

DEPARTMENT OF COMMERCE

REVISED AGENDA

MARINE PROTECTED AREAS FEDERAL ADVISORY COMMITTEE

Tuesday, February 15, 2005

9:00 a.m. - 5:30 p.m.

Crystal City Hilton
2300 Jefferson Davis Highway
Arlington, Virginia

PARTICIPANTS:

Marine Protected Areas Federal Advisory Committee:

Dr. Tundi Agardy, Sound Seas
 Robert Bendick, The Nature Conservancy
 David Benton, commercial fishing
 Dr. Daniel Bromley, University of Wisconsin, Chair
 Dr. Anthony Chatwin, The Nature Conservancy
 Dr. Michael Cruickshank, Marine Minerals Technology
 Center Associates
 Carol Dinkins, Esquire
 Dr. Rod Fujita, Environmental Defense
 Dr. Delores Garza, University of Alaska
 Eric Gilman, National Audubon Society
 Dr. John Halsey, Michigan Department of State
 Dr. Mark Hixon, University of Oregon
 George Lapointe, Maine Department of Marine
 Resources
 Dr. Bonnie McCay, Rutgers University, Vice-Chair
 Mel Moon, Quileute Natural Resources Department
 Robert Moran, American Petroleum Institute
 Dr. Steven Murray, California State University,
 Fullerton
 Michael Nussman, American Sportfishing Association
 Terry O'Halloran, recreation industry (Hawaii)
 Dr. John Ogden, Florida Institute of Oceanography,
 University of South Florida
 Lelei Peau, American Samoa Department of Commerce
 Dr. Walter Pereyra, commercial fishing
 Max Peterson, International Association of Fish
 and Wildlife Agencies (retired)
 Gil Radonski, sport fishing
 Dr. James Ray, Oceanic Environmental Solutions,
 LLC
 Barbara Stevenson, commercial fishing
 Dr. Daniel Suman, University of Miami
 Cpt. Thomas Thompson, International Council of
 Cruise Lines (retired)
 Kay Williams, Gulf of Mexico Fishery Management
 Council
 Robert Zales II, recreational fishing

Other Participants:

Scott Rayder, NOAA Chief of Staff
 Joseph A. Uravitch, Director, MPA Center
 Tony MacDonald, Executive Director, Coastal States
 Organization

PARTICIPANTS (continued):

George Geiger, Fishery Management Council

Dan Furlong, Fishery Management Council
Jack Lorrigan, Sitka Tribe
Jim Zorn, Great Lakes Intertribal Fish Commission
Billy Frank, Northwest Indian Fisheries
Commission
Mack Gray, Department of Agriculture
Mary Glackin, Department of Commerce
Donald Schregardus, Department of Defense/Navy
Patrician Morrison, Department of the Interior
Margaret Hayes, Department of State
Rear Adm. Jim Underwood, Department of Homeland
Security
Dr. Brian Melzian, Environmental Protection Agency
Dr. Joseph R. Pawlik, National Science Foundation
Jacqueline Schafer, U.S. Agency for International
Development
Lt. Jeff Pearson, U.S. Coast Guard
Larry Maloney, Department of Interior
Dr. Charles Wahle, National MPA Center
Lauren Wenzel, federal designated official
Heidi Recksiek, staff
Lisa Phelps, staff

AGENDA:	PAGE
Call to Order	5
Committee Business	
Approval of Sept., 2004 meeting minutes	6
Review of Agenda	6
Process for Reviewing Synthesis Document	12
Welcome and Remarks, Scott Rayder, NOAA Chief of Staff	16
MPA Center Update, Joseph A. Utravitch, Director	55
MPA Center Report on Federal Workshop on National System of MPAs	64
Pacific State and Territorial Perspectives on the National System, Tony MacDonald, Executive Director, Coastal States Organization	71
Fishery Management Councils' MPA-Related Activities	
South Atlantic, George Geiger, Vice Chair	107
Mid Atlantic, Dan Furling, Executive Director	135
Tribal Perspective on Marine Protected Areas - Mel Moon and Dolly Garza, Moderators	
Jack Lorrigan, Sitka Tribe	160
Jim Zorn, Great Lakes Intertribal Fish Commission	187
Billy Frank, Northwest Indian Fisheries Commission	229
Public Comment Period	288

1 P R O C E E D I N G S

2 MS. WENZEL: Good morning. I'm Lauren Wenzel.

3 I'm the designated federal official for the Marine
4 Protected Areas Federal Advisory Committee and I'm
5 calling this meeting to order. I would like to turn
6 the meeting over to our chair, Dan Bromley.

7 DR. BROMLEY: Thank you, Lauren.

8 Thank you very much. We're a little bit late
9 to start but we'll pick it up. We're in good shape.10 Thanks to all of you who -- some of you who
11 went through great hurdles to get here. We're happy to
12 have all of you here. We're missing a few people --
13 Wally and Barbara and Kay Williams -- but aside from
14 that we are complete.15 Our first order of business is to approve the
16 minutes from our meeting in Maui. I used to say it
17 Maui but then I heard Lelei say it and I think Lelei
18 says it Maui. So how am I doing, Lelei?

19 MR. PEAU: Great.

20 DR. BROMLEY: Better? Okay.

21 APPROVAL OF PRIOR MINUTES

22 DR. BROMLEY: Well, our first order of

1 business is to approve the minutes from our meeting in
2 Maui.

3 Do I hear a motion to that effect?

4 MR. O'HALLORAN: I move.

5 DR. BROMLEY: So moved.

6 DR. CRUICKSHANK: I second.

7 DR. BROMLEY: Seconded. Any discussion, any
8 comments on it? If not all in favor of approving the
9 minutes say aye.

10 (A chorus of ayes.)

11 DR. BROMLEY: Opposed?

12 (No response.)

13 DR. BROMLEY: Okay. Let me go through the
14 agenda very briefly here to give you a bit of a review,
15 preview of what we're going to do.

16 As soon as I finish we're going to ask Brian
17 Melzian from EPA to make a few comments to us. Then
18 we're going to spend a little bit of time discussing
19 the process we will use for reviewing the synthesis
20 document that you have. We have Scott Rayder who is
21 the NOAA chief of staff on -- you can see there.

22 I think the only thing that requires

1 explanation is that for lunch there's a room near here
2 where the lunch will be put on, and you get it and come
3 back. We have a program over the noon hour which
4 promises to be very good.

5 Our first public comment hearing is this
6 afternoon at 4:00, then we will adjourn. The committee
7 will meet for dinner at 6:30 in Ondines here in the
8 hotel.

9 Bonnie, do you need a count as to how many are
10 coming? No. So at 6:30 we'll meet for dinner.

11 Tomorrow morning is -- Wednesday is our day of
12 hard work, hard slogging on the report. We will
13 discuss how we're going to do that in a minute.

14 Tomorrow we're going to try to adjourn a
15 little bit early. It says 5:00, but many of you are
16 going to the Women's Aquatic Network Reception so we'll
17 try to break perhaps a little bit before 5:00.

18 Thursday I think nothing needs explanation
19 now. So that's sort of how we plan to operate these
20 next three days.

21 Any questions on the agenda? We'll come back,
22 we'll revisit it. As we move closer to an event we

1 will elaborate, but that's the general outlook.

2 Tomorrow is basically our day of hard work on
3 the synthesis document. Today and Thursday we have a
4 public comment period, we have speakers and what have
5 you.

6 So with no further delay, Brian, did you wish
7 to go ahead.

8 DR. MELZIAN: Good morning everyone. Just so
9 I could cover a few activities which are national in
10 scope and are ongoing as I speak, and they relate
11 directly or indirectly to the national system marine
12 protected areas.

13 The first -- there's six activities, which
14 should take only a few minutes. The first -- I have
15 distributed the Federal Register notice for the Marine
16 Protected Area Federal Advisory Committee to all
17 members of the National Association of Marine
18 Laboratories, which is about 120 members because as you
19 know we're going to be losing a couple of members. In
20 the National Association of Marine Labs I'm on the
21 executive board of that organization. Some of you are
22 members. There is about 120 members. So hopefully

1 we'll get some responses from them.

2 Secondly, I sent some information out and I'll
3 leave some handouts on the front desk about the
4 National Coastal Condition Report. This is the cover
5 from this report which was put out in collaboration
6 with NOAA, EPA, U.S. Fish and Wildlife Service and the
7 USGS. It talks about the condition of 100 percent of
8 the estuaries. It's statistically based and used
9 50,000 samples from 1997 to 2000 looking at five key
10 indicators -- water quality, coastal habitat loss,
11 sediment quality, and community condition and fish
12 tissue contamination. And this handout will include
13 the fact sheet plus additional information where you
14 could either obtain hard copies of this document or you
15 can download it from the EPA website.

16 These are reports that are required by
17 Congress and they're put out periodically. The next
18 report will cover Alaska and Hawaii. It did not cover
19 those states in this report. That's the second one.

20 Third, the Integrated Ocean Observance System.

21 Some of you know that I'm involved with that. I'm on
22 the U.S. Ocean -- Ocean U.S. Executive Committee that's

1 helping to form this system along with NOAA and nine
2 other agencies.

3 On February 28th the National Ocean Research
4 Leadership Council, which is chaired by Adm.
5 Launtenbacher of NOAA, should be voting on the first
6 annual development plan, which shortly thereafter we
7 hope will be submitted to the Office of Management and
8 Budget and also the Office of Science and Technology
9 Policy, and perhaps the President's Council on
10 Environmental Quality. If it's vetted there, if it's
11 approved there, the intention is to get it to Congress
12 in the not foreseeable future.

13 Why this is relevant to you folks, as I speak
14 this week the 11 nation regional associations -- there
15 are 11 regional associations now being developed and
16 funded around the country to start the development of
17 this Integrated Ocean Observing System which will go
18 from tidal waters all the way out to the edge of the
19 exclusive economic zone, which is 200 nautical miles.
20 So needless to say it may behoove the National System
21 Marine Protected Areas to be aware of these efforts,
22 especially regarding monitoring and evaluation.

1 The fourth topic is I sent some information
2 out -- and I'll have a few copies of the Integrated
3 Ocean Observance Systems Industry Day which is coming
4 up here in Washington, D.C. on March 18th -- and even
5 though it says industry, academia, other parties are
6 more than welcome to participate. But it is a
7 controlled event for security reasons. So if you're
8 interested in this event you just have to apply online
9 and participate.

10 The fifth event -- the fifth topic relates to
11 the Administration's U.S. Ocean Action Plan. Even
12 though the final report of the U.S. Commission on Ocean
13 Policy is out and that's nice, the bottom line this is
14 the report that we need to really address because this
15 is what the Administration will support. We already
16 mentioned that the marine protected areas are mentioned
17 in this report.

18 Another topic that's mentioned is the National
19 Water Quality Monitoring Network, of which EPA is a
20 part. There are now weekly conference calls
21 establishing this National Water Quality Monitoring
22 Network, which will be freshwater and marine, and I'm

1 on the design team. So needless to say I'm going to
2 try to put a word in for Marine Protected Areas.

3 And then lastly the information I sent out
4 about the Ocean Research Interactive Observatory
5 Network program under the National Science Foundation
6 and their call for nominations for education and public
7 awareness. If you yourself, or you know of anyone with
8 any interest in this committee, just look at the
9 information that's found on this document. I'll leave
10 copies at the front desk. Thank you.

11 DR. BROMLEY: Thank you, Brian, very much.
12 The next -- the last agenda item before we move on is
13 in a sense a preview of how we would like to have the
14 synthesis document tomorrow looked at. And I believe
15 all of you have received these guidelines when Lauren
16 sent the document to you, but I'd like to review them
17 now very briefly because I would imagine this evening
18 you will sit down with this report and spend a bit more
19 time with it than you perhaps have had a chance to.

20 If we look ahead at Wednesday, basically the
21 bulk of the day, up until 3:00, is going to be devoted
22 to working on the synthesis document. The plan is, to

1 refresh your memory, that we will go through this
2 report section by section soliciting reactions.

3 Our guess is that there will be two kinds --
4 there will be very specific, shall we say, wordsmithing
5 suggestions and there will be perhaps more substantive
6 things. We're going to try to capture those, and we
7 want to capture them on flip charts but we also want to
8 capture them electronically. So we ourselves are not
9 quite sure how this ought to work, but we do have a
10 vision about comments coming in. We want to -- we will
11 compile them, we will compile them on the screen as we
12 go, but we will also somehow compile them on flip
13 charts. Then all of them will be looked at as a
14 package speaking to each section and we'll have a
15 discussion of them and what have you.

16 And then as we discover that there are points,
17 substantive points that require further work, we may
18 deputize a few people or however you wish to structure
19 yourself, perhaps to go off and come back with specific
20 wording or language of some sort and work our way
21 towards we hope by the end of tomorrow general
22 agreement on most everything that's there.

1 Over the lunch period tomorrow the executive
2 committee will meet to sort of take stock of where we
3 stand. We will try to produce at that point a list of
4 the comments that have been received. We haven't done
5 this before, so we're not sure how long it will take.
6 We're not quite sure how the dynamics are gong to work.

7 We are of the opinion with -- that with
8 sufficient goodwill and some flexibility on everyone's
9 part we can move forward, reach consensus on this thing
10 by tomorrow afternoon. We hope to avoid unseemly
11 disputes in public. We'll see how it goes.

12 DR. MELZIAN: Can we dispute in private?

13 DR. BROMLEY: Items -- well, that's up to you
14 what you do in private. I've never been much
15 interested in that, Brian.

16 But the idea is we hope that we can
17 collectively reach agreement on this, and indeed if
18 there are lingering things by the end of tomorrow or
19 indeed by Thursday if -- if there are things that
20 cannot be resolved, then we'll have to figure out on
21 Thursday how we wish to move forward in terms of
22 creating a new subcommittee or a new task group to

1 tackle some particularly difficult points.

2 So that's kind of the plan. I welcome
3 reactions to this plan, other thoughts. Does it seem
4 okay to you, we give it a try, see how we do? And
5 nothing is set in stone. If we find after an hour or
6 so in the morning we're not quite happy with how it's
7 going we can redesign it. Is that all right?

8 Okay. So, Joe, you're going to introduce
9 Scott Rayder?

10 MR. URAVITCH: Yes, thank you. Good morning
11 everyone. It's great to be back with you again. It's
12 my pleasure to introduce today Scott Rayder. Scott is
13 the Chief of Staff to Adm. Launtenbacher, the NOAA
14 Administrator. In that role he's charged with
15 formulating, guiding and integrating policy, budget
16 program initiatives with senior NOAA management across
17 the agency to ensure consistency across the agency's
18 diversity of internal programs.

19 Before coming to NOAA Scott was the Director
20 of Government Relations at the Consortium for
21 Oceanographic Research on Education. While there he
22 developed and implemented CORE's legislative strategy,

1 working with the executive staff and the CORE board of
2 governors.

3 Before that he was with -- as a senior
4 technology policy analyst with the Heritage Foundation.

5 He received his bachelor's degree in government and
6 geology from Hamilton College in New York and a
7 master's degree in public administration from the
8 Maxwell School of Citizenship and Public Affairs of
9 Syracuse University. He's a great person to work with
10 and he's been a big supporter of the MPA initiative
11 since its inception. I'd like you to please welcome
12 Scott Rayder.

13 (Applause.)

14 MR. RAYDER: Thank you very much, Joe, for
15 that kind introduction and hopefully we recorded that.

16 I'm going to send that home to my mom.

17 First of all I want to thank Chairman Dan
18 Bromley and Vice-Chair Bonnie McCay. I know this has
19 been a lot of work and I want you to know how
20 appreciative we are of the work that you've done to
21 pull this MPA FACA together.

22 I was commenting earlier to Dr. Bromley that

1 it's 2005. Three years ago we started work on this and
2 I can't believe we're at this point where we're ready
3 to move forward with recommendations to the Department
4 of Commerce and Interior, assuming you can get through
5 your agenda in the next few days. But it's shocking
6 to me how far you've come in such a short period of
7 time, so I salute you for that.

8 And on behalf of the National Oceanic and
9 Atmospheric Administration I'd like to welcome the
10 Marine Protected Areas FACA to beautiful Arlington,
11 Virginia. It's going to be 62 degrees outside today.
12 The weather service has assured me of a good forecast.

13 I also have to acknowledge a couple other
14 people in the audience. Mary Glackin from NOAA is one
15 of my colleagues. She's the assistant administrator at
16 NOAA for planning, program and integration and she is
17 the Department of Commerce representative to this FACA.

18 And I'd also to recognize Larry Maloney with
19 the Department of Interior. He is with the Office of
20 the Assistant Secretary for Lands and Minerals
21 Management.

22 I want to welcome all of our federal partners

1 because this truly is a partnership. It takes a
2 partnership to make this work. As I look around the
3 room there is truly a diverse group, and that's good
4 thing because there are a lot of interests in how we
5 manage Marine Protected Areas.

6 You've made a lot of progress since the first
7 meeting in June of 2003. I was looking over your
8 agenda and I was kind of surprised that -- I told Joe
9 to give me a copy of the first one, and I kind of
10 looked at this one to compare the two. There's a lot
11 more on this agenda of deep substance. I know early on
12 it was getting the committee, the FACA forum up and
13 running, the logistics.

14 I would like to thank the folks here at the
15 head table. That's worked out marvelously. I know we
16 had some problems early on with some security
17 clearances and I know we got those fixed. That was
18 because a lot of people were dedicated to making this
19 work.

20 Let me tell you a little bit about what's
21 going on at NOAA right now because I think that's
22 incredibly important. As you know, we have a broad

1 array of responsibilities. Mary Glackin who is our
2 director of PPI, the office we call the assistant
3 administrator, has produced a NOAA strategic plan with
4 four goals. I think everybody understands we have the
5 ecosystem approach to management, we have understanding
6 weather and water, understanding climate, and
7 supporting commerce and transportation, but all of
8 those affect how we manage resources in our oceans and
9 coasts. They're all linked and they're all integrated,
10 and that is the path we are going towards. It's one
11 NOAA, an integrated NOAA.

12 The President's fiscal year 2006 budget
13 request does provide some significant resources for
14 NOAA's oceans and coasts programs. And I'm going to
15 take a couple of questions and answers at the end, but
16 I can tell you that we are looking at some more money
17 for fishery stock assessments and improved data
18 collection. I think that's very positive. We're
19 looking to expand NOAA's capability to estimate the
20 economic impact of fishing locally and nationally,
21 getting the right socioeconomic data. We think that's
22 a very positive development.

1 We're also looking to improve our capabilities
2 for monitoring and enforcement in some of the closed
3 areas of protection for endangered species. We think
4 that's a great development. We're also working with
5 states and territories to address threats to our
6 nation's coral reefs.

7 The fiscal year '06 budget request is 6
8 percent over the fiscal year '05 request. So in tight
9 budget times NOAA has a good apples-to-apples
10 comparison. We have a good request over last year's
11 presentation, so we're happy about that.

12 I should also say that the budget allows us to
13 improve monitoring through a new Texas national
14 scientific research reserve we hopefully will designate
15 later in 2005. That's a nice development. It includes
16 funds to support the scientific and research activities
17 in Marine Protected Areas managed by the Marine
18 Sanctuaries Program, the National Administrative
19 Research Reserve System, as well as the National Park
20 Service.

21 So we think these are -- we're going in the
22 right direction. A lot of the issues that you have

1 discussed are actually framed in our budget.

2 There are also a number of activities that
3 were alluded to earlier by Chairman Bromley related to
4 the U.S. Commission on Ocean Policy and the subsequent
5 Administration response, which was the U.S. Ocean
6 Action Plan. If you do not have a copy I urge you to
7 get a copy and read that.

8 It was nice to hear somebody say that this is
9 the document we need to respond to. I didn't -- I want
10 to make the point I did not pay anybody to make that
11 statement. I really appreciate that. I want to make
12 sure you look at that document. It very specifically
13 calls for agencies to better coordinate amongst
14 themselves and with the constituents in the regions on
15 our oceans, our coasts and the Great Lakes. It
16 includes references to Marine Managed Areas and it's
17 very important that you read and you understand that.

18 The Ocean Action Plan highlights the need for
19 further integration of the management of existing
20 parks, refuges, sanctuaries, stream research reserves
21 in marine and coastal areas. It does support the
22 intent of Executive Order 13158, which as you know gave

1 rise to this FACA.

2 We're going to take a number of steps within
3 NOAA and at the federal level to integrate some of
4 these existing Marine Managed Areas in a new way and
5 hopefully we can use that to promote the coordination
6 of research, promote education, public education, and
7 management activities. We want to do it across this
8 broad array of marine areas because there are a number
9 of different assets that can come into this system.

10 Your recommendations, I can tell you right now
11 regarding the national system of Marine Protected
12 Areas, are going to contribute to how we shape these
13 actions at the federal level. So we are listening and
14 I want to make sure that you understand that.

15 You're going to hear a lot more about the
16 action plan when CQ chairman Jim Connaughton comes to
17 speak with you. I consider Jim a good friend. I can
18 tell you that he was a real asset for the Ocean and
19 Coastal Community in what he did on the response to the
20 Commission. I don't want to steal any of his thunder,
21 but I think he'll have some things in greater detail to
22 tell you that I think will please this body.

1 And I also understand that the meeting of the
2 advisory committee is especially important because
3 you're getting prepared to issue your first set of
4 recommendations to the Department of Commerce and
5 Interior about how to implement the MPA Executive
6 Order. And I have a boss who likes to tell me, you
7 know, it's always to nice plan but it's the execution
8 part that really counts. But if you have a really good
9 plan it makes execution that much easier. I think Mary
10 Glackin has probably heard that several times from Adm.
11 Launtenbacher.

12 I want to emphasize that your advice on how
13 the departments should proceed with developing the
14 national systems of protected areas will be -- as NOAA,
15 Interior and the Marine Center work together and move
16 ahead with plans, on how we develop this system. And
17 it's crucial because these plans and these protected
18 areas are widely considered a tool in how we conserve
19 the nation's wealth of natural and cultural resources
20 for all Americans. I should say that the resources
21 include everything.

22 I'm always amazed by what comes across my desk

1 in the form of policy papers or press releases, what it
2 includes -- pearl reefs, kelp forests, whales,
3 shipwrecks and wide variety of marine life in the
4 oceans and coasts and Great Lakes. One came across the
5 desk yesterday which was of particular interest. Up in
6 Stellwagan Bank we have just declared The Portland,
7 which was the ship that sank in a noreaster storm, it's
8 now on the list of -- I don't know how they do this --
9 but the list of national historically registered
10 places. So that's apparently the first shipwreck that
11 we have that has obtained that designation in a
12 sanctuary that I know of, probably other than The
13 Monitor which I think folks here are pretty aware of.
14 But this is another one that -- it highlights the
15 importance of these cultural assets to our nation.

16 All of these sites have essential conservation
17 roles and I want to make sure that folks understand
18 they're multiple use sites. That means we allow for
19 fishing, boating, diving, other recreational and
20 commercial activities and -- to some degree, and that
21 they need to be established for more limited access
22 depending upon the sensitivities in that region -- and

1 we understand that.

2 NOAA is looking forward to your
3 recommendations regarding the Marine Protected Area
4 stewardship and coordination of these activities with
5 NOAA, but I want to make sure it's not just NOAA.
6 We're part of a bigger federal family that has these
7 Marine Managed Areas.

8 And I hope you appreciate first of all how
9 valuable your contributions are. I started out with
10 that, but I again want to mention that. I know Adm.
11 Launtenbacher is very grateful. He reads the updates
12 fastidiously on this and he is looking forward to your
13 recommendations.

14 Let me conclude -- that's a good spot to
15 conclude because I'll take some questions and answers.

16 I emphasize the commitment of Commerce Secretary
17 Venterez who has been briefed on a number of NOAA
18 issues including this one, the fact that he wanted to
19 know what bodies were operative, we're working with.
20 He is aware of this. I don't know how much he's
21 internalized it at this point seeing that he's been on
22 the job for approximately eight days, but I can tell

1 you he's a very quick study and I can tell you that
2 Undersecretary Launtenbacher is very committed to your
3 role in providing the recommendations that are directed
4 by the Executive Order. We look forward to those.
5 Both leaders strongly believe in balancing conservation
6 needs and commercial needs to come up with win/win
7 solutions.

8 On that note let me wish you continued success
9 in your important work. We're grateful for your
10 service and I look forward to your ultimate
11 recommendations late this year to the departments.

12 At this point let me stop and take any
13 questions you may have.

14 No questions? Oh, right down here.

15 DR. RAY: In the recommendations that are
16 coming out of this committee, if they were implemented
17 over the next five years there's a cost associated.
18 What do you think the possibility is that Congress
19 would be responsive to a potential increased budget to
20 make this system of Marine Protected Areas a potential
21 success?

22 MR. RAYDER: Well, that's a great question. I

1 mean, right now we are clearly in a tight budget
2 environment. I am pleased that in '06 we got program
3 increases. I could just say in the past it was not
4 just satellites, we got increases across the board for
5 broad sections of the NOAA portfolio. I think that's
6 where a good plan tied to a good program with good
7 budget numbers makes it easier for us to sell anything
8 that you might recommend inside the administration. I
9 mean, you've really got to be able to demonstrate that
10 you're getting value out of every dollar that you spend
11 and that's what we're trying to do.

12 Performance measures are very important. So I
13 think that's another angle that you might want to
14 consider. What are the performance measures that
15 you're going to use to measure success in Marine
16 Managed Areas.

17 DR. BROMLEY: Are there other questions? Yes.

18 DR. OGDEN: One of the key points that the
19 Commission on Ocean Policy Report dealt with is
20 ecosystem based management. It was highlighted in a
21 lot of these things. I was just flipping through the
22 President's response trying to see whether specifically

1 -- I actually can't find it specifically highlighted
2 here, but I'm curious. I know within NOAA circles that
3 we talk about this a lot, or NOAA talks about and asks
4 for advice about it and nobody really knows exactly
5 what this is going to mean in the long run is that --
6 and you didn't mention it specifically -- I wondered
7 how -- what is your feeling about this within NOAA and
8 how you're going to deal with it if at all?

9 MR. RAYDER: Okay. I think Jim Connaughton is
10 probably going to address that with his remarks, but
11 let me give you the, kind of the NOAA perspective here,
12 which is before the Ocean Commission came out with
13 their final recommendations there was an understanding
14 from the constituent communities that we met with that
15 the ecosystem approach to management is the way to go.
16 Let's get away from species by species.

17 I guess one of the examples we use is right
18 here from the Chesapeake. I think -- if you're aware
19 of the crabs who eat the oysters, the rockfish eat the
20 crab and humans eat all three. So we used to manage
21 species by species in that chain, but it's really a
22 web. So you're going to have look at a more holistic

1 approach about how you manage that ecosystem. Species
2 by species management will not get you to sustainable
3 resource levels.

4 So we're going down this approach -- I mean,
5 we're going down this path and it's going to take time.

6 We're working with our partners. We have a definition
7 that we're working with of what ecosystems are. I
8 think you have to define things so that people are
9 comfortable with where you're going and that's been
10 hard to do.

11 I mean, some of the definitions here are very
12 tough. The Commission recommended this. I don't want
13 to -- I don't want to say we were out ahead of them,
14 but we went to the ecosystem approach to management
15 probably a year-and-a-half before the Commission
16 delivered the plan. I'm not going to say that the
17 Commission followed us, that would be a gross
18 overstatement, but I think everybody understands we
19 have to take this more holistic approach.

20 It's interesting because we are trying to
21 integrate NOAA so that it can predict and forecast the
22 environment that we're responsible for, that we have

1 the mandate for, and that's an integrated environment.
2 We can't go out and pick out a piece of it or a slice
3 of it and take it and say, well, we're just going to
4 look at this slice. You can't do that. It's
5 integrated.

6 And I think one of the big things that the
7 Admiral has done on the management, recognizing how the
8 natural world is structured, how complex it is, is
9 trying to get NOAA to integrate itself to make sure we
10 can bring the right data, the right products, and the
11 right services to bear on this. I'm sure Jim
12 Connaughton is going to address more on that, so that's
13 a good question to ask Jim. But is in the Ocean Action
14 Plan that, you know, it's something we do plan to go
15 towards.

16 Yes, sir.

17 DR. FUJITA: Just related to that. I
18 understand that you're working on the budget for NOAA,
19 and although ecosystem management is difficult to
20 define and there are many definitions out there most of
21 them involve a greater information source. Just more
22 data is required on many different species and the

1 relationships to move toward ecosystem management. So
2 on top of the idea of, you know, more fully integrating
3 NOAA's sources of data and science, which would be
4 great, is there sort of a projection of costs and a way
5 to meet those costs to, you know, really get to
6 ecosystem management?

7 MR. RAYDER: Yes, we are looking at those. I
8 mean, what there is now is we now -- well, there's two
9 angles I want to take on that question so let me hold
10 one in the back of my mind and we can come back to it,
11 the Integrated Ocean Observance System which is -- let
12 me actually start there.

13 We do need more and better data on ecosystems,
14 and that's why the Admiral has been just an incredible
15 advocate and proponent for building IOOS and building
16 -- he's actually in Brussels, Belgium today. Fifty-
17 five countries are going to sign an agreement tomorrow
18 to build the global earth observing system of systems.

19 The idea here is to get more data so that it can come
20 to user areas and focus on things.

21 The international term, they don't use
22 ecosystems. They actually use bio-diversity. That was

1 the word that they could agree on, understanding bio-
2 diversity not ecosystems. That was a technical issue
3 that they had to work with the Europeans on.

4 But there is nine specific user areas. I
5 would urge you to go to the earthobservations.org I
6 think or earthobservations.gov website. You can find
7 out about the GEOSS process.

8 We have looked at the run outs. I mean, one
9 of the things when we first came into NOAA was we asked
10 a question, our program review, do resources meet
11 requirements. We did not have requirements for
12 eco-based systems processes. We're getting better.
13 I'm not going to tell you that they're perfect because
14 they're not, but we're getting much better in stacking
15 up what those requirements are in terms of
16 observational data so you can make good, solid,
17 scientific determinations about what's going on in an
18 ecosystem. I am confident that we'll get support for
19 this.

20 I also want to thank Interior and some of the
21 other federal partners around the room because I think
22 we've come to the conclusion, and I don't think it was

1 anybody turning on the light over our heads and there
2 was a great epiphany, but we've all come to the
3 conclusion, too, that we've got to work on better and
4 share data together better. We're working on that
5 because that's how you're going to do some of these
6 things.

7 A gentleman here earlier alluded to the Ocean
8 Observing Initiative over at NSF. Somehow we've got to
9 make sure the OOI data and the NEON, which is the Near-
10 Shore Ecological Observing Network, that data gets into
11 this ecosystem approach to NOAA. And we're working
12 with our federal partners to make sure that those
13 connections are made so that we can bring the right
14 data to bear. But we are looking at those run outs.

15 I will also tell you -- I don't know if anyone
16 around here, Joe, has the FY '06 blue books but perhaps
17 we should have somebody run some over here. Folks,
18 it's a compilation, it's an executive summary
19 essentially of the NOAA 2006 budget, and I think that
20 would be great for the people in here to have so you
21 can get an idea of what our budget looks like. We were
22 directed in the '05 appropriations bill to put five

1 year run outs not in our operations, research and
2 facilities account, but in our procurement,
3 acquisition, construction account. I think that would
4 help you to have a copy of that book and kind of see
5 what some of those run outs, the profiles look like.

6 Yes, sir.

7 MR. ZALES: Kind of along these same points
8 here, but this kind of gets into -- we're dealing with
9 the federal government and when you're dealing with
10 MPAs, and I've used this example in the past. We've
11 got an area that's called Magnuson-Swanson that was
12 established and protects spawning and aggregation of
13 gag grouper. Those gag grouper, once they spawn and
14 they drift in shore, the first year or two of their
15 life they live in grass beds. The leeches dig in and
16 often time .

17 What kind of efforts are you all doing to get
18 state support? In other words, this closed area is a
19 great thing for what it's doing, but if it has no
20 coordination and interaction with a comparable place on
21 the beach where these animals need to go it's kind of a
22 useless thing in a lot of people's minds. So without

1 cooperation from the states and what not to work on
2 this what effort are you all doing there?

3 MR. RAYDER: Well, we're working with states
4 along with sea grant extension agents to work on some
5 of that, but I think that's an area that needs to be
6 strengthened. I think that's why the U.S. Commission
7 on Ocean Policy made the recommendation for these
8 regional accounts, because that's where they see that
9 there's a fundamental weakness in some of the
10 conductivity between the feds, states and locals. I
11 think that's an area that needs to be strengthened.

12 What is NOAA doing specifically? I can talk
13 to the sea grant extension agents. I know that they're
14 doing some things, helping in regional areas regarding
15 issues like restoration of habitat or preserving
16 habitat so that the species can flourish. But I think
17 that this is an area quite frankly we're going to have
18 to look at how we're going to strengthen, how we're
19 going to build those.

20 I think we have looked at the federal
21 portfolio in terms of its depth and breadth and kind of
22 the horizontal, and I think now we're really taking it

1 -- I think the Watkins Commission did that. I think
2 the thing that I really take out of the Watkins
3 Commission is that now it's an issue of drawing down.

4 The recommendation of the U.S. Commission on
5 Ocean Policy to these regional ecosystem councils is to
6 do just that because they feel that there's a weakness
7 there as well. I think that's one area where if you
8 could provide some guidance that would -- or some
9 ideas, that would be very helpful.

10 Yes.

11 DR. OGDEN: Talking about the IOOS, which is
12 the Integrated Ocean Observance System, which is really
13 -- it's truly a wonderful development and I don't think
14 anybody can argue that, to get all of these things
15 together and have a more comprehensive picture. The
16 problem with it, and you've mentioned a lot of the
17 programs that have elements to this is, is that IOOS
18 essentially has no biology. It's a physical -- it's a
19 by and large physical. Oceanographers and sensors come
20 on line and chemicals, but biology is -- everyone
21 acknowledges its importance but it isn't actually --
22 it's just built in.

1 And so I guess the -- in order to make it
2 truly integrated -- we've mentioned a few ad hoc
3 programs that are sort of coming in that will bring
4 biology into it, but in sort of a design sense it
5 strikes me -- and this is probably a personal opinion,
6 Brian may not agree -- that it is superbly designed
7 from a physical standpoint, possibly a chemical
8 standpoint, but not from a biological point.

9 MR. RAYDER: That's a good point. I think one
10 of the things we do have to do is develop some of the
11 biological sensors that look at primary productivity,
12 things like that. The analogy that I use for that is
13 let's take the weather service modernization and I want
14 the Doppler radars to be able to pick out birds.
15 That's hard.

16 And so I just think that the advances that we
17 could make in the science of ecosystem forecast,
18 ecological forecasting, will just be so enhanced by
19 IOOS. We actually do use it, a version of IOOS, to
20 make the forecasts for the dead zone. We forecasted
21 that for the last two years. That's a great example
22 where an observing system has played a key component in

1 looking at the Gulf Mexico with the edification. The
2 role that the observing system plays there kind of
3 gives us a heads up on the chemical composition and
4 physical composition of the water column.

5 But it's going to take time to build those
6 sensors and I think one of the things that we should
7 probably look at, and we're trying to look at it
8 internally and it's hard, is how do you build those
9 bio-sensors. I can tell you right now the Department
10 of Homeland Security is struggling with this on a much
11 higher -- probably a more important language is how do
12 you detect certain stuff in the air column and notify
13 people in real time that it's there. They're having a
14 challenge with that in the air.

15 I mean, this is going to be a real challenge
16 in the ocean and our coasts, but that doesn't mean we
17 don't do it and that doesn't mean we don't try. I know
18 that some of the fisheries labs are looking at exactly
19 these sorts of sensors to develop.

20 Yes, ma'am.

21 DR. McCAY: You also mentioned that there are
22 in -- in the '06 budget there is an increased amount

1 for collection of -- or for socioeconomic aid I
2 believe.

3 MR. RAYDER: Yes.

4 DR. McCAY: And one big concern I'm having
5 about the IOOS is that it really is emphasizing so much
6 the oceanographic phenomena and it is missing some, the
7 ecosystem phenomena, which include the linkages to land
8 and the way that humans interact with the oceans. And
9 I know we can't do it all, it's not possible, but I
10 hope that there really is a genuine increase in our
11 ability to monitor.

12 For example, just to be able to get good
13 estimates of fishing effort is currently almost
14 impossible in most areas and it seems such a simple
15 parameter. I mean, it's sort of like primary
16 productivity for biologists. I don't know how you see
17 this fitting into it.

18 MR. RAYDER: Let me tell you on the
19 socioeconomic research -- I'll be quite frank here.
20 Every year we put this into the President's request and
21 every year it goes up to the Hill and gets taken out.
22 And of course I can't tell you to advocate or lobby

1 because that's illegal and in violation of the anti-
2 lobbying act, but somehow as a community we need to let
3 people know that data is really important.

4 And quite frankly that's the real struggle we
5 have in the NOAA budget. We put in good things that
6 come out of the President's request -- I really believe
7 they're the right thing to do -- and you go up to the
8 Hill and you lose them.

9 The equivalent on the data side is an
10 interesting one. Our satellite information service for
11 years has been trying to get money to archive satellite
12 data so it's accessible to researchers. Every year we
13 put in money for it at the President's request and
14 every year we go up on the Hill and they take it out.
15 The worst thing is then they sit down and criticize you
16 for not doing enough in that area. I mean, it's -- it
17 really is, it's a Gordian knot and I don't know how to
18 get out of it. The fact that it's a Gordian knot means
19 you're not be able to, but I can tell you these are two
20 in particular -- the data issue on the satellite and
21 the data on the socioeconomic, every year we put it in.
22 It's in the request again this year and I don't know

1 what's going happen to it, I really don't.

2 And so that's why -- I mean, one of the things
3 I can tell you is what we're trying to do is figure out
4 ways to justify these. To me this one is pretty easy
5 to justify. Better data allows you to make better
6 policy.

7 And it's been a struggle. I can tell you on
8 this one for the three years that I've been working on
9 budget issues for NOAA -- and I should say I've worked
10 on them before. I worked in NOAA in the career force
11 in the early to mid 90s, the same issues. Certain
12 things get taken out by Congress. So if anybody has
13 got any ideas on that we're more than willing to
14 listen.

15 Right back there.

16 DR. FUJITA: Yes. I think you should rename
17 socioeconomic studies constituent impact studies.

18 MR. RAYDER: If that would work I'd do it
19 tomorrow.

20 DR. FUJITA: I do have another question,
21 though. Adaptive management is another one of those
22 concepts that's in vogue and is thrown away and is kind

1 of ill-defined. We're trying to define it here in this
2 committee. But I'm wondering if NOAA has or you have
3 any thoughts on -- I mean, is the ability of the
4 regional fishery management councils or the various
5 management arms of NOAA to respond adaptively to new
6 information, is that a problem or do you think that
7 they're well equipped to do that? Also the other kind
8 of stronger form of adaptive management, is their
9 capacity to intentionally design management to maximize
10 information back and improve management that way?

11 MR. RAYDER: That's a very good question. Do
12 we have enough flexibility to do some of these things?

13 I think our flexibility is quite frankly limited by
14 our resources, and it's easy to move and adapt and
15 change when you have I'd say a resource base that's
16 rich enough to do that.

17 Particularly in Fisheries and to a large
18 extent the National Ocean Service, a large portion of
19 those budgets every year, how shall we say, come out in
20 a cycle. We're in a cycle where they come out --
21 because there's member interest projects that go in and
22 they come out and we lose. What we lose is that

1 ability to be flexible and do those sorts of things.

2 What you will see in the '06 budget quite
3 frankly is we found a way to actually roll-up a few
4 member interest projects and get them into the current
5 program. We consider that a victory. But I think
6 that's -- with the right amount of resources anybody
7 can be more adaptive and address the need of the day.

8 Yes, sir.

9 DR. BROMLEY: Scott, back on this previous
10 point, and far be it for me to tell you how to do your
11 job, but having said that I will. It could be that
12 we're not talking about it the right way. I mean, if
13 NOAA says this is important and it gets put in and it
14 gets taken out, that means we're not speaking, the
15 agency isn't speaking to the Hill in a way that the
16 Hill captures.

17 So now Rod says, well, I'll call it -- what
18 did you call it, Rod, impacts or something? That ought
19 to be a signal to us that we're not talking about
20 things in the right way.

21 MR. RAYDER: Well, sir, I can tell you we're
22 actually looking at changing the names of certain

1 things.

2 DR. BROMLEY: Exactly. And give people
3 reasons not to take it out.

4 MR. RAYDER: Right.

5 DR. BROMLEY: That's part of the business.

6 MR. RAYDER: Well, every year in the Pentagon
7 you get the cost of business. If you're running a
8 business and you have inflation, the Pentagon gets
9 their budget from the previous year plus inflation
10 automatically. That's where they start. At NOAA we
11 don't do that. We have to fight for what are called
12 adjustments to base.

