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TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

VOLUME XVI

SUBSISTENCE

OCTOBER 11, 1984

ALASKA NATIVE REVIEW COMMISSION

HON. THOMAS R. BERGER

COMMISSIONER

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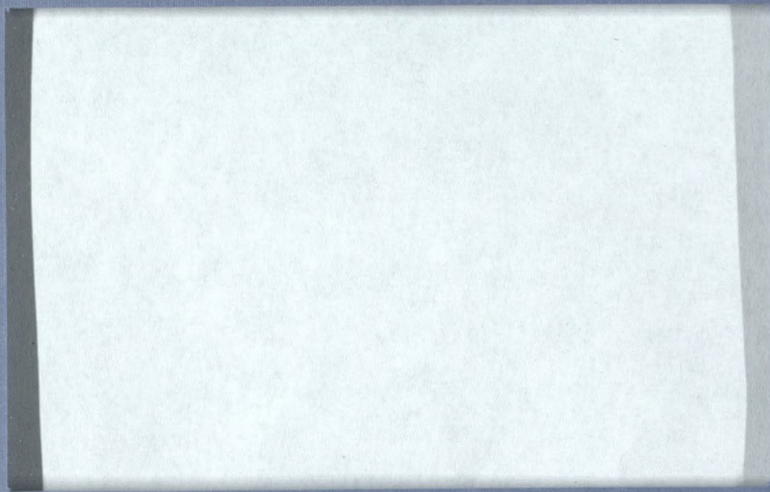

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Transcripts of the Alaska Native Review Commission are produced in two series. Those in Roman numerals are for the Roundtable Discussions. Those in Arabic numbers are for the Village Meetings.

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Roundtable on Subsistence

October 10, 11, 12 & 13, 1984
Anchorage, Alaska

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*This list includes invited participants at the Roundtable. It does not necessarily include others who attended. Those who participated in the discussion are acknowledged in the verbatim transcripts.

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Dalee Sambo
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Jonathon Solomon
President, Gwitcha Gwich'in Ginkhye; Chairman, Alaska Delegation, International Porcupine Caribou Commission.

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Peter Usher
Geographer and Renewable Resources Consultant, Ottawa, Canada.

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(TAPE 5, SIDE A)
(ROUNDTABLE DISCUSSION)
(SUBSISTENCE)
(OCTOBER 11, 1984)
(MEETING CONVENES)

MR. BERGER: Well, maybe we could take our seats and begin this morning. What I thought...no, no, this has added some class to the...Well, let me welcome you all again this morning. Let me remind you, sign in with Joyce Johnson at the entrance to the room, when you're coming in or leaving, just so that we have a complete register. And those sitting opposite me, maybe you'll turn your namecards around so they face me so that the cameras can pick-up your namecard when they show you speaking. I want to welcome one or two who have arrived today. Weaver Ivanoff from Unalakleet and Victor Mitander of the Council of Yukon Indians. I have in mind altering our agenda this morning, and perhaps you would indulge me for a minute or two while I explain that, because I think it will be more useful to me and I hope to you. The Alaska Native Review Commission is looking into ANCSA, and as I said yesterday that entails in my view an examination of subsistence, not only because ANCSA extinguished aboriginal rights of hunting and fishing, but also because ANCSA deals with land-ownership and it seems to me that landownership, land use, and subsistence are all linked.

Now yesterday we had a general discussion of basic issues. And it was a good discussion, but I would like very soon to bring it to an end and go on to some specific issues. But might I attempt, in a minute or two, to summarize what was said yesterday. Gary Holthaus urged that subsistence was something that was up to the Native people to decide whether they wished to continue with, and he suggested that it was a matter of will on their part--did they

1
2 have the will to continue with the subsistence way of life. I think that Gary will be returning Saturday and we can discuss
3 his views at greater length with him then, but my own feeling
4 is that having been to 40 villages over the last eight months
5 and listened to 800 Native witnesses, I think there is a determination out there to see that subsistence and the villages
6 that depend on it survive. Tom Lonner suggested that, given
7 the present laws and regulations, given the present legal
8 system...Marie, please come and take your seat, and, why don't both of you sit together over here, because Caleb will be away
9 this morning...Tom Lonner suggested that the present laws and
10 regulations are not calculated to enhance or enlarge subsistence, but that their inevitable result will be to diminish it.
11 And Austin Hammond and Caleb Pungowiyi and many others gave
12 examples of the ways in which the laws and regulations have
13 diminished subsistence. Mr. Behnke and Ms. Spengler pointed
14 out that the State subsistence law is just being implemented and that it may be too soon to pass judgment on how it's going
15 to work. Don Mitchell said many things, but those that stick
16 out in my mind are these, he said that the law has protected
17 Native access to fish and game, but where it has failed lamentably is that it has not restricted access by other users.
18 It has failed to limit access to fish and game by other users,
19 and he feels that is the crux of the problem. He said he
20 didn't have any answers. Tom Lonner suggested that local control was the answer. In the travels I've made around the
21 state a lot of answers have been put forward. The very last
22 village meeting I held was in Unalakleet last Friday and
23 Saturday, and, I only mention it by way of example, but the people there, not only from Unalakleet but from surrounding
24 villages, spoke of strengthening their IRA councils and turning
25 over management of subsistence to their IRA councils and while I was there some of them spoke about establishing a

1
2 regional IRA council for that purpose. I mention that because
it shows that people out there want to do something. They
3 think that they can handle this problem themselves, and it may
4 be that in, in the end, it's what those people decide to do for
themselves that is more important than all the theorizing and
5 law making. Perhaps not, but it seems to me a hopeful sign
6 when people want to do things by themselves and for themselves.
7 Tony Vaska and Harold Sparck told us about the way in which the
people in southwest Alaska have taken measures themselves to
8 limit the take, the taking of birds by users in California.
9 And that, I think we all agree, was a remarkable example of
10 people at the local level deciding to do something and going
out and doing it for themselves and preserving the migratory
11 birds, their habitat, and limiting the kill.
12 Now, having said that, what
13 I thought we would do today is this: we had originally thought
we would have more general discussion of harvesting and land
14 management today, but I decided last night that I had been
15 exposed to enough deep thinking for one day, and I thought that
16 we would be better off, today, if we turned to Alaska Natives
and people from Canada and said, "What are you doing about
17 this?" And I think out of a discussion of the things that they
18 are doing we will perhaps learn more than by continuing with
19 that general discussion. And I, therefore, with your approval,
I hope I have your approval, propose that today what we do is
20 this: we spend the first perhaps hour or so completing yester-
21 day's discussion, and I propose to ask Mr. Austin Hammond to say
22 a few words, and then to see if any others wish to respond to
Gary Holthaus, Tom Lonner, and Don Mitchell. But by about
23 10:15 or 10:30 I hope we can then start to talk about the
24 Alaska Eskimo Whaling Commission, and I hope that Marie Adams
25 and Mr. Rexford will lead the discussion about the Whaling
Commission. I hope that we can move on from the Whaling

1 Commission to the International Porcupine Caribou Commission,
2 and that Mr. Jonathon Solomon will lead that discussion, and
3 then I thought that that would bring us this afternoon, or
4 sometime this afternoon, logically to call on our friends from
5 the Council of Yukon Indians to talk about their land claims
6 negotiations. They are, of course, users of the Porcupine
7 caribou herd, too, and then to ask the people from COPE, now
8 they were not able to come, but the government negotiators are
9 here and they are willing to talk to us about the COPE subsis-
10 tence provisions, and indeed extracts from the COPE settlement
11 are on your table. And we also thought we would ask
12 Mr. Spaulding, the lawyer for the Dene-Metis to talk about what
13 they are trying to achieve in subsistence in their negotiations
14 in Canada. And then I thought on Friday we would talk about
15 the Eskimo Walrus Commission, and Caleb Pungowiyi had to be
16 away this morning, but he'll be back this afternoon, and will
17 be able to lead us tomorrow morning in that. Jim Kolwalsky is
18 here from TCC, and I hope Jim will talk about what Tanana Chiefs
19 are doing and the matter of self-regulation and subsistence.
20 And if the representatives of the Pribilofs and NANA arrive we
21 will hear from them, as well. And I hope that Harvey Feit can
22 tell us about James Bay and Northern Quebec tomorrow, and that
23 Dan Gross can talk about what is being done about subsistence
24 in a number of third world countries. And I may have left some
25 things out but we can adjust and revise this agenda as we go
along. That would still leave us Saturday to return to some of
the underlying questions that were raised yesterday. So,
if...that's the way I would like to proceed, that would be more
useful to me, and though I thought yesterday was useful, I
think we will spend our time more effectively if we turn now to
specific questions.

But before we do that, I
think we should conclude the discussion of the Lonner,

1
2 Holthaus, Mitchell views. And I was going to call on
Mr. Austin Hammond and two or three others that asked to say a
3 few words before we move on to talk about the Whaling Commis-
4 sion, and Mr. Burton Rexford is with us, along with Marie
5 Adams, for that purpose, and I'm glad that Mr. Rexford was able
to join us today. And Austin Hammond will be speaking to us,
6 and Sid Smith has asked to speak, to say a few words. And I
7 think Dan Gross might be willing to throw something into the
8 pot, as well. And any others who wish, over the next half-hour
or so, and then we'll move on to specific cases. Don Mitchell
9 said he didn't know what the answer was, I don't know whether
10 he was seeking to challenge us or not, perhaps he does know the
11 answer, but we'll leave it at that, he doesn't know the answer.
Maybe the only answers are what are people doing out there for
12 themselves, and that's really what I'd like to hear about over
13 the next couple of days. So, Mr. Hammond, you have the floor,
sir.
14
MR. HAMMOND: I like to
15 stand close to that blanket. Before I start speaking here,
16 always the BLM are here. They write a letter to me, how long
do you know Chilkoot, and how long do you stay? This the
17 reason why I bring it over, to show them how long we own
18 Chilkoot. Before this year, before it made it, I asked Jennie
19 Thlunaut, that's our grandma, so she told me, when I asked her,
"Did you fix that?" she says "No, my father's oldest sister fix
20 it." And she figure 200 years old, that's how long we have it.
21 And all the people came here, from Sitka, from Angoon, I call
22 Angoon and all over, to talk about why we own the places, to
show to you. Our people have a place in Sitka they call
23 Keneshaw (ph), it's a cross, they own it. And Angoon, that
24 flood, they call old (?), and ourself will call new. And this
25 one, in Chilkoot, I don't have it on, since the flood, our
people know the story. And a lot of people don't understand

1 how we come and gone from back, since the flood our people, one
2 on the other side, so our people walking down. Some Yakutat,
3 some came Taku, Stikine, all the way down the line. So this
4 one here, it came from Chilkoot. And I have to talk Tlingit,
5 and I wish you could understand me. And we been trying to
6 teach how to talk Tlingit in Haines. My grandchildren, the
7 reason why I bring this here, when I call, when they sent the
8 letter to me from here, from BLM, when I had to camp there, for
9 the children, and they asked me, "How long did you know
10 Chilkoot?". So I wish you, that's in front of you, we had it,
11 you could look at it, when I'm talking Tlingit.

(SPEAKS TLINGIT, TRANSLATION IN APPENDIX SECTION)

....the one I put it in. Our history. You been asking us,
12 "Where's your history?" This is our history. We never change
13 nothing, we still had it, you white people been changing what
14 you got in front of you, everytime you change. Us change us,
15 we don't change. We have it, for 200 years, that our land.
16 It's hard for us to know it, myself, I didn't go to school, I
17 can't read, so if I made a mistake, so I brought my lawyer with
18 me. I love to work with you people, anything, I didn't put it
19 on the paper. I love to do things that I could learn from you
20 and you could learn from us. Who come, all what I don't put it
21 down, that's what I, the reason why I'm talking to you. Like
22 Sitka, they came. Angoon, they didn't come. But from the
23 flood we know the history of our land. In Chilkoot we had it
24 on the mountain, two men standing there. Pretty soon, you will
25 see, they'll fix it for me. And Sitka, they call Keneshaw
(ph), that's a cross on the mountain. Angoon, there is a fort
there, they built it up, all the way up, ahead of the flood.
They are right to talk about this, whoever come, to talk on
subsistence, they know what they're talking about. So I put
this in ahead of you, to know what we have to do. I'm sorry I
have this cold. Put that up... (away from mike)...the reason

why I brought it over, and I don't put this one on that table. How far we know, this our shaman. It came from Pt. Sherman (?), that's where the the fishline is, we're fishing up. But now they move it down. This is our shaman. First he tried it, to get the power. But some people, I myself, I done a lot of mistakes. This is what he did, first when he tried it. He didn't have it. But when he get back to the village, that little boy was sick, so they call on the man, come on, cure our son. So he came. But when he come around, the people, the older people sitting there, like that, the way you sitting, and they see, he don't have the power, he don't have it. So the people said ...(Tlingit)...it's not in him, it's outside. This is what we call Dakei (ph). So, that, he have to walk out, and he went to Pt. Sherman, by himself. When he got out, any bird he see flying, he didn't grab the bird, just "Here, you're going to be mine." Anything what he said, you going to be mine. Anything what's running, he gonna be mine. Just like he's put it in a bag. This is the reason why we call now Tukchyeh (ph). Now, means the people sitting here, Tukehyeh. If all of you, stomping your feet, our shaman is going to be strong. They fighting each other, lot of times, and they talk to each other before the long distant you have. They know what's going on down there, from way up in Haines. This is what I want to show you, how we learn from my grandfather, Jim David and Joe Wiskus (?). And the other one, I didn't bring it, about fomah (?). Lot of people thinking, we are just trying to grab, we now, we had it, because we lived there. All the way, I could mention, from 19-mile, up above there's 20-mile, that's where we used to fish, up there is below us, Klukwan (?). Klukwan, it's an old village, Chatuktukan (ph), but the white people make it real easy, Klukwan. But our Tlingit way, skued (ph), and that's another word, skued (ph). Anything, the tide coming in, it's just like it's coming out, it's floods there, this is what we

skued (ph). That's how we call Chilkoot, that white man call it easy, Chilkoot. Skued (ph), this is the real name. So, all this then, I want to show you, because the other ones going to talk about subsistence. Our Tlingit knows better. You folks just learning, you go sample something, you take the scale out, but our people knows how to handle fish. I thank you. Thank you.

(APPLAUSE)

MR. BERGER: Well, I have three names of people who had, wish to speak: Nelson Frank, Sid Smith, and Dan Gross. You might just turn the mike over, Woody...

MR. FRANK: Thank you. My name is Nelson Frank. I'm representing 2,000 people in Sitka. I am on the tribal council. I wanted to make a brief statement on subsistence. We were asked to make comments on the three papers that were presented yesterday. Unfortunately, the non-participants in this roundtable discussion beat me to the stack, so I have no comments for the paper, other than the fact that I would like to comment on the dances that were presented, and accordingly I dressed down for the occasion. Yesterday, I had a mohair jacket on that obviously came from Saudi Arabia, and my shirt and tie were from Paris.

Subsistence living, a margin way of life for most, has no such connotation to the Native people of southeast Alaska. The relationship between the Native population and the resource of the land and sea is so close that an entire culture is reflected. The traditional law, the ethnolegal structure which allows the Native nations of southeast Alaska to coexist in relative harmony down through the centuries, was passed from generation to generation intact, through the repetition of legends and observance of ceremonials which were largely concerned with the use of land, water, and

1
2 the resources contained therein. You just heard Mr. Hammond. Subsistence living was not only a way of life, also a life
3 enriching process. Conservation and perpetuation of subsis-
4 tence resources was part of the way of life and was mandated by
5 the traditional law and customs. Although there has been inroads into traditional way of life by a cash economy and by
6 cultural dilution, the basic relationship of the southeast
7 Alaska Native population to subsistence resources remains un-
8 changed. In recognition of this relationship, and in a continuing effort toward the preservation of our cultural values,
9 as well as meeting nutritional needs of the members, the Sitka
10 Community Association, or the Indian tribe, sponsors subsis-
11 tence gathering and subsistence-preserving projects and activities. As you heard over the past two days, we've been classed
12 as urban, and this is how we urban people continue our food
13 gathering and processing.

14 We wrote a paper on Food the Native Way. During the past year the Food the Native Way
15 has directly benefitted at least 200 tribal members and
16 children in numerous ways, including training in recognition
17 and preparation of wholesome and nutritious traditional foods. We have a preceptorship, where gentlemen like Austin pass down,
18 through the training effort, that sets aside the food gathering
19 process and the reasons why. We have a learning process that
20 continues on from the very young to the very old. This association between the parents and their traditional people is
21 a personally rewarding experience. We have several other areas
22 that we like to lay claim to. We like to say that, in our
23 effort to gather our food, we sit down and tell them the reason why. We tell, in stories and song, the reasoning behind the
24 gathering and taking of the food.

25 We built a tribal smokehouse in Sitka. As you heard in previous testimony, you

found that the systematic destruction and burning of our smokehouses, this one is right on tribal trust property. We find that this project prepares and distributes to the frail, the elderly, to the widowed, and to the needy tribal members. We distribute smoked fish, dried fish, salt, and canned subsistence foods. In addition to the food values realized, the subsistence eligible beneficiaries are transported to gathering sites by our staff, and participate in gathering activities to the extent of their physical abilities. A portion of the realized food so gathered is the focal point of traditional social gatherings and ceremonies which are full of our value.

In 1984, with the help of the Alaska Native Brotherhood and Sisterhood, and with the cooperation of the "Double OO" or the Senior Citizen Center, three traditional potlatch-type socials were held. These benefitted 250 people. Subsistence gathering was discussed and carried on. An additional 180 persons meeting poverty criteria were given processed traditional foods through this program. Half of these were elderly and very poor people.

We also went to the point of sport hunting and fishing for subsistence. The tribe, through tribal staff and volunteers, makes fishing and hunting trips available to tribal members who cannot engage in these activities because of economic or physical reasons. We have a computerized list of all of our talents and we utilize that computer bank to help those needy people. A total of 45 such subsistence gathering efforts were made in 1984, benefitting 158 people. Subsistence resources realized include salmon, bottomfish, shellfish, seaweed, herring, herring roe, berries, squid, octopus, and subsistence plants. This effort is handicapped because of the absence of subsistence provisions for resources as marine mammals, deer, and other land animals, the silver salmon, and the king salmon.

We are asking the Commission for a roundtable consideration of the following issues which are are affecting subsistence use gathering of our resources in a negative way:

The Advisory boards, the local and regional, how are these board specifically tied into enforcement of subsistence priority or ANILCA? Number two, the federal funding to administer the subsistence priority, how does the State allocate these funds? Number three, no subsistence provisions for deer hunting and silver salmon, we want to know why. And all of these subsistence food gathering activities are tribally sponsored.

Mr. Chairman, I would like to thank you, and I'd like you to consider those three areas.

MR. BERGER: Thank you, Mr. Frank. Perhaps, before we leave the discussion, we might ask Steve Behnke to comment on those three issues raised by Mr. Frank. Could you do that now, Mr. Behnke.

MR. BEHNKE: If desired, I'd be glad to.

Mr. Frank's question about the advisory committee and regional council system, there really hasn't been much discussion in this group about those bodies, but those are the bodies that are recognized in ANILCA, required, the State is required under ANILCA 804, 805, Section 805, to have these bodies in existence as part of the requirement, the way that the State meets the subsistence provisions of ANILCA, to be in compliance with ANILCA. And the advisory committees are composed of individuals in local communities. The regional councils are composed of the chairman of local advisory committees. The State sees those, both those bodies, as one fundamental way to get proposals for regulatory change to accommodate subsistence uses into the, before the

Board of Fisheries and Board of Game.

On your second question, about federal funding. ANILCA also specified that if the State met these provisions the State would be reimbursed up to $5 million a year for its activities related to support for the advisory committee and regional council system and also for technical support to the advisory committees and regional councils. And the way the State has provided those has been through the board, the Division of Boards within the Department of Fish and Game, which provides staff and also travel funds for the advisory committees and regional councils. Also, a portion of those funds go to the Division of Subsistence, for the research that it conducts, and for the staff that it provides. Those staff...

(TAPE 5, SIDE B)

are available to the advisory committees and regional councils to assist them in developing proposals. The State, although ANILCA says up to $5 million are to be available, Congress has never appropriated more than $1 million, and that's a reimbursable amount. The State has to spend $2 million to get $1 million. We're currently spending about $4 million on this, in this area, between the boards and the Division of Subistence, and the State does get reimbursed $1 million.

