Statement of Assistant Secretary of the Interior John A. Carver, Jr., before the Indian Affairs Subcommittee, Committee on Interior and Insular Affairs, United States Senate, on S. J. Res. 170 and S. J. Res. 171, regarding Indian fishing rights, August 5, 1964

Mr. Chairman:

Just as the two proposals before you are inconsistent, so also are the program interests of the Department of the Interior. S. J. Res. 170 would rely upon the conservation responsibilities of the federal government as a basis for authorizing State regulation of the time and manner of off-reservation fishing by Indians. S. J. Res. 171 would authorize the purchase and consequent extinguishment of the Indian treaty fishing rights, on and off the reservations.

In the Department, our trust responsibilities for the Indians are always gravely considered. Protection of the rights of Indians granted by treaties is one of the duties of that trust. But the responsibility for conservation of natural resources, including the great fishery resource of the Northwest is a Congressionally mandated responsibility, not to be taken lightly at any time.

Experience has amply demonstrated that accommodation of these two program interests is difficult.

The elements of the problem can be stated in fairly precise terms:

First, the treaty right to fish is important to the economic welfare of the Indians. The Department's report encloses a brief statement on this subject.

Second, the Indians believe that as a matter of law their treaty right to fish is not subject to regulation by the States. This legal issue has been litigated in the courts over an extended period of time, and a clear answer has not been given. The Department's report also encloses a statement on this subject.

Third, the State officials who are responsible for management and conservation of the fishery resource, and the Fish and Wildlife Service of this Department, believe that effective management of the resource is impossible unless all segments of the fishery are regulated. The Department's report also includes a statement on this subject.

Fourth, the segments of the anadromous fishery are sport fishing, commercial fishing, and Indian fishing. The States' regulations have been designed to accommodate the needs of the first two segments, sport fishing and commercial fishing, but have not recognized any separate need for the Indian fishing, believing that the Indians should engage in sport and commercial fishing on the same terms that apply to other citizens. The unwillingness of the States to recognize any special Indian need is probably the reason for the Indians' unwillingness to be subjected to State regulation. This poses a most difficult policy issue, which is, to what extent should the Indian fishery be subjected to different rules. I suppose it would be possible to restrict sport and commercial fishing to a greater degree, and thereby allow greater freedom in Indian fishing, and still carry out an effective conservation management program.

Fifth, the issue therefore resolves itself into one of who should regulate the Indian segment of the fishery, the State, the Federal Government through the Secretary of the Interior, or the Indian tribes themselves. A subsidiary issue is whether the treaty right should first be purchased and extinguished before Indian fishing is regulated. This subsidiary issue is a policy one and not a legal one, because the authority of the Congress to regulate the Indian fishery in the interest of conservation seems clear.

As the Department's report indicates, the two alternatives available are either to legislate the answer to the problem, or to leave the issue for further litigation in the courts. The choice is not an easy one.