

ALASKA
HISTORICAL LIBRARY

20c
Aug 85

TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

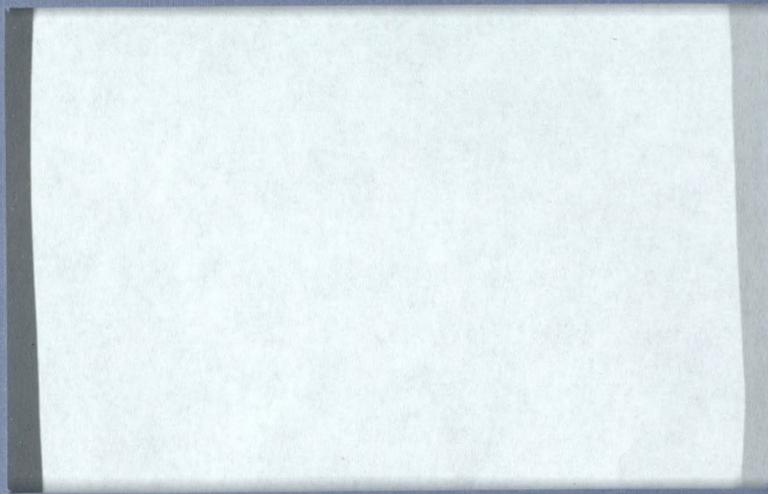
VOLUME XV

SUBSISTENCE

OCTOBER 10, 1984

ALASKA NATIVE REVIEW COMMISSION
HON. THOMAS R. BERGER
COMMISSIONER

KF
8208
.A46
1984
vol. 15



TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

VOLUME XV

SUBSISTENCE

OCTOBER 10, 1984

Transcripts of the Alaska Native Review Commission are produced in two series. Those in Roman numerals are for the Roundtable Discussions. Those in Arabic numbers are for the Village Meetings.

All original transcripts, audio tapes and other material of the Alaska Native Review Commission are to be archived at the Elmer E. Rasmuson Library, University of Alaska, Fairbanks, Alaska 99701.

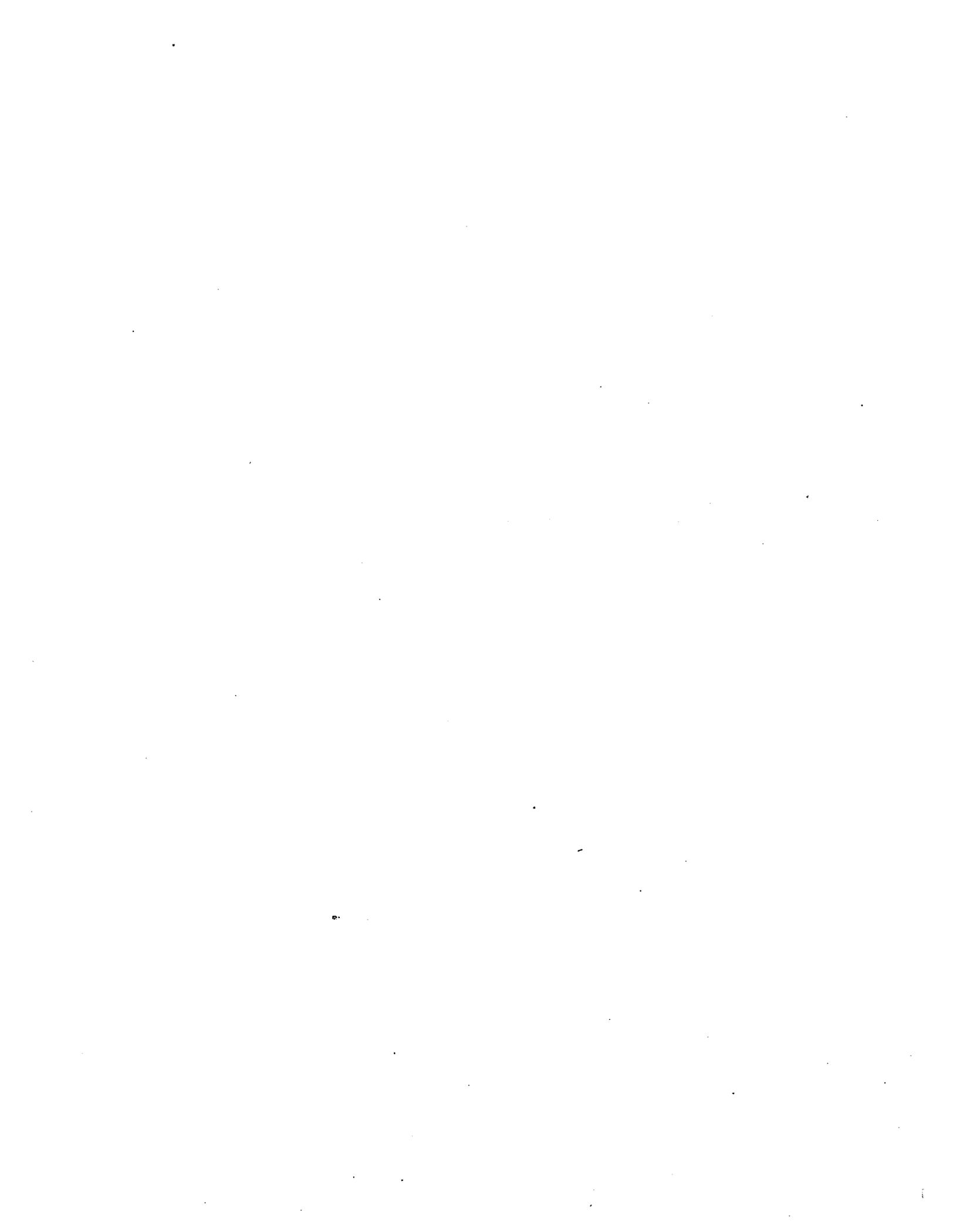


TABLE OF CONTENTS

1	<u>EXPLANATION</u>	<u>PAGE</u>
2	Mr. Berger Speaking-----	1457
	Introductions-----	1464
3	Mr. Langdon Speaking-----	1467
	Tape 1, Side B-----	1474
4	Mr. Vaska Speaking-----	1475
	Mr. Morrison Speaking-----	1475
5	Mr. Pungowiyi Speaking-----	1477
	Ms. Worl Speaking-----	1478
6	Mr. Morrison Speaking-----	1478
	Mr. Vaska Speaking-----	1480
7	Mr. Case Speaking-----	1482
	Mr. Vaska Speaking-----	1483
8	Mr. Sparck Speaking-----	1485
	Ms. Adams Speaking-----	1487
9	Mr. Meeker Speaking-----	1487
	Mr. Berger Speaking-----	1489
10	Ms. Spengler Speaking-----	1490
	Mr. Behnke Speaking-----	1492
11	Tape 2, Side A-----	1492
	Mr. Pungowiyi Speaking-----	1493
12	Ms. Adams Speaking-----	1493
	Mr. Lonner Speaking-----	1493
13	Ms. Spengler Speaking-----	1494
	Mr. Hammond Speaking-----	1498
14	Mr. Pungowiyi Speaking-----	1502
	Mr. Hammond Speaking-----	1504
15	Mr. Morrison Speaking-----	1504
	Mr. Langdon Speaking-----	1511
16	Tape 2, Side B-----	1511
	Mr. Hammond Speaking-----	1511
17	Mr. Behnke Speaking-----	1514
	Mr. Lonner Speaking-----	1515
18	Ms. Spengler Speaking-----	1516
	Mr. Case Speaking-----	1517
19	Mr. Lonner Speaking-----	1518
	Ms. Spengler Speaking-----	1519
20	Mr. Sparck Speaking-----	1519
	Mr. Berger Speaking-----	1521
21	Mr. Lonner Speaking-----	1522
	Tape 3, Side A-----	1530
22	Mr. Berger Speaking-----	1543
	Mr. Holthaus Speaking-----	1544
23	Mr. Mitchell Speaking-----	1552
	Tape 3, Side B-----	1552
24	Tape 4, Side A-----	1571
25		

TABLE OF CONTENTS (cont.)

<u>1</u>	<u>EXPLANATION</u>	<u>PAGE</u>
2	Mr. Vaska Speaking-----	1571
3	Mr. Sparck Speaking-----	1574
4	Mr. Mitchell Speaking-----	1585
5	Mr. Sparck Speaking-----	1589
6	Tape 4, Side B-----	1590
7	Mr. Usher Speaking-----	1590
8	Mr. Mitchell Speaking-----	1593
9	Mr. Berger Speaking-----	1595
10	Mr. Pungowiyi Speaking-----	1595
11	Mr. Solomon Speaking-----	1597

* * * * *

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(ROUNDTABLE DISCUSSION)
(SUBSISTENCE)
(OCTOBER 10, 1984)

MR. BERGER: There are name cards. Feel free to sit where you wish around the table here, and we'll sort out the name cards. But if it appeals to you to sit where your card is, well, so much the better...I think that there's, I think Dan Gross, you wouldn't mind moving up by Joe Meeker there, just for the fun of it, fill up that space.

Well, we'll start in just a minute. They are videotaping the proceedings, because they intend to make television programs out of them. And Gary Williams is making a movie, or a program, and so they will be bringing other mikes in in a minute. But, for the moment, if it's okay, Gary, could I begin, and I could just talk, and we've got a mike here. So I'll just monopolize the first few minutes until those other mikes are installed. And since I intended to that anyway, I don't think anything will have been lost.

Well, my name is Tom Berger, and I think you know that I have been asked by the Inuit Circumpolar Conference and the World Council of Indigenous People to conduct the Alaska Native Review Commission. We have been holding meetings in the villages since February. We've held meetings in towns and cities as well, throughout Alaska. We've held meetings in fish camps on the Yukon River and the Kuskokwim River. And I've had the opportunity, I think, of meeting just about all of you in one locale or another. It is part of our plan, in carrying out the work of the Commission, to hold roundtables like this. We held three weeks of roundtables back in the spring. They were, I thought, quite successful. And so we decided to hold this fall and winter for roundtables. And this is the first of those. Per-

1 haps you might forgive me if I read an opening statement on the
2 subject of subsistence, and to indicate to you why I felt that
3 was something that justified our assembling here for four days
4 to discuss the subject.

5 I have been to 40 villages
6 and towns throughout Alaska, and during those travels I have
7 heard testimony from now more than 800 Alaska Natives and non-
8 Native Alaskans. And I have found that the principal concern
9 of the people in many of the villages is subsistence. The
10 Alaska Native Claims Settlement Act of 1971 is supposedly about
11 corporations, but when you think about it it is really about
12 land. And to Alaska Natives in many of the villages, land is
13 subsistence. And the loss of ANCSA lands will not eliminate
14 subsistence, for subsistence takes place on State and federal
15 lands, as well, but it will impair its exercise. People have
16 told me that they believe ANCSA lands must remain in Native
17 hands. Furthermore, access to State and federal lands must be
18 retained. And thus concerns about ANCSA lands and the
19 subsistence regime are fused.

20 Now many who have testified
21 regard the post-ANCSA era, the 13 years since ANCSA, as one of
22 retreat. They are acutely aware of restraints on subsistence,
23 the loss of freedom to hunt, fish and trap, wherever they or
24 their parents or grandparents had done, the impingement of
25 closed seasons, and competition from commercial fishing and
26 sport hunting and fishing. All of these things, they feel,
27 threaten the fish and game resources upon which they depend and
28 threaten as well their continuing access to them.

29 Now it is more, however,
30 than a simple question of making a living off the land, now and
31 in the future. The legitimacy of these villages, in the eyes
32 of legislators, depends on their being thought of as being
33 truly engaged in subsistence as a viable way of life. Yet the

1 intrusion of non-Native institutions and ways, including
2 restraints on subsistence, has reduced some villages to a
3 condition where they can hardly claim to be dependent on sub-
4 sistence. Their moral claim to resist further intrusion may be
5 thereby impaired, and they feel aggrieved because they did not
6 seek this outcome. Thus, I have found that, even in villages
7 where subsistence activities appear to have declined, people
8 speak of subsistence with the same passion as they do in
9 villages where it is flourishing.

10 In Alaska, Native
11 societies, large and small, were erected on a subsistence base.
12 Today subsistence gives continuity to village life, and given
13 the limited opportunities for wage or salaried employment in
14 rural Alaska, is seen to be the key to survival in village life
15 and village society. Although ANCSA extinguished aboriginal
16 subsistence hunting and fishing rights, Alaska Natives still
17 regard subsistence as their birthright. Even those not engaged
18 in subsistence regard it as essential to their future well
19 being.

20 Now, forgive me if I say a
21 word about the social problems in the villages, because these
22 are the subject of concern throughout Alaska, and especially in
23 the villages, where people have quite frankly and openly refer-
24 red to them. And these things, it seems to me, are linked to
25 the acute awareness of dependence and marginalization. The
perceived importance of traditional cultural institutions and
bitterness towards the dominant society that has produced this
condition, may result in a refusal to abide by the norms of
either culture. And, as Professor Ted Chamberlin has said,
speaking of the situation in Australia, "Aboriginal health is
now seen to be a function of the material and spiritual
nourishment that the land provides. Ill health is the result
of estrangement and dispossession." Now that may be stated too

- 1 6. Do these represent the wave of the future? If they do,
2 ought they to?
- 3
- 4 7. What kind of legislation and institutional arrangements
5 can assure the future of subsistence?
- 6 8. What has been the experience of other jurisdictions and
7 other countries in seeking a measure of control over
8 regulations of subsistence?
- 9 9. What is the condition of subsistence worldwide?

10 Well, we've cast a pretty
11 broad net there, but I thought that it would be worthwhile to
12 do that, because we can always return to the specific details
13 of subsistence in Alaska, aided as we are by Steve Langdon's
14 paper. Might I just say that we have distributed Steve
15 Langdon's paper, and Steve has sought to describe the subsis-
16 tence regime in Alaska. I don't expect that you will have read
17 his paper from beginning to end, nor do I expect that you will
18 necessarily do so. But it is, I think, a most valuable docu-
19 ment to have. It's an encyclopedic reference to the current
20 subsistence regime, and Steve has raised certain subsistence
21 issues in his paper that I hope we will be able to discuss this
22 morning and this afternoon, and in a few minutes I'll ask Steve
23 to carry on.

24 Before I stop talking, I
25 see those mikes are not yet in place. I was going to suggest
that we all introduce ourselves at this stage, but perhaps you
will forgive me if I'll just go on a minute longer to discuss
procedure and agenda that I thought we might follow for the
next four days, and then we can introduce ourselves. There is
a suggested agenda that I think you have. And if you have it

1 before you perhaps I must just talk about it for a few minutes.
2 On the first day, Wednesday, we are to discuss basic subsis-
3 tence issues. And you'll see that it refers to my opening
4 remarks; well, those, thankfully, are now completed. Intro-
5 duction of the roundtable, perhaps you might allow me to just
6 postpone that for a minute. Procedure and agenda, well, that
7 is where we are. (I think there's a namecard, Woody.) I
8 thought that today we would discuss basic subsistence issues,
9 and Steve Langdon will open the discussion if that's all right
10 with all of you. And he will take a little time to do that.
11 And then we thought we would just, for the rest of the morning,
12 have a roundtable discussion of basic subsistence issues and
13 that we hoped that all of you would feel free to participate in
14 that. This afternoon we will start with Tom Lonner, who has
15 prepared a paper called, "The Spider and The Fly," that I think
16 you have. And Tom's argument essentially will be that all of
17 these measures designed to regulate subsistence inevitably
18 result in a narrowing subsistence base and that it's time to
19 take a new look at this network of subsistence regulations.
20 And so, we will begin the afternoon, if we may, with Tom's
21 rather challenging and iconoclastic position. Don Mitchell is
22 coming this afternoon, and we will ask him to follow Tom. And
23 then we were hoping that you would all feel free to participate
24 in that discussion, as well.

19 Then tomorrow morning we
20 thought that we would talk about, that is, the second day,
21 Thursday, tomorrow, we thought we would talk about harvesting
22 and land management and harvesting rights and management
23 regimes. The feeling being that you can't separate them, that
24 land tenure, land management are inevitably, inevitably have a
25 great bearing on what in fact, whether harvesting rights are,
in fact, exercised. And we would ask Steve again to begin that
subject. And we would ask tomorrow that people from Alaska

1 follow Steve. And we were hoping that Austin Hammond and Caleb
2 Pungowiyi would perhaps lead the discussion tomorrow when Steve
3 has introduced the subject. And then we thought we would have
4 a roundtable on it. Tomorrow afternoon we were going to ask
5 people from other jurisdictions and other countries to talk
6 about the land management and harvesting regimes in their
7 jurisdictions and in their countries. And we were going to ask
8 Harvey Feit, who is well acquainted with the James Bay and
9 Northern Quebec Settlement to talk about what has been done
10 there. We were expecting representatives of Makvik, the
11 Inuit of northern Quebec, to be here, but they were unable to
12 come, they are engaged in salvaging the, or securing the safety
13 of that deer population that was flooded just the other day in
14 northern Quebec. We would also, tomorrow afternoon, ask the
15 representatives of the Northwest Territories' government to
16 talk about the regime in the Northwest Territories, Hugh
17 Monaghan and Dick Spaulding are here representing the gov-
18 ernment of the Northwest Territories. And we will ask Dave
19 Porter, of the Council of Yukon Indians, to talk about their
20 land claims settlement that is currently being negotiated with
21 the government of Canada, and their land management regime.
22 And we also ask Dan Gross, who is from CCNY, but knows a good
23 deal about these regimes around the world, to talk about other
24 countries, in particular Brazil.

19 And then on the third day,
20 Friday, what we thought we would do would be to devote the day
21 to Native management regimes, to the new, the initiatives being
22 taken in Alaska to establish Native management regimes. And we
23 were going to ask Marie Adams and her colleagues to talk about
24 AEWC, perhaps Caleb and others would talk about the Eskimo
25 Walrus Commission, and Jonathon Solomon and Bob Childers and
others would talk about the Porcupine Caribou Commission. We
want Larry Mercurieff to talk about what they're doing on

1 the Pribilofs now, and perhaps Tony Vaska and Harold Sparck
2 could talk about the Hooper Bay arrangements. And Willie
3 Goodwin about what is being done in NANA, and Jim Kowalsky to
4 talk about the Tanana Chiefs' own regulatory regime in subsis-
5 tence. And we thought Friday afternoon we would hear once
6 again from those from other countries to talk about Native
7 initiatives in managing their own subsistence regime.

8 And then on Saturday we
9 thought that we might discuss the future of subsistence, and
10 we've asked Joe Meeker of Antioch to start the discussion off
11 on Saturday, and we hope Dick Nelson and Peter Usher will also
12 participate at that time.

13 Now that's just a suggested
14 agenda. We have to nail the first board to something, and I
15 hope that as we go along you will all feel free to speak up
16 during any discussion of any subject. We simply thought that
17 that would be a way of getting launched. And feel free to
18 suggest that other issues be raised if you think they are not
19 likely to be covered. Well, perhaps we might begin by intro-
20 ducing ourselves. And I'll just start to my right, and perhaps
21 we could go around the table, and David do you want to tell us
22 who you are.

23 MR. CASE: My name is David
24 Case, I'm counsel to the Commission.

25 MR. LANGDON: My name is
26 Steve Langdon, I'm the gentleman who's been in the box with the
27 word processor for the past two months, attempted to come to
28 grips with the basis of subsistence rights here. I'm an
29 Associate Professor of Anthropology here at the University of
30 Alaska, Anchorage.

31 MR. MORRISON: I'm Woodrow
32 Morrison. I'm a Haida. I have a bachelor's degree in
33 economics and sociology and also a jurisdoctrate, shareholder

1 in Haida Corporation and on the board of directors for Haida
2 Corporation, and also a shareholder in Sealaska Corporation,
3 and I presently work for the Bureau of Indian Affairs as a
4 resource specialist, subsistence. And I consider myself to be
a traditionalist.

5 MR. TOYUKUK (ph): I'm Mose
6 Toyukuk from Manokotak, also a shareholder in BBNC.

7 MR. LONNER: My name is Tom
8 Lonner, I was chief of the Subsistence Section of the Alaska
9 Department of Fish and Game from 1979 to 1981, and since that
10 time I've regained my amateur status and so I'm free to come
11 here and speak.

12 MR. NELSON: I'm Dick
13 Nelson, anthropologist from Sitka, Alaska.

14 MR. MEEKER: I'm Joe
15 Meeker, I'm with Full Systems Design (?) at Antioch University
16 in Seattle.

17 MR. GROSS: I'm Daniel
18 Gross, I teach anthropology at the City University of New York,
19 and I am currently on leave with the National Science Founda-
20 tion.

21 MS. CRAIG: I'm Lois Craig,
22 development officer with the Department of Indian Affairs and
23 Northern Development in Canada.

24 MR. SPAULDING: I'm Dick
25 Spaulding, I'm a lawyer for the Dene Nation and Meti
Association, I'm working on negotiations of their aboriginal
claim.

MR. MONAGHAN: I'm Hugh
Monaghan, assistant deputy minister, Renewable Resources,
government of the Northwest Territories, Canada.

MR. VASKA: I'm Tony Vaska,
I'm very helpful.

1 MS. WORL: And I'm Rosita
2 Worl and I try to be helpful, I also serve as special consul-
3 tant to the Commission.

4 MR. PORTER: My name's Dave
5 Porter, Caska Dene member from the Yukon, and I'll try to
6 help the previous two speakers.

7 MR. SPARCK: My name is
8 Harold Sparck, I'm director of Nunam Kitlutsisti, Bethel,
9 Alaska.

10 MR. BEHNKE: I'm Steve
11 Behnke, I'm presently director of the Subsistence Division,
12 Alaska Department of Fish and Game, based in Juneau.

13 MS. MYERS: I'm Heather
14 Myers, I'm an environmental analyst with the Department of
15 Renewable Resources in Yellowknife.

16 MR. GAMBLE: I'm Bob
17 Gamble, I work with Parks, Canada in Yellowknife, involved in
18 new park establishment in the Northwest Territories and Yukon.

19 MR. FRANK: I'm Nelson
20 Frank, I'm a tribal council member from Sitka.

21 MR. HENRY: My name is
22 George Henry with the Broadcasting Company in the Yukon.

23 MR. ESTRENKO (ph): Just
24 about the same, Vic Estrenko with Northern Native Broadcasting,
25 Yukon.

MR. LOHR: Bob Lohr with
Rural CAP, proud lessors of a high speed Xerox machine, we
produced a lot of papers for the meeting today.

MR. HAMMOND: My name is
Austin Hammond, from Haines, and I represent southeast Alaska,
to talk about here what I came here, this is the first time I
came to this kind of a meeting, and I'm glad to be here with
you.

1 MR. PUNGOWIYI: I'm Caleb
2 Pungowiyi, president of Kawerak, Inc. in Nome.

3 MS. ADAMS: I'm Marie
4 Adams, I'm special advisor to the Alaska Eskimo Whaling Commis-
5 sion and presently the city manager for the City of Barrow.

6 MR. FEIT: I'm Harvey Feit
7 and I'm an anthropologist and I've worked in Northern Quebec
8 and I'm attached to McMaster University in Hamilton, Ontario.

9 MR. BERGER: Well, thank
10 you all, and those who are seated in the back rows feel free to
11 move up here and just take a seat if you wish. But if you're
12 comfortable where you are, well, that's fine, too. Well, thank
13 you all for coming. I certainly do appreciate it, and I think
14 we can start now to discuss basic issues in subsistence, and
15 we'll ask Steve Langdon to lead off the discussion. Steve.

16 MR. LANGDON: Thank you,
17 Justice Berger. The task before this group over the next four
18 days is large, complex, important, and also perhaps a first-
19 time opportunity to take stock of the subsistence situation of
20 Alaska Natives at the current time. Certainly we hope to con-
21 tribute to Justice Berger's charge to review ANCSA, but I think
22 as well this is an opportunity to begin the assessment of where
23 Alaska Natives stand with subsistence in the state at the same
24 time.

25 The task should involve
examination of how subsistence policies presently work, how
subsistence practices are presently ongoing. It should also
involve questions about how subsistence, to begin to think
about how subsistence practices might be affected by policies
of the state and federal governments in the future. How they
might be affected by policies of Native corporations. And we
should also take stock of the question of what general or
specific policies are desired by Alaska Natives to balance

1 subsistence with economic development activities that will not
2 only maintain but enhance local communities, village Alaska,
3 now and in the future.

4 I think we are fortunate to
5 have the opportunity to hear different perspectives from our
6 colleagues in the Canadian North on how these questions are
7 being handled and discussed and managed on that side of the
8 border, and we also have the opportunity to hear from other
9 parts of the world, Brazil specifically, as well. I think this
10 is important because it provides us with an opportunity to gain
11 new insights on our own circumstances. It also may provide
12 ideas about new possible directions.

13 As part of the background
14 for this roundtable, Justice Berger asked me to try to sum-
15 marize, if possible, what the current status of the subsistence
16 regimes, as they operate in Alaska, are. And I've undertaken
17 that task, and in these opening remarks what I would like to do
18 is briefly outline what I've tried to do in the document so
19 that you can at least attend to those areas that are of
20 interest to you. And then I want to phrase the topic before us
21 this morning, which is a definitional topic, what is it that
22 subsistence is about to the people here, its importance to the
23 people here, and, secondly, what the basis for subsistence
24 rights are, the economic bases, the culture bases, legal and
25 political bases, and perhaps ultimately the moral bases in many
peoples' minds as well.

26 Let me turn now, then, to
27 that first overview, which is the question of how it is that
28 subsistence regimes currently operate in the state of Alaska.
29 In the daily lives of Alaska Natives, hunting, fishing, and
30 gathering require both the fish and the animals and the access
31 to the land and the ocean where those resources are found. In
32 today's Alaska those two elements--the land use and the rights

1 to harvest the resources--are divided and governed by different
2 laws, different regimes. So that I have organized my discus-
3 sion to attempt to treat those two different areas.

4 First, the question I raise
5 is what are the ways in which Alaskan Native harvesting rights
6 are presently managed? What are the laws? But, also, what are
7 the customary and traditional practices which govern those
8 rights? Section two of the paper then treats those regulatory
9 regimes. It starts out by examining the customary and tradi-
10 tional practices which Alaska Natives have used and continue to
11 use in many ways, shapes, and forms about the state, to regu-
12 late fish and animal harvesting. We then look at the State
13 laws, how the State laws are, what the federal law, particu-
14 larly ANILCA and some other treaties, are. What the opportuni-
15 ties for tribal regulation in the state are, particularly on
16 Annette Island in southeastern Alaska. Then we turn to the new
17 initiatives for self-management which Alaska Natives have
18 undertaken recently--the Eskimo Whaling Commission, the Hooper
19 Bay Waterfowl Agreement, the Eskimo Walrus Commission, the
20 attempt in the IRA region of NANA to manage beluga, the Inter-
21 national Porcupine Caribou Commission, and traditional caribou
22 management in Venetie. This is a very complicated set of
23 regimes which Alaska Natives utilize and come to grips with in
24 their daily lives, with regard to how it is to go about fishing
25 and hunting. What laws, what practices govern. Next we're
going to then turn to the questions of land management and
jurisdiction. What is the current circumstance with regard to
who owns the land and what can be done with the land on which
those resources are found? This includes both the federal land
use regimes, which are really captured in ANILCA, a very com-
plicated set of laws, the State land use regimes, the Native
land management, and the Alaska Native land bank. And at the
conclusion of the paper I raise a number of questions which we

1 will come back to in the last day of the session, fundamental
2 questions about subsistence as well as more specific questions
3 about the pragmatics of the current regimes as they operate.

4 I'd like to turn now then,
5 and just take a few more minutes to provide lead-in to the
6 discussion by the roundtable participants of the questions of
7 what is it that constitutes subsistence and what is it
8 that constitutes the basis for the right to subsistence? As I
9 understand it, that's what we will be discussing this morning.

