

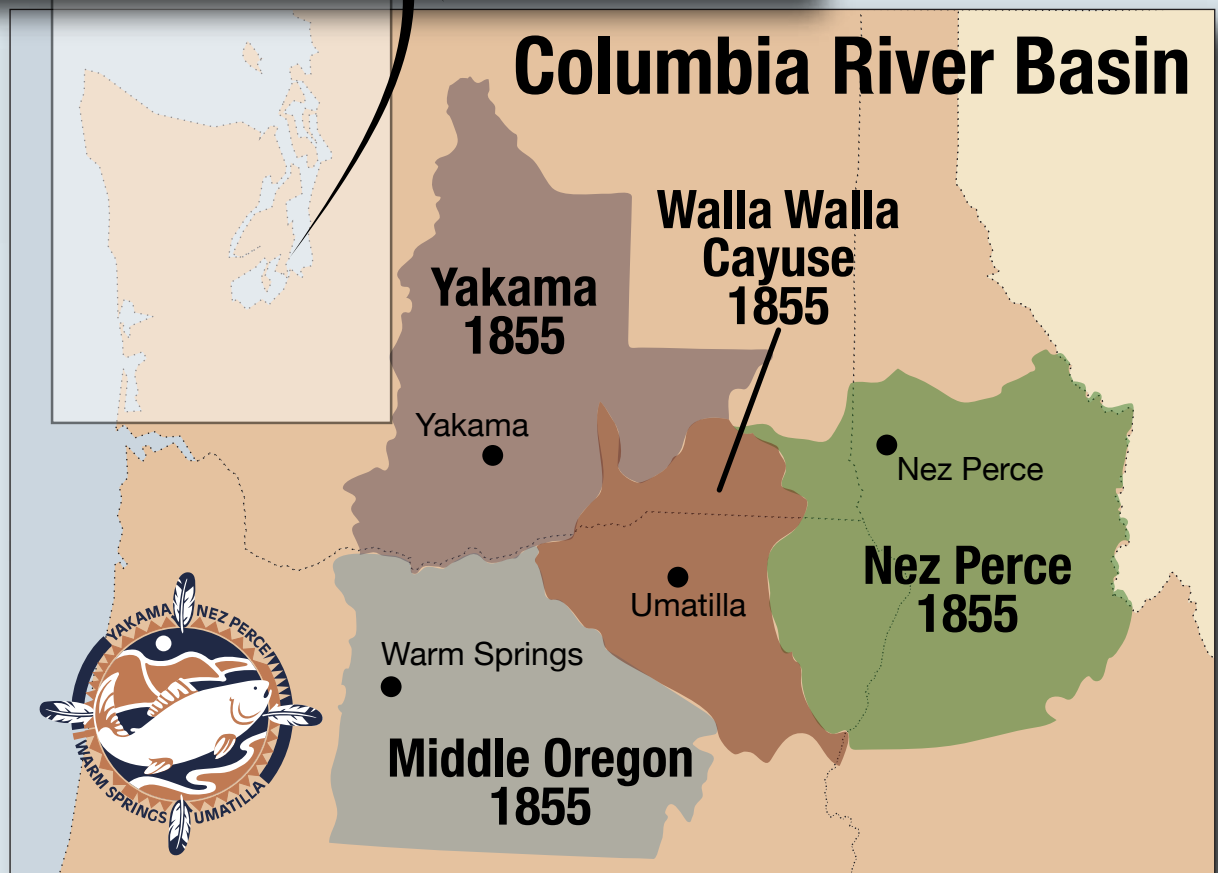
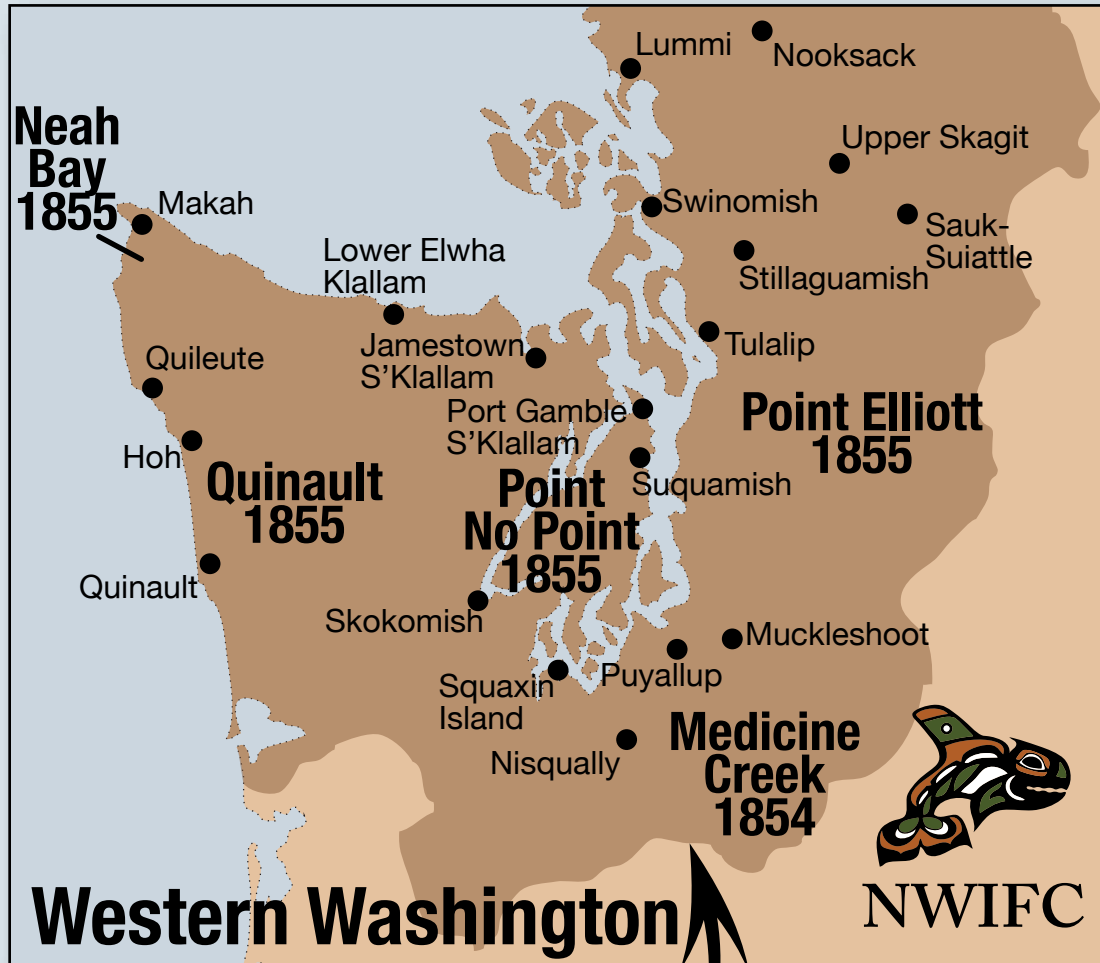
Affirming and Implementing Treaty-Reserved Rights in the Pacific Northwest and Great Lakes

