The original documents are located in Box 1, folder "Cherokee - Eastern Band" of the Bradley H. Patterson Files at the Gerald R. Ford Presidential Library.

MEMORANDUM OF CALL

TO: Brad

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

Sally Willette

OF (Organization)

☒ PLEASE CALL → PHONE NO. CODE/EXT.

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

MESSAGE

785-4166

re: Eastern Cherokee case

303-447-8760

RECEIVED BY	DATE	TIME

STANDARD FORM 63
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-11.6

GPO : 1969—648—16—80341-1 332-369

63-108

Staff Attorneys
Sharon K. Eads
Don B. Miller

Sally N. Willett

Native American Rights Fund
1712 N Street, N.W. • Washington, D.C. 20036 • (202) 785-4166

Main Office
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

Director
Thomas W. Fredericks

December 20, 1976

Mr. Edmund Clark
Room 2339
U. S. Department of Justice
10th & Constitution Avenue N. W.
Washington, D. C. 20530

Mr. Tony Liotta
Room 2143
U. S. Department of Justice
10th & Constitution Avenue N. W.
Washington, D. C. 20530

Mr. Bradley Patterson
Room 134
Office of the President
Old Executive Office Building
Washington, D. C.

Dear Messrs. Clark, Liotta, and Patterson:

Enclosed are copies of the documents requested at the meeting Wednesday, December 15, 1976. Included are: reproductions of the Eastern Cherokee and State of North Carolina fishing permits and regulations; four (4) maps of the Eastern Cherokee Reservation and the text of North Carolina G.S. 71-8.

Please note that G.S. 71-8 vests responsibility for management of the trout fishery in the Eastern Cherokee Tribal Council. However, the term "management" is defined so as to include determinations regarding creel and size limits and bait requirements.

Should further information be required please feel free to contact me.

Sincerely yours,

Sally N. Willett
Staff Attorney

SNW/tmws

Enclosures

FISHING PERMIT
CHEROKEE INDIAN RESERVATION

No. C 91472

NAME

CITY B H J M S STATE

[redacted]

GOOD ONLY FOR DATE OF

STATE LICENSE NO. VOID

Subject to the General Regulations which apply.
This permit is not transferable.
DAILY PERMIT $2.00 DAILY LIMIT 10 TROUT OR BLACK BASS
FISHING HOURS 6 AM - 8 PM

PERMITTEE

Color Sex Age Ht. Wt. Eyes

Hair Issued By

A. B. MOSS & ASSOCIATES 330069-4

FISHING PERMIT
CHEROKEE INDIAN RESERVATION

№ 7423

Name

City, B H J M S, State

GOOD FOR FIVE CONSECUTIVE DAYS BEGINNING

[redacted] ENDING

STATE LICENSE NO. VOID

Subject to the General Regulations which apply. This permit is not transferable

5-Day Permit $7.50
Daily Limit 10 Trout or Black Bass — Fishing Hours 6 a.m.-8 p.m.

Permittee

Color Sex Age Ht. Wt. Eyes

Hair Issued By

1976 | $5.50 | 37-040055 PART 1
VALID | PRICE | LICENSE NO.

STATE OF NORTH CAROLINA
WILDLIFE RESOURCES COMMISSION
NONRESIDENT STATE THREE-DAY FISHING LICENSE

ISSUED TO Willie Hicks
STREET P.O. Box 442
CITY Icahasso Fla
DATE OF BIRTH Br 5.11 160
305-58-9-5677 W
VALID THREE CONSECUTIVE DAYS ONLY
BEGINNING DATE 12-17 1976 ENDING DATE 12-20 1976
AGENT W. A Craig 12/17
Willie Hicks

1976 | $3.00 | 36-048453 PART 1
VALID | PRICE | LICENSE NO.

STATE OF NORTH CAROLINA
WILDLIFE RESOURCES COMMISSION
RESIDENT STATE THREE-DAY FISHING LICENSE

ISSUED TO Adam Thompson
STREET Rt 1 Box 45
CITY Whittier, N.C.
DATE OF BIRTH 9-5-27 Br 6 184
1362119 I
VALID THREE CONSECUTIVE DAYS ONLY
BEGINNING DATE 12-18 1976 ENDING DATE 12-20 1976
AGENT W. A. Craig 12/17
Adam Thompson
SIGNATURE OF LICENSEE

Seasonal Permit - Fee $40.00
1976 CHEROKEE FISH & GAME MANAGEMENT ENTERPRISE
№ 1641
FISHING HOURS: 6 A.M. TO 8 P.M.
FISHING PERMIT FOR CHEROKEE INDIAN RESERVATION
Issued To .... N.C. Lic. No. ....
Address .... VOID
Age ...... Hair ...... Eyes ...... Ht. ...... Wt. ......
By .... Agent .... Date ....
Signature of Licensee
PERMIT NOT TRANSFERABLE — LIMIT 10 FISH PER DAY

1976	$5.50	37-040055 PART 1
VALID	PRICE	LICENSE NO.

Nonresident Trout License Also Required When Licensee Is Fishing In Designated Public Mountain Trout Waters.

NOTICE

This license entitles the person aforenamed and described on the face thereof to fish by means of hook and line in the Inland Waters of North Carolina in accordance with and subject to the laws of N. C., and regulations promulgated by the North Carolina Wildlife Resources Commission.

The licensee shall when exercising the privileges accorded by this license, keep this license ready at hand and shall exhibit it to any law enforcement officer upon request. Once issued, this license may not be transferred to another person, altered, lent, borrowed, bought, sold, nor may it be used by any person other than the person to whom issued.

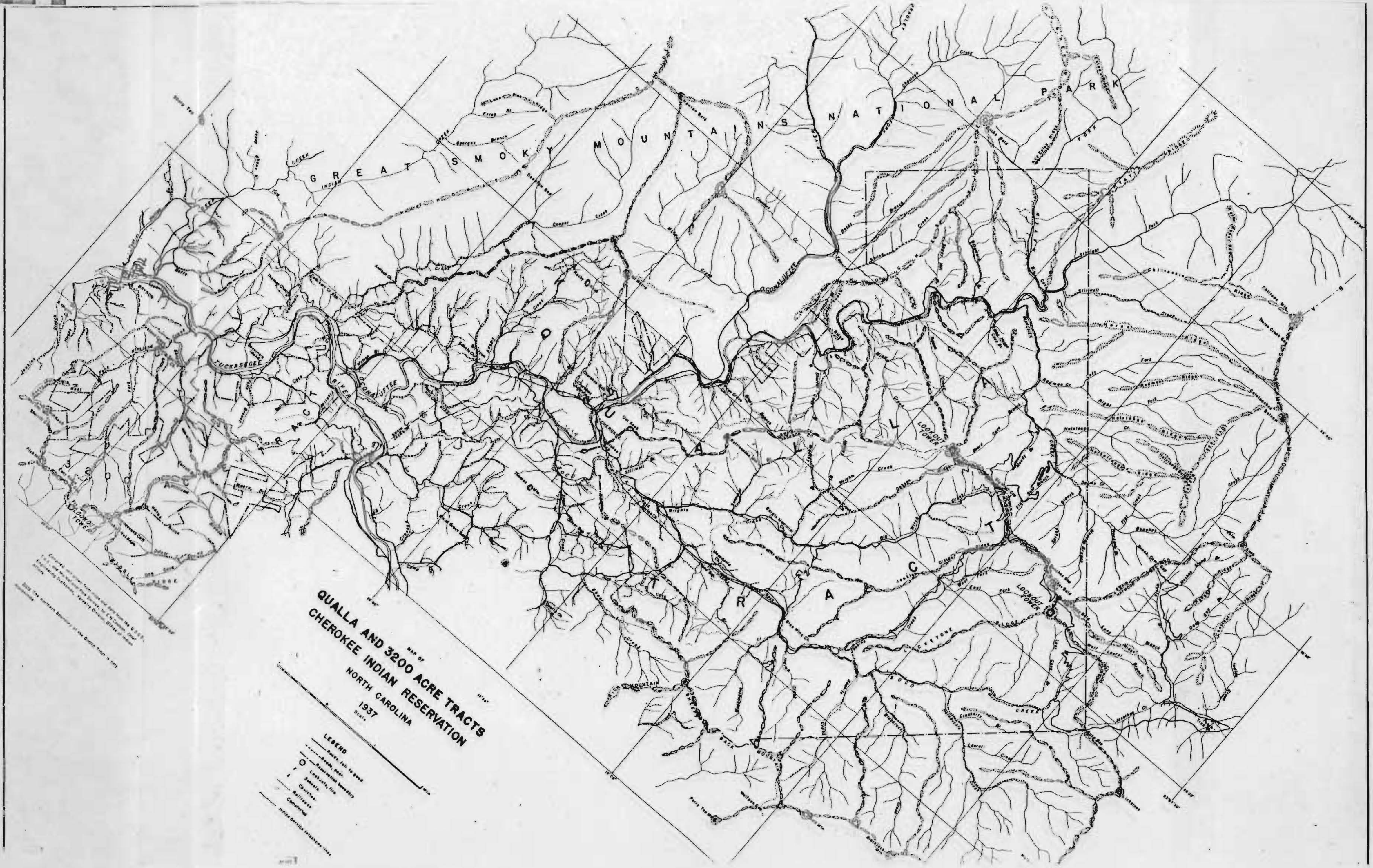
1976	$3.00	36-048453 PART 1
VALID	PRICE	LICENSE NO.

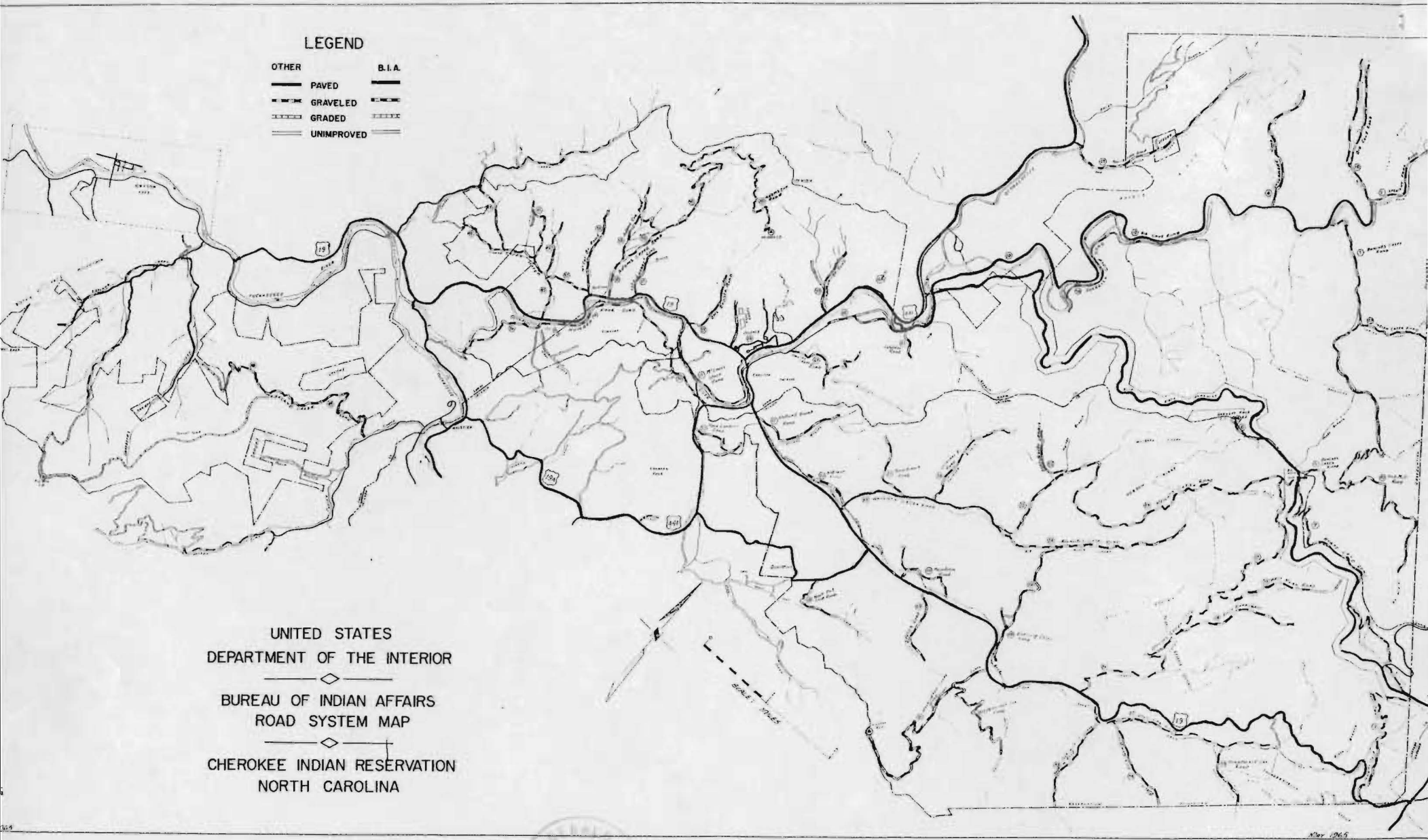
Resident Trout License Also Required When Licensee Is Fishing In Designated Public Mountain Trout Waters.

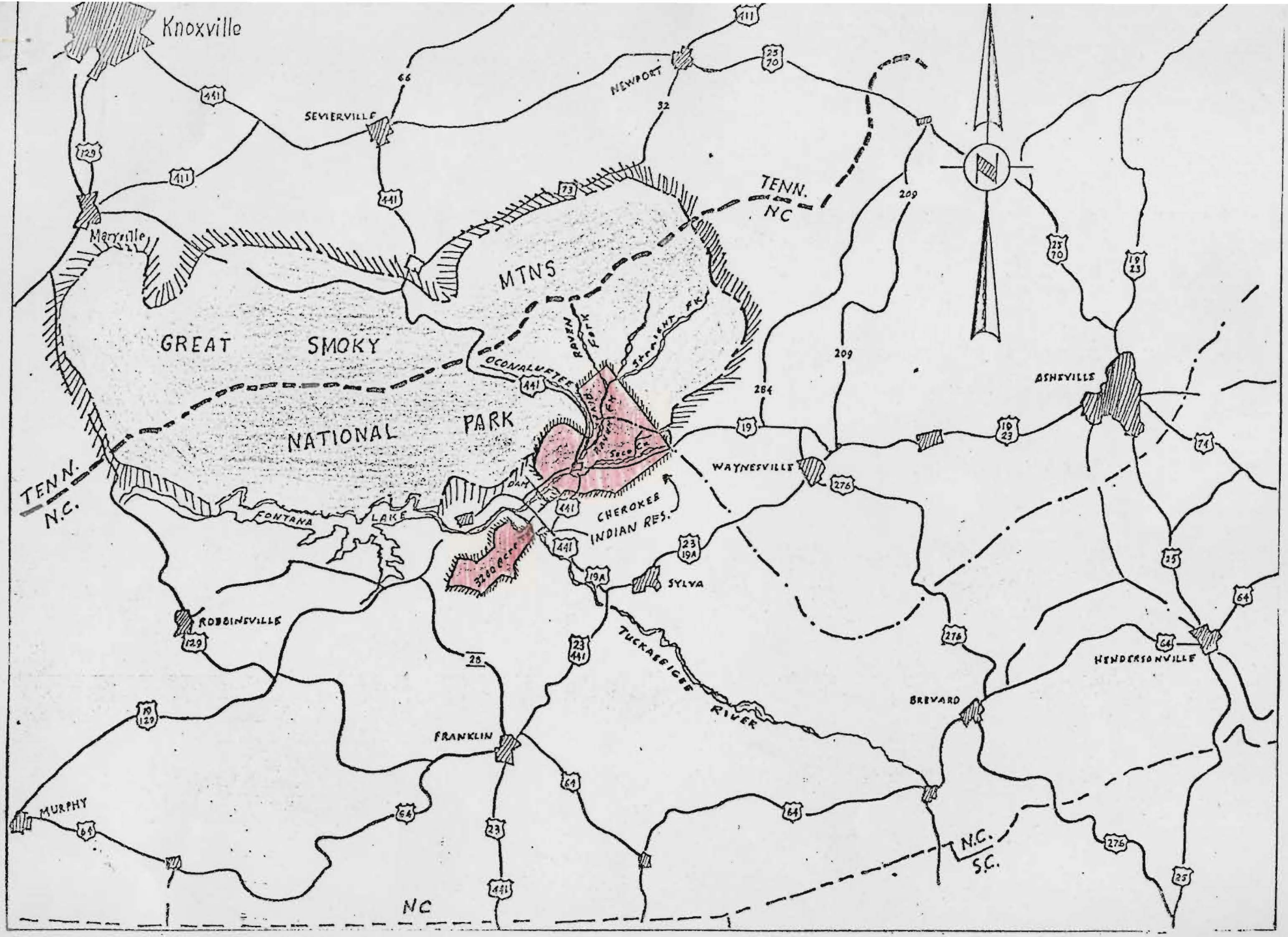
NOTICE

This license entitles the person aforenamed and described on the face thereof to fish by means of hook and line in the Inland Waters of North Carolina in accordance with and subject to the laws of N. C., and regulations promulgated by the North Carolina Wildlife Resources Commission.

The licensee shall when exercising the privileges accorded by this license, keep this license ready at hand and shall exhibit it to any law enforcement officer upon request. Once issued, this license may not be transferred to another person, altered, lent, borrowed, bought, sold, nor may it be used by any person other than the person to whom issued.


MAP OF
QUALLA AND 3200 ACRE TRACTS
CHEROKEE INDIAN RESERVATION
NORTH CAROLINA
1937
LEGEND
GREAT SMOKY MOUNTAINS NATIONAL PARK
QUALLA TRACT
TUCKASEGEE
OCONALUFTEE
RIVER
LOOKOUT TOWER
LOOKOUT TOWER
LOOKOUT TOWER





Oconaluftee is 23 miles long, winding south, east, then west, beginning 6,000 feet up in the Smokies to its mouth at Ela. The fall of the river averages 35' per mile during the first half of its plunge, and 23' per mile for the next 11 miles from Ravensford to the mouth.

National Park Reservations

Rules and Regulations

FOR CHEROKEE FISH MANAGEMENT AREA

1. The following waters are designated as "Enterprise Waters" and open to public fishing: Ravens Fork River from the junction of Straight Fork River, and Big Cove Creek downstream to the Park Boundary, (including the fish ponds in Big Cove), Soco Creek, Bunches Creek, Oconaluftee River from the Park Boundary downstream to the Reservation Boundary in Birdtown.

All other fishing waters on the Reservation are designated as "Indian Fishing Only" and only enrolled members of the Eastern Band of Cherokee Indians shall be permitted to fish on these streams.

2. All persons fishing on Enterprise waters shall be required to obtain and have in their possession a tribal fishing permit, cost: Daily—resident $2.00, non-resident $1.50; 5-Day—resident $7.50, non-resident $6.00; Season—$40.00. Children under 12 years old may fish free when accompanied by a licensed parent or guardian. In addition to above permit, all persons 16 years of age and over are required to possess a valid North Carolina State Fishing License, cost: Resident-Daily $1.25, County $2.50, Season $7.50; non-Resident — Daily $2.25, 5-Day $4.25, Season $11.50.

3. The daily creel limit on Enterprise waters shall be 10 Trout, Bass, or Catfish in aggregate for all adult fishermen and 5 Trout, Bass or Catfish in aggregate for all fishermen under 12. Minimum size limit for Bass is 10 inches; no size limit is in effect on Trout. Limit in possession is 2 days' catch (20 fish).

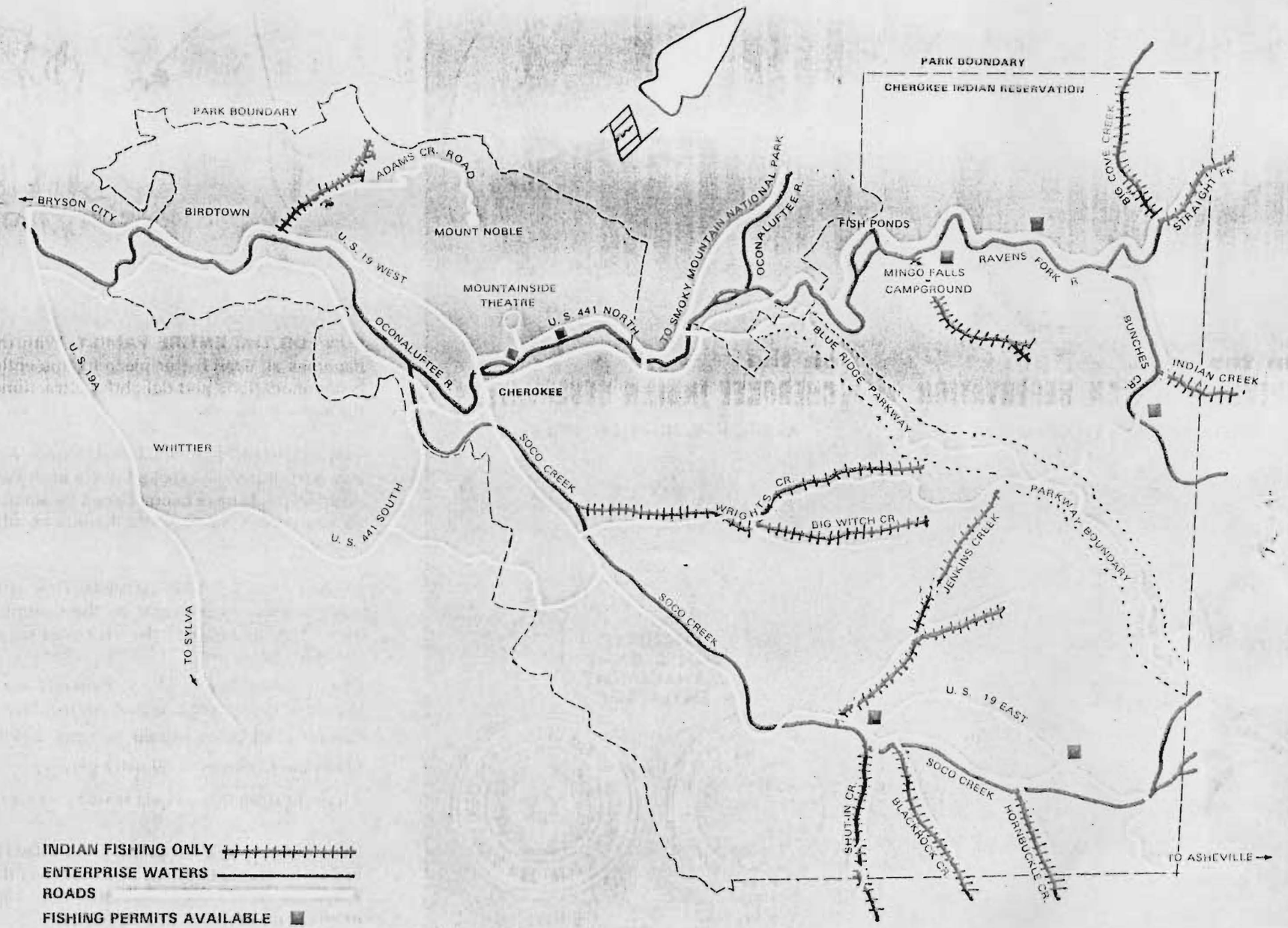
4. Enterprise Waters will be open to fishing during open season as hereinafter provided seven days a week between the hours of 6:00 a.m. and 8:00 p.m. with the following exceptions:

(A) The following streams shall be closed on Tuesday of each week for stocking: Soco Creek and Oconaluftee River.

(B) The following Enterprise Waters shall be closed on Wednesday of each week for stocking: Bunches Creek, and Ravens Fork River, and the fish ponds in Big Cove.

5. The open season for Enterprise streams shall be from the first Saturday in April until October 31, with the exception of the day such streams are closed for stocking as hereinbefore provided.

6. Fish may be taken from enterprise waters only with rod and line, and with bait or lure. No person may have more than one line in the water at one time. Snagging, chumming, grabbling and seining of game fish is prohibited.



INDIAN FISHING ONLY

ENTERPRISE WATERS

ROADS

FISHING PERMITS AVAILABLE

Closed Tuesdays for stocking: Soco Creek and Oconaluftee River.

Closed Wednesdays for stocking: Bunches Creek, and Ravens Fork River from the junction of Straight Fork, Big Cove Creek downstream to the Park Boundary and Fish Ponds in Big Cove.

1976
North Carolina
INLAND FISHING REGULATIONS

INCLUDES
GAME LANDS
FISHING REGULATIONS

Effective January 1, 1976

STATE OF NORTH CAROLINA
DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES
WILDLIFE RESOURCES COMMISSION

Official Inland Fishing Regulations and Information on Laws Governing Freshwater Fishing
Effective January 1 - December 31, 1976

INDEX

LICENSES

Licenses Required

The State law requires each person to have obtained a proper license before fishing by means of hook and line in inland fishing waters or joint fishing waters. In addition, each person must obtain a special trout license before fishing in designated public mountain trout waters. A special device fishing license in required for taking nongame fish by means of devices other than hook and line in inland waters where the use of such devices is authorized by these regulations.

Residence Requirements

Fishing licenses are generally divided into two classes, depending on residence: (1) resident licenses and (2) nonresident licenses. To be deemed a resident for license purposes, a person must have resided in the state for at least six months or must have been domiciled as a permanent resident of the state for at least 60 days immediately preceding application for license. A resident may use a county fishing license only in the county of his permanent residence, but outside of that county, a statewide fishing license is required.

Game Lands Use Permit

In addition to the regular fishing license and the special trout license, a person 16 years of age or over must have a Game Lands Use Permit when fishing in designated public mountain trout waters located on Game Lands. [See Regulation 4-76.]

Exceptions

1. Persons under 16 years of age, whether resident or nonresident, are exempt from fishing license requirements.
2. A resident of the State may fish with natural bait in the county of his residence without the ordinary hook and line fishing license, but this exception does not apply to the special trout license or the Game Lands Use Permit.
3. A nonresident serviceman stationed in this State, his wife and his children under 18, may purchase a resident state fishing license and are entitled to use a county resident license or the natural bait exemption while fishing upon the military facility or in the county where they reside.