10 First of all, subsistence
11 practices as they are considered in the state of Alaska, as
12 used by a variety of parties, there are sometimes different
13 kinds of interpretations. I'm going to speak primarily from,
14 at least the attempted academically treatment of constitutes a
15 subsistence regime, leaving the definition of those particular
16 practices to individuals as they so define them. But in
17 essence, subsistence has been defined as a distinctive way of
18 life that incorporates principles of fishing, hunting, and
19 harvesting naturally occurring fish and animal resources. It's
20 a society which is organized towards that particular end.
21 Those practices are carried out within the context of social
22 relationships. Key relationships between people which estab-
23 lish the units, who harvest the game, process the game, and
24 consume the game. In addition, subsistence has, along with it,
25 a complicated set of exchange and sharing institution amongst
people. These go along with the subsistence way of life as
much as the harvesting and the processing. This is done through
the social relationships of people, who they are kinsmen to,
who they are married with, who they live with. Further,
subsistence involves a set of relationships with animals and
resources in a local region. People have long-standing ties
with specific locations and areas in which their harvests are
done. These ties are often legitimized in the society through

1 oral accounts, through historic accounts of use patterns, and
2 perhaps most importantly about those is that those rights are
3 customarily respected by other Alaska Native peoples. So this
4 is an important component of subsistence as well, it is the tie
5 to a local set of resources that are important and have
6 historic and traditional importance as well.

6 There is also in subsis-
7 tence, as it is typically conceived of, an intimate relation-
8 ship of the population to the fish and animal resources which
9 they harvest. These are spiritual relationships often times,
10 in terms of the linkage together, the spiritual entwinement of
11 the people with the resources, the recognition that both of
12 their future existences are tied together. The people must
13 respect the resources and through that aspect of respect the
14 resources will continue to replenish themselves and to make
15 themselves available to the population that is using them.

13 Taken together then, these
14 aspects of subsistence provide for the characterization of how
15 subsistence has been practiced, customarily and traditionally,
16 in Alaska. In the period since the coming of EuroAmericans,
17 subsistence practices have been added to in certain ways,
18 changed in other ways. Most importantly at the present time,
19 major modifications have occurred as the result of the intro-
20 duction of new and better harvesting technologies and the
21 availability of cash, either through commercial production, say
22 fishing or trapping, or through wage labor. In societies which
23 are subsistence-based societies, which still continue to be
24 motivated primarily by the seasonal round and that relationship
25 with the fish and animals, cash and technology can be a benefit
and a contribution to the subsistence way of life. In other
circumstances in which resources may have been seriously de-
graded or new populations have come in and new enterprises,
wage jobs are now available, subsistence activities may not

1 have the salience and importance that they once did. Neverthe-
2 less, in these circumstances, the cultural persistence of the
3 importance to the way of life to the people and their defini-
4 tions of themselves, continue on at a high degree of impor-
5 tance.

6 I'd like to turn now, in
7 closing my remarks, to the questions of, after the characteri-
8 zation of subsistence, is the question of what are the bases
9 that Alaska Native people use to justify the rights to subsis-
10 tence? And as Justice Berger spoke previously, the question
11 comes up in the context, certainly, of the language which
12 ANCSA, the Alaska Native Claims Settlement Act, has, which
13 there is a statement which extinguishes aboriginal hunting and
14 fishing rights. So I want to speak now in the context of how
15 it is that Alaska Natives, as I perceive and everyone else will
16 fill in on this particular point, the claims, the basis of
17 those claims.

18 Certainly the fundamental
19 basis, I think, is a moral claim that arises out of local
20 membership in a community with long-standing traditional ties
21 to the resources. This is a claim which in my experience most
22 Alaska Natives feel has not been eradicated or delegitimized by
23 any state or federal action. As long as those subsistence
24 activities are carried out in the village of the home birth,
25 they continue to persist. This is a moral foundation or claim
that I perceive in many Alaska Natives.

There are also important
economic claims. That is, that subsistence resources are
necessary in the sense that they provide goods, foods, and
other products which are simply not available to residents of
those communities through participation in the cash or market
economy. Those are not available either because they are not
there, they don't exist in those villages, or the prices and

1 the costs of them are so exorbitant as to make it impossible
2 for the local residents to buy those things. In the economic
3 argument then, it is economically rational, it's efficient, and
4 the reason why people persist in subsistence is that it has
5 very clear payoffs for them. This is a second ground that is
6 used, that I find and is an important and cogent ground, as
7 well.

8 A third ground, which is
9 akin in part to the moral ground but is somewhat different, is
10 what I call the cultural ground. And this is the ground that
11 subsistence is a way of life, that is, constitutes that funda-
12 mental set of linkages that I spoke of before, of people to
13 their local territory, of people to each other, of people to
14 their fish and animal resources. Subsistence as a way of life,
15 then, is definitional: "We are this group of people who do this
16 and engage in this particular activity."

17 Then, there are finally
18 also more technical, legal, and political grounds on which
19 subsistence rights continue to be placed. Certainly although
20 ANCSA has specific language with regard to aboriginal hunting
21 and rights, many Alaska Native leaders speak to the legislative
22 history of ANCSA, which points to the clear indication in the
23 intent of Congress that the State of Alaska should protect the
24 subsistence rights of Alaska Native peoples. And they speak of
25 that legislative history as delegating that authority for the
protection to the State. Furthermore, there is another legal
and political ground in ANCSA itself that is spoken to. That
has to do with the retention of what is called the "trust
responsibility," and that out of the trust responsibility to
Alaska Native people the federal government continues to have a
legal obligation to the protection of the subsistence rights of
Alaska Native peoples. The question of the legal and political
rights is also pointed to in the ANILCA legislation, specifi-

1 cally Title VIII, which sets out and establishes a regime for
2 the protection of Alaska Native subsistence rights. But the
3 point that I want to make at this particular point, and that is

(TAPE 1, SIDE B)

4 done in the context of a definition of rural subsistence
5 rights, which are labeled as those rural rights to subsistence
6 available both to non-Native and Native, practitioners of
7 subsistence in rural areas. The other aspect of ANILCA which
8 is spoken of in terms of the legal right and basis, is the
9 invocation or the speaking to the constitutional authority of
10 the federal government through the, what is called the Commerce
11 Clause, for exercising a trust responsibility to Alaska Native
12 peoples. So here too, then, is spoken, ANILCA once again then
13 confirms in many Alaska Native viewers' eyes, that fundamental
14 federal responsibility to the protection of Alaska Native
15 subsistence rights.

16
17
18
19
20
21
22
23
24
25
These grounds, then, are what I perceive to be the kinds of grounds that are normally advanced in the context of the discussion of the basic rights, those basic rights key back into that definition of subsistence, what subsistence is, why it is that people want to protect it. And with those introductory remarks I think that we can explore those basic issues with the audience.

MR. BERGER: Thanks very much, Steve. Maybe just before we leave you, you could indicate in what regions of the state of Alaska you think the subsistence economy, subsistence activities, are still most prevalent. Is it possible to state that?

MR. LANGDON: Well, the subsistence economy is everywhere, existent in one form or another. In terms of the numbers of people directly supported by it, it is probably most vital from western Alaska, from Bristol Bay on north all the way around to the Canadian border, and in the villages of Interior Alaska, where these populations

1 are, fundamentally their existence depends upon their ability
2 to produce from the naturally occurring resources. Let me make
3 a couple of other demographic remarks which I think you wanted,
4 you were leading to here. And that has to do with the size of
5 the Alaska Native population that is presently covered by the
6 protections of ANILCA. Because the protections of ANILCA,
7 well, speak only to rural Alaska Natives, based upon the 1980
8 census, it covers approximately, 75% of the Alaska Native
9 population is covered under that ANILCA requirement. That
10 means approximately 25% of the population is not covered by
11 those ANILCA provisions because they are currently residing in
12 what are defined as urban contexts.

10 MR. BERGER: Yeh, Tony.

11 MR. VASKA: I would like to
12 then question...(feedback)...identifying a subsistence economy.
13 I think the definitions that he gave for defining what subsis-
14 tence is, including the moral rights, the cultural rights, and
15 the legal/political rights, should also be...should also be
16 used in terms of the question that you asked him, in terms of
17 the economic identification. To simply identify a subsistence
18 way of life based on economy is looking at only one aspect, and
19 I suspect Steve's answer should cover all the other defini-
20 tional regimes that he described.

19 MR. BERGER: Yes, Woody.

20 MR. MORRISON: In
21 discussing the definition of subsistence I think we should
22 begin first by discussing the people, Native people. And I'd
23 like to at some point, be able to distinguish the difference
24 between how Natives perceive subsistence and differentiate it
25 from non-Native peoples. First of all, Native people by the
mere fact they are not white, are a racial minority. But we
enjoy something more, which is a political definition, that
Native individuals are members of specific political entities

1 to whom they owe their primary allegiance. And this is con-
2 siderably different from a racial minority. And Native people
3 are indigenous to the land, being here from anywhere from 3 to
4 maybe 30,000 years. And also being indigenous to the land, I
5 would say, means that the people are part of an ecosystem that
6 involves, involving an intimate interrelationship between
7 human, plant, animal, and environment. And this usually mani-
8 fests itself in the system, a functional system of beliefs and
9 traditions. And so subsistence is more than a economic system.
10 It's the embodiment of spiritual beliefs, community traditions,
11 which are inextricably intertwined with social, political,
12 economic, and historical aspects of the lives. And this system
13 is articulated by the Native languages. The Native languages
14 are not mere accumulations of words, but over the thousands of
15 years it took to develop the Native languages each specific
16 language describes the special relationship between the people
17 who speak that language and their environment. The tribes or
18 bands, whatever we might want to call them, these political
19 entities to whom each Native person is a member to one identi-
20 fiable group, have their own culture-specific system of spiri-
21 tual beliefs and moral values, they have a unity of language,
22 of history, culture, creation, tradition, and environment. So I
23 think that we have to talk about subsistence as more than an
24 economic system, but the totality of a system of beliefs and
25 practices that not only describe the peoples' relationship to
the environment, but also, I guess in a Christian sense, you
would say the relationship to God. In Haida we have a word we
call senhonawai (ph), I'm not too sure if I've pronounced it
correctly, but the closest definition I could find was the
power of the creating that's on the wind. Which means that the
power that went into creating the universe, went into creating
animals, went into creating say this table, and me, was all the
same, therefore we are related. So everything is my, I am

1 related to everything, everything is related to me. I must
2 treat them with respect, which I guess you would contrast by
3 the traditional Christian belief, and I don't deny it, that God
4 gave man dominion over the earth, over the fishes of the water,
5 the animals of the lands, and so on. So I think we have to
6 look at this in terms of more than a mere economic system. And
7 also distinguish the difference between indigenous people who
8 have long traditions of involvement with the environment and
9 the non-Native people who view hunting and fishing, for the
10 most part, their rights come from the English Common Law, in
11 which wild animals belong to the sovereign, until reduced to
12 possession, then the sovereign has the right to determine
13 by what method and whatever management practices that that
14 individual may reduce that wild animal, be it bird, fish,
15 whatever, to possession. And so there we have a major dis-
16 tinction between how we perceive our rights to these resources
17 and those that come over from Europe. And, also, if you take a
18 look in most dictionaries, hunting is defined as the pursuit of
19 game for sport or food. So there's not spiritual basis in
20 there, there are not moral values articulated in that defini-
21 tion, and fishing is merely the act of attempting to catch
22 fish, or of actually, well, fishing doesn't mean you catch
23 anything, it's kind of like shopping, you know. You go and you
24 take a look, but that doesn't necessarily mean you have
25 anything. So I'd like to...I see Caleb has something to say.

MR. BERGER: Yes, Caleb.

MR. PUNGOWIYI: Perhaps I
could expand a little bit on what Woodrow just said. That the
laws that have been passed regarding subsistence, the priority
law, the ANILCA and the Marine Mammal Protection Act, are
reactions to existing situations. That the laws were passed
because the people were doing these kinds of activities. And
yet many of these laws are not suitable to the existing situa-

1 tion. And I think that's something that we on this panel and
2 the people in the audience should be aware of, that if you go
3 to a village and ask them, "What is the bag limit for
4 ptarmigan?", they won't know that. If you ask them for
5 seasons, they won't know that. Because they are dependent on
6 availability. The village people normally don't react to the
7 regulatory regimes that in the place, unless somebody comes in
8 and tells them, "You can't do it." And, also, that, some of
9 the methods that we use for gathering subsistence resources is
10 perhaps not the most efficient means of gathering. You know,
11 you can probably seine tomcod and get a lot more than fishing
12 through the ice, but a lot of it is the effort. If it wasn't
13 for the school system, where the people had to move into the
14 village, I think we would see a lot more people scattered out
15 over Alaska in pursuit of subsistence or living the lifestyle
16 that they lived before. So this is something I think that we
17 should be aware of as we discuss the situation here.

14 MR. BERGER: Thank you.

15 Rosita.

16 MS. WORL: Yes, with the
17 broad definition that we have, that Native people have of
18 subsistence, and I think a couple of people have already ad-
19 dressed the cultural significance of subsistence, I think it's
20 incumbent upon this body, also, to spend some time focusing on
21 urban Natives, and exclusion of urban Natives in the
22 legislation.

21 MR. BERGER: Woodrow.

22 MR. MORRISON: Yeh, I'd
23 like to continue on with what Rosita was saying there. I think
24 for a working definition for subsistence the closest I could
25 come to would be people deriving sustenance from the land.
Which goes far beyond any economic definition. And also in the
concerns of the Native people who live in the urban areas, one

1 of the things about being members of these specific political
2 entities, which we'll call tribes, or bands, or whatever other
3 terms you want to call them, they have this little thing, this
4 little spark, which makes them different from racial minori-
5 ties, that we call sovereignty. Which means that they, as a
6 group, have rights that I would say are given by creator. And
7 that regardless of where any individual member of that tribe
8 may reside, the case law of the United States I believe has
9 found that, regardless of where that individual may be domi-
10 ciled, that he is never considered, or she, to have abandoned,
11 left or abandoned the group, the tribe, or their home, unless
12 they do it by some specific, positive act. So that regardless
13 if they live in Anchorage, in Fairbanks, whatever rights accrue
14 to the tribe accrue to the individual. And what has happened
15 here in Alaska is the claims settlement act is trying to dis-
16 perse us into, or reduce us down to a mere racial group, rather
17 than a political definition. I think if you look in Section 2
18 of the claims settlement act, one of the things stated in there
19 is that the claims settlement act was not intended to create
20 any permanent, racially defined institutions, rights, privi-
21 leges, or responsibilities. Well, for one thing, we are not
22 racially defined. And I think that should be made clear right
23 from the very outset. And the other thing is that, as Caleb
24 said,...

19 MR. BERGER: Your rights
20 are political in origin, that's the point.

21 MR. MORRISON: Right,
22 right. Rather than being just the rights of a racial minority.
23 And also that...I lost my train of thought here...so, anyway,
24 these groupings, I mean this political identity goes far beyond
25 the mere grouping of individuals, say, associations or that
sort of thing. And so I agree with Steve that times have
changed, technology has changed, but then when you take a look

1 at the regulatory practices, the State is tying technology to
2 this right to derive sustenance from the land. I think prob-
3 ably later on we'll discuss the State's creation of a new
4 category called "personal use," that I, for one, have been
5 unable to find any legislative language that would give rise to
6 that category nor anything in the present regulations. But,
7 again, that personal use is based on technology. Also, it's
8 been, subsistence has been, people have tried to tie it to
9 economics, to create a welfare situation. And I think Steve
10 articulated that in his paper. But our whole system of beliefs
11 came under attack very early. The Christians coming from
12 Europe had a mandate to go out and missionary unto the world,
13 which they did. I'm not attempting to point the finger or say
14 they were wrong, but I'm saying this is what happened. And so
15 the first thing that this attacks, then, is our subsistence way
16 of life. Because then it changes the whole perception of
17 peoples' relationship to the environment. And also the willful
18 destruction of the languages by Sheldon Jackson also played a
19 very major role in also destroying this identification with our
20 relatives, I'll put it that way, so then that puts us where we
21 are right now. But I still would like to have a discussion on
22 insuring that everybody understands that our rights are politi-
23 cal, but they are also god given, rather than the rights
24 accorded by a mere sovereign, as was with the English Common
25 Law.

20 MR. BERGER: Tony Vaska,
21 you started this off. Do you have anything to add to what has
22 been said by Woodrow and Caleb?

22 MR. VASKA: Sure.
23 Basically, I think the, what Woodrow and Caleb are saying here
24 is there are a lot of factors involved in the definitional
25 aspect of trying to deal with the subsistence law. I think
Steve's approach in identifying what those general identifica-

1 tions are that we use to identify subsistence actually do
2 exist. And what the roundtable discussions should be looking at
3 is whether, in fact, the political system as it's being used to
4 identify subsistence uses can in fact take into account the
5 moral aspect of subsistence, the cultural aspect, and the
6 economic aspect. The political system, as it exists, uses the
7 economic aspect only because it's the easiest methodology to
8 allocate resources among competitive users. That kind of a
9 discussion is vastly different than an identification of those
10 uses by a specific group for moral or cultural uses, it's
11 vastly different. And yet I think the legal/political system
12 is too exact in its identification of allocation of resources
13 or management of resources, because the management schemes are
14 too tight in terms of how they regulate individual users. And
15 the difficulty in taking care of an individual user of any
16 resource at the expense of a larger population is very diffi-
17 cult, and it's very difficult for any political system, or
18 management system, to do that. And I don't know of an example
19 whereby an individual is taken care of specifically by a
20 management scheme, so that everyone is viewed to be treated
21 equally, that just doesn't exist. And I suspect we can find a
22 lot of examples in this state and perhaps in the North where
23 that happened. How the legal/political system, as it exists,
24 identifies cultural uses is not something that I can speak of
25 intelligently. But it's something that people in the villages,
Native people in the state, identify with very heartily, and
express it as such.

The fact that Rosita brought up, the urban Natives, is a valid example of Native people living in the urban areas who, in fact, are tied, perhaps not economically or politically to the use of those resources, but certainly culturally. And, as an example, when I am living in Juneau during the legislative session, you know, I

1 welcome a visitor from Bethel who is bringing me something from
2 home to eat. And it's something that I'm tied to, and I sus-
3 pect that most Alaska Natives living in urban areas do identify
4 in that fashion. It speaks to the personal relationships that
5 are tied by those specific individuals to their own land.
6 Those are tough, those are almost impossible to regulate or
7 write statutes for. You just don't do that. If you examine
8 closely the two sets of, the two most obvious sets of laws that
9 deal with subsistence--the Alaska National Interest Lands and
10 Conservation Act and the Alaska State law on subsistence--you
11 will find that the legal system is restricted severely in how,
12 in fact, it can take care of the state's population and people
13 who are inextricably tied to a subsistence way of life. The
14 law, in fact, tends to identify subsistence not so much as a
15 way of life but a lifestyle. And whether the people in the
16 state of Alaska or the United States can frame a statute to go
17 around the constitutional constraints of identifying Native
18 peoples as exclusive users or different users of those re-
19 sources, I think that at this point it's difficult. And I
20 think that a lot of us who think about these things can cer-
21 tainly write a statute today identifying subsistence users as
22 Native only, but we didn't, the constraints by the state and
23 federal constitutions are more powerful than we are. Dave
24 Case would take it to court, and the courts would decide that
25 that was unconstitutional. Dave Case as an example, he
wouldn't do that.

MR. CASE: I guess it is my
turn. I guess, I had one point I wanted to bring up, but let
me respond to what I think you were saying, Tony. I guess I
don't think there is a constitutional problem with Native-only
subsistence in Alaska, or anywhere else in the United States.
That was not a federal constitutional problem, and the federal
constitution could clearly supersede the state constitution.

1 What is the problem is a practical/political one of, it seems
2 to me, as to whether in 1980 it was politically possible to
3 protect Native rights, in the political sense that I understand
4 Woody to be talking about them, in Alaska. And I am not sure
5 that, whether that was possible or not, at that particular
6 time. But the negotiations, and the enactment of ANILCA, is on
7 the premise that the political cuts that had to be made with
8 Alaska and Alaska's representatives in order to get that law
9 passed couldn't accommodate Native political rights in the
10 sense of Native rights to hunting and fishing. Now I think it
11 should be very, we should perhaps, in the course of these next
12 few days, find out what the political situation has been else-
13 where, recently, and why. Where, I believe other kinds of
14 subsistence regimes were adopted, that were for Natives only.
15 But because Native Americans are not a racial minority, they
16 are, political communities, it is not unconstitutional to treat
17 them separately. But I think it was a political, practical
18 problem at most, in 1980. And perhaps the awkward question
19 we're asking now is, "What was wrong?" and "Will it work?"

20 The other point I wanted to
21 ask Steve and others about was the, and I think it goes to the
22 practical ability to respond to the deep cultural, spiritual,
23 and even economic needs of a Native people, and that is the
24 need, as I saw Steve describing it, to maintain the flexibility
25 of the harvest. And I would appreciate it if you could, I
think it would be useful, too, to expand on what you meant by
flexibility of the harvest, or perhaps other people who are
more familiar with the subsistence way of life could explain
whether or not it is important to have flexibility in har-
vesting, and what that may mean.

VASKA(?): Well, I think
Caleb, when he was discussing how it is that people in the
villages relate to the regulatory system was expressing it very

1 well. The institutions and the knowledge of the villagers
2 adjust to the resources that's available. When certain re-
3 sources are in abundant supply they're made use of, when
4 they're not other resources are sought out. And it doesn't
5 make any difference whether it's duck, birding season doesn't
6 open until September 10th, according to the migratory waterfowl
7 treaties, or not. You go out and you subsist on the resources
8 that's available to you, given the knowledge that you have
9 about where they're going to occur, when they're going to
10 occur, and at what times you want to be able to make use of
11 them. I would also make a point about the language and the
12 codification of long-term information and knowledge about what
13 those cycles are, over generations upon generations of people
14 who pass down that block of knowledge to their offspring. And
15 it's that entire corpus of knowledge, not merely the monitoring
16 of the resources at any particular time, but also the taking
17 into account of what other kinds of possible arrangements can
18 be used in certain times, that makes for that flexible arrange-
19 ments. And in closing that remark, this is one of the serious
20 concerns that I think confronts people, is the problem that
21 that flexibility is seriously hampered by many of the regula-
22 tions that are presently enforced. And, unfortunately, cer-
23 tainly in a certain segment of them, those having to do the
24 codification of the term "traditional" within the subsistence
25 regime on national parks, there is a great concern and fear
that it will not adequately reflect the necessity of this kind
of flexible adaptation, re: moving in when fish and game popu-
lations are elsewhere. It, unfortunately, might lock into place
a system which does not have the same kind of flexibility which
these village populations have used in long-standing, customary
and traditional practices. I think Caleb spoke to that very
well.

MR. BERGER: Just for the

1 record, the tape record, I'll take the liberty of mentioning
2 your names as each of you speaks, and that only so that the
3 person typing this up will know who is about to address us.
4 So, please, Harold.

5 MR. SPARCK: I wanted to go
6 back to what Caleb had said, because I thought he put his
7 finger on a very important issue, and that is the legislation
8 that we have now is one of orderliness. It was proposed to
9 address short-term problems that had become politically
10 untenable, and both ANILCA, specifically the state subsistence
11 law, the village populations are opportunists. They have to
12 harvest what's available. Recently we've been talking about
13 the fact that, if you have to look at economies, my wife's
14 village requires about \$2.2 million to operate now the house-
15 holds. It's private economy is about \$280,000 this last year.
16 That means government makes up the difference right now. There
17 are a lot of former luxuries which are now necessities in that
18 village. They do not have the wherewithal to import protein.
19 The flexibility of their harvest is absolutely essential. But
20 when you look at the federal legislation, you look at the state
21 legislation, it does not consider the flexibility. It
22 is...site specific, it's temporal, it's spatial, it says we
23 only know what is a problem now, we can't consider what is a
24 problem in the future. At this time, again I live in western
25 Alaska so I have to reference western Alaska, we're going
through a period of intense ocean conversion. We're now
sharing our resources with the oil and gas industry. The
federal government couldn't care less about, I'll quote
Secretary Watt: "45,000 people living in western Alaska, are you
silly, should they control federal policy?"

When we learn from our
elders, we learn of the time of starvation and of the habitat
loss. Flooding, storm events, ice overrides, which remove the

1 habitat necessary for the wildlife to reproduce that the people
2 depend upon. The subsistence systems that the elders always
3 tell us about is one in which not only do you care about the
4 principal species which are being harvested now, but you always
5 set aside, in your bank, those other species that were har-
6 vested in the past, when the prime species were lost. And I
7 think, you know Caleb was quite correct in pointing out that
8 this orderliness is temporal and is not very well founded. If
9 the government gives away the tomcod, which are an important
10 species for a period of time now in the fall, in the past when
11 there were no birds these very same species were the food
12 source for the spring. So, when we go to...and the government
13 doesn't know that, either the state government, its laws and
14 legislation, this government could very easily sacrifice those
15 resources, now, in this year, 1984. The industry, the oil
16 industry, can say, "That's a cost to us, we don't want to pay
17 that cost right now." The government says, "Fine, we don't
18 know what the villages know, we'll give away that resource."
19 In 1988, four years from now, let's say the resources which are
20 harvested in the spring aren't available, and the people would
21 have to go to tomcod. They're not there. Who suffers that
22 loss? Who was penalized? Well it definitely wasn't the new
23 industrial users, it definitely is going to fall on backs of
24 these, as Watt was saying, these 45,000 people who live on the
25 shell of the far flungs of America, who don't matter in the
national politic, who don't matter in state politic. And that
is an important question about flexibility. And I hope as we
go through this period of days that the issue of where is the
overall well being in the future of these rural communities is
going to be founded in. It definitely cannot be founded right
now with the existing legislation. Thank you.

MR. BERGER: Marie. Marie

Adams.

1 MS. ADAMS: I would like to
2 first of all thank you for inviting us to participate here. I
3 think it's very important for us to consider things that we
4 need to consider in coming up with a definition of subsistence,
5 because in dealing with the whaling issue the definition of
6 subsistence has been a critical issue. And I agree with
7 Woodrow Morrision, that subsistence should be looked at, tying
8 it to our cultural, nutritional, and spiritual needs. And this
9 is one thing that has assisted the Whaling Commission in
10 dealing with cultures that did not understand what traditional
11 subsistence was. And if it wasn't for this tying, I don't
12 think we could have gone very far from where we started out
13 from. I think it's important that we look at that, and what-
14 ever definition that we agree to here I think will have an
15 impact on other resources that we're all dealing with today.

12 MR. BERGER: Joe Meeker.

13 MR. MEEKER: ...involved in
14 the process of understanding what subsistence means. It's
15 probably worthwhile to have a little perspective on it, that
16 goes beyond the time scales we've been talking about. Yeh.
17 What we're calling subsistence has been the way of life for
18 most human beings throughout the evolutionary history of our
19 species. It is, the subsistence way of life was the dominant
20 way of life over at least a million years, and perhaps up to
21 four million years, as our species was evolving. It was from
22 the subsistence way of life that our present mental capabili-
23 ties, our present social instincts and relationships, our
24 emotional lives, the entire body of what we individually and as
25 a species and as communal members have inherited, it all grew
from the subsistence lifestyle and way of life. The other
lifestyles that are competing, and that are now overriding that
lifestyle, are very, very recent by comparison. Agriculture
and the domestication of animals are no more than 10,000 years

1 old. The Hebraic tradition is around 4,000 years old, the
2 Christian tradition around 2,000 years old, the humanistic
3 culture we're talking about is about 400 years old, modern
4 democracy is 200 years old, industrial society is 100 years
5 old, high-tech life and the nuclear age is around 30 years old.
6 So we're dealing with relatively minor periods of time for all
7 of the traditions that seem to be dominating the discussion
8 and are certainly dominating the policy and politics and regu-
9 latory bodies.

