

**STATEMENT OF COUNCILMEMBER RYAN JACKSON - HOOPA VALLEY TRIBE
BEFORE THE DEPARTMENT OF THE INTERIOR TRUST REFORM COMMISSION
SEATTLE, WASHINGTON
FEBRUARY 11-12, 20013**

Thank you for the opportunity to present the statement of the Hoopa Valley Tribe (Tribe) to the Secretarial Trust Commission. The Commission's process can provide an important opportunity to correct longstanding problems and to improve the relationship between the United States and Indian tribal governments.

Tribes and Indian people have experienced dramatic changes in the tribal-federal relationship since treaty-making began. Some of the most negative federal and Congressional attitudes towards tribes and Indian people were demonstrated through termination and extermination policies, while other progressive and respectful policies have been in forms of Indian Reorganization and self-determination and self-governance. The effect of the different directions of federal and congressional political pendulums continues to be reflected in the kinds of trust reform improvements that are needed today. When destructive and disrespectful agendas rule, poor trust management lead to lasting devastation to Indian resources that lingers for decades. When positive and progressive co-management relations between tribes and the United States emerge, then so do many positive, meaningful and lasting trust improvements.

The more positive federal Indian policies of tribal self-determination emerged in the mid-1970s and began taking on more progressive shape by the 1980s and 90s. It is difficult to determine whether it was the positive federal tribal self-determination policies or the sheer survival skills of tribes and Indian people that drive the process, but it is no coincidence that what followed is some of the most progressive and productive economic ventures of tribes since the days of treaty-making. The investments in and respect for tribal self-determination and self-governance has resulted in an explosion of new and unprecedented economic vitality for Indian communities and improved trust asset management and increased capabilities by tribes in only twenty-five years.

The reason for the vast differences between federal and tribal management actions is easily explainable. When the Federal Government manages, it typically only looks at trust reform based on a perspective of what will limit or eliminate its financial or trust liabilities that it owes to tribes and Indian people. The unfortunate result is that federal trust reform decisions are usually based on short term actions that do not address the short and long terms needs of the United States, tribes or Indian people. The framework of Indian law of being the "supreme law of the land" is usually lost in the shuffle of providing more and more opportunities to non-Indian development that strain against the legal and moral obligations of the United States to tribes and Indian people.

When tribes deal with trust reform issues, tribes generally look at our work in a comprehensive manner, which includes the necessity to protect, preserve and promote our culture, guard against improper exploitations by Federal agencies and non-Indian groups, as well as how they can be utilized to provide our members and communities with the necessary tools to address economic, social and community development issues.

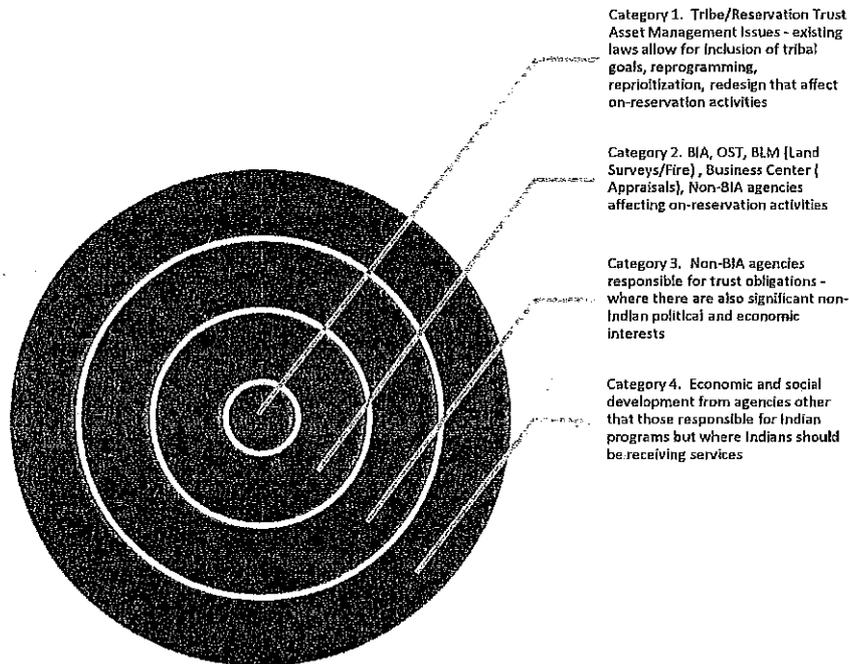
Many federal officials have attempted to seize on the opportunities to exploit tribal assumption of federal trust activities by suggesting that we should not be dependent on Federal trust obligations. However, this is one of the most misunderstood foundational principles of the tribal/federal relationship. Until such time as the United States decides to give back the resources and rights that were ceded by tribes and Indian people to build the Nation it must honor and fulfill its perpetual trust contractual obligations. It would be very self-serving for the United States to ever think that it can simply walk away from its moral and legal obligations of the agreements that it has with tribes and Indian people. Instead of thinking that it can simply walk away from Indian trust obligations, the United States needs to embrace its sovereign-to-sovereign relationship with tribes by not only living up to its trust obligations, but also to work with tribes to design a 21st Century trust co-management model that is not premised on the plan to revert back to the impractical termination, and disrespectful policies of the past.

An analysis of the mutual benefits of modern-day tribal self-determination and self-governance policies to tribes and the United States is self-explanatory by simply reviewing their recent history. Since the emergence of these laws and policies there has been a net reduction in breach of trust cases against the United States by tribes. In addition, tribes have brought significant amounts of new funding sources to the table to help design and implement trust improvements. Attachment 1 demonstrates the level of increased funding that the Hoopa Tribe has brought to trust asset management activities since entering into our first Self-Governance agreement. These diagrams show that in 2001, the Tribe contributed \$2.00 for each \$1.00 that was compacted from the BIA. By 2013, the Tribe's contribution increased to \$3.80 for each \$1.00 compacted. These increases in funding are from tribal sources, as well as from other Federal agency budgets that are not accessible to the BIA. This information demonstrates that tribes are great co-management trust reform partners to the United States.

Just as it is not possible to separate tribes and Indian people from trust reform, tribes do not believe that it is possible to compartmentalize trust reform in the BIA and a handful of other Federal agencies that manage "Indian programs". The sovereign-to-sovereign relationship between tribes and the United States is founded on the political and legal framework of the U.S. Constitution and treaties, and federal statutes that interpret and define trust obligations. These obligations are Federal Government-wide – not just the responsibilities of the BIA and IHS.

Therefore, when approaching trust reform, we want to suggest a way to visualize the trust relationship and that is how we have structured our recommendations. The trust relationship can be seen as four categories, as described below. The Federal agencies described in each category have their own individual and collective responsibilities to tribes and Indian people, with the center representing the tribal and Indian beneficiary in the trust relationship. The roles of Federal agencies change based on the nature of their trust activity being performed. For example, the BIA, U.S. Fish and Wildlife Service and National Marine Fisheries Service has a direct trust obligation to carry out their functions in ways that make Indian life meaningful on Indian reservations when dealing with reservation-based decisions (Category 2). (Category 3) The same agencies that are present in category two have non-tribal interests that must also be balanced with preserving the trust obligations to Indian Tribes and Indian People while performing activities outside of the reservation.

(Category 4) includes federal programs where tribes and the United States can work together to provide an opportunity to “level the playing field” in areas outside of trust reform that can help address social, economic and other development areas to generate independent and sustaining economic opportunities throughout Indian Country.



Based on this approach, we offer the following suggestions:

Category 1. Tribal Governance

A tribal government’s policy decisions are directed by the tribal electorate and determine the degree to which the tribe undertakes reservation trust programs. Tribes have considerable authority to design their relationship with the United States to address their individual needs and priorities, as well as to interpret treaties, agreements and federal statutes that determine the kinds of trust obligations that the United States owes them. We offer no change to those relationships since each tribe has the authority to design its relationship with United States

Category 2. On-Reservation Activities

These Federal agency activities include the BIA and OST, which carry out many of the federal government’s most directly targeted trust duties. Other activities of Federal agencies that are charged with the responsibilities to carry out direct trust obligations to tribes and Indian people include cadastral and administrative land surveys, fire protection, appraisals, minerals management, ESA, fish and wildlife management, water, probates, etc. While many of these agency activities operate outside of the BIA and DOI, their responsibilities are directly related to on-reservation activities that manage trust assets, provide jobs and revenues for tribes and Indian people, and administer activities related to ESA listed or otherwise sensitive species. As such,

their jobs are not to control reservation development or control and impede local economic and social development. Instead, their roles as category 2 agencies are to work with tribes and Indian people to allow activities to be carried out in a timely, expeditious, supportive and cost effective manner. They have a direct trust treaty-based obligation to work to create revenues, jobs and resource management activities. Our recommendations are as follows:

Sunset the Office of Special Trustee

The Office of Special Trustee (“OST”), established by the 1994 Trust Reform Act, was never intended to become permanent, not authorized to take over BIA functions or redesign tribal compacted and compacted trust programs, or empowered to transfer Indian trust services that were previously carried out by local BIA offices to remote agencies that have no commitment to the delivery of Indian services or developing the Indian local economies and jobs. See 25 U.S.C. § 4042(c). However, OST has established a parallel bureaucracy which duplicates administrative inefficiencies instead of improving trust services. The lines between OST, BIA, other trust service agencies, and tribal government responsibilities are often unclear. We recommend that the Commission facilitate to sunset OST at the earliest possible date and to transfer its functions and funding back into a streamlined BIA trust service structure. The Office of Trust Funds Management would be transferred intact to an operationally separate department within the BIA that would be protected against federal downsizing activities and civil service personnel regulations that otherwise apply to Federal agencies. Other activities, such as land surveys, probates, appraisals, ESA and NEPA reviews, would be organizationally aligned to carry out their activities in manners that facilitate carrying out on-reservation development activities.

Adequately Fund Trust Programs

The chronically underfunded Indian programs within the BIA budgets have been well documented over the past several decades. Some tribes hesitate to assume federal programs under self-determination because they understand there is not adequate money to support the tribe in carrying out the functions of the program that the tribes want to administer. The United States has a responsibility to ensure adequate funding for programs that serve tribes and Indian people. Attachment 2 provides an overview of comparisons between tribal programs funded by the BIA to those being carried out adjacent to the Hoopa Reservation by Federal agencies for the same species and comparable land management areas.

