National Environmental Justice Advisory Council

Tuesday, December 4, 2001

Members Present:

Peggy Shepard (Chair)
Daisy Carter
Larry Charles
Veronica Eady
Anna Frazier
Eileen Gauna
Michel Gelobter
Richard Gragg
Robert Harris
Phillip Hillman
Savonala "Savi" Horne
Annabelle Jaramillo
Mary Nelson
Coleen Poler
Graciela Ramirez
Leonard Robinson
Moses Squeochs
Jane Stahl
Dean Suagee
Wilma Subra
Jana Walker
Kenneth Warren
Marianne Yamaguchi

EPA Representatives

Barry Hill
Jim Hanlon

Mark Kasman
Ron Kreizenback
Charles Lee (DFO)

Other Persons Present

Delores Garza
Catherine O'Neill
Velma Veloria
Patrick West

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P R O C E E D I N G S

(8:33 a.m.)

Welcome And Strategic Plan

Peggy Shepard, Chair

MS. SHEPARD: Good morning, everyone. Ready? Okay. Good morning. Welcome to the 17th meeting of the National Environmental Justice Advisory Council to the EPA. I'm Peggy Shepard, and I'm Chair of the NEJAC. I'd like to just go through a couple of housekeeping items for those of you who are just arriving today.

The meeting is being recorded by a court reporter, so it's important to always speak in a microphone. For those who wish to offer public comments, which will be tonight, there is a public comment period sign-up desk outside the room by the registration desk. The public comment period will begin at 7:00 p.m. tonight. Obviously if you have not registered please do so. Restrooms and phones are right outside this room past the escalators, and there is a telephone number here at the hotel and fax number, and you can get those out at the registration desk.

This morning we're going to begin by focusing the agenda on the strategic plan that the NEJAC has been working on over the past six months. The NEJAC as you know provides advice designed to promote environmental justice in EPA decision making, and over the past year the NEJAC has been reviewing its role and believes that it can best promote environmental justice and fulfill the mission of the charter. The charter, by the way, is reviewed every two years by Congress.

We feel we can fulfill the mission best by refocusing our process and our products while redirecting the more site-specific issues that we have been very engaged in over the past few years. Really delegating the site-specific issues to appropriate EPA regional offices where they have the responsibility and the authority to address those issues. Public input on

policy advice issues before the NEJAC will continue to be solicited at NEJAC meetings.

Now, let me just say that negative disproportionate impacts on community residents of color in poor communities are at the very heart of environmental justice and at the heart of the impetus for grassroots activism that resulted in several products. One was the Clinton executive order, and secondly NEJAC, among many, many others over the years; and NEJAC will continue to make strong recommendations to EPA on the conduct and the follow-up of these regional listening sessions that will be taking place after a strategic planning process around that over the next year.

But now the 26-member Executive Council, we have met back in August of this year to do three things: to redesign the activities of the NEJAC to better fulfill our charter advisory role; secondly, to collaborate with EPA to provide regional and other alternative mechanisms outside of NEJAC for communities to bring their site-specific issues; and, three, to develop through a deliberative process that involves all stakeholders in an effective work product that is grounded in environmental justice community issues. So the issues raised and conclusions reached at the August meeting were used to construct a draft strategic plan to guide the work of the NEJAC through September of 2003.

Now, I'll just go over the mission statement that we have confirmed, and then we will begin discussion. The NEJAC is a federal advisory committee that provides timely, relevant, cogent, and independent advice to the EPA Administrator on matters of environmental justice to insure the fair treatment of all peoples, including minority, low-income and indigenous populations, federal-recognized tribes, and often overlooked populations such as agricultural workers. This is your mission statement that the NEJAC Council did come to consensus around back in August.

We have developed a Drafting Committee, and I would like to thank Annabelle Jaramillo for heading that committee and mention the Writing Committee members as well who did an excellent job in a really short 60-day period. That would be Wilma Subra, Kenneth Warren, and Veronica Eady, and we all thank them very much for doing this work over the summer in a really constrained period of time and really getting out a strong product that we could all begin to work with and begin to discuss and finalize.

I'm going to ask Annabelle if she would like to -- as Chair of that workgroup if she would like to offer some comments before we begin discussion.

MS. JARAMILLO: Thank you, Peggy. Just briefly. I want to reinforce what you talked about in terms of putting the strategic plan together and the process that will ensue from the development of that plan. It is a dynamic process. That is that we will work through the process and over time because of its dynamism will change, it will grow and move with the times. The intent of course is issue focus. That is for us to be able to fully address in very constructive dialog the issues that face environmental justice communities.

I want to really commend Wilma, Ken, and Veronica for the hard work that they did in putting this all together. They did all the writing and then with input from the NEJAC pulled together the final strategic plan, and I think that was an incredible piece of work considering the time constraints that they had to do it in. I think they pulled it together in about three weeks following the strategic planning session, and I commend them for that.

I'm not going to take anymore time now to discuss the specifics of the strategic plan other than to say that I felt that it was a very successful collaborative process. We came together. We had very frank discussions. I think everybody left the strategic planning session with a sense of mission

and a sense of direction to move forward. So, Peggy, why don't we go ahead and discuss the plan.

MS. SHEPARD: Okay. Thank you. Jane Stahl.

MS. STAHL: I didn't even have to put my card up, huh?

MS. SHEPARD: Well, you know, intuition.

MS. STAHL: First of all good morning, and second of all but very, very importantly I think that the work that was done in August is going to set the stage for a wonderfully productive collaboration between a council that was created to assist communities in having a voice in the world of environmental protection and environmental management and the organizations and bureaucracies that are supposed to be doing that work on behalf of all of our communities and constituencies.

I think that we've really hit a stage here where rather than dividing between the haves and have-nots both in terms of who gets to make the decisions as to what protections are going to be afforded which communities, which communities are going to get to speak and have a say in the important work that's done and who is going to get to the microphone first. What we have been able to do through the strategic planning process is look for and work from the common goals of making sure that environmental protection, environmental management, environmental resources are available to everyone on an equal basis. I hope that everyone here sees that is really just a restatement of the mission as we derive -- as it's now been articulated in the plan.

The importance of the plan, though, is that we have a way to move forward. We're not going to spend a lot of time first figuring out who is on whose side, because we're all on the same side. It's just that we bring different talents and different views to the table. We need to hear from each other and work with each other, but we need to do it in a structured fashion so that there is an end result as opposed to more division and

controversy over the issues that are so important to us all.

I think we've made a major first step, and I, too, would like to thank the people who really put their heart and souls into drafting and crafting a document that will set the framework for us to move forward. I think that we will see from today's meeting on forward the fact that an organized process is something that will truly help not just the NEJAC as a group in achieving its goals, but that its goal reflect the goals of the communities that it's out there to serve and EPA in moving forward in addressing issues that are so important to the communities that have been excluded from the table in the past.

So I am just absolutely delighted that we have taken these steps. I think that as we work through using this meeting first as an example and our subcommittee meeting as the vehicles for then taking the information not just on fish consumption, but upcoming issues and move them forward that we will have achieved through process a great new substance, and I'm very much looking forward to putting this strategic plan into effort and into effect. So hopefully everyone else is ready to move forward, and off we go. Thank you.

MS. SHEPARD: Okay. Thank you, Jane. I thought I would just go over some of the ways the NEJAC believes that it can perform its mission through following a number of goals. One is a work product goal which encompasses both formal advice as well as how we give informal advice to the

--- (audiotape cuts off for a short period here) --- process in mechanisms around the way we will deliberate and provide that advice. A third goal is public participation and public input, and again we have been talking about a strategy to bring the regional offices into the mix and holding regional meetings with the community can have really appropriate access to their regional offices and where the NEJAC members can attend those

regional meetings as well. That's something that we have to discuss further in terms of our advice around those listening sessions.

There is an organization and procedure goal, one around communications. Many of the NEJAC members feel that we need to have better briefings from the EPA around initiatives and around issues that we are undertaking. How can we move ahead talking about fish consumption or pollution prevention and providing real advice without knowing what the agency is already doing? So briefings from the EPA is an important part of communication, and communications to the external communities as well. We don't feel that we've been doing a very good job in communicating externally to the larger environmental justice movement to communities, to other stakeholders, government and industry as well.

Lastly, it is very important that we really design an effective orientation of new council and subcommittee members, that we have strong evaluations of subcommittees, where they are going, what they are doing, are they achieving their objectives, how they are achieving their objectives; and on Thursday we will be talking more about the timetable for implementation of all of these goals with appropriate workgroups who will be heading those, and again with timetables and deadlines for achieving those plans and strategies. Are there any other comments from NEJAC Council members around the plan? Graciela.

MS. RAMIREZ: Good morning. My name is Graciela Ramirez. I am the Chair of the subcommittee for Puerto Rico, and I want to congratulate what has been done by the other members. The work that the group that prepared the documents

did -- they did a great job putting together the ideas of everybody and the discussions. I would like however in the spirit of this dynamic strategy to suggest that we visit four aspects in the future that I think should be added or clarified with the purpose or the goal of making these procedures more

clear to the members and also more successful in terms of getting ---.

I think that it will be good for the deliberation process if the strategic plan includes some definition on how the workgroups will include non-NEJAC members. How are these people going to be appointed and what would be the procedures to invite these people into these subgroups for working. That is of a special importance since sometimes we need technical experts which don't work specifically in the same scale that the NEJAC work, and we will have to brief them in what we expect from them and what kind of work we'll need from them.

Also I believe that it is necessary to establish a minimum structure for the conference calls. I think that members should be informed of future conference calls with some time that allows them to structure their schedule with the NEJAC's schedule, and that after a certain specific time the conference call should not be changed from date or time. That's a minor issue, but I think it will facilitate that everybody could participate in the conference calls.

I was going to bring up also the point of briefing from EPA that Peggy already mentioned. Again, if we're going to give advice on environmental justice issues related to future regulations or future plans of EPA it would be very important for us to know where is the agency on those issues, or what is the agency doing that needs this environmental justice input.

Finally, I think that for the regional hearing sessions it's important that we define what would be the role of the members in the region, the NEJAC members that live in the regions where these hearing are going to be held. I think that we should clarify how we are going to participate in those sessions. Thank you.

MS. SHEPARD: Thank you, Graciela. Charles?

MR. LEE: Yes. Good morning, everyone. Before I make my remarks there are two things that I need to say. First of all, for those of you in the

audience, copies of the NEJAC strategic plan are on the back table. They are the item with the orange cover, and secondly there are a number of people that we need to recognize who are in the audience and on the table. The first one is Jim Hanlon, who is the Acting Deputy Assistant Administrative from the Office of Water, who is going to be spending the day with the NEJAC in discussing the fish consumption issue. The second is Larry Starfield, who is the Deputy Regional Administrator from EPA's Region Six. I think I see Larry back there somewhere, and the third is -- is Richard around? Richard Moore, who is the -- he was in the back. Richard is the first Chair of the NEJAC, and so we want to acknowledge their presence.

Let me just put some framework around this discussion, and obviously if you see in your schedule the discussion of the NEJAC strategic plan is only scheduled for this morning for one hour, and that is a -- and given what Annabelle has and Peggy has and others have said that this is a dynamic process, that this is going to be an ongoing discussion, that, you know, this morning's discussion is only the beginning. You see in your agenda, there is about the entire morning on Thursday for the business session a discussion around the specific points and the actionable items which come out of the strategic plan.

So that's when I think two things are going to be happening. One is, you know, what is the actual concrete implementation of the strategic plan going over into the next year, and also the kinds of issues and concerns, things which add to and augment the strategic plan such as the ones as Graciela raised. So I think that is the thing.

I think it would be important for everyone here and in the audience to -- oh, I'm sorry, and the third thing is this. Part of the reason why the members of the NEJAC wanted to have this discussion first thing this morning is to set the stage in terms of explaining to the audience the kinds

of change that have taken place since the last meeting. As you know, it used to be that the meetings of the NEJAC were held in a U-shaped table, and, you know, given the fact that as Peggy said one important item which has grown out of the facilitated dialog was the idea that the NEJAC in being an advisory committee to do this advice well needs to be deliberative. So it was very difficult as many of you have said in terms of being able to really talk with each other around albeit very controversial, difficult issues, to -- you know, to have done it in the kind of format that was done before. That is why this table is shaped the way it is.

There are a number of other changes that will become evidenced over time as you attend this meeting. The other important charge that comes out of this discussion this morning is a charge to the subcommittees to look at the strategic plan. At this point the strategic plan has only been a subject of real in-depth discussion by the Executive Council, and within the strategic plan in what Peggy described as the organization and procedure section of it is a whole discussion about how should the NEJAC be organized. Presently as you know it is organized among an Executive Council, subcommittees, and workgroups. Those are subjects and will be subjects of a lot of attention over the next year, and certainly we know that the subcommittees are going to have this as part of their discussion. So this is the -- to set the foundation and provide a charge from the Executive Council to the subcommittees for that discussion and give it a certain basis. You know, give everyone a certain basis of understanding about it. So this is kind of like the framework I think for this discussion this morning.

MS. SHEPARD: Okay. Thank you, Charles. Savi Horne.

Comments on Strategic Plan

By Savi Horne

MS. HORNE: Yes. I also would like to echo congratulations to the

crafters and the people who worked on the strategic plan and also to congratulate the Council in dealing with the reality that we are a FACA and that we have to comport with the requirements of the FACA. But then also we took the high road in dealing with the very real concerns of the EJ communities and how to encapsulate that and have it be maximized in crafting the strategic plan, and I think we have been able to do that in the plan as it is.

However, I would just like to just flag a few things, and one of the things I'd like to start with is just to basically pick up after Graciela in her comments dealing with the regional listening sessions. My point where I'm going to start from is page 12 on the public participation, the last two sections under letter C.

MR. : Page seven.

MS. : Page 12 of which version?

MS. HORNE: Page seven, the version that is in your binder. It's page seven, letter C, the last two sentences. Okay. I guess my point really in highlighting these particular sentences, it seemed to me in just a plain reading of the language is that there might not be a sort of simultaneous consultation with NEJAC and the region in figuring out these processes, but the NEJAC basically would be informed of the process and then through -- by doing that then they could then input their advice.

The point that I would like to make is that I think that there needs to be a sort of backward loop that would tie back in the Council in the processes at the regional level so that if there are particular EJ issues that comes from the listening sessions, the series of listening sessions, that somehow the NEJAC would somehow be empowered to advise or to make recommendations to the region. I just don't think that is somewhat encapsulated clearly enough. Maybe that would evolve through the processes that would be put in place, but I just wanted to flag that

particular concern.

MS. SHEPARD: Thank you, Savi. Mary, then Jane.

MS. NELSON: Thank you. I, too, want to echo my appreciation for the clarity and brevity of this strategic plan and the fact that there are timetables in it for getting things done. My one concern as we proceed is that we have very infrequent face-to-face meetings, once or twice a year at maximum. So we're going to need to be careful that the work flow that the advisories, that the publications, that the other things all proceed in the interim periods at a set pace and with continued sets of deadlines for things to get done in order for us to be productive in a way that makes sense.

It seems to me one of the things that comes out so loud and clear when we have these in getting inputs from the communities is the long, slow process of, number one, being heard and, number two, any action being taken. So any way that we can continue to help expedite the groups being heard or issues being brought to the floor and secondly some kinds of actions being taken I think is going to be really important and because we meet so infrequently and I find the conference calls very difficult for me to get into the groove with in terms of getting real action done. So I just think we're going to have to struggle a bit to figure out how do we help promote hearing and action in the interim.

MS. SHEPARD: Yes. Thank you. I agree, and it's -- we're really going to have to manage this process, you know, over the next six to seven months of the workgroups and staying on time and getting this done. So I agree, and hopefully we might be able to have some smaller face-to-face meetings with the workgroups. Jane?

MS. STAHL: Yes. Since we're in this nice, deliberative circle here I wanted to speak to Savi's point just a little bit and pick up on it a little bit, and that is without turning this into too much of a lovefest I think that,

number one, we need to recognize the fact that EPA has moved forward and the regions have moved forward in accepting this notion of regional listening sessions. Which, you know, might have been something that we had to battle for in the past. So I'm just real pleased that appears to be something that has already been accepted as something that is going to move forward.

I agree, Savi, that we need to really make sure that those listening sessions have that feedback loop, and whether we speak of it in terms of acting on the specific issues or encouraging EPA to act on the specific issues that are raised in the regions or in identifying issues that pop up from region to region and then become issues that EPA might ask for NEJAC's advice upon is something that we're going to continue to monitor so that we can in fact stay responsive to the issues that are being raised by the communities across the country in -- you know, on a national level as opposed to a region level.

So the two levels really do need to work together, and we do need to keep that loop always in check, hopefully as we will keep in check the loops that we engage in here around this Council. That we don't drop things, that things don't end, and that there is in fact action and advice that is derived from the things, the issues and concerns that are being raised when they come in the form of things that then can be advice back to EPA. So I think the plan in its entirety really needs to be a continuum and a loop through, and the regional listening sessions are going to be a key tool in making that happen.

MS. SHEPARD: Now, Jane, as a representative of state government, how do you see the state government role in these regional sessions? Is EPA going to have to, you know, lasso states to get there? What do you see as a role?

MS. STAHL: You know, I think we're -- I'm in a unique position. I

know that in Region One, which is the Northeast -- well, the New England region, there will be no lassoing involved. I think that each of the states will want to participate in those listening sessions. I think you're going to find that throughout the county. That people will want to in fact participate in the listening sessions.

I think that there are two reasons for that. Number one, this is no longer an issue that's kind of on the outskirts. I mean, environmental justice is an issue that has a life of its own in each of the individual states, and they can't afford -- the states can't afford not to participate. I think that the nice thing about regional listening sessions -- or I'm hoping that the nice thing about regional listening sessions is that they won't be difficult for the states to participate and that -- both in just the geography and the demographics. But I think and hope that they will also be constructed in such a way that they are not -- that no one is really put on the spot. That they are in fact a sharing of concerns and of information as opposed to a demonization if you will of state bureaucracies or state environmental agencies.

You know, to some extent that's going to have to come out in the -- you know, in the process, but it occurs to me that to the extent that EPA needs to engage the states on a regional basis this is a good way of doing it as opposed to a -- you know, a lassoing or a forced way of doing it.

MS. SHEPARD: Okay, Jane. Thank you. Larry and then Wilma.

MR. CHARLES: I also join in with others in commending the committee for its outstanding work on a very difficult subject. I just want to make the point, and I guess it's appropriate to follow up on comments by the Deputy Commissioner from Connecticut as a resident of Connecticut. Racism, classism, and the economic inequities in America is very well entrenched, and to believe that people and systems of government will automatically do the right thing is a very poor assumption.

That's why we're here as an environmental justice body, because enough focus has not been placed on the decision-making processes that are influenced by these factors.

The only concern I have is this, the action plan. When communities identify problems and they find that they don't have the resources at the community level to make the proper pitch scientifically or legally in order to get action on the part of EPA. That's a great concern that I have. Having listening sessions by themselves without some guidance as to the format of those sessions as to how they will be evaluated as well and how the action part will be measured is the area that I'm concerned about.

I don't think that it's the business of NEJAC to decide those operational and procedural questions, but I think it is the business of NEJAC to encourage and advise EPA to assure that they develop a standard process region by region. Everybody's not at the same level, and I think Region One is fortunate that we do have some forward-thinking people in policy and operational positions at the region and at the state level, but I'm not so sure that every region is there, and so I'm not -- as far as our process is concerned somewhere along the line I would like us to add language to the document that emphasizes the importance of a standard format and process for holding the listening sessions. Actually achieving the state participation, because that's where most of the implementation and the response for dealing with the issues will be brought by the communities through those listening sessions, and then measuring the effectiveness and then finally evaluating the process; and I'm from Louisiana, and finally doesn't mean immediately.

I also want to say that we need to have some accountability or reporting back to NEJAC as to how this idea is working considering its importance. Thank you.

MS. SHEPARD: Thank you, Larry. Wilma?

MS. SUBRA: One of the things that was included in the strategic plan was to have each region report back to the NEJAC committee on the status of the issues that they were working on in their region in a timely fashion so we'd have time to review it. I'd like to congratulate each of the regions, because they did submit that information and it was provided to us in a timely fashion.

I think this information needs to go out to the communities within each region so that the communities can see exactly what it is the regions say they are doing. That provides a mechanism for the regions to also report back to NEJAC on at least an annual basis for our annual meeting of what are the status of things, the things that were brought to them through listening sessions and what have they done.

On the issue of the state involvement, I'm from a state that sometimes performs less than appropriate as far as the citizens are concerned, and there is this huge wedge. The citizens often feel the state is not doing the appropriate thing. So they look to the region. So you are going to have this at these listening sessions. It's really important that the region of EPA and all the states attend the listening sessions and then decide within them who is going to address which issues, and it's important for NEJAC to keep their finger on the pulse of what issues have been identified and who is assigned to address them, and then are they being addressed. Because there will be states across the nation where this wedge will be driven at these listening sessions, and I think it's up to the NEJAC's oversight, the regions, and the states to try to work together to address the issues that all the citizens are bringing to the listening session.

MS. SHEPARD: Okay. Thank you. Eileen.

MS. GAUNA: Yes. I just want to make some quick comments for clarification I think. I think we're kind of breaking new ground here in terms of federal advisory committees in trying -- the NEJAC is in trying to

respond to community concerns, and obviously the structure of federal advisory committees was not created with environmental justice in mind. So I guess I want to make it clear that I don't think we have any oversight authority in terms of what the regions do.

A lot of this from my understanding is sort of an informal understanding of a new process that we're going to try, but I do want to in the interest of full disclosure to say that although we as a committee can try to -- or as an advisory council can try to prompt a feedback kind of a mechanism and sort of accountability I just want to stress that it is largely voluntary, because I don't think we have any kind of oversight authority. But we're trying, doing the best we can.

MS. SHEPARD: Thank you, Eileen. You're absolutely right, but we're going to make some strong recommendations anyway and we'll see. Larry.

MR. CHARLES: I just want to add to your comment on that. You know, all we're doing is advising EPA as to how to address their major and serious issues that it has to face on a daily basis. If EPA decides to follow our advice in the format that we present it then EPA implements that. So it's not us trying to assume authority or to, you know, accept accountability for actions of EPA, but still in our role of advising EPA as to how to deal with a difficult issue. But if they make the decision to implement our advice then that's great, and then our second role of the monitoring the effectiveness of EPA is where the feedback part I think is justified. Thank you.

MS. SHEPARD: Thank you, Larry. Ken.

MR. WARREN: There were two themes in the plan that were important to me. The first was that we were going to engage in a deliberative process, and what that meant to me is that what we would try to do is deliver work products to EPA which could then be integrated into

EPA policy and practice. I think that the fish consumption report, which is reflective of a lot of effort by the Indigenous Peoples Subcommittee and others, is a good example of that deliberative process, and we're going to be talking later this morning about that report. One of the most effective ways I think that we can influence environmental justice is to deliver considered well-supported work product to EPA, and that seemed to have been a consensus of this Council at our August meeting and we shouldn't lose sight of that.

The other aspect or theme that runs through the plan is that the processes are collaborative, and there are a number of collaborative processes that we have in mind. The first is a collaborative process between this Council and EPA that we will work with EPA to define the issues that are important to environmental justice and then to have continuous discussion and dialog with EPA as those issues are shaped and furthered. Another aspect of the collaborative process is the collaborative process between this Council and the community, and that's why I think that we all felt that it was vital to continue to have listening sessions ourselves as part of these meetings.

But the one point that I would make to all of us and to EPA is that we envisioned in this strategic plan that a communications plan would be developed, and I think that while it's sort of a very small part of the strategic plan it's a very important part as we go forward. Because to the extent that we can not only communicate among ourselves but to have multiple channels of communication with EPA to better understand how EPA is operating, to better understand those issues so that we can perform our chartered mission of providing advice to the Administrator that we will all be benefited and the communities will be benefited by it. So I would encourage all of us but also EPA to spend a fair amount of time developing a communications plan that will be comprehensive and effective.

MS. SHEPARD: Thank you, Ken. Those are really important issues. Thanks for bringing that up. Anna.

MS. FRAZIER: Good morning. I just wanted to say hello to the people that are here from this area because that's our custom as a native person, that we are here in your country and I just want to greet all of you here that are from here, from around this part of the country.

MS. SHEPARD: Anna, would you give your affiliation since we were not able to introduce you yesterday?

MS. FRAZIER: Yes. I just got here last night.

MS. SHEPARD: Yes. Welcome.

MS. FRAZIER: My name is Anna Frazier, and I'm from the Navajo Indian reservation, Diné ---. So I'm a part of the NEJAC Council. I'm very new to it, so I'm still learning. Well, I'm not really new to the Council, but I'm -- I mean I'm new to the Council, but I'm new to the grassroots movement, the environmental justice movement.

I want to make a comment here about the strategic plan. I have talked with several grassroots people that are in the movement, that have been in the movement and have been involved in environmental justice, and so I just want to say that there are some comments that they would like to make later on during the public comment period regarding this issue. So that has to do with public input. So I just wanted to mention this here because, you know, they are the people that really started this environmental justice movement. So I think we should listen to them, and I'm just glad, too, that this strategic plan is a living plan where we can also add or delete or whatever, you know, like tomorrow, next year. So it's good to know that, too. Thank you.

MS. SHEPARD: Thank you, Anna, and the last comment, Bob.

MR. HARRIS: Thank you. Yes. I think the important point to remember here is that this strategic plan really provides a foundation for

us to really have impact nationwide for resolving problems. All issues, local issues, are local, and in order to resolve those issues you have to have the stakeholders involved. Not only the community people, but all of the players around there, whether it's industry, government, et cetera. I think this is a good beginning to do that, and as a result of this I think it will open the door of opportunity for resolving issues that heretofore we probably had very little opportunity to resolve from, quote, "the national level."

I want to personally commend the regional administrators for understanding the importance of the role that they must play in this endeavor, and especially the role they must play in bringing together all of the stakeholders in that jurisdiction in which they reside. So I'm just really delighted that the strategic plan offers, although not perfect, but offers that opportunity to move in that direction.