10 In the larger sense,
11 though, what each of us is as a human being, what all human
12 beings are, grows out of the subsistence way of life. It
13 doesn't grow out of postagricultural culture and it doesn't
14 grow out of industrial culture. Perhaps worth remembering.

15 MR. BERGER: That's a
16 thought provoking statement, Joe, any preliminary statements
17 you want to draw from it?

18 MR. MEEKER: Well, there
19 are a few things we can say, I think, growing from that. That
20 the subsistence way of life is an extremely complex, systemic
21 way of life. Most of the other additions that have been added
22 on in the past 10,000 years have been attempts to simplify.
23 Agriculture is a way to making hunting easy, or the way to make
24 gathering easy, by planting only one crop and keeping other
25 crops out. The domestication of animals is a way to make
hunting easy, by restraining an animals and modifying its
habits, so it's easy to approach and easy to kill and eat. Our
tendency, over the past 2,000 years, has been to move towards
simpler structures, which yet proliferate, and so they become
complicated. And modern industrial culture is a complicated
society, whereas most subsistence ways of life are genuinely
systemically complex ways of life. And if we can make a dis-
tinction between complexity and complication, I think that,

1 too, might be useful at some stages in our discussion.

2 MR. BERGER: Well, maybe I
3 could just suggest what has emerged thus far. It seems to me
4 that clearly there was, in Alaska, for thousands of years, a
5 society that arose out of subsistence. Its moral, spiritual,
6 and economic life was integrated with the requirements of
7 subsistence. That society still exists, yet the laws that
8 govern that society, the laws made in Juneau and
9 Washington, D.C., and treaty arrangements relating to whaling
10 and other marine mammals that are made by conventions arrived
11 at by any number of countries. Those laws, coming from a
12 different tradition, as Woodrow Morrison has suggested, have
13 the effect of undermining the Native society founded on subsis-
14 tence, because those laws don't take into account the fact that
15 there is a whole web of moral, spiritual, and economic rela-
16 tionships founded on subsistence, that a whole society is
17 dependent on. Rather, our laws are formulated, and I think
18 this is so in all the Western countries, on the basis of indi-
19 vidual rights. So subsistence laws, rights to take fish and
20 game, are by-and-large passed with the idea that there are a
lot of individuals out there who don't necessarily belong to
any special group, Native or non-Native, and those laws are
designed to limit and to qualify the subsistence rights of
those individuals. And that has the effect, I think you have
all urged, of undermining that very long-standing subsistence
way of life out there.

21 Now, David Case has assured
22 us that if the law, federal law at least, were to acknowledge
23 that collective way of life dependent on subsistence, and to
24 guarantee and insure its survival, by, if need be, limiting
25 rights to take fish and game to Native people, Native people
only, a subsistence preference for Natives only, if federal law
were to do that it could not be successfully challenged under

1 the Constitution, since those rights are derived from the fact
2 that that society existed before the U.S.A. was established,
3 and so its rights are political, not racial. And it seems to
4 me that that's what has emerged thus far, if I've, uh...maybe I
5 could invite Larri Spengler of the Attorney General's depart-
6 ment or Steve Behnke of the Subsistence Division to offer their
7 views. I don't know whether on behalf of the State of Alaska,
8 but any views you wish to express, please, Larri.

9 MS. SPENGLER: I agree with
10 Dave Case that federally there would not be a problem. Consti-
11 tutionally, it would not be a constitutional problem to iden-
12 tify subsistence uses through the use of the Native criteria.
13 The State constitution, under the State constitution, that
14 would not be feasible, and the result would be whether it would
15 be good or not is a separate issue, the result would be the
16 federal government would be in charge of managing the fish and
17 game, so that is one limitation or one consequence of that
18 choice. There's, I'm not sure whether this is a useful clari-
19 fication or not, there's a, the implication of some of the
20 discussion earlier, or maybe it was just in Steve's paper, is
21 that there are four named communities in the legislative his-
22 tory of ANILCA that are named as urban communities--Anchorage,
23 Fairbanks, Ketchikan, and Juneau. And the implication is that
24 the rest of the state is rural. That's not exactly the way it
25 works. The four named communities were listed as examples of
urban areas, and then subsistence was to occur, rural areas,
for rural residents in customary and traditional uses. The way
that has been implemented is, through a set of eight criteria,
the State has adopted eight criteria to identify subsistence
uses. The criteria are listed in Steve's paper and they are
such things as long-term, consistent pattern of use, patterns
of sharing, exchange networks, traditional modes of prepara-
tion. As the subsistence law is implemented at this time, what

1 would happen is the State Board of Fisheries or the State Board
2 of Game would look at a particular area or community and deter-
3 mine whether or not that area or community qualified, whether
4 the uses of the resources in that area or community qualified
5 under the eight criteria. Then, if they did, then subsistence
6 uses would be authorized, if they did not subsistence uses would
7 not be authorized. There's a presumption that, I mean, Juneau,
8 Ketchikan, Fairbanks, and Anchorage would not be included, but
9 there are communities that are, that are sort of middle,
10 they're not the villages out in very obviously rural areas,
11 they're places like Kodiak, Sitka, communities in-between size,
12 that depends on, that are not automatically rural, it depends
13 on what the analysis is of the eight criteria. And they have
14 not been applied throughout the state, this is an ongoing
15 process. They were applied to the Kenai Peninsula, and the
16 Kenai Peninsula was found not to qualify. So this is just a
17 little clarification on how that works. Whether that's good or
18 not is a separate question, but simply by taking the popula-
19 tions of the four named communities and adding them up, those
20 are not necessarily the only Native Alaskans that would not
21 qualify. For example, the Kenai Peninsula does not qualify for
22 subsistence fishing, and that is not a named community in the
23 legislative history.

19 MR. BERGER: Just one point
20 you made, Larri, about the State constitution. I take it the
21 State constitution provides that fish and game resources are
22 the common property of all the people of Alaska, something like
23 that?

24 MS. SPENGLER: Yes. And
25 that all people shall be treated equally with regard to race,
26 creed, or color. And the State has taken a position, at least
27 so far, that although the federal government has a special
28 relationship with Alaska Natives as a political entity, the

1 State does not have that same relationship, technically, and so
2 cannot negotiate as a political group, or cannot treat Natives
3 separately as a political group.

MR. BERGER: Thank you.

4 Steve Behnke.

5 MR. BEHNKE: Thank you,
6 Justice Berger. I wanted to mention that I'm basically here as
7 a resource to explain how the State is involved with subsis-
8 tence issues and also to, basically to learn and to listen.
9 There have been a lot of interesting things tossed out here, I
10 also wanted to mention that my job as director of the division
11 which is...

(TAPE 2, SIDE A)

12 responsible for compiling information throughout the state
13 about subsistence users, my job would be a lot easier if there
14 were some way to define subsistence uses in terms of Native
15 interests. But, basically a lot of the information that we
16 compile goes into allowing the Board of Fisheries and the
17 Board of Game to identify what uses are customary and tradi-
18 tional uses, and obviously that would be a lot simpler and
19 easier, although as others have pointed out, probably not
20 politically palatable.

21 MR. BERGER: That's Caleb,
22 and then Marie.

23 MR. PUNGOWIYI: Yes. I
24 want to explain, or ask Larri, on this definition of customary
25 and traditional uses, is something that has been thrown around
for some time, and yet nothing has been really specifically
designed to address that. And I think if you look at the
regulatory regime that has been developed by the boards of game
and fisheries, that they have not really addressed that issue.

1 And the seasons and the bag limits and those kinds of things
2 that are addressed in those regulations, do not address custo-
3 mary and traditional use at all. And I think it's something
4 that the State will eventually need to address. Mainly because
5 the State has been addressing land mammals, land resources, you
6 haven't really been, since the marine mammals have been under
7 the federal management, there's been in essence no regulations
8 concerning marine mammals, but if the State was to take manage-
9 ment, then they would have to address that. And I think it's
10 something that the State needs to address very closely, because
11 it is out there, it is in the law, and yet it has not been
12 addressed.

13 MR. BERGER: Marie.

14 MS. ADAMS: I was going to
15 say basically the same thing as Caleb was saying, that there
16 are traditional subsistence laws, I mean, within the communi-
17 ties, they have their own laws, basically their own structure
18 on how they hunt, what is acceptable, what is not. And it
19 exists out there, and what's been happening the last several
20 years, several decades, is with the new federal government, the
21 state government coming in and basically imposing laws without
22 clearly understanding or going out to see what is out there,
23 has created a lot of confusion. Many times we had to clarify
24 what is meant by which law.

25 MR. BERGER: Tom Lonner, and
then Woodrow.

MR. LONNER: I think that
Marie has made a very excellent point. That the laws that were
used to control subsistence prior to the State subsistence law
were done essentially without any specific recognition for
subsistence and what would be meant by customary and traditio-
nal use or just the basic necessities of life in rural Alaska.
I think one of the points that needs to be made is that the

1 State did not adopt the state subsistence law willingly. It
2 was a process, the end result of a great deal of pressure
3 around the Alaska Native Claims Settlement Act and the coming
4 d(2) legislation. The State was essentially behind the power
5 curve by easily 10 or 20 years in terms of its knowledge to
6 create such a subsistence law. It did it in a hurry-up
7 fashion, with a great deal of pressure, and its implementation,
8 and I think that Steve's experience was probably the same as my
9 own in trying to direct some of this, is predominantly eco-
10 nomic. If you look at the language of the State subsistence
11 law, while it talks about customary and traditional uses, it
12 very rapidly reduces those to economic uses only, and then
13 proceeds to limit those. Now, if that, the law apparently, in
14 terms...a lot of people claim authorship to the State subsis-
15 tence law, and to the language that's there. And what's so
16 fascinating about it is that those persons who thought they
17 were attempting to protect subsistence by adopting such a law
18 immediately, on enacting it, in fact tended to limit what was
19 meant by subsistence and what criteria one could use to measure
20 it. So that when we turned around a few years later and
21 adopted these subsistence criteria, we expected, we in fact
22 were trying to expand it back to what Tony was talking about,
23 and what Woodrow was talking about, trying to get back into
24 patterns of tradition and custom and so on and get off of this
25 purely economic mode that the State had adopted in its very
protective subsistence law. It was a very dangerous thing that
we all did back in 1978.

21 MR. BERGER: Larri, did you
22 want to say something?

23 MS. SPENGLER: Yes. I
24 thought it might be useful to briefly summarize what the State
25 subsistence law does, and then partly respond to Caleb's point
that it doesn't seem to be being implemented very rapidly.

1 Before 1978, in Alaska, for the benefit of those that aren't
2 from Alaska and may not be familiar with those, regulations for
3 hunting and fishing are adopted by the State Board of Fisheries
4 and the State Board of Game, and before 1978, before the State
5 subsistence law was adopted, the boards could authorize uses--
6 subsistence, commercial sport uses--completely in their discre-
7 tion. It was up to them whether or not to authorize a com-
8 mercial fishery on a particular stream, or to authorize subsis-
9 tence fishing or hunting in a particular area, as long as they
10 behaved reasonably. I mean, some would claim they did not
11 behave reasonably, but the test of reasonableness would be the
12 only one that a court would have imposed. In 1978 the State
13 subsistence law was passed, and it did several layers of
14 things. The first thing it did was, as regards to subsistence,
15 it removed the discretion that the boards had previously had.
16 So if subsistence uses were found to exist on a particular fish
17 stock or game population, the boards no longer had the discre-
18 tion to say, "Well, we don't think it's a good idea to
19 authorize hunting or fishing." They had authorized subsistence
20 uses on that stock or population unless it would hurt the
21 resource. The resource had the top rung, but then the next
22 level was subsistence, and the board, this is even before you
23 get into the priorities, the board had to authorize it. Now, a
24 result of that was then you had to figure out what subsistence
25 uses were. And the State subsistence law then adopted a defi-
nition of subsistence uses, which is subsistence uses are
customary and traditional uses of wild renewable resources in
Alaska for various specified things. That's very important,
because before that time subsistence fishing and subsistence
hunting were defined in terms of hunting and fishing for perso-
nal use. And that was to distinguish fishing and hunting for
personal use from commercial use, for sale, for profit. Sub-
sistence fishing was mostly a gear distinction, it was personal

1 use by net, sport fishing was personal use by rod and reel.
2 So, in 1978 the definition of subsistence fishing and of sub-
3 sistence hunting was narrowed so it no longer referred to
4 personal use, but now subsistence use, which in turn was de-
5 fined as customary and traditional use. So, what happened was,
6 what the boards had to authorize now was subsistence use, but
7 subsistence use didn't mean what it did before in 1978. Before
8 1978, as long as you caught it and ate it, basically, it was
9 subsistence, it was personal use. Now it meant something more,
10 and what exactly more it meant was somewhat, perhaps, vague,
11 because customary and traditional uses, well, what you, look
12 around, and what are customary and traditional uses? From a
13 Board of Game or Board of Fisheries perspective, those weren't
14 sufficient, it's just not an intuitive thing for some people to
15 say, "Oh, that's it." Many people here have a different kind
16 of understanding of those uses and may be able to identify
17 them, but you need legal criteria to do it. Consequently, the
18 boards of fish and game jointly adopted the eight criteria that
19 I referred to earlier, to expand on what customary and tradi-
20 tional uses referred to. And those eight criteria have the
21 effect of identifying rural uses of fish and game. Now...so
22 the subsistence law mandated that the boards had to authorize
23 subsistence uses if they were present, changed the definition
24 of subsistence uses, narrowed it down to customary and tradi-
25 tional uses instead of personal uses, and then the other thing
it did was established the priorities, so that if there was a
circumstance where there was not enough to go around and re-
strictions were necessary, subsistence would be the last use
cut back. Time passed, and after the law had been enacted not
much was done officially, and then some court cases in 1980
made the State realize that not much had been done, so it was
at that point that the criteria were developed. The reason
many changes, the practical reason that many changes may not be

1 noticed in some parts of the state, are in some parts of the
2 state there are plenty of fish and game and whether or not the
3 regulations accurately reflect the practices of the people is
4 an aside. There are enough fish and game so that there wasn't
5 really any need to go around identifying them. Now, it may not
6 be that those regulations accurately reflect what would be
7 useful, but there was no need to go and separate them out. The
8 law tends to be implemented as hot spots develop and as data is
9 available, so the first place it was really implemented is Cook
10 Inlet. The board went around Cook Inlet and identified, under
11 its criteria, three communities where it found subsistence uses
12 to exist, and then it authorized those uses. One of the conse-
13 quences of that was that it determined that the Kenai Peninsula
14 did no longer have subsistence uses, and they were, the
15 Kenaisian Indians as well as everyone else there was excluded.
16 The Copper River is another place where there's a lot conflict
17 right now over the amount of fish there are. There's not
18 enough fish, people are wanting them, conflicting uses, so the
19 board at the last meeting identified subsistence uses of Copper
20 River based on the data that the Division of Subsistence pre-
21 sents and other testimony. And then proceeded to authorize
22 subsistence uses, and then allocate what was left over among
23 the other uses. And there are many areas in the state where
24 that hasn't been done yet, so it's not too surprising that
25 people would have the impression that things aren't happening.

The personal use category
that was mentioned earlier was developed as a result of the
fact that since the law narrowed the definition of subsistence
uses and in Cook Inlet now, for example, we have Tyonek,
English Bay, and Port Graham, where subsistence uses are
authorized. But, what about all those people that used to fish
under the old definition for personal use, with nets? There
are a whole lot of people that used to fish for personal use.

1 And the way the law has been implemented, they no longer can do
2 that. So the Board of Fisheries, after thrashing about for a
3 bit, created a new regulatory category called personal use,
4 which is exactly like commercial use or sport use, as far as
5 the board's discretion. The board can examine the resource,
6 determine what's there, and then can make a public interest
7 decision on whether or not to authorize personal use. So in
8 Cook Inlet there are several different personal use fishery,
9 that anyone that holds an Alaskan sport fish license can
10 participate in. And you can go and fish with nets during
11 specified seasons. It was designed as a mechanism to provide
12 the opportunity for people to fish who no longer could fish
13 because of the narrowing definition of subsistence. And, Tom
14 Lonner pointed out, indeed it has been narrowed, and whether or
15 not that was the intent, that's certainly what's been hap-
16 pening, because in areas of conflict the focus is on, "Okay,
17 what are subsistence uses?" And that means that some uses
18 won't be subsistence. Whether or not that was what the
19 drafters of the law intended I suppose is debatable, but that's
20 certainly the way it's been going.

16 MR. BERGER: Thank you,
17 Larri. Rosita.

18 MS. WORL: I wonder if we
19 might call upon Austin Hammond, and have him address subsis-
20 tence laws and legislations and how they have affected the
21 Chilkoot Lake area.

21 MR. BERGER: Yes, please,
22 Mr. Hammond?

22 MR. HAMMOND: Yeh, I've
23 been just trying to listen when you are all talking. We had
24 some problem, I was living in Haines. The place where I tried
25 to build a smokehouse in Chilkoot, we had a problem over there.
Because the fish that were there, we can't catch our own fish

1 there. You know, in Chilkoot there's lots of bulldozers there
2 in the river, we can't set a net, like what they are doing the
3 Chilkat side. And by this way, these fish weir, they put some
4 rocks and they close it out. And the fish stays below. The
5 reason why I'm kicking about this fish weir, the tide comes
6 close to it, 20-foot tide. And the sport fishermen below, say
7 about 100 feet, they could fish. But that sport fishermen,
8 when they come up, it's sometimes 100, over 100 cars comes up.
9 If someone, you are here, who is taking care of Chilkoot, they
10 had a limit to catch the fish, by sport fishermen. And I talk
11 to the fish commission one time, and I told them, "Do you watch
12 how much they catch, a day?" Well, we can't handle all the
13 cars, because we got no money to pay. They bring some freezer,
14 propane freezer on their car, that if I remember right, one
15 car, they got two freezer. But us, when we wait,
16 we can't get any. Because they block us, block
17 it out, for the sport fishermen, where the fish weir are. And
18 I've been trying to fight against this fish weir, and I told
19 them to take it out and put up above, close to the lake, where
20 it's not real rough water coming out. Still they tell me it
21 is, cost a lot of money to put the fish weir. And why did you
22 put it, it cost a lot of money? Why didn't you ask us, before
23 you put it there? This is what they been doing, these sport
24 fishermen. One of them, they been complaining when they opened
25 the fish weir too early, they are holding it down until they
get enough fish. They don't use the spoon (?), they snagging
it. This is what I see. I see a lot of things what's happened,
but us, we had a tough time. Tomorrow I will speak about it,
about Chilkoot Lake, how I want to do. Up above where it's
only spawning, I went up there, and I notice it, there's no
more fish lives (?) in it, it's all the spawning. What is hard
for us to go up there, they're watching it up there but they
don't watch the sport fishermen. So that I was talking quite a

1 few places where they need me to bring it out so you could
2 listen what they need. In Hoonah, I called them, Angoon,
3 Juneau. They can't get no fish from the river. It's hard for
4 them to get it. This are Tlingit, lots of elders there. In
5 Hoonah they can't get no fish from the river. What they do,
6 the person that catch the fish for them, it's not even enough.
7 The fish is different, what you catch from the salt water, from
8 the river. That's why they want to catch the fish from the
9 river, that's what they told me. In Haines, when we get on the
10 Chilkat side, using the net, we have to stay with it. You
11 know, in cold weather, it's kind of hard when it's raining. We
12 have to stay with our net. If we catch king salmon, we can't
13 keep it, we have to take it out and throw it back in the water.
14 You know, that king salmon, when they get it into the net, gets
15 weaker. If you let it go, the water's kind of muddy, you can't
16 see it's going away, maybe died. In Klukwan, they can get the
17 king salmon, but us from Haines we can't, they won't allow us
18 to take it. If they see that we catch king salmon we get into
19 trouble. I was listening to you when you talking about a
20 Native could catch anything what we want. But it's not so. It
21 is hard for us.

22 I tried to do a lot of
23 things about hunting. To work for our Native, in Haines. They
24 close out quite a few place where we used to get hunting. Me,
25 I'm not strong enough to go, up on the mountain to get the
mountain goats, and they close it up, the place where we used
to get it, the easy place for us. So us Tlingit, we are just
worse than the white man, we got to get our license. But
before that, we can get anything what we want, but it don't
work that way.

I'm a commercial fisherman,
I'd like to get back to the commercial fishermen, what they
doing in Chilkoot. The fishline is way down by the tank farm.

1 And they count them, the fish. Two years ago, when I went to
2 the fish commission about the fish weir, there's 100,000 fish
3 that's got to go through the fish weir. Year after that, they
4 said there's 65,000, why did you having it, taking it down like
5 this? That's why spawning in Chilkoot. When they know, if
6 it's enough, like that 100,000, the commercial fisherman comes
7 right the mouth of the river and fish there. They've been
8 fighting to get all the fish they can get. That I note, all
9 the way, they been doing this here. Now this summer, 43,000
10 fish go through weir, and they open it for the commercial
11 fishermen. From all the way down from the tank farm, they took
12 it up where the river was coming down, on the low tide, all the
13 fishermens there. So this is what we got to look into it.
14 Chilkoot, it's really for sockeye. This the reason why I told
15 them, "Leave it open, this fish weir. And don't move the line
16 to that river. And leave it down where it's supposed to be."
17 Before, up above Perry Turner (?), our fish lines there, we
18 tried to work into it, to leave it there. Quit fooling around
19 with it, moving back and forth. All this trouble we have. We
20 sit there in Haines, waiting for the fish to come. But all the
21 way from Seattle, Bellingham, Everett, you could name it, all
22 the way up, they come right to Chilkoot. This is the reason
23 why I try to talk about the fish weir. To leave it out, or
24 either put it way up where it's running smooth. We like to
25 change it. I was down Washington, D.C., that's when they came
up, they tried to sample that other, to count that fish. But
the fish commission said leave it where the fish weir is, it
can't work there because the river is stronger, the bubbles, so
that's what is counting. But if they had it way up by the lake
it will work. So all the fishing who ain't spawning (?) in
Chilkoot, there's nothing there. I went through. Tomorrow I
will talk about it, all what I had in mind to talk about
Chilkoot. And I wish I could bring my Chilkat blanket here, so

1 you could see why I'm trying to fight against all this thing
2 here. I brought it over. We call it Chilkat blanket with
3 sockeye on it, I'm a sockeye tribe myself. So all these things
4 I've been coming here to tell you, about the sport fishermen.
5 Try to do something for that, and what they catch, sometimes
6 they don't need the fish, they just threw it in the grass. We
7 don't waste fish ourself, what we use. Even the eggs, we save
8 it, some of the heads we dry. We use everything. But, still,
9 they blame us. The Natives, they been eating lots of boil fish
10 (?). We don't eat that much. Look at the press all be (?),
11 how many thousand fish they been sending down to Seattle,
12 through the plane. We don't do that. It's hard for us to get
13 the fish from Chilkoot, and I hope I could use a net like the
14 way we used to do before. And this time we can't do it, and
15 I'm working for it. It's going to come up. I was talking to
16 the fish commission, and they see it, how hard for us to get
17 the fish. And they tell us, ask me, do you know, on the raven
18 side, how it comes out about Chilkoot? Yes, I know it. I
19 could tell you all. Some of you people don't know, we in
20 Tlingit were called Istaahhoo (ph). When you dry some fish,
21 and you're going to put it together, 'til it comes up and
22 doesn't push it down, wraps it up, there is three in Chilkoot,
23 what the raven did. They want to find out what I know about
24 Chilkoot. I know all the way. My grandfather tell me the
25 story. What I'm doing now, I'm working for my grandchildren.
Myself, just a few years I think ahead of me, because I'm a
sick man, but I'm working, but I'm glad to be here, to listen
to me, I'm talking to you, to listen.

MR. BERGER: Thank you,
sir, thank you, Mr. Hammond. Caleb Pungowiyi.

MR. PUNGOWIYI: Yes, I want
to expand a little bit on what Austin had said, and this is one
of the problems with the regulatory system of the State

1 Department of Fish and Game, and that is with the hunting
2 licenses, the \$15 hunting license, if you are of certain income
3 you can get a \$.25 hunting license. If you are a subsistence
4 fisherman you can get a subsistence fishing permit to fish with
5 no cost. But if you want to sports fish, you have to buy a \$15
6 fishing license. And if you're, like in Nome River for exam-
7 ple, we have competition similar to what Austin referred to,
8 where they get subsistence fishermen, the sport fishermen, are
9 competing for the same resources. The subsistence fishermen
10 have a certain amount of fish they can catch, in this case 100
11 salmon. And the sports fishermen have no limit, they can fish
12 all they want, they can be any number of fishermen that can
13 fish on the Nome River. And yet if a subsistence fisherman was
14 to pick up a fishing rod and go down to the mouth of the river
15 and throw in a hook and the fish and wildlife people come along
16 and ask him "You got a sports fishing license?", no, he can be
17 cited, for not having a sports fishing license. I think this
18 is one of the things that Austin refers to, you know, and is
19 the same situation around the state, that should be looked at,
20 and it's a real problem.

21 MR. HAMMOND: Why he was
22 talking about the license. We had some lifetime license, but
23 still it's hard for us to use it. We doing commercial fisher-
24 men, it used to be \$200, and we have all kinds of license come
25 up, but now we are paying it, just like the white people. I'm
a commercial fisherman, I've been fishing since I was 12 years
old, now I'm 73, I'm still doing it. But it's pretty hard, for
this license. Even, we go up Chilkat side, we getting some
hooligan, we got to have a sport license. Some of them I
notice it, they got into trouble, to get the hooligan. And
they have to take them to the court. Us Natives supposed to
get anything what we need. Like the commercial fisherman, a
gillnetter, they used to say to say it, on it, anything what

1 you catch on your net you could sell it, but we can't now. Now
2 the commercial fishermen in Chilkoot, humpies, if you catch
3 them by the river, they don't buy it, they throw it overboard.
4 Now what is this, I'm really fighting against that, what
5 they're doing. Because they said it's too old now, to put it
6 in the can. And why did they have to open right close to the
7 mouth of the river? And I told them, just leave where it is,
8 so wouldn't kill for nothing, all those humpies. And the
9 hunting, we had a tough time, because it's closed (?), in
10 Skagway, and Chilkoot, you know I can walk up and get the
11 mountain goat. We don't have no deer in Haines, that's the
12 only thing we have. Moose hunting. It's hard. You know when
13 I got on the ferry going up from Juneau, everybody was going
14 there with a gun case, taking their guns, the moose hunters.
15 And all the boats, that 200 boats, gillnetters. They have to
16 stop fishing, they all have to go hunting. One man I know
17 that, when I was going back to Juneau, and he was asking me how
18 many moose I caught, and I told him I didn't go hunting, be-
19 cause I'm too old and my eyesight is not right. And I ask him,
20 "Do you get some?" "Yes," he said, "I got three, with my
21 partners." I don't know how many partners he's got, he's says
22 he's got three, on that ferry, but us, it's pretty hard. One
23 thing I like to do, on Canadian line, if we're going there, we
24 have to pay, to go through there. Why not doing it? Chilkat
25 people they have a tough time because all the hunters. And one
thing I was thinking about, just for the Natives, it's got to
be open, say but we got two. So before they start changing it,
there's too many hunters, any brush moves they shoot at it,
this is what is danger. They don't see what's there. So they
gonna kill each other, so many people hunting. Thank you.

MR. BERGER: Thank you.

Woodrow Morrison.

