the Departments shall work together with Indian tribes to develop recommendations to the Secretaries within one year to revise or establish uniform administrative procedures to govern the possession, distribution, and transportation of such natural products that are under federal jurisdiction or control.

Sec. 9. Dispute Resolution. (A) Federal-tribal disputes regarding implementation of this Order shall be addressed through government-to-government discourse. Such discourse is to be respectful of government-to-government relationships and relevant federal-tribal agreements, treaties, judicial decisions, and policies pertaining to Indian tribes. Alternative dispute resolution processes may be employed as necessary to resolve disputes on technical or policy issues within statutory time frames; provided that such alternative dispute resolution processes are not intended to apply in the context of investigative or prosecutorial law enforcement activities.

(B) Questions and concerns on matters relating to the use or possession of listed plants or listed animal parts used for religious or cultural purposes shall be referred to the appropriate Departmental officials and the appropriate tribal contacts for religious and cultural affairs.

Sec. 10. Implementation. This Order shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable. In addition, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service shall implement their specific responsibilities under the Act in accordance with the guidance contained in the attached Appendix.

Sec. 11. Effective Date. This Order, issued within the Department of the Interior as Order No. 3206, is effective immediately and will remain in effect until amended, superseded, or revoked.

This Secretarial Order, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act," and its accompanying Appendix were issued this 5th day of June, 1997, in Washington, D.C., by the Secretary of the Interior and the Secretary of Commerce.

Secretary of the Interior

Secretary of Commerce

Date: June 5, 1997

APPENDIX

Appendix to Secretarial Order issued within the Department of the Interior as Order No. 3206

Sec. 1. Purpose. The purpose of this Appendix is to provide policy to the National, regional and field offices of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), (hereinafter "Services"), concerning the implementation of the Secretarial Order issued by the Department of the Interior and the Department of Commerce, entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." This policy furthers the objectives of the FWS Native American Policy (June 28, 1994), and the American Indian and Alaska Native Policy of the Department of Commerce (March 30, 1995). This Appendix shall be considered an

integral part of the above Secretarial Order, and all sections of the Order shall apply in their entirety to this Appendix.

Sec. 2. General Policy. (A) Goals. The goals of this Appendix are to provide a basis for administration of the Act in a manner that (1) recognizes common federal-tribal goals of conserving sensitive species (including candidate, proposed, and listed species) and the ecosystems upon which they depend, Indian self-government, and productive government-to-government relationships; and (2) harmonizes the federal trust responsibility to tribes, tribal sovereignty, and the statutory missions of the Departments, so as to avoid or minimize the potential for conflict and confrontation.

(B) Government-to-Government Communication. It shall be the responsibility of each Service's regional and field offices to maintain a current list of tribal contact persons within each Region, and to ensure that meaningful government-to-government communication occurs regarding actions to be taken under the Act.

(C) Agency Coordination. The Services have the lead roles and responsibilities in administering the Act, while the Services and other federal agencies share responsibilities for honoring Indian treaties and other sources of tribal rights. The Bureau of Indian Affairs (BIA) has the primary responsibility for carrying out the federal responsibility to administer tribal trust property and represent tribal interests during formal Section 7 consultations under the Act. Accordingly, the Services shall consult, as appropriate, with each other, affected Indian tribes, the BIA, the Office of the Solicitor (Interior), the Office of American Indian Trust (Interior), and the NOAA Office of General Counsel in determining how the fiduciary responsibility of the federal government to Indian tribes may best be realized.

(D) Technical Assistance. In their roles as trustees, the Services shall offer and provide technical assistance and information for the development of tribal conservation and management plans to promote the maintenance, restoration, and enhancement of the ecosystems on which sensitive species (including candidate, proposed, and listed species) depend. The Services should be creative in working with the tribes to accomplish these objectives. Such technical assistance may include the cooperative identification of appropriate management measures to address concerns for sensitive species (including candidate, proposed and listed species) and their habitats. Such cooperation may include intergovernmental agreements to enable Indian tribes to more fully participate in conservation programs under the Act. Moreover, the Services may enter into conservation easements with tribal governments and enlist tribal participation in incentive programs.

(E) Tribal Conservation Measures. The Services shall, upon the request of an Indian tribe or the BIA, cooperatively review and assess tribal conservation measures for sensitive species (including candidate, proposed and listed species) which may be included in tribal resource management plans. The Services will communicate to the tribal government their desired conservation goals and objectives, as well as any technical advice or suggestions for the modification of the plan to enhance its benefits for the conservation of sensitive species (including candidate, proposed and listed species). In keeping with the Services' initiatives to promote voluntary conservation partnerships for listed species and the ecosystems upon which they depend, the Services shall consult on a government-to-government basis with the affected tribe to determine and provide appropriate assurances that would otherwise be provided to a non-Indian.

Sec. 3. The Federal Trust Responsibility and the Administration of the Act.

The Services shall coordinate with affected Indian tribes in order to fulfill the Services' trust responsibilities and encourage meaningful tribal participation in the following programs under the Act, and shall:

(A) Candidate Conservation.