The Role of
Treaty Tribes and
Intertribal Treaty
Commissions



Recommendations to the
Biden Administration
and the 117th Congress

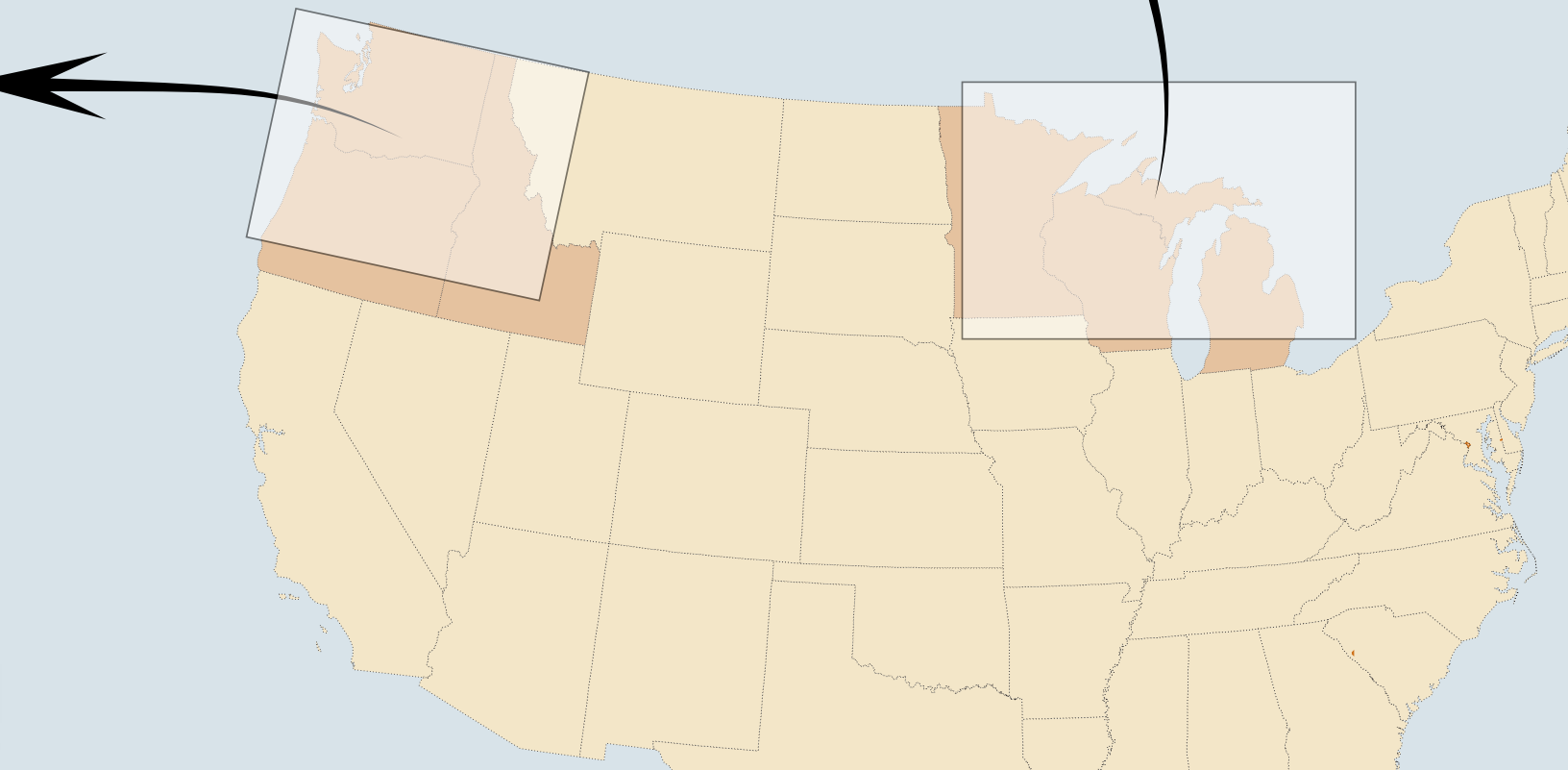
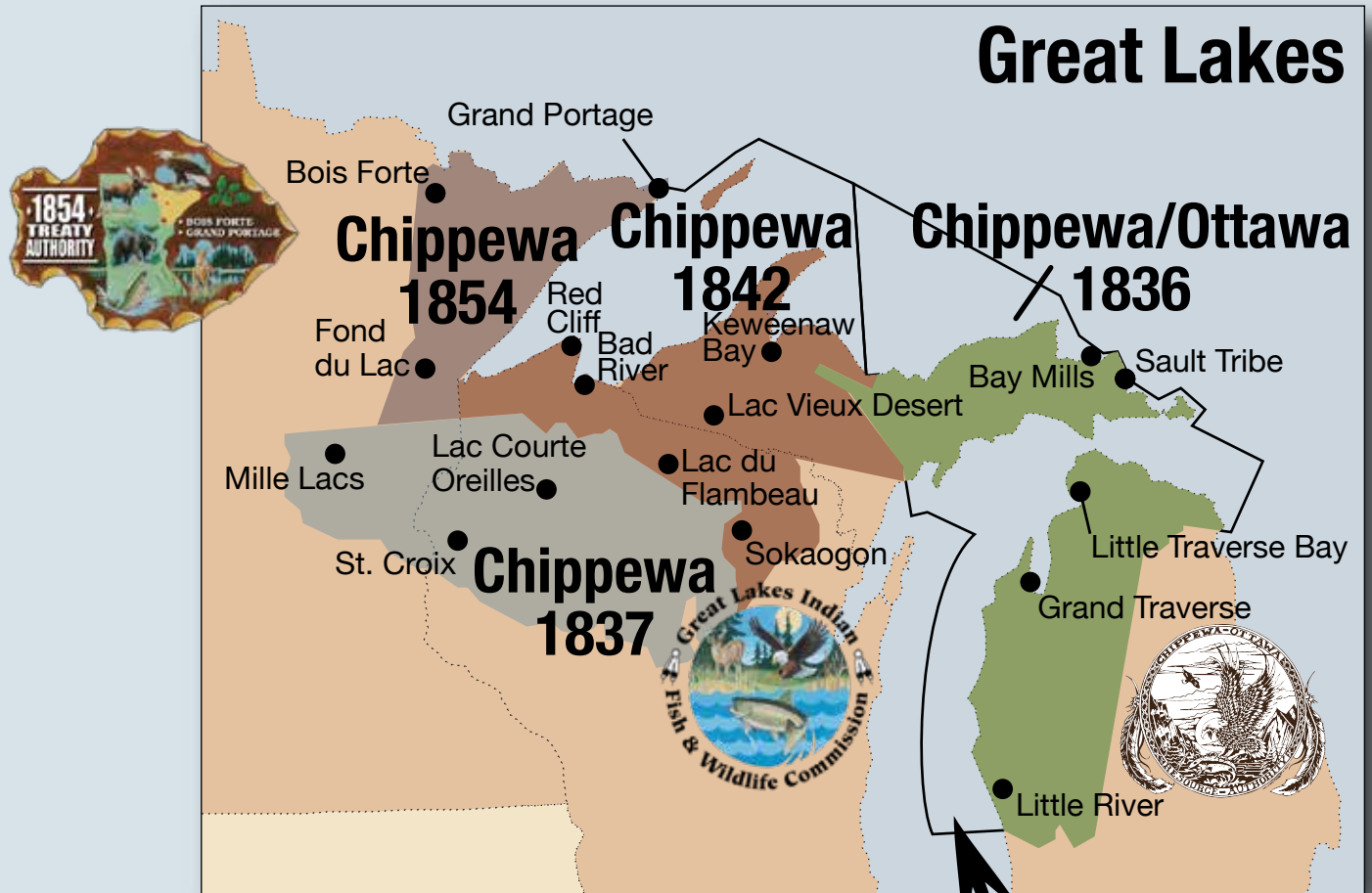
The 41 Treaty Tribes of the Pac