13 So we're -- that's the people, the 12,500
14 employees at NOAA, we have to pay, okay. They get a
15 pay raise every year mandated by Congress. If we
16 budget 1.5 percent and Congress gives them 3.5 percent,
17 we've got to find 2 percent from the program someplace
18 to pay our employees.

19 So we're trying to explain to people it's not
20 an adjustment to base, it's the cost of doing business.

21 And what we've done is we've come up I think quite
22 frankly with some budget terms that don't accurately

1 describe what needs to be done. But I do believe there
2 are a number of programs out there that I think with
3 better labeling will allow us to market them better,
4 where they need to be marketed.

5 And also I again urge you if there are any
6 areas where you think you can help with that let us
7 know.

8 Yes, sir.

9 MR. LAPOINTE: Just a general comment and I
10 certainly appreciate your coming and NOAA's interest of
11 6 percent in their budget. If you look at the U.S.
12 Commission on Ocean Policy it talks about an enormous
13 increase in investment, and we shouldn't lose sight of
14 that. And I -- I'm from the State of Maine and we
15 benefit from a lot of those 6 percent increases so I'm
16 not downplaying that, but we have to be cognizant of
17 the job we have and the tendency to feel a little
18 burned at the time. And so we really need to look at
19 the bigger picture as well, about the need in ocean
20 management and not lose sight of that.

21 MR. RAYDER: Well, let me address that, too,
22 in terms of the recommendations on funding from the

1 Ocean Commission. As you're well aware their report
2 came in on September 20th, and I can tell you that our
3 '06 budget was built at that time and was just about
4 over at OMB. And I've worked for Adm. Watkins, I love
5 Adm. Watkins, he's a great man, and I had told folks
6 over there please don't deliver that report at that
7 time. We had no leverage. That was the wrong time to
8 deliver that report.

9 And as a result we came out of '06 and people
10 will look at our budget and say, well, where is the
11 Ocean Commission stuff? And there is some Ocean
12 Commission stuff in there. The sea grant is funded at
13 the '05 enacted level. That's great.

14 Ocean exploration is up. We have a -- we've
15 got our fourth fishery survey vessel which is funded.
16 There's some good things there, but quite frankly now
17 we're going to have to come back in the '07 programming
18 process and figure out what we're going to tease out of
19 that report.

20 But the fact that we had to respond 90 days
21 after September 20th -- you know, December 17th I would
22 say was when we actually responded. We actually -- it

1 was probably not the opportune time to go out in
2 Washington and respond to folks. The timing on that
3 really didn't work out well.

4 However, there's some developments. I want to
5 make sure everybody is aware. Senator Stevens has
6 reinstated the National Ocean Policy Study and I
7 believe Senator Sununu from New Hampshire is probably
8 going to be chairing that subcommittee. That's at least
9 the latest rumor. If that's the case, I mean there is
10 an opportunity for communities to go in and talk about
11 the larger picture.

12 I can tell you I've been in the ocean
13 community and the coastal community since my days at
14 CORE, and I also worked on the House Science Committee
15 for about three-and-a-half years, and this community
16 needs to learn to talk together. We play off against
17 each other too much and that's been my frustration.

18 When I was on the Hill and NASA wanted a
19 telescope, everybody who was sitting around this table
20 representing NASA will come and say this is what we
21 want. They spoke with one voice. Now we've got to
22 figure out how to do that in our community. That's

1 tough.

2 Yes, sir.

3 MR. PETERSON: Let me join with our Chairman
4 to suggest that -- I looked at NOAA's budget for 14
5 years in a row and I would say charitably that NOAA's
6 presentation of its budget was the worst of all the
7 agencies I've looked at. One of the reasons for it is
8 about every two years you'd change your programs and
9 put new names on them that nobody understood, and you
10 couldn't relate it to the past budget or you couldn't
11 relate it to performance.

12 So I think -- I'm not suggesting you change it
13 again. Maybe you're right now, but anyway I think
14 there's a real need in this business to come up with
15 some program titles that people relate to. They don't
16 really relate to ecosystem management, nor do they
17 relate to bio-diversity or all those buzz words that we
18 like to throw around in scientific circles. When
19 you're up against a new telescope or whether -- or to
20 deal with the Hubble telescope which may die if you
21 don't put your money into it, to have a fuzzy name on
22 something is a guarantee you won't get it.

1 So anyway, I think this committee ought to
2 give some thought with you to maybe giving some program
3 names.

4 I would suggest one final thing is a -- you
5 were on the Hill -- a discussion with the congressional
6 appropriations staff on how you put a budget together
7 that they can relate to. Anyway --

8 MR. RAYDER: Let me take that one because I
9 can tell you Scott Brugh used to be our director and
10 Scott worked putting together the first program review
11 that NOAA had ever completed in 2002. Coming out of
12 that program review we determined that we had to go out
13 and get a new strategy. Mary Glackin was in charge of
14 that process. But when I would talk to stakeholders --
15 and those were the four areas they told us. There was
16 a fifth area of the strategic plan, which is mission
17 support, which is a cross cut.

18 So we went out and people verified, yeah,
19 these are good areas, this is where you ought to be.
20 Then Scott actually left NOAA, went up to the House
21 Appropriations Committee, and then as luck would have
22 it came back to be the core on Commerce, Justice,

1 State, and he wrote our '05 budget. And he liked that
2 structure and it actually reflects what came out of the
3 strategic planning process that he was intimately
4 involved in.

5 Now it's interesting because we had gone up
6 and talked to them. I can tell you that one of the
7 things that we got the appropriators to do in '05 is
8 roll up some lines and bunch them. I just think for a
9 budget that's 3.9 billion in '05 the number of lines
10 that we have in our budget is out of control, and part
11 of that is is there's an awful lot of micro-management
12 through the poor language and bill language direction
13 that goes on at NOAA.

14 You know, you asked earlier about adaptive
15 management. I can't adapt when I'm being told what to
16 do by other folks. This is a struggle. At the one
17 hand I should tell you I'm very grateful. I mean, we
18 requested in '05 3.4 billion and we got 3.9. Congress
19 likes us. We've got a lot of friends up there. They
20 like our mission, they believe we're doing good things.

21 I can tell you that I've talked to a lot of
22 staff. They feel that the organization is better

1 managed. We're getting a little bit tighter. I'm not
2 going to tell you it's perfect, but it's getting
3 better.

4 We now have a corporate executive board, the
5 NOAA Executive Council, which Mary and myself sit on,
6 the Admiral chairs. We make corporate decisions.

7 We've gotten away from the hub and spoke method of
8 reporting, with 12,500 people at NOAA wanting to come
9 into the undersecretary's office with their problems.

10 We're trying to institute a chain of command
11 in the organization. This is an organization that has
12 never had a chain of command. It's a thousand mom and
13 pop shops and we're trying to get away from that.
14 We're trying to build a NOAA, and it's tough because
15 we're fighting 30 years of culture that has existed. I
16 would say it even goes back to ESSA. I mean, we've got
17 guys who still call it the Bureau of Commercial
18 Fisheries. I've got guys in the weather service who
19 say it's the Weather Bureau.

20 And you know and I know that some of these --
21 some of these people, they're very good people, let me
22 tell you they're quality individuals. We've got a

1 great workforce. They're probably going to pass away
2 working at NOAA. They love their jobs that much.
3 That's a good thing if they love their jobs that much
4 that they're willing to work into their seniors years.

5 But we are trying to integrate the
6 organization. It comes back to what I alluded to
7 earlier -- to integrate it so we can manage the
8 integrative environment that we are responsible for by
9 law.

10 I should also tell you one other thing, I
11 don't know if it's come up in your discussion, but out
12 of the Ocean Action Plan we put forward a NOAA Organic
13 Act. NOAA does not have a goal that exists out there
14 that says a NOAA should exist. I would think that the
15 people around this table would actually agree with,
16 yeah, NOAA has got a pretty good responsibility, it's
17 the public good, it should exist. We don't have that.

18 NASA has one from, obviously from Sputnik, and NSF has
19 one from that, say, era, both from 1958.

20 The Administration sent a bill up last year,
21 H.R. 4607 which Dr. Eihlers and Mr. Gilchrist
22 introduced in the House, but that is one thing that we

1 will be pushing for I can tell you in the 109th session
2 of Congress, which is the New Organic Act. We are
3 technically established by Executive Order Number 4
4 from 1970 on Earth Day. Executive Order Number 3 was
5 EPA.

6 So I envy Interior because actually the only
7 part of the Interior that doesn't have an Organic Act I
8 believe is MMF. But everything else -- it's stated in
9 law this is what Interior's mission is. We don't have
10 that so --

11 And the gentleman at the end, Bob mentioned to
12 you -- did you want to ask?

13 MR. MORAN: No, I was going to ask you a
14 question about the Organic Act.

15 MR. RAYDER: Oh.

16 MR. MORAN: Thank you --

17 MR. RAYDER: ESP.

18 MR. MORAN: -- we love the Department of Fish
19 and Fund.

20 MR. RAYDER: Department of Fish and Fund.

21 Well, anything else? Let me stop there. I
22 appreciate your time. Let me know if there's anything

1 else and we can follow up.

2 And I will see to it that they actually get
3 some budget books over here, the 2006 blue books,
4 because I think if folks here had a copy of that you'd
5 have an idea, more in-depth idea of where we're going
6 with the '06 budget, and I'd urge you to look at the
7 '05 profiles and I thank you for inviting me. I look
8 forward to your recommendations coming out. I know you
9 guys got a lot of work over the next few days.

10 And be sure to give Jim Connaughton a lot of
11 questions. I know Jim loves to talk about this stuff.

12 He's been an incredible advocate for NOAA and I'm just
13 grateful he's really supported us at the White House.
14 I don't have enough good things to say about Jim's role
15 in supporting NOAA and the response to the Ocean
16 Commission. So thank you very much.

17 (Applause.)

18 DR. BROMLEY: Thank you, Scott. That was very
19 nice. We're happy you had a chance to take questions.

20 Joe, now we're at the point where we're going
21 to hear an update from the MPA Centers. So, Joe and
22 Lauren and Charlie, however you want to do this.

1 MR. URAVITCH: All right, thank you. I'm back
2 again. I will keep this short. I'm really going to
3 focus in on where we're heading with the whole national
4 system development process and specifically the federal
5 workshop that was held a couple of weeks ago.

6 I'd also like to introduce a staff member who
7 has joined us since the last federal advisory
8 committee, Brian Oles, who is our first social
9 scientist on staff, differentiating him from Brian
10 Jordan our marine archeologist who has his own special
11 capacity.

12 So let me move forward. We're finding
13 exciting the presentation here on the discovery of the
14 federal workshop. This was really -- as we're sort of
15 gearing up for the view graphs -- I can talk without
16 them. This was a major take off event for us on this
17 whole national system development process. We met with
18 federal agency representatives here in Washington on
19 January 26th and 27th. We actually preceded that by
20 joining the National Marine Sanctuary program out in
21 San Francisco, their leadership team, two weeks before
22 that.

1 I can tell you we in the Sanctuary Program are
2 now working very closely to figure out how we can be
3 mutually supportive in efforts around the country. So
4 they've really been the first to step forward as an
5 individual program to identify the kinds of work we
6 could do together to support the missions of both
7 programs. So I just wanted to thank the Sanctuary
8 Program for that.

9 Oh, good, we're sort of showing up. We're on
10 the screen, the computer screen, so we're halfway
11 there. Why don't I just sort of drone on while we're
12 waiting for the computer to move ahead.

13 We basically had three goals for our meeting
14 with the federal agencies on the 26th and 27th of
15 January. The first was to provide them with a greater
16 understanding and build support from them for the
17 development of the national system of Marine Protected
18 Areas. We also wanted to provide an opportunity to get
19 feedback from the federal agencies, especially the site
20 managers, on the goals, the opportunities and the
21 barriers for the creation of a national system.

22 And finally and most practically we wanted to

1 gain their support for coordinated federal outreach,
2 both here in Washington but more importantly out in the
3 field to their offices, to their sites, to the states
4 and other stakeholders. And I'm pleased to say that I
5 believe we at least partially met if not furthered all
6 those goals.

7 In terms of participants, we had about 75
8 participants from 10 federal agencies including some
9 leadership folks from the Departments of Commerce and
10 the Interior. Over half the people at this meeting
11 were from the field. They were site managers from
12 marine sanctuaries, national parks, fish and wildlife
13 refuges.

14 We also had a representative from the National
15 Estuarine Research and Reserve System, since that is
16 one of our MPA programs in NOAA, and your own Bonnie
17 McCay was there representing the MPA Federal Advisory
18 Committee and providing information about your work.

19 We also had representatives from two of the
20 regional fishery management councils there because
21 those are federal agencies, federal activities, and it
22 was a federal meeting.

1 Let's see if we can move on. The details of
2 the MPA Executive Order were new to many of the
3 participants in this process, and so we started by just
4 providing basic information. I think we met obviously
5 with the initial skepticism and concern over, you know,
6 (a) what is this, (b) what is going to do to us, and
7 (c) we know it's going to mean more work why should we.
8 But I think we ended with some pretty strong support
9 from the agencies.

10 What we heard from the people there I think is
11 going to be very helpful in shaping the vision for our
12 future actions, just as the work of this committee is
13 going to be. There was an agreement among the parties
14 on the importance of a shared vision for a national
15 system of MPAs. What is it going to be, what is it
16 going to do, how is it going to help the programs, how
17 is it not going to interfere with the programs, to use
18 the language of the Executive Order, as they move
19 around -- in carrying out their own mission

20 There was a strong interest on the part of the
21 federal agencies in having a further dialogue with you
22 all on the barriers and the opportunities for site

1 managers regarding a national system. They're very
2 interested in being involved with what's going on and
3 looking forward to hearing what you all have to say in
4 terms of what you think the national system ought to be
5 and what it ought to do.

6 They also focused a lot on the whole concept
7 of broader ecosystem based management and integration
8 across programs. One specific recommendation we had
9 was we had what we thought was the perfect
10 classification, which Charlie has been working on for a
11 number of years and you all have seen. One of the
12 first things they did is recommend that we revise it.

13 Speaking as site managers they got down to
14 practical and said the three themes you have are great
15 -- national -- natural heritage, cultural heritage,
16 sustainable production. A lot of our sites do more
17 than one. All of us have not only a national resource
18 mission but we have a cultural heritage mission as
19 well. So you can't just pigeonhole us in one theme.

20 But we will continue with the three themes.
21 Charlie has taken another whack at the classification
22 system. You're working through what now six rather

1 than three, Charlie, sort of variations on the themes
2 so that some sites might be natural and cultural or
3 natural and sustainable, et cetera. You can figure out
4 the permutations of the three.

5 But basically we're trying to keep this simple
6 enough to still do the kinds of analyses we need to do
7 of the national inventory of Marina Managed Areas, but
8 also practically recognize that sites are often
9 established for more than one purpose and that also
10 needs to be acknowledged. So we did a quick turnaround
11 there as the meeting progressed to start thinking about
12 how we might improve that classification system.

13 Where we're heading next -- sorry, I skipped
14 one. I must have this thing backwards. There was the
15 obvious tension that you'd see from a site manager in
16 particular in terms of the needs of supporting existing
17 sites and the always constant shortfall of funding
18 available to manage a site versus what would happen if
19 you set up a system requiring new sites. If there's
20 new sites the site managers were concerned it was going
21 to drain off resources from them to do the important
22 work they already have to do.

1 There was also a very strong interest from the
2 sites in having resources available to improve their
3 effectiveness and their capabilities. That we hear and
4 that's obviously one of our missions under our goal for
5 improving stewardship and efficiency.

6 And there was a strong interest in the need to
7 emphasize the value of these sites at programs and the
8 need to develop networks, which is obviously one of the
9 things that is our goal under the national system, and
10 to do this on a regional basis, to get down to the
11 place where people actually are doing work and where
12 those kinds of things make sense.

13 And finally the question is where do we go
14 from here. What we're going to be doing is completing
15 our notes from that meeting and like with all meetings
16 we hold post these on MPA.gov. We're also going to set
17 up a new section on the website which will come from
18 the national system development process. So you'll
19 start to see all of these things together in one place.

20 We are going to continue working through our
21 federal interagency MPA working group, both as a
22 committee as a whole and probably as some

1 subcommittees, to address specific issues. We were
2 asked by the federal agencies to keep them involved,
3 particularly down at the site level as we go across the
4 regions in the country, to keep them involved in
5 coordinating state and public outreach so that they are
6 part of the process of making this happen and so that
7 they're not caught by surprise.

8 One of the issues from us in the MPA Center is
9 how we reach down into various programs because
10 everybody is organized differently. Everybody has a
11 region but everybody's regions are not the same. The
12 corporate cultures are all different. So a real
13 challenge for us is just to figure out how to
14 communicate down through headquarters and out into the
15 field into all these programs.

16 So this is just the federal agencies. Tony
17 will get to the states in a minute.

18 They were interested in the opportunity to
19 continue to exchange information and work across the
20 sites as well as with the advisory committee.

21 And finally they basically will be looking
22 forward to how we can take the specific feedback on the

1 goals and processes that we got from them and integrate
2 that as we move forward with this whole national system
3 development process through the framework.

4 And that really concludes it. I was very
5 pleased with that meeting. We had a bigger turnout
6 than I expected. Just about everybody stayed for the
7 full two days. That's always a good sign for a
8 meeting, if people don't start baling out the afternoon
9 of the second day.

10 So with that I will let us move on unless
11 there are any questions specifically either on this or
12 anything else about the MPA Center.

13 DR. BROMLEY: Right. Are there questions for
14 Joe?

15 MR. PETERSON: Joe, just one quickly. Could
16 you tell me again who was in attendance in a general
17 sense?

18 MR. UTRAVITCH: We had 75 people. We had
19 about, oh, a dozen or so from the U.S. Fish and
20 Wildlife Service, about 8 from the National Park
21 Service, about the same number from the National Marine
22 Sanctuary Program. We had two of the regional fishery

1 management councils. We had the Northern Pacific and
2 -- memory escapes me. Who was the other?

3 VOICE: South Atlantic.

4 MR. UTRAVITCH: South Atlantic, right, South
5 Atlantic. We also had representatives from Coast
6 Guard, EPA, Army Corps of Engineers, various components
7 of Interior besides Parks and Fish and Wildlife. MMS
8 was there strongly. MMS has been heavily involved in
9 this initiative since day one and still is to this day.
10 Just a fairly -- I can send a list to you and we'll
11 have that posted soon.

12 What I think was really important was that
13 over half the people there were actual MPA managers,
14 folks out there doing the work, places where they will
15 be out in the field stirring up issues. And so we got
16 to hear their perspective on how we ought to proceed,
17 how we ought to work to engage people down at the
18 regional level, and strong support from them that they
19 want to be involved in that process.

20 DR. FUJITA: Joe, you mentioned that the Army
21 Corps and the Marine -- the Mineral Service was there.

22 Did those folks have any thoughts or did you get into

1 issues, the do no harm provisions of the Executive
2 Order saying that, you know, federal agencies
3 shouldn't, you know, approve activities that harm MPAs?

4 MR. URAVITCH: We didn't. I mean, the issue
5 came up in that it's something that needs to be
6 addressed, but this was really the first meeting for a
7 lot of these people. But it is an issue that's going
8 to come up with the federal interagency working group
9 this year. That was part of how we left that, that
10 when the interagency working group meets again, which
11 is going to be what, soon? Next week. One of the
12 issues we will be taking up is avoid harm and pulling
13 together a subcommittee of that working group to start
14 focusing in on just what that provision means.

15 And the Army Corps of Engineers is a new
16 member to this and when you see the new charter for the
17 next advisory committee it includes the Corps of
18 Engineers who asked to be brought into this, Not only
19 because of that but because they had something they
20 thought they could add to this process based on the
21 scientific information they're collecting for their
22 shorelines.

1 DR. BROMLEY: Could you use the microphone
2 please.

3 DR. CRUICKSHANK: Can you turn it up? Is it
4 on?

5 In the minutes of the last report last week it
6 was mentioned that MMS had to step back from the idea
7 of the MPA issue and here you're saying that many of
8 them -- how are they going to be involved?

9 MR. UTRAVITCH: Well, they have a strong
10 science program and there is an interest in including
11 some of the sites that they have in their program which
12 are inventory Marine Managed Areas. So those are
13 certainly components of it. But there's definitely a
14 strong interest in working cooperatively on the
15 scientific side, both natural and social science.

16 So we see them being heavily involved in terms
17 of how we move forward on system development, both from
18 issues such as resource characterization to the whole
19 question of human uses and impacts on the resources.
20 We think they'll be partners as we move along on this.

21 DR. CRUICKSHANK: Thank you.

22 DR. BROMLEY: Bob?

1 MR. BENDICK: If I can figure out how to turn
2 this on.

3 DR. BROMLEY: It's on.

4 MR. BENDICK: Okay. Was there any discussion
5 among this group of federal agencies about something
6 that we talked a lot about, the relationship with the
7 states and tribes and local governments and the need to
8 reach out and coordinate within regions for those
9 levels of government?

10 MR. UTRAVITCH: Yes. I mean, that was
11 definitely a subject of conversation as we moved
12 through. Obviously it was a structured kind of
13 workshop, but what they told us basically is they
14 wanted to be involved because the site managers felt
15 they are part of the community and that there's no way
16 they can proceed without being involved with the states
17 and the tribes and the local governments. I think
18 there was a general consensus that that was the case.

19 I won't steal Tony's thunder, but we heard
20 basically the same thing from the Pacific states and
21 territories the next week.

22 So there seems to be a strong interest across

1 all levels of government in being involved in this
2 together.

3 DR. BROMLEY: Okay. Other comments, questions
4 for Joe?

5 Brian. This will be the last one.

6 DR. MELZIAN: I just have -- well, go ahead.

7 DR. BROMLEY: I didn't see that.

8 MR. MOON: I'm kind of stuck in the corner
9 here. Actually, Joe, I noticed that the -- you made
10 mention that there was a National Park Service and the
11 Fish and Wildlife Service from Interior were present
12 for the discussions, but I assume then there was no BIA
13 representative or tribal representatives at this?

14 MR. UTRAVITCH: No, there wasn't.

15 MR. MOON: Because I notice it had little or
16 no mention about the tribal approaches to MPAs.

17 DR. BROMLEY: Brian, do you have a short one?

18 DR. MELZIAN: Just that I attended this
19 meeting as two roles, one as an executional member of
20 this committee but also representing my agency. And
21 I'm usually quite skeptical going to these kinds of
22 meetings because the feds are famous for talking a good

1 game but not doing anything. I try to do the opposite
2 of that, and believe me the people that showed up were
3 exactly the people that you want to show up to
4 implement a system in the future. There are folks
5 there that I've worked with the last couple of decades
6 that manage the Continental Shelf Program in Southern
7 California and that's -- Gary Brewer is his name -- and
8 some other folks from EPA Region 9 that have been
9 around for a couple of decades. They know the contacts
10 and they know -- they will take this plan that we have
11 and I think pro-actively help to implement it in the
12 future.

13 So I was very impressed with the quality that
14 was shown at the meeting put on by the Center, but also
15 the enthusiasm and the participation by all these
16 folks. It was pretty intense, and you'll see when the
17 notes are posted there's a lot of good information
18 that's out there for your consideration. Thanks.

19 DR. BROMLEY: Okay. Wonderful, Joe. Thank
20 you very much. That's nice. We're right on schedule.

21 The next part of the program concerns coastal
22 state issues and, Joe, you're going to --

1 MR. UTRAVITCH: I think this is my last --

2 DR. BROMLEY: I'm happy.

3 MR. UTRAVITCH: Yes, it's again my pleasure to
4 introduce this time up a long term colleague, Mr. Tony
5 MacDonald. He's a former special advisor to the Mayor
6 of New York City and legislative counsel to the
7 American Association of Port Authorities, and for a
8 number of years now he's been the executive director of
9 the Coastal States Organization which consists of
10 representatives of the governors of 35 coastal states
11 and territories focusing on coastal and marine issues.

12 He's very knowledgeable on the field and he's
13 a co-organizer of a series of state and territorial
14 workshops comparable to the federal workshop that we
15 were involved with.

16 Tony is going to talk to us today about his
17 view on how that went.

18 MR. MacDONALD: Thank you very much, Joe. Joe
19 had mentioned stealing my thunder. I'm afraid I can't
20 really promise that much excitement but I would -- I
21 appreciate very much the opportunity to give you some
22 of my thoughts and the thoughts of the outcomes of some

1 of the discussions we've been having with the states
2 about the national system of MPAs.

3 I feel a little bit like that presentation
4 from Scott Rayder in this sense, and which is that I
5 hear that NOAA budget briefing it seems to me just
6 about every year and it really doesn't change that
7 much. And sometimes I feel like, for those of you who
8 work with the states and for those of you like myself
9 who represent the states, the messages that come up
10 from the states in terms of coordinating with the
11 federal government don't tend to change that much.

12 So to some extent I don't think there's going
13 to be very much surprising in here for you all. What
14 is surprising is the extent to which we have to
15 actually have these workshops every year to remind us
16 that we need to partner in certain ways on some of
17 these federal initiatives. And so with that I'll get
18 into it a little bit.

19 Again Joe mentioned that the Coastal States
20 Organization two weeks ago hosted a, with the MPA
21 Center, a state MPA workshop. At the outset I want to
22 thank the MPA Center for their support and mention and

1 thank Rod Fujita from the FACA for participating in
2 some of the discussions.

3 I would also like to extend the regrets of
4 Brian Baird who is the Assistant Secretary for Coastal
5 and Ocean Policy in California, the Vice Chair of CSO,
6 and the Chair of the MPA State Advisory Group who hoped
7 to be here today to present these remarks.

8 In the most general terms I think the
9 prospectus of the workshop is illustrated by the
10 group's recommendation that when we write up the report
11 for the proceedings we put the term "national system"
12 in quotes. This recommendation reflects some confusion
13 regarding what the term means, what the objectives of
14 the systems are, and some healthy skepticism about
15 buying into a national system of individual sites that
16 would be selected from among a very diverse group of
17 MMAs around the country.

18 I am sure that this is not the first time that
19 you have heard from states or other stakeholders that
20 there is concern that federal efforts to develop a
21 national system may be too top-down and reflect state
22 and local -- and not fully reflect state and local

1 realities or needs.

2 Before I get into the specifics of the
3 workshop let me step back for a little introduction and
4 background. As Joe mentioned I'm the executive
5 director of Coastal States Organization which
6 represents the interest of the governors of the nations
7 35 coastal states and territories in Washington, D.C.
8 We are partnering with the National MPA Center on
9 supporting a State MPA Advisory Group and a series of
10 state workshops that I'm going to talk about a little
11 bit more specifically today.

12 I did want to acknowledge John Halsey who is a
13 participant in that state advisory group.

14 The State Advisory Group was established to
15 provide guidance and support to the National MPA Center
16 and the NOS Special Projects Office in conducting the
17 inventory of Marine Protected Areas, identification and
18 analysis of state programs and policies to manage
19 Marine Protected Areas, state concerns, and identify
20 state concerns, issues and policies and recommend best
21 practices amongst the states as they relate to the
22 development of a national system.

1 Their efforts to date, the State Advisory
2 Group that is, has focused on working to collect the
3 information and data in preparing two reports
4 documenting state MMA programs and activities. These
5 reports are available on both the CSO and the MPA
6 Center websites.

7 This year the State Advisory Group efforts
8 will focus on coordinating three state MPA workshops.
9 The first I'm going to discuss today was in San
10 Francisco two weeks ago. The one next month will be
11 held in St. Petersburg, Florida with the Gulf and South
12 Atlantic states, and one tentatively scheduled for
13 early June will be held for the Mid-Atlantic, North
14 Atlantic and Great Lake states.

15 The State Advisory Group will also coordinate
16 a preliminary session at Coastal Zone '05 in New
17 Orleans in July to present some of the preliminary
18 recommendations and conclusions coming out of the state
19 workshops.

20 So some of the recommendations coming out of
21 the first state advisory group, state polices and
22 programs relating to Marine Managed Areas, issues and

1 recommendations, are relevant to my remarks and the
2 discussions today.

3 Integrated national, regional and state Marine
4 Managed Area systems and networks have the potential to
5 improve the management of oceans and coastal resources.

6 However, state officials are taking a hard look at
7 whether the potential benefits warrant their
8 participation in the new -- to what extent it warrants
9 their participation in the new MPA related initiatives,
10 especially given current institutional and political
11 challenges and constraints.

12 State decisions will likely hinge on the
13 establishment of a clear identification of benefits of
14 the so-called system to states and public stakeholders
15 and federal support for state participation and
16 technical assistance in developing that system.

17 After reviewing current state programs the
18 report provided the following six general, preliminary
19 recommendations, many of which have been anticipated by
20 the Federal Advisory Committee and which were also I
21 think identified again and reinforced at the state
22 workshop.

1 First, at the state level we need to consider
2 adopting and reviewing legislative authorities for
3 providing clear and consistent directions for state
4 Marine Managed Area programs. Currently the review
5 indicates that state programs, both within states and
6 across the states, vary considerably and their current
7 complexity needs to be addressed if we're going to move
8 to any national level of -- national MPA system. You
9 need to recognize that that's a fundamental building
10 block of any national system.

11 Secondly, states need to utilize, build
12 existing -- building on existing coastal fisheries and
13 resource management policies and programs to integrate
14 with state fisheries management, historic preservation
15 agencies and enhance State MMA and Marine Protected
16 Areas. I'm sure it's not a secret, although we don't
17 necessarily say it too often, that sometimes even at
18 the state level we need to coordinate a lot better
19 across fisheries, natural resource and cultural
20 resource agencies. And I think again that's another
21 challenge that you need to anticipate as you think
22 about the national system.

1 With regard to the federal level, we need to
2 develop a consistent national terminology and
3 classification system, and I think we're moving in that
4 direction. I would clarify that that doesn't
5 necessarily mean that everybody needs to use the exact
6 same words. I mean, people need to put their own mark
7 on things, but we do need some consistency for
8 comparison so that we know when we use certain words
9 and what the characteristics are of those systems and
10 of those classifications.

11 We need to provide federal financial,
12 technical, administrative and scientific support.
13 Again I think this is very important in the long run.
14 What is the real level of commitment to this.

15 On the macro level we certainly heard
16 discussions about NOAA's budget, but at some level you
17 need to look at the reality and say are you really
18 committed to this and if you're not then let's figure
19 out how we're going to do things incrementally rather
20 than set up broad visions and hopes that we will not
21 actually support with the resources that we need.

22 We need to establish a clearer process and

1 legislative authority for federal MPA designations.

2 There continues to be a serious question regarding what
3 the federal authorities are to designate MMAs and MPAs.

4 The current system of sanctuaries, parks, refuges,
5 fisheries management zones, if anything probably
6 confuses people with regard to what MMAs and what MPAs
7 are.

8 So we need to look at ourselves a little bit
9 and see what are our authorities and not go down the
10 path of creating a system when we don't really have the
11 authority or the framework to actually support that
12 system.

13 Again we do need -- and this I think is
14 reflected in some of your discussions and
15 considerations -- I think people will relate much more
16 to a regional framework for the national system and
17 building things incrementally. These MPAs after all
18 need to make sense with regard to the impacts on the
19 local and regional resources. I think that's a
20 discussion that needs to be I think -- is being had but
21 needs to probably be pushed up on the national and
22 local agenda considerably.

1 So to the workshop. The workshop was held on
2 February 2nd and 3rd in Tiburon. It involved
3 approximately 24 state representatives from American
4 Samoa. I would like to acknowledge Lelei Peau and it's
5 great to see him again. He's been a long board member
6 of CSO and was for many years the chair of our Island
7 Affairs Committee.

8 Hawaii, Alaska, Washington, Oregon California,
9 representatives from Guam and the Northern Mariana
10 Islands were invited but were unable to attend. The
11 state group included fisheries, cultural resource and
12 costal and natural resource managers. There were also
13 approximately six federal agency representatives,
14 including the MPA Center and regional partners,
15 including the sanctuaries, parks and national refuge
16 systems. And that was a very useful I think
17 perspective to include in the discussions.

18 The meeting goals were to obtain feedback from
19 state and territorial decision makers on participation
20 in the national system, to provide a forum for a
21 diverse group of state managers to network and discuss
22 opportunities and challenges presented by the state and

1 federal MPA coordination, and third to foster greater
2 understanding of the development of the national
3 system.

4 While I think the meeting was successful in
5 addressing these overall goals there was a sense that
6 there is still a long way to go among the various -- to
7 build bridges among the various state and federal
8 programs. There needs to be a greater focus on how to
9 build public consensus around MMA and MPA efforts from
10 the bottom up and how to -- that's one of those things
11 the states always say so I'll just say that and I'll
12 probably say it three more times -- to address the
13 public and stakeholder conflict that often dominate MMA
14 and MPA activities at the state and local level.

15 And I think there was a concern that that's
16 not sort of up front and center with regard to some of
17 the discussions that are being had on this, and I think
18 that's something we need to engage a little bit more
19 directly and not pretend it's something that will go
20 away if we convince people and talk -- use the right
21 words and market it the right way. These are real
22 problems and we need to figure out how we address them

1 in concrete ways.

2 After the presentation of the National MPA
3 Center and regarding the process for developing the
4 national system and framework for the national system,
5 there was a rapid, facilitated exercise on hopes and
6 fears for a national and regional system from the state
7 perspective. And I think this really quickly raised
8 many of the issues that frankly we will be -- you will
9 be struggling with for a long time. But it's amazing
10 how if you go with your instincts you'd probably hit
11 most of the things you have studied for 18 or 24 months
12 over a period of time.

13 So a brief listing of some of those hopes and
14 fears were identified randomly at the beginning of the
15 workshop.

16 Fears: national system lacks definition;
17 approach is top down not bottom up; push for a national
18 system scares the public; view from the national level
19 dilutes the focus and success of place based efforts
20 and programs at the state and local level; focus on
21 site selection for a national system creates a club of
22 special sites and distracts from the important elements

1 of the system connectivity; federal resources and
2 support will not be realized; federal efforts under the
3 Executive Order may conflict with state priorities and
4 processes and needed to be addressed; site
5 identification may encourage visitors but without a
6 plan to manage the impacts.

7 So when you think of those secondary impacts
8 on some of the efforts that we're doing, recognize what
9 the real intent of some of these designations are.

10 There are some pros. Hopefully they're not
11 dreams: simplified, pragmatic approach; federal
12 leadership and resources will be provided; focus on
13 relevant regional networks that are going to have an
14 impact; consistent terminology, information, data and
15 facilitated information flow that can be received.
16 It's not significant enough to always develop that data
17 and have a lot of it. You need to make sure that folks
18 are in a position to receive it and use it in some
19 meaningful way.

20 Increased focus and better identification on
21 cultural and historic resources. Integrate and
22 strengthen MPA and fisheries management structures

1 continues to be a challenge at the state and federal
2 level. Capture and build on opportunities to cooperate
3 and partner; be more opportunistic about how we
4 proceed; use existing sites and properties to build the
5 national system, not an exclusive approach; common
6 ethic is encouraged and aspired in the public.

7 There was considerable push back to the
8 National MPA Center regarding their opening
9 presentation which focused on the policy and planning
10 approach. In defense of them I think it really was
11 primarily a sort of a how they presented it not what
12 they were presenting approach, but I think it's
13 illustrative of some of the concerns and some of the
14 things that -- the facts that they may consider as they
15 move forward.

16 The presentation appeared, at least to state
17 participants, to be wired to lead inexorably to the
18 holy grail of selecting sites for a national system.
19 But why? It wasn't clear to participants. And again
20 you have to recognize that in bringing these state
21 participants around the table a few of them know the
22 terminology, just like a few of the folks here and the

1 public and even fewer know about it, but many of them
2 did not, even though their job might have been related
3 to the MPA system.

4 So there was a concern about why and a
5 suggestion back to the MPA Center that that needed to
6 be much clearer.

7 The state participants urge the MPA Center to
8 focus more attention and effort on educating
9 stakeholders about the potential benefits of a national
10 system, or better yet a system of systems that builds
11 upon rather than supersedes current activities.

12 It was important for the MPA Center to focus
13 more on clarifying the roles of the states and other
14 stakeholders to participate as partners in developing
15 and implementing a framework, and developing a
16 framework which presents opportunities for ownership by
17 those state and other stakeholders in the process.
18 Currently, although there may be opportunities, they
19 weren't transparent and it wasn't clear that that was a
20 primary intent of the development of the National MDA
21 Center and the state participants thought that it
22 should be.

1 Even among some of the state participants
2 there was a significant learning curve in the new
3 language as I indicated about the MPA system. Again
4 you all are having these discussions. Please be
5 conscious very few people could come into this room and
6 understand what the heck you're talking about. So
7 please recognize that and be conscious of that as you
8 move forward through this recommendation.

9 It won't be a shock to you all that nobody
10 knows what a FACA is, nor do they even care, nor do
11 they want to know.

12 The need for broader engagement was
13 particularly evident in the comments from the historic
14 and cultural resource participants who felt that
15 cultural resources were often tacked on as an after
16 thought and that there were too few opportunities for
17 their community at the state or federal level to engage
18 in the discussion of MPA issues. So we need to
19 recognize that we don't really even have those four out
20 there in which we can engage these issues and that's
21 something that they urge the MPA Center and other
22 agencies to think about.

1 There was a small if constructive rebellion at
2 the end of the first day when a group decided to switch
3 the focus of the second day breakout groups from a
4 discussion of how to identify sites for inclusion in
5 the national system to the question of developing a
6 shared vision for what is an end point of the national
7 system, what are we trying to do here, what are we
8 trying to build here. State representatives were
9 driven by the pragmatic question of what an effective
10 national regional system will accomplish that also
11 benefits states and federal MPA programs, and what will
12 be accomplished that cannot be accomplished under
13 current programs and activities.

14 In the most practical terms one of the
15 questions -- one of the participants indicated I need
16 to go back to my boss and my governor and convince them
17 that it's worth my time to be spending on these things.

18 Why is it worth my time? Why is it worth his time to
19 suggest that we should do something differently in the
20 state or work with the federal government? Very
21 practical questions, very real questions, but I think
22 ones that are important to keep in mind as you move

1 forward on your deliberations.

2 So some of the workshop conclusions, again
3 these are very randomly presented and give you a feel
4 of the meeting. As Joe indicated we are currently
5 preparing the results of this meeting and will share
6 with them Center and the FACA when they're prepared.

7 But you also should recognize that this is
8 really the beginning of a process. We're going to --
9 these are -- we view them as continuing discussions
10 with the states, that we're going to continue to
11 advance these and refine them in subsequent state
12 workshops by essentially feedback with the State
13 Advisory Committee and reaching out to other state
14 interest groups over the coming year.

15 So that's our intent, to continue to build on
16 these ideas. My suspicion is we will reinforce some of
17 the same themes. What our challenge will be is to say,
18 therefore, what do we want to do about them and what
19 are the states asking for from the federal agencies.

20 So one of the important things as I indicated
21 coming out of the workshop was the desire of the
22 coastal states to define what the end products of the

1 system will be. As I indicated earlier, the
2 terminology of the system has been confusing to say the
3 least.

4 Suggested focus -- or suggestions focused
5 around what are the value added products out of this
6 system. Products would include the potential for a
7 national inventory that is accessible to users with a
8 standardized classification system for comparison
9 purposes to understand the national and regional
10 picture.

11 A clear identification of federal jurisdiction
12 and the role of states and a clearly defined authority
13 to establish MPAs in federal waters and in conjunction
14 with states and state waters. Right now, as I
15 indicated earlier, it's extremely fragmented and
16 unclear.

17 Leadership at the federal level will be
18 necessary. More emphasis needs to be provided on the
19 development of products that help states and services
20 with regard to technical services, monitoring,
21 research, enforcement -- a big issue that came up
22 consistently through this workshop.

1 The integration of the needs for various
2 objectives -- living marine resources management,
3 cultural resources, recreational and maybe even water
4 quality. I think that was sort of raised earlier in
5 the discussion about the classification system and you
6 recognize there are multiple purposes, although there
7 may be a primary purpose but there might a secondary
8 benefit which is even greater which we're finding in
9 some cases.

10 There's some states who sort of resisted the
11 inventory because they didn't want to tell anybody,
12 because even though this was a cultural site it was
13 having resource benefits and they really like that and
14 they didn't want people to know. So we do need to
15 recognize that these are real world circumstances that
16 we need to -- that have integrated and in many cases
17 unanticipated benefits and impacts.

18 Other specific ideas that were randomly
19 presented, and again some of this will be somewhat
20 redundant, is the need to more clearly define the terms
21 and definitions of the national system and what a
22 Marine Managed Area and what a protected area is.