Improve the Accounting of Real Property Trust Assets

In the course of settling our trust funds mismanagement case, *Hoopa Valley Tribe v. United States*, Court of Federal Claims, No. 06-908, we were asked to agree to the correctness of a January 31, 2012, Statement of Performance for our tribal trust property. While we could agree to the trust fund balances, the Statement of Performance was found to include scores of pages listing real property assets, itemizing tracts of tribal lands, and lands leased to tribal members for home site purposes. The listing of real property assets is full of mistakes and obviously has not been properly updated. The process of preparing and maintaining those trust records must be improved. Again, a part of this problem is the result of the fragmented management structure of the OST trust reorganization plan, where agency trust functions have

become disconnected and trust records, accounting functions and trust asset management activities are being managed by separate agencies. A solution can be to realign the BIA structure to once again being a “one stop” trust office that is managed by regional and local offices that are responsible to tribes and individual Indians.

Category 3. Off-Reservation Federal Trust Asset Management

Federal agencies in category 3 include those that are being carried out off-reservation and are part of the United States’ trust responsibility as a whole. The federal courts have frequently reminded us that “trust responsibility extends not just to the Interior Department, but attaches to the federal government as a whole.” *Parravano v. Babbitt*, 70 F.3d 539, 546 (1995) (quoting *Eberhardt v. United States*, 789 F.2d 1354, 1363 and citing other cases). Officials in these agencies typically carry out trust responsibilities that are also utilized by non-Indian users, such as water, fish and wildlife. Other category 3 activities include wildland fire protections, ESA, NEPA, environmental protections, and others. Our recommendations are as follows:

Issue an Executive Order Barring Federal Employees from Advocating Reductions in Federal Trust Responsibilities

There are many examples of federal employees negotiating to reduce the scope of the federal government’s trust responsibility to Indians. For example, in 2010 the Department provided a legislative drafting service that proposed the following bill language:

“[T]he United States, as trustee on behalf of the Federally-recognized tribes of the Klamath Basin . . . is authorized to make the commitments provided in the Restoration Agreement, including the assurances in Section 15 of the Restoration Agreement.”

In the Restoration Agreement, Section 15, the Department employees committed that the United States would provide:

“Assurances that it will not assert: (i) tribal water or fishing right theories or tribal trust theories . . . that will interfere with the diversion . . . of water for the Klamath Reclamation Project.”

When the Department proposed that bill language, it was well aware that three of the federally recognized tribes of the Klamath River Basin opposed Section 15 of the Restoration Agreement. Nevertheless, the Department, over tribal opposition, proceeded to advocate reduction of its trust responsibilities. That legislation was introduced as H.R. 3398 and is still pending.

Several efforts to limit trust duties arose in connection with the tribal trust fund settlement negotiations noted above. For example, the tribes were asked to agree that the Statements of Performance satisfied the government’s obligations under the Trust Reform Act. Also, the tribes had to agree to limit to five years the time that proceeds could be held in a tribal trust account. Similarly, the Treasury Department sought agreement that its obligations were

limited to those defined by 25 U.S.C. § 161a(a). We recognize that the Department cannot prevent the Justice Department from taking advocacy positions in litigation. However, an Executive Order prohibiting Department employees from attempting to reduce the government's trust obligations to Indians will help protect trust duties. The Affiliated Tribes of Northwest Indians and National Congress of American Indians have adopted Resolutions petitioning the President to issue an Executive Order barring federal employees from proposing or advocating reduction of the United States' existing trust responsibilities. This recommendation is similar to the Commission's proposed Conflict of Interest policy.

Amend Secretarial Order No. 3206 (June 5, 1997) into Regulations with Specific, Measurable Consultation Requirements that have the Force of Law.

In Secretarial Order No. 3206, the Secretary of the Interior and the Secretary of Commerce, pursuant to the Endangered Species Act of 1973 ("ESA"), the federal-tribal trust relationship, and other federal laws, attempted to clarify federal responsibilities when actions taken under the ESA may affect Indian lands, tribal trust resources, or the exercise of American Indian tribal rights. Secretarial Order 3206 also, in its Purpose, states that the Departments will ensure that "Indian tribes do not bear a disproportionate burden for the conservation of listed species . . ." While the Secretarial Order contains good concepts, it has been ruled insufficient to establish a legally enforceable obligation to engage in meaningful government-to-government consultation with tribes. For example, in *Center for Biological Diversity, et al. v. Salazar*, No. 10-2130 (D. Ariz. Nov. 30, 2011), the Court examined the Secretarial Order to determine whether its obligations included requirements that have the force of law. The Court concluded that protections for Sonoran Desert bald eagles, which have great value to tribes, "do not implicate the federal government's fiduciary duty over the management of specific treaty-protected resources . . . nor does [Fish and Wildlife Service] have the same statutory and regulatory obligations to consult with the tribes under the ESA that the BIA has when making decisions directly related to the management of tribal services and employment on Indian reservations." *Id.* Order at 19. The Court concluded that "Congress and Interior have not imposed such consultation obligations in the ESA context, and it is not the proper role of the Court to impose such obligations on its own." *Id.* This defect in Secretarial Order No. 3206 should be corrected. Formal regulations should be adopted to make consultation meaningful and ensure that tribes do not bear a disproportionate conservation burden. We have included as Attachment 3 an ESA administration analysis that was developed by the Hoopa Tribal Fisheries Department that describes the minimal levels of impacts (Hoopa has .06% of ESA-listed Coho salmon habitat on the Hoopa Reservation), yet ESA administration takes more than 1 ½ years to complete for on-reservation activities. Outside activities involving ESA on private and federal lands are approved without delays. In addition ESA requires that all listed and endangered species have recovery plans that have clear and measureable standards that ensure the survival of the affected species. In many cases the recovery plans are either inadequate or in fact, incomplete. Yet Tribes are required to maintain populations and habitat for T&E species without having any direction on clear and quantified standards.

Institute a Tribal Resources Analysis Requirement that Requires Federal Agencies to Analyze the Effects of Federal Actions on Tribal Resources and Mitigate for Adverse Impacts.

When making decisions affecting tribal resources, the federal government has a substantive duty to protect “to the fullest extent possible” the tribe’s treaty and statutory rights and the resources on which those rights depend. This trust obligation involves both consultation *and* the affirmative protection of treaty rights, Indian lands and migratory and non-migratory resources. In order to properly account for the impacts of federal actions on tribal resources, federal agencies need to provide a quantitative analysis on how federal actions will impact, protect, and enhance these resources. This “tribal resources analysis” should be triggered by federal actions and would be a separate but parallel analysis to NEPA and ESA consultation. If this analysis finds that tribal resources would be negatively affected, the federal government must mitigate for those negative impacts. These requirements should be incorporated into the amended Secretarial Order No. 3206, discussed above. See Attachment 3

Amend Existing Regulations to Protect Treaty Resources in ESA Take Authorizations and Expedite ESA Take Authorizations on Tribal Lands.

Secretarial Order No. 3206 should also be amended to require that projects proposed by tribal entities that affect tribal resources that are listed under the ESA be authorized before, not after, other pending ESA take authorizations when practicable. This prioritization is intended to insure that no disproportionate conservation burden is placed on Indian tribes. ESA section 7 consultations on tribal lands also must be prioritized in order to expedite project execution (which promotes self-determination and economic development), and also to minimize making tribal resources available for use or consumption by other proposed projects. The Secretarial Order regulations must require that treaty and other trust resources be explicitly incorporated into the environmental baseline of all ESA Section 7(a)(2) consultations. See Attachment 3

Copies of Records Should be Provided to Tribes as Part of the Government-To-Government Process, Instead of Relegating Tribes to the Bureaucratic Black Hole of the Freedom of Information Act.

The Department’s administration of the Freedom of Information Act (“FOIA”) leaves much to be desired. FOIA is applied grudgingly and responses are often long delayed. However, there is no reason for insisting upon using the formal FOIA process when responding to a records request from an Indian tribe. Just as federal agencies do not employ FOIA against each others’ document requirements, so too the Department should expressly provide for the prompt availability of federal records upon the request of a tribe as a matter of government-to-government consultation.

Pub. L. 93-638 should be amended to Direct Mandatory Compacting for Programs, Functions, Services, and Activities that Non-BIA Interior Department Bureaus and Other Federal Agencies Provide with Respect to Indian Trust Resources and Rights.

The Tribal Self-Governance Act provides for compacting non-BIA functions in § 403(b)(2) and (c) of Pub. L. 93-638. Mandatory compacting is required only as to services “otherwise available to Indian tribes or Indians,” while discretionary compacting can include programs of special geographical, historical, or cultural significance to the tribe. The courts have limited mandatory compacting to programs specifically targeted to Indians. Thus, programs directed to improving trust resources, such as fish harvests, because they have collateral benefits to non-Indian fishing interests, fall outside of ‘638 compacts unless the non-BIA agency, in its discretion, chooses to include them in a tribal compact. For BIA programs to improve law enforcement, for example, the presence of benefits to non-tribal members does not remove the program from mandatory compacting. Neither should programs directed to restoration and protection of trust resources such as Indian water rights or fisheries resources be insulated from mandatory compacting simply because those programs are administered by non-BIA agencies and bureaus of the Department of the Interior. The Commission should recommend improvement of ‘638 compacting along the lines of proposed § 405(b)(2) of H.R. 3994, 110th Cong. 1st Sess.