On the cover: Yakama fisher Bobby Begay on the Columbia River. Begay passed away in April 2020 from complications due to COVID.



ific Northwest and Great Lakes



Working together

On behalf of the 41 treaty Indian tribes in the Pacific Northwest and Great Lakes, congratulations to the new Administration and members of the 117th Congress. We are encouraged by the Administration's leadership, the Biden-Harris Plan for Tribal Nations, and the appointments of Native Americans in your Administration. We also want to extend our appreciation to returning members for their ongoing service, dedication, and commitment to tribes.

The priorities exhibited by the Administration's actions already speak to the importance it places on Native inclusion, respect, obligations, and honoring the unique relationship between tribes and the federal government.

We are encouraged by the Administration's desire to fulfill trust and treaty responsibilities by addressing chronic underfunding of federal obligations to Indian Country and its commitment to assisting tribes across the nation as we deal with the COVID-19 pandemic.

We also recognize that Congress faces the monumental task of appropriating and legislating these important priorities. We look forward to working closely with the Administration to accomplish our shared goals of protecting tribal treaty rights and recovering the economy from the pandemic-induced recession.

It is our hope that the Biden Administration will be a true partner in government-to-government relations. We believe this relationship runs in two directions, and we encourage you to take advantage of our expertise to help inform and shape your decisions and make use of our capacity in addressing tribal concerns as well as safeguarding and restoring natural and cultural resources.

For more than three decades, Presidential administrations and Congress have helped to fulfill their treaty obligations by supporting these treaty rights programs through the Rights Protection Implementation sub-activity line-item in the Bureau of Indian Affairs budget. This funding has helped provide institutional expertise, continuity in interagency relationships, and social stability in the context of ceded territory treaty rights issues. The tribes are recognized as valued partners in natural resources management.

This report describes some of the Great Lakes and Pacific Northwest treaty tribes' natural resources management challenges, accomplishments, and funding needs. It includes recommendations for actions needed to uphold the federal government's treaty obligations and trust responsibility, and to ensure that treaty rights continue to be understood, recognized, and fully implemented.

We look forward to working alongside the Administration and Congress on common goals and responsibilities. By working together, we can help protect the natural resources that enrich the lives of not only tribal people, but of all Americans.



Recommendations

RECOMMENDATION 1

Adequately Fund Treaty Rights Management

Fund essential tribal treaty rights management programs in fulfillment of treaty obligations through the **Bureau of Indian Affairs' Rights Protection Implementation** line-item at not less than \$66 million to meet overall tribal program needs.

RECOMMENDATION 2

Address Climate Change

Implement the **climate change adaptation and mitigation strategies** that have been developed through collaboration with tribal governments and climate scientists, including recommendations provided by the White House State, Local, and Tribal Task Force on Climate Preparedness and Resilience; the House Select Committee on the Climate Crisis' Plan "Solving the Climate Crisis;" and others.