1 Outreach to the public and stakeholders. We
2 need to recognize the diversity of those interests.
3 And it's not one public, there's a variety of publics
4 and a variety of stakeholders, and an outreach needs to
5 be considerate of what those various stakeholders were.
6 And these efforts needed to be coordinated by or with
7 the states and locals.

8 There was a lot of concern about the national
9 federal system going out and trying to get public input
10 on a national system in a way that was not coordinated
11 at the state and local level. A national system is
12 really more than a network of regional systems, and the
13 way to start and compliment the ongoing efforts -- it
14 needs to look at ways to compliment ongoing efforts in
15 states and to look at the value added as I indicated
16 before.

17 There was again a concern about site
18 designations should be de-emphasized and not create a
19 negative connotation for sites not selected to be in
20 the national system. They may not be in the national
21 system for some criteria reason but they may have
22 substantial and significant local benefits which may be

1 of greater interest to the states and local
2 governments.

3 Much attention -- more attention needed to be
4 focused on information related to conductivity,
5 including geospatial data and information that reflects
6 spatial management and policy information. There's a
7 lot of concern that we're just not giving the tools to
8 actually clearly identify what the issues were. So the
9 initial maps indicate -- there's a lot of protection
10 out there because the sites are big, but that's not
11 necessarily the case and the public is not going to be
12 able to make those distinctions unless we work with
13 them to make it clear.

14 And again geospatial and other information was
15 one of the suggestions we needed to look at.

16 A regional perspective as I indicated and
17 linking across jurisdictions and also international
18 issues as well. We need to begin to discuss things
19 from a broader cultural perspective and we need to be
20 inclusive not only of just sites and artifacts but also
21 living cultural issues. This is particularly important
22 in the islands, territories and other issues.

1 And things that they treasure culturally and
2 traditions, values. Also we need to be inclusive in
3 our definitions of who we are going to discuss
4 management with. It should be both the tribes and
5 indigenous peoples.

6 Sustainable production needs to be looked at
7 more broadly beyond fishing to include other
8 opportunities, such as tourism and other activities.

9 There is a need to more fully incorporate
10 historical and cultural resources into the system
11 development. That was a constant concern of some of
12 the participants in the workshop.

13 So again that's just some idea of some of the
14 suggestions that came out of the workshop. I think it
15 was a very productive workshop from the perspective of
16 the states talking to each other and starting to build
17 those networks. There were some concrete follow up
18 actions that were also identified in terms of trying to
19 engage some of these questions that were raised and I
20 think -- I do want to thank both the federal
21 participants and the MPA Center as well for having it.

22 I think this really will be a productive, long term

1 discussion.

2 But I guess I would conclude with the issue
3 is, you know, it's not adequate to say the doors are
4 open to state input, and they are, and they really are,
5 but on the other hand folks are very busy and they have
6 other priorities, there are other things going on.
7 Unless we actually support those mechanisms for
8 engagement, unless we actually give some -- put a
9 little cheese in the trap a little bit so that we can
10 get some folks actually at the table and they think
11 there's some benefit that they're going to be generated
12 by it, I don't think we're going to be successful
13 engaging the state and local initiatives, the state and
14 local interests on the broader goal if we define what
15 that is, the end point of what the national system is.

16 So again I appreciate that. Sorry that was a
17 lot in a short time, but hopefully that gives you a
18 feel for where we are currently. If you have any
19 questions I'd be happy to answer them.

20 DR. BROMLEY: Thank you, Tony, that was a lot
21 and I was wondering why we didn't have you on the
22 program two years ago. But thank you. There are

1 questions I'm sure, comments.

2 Tony.

3 DR. CHATWIN: Thank you, Mr. MacDonald. My
4 name is Tony Chatwin. I'd be interested in hearing
5 more -- at the beginning of your presentation you
6 mentioned specific recommendations and one of them was
7 to review and adopt state legislative authority. I
8 just wondered if there was a process in place for that
9 review to be done and who's doing it or has there been
10 any discussion of how to actually get that done.

11 MR. MacDONALD: Well, one of the things --
12 there's not a process in place, but one of the roles of
13 my organization, CSO, is to exchange that process among
14 the states. So one of the things we're looking to do,
15 although we do not have funding for it, but we are
16 looking actually to do more -- to take the initial kind
17 of identification of authorities that we have done to
18 sort of try to identify more on what states could do.
19 But again it's going to be up to the states and they
20 will vary state to state.

21 So we are looking perhaps on working to
22 develop some take, our initial take on what state

1 programs are, not to say that there's one system that
2 should be applied, but again to sort of provide some
3 options for the state. So that's -- we're trying to
4 develop a best practices but we haven't done that
5 currently.

6 DR. CHATWIN: Just one more question.

7 MR. MacDONALD: Sure.

8 DR. BROMLEY: Speak up loudly please.

9 DR. CHATWIN: Then in the fears, the
10 discussion about hopes and fears, you mentioned that
11 one of the fears was that a national system scares the
12 public. I just wondered if you could elaborate on
13 that.

14 MR. MacDONALD: Again I think I'm presenting
15 that pretty subjectively and broadly. It was just the
16 reaction but one that needs to be thought of. Again I
17 think the idea that somebody is coming in and designing
18 this national system is something that generally people
19 react somewhat negatively to. I don't think the public
20 in general is looking for that, particularly if they
21 don't understand what it is.

22 So again there's a lot of interest at the

1 local level that I think are raising questions about
2 what the national system will be and what the role of
3 Marine Protected Areas -- again the language of Marine
4 Management Areas, Marine Protected Areas we're all
5 comfortable with it even if we use it I think somewhat
6 inconsistently in rooms like this. But I don't think
7 it's something that there is a consensus about in the
8 public, not that there couldn't be or not that there
9 shouldn't be. But right now I don't -- it's just a
10 general concern that I think some of the participants
11 in the workshop had.

12 DR. CHATWIN: Thank you.

13 DR. BROMLEY: Okay, Tundi.

14 DR. AGARDY: Thanks Tony for your
15 presentation. I think it's always useful to have a
16 reality check sometimes. I am interested in
17 understanding a little bit more the perspective of the
18 coastal states and I wondered if in trying to
19 understand that perspective it would be useful I think
20 for us to hear if you can characterize what the coastal
21 states' reaction was to the Ocean Commission's report
22 and whether they thought that was a valid description

1 of what's going on in countries' waters and the extent
2 to which management really isn't doing the job that it
3 ought to be doing in protecting the countries'
4 resources.

5 MR. MacDONALD: Again if I can speak in the
6 broadest terms. I think actually anybody can find
7 quite -- in quite and considerable and painful detail
8 what the states reactions were because the Ocean
9 Commission did a very good job in actually posting all
10 of the information. I was extremely encouraged by how
11 many governors actually did weigh in with regard to the
12 report during deliberations at a variety of levels.

13 I would say in general that their sense was
14 yes, there is some significant challenges and crises
15 that need to be developed. With regard to the failures
16 of management to address those problems, I think the
17 view is probably mixed with regard to the issues. I do
18 think the reality is that they do feel that frankly
19 they're doing the job that is asked of them from a
20 management perspective and for which they are
21 supported, but currently we do not have a system that's
22 asking us to do more or a better job in a sense. The

1 goal and the standards are such that right now we can
2 each define success I think in very limited terms, and
3 again this is my extrapolation from very specific
4 comments from the governors.

5 And so I think there's a little bit of a
6 question in the way you asked the question and I would
7 want to set the states out again sort of, you know, the
8 failures of management. I think the reality is they're
9 defining their successes against baselines that aren't
10 correct. The Ocean Commission report I think generally
11 raised the bar with regard to the goals, what we need
12 to be addressing.

13 I think, you know, Scott's discussion of the
14 administration and NOAA's response to the Ocean
15 Commission report wasn't entirely satisfying to me
16 anyway because again -- I mean, anybody with half an
17 eye open knew what the Ocean Commission report was
18 going to say. Anybody -- you know, NOAA always does
19 this thing. You know, our budget process was closed
20 six months before. Well, you know, you know what the
21 Hill is going to want. I mean, they've been saying
22 consistently that they need to fund more regional

1 management efforts. Most of the earmarks are specific
2 regional management issues. Many of the earmarks are
3 for regional observation systems. Much of the
4 information is to support management and strengthen
5 some of those management roles at the state level, yet
6 they do not actually break through -- I don't know who
7 the problem is, OMB, NOAA.

8 So one is to say that I think the governors
9 are looking for significant, more resources in the
10 program. Most of them supported the doubling of
11 science and information. They all recognize that.
12 They also saw the economic benefits of investing in
13 some of the informational tools and the techniques as
14 well as protecting some of the resources.

15 So I would say in general they were actually
16 quite supportive of the Ocean Commission
17 recommendation, and I guess we're all not particularly
18 good at admitting our own failures so not too many of
19 them volunteered that it was -- that they had not lived
20 up to the management challenges, but I think there are
21 some certainly ways to go to address those concerns.

22 DR. BROMLEY: Good. Okay, we have four people

1 on the list. We're out of time so any further
2 questions eat into your break. Tony, we're happy to
3 have you stay as long as you can. So I'd ask for short
4 questions and short answers.

5 Bob Bendick.

6 MR. BENDICK: Well, our draft recommendations
7 speak to a lot of these concerns about bottom up,
8 incentive based, region based approach to creating a
9 national system. This presentation is so relevant to
10 our creating some recommendations that have political
11 viability, that if we could get your notes.

12 MR. MacDONALD: Oh, yes. I will share this.
13 I have a presentation.

14 MR. BENDICK: I think this would be important.

15 MR. MacDONALD: I will send the tape right
16 after this. I'll get back to the office and e-mail it
17 to Lauren right after the meeting.

18 MR. BENDICK: We need them tomorrow. I think
19 that's the point, to sort through this stuff.

20 DR. BROMLEY: Thank you. Okay, I have Mike.

21 DR. CRUICKSHANK: You mentioned --

22 DR. BROMLEY: Use the microphone please, Mike.

1 DR. CRUICKSHANK: I'm sorry. You mentioned
2 the diversity of states. How apparent was this in
3 terms of on the issues some states are totally
4 different from others, from the East Coast to Hawaii?

5 MR. MacDONALD: Well, I think the nature of
6 the differences briefly is actually one that -- the
7 differences are obviously -- the issues they are going
8 to identify are going to be different to begin with.
9 The culture and history of the structures in those
10 different regions will vary as well and you need to be
11 sensitive to them.

12 And third, the existing legal frameworks in
13 those states will vary considerably regarding the
14 extent to which they have addressed it at all, in any
15 governmental sense. So I think on these three levels,
16 which is the issues, the ecosystem issues, the second
17 being the issues of the cultural and what are the
18 challenges, and the third being what are the
19 governmental and legal authorities addressing them, all
20 present some reasonable challenges.

21 DR. BROMLEY: Bob Zales.

22 MR. ZALES: I'm kind of like Dan. I think you

1 should have been here a couple of years ago to do this.

2 I think some of us expressed concern about state
3 involvement in this whole process.

4 First a question and then I guess a statement.

5 The agencies like in Florida, it's the Florida Fish
6 and Wildlife, whatever the agency is called, is
7 probably the lead agency that would be involved in
8 this. The different states I suspect have different
9 deals and our FWC is basically regulated or run by
10 seven commissions who decide what to do and what not to
11 do, and in some cases in the past some of them have
12 kind of been of the opinion that they want the state to
13 be boss and not necessarily worried about the federal
14 government.

15 So we've identified the different agencies
16 that I guess would be involved in this kind of deal? I
17 guess my specific question would be in Florida have
18 they been contacted to send somebody to be part of this
19 group?

20 MR. MacDONALD: It kind of gets to the last
21 question. Most states don't have a lead necessarily.
22 Very few states have Marine Managed Area programs that

1 they think of in the terms that you all are discussing
2 here. They may have things that look like what you're
3 discussing here, but very few of them identify Marine
4 Managed Areas as a cross-cutting, programmatic issue.

5 I would say in Florida it may be DNR because
6 there's a whole habitat conservation folks that have
7 the lead because they have their whole special
8 protected area program. I think it's -- it may be DEP,
9 I'm sorry. I'm not good at that. But so -- DEC or
10 whatever. So I'm not sure it is clear that the Florida
11 fishery folks would necessarily have the lead depending
12 on whether you're talking about place based management
13 or resource protection. So that's the challenge.

14 DR. CRUICKSHANK: Yeah, and then -- so it's a
15 compilation of the various commissions. Some of the
16 power has kind of been combined into one group so I'll
17 have to check in with the commission to see who is the
18 -- but one suggestion would be to -- because on some of
19 the other panels that I sit on as an advisor a lot of
20 times states aren't invited to attend the various
21 meetings or the representative doesn't necessarily take
22 it and put the -- to observe and see what's going on.

1 So maybe in the future, not necessarily as part of this
2 panel, but maybe we'd want to find out who at the
3 various states are doing this and maybe invite some
4 particular person from there to attend so we can get
5 ahead and so they can see what's going on, where we're
6 headed, and where we need -- and why we need
7 coordination between the states and the federal system.

8 MR. MacDONALD: We certainly could help you
9 try to identify those folks. We've worked with Joe I
10 think to do that currently and we will continue to try
11 to perform that role.

12 DR. BROMLEY: Okay. Our last question, Terry.
13 Did you have your hand up?

14 MR. O'HALLORAN: Yes, I did. Thank you.
15 Actually Bob Bendick trying to get the notes from your
16 talk I think is very important to us because you've --
17 you've hit a lot of key issues that I think we need to
18 make sure that are included in our recommendations so
19 that we have some chance of being successful, and I
20 would suggest that your organization become part of
21 this organization if it isn't already.

22 DR. BROMLEY: Okay. I'll second that. Thank

1 you very much.

2 MR. MacDONALD: Thank you very much.

3 (Applause.)

4 DR. BROMLEY: Okay. We have our first break.
5 We've lost five minutes of it. I'll ask you to be
6 back at 11:00. We have guests and if you're not in
7 here at 11:00 we'll send Lauren around with whatever
8 this is today. We'll make sure you're back in here by
9 11:00. Thank you.

10 (A brief recess was taken.)

11 DR. BROMLEY: In our continuing effort to make
12 sure we've heard from the various fisheries management
13 councils we have a session now. We'll have until 12:00
14 to hear from two of them. Bonnie will introduce the
15 speakers.

16 Let me just say that at lunch the food I think
17 is on this side. It's just next door. You are to get
18 your lunch and come back in here.

19 So I'm going to turn the program over to
20 Bonnie. She's going to introduce our two speakers for
21 this next one hour session.

22 DR. McCAY: Well, we're very pleased again to

1 have representatives of the regional fishery management
2 councils to talk to us a bit about what their councils
3 are like and what -- how the work of our committee may
4 intersect with some of the old and new directions
5 they've been taking.

6 So first -- our first speaker is George Geiger
7 who is Vice Chair of the South Atlantic Fishery
8 Management Council. And George is -- he's a New Jersey
9 native who was in the Army for many years, retired from
10 the Army not to New Jersey for some reason but to
11 Florida instead, and in Florida has become very, very
12 active in environmental matters concerning the marine
13 system. He's been active in the CCA and in other
14 organizations, and he's an insured fishing guide. He
15 was appointed to the South Atlantic Fishery Management
16 Council, and I believe you're in the last year of the
17 three year term on that council right now.

18 So thank you very much, George.

19 MR. GEIGER: Good morning and thank you,
20 Bonnie. I'm very please to be here this morning and
21 speak before this distinguished panel. I was very
22 charged to hear Tony MacDonald's presentation. Tony is

1 not in the room. I was even more enthused to hear
2 comments from this panel in regard to getting Tony's
3 comments because I can tell you his comments were right
4 in line with the lessons learned, very hard lessons
5 learned that the South Atlantic Fishery Management
6 Council has experienced during the past 20 years.

7 Let me talk a little bit about, briefly about
8 the South Atlantic Fishery Management Council. The
9 council basically geographically controls the exclusive
10 economic zone from 3 miles out to 200 miles, between
11 Cape Hatteras, North Carolina and Key West, Florida.
12 Of course you know the history of the council process
13 and how they were created and who makes up the South
14 Atlantic Fishery Management Council. The council
15 itself is -- and we're very proud of the fact that
16 we're pro-active and probably the most precautionary
17 management council of the eight in the system.

18 The council members are in fact appointees
19 from the state. Our council is rather unique in that
20 of the 13 voting members we have 8 who are appointees.

21 Four of the appointed members are obligatory seats,
22 meaning they come -- have to be represented and

1 represent the four states that compromise the South
2 Atlantic Fishery Management Council. The four at large
3 seats are seats that can be vied by any individual
4 state in an effort to gain a foothold of the voting
5 majority on the council. Our council does not
6 participate in the obligatory seat proctor in the at
7 large seat process.

8 There's a gentleman's agreement amongst the
9 council and the council representatives stating that we
10 will divide the at large seats equally amongst the four
11 states. So each state will have two appointed
12 representatives, giving no one state any voting
13 advantage.

14 Our council is very pro-active in regard to
15 the advisory -- in regard to the advisory panel
16 process. We basically have an advisory panel for each
17 committee and a committee for each fishery management
18 plan that the council has developed, and they're not
19 just advisory panels in name. The advisory panels
20 convene at least three times in conjunction with the
21 committee, the council committee that's working an
22 individual fishery management plan before that plan

1 goes to final process. We highly value the council,
2 the advisory panels, and the input and their advice
3 during the advisory panel process and the joint
4 committee meetings.

5 I was asked to talk about, a little bit about
6 the history of our process in regard to fishery managed
7 or Marine Protected Areas and the fishery management
8 process associated with them. Marine Protected Areas
9 were basically an idea that was brought to the council
10 by the scientific community. The council had begun
11 working on snapper/grouper plan amendments back in the
12 late '70s and early '80s. It was a very, very
13 difficult process in the beginning and regulations were
14 very minimal at best. I think it was obvious to some
15 of the fish scientists that for this to be an effective
16 process there was going to be something required more
17 than just these very minimum fishery regulations for a
18 very complex species group.

19 Our reef fish specifies group,
20 snapper/grouper, consists of 72 different species.
21 It's an extremely important commercial and economic --
22 recreational and economic fishery and over the years

1 has become extremely heavily regulated. It's important
2 to note that it is considered to be basically
3 artesional fishery in that we have veritable bottom
4 here, bottom long-lines and no nets or any type of net
5 drawing for reef fish.

6 This was a current definition of the South
7 Atlantic Fishery Management Council's MPA and what we
8 believe it's -- the definition under which we operate.

9 This was a very long and torturous 20 years process in
10 getting to the point -- getting a definition that we
11 could work with. And of course one of the most
12 important thing in my opinion is additions to the
13 original MPA definition, is the inclusion of habitat.

14 In the beginning Marine Protected Areas had
15 brought the proposal to employ Marine Protected Areas
16 in the South Atlantic reef fish management complex was
17 basically one of stock sustainable and there was no
18 basic discussion of habitat issues.

19 In the course of developing our current MPA
20 policy we developed a number of different tools, and
21 these are the type of MPAs that the South Atlantic
22 Council, and the options that we've come up with in an

1 effort to identify the types of MPAs as a management
2 tool and specific MPAs and how they could be applied to
3 regulate specific fisheries. It's an extremely broad
4 definition.

5 We have in place already a permanent closure
6 no-take, which is the Oculina Bank habitat of
7 particular concern which was established in 1984 and
8 was just recently reestablished in 2003. The current
9 -- the current type of MPA that we're working under now
10 for the nine protected areas that the council is
11 currently working on are highlighted in yellow. That's
12 permanent closure. There's some take allowed which we
13 refer to as a Type 2 Marine Protected Area.

14 In addition, the Marine Protected Areas that
15 were brought to the council in the beginning were a
16 wide, sweeping scope of Marine Protected Areas with no
17 identification as to what they were going to do or how
18 they were going to interplay with the current process.

19 I think it's extremely important to note that Tony
20 MacDonald hit on the head the problem that this council
21 experienced early on when we went with this initial
22 process.

1 We are at a point now where the current Marine
2 Protected Areas, which number nine, basically focus on
3 deep water sites in an effort to preserve those sites
4 for the deep water complex. The question is why the
5 deep water complex -- the deep water complex is a
6 fishery that has extremely little data. There's very,
7 very little fishery independent or dependent data.

8 The by-catch, there's an extreme high release
9 mortality associated with deep water complex by catch.

10 The life history of the fish in the complex is long
11 lived, very, very slow growing, and extremely complex.

12 Demand and technology over the years has
13 absolutely taken us to the breaking point with GPS and
14 the ability of people to continually repeat with
15 extremely high degrees of accuracy on spawning
16 aggregations of fish. The numbers -- the few, the
17 small amount of numbers, the small amount of data that
18 does exist indicates that the fishery is in trouble.

19 So let's talk about what the South Atlantic
20 Council did in the beginning. We made all the
21 classical mistakes that Tony alluded to and I hope that
22 don't get repeated in the future. We started with the

1 top-down process.

2 The scientists came to the council and
3 recommended that the council review this particular
4 aspect of fisheries management and consider creating
5 no-take marine reserves, the only viable option to
6 preserving and working with these -- with this fishery.
7 And of course we heard earlier this morning the
8 importance of a plan and implementation. Our plan was
9 pretty, pretty poor and the implementation of such was
10 an absolute and abject failure. And we'll talk about
11 that.

12 This is a map that the scientists brought to
13 the council in an effort to try and get the council to
14 consider the MPA process. I mean, that's pretty
15 shocking and I think you can see that when the public
16 saw that in our scoping document that it has the
17 potential for MPAs -- that the human cry became
18 absolutely overwhelming.

19 This is a pretty neat little slide, but it's
20 inaccurate. That bomb should be exploding as opposed
21 to just simmering. In the process of trying to develop
22 these Marine Protected Areas and take the scoping

1 document to the public -- and I was part of the masses
2 at the time and sitting in the audience and probably
3 part of that unruly group that was as close to
4 rebelling as I've ever seen in a public forum -- caused
5 the council to absolutely take the MPA program that we
6 had in place and were moving forward with, and placed
7 it on the back burner. I mean, it was just a total
8 abject failure.

9 When we talk about concerns, why is the public
10 afraid of the top driven process, well you can use the
11 old axiom, you know, the town that was known for the
12 slippery slope. Once you get a little bit, what
13 happens next, where does it end?

14 Of course the other big question is why, what
15 benefit do they provide. Is the statistical data there
16 to prove their worth. And those are all answers that
17 really could not be answered, and it was just such a
18 debacle that the council took the MPA process and put
19 it on the back burner, recognizing the need to move
20 forward with other fishery management plans and a huge
21 amount of work that needed to be done to develop
22 background data if we were ever going to move forward

1 with this particular program.

2 The second time around it was decided to
3 include Marine Protected Areas as a tool in the toolbox
4 for an upcoming management plan called Amendment 13,
5 which was an amendment to the snapper/grouper plan, and
6 it was going to be included in that plan as an option
7 and a potential tool in the work box -- in the toolbox.

8 We went forward with that very slow and deliberative
9 process. We created an advisory panel to give
10 stakeholders buy-in very, very quickly and immediately,
11 and held a number of public outreach meetings around
12 the Southeast region.

13 There was no discussion of where they were
14 going to be, how big they were going to be, or anything
15 associated with it. We tried to basically get buy-in
16 from the stakeholders that a need existed for some type
17 of additional management tool in addition to the
18 regulatory process to provide, in the words of our
19 chief scientist, an insurance policy.

20 And there were a number of informal meetings
21 to determine whether or not we should even go forward
22 and whether there was enough data to get stakeholders

1 agreement to move forward. And believe it or not after
2 discussions amongst the user community we got buy-in.
3 All the stakeholder groups met, and of course the key
4 element of that was protecting aggregations and
5 habitat. There was no discussion to the best of my
6 recollection of sustaining a fishery, but it was all
7 about protection of habitat.

8 After we got that particular stakeholder buy-
9 in then we began to investigate where could these
10 places -- where did these MPAs need to be created and
11 what benefit can we gain from creation of the sites.
12 It was amazing how many sites had been relocated. On
13 the maps behind these participants you can see red
14 spots which basically indicate hard water habitat off
15 the different areas of the coast of the South Atlantic
16 Plate.

17 And of course the focus of the attention in
18 developing these locations for MPAs was centered on
19 those live bottom habitats. Again a very, very
20 successful process. As a result of that process there
21 were 150 sites located -- a rather daunting number -- a
22 number of which caused a great deal of concern as to

1 the fact that there was no really output for a data
2 type, ability to gather data to prove the viability of
3 having that many sites.

4 It was winnowed down to then 32 sites. It was
5 then taken to public scoping and as a result of the
6 public scoping process the fishermen felt the process
7 belonged to them. All groups worked together. They
8 were able to winnow down that 32 prospective sites to 9
9 sites, basically 2 off of each state.

10 It's extremely important to note that the buy-
11 in process is the only way from the beginning that this
12 process is going to move forward. I think the examples
13 -- an example can be cited in the Florida Keys Marine
14 Sanctuary. They started off with a top-down process.
15 That was probably almost as bad a debacle as we had in
16 the South Atlantic, and of course they had to back up
17 and start over again as well.

18 What they did was they brought in the
19 stakeholders in the beginning in an effort to develop
20 the need and understanding for that need, and then they
21 moved forward with siting. Then they worked with the
22 fishermen and they actually came up with the most

1 beneficial sites for their particular area, as I
2 believe we have done.

3 One of the problems I might caution you on,
4 however, and this is one of the things that I
5 predicted, is that they got buy-in from the commercial
6 industry relatively quickly and everybody would --
7 everybody felt, well, that's great and these are the
8 guys who are the stewards and it should be that way.
9 My concern was that, as it is with most Marine
10 Protected Areas, the -- if we have Marine Protected
11 Areas there might be the development of a general
12 feeling that we don't need any other types of
13 regulatory processes, and of course that's exactly what
14 happened in this process.

15 The commercial industry bought in and they
16 identified the sites. They proceeded and supported our
17 Marine Protected Area programs, but at the first
18 opportunity when we started talking about other
19 regulations to be applied to the snapper/grouper
20 fishery they came forward and said we don't believe
21 there are any necessary -- or there's no need for any
22 additional regulatory needs because we've already given

1 you all these Marine Protected Areas and they are going
2 to sustain our fishery.

3 So therein lies a very, very critical -- and
4 now we're going back and we're having to rehash through
5 the advisory panel process, getting joint advisory
6 panels together in an effort to bring to fruition the
7 need for additional fishery management plan regs as
8 well as the Marine Protected Areas.

9 I've got a series of maps here which I'll go
10 through rather quickly. This is off Cape Fear, North
11 Carolina. This shows a rather -- this shows a deep
12 water area referred to as the Snowy Wreck, and as you
13 can see we're still in the fine-tuning process.

14 For a lot of these you see an option one and
15 an option two. Since the original siting when we got
16 down to nine, we had the advisory panel come back and
17 look at it and actually come up with tweaking in an
18 effort to site the location properly to protect more
19 live water habitat and spawning aggregations that have
20 been identified since the original siting.

21 In South Carolina we have these two locations
22 identified. You can see -- well, actually there are

1 two. Option three here represents tweaking of option
2 one, which is another very, very late addition. So
3 this is a process that's being refined even as we
4 speak.

5 Again off of South Carolina another site which
6 was just recently added which is the Charleston Bunk.

7 There's a site with a tweaking option off of
8 Georgia. What do I do here? I hit the wrong button.

9 The North Florida MPA -- and of course this is
10 between option one and two, so a decision will be made
11 whether to employ option one or option two. This is
12 not a tweaking.

13 Sea Bass Rocks off of Jupiter and Florida East
14 Hump off of Islamorada in the Keys.

15 DR. GARZA: Could I ask a quick question here?

16 MR. GEIGER: Yes.

17 DR. GARZA: In terms of these sites are they
18 within the three miles? I'm not --

19 MR. GEIGER: Well, these are all deep water
20 sites in excess of 240 feet. If that --

21 DR. GARZA: All right.

22 MR. GEIGER: And this was a focus, the

1 original concept of the Marine Protected Areas within
2 the South Atlantic scope of 3 miles all the way out to
3 the 200 mile limit. It did represent almost 20
4 percent of the Continental Shelf. These particular
5 sites are all located in deep water with the exception
6 of this one off of North Carolina, which is an
7 experimental site. It's a man-made reef and they would
8 like to put in this Marine Protected Area grouping just
9 so they can begin to collect data for the benefits of
10 shallow water Marine Protected Areas.

11 So where are we? Here it is. We have nine
12 Marine Protected Areas that are under consideration. It
13 has been a tortured past. We've learned a lot.
14 Believe me, getting involvement from the beginning is
15 extremely important.

16 When we moved forward with this MPA process we
17 were looking at a fishery plan amendment,
18 Snapper/Grouper 13, with 72 species to regulate. The
19 management, the size of the project, in excess of 8,000
20 pages. We had to break some things out.

21 One of the things that we broke out was the
22 Oculina Bank habitat, an area of particular concern

1 which was originally formed in 1984 and expanded in
2 1994 and again in 2000. We decided to put Marine
3 Protected Areas in the fishery management point,
4 Amendment 14. Then we're going to break Amendment 13
5 down into that deep water and we're going to add method
6 14 into the deep water complex as a tool and an option
7 under Amendment 13B.

8 The problem is the document got extremely,
9 extremely large once again. We decided to move forward
10 with 13A to address the Oculina Bank. 13B will address
11 the shallow water complex and we have not embarked, and
12 we're a year-and-a-half into our ecosystem management
13 plan which is a -- we're probably further ahead than
14 any other fishery management council.

15 It was decided at the last council meeting to
16 move the fishery management plan option into our
17 ecosystem base plan along with our Mackerel Amendment,
18 Amendment 16.

19 So those are the two fishery amendments, the
20 first two fishery plans to be incorporated into our
21 fishery ecosystem plan. I really appreciated the
22 earlier comments in regard to ecosystem based habitat.

1 This council believes in it strongly and understands
2 that it's a way to manage fisheries.

3 Single species management is unsuccessful and
4 very, very difficult. We have a plan. We have an
5 ecosystem based management committee meeting at every
6 council meeting. In addition each of the APs that meet
7 receive a briefing on ecosystem based management and
8 are tasked to provide input on their fishery management
9 plan how best it could be incorporated into this
10 ecosystem based model.

11 DR. McCAY: Thank you very much. We have time
12 for a few questions. George.

13 MR. GEIGER: Yes, sir.

14 MR. LAPOINTE: Thank you and thanks for your
15 presentation. One of my concerns about Marine
16 Protected Areas, and I couldn't tell from the size of
17 your charts, is the size of the area in relation to
18 enforceability. And then I'm also interested in the
19 council's plans on monitoring for effectiveness of the
20 MPAs. So if you could address those I'd appreciate it.

21 MR. GEIGER: I appreciate your question and
22 it's a great segue. I have here -- I brought some

1 copies along of an evaluation plan for the Oculina
2 Closed Area and it's very germane to what you
3 discussed. The Oculina Bank, for those of you who
4 don't know, is an area of particular concern. It was
5 established in 1984 by this council and if --

6 DR. BROMLEY: Can you move back to the mike so
7 that we can pick this up.

8 MR. GEIGER: Oh, sure.

9 DR. BROMLEY: Thanks.

10 MR. GEIGER: The Oculina Bank was created in
11 1994 specifically to protect the Oculina Vericosa
12 Coral, which is a very rare coral that occurs in a very
13 narrow range right on the edge of the Continental
14 Shelf, basically between Cape Canaveral and Fort
15 Pierce. It was originally created as a 92 square mile
16 -- 92 square nautical mile area and has since been
17 expanded to 300 square nautical miles.

18 One of the problems was that it was -- in 1984
19 it was put in place for ten years with a sunset. In
20 1994 when it was re-authorized it stopped all bottom
21 fishing and anchoring on the Oculina Bank area, which
22 created a human cry and the council went to the extent

1 of calling it an experimental research reserve and
2 outlined a plethora of research that was going to be
3 conducted over the course of the next ten years, prior
4 to the next sunset, to show the benefits of this closed
5 area.

6 Well, guess what? 2003 came along, we're
7 looking at a re-authorization under the sunset, and we
8 went back to check the science that's been done over
9 the course of the past ten years and there's a big
10 hole. Nothing has been done.

11 So the council went forward, unbelievably to
12 me, with the preferred option to re-authorize it again
13 for an indefinite period. We were able to turn that
14 around and force the development of a research plan for
15 the next ten years to address the concerns of
16 enforcement and also public information and outreach.
17 And that's contained in this draft plan that was
18 required one year after the re-authorization of that
19 area.

20 So enforceability has always been a problem.
21 It's to the point where we have almost required the
22 Coast Guard and Florida FFWCC who received the 65 per

1 craft under the Joint Law Enforcement Agreement
2 Program, to provide monitoring out there, to provide us
3 with their schedule of activities for the previous
4 quarter during the course of that time on top of the
5 Oculina Bank area. I can tell you that the amount of
6 enforcement that occurs out there is minimum.

7 DR. McCAY: Dolly.

8 DR. GARZA: Thank you, Madam Chair. I have
9 two questions. One, you started with 32 sites and
10 dropped it down to 9 sites. Is that because through
11 the public process other solutions arose for the other
12 sites or just because of the size?

13 MR. GEIGER: Well, as a part of the process we
14 got as much input as we could and we accepted all the
15 input, and then it got down to the ox goring process as
16 to who was trying to make sure that a Marine Protected
17 Area was created, you know, 100 miles away from where
18 they fish, not necessarily on top of the most
19 productive bottle.

20 So, you know, it was determined what was the
21 best bang for the buck on the number of sites that we
22 could get, and the ones that were of marginal quality

1 were eliminated. So it was purely a subjective
2 process.

3 DR. McCAY: Mark.

4 DR. GARZA: I had one more question.

5 DR. McCAY: Oh, I'm sorry.

6 DR. GARZA: And then I did ask for
7 clarification earlier and I think I had -- I didn't ask
8 it correctly. So you had sites that you indicated on
9 the map and you stated that they were deep water sites,
10 but I didn't get the feeling of whether or not it
11 involved state jurisdiction or federal jurisdiction
12 because I wasn't sure where the mileage happened there.

13 MR. GEIGER: They were all federal, under
14 federal jurisdiction.

15 DR. GARZA: Thank you.

16 MR. GEIGER: In some cases, depending on where
17 they are off the Coast, they could be as far as 40
18 miles, 45 miles off the beach. So the state has
19 jurisdiction up to three miles, federal has
20 jurisdiction unless they participate in the JEA
21 program. For example, North Carolina does not.
22 Florida does so all the federal FFWCC officers are

1 federal marshals, deputized federal marshals and can go
2 out and conduct federal operations and federal law. So
3 it's a mix.

4 DR. HIXON: Thanks for your presentation.
5 Three quick questions that have quick answers I think.

6 What percentage of the known grouper spawning
7 aggregations are protected in these nine sites?

8 MR. GEIGER: What percentage of the known
9 spawning grouper aggregations are protected --

10 DR. HIXON: In these nine sites, these
11 candidate sites.

12 MR. GEIGER: I can't answer that question
13 percentage-wise. I'm not sure we know where all the
14 spawning aggregations are. I'm not sure that those
15 spawning aggregations if they're known about have been
16 revealed by all the sources who came to the table with
17 knowledge. That's another part of the winnowing
18 process, is determining whether or not the sites that
19 are actually being selected are the best sites and not
20 just sites that are being sacrificially offered up.

21 You know, there's a -- at some point you have
22 to use good faith and understand that when you get a

1 large group together there comes a meeting of the minds
2 and everybody agrees that that's a good site. So I
3 can't answer your question, but I can certainly try to
4 find that out if we know it.

5 DR. HIXON: Do all nine candidate sites
6 include spawning aggregations?

7 MR. GEIGER: Yes.

8 DR. HIXON: Then just one quick question.
9 What is meant by partial take in these MPAs as opposed
10 to no-take?

11 MR. GEIGER: Yes. Thank you. Under the
12 partial take we have take one MPAs which would be a no-
13 take system, and type two MPAs which would be a partial
14 take, a partial allowification, the type of our
15 existing type two MPA. The Oculina Bank, we allow
16 surface trolling for coastal pelagics and highly
17 migratory species, but no bottom fishing. And if
18 you're trolling for coastal pelagic by regulation or
19 highly migratory species and you're in that area, you
20 cannot be in possession of any reef fish.

21 DR. HIXON: Okay, thank you.

22 DR. McCAY: Rod.

1 DR. FUJITA: Thanks, Bonnie, and thanks,
2 George, for that presentation. This is kind of related
3 to what Mark asked. I'm wondering -- I mean, just
4 eyeballing it from your charts I would guess that the
5 proposed MPAs don't cover that much of either the
6 available habitat for grouper or snapper complex or the
7 potential biomass. It certainly seems far less than
8 the 20 percent that the scientists proposed earlier.

9 Given that -- so I'm kind of surprised that at
10 the end of the stakeholder process the fishermen had
11 some kind of expectation that these MPAs were going to
12 somehow protect -- provide sufficient protection for
13 the snapper/grouper complex with no further regulation.

14 It struck me that this might be a place where a top-
15 down, science based goal that would make clear that you
16 really can't get any fishery benefits unless you
17 protect a fairly large proportion of the spawning
18 biomass, it might have been a good compliment to this
19 bottom-up approach which worked so successfully to pull
20 people in. A byproduct of that, you know, bottom-up
21 approach without a top-down science based role might
22 have been this false expectation that small MPAs would

1 produce big fishery benefits.

2 MR. GEIGER: I think you're exactly right and
3 we -- you know, Doug Rayder, Dr. Doug Rayder with the
4 organization, with your organization, is extremely
5 involved in this process and has been from the very
6 beginning.

7 DR. McCAY: We have time for one last quick
8 question. Daniel.

9 DR. SUMAN: I'm curious. If you could give us
10 some background about different approaches of the
11 recreational and the commercial fishing sectors
12 regarding this whole process, how their approaches
13 varied and opinions.

14 MR. GEIGER: In the original process -- we'll
15 start with the Oculina Bank because that was the first
16 one we did in 1984. Creating that 92 square mile area
17 basically put the snapper/grouper permit holder in the
18 South Atlantic who fished out of Fort Pierce out of
19 business. That was the area that they fished. So they
20 were immediately put out of business. They had no
21 place else to go. They had to either go north or go
22 deeper in an effort to fish for snapper/grouper. Their

1 most productive bottom was completely eliminated by
2 that 1984 effort.

3 And of course the fear spread from there.
4 That was a very hard sell in the beginning but it was
5 done based on some great scientific work from Harbor
6 Grants that they were able to produce pictures and
7 videos of the bottom, of spawning aggregations of fish.

8 And then with recent -- within five years I believe of
9 the original videos, site surveys demonstrating the
10 shear amounts of coral that had been trolled to rubble
11 by the rock shrimping industry.

12 So that was -- you know, nobody, you know,
13 commercial or recreational fisherman could argue with
14 that demonstrated evidence and that was a huge sell in
15 getting this particular area put in place. But the
16 original one was basically to stop all bottom tending
17 gear which continued to allow the snapper/grouper
18 fisherman to fish. In 1994 I should have said they
19 were put out of business when we -- when the council
20 stopped the anchoring and bottom fishing on that 92
21 square mile area.

22 So I don't know if I answered your question.

1 It's a --

2 DR. SUMAN: No. Actually my question is
3 Amendment 13 and MPAs, do you see more buy-in from the
4 recreational sector or the commercial sector and why?

5 MR. GEIGER: The hesitancy on the recreational
6 sector is one of the nose in the camel's tent. They're
7 afraid that there's a slippery slope here. Once we get
8 into deep water areas the next move is to in-shore
9 areas. I don't believe that the recreational sector
10 will argue with science that indicated there was a need
11 because we demonstrated here there was a need and we
12 got buy-in. We demonstrated a need in a deep water
13 complex, we got buy-in, but it's not as big a
14 recreational fishery as it is a commercial fishery.
15 You know, it's extremely technical and you have to know
16 what you're doing as a recreational fisherman to
17 succeed in 240 feet or deeper.

18 The other issue is that we created a type two
19 Marine Protected Area which allowed for surface
20 trolling, which is the most prevalent type of fishing
21 in the recreational sector, offshore in the South
22 Atlantic Pipe. So we continued to allow trolling for

1 highly migratory species as well as coastal pelagics.
2 So that helped get buy-in.

3 And anytime that you talk about protecting
4 habitat you'll get I think a better reception from the
5 recreational community than you will talking about
6 trying to sustain a fishery using Marine Protected
7 Areas, because the science I just don't believe is
8 there to demonstrate that sustainability is a byproduct
9 of the Marine Protected Areas.

10 DR. McCAY: Thank you. We'll have to move on
11 now, but I think this will be a source of a lot of
12 conversation, discussion during lunch. I hope you can
13 join us, George. Thank you.