- (1) Solicit and utilize the expertise of affected Indian tribes in evaluating which animal and plant species should be included on the list of candidate species, including conducting population status inventories and geographical distribution surveys;
- (2) Solicit and utilize the expertise of affected Indian tribes when designing and implementing candidate conservation actions to remove or alleviate threats so that the species' listing priority is reduced or listing as endangered or threatened is rendered unnecessary; and
- (3) Provide technical advice and information to support tribal efforts and facilitate voluntary tribal participation in implementation measures to conserve candidate species on Indian lands.

(B) The Listing Process.

- (1) Provide affected Indian tribes with timely notification of the receipt of petitions to list species, the listing of which could affect the exercise of tribal rights or the use of tribal trust resources. In addition, the Services shall solicit and utilize the expertise of affected Indian tribes in responding to listing petitions that may affect tribal trust resources or the exercise of tribal rights.
- (2) Recognize the right of Indian tribes to participate fully in the listing process by providing timely notification to, soliciting information and comments from, and utilizing the expertise of, Indian tribes whose exercise of tribal rights or tribal trust resources could be affected by a particular listing. This process shall apply to proposed and final rules to: (i) list species as endangered or threatened; (ii) designate critical habitat; (iii) reclassify a species from endangered to threatened (or vice versa); (iv) remove a species from the list; and (v) designate experimental populations.
- (3) Recognize the contribution to be made by affected Indian tribes, throughout the process and prior to finalization and close of the public comment period, in the review of proposals to designate critical habitat and evaluate economic impacts of such proposals with implications for tribal trust resources or the exercise of tribal rights. The Services shall notify affected Indian tribes and the BIA, and solicit information on, but not limited to, tribal cultural values, reserved hunting, fishing, gathering, and other Indian rights or tribal economic development, for use in: (i) the preparation of economic analyses involving impacts on tribal communities; and (ii) the preparation of "balancing tests" to determine appropriate exclusions from critical habitat and in the review of comments or petitions concerning critical habitat that may adversely affect the rights or resources of Indian tribes.
- (4) In keeping with the trust responsibility, shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

(5) When exercising regulatory authority for threatened species under section 4(d) of the Act, avoid or minimize effects on tribal management or economic development, or the exercise of reserved Indian fishing, hunting, gathering, or other rights, to the maximum extent allowed by law.

(6) Having first provided the affected Indian tribe(s) the opportunity to actively review and comment on proposed listing actions, provide affected Indian tribe(s) with a written explanation whenever a final decision on any of the following activities conflicts with comments provided by an affected Indian tribe: (i) list a species as endangered or threatened; (ii) designate critical habitat; (iii) reclassify a species from endangered to threatened (or vice versa); (iv) remove a species from the list; or (v) designate experimental populations. If an affected Indian tribe petitions for rulemaking under Section 4(b)(3), the Services will consult with and provide a written explanation to the affected tribe if they fail to adopt the requested regulation.

(C) ESA Section 7 Consultation.

(1) Facilitate the Services' use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected Indian tribes in addition to data provided by the action agency during the consultation process. The Services shall provide timely notification to affected tribes as soon as the Services are aware that a proposed federal agency action subject to formal consultation may affect tribal rights or tribal trust resources.

(2) Provide copies of applicable final biological opinions to affected tribes to the maximum extent permissible by law.

(3)(a) When the Services enter formal consultation on an action proposed by the BIA, the Services shall consider and treat affected tribes as license or permit applicants entitled to full participation in the consultation process. This shall include, but is not limited to, invitations to meetings between the Services and the BIA, opportunities to provide pertinent scientific data and to review data in the administrative record, and to review biological assessments and draft biological opinions. In keeping with the trust responsibility, tribal conservation and management plans for tribal trust resources that govern activities on Indian lands, including for purposes of this paragraph, tribally-owned fee lands, shall serve as the basis for developing any reasonable and prudent alternatives, to the extent practicable.

(b) When the Services enter into formal consultations with an Interior Department agency other than the BIA, or an agency of the Department of Commerce, on a proposed action which may affect tribal rights or tribal trust resources, the Services shall notify the affected Indian tribe(s) and provide for the participation of the BIA in the consultation process.

(c) When the Services enter into formal consultations with agencies not in the Departments of the Interior or Commerce, on a proposed action which may affect tribal rights or tribal trust resources, the Services shall notify the affected Indian tribe(s) and encourage the action agency to invite the affected tribe(s) and the BIA to participate in the consultation process.

(d) In developing reasonable and prudent alternatives, the Services shall give full consideration to all comments and information received from any affected tribe, and shall strive to ensure that any alternative selected does not discriminate against such tribe(s). The Services shall make a written determination describing (i) how the selected alternative is consistent with their trust responsibilities, and (ii) the extent to which tribal conservation and management plans for affected tribal trust resources can be incorporated into any such alternative.

(D) Habitat Conservation Planning.

(1) Facilitate the Services' use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected tribal governments in habitat conservation planning that may affect tribal trust resources or the exercise of tribal rights. The Services shall facilitate tribal participation by providing timely notification as soon as the Services are aware that a draft Habitat Conservation Plan (HCP) may affect such resources or the exercise of such rights.

(2) Encourage HCP applicants to recognize the benefits of working cooperatively with affected Indian tribes and advocate for tribal participation in the development of HCPs. In those instances where permit applicants choose not to invite affected tribes to participate in those negotiations, the Services shall consult with the affected tribes to evaluate the effects of the proposed HCP on tribal trust resources and will provide the information resulting from such consultation to the HCP applicant prior to the submission of the draft HCP for public comment. After consultation with the tribes and the non-federal landowner and after careful consideration of the tribe's concerns, the Services must clearly state the rationale for the recommended final decision and explain how the decision relates to the Services' trust responsibility.