RECOMMENDATION 3

Enhance Natural Resources and Environmental Protections

Exercise federal authority to **enhance natural resources and environmental protections** and reverse harmful regulatory rollbacks.

RECOMMENDATION 4

Commit to Strong Government-to-Government Relationships

Forge **stronger government-to-government relationships** with tribes by fulfilling treaty and trust responsibilities to engage in meaningful and timely consultation with tribes about activities and decisions that may affect tribal interests and resources.



RECOMMENDATION 1

Adequately Fund Treaty Rights Management

Fund essential tribal treaty rights management programs in fulfillment of treaty obligations through the **Bureau of Indian Affairs' Rights Protection Implementation** line-item at not less than \$66 million to meet overall tribal program needs.

Tribes have a sovereign right to govern their citizens, manage their territories, and determine their future. The United States officially recognized Indian tribes as distinct governments in the U.S. Constitution and further solidified federal recognition of tribal sovereignty when it signed the treaties.

Tribes also have sovereignty over the exercise of treaty-reserved rights and the ability to manage the harvest of treaty resources on- and off-reservation. These reserved rights were adjudicated through numerous federal court decisions and resulted in court orders that firmly established the treaty tribes as co-managers of natural resources throughout ceded territories. These seminal cases also affirmed the obligations of state governments to not impede the exercise of these rights. These cases include: *U.S. v. Washington*, *U.S. v. Michigan*, *Lac Courte Oreilles v. Wisconsin*, *U.S. v. Oregon*, *Minnesota v. Mille Lacs*, and *Grand Portage v. Minnesota*.

To help coordinate natural resources management, the 41 treaty tribes of the Great Lakes and Pacific Northwest regions established five intertribal commissions and delegated them certain responsibilities and management authorities. With the support of these commissions, the tribes implement court orders, consent decrees, international treaties, and cooperative intergovernmental agreements that recognize treaty-reserved rights.

Our tribes and commissions operate comprehensive treaty rights protection and implementation programs that enable the exercise of treaty-reserved hunting, fishing, and gathering rights; conserve and enhance natural resources and their habitats; and protect public health and safety.

Tribes manage treaty-reserved resources and participate in decision-making as sovereigns alongside federal and state governments. Tribes also play an integral role in negotiating and implementing international treaties, management plans, and other agreements that affect their



Columbia River Inter-Tribal Fish Commission fish technician Solomon Trimble (Mescalero Apache, Lakota) samples a chinook salmon for research at Bonneville Dam on the Columbia River.



Jacques LeBlanc, Bay Mills Indian Community member, on his fish tug in Whitefish Bay of Lake Superior.

natural resources rights, including the U.S./Canada Pacific Salmon Treaty, U.S./Canada Boundary Waters Treaty, the Great Lakes Water Quality Agreement, Washington Timber/Fish/Wildlife Agreement, and the Convention on Great Lakes Fisheries.

Using biologists, technicians, conservation enforcement officers, policy analysts, and public information specialists, the tribes:

- Fulfill conservation, habitat protection, and law enforcement functions required by federal court decisions affirming treaty rights;
- Regulate and monitor tribal treaty harvest of natural resources;
- Serve as active partners with state, federal, and local governments, educational institutions, conservation groups, and other nonprofit organizations; and
- Conduct state-of-the-art scientific research to broaden the base of knowledge for all natural resources managers and decision-makers.

Tribal treaty rights programs also provide significant recreational, economic, public health, and other opportunities that extend beyond tribal communities. Our programs protect and conserve natural resources that are harvested by the public, and they protect and enhance habitats and ecosystems relied upon by others for economic benefit and development.

The tribes and their commissions also promote cooperation with state and federal co-managers and foster innovative partnerships that are effective and efficient for multiple stakeholders. These partnerships maximize limited financial resources, avoid duplication of effort and costs, and deliver outcomes that no one partner could accomplish alone.



“I believe that’s what our treaty rights, our aboriginal rights, are all about—the future generation and how to transmit the knowledge that we have to them.”

Bucko Teeple
Bay Mills Indian
Community

Addressing Over a Century of Damage: Lake Superior

After tribal fishers reported changes in the health and abundance of lake trout and whitefish populations in the Buffalo Reef area of Lake Superior's Keweenaw Bay, the **Great Lakes Indian Fish and Wildlife Commission (GLIFWC)** obtained a grant from the U.S. EPA's Great Lakes National Program Office in 2005 to obtain sonar imaging of the reef.

