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TRANSCRIPT OF PROCEEDINGS

ROUNDTABLE DISCUSSIONS

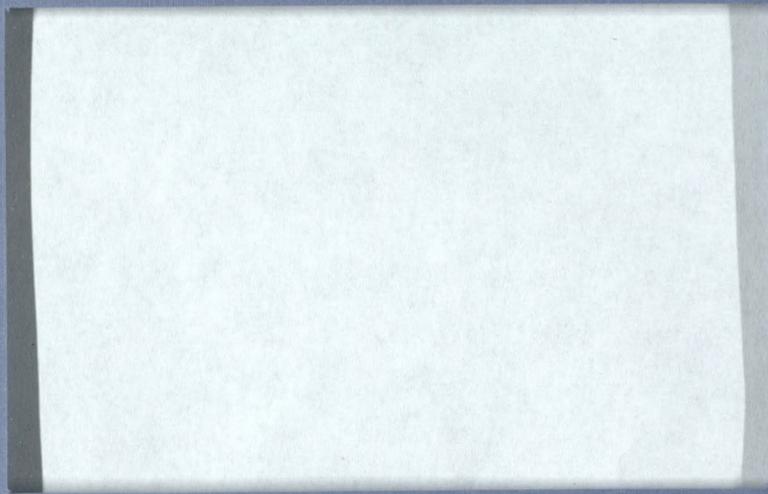
VOLUME XVII

SUBSISTENCE

OCTOBER 12, 1984

ALASKA NATIVE REVIEW COMMISSION  
HON. THOMAS R. BERGER  
COMMISSIONER

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

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(OCTOBER 12, 1984)

(TAPE 9, SIDE A)

(MEETING CONVENES)

MR. BERGER: Well, maybe I could start off by welcoming all of you once again, and reminding you to sign in at the register at the door when you have an opportunity today, if you haven't done so. And setup your name cards in front of you, so that if you are speaking and they have the camera on you they will have the right namecard in front of you so that the folks back home will know it's really you.

Well, I think that the feeling is that the way in which we're proceeding is the best way, so let's just continue in that way today. And I suggest that the order of our proceeding today should be like this: with your permission I will call on Hugh Monaghan of the Northwest Territories government in Canada to tell us about the subsistence provisions of the COPE agreement that came into force in August of this year. And then I'll ask Victor Mitander of the Council of Yukon Indians to discuss the subsistence provisions of the land claims agreement that they negotiated with the government of Canada earlier this year, but which their villages have, I believe rejected. It is interesting, though, to see what was on the table, and under consideration. Then we'll ask Caleb Pungowiyi and Dolly Garza and Weaver Ivanoff to talk about the Walrus Commission. And then Jim Kolwalsky to talk about the Tanana Chiefs experience. And, by the way, I should welcome Dolly Garza to our proceedings this morning. And then we'll ask Willie Goodwin, and we welcome Willie, to talk about what is happening in the NANA region. And then we'll go on from there to Harvey Feit and James Bay and then to Dan Gross and the third world. I think if we get through all of that today we'll be doing extremely

1 well. If not, we'll greet the third world tomorrow morning,  
2 perhaps. We have the Pribilofs down, I think they are the only  
3 people who haven't been able to attend, they may be able to  
4 attend later, if they do we'll certainly find a place for them  
5 on the agenda. So, the meetings have gone so well I think  
6 there's no need for me to try to sum up what has been said thus  
far, and I think we'll just start with you, Hugh, if we may.

MR. MONAGHAN: Thank you.

7 (Is the speaker live?). Like several others, I should start  
8 out with a couple of qualifiers. Before I get into the agree-  
9 ment with the Committee for the Original Peoples' Entitlement,  
10 the Inuvialuit of the western arctic regions, I'd like to make  
11 a couple of general comments on some of the papers that we've  
12 heard, which I think are very interesting, but give you a  
13 perspective from the Canadian north, which might be, I think,  
14 in some ways different than the Alaska scene. To provide a  
15 couple of riders, first, Don Mitchell and others were cautious  
16 to point out their backgrounds, and I suppose I should mention  
17 mine briefly. That is, having been involved in Canadian land  
18 claim negotiations from the government of the Northwest  
19 Territories perspective I guess in excess of a decade now, and  
20 nearly two decades of renewable resource management background  
21 in the territories, provide me with a perspective as a resource  
22 administrator. And I must admit after that length of time I'm  
23 still on the sharp edge of the learning curve in some of these  
24 areas, I hesitate to admit. I don't know whether that's the function  
25 of a changing environment or a slow learner or both. Hopefully  
it relates to the environment. In looking very briefly at the  
papers, I was struck with the quality of them, but despite the  
similarities which we have, and that's the large geographical  
area under consideration, some of the physiography is the same,  
and the cultural attributes of the people are definitely com-  
parable in a lot of ways, there's a lot of differences between

1 the Canadian scene and the Alaskan scene, which many of you are  
2 familiar with. First of all, we've got an awful lot smaller  
3 population. It struck me, particularly when someone was  
4 talking the other day about 56 communities in one delta system  
5 or one political complex that you have here in the Alaska  
6 scene. But we don't really have very many more than that  
7 communities in the whole of the Northwest Territories, which is  
8 nearly a million and a half square miles of Canadian Arctic.  
9 I'm somewhat taken by the size of Anchorage, it's been 10 years  
10 since I was last here. But we, of course, have nothing com-  
11 parable in the Canadian north. Our racial mix is quite dif-  
12 ferent, as was mentioned earlier. The Inuit in the eastern  
13 Arctic are very, very strongly in the majority, and in the  
14 western Arctic, Mackenzie Valley, it's about 50:50, Native and  
15 non-Native populations. So those different mixes create quite  
16 a different political system. Just to amplify on that a bit,  
17 Justice Berger referred to the fact earlier that my minister is  
18 a claimant from the COPE region. Our government leader will be  
19 a claimant in the Dene-Metis claim. My deputy minister was  
20 involved strongly in one of the Native political organizations  
21 in the Northwest Territories. So there's a lot of political  
22 strength in the Native people in the Northwest Territories.  
23 There has also been quite a bit of interchange in recent years,  
24 between the Native political organizations and the government  
25 of the Northwest Territories, and this continues as well as in  
the bureaucracy. So that gives the administration of the  
Northwest Territories quite a different flavor and, of course,  
causes me to comment on some of these papers.

22 The differences and simi-  
23 larities come out clearly in reading Langdon's paper, which I  
24 think is very thorough review of the current situation in  
25 Alaska, as I understand it. One of the first things that  
struck me, and it's interesting that Bob Gamble and I were

1 talking about it in the plane on the way over, was some of the  
2 ideas that have been brought out in Tom Lonner's paper. And  
3 that is it's been my experience in land claims that as you have  
4 different parties, and it's usually three in the Canadian  
5 scene, the more you discuss issues to refine what it is you  
6 mean in a land claims settlement the more finite and legalistic  
7 the language becomes, the more locked-in you get into some of  
8 these structures. And I guess, to a certain extent, I agree  
9 with Lonner's comment of fear of structuring these agreements  
10 in too much detail because then they begin to hamper some of  
11 your actual objectives. I'm a proponent of building in as much  
12 flexibility as you can in land claim agreements. However, I  
13 fear some of Lonner's ideas of rationality. And that is that  
14 it's nice to appear rational but an awful lot of these things  
15 come down to value judgments, and aren't always easily  
16 rationalized and structured. The point of disagreement I would  
17 have with his paper on the Canadian scene is that, as I under-  
18 stand it, he has made a strong pitch that by Native people  
19 joining government structures they are, in effect, co-opted.  
20 That, I don't think, is an accurate statement in the Canadian  
21 north. Because, as I've just indicated, the, at least at the  
22 territorial government level, the Native people are clearly in  
23 a political majority. So, I wouldn't see the territorial  
24 structures as co-opting their interests, but helping to  
25 integrate their interest with the broader environment, or the  
total political environment in the Northwest Territories.

Don Mitchell's paper also struck some common cords with my background. I think his strong pitch that we have to look at the social and economic aspects of resource management are very important points when it comes to implementing land claims, that subsistence is often defined in a narrow, legalistic sense of sort of hand-to-mouth operation or survival on the land. But, as we'll see when we



1 the governments of our country and the maintenance of their  
2 culture.

3 Quick comment on status of  
4 claims. As indicated yesterday, the leading edge on all land  
5 claim negotiations in the Canadian north has been fish and  
6 wildlife, plain and simple. They shoot for wildlife agreements  
7 first, because that is the closest to the core of the exis-  
8 tence, it would appear. The Dene-Metis, although they started  
9 on a claim nearly a decade ago, have just gotten into the  
10 details of a wildlife agreement since this past spring. We're  
11 right into the middle of it, and as a matter of fact there's  
12 meetings set up for next week, and I wouldn't want to predict  
13 when there would be an agreement in principle on wildlife, but,  
14 as I say, we're well along our way.

15 The Inuit top reaches (?)  
16 of Canada, their northern NWT component, the TFN, first started  
17 serious land claims negotiations with a wildlife agreement in  
18 1973. It progressed, there was lack of support for some of the  
19 initial negotiations in the communities, it fell by the way-  
20 side, it picked up again several years ago, and in effect there  
21 was a wildlife agreement in principle initialled by the negotia-  
22 tors but was found unacceptable to several federal departments  
23 in a couple of sections, and that's where things sit at the  
24 moment. It could break loose again, it depends on, I suppose,  
25 the political will, on both sides, and how much urgency they  
attach to it. The COPE agreement, which we'll be into in a  
sec, as I indicated has been ratified and passed in the  
Canadian law this past summer. We have not yet made the legal  
changes to our legislation in the Northwest Territories, but  
we're in the process of gearing up for implementation of that  
agreement. It's a very complex document and it's going to take  
quite a lot of good will between our government, the federal  
government, and the claimants to work out the details of

1 implementation over the next several months.

2 To get to the specific  
3 issue of subsistence, to give you a couple of minutes of back-  
4 ground, the Northwest Territories, the history has been that  
5 very, very large parts of the Northwest Territories have been  
6 set aside as hunting preserves for Native people, historically,  
7 dating back to the 1920s and '30s. When there was beginning to  
8 be a large influx of southern Canadians the federal government  
9 moved quite assertively to create these very large hunting  
10 preserves for Native people to protect their particular  
11 interests. A very limited number of non-Native people were  
12 granted what is called a general hunting license which permits  
13 them essentially the subsistence way of life. These general  
14 hunting licenses were also issued to Native people and that  
15 has, in effect, been the core of our subsistence policy in the  
16 Northwest Territories. Clear prior right has been granted the  
17 Native people, limited access to non-Native people, and the on-  
18 going access for both has been guaranteed as hereditary right  
19 in the case of Native people and privilege in the case of non-  
20 Native people. There have been through the last several  
21 decades stronger and stronger local and regional structures  
22 created for local hunters and trappers associations, dominated  
23 by Native people, to in effect allocate their harvest and to  
24 make recommendations on legislative changes, policy changes,  
25 and also programs.

20 The general approach then  
21 taken in land claims negotiations by the Native people, as I  
22 have indicated is...the primary tool of maintaining their cul-  
23 ture has been to develop the renewable resource-based economy,  
24 to enshrine in what amounts to the Canadian constitution their  
25 on-going access, either exclusive or preferential, to the  
various wildlife resources, and to encourage government struc-  
tures to be integrative. And I think one of the keys that was



1 Western Arctic Claim with the...

2 MR. MONAGHAN: That's  
3 correct, just right inside the cover, on the bottom left hand  
4 side, the principles that governed our negotiation of that  
5 claim from all three perspectives are stated very tersely, and  
6 I'll just repeat them, because I think it sets the frame here:  
7 "The basic goals expressed by the Inuvialuit and recognized by  
8 Canada in concluding this agreement are: (a) to preserve the  
9 Inuvialuit cultural identity and values within a changing  
10 northern society." The actual meaning of that became, I think,  
11 important in the commercial aspects of the claim, where they  
12 said, "Look, we want to change and take advantage of a changing  
13 environment, we don't want to be locked into traditional  
14 methods of harvest and traditional levels of harvest." So a  
15 phrase like that became very, very important when we got into  
16 the mechanics of the claim. "(b) to enable the Inuvialuit to  
17 be equal and meaningful participants in the northern and  
18 national economy and society." That section was used very,  
19 very strongly, not necessarily in the renewable section, but by  
20 getting, by guaranteeing agreements for people to enter onto  
21 their lands, and also preferential economic opportunities that  
22 weren't related to renewable resources became a key tool to  
23 implement that principle. And, "(c) to protect and preserve  
24 the arctic wildlife environment and biological productivity."  
25 And for any of those who have gone through the details of this  
document, you'll see quite elaborate structures to guarantee  
adequate environmental review processes and integration with  
land-use planning. Land-use planning is referred to in this  
document, and although it's envisioned that there be an NWT  
land-use planning commission for at least the western Arctic,  
they've made it very clear that within the western arctic  
region there will be a land-use planning group that at least  
half of which must be Inuvialuit. Now whether the other half

1 are appointees of civil servants or simply appointments by  
2 government of other northerners is left fluid. But they  
3 clearly see that as being one of the main planning forums to  
4 determine where land use and resource development is going in  
5 the Northwest Territories, and I think that will be an in-  
creasingly important structure in time.

6 Another key element of the  
7 maintenance of habitat we discussed at length yesterday so I  
8 won't go into it, Bob gave a good summary of what they  
9 attempted to do with national parks on the North Slope and  
10 other land-use regimes there that will protect resources and  
11 particularly the caribou management herd.

12 It's interesting to note in  
13 their regime which is referred to on page 19 for east of the  
14 Babbage River, this gives you a flavor of the criteria that  
15 they see being applied to any land use activity in that area.  
16 First of all, there has to be a thorough analysis from the  
17 standpoint of conservation and harvesting interests of any  
18 proposed land use. The applicant must also clearly identify  
19 any alternate locations for that form of development. There  
20 must also be a clear statement of the environmental and social  
21 impacts. There must be a clear weighing of the interests of  
22 the users and conservationists in any resource development  
23 decision. There must also be a clear assessment of the ability  
24 of the applicant to carry out the development in a fashion that  
25 he has indicated that he wishes to. In other words, he has to  
prove his credentials to develop in that particular area. And  
then there has to be the bureaucratic machinery in place to  
make sure that the development is monitored and conducted in  
the fashion that was suggested in the first place. So,  
clearly, they've built in detail to give substance to their  
claim to environmental protection.

As referred to on page 20,

1 I see in other pieces of legislation Native people have been  
2 given the right to trade and barter amongst themselves, and  
3 that also applies to the Inuvialuit in the western arctic  
4 region, particularly the North Slope, but I should add to that  
5 that in the Northwest Territories it's trade, barter, and sale.  
6 In other words, claimants can sell, for example, caribou meat  
7 amongst themselves, or game meat. The rationale here is that,  
8 and it's been raised by people around the table, that even  
9 though a Native person may live in one of the larger centers he  
10 still has a dependence, both physiological and cultural, on wild  
11 game meat. And he may not be able to provide that for himself,  
12 because of the particular position he's in, in industry or  
13 government or whatever, but professional resource harvesters  
14 that are also claimants should be able to provide that require-  
15 ment for him, and gain from it economically. As I say, that  
16 applies in the Northwest Territories, it does not apply on the  
17 North Slope.

14 MR. BERGER: Excuse me.

15 Nelson Frank pointed out yesterday the fact that under Alaska's  
16 subsistence law the urban Native people don't have access to  
17 wildlife, fish and wildlife resources for subsistence. Are you  
18 saying that this agreement insures that urban Natives in the  
19 Northwest Territories have subsistence rights, is that the  
20 point?

19 MR. MONAGHAN: That is  
20 correct. And it's insured to them in two ways. First of all  
21 they can directly get out and hunt and harvest themselves, or,  
22 if they're not in a position to do that, they can acquire the  
23 products from other hunters who are more directly reliant on  
24 the land.

24 Then, depending on which  
25 species you're referring to, there could be a limitation based  
on the percentage of access to harvest that the Native people

1 have themselves. In other words, the Native people themselves,  
2 at some point, may choose to insure a larger part of that  
3 harvest goes directly to people dependent on the land as  
4 opposed to those who have other economic alternatives. In  
5 general, both have full access to the resource.

6 I should mention again, we  
7 touched on it briefly yesterday, that the only two overall  
8 riders on access to resources by Native people are first of all  
9 conservation, the conservational limit is an absolute limit and  
10 cannot be exceeded, and the method of take is governed by  
11 public safety. There are some fine-tuning, but those are  
12 generally the two overriding principles.

13 MR. BERGER: Thank you,  
14 Hugh. Any questions for Hugh, before we pass on. Bob  
15 Childers.

16 MR. CHILDERS: Yes, Hugh.  
17 You mentioned that caribou meat or other wild game products can  
18 be sold. Are there any limits on conditions of that sale, that  
19 is, can they be sold in a commercial, profit-making enterprise,  
20 or is this sale at cost, or are there any limits at all in that  
21 way?

22 MR. MONAGHAN: No, the  
23 conditions that are imposed on it relate to conservation, they  
24 relate to the access to the resource by others, but within that  
25 part of the commercial harvest that claimants have they can  
sell it at a profit. However the laws of general application  
and respective controls are fully in place, to make sure there  
is proper documentation and that the harvest can probably be  
controlled.

26 MR. BERGER: Yes, Willie  
27 Goodwin.

28 MR. GOODWIN: The issue of  
29 establishing parks, etc., you know, I'll bring up an example

1 here, there's some people within the national park regime that  
2 are pretty negative toward Alaska Natives and how they use the  
3 land. How is that being perceived or observed by the Native  
4 peoples of Canada and how are you getting around future land  
management plans to resolve that question?

5 MR. MONAGHAN: This was  
6 touched on briefly yesterday. The overriding principle that's  
7 been used in the Canadian north in land claims is that  
8 claimants will continue to have access to all conservational  
9 lands for the purposes of hunting, within the conservation  
10 limits, within the laws of public safety, and in some cases  
11 there may be particular characteristics within the conservation  
12 area that must be protected to maintain the integrity of the  
13 area, in which case the Native hunting right could be cur-  
14 tailed. The degree to which that would apply is still under  
15 discussion, in the Mackenzie Valley and in TFN. Perhaps an  
16 example I might give is that, for instance, a salt lick, a  
17 sheep salt lick in the South Maheney (?) River. Although  
18 Native people would presumably have access throughout the South  
19 Maheney Park to hunt, there could be a restriction that would  
20 apply to the hunting in the neighborhood of, say, a salt lick.  
21 It would create some considerable confusion and turmoil if you  
22 had regular tourists visiting that salt lick, which is a unique  
23 site, and having shooting of sheep at the site at the same  
24 time. So obviously in very, very special areas like that  
controls are in place. But in general the principle has been  
that the management regime inside the park must as closely as  
possible reflect the management regime outside the park, and  
that includes both the conservation limits as well as hunting  
access by Native people. There is no hunting access by non-  
Native people in national parks in the Northwest Territories,  
although there are in territorial parks.

25 MR. BERGER: But you say

1 the principle is at the start that Native people have hunting  
2 rights within the parks?

3 MR. MONAGHAN: That's  
4 correct. Would it be helpful, just before we got into too many  
5 more questions, that I just refer to the subsistence criteria  
6 and the actual rights of access they have to different species  
7 on preferential and exclusive grounds?

8 MR. BERGER: Alright.

9 MR. MONAGHAN: It should  
10 just take a sec. You'll note on page 21 I think there's an  
11 important reference which we should refer to for just a second  
12 on the subsistence criterion. You'll note that it relates to  
13 food and clothing, which is obvious; use patterns and level of  
14 harvest, which is an eye towards what people have traditionally  
15 used; the particular requirements that Native people have for  
16 particular species, and I think that's one of the points,  
17 Woodrow, that you got into yesterday, is that people require  
18 certain species at certain times of the year, and that has been  
19 acknowledged in the COPE claim and is being acknowledged as  
20 well in the other claims; (d) is an important one because it  
21 speaks to the availability of wildlife populations, and that  
22 you don't necessarily want to lock a group of people into a  
23 harvest of 1,200 caribou if that's what they traditionally had,  
24 because if for some reason caribou don't show up in a particu-  
25 lar year, for example in Aklavik, then there's a very  
significant dependence on Dahl's sheep, so you have to look  
between species for an ongoing protein requirement, and that's  
covered by that section; also under (e), projections of wild-  
life population trends, if you've got a population that's going  
down there may be a greater dependence on other resources while  
you're trying to rebuild that population; and then clearly  
national/international obligations.

The wildlife compensation

1 clause is on page 22 and Heather Meyers is here of our depart-  
2 ment. She has worked extensively on a compensation program and  
3 policy for our department. It's in draft stage, and I would  
4 encourage any of those of you that are particularly interested  
5 to discuss it with her. It will be finalized shortly and be  
6 operational shortly in the Northwest Territories.

6 The other key section is  
7 harvesting rights, which applies throughout the western arctic  
8 region, for the COPE claimants. 14(6)(a), they have preferen-  
9 tial right to harvest all species of wildlife, excepting migra-  
10 tory non-game birds and migratory insectivorous birds, for  
11 subsistence usage throughout the western arctic region. They  
12 have the exclusive right to harvest fur bearers, including  
13 black and grizzly bears. Exclusive right, by definition in  
14 this agreement, means that they can either take the resource  
15 directly themselves or suballocate it to others, for instance  
16 through guiding and outfitting, in the case of bear, or to  
17 permit other people to trap. In that case, then the laws of  
18 general application that are created by the territorial govern-  
19 ment apply. They have the exclusive right to harvest polar  
20 bear and musk oxen, and I indicated, that also implies the  
21 ability to delegate that to others. And they have the  
22 exclusive right to hunt on their own lands. There's also  
23 sections that are built in here for reciprocal agreements with  
24 other Native people who abound in their area.

20 MR. BERGER: Willie, could  
21 you pull the mike a little closer to you?

22 MR. GOODWIN: Are those  
23 exclusive rights subject to game management that the Canadian  
24 government imposes on you? Like, we have that right to subsist  
25 on our land, but we have to abide by the laws that are  
established under the State Fish and Game management plan. Or  
federal?

1 MR. MONAGHAN: They're  
2 subject to the laws of general application only to the extent  
3 that those laws of general application can be justified on the  
4 grounds of conservation or public safety. In other words, you  
5 can't use the laws, other laws of general application, to  
6 curtail a Native access to resources, and reduce their allow-  
7 able harvest. It clearly has to be justified under conserva-  
8 tion of the resource or public safety, with only a few minor  
9 exceptions, that is true throughout the western arctic region.

8 MR. BERGER: Dick Nelson.

9 MR. NELSON: Yes, I'm  
10 curious to know if the government of the Northwest Territories  
11 has established a system of priorities or policies related to  
12 industrial developments in the lands of the Northwest  
13 Territories that might conflict with subsistence uses or that  
14 might be detrimental to the population of wildlife resources  
15 important for subsistence? And if so, is there a clear system  
16 for stating that subsistence is the highest priority in event  
17 of a conflict between those kinds of uses?

18 MR. MONAGHAN: No, there  
19 isn't a clearly enunciated explicit policy in respect to that  
20 at this point. We're just now gearing up for a land-use plan-  
21 ning program that's going to begin in the key areas of the  
22 Northwest Territories that are confronted with development. The  
23 front edge of that process is developing that policy, so we're,  
24 it would be premature for me to say at this time that we've got  
25 policies clearly enunciated that would protect the subsistence  
way of life. We have clear statements of territorial  
government programs which support that way of life. We have a  
clear priority by our political leaders to maintain that way of  
life. But we've got to do some more work in terms of actual  
policy development.

MR. BERGER: Marie Adams.

1 MS. ADAMS: I'm just  
2 curious about how they deal with, in cases where the  
3 communities...along the Northwest Territories I know there are  
4 communities dependent on both land and sea mammals. How do they  
5 approach conservation when they deal with sea mammals?