4. An individual who owns land, or who leases and uses land primarily for purposes of cultivation, his spouse, and any dependent member of his family who is under 18 years of age and resides with him are exempt from license requirements while fishing on such land.

5. Any resident 65 years of age or over may obtain a lifetime hunting and fishing license for $10.00 upon application to the Commission showing satisfactory proof of age.* This exemption does not apply to the special fishing licenses or to the Game Lands Use Permit.

6. Any resident 70 years of age or over may obtain a lifetime hunting and fishing license without charge upon application to the Commission showing satisfactory proof of age.* This exemption does not apply to the special fishing licenses or the Game Lands Use Permit.

7. Any resident 50% disabled war veteran, as determined by the Veterans Administration, may obtain a lifetime hunting, fishing, and trapping license for $7.50 upon application to the Commission.*

8. Any resident who has been certified by the North Carolina Commission for the Blind as a person whose vision with glasses is insufficient for use in ordinary occupations for which sight is essential may obtain without charge a lifetime hook-and-line and special trout license upon application to the Commission accompanied with an authenticated copy of such certification.* This exception does not apply to special device fishing licenses or the Game Lands Use Permit.

* Applications for lifetime licenses must be made directly to the Wildlife Resources Commission, License Section, Albemarle Building, 325 N. Salisbury St., Raleigh, North Carolina 27611, on forms available at license agents and the Commission office

Cherokee Indian Lands

Fishing license requirements apply to all waters on the Cherokee Indian Reservation. A non-Indian fishing in such waters must purchase the appropriate fishing license. In addition, the name and correct number of the said fishing license must be entered on the fishing permit issued by the Tribal Council. All trout transported from the Reservation must be accompanied by such fishing permit which shall further show the number of trout taken and the date of such taking (S.L. 1965, C. 765, s. 3).

LICENSE AND PERMIT FEES

Resident State Fishing License	$ 7.50
Resident State Combination Hunting-Fishing License	10.00
Resident County Fishing License	3.50
Resident State Three-Day Fishing License	3.00
Resident Special Trout License *(Required in addition to one of the preceding resident licenses when fishing in designated public mountain trout waters.)*	3.25
Resident Sportsman's License *(May be used in lieu of the preceding resident fishing licenses, the special trout license, and the Game Lands Use Permit.)*	25.00
Resident Special Device Personal Use Fishing License	3.00
Resident Special Device Nonpersonal Use Fishing License	10.00
Nonresident State Fishing License	12.50
Nonresident State Three-Day Fishing License	5.50
Nonresident Special Trout License *(Required in addition to one of the preceding nonresident licenses when fishing in designated public mountain trout waters.)*	6.25
Nonresident Sportsman's License *(May be used in lieu of the preceding nonresident fishing licenses, the special trout license, and the Game Lands Use Permit.)*	50.00
Nonresident Special Device Personal Use Fishing License	10.00
Nonresident Special Device Nonpersonal Use Fishing License	25.00
Game Lands Use Permit *(Required in addition to the regular fishing license and the special trout license when fishing in designated public mountain trout waters on Game Lands designated herein, except that Game Lands use privileges are included in the sportsman's license.)*	8.00

TERM AND USE OF LICENSE

Except for the three-day and lifetime licenses, all fishing licenses are annual licenses. All annual fishing licenses expire with the calendar year except the Resident State Combination Hunting-Fishing License, the Resident Sportsman's License

and the Nonresident Sportsman's License, which are valid from August 1 to July 31. Each licensee must keep the license on his person or ready at hand while fishing and must exhibit the same for inspection to any wildlife enforcement officer or other officer requesting to see it. Except as otherwise provided in the case of special licenses for bow nets and dip nets, no license may be used by any person other than to whom it was issued.

DEFINITIONS

Private Pond: A body of water arising within and lying wholly upon the lands of a single owner or a single group of joint owners or tenants in common, and from which fish cannot escape, and into which fish of legal size cannot enter from public waters at any time. This does not include any impoundment located on land owned by a public body or governmental entity.

Inland Fishing Waters: All inland waters except private ponds and all waters connecting with or tributary to coastal sounds or the ocean, extending inland from the dividing line between coastal fishing waters and inland fishing waters agreed upon by the Department of Natural and Economic Resources and the Wildlife Resources Commission.

Joint Fishing Waters: All coastal fishing waters in which freshwater game fish are found and which are jointly administered by the Department of Natural and Economic Resources and the Wildlife Resources Commission.

FISHING REGULATIONS

The following regulations have been adopted and published by the Commission as authorized and directed by Subchapter IV of Chapter 113 and Article 18 of Chapter 143 of the General Statutes of North Carolina, and are in effect during 1976 or until repealed or amended by the Commission.

Where local law governs fishing, or is in conflict with these regulations, the local law shall prevail.

REGULATION 1-76

GENERAL

a. Identification: It shall be unlawful to fish without having on one's person a means of identification indicating the current residence of such person.

b. Hook-and-Line Fishing License Requirements: Hook-and-line fishing license requirements apply in all inland fishing waters. In addition, these license requirements apply to non-commercial fishing by hook and line in joint fishing waters.

c. Joint Fishing Waters: Joint fishing waters include Currituck Sound, Kitty Hawk Bay, Buzzards Bay, and their tributaries within coastal fishing waters; but they do not include the Atlantic Ocean, the other coastal sounds, and downstream portions of certain larger bodies of water designated in the next paragraph. All other coastal fishing waters tributary to the Atlantic Ocean or the coastal sounds, including tributary arms as well as rivers and streams, are joint fishing waters in their entirety except as specifically posted as Inland or Coastal fishing waters.

Hook-and-line fishing license requirements do not apply to the Cape Fear River below the old US 74 bridge at Wilmington; Trent River below US 70 bridge at New Bern; Neuse River below US 17 bridge at New Bern; Pamlico and Tar rivers below Norfolk and Southern Railroad bridge at Washington; New River below US 17 bridge at Jacksonville; White Oak River below the mouth of Grants Creek; Pungo River below the mouth of Smith Creek; and Pungo Creek below the bridge on SR 1713.

d. Reciprocal License Agreements:

(1) *Virginia* — In accordance with a reciprocal license agreement between the States of Virginia and North Carolina, all valid statewide fishing licenses obtained from the Virginia Commission of Game and Inland Fisheries or the North Carolina Wildlife Resources Commission, or the duly authorized agents of either, shall be reciprocally honored for fishing by means of rod and reel, hook and line, casting, or

trotline in the Dan River east of the Brantly Steam Plant Dam at Danville, and east of the mouth of Difficult Creek on the Staunton River arm of Kerr Reservoir to the Gaston Dam on the Roanoke River, including all tributary waters lying in either Virginia or North Carolina which are accessible by boat from the main bodies of the Kerr and Gaston reservoirs, or from the Island Creek subimpoundment. In addition, the Virginia Nonresident Interstate Three-day Kerr Reservoir Fishing License will be so honored, except on Gaston Reservoir.

(2) *Georgia* — In that portion of Chatuge Reservoir lying in and between the States of North Carolina and Georgia, east of the dam to Elf High Bridge on the Shooting Creek Arm and to Macedonia Bridge on US 76 south of Hiawassee, Georgia, and the lateral branches of the Reservoir between these points, all official fishing licenses and permits legally obtained from the North Carolina Wildlife Resources Commission or the Georgia Game and Fish Commission, or duly authorized agents of either, shall be honored and accepted as legal authorization to fish by means of rod and reel, hook-and-line, or casting: *Provided, however,* that all persons fishing in the waters of the Chatuge Reservoir beyond the bounds of the state from which they hold a valid fishing license, shall be authorized to fish with said license only from boats not anchored to the shore or to a pier or boat dock connecting to the shore.

(3) *Tennessee* — In that portion of Slick Rock Creek which coincides with the state line between North Carolina and Tennessee and in all of Calderwood Reservoir, when fishing from boat, all valid statewide fishing licenses obtained from the North Carolina Wildlife Resources Commission or the Tennessee Wildlife Resources Agency, or the duly authorized agents of either, shall be reciprocally honored for the purposes of fishing with hook and line or fishing in designated mountain trout waters, according to the tenor thereof.

e. Draining Impounded Public Waters: Before any impounded public waters may be lowered to a level which would concentrate fish populations in pockets or otherwise endanger their survival, a permit must have been obtained from the Executive Director of the Commission or his duly authorized agent.

f. Designation of Public Mountain Trout Waters: On Game Lands located in western North Carolina certain waters are classified and designated as public mountain trout waters, and some of these are further specifically designated as Native Trout Waters or Trophy Trout Waters. [See Regulation 4-76.] Other streams, portions of streams, or bodies of water which are not located on Game Lands will be designated by the Commission as general public mountain trout waters in supplemental regulations. Signs designating such waters shall be properly posted and the names of these waters listed and filed with the Clerk of the Superior Court in the counties wherein such waters are located. However, trout seasons, size limits, and creel and possession limits shall apply to all waters whether designated or not as public mountain trout waters. [See Regulation 2-76b.]

Revocation of Designation: In any case where designated public mountain trout waters are located on or adjacent to private land and the owner or person in charge thereof subsequently restricts or prohibits public access thereto, or where any body of water or portion thereof previously so designated becomes totally unsuitable as such by reason of changed conditions, the designation of such waters as public mountain trout waters shall be automatically revoked and a notice of such revocation shall be filed with the Clerk of the Superior Court in the county wherein such waters are located. The Executive Director shall thereupon cause the posters indicating such designation to be removed.

Closed Season: It shall be unlawful to take, or attempt to take, fish of any kind by any manner whatsoever, from designated public mountain trout waters except during the open season for trout fishing.

g. Trotlines and Set-Hooks: Trotlines and set-hooks may be set in the inland waters of North Carolina, provided no live bait is used; *except* that no trotlines or set-hooks may be set in designated public mountain trout waters. For the purposes of this regulation, a set-hook is defined as any hook and line which is attached at one end only to a stationary or floating object and which is not under immediate control and attendance of the person using such device. Trotlines must be set parallel to the

nearest shore in ponds, lakes, and reservoirs.

Recognizing the safety hazards to swimmers, boaters and water skiers which are created by floating metal cans and glass jugs, it shall be unlawful to use metal cans or glass jugs as floats. This shall not be construed to prohibit the use of plastic jugs, cork, styrofoam, or similar materials as floats.

h. Grabbling for Fish: It shall be unlawful to take or attempt to take nongame fishes with the hands (grabbling) unless the person so doing has a valid fishing license in his possession. It shall be unlawful to take or attempt to take game fishes by this method at any time, and it shall be unlawful to grabble at any time in designated public mountain trout waters.

i. Spawning Areas: The following waters are designated as spawning areas in which fishing is prohibited or restricted:

(1) No person shall fish by any method or at any time in, or within 50 feet of, the fish ladder at Quaker Neck Dam on Neuse River in Wayne County.

(2) No person shall fish by any method from February 15 to April 15, both inclusive, in Linville River from the NC 126 bridge downstream to the backwater of Lake James in Burke County.

(3) No person shall fish by netting in the Roanoke River between the US 301 bridge and the dam of Roanoke Rapids Lake, or while in or on said river within said area, have in possession any bow net, dip net or any landing net having a handle exceeding eight feet in length or a hoop or frame to which the net is attached exceeding 60 inches along its outside perimeter.

j. Transportation of Live Fish: It shall be unlawful for any person, firm, or corporation to transport live freshwater nongame fishes, or live game fishes in excess of the possession limit, or fish eggs without having in possession a permit obtained from the North Carolina Wildlife Resources Commission.

k. Fishes Taken Illegally or for Management Purposes: All edible fishes which are taken illegally or for fish management purposes shall be disposed of by agents of the Commission by gift to hospitals, charitable or State institutions, or

almshouses. Upon each such disposition a receipt shall be obtained from the donee and filed in the office of the Commission in Raleigh.

l. Possession of Certain Fishes: It shall be unlawful to transport, purchase, possess, or sell any species of Piranha, the "walking catfish" (*Clarias batrachus*), or the white amur or "grass carp" (*Ctenopharyngodon idellus*), or to stock any of them in the public waters of North Carolina.

m. Fish Hatcheries: Except on Lake Rim, it shall be unlawful to fish by any method or at any time in the waters of, or upon any property used in conjunction with, any state fish hatchery. On Lake Rim it shall be unlawful to use power-driven boats except those powered by electric motors. It shall be unlawful to swim or bathe in the waters of Lake Rim at any time, or to use, or have in possession, any minnows or other species of fish except Golden Shiners (shad roaches) for use as bait, or to attempt to take fish by any means except by hook and line.

REGULATION 2-76

REGARDING GAME FISHES

a. Manner of Taking Freshwater Game Fishes: Except as otherwise provided, it shall be unlawful for any person to take freshwater game fishes from any of the waters of North Carolina by any method other than with hook and line, rod and reel, or by casting. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed, except that licensed commercial pound net fishermen may retain one daily limit of 25 panfishes for each operation. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by Regulation 3-76 shall be immediately returned to the water unharmed, except that striped bass and weakfish so taken may be retained in accordance with the applicable creel and possession limits.

In designated public mountain trout waters, except power reservoirs and city water supply reservoirs so designated, it shall be unlawful for any fisherman to fish with more than one line.

b. Open Seasons; Creel and Size Limits (See Exceptions, page 13):

GAME FISHES (MAY NOT BE SOLD)	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON (See exceptn. 10)
Trout (Rainbow, Brown, Brook)	7 in aggregate (See exceptn. 3)	7 in. (See exceptn. 3)	Jan. 1-Feb. 29 and ½ hr. before Sunrise April 3-Dec. 31 (See exceptns. 2 and 3)
Muskellunge	2	26 in.	All Year
Chain Pickerel (Jack)	None (See exceptn. 1)	None	All Year
Walleye Pike	8 (See exceptn. 12)	15 in. (See exceptn. 11)	All Year
Black Bass (Spotted, Smallmouth, and Largemouth)	8 in aggregate (See exceptn. 6)	12 in. (See exceptns. 4 and 9)	All Year
White Bass	25 (See exceptn. 1)	None	All Year
Weakfish (Sea Trout)	25	None	All Year
Striped Bass	8 (See exceptns. 1 and 6)	12 in. (See exceptn. 1)	All Year
Panfishes*	None (See exceptn. 5)	None	All Year (See exceptn. 5)
NONGAME FISHES (MAY BE SOLD)	None (See exceptn. 7)	None	All Year (See exceptn. 8)

*Crappies, Yellow Perch, White Perch, Warmouth or Openmouth, Redbreast or Robin, Bluegill or Bream, Rock Bass (Redeye), Sauger, Kokanee Salmon, and all other species of Sunfish, Perch, or Pickerel not specifically listed above.

Exceptions (To Open Seasons; Creel and Size Limits):

1. **Virginia-North Carolina Reciprocal Agreement.** In the Staunton River east of the mouth of Difficult Creek, the Dan River east of the Brantly Steam Plant Dam at Danville, Kerr and Gaston reservoirs including all tributary waters lying in either Virginia or North Carolina which are accessible by boat from the main bodies of the reservoirs, and the Island Creek subimpoundment, the creel limit is 8 for Chain Pickerel (Jack), and 8 for White Bass. In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam the creel limit on Striped Bass is 4 and the minimum size limit is 20 inches.

2. There shall be no closed season on taking trout from Trophy waters [see Regulation 4-76c. (6)], the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing, or that part of Slick Rock Creek which coincides with the Tennessee state line.

3. Night fishing is prohibited in designated public mountain trout waters on Game Lands, and special creel and size limits apply to Native and Trophy Trout waters on Game Lands. [See Regulation 4-76.]

4. Bass taken from streams designated as public mountain trout waters may be retained without restriction as to size limit.

5. On Mattamuskeet Lake, special Federal regulations apply.

6. In all waters other than reservoirs and their tributaries, the daily creel limit for Black Bass and Striped Bass is 25 in aggregate, not to exceed 8 Black Bass.

7. On Indian Camp Lake in the Sandhills Game Land, the daily creel limit for catfish is 5.

8. See Regulation 3-76g. for open seasons for taking nongame fishes by special devices.

9. In and west of Stokes, Surry, Wilkes, Alexander, Caldwell, Burke and Rutherford counties, the minimum size for Black Bass is 10 inches, except in Lake James, Lake Rhodhiss, Lake Hickory, Belews Lake and Lookout Shoals Lake where the minimum size limit is 12 inches. The 12-inch size limit shall also apply to any waters which form the boundary described above.

10. In McKenzie Pond and other waters located on the Orton Wildlife Refuge in Brunswick County the open season for all species of fish is limited to March 1 through October 10 during the daylight hours.

11. Walleye Pike taken from Glenville Lake in Jackson County and Calderwood Reservoir may be retained without restriction as to size.

12. The creel limit for Walleye Pike taken from Calderwood Reservoir is 10.

c. Taking and Possession of Inland Game Fishes: It is unlawful to take in one day more than the daily creel limit of those species of inland game fish having a specified creel limit, or to possess more than three days' creel limit. It shall be unlawful to possess any fish smaller than the minimum size limit or to destroy unnecessarily any inland game fish taken from public fishing waters.

d. Purchase or Sale of Inland Game Fishes: Except as otherwise provided, it is unlawful to buy or sell, to offer to buy or sell, or to possess or transport for the purpose of sale, any species of fish included as an inland game fish in Regulation 2-76b.

White perch *(Roccus americana)*, yellow perch *(Perca flavescens)*, weakfish (sea trout), and striped bass *(Roccus saxatilis)* when taken from inland waters are classified as game fishes and shall not be sold.

The possession of species of fish included as inland game fish in Regulation 2-76b. — other than the species listed in the preceding paragraph — in any hotel, restaurant, cafe, market, or store, or by any produce dealer shall be prima facie evidence

of the possession thereof for the purpose of sale. The terms of this Section shall not apply to mountain trout which have been commercially reared in a licensed hatchery and which have been packaged in a printed wrapper bearing the name, address and license number of the producing hatchery, and indicating the species, number and weight of the enclosed mountain trout and stating that the sale thereof in North Carolina is authorized by the Wildlife Resources Commission. Any person, firm, or corporation selling commercially-reared mountain trout shall furnish the purchaser with a certificate or invoice of the sale, bearing the date of sale, the number of the license under which sold, the number of fish, and the number of pounds sold. The certificate or invoice must be shown by the holder on demand of any wildlife enforcement officer or any other law enforcement officer.

It shall be unlawful for restaurants and other eating places to serve and sell said trout without advertising them on the menu as commercially-reared trout. In addition to these regulations, North Carolina hatcheries producing commercially-reared trout shall operate under the conditions provided by G.S. 113-273. Trout taken from licensed commercial trout ponds and game fishes other than trout taken from private ponds may be sold by persons licensed to do so under the provisions of G.S. 113-273 and in accordance with regulations of the Commission adopted pursuant thereto. Copies of these regulations are available on request.

REGULATION 3-76

REGARDING NONGAME FISHES

a. Manner of Taking Nongame Fishes: It shall be unlawful for any person, persons, firm, or corporation to take or attempt to take freshwater nongame fishes in any of the inland waters of North Carolina except with hook and line, rod and reel, by

casting, or by trotline, except as otherwise provided herein. Nongame fishes may be taken by such hook and line methods at any time without restrictions as to size limits and creel limits, except in waters designated as public mountain trout waters, where the open season shall be the same as the trout fishing season.

b. Taking of Bait Fishes or Fish Bait: It shall be unlawful to take or attempt to take bait fishes in the inland waters of North Carolina using equipment other than:

(1) A net of dip net design not greater than six feet across

(2) A seine of not greater than twelve feet in length and with a bar mesh measure of not more than one-fourth inch.

(3) Minnow traps not exceeding twelve inches in diameter and twenty-four inches in length, with funnel openings not exceeding one inch in diameter. Such traps must be under the immediate control and attendance of the individual operating them.

Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water. It shall be unlawful to take, or attempt to take, bait fishes or fish bait from designated public mountain trout waters.

c. Taking of Nongame Fishes by Special Devices: It shall be unlawful for any person or persons to take or attempt to take fish from the inland waters of North Carolina by the use of any net, seine, bow and arrow, trap (including baskets, fish pots, eel pots, automobile tires, etc.), spear, harpoon or gig, or any device similarly used, without first obtaining a special fishing license as provided in Section d. of this regulation.

All species of herring, shad, and mullet (migratory saltwater fishes) shall be classified as freshwater nongame fishes when found in inland waters, and fishing for the same shall be under the jurisdiction of the Wildlife Resources Commission.

Game fishes taken as an incident of the licensed taking of nongame fishes through the use of special devices must be immediately returned unharmed to the water, except that striped bass and weakfish so taken may be retained in accordance with the applicable creel and possession limits.

d. Special Device Fishing Licenses: The special device fishing licenses set forth below are valid throughout the calendar year of issuance and authorize the taking of nongame fishes from the inland fishing waters with the devices and during the open seasons listed in Section g. of this regulation beginning on page 19 and continuing through page 30. The use of bow and arrow as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless specifically prohibited, bow and arrow may be used in joint fishing waters. It is unlawful to take fish with crossbow and arrow in any inland fishing waters.

(1) *Special Device Personal Use Fishing License:* Licenses to use special devices in taking nongame fishes from inland fishing waters for personal use only and not for the purpose of sale may be obtained by individual residents of North Carolina for $3.00 from authorized license agents of the Commission. Nonresidents may obtain such licenses for $10.00. License agents may retain twenty-five cents from the proceeds of each such license sold. Not more than 100 yards of gill net, drift net or seine and no more than five baskets or traps of any sort, other than automobile tires, may be used under the Special Device Personal Use Fishing License. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and bearing his name and address. Such card or tag shall be affixed to the top line of each gill net at one end.

(2) *Special Device Nonpersonal Use Fishing License:* Licenses to use special devices in taking nongame fishes from inland fishing waters for personal and nonpersonal use, including sale, may be obtained by individual residents of North Carolina directly from the Wildlife Resources Commission, License Section, Albemarle Building, 325 N. Salisbury Street, Raleigh, North Carolina 27611, upon remittance of $10.00. Nonresidents may obtain such licenses from the same address upon remittance of $25.00. Each unit of gear used under the

Special Device Nonpersonal Use Fishing License shall be affixed with a tag supplied by the Wildlife Resources Commission on remittance of $1.00 per tag and showing the license number, tag number, year, date, type of gear, and name and address of the license holder. Such tag shall be valid for use only during the year indicated. Every holder of the Special Device Nonpersonal Use License is required to make monthly catch data reports on forms supplied by the Commission with the license. A separate catch data report is required for each calendar month during the open season for the type of device licensed. The reports must be mailed on or before the 15th day of each succeeding month to the Division of Inland Fisheries of the Wildlife Resources Commission, Albemarle Building, 325 N. Salisbury Street, Raleigh, North Carolina 27611. Failure to supply these reports will result in revocation of the license.

e. Possession of Licenses: Except as indicated below, every individual participating in the taking of fish through the use of any special device must have the special device fishing license issued to him, personally, in his possession or readily available for inspection. A bow net or a dip net may be used by an individual other than the licensee with the licensee's permission, but such user must have the license in his possession or readily available for inspection: *Provided further*, that when using drag seines authorized for taking nongame fishes at beaches on inland fishing waters where there are migratory saltwater fishes, (herring, shad or mullet) only the principal owner and operator is required to be licensed.

f. Special Provisions as to Nets: No fixed or gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline, except in the Neuse, Trent, Northeast Cape Fear, Cape Fear, and Black rivers and their tributaries. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end a floating plastic jug or

other floating object not less than 6 inches in its smallest dimensions. Floats marking the ends shall be colored white. Glass floats and metal cans may not be used.

It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

It is unlawful to use a trawl or clam dredge in any inland fishing waters.

g. Permitted Special Devices and Open Seasons: Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:

ALAMANCE

July 1-August 31 with seines in Alamance Creek below NC 49 bridge and Haw River.

January 1-December 31 with gigs in all public waters.

ALEXANDER

July 1-August 31 with seines in all running public waters except designated public mountain trout waters.

January 1-December 31 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir.

ALLEGHANY

January 1-December 31 with gigs in New River, except designated public mountain trout waters.

ANSON

January 1-December 31 with traps and gigs in all public waters.

January 1-June 5 and December 1-31 with dip, bow, and gill nets in Pee Dee River below Blewett Falls Dam.

July 1-August 31 with seines in all running public waters.

ASHE

January 1-December 31 with gigs in New River (both forks), except designated public mountain trout waters.

BEAUFORT

January 1-December 31 with traps in the Pungo River, and in the Tar and Pamlico rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters.

January 1-June 5 and December 1-31 with dip and bow nets in all inland public waters; with drift gill nets in Tar River upstream from the Norfolk and Southern Railroad bridge at Washington to the Pitt County line; and with gill nets in all other inland public waters, except Blounts Creek, Chocowinity Bay, Durham Creek and Mixon Creek.

BERTIE

January 1-December 31 with traps in the Cashie River and Broad Creek (tributary of Roanoke).

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters.

BLADEN

January 1-March 1 and December 1-31 with gill nets in all inland public waters, except Jones, Salters, White, Singletary, Little Singletary, and Black lakes.

January 1-May 1 and December 1-31 with gill nets in Black River.

January 1-June 5 and December 1-31 with dip and bow nets in Black River.

BRUNSWICK

January 1-March 1 and December 1-31 with gill nets in all inland public waters.

January 1-May 1 and December 1-31 with dip, bow, and gill nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek.

BUNCOMBE

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

BURKE

July 1-August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters.

January 1-December 31 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James.

CABARRUS

July 1-August 31 with seines in all running public waters.

January 1-December 31 with traps and gigs in all public waters.

CALDWELL

January 1-December 31 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters.

CAMDEN

January 1-December 31 with traps in all inland public waters.

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters.

CARTERET

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters except South River and the tributaries of the White Oak River.

CASWELL

January 1-December 31 with gigs in all public waters.