MS. SHEPARD: Thank you, Bob, and thank all the Council members for their thoughtful comments. We will get back to this on Thursday. I would like to call on Charles for some final comments before we move on.

MR. LEE: Thank you, Peggy. There is one thing I want to earmark on, and many of you have commented about these regional listening sessions, and they are on the agenda for Thursday. The only thing I want to say at this point is that, you know, whereas I think it is fair to say and it's accurate to say there is support on the part of the regional administrators for addressing this issue it is still a very difficult task to do it right, and some of the comments that Larry made kind of began to point to that.

It would be really tragic if this became a process that lead to undue expectations, you know, once again. So, you know, what exactly or how do we think through the issues that have to do with making these the kind of successful endeavors? What kind of partnerships are necessary? You know, are these to be -- if these are geared around site-specific issues how

do you do these so that they are in fact geared towards problem solving?

All these kinds of questions I think have to be thought through. So the relationship of the NEJAC in terms of providing some advice around this is very critical. I think at the same time you need to -- and this is going to be something that we talk about more in detail -- understand that without a kind of framework that the agency establishes, you know, then there is no basis for the kind of collaborative framework or the model that Ken is alluding to. So I think these things have to be moving together in parallel.

In fact, if you would just -- I wanted to give some kind of historical perspective to -- especially to the audience around this, way you have heard and what has transpired over the past six or nine months around the -- I guess the refocusing of the NEJAC, and I want to say first of all that this is not a conversation that started six months ago. This is a conversation that began maybe about five, six years ago.

You know, in terms of the kinds of issues that have swirled around the NEJAC is efficacy as an advisory group as well as is ability to address and meet the kinds of issues that communities would bring to the NEJAC, and it did in fact -- a lot of the things that are in fact in the strategic plan and part of the dialog that took place in August were things that were identified by a thing called the NEJAC Assessment Workgroup which was established in 1998. So these are not issues that are new, and it does take a while to kind of unfold them.

I think I just want to say two or three big things that are happening related to this. One is that it was very important to understand the context in which the NEJAC operates, that it is in fact trying to -- moving to fill a void that has been there for many, many, many years. So there was this pent-up demand for -- to address a wide range of issues related to

environmental justice that kind of came together when the NEJAC was established in 1994.

So, you know, what happened in terms of the NEJAC is very understandable, and so it is very important to understand that and it is very important to understand that we have to be true to all those things that gave rise to that. At the same time we need to understand that NEJAC cannot address those kinds of issues, because the NEJAC is a federal advisory committee, and it has no authority and being there it leads to a lot of undue expectations and frustrations.

So what they have set up is a process -- a problem that goes something like this. A lot of people are trying to accomplish -- address a lot of issues related to environmental justice under the guise of a federal advisory committee, and it would never work. So in the long run what we're doing is doing a disservice to those communities and those issues, and in fact what's happening is that the NEJAC cannot fulfill its own real function of providing advice and recommendations that is going to lead to some kind of effective difference.

So all those things needed to be sorted out, and so it was very important that the NEJAC sort out what its mission was. Then, you know, in terms of the kinds of ways it would do this work to carry out that mission. So that's where, you know, the idea of sorting out the issues and the -- for the NEJAC, sorting, clarifying its mission and establishing a deliberative process. Which is what I think where, you know, things have gotten to in terms of the facilitated dialog, and now the NEJAC is going to really kind of put the meat on the bones in terms of these things.

One thing that still remains and I want to call everybody's attention to in the strategic plan is this whole idea of making sure that the community's issues, concerns, and voice is incorporated into this policy dialog; and that remains, and I think that if the NEJAC does not stay true that then it really

does -- you know, it really is not fulfilling its mission in terms of providing the most sound advice around issues of environmental justice. So, you know, those are some of the things that I want to highlight.

Now, there are in the past year -- there's been actually two things that have been going on. There's a lot of things going on, but I think these are the two things I wanted to kind of bring together for the members of the NEJAC and for the audience here. That is one is the NEJAC has been talking about its mission and clarifying it, you know, and that resulted in a strategic plan. The other is, well, what are you doing and to what end, you know, and I think part of the discussion has been some on clarify on all of our parts of what exactly is this thing supposed to produce.

This meeting is very important because you have the juncture of two things happening, the strategic plan and the work of the Fish Consumption Workgroup which has resulted in this draft report. The thing that I recall -- I mean, there are a lot of things about this draft report, but the thing I will want everyone to really pay attention to when you read it, this has done an incredibly excellent job of making sure the community's voice, issues, and concerns are in the report. This then becomes a real contribution to the literature in a lot of ways, but one of the key ways is that, and so what is happening I think and -- you know, the NEJAC and the people you are going to hear from in terms of the Fish Consumption Workgroup should be really proud of this, of the fact that these two things are now coming together.

So before there is a sense that when we talk about the strategic plan it's something somewhat in the abstract. I mean, why do we want to be so, you know -- why are we so intent on making sure there is a deliberative process focused on the mission? Because there is a certain type of product that comes out of that, and the more we are clear about that the better that product is and then the greater the kind of difference this

advisory committee as an advisory committee can make in terms of effecting the policies, programs, and activities of EPA. That translates effectively into differences in communities.

We cannot, I think that as important as it is -- and I think we all recognize that because of the importance of having the attention of these regional listening sessions, but the NEJAC cannot be satisfied with just being a platform for communities to have access. I mean, that is the whole point here. So I just wanted to end with that, you know, with those kinds of statements of summary.

MS. SHEPARD: Okay. We are now going to move the agenda to our policy discussion around the fish consumption report, and I'm going to call on Jana Walker to lead that dialog and overview. Oh, I'm sorry. I'm sorry Annabelle. I will call on you to lead this overview.

MR. LEE: I'm sorry. I just want to make sure. Is Richard here now? He's never here when we want a picture. There must be something, but the other thing is I'm going to -- we are really graced today and throughout this meeting with a delegation from Thailand who has been visiting here and who are very concerned about this, about environmental justice and the issues of contamination of water and fish, and I would ask Mark Kasman to introduce them.

MR. KASMAN: Thank you. I'm very pleased to --

MR. : Come to a mike.

MR. KASMAN: Thank you. Is that working now? Okay. Thank you very much. Many of you remember at the meeting in Atlanta we were very fortunate to have a delegation here from South Africa to join us, and this year we are very fortunate to have a delegation for Thailand. I would like to introduce each of them and just tell you very quickly about them. They are going to be participating in the entire NEJAC meeting and will be in some of the international -- in some of the subcommittees tomorrow as

well as making a presentation at the International Subcommittee tomorrow afternoon.

But first I would like to introduce Dr. Amnat, who is a professor of environmental law at Thammasat University, which is the premiere university for environmental law in Thailand, and he is looking to bring environmental justice issues into the curricula of environmental law training there.

Then Khun Apichart, who is the director of a major non-governmental organization in Thailand that works with the community on environmental issues.

Then Khun Burt, who is with the Pollution Control Department of Thailand, which is the closest thing to an equivalent of EPA and works in what would be the closest equivolent of our Office of Enforcement.

Then Khun Supradit, who is also very active as a vice president of a major non-governmental organization in Thailand that works with the community, and on the side he is also an environmental journalist for the major English-speaking language -- English language newspaper in Thailand, The Bangkok Post, and he will be writing an environmental justice article when he returns to Thailand. So you will see a lot of picture-taking while he is here, and he will be asking you individually a lot of questions.

So thank you very much for welcoming us to this meeting. We very much appreciate it and look forward to participating.

(Applause.)

Report Overview and Dialog

Annabelle Jaramillo, Facilitator

MS. JARAMILLO: Okay. Good morning again. I'm Annabelle Jaramillo, a member of the NEJAC and Chair of the Air and Water Subcommittee, and I will be moderating the issue dialog today. I want to

give you my personal welcome to the Pacific Northwest. This is the place I call home. I've been here probably more years than I want to mention right now, but I have come to love this region, and I hope that you all will see its beauty; not only the beauty of the land around us, but of the people who reside here. As you saw yesterday from the virtual tour, there are many communities who have made the Pacific Northwest their homes.

The policy dialog about to begin is the logical next step in the development of the NEJAC in its efforts to provide cogent, relevant, timely advice to the Administrator of the Environmental Protection Agency. This dialog will use as its foundation the fish consumption report, which is the pre-meeting draft before you.

Before beginning that dialog we must acknowledge the hard work of the workgroup that invested countless hours on this issue. The workgroup, composed of members of the NEJAC's Air, Water, and Indigenous Peoples Subcommittees, community leaders and members, and EPA officials, is to be commended for the fine product before you. It represents a collaboration of many people. It exemplifies the quality of work subcommittees and workgroups can accomplish.

Let me put those names into the room. Co-chairing the workgroup were Coleen Poler and Leonard Robinson. Coleen is a member of the NEJAC Indigenous Peoples Subcommittee and is from the Sokoagon Defense Committee. I hope I pronounced that right.

MS. POLER: That's close.

MS. JARAMILLO: Thank you, and please forgive me on that, and Leonard Robinson, who is a member of the Air and Water Subcommittee and from Tamco Steel. Daisy Carter, from the Air and Water Subcommittee and Project Awake; Patricia Cochran, Alaska Native Science Commission, University of Alaska, Anchorage; Josee Cung, Minnesota Department of Natural Resources, Southeast Asian Program

Commission Office; Chung Yum Song, supervising planning and development specialist, Seattle Public Utilities; Pamela Kingfisher, member of the NEJAC Health and Research Committee Indigenous Women's Network; Brian Merkel, University of Wisconsin, Green Bay, College of Human Biology; Bart Merrick, Earth Conservation Corps; Lawrence Skinner, New York State Department of Environmental Conservation; Moses Squoechs, NEJAC Indigenous Peoples Subcommittee and a member of the 14 confederated bands of the Yakima Nation; Velma Veloria, from Seattle; Jana Walker, Indigenous Peoples Subcommittee and an attorney from Placitas, New Mexico; Patricia -- Patrick West. Sorry, Pat.

MR. WEST: Happens all the time.

(Laughter.)

MS. JARAMILLO: I bet it doesn't. He's a professor emeritus from the University of Michigan. Damon Whitehead, a member of the Air and Water Subcommittee and is the Anacostia River keeper; Terry Williams, Commissioner of Fisheries and National Resources, Tulalip tribes; Marianne Yamaguchi, a member of the Air and Water Subcommittee and Santa Monica Bay Restoration Project; and Dr. Delores Garza, professor at the University of Alaska and Alaska Native Science Commission.

I also want to commend the work of the DFOs in this effort, and that's Alice Walker and Danny Gogal. They've performed yeoman's work, and I know we will continue to acknowledge them throughout the day; and not to forget Jim Hanlon from the Office of Water, who will be making a few comments, and Peggy Shepard later.

Okay. Finally, it's very important to acknowledge the hard work of Catherine O'Neill, who put all the words and the thoughts to paper and thus has given us a solid foundation from which we begin our dialog. Catherine, our sincere thanks, and Catherine will be a resource for

everybody here.

(Applause.)

MR. LEE: I just want to take the privilege of just saying a few words in terms of echoing what Annabelle said and the hard work of the members of the Fish Consumption Workgroup, Catherine, but I also want to just say a few words in terms of Alice Walker. And Alice, I don't know if she's in the back of the back of the room either, but --

MS. : There she is.

MR. LEE: There she is. You know, I went to Alice at the beginning of this year and said that, you know, I thought that the work of the Fish Consumption Workgroup in planning for this meeting was good, but it needed to be reoriented, and it needed to be reoriented in a way from just having a meeting into having -- developing a report with recommendations. She said, "Well, you know, I'm not really sure that this is something that we can do. That's a pretty audacious kind of a task," but she said, "Well, I'll go along with you on faith." I think this workgroup is representative of, you know that spirit, and kind of the hard work that Alice as well as many others put into this is really I think reflected in this product. So I just wanted to make sure that they are recognized.

MS. JARAMILLO: Thank you, Charles. Now, there are several people that I mentioned from the list that will be on the panel before us. Four will be making formal presentations and the others will participate in some of the discussion and provide input.

As moderator I will ask you to observe a few rules. I will make every effort to keep speakers to their assigned times, and I won't beat you on the heads, but I'll kind of give you some eye signals as I see you running over time. Then to the NEJAC, I also ask all of you to observe some common courtesies while speaking or listening and try to make your questions or points succinct. We have a lot of territory to cover today, and we'd really

like to get everything that we can done.

Now to begin. How should EPA improve the quality, quantity, and integrity of our nation's aquatic ecosystems in order to protect the heath and safety of people consuming or using fish, aquatic plants, and wildlife. You will be hearing those words a lot today, and I want us to keep a few things in mind.

Remember that low-income people and communities of color are dependent on fish and aquatic species for subsistence and cultural traditions in greater quantities than the probability of -- they are dependent on these species in greater quantities. Thus the probability of disproportionate impact often occurs. Standards for most populations may not be enough, and we need to think about that. We must assess the implications of risk prevention and risk avoidance, and as we go through the day we will be talking much about that; and in our dialog it is imperative that we understand the context of the issues, the cultural implications and the government-to-government relationships between tribes and the government.

The words of the people are critical to this dialog. From the Nez Perce: In all the Nez Perce ceremonial feasts the people drink water before and after they eat. The water is a purification of our bodies before we accept the gifts from the Creator. After the feast we drink water to purify all the food we have consumed. The next most important element in our religion is the fish, because fish come from water.

An African-American fisher on the Detroit River: My stepdad taught me how to fish. When I was little we used to eat fish a lot, but that was when the water was clean. I do eat the fish that I catch.

From Yin Ling Leung, Executive Director of Asian Pacific Islanders for Reproductive Health in California: To our communities being able to fish means being able to either put food on the table or basically eat a much

less nutritious meal. I think that's a non-choice.

Let us begin our dialog. To begin, Jana Walker will give us a presentation, an overview of the work of the Fish Consumption Workgroup. So go ahead, Jana.

Report Overview Presentation

By Jana Walker

MS. WALKER: Thank you, Annabelle. Can everyone hear me all right?

MS. JARAMILLO: You might want to speak into it a little bit more.

MS. WALKER: EPA has called on NEJAC to examine the relationship between water quality, fish consumption, and environmental justice, and in accordance with our mission to provide independent advice and recommendations to the agency NEJAC created the Fish Consumption Workgroup, which over the last year and a half has developed the discussion draft of the fish consumption report. It's important to remember that it is a draft, a discussion draft, and it's intended to promote open dialog here among NEJAC as well as public comment, and we are really welcoming and encouraging comments on this draft through January, 2002.

The policy question addressed by the report is "How should EPA improve the quality, quantity, and integrity of our nation's aquatic ecosystems in order to protect the health and safety of people consuming or using fish, aquatic plants, and wildlife?" The report contains a background section and four chapters. The background sections explored why contaminated fish and aquatic ecosystems raise environmental justice concerns, and it does so through the perspectives of real people who have suffered the harmful effects of contaminated fish. While there are important differences between affected groups generally communities of color, low-income communities, and tribes often are consuming greater

quantities of fish and depend on healthy fish and aquatic ecosystems to a greater extent and in different ways than does the general population. As a result, it is these communities and tribes that are being forced to bear a disproportionate share of the environmental harm caused by polluted waters.

Noncommercially-caught fish are a healthy, cheap, and readily available source of protein in the diet, and as a result persons who subsist chiefly or solely on fish are more likely to be members of communities of color, low-income communities, or tribes. Affected groups also may consume or use fish, aquatic plants, and wildlife for cultural, traditional, or religious purposes, and they may eat different parts of the fish and prepare the fish in different ways. As a result, conventional understandings of catching, harvesting, preparing, and eating fish are not adequately capturing these practices.

Communities of color, low-income communities, and tribes also may have different and often multiple exposures to environmental pollutants. Many of these toxins and toxic chemicals persist in the environment for very long periods of time, and bioaccumulate in fish, plants, wildlife, and ultimately the people who eat them. While no one really knows what the health risks are from such multiple exposures, we do know that many of these chemicals are highly toxic to people and may cause reproductive, neurological, endocrine disorders, cancer, and devastating developmental effects in children such as low IQS.

Quite simply, healthy waters and watersheds mean healthy people, and while acknowledging that, yes, EPA has made progress in addressing water pollution over the last 30 years much more needs to be done now. Today only 60 percent of our lakes, rivers, and estuaries are clean enough to support fishable, swimmable uses; 40 percent of assessed waters are degraded to the point they no longer support their designated use. We

have some 300,000 miles of rivers and streams, and more than 5,000,000 acres of lakes that do not meet water quality goals, and many of these waters are not safe for swimming and are unable to support healthy fish. The number of fish consumption advisories continue to rise. Advisories now cover some 52,000 lakes, including all of the Great Lakes and their connecting waters.

Chapter one of the report focuses on the tools that EPA uses to define, evaluate, and respond to the adverse health impacts from contaminated aquatic ecosystems, and specifically it's addressing science -- social-science findings about affected communities and tribes and their role in EPA's risk assessments. Fish consumption is the primary route of exposure for many toxic contaminants. EPA uses the exposure data to set environmental standards. For example, developing national water quality standards and criteria require certain assumptions about how much fish people eat, which parts of the fish are eaten, and which people are eating those fish. These assumptions often have reflected the habits of the general population, or the average American if you will, and not the realities of higher-consuming subpopulations such as communities of color, low-income communities, and tribes.

Until just recently water quality standards were set based on the key assumption that people consume only six-and-a-half grams of fish a day. However, studies regarding fish consumption in tribal and low-income and minority communities reflect fish consumption rates well over 100 times that EPA value. Although there was an upward adjustment of the fish consumption rate in the fall of 2000, it is unclear to what extent the water quality criteria now in effect still reflect that old 6.5 grams-per-day default value. Unquestionably that value grossly underestimates fish consumption by many affected communities and tribes. Other key assumptions are that the fish eaten is from a filet and that the fish eater is a 160-pound man.

(Laughter.)

The report provides ample evidence that ethnic minorities and tribes are more likely to eat the whole fish, including the skin, head, and tail, and that these parts contain higher levels of pollutants than the filet.

EPA's approach also has proceeded as if people were exposed to one contaminant at a time. In the Columbia River system, however, over 100 contaminants have been identified in fish tissues. Additionally communities of color, low-income communities, and tribes are often exposed to multiple contaminants by multiple routes in the environment in which they live. EPA also has assumed that all people enjoy the same relative health and access to health care and nutrition, and, as we all know, members of communities of color, low-income communities, and tribes often have poor health, poor nutrition, and less or no access to health care.

In sum, EPA's understandings and assumptions regarding patterns of fish consumption do matter greatly, and they simply must be made to reflect the lives and circumstances of all people, including these more highly exposed groups.

Chapter two focuses on EPA's risk reduction strategies that require the risk producers, generally the polluters, to clean up, reduce, of prevent environmental contamination. The chapter looks at existing legal authorities under the federal environmental laws that might be used more effectively to address contaminants of concern and to protect the health of fish consumers.

Chapter two starts with background information on major fish contaminants. Interestingly five contaminants, mercury, PCBs, dioxins, DDT, and chlordane, are responsible for most of the fish and wildlife consumption advisories that are being issued by federal, state, tribal, and territorial governments. Another 40 chemicals give rise to at least one

advisory, and one thing that is important to remember is that the absence of a fish advisory doesn't guarantee that a particular river or lake is free of contamination. It frequently means only that an assessment of that particular water body has not yet been done, and this failure often is due to a lack of financial and technical resources. As we heard yesterday, it's quite possible that in some instances economic reasons, tourism, may also play a role in whether or not a state is issuing a fish consumption advisory.

With respect to contaminants, mercury is responsible for nearly 79 percent of all fish and shellfish advisories. Mercury also is responsible for the first-ever issuance of a national fish consumption advisory in 2001. Significantly 80 percent of the mercury contamination in surface waters arise from mercury emissions to the air. Coal-fired power plants account for 87 percent of all mercury emissions. Other sources of mercury emissions are solid medical waste incineration, mining and smelting, chlor-alkali facilities, cement productions, and even wildfires. A very bad thing about mercury is that it accumulates in the muscle of the fish, basically the filet. So skinning and trimming a fish really does nothing to reduce the mercury in a cooked fish.

PCBs account for 27 percent of all fish and shellfish advisories, and although the United States banned the manufacture of PCBs back in 1979, today's sources include items that were grandfathered in at the time of the ban, past releases that have never been cleaned up, and also contaminated sediments. Dioxins are responsible for two percent of all fish advisories and primarily result from industrial processes that burn chlorine or directly discharge it into surface waters. Because dioxins have very long half-lives resuspension of particles from sediments to surface waters also are a very important source. Contaminants such as the persistent organic pollutants, or POPs, also are a particular concern because they are highly toxic, they bioaccumulate, and then persist for very

long periods of time in the sediments.

As far as legal authorities, the chapter focuses on the Clean Water Act, which is the major federal environmental law concerned with water quality. Other laws, particularly the Clean Air Act, necessarily are implicated when again you consider that air emissions account for 80 percent of the mercury fish advisories. With respect to these laws major issues concern compliance, cleanup and restoration.

Chapter three examines EPA's risk avoidance strategies whereby the risk bearers, in this case the affected communities and tribes, are asked to change their lives and practices to avoid exposure to harmful contaminants. The chapter discusses what role fish consumption advisories should play in protecting the health of people who are consuming or using fish, and concludes that the role of an advisory is going to vary for different communities or tribes. It's crucial that the affected group determine what role will be appropriate for advisories from the community perspective, and this is particularly so for tribes acting in their governmental capacity. Significantly many communities and tribes agree that even where the agencies act together with affected groups and opt to use fish consumption advisories efforts must be redoubled to clean up and restore already- contaminated environments and fisheries and to prevent and reduce new sources of pollution.

Chapter three raises several significant concerns regarding reliance on fish advisories. For example, agencies using fish consumption advisories generally assume that there will be adequate substitutes for being able to fish at the same place in the same way and for the same fish. However, for many of these affected groups there may be no real alternatives. It may be totally impractical to ask communities or tribes to switch to a substitute source of protein. Not eating fish may be unimaginable for cultural, traditional, or religious reasons, or in the case of

many native peoples fishing may be absolutely necessary for survival as a people. In many of these affected groups the nutritional, economic, and traditional aspects of fishing and preparing and eating the fish are not only inter-related, but also culturally ingrained.

Chapter three also discusses what is an effective advisory, and available evidence suggests that it's people of color and those with low incomes, limited English proficiency, and little formal education who are less likely to be aware of advisories.

Chapter four addresses considerations unique to the 556 federally-recognized tribes of which 229 are Alaskan Native villages. While tribes share many of the concerns described in the preceding chapters in many ways their unique political and legal status distinguishes them from all other affected groups and warrants separate treatment in the report. Unlike other affected groups, tribes also are governmental entities and regulators possessing broad inherent sovereignty over their members, territories, and resources.

Federally-recognized tribes have a government-to-government relationship with the United States and its agencies, including EPA. This means that federal agencies may not treat tribes as interest groups or simply as part of the general public. The cornerstone of the government-to-government relationship is a federal trust responsibility owed to federally-recognized tribes to protect their status and property rights and to act in their best interest. In return for ceding vast amounts of land to the United States today treaties protect the rights of many tribes to fish, hunt and gather.

Tribes also have unique susceptibilities to health impacts from pollution. First, the health status of American Indians and Alaska natives is far below the health status of the general population, and this disparity is reflected by an overall life expectancy that is lower than any population

in this hemisphere except Haitians. American Indians and Alaska natives also have the highest poverty rate for any ethnic group in this country.

Secondly, fishing, hunting, and gathering often are part of a spiritual, cultural, social, and economic lifestyle, and the survival of many native families is largely dependent on subsistence activities. Where these traditional and subsistence activities are involved federal and state environmental standards used to protect the general population may not afford adequate protection, and to date only a few tribes have EPA-approved or promulgated environmental programs. As a result, contamination of the food web and the accumulation of these contaminants in native people through ingestion and contact not only endangers their health, but also threatens future generations and cultural survival.

In closing, this report is not intended to ignore or belittle the progress EPA has made in addressing water pollution. However, it is clear that many obligations remain unfulfilled and much work remains to be done. As we meet here today and continue our discussions over the next couple of months NEJAC's challenge will be to develop meaningful advice on how EPA should improve the quality of aquatic ecosystems in order to protect the health of all people consuming fish, especially the more highly-exposed communities and tribes. Thank you.

MS. JARAMILLO: Thank you, Jana. At this time I would like to give Jim Hanlon and Peggy Shepard five minutes each to respond and offer their comments. Jim.

Responses

By Jim Hanlon and Peggy Shepard

MR. HANLON: Thank you, and let me also begin by thanking the committee for the invitation to be with you today. This is the fourth or fifth time I guess I've been able to be with NEJAC, and I think at every meeting there's a better relationship and a better set of understandings between

sort of the perspective of the Council and the responsibilities of the agency and the Office of Water.

Let me also recognize as others have done this morning the very high quality water done by the workgroup in putting together their draft report. If only the reports done at the agency were as easy to read as this was I think we'd be farther along. So again my compliments to the group.

I view the report, the draft report, as an important step in EPA's work in terms of dealing with fish contamination issues. Certainly Jana's comments that much work needs to be done are comments that we would sort of whole-heartedly agree with. Let me just take a minute to summarize where we have come from, because I think that perspective is important as we sort of look forward to today's discussions in terms of the contents of the report and the draft recommendations.

If you go back only 10 years ago across the country there were fewer than five states who used risk-based methodologies to develop fish consumption advisories, and it was with cooperation with the states that EPA and the Office of Water developed a set of guidelines that are used by the states to develop the advisories that are now in place. Those guidance documents include sort of sampling methodologies, analytical methodologies from a laboratory perspective, risk management guidance and risk communication guidance.

As we sit here today an excess of 40 states now use risk-based methodologies to develop fish consumption advisory information for their populations. That is a real step forward in an area that if you take a couple steps back from a programmatic standpoint has probably been a discretionary activity. If you look at the Clean Water Act it doesn't say to the Administrator of EPA, "Thou shalt work with the states to develop fish consumption advisories and public information." So again we're happy with the progress we've made, but again I think the discussions of today

and those that will follow identify the work that lies before us.