(3) Advocate the incorporation of measures into HCPs that will restore or enhance tribal trust resources. The Services shall advocate for HCP provisions that eliminate or minimize the diminishment of tribal trust resources. The Services shall be cognizant of the impacts of measures incorporated into HCPs on tribal trust resources and the tribal ability to utilize such resources.

(4) Advocate and encourage early participation by affected tribal governments in the development of region-wide or state-wide habitat conservation planning efforts and in the development of any related implementation documents.

(E) Recovery.

(1) Solicit and utilize the expertise of affected Indian tribes by having tribal representation, as appropriate, on Recovery Teams when the species occurs on Indian lands (including tribally-owned fee lands), affects tribal trust resources, or affects the exercise of tribal rights.

(2) In recognition of tribal rights, cooperate with affected tribes to develop and implement Recovery Plans in a manner that minimizes the social, cultural and economic impacts on tribal communities, consistent with the timely recovery of listed species. The Services shall be cognizant of tribal desires to attain population levels and conditions that are sufficient to support the meaningful exercise of reserved rights and the protection of tribal management or development prerogatives for Indian resources.

(3) Invite affected Indian tribes, or their designated representatives, to participate in the Recovery Plan implementation process through the development of a participation plan and through tribally-designated membership on recovery teams. The Services shall work cooperatively with affected Indian tribes to identify and implement the most effective measures to speed the recovery process.

(4) Solicit and utilize the expertise of affected Indian tribes in the design of monitoring programs for listed species and for species which have been removed from the list of *Endangered and Threatened Wildlife and Plants* occurring on Indian lands or affecting the exercise of tribal rights or tribal trust resources.

(F) Law Enforcement.

(1) At the request of an Indian tribe, enter into cooperative law enforcement agreements as integral components of tribal, federal, and state efforts to conserve species and the ecosystems upon which they depend. Such agreements may include the delegation of enforcement authority under the Act, within limitations, to full-time tribal conservation law enforcement officers.

(2) Cooperate with Indian tribes in enforcement of the Act by identifying opportunities for joint enforcement operations or investigations. Discuss new techniques and methods for the detection and apprehension of violators of the Act or tribal conservation laws, and exchange law enforcement information in general.

Executive Order 13175

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes: it is hereby ordered as follows:

Section 1. Definitions.

For purposes of this order:

"Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

b. "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

c. "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

d. "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles.

In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

b. Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

c. The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria.

In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

b. With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

c. When undertaking to formulate and implement policies that have tribal implications, agencies shall:

1. encourage Indian tribes to develop their own policies to achieve program objectives;

2. where possible, defer to Indian tribes to establish standards; and

3. in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals.

Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation.

Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

b. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

1. funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

2. the agency, prior to the formal promulgation of the regulation,

c. consulted with tribal officials early in the process of developing the proposed regulation;

d. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

e. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

f. To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

1. consulted with tribal officials early in the process of developing the proposed regulation;

2. in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

3. makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

g. On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

b. Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

c. Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

d. This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.

In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

b. In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

c. Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies.

Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions.

This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

b. This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

c. Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.


d. This order shall be effective 60 days after the date of this order.

Sec. 10. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton
The White House,
November 6, 2000.

Comment 477-Skokomish Indian Tribe



PEPC 190994-477

Skokomish Indian Tribe
Tribal Center (360) 426-4232

N. 80 Tribal Center Road FAX (360) 877-5943 Skokomish Nation, WA 98584

September 29, 2006

Superintendent, Olympic National Park
600 East Park Avenue
Port Angeles, Washington 98632-9798

fax 303 969-2736 (NPS Denver Center)

**RE: SKOKOMISH TRIBAL RESPONSE TO NATIONAL PARKS SERVICE—
OLYMPIC NATIONAL PARK GENERAL MANAGEMENT PLAN / EIS**

Dear Superintendent Laitner:

On behalf of the Skokomish Indian Tribe, its Cultural Resources Department and its Natural Resources Department, we respectfully request your acceptance of these comments as they pertain to the above –referenced document.

The Olympic National Park (ONP) EIS Alternative D is a plan the Skokomish Cultural Resources/Tribal Historic Preservation Office (THPO) can work with. We recommend continuing efforts at notifying our office when projects are planned, and we would like to use our archeologist and monitors for any survey work to be done. We suggest developing a protocol list on how artifacts are handled and where they are housed. We want to house any and all Skokomish /Twana / tuwaduq artifacts the ONP has now and may recover in the future. We would also like to nominate areas of ONP for either eligible or nominated status to the National Register of Historic Places, possibly as a cultural landscape.

We understand some information can be used to educate the public; however we want to include in the development of a protocol, a provision for confidentiality. We would also like to rename sites using our tuwaduq ancestral name for areas within the ONP. This would be an excellent educational opportunity. We would like to have further meetings about the types of plants and other foods available for harvesting for spiritual purposes in Staircase and Dosewallips areas. Further meetings may be necessary to understand how and why we use these areas, and how we would like to protect these and other sites within the ONP area. We would also like to have further meetings to discuss developing private areas within ONP for purification and spiritual needs.