CATAWBA

July 1-August 31 with seines in all running public waters, except Catawba River below Lookout Dam.

January 1-December 31 with traps, spear guns, and gigs in all public waters.

CHATHAM

January 1-April 15 and December 1-31 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law).

July 1-August 31 with seines in the Cape Fear River, Deep River, Haw River, and Rocky River.

January 1-December 31 with traps in Deep River; and with gigs in all public waters.

CHEROKEE

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

CHOWAN

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters, except Bennetts Mill Pond and Dillard Pond.

CLAY

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

CLEVELAND

July 1-August 31 with seines in all running public waters.

January 1-December 31 with gigs, traps and spear guns in all public waters.

COLUMBUS

January 1-March 1 and December 1-31 with gill nets in all inland public waters, except Lake Waccamaw and Bolton Canals.

January 1-June 5 and December 1-31 with dip, bow, and gill nets in Livingston Creek.

CRAVEN

January 1-December 31 with traps in the main run of the Trent and Neuse rivers
January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters, except Pitch Kettle, Grindle, Slocum and Hancock creeks and their tributaries; and with seines in the Neuse River.

CUMBERLAND

January 1-March 1 and December 1-31 with gill nets in all inland public waters

CURRITUCK

January 1-December 31 with traps in Tulls Creek and Northwest River
January 1-June 5 and December 1-31 with dip, bow, and gill nets in Northwest River and Tulls Creek.

DARE

January 1-December 31 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake
January 1-June 5 and December 1-31 with dip, bow, and gill nets in Martin Point Creek.

DAVIDSON

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters

DAVIE

July 1-August 31 with seines in Dutchman's Creek downstream from US 601 bridge, Hunting Creek, South Yadkin River, and Yadkin River
January 1-December 31 with traps and gigs in all public waters.

DUPLIN

January 1-March 1 and December 1-31 with gill nets in Baysden Pond and in the Northeast Cape Fear River, including old channels from a point one mile above SR 1700 (Serecta) Bridge downstream to the county line.
January 1-June 5 and December 1-31 with dip, bow, and gill nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge

DURHAM

July 1-August 31 with seines in Eno River and Neuse River
January 1-December 31 with gigs in all public waters

EDGECOMBE

January 1-March 15 and December 1-31 with gill nets in Noble Mill Pond and Wiggins Lake.
January 1-June 5 and December 1-31 with dip and bow nets in all public waters, and with drift gill nets in the Tar River below the bridge at Old Sparta to the Pitt County line

FORSYTH

July 1-August 31 with seines in Muddy Creek and Yadkin River.
January 1-December 31 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir.

FRANKLIN

January 1-March 1 and December 1-31 with gill nets in Clifton Pond, Parrish Pond and Jackson Pond
July 1-August 31 with seines in Tar River.
January 1-December 31 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's ponds, and in the Franklin city ponds

GASTON

July 1-August 31 with seines in all running public waters.
January 1-December 31 with gigs, traps and spear guns in all public waters

GATES

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters, except Williams (Merchants Mill) Pond

GRAHAM

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters

GRANVILLE

January 1-December 31 with gigs in all public waters, except Kerr Reservoir
July 1-August 31 with seines in the Neuse River and the Tar River below US 158 bridge

GREENE

January 1-June 5 and December 1-31 with dip, bow, and gill nets and reels in Contentnea Creek

GUILFORD

July 1-August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge
January 1-December 31 with gigs in all public waters

HALIFAX

January 1-March 1 and December 1-31 with gill nets in White's Mill Pond
January 1-June 5 and December 1-31 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run

HARNETT

January 1-March 1 and December 1-31 with gill nets in all inland public waters.
January 1-May 31 with gigs in Cape Fear River and tributaries.
January 1-June 5 and December 1-31 with dip and bow nets in Cape Fear River

HAYWOOD

January 1-December 31 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters

HENDERSON

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters

HERTFORD

January 1-December 31 with traps in Wiccacon Creek.
January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters, except mill ponds

HOKE

January 1-March 1 and December 1-31 with gill nets in all inland public waters

HYDE

January 1-December 31 with traps in all inland waters
January 1-June 5 and December 1-31 with dip and bow nets in all canals outside of the National Wildlife Refuge that open into Lake Mattamuskeet, Pungo River and tributaries upstream from US 264 bridge, Scranton Creek, and Long Shoal River, and with gill nets in Pungo River and tributaries upstream from US 264 bridge, Scranton Creek, and Long Shoal River and tributaries.

IREDELL

July 1-August 31 with seines in South Yadkin River and Third Creek
January 1-December 31 with traps and gigs in all public waters, and with spear guns in Lookout Shoals Reservoir and Lake Norman

JACKSON

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters

JOHNSTON

January 1-March 1 and December 1-31 with gill nets in Cattails Lake, Holts Lake, Holts Pond, and Wendell Lake
January 1-June 5 and December 1-31 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River, and Swift Creek

JONES

January 1-December 31 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge
January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters, except the White Oak River and its tributaries
January 1-June 5 and December 1-31 with dip and bow nets in the main run of the White Oak River.
March 1-April 30 with gill nets in the main run of the White Oak River

LEE

January 1-April 15 and December 1-31 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond
July 1-August 31 with seines in Cape Fear River and Deep River.
January 1-December 31 with traps in Deep River; and with gigs in all public waters.

LENOIR

January 1-December 31 with traps in Neuse River below NC 55 (Oak) Bridge.
January 1-June 5 and December 1-31 with dip, bow, and gill nets in Neuse River and Contentnea Creek upstream from US 11 bridge at Grifton; and with seines in Neuse River.

LINCOLN

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps, gigs and spear guns in all public waters.

McDOWELL

July 1-August 31 with seines in all running public waters, except designated public mountain trout waters.
January 1-December 31 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James.

MACON

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters

MADISON

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters

MARTIN

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters

MECKLENBURG

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps, gigs and spear guns in all public waters.

MONTGOMERY

July 1-August 31 with seines in all running public waters
January 1-December 31 with traps and gigs in all public waters

MOORE

January 1-April 15 and December 1-31 with gill nets in Deep River and all tributaries
July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land

NASH

January 1-March 1 and December 1-31 with gill nets in Boddies Pond
January 1-December 31 with gigs in all public waters, except Tar River
January 1-June 5 and December 1-31 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam.

NEW HANOVER

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters.

NORTHAMPTON

January 1-December 31 with gigs in all public waters, except Gaston and Roanoke Rapids reservoirs and the Roanoke River above the US 301 bridge
January 1-June 5 and December 1-31 with dip and bow nets in Occoneechee Creek, Old River Landing Cut, Roanoke River below US 301 bridge, and with dip, bow and gill nets in Vaughans Creek below Watsons Mill

ONSLOW

January 1-December 31 with traps in White Oak River below US 17 bridge
January 1-March 31 and August 1-December 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek
January 1-March 1 and December 1-31 with gill nets in Catherine Lake and Bay slew Pond.
January 1-June 5 and December 1-31 with dip, bow, and gill nets in the main run of New River; and with dip and bow nets in the main run of the White Oak River
March 1-April 30 with gill nets in the main run of the White Oak River; and with dip, bow and gill nets in Grant's Creek.

ORANGE

July 1-August 31 with seines in Eno River and Haw River.
January 1-December 31 with gigs in all public waters.

PAMLICO

January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters

PASQUOTANK

January 1-December 31 with traps in all inland waters
January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters.

PENDER

January 1-June 5 and December 1-31 with dip, bow, and gill nets in the Northeast Cape Fear River and Long Creek; with dip and bow nets in Black River; and with seines in the main run of Northeast Cape Fear River.
January 1-May 1 and December 1-31 with gill nets in Black River; and with dip, bow, and gill nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp

PERQUIMANS

January 1-December 31 with traps in all inland waters.
January 1-June 5 and December 1-31 with dip, bow, and gill nets in all inland public waters.

PERSON

July 1-August 31 with seines in Hyco Creek and Mahio Creek.
January 1-December 31 with gigs in all public waters.

PITT

January 1-December 31 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville.
January 1-June 5 and December 1-31 with dip, bow, and drift gill nets and with seines in Tar River; and with dip, bow and gill nets in all other inland public waters, except Grindle Creek, and Contentnea Creek between NC 11 bridge at Grifton and the Neuse River.

POLK

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

RANDOLPH

January 1-March 1 and December 1-31 with gill nets in Deep River and Uwharrie River.

July 1-August 31 with seines in Deep River and Uwharrie River.
January 1-December 31 with gigs in all public waters.

RICHMOND

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land.
January 1-June 5 and December 1-31 with dip, bow, and gill nets in Pee Dee River below Blewett Falls Dam.

ROBESON

January 1-March 1 and December 1-31 with gill nets in all inland public waters.

ROCKINGHAM

July 1-August 31 with seines in Dan River and Haw River.
January 1-December 31 with traps in Dan River; and with gigs in all public waters.

ROWAN

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters.

RUTHERFORD

July 1-August 31 with seines in all running public waters, except designated public mountain trout waters.
January 1-December 31 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters.

SAMPSON

January 1-March 1 and December 1-31 with gill nets in all inland public waters.
January 1-May 1 and December 1-31 with gill nets in Big Coharie Creek, Black River, and Six Runs Creek.
May 2-June 5 with gill nets of no less than 5½-inch stretch measure in Big Coharie Creek, Black River, and Six Runs Creek.
January 1-June 5 and December 1-31 with dip and bow nets in Big Coharie Creek, Black River, and Six Runs Creek.

SCOTLAND

January 1-March 1 and December 1-31 with gill nets in all inland public waters, except lakes located on the Sandhills Game Land.

STANLY

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters.

STOKES

July 1-August 31 with seines in Dan River east of Danbury, Little Yadkin River downstream from Dalton Bridge, and Town Fork Creek east of Walnut Cove.
January 1-December 31 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir.

SURRY

July 1-August 31 with seines in Ararat River below US 52 bridge and Yadkin River.
January 1-December 31 with traps and gigs in all public waters, except designated public mountain trout waters.

SWAIN

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

TRANSYLVANIA

January 1-December 31 with gigs in all public waters, except designated public mountain trout waters.

TYRRELL

January 1-December 31 with traps in Scuppernong River, Alligator Creek, and Lake Phelps and its drainage canals.
January 1-June 5 and December 1-31 with dip and bow nets in Bee Tree Canal and Alligator Creek; and with gill nets in Alligator Creek.

UNION

July 1-August 31 with seines in all running public waters.
January 1-December 31 with traps and gigs in all public waters.

VANCE

January 1-March 1 and December 1-31 with gill nets in Southerlands Pond and Ellis Pond.
July 1-August 31 with seines in the Tar River.
January 1-December 31 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon ponds, City Lake, and Kerr Reservoir.

WAKE

January 1-December 31 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson lakes.
January 1-June 5 and December 1-31 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam.

WARREN

July 1-August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill ponds.

January 1-December 31 with gigs in all public waters, except Duck and Hammes Mill ponds, Kerr Reservoir, and Gaston Reservoir.

WASHINGTON

January 1-December 31 with traps in Lake Phelps and its drainage canals.
January 1-June 5 and December 1-31 with dip and bow nets in tributary canals to Lake Phelps, Mackeys Creek, Upper Scuppernong River and Conaby Creek, and with gill nets in Conaby Creek.

WAYNE

January 1-March 1 and December 1-31 with gill nets in Sleepy Creek Lake.
January 1-June 5 and December 1-31 with dip and bow nets in Little River, Mill Creek, and Neuse River, except from Quaker Neck Dam downstream to SR 1005 (Tolars) bridge.

WILKES

January 1-December 31 with traps in Yadkin River below W. Kerr Scott Reservoir, and with gigs and spear guns in all public waters, except designated public mountain trout waters.

WILSON

January 1-December 31 with gigs in Contentnea Creek, including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge.
January 1-June 5 and December 1-31 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam.

YADKIN

July 1-August 31 with seines in Yadkin River.
January 1-December 31 with traps and gigs in all public waters.

REGULATION 4-76

GAME LANDS SUBJECT TO SPECIAL REGULATIONS

Effective Until Amended or Rescinded

a. Designation of Game Lands: Lands owned, leased, or cooperatively managed by the Wildlife Resources Commission for public hunting and fishing are designated as Game Lands.

A book of hunting and fishing maps showing roads to and on Game Lands established as of date of publication may be obtained from license agents, or by writing GAME LAND MAPS, Wildlife Resources Commission, Albemarle Building, 325 N. Salisbury St., Raleigh, N. C. 27611.

b. General Regulations Regarding Use:

(1) Trespass: Entry on Game Lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner.

(2) Possession of Hunting Devices: It shall he unlawful to possess a firearm or bow and arrow on a Game Land at any time except during the open hunting season for game birds or game animals thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven inches in length and shooting only short, long or long rifle ammunition may be carried as side arms on Game Lands at any time other than by hunters during the special bow and arrow deer hunting season.

(3) Fishing on Game Lands: Except as otherwise indicated, fishing on Game Lands which are open to fishing shall be in accordance with the statewide fishing regulations. All Game Lands are open to public fishing except Crappie Lake and Scotland Lake on the Sandhills Game Land, Grogan Creek in

Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No net, trap, gig, bow and arrow or other special fishing device of a type mentioned in regulation 3-76(c) may be used in any of the impounded waters located on the Sandhills Game Land. The Game Lands Use Permit is not required to fish on the Central and Eastern Game Lands where there are no designated public mountain trout waters.

(4) Littering: No person shall deposit any litter, trash, garbage or other refuse at any place on any Game Land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any Game Land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

c. Designated Public Mountain Trout Waters:

(1) Location: All waters located on the Game Lands listed below, except Cherokee Lake, Grogan Creek, Nolichucky River and Lake Powhatan, are designated public mountain trout waters.

Caney Fork Game Restoration Area in Jackson County

Green River Game Land in the counties of Henderson and Polk

Nantahala National Forest Game Lands in the counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania

Pisgah National Forest Game Lands in the counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey

South Mountains Game Land in Burke County

Thurmond Chatham Game Land in Wilkes County

Toxaway Game Land in Transylvania County

(2) Permit Required: Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a Game Land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a Game Lands Use Permit in addition to the regular fishing license and special trout license. The Game Lands Use Permit is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee state line, or when fishing from boat on Calderwood Reservoir.

(3) Fishing Hours: It is unlawful to fish in designated public mountain trout waters on any Game Land from one-half hour after sunset to one-half hour before sunrise.

(4) General Trout Waters:

All designated public mountain trout waters located on Game Lands and which are not further designated as Native Trout Waters or Trophy Trout Waters are classified as General Trout Waters and are subject to the same restrictions as to seasons and creel and size limits as are applicable to trout generally. [See Regulation 2-76b. on page 12]

(5) Native Trout Waters:

(a) Designation: So much of the following public mountain trout waters, including all tributaries unless otherwise indicated, as are located on Game Lands, are further designated as **Native Trout Waters:**

Big Snowbird Creek above Mouse Knob Falls in Graham County

Bradley Creek in the counties of Henderson and Transylvania

Caney Fork Creek in Jackson County

Davidson River, above its confluence with Avery Creek, except Grogan Creek, and Looking Glass Creek, in Transylvania County

Fires Creek in Clay County

Harper Creek in the counties of Avery and Caldwell

Mackey Creek in McDowell County

Middle Prong, West Fork of Pigeon River in Haywood County

Nantahala River, except Kimsey Creek, above high concrete bridge at Standing Indian Campground in Macon County

North Fork French Broad River upstream from Gloucester Bridge (SR 1326) in Transylvania County

North Harper Creek in Avery County

Park Creek in Macon County
Slick Rock Creek on the Tennessee line and in Graham County
South Harper Creek in Avery County
South Mills River from headwaters to and including Cantrell Creek in Transylvania County
South Toe River in Yancey County
Steels Creek in Burke County
Thompson River in Transylvania County
Upper Creek in Burke County
Wilson Creek above the Bill Crump Property in Avery County

(b) Open Seasons: See Regulation 2-76b. on page 12.

(c) Creel Limit: The daily creel limit in Native Trout Waters is 4.

(d) Size Limit: When taken from Native Trout Waters, the minimum size limit is 10 inches for rainbow and brown trout and 7 inches for brook trout.

(e) Manner of Taking: It is unlawful to fish in Native Trout Waters with any bait or lure other than an artificial lure having only one single hook.

(6) Trophy Trout Waters:

(a) Designation: So much of the following public mountain trout waters, including all tributaries unless otherwise indicated, as are located on Game Lands, are further designated as **Trophy Trout Waters:**

Lost Cove Creek, except Gragg Prong and Rockhouse Creek, in Avery County
Nantahala River, except Park Creek from the high concrete bridge at Standing Indian Campground downstream to the Bear Sanctuary line in Macon County
South Mills River below (but not including) Cantrell Creek, and excepting Bradley Creek, in the counties of Henderson and Transylvania
Wilson Creek, from the Bill Crump Property downstream to the Jim Todd Property in Avery County

(b) Open Season: Year-round.

(c) Creel Limit: The daily creel limit in Trophy Trout Waters is one trout.

(d) Size Limit: When taken from Trophy Trout Waters, the minimum size for rainbow and brown trout is 16 inches and the minimum size for brook trout is 12 inches.

(e) Manner of Taking: It is unlawful to fish in Trophy Trout Waters with any bait or lure other than artificial flies having only one single hook.

NOTE

Fishing on Federal Lands: Information and regulations pertaining to Blue Ridge Parkway Lands may be obtained from: The Superintendent, Blue Ridge Parkway, National Park Service, P. O. Box 7606, Asheville, N. C. 28807 – telephone: 704-254-0961, Ext. 717.

Information and regulations pertaining to Cherokee Indian Reservation waters may be obtained from: Fish and Game Management Enterprise, P. O. Box 302, Cherokee, N. C. 28719 – telephone: 704-497-9131.

Information and regulations pertaining to the Great Smoky Mountains National Park waters may be obtained from: The Superintendent, c/o National Park Service, Gatlinburg, Tenn. 37738 – telephone: 615-436-5615.

Information pertaining to the U. S. Forest Service permit requirement for entry of the Linville Gorge and Shining Rock Wilderness Areas may be obtained from: The Supervisor, National Forests in North Carolina, Asheville, N. C. 28802 – telephone: 704-258-2850, Ext. 601.

REGULATION 5-76

SPECIAL REGULATIONS APPLYING TO FISHING AND BOATING ACCESS AREAS

Effective Until Amended or Rescinded

a. Definition: For the purpose of these regulations the term "fishing and boating access area" or "access area" is defined to mean any area of land which adjoins or abuts on the public waters of the State; which is owned, leased or controlled by the Commission; which is developed and maintained for the purpose of providing ingress to and egress from public waters; and which is posted with a sign or signs designating the same as an access area.

b. Regulations Posted: The Executive Director of the Commission shall cause to be prepared signs or notices containing these regulations or the essential substance thereof and shall cause at least one of such signs to be posted at some conspicuous place on each fishing access area in the State.

c. Signs and Markers: The Executive Director shall cause to be installed signs or markings designating parking and non-parking zones and such other signs or marking to regulate the use of each access area as in his opinion will best serve the purposes for which the area is intended.

d. Use of Areas Regulated: No person shall leave any vehicle, boat trailer or other obstruction on any access area in such a location, position or condition that it will prevent, impede or inconvenience the use by other persons of any ramp or other facility constructed for the purpose of launching or landing boats. No person shall leave parked any vehicle, boat, boat trailer or other object at any place on any access area other than on such place or zone as is designated as an authorized parking zone and posted or marked as such.

No person shall possess a loaded firearm on any boat access area. No person shall operate a vehicle on any boat access area in a manner so as to endanger life or property.

No person, when using any access area, shall deposit any debris or refuse anywhere on the grounds of the area. No person, when using any access area, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this regulation for the purpose of regulating the use of the area. At any time when all designated parking zones on any access area are fully occupied, any person may enter and use such facilities, provided such person makes other arrangements for parking and violates none of the provisions of this regulation or the signs or markings made or posted pursuant hereto.

No person shall operate a motorboat in the public waters of North Carolina within fifty (50) yards of a Commission-owned or managed boat launching ramp at greater than "no wake" speed. For the purpose of this regulation, "no wake" speed shall mean idling speed or a slow speed creating no appreciable wake.

Except where facilities are provided, it is unlawful to use any access area for purposes other than the launching of boats and parking vehicles and boat trailers. All other uses — including swimming, skiing, camping, building fires, operating concessions or other activities not directly involved with launching of boats — are expressly prohibited.

e. Designated Fishing and Boating Access Areas:

ALLIGATOR LAKE
Tyrell County (Gum Neck Landing)—20 miles south of Columbia via NC 94, SR 1321, 1320 and 1316.

APALACHIA LAKE
Cherokee County—Immediately downstream from Hiwassee Dam on the south side

BADIN LAKE
Montgomery County (Beaver Dam)—14.5 miles south of Denton on SR 2551.
Montgomery County (Lakemont)—Turn off NC 109 on SR 1156 at Blaine, then on SR 1158 (Lakemont).

BEAR CREEK LAKE
Jackson County—5.1 miles east of Tuckaseigee off NC 281 on SR 1137.

BIG FLATTY CREEK
Pasquotank County—From NC 168 at Weeksville, take SR 1103 to 1104 to 1108, approximately 6 miles from Weeksville.

BIG SWAMP CREEK
Robeson County (Lennon's Bridge)—On SR 1002, 0.3 mile from Columbus County line.

BLACK RIVER
Bladen County (Hunt's Bluff)—Eight miles east of Kelly, south of NC 53 on SR 1547.
Sampson County (Ivanhoe)—Just south of Ivanhoe on SR 1100.

BLEWETT FALLS LAKE
Anson County (Pee Dee)—Two miles north of Pee Dee River Bridge (US 74) via SR 1748 and 1747.
Richmond County (Grassy Island)—Five miles west of Ellerbe on SR 1148.

BOGUE SOUND
Carteret County (Morehead City)—On the east side of US 70 near the western town limits of Morehead City.

BRICE'S CREEK
Craven County—In Croatan National Forest on Forest Service continuation of SR 1143.

CAPE FEAR RIVER
Bladen County (Elwell's Ferry)—Two miles northeast of Carvers at Elwell's Ferry via SR 1730.
Bladen County (Tarheel)—One mile northeast of NC 87 on SR 1316.
Chatham County (Avent's Ferry Bridge)—Two miles southwest of Corinth via NC 42 at Avent's Ferry Bridge.
Cumberland County (Fayetteville)—Four miles south of Fayetteville on NC 87.
Harnett County (Lillington)—Three miles east of Lillington via SR 2016.

CAPE FEAR RIVER BASIN
New Hanover County (Federal Point)—Located at the terminus of US 421 near Fort Fisher.

CEDAR CLIFF LAKE
Jackson County—From NC 107 at Tuckaseigee, take SR 1135 east to area.

CHATUGE LAKE
Clay County (Jackrabbit)—From US 64, four miles east of Hayesville, take SR 1154 two and one-half miles south to SR 1155, then 1.2 miles to area
Clay County (Ledford's Chapel)—Five miles east of Hayesville via US 64 and SR 1151.

CHEOAH LAKE
Graham County—Adjacent to NC 28.

CHOWAN RIVER
Chowan County (Cannon's Ferry)—13 miles north of Edenton on NC 32, turn left on SR 1231. Go one mile to area.
Chowan County (Edenhouse Bridge)—Adjacent to US 17.
Hertford County (Tunis)—From NC 45 at Cofield, take SR 1403 to 1400 to 1402, then 1402, 0.8 mile to area.

CONABY CREEK
Washington County (Conaby Creek)—On NC 45 approximately three miles north of US 64.

CONTENTNEA CREEK
Greene County (Snow Hill)—At Snow Hill, one block east of US 258

CURRITUCK SOUND
Currituck County (Poplar Branch)—At end of NC 3, 0.7 mile off US 158 north of Grandy.

DAN RIVER
Caswell County (Milton)—Just northwest of Milton on NC 62.
Rockingham County (Leaksville)—NC 14, one mile from Leaksville

DAWSON CREEK
Pamlico County (Dawson Creek)—Off SR 1302, four miles southwest of Oriental.

DEEP RIVER
Moore County (Carbonton)—Just south of Carbonton on SR 1621.
Randolph County (Sandy Creek)—One-half mile west of Ramseur on US 64.

EAST LAKE
Dare County (Mashoes)—Three miles north of Manns Harbor on SR 1113.

FONTANA LAKE
Swain County (Tsali)—From NC 28 at Graham-Swain County line, take Forest Service Road north to area.

FRYING PAN LAKE
Tyrrell County (Frying Pan)—Near the end of SR 1307, twelve and one-half miles southeast of Columbia.

GASTON LAKE
Halifax County (Summit)—East of Littleton, one mile north of US 158 on SR 1458.
Northampton County (Henrico)—From NC 46 on SR 1214, 6.5 miles west to area.
Warren County (Stonehouse Creek)—Three and one-half miles north of Littleton on SR 1357.

HANCOCK CREEK
Craven County—From Havelock go east on NC 101, 3.5 miles, then 2.2 miles on SR 1717.

HICKORY LAKE
Alexander County (Steel Bridge)—Two miles north of Hickory on NC 127, to SR 1208, to SR 1141 to area.
Caldwell County (Gunpowder)—On US 321 N., 0.4 mile north of Catawba River Bridge, turn east on Grace Chapel Road (SR 1758), 3 miles to SR 1757, turn north 1.3 miles to area.
Caldwell County (Lovelady)—On US 321 N., 0.4 mile north of Catawba River Bridge, turn east on Grace Chapel Road (SR 1758), 3 miles to SR 1757, turn south 0.9 mile to area.
Catawba County (Oxford)—Southwest of Oxford Dam via NC 16 and SR 1453 to Lake Hickory Camp Ground Road 1.2 miles to area.

HIGH ROCK LAKE
Davidson County (Southmont)—Off SR 1100, one mile south of Southmont.
Rowan County (Dutch Second Creek)—Eight miles southeast of Salisbury at Bringle's Ferry Road Bridge (SR 1002).