14 MR. GEIGER: Thank you.

15 DR. McCAY: Now I would like to introduce our
16 second speaker which is Mr. Dan Furlong. Dan comes to
17 us as the executive director of the Mid Atlantic
18 Fishery Management Council, a position he's held for
19 about six years, since '99. Before that for many years
20 he was with the Southeast Fishery Science Center, which
21 is part of NOAA in the National Marine Fishery Service.
22 He was Deputy Director of the Southeast Region rather.

1 I'm sorry Dan, forgive me. He's also active in the
2 marine community in other ways, including serving on
3 the Sea Grant Advisory Board of the University of
4 Delaware. So thank you very much Dan for coming.

5 MR. FURLONG: Thank you, Bonnie. It's a
6 pleasure to be here.

7 Actually I'll start by telling you why I'm
8 somewhat intimidated with this group. I was reading a
9 story over the weekend about this retired marine
10 sanctuary manager who had been in the FIRS program.
11 That's -- for you people who aren't familiar this is
12 kind of what George Bush is pushing with social
13 security, the idea of taking a piece of your social
14 security and putting it into a private investment.

15 Well, the feds have that now. They call it a
16 thrift savings plan. And obviously this guy did very
17 well because when he retired he went down to Florida
18 and he bought an orange grove, and then he proceeded to
19 put a pond on it and build a little Ramada out there
20 with a picnic bench. It's got a volleyball court, it's
21 got horse shoe pitch. But he doesn't pay attention to
22 it too much because of his first grand-kid.

1 Then one night he decides that since he's got
2 oranges and lemons down there he'd go down and pick
3 some. So he grabs a bucket and heads down to the pond.

4 As he approaches the pond he hears all this chatter
5 and laughing. He gets down there and he sees a bunch
6 of girls swimming in his pond and they're all skinny-
7 dipping.

8 And they say, "Hey, you have to get out of
9 here. You're not allowed down here."

10 He said, "Now, girls, I own the pond." He
11 says, "I didn't come down here to see you swimming
12 naked. I'm not going to hang around to watch you run
13 out of the pond." He says, "I just came down here to
14 feed the alligators."

15 Now you can imagine what happened next. But
16 it's just -- you know, getting back to my point about
17 intimidation, it's just the point that experience and
18 treachery often beats youth and inexperience. So
19 that's where we are with this program.

20 Okay, that's who I am. I just ruined that,
21 didn't I? I should have checked out before I got them.

22 Back in May of 2000, and the last eight months

1 of those eight years, the President signed off on that.

2 I just wanted to make sure you all know that an
3 Executive Order is an oral order having the force of
4 law issued by the President.

5 Now one of Clinton's top advisors was a guy
6 named Paul Begalia and he thought this was kind of neat
7 -- a stroke of the pen, law of the land kind of cool.
8 And that's a fact.

9 George III thought the same way and back about
10 200 -- whoops, they're you go -- that's what he
11 thought. They're you go. We're done.

12 Well, that's a demonstration of the revolt
13 that occurred with George III making these calls.
14 There you go.

15 The next one, slide please. And you know this
16 as well. It talks about what an MPA is. And parked
17 down here, it's the lasting protection for all the
18 natural and cultural resources therein. I'll get back
19 to that.

20 The other thing the Executive Order did, next
21 slide, is to establish this advisory committee, the
22 infrastructure, establish a website, establish an MPA

1 Center, establish a consultation requirement with among
2 others Regional Fishery Management Councils -- that's
3 what that RFMC is there -- to promote coordination of
4 actions established. It didn't create any new
5 authorities and it certainly didn't fund anything.

6 Now the consultation requirement brings us to
7 today's agenda item, which is Fishery Management
8 Councils' related activities. I really want to
9 acknowledge at this point that there's a very important
10 piece of the Marine Sanctuary Act that established that
11 councils have first dibs if you will on writing fishing
12 regulations and MPAs. So that's a very important
13 point. I'll just mention it and move on.

14 If you back up one -- you're stealing my punch
15 line here. This situation with MPAs, when you get into
16 us -- I'm sure you saw the Super Bowl commercial about
17 Ameriquest, where this guy prepared a dinner for his
18 significant other, you know, romantic, candlelight, all
19 this. He's got a pot on the stove. The cat jumps up,
20 dumps the tomato sauce all over himself. He picks up
21 the cat. He's got a knife in his hand. Just then his
22 girlfriend walks in or his wife, and the punch line

1 with the commercial is don't make, you know, rapid
2 judgments, don't pre-judge. Because as it relates to
3 MPA activities -- now you can turn it -- we have none.
4 The Mid Atlantic Council isn't involved with MPAs,
5 okay. Next.

6 And why is that? Okay. Well, I'm going to
7 tell you why.

8 Next. Semantics, press on. The reason,
9 Fishery Management Councils were established back in
10 '76 by the Fishery Conservation Management Act. Next.

11 It's now known as the Magnuson Act and it was
12 most recently amended in '96, and it was amended by the
13 Sustainable Fisheries Act. Next.

14 Now we get into this dilemma of EFH because
15 the Sustainable Fisheries Act brought a whole new
16 concept if you will into councils and the National
17 Fishery Service for that matter. Next.

18 These are the things the Sustainable Fishery
19 Act -- it made one finding. It articulated what EFH
20 was in terms of a purpose. Remember, MPA in the year
21 2000, Sustainable Fishery Act '96. So this predates
22 MPAs. It defined EFH, it added one requirement for

1 fishery management plans. I won't go through all of
2 it, but I do -- press on.

3 I want to point out the findings. It's to
4 facilitate long term protection of essential fish
5 habitats. That's what the purpose or the finding that
6 Congress made.

7 Now we move from Executive Orders over to
8 Congressional Statutes that become laws. The other
9 thing was to promote the protection of essential fish
10 habitat and the review of projects -- that's -- this is
11 the purpose -- conducted by -- under federal permits,
12 licenses or other authorities that have effect or may
13 have the effect to impact essential fish habitat.
14 Next.

15 Now this is where they got sloppy in my
16 personal opinion. They define essential habitat to
17 mean those waters of substrate necessary to fish for
18 spawning, breeding, feeding and growth to maturity. I
19 can assure you that no fish that we manage can live
20 outside the water. So in effect, you know, what
21 they've done by this definition is made everything
22 essential. When you have that circumstance nothing is

1 essential. That's the reality of sloppy legislation,
2 again in my opinion.

3 Moving on. The contents of fishery management
4 plans. Every fishery management plan that a council
5 produces anywhere in the country, and George mentioned
6 that we've got eight of these councils, we have to
7 describe and identify essential fish habitat, we have
8 to minimize to the extent practicable the adverse
9 effect of fishing on such habitat, and then we also
10 have to encourage the conservation and enhancement of
11 such habitat.

12 Now councils are charged to do seven things.
13 Next.

14 I won't go through all these things, but the
15 first thing up is the idea of management plans and
16 amendments to those plans, and the rest of it just kind
17 of scales down through it. But the next to the last
18 item is the one, comment and recommend to the Secretary
19 and any federal or state agency, any activity that may
20 affect habitat including essential fish habitats. So
21 we always had license to address essential fish
22 habitat.

1 Now pressing on. The way we operate, and some
2 of you may know this, many of you may know this, there
3 are ten national standards under which any of our plans
4 that we develop have to address. The first one is very
5 important because it very much differentiates values,
6 okay, where we're coming from, where you may be coming
7 from. The first one says the conservation and
8 management measures shall prevent over fishing while
9 achieving on a continuing basis the optimum yield from
10 each fishery in the United States fishing industry.
11 Okay.

12 Now that's, you know, an exploitation if you
13 will sanction. Many argue that this first standard is
14 the most important of the ten, and in fact there is
15 case law that supports that thinking.

16 Now I want to go to the Executive Order that
17 addressed MPAs, Executive Order 13-158, where it's very
18 clear. It says in section 4 that MPAs, you know,
19 should do this, should create ecological reserves in
20 which competitive -- or excuse me -- consumptive uses
21 of resources are prohibited. So you've got a conflict
22 in our mind with this national standard.

1 It goes on to say the minimum area where
2 subterfuge will be prohibited as necessary to preserve
3 representative habitats. These are two things that are
4 right in the Executive Order that come out that, you
5 know, could be interpreted by some as being anti-
6 fishing, okay. That doesn't mean, you know, we're
7 loggerheads or anything. It just means that there's
8 different values operating. That's important to
9 recognize, where councils and the advisory committee
10 here may have some differences of opinion on.

11 So I'll press on and just go through the rest
12 of them. I won't spend any time on this. I was told
13 not to by one of your colleagues here. Keep pressing
14 on. There were go.

15 Get on the number of the next one. Now when
16 we develop a management plan -- again statutorily there
17 are 14 things that we absolutely have to address in a
18 fishery management plan and there are another 12 that
19 are discretionary. One of the requirements is
20 something I've shown you earlier, the idea that we have
21 identify and describe essential fish habitat and
22 minimize to the extent practical the adverse affect.

1 Now in all of our plans we've done this. All
2 of our plans have identified and described essential
3 fish habitat. One of them still has an outstanding
4 issue with regards to mitigating the adverse effect,
5 but that's just one. The rest of them are in line.

6 Now as it relates to the law, this is what
7 Congress said we had to do. Press on.

8 When we get into the rule making, which is
9 where the federal agency has the opportunity to
10 interpret the statutes, they came out with a rule
11 making process. Back in January of 2002 this was the
12 final rule to revise the regulations implementing the
13 EFH provisions that are included in the Sustainable
14 Fishery Act that are built into the Magnuson Act now.
15 Press on.

16 These three things, number one, two and six,
17 are verbatim out of that slide I just showed you that
18 we have to address in our management plans. The
19 description identification of EFH, fishing activities
20 that may adversely affect EFH and encourage
21 conversation and enhancement that's, you know, right
22 out of the Act. Press on.

1 These next seven items can be termed, you
2 know, bureaucratic activism. None of these are in the
3 statute, none of these are in the Executive Order.
4 These are just what the bureaucracy says, hey, this is
5 what we interpret the Act to be and if you don't like
6 it you can always go to court and challenge them. You
7 know, maybe you'd get some judicial relief.

8 But in the meantime these are the things that
9 we have to address. For instance number seven, back
10 up, prey species. We have very little data about
11 predator/predatee relationship in our jurisdiction,
12 very, very little.

13 Non Magnuson-Stevenson Act fishing activities
14 that may adversely affect EFH, not very well defined.
15 These things are good in an ecosystems approach, and
16 Congress as well as the Administration are moving into
17 an ecosystems mode, but these if you will are people
18 who have put us there already. They've tried to
19 advance the clock. Maybe they're just ahead of their
20 times, but I can tell you the data is not there to
21 support what they'd like for us to do and this is a
22 real research need. Press on.

1 The EFH coordination consultation
2 recommendations. Again this is nothing new. We've
3 always had this opportunity. In fact on this next
4 slide we'll quickly go through -- these are just some
5 of the things, these are some of the statutes that were
6 prior existing to the Sustainable Fishery Act that
7 allowed for councils of the National Marine Fishery
8 Service to comment on any aspect of impacts on the
9 marine environment. You have the opportunity through
10 these pieces of legislation to bring forward your
11 concerns to the appropriate authorities.

12 Now moving specifically to the Mid Atlantic
13 Council -- next slide please -- that's our
14 jurisdiction, New York to North Carolina. We overlap
15 with the South Atlantic for North Carolina. Press on.

16 The coastal measures turn out to be 725 miles
17 of coastline from up there on the northern fork of Long
18 Island down to the North Carolina/South Carolina
19 border. You can see there's quite a bit more shoreline
20 than there is coastline.

21 But in that context -- press on -- the
22 conservation zone that came into being with the '76 Act

1 was the one that moved out to 200 miles. In '83 the
2 President changed it from fishery conservation zone to
3 exclusive economic zone, still out to 200 miles. You
4 can just do your arithmetic. If you've got 725 miles
5 of coastline times 200 you've got about 140,000 square
6 miles of ocean bottom in the Mid Atlantic jurisdiction.

7 Now -- the next one. In our jurisdiction 95
8 percent of that is sand. There's a lot of things in
9 sand, but in terms of impacts we don't have a lot of
10 impacts. Mud, rock, coral.

11 Now these are statistical, you know, measures.
12 They may not be perfect. No one has ever challenged
13 this. Bill Hogarth challenged this one time in a
14 meeting and I said, "Bill, get your staff -- give me
15 better information." He's never called me back.

16 I don't know if this is a fact, but this is
17 the right order of magnitude and it's close.

18 Now in that context -- press on -- when we
19 look at bottom tending gear that physically impact the
20 bottom, okay, and if the bottom is sand, mud or clay
21 those impacts tend to be minimal and they tend to be
22 temporary. The basis for that statement is out of a

1 workshop that dealt with the effects of the habitat
2 that was convened by the Northeast Fishery Science
3 Center up in -- I forget where it was, in Boston maybe
4 -- in October of 2001.

5 So our mind set, if you will, our attitude, is
6 that, well, look, if 99 percent of our bottom isn't
7 really being impacted then what's the deal? You know,
8 there's not a lot of adverse activity out there. In
9 fact if a northeaster comes through our jurisdiction it
10 delivers more energy to the bottom than the sum of all
11 fishing activity in any given fishing year. Press on.

12 To give you an idea of some of the gear types
13 by species, what people are targeting out there, you
14 get an idea of the types of gear that they use to
15 prosecute those fisheries, and again I won't spend a
16 lot of time on that. But again we have that
17 information and it is available.

18 So what can I say in a positive sense that
19 shows that, hey, we're in the game, just operating
20 different values. The next one.

21 First of all there is in our jurisdiction a
22 National Marine Sanctuary and that's the first National

1 Marine Sanctuary. It's the Monitor and it's only --
2 you know, the vessel is out one mile certainly. So
3 we've got like 3.14 square miles of a sanctuary out of
4 about 140,000 square miles of bottom.

5 As I said, EFH is defined in all our documents
6 as it relates to trying to differentiate essential fish
7 habitat, which by a lousy definition kind of is a
8 useless thing. We have identified habitat areas of
9 particular concern for some fisheries. The tilefish in
10 particular is structure dependent out in the canyons,
11 Baltimore Canyon, Wilmington Canyon, Hudson Canyon.
12 We've identified areas that we feel that could be,
13 because of the structure dependence of that particular
14 fish, you know, differentiated differently than just
15 looking at a sand or mud bottom.

16 The National Marine Fishery Service together
17 with the Atlantic States Marine Fisheries Commission
18 identified a horseshoe crab reserve off the mouth of
19 the Delaware Bay. This basically extends from Ocean
20 City, New Jersey down to about Ocean City, Maryland,
21 out 30 miles. And what this reserve does is it -- you
22 can't go in there and fish for horseshoe crabs. That

1 related to -- the bird watchers if you will really came
2 in and brought the pressure to bear on that because of
3 the food source horseshoe crabs provides to migratory
4 birds, and the flyover in Delaware and New Jersey is
5 critical to those migratory birds.

6 Now we do use time and area closers. Remember
7 we're -- we as a council operate somewhat differently
8 than some of our adjacent councils. We're quota
9 managed which means that, hey, when they hit the quota
10 we shut down. We don't spend a lot of time on trying
11 to, you know, take a look at the input side of the
12 equation with figuring out days at sea, and allocating
13 effort, and hoping to manage in that manner.

14 We go to the other side and say, hey, look,
15 let's have a reality check here. What's coming out?
16 If too much is coming out we're going to shut you down.

17 When it shuts down that ends the fishing practice.
18 You know, that must have some beneficial effect on
19 those bottoms.

20 We use unrestricted areas. This isn't driven
21 by habitat, this is driven by bycatch. We have
22 irrestrictions in the Northeast related to scup, where

1 the small mesh fisheries for a loligo like squid have a
2 tendency to take a lot of juvenile scup. So we'd say,
3 hey, we know when they concentrate so you can't go in
4 there with small mesh. You've got to go in there with
5 bigger nets, you've got to go in there with four inch
6 or four-and-a-half inch mesh and that will reduce the
7 by-catch.

8 The other area relates to something that the
9 council did jointly with the Marine Council. The
10 Marine Council is the lead council on monkfish. We
11 participated with them on some closures in some of the
12 canyon areas. Oceanographer and Lydonia Canyons were
13 closed to protect some deepwater coral that were
14 discovered in those areas, and we did shut those down.

15 Now is that an MPA? Probably, it depends on
16 how you define it. You know, to me MPA is the umbrella
17 under which a lot of things can be considered. From
18 our perspective, you know, you can define some of our
19 essential fish habitat activities to fit nicely under
20 MPAs.

21 But there's lots of opportunities. I
22 appreciate the opportunity to be here. We have worked

1 -- we have invited program officials for the Marine
2 Sanctuary Programs to our council chairman's meeting to
3 participate. As George pointed out they are a public
4 forum. We invite other officials into what we do and
5 we'll continue to do that.

6 Basically that's my pitch for today, Bonnie.

7 DR. McCAY: Thank you very much, Dan. All
8 right, we'll have time for just a couple of questions.
9 George and Mark.

10 MR. LAPOINTE: Thank you, Bonnie. Thanks,
11 Dan. And I'm saying this as a New England council
12 member who has done as much whining about MPAs as
13 everybody else, that's my basis for this statement.

14 A lot of what you've described as things that
15 are being done now and what we've discussed with this
16 committee is -- in Louisiana it's called Lagniappe,
17 something extra. We're talking about moving beyond
18 kind of the way we manage now into a more comprehensive
19 framework, and that's the struggle we're in and we want
20 to do that in an evolutionary kind of way.

21 How have the council discussions gone at the
22 Mid Atlantic about, you know, kind of that next step,

1 because I think that's the pertinent point for our
2 federal advisory committee here.

3 MR. FURLONG: This would be my assessment in
4 terms of an answer to your question. Don't take it for
5 gospel. But empirical data suggests that what we do as
6 a fishery management council has had a positive effect.
7 We have, you know, slowed over fishing. We have
8 rebuilt stocks. We're in the process -- over 80
9 percent of our fisheries are not experiencing over
10 fishing and are not in an over fished state. That's a
11 very high level of success and that's despite not
12 having done a lot on habitat, okay.

13 So in the context of success, what's the
14 causal relationship between habitat and fishery
15 production? We would like to know that. This
16 gentleman asked that question to the last presenter.
17 You know, the idea that if we have a science, top-down
18 kind of approach to it maybe we could come up with some
19 of those indices, and we would love to have that.

20 But again the data is not there to demonstrate
21 that kind of causal relationship. What does a square
22 mile of this bottom do in the way of producing critter

1 X? And we don't have that. What we do have is the
2 empirical data that, you know what, our fishing
3 management measures are working, through quota
4 management things are changing. We're moving in the
5 right direction. So we're -- in our value system we're
6 doing the right thing despite not paying a lot of
7 attention to habitat.

8 Now another thing that's difficult in our
9 world is -- I think it's National Standard 6, cost
10 benefit. You know, if we shut down an area to protect
11 a habitat we could tell you what that costs because we
12 can tell you what landings came out of there, we could
13 tell you the value associated with those landings, but
14 what we can't tell you is the benefit. We cannot
15 equate in a cost benefit sense what the benefit is of
16 closing that area to protect it. Now when we get that
17 answer then we can a better decision.

18 So again different values. And George, I hope
19 that kind of touched on your question.

20 MR. LAPOINTE: Just a bit of follow through.
21 It's an observation. And again I'm a council member, I
22 can make this. The councils would have to move beyond

1 that value system to remain relevant in this discussion
2 because this isn't just about fishing mortality and
3 over fishing. And so as we engage in the discussion I
4 encourage the Mid Atlantic Council and everybody else
5 to kind of boost to the next level of discussion
6 because the discussion will pass you by otherwise.

7 MR. FURLONG: To that next level. We are
8 working rigorously with the agency as it relates to
9 ecosystems management, okay.

10 Now one more thing to kind of expand on that
11 question as it relates to essential fish habitat. When
12 that legislation came through, guess what, unfunded
13 mandate. You've heard of that one. You know, do this,
14 this is your responsibility.

15 Okay, fine, give us some money.

16 No, not coming.

17 So are you serious about this? If you want us
18 to do it give us the money to get it done.

19 We never got any money for habitat programs,
20 not the first penny for it.

21 Now as it relates to the ecosystems advisory,
22 completely different picture. Bill Hogarth gave us a

1 quarter of a million dollars last year. Do you know
2 why we're engaged in ecosystems management to the
3 extent we are today? Bingo. They're willing to pay
4 for it, that's why.

5 DR. McCAY: We've run out of time so I'm going
6 to ask the remaining people to quickly state your
7 questions and Dan quickly give your answer so we can
8 have -- go to lunch and continue the conversation
9 there.

10 Mark.

11 DR. HIXON: Thanks, Bonnie. Thanks for your
12 presentation. Just a quick comment.

13 I certainly understand the difficulties
14 associated with essential fish habitat designations and
15 dealing with that whole issue. At the same time I'm
16 concerned about the notion, be it my imagination or
17 real, that soft bottom sea floor habitats do not suffer
18 gear impacts.

19 I think it's very well documented in a number
20 of studies worldwide that especially deeper mud
21 habitats have bent the convertibrate associations with
22 them that probably are important in a number of ways,

1 especially for juvenile fishes, and do in fact suffer
2 severe consequences of repeated trolling and dredging.

3 Thanks.

4 MR. FURLONG: I don't disagree. It's a matter
5 of convenience as to which report we use.

6 DR. McCAY: Rod.

7 DR. FUJITA: Yes, thanks for the presentation.

8 I would just observe that it's difficult to tell what
9 the impacts of fishing have been on any ecological
10 parameter or any fishing parameter if all you've got is
11 fishery dependent data, like catch data or catch effort
12 data. What's really required from a rigorous
13 scientific point of view is a reference area, otherwise
14 you're always confounded by the shifting baseline
15 phenomenon and all the other vagaries associated with
16 fishery dependent data.

17 DR. McCAY: And Tony, we'll let Tony have the
18 last.

19 DR. CHATWIN: Thank you. And I have just a quick
20 question. You mentioned a few times how -- the fact
21 that all of the ocean is designated as EFH and that
22 makes it useless, but I would just -- from a point of

1 view of interagency collaboration the fact that you get
2 to comment on any federal activity that affects all of
3 the ocean, doesn't that give you a seat at the table?
4 Isn't that a plus to be able to work with other
5 agencies on other factors that -- other activities that
6 are happening that are not directly related to fishery
7 management?

8 MR. FURLONG: It's a plus but it's a paper
9 tiger, okay. It's a letter writing campaign. You
10 write to the Secretary, the Secretary writes to the
11 action agency. They say thank you very much for your
12 comment, appreciate it. We don't have a club to induce
13 people to behave the way we'd like them. So
14 consultation is fine and, you know, in reality you
15 build relationships. That's what all this is about is
16 relationships, you know, whether you're confrontational
17 or whether you're cooperative. But the consultation
18 process is laid out in the current statute. It's a
19 letter writing campaign that's a paper tiger.

20 DR. McCAY: Thank you very much to both of our
21 guests. Thank you very much.

22 (Applause.)

1 DR. BROMLEY: Before you get away there's been
2 kind of -- you know, we do have a formal program over
3 lunch. It is not -- it's not a conversation that we
4 will have. So I must ask that you go next door. I
5 believe it's this way. Is that right, Bonnie? Please
6 get your lunch and come back out of respect for the
7 speaker. We have -- we have a program so I'm not going
8 to give you a time limit, but we'd really like to have
9 you back here immediately. Get your lunch and let's
10 get back to work.

11 (Whereupon, at 12:06 p.m., a luncheon recess
12 was taken.)

13

1 A F T E R N O O N S E S S I O N

2 DR. GARZA: This is a spirit song. It's not
3 followed with applause.

4 (Spirit song sung.)

5 DR. GARZA: Hawaa Salanna. We have three
6 panel members today covering a broad range of areas and
7 topics and who have differing rights and
8 responsibilities.

9 The first speaker is Jack Lorrigan with Sitka
10 Tribe. Jack has a bachelor of science in fisheries
11 from Sheldon Jackson College in Sitka and has worked as
12 a tribal biologist for Sitka Tribes for the last nine
13 plus years. As the first speaker Jack will be
14 discussing how Sitka Tribe has been involved with their
15 responsibility and stewardship.

16 Jack.

17 MR. LORRIGAN: Good afternoon. My name is
18 Jack Lorrigan and I wanted to thank you for inviting me
19 here to speak to you about this. As Dolly said, I'm
20 from Sitka, Alaska. I've got Klinka, Shimshan and Hida
21 Heritage, and I had to run and put my people on so I
22 could have a weight with my words when I speak to you.

1 Traditionally we would thank the host tribe
2 for allowing us to be on their land, but I'll thank
3 you. So thanks.

4 The tribe I work for in Alaska, they're
5 Tlingit. The interpretation is people of the tides.
6 What that means is when the tide is out the table is
7 set, a variety of shore life is available for
8 consumption.

9 When the Russians first came the Tlingit they
10 were baffled at how they were always hungry because
11 they would never go along the shore and pick up
12 something to eat which was available. There were
13 clams, there's limpets, there's all kinds of stuff to
14 eat along the shoreline. So it was kind of funny for
15 them that they would be so hungry all the time.

16 We are located -- Juno is right about there.
17 We're about 90, 95 miles due south of Juno. It's ferry
18 and air traffic only to get to us, Baranoff, Chichagof
19 and the Admiralty Islands are called the ABC Islands.
20 They're known for their brown bear populations if you
21 know nothing else about them. Next slide.

22 Our city of Sitka is right down here in this

1 area. It's called Sitka Sound. When I was asked to
2 speak to you about Marine Protected Areas I was trying
3 to think of any areas around us that have that
4 designation, and the only thing I could think of was
5 the Pinnacles out in front. I just recently understood
6 that you already had a presentation on them so I will
7 be brief with those.

8 But our traditional territory goes up the
9 spine of Baranoff Island. Chichagof Territory goes
10 along like this. We share some of Huna Sound with
11 Nangun and Kake, which is over here. All these
12 communities have Tlingit names because they're former
13 Tlingit villages. Nangun Kwan, Kake Kwan. Ketchikan
14 is a Tlingit word. Juneau was a Tlingit village.
15 Actually Lock Bay, that was populated because there's a
16 sockeye lake there, but Juneau became popular because
17 of the gold discovery there. Huna, Skagway, Yakitak
18 were all Tlingit villages. So we have a very
19 definitive maritime culture associated with the sea.

20 The -- all these nooks and crannies had
21 villages or clan areas, and depending on what resource
22 was in there there was a village in there. And

1 smallpox and yellow fever wiped out a lot of these
2 people that were there. The residual population
3 eventually moved back into Sitka because of the law
4 that kids had to be educated. So a lot of these areas
5 had to be abandoned because there was no people there
6 anymore or they had to come in and put their kids in
7 school.

8 This is Port Alexander down here. This is
9 Frederick Sound. Frederick Sound, Chatham Strait, and
10 Cape Almay. You know, I'll discuss a little bit about
11 this area later. Next slide.

12 Like I said, the Pinnacles are out front of
13 Sitka Sound. You've probably already heard this so
14 briefly it is a very rich, lucrative spawning area for
15 a variety of bottom fish, and Lingcod are very
16 aggressive feeders so they're very easily caught off of
17 there. Next slide.

18 This is down here off of the tip of Cape
19 Edgecomb. Next slide.

20 This is St. Lázaria. This is a bird sanctuary
21 now because of the puffin and mere populations that are
22 there. There's also seagull eggs. A lot of these

1 rocks that are exposed out here have sea eagle egg
2 populations. I'll talk a little bit about that. But
3 this is a protected area, as are the Pinnacles here a
4 protected area. But the rest of Sitka Sound and the
5 outside coast are fair game I guess. Next slide.

6 I got these photos from the Alaska Department
7 of Fish and Game. Tori O'Connell, she might be part of
8 that presentation you heard. But these Pinnacles are
9 all volcanos and the rubble field around the base is
10 spawning habitat, and then a variety of groundfish come
11 up to the top and they're able to intercept the
12 migrating salmon or other fish as they come by. Next
13 slide.

14 We have Yellow Eyed Rockfish and Lingcod
15 pretty much living together. Next slide.

16 And then you've got Lingcod all lined up.
17 It's really -- it's been described as a very rich,
18 abundant, prolific area just because of its location
19 and the variety of species that are there. Next slide.

20 Sitka Tribe is one of 220 plus tribes in
21 Alaska. It was mentioned that there was 560 tribes in
22 the United States. Alaska has half of them or more.

1 We have one reservation at Melacalla, but not treaties.

2 We don't have any piece of document that protects us
3 and our culture or our resources in perpetuity. We
4 have nothing but our own initiative at times, and some
5 laws like ANILCA and ANCSA there's a little bit of
6 mention. The strongest document we have right now is
7 an Executive Order signed by President Clinton in '94 I
8 think.

9 But ANCSA was the Alaska Native Claim
10 Settlement Act. Basically that act was -- they
11 discovered oil up on the north slope. They needed to
12 figure out how to get it legally out of the ground and
13 across all the Indian territories. So they had to rush
14 that through in '71.

15 Instead of reservations tribes were allotted
16 corporations, and without further ado on that, I have
17 different feelings about that, there wasn't a lot of --
18 a lot of the hunting and fishing rights weren't so much
19 addressed in that. It was more of the land issue.

20 The next one is ANILCA, Alaskan National
21 Interests Lands Claims Act. It was passed to address
22 these rights, but they're not a forever deal. It did

1 not exclusively address Alaska natives and it was -- it
2 was an urban and rural designation. Next slide.

3 Subsistence from ANILCA. Feds took over
4 management of subsistence on federal waters in 2000.
5 That should read waters. The reason being the Alaska
6 legislature refused to enact a constitutional amendment
7 to address subsistence as a rule, I mean to comply with
8 federal law. So now the federal government has
9 subsistence rights on hunting on lands and fishing on
10 federal waters. As a result we have the Federal
11 Subsistence Board that we work through.

12 Dolly is vice chair of the advisory council
13 from Southeast Alaska, and we also the Alaska Board of
14 Fish that -- and the Board of Game, also depending on
15 which issue we're -- we have a proposal to deal with.
16 We've been very active in the Alaska State Board of
17 Fish and the State Board of Fish deals with all fin
18 fish, fishery, shellfish fisheries throughout the state
19 and in marine waters, and to some extent fresh waters.

20 The biggest issue since I've been with the
21 tribe and since '96 has been herring. The herring
22 issue is big because it's been -- to us the herring are

1 similar to the Plains Tribes and the buffalo. The
2 herring are now harvested in a sac roe fishery. And
3 what that is, they're after the sac roe in the females.
4 So when they catch -- they're after 10 percent roe,
5 meaning out of 100 tons of herring 10 tons of that will
6 be sac roe out of all those females, and that goes to
7 Japan as a luxury item for the emperor's new year
8 celebration. They give these sac roe packets to
9 friends and families. It's an old tradition that is
10 dying out, but the sac roe fishery still goes with
11 gusto.

12 And to the elders, understanding that, they
13 felt that was just like shooting all the buffalo on the
14 Plains just for their tongues and their hides. It was
15 a sacrilege to the animal, that the 90 tons that was
16 not used in the harvest would be -- back in the early
17 days the fish was just dumped overboard. It wasn't
18 used for anything.

19 If there's anything in the ocean that has a
20 job it's herring. Herring feed everything. I mean,
21 everything you can think of in the ocean eats herring
22 at some point in its life stage. If you believe in

1 reincarnation don't get in the herring line because
2 you're going to be right back. Everything eats
3 herring. When they're eggs the snails and the starfish
4 climb all over them until they hatch out. When they
5 hatch out they're at the mercy of the current and then
6 the baleen feeders, the whales, the jellyfish, all your
7 anemones get them. Then when they finally are able to
8 swim everything else bigger than them eats them.

9 So there is safety in numbers. The spawn is
10 tremendous. But traditional ecological knowledge is
11 what we relied on in 1997 to get the threshold
12 increased from 7,500 tons in Sitka Sound to 20,000.

13 What happened there was the elders were
14 complaining about the sac roe fishery and how
15 destructive it was and how it always kept the fish, the
16 population down. Sitka Sound has the residual, largest
17 stock in Southeast Alaska of herring. I'll have my
18 theory of the reason why that is in a minute. But what
19 that was, say this middle area of the conference room
20 is -- that's 7,500 tons. If there's 7,499 tons there's
21 no fishery, but if there's 7,501 tons there's a fishery
22 and they can catch up to 10 percent of that.

1 We didn't feel that the 7,500 ton threshold
2 reflected the traditional biomass of what used to be in
3 Sitka Sound. The elders were saying that the spawn
4 went on for weeks and it went from -- you don't have a
5 point of reference, but from Cape Aspen all the way up
6 to Salisbury Sound and it was just a prolific, super
7 abundance. It had been reduced in the 1910's, 1920's,
8 30's, 40's, 50's and into 60's in reduction factors.

9 What they were doing is they were catching the
10 herring and reducing them down into their most basic
11 parts -- for meal, munitions, margarine, anything you
12 can take an oily substance and make it into something
13 else is what they were doing with the herring on a
14 great scale.

15 The tribe -- we wanted to double that from
16 7,500 tons to 15,000 tons. You know, protect the core
17 biomass, that the herring will always be protected at
18 that level because they don't have to deal with the
19 fishermen. What they have to deal with is Mother
20 Nature. There's environmental factors that really
21 throw this out of whack.

22 Right now we're experiencing coast-wide --

1 from BC to Yakitak there's an absence of three year old
2 herring or four year old herring now and it has nothing
3 to do with the fishing. It's just nature has taken her
4 turn at them. So there's an environmental factor that
5 has always been at play with these herring.

6 The -- could you go back to that last slide?

7 In 2000 there's an area in front of Sitka that
8 traditionally has been one of the highest spawning
9 areas for herring throughout the past few decades, and
10 in 2000 the sac roe fleet was unleashed on this same
11 area three different times. They caught 12,000 tons
12 right from there. Then there was no spawn on the
13 islands that we were relying on for our needs. And
14 there were herring in other places, but the idea is
15 that a lot of people have small skiffs. We're not --
16 we don't have big boats, so we have to endure bigger
17 water to get to the resource, which is not a reasonable
18 opportunity.

19 We were told by Fish and Game go down there to
20 get your eggs. Why don't you go down there and get the
21 herring so we can stay here and get our eggs. It's
22 safer for us and we're packing -- we set hemlock

1 branches in the water and the herring come in and spawn
2 on them. Then that triples or quadruples the weight of
3 the branches. So now you've got all that weight in
4 your skiff and now you've got to come back in rough
5 chop. That's not a good deal. That's not safe.

6 So we got an agenda change request with the
7 Board of Fish, which is like getting an act of
8 Congress, but we got one anyway and we were able to get
9 in front of the Board and Fish and said our subsistence
10 opportunity was not met with this last fishery. We
11 need to work on something else that gives us the
12 opportunity and keeps us all out of court.

13 So there's a memorandum of agreement with the
14 tribe and Alaska State Department of Fish and Game that
15 we are now a stakeholder in the fishery. We
16 participate in the fishery meetings. We're consulted
17 by Fish and Game management and the Seines Fleet during
18 the fishery about what areas we want the Seines Fleet
19 to stay away from if they can't get their quota in
20 other places. I think that's enough on that.

21 Next slide. This is -- these are all council
22 members here and this is the Commissioner of Fish and

1 Game signing the memorandum of agreement. We always
2 have it at the meetings. You know, this is what you
3 guys said you would do. So so far it's worked out.

4 And the herring, you know, nobody consulted
5 with the herring to tell them what we're doing so we
6 have to react to whatever the herring do. So far the
7 herring haven't all concentrated in one area, the fleet
8 concentrated in the same area, and then we're trying to
9 get what we can out of that. So so far it's worked
10 out. But in the way it's set up for those points in
11 time when it doesn't work out that we have -- we worked
12 through some kind of compromise and we have our
13 protections and the Seines Fleet gets their quota.

14 It's like D Day when the fishery goes.
15 There's 51 permit holders. They all get in a small
16 area. There's a lot of jockeying, and bumping, and
17 jostling for position, and when they do the countdown
18 then there's these big puffs of black smoke as all the
19 seiners take off and they dump their seines and they're
20 trying to get their nets full of herring.

21 And then you've got all the spotter planes
22 flying around in figure eight patterns. There's 51

1 seiners, probably an equal number of tenders, plus all
2 the other sightseers and helpers. And then you've got
3 helicopters and small float planes as spotters flying
4 over. It's quite the show. There's probably millions
5 of dollars being burnt a minute just in gas and wages
6 and everything else to catch the herring.

7 DR. BROMLEY: Would this qualify as a derby
8 fishery?

9 MR. LORRIGAN: It is very much a derby
10 fishery. I was just in the last fisheries meeting and
11 an incident last year got one boat almost sunk because
12 of deliberate ramming. They were trying to keep a boat
13 from getting into the spot where -- two boats were
14 acting as a screen for two other boats that were
15 fishing, and another boat was trying to get in to get a
16 part of that, legally enacting his livelihood. But
17 they crumpled his hull and almost killed one of their
18 seine guys who was in the skiff backing into him.

19 It's very, very competitive. There's a lot of
20 money to be had here. The price has gone down
21 considerably because like I said in Japan the custom of
22 giving the gift pack is dying off with the elders. The

1 Japanese youth are not picking this back up. So we're
2 trying to use that to our advantage, but so far no
3 luck.

4 DR. FUJITA: What do you call that, greed?
5 That's exactly what you call it.

6 MR. LORRIGAN: It's capitalism in its finest
7 form.

8 DR. FUJITA: The resource --

9 MR. LORRIGAN: And the elders have complained
10 bitterly about this. Some have gone to their graves
11 hating this fishery because of what it has become and
12 what it used to be. The Alaska Department of Fish and
13 Game said there's more herring now than we've ever seen
14 before. There's a lot of truth in that statement
15 because Alaska became a state in 1959. The elders were
16 talking about the 1920's, the 1910's, the 1930's. The
17 biologists from Fish and Game were -- there's lots of
18 herring. You know, the people in the wheelchairs in
19 the pioneer home talk about -- you know, they wave
20 their hand and talk about the days and days of spawning
21 that would occur when they were youth.

22 Father Duncan was a Presbyterian missionary.

1 He came through and saw 20,000 different Indians in
2 Sitka Sound to gather herring eggs. Alaska, Sitka,
3 only has a population of 8,700 people, permanent
4 residents now, so that was a lot of Indians coming to
5 get herring eggs. Next slide.

6 This is Sitka in the background. This is
7 Cashion Island. This is the island I was talking about
8 that was so impacted. They had all the seiners right
9 in here going after the herring three different times
10 and nothing happened on the island. Next slide.

11 This is what it's all about is these guys.
12 Next slide.

13 Those are herring in the seine. I was taking
14 a picture of -- they're milling around. They're doing
15 a test sample. But they get up to -- the Sitka Sound
16 herring get probably about that big as eight year olds.

17 Next slide.

18 As far as habitat, all this white water is
19 herring spawn just starting to take off. What will
20 happen is every -- depending on the size of the
21 biomass, every square inch of shoreline will be white,
22 even in the background and up in here depending on how

1 large the population is. Next slide.

2 This is Sitka. This is the airport. You
3 know, when you're landing you see water, water, water,
4 water, ground, and then --

5 This is just starting to take off. This is
6 Dolly's Abalone Rock. All this, there's kelp, there's
7 all kinds of substrate for the herring to spawn on.
8 All this will be covered in spawn, even through town
9 this will all be white with spawn, the breakwater, the
10 pilings on the floe, all around in here will be all
11 white.

12 It's really quite a show. People will put
13 their hemlock trees in the water for the herring to
14 come in and spawn on. They'll -- what they do is they
15 clip them off, they freeze them. This is a delicacy.
16 There's only a couple of people in here who can
17 understand this and how important this resource is, not
18 to say that you don't know, it's just that this is a
19 much sought after item in the native community in
20 Alaska. It's traded all the way to the Barrow, all the
21 way to San Francisco and the interior of Canada. It's
22 also -- it can be harvested off of kelp too. Next

1 slide.

2 This is roe. It's just -- you can't even see
3 the green on the tree. What they do is -- one of the
4 ways you can eat it is raw or you dip it in just
5 boiling water for a three count or a five count
6 depending on how thick it is, and then you pull it out
7 and then people dip it in soy sauce, sea oil, hooligan
8 oil, butter, different varieties and eat it. Next
9 slide.

10 We also have halibut. Halibut subsistence
11 fishing was happening before European contact. It was
12 illegal even though it was the oldest fishery of
13 halibut that has ever occurred, but it was illegal
14 until 2002 when a committee and task force of Alaskan
15 natives coastal-wide went before the North Pacific
16 Fishery Management Council, as they have jurisdiction
17 over the halibut, to get the subsistence harvest
18 allowed.