Category 4. Tribal Contract Opportunities with Non-Trust Federal Agencies

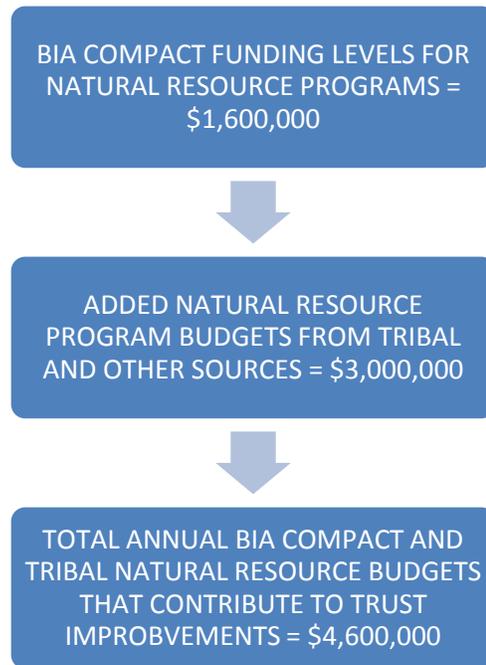
Agencies in category 4, while not necessarily being a trust service or function, has a responsibility to help carry out the United States’ legal contractual obligations to make life meaningful on reservations, such as providing funding an services for economic development, jobs, social programs and services in the same manner that is being provided to other States and U.S. citizens. In addition to trust services and programs, the United States relationship with tribes needs to evolve to agencies and services that are beyond typical Indian programs. Some of these agencies include the Small Business Administration, U.S. Department of Agriculture, Homeland Security Administration, and others. We include descriptions in Attachment 2 where tribal expertise has been developed with respect to natural resources management that can help provide services to agencies managing federal lands while also providing tribes with additional financial resources to continue providing services to reservation-based trust improvements. We offer the following recommendation:

The United States should direct that each Federal agency work with tribes to expand access to other Federal agency funding, programs and services to allow for additional economic and social opportunities in and around Indian Country

Tribal contracting and compacting opportunities should be expanded to enable tribes to contract to carry out any federal programs, services, functions, or activities where tribes and Indian organizations are eligible. These federal agency efforts should be systematized and shaped into a more uniform contracting and certification program to enable tribes, if they wish to do so.

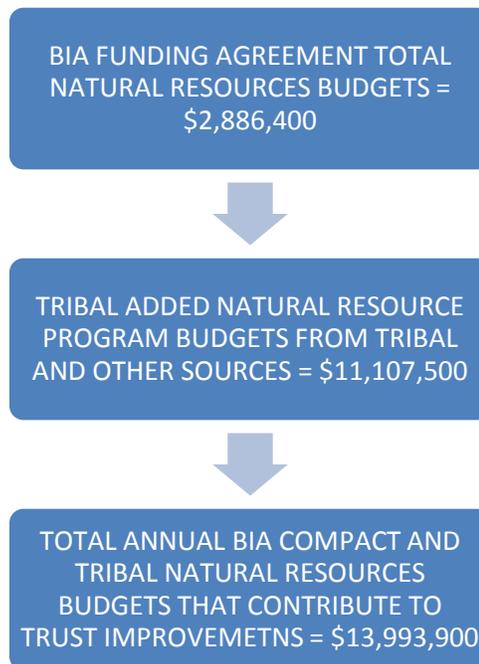
Thank you.

2001 BIA COMPACT AND TRIBAL BUDGET FUNDING LEVELS FOR TRUST RESOURCE MANAGMENT PROGRAMS THAT WAS DONE TO DEMONSTRATE THE BENEFITS OF TRIBAL/FEDERAL PARTNERSHIPS IN AREAS OF TRUST REFORM AND TRUST IMPROVEMENTS



In 2001, the Tribe's contribution to trust asset programs was \$2.00 for every \$1.00 compacted from the BIA. The Tribe's contributions included all sources of tribal and other funds that were not available to the BIA.

**DEMONSTRATION OF BENEFITS OF TRIBAL SELF-GOVERNANCE TO
TRUST RESOURCE MANAGEMENT IMPROVEMENTS
BASED ON FY 2013 and 2001 BIA COMPACT AS COMPARED TO HOOPA
TRIBAL BUDGET**



Based on this chart, the efforts of the Hoopa Valley Tribe's efforts provided approximately \$3.80 from non-BIA sources for each \$1.00 of BIA funding for resource management in FY 2013. This chart demonstrates that, while Tribal Self-Governance and Self-Determination Laws are not appropriations statutes, they have resulted in more than a 4-fold increase in tribal natural resource budgets by creating meaningful partnerships between Federal agencies and Indian tribes.

HOOPA TRIBAL FORESTRY TRUST COMMISSION REPORT

ESA, Wildlife and Federal Trust Issues in Indian Country

Background

Federally recognized tribes and the Federal Government have a unique working relationship stemming from the Government's Trust Responsibility to tribes. There have been two Congressionally mandated "Assessment of Indian Forests and Forest Management in the United States" reports completed stemming from the passage of the National Indian Forest Resources Management Act (NIFRMA, P.L. 101-630). These assessments have been conducted by the Indian Forest Management Assessment Team (IFMAT 1993, and 2003). Reports are required by Congressional mandate every 10 years and a third report is in the process of being drafted. In the Concluding Comments of the Executive Summary of the 2003 IFMAT Report, it was stated:

"Obstacles still prevent tribal forests from reaching their potential. Funding for Indian forests, even with tribal contributions, continues to lag behind both federal investments on the Nation Forests that are managed for ecological services, and on comparable state and private lands managed for timber production".

"Nonetheless, Indian forests have the potential to be models of integrated resource management and forest sustainability. At the end of the day, Indians live closer to the consequences of their forest management decisions than other members of American society and depend heavily on their forests to sustain tribal values, employment, and income".

Funding levels for Forest Management in Indian country are far below that of other Federal lands and private lands. Comparisons of actual wages from Hoopa Forestry to comparable positions in the US Forest Service (i.e. GS scale most appropriate for the positions) shows that at nearly every position the current Tribal wage is below the minimum starting wage within the Forest Service and none approach the level of step 7 within the GS grade (Figure 1). It is no wonder that many top employees have left Hoopa Forestry over the years for higher paying positions and that some key positions have remained vacant for years (silviculturist, Timber Management Officer).

The Endangered Species Act (ESA) has had considerable impact on Indian forest management, especially in the Pacific Northwest where the listing of the northern spotted owl in 1990, followed by marbled murrelets and coho salmon has resulted in the collapse of the portion of the timber industry based on public lands. Tribes have been adversely impacted in several ways from these listings. First, ESA requirements for Consultation and the need for surveys directly impacted tribal economies and often created animosity between tribes and the Federal Government. Second, restrictions required to protect listed species have reduced the volume of timber available and shortened the length of time available for each logging season. Third, as the supply of large diameter old trees from public lands was abruptly

cut off, the number of mills capable of cutting such trees declined precipitously and reduced competition and hence the price offered for tribal timber.

ESA and the Hoopa Valley Tribe

Just prior to the listing of the northern spotted owl, the Hoopa Tribe became one of 10 "Self Governance" Tribes in the nation and took on the responsibility of managing its natural resources. The Tribe had long had issues about what they considered miss management by the BIA and they had never adopted any of the BIA Forest Management Plans. Hoopa began drafting their first Tribal FMP in 1991 and completed it in 1994 (one of the first in the nation). The planning process included evaluation of 5 major alternatives covering a broad range of practices and impacts. In the end a middle of the road alternative was selected which included maintaining a moderate level of timber harvest and moderate protections for fish, wildlife and plants.

These alternatives and the ultimate management decision were made by Tribal Members and Tribal Employees with very little outside influence. The planning process included an Inter-disciplinary Team (IDT) of Tribal resource professionals from Fisheries, TEPA, Fire and Forestry as well as a Policy and Cultural Committee inputs. The Cultural Committee assisted with the development of the minimum management requirements (MMRs) and was made up of cultural leaders. They were involved with the creation of the land classification systems and riparian protection areas. The Policy Committee, appointed by the Tribal Council, was kept informed and reviewed the MMRs and other management practices included in the alternatives. The final plan was approved by the BIA and was Certified by the Forest Stewardship Council (FSC) as Ecologically Sustainable. The United Nations invited the Tribe to present the plan in Washington DC as an example of an exemplary community based management plan in 1996.

The listing of the northern spotted owl prompted the tribe to hire a wildlife biologist in 1991. Prior to that time the required NEPA process for timber sales included input from a consulting biologist which also conducted field surveys for bald eagles and peregrine falcons. Since 1991 the tribe has developed a small wildlife program within the Forestry Department. This program has been supported primarily by BIA ESA funding some of which arrives each year through the annual "compact" funding agreement (\$177,000) and some which is requested as Add-On funding each year (\$0-120,000).

Milestones of the Hoopa Wildlife Program 1991-present:

- Began intensive demographic monitoring of the northern spotted owl (NSO) population beginning in 1992 (surveying entire study area and banding or re-sighting all owls each year)
- Participation in and collaboration on 3 northern spotted owl Meta-Analysis and resulting publications
- Used NSO survey and demographic data to complete Programmatic Section 7 Consultation on the Tribe's Forest Management Plan (FMP), 3 times, first in 1996 covering 1996-2003, second in

- 2003 covering 2003-2008 and third in 2012 covering 2011-2026. Hoopa was the first tribe to complete a Programmatic Section 7 Consultation in the US.
- Hoopa study area is being considered as a treatment site by the Fish and Wildlife Service (FWS or Service) in their EIS for the Experimental Removal of Barred Owls
 - Surveyed over 80% of all potential marbled murrelet habitat reservation wide (1992-2003), completed 2 years of radar surveys in highest potential habitat (2005-2006). Funded by BIA ESA Add-On funding. Result, no further surveys required by the Service.
 - Began fisher surveys in 1992. Began research in 1996-1998 using grant funding. Gap in funding between 1998 and 2005. Restarted fisher research project in 2005 funded primarily by grants from the FWS, Administration for Native Americans (ANA), California Department of Fish and Game and funding from BIA ESA Add-On
 - Impacts and Capacity Building resulting from fisher research project include:
 - Hoopa Tribe being considered a leader in the field in terms of fishers and fisher management in the west.
 - Participation on the Interagency Fisher Biology Team (FBT)(2006-2010). Co-author on the resulting 3 volumes published by the USDI Bureau of Land Management (BLM)
 - Co-author of a book chapter published following the International Martes Association symposium held in Seattle WA in 2009. Book: Biology and Conservation of Martens, Sables, and Fishers A New Synthesis published 2012.
 - Developed a methodology for assessing impacts to fishers resulting from forest management activities. Used these methods in a Programmatic Biological Assessment on the tribe's 15 year FMP. Consultation to be completed by the Service prior to listing of the fisher.
 - Several publications in peer reviewed journals, most notably Gabriel et al. 2012 which was published in the online journal PLOS ONE and which documented a link between illegal marijuana grow sites on public and tribal lands and the poisoning of fishers. This article has generated nationwide interest and focused attention on the level of environmental damage done by such illicit operations.