6 MR. MONAGHAN: Marine  
7 mammals in the north, in the Canadian north, excepting polar  
8 bear, are under the jurisdiction of the federal government.  
9 Walrus, narwhal are the key resources. Our people in the  
10 Canadian north do not hunt big whales. There are quotas in  
11 place for narwhal, and walrus, and depending on the area and  
12 the species, quotas are more or less precise. In the case of  
13 polar bear, we implemented, the government of the Northwest  
14 Territories, implemented a quite rigid quota system in 1968,  
15 even in the absence of clear biological information on  
16 sustained yield, we looked at traditional levels of harvest  
17 before the harvest escalated due to price increases and fixed  
18 the harvest at those levels until we could get our biological  
19 information to catch up. And since then we've been adjusting  
20 those quotas for polar bear annually. There's one last  
21 significant geographical area which is being covered by  
22 ourselves, the federal government, and two provinces over the  
23 next three years, in the extreme eastern Arctic. Marine mammal  
24 management, meaning narwhal and walrus, has been less finite,  
25 less precise, because of the limited database. But the federal  
government has put a priority on that in the past two years, so  
hopefully that will be more refined. I should mention that in  
the determination of harvest that's been a combination of  
biological information combined with traditional levels of  
harvest. However, the allocation of that harvest, both in the  
case of marine mammals and polar bear, in the communities we  
see as the prerogative of the community. We determine the  
number of tags, we give them to the local hunters and trappers

1 association, in effect say, "You distribute them amongst your  
2 hunters as you see fit," and in the case of polar bear we go  
3 one step further and say, "You can allocate whatever proportion  
4 of those tags you want for nonresidents, providing you provide  
5 the guiding and outfitting service and it occurs within the  
6 laws of general application." Does that answer your question,  
7 or am I being too...?

8 MS. ADAMS: It does. I've  
9 got one other question that Burton touched on a little bit.  
10 People up there, I know as much as they do in Alaska, would  
11 like to protect their subsistence resources from development  
12 where there may be adverse effects. I know there's a lot of  
13 exploration and possibly development in the Mackenzie Bay area.  
14 Does COPE, do you have a position that you have developed in  
15 dealing with conservation or protection of habitat?

16 MR. MONAGHAN: I should be  
17 quick to remind you that I can't speak to COPE's policies, I  
18 work for the territorial government. I would hesitate to...I'm  
19 not competent to indicate what their policies are.

20 MR. BERGER: I think David  
21 Case has the next question.

22 MR. CASE: It may, I think  
23 it feeds off of what Dick Nelson and Marie Adams were just  
24 asking about. What, if any, is the significance of the  
25 exception from these additional development provisions of  
adjacent, nearshore, and offshore waters in the settlement?  
In other words, Section 12 speaks of several development  
provisions, review provisions, to be implemented within the  
area east of the Babbage River. But excepted from those  
provisions and subject to the normal government process are  
adjacent, nearshore, and offshore waters. And is there any  
significance to that? I mean, is there likely to be a lot of  
development in those waters, or is this...of less significance?

1 MR. MONAGHAN: I hesitate  
2 to speak to the detail of it. One other rider I should have  
3 put is my involvement, or our negotiation in this agreement  
4 took place quite some time ago and I was rapidly trying to  
5 remember some of the detail of that negotiation last night as I  
6 went through this, so I don't know that I can be helpful in  
7 specific terms. But I think in general the reason for  
8 reference to some of that north coast or the North Slope was,  
9 is that, because that is occurring in a different jurisdiction,  
10 that is in the Yukon. In, by definition, anything beyond the  
11 tide mark in the north of Canada is a part of the Northwest  
12 Territories. So, any offshore activity then gets swept into  
13 the Northwest Territories' review regimes, which they've been  
14 guaranteed access to through land-use planning and so on.  
15 Land-use planning in the Northwest Territories is thought to  
16 include the offshore, for reasons that Marie was alluding to,  
17 is that particularly for our coastal people we find it  
18 impossible to isolate the land from the marine environment, so  
19 we see it as one continuum, and I'm assuming that would be  
20 swept into Northwest Territories' land-use planning.

16 MR. BERGER: Alright.  
17 Well, maybe we could move on to Victor Mitander then, and,  
18 Victor, you could tell us about the CYI, or Dave Porter, or or  
19 the other of you could tell us about the CYI agreement.

19 MR. PORTER: You're going  
20 to be lucky, you're going to get both of us this morning.

21 MR. BERGER: Okay, well,  
22 Dave Porter first, for the record.

22 MR. PORTER: First of all,  
23 I would like to express our appreciation for being invited to  
24 speak to this commission. On a more personal level I am  
25 particularly gratified for the opportunity inasmuch as I missed  
the opportunity in the valley. Couple of days ago, if you

1 believe what the deep thinkers were saying, you would have  
2 thought that subsistence culture had been deep-sixed. I think  
3 that it's very important to make a statement to the effect that  
4 it is very much alive and is functioning out there. We realize  
5 that our culture today is not pure, and no culture can continue  
6 in a pure form. We realize that our communities have been  
7 tremendously impacted by the technological changes that have  
8 been brought about by urbanization and the introduction of the  
9 wage economy to our part of the world, and we realize the kinds  
10 of changes that has been made to our lifestyles. But that does  
11 not, that does not detract from our responsibility to protect  
12 what exists out there. And in many of our communities in the  
13 Yukon, as well as Alaska and the Northwest Territories, many of  
14 our people continue to live primarily a subsistence-oriented  
15 lifestyle. None of it is pure, none of it is totally a  
16 subsistence economy, it's an integrated economy. It's one that  
17 coexists with the wage economy. And at one time we were told  
18 that was not the case. Through the efforts of people like  
19 yourself and Peter Usher we've been able to, I think in the  
20 Canadian north, demonstrate to the larger Canadian public that  
21 it does in fact exist. We've done tremendous work in terms of  
22 documenting extensive land use and occupancy studies throughout  
23 northern Canada. And so there is no longer an argument from  
24 our perspective as to the viability and to the effectiveness of  
25 our subsistence cultures. And it's also very important for us  
to be here from an educational sense. There is an awful lot  
that is occurring now within this state that has a direct  
bearing on our part of the world. We are involved in the  
process of attempting to establish agreements, contractual  
agreements with the governments of Canada with respect to the  
question of aboriginal rights. You've had the experience in  
this part of the world of having to live with such an agreement  
for 13 years. And so many of the issues that you are talking

1 about here today, that we're addressing at this particular  
2 meeting, are issues that we are being asked to come to a legal  
3 contractual arrangement on with the federal government of  
4 Canada. So it is a very important place for us to be right  
5 now, to learn and hopefully to be able to take the knowledge  
6 that we acquire here and...

(TAPE 9, SIDE B)

6 institute arrangements that are going to be of benefit to us.

7 I think that, in describing  
8 the Yukon situation with respect to the question of  
9 negotiations, it should be pointed out at the outset that we do  
10 not enjoy the situation of the aboriginal peoples in the  
11 Northwest Territories, inasmuch as that we are not the majority  
12 of the population. Depending on your definition of what  
13 constitutes citizenship, we are anywhere from 30% of the  
14 present population to, in our opinion, 75% of the permanent  
15 population. And so we don't have at our disposal the kind of  
16 political leverage that is exercised in Northwest Territories,  
17 and as you will see in terms of discussions of the agreements  
18 and principles that we've signed to date, those agreements  
19 reflect that political reality.

17 The particular points of  
18 history that relate to the Yukon claim are that the claim was  
19 formally adopted in 1973. Prior to 1973 it was Canadian  
20 government policy that aboriginal rights did not really exist  
21 in the country. Following the Calder (?) case, which involved  
22 the Niska (?) people from the Nast (?) Valley, government  
23 changed their mind and instituted a process of negotiations to  
24 specifically define what aboriginal rights really were and what  
25 they looked like. In 1973 our people presented to the federal  
government of Canada a position paper called, "Together Today  
for Our Children Tomorrow." That document formed the basis of  
which we wanted to proceed with negotiations with the federal



1 having concluded negotiations with respect to most all of the  
2 areas that we agreed to talk about, and so we have in excess of  
3 73 sub-agreements. They are not at the ratification process.  
4 The ratification process, as agreed to in Yukon, was that 10  
5 out of our 12 communities must ratify the agreement for it to  
6 be construed as an agreement or principle agreed to by all  
7 Yukon aboriginal people. So far, only eight or nine communities  
8 have voted. Eight have voted in favor, one has turned down the  
9 agreement. The other three communities have said that there  
10 are certain issues that must be clarified prior to moving on.  
11 So, for all intents and purposes, the ratification process is  
12 stalled.

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And I think it's important to the discussions here to indicate what the specific areas of concerns are. And the concerns were expressed by the communities by way of a vote in our assembly in Tagish (?). And they passed a resolution that effectively called for changes to the agreement in principle. There were seven points, one being general and overall. And the first point that was contained in the resolution is that aboriginal title not be extinguished. That, number two, that subsistence hunting must be recognized and protected. Three, that last selection or reselection be based on need and not on a quantum basis. Four, that there be Indian control, not fee simple ownership, over lands selected by Indian people as settlement lands. Five, that there be full and proper recognition of those of our people who are classified as non-status Indian people. And six, that the bands and band authorities must be fully recognized and strengthened. That was passed in Tagish, and what is occurring now internally within our communities is a process to flesh out what these general concepts mean, when you look at them as negotiating positions. Workshops are being conducted, inter-community meetings, and hopefully what will happen is that all

1 the communities will firm up their position and when we get  
2 back after this week and after a drive back down the highway,  
3 we will begin 10 days of meetings between ourselves to finally  
4 determine a negotiating position to take to the new government  
5 of Canada based on these particular points as expressed by the  
6 resolution passed in Tagish.

7 I think just to Victor  
8 starting to talk and in very specific terms as to the  
9 agreements, I think in terms of the question as to how will we  
10 move on to the future has been clearly demonstrated the last  
11 couple of days. I think that the answer, from our  
12 perspective, is for aboriginal people to move on these  
13 questions themselves internally and to assert their rightful  
14 place in terms of management over the resource. That has been  
15 our responsibility for thousands of years. They've been  
16 impinged upon by various governments, regulatory agencies, and  
17 I think that what we're seeing in terms of the efforts of the  
18 Eskimo Walrus Commission, the Whaling Commission, the Porcupine  
19 caribou herd discussions, is a reassertion of that  
20 responsibility, acknowledgement of that responsibility. And I  
21 think that clearly is a direction in which we will be moving to  
22 proceed in the future. It's going to not happen overnight,  
23 there's going to be a lot of development before we are totally  
24 satisfied. I think we only will be totally satisfied when we  
25 have a form of legislative jurisdiction with respect to the  
management of our resources.

And furthermore, just as an  
21 aside, and a very important aside, in Yellowknife this summer  
22 there was an international conference of indigenous people  
23 convened, clearly on the question of the cultural survival of  
24 indigenous people. And as a part of that process, there was an  
25 international committee formed, called Indigenous Survival  
International, that is mandated to deal with a lot of the

1 issues we're talking about here. It is composed of two members  
2 from Greenland, two from Canada, and two from Alaska. This  
3 committee basically has a responsibility to go out into the  
4 world and to give expression to support of the subsistence  
5 culture of our people. So I think that, in many respects, we  
6 are clearly demonstrating how we are going to survive, and how  
7 we are going to protect our cultures.

8 And with those opening  
9 remarks, I'd like to turn this over to Victor Mitander, who's  
10 been very much involved in many of the issues that we've been  
11 talking about. He's been a negotiator for many years with the  
12 Council for Yukon Indians, and can very clearly describe in  
13 more detail the agreements that we've reached to date that  
14 related to wildlife.

15 MR. MITANDER: Thank you  
16 very much. Basically what I'll do is I'll start in three  
17 areas--fishing, hunting, and trapping. Just to give you some  
18 background on how negotiations took place on that, the federal  
19 government is the main body that we negotiate with. The Yukon  
20 Territorial government forms part of the federal team. Under  
21 the Yukon Act, that the Yukon government operates under, they  
22 have certain jurisdictions responsible for hunting and  
23 trapping. And when it came to that, as what was said earlier,  
24 we...one of the first topics that we wanted to negotiate out  
25 was the whole harvesting area. As a result of hard  
negotiations for about a year and half, we finally arrived at a  
harvesting agreement. After many, many drafts we did arrive at  
an agreement, and as a result there is still a number of  
concerns being expressed by our people in the communities on  
the harvesting area.

So what I'll do is I'll  
express the objectives of the fishing agreement first. And  
that is to first grant and protect in perpetuity certain

1 hunting, or fishing rights of our people. Secondly, to  
2 establish a system of allocation of salmon and other specied  
3 fish in the Yukon. To improve protection and management of  
4 fish in the Yukon, and attempt to increase those fisheries  
5 enhancement of the levels of fish stocks in the Yukon. To  
6 establish a fair and equitable limited entry system with a view  
7 to increasing participation of our people in commercial  
8 fisheries. Also to respect the non-Indian to sport domestic  
9 and commercial fishing. And to involve our people in the  
10 planning and development of fisheries policy in Yukon, and that  
11 would be designed for Yukon conditions itself. In exchange for  
12 the guarantees, our people have agreed to accept the  
13 government's claim that it has the final responsibility in  
14 managing of the Yukon's fish. Our people have agreed to accept  
15 these guarantees in exchange for any rights of ownership that  
16 we might have over Yukon's fish.

17 The agreement sets out  
18 three types of fishing. Food fishing (Indian food fishing)  
19 commercial sport, and domestic. Although our people are not  
20 given special rights to sport fishing, they do have the same  
21 rights as anyone else. We will be given preference in  
22 commercial sport fishing enterprises, about a quarter of all  
23 commercial fishing licenses south of 65 latitude north are  
24 guaranteed to our people. All new commercial fishing licenses  
25 for the Porcupine drainage system are guaranteed to the  
residents of that area. Basically, the Old Crow area (?) itself.  
Our people have been given special rights to fish for food.  
These rights include the use of traditional fishing methods,  
exclusive use of certain traditional fishing sites is given  
and Indian salmon food fisheries may only be located in these  
areas. The right to a proportion of the Yukon's total  
allowable fish catch has been guaranteed to our people.  
Whenever fish are in short supply commercial fishing limits

1 will be the first ones to be reduced. Although the agreement  
2 deals separately with salmon fish and fishing for other types  
3 of fish, the rules for both types of fish are similar. If food  
4 fish populations are reduced as a result of major industrial  
5 and/or government actions, such as hydro projects, compensation  
6 would be considered. The manner in which compensation would be  
7 made to our people would be laid out in the final agreement.

8 In terms of fish  
9 management, the central Indian authority would be consulted by  
10 the government on setting of fish limits that would be involved  
11 in all programs to improve fishing in Yukon. Canada and the  
12 Council for Yukon Indians have also agreed to set up a  
13 committee to design a general fishing policy. So, basically,  
14 that is the fishing agreement itself. If there's more specific  
15 questions on that I'd be pleased to answer them later on.

16 MR. BERGER: Before you  
17 move on, Victor, you said you were guaranteed a certain  
18 proportion of the Yukon fishery. Are you able to elaborate on  
19 that?

20 MR. MITANDER: The  
21 guarantee would be based on each of the different river systems  
22 that we have. For instance, in the Porcupine River, in north  
23 Yukon, Old Crow, people of Old Crow would pretty well control  
24 about 90% to 95% of the fish in that river system. In other  
25 rivers or streams south of that the proportion would come down  
somewhat, based on the proportion of Indian/non-Indian in that  
area. Again, those are guaranteed in perpetuity, or based on  
conservation.

MR. BERGER: And those  
guarantees are in the agreement?

MR. MITANDER: That's  
right.



1 ment and would have 50% Indian participation on that management  
2 board. It would advise the responsible minister on all manners  
3 concerning wildlife protection and management. More specifi-  
4 cally, it will establish all hunting limits for the Yukon and  
5 its constitutes, regions, and people. In carrying out these  
6 functions, the board will have the right to all relevant gov-  
7 ernment information and will have the power to order documents  
8 and witnesses, other than the minister, to appear before it.  
9 It may hold its meetings in public, and will hold public  
10 meetings in the Yukon communities to hear the view of local  
11 people. The board will have its own secretary working under  
12 its own control.

13 In terms of the game quota,  
14 the annual allowable harvest would be set for moose and cari-  
15 bou. Roughly half of these quotas are allowed to our people.  
16 For the first three years the Indian quota would be 500 caribou  
17 and approximately 1,250 moose. A separate agreement on the  
18 Porcupine caribou herd being negotiated out will probably be  
19 finalized, probably by the end of the year. Sheep are  
20 presently managed on a trophy basis in Yukon. The Yukon  
21 Wildlife Management Board will report to the minister on the  
22 allocation of sheep trophies between residents and nonresident  
23 hunters. The board will also report on whether all or part of  
24 the sheep hunt should be allocated to food, and if so, what  
25 proportion should be allocated to our people. Because it is  
recognized that some of our people traditionally hunt sheep for  
food, the Yukon government is now exploring ways of utilizing  
trophy meat for the use of Indians. The Yukon government will  
be responsible for establishing the quotas on the basis of  
recommendations from the Yukon Wildlife Management Board. The  
board will decide upon its recommendations after reviewing  
information requested of and provided to it by the wildlife  
branch and the local communities. The agreement does not apply

1 to hunting on the North Slope of the Yukon. The COPE agreement  
2 speaks to that particular area itself, and that was mentioned  
3 earlier. Except where they are protected by law, our people  
4 may take small game by either traditional or conventional  
5 methods. Our people would be entitled to black bear, goats,  
6 and grizzly bears on the same basis as other Yukon residents.  
7 They may receive special permission from the minister, over and  
8 above the usual citizen's right, to take black bear for food,  
9 and black bear, grizzly, and goats for ceremonial purposes or  
10 religious purposes.

11 Our hunting rights, our  
12 people would have the exclusive or the sole right to hunt on  
13 settlement lands or...They will also share the right with the  
14 general population to hunt on unoccupied crown land on which  
15 hunting is permitted. If they so wish to do so, our people may  
16 apply for a non-Indian hunting license. The number of animals  
17 killed under such license would be reduced or deducted from our  
18 quota for the following year.

19 In terms of the moose, the  
20 annual allowable harvest for the first three years following  
21 the settlement would be 2,500 moose, which our people would be  
22 guaranteed 50%, or 1,250 moose. From these 1,250 moose, our  
23 people would be allowed a preferential harvest of 600 moose,  
24 which may be taken at times other than the regular season. In  
25 other words, the hunting season that we have now starts from  
August through to September, or end of October, the other 600  
moose would be harvested from the beginning of November right  
through 'til end of August of the following year. However,  
should our harvest exceed 650 moose during the regular season,  
the amount of excess of 650 moose would be deducted from the  
preferential quota, thus maintaining a total allowable harvest  
of 1,250 moose for Yukon Indians. In the fourth and fifth year  
the preferential quota would be established by government in

1 the same manner as the overall quota.

2 Caribou. In the first  
3 three years following the settlement the allowable harvest  
4 would be 1,000 caribou, of which our people would be guaranteed  
5 50%, or 500. Our people would be allowed to take 200 of the  
6 500 caribou allocation outside the normal hunting season, pro-  
7 vided that the take in the regular season is 300 caribou or  
8 less. And the regular season harvest of caribou is greater  
9 than 300, the preferential harvest of caribou shall be reduced  
10 accordingly. The preferential quota during the fourth and  
11 fifth year will be established by government in the same manner  
12 as the annual allowable harvest. Where such hunting does  
13 conflict with the objectives of national parks, our people  
14 would have the right to hunt for subsistence within those  
15 parks. Such hunting will be made by mutual agreement between  
16 our bands and the parks authority and will apply to any new  
17 parks where Indians can establish a customary hunting ground.  
18 The Kluane and the Champagne Asiak (ph) band have such a right  
19 to hunt in Kluane National Park now. In territorial game  
20 sanctuaries our people would have the right to participate in  
21 obtaining the meat from cull of sheep, caribou, and moose in  
22 those areas. The boundary of the Kluane Game Sanctuary will  
23 have to be adjusted to allow for group traplines to be held by  
24 the Kluane Travel Brotherhood in those areas. Presently those  
25 are game sanctuaries and there is no hunting or trapping  
allowed in that. But we have negotiated a special group  
trapping area where the people in Burwash can utilize. The  
hunting in territorial parks will continue where it is  
consistent with park use and objectives.

Our people may use animals  
for food, clothing, and for barter with other Indians for fish  
and other animals. They may also legally sell any nonedible by-  
products. Our hunting limits will apply to Indians from out-

1 side the Yukon who hunt in Yukon. The central Indian authority  
2 would be responsible for allocating the hunting rights to both  
3 Yukon and the non-Yukon bands. The allocation to the non-Yukon  
4 bands is to reflect the general levels of Yukon hunting between  
5 1979 and '80. Presently there is an agreement in place that  
6 speaks to non-Yukon bands and that agreement, again, has been  
7 reappealed or is going to be rejected because it's not  
8 acceptable to us or to the other parties that have interest in  
9 Yukon.

10 In terms of the migratory  
11 birds, Canada has agreed to seek changes in the international  
12 agreement on migratory birds. The purpose of these changes is  
13 to allow for subsistence hunting of game birds by our people  
14 during the closed season. The Canadian government has agreed  
15 to consult with our people in the development of regulations  
16 concerning the subsistence hunting of migratory birds.

17 We also have a section of  
18 economic opportunities. The central, or the Council of Yukon  
19 Indians, would be given dollars or funds by Canada, or the  
20 government of Canada, with which to develop and implement  
21 training programs in guiding and outfitting. Our people may  
22 also employ other Indians to provide transportation and labor  
23 on hunting expeditions. A resource management training program  
24 would be initiated for our people by the Yukon territorial  
25 government to allow for our people to be brought into the  
management of wildlife within the government. There is also an  
agreement to consider preferential rights of our people in game  
outfitting and to discuss the feasibility of involving Indian  
people in the commercial wildlife farming or ranching.

That basically is the  
wildlife resource harvesting agreement. The next one is the  
trapping. Basically the objectives there are to grant and  
protect in perpetuity certain harvesting rights of our people;

1 to preserve trapping opportunities for qualified non-Indian  
2 people in the Yukon, to commit our people to allocate and  
3 realign trapping privileges in what we call Category 1 trapping  
4 areas, in accordance under this agreement; and with respect to  
5 trapping privileges of all individual trappers in Yukon, to  
6 provide a cooperative approach to the management of furbearers in  
7 the Yukon and to provide for the enhancement of trapping oppor-  
8 tunities and increasing the productivity of our peoples'  
9 trapping. The agreement guarantees our people the right to  
10 hold up to 70% of all trapline areas in Yukon. When the number  
11 of Indian traplines fall below 70% then they have the right of  
12 first refusal on any available traplines. When the number of  
13 Indian traplines reach 70% they lose the right of first re-  
14 fusual. The right of first refusal will not apply to traplines  
15 being transferred between members of non-Indian families or  
16 those being transferred to non-Indian assistant trappers who  
17 have worked on the trapline for three years. The traplines  
18 designated as Indian traplines may only be transferred to  
19 Indian people. The remaining 30% of traplines may be held by  
20 any qualified person, and these traplines can be assigned to  
21 any other person. Our people there can also hold that 30%.

17 And our people do not,  
18 through the enactment of the agreement, acquire ownership of  
19 any wildlife, merely the right to use it. As part of the  
20 working of our trapline, trappers are entitled to build cabins,  
21 to cut necessary trails that are required for their businesses.  
22 In terms of the management, although the responsibilities of  
23 furbearers lies with the Yukon territorial government, the gov-  
24 ernment has agreed to establish with Indian trappers a con-  
25 sultive procedure on fur management in the future. Where  
possible, Indian trapping privileges will be allocated  
according to the former use of individual trappers. Group  
traplines may also be allocated. The Yukon government will

1 allot non-Indian traplines, our people will be responsible for  
2 providing the government with the fur management information  
3 required by it and will allow the government access to their  
4 traplines for purposes associated with good management. Steps  
5 will be taken to ensure that traplines are fully utilized. The  
6 government accepts responsibility for continuing research on  
7 furbearers as part of the fur management function. Until the  
8 settlement is achieved, the existing 70:30 division between  
9 Indian and non-Indian traplines will be preserved. In other  
10 words, the status quo would be followed.

11 In terms of programs under  
12 the trapping agreement, Canada would provide funds for our  
13 people with which to design and implement programs around  
14 trapping. The government will also agree to consider the  
15 setting of self-supporting floor prices in the Yukon and to  
16 adopt a standard of fur grading system. Again, in terms of the  
17 nonresident Indian, or Metis' aboriginal interests in the Yukon,  
18 we have a group of people from Fort McPherson who have a group  
19 trapline in the northeastern portion of the Yukon, called Fort  
20 McPherson Group Trapline. That is not included in the agree-  
21 ment, it is recognized under the agreement that Fort McPherson  
22 would have that right to use that area in the future.

23 So, basically, that itself  
24 is a general overview on the three agreements that have been  
25 negotiated out. Okay, in terms of the, one of the other  
aspects that we negotiated out was the whole aspect of land use  
planning and environmental assessment. There, there are basic  
objectives that would consider our peoples' interest in  
hunting, fishing, and trapping. When land use planning is  
established, hunting, fishing, and trapping rights of our  
people must be reflected within the planning of that. The  
settlement lands that we have under the agreement must also be  
considered under the land use planning. Our peoples' rights in

1 terms of the socioeconomic and political structures must also  
2 be reflected within the overall land use planning. And the  
3 land use planning agreement basically provides to our people a  
4 minimum of 25% participation within any board structures or  
5 commissions that are established. In the north Yukon the  
6 planning agreement is somewhat stronger and has 50% participa-  
7 tion of our people within the planning process.