19 People were doing it illegally. I've been
20 with people who had their skates tucked up in the trees
21 several miles away from town. They'd run out, set
22 their skate, and pull in some halibut while they went

1 and did something else. Come back the next day,
2 whatever, pull their halibut, tuck their skate back in
3 the trees and bring their halibut home. This fishery
4 was always occurring, but it was never ever officially
5 recognized.

6 So they were always doing it illegally. They
7 were always getting in trouble for it and that's what
8 brought the case to a head, is some guys actually got
9 caught doing it. So let's go to court about it.

10 So from that day they worked something out.
11 Right now it's 20 halibut per day, 30 yards per skate.

12 And the reason that that would seem abundant to you --
13 but what happens is if you get -- if you're lucky
14 enough to get halibut, 20 halibut for your effort,
15 that's a lot of work. Some of these fish are very,
16 very big and there's no way you're going to have the
17 freezer capacity to deal with all that fish, and let
18 alone eat it.

19 The idea was that this is permissive enough
20 that you would give to the community, you would give --
21 and that's what the subsistence culture is, is you go
22 -- you have your high harvesters, you have your

1 harvesters, and they share the resource with the elders
2 and the people who can't get out or the -- just get it
3 through the community. So everybody has a pot latches,
4 ceremonies, funerals. It's available for that and
5 that's the reason. It's always been a part of their
6 culture. Next slide.

7 Traditional fisheries predate European
8 contact. Current commercial methods are copied from
9 observing traditional fisheries. Traps and streams,
10 traps in the saltwater, seines, gill nets, trolling,
11 long lines are described in historical documents that
12 Indians were already doing it. They already knew the
13 resource was there. They had their ways developed of
14 getting it. The circle hook on the long line was
15 developed from the traditional halibut. Next slide.

16 The fish comes in. The hooks have names.
17 They have bait tied to them. There's some with a rock
18 with a slip knot. You know, a buoy runs up to the
19 surface. The halibut comes in and gets caught and
20 can't shake the hook, and then they just tease him up.

21 If the halibut is too big it will take the whole hook
22 in his mouth and he won't get caught. If he's too

1 small he can't get the hook in his mouth and he can't
2 get caught. So there's a size class of halibut that
3 would get caught on these, where you wouldn't get the
4 super-sized 300 pound barn doors and you wouldn't get
5 the little ones. Next slide.

6 There's a long legacy, the long line one right
7 there, the circle hook. Did we put a mark on there?
8 Next slide.

9 Sockeye another -- we'll move onto salmon.
10 Sockeye and other subsistence salmon fishers, STAs, it
11 could travel to Alaska. It had to watch other --
12 watched our other fisheries become scarce due to
13 increased charter and commercial effort, not because of
14 --

15 The guided charter industry in Sitka has
16 exploded from the mid 90's to now and it's growing even
17 more. Basically that's -- a guide will take up to six
18 people out on the boat. They get their limit of salmon
19 and there's special areas that -- high concentrations
20 of salmon historically would come to an area and they'd
21 fish them.

22 We've seen our Chinook and our Coho local

1 resources go down. We got caught kind of unaware on
2 that one. We've had to react to it to make sure that
3 not only the tribe but other residents of rural
4 communities had protections for these. We've got some
5 subsistence limits set that are more reflective of our
6 needs, our local needs, and tried to reduce the charter
7 and the commercial effort accordingly.

8 Alaska state law and federal law says
9 subsistence has a priority. Basically people have the
10 right to fill their freezers with the local resource.
11 In times of low abundance them first, then the sport,
12 then the commercial. Those laws are set up for those
13 instances when there is a reduction in the stocks, that
14 the commercial entities will be cut out first, and then
15 the sport entities will be cut out next, and eventually
16 subsistence will be cut out. It's to make sure that
17 the people of the area have the chance to meet their
18 needs first.

19 Sockeye, one of the most important foods to
20 the Tlingit. The high cast clans had control over the
21 Sockeye streams and lakes. The Sockeye come in early.
22 They come in June, early July. They're a rich, oily

1 flesh. They're one of the first salmon to return to
2 the stream. Their quality of flesh is superb. They go
3 into the lakes and ripen up over the summer and spawn
4 when the rest of the salmon spawn in the fall.

5 So they're a very important subsistence
6 fishery and for a while there only Sockeye Salmon and
7 only herring eggs were a designated subsistence food.
8 We had to go before the Board of Fish and ask for all
9 the other resources as a subsistence, get our
10 subsistence designation for those resources. We got
11 everything except for King Crab and Gooey Duck because
12 they weren't convinced we knew about them, but we got a
13 lot of literature that says we knew about those
14 resources too.

15 So that's the next one we have to go after.
16 But there for a while Sockeye and herring eggs were all
17 we really had subsistence access to. Next slide.

18 Like I mentioned before, subsistence is the
19 priority as per state and federal law. Next slide.

20 People put them in their smokehouses, they put
21 them in jars, they dry them. They're available, you
22 know, so they have something healthy to eat throughout

1 the year.

2 Redoubt Lake, right behind this falls is the
3 lake. And this is saltwater right here. So there's
4 only maybe a ten foot drop between the lip of the lake
5 and the saltwater at high tide. And these rocks right
6 -- you can't see, but that's one of the favorite
7 dipping areas at low tide or lower tides for people to
8 get their Sockeye.

9 The issue here was the lake back here is nine
10 miles long, but it's an meromictic lake. It's got a
11 saltwater layer at the bottom of it that when the
12 Sockeye or other salmon die, if the bodies pass through
13 that layer into the saltwater portion those nutrients
14 are lost forever. And you don't want them back because
15 it's an anoxic toxic zone at that depth. It's 100
16 meters, 100 feet down. Once those nutrients are
17 through they're lost. So the Forest Service has been
18 fertilizing the lake to increase the population there.

19 Next slide.

20 We had seen other fisheries become constricted
21 by the other fisheries, but they were starting to move
22 into our Sockeye lakes and we decided that wasn't going

1 to happen without some opposition. So we put a
2 proposal before the Subsistence Board and the Alaska
3 Board of Fish to make resource and subsistence the
4 priority it was entitled to, for not only Redoubt but
5 all the other lakes in our CT area. They tabled all
6 the other lakes except for Redoubt, because it was the
7 most public lake that got fished. Sometimes its
8 returns were so high that there's plenty of fish and
9 then they're so low that there was nothing. They had
10 to close it to everybody. So Redoubt became the
11 showcase. Next slide.

12 Through a local task force we were able to get
13 a management plan with escapement triggers that has
14 allowed escapement, subsistence fishing, sport fishing
15 and commercial fishing in that order, depending on the
16 population size. And somebody had sent our travails
17 into the Forest Service chief and we got a national
18 award out of it too for community effort as a Forest
19 Service project that's fertilizing the lake. Next
20 slide.

21 These weir stakes are thousands of years old.
22 You know, our occupation and use predates the United

1 States. It's something that is passed down to us. Our
2 elders made sure that they could pass it down to us and
3 those of us our doing the fight now need to make sure
4 we can pass it to our children and our grandchildren.
5 We want to make sure he has something to eat too. Next
6 slide.

7 As a tribal organization without treaty
8 protections or any of that other stuff we were able to
9 get greater protections on herring conservation,
10 customary and traditional determinations through the
11 board process, get our halibut fishing rights awarded
12 to us, and for the local area get our subsistence
13 priority for Sockeye recognized. It was a commitment
14 by the tribe, not a treaty right that we did this.

15 Like I said, the biggest piece of paper we had
16 to use was the Executive Order requiring the federal
17 government to consult with us on a government to
18 government level. President Bush just reaffirmed that
19 in October before the election. He had a roomful of
20 Indians to tell them that the government process with
21 the United States Government was still intact. We try
22 to work with all the governments however we can.

1 What we need is to maintain critical habitat
2 for all flora and species, juvenile salmonids, and
3 recognize tribal rights and knowledge in coastal
4 decision making and make sure we have access to
5 culturally important resources when an area has
6 protections that don't protect it away from us. When
7 the elders gave testimony they didn't -- European-
8 Judean concept is that man has dominion over nature.
9 The tribal concept is that we are part of it. What
10 happened to it affected us. We were -- we had just as
11 much right to fish for the salmon as the bear did.
12 That's how they viewed themselves. Thank you.

13 (Applause.)

14 DR. BROMLEY: Questions?

15 DR. GARZA: I think we'll hold off on
16 questions for all the panel.

17 MR. MOON: Our next speaker is a
18 representative from the Great Lakes Intertribal Fish
19 and Wildlife Commission. My hope was when picking out
20 the speakers today to try to bring information to the
21 forum to deal with a cross-section of what tribes
22 represented. It was very difficult. We have in the

1 next couple of speakers representatives from the
2 commissions, fish commissions, which I think have done
3 outstanding work in the past years to establish the
4 credibility of tribal technical work, legal work and
5 rights representation.

6 I'd like to introduce our next speaker, Jim
7 Zorn. Jim is the policy analyst for the Great Lakes
8 Intertribal Fish and Wildlife Commission and he's in
9 the Division of Intergovernmental Affairs. The
10 organization represents 11 tribes and has been in place
11 since 1984 and has tribes in three states. So again
12 join me in welcoming Jim.

13 (Applause.)

14 MR. ZORN: Well, good afternoon. It really is
15 a pleasure and honor to be here. I'm very humbled
16 first of all to be among such a diverse group and I
17 sure appreciate as a general citizen and someone who
18 works for tribes your commitment to think about natural
19 resources and how they should be protected.

20 I'm also humbled because as Jack indicated
21 it's a responsibility that we, and I'm not a tribal
22 member, but those of us who work for tribes, you know,

1 we come and speak on behalf of our tribes, and there's
2 a long tradition that comes with us.

3 I say things as a non-Indian lawyer -- okay,
4 all the jokes out, let's get the lawyer jokes out.
5 That's fine. So that's fine. I'll get that right
6 away.

7 So I speak in ways different than what you
8 might hear Jack or Billy speak about, but what I think
9 will be nice is you'll hear things said by different
10 people that are trying to say the same thing in
11 different ways. So part of my job is to help translate
12 some of the things I've learned as a lawyer, policy
13 analyst working with tribes and living in tribal
14 communities to other branches of government, to bodies
15 like this, to that non-Indian public that Pat Zell
16 talked about during the days of the rock throwing, gun
17 shooting and pipe bomb setting at the Bow Landings in
18 Wisconsin.

19 So I think we'll cover some of the same
20 things. I have a lot of slides. I can go a long time,
21 but I'll gloss through things that have been covered.

22 Let's reinforce. I really, you know, don't

1 have an agenda today other than to get some ideas and
2 principles out on the table, see where they lead. That
3 might help your work, that might help my work. I look
4 at lessons that we might have learned in our context
5 that might relate to what you do and then maybe I can
6 learn too.

7 It's really interesting to think about coming
8 here and talking about the Ocean Policy Commission
9 Report, and COS, and so on. I'm going, what the heck
10 does that have to do with us? Well, apparently Great
11 Lakes are included in all that stuff. And lo and
12 behold as part of my job I'd never dealt with that
13 before until we saw that draft Ocean Policy's
14 Commission Report, and that's the same time we're
15 dealing with the water diversion in Great Lakes, and
16 this Great Lakes regional collaboration. And holy cow,
17 for tribes a lot of time as far as organizations, who
18 you see is who we have.

19 You know, I'm here alone today because our
20 other staff is home working. We don't have a lot of
21 people. So we're infrastructurally challenged I think
22 compared to a lot of the other branches of government

1 and certainly in terms of some of the educational
2 institutions what you can bring to the table.

3 So, you know, I'll talk about our tribes, the
4 reserve rights and their treaty rights, and let's see
5 where we go on that. I think this will work. Where do
6 I point this to get it to advance?

7 So we're really talking about MPAs, we're
8 talking about relationships of people to place --
9 somehow the E came off -- and what we'll look at is the
10 Anishinaabe or the Ojibwe or the Chippewa, their life
11 ways, their reserve sovereign prerogatives, some on
12 reservation, what I call reservation based rights.
13 What we deal with in the Great Lakes Game, Fish and
14 Wildlife Commission are the off reservations right or
15 the ceded territory rights, treaty rights to hunt, fish
16 and gather beyond the reservation boundaries and
17 including Lake Superior.

18 The fundamental principles that you've already
19 heard from Patricia and others, tribes as sovereign
20 governments. You need to understand the nature and
21 purpose of the rights. When we go to court to get the
22 rights affirmed job one is to educate the judge. You

1 know, what did the tribes, what did the Indians think
2 when they were making the treaty. What did they think
3 they were reserving unto themselves. What did they
4 think they could continue to do.

5 The relationship between the tribes and the
6 other governments, you've heard our friends from Alaska
7 talk about that already. The unique federal treaty
8 obligations and trust responsibilities that come into
9 play when the federal government wants to do things in
10 areas that the tribes have rights in, whether it's on
11 or off reservation.

12 Then the government to government
13 relationship. So some of those things we won't have to
14 dwell on.

15 These are our 11 members tribes. The dots
16 roughly represent where their reservations are. The
17 bold blue numbers are the ceded territories. Those
18 represent years that treaties were made with the
19 Chippewas. They're known as land accession treaties.

20 The tribes never understood they sold the land
21 or were selling the land. They never understood they
22 owned the land. It just was a place to be and carry on

1 life ways. But low and behold the courts have
2 determined that they sold those large tracts of lands
3 in various treaties.

4 And then really what these rights are about,
5 whether they're on or off reservation, is a key as
6 Mother of the Earth of the circle of the seasons. It's
7 a life way that depends upon the resources that are
8 there to do things that you've always done, whether
9 it's to eat, whether it's for cultural practices,
10 spiritual, religious connections, medicine and, yes,
11 commerce.

12 There is commercial fishing. Wild rice in our
13 area is an article of commerce, maple syrup and so on.

14 It's a way life. And so there's really this
15 interrelationship that so goes the land and the ecology
16 and ecosystem so go the people in many ways. You scar
17 the land, you scar the people. So there's kind of a
18 qualitatively different relationship perhaps.

19 And the other orders of creation, I think we
20 heard reference to this before. The view that I hear,
21 that I'm taught is that, you know, the world can get
22 along perfectly fine without us humans. We're the last

1 ones here. If we weren't here, you know, everything
2 would be doing great. So when we talk about trying to
3 protect or restore an ecosystem or a habitat, you know,
4 if we went away it would take care of itself. We're
5 really kind of trying to fix ourselves is what we're
6 trying to do, is what I've been taught.

7 So that's something that again is similar to
8 the tribes that we deal with in the Northwest and
9 Alaska and tribal cultures.

10 The Ojibwe culture, again it's an
11 interdependence between people and a place, the natural
12 environment. The geographic place is really important
13 because it talks about where you came from as a people,
14 your historical identity, the stories that have been
15 passed down. We have tribal elders that talk about
16 genetic memory, the idea of you're walking in the woods
17 and you get to a spot, you know, we might call it deja
18 vu. I'll think I've been here before.

19 You know, Toba Sonic, a good friend from the
20 Lake of the Woods Treaty 3 area up in Canada talks
21 about, he said, "You know, that's not deja vu. That
22 means that somebody in your family, your bloodline had

1 been there before. You know this, you've experienced
2 it."

3 Those are things that I hear in tribal
4 communities from elders when they talk about the
5 connection to the land. Then you bring that all
6 forward into the modern day context and, you know, it's
7 nice to talk about in a storytelling context and oral
8 traditions, but you bring it into this doggone
9 governmental sausage making process of, you know, MPAs
10 and wildernesses and laws and all that stuff, and how
11 does it fit with which sovereign and which jurisdiction
12 has what authority, and who can make what decision, and
13 who has the right to challenge and when. I mean,
14 that's -- how do you mix all this in the modern world?
15 And don't say that's why we get paid the big bucks,
16 Billy, because we don't.

17 But that's how lawyers and policy analysts and
18 biologists -- and that's why tribes themselves have
19 recognized the need to develop their own governmental
20 infrastructures, so they can enter into these dialogues
21 and debates from a position of knowledge, of power,
22 bringing forward both the traditional and ecological

1 knowledge and the modern day science and Western
2 methodology.

3 You know, for our member tribes, and I'm sure
4 this is true around the nation, you use virtually all
5 of the plants and animals to meet a variety of everyday
6 needs. We just recently had a grant from the
7 Administration of Native Americans to look at wild
8 plants, non-medicinal wild plants -- it's a very
9 delicate subject with medicinal -- but to talk to
10 elders and other people about wild plants that the
11 Chippewas use for whatever reason. You talk to all
12 those people. Hair dyes, hair conditioners, you name
13 it, it was used for whatever purpose. And so we tried
14 to document some of those things, the types of habitats
15 where you might find those plants, can you still find
16 those there, where do you go, and so on. So it's just
17 amazing when you think about it in that context.

18 I put up here water ceremonies too because I
19 know you're talking about kind of the coastal region,
20 and the idea of women as the kind of keepers of the
21 water in Chippewa or Ojibwe culture is very important.

22 We had Mike Levitt who has now moved on to Health and

1 Human Services visit our office last July, August, and
2 we had -- one of our staff members is a member of the
3 Medeoan Lodge and she did a women's water ceremony that
4 she might do in the lodge, kind of a short one. It was
5 very interesting to see a governor from Utah, from a
6 water starved area who had just -- you know, they value
7 water because every drop is so precious -- see the
8 value of water where it's so plentiful and it's just as
9 precious for a whole bunch of different reasons. I
10 think he came away with kind of a different
11 understanding of why the Great Lakes are so important
12 to a whole bunch of different people in particular
13 tribes. And so we tried to make the point don't divert
14 that water to Utah.

15 The other thing is, and I apologize to my
16 friends from the communities, I don't mean to go into
17 areas where I shouldn't, but there are some lessons to
18 be learned about how you maintain the bounds of the
19 natural order. I mean, the idea that I learned is that
20 there are spirits in the fish. There are spirits of
21 the grandfathers of the rocks. You know, kind of both
22 animate and inanimate objects have a role in this order

1 of creation. They all play a role in making the circle
2 of the seasons work.

3 And so it's just -- you look at things from
4 more than just a human perspective. The manner and
5 rituals of harvest are very important. The centuries
6 old -- what were they -- the stakes for the seines that
7 were on the shoreline there. You know, the idea of a
8 grandfather going spear fishing with the granddaughter
9 or grandson or setting that -- passing down the
10 knowledge, telling the story. You know, that's how you
11 -- well, you know, these fish look different this year
12 or the maple sap is running different this year for
13 this reason. Boy, I remember back in whatever, '54,
14 and we had a winter like this. And all that kind of
15 stuff that's passed down and how you distribute
16 resources in the community.

17 We had -- Dan Bromley knows this because he
18 helped us out in some of our treaty cases and Pat Zell
19 talked about it, why in the hell do you need all these
20 fish you take up there in Wisconsin? You know, we just
21 see them dumped in the landfill. You don't need all
22 those fish. You don't eat them all.

1 Well, where are you throughout the course of
2 the year when there's a naming ceremony for a baby, for
3 a funeral, for a community feast. I mean, it's shared
4 and it's all part of maintaining the culture and the
5 people.

6 The idea of how you harvest things, it teaches
7 you a lot about the animals. I was struck by the hook,
8 that the halibut naturally selected a certain size fish
9 by the size and design of the hook. An amazing way to
10 impose a biological sort of regulation, a harvest
11 regulation, without putting in a size limit. Thou
12 shalt not harvest more than, a size more than 20 inches
13 or something like that. It's just sort of done because
14 the tradition was to take what you needed and more, and
15 if you go out to leave some behind so they could
16 continually, naturally reproduce.

17 And then idea of, you know, taking what you
18 need. I mean, don't take more than what the earth can
19 produce in -- as the earth does in natural cycles.
20 This is what I talked about before, ecological damage
21 really can result in disruption of a people.

22 This -- some of these principles kind of came

1 up in the idea of a proposed sulfite mining operation
2 near a reservation in North Central Wisconsin. The
3 tribes are trying to explain to the DNR and EPA and
4 others why putting that mine there, and living in the
5 shadow of the mine, and doing to the land what was
6 going to be done where the tribes had these rights was
7 going to harm the people, you know, kind of
8 psychologically and in a very real way.

9 And so there's different stakes, you know,
10 kind of qualitative stakes involved for tribes.
11 They're very real, too. I mean, we think about fish
12 consumption advisories. Think about fish consumption
13 advisories that are set based upon a normal meal for me
14 as a sport angler, that if I'm lucky I catch a fish a
15 month and what I eat. Think about it when the harvest
16 patterns for the Walleyes, for the tribal members peak
17 in the spring and peak again in the fall, and the
18 number of meals consumed there and what quantities.
19 The standard at which you start doing consumption
20 advisories and set acceptable pollution matters are --
21 for pollution levels, that matters differently for the
22 kind of subsistence consumer than for the sport angler.

1 And the Ojibwe, like all the other tribes, are
2 very adaptable. But the catch is you can only adapt so
3 far before you're just -- you know, you take away too
4 much of your essence.

5 So anyway, a lot of background of the treaty
6 promises. You heard Patricia talk about the treaties.

7 We have treaties that -- these land cession treaties.

8 The tribes, the real purpose of them, of the treaties,
9 the tribes could continue their ways of life, to make a
10 moderate living by hunting, fishing and gathering. As
11 we all know the treaty is the supreme law of the land.

12 I'll talk in a minute -- somebody raised the
13 question how does this relate to our work. I have this
14 notion in the federal treaty and trust obligations or
15 trust responsibilities is a dual mandate dilemma.

16 Congress is great at passing these laws that say
17 somebody -- maybe like this body shall do this, this
18 and this. Not one mention of treaties, not one word of
19 tribes or trust responsibility.

20 Tribes will come to you and say, but these
21 treaties still exist, we have these rights. How do you
22 balance what you do? It's a difficult job and that's

1 where the idea of a trust responsibility and trying to
2 sort of do your job as Congress has said and still
3 honor the treaty obligations. It's a very difficult
4 dilemma.

5 These again are the ceded territories. No
6 significance that the large green and gold there might
7 be Packer territory. And I don't know if anybody is
8 from Michigan or what, but anyway that's -- my boss
9 makes us do that.

10 So anyway -- so then the other thing I wanted
11 to mention was about the on reservation. I've talked
12 about off reservation. You know, each tribe came into
13 their reservations many different ways -- executive
14 orders, Chippewa, a lot of the tribes by the 1854
15 treaty. And the reason why that is important -- and I
16 put home and traditional in quotation marks for a
17 reason. We don't forget the ancestral homeland where
18 these large tracts of land that all of a sudden somehow
19 by fiat were sold to the federal government.

20 And then between the time of the '42 treaty
21 and the '54 treaty there were these efforts to remove
22 the Chippewa from Northern Wisconsin, Northern

1 Michigan, move the tribes from here over there, to some
2 un-ceded lands. Well, under the earlier treaties,
3 there were treaty annuity payments that were being paid
4 on Madeline Island right there, pretty easily
5 accessible, paid in July or August. Well, there were a
6 couple of Indian natives who said, you know, let's get
7 these guys the heck out of there. We want that land
8 for the white settlers and we want the Indians over
9 there so that this new emerging State of Minnesota can
10 get the economic benefit of the treaty annuities that
11 are going into the hands of the Indians, and they're
12 going to have this money to spend, and all these goods
13 to do, and all that kind of stuff.

14 So they moved the treaty annuity location from
15 there to there, moved the date from July until, you
16 know, November, December in the hopes that when they
17 got there winter would set in and they wouldn't go
18 home. Well, winter did set in. By the time the tribes
19 who did go, the tribal members who did go got there the
20 provisions were spoiled. Dysentery, other disease went
21 through. 200 or so died that way.

22 And then winter set in and about on December

1 2nd or 3rd they said, you know, we're going home.
2 We're not staying here. We're walking back. Another
3 200 died on the way back. That's the Sandy Lake
4 Tragedy and we built a memorial there.

5 But anyway, this 1854 treaty -- you can go
6 ahead to the next one, Dan -- is very important because
7 that's where the tribes kind of caught on and said, oh,
8 no, now we know what these treaties are about. So
9 Chief Buffalo from the Red Cliff Band, he took a trip
10 to Washington, D.C. You know, he started by boat and
11 canoe through the Great Lakes and somehow, I don't know
12 where, he got on a buffalo or whatever and hopped on a
13 train and went back and said, "Okay, now we caught on
14 to what you did. Now we want some of our home back.
15 We want these reservations where we can call our own.
16 You won't bother us. We can continue to do what we
17 did, what we always did."

18 And lo and behold the '54 treaty was
19 negotiated and a fair number of our member tribes,
20 their reservations were either set forth specifically
21 in that treaty or provided for and then later surveyed.

22 And so this idea of calling kind of like a

1 homeland, you know it's -- it's a small vestige of the
2 ancestral homelands those tribes once had, but at least
3 it provided a home base that the tribes' expectation
4 was it was theirs, sort of in perpetuity as you
5 mentioned, and that they could do -- live as sovereigns
6 in these communities.

7 So there again, I just wanted to point out
8 where some of these reservations are. The bulk of the
9 '54 reservations would be kind of from there, all in
10 here, and up there as well.

11 Patricia Zell mentioned -- I mean, the
12 difficulty of balancing this dual mandate that you
13 might have, you know, what are treaty rights, how do
14 you know they exist. I mean, look, here's the article
15 for the treaty of 1837.

16 "Privilege of hunting, fishing and gathering
17 wild rice upon the lands, the rivers and the lakes,
18 including the territory ceded is guaranteed during the
19 pleasure of the President of the United States."

20 What the heck does that mean in the 1980's
21 when you're in federal court trying to explain to a
22 judge, well, you know what this means, Your Honor, is

1 the tribes can keep doing what they always thought they
2 could do on the lands that they had ceded.

3 So that's where what Patricia talked about the
4 canons, the treaty construction came in. Thanks, Dan.

5 And one of the important canons, just so it's clear on
6 this, is that just because the '54 treaty came later
7 and the reservations came later than this previous land
8 cession treaties, the '54 treaty was silent about its
9 effect on those previous treaties.

10 Well, the rule is that treaty rights are not
11 abrogated by implication. Congress must do it
12 expressly. And so therefore since the reservation
13 based treaty, reservation treaty did not explicitly
14 abrogate those previous off reservation rights from the
15 previous treaties they continued to exist.

16 And so in -- and Patricia talked about how
17 treaties are to be interpreted as tribes would have
18 understood them. Well, you know, that sounds -- coming
19 from that boat landing context that Patricia talked
20 about, you know, people say that's really unfair.
21 Well, you know, we do contracts everyday and I'm
22 lawyer, and when I did contract law we took -- we

1 understand contracts of adhesion, superior or inferior
2 bargaining position. We understand the idea that the
3 treaties were negotiated and written in the English
4 language and the person who controls the pen of a
5 contract, if there's any ambiguity it's construed
6 against the drafter because they controlled the pen and
7 what better incentive -- who else is in a better
8 position than to sneak something in.

9 You know, there's a term, it's a dual meaning
10 in the white man's legal system that there may be no
11 equivalent in the Ojibwe language. In fact one of the
12 treaty cases that Dan was involved in there was some
13 words used in a treaty that was being -- the state was
14 trying to argue that those words meant that the
15 previously ceded territory rights were extinguished,
16 and one of the key witnesses was an Ojibwe linguist who
17 pointed out that there was no way to translate the
18 equivalency of this English concept, this legal
19 concept, back to the tribal folks who were negotiating
20 the treaties, and so they never would have understood
21 that they had given up their previously reserved
22 rights.

1 Some other things is that of course neither
2 the Congress nor the President have terminated the
3 rights. The President never exercised his pleasure,
4 and even then the way the treaties were negotiated the
5 President's pleasure was not an unfettered discretion.

6 He had promised good faith and fair dealings and he
7 would not revoke the treaty rights arbitrarily. And
8 so, therefore, mere subsequent acts of Congress that
9 the President may have signed should not be in a
10 backdoor way construed as a way to abrogate or modify
11 the rights that were guaranteed.

12 The other thing is statehood, at least in our
13 treaties -- I know there's a case in Wyoming involving
14 the Crow Tribe. I think it was the 10th Circuit that
15 decided that statehood there did abrogate the treaties.

16 In this case it did not. The equal footing doctrine,
17 the states came in, became statehood, but they took the
18 statehood subject to these treaty rights. There was
19 nothing in the enabling acts for those states that
20 indicated congressional intent to abrogate the treaty
21 rights. Again, not by implication.

22 They ain't misbehaving interpretation, that's

1 kind of that good faith. The Treaty of 1842 that deals
2 with Lake Superior, it was very clear. Steward had
3 negotiated the treaties, told the tribes, he said,
4 look, the President will never require you to move out
5 of here as long as you're basically good Indians, you
6 don't misbehave. You know, it was sort of if -- if you
7 just keep doing what you're doing, you're peaceful and
8 all that kind of stuff, it will be great.

9 And so it was shown that these were removal
10 treaties, that there had to be some sort of -- some
11 acts or something to take place before the rights could
12 be terminated. So just some examples of when you think
13 about, you know, are treaty rights, are they that cut
14 and dry, do you need a court decision to tell you they
15 exist or not. This is sort of how you go about it.
16 You do a very particularized, historical inquiry as to
17 what was going on at the treaty time, what did the
18 parties intend, what were the tribes thinking, and then
19 you carry it forward from there.

20 Again nature and extent of the rights. We saw
21 this in the other context and one thing I will mention
22 is that at least in our context I think in the

1 Northwest there's this -- the tribes are entitled to a
2 maximum of 50 percent allocation of the harvest
3 resources. I know that comes up in the context of
4 tribal state allocations. If the tribes say only take
5 20 percent of the harvestable surplus, they don't get
6 to reserve the other 30 percent and keep it away from
7 the state. The state can -- I mean, you can keep
8 harvesting up to this whole harvestable surplus. The
9 tribes, at least in our context, are not gatekeepers of
10 the resource.

11 Tribal sovereignty over the rights. In our
12 context, in the ceded territory, the tribes have the
13 authority to regulate their own members. It's in the
14 tribal constitutions. You can set the codes, the
15 terms, and we'll talk about how the states and the feds
16 come into play here in a second.

17 But that gets you to the co-management with
18 the other sovereigns, because as Patricia and others
19 have pointed out these resources don't know any
20 political or jurisdictional boundaries. You know, the
21 salmon swim, the lake trout swim, the walleye swim, the
22 deer wander. So for the states who are ceded,

1 territory rights exist.

2 Now whether or not this relates to your work
3 is a good question because you're talking about setting
4 up things. My understanding is that the Apostle Lines
5 National Lake Shore and the Whittlesey Sea Wildlife
6 Refuge near the Shuanga Bay area up there in Lake
7 Superior are inventoried as potential areas.

8 Well, for states, the states, you know, still
9 have management authority in these ceded territories,
10 but they are subject to the tribes rights. They cannot
11 exercise management authority in a way that would
12 destroy the rights. The state can regulate the rights
13 to the extent necessary and reasonable for
14 conservation, public health, public safety. Dan, the
15 next slide.

16 But the tribes can preempt the state
17 regulation if they enact the regulations that the state
18 would otherwise require. And this is a subject of a
19 lot of litigation sometimes.

20 In terms of the federal obligations, you know
21 the feds -- this is sort of where the federal advisory
22 committee I think somehow plays a role if you can set

1 up something under federal law. And don't forget the
2 feds are signatories to the treaty. Most of the
3 lawsuits you see out there about these treaty rights
4 are against states because it's the state conservation
5 laws that tend to be enforced against tribal members
6 who are spearing walleye, netting fish, and where the
7 states have said we only want you to hook and line.
8 You can't use spears.

9 Well, what's the issue then? How can you
10 safely, in a biologically safe manner use spears within
11 -- to keep fishing within the biologically safe levels?

12 So you have to have quotas. The tribes count
13 every walleye they take in Northern Wisconsin by spear
14 or by net. They have to come back to designated
15 landings. They count it. When they reach their quota
16 fishing is over. We can't say that about state
17 angling.

18 So anyway, so you have to fulfill the
19 provisions of the treaty. See here the feds are the
20 treaty signatory. They are the ones who signed the
21 document. Who better then to guarantee those treaty
22 rights? So even though we think about states sometimes

1 as the ones we generally are fencing with, we have to
2 remember that the feds are the ones that are on the
3 hook that signed the treaty, and that carries with it
4 this trust responsibility to exercise those treaty
5 obligations, sort of like a trustee at a bank would
6 with an estate.

7 When do feds have management and regulatory
8 authority over tribal affairs, tribal rights? That's a
9 good question. You have to look at the particular --
10 the federal law that's coming into play. What did
11 Congress say? If the law is silent, what did Congress
12 say in the legislative history? If there's nothing in
13 the legislative history, it's total silence, you kind
14 of presume that Congress didn't mean to screw around
15 with the rights, that they remain intact.

16 Some courts have held that even in that type
17 of silence the federal agency can regulate the rights
18 to the extent necessary for conservation, health and
19 safety. That's the Forest Service context. We've had
20 that held up to us for example.

21 This is what we talked about before and, you
22 know, we can kind of breeze through these because I

1 don't want to cut into Billy's time. But this is sort
2 of that -- if you want to keep going forward a little
3 bit, Dan, here -- the trust responsibility to look at
4 treaties, court decisions, the general relationship. I
5 mean, look, these were -- the treaties were for many
6 different purposes -- peace treaties, land cession, and
7 so on.

8 And what was the promise to the tribes? We
9 bring you under our wing. You quit fighting against
10 us. Don't ally with those folks -- at least in our
11 context -- up there, up in that Canada, you know those
12 bad guys up there. You stick with us down here. We'll
13 bring you into our fold and we'll protect.

14 You know, that -- all this stuff is talked
15 about in treaties with tribes. It's a unique legal and
16 political relationship.

17 I just do want to emphasize it's not a racial
18 thing. It's based upon this historic relations of a
19 governmental government. You know, the Supreme Court
20 has called it a domestic dependent sovereign status.
21 The -- as much as I'll use the term the conquerors
22 came, the law of discovery basically held that, you

1 know, the new people coming to an area dealt with the
2 people already there as sovereigns, as they would be
3 dealt with if the roles were reversed.

4 And so the federal laws that deal with tribes
5 and Indian people, Indian communities, it's not a
6 racial thing. It's a political, legal relationship.

7 What does it mean? Sometimes the treaty
8 rights, the trust responsibility means that the federal
9 government or the states can't do something because the
10 treaty rights exist. You cannot stop us from fishing.

11 It's biologically safe. There's no human health or
12 public health concern, a public safety concern. We
13 have a right to do it in this way, in this fashion.

14 In other instances maybe it's a pro-action.
15 When does a federal agency have to step forward and
16 help when a tribe is having trouble maybe with the
17 state, with the local government, with some sort of
18 proposed action that will -- a mining permit that would
19 affect the habitat, that would put more mercury in the
20 air that will get in the meat of the fish that the
21 tribal members eat? When does somebody have to step in
22 and do something extra?

1 What tends to come up in this type of
2 discussion is, well, okay, do we just have to kind of
3 balance the harms here and, you know, kind of harm the
4 tribes a little bit less or do we have to go the extra
5 mile and prevent harm to the tribes and the tribal
6 interests. Interesting dialect and nice debate that
7 goes on in there.

8 Again government to government -- and this is
9 what I talked about before, about the obligations of
10 federal agencies. As they make decisions that affect
11 tribes we really have to work hard to understand the
12 nature of the tribal rights involved, the impacts of
13 the proposed action, the alternatives on those rights,
14 and the tribal view of what should be done.

15 Do a mandate. Geez, we've got to set up these
16 Marine Protected Areas. What do you do about these
17 treaty rights? A couple of examples. We live where
18 there's national forests. We deal with a couple
19 wilderness designations. What does that bring with it?
20 Hands off type thing.

21 Well, tribal members are going to say, look,
22 you know, wilderness should not detract from our

1 ability to exercise our rights. If you want to talk
2 about motorized vehicle access or there's some reason
3 why we shouldn't, you know, drive our ATVs in there to
4 our sugarbush or something like that, that's fine,
5 let's talk about it, but the mere wilderness
6 designation cannot and should not take away the treaty
7 right.

8 A couple of examples. Let's look at the
9 Sylvania wilderness in the Ottawa National Forest.
10 That was set up subject to existing rights. Michigan
11 riparian law is amazing. I didn't understand the
12 ramifications of it, but apparently if you own land on
13 a lakeshore in Michigan you have the right to use a
14 motorized boat throughout that whole lake.

15 Well, guess what, this wilderness cuts the
16 lake in half. The tribes had a historic rice bed back
17 in the corner of Crooked Lake. The elders wanted to
18 take their motorized canoes, go harvest that rice.
19 They wanted to reseed it and so on. The Forest Service
20 said, "No, you can't."

21 We looked at them and said, "Well, look, this
22 federal court just ruled that these non-Indian land

1 owners have riparian rights to use their boat
2 throughout the whole doggone lake. A few tribal
3 members going back to the rice beds is certainly going
4 to be less impactful than that."

5 "No, no, no, sorry. That's not an existing
6 right."

7 Well, that's a hell of a perspective to have
8 now. So anyway, we agreed to disagree over that but
9 now I think -- God rest his soul, Archie passed on but
10 he would putt up there in his canoe and no Forest
11 Service law enforcement officer would touch him. He
12 found a peaceful coexistence.

13 The Apostle Lines National Lakeshore. I
14 mention that specifically because I noticed -- I think
15 that's inventoried on your site. Recently, last
16 Congress I think about 80 percent of that was placed in
17 wilderness status. That legislation went into Congress
18 proposed with the provision that said nothing in this
19 legislation is intended to modify, amend or abrogate
20 the tribe's treaty rights. So, you know, what goes in
21 good comes out good, and there Congress stated its
22 intent.

1 Think of fish refuges. I don't know if these
2 MPAs are kind of like fish refuges, but we faced this
3 in Wisconsin about fish refuges on inland lakes where
4 walleye spawn. Well, fishing season for the non-
5 Indians is closed during the spawning season because
6 they don't regulate the numbers of fish you catch.
7 They regulate the efficiency of the method and the time
8 of the season. Tribal members are regulated by a
9 quota. It doesn't matter when you take the fish as
10 long as you stay within the numbers.

11 Those fish refuges were inapplicable to tribal
12 members exercising the treaty rights because they
13 played no role -- it had no bearing on the reproduction
14 of the fish if tribal members took fish out of there
15 because the fish were counted and you knew when to
16 stop.

17 I'm looking to see -- are you getting nervous?
18 Okay, all right.

19 Let me put out one other thing. This is a
20 great misconception. Billy will jump all over me here
21 I know if I'm wrong. There's this notion of tribes and
22 treaty rights, that by golly when the tribes speak and

1 state their view the tribe has always got to win.
2 Well, you know, I mean, balancing the dual mandate
3 isn't that easy.

4 One thing you've got to watch out for is that
5 the federal agency has to avoid premature
6 determinations and the substitution of judgment. You
7 know, that old paternalistic thing. Oh, yeah, don't
8 worry. We know what's better for you. You know, we
9 can think for you.

10 Then this idea of the tribal veto authority
11 versus the federal agency can make whatever decision it
12 thinks it needs to make after proper consultation and
13 live or die by that decision. We don't always win when
14 we go in there to duke it out with the Forest Service,
15 with the Fish and Wildlife Service, with the EPA, but
16 we always let them know, man, if we think you screwed
17 up or we think you're going to impact our treaty rights
18 either now or when you actually commence your action,
19 you may see us in court. It's not a threat, it's just
20 the reality.

21 That's how we get around the idea. What we
22 try to do -- we have an agreement with the Forest

1 Service for about four national forests up in our area,
2 about consultation on decisions that affect tribes.
3 The provisions say good faith efforts to reach
4 consensus. If you can't reach consensus you kick it up
5 to the next level, you kick it up to the next level,
6 and if you ultimately can't reach consensus the feds
7 can pull the trigger if they think they've got the
8 goods to make the decision they want to make and the
9 tribes are free to challenge them. But you make every
10 effort to resolve your differences.

11 That's how we sort of put the meat on the
12 bones of the trust responsibility. Nothing is worse
13 than going to a federal agency and there's a nice
14 federal person there who really wants -- and you say
15 there's a treaty and trust responsibility here. And
16 they go, what does that mean for my job? You know, and
17 so -- so after, you know, some years you kind of say
18 well, geez, if I were in your shoes I'd be asking the
19 same questions.

20 And so this is how we try to deal with that,
21 get it out of some of these -- you know, it's always
22 got to be war, it always has to be adversarial.