The BIA ESA funding and the Tribe's Wildlife Program have ensured that tribal timber sales and other ground disturbing projects have been implemented without delay since 1991. As can be seen from in Figure 1, the Tribe's employees are paid at a rate far below that of their Federal counter parts. The Tribe appreciates the fact that ESA funds have been delivered to Hoopa, especially since it is well known that many tribes with ESA issues receive no funds to address those issues. We would like to stress however, that Hoopa has made very good use of the funding received and has been able to do more with less for most of the last 2 decades. As an example we have made the following comparison between the Tribe's northern spotted owl demographic monitoring effort and that which has been funded by the Forest Service nearby.

We have attempted to make as accurate a comparison as possible between the US Forest Service Willow Creek Northern Spotted Owl Demographic Study Area (WCSA) and the Hoopa Study Area (HSA). Dr. Alan

Franklin graciously supplied us with the annual budget for the WCSA and the hectares that they survey intensively each year (29,444 ha, Density Study Area). They expended approximately \$7.59 per ha to cover all aspects of the demographic study from data collection to analysis including wages, supplies, equipment, vehicle leases, fuel, etc. This includes 2 full time employees and 5 seasonal technicians. They feel their funding is by no means excessive for the amount of work that they complete each year and that funding levels directly affect data quality.

Calculating the amount per ha for Hoopa is complicated by the fact that there are multiple goals and objectives and multiple funding sources each year. For example, the project leader, Mark Higley, is funded entirely out of the BIA base compact (Funding originates in BIA-ESA annual funding agreement \$177,000/yr). His job duties, however, include organizing, implementing and analyzing and reporting of the owl surveys each year as well as running a fisher research project, grant writing, ESA-NEPA compliance for all tribal projects involving ground disturbance, budgeting, and personnel management. Two Biological Technicians funded through the base compact work year round and assist with other projects (primarily fisher) during the winter. In addition, the tribe receives ESA Add-On funds periodically and very consistently since 2009 of approximately \$110,000 annually which is used for owls and fishers. Therefore, for the most current comparison we have included 50% of the project leader time, 70% of the two year round employees and 80% of 3 seasonal technicians. In addition, funding for the crew house rent, vehicle repairs, fuel, supplies and equipment have been included in the calculations of \$/ha. In years when there has been no ESA-Add-On funding for owls 2000-2008 (the project leader was included at 75%) and we had approximately \$3.90/ha and since 2009 with the inclusion of Add-On funding \$5.90/ha. The increase in funding since 2009 has been used to increase spotted owl survey effort in response to the lower detection rates observed as barred owls have increased and to conduct barred owl specific surveys. Both HSA numbers are lower than the estimate from the WCSA, where they feel they are funded at a bare bones level, especially as they have also been conducting barred owl specific surveys in recent years.

Clearly the Tribe has been accomplishing a similar level of work with less funding, albeit while under paying its employees (Figure 1). Hoopa's base compact has remained relatively static for many years. Without the ESA Add-On funding it would not be possible to continue the spotted owl demographic work which is used in monitoring the effects of the FMP and maintaining the reporting requirements for the annual monitoring report to the Service.

An additional comparison was made between the Hoopa fisher project and 2 fisher projects from the Southern Sierra Nevada. Both Sierra projects were funded primarily by the US Forest Service and cooperative Agencies and Universities. All 3 studies have collected similar data employing live captures, marking, radio telemetry, habitat selection analysis and demographic data collection and analysis. Hoopa started first and has continued the longest thus far and has marked and monitored the largest number of animals. Each study captures and radio marks a similar number of animals each year 20-30 on average yet the funding available for each study has been vastly different (Figure 2). Hoopa has funded all of the work with soft money obtained through grants primarily from the FWS (Tribal Wildlife Grants Program, and field offices), Administration for Native Americans (ANA) and California Department of Fish and Game. The BIA ESA funding has also been instrumental in keeping this project

going especially since 2009. Even if the actual budgets from the 2 Sierra projects were 50% lower they would still have been funded at a much higher rate than Hoopa. Our low level of funding results in under paid employees and a much slower publication rate of peer reviewed articles. However, the effort has positioned the Tribe quite well as an expert in fisher biology and management and thus made it possible for the Tribe to Programmatically Consult on the FMP if the Fisher becomes listed (decision expected in 2014). The data collected is critically important for evaluating the impacts of the FMP on this culturally important and potentially threatened or endangered species (T&E). However, the Tribe will not be able to continue this monitoring and research without a source of stable, adequate funding.

Again, it is clear that the Tribe has been accomplishing more with less than comparable Agency funded projects. Although the Hoopa Reservation represents only 0.15% of the northern spotted owl range (NSO Recovery Plan 2011) and 0.10% of the west coast fisher historic range (Lofroth 2010) the Tribe has modified its management to protect these species and has contributed greatly to the biological knowledge base for both species (Figure 3). Because species listed as Threatened or Endangered can impose significant restrictions on forest management activities the Tribe has taken the proactive approach of surveying for and studying these species so that the Tribe is well positioned to Consult on threatened or endangered species with high quality data (Figures 4 and 5).

General ESA Related Trust Reform Issues

Indian Tribes are often left holding a much larger proportion of the conservation burden for Threatened and Endangered Species primarily because they have not developed their lands to the same extent as most private lands. Therefore, Tribal lands often retain high value to T&E species. Regulatory agencies charged with conserving T&E species might therefore, focus on maintaining habitat quality on Tribal lands and ignore the Federal Trust responsibility to Tribes. At times the Federal Government has made attempts to rectify this problem by proposing policies such as Executive Order 13175, Secretarial Order 3206 and Presidential Memorandum regarding Tribal Consultation (Nov. 2009). In terms of the implementation of the ESA the most comprehensive of these has been Secretarial Order 3206 which if adhered to would be a great improvement. However, the Order does not have any regulatory authority and therefore can be ignored by the Agency personnel charged with Consulting with Tribes.

Recommendation: Work closely with Tribes to revise the principals of Secretarial Order 3206 into legislation that can become Law and then hold regulatory Agencies accountable for implementation of the regulation.

- Prioritize ensuring that conservation efforts are first imposed on public and private lands before requiring special efforts by Tribes.
- Ensure that conservation efforts imposed on Tribes are the least necessary for conservation of the species
- Truly give deference to Tribal plans so long as they meet some minimum, mutually agreed upon Conservation goal which is based on the best available science
- Make sure that appropriate regulatory staff attend training regarding implementing Tribal Consultations

- When possible, partner with Tribes (including funding and technical assistance) to monitor the effects of their management on T&E species so that knowledge can be gained for use in evaluating future actions. (i.e. Adaptive Management)

Trust Reform Opportunities

Many Tribes manage natural resources on significant land bases providing an enormous opportunity to conduct long term research designed to evaluate various land management strategies and the impacts of climate change given sufficient funding resources. Many such tribes already employ people that would be capable of managing such research efforts and some may already be engaged in research to varying degrees. Many Federal Agencies support research facilities with top notch scientist such as the US Geological Survey, US Forest Service, US Fish and Wildlife Service, National Oceanic and Atmospheric Administration to name a few. Collaboration between such Agencies and Tribes could result in some very interesting and mutually beneficial findings. Tribes tend to want to manage their lands in a holistic manner while extracting resources. They implement management plans consistently over time generally unimpeded by law suits and court decisions. Tribes like to think that their management is "Good Management" but there is precious little documentation in terms of scientific data to refute or verify the results.

If funding were made available consistently to Tribes for the purpose of collaborating with high quality research facilities including Agencies, NGO's or Universities or some combination of these then a great deal of meaningful applied research could be accomplished while providing educational and employment opportunities to Tribal members. This Applied Research program could be a boost to Tribal economies and provide an avenue of opportunity for Tribal members to become engaged with science and natural resources management. Ultimately, tribal members involved with such research efforts might choose to pursue higher education opportunities and eventually fill all tribal and possibly many public land management agency professional positions. I have long envisioned this sort of program and have spent my career attempting to demonstrate the potential for its success and value to tribes and society as a whole. The success of Hoopa's Programmatic Consultations with the FWS are in large measure the result of the Tribe having the best data possible. Tribe's often set management goals to achieve ecological sustainability as well as meeting economic needs. Unfortunately lack of funding prevents scientific documentation of success or failure. Repeating the last portion of the quote from the 2003 IFMAT report from paragraph one above:

"Nonetheless, Indian forests have the potential to be models of integrated resource management and forest sustainability. At the end of the day, Indians live closer to the consequences of their forest management decisions than other members of American society and depend heavily on their forests to sustain tribal values, employment, and income".

Given adequate funding for implementation and monitoring Indian forests would undoubtedly meet the potential to be models of integrated resource management.

We would envision the Applied Research program as follows:

- Tribes with significant land bases managed for natural resource extraction, form collaboration(s) with at least 1 of the following organizations: Universities, NGO's or established Research Stations with an interest in conducting research in the vicinity of the tribal lands.
 - The purpose of the collaborations would be to ensure experienced researchers serve as Principal Investigators to assist with study design, protocol development, data analysis and publication.
- Tribes Develop Long Term Monitoring and Research Objectives in Collaboration with their research collaborators.
- Federal Government Provide secure multi-year (6-10 years) funding to participating Tribes (possibly a set of 20-30 tribes used as a demonstration project)
- Establish a recruitment and training program to draw in tribal member participants to collect field data.
 - Provide educational opportunities to tribal members that wish to pursue natural resource or science degrees.

Using Hoopa as an example there would be tremendous opportunity to partner with the US Forest Service Redwood Science Lab, Universities and NGO's to accomplish a wide range of meaningful long term research addressing a wide range of topics. Included in the topics would be climate change, impacts of Sudden Oak Death (SOD), northern spotted owl demography in response to forest management and barred owl control, and many other aspects of the effects of forest management on forest ecology. All that stands in the way is foresight and consistent funding.