The project found that the reef was being covered by stamp sands – mining waste that was dumped into Lake Superior and on its shoreline during the late 1800s and early 1900s. These stamp sands are high in copper, mercury, arsenic, and other contaminants that are toxic to aquatic life. Buffalo Reef is an important spawning reef, estimated to supply nearly a quarter of lake trout and whitefish spawning habitat in waters along the east side of the Keweenaw peninsula of Lake Superior.

The problem was significant enough that it launched over 12 years of interjurisdictional coordination between GLIFWC, Keweenaw Bay Indian Community, Michigan Technological University, U.S. Army Corps of Engineers, U.S. EPA, and the State of Michigan.

Using Great Lakes Restoration Initiative funding, this team developed short-term dredging and disposal plans and long-term plans for protecting the reef.

Through Rights Protection Implementation funding, GLIFWC has worked with a team of scientists to better understand the effect these sands have on fish spawning behavior and movement. ✦



Mining waste (stamp sands) piled on the shore of Lake Superior.

Aiding An Icon in Peril: Minnesota Moose



With its focus on conserving treaty-reserved resources, the **1854 Treaty Authority** places a high priority on moose. Moose are a culturally significant part of the connection to the landscape in the 1854 ceded territory in present-day northeastern Minnesota. They are an icon for subsistence harvest and treaty-reserved resources.

A significant decline in Minnesota's moose population from 2006-2012 prompted concerns about their long-term future in the ceded territory. Reasons for this decline likely include interaction with other species and related parasite transmission, predation, and habitat changes. And since all things are interconnected, climate change could be playing a role in these and other factors.

Each year, the 1854 Treaty Authority partners with the Minnesota Department of Natural Resources

and Fond du Lac Band to survey the moose population. The aerial survey is flown by helicopters in January if snow conditions are suitable to provide a backdrop to assist with sighting moose. Additional plots are also surveyed by air to determine impacts on moose habitat from wildfires, prescribed fires, and timber management. On the ground, the 1854 Treaty Authority monitors sites that have been treated to improve habitat to document plant species and use by moose. With the concern over transmission of brainworm and liver flukes to moose, collection and analysis of deer fecal pellets is needed to further understand the distribution and prevalence of these parasites.

This work preserves and enhances moose for both present and future generations. ✦



RECOMMENDATION 2

Address Climate Change

Implement the **climate change adaptation and mitigation strategies** that have been developed through collaboration with tribal governments and climate scientists, including recommendations provided by the White House State, Local, and Tribal Task Force on Climate Preparedness and Resilience; the House Select Committee on the Climate Crisis' Plan "Solving the Climate Crisis;" and others.

Indigenous people have always depended on the natural world for cultural, spiritual, and economic survival. Tribal culture and lifeways are directly tied to indigenous homelands and the resources found there. This knowledge was developed through long-term, intimate existence with the natural world.

While the tribes and their commissions represent varied interests, we share much in terms of our views and cultural perspectives on environmental and natural resource issues. The declining health and abundance of the natural resources that lie at the center of tribal identities is our common concern.

Climate change looms large among threats that challenge the tribes' ability to preserve their lifeways and practice their treaty-reserved rights. Natural resources impacts from both the causes and consequences of climate change include species loss, changes in the distribution and



population density of wildlife species, the contraction or expansion of both plant and animal ranges, the northward migration of species, and encroaching invasive species. These factors are all threatening ecosystems at increasing rates.

Umatilla tribal youth learns to dig roots near a wind farm on the Umatilla Indian Reservation.

Photo courtesy Facing Climate Change Project

The tribes are preparing for these changes with mitigation efforts. However, this won't stop the global change to the climate. That will require dedicated national and international leadership and cooperation.

Tribal cultures and identities are rooted in place and treaties are tied to their homelands; they cannot simply relocate to access traditional resources.

One of the most precious traditional teachings is the concept that “everything is connected.” For thousands of years, the tribes lived in an appropriate and sustainable way on the earth. To properly address this threat, the United States—indeed all nations of the world—must be willing to listen and incorporate Indigenous wisdom into their activities and actions.



“If [the First Foods] shift in their distribution significantly, then it’s kind of like they’re leaving the community behind.”

Eric Quaempts
Confederated Tribes of
the Umatilla Indian
Reservation

Advancing Science: Understanding the Ocean Ecosystem

In 2020, the **Columbia River Inter-Tribal Fish Commission** assumed stewardship of the Center for Coastal Margin Observation and Prediction (CMOP) in Astoria, Oregon, at the mouth of the Columbia River. CMOP is a nationally renowned ocean and estuary research institution dedicated to further understanding the links between the Columbia River and Pacific Ocean.