Delbert Miller
Cultural Resources Director, THPO
Skokomish Tribe

RECEIVED
MAILROOM
06 OCT -3 AM 5:01
OLYMPIC NATIONAL PARK
PORT ANGELES, WA 98662

Additional natural resources issues brought forward during discussions from July 12, 2006:

The EIS / Draft Plan states ONP will continue to provide certain protective mechanisms to varied resources of concern to the Tribe, consistent with treaty rights issues. Individual tribal members should not be expected to have their access or treaty-protected activities restricted or regulated. The Skokomish Tribe concurs with the Preferred Alternative D identified in the Plan.

The current Olympic National Park was a former National Monument, its nearly million-acre landscape resides at the center of the Olympic Peninsula. But prior to any federal or state designations, the area was and continues to be part of the usual and accustomed areas of the Skokomish, as it has *since time immemorial*. It is the Tribe's desire to be more involved and provide comments on Park projects. The Tribe anticipates more collaborative and cooperative opportunities with the Park. The Skokomish Tribe acknowledges the other tribes affected by the Park, and supports their sovereign abilities to communicate their concerns with the Park. The Skokomish Indian Tribe may share certain concerns with other tribes, but government-to-government relationships are expected to be honored, including opportunities for consultations.

Superintendent Laitner expressed the Park "would certainly like to work more with the Tribe. If we had a project on the east side of the park, we would notify the Tribe for initial feedback. If the Tribe wishes, we could have a tribal member on site during project work, and we would have a plan for discovery. We also could provide a follow-up report". As mentioned in the previous comment by Delbert Miller, the Tribe would like to implement the appropriate protocols and methodologies that could include on-site observers, plans for inadvertent discovery and reporting requirements, and identifying certain sites for ceremonial and spiritual purposes.

When asked about ONP identifying any ethnographic resources found eligible as cultural landscapes, your response was "No, not as cultural landscapes. We could evaluate them with the Traditional Cultural Property (TCP) criteria though, if the Tribe would like them evaluated" and ONP would be interested in working with the Tribe. The Tribe expects such interactive dialogues.

As discussed in our meeting, the Tribe is very interested in the reconstruction of the pedestrian bridge at Staircase, as it provides access to traditional areas for the tribal community, including its elders. The Tribe agreed to work collaboratively with Park staff to assist them in soliciting certain funding support for the project and rebuilding the bridge. Park staff commented that unfortunately, fire suppression needs tend to outweigh this bridge reconstruction as the fiscal years' end. The Tribe believes if the bridge is part of the Preferred Alternative D, it should not be weighted against fire suppression, but treated as both a cultural and recreational enhancement.

Final comments related to natural resource issues are addressed by two critical elements taking place within the Skokomish watershed. The Tribe believes they require Park consideration. These elements were not brought up in our discussions but are related to others, and to each other.

The Tribe co-manages the fisheries and associated habitat with the Washington Department of Fish and Wildlife, (WDFW) within our usual and accustomed area as defined by the 1855 Treaty of Point No Point, later affirmed in *US v Washington*, and referred as the Boldt Decisions. The co-managers determined a Skokomish Salmon Recovery Plan is to be developed this year, with an emphasis on the ESA-listed stocks, including Puget Sound Chinook, Hood Canal summer chum and coastal bull trout, but addressing all salmonids. Coastal steelhead are also proposed for listing. This product is in development and can benefit from fruitful dialogue with Park staff. Landlocked salmonids in Lake Cushman and Park waters do not have the access opportunities to pursue the anadromous characteristics associated with life history behaviors.

Department of Interior 4(e) conditions include supporting flow regime modifications, and fish passage past the two Cushman dams, in addition to other critical watershed enhancements. The implementation of these 4(e) conditions has long been a goal of supporting restoration of full watershed integrity in its entirety, from the Skokomish estuary and delta to the headwaters of all basin tributaries. Such access includes passage past the dams that block the salmonids' ability to exhibit their anadromous characteristics. Such blockages have violated the Federal Power Act for 70+ years. Along with the out-of-basin diversion of the North Fork Skokomish, the fisheries and associated habitat have been deleteriously affected, challenging the treaty rights of the Tribe.

These 4(e) conditions are critical to treaty rights protection. The Skokomish Indian Tribe believes the Olympic National Park, as a representative of the federal fiduciary trust relationship to the Tribe, is obligated to support the Tribe in this regard. Such support for the 4(e) conditions should have no direct bearing on the Park, its Management Plan EIS or Preferred Alternative D. In fact, it is a mutual collaborative opportunity that may have certain pro-active bearing upon the Park, its waters, organisms, and adaptive management strategies for full watershed restoration.

The Skokomish Indian Tribe believes increasing dialogue and communication, may help facilitate such reciprocal objectives with common goals and outcomes, particularly within a fisheries utilization framework. Olympic National Park landscapes provide the potential template for relative pristine conditions and index areas, that can be used to monitor and track restoration trajectories, and offer specific opportunities in adaptive management, within a framework of cultural protection, environmental education, and stewardship. The Tribe believes ecological restoration is not mutually exclusive of cultural restoration. Certain synergies exhibited between and among these issues, and the anticipated increased dialogues, support pro-active pursuits.

Thank you for accepting these comments. Please do not hesitate to contact the Tribe for further information, clarification, or to schedule follow-up discussions that include consultations.