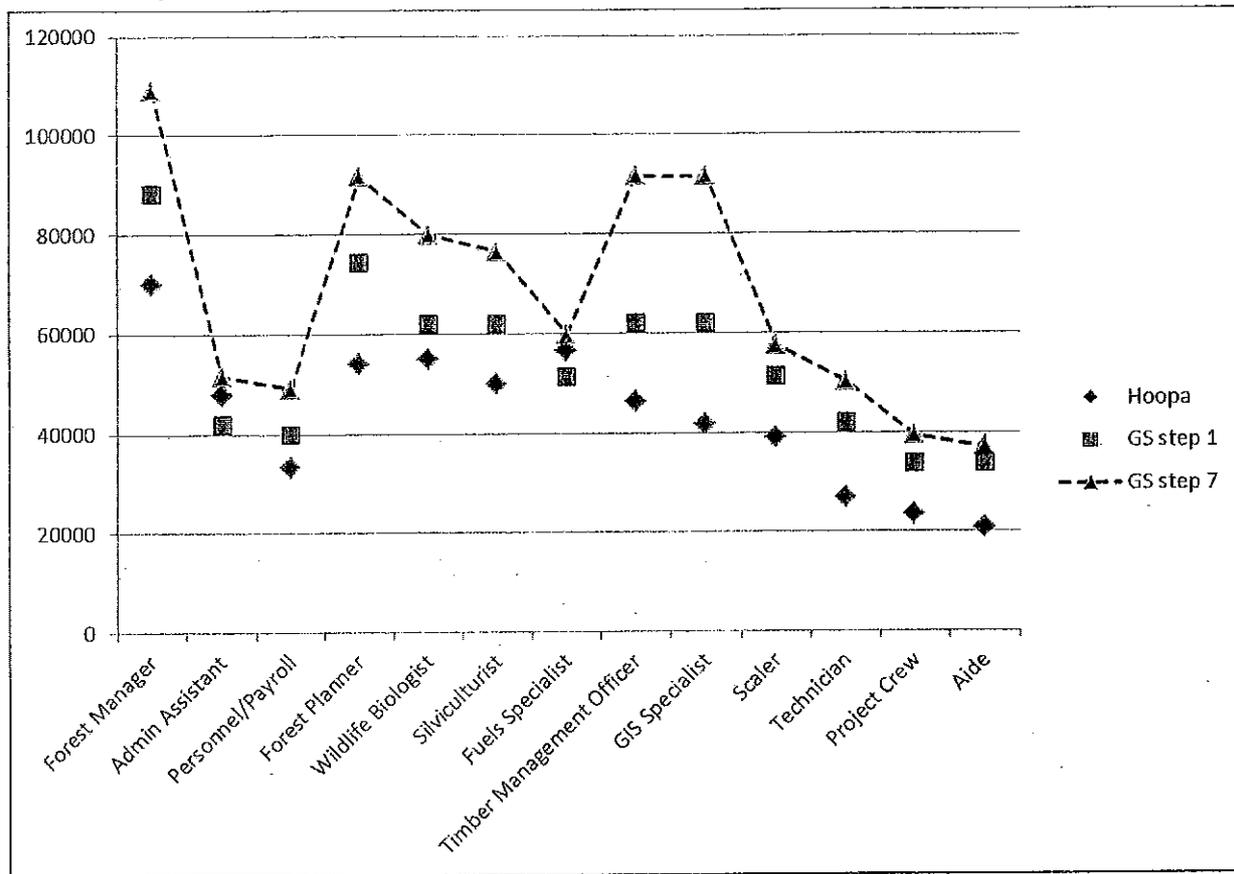


Figure 1. Comparison of annual wages currently paid to Hoopa Tribal Forestry employees in comparison to the comparable Federal GS grade step 1 and step 7 (Based on the 2012 GS scale for the Sacramento region). Note that the Hoopa wages are below the step 1 rate in nearly all positions and many of the employees have been working for the tribe for more than 5 or more years and therefore should be approaching or past step 7.

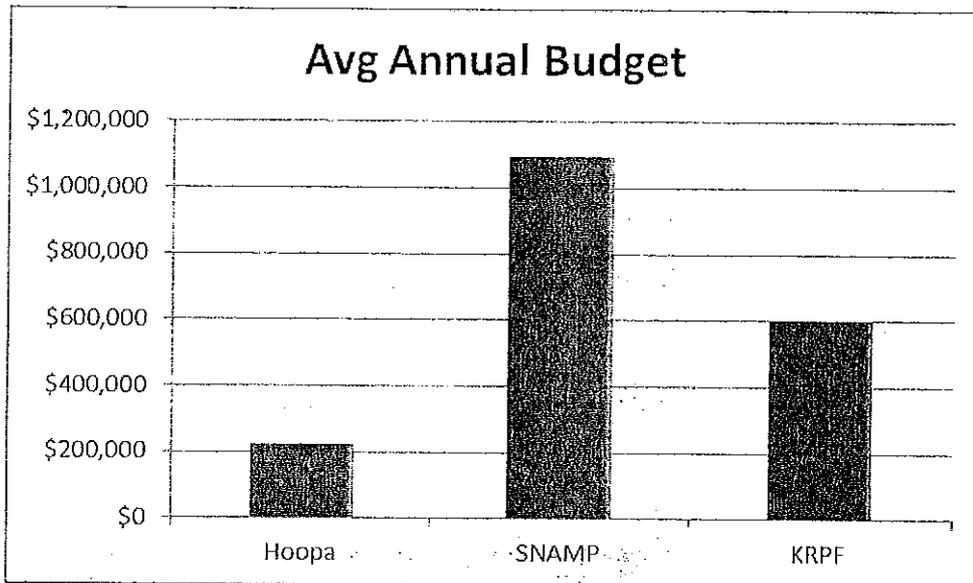


Figure 2. Comparison of estimated annual budgets for 3 similar fisher studies which include live capture, radio telemetry monitoring, and demographic analysis. Estimated budgets for SNAMP and KRPF are from Study/Work Plans published in 2007 and actual funding received may be lower. We estimated \$225,000 for the annual amount for the Hoopa study even though we have never had that much within a single grant source for a single year, it includes estimated support from Forestry Base, and a 40% of wildlife biologist, Mark Higley's wages and fringe. Even if the amounts estimated for SNAMP and KRPF were 50% lower they would still be higher than the Hoopa budget. All three studies have monitored 20-30 animals with telemetry each year and conducted similar capture efforts. At Hoopa we have had 2-4 full time field people while the other studies have averaged 5-8 and of course we have paid our people substantially less.



Figure 3. Several recent peer reviewed publications in which the Hoopa Tribal Wildlife Biologist was a Co-Author with a team of Federal Agency and or University biologists.

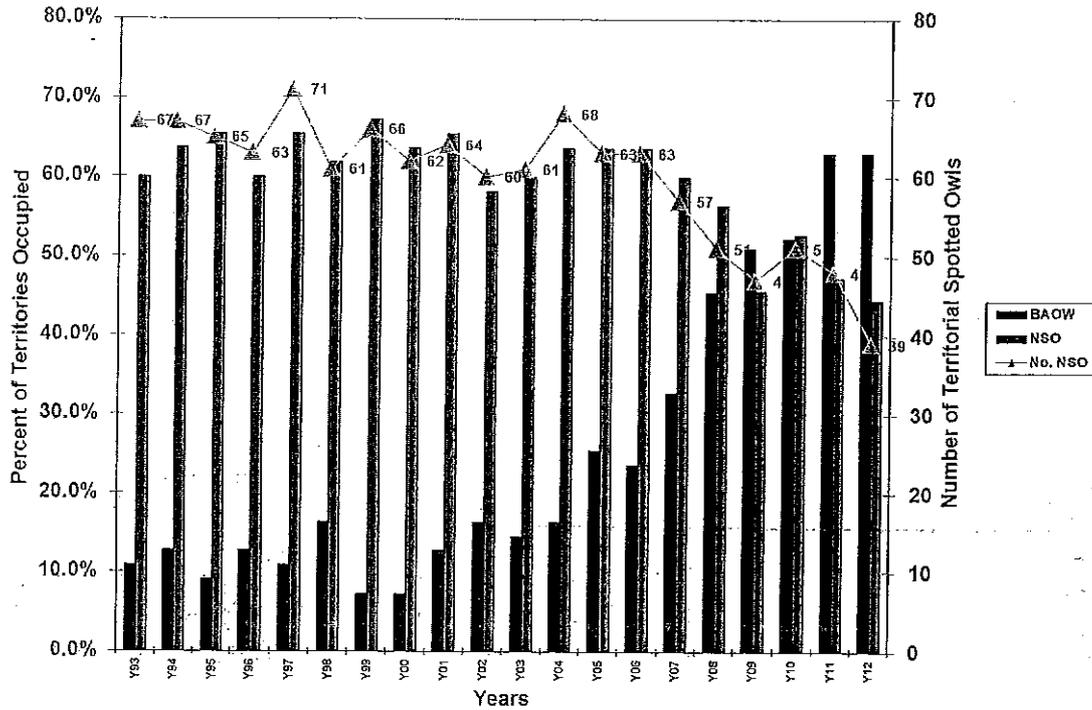


Figure 4. Downward trend in northern spotted owl annual territorial occupancy (NSO) and census numbers (No. NSO) 1993-2012, with increasing trend in barred owl (BAOW) detections within spotted owl territories. This decline in NSO correlates with the increase of barred owls however, this does not necessarily represent a causal relationship. Further study involving the experimental removal of barred owls should provide strong evidence for a cause and effect relationship if one exists. Such a study is currently being proposed by the FWS and is extremely important to the Tribe since we believe that the Tribe's forest management under the FMP for the last 2 decades has been compatible with the maintenance of a healthy NSO population. This is impossible to determine with the apparent adverse impact of an increasing barred owl population.