HIWASSEE LAKE
Cherokee County (Grape Creek)—Five miles northwest of Murphy on Joe Brown Highway (SR 1326).
Cherokee County (Hanging Dog)—From Murphy, take SR 1326 approximately three miles northwest to area.

INTRACOASTAL WATERWAY
Brunswick County (Ocean Isle)—On NC 904 five miles south of Shallotte.
Carteret County (Cedar Point)—One mile north of Swansboro on NC 24.

Currituck County (Coinjock)—One mile east of Coinjock on SR 1142.
New Hanover County (Snow's Cut)—Near Carolina Beach, one mile east of US 421 at south end of bridge.

JAMES LAKE
Burke County (Canal Bridge)—Two miles northwest of Bridgewater on NC 126.
Burke County (Linville River)—One mile east of Linville River Bridge on NC 126.
McDowell County (Hidden Cove)—On NC 126 approximately one-half mile south of the Catawba Spillway.
McDowell County (North Fork)—One-half mile north of US 221-70 intersection west of Marion via SR 1501 and 1552.

KERR LAKE
Vance County (Bullocksville)—Three and one-half miles west of Drewry on SR 1366.
Vance County (Henderson Point)—Two miles north of Townsville on NC 39 to SR 1356, 2.5 miles to SR 1359, 1.4 miles to area.
Vance County (Hibernia)—One and two-tenths miles north of Townsville on NC 39 to SR 1347, 2.1 miles to area.
Vance County (Satterwhite Point)—Approximately five miles north of I-85 at the end of SR 1319.
Vance County (Williamsboro Wayside)—Five and one-half miles north of I-85 in Henderson on NC 39.
Warren County (County Line)—Three miles north of Drewry on SR 1200 to SR 1202, three-fourths mile to SR 1361, 1.2 miles to SR 1242, one-half mile to area.
Warren County (Kimball Point)—Five miles north of Drewry on SR 1200 to SR 1204, 1.5 miles to area.

KITTY HAWK BAY
Dare County (Avalon Beach)—At Avalon Beach, one-half mile west of US 158.

LITTLE RIVER
Pasquotank County (Hall's Creek)—Between Nixonton and US 17 on SR 1140.

LOOKOUT SHOALS LAKE
Catawba County—Near Lookout Dam, six miles northeast of Conover on SR 1006 off NC 16.

LUMBER RIVER
Hoke County (Wagram)—On US 401 approximately one mile northeast of Wagram.
Robeson County (High Hill)—At south edge of Lumberton on US 74 at Lumber River bridge.
Robeson County (McNeil's Bridge)—From US 301 Bypass, take NC 72 northwest to area (within sight of US 74).

MEHERRIN RIVER
Hertford County (Murfreesboro)—North side of bridge on US 258 at Murfreesboro.

MOUNTAIN ISLAND LAKE
Gaston County (River Bend)—Twelve miles northwest of Charlotte on NC 16.
Mecklenburg County (Davidson Creek)—Northwest of Charlotte, 12 miles on SR 2074 (Beatties Ford), turn left on SR 2165.

NANTAHALA LAKE
Macon County (Choga Creek)—East of Andrews via SR 1505 and U. S. Forest Service Road No. 30.
Macon County (Rocky Branch)—Nineteen miles west of Franklin via US 64 and SR 1310.

NEUSE RIVER
Craven County (Bridgeton)—One mile north of Bridgeton just off US 17.
Johnston County (Richardson's Bridge)—Off SR 1201, approximately nine miles southeast of Smithfield.
Lenoir County (Kinston)—On US 70W in Kinston adjacent to Neuse River Bridge.
Pamlico County (Oriental)—On Smith's Creek at the end of Midgette Street in town limits on west side of NC 55 bridge.
Wayne County (Cox's Ferry)—On Wayne County Road 1224 approximately nine miles west of Goldsboro.
Wayne County (Goldsboro)—Adjacent to US 117 south of Goldsboro.

NEW RIVER
Onslow County (Jacksonville)—Adjacent to the US 17 New River Bridge in Jacksonville.

NORTHEAST CAPE FEAR RIVER
Duplin County (Kenansville)—Between Kenansville and Beulaville on NC 24.
Pender County (Holly Shelter)—At Holly Shelter Game Land, six miles south of NC 53 via SR 1523 and 1520.
Pender County (Sawpit Landing)—On NC 53 three miles north of Burgaw, turn on SR 1512. Area located at end of SR 1512.

PAMLICO RIVER
Beaufort County (Smith's Creek)—In Goose Creek Game Land area on NC 33 approximately two miles west of Hobucken.

PAMLICO SOUND
Dare County (Stumpy Point)—Located at the end of SR 1100.
Hyde County (Engelhard)—East of US 264 at north town limits of Engelhard.

PASQUOTANK RIVER
Camden County (Elizabeth City)—Adjacent to US 158 northeast of Elizabeth City.

PEE DEE RIVER
Anson County (Red Hill)—Eight miles north of Wadesboro on NC 109.
Richmond County (Rockingham)—On US 74 approximately six miles west of Rockingham.
Richmond County (Blewett)—From Rockingham, approximately four miles west on US 74 to SR 1140, one mile to SR 1141, approximately 3.5 miles to area.

PERQUIMANS RIVER
Perquimans County (Perquimans)—From Hertford east on SR 1300, approximately nine miles to SR 1319, thence one mile to area.

RHODHISS LAKE
Burke County (John's River)—3.8 miles north of Morganton on NC 18.
Caldwell County (Castle Bridge)—North of Connelly Springs at Castle Bridge via SR 1001.
Caldwell County (Dry Pond)—One mile southwest of Granite Falls.

ROANOKE RAPIDS LAKE
Halifax County (Thelma)—Two miles northeast of Thelma via SR 1400 and 1422.
Northampton County (Vultare)—Take NC 46 to Vultare, then south on SR 1213. Area located at end of SR 1213.

ROANOKE RIVER
Halifax County (Weldon)—On US 301 at Weldon.

Martin County (Hamilton)—In town limits of Hamilton.
Northampton County (Gaston)—At northwest end of NC 48 bridge north of Roanoke Rapids.
Washington County (Plymouth)—Adjacent to the Highway 45 Bridge east of Plymouth.

SANTEETLAH LAKE
Graham County (Avey Creek)—Eleven miles west of Robbinsville. Turn left on Forest Service Road approximately five miles to access area.
Graham County (Ranger Station)—Five miles west of Robbinsville on SR 1127

SCUPPERNONG RIVER
Tyrrell County (Columbia)—One mile west of Columbia off US 64

SHELTER CREEK
Pender County—Nine miles east of Burgaw, one-quarter mile off NC 53, on SR 1523

SOUTH RIVER
Bladen County (Ennis Bridge)—From NC 210, five miles south of NC 41, take SR 1007 one mile east to area.
Bladen County (Sloan's Bridge)—Two miles southwest of Garland on US 701.

SOUTH YADKIN RIVER
Davie County (Cooleemee)—Two miles northwest of Cooleemee on SR 1116 (Davie Academy Road).

TAR RIVER
Edgecombe County (Bell's Bridge)—One mile north of Tarboro on NC 44 at Bell's Bridge.
Edgecombe County (Old Sparta)—On NC 42 at Old Sparta.
Nash County (Rocky Mount)—Adjacent to Business US 301.
Pitt County (Falkland)—On SR 1400. Off NC 43 one mile east of Falkland
Pitt County (Greenville)—At Hardee Creek, approximately one mile east of Greenville city limits on US 264 to SR 1533, north approximately one-half mile to area.

TILLERY LAKE
Montgomery County (Lilly's Bridge)—Five miles west of Mt. Gilead. Take NC 731, turn right on SR 1110.
Montgomery County (Swift Island)—Five miles southeast of Albemarle on NC 27-73.
Stanly County (Norwood)—From Norwood take SR 1740 approximately one mile to area.
Stanly County (Stony Mountain)—From Albemarle, east on NC 24, 27 and 73 approximately five miles to Lighthouse Marina Road, site is adjacent to marina.

TUCKERTOWN LAKE
Davidson County (High Rock)—On Davidson County Road 1002 approximately four miles west of Healing Springs
Rowan County (Flat Creek)—On SR 2148, three miles north of NC 49 via SR 2152

WACCAMAW LAKE
Columbus County—On lake shore road west of NC 214.
Columbus County (Big Creek)—Northeast shore of Lake Waccamaw on SR 1942

WHITE OAK RIVER
Jones County (Haywood's Landing)—Five miles southeast of Maysville, south of NC 58.

WYLIE LAKE
Mecklenburg County (Copperhead)—Shopton Road to Pine Harbor Road to SR 1333, one mile to area.

YADKIN RIVER
Davie County (Concord Church)—From Fork, N. C., on US 64, west four miles on NC 801 to access road leading southeast one-half mile to area.

Certificate of Adoption and Publication

STATE OF NORTH CAROLINA
WAKE COUNTY

I, Clyde P. Patton, Executive Director of the North Carolina Wildlife Resources Commission, an agency of the State of North Carolina, do hereby certify that the foregoing is a true and correct copy of the regulations governing freshwater fishing for the season from January 1, 1976 to December 31, 1976, adopted by the said Commission on October 20, 1975, as authorized and directed by Section 264 and Articles 21, 22, and 23 of Chapter 113 of the General Statutes of North Carolina, the same being taken from and compared with the originals as contained in the minute books of the Commission on file in my office, that the same have not been rescinded or repealed and are still in full force and effect and that the foregoing codification of said regulations has been approved by the Commission.

I further certify that after proper notice, public hearings were held by the said Commission prior to the adoption of the said regulations as required by Chapter 143B, Section 18, and that full publication of the said regulations has been made as required in Chapter 113, Sections 88 and 301; and Chapter 143, Article 18, of the General Statutes of North Carolina.

Clyde P. Patton

Clyde P. Patton, Executive Director
N. C. Wildlife Resources Commission
November 5, 1975

1976
TROUT FISHING REGULATIONS SUMMARY

	GENERAL WATERS	NATIVE WATERS	TROPHY WATERS	POWER SUPPLY LAKES
SEASON	Jan. 1-Feb. 29 April 3-Dec. 31	Jan. 1-Feb. 29 April 3-Dec. 31	Year-Round	Year-Round
CREEL LIMIT	7 Trout	4 Trout	1 Trout	7 Trout
MINIMUM SIZE LIMIT	7 Inches	7 Inches Brook 10 Inches Brown-Rainbow	12 Inches Brook 16 Inches Brown-Rainbow	7 Inches
LURE RESTRICTION	None	Artificial lure having one single hook	Artificial flies having one single hook	None
WATERS COVERED	All designated trout waters not listed as Native or Trophy	Selected waters. (See Regulations - page 31)	Selected waters. (See Regulations - page 34)	Power Supply Lakes

1. All waters not officially designated as trout water have the same regulations as General Waters.
2. All Designated Trout Waters require an appropriate fishing license and a trout license.
3. All game lands waters are designated as Trout Waters (exceptions - page 32).
4. Fishing on game lands requires a game lands use permit, a fishing license and a trout license.
5. For information related to Blue Ridge Parkway - Great Smoky Mountains Park and Cherokee Indian Reservation, see page 35 of Regulations.

This Map Will Help You Understand
THE 1976 INLAND FISHING REGULATIONS
Inside This Booklet

Counties With Designated Public Mountain Trout Waters And 10 Inches Minimum Size Limit On Black Bass (See exception 9 on page 14.)

Counties With Migratory Salt-water Fish Waters

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HELP CONSERVE FISHERIES AND WILDLIFE REPORT VIOLATIONS

To report a violation of the game, fish, and boat laws, call North Carolina Wildlife Resources Commission at the nearest of the following locations:

Location	Area Code	Telephone
Edenton	919	482-4444
Vanceboro	919	244-1717
Burgaw	919	259-4774
Rocky Mount	919	446-3959
Elizabethtown	919	862-3953
Haw River	919	578-1646
Hamlet	919	582-2101
Jonesville	919	835-6426
Morganton	704	437-5131
Marion	704	652-4040
Waynesville	704	456-9292
Raleigh	919	829-7191

A Commission radio operator will take your message and immediately relay the information by radio to the nearest wildlife enforcement officer. If a long distance call is necessary to reach the nearest number, place the call collect, and inform the operator that you wish to report a law violation. If you fail to reach the first number called, try the next nearest location. If you do not have these numbers available call your Sheriff's or Police Department office.

TROUT FISHING

on the
CHEROKEE INDIAN RESERVATION
CHEROKEE, NORTH CAROLINA

IN THE HEART OF THE GREAT SMOKIES!

CHEROKEE FISH & GAME MANAGEMENT ENTERPRISE

BUREAU OF SPORT FISHERIES & WILDLIFE

EASTERN BAND OF CHEROKEE INDIANS

RAINBOWS - BROOKS - BROWNS

TROUT FISHING

on the
CHEROKEE INDIAN RESERVATION
CHEROKEE, NORTH CAROLINA

IN THE HEART OF THE GREAT SMOKIES!

CHEROKEE FISH & GAME MANAGEMENT ENTERPRISE

BUREAU OF SPORT FISHERIES & WILDLIFE

EASTERN BAND OF CHEROKEE INDIANS

RAINBOWS - BROOKS - BROWNS

RULES AND REGULATIONS, ITEM 2., 3rd PARAGRAPH:

Disregard the License information in this pamphlet.

The current license requirement is the

Cherokee Tribal Fishing Permit, available for:

Daily $2.00, 5-Day $7.50, or Season $40.00.

June, 1976

FUN FOR THE ENTIRE FAMILY: With the TROUT MANAGEMENT PROGRAM, Cherokee becomes an even better place for the entire family's vacation. Cherokee's trout fishing, fine accommodations and delightful attractions will make your vacation one you will remember throughout the year.

THE FISHING PROGRAM FEATURES: Approximately 30 miles of cool, clear trout streams and 3 trout ponds, stocked twice each week with Rainbow, Brook, and Brown trout. Many artificial pools have been created by small dams, making ideal fishing spots with easy access for everyone, young and old. Inquire about good fishing spots and baits or lures to use where permits are sold.

MINGO FALLS CAMPGROUND: One of Cherokee's most picturesque campgrounds. With many sites available right on the beautiful Raven Fork River, Mingo Falls Campground is located in the heart of the Cherokee reservation and is now operated by Cherokee Fish & Game Management.

Camping facilities at Mingo Falls include showers, washrooms, restrooms, and a plentiful supply of hot and cold water. All facilities are convenient to the campsites.

Camping: $3.00 up to four persons, 25¢ for each additional person per party per night.

Electrical hook-ups $.50 extra per day.

All profit from this project is used for recreation programs for the Cherokee youth.

HERE ARE SOME OF CHEROKEE'S OUTSTANDING ATTRACTIONS: "Unto These Hills"—World-famous outdoor drama depicting the story of the Cherokees from 1540-1840. "**Oconaluftee Indian Village**"—A replica of an 18th century Cherokee settlement featuring live demonstrations of arts and crafts work.

Other Attractions: Great Smoky Mountains National Park, Museum of the Cherokee Indian, Mystery House, Wax Museum, Chair Lift, Pioneer Farmstead, Arts and Crafts Shops, Indian Dancing, Frontierland, and many others.

Rules and Regulations

FOR CHEROKEE FISH MANAGEMENT AREA

1. The following waters are designated as "Enterprise Waters" and open to public fishing: Ravens Fork River from the junction of Straight Fork River, and Big Cove Creek downstream to the Park Boundary, (including the fish ponds in Big Cove), Soco Creek, Bunches Creek, Oconaluftee River from the Park Boundary downstream to the Reservation Boundary in Birdtown.

All other fishing waters on the Reservation are designated as "Indian Fishing Only" and only enrolled members of the Eastern Band of Cherokee Indians shall be permitted to fish on these streams.

2. All persons fishing on Enterprise waters shall be required to obtain and have in their possession a tribal fishing permit, cost: Daily—resident $2.00, non-resident $1.50; 5-Day—resident $7.50, non-resident $6.00; Season—$40.00. Children under 12 years old may fish free when accompanied by a licensed parent or guardian. In addition to above permit, all persons 16 years of age and over are required to possess a valid North Carolina State Fishing License, cost: Resident-Daily $1.25, County $2.50, Season $7.50; non-Resident — Daily $2.25, 5-Day $4.25, Season $11.50.

3. The daily creel limit on Enterprise waters shall be 10 Trout, Bass, or Catfish in aggregate for all adult fishermen and 5 Trout, Bass or Catfish in aggregate for all fishermen under 12. Minimum size limit for Bass is 10 inches; no size limit is in effect on Trout. Limit in possession is 2 days' catch (20 fish).

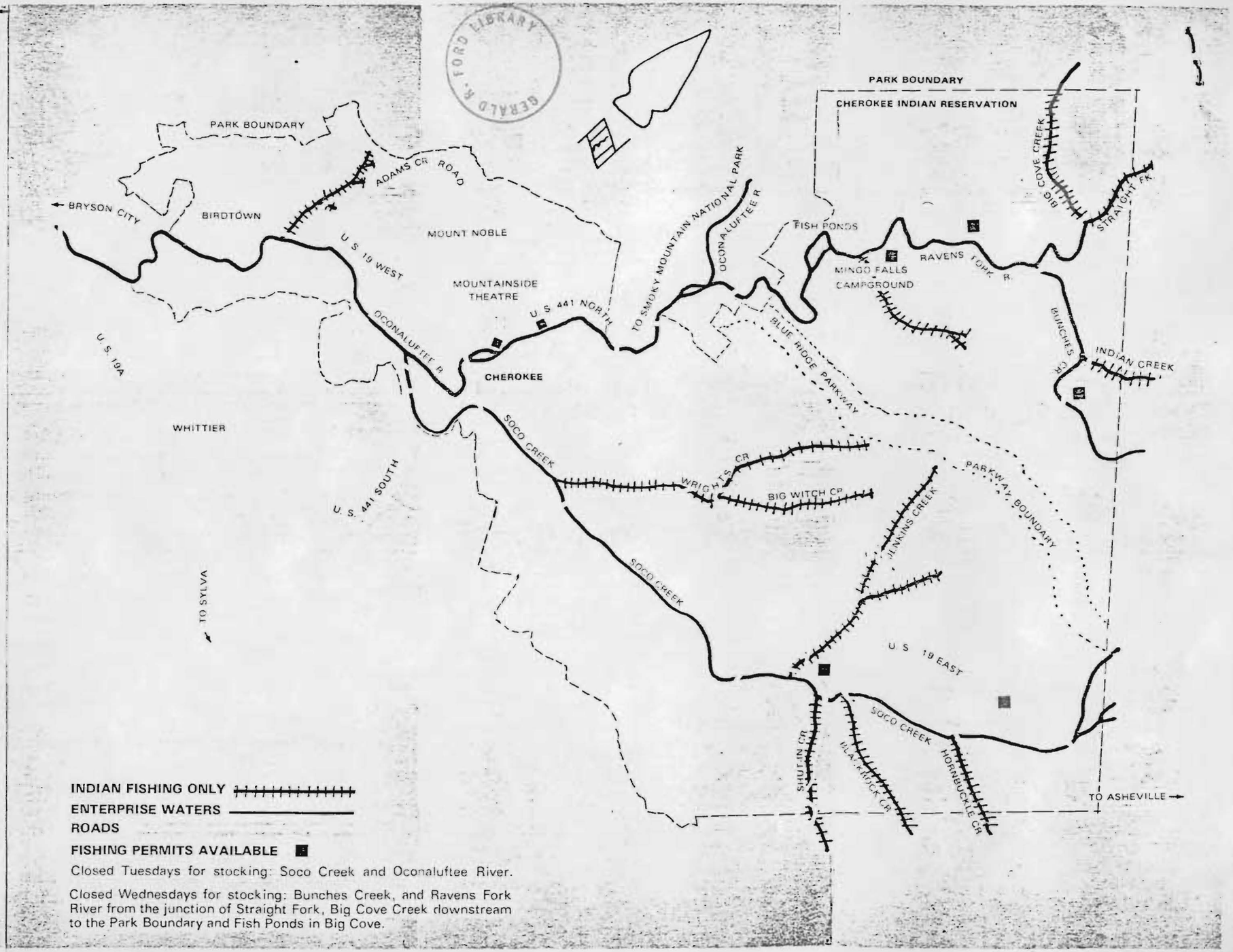
4. Enterprise Waters will be open to fishing during open season as hereinafter provided seven days a week between the hours of 6:00 a.m. and 8:00 p.m. with the following exceptions:

(A) The following streams shall be closed on Tuesday of each week for stocking: Soco Creek and Oconaluftee River.

(B) The following Enterprise Waters shall be closed on Wednesday of each week for stocking: Bunches Creek, and Ravens Fork River, and the fish ponds in Big Cove.

5. The open season for Enterprise streams shall be from the first Saturday in April until October 31, with the exception of the day such streams are closed for stocking as hereinbefore provided.

6. Fish may be taken from enterprise waters only with rod and line, and with bait or lure. No person may have more than one line in the water at one time. Snagging, chumming, grabbling and seining of game fish is prohibited.



Closed Tuesdays for stocking: Soco Creek and Oconaluftee River.

Closed Wednesdays for stocking: Bunches Creek, and Ravens Fork River from the junction of Straight Fork, Big Cove Creek downstream to the Park Boundary and Fish Ponds in Big Cove.

North Carolina G.S. 71-8.

> Subject to the approval of the Secretary of the Interior . . . the tribal council of the Eastern Band of Cherokees shall be responsible for the management of the trout fishery on the waters of the lands presently held in trust for their use and benefit in Jackson and Swain counties. Such management shall include the establishment of creel limits, size limits, and choice of bait. (1965, c. 765, s.1).

THE WHITE HOUSE
WASHINGTON

Bridges

704-586-2121

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

BRYSON CITY DIVISION

CIVIL NO. BC-C-76-65

EASTERN BAND OF CHEROKEE INDIANS,

Plaintiff.

vs.

STATE OF NORTH CAROLINA DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES, GEORGE LITTLE, Secretary, and NORTH CAROLINA WILDLIFE RESOURCES COMMISSION, CLYDE P. PATTON, Executive Director,

Defendants.

MEMORANDUM AND ORDER.

The Plaintiff, Eastern Band of Cherokee Indians, brought this action against the Defendants, State of North Carolina Department of Natural and Economic Resources; George Little, Secretary; North Carolina Wildlife Resources Commission, and Clyde P. Patton, Executive Director, seeking declaratory and injunctive relief from the imposition and collection of State fishing license fees from non-Indian sportsmen fishing on the Cherokee Indian Reservation. The Plaintiff contends that the license requirement infringes upon the exclusive jurisdiction of the United States and violates the Tribe's right of self-government. The United States in its amicus curiae brief has joined the Plaintiff in contending that the State's authority over non-Indian fishing on Reservation lands has been pre-empted by the federal government.

The Defendants, Department of Natural and Economic Resources and George Little as its Secretary, moved to dismiss on the grounds that under North Carolina law neither the Depart-

ment nor its Secretary has any authority or control over the wildlife resources of the State. An examination of the North Carolina statutes indicates that the North Carolina Wildlife Resources Commission is solely responsible for the control and management of wildlife resources in the State and therefore the Motion to Dismiss as to the State of North Carolina Department of Natural and Economic Resources and George Little as Secretary is hereby allowed. See N.C. G.S. 143-246, 247, and 253; 143B-281; 113-81.6 and 81.7.

The Defendants, North Carolina Wildlife Resources Commission and Clyde P. Patton, Executive Director, moved to dismiss the action under Rule 12(b), Federal Rules of Civil Procedure, contending that the State license requirement is lawful. They contend that due to the unique history of the Eastern Band of Cherokee Indians, the State of North Carolina is entitled to exercise concurrent jurisdiction with the federal government over tribal lands, and that there has been no specific preemption by the federal government with which the State's licensing regulation would conflict. They also move to dismiss for lack of jurisdiction.

The matter was tried at the July 1976 Term in Bryson City and the Court now enters its findings and conclusions.

The parties have stipulated that the Plaintiff, Eastern Band of Cherokee Indians, is a North Carolina corporation and a federally recognized Indian Tribe possessing certain powers of self-government, and that the Tribal Council is the governing body of the Tribe. The history of the Tribe and its development as a recognized Indian Tribe and a North Carolina corporation is garnered from the stipulation of facts, the evidence presented, and the opinion by Chief Judge Parker in United States v. Wright, 53 F.2d 300 (4th Cir. 1931).

The Tribe is a remnant of the Cherokee Tribe which emigrated West after the Treaty of New Echota in 1835. Under this treaty, the Tribe surrendered all rights to its lands in North Carolina and adjoining States and agreed to move from these States in consideration of money to be paid by the United States and a grant of land located West of the Mississippi River. The Tribal lands thus became subject to grant by the States.

By the terms of the Treaty such Cherokees as were averse to removal and desired to become citizens of the States where they resided if qualified to take care of themselves, should receive their proportion of all the personal benefits accruing under the Treaty. Notwithstanding the Treaty, great reluctance to go West was manifested on the part of many Cherokees and federal troops were used to force their removal. A considerable number were allowed to remain under the terms of the Treaty and many others escaped the vigilance of the troops. The number remaining in North Carolina in 1838 was estimated to be between 1,100 and 1,200.

The remnant remaining behind was without interest in the lands West of the Mississippi, or in the commuted annuity fund to which the Tribe was entitled. Their connection with the Cherokee Tribe had been dissolved and their interest in the lands formerly held by the Tribe in North Carolina had been divested by the Treaty and their right of tribal self-government had come to an end. They remained upon the lands which they and their fellow tribesmen had occupied and became subject to the laws of North Carolina.

The first recognition by the federal government of the rights of those Indians remaining in North Carolina was contained

in the Act of July 29, 1848, 9 Stat. 252, 264, § 4 (31 U.S.C.A. 711[20] and Section 5 [Page 265]), by which it was provided that the number and names of the Cherokees in North Carolina after the Treaty of New Echota be ascertained and a fund set apart for them to remove West of the Mississippi whenever they desired to do so. With funds derived under this Act and other monies paid him by the Indians, one W. H. Thomas set about to purchase for these Indians the boundary now known as the Qualla Boundary comprising about 50,000 acres.