Sincerely,



Keith Dublanica, Director
Skokomish Natural Resources
(360) 877 -2110 x457

cc: Denese LaClair, Tribal Council Chair
Dave Herrera, Policy Representative
Brian Collins, Senior Tribal Attorney
Jonathan Wolf, Fisheries Manager
Nancy Hendricks, ONP


Businesses

Comment 269-Aramark Lake Quinault Lodge

PEPC 190705-269 ✓

Olympic National Park
Draft General Management Plan
Summer 2006

National Park Service
U.S. Department of the Interior



COMMENT SHEET ONP - GMP

We welcome your comments on this project. The comment period closes on 09/15/2006. Your comments must be delivered or postmarked no later than 09/15/2006.

You may complete this form and provide it to the NPS at one of the open houses, or you may send this form and/or your letter to:
National Park Service
Denver Service Center - Cliff Hawkes, DSC-P
12795 West Alameda Parkway
PO Box 25287
Denver, CO 80225-9901

It is the practice of the NPS to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety

Personal Information

First Name: KEIS Middle Initial: M

Last Name: DAHL

Organization: ARAMARK LAKE QUINAUT LODGE

Address 1: P.O. BOX 7

Address 2: 345 S. SHORE RD.

City: QUINAUT State/Province: WA

Postal Code: 98575

E-mail: DAHL-KEIS@ARAMARK.COM

☐ Keep my contact information private. Provide justification:

Please use below and the back of the paper for your comments. Attach extra sheets as necessary. Please print or write clearly.

QUINAUT AREA: THE NEED FOR A RANGER FOR THE INTERPRETIVE PROGRAM
IS GREAT. THE VISITORS HAVE NOTICED NO RANGERS FOR GUIDED HIKE AND
EDUCATIONAL PROGRAMS.

BIKE LANE NEEDED AT WEST CLIMB TO ALL BUSINESSES. HIGH VOLUMES OF BIKES
GO THROUGH THIS AREA IN THE SUMMER TIME.

Comment 284-Fineline Press

PEPC 190721-284

Olympic National Park

Draft General Management Plan

Summer 2006

National Park Service
U.S. Department of the Interior

COMMENT SHEET ONP - GMP

We welcome your comments on this project. The comment period closes on 09/15/2006. Your comments must be delivered or postmarked no later than 09/15/2006.

You may complete this form and provide it to the NPS at one of the open houses, or you may send this form and/or your letter to:

National Park Service
Denver Service Center - Cliff Hawkes, DSC-P
12795 West Alameda Parkway
PO Box 25287
Denver, CO 80225-9901

RECEIVED
AUG 22 2006
DSC-P

It is the practice of the NPS to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Personal Information

First Name: DANIEL Middle Initial: E.

Last Name: BARR

Organization: FINELINE PRESS

Address 1: 610 FRONTIER STREET

Address 2: _____

City: CLALLAM BAY State/ Province: WASHINGTON STATE

Postal Code: 98326-0363

E-mail: DAUBARR@STINZ.COM

☐ Keep my contact information private. Provide justification:

Please use below and the back of the paper for your comments. Attach extra sheets as necessary. Please print or write clearly.

I SUPPORT PLAN D - WITH AN EMPHASIS (I RECOMMEND) ON PRE-SERVING AND RESTORING BIRD HABITAT IN PARK/FOREST AREAS ACCESSIBLE TO TOURISTS. THANK YOU.

Comment 285-Fineline Press


PEPC 190722-285

Olympic National Park

Draft General Management Plan

Summer 2006

National Park Service
U.S. Department of the Interior



COMMENT SHEET ONP - GMP

We welcome your comments on this project. The comment period closes on 09/15/2006. Your comments must be delivered or postmarked no later than 09/15/2006.

You may complete this form and provide it to the NPS at one of the open houses, or you may send this form and/or your letter to:

National Park Service
Denver Service Center - Cliff Hawkes, DSC-P
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PO Box 25287
Denver, CO 80225-9901

RECEIVED

AUG 22 2006

DSC-P

It is the practice of the NPS to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety

Personal Information

First Name: DONNA Middle Initial: J

Last Name: BARR

Organization: A FINE LINE PRESS

Address 1: PO BOX 363

Address 2: 610 FRONTIER

City: CLALLAM BAY, WA State/Province: WA

Postal Code: 98326

E-mail: barr@stinz.com

☐ Keep my contact information private. Provide justification:

Please use below and the back of the paper for your comments. Attach extra sheets as necessary. Please print or write clearly.

Keep in mind, The West End Resident population all have some creative talent, and are open to developing the Arts to take advantage of the worlds biggest industry: arts, entertainment & media. This will support Tourism and the healing of over-used resources, and provide employment through the internet - for worldwide companies. Develop tourism for a place to breathe, not a place tourist trap. Lighten the human footprint by wise, careful energy use & production (such as diesel-veg, oil conversion). The people here have vision and talent - use it to save what we have for future generations.

*local

Comment 441–Green Crow Corporation

PEPC 190939
441

Comments on the May 2006 “Draft General Management Plan & Environmental Impact Statement” for the Olympic National Park.

By Harry Bell, Chief Forester

Green Crow Corporation

September 27, 2006

These comments focus only on the proposed boundary changes in the Lake Ozette and Lake Crescent areas and on the proposed 44,000-acre purchase and exchange lands in the Lake Ozette drainage. Regarding the development of facilities for the benefit of “front country” users we generally support alternative C without the road and faculty removals or the boundary expansion.