1 There's ways to resolve disputes.

2 I think we can -- just so you know from the
3 tribal sovereignty perspective, they regulate the
4 members and then they have management responsibility.
5 I mean, let's face it, off reservation tribes don't
6 issue the permits for emissions from coal plants. But
7 when the states do that, you know, we've got a
8 responsibility to go talk to them and say, hey, look,
9 if you do it that way you're going to put this much
10 mercury in. So we may not have the management
11 authority to issue the permit, but we have some co-
12 management responsibility to go in there and try and
13 make the -- and have the right decisions made.

14 Again as I said before, the tribes if they do
15 good a job they can preempt the federal or state
16 regulations. That's why tribes have laws, biology
17 enforcement courts, just what you saw from our friends
18 from Alaska, the programs.

19 Anyway, so this is the kind of stuff that
20 tribes do. They have plans, resource management plans.
21 They have protocols among the tribes themselves where
22 they share areas, they share rights, they share

1 resources with states, with the federal government for
2 determining the harvestable surpluses, limits, quotas.

3 They have regulations, harvest monitoring reporting,
4 research and data gathering. What's interesting about
5 that is a lot of the research and data gathering that
6 tribes do is really geared towards what tribal members
7 do out in the field. So it's kind of unique to tribal
8 needs.

9 Lake Superior, let's just talk about that a
10 little bit. I mean, we already know why it's
11 important. It's part of the life way. You know, some
12 of the -- you can go on to the next one, Dan -- some of
13 the policy positions that we have taken, zero discharge
14 of these key chemical, toxins, you know, keep them out
15 of there.

16 Mercury is a big issue. Our fish consumption
17 advisories for our inland walleye lakes in Wisconsin
18 are getting to the point now where women of
19 childbearing years and kids under 15 are going to have
20 a hard time eating one meal a month of Walleyes.

21 You'll stop the people from eating fish but
22 you won't stop the pollution. I don't get it.

1 Tribes have supported an outstanding national
2 resource water designation for Lake Superior. When I
3 came here things -- before I understood the
4 ramifications that Marine Protected Areas could be used
5 as a way to keep tribes from exercising their rights I
6 thought, hell, designate all of Lake Superior. It
7 sounds good to me. It sounds like a great ecosystem
8 management approach.

9 And then the water diversion and withdrawals,
10 that's a big issue for tribes right now and I don't
11 know how that's going to interplay with what you do
12 but, you know, the Council of Great Lakes Governors is
13 working really hard now to find criteria and sort of
14 objective factors to help base decisions to be able to
15 say no to water diversions and withdrawals that will be
16 supported if somebody challenges them in court.
17 So they're not arbitrarily saying no to people.

18 One of the positive affects of looking at
19 people who might want to take water out of the Great
20 Lakes is how are we conserving water in our uses in the
21 Great Lakes. So it's getting us to do a better job I
22 think in our own base.

1 We do a lot of invasive species work. So I
2 don't know how this again plays for your Great Lakes
3 work, but invasive species, ballast water, humongous
4 impact on the native populations out there both for the
5 aquatic things that swim as well as plants. The fish
6 contaminant, just amazing. I mean, I don't know --
7 again your coastal environments, I don't know if you
8 saw an article a couple of weeks ago about how the St.
9 Clair River by Detroit has been dredged out so much
10 that the water flows out of there faster than it
11 naturally should and that's why Lake Michigan and Lake
12 Huron are kind of in recent years lower than average,
13 way low. We've dredged the heck out of it so the water
14 is just draining right out of there and we can't figure
15 out why the water is low. You know, and then you put
16 the rip-rap up to prevent the siltation and filling in,
17 you know. I don't know, it doesn't seem like rocket
18 science.

19 These are some of the other things that are
20 going on in the Great Lakes which I'm sure you know
21 about. I don't know how it relates to your work, but
22 the bi-national program to restore and protect Lake

1 Superior, the Great Lakes Fishery Commission and all
2 their various lake committees that deal with fishery
3 management issues. The IJC, that also deals a lot with
4 water levels. Every two years the EPA sponsors the
5 state of the Great Lakes ecosystem conference and then
6 this recent Great Lakes regional collaboration that
7 President Bush called for.

8 So anyway, some of the critters we look for
9 are sea lamprey. They kill more lake trout in Lake
10 Superior than harvest, still after all the efforts to
11 try and control those buggers. Purple loosestrife gets
12 into rice beds. It chokes out the wild rice. Ruffe
13 came in in ballast water from some -- and then the
14 zebra mussels we all know about.

15 Type of fish we monitor in Lake Superior are
16 lake trout, white fish, sturgeon. Again, reinforce
17 what we heard before. That's -- remember Patricia
18 talked before how you spear. There's a picture --
19 that's probably late 80's. It's a little outdated. I
20 think Stoney back there probably has less hair and
21 maybe he has a new boat. I don't know, but that is the
22 method. That's how they went out on the lake.

1 And then this is what we started seeing. The
2 next slide, Dan.

3 How would you like to go into your local
4 grocery store or your local tavern with your friends
5 and see this starting you down, you know, and
6 distribute it around town? Next slide.

7 Save a deer shoot an Indian. Save a walleye
8 spear a squaw. Save two walleye spear a pregnant
9 squaw. The casting light upon the water process to get
10 objective information out there that was agreed upon by
11 all managers -- tribal, state, federal -- went a long
12 way to get us to where a kid can just go out fishing
13 and be happy with what he caught without having
14 somebody calling him a name, throwing a rock at him or
15 setting a pipe bomb on the boat landing where he and
16 his dad might launch their boat.

17 Two people went to federal jail in Northern
18 Wisconsin because they set pipe bombs. Casting light
19 upon the waters went a long way. The other thing that
20 went a long way was the federal court injunction that
21 said, sorry, we're shutting you down protestors.
22 There's a first amendment right but then there's a line

1 you crossed and you went to -- it's racially motivated
2 harassment and the federal court issued an injunction
3 against the leader of one of these groups. You know,
4 no damages but he had to pay the tribe's attorneys fees
5 for winning the case. You know, so, a couple hundred
6 thousand dollars later he's trying to sell all his land
7 or hide all his land. He was shut down.

8 Casting light upon the water. Now I grew up
9 in Northern Wisconsin, a small town called Phillips in
10 Price County, Indian reservations on kind of both sides
11 of me. Friends I knew all my life went to the boat
12 landings. Oh, you know, we're just watching.

13 Casting light upon the waters helped pull the
14 soapbox out of those people who were leading the
15 caravans to the boat landing to throw the rocks. It
16 disarmed their arguments and it helped bring some calm
17 back to Northern Wisconsin.

18 So to the extent some of these thoughts are
19 helpful in your work, those are some of the lessons,
20 some of the context that we work in, and I am extremely
21 grateful for the opportunity that you shared some of
22 your very valuable time with me here today. Thank you

1 very much.

2 (Applause.)

3 MR. ZORN: And if you want our website has all
4 sorts of things, publications, things like that. So
5 feel free to go look at it and so on. Thanks.

6 MR. MOON: All right. Thank you very much,
7 Jim, and we'll have questions directly after the
8 speakers. The next speaker that we have is one of my
9 most favorite people in the world I would say. One of
10 the items that Jim spoke on in his talk and the tribes
11 in the Northwest have in terms of the structure of the
12 treaty rights is the fact that they're salmon people
13 and that the reservation does not create the boundary
14 from which to get harvest, and that the off reservation
15 rights are there. And these are reserve rights that
16 were given from the Indians to the non-Indians, and
17 that has gone through several court proceedings.

18 Billy is the chairman of the Northwest Indian
19 Fisheries Commission, a 20 tribe organization of which
20 the Cooluye Tribe is a member. I just wanted to say
21 that in 1992 Billy Frank received the prestigious
22 Albert Schweitzer prize for the Humanitarian Award from

1 Johns Hopkins University. So would you please join me
2 in welcoming Billy Frank.

3 (Applause.)

4 MR. FRANK: Thank you, Mel. I'm just really
5 glad to see this committee come together and hopefully
6 recommend some good things to the President and his
7 Executive Order. I think the year 2000 (sic) which
8 we're in is going to be an exciting time in our world,
9 in our country, and in our own backyard.

10 You heard a lot of the things here with our
11 brothers and sisters up in the north country and as
12 well as our Great Lakes and as well as our southwest
13 people that we, our tribes, that we all work together
14 as tribal governments. But I hope this Executive Order
15 is -- it don't lay on the shelf, you know, it gets
16 implemented and it's got some real good people here to
17 listen and make some recommendations and -- because our
18 coastlines, our waterways need this, very seriously
19 need it. We're here to help make that happen with the
20 recognition of our tribal people and our governments.

21 Now as you heard, you know, we've always got
22 to talk about our history and, you know, our history in

1 the Northwest as Mel said was -- we have 20 tribes on
2 the western side of the Cascade Range and both sides of
3 the Coastal Range in the State of Washington. Along
4 the Pacific Coast we have our tribes and along the
5 Straits of Juan de Fuca and into Seattle, up into
6 Canada, clean down to the South Sound where I live.

7 But 50 years ago, and now it's 51 years ago --
8 I was talking last year and now it's all of a sudden
9 we're into another year, but last year I was saying 50
10 years ago you had a president that did three things in
11 this country. That's not a long time ago. I was just
12 getting out of the Marine Corps in 1954 when that
13 happened. A guy by the name of President Eisenhower
14 was our -- well, he was a general and then he was the
15 President, but he did three things to the Indian people
16 and our tribes throughout our country.

17 First he did through Congress is -- and he had
18 a republican senate and he had a republican house of
19 representatives. He did three things that -- within a
20 short length of time. First he terminated, started the
21 Termination Act against all the tribes throughout the
22 nation.

1 You know, here we talk about treaties in 1854
2 and earlier and all of a sudden we've got abrogation of
3 the treaties right off the bat. And so he started that
4 abrogation in 1950 and that was one of the acts that
5 appeared and Congress passed it.

6 The second thing he did was he turned
7 jurisdiction over to the State of Washington and the
8 other states throughout the country.

9 And then the third thing he did, he allowed
10 liquor on the reservation. Those were the three things
11 that he did to wipe us out, get rid of us.

12 Now we had signed those treaties as you saw in
13 1854 right alongside of where I live in Medicine Creek,
14 along the South Puget Sound in the State of Washington.

15 And we have five treaty areas and some of our people
16 are in this room.

17 Along the Pacific Coast and through the
18 Straits of Juan de Fuca down into South Sound and up
19 to the Canadian border, that's where we all live and we
20 harvest our salmon, our shellfish. And all of our
21 gatherings are there, our mountains, and all of our
22 animals and everything are right there in this

1 beautiful setting of ours.

2 And you heard our people from the North, it's
3 exactly the same way if you went back before anyone
4 came here. Now we're just about ready to celebrate the
5 Lewis and Clark Expedition that came from here to the
6 West Coast. In a couple of years that celebration will
7 be going on and we're taking part in that right now
8 because we want to get the history set straight about
9 this country and the Indian people and the relationship
10 that they have.

11 So anyhow, the treaties were signed in 1854
12 and we had some wars out there about that because they
13 wanted to move us again off of our rivers and our
14 watersheds where our salmon comes back to us. We don't
15 go out chasing the salmon. When salmon come home we
16 know that. We have ceremonies with the salmon every
17 time they come back. We have offerings, we have our
18 religious and our cultural way of life. Right there,
19 we live right there on the river and the salmon comes
20 home.

21 All year round the winter salmon, the summer
22 salmon, the spring salmon, all of the year round, the

1 circle is filled every year. And the circle is filled
2 by everything that's growing all around us -- our
3 medicines and everything.

4 Well, the treaty -- we ceded all this land to
5 the United States and what we did when we ceded that
6 land is we made the people in this country free. They
7 weren't free, you weren't free. The people that come
8 out there in the State of Washington and our territory
9 was not free. They didn't own nothing until we ceded
10 the land to them.

11 Now after that they could go to the bank, they
12 could go across the street to the bank, start a bank.
13 They could start a town, they could start their forts,
14 start their cities, start their villages, whatever,
15 farmers and everyone, and they can go to the bank and
16 borrow money now. And that's what happened. So we set
17 them free.

18 But then they didn't honor that treaty. They
19 didn't honor that treaty one bit. So you heard our
20 brother from the North, you know, trying to -- they
21 were living in villages. Well, we live along the river
22 in these mountains and along these hundreds and

1 hundreds of watersheds. Everyone of them, we lived
2 there, our Indian people. We don't chase the salmon.
3 We don't -- our salmon leaves Puget Sound and it turns
4 to the right and it goes up by Vancouver Island, clear
5 up into the Aleutian Islands depending on what species
6 we're talking about, the five or six species we got.
7 And they come home, they come right back to us, right
8 back to our watersheds where they originated.

9 Now on the Columbia River, which is 100 miles
10 down the coast, Oregon and Washington, the great
11 Columbia River that comes out of Canada and comes down
12 through Washington and Oregon, then salmon turn left
13 and they go down out of California and Mexico. They
14 turn left and they go that way, except the Chinook
15 Salmon out of that river, and it turns right and goes
16 up into the Aleutian Islands. It needs cold water, the
17 big giant salmon.

18 So there's a difference between all of our
19 territory and our country of what we're talking about.

20 The salmon is so important to the Pacific Coast. This
21 is the wild salmon we're talking about.

22 And so what we did when we ceded that property

1 along the Pacific Coast, we can't go anywhere. We go
2 out into the ocean. We've got a boundary here and a
3 boundary here. We can't go into Oregon. You know, our
4 salmon has to come by and our bottom fish and
5 everything has to come right in this area. We can't go
6 chasing it over there. It's not legal.

7 So our salmon has to come back to us and we
8 have to manage to make that happen. Well, in 1974 we
9 had a decision in Tacoma, Washington called the Bolt
10 Decision in U.S. v. Washington. After all of this
11 fighting of trying to get our salmon home, back to our
12 rivers because they were intercepted throughout the
13 range of the salmon, Judge Bolt interpreted the treaty.

14 The treaty was interpreted in 1974 and it was upheld
15 in 1979 right here in the U.S. Supreme Court.

16 That treaty stands today, the interpretation
17 of that treaty. And all of that has the salmon
18 management, the harvest and everything in it. What
19 that did, one of the most important things it did, to
20 the world it was a legal document and a lot of
21 principles in there about Indian rights which you've
22 heard here, about our rights and our treaties, our

1 legal right, our standing and everything was in there.

2 In that document it said you the Indian, these 20
3 tribes, will be co-managers with the State of
4 Washington and you will manage the resource, but not
5 only that you will have an infrastructure. Your tribes
6 now will have a capability of being managers. You'll
7 have -- you'll write your own regulations, you'll have
8 your own enforcement, you'll have your own judicial
9 system, you'll have your own technical people, your
10 science. You'll have your policy. You'll be able to
11 travel. You'll be able to sit down and put your
12 government together.

13 And that's exactly what we did. Today we are
14 the governments there. The Northwest Indian Fish
15 Commission is the body that coordinates them 20 tribes,
16 and it's a very healthy coordination and the tribes we
17 come to Washington and we speak with one voice. We
18 work with the State of Washington, the federal
19 government, our partners in the different agencies,
20 Fish and Wildlife, the Commerce, NOAA, and we manage
21 the fish.

22 Endangered species is one of the big things on

1 the front line out there for us and we're working on
2 that continually. For 24 hours a day we're working on
3 that, on every one of those watersheds.

4 Now the Bolt Decision is 31 years old now. It
5 was 30 last year when I was talking but now it's 31.
6 It's 31 years old and 31 years later we're capable of
7 sitting down with anybody in the United States or in
8 the world and talking about our resource. We have the
9 science, we have the data. All of these years we've
10 collected all of these things.

11 You can say that is power or you can say it's
12 whatever you want to say it, but it's co-management
13 with the State of Washington, making the State of
14 Washington do the right thing to protect our habitat as
15 well as our water, all of our clean water, all of --
16 everything that is so important to the people in the
17 Northwest, and along with the federal government, and
18 the local governments, and the counties, and the cities
19 and so on.

20 So this is what we're doing. We're along that
21 Pacific Coast where we got -- we're harvesting all of
22 our bottom fish, our crabs out there. We're taking

1 part in all of that management. We know what the
2 funding is. We're capable of coming back, telling our
3 story.

4 You have -- Fran gave you these documents
5 here. This is what we give to Congress every year.
6 It's a comprehensive report of exactly what we do and
7 what we're managing, the accountability of every dollar
8 that we spend, and it's a comprehensive plan.

9 Now in the Northwest we have -- there's
10 nowhere I don't think in the world that has a
11 comprehensive plan like we do about the recovery of
12 salmon, and we do have a comprehensive plan in the
13 Northwest. That's why money goes to the Northwest,
14 because we have a comprehensive plan to put the --
15 bring the salmon back, the endangered species and all
16 of -- everything that we have, the problems that we
17 have out there. And with the people we're going to do
18 that.

19 Now I ain't saying the government can do that
20 and I'm not saying the states can do that or the tribes
21 can do that, the people has got to do that. There has
22 to be a political role in this country to make this

1 body right here start flourishing and bring it up to
2 the top. There has to be a political role in the
3 Pacific Northwest, from Alaska to Mexico, to bring the
4 salmon back, a political role to protect the water, the
5 clean water and all of the habitat and work together to
6 make that, find a balance. Find a balance, that's all
7 we're asking, and be fair.

8 Get out of the courts. The courts cannot
9 settle our problems and neither can the United States
10 Congress settle our problems, neither can our state
11 legislature settle our problems. We have to settle our
12 problems. We together have to settle them problems,
13 and we'll do that. We're capable of doing it. You
14 need the leadership out there to make it happen. You
15 need the leadership in the highest level of our
16 government to make it happen. And we got to make that
17 happen. We've got to push them people to the top and
18 make it happen.

19 But these are important things to us, along
20 the Pacific Coast and in our waterways, to put this
21 plan together. This plan we've been waiting for.
22 We've been waiting for a comprehensive plan that's

1 going to come out about the critical habitat.

2 But one thing you heard here is don't leave us
3 Indian people out and our governments out. If you want
4 success you include the Indian tribes and our native
5 people from Alaska, throughout all of our United
6 States, our country, on the Eastern Seaboard, wherever
7 we're at. We work side by side with the Great Lakes,
8 with Jim and our people in the Great Lakes.

9 We've been there when the fighting -- you
10 heard Patricia talking about the fighting. We went
11 there to educate along with our Great Lakes tribes, to
12 educate the governor at that time, to keep from having
13 any kind of killings going on or anything like that.
14 And so we did that, all of us together.

15 We get up and testify in Congress about -- we
16 have the expert testimony because we live there
17 everyday, 24 hours a day on these watersheds. We live
18 there 24 hours a day along that Pacific Coast. We know
19 when the tide comes in, we know when the tide goes out.
20 We know what way the winds are coming, we know what
21 way the winds are going. We know everything about that
22 ocean and we know everything about the way the currents

1 are flowing and everything.

2 So we have to be part of everything that's
3 going on. We have to be because there's nobody else
4 out there floating around. There's nobody else out
5 there living and trying to manage the resource. You
6 have our universities that are important to all of us.

7 You know, the science that comes out there, that
8 they're reading it on a piece of paper, they ain't
9 living it like we are. We're right there on the
10 watersheds, the Indian people.

11 So include us in every one -- everything that
12 there is to be included because we're here. You've got
13 Mel here on the committee and our people from the
14 North, you know. I'm excited about that. You know,
15 you're going to form a board. We want to be on that
16 board. We want to be there.

17 After the Bolt Decision there was the Magnuson
18 Act. Now Senator Magnuson was one of our great
19 senators in the State of Washington, along with Senator
20 Jackson who we worked with. And so Magnuson put this
21 act together, the 200 Mile Act we call it, the Magnuson
22 Act. It's now the Stevens-Magnuson Act.

1 So we made sure, our tribes made sure that we
2 wrote in that act along with the Senator, that we had
3 language that we the tribes would be at the table
4 whenever there was a decision made on our resource and
5 our salmon.

6 And we're there today, we're there today. We
7 sit on the U.S. Canada International Treaty. We have
8 our own policy people on there along with the State
9 Department, State of Washington, State of Idaho, State
10 of Oregon. We all sit on that U.S. Canada -- U.S.
11 representatives where the president nominates us, from
12 our recommendation from our tribes.

13 We sit on the 200 mile Pacific Salmon
14 Management Council along the Pacific Ocean. We sit on
15 that forum. We have a man sitting there right now, an
16 Indian from Quinalt. So we're there. We're there on
17 that -- on those very important management schemes that
18 we're putting up to understand how we all gather that
19 fish.

20 Right now we're meeting, right now there on
21 the North of Falcon about how we manage the ocean and
22 how we manage the inside, the salmon that are coming

1 back to our streams and how the endangered species is
2 being managed and all of that. So we're there
3 managing. We're managers, where governments that can
4 sit down and sit down with you, and we got information.

5 If you need information we're here to supply it. If
6 you want to talk fish, we're here to talk to you. You
7 can call any of us and we'll come to wherever you want
8 us to be.

9 It's very important that we go out into our
10 islands. Our people out there in Hawaii and Samoa, our
11 island people out there rely on the salmon and the
12 different fisheries out there for their life. We've
13 got to look at all that and make sure that that's
14 protected and covered.

15 We have a lot of clean up. Right now in Puget
16 Sound we have Hood Canal along the Olympic Mountain
17 Range, a beautiful mountain range. The Pacific Ocean
18 is on the other side, Hood Canal is on this side. The
19 Straits of Juan de Fuca here. That canal is dying
20 right now. It's dying. If that canal dies in the next
21 ten years -- if that canal dies South Puget Sound from
22 the Narrows Bridge in Tacoma, Washington south will

1 die. Now that's two big bodies of water in Puget Sound
2 that will die.

3 So we have to have this body convene and make
4 some recommendations because we looked at as a short
5 term and then we looked at it as a long term. How do
6 we clean up the ocean, how do we make a comprehensive
7 plan along that ocean and all our waterways and how do
8 we start getting to where we want to be in the clean
9 up? We need the people to be there. We need the
10 people to take part in these type of forums, to testify
11 in front of all of us.

12 When I testified in front of the Ocean
13 Committee in Seattle, Washington they had a little boy
14 about that -- he was from the Hood Canal. There was
15 about -- a whole bunch of kids in there, young kids. I
16 didn't know them. But he testified about the Hood
17 Canal dying to the Ocean Forum, you know. It was a
18 really sad thing that, you know, he was talking -- I
19 mean, he could get up there and tell it like it was,
20 you know, that we have to do certain steps to make it
21 -- to clean that up, you know.

22 But these are the people you've got to hear

1 from. You've got to hear from some of these people and
2 if you won't have time, maybe anytime, but somewhere
3 you've got to get out and talk to people around our
4 country and you have been doing that.

5 And so I think that, you know, we got time to
6 make it happen but it's got to happen. I mean, you
7 know, you can see the changes going on around the
8 world. You can see the happenings that are going on,
9 whether they be earthquake, whether they be global
10 warming, whatever it is. You see it all happening
11 here.

12 We have got to change our ways, you know. How
13 do we change our ways? You know, everybody goes to
14 sleep when you say change your ways. You know, how do
15 we do that? How we do that is we tell our children,
16 you know, we have to make a change. It's your
17 generation and the next generation, but we have to make
18 a change and we have to start it somehow.

19 There's ways of doing it. There's ways of
20 doing it, but we just have to make -- get the
21 leadership and make it happen. This is our country.
22 It isn't nobody else's, it's ours. Together it's ours,

1 all of it. We take the responsibility everyday of our
2 country and our own backyard. We take the
3 responsibility of that Pacific Ocean that feeds us. We
4 take the responsibility of that mountain that feeds us.

5 We take the responsibility of all of them trees and
6 everything that's growing out there, all of them
7 animals, we take the responsibility to keep them there.

8 All of our medicines, we take the responsibility of
9 all of us working together and trying to bring some
10 type of a balance in front of us so we can all go down
11 the same road. We have to do it and the only ones that
12 can do it is us. So thank you.

13 (Applause.)

14 MR. MOON: Well, I guess now would be a good
15 time to go ahead and open up the floor for questions of
16 our speakers today. Anybody have any questions? John.

17 DR. OGDEN: Thank you, Mel. Thank you all the
18 speakers for an interesting set of talks. It's -- I
19 don't think there's anybody in this room who couldn't
20 say that this was a sobering story of what's happened
21 with the, essentially the history of disenfranchisement
22 and so on that has occurred with Native Americans. I

1 think probably everybody would -- and indeed in terms
2 of the work of this committee, my perception at least
3 is that we have worked hard to reverse that trend.

4 I guess my question is is that history of
5 disenfranchisement would naturally lead to essentially
6 a special, shall we say, kind of sensitivity, one might
7 say suspicion of a group that was coming in possibly
8 top down or it might be perceived as coming in top down
9 to essentially almost continue that story of
10 disenfranchisement by sort of saying that there are
11 these places in the ocean where we need to control
12 and/or eliminate the harvest of marine resources for
13 the greater good, whatever that might be -- fisheries
14 management, natural heritage, cultural heritage, which
15 are the three elements that we're dealing with.

16 I guess my -- and from my perception as not a
17 Native American obviously is that this sense of Native
18 Americans is often there in the sense that there is an
19 innate resistance to this type of control even through
20 what fisheries, traditional fisheries management tries
21 to do. And I guess I'd just like to -- I mean, I don't
22 -- this isn't really a question I guess, but to hear

1 you talk a little bit more about your perception of the
2 possibility of a committee that is duly constituted as
3 ours, as we believe ours is, to essentially say, and
4 let's just put it bluntly, that there are places in the
5 ocean where you can't go to take fish.

6 DR. GARZA: If I could real quick. When you
7 do ask your question if you could state your name and
8 something about you so that the panel knows who's
9 asking the question, John.

10 DR. OGDEN: Okay. My name is John Ogden. I'm
11 a professor from Florida. I run an oceanographic
12 institute and I work on some of these sanctuary issues
13 and protected area issues. I'm just sort of taken by
14 this idea of continuing disenfranchisement.

15 MR. ZORN: Let me give the lawyer answer and
16 then we'll give it over to the folks in the community.
17 I mean, there is a legal principle that's involved,
18 that if -- you do have to regulate the exercise of the
19 treaty right. You have to make sure that you regulate
20 the non-Indian first to make sure that the treaty
21 fishery continues. I think we saw that when you put
22 the priority on subsistence and so on.

1 I think a couple of things. Just make sure
2 that we do hammer in the fishery that, you know, if you
3 really have to propose it, you really have to propose
4 it, but don't presume that you have to close the tribal
5 fishery just because you have to close everybody else.

6 I mean, that's kind of like that fish refuge thing
7 that I was talking about.

8 You know, look for experiences where, you
9 know, maybe when you do talk to tribes say, well, what
10 do you do in your home territory when you think you
11 need to control harvests or among your own community
12 how do you handle that. I've been taught the idea of
13 an endangered resource -- I mean, if you haven't paid
14 proper respect with what the Creator provided and, you
15 know, the idea of non-use will lead to the
16 disappearance of the resource as well. You've got to
17 continue to use so that the Creator knows that you're
18 grateful that the resource is there and then the
19 resource will continue to present itself for you if you
20 use it in the right way.

21 Now I'm crossing the road, the side there, and
22 that kind of is beyond the lawyer but that's things

1 I've been taught.

2 MR. FRANK: One of the things that's happening
3 right now in our country is that our tribes along the
4 Pacific Coast and inside, you know, we have -- some of
5 the tribes, the bigger tribes has a million acres or
6 more and all of a sudden we find ourselves managing the
7 resource and all the endangered species now are coming
8 to the reservation. And so we're being penalized. Our
9 harvest of timber, our harvest of our salmon, because
10 we're managing and we're managing our rivers. We've
11 got in stream flows on some of them. We're managing a
12 comprehensive plan with all of the utilities and
13 everyone, and we get penalized.

14 95 percent of our fishery is closed right now
15 in Puget Sound and along the coast. And, you know,
16 that economy went, gone, you know. And we have a
17 subsistence fishery, you know, for our ceremonies like
18 you heard and different things but -- and help one
19 another. If another tribe don't have enough salmon for
20 their ceremonies or whatever we all share that.

21 When you look at that all we want is to be
22 recognized and you look at -- you look at the

1 scientists, conservation, we close down if there's a
2 conservation problem on any of our species of anything.

3 And, you know, no over fishing.

4 Now I would tell you how -- what happens from
5 Grace Harbor -- if I had a map and I would show you
6 clean up the Pacific Coast. That's our territory, from
7 Grace Harbor way up to McCaw on the corner of -- you
8 guys, some of you know that, to the corner of the
9 United States. That's -- we can't go anywhere else.
10 This is us. We're fishing, bottom fishing, crabbing
11 and everything out there. The salmon are going down
12 the Pacific Coast and migrating that way and different
13 ways.

14 Oregon and California people come up right in
15 here and they over fish this fishery and it's allowed
16 to happen. And all of a sudden we have -- we're closed
17 for conservation, you know. We're saying to the United
18 States put a boundary out there and keep them people in
19 California, let them -- if they want to kill their
20 fish, let them kill their fish. If they want to kill
21 their fish in Oregon, let them kill their fish. But
22 don't come up here where we're managing the resource

1 for all of us.

2 And them are the things that are happening
3 right in front of us, you know. It continues to go on.

4 But when you -- you've got to look at this picture in
5 kind of a big picture and, you know, the reason why
6 they're up there is there's nothing down there anymore.

7 MR. LORRIGAN: What they said. I guess bear
8 in mind that from all the information I've heard and
9 read and whatever, for Alaska the subsistence harvest
10 of the resources by subsistence users, this includes
11 moose, deer and all the other resources, has been 1
12 percent, or a little more a little less than 1 percent
13 of the total commercial and sport harvest in the sport
14 hunting.

15 In Sitka we did a halibut survey and Sitkans
16 were harvesting, reported about 300,000 pounds of
17 halibut. The commercial by-catch far exceeds that.
18 That's what they throw overboard in waste because they
19 can't have it on board. They waste way more than we
20 were legitimately using and giving to the community,
21 but the sky is falling because we are allowed
22 subsistence use.

1 This last year we had 300,000 pounds of
2 herring eggs that were harvested and shipped all over
3 the Pacific Northwest. Alaska Airlines provided their
4 poundage to us. Those herring eggs went all over the
5 coast. The use of those herring eggs isn't even
6 recognized by Fish and Game. They don't even count it
7 as a loss to the overall biomass because it's so
8 insignificant of a use.

9 The commercial sac roe fishery far exceeded
10 that with their commercial killing of the adults. All
11 the roe we took, the adults swam away.

12 So I'd like this body to bear in mind that,
13 you know, the lakes in the Midwest, they had to have
14 that light on the water document proving that their
15 actual harvest was far less than what was being cried
16 about. The people were taking what they needed -- you
17 heard the Columbia River, the Pacific Northwest and the
18 lower 48.

19 Indians have treaty rights to harvest salmon.
20 Oh, my God. But if you look at the actual numbers of
21 what they're taking for their own use it far -- it's
22 far less than the actual sport and the actual

1 commercial harvest of the same species.

2 MR. MOON: Was it Bonnie had her hand up.

3 DR. McCAY: Well, I have to join everyone for,
4 thanking you for these really thoughtful presentations.

5 I have another question --

6 DR. GARZA: Your name.

7 DR. McCAY: My name is Bonnie McCay and I'm a
8 professor at Rutgers University in human ecology. I'm
9 wondering about the notion of cultural heritage as the
10 basis for demarcating some part of the marine
11 environment as a protected area, whether that's
12 anything that has made any sense to the people, to the
13 groups with which you're affiliated or not. Because
14 we're not just talking about biological systems, we're
15 talking about the marine environment is something that
16 contains all kinds of human significance -- cultural
17 meaning, stories, ceremonies, artifacts. I'm thinking
18 like the reef net system of the past. There may be
19 others, too.

20 MR. LORRIGAN: I'll give you an example from
21 Sitka. There was a proposal by some of the fishermen
22 to create an open pound system whereby they would bring

1 net -- or floating platforms in and suspend seaweed
2 fronds in the water and the herring would come and
3 spawn on those, and they would sell that to the sushi
4 market in Japan. They wanted us to delineate, you
5 know, what areas are important to you for your herring
6 harvest.

7 Almost to a person in the tribe they wanted to
8 circle the whole sound. They didn't want to get into
9 the nit-picky parts of this cove, and that bite, and
10 that point, and this and that. It was just like all of
11 it. We've been here for thousands of years and the
12 herring aren't always going to spawn there. You put a
13 number of nets up to make sure that you have some
14 successful harvest.

15 And so their mind set was how can you tell us
16 to -- you know, that's allotting away traditional
17 territory by asking us to do that. All of this was
18 used, all of it has Tlingit names, all of it has our
19 history, you know. So that's an example I could share
20 with you.

21 MR. ZORN: Yes. It's just interesting. You
22 raised the notion of a place that's alive and dynamic

1 and of continuing use, and John you talked about the
2 idea of shutting something down, you can't fish there.

3 I mean, you know --

4 VOICE: Perception.

5 MR. ZORN: Yes, perception. And the starkness
6 of sort of that type of thing. One of the messages we
7 were trying to convey today is that these sort of
8 natural heritage places for tribal communities, and
9 clans, and families, and so on, they're just living
10 places. You know, old wild rice camps or sugar bushes,
11 I mean just think of a sugar bush in the woods.

12 We go to the Forest Service all the time under
13 our MOU and say let's find some areas that we can set
14 aside where you will not harvest those maple trees, the
15 families can go back there year after year. And so in
16 that sense there was sort of a set aside for an
17 enhancement in our view of protection in that sense
18 rather than a, well, we have to stop something to make
19 sure we enhance it. It was more let's do something to
20 enhance it.

21 MR. FRANK: You know, one of the things I'm
22 happy to hear these professors in here from the

1 universities because in our country we have -- we've
2 formed a timber and fish and wildlife, we want to keep
3 the timber industry in business, the warehouses and the
4 big timber companies. We had our meeting here just
5 last month, big annual meeting, and one of the CEOs got
6 up from one of the timber industries and said, you
7 know, where are we going to get our -- who's going to
8 take our place, you know. I don't see any more of the
9 universities putting out anybody to protect our natural
10 resource, our sustainable -- sustainable country here.

11 He's on a panel talking like that. You know,
12 here's the CEO, you know.

13 And I got up and I said, "The University of
14 Washington" -- and the president was in there and he's
15 a local guy from Fife, just 20 miles from where I live,
16 a good president, a new president. I hope he's going
17 to be good. But the University of Washington had one
18 of the greatest school of fisheries and timber, you
19 know. Where did that go to? Have we changed the
20 universities throughout our nation on our sustainable
21 country here? Where are we headed? You know, where
22 are we headed in sustainability of our resource, and of

1 our trees, and our water and everything? Can we -- are
2 we headed to where we can make it someday or the other
3 or can we make a tree fast or without a thousand years
4 to grow that cedar tree?

5 Can we purify that water there? Where's the
6 water going to come from if we don't sustain it? You
7 know, sustainability has got to come to the
8 universities and we've got to get this going or
9 otherwise we're going that way.

10 MR. MOON: Okay, Rod.

11 DR. FUJITA: Thank you, Mel. I'm Rod Fujita.

12 I work for a non-profit environmental group called
13 Environmental Defense. I also thank you for your great
14 presentations.

15 I've heard in this discussion and also in your
16 presentations several really powerful arguments for
17 spatial management or managing areas differently, you
18 know, depending on what's going on there, ranging from
19 just the fact that there are treaty rights and
20 traditional use and gathering areas all the way up to
21 this proposal for a special salmon area to keep the
22 Californians out. Being from California I can

1 appreciate that.

2 Anyway, there seems to be a theme running
3 through your presentations and I'd just like to hear
4 more about the roots of that kind of thinking. I think
5 it was Jim who provided the example of the maple
6 reserve, you know, to enhance the production of maples.

7 Are there equivalent traditions in the inner tidal or
8 inner shore areas where areas are reserved and access
9 is limited or harvest is limited somewhat so as to
10 preserve and enhance the resource?

11 DR. GARZA: I'm going to jump into that first.

12 Thank you, Rod. Jack will probably follow up on this,
13 but historically in Southeast Alaska the Tlingit, the
14 Haida and the Tsimshian held tidal rights to lands, to
15 the waterfront in front of it, to the shores, out the
16 seal rookeries. To harvest a resource in that area you
17 had to go to the chief and get permission, and the
18 chief or the head of the clan would make determinations
19 on how much could be taken.

20 And Jack brought up the herring resource,
21 which is like the biggest thing in Southeast Alaska is
22 to get herring eggs from Sitka. And traditionally, you

1 know, Jack was saying 20,000 people would come in.
2 They would come in as tribes and get permission from
3 the Kiksadi, the main clan there, in order to use that
4 resource. And they would take what they were told to
5 take and they would barter however they needed to
6 barter to make that happen.

7 And so now, you know, in Sitka these tribes
8 still hold those responsibilities, whether or not
9 they're recognized they -- Sitka Tribe is one of the
10 hardest fighting tribes in terms of trying to maintain
11 that responsibility. If nobody recognizes that
12 responsibility from the government it doesn't make that
13 responsibility go away. Those areas are still
14 protected by those clan members in whatever means that
15 they can.

16 MR. LORRIGAN: To quote a, you know, that they
17 just passed, sovereignty cannot be legislated away. It
18 cannot be given. It can only be suppressed.

19 What Dolly was saying was correct. Like I
20 said the sockeye streams, the high cast clans had
21 control of those lakes because of the nature of the
22 resource returning to it and they were the ones who

1 would designate the harvest on that and how much could
2 be taken.

3 The federal government prohibited pot latches
4 in 1904 because the pot latches were the Tlingit
5 method, or the Haida, or the Tsimshian method of
6 transferring title, deeds, whatever. It was their way
7 of -- if one clan owed another clan a favor for
8 whatever reason, a pot latch would be held and the
9 whole community would be involved. That was the format
10 then the whole community understood that for what --
11 you know, for whatever reason the clan that was in
12 charge of this lake has given over permission to this
13 other clan as a payback and they now are in charge of
14 this lake, and whether they will move out or will stay
15 -- but you always have to ask permission.

16 There was a responsibility to the resource.
17 Like I said, when the elders talked about how different
18 the ideologies are that we have to deal with today, the
19 European mind set is, you know, out of the Bible. Man
20 will have dominion over nature. We never looked at it
21 that way. Historically we were part of nature. We
22 were a little smarter sometimes I guess and decided how

1 much could be taken from a spot.

2 They tried very hard not to fish out an area
3 because they understood that there's a cycle. The
4 little ones need to be -- have their chance at life too
5 and we'll take what we need and eat it. We were no
6 different than the seal, or the eagle, or the bear in
7 our fishing or our exercise of gathering food for
8 ourselves. It was just, we're a part of this too. If
9 this resource suffers we're going to suffer. If it
10 goes away we might go away, so we need to be very, very
11 responsible in how we deal with this.

12 MR. FRANK: I told you about the U.S. v.
13 Washington and the interpretation of that treaty. We
14 have our reservations, but then we have our usual and
15 customary fishing areas or hunting areas, you know.
16 And it's all the land that we ceded to the non-Indian.
17 It's all that land, not just the reservation. It's
18 all the land along the Pacific Coast and out into the
19 ocean and all over, you know.

20 That's what we manage, you know. We manage
21 that off the coast and inside and on the land. That's
22 why we have to -- we have to manage with the

1 agriculture people, we have to manage with the
2 warehouse, the timber industry. We have to manage
3 with the hydroelectric, the dams, that there's three or
4 four dams on some of our rivers. We manage,
5 continually manage with those people. We're managing
6 for the resource, for the water, the in stream flows,
7 the clean water, the quality and the quantity and all
8 of that. So it makes you whole when you're doing that.

9 When our people from -- if we all, all of our
10 tribes -- and they know what they want in their area,
11 and only they know, not anybody else. They should have
12 that right. That should be clear and simple for
13 somebody to understand that this village right here,
14 you know, it expands not only just right there, it
15 expands wherever the tide goes out there and the tide
16 comes in or wherever the coves are. All of that should
17 be understood and wrote into some recognition of
18 management and protection of our resource.

19 If people would use the Indian people as a
20 benchmark of management, you know -- and the Federal
21 Energy Commission, when I was managing the Squale
22 River, that's 40 years ago, and put that watershed

1 together, the Federal Energy Commission made a policy
2 call that there wouldn't be -- don't make any moves
3 until you talk to that tribe, the Federal Energy
4 Commission, because those dams are going to be re-
5 licensed. They're going to be re-licensed and you've
6 got to work with the tribes. If you want to re-license
7 in the future you work with the tribes.

8 What do the tribes want in working? They want
9 their salmon, they want everything. They want the
10 water and everything, the in stream flows and all. We
11 can work if we sit down, we can work to do that. We
12 can work to put salmon passages around those dams, you
13 know.