Your third question, I'm not familiar with the regulations for deer hunting and salmon, silver salmon, in Southeastern. But my understanding is that deer regulations, maybe I'd better not, maybe I'd better just leave it at that, but typically, in those kinds of situations, unless the board is...The Board of Game tries to accommodate customary and traditional uses through its seasons, normal seasons and bag limits. And in Southeastern my understanding is, in many areas, the deer seasons and bag limits are fairly liberal. There's fairly long seasons, in some areas. But

1
2 that's quite variable. I'm not familiar with the silver salmon situation. I could certainly get that information for you.
3 MR. BERGER: Steve.
4 MR. LANGDON: I just want to
5 make a couple of comments about the situation, because they point up some of the dilemmas in the currently operating sub-
6 sistence law. I don't think we want to go into them in great
7 length right now. This is a community, a heterogenous com-
8 munity with a population of, Nelson mentioned, 2,000, Tlingit, I presume those are all...and Haida, okay, Woodrow...and in
9 the, entire population of the community of Sitka is 8,000.
10 It's in this kind of a community in which the application of the state standard on a community level may lead to the denial
11 of subsistence access to these kinds of populations. In this
12 particular case, we will see, I think, as the tribe in Sitka
13 comes forward with a proposal to the Subsistence Division and the regulatory process about the coho season, about the deer
14 season, we will see in the mechanisms of the data collection
15 and the working out, how that subsistence priority is going to
16 be actualized in this particular case. It remains to be seen, it's a open question here, when those things begin to come
17 forward.
18 MR. BERGER: Sid Smith.
19 MR. SMITH: I was listening
here yesterday, and what I wanted to do, I think there's a lot
20 of new faces here. Ten years ago I was sitting on the other
21 side. My concerns were that the Alaska land claims act didn't
22 address our way of life, which is an economic system, I hear that going back and forth, that's what I felt in '74. I wrote
23 three, four articles in Alaska Magazine, also Anchorage Times,
24 and also one in Dillingham. I approached AFN in 1974 to form a
25 committee on subsistence, also justice. They funded us for two months, and they defunded us. It upset me. But what I found

1 out was that I upset them, because they were concerned about
2 the d(2), their land selections, it upset the State, and they
3 were wondering why I was doing this. Finding out that AFN is
4 basically funded by the regional corporations I could under-
5 stand that. So, finally after knocking on doors, the Regional
6 Office for Development, they won't listen to me, so I finally
7 went into Rural Cap. And we started the subsistence law. It
8 took us approximately four and a half years to get the bill
9 passed.

10 What happened in D.C., what
11 Harold Sparck was talking about, strategy. We talked about
12 land use. You will find out at that time there was approxi-
13 mately 400,000 people in Alaska, approximately 75,000 Alaska
14 Natives within the state. But, by using the word majority we
15 talked about land use. Alaska Natives were the majority users
16 of the state. We talked about all Alaskans in our writings, we
17 didn't just talk about Natives, black, white, we talked about
18 all Alaskans, all 400,000. We used those kind of words.

19 Also, if you'll take
20 notice, you are talking about who's managing the resources, the
21 strategy we used, with all the foul-ups that the State has
22 done. I can talk about this thing probably six months, all the
23 foul-ups that they had, from beaver, herring, you name it. We
24 started realizing that our renewable resources were going to
25 profit entities. Big population coming in. We talked that we
would like the State to manage the subsistence bill, if it was
passed, even though we knew of all the things that the State
has done to us. When we got into the question, why did we want
the State to manage our resources?, we explained that what
we're looking at is what you call local control. It is very
hard for the federal government to manage something way down in
D.C., just as it is to manage from Juneau, but at least it was
closer home. We had a show-and-tell game. Nineteen seventy-

five we decentralized the school system from Anchorage here. We used that approach. That we decentralize Fish and Game, so it comes more local control.

We talked about the Fish and Game biologists as being horses with blinds on. Why? Because they didn't even understand the ecosystem. Why? I don't know, I'm not a biologist, but the thing about it is our people used to talk, herring, king salmon live together, that's part of the ecosystem. Walrus, clams, look at Walrus Island, there's no more clams left. What's happening? Walrus are going down, too. Port Moller, coming into Nushagak Bay, you never seen that before.

When you talk about economic systems, if you go around the state you will find out, most of those people, if they make $4,000, how do they live, when their cost is so high? A town or a city, average pay is $25,000. Think about it. How do they exist? I'll try to explain it later on. Where I come from we have 240 people in the village. It's my third year in Anchorage, and it's getting to bother me a lot, but not as much, because I work with a lot of young students. In that village we only have nine workers, that's what you call an economic base. A lot of us are forgetting that, when we talk about villages we talk in general terms what we know. The gentleman that lived in Lower 48 and Anchorage here, he doesn't talk in terms of where's the economic base. We're forgetting those.

There was a statement made yesterday about the State not concerned about the subsistence law, in 1978. I happened to be there. The State wasn't even ready for it, they didn't even know what the heck was going on. Skoog had to call the governor and get an attorney to say, hey, these guys are doing something out here, we gotta get on the ball. The state itself has a problem. Twenty-eight per-

1
2 cent of the state is owned by the State of Alaska, 60 percent
is owned by the federal government. The 11 percent that is
3 owned by regional corporations and village corporations are
4 pretty well much in control if you really look at it. The land
5 selections, the majority of it was selected by subsistence way
of life. They chose the land that they know that they can hunt
6 on, but yet they still have minerals on. One percent is owned
7 by private ownership. What's going to happen when a regional
8 corporation makes decisions, get oil, timber, whatever? You
think they're going to listen to their own people? Boy, you
9 got something coming. They're basically forced, by the federal
10 government and the State, to live up to their regime, which
11 means profit-orientated. Another problem we got to look at.

If you take a look at
12 Hawaii, I happened to have a chance to talk to some of the
13 people over in Hawaii, they're four to five generations behind.
14 They don't talk about their culture, they don't look at it,
they don't have potlatches. Alaska here, the Alaskan people
15 here, have it. They still have it, you can go out there and
16 touch and look at it. And I think that's what a lot of the
17 people are trying to preserve.

When you talk about local
18 advisory committees, that was one of our most scary things that
19 you can ever work with. We looked at 'em. We found out that
20 60 percent of them was made up from the big, what we call urban
villages, like Dillingham, Bethel. And they were, a lot of the
21 people were guides, businessmen. The local people, like
22 Bristol Bay has 29 villages, out of the whole board member of
23 11, only one Native of a village happened to be from Monokotak.
So the odds were against us there. When we were also in
24 D.C. we did not want to upset the applecart. Our goal behind
25 the thing is what you call regulatory powers within a geo-
graphical area, that's what we're looking at, and that's what I

hope we was talking about today. Take a look at it. Fish and Game, or the State of Alaska, doesn't want to hear that, that's a no-no. They say, how can you manage your resources, do you have a degree?

Things I like to talk about is like the first one, the regulatory powers within a geographical area. Also make it cost effective. We pounded on the State's door, saying that we talked about 12 to 15. You know what they gave us, they gave us 6. So that people from Barrow to Bethel have to meet. How is that cost effective?

Language. I hear the gentleman over here talking about money being spent by the State and being reimbursed by the federal government. We tried something very, we tried things to find out what's happening to what we're saying. So what we've done, is when the State brought in their own secretaries and you name it, we said, no, we don't want them around here. Because every time we give you information it is turned around. So what we did was we made a comparison of a local secretary, from the village, and showed them the comparison, what's put down. And I realize that the State has to live by its guidelines, but they're not hearing what we're really saying. So that's one thing you have to watch for is the language--is it really coming from the people that utilize these resources?

Number three. One thing that you gotta keep in mind. The 1971 act is totally different from the 1978 act. Two separate acts, yet they kind of comingle. The other big problem that I see is that you're going to have to understand that we're dealing with two different types of economic systems. One is cash economy, one is subsistence economy. They are saying to our economy which has existed for at least 40,000 years, "change over night." And that's exactly what they're trying to do, speed us up, speed us

1 up. What I look at is myself and I wrote it, a story about why
2 is the subsistence people are a germ? Why are we a germ?
3 Most of you people know what you do with a germ. You got the
federal government, you got the State, you got the regional
4 corporations, you got PHS, you got housing, they're attacking
5 our way of life. There's so many problems to deal with it, but
6 understand that there's two different systems. The cash
economy only lasted for a little over 100 years. And they're
7 saying that 100 years is better than 40,000? Those are the
8 things you have to look at. I know it's going to be tough to
9 say, well, let's take a look at it. Can't we have two
different economic systems within the state?
10 The thing I talked about
11 earlier was that I feel that the Western culture, with all its
12 profit orientation, taking renewable resources and turn them
into dollar, is...they really want us to change, overnight.
13 And I really wish, since after 10 years, and after 6 years of
14 the passage of the act, that we really start taking a look at
15 these things. And I'm glad that you're sitting down there and
talking about this, and I'm glad that I at least get to talk
16 about it, because I still work it, with a lot of the students
17 that I work with. I teach natural science of Alaska, even
18 though I don't have a degree, but I talk about these issues.
AFN, subsistence law, the way of life, and also to compare the
19 two, between the western culture and our culture. So, thank
20 you.
21 MR. BERGER: Thank you,
Mr. Smith. Dan Gross, did you want to say anything at this
22 point?
23 MR. GROSS: I can pass if
you're pressed for time.
24 MR. BERGER: Well, we're
25 not exactly pressed, so we'll treat you as perhaps the last on

1
2 this subject, and then we'll turn to the Whaling Commission.
MR. GROSS: Okay. My
3 comments are addressed to a broad issue, perhaps one of these
4 deep thoughts that you referred to, but I hope that they'll be
5 helpful. I want to remind you that they're based on experience
in a context very different from the one which we've been
6 discussing for the last day and a half, because all of my
7 experience has been with dealing with the subsistence regimes
among Native peoples in the tropics of South America. Never-
8 theless, there are some issues that I've confronted in my work
9 there which I think may have some relevance for the questions
10 we're addressing here.
Most of the contributions
11 that we heard from various parties referred to the integral
12 nature of subsistence and the culture of the peoples who prac-
13 ticed subsistence economies. We see that there's a kind of
triangle, which includes at one angle subsistence activities,
14 and another angle what we may call the moral economy of a
15 population which depends on subsistence, which involves
16 reciprocal exchange and other kinds of exchanges which are
mandated by the nature of the goods which are being circulated,
17 mandated by their perishability, and by the fact that the
18 supply that is available is not constant for any household or
19 any individual, and these exchanges then become traditional and
customary and may even be regarded in some ways as sacred. The
20 third pole or the third angle of the triangle is village life,
21 which is founded on and based very heavily on this moral
22 economy, the exchange of goods, and on the subsistence activi-
ties in which people engaged. The size of the village, the
23 location of the village, I believe that it's true certainly in
24 the context of Alaska Natives just as it is in other areas of
25 subsistence economy, the size and location of the village is
very much dependent on these other aspects. And on this

1
2 triangle or triumvirate of factors the persistence of Native culture rests and the identity of Native peoples. This is the way I see it from the experiences I've had in another part of the world. The aspect that I believe hasn't received quite as much emphasis in most of the discussions here has been that these factors and the relationships between the factors are not frozen in time. There is good evidence, in the cases that I have knowledge of, once again from another part of the world, that change was going on constantly, even before contact with Europeans. That these groups were not simply arrested at a particular stage of development. Change was probably accelerated after European contact, and after the introduction of new technologies, new diseases, and after people were pushed off the land and moved to areas where their subsistence habits had to change. The point of all of this deep thinking is that the context in which any particular Native community exists is a dynamic one, it's a changing one. The danger is, I think, for some of these communities to allow at any moment to, for outsiders to determine what is customary and traditional, within those contexts, and to suggest to them that this is what it is to be an Alaska Native. That it is customary and traditional to use this kind of weapon or this mode of transportation, or it is customary and traditional for people to live in a village of a certain size, if they live in a village of a larger size then it is not appropriate for them to be subsistence producers. I was intrigued by a lot of the discussion that I heard, particularly today, but also yesterday, which gives me reason to believe that the culture of Alaska Natives is, as it is elsewhere, very dynamic and constantly changing. As, as in the case of all living cultures, a culture which is constantly redefining itself, and constantly engaged in a negotiation with other cultures as to what its own identity is, and how it's going to make its way.
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2 So I think that the
relevance now, the practical aspect of this, has to do with the
3 way in which the rights of access to subsistence resources are
4 going to be defined. If they are going to be defined in terms
5 of some of the formulations that we've heard I think there is a
danger that the possibility for dynamic change, for adaptive
6 change in the future, will be closed off. And if, on the other
7 hand, they can be defined in a way which is appropriate to the
8 particular cultures involved, and with the participation of the
people of these groups, I think there is a greater chance that
9 these cultures will be able to continue to adapt and to con-
10 tinue to pursue subsistence economies. Not in the same way as
they have in the past, I think that's out of the question, but
11 with a substantial amount of dependence on those resources.
12 MR. BERGER: Rosita.
13 MS. WORL: Yes, your honor,
just for the record I would like to expand on the translation
14 that my grandfather Austin Hammond gave to you in the prepared
15 statement you have there. He wishes that BLM were here, he
16 asks, "Are there any BLM officials here?", because he wanted to
tell the story of how the Tluxwaaxadi clan claims title to the
17 Chilkoot lake and river area. And then he goes on to tell the
18 story, and we have a brief account of how the Tluxwaaxadi came
19 to claim and gain title of that area. And when he found out
that the federal government and that the State had title to the
20 land, he then asks them, and he wanted to again ask BLM, okay,
21 if you have title to the land, you tell me the stories, you
22 tell me the stories which give you and validate your claim to
that area. And he suspects that they don't have any stories.
23 MR. BERGER: They don't have
24 the right ones, anyway!
25 MS. WORL: Right. And the
other issue that he wishes to raise is that the laws have given

title to other people, to other people besides the Tluxwaaxadi. They've given them title to the land. And he says the State...he equates the arrival of white people like a tidal wave. And this is a story we've heard over and over again, that white people are like a tidal wave, they are coming in and pounding on your shores. And they take title to your land and implement laws and regulations that affect your way of life. And he sees this, the tidal wave, as continuing. He has a charge to protect his land for his grandchildren, and he feels remiss in the fact that he has not been able to achieve title to the Chilkoot Lake and Chilkoot River area, or any of the area, as a matter of fact they have not title to, under ANCSA, the Chilkoot people did not receive one acre of land. And he feels that he has not been able to succeed in his duty to protect the land for his children. And he talks also a little bit about the relationship that the Tluxwaaxadi have to the wildlife, and he talks about how, the spiritual relationship that they have, that they care for them so much that they will even clean the rocks on the river, so as the sockeye won't get entangled in the seaweed. And yesterday you heard how unhappy he was with the fish weir, and he feels that the fish weir is responsible for decreasing the population. He thinks that there should be a greater escapement allowed into the Chilkoot Lake area. He thinks that the lake could hold a lot more salmon, but he thinks that the Fish and Game don't know what they're talking about. And, anyway, he again tells the story to validate his claim to the area, even though he says other people have title to it.

MR. BERGER: Thank you. We will have a complete translation of Mr. Hammonds's remarks given in Tlingit when the transcript comes out. Well, I think now we can turn to specific initiatives taken by Native people in the subsistence area, and start with the Alaska Eskimo

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2 Whaling Commission, and Mr. Rexford and Ms. Adams, if you
would...
3 MS. ADAMS: Yes, I would
4 like to introduce the vice chairman of the Alaska Eskimo
5 Whaling Commission, Burton Rexford. He is the commissioner in
the Alaska Eskimo Whaling Commission from the village of
6 Barrow.
7 MR. REXFORD: Thank you.
We're talking about subsistence, and the area I'm going to
8 cover is whaling. Subsistence whaling has been a controversial
9 issue locally, statewide, and nationally. In spite of the
10 Native peoples' knowledge of the great bowhead whale, the
Eskimos have been repeatedly put on a chopping block by the
11 world scientists and regulatory government agencies. Ninety-
12 nine percent of these people have very little knowledge of
13 migration and behavior patterns of this great sea mammal that
is so respected and that is such a large part of our
14 subsistence lifestyle in every way.
15 A whaling captain is faced
16 with great responsibilities. His number one priority is, of
course, the immediate concerns of safety while out on the
17 hazardous and icy arctic waters. Moreover, he is concerned
18 with the sustenance of his people. It is his knowledge and
19 preparation that the people depend upon for their daily food.
A whaling captain is also charged with the preservation of the
20 great bowhead whale. This duty and responsibility of
21 preservation of the whale has been handed down from immemorial.
22 Now is the time for Native
people across the state of Alaska to be given the responsi-
23 bilities and duties of regulating their own subsistence needs
24 in their prospective regions.
25 A little bit of history of
one of the captains, whaling captains from Barrow. His name is

1
2 Alfred Leavitt. Alfred Leavitt goes on to say, was asked to
discuss our cultural whaling lifestyle, and the changes he has
3 seen regarding whaling:

4 I started whaling by
5 first observing the whalers and by learning from them
beginning in 1930. Through actual experience by the
6 sea, I observed the older whalers' traditions. I
7 actually started my own whaling crew in 1946 or '47.
8 My desire for starting my own whaling crew was based
on knowledge that I had gained by watching the pat-
9 terns of the whales and the art of whaling from the
10 whalers. Even though I thought I knew as much as I
11 need, when I caught my first whale, someone told me,
'When you catch your whale and there are people who
12 help you, then you have to give and share your whale
13 with them without being possessive. In fact, you must
given them enough that they will not have any need to
14 ask you for some more.' This was one piece of advice
15 that was given to me when I caught my first whale.

16 From that time on I
17 learned that whaling was a very difficult task. There
were occasions when we had absolutely no meat or food,
18 and there were times that we had only two or three
19 bombs on hand to take with us when we went out to
whale. Even then we were never uncertain because we
20 realized that our only obstacles to being successful
21 were our own selves.

22 After 1950, I did not
do actual whaling for approximately three years, and
23 had my brothers take care of my whaling responsibili-
24 ties, using my boat. I left the whaling in their
hands. After the three years, I started whaling in-
25 tensely and continue to do so to the present day.

1
2 When I was whaling I experienced times of hunger along with my brothers.
3 This is when all my brothers were still alive. In our
4 lives, when we caught a whale, we were actually en-
5 riched because we knew then that we would be able to
survive through the coming winter. If a village did
6 not catch a whale, then we knew beyond the shadow of a
7 doubt that we would experience extreme hardship and
feared the oncoming hunger that would strike us.
8 Thus, we would all be in an anticipatory mood while
9 out whaling, even to the point of going without sleep
10 for long periods. We knew that when we caught a
whale, we would then be able to sleep easily and eat
11 well.
12 As for the present
13 day, we have been given a system of quotas. Everyone
14 seems to believe that life is much easier to live
through, but when the quota system was incorporated
15 and the censuring of the whale hunt was forced on us,
16 it was and is the most inapprehensible difficulty we
have yet endured. When we do not catch a whale, we
17 are without our sustenance for the oncoming winter and
18 go hungry. This is what we have to live with today.
19 We, the Inupiat
people, by own hands did not cause the whale popula-
20 tion to become depleted. The Westerner told us that
21 the whales' population was decreasing. We have not
22 seen their numbers decrease. However, if their num-
bers are smaller it is because of the Westerners'
23 influence here in the Arctic. Our animals from
24 ancient times have never greatly decreased in number
25 even though we totally subsisted on them. Even during
the times we would catch 16 or 20 whales in Barrow

their numbers would not decrease, and still it is said that we are the cause of the depletion. The Inupiat people have unjustly been blamed for killing of the whale as a species.

Without doubt, the oil companies", I like this, he is attacking the industry, "...the oil companies know that their pollution, both noise and chemical pollution, can poison the animals of the sea. Yet we are blamed. The Inupiat people know that we do not carelessly cause depletion of the animals.

Long ago we totally subsisted on the animals and the land. Then the sea and the land were "the store" for us. This was the way we survived. In this day and age we are not totally dependent on all the animals and have decreased our use of wildlife as our food source. We can now go to the stores for substitution. (Keep in mind this statement refers to Barrow.) We also need to keep in mind that Barrow has grown in population, therefore a balance needs to be kept with the population of Barrow and the number of whales that are caught. We need to increase our quota to lessen the shortage of whale meat of the populace of Barrow.

We know that we have no control over the arctic animals, but Westerners do have that controlling factor, it being the oil exploration and environmental changes that happen. Poisonous substances produced by the oil companies have been known to kill caribou, polar bears, and fish. Whenever we kill an animal we utilize all of it. Even if something negative happens, even if the meat is rancid, we still eat all the whale meat.

I was happy to be able to talk about these issues when the opportunity was presented to me. I had a grandfather named Akuvaaq who when I was growing up used to talk to me and tell me this, 'If you are ever lazy you will have hunger.' I would ponder what my grandfather had said when I started hunting. I seriously contemplated that statement and took my whaling responsibilities with solemnity. My grandfather also used to say to me, 'If you are going to hunt animals, you have to be absolutely still within yourself.' We are not the caretakers of the animals, only the universe is. And as for the future of the sea waters, any action by the oil companies must be made with extreme caution, because of the very large number of sea and land animals, not to mention people, that depend upon the sea for their livelihood. I want to be able to hunt the bowhead whale in Barrow for as long as I can.

I will cite a story narrated to me. My grandfather would talk about Tuukkaq and Anurruk who were brothers. Anurruk was an able whaler, but Tuukaq was the more skillful whaler. Thus their mother would physically tire from feeding so many people through the winter months to keep them from going hungry, even though each of the men had wives. These stories were heard when I was growing up. I also used to hear stories about the people from Nuvuk (Point Barrow) who would tease each other by creating teasing songs. I will now sing the song that Anurruk made for his brother:

"My mother Kullaatchialuk did not have a very able hunter (on her hands) who is Anurruk, but I do have a brother, who is Tukaq and indeed he is a man."

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2 Ever since that time I was able to remember, there was an unwritten law that
3 the whalers could not take another person's be-
4 longings. But times have changed within the present
5 day living/whaling conditions. We seriously have to
6 unite together and help each other without being
7 opponents to one another because living conditions are constantly changing.

8 My grandfather would tell me that if a person did not want to be helpful,
9 then he was respected enough to be left alone, this
10 was within the whaling circles. These are some of the
11 things that my grandfather would discuss with me. He
12 further reiterated not to bother people who opposed
13 you but that if I killed any animals then I had to
14 give it to the people. This was his lecture to me
15 concerning whaling and what he had observed first hand
16 as a whaler. I also observed what he had relayed to
17 me while I was whale hunting. My grandfather never
18 worked for me in any way except by the words of wisdom of which he passed on to me.