Another important step in the process was a conference that EPA and the Office of Water together with the Minnesota Department of Health sponsored this past May in Chicago where we brought together in excess of 400 people representing all 50 states, I think 50 or more tribal elements were represented, together with experts in risk communication to deal with issues surrounding primarily communication of risks in fish consumption; but also more generically if you are communicating with at-risk populations what communication vehicles should be considered. The proceedings of that conference have been released, and we will be talking tomorrow in particular with the Air and Water Subcommittee about sort of further actions that the agency is considering in terms of developing further tools that states could use in terms of improving their risk communication capabilities.

As was mentioned in the overview, about a year ago now we issued an updated methodology for the development of human health criteria that replaced a document that had been in use since the early 1980s, and it took important steps forward in a number of areas. Not only updating based on some available statistical information the average consumption levels for general populations, sport fishers and subsistence populations, put also and probably more important from a bottom-line standpoint made the transition from using historical bio-concentration factors to bioaccumulation factors in the derivation of criteria. Those are fairly complex scientific concepts, but from a bottom-line standpoint had the effect for some of the criteria of actually lowering the acceptable criteria by a factor of over 100.

So when you talk about some real progress made I think that's an area also. That methodology recognized officially for the first time the concept of relative source contribution, that basically individuals don't get

their entire body burden or entire load of a particular toxic pollutant from fish tissue consumption, but there are other exposure routes that need to be considered.

The next activity that I'd also like to highlight for your information is within the last couple of months we completed our second mailing to the health provider community. EPA and the Office of Water have done this in cooperation with the Department of Health and Human Services, where we have sent information packages to 135,000 health care providers across the United States; pediatricians, obstetricians, gynecologists, family physicians, physician assistants and midwives, giving them very basic information in terms of fish contaminant -- the potential of fish contamination and to be aware of sort of what that means to their patients from a health maintenance standpoint.

Much of this information and certainly the person who has been at the hub of this activity is Jeff Bigler. Jeff is in the audience now, and Jeff will be staffing a table up in the Washington Room on the second floor in this building that will be -- he'll be up there during the breaks, and I encourage all of you to stop by, and Jeff has a sample of the documents that we have developed over these last 10 years. But also Jeff is an outstanding source of information in terms of what our thinking is in terms of that next generation of information, and again Jeff will be with the Air and Water Subcommittee tomorrow.

From the Office of Water's perspective, and I think that the draft report touches on this in a couple of places, we do not believe that the solution to contaminated fish is fish consumption advisories, that we have never said that, and if that messages was taken that's our error. Basically fish consumption advisories are a temporary measure to advise the public of what risks there may be in contaminated fish. The entire horizon of Office of Water activities from developing better criteria documents, to

working with the states to incorporate those criteria documents into the water quality standards, to recognize local situations in terms of at-risk populations whether they are subsistence populations or others, to having ever-better monitoring information, the Achilles heel of our national water program continues to be a lack of robust information or data across watersheds in the United States. When we site as Jana did earlier, you know, 40 percent of the assessed water bodies do not meet designated uses the key word there is 40 percent of assessed. I think the universe of assessed water bodies is 20 or 25 percent of the total. So what we know about water bodies or watersheds across the United States is limited by our available data.

The TMDL Program is taking giant steps forward. If you look back four or five years, we were probably doing 100 or so TMDLs. A TMDL is shorthand term for a requirement of the Clean Water Act to do a total maximum daily load. A total maximum daily load is sort of a pollution budget, what loads are allowable in a given watershed for that watershed to meet its water quality standards. This coming year I think the TMDL projects are on the order of 2,000 nationwide. That's still not enough, but it's a significant increase from where we were four or five years ago.

There are I think on the order of 30 or 33 states where there has been either consent agreements or court orders that are requiring the states and EPA to step forward and complete those TMDLs, and then the work does not even begin to be done once the TMDL is done. Because obviously implementation is the key to look at sort of what those sources are, whether they are point sources that can be dealt with through MPDS permits, or non-point sources whether they are agricultural operations, land use operations, or air -- Dilute air sources in the case of mercury that are affecting the quality of our waters.

The object of the Office of Water across all our programs is to insure

that the water is safe to drink, that our water resources are safe for aquatic recreation, whether that's swimming, boating, or other uses, that the fish are save to eat, and that our water resources provide a balanced, high-quality system to support aquatic life. Those are the objectives of the Office of Water.

Again, let me commend the Fish Consumption Workgroup for their draft report, and I personally look forward to today's discussions in terms of discussing those recommendations and follow-on activities of this committee. Thank you.

MS. JARAMILLO: Thank you, Jim. The report that Jim talked about or the proceedings from the meeting that Jim talked about are this document. I don't think that there are any available, but we can ask staff to find out how you can get a hold of them.

MR. HANLON: Certainly. Right. If anyone wants a copy of that see Jeff up in the Washington Room.

MS. JARAMILLO: Okay.

MR. HANLON: Give him a card or your name and address, and we'll make sure you get a copy.

MS. JARAMILLO: Thank you. Before I move to Peggy I just want to kind of ask you all to jot your questions down, and after Peggy's presentation we are going to move to the chapter summaries; and the presenters have asked that we hold questions to the end so that we can get all the information out, and then we can have a dialog around the questions you may have or your response to some of the presentations. So you have paper pads in front of you. Just go ahead and jot those down. Peggy?

MS. SHEPARD: Sure. First of all, I just want to thank Jana Walker for just a compelling, thorough, and succinct overview. The report is excellent. So I just thank all of you all again.

You know, my response to this is, you know, I live along the Hudson River, which is allegedly the longest superfund site in the country.

(Laughter.)

MS. SHEPARD: And it's filled with PCBs, and as you probably know General Electric had for years been allowing PCBs to go into the water and had started a major public relations campaign basically with billboards all over basically saying that PCBs were actually a good thing, good for you. Carol Browner had to come to the New York State Legislature and set everybody straight. So this is a very, very important issue for a diversity of communities and tribes around the country.

I just had six very brief comments that just sort of stuck out for me, and one was simply how EPA has just had wrong assumptions about consumption through the lack of consultation and understanding of how fish is consumed among so many different tribes and communities.

When we talk about fish advisories, you know, I have found at least in my own state that even though the contamination has been known for years I know many groups in New York have been engaged for over six years in consultation around fish advisories with the State Department of Environmental Conservation, and we still have no postings along the river. So I would really like to see fish advisories taken seriously and EPA find some way to mandate that those signs and advisories are posted and that there is general education throughout the communities.

I also felt that the information reinforced the need for accelerated investigation projects and protocols for determining cumulative effects from multiple exposures, and especially due to the bioaccumulative impact of certain pollutants the whole issue of establishing body burden just become more and more significant.

I felt that there was a glaring disparity in water quality standards, enforcement, and clean up, and it just simply confirms the continuing

unequal enforcement that's well known in our communities where we have highly exposed populations.

Again, I think a general public information campaign on fish advisories is clearly needed, and the lack thereof is just unconscionable. I know again in New York we have a situation were major fisherman groups were illegally selling contaminated fish from the Hudson to 10 major hotels and restaurants, five-star restaurants, and about 20 of them were led off on TV in handcuffs. But we also find that all along the river subsistence fisherman are selling fish to local fish markets, and this, you know, is egregious and there's very little inspection and enforcement going on in affected communities.

Lastly, I would say that it would be important for financial resources to be given to affected groups so that they can consult and that they can begin to take some of their own initiatives to educate their own populations and own communities. I think again that should not let enforcement off the hook, but again I think it's important that communities are able to speak in their own languages to their own cultural customs, and that they need resources to be able to do that in that partnership with government.

So those are my sort of initial responses to what I've heard today, and, you know, I look forward to hearing further public comments. Thank you.

MS. JARAMILLO: Thank you, Peggy. At this time we're going to go into more in-depth discussion, chapter by chapter, and this afternoon we'll be talking about recommendations that came from the workgroup to the NEJAC and then for NEJAC's consideration. So at this time I"m asking the presenters to make their presentations in about five minutes, and as I mentioned earlier -- five minutes each that is, and as I mentioned earlier if you can jot down your questions we can have a more in-depth discussion after they've all made their presentations.

So, Patrick West, if you could tell us about research methods and risk assessment approaches.

Chapter 1: Research Methods and Risk Assessment Approaches

By Patrick West

MR. WEST: Okay. Thank you very much. Is this microphone working? Okay? Okay. There is no way in five minutes that I can summarize all the many issues in chapter one, and I appreciate very much Jana's very fine overview. What I'd like to do in this morning's session on chapter one is to emphasize some key selected elements of fish consumption science and related policy dialogs, especially research findings showing much higher fish consumption by environmental justice communities than rates for the average fisherman and fish-eating public. This will be linked to presentation and discussion of our overarching recommendations from chapter one this afternoon.

EPA continues to use the outmoded 6.5 grams-per-person-per-day, which I will subsequently call GPD throughout, in approving state water quality standards for point source discharge permitted. There is simply no modern social scientific data or evidence on fisherman and fish eaters that supports this very low GPD assumption. For instance, averages of multiple studies in the Great Lakes states arrived at by EPA in their own Great Lakes initiative arrived at an average of 15 grams-per-person-per-day, more than twice the 6.5 standard. More importantly for our concern for environmental justice communities here, these groups often consume way above the mean for the general fishing public, ranging from 40 to 90 grams-per-person-per-day in some studies and up to 350 GPD and way up to -- well, from 109 up to 350 GPD in other studies. Excuse me.

When we look at percentiles over the mean for these EJ communities we find 95th percentiles in the range of 225 GPD up to 489 GPD. If point

source discharge standards are to be established on a scientific basis and not on a path-of- least-resistance basis then it is imperative that much higher GPD assumptions be used in approved state water quality standards and permitting processes in regions surrounding EJ communities. These higher levels of GPD assumptions have critically important policy implications for point source water and air discharge permitting --- mediation policies to be discussed in detail this afternoon.

Some will say that significant movement in this direction is not feasible in the short run and that we must rely on fish consumption advisories to reduce high GPD consumption by minorities and tribes. However, we also know from social science research and repeated testimonials that low-income minorities and tribes simply will not usually respond to advisories. They simply must consume fish for subsistence to feed their children, and for many tribes and other cultural groups high fish consumption is deeply woven into their culture and is ritually prescribed. Thus many will simply not respond to advisories.

The science of fish consumption is further complicated by what has been called the fish consumption suppression effect. It is especially important to understand this process as part of considering GPD policy implications. A consumption suppression effect occurs when a fish consumption rate for a given group reflects a current level of consumption that is artificially diminished, that is suppressed from an appropriate historical baseline level for that group that are not captured in current GPD consumption rates. This may be due for instance to areas of extremely heavy pollution that may exist and thus suppress consumption in some cases to no consumption at all in extreme circumstances.

For instance, in areas in the South Afro-American fishing consumption is 60 to 90 grams-per-person-per-day in different studies. But in New Orleans in the heavily-polluted Mississippi River ecosystem

pollution is so bad that comparable black fishing has been totally abandoned and fish consumption has reduced to zero GPD. We can find examples of this all around the country, and many of us are aware of such situations.

This is not a call for complacency or celebration of the success of no fishing advisories, but rather a call to action. A call to understand and measure suppression effects and then to understand remediation and pollution prevention policies so that subsistence and culturally-appropriate fishing can resume and increase.

In closing I would like to quote a highly-valued colleague here at these meetings with respect to high fish consumption tribes, which holds also for all fish-eating EJ communities. Agencies possess quantified fish consumption data showing populations to consume significantly greater quantities fish than the general fish-eating population. Because these data are clearly identified, Native Americans as among the most highly exposed, agencies know who it is that will be left under-protected by a choice of an average or mean consumption rate for the general fishing public. Agencies know who will be subjected to risk orders of magnitude than risk deemed acceptable. The debate is not about edentulous, statistical lives. Thank you very much.

MS. JARAMILLO: Thank you, Patrick. Jana, chapter two, utilization of existing legal authorities.

Chapter 2: Utilization of Existing Legal Authorities

By Jana Walker

MS. WALKER: I just had a couple of additional points to make. One, as we mentioned in the fall of 2000 some revised water quality criteria did come out, and in that to the extent that it recommends that states and tribes should prefer or try to use local data rather than these default fish consumption rates adequate funding is really going to be crucial in order

to make that option meaningful for states and tribes.

The other point is that there are special jurisdictional rules applicable to reservations, and under those rules either the tribes or EPA are responsible for implementing water quality standards within Indian country. Currently only 16 of 565 tribes have EPA-approved or promulgated standards, and as a result we have a very large gap in water quality standards coverage in Indian country. Land-wise that gap would be an area approximately the size of all of New England plus New Jersey, and people-wise the combined populations of Wyoming, Alaska, and Vermont would reflect the number of reservation residents who are not protected by any water quality standards. A large number of these Indian and Native Alaskan people are highly dependent on subsistence activities and diet. Thank you.

MS. JARAMILLO: Thank you, Jana. Marianne Yamaguchi will talk a little bit about fish advisories and risk communications.

Chapter 3: Fish Advisories and Risk Communications

By Marianne Yamaguchi

MS. YAMAGUCHI: Thank you. Chapter three is entitled "Fish Consumption Advisories," and it's framed by the policy question "What role should fish consumption advisories play in efforts to protect more effectively the health and safety of people consuming or using fish, aquatic plants, and wildlife?" To address this question we have focused on issues surrounding fish and wildlife consumption advisories as a health risk avoidance versus a reduction strategy.

Two key aspects of this strategy are explored. First, what is the proper role of fish and wildlife consumption advisories; and, secondly, we discussed the general issue of risk communication and the factors that bear on the effectiveness of those advisories. As mentioned in Jana's overview, consumption advisories place the responsibility for risk

avoidance on those who are exposed to environmental contaminants and as such place a greater burden on communities of color, low-income communities, and tribes. The chapter raises concerns about the probable assumptions being made by health agencies when they are issuing advisories with regard to adequate substitutes or real alternatives to the fish or wildlife that they are consuming.

Drawing on the observations about the impracticality or unimaginability of reducing fish consumption or of altering practices connected with the catching, preparing, and eating of fish we conclude in this chapter that the answer to the question of fish consumption advisories' proper role will be likely be different for different communities and tribes and that it should be up to the affected groups to determine what is appropriate from its perspective.

Secondly, we have explored in this chapter the issue of effectiveness of fish consumption advisories. Anecdotal evidence suggests that while advisories have been in place for many years in locales throughout the United States it appears that many people of color, low incomes, limited English proficiency, or education are often unaware of or have limited understanding of advisories and/or do not alter their consumption patterns as a result of those advisories. I must say that from personal experience some of those advisories are so poorly written that I don't even really understand what they are trying to convey to the public. In light of this evidence and in view of current EPA efforts to this end, this chapter devotes considerable attention to the matter of improving the effectiveness of the risk communication process and of fish consumption advisories.

The specific recommendations associated with that are to be covered in this afternoon's session. However, as a general matter, we conclude that effective risk communication is a two-way street and if real communication is to occur affected communities and tribes must be

involved as partners and co-managers at every point in the risk communication process. All elements of effective advisories, including audience identification, needs assessment, message content, media choice, implementation and evaluation, will fall into place if agencies and affected communities or tribes together consider the questions and the answers.

Importantly we note that the agencies must do a better job of recognizing that affected groups include a very large and diverse array of groups and subgroups, each of which consumes and uses fish, aquatic plants, and wildlife in differing cultural, traditional, religious, historical, economic, and legal contexts. Involving affected groups in identifying and understanding that these diverse contexts, interests and needs is perhaps unsurprisingly essential. There's a incredible diversity of affected communities, including but not limited to groups with limited English proficiency, groups with limited or no literacy, low-income communities, immigrant and refugee communities, African-American communities, various Asian and Pacific Islander communities -- and I was just looking at this document that EPA put out on its outreach strategy, and even within that for the Asian and Pacific Islander communities there are 54 groups that were noted in that alone -- various Latino and Hispanic communities, subcommunities, various Native American, Native Hawaii and Alaska Natives. Then within these groups there are subgroups such as children, pregnant women, or elders.

While agencies have increasingly recognized this diversity ongoing and constant efforts are necessary to learn about and attend to the changing contours of affected groups and subgroups, some of which may be changing quite rapidly such as in cities that are ports of entry for immigrant and refugee groups or in rural and other communities where particular groups have settled.

All of these groups are likely to differ with respect to their concerns and needs relative to risk communication. Therefore, rather than large-scale one-time risk communication efforts and products we see that there is a need for local ongoing relationships with affected communities and tribes to develop and implement risk communication programs. Ongoing relationships would allow for real, respectful communication and information exchange. Under such a scenario communities and tribes could truly participate with health agencies in all aspects of a risk communication program, from determining the role of advisories to designing and implementing research projects and developing consumption recommendations. Evaluating program effectiveness will also be most usefully conducted together with members of affected groups whose ability to help define and measure success will again be unparalleled.

Affected community involvement can insure that message content, outreach media, and implementation approaches are cultural appropriate and communicated in a manner that is tailored to specific locales and community needs. Affected communities and tribes will be particularly well positioned to take the lead in implementing and advising and outreach strategy that has been developed by and for this group. Capacity building is in and of itself an environment justice issue and involvement by those affected in each phase of program development and implementation would go far towards enabling affected communities to shape the process so that it is not only relevant and appropriate, but also useful and empowering.

Finally we note here the same as Peggy did that financial and technical support for affected communities and tribes is crucial for them to fully participate in health risk communication and reduction efforts. Thank you.

MS. JARAMILLO: Thank you, Marianne. Dean Suagee, would you

tell us a little bit about American Indian tribes and Alaskan Native villages, which is covered in chapter four?

Chapter 4: American Indian Tribes and Alaskan Native Villages
By Dean Suagee

MR. SUAGEE: Thank you, and I want to express my thanks to Jana for all the work that she did on this project. Chapter four is a relatively short chapter, and it reflects one of the consistent tensions that we have in dealing with issues affecting Indian tribes and Alaskan Native villages in the EJ context. That is that on the one hand, we want to make sure that issues affecting tribal communities are addressed in the main body of the report; on the other hand, we want to make sure that the things that -- the ways in which tribes are different are acknowledged and highlighted.

So I think that's the rationale for a separate chapter, although it's relatively short compared to the other three chapters, and I wanted to -- you know, to note that there's a lot in the other three chapters that specifically talks about Indian tribes and Alaskan Native villages. It's not all in chapter four. For example, one key part that's in chapter two is a discussion of EPA's proposal to adopt federal core water quality standards for reservations, which is not discussed in chapter four at all, but we will be talking about that later this afternoon as one of the key recommendations.

Chapter four consists of basically three sections. The first section deals with the legal status of Indian tribes. The tribes are separate sovereigns, that they have a government-to-government relationship with the United States, with all of -- with each of the agencies of the United States, including EPA, and that one of the, you know, key principles defining that relationship is a doctrine of federal law known as the federal

trust responsibility. The trust responsibility is based in large part on treaties that tribes entered into with the United States back in the formative years of the Republic, also on acts of Congress and on opinions by the federal courts.

In essence the chapter points out that there are different aspects to the trust responsibility. It includes management of resources that are said -- lands and resources that are said to be held in trust. It also includes the protection of the right of the tribes to continue to exist as self-governing sovereign entities. The chapter takes note of the legal doctrine known as the plenary power of Congress, which recognizes that under the constitution the authority to relate to -- to make laws relating to Indian tribes is vested exclusively in Congress and not in the states.

In the evolution of environmental law in this country in the early '70s when most federal environmental statutes, the modern era statutes, came into being, the basic approach that was taken was sometimes referred to as cooperative federalism in which the EPA and other federal agencies, but primarily EPA, have leading roles. But the states also have leading roles, and most of the statues are designed so that they're implemented in a partnership. In the context of federal Indian law and policy that generally meant that there were enforcement voids. There were gaps in Indian country, and EPA is to be commended for addressing that fairly early, going back to the 1984 Indian policy, the policy for the administration of the governmental programs on Indian reservations, which the report notes has been affirmed by all EPA Administrators since, including Administrator Whitman.

The chapter also notes that, you know, to some extent in response to EPA's, you know, actually dealing with this problem, acknowledging the problem of adoption of Indian policy, Congress then amended several of the statutes to authorize Indian tribes to be treated like states and notes --

the report notes that some see this issue itself as an environmental justice issue. I'm one of the people who have said that. It's kind of what I would describe of structural disproportionate impacts in that Indian reservations having been left out of the first phase of building an environmental protection infrastructure through this, you know, cooperative federalism, our tribes are behind. They don't have the same kind of resources that states do, and the federal government hasn't generally provided those kinds of resources. So within reservations we have differential generally less regulatory infrastructure to deal with the environmental impacts, and so that I've described that as structural disproportionate impacts.

The section also notes that a number of tribes are involved in dealing with environmental pollution, and particularly just notes a handful of tribes that have been involved in cleaning up superfund sites as trustees for natural resources as authorized under the superfund statute. Section B of the chapter deals with treaty rights, and it notes that under federal law a treaty is considered a grant from the tribe to the United States, and not a grant -- not the other way around. It was an exchange in which tribes gave up immense territories in exchange for a promise. Basically in exchange for a promise of the United States to protect the right of tribes to continue to be self-governing communities within the lands that they had reserved to themselves. So in that sense a treaty does not have to have any specific language to establish hunting and fishing rights for on-reservation activities, because that's something that a tribe would have had to have specifically given up.

The chapter also notes that in many instances tribes have specifically reserved hunting and fishing rights outside their reservation boundaries. That's probably something that here in Western Washington we don't -- you know, everyone is aware of, but not everyone is aware of that throughout the country, and it continues to be -- you know, it continues to

be a subject of controversy, and most recently, this was in the last couple of years, you know, we had a Supreme Court decision involving off-reservation reserved treaty fishing rights in Minnesota, which only came down in the tribe's favor by a five-to-four decision of the Supreme Court. The chapter also notes that this off-reservation fishing rights are generally recognized to be included within the scope of the federal trust responsibility.

Section C of the chapter is captioned "Tribes' Unique Susceptibilities and Co-Risk Factors." This section points out some of the socioeconomic and the health care statistics affecting American Indian and Alaskan Native people. I was struck by that statistic that we have the lowest life expectancy of any population other than Haitians. The chapter takes note of cancer problems, of the high mortality rates, the high risk from -- you know, a high risk of cancer from engaging in traditional cultural practices, including practices that are protected by treaties. So that's a kind of disproportionate impact that, you know, can really only affect Indian and Alaskan Native people.

The chapter notes that the -- you know, while we have in recent years, you know, beginning in the mid '80s, we changed the statutory framework so that tribes can become treated like states and become engaged in the environmental protection framework laid out under the federal laws. That's really an enormous challenge for tribes to do that, and in the specific context of the Clean Water Act we have -- I believe the number is 18 tribes that have adopted water quality standards that have been approved by EPA. Which leaves, you know, more than 300 tribes in the lower 48 that haven't, and that doesn't begin to address Alaska, which has its own issues regarding, you know, the language and the statute. It just specifically refers to reservations.

So it closes with this, you know, acknowledgment that we've made

some progress, we've established a legal framework to make some progress, but there's an enormous challenge for tribes to become real meaningful participants in regulating activities that affect the environments of their reservations. Thank you.

MS. JARAMILLO: Thank you, Dean. Thank you all for your presentations. Please, NEJAC Council members, join me and everybody here join me in acknowledging the good work.

(Applause.)

MS. JARAMILLO: At this time I'm going to give you a few minutes to think about your questions and also give you some time to take a break. So at exactly 11:00 a.m. will reconvene, and at that time we will begin the question and comment period.

MS. : I am just curious as to how we are going to proceed. I mean, I'm not following the agenda.

MS. JARAMILLO: Okay.

MS. : Could you just give us a quickie on that before we break?

MS. JARAMILLO: Yes. What we'll do is from 11:00 to 12:00 we will have you address questions. Panel members can address questions to the presenters, and that'll be the format. At 12:00 we'll break for lunch, and during that period of time I'm mostly going to ask Catherine to kind of add her comments to what's been discussed. So it'll be questions and comments and present them to the panel members, and panel members will also have an opportunity to do the same thing.

MS. : Great. Thank you.

(Whereupon, a brief break was taken.)

Comments and Questions

MS. JARAMILLO: We're going to go ahead and start. Before we took our break I asked you all to think about some questions that you wanted to present to the presenters, and I invite other people that are

sitting on the panel to do likewise. So would anybody like to start? Veronica.

MS. EADY: Thank you. I have --

MS. JARAMILLO: Speak into the microphone please.

MS. EADY: I have a number of questions, but I'll start with just one this time, and directed primarily at Jana, but if anybody else can answer this question. Jana, you in your overview talked a little bit about sedimentation and the resuspension of dioxin, and I am particularly interested in that issue as the Chair of the Waste and Facility Siting Subcommittee. I was wondering, and I know you are going to have more recommendations this afternoon, but if you had an particular comments on sediment and any research recommendations on the issue of sedimentation.

MS. JARAMILLO: Catherine, could you amplify on that any?

MS. O'NEILL: I think the report looks at sedimentation, but -- and has looked at the EPA's current sedimentation documents, both the research that they've done and then their particular plan. So to the extent that the research has been done by EPA, it has a sense of the extent of contamination of the sediments and mentions for example that -- I believe the figure is something like 10 percent of the sediments underlying surface waters within the United States are contaminated. Again, this is the assessed figure as opposed to a figure that represents the entirety.

So sediments are certainly an enormous source of concern, and that's something that the report recognizes. The recommendations I think include sediments for cleanup along with some of the other cleanup issues, and it's going to be particularly important as I think Jana mentioned for those contaminants of concern that are no longer being manufactured or produced. So it's not a matter of prevention in manufacture, but a matter of cleaning up and restoring past contamination, and that's going to be true

for DDT, that's going to be true for PCBs, and some of the other important persistent -- the POPs.