MR. MORRISON: I'd like to

1 expand a little bit on when you were talking about flexibility,
2 and maybe if we can tie what Mr. Meeker was saying to it. I
3 think what you're referring to is laws that result in what we
4 would call de jure social Darwinism for, if you want to use the
5 term, a system being imposed upon us by those who have
6 developed from subsistence users to high tech. But as far as
7 flexibility, when Native people take different food sources,
8 there's a system to it. Certain foods are taken at certain
9 times. Because of quality, and it's the right time of the
10 year, part of the spiritual ceremonies involved in it. For
11 example, at home, we take halibut, our summer camps, our spring
12 fish camps, halibut were taken at a certain time because of the
13 low oil content of the halibut, if you want to have a physical
14 reason for it, and it was easier to dry. We know when the
15 seaweed is ready for harvest, because the wild celery is up to
16 about knee height. And so those things aren't really tied to a
17 lunar calendar so much as they are to a cyclical way of life.
18 The cycles were established probably since the early dawn of
19 human presence on the planet. I lived in the lower Yukon area
20 for a while, five, six years, and the way people lived out
21 there, for example, in the spring months, about the time of
22 break up, when it started to get water on the ice, it's dan-
23 gerous to go after moose, it's dangerous to travel to hunt.
24 And it's about that time that the birds begin to return, migra-
25 tory waterfowl. And so that becomes a source of protein. But
then as the ice begins to break up and go out, whitefish begin
to run, people dip for whitefish. But that's fairly short-
lived, maybe a couple of weeks. And so when the whitefish have
been taken, then there's again another break, and another
source of protein has to be found, which usually are the migra-
tory birds. It's too difficult to travel, the rivers aren't
really open enough to be able to travel to look for moose, and
it's also the time when calves are pretty small. So people

1 take birds. And then this is followed by the salmon, and then
2 when the salmon are gone then the moose season begins, where
3 people begin to get moose and also maybe a few birds before
4 they leave south. And then as soon as freeze up, people would
5 go and cut, they'd put a fence into the river, made of willows
6 and cottonwood, sunk down into the river through the ice. And
7 then large pools were caught on the upstream side of the fence,
8 and large dipnets used to dip whitefish. And so, again, they
9 were hoping to be able to get enough whitefish to last for the
10 rest of the winter. In the meantime, moose then became the
11 other alternative to a strictly fish diet. And then around
12 December people began to get in eels, dipping for them through
13 the ice. And so the peoples' lives are governed by these
14 natural cycles, that seasons do change. Sometimes you have an
15 early winter here in Anchorage, sometimes you don't. Well, the
16 animals' lives are geared to those changes, rather than to
17 dates on the calendar. And if people are going to be able to
18 live in a time-honored way, and be able to pay respect their
19 relatives in a proper way, then they should be able to follow
20 those cycles. Another example on the lower Yukon was people
21 never "kill" anything, they go out and they "catch a moose,"
22 they don't go out and "kill a moose." They "catch some birds."
23 The animal has a spirit of its own. And many times, the old
24 way, people would say to that animal, after they had shot it, a
25 "thank you for giving up your spirit so that my family could
live." And then they would treat it with respect. And so
technology really had nothing to do with it, it didn't have
anything to do with how the animal was taken, it's the respect
accorded to that food. It's more than food, it's ingestion of
the spirit of that animal, also, or that fish. And also those
fish, and the other game, are a gift that was given to us. And
therefore, when any person would come into my house, and I had
fish, I had meat, whoever came in was also entitled to that.

1 And so we give to each other. Not to incur an obligation, but
2 as recognition of a person's right to it. But when you go to
3 the school, I think Ann Riordan was writing about this, it's
4 not the same when you buy grub from the store. You don't give
5 away a can of Spam to somebody when they come in. There's no
6 real relationship to that can. But when somebody comes in, you
7 got dried fish, skew (?), seaweed, whatever, you invite that
8 person to sit down and celebrate with you. In the spring
9 months, when the salmon return home, the first ones, when we
10 see them jump, we holler "Aiyoo, aiyoo!" That's a celebration,
11 our relatives have returned again. Creator is making it pos-
12 sible for us to continue our life in that same cycle. But then
13 when Fish and Game makes regulations, then we begin to become
14 trophy hunters, we look for the biggest and try to get as much
15 as we can to horde, not necessarily to give away. And every
16 time something looks like somebody might like it, we give
17 people our seaweed, next thing we know the Japanese are coming
18 in and they're harvesting seaweed with shears. Seaweed doesn't
19 grow back after they've been sheared. Now there's going to be
20 a commercial fishery for whitefish. Pretty soon, Native people
21 are going to be told, you can only take these certain time, you
22 can't use fish fence anymore, you gotta do it the way we tell
23 you, and only when we tell you, and how much. At home, us
24 Haidas, Tlingit people, Tsimshian, and other people who live on
25 the ocean, for us, when the tide is out, our table is set. Our
lives come from the ocean, that's where we live. Abalone in
Hydaburg. We tried to tell the Fish and Game people, don't
make commercial season out of that. Used to be, all of us, all
of us Haidas would go and get as much as we wanted, when we
wanted it. After the commercial fishery, I talked to people at
home, and during the past year only one person got abalone, and
was able to find maybe a dozen, just little ones, too small to
be spawners. Used to be you could get maybe 1,000. But we

1 didn't take them below the low water mark. These divers go
2 down and take them down deep, now we got no more. Herring roe.
3 There's a place out there, the Corlies (ph) Islands, where a
4 man and his wife, Louie Tom, Emma Tom, went up to a place we
5 call Craig now, we called Quoslie (ph), place where we got
6 herring eggs. They caught a male and a female herring, tied a
7 very thin string, hair-like string on them, and took a rock,
8 and they towed those fish about 30 miles, to what's called
9 Corlies (ph) Islands now, at low water. They sunk that rock,
10 and released those two herring. And for years, we didn't touch
11 that place, until the herring grew and the spawn increased,
12 until sometime in the late, early 1950s. Then they opened it to
13 commercial fishery. Now we are restricted to 10 pounds per
14 person. We put it there, our people did that. And then they
15 talk about using ponds for getting herring roe. Same with our
16 relatives in Massett and Skidegate, down at Queen Charlottes.
17 So they set up those ponds, and we found that they took the
18 kelp from the northern end of Dall Island, and brought them in
19 there. And they didn't talk to Hydaburg about it, they didn't
20 ask us, that's our country, we've been there since the ice age.
21 We had to leave during the flood. And returned again. Our his-
22 tory goes back to talk about the walls of ice to the east,
23 around Nass River (?), talks about ice walls to the north. Our
24 history is very specific, and tells how we got back across to
25 Prince of Wales Island and Dall Island. But our whole lives
have been tied to the resources of the eastern Pacific Ocean.
And also, like in the spring months, when noko (ph), fish eggs
on kelp was ready, we'd take a seine boat load of them and run
to the Charlottes, Haidaguya (?), to give to our relatives out
there. Later, Tsimshian would come to Hydaburg with a boat
load of hooligan, and with seto (ph), grease made from hooli-
gans. We paid a little bit for it. And then when the potatoes
were ready in the fall, Massett, Skidegate people would bring

1 boat loads over to us. And so that cycle would go on and on,
2 we always trading back and forth. We had extensive trade
3 routes in the area that Austin Hammond is talking about, when
4 the English, the Hudson Bay Company came in, tried to set up a
5 trading post, Tlingit people tore it down, said you didn't get
6 our permission. And they gave them permission to use a very
7 narrow trail to go through their country. A place we have
8 always considered sacred at home, Forrester Island, we call
9 Chin Qui Guy (ph), a grandfather with whom I have a close
10 personal relationship. In 1913, U.S. Fish and Game, Fish and
11 Wildlife person, went out, tore down my uncle's house, used the
12 materials to build a house for himself, and cleared an area for
13 Norwegian fishermen, and pushed my grandfather's family and the
14 rest off to a part of the island where the only way to get
15 ashore was to ride the surf up on the rocks and hope you didn't
16 tip over. Norwegians brought in with them power trawlers. And
17 they made a rule, that those power trawlers wouldn't come
18 within a thousand feet of the beach. But they didn't stick to
19 it. They came in with their power boats and they cut our
20 lines. Then when the fish buyer came he'd stay way off shore,
21 to where the power boats could get to them, deliver their
22 catch. And then they would leave, before our boats could get
23 out to them. And what I'm saying is, we've been involved in
24 this for thousands of years, we never took anything from any-
25 body. We didn't take anything from the State, we didn't take
anything from the people who came in. We accepted them, and we
welcomed them, and said "Come stay with us, we'll feed 'ya."
Next thing we know we're pushed into the backroom, and said,
"Well, we're going to permit you to do this now." Now, maybe
this is idealistic, what I'm talking about. History is every-
thing to us; to Americans, today and tomorrow is all that's
important, a system based on smash and grab, as the British
call busting a window and grabbing what you can and running.

1 We're concerned with what's going to happen to not only my
2 grandchildren, but I want them to know that a hundred genera-
3 tions from now, when they can say "de hot argon" (ph), "I'm a
4 Haida," and I walk the same ground, I eat the same way that my
5 ancestors did, because they took care of this for us, and
6 that's what we have. And so I think if the State is going to
7 manage this equitably that maybe the solution might be, and you
8 can debate it if you wish, is that the allocation of resources
9 go to each individual tribe and let them manage it themselves.
10 If you allocate say 400 caribou, just for leaving numbers, say
11 to Arctic Village, it doesn't hurt the State in their manage-
12 ment scheme, because they can plan for that number of animals
13 to be taken. And that's what you call setting a priority for
14 subsistence. On the Copper River, they made a priority for
15 subsistence by going and taking the average number of fish that
16 people caught there and saying, okay, you're going to have
17 20,000. Then for personal use, they said, well, we're going to
18 give you twice as much, you're going to get over 40,000. Then
19 the commercial fishermen get the rest of it. And so, Native
20 fishermen, they know which runs are best for them. They are
21 the ones who should be able to fish according to the time
22 honored cycle of life, rather than artificial boundaries estab-
23 lished by law. That way they won't have to just take the tail
24 end of whatever gets up there. And I want to thank Austin too,
25 for talking about that, because in Hydaburg we have the same
situation. We had a young man, was trawling, he caught a small
halibut. And while he's trawling, this young boy sitting out
in the cockpit, Fish and Game guy came alongside, said, "Can I
come aboard." And the boy said, "Yes." Fish and Game guy came
aboard, this Haida skipper was sitting down in the galley, he'd
fried the halibut and was eating it. He was cited, and the
halibut was taken from his table as evidence that he'd violated
the law. Another one, we use a spear to get fish. It's a

1 large hook without a barb that detaches from the end of the
2 pole. A guy from home got an old dog salmon (?) called Inga,
3 it's turning white, you know, gonna die, and a humpie, to use
4 in a crab pot. Fish and Game arrested him because he didn't
5 have a permit for those two fish. And it goes on and on. They
6 confiscate guns, people are hungry, need to go and get the
7 deer, they get arrested for that, the same for birds. I grew
8 up as a commercial fisherman, from the time I was seven years
9 old. But I also grew up, I would say, in a traditional way of
10 honoring those ways.

11 MR. BERGER: Steve, did you
12 want to...?

13 MR. LANGDON: I just wanted
14 to make a brief remark about some of Austin's and Woodrow's
15 comments, is that for the record it's the people of south-
16 eastern Alaska who have endured the regulatory burden the
17 longest, because of the course of the history of Alaskan de-
18 velopment. But the traditional harvesting methods of the
19 Tlingit people, you have, this is...

(TAPE 2, SIDE B)

20 were outlawed before Austin Hammond was born. In 1896 the
21 traditional techniques were already being constricted. They
22 were told they could no longer catch the fish in the streams
23 anymore. And it's been that long that that regulatory burden of
24 customary and traditional has been endured. I just wanted to
25 make that point for the record.

MR. HAMMOND: ...(off
21 mike)...that what they're saying, that law. When I was nine
22 years old, I was in Chilkoot. 1910. They were buying fish
23 from Chilkat, Chilkoot Lake. On Chilkat side, all over, came
24 up then fishing. They buying through the canneries. So our
25 Tlingit knows about fishing. They stopped it. Just before
that, when the white man came to Alaska, like Chilkoot side.

1 There was a traps, they put it in, piling. On the Chilkat
2 side, they have some traps all around. This is way it coming.
3 So our chief from Chilkat, on our side Chilkoot chief, they got
4 together and they see what they're doing. They're going to
5 kill all these fish, there will be no more fish in Chilkat, and
6 Chilkoot. They see ahead of time, before you white people come
7 around. We don't use no trap ourself, our Tlingit. So they
8 decided to have a second meeting to bring all the young people,
9 young boys, when they get together. Two of the chiefs said,
10 you go on this side, chop down all the traps at low tide. So
11 is Chilkat side, all the way. If they come to you, why you
12 doing it?, you mention our name. So they all went and cut all
13 the traps down. They see all that scar (?) loaded from the
14 traps, two, three scar (?) loaded. This the reason why they do
15 it. And they caught them. They took them to the court. Why
16 you do it? You know that piling we put it up, it's expensive.
17 Why don't you ask us before you put it up there? This is our
18 land, like what brother was saying there. This is our land you
19 put the traps on. Chilkat side there will be no more fish, and
20 Chilkoot the same way. Well, they win the case. Then, it open
21 for purse seiners. Came up, in Chilkat, right now, there's
22 lots of cohos coming. There were lot of jumps, so all the
23 purse seiners waiting, 'til it open. And our people watching
24 it, what's going to happen? Soon as it opened they went out,
25 make a set. All the boats, they clean them out, no more fish
there then. So they came together. This time the line is
going to be way down, not a purse seiners will come in. They
know it, what's going to happen, so they had it, move it down
again, to Pt. Howard.

23 Now, to talk about the
24 hunting. My father, my stepfather, named Jimmy Marks, he goes
25 to the doctor. They told him, the doctor told him, don't buy
any meat from the store, it's no good for you. Because what

1 they given to the cows, that wouldn't agree with you. Any-
2 thing, like pig, or either some chickens, you can't eat it. So
3 we went out hunting. And my brother Horace Marks, he's crip-
4 pled, he can't go with us. So my father, he want to have some
5 duck. So brother Horace shot two ducks. He was going to work
6 on it, to cook it for my stepfather. And here comes the game
7 warden, and that ducks he's got, they took it away from him.
8 They tried to explain why they kill 'em, they don't listen to
9 him. They took it to Juneau. So they told 'em to come to the
10 court. So they went. Still they try to explain. Nope, your
11 got to pay a fine. We are Natives. What we need you could kill
12 it, because that's our land. So all this is, bother me (?).
13 Myself, I'm going to the doctors. I got pacemaker on me, and I
14 got Addison's disease, same thing that happened to me, I can't
15 eat from the store. But I can't kill no ducks, what I want to
16 eat. Our Natives should have what they need to eat, because
17 the doctor told them not to eat from the store. It happened to
18 me, if I get something from the store I get sick. Now the
19 other thing, what I skip, in Chilkat side, when the tide, not a
20 tide, flood comes up, you know, when it's raining. By this
21 time, all the fish going up. After stop, the river going down,
22 just like here, what we have here. All the docks haven't got,
23 dried up there, they can't go out no way. My brother Horace
24 again, he was crippled, he told Chauncie (?), let's get some of
25 that fish. So they did, they caught some fish from there. And
they see it again. And they took that fish away. And they
told them that fish can't go out, they're going to die there
anyway. And they pay \$250 fine, to get that fish. This is our
Natives I'm talking about. It's kind of hard for us to get
anything what we need. But it's easy for the white people.
Sport fishermen, they're protected, that's the way you get in
the fish. But us, we could do the sport fishermen, but they
are too many when they start catching the fish. We don't want

1 to fight for the fish, what we need, we take it, but we don't
2 want to fight for it. But this time, when I came up, I had
3 everything coming to my mind when they talking. Our fish, we
4 need it. I told 'em, you could put me in jail if I get some
5 fish from up there. This is my land, this is the blanket I got
6 to show you, tomorrow. The reason why I'm strong for this
7 here. So I'm thank, brother was talking there, this is our
8 land. Thank you.

7 MR. BEHNKE: A number of
8 people, Mr. Hammond and Mr. Pungowiyi, and Mr. Morrison, have
9 mentioned instances where State regulations have not accom-
10 modated, in their view, have not accommodated customary and
11 traditional uses. And I want to point out two things. One is
12 that, Larri Spengler mentioned, that it's been a very short
13 time since the State subsistence law was established. And, you
14 know, you're reviewing ANCSA, which has been, what, 13 years
15 since that major piece of social legislation was established,
16 and the subsistence law was the State's attempt to deal with
17 these things, was passed about five years ago. And it's really
18 been only about the last two years since there's been any
19 effective attempt to implement some of the provisions of the
20 subsistence law. I think probably those who were involved in
21 that would agree, that there have been more strides in the last
22 two years, at least, than there were in the earlier years. For
23 those who aren't familiar with the regulatory process, some of
24 the visitors here, its probably important to point out that the
25 kinds of concerns that Mr. Hammond mentioned, and concerns that
Mr. Pungowiyi mentioned about the Nome River, are able to, the
State system tries to deal with those kinds of concerns through
its very open proposal process, where proposals for changes in
regulations can be submitted, and through its advisory commit-
tee system. I know Mr. Hammond has participated in that system
and in the board meetings, and I expect...there have been some

1 changes made that have accommodated some of those concerns. In
2 the community of Klukwan, for example, there have been regula-
3 tions adopted in the last year or two that have dealt with some
4 of those issues, not all of them, obviously. Also in the case
5 of Hydaburg, Mr. Morrision mentioned a 10-pound limit on roe on
6 kelp, well, last month the Board of Fisheries addressed that,
7 that concern was brought up by advisory committees and by
8 communities and groups in those areas, people who harvested roe
9 on kelp for subsistence purposes, and the Board of Fisheries
10 heard their testimony and also heard testimony from my divi-
11 sion, and they did adopt a considerably higher limit, up to
12 500 pounds, for individuals, households that take roe on kelp.
13 So I guess it's just worth pointing out that if you're viewing,
14 at least the approach that the legislature and State have
15 adopted, is a process, for accommodating customary and tradi-
16 tional uses, and given that it's going to, you know, it's been
17 an awfully short time since it's been in existence, and I
18 guess, you know, as you think about it and as you evaluate
19 that, think about it in terms of those constraints on, the
20 legal constraints, the political constraints, and keep in mind
21 that it is an evolutionary process.

17 MR. BERGER: Tom Lonner.

18 MR. LONNER: ...(off

19 mike)...argue with you that you made a lot of progress, more
20 progress than the years that I was sitting in that same office,
21 but I wonder if you think that, definitionally, removing the
22 east side, or that is the Kenai Peninsula, as a subsistence
23 area for the Kenaisian Indians is what you would call
24 progress in terms of the State's understanding of what subsis-
25 tence really is about. When you have small communities of
Alaska Natives whose communities grow beyond their own capacity
because of immigration, because of economic development, that
essentially after a while those two communities become sub-

1 merged and subsistence disappears, I guess I don't perceive
2 that, particularly as progress, in the management of some of
3 these most critical issues. I'll give you all the credit for
4 going through the documentation and assisting in the claims of
5 people from Klukwan or from Haines, Hydaburg, but in these
6 really critical issues I'm not sure that any basic change has
7 taken place in the State's position, it still has managed to
8 define subsistence out of the Kenai Peninsula. And it can do
9 that elsewhere, as soon as population pressures and other
10 economic events occur. And it seems to be it's a very
11 debilitating force in the long run.

MR. BERGER: Steve.

10 MR. BEHNKE: I think I'm
11 not going to debate with Mr. Lonner about that at all. I think
12 that that's the type of, I'm obviously looking at the narrower
13 picture of, within the existing system, of what we can accom-
14 plish. Obviously, you know, that's, the type of issue that
15 you're mentioning is the type of thing that this body should be
16 talking about.

MR. BERGER: David Case.

16 MR. CASE: Maybe, I don't
17 know, Larri seems to be having something to say too at this
18 point. I wanted to address, and to this particular point, so
19 maybe Larri would, if you're addressing this point maybe it
20 would be more appropriate for you to speak.

MS. SPENGLER: Thank you.

21 I just wanted to follow what Tom was saying about the Kenai
22 Peninsula, is probably a very good example of how hard it is to
23 find...since the State cannot use race as a criteria, because
24 of the State constitution, how hard it is to find some
25 mechanism for identifying what you are talking about in terms
of subsistence, the cultural/spiritual, as well as economic and
nutritional aspects of it, how hard it is to find some criteria

1 that is legally supportable. I'm not offering that particularly
2 as an excuse for anything, it's just, it's hard. And the
3 criteria they've got, the board adopted, is one way of doing
4 it. We can't use race, and, you know, if you can come up with
5 a better way, it would certainly be welcome.

5 MR. BERGER: David.

6 MR. CASE: Well, I want to
7 get back to a point that maybe is more general about this
8 regulatory regime. And that is, I understood that you said
9 that the allocation for subsistence resources would be made in
10 a particular region, particular area, and that then the rest,
11 the other uses for that resource would also be allocated to
12 other users, personal use, commercial, or whatever. That's the
13 way it is supposed to work, or does work?

12 MS. SPENGLER: That's the
13 way it works when the situation is such that the board is
14 focusing on an area and addressing it under the methodology,
15 the procedures that they've set out. First, subsistence uses
16 would be identified, then provided for, and then any other uses
17 would be accommodated. Now, that only occurs when they're
18 focusing on an area.

17 MR. CASE: And so, does
18 that focus only occur when there arises an issue, when it
19 becomes a hot spot, in other words, there's obvious competition
20 and dissatisfaction with the use of the resources, is that
21 correct?

21 MS. SPENGLER: So far
22 that's the way it's worked because of limited personnel and
23 data, you can only do so much, basically.

23 MR. CASE: Okay. My ques-
24 tion, I guess, and this may go to, I know it goes to a point in
25 one of the papers, I'm not sure if it's Tom's or Steve's or
both, but what is the consequence to this idea of flexibility

1 of allocating all of the resources some place. In other
2 words, does it reduce the opportunity for flexibility within a
3 subsistence, for subsistence taking of fish and game, if you
4 allocate it all out and...could someone respond to that?

5 MR. BERGER: Tom Lonner.

6 MR. LONNER: Thank you.

7 What generally happens is that, I'm sure the procedures of the
8 department haven't changed, the department tries to identify
9 what it considers to be a safe, harvestable surplus of a
10 particular resource in a particular location in time. If it
11 meets the subsistence requirement, whatever standard has been
12 historically present or documented or claimed, the boards will
13 attempt to allocate that amount, and then allocate the re-
14 mainder of that harvestable surplus elsewhere. So, essentially
15 what they've done is they've allocated a certain amount for
16 retention as conservation and the rest of it is allocated to a
17 variety of uses. The problem is that once those uses have been
18 allocated that sets up another pattern that tends to lock
19 subsistence in. That is, subsistence needs to grow and to
20 change, perhaps. When you've allocated all of those resources,
21 and perhaps allocated them too close to the safe margin for
22 conservation, you don't have any room left anymore. You have
23 established personal use situations, you have established com-
24 mercial limits, people begin to depend on those. All of those
25 uses then become valid, competing uses, all with real claims on
the resource and with some claim to time depth. They are not
dependent on it. Any change in subsistence, other than making
subsistence smaller, is unlikely to occur. That flexibility
inherently is gone, over the long run, when you have three or
four or five years of that kind of legal development.

MR. BERGER: Steve.

MR. LANGDON: Well, Larri
can correct me on this particular point if it's appropriate,

1 but we do not have yet in place a situation in which, say for
2 example, the village of Tyonek, which has a specifically allo-
3 cated proportion of the king salmon, that village is to grow
4 naturally in terms of population expansion, presumably the
5 regulatory process with a subsistence priority can be broached
6 for the raising of those levels given the meeting of the sub-
7 sistence standard of the new households. I would presume that
8 that regulatory authority exists. To do that we simply haven't
9 yet had a circumstance for that. I don't know, that's...

MR. BERGER: Yes, Larri.

MS. SPENGLER: ...(off
10 mike)...regulatory system operates in Alaska, anyone can put in
11 a proposal for anything. So if, for example, the community of
12 Tyonek grew to a certain level, Tyonek or the advisory commit-
13 tee or somebody could put in a proposal to raise the quota for
14 the, raise the allocation. Whether or not it would succeed I
15 don't know, because it hasn't happened, that I'm aware.

MR. LANGDON: ...(off
16 mike)...flexibility is now regulatory instead of natural,
17 though.

MS. SPENGLER: Uh huh.

MR. BERGER: Harold Sparck.

MR. SPARCK: One thing
18 that's been missing is the natural limits on the resources.
19 Again, referring back to the, what our elders continually
20 remind us about is that you have these fluctuations in popula-
21 tion. We have, I guess, politically tried to retard new users
22 and new uses of the subsistence resources in western Alaska.
23 The fear of our elders is that if you encourage new users and
24 new uses, they have a demand, and they then get a legal status
25 in the future. If the populations drop because the habitat is,
let's say, lost by federal mismanagement or by State mismanage-
ment, you can't support new growth or a regrowth of a damaged

1 biological population, the subsistence people are not going to
2 be able to change. They are not going to be able to move to the
3 other resource in order to support themselves. Many of us
4 looked at ANILCA after we lost the battle in '77 and '78 as a
5 Native-only subsistence provision, as a, really, as a habitat
6 conservation measure. The Alaska National Interest Lands Con-
7 servation Act was a way of trying to protect the habitat, at
8 least the upland habitat. We had a second major defeat, many
9 of the people in western Alaskan tried to expand ANILCA 200
10 nautical miles off shore, so that you were dealing with an
11 entire ecosystem. You were dealing not only with the upland
12 land base, but you were dealing with the marine system. Both
13 are essential to protect the wildlife resources the village
14 populations depend upon. So, in two areas we were defeated, in
15 Congress. The only salvation we did get is certain stipula-
16 tions under Title VIII, which said that whatever was left the
17 subsistence people had the priority on. But I think this issue
18 is very important that you're addressing right now, and I think
19 Mr. Hammond explained it very well. If you allow a new user or
20 a new use to come in and you don't protect yourself, either
21 politically or legally, if the population drops, you're in
22 trouble. You have closed the door on your own way of life, and
23 again I guess I would characterize many of our efforts as being
24 a political effort to leave room in the future for the change,
25 growth, or development of the subsistence way of life of our
coastal villages.

MR. BERGER: Yes, thank
you. It's almost 12 o'clock, and maybe we could adjourn in
just a moment, but before we do could I ask that anyone who has
not yet signed the list of attendees, the list near the en-
trance way, might do so as they are leaving or when they come
back after lunch. Now after lunch we'll hear from Tom Lonner,
and it seems to be logical that we reach Tom next, because all

1 that you have been saying today reflects what I have heard at
2 the meetings in the villages over the last eight months.
3 People there feel very keenly what they regard as the loss,
4 limitation on access to fish and game resources. And much that
5 has been said by Caleb and Woodrow and Mr. Hammond and Marie
6 and others is very much along the lines of what I've heard in
7 the villages. And that, it seems to me, means that it may be
8 appropriate for Tom this afternoon to begin the discussion by
9 suggesting that the assumptions that we've made are wrong, and
10 that perhaps an entirely new approach is called for. And we
11 expect Don Mitchell will follow Tom, and then there'll be
12 another open discussion. And I hope that our visitors from
13 other jurisdictions will feel free to participate, and to talk
14 about their own experience and their regimes in their own
15 jurisdictions. If you have any ideas about the way in which
16 we're proceeding that you'd like to bring up, please feel free
17 to speak to Rosita Worl or David Case or me over the break or
18 at any break and bring to our attention your dissatisfaction,
19 if you feel that way about the way in which we're proceeding.
20 I didn't have a coffee break this morning, because I think with
21 a group as large as this it's sometimes difficult to get
22 everyone back in their chairs, but perhaps we will have one
23 this afternoon, threeish, and so you can all look forward to
24 that. Let's adjourn now and then try to start again at one.