It was indeed and
19 still is to a large degree difficult to whale hunt. I
20 have undergone periods of times when we did not have
21 any heating equipment to keep us warm nor food for our
22 sustenance. There was a time I remember well when I
23 was whaling with Taaqpak, along with Argaitchuaq. We
24 were able bodied young men at that time and Taaqpak
25 would occasionally admonish us to go ashore and get
something to eat. This was during the time that all
we had in our whaling camp were weaponry. We were
given a small cup of tea infrequently. Yes, those
were the hard times we experienced when whaling.

1
2 Finally the time came when Aqivgaq took us out to go hunt for seals, since we did not have even scraps of
3 food to eat. Along the way we met the Akootchook
4 hunters. They encouraged us to go ashore to get some-
5 thing to eat. So we did and ate 'til we were full.
6 Afterwards, we headed back out to hunt for seals. We did finally find...

7 (TAPE 6, SIDE A)

8 one seal but missed it, which was to be our only source of food. Thus we travelled, hunting for seals.
9 Came onto a land-fast ice and were lucky to catch a
10 seal, at which time the land-fast ice began flowing
11 away at a rapid pace. We were not worried because we had secured our seal, but we also saw other hunters
12 who had to run for safety, so they began discarding
13 their game. We began retrieving them so we would have more to eat. We were fortunate to retrieve those
14 game, at that time we were not able to hunt for whales
15 because we were late in whale hunting. But at least
16 we had secured game, thus enabling us to survive a little longer.

17 I do not have much
18 more to say at this point. I hope that I have helped
19 out in what I had to say."

20 That was Alfred Leavitt.
Thank you, Mr. Chairman.

21 MR. BERGER: Thank you.
22 Please give Mr. Leavitt our thanks, too.

23 MS. ADAMS: Justice Berger
and colleagues, friends. I think you can understand from what
24 he read to you about how the whaling captains view their
25 whaling activities. It is not just for them. And if you can imagine, what happened, what reaction came about in 1977 when

1 they were asked to stop whaling. It was incomprehensible.
2 And people were deeply hurt. And then we started, the people
3 gathered together in '77 to deal with it, in Barrow, from the
4 nine villages who are presently in the Alaska Eskimo Whaling
Commission. And that was the time when the Whaling Commission
5 was formed to deal with the ban on bowhead hunting. I remember
6 listening to the meeting. I was out working for a camp where
7 we were teaching kids how to hunt, teaching them about the
plants, teaching them about our way of life. And listening to
8 it, people were very upset. Men and women were all crying.
9 And it still affects me very deeply that we were hurt by some-
10 thing like that. And when we started fighting for it, after
the Whaling Commission got together, one of the things that we
11 had, some of the things that we ran across were people did not
12 believe that we were still whaling, traditionally, the way we
13 were, and still carrying on the traditions that we did. And at
one time I took a movie to Washington, D.C. and they thought we
14 had actors actually out there with our parkas and the seal
15 boats. People did not believe the Eskimos when they said there
16 were more than 800 whales out there. We see them going by,
we're the ones out there. People did not think that we were
17 intelligent people, I guess, they thought they knew better.
18 But these people were from Washington, D.C., from all parts of
19 the world. And we were put in a very difficult position. But I
see the same sort of things with our other subsistence activi-
20 ties. It's still, lots of people still have a hard time under-
21 standing what subsistence means to the people. I know with the
22 caribou, you know, people did not believe what we were saying,
that there were more caribou. Things like that, these were the
23 kinds of things we were facing in '77. And for many years
24 since, I've been involved since 1978, for many years people
25 wouldn't listen to us.

1
2 And in 1980 it had gotten so bad we were facing the federal grand jury for taking a whale in Kaktovik. And we were taken to court because of our subsistence activity. People were again deeply hurt that we were being treated that way. In 1980 we got together with people, the scientists, down in Seattle, tried to work with the scientists, even though we were at odds with our own government, and tried to work with the U.S. government scientists, to try and do something. And at that time we ran into some of the people from Washington, D.C. and made an agreement that if they could go back and take the grand jury away that we would seriously sit down with them and try and come up with a solution. Because at that point the Native people were so angered they did not want to deal with the federal government any more. They were shutting the government out, because they weren't being heard. And then that's when discussions opened again with the government.

They went back and started working on taking the grand jury out. When we heard that they were doing that, we went down to Washington, D.C. in March of 1981 and made an agreement, not specifically following any particular law with the federal government, but an agreement between the management plan that the...I mean, it was agreement utilizing what was already up there in the North Slope and the western Alaskan villages. They were utilizing the management plans that were already existing in the villages, and they were also utilizing the leadership that was already there in the villages, and made an agreement that...this agreement was, in effect, the U.S. government was accepting our management plans, our leadership up there, and allowing us to regulate ourselves, with the existing management plans that we had in the villages. And left one thing between the federal government, and it also

1 goes into the IWC, also gives people a chance to put their
2 input in this one thing, is the quotas that we still have to
3 live under. Everything else the government agreed to utilize
what was already there, and that's pretty much the way we
4 operate today. And it's been very effective, there's been no
5 problems. People were afraid that we wouldn't follow through
with it, but in the most difficult circumstances the villages
6 have been able to manage themselves, and stop when they needed
7 to, even though they were hurting themselves, basically, by
8 following the quota. Some villages don't have the cash economy
that some of the other villages do, and we know they're going
9 hungry. And it's impacting their lives still today.
10 What he's talking about is,
11 what Alfred was talking about, is presently similar situations
12 that people find themselves in when they're out whaling. They
don't have heating, some of them don't, some of them go hungry,
13 they stay awake and try and catch a whale, to feed their
14 families and the community. And under the circumstances, the
15 villages have been able to manage themselves, and lots of times
people didn't think they would. And they have been able to do
16 that. And presently we're still dealing with the International
17 Whaling Commission, trying to make them understand the degree
18 of need that we have in the villages, and how important it is
to those villages, culturally, spiritually. And also, in our
19 society the whaling captains are leaders, and if you look at
20 the leadership in the North Slope, the mayors and the people
who are from the villages, the mayors and the North Slope
21 Borough, people who are involved with that, people who are
22 leaders, are whaling captains. Whaling has given us that
23 structure and it's still presently very much something that we
follow. A whaling captain is respected, he's a leader, he has
24 to be able to be a leader in order to go out hunting, he's got
25 to lead his crew, and he's go to lead the community in

1 ceremonies. He's go to be able to do that.

2 So presently, also, we're

3 trying to work with the federal government; finally, we're working together. And it's in sciences, in bowhead whale

4 research the Native community has taken a lead, we've lobbied

5 the federal government to continue research. And this research

6 is applied not just to the whaling quotas, but the majority of it is, but some of it is applied to the oil industry

7 activities, and we see the unfair treatment between the two.

8 They go after the quotas very hard, but when it comes down to

9 the industry they don't use very much of it, they sort of let it slide by or put it aside. The information that is gathered.

10 We work with the federal government in sciences and also in

11 studies to record what is there in the whaling villages in

12 terms of social sciences and also recording some of the history. We've done everything that we could to cooperate, and

13 sometimes we don't get any cooperation. Even though we don't

14 get any cooperation, we take the lead to do something about it.

15 No one is going to do it for us. We've taken that attitude, that we're going to do it for ourselves.

16 Anyway, before I go too

17 far, I wonder if there are any questions.

18 MR. MORRISON: Marie, yesterday Harold Sparck was talking about the AVCP involvement

19 with having to travel to meet with other users of the Pacific

20 flyway. And the Bureau of Indian Affairs participation in that was merely, well, was one of providing funds for the villages

21 to be able to travel to California to take part in those

22 meetings. But then Harold went on to say that all the

23 negotiations between the State of California and the AVCP

24 people was carried out by the villagers, by the people themselves, with the State, and there was no federal

25 involvement in those negotiations, and if I understood him

1 correctly there wasn't really any state participation in that.
2 And you've said that the International Whaling Commission
3 people would not believe Eskimo people when they said how many whales are up there, and so now the North Slope is involved in
4 using acoustical location devices to generate the type of
5 information that will, I guess, substantiate what Eskimo people
6 already know. Well, the Bureau is participating in that, to some degree, financially. And I also understand that there are
7 17 other nations that take the bowhead whales, and my questions
8 then are...my first question is, in the negotiations with those
9 17 nations, now is the negotiating done by the Eskimo Whaling Commission, is it done by the federal government for the Eskimo
10 Whaling Commission, or who does that part of it?

11 MS. ADAMS: Before the
12 International Whaling Commission meetings the AEWC meets with the federal government and we negotiate what positions should
13 be carried out to the IWC. So the work is done before we go to
14 the International Whaling Commission negotiating what position
15 the United States government takes to the IWC. So we're very much involved with it. And the 17 nations you are talking
16 about, they do some whaling, they don't take bowhead whales.
17 Bowhead whales are considered an endangered species and the
18 Eskimos are the only ones who are allowed to take that. They hunt sperm whales and some other fin whales.

19 MR. MORRISON: I also
20 understand that the, about a year and a half ago the
21 International Whaling Commission in its newsletter made a statement which I found surprising, that the depletion or
22 decline in the population of the bowhead whales was due to
23 commercial take and not to subsistence. I believe that's what
24 the International Whaling Commission did make that statement, didn't they?

25 MS. ADAMS: They did make

1 that statement, but it was largely due to the efforts that we
2 made to say what was historically true in their records.
3 MR. MORRISON: Okay. My next question might be a little more difficult. The Bureau of
4 Indian Affairs is involved in a program of statewide advocacy
5 and protection of Alaska Native rights to subsistence, cultural
6 lifestyles, and traditions, and is in the process of developing policies on how to, for decision making, to meet the federal
7 trust responsibilities for representing and supporting Alaska
8 Native subsistence interests. And so since it's in that
9 development stage, what would be the Eskimo Whaling Commission's recommendation as to what the Bureau's policy
10 should be to carry out that trust responsibility?
11 MS. ADAMS: One of the
12 things that we do with the Whaling Commission is we allow all the whaling captains to participate in the decisionmaking.
13 Each of the villages have meetings and decide what their needs
14 are, and then the commissioners get together and sit down
15 together, from each of the villages with a representative from a village, and agree by consensus, everyone agrees by
16 consensus. If there's any disagreement they sit down and
17 resolve that issue and come up with an acceptable solution.
18 And then from there we go to the federal government. I think that the most participation you can get from the users allows
19 people, you know, to come up with something that's acceptable,
20 otherwise if it's unacceptable there's a lot of hard feelings
21 and your management is, you know, questionable sometimes. But if you have something that's acceptable that works out pretty
22 well. That's what we've learned with the processes that we've
23 had to go through with the Whaling Commission.
24 MR. BERGER: I had a couple of questions, but any other questions around the table? Steve?
25

1 MR. LANGDON: I wondered if
2 Marie could comment on what her, the present situation in the
3 commission's eyes with regard to the influence of the
conservationists movements, both nationally and
4 internationally, and the attempt to halt whaling, subsistence
5 whaling. Is that still a concern? Is that presently an issue
to the commission?
6 MS. ADAMS: Presently the
7 focus is on stopping all commercial whaling. They've separated
8 commercial whaling and subsistence whaling. There is now a
separate management scheme for subsistence whaling. So, most
9 of the effort the last couple of years has been to stop all
10 commercial whaling, and they're phasing that down. And
11 supposedly it's ending in 1986. But in between times they deal
with the bowhead whale issue, and it's coming up this year, the
12 next following year, and I know they are going to be really
13 focusing on that. And there's quite a few issues that we're
14 going to have to face. But they're not looking at stopping
subsistence whaling, but they're looking at everything else
15 that we do, short of stopping it.
16 MR. BERGER: Tom Lonner.
17 MR. LONNER: Marie, the
costs of the AEWC must be very high with the travel and science
18 and so on. How are these huge expenditures of energy and so on
19 underwritten? Is there someone or an agency that is
20 supporting, financially and with other methods, the efforts of
the AEWC?
21 MS. ADAMS: For the
22 scientific research we do lobby the U.S. Congress and the State
23 legislature, and we have gotten appropriations from them. For
the operating expenses of the Whaling Commission, they are from
24 the North Slope Borough. All the travel and we've worked it
25 out so it's a lot more efficient than it used to be, so it

1 doesn't take that much. And it's...our experience has been
2 that, coordinating with the federal government, the State
3 government, and the North Slope Borough, coordination has cut
down a lot of unnecessary expenses.
4 MR. BERGER: Dave Porter,
5 and then Rosita.
6 MR. PORTER: Recognizing
that the Inuit of the western and eastern arctic parts of
7 Canada also subsist on the whaling economy, is there any
8 present working relationship with those people, and, if not,
9 are there any discussions toward cementing some sort of
structural relationship between your peoples?
10 MS. ADAMS: Under the Inuit
11 Circumpolar Conference, there is an Inuit Circumpolar Whaling
12 Commission. We meet at least once a year and discuss the
issues related to the Inuit people in Greenland, Canada, and
13 Alaska.
14 MS. WORL: Marie, maybe you
15 could expand a little bit on...well, first of all, I thought it
was really significant, you know, when I was doing some work
16 with the whalers, how the whalers quickly adopted or learned
17 about scientific principles. And I think you actually
18 incorporated that into the management plan that you went to the
Department of the Interior with. Maybe you could tell us just
19 a little bit about....
20 MS. ADAMS: Well, it was
21 one of the strategies that they adopted, was to learn every-
thing that they can learn, and sciences was one of them. And
22 they, in Barrow, I think Burton could explain a little bit more
23 to you about how they do it in Barrow, but I know they sit down
24 and interpret and go through the scientific jargon, translated,
so it's understandable for them. (Speaks Inupiat to Burton)
25 MR. REXFORD: Yeh. First

1 of all, we got a keen eye, so...we never close our eyes, we
2 observe all the time. And every year we make a study of the
3 great bowhead whale. It's been going on from time immemorial,
4 like I said. So it's just a handed down procedure, like, you
know. And we are observing. There is a large amount of
5 whales, and what is being put out today, in the data. Thank
you.
6
MS. ADAMS: Does that help?
7 Does that, in terms of the scientific thing, I think you can
8 understand that they are very observant, and that's what
science is based on.
9
MS. WORL: Right. I guess
10 the point that I observed with the Alaska Eskimo Whaling
11 Commission was that they quickly learned about net recruitment
rate, MSY, and then based on that they themselves developed
12 their own management regime, and that was the one that they
13 brought to the Department of the Interior.
14
MR. REXFORD: The
15 scientific data that's being worked on, that I know of, it's a
slow process. It's too slow for me, but got to have a little
16 patience, maybe in a couple of years we'll have good data put
17 together on bowhead whale.
18
MR. BERGER: Tony Vaska.
MR. VASKA: Thank you. As a
19 distance observer of whalers over the years, I do have a
20 question. And the question is: yesterday we talked briefly
about technological constraints by regulatory agencies, either
21 the National Marine Fisheries Service, the Department of Fish
22 and Game, the Fish and Wildlife Service, find ways to redefine
23 cultural and traditional ways of harvesting different species
of animals. I know they do that for the whalers. Have you
24 made suggestions, either to the National Marine Fisheries
25 Service or the International Whaling Commission, about the use

1 of perhaps more efficient whaling implements? Because I do
2 know, for instance, that the Japanese and the Russians use
3 large boats in the high seas to harvest whales.

MS. ADAMS: That's one of
4 the issues that's we'll be discussing at the next International
5 Whaling Commission meeting. We've been doing research on
6 improving the existing bomb. One of the things that we have to
realize, that they take umiats out on the ice and you can't set
7 a gun, you know one of those hand guns that they have, that the
8 Japanese have, and it's also, you'd have to teach everyone how
9 to use it. And it could be a very long time before they are
accepted. And what we've done is, we've looked at what is
10 there and try and improve on it. I think Burton would like to
11 add more to that.

12 MR. REXFORD: Well, in
weapons, I have been with the old weapon for a long time, so
13 it's hard to get away from it. My father, grandfather has been
14 with it, so...in fact, I got one that was made in 1878, one of
15 the shoulder guns. And we go to a meeting in our locality
about the weapon. We seem to have a resentment in going into
16 different areas in the weapon-wise, because we're well schooled
17 with what we've got today. Thank you.

18 MR. BERGER: Woodrow
Morrison, then Rosita Worl.

19 MR. MORRISON: Okay, the
20 question asked by Rosita about the science part of it. One of
21 the parts of ANILCA the language says that, in Section 8021,
that the...consistent with management of fish and wildlife in
22 accordance with recognized scientific principles...and in
23 southeastern Alaska we were involved in a land exchange with
24 the Bureau of Land Management, and were doing an assessment of
the biology of the area, and the biologist, a Western
25 scientist, made the statement that, based on timber types,

aerial photographs, that sort of thing, the area, the state of the art said that it should support a very large deer population. We told him there are no deer there, tried to explain, and finally had to take him out on a field investigation, to show him there are no deer there and then explain to him why. So it seems like we're running at cross purposes to exactly what recognized scientific principles are. And Mr. Rexford said that science there was based on having sharp eyes, in other words an involvement with it. Do you find a conflict between what Western science says and, if you will, Indian science? And I use the term "science" meaning a search for truth. And, again, I use the Indian science to make the difference between Western science studying one species and Indian science studying the interrelationship between that specie and other things. Do you find a conflict with that?

MS. ADAMS: We do have conflict with that. We've always said that we've got all of this knowledge and it's unacceptable to the Western governments and to different organizations, you know, based on the Western society. So, we've learned one thing, that we've taken the Western science, what is acceptable to them, but not because we're laying aside what we believe in. People continue to learn by observation, and they know they have that knowledge, and we're writing it down. We use that when we deal with the federal government, with the IWC, provide that information to them. But also we've taken even, like Burton said, Western science is a very slow process. And we know what's there already, but with the Western science it takes a long time to prove something. But from observations out on the ice people know what's there, from pure observation. We do find there's a big gap between the two.

MR. BERGER: Rosita Worl.

1 MS. WORL: Just an
2 observation. I've been fortunate enough to be able to be
3 allowed to study whaling and go whaling for several years. And
I recall one of the accusations that was primarily made by
4 conservationists was that Eskimos were hunting with modern
5 weaponry. And I recall my first experience of being out in a
whaling boat and watching these hunters with their modern
6 whaling weaponry. And Burton might want to talk about the
7 kinds of things that they use, but they actually have these
8 harpoons. I saw this guy standing up, and I saw this 40-foot
whale coming up, and I saw this guy ready to shoot that harpoon
9 into that whale, and I had a little problem trying to
10 understand what conservationists were talking about when they
11 were talking about modern weaponry. The thing that I did note,
that the Inupiat and the St. Lawrence Island Yup'ik are anxious
12 to improve their equipment and weaponry when it is effective
13 for whaling. I know that they have put in a lot of money to
14 try to improve the weaponry, the bombs that they do have.
According to the statistics, I think only about 1/3 of their
15 bombs actually work, when it's actually shot. But I do also
16 know that National Marine Fisheries previously had not been
17 supportive of them improving that kind of weaponry. The other
thing is that they will also reject modern technology when it's
18 not effective. And precisely, I'm talksing about the aluminum
19 boats. They reject the use of aluminum boats during the fall-
20 time, even though it probably might save them little time and
money. Because the aluminum boats are not effective in whaling
21 and that the skin boats still continue to be the best, and I
22 guess for the noise.
23 MS. ADAMS: I would like to
comment on that. The whaling captains in Barrow, they use the
24 skin boat to chase after the whales. They've also learned that
25 the aluminum boat is very noisy so they don't use it when

1 they're chasing them. But once they've struck a whale they
2 take some aluminum boats because it can take waves better than,
3 it has a little bit more....uh....stability than the umiat
does. So they use the aluminum boat after they've struck the
4 whale. They've learned to use technology to their best, like
5 you said.

6 MR. BERGER: Dick Nelson.

MR. NELSON: I might just
7 add something to that, from little experience I've had with
8 whaling at Wainwright and Pt. Hope over the years. Maybe you
could correct me if I'm wrong about this. It seems that
9 outsiders who have no experience with subsistence generally
10 often are resistant to the idea that modern technology is fair,
11 and that modern technology counts. And a classic example of
that, I think, is the technology that's used for whaling on the
12 North Slope. And it's interesting to note that, if I
13 understand correctly, that since the aluminum boat has been
14 brought into use, and the outboard engine, for chasing whales
that have been struck or whatever, out on the ice, the number
15 of whales struck and lost has declined, so that the loss of
16 wounded animals has been reduced a tremendous amount, if I
17 understand correctly, by using aluminum boats. And I think
it's very important for people such as those from the
18 conservation community, of which I proudly consider myself a
19 member, to understand that oftentimes using modern technology
20 serves the purposes of both subsistence users and of
conservationists the best. That's sort of a comment and a
21 question, just wondering if that is true, according to the way
22 you see it.