8 So that is a general  
9 overview on the type of things that we have negotiated out.  
10 Keep in mind, too, that a number of our communities have  
11 expressed concerns in the whole harvesting area right now. And  
12 that's something that will be discussed further next week in  
13 terms of developing a mandate or a community position or an  
14 overall Yukon position that could be presented to government.  
15 There is a lot of emphasis to have the hunting or subsistence  
16 recognized and protected in the agreement, and that's something  
17 that we're going to have to consider.

18 MR. BERGER: Thank you,  
19 Victor. I take it from all that you say that Canada was pre-  
20 pared to accept the provisions that you've outlined to us, but  
21 your ratification procedure requires 10 of 12 villages to vote  
22 in support of the agreement, and it's the Indian people who  
23 have rejected the agreement.

24 MR. MITANDER: That's  
25 right.

MR. BERGER: Well, any  
questions for Dave Porter or Victor...Jim Kalwalsky, and then  
Willie Goodwin.

MR. KOLWALSKY: Yeh, Vic,  
you mentioned fisheries rehabilitation. Could you elaborate on  
a little bit as to why, and where, and how?

MR. MITANDER: What we have  
is, what we want to see happen in Yukon is enhancement of

1 salmon and fish stocks, and that's something that over the last,  
2 well, hundred years I suppose there's been a depletion of fish  
3 stocks, particularly salmon. And with the commercial fishing  
4 activities that are going on in the Yukon a lot of freshwater  
5 stocks are being depleted. And what we're going to do, and  
6 would have to be defined within the final agreement, as to how  
7 enhancement would be carried out, where, and what initiatives  
8 are necessary by our people and by government to carry those  
9 objectives forward would have to be defined later on.

8 One of the other things  
9 that my colleague just mentioned to me is that salmon is a  
10 stock, an international fish, it's like a caribou, it travels  
11 between Alaska and the Yukon. It is something that we're going  
12 to have to come to grips with and establish a, I guess, com-  
13 munication and cooperation in terms of how we approach the  
14 salmon topic. It is something that we're going to have to deal  
15 with, and our people are very concerned about the stocks that  
16 are available now. They are depleted, and they want to see  
17 something put in place, and I think the best way of dealing  
18 with that is to start opening a dialogue up with the Alaska  
19 Native people in achieving and developing common positions that  
20 we could reflect to the governments that we have to work toward  
21 establishing what would be, I guess, an international treaty at  
22 some point in time.

19 MR. PORTER: So he's saying  
20 he's prepared to negotiate.

21 MR. GOODWIN: Victor, one  
22 of the hottest things that comes up once in a while here in  
23 Alaska is harvesting of game for ceremonial purposes. Do you  
24 have limitations on harvesting of game for ceremonial purposes  
25 in Canada, and how do you propose or have you had on-going  
negotiations with the Canadian government, to resolve that  
problem?

1 MR. MITANDER: There is  
2 recognition under the agreement for the use of game for cere-  
3 monial purposes. There will be special provisions so that  
4 these kind of activities can continue in the future. Those are  
5 things that we still have to work out in terms of the details,  
6 again those kind of things would have to worked out towards the  
7 final agreement.

8 MR. PORTER: I'd just like  
9 to respond to that, and point out that right now, at the  
10 present time, there is no restriction on the ability of legally  
11 recognized status Inuit people to hunt for subsistence anywhere  
12 in the Yukon. And that would also involve for religious pur-  
13 poses. But a point of clarification with respect to the aspect  
14 of our negotiations and where they sit now. There seemingly is  
15 some impression that the agreement in principle as we talk  
16 about it and as are represented by the subagreements that have  
17 been signed, have been rejected by our people. That hasn't  
18 really been a clear cut decision. You can construe that be-  
19 cause they can't come to a ratification vote on the issue that  
20 that in its way means that the agreements have been rejected.  
21 But it's rather a situation where the agreements have been  
22 reviewed, they've not been approved, and there has been put in  
23 place some recommended changes that should occur to those  
24 agreements prior to moving on to a further ratification pro-  
25 cess. So you should clearly understand that next week when we  
sit down on the 17th that is the intent of those meetings is to  
discuss the current agreements in principles with the suggested  
six changes and to come forward with new negotiating positions  
reflective of those six issues and to go back to the table with  
the government of Canada.

MR. BERGER: Caleb Pungowiyi.

MR. PUNGOWIYI: Yes.

Maybe, one question to Victor, but a supporting statement to

1 Dave Porter, and that is, I think it's true of what has been  
2 said over the past two days in regards to the Native position  
3 on various things. And one is that, and it came out in what  
4 Mr. Porter was saying, and that is that the people, the Native  
5 people, are really concerned about the protection of the re-  
6 sources and the habitat they use for their continuation of  
7 subsistence. And I think you will keep hearing that as time  
8 goes by. But I wanted to ask Victor as to why you were  
9 agreeing to a set number of harvesting of caribou? I wanted to  
10 ask you, you know, why you wanted to agree to a set number?

MR. MITANDER: Well, in  
11 order for our people to become equal, as I mentioned earlier we  
12 have status/nonstatus, our elders tell us that they want all the  
13 people included in the settlement and they want all the people  
14 to become equal. Presently we do have, the status Inuit  
15 people, have the right to hunt for food on unoccupied crown  
16 land. In terms of the agreement as to why a set number is in  
17 place, the government of Yukon estimated that there was  
18 approximately 25,000 moose in the Yukon. The harvest level of  
19 that is about 10%, 2,500 animals, of which 50% of that would be  
20 given to our people. This is guaranteed. If the moose popula-  
21 tion increases in the future then our quota would also be  
22 increased substantially. Keeping in mind, too, that we have  
23 approximately 6,000 people enrolled under our settlement, women  
24 and children, and we did calculations as to what that take was  
25 before we arrived at that number. And we thought that the  
1,250 moose was adequate to protect our interests to maintain  
that level for the future. And that's one of the reasons why  
we accepted that, and also as part of that deal we had 50%  
control on the management board. That board would recommend to  
the minister as what those allowable harvests are and the  
communities themselves would allocate to the people in the  
communities, through the chief and council, who gets the tags.

1 And what a number of communities are saying is that subsistence  
2 should be allowed to continue for the old people and that  
3 people that maintain that activity throughout the year should  
4 also be given preference or priority on that.

5 MR. BERGER: Weaver  
6 Ivanoff, and then Dolly...

7 MR. IVANOFF: I was  
8 interested in commercial and the subsistence fishing, coming  
9 from a fishing village myself. You mentioned that you have  
10 commercial fishing rights given to residents in the area. Are  
11 they limited only to the entry permit holders, the fishing  
12 permit holders, or is that allowed to all the residents? And,  
13 number two is, if you are a commercial fishermen are you still  
14 allowed also to subsistence fish, are there any limitations?

15 MR. MITANDER: We have,  
16 under the fishing agreement, we break it into four different  
17 areas--subsistence is the first priority, domestic fishing  
18 which applies to non-Inuit people, sports fishing, and com-  
19 mercial fishing. I would think, to answer your last question,  
20 commercial fishing doesn't mean subsistence fishing, it's one  
21 or the other. In terms of the allocation, we are guaranteed,  
22 in the future, 25% of the commercial licenses that are issued.  
23 Now, for instance, in salmon most of the commercial fishing  
24 takes place from Dawson City north to the border of Alaska,  
25 that's where the fishing for salmon takes place. The fisheries  
issues so many licenses, there are going to be measures taken  
to allow for Inuit people to increase their participation in  
the commercial fishing in that area. In terms of the course  
fish, or the freshwater fish, the commercial aspects would be  
increased, depending again on conservation.

MR. BERGER: Dolly Garza.

MS. GARZA: In looking at  
the...it's the Yukon Territory that manages the fish and

1 wildlife resources? Is that also true in the Northwest  
2 Territories?

3 MR. MITANDER: That's  
4 right.

5 MS. GARZA: So they're both  
6 managed by the territorial, as opposed to the Canadian  
7 government as a whole?

8 MR. MITANDER: That's  
9 right.

10 MS. GARZA: Okay. I  
11 wonder if there is concern by the people in the area that the  
12 subsistence harvest levels could be drastically changed in the  
13 future based on ultraconservative resource interests? What I'm  
14 getting at is, could the harvest levels potentially be reduced  
15 for the sake of the resource? That seems to be a problem in  
16 Alaska, that our harvest levels are subject to ultraconserva-  
17 tive resource interests to a degree that we don't agree that  
18 the harvest levels should be as low as they are. Is that a  
19 concern of your people?

20 MR. MITANDER: It is a  
21 concern, there's no question about that. Generally the focus  
22 of resource development has been in the interest of the non-  
23 renewable resource area, and generally what happens is that the  
24 renewable resources suffer from that. Therefore, there's a  
25 real...it affects our people in terms of subsistence require-  
ments there. And there's pressures by the managers to cut back  
in that area. But those kind of things would have to be con-  
sidered in the future, if development is going to take place in  
a certain area it would have to be subject to a very strict  
environmental screening process, taking into consideration our  
interests in hunting, fishing, and trapping and the social,  
economic, and political structures of our people in reference  
to that project. So, I guess, through that process it would

1 be, the project would be evaluated. First of all, whether it's  
2 in that community's interests to go ahead with that project,  
3 whether it's going to benefit the community. The impacts on  
4 the livelihood toward subsistence would have to be weighed, and  
5 proper measures or mitigative measures would have to be con-  
6 sidered if a project is allowed to go ahead. For instance,  
7 there is a proposal in the North Slope of the Yukon to develop  
8 a rock quarry...

(TAPE 10, SIDE A)

8 It would have to go through this screening process and  
9 ultimately at the end they would provide a recommendation to  
10 the government whether the project should go ahead, taking in  
11 consideration the subsistence. Those kind of things would have  
12 to be recommended to government, along with the terms and  
13 conditions that would have to be placed on the project

MR. BERGER: Dave Porter,  
13 you wanted to add something?

MR. PORTER: In the present  
14 laws that exist in Yukon today, Yukon government has no ability  
15 to affect the subsistence rights of aboriginal people that are  
16 status Indian people. We can hunt anywhere in the Yukon,  
17 anytime of the year, take any species of game. They can't  
18 initiate any legislation action that can curtail that activity.  
19 Under these agreements that was given up. What has happened is  
20 that we've agreed to a 50% quota with respect to moose and  
21 caribou. They cannot, under this agreement, affect that quota,  
22 except for measures of conservation, very much like the  
23 Inuvialuit agreement.

With respect to the current  
23 position of communities, there is dissatisfaction with the  
24 present agreement at the present time, that is why the  
25 ratification process of these agreements has been held up.  
What the dissenting communities are saying is that there should

1 be a very clear stated position of the priority of the  
2 subsistence use of the resources in law. That is an element  
3 that they see missing here, and what they say is that these  
4 agreements should be restructured to say that subsistence use  
of the resources should be the absolute priority.

5 MR. BERGER: Dave, you  
6 mentioned status Indians who had the subsistence right at the  
7 present time, under existing law, and the nonstatus Indians who  
8 have no subsistence rights. What's the proportion of status to  
9 nonstatus Indians in the Yukon, you said there are 6,000 all  
together.

10 MR. PORTER: This is a very  
11 ugly blemish on Canadian history with respect to law as it  
12 relates to aboriginal people in our country. They purposely  
13 divided our people, and this has had tremendous impact all over  
14 Canada, and the division is still there very clearly in law,  
15 then has translated itself into political division that has  
16 been monopolized and used by various governments for their own  
17 political interests. And we have situations where brothers and  
18 sisters sit on either side of a legal fence with respect to  
19 definition of who is who. And in the Yukon, fortunately,  
20 we've been able to politically live with that reality, and have  
21 come to grips with it, and we're the only part of Canada that  
22 has thrown those artificial definitions out and have been able  
23 to conduct ourselves collectively. We've said, "We know who we  
24 are and the governments can't tell us otherwise," and  
25 politically have gone ahead. But the legal reality is that  
there are two sets of rights as articulated by Canadian law at  
the present time. And what they've used as a hammer in the  
negotiations in terms of leverage in every instance where there  
are current existing rights attributed to one part of our  
population, largely the status Inuit people, they say that  
they'll take those rights away...they'll only grant certain

1 rights to the nonstatus part of our population should we agree  
2 to give up the other rights. And they tell us it's either, for  
3 example, a reserve system that does not include those part of  
4 your population or it's our government as we articulate it.  
5 And there's virtually, in terms of the extremes of the offer,  
6 there's no real middle ground that they're prepared to  
7 negotiate on. But to finally answer your question, 50% of  
8 each.

9  
10 MR. BERGER: Fifty percent  
11 status, 50% nonstatus.

12 MR. PORTER: Just about  
13 right down the middle.

14 MR. BERGER: And under the  
15 new agreement the nonstatus will cease to be nonstatus, they'll  
16 have the same status under the agreement as the status.

17 MR. PORTER: Correct.

18 MR. BERGER: I'm sorry, I  
19 think Marie was next.

20 MS. ADAMS: You asked the  
21 same question I was going to ask. Thank you.

22 MR. BERGER: Hugh Monaghan,  
23 and then Willie Goodwin.

24 MR. MONAGHAN: The  
25 situation in the Northwest Territories is slightly different,  
but again changing because of claims. As Dave indicated, under  
Canadian law, the Indian Act, treaty people can hunt anywhere  
in unoccupied crown land, which in Northwest Territories means  
the whole of the Northwest Territories except uptown in the  
village sort of thing. The distinction that we drew early,  
however, was, in the Northwest Territories, and it dates back  
to 1938 and was revised slightly in 1953, is that we would  
permit all aboriginal people, undefined, to have general  
hunting licenses, which therefore gave nonstatus people the

1 same access to the resource as status people. So that solved  
2 this problem which Dave has correctly identified as a very real  
3 problem, in that in some of our families some brothers are  
4 treaty and some aren't. And that changed for various reasons.  
5 So the general hunting license helped us out of that problem.  
6 Now there is an avenue that's been used in the Northwest Terri-  
7 tories to permit the government of the Northwest Territories to  
8 limit Native hunting on unoccupied crown land, and that is  
9 through declaring an animal to be endangered. Now, endangered  
10 doesn't mean that it's on, it's in the process of being extir-  
11 pated, it just means that you have to manage in a proactive  
12 fashion to maintain that resource. For instance, caribou in  
13 the Northwest Territories were declared endangered many years  
14 ago, although we've got over half a million. But there was  
15 thought to be a need for management measures. Polar bear were  
16 declared endangered in 1968, due to permit management. Now  
17 that old and awkward tool, and to a degree it's misleading, has  
18 now been replaced by these settlement acts which prescribe  
19 conservation as a limit and within that the preferential and  
20 exclusive access of Native people to resources and involvement  
21 in management regimes. So our whole method of approach is  
22 being changed by land claims.

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On the fisheries question,  
in the Northwest Territories, the government of the Northwest  
Territories administers the sport fishery. However, in the  
commercial fishery the federal government manages it, although  
the territorial government takes on a very, very high profile  
in terms of developmental policies and assistance programs. We  
plow a lot of money into supporting the fishing industry, the  
trapping industry, and the hunting industry, it's subsidized in  
many respects. One thing that I'd like to make clear in terms  
of priorities, there is limited competition for fishery  
resources in the Northwest Territories because we have a

1 fantastic resource and in most cases a very limited draw on it.  
2 So that is dramatically different from what you have here in  
3 Alaska. In the Northwest Territories the first draw on any  
4 fisheries is automatically for subsistence or domestic use. We  
5 see them as being essentially the same. Then it's up to the  
6 community to decide whether they want to get into a commercial  
7 harvesting operation, and in almost all cases, excepting Great  
8 Slave Lake, that means the local Native community. They can  
9 then develop it commercially to ship the protein out, or they  
10 would have first call on whether they wanted to put in a sport  
11 fishing lodge. Now that's practiced now by policy and is  
12 enshrined in the land claim documents. So if someone wants to  
13 open up a new lodge in Great Bear Lake it goes before the  
14 community council for review and under the land claim agreement  
15 they would have the first opportunity to open it if they wish to.  
16 So we're into, I guess what that means in shorthand is, the  
17 land claim agreements are enshrining much more firmly and  
18 explicitly what has been the practice in recent years.

19 MR. BERGER: Okay, thank  
20 you. Dave, and then we'll let Willie have the last, well,  
21 second to the last question.

22 MR. PORTER: An important  
23 point of clarification. The Yukon government does enjoy the  
24 same legislative prerogative to curtail our hunting rights by  
25 declaring a species as endangered.

MR. GOODWIN: A few years  
ago the Western Arctic caribou herd crashed, the term was  
crashed, right? The quota was set by the State Fish and Game  
Department and the Board of Game to one caribou per hunter,  
even though we tried to tell them that the crash, it happens  
just about every forty years. But there was no document saying  
that it did happen, even though our people know it happened 40  
years prior to that. My question is, what happens to your

1 quota and the numbers when some unforeseen thing happens like  
2 the 10,000 caribou that hit the drink?

3 MR. MITANDER: Well, I  
4 think under this agreement here it will be seriously affected,  
5 there's no question about it. And I think that's one of the  
6 concerns that people have in the communities now, is that they  
7 want to have the right to go out and use the resources for  
8 subsistence purposes in the future, regardless of...you know,  
9 it's a mainstay, and it's livelihood, and they require that.  
10 For instance, if the Depression happens in this world, and in  
11 Yukon today, regardless of what laws are there, people are  
12 going to go back to the land. And I think that's something  
13 that has to be considered in these kind of agreements, the  
14 right of subsistence must be maintained overall.

15 MR. BERGER: Dolly Garza.  
16 MS. GARZA: I don't know  
17 if you're going to want to answer this, but was the agreement  
18 voted down because status Natives were unwilling to give up  
19 their unrestricted right for the sake of allowing nonstatus  
20 Natives an equal opportunity?

21 MR. MITANDER: I guess  
22 somewhat there is that feeling. That the status Inuit people  
23 in the Yukon have that right, don't want to give it up. I'm a  
24 nonstatus person, and I understand what the status Indians are  
25 talking about, and I support them on that. I think the whole  
basis of the whole land claims is to try to achieve equality.  
Me, as a nonstatus, because my mother married a non-Indian,  
because of that, I was discriminated against. And I think as a  
result of the settlement we should try to resolve these kind  
of problems, so that there is not a step down from the present  
rates that status Indians have, but a step up for the nonstatus  
having their rates recognized.

MR. BERGER: The question

1 of status and nonstatus Indians bedevils Native people and  
2 their friends in Canada, and that could be the subject of a  
3 three-day long discussion. Perhaps we could leave it by just  
4 saying that there is something similar now in Alaska since  
5 1971. In Canada you became nonstatus if you married the wrong  
6 person, in Alaska you become something like nonstatus if you  
7 happen to have been born after 1971. So we see this, I'm  
8 putting it in very rough terms, but it's kind of like  
9 reinventing something that in Canada we've spent many, many  
10 years trying to eradicate. And in the Yukon I think the Council  
11 of Yukon Indians deserves credit for what I think is an act of  
12 statesmanship trying to unite all the people under the same  
13 agreement. David Case, I think we'll give him the last  
14 question, and then we'll move on.

15 MR. CASE: I wanted to  
16 follow up on Weaver Ivanoff's question regarding limited entry,  
17 and to the commercial fishing that you mentioned. You probably  
18 know there's a limited entry of sorts and of problematical  
19 fairness in Alaska. And one of the things that has recently  
20 emerged is that in some locations this particular system in  
21 Alaska has resulted in up to 22% of the permits originally  
22 allocated or granted to Indians, Native Americans, being  
23 alienated to non-Indians, non-Natives. Is that, what does your  
24 agreement envision to prevent that from happening, or is it  
25 guaranteed by the guaranteed commercial fishing rights.

MR. MITANDER: It would be  
guaranteed in terms of the commercial fishing rights. The  
limited entry system we're guaranteed a minimum of 25% of the  
commercial licenses that are issued, for the particular areas.

MR. CASE: Would the  
licenses that are issued be issued to a person permanently?  
They would have this permit as a piece of property essentially,  
a permanent right to harvest in that area?

1 MR. MITANDER: Well, it  
2 would be based first of all on the conservation. If  
3 conservation, if the fish stocks are depleted, then there would  
4 have to be measures taken to limit first of all on a priority  
5 system, commercial fishing would be the first to go.  
6 Subsistence would be the last to go, and it would be based on  
7 that...

8 MR. PORTER: Just a point  
9 of clarification on that issue. Your question is to one of  
10 perpetuity in terms of permanence. The way in which that can  
11 achieved I think is that the agreement provides for the ability  
12 to have exclusive use of certain geographic areas to fish. All  
13 the eddys that your families have been at for hundreds of  
14 years, you have the ability to gain the exclusive use in  
15 perpetuity to those areas. Further on in the agreement you  
16 have the ability to not only subsistence fish in that area, but  
17 also, should there be deemed to be a surplus of fish after your  
18 subsistence activity, then you may commercial fish that excess  
19 of fish.

20 MR. BERGER: I'll give  
21 myself the right to ask a last question, just before we leave  
22 limited entry. Here in Alaska, as Dave Case says, a number of  
23 Native fishermen possessing limited entry privileges have sold  
24 them to non-Natives. Now, I think what Dave is getting at is,  
25 could you lose your 25% of all limited entry commercial fishing  
licenses if people decided to sell them? You can't sell them?

MR. MITANDER: You can't  
sell them.

MR. BERGER: Alright, well,  
thank you both, and thank you, Hugh, and we'll move on now to  
have Caleb Pungowiyi discuss for us the Eskimo Walrus  
Commission.

MR. PUNGOWIYI: Thank you,

1 Judge. First of all, let me either qualify myself or disqualify  
2 myself concerning the Walrus Commission. First of all, I am  
3 not a member of the Walrus Commission, but I have been involved  
4 in the formation of the Walrus Commission and I followed the  
5 proceedings of the Walrus Commission and feel fairly  
6 knowledgeable about the commission. There are other members  
7 here, Ron Navilkak, who is a member of the Walrus  
8 Commission, and other members are here with me. Weaver Ivanoff  
9 was the chairman of the Northwest Native Association in  
10 Kawerak, who contracts on behalf of the Walrus Commission, and  
11 Dolly Garza, who is with Cooperative Extension Service, who is  
12 teaching a course on marine mammal management. And if there  
13 are some questions that I am unable to answer the questions  
14 will be redirected to those.

15 I do want to proceed in  
16 perhaps a little different manner, and that is go back to  
17 history a little bit, to the passage of the Marine Mammal  
18 Protection Act of 1972, and to the State management during the  
19 '76-'79 period, and the formation of the Walrus Commission, and  
20 the reasons behind that, and then the management plan that was  
21 developed by the Walrus Commission.

22 The Marine Mammal  
23 Protection Act was passed in 1972. This act was primarily a  
24 conservation act. The purpose was to preserve all marine  
25 mammals that are under the jurisdiction of the United States  
from any hunting and put a moratorium on all hunting of marine  
mammals. The Native population, through Ted Stevens, were able  
to put a provision in the act that exempted all Alaska  
Natives--Aleuts, Eskimos, Indians--from the provisions of this  
act. The exemption is total in that it allows the Natives full  
hunting rights to marine mammals. The restrictions,  
surprisingly, I guess you might say not surprisingly, came on  
the provisions of what you do after you have harvested the

1 marine mammal. There's restrictions, regulations on the  
2 production of handicrafts, there's regulations on sale and  
3 trading of food and other parts of the marine mammals. The  
4 Section 101(b) of the act has two provisions, one which applies  
5 to the hunting provisions of the act and the other one that  
6 applies to the restrictions on the production of handicrafts.  
7 The hunting had no...there was to be no regulations on hunting  
8 by Alaska Natives as long as the species were not depleted. In  
9 other words, Alaska Natives could hunt all they want, there was  
10 no restrictions, they could catch as much as they want, as  
11 long as it was not done in a wasteful manner. And the wasteful  
12 manner was not defined. The regulations on production of  
13 handicrafts had several restrictions. One is that the  
14 handicrafts must be done strictly by hand, that there was  
15 restrictions on use of multicarvers, mass producing machines,  
16 that sort of thing. In which the intent of the Congress was to  
17 protect the villages from the high technology that may overcome  
18 the people and therefore disrupt the economy of the villages.  
19 And the intent was to maintain the economy in the village  
20 level. The right to sell and trade Native products was limited  
21 to Natives only. You could not sell any kind of a raw product  
22 to non-Natives. You could not sell the meat of the marine  
23 mammals to non-Natives. If non-Natives got involved there was  
24 a limitation on how they could get involved. They had to  
25 receive a permit from U.S. Fish and Wildlife Service, or  
Department of Commerce. And the restriction was that they  
could buy from the Natives, but they could only sell to other  
Natives. And those were the restrictions that were placed on  
the provisions of the Marine Mammal Protection Act.