19 (MEETING ADJOURNS)

20 (MEETING RECONVENES)

21 MR. BERGER: Just before we
22 begin, I should tell you that Jim Sykes with the earphones here
23 is taping the proceedings for the Commission, but he also is
24 running a PA system here so that we can all hear each other and
25 that those folks who are in the audience can hear what we're
saying, so I remind you that when you're speaking would you
draw one of the microphones towards you so that we can all hear

1 you and your remarks can be recorded. Gary Williams is taping
2 these four days for Independent Public Television and for the
3 University of Alaska, and he will be developing programs to be
4 shown on LearnAlaska and on other stations. Well, this after-
5 noon the proposal is that Tom Lonner should lead off. He wrote
6 the paper called "The Spider and the Fly," and if, Don Mitchell
7 is to be with us this afternoon, we'll ask him to say something
8 as well this afternoon, and later on we'll take the liberty of
9 asking Gary Holthaus to offer his views on some of these...Yes,
10 Tony.

11 MR. VASKA: (off mike,
12 inaudible)

13 MR. BERGER: Well, I think
14 perhaps he's eager to do that, so perhaps we should give him
15 the floor now.

16 MR. LONNER: I don't even
17 recall the childrens' fable about the spider and the fly, all I
18 really recalled out of it when I was writing my paper is that,
19 is I begin to view the federal and State regulatory systems and
20 land management systems as a vast spider and subsistence as
21 being the fly, and I have this vision of subsistence being
22 wrapped up by all of these regulations into this tight little
23 ball ready to be eaten by these somewhat gigantic spiders, and
24 I wanted to talk a little bit about what that web looked like,
25 which is the reason that I wrote this particular paper. And
some of it you will find redundant to this morning, unfortu-
nately or fortunately, because almost all of the issues that
are raised in my paper are raised by the individual contribu-
tions of people who spoke earlier, and I'm trying to put it
into, just trying to take those same materials and put it into
a kind of a story line that seems to make sense to me, about
how to explain where we are and where subsistence is right now,
and whether subsistence really has a future in Alaska.

1 somewhat misleading notion, since neither party to the land
2 claims settlement was interested in land, per se. The pur-
3 chasing party, the United States, was interested primarily in
4 extracting resources from the land, not settling on the land.
5 The compensated party, Alaska Natives, was relinquishing rights
6 to the rewards of that extraction, but did not intend to re-
7 relinquish rights to chase and harvest the wild resources which
8 traversed or inhabited all the lands. While the provision in
9 the settlement purported to extinguish aboriginal hunting and
10 fishing rights, it did not exclude continuing access to or
11 priority use over those wild resources. Indeed, language in
12 the act and subsequent legislation establishes the State and
13 federal responsibilities in ensuring continuing provision of
14 subsistence opportunity. In effect, with the coming of Ameri-
15 can dominion over the land, and without the consent or knowl-
16 edge of Alaska Native people, their wealth had been usurped by
17 the American government. Lands, waters, fish, wildlife,
18 minerals, and forests all passed into government hands and were
19 converted into common property resources, that is, wealth held
20 by the government on behalf of all Americans. In return for
21 this peaceful expropriation, Alaska Native peoples were sur-
22 rounded by the protections and responsibilities of American
23 citizenship, which over time they received. That seems to me
24 to be the unwritten contract: an exchange of great wealth for
25 simple citizenship.

As a first generation
American myself, I find that difficult to comprehend. Over the
last two centuries, millions of immigrants from Europe and
elsewhere have come to America and were awarded citizenship.
To my knowledge, none have been required to surrender at their
point of entry into the country, all of their wealth to the
government for common use in order to obtain citizenship.
Nonetheless, that was the price paid by unknowing Alaska Native

1 peoples. The Alaska Native Claims Settlement Act returned a
2 small portion of Alaska Native people's original wealth in the
3 form of lands, but in a form considerably hedged by controls
4 and constraints. It was at this point that the separation of
5 land wealth and subsistence wealth began, as Native people were
6 encouraged to select lands most suitable for development, be-
7 cause their continuing subsistence activities on other lands
8 were to be assured by federal and state governments. However,
9 these assurances were in the form of social policy, rather than
10 basic or property-based rights. These assurances were seen to
11 be as mutable and insecure as the ever changing flow of power
12 and purpose in the dominant political system. As Usher points
13 out, government has expressed its exclusive ownership of and
14 control over wild resources through changing land classifica-
15 tions, land uses, and the regulation of wildlife harvesting.

16 The dominant social policy
17 in Alaska from statehood until 1978 had been that no particular
18 rights to sever common property resources accrue to any part of
19 society by virtue of long-term custom, tradition, or practice,
20 local residency, economic need, nutritional need, or any other
21 factor. The government retains to itself the right to deter-
22 mine preferences among beneficial uses of wild resources. The
23 State has many examples of providing limited access to valued
24 common property resources, land, water, gravel, oil and gas,
25 fisheries, and so on. Paper title, granted by the State,
rather than thousands of years of continuous use, becomes the
validating tool of ownership, access, and severance. As a
result, there is a serious question in the minds of subsistence
persons about the relevancy of government to their direct
access to the harvest and use of wild resources. In particu-
lar, the harvesters do not feel that the resources are, or
should be held in common, or that, given their negative view of
Western wildlife management, the resources are being held at

1 all. The government assurances to protect subsistence took the
2 form of the regulatory regime so carefully outlined by
3 Professor Langdon in his paper. It is my belief that the
4 separation of land wealth and subsistence wealth may prove
5 fatal to the long-term survival of subsistence, as a mechanism
6 of self-reliance for Alaska Native peoples. It is my further
7 belief that all of the regulatory regimes, individually, in
8 concert with one another, and in concert with a myriad of other
9 forces in the real world, as distinguished from the formal
10 administrative, planning and legal worlds, will not only fail
11 to enhance or protect subsistence, but will combine to slowly
12 but surely strangle subsistence. In other words, those human
enterprises which have as their sole function the task to
maintain subsistence, will in fact smother it, with close and
loving attention.

Subsistence is a living,
breathing, dynamic human activity. Regulatory regimes tend to
place the steel web of exactness on the activity, in the form
of exact definitions, exact locations, exact numbers. This
exactness cannot respond to the everchanging human needs or
everchanging environmental conditions which comprise subsis-
tence. Each bit of exactness, whether a land use boundary or a
harvest regulation, combines with all others to create an
indifferent set of constraints to this living system. The
result of the interactions of these constraints is that public
policies whose impulse is to be basically benign have conse-
quences that are cruel. That policies which are intended to be
passively protective have consequences that are actively de-
structive. There is not a single regulatory regime described
by Professor Langdon which has, as its effect, an expansion,
enhancement, or even restoration of wildlife resource levels or
which reflects the flexibility inherent in subsistence over
decades of human reliance. The sole purpose and the sole

1 product of these regimes is to allocate a harvestable surplus
2 of some resource. As resources decline from time to time, or
3 competition increases due to a variety of nonregulated and
4 nonmanaged events in the real world, the harvestable surplus
5 declines, and the most local harvesters bear the cost of the
6 decline. Since no one has provided evidence that valued wild
7 resources are growing, or that competition for these resources
8 is declining, all that the future appears to hold is a con-
9 tinued decline in harvestable surplus and more regulations
10 which limit subsistence in the name of protecting it.

11 I am persuaded that the
12 more local the regulation-making authority, the more the regu-
13 lations are likely to reflect local realities and meet local
14 objectives. This, after all, was the argument used to give
15 states the power to regulate resident fish and wildlife. How-
16 ever, I'm not persuaded that formal Native participation in
17 governmental regulatory regimes is going to be effective in
18 insuring the survival of subsistence. While the unique
19 arrangements dealing with the Porcupine caribou herd, the bow-
20 head whale, and the migratory waterfowl nesting in southwest
21 Alaska are more enlightened than most of the processes of user
22 participation, the ultimate consequence of these regimes is the
23 limitation of subsistence. I see no sign that participation
24 has expanded the subsistence enterprise. The more such parti-
25 cipatory systems become engaged in the normal science preceding
wildlife management, the more Alaska Natives become captive to
the limitations and conclusions of that science. The control
over subsistence that is implied by such participation is more
illusory than real, as long as the forces of conservation,
industrial development, land use classification, and scientific
application remain outside of Native control. The price paid
for slightly more sensitive regulations is cooptation into the
bureaucratization and proceduralism of government management of

1 Alaska Native peoples' most basic concerns.

2 Harvey Feit makes a most
3 cogent argument about the ability of Native peoples to manage
4 their own practices to avoid depletion of resources and still
5 accomplish their work, social, and spiritual objectives. How-
6 ever, without control over forces beyond harvest regulations,
7 such management practices will have limited long-term effects.
8 Because subsistence is so integral to the continuous fabric of
9 Alaska Native life, it is affected by all of the social, eco-
10 nomic, and environmental changes occurring around it. Not all
11 of the problems of subsistence flow from the Alaska Native
12 Claims Settlement Act, nor do many of the solutions. The issue
13 of the conditions which are necessary and sufficient for the
14 survival of subsistence is not only a land tenure issue, not
15 only a aboriginal rights issue, not only a State constitutional
16 issue, not only a economic development issue, but all of these
17 and more.

18 If we look at the array of
19 forces acting to limit the availability of wild resources and
20 access to these resources, it does us little good to look at
21 only those forces over which we have ready control, such as
22 management regimes, management plans, government regulations,
23 and regulatory bodies. Regimes, plans, regulations, and regu-
24 latory bodies are forces which we understand and from which we
25 expect a great deal of effectiveness. In my own experience
they constitute a large part of the foreground in the discus-
sions of subsistence, when in fact they should occupy only a
part of the background. Placing them in the foreground pro-
vides an interesting arena for intense debate over economic and
legal rights, while the concrete reality of persistent damage
to subsistence goes on unnoticed and unchecked. Changes in
individual regulations consume vast amounts of human and even
professional energy, but alter very little of the subsistence

1 enterprise as it actually occurs. There is a real fallacy in
2 assuming any relationship at all between subsistence activities
3 and the paperwork governing subsistence. I view subsistence
4 regulations as small, angry mosquitoes stinging the tough,
5 resilient hide of subsistence. Any one mosquito by itself has
6 little meaning, however vast armadas of mosquitoes, in combina-
7 tion with other larger forces debilitating subsistence, may
8 have a powerful and possibly fatal effect.

9 Each force acting on sub-
10 sistence nominally aimed at protecting it has built into it
11 little, and in some cases large, errors. There are regulatory
12 errors, scientific errors, planning errors, observational and
13 logical errors, statistical errors, economic errors, social
14 errors, political errors, and industrial errors. Errors,
15 errors, everywhere. Each error, in and of itself, may cause
16 only a fractional bit of damage to subsistence, able to be
17 overcome, as Professor Langdon suggests, by the ability of the
18 enterprise to adapt. But I don't believe it for a moment, much
19 as I would like to believe it. What I see is a vast cumulation
20 of fractional errors which, taken together, combine to create
21 the potential for disaster. The most important errors occur in
22 law and regulation, scientific wildlife management, scientific
23 human management, land use change, man-made environmental
24 change, and political change, all in concert with natural
25 environmental change. And I would like to address each of
these in turn.

26 Law and regulation. Prior
27 to the enactment of the State subsistence law in 1978, there
28 were a great number of regulations which severely limited, in
29 law if not in reality, the ability of rural people to continue
30 to take and use resources as they have in the past. These
31 limitations were justified on the grounds of biological neces-
32 sity, management convenience, or increasing competition for the

1 resource. Not surprisingly, these limitations reflected power
2 relationships, not only among the competing users, but the
3 political constituencies related to these users. Prior to
4 1978, regulations had been implemented which masked the usurpa-
5 tion by new user groups or industries of resources already
6 committed to subsistence. The regulations were sustained by
7 nonbinding policies adopted by the regulatory boards, public
8 testimony to these boards, and a lack of basic inquiry and
9 information on the uses being restricted. With the passage of
10 the State subsistence law, rural people did not have the
11 right...

(TAPE 3, SIDE A)

12 to take fish and wildlife as they had in the past, but had only
13 a right to certain procedures preceding the making of regula-
14 tions governing their use. The State expressed no new interest
15 in the protection or enhancement of subsistence, or the re-
16 sources upon which it was based. No new opportunities for
17 subsistence were created by the law. All that could be
18 achieved was some small return of what the State had taken away
19 during the first two decades of state wildlife management.
20 This return did not result in an expansion of harvest in most
21 cases, but only a legalization of harvest that had continued,
22 as it had to, in violation of state regulation. It made the
23 subsistence enterprise more legal, not more productive. Rural
24 people did not receive more resources, but were relieved of the
25 legal liability they ran when engaging in their normal harvest
pursuits. As currently constituted, implemented, and enforced,
laws and regulations directly governing harvest are among the
smaller impediments to or supports for subsistence. This remains
essentially true as long as Alaska Natives are willing to
violate these imposed, unnecessary, and inappropriate limita-
tions and as long as they have powerless roles in the en-
actment, implementation, and enforcement of conservation

1 measures. It may be a terrible waste of time and energy for
2 Alaska Natives to invest much hope or confidence in passing
3 better regulations to protect and enhance subsistence, when
4 other, much larger, unseen and uncontrolled forces, are drasti-
5 cally altering it. Creating better and better laws to allocate
6 fewer and fewer resources does not seem worthwhile in the long
7 run.

8 I am certain that Professor
9 Langdon will forgive me if (this is a consequence of my low
10 opinion of management regimes) I suggest that his report really
11 begins on page 68, when he introduces the guiding governmental
12 concepts of least adverse impact, and on pages 72 and 73, the
13 ill-defined and ill-operationalized concept of significant
14 restriction. Both concepts suggest, I think without support,
15 that separate and individual limitations can be placed on
16 subsistence without quickly and inevitably creating a very
17 large cumulation of very significant damage to subsistence.

18 Let me briefly comment on
19 one limitation to which I contributed and which we discussed
20 earlier this morning. Having been the author of the State's
21 eight, which were originally ten, I was edited out, eight
22 criteria for recognizing subsistence, I agree with Professor
23 Langdon that such regulation-guiding definitions must, even in
24 the near term, result in some damage to subsistence. The more
25 tightly these criteria are applied the smaller the group of
subsistence harvesters that will be allowed to be, and the
larger the group of personal, recreational, and commercial
harvesters will be. In the end, subsistence use in certain
areas will be defined out of existence, in law and regulation.
By way of explanation, I must note that these criteria were
developed as the State was attempting to define subsistence out
of existence in Cook Inlet eastside fisheries. Social scien-
tists, if not social science, won a minute battle, really only

1 subsistence. Many of these efforts are no more than hopeful
2 environmental tinkering, based on incomplete information, in-
3 adequate models, and best guesses. Much of this is just
4 wishful engineering. These efforts also seem to be based on the
5 premise that tinkering can be done on some aspects of wildlife,
6 while holding the other major aspects constant. But none of the
7 other aspects, of course, can be held constant. The current
8 state of knowledge does not allow for the ready manipulation of
9 wildlife populations to meet desired levels in the short or
10 long run. This does not mean that current management practices
11 on different species and different locales are poor. What is
12 more likely is that these populations are relatively impervious
13 to scientific manipulation, and that other forces are con-
14 siderably more significant in determining the size, composi-
15 tion, and health of populations. The real life effects of
16 management plans have a very mixed record since statehood.

17 The problem with current
18 wildlife management in my opinion is that it is insufficiently
19 rationalized. As a management system, it tends to lack ade-
20 quate data, adequate models, and adequate objectives and plan-
21 ning for the ultimate well-being of the resources and the users
22 of those resources. One would assume that with a heavy empha-
23 sis placed on establishing optimum populations and high
24 wildlife yields, managers would also have established specific
25 objectives and timelines for the accomplishment of these objec-
tives, based on an exhaustive examination of human desires and
ecological possibility. No one seems to be able to articulate
these objectives, the method of accomplishment, the benefici-
aries of the production, or the cost-benefit analysis of alter-
native levels of productivity, and the tradeoffs between
wildlife productivity and other forms of productivity. It is
productivity for its own sake.

I expect that in Alaska

1 there is a serious overutilization of many of the most highly
2 valued wild resources, or a margin of error that is too thin to
3 guarantee their long-term stability. That is, if we add to-
4 gether all of the valid claims for resources by all users, that
5 some of the claims will exceed the harvestable surplus. If
6 biological managers have done their best in terms of produc-
7 tivity, and they are not politically pressed to push wildlife
8 harvest beyond safe limits, then socioeconomic adjustments
9 among those with valid and competing claims for that surplus
10 must be made. I'm sorry...well, we'll go on.

11 We seem to have no
12 rational, acceptable, and equitable way for resolving these
13 conflicts. One all too common pattern is that since much
14 subsistence activity occurs in terminal areas, that is, the
15 resource has already run the gauntlet of major human harvest
16 and other predation before it appears in areas proximate to
17 Alaska Native communities, the regulations require that Native
18 subsistence harvest be curtailed to offset preceding overhar-
19 vest. In effect, we may be allocating resources which are not
20 surplus in an effort to appease a wide array of claimants. The
21 juggling of allocative regulations may not be the highest or
22 required forms of management for the future.

23 Scientific human manage-
24 ment. When we total all the uses of major wildlife resources,
25 what we have is a total and socially justifiable commitment of
specific resources to specific users based on well-established
dependency. When economic and political forces exert greater
claims for these fully utilized resources, we have no mechanism
to rationally and scientifically assess and compare these
claims. Nonetheless, a great deal of information is gathered
by social scientists in the attempt to document human harvest
levels, effort, locales, and patterns, and thereby establish
the basis for continued harvest opportunities by subsistence

1 harvesters, as if harvest level alone could and would justify
2 the subsistence enterprise. In the last few years more effort
3 has been placed on obtaining information on the purposes and
4 methods of human harvest of wildlife resources. This informa-
5 tion would help regulators make informed decisions about the
6 merits of competing claims for limited resources. Anthropo-
7 logist, sociologists, and economists have conducted extensive
8 studies to shed light on wildlife use patterns. Has this
9 resulted in protection and enhancement of subsistence? I doubt
10 it. The scientifically gathered human use information has
11 produced a documentation of current use patterns, the who,
12 what, where, and how much of predation by humans. Short-term
13 findings on harvest levels, harvest locations, and harvesters
14 have tended to freeze these elements in time. That is, regula-
15 tors use these findings to provide for current levels of sub-
16 sistence and then allocate the remaining surplus elsewhere.
17 This will have a devastating effect on the long-term flexi-
18 bility required by subsistence and will reduce the allocation
19 issues to economic rationality only, that is, cost-benefit
20 analysis. Scientific human inquiry has assisted managers in
21 regulating subsistence and other harvesters in terms of allowed
22 or required methods, means, locations, times, and access modes
23 for harvesting, the numbers, size, sex, and age of harvested
24 resources, who can obtain entry into the harvesting population,
25 and how they must report their harvest, and the uses to which
harvested resources can be put and with whom exchanged. Each
and every one of these factors, under the guise of protecting
subsistence, in fact limits and constrains it, that is, changes
the basic elements of the subsistence enterprise. Scientific
human management has continued to treat subsistence as an
individual rather than family or community activity. Permits
are issued to individuals, and reports are required from indi-
viduals. This continued individuation of communal activity

1 Land classifications in
2 recent years have drastically altered subsistence. On many
3 federal lands which contain subsistence as a purpose, and which
4 permitted subsistence as an activity, constraints over and
5 above those proposed by State wildlife regulators have been
6 imposed on traditional activities. Trails have been identi-
7 fied, and transportation for subsistence purposes limited to
8 the access routes, harvest areas, and target species. Modes of
9 transportation have been limited, and other tests of compati-
10 bility have been applied to limit subsistence activity. By
11 providing limited entry onto some federal lands for subsistence
12 purposes, some of the harvest effort has been shifted to other
13 areas, creating intense competition for resources where pre-
14 viously there had been none. Thus, many federal protections
15 can be interpreted as an attempt to freeze subsistence to allow
16 it no expansion or flexibility. The cumulation of hunting and
17 fishing restrictions, in combination with land use restrictions,
18 results in a larger picture of government agencies and public
19 and private landholders pushing rural residents here and
20 there, fixing their activities here, stopping activities there,
21 without any comprehension of the total effect of such human
22 engineering.

23 Much of the land selection
24 done by municipalities in Alaska has usurped some of the best
25 wildlife habitat adjacent to urban areas, and converted it to
urban uses such as housing, roads, and industry. While this
has not significantly damaged rural subsistence harvesters, it
has removed much of the opportunity for urban harvesters who
are now travelling into subsistence areas for continued oppor-
tunity and creating competition where before there was none.
The same effects have resulted from planned agricultural pro-
grams and remote parcel land disposals. Native land selections
in the main were aimed at economic development through profit-

1 making corporations. This was an attempt to foster more eco-
2 nomic activity among Native peoples and more wage opportuni-
3 ties. In effect, this step, in combination with governmental
4 funding of major housing, sanitation, school, road, health, and
5 airport projects has fostered a dependency on cash and an
6 erosion of subsistence skills. It has also forced Alaska
7 Natives to decide, within their corporations, to select either
8 subsistence or development when, in fact, they require both.

9 Man-made environmental
10 change. The effects of environmental change on wildlife are
11 all around us, resulting in declines in wildlife populations
12 and uncontrolled shifts in harvest pressures. These changes
13 result from conversions of water, due for example to mining and
14 hydroelectric power generation; creation of roads; loss of
15 forests; chemical kills; housing and agricultural development;
16 and so on. Accompanying these changes are other uncontrolled
17 human activities such as noise, harassment of animals, waste,
18 and overharvest.

19 Use changes. Among the
20 most serious threats to subsistence is the growth of competi-
21 tion for valued resources. This is particularly true in those
22 situations in which the resource may be considered as fully
23 utilized by subsistence harvest only. Commercialization of the
24 harvest is particularly threatening whether it is direct har-
25 vest or commercial support for recreational harvest. In these
situations, competition may be considered as either a new
harvester, or as an alternative or additional use for the
subsistence harvester. This leads to conditions of over-
harvest or illegal harvest or a commercialization of subsis-
tence, of which there are a number of instances in the recent
past. Another serious form of use competition is the non-
consumptive use of wild resources. This competition is com-
prised of persons whose interest in conservation, photography,

1 readily privatize other forms of common property such as oil
2 and gas, timber, and land. It is my opinion that many Alaskans
3 consider that full citizenship entails totally sharing in the
4 commonweal. The fact that Native peoples may retain or claim
5 privileged access to wild resources and can thereby insulate
6 themselves to some degree from the rollercoaster of the re-
7 source dependent Alaskan economy, is anathema to them, even
8 while they accept that other forms of private wealth are
9 legitimate. It is unfortunate, I think, that subsistence
10 hunting and fishing, along with a myriad of other subsistence
11 activities, are not perceived as an important and legitimate
12 bulwark against worldwide economic change, Alaska's boom-bust
13 economic cycles, and excessive dependency on outside food and
14 energy support. This bulwark provides a sense of security,
15 autonomy, and self-sufficiency to these Native populations. I
16 would have expected that self-sufficiency, a commonly iterated
17 goal for Alaska as a state, would have been extended to its
18 longest residents. The State's interest in subsistence appears
19 to be limited to allocation only, rather than as a potential
20 long-term investment in the self-sufficiency and well being of
21 a significant but minority population. When you really get
22 down to it, subsistence is giant, unwanted, embarrassing orphan
23 of public policy, and also a kind of a pawn in government-
24 Native relations. The management regimes and development poli-
25 cies of the larger society are a clear reflection of this
orphan and pawn status.

I would like to conclude by
quoting directly from Harvey Feit's analysis of some Canadian
realities (and I'm going to use my own emphasis, which may be
different from Harvey's):

There is clearly no long-term future for
renewable resource-based economies in the

1 Canadian north if there is not, in fact, as well
2 as in policy, a real importance given to
3 renewable resources and the decisions about how
4 nonrenewable resources and land are used in the
5 north. Policy statements and decision making
6 and administrative tools have not proved
7 effective means to more than moderate and, where
8 possible, remedy the impacts of nonrenewable
9 resource development.

8 He goes on in another section:

9
10 Clearly there are areas and peoples whose
11 isolation and autonomy will survive for a long
12 time. The burning question is whether this will
13 be a result of the happenstances of nonrenewable
14 resource distributions, economic conditions, and
15 ingenious tenacity and adaptability, or whether
16 the basic political processes will eventually
17 make effective provisions so that continued
18 maintenance of indigenous communities and
19 ecological systems can be widespread and
20 responsible to the intentions of both the Native
21 peoples and to what some of us think should be
22 the national interest.

20 I think that in Alaska the
21 question of survival itself is just as burning as the question
22 of how the survival is to be accomplished. Thank you for your
23 patience.

23 MR. BERGER: Well, thank
24 you, Tom. I would like to call on others to comment on what Tom
25 has said, but, as I understand him, he is saying that the
present subsistence regime is leading nowhere but to the

1
2
3 extinguishment of subsistence as a way of life. He says that
4 not a single regulation or law referred to by Steve Langdon in
5 his paper is designed to enhance or restore subsistence. He
6 suggests that local control, this was the, I think, the recom-
7 mendation that emerged from his paper, local control is perhaps
8 the only way in which people will be able to preserve subsis-
9 tence. He rejected the idea of formal Native participation in
10 the government regulatory system, saying that in those cir-
11 cumstances Native people are inevitably co-opted into going
12 along with measures that reduce subsistence. He said the whole
13 idea of our subsistence laws is that human beings are regarded
14 as predators and the system adopted is predator controlled.
15 And he said that subsistence is never the primary use to which
16 any land is dedicated, and when it is devoted to a multiplicity
17 of uses subsistence inevitably comes out last. Well, not a
18 very cheerful sort of look at things, but there it is.

15 Some people have joined us
16 this afternoon, and I'd like to welcome them. Jonathon
17 Solomon, and Peter Usher, and Don Mitchell, and Mr. Frank.
18 Thank you for joining us. I think if you will allow me I'll
19 ask Don Mitchell if he would like to carry on the discussion
20 since I believe he could only be with us this afternoon.

20 MR. MITCHELL: I can do
21 that, although it's sort of the "battle of the bands" as to who
22 it is who can't be with you the most. And I was just talking
23 with Gary Holthaus earlier, and I know that he was supposed to
24 be on deck after me, and Gary had discussed about maybe zipping
25 into the front of the line if he's around, and I have the rest
of the afternoon to spend, and so if he has somewhere to go...

MR. BERGER: Gary, why

1 don't you come and take a chair and then carry-on from here.

MR. HOLTHAUS: Thanks, Don.

2 Is this on? Is this on? I did want to make a few comments,
3 and I have a great deal of respect and appreciation for what
4 Tom has just said, Tom Lonner, in his paper, which I think is
5 very important. And, yet, I have a question about some of the
6 things that he said. One comment he made was that the most
7 important errors, and he listed an incredible array of errors,
8 occur in law and regulation. And I think in one respect
9 that's true. In another respect I think perhaps the most impor-
10 tant error occurs in our failure to maintain the tradition, to
11 pass on the knowledge of how the world works, and the failure
12 to live in a subsistence way, so that our children can learn to
13 live in a subsistence way also.

He also suggested that the
12 main issue is not, is control of the land. I think the main
13 issue is not control of the land, but control of how we live,
14 and who we are. And I do not mean to suggest that those are
15 not related, for they certainly are, but always underlying our
16 concern about the land is our concern about the way we live,
17 and about the values and the lifeways that we have held for
18 thousands of years. As a non-Native looking at the whole
19 subsistence matter, one cannot help but be humbled and subdued.
20 The issues are so complex and the problems so complicated and
21 the cultural differences in our understanding of the land so
22 great, that one is tempted to remain silent, but I think there
23 are some things that need to be added to what has been said and
24 put on the table for our consideration.