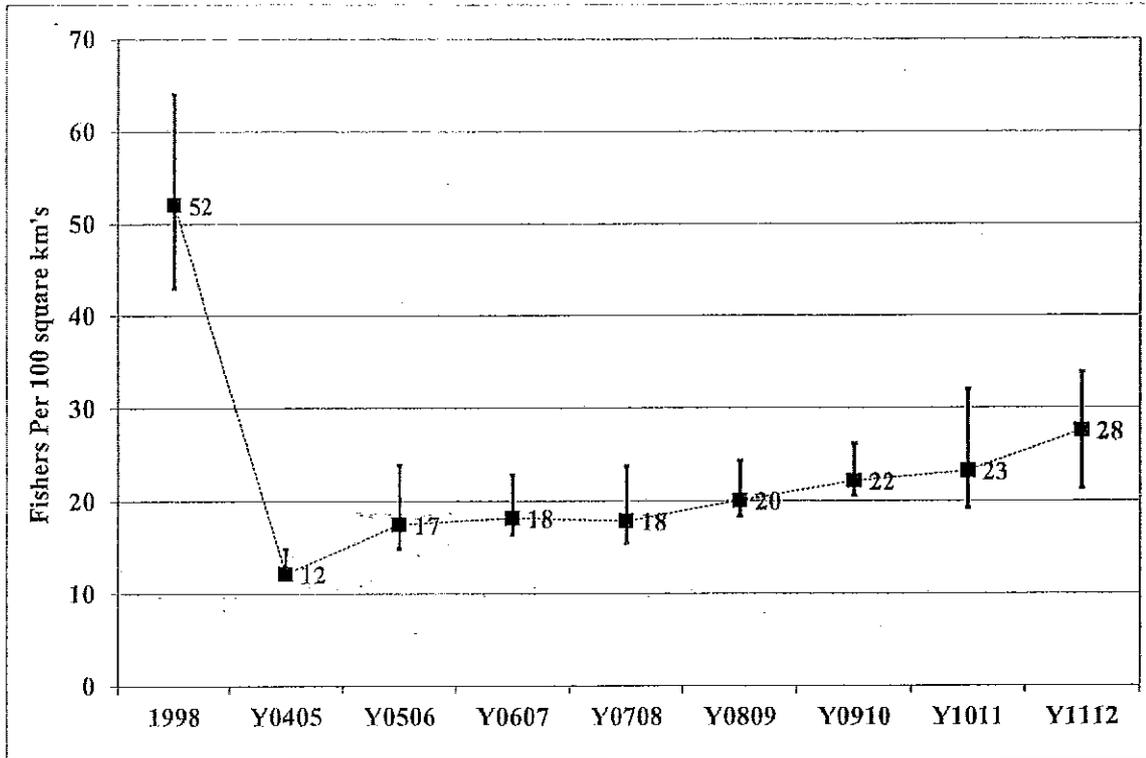


Figure 5. Estimated fisher density (Number of fishers per 100 km² +/- 95% CI) showing a population crash between 1998 and 2005 followed by a slow recovery up through 2012. No fisher research funding was available between 1998 and 2005. The fisher was listed as a Candidate for ESA protection in 2004. The Tribe has pieced together, through various sources of soft funding, the longest running fisher demographic study ever in an effort to be prepared if the species becomes listed and to further the knowledge base for the species so that managers can make informed decisions.



Figure 6. Tribal member interns (left to right, Ryan Matilton, Chelesa Hostler, Anthony Colegrove, and Robert Buckman) “mousing” a northern spotted owl as part of a High School Intern group in 2008. Ryan is currently a fulltime wildlife management major at Humboldt State University while Anthony is considering pursuing a wildlife degree as well while taking courses at College of the Redwoods. Chalesa is currently in the Navy and Robert is a wildlife technician.



Figure 7. Tribal members Dawn McCovey and Aaron Pole banding a juvenile spotted owl during the years when Dawn was an intern. Dawn is currently working on a Masters Degree in Natural Resources-Wildlife at Humboldt State University. Aaron is approaching his 20th year as leader of the spotted owl crew.



Figures 8 and 9. Left: Kerry instructs the 2011 summer interns in the art of running a fisher into a handling cone for immobilization during a rare summer trapping session targeting male fishers that dropped collars. Right: she is processing a bobcat captured in a fisher trap (an even rarer event) while interns and technicians assist. Kerry is an excellent

ATTACHMENT 3

HOOPA TRIBAL FISHERIES TRUST COMMISSION REPORT



Hoop Tribal Fisheries employees monitoring Hoopa creeks to assess fish population health

Hoopa Tribal Fisheries Trust Commission Report

The Endangered Species Act (ESA) is being unfairly applied to the Hoopa Valley Tribe (HVT) and has proved inadequate to protect tribal trust resources from non-Indian activities. In support of the HVT's tribal trust commission recommendations, we describe the problems below and make recommendations to improve ESA implementation in support of tribal interests.

Problem: Delays and inconsistent standards in ESA consultations result in economic hardship for tribal members and enterprises while inadequately protecting tribal resources from non-Indian activities

The Forestry Department has recently encountered delays (start-up of timber harvest delayed in June 2012) in getting their consultation completed on ESA listed Coho salmon which has impacted the Tribes abilities to harvest timber in a timely fashion. Klamath-Trinity River Coho salmon have been listed as threatened as part of a larger population (Southern Oregon Northern California Coastal) SONCC Evolutionally Significant Unit (ESU) since 1997. Presently, the Forestry Department is awaiting a programmatic ESA consultation based upon the HVT's implementation of its Forest Management Plan (FMP) over a 15 year period. However, Forestry has experienced chronic delays in getting the Biological Opinion (BO) for the programmatic ESA consultation completed. There are several possible outcomes once the BO is released to HVT including possible curtailment of the Tribes ability to harvest timber under standards contained in the HVT's FMP.

Since the listing of SONCC Coho, the Tribe has approached NMFS on several occasions seeking BO's regarding a variety of management actions. In some cases the proposed actions were aimed at improving Coho habitat, such as the barrier removal in Hostler Creek. In that case, the approval process was expeditious. In other instances such as the proposed roads betterment action under the 2006 Federal Salmon Disaster Relief grant, irrigation development for Mill, Hostler, and Supply creeks, the permitting process was burdened with unreasonable delays similar to the approval of the FMP today. In some cases such as the road improvement project, NOAA never issued a BO. We observe that common to all of these examples, these are actions that result in significant improvements for Coho salmon. For example, the improvement of the agricultural water diversions in Hoopa included advanced fish screening to protect juvenile Coho while the roads betterment project would have improved existing roads to reduce sedimentation to the Hoopa Valley Reservation (HVR) streams and Trinity River. We would also argue that the Tribe's FMP has significant protections for Coho. However, Tribal initiatives are consistently burdened while NOAA actions are expeditiously implemented (Hostler Creek), resulting in inconsistent implementation of the ESA. In the case of directed harvest, a BO was

issued by NOAA fisheries in 1998 analyzing HVT fish harvest impacts to Coho salmon within two months of the submitted Biological Assessment by the Tribe. The species had been listed one year prior, in 1997, and at the time, this direct take was seen as an acknowledgement of preexisting, baseline impacts. Today, any proposed action is endlessly scrutinized because it is viewed as yet another ADDITIONAL impact over the baseline. Recommendations offered herein address this baseline matter as well as other issues.

The FMP adopted by HVTC reflects the preference of the membership, preserving clean water, cultural sites and resources, and valley view sheds among other tribal values. The FMP has received smart wood certification and the Tribe is recognized for its environmental stewardship. The ESA listing of Coho has created additional regulatory compliance burdens for the Tribe although to date NMFS has not required any further protections outside of the tribal preference for a balanced approach embodied in the FMP.

The draft NOAA ESA recovery plan for Coho estimates that perhaps 0.6% of Coho habitat is sited on HVR relative to the entire geographic area inhabited by the listed population (central Oregon to Eel River, see Figure 2) and only 2% of habitat is within the Klamath Basin (see Figure 1). Hence, the significance of the HVR land base and potential Coho habitat relative to the entire population is minuscule, as reflected by NMFS through its abstention from designating critical habitat on the HVR. Therefore, the burden of conservation to the tribe's activities including timber and fish harvest relative to others burden should be minimal.

HVTC has been informed by NMFS that their standard for evaluating a proposed action against future recovery of Coho rests with an interpretation of "doing no further harm to the listed species". Consistent with this definition, Fisheries estimates that the presence and utilization of Coho, indicated by distribution and relative abundance of juveniles in Reservation streams, has not significantly changed relative to adult spawners over the past decade, or since the listing of the species (see Figure 5). This would suggest that it is the number of fish coming in, not the degraded habitat, that results in the numbers of out-migrants the following year (larger trends are at play in the species status). The presence of wild Coho juveniles (which included both Hoopa spawned fish and fish that came from elsewhere that use the tributaries as they passed through) represent the expected utilization in recent time and we presume the consistent application of the Tribe's FMP should meet the standard of "doing no further harm" across the limited spatial scale of the HVR.

From 1997-2010 NMFS has authorized on average the taking of 2,061 adult Coho from the ocean and river (non-tribal) per year whereas the average annual Hoopa harvest is only 247 fish (see Figure 3) and the estimated spawning population in tributaries of the Hoopa Valley Indian Reservation is 105 fish per year. Hoopa fisheries and forestry have been intensely scrutinized by NMFS even though Hoopa take is orders of magnitude below the amount of take authorized by NMFS in just the non-tribal ocean and river fisheries (see Figure 4), not to mention that ocean and in-river authorizations are only 1 of almost 200 formal take authorizations issued by NMFS Arcata Office since 1997 (which includes things like the BOR's Klamath Project Operations, the PacificCorps Habitat Conservation Plan, Fruit Growers Supply Company HCP, etc).

Therefore, the Department concludes that pursuing the conservation measures already embodied in the FMP which targets a sustainable production of 9.8 MBF, will do no further harm, results in far less of an impact than other authorized activities, and has not been correlated to a decline of the presence and distribution of Coho in our streams (relative to adult returns throughout the system) during FMP implementation in prior years.

Any impacts from tribal activities are minimal and are far outweighed by the myriad benefits Coho receive from Hoopa Valley Tribe efforts negotiating the 2000 Trinity River Record of Decision and ensuring its effective implementation through the TRRP, the FMP itself, and other habitat improvement projects the Fisheries Department is pursuing on the HVR. In the case of FMP approval, BIA (ESA section 7 'action agency') has informed the Tribe that failure of a timely BO from NMFS will default to approval by the agency. This will occur in recognition of the fact that the FMP is durable, based upon sound conservation principals, and is likely not to cause further harm to Coho. The bottom line is that the Hoopa Tribe is having a negligible impact on Coho salmon and should not be disproportionately impacted by ESA management.

Recommendation: The following recommendations attempt to improve and enhance protections in areas outside of the HVR (i.e. the remaining 99.4% of inland habitat accessed by Coho within the SONCC ESU) for all trust species and minimize undue burdens on tribal activities.

Recommendation 6: Amend Secretarial Order No. 3206 (June 5, 1997) into Regulations with Specific, Measurable Consultation Requirements that have the Force of Law.

This recommendation forces the USFWS and NMFS to comply with Secretarial Order 3206, which provides specific prescriptions for how the government should respect tribal sovereignty and defer to tribes while still complying with the ESA. This order is currently just guidance and is not enforceable by law.

Recommendation 7: Institute a Tribal Resources Analysis Requirement that Requires Federal Agencies to Analyze the Effects of Federal Actions on Tribal Resources and Mitigate for Adverse Impacts.