Shortly after the Civil War, the United States refused to pay over to these Indians certain monies to which they were entitled unless they would remove to the Indian Territory West of the Mississippi or secure an act of the legislature of North Carolina permitting them to remain permanently within the State. The North Carolina Legislature thereupon passed a statute granting this permission. Public Law of N.C. of 1866, c. 54, P. 20.

By the Act of July 27, 1868 (15 Stat. 228), Congress provided that the Secretary of the Interior should cause a new roll or census to be made of the North Carolina or Eastern Cherokees, and that thereafter the Secretary of the Interior should cause the Commissioner of Indian Affairs to take the same supervisory charge of them as of other tribes of Indians.

By the Act of July 15, 1870 (16 Stat. 362), Congress authorized suit to be instituted in the District Court of the United States for the Western District of North Carolina for the purpose of establishing the boundary rights of the Eastern Band of Cherokee Indians, and such suit was accordingly begun. The final court decree awarded the Qualla Boundary to the Indians. By the Act of March 3, 1875 (18 Stat. 447), Congress made provision

for the payment of the money directed by the court and a deed was made conveying the lands within the Qualla Boundary to the Commissioner of Indian Affairs in trust for the use and benefit of the Indians.

In 1889 the North Carolina Legislature granted these Indians a corporate charter, which authorized them, under the corporate name of Eastern Band of Cherokee Indians, to sue and be sued, plead and be impleaded, and exercise all other powers belonging to corporations under North Carolina law. (Private Laws, 1889, c. 211). This Act also validated, as against the State, titles or conveyances of land made to the Band or to any person in trust for their benefit. Chapter 207 of the Private Laws of 1897 amended the charter by conferring on the Band certain limited powers of government having special reference to the control of tribal property. This charter has been retained by the Tribe and remains its effective constitution to the present time.

On August 19, 1890, Congress appropriated the money to defray the expenses of a second court action involving the title to the lands of the Qualla Boundary (26 Stat. 338, 357). This action was compromised in 1894 and the court decree ordered the lands held by the Commissioner conveyed to the corporation, but that nothing therein contained should "be construed as interfering with the right of the Commissioner of Indian Affairs from exercising such supervisory charge over the person and property of said band of Indians and the members thereof and the contracts of said Indians as that officer now has by virtue of the Constitution of the United States and the treaties and laws in pursuance thereof." The deed thereafter made by the Commissioner of Indian Affairs conveying these lands to the corporation,

Eastern Band of Cherokee Indians, contained this same provision. The title to these lands remained in the corporation until conveyed to the United States on July 21, 1925, pursuant to the provisions of the Act of June 4, 1924, 43 Stat. 376 (23 U.S.C.A. 331).

The parties have stipulated that the Tribe has accepted the provisions of the Indian Reorganization Act, 25 U.S.C.A. 476, et seq. (1934), but continues to operate under its State charter.

The Tribe established a Fish and Game Management Enterprise which functions in the areas of recreational fishing and camping programs on the Reservation. On January 19, 1965, the Eastern Band of Cherokee Indians and the United States of America, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior, entered into an agreement whereby the United States, at its expense, stocks some of the waters of the Reservation with about 200,000 trout each year. During fiscal year 1973 the Government spent $31,300.00 in its management assistance and $91,349.00 in its stocking program on the Reservation, while in fiscal year 1975, the management assistance amounted to $46,400.00 and the stocking program dropped to $73,300.00. The Tribe, through its Fish and Game Management Enterprise, sells fishing permits to non-Indian sportsmen for the privilege of fishing in the streams on the Reservation to catch the trout stocked by the Government. It is not a conservation program but merely a program whereby the Government furnishes the fish and management for the purpose of stocking the streams so that the Tribe can sell permits to non-Indian sportsmen to catch the fish

immediately after stocking. During fiscal year 1975 the Tribe's Fish and Game Management Enterprise received from the sale of such fishing permits the sum of $74,000.00 and $1,986.75 as commissions from the sale of North Carolina fishing licenses.

The agreement entered into by the Tribe and the Government on January 19, 1965 also provided that a North Carolina fishing license would be required of all persons over 16 years of age who were not members of the Tribe. On June 7, 1976 the parties entered into another agreement which is identical in its terms with the 1965 agreement, except for the deletion of the provision requiring a North Carolina fishing license and the addition of a provision to the effect that the Tribe will receive first priority for U. S. Fish and Wildlife Service assistance as long as the fish program legally complies with all applicable state and federal regulations and requirements.

Based upon these facts the Plaintiff contends that it is a federally recognized Indian Tribe which enjoys an unrestricted federal Indian status under the laws and policies of the United States. It further contends that the United States and the Tribe have assumed virtually all governmental responsibilities for supervising the Reservation, and in particular, the Cherokee Fish and Game Management Enterprise, and that the State has no responsibility over Reservation fishing and its license fees interfere with a pre-emptive federal scheme and infringe upon the lawful exercise of Tribal self-government. The Plaintiff further contends that state regulations of non-Indian fishing on the Reservation will hamper proper management of the fisheries resources and impair the economic development of the Reservation.

The Defendants contend that in the absence of express treaty provisions to the contrary, Indian tribes can regulate only Indian fishing; that state regulation of non-Indian fishing on the Reservation does not interfere or conflict with tribal fishing or self-government. They contend that upon the basis of the unique legal history of the Eastern Band the State of North Carolina has retained concurrent jurisdiction over the Tribe, except where that jurisdiction is expressly pre-empted by an Act of Congress and that no such Act exists. Further, it is contended that the State license fee is a valid tax in that it is a tax against non-Indians with only an indirect effect on the Tribe, and that it does not interfere with the Tribe's right of self-government.

As Judge Parker found and concluded in United States v. Wright, 53 F.2d 300 (4th Cir. 1931), " . . . there can be no question but that the Eastern Band of Cherokee Indians is a distinctly Indian community. Congress for more than half a century has recognized it as such, and has extended to it the guardianship and protection of the government." Judge Parker stated further, " . . . We think there can be no doubt that Congress has the power to legislate for the protection of the Eastern Band of Cherokee Indians and for the regulation of the affairs of the band. It is clear, however, that not every Act of Congress with relation to the band would come within the power. As heretofore stated, the members of the band, by separation from the original tribe, have become subject to the laws of the State of North Carolina; and clearly no Act of Congress in their behalf would be valid which interfered with the exercise of the police power of the state. In such a situation, a law to be sustained must have relation to the purpose for which the

federal government exercises guardianship and protection over a people subject to the laws of one of the states; i.e., it must have reasonable relation to their economic welfare."

When the Congress by the various acts referred to above recognized the Eastern Band as a Tribe and accepted a conveyance of its lands in trust for the use and benefit of the Tribe as a whole, the inherent rights of hunting and fishing accompanied the land and accrued collectively to the members of the Eastern Band. The United States, acting through the Fish and Wildlife Service, Bureau of Indian Affairs, provides financial and technical assistance for the operation and maintenance of the Cherokee Fish and Game Management Program. Congressional authority for these agency functions is contained in 25 U.S.C.A. 13, and 13 U.S.C.A. 661. Furthermore, the Tribe has been allowed to regulate these programs under its right of self-government, and the United States has provided for the enforcement of these regulations in federal courts under 18 U.S.C.A. 1165.

The Court therefore finds and concludes that these governmental acts, under congressional authority and approval, relate to the exercise of guardianship and protection over the Eastern Band and that such acts reasonably relate to the Tribe's economic welfare. It is a valid governmental function consistent with its fiduciary relationship with the Tribe, and under the facts of this case, pre-empt the State's regulation. It follows that the United States, in conjunction with the Eastern Band, is entitled to regulate and maintain the fish management program on the Cherokee Reservation without the interference of the State.

The fact that the 1965 agreement between the Tribe and the Government requiring all non-Indians above the age of sixteen to purchase State licenses before fishing on the Reservation does

not change the results in this case. The 1976 agreement deleted this requirement and merely requires that all State and federal rules and regulations for fishing be complied with. The Plaintiff contends that the license requirement is not a valid rule or regulation, and further the State is not a party to that agreement and has no standing to enforce its provisions.

At first blush it would appear that the recent decision of the Supreme Court in Moe v. Salish & Kootenai Tribes, 96 S.Ct. 1634, is dispositive of this issue. In Moe the Supreme Court found that the proprietor of a "reservation smoke shop" could be required by the State to pre-collect the cigarette sales tax imposed by state law upon a non-Indian purchaser of cigarettes upon the reservation. This holding was premised upon the finding that such a requirement imposed a minimal burden upon the retailer and did not frustrate tribal self-government or run afoul of any congressional enactment dealing with the affairs of reservation Indians. The court cited and discussed McClanahan v. State Tax Commission of Arizona, 411 U.S. 164, 93 S.Ct. 1257 (1973), and Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S.Ct. 1267 (1973), wherein the court had read the treaty and applicable federal statutes against the "backdrop" of the Indian Sovereignty doctrine and concluded that the State of Arizona exceeded its lawful authority by imposing state taxes on Indian Reservation lands or Indian income from activities carried on within the boundaries of the reservation.

Applying Moe to the case at bar it may be argued that the State tax here is levied against the non-Indian fishermen and not against the Tribe, or its lands or members. However, the evidence shows that the State license fee is much greater

than the fee for a tribal fishing permit; that the revenues from such permits inure to the benefit of the Tribe and that the imposition of the State license fee would have detrimental effect upon the revenues of the Tribe. Gross revenues in recent years from the sale of fishing permits have ranged from $65,000 to $74,000 annually, and the indirect revenues from tourists attracted to the Reservation by the fishing program would far exceed these figures. The Tribe owns and operates a motel and levies and collects taxes on all sales on the Reservation. The total revenue of the Tribe exceeded one million dollars during the fiscal year 1975 and is almost totally dependent upon tourism. It is axiomatic that an increase in the State's license fee will discourage tourism to some degree and result in a decline of Tribal revenue. The action of the State in levying and collecting this license fee would have a direct impact upon the finances of the Tribe instead of a few tribal entrepreneurs as in Moe. Therefore, the factual setting in Moe is clearly distinguishable from the case at bar.

This Court finds and concludes that the federal government has assumed comprehensive supervision and management of trout fishing on the Reservation and has thereby pre-empted this field, and has delegated its regulatory power to the Plaintiff, Eastern Band of Cherokee Indians. It therefore follows that the State has no authority to levy and collect the fishing license fee. Confederated Tribe of the Colville Indian Reservation v. State of Washington, et al., (C-75-146, E.D. Wash. April, 1976).

The Defendants' Motion to Dismiss for lack of jurisdiction is without merit since the evidence established that the requisite jurisdictional amount is present. The Court concludes that it has jurisdiction of the parties and the controversy under the provisions

of 28 U.S.C.A. 1331 and 1362, and that the action is not prohibited or barred by the provisions of 28 U.S.C.A. 1341. See Moe v. Salish & Kootenai Tribes, supra.

The Court hereby declares that the regulation of the North Carolina Wildlife Resources Commission requiring a State license to fish in the streams of the Cherokee Indian Reservation is unlawful and is hereby declared null and void.

It does not follow that the Plaintiff is entitled to injunctive relief since there is no indication that the Defendants will fail or refuse to comply with the final order and judgment of this court.

It is, therefore, ordered that the Plaintiff's prayer for injunctive relief be, and the same is hereby denied.

This the 26th day of August, 1976.

Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

EASTERN BAND OF CHEROKEE INDIANS, Plaintiffs, V. STATE OF NORTH CAROLINA DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES, GEORGE LITTLE, SECRETARY, et al., Defendants.	CASE NO. BC-C-76-65

BRIEF AMICUS CURIAE OF THE UNITED STATES

Statement of Interest

This case involves a jurisdictional conflict between a federally recognized Indian tribe possessing all the powers of self government recognized in the Indian Reorganization Act, 25 U.S.C. §§ 476, et seq. and a state government over non-Indian activities on trust land within an Indian reservation. The decision in the case will have ramifications on other Indian reservations throughout the United States. Since the federal government is joined by a fiduciary relationship to all federally recognized tribes, the ultimate decision in this case undoubtedly will affect policies of the United States, its relationship to its Indian wards, and its dealings with the several states. The United States, therefore, has a direct governmental interest in these proceedings.

Moreover, the United States has a significant financial investment in the development of the fishing program on the Eastern

Cherokee Reservation and has cooperated closely in developing that program so that tribal economic dependence on the United States might be reduced. Hence, the Government also may have a financial interest in this case.

Introduction

The United States supports fully the position asserted by the Eastern Band of Cherokee Indians in this litigation. Certainly, the United States views the Eastern Band of Cherokees in a fashion similar to any other federally recognized tribe and perceives the status of the Band as no different from other such tribes. And under principles of federal Indian law the Eastern Band is entitled to exclusive control over fishing on its Reservation. Consequently, the imposition of state license fees by the State of North Carolina on non-Indians fishing on the Eastern Cherokee Reservation is improper.

The argument of the United States on the issues in this case is divided into three parts. Initially, the status of the Eastern Band of Cherokee Indians as a federally recognized tribe with all accompanying rights and powers is discussed. Secondly, this brief addresses the question of whether the federal government, in conjunction with the Eastern Band, has preempted supervision over fishing on the Reservation. Finally, the issue is raised as to whether the state license fees unlawfully infringe upon the Band's exercise of its governmental authority.

I. THE EASTERN BAND OF CHEROKEE INDIANS IS A FEDERALLY RECOGNIZED TRIBE OF INDIANS WITH ALL THE RIGHTS AND PRIVILEGES HELD BY SUCH TRIBES

The following comments briefly describe the history of Eastern Band of Cherokees. A more detailed account may be found in United States v. Wright, 53 F.2d 301 (4th Cir. 1931).

The Eastern Band of Cherokee Indians consists of remnants of the Cherokee Nation which emigrated west after the Treaty of New Echota in 1835 and under the terms of that treaty occupied lands beyond the Mississippi River.

The Cherokees originally occupied a wide expanse of territory within what is now North Carolina, South Carolina, Tennessee, Georgia and Alabama. The Tribe's possessory right to lands in North Carolina was gradually extinguished beginning with the Treaty of Hopewell in 1785, 7 Stat. 18, and ending with the Treaty of New Echota in 1835, 7 Stat. 478.

A significant number of Cherokees, however, remained in North Carolina although they held no interest in the lands formerly possessed by the Tribe and even the tribal government ceased to function. Yet, eventually, these individuals banded together and regained the status of a federally recognized Indian tribe.

The United States first recognized the rights of the Indians who remained in North Carolina in the Act of July 29, 1848, 9 Stat. 252, which provided for the establishment of a tribal roll and set apart a fund with the interest to be provided to the tribal members. Additionally, the fund itself could be utilized if members wished to remove west of the Mississippi.

Funds appropriated under this Act, supplemented by additional funds from individual Indians, later were utilized to purchase the land which eventually became the Eastern Cherokee Reservation. After the Civil War, the federal government refused to pay certain

funds to the Eastern Band unless they would remove to the Indian Territory or the State of North Carolina consented to their remaining within the state permanently. In 1866, North Carolina passed such an act. Public Laws of North Carolina of 1866 c54 p. 20.

Congress, in the Act of July 27, 1868, 15 Stat. 228, requested the Secretary of Interior to establish a new roll of the Eastern Cherokees and, more importantly, ordered that the Commissioner of Indian Affairs "take the same supervisory charge of the Eastern or North Carolina Cherokees as of other tribes of Indians." Id.

Litigation was funded by the United States to assist the Eastern Band in obtaining its Reservation. See Act of July 15, 1870, 16 Stat. 352. Subsequently, additional money was appropriated for the purchase of land and finally, a deed was executed conveying the land to the Commissioner of Indian Affairs in trust for the use and benefit of the Indians. See Act of March 3, 1875, 18 Stat. 447.

In 1899, the State of North Carolina granted to the Band a corporate Charter, Priv. Laws 1899, c.211. Subsequently, the Commissioner of Indian Affairs conveyed the land which he held in trust to the corporation. In 1924, the lands, however, were reconveyed to the United States pursuant to the Act of June 4, 1924, 43 Stat. 376. Under that Act, the land comprising the Reservation was allotted to individual members of the Band, although the land was to remain in trust.

Act, 25 U.S.C. §§ 476, et seq. and possesses all the attributes of tribal sovereignty. See, Crowe v. Eastern Band of Cherokee Indians, Inc., 506 F.2d 1231 (4th Cir. 1974) in which the Fourth Circuit clearly recognized that the doctrine of tribal sovereignty first articulated in Worchester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) was applicable to the Eastern Band.

The principles of federal Indian law also have long been applied in order to protect the lands of the Reservation from state or other outside interference. In United States v. Wright, 53 F.2d 300 (4th Cir. 1931), for example, the Court of Appeals addressed the question of whether Congress had the authority to pass the Act of June 4, 1924, 43 Stat. 376, which exempted from state taxation the allotted lands of the Reservation. The court stated:

> [w]e think there can be no doubt that Congress has the power to legislate for the Cherokee Indians and for the regulation of the affairs of the band. United States v. Wright, 53 F.2d at 307.

Thus, the court upheld the legislation granting tax exemption to the allotted lands of the Cherokees as within the power of Congress. 1/

1/ Although the Court stated that "no act of Congress . . . would be valid which interfered with the police powers of the state," 53 F.2d at 307, that statement is properly characterized as dictum since it is not relevant to the holding of the case--that in the instance before the court, Congress did have the questioned power. Moreover, it is a general principle of federal Indian law that there are limited instances where state authority properly affects Indians and Indian reservations. See, e.g., Bryan v. Itasca County (Civ. No. 75-5027, Decided June 14, 1976); Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973); United States v. McBratney, 104 U.S. 621 (1882). Thus, the statement quoted above, standing alone, is not persuasive on the issue of whether, in fact, the federal government's authority with regard to Eastern Band is somehow more limited than in connection with other federally recognized tribes.

Similarly in United States v. Colvard, 89 F.2d 312 (4th Cir. 1937) the Court of Appeals found that the United States acted properly in bringing suit to enjoin trespasses on the lands of the reservation. The court stated:

> [N]either the fact that title to these lands was acquired through grant from the state of North Carolina, nor the fact that the Indians are citizens of that state and subject to its laws, has any bearing upon the question before us. The controlling fact is that the United States, in a proper exercise of governmental power, has accepted a conveyance of the title of the lands for the benefit of the wards of the nation. United States v. Colvard, 89 F.2d at 314.

Finally, the Fourth Circuit has consistently recognized that federal law properly may preempt the application of state law on the Reservation. See, e.g., United States v. 7,405.3 Acres of Land, 97 F.2d 417 (4th Cir. 1938) where the court held that a private company could not adversely possess lands held by the United States for the benefit of the Eastern Band. The court reiterated that the federal government has assumed a similar guardianship with regard to the Eastern Band as for other tribes. Likewise, in United States v. Parton, 132 F.2d 886 (4th Cir. 1943), the Fourth Circuit again rejected the argument that federal authority over the Eastern Cherokee Reservation was limited in any respect because of the origins of the Reservation. In that case, the court found that the federal statutes regulating trade on Indian reservations were applicable to the Eastern Cherokee Reservation.

The holdings of the Fourth Circuit in these decisions are consistent with general principles of federal Indian law which hold that when the lands are set aside for the use of Indians

and the federal government retains title to that land, the Government has authority to enact regulations and protective laws respecting that land. See United States v. McGowan, 302 U.S. 535, 538-39 (1938). Nor is there any support within those principles for the proposition that a tribe possesses a lesser degree of sovereignty as a result of the unusual history of the creation of its reservation. Instead, it is clear that the only manner in which a state can acquire jurisdiction over an Indian reservation is by rigidly following the requirements of Public Law 280; 28 U.S.C. § 1360, 18 U.S.C. § 1162. 2/ Kennerly v. District Court, 400 U.S. 423 (1971); Fisher v. District Court, 96 S.Ct. 943 (1976).

II. THE FEDERAL GOVERNMENT IN CONJUNCTION WITH THE EASTERN BAND HAS PREEMPTED THE REGULATION OF THE FISHERIES PROGRAM ON THE EASTERN CHEROKEE RESERVATION

The plaintiff Band has described in its trial brief its activities and those of the Fish and Wildlife Service in connection with the management of the fisheries program on the Eastern Cherokee. For present purposes, it suffices to say that the Band in cooperation with the United States Fish and Wildlife Service is completely responsible for the development and supervision of the Fisheries Program on the Eastern Cherokee Reservation.

The plaintiff Band has described in its trial brief its activities and those of the United States Fish and Wildlife Service in

2/ Similarly, the state and the Band, acting independently or in conjunction, cannot terminate the federal government's trust responsibility towards the Band. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F.2d 370, 380 (1st Cir. 1975).

connection with the management of the fisheries program on the Eastern Cherokee Reservation. For present purposes, it suffices to say that the Band, in cooperation with the United States Fish and Wildlife Service, is completely responsible for the development and supervision of the Fisheries Program on the Eastern Cherokee Reservation. In contrast, the state exercises no responsibility with regard to that program.

When lands are reserved for the occupancy and use of Indians, that reservation includes the exclusive right to hunt and fish on such lands. Menominee Tribe v. United States, 391 U.S. 404 (1968); Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918); Kimball v. Callahan, 493 F.2d 564 (9th Cir.) cert. denied, 42 L.Ed.2d 292 (1974); United States v. Washington, 384 F. Supp. 312, 332 (W.D. Wash., 1974), aff'd. 520 F.2d 676, (9th Cir. 1975) cert. denied, 44 U.S.L.W. 3428 (Jan. 26, 1976). This principle is unaffected by the manner in which the reservation was initially established. Alaska Pacific Fisheries v. United States, supra; Quechan Tribe v. Rowe, 350 F. Supp. 106, 111 (S.D. Cal., 1972); aff'd in part and modified in part, 531 F.2d 408 (9th Cir. 1976). See also, Spalding v. Chandler, 160 U.S. 394, 403 (1896); United States v. McGowan, 302 U.S. 535 (1938); Antoine v. Washington, 420 U.S. 194 (1975); United States v. Walker River Irrigation District, 104 F.2d 334 (9th Cir. 1939). Nor does it matter whether the document establishing a reservation specifically mentions hunting and fishing. E.g., Menominee Tribe v. United States, supra.

Since it holds an exclusive right to fish, the Eastern Band may lawfully enact ordinances which prohibit or regulate non-Indian fishing in waters within its Reservation. Metlakatla

Indian Community v. Egan, 369 U.S. 45 (1962); Alaska Pacific Fisheries v. United States, supra; Oneida Tribe v. United States, 165 Ct.Cl. 487, cert. denied, 379 U.S. 946 (1964); Moore v. United States, 157 F.2d 760 (9th Cir., 1946); cert. denied, 330 U.S. 827 (1947); Quechan Tribe v. Rowe, supra.

Since Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832) it has been established that the federal government's plenary power over Indian relations precludes the exercise of state power in such matters unless Congress has consented to the exercise of such state power. See Kennerly v. District Court, supra; Williams v. Lee, 358 U.S. 217 (1959). In Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 635 (1965), the Supreme Court held that the State of Arizona could not impose its gross receipts tax on income received by a non-Indian doing business with Indians on a reservation. In so holding, the Court relied upon its finding that the federal government had undertaken a comprehensive regulation of trading with Indians on the reservation and thus there was no room for similar regulation by the state. 3/

Congress has established a regime for governing hunting and fishing, by all persons on Indian reservations such as the Eastern Cherokee Reservation. Confederated Tribes of the Colville Indian Reservation v. Washington No. C-75-146 (E.D. Wash., April 14,

3/ The concept of federal preemption enunciated in Warren Trading Post arises from long-standing constitutional principles which require a state to demonstrate a legitimate state interest prior to its taxation or regulation of commerce among the states or within federal reserves. See Portland Cement Co. v. Minnesota, 358 U.S. 450, 465 (1959); General Motors Corp. v. Washington, 377 U.S. 436, 441 (1964); United States v. Mississippi Tax Commission, 412 U.S. 363, 378 (1973).

1976). The Act of July 12, 1960, 75 Stat. 469, 18 U.S.C. § 1165 makes it a federal offense for any person to take game from an Indian reservation "without lawful authority or permission." This provision has been construed to refer to the "authority or permission" of the Indian tribes in question and to delegate to those tribes the authority to enact regulatory schemes governing hunting and fishing. Quechan v. Rowe, supra; United States v. Pollmann, 364 F. Supp. 995 (D. Mont. 1973). The United States may delegate to a tribe the authority to regulate members and non-members with respect to critical reservation activities such as hunting and fishing. Tribal exercise of those powers is identical--for purposes of the Supremacy clause--to the United States exercising those powers. United States v. Mazurie, 419 U.S. 554, 556-559 (1975). The situation, therefore, is as if Congress had enacted substantive hunting and fishing legislation comparable to the trading-with-Indian statutes involved in Warren Trading Post; and the result is the same--the state cannot interfere with that scheme. Confederated Tribes of the Colville Reservation v. Washington, supra. This reasoning is valid even in Public Law 280 states, by virtue of the proviso to that statute, contained in 18 U.S.C. § 1162(b) to the effect that nothing in P.L. 280 "shall deprive any Indian . . . tribe . . . of any right . . . with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof." (Emphasis added).

Furthermore, the federal scheme here as in Warren Trading Post is comprehensive, covering all aspects of hunting and fishing. 4/ And by the nature of the subject matter--hunting and fishing--any state regulation of non-Indians on the Reservation would almost inevitably infringe upon tribal control. Id.

III. THE STATE'S ACTIONS IN IMPOSING STATE LICENSE FEES INFRINGES UPON THE RIGHT OF THE EASTERN CHEROKEE BAND TO SELF GOVERNMENT

The initial question presented is whether, in fact, the state can claim a legitimate interest in the subject of this dispute since its only apparent concern is receiving the funds collected from the license fees. Absent such an interest the state, of course, may not tax or otherwise burden the activities in question. See n.2, supra and cases cited therein.