“Our co-management ethos dictates that wherever the salmon go, we go with them,” remarked Jaime Pinkham, then-executive director of CRITFC, at the transfer. “Working alongside public and nonprofit partners, we can bring tribal co-management and vision to the estuary and ocean environments.”

CMOP served as one of two early pilots of the U.S. Integrated Ocean Observation System (IOOS), which is now an established NOAA-led national program to assist decision-makers and scientists across the U.S. coastal margin and Great Lakes.

CMOP uses remote sensors, models, and open data access in ways that help stakeholders manage ecosystems; facilitate sustainable development; and protect lives, livelihoods, and our changing environment. The information is used by tribal, state, and federal agencies as well as fishers, shipping companies, aquaculture businesses, weather forecasters, public utilities, search and rescue teams, and others to make informed decisions. ✦



CMOP researchers deploy a remote-controlled underwater drone called a “glider.” With it, researchers collect ocean water samples at varying depths and locations and use on-board sensors to measure a variety of physical, chemical, and biological conditions.

RECOMMENDATION 3

Enhance Natural Resources and Environmental Protections

Exercise federal authority to **enhance natural resources and environmental protections** and reverse harmful regulatory rollbacks.

Natural resources are the foundation of treaty rights and they, in turn, depend on clean and abundant habitat, air, and water resources.

All of the treaty tribes are working to prevent habitat destruction, restore and protect native species, and eradicate invasive species, with the aim of preserving natural resources for tribal members and broader communities. The job has become more difficult with changes made over the last four years to a myriad of regulations that implement federal environmental protection laws including the Clean Water Act, the National Environmental Policy Act, the Migratory Bird Treaty Act, and others.

The United States is mandated by federal law to ensure that the treaties and the rights guaranteed by them are recognized, defended, and honored as the supreme Law of the Land. This obligation includes the federal government's responsibility to protect, enhance, and restore the natural resources that are the subject of the reserved right. The federal government can do this by identifying, respecting, and protecting tribal interests in all decisions that may affect tribal sovereignty, treaty rights, cultures, economies, health, and education.



We need the help of the federal government to ensure that tribes can continue to engage and participate fully as co-managers with other governments. We also need the federal government to take the lead in reversing these harmful regulatory changes and in developing enhanced environmental protection initiatives.

The siting and operation of hydrocarbon pipe and rail lines through tribal reservations and numerous watersheds

threaten animals, fish, and plants upon which tribal cultures depend. The continued operation of pipelines needs to be conditioned on clear standards that are established after consultation with tribes and implemented aggressively. Throughout Indian Country, tribes and allied environmental groups are challenging the continued operation of pipelines through fragile and irreplaceable ecosystems, but with uncertain success. Without the changes requested by tribes, treaty-reserved rights and resources will continue to be threatened by the unacceptable risks presented by pipelines that leak, corrode, and operate without adequate enforcement tools.

Invasive species have been deliberately introduced and also migrated naturally into our homelands. These species are dramatically altering the natural environment to their advantage and preying upon native species. In some cases, invasive species are capitalizing on climate change and even human-caused changes such as dams, bridges, impoundments, and logging. At times, applicable laws conflict when they protect one species over another, defer to the introduced species, or prioritize sport harvest. Flexibility must be found in existing law to elevate the protection of treaty-protected species at risk from invasive species. Innovation is needed to mitigate these threats to native species.

During the COVID-19 pandemic, hiking, camping, boating, and every other kind of outdoor recreation has exploded. While heartening to see more Americans use public lands to connect to the natural world, this spike in outdoor recreation has had a growing impact on the environment and tribal treaty rights and resources. Even the most remote locations are seeing damage including theft of old-growth cedar and maple, increased litter and human waste, and vandalized cultural and spiritual sites that are sacred to our tribes.



Vandalism at a campground in Nez Perce-Clearwater National Forests on the Nez Perce Tribe's ceded lands in Idaho.

Photo courtesy USDA Forest Service

Tribes watch with alarm as federal, state, and local governments plan, fund, and expand recreation without adequate evaluation of its cumulative impacts, without providing necessary enforcement, and often without tribal consultation.

Like most natural resources management issues, intergovernmental coordination will be critical to improving recreation management on state, federal, and private lands.



Power of Partnerships: Sockeye Salmon



Skokomish tribal member and Saltwater Park Sockeye Hatchery employee Charlie Henry shows off the first sockeye to return to the hatchery since the start of a recovery program to bring back these salmon to the North Fork Skokomish River and Hood Canal.