23 The act was passed in '72.  
24 In 1976 the State of Alaska petitioned U.S. Fish and Wildlife  
25 Service, or the Department of the Interior in this case, to  
take over management of marine mammals. This petition did not

1 have a lot of input from the Native community, it was strictly  
2 an agreement between the State government and the federal  
3 government on the management of marine mammals. The agreement  
4 was strictly on walrus, it did not affect any other marine  
5 mammals, it was strictly to manage walrus hunting. The  
6 agreement had certain provisions. One, there was a quota  
7 placed on the number of animals that could be harvested, total  
8 that could be harvested within the state of Alaska. That total  
9 was 3,000. The Alaska Department of Fish and Game, in reaching  
10 this agreement, based it on several different things. One was  
11 that they estimated the average annual harvest of marine  
12 mammals or walrus by walrus hunting in the communities. They  
13 did not look at the total harvest of the marine mammals or  
14 walrus in the state of Alaska. Secondly, they based it on the  
15 estimated population of the walrus at that time, which was they  
16 estimated it was 75,000, and the total that could remain safely  
17 and maintain the population in the healthy status...or, maybe I  
18 should say it wasn't 75, it was around 150,000 that it was  
19 estimated at that time, or 100,000...anyway, those factors led  
20 to the establishment of the quota for the walrus. The  
21 department then decided to place a number on villages. The  
22 village decided, Gambell, would harvest 250 walrus, Wales 250  
23 walrus, Nome 150 walrus, and it went to several...Gambell,  
24 Savoonga, Nome, King Island, Wales, Diomedede, were given quotas  
25 that they could harvest. But there was some fallacies in this  
quota system, in that the villages that also hunted walrus were  
not placed on the quota system. Brevig Mission, Stebbins,  
Mekoryuk, Togiak, Manokobak, and some of those villages,  
Kivalina, Point Hope, were not on the quota system, although  
Point Hope was given a quota near the end of the state  
management. They estimated that those villages that did not  
have the quota could be allowed what is called incremental take  
of the walrus. In other words, they did not keep track of how

1 many walrus these villages were harvesting, but rather allowed  
2 for it in the total 3,000 walrus. The quota that was set was  
3 2,500. Two thousand five hundred walrus could be hunted by  
4 those villages that were identified in the quota system. And  
5 when a particular village reached that quota, be it 150, 200,  
6 the village would cease to hunt walrus, even though there may  
7 be a larger population passing by. But, also, the monitoring  
8 of this quota was done only in the springtime, when the walrus  
9 were passing through the villages, not in the falltime when the  
10 walrus came back from the wintering grounds, or summering  
11 grounds. So there was some fallacy as to how the State applied  
12 this quota system. Also the quota system applied only to  
13 Native taking. If there were sports hunters that were within  
14 those villages, or if the guides brought in sports hunters to  
15 those villages and the walrus were available, the sports  
16 hunters could be taken out and remove walrus from the  
17 population. That would not affect the quota of that particular  
18 village.

15 There was tagging done on  
16 the raw ivory that was taken on the walrus. Every hunter that  
17 caught walrus the ivory had to be tagged by the Alaska  
18 Department of Fish and Game. It was kind of a voluntary  
19 system, but it also allowed those ivories that are tagged to be  
20 sold on the open market, you could sell them to anybody, there  
21 was no restriction onto whom those ivories could be sold. And  
22 it opened up a lot of the, this particular activity to be sold  
23 elsewhere, it left the village and there was a lot of market  
24 for ivory. The village of Togiak was one of those villages  
25 that was not given a quota. The Alaska Department of Fish and  
Game said to Togiak, "You guys cannot hunt on Walrus Island,  
that is a restricted area, you cannot hunt within Togiak area."  
Togiak sued the Department of the Interior, saying under the  
Marine Mammal Protection Act we are given full exemption from

1 being aborted on Penuk Island. The walrus were trampling  
2 amongst themselves to death, in large numbers. They showed  
3 signs of perhaps exceeding their feeding grounds, in that the  
4 blubber thickness among the walrus was quite thin, there was  
5 increased cannibalizing by walrus among other species,  
6 primarily the seal, which were not normal diets of the walrus.  
7 The commission also asked that these agencies do an immediate  
8 research on the status of the population and to find some  
9 population indices that would indicate what was happening to  
10 the population. First reactions from Fish and Wildlife Service  
11 was, "We don't intend to study the walrus population for the  
12 next several years because we're doing it on ten year cycles."  
13 The Fish and Game said, "We don't have the money to do the  
14 research." So the Walrus Commission approached the oil com-  
15 panies, "Can you find us some money where we can do the research  
16 on the population?" We also asked Dr. Butsfey (ph), who's with  
17 the University of Alaska, to develop a plan in which we could  
18 do some of this study that the commission felt was needed. One  
19 was to collect the stomachs of walrus to find out what they  
20 were actually eating, what was happening to the clam popula-  
21 tion, and compare it to the previous studies that had been done  
22 in the past years, in the '50s and '60s. And also take teeth  
23 samples of the walrus to see what kind of age was happening to  
24 the walrus, and also to conduct studies on the areas where the  
25 walrus were definitely showing signs of stress, like at Penuk  
Island where they were aborting fetuses in the falltime as they  
came back from the north, and also trampling. We also wanted  
them to study what were causing these trampling on Penuk Island  
and other parts of St. Lawrence Island. You might recall in  
1979 or '80 about 200 walrus trampled themselves to death on  
Kialegak, which is on the southeast side of St. Lawrence  
Island, for what we could tell for no apparent reason. And  
this was also happening on Penuk Island. But the research

1 monies were not available, nobody had really budgeted to take a  
2 look at the population of marine mammals at that time. And the  
3 Walrus Commission wanted the feds to do this.

4 Fortunately, there was  
5 another activity that was going on. The Alaska Outer  
6 Continental Shelf Office were doing some baseline studies in  
7 Norton Sound in preparation for Sale 57, which is an OCS sale  
8 in Norton Sound. There were some study monies available for  
9 doing population baseline studies on the marine population in  
10 Norton Sound. And some of that money was diverted to study  
11 what was happening to the walrus population. One of the things  
12 that the commission demanded at that time was they wanted to be  
13 involved in some of that research activity. They also volun-  
14 teered some of the people within the villages to actually  
15 monitor on yearround basis the harvest of the walrus popula-  
16 tion. For the first few years they were, I guess you might  
17 say, obliged to be involved in the research. We had some  
18 walrus hunters participate in the joint research between the  
19 Russians and the United States government during the fall of  
20 '79, we had another one involved during 1980, when the summer  
21 crews up through the Chukchi Sea studied the population, and  
22 also in '81. But since then the commission has not been  
23 involved by the feds in some of this research activity.

24 The Walrus Commission  
25 ...it's strange in some ways that the managers, both Fish and  
Game and U.S. Fish and Wildlife Service, maybe perhaps don't  
trust the Native people in terms of monitoring their own har-  
vest. When the Walrus Commission, you know, volunteered to  
monitor the walrus harvest in the villages the reaction from  
Fish and Wildlife Service was, "We'll put our own people out  
there and they'll, you know, they'll keep track, they'll buy  
the products, they'll buy the tooth for our research purposes."  
And they did. They sent their bird people, their clerk people,



1 research programs; (7) To encourage our government to cooperate  
2 with other nations in studies, enforcement, and other involve-  
3 ment in marine mammal well-being. The Purpose of Regulations:  
4 These regulations are adopted by the Eskimo Walrus Commission  
5 because there is no state or federal regulations or management  
6 relating to walrus. The purpose is to show that the Walrus  
7 Commission, and the walrus hunting communities, can responsibly  
8 satisfy their needs for walrus in a manner consistent with  
9 proper walrus management. Scope of Regulations: These regula-  
10 tions apply to all walrus hunting and by-products, and they are  
11 not to be construed as interpretations by the Walrus Commission  
12 of a state or federal law. The Walrus Commission makes no  
13 position whether these regulations comply with state or federal  
14 law."

15  
16 And I think it is  
17 interesting to note that the commission, in establishing these  
18 regulations, and I might also add that most of the members are  
19 not what you would call highly educated individuals, and when I  
20 read some of the language in these regulations you will hear  
21 that, but you also will hear the intent that they were trying  
22 to make in regards to their proposed management of walrus.  
23 "Harvest Limit: No numerical quota system shall be imposed on  
24 the Native take of walrus. A flexible harvest will be con-  
25 ducted based on the biological standards of the agency managing  
the walrus, whether, and as conditions and needs of the  
people, or needs of the villages. Subpart B:," I'm kind of  
jumping around here and there, "Biological and Population:  
Population--conduct studies to determine the population and  
maintain within the optimum sustainable population. Biological  
Studies--biological studies will maximize Native participation  
in the data gathering process and interpretation of data as  
well as integrate traditional Native knowledge into the study  
processes. Monitoring Harvest: Native monitors will be used

1 to monitor the harvest of all marine mammals. Health: Monitor  
2 the general health status and trends of the walrus population.  
3 Pollutants: Determine and monitor the pollutants and effects  
4 on walrus. Migration: Determine the migration chronology and  
distribution."

5 I was also going to ask,  
6 not ask, but say that in developing these regulations to per-  
7 haps the commission, like any other Native group, fell into the  
8 trap of adopting the white man's system of coming up with  
9 something that is written, in terms of complying with what  
10 they thought as existing, you might say, requirements by the  
11 non-Native society. "Haul-out: Identify and preserve haul-out  
12 areas of walrus after consultation with immediate area users."  
13 I think in this particular case they were concerned that, and  
14 there's been concern among the Native community, that you don't  
15 let the white people know everything, that there is some areas  
16 that you want to keep secret from the white people, so that you  
17 maintain some of your own traditional ways. And I think that's  
18 the reason for putting in there, "...after consultation with  
19 the immediate area users." "Habitat and Feeding: Identify and  
20 describe important habitat of the walrus. Disturbance and  
21 Development: Determine the impacts of disturbance, such as  
22 aerial noise activities, and sea migrational harassment and  
23 disturbances on haul-outs and natural habitats. Adequate  
studies and monitoring will be conducted to ensure that walrus  
and its environment are not disturbed by development activi-  
ties. Natural Mortality: Evaluate and determine the causes  
and rate of natural mortality. Subsistence: Provide for  
subsistence needs of the Native people as a priority use of the  
Pacific walrus."

24 "Recreational Hunting:." I  
25 think this is also interesting, "...If the populations can be  
sustained then the limited recreational hunt for non-Natives

1 are allowed, as long as professional Native guides are  
2 utilized. At no time will non-Natives be out by themselves  
3 because of threat to their lives and property." When the State  
4 had management of walrus, the non-Native hunters that were  
5 brought within to the villages were brought in by the profes-  
6 sional hunters or professional guides that were established in  
7 Anchorage, Fairbanks, and other urban areas. And they more or  
8 less acted as bookies--they'd bring in their hunters, they'd  
9 bring them to a village, and then they would hire the Native  
10 captains to take these hunters out, for a fee of let's say  
11 between \$200 to \$700. And their fee ranged, to the profes-  
12 sional hunters, between \$3,000 to \$5,000. And the commission  
13 was concerned about the way that they were being used by the  
14 professional hunters in regards to professional hunting. And I  
15 think this is the provisions for that, that they wanted to be  
16 involved in the actual hiring or guiding of these professional  
17 hunters and reap the economic benefit that these bookies were  
18 taking in terms of taking them into the village and then  
19 letting the village hunters take the hunters out. But there's  
20 another portion that I think is very interesting, which we'll  
21 get to as I read the management plan. "Cold Storages:  
22 Encourage and promote utilization of walrus by seeking better  
23 food preservation methods, means, and economic uses of parts  
24 which may otherwise be discarded. Utilization: After hunters  
25 get walrus and gets edible parts he needs, he should open the  
chest and stomach and sink the walrus bull (?) for the utiliza-  
tion by marine creatures." In other words, they're saying that  
there is a life cycle that supports the marine system, and when  
they sink the walrus that is going to be used by other marine  
animals that live on the bottom of the sea for recycling of the  
walrus.

"Method, Means, and

Reporting: (1) Equipment--The regulations on walrus should

1 prohibit rim fire cartridges." And there's a little...let me  
2 read the whole thing, then I'll get back to the history. "The  
3 State may impose caliber, for example, 270 caliber for sports  
4 hunters, but the only limit on subsistence hunters should...but  
5 that be of center fired cartridges. Each walrus hunting boat  
6 must have two harpoons with lines and floats. Every boat is  
7 encouraged to have a functional walkie-talkie for safety pur-  
8 poses. Other suggested equipment for safety of all concerned  
9 are an extra motor, oars, paddles, and at best 30-gallons of  
10 fuel, gas stove, spark plugs, flares, life jackets, blankets,  
11 extra food." And the thing on limiting caliber, in 1978, 1979,  
12 when the State of Alaska had management the staff of Fish and  
13 Game proposed to the game boards to limit the harvest of walrus  
14 to those calibers of rifle that were 264 magnum and over. The  
15 reasoning behind the staff was that, and I think there was also  
16 pressure from the environmental community, that the walrus be  
17 killed instantly. That the effort be made to humanely take  
18 these marine mammals in a most efficient manner. And the walrus  
19 hunters were concerned, hey, you know, we normally don't use  
20 these big caliber rifles for harvesting walrus because we have  
21 a method...

(TAPE 10, SIDE B)

17 and means of how we harvest these walrus. We use small caliber  
18 rifles when the walrus are in the water, so we can wound them,  
19 slow them down, and then we cover them. If we use high caliber  
20 rifles that may kill the walrus instantaneously and it will  
21 sink. And also if we high caliber rifles, you know, 7 mm, or  
22 300 magnum, on the walrus, a lot of times the bullet will go  
23 right through that walrus and wound another walrus. And those  
24 were some of the things that they were concerned about.  
25 Another one was enforcement--How is Fish and Game going to  
enforce the walrus hunters to make sure that they used only  
those high caliber rifles to kill a walrus? Are they going to

1 board these boats and make sure that they have only those large  
2 caliber rifles? And the other concern was that most hunters do  
3 not go strictly out to hunt walrus. When they go hunting  
4 they're looking seals, they're looking for walrus, they're  
5 looking for oogruk, and not strictly for walrus. And  
6 therefore need these other smaller caliber rifles to hunt these  
7 marine mammals. And this suggestion, that the sport hunters  
8 use these higher caliber rifles, is in fact a reaction to that  
9 proposal that was put by Alaska Department of Fish and Game.  
10 Whether it was adopted I don't know. "Method of Harvest:  
11 There will be no indiscriminate firing into herds of walrus.  
12 There shall be no unnecessary harassment of walrus. Reporting  
13 and Marking: The captain or hunter shall report all takes of  
14 walrus and other marine mammals to the Eskimo Walrus Commission  
15 representative. Staff will develop a marine mammal calendar."  
16 And this is...I'm getting to the part that I was going to say  
17 earlier, in regards to recreational hunting. "Recreational  
18 Hunting: Recreational hunting will be conducted in an adven-  
19 turous and pioneering spirit using Native guides and crew. All  
20 rules of Section 401 or 4.1 shall apply," that means in terms  
21 of required equipment, "...The recreational hunter shall have  
22 one chance, one shot of harvesting the Pacific walrus. If the  
23 Pacific walrus is not brought down then the back-up Native  
24 shooter will kill the animal for the hunter."  
25

And let me go back to  
history a little bit. Many of these professional hunters that  
came up to hunt the walrus, a lot of times did not know how to  
shoot the walrus to kill it. I won't say most of them, but  
some of them, were in this category, that they did not know  
when to shoot the walrus to kill it. And in other cases they  
would wound the walrus and they would escape and perhaps die  
later. And the Walrus Commission wanted to avoid this kind of  
thing happening, where a professional hunter would shoot the

1 walrus, wound it, and then they might keep shooting it and it  
2 crawls off the ice and goes under and escapes. This provision  
3 was to allow the professional hunter one shot, one try, to kill  
4 the walrus, and if he didn't then the Native hunter would kill  
5 the walrus on their behalf. It's a unique reasoning, in this  
6 case, and something that probably the professional hunters  
7 would not want to see ever adopted, because it restricts their  
8 ability to one shot, at one time only.

9 MR. BERGER: Caleb, we have  
10 to adjourn just a little early for lunch, so would this be a  
11 convenient time to break-off and...Well, we'll come back at  
12 1:00 and just carry on with Caleb Pungowiyi's presentation,  
13 then...

14 (MEETING ADJOURNS)

15 (MEETING RECONVENES)

16 MR. BERGER: Well, maybe we  
17 should take our seats and begin again...Okay, well, why don't  
18 you start again, Caleb, and we'll just carry on.

19 MR. PUNGOWIYI: Okay, well,  
20 I'll try not to carry it too much further, knowing the time  
21 limits. Let me read a few more of the provisions of the pro-  
22 posed management plan of the Walrus Commission. "Subpart F is  
23 Regulations and Enforcement. Purpose of Regulations: It is  
24 the purpose of the regulations contained to (a) ensure an  
25 efficient subsistence harvest of walrus and (b) provide a means  
within the Eskimo customs and institutions of limiting the  
walrus harvest within Section 1.4 in order to prevent the  
extinction of such species." Part of this is cut off, so I'm  
not able to read fully part of it, "...The Eskimo Walrus Com-  
mission is empowered to administer the regulations contained  
herein to assure the purposes in Section 6.1 of these regula-  
tions. (1) Acting an enforcement agency for any governmental

1 entity authorized to enforce these regulations; (b) the Walrus  
2 Commission is empowered to promulgate interim regulations  
3 that are in addition to but not inconsistent contained herein.  
4 International Cooperation/International Agreement: Promote and  
5 be included in the negotiations of an international agreement  
6 with the U.S.S.R. regarding the management and conservation of  
7 the Pacific walrus."

8 And that pretty much con-  
9 tains most of the proposed regulations that have been adopted  
10 by the Walrus Commission. One thing that they have not done is  
11 approached the enforcing agency, in this case the U.S. Fish and  
12 Wildlife Service, and said, "These are our proposed regulations,  
13 and in absence of the federal management we would like to  
14 institute these regulations on our behalf." And the other thing  
15 is that the State of Alaska is now in the process of seeking  
16 the return of marine mammal management to the State of Alaska  
17 from the federal government. The Walrus Commission has asked  
18 or seek to be a participant in those negotiations with the  
19 federal government, in regards to the management of marine  
20 mammals, particularly walrus. But the response from the  
21 Department of Fish and Game has been that they don't want to  
22 involve private interests in their negotiations with the  
23 federal government, meaning the Native people in this case, and  
24 also possibly the sportsmen that would be interested in getting  
25 involved in the hunting of marine mammals. I think it is of  
importance, and the Walrus Commission really feels this, that  
since they are the primary users of these resources that they  
should be involved in the negotiations with the federal gov-  
ernment in regards to the return of management of marine mam-  
mals to the State of Alaska. We might also add that the 1981  
amendments to the Marine Mammal Protection Act were done with-  
out the involvement of any of the community, although Alaska  
Federation of Natives was represented by Don Mitchell, in our

1 opinion it was a long-range representation, in that once in a  
2 while he would call us up and say, "Hey, this particular pro-  
3 posal is being considered, what is the position of the Walrus  
4 Commission or the Native community?" And it was difficult to, I  
5 think the Native community should have been intimately involved  
6 in those amendments on the reauthoring of the Marine Mammal  
7 Protection Act of 1981. As a result of that I think there are  
8 some provisions in those amendments that will potentially be  
9 harmful to the Native community.

10 Thank you very much.

11 MR. BERGER: Thank you,  
12 Caleb. Any questions that you'd like to direct to Caleb, or to  
13 Weaver Ivanoff or Dolly or Ron?

14 MR. PUNGOWIYI: I must have  
15 overwhelmed them.

16 MR. BERGER: Bob Gamble.

17 MR. GAMBLE: One of the  
18 things you mentioned, Caleb, that I was particularly interested  
19 in was that one of the principles in the formation of this  
20 commission was the integration of traditional and modern  
21 scientific knowledge. I wonder how that's worked out in  
22 practical sense?

23 MR. PUNGOWIYI: We were  
24 kind of discussing that earlier in our interviews in the  
25 station, in that there is new technology that has been applied  
to some of our subsistence hunting activities, the high-powered  
rifles, the outboard motors, and some of those things that  
increased the mobility and ability of our people to harvest  
marine mammals. I don't think it has really affected the  
subsistence activities of the Native population, nor has it  
affected the populations that people have, I don't know how  
to...used for such resources. When you look at the Marine  
Mammal Protection Act and the animals that are in it and the

1 resources that are used by the Native people, those populations  
2 that are used by the Native people have not suffered, but those  
3 that have been affected by commercial fishing have been  
4 affected by some of the other activities. So I think in that  
5 sense the, although the means have changed, the feeling or the  
6 meaning behind it has not changed.

6 MR. GAMBLE: I think maybe  
7 you misunderstood my question, I was talking about in the  
8 application of traditional knowledge and the marrying of that  
9 with western scientific methods and knowledge, in terms of  
10 making decisions about harvests, allocations, and so forth.  
11 Has that ever been tested or applied?

11 MR. PUNGOWIYI: Not in this  
12 case, no. You must realize that these proposed regulations  
13 have not been enforced or have not been applied to the manage-  
14 ment of marine mammals. I think that's what they're trying to  
15 say in this case, that any kind of regulations that are being  
16 proposed that there be village involvement. That if there's  
17 going to be some decision that's going to be affecting the  
18 habitat that the user group or the, what they said in this  
19 case, the...I forget what it was now...in terms of habitat,  
20 that those people that are...let me try to find it...after  
21 consultation with immediate area users. In other words, you  
22 know, they're saying that it should not be done without the  
23 knowledge or consultation or concurrence from the users.

20 MR. BERGER: Anything you'd  
21 like to add, Ron?

22 MR. NALIKAK: No, I think  
23 Caleb's just about said it all, he gave a pretty good  
24 presentation.

24 MR. BERGER: Okay. Tom  
25 Lonner, and then Marie Adams.

MR. LONNER: Caleb, you

1 mentioned some newly promulgated changes to the Marine Mammal  
2 Protection Act dealing with walrus that you said in the long  
3 run or even in the near term might prove difficult for you.  
4 What are those changes exactly?

5 MR. PUNGOWIYI: Not having  
6 those amendments in front of me it's difficult, but I can  
7 answer some of the things. One is that the State and the  
8 environmentalists convinced the federal government that there  
9 must be some tagging and monitoring of the harvest of marine  
10 mammals by the Native population. And the feds are now being  
11 forced to do that or else be in contempt of the law. So  
12 they're now developing means in which they can tag walrus  
13 ivory, tag seal skins, tag polar bear skins, so that if  
14 the...if the State should take over management that these kind  
15 of practices will continue under State management. But,  
16 they're also being required, even if there's no State manage-  
17 ment, that if the federal management continues that these  
18 regulations will be used, or these kind of taggings will be  
19 used. So that's that's one thing that I think is, can be  
20 detrimental.

21 The other portion is that,  
22 whereas currently the hunting is without regulation that there  
23 is potential for regulated hunts, be it the quota system, the  
24 bag limits, and some of those things. But I also want to also  
25 point out that there is two divisions within the federal gov-  
ernment that apply to, in this case, the walrus. One is the  
Fish and Wildlife Service that kind of keeps track of the  
biological part of the animals and keeping track of the num-  
bers, the other portion is the Law Enforcement Division, sup-  
posedly to enforce the law and make sure that what is done is  
being done. A lot of times the two don't speak to each other,  
I guess, and they create problems for one another. And the  
one, you know, a lot of times the Fish and Wildlife people say,

1 you know, "Why don't those Law Enforcement people listen to  
2 us?" because what they're doing a lot of times will alienate the  
3 Native people. Okay, in other words, when there's alienation,  
4 then there's lack of cooperation. And I think that's something  
that, you know, should be said.

5 MR. LONNER: Ask just one  
6 additional question. Is the Walrus Commission on record as  
7 opposing or supporting transfer of management back to the  
State?

8 MR. PUNGOWIYI: Ron has  
9 that.

10 MR. NALIKAK: We discussed  
11 this the other day, and we were still neutral when we met back  
12 in Nome, but towards the end of the meeting the commission had  
13 decided that they were going to oppose State transfer. But  
14 later on we changed it, so it's going to remain neutral until  
Fish and Game has had a chance to meet with all the villages  
and then they'll make their decision then.