LAKE OZETTE BOUNDARY CHANGES (Alternatives B, C, and D)

Attached is a paper, written by Dr James Rochelle, providing scientific arguments showing that virtually all of the ecological benefits that are expected form ONP expansion are already being addressed by the State of Washington Forest Practices Laws and the Programmatic HCP including the Monitoring and Adaptive Management elements. Following are additional comments on ecological, economic and social issues.

Ecological Issues

Since 2001 I have been an active member of what is now the Lake Ozette Sockeye Recovery Plan Steering Committee. Other committee representatives are from ONP, Indian Tribes, Clallam County, EPA, NOAA, private landowners and several State Agencies. Until 2006 our focus was on listing the factors limiting the recovery of sockeye and evaluating the supporting evidence that indicates that these factors have been or still are limiting. We are now developing the recovery plan. During this entire effort the ONP representatives have demonstrated an enormous disconnect with the existing ecological protection and management activities outside of the ONP boundaries. This disconnect is obvious throughout the Draft General Management Plan Document and is particularly demonstrated in the chapter entitled “Relationship of Other Planning Efforts To This General Management Plan.” Neither the state HCP, the state forest practices laws nor the state forest practices rules are referenced in this chapter. As shown in the attached paper, an honest presentation of the benefits of these existing policies shows that virtually all of the ecological reasons for park boundary expansion (listed on page 370 of the proposed plan) have already been fixed.

NOAA and the Recovery Plan Steering Committee are now developing the recovery plan for Sockeye, which will include recognition of the State HCP. For successful recovery of Sockeye, three additional things appear to be necessary within the *current* park boundaries—none of which are likely under the parks “wilderness” mandate. 1) Eliminate or significantly reduce predation by seals, river otters, cutthroat trout and pike minnows in the lake and the Ozette River, 2) Relocate enough large woody debris in the Ozette River to re-elevate the lake to its natural level, 3) Clean the lake gravels that have been silted in from tributary incising caused by the lower lake levels caused by removal of woody

debris from the Ozette River. The ONP plan should allow these restoration projects to happen so that lake spawning sockeye populations can recover. Expanding the park boundaries will do nothing to fix these problems.

Since 1977, when the ONP last expanded its boundaries to include most of the lake shoreline, virtually nothing but finger pointing has been done to address sockeye recovery. This is an example of what might be expected under park management in the proposed expansion in the Lake Ozette Watershed. The ONP's recent catch and release policy for cutthroat trout—which are a demonstrated predator on Sockeye fry—is actually working against sockeye recovery.

In contrast, private timberland owners have provided increasing protection measures for both fish habitat and water quality. In the Ozette drainage nearly 20% of the private land ownership is in stream or wetland protection zones restricted from timber harvest by state laws. We enhance biological diversity by providing a much broader spectrum of habitats for a much broader spectrum of wildlife than the old growth and passive wilderness management typical of the ONP. Additionally, forest landowners are upgrading roads even though there is virtually no conclusive empirical data suggesting that these roads are having a measurable impact on water quality or sockeye recovery. These things will not happen under park service management.

Economic Issues

With two kids in public school my wife and I are acutely aware of the losing financial struggle of the school districts on the North Olympic Peninsula. Here in Port Angeles one school closed and at least one more will close. Other school districts to the west are having similar financial challenges. The primary reason is that enrolments are down because family wage jobs are on the decline. The Northwest Forest Plan devastated hundreds of families because—unlike most other national forests—the Olympic National Forest has no matrix lands under the plan. Ripple economic effects, including the closure of several saw mills and the Rayonier Pulp Mill, have caused the loss of many more family wage jobs. The recent influx of wealthy retirees and scattering of low wage tourism jobs have done little to offset this problem. People work and shop at Wal-Mart because they have no choice. We are still in economic decline and the ONP expansion will likely contribute to this downward trend. While ONP emphasizes that the boundary expansion does not change ownership, the 1976 federal legislation that previously expanded the ONP clearly indicates that the intent was to buy from willing sellers and then to acquire the remainder by condemnation.

The sustainable and multiple use management of the private timberlands have, to some degree, mitigated these impacts by providing family wage jobs from timber harvest. Green Crow timber harvest in the Lake Ozette and Lake Crescent watersheds contributes several million dollars a year to the various foresters, loggers, truckers, road builders and tree planters.

Aside from the likelihood of another trust beneficiary lawsuit, a much bigger economic impact is likely if the proposed 44,000 acres of private land becomes state managed “Legacy Forests”—especially if these lands are constrained by Forest Stewardship Council certification. Jobs will be lost. Schools and junior taxing districts will suffer.

Last, private timberland that falls within the park boundaries immediately loses value because of the Washington State Environmental Policy (SEPA) and state forest practices acts. Under these policies the ONP has a say on when, where and how private timber is managed. Even if the ONP is politically sensitive enough to not do this, the SEPA process gives any anti-timber or pro-park organization—for example the Wilderness Watch, Olympic Park Associates, National Parks and Conservation Association or the Public Employees for Environmental Responsibilities, who are using the Wilderness Act to challenge the ONP's plans to protect cultural resources—a very convenient and inexpensive appeals process that will gridlock any private forest timber harvest plans. Not only will we become a “willing” seller, but we will also be compelled to sell at significantly reduced prices. This is because the yellow book federal appraisal guidelines require valuation net of regulatory restrictions. In effect the ONP or pro-park organizations can influence the land and timber valuation.