All that having been said, I think that the report could go further into looking sedimentation issues; and the Fish Consumption Workgroup, I think this is an area we have identified as wanting to look at more, to hear more input from affected communities and perhaps to develop further some more focused recommendations that deal with the sedimentation problem.

MS. JARAMILLO: Charles.

MR. LEE: I just want to put this question of sedimentation in some context. I think that the workgroup had identified early on this as an important area. However, you know, there's an extraordinary amount of things that the workgroup worked -- you know, looked into, and this did not happen to be one that had gotten the kind of attention sufficient to what I think everyone feels it deserves. However, in terms of, you know, following up on this, this is certainly one of those that probably is going to get the kind of detailed attention it deserves following this report.

Now, having said that, I just want to say that Veronica, who is the Chair of the Waste and Facility Siting Subcommittee, which is sponsored by the Office of Solid Waste and Emergency Response, which it would be the office that addresses sedimentation issues. These are really superfund remediation-type issues, like the Duwamish, you know, River here which is a superfund site. We talked about the report, and there was discussion about the Office of Solid Waste and Emergency Response doing a set of activities to follow up.

So just to put all this in some type of context, this may not be one of those issues that you in terms of all the different issues that are put on the table are going to be able to address with sufficient, you know, attention that it might deserve, but certainly it will be one of those that would have

the kind of pathway to a follow-up.

MS. JARAMILLO: Richard.

MR. HARRIS: Bobby Harris.

MS. JARAMILLO: Robert, yes.

MR. HARRIS: As a follow-up to that question, unless I misread the report I don't think I saw any mention whatsoever of diesel engines, which is a major, in many urban areas, cause of dioxin. I'm just curious as to why that was omitted from the report.

MS. JARAMILLO: Catherine, would you like to respond to that?

MS. O'NEILL: There wasn't an intent to refrain from referring to diesel engines as a source. I think it's something we were gathering information -- relying on some of the EPA documentation of the major sources of dioxins, and so if that's something that we should add then we certainly will. There is no reason for not mentioning it.

MR. LEE: The reason I mention it is because in some areas, for example West Oakland, Oakland, California, because of the port activities, et cetera, it is a major problem. It's a problem that has been tried -- that they have tried to address in terms of diesel engines. They've changed out a number of the engines to clear air vehicles to deal with some of the problems.

Anyway, I just wanted to raise it raise it as a possible issue that you may want to think about as you look at some of the causes, because dioxin as you know is very toxic even at very, very small amounts as your report correctly indicates.

MS. JARAMILLO: Larry.

MR. CHARLES: First I want to just yield a minute to Charles Lee so that he can do what he's been trying to do all morning, and that's recognize history now standing in the corner. Charles?

MS. : Oh, yes. Richard.

MR. LEE: Oh, yes. That's right.

MS. : Finally.

MR. CHARLES: That's not the end of my remarks, but --.

MR. LEE: Finally, right? For the third time we're going to try to do this. I had before wanted to acknowledged the first Chair of the NEJAC, who is Richard Moore from the Southwest Network for Environmental and Economic Justice. I think Richard is in the back of the room, so we want to acknowledge him.

(Applause.)

MS. JARAMILLO: Thank you.

MR. CHARLES: All right. I guess in the same spirit as Mr. Harris over there, the whole urban discussion is one that I think we might want to add a bit more to as far as this report is concerned, and point sources for contaminating fish in waters that are used by people from the urban communities. The point source I'm specifically concerned about is sewage treatment plants. I'd like to ask if you all could in the final report add some discussion as well about the impacts of sewage treatment plants and especially in the legal authorities section discuss some of the tools that are available to EPA and local regulatory bodies with respect to that. I know that issue has a lot of exposure currently and that resources are available, and there is a movement to cause even more resources to be made available to deal with sewage treatment plants and the effects that they have in contaminating fish in the urban communities. Is this a round robin?

MS. JARAMILLO: Actually I've got names on a list here as I saw the -- as the cards went up. Jane.

MS. STAHL: Thank you. My card is going to go back up later. I have three sets of questions, but I wanted to just comment both for -- on the issue of sedimentation. One comment specifically to Veronica. In case you don't know, the USGS in our area has done a study on dioxin in

sediments.

Secondly, again in your -- now in your capacity as taking up this issue tomorrow in subcommittee one of the things that I think is going to be important to identify is the disposal of contaminated sediments once they are in fact removed from the environment and making sure that the disposal doesn't become yet another issue or problem.

Number three, back to the workgroup as well ourselves I think for further consideration -- it's three and four. Three being I think it's very important to recognize the various sources of contamination for any of the criteria pollutants that we're talking about, any of the real hazards that we have and are creating, because that gives us the wherewithal then to approach on a -- you know, on an issue-by-issue or detail-by-detail basis how to remove it from the environment. So I think, you know, a point making sure that we understand, and not that we'll create an exclusive list, but to understand better what the sources of contamination are so that we can then systematically deal with removing them from the environment I think becomes important.

Number four, one of the things that I think we need to keep an eye on as we go forward is the issue of costs, and one of the things that we've really never gotten our hands on or addressed in my understanding here on the NEJAC is what are the costs. What is the plain, old "How many dollars does it take to address any of these issues?" Either, you know, in a regulatory fashion or the actual work to be done to remediate a site or series of sites, because we need to know what that is in order to then start prioritizing how to address again the issues. So I'll put my card up later for my three other questions.

MS. JARAMILLO: Thank you, Jane. Eileen?

MS. GAUNA: Okay. Well, I'm like Jane. I have too many questions, and they're all over the place.

MS. JARAMILLO: Well, we'll go around again.

(Laughter.)

MS. GAUNA: All right. Okay. I guess I had two sort of big questions and then a more focused question. So I'll start with the big comments. First was the idea it seems like there are two areas of potentially -- one potentially problematic area, and that is the idea of a cap and trade system for mercury, and I was wondering if the workgroup considered that at all, had any kind of thoughts, tentative thoughts on it. That seems like a problematic area in terms of what kind of protection should be put in place if Congress and the EPA decide to go that route. I'd like some thoughts from the agency in terms of what they are thinking along that line.

The second big sort of generic comment I had was it seems like the TMDL Program that you spoke about earlier would be a wonderful opportunity to actually try to consider in a guided document to the states or -- I don't know exactly how it would be authorizationalized mechanically, but it seems like what we're hearing a lot are there are very special types of harms that cannot be expressed in a risk estimate. Although I appreciate, you know, that risk estimates are necessary, but for example the harm to the continuation of cultural practices when people cannot use the resource is a particular type of harm that isn't expressed in a risk estimate.

So when states are developing TMDL plans is there anything that the EPA can do to try to address those types of harms through its criteria? You know, if states could be given guidance as to the types of things to look for an address when they are working up their TMDL plans and coming up with priorities and that sort of thing. Specific EJ criteria in TMDL criteria, the possibility of that is what I'm wondering about.

The third more specific question that I had was more for clarification. Professor Suagee was talking about an interesting point that shouldn't be

overlooked, and the fact that this idea of this big federal partnership in federal environmental law, the way that it was originally done sort of lead Indian country far behind in terms of enforcement in these environmental laws. I wonder if Professor Suagee would give us a more concrete example of how that happens, because I think that has important -- it not only explains why we're all here today talking about fish consumption, but it could also help us I think a little bit better to understand how that structural program is working its way through and what we can do about it.

MR. SUAGEE: I'm I supposed to respond to that?

MS. JARAMILLO: Yes. There will be responses from a couple of other people probably as well. So why don't you go ahead, Dean.

MR. SUAGEE: Okay. Yes. Thank you. In my presentation I used the word "enforcement", and I probably should have used the word "implementation" as a more generic term for the kind of void that exists. That, you know, still exists in Indian country. But one good example, we'll look at the Clean Water Act. The Clean Water Act is a classic example of cooperative environmental federalism, with some roles assigned to EPA and some roles assigned to states. Some of the things that EPA does can be delegated to states. Some things the states just do in the first instance, and EPA doesn't do them unless the states don't. Water quality standards is sort of, you know, the key concept the Clean Water Act is built on. Well, water quality standards under Section 303 of the Clean Water Act are adopted by states. EPA doesn't adopt water quality standards. There are no generally applicable federal water quality standards. EPA issues guidance, which we heard, you know, a discussion about the revision of their guidance to deal with the, you know, fish consumption.

But as a basic principle of federal Indian law states don't have jurisdiction over tribes and reservation Indians unless specifically

authorized by Congress. Well, the Clean Water Act didn't specifically authorize states to do that, yet tribes would resist the idea that states would have that kind of jurisdiction. So it wasn't really -- that was one of the, you know, basic reasons for amending the Act in 1986 to authorize tribes to be treated like states, and, you know, one of the first areas of emphasis was to adopt water quality standards. EPA's rules implementing the provisions of the 1987 amendments to treat tribes like states, you know, the rules for water -- for treating tribes like states to set water quality standards were issued in 1991.

We subsequently had rules on, you know, taking over the -- the NPDES permit program under Section 402 is another example of, you know, one other aspect of the Clean Water Act that is in the first instance done by EPA, but can be delegated to states. The NPDES Permit Program, the National Pollutant Discharge Elimination System, the permit program for point sources, is in many ways the principal enforcement mechanism, but it's built on this substrate of having water quality standards in place. So, you know, the enforcement implementation mechanism, you know, the void in Indian country is that since states don't have authority to adopt water quality standards for reservations and EPA doesn't do it unless they specifically, you know, focus on it and do it as a -- you know, in reaction to the fact that there are no standards.

There are no standards, and in the early '80s adopted and promulgated federal standards for one reservation, for the Colville reservation in Washington, and then in the -- you know, since the regulations have been issued to implement the 1987 amendments a handful of tribes have become authorized to adopt standards. I think the number we have in the report is 18, although my recollection is it's actually 15 and that there are another 20 tribes that are somewhere -- that have been approved or that are someplace in the process of being approved.

But in recognition of this void EPA about three years ago initiated a process in consultation with the tribes to adopt what they refer to as federal core water quality standards that would apply to all Indian country waters throughout the country and, you know, that would be a placeholder until such time as tribes take that on. The Clean Air Act works a little differently, and we will probably have to come -- yes. We will probably get into that later this -- you know, later this afternoon.

When tribes have adopted water quality standards under the Clean Water Act and EPA has approved them the fact that federal law says that they can do that and the agency approves it doesn't mean that the agency doesn't get sued, and we have had a series of lawsuits challenging that, challenging those approvals. That's one of the other complicating factors for tribes trying to protect their environments, is that if they actually step forward and assert their sovereign authority within the framework of federal law chances -- you know, they have to expect that their assertion of authority is going to be challenged, and it's a kind of limit on governmental authority that no other kind of sovereign in our system faces.

MS. JARAMILLO: Thank you, Dean. Jim Hanlon, would you like to respond?

MR. HANLON: Yes. Let me first speak to the issue of I guess the suggestion for a model or a pilot with respect to TMDLs and special uses. The place to do that the way the statute operates would be in the setting of the standard. Basically water quality standards by definition contain three elements. The use designation or what the state designates that water body use as being; the criteria, both numeric and narrative criteria that could include toxics or nutrients or other parameters; and then an anti-degradation policy. So basically if the state was going to recognize special uses for a given water body the place that would be done would be in the

setting of the standard, because once the standard is established then the follow-on process is a determination as to whether that standard is being met or not. If it is not, then the Clean Water Act requires that a TMDL be done that basically is the calculation, if you will, in terms of how you are going to get from where you are at to complying with the standard.

One of the comments that goes back to the earlier discussion on sediments -- a couple of points. The EPA and the Office of Water has completed a couple of years ago a national sediment inventory that identified locations of contaminated sediments across the United States and were in the process of developing -- and this is contained in a report to Congress, a second -- or a first update of that first report that I think is due out within the next year or so.

But it is important when you talk about sediments in the water context to distinguish what the sediment issue is. In many parts of the United States many of those impaired water bodies are impaired because of clean sediment, basically silt washing off into the water bodies that then cover over the bottom and bottom structure and basically impair the habitat and the ability of that water body to support aquatic populations. Whereas contaminated sediments are much -- it's a much different set of issues. The issues of sediment in general, but in particular contaminated sediments, get very, very complicated very quickly from a water chemistry standpoint. You need physical chemists, you know, water chemistry, and then the shear issue of dealing with contaminated sediments in terms of removal options. Because dealing with hazardous materials on land are complex, controversial, and expensive; when you put them under water, increase that by an order of magnitude.

MS. JARAMILLO: Thank you. Wilma Subra.

MS. SUBRA: First of all to set the record straight, fishing does continue to go on in the Mississippi River, both by subsistence fisherman

and commercial fisherman, and the commercial fisherman continue to sell it to the fish markets.

I have a question and a comment. My first one is a question to Jim, that I thought it was really outstanding when you said that only 20 to 25 percent of the water bodies have been assessed. So the question then becomes what percentage of the water bodies have had the aquatic organisms tested in order to do or not do a fish consumption advisory, and what percentage of the water bodies have been tested for sediment contamination? Because I know in the states that I work in I think probably the quantity of water bodies tested for both things are very, very small.

The other thing, after listening to the testimony of the public yesterday and looking at this report and delving into it, it seems that the causes of the aquatic organisms being contaminated are in two broad areas. Sins of the past, and we heard a lot yesterday about a mining operation that contaminated organisms in a water body in this are, and then ongoing contamination or ongoing potential contamination that will continue to cause the aquatic organisms to be contaminated; and there lies the debate over are the quantity of fish that people eat everyday adequate to establish a correct water quality or air quality standard.

So I think we need to identify whether these sources of contamination that have contaminated these water bodies are sins of the past or ongoing, and if they are ongoing I think those are the things we can take quick action to get better standards so that the sources that are ongoing can be reduced and hopefully not impact as large an area of aquatic organisms.

MS. JARAMILLO: Thank you. Jim, would you like to respond one more to Wilma?

MR. HANLON: The two questions posed were -- first of all, what percentage of water bodies have been tested in terms of contaminated fish tissue. I don't have that answer off the top of my head, but I think Jeff

Bigler could characterize the response to that. Is Jeff back there?

MS. SUBRA: Not just fish tissues, but aquatic organisms.

MR. HANLON: Most of the information that we have from the states are around fish, but in some places there is also shellfish and other testing done. Again, recognize that essentially all that, all the -- never say all. Essentially all of the water quality monitoring data that is collected is collected by the states. The USGS has some activity in that area, but most of it is done by the states. EPA in the context of some special studies also collects information, but those are again not systematic of data collection efforts. They are generally around special studies. So let me check with Jeff, and I'll see if I can sort of characterize that response after lunch.

The second question was what percentage of water bodies have been tested for sediments. The contaminated sediment information that we have again is based on individual studies, and to a large extent those are instances where we're sort of looking under the streetlight for our keys. If you look at most urban areas, certainly harbors and ports in the country that have been tested over the years for a variety of reason, there have been contamination identified in those areas as well as urban rivers and river settings. That is the kind of information that is rolled up into the sediment report to Congress that I talked about. Parts of the country, in parts of the country there have been more systematic testing programs for contaminated sediment. A good example is in the Great Lakes where there have been areas of concern identified. I think the number is about 43 in total, and with 33-or-so of those in the United States, and there have been testing programs around those areas of concern. I think it's safe to say that in all of those there have been contaminated sediments identified.

One EPA sampling program that has been ongoing for a number of years is called the Environmental Monitoring and Assessment Program, EMAP, where there were statistical sampling grids laid out for parts of the

country where they went out and looked at everything from water quality to sediment quality to fish tissue quality. Again there were statistics that came out of that in terms of background sediment contamination, but I don't have those numbers at my fingertips. I can certainly make a call and find those out if that would be useful.

MS. JARAMILLO: Thank you, Jim. Daisy Carter.

MS. CARTER: Yes. I think he said his name was Mr. Roberts that --

MS. JARAMILLO: Microphone please.

MS. CARTER: Oh. That alluded to the diesel and the dioxins that might be found in fish, and I was wondering if the research would point out that it dealt with air or should we look for it from our point sources as well as from the air aspect. I just wanted a little bit more information on that so I could do some further study.

MR. HARRIS: My assumption is that it would be from air and then ultimate settlement into the surface water itself. As you know, dioxin has a tendency to travel distances, and it just hangs around. It's just bad stuff no matter how you look at it.

MS. JARAMILLO: Go ahead.

MR. HANLON: With respect to dioxin, as you are probably aware the agency has been laboring at the dioxin reassessment document for maybe 10 years, and it has undergone scientific review by an external board of scientists as well as EPA's Science Advisory Board completed that review earlier this calendar year. It's currently in sort of the final interagency review. The latest numbers I've seen in terms of the inventory of dioxin sources recognizing the EPA regulations that have already been put in place, like diesel rules and the medical waste incinerators, and the hazard waste incinerators, basically continue to identify air sources as the largest ongoing source of dioxin the environment. Historical sources like pulp and paper plants that use chlorine to bleach their pulps, those concentrations

have been significantly reduced as a result of both voluntary actions and the EPA promulgation of an --- guideline to deal with the bulk paper industry.

But looking forward, the single largest uncontrolled source of dioxin in the United States, and it's larger than the second source by a factor of more than 10, is basically the practice across much of America of backyard burning. Basically the burning of trash in the backyards of rural America creates dioxin at a magnitude of a factor of 10 larger than the next quantified source. That doesn't mean there aren't other unquantified sources out there, but the agency has spent a fair amount of money and effort over the last 10 or 12 years to identify sources, and we are through our Office of Solid Waste and our Air Office working with the states to deal with local municipalities. Most of that is controlled by sort of local ordinances in terms of informing folks about that and sort of put in place better practices. But any combustion of plastic materials generally will produce some amounts of dioxin. So if you multiple all those backyard sources, if you will, you get a number like 500 grams a year.

MS. JARAMILLO: Patrick West, would you respond?

MR. WEST: Yes. The conversation has carried itself far beyond what I raised in my thing.

(Laughter.)

MR. WEST: To come back to your comment about New Orleans, the studies that we cited about New Orleans and the consumption suppression effect, one was a quantitative study showing that there in that situation there was no relationship between white and minority fish consumption, which struck as anomaly throughout the South where fish consumption by particularly African-American people was much higher in many other areas of the South. The South cited 60 and 90 grams-per-person-per-day studies. That study we triangulated with a study that was conducted by

Charles Lee and my friend Paul Mohigh, who was down there looking, and it was more of a qualitative study. People themselves not responding to fish consumption advisories, the people themselves had concluded, subsistence fisherman, that they could no longer fish from the river. Because also their wildlife that they used to depend upon for other aspects of their subsistence were dying, and they made their own decision not to fish in the river. Now maybe there were some. Maybe I shouldn't have said absolutely zero. But, by gosh, it's almost nothing.

MS. JARAMILLO: Thank you. Delores Garza, I'd like to get some comments from you. Delores is with the Alaska Native Science Commission, and I think there are some issues in Alaska that we also need to address. I really would like to have you comment. We've been talking about the lower 48, and I think we also need to bring in the concerns.

MS. GARZA: Right. I didn't put my marker up because I thought this was the time when the -- when you guys would be making comments and suggestions and our opportunity was this afternoon, but --

MS. JARAMILLO: Well, you'll get another opportunity this afternoon as well.

(Laughter.)

MS. GARZA: I thank you for the opportunity. I feel a bit afraid to be making comments, because this is the first time to this meeting that I have been here, and I'm standing in for Patricia Cochran who has probably attended several meetings and is much more familiar with the process and with what has been done. I don't want to make suggestions or comments and have people roll their eyes and say, "Well, you know, we did that two years ago," and here I am suggesting that should be done like I'm the first person who has ever thought of it.

In terms of Alaska's concerns there certainly are many. When you had brought up the issue of sewage that's a very serious concern. In rural

Alaska we have many communities that are still relegated to the honey bucket. That means that there is no sewer system. The sewer goes into a five-gallon white-lined bucket that's lined with a garbage bag. It goes out to the dump and it's thrown out on the surface. In Southwestern Alaska primarily in the Yupik area where you have communities built in areas that you might consider bogs they have high water tables. The sewer is leaching and is contaminating the fresh water source. So you have guys who are dumping their sewer into this garbage dump. It's leaching into the ground water, and that ground water is the water that they would go out and get their fresh water from in different five-gallon buckets.

So you have communities that now may have 70, 80 percent unemployment trying to find the gas money to take their boat upriver or to take their four-wheeler farther out to get fresh water, and while Alaska has worked to reduce a number of communities that have to rely on this honey bucket system that is still a big issue in many communities in Southwestern Alaska.

In terms the chapter four on tribal options the one thing that may be in there and I didn't see was the option for EPA to increase or improve the 630(a) contracting. When I looked at risk assessment in terms of the 6.5 grams per day that certainly is -- I don't even know how many grams are in an ounce. So I don't know how that related to how much fish I eat, but I eat much, much more. One of the things that saw missing is it's wonderful that it does point out that we eat much more than is listed, but we also eat it in a very short time period. That's when strawberries are fresh, when corn is fresh, when salmon run you eat nothing but salmon. So you don't eat one steak per month or one filet per month. You eat salmon for breakfast, for lunch, for diner for a month, and then you go to your next resource and you eat that same amount of that resource.

In terms of the fish advisories it was brought up by the lady from

Barrow from Nuiqsut yesterday, and where I saw -- and the concern I had with this document or the question I had was who is this document being written for? Is it something that EPA will pick up and say, "Okay. These are the recommendations that we can take," or is this a document that we as community members can pick up and start applying for grants?

When I think of Alaska communities that are trying to address contaminant issues many of the village thankfully now have EPA IGAP environmental people who are trying to address these issues. One of the main things that they're trying to do is apply for grants to do assessment, and I like the point that you had made earlier that this process, if we develop a process that if I don't know how to apply for the grant I could step in and say, "Oh. This is the process that I should be using for assessing the issue, for training people to collect data, for training people to analyze the data, and for training people to say, okay, if this is the data then this is what we should be telling our community is safe and not safe rather than having an advisory come from a region." I mean, Region 10's office is in Seattle.

So what I saw was -- and that has happened. I know that it was brought up I think in chapter two or chapter three as the use of co-management and the use of tribes and communities. In the Alaska delegation Senator Murkowski has really focused on community involvement, not just tribal involvement, but getting the community involved to a level. Under co-management what I understand it to be rolled into a nutshell is that you have equal participation at the table, but you also have equal obligation to insure it goes forward; and I think that if we strive toward those levels of activities and you have people involved so that they are participating, but are also obligated to make sure that things happen, that I think that will have a greater level of commitment from rural Alaska and from other rural communities. I have many other points, but I didn't

know how much time you wanted to give me.

MS. JARAMILLO: I'm sure we will get a an opportunity to hear more from you this afternoon, and in regards to your question of who is the document for, I hope that we can get into more concentrated discussion on that this afternoon as well. Mary Nelson, your card has been up for quite a while. Let's get your questions.

MS. NELSON: Thank you. I want to again commend the writing committee and the many people who participated in putting this document together. I think it's the most readable and the most diverse set of voices that I have ever seen in any EPA document or any document that comes out of that. So this has set a standard I think of what we hope and dream for as we move forward. So congratulations on setting such a high mark for others to follow afterwards, and the report for next year hopefully will benefit from your good work.

I am puzzled though that the document seems to put so much weight on the advisories and on helping communities to understand that they shouldn't eat so much fish or they shouldn't fish there, et cetera, et cetera, as opposed to helping us understand the possibilities for cleaning up the air and the water and these sources and returning those spaces and places to places where you can viable fish again and revert to those things. So I would hope -- and I think I'm so disappointed in chapter three in that regard that the emphasis is on the advisories. I know in the recommendation section there are some recommendations for some other kinds of things, but I would hope we could lift up some examples in the document of where either some cleanup has been done or some positive action has been taken that has restored or is in the process of restoring so that we might have some glimpses of some other kinds of action that have happened. So my question is are there those examples that could be added to the document of some other kinds of action?

MS. JARAMILLO: We could probably get to that in more detail when we get to the recommendations.

MS. NELSON: But I would just like a response to --

MS. JARAMILLO: Right.

MS. NELSON: If anybody knows of any positive --.

MS. JARAMILLO: Can anybody respond to Mary's question? Charles?

MR. LEE: Well, she has -- there's two questions, right? I mean, there's the second question having to do with the examples that you're looking for. The first part of the question is why the emphasis or why the attention -- I wouldn't say emphasis -- on fish advisories, and just let me give some background to that. I think the workgroup wanted to be responsive to the Office of Water, who had asked for -- you know, let me backtrack a little bit. You know, part of the question of -- and this relates to the question of -- that Dr. Garza raised as well in terms of the -- who the document is being written for, and it goes back to the question of the mission of the NEJAC and so on and so forth. The NEJAC is an advisory committee for EPA, right? So in terms of establishing a framework that you all have been talking about, which is not -- which is collaborative, you know, we wanted to make sure that the primary office at EPA and the NEJAC are working together. So part of that involved asking the Office of Water to -- you know, to identify areas in which they felt, you know, they could benefit from advice, and one of those areas they identified was this area of risk communications, which is -- you know, a subset of which are fish advisories. So that's why the workgroup wanted to be attentive and responsive to that. I think, you know, I will leave it to -- I think Mary and Jana and others have talked about the relationship between fish advisories and the kinds of questions she raised, and I think even Jim talked about the fish advisories as being a temporary, you know,

solution and so -- and I think one of the things that you need to be careful about in terms of the assumptions in terms of your question, Mary, is that -- yes. I mean, if your premise is one that generally everyone can accept then it does not necessarily lead to the conclusion that we should do nothing with fish advisories. The more effective they are, they are. I think they have in terms of that short-term benefit. So these are -- I mean, I just wanted to lay that out for you.

MS. NELSON: But the overarching question here is how should EPA improve the quality, quantity, and integrity of our nation's aquatic ecosystem. So to my mind I think we've got to put more emphasis on how we can improve.

MS. JARAMILLO: I think your point is well made. Let me make a comment here, and Patrick is -- for just a second, you'll be responded to a comment, or are you adding?

MR. WEST: Here and there.