Both Tom and Steve Langdon
23 in his paper talked about definitions of subsistence. I'd like
24 to go back to that for just a moment. I think in 1974 the old
25 Joint Federal-State Land Use Planning Commission sponsored a
meeting in Juneau specifically about subsistence. And at that

1 conference, it seemed as if all the non-Native participants
2 talked about subsistence primarily as hunting, fishing, and
3 berry picking, and clearly they saw it as an economic system.
4 Native participants, on the other hand, consistently referred
5 to subsistence as a way of life, and that way of living seemed
6 to include far more than hunting, fishing, and berry picking.
7 And it struck me then that the difference, the gulf between
8 those definitions, is really profound. Most non-Natives see
9 subsistence as an economic system, a part of culture, the Native
10 people there seem to see it as a base upon which an entire
11 culture establishes its identity, and it includes philosophy
12 and religious belief and practice and law ways, and the develop-
13 ment of a variety of technologies which insure survival, and
14 all of those things fall within the realm of subsistence. So
15 as long as each group continues to use definitions that they
16 believe are accurate, but in fact are really very different,
17 there will be an effective collapse in the communication about
18 the issue. One difficulty in thinking of subsistence as an
19 economic system is that such systems are usually associated in
20 our non-Native minds with so-called primitive cultures, and we
21 often say of such systems that they must move into a cash
22 economy, which is more sophisticated and complex, we think, and
23 like our own, of course. What too often is unacknowledged is
24 that we all live in a subsistence relationship to the land, and
25 all economies regardless of cash or credit or stock or other
media for the exchange of values, are essentially subsistence
economies, based upon what the land has to offer for energy and
for raw material.

22 Further, the question of
23 whether or how to protect subsistence on large tracts of
24 Alaskan land immediately involves us in a dilemma that is not
25 only economic but certainly an ethical one as well. It takes
us directly back to the old human question of freedom and

1 limits. How far can I go in my development without impinging
2 on your freedom to live a subsistence lifestyle or enjoy a
3 healthy environment? The limits to what we can do are real.
4 And in our time the dilemma of land use seems to me to be
5 expressed in a variety of ways. Industry, whether Native
6 corporation or non-Native corporation, says, "I need the land
7 for development," villagers say, "I need the land for subsis-
8 tence," environmentalists say, "I need the land for aesthetic
9 or spiritual reasons," the government says, "I need the land
10 for energy or for military purposes," the sportsman says, "I
11 need the land for hunting and fishing." So we find ourselves
12 in a discussion that reminds one of the French philosopher who
13 got at the same matter from a somewhat different perspective.
14 He said, "There are two things we have to avoid. One is be-
15 coming a victim, and the other is becoming an executioner."
16 There are some, even in this room, who may feel as if they are
17 being victimized, and there are some who feel that they might
18 be able to point to an executioner. We can argue for a long
19 time over who ought to suffer the imposition of limits, because
20 the limits exist, and they animate all our talk about subsis-
21 tence. But what we have to do is settle that question without
22 making anyone either a victim or an executioner. Somehow meet
23 the world's need for energy, for agriculture, for wilderness,
24 for sound economies, for the continuation of appropriate life-
25 styles, for the protection of minorities in a democracy, for
peoples' right to live as they wish, as far as possible, with-
out anyone becoming either victim or executioner. So sometimes
it begins to seem as if what we really need to balance subsis-
tence and development is a victim who is willing to have his
head cut half off, and an executioner who is skilled enough to
cut a head half off. The former is the ethical-political
problem, the latter is the technical one.

So there is some tension

1 between some villages committed to the maintenance of subsis-
2 tence and some regional corporations facing the necessity for
3 development. And that tension may occasionally be overshadowed
4 by state or federal or industrial or military need for resour-
5 ces of all kinds. So the threats to subsistence are many. And
6 Tom and Steve both have outlined a lot of those.

7 But I would like to begin
8 with a notion that subsistence is not dependent on fish and
9 game. If subsistence is a way of life, then it is dependent on
10 the way people live. So, in the old days, when the game did
11 not come, subsistence life did not stop. Subsistence is not
12 dependent on fish and game. And the threat that I fear most is
13 not any of the external threats that we have discussed, but the
14 gravest threat is an internal deterioration of subsistence, the
15 withering away of subsistence values from within the culture,
16 the loss of subsistence integrity, not forced either by the
17 corporations or by non-Natives from outside, but the loss of
18 understanding from inside. There is a kind of romantic notion,
19 I think, that somehow or other if we could just get all the
20 other forces under control that everything would be well in
21 Eden. I'm not sure that that is true.

22 I guess one fear I have is
23 that the magic and the method of subsistence will be forgotten,
24 and that subsistence cannot live without them. So how do we
25 maintain that? In part, we do it by learning from our elders.
26 But it's not entirely a matter of learning what the elders have
27 to teach. That learning is essential and important, but we
28 must also see for ourselves, so maybe we have to learn every-
29 thing twice, once from others and then again in our own
30 experience, so when we pass it on we speak not only from
31 learning but from conviction. So we must not only hear what
32 the elders have to say, but we must continue their close obser-
33 vation of the natural world, their participation in the life of

1 animals, and the prayers and the practices that make animals
2 return. If we do not do that also, then essential knowledge,
3 greater than science, will be lost, the knowledge of what holds
4 the world together. And this is not a matter of numbers of
5 fish and game. It is a matter of world view. The white man's
6 economics and determination to count and quantify everything is
7 almost irrelevant to the subject under discussion. It is
8 possible that we could have, in the future, the largest popula-
9 tions of moose and bear and caribou that Alaska has ever known.
10 Sound management probably could bring us that. But we can have
11 that 50 years from now, and still have no subsistence culture
12 left. What is critical is that what we believe about the world
13 come from the center, from the earth, and our most intimate
14 knowledge of it, and from the center of culture. If the cul-
15 ture lets go of the way of life which gives meaning to subsis-
16 tence, to hunting and to fishing, then it also lets go of its
17 own definition of subsistence, and replaces it with an economic
18 system, or reduces it to an economic system. It may be that
19 every time we choose corporate values over traditional values
20 we let go of a bit of the subsistence way of life.

16 So this means the protec-
17 tion of subsistence culture cannot come from the land claims
18 settlement act, it cannot come from our schools, it cannot come
19 from the IRA's, or any other laws nor from any structure exter-
20 nal to the subsistence culture. It can only come from living
21 the subsistence life itself. Only the culture can protect the
22 culture. The law can help us fend off some of the destructive
23 forces, but that's about all. The culture protects itself by
24 continuing, by deliberately choosing to continue the training
25 of the young in the true values of the culture, despite what
the schools or any other institution of any other culture says.

24 About a year ago now, I
25 went to AFN's evening of dancing and drumming and singing here

1 in Anchorage. Everyone was very pleased and excited to see the
2 kids up and dancing. Some village dance groups were all junior
3 high and high school kids. Folks were elated that they were
4 learning the old songs and dances, and I got more and more
5 depressed watching it, and I think I know why. The kids were
6 all lined up like a chorus line, everyone making the same
7 gestures and movements, like the Radio City Rockettes, singing
8 songs and dances they learned in school, taught by their
9 elders. And it finally struck me that that's exactly part of
10 the problem. In the old days a man prepared himself and his
11 equipment, went hunting, came back, invented his song and dance
12 and performed that with the whole village, and it was part of
13 an integral cultural whole, not something he learned from
14 someone else. So the kids at the AFN convention have been
15 taught not in the community, but in the school, a fragment of
16 what is really too broad-ranging and integrated to be taught.
17 It can be learned, in a whole community, but not taught in a
18 school. It can only be learned in a system that's as whole as
19 the culture. We can be taught the elements of our culture--
20 art, history, music, language, and so on--because ours has been
21 fragmented a long time. But a whole culture needs a whole
22 system, not a fragmented one, to transmit what members need to
23 know to participate. What the hunter learned was a context, a
24 miniature social ecosystem in which he could move comfortably.
25 What the hunter learned was a process, not a song; what the
school teaches is the song. So no matter how much the elders
do through schools, the second leg of our knowledge, which
comes from our life with nature, is still missing or empty.
Subsistence learned in school is only a matter of heresy, not
experience, and as such it is doomed. So the best learning
takes place outside the school, in the field, youth and elders
together, the elders helping the younger to understand what
they are seeing.

1 when the corporate structures begin to impinge on decision
2 making? And what's the difference between a communal relation-
3 ship to the land, a village relationship to the land, and a
4 corporate relationship to the land? Maybe it's possible to
5 transfer a village style of leadership and decisionmaking into
6 the corporate board room. I don't know. But I think it's a
7 question that needs to be addressed as we think about the ways
8 in which we can protect subsistence. I raise the questions
9 because they seem very difficult to me, part of the dilemma,
10 and intimately involved with our thinking about subsistence and
11 how we protect it for the future.

12 One final comment. We are
13 one with the land. Our European science and the traditional
14 view of indigenous people all over the world are pretty well
15 agreed on that. The chemical and spiritual bonds between
16 ourselves and the earth are clear, and we know that when land
17 health declines, human health declines, the quality of our
18 lifeways declines, even to the vanishing point. So the ques-
19 tion of subsistence rights is an ethical one, not only a
20 technological or structural one. And we dare not believe that
21 either social structures or technology can let us off the hook
22 of ethical or philosophical dilemmas. The dilemmas are ours
23 forever, and we have to work at their resolution forever. The
24 only answers lie with the culture itself, with people living
25 subsistence lifeways. And those of us who have structural or
26 technological skills to offer, must do so in ways that consider
27 the whole of subsistence culture, rather than its disparate
28 parts. Thank you.

29 MR. BERGER: Thank you,
30 very much, for a challenging statement. Well, we could, if
31 anyone wishes to do so, reflect or discuss what Gary has said,
32 before moving on to Don, or we can move on to Don right now.
33 Well, perhaps we'll do that then, Don.

1 MR. MITCHELL: Okay, well,
2 thank you. There was a method to my madness in reversing the
3 order of Gary and myself, since I've seen Gary do that before
4 and generally he so bums everyone out with cosmic questions
5 about what is the meaning of life that when someone shows up
6 with the happy answer that there isn't any, and let's let at it
7 in a much more mechanistic way, a lot of people are very
8 thankful, so that's why I wanted to get a lot of you off the
9 hook:

10 A couple of things before I
11 get into my remarks, just in terms of setting the context.
12 First of all, having been a mechanic in this business for a
13 fair number of years now, I have some views on the matter, and
14 those views change constantly, and I may disown them tomorrow
15 morning, at least the ones that I state this afternoon, but
16 whatever the views are they are my own, they don't reflect any
17 members of the Native community or any Native ...

18 (TAPE 3, SIDE B)

19 organizations that I might be associated with on these issues.
20 I realize that's pretty obvious, but it's always helpful to
21 mention that, particularly to the press. The second issue
22 probably comes as no surprise to anyone if I fess-up and admit
23 that I am neither an Alaska Native nor a biologist, so I'm not
24 competent to talk about this very interesting subject from
25 either the point of view of the Native community itself or from
the point of view of what's good for the resources that are the
object of all of this. The last thing I'd like to mention is
that, as I look around this table, at least those of us who
live in Alaska, most but not all of us have engaged in hours
and hours and hours of discussion about what the point of all
this is and how best to accomplish whatever the point might be,
and what's been good and what's been bad. And we could con-
tinue to do that for days, if, in fact, that's the drill. But

1 it's my understanding that actually the point of this whole
2 inquiry is, "What does all this have to do with the Native
3 claims settlement act?", and so I will attempt, ultimately, to
4 answer that question. And I think that it's a much easier
5 question to answer than some of the questions that Gary has
6 thrown out on the table.

7 Starting with all those
8 ground rules in place, it seems to be that the first thing we
9 could do is to try and very mechanically separate the issue.
10 When I look at the regulation of subsistence, whatever that
11 means for the moment, it seems to me that it breaks down into
12 three subjects. The use of the land, the regulation of Native
13 people in terms of their taking a particular resource for the
14 purpose of personal or local consumption, and then also,
15 interestingly enough, the use by Alaska Natives of the very
16 same resources in order to sort of shuffle the cards very
17 quickly and, just like the rest of us, turn those resources
18 into money. And I think that the use of subsistence resources
19 by the Native community for access to the non-Native economy is
20 a very interesting and overlooked part of this whole situation.

21 So, starting with that, I
22 think it might be helpful, in terms of looking at what ANCSA
23 has done or not done, to think about, again in a very mechani-
24 cal, non-Native sort of point of view, what the historical
25 situation has been. And let's take primarily the regulation at
least for the moment of the taking of fish and wildlife and
other renewable resources by Alaska Natives for their own
personal consumption, not to turn them into money. Well, as
near as I've been able to figure it out, most of the members of
the Native community who were wandering around Alaska prior to
Mr. Bering and the rest of us descending upon them, in terms of
how they spent their day, they were out, essentially, trying to
corral animals and fish and stuff under their own control and

1 then attempting to turn what they had corralled into some kind
2 of an economy. And if you think about it, and if you look at
3 it in terms of economic systems, it was an absolutely self-
4 sufficient economy. Right? You didn't have to send to Seattle
5 for anything. Whether SeaLand went on strike was completely
6 unimportant, because theoretically everything that family or a
7 group of families needed to get through their day, they were
8 getting themselves, without having to go outside of their own
9 situation to acquire whatever it is they needed. I mean, they
10 were building homes out of tundra and driftwood, they were
11 eating food that wandered by or swam by, they were clothing
12 themselves with, at least as I understand it, with the skins of
13 animals they probably caught for food. It was interesting
14 looking at the E.W. Nelson exhibit that was at the Smithsonian
15 last year. Even the toys and the things that kids did to get
16 through the day were all things that the indigenous, what we
17 would now call subsistence economy, could do for itself. Well,
18 when the non-Native community descended on that system,
19 obviously the non-Native community didn't much really like
20 living here, which is why there were so few non-Natives around
21 for so many years, and they were generally up here attempting
22 to either gain access to the same resources that were used for
23 the purposes I've just described in order to turn those re-
24 sources into money and then skedaddle, such as, you know, the
25 fisheries and the fur seals are an obvious example, and
land-based fur animals, and all of that. And when they were
doing that, it certainly seemed to me that they had a tendency,
at least the historical record would indicate, to slowly suck
the Native community into that economy. It is interesting to,
you know, one of the most famous Native events is the last
traditional meeting of the Tanana Chiefs when they met with
Wickersham, up in, I think it was Nenana or Fairbanks, I guess,
in 1915. And it's interesting to look at that picture. Be-

1 cause that picture depicts the leading men of the Interior
2 Alaska Native community who were down there to go cut a deal
3 with the leading man of the non-Native community in Alaska,
4 and if you look at the picture you will see that most of them
5 are all wearing clothes that had to come out of Seattle. And,
6 I mean, that really started changing, even by 1915, the subsis-
7 tence economy. And I would suggest, today, that while the
8 subsistence economy is important for some reasons that I will
9 describe, I am becoming increasingly resistant to sort of the
10 Rousseauian, for lack of a more respective term, "noble savage"
11 attitude about, "Isn't the subsistence lifestyle great?" I mean,
12 it seemed to me, at least from what I've read about it, that it
13 was an economy that was very marginal in terms of the wealth
14 that it produced. And when it could not produce wealth on an
15 ongoing basis, people died. I don't think that's very roman-
16 tic, that if the food is there it's great and if the food's not
17 there people are dead. I don't think that anybody, neces-
18 sarily, is interested in returning to that state of affairs, or
19 at least that would be my value judgment as to what I suspect
20 if people were given the two choices they would arrive at.

21 But all that aside, looking
22 at how this whole thing was regulated, although Congress was
23 obviously very interested in the fur seal situation, and had a
24 whole variety of laws dealing with what happens with fur seals,
25 because that was really cash in the bank, there were very few
laws dealing with game. And in 1902, it was not Alaskans and
it was not the Alaska Native community, but it was bunch of
dilettante New York Conservationists that decided that what
Alaska really needed was a law that would tell all these people
how to go about their business in order to protect all of these
game resources. And it's interesting, however, to look at that
law that was passed in 1902, which was the first game law that
Alaska ever had, and it was interesting because they specifi-

1 cally wrote in an exemption to exempt Alaska Natives who were
2 participating in that non-Native subsistence economy from
3 having to pay the slightest bit of attention to whatever it is
4 they were doing. And I think that that is a relatively
5 interesting thing that was done, because I think the historical
6 record will show that the Congress and the non-Native community
7 has decided over the last 50, 60, 70, 80 years to get in the
8 business of attempting to regulate non-Native, I'm sorry,
9 Native behavior has really been pretty decent; on a policy
10 level, at guaranteeing the Native community access, literal
11 access, to whatever animals or fish might be around. That
12 subsistence exemption reappeared in the 1908 game law, it
13 reappeared in the 1925 game law, there's a, there are provi-
14 sions that allow for people to take salmon for their own food
15 requirements and for dog feed in the White Act, which was the
16 major law that regulated the Alaska fishery before statehood.
17 You look at the 19...I think it's '41 walrus act which
18 attempted to control the walrus harvest up in the Bering Sea
19 but provided a subsistence exemption, you look at the 19...I
20 think it's '56, walrus act, over and over and over you'll see
21 that Congress was pretty decent about guaranteeing the non-
22 Native community access.

23 In my judgment, the problem
24 with that situation, or the problem with that benevolence, if
25 you will, is that it wasn't the problem. The problem, when
you're looking specifically at regulation, is not guaranteeing
the Native community access, it is protecting the Native com-
munity's economic system from competition for access to the
same resources. And with respect to that component of the
regulatory process, I think the non-Native community and, in
general, and the United States Congress, in particular, failed
miserably. And the reason they failed, I would suggest, is
because the Native community packed neither weight, politi-

1 cally, nor economic power in the political world of the non-
2 Native community that made those rules. So, talk is cheap when
3 you're just gonna do something that will give the Native com-
4 munity access, but when you have to shut off someone else's
5 access in order to do what's right by the Native community,
6 that becomes a political question, and, frankly, my reading of
7 Alaskan history from 1902 until the present, actually, is that
8 the Native community has not profited either by the benevolence
9 of the non-Native legal system nor has the non-Native community
10 had the economic or political power to do a particularly good
11 job of defending itself. My, is that...I was going to say,
12 I've probably irritated enough people that they've pulled the
13 plug on me! Testing, testing...

14 MR. BERGER: While we're
15 waiting, Don, just a couple of things. You referred to that
16 continuing subsistence exemption in federal laws enacted for
17 many, many years, that was an exemption for Native subsistence,
18 I take it?

19 MR. MITCHELL: Well,
20 uhm...it depends on the law. The Alaska game acts protected
21 not only Natives but also non-Natives who were out travelling
22 or prospecting. You look at the walrus law, and the walrus
23 exemption was exclusively for Alaska Natives. You look at,
24 even today, the exemption in the Marine Mammal Protection Act,
25 that is exclusively for Alaska Natives...would be Endangered
Species Act exemption and this both for Alaska Natives and for
non-Natives, but only if they are residing in Native villages.
But, you know, I think it is a pretty consistent thing that, as
a policy that you can trace, without a lot of trouble. And I
think that it was easy for that to be done, because it was
really cost-free. The non-Native political system could do a
nice thing like that and pat themselves on the back, and there
wasn't anybody who would particularly get upset with them.

1 Where it got tricky, as I said, is when there was a political
2 problem associated with protecting the integrity of the Native
3 economic...am I back on yet?...Okay, protecting the integrity
4 of that economic system. And at that level, people failed
5 miserably. And there are a couple of quick examples of that.
6 One of the most interesting, I think, is that probably the most
7 destructive thing that was done, well, actually, there's so
8 many destructive things, it's hard to pick one, probably one of
9 the most significantly destructive things that was done to the
10 Native subsistence economic system was the decision that the
11 only way that all those people down in California and Oregon
12 and Washington were going to protect themselves from the
13 Japanese was to haul about eight trillion GI's up here in the
14 early 1940s. And for those of you that aren't aware of that
15 bit of history, there was a whole commotion about, the Alaska
16 game laws in those days said that in order to get a resident
17 hunting license you had to be domiciled here for a year, but of
18 course if you were up here in the armed services you might be
19 here a year but you wouldn't be domiciled, you would only
20 resident. And there was a whole commotion about that, and
21 eventually the law was changed. But what's interesting is that,
22 if you look at the reports of the territorial governor from
23 about that period of the change on up, you'll see particularly
24 in the late '40s early '50s, the territorial governor every
25 single year, almost, not every year, but almost every year,
screaming and moaning to the Secretary of the Interior about
how these eight trillion GI's armed with M-16s or the equiva-
lent, or whatever it is they ran around with in those days,
were shooting the bejesus out of everything that moved, and how
the territory was incapable of coping, they had no enforcement
people that...nobody was paying the slightest bit of attention
to what was going on, it was trashing all the animals. And
even occasionally, about once every four or five years, the

1 governor even would feel so upset about it he'd even mention
2 that this might be having an adverse affect on the Native
3 community. You know, I mean, but nothing, if you read the
4 historical record of that situation, there was never, while the
5 people were concerned about the state of the caribou, nobody
6 ever said, "Well, you know, this is going to destroy a bunch of
7 human beings that live off that caribou." That was, at best, a
8 political afterthought. I could sit around and do subsistence
9 historical trivia all afternoon, but, you know, that is not an
10 exception, that example was really the rule.

11 Now, one of the other
12 interesting things that I've been amused by in terms of the
13 political debate that's gone on in Alaska over these issues, is
14 that based on at least my reading of the historical record,
15 generally speaking the Native community did an unusually good
16 job of paying attention to these idiotic rules that these guys
17 back in Washington, D.C. and then later in Juneau, thought up
18 to control their behavior. You know, one of the things that
19 has always infuriated me about the legal business, in fact,
20 with all due respect to my friend David over there, I was
21 reading part of his latest tome on the state of affairs around
22 here, and one of the things he remarked is something to the
23 effect of, "Surely the legal system is not a word game," or
24 something to that effect. And my position, was, "Poor child,
25 of course it's a word game," and to think that it's not, I
mean, that's what the whole deal is about. And it is amazing
to me that as an act of religion that non-Native regulators,
particularly in the '20s and the '30s, would sit around and
say, "Well, I guess the beaver aren't doing very good anymore,
so I guess we'll just shut that down for three or four years."
And they'd write up on a piece of paper that henceforth nobody
should be fooling around with any beaver, and then in their own
mind, I mean it's absolute religion, would believe that the

1 20,000 or 30,000 human beings would have read this piece of
2 paper, most of whom do not read their language, and would
3 automatically go out and start behaving exactly as these
4 poobahs had indicated in this piece of paper. And what's even
5 more amazing to me is that, generally speaking, they did! I
6 wouldn't have! But it's incredible to read some of this stuff
7 of the '20s and '30s, of particularly missionaries and school
8 teachers, who are obviously people that were communicating with
9 the outside world, saying, "You know, we've just had the vil-
10 lage meeting for two or three days and people are desperate
11 because they can't go beaver trapping anymore and it's going to
12 destroy them," or "They can't go caribou hunting or something
13 else, and please, couldn't you change the rules." Well, impli-
14 citly, the inference that I draw from that is that people are
15 taking those rules very seriously, and the rules, for the most
16 part, are idiotic. So, you know, I think that that is, a lot
17 of people, I think, in the political climate of Alaska, would
18 now want to give the Native community credit for being such
19 good troupers and environmentalists and all this other baloney.
20 I think that they were good troupers, personally, to a fault.
21 I wouldn't have paid any attention to that gibberish, it was
22 just flatly unjust.

23 So, anyway, that's sort of
24 where I see the historical situation as having been. Well,
25 what does all this have to do with ANCSA? Well, what's
interesting is that if my analysis that the real problem when
we look at this solely from a regulatory point of view, has
been protecting the Native community from unfair competition,
from being overwhelmed by essentially the non-Native community,
ANCSA didn't do any more for that situation than anything else
that had ever been done. It is fascinating to look at the
recommendations of the land use planning, I'm sorry, not the
land use planning committee, the Federal Field Committee, that

1 were eventually transformed into the first Senate ANCSA bill,
2 S. 1830, I think. Because there was a subsistence provision in
3 there, all right, and what does it say? It authorized but did
4 not require the Secretary of the Interior, if he thought there
5 was an emergency, to close a certain area to the taking of fish
6 or wildlife except to local residents of the area, provided,
7 however, that this emergency could not last for more than, I
8 forget what it was, a couple of years. I mean, give me a
9 break, is that any kind of a commitment to analyzing the social
10 and economic importance of the subsistence system to this day,
11 to all of those villages? I mean, ridiculous. And what's also
12 interesting is that there was some poor, sad BIA fellow who
13 came up about the same time and did a report on all of this,
14 and he knew nothing about it, but reading the recommendations
15 in his report he said that the very first thing you ought to do
16 is you ought to shut down the harvest of fish and wildlife in
17 Native regions of the state by every single non-Native, non-
18 resident of the area, and only allow it at such time as you
19 have analyzed the base level that is needed to maintain the
20 integrity of the Native economic system, and then, and only
21 then, let in whatever it is you can. So it's not to say, and
22 that guy, by the way, was dismissed as essentially a crank,
23 who'd come up here on a boondoggle and thrown together a quick
24 study in a couple of weeks and then zipped back into non-Alaska
25 obscurity. But, you know the point is is that at least it's
possible that at the time people at least knew or should have
known what the problem was.

21 Well, as we all know, even
22 that pathetic protection for the integrity of the Native rural
23 economic subsistence system, whatever it is you want to call
24 it, got trashed by the ANCSA conference. In its place, of
25 course, is the famous, I am told, Dave Hickok language,
probably the most often-cited bit of legislative history in

1 Alaskan legal history, I'm sure probably most of the people
2 around these tables could chant it like a mantra, anybody want
3 to try it, you know, on the count of three? You know, we threw
4 this provision in the trash because we think it's unnecessary
5 because we, the Conference Committee, think that the Secretary
6 already has this authority, and, of course, we expect both the
7 Secretary and the State to do everything necessary to take care
8 of this problem, sincerely yours, the Joint Conferees. I mean,
9 how many times do we have to listen to that gibberish? I mean,
10 it was, and I don't mean to say that it wasn't worth putting
11 in, it's certainly been very helpful, but, I mean, that's past
12 history, and the time for all of that, I think, is over. It
13 doesn't really mean a whole bunch, other than nobody thought
14 this problem through.

15 Well, one of the reasons
16 that it got thrown out of the Conference Committee, of course,
17 was because the State of Alaska showed up and crossed its heart
18 and hoped to die and said, oh, you don't have to do this to us,
19 because we really love our Natives up there, and we'll take
20 care of this whole problem without having to have somebody put
21 thumb screws to all ten of our fingers, and so we promise to be
22 well behaved. Well, of course, by about 1976, 1977, the
23 amusing hypocrisy associated with that statement had become
24 pretty self-evident. But I would say that the hypocrisy
25 associated with the State of Alaska's representations to the
Congress in ANCSA was in the grand tradition of the non-Native
political system's attitude about this entire issue, over the
non-Native community's entire history of involvement up here.
Now, that changed really with the whole political struggle over
the subsistence provisions of the Alaska National Interest
Lands Conservation Act, but what I would suggest, getting back
to the point of ANCSA, is that to the extent that there has
been statutory relief, both on a federal or a state level, it

1 has been directly related, in my judgment, to the ability of
2 the Native community itself to use the political and economic
3 power that ANCSA gave it to protect itself on a policy level.
4 And I think that's one of the things that the Native claims
5 settlement act has really been given not its due about. I
6 mean, I fully understand that to the extent that people thought
7 that ANCSA was to result in more control at a village level in
8 their institutions and more authentic economic development with
9 respect to village activities, that the Native claims settle-
10 ment act certainly, if anybody had those expectations, has not
11 fulfilled those expectations. But I would suggest that the
12 Native claims settlement act has done an incredible job of
13 providing the requisite number of poker chips for the Native
14 community to essentially play at the table of public policy
15 with respect to subsistence issues.