Social Issues

On the private timberlands that ONP would like to “purchase” or lock up into “Legacy Forest” we practice sustainable consumptive use. That is, people catch fish—and keep them—and hunt for both recreation and subsistence. These important Tribal and local cultural activities will most certainly cease under ONP management. A current example is the ONP's catch and release policy for Cutthroat Trout in Lake Ozette and Lake Crescent. There is no data that indicates that these populations are even remotely at risk. Yet national park policy has stopped this valuable recreational and cultural activity.

Since the creation of the ONP there have been periodic episodes of park expansion. Each time more multiple use lands are lost to wilderness, more families are displaced and taxpayers are saddled with additional forever-increasing cost of park management. This trend raises the rhetorical question: Is the long-term goal of the National Park Service to minimize human occupancy, and control those left, on the Olympic Peninsula? The trend suggests an affirmative answer.

Conclusion

There is a clear contrast between the National Park Service preservation philosophies—as exemplified by the Wilderness Act and the park's management activities—and the private land multiple use philosophy embodied in the Washington State Habitat Conservation Plan and private forest landowner's management activities. On the Olympic Peninsula we have an enormous land base committed to providing wilderness benefits. At the same time we are enormously lacking—and continually losing the land base necessary to fulfill our social, cultural and economic needs. Every acre of National Park expansion has a disproportionate negative impact on middle and working class families. On ecological issues the benefits are small to nonexistent relative to current management. On the social and economic issues, the park expansion plans are clearly and grossly negative. **For these reasons we oppose any boundary expansion of the ONP and the purchase and exchange of the proposed 44,000 acres.**

Comment 547-Green Crow Corporation

PEPC 191179 -547

GREEN CROW

805 E. 8th • P.O. Box 2469
Port Angeles, WA 98362-0074
(360) 452-3325 • FAX (360) 417-3676



Re: Comments on the Olympic National Park Proposed General Management Plan

The following comments are being submitted on behalf of Green Crow, a Port Angeles based family owned company that has been in the timber business for many years.

As background, we as a company sincerely care about our community and believe that we should give back to those that have helped make us successful. This includes the 140 employees directly employed by Green Crow through its various companies or partnerships, and the other approximate 300 additional truck-drivers, mill-workers, foresters, road builders, etc. that are employed with family wage jobs that provide essential services so that we may operate. Most of these employees reside on the Olympic Peninsula.

We also appreciate the fact that we have the Olympic National Park in our backyard.

The comments in this letter are more general in nature since comments already submitted by our research biologist, chief forester, and WFWA are very focused and specific.

---First, our company was and is upset by the method the ONP used to convey their thoughts regarding proposed changes with their neighbors. The first time we saw anything about this current recommended proposal was a headline in the local paper. This is a great way to treat your neighbors!

---Second, there are numerous conclusions throughout the document that have little or no factual or scientific basis. The ONP does not seem to have to abide by the rules requiring economic or scientific peer review when promulgating a position and the authors of the document should state these items as opinions and not facts if in fact there is little statistical validity. Others have highlighted many of these inaccuracies, but just a few egregious examples include the following:


- 1) Summary of comparative costs (page 64) gives a range of estimates for the addition property to expand the ONP boundary and add the acquisition of additional property and for the exchange of mineral rights. Since our company has evaluated and been involved in almost all major timberland acquisitions in the States of California, Oregon and Washington for the past ten years, these numbers do not even begin to reflect reality. Our best estimate of cost would be \$150 to \$200 million for the acquisition of the property outlined in this document. What kind of cost benefit would result from this acquisition? Since there is a large backlog of other unfounded projects, is this the best use of the limited financial resources of the ONP?
- 2) A large component of the economic benefit from Alternative C and D in the ONP planning document is the increased recreation visits to the Park. Based on the ONP projection (page 173), there is an upward trend in visitation with a very low correlation coefficient and therefore little statistical accuracy. However, if one used the data beginning in 1995 through the current year, there would instead be a negative trend line showing even fewer ONP visitors. This negative trend line would be more appropriate given the data for the other U.S. National Parks where there has been a drop in visitation by 25% over the past sixteen years. (You should read the article in the Washington Post on July 5th, 2006 regarding "Videophilia Keeps Americans Indoors"). If one instead believes the resulting negative trend line beginning in 1996, there would be little or no

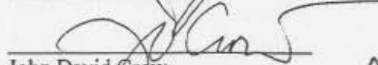
economic benefit to the Park proposed expansions under any alternative. Except at ONP's hypothetical macro-economic level, there is little reason to believe that any of these proposed expansion plans would result in any additional economic benefit. If examined on a specific project basis, we do not believe that there would be any economic benefits to any expansion. In fact, the resulting loss in family jobs based on less timber harvest would result based on our projections in 600 to 900 fewer family wage jobs.