This recommendation forces federal agencies to analyze the effects of their actions on tribal resources so as to not violate their tribal trust obligations. This would, for example, compel the government to analyze the impacts of the Klamath flows as they relate to Chinook salmon, whereas now they just examine the impacts to Coho salmon which are listed under ESA. If that analysis found that the action negatively impacted trust resources, the agencies could not perform the action as proposed.

Recommendation 8: Modify or Amend Existing Regulations to Protect Treaty Resources in ESA Take Authorizations and Expedite ESA Take Authorizations on Tribal Lands.

This recommendation makes it clear that tribal resources should be protected first before NMFS or USFWS authorize the taking of listed species for non-tribal activities. It also recommends

that consultations taking place on tribal lands be expedited so economic activities are not delayed and that take authorized by NMFS or USFWS for other non-tribal activities should be disclosed. The lack of priority by NMFS in completing the ESA consultation on Coho related to the FMP and subsequent delays in harvest would be remedied by this action. Also this action would ensure that the tribe is not disproportionately burdened by unfair ESA application through explicit disclosure of previously authorized take. Recall, 99.4% of the species habitat occurs off of the HVR and NMFS has authorized more take for other activities than the total population of Coho in Hoopa, yet NMFS is intensely scrutinizing the FMP and other tribal projects not funded by NMFS.

FIGURES

Analysis of SONCC Coho impact potential Relating to ESA and land use activities on Hoopa Valley Reservation

Data provided in Figures 1 and 2 illustrate spawner requirements for viable long-term sustainability of ESA-listed coho salmon (Southern Oregon Northern California Coho ESU). Specifically, the numbers shown are equivalent to the recovery standard. Comparisons afforded by the figures illuminate the HVIR "share" of SONCC coho at play when National Marine Fisheries Service consults with the Hoopa Valley Tribe. Coho habitat within Hoopa Valley Reservation streams represents a small fraction (0.6%) of habitat within the ESU, and Tribal activities such as timber harvest therefore pose, at worst, minor risk to long-term sustainability of the species; considering watercourse protections offered through the Tribe's comprehensive Interdisciplinary Team review of annual sales tiered to the Forest Management Plan. The Tribe's harvest plans in fact provide for recovery of habitat and the fish supported by such habitat. It is the opinion of the Habitat and Water Division of Tribal Fisheries that NMFS' consultations regarding Coho habitat on the Reservation should be straight-forward, fairly uncomplicated in terms of technical content, and easily completed in timely fashion.

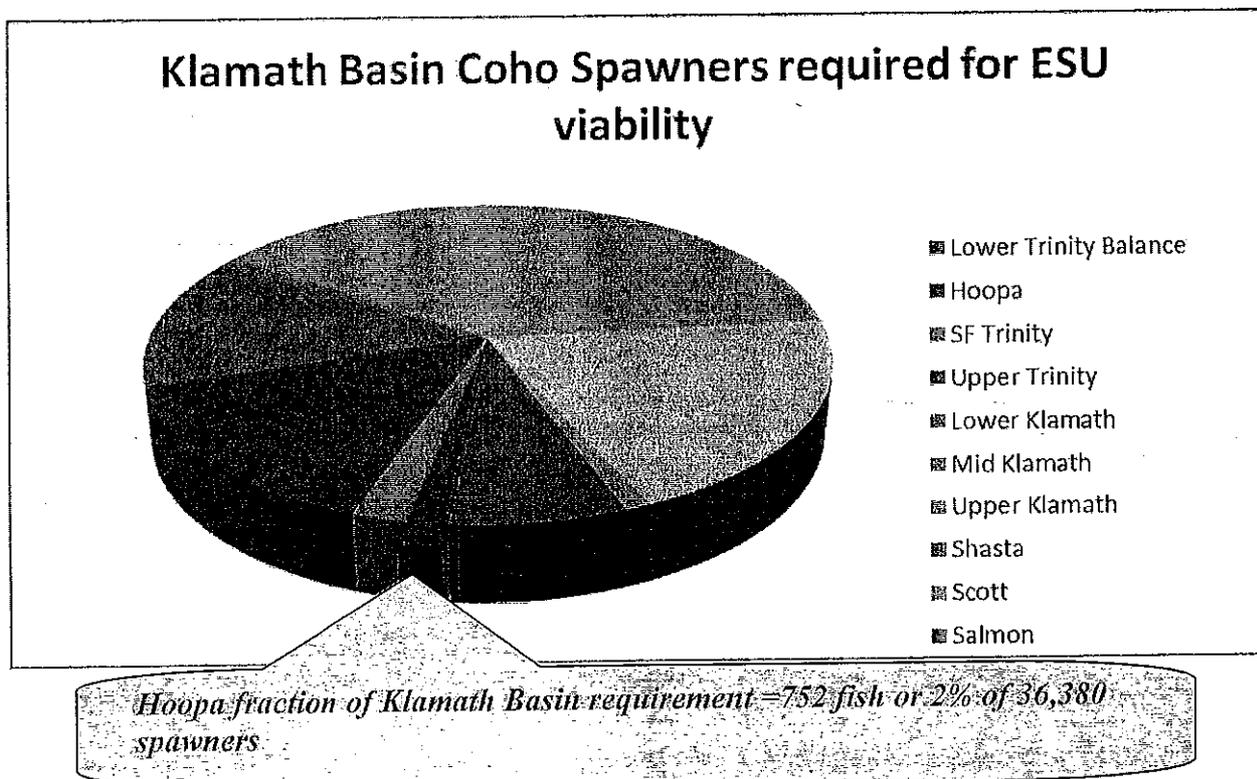


Figure 1 - Indexed fraction¹ of Hoopa Valley Reservation potential coho spawner contribution to Klamath Basin SONCC Coho ESU viability. Source of fish numbers: SONCC Coho Recovery Plan, Public Draft January 2012

http://swr.nmfs.noaa.gov/recovery/soncc_draft/SONCC_Coho_DRAFT_Recovery_Plan_January_2012.htm

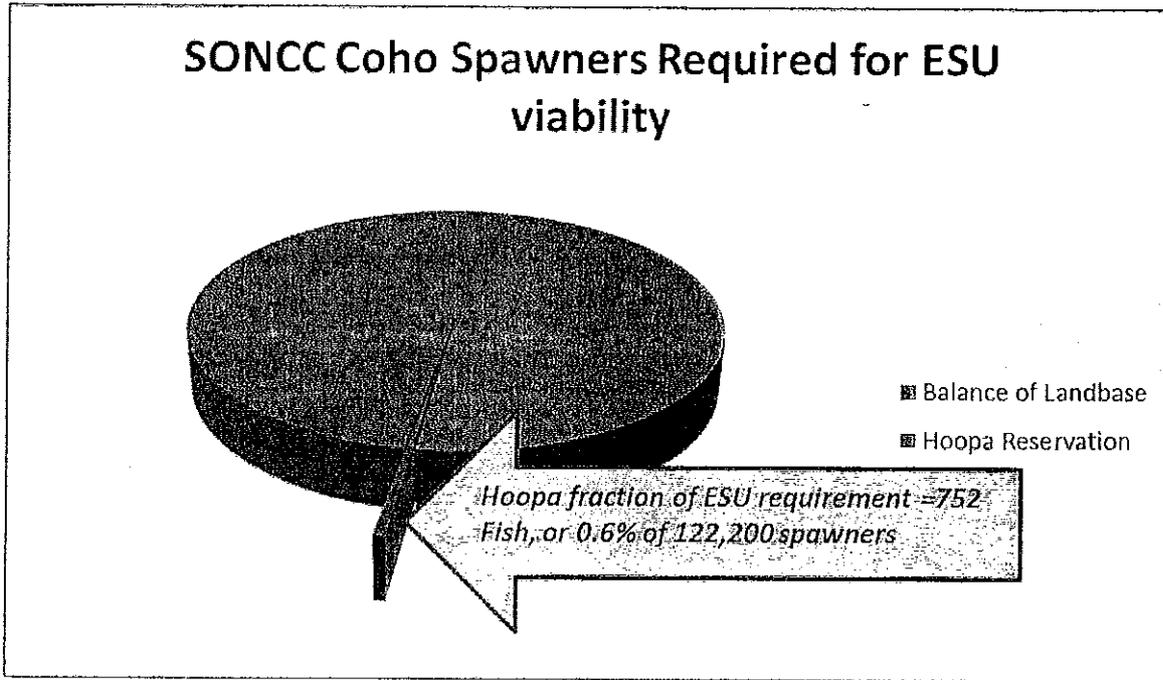


Figure 2 – Contribution of Hoopa Reservation fish to SONCC Coho viability. Numbers on graph represent coho spawners required to support long-term viability of the species (recovery standard), as defined in SONCC Coho Recovery Plan, Public Draft of January 2012.

http://swr.nmfs.noaa.gov/recovery/soncc_draft/SONCC_Coho_DRAFT_Recovery_Plan_January_2012.htm

¹ Fish numbers scaled within Lower Trinity sub-unit based on proportions of landbase within Hoopa Valley Reservation and in balance of sub-unit, according to acreage reported in NMFS publication – SONCC Coho Recovery Plan, Public Draft January 2012.

Summary of Trinity Origin Coho Impacts by Tribal and Non-Tribal Fisheries (1997-2010)

Coho are encountered in the Hoopa Valley Tribal fishery starting in late August through early December. By late September, when the fishery for fall Chinook matures, Coho comprise a significant portion of harvest in the Tribal Fishery. In years leading up to the ESA listing of SONCC Coho (1982-1996), the Hoopa fishery accessed from 25 to 1,100 adult Coho per year and averaged 264 adults. In the years following listing (1997-2010), the fishery harvested an average of 247 adults within a range from 42 to 606 adult Coho.

Annual estimates of Trinity River run-size of both Trinity River Hatchery and natural origin adults escaping to areas above Willow Creek Weir (typically sited within a few miles of the town of Willow Creek) have been compiled by the California Department of Fish and Game, Arcata office since 1978. Run size information may be further enhanced by adding estimated harvest by tribal and non-tribal fisheries occurring in the Klamath and Trinity rivers below the weir site. Seth Naman of NOAA Fisheries, Arcata, has tabulated annual harvest estimates for tribal and non-tribal fisheries in Klamath (Yurok Tribal Fishery) and Trinity Rivers, and annual Willow Creek Weir estimates for Coho run size for years 1997 through 2010. Mr. Naman has also attempted to estimate the ocean abundance for these run years and estimates the combined ocean population of TRH and natural Coho averaged 15,850.