23 MS.ADAMS: Your
observation, this is basically true. They use whatever they
24 can to improve the catch level, and we've been working on that
25

1 for several years, and we're continuing to work on that. I
2 think there's something here that should be said, and that is,
3 we do regulate some weapons, what is used and the method of
striking a whale. But we leave it open ended to see what would
4 work out the best. And if it does, then, you know, if people
5 don't have problems with it, it's been, like you said, some
6 conservationists, with, sometimes would prefer to see the
Eskimos use the most traditional things and they think that
7 we're going away from tradition. But that's, in my mind,
8 that's not something that is true, because the act itself has
remained the same.
9 MR. CASE: I read, and you
10 alluded to the previous connection, at least, between the
11 effort to ban commercial whaling and the bans that have occurred
12 and the quotas for subsistence whaling. That's a connection that's always mystified me. But not that, maybe you could
13 explain it a bit more, and especially I'd like to know if there
14 is still a connection between negotiations or policies for
15 subsistence for commercial whaling that somehow affects the
negotiations for subsistence whaling.
16 MS. ADAMS: What is
17 happening today, with commercial whaling being attacked, the
18 commercial whaling countries are looking for ways to protect
themselves, and they're looking at how they might get included
19 in with subsistence whaling, so it's still pretty much
20 connected with the politics that go on down there.
21 MR. BERGER: You've avoided
the problem Don Mitchell posed, that is restricting other
22 users. You say that there is no commercial taking of bowhead
23 now, so are you the only aboriginal people taking bowhead in
the world now?
24 MS. ADAMS: Yes, we are.
25 It is, like I said, an endangered species, and no one else is

1 allowed to hunt the bowhead whale. The allocation is given to
2 the United States government, and in turn to the Alaska
Natives.
3 MR. BERGER: I have a....
4 MS. ADAMS: I would like
5 to, I've been talking about endangered species. I would like
to say, I use that term because it is something that the
6 federal government, they classified as such. But in the minds
7 of the Inupiat people they've seen more whales than what has
8 been counted. Like Burton was saying, they don't believe it is
endangered, I wanted to say that before I got too far away from
9 it.
10 MR. BERGER: Hugh Monaghan.
11 MR. MONAGHAN: I have a
question for Marie, and then a comment. Marie, looking at the
12 structure of the Alaska Eskimo Whaling Commission and the IWC,
13 do I take it that your Alaska Eskimo Whaling Commission is
14 purely made up of Eskimo people, and that from what you are
saying you then negotiate your position with the federal gov-
15 ernment, which then represents that position to the IWC? Or do
16 you sit with your federal government in negotiations on the
17 IWC?
18 Ms. ADAMS: We go there
after the position has been--well, we negotiate the position
19 in the United States before the IWC, and we both go there and
20 work together on it. We sit wherever we can. If we have an
opportunity to voice our own opinion, we like to say it out of
21 our own mouths and not leave it to the government to say it for
22 us.
23 MR. MONAGHAN: That I think
is similar to what is going to happen in Canada on a number of
24 international agreements. In the process of negotiating land
25 claims, our...

1 MR. BERGER: ...microphone
2 there that might...
3 MR. MONAGHAN: Is that alive
and well? The position of the Native people in the Inbateaa
4 (ph) has been that to the greatest degree possible they would
5 like to represent their own interests on international negotia-
tions. And the position of government has generally been that
6 it's usually government responsibility to coordinate national
7 input in international negotiations, but they have indicated,
8 and we've been an advocate of it, that the Native people them-
selves should be directly involved in the negotiations with the
9 federal government, wherever possible. So there seems to be
10 some consistency there.
11 I have a comment, and it's
sort of a rambling comment rather than a focused one. And it's
12 this business of pulling together traditional knowledge and
13 science as we understand it. Peter Usher may also want to
14 comment on that, given his experience in the Inbateaa (ph) and
other parts of northern Canada. But we ended up in a situation
15 in the Northwest Territories, and it was really focused on
16 caribou, where up until that point researchers, some of them
17 that had worked very, very closely with people in the com-
munities, had developed a fair bit of credibility, and as a
18 result their recommendations carried a fair degree of weight
19 and credibility in the communities as well as with government.
20 In other cases, we've had researchers who are somewhat more
taken with science, and see science as a solution to all prob-
21 lems. Their credibility has not often been high in the com-
22 munities, and as a result in many cases we have run into some
23 very serious management problems. When we develop a techno-
cratic solution and go to implement it there is little local
24 acceptability, and therefore little relevance.
25 We've done a few things to

1 try and get around that, and we're still learning, we don't
2 know yet how successful they will be. One of the first was to
3 setup a renewable resource training program at a technical
level in the Northwest Territories, with a particular focus on
4 the north. And I think in Canada it's probably the only one
5 that has any training in marine mammals. To try and bring
people from the communities into our organization to learn
6 science but bring with them, also, their perspective. And we
7 hope in time that that will help. Another technique that we've
8 tried, and again it was precipitated by the Beverly Kaminuriak
(?) caribou management problems, is we formed a joint
9 board of Native users in the communities as well as the gov-
10 ernment agencies to try and bring together the two values, two
11 systems, and the way of thinking, to develop a joint management
program. The management program has not only been purely run-
12 ning numbers together to figure out what an allowable harvest
13 is, but as you've seen from some of the handouts here, it's
14 broader, and that is education, both in the communities and of
the administration by the communities, where we try and come to
15 a common understanding of what the values are that should be
16 used in setting up a management program. I don't know what
17 relevance that is to your problem here, but it may have some.
As I say, we're still on the very sharp edge of the learning
18 curve on this in the Northwest Territories. That particular
19 board has not yet completely proven itself, but it has defi-
20 nitely worked on an educational front both ways, it's been
beneficial there. It's now developed a management program
21 which is in a draft stage and nearly ready to go in the com-
22 munities, and, I suppose most importantly, getting back to the
23 science and joining together of public information, all re-
search that is done on those two caribou herds is done by the
24 government agencies responsible, but with the people in the
25 communities. If we send a '185 up to count caribou or

photograph caribou we've got members of the local hunters and trappers associations in the plane, observing the techniques and commenting on them. So there's a strong attempt to try and bring these two forms of knowledge together. And, as I say, we're still on the front end of the learning curve, but there seems to be some success in it.

MR. BERGER: Any comment on that?

MS. ADAMS: I'd like to comment on that. With the sciences, before, well, when we realized what some of the scientists were saying, in the beginning when we started dealing with the scientists, we were basically battling each other. And then, once we came to an agreement we started working on the coordination process between the AEWC and the North Slope Borough and the federal government and the state government to coordinate what projects were being done and to get away from duplicating different scientific research. So we have been involved with that process, and before they go off to the villages they ask for the permission of the whaling captains to go out there. Because they can be disruptive to some activities out there. So they do go to the whaling villages and ask them to support them, and they do, realizing what it is for.

MR. MONAGHAN: That's interesting. There seems to be a fair parallel here, probably not a planned one, but I think the result is the same. We have a scientific licensing system that any research conducted in the field is done through a scientific permit. Before that permit is issued it is obligatory that there is consultation with the local hunters and trappers association. And in some cases we require their involvement.

(TAPE 6, SIDE B)

1 MR. BERGER: I have a
2 couple of questions that I might, if I may, I'd like to put before noon, and then in the afternoon we can start off with
3 the International Porcupine Caribou Commission and hear from
4 Jonathon Solomon and his group and from the CYI and others.
5 According to Steve's paper, and you said this Marie, that the Eskimo Whaling Commission was established in 1977 and it was
6 established by the whaling captains from each of the nine
7 villages coming together and constituting themselves the com-
8 mission. And saying, okay, we've got to do something about this, and you went ahead and did it. Now, that's an extra-
9 ordinary thing to do. But, did anybody say to you, well, where
10 is your legal mandate, where is the State law that says you can
11 talk to us, where is the federal law, show us your credentials, give us a piece of paper? Can you tell me what happened?
12 MS. ADAMS: Well, I guess
13 it's just part of self-determination that we consider ourselves
14 United States citizens and we have as much right as anybody else to say how we feel to the government and take some initia-
15 tive. That's, I think, we didn't even consider that, I don't
16 think people even thought or asked themself that question.
17 MR. BERGER: I didn't think so, but...Tony Vaska.
18 MR. VASKA: Thank you. I
19 suspect that it's probably easy to generalize and say that, I
20 think most of us who have had to deal with a variety of manage- ment agencies have had to own up to credentials and Marie is
21 correct in saying that, yes, there is a forum to allow us to
22 come and tell people, managing agents or agencies, what it is
23 exactly that we want. And in observing the different forums that operate, whether it's the migratory caribou or the whales
24 or the birds, the public process that is allowed by the federal
25 or state governments allows for people to get together. That

1 exists now, I think, in State and federal laws. I think what
2 is probably more interesting is the fact that you have all of the whaling captains willing to sit down as a group, a single
3 group, to manage that specific species. You'll probably find
4 the same thing with the caribou, certainly with the birds. It
5 was in the interest of the users to get together, to meet with the managing agencies. And those managing agencies are
6 numerous. I tried to outline who the whalers had to deal with,
7 before they got results. They had to deal with the Inter-
8 national Whaling Commission, the State Department, Commerce Department, and Interior Department. And I know it's real
9 difficult to trust the State Department when the State
10 Department perhaps has never been in the North Slope to do
11 their observations, and yet it is that department that's nego- tiating on behalf of the Alaska Eskimos, on that specific
12 issue. I think we face the same thing with migratory birds.
13 We spent a lot of time training, teaching the State Department,
14 Interior Department, about exactly what it is we want. And one of the adaptations, or, again, one of the strategies we use is
15 to learn and use what systems are available to continue doing
16 what we want to do. And it's a real slow process, and Burton
17 is correct, the research done by the different State and federal agencies do follow a system and that system is not only
18 unwieldy it's very slow. And whales don't wait for the scien-
19 tists to finish their research, and neither do the people who
20 hunt them.

21 Also, one other thing that shouldn't be forgotten, in terms of the technology. I was
22 asking a question, hoping for a certain response, that is, when
23 you talk about customary and traditional users and techno- logies, you have to also remember that technologies evolve, and
24 the use of those technologies should be considered as part of
25 the methods and means that subsistence users use to harvest

1 whatever species they're after.

2 MR. BERGER: You're making the point that Mr. Gross made, that these cultures and their technologies evolve and change and they shouldn't be frozen at...

5 MR. VASKA: Yeh. I have a better chance of bagging a goose with a shotgun than I do with a ball, I guarantee that.

7 MR. BERGER: David Case...Oh, Steve Behnke, go ahead Steve.

9 MR. BEHNKE: Mr. Chairman, there have been a number of comments about the term "customary and traditional" and I just wanted to point out that in the State law I think that certainly it can be interpreted or people can interpret that to mean that it potentially could lock people into things, but it doesn't have to mean that. I mean, obviously, you know, it's a political process, and I think that so far there haven't, I can't think of any situations where the Board of Game or the Board of Fisheries have tried to lock in and prevent modification or change in those, along those lines. There may be cases I haven't thought of, but thus far I think that the boards have been amenable to saying that. In fact, in some cases they've tried to encourage changes, sort of along the lines you're talking about to improve efficiency, in which case, I think appropriately, local people have pointed out that it may not make very good sense to try and use crab pots in Norton Sound, that they prefer their lines through the ice, that they're a lot more practical. But...

22 MR. BERGER: David Case.

23 MR. CASE: I have a question, and then maybe a comment. And this relates to Judge Berger's question, I think. Has the Whaling Commission found it necessary or advisable to organize under some formal State

1 structure or other kind of structure?

2 MS. ADAMS: We have incor-
3 porated as an association and also we have an arm, we have
incorporated as a non-...there's a nonprofit arm to be able to
4 channel funds to operate the Whaling Commission. But the
5 organization itself is an association.

6 MR. CASE: And that is
association chartered under the laws of the State of Alaska, is
7 that correct?

8 MS. ADAMS: Yes, for the
purposes of operations, not otherwise.

9 MR. CASE: Well, perhaps
10 its obvious, but I'd like to see if there's any response on
11 your part. It seems to me that the Whaling Commission is quite
a startling development, really, in terms of the involvement of
12 aboriginal people in international negotiations. And I wonder
13 if you agree with that, the fact that aboriginal people,
whether you are sitting wherever you can or negotiating with
14 the federal government and then with the IWC, is the fact that
15 it appears to be that you are doing it directly in the inter-
16 national arena, and not going through government instruments,
17 of the United States government.

18 MS. ADAMS: The government,
the United States government, does not have any problems.
19 They, apparent, well, they haven't had any problem, and conser-
20 vationers don't feel that it is a problem to be representing
ourselves in dealing with all levels that we have to deal with
21 related to our subsistence take. I hadn't seen that except the
22 thing that we've gone through is when people don't listen the
23 Native people tend to walk out. I mean, they have walked out a
couple of times out of the International Whaling Commission
24 meetings.

25 MR. BERGER: Steve Langdon.

1 MR. LANGDON: I want to
2 make, Marie, maybe you can clarify this. Because, one of my
3 understandings is that one of the court cases is still pending,
4 and that court case asserts that the AEWC does not recognize
5 the jurisdiction of the federal government, so that we are in a
6 pragmatic regime here. Basically we're on hold, as long as the
7 federal government proceeds with the regime that's more or less
8 in the keeping with what the Inupiat people expect they'll go
9 along with it, but if the federal government should try to
10 impose a complete ban then the AEWC would withdraw from their
11 necessary commitment to the federal regime as it's established.
12 Maybe it's unfair to make that kind of statement, but...and if
13 you don't want to comment on it, that's fine.
14 MS. ADAMS: The court case
15 you are talking about I just recently talked with our attorneys
16 who represent the Whaling Commission. That case has been set
17 aside by the court, dismissed, with prejudice that we can bring
18 it back up in case that we wanted to do that.
19 MR. BERGER: Well, it's
20 12:00 sharp, and I think...well, I'd like to thank Marie Adams
21 and Burton Rexford for explaining the work of the Whaling
22 Commission. Steve's paper, this long paper, beginning at
23 page 43 has a discussion of the Whaling Commission, so that is
24 a good background and I recommend it to you. This afternoon
25 we'll begin the discussion at 1:00, if you would come back at
1:00 we'll start again. And we'll begin the discussion of the
International Porcupine Caribou Commission, and that will take
us, I think, from Ft. Yukon and Venetie acrossed the inter-
national boundary into Yukon Territory and we'll hear from all
of those people this afternoon. So, we'll adjourn 'til one,
then.

1 (MEETING ADJOURNS)
2 (MEETING RECONVENES)
3 MR. BERGER: We had a very
useful discussion yesterday about basic issues bearing on
4 subsistence, moral and economic and cultural. And this morning
5 we considered the first of a series of specific initiatives
6 that Native people are taking to preserve their subsistence way
of life, and the discussion of the Alaska Eskimo Whaling
7 Commission, I think we all agree, was very, very interesting.
8 This afternoon we'll going to begin with a discussion of the
International Porcupine Caribou Commission, and international
9 Native peoples' commission established to preserve the
10 subsistence way of life of the villages in Canada and the U.S.
11 that depend on the Porcupine caribou herd. And what I thought
we would do this afternoon would be first of all to ask Steve
12 Langdon to frame the whole picture for us, then we'll ask
13 Jonathon Solomon to discuss the Porcupine Caribou Commission,
14 and Bob Childers will assist him, I think, if he is back in
time to do so. And then, since it is an international concern,
15 we will ask Victor Mitander of the Council of Yukon Indians,
16 Hugh Monaghan of the Northwest Territorial government, and Bob
17 Gamble of Parks Canada to discuss the corresponding measures
taken on the Canadian side of the border with regard to
18 subsistence. So...by the way, we have a number of guests
19 today, as we did yesterday, and today they include the members
20 of the state board of the Alaska Humanities Forum, which I wish
to welcome. They have given a good deal of support to this
21 commission and we're grateful to them for that. Well, Steve,
22 would you like to start?
23 MR. LANGDON: Thank you
Justice Berger. What I would simply like to do here is to
24 present a few framing remarks about the range of the new
25 institutions that Alaska Native peoples have began developing

1 in the last decade, what some of their intentions with these
2 new organizations are, and some of the principles upon which
they're based. These new organizations are more formal in the
3 sense of structure and process then have been the ways in which
4 Alaska Native peoples have traditionally governed subsistence.
5 But they all seek to incorporate aspects of traditional
management, including local control, the utilization of kinship
6 systems, utilization, as Marie spoke this morning, of local
7 knowledge, as part of the new management regime. But they are
8 also seeking out and reaching out for the new sources of
information that can be presented by new kinds of scientific
9 and technological apparatus. However, Native peoples want to
10 control that science so that it produces information which
11 is relevant to the protection of the resources upon which
subsistence is dependent, as well as the protection of the
12 subsistence use of those resources. I guess my fundamental
13 point there that I want to make is that as I see the new
14 institutions they involve incorporation of traditional
principles and taking new kinds of approaches that are relevant
15 to those traditional principles and bringing them into the new
16 formal organizations as well. These organizations have emerged
17 as Alaska Natives have been threatened by state and federal and
international forces with the denial or severe limitations
18 being placed on subsistence activities. The aims of the
19 organizations, as you will see, are somewhat different, and we
20 can begin to piece together some overall understandings about
them as each of the cases emerge from the participants
21 presenting them. But they share the desire and will to be
22 involved more directly, more fundamentally, in the decisions
23 and management of the resources they depend on. Many, indeed,
are oriented to Native self-management of regulations on
24 harvest levels and harvesting practices. Many conceive of
25 themselves as fundamentally advisory in nature, others conceive

1 of themselves as fundamentally self-management in nature.
2 These bodies vary in their length of existence, their
complexity, the organizations in terms of communities, regional
3 associations, that comprise the membership, and they vary in
4 relationships which they've established with the state
5 institutions, the federal government, and with international
organizations. We heard yesterday from Tony Vaska and Harold
6 Sparck about the Hooper Bay Waterfowl Agreement, which has a
7 specific set of characteristics and understandings. We heard
8 this morning from Marie Adams about the Alaska Eskimo Whaling
Commission. We'll also hear from Jonathan shortly on the
9 International Porcupine Caribou Commission. We will hear from
10 Caleb and perhaps Matthew Iya tomorrow on the Eskimo
11 Walrus Commission, and in addition there are other kinds of new
initiatives being taken in the area of Alaska Native self-
12 regulation. Initiatives that are rising out of the Indian
13 Reorganization Act, the tribal governments' system of the
14 federal government. And tomorrow we will also hear from NANA
and from Norton Sound on IRA initiatives in the area of
15 regulation of subsistence. I think we all agree and are
16 excited by the potentials of the new directions, and we should
17 also be very cognizant of the fruit, the very useful fruit that
have been born in the path setting efforts by the Alaska Eskimo
18 Whaling Commission in this regard, and the new Hooper Bay
19 Waterfowl Agreement. I believe that there is the great
20 possibility for more fruit to be born with effort and
nurturance in these areas. This is not to say that there
21 aren't hard questions and hard negotiations and even battles in
22 the future to be waged on these fronts, and with that, Justice
23 Berger, I turn it back over to you and we can get on with...
MR. BERGER: Well, Jonathon
24 Solomon.
25 MR. SOLOMON: My name is

1 Jonathon Solomon. I'm the chief of the Yukon Flat people, the
2 organization name for that is the the Gwitcha-Gwitchen-Ginkhye,
all that means, and the Yukon term is, that the Yukon Flat
3 People Speak. This organization was incorporated as a tribal
4 sovereignty nation in the early '60s, when our good friend
5 Senator Gruening proposed the bill of making a monument for
himself called the Rampart Dam. This organization fought that
6 thing on an equal basis with the senator and we won. And then
7 along come 1971 land claims, and we were quite involved in it.
8 In 1971, after Nixon signed it, we thought we were done. So we
went back home to the Yukon Flat and we started living our life
9 like we used to. And all of a sudden under the land claims
10 came up what is known as the public interest land will be
11 decided for the state of Alaska. And in that, at the Marine
Fishery Committee, Congressman Don Young proposed oil
12 development in the Arctic Wildlife Range. Immediately the
13 Gwitcha-Gwitchen-Ginkhye came up and they were at arms with the
14 congressman. And I was called as the chief to lead the fight
against oil development on the Arctic Wildlife Range. At that
15 point in time, in '75, we said that the Porcupine caribou herd
16 must survive. And we knew that we couldn't do it alone, so we
17 called upon our Canadian brothers to join us, because the
Porcupine caribou herd was an international animal. That was
18 the first time we ever met, and we only called upon our
19 brothers across the border at Old Crow. Immediately we went to
20 Washington, D.C. to testify against oil development in the
Arctic Wildlife Range, especially the calving area. At that
21 time we also called our Eskimo brothers in Kaktovik to join us
22 in this, because the calving ground of the Porcupine caribou
23 herd is in the backdoor of the Kaktovik village corporation.
And that's how it all started.
24 We became the political
25 football of the public interest lands called d(2) lands. But

we had to come down, and we negotiated a position on the development of the Arctic Wildlife Range. And then we started meeting with our Canadian brothers, on both sides, to make sure that all these things take place. But as you know, the people that we elect to direct our country, how natural resources and how economic development should occur in this country, always at the end we, as rural Alaskan people, had to fight 'em at the end. And we have a tough time doing this, because these people put on the books laws that are supposed to be in the favor of its own people. But they keep breaking it. They make deals, they make laws to govern its own people, then they misuse it, they break it. And they give you certain things, then you have to fight like hell to keep it. We as indigenous people of the world always had that problem with our own governments.