MS. JARAMILLO: Okay. Well, there's quite a few cards up, and I know some of them are up for the second time around. I would really like to give an opportunity to those that have not spoken, and I'm going to be calling on three people that have not got cards up to phrase some thoughts of their own so that we can try to get as many people in on this conversation as possible. That would be Moses, and Coleen and Leonard. If you can get your thoughts together while we let Graciela go next, and then followed by Savi Horne. Then I'd like to hear from the three of you. So Graciela?

MS. RAMIREZ: Yes. I have two short questions. Can the panel define the term Caribbean-American where you --

MS. JARAMILLO: We can't hear you.

MS. RAMIREZ: Could the panel define the term Caribbean-American? Caribbean. It's in the document a couple of times and --.

MS. O'NEILL: I think the reference is to a particular study that was done in New York in one of the burrows that noted that the Hispanic population or the category Hispanic didn't accurately or specifically reflect the -- or may have been misleading with respect to the fish consumption practices of the community there, and the term Caribbean-American was used by individuals or by the authors of that study to specify the sort of subgroup within the larger Hispanic community that for that particular study had different practices. In particular, the study authors concluded that not only were members of the Caribbean-American community consuming greater quantities of fish, but also had different practices with respect to some of the parts consumed, and these were in some cases parts that were heavily contaminated like the hepato-pancreas of the crab.

MS. RAMIREZ: Well, I think that it will need a little bit of clarification, because in the Caribbean we have the Virgin Islands where there are Americans there, there are, you know, Spanish-speaking peoples, and then we have the Puerto Ricans. Then we have naturalized Caribbean-American people that live in the states. So it gets very complicated. So it could be that ---.

MS. JARAMILLO: And it's a good point. Yes. Savi?

MS. HORNE: I'm a Caribbean-American, and I claim Puerto Rico.

(Laughter.)

MS. HORNE: Well, anyway --. But, no, your point is well taken that we shouldn't subsume other cultural aspects under the rubric of Caribbean-American because since they are -- it could just actually be referring to Anglo-Caribbeans. I came in on Eileen's phrase dealing with EJ and TMDL standards, and I'm not really sure, Jim, if you had addressed it or just given us some like brief points as to how EJ concerns could be reflected in TMDL standards. I'm come from the place of North Carolina where you have in the eastern part of the state the heavy impact of ---,

agricultural runoff, breakdown of municipal treatment plants impacting upon the waterways, and you do have a lot of subsistence fisherman. Communities, you know, living from the land so to speak.

So I'm really trying to figure out, because we can't engage the Department of Natural Resources in North Carolina --- on the EJ concerns in setting these standards. I was just wondering if you had commented on it. If you had, then I can just maybe pick it up from somebody else.

MR. HANLON: Again quickly I think if you're -- the place to incorporate EJ issues in the setting of the objectives for a particular water body or watershed is in the setting of the standard. That once the standard decision is made, and as was stated earlier the Clean Water Act sort of cedes that authority to the states, that what follows that is based on that standard decision.

So if there are environmental justice concerns the TMDL is simply an allocation process to allocate where the appropriate load should be. Now, how that allocation is done, there may be environmental justice considerations there, but in terms of the fundamental sort of use of the resource those decisions and considerations should be made as part of the standard-setting process.

MS. JARAMILLO: Moses, Moses Squeochs, I would like to hear some comments from you, and Moses is a member of the Yakima Nation here in Washington State.

MR. SQUEOCHS: Thank you. I'm a little unclear as to just exactly -- are you just asking me to respond generally?

MS. JARAMILLO: Generally. I'd just like to get some thoughts from you. Let me give you the format for the rest of this morning if you will before Moses. I know that some of you would like to speak again, and what I'm proposing is that we hear from Moses and Coleen and Leonard and then adjourn for lunch; and we'll come back this afternoon and pick up

your comments again, and we can elaborate a bit longer. We have a lot of work this afternoon, and I'm sure that we can work you in there, but really we'd kind of like to just get some thoughts from you, Moses, and you, Coleen and Leonard. I'm going to have you be the last here, and then we can move on. So Moses?

MR. SQUEOCHS: Thank you. Yesterday I was asked what I thought about the report, the draft report that is out that we're all focused on today. In thinking about that question I've come to a conclusion that I believe that the report is a good step, and nothing more than a step in the right direction. At this point in time conventional thinking has been influenced to open its mind to see a little broader perspective, still not seeing the whole, real, genuine world as it is in existence today.

I appreciate the opportunity to participate with such a group, and I applaud each and every one of you for your contributions to the report. As I look at it I'm thinking about tomorrow. How are we going to frame and formulate, you know, the ideas that have emerged that have been compiled into this report into a working tool?

The people that I come from, the confederated -- the 14 confederated tribes and bands of the Yakima Nation, our focus today is on restoration. The exercise of our tribal sovereign government is focused on restoration. All aspects for community are aimed toward that focus.

It was mentioned this morning capacity building. I refer to this reference not as capacity building in reference to a tribe, but more so capacity augmentation. The capacity of the people that I'm from has been there for thousands of years. It's been along the Duwamish River for thousands of years. It's been in watersheds scattered across the country for thousands of years. Capacity has been there. So this idea that EPA is now going to lend capacity or help tribes build capacity, I try to be as diplomatic and as tactful as I can.

(Laughter.)

MR. SQUEOCHS: It must be understood that there is a certain environmental quality standard that must be recognized, and it must be targeted. Now, we know that when this occurs there's all kinds of obstacles that come up in the name of economic development, in the name of progress, in the name of this, in the name of that, attempting to impede or even obstruct any effort to restore ecosystems.

One of the most difficult thinks we're looking at now is what is that target. What should the ecosystem look like? This is referred to by scientists as baseline. In the Yakima Nation we've had many, many employees, most non-Yakimas, most non-tribal. They come out of some of the most prestigious institutions in the world that are scattered about the United States, and we even have some from other countries employed on our behalf. But even with that as the case, they cannot see simply what the target is in terms of ecosystems. They've got all kinds of grandiose ideas that are thousands of miles off as far as targets.

So that's the key thing that I've attempted to bring to this working group, is to try to -- when you leave this building try to look around and see the super imposition of what is called civilization onto the natural world here, and then try to see some target that will guarantee healthy lives. Not only of the human species, but of many, many, many other species that are out there in coexistence. So that is my general comment in response.

I've been listening to all these, and I've just decided this morning EPA needs to explain to all the rest of us what they are doing in the Columbia River. The Columbia River is a very substantial ecosystem. The EPA is leading a federal effort right at this time to attempt to accomplish compliance with the Clean Water Act for two parameters, two parameters of several parameters. They are focused on a TMDL that will accomplish compliance with the Clean Water Act as it has been created here in this

Columbia River region by the states of Washington, Idaho, and Oregon, not necessarily the indigenous populations that are here.

There are 13 tribes in the Columbia River basin. They are saying that they are giving trust responsibility to tribes. The reason they are saying this is because they have a tribal water quality standard, that of the Colville tribe here in the state of Washington. Well, EPA developed those standards for the Colville tribe, and a key word in that exercise of development of environmental standards for a tribe was assumption. I think that is very important for EPA to take a look at that word and reexamine and evaluate and reevaluate that word of assumption, what was assumed on behalf of that indigenous population, the Colville.

There is a common understanding among tribes that the modern civilization believes that we are wild Indians. They believe that we have no idea whatsoever of who we are and what we are supposed to be about. So they have come here to save us. They have come here to civilize us. Well, I deal with that day in and day out.

(Laughter.)

MR. SQUEOCHS: That is a difficult thing to deal with, but that whole idea, I think the tribes and I think any subpopulation that is not -- that does not fit into what they call that segment of having statistical power. Any population that is of such number that you fall outside, either below or above this capacity of having statistical power, you need to figure something out to make sure that your interests, your lives, the lives of your people, the lives of your children, and the lives of the interests that you have gained since you have come to this continent, you know, are protected with an appropriate -- as it is referred, an appropriate risk assessment.

When I first began this work and I first learned about risk assessment I took issue with it immediately, and I still have issue with it today. That's

been over 10 years now, and I have continually taken a position that risk assessment or conventional risk assessment is based on an American experience, not an indigenous American experience. So there is a disparity there that needs to be recognized and it needs to be addressed. It needs to be respected, and it needs to be addressed. Just as we speak today we have members from our Yakima Nation serving under the flag of the United States in an exercise in justice around the other side of the world.

So this is just my general response I think to this report. We recognize what it is. We all must recognize what it is. It is nothing more than just a small, tiny, little step in the right direction, but I think it serves as an excellent foundation from which we can further add, clarify, and characterize the real world. Then once we can, if we can bring ourselves to do that, then we can continue to build something that possibly will lead to a greater a hope of sustainability, because I think that's what we're all here for. We're here for a good, sound hope of sustainability.

I believe that all of us, you know, have children. Last night we saw an exhibit by a youth, a presentation by a youth group. Excellent. Excellent. So just a few comments. Thank you for the opportunity.

MS. JARAMILLO: Thank you. Thank you, Moses, for your words.

(Applause.)

MS. JARAMILLO: Coleen Poler, co-chair of the workgroup, I'd like to hear from you.

MS. POLER: (Speaking in native language.) Can you translate that?

MS. JARAMILLO: I can.

MS. POLER: Okay. I just want to make sure. Okay. My impression of this report is it is put together pretty good, but like Ms. Nelson I don't -- Mary?

MS. : Yes.

MS. POLER: Okay. She had one of the concerns that I had with regards to this report with regards to prevention. One of the things that my tribe has done is we have established a water quality standard of zero degradation. We don't have TMDLs. We will never have an TMDLs, and that was one of my recommendations to the United States government. Why are going to do this? Why do you broker TMDLs?

Another concern of mine is that although we have four subcommittee members from the Air and Water Subcommittees why aren't we receiving a response from the Air Department at the EPA with regards to this document that has concerns regarding mercury, dioxins, that are airborne pollutants?

Another concern that I and my people have is with regards to is this document -- this document is a supposed living document, but are they going to consult with the Department of Defense with regards to fish consumption and other aquatic ecosystems depletion? Are they going to consult with the Department of Energy? We don't have glowing fish in the Great Lakes yet, but I'm pretty sure that if we don't start consulting with each other we will.

My tribe has established water quality standards. We have been sued by the state of Wisconsin by the illustrious Department of Health and Human Social Services gentleman now, Tommy Thompson. The court found in the favor of the tribe, and the state of Wisconsin again appealed that decision. The next court refused to hear it because they went with the merits of the tribe that we can control our ecosystems. We have controlled our ecosystems and maintained our ecosystems from the beginning of time. We are stewards of the Earth, and I think that maybe the EPA and other federal agencies should take our lead. I don't want to insult anybody, but you wanted to hear my comments.

MS. JARAMILLO: And I hope we'll get to hear from you more this

afternoon.

(Laughter.)

MS. POLER: Yes.

MR. : You asked for it.

MS. JARAMILLO: Thank you.

(Applause.)

MS. JARAMILLO: Leonard Robinson, we'll ask you to be the last commenter, and then we will break for lunch. Charles will give us -- before you do that, Leonard, Charles will give us some housekeeping comments maybe or -- go ahead.

MR. ROBINSON: Okay. I'm going to do something radically different. I'm going to be short, brief and to the point. As a co-chair of the Fish Consumption Workgroup, as a member of the NEJAC Air and Water Subcommittee, and an industrial stakeholder -- I work for a steel mill. I'm an environmental manager of the steel mill. I don't manage the environment. It manages me most of the time. But I was blessed to work with some exceptional people to put out an exceptional report, and I've heard comments like it's an excellent report, exceptional report. But the one I really appreciate is that it was easy to read. If it's easy read that means people will read it.

This report brought out overarching questions which will, as it is bring them up now, bring up more questions. To get a better answer you have to ask a better question, and like Moses said it's nothing more than a step, but a journey of 1,000 miles begins with that first step. So we're going to continue to do it, and as we read this report let us help identify or redefine our definition of success in this type of issue. Let the format that it was done be replicated to address other environmental issues.

As stakeholders we need to read the document, read the recommendations individually and collectively, and say, "What do we need

to start doing?" What do we need to start doing, what do we need to stop doing, and what do we need to continue doing? A living document, this -- again, hopefully it raises up greater questions, better questions, and the answers will come.

I was again blessed to work with some exceptional people. A lot of them, we've seen each other for the first time, and, you know, I'm not -- you know, I'm not blond-haired, blue-eyed, you know, as everybody thought.

(Laughter.)

MR. ROBINSON: But there's a couple of things I want to do, a couple of acknowledgements. It's a synergistic effect. I think we accomplished a lot. I'm really proud of this group, and this is the end of my term with the NEJAC, but this makes me want to go on and carry this message on to my industry counterparts that I was on the NEJAC for three years and I lived to tell about it.

(Laughter.)

MR. ROBINSON: But this committee, there were a lot of people who worked in the background to make this successful. The first person I would acknowledge is our designated federal officer, Allice Walker, from the EPA Office of Water. You talk about a tireless effort. Setting up the conference calls, information dissemination, countless faxes, e-mails, and letter. Setting up agendas and providing the minutes and the follow-up. My nickname for her was designated miracle worker, because she did a lot of work for a lot of demanding people, and it became a success, and she worked tirelessly in the background; but I want to bring the background to the forefront, and I want to acknowledge the efforts of Alice Walker, EPA Office of Water, our designated federal officer. So can we give a hand for Alice?

(Applause.)

MR. ROBINSON: Okay. Now, as you look at this report, you know, an excellent report, easy reading. A group of people, a group of demanding people had their own ideas how things had -- things ought to be, but we had one person who was able to take this and format it. So again, somebody who works in the background, and I've met her for the first time. I can tell she's kind of shy about acknowledgements, but I want to acknowledge Catherine O'Neill. We rode Catherine's intellectual shoulders to get this document, which could have been a 1,000-page document, to a succinct, easy-to-read document, and we have a little prize we'd like to give to Catherine O'Neill for all her help and for all her efforts. Thank you, Catherine. Let's give a hand for Catherine O'Neill.

(Applause.)

MR. ROBINSON: And that's the end of my comments.

MS. JARAMILLO: Thank you, Leonard.

(Applause.)

MS. JARAMILLO: Charles, would you like to close before we adjourn?

MR. LEE: Yes. Okay. It is now what, 12:20?

MS. JARAMILLO: 12:20.

MR. LEE: So we are 20 minutes behind schedule, which is not bad.

(Laughter.)

MR. LEE: So we should reconvene maybe at 1:15, and this afternoon I just want to bring everyone's attention to a document that the Council members have. It's in the back of the room, which are the NEJAC Fish Consumption Workgroup draft report's overarching -- proposed overarching recommendations. This is the subject of your discussion this afternoon. The discussion will transition from the broader overview of the report and issues into recommendations. Very specific recommendations that have been prepared by the workgroup, and so I would ask that during

that one hour that you also take some time to familiarize yourself with this. So with that let me say also I would appreciate everyone getting back on time.

MS. JARAMILLO: Yes. We will start.

MR. LEE: This afternoon's agenda is totally time blocked. We have to adjourn by 5:00, no ifs, ands, or buts, because the staff has to break up the room and -- to reconfigure it for the public comment period tonight.

MS. JARAMILLO: 1:15. Thank you.

(Whereupon, a luncheon recess was taken at 12:25 p.m.)

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

(1:46 p.m.)

Chapter Recommendations

Annabelle Jaramillo, Facilitator

MS. JARAMILLO: We're going to get started here in a couple of minutes. This afternoon we're going to focus on the recommendations set for by the workgroup, and the way we'll do that, we'll allow a presentation of 10 minutes for the recommendations and then a discussion period. What I'm going to do in order for us to stay on target to adjourn at 5:00 is kind of pare back that hour back to about 50 minutes, plus or minus two or three minutes, and we'll do that will all the presentations so that we can try to get in everything we need to get in.

MS. NELSON: Can I ask a question?

MS. JARAMILLO: Sure.

MS. NELSON: When are we going to talk about what's next for this?

MS. JARAMILLO: Mary, I was going to get to that. I think right after we finish with the discussion then I'm going to have Charles walk through those steps.

MS. NELSON: Okay.

MR. LEE: Yes. I mean, two things. We probably will touch on it today, and then the first hour of the discussion on Thursday, your business meeting, is what's next for this. Okay? So that's when you can sum up and really move forward.

MS. JARAMILLO: Right.

MR. LEE: Just to say we have a new person at the Council table, and his name is Phillip Hillman; and, Phillip, you're with Polaroid. That's right, and Phillip is with the International Subcommittee, and he's a proxy for Alberto Saldamando. Welcome, Phillip.

MS. JARAMILLO: Welcome, Phillip. Thank you. What we are going

to do this afternoon as I mentioned is the presentation and then the recommendation. We've got a couple of flip charts off to my right. They're right in front of the screen. If new issues emerge during the discussion we'll put those on the new issues list, and if there's some issues we need to come back to and we don't want to lose a thought we'll put it in the parking lot. Do you recall that, that little exercise? Just kind of remind us of some things that we may want to come back to. So we'll have some scribes taking care of that.

I wanted to just quickly remind or just kindly reassure Larry, Jane, Veronica, and Patrick that I haven't forgotten that your cards were up before we took the break. So at an appropriate time we'll try and work you in. So without spending much more time on instructions and preliminaries why don't we get started. Patrick, we'll let you go first. Chapter one.

Chapter 1 Recommendations

By Patrick West

MR. WEST: Thank you, Madam Chair, and members of NEJAC. In this presentation of overarching recommendations for Chapter one I will first briefly state the relevant issues and then the recommendation or recommendations related to each issue. Due to time limits I am covering most but not all recommendations from Chapter one.

Issue: Fish consumption rates, pollution prevention and remediation. The contamination of fish, aquatic plants, and wildlife is an especially pressing concern for many communities of color, low-income communities, and tribes, whose consumption and use practices differ, often profoundly so, from those of the general fish-eating population as I discussed and quantified in this morning's session. Members of these EJ communities often consume far greater quantities of fish, aquatic plants, and wildlife. They consume and use different species and parts, and they employ culturally different methods in procuring and preparing the fish, aquatic

plants, and wildlife that they use. Thus, communities of color, low-income communities and tribes are among the most highly exposed to contaminants in the fish, plants, wildlife, and aquatic environment.

Recall that empirical studies document the 95th percentile fish consumption rates for various affected EJ communities and tribes between 225 GPD, ranging up to 489 GPD, and yet 6.5 GPD is regularly and routinely approved by the EPA.

Recommendation: We urge NEJAC to recommend that EPA use fish consumption rates that are appropriate for various higher-consuming EJ communities and tribes when it develops water quality criteria, when it sets and approves state and tribal water quality standards, when it sets and approves cleanup levels for water and sediments, when it addresses cross-media contamination -- for instance, mercury emissions into the air that settle in surface waters -- and when it provides other relevant guidance.

Recommendation: We urge that NEJAC similarly recommend to EPA that they account for other aspects of communities' and tribes' different exposure circumstances when it conducts these various activities, including practices that mean different species are consumed, different parts are used, for instance highly contaminated organs of crabs often consumed by Asian and Pacific Islanders and by Caribbean-Americans, and/or preparation methods employed that are cultural different than those typically assumed by agencies. Some of these examples were given last night in the evening presentations that add to our information base.

Issue: Fish consumption policy in a legal and cultural context. The contamination of fish, aquatic plants, and wildlife is also troubling to many communities of color, low-income communities, and tribes because the aquatic plants and wildlife in different cultural, traditional, religious, historical, economic, and legal contexts than the average fish-consuming

American. For example, tribes have treaty-guaranteed rights to take fish. The unique legal obligations entailed by these treaties are relevant to EPA's decisions affecting the health of the fish and the fisheries' resource. Fish consumption and fish utilization is often culturally and highly ritually prescribed and deeply tied with collective and individual identity. The presence of these different contexts is abundantly demonstrated by both testimonial, including last night, and social scientific evidence. For these reasons, current fish consumption practices are in an important sense indispensable for many of these communities and tribes.

Recommendation: We urge NEJAC to recommend to EPA that they understand the realities that they groups consume and use fish, aquatic plants, and wildlife in different cultural, traditional, religious, historical, economical, and legal contexts than the average fish-consuming American and to incorporate this evidence into its risk assessment, risk management, and risk communication policies.

Issue: Policy implications of fish consumption suppression effects. In this morning's presentation I defined and gave a stark example of the fish consumption suppression effect.

Recommendation: We urge NEJAC to recommend to EPA that they explore instances in which consumption by EJ communities seems artificially low, and conducting research to ascertain whether a consumption suppression effect is at work. If so, cleanup and restoration in these areas should receive a very high priority.

Recommendation: We urge NEJAC to further recommend to EPA that they employ appropriate baseline levels in providing guidance for states and tribes, and in setting and approving water quality standards and other environmental standards in order to avoid or remediate major fish consumption suppression effects.

Issue: Current risk assessment methods do not adequately account

for susceptibilities and co-risk factors that affect individual responses to environmental contaminants. These factors include underlying health status, baseline diet quality, genetics, socioeconomic status, access to health care, and other facts. For instance health-related low-income socioeconomic status may combine and interact with and intensify health effects of consuming contaminated fish in EJ communities. In most cases we do not yet know what the co-risk factors and interactions are.

Recommendation: We urge NEJAC to recommend to EPA that they conduct further research into the extent to which susceptibilities and co-risk factors are clustered into certain subpopulations. To the extent that clusters emerge relevant to fish-eating EJ communities, we encourage NEJAC to recommend to EPA that they incorporate these factors into its risk assessments, standard setting, and permitting processes.

Issue: Cumulative effects. Current risk assessment methods evaluate risks as if humans were exposed to only a single contaminant at time and by a single route of exposure. Members of EJ communities, however, are often exposed to multiple contaminants at a time or in succession and often via more than one route of exposure. For example, the 13 confederated bands of the Yakima Nation fish in the Columbia River system, where it is norm for over 100 contaminants to be identified in fish tissues. Or, for example, the northern Ojibwa tribes are exposed to mercury via multiple natural resource pathways given its uptake in fish and its presence in and on wild rice, both of which are heavily relied on for subsistence and cultural practice. And for example, a community presenter last night raised questions about whether skin contact with polluted river water may contributed to health effects of eating contaminated fish. There is another example. Some of these cumulative effects are scientifically known, but most are not, especially in their interaction effects.

Recommendation: Where the nature of cumulative effects are known, we urge NEJAC to recommend to EPA that they incorporate cumulative effects into their environmental policy and specific standard-setting practices. Where they are not well known, we encourage NEJAC to recommend to EPA that this be a high priority area for research given that the potential for cumulative effects are perhaps where the greatest danger to human health lurks precisely because their cumulative health effects go undetected in current risk assessment methodologies.

Issue: EJ communities and participatory research. Affected communities and tribes are integral to producing relevant, accurate, scientifically-defensible data. Affected communities and tribes need therefore to be involved at every stage of the research on the issues identified above, from identifying research needs, to designing research methods, to interpreting the policy implications of research findings, and in determining its importance to agencies' risk assessment, management, remediation, and emission permitting processes.

Recommendation: We urge NEJAC to recommend to EPA that they recognize the expertise of members of affected communities and tribes and to involve them or consult with them throughout the process of researching the various issues outlined above.

In conclusion, let me say that EJ communities also have a broader policy role to play beyond the arena of research. The Native peoples her and throughout the country have challenged us to walk in their moccasins, to see and experience the importance of fish consumption and related subsistence resources utilization from the waters and land, and the harsh impacts of pollution and pollution policy as they themselves experience them. The same is true for other EJ communities and cultures.

Again and again in our report and in other venues they sound a common and consistent theme. At the recent Chicago conference for

instance, with over 50 tribes represented, again and again tribes and other EJ communities urged EPA to take a broader, more holistic view that goes beyond the very important, but very short-term, narrow, focused policy of singular reliance on advisories. "We don't advisories," quote, "We want prevention and cleanup of our water." End quote. Quote, "Success is measured by action on the real issue, contamination of our environments." End quote. Quote, "Stop the releases that continue to destroy the ecosystem and its ability to recover." End quote. Quote, "Link remediation with any interim solution of cutting back on eating fish," et cetera, et cetera.

Are we willing to walk in their moccasins and take on the hard issues of prevention and remediation with renewed determination? Thank you very much.

MS. JARAMILLO: Thank you, Patrick. Mary.

MS. NELSON: The last comments he made from that Chicago conference, those are in the recommendations, but you've added them to them?

MR. WEST: Actually that was a rhetorical flare that is not in our report. It should be there.

MS. NELSON: I'd love to have it incorporated.

MR. WEST: I've encouraged our group to review the Chicago conference and to incorporate the perspectives of the Native peoples and other EJ communities that were represented and spoke at that conference into our report. It is something that is an integration that I think still remains to be done, something that I've encouraged personally. I just drew on those materials. There's very rich materials coming out of that conference which was very important.

MS. JARAMILLO: Could we have a scribe please make sure that thought is not lost. On the new issues, yes. Wilma Subra.

MS. SUBRA: On recommendation 1-1, approve cleanup levels, you

have for water and sediment. I would request that you add for water, ground water, and sediment.

MR. WEST: Yes. That certainly is very appropriate. I think we would all agree with that, and it certainly also relates to the issues of cumulative impacts. Where if we have polluted ground water and somebody's exposed to that and they consume fish if they are exposed that it certainly also is a relevant feature in cumulative impacts. Something that we do mention in the report -- again, you know, when we do these summaries we can't include everything, and we have indeed thought of that. So I think your comment is well taken.

MR. SUBRA: The other thing is --

MS. JARAMILLO: Wait. Before we move, Wilma, I want to make sure that the scribe catches that note, and I can't see the chart from this direction, too. So you will have to remind me if it doesn't get up there, that we need to put something up there. Okay.

MS. SUBRA: Okay. 1-1, add ground water to the water and sediment. The other thing is in your closing statement, it sort of gets back to the things Mary and I were saying. You really need a recommendation that the agency would evaluate water quality and air quality standards to determine if they're strict enough to prevent any additional degradation of aquatic organism contamination and what kind of standards would be necessary to reduce the contamination in the organisms over the long term.