12 Without going too deeply
13 into my archives, it is interesting that as recently as the
14 establishment of the Arctic Wildlife Range, that if you go in
15 and look at the historical record on the struggle to establish
16 the wildlife range, after oodles of Senate and House hearings
17 and all kinds of commotion, and Bartlett and all of these
18 people were absolutely opposed to the Eisenhower administration
19 withdrawing the range or the Congress establishing the arctic
20 range, at the very end of that process, in absolute desperation
21 with about 15 minutes left in the last hearing, Bob Bartlett
22 says to the representative of the Department of the Interior,
23 "Well, have you asked any of the members of the Native com-
24 munity who reside in the area what they think about this?" And
25 the answer on the hearing record is complete, stunning silence.
As if no one had ever thought of that before. Now, that was in
1960. Can you imagine today a proposal by the government to
withdraw eight million acres of land north of the Brooks Range
that they would not even come to the table unless they had that

1 deal signed, sealed, and delivered with the North Slope Borough
2 and Arctic Slope Regional Corporation and Kaktovik and every
3 other group you could ever think of? That change of circum-
4 stance, I would suggest, is not an accident. That it is a
5 direct result of the Native claims settlement act. And I think
6 that in terms of the whole subsistence issue it is something
7 that the claims act is entitled to a little credit for, rather
8 than all the baloney that's normally poured over the top of it,
9 or caribou sausage, or something.

10 So, you know, it seems to
11 me that, with respect to ANCSA, that that's sort of where the
12 issue of regulation sits. I'm not going to go into the, every-
13 body here in some fashion or another from Alaska participated
14 in either the enactment or the implementation of the federal
15 and state subsistence laws, and so we don't need to rehash all
16 of that, that's pretty common knowledge. But I think that in
17 terms of the policy that it's certainly something to think
18 about.

19 Second thing I'd like to
20 talk about very briefly is this business about the land. I
21 think that I have at least some intellectual disagreement with
22 Tom, who says, at least if I heard your paper correctly, that
23 the most important part about all of this is land ownership, or
24 something like...I see, land control. Well, maybe we don't
25 have much of a disagreement. My view on that is that it's use.
I think that the Native community to some extent has been
sucked in by the way that we non-Natives view the legal con-
cepts of land. I mean, land doesn't change, land's always the
same. The only thing that changes are these intellectual
systems that we use to describe certain legal relationships
among each other. And, it was very interesting, I was out in
the southwestern part of the state, oh, about a year and a half
ago, at a 1991 meeting, and sort of the people leading this

1 meeting, a regional meeting, stood up and did this whole, the
2 normal, the normal sort of ritual about 1991 and protecting the
3 land and blah, blah, blah. And this relatively older fellow
4 stood up, I don't know if I'd want to call him an elder, but he
5 was sort of getting ready to cross over the divide into the
6 world of elders, and he said, "Hey, you know, I don't know
7 anything about all of this stuff, all I want to be able to do
8 is use it, you know. If I can still hunt and fish on it and
9 nobody else can, and I can go out and chop wood whenever I
10 need, and I can go off and get logs, you know, and if my wife
11 can go berry picking, all the business about legal title and
12 all the rest of this baloney, I mean, who cares? All I want to
13 be is left alone, I don't care about fee title and all the rest
14 of it." And, you know, I sort of listened to that and I said,
15 "Hey, you know, that's a pretty enlightened point of view,
16 really." I mean, it costs a lot of money to own land, so if
17 you have the right rules associated with your use of the land,
18 you know, there's an argument that can be made to just shove
19 the ownership responsibilities off on somebody else. And I
20 think there's, to some extent, that was sort of the philosophy
21 about a lot of the things that were done with respect to the
22 Alaska National Interest Lands Conservation Act. It was, once
23 you got through this bugaboo about how many acres that every-
24 body was falling on their swords, for lack of a more creative
25 metaphor or analogy, you know, once you got through with that
it didn't make any difference where those lines were drawn,
what was important will be what were the statutory rules about
how people were going to behave inside those boundaries. And
so I would suggest that with respect to subsistence and land
use, that that's really what's important.

So, let's see. I think
that's pretty much about it. We can discuss, if you are
interested, the whole relationship between the commercial

1 utilization by the Native community of what you would call
2 subsistence resources and how that might fit into it, but the
3 topic of this panel is really subsistence, which I assume to
4 mean really the use of these resources for personal consumption
5 and keeping them out of the exchange system. So, I mean, I
6 can, however long you'd like me to go on, I can, I'm a profes-
7 sional pontificator on the subject.

8 MR. BERGER: Well, I think
9 that while you're at it you might as well push on to the, what
10 you described as the conversion of subsistence resources into
11 cash and access into the cash economy and when you've done that
12 I think we'll take a break for coffee and then, having heard
13 these three quite different presentations, we can discuss them.

14 MR. MITCHELL: Okay. Well,
15 just speaking generally about all of that, to some extent the
16 analysis, I think, holds true into the other side of the equa-
17 tion, which is I think the claims act has provided economic and
18 political power to also at least assist the Native community in
19 its endeavors with respect to the economic side of things. But
20 it does seem to me that one of the things that the non-Native
21 community seems to forget is that generally speaking most
22 people get themselves together to live next door to each other
23 for some reason, usually associated with economics. For
24 example, in Youngstown, Ohio, everybody generally built those
25 little houses because they could then all zip down the road
with their lunch pails and go to work for whatever it is, U.S.
Steel or Young and Laughlin, or whoever it is that is now
destroying the place. And when the economic purpose of
Youngstown, Ohio ends, then generally the people will start to
dribble away. And certainly the situation has been in Alaska
that communities that have been organized in rural Alaska
solely around economic activities that no longer exist, Flat
and Iditarod are my two favorite examples, people pack up and

1 move on. Now, I would suggest that the reason that most but
2 not all Native communities exist in rural Alaska is because the
3 economic activity that holds those communities together is
4 hunting and fishing, in some fashion. Now, we all know the
5 history of that, at least as I understand it as a non-Native,
6 that people were once scattered around in much smaller units,
7 that it was really the missionaries in the schools and said,
8 "Unless you people agree to live in a village of a certain
9 size, we're not going to give you the benefits of that school
10 and church." After all, this is a capital project, you know,
11 and you know how carefully we have to study capital projects in
12 the bush. And so everybody said, "Boy, we really want these
13 schools and these churches, so we'll stop going to all these
14 other camps and things and we'll all agree to sit around in
15 this village." But the point is that, discounting for all of
16 that, that generally speaking most of the communities out there
17 are there because they were convenient locations for people to
18 engage in the harvest of renewable resources. Now, if you also
19 assume, as I said earlier about the Tanana Chiefs and the
20 clothes from Seattle, that the fact of the matter is that those
21 communities are dependent in large measure...I mean, sometime
22 the next either you go home or you have occasion to visit a
23 village, just walk through with a mental clipboard and look at
24 everything that comes from somewhere else, you know. Sheet-
25 rock, insulation, 2 x 4's, snow machines, I mean, the list, you
know, on and on and on, electric lights, I mean the list goes
on and on and on. The point is that those things didn't arrive
by magic, they all arrived because of the intervention of
money. Well, it's also pretty clear to me that most of those
communities do not have the amount of money that in any way,
even remotely, reflects the amount of stuff that's been im-
ported in by that economic system. If that's true, it cer-
tainly seems to me that it should be rational state and federal

1 policy to encourage the ability of people residing in those
2 communities to participate to the maximum extent possible in
3 whatever authentic economic activities might be available in
4 the area. And...I guess I've been cut off again, eh? I'm
5 still on?...Oh, that's okay...So, you know, the most obvious
6 ways in which that has occurred in the past have been com-
7 mercial fishing, trapping, and I guess that's really about it,
8 and certainly the commercial use of walrus. The Native com-
9 munity never participated, as I understand it, particularly
10 greatly in the commercial use of whales, but I guess probably
11 there was some, right? People taking subsistence caught whales
12 and going to the whaling stations and dealing with that. But,
13 I think the history has been that if the non-Native community
14 was not particularly inclined to do the Native community a
15 favor with respect to the regulation of those resources for
16 what we call subsistence purposes, that the non-Native com-
17 munity has been loathe to do the Native community a favor with
18 respect to the nonsubsistence use of those resources.

19 A couple of examples. The
20 whole history of commercial fishing in southeast Alaska, I
21 mean, it's incredible to me that you look at the historical
22 record and the Fish and Wildlife Service is repeatedly saying,
23 "We love fish traps because they're the most efficient way to
24 regulate the taking of fish." What the social and economic
25 impacts are, just because that particular method and means
happens to benefit all of these capital-intensive gusuks
who live in Seattle, rather than literally hundreds if not
thousands of Alaska Natives who reside in southeast Alaska who
cannot go seining anymore, is none of our business. I mean,
that was essentially their position, is we have no responsi-
bility for social and economic effects of our policies. I
would suggest that that was a little bit baloney. That, in
fact, if you look a little closer at the record you'll see that

1 they were up to their elbows in at least a, you know, if not a
2 tea dance, at least some kind of jitterbugging with essentially
3 those Seattle capitalists who were not about to maximize the
4 Native community's participation in that economic activity.
5 You look at the whole situation with the regulation of fur. On
6 the one hand, while for the most part up until the late 1930s,
7 early 1940s, it was really the Native community that had almost
8 exclusive control, even when the Russians were around, of the
9 harvest of those furs, and then they would take them into the
10 capitalists and get \$.30 on the dollar before all the furs were
11 hauled to Seattle. But, you know, when suddenly there was
12 competition for that economic activity, the federal government,
13 which had control in those days, sat on their hands. I mean,
14 you know, one of the reasons that the Venetie reserve exists
15 today has got nothing to do with Native sovereignty and all the
16 rest of that stuff, it's got to do with the fact that the BIA,
17 bless their heart, was absolutely petrified about what in the
18 early '40s was happening to folks that lived in Venetie and
19 Arctic Village who were getting their traplines jumped by
20 gusuks and Super Cubs out of Fairbanks who'd stayed up there
21 after the war. And they went repeatedly to the Alaska Game
22 Commission and to the rest of the department, and said,
23 "Protect these people." But when they said "protect them,"
24 they didn't mean protect their subsistence activities, they
25 meant protect their economic activities, because you're
destroying these people's participation in the nonsubsistence
economy. David's grinning at me a bit, I've got a whole file
on that if you'd ever like to see it sometime. But that's, you
know, and the only thing the Bureau had to do to defend those
folks was to use its withdrawal authority. But the point is
that the traditional means that had political control over that
issue were absolutely, completely uncaring at best, and
probably exceedingly racist at worst, with respect to pro-

1 tecting not the subsistence economy, but to protect the degree
2 of integration that the Native community was able to achieve in
the non-Native economic system.

3 I guess, you know, the last
4 thing I'd like to say, and then I'll sum up and we can take a
5 break, is that I think that if there's any problem that every-
6 body faces today, and it's certainly something that Gary at
7 least mentioned, it's the continued refusal of many elements of
8 both the non-Native community generally and also State and
9 federal resource managers to recognize the significant social
10 and economic affects that regulatory decisions can have on the
11 rural economy. It is just incredible to me that people can
12 say, "Well, I don't care what happens to all those people, you
13 know, if they blow up and drift away all I want to have is an
14 equal opportunity to go out there and blow away a moose along
15 with everybody else." I mean, completely oblivious and
16 uncaring to the very significant social and economic effect
17 that those decisions have in the aggregate. And, frankly,
18 after three-quarters of a decade in the business, I have not
19 really the slightest idea what to do about it. I do not think
20 that there has really been an authentic perception on the part
21 of the non-Native community about what it is I've just said. I
22 think to the extent that there is a sympathy, and there is an
23 authentic sympathy within wide sections of the non-Native com-
24 munity, particularly in the cities, for what they view as
25 subsistence, they don't view it in terms of economic systems,
they view it in terms of well, "wouldn't it be nice," you know,
they really sort of feel pretty good about the idea that in
their state there are these sort of Natives that are running
around, you know, hauling themselves here and there in dogsleds
and drying fish and stuff, and that's sort of nice, particu-
larly since they don't particularly go out there. Anybody who
goes out there, I mean again to generalize, but anybody that

1 goes out there and actually competes with the Native community
2 for access to those resources, I would say I have not seen them
3 move one iota off the historical position of everybody for
4 themselves and the social and economic consequences of
regulatory actions be damned.

5 So, on that very happy
6 note, I guess it's time to head for the coffee pot.

7 MR. BERGER: Well, okay,
8 and let's discuss these three presentations after coffee, and
we'll all look forward to some good news after coffee.

(MEETING BREAK)

(TAPE 4, SIDE A)

(MEETING RECONVENES)

9 MR. BERGER: Maybe we
10 should be seated again. I knew this would happen if we took a
11 coffee break, but there you are...Maybe we can start again. As
12 you know, we intend tomorrow, all going well, to discuss har-
13 vesting rights and land management, and we intended on the
14 third day, that is, on Friday, to talk about the initiatives
15 Native people have been taking to establish their own subsis-
16 tence regimes. And we had referred to the Whaling Commission,
17 the Walrus Commission, the Porcupine Caribou Commission, and so
18 on. And we may just turn now, I think it follows from the
19 discussion we were having, to one of those initiatives in
20 western Alaska. Tony Vaska and Harold Sparck can tell us about
that, and they do wish to respond to what has been said by Gary
and Tom and Don. So maybe, Tony, if you would lead off?

21 MR. VASKA: Thank you very
22 much. I suppose, by way of introduction, I should say that one
23 of the reactions that we have in rural Alaska, and I think
24 basically I can identify it as reactions, is in posturing
before regulatory agencies that do have an effect on our lives,
25 especially our subsistence lives. Then we have to adopt

1 strategies at different levels to respond to different actions
2 by those regulatory agencies for the regulation or management
3 of the different species that we deal with. The strategies
4 that we adopt for something specific, the Hooper Bay Agreement,
5 dealing with migratory birds, is something that was done speci-
6 fically to deal with a resource that we utilize on an annual
7 basis, and I think that most people would identify specifically
8 those individual species of birds that we use for food and
9 identify them in a variety of ways, whether they're endangered,
10 threatened, or overutilized, underutilized. It only becomes
11 a problem when the bird species drops drastically. And our
12 experience has been that in the past most of that blame points
13 to us, and I think we're probably, I don't want to say we're
14 getting used to it, but we come to expect that when there's a
15 population crisis in any of the species, the first reaction by
16 the regulatory agencies or by non-Native peoples is to point to
17 us as the users of those resources and blame us for the reduc-
18 tion or the fall in the population of those species. And we
19 can point to many examples, and I think the Northwest caribou
20 herd is also a prime example of that, that we can point to. We
21 use the same kind of strategies in our approach with other
22 areas of competition, if you want to use that word, I don't
23 like to use that word. But, basically, we have a lot of fights
24 with allocation of resources, and if you look at our battles at
25 the present time with the Japanese troll fisheries in the high
seas, it extends to having to deal with international agencies,
because those actions and activities bear directly on the
harvest levels of the salmon species that we use, in the case
of fish, and in the case of birds where the birds are har-
vested, not only in Alaska but perhaps Canada, Russia, Mexico.
The specifics for developing strategies in dealing with those
particular species is interesting only in, well, not only in
effect, but it's interesting in one aspect and that aspect is

1 that we've come to realize that to make changes we need to
2 understand specifically what those regulatory agencies are, and
3 how to work them. I think our responses that for too long the
4 decision, for instance, for the United States government to go
5 into treaty with the countries of Canada, Mexico, Russia,
6 Japan, happened not at home, among people who utilize those
7 species directly, but among governments who in many cases are
8 responding to those very agencies and agents that Don Mitchell
9 was talking about--people who happen to come into an area and
10 report consequences of regulatory actions at a much higher
11 level. And for a long time we've been reacting to those deci-
12 sions, and trying to find some access to the decisionmakers,
13 or in fact, ideally, become decisionmakers ourselves. And,
14 obviously, it's a two-sided coin, from our perspective, in the
15 fact if we are willing to make those decisions we are also
16 willing to accept the responsibility for the complete manage-
17 ment and protection of those species.

14 I think before I get into
15 the details too far, Harold should talk about that, because
16 he's been involved with all of the villages and the Fish and
17 Wildlife Service, the Department of Fish and Game, California
18 Waterfowl Association, Department of the Interior, the Canadian
19 Wildlife Federation, Ducks Unlimited, Sebastiani Vineyard.
20 It's amazing who you talk to when you get into that arena,
21 because it's those people who are particularly interested in the
22 propogation of those species or the maintenance of the popula-
23 tions. So I will leave it at that, and simply outline that we
24 have had to find out who, in fact, has specific interests in,
25 not only those species, but the environment. Ducks Unlimited,
for instance, has this huge waterfowl habitat program to make
sure that the rice fields in California continue to stay in
existence, so you're dealing with agricultural machines in
California, and some of those are a bit much to put up with,

1 but they're part of the strategy that we've had to develop to
2 deal with protecting the birds after they leave the Yukon-
3 Kuskokwim Delta and go off to wherever they do every year and
4 come back.

4 MR. BERGER: Harold Sparck.

5 And, Harold, since you will be leaving tonight and not
6 returning, feel free to move beyond the Hooper Bay agreement
7 and to tackle the issues raised by this troika of Lonner,
8 Holthaus, and Mitchell.

8 MR. SPARCK: Well, frankly,

9 I'm very thankful for the conversations I've listened to. I
10 live in a goldfish bowl in Bethel and I don't very often get
11 out, that's on personal choice, but it is refreshing to come
12 out and hear different opinions. One of the things that we had
13 to do, for those of us who remember childrens' fairy tales, is
14 when, in August of this year the federal Fish and Wildlife
15 Service, August of last year, showed up and said, "The sky is
16 falling, the sky is falling, and the Native people of the
17 Yukon-Kuskokwim delta are responsible for it, solely respon-
18 sible for the loss of all these geese." Many of us who've lived
19 through the early '50s remember that hysteria of who lost
20 China, and it looked like we were going through the same hys-
21 teria now, of where have the geese disappeared to. Well, it
22 became rather confusing to many of the elders who were sitting
23 in attendance at this meeting, passively listening to the Fish
24 and Wildlife Service blaming them for this whole history of
25 mismanagement and biological changes, both man-made and
natural, that were occurring in the habitat of the geese in
question. So, after the Fish and Wildlife Service got through
all this moaning and groaning, the villagers excused them, and
the first thing that came out of several of the elders mouths
was, "Wait a minute, they're talking about these animals that we
eat. Now, when we were young, when these animals were strong

1 in numbers, the little birds that fly around like clouds were
2 very strong, too. Nobody eats them. How come they are very
3 few in number, too? They go to the very same places that these
4 big birds go to. And, maybe what these guys are saying is that
5 they're looking for somebody to blame all this problem on. So,
6 our concern is, number one, we gotta make sure we're not stuck
7 with the onus of being responsible for this whole thing, but
8 number two, we have to watch out for our children." And it was
9 a deliberate decision by the elders in that meeting that they
10 wanted migratory waterfowl at the turn of the century, and that
11 they were going to do whatever was necessary in order to insure
12 that their children and grandchildren were going to have future
13 access. They then started listing where their concerns were.
14 And, we're sort of out of sync here with the rest of the
15 conversation that's been going on today, so I'll try and link
16 it back to the general discussions on subsistence. Number one
17 is the allocation issue. But the villagers were very con-
18 cerned, they did not want to get tied into a bag, into flour,
19 into a sack that said we are only to discuss who can kill the
20 birds. What we have to discuss is not only who can take the
21 birds, but we also have to discuss the subsistence way of life,
22 what resources are important to us as substitutes for birds, if
23 we are going to voluntarily retard our take of these birds,
24 what habitat we have to concern ourselves with for not only the
25 birds but these alternate resources, and then, fourth, how do
we find out who the players are in the lower 48 and Canada and
Mexico and the Soviet Union, all these interest groups?

21 So, there was a decision
22 reached, what Tony refers to as a strategy, that we had to make
23 a comprehensive agreement. We couldn't just get linked into what
24 the federal Fish and Wildlife Service wanted of, "no Native take
25 of migratory waterfowl in the springtime." What happened was a
series of meetings. And the meetings took place, and during

1 the meetings, for the first time, there was an interchange
2 between the California takers and the Alaskan takers of these
3 very same waterfowl. Articles starting appearing in national
4 press blaming the Native peoples of the Yukon-Kuskokwim Delta,
5 they were responsible. Well, the first thing the villagers ask
6 that the Californians was lower the guns. You're not going to
7 get anywhere with us if you're asking for voluntary compliance.
8 The villagers reported, they had read the congressional com-
9 mittee reports that it would take at least 2.3 to 3 million
10 dollars for enforcement, any adequate level of enforcement in
11 the Yukon Delta, if you had to involuntarily prevent village
12 hunters from taking birds they need to feed their families.
13 And the villagers were very comfortable with the idea that the
14 federal Fish and Wildlife Service didn't have the money and
15 didn't have the wherewithal to go raise the money, either, and
16 come out and harass them. They wanted to sit down and look at
17 the long-term good for both the Native community and the birds.
18 And if it also benefitted the Californians then that would
19 probably be all right, too.

15 The situation then de-
16 veloped into a series of agreements. In Chevak, in November,
17 with California present, the villagers became very aware for
18 the first time that the Fish and Wildlife Service was pocketing
19 the information, and it was using it for political ammunition
20 to enrage the Californians against the Alaskan Natives. There
21 was voluntary agreements by the villages, beginning in '77, on
22 select bird species, many of you know that the villages of the
23 Delta gave the Fish and Wildlife Service 13 million acres of
24 land in the form of the Yukon Delta National Wildlife Refuge.
25 They did insist, however, on habitat conservation. They did
insist on subsistence access to the resources, a privilege or a
priority in the take, whatever resources existed. The agree-
ment in Chevak dealt with the entire flyway. We linked take in

1 the Yukon Delta to conversion of wetlands in the central valley
2 of California that began in the 1930s, into rice production, to
3 the take by gringos out of Los Angeles going down into Mexico
4 and hunting without any enforcement whatsoever. And there was
5 a, with the tightening of the bird take, geese take in
6 California, there was this healthy exodus of people into
7 Mexico, where there's no enforcement whatsoever. So the vil-
8 lagers said, "This has to be international, we don't want to be
9 blindsided sometime in the future, and it has to be comprehen-
10 sive." In Chevak, agreements were reached across the board, and
11 it was on the environment. Many of you are familiar now with
12 the industrialization of the continental shelf in the Arctic
13 Basin, both our Canadian neighbors and the Alaskans know what's
14 happening in the Canadian and Alaskan Beaufort and will be
15 happening in the Chukchi and the Bering Sea. There's just
16 going to be increased activity there and, as I said earlier, we
17 made the effort of including the marine areas as part of the
18 upland conservation units. We lost on that area. It's ironic
19 that all of the lands that are going to be utilized by birds
20 for nesting, these very threatened or critically endangered
21 birds, would all be impacted by an oil spill during a three- to
22 four-inch-high tide, much less a 20- or 30-year storm event.
23 If there was an oil spill it would inundate the tundra, you
24 could kiss off the birds completely. But the federal
25 government, one agency of the Department of the Interior was
saying, "We care about the birds." Another agency of the
Department of the Interior, the Minerals Management Service,
was saying, "We don't care about the birds, we don't care about
anything other than finding oil." And so we had cross pur-
poses, and to get the Department of the Interior to sit down
with us and be consistent, well, the Minerals Management
Service was never consistent, so we just had to deal, then,
with the Fish and Wildlife Service. They agreed that there was

1 no conservation problems, or differences, with our villages,
2 and that they, the good guys that they were, they would start
3 looking after the Minerals Management Service and the oilies
4 and making sure that they would pay attention to detail.

5 So we started into Yukon-
6 Kuskokwim Delta, and we started identifying all the habitat
7 there that was essential for the birds. We also explained to
8 them about that, "In case you didn't notice it, guys, fox eat
9 bird eggs, and fox eat chickens, and minks eat the same, and by
10 the way, you know, flooding does the same thing, it just kills
11 the next, and before you guys start sending your troops all
12 over the country blaming the Alaska Natives anymore for the
13 decline in birds, by the way, why don't you tell your bio-
14 logists to start recording what the predator take is and what
15 the natural hazards are out there. Maybe that has a signifi-
16 cant impact on these bird populations, while they're in
17 Alaska."

18 The second area we con-
19 cerned ourselves with was Isembeck lagoon, which has the
20 largest eelgrass beds in the world, black brandt, one species,
21 has a 52-hour flight from Izembeck Lagoon to Mexico. They
22 fatten up for six weeks in Izembeck Lagoon. Well, it just so
23 happens that our new friends, the oilies, used Cold Bay for
24 their helicopters to service the oil rigs in St. George. So we
25 got assurances from Fish and Wildlife Service in Chevak in
November of '83 that they would insure that the helicopters
would not disturb the birds when they were in Izembeck Lagoon.
We then moved on to California, and we were able to assist, as
a matter of fact we were used as propoganda by the California
Department of Fish and Game, to get a \$80 million bond issue
through to buy wetlands back in the central valley of
California. Then we got on to Mexico. And with Mexico it was,
"What do we do about all these gringos going down there and

1 blowing away the birds that their fellow Californians are
2 freely giving up?" And that's a sticky one, and that involves
3 an international protocol between the United States and Mexico,
4 but it has influences also on the U.S.-Canadian treaty and the
5 U.S.-Soviet-Japanese treaty. We finally got a commitment from
6 the federal government, and the national government of Mexico,
7 that they would suddenly pay attention to the number of people
8 going down there to harvest the waterfowl, and that they would
9 start recording the take, and start paying attention to habitat
10 there, also.

11 The second phase of the
12 agreement was allocation. "Who gets what of what's left?" We
13 have maintained that the federal government has a responsi-
14 bility to the Alaska Native people to, if there are birds that
15 can be taken, that subsistence has to be taken care of first.
16 And this is again with threatened habitat. The federal gov-
17 ernment has refused, ever since 1978, to publish regulations
18 that would give, legalize the subsistence take of waterfowl, or
19 a preference for people who are subsistence takers above rec-
20 reational takers. We're living in that quandary. What we did,
21 we said, "Listen California, our interest is in working with
22 you, not with the federal Fish and Wildlife Service right now,
23 how do we try and solve the bird problem?" Our villages volun-
24 tarily agreed to lay down their guns and stop taking eggs, in
25 exchange for California reducing their take by 50 percent. So
we went around the federal government in order to get this
taker-to-taker agreement, and then California supported our
habitat concerns. Low and behold, our villages complied,
California's complied. Every place where we depended on the
federal government to comply, however, has fallen to hell, they
have not come across. It's been a woeful situation dealing
with the federal Fish and Wildlife Service. And that is some-
thing that our villages predicted, because they said they did

1 not have an interest like we had an interest, and the
2 Californians had an interest, in the well-being of these birds.
3 They were protecting themselves from someone in Congress con-
4 vening the hearing of where the birds went, because they were
the ones that would be holding the bag.

5 The situation was important
6 I believe for the review of this group because it dealt with, in
7 addition to the allocation issue, competition from another
8 resource taker. There is no protections from California taking
9 all of the birds. They've done a hell of a good job on it
10 every since the '30s. They've taken them in two forms; they've
11 taken them as food, and then they've denied them the wetlands
12 that the birds used for wintering, that's another form of take,
13 they're dead animals. Our villages were impressed when they
14 went to California. What they saw were the number of birds in
15 one lake that were spread over 30 to 50 square miles in the
16 Delta in the winter time. If someone happened to drop a
17 little pollution off of their agricultural runoff into those
18 lakes, you could just count the mortalities. Pestilence be-
19 tween the birds was really significant. The people were very
20 impressed with the number of blisters and scars on the birds in
21 the wintering grounds, and that was in large parts of the
22 population. So it was an effort to try and get California to
23 own up to its responsibility, and at least where we are right
24 now, because it was taker-to-taker, we felt that we got a
25 pretty good response. This summer our villages followed the
agreement. You can read about it on page 53 of Steve Langdon's
report, beginning on 53, I'm sorry, Steve, I haven't read it
yet, but it's there. I hope it's, everything is in there, it's
helpful for everyone.