In 1975, when we started this thing, there were laws on the books, and especially from the Canadian government, if you call them as government, that there was a Chief Justice called Thomas Berger had an inquiry. And under that direction of that inquiry, he set up, adjoining the Arctic Wildlife Range, set up international park which favors the Porcupine caribou. We had all these things, and then went to Congress. But we couldn't do nothing as a whole because we were not an organization. And then in '75, that same year, the...(I forget the name of that outfit)...United Nations met in Stockholm to discuss indigenous people of the world. At the end, they made a statement which the Canadian government and the United States government signed off on. And today you ask the Whaling Commission, "What is your credential?" I say to you, and to the people of the world, under the United Nation's direction, agreed upon on Stockholm in '75, that I am an indigenous people, I belong to that area, that that is credential make me what I am today. A credential is under that, when they said that people of the world are

1 countries are not, and they are nations, cannot step on the
2 way, in the way of the indigenous people to practice their way
3 of life, their religion, or their language. Countries and
nations must step aside for these indigenous people to practice
4 that. And that is our credential, because the United Nations
5 said so.
6 Under that, in 1982, the
village in the Yukon Flat and the village of Kaktovik and Mayo
7 (?), Dawson, Old Crow, and CYI, as representative of the Yukon
8 people, indigenous people, met in Arctic Village. And we formed
what is known today as the International Porcupine Caribou
9 Commission. And we filed it with the United Nations. We did
10 not file it with the United States, we filed it with the United
11 Nations, under their agreement in Stockholm. And that's how
the International Porcupine Caribou Commission became in
12 existence.
13 From there we started
14 moving. And last October the governor of the State of Alaska
called us into his office and said, "You guys been working on
15 this caribou treaty for many years," he says, "It's about time
16 we move on with it." And he formed a task force. And today,
17 with the Fish and Game of State of Alaska, we have worked out
the wording. And today, as Steve informed me, that now the
18 commissioner, deputy commissioner, will be meeting with the
19 Fish and Wildlife people, from the feds. And sometime this
20 year, before this year is over, the Native people of the commission will meet in Vancouver to decide what steps we'll take
21 from that point on. And that's where we are with the
22 International Porcupine Commission.
23 And if I may, want to point
out, like I said yesterday, I was pretty disgusted, but I'm not
24 today, because I'm hearing from my own people. And this, a
25 roundtable discussion, should come from the people that we are

talking about. We say we are subsistence people, I am a subsistence person. I am a tribal government, brought up that way, under the IRA council. When the State of Alaska talk to us, they must talk to us on an equal basis, because the State of Alaska was created with a constitution. My tribal government was created by a constitution. We don't have a by-law, we have a constitution. So we must talk together, if we talk to each other it must be on equal basis. My constitution says that anybody is going to represent me must have a piece of paper from the chief of my tribe or a resolution from my council. I carry that, because I am the chief. Nobody else has got that authority. Just like I don't have authority to represent the State of Alaska, the governor does. And we talk about all these things, say, in that, when it comes down who lives the right to live the right of their ancestors...

I inherited that, being born an Indian. I inherited a lot of rights because as we talk about these animals...two days ago I was home, when we talk about an animal for the Native people of the world, are in the same ecosystem as these animals. We are not a visitor upon these lands, we are in the same ecosystem as the animal on these lands. 'Cause we take care of it. If there's going to be a danger, obstacle in the way, we try to solve it. Two days ago, if you heard, in northern Quebec, 10,000 caribou drowned. Because somebody forgot to level the river before the crossing of these animals. The caribou, as my people believe for many years, is part of the Gwitchen people religion. We kill it, we eat it, we use their parts of their fur and stuff for our own clothing. But we also believe that the population of the Gwitchen people in the Yukon Flat goes up and down with the numbers of these animals. If the Porcupine caribou herd declines, as our people believe, that our people will decline. This is why it's very important to us, when we talk about the

1 Porcupine caribou herd, that it be protected for our
2 generations to come, because this is our belief. Way back in
3 the 1920s the Porcupine caribou herd was 250,000 strong. So
was our people. In the early '40s, the Porcupine caribou
4 declined to around 110,000. Our people declined in the early
5 1940s, with a sickness called the flu, to that number. We see
it through our own culture, everything we're saying. That it
6 is the truth, as we know it, as we've been told.
7 When I talk to a bunch of
8 people I get nervous, I'm kind of shaky right now, because I
indulged myself last night with the culture at hand. Putting
9 that aside, when I, when you come to my part of the country, I
10 expect you to respect that culture at hand. If there's any
11 question, I would like to take it now, and expand on certain
other areas at the end of this presentation. Thank you.
12 MR. BERGER: Thank you,
13 thank you, Mr. Solomon. You indicated you'd be willing to
14 answer some questions now, and then after we've heard from the
others we'll return to you. Well, Woodrow?
15 MR. MORRISON: I didn't
16 have my hand up, but I will ask a question. I was reading
17 through your statement of June 21, 1983 that had to do with the
Arctic Wildlife Range oil and gas exploration plans, and I want
18 to ask pretty much the same questions that I asked this morning
19 of Marie Adams and Burton Rexford, and it has to do with the
20 problems with the scientific community. In your statement you
said that there were some hearings held on regulations for
21 seismic explorations, and that the people explained to the
22 people holding these hearings how the wind blows the snow off
23 little hills all winter long and how, in low spots, the snow is
real deep. But in the final EIS, the statement said there was
24 not enough known about the area, and then you also went on to
25 ask the question, that the people explained to you all this,

1 why don't you believe them? You take the words of your
2 scientists and others who come here and visit for a short time,
maybe one or two times, maybe more, but you do not believe the
3 people who spend their whole life here. Is this still a
4 problem with those scientists? Do they listen, or...?
5 MR. SOLOMON: Yes. For the
simple reason that these guys come out there, to do a survey or
6 whatever, and they fly over the area, but they never take the
7 initiative to ask the experts, like I said yesterday, the
8 people that live there. We tell them, we testify at hearings,
about numbers, about habitat, nobody listens, it's just
9 knocking on a wall that won't open, because there's no door
10 there. We know, just like the Alaska Whaling Commission knows,
11 how many animals are out there. We know, we live there every
day. But they never take our word for it. They fly over it
12 one time, they're an expert. Just like Mr. Lonner is an expert
13 in subsistence. He can write a book about it. We don't need a
14 book. We know it for generations back.
15 MR. BERGER: Any other
questions at this stage? Marie Adams.
16 MS. ADAMS: Yeh, I wanted
17 to find out what happened in Canada. You referred to 10,000
caribou that drowned.
18 MR. SOLOMON: Victor,
19 wanna...? I just heard about it two days ago, that's in
20 northern Quebec.
21 MR. BERGER: Well, maybe
Victor Metander of the Council of Yukon Indians can tell us
22 something about that.
23 MR. METANDER: What was
the question?
24 MR. SOLOMON: What happened
25 in northern Quebec with the caribou?

1 MR. MITANDER: What
2 happened in northern Quebec I guess goes back a long ways when
3 the Quebec government put in place plans to build hydro
development in northern Quebec, basically there's a number of
4 problems that had to be overcome. And I guess basically what
5 happened there is that there was miscalculations on the water
6 flow, and I guess basically the power authorities have released
too much water into the water system. And when the caribou
7 came through they swam across the river there and were caught
8 in the rapids. And that's what happened, the whole herd just
went right through, and as a result of that approximately
9 10,000 animals were lost in that. And I guess there's been
10 some mistakes that were made in planning the environmental
11 and the, to consider the water flows and so forth. And as a
result of that, they are pointing their fingers at Quebec
12 Hydro, that there should have been proper measures in place,
13 and as a result of that now they are putting in place a fence
14 that would block or stop the caribou from going that way, and
15 basically forcing them to go and take another route where they
can cross safely.
16 MR. BERGER: Thank you.
17 Any other questions of Jonathon Solomon? Steve.
18 MR. LANGDON: Jonathon, the
International Porcupine Commission passed a resolution in April
19 laying out a framework for how you think the commission ought
20 to be established and some principles for managing the herd.
Could you tell us what has been the response of the State and
21 the federal government, to date, to the specifics in that
22 commission plan which you guys laid out at that time?
23 MR. SOLOMON: Yes. The
State of Alaska, as I said, is cooperating finally with the
24 caribou commission. We make up the task force for it, and we
25 worked out the wording, now it went to public hearing, and now

they're going to meet with the Fish and Wildlife people. But we never approached the federal yet. It's not...after we get all these things out of the way, then we go to federal.

MR. BERGER: Woodrow.

MR. MORRISON: When you filed your caribou commission with the United Nations, did you file it as a commission or were you seeking NGO or non-governmental organization status?

MR. SOLOMON: No, we filed as a commission under the indigenous people rights.

MR. MORRISON: So then on these international dealings, do you deal directly with the Canadians, or who does the commission deal directly with?

MR. SOLOMON: With our brothers on the other side. Because we are a sovereign nation, we can deal with other countries.

MR. MORRISON: So then the commission is set up then to affect United States' policies and Canadian policies for the management of the herds, is that what it's for?

MR. SOLOMON: Pardon me?

MR. MORRISON: That the commission was established to affect, or would we say, develop policies for the management of the Porcupine caribou herd, are you trying to get those policies adopted by both the United States and Canadian governments, or?

MR. SOLOMON: Are you asking that, does the treaty manage the herd?

MR. MORRISON: Yeh, who's going to manage the herd, then?

(TAPE 7, SIDE A)

MR. SOLOMON: We do not propose the commission to manage the herd. We don't propose that. We propose that the Yukon government and the State of

1 Alaska manage the herd. We're looking for protection of the
2 habitat, as we see it up there, the range of the Porcupine
3 caribou herd. We only, the commissioners of the international
treaty, will only become, if you call it such, manager of this
4 treaty only in emergency cases, if the herd started to decline.
5 Until that time, both countries will manage through its state
6 department or through its territorial government. We recognize
that the State of Alaska Fish and Game will manage on this
7 side. All we are worried about is that the quota, how much
8 should be taken every year from this herd. How that's divided
9 between the two countries, that's their problem, to make that
decision.
10 MR. BERGER: Tony Vaska.
11 MR. VASKA: Thank you.
12 Jonathon, how does the State of Alaska through the Department
of Fish and Game deal with the sovereign government of the
13 Cutchin? You are saying that the, you are dealing with the
14 International Porcupine Commission as a sovereign government.
15 How does the State of Alaska, through the Department of Fish
and Game, represent your interests as Alaskan citizens, or how
16 do they deal with your government?
17 MR. SOLOMON: We deal
18 directly, I don't know how else to answer that!
MR. VASKA: Mr. Chairman,
19 perhaps I might direct the question to Larri Spengler.
20 MR. BERGER: Yeh, Larri
Spengler.
21 MS. SPENGLER: Tony, I
22 guess I don't quite understand the question.
23 MR. VASKA: The question
is, the sovereign government of Venetie, Ft. Yukon, Mr. Solomon
24 mentioned several other villages, basically you're dealing with
25 a tribal government, an IRA government that is formed some

1 years ago, and they are the principals in the negotiations with
2 the Canadians, using the International Porcupine Commission,
3 which is recognized by the United Nations. How does the State
of Alaska deal with that?
4 MS. SPENGLER: In
5 developing the State's position on the international Porcupine
caribou matter, the State consulted very directly in a series
6 of meeting with the International Porcupine Commission, with
7 Jonathon Solomon's groups, and so forth. And then also opened
8 the whole matter up for wider public comment and had one or two
meetings at which other people could come and express their
9 views, and all of those were taken go the governor's office and
10 the final decisions were made on what the State's position
11 would be. Now, when we go forward from here on, the State and
the various components of the State will have to be working
12 through the Fish and Wildlife Service, through the federal
13 government, in dealing with the federal government of Canada.
14 That's our view of the situation. Now there may be another way
of characterizing that, but that's the way we would see it.
15 MR. BERGER: Yeh. Bob
16 Childers I think has worked with the International Porcupine
17 Caribou Commission, and Bob, you had your hand up. If you'd
like to say something, maybe, you did at once have a namecard
18 here, but it's been confiscated, I guess. If you could find
19 your way to a seat a little more comfortable you're welcome.
20 Well, they found your namecard, now they just have to...
MR. SOLOMON: Mr. Chairman,
21 Bob Childers is the consultant to the Porcupine Caribou
22 Commission.
23 MR. CHILDERS: I wanted to
comment on a couple of things that were just raised. One of
24 them was the question of how management would be addressed in
25 an international agreement that we've been discussing. I think

1 that we should also drift back to the question of what role the
2 tribal entities play.
3 Strategically, the approach that the IPCC has taken has always been a minimalist one. We
4 wanted to be very careful not to confuse domestic issues, and
5 particularly domestic issues relating to tribal matters, with
6 international issues. In terms of the treaty, which is a part of this puzzle that addresses specifically the international
7 issues, we wanted to restrict its scope of activity, in the
8 first instance, to those elements that were inherently international, that had to deal with the herd as a whole. And those
9 really came down to two issues, we thought. One was overall
10 mortality, and getting some handle on the total allowable take
11 out of that herd under conditions of stress, which we do not
12 believe exists now but that had to be prepared for. And the other was habitat protection, and the integrity of the habitat,
13 and their ability to move within the range elements. Conse-
14 quently, when this issue first arose we were active in
15 Washington, D.C. on some federal legislation that dealt with
16 Alaska. When a minister from Canada raised the issue of an international agreement our initial reaction, the reaction of
17 the communities up there, was basically negative. And the
18 reason is that the history of international agreements have primarily served to restrict harvest once a problem was en-
19 countered, once a population was in decline. And our concern
20 was that efforts should be directed at preventing a decline in
21 the first instance. That meant, that got us fairly quickly into issues of habitat protection and how to coordinate manage-
22 ment and away from the mainstream of historical wildlife
23 treaties to which the United States or Canada are a party.
24 What we did is we really started pushing the habitat issue. The kind of scheme that's reflected in the memorandum that
25 Woody referred to is in greater detail than the discussions

1 that we've had with the State so far. You asked how the State
2 was, how receptive the State was to the particulars, and I'd
3 have to say that we've come to a more generalized understanding
that would accommodate all of the particulars that we mentioned
4 but they're not all addressed at this time. In any case, we
5 wanted an agreement that dealt primarily with habitat protec-
tion and that minimally interfered with other domestic arrange-
6 ments. In Canada there's a Porcupine Caribou Cooperative
7 Management Board being structured. In Alaska there is existing
8 management framework with the boards and commissions and local
advisory committees, and a really unknown role that tribal
9 governments may play directly, that will hinge on a number of
10 legal questions having to do with Indian, what is Indian
11 territory and so forth.

So with respect to habitat,
12 first of all, the board, as suggested, is advisory. With
13 respect to habitat, we had suggested a series of essentially
14 procedural approaches. There would be general habitat standards
that would be prescriptive, but the agreement that we've en-
15 visioned is primarily procedural. It is based on a, with
16 respect to habitat, a series of three interlocking obligations
17 of government: first is to notify an international board or
commission of activities, proposed activities that may affect
18 the herd or its habitat; the second is to give the board or
19 commission an opportunity to present evidence or comment before
20 the appropriate bodies; and third would be an obligation,
what's sometimes called an "action-forcing mechanism," an obli-
21 gation structured similar to the International Whaling Commis-
22 sion, where a country would either implement the recommenda-
23 tions to the commission that seem very important for habitat
protection or would formally reject them in some way, making
24 themselves responsive to the proposed commission. With respect
25 to restricting of taking, it was envisioned that the commis-

1 sion's activities would keep track of mortality losses, the
2 general condition of the herd, and only at such times when it
3 would be necessary to restrict mortality might there be an
overall harvest limit established and some allocation between
4 the two countries. The agreement itself would not interfere
5 domestically with how that allocation was otherwise to be dealt
with inside those two countries.
6 MR. BERGER: Thank you.
7 MR. SOLOMON: Mr. Chairman,
8 I think at this time that Dave and Victor want to make a
statement on this issue, because we all went through this same
9 thing.
10 MR. BERGER: I was going to
11 ask Victor Mitander of the Council of Yukon Indians to follow,
so, Victor, you go ahead.
12 MR. MITANDER: With respect
13 to the International Porcupine Caribou Commission, one of the
14 other aspects that we see is to insure that the Native users'
rights to the herd is protected. And we know that one of the,
15 I think from the onset when we started discussions with Alaska
16 Native communities, we wanted to insure that, first of all,
17 that there is the political will between the two countries to
establish an international treaty. And, as probably many of
18 you know, that this topic has been talked around for a number
19 of years, I guess prior to the last presidental election
20 President Carter was prepared to sign a Porcupine caribou
international agreement. But as a result of that, I guess, I
21 understand now that there's some will now to move ahead with
22 that. That's great. But what we see, if you don't mind me
23 getting into some of the discussions, what we see happening in
Canada. We see two things. First of all, that there be an in-
24 Canada agreement; secondly, once that's in place, then the
25 international treaty should, the process should be started for

1 that, between the two countries. And one of the things that we
2 want to ensure is that when the discussions starts that we be
involved in discussions at the highest level, to insure that
3 your interests are protected, to insure that we have input from
4 the user community perspective as to what issues and what the
5 agreement should look like. Keeping in mind, too, that the most
important is that the habitat is as it is today and would
6 remain that way into the future.

7 One of the things, that map
8 on the wall there indicates the habitat area both in Alaska and
Yukon. That herd is about approximately 135,000 animals, and
9 it's a very significant range. It ranges from, in the Yukon,
10 just north of Dawson City into the Northwest Territories right
11 up to the, beyond the coastline, on the North Slope, and well
into Alaska, including very sensitive biological and environ-
12 mental sensitive areas up there, and basically there are, in
13 Canada, eight user communities. Those being Old Crow, which is
14 primarily the main users in Yukon for that herd, Dawson City,
Mayo, and then Northwest Territories, Ft. McPherson, Arctic
15 Red Village, Aklavik, Inuvik, and Tuktoyktuk. And
16 those communities are involved in discussions with government
17 in arriving at a management agreement. At the table the gov-
ernment of Canada is represented through Northern Affairs and
18 through the Department of Environment, along with the gov-
19 ernment of Yukon, which is the manager of the herd in Yukon and
20 the government of the Northwest Territories, which a portion of
the range does go into the Northwest Territories. Therefore,
21 they have responsibility for management.

22 One of the aspects that we
23 see is that we want to ensure that there is cooperation in
terms of the management of the herd and its habitat, and to
24 first of all insure that there is conservation of the herd
25 itself with the view of providing ongoing subsistence needs of

1 the Native users. Secondly is to provide for the Native users
2 to participate in the Porcupine caribou management. Thirdly is
3 to recognize and protect certain harvesting rights of the
Porcupine caribou for the Native users, while at the same time
4 acknowledging that there are other users, non-Native users, of
5 the herd itself. And that would be settled, basically, in the
6 agreement itself. Also, to provide communication amongst gov-
ernments and government to Native users and amongst Native user
7 communities. Those are basically the primary objectives of the
8 agreement itself.

9 The board is established
under the agreement. It is a powerful board that would advise
10 the ministers in government, federally and territorially, and
11 basically would be made up of eight representatives, equal
12 representation between government and Native and equal repre-
sentation between the Native, the Yukon Indian people and the
13 Native people of Northwest Territories should also be equal.
14 The functions of the board would be to establish and maintain
15 communication, as what I had said earlier, it would determine
what actions would be followed or recommended to the minister,
16 it would have the right to hold public meetings on what its
17 findings are and recommendations, and what actions are neces-
18 sary in that area. Also to review technical and scientific
information that is available, and also to encourage Native
19 users on the collection of statistics and biological informa-
20 tion in reference to management itself. And also to provide or
21 maintain a list of Native users that use the Porcupine caribou
right now, and the future. The board would also recommend, in
22 terms of making policy, legislation, and regulation. Would also
23 recommend on what management strategies should be followed,
what a management plan should look like. It would also provide
24 recommendations as to what guidelines of Native users' partici-
25 pation within the management plan itself. Also, with respect

1 to Native peoples, participation in the training. In manage-
2 ment there's going to be training programs established whereby
3 Native people would be involved in all aspects of management.
4 The board will also recommend predator management plans, con-
trol plans. It also will recommend research proposals, and
5 would review and recommend as to what should be done in that
6 area, and methods of collecting data or biological information
with respect to the Porcupine caribou. It would also recom-
7 mend, what we consider a very important area, is the habitat
8 itself--to insure that the habitat is protected and main-
9 tained--and the board would keep that as a very important
objective to insure that the caribou is maintained and pro-
10 tected for the future generations. The board itself would also
11 recommend what land use planning should be up in that area, in
12 terms of proposed developments for resource extraction. The
board would also take into consideration what should happen in
13 that area, if it impedes, or delays, or disrupts the herd
14 itself.

15 And also with respect to
habitat, as you know, in the North Slope area of Yukon and
16 Alaska, it is very sensitive, because of the calving grounds,
17 and the board could also recommend that sensitive habitat
18 areas are protected because of development that may be planned
in the future. It would have, the board would have access to
19 all information within government, documents that are confi-
20 dential. If there is confidentiality it will be respected by
21 the board members itself, so the board would have access to all
the information necessary to conclude its recommendations to
22 the minister.