Assuming arguendo, that the state can claim a valid interest for imposing its license fees, the proper test for reconciling the competing jurisdiction of the state and the Eastern Band 5/--

4/ Pursuant to the authority in 25 U.S.C. § 13 and 16 U.S.C. § 661, the United States has assisted the Eastern Band in the development and management of the Cherokee Fish and Game Management Program. Thus, the participation of the federal government goes beyond simply delegating to the Band the authority to regulate fishing on the Reservation. It also includes a significant financial investment.

5/ The Band has participated with the federal government in developing its extensive fisheries program which provides both direct and indirect economic benefits to the Band and its members. Moreover, the Band has adopted rules and regulations controlling fishing on the Reservation. Certainly, the Eastern Band has the authority to regulate non-Indians fishing on its Reservation, see cases cited, Part II, supra, and to require that non-Indians purchase tribal fishing licenses. See, the Indian Reorganization Act, 48 Stat. 984; Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956); Buster v. Wright, 135 F.2d 947 (9th Cir. 1905), appeal dismissed 203 U.S. 194 U.S. 384 (1904). See also, Solicitor's Opinion 55 I.D. 14 (1934) on the powers of Indian tribes.

In addition Band's fishing license fees are part of its comprehensive taxing plan on the Reservation.

absent federal preemption--is that the state may only "protect its interest up to the point where tribal self-government would be affected." McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 179 (1973). That standard was recently reaffirmed by the Supreme Court.

> In litigation between Indians and non-Indians arising out of conduct on an Indian reservation, resolution of conflicts between the jurisdiction of state and tribal courts has depended, absent a governing Act of Congress, on "whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." Williams v. Lee, 358 U.S. 217, 220 (1959); accord, Kennerly v. District of Montana, 400 U.S. 423, 426-427 (1971) (per curiam). Fisher v. District Court, U.S. Supreme Court No. 75-5366, March 1, 1976.

See, also, Crowe v. Eastern Band of Cherokee Indians, Inc., supra.

The Court's recent decision in Moe v. Salish and Kootenai Tribes, 44 U.S. L.W. 4535 (decided April 27, 1976) confirms that the critical question is whether, in fact, the state's activities actually infringe upon tribal self-government. In that case the Supreme Court held that Montana could require an Indian retailer to collect a state tax from a non-Indian purchasing cigarettes. Moe involved little, if any, tribal activity since the Tribes collected no tax on cigarette sales. Moreover, the Tribes played no part in, nor did they benefit from, the sale of cigarettes. That contrasts to the Eastern Cherokee fishing program for which the Band and the federal government are solely responsible and which provides substantial benefits to the Band.

As the discussion in Part II, supra, recognizes, the importance of the Band's right to control hunting and fishing on its Reservation has been continuously recognized by the courts. The practical effect of state regulation or licensing here is destructive of the rights of the Eastern Cherokee Band. The

state's adamant requirement that all non-Indians purchase state fishing licenses is certain to diminish the number of non-Indians fishing on the Reservation since they will have to purchase both state and tribal licenses--thus making fishing on the Reservation more expensive than in the rest of the state. In fact, the mere threat of enforcement in the present situation results in an infringement of the Band's right. Hence, the action by the state in imposing state license fees on non-Indians participating in the Eastern Cherokee fishing program is improper.

IV. CONCLUSION

In summary, the position of the United States is that the Eastern Band of Cherokees enjoys rights similar to those of other federally recognized Indian tribes, that such rights by virtue of federal prememption entitles the Band to exclusive control over the fishing program on the Eastern Cherokee Reservation and that even assuming that the state had a legitimate interest in licensing non-Indians participating in the Band's fishing program, imposition of state license fees improperly infringes upon the Band's right to self government.

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA

EASTERN BAND OF CHEROKEE INDIANS, Plaintiff, v. STATE OF NORTH CAROLINA DEPARTMENT OF NATURAL AND ECONOMIC RESOURCES, GEORGE LITTLE, Secretary, ET AL., Defendants.	)	Case No. BC-C-76-65

PLAINTIFF'S TRIAL BRIEF

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PLAINTIFF'S TRIAL BRIEF

INTRODUCTION

On April 22, 1976, plaintiff, the Eastern Band of Cherokee Indians filed suit seeking declaratory and injunctive relief against the North Carolina Wildlife Resources Commission. The specific claim in this litigation is that defendants, officials of the State of North Carolina, are unlawfully imposing state license fees on non-members of the Eastern Band as a condition to their participating in the Eastern Cherokee Fish and Game Management Program on the Eastern Cherokee Reservation. The Eastern Band claims that imposition of the state license fees violates the federal rights of the Eastern Band as a federally recognized Indian tribe.

At the time of the filing of the federal court complaint plaintiff filed a motion for a temporary restraining order. This court has not acted on that motion for temporary relief in part because the State of North Carolina has agreed not to enforce its 1976 fishing regulations requiring the on

reservation sale of permit fees until this court rules on the legality of that state policy. In preparation for the trial in this case, the Eastern Band of Cherokee Indians and the State Wildlife Commission are developing proposed stipulations which are expected to resolve nearly all of the pertinent factual issues at stake in the litigation. To the extent the parties are unable to stipulate as to certain relevant facts, limited testimony will be produced at the trial.

Plaintiff's Trial Brief will describe the relevant legal issues for consideration at trial, and will incorporate all material factual issues which, as noted above, will either be stipulated to by the parties prior to trial or will be the subject of limited testimony at trial. Plaintiff's Trial Brief will be divided into four parts. The first part will deal briefly with questions of jurisdiction which have been raised in the Answer of the defendants filed June 2, 1976. The second part will deal with the status of the Eastern Band of Cherokee Indians as a federally recognized tribe. The third part will describe the nature and scope of federal and tribal governmental activity on the Cherokee Reservation with particular emphasis on the Fish and Game Management Program. The fourth part will demonstrate that under principles of federal Indian law, the Eastern Band in cooperation with the United States Department of Fish and Wildlife has as a matter of law preempted supervision over fishing on the Eastern Cherokee Reservation. As a result, the State of North Carolina may not impose its license fees on the Eastern Cherokee Reservation.

I

THIS COURT HAS JURISDICTION TO RESOLVE THE DISPUTE BETWEEN THE EASTERN BAND AND THE STATE OF NORTH CAROLINA

Plaintiff asserts federal court jurisdiction under 28 U.S.C. § 1362 and 28 U.S.C. § 1331. 28 U.S.C. § 1362 is a recent jurisdictional statute which provides:

> (The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States. October 10, 1966, Public Law 89-635, § 1, 80 Stat. 880.

Congress' purpose in enacting 28 U.S.C. § 1362 was to provide "the means whereby the tribes are assured of the same judicial determination whether the action is brought in their behalf by the Government or by their own attorneys." H. R. Rep. No. 2040, 89th Cong. 2d Sess., 2-3 (1966). See Moe v. Salish and Kootenai Tribes, ___ U.S. ___, 44 U.S.L.W. 4535, 4545, (decided April 27, 1976).

Jurisdiction under 28 U.S.C. § 1362 does not require a demonstration that the amount in controversy is in excess of Ten Thousand Dollars ($10,000.00). Nevertheless, to the extent that plaintiff Eastern Band has also relied on 28 U.S.C. § 1331 for jurisdiction, it is true that the amount in controversy must exceed Ten Thousand Dollars ($10,000.00) in order for jurisdiction to also be founded in 28 U.S.C. § 1331. The right of Indian tribes to exercise hunting and fishing rights free of state regulation has been found by a number of courts to involve an amount in controversy in excess of $10,000.00. Kimball v. Callahan, 493 F.2d 564, 565 (9th Cir. 1974), cert. denied 419 U.S. 1019 (1974); Holcomb v. Confederated Tribes of the Umatilla Indian Reservation, 382 F.2d 1013, 1014, n.4 (9th Cir. 1967); Leech Lake Band of Chippewa Indians v. Herbst, 334 F. Supp. 1001, 1002 (D. Minn. 1971). In addition, the

facts of this controversy indicate that the State of North Carolina receives from the Eastern Band approximately Thirty Thousand Dollars ($30,000.00) each year from the sale of state fishing permits on the Eastern Cherokee Reservation. [Proposed Stipulation No. 34].[1/] There can be no question, therefore, that the amount in controversy in this case is in excess of $10,000.00.

The second test for federal court jurisdiction under both 28 U.S.C. § 1362 and 28 U.S.C. § 1331, that the matter in controversy arise under the Constitution, laws, or treaties of the United States, is similarly met in this case. On the face of plaintiff's complaint appear the following federal statutes which deal either specifically with the origins of the Eastern Band or generally with tribal hunting and fishing rights. These statutes create the federal rights which plaintiff alleges are being interfered with by the defendants. 9 Stat. 252; 15 Stat. 228 (Complaint, paragraph 5); 18 U.S.C. § 1162; 18 U.S.C. § 1165 (Complaint, paragraph 8.) Moreover, the assertion of tribal self-government relating to the reservation fishing resources program is carried out pursuant to federal policies encouraging the exercise of tribal government. Such policies are embodied in specific legislation, i.e., the Indian Reorganization Act, 25 U.S.C. §§ 476, et seq. In addition to these specific federal statutes directly authorizing tribal activities, the tribe has been delegated responsibility for the fishing program by the United States acting pursuant to the authority contained in 16 U.S.C. § 661 and 25 U.S.C. § 13. All of these statutes were enacted pursuant to the federal authority contained in the Commerce Clause of the United States Constitution.

[1/] Whenever a material fact is relied on in this Trial Brief, it will be documented either as a stipulation in the Proposed Stipulation which has been filed contemporaneously with this Brief or as an attached Exhibit.

Moreover, the unlawful actions of the State of North Carolina interfere with the unique federal Indian relationship enjoyed by the Eastern Band with the United States. On numerous occasions, that federal Indian relationship founded in the Constitution and supported by two centuries of federal Indian law has been protected from unlawful state intrusion. See e.g. Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685 (1965); Williams v. Lee, 358 U.S. 217 (1959); Menominee Tribe v. United States, 391 U.S. 404 (1968); Kennerly v. District Court, 400 U.S. 423 (1971); Fisher v. District Court of Montana, ___ U.S. ___, 96 S.Ct. 943 (1976); Bryan v. Itasca County, ___ U.S. ___ (Civ. No. 75-5027, decided June 14, 1976). See also the following cases of the United States Court of Appeals for the Fourth Circuit dealing with the unique federal Indian relationship of the Eastern Band. United States v. Boyd, 83 F. 547 (4th Cir. 1897); United States v. Wright, 53 F.2d 301 (4th Cir. 1931); United States v. Colvard, 89 F.2d 312 (4th Cir. 1937); United States v. 7,405.3 Acres of Land, 97 F.2d 417 (4th Cir. 1938); United States v. Parton, 132 F.2d 886 (4th Cir. 1943); Nettie Crowe v. Eastern Band of Cherokee Indians, 506 F.2d 1231 (4th Cir. 1974). To conclude, this jurisdictional dispute between federal and state jurisdiction arises under the Constitution and federal laws of the United States.

Finally, an actual case or controversy exists between the Eastern Band and the State of North Carolina sufficient to give this court federal jurisdiction. Plaintiff's complaint alleges that important federal policies and tribal governmental actions are being interfered with by the State of North Carolina which continues to impose a substantial state license fee on reservation fishermen. The effect of such a state imposition is to place a double burden on sportsmen fishing on the Eastern

Cherokee reservation with the result that sportsmen are deterred from coming to the Eastern Cherokee reservation. These allegations give rise to a case or controversy:

> The Constitution limits the exercise of the judicial power to "cases" and "controversies". "The term 'controversies' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature."
>
> * * *
>
> A "controversy" in this sense must be one that is appropriate for judicial determination. . . . A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot . . . The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests. . . . It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.

Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 239-241 (1937) (per Chief Justice Hughes).

The standards for finding a case or controversy as described in the Supreme Court opinion quoted above have been met in this case. Plaintiff has alleged a specific federal right, a specific state infringement, and has sought specific declaratory and injunctive relief.

II

STATUS OF THE EASTERN BAND OF CHEROKEE INDIANS

The Eastern Band commenced this litigation seeking a declaration that as a federally recognized Indian tribe it is entitled to develop a reservation fishing program in cooperation with the United States free of state interference. We rely on federal preemption principles confirmed in such cases as Menominee Tribe v. United States, supra; Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918) and Confederated Colville Tribes v. Washington, ___ F. Supp. ___ (Civ. No. C-75-146)(E.D. Wash. 1976), and on tribal infringement principles announced in Williams v. Lee, supra; McClanahan v. Arizona Tax Comm'n., 411 U.S. 164 (1973); Fisher v. District Court, supra.

In its Answer, the State of North Carolina adopted the tactic of arguing that the Eastern Band is a special Indian tribe with powers and authority uniquely limited by the exercise of so-called "concurrent" State of North Carolina jurisdiction:

> Since that time, the State of North Carolina has claimed concurrent jurisdiction on the tribal lands with the federal government. This jurisdiction prohibits any federal interference with State police power and sustains only those federal laws which have a definite relationship to the purpose of federal guardianship, and therefore preempt any specific state regulation.

(Answer, paragraph 1.)

In this Part II of the Eastern Band's Trial Brief, we will demonstrate that the State of North Carolina miscomprehends the legal status of the Eastern Band. The Eastern Band will show that no less than six important decisions of the United States Court of Appeals of the Fourth Circuit as well as a significant North Carolina State Supreme Court decision have confirmed that the Eastern Band as a tribe and the Eastern Cherokee Reservation as an Indian reservation are entitled

to the same status as Indians are provided elsewhere in the United States. As a result, the determination of whether the state license fees unlawfully interfere with federal rights of the Eastern Band must be made by reference to general principles of Indian law.

A. The Courts Have Consistently Held That the Rights of the Eastern Band (Like the Rights of Any Federal Tribe) are Measured by the Scope of Federal Plenary Authority Exercised by the United States Over the Tribe.

These cases, to be described below, demonstrate unequivocally that the State of North Carolina does not possess any unique concurrent jurisdiction over the Eastern Band. To the contrary, the cases show that the United States has exercised its plenary authority under the Constitution to develop a federal trust relationship with the Eastern Band not unlike its federal trust relationship with other federally recognized Indian tribes. As a result, North Carolina's authority over the reservation is to be determined by generally applicable principles of federal Indian law. What these cases do show is that although the Eastern Band and the Eastern Cherokee Reservation were not created by federal treaty with the United States (but rather were organized and created through actions undertaken by the Indians themselves, the State of North Carolina, and certain private individuals), nevertheless, since 1868, the United States has treated the Eastern Band like any other Indian tribe. As a result, even though the origins of this particular tribe are unique, its status as well as its rights and privileges under federal law are today no different than any other tribe.

1. United States v. Boyd, 83 F. 547 (4th Cir. 1897).

United States v. Boyd, the first of the important Fourth Circuit cases dealing with the status of the Eastern Band, involved a suit by the United States on behalf of the

Eastern Cherokees to rescind the sale of certain timber belonging to the Eastern Cherokees, for violation of federal contracting law. In Boyd the defendants attempted to show, like the State of North Carolina in this case, that the Eastern Band was unlike other Indian tribes and thus was not subject to the federal restrictions on contracting. The Court of Appeals rejected this argument:

> The effort to show that the Eastern Band of Cherokee Indians, in disposing of the timber in controversy, and in making the contract with Boyd, acted as a corporation created by the laws of the state of North Carolina, is without force; for it is well settled that neither the constitution of a state, nor an act of its legislature, can prevent the application of an act of congress to the Indian tribes residing in the states, but subject to the control of the general government. To hold otherwise would be to make the constitution of a state and the laws of the same, the supreme law of the land, instead of the constitution of the United States, and the laws and treaties made in pursuance thereof. . . . The congress of the United States has repeatedly, since the Treaty of New Echota, recognized the Eastern Band of Cherokee Indians as a distinct portion of the Cherokee race, and has dealt with them, not as individuals, but as a band distinctive in character, dependent on the United States, and entitled to the aid and protection of the general government.

83 F. at 553-554. The Court of Appeals in United States v. Boyd relied heavily on a series of federal statutes, the most significant of which, the Act of July 27, 1868, contained the important provision:

> that hereafter the Secretary of the Interior shall cause the commissioner of Indian affairs to take the same supervisory charge of the Eastern or North Carolina Cherokees as of other tribes of Indians.

83 F. at 554, 555. The broad principles quoted above in United States v. Boyd, have been consistently followed by all courts which have inquired into the status of the Eastern Band.

2. United States v. Wright, 53 F.2d 301 (4th Cir. 1931). United States v. Wright involved an action by the

United States to enjoin the sale of Eastern Cherokee lands for state and county taxes. The Court of Appeals described in United States v. Wright the unique history of the Eastern Band:

> The status of the Indians who thus remained in the state was anomalous. Their connection with the Cherokee Tribe had been dissolved, and they were without interest in the lands acquired west of the Mississippi, or in the commuted annuity fund to which the tribe was entitled. Any interest which they may be said to have had in the lands formerly held by the tribe in North Carolina had been divested by the treaty, and even their right of tribal self-government had come to an end. . . They became subject to the laws of the State of North Carolina . . . They continued to remain upon the land which they and their ancestors had occupied, however, continuing their tribal life; and gradually they were restored to something approximating their former status as an Indian tribe under the protection of the United States. Title to the land which they occupied was acquired for them. The government supervised their contracts, educated their children and made generous provision for their support. And, although they remained subject to the laws of North Carolina, they were granted a charter by the state which authorized them to exercise limited powers of self-government.

53 F.2d at 302, 303. The Court of Appeals decision carefully and exhaustively traces the development of the Eastern Band as a full fledged Indian tribe commencing with the Act of July 29, 1848, 9 Stat. 252, which was the first recognition by the United States of the rights of the Cherokees to remain in North Carolina. See generally 53 F.2d 303, 304, 305. The Court of Appeals contrasted the plenary authority of the United States over the Eastern Band with the very limited responsibility of the State of North Carolina:

> Not only with respect to the acquisition and preservation of the title to this land, but also in practically every other way imaginable, the government of the United States from 1868 to the present day has continuously guarded and protected the interests of this band of Indians, and has done everything possible to promote their progress and development.

53 F.2d at 304.

> It [the State of North Carolina] affords them the protection of the laws of the state; but because their land is held in common and they live under a primitive tribal organization, the laws of the state, which are adapted to an advanced civilization, touch their lives at but very few points. In other words, the life of this band of Indians, from an economic standpoint, both in its relation to the federal government and to the state, has been for more than 60 years practically that of other Indian tribes. Politically they have been subject to the laws of the state, but economically they have been wards of the federal government and have been cared for as such under the provisions of its laws.

53 F.2d at 304, 305.

Presumably, the genesis of the notion advanced by the State of North Carolina in this litigation, that the state has a unique concurrent jurisdiction with the United States, can be found in the last portion of the Court of Appeals decision in United States v. Wright. Thus, the Court of Appeals, after confirming that the United States retains its plenary authority to deal with the Eastern Band as an Indian tribe and that in fact the United States has consistently so acted, nevertheless concluded that Congress' authority over the Eastern Band was limited by state political authority.

> On the first question, therefore, we think there can be no doubt that Congress has the power to legislate for the protection of the Eastern Band of Cherokee Indians and for the regulation of the affairs of the Band. It is clear, however, that not every act of Congress with relation to the Band would come within the power. As heretofore stated, the members of the Band, by separation from the original tribe, have become subject to the laws of the State of North Carolina; and clearly no act of Congress in their behalf would be valid which interfered with the exercise of the police power of the state. In such a situation, a law to be sustained must have relation to the purpose for which the federal government exercises guardianship and protection over these people subject to the laws of one of the states, i.e., it must have reasonable relation to their economic welfare.

53 F.2d 307.

The state's view, that this language creates a special authority in the State of North Carolina to effectively restrict the scope of federal actions relating to the Eastern Band is simply incorrect. To the contrary, this language merely reiterates that only federal laws enacted in furtherance of the special trustee relationship with the Eastern Band are authorized to preempt state laws. Moreover, this language simply confirms that although federal authority over Indians on a federal Indian reservation is plenary, there are occasions (as there are under general principles of federal Indian law) where state authority may affect Indians and Indian reservations. For example, it has been held:

(a) That when Indians engage in activities which reach outside their reservation they are subject to state law unless Congress expressly exempts them. Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973);

(b) State laws may apply to Indians whether or not on a reservation where the Indians have severed their tribal relations. Bryan v. Itasca County, supra; Goudy v. Meath, 203 U.S. 146 (1906); Scott v. Sandford, 60 U.S. (19 How.) 393 (1857);

(c) State criminal laws may apply to certain offenses committed on a reservation involving non-Indians, United States v. McBratney, 104 U.S. 621 (1882); New York ex rel. Ray v. Martin, 326 U.S. 496 (1946), and

(d) When the state law affects a non-Indian residing on a reservation, it may do so unless it interferes with a preeminent federal scheme, Warren Trading Post v. Arizona Tax Comm'n., supra, or interferes with a lawful exercise of tribal self-government. Williams v. Lee, supra; Moe v. Salish and Kootenai Tribes, supra.

That the language of concurrent jurisdiction quoted above in United States v. Wright does not extend to the State of North Carolina any special authority over the Eastern Cherokee Reservation or the Eastern Band of Cherokees is further confirmed by the fact that to our knowledge no court, be it federal or state, has ever held that the scope and

extent of federal plenary authority over the Eastern Band and its reservation are less than it is for other tribes.[2/] Indeed, as we shall show, every court which has considered the status of the tribe and the reservation since the decision in United States v. Wright has held that the Eastern Band and the Eastern Cherokee Reservation are entitled to the same federal status as are Indian tribes and reservations generally.

3. United States v. Colvard, 89 F.2d 312 (4th Cir. 1937).

United States v. Colvard involved an action instituted by the United States to enjoin certain non-Indians from trespassing on lands of the Eastern Band. The Court of Appeals went out of its way to confirm its broad holding in United States v. Wright:

> As we were at pains to point out in the Wright Case, with citation of the controlling authorities, neither the fact that title to these lands was acquired through grant from the State of North Carolina, nor the fact that the Indians are citizens of that state and subject to its laws, has any bearing upon the question before us. The controling fact is that the United States, in a proper exercise of governmental power, has accepted a conveyance of the title to lands for the benefit of these wards of the nation. Having done so, it may bring, in the proper District Court of the United States, any suit necessary or proper for the protection of the lands or the rights of the Indians therein.

89 F.2d at 314. In the opinion of the Fourth Circuit, therefore, the controlling question in any dispute concerning the nature and scope of federal Indian rights of the Eastern Band is whether in the first instance the subject matter of the dispute

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2/ The State's argument that it has special authority over the Eastern Cherokee Reservation is also at odds with recent Supreme Court decisions holding that a state can only acquire special jurisdiction over an Indian reservation by strictly complying with the federal statute which confers special state jurisdiction, Public Law 280; 28 U.S.C. § 1360 and 18 U.S.C. § 1162. Thus, in Kennerly v. District Court, supra, the Court ruled that a tribe cannot unilaterally delegate jurisdiction to a state while in Fisher v. District Court, supra, the Court would not allow a state supreme court to construe a delegation of jurisdiction to a state utilizing a statute other than Public Law 280.

has been the subject of a proper exercise of federal governmental power. In Colvard the court found that the United States held title to the reservation lands and imposed on them a lawful federal restriction. Thus, the defendants were found to be trespassing because of their failure to comply with federal law in obtaining a right of way.

4. (United States v. 7,405.3 Acres of Land, 97 F.2d 417 4th Cir. 1938).

United States v. 7,405.3 Acres of Land involved the question of whether a private company could adversely possess lands held by the United States for the benefit of the Eastern Band. Again, as in Colvard, the Fourth Circuit took the position that the ability of the defendants to invoke state principles of adverse possession depended upon whether the United States had acted lawfully pursuant to its authority over Indian lands to hold the lands of the Eastern Cherokees free of state adverse possession laws. The court repeated that it makes no difference in the controversy that title to the land at issue was originally obtained by grant from the State of North Carolina--the determinative fact is that the federal government has assumed toward the Eastern Band the same sort of guardianship that it exercises over other tribes of Indians. Hence, since the Eastern Cherokee lands are restricted in furtherance of a proper federal governmental purpose, they may not be taken by contract, adverse possession, or otherwise, without the consent of the United States. See 97 F.2d at 422.

> It is clear, from the foregoing statement, not only that this band of Indians are wards of the federal government, just as are other Indian tribes for whose protection the power of that government is exerted, but also that the tract of land here in controversy is one of those belonging to the Indians, which have been acquired and preserved for them largely through the activities of the federal government. Whether the legal title to the lands has been vested in Thomas, in the commissioner

> of Indian affairs, in the North Carolina corporation or in the United States itself, it has been held in trust for the benefit of the tribe, which is under the guardianship of the federal government, and for that reason it may not be divested except in accordance with the laws of the United States.

97 F.2d at 422.

The Court of Appeals in United States v. 7,405.3 Acres of Land again took the position that the test for determining the extent of state laws on the Cherokee Reservation involves a determination of the first instance whether the United States had acted properly with respect to the Eastern Cherokee Reservation such that it could be fairly said that federal law preempted inconsistent state law. The court found that because the Eastern Cherokee Reservation lands were held in federal trust, state adverse possession laws could not apply. This decision is consistent with the decision in Covard requiring users of Indian land to comply with federal right of way statutes and is consistent with the decision in Wright that state tax laws cannot apply to reservation lands.