15 MR. BERGER: David wants to  
add something to...

16 MR. CASE: ...To Tom's  
17 question about the amendments, too, I'm getting this from  
18 memory, but I'm pretty sure I got it right. The main thing  
19 about the amendments to the Marine Mammal Protection Act is  
20 that they removed the Native-only exception when and if juris-  
21 diction is ever returned to the State, and converted it into a  
22 subsistence user, rural subsistence user exception, paralleling  
23 the d(2) legislation. So the result is as long as the marine  
24 mammals are in federal management then there is an exclusive  
25 Native exemption with effectively few or no regulations, and if  
it goes back to the State then it will be the subsistence user  
exemption. Which is a pattern that you are beginning to see in  
the treaty negotiations and other statutes.

1 MR. BERGER: Dolly Garza.

2 MS. GARZA: Yes, that's  
3 exactly what I was going to say, that was the major amendment  
4 change in 1981 that has potential detrimental affect to the  
5 Natives, and as Caleb had stated was changed without consulting  
6 the Native resource users who would be affected by the change.

6 MR. BERGER: Marie Adams,  
7 did you have a question?

7 MS. ADAMS: I don't have  
8 any particular questions right now, but there were several  
9 things I wanted to comment on, in regards to Caleb Pungowiyi's  
10 presentation. He mentions that there was a great deal of  
11 publicity that was harmful and we've experienced that also, but  
12 also the problems that they we're experiencing in regards to  
13 that publicity were also impacting other areas of subsistence,  
14 you know. So was our publicity on the whaling matter. I think  
15 it's important for people to understand that, in regards to  
16 subsistence, when one resource is having problems then people  
17 tend to sort of go across the board and say there's a problem  
18 with subsistence all across. And we've experienced that with  
19 publicity that was, that was given to the walrus problem. I  
20 don't consider it a problem with the situation there.

18 And also, in regards to  
19 weapons, I would like to give some support to what they were  
20 saying that they should have the ability to maintain their  
21 hunting methods, because they were the ones who would know  
22 best. And when, in our situation there's been attempts to make  
23 changes and those are very difficult, it's very difficult for  
24 people to accept those changes because they know the methods  
25 that they've developed have been developed over centuries some  
of them, and some of them by adoption, to make their hunt more  
efficient. So to train, attempt to train that from the outside  
would only be detrimental.



1 we've tried to do is develop a joint, we've tried to develop  
2 joint projects where we have people who have the academic  
3 credentials and also people who work in communities and we see  
4 those things as joint kinds of projects. I think that the same  
5 model could apply in biological work, I guess the question that  
6 Caleb raises about what emphasis or whether people listen to  
7 people who don't have the professional credentials, that is a  
8 problem in the system. Of course, we also have, the other  
9 piece of that is that in the local fish and game advisory  
10 system there is opportunity for people to testify before the  
11 Board of Fisheries and Board of Game on their view. And I  
12 think that the adequacy of, whether or not that, the role that  
13 that testimony plays in the boards' consideration really varies  
14 a lot, there's a lot of factors that are relevant there. I  
15 think that there are a lot of situations where the Board of  
16 Game relies heavily on local peoples' observations about  
17 resource situations. In other cases they weigh that kind of  
18 testimony against or with biologists' testimony about things.

15 MR. CASE: Is biological  
16 research handled in a different division, then, entirely,  
17 within the Department of Fish and Game?

17 MR. BEHNKE: On game,  
18 wildlife questions, it's handled by the Division of Game, on  
19 fisheries questions it's handled between the Division of Sport  
20 Fishery and the Division of Commercial Fisheries.

20 MR. CASE: And so the  
21 Subsistence Division doesn't actually do biological research,  
22 it does sociological research?

22 MR. BEHNKE: That's  
23 correct, we do socioeconomic research. We also, although we  
24 also conduct some harvest studies, and in those cases we  
25 cooperate with other divisions in the department and also with  
local communities.

1 MR. BERGER: Dolly...

2 MS. GARZA: I had a comment  
3 on your question as to the hiring difficulties. With both Fish  
4 and Game and with the Fish and Wildlife Service it is required  
5 that interested persons get on a register. And to qualify for  
6 the registers generally requires some type of education, often  
7 one to two years of college or so many credits or past work  
8 history. Often the residents in the northwest area don't have  
9 those college credits necessary, and even if they do may be  
10 unaware of the register deadlines, which may be up to six  
11 months in advance of when the job would actively open. So  
12 there has been a lot of difficulty in terms of getting  
13 residents employed in those areas.

14 MR. CASE: And that's true  
15 for both the federal Fish and Wildlife Service and State Fish  
16 and Game?

17 MS. GARZA: Yes.

18 MR. BERGER: Steve Behnke.

19 MR. BEHNKE: The previous  
20 comment was real accurate, I'm real aware of those difficul-  
21 ties, because...and probably Tom Lonner and others who have  
22 worked for the Department are, too, because when the Division  
23 of Subsistence was created we immediately saw that one of our  
24 major needs was to be able to hire people out in local areas to  
25 help us compile socioeconomic information, and we battled with  
the State administrative systems, the procedures for being able  
to hire local people for a number of years. And over the years  
we've improved our record considerably. We've developed a way  
that we can get local people who have bilingual skills, use  
that as a criteria to get them on the register, require those  
kinds of skills for people. And my division hires a large  
number, well, relatively speaking, at least relative to the  
size of my division, a large number of bilingual local people

1 in technician kinds of positions. And where we can get people  
2 with the appropriate skills from, the degrees that are required  
3 for higher-level positions we've done that.

4 But also, within the  
5 Department of Fish and Game the last two years, is recognized  
6 this whole question of local hire as a major area of concern,  
7 and we've been taking a number of steps to try and improve our  
8 record in those areas. One of the things that we've, we have  
9 actually improved it considerably over the last two years, our  
10 record of that kind of hiring.

11 MR. BERGER: Marie Adams.

12 MS. ADAMS: I'd like to  
13 comment on, in doing research I know they, that it's been in  
14 our experience...I guess when you do contract, you do contract  
15 out to the scientists who bid for the type of research that  
16 you're requesting for, and I think it's important that whenever  
17 there is something that you can do about local hiring that it  
18 should be done, particularly with people...when you have an  
19 opportunity with people who know the area, who have a lot of  
20 knowledge about the animals that people are studying. I think  
21 in our area our Native people have been overlooked for some  
22 time, and that gap is closing in. But in what Caleb said  
23 earlier, that a lot times they'll bring young college stu-  
24 dents in to do the kind of work that local people can do, and  
25 with local people involved, these people know more about those  
animals and could put more information into the reports. Like  
Burton said, science is a real slow process, and I think in  
doing that kind of research the opportunity to include people  
who know their resources very well and the environment area  
should be considered very strongly.

MR. BEHNKE: The  
Commissioner's office in the Department of Fish and Game has  
recognized this and has appointed a task force within the

1 Department to look at ways to improve local hire and we're  
2 going to be going out over the next several months and I think  
3 that probably recommendations will be sought from the Native  
4 community about how to go about that. But some of the changes  
5 that need to occur are at the statewide, within the Department  
6 of Administration in the State government. There's just a very  
7 cumbersome set of procedures for hiring, and that institution  
8 has been around for a long time, and, you know, it involves  
9 unions, it involves a whole range of institutional problems  
10 that we're trying to address. And I think that your  
11 recommendations would be real helpful in that.

MR. BERGER: Daniel Gross.

12 MR. GROSS: I have just a  
13 brief comment to make with respect to the methodologies of  
14 wildlife surveys. I'm not familiar with the methodologies  
15 which are employed here, in this region of the world, but in  
16 many areas wildlife surveys are conducted by persons who are  
17 trained to look for animals or plant species and to attempt to  
18 assess their frequency distribution over time and space. In  
19 doing so they frequently ignore a very, very lucrative source  
20 of information, and that is the actual time that is required to  
21 locate these resources, and this is a very sensitive indicator  
22 of the abundance of resources. And since there are people who  
23 are there, who are searching for these resources, and whose  
24 livelihood depends upon them, one can assume in many cases that  
25 there is a very efficient kind of search going on, and that  
whatever data that they can report about their own subsistence  
activities would be extremely valuable in assessing the status  
of any particular species population at a given moment in time.  
And this can be done on a very formal level, through a sophis-  
ticated sampling, it can also be done informally. One of the  
ways that, in South America that we found is very useful to  
determine the status of wildlife vis-a-vis any particular Na-

1 tive population is to query Natives concerning how long they  
2 have to hunt before they locate a particular species. In some  
3 cases people report that they go out in the morning and they  
4 bag game before afternoon. In other cases they report that  
5 they have to leave their villages and have to stay out over-  
6 night. That information is extremely valuable in assessing  
7 what the abundance of a species is in a particular area. And  
8 if a division of fish and wildlife were to utilize that kind of  
9 information they might be able to actually multiply the  
effectiveness of their surveys and get very sensitive informa-  
tion not only about the present but also about the past status  
of particular populations of game.

10 MR. BERGER: Thank you,  
11 Mr. Gross. Larri Spengler.

12 MS. SPENGLER: Thank you.  
13 For those of you that have just joined us in the last little  
14 while, I'm the assistant attorney general that works with the  
15 State board of fisheries and game. And I'm just moved to make  
16 an observation that I've been working with the boards since  
17 about 1979, and in that time I've seen an interesting change in  
18 the way the board treats information from the Division of  
19 Subsistence. When I started working, the boards over the years  
20 had only heard from biologists, and they understood biological  
21 information and they could deal with it and they knew how to  
22 weigh it and they could use it. The Division of Subsistence  
23 had only recently been created and only started presenting  
24 information, and it was socioeconomic in nature, and the boards  
25 couldn't make head nor tail of it. They were really dubious  
about it, they didn't know how to weigh it, didn't know how to  
use that kind of information. It was completely unwanted, in  
part because they didn't know what to do with it. And in the  
last, over the last few years, from the time that I've become  
involved, the boards are more and more coming to rely upon the

1 Division of Subsistence to give them information and are  
2 finding that kind of information useful. That may be a hopeful  
3 sign that different kinds of information, if presented over  
4 enough time period, can find a way of being used in a system.  
5 I'm not predicting everything to be rosy, but that has been  
6 definitely a change that I've observed.

MR. BERGER: Thank you.

6 Dolly Garza.

7 MS. GARZA: Yes. I would  
8 like to bring up a point in terms of the concerns that Natives  
9 should have concerning Native subsistence uses of the marine  
10 mammals. And that concern is brought about by the State's  
11 interest in applying for management of the ten marine mammals.  
12 The State is going through a process of holding public hearings  
13 throughout the communities which would be affected by a  
14 potential change in management, and are giving the residents  
15 there a lot of information on the benefits that would be  
16 incurred if management were changed from federal to State  
17 hands. They are, however, not addressing the issue that the  
18 Natives would lose out in the fact that right now they are the  
19 only people who can harvest the resource and, if management  
20 were changed, that they would lose that right. And that for  
21 those species which there is interest in additional harvest  
22 that that species would have to be divided among subsistence,  
23 recreational, and possibly commercial users. And that is a  
24 serious concern that we should be addressing.

MR. BERGER: Tom Lonner.

21 MR. LONNER: I guess I  
22 would like to see if we can address it for a moment, if that's  
23 alright. I was thinking about it from the question that Rosita  
24 raised yesterday, about the difference between State and  
25 federal management regimes. It seems to me that the State of  
Alaska has claimed often that it can't manage a resource for an

1 exclusive use, such as exclusive for Native use. I think that's  
2 the extreme point of the minimalist position that we were  
3 talking about yesterday, that somehow it's disabled from doing  
4 those kinds of things. What I don't understand is how the  
5 State can take the position that it can't grant exclusive use  
6 on, let's say for example the Pacific walrus, and yet it can  
7 grant limited entry in a commercial fisheries mode to specific  
8 individuals, that is very exclusive. And that, and it does it  
9 with other resources, not just wild resources. It does it for  
10 oil and gas, I mean, I can't punch a hole in the ground and get  
11 out the State's oil and gas, I have to go to the State and the  
12 State will award me, as an oil and gas company, some rights to  
13 drill and it won't grant it to others. I think we have a long  
14 history of the State granting exclusive right over resources to  
15 specific entities, usually through a sale process or through  
16 limited entry. Now, when I was in the Department of Fish and  
17 Game, the Game Division claimed that it could not manage walrus  
18 exclusively for Alaska Natives, under the exemption.  
19 Therefore, until that exemption was removed the Game Division  
20 didn't want to handle it, presumably because its constituents  
21 were sportsmen paying sports licenses, not Alaska Natives who  
22 would be able to hunt the walrus without obtaining such a  
23 license. And yet on the other hand when the federal dollars  
24 became available under ANILCA, the \$5 million potentially, the  
25 Game Division immediately ran around and said, "But we have all  
kinds of species that we manage purely for subsistence, there-  
fore we should get some of that subsistence money to help us in  
management, we do it solely for subsistence." They also filed a  
report, I believe it was in late 1980 or early 1981, they did a  
review of all the resources in the state, game resources in the  
state, and found a large number of locales and species that  
they said were fully utilized by Alaska Natives for subsistence  
purposes. So what I don't understand is, where is the princi-

1 ple that says that the State cannot award limited entry on  
2 these resources, which is a form of exclusion, to Alaska  
3 Natives, for the customary and traditional uses that are  
4 already recognized under the State subsistence law, which is  
5 presumably still constitutional, and not awarded as a license,  
6 which is the way we award limited entry permits in other areas,  
7 but just as a recognition of that traditional customary right  
8 that is recognized by the existing law. I guess I just don't  
9 understand, it seems to me it's a paradox. And I don't think  
10 that somehow we're disabled by the Alaska State Constitution  
11 from granting exclusive rights in this area as long as we've  
12 granted them in other areas.

13 MR. BERGER: Well, I'm  
14 going to allow two brief comments on that, because we could  
15 spend the rest of the day arguing about what the state consti-  
16 tution means. But Tom's point is that there is, there are any  
17 number of subsistence preferences for Native people in Alaska  
18 under federal law, why is it that it would unconstitutional for  
19 there to be such a preference under State law? We'll ask Larri  
20 Spengler to speak to that, and then David Case, we'll give  
21 David the last word.

22 MS. SPENGLER: First of  
23 all, there's no general prohibition on granting exclusive use  
24 to various resources, it varies from resource to resource. The  
25 limited entry program that Tom mentioned was prohibited by the  
State constitution because of the prohibition against exclusive  
right of fishery, and it required a constitutional amendment to  
allow that limited entry program to be put into place. The oil  
and gas leases, various other kinds of resources' use, may well  
ultimately reside with one entity, one corporation or one  
group, partnership, whatever, but the criteria for who get it  
is not racial. And the prohibition that we read in the State  
constitution is that the State cannot distinguish among indivi-

1 duals because of race. If you'll recall, ANILCA defines subsis-  
2 tence users in terms of rural Alaska residents, and that cap-  
3 tures, that term captures a fairly large percentage of the  
4 Alaska Native population, but it also captures all other rural  
5 Alaskans. So it may seem like a hair splitting reason that we  
6 say we can differentiate between rural and urban because of the  
7 different factual situations, the different socioeconomic sys-  
8 tems that are present, but we cannot under the State constitu-  
9 tion distinguish between Native and non-Native. So we cer-  
10 tainly have been implementing (to the extent some find not  
11 sufficient some find sufficient) ANILCA and the State subsis-  
12 tence law, implementing the rural definition of subsistence  
13 uses. That's different, in our view, in a court of law than  
14 the Native/non-Native distinction. And if the federal gov-  
15 ernment wish, under the federal constitution the federal gov-  
16 ernment could make that distinction between Native and non-  
17 Native, but if management is to rest with the State the State  
18 cannot. And that was exemplified by the Marine Mammal  
19 Protection Act. When it required the Native/non-Native the  
20 State...there may have been other agendas by certain parts of  
the State as far as where they're getting their money and so  
forth, whether or not that was the case there also was this  
constitutional bar to distinguish between Natives and non-  
Natives. And that could be done away with by amendment to the  
State constitution, and whether that's politically feasible is  
another question entirely.

21 MR. BERGER: Yes, thank  
22 you. David, do you want to make a brief comment?

23 MR. CASE: I'm glad you  
24 qualified that. I'm not sure I agree that it would require an  
25 amendment to the State constitution, but I'll just say again,  
as I did at first, that whatever it is it's a political prob-  
lem, and not necessarily, I think, a legal problem. For

1 example, I suspect that the federal government could pass a  
2 statute which either required or permitted, not sure which, the  
3 State to manage certain species, all species, with a Native  
4 exclusion or preference. And that, as I read the supremacy  
5 clause, and again I haven't researched it, but the U.S.  
6 Constitution says that the legitimate laws of the federal  
7 government shall be superior to the laws of the states, nothing  
8 to the contrary withstanding in the state constitution. So I  
9 think that it would be possible for a federal law to overcome  
10 the state law as a state constitutional prohibition that  
11 focuses on race as a category and transfer that into Native  
12 people as a federally-protected category. So it's not a legal  
13 problem, but the possibility of getting that kind of a law  
14 through Congress is a political problem.

15 Now, that I think brings us  
16 back to making my view, the Marine Mammal Protection Act and  
17 what happened there. There was a Native exclusion in the  
18 Marine Mammal Protection Act. And the State argued at the time  
19 the walrus management was originally retroceded to it, that  
20 that did, the exclusion did not go with it. In other words,  
21 and furthermore, the State couldn't manage the walrus with that  
22 Native exception. But I think the State could, frankly, be-  
23 cause that was what the law was interpreted to mean, was that  
24 the exception went with the retrocession. And the State could  
25 have, but politically it was unwilling to do that, in my view.  
And, therefore, the Marine Mammal Protection Act, I think it  
was therefore, it was amended in order to get over that politi-  
cal problem. But not, I don't think, really to get over a  
legal problem, although that may have been the way it was  
characterized.

MR. BERGER: Alright,  
Caleb, we'll give you the last word, since you're not a  
lawyer...

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(TAPE 11, SIDE A)

MR. PUNGOWIYI: I want to clarify a little bit what Dave just said about the amendment to the act and how they affected the Native population. When State, in arguing it's court before the judges on the Togiak case, were saying that Native exemption would, you know, prevent the adequate management of marine mammals, or walrus in this case, they also, their argument was that the Native exemption, when they turned it over to State management, was no longer applicable. But the Togiak people argued that the exclusion rights--total the act exempted Native population from management. The State could have continued management. They could have continued managing the walrus, provided that they recognized this Native exemption, and State was not willing to do that. And I think that's a very crucial point to be made, that they did not want to manage walrus with the Native exemption provision in there. And the '81 amendments, the way the act was amended in '81 was to remove that total exemption. And that the way the State would take management would be that rural residents could hunt the walrus. And there's a big difference, there's no longer base total Native exemptions, but rather a rural resident requirement.

MR. BERGER: Thank you.

Well, I think we'll move on now, having sorted out the question whether the exemption went with the retrocession. I thought that was a good phrase, and I wrote it down. No, I do appreciate what Larri and David have said.

Well, Jim Kalwalsky, we have you down to tell us what initiatives are being taken by Tanana Chiefs in relation to Native management of subsistence, self-determination in the subsistence area.

MR. KOLWALSKY: Thank you.

As I understood it what you had asked for was roughly what you

1 said. You stated it yesterday as, "What are people doing to  
2 help themselves?"

3 MR. BERGER: Alright,  
4 right.

5 MR. KOLWALSKY: ...I think  
6 that's just another way of putting it. Let me start by first  
7 stating the obvious, which is that I certainly do not in any  
8 way consider myself to be an expert in subsistence. I'm hired  
9 as a technician who deals with the system, so to speak, and in  
10 the program that we have at the Tanana Chiefs Conference, which  
11 is called Wildlife and Parks, the idea there is to give techni-  
12 cal assistance to fish users of the resources and to village  
13 governments to help in any way that's possible to be sure that  
14 those users are directly involved in the system that allocates  
15 and manages. And I might try to describe some of those things  
16 that we're doing. I should say though that the Tanana Chiefs  
17 Conference or region is the largest of the 12 regions in the  
18 state, otherwise known as the Doyon Region. It includes all of  
19 the Interior, and TCC is one of the 12 regional nonprofit  
20 Native corporations. The region that we cover extends  
21 all the way from the Brooks Range south slope on the north,  
22 that would be as far north as Arctic Village, to the  
23 Tok/Northway area near the Canadian border to the south, and on  
24 the west near the...starting to the lower end of the Yukon  
25 River, Holy Cross, all the way up to Eagle on the Yukon-Alaska  
border. So we have a very large region. And because of that  
the region is divided into six subregions. So we have, just to  
explain to you how we function, we have a central staff in  
Fairbanks and then we have six subregional offices with smaller  
staffs in six other locations throughout the region. We have a  
board of directors which consists of the 40 or so chiefs of the  
Native governments of the Interior and then from those 40 there  
is an executive board which meets quite frequently. And then

1 in addition to that each subregion, that is each subregional  
2 office, has an advisory board. And so they set the program for  
3 us and tell us when we're doing right, and tell us when we're  
4 doing wrong.

5 The economy of the region  
6 is very heavily oriented towards the harvest. And so subsis-  
7 tence really is very important to the communities of the TCC  
8 region. In the case of the Yukon River the harvest does of  
9 course include commercial fish. Many people who are subsis-  
10 tence users of both fisheries and other resources are holders  
11 of limited entry permits, I shouldn't say many, maybe not  
12 nearly enough, but there are commercial fishery activities  
13 within the context of the rural economy which of course  
14 includes subsistence.

15 In terms of initiatives  
16 that people are trying to work with, are taking to help them-  
17 selves, I might mention trapline registration. And I should  
18 explain, particularly to our Canadian friends here, that the  
19 system of trapline protection in the U.S., certainly in Alaska,  
20 is nowhere near as sophisticated and advanced as it might be  
21 found to be in Canada. In fact, to register traplines, that is  
22 to document the location and the use and the history of the use  
23 of that trapline so as to protect it, is a very new concept to  
24 our region and I think for the most part throughout the state.  
25 There is a trapline registration system now in place by the  
26 urban trappers of Fairbanks, who call themselves the Alaska  
27 Trappers Association. And what is ironic here is that the  
28 urban trappers are going out and systematically documenting  
29 their use while it is taking some of the communities that have  
30 interests in traplines also, that is the Native communities,  
31 are just now trying to play catch-up.

32 So we, in one instance, we  
33 have said very little about this in public, because it's not

1 firmly in place, but I would describe to you the trapline  
2 registration system for the village of Minto. Minto is located  
3 very close to Fairbanks and the use of the Minto Flats by Minto  
4 people is extensive and, in terms of history, it goes way, way  
5 back. But because of the fact that Fairbanks is so close to  
6 Minto, and because Fairbanks is really in effect a little  
7 Anchorage, and maybe not so little anymore, it has 60 some  
8 thousand people in the Greater Fairbanks Area, the conflicts of  
9 resource uses, including traplines, in the Minto Flats is  
10 becoming fairly much of a problem. So the Minto village coun-  
11 cil, through the elders conference actually, who first alerted  
12 the Tanana Chiefs Conference to the need for a trapline regis-  
13 tration system, the Minto village council, which is what we  
14 call an IRA government...some people asked what that means by  
15 the way, it's Indian Reorganization Act, it's one type of  
16 Native government that we have. The other are the traditional  
17 Native governments, there are about 17 IRA governments in the  
18 TCC region, the rest are what we call traditional Native gov-  
19 ernments. But the Minto village council, this is the Native  
20 government for Minto, did put into an ordinance a trapline  
21 registration system. And then they elected a trapline board to  
22 adjudicate trapline disputes and in other ways to try to manage  
23 this system. Now, our role in this was to go out and give  
24 technical assistance to help with the mapping of the traplines,  
25 that is actually to register the traplines, and to work  
directly with the trapline registration board and the council  
to try and get this system set up and in place. One of the, I  
wouldn't say dilemmas, but one of the unanswered questions is,  
if there are trapline disputes that cannot be adjudicated,  
let's say between perhaps a Fairbanks trapper and a Minto  
trapper, then the question is, well, what does the ordinance  
mean? And that would be a question of Indian law and at this  
particular point in time Minto has decided that the emphasis

1 should be on a careful documentation and attempt to adjudicate  
2 the differences. And so the Minto system is perhaps going to  
3 serve, in our region, as the model for other communities.  
4 Communities on the middle Yukon River have shown an interest.  
5 Most recently the Yukon Flats has expressed an interest in  
6 investigating the different types of trapline registration  
7 systems that might be available. So this is one area or one  
8 initiative that is being taken, to protect traplines by  
9 carefully documenting and keeping up-to-date how those trap-  
10 lines are used.