Going back to what Don was
talking about earlier, and that is this issue of what you do
with the resource when somebody else wants it. I think this is

1 principle was birds at the turn of the century, that's what
2 they wanted, our villages wanted.

3 I'd like to get on to a
4 second issue, and that is the issue of habitat. And Don men-
5 tioned it briefly, and that is this competition. The competi-
6 tion is going to become even more serious in the future.
7 There's only so much land space and so much ocean space. And
8 as I mentioned earlier, it's been our deliberate political
9 effort to reduce the new users and to limit their uses of the
10 resources that the village people depend on. We know of no
11 other way of trying to protect a village economy, we are with-
12 out the political strengths, if we have to go head-to-head,
13 like in the courts or in the Congress, with users who talk in
14 billions of dollars, like the oil companies, we must try and
15 protect the habitat so that when the wildlife fluctuations
16 occur they have room to recover. If we give it up to the
17 oilies, we've lost it, because they won't give it back to us,
18 or else they'll give it back to us damaged. The competition
19 that our villages fear, again using the birds as the example,
20 is that they won't have the resources in the future that's
21 going to be adequate for subsistence, the ones that they're
22 harvesting right now, so they are trying to set aside all of
23 the resources that they use, historically. Yet not the federal
24 government or the State government understand that. The other,
25 the new industrial users, couldn't care less. There's not
penalties for them if they damage those resources, mainly
because government doesn't know and doesn't care. So it has
been a, really, a ten year or decade long effort, once the
villages made the decision that they had to protect their
future, both their subsistence economy and then what surpluses
existed they convert into cash, from change. And they go
kicking and screaming everytime someone proposes change. They
have to have their teeth pulled out, without Novocaine, using

1 pliers, and that's the only way they make their point. And
2 they finally get some level of concession. Many of the elders
3 are not sanguine about the future. They maintain that when the
4 flooding occurred, when the natural disasters occurred, the
5 birds moved to another place, or there was another fish stock
6 to take to. They point to the turn of the century when there
7 were 15,000 aboriginal people living in the area of the Yukon-
8 Kuskokwim Delta. At that time you had no Japanese high seas
9 salmon fishery, which at times have as many as 400 boats, each
10 one of them launching 12 miles of net a day, for three months,
11 every year. There was no effort by the troll fisheries to kill
12 off the marine mammals in the ocean. There was not a signifi-
13 cant loss of habitat in California that's needed by the birds.
14 The federal government was not leasing the north Aleutian Shelf,
15 the St. George Basin, the Navarin Basin, all the havens for
16 reproduction during the migratory year of the marine mammals
17 and the marine birds that the villages depend upon. And there
18 was no Anchorage, at that time, there weren't all these Super
19 Cubs coming out into the area where Woody lived, into the
20 treeline, taking all the ungulates walking the land. And there
21 weren't a large number of people jumping other peoples' trap-
22 lines. All those things exist now. What the villages have
23 said is that we have more people than we have animals right
24 now, and we have to, the only way we're ever going to get by in
25 the future is to protect their habitat. And that has been a
dedication that they have moved to. And, again, be it repeti-
tious then, they have refused to get caught in an allocation
bind. They will not sit down in any meeting and talk just who
gets the birds or who gets the moose or who gets the mink.
They have linked the habitat and the government's handling of
the habitat to every resource decision that they're making.

MR. BERGER: How many
villages involved in this?

1 MR. SPARCK: There are 56.

2 MR. BERGER: The whole of
3 the...

4 MR. SPARCK: Yeh, the whole
5 of the Delta. They sit down in unison. And one of the things
6 that Gary was talking about, there aren't any 19 to 17 votes
7 still, it's by consensus. And there won't be a decision for
8 many months, and Bristol Bay is the same way, many of the
9 villages in Norton Sound are the same way, it has to be by
10 consensus and only after full airing of all the issues. But,
11 anyhow, that's what they see as their future. And people like
12 me, Don calls himself a mechanic, I don't know, I guess I'm an
13 engineer, then, but the villages give us direction. And one
14 thing I'd like to say also that has been very important is that
15 in recent years, it used to be that there was so much confusion
16 and misunderstanding in the villages, they would take somebody
17 like me and say, "Go out and do the best job you can." There's
18 been a conversion within the last five years that no longer do
19 we trust our aides, this is serious stuff. Mainly there is no
20 more left to give away, anything that we trade now comes off of
21 our dinner table. And we have to be involved in it. So, like
22 the people up in the Borough and up in the Sound, they have,
23 the elders, even though they have limited English, have been
24 making, seating themselves at the table now, in all discus-
25 sions. And people like myself applaud that, because it's pretty
hard sitting there and deciding what you want to give up if
you've been told to protect something. And it's been very
valuable to us, again, people like myself, that not only are
the villages giving direction, but now they're sitting there
and actually carrying out the agreements and deciding what
values they want to protect, when they want to protect them,
and how they want to protect them. If there are to be trades
they're in control of what's to be given up.

1 MR. BERGER: Thanks,
2 Harold. David, you had a question for Don?

3 MR. CASE: First, Don, I
4 must confess I hadn't counted in my book getting a review
5 before it got published. And I guess I'd be the first to admit
6 that I am naive, but somehow that, the law school must have
7 slipped up, and the bar, too. But the question I do have goes
8 to, I think, an important point that you made, and that is this
9 historical analysis of how various regimes are, protected ac-
10 cess, but not protected against competition. And I'd like...I
11 think a lot of that, a lot of the morning, which you had to
12 miss, involved that same question. And I wondered if you could
13 comment on the degree to which the provisions of ANILCA meet
14 that problem.

15 MR. MITCHELL: Sure. Also,
16 one other thing I wanted to say about Harold's comments about
17 habitat, too, when I'm through with this. For openers, by the
18 way, in terms of my crack about reviewing your book before it's
19 actually hit the Book Cache, I think one thing that's important
20 to recognize about all of this is that what we're really
21 talking with a lot of this stuff are figments of the non-Native
22 intellectual imagination. We are describing a lot of this
23 stuff as if it's real, and it's not real at all, it is just
24 stuff that us non-Natives have thought up in our heads in terms
25 of how we're all going to behave so that we don't end up
slitting each other's throats. And to that extent it really is
sophistry and gibberish and illusion, and my only point is that
it should be acknowledged as such, that that's exactly what it
is, if in fact the benefits of that system that nobody created,
including you and I, are to really be maximized on behalf of
the Native community. And that's sort of what I was attempting
to get at with respect to whether or not it's a word game.
Yes, in my judgment, it is a word game.

1 way around it politically you figure out, well, isn't there
2 something we could do to just shave this thing and maybe next
3 year it will all go away when the game board comes back and, I
4 mean, I've been, we've all been involved in countless efforts.
5 And what have we been attempting to do? We've been attempting
6 to salvage the most that we could in a particular situation of
7 that policy statement, without getting involved in a political
8 allocation hassle that even, after my rave reviews for the
9 claims act, we didn't have the political power or the economic
10 power to win. And so to that extent I think the policy itself
11 is a significant step forward in the history of the way gov-
12 ernment has related to the subsistence economy of the Alaska
13 Native folks. But in terms of its reality, time will tell.

14 With respect to Harold's
15 sort of statements about habitat, one thing I did want to say
16 is that I devoted most of my remarks primarily to the alloca-
17 tion issue, because for the past, oh, twenty years or so it has
18 really been the allocation issues that have got the most heat
19 and light and smoke and commotion and aggravation and emotion
20 surrounding them. But I think that particularly since the en-
21 actment of ANILCA settled once and for all land patterns, I
22 think obviously land use will come to play a more important
23 role in this whole equation from here on out, and, you know,
24 one of the things about, that I find amusing, is that, you
25 know, there was once another pretty decent subsistence economy
on the plains of the Lower 48. And that subsistence economy
was dependent on five or six or ten or twenty, however you may
want to count it, million buffalo rampaging around at will,
through ten or twelve different states. Well, if you look at
what, how many buffalo we got up there in Delta, Larry, couple
hundred head? If you look at the commotion that a couple
hundred head of buffalo have done to the aspirations of the
State of Alaska to develop its agricultural potential, assuming

1 such a thing exists, you know, on one small area, you can
2 imagine how inconvenient to "our," speaking as a non-Native,
3 economic system to have five or ten million buffalo running
4 through downtown Omaha, Nebraska whenever they felt like it. I
5 mean, that kind of stuff just could not be allowed to go on in
6 our economic system. And I would suggest that that has not had
7 to be confronted in Alaska because for so many years there was
8 so much commotion over who owned what land and how that eco-
9 nomic system could deal with it, that it was all irrelevant.
10 Now that that's settled I would suggest that there's really
11 only two points of view. As I understand, at least, I don't
12 want to speak for them or to oversimplify their position, but
13 basically as I understand most of my associates in the profes-
14 sional environmental community, they look at Alaska as part of
15 the Lower 48 economic system and say that in the aggregate
16 habitat has paid enough cost to maintain the United States as
17 an economy and therefore you don't need to go into Alaska. I
18 think that if you look at the Anchorage Chamber of Commerce
19 their point of view would be to say don't look at Alaska as
20 part of the United States of America, look at Alaska as if it
21 were a separate economic nation, and with respect to it being a
22 separate economic nation, it looks about like the lower 48 did
23 probably back in about 1890, for lack of a better date to pick.
24 And if that is the case, then I would suggest that what is
25 going to have to be done with Alaskan habitat in the long run
over time is exactly what's going to have to have been done
with habitat in the lower 48. And what that does, assuming
that those decisions will be made not because anybody cares
about Alaska Natives, but they care about the way the world
really works, that's a given. And what that's going to mean, of
course, is that habitat necessary to support these resources is
going to diminish, which means that the harvestable surplus of
each of these resources is going to diminish, which also means

1 that if the competition even remains constant rather than
2 increases the squeeze will increasingly be on. And that is,
3 again, we're talking about not a 24-month trip down the road,
4 I'm talking about between now and, for instance, the end of
5 this century. And so even if government on the allocation
6 issues wanted to clean up its act, I would suggest, as Harold
7 has sort of alluded to, that the habitat issue associated with
8 maintaining what integrity the subsistence economy has left may
9 be even more important. But as I said, I didn't get into it
10 originally because it hasn't really been relevant to discussing
11 ANCSA.

12 MR. BERGER: Thanks, Don.

13 Steve wanted to add something.

14 MR. LANGDON: I wanted to
15 ask Harold just to followup on the question of the importance
16 of the mechanisms for the Hooper Bay agreement with regard to
17 the authorities vested in the AVCP and the Waterfowl Conserva-
18 tion Committee, the importance of jurisdiction being defined as
19 tribal, and in the, how is that seen or arrived at in this
20 particular case?

21 MR. SPARCK: Well, I heard
22 third hand that when California agreed to go along with federal
23 proposed regulations that the sovereign State of California
24 said that yes, they would agree with this, unless the governor
25 of the sovereign State of California could make an agreement
with the president of the sovereign nation of Association of
Village Council Presidents could cut a better deal for
California, so many of the sovereign people who are quite
interested in sovereignty in our region that was a very nice
statement by the State of California. The people have main-
tained that if they ever stop being Eskimos and Athabaskan
Indians they are lost. They'll get trashed in any allocation
decision and the sovereignty issue, again this is my perspec-

1 tive, the sovereignty issue has generated itself because of
2 this threat to the way of life the people want to maintain.
3 And the Association of Village Council Presidents was very
4 insistent that the relationship of all the parties in this
5 agreement had to be the individual village entity. It was they
6 who under peer pressure would control voluntarily the habits or
7 change, modify the habits of the hunters there. Like Caleb was
8 saying earlier, unless you go into the village and tell the
9 guy, "Listen this is the way the law reads, this is what you are
10 supposed to do," most of the people in 1984 ...

(TAPE 4, SIDE B)

9 still do not know that they are doing a lot of things that they
10 are not supposed to be doing. And frankly, because nobody else
11 wants those resources, there's no pressure on them. In the case
12 of the birds, somebody else wanted those resources, so there
13 was pressure. And again I believe was a political reason by
14 AVCP to give the authority to the village entity which is the
15 tribal governing body of the villages. In some cases there is
16 no tribal governing body and in that case there was a tradi-
17 tional government that was given the authority to work on this
18 agreement.

17 MR. USHER: Just a reaction
18 as a visitor to the three very interesting presentations that
19 we heard right after lunch. I found myself agreeing with all
20 of them and so I wondered why that might be since they all said
21 quite different things and it occurred to me that really they
22 were talking about some quite different things and, therefore,
23 I wonder although this round table discussion is titled subsis-
24 tence, I wonder if in fact there aren't three different issues
25 that we might be addressing the future of. So, perhaps I will
throw them out as possibilities and give you at least a very
brief (my own) thoughts on them and then if some of them aren't
valid we can throw them out. But, it seems to me first of all

1 that we are looking at what is the future of subsistence, and
2 that it seems to me is what Lonner and Holthaus expressed. And
3 they, it seems to me, were somewhat pessimistic, I guess if I
4 had to characterize Tom's view of what's happening with subsis-
5 tence it would be like one of your generals said about Hue
6 in Viet Nam which was that in order to save subsistence we
7 had to destroy it. Sometimes I get rather pessimistic about
8 the future of subsistence in the Canadian North as well, but
9 then I think well, you know, these are to some extent semantic
10 terms--what we mean by subsistence and what other people might
11 mean by subsistence I think are quite different and in fact
12 that's been raised in some of the comments that people have
13 made about the commercial use of subsistence resources. Then
14 it seems to me that the conventional non-Native use of subsis-
15 tence is nothing but a hindrance to the way Native people would
16 conceive of their resources and would like to use them in the
17 future. There is a long history of the commercial use of so
18 called subsistence resources, certainly in Canada and I'm sure
19 in Alaska that to all intents and purposes are traditional
20 and why we should be hung up on this notion of personal use and
21 so on is quite beyond me. Then I think that in our own
22 society, somebody commented on the degree of subsistence life
23 in the non-Native economy, I think that there's a lot more of
24 it than most of us recognize. I live in an area in rural
25 Ontario where there are a lot of old-time farmers around and as
I look at the definitions of criteria for subsistence which I
find on page 26 of Steve's paper, I think, gee, an awful lot of
my neighbors have subsistence rights based on those criteria,
so what's the big deal? So, I kind of think that if you want
to look a hundred years ahead which is more the Native time
frame, I think than our own Western time frame (it's a good one
to me), a hundred years...what's subsistence going to look
like? Well, in our conventional non-Native terms we might be

1 quite pessimistic about it but I suspect that it's still going
2 to be around and that Native people will have a hundred years
3 from now something which that generation very certainly defines
4 as their subsistence use of resources. And it probably won't
5 resemble what we think subsistence is right now. But there are
6 two other issues, one of which is ownership. Or some kind of
7 proprietary interest in resources, and when I look at the future
8 of that, let's say a hundred years down the road, and we ask
9 ourselves what is the possibility that Native people will
10 between now and then gain some kind of title or recognized
11 legal interest in their resources. And we can talk about that
12 at some point as to what that might mean. I would say, gee,
13 that's entirely possible, seems to me like a quite reasonable
14 proposition. I think that it's probably more likely in Canada
15 than in Alaska because of your institutional set up and so on
16 and the fact that it seems to be a non sequitur to even refer
17 to aboriginal or Native people in legislation. But I think
18 that's quite possible...now when we talk about ownership of
19 subsistence resources then we're looking at a situation where
20 maybe people are going to make their own judgments about what
21 they want to do with those things. And they might want to use
22 them for something quite different than subsistence and that
23 they will do in their wisdom or their lack of it. And we as
24 non-Natives can sit around and make comment on that I suppose
25 but you know, the thing about property is that it's not ours to
dispose of...if it's somebody else's property you can comment
on how they dispose of it, but it is their right to do as they
please with it, isn't it? And if we don't like it that's too
bad for us, but not necessarily for them.

And I suppose the third
issue is management. To what extent, when we look a hundred
years down the road, will Native people be actually managing
their resources and again it seems to me that the prospects for

1 that are entirely possible. And how would they manage their
2 resources? Well, probably no better or no worse than the rest
3 of us do with ours, so again that's an incident of property,
4 isn't it? If you own it you can do with it as you please. But
5 I see those things as quite separate issues. And if we're
6 talking about the future of subsistence and to some extent
7 maybe forcing an idea of what subsistence is and lamenting the
8 future of it, it's not the same as saying...will Native people
9 in Alaska get to own and do as they see fit with their
10 property? They're separate.

11 MR. BERGER: Could I...yes
12 Don.

13 MR. MITCHELL: I just had
14 an immediate response to that, and a strong one actually. I
15 think that is a completely unhelpful way to look at the situa-
16 tion. And it seems to me that property again is nothing more
17 than one of those intellectual figments of our imagination. I
18 own lots of property, particularly I don't own enough real
19 property, but I own real property. To say that I have any
20 control to unilaterally decide what I want to do with that
21 property is not a correct description. I've got to go plead
22 with the political institution of the Anchorage Municipality
23 and the Planning and Zoning Commission and everybody else on
24 earth in the State legislature to get their okay with respect
25 to how I use that property. Their okay or the standards they
use to decide how I can use my property is based upon a politi-
cal equation that theoretically I participate in. But, it's
because I'm part of a political community and to say that at
any time the Native community should have any expectation, even
if they get their hands on property, that they'll have any
authentic self-control outside of a political community is
just, I don't think very intellectually helpful.

1 MR. BERGER: We'll have to
2 adjourn in just a few minutes, so Peter you'll have to wait
3 until tomorrow to respond. Caleb Pungowiyi and Jonathon
4 Solomon and Joe Meeker all want to say something this afternoon
5 before we adjourn and since the hall must be vacated for Bingo
6 in a few minutes, we'll have to make it brief. Could I just
7 say, since I won't get another chance I'm sure to say anything
8 this afternoon, that it seems to me that in one way or another
9 you've been talking about ANCSA gave land, (let's not get into
10 the argument about giving and that it was already ours and so
11 on) but gave land to Native people, Don Mitchell has pointed
12 out that the land, the money that came with ANCSA, the
13 corporate structures, gave them a certain amount of economic
14 and political influence and I think that everyone acknowledges
15 that. I hope tomorrow we can begin to look at what is being
16 done in other jurisdictions in land claim settlements to move
17 from the concept of fee simple land to access to resources
18 because that's what all of these people have been talking about
19 is access to resources, access to fish and game resources.
20 And we will no doubt hear from the people from Canada about the
21 recent agreements that have been reached there and the measures
22 taken not so much for purposes of acquiring fee simple owner-
23 ship of land but to have the right to use land for subsistence
24 hunting and fishing purposes. And it seems to me we are moving
25 in that direction. And certainly if I may be allowed to return
to where we began this morning, and you will recall that I
spoke at the outset, I said that I've been to these villages,
I've heard from 800 witnesses, largely Native persons, and they
are concerned about subsistence, they are concerned not about
fee simple ownership of land, but about access to fish and game
resources and guaranteed access and perpetuity so that those
villages can survive and those people can survive. So, I take
the liberty of mentioning that so that it will perhaps give us

1 something to think about as we contemplate tomorrow's discus-
2 sions. Caleb and then Jonathon Solomon.

3 MR. PUNGOWIYI: I wanted to
4 respond to some of the statements that were made by the three
5 people that were on the panel earlier. One of my initial
6 reactions was that at least the individuals, the closest
7 they're in to Brevig Mission is probably Nome, Alaska, and the
8 longest they've been in any villages is probably to sleep. And
9 when they were in that village they were not there to...your
10 view of "subsistence taking" would derive from probably some
11 other meaning. And one thing that really bothered me was the
12 statement by Gary Holthaus in that statement that subsistence
13 would die because we didn't teach it to our children. I think
14 that is one of the most outlandish statements I've heard--if it
15 is, then we are the victims of your society; and in that the
16 school system and these things that have been imposed upon us
17 are something that we did not impose upon ourselves. And that
18 we are not even told of the school system, the state school
19 board decides what is to be taught in the school system. One
20 of the things that I feel, that one of the best acts that was
21 passed by the Congress in relating to continuation of subsis-
22 tence was the Marine Mammal Protection Act of 1972. And that
23 the act totally exempted the Native population from regulation.
24 The only time they would be regulated was if the species became
25 depleted. Most of the game managers don't agree with that.
They feel that there must some kind of a human control in order
for the species to be healthy. The best way to put it. Truly,
that there is some species that have bothered the commercial
fishermen...the sea otters, the belugas, and the sea lions have
become a nuisance to the commercial fishermen. But not those
species that have been used by the northern Alaskan villages--
the walrus, the polar bear, the seals, the belugas. They've
been pretty healthy. In 1976, when the State took over

1 management there was an agreement that put a limit on how much
2 could be harvested. And that human management of the taking of
3 walrus, I think was probably one of the worst management tools
4 that was agreed on between the federal government and State
5 government in that they didn't take into consideration the
6 number of population of the walrus but rather they just took
7 estimated harvest levels of the villages and said this is what
8 it's going to be. And they set quotas for the village and for
9 those villages that they did not know about they allowed a
10 certain number of animals that could be caught but they would
11 not be counted in that quota. And what happened is that most
12 of the villages would reach their quota and then they would
13 have to stop hunting. While the walrus population passed by.
14 By 1978, we formed the Walrus Commission and I will talk to
15 that when I get to the panel later on concerning Walrus
16 Commission. But our fear was that population of the walrus had
17 increased to such an extent that something needed to be done to
18 it. Fortunately, Togiak won in the case in which the State
19 reluctantly agreed to not continue to manage our walrus and we
20 could get back to harvesting our walrus at the levels that we
21 originally did. I think, you know that some of these things
22 have failed to point out some of problems with the regulatory
23 schemes that are developed to control human taking. The think
24 that Larri said this morning about the system of upsetting
25 proposals by the game boards and acting on them I think, uh,
the game board is subject to politics, you must realize that.
And it was just recently that we got involved in terms of
making proposals and recommendations for change in management
of these species, of every species. And if that proposal did
not have blessing of the staff, most of the time it didn't pass
the game board. And, or if it was not presented to the
advisory board it did not pass the game board. Norton Sound
Fish and Game Advisory Board, was one of the first ones that

1 was organized in the state of Alaska. But the people that were
2 originally on there were hand-picked, they were hand-picked by
3 the staff of the Fish and Game. And it took us four years to
4 get some people in there whom we felt could adequately repre-
5 sent some of the needs of the people. Why did it take us so
6 long? the advisory board was a self-appointing board, in that
7 they and only they could make nominations to appoint somebody
8 to that board. And, I think these are the kinds of things that
9 we need to address, the thing that Gary Holthaus said about,
10 that we are solely responsible for the continuation of subsis-
11 tence, it really, you know, again, it really bothered me. But,
12 also, it was a way out, he gets us to blame for the failure of
13 subsistence: "not us, 'cause you didn't teach your children."
14 But, I think, also, in this particular roundtable, and future
15 discussions on subsistence, that our hope, or at least my hope,
16 is that we will not repeat atrocities that have happened in the
17 past, and that we will work toward more workable solutions
18 concerning subsistence and the resources on this land.

14 MR. BERGER: Thank you,
15 Caleb. Jonathon Solomon.

16 MR. SOLOMON: Yeh, Mr.
17 Chairman. You know, when I walked in here this afternoon, came
18 off the plane from Ft. Yukon to here, (inaudible), I don't know
19 how this meeting is going to be run, but all of a sudden I walk
20 into the situation I've been in before, that all nonresidents,
21 nonresidents of rural Alaska, discussing subsistence for rural
22 Alaska. They're great authorities on these things, but they
23 invite us, which are the greater authority than theirs, and
24 they don't give us a chance to get in a discussion with them.
25 You know, my friend, Gary Holthaus, talk about culture, talk
about dancing, which he doesn't know a damn thing about. When
you play showmanism, we teach our kids that we have to show
these other non-Natives, non-rural Alaskan residents a part of

1 what we believe in. And we do that through the dances, through
2 the potlatches, but these people never been to a damn potlatch,
3 and he said he was, you know, he was down, whatever it was,
4 because he's seen kids dancing at AFN convention. Them dances
5 are created for this environment here in Anchorage. The crea-
6 tion of Native dances and Native culture exists only in every
7 per village (?). When you see dances in Native villages, if
8 you ever get the opportunity, you will never see these things.
9 They don't go by what you see on the platform of a dance hall
10 in Anchorage. And yes, I know damn well, sitting here, what
11 Don Mitchell's going to say, I heard it ten trillion times.
12 But I do not know what my brother next door is going to say.
13 That's what I came here to listen. I see a great big piece by
14 my friend Tom, you know, and I know what he's going to say, I
15 heard him a lot of times, too. And they just, let's get this
16 thing down, and bring these rural people in, like you're doing
17 now, and sit down and explain what...find out exactly what we
18 think. We're the traditional rural subsistence users. We came
19 from the village, we lived there all our life, do we have a
20 problem with it? Don Mitchell himself, I don't know how long I
21 know him, don't know what my problem in subsistence is. He
22 never asked. But he sure done a hell of a lot of paperwork on
23 it. Writing, Tom Lonner same thing. Let's get down to it.
24 Unless this is done, then I'm wasting my time here. Thank you.

19 MR. BERGER: Well, it's 4:30

20 sharp. Joe, we can stay a few minutes, if you want to add
21 something. Well, I think it's been a useful day. I want to
22 thank you all, and I think that the troika of Mitchell, Lonner,
23 and Holthaus have succeeded in infuriating a good many of the
24 people here, and that may well have been their object. So,
25 we'll carry on tomorrow. And if you want to, if you have any
suggestions about the way in which we are proceeding, as I
said, speak to Rosita Worl or to David Case or to myself,

1 because we would like to know. We wanted this to be a meeting
2 of people with all points of view, and so far we're getting
3 them, and I hope that will continue. So we'll start at 9:00 in
4 the morning.

(MEETING ADJOURNS)

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

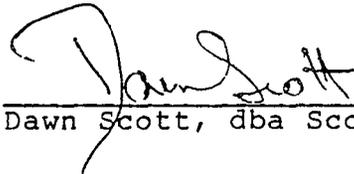
1 I, Dawn Scott, residing in Anchorage, Alaska, do hereby
2 certify:

3 That the annexed and foregoing pages number 1457
4 through 1958, a full, true and correct transcript of the Alaska
5 Native Review Commission Roundtable Discussion in Anchorage, Alaska
6 on Subsistence, as transcribed by me to the best of my knowledge and
7 ability from cassette tapes furnished to me by Ms. Joyce
8 Johnson of the Alaska Native Review Commission.

9 That the original transcript has been retained by me
10 for the purpose of delivering the same to Ms. Joyce Johnson of
11 the Alaska Native Review Commission, 429 "D" Street, Suite 317,
12 Anchorage, Alaska.

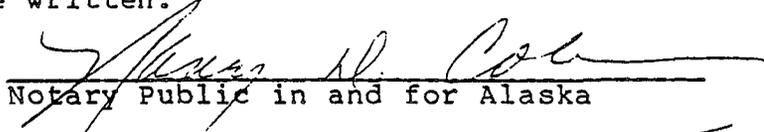
13 I am not a relative, or employee, or attorney, or
14 counsel to any of the parties, nor am I financially interested in
15 this action.

16 IN WITNESS WHEREOF, I have hereunto set my hand this
17 30th day of January, 1985:

18 
19 Dawn Scott, dba Scott's Secretarial
20 Service

21 UNITED STATES OF AMERICA)
22 STATE OF ALASKA)
23 THIRD DISTRICT)

24 This is to certify that on this 30th day of January 1985, before
25 me the undersigned a notary public in and for the State of Alaska
duly commissioned and sworn as such personally appeared Dawn
Scott, known to me and to me known to be the individual described
herein and who executed the foregoing instrument as their free and
voluntary act and deed for the uses and purposes therein
mentioned, witness my hand and notary seal on the day and year on
this certificate first above written.

26 
27 Notary Public in and for Alaska
28 My Commission Expires: 11-18-85