23 One of the things we want
24 to insure is that the Native people that use the herd would
have preference to the herd itself. We also want to insure
25 that there is no commercial harvest of the caribou in that

1 area, and that Native people that would be eligible to sell the
2 nonedible by-products of the caribou, those kind of things
3 would be considered in the agreement itself. Basically, what
we see happening now, the discussions have been going on for a
4 number of years, and still to this day we've initialled an
5 agreement and pretty well most of the parties have agreed to
it, with the exception of the Yukon territorial government.
6 They have some problems with the present agreement, basically
7 in the area of composition and how the allocation of caribou is
8 set up. They want to assure that the board allocates it rather
than how the communities allocate the quotas that would be
9 sent. So I guess we expect to have, there seems to be right
10 now, a move on the part of the Yukon government to put in place
11 an agreement very soon, and we probably expect to have this
agreement signed by the end of the year. This agreement here
12 would be included in the land claims settlement, which in turn
13 would be protected under the constitution of Canada. So those
14 agreements, as they are arrived at, and consent given to by our
communities, would therefore be put in place and set, I guess,
15 in our claims agreement. It would be put into the COPE,
16 Committee of Original Peoples' Entitlement, land claims settle-
17 ment act, and later in the Dene nation settlement when it comes
about, and would be protected, we feel, under the strongest law
18 of this country...in Canada itself, under the constitution.
19 Once that agreement's in
20 place we would then see ourselves being involved in how the
international agreement should come in place. And this is where
21 I feel it can be quite valuable that the Alaska Native peoples
22 and the Yukon Northwest Territories should get, must get to-
23 gether, and work together, and plan strategy together, to
insure that the interests that we have, which are common, are
24 put in place and protected to our satisfaction.
25 MR. BERGER: Thank you.

Maybe I could suggest how we might proceed now. The...forgive me, I know a little bit about this, not very much, but a little bit. And we have a caribou herd that ranges between two countries, crosses the international boundary between Alaska and Canada. And this has been a fascinating example, it seems to me, of Native people on both sides of the border, forming their own caribou commission and insisting that the principles that they have developed should be the basis of the agreement between Canada and the United States, and observed by the territorial government on the Canadian side and the state government on this side. The, Jonathon Solomon mentioned a recommendation I made to the Canadian government that there be a wilderness park established in the northern Yukon, with guaranteed aboriginal hunting rights within the park. And that park, not exactly the one I proposed, it's an imperfect world, but it was established, I believe, in July. And perhaps we could ask Bob Gamble to mention something about how that came about, and then Hugh Monaghan to discuss the matter from the point of view of the Northwest Territories. And then we could have some questions about the Porcupine Caribou Commission. And then we might ask Victor and David to talk about CYI's approach to subsistence in their land claims generally in the Yukon, because of course this is just a northern part of the Yukon Territory, and the land claims proposal deals with the whole territory. And then perhaps Hugh might tell us something about the COPE land claim....Alright, Steve is going to clarify...

MR. LANGDON: I just wanted to clarify a couple of things, Victor. The board that you were talking about, is that a separate board within the Yukon Territory that will be in charge of the management of the Porcupine herd, and is it distinct from the rest of the game management regime in the territory?

1 MR. MITANDER: It is
2 separate from the rest of the game management board that is set
3 up. The Porcupine Caribou Management Board is set-up based on
65-30 degrees latitude. It is a board that will be strictly
4 set-up to manage the Porcupine caribou alone itself.
5 MR. ___________: And
doesn't that also extend into the Northwest Territories. The
6 other half was whether or not it was restricted to the Yukon.
7 MR. MITANDER: It includes
8 the entire habitat range, which is both in Yukon and Northwest
Territories. And there is representation from both, from the
9 Northwest Territories.
10 MR. LANGDON: The other
11 question that I wanted, for a point of clarification, on the
present constitution, in terms of the communities in the IPCC,
12 what Canadian communities are presently in the IPCC, Jonathan?
13 Is it just Old Crow now, or...?
14 MR. SOLOMON: No. Mayo,
Dawson, and Old Crow signed-off on it, when they signed in
15 Arctic Village. I think it was CYI on behalf of the other
16 villages.
17 MR. LANGDON: So CYI is on
behalf of McPherson, Arctic Red,....
18 MR. MITANDER: The repre-
19 sentation would come from those three communities--Old Crow,
20 Dawson City, and Mayo.
MR. BERGER: Bob, you
21 wanted...
22 MR. CHILDERS: I just
23 wanted to clarify that. The commissioners sit representing
directly their communities, there were to be two from the Yukon
24 and two from the Northwest Territories. And the time, at the
25 last period, during the last period of ratification, it will be

reopened. There were some uncertainties as to how land claims would best proceed in the Northwest Territories with COPE and with Dene/Metis. And they decided essentially they would come and sit at the meetings, but they decided not to sit down until some of those uncertainties, particularly having to do with their respective negotiations on wildlife rights, including the Porcupine herd, were completed. We're now ready to go back and talk to them, since COPE's agreement has been terminated, I mean, finalized. Excuse me!

MR. BERGER: Bob Gamble, perhaps you would tell us about the COPE claim and its settlement, and how that bears on the wilderness park and the future of the Porcupine caribou herd.

MR. GAMBLE: Well, you mentioned earlier about an imperfect world and your recommendation not being fully carried through. There are several stages to that. Because, I gather, that the Canadian government is not being generous enough to allow sufficient fee simple land selection, Native groups have found other ways of augmenting their fee simple land selection, protecting areas, particularly for subsistence use, that would serve their purposes. And COPE, at one time, called for the establishment of a national wilderness park right across the North Slope of Yukon, encompassing part of the territory that arose from the recommendations out of the Berger Commission Report in Canada. That hasn't come to be. What happened was that the government of Canada withdrew all the lands between the Alaska and the NWT border north of the Porcupine River, withdrew those lands from any alienation or disposal, pending the COPE settlement and pending any decisions on conservation designations for that area. What has finally come out, just in the last few months from the COPE agreement, is that there is part of a proposed national park in the northern Yukon. The national park pro-

1 posal runs from the Alaska border to the Babbage (?) River and
2 down to Old Crow Flats. The COPE agreement, when it was
3 legislated, provided therefore an amendment to the National
Parks Act which created a national park just north of the
4 watershed, in the COPE claim area. The southern portion of the
5 proposed park is subject to CYI claim, which is on hold,
temporarily, Victor can explain more about that, if people are
6 interested. So what we have, essentially, is a very small
7 fraction of the original wilderness park concept. However,
8 because of the way that this is dealt with in the claims, being
dealt with currently in the CYI claims and has been dealt with
9 in the COPE claim, the park regime forms a part of the total
10 management regime of the Porcupine caribou herd. Parks Canada
11 will not have, under the COPE agreement of which you have copies
here, will not have sole management jurisdiction over the
12 Porcupine caribou herd when they are within the boundaries of
13 the park. If there's a quota established, as has been dis-
14 cussed, for the Porcupine caribou herd, Parks Canada will be
subject to that quota. And whether the beneficiaries, from Old
15 Crow for example, take all or none of their quota within the
16 park boundaries is beyond the control of Parks Canada. The
17 area will be managed on the basis of the species range, not on
the basis of designation boundaries, if you like. This is the
18 pattern that's being established elsewhere, in other claims
19 that are being negotiated. It's interesting to note that, for
20 the most part, for all the comprehensive claims that I'm aware
of in the Northern Quebec and the Northwest Territories the
21 first agreements in principle to be negotiated concern wild-
22 life. And other management regimes and other things that
23 affect subsistence use of wildlife and wildlife management
always refer back to those general principles of the wildlife
24 management agreement of principle. That's the way things are
25 going with the TFN claim, the Inuit claim in the eastern

1 Arctic. And that seems to be the approach so far that the
2 Dene/Metis are using, which Dick can maybe elaborate on
further.
3 MR. BERGER: Thanks, Bob.
4 Hugh, would you like to add anything about the international
5 commission and the protection of the Porcupine herd?
6 MR. MONAGHAN: Well, it's
been spoken to quite eloquently to by a group of people, al-
7 ready, so there's no point in adding much detail, but perhaps
8 just a slightly different perspective. And that is that the
Native people of Northwest Territories are in a peculiar posi-
9 tion, in that although they typically take more than half the
10 harvest of that Porcupine herd annually, they take most of that
11 harvest of the NWT, a very small part of the herd comes into the
NWT. So what we've got then, from the perspective of the
12 Native people in the Northwest Territories, is considerable
13 demand on the resource but limited access to control over those
14 things which actually affect the status of that herd. And I
think, or presume of course, that was a good part of the COPE
15 strategy in their land claims settlement, as Bob alluded to
16 earlier, is to put in legislation and land claims in Canadian
17 law to become part of our constitution in effect now, to lock
in certain habitat protection measures in effect in our consti-
18 tution. In addition to which they would create management
19 structures with the federal government and YTG to...
20 MR. BERGER: YTG being the
government of the Yukon?
21 MR. MONAGHAN: That's
22 correct, to permit them to have access to land management
23 processes in the Yukon. This now has, in effect, has come in
effect because of the passing of the legislation in Canada last
24 summer ratifying the COPE agreement. From the perspective of
25 the people in the Northwest Territories, as I say, this is a

crucial resource for all of the Mackenzie Delta communities referred to--Inuvik, Aklavik, Ft. McPherson, Arctic Red, and Tuk depend on that resource annually. I like the idea that Bob mentioned earlier of using a minimalist approach to international agreements. And that is, you structure your international agreement around those key things that you have to control jointly, because if you lock all detail into these then they become very unwieldy and very, very difficult to work with. Given that approach, Victor Mitander has outlined in detail the agreement that is being structured within Canada. Our government has, is essentially on the side of that agreement, we've been strong advocates of it. My previous minister was part of the commission that was spoken to by Jonathon, the early discussions on that, my current minister was, of course, very actively involved in the COPE negotiations. So I would envision our government as continuing to be a very strong advocate of an international agreement to protect that resource, primarily for Native people.

MR. BERGER: I think I should add that Hugh Monaghan is an Assistant Deputy Minister for Renewable Resources in the government of the Northwest Territories. And the Northwest Territories has an Inuit and Dene majority in the population, and they have a majority in the legislature. And the leader of the government is a Native person, he was indeed your minister, I think, Hugh, and the current minister is Nellie Cournoyea, who is Inuvialuit. That's why you have the exceptional state of affairs in which the ministers are both, I gather, in one way or another alumni of the International Porcupine Caribou Commission. Maybe we could have some questions to Jonathon and Victor and Hugh and the two Bobs now, and then perhaps take a break for coffee and then ask the Canadians to talk about not the Porcupine caribou herd, but their current, COPE has just signed its land claims

1 agreement, they could tell us about the approach to subsistence
2 in the land claims agreement. The Yukon, Council of Yukon
3 Indians, is still negotiating its agreement, but they've signed 73 subagreements. If they could, without telling us about each
4 of the 73 subagreements, indicate the approach to subsistence
5 generally and then if Dick Spaulding who is with us and is
6 lawyer for the Dene/Metis could tell us about their approach that might I think be a useful way to spend the afternoon. And
7 then tomorrow morning we can resume with a discussion of the
8 Eskimo Whaling Commission here in Alaska, led by...what did I
9 say?...Eskimo Walrus Commission, and we'll ask Caleb to lead that discussion. So we could have questions directed to all of
10 these people about the...Woodrow.

11 MR. MORRISON: I found it
very interesting, believe it was Mr. Gamble, or was it Monaghan
12 there. Here in Alaska we have a situation where the people of
13 Anaktuvuk Pass do some of their caribou hunting within the
14 Gates of the Arctic National Park, and so there are some difficulties involved in that. And I believe you said that the
15 proposed management scheme would be one in which quotas, the
16 harvest quotas would be established, and whether the entire
17 quota was taken within the park area that the park service
18 would not have any control over that? Did I hear you correctly?

19 MR. GAMBLE: Yes, that's
20 correct. I believe copies of the sections of the COPE agreement
21 were circulated. You can see from that that there are several management regimes established to look after habitat and pro-
22 posed development and so forth. And it mentions in there, as
23 well, the International Porcupine Caribou Herd Management
24 Agreement. Whatever management is recommended for that herd applies to the full range of the herd. The park itself, the
25 only distinction that will be made within the park is that only

1 beneficiaries will be allowed to hunt, so they have the
2 exclusive right within the park. But the way it's setup
there, Parks Canada will participate probably only indirectly
3 in the management regime for the Porcupine caribou herd. The
4 Department of the Environment, of which Parks Canada is a
5 branch, will have a representative directly on the management
board. So Parks Canada will speak through the Department of
6 Environment representative on that board. But whatever deci-
7 sions are made there, or quotas, will apply to Parks Canada.
8 Parks Canada cannot manage, or cannot usefully contribute, to
the management of that herd by only trying to control the take,
9 if you'd like, within one very small portion of that range. It
10 just doesn't make sense. So the management is for the herd as
11 a whole, whether all of it or none of it is taken within the
park should be of no concern to Parks Canada. it's the
12 viability of the population that's the bottom line.
13 MR. MORRISON: Yeh, I also
14 understand that part of the viability of the herd involves the
protection of the habitat, and within the Gates of the Arctic I
15 believe that a part of the park scheme for protecting the
16 habitat is through a system of easements, narrow corridors
17 which permit Native subsistence hunters to enter the park to
hunt and also there are restrictions on the types of vehicles
18 that they may use to go into the park. And so I would think
19 that maybe this would be one method by which a park might be
20 able to get involved in, might involve itself in a manage-
ment...are these the types of regulations that the park service
21 in Canada also, do they have these types of regulations, or are
22 they proposing those types of regulations?
23 MR. GAMBLE: Right now, for
all the national park reserves that exist in the Northwest
24 Territories, there are no regulations governing these kinds of
25 things in those parks. What happens is that Parks Canada has,

1 with various degrees of success, I think without too much
2 difficulty, just integrated itself into the game management regimes that surrounds it. There is no proposal, as far as I'm
3 aware, to limit access to certain corridors. That, as far as
4 the Inuvialuit are concerned, and the people of Old Crow, they
5 will continue to use the methods that they do, or in methods that involve that are consistent with sound game management
6 practices. You know, outside of a park you're not allowed to
7 run around and pop off caribou with machine guns from aircraft;
8 well, you won't be able to that within the park, either. But they do have access to caribou by snowmobiles, over routes
9 that just make sense because that's the way you get there.
10 Parks Canada has no idea at the moment of placing any
11 restrictions on that.

12 MR. BERGER: Rosita, and then Marie and then Hugh.

13 MS. WORL: I have two ques-
14 tions for Victor. Victor, you mentioned that in your in-Canada
15 agreement that you are going to recommend maintaining a list of Native users, could you expand on that?

16 MR. MITANDER: Well,
17 basically what we say is that the people that rely on that herd, it should be based on traditional use and occupancy, and
18 present use. Right now with laws that we have in Canada, a lot
19 of (inaudible) can hunt freely throughout, eh, and what we're
20 saying here is that, in terms of conservation and maintaining the present levels, there are people that use the herd right
21 now, and those people that use that herd should have the right
22 to use that herd in the future. What we have to do is come
23 forward with a list from those communities, those eight communities, who those people are that harvest the herd. I guess
24 to regulate, in a lot of communities that border the range
25 itself there are a number of people that live in the community

1 that don't harvest the herd itself. And what we want to do is
2 restrict access to those people, and to insure that the people
3 that use the herd right now would have the right to use it in
the future. And by doing it we would have to develop a list as
4 to who those people are.

5 MR. WORL: And their
offsprings, or?

6 MR. MITANDER: That's
7 right, its traditional use and occupancy and their...

8 (TAPE 7, SIDE B)

what we say, we've got a section in the agreement that speaks
9 to those people, and their, their offsprings, or the future
10 generations that would follow would have the right to access to
11 that herd.

12 MS. WORL: The second ques-
tion that I have, you really didn't discuss your, what you saw
13 or envisioned to be in the international agreement, but I was
14 wondering if you had any thoughts or what did you see in
relationship to commenting on oil exploration and development
15 in the Arctic National Wildlife Range, and also on Venetie, the
16 Venetie reservation?

17 MR. MITANDER: Well, that
area there, as I understand it, is in our view very sensitive,
18 because of the calving grounds and the staging grounds for the
19 caribou before they migrate, they gather in that area. What we
20 see is that those areas should be held off from any kind of
development at all. For instance, in the north Yukon we take
21 the position that, first of all, that a park be established in
22 north Yukon, we've got that. That also there be a land use
23 planning regime set up for the north Yukon where oil explora-
tion, resource development, or hydrocarbon developments up
24 there would be subject to an environmental screening process.
25 First of all, whether it's in the national interest, whether

1 it's in the interest of that area, and what the environmental
2 and socioeconomic impacts are that would result from that. And
3 secondly, what measures or mitigative measures should be put in
place to protect the habitat and the caribou itself? So I
4 think in terms of the wildlife range there we would look to the
5 Alaskan Native communities to look after the interests of the
herd itself. And we've talked about it in the past, and in the
6 next meeting that we see coming forward in November those kind
7 of issues should be discussed more amongst those communities as
8 to what positions or strategies should be taken to insure that
the interests of the caribou is looked after, including the
9 habitat.
10 MR. BERGER: Marie.
11 MS. ADAMS: Yes, I'll
direct my question to Jonathon Solomon. We've been, well, with
12 the bowhead whales, we've been severely impacted by quotas, and
13 from what I understand the North Slope Borough recommended not
14 to include any language related to quotas in the management
plan. I'm not sure how the State is handling management in
15 terms of how many people can take or what kind of management
16 are you looking at?
17 MR. SOLOMON: Yeh, I think
when we set this quota thing, I think in the agreement we only
18 said that quota would come into effect if there's a decline in
19 the herd. Today, when the State of Alaska Fish and Game sets a
20 quota, a type of a quota, only saying that if this herd is
hunted by people from other areas that you can only take three
21 caribou south of the Yukon, that's the only quota I know of at
22 this point.
23 MR. BERGER: Hugh Monaghan.
MR. MONAGHAN: I have just
24 a couple of general comments to elaborate on what Bob was
25 saying. There's a basic theme in Canadian land claim negotia-

1 tions, at least in the NWT, that is perhaps distinct from the
2 situation in Alaska here we should maybe understand as we
3 discuss this sort of an issue. And that is that Native people,
4 at least in the NWT, it is assumed that they will continue to
5 have accesses, for the purposes of hunting and trapping and
6 fishing, to all unoccupied crown lands in the Northwest
7 Territories. "Unoccupied" is a little unclear as to what
8 exactly that means in law, our case law is very limited. But
9 in fact you can assume that almost the entire of the Northwest
10 Territories is unoccupied crown land, with the exception of the
11 villages themselves, and the odd small area. The only limita-
12 tion placed on Native access to resources within that geo-
13 graphical area is based on either conservation, in other words
14 to maintain populations, or public safety. So the principle
15 then is that that also applies to all conservation lands--
16 territorial parks, national parks, or whatever. So within that
17 notion, what in effect we're striving for is that we want
18 consistency in management regimes throughout the hinterland,
19 whether it's inside or outside of conservation areas. Consis-
20 tency in management programs and also access by users, since
21 particularly in the Arctic we're dealing with populations that
22 move over very broad areas, populations of wildlife as well as
23 hunters. So you've got a regime that is fairly simple. There
24 are some exceptions to that, but in general it's a very, very
25 open system, currently and we envision that carrying on in the
future beyond land claims.

MR. BERGER: David, and then Steve.

MR. CASE: How is it possible for the unoccupied, or is it possible for the unoccupied crown lands to become occupied, in the future?

MR. MONAGHAN: Well, of course it would take a lawyer to ask that question. As I

1 mentioned, we have very little case law. There are some narrow
2 development corridors that could perhaps be described as being
3 occupied, but the mere creation of a conservation area does not make it occupied crown land. There has been some case law in
4 the Yukon recently which we've been looking at, and I suspect
5 these fellows are about to comment on.

6 MR. BERGER: Dave Porter, did you want to add something on that?

7 MR. PORTER: In the Yukon a
8 few years ago there was a case where two of our people were
9 charged for taking caribou in a game sanctuary. At the magistrate court level decision those people were found guilty
10 for hunting on occupied crown land, and that was the central
11 theme as to the dispute in terms of the legal arguments. And
12 it went to the Supreme Court of the Yukon and was overturned at that level, and a game sanctuary as a designation in terms of
13 land use was not deemed to have been found to be an occupation
14 of the land. So it would follow that a lot of the similar
15 designations, including possibly parks, may not restrict the ability of our people to, at the present times in terms of how
16 the law is stated in the Yukon, to go out and practice their
17 hunting rights.

18 MR. CASE: Is, assuming the crown land is not set aside as a park or something else speci-
19 fic for habitat protection or whatever, is it possible for
20 crown lands to be used for nonrenewable resource development?
21 Does that then constitute "occupancy," or is that really addressed?

22 MR. MONAGHAN: In the NWT,
23 based on my current understanding, only the very local area of surface lease would be considered occupied. But the mere fact
24 of letting out 5,000 square miles subsurface does not
25 constitute alienation for the purposes of this discussion.