11 I perhaps am glossing over  
12 many things about this, but I would like to go on. Another  
13 type of initiative that is being taken with the TCC region is  
14 to get the approval of pending applications for IRA constitu-  
15 tions. One of the most recent that has been in the news a great  
16 deal as of late is the application by the village of Eagle to  
17 have approval from the Department of the Interior to put into  
18 place a so-called IRA government through approval of an IRA  
19 constitution for Eagle, the village of Eagle.

20 An area in which this  
21 program that I work with makes a great deal of effort, and it's  
22 really the central focus of the Wildlife and Parks Program at  
23 Tanana Chiefs Conference, are the Fish and Game Advisory  
24 Committees. I'd like to just have your indulgence for a few  
25 minutes and talk to you about these. I haven't heard a great  
deal about them here, although I did miss the first day. The  
Fish and Game Advisory Committees, as probably most Alaskans or  
all Alaskans here know, is a system that is a State system.  
That is, it's funded by the State of Alaska through the boards  
of fish and game by the legislature, it is an advis...a system  
of statewide advisory committees that meet to serve as a local  
forum for all concerns that are of interest to fish and wild-  
life users. The Fish and Game Advisory Committees most typi-

1 cally would meet twice in the year to put together a series of  
2 proposals to the Board of Fisheries which those users feel are  
3 needed. These would be proposals that would change the alloca-  
4 tions, the bag limits, the gear types, the seasons. And then  
5 typically that Fish and Game Advisory Committee, let's, for  
6 example, there is one in the Yukon Flats, let's just use that  
7 as an example. And typically the Yukon Flats Fish and Game  
8 Advisory Committee, once having done that, would then elect a  
9 member to go before the Board of Fisheries and defend those  
10 proposals. All of those support costs, including the meeting  
11 of the committee out in the Yukon Flats, as an example, and the  
12 sending in of the representative from the committee to the  
13 Board of Fisheries meeting, all those costs are paid for by the  
14 State of Alaska. Steve Behnke yesterday mentioned that these  
15 are reimbursable costs, from the Department of the Interior.  
16 That is that the State puts up a certain amount of money, the  
17 Interior Department is supposed to put up a similar amount. So  
18 this is a State system. And then typically the Fish and Game  
19 Advisory Committee from the Yukon Flats would meet then two  
20 more times in the year to do essentially the same process for  
21 game. That is to say, they would sit down and decide and  
22 determine, what are the needs for allocation of game resources,  
23 including trapping? What changes should take place? And then  
24 they would formalize proposals based on their collective  
25 knowledge, and then they would submit those to the Board of  
Game, and then similarly they would elect a representative, most  
likely the chairman in each case, to go before the Board of  
Game, to be present there at the game board meeting in  
Fairbanks or Anchorage, wherever it happens to be, and to  
defend that proposal and to be present to answer questions.  
That's just a very quick, rough sketch of the Fish and Game  
Advisory Committee system. But I should point out that we have  
in our region I think it's 12 committees now. One, of course,

1 is Fairbanks, which is an urban committee. But all of the  
2 others are rural committees. And for the most part all of  
3 those committees are heavily made up by local Native people.  
4 In some cases, I should also point out, and not many cases but  
5 in a few cases, some of the participants have been discouraged  
6 by their own reservations, let's say, about participating in a  
7 State system, because of questions of Native sovereignty and so  
8 forth. But for the most part, I think, the way these  
9 committees are viewed in the region is that right now, you know,  
10 at this time, at this point in time, these committees are one  
11 of the best tools that Native people have in rural Interior  
12 Alaska to deal directly with the makers of the regulations for  
13 the taking of fish and of game. And we try to travel to all  
14 the Fish and Game Advisory Committee meetings. We try to be  
15 there to present any kind of assistance that we can, if it  
16 means taking minutes, we've done a lot of that, if it means  
17 explaining some things that are happening in the city, where so  
18 often they happen and the news of that never reaches these  
19 areas, then we do that as well. So that is, in a nutshell, how  
20 we try to work with the Fish and Game Advisory Committees  
21 system.

17 And I think for the most  
18 part, it is advisory of course, but under the new d(2) or  
19 Alaska National Interest Lands Conservation Act, some people  
20 refer to it as ANILCA, there are tighter provisions for the  
21 ways in which the boards of game and fish must receive those  
22 proposals from the Fish and Game Advisory Committees. And that  
23 would be that now there is a system prescribed in ANILCA of  
24 regional councils. There are six of these. The regional  
25 councils are made up of the chairman of all the advisory  
committees in each of the six regions. The regional council in  
the Interior typically may meet twice. The regional councils'  
advice to the boards of game and fish on specific allocation

1 issues are supposed to be followed by the boards unless there  
2 is a very good reason. And I can't enumerate them now, because  
3 I don't have it in front of me, but if the boards feel that the  
4 regional council's advice is not sound there is a loophole  
5 there, I'll use that term, too, for the boards not to follow  
6 the advice of the regional councils. But in any case, the  
7 regional council system I'm certain was envisioned as a way to  
8 give more authority, that is more participation and more  
9 meaning and more weight, to how the proposals come to the  
10 boards from the rural communities. And of course the urban  
11 communities are members of those regional councils as well.

12 On the central Yukon we  
13 have now, and when I say I only mean...it's a generic term,  
14 it's not Tanana Chiefs, but there are several fisheries  
15 organizations that have been organized. Most recently this  
16 summer a Central Yukon Fisherman's Organization came into being  
17 as a result of a dispute with the fish buyers over fish eggs.  
18 That has not been resolved, but it did spawn, if I may use the  
19 term, a new fisheries organization in the Interior. And I  
20 understand that fishermen up and down river are now more  
21 interested in looking into the possibility of trying to deal  
22 with market conditions and so forth through a fisheries  
23 association. There are now, as I say, two that we are aware  
24 of, and we do give assistance to them, as well.

25 The proposed caribou  
agreement or caribou treaty as we prefer to call it has been  
discussed yesterday. I should only add that the Tanana Chiefs  
Conference does give technical/logistical assistance to the  
International Porcupine Caribou Commission.

We have also in our work  
program a fish, well, for lack of a better term, a fish and  
game education project. The idea here was to try to find some  
funding in which we could put together an educational program

1 that would essentially explain, as clearly as possible, the  
2 system of Fish and Game Advisory Committees and Regional  
3 Councils. What this eventually evolved into is a video project  
4 which is just now starting production, with the assistance of  
5 funds from the Alaska State Legislature and a matching grant  
6 from the Rural Alaska Community Action Project, known as RurAL  
7 CAP. This, it would be a 28-minute production which would be  
8 duplicated in numerous copies so that it could be used anywhere  
9 within the state of Alaska, and the emphasis will be on using  
10 that system to make changes in the regulations that are needed.  
11 And as I say, this will be a statewide project. That is, as  
12 we're putting it together we are doing that with an eye toward  
13 having it be useful throughout Alaska, and of course  
14 particularly with an emphasis on subsistence. There will be,  
15 in this production, some effort to portray to urban viewers the  
16 importance of the harvest of rural people. So that is another  
17 initiative, as we might call it, that has been undertaken and  
18 is under way.

15 Additionally, I mentioned  
16 to you that because of the close proximity of the village of  
17 Minto to Fairbanks and the substantial conflict of uses and  
18 users there, we have undertaken, with assistance from the  
19 Bureau of Indian Affairs, a study to very closely look at the  
20 conflicts of resources in the Minto Flats. I should say, too,  
21 that that study is being done in coordination with a subsis-  
22 tence, Alaska Department of Fish and Game subsistence study in  
23 Minto. That is, the department is looking closely at household  
24 uses in Minto, we are trying to assess through a contrac-  
25 tual arrangement with a private contractor, all of the other  
uses of the Minto Flats, so that in the end we can put together  
a complete picture. I should say, I beg the indulgence of a  
member of the Board of Game who is present here, I should say  
that, all of this came from an unsuccessful attempt by the

1 Advisory Committee that represents Minto to put into effect  
2 before the Board of Game a system for moose hunting that would  
3 restrict or would banish the use of aircraft. That attempt  
4 failed. One of the board members, not the one present I should  
5 hasten to add, did say that he was not convinced that there  
6 were conflicts out there, and I thought, right at the moment  
7 when I heard him say that, "boy, you've just given me one of the  
8 best ideas I've had yet for a grant proposal." And since that  
9 time the proposal was funded and we are going to, in a sense,  
10 show him but of course many other people, that indeed there are  
11 conflicts of uses and if this priority law means anything at  
12 all it's going to have to mean something, hopefully as a result  
13 of what we can show from this study.

14 There are other attempts to  
15 take initiatives to participate directly in land use decisions.  
16 For example, just now completed is a very extensive Tanana  
17 Basic Land Use Plan that was mandated by the legislature and  
18 conducted by the Alaska Department of Natural Resources. In  
19 this study there was a person in another program area within  
20 TCC who has dogged that thing closely for two years and has  
21 worked very hard on her part to be actually certain that DNR  
22 went to every damn village and that the villages were fully  
23 apprised and were participating completely in every phase of  
24 the Tanana Basin Plan. So that would be one example. Then we  
25 have the...and I should say, too, that in the work that we do  
we are, as Dave Porter mentioned this morning, trying to con-  
vince Canada that there is a legitimate and long-standing use  
of land and resources, he mentioned extensive use and occupancy  
studies that have gone on in Yukon, including mapping of uses  
and of course harvest documentation. I think this is also  
very, very important in our region. And some communities, very  
understandably, are still reluctant to have their own uses of  
lands and resources looked at carefully, but I think now

1 there's more and more acceptance of that. The Department of  
2 Fish and Game, again Subsistence Division, is doing a lot of  
3 that work in the Interior. They coordinate with us very care-  
4 fully, they also provide us with a great deal of advice on  
5 similar matters that we're working with, so we, I feel, have a  
6 very good relationship there.

7 The federal regime of  
8 resource managers is the usual array of the U.S. Fish and  
9 Wildlife Service has seven national wildlife refuges in the TCC  
10 region. Very large refuges. And they are in the process of  
11 management planning mandated by the ANILCA act. Once again,  
12 we're trying to follow them as closely as possible and to be  
13 certain that local people are as involved as possible in this.  
14 To give you one example, our board of directors asked the  
15 planning team for the Kanuti Wildlife Refuge and the Koyukuk  
16 Wildlife Refuge to actually hire local people on the planning  
17 team. We submitted that request perhaps three months ago; we  
18 still have yet to receive an answer. But we are trying to be  
19 aggressive on behalf of these communities with respect to refuge  
20 planning.

21 The National Park Service  
22 manages some of the lands within our region, and they have, as  
23 you probably know, these so-called subsistence resource commis-  
24 sions. I think they were two years late in putting these  
25 commissions together. The first meetings now have taken place  
this year. There is a Gates of the Arctic Subsistence Resource  
Commission which has now met twice. It's planning a series of  
village hearings next month, sorry, this month, up in the area  
of south side of Gates of the Arctic, and on that commission  
are some local users. I think there are three, possibly four,  
Native people from the immediate area. There are problems with  
the National Park Service. I maybe don't need to hash them  
over again, but we see them as being unfortunately very rigid,

1 particularly in questions of access. So perhaps the statement  
2 that was made to you the day before I got here but which I  
3 heard about, that people, maybe on the North Slope or at least  
4 in that area, are having the same access to lands and resources  
5 as they have always had may not be entirely true. Certainly  
6 Gates of the Arctic National Park at the moment seems to be one  
7 area where this may not be true. There are substantial argu-  
8 ments going on, mostly between Anaktuvuk people, that's out of  
9 our region, but how those arguments are resolved will affect  
10 the way people to the south of Gates of the Arctic, which is  
11 within our region, also have access to subsistence resources.

12 The BLM is involved in  
13 extensive land use planning in the Interior. There is a  
14 reference to it in Steve Langdon's paper in terms of the TCC  
15 involvement with that. To their credit for the first time ever  
16 they have tried to do some subsistence mapping as a part of the  
17 Central Yukon Plan, so-called. We've felt and argued with them  
18 that they should be commended for doing it but they've done it  
19 in a very hit-and-miss fashion with not enough seriousness,  
20 quick visits to communities, and that perhaps the end result  
21 might be more damaging than useful. So that hasn't really been  
22 resolved very well, and the BLM now has four alternatives for  
23 the Central Yukon Plan, which they are unveiling, and then  
24 there is a public process that will go on here for the next  
25 four or five months, in which our communities can respond to  
the alternatives for the Central Yukon BLM Plan.

Another initiative that's  
being taken, I hesitate to speak in any way very deeply about  
profit corporations, but the land bank provision in ANILCA is  
one in which a corporation can put its land into a land bank.  
I think they have to renew the application each five years, and  
then that land is managed by the federal agency that is closest  
by. In the region of the central Yukon River there is a land

1 bank application by a consortium of three or four village  
2 corporations there. Those lands, if that land bank application  
3 is approved, would be added temporarily on a continuing, every  
4 five-year basis to the Koyukuk National Wildlife Refuge and  
5 would be managed by the Fish and Wildlife Service under a joint  
6 agreement with that particular corporation. I understand that  
7 the Interior has not yet responded to that application. It  
8 might have been have been the first one they've gotten, or one  
9 of the first. But that is an initiative that is being taken, to  
10 not lose the land for a variety of reasons that it might be  
11 lost and yet to have use of land for harvest purposes.

12 I should also mention that  
13 in ANILCA the wildlife refuge system does have a unique feature  
14 that is one of a kind. That is, all the refuges that are so-  
15 called d(2) or ANILCA refuges, many millions of acres of these  
16 lands in Alaska, have as a stated intent of Congress, as one of  
17 the stated intents of the creation of each of these refuges,  
18 the opportunity to continue subsistence harvest. I haven't  
19 given you an exact quotation, but that is unique language.  
20 Congress has not said that about wildlife refuges anywhere  
21 else. And so we feel, particularly through this planning  
22 process that Fish and Wildlife Service who manage these refuges  
23 are going through, that we must always assert or remind the  
24 planners and, later and on-going, the managers, that "Congress  
25 has told you that you must manage this refuge as one of its  
purposes to continue subsistence opportunities."

26 Let me just quickly go on.  
27 Another initiative is one that involves water quality. There  
28 is a reference in Steve's paper to Tuluksak, which is outside  
29 of our region, but Tuluksak probably more than any other com-  
30 munity has put the issue or let's say the conflict between  
31 diminished water quality, and local uses of water being harmed  
32 by that, on the map. But in our region, in the Interior, the

1 distance between the bedrock and the top is very thick, in  
2 other words, geologically speaking, there's a thick overburden  
3 of what turns out to be muck, that has to be stripped away  
4 before placer mining can take place. And as a result of all of  
5 that quite a number of the streams that have in the past sup-  
6 ported fish and have supported other subsistence activities  
7 have been damaged. The State and the federal government has  
8 also not maintained the water quality standards for those  
9 streams. This is becoming a bitter debate. And the initiative  
10 that's being taken here, in the Interior, is that TCC, along,  
11 let's just leave it, suffice for now to say with other  
12 interests, are coalescing to try to take the initiative in a  
13 variety of forms upcoming. I might mention one of those creeks  
14 is Birch Creek, and there is a community of Birch Creek, on  
15 Birch Creek. This river is so muddy that people there say they  
16 no longer can catch fish in the river. In the case of Minto,  
17 again I keep coming back to Minto, there is a perception there  
18 that water quality damage from placer mining has actually  
19 destroyed or harmed the habitat for water animals, principally  
20 beaver and muskrat, that it has actually affected the harvest,  
21 therefore, of beaver and muskrat. And other perceptions  
22 locally are that it has even affected the habits of waterfowl,  
23 and therefore the harvest of waterfowl. And so we're trying to  
24 take a political initiative in this case to try and convince  
25 the State that they have to be much more aggressive. But of  
course there are reasons why this will be difficult to do.

Within this context there has been interest from our Kuskokwim, upper Kuskokwim subregion in McGrath, of actually looking into the possibility of rehabilitating the salmon runs in some of the upper Kuskokwim watershed, where elders have clearly told us all that there have in many years past been heavy runs, that is heavy in the local context, of king salmon where there are no longer any

1 runs. And so we'd like to, in sort of the context of water  
2 quality and fisheries rehabilitation, look at the possibility  
3 of, what would be necessary to reestablish salmon runs in the  
4 upper Kuskokwim for local users.

5 I should mention now some  
6 problems, I hate to just give a laundry list of those, and I'll  
7 try not to do that. But I didn't hear any mention here, and  
8 I'm not being critical, I may have missed it, of an organiza-  
9 tion that's springing up around the state called Wildlife  
10 Safeguard. I'm sure many of you from Alaska have heard about  
11 Wildlife Safeguard, but basically what it is attempting to do  
12 is to raise private monies in order to pay informants to lead  
13 to the conviction, arrest and conviction and so forth, of  
14 violators of fish and game laws. And what causes us a great  
15 deal of concern here is that we can see what the implications  
16 might be for rural communities who have no idea, you know, of  
17 how this is supposed to work and what is going on. Wildlife  
18 Safeguard, as I understand it, and I could be misinformed,  
19 although we have tried to look into it fairly carefully, does  
20 now have a board of directors here in Anchorage, and plan to  
21 establish a board of directors in Fairbanks and in two other  
22 locations in Alaska. I've forgotten which those two might be,  
23 it may be Dillingham and Juneau, I'm not sure of that, so I  
24 could be wrong on that. And I suppose to be fair the turning  
25 in of wildlife violators certainly does have its place. I  
would say in the Fairbanks area this is particularly true,  
where a great deal of wanton waste of moose in particular and  
caribou to some extent has taken place last year and I under-  
stand not quite as bad this year but there's a lot of it again  
this year. Principally by urban hunters, especially by hunters  
who come from the nearby military bases. But in any case, I  
would just caution that we try to be alert to Wildlife Safe-  
guard. One theory that's running around, I don't know whether

1 to subscribe to it or not, is that this is really a front to  
2 raise money nationally for the effort of actually going back to  
3 Congress to amend Title VIII of ANILCA. That may sound far-  
4 fetched, and I often feel that there are conspiracies all over  
5 out there, so I can appreciate why this particular individual  
6 felt strongly about this, but he felt that way I believe be-  
7 cause he was told that Wildlife Safeguard does have money  
8 donated from as far away as Boston, for example. So we might  
9 try to pay attention to that.

10 We also have seen a strong  
11 organizational effort by the sportsmen of the state of Alaska  
12 in what has now coalesced into what is called the Alaska  
13 Outdoor Council. The council is poking its head into a lot of  
14 areas, you've heard maybe about some of the areas if not about  
15 the council. But I just want to mention here that it does  
16 concern us greatly and part of what I am supposed to do is to  
17 develop information about what all these people are doing and  
18 what their plans are. And so we do try to keep track of them,  
19 as much as possible.

20 I should mention then one  
21 final initiative would be the, what we call the Rural Alaska  
22 Resources Association, or RARA for short. RARA is a statewide  
23 organization of nonprofit corporations, that is a representa-  
24 tive from each..., and the North Slope Borough, and the village  
25 of Tyonek. And RARA meets two to three to four times a year,  
mostly to exchange and coordinate the exchange of information.  
It's a program sponsored by RurAL CAP, and at the present time  
I happen to be the chairman for RARA. But I do call your  
attention to the fact that your region is supposed to be repre-  
sented on the RARA board of directors and again the primary  
function there is to coordinate regional concerns and to keep  
information flowing back and forth on a statewide basis. RurAL  
CAP does also allocate some staff support to RARA.



1 to harvest enough moose, but now I'm starting to hear questions  
2 out there from the Yukon River, what are the State's intentions  
3 of rebuilding this population? In other words, is the intent  
4 here to reopen this area to the normal influx of urban hunters,  
5 who then once again compete with local hunters? I can't answer  
6 that question, but I find it very interesting that it's now  
being asked locally. Maybe I'll just stop on a question.

7 MR. BERGER: Yes, thanks,  
8 Jim. Heather Myers, you had a question, just come forward to  
a mike and ask it.

9 MS. MYERS: Can you tell me  
10 a little bit more about the trapline registration program  
11 you spoke about? I was wondering, you mentioned that it was  
12 set-up to resolve disputes, what kind of disputes is it dealing  
with?

13 MR. KOLWALSKY: Well, the  
14 disputes that might typically take place or are taking place in  
15 the Minto Flats, which geographically in Alaska terms is  
16 relatively small, but is really the breadbasket for Minto and  
17 to some extent Nenana hunters and trappers, the conflict would  
18 be...Let me give you just kind of an example, and you can  
19 consider it partially true and maybe partially untrue, to  
20 illustrate the point. That in the Flats, in a particular  
21 region, there might have been an area that was trapped, that is  
22 three traplines by, in the case, people from Minto, going back  
23 to the early 1900s and possibly earlier than that. Then those  
24 trappers over a period of time might not go back on that trap-  
25 line to allow the fur to rebuild, as they say, in other words  
to give the area a rest. In the meantime, along comes the urban  
trapper from Fairbanks, maybe with an airplane or maybe with a  
snow machine, it's that close, to get out there by snow  
machine, it's possible to do, and he sees this area and decides  
it's going to be his. So he takes it over, not only in fact,

1 but he also registers that line with the urban trappers. And  
2 in the case of the Alaska Trappers Association, one of the  
3 purposes of their registration is to document the use so that  
4 they don't lose their traplines, whether it's from other  
5 trappers or whether it's from the State of Alaska selling the  
6 land, or BLM or other planning going on, you know, disposing of  
7 that land in a way that destroys the trapper's use of it. So  
8 they are, they will show their trapline registrations publicly.  
9 And so we went out where those records are kept recently, on  
10 Chena Hot Springs Road at Tact's (ph) Store, and the gentleman  
11 was very accommodating, in fact gave us the whole book to take  
12 down to the restaurant. And a person who works with me, Ronnie  
13 Silas, he was from Minto originally and knows whose traplines  
14 those really are, he said, after he said, "Boy, the hair on the  
15 back of my neck just stood up when I saw those registrations,"  
16 from what we might refer to as the urban trappers association,  
17 because they are directly on the traplines of people from Minto  
18 who have left them rest for several years. So that's one of  
19 the types of conflicts, and it's probably the most prevalent  
20 one. But, there are also other trapline losses that are coming  
21 from oil and gas lease sales, from settlement programs of the  
22 State of Alaska for its lands, and so forth. So this would be  
23 another type of conflict that a trapline registration that  
24 carefully documents the use might help to avoid. In fact, a  
25 resolution by the Alaska State Legislature, not this past  
session but the one before it, not a statute, mind you, but a  
resolution, does state that the DNR shall now consult with the  
Alaska Trappers Association and the Tanana Chiefs Conference  
before doing any land disposals. In a sense it was a little  
premature, because we didn't have, we hadn't done the mapping  
yet, at that point. But, anyway, that's another type of con-  
flict that might be at least mitigated somewhat by a good  
documentation, which is part of the registration. As I said,

1 the part that is not clear to us and would probably require  
2 court tests is what applicability does Indian law have to these  
3 traplines? And typically a trapline might start on a Native  
4 allotment, on Native land, or Native corporation land, and then  
5 it might, just because that's the way it's always been, it  
6 might cross out over some State-owned land. And then even, it  
7 might even get onto a patch of federal BLM or U.S. Fish and  
8 Wildlife Service-managed lands. So it's possible for a trap-  
9 line to extend outward over several jurisdictions now. And  
10 whether or not Indian law, for example, the Lacey Act, the  
11 amendments to it, could be applicable to that trapline, not  
12 only from its point of origin on Native land, but across these  
13 other lands as say Indian country, which is the legal term  
14 here, whether or not that is going to, you know, that remains  
15 to be resolved. In other words, it's a question that hasn't  
16 been answered. But the people that want the trapline  
17 registration system feel it's important to get something  
18 carefully documented in place. So that's the first step.

19 MR. BERGER: Peter Usher,  
20 you had a question?

21 MR. USHER: Yes, I'd like  
22 to comment on the registered trapline system, if I might.  
23 Perhaps to give you some impression and what some of it's  
24 advantages and some of its disadvantages might be. But perhaps  
25 before I do that I should get a bit of clarification from you--  
do I understand that there never has been a system by which  
traplines were actually registered under the authority of the  
State here?, Or..., is this just a trappers association  
business where they register their own lines, or what?

MR. KOLWALSKY: It's the  
latter. The State has never instituted any system of the sort.  
So that the system that is in place, that is the Alaska  
Trappers Association, is a private organization, and they have

1 the first registration system.

2 MR. USHER: Okay. Well, I  
3 guess the registered trapline system is perhaps a distinctive  
4 Canadian institution, then, that might be worth saying a few  
5 words about. My perspective on it is based on having done  
6 research for Native communities and Native organizations,  
7 chiefly in the Yukon, NWT, British Columbia, and Ontario, all  
8 of which have for part or all of their territories a registered  
9 trapline system, and it's common in most of the provinces of  
10 Canada. I think possibly my comments might not apply to  
11 Quebec, but Harvey Feit perhaps could say something about that.  
12 And I should also add then that considering who I've done the  
13 work for my perspective reflects that of...I think more the  
14 impact of the registered trapline system on Native people,  
15 rather than...so that my perspective is not necessarily shared  
16 by the game management authorities in many of those  
17 jurisdictions.