5. United States v. Parton, 132 F.2d 886 (4th Cir. 1943).

United States v. Parton involved an action brought by the United States against non-Indian defendants who sought to engage in retail sales businesses on the Eastern Cherokee Reservation without obtaining a license as required by federal law. The defendants, like the State of North Carolina in this case, argued that the Eastern Band is not a normal Indian tribe, nor the Eastern Cherokee Reservation a normal reservation. Thus, they contended, the Indian trading statutes, 25 U.S.C. §§ 261 and 262, which control trading on an Indian reservation should not apply to preempt state laws. The Court of Appeals,

consistent with its analyses in the above-cited cases, first determined that the United States properly exercised its plenary authority over the Eastern Band and that the trading statutes properly were applicable to the Eastern Cherokee Reservation. The court concluded that since the United States through the Commissioner of Indian Affairs had exercised authority over trading on the reservation, the defendants could not avoid the application of federal law. Thus, Parton represents yet another federal decision which thoroughly rejected the notion that somehow the scope of federal authority, and therefore the application of state laws, is different on the Eastern Cherokee Reservation.

6. Crowe v. Eastern Band of Cherokee Indians, Inc., 506 F.2d 1231 (4th Cir. 1974).

Crowe v. Eastern Band of Cherokee Indians involved an action against the Eastern Band under the Indian Civil Rights Act, 25 U.S.C. §§ 1301 et seq. The issue in Crowe dealt with the rights of individual tribal members in tribal lands. The Court of Appeals in Crowe, as it had done in every previous case, analyzed the scope and nature of federal authority to determine the rights of the parties involved. The court found that the tribe was subject to the Indian Civil Rights Act as a federally recognized tribe and that pursuant to that Act, it had violated the rights of tribal members created by tribal constitutional and ordinance authority. There is no intimation whatever in the decision that the Eastern Band of Cherokee Indians is to be treated differently than any other Indian tribe with respect to the scope of tribal authority over reservation property and over members and non-members living on or visiting the reservation.

7. Rollins v. Eastern Band of Cherokee Indians, 87 N.C. 229 (1882).

Rollins v. Eastern Band of Cherokees involved an action in state court for the recovery of compensation for services allegedly rendered under contracts made between the tribe and non-Indians. The North Carolina Supreme Court first determined that the Eastern Cherokees, like any other Indian tribe, was subject to Revised Statutes 2103, 2104, and 2105, now codified at 25 U.S.C. §§ 81 et seq. which imposes specific and precise conditions on the execution and performance of any contract with an Indian tribe. The litigation was initiated by the defendants in state court after they failed to obtain federal approval, as required by the statutes, for a portion of their contract. The Supreme Court of North Carolina refused to entertain the suit on the ground that the Eastern Band was under the guardianship of the federal government. Moreover, and this is of special importance to the claims of the State of North Carolina here, the state supreme court rejected the application of specific state law provisions dealing with contracts with the Cherokees, finding that Congress had through the enactment of Revised Statutes 2103, 2104, and 2105, superceded the state law. Rollins v. Cherokees, therefore, is of special significance because it demonstrates that the highest court of the State of North Carolina long ago took the position that Congress exercises plenary authority over the Eastern Band, and that the Eastern Band is subject to the same federal scheme as are Indian tribes elsewhere.

B. General Principles of Federal Indian Law Confirm That the Eastern Band of Cherokee Indians is a Federally Recognized Tribe Having the Same Status as Other Federally Recognized Tribes.

The Eastern Band has demonstrated in Section A of this Part II that under the controlling federal and state decisions it has consistently been treated as a federal Indian tribe of the same status as are tribes elsewhere. We have demonstrated that in each case where there is an alleged conflict between the assertion of state authority and the assertion of federal authority, the courts have analyzed the particular subject matter of the controversy to find whether it has been the subject of lawful federal authority. In each case, the courts have concluded that the Eastern Band, the Cherokee Reservation, and the disputing non-Indian party were all subject to preemptive federal law. In this Section B of Part II, we shall show that these Eastern Cherokee cases are consistent with decisions of the United States Supreme Court.

In United States v. McGowan, 302 U.S. 535 (1938), the Supreme Court analyzed the status of the Reno Colony of Indians in Nevada. It had been argued that the Reno Colony should be treated differently than Indian tribes elsewhere:

> The fundamental consideration of both Congress and the Department of the Interior in establishing this Colony has been the protection of a dependent people. Indians in this Colony have been afforded the same protection by the Government as that given Indians in other settlements known as "reservations." Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out, and it is immaterial whether Congress designates a settlement as a "reservation" or "colony." In the case of United States v. Pelican, 232 U.S. 442, 449, 58 L.Ed. 676, 679, 34 S.Ct. 396, this Court said:
>
> > "In the present case the original reservation was Indian Country simply because it had been validly set apart for the use of the Indians as such, under the superintendance of the government."

> The Reno Colony has been validly set apart for the use of the Indians. It is under the superintendance of the government. The government retains title to the lands which it permits the Indians to occupy. The government has authority to enact regulations and protective laws respecting this authority.
>
> > '. . . Congress possesses the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States. . .'
>
> United States v. Ramsey, 271 U.S. 467, 471 [Footnotes omitted, emphasis as in original].

302 U.S. at 538-539. Furthermore, the Supreme Court has made it clear that with respect to the recognition of Indian tribes:

> It is the rule of this Court to follow the action of the Executive and other political departments of the government whose more special duty it is to determine such affairs. If by them those Indians are recognized as a Tribe, this Court must do the same.

United States v. Holliday, 70 U.S. 407, 419 (1866).

Consistent with these decisions is the notion that Congress has the sole authority to deal with Indian tribes and Indian people, without regard to the specifics of how that authority is exercised. Thus, an Indian tribe does not have to have a treaty or a special statute setting aside its reservation in order to enjoy the full benefits of the federal Indian statutes; indeed, an Indian tribe can be derived from remnants or former members of a tribe. Thus, the often repeated holdings of the Court of Appeals for the Fourth Circuit that the Eastern Band enjoys a status like any other federally recognized tribe, notwithstanding its unusual beginnings, is confirmed by these decisions.

Additional confirmation is demonstrated by Congress' enactment of the Indian Reorganization Act, 25 U.S.C. §§ 476, et seq. The purpose of the Indian Reorganization Act was not only to assist already recognized and functioning tribes to strengthen their powers of self-government, but also to assist remnant

Indians and Indian communities to organize as tribes in the first instance:

> This bill is designed not to prevent the absorption of Indians in white communities, but rather to provide for those Indians unwilling or unable to compete in the white world some measures of self-government in their own affairs.

Hearings on S. 2755, 73rd Cong. 2d Sess., Pt. I, p. 26 (1934). See also Maynor v. Morton, 510 F.2d 1254 (D.C. Cir. 1975).

Since the Eastern Band of Cherokee Indians elected to adopt the Indian Reorganization Act,[3/] the tribe and its members are assured of federal Indian recognition.

> . . . These Indians, therefore, like many other Eastern groups, can participate in the benefits of the Wheeler-Howard Act only in so far as individual members may be of one-half or more Indian blood. Such members may not only participate in the educational benefits under section 11 of the Wheeler-Howard Act and in the Indian preference rights for Indian Service employment granted by section 12 of the Wheeler-Howard Act, but may also organize under sections 16 and 17 of the Wheeler-Howard Act if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation. Such a reservation might be established either through the outright purchase of land by the Secretary of the Interior themselves, under the same section of the Wheeler-Howard Act, or by a combination of these two methods of acquisition. A reservation having been established, those residing thereon will be entitled to adopt a constitution and bylaws and to receive a charter of incorporation. Under section 19 of the Wheeler-Howard Act the "Indians residing on one reservation" may be recognized as a "tribe" for the purposes of the Wheeler-Howard Act regardless of their previous status.

Memorandum Opinion, April 8, 1935, Assistant Solicitor, U.S. Department of the Interior.

3/ Although the Eastern Band of Cherokee Indians accepted the Indian Reorganization Act ("IRA"), it did not elect to adopt either a constitution or a charter under the Act because it, like the Menominee Tribe in Wisconsin, the Red Lake Tribe in Minnesota, the Standing Rock Sioux Tribe in North Dakota and other tribes had adequate and acceptable constitutions implemented prior to the IRA. [Proposed Stipulation No. 16]. The acceptance of the Indian Reorganization Act and the adoption of a constitution and charter are separate events. The Eastern Band is an IRA tribe possessing all of the powers of self-government confirmed in the IRA, even though it operates pursuant to its historical State of North Carolina charter.

Because the Eastern Band is an IRA tribe, its powers over its membership and reservation are confirmed not only by its sovereign status and its occupancy of reservation lands, but also by the authority contained in the Indian Reorganization Act. That authority is extensively described in a contemporaneous Solicitor's Opinion [55 I.D. 14 (1934)] which explores the powers secured to an Indian tribe in Section 16 of the Wheeler-Howard Act which provides:

> In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall . . . .

48 Stat. 987.[4/] The opinion, in describing the powers of tribal self-government, concludes that they are vested in a tribe, not because they are delegated by express acts of Congress but rather because they are inherent powers of tribal sovereignty which had not been extinguished.

C. On At Least Two Occasions the State of North Carolina Has Confirmed That It Has No Jurisdiction Over the Eastern Cherokee Reservation.

A 1930 Opinion of the North Carolina Attorney General concluded:

> So long as the tribal relations continue in any band of Indians, that tribe occupies a position which the Federal law construes as making them, in a certain sense, wards of the Nation. The United States Constitution expressly confers upon Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes. The relations of the Eastern band of the Cherokees with the Federal Government was interrupted by the Civil War on account of the participation of a large number of them in the military service of the Confederate Government during that war. On July 27, 1868, however, Congress reinstated this Eastern

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4/ In Part IV of this Trial Brief we shall demonstrate that the Eastern Band in cooperation with the United States has the authority to establish a fishing recreation program and to impose license fees on participants in that program. The authority of tribes to impose fees and taxes as a condition to participation in reservation activities is discussed in 55 I.D. 14 (1934).

> band of Cherokees in such a way as to require the Secretary of the Interior to cause a new roll or census of the North Carolina Eastern Cherokees, which shall be the roll upon which payments due said Indians shall be made and to cause the Commissioner of Indian affairs to take the same supervisory charge of the Eastern or North Carolina tribe of Cherokees, as of other tribes of Indians. Under this act, an enrollment was made and the Interior Department assumed and has exercised such supervisory control over the interests of these Indians, establishing schools, appointing agents and disbursing money to them. The money due the Eastern band of the Cherokees is known as occupation, removal, subsistence, spoliation, preemption and reservation funds. These funds were retained and invested by the Federal Government for the benefit of Indians who did not remove West and paid out by agents appointed by the government.
>
> We are not informed as to whether or not all of these payments have been finally made. We do know, however, that these Indians are still upon a reservation, without their lands having been allotted to them in severalty, according to the provisions of the act of June 2, 1924. 25 U.S.C.A., pp. 186 to 190, inclusive.
>
> Thus, necessarily, they are still wards of the Nation and wholly subject to the legislation of Congress.

Opinion of the Attorney General, State of North Carolina, January 22, 1930.

On August 26, 1975, the deputy attorney general of the State of North Carolina issued a memorandum which discusses the relationship between the Eastern Indian nation and the State of North Carolina. The opinion concludes that the Eastern Band of Cherokee Indians is to be treated like any other federally recognized tribe and that in line with this status, North Carolina law can apply to the Eastern Cherokee Reservation only to the extent that Congress has authorized it:

> While Congress has granted certain civil and criminal jurisdiction . . . no such jurisdiction has been given to North Carolina regarding Indians within its boundaries. Therefore, control of the Indian reservation lies with the federal government and the Indians themselves.

> The state exercises no jurisdiction. Consequently, private protective agents are to be regulated by the Indians themselves and not by the state. The state has no authority or responsibility to issue a license to a private protective agent.

Memorandum, p. 2. A copy of the Memorandum is attached to this Trial Brief as Exhibit 1.

To summarize, the decisions of the Fourth Circuit Court of Appeals and the North Carolina Supreme Court dealing specifically with the status of the Eastern Band of Cherokee Indians confirm that the United States has paramount and plenary authority over the Eastern Band and its reservation. Furthermore, general principles of Indian law articulated by the Supreme Court and confirmed by Congress in the Indian Reorganization Act, to which the Eastern Band of Cherokee Indians is subject, confirm that plenary federal authority can attach to a tribe without regard to its origins. Finally the State of North Carolina recognizes the status of the Eastern Bands as a full fledged, federally recognized tribe; indeed, less than a year ago its attorney general concluded that in the absence of an express act of Congress authorizing state laws on the Eastern Cherokee Reservation, such laws cannot apply.

III

THE UNITED STATES AND THE EASTERN BAND HAVE EXERCISED THE FULL RANGE OF THEIR GOVERNMENTAL POWERS OVER THE CHEROKEE RESERVATION LEAVING VIRTUALLY NO RESPONSIBILITY FOR THE STATE OF NORTH CAROLINA

As described in Part II, the courts have reviewed the scope of federal authority over the Cherokee Reservation and the sources of that authority in determining whether federal or state law should apply in a given situation. In Part III of this Trial Brief, plaintiff will demonstrate that the United States has utilized all of its plenary authority over Indians to provide assistance to and supervision over the Cherokee Reservation. Plaintiff will also demonstrate that the Eastern Band itself has asserted its powers as a federally recognized tribe and has engaged in a wide variety of governmental programs, one of the most important of which is the fisheries program at issue in this litigation. This demonstration of federal and tribal preemption will show that the State of North Carolina bears virtually no responsibility for or control over the Reservation and hence cannot impose its state licenses on the Reservation.

A. The United States Has Undertaken a Comprehensive Scheme For Federal Supervision Over the Eastern Cherokee Reservation.

Summarized below are the programs undertaken by the United States on behalf of the Eastern Band of Cherokee Indians on the Eastern Cherokee Reservation. They reveal a comprehensive federal scheme to benefit the Eastern Band and its members.

(1) Education. The largest United States program on the Eastern Cherokee Reservation deals with education. Included is a regular Bureau of Indian Affairs (BIA) program, a special follow-through program, a program authorized by Title I of Public Law 89-10, and a program authorized by Title VI-B of the Department of Health, Education and Welfare. For the years 1973-74, $2,690,400.00 was budgeted for these programs and for the years 1974-75, $3,119,000.00 was budgeted. [Proposed Stipulation No. 17].

(2) Credit and Financing. The objective of the BIA Branch of Credit and Financing is to assist in upgrading the economic and social conditions on the Cherokee Reservation by aiding both Indian organizations and individuals to obtain financing for commercial, industrial and agricultural development activities including education and housing. In fiscal 1974, the Branch of Credit and Financing assisted tribal members in obtaining four loans from commercial lending institutions amounting to $303,600.00. Nine other tribal members were aided in obtaining financing from federal agencies totaling $276,666.00. Finally, the Eastern Band has borrowed $1,317,000.00 of revolving credit funds from the United States. In the fiscal year 1975, the BIA helped tribal members obtain two loans from commercial lending institutions amounting to $28,200.00 and six other members were aided in obtaining financing from federal agencies totaling $873,860.00. The tribe maintained its $1,317,000.00 account with the revolving credit funds from the United States. [Proposed Stipulation No. 18].

(3) Housing. The BIA has assisted the tribe in undertaking a number of housing projects. In 1974, the Qualla Housing Authority constructed 100 units of mutual help housing, giving them a total of 280 mutual help units and 37 low rent units under their management. In 1975, the Qualla Housing Authority had under way 30 homes in their new mutual help project and received new approvals from the United States Department of Housing and Urban Development for 200 additional units. An expanded housing improvement program was undertaken to repair 58 homes in 1974 and 24 homes in 1975. In fiscal year 1974, $138,900.00 was budgeted for administering this program and in fiscal year 1975, $138,900.00 was again budgeted. [Proposed Stipulation No. 19].

(4) Roads. New road expenditures in 1974 were $493,000.00 and new road expenditures for fiscal year 1975 were $360,000.00. In addition, road maintenance funds were allocated for fiscal years 1974 ($76,300.00) and 1975 ($113,700.00). [Proposed Stipulation No. 20].

(5) Community Services. The BIA Special Service Program is designed to fill the gaps in general assistance which are not provided otherwise to American Indians. The Bureau of Indian Affairs also has a special child welfare program to assist children and families that are not eligible for general welfare. For fiscal year 1974, $283,600.00 was budgeted for these programs and in fiscal year 1975, $284,700.00 was budgeted. [Proposed Stipulation No. 21].

In addition to these federal programs undertaken by the BIA, the BIA also provides Real Property Management Services

(funding level for fiscal year 1974 is $96,000.00 and for fiscal year 1975 is $147,500.00); Industrial Development Services (funding level for fiscal year 1974 is $41,000.00, funding level for fiscal year 1975 is $48,000.00); Forestry Services (funding level for fiscal year 1974 is $48,300.00 and funding level for fiscal year 1975 is $48,500.00); Employment Assistance Services (funding level for fiscal year 1974 is $19,000.00 and funding level for fiscal year 1975 is $20,000.00); Agricultural Extension Services (funding level for fiscal year 1974 is $42,500.00 and funding level for fiscal year 1975 is $47,800.00); Facilities Operation and Maintenance (funding level for fiscal year 1974 is $344,000.00 and funding level for fiscal year 1975 is $647,200.00). [Proposed Stipulation No. 22].

The total funding level for Bureau of Indian Affairs programs, be they educational, Indian services, tribal reservation development, trust responsibility, and facilities operations, was $4,449,800.00 for fiscal year 1974 and $5,163,200.00 for fiscal year 1975. [Proposed Stipulation No. 23].

The Indian Health Services of the United States Department of Health, Education and Welfare provide substantial health services to the Eastern Cherokee Reservation. They maintain a Cherokee hospital as well as several clinical services. The 1974 funding level for Indian health services activities on the Eastern Cherokee Reservation was $1,143,000.00 and the 1975 funding level was $1,661,000.00. [Proposed Stipulation No. 24].

Each of these programs is undertaken pursuant to congressional enactments which authorize federal governmental activity by the United States Departments of Interior, Health, Education and Welfare, Commerce, and Housing and Urban Development. Moreover, each governmental program is undertaken pursuant to annual appropriations enacted by Congress.

B. The Eastern Band of Cherokee Indians has Exercised Broad Powers of Tribal Self-Government for the Benefit Of the Cherokee Reservation.

Pursuant to the authority which the Eastern Band of Cherokee Indians has as a federally recognized tribe,[5/] the Band has undertaken the following comprehensive governmental services:

(1) Tribal Community Services. Included in general tribal community services are the tribal police department, the tribal fire department, the tribal sanitation department, the tribal rescue squad and the tribal water and sewer enterprise. These activities have been primarily maintained as a result of a sales tax levy imposed by the Eastern Band on all retail sales taking place within the reservation. This tax has been on the books since 1952. For fiscal year 1974, the Cherokee Tribal Community Services Fund received $401,172.50, from the sales tax levy, and with additional revenues, its total operating budget was $419,295.61. For fiscal year 1975, the Cherokee Tribal Community Services Fund received from the sales tax levy $452,968.12, and its total operating revenues were $502,214.40. In 1974, the Community Services Fund expended $335,481.50 and in fiscal year 1975, $436,267.59. [Proposed Stipulation No. 25].

(2) Cherokee Council Fund. The tribal council is the governing body of the Eastern Band of Cherokee Indians. The tribal council is responsible for carrying out all governmental programs and for exercising all powers of tribal self-government. Its operating revenues are derived primarily from one percentage of the four percent tribal sales tax and from a special operators lease rental which requires anyone who leases reservation land for business purposes to pay the tribe for the privilege of doing business on the Eastern Cherokee Reservation approximately 30% of the gross value of the lease. For fiscal year 1974, the tribal council revenues were $255,861.79 and for fiscal year 1975, the revenues were $291,608.77. The primary expenditures of the tribal council are administrative, although some tribal council funds are used for welfare and other community benefits. For fiscal year 1974, the expenditures were $218,491.77 and for fiscal year 1975, the expenditures were $230,402.42. [Proposed Stipulation No. 26].

5/ See the discussion in Part II regarding the authority contained in the Indian Reorganization Act, 25 U.S.C. §§ 476, et seq. and the contemporaneous Solicitor's Opinion, 55 I.D. 14 (1934) for a compilation of federally recognized tribal powers.

(3) Revenue Sharing. The tribal council receives federal revenue sharing funds and distributes them for various purposes. 1974 funds were given to local Head Start programs, senior citizens programs, and community recreation programs while in 1975 road equipment was purchased, a tribal finance building was constructed and funds were given for handicapped children and community services. [Proposed Stipulation No. 27].

(4) Categorical Federal Assistance. The tribal council operates as a clearing house for approximately 25 federal programs of categorical assistance each year. These programs originate in the United States Indian Health Services, the Office of Native American Programs, the Economic Development Administration of the Department of Commerce, the United States Departments of Health, Education and Welfare, Housing and Urban Development, and the Bureau of Indian Affairs. [Proposed Stipulation No. 28].

(5) Fish and Game Management Enterprise. Pursuant to its tribal governmental authority, the Eastern Band has established a Fish and Game Management Enterprise which is responsible for and has control over the recreational fishing hunting and camping programs on the reservation. For the fiscal year 1974, the operating revenues of the Fish and Management Enterprise totaled $68,466.03, of which $65,000.00 was obtained from the sale of tribal fishing licenses. Expenditures for fiscal year 1974 were $57,654.70. For fiscal year 1975, the operating revenues totaled $79,953.25, of which $74,000.00 was derived from the sale of fishing licenses. The expenditures for fiscal year 1975 were $63,234.17. [Proposed Stipulation No. 29].

(6) Boundary Tree Enterprises. The tribe, pursuant to its proprietary authority, developed the Boundary Tree Enterprises which directly operates a large motel on the Eastern Cherokee Reservation and leases for operation dining room and gasoline facilities. For fiscal year 1974, the operating revenues for the Boundary Tree Enterprises were $148,033.20, and the expenditures were $129,988.75. For fiscal year 1975, the revenues were $149,337.10 and the expenditures $147,260.46. [Proposed Stipulation No. 30].

(7) Miscellaneous Programs. In addition to the primary governmental activities described above, the Eastern Band is engaged in the following programs for the benefit of tribal members: the Qualla Civic Center (containing a library, center for senior citizens, and offices of the agricultural extension service), the fiscal year 1975 budget was $89,929.00); the Qualla Arts and Crafts Mutual Organization (which is an Indian craftsmen cooperative founded in 1946 to encourage development for the marketing of reservation crafts), the 1975 fiscal year estimated budget was $43,925.00;

the Tribal Planning Development Agency (to strengthen the economy, improve the environment, and develop job opportunities), fiscal year 1975 estimated budget--$50,000.00; the Indian Action Program (to train 50 tribal members for long term employment in trades such as carpentry, masonry, plumbing, heating and air conditioning), fiscal 1975 budget--$300,000.00; Businesss Development Office (assisting businesses on the reservation), fiscal year 1975 budget--$55,000.00; Aid to Tribal Government Program (designed to assist the tribal government in carrying out its governmental services and responsibilities), fiscal 1975 budget--$100,00.00; Qualla Housing Authority (designed to aid in the construction of new homes and the repair of old homes on the reservation), fiscal 1975 budget in excess of $1,000,000.00, primarily from funds received from the United States Department of Housing and Urban Development; Cherokee Boys Club; Cherokee Action Committee for Foster Children; Save the Children Federation; Cherokee Activities Center for Handicapped, Inc., and Cherokee Comprehensive Employment and Training Program. [Proposed Stipulation No. 31].

(8) Total Tribal Revenues and Expenditures. The total Eastern Band tribal governmental revenues for fiscal year 1974 were $970,310.52, while the fiscal year 1975 total revenues were $1,133,817.39. Total tribal expenditures in fiscal year 1974 were $833,355.86, while in fiscal year 1975, they were $1,006,560.49. [Proposed Stipulation No. 32].

C. The Eastern Band in Cooperation with the United States Has Complete Control and Supervision Over the Fisheries Program on the Eastern Cherokee Reservation.

In this Part III of the Trial Brief, we have described the scope and extent of federal and tribal governmental authority on the Eastern Cherokee Reservation. In this section of Part III we will detail the nature and scope of the tribal program in fisheries management undertaken in cooperation with the United States Fish and Wildlife Service. Having described this program, we will in Part IV demonstrate that existing principles of federal Indian law require a determination by this court that the Eastern Band, together with the United States, has preempted fisheries management on the Eastern Cherokee Reservation, leaving no room for state intervention. As a result, the state license fee is unlawful.

(i) Action By the United States Fish and Wildlife Service

Pursuant to a request made in 1963 by the Eastern Band of Cherokee Indians, the United State Department of the Interior, through the Fish and Wildlife Service and the Bureau of Indian Affairs, undertook to develop a fisheries management program with the Eastern Cherokee Band on the Eastern Cherokee Reservation. [A copy of the 1963 Tribal Resolution is attached hereto as Exhibit 2]. The United States acted pursuant to the authority contained in 16 U.S.C. § 661 which authorizes the United States Department of the Interior to undertake cooperative agreements to enhance the wildlife of the United States. In addition, the Department of the Interior acted pursuant to 25 U.S.C. § 13 (the "Snyder Act") which authorizes the United States to take all necessary and appropriate steps to advance Indians and Indian property throughout the United States. Pursuant to that statutory authority and pursuant to Interior Departmental Manual, release number 606, part 501 DM 2, dated June 20, 1963 [copies of release number 606 (1963) and release number 1266 (1971) are attached hereto as Exhibit 3], the United States Fish and Wildlife Service entered into an agreement on January 19, 1965 with the Eastern Band of Cherokee Indians. [Copies of the 1965 Agreement and a recently executed replacement 1976 Agreement are attached hereto as Exhibit 4].

The agreement provides that the United States will provide technical assistance in the management and development of sport fisheries resources; the United States will provide game fish for stocking reservation waters and that the United States will continue to provide these services on the contingency that funds be made available. Pursuant to the 1965 fish management agreement, the United States has stocked the waters of the reservation at an approximate average level of 200,000 trout

each year. Moreover, for fiscal year 1974, the United States expended $31,300.00 for its management assistance and $91,349.00 for its stocking program, while in fiscal year 1975, the United States expended $46,400.00 for its management assistance and $73,300.00 for its stocking program. In fiscal 1974, approximately 256,000 trout were stocked while in fiscal year 1975, approximately 250,000 fish were stocked in reservation waters. [Proposed Stipulation No. 33].