That is not to say what you have here is not good, because it's great, but you miss the -- so that we've told everybody. We've done all these studies. What have we done to clean it up? I think there's a real need to clean it up and to look at the water quality and air quality standards, because a lot of times we ask the agency, "Well, if you set the level of discharge at this level, does that prevent contamination of the sediment

and aquatic organisms?" Then they say no.

MR. WEST: Okay.

MS. SUBRA: So there's a real need to look forward at how we are going to improve the quality.

MR. WEST: Yes. Okay. Let me respond, too. I think there are two parts to your question. One, in relation to chapter one when we are looking at the fish consumption science of grams-per-person-per-day, I think as you know the more we jack up the grams-per-person-per-day the lower the amount of pollution comes out to the point that at some point we reach zero discharge. So there's an automatic, you know, mechanism built in for that. When we say put in the GPDs for the relevant communities that are consuming at 60, 90, 100, 360 on average, ranging up to 400-something 95th percentile, we're talking about policies that will reduce pollution. Those same GPD figures can be used to direct air quality standards and remediation efforts.

MS. SUBRA: But as we heard this morning, not all of the fish are evaluated. We need to look at the air quality and water quality standards to be sure that they are strict enough that the won't degrade the quality of the aquatic organisms further for communities that haven't been identified yet, and I understand the grams-per-day. I understand that, but this needs to be like an overarching look at what are we going to do from this point forward for sins of today, not sins of the past, to be sure we don't degrade organisms any further.

MR. WEST: I certainly agree with you. Just to say that I think if, you know, the agencies would start adopting these kinds of standards we would start moving in the right direction, and what we're saying is that they're not. At this point they're not meeting what we need, because they are continually using the 6.5 standard even today. It's an old, outmoded standard. There is no scientific basis for it whatsoever. The only reason

for it being there is to be artificially low to allow pollution to occur. That's the only reason for it to exist, the only reason.

MS. JARAMILLO: Thank you. Let's get some other comments. Richard Gragg.

MR. GRAGG: Thank you. First, I'd like to join with everyone in complimenting the group for the excellent report, and I'm very pleased to be associated with such a report. Excuse me. I didn't have much -- but it's an excellent report.

My comments have to do with a couple of things. Let me go over this first one. On the recommendation 1-7 on susceptibilities, one thing that we haven't -- I haven't seen in the report. We talked a lot about the exposure sources in the fish, but there's no recommendation to make any type of assessment of these populations in terms of the body burden of these contaminants that they may be carrying, which would also be a susceptibility factor.

Further, there is no link in the report or in these recommendations let's say. Although not in chapter one, but in chapter two they mention the top five chemical compounds and their known toxicological effects. But there's no recommendation in the report to make any assessment as to the health disparities or health problems in the communities in the type of exposures that they may be experiencing through their consumption of fish, which would also impact or be considered a susceptibility and co-risk factor in this situation.

What else do I have? It was mentioned before in this notion of risk assessment they talk about sediment and cleanup and people talked about resources. In the notion of an overarching recommendation it seems to me that we're missing any advice to EPA in working in coordination with other federal agencies that could play a role in the assessment such as US Fish and Wildlife Service, USGS, and in terms of human health we have

CDC, NIEHS on both sides. Somebody has already mentioned DOD. So it seems to me that we need to tie these recommendations somehow into advising EPA in terms of interaction with other agencies, which I think is the premise of the IWG group. One more thing --

MS. JARAMILLO: Have we been able to capture that one? Let me add another one to Richard's, became I think those are very good. Another one is dealing with the issue of salmon taking. I think the restoration of habitat is very important, and that gets it at some of the comments that Moses made this morning in terms of -- you know, not only looking at advisories and identifying contaminants, but really getting at the restoration issue. So you might want to throw up another set of initials up there, NMFS, National Marine Fishery Service.

MR. WEST: Could I respond to the comments?

MS. JARAMILLO: Yes, and what I would like to do, Patrick, I know you are going to want to respond on every one of the recommendations, but what I would like to do is see if
we can capture the new thoughts. Then maybe you can capsulate that towards the --

MR. WEST: I'll try to keep notes here so I can come back to it.

MS. JARAMILLO: Yes. So you can help describe as well, because I think we're going to get into some lively discussion, and perhaps after you've heard two or three comments you can kind of encapsulate that. Does that work for you?

MR. WEST: Sure. Just call on me when you're ready.

MS. JARAMILLO: Okay.

MR. GRAGG: Annabelle, I had one other.

MS. JARAMILLO: Richard, go ahead and finish.

MR. GRAGG: Now I learned something new here today. Apparently I need to go back and take our course in environmental regulations, but I

learned that states set water quality. Correct?

MR. HANLON: Standards.

MR. GRAGG: Standards? Then we have the Clean Water Act that does what?

MR. HANLON: The Clean Water Act sets the framework in which the whole process works. Within the terms of the Clean Water Act it assigns to the states the responsibility for adopting standards.

MR. GRAGG: The same standards?

MR. HANLON: Basically standards that they deem appropriate for their individual water bodies, and the standard for each water body includes three parts: the use, the criteria, and degradation policy.

MR. GRAGG: So what happens when water flows from one place to another outside of the boundaries of the state?

MR. HANLON: The upstream contributions may not violate a downstream state's approved standards.

MR. GRAGG: Okay. Well, my point or thoughts are that advisory -- you know, as far as advising the EPA is that there needs to be some coordination or unification if you want to call it of these water quality standards if different states can set different water quality and then we're going to go around recommending to EPA to do risk assessment and do all this stuff. We've already mentioned the science that says in this report about different people responding differently in different groups, eating the fish differently, and now we're going to add onto that whole problem of different standards in different states to try to reconcile. I see a whole level of somebody said start, stop, start, and continue. It doesn't seem we're going to get anywhere. It seems to me that there needs to be some more unification on these water quality standards which would help address -- it would remove some of the confusion and some of the complexity and variables in terms of addressing the real issue of fish consumption

problems.

MS. JARAMILLO: Thank you. Delores Garza.

MS. GARZA: Thank you. I have I think five points. I think that the recommendations are excellent, and I think these points just help to strengthen them. Under recommendation 1-1, "NEJAC recommends that EPA," and in here I've added "work with affected groups to draft," and then it goes on "fish consumption rates." What we heard yesterday was the Nuiqsut people, because that work was done without them that the fish consumption concern that was given to them wasn't really relevant to what they were eating, and so it scared them. So that process has to include the community, or region, or tribe that is affected by that fish consumption.

Under item 1-2, I just wanted to add -- it's the second-to-the-last line where it lists different exposure circumstances. We have "e.g., the highly contaminated," blah, blah, blah, down to the "Caribbean-Americans," which may be clarified later. To add after that "and different windows of consumption" in there. I had meant that when I brought up earlier where people may eat all of their fish in 10 days and so we can't really use the grams per day based on a yearly consumption of that.

Under item 1-4 -- and I have these written down. I'd be glad to submit them. "NEJAC," nice to see that, "Strongly urges EPA to understand," and after understand I have inserted, "And provide funding for documentation." "The reality that these groups consume," and so here it's try to find money so that groups can document how much they use of these different resources so that we have a better understanding of the risks. The intent there is that the communities are involved with this documentation, that it's not an entirely outside activity.

Under number 1-5 it's that same -- pretty much the same thing. The middle, "NEJAC urges EPA to explore instances in which consumption by communities of color, low-income communities, and tribes seems low,

conducting," and here I added "Tribal and community research to ascertain whether a suppression effect is at work." So again it's trying to get the tribal community or the community involved in that research so that they can document what their concerns are as well as the uses.

Under item 1-7, just at the very end of that recommendation, which is a good one, the last line, "Recommends that EPA incorporate these factors into its risk assessments." Here I added, "And restoration planning." So those were my comments. Thank you.

MS. JARAMILLO: Thank you very much. Graciela.

MS. RAMIREZ: Yes. Well, my first recommendation you know what it is. In the recommendation 1-2, where it lists Pacific Islanders by Caribbean-Americans I think that should be more general in the way to include any population or any community in the islands under the US that apply US EPA regulations, because we have Guam, and Hawaii, and then Puerto Rico and the Virgin Islands, and a whole list. Okay.

Also a general comment following up on a previous comment. Not only the other agencies that manage or use the watershed should be included in any strategy, but other EPA programs. We have been talking the whole morning about the Clean Water Act. Right now the Office of Drinking Water is working on a strategy to integrate the Clean Water Act Program and the Safe Drinking Water Act Program with the purpose source protection and watershed protection. I think that's a real important avenue in terms of going into our direction of trying to prevent more than having to rectify actions.

MS. JARAMILLO: Thank you. Jane? Jane Stahl.

MS. STAHL: Thank you. A couple of different things, and I don't want Jim to spill anything while he's walking over, but I think that we all benefit from a better understanding of how water quality criteria and standards are both developed by EPA as guidelines for states and tribes to then use and

adopt. Because, I mean, I would hate for anyone to walk away from here thinking that every state is on its own to just go out and pick whatever level for whatever pollutant is out there so that they can -- as Patrick suggested but I'm sure didn't mean, we would just allow pollution to continue to occur at high levels.

I think that it's very important to recognize that we are in fact working with the best science we have at any given point in time when we're developing both the goals for uses of water bodies and the current uses for water bodies, dependent on both their current status in terms of water quality and what we think is achievable by the continued ratcheting back of the allowable discharges and emissions rates. Or at least that's how it's supposed to work, and I'm hoping that I'll get some nods from someone who knows better about these things. But I think it is important to recognize that there are guidelines that are prepared and shared with the regulator agencies.

I think it is important for us to also recognize that we -- in the states we general deal with things on a water-body-by-water-body basis. So that when we are setting the uses and then the emissions standards that will apply either across the board or to specific activities we are trying to look at specific water bodies, We do not always or haven't in the past taken into consideration to the extent that I think we will or can with this better information what I understand to be meant by the suppression effect, which is something I would like to go into a little further, but also the variety of users that just were not general recognized in the past and, you know, when the Clean Water Act clearly was written and as it's been upgraded in its application by various states.

Getting to this suppression effect, and again I'm hoping that I'm understanding it correctly, on the one hand I think that the language that is in the report assumes that we don't know what the uses are or what the

uses would be were a water body at a different level of quality. Is that one of the bases of the statement? I hope you don't mind if I ask questions back and forth.

MR. WEST: That's all right. Would you restate that?

MS. STAHL: I'll try. As I understand the right-up of the suppression effects, one of the assumptions is that we don't always know or take into consideration the fact that a community has already changed its way of utilizing a water body based on its acceptance of that water quality and potential impacts.

MR. WEST: Yes.

MS. STAHL: Is that correct? Okay. And so then the --

MR. WEST: That's correct, but we should add that their preference would be to consume at their historically high level.

MS. STAHL: Right. I'm just trying to get -- you know, in my own very linear way I'm trying to understand what you said so that we can then -- you know, so that I can better understand the recommendation.

MR. WEST: Could I just give a quick, you know, just an example? Let's say that historically they consumed 100 grams-per-person-per-day. Now because of the fish consumption advisory they're consuming at 50 grams-per-person-per-day. We then look at that figure and we assume, "Hey. They're not consuming all that much. We can set the standards pretty low." We are saying, "No. That isn't right."

MS. STAHL: Okay. Then I did understand it correct, but there are in fact -- but what we need to understand and as we go forward hopefully implement is the fact that that may well be operating, but it may also been taken into consideration in the establishment of a water quality standard.

MR. WEST: Probably usually not. If standard setters are using current fish consumption levels and there is a suppression effect, well, then they are missing the boat. I don't know of any particular instances

where that's the case, but if we're going strictly by what current consumption is and we haven't asked that question about suppression --

MS. STAHL: No. The important thing then is to make sure that we're at least asking the question.

MR. WEST: That's right.

MS. STAHL: So that we know what the level of consumption would be given a clean water body.

MR. WEST: That's right.

MS. STAHL: Okay.

MR. WEST: Good. Yes.

MS. STAHL: Then I guess my question or my comment then turns to what current authorities are to address that, and it would seem to me that one of the pieces of the Clean Water Act as it's applied is the anti-degradation policy. So that if in fact we get to the point where we understand what the water quality should be to accommodate consumption levels that we're trying to address we wouldn't get to that kind of downward spiral of allowing water bodies to further degrade, therefore further disadvantaging people who would want to consume fish, because we're not allowing the degradation. So, you know, depending on where we set the baseline we need to be applying the existing anti-degradation policy.

I guess the point of all of this is that -- is to think back to our prior conversations about what existing authorities are out there. We don't need new authorities in order to address the suppression effect. We need to make sure that we're taking into consideration both the level of consumption and the level of would-be consumption, if you will. Does that make sense?

MR. WEST: That would be my understanding. Could I ask Catherine to respond to that?

(Laughter.)

MS. STAHL: You can, but she might not want to.

MR. WEST: As that gets into the legal aspects of -- that's not my area, and she's a lawyer.

MS. STAHL: Okay.

MS. O'NEILL: I think that's right, and the only thing I would add is that the suppression effect also includes suppression due to depletion. So contamination and depletion, and so that would bring in as well the Endangered Species Act and the role of the EPA consulting and also some of the cross-agency coordination that we talked about with NMFS and so on. So that would be the only addition to the list of existing legal authorities that I would make right at the moment.

MR. WEST: Yes. Thank you.

MS. STAHL: Then where I wanted to go from there, though, was to the comment that Wilma and Mary made, and I'm wondering if perhaps these recommendations, 1-5 and 1-6 -- actually that was another question. I wasn't sure whether or not 1-6 came out in the summary, but we can get back to that. But again if you look at those, don't those with the understanding that if it's done right and if we apply the anti-degradation policy, don't that -- doesn't that actually get to some of the additional language that you were looking for in some of the earlier recommendations? That if you take these as a package then those things are actually addressed, that we're not allowing the further degradation -- we're not writing anything off in other words. I'm wondering if that in fact makes sense, or if I've missed something there.

MS. : 1-5 says it more clearly than 1-6.

MS. JARAMILLO: Okay. Thank you, Jane.

MS. STAHL: I'm I going to get another turn?

(Laughter.)

MS. STAHL: Because I actually have one more thing that I wanted to throw in there.

MS. JARAMILLO: Let me give Veronica a chance to -- she's been waiting very patiently, and then --

MS. STAHL: I'm going to arm wrestle with her later.

MS. EADY: Jane, tell me what you want to say and I'll throw it in. No.

MS. JARAMILLO: Jane, we will come back to you right after Veronica's comments, and then I'm going to
want Patrick to kind of give us his reaction to your recommendations so we can move on to chapter two. Veronica.

MS. EADY: Okay. I just have two things. First of all, Eileen Gauna made a comment this morning and I don't want to lose it. I would hope that it could be a recommendation, and if I'm characterizing it correctly, Eileen, you touched on the fact that the fish advisories and the suppression that is going on also leads to a change in cultural practices. Eileen's comment I believe was that, you know, we need to recognize the importance of the harm in the ability to continue in cultural practices of fishing and scalloping and all of the other practices, and that that needs to factored into risk assessment. So I was hoping that that comment could be part -- because you do talk about changes to risk assessment in your recommendations, so I was hoping that that comment could become part of that recommendation.

MR. WEST: I'm in full agreement, and I'm sure the rest of us would be as well.

MS. EADY: Okay.

MS. GAUNA: Can I make a clarification?

MS. JARAMILLO: Sure, Eileen. Follow up on that.

MS. EADY: And then I have one more thing.

MS. GAUNA: Just a clarification. I'm not sure that it can be

incorporated into risk assessment methodology as the methodology currently exists. Which is another story, sad story in my view, but what I was trying to -- the idea I was trying to get across was that the EPA can and should promote a policy that states should consider the special cultural harms that occur. I sort of wrote some language out. You know, when culturally distinct subpopulations are precluded from using the water body to perpetuate their respective cultural identify and practices and provide specific guidance on how water quality standards and TMDL plans can address these cultural concerns on a site-specific level.

I mean, I think it's one thing to set a water quality standard that floats over a big water body, what if a particular place may have special historical significance? I don't think either the risk assessment or the standard itself is going to account for that, and I think that the EPA can and should provide guidance as to how either the waste load allocations under a TMDL plan or some specific planning tools can be used to address these site-specific concerns. So what I wanted, the thought that I wanted to get across was that the EPA needs to both promote the policy of considering this and provide specific guidance on how to do it, and I've got some language if somebody is interested.

MS. JARAMILLO: Veronica.

MS. EADY: Okay. I just have one more thing, and I'm not sure if it's -- this is the appropriate place or in chapter three, but, you know, Wilma raised the issue this morning of fish tissue testing and also testing of other aquatic organisms. One thing that dawned on me is that in that conversation although, you know, state environmental protection agencies or DEPs do the water quality standards and those sorts of things. In my state at least, in Massachusetts, the tissue testing is done by our Department of Public Health, and the fish advisories are done by our Department of Public Health. While, you know, in my state we're working

closely with our DPH to make sure that we're, you know, covering all of the bases at least as we understand them now, I think that there's a real disconnect between EPA and say state departments of public health that might actually be doing the tissue testing and putting out the fish advisories.

So one thing that popped into my head -- and I don't really know how this works with EPA. This might be totally off the wall, but in talking about technical assistance and funding and things of that sort I wanted to just throw out there the idea of how it might work for EPA for example to work with DPHs or make funding available or whatever to make the connection to make the connection with the departments of public health who might be the ones that actually out there doing the testing on aquatic organisms.

As I throw that out there, my other thought is that, again using my state as an example, we don't really have a lot of money. So when we're doing testing, and I'll use mercury as an example because it's a really big problem in New England and in the Northeast, when we identify water bodies of concern, rivers of concern, and we actually go out and we do the testing my question is about how -- what sort of ongoing monitoring is going on with testing fish and other aquatic organisms? Because my sense is that it's kind of episodic and it's not ongoing, and once we identify a water body and we say it's a problem we don't go back a year from then and say -- and try to figure out if mercury is still a problem or if PCBs are really a problem.

So I think that we also need to think about how EPA and other agencies, be they state agencies or federal agencies, can sort of do the ongoing monitoring. Because while a lot of this water quality testing and tissue testing is falling between the cracks and we have a lot of bodies that haven't been tested, we also have bodies that have been tested once and they might come up clean, and then a year from then, you know, they've

become a problem.

MS. JARAMILLO: Yes. Barry, or --?

MR. HANLON: A couple of comments there. With respect to communications between the agency and the set of set agencies that may have leadership roles in the fish consumption program, that program is a little bit unique and we do across the board communicate with the state environmental agencies, with the state DNRs, which in some cases have the lead for monitoring programs, and the state health agencies. So when we communicate with the states it's actually sort of three places in every state to make sure we cover all the different combinations of jurisdictions and responsibilities on a state-by-state basis. So when we communicate with Massachusetts we make sure that sort of all three of those agencies are in the loop to insure coverage.

MS. EADY: Are there funding connections between EPA and those other agencies?

MR. HANLON: State program funding that's provided under the Clean Water Act, whether it's the 106 program funding or 319 on point source money in most cases go to the environmental agency. But certainly if they wanted to -- if the governor wanted to move that money across state agencies the states know how to do that.

The second issue you brought up was -- oh. Monitoring. Basically if a water body tests positive using the sampling methodology that we've recommended in the guidance I talked about this morning for a bioaccumulative chemical, whether it's PCBs or mercury, you don't really need to monitor every year. Basically those are longstanding sources of contamination. If they are there you probably need to go back every couple of years to see if there is a trend line, but doing it more than once a year or even every year probably isn't necessary.

MS. EADY: Can I just ask him one follow-up question?

MS. JARAMILLO: Very quickly, please.

MS. EADY: So, but say you have a water body that comes up clean. Do you go back a year later to see if that has changed?

MR. HANLON: Again, the resource trade-offs in terms of how states design their monitoring programs, in some states they've done sufficient monitoring across the state. They've come to the conclusion wherever we look in inland lakes for mercury there's contamination there are -- what's the number? Some 13 or 15 states have issued statewide advisories saying, "Wherever we look we find it. Therefore across the state for all inland lakes we're hereby issuing an advisory." Some states have done it that way. Other states say, "No. Until we find it in every lake we're not going to list them," and they go sort of lake by lake until they get to the bottom of the list.

MS. EADY: Annabelle, I swear this is the last thing I'm going to say --

MS. JARAMILLO: I'm going to cut you off right now, Veronica. What we're going is getting into a general discussion, and what I would really like to do is stay focused on the recommendations so that we can again get back to the next chapter. The people that have their cards, I want to make sure that we're going in the -- you have your comments aimed at the recommendations. Because what I would like to do before we move on to the next chapter is get a sense from the Council as to whether you want to move forward with the additions or some of the modifications of the recommendations that have been put before you so that we can give guidance to the workgroup to -- what they need to add and what we want modified.

So let's see. We had cards over here. I had Jane and Catherine, Mary and Richard, and let me ask you is this to the recommendations or comments to the recommendations? Jane? You were first on the list. If we're going to get into a general discussion I am going to cut you off.

(Laughter.)

MS. JARAMILLO: Beat me up later, okay?

MS. STAHL: You know what? I will hold until later. I think the point that I have to make I can make in various places. So I will hold.

MS. JARAMILLO: Okay. Thank you. Catherine, was yours a -- I think you were trying to respond.

MS. O'NEILL: Yes. This was a response and a request for clarification from Veronica. I think there have been some efforts to not only sort of change the exposure scenarios, you know, increase the fish consumption rates so that the reflect higher quantities, but really to do -- to sort of work at more fundamental changes to the risk assessment process that move toward reflecting something like eco-cultural risk. For example, the report on page 23 talks about one such effort by Stewart Harris, who is at the Confederated Tribes of Umatilla, and Barbara Harper, who was formerly at Yakima and is now at the International Institute for Indigenous Resource Management. They've developed a model that really more fundamentally changes the way risk assessment is done, and doesn't simply as they put it add a sort of quality of life component or doesn't simply increase the different exposure factors.

Is that the kind of recommendation that the NEJAC would like us to add? Something that also asks EPA to move toward some of these models on the cutting edge that really more fundamentally change risk assessment as opposed to sort of just changing the values that input to a current risk assessment approach?

MS. EADY: I think not having seen that but just having heard you describe it I think that my suggestion at least, not speaking for the whole body, but my suggestion was, yes, that there be a recommendation that at least in this context it move toward that kind of a model.

MS. JARAMILLO: Let me get Daisy Carter's voice in here. She's not

a chance to speak this afternoon. Mary and Richard, you've an opportunity. So I'm going to let -- move Daisy ahead of you here real quickly.

MS. CARTER: No. I was just wondering --

MS. JARAMILLO: Step up to the mike.

MS. CARTER: -- if I misunderstood a statement. I was wondering if she was saying that we should relax the recommendations for people with cultural differences so that they could keep up that type of ritual when it is at risk to their health. Did you understand?

MS. EADY: Yes. No. My recommendation was not to relax anything, but I think that my recommendation -- and, Eileen, I don't know if you wanted to comment on yours -- was just that when we look at the risk we have to be sensitive to cultural differences that might figure into it and to acknowledge them and try to think about them as we're doing risk assessments so that we're not losing that, losing the cultural significance.

MS. JARAMILLO: Mary a minute, and Richard a minute. Mary?

MS. NELSON: I just thought we ought to have an introductory or a process kind of a comment about the interrelatedness. We've been talking about fish consumption, but fish live in water. If the water is contaminated that's how the fish get contaminated and if the mercury is in the air and it ends up in the water. So I think we need somehow to just make that underlying statement right in the very beginning that you can't almost separate all of these things, even though we're tackling it from one angle, the relationship to the water and the relationship to the air.

MS. JARAMILLO: Thank you. Richard.

MR. GRAGG: Yes. I'd like to see the workgroup tie the recommendations or support the recommendations to existing law and regulation that guides EPA, because I see in some of these recommendations -- for myself I see a lot of the NEPA guidelines on EJ

and how to approach EJ and do EJ assessments and things of that nature. So I think the recommendations could be enhanced by linking them to existing laws and regulations.

MS. JARAMILLO: Thank you. Patrick, will you kind of summarize that very quickly so we can get ---.

(Laughter.)

MR. WEST: There's been so much going down. I don't know if I can fully. I would just have us think. I think agree with most of what's been said with a few comments that I'm going to make. I think we should think about three categories here as we move to try to get a consensus. One is a revision of an overarching recommendation that we've already made, and some people have made I think some reasonable suggestions for that. The second would be new overarching recommendations that would be of the same magnitude and scale, and then the third would be more specific, focused recommendations under existing overarching recommendations.

Let me give you an example of that that I happened to pick out and write down. One of the gentleman over hear was talking about the need for interagency coordination for doing cleanup and remediation. So that would seem to me to be a very sort of focused recommendation. Certainly a very important one, because we certainly do need that under recommendations related to remediation. So if we can like think of those kinds of three categories for trying to categorize all of this I think that would be very helpful.

Two specific points I just wanted to pick out here, because I don't have time to do everything, and I've forgotten a lot of stuff that was said. I wanted --

MS. JARAMILLO: Well, I'm sure that it's been taped and we have lots of scribes.

MR. WEST: Yeah, right. Okay. Thank you. Let me just pick out the

issues of susceptibility and co-risk that somebody raised early on. We made a very specific and distinct distinction between co-risk factors and cummulative effects. Co-risk factors are factors that are socioeconomic in some way that are not related in any particular way to toxic exposure. Okay? That may interact with -- and certainly a cummulative way, but interact with toxic exposures of various kinds. Okay? As opposed to cummulative risks, which are cummulative risks of various kinds of chemicals interacting and different pathways of exposure.

I think we may need and wish to --- a careful kind of definitional distinction between those things so that we don't confuse and muddle them as we're talking about all these interactions. Because they are all iterations and everything, but I think we need to keep those two separate categories distinct in definitional terms. I think it's very important.