18 The origin of the system in  
19 Canada goes back to the 1920s in British Columbia and to the  
20 late '40s and early '50s in the other jurisdictions. And it  
21 was instituted chiefly by the resource management agencies, the  
22 fish and wildlife agencies. Well, why did they do that? Well,  
23 it was justified sometimes as a means of protecting the  
24 interests of Native people, who in these jurisdictions usually  
25 constituted the majority of the trappers. But if one inspects  
the files of the fish and wildlife...the contemporary files  
back in those days of the fish and wildlife services, you will  
find often that what they are really trying to do is protect  
the interests of white trappers who were coming into the coun-  
try and wanted to make sure that they could make living off  
these things without being interfered with by traditional  
trappers. And I think there was another factor at work there,  
and it was a widespread perception which I think still perhaps

1 prevails a lot as a philosophy in game management offices, and  
2 that is it was a means of overcoming the evils, the perceived  
3 evils of the...

(TAPE 11, SIDE B)

4 common property system, whereby anybody could just go anywhere  
5 and trap as they pleased and not take care of the habitat and  
6 so on. And so what they perceived they were doing was imple-  
7 menting a system of private property rights which would allow a  
8 better conservation of the resource. Considering the arrogance  
9 which typified game management in that era, not surprisingly  
10 there was an assumption, there was an assumption that there was  
11 in effect no system, traditional system, on which they were  
12 imposing this. In other words, there was no recognition that  
13 there was a whole traditional system of trapline tenure, if you  
14 like, in most of these areas, that was either based on families  
15 or extended kinships groups or whole villages or whatever it  
16 happened to be. So there was an assumption that we were just  
17 replacing a free-for-all with a private property system.

18 Now, the other party that  
19 had some interest in seeing that system come in was the  
20 Department of Indian Affairs, who, because again if you look at  
21 the historical context in which this system came in, it was  
22 during the time when the trapping economy was declining very  
23 seriously because of low fur prices and so on, and in some  
24 cases was imposed in a situation where traditional harvesting  
25 practices had become quite disrupted by virtue of this economic  
26 problem, by virtue of epidemics and so on that had caused a  
27 considerable disruption in the traditional use patterns.  
28 Indian Affairs sought to protect the interests of Native  
29 trappers to a greater extent, and tried, although the impetus  
30 for this came from the resource management agencies, Indian  
31 Affairs tended to try and speak on behalf of the local Native  
32 populations, to say, "Look, this is their economic base, you

1 must make sure that they give some of these traplines." And in  
2 fact for the most part they did.

3 I would say that the chief  
4 disadvantages that Indian people perceived of the registered  
5 trapline system would have been three. One was that by making  
6 a private property institution out of what had generally per-  
7 ceived to be a collective, collective property, community  
8 property, if you like, was that the traplines became dissipated  
9 over time as individuals could be approached by white trappers  
10 and say, "Gee, I'd like to buy your trapline, I'd like to buy  
11 your trapping rights." And in some cases if you look at the  
12 history of tenure over a period of 20 or 30 years, from the  
13 '40s to the '60s or '70s, what you see is a gradual decline of  
14 Indian tenure in favor of non-Native tenure, of these trap-  
15 lines. So in a sense it's analogous to what happened to  
16 reserve lands in the United States that were given over to  
17 individual possession. Another is that, and this is quite  
18 commonly expressed, is that people felt that their traditional  
19 systems of running their traplines were unduly interfered with  
20 by this system, because no longer could they operate the system  
21 of leaving some areas to rest and using others and going on  
22 this kind of rotation over very large areas on an extended-  
23 family basis. But they had these smaller areas, to which  
24 individuals, they couldn't cross over to each other, couldn't  
25 use each other's properties, legally they couldn't, although  
covertly a lot of these things continued on. And the other was  
that in some jurisdictions, at least, there were performance  
criteria on maintaining these trapping rights. So that, and I  
should add that all of this could be done despite treaty obli-  
gations and so on, because this was seen to be a commercial  
right rather than a subsistence right, and that I suppose the  
added affect of that was to separate out trapping as a commer-  
cial function, as a means of getting access to traditional

1 lands, whereas in fact, in the eyes of the people, trapping was  
2 only one of many things that had gone on. So these performance  
3 criteria that in effect raised the usual sort of double bind  
4 that Native people often find themselves with respect to  
5 resource management agencies, which is that either you're using  
6 these resources too much, so we'll have to clamp down on you,  
7 or you're not using them enough, so we will reallocate them to  
8 somebody who will use them more efficiently than you.

9 Now, I'm speaking of a  
10 situation that's, for the most part, past history. But I think  
11 it's worth remembering why the system came into effect and what  
12 its impact was. Happily, I think it's not been all disadvan-  
13 tage. As often happens, people take these things and turn them  
14 around to their own advantage, and when it's least expected  
15 that they might do so. And of course in the context of claims  
16 negotiations in a lot of these jurisdictions the game manage-  
17 ment authorities have put a halt to the performance criteria  
18 and to turning over traplines into non-Native hands, pending  
19 the outcome of claims negotiations, and you've heard a lot of  
20 the proposals that people have in the different jurisdictions  
21 to transform this system.

22 But let me then mention one  
23 or two of the positive features of the registered trapline that  
24 could be to advantage. One is that being a kind of indivi-  
25 dualized resource tenure it has been argued, in the case of  
Alberta I've seen a legal argument, to the effect that this  
ought to be the basis then on which people could receive some  
kind of compensation to which they might not otherwise be  
entitled, because normally trapping is not considered, a trap-  
line or a trapping license is not considered to be a right that  
can be compensated when it's interfered with by a third party.  
The argument that was made in Alberta was that in fact  
what...the nature of the license that the province had granted

1 was in effect the same as what would be given to, let's say, an  
2 oil company, which was in effect a right of profit of ponder  
3 (?). In other words, that if that was interfered with that  
4 there was some kind of compensation due to the third party that  
5 interfered with it. And that is reflected to some extent in  
6 very recent years in compensation regimes in some of the  
7 western provinces, which have enabled trappers now to obtain  
8 compensations in situations where I think they would not have  
9 before.

8 I think the other thing  
9 that may be turned to advantage with registered traplines in  
10 Canada is that not all of them, fortunately, have been made to  
11 individuals. There are such things as group-registered trap-  
12 lines. The Yukon people referred to some of them in the  
13 northern part of the Yukon this morning. They also exist in  
14 the western part of the Northwest Territories. And in the  
15 past, a trapline which is registered to a group, let's say to a  
16 community, has been a means by which the community has been  
17 able to regulate the entry of other parties onto their trapping  
18 area. And for example, in the case of Banks Island in the  
19 western Arctic, which was a particularly abundant area for  
20 Arctic foxes, the Inuit community there for many, many years  
21 successfully controlled entry into trapping on the island,  
22 which they would not have otherwise been able to do without the  
23 instrument of the group-registered trapline. So, and of course  
24 what that offers now is the possibility of some kind of a group  
25 property which could be compensated for, I suppose. I should  
say that that's not in effect at the present time, but I think  
the arguments are there that could possibly create that  
situation.

So I certainly don't want  
to discourage you from adopting what might seem to be a great  
idea. Maybe you should pick and choose from the kinds of

1 things I've talked about as to where it might be to your advan-  
2 tage and where it might not be. I think there are some  
3 pitfalls with the registered trapline system, but also  
4 advantages.

5 MR. BERGER: I wonder if I  
6 might suggest that we take a break now, and then after coffee  
7 return with any additional questions we have for Jim Kolwalsky  
8 and then we'll hear from Willie Goodwin about the management of  
9 the Western Arctic herd and from Weaver Ivanoff. And if there  
10 is time after that, from Harvey Feit. And tomorrow we'll hear  
11 from Dan Gross about third world subsistence regimes and then  
12 we'll return to a general discussion of basic issues and I hope  
13 that Joe Meeker and Dick Nelson and Peter Usher and Gary  
14 Holthaus, Gary's going to be returning tomorrow, and Dr. Mike  
15 Holloway will all participate at that time.

(MEETING BREAK)

(MEETING RECONVENES)

14 MR. BERGER: Well, let's  
15 take our seats, Dalee Sambo has an announcement to make...Let's  
16 just take our seats and I'll let Dalee Sambo of ICC have the  
17 floor.

17 MS. SAMBO: Thank you.

18 This request came to us on the part of the Makivik  
19 Corporation research department, and it's relevant on several  
20 points. The fellow who contacted both the Review Commission  
21 and also the Inuit Circumpolar Conference offices was going to  
22 be here in attendance to talk about subsistence and the  
23 northern Quebec region under the James Bay Agreement, James Bay  
24 and Northern Quebec Agreement. Robert Lannery couldn't be here  
25 and he made a request to the Inuit Circumpolar Conference to  
generate awareness of an incident that has take place in  
northern Quebec. Just recently, on September 29 in fact, a  
Inuit game warden and also two biologists were travelling in

1 the northern Quebec area, near the Kanaaupscow River, and found  
2 10,000 caribou carcasses dead along the Kanaaupscow River.  
3 They think that it's a result of spillage that has been taking  
4 place under the part of the James Bay Hydroelectric Project in  
5 Hydro Quebec. They've been releasing water from their reservoir  
6 because of too much pressure, and also they're losing water and  
7 they don't know why they're losing water through a sink hole,  
8 so they were releasing water so that they could do some testing  
9 to find out where the water has gone. Well, this resulted in a  
10 very strong flow in the river while the caribou were making  
11 their annual migration, attempted to cross the river, were  
12 caught in the flow, and carried down the limestone falls in the  
13 river and found dead. So far 10,000 caribou have been removed  
14 from the rivers. What Mackvik Corporation would like the  
15 government of Quebec and also the federal government to do is  
16 to set-up a public inquiry about the impact of the hydro-  
17 electric project and in particular this recent incident with  
18 the 10,000 caribou. They've requested the ICC and any other  
19 Native groups and organizations, any, I know there are some  
20 State officials here as well, to send letters to both the  
21 Minister of Environment in Quebec and also the Minister for  
22 Oceans and Fisheries of the federal government urging them to  
23 set up a public inquiry to look into this matter. I've put  
24 together a press release based on the information received from  
25 Robert Lannery and the press release is available on the table  
out there. If we could get as many organizations, both con-  
servation and environmental groups as well as Native organiza-  
tions, to send letters along urging this public inquiry to be  
established that would be of great assistance to them. A  
couple of things that are paralleled here, the James Bay Agree-  
ment was triggered, like ANCSA, because of industry, there it  
was hydroelectric, here it was oil. And this is a result of  
lack of monitoring, lack of environmental and social impact

1 assessments taking place in the northern Quebec region. What  
2 are the impacts there? And this is a perfect example of the  
3 result of lack of monitoring. And currently there are no  
4 monitoring, there's no entity that is set up to monitor the  
5 activities there. Hydro Quebec is required to do this all by  
6 themselves. Well, they're not fulfilling the obligations under  
7 the James Bay Northern Quebec Agreement and Makavik  
8 asserts this in several ways in the press release. So if they  
9 could get support from the Alaskan side that would be certainly  
10 helpful. I've already sent telexes from my offices; letters or  
11 telexes or telegrams to the ministers would be helpful. Thank  
12 you.

13 MR. BERGER: And there are  
14 copies of your press release by the door with the addresses of  
15 the two ministers? Okay. I think Joe Meeker has a question  
16 for Jim Kolwalsky.

17 MR. MEEKER: Jim, you  
18 mentioned the military impact on the game animals in the  
19 Fairbanks region. I understand there's a fairly substantial  
20 increase now coming in the military population of the Fairbanks  
21 area of looking to the future possibility of increased military  
22 presence in the area. What strategies are open to you to cope  
23 with the effects?

24 MR. KOLWALSKY: Well, the  
25 first anticipated increase in military personnel at  
26 Ft. Wainwright, which is just immediately adjacent to  
27 Fairbanks, was apparently over estimated, so it is less than  
28 the first numbers that we were hearing a month or so ago. But  
29 as I understand it there is still an increase anticipated in  
30 the next two years. As to strategies, I'm afraid I don't have  
31 one to suggest, as sort of a single thrust. But I guess, first  
32 and foremostly, the tools that are now available to us in the  
33 Interior, which I tried to outline in my presentation, would be

1 those tools that would have to be used in any strategy. That  
2 is to say, if there are going to be conflicts with local users  
3 then they're going to have to assert, they're going to have to  
4 be very definitive about this and assert their needs through  
5 these State structures, whether through the local Fish and Game  
6 Advisory Committee system, that is to make proposals that are  
7 well documented to meet the local needs first. That is, after  
8 all, what the subsistence priority as I understand it is really  
9 all about. And I think too, I sense from time to time there's  
10 a reluctance to assert it, almost a self-consciousness about,  
11 well, "We got the law, we beat the repeal, now let's use the  
12 law." And I think sometimes people are a little bit afraid of  
13 putting their, you know, getting committed and getting their  
14 name in the front page of the Fairbanks newspaper as to  
15 bringing this law into its reality. But there is a priority  
16 law and if the increased urban uses conflict then those conflicts  
17 have to be documented and then the allocations of resources  
18 have to be made accordingly. So, I guess the question is,  
19 then, where does that proof come from? Well, presumably it  
20 comes in part from the State of Alaska itself, who document  
21 these needs and these uses and these conflicts. But then  
22 there's also a substantial burden on local people to make their  
23 case. And I think those tools are to some extent available.  
24 As I said, I tried to outline them earlier. But that isn't,  
25 well, that's a very general strategy, and it may not be a real  
good answer, maybe it wasn't what you hoped for.

MR. MEEKER: Well, if I can just follow through, I suspect it's a question that will apply to many other regions other than yours. There are a good many observers who have noted that there's a major increase in Soviet military activity in Eastern Siberia and expect that that will be countered by a corresponding increase in military activity in Alaska. So it could be that a good many areas of

1 what is now rural Alaska will be feeling a major military  
2 presence over the next decade or so.

3 MR. KOLWALSKY: Well, I  
4 think that's true, I think there is something to be learned by  
5 following the situation in the Interior. And there may be  
6 other places in the state that will have or have already the  
7 same experience. I understand in the...Let me give you an  
8 example. In the community of Galena, which is on the central  
9 Yukon River, there is an Air Force base. It's a very small  
10 one, but nevertheless its presence there is very obvious. And  
11 I hear varying stories about how conflicts of resource use are  
12 handled. From time to time I hear that the base commander just  
13 simply tells his people not to get involved. But then at other  
14 times I hear that that story isn't accurate, but overall,  
15 generally I'm led to believe that in that particular situation  
16 there have been some attempts, just by local people, to deal  
17 directly with the Air Force, to explain the problems. I guess,  
18 surely there is a very low level of understanding on the  
19 military bases as to these things we're talking about here  
20 these past two, three days. Maybe that would help.

21 MR. MEEKER: Have those  
22 attempts to deal directly with the military bases been  
23 effective?

24 MR. KOLWALSKY: Well, as I  
25 said, I hear conflicting stories about the Air Force base in  
Galena, as to whether there is an effectiveness coming from the  
communication that they have or not. I think too the  
personnel, rotate rather quickly.

MR. BERGER: Well, any other  
questions for Jim? Yeh, Larri Spengler.

MS. SPENGLER: Thank you. I  
didn't have a question so much as one comment. Jim said that  
the Regional Councils that are set up by the State have a

1 certain, more-than-advisory power, that when they make recom-  
2 mendations the boards of game and fisheries must follow them,  
3 unless they make certain findings. That only applies when the  
4 recommendations involve subsistence uses. I just wanted to  
make that clarification.

5 MR. BERGER: Well, I think  
6 we can move on now to Willie Goodwin, please.

7 MR. GOODWIN: I will touch  
8 briefly first, before I get into the Western Arctic caribou  
9 herd, on how our IRA councils in the NANA region play a part in  
some of our decision making for land use, which ties in with  
subsistence.

10 You saw in Professor  
11 Langdon's report a brief summary of beluga hunting in the NANA  
12 region. And I have to make one point clear, to me it...and I  
13 take it personally because I'm one of the hunters from Kotzebue  
14 that go over there. It implies that when there is an unsuc-  
15 cessful hunt, that is Kotzebue's fault. That is not so.  
16 There's a lot of other things that come into play. Killer  
17 whales come in, keep the beluga out. We say it's Buckland's  
18 fault, you know, so...I wanted to make that clear. We do have,  
19 we did pass some resolutions from the IRA councils in Buckland  
20 and Kotzebue in support of some standard rules that we should  
21 follow when we go over and hunt. But these are all on a  
22 voluntary basis that we ask each hunter to observe these and  
23 try to comply with them. And they've been successful, up to a  
24 certain point. There's also a Northwest Inupiat Tribal Council  
25 made up of all our villages where we have a regionwide tribal  
council that was established this past year. That will have a  
strong effect on some of the decisions that are made with  
respect to land use. We have the Kotzebue IRA Council  
Ordinance 1 which deals with hiring of Native people by con-  
tractors, in Kotzebue. And we have that in force right now,

1 where we do force contractors that are going to be doing work  
2 in Kotzebue to hire Natives.

3 Also in NANA's management  
4 frame of the land that's been selected under ANCSA with its  
5 merger with the village corporations there is, in that merger  
6 provision, that the land that was selected by those villages  
7 around each village, the IRA council of those respective  
8 villages have management jurisdiction over them. Well, that's  
9 how they play a part in NANA's land.

10 The movement with the IRA's  
11 in Kotzebue, in the NANA region especially, it's getting pretty  
12 strong now that they are beginning to feel what they can do.  
13 But we have some unanswered questions of jurisdiction, on how  
14 that comes into play. But we're looking at different alterna-  
15 tives to amend our charters that should take care of that.

16 To get back onto the  
17 Western Arctic caribou herd, back in the early '70s, many of  
18 you remembered that it crashed from a number of, they say from  
19 240,000 down to about 50,000. And at that time there was a  
20 strong movement by the conservationists and State Department of  
21 Fish and Game to completely stop hunting of caribou from the  
22 Western Arctic caribou herd. And when we got wind of it it was  
23 at that same time that I was working for NANA and we were doing  
24 a study on all of the resources that our people use for a basis  
25 of making decisions when we make our land selections. So we  
did a household-to-household study of all of the resources that  
our people use, where they get 'em, how far out they have to  
go, and how many for that particular year. And we used that  
information as backup to go before the Board of Game and come  
up with a compromise situation where they allowed us to hunt up  
to 5,000 caribou. The allocation was made for 4,000 at NANA  
and 1,000 the Arctic Slope, that was our part in politicking it,  
so...it was...And then we could only hunt one caribou, where

1 historically, from the study that we did, that I did was...our  
2 annual harvest was somewhere around 25,000. And to cut back to  
3 5,000, or one per household, was something that we had to live  
4 with but, you know, there are ways to get around it with other  
5 resources. But we made it through. Now the herd's back up to  
6 well over 200,000 again, and now they're saying that, look,  
7 now...the Fish and Game is saying, "We're going to let you hunt  
8 all you want, get as many caribou as you want, but, you can  
9 only get five at a time." So it's, it's...I'll give myself as an  
10 example. When I go hunt in the falltime I have to go 200 miles  
11 in a boat to go hunt caribou. And by the time I'm outfitted  
12 and everything it costs me somewhere around \$700 to go hunt.  
13 So, you know, to go up and just get five is kind of hard, but  
14 we do that. We take other people along, or we get more than  
15 five, you know.

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During the time of the crash the Alaska Department of Fish and Game went out of its way to document and take photos of what they say was wanton waste, where they see dead caribou, and the ravens are at them and the wolves are at them, but they can't tell which ones had been shot or which ones had been killed by the wolves. But they blamed, they blamed the Natives anyway. So they were using that as a basis to completely try to stop the hunting of caribou from the Western Arctic caribou herd. The biologists played a large part in their reports, of counting. When it crashed they tried to figure it out and they couldn't. We tried to tell them that historically it happens about every 40 years, but we don't have any documented statements that this happens, we just know it happens, because we hunt them, we expect it. And I even suggested to the biologists at that time that maybe one of the reasons was that caribou quit having twins, you know, I don't know. But they do have twins, so that might have played a part in the crash. But...the biologists

1 and everything, some of them, they have some, we have some  
2 problems with some of the people in the department, because  
3 they have a racist attitude. So, one of the ways that we've  
4 been taking care of our problems like that is that we ask the  
5 Fish and Game first to transfer 'em. When that don't happen,  
6 we tell Al [Adams] and Frank Ferguson to cut their money, so  
7 they have to go. And then after they're gone we reinstitute  
8 the program again, so...but we have ways of making the  
9 Department of Fish and Game know who we'd like to see up there,  
10 and it works effectively.

11 Frank Ferguson's the  
12 senator, suggested last year that Maniilaq take over the  
13 management of fish and game in the NANA region. It could work,  
14 we know it could work. They told us when the idea was first  
15 brought about that Maniilaq should take over the other social  
16 service systems, and the state said "No way they're going to do  
17 it." Now we're doing it, we contracted with the State to do  
18 those programs. And we feel we can do the same thing with the  
19 management of the fish and game. I don't know how we'd, we  
20 would probably have to come up with some kind of a resolution  
21 to control some of the game wardens, but that's a different  
22 story than management of the resources, and quota setting, and  
23 allocation.

24 We do a lot of negotiating  
25 with the federal agencies that are up there--Park Service, Fish  
and Wildlife Service. And we've found that when we agree to  
something and it doesn't get publicized that there's no criticism  
of what happens. So we kind of keep things quiet, but we do  
get what we want. And we give up concessions to the federal  
government, Park Service, but we also, the bottom line is that  
we want to be able to hunt and fish all the time. That's the  
bottom line of any kind of agreement that we come up with.  
Some of the decisions like I said are probably made behind

1 closed doors and etc., but they're effective. And where we  
2 feel comfortable is that when we come up with something that  
3 satisfies our needs then we feel that we've gained something.

4 The Red Dog proposal has  
5 some very strong subsistence provisions in it, the proposal  
6 itself, that those activities will be protected or the  
7 stockholders have the authority to close the mine. Those are  
8 being put in place right now. They played a large part in the  
9 subsistence report, played a large part in the discussions with  
10 the villages that are going to be directly affected with Red Dog.  
11 The message was pretty clear that subsistence will have to be  
12 ongoing, whether Red Dog is there or not. And NANA is taking  
13 it there through agreement with Cominco, to make sure  
14 that subsistence does continue along the corridor.

15 I don't have anything else,  
16 but I'd be glad to answer questions, or...

17 MR. BERGER: Okay, well,  
18 maybe we could just ask Weaver Ivanoff to...well, there are a  
19 couple of questions, and...Caleb Pungowiyi.

20 MR. PUNGOWIYI: Yes, two  
21 questions to Willie. One is on the resolution concerning  
22 Beluga hunting. What prompted the IRA's to pass these  
23 resolutions?

24 MR. GOODWIN: There was  
25 some tension between the Kotzebue hunters and Buckland hunters  
over different periods of time when boating takes place, for  
gathering of wood or coming to and from Eschscholtz Bay, or  
near Elephant Point. And one of the things was, we say that  
the Buckland people go out and get wood anytime they feel like  
it, so it keeps the beluga off, from coming in. And they say  
that we travel anytime we wanted to go home or come, I mean, go  
to the place to go hunt. So those type of problems or  
discussions and feelings were brought out a number of times,

1 and I played a large role in coming up with some of the  
2 suggestions and proposed rules that we established that are in  
3 place now. That's how they came about.

4 MR. PUNGOWIYI: My other  
5 question is on the caribou. After they had crashed and you  
6 were put on the quota system, the quota was for all residents  
7 within the Kotzebue area, is that right?

8 MR. GOODWIN: It included  
9 the Arctic Slope, when it crashed, yeh. So we allocated 4,000  
10 for the NANA region and 1,000 to the Arctic Slope.

11 MR. PUNGOWIYI: When it was  
12 on a household basis, did the department enforce that provision  
13 or did they ask the Native organizations to make sure that only  
14 one household, you know...

15 MR. GOODWIN: Well, they  
16 did it like they do everything else, they say, "This is the  
17 law."

18 MR. PUNGOWIYI: Okay. The  
19 other question I had was on the, I know there was a suit by the  
20 sportsmen concerning that particular quota. What was the  
21 outcome of that?

22 MR. GOODWIN: They lost.  
23 We got the quota. We were still able to hunt.

24 MR. PUNGOWIYI: So in other  
25 words, the quota was applied...was not allowed to be outside of  
the residents of the area.