14 Engineers from the universities -- in the
15 early days there wasn't none of you people or none of
16 us to sit down with them. If you sit down with the
17 engineer in them days and told him that you needed the
18 salmon to pass that dam and migrate back, he would have
19 figured it out, the engineer would have.

20 But what you told him was block the river, and
21 he did it. No salmon gets up any higher and no salmon
22 migrates home. Nothing. You know, here we are in the

1 year 2000 (sic) right now and we're all at the table.
2 If we recognize each other -- you know, we're going to
3 go into the future together. We want to build a dam on
4 our river, and we need to build it, and we all agree on
5 it, it will be built right because we're all going to
6 sit at the table and we'll have a model sitting right
7 there on the floor to tell us exactly how that salmon
8 is going to get up, how them animals are going to get
9 through.

10 That's all we're saying is let's do it.
11 There's a right way to do it and there's a wrong way to
12 do it.

13 MR. MOON: Okay, Lelei.

14 MR. PEAU: Thank you. My name is Lelei Peau
15 from American Samoa. I'd like to just make a brief
16 observation on the Pacific, the Pacific panel that we
17 participated in in our last meeting in Maui and the --
18 I see there's a lot of similarities and I certainly
19 indeed appreciate the enforcement of some of the take
20 home message that we've heard this afternoon, the
21 notion of caretaker of the resources, the reinforcement
22 of cultural heritage for the people that live and

1 depend on those resources on a daily basis, the
2 recognition of our traditional practices and
3 subsistence living. I also am very appreciative of the
4 fact that the notion of -- the integration of science
5 into our thinking in the islands, that we have to rely
6 on the best available research, but I think there is
7 recognition in our -- today's thinking that we have to
8 have the biological into the equation to validate some
9 of the research that we have.

10 I'm also very pleased with the fact that -- to
11 hear Frank talk about the political will. The notion
12 of court cases or quote, unquote resolving any dispute
13 in the Pacific as we heard from in our Maui discussion,
14 that in the Pacific a lot of the decision is based on
15 consensus building among the chiefs. I hear today
16 treaties that were made by the native, but what I think
17 what it is really common here is responsibility of the
18 local community to take charge of those resources and
19 learn to be responsible -- but be accountable -- to
20 ensure that policies, management are developed to
21 ensure that resources are safely cared, that they're
22 resources that remain for future generations, that we

1 take what we need on a daily basis.

2 So I'm really pleased to hear that. In
3 building the recommendations that we need to instill
4 within the work as the federal MPA, I think it's
5 significant in our deliberations to continue to
6 recognize that we heard from the Pacific panel and now
7 we hear from the tribal the importance of the cultural
8 heritage and the way that we base our decisions. I
9 think it's significant that there is a recognition of
10 having science integrated into our thinking process,
11 but I think it's really important and I certainly
12 appreciate the panel reminding the committee of the
13 rich knowledge that is instilled within the tribe and
14 also within the traditional lifestyle in the Pacific.

15 So with that quick observation I think it is
16 really important that we remain focused, that we do not
17 disregard what we heard from the Pacific panel and what
18 we heard this afternoon. Thank you.

19 MR. MOON: Michael.

20 DR. CRUICKSHANK: Thank you, Mel. My name is
21 Michael Cruickshank. I'm an emeritus researcher from
22 the University of Hawaii and Marine Minerals

1 Technology.

2 I have been most impressed to listen to the
3 conversation that's gone on this afternoon and the
4 amount of wisdom and feeling that has gone into all
5 these studies we've heard, which it makes one feel
6 proud to be an American along with you folks who were
7 here long before we were. And what I wanted say here
8 is that in my time in the Pacific, in Hawaii, I have
9 had the occasion to travel over much of the Pacific
10 Islands.

11 There are some 14 sovereign countries which
12 are isolated by thousands of miles of ocean. The
13 United States has exclusive economic zones around
14 certain of those. They have arrangements where they
15 are actually United States territories. And to the
16 whole extent that we're looking at with the Pacific,
17 the American interests in the Pacific encompass the
18 width of the ocean, which is as far as from -- from the
19 bay, Nia Bay to Nova Scotia. It's a tremendous area.

20 In this area of course are the migratory fish,
21 the tuna stock of various kinds of tuna. I don't
22 profess to know much about fish except that in my

1 travels I talk to people in the islands and one -- the
2 one we're talking about, which is the most impressive
3 to me was, I believe it was in Kayaboss where they
4 anchored about nine or ten very large vessels, and I
5 asked what these were. They said, well, these are
6 factory vessels for the tuna.

7 Each of these vessels had attached to it nine
8 other fishing vessels of substantial size. They would
9 fan out from this island, from the particular harbor
10 where they were, and within a matter of days or a
11 couple of weeks would fill their holds with tuna,
12 taking it to factory ship and going back out again.
13 When the factory ships were full they would take off
14 and take these fish to be processed for sale in Asia or
15 elsewhere.

16 One of the -- we were having a beer and one of
17 these fishermen that was working at the harbor and -- a
18 young fellow, an American, and he said, "Well, this is
19 a great life. I'm looking forward to having a career
20 here."

21 And one of the older men said, "Listen, if it
22 goes on like it's going on now there won't be any

1 career for you because the fish will be going, there's
2 not going to be any tuna."

3 And I was very shocked. It's clear to me that
4 what's happening in this grand scale in the Pacific,
5 total desecration of the fisheries, of the tuna
6 species, I wonder if there's some way that you could
7 put light to what is, the way of handling this,
8 basically genocide if you like, of the tuna stock.
9 There is in the Pacific a number of quoted commissions,
10 the federal -- there's no federally -- foreign
11 fisheries agency and a few others like that. I guess
12 the environmental, United States Environmental
13 Administration also, which I have tried to do something
14 with, as far as I know with marine nothing much has
15 been done about these migratory fish and the migratory
16 attack, sort of like takers of the fish, which with the
17 -- they use the tuna in one area and then move to the
18 next area.

19 We can watch them. We can have the area of
20 observation to see which way they are going this time.

21 With the 14 countries some of these countries allow,
22 give out -- as I understand it from these conversations

1 I had, give out permits for these fishery people to
2 work within their agency for a matter of a few thousand
3 dollars a year. The total value of the fish coming
4 from one of these is somewhere in the several billions
5 of dollars. The difference is phenomenal and
6 horrifying to understand. They're practically giving
7 away these permits to fisheries, to the fishermen, to
8 allow them to fish in this water. Then as soon as
9 they're gone they go to the next area and do the same
10 thing.

11 So with all the wisdom and the thought that
12 you folks have I wonder if you have some ideas. How do
13 you effect, stop that from happening and get on to
14 sustainable type of fisheries? I'd be very interested
15 in listening to how -- what you think about it. Thank
16 you.

17 MR. MOON: Actually I might answer that just
18 because you were talking about a highly migratory
19 species and on the Washington Coast the four tribes
20 there, they are engaged in harvest of tuna fisheries
21 and at present there isn't a real structured mechanism
22 about the management. I think there's some steps being

1 taken to address some greater information to be covered
2 about that. But for -- at present we're having a
3 discussion with -- a management plan that addresses the
4 fact that the treaty right does exist. I think that
5 was something that we had gone through other ground
6 fish species with and we were able to add that on to
7 this discussion as well.

8 I think we would welcome any kind of
9 invitation and resources to be able to participate in a
10 co-study or a study that dealt with the problems that
11 were coming from these types of fisheries or any other
12 fishery that was out there. Part of the reason why I
13 brought this group together was to demonstrate that
14 over the years that we've been operating past Bolt, 31
15 years, that we have -- the 20 tribes in the Northwest
16 have been able to get to a capacity to have our
17 biologists, and our enforcement, and our legal people
18 so we can engage now, and we're ready to do that if
19 given the opportunity to do that.

20 The other reason I wanted to have this panel
21 was to elevate the fact that it was not just a cultural
22 heritage matter, but that in fact the act had language

1 about the diminishment or affect on treaties. It was
2 not going to happen, and that was part of the Executive
3 Order itself.

4 So sovereignty is a huge issue, government and
5 government and capacity to be able to interact. I'm
6 actually quite pleased with the results that we've had
7 with the speakers today.

8 Tundi, you were next?

9 MR. ZORN: Well, can I just add one thing, a
10 little war story, anecdote. I don't mean to be kind of
11 cavalier about this, but you talk about how do you kind
12 of control that fishing. When we were kind of
13 litigating the treaty rights in Wisconsin, the walleye
14 fishing rights in the inland lakes, and I don't know
15 how this applies to the coastal staff but we'll see.

16 The Wisconsin DNR had this document called
17 Walleye 2000 or Fish 2000. And this was, you know, in
18 the middle 80's and you're in the courts. The premise
19 of that document was that the demand for the walleye
20 resources in these Northern Wisconsin lakes was going
21 to exceed the supply of the fish. I mean, just
22 demographics, tourism, you know, all this kind of

1 stuff. I guess they didn't predict the popularity of
2 golf that has taken away from fishing now.

3 So the DNR in the 1980's was trying to -- had
4 this quandary. How in the heck are we going to get
5 people to stop fishing, because we're going to have to.

6 You know, they don't like to tell people you can't
7 fish anymore.

8 Well, great, what do they get? A federal
9 court decision says, hey, these tribes have treaty
10 rights and they can get up to 15 percent of those
11 Walleyes. Boy, white guy, you've got to cut back now.

12 And guess whose fault it is?

13 So the Indians took the brunt it, but the
14 bottom line was that you have better managed walleye
15 fishery in Northern Wisconsin now after the treaty
16 rights were affirmed. Tribes are in the game. There
17 is sort of, this allocation game that has to go on.
18 Well, if the tribes can have a certain share we better
19 figure out how many fish can be shared. Well, then
20 once you start sharing them, guess what, if we have a
21 limit you've got a limit too.

22 And so it went from creole survey estimates of

1 the number of Walleyes taken in these Northern
2 Wisconsin lakes from hundreds of thousands, all of a
3 sudden down to, well, guess what, we're taking about as
4 many Walleyes out of those lakes, tribes, as you are.

5 So the ironic part was with the entry of the
6 tribal rights on the scene the state had to do a much
7 better job in just overall management, sort of under
8 the guise that, hey, we've got to share this now and
9 have this allocation. So it's just sort of irony.

10 We actually do have the DNR, the then DNR
11 secretary on tape saying, yup, we got better walleye
12 management now after the treaty rights than before. So
13 we quote that whenever we can.

14 MR. MOON: Tundi? Go ahead.

15 DR. AGARDY: My name is Tundi Agardy. I'm an
16 ecologist by training, but I'm now an independent
17 environmentalist/conservationist. I do most of my work
18 outside the United States in the developing world.

19 I wanted to follow on the question that Rod
20 asked and also the one that I think John was asking. I
21 think what they were getting at was to ask you as
22 representatives of Native American peoples whether you

1 saw Marine Protected Areas as a potentially important
2 tool to do a number of things, to kind of give greater
3 recognition for your sustainable ways of managing and
4 your ways of actually relating to the natural
5 environment, to use MPAs as a way to stave off some of
6 the destructive activities like what we heard about in
7 Sitka with the commercial roe fishery and to use MPAs
8 to generate the kind of political wall that Billy was
9 describing is needed to get people to understand the
10 importance of the ocean and the importance of sustained
11 use of ocean resources. This committee in most
12 discussions of protected areas tends to focus very much
13 on fishing and extractive uses of the marine
14 environment.

15 I happen to think that one of the important
16 ways that Marine Protected Areas contribute to
17 conservation is by allowing people to recognize the
18 special significance of a place and to generate the
19 kind of political will that's needed to, for instance,
20 stop indirect impacts like pollution from afar, things
21 that are happening in, for instance, in the Pacific
22 Northwest with a lot of industrial pollution and so

1 forth added to things that we can't do much about, like
2 climate change. So would you see this committee and
3 the Marine Protected Area movement as a whole as kind
4 of an ally in helping you move this country to a more
5 sustainable path?

6 MR. ZORN: These guys use me to kick it off
7 and then clean up after me. I don't know why.

8 You state a very persuasive case that the
9 answer should be yes. That's very good. That really
10 is the theory and the principles. I will tell you just
11 from this recent experience, for example from the
12 Apostle Islands National Lakeshore Wilderness, every
13 reason you state why it's good a idea -- and the tribal
14 leaders and the tribal sort of fishery and national
15 resources committee idea with it, they buy into that
16 100 percent. The problem is once you start setting
17 aside these little pockets with these rules, all of a
18 sudden they become more and more targeted for more and
19 more rules and more and more restrictions.

20 The areas that need to be set aside, at least
21 in our experience, tend to be areas where tribal
22 members go or have gone or whatever, and in this

1 particular case for the Apostle Islands when the
2 lakeshore was first formed and Gaylord Nelson was the
3 senator back in the 70's it sounded really -- it
4 sounded just like the treaty days. We found this
5 correspondence from the representative -- the
6 Department of Interior that basically said, oh, don't
7 worry. We'll talk to the Bad River and Red Cliff
8 Tribes. We'll convince them that giving up part of
9 their reservations for this lakeshore is a good idea.
10 We'll show them it's in their best interests.

11 So right away the lakeshore comes with the
12 baggage of they wanted to move the tribes,
13 reservations, sort of out of the way for the lakeshore.

14 Well, then you come up with this wilderness on top of
15 it and you conjure up the memories of, well, wait a
16 minute, they wanted to move us out of the way once,
17 they want to move us out of the way again.

18 So my experience is if you can overcome that
19 sort of fear, that sort of skepticism, all the reasons
20 why it really does get you in the right way and that we
21 want to use it to say don't pollute, stop the
22 polluting, you know that kind of stuff.

1 The wild rice bed in the Bad River is one of
2 the last pristine areas on Lake Superior, but when
3 tribal members here, it was brought to the tribal
4 council and said set it aside and do something with it,
5 and make it unique, they were going like, wait a
6 minute. You're going to take that away from us. We
7 know you are. We know that's the next step. What the
8 tribal council wants to do is keep boats out of there
9 during the floating leaf stage so that the wake doesn't
10 destroy the crop.

11 So that's what I hear, and just so you know
12 that there is that sort of skepticism, that cynicism
13 that, you know, we've seen it all before and we're the
14 ones who take it. In the Boundary Waters Canoe Area
15 Wilderness up in the Minnesota -- I mean perfect
16 example of sort the environmental community wanting
17 that, but when tribes would say, well, you know, we
18 should still be able to kind of motor out there and get
19 our rice and fish.

20 Oh, no, you can't use motors. You know,
21 that's not part of the natural experience.

22 And tribal members are saying it's very much a

1 part of the natural experience. That's what our rights
2 are. That's what we get to do.

3 So for all the reasons that are yes, just so
4 you know a little bit of the reality that I hear back
5 at home.

6 MR. LORRIGAN: I guess to paraphrase it,
7 you're from the government and you're here to help.

8 (Laughter.)

9 MR. LORRIGAN: Well, I'll give you a story.
10 And I'm not talking about Sitka right now so I
11 apologize to all the people from Hoonah in here. But
12 there's a place called Glacier Bay National Monument.
13 Some of you may be aware of it. There is band of
14 Tlingit called the Chukenaide and in order to be
15 adopted by the Chukenaide you have to learn their
16 songs, you have to learn their stories, and you have to
17 learn their history.

18 One of their songs talks about the village at
19 the head end of Glacier Bay. A taboo was broken by a
20 woman and the snow came and didn't leave. It
21 eventually pushed the people out of Glacier Bay. They
22 had to resettle at Hoonah, across icy straits.

1 So they have this historical reference to an
2 old place that's no longer habitable because of the
3 glacier. But their stories talk about the fiords,
4 their stories talk about the islands and the village
5 site, but there's no artifacts there because the
6 glacier scoured it away. That's what glaciers do.

7 But the people have the oral tradition of
8 being in that place and being a resident of that place,
9 and now the Glacier Bay National Park wants to exclude
10 all use of Glacier Bay -- the commercial fishing, they
11 want to restrict the tourism in there, and they also
12 want to restrict the native use of that place.

13 And they're like wait a minute. That's our
14 home.

15 Well, there's no history here.

16 Yeah, we know. The glacier pushed us out.
17 Our stories tell about the glacier and the glaciers are
18 sitting there, they're starting to see where trees were
19 and such at the head and the bay. So in order to
20 protect this area, to bring it back to the pristine
21 state, to have this preserve where there's no human
22 interference, I reiterate again that the people always

1 thought of themselves as part of the food web, that
2 they were just as much a part of Glacier Bay as the
3 seals and the seagulls, and the salmon that are
4 starting to pioneer back in there.

5 That glacier has receded tremendously since
6 John Muir, you know, wrote about it. The Indians
7 always knew it was there and they knew why it was
8 there. They had the story to tell you why. Their
9 history will reflect why they were pushed out and why
10 they should be allowed back in there. They have to go
11 through extreme paperwork and documentation to get some
12 rights to go back in there which is just -- it's just
13 -- it's wrong I think.

14 But that's an example of how this area became
15 protected from everybody and it became protected away
16 from the people who -- that was their home.

17 DR. GARZA: Okay. Thank you, Billy. I guess
18 in responding to that I would like to try the other
19 side because there is potential benefits.

20 And using Sitka as an example, five years ago
21 the State of Alaska eliminated the habitat division
22 from the Alaska Department of Fish and Game. And so if

1 you're looking at something like protecting the inner
2 tidal habitat for herring spawn for future generations,
3 there are no biologists there to help you. There is no
4 easy process. I mean, Alaska is in a state of
5 development right now and will continue through this
6 current regime.

7 And so in those instances I think that the
8 tribes that have the capacity, and that will not always
9 be the case, but if there's tribes that have biologists
10 such as Jack and have people who have worked in
11 environmental policy areas, may pick it up and have the
12 time to say, okay, how can we use this as a tool and
13 what can we do with it. But by and large most of the
14 tribes are just busy trying to take care of the
15 immediate needs of the community and have a hard time
16 looking that far down.

17 And so in order to use those types of tools
18 there also has to be things in that toolbox that allows
19 that opportunity in terms of grants, in terms of people
20 that are willing to work with them, otherwise they
21 won't be used.

22 MR. FRANK: Well, you know, the tribes -- when

1 we seen what the president was trying to do here it
2 scares us, and you heard why it scares us because. You
3 know, we haven't seen in this country yet -- we've seen
4 the decision on the Bolt decision, U.S. v. Washington.

5 We've seen the 200 mile and the Magnuson be at the
6 table. You know, we're hanging on by our teeth in the
7 United States Supreme Court on sovereignty. You know,
8 just one judge and that's gone.

9 The history of our country does not wear very
10 good with us when it comes to looking at our coastline
11 and looking at our mountain and our range and the clear
12 cuts and everything else that's going on -- that
13 habitat and everything. So why -- if you put yourself
14 in our position, you know, you would be scared whenever
15 something like this comes up and whenever it says, you
16 know, come and take part in this. We'll protect you,
17 you know.

18 We have to be part of whatever is going to
19 take place. We have to be at the table and that's why
20 we're here and try to make you understand how we feel,
21 you know. Glacier Bay is just an example of how we
22 feel and, you know, we're like those animals out there.

1 You'll see us up at them watersheds and you'll see us
2 all along them watersheds. You'll see us along that
3 coastline. And we're there. We live there. We live
4 there whether it's raining, whether it's snowing,
5 whether the weather turns or anything -- the blowing or
6 what we're there. We live there and we don't move over
7 there, we don't move over there, or over there, or over
8 here. We're there.

9 And so when somebody says -- comes into your
10 backyard and says, oh, I'm going to protect you, you
11 know, you're a private land owner, you say, oh, boy. I
12 know what kind of protection they're going to give.

13 So, you know, we can all sit down and try to work this.

14 I think it's in the best interest of our country.

15 But don't think that you're going to come
16 along and close the Pacific Coast down and it's going
17 to be -- it's all going to be rosy from now on because
18 that isn't what's going to happen. Don't think you can
19 stop all the fishery. If you stop every fishery right
20 now there wouldn't be no fish. You have to keep people
21 interested in protecting that shoreline. You have to
22 keep people interested in catching them salmon, but not

1 all of them.

2 Someway we have to find a way to manage -- the
3 United States has got to manage and they've got to
4 enforce. You know, these things are happening in front
5 of us. There's so much illegal going on beyond the 200
6 miles we can't even count it. We don't know where our
7 steelhead is being caught now. We tagged them and
8 everything. They don't come home anymore. The
9 steelhead go to clean Japan, clean to Japan, clean
10 around the west side of Japan and come home, come home
11 right back to our river. You know, they don't come
12 back any more.

13 You know, what happened? You know, we have to
14 find out so we can talk to whatever happened out there.

15 We know what the ocean is doing, we know what the
16 weather is doing and everything. So we have to work
17 together. We have to work together to be part of
18 everything that we do.

19 MR. MOON: Okay, Dan, you're the last one.

20 DR. BROMLEY: No, I relinquish --

21 MR. FRANK: You've got to talk now.

22 MR. ZORN: Come on, your deposition was longer

1 than that.

2 MR. FRANK: Come on now.

3 MR. ZORN: Come on, man.

4 DR. BROMLEY: I can say whatever I want so I
5 don't want to say anything.

6 MR. ZORN: Dan, I do want to mention in
7 response to the last question. At least for our member
8 tribes there is this universal recognition despite all
9 the fears that it's habitat, habitat, habitat. We can
10 be concerned about the fish all we want but if people
11 are going to build up to the lakeshore, clear the
12 lakeshore, no spawning grounds and all that stuff.

13 So it's a really, you know, multi-tiered
14 approach from local zoning on up, and to the extent
15 that a body like this can help think through what do we
16 do with the aquatic habitats of our coast and protect
17 the values and the resources that you've heard about,
18 you're going to find many willing partners and people
19 who will be willing to talk longer than we have believe
20 it or not.

21 So certainly thank you for the opportunity to
22 be here. It's been great fun.

1 (Applause.)

2 DR. BROMLEY: Thank you Mel and Dolly and all
3 of our guests for this wonderful session. We do have
4 public comment period at 4:00. We're under some legal
5 and moral obligation to honor that time. So that gives
6 us about, I don't know, you count, eight minutes for a
7 break. We need to be back here.

8 (A brief recess was taken.)

9 DR. BROMLEY: Can we start again please? It's
10 time for the public comment period. My understanding
11 is we have two people signed up. We will hear from
12 them and I've given them a little bit of extra time
13 from what we have ordinarily done.

14 Then in case you're beginning to get excited
15 about being excused early we have other plans. So do
16 not go anywhere. Unlike that Southwest Airlines ad
17 where they say you want to get away, well, we're going
18 to stay here for a little bit, and with a sense that
19 after the public comment period we want to get a little
20 bit of a start on tomorrow.

21 So don't get to anxious to leave please. We
22 may not stay until 5:30. It depends on how snarly you

1 get. I'd like to keep you here at least until 5:00 if
2 I could.

3 MS. WENZEL: That's a disincentive.

4 DR. BROMLEY: Well, I know. How can I tell
5 the difference right, at anything. We could make some
6 nice progress today and so we have some thoughts for
7 you.

8 So with that we're going to have the public
9 comment period. The first speaker is Mr. Jim Woods.
10 Would you please come up to the microphone. Give us
11 your name, tell us in a sense who you are representing,
12 and we'd be happy to hear from you.

13 MR. WOODS: Hi, everybody. My name is Jim
14 Woods. I'm the sustainable resource coordinator for
15 the Makah Tribe in Washington State on the Olympic
16 Peninsula.

17 I don't really want to beat a dead horse and
18 pretty much our panel, they brought across everything
19 that I was going to say. The Makah Tribe, we're about
20 the biggest or the largest fisheries tribe on the
21 Pacific Coast, up in the Northwest, and I guess I
22 wanted to point out the importance of what our panel is

1 talking about.

2 You know, you have an enormous responsibility
3 of influence, each and every one of you on your
4 decision making for, you know, MPA, the whole process.

5 And so I think what the tribes are trying to get put
6 out there and what we want to stress is the importance
7 of not only our culture but our sovereign right and our
8 treaty -- our treaties I should say, and our usual and
9 customary areas of where we harvest from the ocean.

10 It's something that's throughout our culture,
11 throughout our history, it's as old as our songs and
12 it's as old as our stories. It's carved in stone in
13 the Petroglyphs on the beach right down from where I
14 live. So we've been a part of this, this whole
15 ecosystem, and so I just want to stress how important
16 it is.

17 Well, the Makah tribe, my tribe, along with
18 the other coastal tribes in Western Washington, again
19 we're co-managers and we take that very seriously.
20 It's something that's only -- not only holds strength
21 in our culture but it holds strength in just pure solid
22 -- you know, that's supported by good science.

1 And what we have in our department at
2 fisheries, at the Makah fisheries we have water quality
3 specialists, we have technicians, we have biologists,
4 marine biologists, halibut and, you know, salmon
5 biologists. We have ecologists, we have scientists
6 working for -- within our department. It's just
7 something that we really take to heart and we take it
8 very seriously.

9 I have here Steve Joner. He's our chief
10 biologist and I'd like to let him pretty much explain a
11 little bit about his point of view and his thoughts on
12 the panel discussion. But again please have an open
13 mind and take a good look at all the issues and at the
14 tribal perspective.

15 We do have -- you know, our treaty is our
16 compact with the United States Government. I was
17 talking to a Delaware tribal member a couple of months
18 ago and he had pointed out out of all 500 tribes and
19 out of all the treaties throughout the country there
20 was only one treaty that had never been broken and that
21 was with Chief Tanaman, a Delaware chief from the
22 Philadelphia area. All my life I've seen our treaty

1 get picked at, whether it be by, you know,
2 environmentalists, or activists, or just people in the
3 surrounding communities around our reservation. And so
4 it's a continual effort of maintaining who we are and
5 upholding, you know, what we're all about.

6 Anyway if I could just hand this over to Steve
7 Joner.

8 DR. BROMLEY: Thank you, Jim. So Steve Joner
9 is our second speaker.

10 MR. JONER: Thank you, Mr. Chairman. As Jim
11 mentioned I'm representing the Makah Tribe. I'm the
12 chief biologist. I guess I could be called a child of
13 Bolt. I was one of the wave, the first wave of fishery
14 biologists that the tribes hired long, long ago to
15 establish their fisheries program.

16 So I guess my longevity can be measured by the
17 condition of the rockfish. When I first went to work
18 for the tribe there were so many rockfish in the ocean
19 nobody cared about them and now that's the big problem
20 in the Pacific Northwest.

21 I don't really have a statement per se. I'd
22 just like to elaborate a little on some of the answers,

1 some of the questions, and provide a little insight
2 from a relatively large fishing tribe.

3 As you probably can see from the -- you've
4 seen from the handout from the Commission, the Makah
5 Tribe is in the northwest corner of the State of
6 Washington. Historically the tribe fished out 100
7 miles or more to sea, hunted whales, seals and just
8 about every form of fish. Currently the tribes
9 adjudicated ocean area goes out 40 miles and it runs
10 from near Port Angeles in the Strait of Juan de Fuca
11 out to Cape Flattery and then down the coast,
12 overlapping slightly with Mel's tribe, the Cooluye
13 area.

14 The Makah Tribe has a fairly large fleet.
15 There's about 35 or 40 long line vessels and some of
16 these also serve as salmon trawlers. The tribe has ten
17 smaller trawlers, that is 60 feet or less, targeting on
18 the abundant rockfish species and bottom species such
19 as Petrolia Sole and Pacific Cod. There are also four
20 large, 120 foot vessels that are used in the tribe's
21 whiting fishery, and the tribe has an allocation of
22 Pacific whiting. This past year it was 32,500 tons.

1 So it's a pretty major fishery.

2 One of the questions that was asked, this lady
3 right here, about the significance of the marine area
4 and, you know, I think my seasoned impression is that
5 the significance is that's where the tribes have --
6 that's where they make their livelihood, that's where
7 they feed their families, and that's where they live
8 out their culture. And you talk to a fisherman from
9 the Makah Tribe or one of the other Northwest tribes
10 and fishing is -- that's their life, that's everything
11 to them. And so it's -- it's really steeped in the
12 harvesting of the resource.

13 Mel mentioned that the treaties were not the
14 United States giving something to the tribes, it was
15 the other way around. And the courts have clarified
16 that, that the treaties must be seen as a grant from
17 the tribes to the United States. For the coastal
18 tribes, even though they did cede somewhat, sometimes
19 large areas of land, the major base, particularly for
20 the Makah Tribe, was the ocean. Prior to treaty times
21 the Makah's area extended well up into what is now
22 Canada, up to Lapruce Bank, and that was their most

1 productive fishing ground.

2 In 1880 for example the Makahs -- it's
3 documented by the Halibut Commission, that the Makahs
4 were landing about a million pounds of halibut a year
5 fishing out of canoes using the Chiboos, the
6 traditional hook that selected for the size of halibut,
7 and those fish were sent, salted and iced, sent to San
8 Francisco.

9 Shortly after that the schooner fishery
10 started out of Seattle and slowly the tribes were
11 squeezed or regulated out of the fishery. So this area
12 that was ceded wasn't just land, it was water. In the
13 treaty narrative, where the treaty was being negotiated
14 between Governor Stevens and the representatives of the
15 Makah Tribe, one by one these men would step forward
16 and say that the sea is my life. If I don't have the
17 sea I'm a poor man. If I don't have the sea I cannot
18 have the halibut, I cannot have the whale.

19 And that was the important thing to them
20 because they viewed that as their property. And
21 tribes, they respected one another's ownership of the
22 fishing grounds.

1 Well, that was ceded to the United States, but
2 I think today if you talk to a tribal fisherman that
3 fishes in the ocean they'll tell you that they still
4 own that. It's still viewed as their property and the
5 tribes care for their property much as any wise
6 landowner would his land.

7 So when faced with questions such as should
8 Marine Protected Areas, no take zones be established in
9 the tribal area, that's very difficult and it's very
10 threatening. I was glad to hear Jim Zorn's answer as
11 far as that's something that other tribes would see as
12 a threat and something that could expand, to become to
13 the point where their livelihood could be threatened.

14 And I'd like to give you some examples of
15 things that we've done to address the conservation
16 concerns, particularly with rockfish, and I'm sure most
17 of you are aware of the situation with rockfish. I
18 think Billy Frank mentioned that the resource in
19 Washington is relatively healthy compared to the rest
20 of the coast, and his mentioning of Oregon and
21 California boats, we call those drive by hookings,
22 where those boats come up and fish and take their catch

1 back to Astoria, Newport, other ports. That happens
2 even from Puget Sound ports, they come out.

3 But I think largely because of the isolation
4 and the fact that the tribes were taking half the
5 resource that a lot of the damage, a lot of the over
6 fishing and habitat degradation that's occurred
7 elsewhere on the coast hasn't occurred in the tribal
8 area. So we now have a rockfish conservation area that
9 was necessary because of the over fished status of
10 several rockfish species, and that runs essentially the
11 entire shelf of the West Coast from Vancouver -- from
12 Vancouver Island, U.S./Canada border down into Southern
13 California. That's closed varying depths, from 50
14 fathoms out to about 250 fathoms depending on the time
15 of the year and gear type. That's closed to most all
16 fishing. However, that doesn't apply to the tribes.

17 What the tribes have done as -- the tribes
18 have implemented their own set of management measures.

19 For example, we have put restrictions on the rockfish
20 catch in our long line fishery by regulating time and
21 area depth for the fisheries that are taking these
22 rockfish. We have a tribal halibut fishery, a long

1 line fishery, and we manage that to avoid impacts or
2 minimize impacts on Yellow Eye Rockfish, one of the
3 most severely depleted.

4 The tribe also, the Makah Tribe has a troll
5 fishery that targets on Yellow Tail Rockfish, one of
6 the more abundant species. And that's a ten boat
7 fishery and the tribe regulates that by season. We're
8 just starting now with the beginning of the year
9 targeting on these Yellow Tail and the limiting species
10 there is the Canary Rockfish, the Canary and Wittle
11 Rockfish.

12 Before the tribe opens the fishery we send two
13 boats out. We have a qualified observer, fishery
14 observer, that's employed by the tribe. The observer
15 goes out, rides along with one of the two boats. We
16 fish side by side and they do test tows. If the by-
17 catch of the Canary or Wittle Rockfish is below the
18 threshold then we send two more boats out. Each boat
19 has to go out and test the area. That actual boat has
20 to be tested, an area has to be tested before it's open
21 to commercial fishing.

22 Then the boats continue to fish on their trip

1 limits with observers on board, and if the by-catch
2 increases above the threshold number then the fishery
3 is moved or closed until the by-catch drops below this
4 area.

5 So these are examples of things that the
6 tribes are doing to address this question, and I think
7 that for the tribes the bottom line is this is their
8 usual and custom fishing areas. They can't go anywhere
9 else and something like a no-take Marine Protected Area
10 would be very difficult to implement. But I think it's
11 something that -- it's a tool, a valuable tool, and
12 it's something that could be used in conjunction with
13 other tools and it's something the tribes could
14 consider.

15 But you've heard this over and over, the
16 tribes really need to be at the table in order to
17 answer that. I could go on for way more, but I think
18 I'll stop there. I'll be here all week if anybody has
19 specific questions about the management and about some
20 of the things we're doing. This is a fishery that's
21 been in place for hundreds of years and the tribe, all
22 the tribes want to continue with it. Thank you.

1 DR. BROMLEY: Thank you, Mr. Joner, very much.

2 We have a question, a clarification, Bonnie.

3 DR. McCAY: Thank you very much, Mr. Joner.

4 Early on you said that historically they range 100
5 miles out to sea and now they -- is it they have 40
6 miles? What is the meaning of the miles?

7 MR. JONER: Okay. In I think about 1978 or
8 1980 the tribe actually went to the court to have their
9 ocean area adjudicated, and the court ruled -- at that
10 time the main activity of the Makah Tribe was salmon
11 trolling, and the tribe ruled that if the tribe went
12 out 40 miles to fish salmon -- they had evidence of
13 that from the logs of the early sailing vessels that
14 came by. Makahs were observed 100 miles out hunting
15 fur seals or hunting whales and -- but the ruling of
16 the court was for salmon fishing, the usual and
17 accustomed, meaning day-by-day, they went out 40 mi

18 So that was the ruling and I think the tribe's
19 view is that is not the full extent of their
20 traditional or legal fishing area, it's just that's
21 what the court had ruled and that's where it stands
22 now. So the tribe goes right out to the length of that

1 40 miles to fish for most species.

2 DR. BROMLEY: Thank you very much. Let's keep
3 moving. Actually we have two more people who signed up
4 to speak. So I will call Mr. Yanity, Shawn Yanity.
5 Please identify yourself and the floor is yours.

6 MR. YANITY: Hello. My name is Shawn Yanity.
7 I'm chairman for the Stilagwamish Tribe of Indians.
8 We're located between Seattle and the Canadian border.
9 We're a small tribe, about 182 members.

10 During the Judge Bolt decision our tribe
11 wasn't recognized. We were fighting to get our
12 recognition back. But we were recognized by the Judge
13 Bolt decision on having treaty rights, and in that UNA
14 we weren't given saltwater rights. That came about
15 later.

16 So where the MPAs are concerned for us, our
17 saltwater rights is about three miles by a five mile
18 area. It's an area called Port Susan. We share it
19 with Tullelah and a couple other tribes.

20 When the shellfish decision came in the court
21 had told us that we needed to go back and find
22 ecological proof that we had shellfish use in Port

1 Susan and places we claimed, yet we had a village right
2 on the mouth of the Stilagwamish River. So when it
3 comes to the, you know, the MPAs, from my tribe's
4 standpoint is that when these new areas are being put
5 up, you know, people have to realize that the treaty
6 right is constantly being plucked -- you know,
7 protective areas here and shoreline management here.

8 One thing that we got going on in Port Susan,
9 when we go for our shellfish rights is that we've got
10 fecal contamination. So when we do get shellfish
11 rights we can't use it anyway because of the
12 contamination. It's a classified area and -- but my
13 tribe, even though we don't harvest shellfish, we are
14 doing water quality studies inside Port Susan,
15 throughout the area in there.

16 There's a lot of management tools that we're
17 using that helps other tribes, you know, and helps the
18 state, the county on decisions they make in that area.

19 That's one thing that I'd also like to offer in these
20 programs that you guys have, is come to the tribe when
21 we come to the table and use our information that we
22 have. We've got a lot of top notch biologists,

1 technicians, professionals that work for us, that get
2 information for us.

3 The state and counties are partners with us.
4 A lot of times we don't get recognized for the quality
5 of information that we get, but just because, you know,
6 the boundaries of our UNA, the Stilagwamish River
7 watershed, doesn't mean that's where we stop with our
8 information. You know, we're seeking outside that.
9 You know, we're helping other tribes, we're helping the
10 county, we're helping other counties. Since our river
11 flows into Port Susan, you know, we want to see what
12 the effects of what the farmlands and stuff are doing
13 in there.

14 So a lot of these MPAs are happening out on
15 the coast, away from us, but as non-Indians that's
16 where you all have to realize that there's a lot of
17 factors that always box us in. There's always
18 something that pops up that says, well, we've got a
19 conservation issue.

20 Right now my tribe hasn't harvested Chinook
21 Salmon since 1986, before the ESA ruling came in. We
22 chose on our own not to harvest for subsistence or

1 ceremonial purposes because of all the factors that's
2 going on in our watershed that affected the salmon.
3 The numbers are depleting. We've got a hatchery that
4 -- if it wasn't for our hatchery we wouldn't have
5 Chinook.

6 So there's a lot of information out there. I
7 strongly urge using the tribes as a tool. Thank you.

8 DR. BROMLEY: Thank you very much. The last
9 one is Randy Kinley. All right, Randy.

10 MR. KINLEY: My Indian name is Packwaset and
11 my given name is Randy Kinley. I'm from the Lami
12 Nation. You see on your map there we come from the
13 corner that's the furthest north, right next to the
14 Canadian border. We're the largest fishing tribe
15 probably in the United States.

16 The concerns that we have is that our
17 observation of what you're trying to accomplish is just
18 another, sorry to say, it's a tool to erode our
19 sovereignty, our way life. It's really important to
20 understand -- that's why I appreciate what you did hear
21 by listening to our tribal people from the north, to
22 the south, to the east -- it's important to understand

1 that there's nobody else other than the Indian people
2 that are more concerned and related about the issue of
3 the resources.

4 You go back to pre-contact, we never had the
5 problems because the tribes managed the resources.
6 They didn't manage them by scientists or academicians
7 or whatever it was. They had common sense because they
8 knew based upon how it was passed down. And it's not
9 because we had written things, it's because of our oral
10 tradition. We turned around -- and what was told to me
11 is that when the time is of the cottonwood was coming
12 off the trees it was time to go fishing. Just like my
13 brother from Alaska said, when the tide is out the
14 table is set.

15 We didn't go to extremes of harvesting so it
16 wouldn't be able to produce because our concerns are
17 for future generations, to make sure that our people
18 can survive because that's what we call our way of
19 life. We call it in our language Shalengin.

20 And then the other thing that we have a
21 concern about too is that we don't recognize the
22 Canadian border. Just like my partner from Makah

1 talked about his halibut banks, our usual and accustom
2 -- and my tribe because of it's uniqueness is part
3 Canadian, part U.S. But yet because of the Jay Treaty
4 that goes right through that, permits them guys from
5 going up to their usual and accustom is what the lady
6 was talking about, the 40 mile area that's right --
7 part on the Canadian border. That prevented these guys
8 from harvesting their halibut. But it wasn't because
9 the Makahs agreed to it, it's because somebody else
10 passed policy.

11 People have good intentions when they pass
12 policy but they don't take in the consequences, and
13 that's why we're here to offer what we know. There's
14 nobody more knowledgeable than us because, like Billy
15 kept saying, we lived there. It's not because we're --
16 well, you want to say we're smart because kind of we
17 are, but we're not smart to the biology level. That's
18 why we have people like Joner.

19 Each one of our tribes -- when Bolt came in
20 and said you had to have, A, B, C and D, and because of
21 that every tribe had to gear up for that. And from our
22 organizations we're willing to take on any biologist.

1 We have people that can sit across the table and call
2 BS BS, because everything is coming back to management.

3 And the other thing that irritates me
4 personally is that why did people let the resource get
5 to the point where it's at. You look at the history of
6 Washington, when you guys go back and you analyze the
7 issue, when Bolt came in -- and Mel can relate to it --
8 WDFW turned their sport fisheries over to the rockfish,
9 you know. That's what caused the decline. The sad
10 thing about it, there was no management. They didn't
11 know what was there. They didn't know what the biomass
12 was. They didn't know what the harvest limits were.
13 Just take, take, take, because it was a political game
14 out on the West Coast.