Secondly, it seems like a very small point, but it was raised this morning. She raised it again this afternoon. I think it's extremely important this notion of peek effects. I know of no fish consumption study done by myself or any colleagues that has ever asked that question, and imagine the importance of it. I take an aspirin a day for preventative health. What if I took all those aspirin in 10 days? Okay? That's very important. How many cultural groups that we are concerned with here may have cultural traditions where there are what we might call peek exposures? We might invent that term, and make sure that when we're talking about cultural variation we very specifically include peek variations. I think that's just preeminently very important, something that I -- I've been doing this kind of research for years, and I -- it never occurred to me, and by gosh it's important.

MS. JARAMILLO: Thank you. Let me get a sense of the body now in terms of the recommendations and some of the modifications to those and some of the new ideas that have been put up there. Maybe the way

to do this, are there any objections to any of these being worked on a little further and getting put into final? Marianne?

MS. YAMAGUCHI: I just had a question. Are we going to try to incorporate Eileen's --

MS. JARAMILLO: I think we tried to catch some of them up there, and she's got them --

(Multiple conversations.)

MS. JARAMILLO: My sense is that we'll get all this material into the expanded document, and then you'll get a chance to look at all these again.

MS. NELSON: It goes back to it'll be the same for each section.

MS. JARAMILLO: Right.

MS. NELSON: It will go back to our process for taking all this input in and then once again getting a revised draft or whatever else it is.

MR. LEE: Let me just say that's why I wanted to kind of make a comment. From a process point of view, I mean, the panel in discussing this is basically getting your responses to these recommendations, and to a large extent it is going to be impossible today to kind of fully synthesize that. That's why they are being taped as well as being -- and there will be transcriptions of that as well as taken down in terms of these bullets here. So I think that you can feel safe that the workgroup is going to take that and really incorporate that. So that's one.

The second thing is the -- I think it would be very helpful for this workgroup if they got a sense from you as to whether or not these overarching recommendations are something as a general direction. You know, albeit with new -- with these changes incorporated, ones that you would like -- you wanted to move forward or maybe even more importantly those that you think are the ones that they shouldn't work on because they're just, you know, way out of whack. So, you know, I think that would be very helpful for them.

MS. STAHL: How would you like us to give that sense?

MS. JARAMILLO: Right now. Speak up.

MR. LEE: Speak up, and maybe the question should be --

MS. : Just in general.

MS. JARAMILLO: I want a straw vote.

MR. LEE: Maybe the general question would be anyone who objects.

MS. JARAMILLO: That's what I was trying. Is there anybody -- are there any specific objections to any one of these recommendations to have the workgroup move forward in?

MR. LEE: Albeit with changes, you know.

MS. JARAMILLO: Right. Right. There are some modifications that have been suggested on some of them.

MS. SHEPARD: Annabelle, I think that's a good idea. I mean, I think this is a right direction.

MS. JARAMILLO: Okay.

MS. SHEPARD: With the modifications that we're beginning to talk about.

MS. JARAMILLO: Okay.

MR. WEST: If I could just raise one further question. I think some of the discussions that ensued started to overlap between chapter one and some of the other chapters.

MS. JARAMILLO: Right.

MR. WEST: And I think we somehow need to sort of keep those connections. You know, everything is in a ball, and you got to lay it out in straight line. You put chops in it, you know, but it's all in a big ---. Some of these questions that were raised about some of the toxicological sites get into chapter two in particular I think in the legal aspects. So perhaps we can figure out how to sort that all out.

MR. LEE: So perhaps from a process point of view, I mean, I think

if you could agree, meaning the Council can agree, that you will leave it up to the workgroup to use its better judgement as to how to sort that out. I mean, obviously when you start with the first chapter you are going to start to overlap because these are, quote, unquote, "There were many --- interrelated." So if you would allow them, you know, leave it to them to sort that out I think it would make life easier. Okay.

MS. JARAMILLO: Yes. Eileen.

MS. GAUNA: I'm just wondering if it would be helpful for the workgroup at least for us to in general principle encapsulate the types of things we have been endorsing. For example, the concept that peak usage is important. The concept that Veronica brought up is that there maybe should be looking at some alternative to risk assessment methodology. The concept of interagency coordination that was brought up, and I'm trying to think of some other sort of large concepts to give you guys direction so you're not having to comb through pages and pages of transcript to find out what the heck we were saying today and if we ever reached consensus on it in any way.

MS. JARAMILLO: Could you put that thought in the parking lot please for the workgroup to look at that that way. Charles, just very quickly, because we're going to move on.

MR. LEE: I think that Eileen's point is going to be gone over on Thursday morning when you review this and some this is reiterated.

MS. JARAMILLO: Okay. So let's make note of that so that we can give that general guidance to the workgroup. Your comment ---.

MS. NELSON: It's going to be a mess Thursday morning unless somebody is assigned tomorrow to try and pull those overarching -- those additional thoughts together.

MS. : Yes. My only point if I may press the matter here is, you know, we're thinking about these things right now, and Veronica just mentioned

the -- you know, the concept, Mary, that you guys were bringing up about, you know, we need to focus more on not just fish advisory, but on ecosystem health and remediation and those sorts of things. If we can just before we wrap up say these are some areas where we think the recommendations -- you know, we could tinker with and word smith the recommendations a little bit to include those ideas that were discussed, and I was just wondering if there were any others.

MS. JARAMILLO: As we continue our discussions I think we will probably come up with some of those, and that's why I want to make sure we catch those words. Delores.

MS. GARZA: Just one key concept I want to throw back out there, and that's that locals need to be involved.

MS. JARAMILLO: Right. Okay. Peggy, I'm going to give you the word. You're the Chair, so I'm going to give you the last word.

MS. SHEPARD: Yes. I just wanted to follow up on some things that Dr. West was saying about bioaccumulation and wonder if that is captured in these recommendations. I didn't feel it was.

MR. WEST: Particularly we didn't speak in chapter one about bioaccumulation per se. I don't know. Does chapter two deal with those kinds of measures?

MS. JARAMILLO: Why don't we --

MS. SHEPARD: Well, when you talk about the cumulative --

MR. WEST: Oh. The cumulative effect. That's not quite the same thing as bioaccumulation, which is a very specific scientific term about accumulation by, you know, fish eating other fish and all that kind of stuff. That falls more within the biological fisheries realm. Catherine, is there a place in the report where we -- whoops.

MS. : She's gone.

(Laughter.)

MR. WEST: Catherine, you're gone. Do we address bioaccumulation anywhere? Perhaps you are looking at --.

MS. O'NEILL: We don't address it specifically in the recommendations. We talk about bioaccumulative sources, contaminants, as being particular contaminants of concern and talk about bioaccumulation as a reason why they are contaminants of concern. So I guess I would be interested in hearing more about how you think that ought to be reflected in the recommendations, what aspects of bioaccumulation you think ought to be reflected in the recommendations, how we could do that.

MS. : Okay. Let me think about that.

MR. WEST: Again, if I might make a suggestion about that particular thing, that's a very specific focus thing. We did not get down to the level of focus things, but if we had one of the first things I would have said is that when we are looking at GPD, there's GPDs and there's GPDs. If you are consuming, you know, bass that's one thing. If you're an African-American fisherman in a dirty urban river and you're eating suckers and you are eating Drummond sheephead that's quite another. So when we're looking at GPDs it's GPDs about what kind of fish and what kinds of environments, and as we look at more specific, more focused recommendations, particularly the notions about --- and magnification they become very important in that context and it gets very fish-specific.

MS. NELSON: Just a process suggestion --

MR. WEST: We didn't quite take it that far.

MS. NELSON: Could we ask people that have specific suggestions to write them down and turn them in to somebody? Who could they turn them into?

MS. JARAMILLO: Give them to Marva, and she'll take care of those. Okay. Let's move on and I'm really -- you know, I'm doing something I

hate to do, and that's cutting off conversation around a particular topic, but I think we'll probably find a way to -- you all are very creative, and you'll find a way to get your comments in as move through.

(Laughter.)

MS. JARAMILLO: Let's move on to chapter two, and, Jana, I'll let you walk us through that one. We've gone like 10 minutes overtime on that one, so I'm going to try to move us a little bit closer to -- we do have some time constraints don't forget.

Chapter 2 Recommendations

By Jana Walker

MS. WALKER: Okay. On chapter two the first four proposed recommendations are really looking at some of the contaminants of concern, and as discussed this morning even though we do have federal environmental laws on the books, although there has been progress in addressing water pollution, we still have many contaminated waters. About 40 percent of the waters assessed in the United States still do not support the fishable/swimmable uses. About 10 percent by volume of all sediments under US waters are seriously contaminated, and there is a long list of sediments in surface waters that need to be cleaned up, and the number of fish consumption advisories continue to go up each year. Because people of color, low-income people, American Indian, Alaskan Natives are disproportionately among those who are being exposed to these contaminants based on their subsistance lifestyles and their traditional cultural activities any lapses or problems or failures in the agency's efforts to prevent, to enforce, to reduce or cleanup and restore the contaminated aquatic ecosystems are going to disproportionately burden these affected groups. So these first four proposed recommendations are going to that issue.

The first on is given that five contaminants, mercury, PCBs, dioxins,

DDT, chlordane, are responsible for the majority of fish and wildlife consumption advisories NEJAC should recommend that the prevention and cleanup of these pollutants in the nation's waters and restoration of aquatic ecosystems following such contamination be a priority.

Number two, specifically because mercury is responsible for nearly 79 percent of all fish and shellfish and advisories and because air emissions account for 80 percent of mercury depositions in water NEJAC should recommend that the prevention and cleanup of mercury in the nation's water be a top priority for EPA and that regulations and other efforts here address all significant sources of mercury, regardless of the initial receiving medium. That is for example air, soils, water, and sediments.

On those first two points I'd just like to add that there -- we understand that there are some upcoming opportunities within the agency as far as rulemaking that would work on the mercury issue. For example, I believe that there -- it is either proposed or somewhere at the proposal stage, soon to be proposed, the rules to regulate mercury emission from institutional, industrial, and commercial boilers. That's something that is needed. Also a rule to regulate mercury emissions from coal-fired power plants we understand may not be proposed until December of 2003. Meanwhile again, coal-fired power plants are the single largest source of mercury air emissions in the country.

Also a rule to regulate mercury emissions from chlor-alkali plants is needed. There are only about a dozen of these plants in the United States. However, each plant is really a very large source of mercury, and in some cases may constitute the most the significant sources locally. An example of that is in Louisianna, where two chlor-alkali plants statewide contribute more mercury than all of the coal-fired power plants statewide combined. I'm not sure where that rule is either.

The third proposed recommendation is that NEJAC should recommend a prevention and cleanup of dioxin, address all signficant sources, and that cleanup of PCBs, DDT, and chlordane, the production of which are all banned, address all significant sources. Similarly, NEJAC should recomment that prevention and cleanup of all persistant bioaccumulative toxins, or PBTs, and persistant organic pollutants, POPs, address all significant sources. Also I guess we understand that there is a need for EPA work on issuing regulations that would control emissions of dioxin. These are needed, but I understand that they are not currently under consideration.

The fourth proposed recommendation is because the concentrations of mercury and some other contaminants of concern such as lead cannot be reduced by cleaning, trimming, or cooking, NEJAC should recommend that regulatory authorities should not rely on advisories suggesting these are methods for protecting public health.

The next three proposed recommendations would address levels of risk, and in setting standards and making other risk management decisions to address these contaminants EPA is generally aiming for a level of risk deemed acceptable or safe, and to the extent that any of EPA's guidance or standards deem a greater level of cancer risk to be acceptable for the more highly-exposed subgroups than for the general population this would be inequitable and deeply troubling from an environmental justice perspective because it is precisely the people of color, the low-income people, and the Indians and Alaska Natives that comprise more highly subgroups. So there are three proposed recommendations there.

The fifth one, NEJAC should recommend that as a general matter EPA should insure that the federal environmental laws are implemented and enforced equitably and effectively to protect the health of all people who are consuming fish, aquatic plants, and wildlife.

Number six, NEJAC should recommend that substantive environmental standards be set so as to provide equitable levels of protection to all, levels that protect not only the health of the general population, but also the health of people of color, low-income people, and American Indians and Alaska Natives.

Seven, specifically NEJAC should recommend that EPA rescind any guidance setting acceptable risks for subsistance and other higher-consuming subgroups at levels greater than the general population. Example, EPA's revised ambient water quality criteria methodology which defines acceptable cancer risks for higher-consuming subgroups as risks up to one in 10,000, whereas it defines acceptable cancer risk for the general population as risk between one and 100,000 and one in one million, and perhaps as protected as one in 10 million.

The eighth proposed recommendation concerning Indian country, Dean Suagee will discuss that in his -- as part of his chapter.

MS. JARAMILLO: Dean, your card was up.

MR. SUAGEE: Yes. Thanks. While we were talking about chapter one I was picking up on something that Professor Gauna said about the historic significance of places. I was trying to think there is a common -- an idea that I'm not sure if it fits in the chapter one recommendations or the chapter two recommendations, and it's -- if it's chapter one it's recommendation 1-4, and if it's chapter two it's somewhere between five, six, and seven or some variant of that.

That it's sort of research methods, but it's also existing law, and the existing law part of it is the National Historic Preservation Act, the recognition that some places have historic significance and are eligible for the national register and the concept of traditional cultural places or traditional cultural properties. Under that under the Section 106 process if you have a federal untertaking, you know, tribes have a statutory rights

to be part of that consultation process, and, you know, some of the actions that we're talking about EPA taking probably are federal undertakings, and some of the actions that states take maybe federal undertakings or federally-assisted undertakings under the Act.

So I just wanted to put that on the table for us to work that in, and the reason that I was struggling with perhaps this fits into chapter one, which is about research methods and more specifically the recommendation 1-4, that NEJAC strongly urges EPA to understand the reality that these groups are concerned in using fish and aquatic plants and wildlife in different cultural, traditional, religious, historic, economic and legal contexts.

The consultation process under the NHPA as it has been used by tribes to -- you know, to get their cultural values into these, you know, federal decision-making processes and federal actions is kind of the way of bringing storytelling into federal decision-making processes. It's like, you know, valuing oral tradition and storytelling as a way of getting at knowledge, at a way of getting at information that should be considered in making these decisions. So it's, you know, the scientific method has a tendency to stop at oral tradition, and this is the existing law that at least gets the stories -- the people who can, you know, convey the oral tradition into the process. So that was the point.

MS. JARAMILLO: Thank you, Dean. Ken, your card has been up for quite a while.

MR. WARREN: I wanted to make two points, other than again complimenting the fish commission working group on an excellent report. The first is when water quality standards are set the first object is to designate the uses, and from what I've been hearing today it sounds like there are some very special uses that certain subpopulations have, and I don't think any of the recommendations specifically deal with the use designation as opposed to how specific standards or numerical criteria

might be set. So I would recommend that we start the process by focusing on some recommendations on usage should be set and what kinds of cultural considerations ought to go into designating stream uses.

The second is that what I'm hearing is for the uses to which certain subpopulations are putting the streams the streams are not in sufficient health, and the lever that we currently have under the Clean Water Act is the TMDL process for bringing impaired streams up to the designated use levels. I think some greater attention should be given in the recommendations to how TMDLs ought to be developed, and importantly how they ought to be implemented. We might want to make some implementation recommendations as well TMDL setting recommendations, at least under the existing guidance. I should say draft guidance, which is on hold right now. I assume it will be revised before it is reissued.

EPA has reminded us that implementation is an important aspect of the TMDL process, and regardless of how EPA ultimately comes out on the whole guidance for the subpopulations that we are dealing with it sounds like implementation is an important component of what our recommendations ought to be.

MS. JARAMILLO: Thank you. Wilma.

MS. SUBRA: One of the designated uses of a water body is propagation of fish and wildlife, and building on what Ken just said obviously in a lot of places these are fish are propagating. They are growing, and that's the problem. They are bioaccumulating. The other issue is that you have a decrease in the population, but in order for people to eat the contaminated fish the fish are doing well. So I think the designated use should be something that takes into affect that the fish are able to live, but they bioaccumulate and then people are eating them.

On recommendation 2-1 I would add after the words "Nation's waters" "and sediment". On recommendation 2-2 I would do the same thing,

"Nation's waters," add "and sediment." On recommendation 2-4, "because the concentrations". I would insert "in aquatic organisms," because you don't know what it is until you get down to cleaning and trimming. At first it looks like you might be talking about the concentrations in water or sediment.

MS. : Which ones? Which ones on the one you were just talking about?

MS. SUBRA: 2-1. It starts off "Because the concentration." I would add "in aquatic organisms." So you are just identifying. Then I was really pleased to see the word prevention in recommendations one, two, and three. I'd really like to see something that explains prevention. This is sort of the same thing Mary and I have been talking about, but you limit the prevention in one and two to water, and often you can have a clean water source. It's the contaminated sediment that serves as the sink and source of the contaminants that are building up in the fish. So I don't want you to get caught in this circle where you've cleaned up the water, but the sediment is still contaminated so the fish are still contaminated, but yet you made the recommendation and it's like, "Oh, yes. Well, we got clean water. What more do you want? That's what you asked for."

MS. JARAMILLO: Thank you, Wilma. Let's see. I have Peggy on my list.

MS. SHEPARD: Thank you. In recommendation 2-7 it seems that many of us argue for more susceptible populations have a higher level of risk. So I don't understand why a more susceptible population has, you know, a lower standard of acceptable risk. So shouldn't we be saying that should be reversed than simply rescinded? I don't understand this recommendation.

MS. NELSON: Right. I read it the same way.

MS. SHEPARD: And can explain what this ---.

MS. NELSON: And in anyplace it's not clear, because I read it the same way you did. It didn't make sense to me.

MS. JARAMILLO: Somebody can take a look at that while we go to the next question, and we'll come back to it. Or, Catherine, maybe you could point out -- I think it was in 2-7.

MS. O'NEILL: The idea -- and I think this is a difficult concept to express. So any input would be gratefully received. The idea is that when EPA or an agency -- and this is specifically for cancer and for the way that agencies set standards for cancer risks. Their goal is not zero cases of cancer, but rather some acceptable level of cancer patients. So they set that as a statistical standard of one excess cancer case in a population of so many, or that's one way of reading the standard.

So the way that I understand the current guidance in EPA's revised ambient water quality criteria document is that it says that it's okay for the acceptable level of risk to be set for the general population at a range between 10^{-4} or 10^{-6}. So basically what we have here is one person in 100,000 or one person in 1,000,000 getting an excess case of cancer. It says it's acceptable for higher-consuming subpopulations to be protected to what is effectively a much lower level of protection, which is to say we'll accept as many as one case out of every 10,000. So even those the number is smaller the level of protection is less because we're saying we'll accept a greater number of cancer cases. So one in 10,000 would be the same as saying 10 in 100,000 or 100 in 1,000,000. So if you take that last as a basis for comparison one in 1,000,000 for the general population is acceptable, we will accept 100 in 1,000,000 for these higher-consuming populations.

So it's a difficult concept to express, and maybe there is a better way to do it. Maybe even that example, that comparison in and of itself might be -- if we can come up with a better way to do it.

MS. SUBRA: Your risk range number, the first one is wrong. On the last --- it should be 10,000 to 1,000,000 if it is 10^{-4} and 10^{-6}.

MR. HANLON: If I can sort clarify. What the Ball 2000 methodology says is that states set their target risk range for the general population that is in the 10^{-5} to the 10^{-6} range, or one in 100,000 to one in 1,000,000. That will identify subpopulations that may be as high as one in 10,000 or 10^{-4}. Basically I believe the methodology specifically says that we would not accept state criteria to be set where the general population would be a 10^{-4}.

MS. JARAMILLO: Okay. Has that been clarified? Does that respond to your --?

MS. NELSON: It clarifies it, but it's so obtuse. I think we have got to find another way to describe that.

MS. JARAMILLO: And I think that's a good suggestion, that we try to define that a little better.

MR. HANLON: The agency would welcome that clarification.

(Laughter.)

MS. JARAMILLO: Okay. Let's see. Savi, you're next on my list.

MS. HORNE: I was maybe --

MS. JARAMILLO: Can't hear you.

MS. HORNE: Sorry. No. I was just wondering maybe if it was done in five, six, and seven, but I was just wondering if one, two, and three could not be strengthened in terms of the recommendations by asking for the enforcement of existing federal laws as it pertains to these contaminants. If the recommendations couldn't be strengthened by stating that.

MS. JARAMILLO: Did we get that notation up there? Thank you. Delores.

MS. GARZA: I had two points to add to section two. One was discussed earlier, and that was sanitation and sewers in urban and rural communities; and I'm not sure how it would be written for urban

communities, but for rural -- and I have this written for you guys over there. Rural ground water then rivers containing important fish are contaminated by archaic sewer disposal. Regulatory authority should assist such communities in finding resolution. So that would be
2-5, because that would fall into the list of contaminants.

Then another point, and I'm not sure if it should be a separate point. I listed it under 2-7, but it could be incorporated into either 2-5 or 2-8, and that is that EPA should list or make available all waivers granted for pollution and discharge. The concern I have there is that as a community member if you live somewhere you believe that it's a good community, it's a healthy community, and you believe that if someone is operating something that are operating it under EPA guidelines or under EEC's guidelines, and people need -- have the right to know if such waivers are made and their health may be compromised. Thank you.

MS. JARAMILLO: Thank you. Eileen, your card was up next.

MS. GAUNA: Okay. Under the theory of be careful what you ask for because it may come true, I guess I'm going to talk a little bit about number two, the recommendation where it says that "Regulations and other efforts here address all significant sources of mercury, regardless of the initial receiving medium. For example, air, soil, water, and sediments." I complete concur with what Savi is saying about, you know, putting something in there about enforcement. But I'm also a little worried that might be misinterpreted. It seems to me there's a potential conflict between saying that these sources overall have to get the mercury levels down and what the distribution implications of them are. For example, if either one of the proposals obviously being considered today for mercury in power plants are -- is the cap and trade program, and although that may get the mercury down overall, you know, it may cause -- if trading isn't controlled in some way to prevent hot spots we could end up with, you

know, some particular areas near these big facilities that are getting hit disproportionately. So I would just recommend a rule-friendly amendment in there that says -- and I hope it doesn't get too cumbersome, but that regulations and efforts here address all significant sources of mercury in a manner that prevents disproportionate exposures. Because just to let them know that, you know, just getting the aggregate levels down isn't acceptable if it's going to result in significant disparities.

MS. JARAMILLO: Thank you. Anna Frazier.

MS. FRAZIER: I'm wondering if another contaminant could be added to the PCPs, DDTs, and chlordane? Meaning that in the Four Corners area we have a lot of abandoned uranium mines, and when, you know, it seeps down into the -- when it rains it seeps down into the aquifer. So we do have a lot of -- our people have a lot of cancer in the population of our -- the people there. So I think there's other areas, too, that are affected in the same way that we are, like up in -- around the Santa Fe area. I know that we've worked with other Native people up that area where they're concerned about nuclear contamination. So I think that maybe if it's possible, you know, to add that in there, too, because it does pollute the water downstream.

MS. JARAMILLO: Thank you, Anna. Graciela, your card was up.

MS. RAMIREZ: I am a little bit worried about the recommendations of cleanup. Not all contaminants can be cleaned up. We don't have, for certain contaminants, we don't have the technology at the time enough to clean and others take a long time. Like for example if you take --- in water you can be air stripping the water for years and not lowering the concentrations under the maximum contamination levels. So I would recommend that a little bit of research in the way of what is available in terms of cleaning technologies for the contaminants of concern that we want to push, you know, more --- in order to establish for once we want to

recommend these cleaning alternatives.

MS. JARAMILLO: Okay. Thank you. Graciela, so specific -- are you suggesting we list specific types of cleanup alternatives if we can find them or --?

MS. RAMIREZ: For example, for mercury there is very definite technology that you can use for cleaning up. I am interested in a very summarized way mentioning, but there are some other contaminants. I mean, you list in your list the ones can be cleaned up with the ones that either take years to clean up or we don't have the technology available. Then you are making your report less strong.

MS. JARAMILLO: Larry, your card.

MR. CHARLES: I think this is where I get to the point I raised earlier regarding sewage treatment plants, that we add a new recommendation to address that. A little bit of background, less than a minute. Many towns in the original construction of their underground utility systems or water systems built one system for storm water and sewage, and often during heavy rains or storms that volume -- that increase in volume exceeds the capacity of the plant, and that raw sewage is dumped straight to the river. There are some --- acknowledging that problem to assist the towns to correct that and other more effective methods that are forcing the towns through lawsuits to correct.

So I want to ask if we could add a new recommendation and would trust the abilities of the committee to word smith it, but basically to encourage EPA to acknowledge and understand the effects on water supply and therefore fish and human health eventually of sewer treatment disposals and discharges in urban communities. I think it's a similar issue I've just learned in some of the tribal lands where there is no sewer treatment plant as well.

The second concern we were looking at is the sludge and how that's

now being disposed of. I think Jane raised the question earlier regarding the disposition of contaminated materials once removed from the stream and how it is disposed of.

So in both cases I think it's a recommendation to ask EPA to evaluate two different things. I don't know if you can ask that the resources do it, but to either collaborative with other agencies -- but somehow try to give us a benchmark as to the effects of the lack of capacity at the municipal level for handling sewage and treatment, and then secondly standards that should be included that should be considered by the municipalities beyond which they shouldn't exceed in terms of releases to the stream.

MS. JARAMILLO: Thank you, Larry. Before getting to a sense of the body here I want to make one comment and really kind of fall upon something Dean said earlier. At an earlier incarnation in my life I was thinking about when I was being trained to be a --- and doing forestry research and being told that it was really important to go out and talk to the old-timers and get their sense of the ground and the environment because that was as important as the number crunching that could come in. So I kind of was interested that kind of the standard was set a long time ago, but somehow we've lost that sense of oral traditions and information from the communities, but it's just as vital in the scientific process or the scientific method. So appreciate the comments you made, because I remember being taught that, that that was equally important. Where that got lost I don't know.

But let me get a sense from the body if there is any objections to any of these recommendations moving forward. We understand that there have been some modifications, and those will be incorporated by the workgroup. What I'm hoping is that we'll have somebody to volunteer to kind of summarize some of the new language on Thursday morning, and I'll kind of corner one of you to do that in that hour of presentation to be

sure that we haven't lost these pieces of new information. Do I have any objections to the recommendations that have been proposed in chapter two?