MR. GOODWIN: Right. The  
only people that could hunt from the 5,000 that were allocated  
was the people from the NANA region and Arctic Slope. That was  
it.

MR. BERGER: Larri  
Spengler.

MS. SPENGLER: In that law

1 suit that was just referred to, although at the lower court  
2 level the sportsmen did lose and the season proceeded as  
3 described, the Alaska Supreme Court ruled in favor of the  
4 sportsmens association on a procedural issue, because there had  
5 not been a proper delegation and there weren't properly drawn-  
6 up criteria to the local areas under which they were going to do  
7 the distribution. So in the long run that case was lost, I  
8 only clarify that for the record.

9 MR. BERGER: There hadn't  
10 been appropriate delegation of authority to whom?

11 MS. SPENGLER: There was no,  
12 the Board of Game said to the Department, "we'll give "X"  
13 amount of permits to this area and let them distribute it  
14 themselves." There was nothing written, there was no criteria,  
15 it was just totally a direction from the board, there was  
16 nothing in regulatory form, and procedurally that wasn't  
17 proper. It was pure procedural question that the Supreme Court  
18 ruled on.

19 MR. BERGER: There was a  
20 question over here? Chuck Smythe.

21 MR. SMYTHE: Willie, I  
22 wonder if you could just expand a little bit for the record on  
23 the extent, both the geographical and the powers of the IRA, on  
24 the village land in the NANA region when, after the village  
25 corporations gave their land to NANA corporation and then  
NANA...

MR. GOODWIN: Okay. What  
they did was, the villages, before, prior to merger, had made  
certain selections around their villages. Those lands were  
under the IRA jurisdiction of that particular village,  
including the land that NANA selected around it. Those lands  
are, that provision is in the merger provision, in the merger,  
that the IRA council would have management authority over.

1  
2 authority then?

MR. SMYTHE: Is that total

3 extent.

MR. GOODWIN: To a certain

4  
5 ask a question? To what extent do State authorities recognize  
6 the authority of the, to what extent does the State recognize  
7 the authority of the IRA's over the lands referred to in the  
8 merger agreement?

9 MR. GOODWIN: They had to  
10 approve the merger, so they essentially said it's okay.

11 MR. CASE: And the law that  
12 requires, the federal law, the claims act that permits the  
13 mergers specify that a village body has to be identified to  
14 exercise certain land management responsibilities. And the  
15 IRA's were chosen, is that correct?

16 MR. GOODWIN: Yeh, the  
17 IRA's were chosen. They didn't feel that if it was turned over  
18 to the municipal government that, you know, anybody can be in a  
19 municipal government, but in the IRA's it's only the Natives.

20 MR. BERGER: Yeh. That was  
21 David Case who asked the last question. Well, thank you very  
22 much, Willie. Weaver Ivanoff, let's return to you now.

23 MR. IVANOFF: Okay, your  
24 Honor. I'd just like to go on a little bit with what, probably  
25 add on a little bit to what Willie Goodwin had to say about the  
IRA's. I'm the president of the Native Village Council of  
Unalakleet. I was born there and I've been living there all my  
life. There's a lot going on right now in Alaska, and a lot of  
it is moving very swiftly. One of the concerns that we were  
talking about today is the Marine Mammal Protection Act, and  
the possible transfer over to the State from the federal  
government. In addition there's oil development occurring in

1 the Norton Sound, and just recently published from the BLM is  
2 potential land-based oil exploration and mineral exploration in  
3 grounds that are not on corporation lands surrounding  
4 Unalakleet, all the way down to St. Mary's and Mountain  
5 Village. Places where we've lived off the land, where we've  
6 subsistence hunted and picked berries, and where elders have  
7 camped, and things like this, are moving very fast. Our elders  
8 got very concerned about this. And of course this has been  
9 happening for years and years. Originally, in our traditional  
10 way of our life, we'd go out there on land and leave that land  
11 the way we found it. In other words, we'd go out there and  
12 hunt and fish, but we'd leave the land the way it was. Because  
13 the animals and the fish live there, and if the home is  
14 disturbed or destroyed the animal goes away or dies. And in  
15 order for us to survive or to have meat on the table we  
16 protect it.

17  
18 And our forefathers,  
19 realizing that there would be differences or conflicts in the  
20 use of the land, designated traditional boundaries, years and  
21 years ago, thousands of years ago. And these are recognized to  
22 this day by the neighboring villages surrounding Unalakleet,  
23 and also recognized by the Indian village of Kaltag. I was  
24 happy to hear about Hugh Solomon and his way of tackling issues  
25 and ideas or problems in his village by talking to the village  
and then reaching a consensus and going in this direction. And  
that's what we've been trying to do in Unalakleet.

26  
27 I'd like to get back again  
28 a little bit to the land, the sharing of the resources by the  
29 Native people amongst themselves. I've often said that if laws  
30 are passed on subsistence then we're hampering our own way of  
31 living, we're restricting ourselves. A law is there to protect  
32 subsistence, but every time a law is passed it restricts us,  
33 because that could be changed, and then we have to fight to

1 change the law, or react to it. And we've been reacting to  
2 laws all our lives because we have to, to protect the way we  
3 live right now...America is a free country. The Constitution  
4 of the United States, and I've said this before, the  
5 Constitution of the United States provided us that freedom.  
6 And our people have survived by being free, by being free to  
7 go out and, like Willie says, to hunt and fish when they want.  
8 When you can be able to harvest that resource. But nowadays  
9 more laws are being passed, that restrict us from going out and  
10 doing exactly that same thing we've been doing for years and  
11 years and years, and that's living off the land. I've said  
12 that, my great grandfather was a free man, he went out there  
13 and did what I was talking about. I'm not as free as he is,  
14 and my children, I don't think, will be as free as I am. And  
15 that's what we're afraid of. There's too much going on right  
16 now that's too fast moving. Like I said, the Marine Mammal  
17 Protection Act. So our elders says, we've got to do something  
18 about it. So we met with the villages surrounding Unalakleet--  
19 Shaktoalik, Koyuk, villages of St. Michaels, Stebbins, and again  
20 Kaltag, and we document, or we're trying to document and  
21 establish our traditional boundaries so that we can have some  
22 jurisdiction over the subsistence use in our area. It's just a  
23 new baby now, it's just growing. There's a lot of things that  
24 has to be worked out, we're looking at this in the legal issue,  
25 but...the difference is, the thing that strikes me real  
clearly in this meeting, that I got a lot of out of, was the  
differences in the constitutions of the State of Alaska and the  
constitution of Canada. Where Canada has that provision in  
there that protects the Native rights, Alaska Constitution does  
not. But the IRA council has that constitution, we have that  
constitution to protect our rights. So that's the vehicle  
that we the Native people are going to have to use to manage  
our resource and manage our subsistence.

1 MR. BERGER: Thank you,  
2 Weaver. Marie, you have a question?

3 MS. ADAMS: I just have a  
4 comment to add to what Weaver Ivanoff was saying. In terms of  
5 impacts on our subsistence resources. One of the things that  
6 we've experienced over and over again the last several decades  
7 has been whenever there is an interest in terms of development  
8 and interest in development comes into our area, then they  
9 start looking at our subsistence resources, if it's going to be  
10 in the way then studies are done to take care of subsistence  
11 resources and a lot of the science ends up limiting our take  
12 allocations. And they forget one of the basic reasons why a  
13 lot of the tension was brought to our areas was because of  
14 development. Look what happened in the North Slope. We  
15 have...with the impacts that they have had on caribou, the  
16 impacts that we have had, been experiencing in terms of the  
17 bowhead whale, all of the research, most of it is diverted  
18 towards restricting take. And very little is done to protect  
19 the resource, in terms of habitat. And I think that we allude  
20 to it in all of our discussions here, but that's a major issue  
21 that we've been dealing with alongside the battle to protect  
22 our take.

18 MR. BERGER: Tom Lonner.

19 MR. LONNER: Weaver, I  
20 understand that you now, and together with your surrounding  
21 villages, are discussing the form in which your own  
22 establishment of some more controls would take place. Are you  
23 anticipating that what will occur will both be control over  
24 land and over the taking of wild resources?

25 MR. IVANOFF: It's a little  
premature right now, I'm kind of hesitant to answer the  
question...But our interest right now is mainly in the  
subsistence use of the resources, for subsistence use.

1 MR. BERGER: Jonathon  
2 Solomon.

3 MR. SOLOMON: Yeh, Mr.  
4 Chairman, what my friend from Unalakleet is saying, through  
5 tribal governments, you know...

(TAPE 12, SIDE A)

6 we come into a situation right now where we talk about  
7 sovereignty. And if each one of us that are IRA councils, our  
8 constitution was written by our fathers or our grandfathers a  
9 long time ago. And we recognize the land use of these areas,  
10 as you see them on a map, on any rivers, they're exactly or  
11 close to 90 miles apart, and this is the way that our  
12 forefathers set it up. And we recognize the imaginary line for  
13 hunting and fishing between each village, that exists all the  
14 time. Like I said yesterday, that Doyon Region, if you look at  
15 the boundary of that region, and you look at the boundary of all  
16 the 12 regional corporations within the state, them boundary  
17 lines were set many years ago by our forefathers. That's why  
18 when we came down to talking about the boundary line we didn't  
19 have, not very much problem drawing them boundary lines and  
20 agreeing to it through the regional corporations. These kind  
21 of boundary lines exist on any given Native area groups.  
22 Weaver Ivanoff is only saying that these villages are  
23 reaffirming them boundaries, which is done all the time by  
24 Native villages and Native groups.

25 MR. BERGER: Thank you.  
There's a delegation from Ahtna that wants to read a statement.  
Just give your name and then go ahead.

MS. HASH PETE: My name is  
Evelyn Hash Pete. I did want to give Weaver an answer on his  
statement. The answer is that we do have sovereign control of  
our areas. And that under State of Alaska constitution, that's  
the disclaimer in Section 12, and it says we have a

1 right...they further disclaim all right and title to any land  
2 now being held by Indians, Aleuts, or Eskimos, hereinafter  
3 called Natives, or their fishing rights.

4 And I'd like to read a  
5 statement on subsistence. The law of the land shall prevail.  
6 No one has the right to tell our people (Alaska indigenous) how  
7 many animals, fish or birds they may catch, when our own laws  
8 are already and always followed. The sharing of food is  
9 nothing new. The first law among Alaska indigenous people is  
10 to share with hunterless people--widows, widowers, elders,  
11 orphans, people who cannot hunt for themselves. Any limit set  
12 by the United States, State of Alaska, or municipal  
13 governments is based on a a per capita basis, rather than actual  
14 use. In no way shall such restrictions be made unless full  
15 consideration is given for actual use of animals, fish and  
16 birds for the number of people involved. Following a  
17 per capita basis for equal distribution of animals, birds and  
18 fish to an equal distribution of people is ridiculous and  
19 ignorant. Few non-Native people eat Alaska animals, fish and  
20 birds daily.

21 I recognize no expert  
22 except my Native elders, who give me the laws which I and my  
23 people uphold to the finest degree. Further, I ask that these  
24 experts in socioeconomic fields be disregarded unless they  
25 serve the actual users of Nigipiaq (real meat), birds and fish,  
and give complete respect to the animals. And that the impact  
of that respect be considered at all times. We can't say how  
many animals we are going to kill, we can't set quotas. The  
animals hear us, this is something we really believe, we know.  
No need would be found to even dare to make game laws, fish  
laws, and bird laws on Alaska indigenous people. How dare  
anyone begin to believe that they have a right to impose laws,  
restrictions and penalties on us when our sovereign system of

1 government laws, penalties, and restrictions have been in  
2 existence for over one and half million years? No. We still  
3 own Alaska. We still were not conquered by Russia, nor the  
4 United States, nor the State of Alaska. We are yet in control  
5 of our destiny, and we are yet the governments of Alaska. We  
6 still own all of the land within the original tribal boundaries  
7 and we maintain the right to govern ourselves and any activity  
8 on our land, Alaska, that we own. We can again bring the  
9 banner of a previous AFN convention in 1977, "Does one way of  
10 life have to die so that another can live?" It may never grow  
11 old, so intent are the foreigners on regulating our subsistence  
12 lifestyles, hunting, fishing, and our existence. So intent are  
13 weto live in complete respect for the animals, fish and birds,  
14 land, water, air and fellow sovereign Alaska indigenous land  
15 owners, and consideration for indigenous sovereign people of  
16 the world.

17 Thank you.

18 MR. BERGER: Thank you.

19 Well, what I suggest we do now is this. We've had a good  
20 discussion of a number of case studies where Native people are  
21 undertaking initiatives in the field of subsistence policy and  
22 management. We heard about the Hooper Bay Agreement, the  
23 Alaska Eskimo Whaling Commission, the International Porcupine  
24 Caribou Commission, the Eskimo Walrus Commission. We heard  
25 from the Council of Yukon Indians, and we heard about the COPE  
agreement, and we heard from TCC, from Willie Goodwin about the  
steps being taken by IRA's in NANA, and from Weaver Ivanoff  
about the steps to assert jurisdiction over traditional tribal  
boundaries in his region. There were two more case studies, I  
shouldn't put it that way, but two more speakers we wanted to  
reach today. We haven't quite reached them, that is Harvey  
Feit to tell us something about the James Bay and Northern  
Quebec Agreement and its provisions for subsistence, and Dan

1 Gross to talk about subsistence in the third world. I was  
2 going to suggest that we spend another 10 minutes here this  
3 afternoon and invite Harvey Feit to sketch for us the most  
4 prominent features of the James Bay and Northern Quebec  
5 Agreement regarding subsistence, giving us something to think  
6 about overnight, and then we could return in the morning and  
7 allow Harvey to complete his presentation, then turn to Dan  
8 Gross. And then having looked at those case studies, consider  
9 drawing back, so to speak, from them, drawing back from them,  
10 consider, what does it all mean? And I thought we would ask  
11 Joe Meeker and Dick Nelson, Peter Usher, and Gary Holthaus to  
12 speak to that, and of course others. But I thought I would  
13 specifically call on them tomorrow. And I asked Doctor Mike  
14 Holloway to come tomorrow, too, because I ran into him last  
15 night and he was telling me that he has practiced in the bush  
16 and he thinks that subsistence is important to physical and  
17 mental health of the people out there, and I was hoping we  
18 might have time to give him an opportunity to say something  
19 tomorrow. So, with that program in mind, perhaps we might just  
20 give our attention for these last few minutes this afternoon to  
21 Harvey Feit. Harvey, if you have the energy to draw a  
22 microphone towards you...

18  
19 MR. FEIT: Okay. I think  
20 what I'll do with ten minutes is not really try and survey the  
21 agreement. I was going to try and pick out parts of the agree-  
22 ment that seemed to relate to some themes. Rather than break  
23 up that part of it, maybe what I'll do is take the part of the  
24 agreement that's probably the most unusual and just give a  
25 quick run through it, the income security program. Leave that  
with people overnight and then come back tomorrow with the  
other.

The James Bay Agreement was

1 negotiated in 1974, '73 and '74, after the province of Quebec  
2 had announced that it was going to build a James Bay Hydro-  
3 electric Project and after the Cree and Inuit people of  
4 northern Quebec had taken the province to court, won the first  
5 round of a court case, but felt that the court process was  
6 unable to stop the construction of the project for any signifi-  
7 cant amount of time, or found that it couldn't stop it for any  
8 significant amount of time. And they negotiated a land claims  
9 agreement or an aboriginal rights agreement in order to try and  
10 assure the circumstances in which subsistence would be able to  
11 continue and in which they would be able to continue to have  
12 wildlife to use and build their society and culture and economy  
13 on.

11 I'll keep that very brief  
12 and say that a key part of their perception of the problems  
13 they face, there were a range of problems they saw they faced,  
14 I'm talking again from my perception as someone who was  
15 involved in it, but I can't, I take responsibility, this is my  
16 perception of what was perceived and thought about and why  
17 things were done there, not a Cree perception, but I'm the  
18 person you have here today. The problems they faced, were many  
19 of the problems that are being talked about here. Problems of  
20 conflicting use, problems of assuring rights to use resources,  
21 problems of assuring habitats in the future of the resources  
22 themselves. But one of the problems they saw they had that's  
23 been touched on a few times but not extensively discussed is  
24 the problem that their hunting depended on a large cash income  
25 or a steady cash income, that more and more they needed equip-  
ment in order to be able to go out and hunt, more and more they  
needed access to services that required cash, airplanes, etc.,  
snowmobiles increasingly. And they found that their ability  
to go hunting was being restricted by the difficulties of  
maintaining a cash income, given the limited job opportunities

1 in their region, and given the fact that many of the job oppor-  
2 tunities were of a kind that they didn't desire. There were a  
3 number of studies done documenting this cash shortage. In  
4 several communities you could actually count the number of  
5 people who weren't able to go out on the land as extensively as  
6 they wanted to. And so one of the things that they insisted be  
7 included in the agreement was a provision to assure the cash  
8 flow to individuals, the cash income that was needed by indivi-  
9 duals in order to go out on the land and hunt. What they set  
10 up was what's called the income security program for people who  
11 hunt, fish, and trap. It was only set up for the Cree, only  
the Cree wanted it. The Inuit chose a different kind of a  
program based on making monies available in a global amount to  
each community and I won't describe that one this time.

12 Basically, the program as  
13 the Cree designed it, was a program that paid individuals for  
14 each day they left the community to go out hunting, fishing,  
15 and trapping. And it gave, the amounts are indexed to the  
16 cost of living in Canada, or in Quebec. The most recent  
17 figures I have are from 1982-83. The program gives a per diem  
18 amount up to eight months in the bush, in other words 240 days.  
19 And it pays an amount in 1982-83 of \$23.50, essentially, to the  
20 man and his consort, sorry, to the head of the family and to  
21 his or her consort. So that there's about \$50 a day coming in  
22 for each day spent hunting. There are also some calculations  
23 for families with large numbers of children that give them  
24 increased amounts over the basic per diem. What it, in 1982-  
25 83, the program came into effect in 1976, in 1982-83 it was  
providing a total cash income to families of about \$9,000  
average per family. Large families were getting up to about  
\$21,000 a year, small families were getting around \$5,000 or  
\$6,000. That meant the total, if you try to give a...it's very  
hard to calculate what that means. The average expenditure from

1 the best data that's available would have been about \$7,000 of  
2 that would have been spent on hunting equipment, hunting  
3 transportation, outfitting, and about \$4,000 would have been  
4 other disposable income.

5 In addition to the program  
6 income, people would have had family allowance payments, social  
7 security payments, etc., that come in to every one. And they  
8 also have the products of their harvest and of their labor. I  
9 can't describe the details. The program was costing in 1982-83  
10 about \$10 million a year for a population of about 6,000  
11 people. Of the 6,000 people, about half of them, about 3,000  
12 were beneficiaries of the agreement, that is, they were in the  
13 families that were hunting sufficiently in order to benefit.  
14 People had to spend at least three months of the year out on  
15 the land hunting in order to qualify, that's the main qualifi-  
16 cation. There's a more complex set, but I'll skip that. I can  
17 answer those in questions, if people want.

18 To give you a quick idea of  
19 what the impacts of the program were, it demonstrated that cash  
20 had really seriously constrained peoples' ability to hunt. The  
21 year it was implemented, in 1976, people were able to join the  
22 program by saying that they wanted to go back to hunting, as  
23 well as by saying that they had been hunting in the years  
24 previously. And in the first year 700 families or individuals  
25 joined the program by saying that they had been hunting con-  
tinuously, and an additional 200 people joined the program and  
stayed on it, saying that they were people who wanted to go  
back to hunting now that there was sufficient cash to permit  
them to pursue the activity. So that it increased the number  
of people who were actively hunting by about a quarter.

Since then, in 1982-83, it  
stayed, the program stayed steady at about 900 families, until  
1982-83 when it jumped from 900 to 1,100, which is another

1 almost 25% increase. That increase was due in part to the  
2 closing down of several community projects, and in part to the  
3 impact of the recession in the region. And again it was an  
4 interesting demonstration of what Native people and the Cree  
5 people had always been saying, which was that subsistence was  
6 the primary economy for their region. It was the one they  
7 could count on, when jobs were unavailable it was to the land  
8 that they would turn. And indeed, given the ability to use cash  
9 resources to go back to the land, within a very short time when  
10 the recession hit people did do precisely that. It also in-  
11 creased not only the number of people, it increased the amount  
12 of time people spent hunting, or out in the bush. The number  
13 of days spent on average rose by about 25% the first year.  
14 People averaged almost eight months on the land, out of the  
15 settlements, in bush camps. And over the six or seven years  
16 that we have following its introduction, the amount of time  
17 spent out hunting has increased by a further 10%.

14 Some of the effects of it  
15 have been to...the Cree wanted to prevent, the Cree found that  
16 the shortage of cash was disrupting the social pattern of  
17 hunting, and they wanted this program to stop the erosion of  
18 traditional social patterns. For example, people found that  
19 they didn't have enough to take their family and their children  
20 out hunting, so the men were starting to go out hunting by  
21 themselves, in men's only camps. The program was designed by  
22 the Cree to pay a sum to both the husband and wife to encourage  
23 families to go to the bush together. And it did precisely  
24 that, it increased the number of families going in the bush and  
25 it increased the number of children that families took with  
them in the bush. And it's put a tremendous pressure on the  
school system, which the Cree have a board that runs, under  
their own control, to adjust its school year to permit children  
to spend as much time as possible with their families in the



1 resources, game like rabbits and partridge, that it takes a lot  
2 more time to catch, it takes a lot more work to catch, but  
3 there are many more of them when the cycle is up. And so  
4 people spent time catching more of the small game that could  
5 carry the burden of more intensive hunting. And the social  
6 distribution networks in the village were also extended.  
7 People kept exchanging the product of the harvest widely in the  
8 village, and in fact more extensively that they had been able  
9 to in the past.

10 Let me see if I can just  
11 hit any other high points. I think the other key point is that  
12 there was greater confidence in the future of hunting. Many  
13 more people said that they would encourage, they would  
14 encourage and take their children to the bush more now, because  
15 they thought there was a future to it, and they were more sure  
16 there was a future to it. And the number of young people  
17 entering hunting has certainly been enough to replace those who  
18 are retiring from it. And with the jump in the last 1982-83 we  
19 don't know the impact, but it looks like those who came in, and  
20 the 200 who came in more in addition in 1982-83 are primarily  
21 young people, so that hunting may not only be holding its own  
22 now, instead of declining in participation, it may actually be  
23 increasing substantially. Maybe I'll, that's the basic idea...

24 MR. BERGER: Yes, thank  
25 you, Harvey. I'm glad, very glad we turned to you before  
departing, because that's one of the most fascinating case  
studies I think that we've put under glass here the last three  
days, and raises a whole lot of interesting questions about  
subsistence and its future. Maybe I could just ask you one  
question before we depart. The money for the income program  
for the hunters, was that negotiated by the Cree as part of the  
land claims settlement, and where does the money come from?

MR. FEIT: Right. The pro-

1 gram is administered by a separate board, made up equally of  
2 Cree and government appointees. The provincial government is  
3 obliged to pay to the board the funds that are necessary to run  
4 the board and run the program. The one qualification on it is  
5 that there is an upper limit on the size, on the number of man-  
6 days that have to be paid. So the province has some assurance  
7 that the program won't cost more than a certain amount every  
8 year. In fact, the number of people participating and the  
9 length of time they're in the bush the program has exceeded  
10 that limit twice, and the limit has been revised upward,  
11 through new negotiations, in a recognition by both the Cree and  
12 the government that its benefits have been positive and it's a  
13 program that should be maintained and expanded. But they  
14 haven't been easy negotiations, despite that.

15 MR. BERGER: Yes, well,  
16 thank you, Harvey. On that note we will take our leave. And I  
17 hope that as many of you as can will be back tomorrow. You've  
18 been awfully good, we've had a very fine attendance thus far,  
19 and I hope we'll be able to start at 9:00 in the morning and  
20 carry on as long as we feel the urge. And if any of you have  
21 to leave tonight I just want to express my thanks to you for  
22 coming, and to say that there will be a record of the pro-  
23 ceedings that will be sent to you and we will do our best to  
24 get that out to you, but don't expect it for a while. Carry  
25 what you've learned in your heads, for the time being.

(MEETING ADJOURNS)

C E R T I F I C A T E

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

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

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

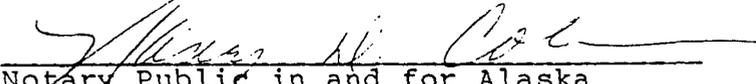
13 I am not a relative, or employee, or attorney, or  
14 counsel to any of the parties, nor am I financially interested in  
15 this action.

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

18   
19 \_\_\_\_\_  
20 Dawn Scott, dba Scott's Secretarial  
21 Service

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

25 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.

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