The context of the HVT Fishery upon Trinity Coho may be understood by contrasting annual harvest against the NOAA Fisheries consultation standard of ≤ 0.13 exploitation rate for marine fisheries that affect SONCC Coho. For example, in 2010 the estimated HVT harvest of Coho totaled 302 adults while applying the 0.13 max allowable exploitation rate for incidental ocean fisheries would have resulted in 1,041 Trinity Coho mortalities. Figure 5 illustrates this comparison by charting HVT Coho harvest in relation to total allowable ocean mortality for ocean salmon fisheries (1997-2010). The estimated combined HVT and Yurok harvest of Trinity Coho is also plotted. Over the 1997-2010, it is estimated that the HVT Coho harvest is less than 12% of the non-jeopardy standard for marine fisheries allowed by NOAA fisheries and that the average allowable take of Trinity Coho (TRH and natural) by non-Tribal fisheries (both marine and river) averaged 2,078 compared with the combined inter-tribal harvest of 596 adult Trinity River Coho.

Estimated Trinity Origin Coho Impacts by Fishery 1997-2010 Run Years

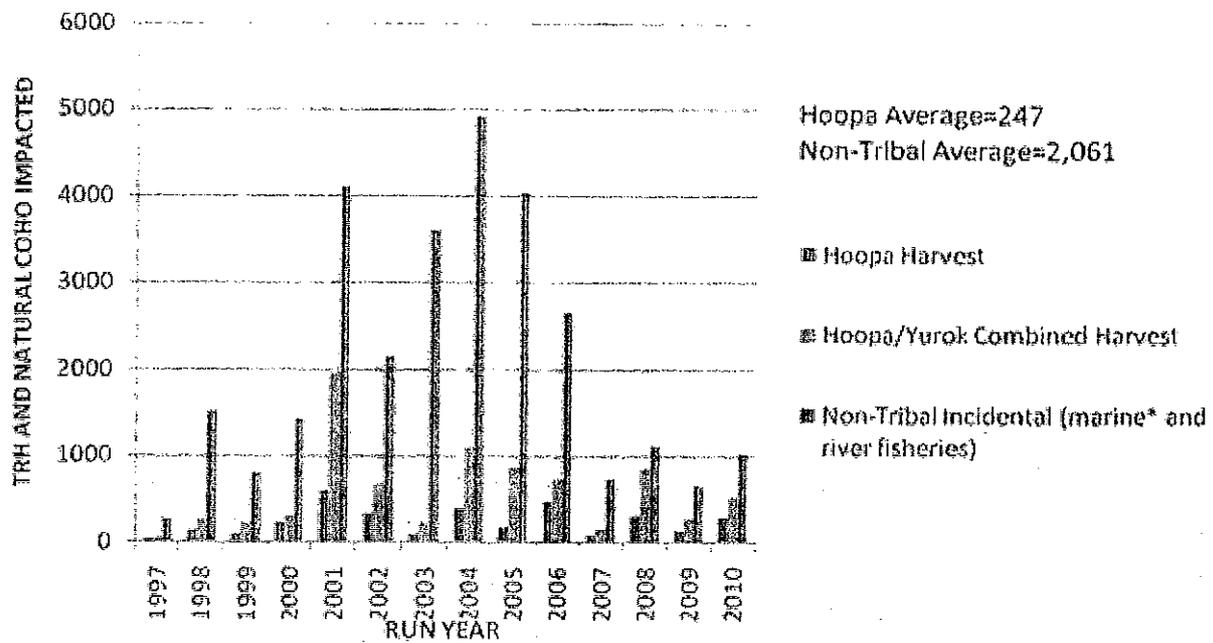


Figure 3. Estimated Trinity Origin Coho Impacts by Fishery 1997-2010

Example of One Authorized Take (of 200 since 1997) compared to Entire Hoopa Tributary Population

This figure clearly demonstrates that the authorized take allowed by NMFS in just one consultation (estimated average of 2,061 per year from 1997-2010) far exceeds the number of spawners present in Hoopa (estimated average of 105 per year from 1997-2010), which is the total number of fish the FMP could potential impact (but never would because of all the protections embedded in the FMP). Non-tribal incidental take in ocean and river fisheries makes up only one of almost 200 authorizations so there are many more additional fish authorized to be taken by other activities (e.g. Klamath Operations). Hoopa's FMP ensures that anadromous fish are adequately protected so any actual take numbers would be far less than the total population. Heavy scrutiny of the FMP and other tribal activities is therefore unjustified.

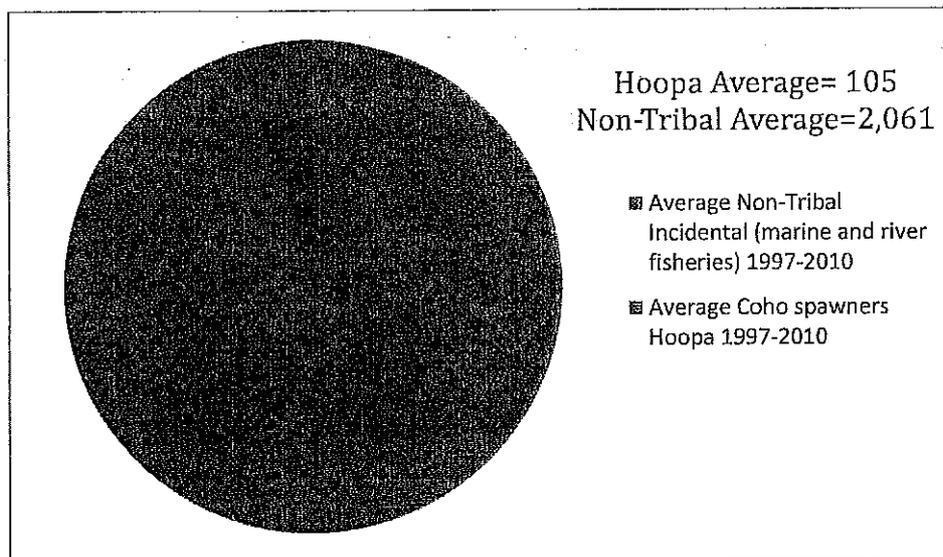


Figure 4. Non-tribal harvest vs. Hoopa tributary run size.

Coho Spawner Estimates and Hoopa Tributary Outmigrants

Coho populations have not significantly changed relative to adult spawners since the listing of the species. This would suggest that it is the number of fish coming in, not the degraded habitat, that result in the numbers of out-migrants the following year (larger trends are at play in the species status). The presence of wild Coho juveniles (which included both Hoopa spawned fish and fish that came from elsewhere that use the tributaries as they passed through) represent the expected utilization in recent time.

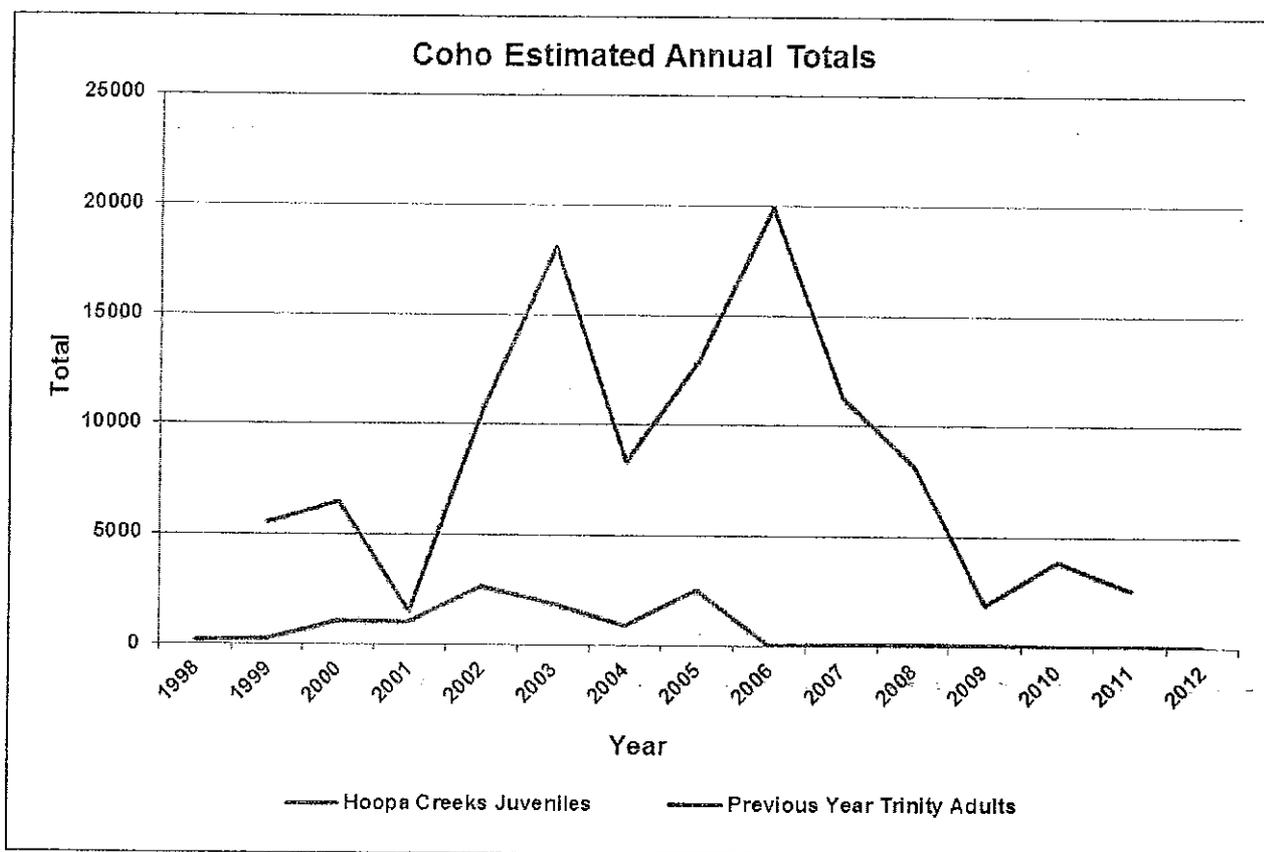


Figure 5. Estimates of Coho Juveniles and Previous Year Trinity Adults