1 MR. CASE: Good. I have a
2 couple of questions, maybe to Mr. Mitander. I understand that
3 you're in the process of negotiating an agreement, but does the agreement envision some substantial role for the Native popula-
4 tion or beneficiaries or their representatives in the manage-
5 ment decision making, or is their participation to be one of
6 access to the decision makers advisory capacities and the like?
MR. MITANDER: In terms of
7 game management, or land use?
8 There is guaranteed
9 participation in both areas. In terms of the game management board, we've got 50% of the management south of 65-
10 30. In terms of the land-use planning, it ranges from a mini-
11 mum 25% south to 50% in the north...
12 MR. CASE: Depending on the amount of Native population in a given area, is that...?
13 MR. MITANDER: Yes, but
14 it's minimum guarantee of 25. So it could go up, but it can't
15 go less than 25.
MR. PORTER: After coffee
16 we'll lay this out in a more clear fashion.
17 MR. CASE: Okay. Well, one
18 comment, just a minute, I just want to get rid of this, but it does seem to me that there is a big difference in the approach
19 or the philosophy of settlement in Canada, which Mr. Monaghan
20 has discussed, and I was intrigued to look at the statements of purpose of the COPE settlement. And it contrasts markedly with
21 the statements of purpose of the claims act.
22 MR. BERGER: Yeah, well,
23 Dave Porter was, suggested coffee, and before we break let me make an attempt to link what we were talking about yesterday
24 with what we've been talking about today. It seemed to me
25 yesterday that we were all struggling with the notion of an

1 indigenous society dependent on subsistence, its moral and ethi-
2 cal and cultural features marked by subsistence. And that
3 enterprise threatened by laws devised for every purpose except
the enhancement and, let alone, the restoration of subsistence.
4 And that led Tom Lonner, among others, to suggest that the
5 present network of laws and regulations in the long run would
6 not enable subsistence to survive but would inevitably lead to
its further decline. And it was suggested by many that that
7 was the inevitable result of this interface between two socie-
8 ties, two cultures, and so on. And we turn today, to see,
9 yesterday when Tony Vaska and Harold Sparck talked about the
Hooper Bay agreement, and again today when Marie Adams and
10 Burton Rexford talked about the Alaska Eskimo Whaling Commis-
11 sion, and now the International Porcupine Caribou Commission,
12 to instances where Native people have themselves, at the local
level, decided to take the initiative to protect that culture,
13 the resources it depends on, and that way of life. And I think
14 that what we've heard today is reassuring. Before we, or after
15 coffee, I think that we should, as I suggested, hear about the
approach of the COPE claim towards subsistence, because, and
16 the Yukon claims towards subsistence, because of course we've
17 heard of how they're struggling with this international caribou
herd, but they have all kinds of other things they're dealing
18 with in terms of fish and wildlife and it might be useful to us
19 to hear about the provisions that COPE has negotiated and that
20 CYI has, I understand, rejected. But, so let's take a break
for coffee, and then return.
21 MR. SOLOMON: Mr. Chairman,
22 Mr. Chairman, before that. I requested at the beginning of this
23 thing that this traditional council with sovereign power have
the last say on this issue.
24 MR. BERGER: Right, yes,
25 please.

1 MR. SOLOMON: Mr. Chairman,
2 yesterday there were certain issues brought up concerning the
3 rights of the people that depend on subsistence in the state of
4 Alaska. Don Mitchell mentioned that land claims done certain
5 things. Right or wrong, it did. But it also put us in the
6 arena of the political system of the western world. When we
7 learned this thing, what we call the political arena, we
8 learned it hard, but we learned it well. With the chief of a
9 traditional council, somebody said when they have meetings
10 there was no motions made or motions passed. It is very impor-
11 tant that the people outside of our own culture understands how
12 these decisions are made. The traditional people of the state
13 of Alaska deals with issues by consensus. It is the duty,
14 after consensus is met, it is the duty of the traditional chief
15 to make that decision. Decision is not made by motions, only
16 with discussion to come to a point of consensus. We live this
17 way because we don't want our chief to go to a meeting to make
18 that decision to be questioned on his authority. Even the
19 President of the United States cannot make that kind of state-
20 ment. When I make a decision for my people it is with the
21 consensus of them people that cannot be questioned. And there
22 was issues brought up about the claims act and what it done.
23 It opened a lot of doors to Native people, which wasn't open to
24 Native people before. Maybe that's a good side. But there's
25 also a lot of bad side of it, where we had, point by point, section by section, we have to deal with that every day, and protect these things. And that's why we're here today. As the traditional chief of the Yukon Flats, my people are meeting in Chalkyitsik today, discussing 1991. We have heard a lot of things about 1991. Our villages became corporations. And all of sudden we're in twelve regional corporations. If you look at the boundary lines of these region corporations, the boundary lines of the region corporations were decided 10,000

1 years ago by our own people. Within them areas, and I come
2 from the Tanana Chief Doyon region, 1991 issues, the way my
people in the Yukon Flats see it, the village people are not in
3 jeopardy, only the region corporation, because their share-
4 holders majority are at-large people, without a village. You
5 cannot take or discuss the stock issues of these corporations
without splitting what is a village corporation and what is a
6 region corporation. I ask my own people, 1991, would you sell
7 you stocks? They said, yes, we'll sell the Doyon stock, but we
8 will not sell our own village corporation stock, because
majority of these people live right there. They subsist on
9 them lands adjoining the village corporations. In 1973, during
10 the land selection, the village people were smart enough, when
11 they done their village corporation selection, they selected
everything that they subsist on. And we took it to our region
12 corporation, said these are the lands we're going to apply for.
13 And they said, "Well, we get less land this way, let's make a
14 deal." We did. We checkerboard the 25 townships for the maxi-
mum land to the Doyon Region. But we also got a signed con-
15 tract agreement that when these things, when these lands are
16 conveyed that the village corporation will manage these lands.
If there's going to be oil development with the Yukon Flat,
17 which Doyon Region right now wants, the Doyon board, but they
18 cannot get a letter of nonobjection from these village corpora-
19 tions. If there's oil there, same thing, right now, in the
whole nation, there's a surplus of oil. So why should we drill
20 for oil on the Arctic Wildlife Range, or the village corpora-
21 tion lands, because there's a big surplus of oil. If the
22 United States and the nation got 120 years of surplus oil, then
23 we tell them, we'll drill for oil 120 years from now. But
nobody listens, because everybody wants to get rich in a short
24 time.

25 And it was brought up about

1 the wages that's earned in these villages. Average wages,
2 cash, into my village, that's Ft. Yukon, is about $700 a year,
3 that they earn working, as you call it. But every year Native
cultures are practiced, we call it potlatches. We got a pot-
4 latch when somebody dies, we got a memorial potlatch for our
5 elders that died years ago. These people that make $400, $700
a year, have a memorial potlatch worth $50,000. The Western
6 culture does not understand this, so how can they understand
7 our subsistence way of life?

8 It's very important, when
we talk about our ecosystem with animals, and I want you to
9 note with the Porcupine Caribou Herd Commission is made up of
10 both sides of the country, and all of this, except for Kaktovik
11 speaks the same language. We communicate, we have meetings
in our own language. The only village that don't understand us
12 is our Eskimo brothers from Kaktovik. That whole range
13 speaks the same language, because they are in with the eco-
14 system with the Porcupine caribou herd. And I want you people
to understand that. We're not taking anything away from any-
15 body. We're not taking anything away that didn't belong to us
16 in the first place.

17 And as Native people in the
whole country know, that when our country call us, we answer.
18 And we're ready to do that, we're pleading, and saying, "Yeah,
19 we're here, we're the experts on these issues, use us." Nobody
20 have came forth, say that, would you come join us in these
things about the trouble of this country? But we're ready,
21 we've been ready for thousands of years. Our doors are open to
22 anybody that wants to become a subsistence user. We don't deny
23 anybody that. And this is the way that Native people do. I
share what's on my table with you, that's what it means, sub-
24 sistence. When I share with you, then my heart is happy, so is
25 yours, and this is the way of subsistence way of life. We

1 sometimes go around it and forget. Some of our Native leaders
2 ourself sometime forget who we're serving. But we're reminded
3 when we go home, every day of our life. And it's very impor-
tant, to me, that these kind of meetings where you let the
4 indigenous people lead the discussion, is very...I had good
5 feelings today on it. Now we are given a chance to be asked
6 the questions, instead of us asking the questions to the other
side.
7 MR. BERGER: Thank you,
8 Jonathan, thank you very much. Well, we'll take a break for
9 coffee for a few minutes.
(MEETING BREAK)
10 (MEETING RECONVENES)
11 MR. BERGER: Well, let's
12 take our seats and take another crack at this. Well, I'm about
to make a slight change in our plans. Dick Spaulding, who is a
13 lawyer from Yellowknife, is here. He is a lawyer working for
14 the Dene nation and Metis negotiating committee, and he has to
15 leave tonight, so I thought I would ask him to open the discus-
sion this afternoon and tell us about the approach of the Dene
16 and Metis towards subsistence values and subsistence hunting
17 and fishing rights. So, Dick, you have the floor, then.
18 MR. SPAULDING: Thank you.
This roundtable comes at a very opportune time for the Dene and
19 Metis, they started to negotiate the issues of wildlife har-
20 vesting and management in April '84, and they haven't finished,
21 so this discussion is going to give us the opportunity to
review the positions that we're developing and look at them in
22 perhaps a larger perspective then one sometimes does when
23 you're working on a week-to-week basis at the table.
24 I should say that I'm
another one of the mechanics in the crowd. I don't have ob-
25 viously any mandate to state political positions or negotiating

positions on behalf of my client. The opinions I'm going to be expressing are my own opinions, and any description that I'm giving of what I see as the Dene-Metis view of things is only my own description and I take full responsibility for any misrepresentations that that might involve.

To give some background on the Dene-Metis claim, the Dene-Metis are the aboriginal people of the Mackenzie Valley Basin. Today their population is roughly 14,000. They number roughly half of the voting population of their claim area. The government of the Northwest Territories is a Native majority government, however, when you compare the eastern part of the territories to the western part you find that the Inuit are in a predominant majority and expect to continue to be in that majority for some time to come. Whereas the Dene and Metis are roughly half of the population now and see it as quite possible that they are not far away from a minority position. And they are developing their positions in the aboriginal claims forum from that perspective. A perspective which assumes that they will have significant clout with the ballot box, but not majority clout, in the long run. They have been negotiating their claims since the early '70s. For most of that decade their negotiations concerned political rights. The government of Canada for most of that period refused to openly negotiate political rights with the Dene and Metis, with the exception of a period during 1977. It was only when the federal government in 1981 agreed to support the establishment of constitutional forums to deal with political development involving both the Native organizations and representatives of the territorial governments in the eastern and western Arctic, that the Dene and Metis decided to turn their attention at the aboriginal claims table to issues concerning lands and resources. The first issue that was dealt with at the claims table was eligibility. The definition of

1 the collective that would participate in the settlement, and
2 Bob Gamble is quite right in saying that the first substantive
3 issue that the Dene-Metis are dealing with in terms of land and
resources is wildlife harvesting and management, and that has
4 only begun this past April.
5 To give some background on
the regulatory system, some of the problems with it in the
6 Mackenzie Basin, just a few general comments. I think the
7 first thing to note, in contrast with the Alaska situation, is
8 that the Dene and Metis have had most of their traditional land
area covered by treaties since the turn of the century, 1899
9 for part of the claim area, 1920 for the other part. And these
10 treaties recognized special rights for Native people to har-
11 vest. I think it's worth mentioning that the recognition did
not limit itself to subsistence harvest. It included hunting,
12 fishing, and trapping, and further that, with respect to
13 hunting and fishing, it recognized what was the Dene-Metis
14 usual vocation to hunt and fish. And at the time, the usual
vocation of the Dene and Metis people did include some exchange
15 with primarily Hudson's Bay traders of meat, and as well supply
16 of meat to Roman Catholic missions.
17 I would say that there is a
similarity between the history of the regulatory regime in the
18 territories and Alaska, as it's been characterized yesterday,
19 in that there has generally been not a great deal of
20 restriction on Native access alone to renewable resources.
There have been enough instances of it, however, to make the
21 Dene-Metis aware that they need protection from the use of
22 authority in the name of scientific management or in the name
23 of competing users to restrict their access to wildlife. There
have been cases of accusations of severe overharvesting,
24 particularly the Beverly-Kaminuriak caribou herd, which
25 purported to be made on a scientific basis and were later found

1 not to have been valid, that the caribou count had been wrong.
2 Those kinds of accusations have produced the kinds of pressures
3 for restrictions on Native harvesting that people in Alaska
have encountered.
4 I'd like to break my dis-
5 cussion of the Dene-Metis approach to the negotiation of this
6 issue into five parts. One concerns the definition of subsis-
tence and the attempt to describe the basic right that the
7 Dene-Metis are seeking. The second concerns how it might help
8 to consider that a property right, and also the ways in which
9 it might not help. The third is management, and I'd like to
deal with that in terms of self-regulation, and also in terms
10 of participation by the Dene-Metis in public management through
11 joint management boards. The fourth is the supply side, or the
habitat protection and productivity of the resource. The
12 agreement that is being negotiated presently by the Dene-Metis
13 doesn't cover much of that, much of that necessarily includes
14 questions of the creation of conservation areas and parks,
land-use planning, landownership, which are going to be dealt
15 with in separate agreements, but I do have some things to say
16 about that. And lastly the perspective of the Dene-Metis on
17 the importance of measures to strengthen and enhance the
renewable resource economy, investment in that economy.
18 I think it's fair to say
19 that the preservation and enhancement of the traditional way of
20 life of the Dene-Metis is their priority in the negotiations of
the wildlife harvesting and management position and of their
21 overall settlement. And I think it's also fair to say that
22 they found their claim to their, to protection of their tradi-
23 tional way of life, on the basis that have been outlined
yesterday--on a moral basis, on a political-legal basis, on a
24 cultural basis, and also on an economic basis. I would say,
25 though, that I think the definition of subsistence that was

discussed yesterday and is outlined generally in Steve Langdon's paper falls short in the economic dimension, in terms of the Dene-Metis approach to the basic right that they want to see recognized. They see themselves as having had an economy that was self-sufficient prior to contact. And it was self-sufficient based at that time on subsistence. Since contact, however, it has been a mixed economy for most of the period since contact actually introduced cash exchange in a way to the Dene-Metis, they've still been able to produce cash through activities based on renewable resources, and that's primarily trapping. After the second world war, when fur prices went way down and other forces ended up putting people in settlements and encouraging people to rely on the wage economy, there has been less reliance on the renewable resource economy as a means of self-sufficiency. But the Dene-Metis are looking at their settlement as a means to make them as self-sufficient as they can possibly be on the basis of renewable resources, so that they are looking for a right which will permit them to not only subsist on renewable resources but to earn cash from the production and development of renewable resources. And they are also looking at a right that will give them preferences and priorities in that area, not only so that they can produce cash, but so that they can control how competitors develop renewable resources. To paraphrase that, then, I think that, I don't think that this wording is perfect, but I think to compare what they see as the basic right that they're pursuing to what Commissioner Berger mentioned yesterday as a preferential Native subsistence right, I would say perhaps the Dene-Metis are talking about a preferential right to produce and develop renewable resources.

Now, does it help at all to talk about this in terms of a property right? I think it does, in some respects.

1 MR. BERGER: Just before
2 you go on, what do you, when you say renewable resources, do
3 you mean anything besides fish and game?
MR. SPAULDING: The
4 position that's being negotiated right now deals almost exclu-
5 sively with fish and game, but the Dene-Metis will, expect to
be taking a similar position with respect to timber and plants,
6 as well.
7 One respect in which it
8 helps to think of this as a property right, in terms of their
approach, is that they are looking to exclusive rights to some
9 species, exclusive rights to some areas for all species, areas
10 outside parks and conservation areas and areas separate and
11 apart from any lands that they might gain fee simple title to.
So that as an owner of property generally has a right to say
12 who else can or cannot use that property, Dene-Metis are
13 looking at a harvesting right that, at least with respect to
14 some species in some areas, would give them that kind of
authority. And they see that as providing them, essentially,
15 with two things; one is protection from competing users, and
16 control over competing uses. They are not necessarily assuming
17 that exclusive rights mean that there will not be permission
granted to other harvesters to harvest for sport or subsistence
18 purposes, but that the Dene and Metis will be in a position to
19 manage that kind of use. They are thinking of some qualifica-
tions on that kind of exclusivity, and they are qualifications
20 that might apply in the case where the Dene-Metis have an exclu-
21 sive right to an area or species and are not exercising that
22 right. And those kind of qualifications would then possibly
23 permit others in some seasons of the year, some of the less
critical seasons of the year, to harvest those resources or
24 those areas. And as well to apply for permission to the local
25 Dene-Metis committee responsible for that area to harvest when

1 perhaps the community isn't using that area and judging by
2 their traditional conservation practices they think that that
area can be used.
3 Another respect in which I
4 think it might help to think about this as a property right is
5 that it is seen as an inherited right. It's seen as an inherited
right that applies to the entire collective of people who are
6 eligible for the settlement. It does not depend upon the
7 lifestyle of those people, it wouldn't depend on the technology
8 of their harvest, it wouldn't depend upon where they lived
within the claim area, it wouldn't depend on whether they
9 exercise that right often or infrequently. It would be seen as
10 a birthright.
11 Another respect in which I
think it helps to think of it as a property right, and I
12 referred to this in my general comments, is that...the holders
13 of these rights would have considerable discretion in how they
use them, in other words, how they use the harvest. And I
14 think the main importance of having that kind of discretion
15 from the point of view of the Dene-Metis is to protect the
16 subsistence priority, which is their priority. But it also
would provide them the option to use the resource for other
17 purposes, including what some people might even call sport, but
18 primarily commercial purposes. And in our discussions we are
19 talking about exclusive rights to commercial licenses in some
20 respects and, with respect to other kinds of economic uses of
wildlife, rights of first refusal. We're talking about
21 preferential opportunities to farm, to ranch, to retail, to
22 manufacture.
23 MR. BERGER: Sorry, to
farm...?
24 MR. SPAULDING: Fur
25 farming...

MR. BERGER: Fur farming. And what's...ranching?

(TAPE 8, SIDE A)

MR. SPAULDING: Ranching, perhaps with buffalo, there is a reindeer preserve mostly outside of the, mostly inside the Inuvialuit settlement area, but that kind of thing, as a potential future use that, if and when it appears to be feasible and if and when the Dene-Metis consider that it accords with their own values and that they can organize themselves socially in such a way that that makes sense to them, that they will have preferential opportunity to into that kind of thing.

Another respect in which one might consider this a property right is that the Dene-Metis, although they haven't developed a detailed position on the question and haven't begun to negotiate it, plan to negotiate a right to compensation for loss of harvesting opportunities. A right which would provide them possibly with substitute resources, possibly new access, possibly restriction on competitive uses to other areas if a particular area that they depend upon is damaged, and from their point of view would provide some deterrents to industry and government in their activities on land that may conflict with subsistence harvesting.

And lastly I think it might help to characterize this as a property right in the sense that the Dene-Metis are considering what kind of judicial remedies they might be able to use to protect this kind of right. They are considering whether they might not be able to characterize this as a right that would permit them to go to court if the right were being contravened and apply for injunctive relief. To have a right which, if trespassed upon by another party, would permit them to go to court to prevent that activity from

1 happening, to stop that activity if it's going on already,
2 possibly to require mitigative or clean-up measures. There are
some respects in which their approach does not easily compare
3 to property rights. One is that for species and areas that are
4 not exclusive they're talking about preferential rights and
5 what they mean by that is the right to meet their needs, but
rights which do not exclude other users from harvesting if
6 their needs are met first. They are contemplating a management
7 regime which may impose quotas in the future but their approach
8 is that they are willing to consider a regime where quotas may
be imposed if necessary but not quotas necessarily. That there
9 would have to be a requirement of conservation, and conserva-
10 tion would be defined in the agreement, to justify the imposi-
11 tion of quotas. In terms of defining what those needs are,
which enable the Dene-Metis to have a preference, there would
12 be some criteria setout in the agreement, but it would not be
13 a strict codification of what their needs are, it would be a
14 set of flexible criteria and they would be depending not only
on the criteria but the make up and the composition of the
15 management board which decides what their needs are, for pro-
16 tection of their needs. And the needs would include some cash
17 requirements, they would not be restricted to subsistence. And
the most important cash requirement, conceptually in terms of
18 their needs, would be what is seen as the cash need to continue
19 to pursue the subsistence harvest. Cash needed for equipment,
20 snowmobiles, traps, rifles, ammunition. The body that would
decide what this need is would be the joint management board
21 setup under the agreement. This particular decision of the
22 board would not be renewable by the minister responsible for
23 that particular jurisdiction. There would be a guaranteed
minimum need, quite apart from what the board might arrive at
24 by applying its criteria. And in some cases the minimum may
25 be defined by numbers of animals, in other cases it may be based

1 on an averaging of the past harvest.
2 The second respect in which
I think this right could not be considered a property right is
3 that the Dene and Metis do not see it as a right that would
4 entitle them to destroy or to waste the resource, which in
5 other respects they may consider themselves to be owners of.
So that they are considering defining conservation in the
6 agreement in such a way that they commit themselves to exercise
7 their rights in accordance with conservation, and if conserva-
8 tion requires that the exercise of their rights be constrained,
either by the joint board or by government, that that authority
9 would exist pursuant to the agreement.
10 The conservation principle,
11 as it operates in this approach, is a crucial one. It provides
the hinge between what the rights of the Native people are and
12 what the authority of the management system and government is.
13 I think it's implicit in the notion that both sides are con-
14 sidering agreeing to comply with the principle of conservation,
that there is some recognition that there is a public interest
15 in continued productivity of the ecosystem. A recognition on
16 the part of the Native users and on the part of government.
17 Obviously the definition of this principle is key, and a defi-
nition which would provide that it just means productivity for
18 its own sake would have to be unacceptable. I'm not sure that
19 we have arrived at a final definition in our negotiations.
20 We've looked with interest at some of the definitions in the
other agreements that have been negotiated, but it seems to me
21 that at least we have to be talking about a definition that
22 includes productivity for sustained harvest. There has been
23 some discussion of going beyond that and requiring that the
conservation principle itself recognize a priority Native har-
24 vest, and the James Bay agreement, Harvey Feit I expect will
25 probably will go into this tomorrow or later this afternoon,

1 the James Bay agreement does include a principle of conservation that recognizes the Native priority. And I think it's
3 also worth noting that the Canadian courts in looking at how provincial governments can regulate Native peoples' harvesting
4 rights recognized in treaties have also developed the principle
5 of what is sometimes referred to as "Indians before moose."
6 That when a province otherwise has the authority to regulate harvesting according to laws of general application, and there
7 is a special harvesting right recognized, that the laws of
8 general application cannot go so far as to put moose before Indians, to raise the priority of conservation and productivity
9 for its own sake to the point that the Native dependence upon
10 the resource is not properly protected.