The Skokomish Tribe and Tacoma Public Utilities staff were jubilant to see the first sockeye salmon return to the Saltwater Park Sockeye Hatchery on Hood Canal in July 2020. It was the first to return to the facility since the start of a 2016 sockeye program in the North Fork Skokomish River and Hood Canal.

The program is a result of a 2009 hydroelectric relicensing agreement between the Skokomish, a **Northwest Indian Fisheries Commission** member tribe, and the utility.

More than 130 sockeye returned to the hatchery in the summer of 2020 and staff collected about 110,000 eggs for spawning and incubation. The fish are not fin-clipped like most hatchery salmon so

they will not be harvested, allowing more sockeye to return to the river. Any sockeye that show up at the hatchery are brought into the spawning program.

These eggs were the first to go through the new hatchery system. After incubation at the hatchery, they were released into Lake Cushman for a year, then caught to be transferred around the dams and released into the river where they then migrated to the ocean.

The 2009 hydroelectric dam relicensing agreement has led to river restoration, increased water flow, fish passage improvements, fish and wildlife habitat restoration, and salmon hatchery programs on the North Fork Skokomish River. ✦



NWIFC



RECOMMENDATION 4

Commit to Strong Government-to-Government Relationships

Forge **strong government-to-government relationships** with tribes by fulfilling treaty and trust responsibilities to engage in meaningful and timely consultation with tribes about activities and decisions that may affect tribal interests and resources.

True government-to-government relations mean tribes must be at the table to share in the decisions that affect treaty-reserved rights and resources. True consultation means the federal trustee must acknowledge and incorporate tribal expertise, vision, and values in addressing climate change, protecting and restoring the environment, ensuring social justice, and meeting the terms of tribal treaties.

Management actions from all levels of federal, state, tribal, and local governments impact these treaty resources. For much of this nation's history, tribes were not meaningfully involved in the federal government's resources management.

By virtue of treaty-reserved rights and legal status as co-managers, the 41 treaty Indian tribes in the Great Lakes and Pacific Northwest are key partners in natural resources management.

Tribes have management capabilities that are comparable to federal and state agencies and collaborate with them for mutual benefits enjoyed by everyone.



Effective government-to-government relationships necessitate that tribes have the capacity to analyze issues, inform their leadership, and actively participate in consultation. Tribes require stable, consistent funding to continue to provide comprehensive and effective co-management structures and to remain partners with federal and other governmental agencies to help chart the future in this country.

“It has always been my foundation, and our community's strength, that we rely on our treaties, our treaty resources, and exercising those rights.”

Dee Mayo
Lac du Flambeau Band of
Lake Superior Chippewa

Coming Together: Protecting Lands and Waters



A primary focus of **Chippewa Ottawa Resource Authority (CORA)** has been to serve as liaison between its member tribes and nonprofit environmental groups which share the tribes' objectives of protecting ceded lands and water from environmental degradation.

This alliance has involved CORA in the unsuccessful effort to prevent an international corporation from extracting four million gallons of groundwater per day from the member tribes' ceded lands.

More success has occurred in the efforts to shut down an aging oil pipeline that runs through the heart of the 1836 Treaty lands and waters and crosses the Straits of Mackinac, which is the most productive area for tribal commercial fishing. CORA joined a steering committee of nongovernmental groups to promote awareness of the threat of oil

spills that the pipeline poses in the Great Lakes and to work together to encourage decommissioning and removal of this threat entirely. Currently, this coalition is focused on shutting down the pipeline in the Straits and preventing a tunnel from being approved as a substitute conduit for hydrocarbon transport.

Fighting aquatic invasive species like sea lamprey and Dreissenid mussels (zebra mussels and quagga mussels) has also been a major environmental concern, as these species in Great Lakes treaty waters have caused drastic declines in valuable commercial fish species such as lake trout and lake whitefish. CORA is working with other governmental entities to fund research on mussel population control. CORA is also a member of the Great Lakes Panel on Aquatic Nuisance Species, an international body composed of U.S. and Canadian agencies,

states, provinces, and NGOs that coordinates education, research, management, and policy efforts.

CORA also works with many other tribes, Canadian First Nations, and intertribal organizations to address threats to our shared treaty resources through multijurisdictional endeavors prescribed in the Great Lakes Water Quality Agreement between Canada and the United States. These shared efforts have yielded real improvements in the environment of the Great Lakes through habitat restoration, protection of native species, and cleanup of legacy industrial pollution. ✦





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