(ii) Fish Management Activities Undertaken By the Eastern Band

On February 1, 1965, the Eastern Band promulgated an ordinance establishing the Fish and Game Management Program as a tribal enterprise. The ordinance provided that a Fish and Game Manager would be appointed, that financing of the enterprise would be developed utilizing tribal treasury funds, that the United States Fish and Wildlife Service was authorized to conduct all biological investigations, and that all persons, be they member or non-members of the Eastern Band, must fish any of the waters of the Cherokee Reservation subject to tribal regulations and conditions, and that any person, be they tribal or non-tribal members, who fished in violation of the applicable tribal regulations would be prosecuted under 18 U.S.C. § 1165. [A copy of the 1965 Tribal Resolution is attached hereto as Exhibit 5].

During fiscal year 1974, the Eastern Band expended $57,654.70 in support of its Fish and Game Management Program, while in fiscal year 1975, it expended $63,234.17. Similarly, in fiscal year 1974, the tribe had operating revenues of $68,466.03, of which $65,000.00 was derived from the sale of tribal fishing permits, while in fiscal year 1975, the tribe had operating revenues of $79,953.25, of which $74,000.00 was derived from the sale of tribal fishing licenses. [Proposed Stipulation No. 35].

Pursuant to the working agreement with the United States Department of Fish and Wildlife, the Fish and Game Management Program has historically required non-members fishing on the reservation not only to acquire a tribal fishing license but where applicable to also acquire a state fishing license. Pursuant to this arrangement, in fiscal year 1974, the Eastern Cherokee Fish and Game Management Program sold 9,971 state licenses and paid over to the State of North Carolina $29,229.50, while in fiscal year 1975 the tribal Fish and Game Management Program sold 10,076 licenses and paid over to the State of North Carolina $29,704.00. [Proposed Stipulation No. 34]. In fiscal years 1974. 1975, as in every fiscal year since the creation of the working agreement between the Eastern Band and the United States Department of Fish and Wildlife, the State of North Carolina has exercised no responsibility for or supervision over the fisheries program--all responsibility, financial and managerial, lies with the Eastern Cherokee Band and the United States.

(iii) The State of North Carolina Continues to Increase its License Fees While Contributing Nothing to the Eastern Cherokee Fish and Game Management Program.

The State of North Carolina has continued to impose its substantial license fees on non-tribal members fishing on the Eastern Cherokee Reservation, even though the state has no financial responsibility for or supervisory control over the Fish and Game Management Program. 6/ The state license

6/ The State of North Carolina provides only limited governmental services on the Cherokee Reservation; the state provides highway maintenance and highway patrol services for approximately 41 miles of reservation roads. Otherwise, the state provides limited health inspection services (i.e., a mobile eye clinic), welfare services (i.e., the state provides two welfare workers and two eligibility employees to administer the federally financed food stamp and welfare assistance programs--in all the state and its subdivisions contribute just over $225,000.00 to reservation services, agriculture extension services and employment programs), agriculture extension services and employment assistance. In exchange for these state services, many Eastern Band members voluntarily pay state income taxes, all members pay state gasoline taxes, and all members pay all applicable state taxes when off the reservation. [Proposed Stipulation No. 38].

fees have increased significantly in 1976. Whereas in 1975, the resident state fishing license was $5.50 per season it is now $7.50; whereas in 1975 the state combination hunting and fishing license was $7.50, it is now $10.00; whereas in 1975 the resident county fishing license was $2.50 it is now $3.50; whereas in 1975 there was a state resident daily fishing license of $1.25, there is in 1976 only a minimum three-day fishing license of $3.00; whereas in 1975 there was a non-resident state fishing season license of $9.50, it is now $12.50; whereas in 1975 there was a non-resident state five-day fishing license of $4.25, there is now a minimum non-resident state three-day fishing license of $5.50. Thus, a non-resident wishing to fish on the Eastern Cherokee Reservation for a single day in 1976 must pay $5.50 to the state, whereas in 1975 he would have had to pay only $2.25. Similarly, whereas a resident fishing for a single day would have to pay to the state $3.00 in 1976, in 1975 he would have had to pay only $1.25. [Proposed Stipulation No. 36].

A non-member of the tribe would have to pay not only the state license fees described above but also the Eastern Cherokee license fees which are required to support and sustain a significant portion of the Cherokee Fish and Game Management Program. These fees provide for a daily fee of $2.00; a five-day fee of $7.50 and a $40 season fee for residents and non-residents alike. [Proposed Stipulation No. 37]. Because of the double licenses, the Eastern Cherokee Tribe is concerned about its continuing ability to attract to its reservation resident and non-resident sportsmen who contribute enormously to the economic welfare of the Reservation and who are responsible for generating a significant portion of the tribe's tax levies. Those levies in 1974 were $534,830.08 from the sales levy and $103,515.05 from the 30% business lease fee while in 1975

they were $640,951.04 from the levy and $114,832.45 from the 30% business lease fee. (Proposed Stipulation No. 39). Significantly, preliminary data shows a fifty percent (50%) increase in the proceeds from tribal license permits which have been sold thus far in fiscal year 1976. Since the state has thus far in 1976 refrained from having its licenses sold on the Cherokee Reservation, these figures suggest the significant economic advantage to the Eastern Band which will occur once fishermen discover that double taxation has been eliminated on the Cherokee Reservation. [Proposed Stipulation No. 40].

IV

THE LICENSE FEES OF THE STATE OF NORTH CAROLINA UNLAWFULLY INTERFERE WITH A FEDERAL SCHEME AND UNLAWFULLY INFRINGE UPON THE EXERCISE OF TRIBAL GOVERNMENTAL AUTHORITY

In Part III of this Trial Brief, the Eastern Band demonstrated the comprehensive scope of federal governmental responsibility over all aspects of the Eastern Cherokee Reservation. Particular emphasis was given to the decade-long involvement of the United States Department of Fish and Wildlife in developing and maintaining the Fish and Management Program. Similarly, we showed the broad scope of tribal governmental authority undertaken by the Eastern Band pursuant to its inherent and statutory authority as a federally recognized Indian tribe. Again, special emphasis was placed on the expansive and detailed activities of the Eastern Band in the area of Fish and Game Management. Given this documentation of federal and tribal governmental activity, we will demonstrate in this Part IV that the state license fees imposed by the State of North Carolina over the Fish and Management Program on the Cherokee Reservation unlawfully interfere with the federal scheme for the reservation, and significantly infringe upon the right of reservation Indians to govern themselves.

A. Through Its Involvement With The Cherokee Fish and Game Management Program, the United States Has Preempted the Imposition of State License Fees.

As demonstrated in the Fourth Circuit Court of Appeals decisions outlined in Part II of this Trial Brief, the United States, ever since 1868, has undertaken an ever increasing role in the life of the Eastern Cherokee Reservation:

> Not only with respect to the acquisition and preservation of the title of this land, but also in practically every other way imaginable, the government of the United States from 1868 to the present day has continuously guarded and protected the interests of this band of Indians,

and has done everything possible to promote their progress and development.

United States v. Wright, 53 F.2d 301, 304 (4th Cir. 1931). Reservation hunting and fishing and wildlife management, although not specifically considered by the Court of Appeals for the Fourth Circuit, is one of those areas over which the United States has traditionally exercised its plenary power to the exclusion of state regulation.

Indian tribes have the right to regulate hunting and fishing on their reservation free of state control. This right is implied in the act of setting aside land by the United States for the exclusive use and occupancy of the Indians. Menominee Tribe v. United States, 391 U.S. 404 (1968); Alaska Pacific Fisheries v. United States, 248 U.S. 78 (1918); Quechan Tribe v. Rowe, 350 F. Supp. 106 (S.D. Cal. 1972), aff'd in part, rev'd in part, ___ F.2d ___ (Civil No. 72-3199, 9th Cir. 1975); Confederated Colville Tribes v. State of Washington, ___ F. Supp. ___ (Civil No. C-75-146, E.D. Wash. 1976). Moreover, the right to enjoy hunting and fishing and to regulate its exercise is not confined to reservations secured by treaty; it is a right and privilege which is a part and parcel of any reservation, whether expressly reserved or not, and whether the reservation was created by treaty, executive order or confirmed by statute. Alaska Pacific Fisheries v. United States, supra; United States v. Walker River Irrigation District, 104 F.2d 334 (9th Cir. 1939); Quechan Tribe v. Rowe, supra. See also Spalding v. Chandler, 160 U.S. 394, 403 (1896); United States v. McGowan, 302 U.S. 535 (1938) and Antoine v. Washington, 420 U.S. 194 (1975).

On at least two occasions, Congress has expressly confirmed the right of Indian tribes to regulate hunting and fishing on their reservation free of state interference.

Thus, Congress in 18 U.S.C. § 1162 confirmed the federal scheme of allowing Indian tribes to regulate hunting and fishing within their reservations by expressly reserving such rights when it conferred general civil and criminal jurisdiction over disputes among Indians on reservations: [7/]

> Nothing in this section shall . . . deprive any Indian or any Indian tribe and/or community of any right, privilege or immunity afforded under federal treaty, agreement, or statute with respect to hunting, trapping or fishing or the control, licensing or regulation thereof.

Moreover, seven years after enacting Public Law 280, Congress created a federal trespass statute imposing criminal penalties on anyone hunting or fishing on <u>any</u> Indian lands without authorization from the tribe:

> Whoever, without lawful authority or permission, willfully and knowingly goes upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use, for the purpose of hunting, trapping, or fishing thereon, or for the removal of game, peltries, or fish therefrom, shall be fined not more than $200 or imprisoned not more than ninety days, or both, and all game, fish, and peltries in his possession shall be forfeited.

18 U.S.C. § 1165, Public Law 86-634, § 2, July 12, 1960, 74 Stat. 469.

[7/] 18 U.S.C. § 1162 and its civil counterpart, 28 U.S.C. § 1360 are together commonly known as Public Law 280. The statutes authorized jurisdiction to pass to certain named states and permitted other states through legislature action or popular referendum to assert jurisdiction over the Indian reservations within their boundaries. The State of North Carolina has never assumed jurisdiction pursuant to Public Law 280 over the Eastern Cherokee Reservation. And contrary to the statements in the State of North Carolina's Answer (paragraph 1), Public Law 280 would be applicable in North Carolina if North Carolina and the Eastern Band were both to consent to its presence. Thus far, neither have.

Thus, Public Law 280 and 18 U.S.C. § 1165 together reveal a comprehensive federal scheme granting Indian tribes the right to exercise hunting and fishing on their reservations free of state regulation.[8/]

In addition to the federal statutory scheme authorizing federal and tribal control over hunting and fishing contained in 18 U.S.C. §§ 1165 and 1162, in the case of the Cherokee Fish and Game Management Program, the United States has moved beyond merely recognizing tribal regulatory authority, and has actively assisted the Eastern Band in the development and management of its fish program. See discussion, pp. 29-31 in Part III, infra. This significant additional involvement by the United States has been undertaken pursuant to the authority contained in 25 U.S.C. § 13 and 16 U.S.C. § 661.

Once the scope of federal authority is established over an Indian Reservation and once it is established that the effect of such federal activity has been to eliminate all duties and responsibilities on the part of a given state over the reservation activity, the state authority becomes preempted as a matter of law. Thus, in Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965) the Supreme Court considered whether the State of Arizona could impose a gross income tax on a non-Indian who was a retailer on the Navajo Reservation. The retailer was acting pursuant to the federal trading statutes, 25 U.S.C. §§ 261, et seq.:

8/ Any question but that the United States may delegate authority to a tribe to take regulatory control over members and non-members with respect to an important reservation activity such as hunting and fishing, and that the exercise of such delegated powers has the same force and effect under the Supremacy Clause as if exercised directly by the United States, has been resolved recently in the important case of United States v. Mazurie, 419 U.S. 554, 556-559 (1975).

> Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities. . . . This state tax on gross income would put financial burdens on appellant or the Indians with whom it deals in addition to those Congress or the tribes has prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commissioner. And since federal legislation has left the State with no duties or responsibilities respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax. [Footnotes omitted, emphasis supplied].

380 U.S. supra at 690-691.

The State of North Carolina has no obligations or responsibilities with respect to the management and regulation of the Fish and Game Program on the Eastern Cherokee Reservation. Management of the fishery, as demonstrated in Part III, has been assumed jointly by the United States Fish and Wildlife Service and the Eastern Band. The federal and tribal agencies have together over the last ten years provided hundreds of thousands of dollars as well as manpower, technological assistance and over two million fish for stocking reservation waters. The end result of their involvement has been the development of an outstanding fishery program for the Eastern Cherokee Reservation in which the State of North Carolina plays no part.

Because Congress has developed a broad statutory scheme authorizing tribes to regulate hunting and fishing and authorizing the United States to assist tribes in developing recreational fishery programs, and because agencies of the United States have acted aggressively to assist the Eastern Band in its program of fishery development and regulation, there is no room for the State of North Carolina to impose its license

fees. Therefore, the State of North Carolina, like the State of Arizona in Warren Trading Post v. Arizona Tax Commission, supra, cannot impose its state fees and taxes as a condition to the privilege of fishing on the Eastern Cherokee Reservation.

B. The Imposition of North Carolina License Fees Infringes Upon the Right of the Eastern Cherokees to Exercise the Powers of Self-Government.

In Warren Trading Post the Supreme Court found that Arizona's tax laws interfered with a retail business, operated by a non-Indian on the Navajo Reservation pursuant to the federal traders' statutes. The Navajo Tribe itself was not directly involved in the trading activity. In contrast, the present dispute involves not only an activity undertaken on a reservation pursuant to a federal scheme, but also an activity directly undertaken by a tribal government. Because the state law affects a tribal program, a second test becomes applicable to determine the legality of the state action. That test involves an inquiry into whether the state levy interferes with the right of the reservation Indians to govern themselves. If the state action is found to infringe with lawful tribal governmental action, it must be restrained.

We have described the nature and scope of tribal involvement in the Cherokee Fish and Game Management Program. [See Part III, infra]. The tribal activity includes not only the adoption of rules and regulations controlling fishing on the reservation, but also the development with the United States of a fishing recreation program financed in large part by a tribal fishing tax. We have demonstrated in Section A of this Part IV the federal authority confirming the Eastern Band's powers to regulate fishing. We shall now briefly describe the origins of the Band's powers to levy a fee as a condition to reservation fishing. Finally, we will show that the state's levy unlawfully

interferes with the right of the Eastern Band to impose its own tribal fees as a condition to reservation fishing.

The fishing license fees imposed by the Eastern Band as a condition to the privilege of fishing on the reservation is part of an overall taxing plan of the Eastern Band. As noted above in Part III (p. 26), the tribe has also enacted a sales tax levy on the privilege of engaging in retail business sales on the reservation, and a 30% lease rental tax for the privilege of leasing land on the reservation for business purposes.

The power of an Indian tribe to impose taxes on members and non-members is confirmed by the Indian Reorganization Act, 48 Stat. 984, 987:

> In addition to all powers vested in any tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest . . . .

The powers confirmed by Congress in the Indian Reorganization Act were described in great detail by the Department of the Interior in the contemporaneous Solicitor's Opinion, "Powers of Indian Tribes," 55 I.D. 14 (1934). Specifically included in the powers is the taxing power:

> Chief among the powers of sovereignty recognized as pertaining to an Indian tribe is the power of taxation. Except where Congress has provided otherwise, this power may be exercised over members of the tribe and over non-members, so far as such non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions.[9/]

55 I.D. at 46.

Non-members of the Eastern Band wishing to fish on the Eastern Cherokee Reservation under existing tribal

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9/ The power of Indian tribes to impose taxes has been confirmed in a number of cases. See e.g. Iron Crowe v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956); Buster v. Wright, 135 F. 947 (8th Cir. 1905), appeal dismissed, 203 U.S. 599 (1906), and Morris v. Hitchcock, 21 App. D. C. 556 (1903), aff'd 194 U.S. 384 (1904).

and state policies are subject to double taxation. The test to be employed in resolving conflicts which arise where both an Indian tribe and a state assert an interest in exercising their respective jurisdictions over non-Indians on an Indian reservation is found in Williams v. Lee, 358 U.S. 217, 219-220 (1959). A determination must be made on a case by case basis as to whether the state's proposed conduct infringes ". . . on the right of reservation Indians to make their own laws and be governed by them." 358 U.S. at 220. As the Supreme Court noted in an important recent case:

> In these situations [involving non-Indians on a reservation], both the tribe and the State could fairly claim an interest in asserting their respective jurisdiction. The Williams test was designed to resolve this conflict by providing that the State could protect its interest up to the point where tribal self-government would be affected.

McClanahan v. State Tax Commission, 411 U.S. 164, 179 (1973). This rule of tribal infringement has been recently adopted by the Supreme Court in Fisher v. District Court, ___ U.S. ___, 96 S.Ct. 943 (1976) and in Moe v. Salish and Kootenai Tribes, ___ U.S. ___, 44 U.S.L.W. 4535 (decided April 27, 1976). In Fisher the Supreme Court ruled that since the Northern Cheyenne Tribe had enacted a scheme for the adoption of tribal members, the State of Montana could not utilize its adoption laws or its courts to affect reservation adoptions for to do so would infringe upon the exercise of tribal self-government. In Moe v. Salish and Kootenai Tribes, the Supreme Court ruled that the State of Montana could request an Indian retailer to collect a tax on cigarettes imposed on a non-Indian purchaser of cigarettes from the Indian retailer, for the burden imposed on the retailer of collecting the tax would not interfere significantly with the exercise of tribal self-government.

Of all the tribal infringement cases, perhaps Moe because it involved state tax levies against non-Indians is of most relevance to the present dispute. This case is significantly different from Moe, for here the tribal government of the Eastern Cherokee Band is actively and directly involved in the activity which is burdened by the state license fee. In Moe there was no tribal involvement. The tribe in Moe neither was engaged in the practice of selling cigarettes nor had it imposed its own tribal taxes on the sale of the cigarettes. On the other hand, here the activity being levied against by the state is an activity peculiar to reservation natural resources which has been directly undertaken by the tribe through the Fish and Game Management Enterprise. Moreover, the Eastern Band here has enacted its own fees on the privilege of fishing and hunting.[10/]

Not only do we have in the present case significant and direct tribal involvement, i.e., tribal responsibility for the Fish and Game Management Program in the first instance as well as the imposition of a tribal license tax as a condition to the privilege of fishing and hunting on the reservation, which distinguishes this case from the facts in Moe, but of equal significance is the fact that here there is a threshhold quesion as to whether in fact the State of North Carolina can fairly claim any legitimate interest in the subject matter of the jurisdictional dispute, i.e., the Fish and Game Management Program.[11/] The state has not expended funds for the establishment

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10/ The three-judge lower court in Moe v. Salish and Kootenai Tribes expressly noted that although the Salish and Kootenai Tribes had the authority to impose a tax on the sale of cigarettes, they had not done so. 392 F. Supp. 1297, 1313 (D. Mont. 1973) (3 judge court).

11/ The Supreme Court has suggested that the tribal infringement test is to be applied where both the state and the tribe can fairly claim an interest in asserting their jurisdiction. McClanahan v. Arizona Tax Commission, 411 U.S. supra at 179.

and maintenance of the fishery. The state provides no personnel for fisheries project management and operation. The state contributes no fish for the stocking of reservation waters. It provides no technical or other assistance for the fisheries project. The State of North Carolina's only ascertainable interest is that of receiving approximately $30,000.00 a year in revenues from the sale of license fees.[12/] The lack of any significant state interest and the presence of a primary tribal interest in the present case is to be distinguished from the situation in Moe.[13/] Thus, in Moe the Supreme Court

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12/ Indeed, the state statute relied on by the State of North Carolina as authorizing it to impose license fees, (766, Public Law 1965) expressly provides in Section 4 "the North Carolina Wildlife Resources Commission shall not have jurisdiction over the above described tribal trout fishery management program on the above described waters." On the face of this statute the only interest which the state has is that when trout are transported from the Cherokee Reservation, they are to be accompanied by an official Cherokee Indian Reservation fishing permit which shall include the number of the permitee's North Carolina fishing license. See Section 3 of Public Law 766. There is nothing in the statute which affirmatively requires a non-member to purchase a state fishing license--all that the statute says is if a person has otherwise purchased a license (i.e., he has purchased a state license for general use in state waters off the Eastern Cherokee Reservation), then the number of that fishing license must appear as a part of the Cherokee fishing permit. Thus, the legal interest of the state is limited to an insignificant disclosure requirement. Moreover, the state cannot point to the provision in the 1965 Agreement between the United States and the Eastern Cherokee Band requiring state licenses on the reservation as authority justifying its license tax, first because state jurisdiction cannot be conveyed by tribal action (see Kennerly v. District Court, supra) and second, because that provision has been deleted in the recent successor agreement, the 1976 Agreement, which is attached hereto as Exhibit 4.

13/ We should also point out that since the state's only interest is financial and since by its own statute (as well as by our showing of federal preemption) its responsibilities do not cover supervision of the fish program, no issue of possible federal or tribal interference with lawful state police power is involved in this litigation. See discussion of concurrent jurisdiction in United States v. Wright, p. 12, infra.

noted that since it is the non-Indian consumer of cigarettes who is saved the state tax and hence who reaps the benefit of the alleged tax exemption, the tribes' interests are remote. 44 U.S.L.W. at 4541. The three judge lower court in Moe was even more explicit in its findings that the competing interests respecting the sale of cigarettes are immediate and direct for the state and are indirect and tangential for the Indian tribes:

> It may reasonably be inferred that the stores were not established primarily for the benefit of Indian customers residing on the Reservation, but rather to sell cigarettes to prospective customers passing on the highway and others who come from neighboring communities to purchase cigarettes at a price substantially lower than the going price off the Reservation. The Indians have a profit from increased sales. The non-Indian purchasers avoid the payment of a tax legally imposed upon them.
>
> We conclude that under these facts the Indian seller in selling cigarettes to non-Indians is involved with non-Indians to a degree which would permit the State of Montana to require precollection of the tax imposed upon the non-Indian. [Emphasis supplied].

392 F. Supp. at 1311. Further, the court noted:

> Nor are we persuaded that the precollection of the tax imposed upon non-Indian customers, interfers with tribal self-government as Plaintiff Tribes contend. We have recognized that the tax is not applicable to Indian consumers residing on the Reservation. The fact that the Tribes collect a small rent and administration fee from operators of 'smoke houses' does not justify sales to non-Indians without payment of the tax. These sales are not for the benefit of the Tribe, but rather for non-Indian consumers who are obligated to pay the tax, and the two Indian sellers who have a competitive advantage in selling cigarettes to non-Indians without precollecting the tax. [Emphasis supplied]. 392 F. Supp. at 1317.

The contrast between the cigarette sales in Moe and the tribal fish and game enterprise involved in the present case is striking. The state interest in Moe was to prevent non-Indians from utilizing the reservation as a tax haven under circumstances where the only beneficiaries of the cigarette

sales activity on the reservation were two Indian retailers. In the present case the state's legal interest is minimal--only that a non-Indian who otherwise has purchased a license must show his state license when transporting trout out of the Cherokee Reservation. Hence, the state's only real interest is in receiving approximately $30,000.00 a year from the sale of its license fees, even though it is uncontested that the state has no financial responsibility for the fisheries program, and even though the state by legislative enactment has withdrawn any supervisory responsibility over the Cherokee Fish and Game Program.[14/] And, in contrast to Moe, the interest of the tribe here is significant for as we have shown, it is acting pursuant to a number of federal statutes to develop and maintain a fish and game recreation program for the benefit of all tribal members.[15/]

The state's efforts to impose its license fees as a condition to non-members participating in the Eastern Cherokee Fish and Game Management Enterprise program significantly interfere with the exercise of tribal self-government. Since

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14/ In the past the State of North Carolina has acknowledged the primary taxing jurisdiction of the Eastern Band for activities located on the reservation. Thus, in § 105.164.13 (Vol. 2C, General Statutes of North Carolina) the state exempts reservation merchants from the state sales tax where the merchants are authorized by the Eastern Band to do business on the reservation and are paying the tribal gross receipts levy to the Tribal Council. We would suggest that this exemption is consistent with federal policies favoring tribal preemption over reservation activities. Moreover, these federal policies favoring tribal self-government are not dependent upon state acquiescence--they prevail as a matter of federal law.

15/ Testimony will be presented at trial indicating that the fisheries program attracts large numbers of tourists to the reservation who not only fish but camp at the tribal camp grounds and purchase food, lodging, retail products and special Indian arts and crafts. It will be demonstrated that these sportsmen not only generate enormous revenues for businesses located on the Cherokee Reservation, which aids the economic status of the community as a whole, but they also are responsible for generating significant amounts of money to the tribe through the 5% sales tax levy and the 30% operators leases and permits fee, and the fishing license fees. See Proposed Stipulation No. 39.

the responsibility for the regulation and development of reservation fishing belongs to the Eastern Band, the State of North Carolina should not be allowed to impose a second license fee.

V

CONCLUSION

In this Trial Brief, the Eastern Band has demonstrated that it is a federally recognized Indian tribe which enjoys an unrestricted federal Indian status under the laws and policies of the United States. As a result, the State of North Carolina possesses no special "concurrent" jurisdiction over the Cherokee Reservation. Moreover, the United States and the Eastern Band have assumed virtually all governmental responsibilities for supervising the Cherokee Reservation, and in particular, the Eastern Cherokee Fish and Game Management Enterprise. The State of North Carolina has no responsibility over reservation fishing and its license fees interfere with a preemptive federal scheme and infringe upon the lawful exercise of tribal self-government. Double taxation of reservation fishing must be prohibited by this court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of June, 1976, mailed a true copy of the foregoing PLAINTIFF'S TRIAL BRIEF, PLAINTIFF'S PROPOSED STIPULATIONS, PLAINTIFF'S OUTLINE OF DOCUMENTATION IN SUPPORT OF THE PROPOSED STIPULATIONS through the United States Mail, postage prepaid and correctly addressed to:

John A. Powell
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