11 Turning to management then, I'd like to treat this with respect to self-regulation, and
12 then with respect to public management authority. Much of the
13 authority that the Dene-Metis approach would grant the Dene-
14 Metis to regulate themselves would come directly by virtue of the rights that are recognized in the agreement, and not
15 expressly through management provisions. The incidental rights
16 to the basic harvesting rights that they are negotiating would
17 include the right to determine their own methods of harvest, the age and sex of animals that they harvest, the season of
18 their harvest. It would include the right to trade and barter
19 edible products of wildlife and, with some limitations, the
20 right to sell meat and fish. They also would have certain exclusive and preferential rights to nonsubsistence uses of
21 harvest. All of these rights give them, incidentally, the
22 authority to manage those uses themselves. But there are mecha-
23 nisms that are proposed in the approach to regulate the exercise of Dene-Metis rights, they're local and regional wildlife
24 councils. They would have express authority to allocate the
25 harvest among the Dene-Metis people. They would have express

1 authority to regulate the methods, the age, the season, the sex
2 of wildlife harvested. They would have, at their own option,
3 the opportunity to have their decisions made binding and
enforceable at law.
4 With respect to public
5 management authority, regulation of competing users, management
6 of wildlife populations directly and habitat as well. I've
mentioned the fact that exclusive rights in themselves would
7 give the Dene-Metis some management authority over competing
8 users, but there would be a joint board set-up under the agree-
ment to exercise virtually all of the public management
9 authority of government over wildlife and wildlife harvesting
10 in the claim area. I think there are some interesting analogies
11 to the game and fish boards in Alaska. Of course, the big
12 difference is that there is no guaranteed Native seat on the
game and fish boards in Alaska, and what we are talking about
13 is a joint board made up of half Native representatives, half
14 government representatives. The nature of the board's author-
ity is a very important question, not only with respect to
15 wildlife but some of the other management regimes to be set-up
16 in the Dene-Metis settlement. What the Dene-Metis are pro-
17 posing is that it be regulatory authority, or what could also
be called delegated decision-making authority. It would not be
18 legislative authority, legislative authority is being discussed
19 in the political forum, the western constitutional forum that I
20 mentioned earlier, and it's being dealt with at another table.
But the Dene-Metis are looking at authority which is clearly
21 something more than advisory authority. I mentioned that the
22 board would have final authority to determine a Native needs
23 level, if that were required in the future. There are other
decisions that the board might have final authority over, but
24 even with respect to those that it doesn't, the relationship
25 between the board and the minister responsible would be such

1 that the minister has a power of disallowance over board
2 decisions, but that he cannot make a decision in the first
3 instance.

Just to go quickly through
4 some of the powers of the board that we're talking about.
5 We're talking about powers only to regulate Native harvesting,
6 if and when required by conservation, and otherwise that is
left to the local and regional councils. We're talking about
7 general authority to regulate non-Native harvesting, to regu-
8 late the use of harvest products, to develop management plans,
to set research priorities, and to design research that's
9 carried out by government. There is a separate commitment in
10 the position to involve Dene-Metis people themselves in the
11 conduct of research. The board would also have authority to
delegate any of its powers to the local and regional councils
12 if the board saw fit to do that, on a regional or community
13 basis. It would have authority to develop enforcement poli-
14 cies, although it wouldn't be an enforcement agency itself. It
would be responsible for education, and it would have some
15 authority to protect and restore habitat, although as I men-
16 tioned earlier this is the first substantive agreement that
17 we're dealing with at the table, and how that fits into an
overall land management regime is yet to be determined. Coming
18 to that side, then, the supply side of the demand, supply
19 equation, one principle that has been introduced in our agree-
20 ment that we expect to continue throughout is the principle
that there must be integration of management of both renewable
21 and nonrenewable resources achieved through the settlement.
22 Now whether that happens through one big board or an umbrella
23 that connects to all the various agencies responsible for
different aspects of renewable and nonrenewable land use is
24 something that hasn't been determined. But the principle is
25 something that the Dene-Metis consider to be important.

1 Just a quick review of the
2 framework of what they see their habitat protection and land
use regime looking like. They expect that they will be
3 selecting lands for fee simple ownership, and at least some of
4 those lands will include subsurface title. They expect that
5 there will be parks and conservation areas established through
the settlement which they will have joint management authority
6 in, analogous to the wildlife board situation I mentioned, and
7 which they may also, as do the Inuvialuit, have some veto
8 authority over development in, which can be exercised apart
from the joint management regime. And which conservation areas
9 and parks would be managed according to objectives that are
10 negotiated and considered acceptable to the Dene and Metis.
11 They would also be looking at basic standards for participation
and for management of parks that might be established after a
12 settlement, or conservation areas. More generally, they would
13 be looking, and I think this is similar to most of the other
14 Canadian land claims settlements, they would be looking at
getting into the land and water regulatory regime at all of the
15 levels--land use planning, screening, impact assessment, appro-
16 val or disapproval of projects, the terms and conditions of
17 development, and what may be a little greater emphasis for the
Dene-Metis because of their experience with the Norman Wells
18 (?) Pipeline than with the other claimant groups, also getting
19 in at the point of monitoring and insuring that there is an
20 adequate monitoring regime set-up, through the settlement, to
monitor on-going development in the claim area.
21 Lastly, one of the primary
22 objectives of the wildlife position from the Dene-Metis
23 objective is to strengthen and enhance the renewable resource
economy. And they are looking at investments of funds gained
24 through the settlement to do that themselves. They are also
25 looking at ways to channel existing government money into the

1 renewable resource sector. Some of the kinds of measures that
2 are being considered are the income security approach that's
part of the James Bay settlement, and I'm sure you'll be
3 hearing from Harvey Feit about that, which involves expenditure
4 of both government and Native funds. A marketing board system,
5 this of course would be for trapping and commercial sale of
products, price supports for those things, transport and equip-
6 ment subsidies for both commercial and subsistence harvesting,
7 and tax incentives with respect to trapping and other com-
8 mercial uses of renewable resources. And I hope that Hugh
Monaghan might give you some information, also, about what the
9 territorial government is now doing in terms of funding for the
10 renewable resource economy today and measures to strengthen
11 that in the future.

Thank you.

12 MR. BERGER: Thank you,
13 Mr. Spaulding. Well, that's a most comprehensive and helpful
14 outline of the Dene nation and the Metis approach to their land
claims negotiations. I think it's worth noting that many of
15 the elements in the Dene and Metis claim are drawn, as I under-
16 stand it, from what is already to be found in the COPE settle-
17 ment that we have here before us, it's called the Western
Arctic Claim, the Inuvialuit Final Agreement, and from the
18 approach taken by the CYI and their continuing negotiations
19 with the government of Canada. Just one point that might be
20 inserted here, because Yukon Territory and the Northwest
Territories are still territories, there is nothing cor-
21 responding to the state government of Alaska, so that when you
22 have negotiations they are negotiations between Canada and the
23 Native people. Now the territorial governments participate,
but territorial governments are creatures of the federal
24 authority and in the end the federal authority can reach an
25 agreement with the Native people and that's that. If the

1 territorial government doesn't like it they have no sovereign
2 authority, there's nothing they can do to intercede. It makes
3 negotiations, I suppose, I'm sure, a little easier than
otherwise they would be. Well, we only have a few minutes left
4 this afternoon. Maybe we might ask Hugh if he'd like to offer
5 an addendum to what Dick Spaulding has said, and then have some
questions before we adjourn. Anything you'd like to add, Hugh?
6 MR. MONAGHAN: Not really,
7 I think I can save most of my comments on land claims and the
8 perspective of our government and the approach that's being
taken in Northwest Territories until later when we get into the
9 COPE agreement. I would, however, just respond to the one
10 point that Dick mentioned, and that's in relation to support
11 programs. Our government, for quite a few years, strongly
supported the maintenance and development of the renewable
12 resource-based economy. We're now trying to focus our support
13 programs to make them somewhat more effective. We're also in
14 the process of reviewing our legislation. I'm sympathetic to
and agree with Tom Lonner's point that, unfortunately, we
15 sometimes trap ourselves in our own legislation and policies,
16 and we're discovering that recently, but I'll get into that
17 tomorrow, as well.
MR. BERGER: Any questions?
18 Rosita.
19 MS. WORL: Mr. Chairman, I
20 would like to beg indulgence of the two previous speakers and
return for a moment to the International Porcupine Caribou
21 Commission and proposed treaty. Since I, unfortunately won't
22 be here tomorrow, but I will have the benefit of reviewing the
23 transcripts later on. And I think a discussion on this
particular issue that I'd like to raise would be vital to
24 particularly Alaska Natives. I would just like to draw
25 attention and discussion between the differences in the

Canadian constitution and the Alaskan constitution, and how these differences might be transformed into an international agreement to ensure the protection of Native subsistence rights, both in Canada and in Alaska. Now, as I understand it, the Canadian constitution provides for the protection of Native peoples' subsistence rights as Native peoples. Alaska's constitution, on the other hand, does not specifically protect Native subsistence rights as Native people, but rather calls for equal access of all citizens to resources. In this case, I would see that an international treaty, that Alaska Natives would want something different in an international treaty than what the Canadians would require, since their constitution already provides for their protection. As we have seen from Langdon's review of international treaties and legislations, most of the protection, or many of the protections Alaska Native peoples have come from international treaties, and also from federal legislation, rather than from State protection. These protections come in spite of our State constitution. Now, my assumption is that the State of Alaska, if they are involved in developing this international agreement, would not be in a position to seek full protection of Native subsistence rights to the caribou as Native people, but I'm assuming that they would be, see going for the equal access of all citizens in an international treaty. So, if we have time tomorrow, I would like a further discussion on that, from both Jonathon Solomon, how he perceives that, and perhaps if we have anyone from the State, if they might like to address that.

MR. BERGER: Yes, well, you're forewarned. Woodrow Morrison.

MR. MORRISON: I also have a question that, or I'll make a couple of comments on that. The presentation by Mr. Spaulding was so comprehensive and, at

1 least in my opinion, so complete that I find difficulty in
2 forming any questions as to what you're proposing, but I would
like to get back again to what Rosita mentions about the Inter-
3 national Porcupine Caribou Commission hearing. And one of the
4 things that Jonathon Solomon said really struck me, I suppose
5 I'd been aware of it but had never fully realized the import of
what he finally was able to, what he articulated. That Alaska
6 Native Claims Settlement Act says it extinguishes Native tradi-
7 tional hunting and fishing rights, but one of the things
8 Jonathon said was that this claims settlement act has thrust
Alaska Natives into the international political arena. So, and
9 so I'm really deeply impressed by what has been done by the
10 Eskimo Whaling Commission, by the AVC people in negotiating an
11 agreement for international migratory birds, and also what the
Eskimo Walrus Commission has done. And so now when these
12 treaties are negotiated, for example with the international
13 caribou treaty, once that's been entered into it's going to
14 have wide-reaching effects on the endeavors of other tribal
peoples, not only the United States and Canada, but probably
15 indigenous peoples in other parts of the world, but more
16 close to home I'm thinking more in terms of the international
17 salmon treaties, international halibut fisheries treaties, and
so on. And one of the aspects of these treaties is that in the
18 United States, as most students of and practicioners of Indian
19 law have come to understand, is that the United States gov-
20 ernment's treaties with Indians, and the United States ceased
making treaties with Indians in 1871, but these treaties have
21 been viewed largely as documents of limitation. In other
22 words, rights or powers not specifically referred to in those
23 treaties are reserved by the tribes. But now we're getting
into a new arena, it seems, into these international treaties,
24 which we might even view as third-party contracts. In other
25 words, the United States government is entering into a contract

1 with the Canadian government for the benefit of a third party,
2 who are the Native people. And the Canadian government, like-
wise, is entering into an agreement with the United States for
3 its third party. And so then the benefits accrue that way.
4 And these international treaties between nations, or third-
5 party agreements, probably will be viewed in a different light
from the traditional viewing of Indian treaties with the United
6 States government. In other words, these international
7 treaties recognize rights and protections of those rights, and
8 if those protections and rights are not stated then they're not
recognized, or they may not be recognized or may not be pro-
9 tected. And also, students of and, again, practitioners of
10 Indian law, are fairly familiar with United States Supreme
11 Court findings of the history of state tribal relations and
have not had too many favorable comments on those relation-
12 ships. And if I understand this minimalistic approach, the
13 minimalistic approach is one in which the treaties, the treaty
14 protects the habitat, but leaves the definition of the rights
and protections of the users of the resources or the subject of
15 the treaty to the domestic managers. Now, I don't pretend to
16 understand Canadian law, however, I understand that in this
17 type of a treaty that then it becomes a domestic matter in
which possibly Canadian legislation may be necessary to articu-
18 late what those particular rights and protections of the third
19 party, i.e., the Native people, are going to be. Whereas here
20 on the United States side, if I understand correctly, this type
of treaty can include those specific rights and specific pro-
21 tections of the third parties, in other words, the members or
22 the peoples of the Yukon Flat area or the 3-G's area, the
23 International Caribou Commission. But the minimalistic
approach, if I understand correctly, would leave the definition
24 of those rights and protections to the State of Alaska, who's
25 the manager. And given the states', not just Alaska but other

1 states', involvement with tribes, maybe tomorrow we can discuss
2 the issue of, and forgive me on this one, Jonathon, because I
3 don't want to try to say what or what should not go into that
treaty, but for the purposes of discussion, I would like to
4 tomorrow, maybe we can discuss that minimalistic approach.
5 Because I understand from what Jonathon was telling us that in
6 order for the people of the 3-G's area to make an agreement
that's by consensus, it's not something where everybody shows,
7 takes a vote, and then you go by the majority, it's a long
8 process, it's something that the people must first understand
9 what it is they're involved in before they'll agree to it. So
this treaty thing is a continuing one, if I understand cor-
10 rectly, and so although there have been some general positions
11 agreed to that it still has not reached a final stage. And so
12 I would beg your indulgence to ask that maybe we can discuss
tomorrow what that minimalistic approach is, because I don't
13 fully understand it. And I'm hoping that as other peoples in
14 Alaska and Canada become involved in fisheries treaties that
15 they then can look to this treaty for guidance and possibly
support, because this is going to have very far reaching af-
16 fects on all indigenous peoples and I, for one, can only say,
17 "thank you," for all the work that you guys have done in
18 opening up this international arena to us.

MR. BERGER: Tony Vaska.

19 MR. VASKA: Thank you. I
20 have a question for Woody, as the subsistence specialist under
21 the Bureau of Indian Affairs. The discussion today by Jonathon
exemplifies that an action by an Alaska Native tribe which has
22 some implications with international agreements on something
23 specific speaks to the fact that the Department of State,
24 Department of the Interior can possibly become involved in
these kinds of negotiations. I'm hearing from the Canadians
25 that they are being very careful about those negotiations, even

1 in their discussions today they gave good descriptive state-
2 ments of what is happening in Canada, whether it's the
3 Northwest Territories or the Yukon Territories. We hear some
very productive results from the Eskimo Whaling Commission. We
4 hear some very good results from one of the things that we're
5 doing on the Yukon-Kuskokwim Delta, and we hear some very good
results from the International Porcupine Caribou Commission.
6 I'm wondering whether it's the Department of the Interior or
7 the Bureau of Indian Affairs' policy to be pushing these tribal
8 governments into negotiating international agreements.

MR. MORRISON: First of
9 all, I'm not authorized to speak on what the Department of the
10 Interior's policy is. And secondly, the questions I posed
11 today, or the ones that I just posed, are primarily for pur-
poses of discussion, and the Bureau of Indian Affairs at this
12 point in time is in the process of developing policies, and so
13 that's why I put the question to Marie Adams as to what did the
14 Walrus Commission see as the Bureau of Indian Affairs' role, or
what did she think the Bureau's policy should be. And that
15 would be also the question that I would ask Jonathon, but what
16 I'm doing, what I'm commenting on, is the fact that the three
17 groups that have discussed these types of treaties have opened
up a world that many of us were not really even aware that
18 existed. Now as far as the Department of Interior's involve-
19 ment in it, I don't think the Secretary of the Interior or
20 anyone else has even articulated the position as to what that
should be. And if I understand it correctly, the DIA in
21 Canada, I didn't hear any mention of the DIA being involved,
22 which is their Department of Indian Affairs. I guess in some
23 ways, working for the...in my position at the Bureau of Indian
Affairs there is so much happening and it's happening so fast
24 that I find myself being a spectator and not really being able
25 to, well, since I'm so low down in the organizational struc-

1 ture, that even what I write at my level has to be cleared at
2 four other levels before it gets to the area director. And as
3 far as the Bureau pushing the tribes into getting into inter-
national agreements, from my own personal perspective, I see
4 this as a manifestation of this term we call sovereignty. That
5 what the tribes are doing is taking what they view to be their
sovereign rights to go forward with protecting their rights,
6 not only the rights of individuals but the rights of their
7 people as a people. I guess that's the best way I can answer
8 your question.

9 MR. BERGER: Tony.

MR. VASKA: Mr. Chairman,
10 if I can followup on that. In discussions like this, I find
11 it useful to get together with people like Jonathon, with
Marie, with Burton, with Caleb, with Weaver, because we are out
12 in the field, and we do try to evaluate the different systems
13 we have to work with. I come to meetings like this and I'm
14 very closed and very careful of what I say because there are
government representatives that I really don't want involved in
15 the kinds of decisions and activities that we do. I have a
16 dual job that makes me especially careful. We have somebody from
17 the Department of Law, State of Alaska, here as well. And so
we find ourselves at a loss at times to come out and explain
18 exactly what it is we're trying to do, because at times we
19 tend, we seem to bend the wishes of the Department of Law, we
20 seem to bend the wishes of the Bureau of Indian Affairs, and
yet we find that we're dealing with assistant ministers and
21 other government officials from a different country, who may
22 only need to go through one other person to discuss the same
23 matters. It becomes a little difficult to be doing that. For
instance, I know that with our Hooper Bay agreement we not only
24 are working out some agreement between the users along the
25 whole Pacific flyway, but we also have to worry about Mexico,

as Harold brought out yesterday, Canada, Japan, and Russia. So we're somewhat closed mouth about it, mostly because we start moving away from our own arena and the State Department starts invervening on behalf of us when we get to those levels of discussions. And I'm not sure to what extent, for instance, the State of Alaska views the International Porcupine Caribou Commission, and what validity the State of Alaska would give an IRA council when, on the one hand, the Department of Law has a different assistant attorney general than the one present who's working on the very question of the jurisdictions of IRA's, and we have another person here who is in fact saying, yes, we are following the lead, maybe I'm putting words in her mouth, but, we are following the lead of the IRA council that Jonathon describes. It seems to present some contradiction, and I worry about those contradictions. Because, yes, I do talk to the other assistant attorney general about different issues in a different arena, nevertheless the State is the same, the powers are the same, and it seems very inconsistent. And too often it's to my disadvantage to be talking to two different people from the same agency.

MR. BERGER: Well, I'm glad, Tony, that you were able to come and join us these past two days. And I, far from thinking you had been guarded, I had thought you were outspoken, but I guess I don't know you well enough! Well, I think that, it being 4:30, and enough new material having been raised to keep us busy for a long, long time, I should thank all of those who spoke today and say that I will, with David and Rosita and Steve, just take a look at the agenda for tomorrow. Let's assume we'll carry on tomorrow as scheduled, and with the items as scheduled. The Eskimo Walrus Commission, I guess there is nobody here from the Pribilofs. Jim could speak for the Tanana Chiefs, and I understand Willie Goodwin will be here to talk about NANA and Harvey

1 Feit about James Bay and northern Quebec, and Dan Gross about
2 the third world. But I hope we can set aside the first hour to
3 complete the discussion with the representatives of COPE and
CYI about subsistence. And thank you, Dick Spaulding, that was
4 a most comprehensive outline, and we'll be returning to it, and
5 have a good journey home.

6 (MEETING ADJOURNS)

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CERTIFICATE

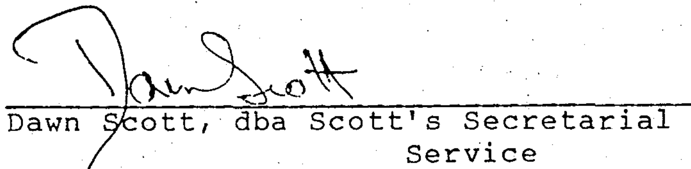
I, Dawn Scott, residing in Anchorage, Alaska, do hereby certify:

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

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

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

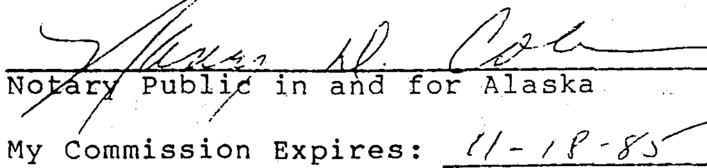
IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of January, 1985:



Dawn Scott, dba Scott's Secretarial Service

UNITED STATES OF AMERICA)
STATE OF ALASKA)
THIRD DISTRICT)

This is to certify that on this 30th day of January 1985, before 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.



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