15 Then the technology -- look at the history of
16 the West Coast fisheries. The technology also on the
17 bottom trawls is what killed us -- not us. The sad
18 thing about it, I was part of it. I was -- I fished
19 out there on the coast when I was -- in the early 60's.

20 I come from a long fishing family. I fished the
21 Columbia River, I fished clear up through Alaska. Then
22 when Bolt came in, my dad he got old and he left us

1 now, but he had a license. Back then we had to have a
2 commercial license. So that allowed us to go fishing
3 everywhere.

4 But anyhow, as far as the management style,
5 we're here to offer our expertise to the process, not
6 only the biological but on the regulatory side too to
7 protect our sovereignty. Again I want to commend you
8 on your large task, but also we're going to be out
9 there observing because we would rather be at the table
10 than like Billy says at the conflict, because we're not
11 scared to go to the hilt to protect what we believe is
12 right for Indians. Thank you.

13 DR. BROMLEY: Thank you very much. Okay.
14 Again, thank you. I guess we declare the public
15 comment period closed, is that right? Yes. Thank all
16 four of you for your contribution. We will pay
17 attention to what you've said to us.

18 Lauren has a brief announcement about dinner I
19 think.

20 MS. WENZEL: Yes. Bonnie asked me to go ahead
21 and pass this menu around for anyone who would like to
22 go to the group dinner and just indicate what entree

1 you'd like just so that they can be prepared. And I'll
2 just send this around. And spouses, family members are
3 welcome.

4 DR. BROMLEY: Okay.

5 MS. WENZEL: This is not a binding agreement.

6 DR. BROMLEY: It's an early warning system for
7 the kitchen.

8 DR. BENDICK: Thank you, Dan. Are you taking
9 care of this?

10 DR. BROMLEY: Now, this is on your own
11 account. You do get reimbursed, so it all works out in
12 the end.

13 Let me see if I can justify why we want to
14 keep you here a little bit. We heard some things today
15 that struck a few of us as having received insufficient
16 attention in the document before you. I could easily
17 imagine that tomorrow when we had suggested we would go
18 through section by section that there will be two kinds
19 of reactions, that is to say is the language exactly
20 the way we want it and has the bigger point been made
21 in an obvious way, and is it clear, and so on.

22 I'd like to use this afternoon, however much

1 time we have, to get ready for tomorrow. By getting
2 ready I mean to have us think a bit about some of these
3 big issues.

4 I made a list through the day of some stuff
5 that strikes me as a big issue. I have some passing
6 familiarity with what you have in front of you, and I
7 confess that I think there are three areas where it is
8 deficient, inadequate. This is conjecture on my part
9 and you can convince me that I'm -- that I'm missing
10 something, but let me say that there are three areas
11 that I -- that I worry about now.

12 The first is this thing about regional. I
13 remember struggling with this word regional because
14 subcommittee three was in a sense partly focused on
15 regions. Their task was in terms of intergovernmental
16 what have you. I think we've done a bad job. I think
17 I've done a bad job perhaps of pulling out of the
18 subcommittees what this thing regional really is.

19 So this is what I could call a big issue. I
20 think that word, I think the connotation that region,
21 regional has to say is quite inadequately developed in
22 here. I don't know that we've made the case that

1 regions and states and other units -- I don't think
2 we've been clear about what the expected outputs are,
3 what the advantages are, something. So that's kind of
4 one, regional.

5 I will tell you that the difficulty here of
6 course is that when we start talking about regional
7 those of us from one culture, we sort of think in terms
8 of Cartesian space and Cartesian coordinates and lines
9 that can be drawn on a map. The speakers this
10 afternoon I believe have jarred us a bit, jarred me,
11 about the pertinence of that Cartesian notion with some
12 of the resources that are central to their existence
13 and central to their meaning, and what have you.

14 So all of a sudden we could start to work by
15 saying, oh, yeah, we need to pin down what regions are
16 and we need to be more specific. Do we mean these
17 three states or do we mean multi-counties? I think we
18 butt right up against a meaning and a concept of
19 resources and of nature and of the oceans that in many
20 respects defies that Cartesian stuff and we have not
21 yet I believe dealt with that.

22 Secondly, I don't think we've made the case of

1 the value to be added by a national system. That case
2 remains to be made. I want to be skeptical. I would
3 say to all of us you've got to tell me more. I'm not
4 yet convinced. We heard it today in terms of top down
5 versus bottom up, different people expressing it
6 different ways. But a number of us have just sort of
7 jumped onboard the idea. Oh, yes, of course it's
8 obvious we need a national system. There will be
9 people who are opposed to it for these sets of reasons.
10 There will be people opposed to it for other sets of
11 reasons. If we don't anticipate those reasons and work
12 our way through it and make the case that there is
13 value added to a national system, then we embarrass
14 ourselves if we run around advocating it when in fact a
15 lot of people still don't find compelling reasons for
16 it.

17 The idea of a national system, not only does
18 it in a sense challenge the sort of official white
19 man's boundaries and demarcations, but again it goes
20 back to native interests, and native treaty issues, and
21 what have you. I think we are really quite deficient
22 there.

1 The third thing I know am worried about and I
2 -- maybe I'm overstating this, but I think I'm sort of
3 embarrassed that I wasn't jarred by it earlier, is our
4 classification system. We have thrown up three
5 categories of MPAs, and I think it was Tony MacDonald
6 who brought this to our attention.

7 And so I challenge you to go back -- I
8 challenge us to go back and think about this a little
9 bit. Are we so sure that an MPA can defined by the
10 cultural heritage or sustainable production?
11 Sustainable for who? Sustainable of what?

12 And then -- we can always say, okay, this is a
13 multi-purpose MPA. It's got two or three of these, or
14 six. Yes, we can put this thing back together in any
15 number of ways that we want, but now I've lost
16 confidence in our categories of three MPAs. You can
17 convince me that I'm overly jumpy about it and say calm
18 down man, they're okay. But by golly I want to hear
19 reasons why these three things are the right way to
20 describe MPAs.

21 So where in this -- I mean, I worry that
22 talking about something as a cultural heritage MPA for

1 example in a sense diminishes, demeans and discounts
2 what the oceans mean to certain people. I don't know.

3 It's a hypothesis, it's a plausible hypothesis that to
4 talk about it as cultural heritage MPAs somehow to some
5 people puts it at kind of a lower level from protecting
6 really critical biological productivity or something.

7 So these are my three things I worry about and
8 whether we want to talk about them now or whether we
9 come in in the morning to start thinking about them,
10 that's sort of up to you. I guess I'd like to ask -- I
11 don't want you right now to tell me my three areas are
12 wrong, you can tell me that in the morning, but I'd
13 like to ask are there other big issues that you think
14 we've missed, that we've not paid enough attention to?

15 So where should we start? I'm just going to
16 go this way. John, Dolly --

17 DR. BENDICK: Very quickly I -- one other
18 issue that I know more than one person around the table
19 has also noted is we haven't really conveyed exactly --
20 and it's sort of in your value added thing. Why are we
21 actually doing this?

22 You know, there was a sense of urgency that

1 was built into the Commission report and into the
2 Commission on Ocean Policy report that dealt with some
3 of the issues that we face and we don't -- you know,
4 our introductory paragraph could be read by a Secretary
5 and sort of say, well, gee, you know, I've got plenty
6 of stuff on my plate and why are we doing this. This
7 looks like a back burner thing to me. Enough said.

8 DR. BROMLEY: Okay. Dolly.

9 DR. GARZA: Thank you, Mr. Chair. And this
10 might be sort of following along that, but I guess from
11 the presentations this morning as well as from re-
12 reading the document what I saw missing I guess was
13 political will. We heard that mentioned on this
14 afternoon's panel but, you know, if we don't have the
15 political will are we just sort of spinning our wheels
16 here because it was created four years ago and now
17 there really isn't anything to keep it going except the
18 fact that we're meeting. And that, you know, may
19 require a couple of glasses of wine and a lot of talk
20 tonight, but it is something that I am quite concerned
21 about.

22 DR. BROMLEY: That the momentum might have

1 dissipated from the time in 1999 and 2000 when this was
2 first crafted, is that what you're saying?

3 DR. GARZA: I think so. Because -- I mean,
4 we've talked about sort of MPA as this goal, and the
5 impression I got from the two council presentations
6 this morning is that it's one of many tools.

7 DR. BROMLEY: That there's what?

8 DR. GARZA: It's one of many tools.

9 DR. BROMLEY: Yes. Right. Okay. I'm going
10 around this way so now I'll circle back. But I am
11 going to go to George who is still over there. But
12 Terry wants to get in so -- anybody else, Steven, okay,
13 Bonnie and Bob, okay. Go ahead. Who's next? George.

14 MR. LAPOINTE: Let Terry go ahead. I'm on
15 break here.

16 DR. BROMLEY: No, no, no. I just -- that was
17 just to get started. Go ahead, Mike.

18 MR. O'HALLORAN: Thank you. I'm not George.

19 DR. BROMLEY: You're not George.

20 MR. O'HALLORAN: I'm Terry.

21 DR. BROMLEY: Did George want to speak also?

22 MR. LAPOINTE: Yes, I just --

1 DR. BROMLEY: He's not -- he's not waiving his
2 --

3 MR. O'HALLORAN: It's late in the day you
4 guys, be good to me.

5 DR. BROMLEY: Oh, Terry, yes.

6 MR. O'HALLORAN: What struck me today was a
7 kind of combination, the success of this buy-in -- I
8 mean, maybe that's another way to say political will,
9 but it's buy-in.

10 And the other thing that struck me is I think
11 we haven't done a very good job at talking to the other
12 jurisdictions, particularly the states. We're starting
13 to talk to the tribes. We haven't done a very good job
14 at communicating with our partners. In fact --

15 DR. BROMLEY: With one partner.

16 MR. O'HALLORAN: Well --

17 DR. BROMLEY: With one partner.

18 MR. O'HALLORAN: I would say in this -- I'm
19 going to reserve my comments to the states then, to the
20 states that are pertinent to what we're doing, because
21 without them we can't -- I don't see us having any
22 ability to frankly do anything except create a lot of

1 paper.

2 So somehow we have to find a way to get this
3 buy-in, the political will, the value added and all of
4 that but basically at the state level, and I think
5 that's going to take a lot of work. I know the state
6 that I come from there's a -- I would call it healthy
7 skepticism about what we're doing and whether or not
8 when we're all done whether they're just going to say
9 okay, thank you, thank you for the input and go about
10 doing what they've been doing all along and just
11 summarily discount it.

12 DR. BROMLEY: That's a risk. I'd like to
13 avoid that risk. George -- are you George?

14 MR. LAPOINTE: I am George and --

15 DR. BROMLEY: Thank you.

16 MR. LAPOINTE: -- I will tell you a healthy
17 skepticism on the part of the states is one of the
18 reasons I'm on this panel, because I wanted to be part
19 of the discussions. I will tell you only 1 of the 28
20 coastal states have been pleased with this process and
21 we do need to reach out to people, but we haven't had
22 anything to reach out with.

1 So I'm not -- you know, this is -- a little
2 bit of philosophy first. This is no different than any
3 other plan that we've put together. When you do a
4 fisheries management plan everybody believes in Jesus
5 at the beginning, and you put this plan together and
6 then when you get down to the end it gets tougher
7 because you realize there's a job to do.

8 I don't see us as any better or any worse than
9 any other group, although I do -- no, I see us actually
10 a little better because we have worked really together
11 with a lot of diverse interests. So I'm not worried
12 about that. Those are things we have -- we have to get
13 through. I'm not going to slit my wrists because
14 there's a big job in front of us. And so I don't -- I
15 don't want us to overreact.

16 DR. BROMLEY: Yes.

17 MR. LAPOINTE: That's my caution.

18 DR. BROMLEY: Thank you, George.

19 MR. LAPOINTE: I want to tell you you're wrong
20 about the classifications. I don't think that we need
21 to re-jigger and send subcommittee one back. We do
22 need to describe the intermixing of the classifications

1 better. They look like three solitary posts in the
2 arc. They are three ingredients to a stew and we need
3 to reflect that and then I think we can get through it
4 without going back to figure out what the other
5 classifications are. That gives me the willies.

6 And then I wanted to mention -- I was talking
7 to Maggie Smith -- Maggie Hayes.

8 DR. BROMLEY: Maggie Smith?

9 MR. LAPOINTE: Excuse me. It's late in the
10 day. She mentioned a couple of things. One was from
11 her perspective we didn't have freedom of navigation as
12 one of the things we need to consider. So, you know,
13 it's one of those things where I kind of hit myself in
14 the forehead and said, gee, that makes sense. So I
15 think we need to -- it's a specific, but it's a big
16 specific.

17 Then I think her other comment which is worth
18 relaying is that in the goal section we talked about
19 international implications or cooperation and we
20 haven't weaved --

21 DR. BROMLEY: Woven?

22 MR. LAPOINTE: -- put together the -- how the

1 goals relate to consideration and implementation. We
2 haven't tied the components together. I think we need
3 to do that. With that I will stop.

4 DR. BROMLEY: Good. Thank you. I think the
5 nice thing, George, about what you said, you said a
6 number of nice things, but one of them is just because
7 we've identified some gaps doesn't mean that what we
8 have done so far is wrong or it needs to be redone. We
9 could put that on our list of other things that we
10 could do in our next incarnation, next -- you know,
11 after we've been reappointed if that happens, what have
12 you. So that's wonderful. It doesn't mean that what
13 we have here is not good, it just may not be
14 sufficient.

15 So now, Tundi I have and then I have Mike, is
16 that right?

17 MR. PETERSON: You skipped Max.

18 DR. BROMLEY: Pardon me?

19 MR. PETERSON: You skipped Max.

20 DR. BROMLEY: Well, let me say I'm no longer
21 going this way. That was just to get me started, okay.

22 So I have Tundi, I have Mike, I have Steve, I have

1 Bonnie, I have Bob Zales. Now who else do I need --
2 and John.

3 VOICE: Max.

4 DR. BROMLEY: Max. Who else would like to get
5 in here? And also Jim Ray. Okay. Tundi, you're on.

6 MR. AGARDY: When I read the document, and
7 kudos to pull together the three subcommittee reports
8 into a synthesis document. I think you did a great
9 job.

10 DR. BROMLEY: Thanks, Tundi.

11 DR. AGARDY: I was also struck by how little
12 kind of rationale was there, and this is something we
13 discussed in subcommittee one, was kind of lack of
14 passion when we were talking about our vision. I think
15 it was a consequence of the process and I think we can
16 reinsert some kind of -- if people are uncomfortable
17 with passion then some kind of more enthusiastic
18 rationale for an MPA system.

19 DR. BROMLEY: A national.

20 DR. AGARDY: A national MPA system. But I
21 also think there's a couple of other things that we're
22 missing.

1 One, and this relates to the classification
2 system, whether it needs to be redone or not. There is
3 a public misconception I think that we're talking about
4 a national system of no-take reserves. We see that
5 coming back time and time again and I think we have to
6 be very explicit that we're talking about the full
7 range of protected areas. And if we need to get into a
8 discussion about kind of more unconventional protected
9 areas, like biosphere reserves which actually
10 accommodate humans much better than other kinds of
11 protected areas, I would say we may have to do that. I
12 don't know.

13 The other thing I was struck with was that we
14 don't make really any mention of how MPAs can
15 complement other types of management and vice-a-versa.

16 So I think we can't speak to an MPA national system
17 and give the misconception or the, you know, defaults,
18 raising of expectations that it's going to be the be all
19 and end all. We really I think have to explicitly say
20 how MPAs can complement other forms of management and
21 vice-a-versa.

22 DR. BROMLEY: Nice. Okay. Mike, is it Mike

1 Cruickshank?

2 DR. CRUICKSHANK: There's a couple, a few
3 things that think we probably should need --

4 DR. McCAY: Can you use the mike?

5 DR. CRUICKSHANK: Oh, the mike, okay. There's
6 a few things I think we probably need to look at again,
7 maybe reinforce them. One is the international issues
8 which of course covers the Pacific, but we've got this
9 widespread economic zones and responsibilities for
10 those.

11 The other one is the involvement and
12 contribution of minerals management. This obviously is
13 a very, very large part is doing environmental things
14 and the good for those.

15 The other things is NEPA. We've never heard
16 that mentioned in the whole issue. Doesn't NEPA have
17 fairly strict requirements for environmental impact
18 studies before the government takes any action and
19 things? These need to be addressed.

20 DR. BROMLEY: Okay. I have Steve Murray, I
21 have Bonnie, and Bob Zales. I'll read out the next
22 couple of names so you can get your thoughts organized.

1 Steve Murray.

2 DR. MURRAY: Some of you have already said
3 this but, Dan, I think you did a really great job of
4 putting together this document. It's given us
5 something I think that we can really work from.

6 Now having said that I have just a couple of
7 points to make. First I think that when we talk about
8 perhaps text that might be missing or might be needing
9 improvement here, I think that from my perspective we
10 need to see more visibility and probably stronger
11 language about achieving the goal for improving,
12 protecting and conserving the nation's marine
13 environment. I think there are a lot of places in the
14 document where that can be interdigitated to maintain
15 the perspective again of why we're all about doing
16 this.

17 Secondly, I think that this point was made by
18 Terry, I think that -- and this more, to me more of a
19 how we might proceed outside the document endeavor.
20 But this notion of how we communicate with the states
21 and states processes I think is quite important. In
22 California now there is a reinvigorated marine life

1 protection process. I'm a member of the science team
2 that's been appointed on that. Folks there are writing
3 a framework, they're writing definitions. You know,
4 they're really overlapping some of the canon and having
5 the same kinds of discussions that we're having here.
6 So some ability to inform and be informed by those
7 processes and those issues can only benefit this effort
8 as it moves forward.

9 DR. BROMLEY: Good. A cautionary note, both
10 in terms of putting more passion in it. Tundi, I'm in
11 favor of passion too, but putting in, more passion in
12 it and talking more about protection, Steve, as you
13 said interdigitating -- is that the word you used?

14 DR. MURRAY: That's wonderful.

15 DR. BROMLEY: We heard this afternoon from
16 people who say, well, you can talk about protection,
17 protection, protection, and that says to us, kicking us
18 out, kicking us out, kicking us out, okay. So look at
19 the whole flap over the Makah whaling whatever it was.

20 So you're right. We could put more protective
21 passion and more protective language, but the more we
22 maybe put in there the more red flags go up with other

1 people who find protection just another word for
2 eviction and dispossession. So I'm not saying we don't
3 want talk more about protection. We've got to be very
4 smart about how we do it.

5 DR. MURRAY: I understand. I think, though,
6 that this also addresses this whole concept of why --
7 why a year. You know, we're responding to some issues
8 that have been laid out on the table. This is one
9 process that's attempting to deal with some of those
10 responses. I think that it's also just as
11 unsatisfactory of an outcome -- I appreciate all the
12 different issues that are on the table. These are very
13 complex issues. But I think, you know, having an open,
14 multi-party process that results in something that is
15 unsatisfactory with regard to addressing issues is just
16 as unsatisfactory to me as all the other possible
17 outcomes that we could achieve when we're all said and
18 done.

19 DR. BROMLEY: Okay, Bonnie, and then Bob and
20 John Halsey.

21 DR. McCAY: Well, I'd like to join the others
22 in complimenting you because, Dan, this is really

1 great.

2 One thing that I didn't see here, however, was
3 the definition of Marine Protected Areas, and that I
4 think brings up -- well, actually I would like to
5 second Tundi, the three points she made, but including
6 this one of being really clear about the more expansive
7 meaning of Marine Protected Areas. And I'm not sure
8 we're all in agreement on that, so it may be something
9 that we need to clarify or at least agree upon our
10 definition here.

11 Today's presentations by representatives of
12 tribal interests made me -- made me think again that
13 what some people call Marine Managed Areas are not
14 mentioned here at all and yet that's really -- if we're
15 serious about taking care of our heritages, natural and
16 cultural heritages, we really have to be thinking about
17 Marine Managed Areas, and this Marine Protected Areas
18 which some people see as a much more non-consumptive
19 sense are just part and parcel of that.

20 So one idea was at the beginning maybe to
21 frame this also in relationship to that larger vision
22 and maybe even ocean zoning or something like that to

1 bring in something that takes Marine -- that either
2 defines Marine Protected Areas in a very -- in a more
3 expansive way or places it within a more expansive
4 context.

5 And the other thing I would like to say, I
6 think I've said it before, I'm concerned that the term
7 national is always -- is often interpreted as federal.

8 I noted that at the workshop that you had, the
9 workshop with the federal people, they really insisted
10 it meant federal and that seemed to be the strong
11 message there. I think that it's important that they
12 see it, that they do take ownership for it, but we have
13 to make clear that it is not -- that it really is
14 something that involves states, tribes, non-profits and
15 so on and so forth. I don't know how we can do that,
16 but I would like to see that. Thank you.

17 DR. BROMLEY: Okay, let me -- let me clarify
18 things here. I have six more people on the list so
19 when I say -- okay, I have Bob and John. It doesn't
20 mean I've forgotten about Max, or Gil, or Jim Ray, or
21 Lelei, I'm just trying to give the next couple of
22 people in line a little bit of warning so they can make

1 their notes and get ready to talk.

2 So, Gil, I haven't forgotten you. Jim, I
3 haven't forgotten you. Lelei, I haven't forgotten you.

4 I'm going to read the whole list. Okay, I got Bob
5 Zales, John Halsey, Max Peterson, Gil Radonski, Jim
6 Ray, Lelei. Next will be Bob Zales and John you might
7 want to get ready. Bob Zales.

8 MR. ZALES: I agree with most everything
9 everybody said here. One thing, and I know I've
10 mentioned this early on in this process and I think
11 that we're hearing it more and more, and I think
12 besides the tribal people who mentioned this I think we
13 heard it from George with the South Atlantic Council,
14 and I think if the Gulf Council ever gets to come here
15 and speak you're going to hear the same thing from
16 them, that stakeholder input is going to be critical on
17 whether or not an MPA is going to fly or not,
18 regardless of whether you've got states, federal,
19 tribal or whoever involved in this system.

20 If the stakeholders -- and by stakeholders I
21 mean the users of the resources, whether or not you
22 physically use them or whether you go out and look at

1 them, or whether you'd just like to know that they're
2 there, you're going to have to have that input in this
3 system and those people are going to have to understand
4 what this system is, and what it's about, and what it's
5 going to for them. Without that, no matter how you
6 design this, it ain't going to fly.

7 When you -- when we talk about MPAs, when I
8 talk about them and we talk about regional, what I mean
9 by that is -- I mean, it can get down into a very local
10 thing, off of one city. It doesn't necessarily mean
11 that this is going to be a one size fits all because I
12 don't believe that you're going to be able to have a
13 one size fits all MPA for all conditions and all
14 situations.

15 I think this plan that we're going to do, and
16 I think we've done a good job at trying to do that, in
17 making the situation to where these areas can be
18 flexible so that you don't -- when you mention MPA you
19 don't mean no-take, no use. It's a wide variety and I
20 think that's what we've tried to figure out what an MMA
21 is as compared to an MPA and how strict or not strict
22 that you're going to be with these areas, and we need

1 to consider all that in this process.

2 So I'm going to shut up now and just listen to
3 everybody else.

4 DR. BROMLEY: Okay. John Halsey.

5 DR. HALSEY: Okay. One group that introduced
6 itself I think back at one of the early meetings was
7 the sport diving industry. From strictly looking at
8 cultural resources and the old fashioned term like Gulf
9 ship wrecks and western kinds of things, sport divers
10 represent both the major predator and the major
11 protector of these kinds of resources. Without
12 involving them in the same fashion that we've involved
13 the tribes and everyone else we're going to get the
14 same kind of reactionary reactions about no-take zones
15 and so forth.

16 We're talking about a tribe in the grossest
17 sense that spans the world. So the decision isn't
18 something that's just limited to the Great Lakes or the
19 South Atlantic. This is a group that, for whatever
20 reason, has not come to many more of these meetings to
21 make their concerns and desires known, but they
22 certainly do form a major usage, consumptive group that

1 we have to address.

2 DR. BROMLEY: Wonderful. Thank you. Okay, I
3 have Max Peterson and Gil and then Jim and then Lelei.
4 Max.

5 MR. PETERSON: I'm beginning to get an
6 inferiority complex. He kept -- he keeps calling on
7 these pretty faces around here, like Mike Cruickshank
8 and some of those.

9 Anyway, let me say that, Mr. Chairman, I do
10 agree that you've spotlighted three things that need
11 more attention. Now let me suggest that when we look
12 at regional we look at -- I think throughout this whole
13 thing we need to look at some existing governmental
14 structures that are out there.

15 For example, we've got a regional system
16 already to look at fisheries management through the
17 council system. I think if we tried to establish
18 regions that ignored that we'd have to come up with
19 some justification for it because Congress has
20 recognized that, governors have recognized it. So we
21 should -- we can use regional to talk about three
22 counties, but that's not the regional I think we're

1 talking about when we talk about coordination.

2 Then I would agree that the classification
3 system needs to be looked at again. I've been
4 uncomfortable with that ever since we started it
5 because I would expect in most areas it would encompass
6 all three of those values. So then that gets you to
7 whether it's primary purpose or not and I get
8 uncomfortable with primary purpose. So I think most of
9 these would be multi-purpose. So I don't know what to
10 do with that.

11 Finally it seems to me that we haven't really
12 thought through, number one, how would we define this
13 national system and what would be the value of this
14 national system either to the people that are -- that
15 have current areas that might qualify. For example, if
16 you're a state or tribe or somebody else, what benefit
17 is there to you to joining this national system? Is it
18 going to be voluntary? Do you get some benefits from
19 this? You know, what are the -- why would I want do
20 this?

21 So I think we need to give a lot of thought to
22 the goals of the national system, and I think passion

1 might come if we define the goals better. I'm a little
2 concerned with the single word protection, too, because
3 for many people that means closed. So the word
4 protection may not be the best word to use. Management
5 includes protection, so in some respects management is
6 relevant.

7 And finally let me suggest that in the Maine
8 meeting, in the meeting in Maine, I think we need to
9 have probably some panelists representing the states
10 just as we had the tribes today, because we really have
11 not provided an input opportunity for states. And even
12 though George Lapointe and myself and others -- one
13 thing I learned a long time ago is you don't represent
14 50 states just because you're from a state. So there
15 needs to be some way, and maybe George and I can make
16 some recommendations how that might happen, because I
17 think right now my friends in the states are saying
18 what in the hell are you up to and what are you doing
19 to us. Okay, thanks.

20 DR. BROMLEY: Good. Moving on to another
21 pretty face, Gil.

22 MR. RADONSKI: Oh, thank you. I agree with

1 many of the speakers. They've all said really good
2 things on this discussion. I agree with John about we
3 have an extremely weak introduction to our document,
4 and again kudos to the Chairman and the executive
5 committee for putting it together. I think it's a good
6 document, but I think we're going to have a heck of a
7 time selling this to the Secretaries on the basis of
8 our introduction. So I think that's a problem.

9 Max has some heartburn with the word
10 protection. I did too, especially on table 1 of the
11 draft report. So I went back to the definitions within
12 the report and looked at protection and it does allow
13 for management. I think there's a very good
14 definition. So reading table 1 with the protection
15 just straightens that out.

16 I'm also concerned about our authority. We're
17 operating under an Executive Order. An Executive Order
18 as we saw earlier on the screen has a force of law.
19 Well, it really doesn't. It cannot direct anybody but
20 a federal agency to do something. So, you know, how we
21 can make recommendations to the Secretaries to deal
22 with state issues is another matter. So I think we

1 have to consider that our basis of our authority to
2 make recommendations.

3 I don't disagree with what was said around the
4 table. I think you have to bring the states in and all
5 that. All I'm questioning is is it within our
6 authority.

7 Another point I would make is we're talking --
8 in the draft report we're talking about creating a
9 national system. We're not talking about what all MPAs
10 have to be. There is a simile but not exactly an
11 analogy in the context of wilderness areas. There are
12 a lot of wilderness areas, but not all of them can be
13 part of the wilderness preservation system. So we're
14 doing the same thing here. You can have an MPA but
15 that doesn't mean all MPAs are going to be part of the
16 national system.

17 We are making recommendations, and I think
18 they're good ones. I like -- some of the things have
19 to be tweaked a little, that's why we're going to have
20 another stab at this tomorrow. But I think we're on
21 the right track and I don't have any problems with the
22 drafting as it is now because I think a lot of the --

1 there's a lot of smart people around this table who are
2 going to be hitting these points. Some of the
3 wordsmithing is going to straighten things out.

4 I think we have to bear in mind the context
5 we're operating in, and that's we're making
6 recommendations to two Secretaries. If I could rewrite
7 this thing, and I don't want the job, it would be to
8 split out the introduction, deal with the introduction
9 differently than the body of the report. I think the
10 introduction has to make the case why the Secretaries
11 should create a national system. Thank you.

12 DR. BROMLEY: Okay, Jim Ray and then Lelei,
13 Bob Moran and Mary. Jim.

14 DR. RAY: I was just getting a little
15 concerned as we started talking about this, whether we
16 were opening a can of worms back up and we were going
17 to spend another three years just trying to write the
18 initial report.

19 A couple of comments. You know, we started
20 out with an objective to try to define a framework
21 which we could provide back to Commerce and Interior to
22 try to get this thing off first base and start rolling.

1 In the draft report that we have right now if there's
2 one thing that comes through from beginning to end and
3 that is the importance of stakeholders and the
4 importance of a combination of tops down and bottoms
5 up. It's throughout that report. We heard it today
6 from our panelists and our speakers. We heard it in
7 Hawaii.

8 I think we've been very responsive to that. I
9 think it's fine to get some of the other states in, but
10 again between the representation on this committee and
11 the variety of speakers we've had at all of our
12 meetings, we've got a -- we're getting a pretty good
13 concept from stakeholders to at least get our framework
14 defined.

15 So I think that we need to really figure out
16 over the next couple of days what we need to do to
17 improve this report that we've got -- what's missing,
18 how do we improve it. Let's try to get on our target
19 of having our deliverable here, and then more
20 importantly, and I hope by Thursday we can at least
21 have some discussions. All right, fine, when this
22 report is done where is this FACA committee going?

1 What is it's next objective? Especially because you've
2 asked for volunteers to re-up, it would be nice to know
3 -- have some idea of where we think -- what the service
4 of this committee will be over the next couple of years
5 once this initial report is provided.

6 My last comment is that the real work, once
7 the framework is laid out, the real work to
8 communicate, get people on board, is up to Interior and
9 Commerce to start working with the rest of the people
10 at the state, local, tribal, county and everything else
11 level in the future when they have a program that they
12 can roll out and discuss. That's all I've got.

13 DR. BROMLEY: Thank you. Okay, Lelei.

14 MR. PEAU: Mr. Chairman, I was going to defer
15 my comment until tomorrow because I was part of the
16 executive committee, but I'd like to make one response
17 to a statement that you made and then also an
18 observation.

19 I believe there's a misperception on -- we
20 heard in Hawaii, the Pacific panel and also this
21 afternoon, the fear of the national system which forces
22 the local -- you know, we talk about protection and the

1 fear of leaving them out. The message that I got today
2 and also from the Pacific is that they want to be
3 acknowledged, their existence should be part of the
4 national system. I don't think that the -- the message
5 was not that they are not in support of it. So I want
6 to make sure that we capture that because that was my
7 understanding from the Pacific region and also from
8 today's panel is that they want that recognition of the
9 traditional knowledge.

10 A second comment I would like to make. I
11 think the intent of the charter is real good, but I
12 think -- what I see as missing is really the next step,
13 the implementation, the capacity that's required to
14 carry out some of the recommendations and findings from
15 this committee.

16 So those are the two points I would like to
17 make. Thank you.

18 DR. BROMLEY: All right, thanks. Bob Moran
19 and then Mary Glackin.

20 MR. MORAN: Thank you, Mr. Chairman. Kudos to
21 you and the other committee chairmen, subcommittee
22 chairman for the wordsmithing. I think it's a great

1 beginning of this document.

2 I also wanted to echo some things Gil said and
3 said items Jim said too. On the stakeholder issue, I
4 just wanted to correct Jim that it's affecting and
5 effecting parties. I just wanted to make sure that
6 gets on record.

7 But seriously back to Gil, and this also kind
8 of echoes what Dolly had said about political will and
9 we heard it from Scott Rayder. I would hope that in
10 our document, in the introduction somewhere, we are
11 noting the action plan, the Ocean Action Plan. That is
12 the hook, particularly now if we're looking at a timing
13 when our recommendations are sent to the Secretaries.
14 That's where you get their attention and that's how we
15 can deal with the issues of implementation, through the
16 governance structure that they -- that this action plan
17 articulates.

18 DR. BROMLEY: And that in a sense addresses
19 part of the political will, momentum issue that Dolly
20 raised and some others.

21 MR. MORAN: Thank you.

22 DR. BROMLEY: Good, thanks. Okay, Mary. Now

1 you have all the answers for us.

2 MS. GLACKIN: Well, no, I don't. Let me start
3 though by thanking again or complimenting the quality
4 of this synthesis draft. It was really a pleasure to
5 read it. Also I think the sense of the comments around
6 here are kind of right on, which really encourages me
7 that we will be able to move forward.

8 Bob's comments here -- I was also going to
9 comment on Gil, the point that Gil made there in terms
10 of this going to the Secretaries. A lot of the
11 comments that we heard this afternoon are context
12 setting -- how do we set the context for this. I think
13 that where we are right now is not able to well define
14 or to define to any great degree that intersection
15 between this national network and the ecosystems
16 approach to management.

17 So you read the Ocean Action Plan and it puts
18 the federal structure at the top. The discussions that
19 we've had in NOAA and with some of our federal partners
20 and the questions -- you know, you guys asked Scott
21 Rayder this morning he didn't have the answer to, is
22 we're just at the beginning of this process in terms of

1 how this will happen on ecosystems that will not be
2 neatly divided on federal boundaries and will not be
3 exclusive ecosystems. They'll be overlapping for
4 different things.

5 So in a sense we have -- you know, I think if
6 we could see what those intersections were, if we knew
7 a little better how the ecosystem approach to
8 management is going to play out, it would be a little
9 easier for us. I do think, you know, just to kind of
10 share with you, the internal dialogue we're having is
11 that we feel the work that EPA has really led in the
12 Great Lakes is a great example of federal, state,
13 tribal, local interests trying to coming together on
14 there. NOAA is kind of declaring itself on that
15 bandwagon in terms of supporting that, and the
16 President's budget had some specific things for us to
17 do up in the Great Lakes.

18 There's other arguments that can be made about
19 the Gulf of Maine and some of the intersection.

20 I think the challenge that some of us find is
21 that when you talk about this, with the real breadth of
22 it, getting into all the socioeconomic values that can

1 exist on a ecosystem, you know, you can collapse under
2 the, you know, just the magnitude of that task. So I
3 think you see people grappling with how to pick a
4 target here that you can be successful at.

5 So I've probably gone on too far but, you
6 know, I think it's -- maybe to summarize it's not
7 something that's going to play itself out over a couple
8 of weeks or even a couple of months here. So we have
9 to be kind of clever in I think creating the context
10 that this will come into this larger wave that's
11 moving.

12 DR. BROMLEY: Okay. All right. The obvious
13 question is how you would like to proceed in the
14 morning. Would you like to, as we proposed, sort of go
15 through this thing section by section looking for, with
16 luck, the big points rather than the little squiggly
17 kind of fine-tuning points, or would you like to make a
18 list of -- I threw out three and then there were some
19 other things that were thrown out. So now we have --
20 we have a short list of things we feel we haven't
21 addressed very well.

22 I guess I'd like to ask for a five minute

1 discussion and feedback about how you think we ought to
2 kick this off in the morning.

3 Max, a pretty face, and Terry. Max.

4 MR. PETERSON: I like the first approach you
5 mentioned of taking the items that you've nominated
6 plus some others.

7 DR. BROMLEY: Plus some others.

8 MR. PETERSON: And deal with things or
9 shortcomings rather than dealing -- inevitably I think
10 if we go through the document we get bogged down in
11 editorial things and I think it would be a better use
12 of our time if we looked at some big questions.

13 I've got a few down. I'm sure other people
14 have and I'm sure there will be redundancy among those.

15 DR. BROMLEY: And with that -- with that
16 conversation, Max, would be -- we'd spend a little time
17 talking about it and we would try to find out where in
18 the report that ought to be beefed up and elaborated,
19 is that the point?

20 MR. PETERSON: I first would just list some of
21 the major areas of concern.

22 DR. BROMLEY: Okay. We'll have some flip

1 charts in the morning.

2 MR. PETERSON: Have some flip charts and then
3 try to look at how we deal with those rather than
4 trying to write the language. I think that's a loser
5 if we try to get into editorializing.

6 DR. BROMLEY: Okay. I have down here Terry
7 was it and then Gil, and then we can take some others
8 too.

9 MR. O'HALLORAN: Well, I -- Max is such a
10 handsome guy that I have to agree with him. I think
11 the point is really well taken. I know I've learned an
12 awful lot just in this period, this last 45 minutes in
13 terms of some of the things that perhaps would be
14 beneficial for us to think about and consider before we
15 start getting into the details of wordsmithing or the
16 section by section report.

17 So I really concur. I found this very
18 valuable and I think a list of, more of the things,
19 perhaps more of this kind of discussion I think would
20 be very helpful and serve us well.

21 DR. BROMLEY: All right. Gil.

22 MR. RADONSKI: I agree with pretty boy Max

1 also.

2 DR. BROMLEY: Bonnie, get your camera.

3 MR. RADONSKI: I would add one thing for you,
4 Mr. Chairman, to put some time limits on this so when
5 we get to a point, so we just don't find that we've
6 spent the whole day on one thing and we're gone. So
7 that's the only thing I would put on it.

8 DR. BROMLEY: I would ask your help with that.

9 I also want people -- when you feel we've reached
10 diminishing returns I want you to say let's stop this
11 and start something else. We'll try to be sensitive to
12 that.

13 And then was it Joe who -- again it was a
14 point I made earlier. We also want to keep track of
15 the things that are central to phase two. In other
16 words, which things -- I mean, in a sense the way we
17 protect ourselves is we put footnotes in here or
18 something that says this is a big issue, we haven't
19 dealt with it, we're aware of it, so that we don't get
20 called out that we've ignored it. We say this seems
21 like an important thing for future work. So that --

22 MR. RADONSKI: One of our responses --

1 DR. BROMLEY: That's one of our things that we
2 need to do tomorrow. Were there other -- Dolly and
3 Charlie.

4 DR. McCAY: Thank you, Mr. Chair. So then
5 what I'm envisioning is in the morning there will be
6 flip charts up and each one will have a section heading
7 so that if I want to add it to one particular section I
8 could say in this section this was a big issue I saw,
9 and then go to another chart and say in this section
10 this was a big issue I saw?

11 DR. BROMLEY: I thought --

12 DR. McCAY: No?

13 DR. BROMLEY: -- we should let Max repeat what
14 he thought. I thought he was urging us to make a list
15 of the big issues right now, not section by section of
16 the report, but just looking at the big issues and
17 getting some agreement as to the things that need more
18 emphasis. Is that right?

19 MR. PETERSON: Yes. I think once you get this
20 list of items then you can segregate a little bit where
21 they might on the report. But some of them might go in
22 three different places in the report.

1 DR. BROMLEY: Two or three of them might be in
2 the same place.

3 MR. PETERSON: Right.

4 DR. BROMLEY: I thought the earlier emphasis
5 would be on the items and the issues that we want to
6 struggle with a bit more. Is that it, Max?

7 MR. PETERSON: That's what I had suggested.

8 DR. BROMLEY: Dolly, is that all right?
9 Charlie.

10 DR. WAHLE: Just a quick comment on the
11 classification system. These are all very good
12 comments, the ones that we heard very loudly from both
13 the state and the federal partners. We've made some
14 proposed changes that I think reflect what I'm hearing.
15 If it would be helpful we could either project them or
16 print them first thing in the morning and at least tell
17 you what we're thinking.

18 DR. BROMLEY: That would be helpful. Can you
19 get them -- yes, that would be helpful. Thank you.

20 It's 5:22 or something. We hope to see as
21 many of you get here as can stand putting up with all
22 of it. So if you can't stand it we'll see you in the

1 morning, otherwise I hope to see you at the restaurant.

2 DR. HALSEY: Mr. Chairman, where is dinner?

3 DR. BROMLEY: Dinner is in the restaurant by
4 the name of Ondines or Ondines. It's in the hotel --
5 O-n-d-i-n-e-s. There's a menu coming around.

6 DR. McCAY: I would like to -- before we break
7 up also I want to thank Dolly and Mel, their panelists
8 for having --

9 (Applause.)

10 DR. BROMLEY: Okay. We do not adjourn, we
11 recess for dinner. We recess until the morning.

12 (Whereupon, at 5:24 p.m., the meeting was
13 adjourned, to reconvene the following day.)

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