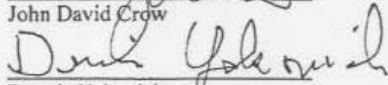
- 3) The Analysis of Boundary Adjustment and Land Protection Criteria (pages 369 to 372) is particularly flawed. As has been addressed by our biologist and chief forester, this and many, (many, many) other parts of this plan fail to recognize the benefits of private forestland being managed under the State of Washington's Habitat Conservation Plan and the Washington Forest Practices Laws. We as a company believe that the protection of critical wildlife habitat and the protection of traditional land uses are not mutually exclusive concepts. In fact, private forestland will provide a much greater benefit to elk; deer, bear and many small animals then will be found in the ONP on their unmanaged regime. In addition, we as a company have set aside approximately 20% of our land for protection of riparian dependent species at a considerable financial cost. Finally, we are on a program to finish our "Road Maintenance and Abandonment Plan" for the benefit of fish and other riparian species within the next nine years. As an example, our company is spending approximately \$1.0 million dollars this year on culverts, bridges and roads strictly to improve fish habitat. The ONP cannot currently fund programs needing maintenance within their current Park boundary, and why would anyone believe that they would improve in the future with additional capital requirements.

Therefore after much soul searching and because we all care about the economic health of this area, we find ourselves unable to recommend any alternative but A.

Thank you for accepting our comments.



Randall S. Johnson


John David Crow


Dennis Yakovich

Comment 451-Interfor Pacific

PEPC 190949-451



RECEIVED
OCT - 5 2006
DSC-P

September 27, 2006

Ms. Carla McConnell
 Olympic National Park GMP
 US National Park Service
 Denver Service Center Planning
 PO Box 25287
 Denver, CO 80225

Dear Ms. McConnell:

In September 2004, Interfor Pacific Inc. purchased a sawmill from Crown Pacific, which is located in Clallam County, at milepost 243701 Highway 101 West, Port Angeles, WA.

Interfor Pacific Inc. completed the acquisition of this mill with the belief there was an adequate private timber supply to sustain its investment. Interfor Pacific is now in the process of a \$20 million dollar upgrade to the Port Angeles facility. When the upgrade is complete, the mill will employ approximately 113 people. This is an increase from 88 current employees who maintain family-wage jobs, with excellent benefits.

Several timber companies have made major capital investments in Olympic Peninsula area facilities. The companies include Interfor Pacific, Simpson Timber, Sierra Pacific, and Mason County as well. They all survive because of private timberlands; not government timber.

In 2005, Interfor Pacific purchased logs delivered directly from the following landowner tree farms:

| | |
|---------------------------------|---------------------|
| Rayonier | 9,109,000 bf |
| Green Grow, Cascade Timberlands | 15,252,000 bf |
| Merrill & Ring | <u>5,921,000 bf</u> |
| Total | 30,282,000 bf |

In addition, Interfor Pacific purchased in excess of 20 million board feet from the above tree farms in the form of timber sales sold by those tree farms, and delivered to Interfor Pacific by way of small independent loggers.

Our facility processes logs with a maximum butt diameter of 16 inches, and a minimum top diameter of 5 inches; second and third growth only. These are 30 to 50 year old sustainable forests with a short rotation age; exactly what you would take away from the current owners and our timber supply, now, and in the future.

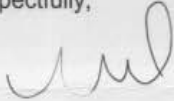
Interfor Pacific Inc. ♦ 2211 Rimland Drive, Suite 220 ♦ Bellingham, WA 98226

employees in serious jeopardy.

Thank you for taking our concerns into consideration.

Should you have any questions, please feel free to contact me at 360-791-7058.

Respectfully,

A handwritten signature in dark ink, appearing to read 'R. Forgaard', written over a horizontal fold in the paper.

Rick O. Forgaard
Operations Manager
Interfor Pacific Inc.

Interfor Pacific Inc. ♦ 2211 Rimland Drive, Suite 220 ♦ Bellingham, WA 98226

Comment 234-Lazelle Nature Photography

PEPC 190650-234

Name: Keith D. Lazelle
Organization: Lazelle Nature Photography
Organization Type: I - Unaffiliated Individual
Address: P.O. Box 192
 1634 Toandos Road
 Quilcene, WA 98376
 USA
E-mail: lazelle@waypt.com

Correspondence Information

Status: Reviewed **Park Correspondence Log:** 190650
Date Sent: 09/21/2006 **Date Received:** 09/21/2006
Number of Signatures: 1 **Form Letter:** Yes (Master)
Contains Request(s): No **Type:** Web Form
Notes:

Correspondence Text

PLEASE defer all decisions relating to wilderness until a comprehensive wilderness management plan is completed and available for public review.

PLEASE keep developed areas at their current size as described in alternative A. New developments should remain OUTSIDE the national park.

PLEASE restore species like the wolf and fisher.

PLEASE establish river protection zones to ensure critical salmon habitats and natural river processes as proposed in Alternative B and design all 13 eligible rivers for federal Wild & Scenic river designation.

PLEASE expand park boundaries in five areas - Ozette Lake, Lake Crescent, Hoh, Queets and Quinault watersheds) to protect critical habitats for salmon and wildlife as proposed in Alternative B.

Olympic National Park's HIGHEST PRIORITY should be preserving its natural systems, restoring threatened wildlife and protecting the integrity of its world-class wilderness.

Thank you for reviewing my comment. I would like to also take time to thank you for establishing intertidal reserves on the Olympic Coast and recommending wilderness study for Ozette Lake!

Sincerely,
 Keith D. Lazelle