(No response.)

MS. JARAMILLO: Okay. I'm going to take the power of the moderator now and talk to you a little bit about moving forward and getting this job done and ask that if you need to stand up and stretch that's okay, but we're not really going to take a formal break. That if you need to walk out real briefly that you each do that individually on your own time so that we can get through this.

I do want to take a minute, however, for Peggy Shepard to share us a letter with us that was delivered a little earlier.

MS. SHEPARD: Yes. Thanks, Annabelle. We have a greeting from the Governor of Washington, and I'll just briefly read his statement. "As Governor of the State of Washington I am pleased to welcome you to the 17th meeting of the National Environmental Justice Advisory Council. Your visit will facilitate the exchange of valuable ideas and information among stakeholder groups represented on the NEJAC and the general public. The policy question being considered, 'What is the relationship between water quality, fish consumption, and environmental justice,' is especially important to the citizens of Washington State. While you are here I hope you will take some time to enjoy the tremendous charm and beauty of the Evergreen State. You will find an extraordinary array of attractions in and around Seattle to help make your visit a memorable one. Best wishes for a successful meeting and an enjoyable stay in Washington. Sincerely, Gary Lock, Governor." So this was delivered to us by one of his assistants, and we thank her very much.

MS. JARAMILLO: Thank you.

MR. LEE: Before Annabelle goes on I have a most important

announcement for Council members, which is that I was told to remind you to fill out the travel vouchers that you have at your place for reimbursement. I think that's probably --

MS. JARAMILLO: That's very important.

MR. LEE: That's very important, and I think that once you have them, Marva, where should they go? To Rene Goings who is in the back of the room, and I guess this is a -- is there anything else they should know about this in terms of filling these out? It's pretty straight forward. Should they try to get this back to you by the end of the day, or --? If you can I think it would make things a lot easier, but definitely you leave. Okay.

MS. JARAMILLO: Okay. Thank you. Let's move on to chapter three. Marianne, if you can lead us through that.

Chapter 3 Recommendations

By Marianne Yamaguchi

MS. YAMAGUCHI: Okay. We get the end of the afternoon when everybody is all exhausted and tired of listening to all this. Chapter three, just to remind you, does focus on the fish and wildlife consumption advisories, and as we discussed earlier this morning those advisories really are just one component of a comprehensive health risk management strategy. They really are directed at the issue of trying to avoid risk rather than the issue of reducing risk, which is really what some of the earlier chapters were more focused on.

Typically advisories are intended to provide information about the nature and the extent of contamination and its potential adverse health effects to encourage consumers to avoid consuming contaminated species and then to suggest alternative means for continuing to eat fish. But, however, for many of our environmental justice communities fish substitutes cannot be readily obtained or changes in fish consumption practices would really cause great anguish or cultural harm. So the reality

of fish contamination means that these practices may expose members of affected communities or tribes to serious potential health risks.

Therefore we state that extensive -- exclusive reliance on advisories on one hand or sole reliance on aggressive pollution prevention, but without any advisories are both unjust and both unacceptable, and I believe Jim Hanlon said that from EPA's perspective that is also true. The Fish Consumption Workgroup reached a key conclusion that advisories can be -- serve an important function that aids communities and tribes to avoid risk, and we therefore recommend that fish and wildlife consumption advisories be recognized as an important component, although not the only component, of a comprehensive health risk reduction strategy.

Therefore the first recommendation of chapter three states we "Strongly emphasize that advisories must be coupled with ongoing and aggressive efforts to curb existing and future pollutant sources through stringent implementation and enforcement of water quality regulations and cleanup of historic contaminant sources." We urge the NEJAC to urge EPA "To be proactive in identifying and implementing alternatives that protect the health of disproportionately exposed groups in the meantime, that is, until prevention and cleanup are fully achieved."

While advisories are useful, in order for them to be effective they must be culturally appropriate and must communicated in a manner that is tailored to the specific locales and specific communities. There really is no one-size-fits-all, and any attempts to really try to insure consistancy across broad regions or a large number of population groups really may not be useful or appropriate. Importantly we must do a better job of recognizing our incredible diversity and tailor our risk communication efforts accordingly.

Our second recommendation therefore states we recommend that the NEJAC urge EPA to become -- and I have different text on two sets, but

this one version I will give to --- if she is here. So "To become cross-culturally competent and attend to the fact that affected groups include a large and diverse array of groups, each of which consumes and uses fish, aquatic plants, and wildlife in differing cultural, traditional, religious, historical, economic, and legal contexts. It is crucial for any risk communication effort to recognize, therefore, the diverse contexts, interests, and needs that characterize affected groups."

Affected communities and tribes are integral to relevant, appropriate, and effective risk communication. Affected communities and tribes need, therefore, to be involved as partners, or as we stated this morning as co-managers, at every stage of the communication process. From identifying needs and priorities, to devleoping group-appropriate advisory content, to helping with translations and communicating the message, and then again also in helping to interpret the communities' responses to risk management efforts.

Were they really effective from the communities' perspective, and why is that, that we need to do this? One measure of effectiveness is successful communication, and successful communication requires that information be accessable. Not everybody is going to be using the internet. It needs to be conveyed in a language and via mediums in accordance with cultural considerations so that it will reach and be understood by those who are affected. Otherwise we have really not achieved what we wanted to achieve with advisories.

So I'll just go over the third and fourth recommendations. This is directly out of the text. It says that we urge "EPA to recognize the expertise of members of affected communities and tribes, and to involve them and collaborate with them throughout the --" and I made that correction here, "Throughout the risk communication project process. NEJAC urges EPA to follow NEJAC's Model Plan for Public Participation and NEJAC's Gide

on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making."

Number four, we urge "EPA to make available additional financial and technical resources to communities and tribes to insure that they can participate or engage in collaboration effectively. We emphasize the importance of capacity augmentation in communities and tribes and recommend that EPA recognize and facilitate this as a separate objective of full community and tribal involvement in risk communication. To this end, we urge NEJAC to recommend that EPA in issuing its advisories and in providing guidance to states and tribes: a) Insure that affected tribes and -- affected communities and tribes are involved in the identification, design, implementation, and evaluation of culturally appropriate and effective communication of fish advisory information. That advisories present information in a form that is culturally appropriate and readily understood by the fisher and fish consumer. That is be simple, that it is not filled with jargon, it's written in appropriate languages and utilizes graphics as appropriate. We also recommend that where culturally appropriate and practicable, advisories should suggest alternative means that would allow for the continued consumption of fish, including alternative fish species or alternative preparation and cooking methods." And last, "That capacity of affected communities and tribes are augmented so that they are trully able to participate and collaborate with water quality and health agencies on the development of recommendations about alternative or substitute food sources and alternative preparation and cooking methods." That's it.

MS. JARAMILLO: Thank you, Marianne. Coleen, I saw your card. We'll come back to her. Jane, your card is up.

MS. STAHL: I've got one simple one, and one I think parking lot one on this. The first one is that cross-culturally competent while a term of

phrase that rings -- that resignates in this group is probably less effective at communicating to the population and the public at large than the language that preceeded it. I think that, you know, --- we as an EJ community need to not fall prey to the same things that happened among us other bureaucrats, and that's creating our own jargon and the like. I would strongly suggest that we be as plain as possible.

My parking lot matter is this. I'm not sure that we have recognized anywhere in this report that we may in fact end up with conflicts among cultures and subcultures, and I'm thinking most particularly about mercury and the use of mercury. Where we for example in Connecticut were taken to task when we talked about the virtual elimination of mercury, which we believe is a good and necessary thing, but it is used in religious cermonies by some of our minority groups. We need to if not accept that at least recognize it, and my sense is that as we go forward in our endeavors here we might find that there are other senses where that's the case, and we should at least recognize that there might be conflicts in the goals and practices between and among different groups that we're trying to reach.

So again I recommend that as a parking lot item, something that we can address later, and it's kind of a funny story along those lines. We also thought that we were doing a good thing when we banned open burning in Connecticut. We did that years and years ago and we've been trying to enhance it and enhance it. The last time we did it, we did it in a way that was so overreaching that the power and political strength of the Camp Fire Girls poured down upon us, because that was something that we had banned, and they did not accept that.

(Laughter.)

MS. STAHL: So, again, we need to be careful in what we do sometimes.

MS. JARAMILLO: Thank you. Wilma, we'll go ahead and go with you.

MS. SUBRA: It's just a short one.

MS. JARAMILLO: Okay. Go ahead.

MS. SUBRA: On recommendation four, subpart C, that means that would allow for the continuing consumption of fish. Do you mean to continue consumption of contaminated fish?

MS. JARAMILLO: Did you get that?

MS. SUBRA: Because it looks like it should be non-contaminated, but when you get to the end it's alternative prepartion --- (audiotape cuts off for a short period here). Are you really referring to -- are you saying you can continue to eat the contaminated fish if you do special things? Is that what you mean here, or are you meaning not contaminated?

MS. O'NEILL: I guess both. I've heard of that brochure actually. Yes. The idea would be -- I think some of the suggestions that have come up would be that some alternatives might include suggestions of places to go to fish, fishing sites where the fish aren't contaminated, but some suggestions recognizing some of the practical difficulties of doing that for many communities, many environmental justice communities and tribes. It would at least to the extent possible make recommendations about how to cook contaminated fish.

MS. SUBRA: So it just needs to be clear.

MS. O'NEILL: It needs to be clear. Right.

MS. JARAMILLO: Thank you. Coleen.

MS. POLER: Excuse me for not being here a few minutes ago. I had to step outside.

MS. JARAMILLO: That's fine.

MS. POLER: So I'm kind of lost. No, I'm not really.

MS. JARAMILLO: But you have found yourself, right?

MS. POLER: Pardon me?

MS. JARAMILLO: You have found yourself here.

MS. POLER: I hope so, but anyway --. Our focus recommendations or the recommendations here should also include -- I know everybody has talked about water quality and remediation, but there's also water bodies out there who have quantities of water that are somewhat presteen, and we should also focus keeping those water bodies presteen and keeping the water quantity there. You know, you talk about we don't have the technology, but we sure the heck had the technology to pollute the water. So I think that EPA along with the Department of Defense and the Department of Energy should take into consideration the effects on all people, you know, not just my people or low-income people, and et cetera, et cetera.

You know, we can put out all kinds of fish advisories all we want to. I am a traditional hunting person. I fish. I eat the food out of the lakes at my home. You know? Like Mr. West has, you know, asked, until you have walked in the person's shoes or you've walked that mile that they've walked, you don't really understand. But to make recommendations, and I understand where most of you are coming from because it's in your heart to try to make something happen, but it has to be in your heart to change the laws to make that happen and to stop the pollution. If we could further strengthen the recommendations to add this is what we recommend to the EPA, it's not to go ahead and ask your superiors if we can put this in this paper.

You know, the EPA has to play political games with the states, and this young man, Robert I believe, or the other young gentleman, Richard, talked about water quality standards and the --- between states. We are treated as a state, our governing body as a tribe. My fudiciary duty to my people is to make sure that their human rights are addressed and make

sure the breath clean air, make sure they eat -- they can practice their traditional cultures. It's not that every state gets to do whatever they want to, be it that they think they can, but it depends on the political monsters that they have to deal with with regards to total and maximum daily loads. We choose as a people. We don't have that. Nobody should choose to have that. You are talking about prevention. The EPA and other departments or other agencies need to stop these things from happening.

You know? We can talk until we're blue in the face about prevention or ways to communicate risk assessments. There are no acceptable levels of risk or contamination. You know? People have to realize that. I'm sorry, but this is well-put-together document, but again your ideas need to be able to be fostered, not just for us to make recommendations here and add them here. This documents needs -- does it need just to go onto a file someplace? You know what I mean? It needs to have some teeth and it needs to move.

MS. JARAMILLO: Thank you. Thank you very much. Delores.

MS. GARZA: I had only one comment for chapter three, and that was under 3-1, and it's my same soapbox. Under the second sentence, "NEJAC urges EPA to work with affected groups and to be proactive." I know that is listed under three, but if someone were to read this recommendation under this report I wanted to make clear that we want to work with the groups when we address these issues. Thank you.

MS. JARAMILLO: Thank you. Larry, you're next.

MR. CHARLES: Good. I'm going to kind of take a queue from statements made by at least three people earlier. First of all, for my home girl from Louisianna, Cayenne pepper can cure the effects of mercury and anything else that is out there in the water.

(Laughter.)

MR. CHARLES: We recommend you highly to use that remedy. The second point is from the Deputy Commissioner from the State of Connecticut. She used the term cross-cultural confidence as an issue, and I'd like to use it as an obstacle to achieving the goals that we have set here in terms of eliminating of mercury and other contaminants in the water supply.

I've actually and honestly believe that the most important thing that we can do to achieve the goals set before us here and to give a good answer to the question to the question referred to us is to implement as quickly as possible a diversity program inside all departments of EPA, and I say start with water. If we have people at the table in new organizations that are part of the discussion you can trust that the issues will come forward in a full, and an honest and upright way, that all considerations will be heard, and that more informed and more effective solution will be found.

I'm not doing this to embarrass you, but rather to encourage you to make diversity a major part of your overall strategy for improving the environmental protection in this country. When you look at the amount of change that needs to occur, the bottom line in terms of changing behavior of individuals to have a measurable impact on the environment in any way, you will see clearly that you don't have enough people to have that responsibility for managing the activities that will cause individual behavior at that level inside your organization or even all of EPA. I think EPA was correct when it adopted the strategy of community-based environmental protection as an essential strategy for changing behavior on the part of so many people, and it's important that when EPA staff then go to embrace this strategy that they be comfortable with the community that they plan to engage. So I really want to take this as an opportunity to make a pitch that to me the most important thing you can do is not scientific, nor is it

procedural, but rather it's diversifying the agency as a high priority.

Now, in addition to that I want to add to the record. I am going to refer to a document that was published by the state of Connecticut titled "Toward Virtual Elimination of Mercury from the Solid Waste Stream," and it includes some very effective -- I think some very effective strategies to do that. If we can remove mercury from the solid waste stream before it gets to the plant burning that can help significantly reduce the contribution to air and water of some of these contaminants, especially mercury. So I am going to pass this over to the recorder and acknowledge Jane Stahl as Deputy Commissioner for the state of Connecticut for providing that document and for providing her leadership in the whole department in the state of Connecticut in that area. So thank you.

MS. JARAMILLO: Thank you, Larry. Mary, your card was up next.

MS. NELSON: Thank you so much. A couple of points here in chapter three. 3-1 is different in statement than the other ones. The other ones say "NEJAC urges EPA," and in 3-1 it simple says "NEJAC strongly emphasizes." Well, I don't know that the NEJAC emphasizes. It seems to me again that we're talking about we want EPA to emphasize. So I don't know why there's the difference in that formulation there on 3-1.

MS. JARAMILLO: Mary, if you go down into it further, just the second sentence --- your concerns, "NEJAC urges EPA to be proactive in identifying," in that same -- or do you want to reverse -- you know, we can look at reversing the order --- the concept a little bit.

MS. NELSON: Well, I just want somebody, I guess our great editor here, to just look at that.

MS. JARAMILLO: Okay.

MS. NELSON: We want to strengthen it. We want to make it as strong as humanly possible, so whatever is going to do that. Secondly, that under 3-4 that I have a problem with this one. It says the communities

and tribes to participate in consultation effectively. I hope that we would have that same inclusion in implementation as well. So I guess I'd like to see that in thinking through the implementation strategies added right there.

Then finally in terms of thinking about under this section how do you -- how do we think creatively about terrible situations, okay? How do we turn those liabilities into opportunities? I would like to see us add a recommendation that would take for instance fine monies, when companies are fined for breaking some of these rules and/or to do some of these things, that those funds be set aside to help do further studies in affected communities and for creative alternative solutions. I read Saturday in the -- or Sunday in the paper here in Seattle that off the coast of Hawaii they are now doing -- in the ocean they're doing fish farms. Okay? You know, it just seems to me there probably are some really creative and interesting alternatives that need to be run by and organized by the impacted communities, and some dollars to help seed those things might come out of some of these fine dollars in one way or another.

So I would hope that we would put something in there that would encourage this kind of creative alternative and some dollars to help to do that. Kind of like they do with the drug busts, you know, that when they take those assets then those assets are available to do community things or even the --- that EPA fines. I know in Chicago we used an EPA fine to help cleanup an eight-acre site. So it seems to me that there is some precedent there.

MS. JARAMILLO: Okay. I think the scribe is catching your thought there. Thank you. Daisy, your card is up. Did you --?

MS. CARTER: I believe that this document can serve to help communities gather together their information in order to make an impact upon the local, the state, federal, and EPA agencies. Too often we are out

there just working real hard trying to come up with a way to really present our problems, and I think this document will do it because it is composed of a cross-section of different people. That's why it is very simple.

I think maybe if you are having a problem in your community that you could take this document and other advisories that have already been published, and sit down with your group and come up with the type of presentation that you would like to present and present it on an intelligent level. I know this document is not a masterpiece, but it is really very helpful to organizations that are trying to find a way to present themselves to agencies for funding and for help.

I really from listening last night at the meeting, I am very concerned and I share the problems that were expressed. Because when it comes down to the problems that we are facing at the local level we really need an avenue of research so that we can go to them with what we want to say to them, and EPA and the state and other agencies would not say, "Well, how do you know that to be true?" This document will help you formulate what you really want to present and have some research to back up what you are saying. I do feel that it points out that unity is very important. You first must get your local groups unified and be together on what you are presenting.

Now, there is another thing that bothered me. I've been listening all day, and you know it's hard to remember everything that you hear. I said, well, now I would like to present a way for you to carry something back. So I thought of this little survey, and I would like to pass it out, and I would like for each one of you to make a comment. Make your contribution to this draft paper, those of you who are sitting back there. I am really thinking about you. You know, I hate for somebody to be in the back of me, but I really know that you are a part of this, and I want you to get involved. Now, I would like you to put down -- I know you have a lot to say, and you want

to say a lot; but I want you to think of your two most important concerns, and I would like for you to put it on this paper so when we come back together again we will have some input from all of you on how you feel, and how you feel about this document or this paper will be able to help you.

I tell you, I don't know if you know anything about Isaiah. Isaiah was a great prophet you know, and he said, "I have played, I have taught, and I have preached, and I wonder if anybody is listening." So I want to know if anybody is listening, and if you are listening I want to know what are you going to do about it?

Now, there's another point I had mind, and I have no desire to be unkind, but I do just hear them keep on saying those poor, low-income groups, and people of color, and the tribes and the indigenous people and all of that. I wonder if we can take that a little higher. I think if you could get it across to those people that she talked about this morning that was eating that contaminated fish out of the restaurant I believe they would support us more. You know?

(Laughter.)

MS. CARTER: They just keep right on saying, you know? I think the people, the upper-class, the elite, they don't care -- I shouldn't say they do not care anything about it, but they are not concerned about the poor man. You know? But if you can somehow bring it down on their level, say, "Look, you are contaminating the water. You are contaminating, polluting the water, the fish," and so forth. Say, "You are going to get some of it, too." We want some help we'll get it more, because the EPA, they'll stop looking at the little groups, the Indians. You know, this morning I had to laugh. He said that they thing that they are still just a group of little crazy people running around and don't know what they are thinking or what they are doing. But I think we need to take this to a higher level.

This has nothing to do with fish consumption, but I'm going to close on this. Do you know when that threat came out in America about anthrax? Everybody got concerned. You started to washing your hands before you pick up your mail. Now, if you let everybody know that this environment belongs to all of us, and when you contaminate the water and contaminate the fish, you are contaminating all of us. I hope you fill this out, and that was just my little part that I wanted to share with you. Thank you.

(Applause.)

MS. JARAMILLO: I think that Daisy has passed this around. There are copies in the back of the room, and I was going to call attention to it, Daisy. At the top it says, "Everything you want to know about fish contamination, but were too afraid to ask." So make sure you fill this out and get it back to Daisy.

I've got several people. Marianne, I know your card is up, and I'm really going to use you at the last if that's okay. Patrick, Peggy, Dean, and then Marianne. Okay. We'll try to get your clarification after that. Okay. Patrick, you were next.

MR. WEST: Yes. Thank you. I just wanted to elaborate on some thinking and some background on item 4-d about development of recommendations about alternative substitute food sources and just elaborate a little bit on that. That's an area that I've worked extensively on in Detroit, in inner-city African-American neighborhoods, the Rosa Parks neighborhood in particular, where we did focus groups and found that African-Americans were willing to consider alternative sources of fish protein that would be safer. Okay? The problems that we encountered were technical and economic. As you referred to earlier, finding resources to develop some of these alternatives so that if we have an advisory and we can develop some alternative safe fish kinds of resources that can help to bridging the gap in that short-term solution until we get to the points

where we all want to be in terms of prevention and remediation.

The situation, however, is quite different in Indian country. Last night you saw the little demonstration about Tilipia, and the next speaker said, "We don't want no little Tilipia. We want salmon this big." That's precisely right, that they have particular cultural traditions that go back thousands of years with respect to specific species of fish, and simply having a fish farm that gives them Tilipia is just not a sufficient kind of solution.

Also if we seek to just withdraw them from fish consumption and put them on other diets, Native Americans have eight or 10 different genetic pathways through which they are more susceptible to diabetes, including Type I diabetes, and if we take them off the healthy protein source and we give them the foods that we're getting on my reservation where I -- not my reservation, but the reservation where I work, the Northern Ojibwe and Leech Lake reservation, we put them on the government surplus foods. They are high in fat and high in sugar. What we're going to do is condemn them to health effects in another direction in terms of diabetes, which everybody on the reservation that I know has it.

MS. JARAMILLO: Thank you. Peggy.

MS. SHEPARD: Yes. I had a short addition to recommendation 3-2, and even though it's implied the word "language" never seems to appear, and I just wondered for clarity if we could just insert the word "language" somewhere in the list of cultural, traditional, religious. Because so many advisories and just so many government notices and regulations are never in different languages, and it's very important obviously that these advisories are.

MS. JARAMILLO: Okay. Thank you. Dean.

MR. SUAGEE: I just wanted to pick up on Mary's comment about the fines and applying them in doing this work, and I could be wrong so I'm looking for clarification from someone at EPA who knows, but my

understanding is that when EPA is taking an enforcement action against an alleged violator that if the enforcement action ends in a settlement then you can have what are known as supplemental environmental projects or SEPs. SEPs can provide things like that, with a community group to get -- but it actually goes to a court-imposed penalty and in that case that money goes back in the Treasury. Is that more or less true?

MR. HANLON: Yes. I believe that's correct, and even if it is a negotiated settlement there may be a split funding where there is a fine that is paid in addition to a supplemental environmental project.

MR. SUAGEE: I know it's a little bit more --

MS. NELSON: But there must be some leeway there, because the city of Chicago was fined in a court thing, and they negotiated payment of the fine to a restoration project as opposed to back to the feds.

MR. SUAGEE: I am thinking that this is, you know -- we've been talking about these overarching recommendations and maybe we're getting into too much detail, but this is a level of detail that we ought to figure out. You know, we ought to get that addressed so that there is -- you know, so the people who are affected by it know what you can do to actually -- that this is a potential source of financial support for community groups.

MS. JARAMILLO: Okay. Larry wants to clarify something.

MR. CHARLES: I just want to make sure that the comments I made regarding diversifying the department is not lost, so I want to formally request that we add a recommendation. I've got something scribbled here, but I hope the committee could strengthen it for me. Specific recommendation, that NEJAC encourages the Office of Water to develop a strategy for recruitment, retention, and upward mobility of protected classes to increase the quality of review, planning, policy development, and program implementation. Then also add that the departments or at

least the Office of Water should also entertain strategies to encourage protected class members to pursue environmental protection professional positions.

MS. JARAMILLO: Thank you, Larry. Marianne.

MS. YAMAGUCHI: Yes. Whatever you want. I'm at your disposal.

MS. JARAMILLO: You're going to comment and then close.

MS. YAMAGUCHI: Okay. Actually I wanted to just point out a couple of things as a reminder, especially in terms of this fish advisory chapter. One being that a lot of the recommendations that are included in this particular section are really directed at helping EPA update this document, which is the guidance for risk communication. It's volume four of a guidance to states and I believe possibly municipalities regarding assessment of fish contamination data and issuing of fish advisories. So just that people will feel assured that this work is going to go somewhere I wanted to just remind people of that.

Also that the recommendations that we brought here today are really just the overarching recommendations. So there's going to be a lot of more specifics on how to go about implementing or realizing those overarching recommendations. So suggestions like the use of the supplemental environmental projects are perfect kinds of additional recommendations that we could use to help fill in the focused recommendations, and actually Daisy gave us all a great opportunity. So for those people in the audience that might even have some specific recommendations on how to realize, or detailed recommendations on how to realize these overarching recommendations I, you know, suggest you use this as an opportunity to direct that specifically to the workgroup so we can really make that part of the final document that you don't even have before you today.

With regard to this advisory I just had a last question to Jim, was that

in reading this volume it appears to me that there's a lot of really good advice and suggestions here to states on how to go about developing advisories and then also how to involve communities, which I think this is what we were going to try to do, to provide additional information on how to do that even better. But it does say in the beginning that this document really is a voluntary one on behalf of the states, and that there really isn't a way to require states or municipalities to utilize the methods that you have. I was just wondering, is there a way to make it stronger so that it isn't just a purely guidance, voluntary document?

MR. HANLON: Not that I'm aware of. I think basically that the programs that states run to advise populations, general populations or highly-exposed populations of contamination in fish is done sort of on a discretionary basis. The Clean Water Act doesn't require it, and I'm not sure that there are sort of -- other than perhaps state policies that have been set by individual state legislatures or state executives that there would be driving force behind that program. Ask anybody else in the room if they are aware of anything, but I'm not.

MS. YAMAGUCHI: Right. I just want people to understand that really EPA is not going to be in that position to be able to make anybody do any of these things.

MR. HANLON: But again, I think the other side of that, though, is that given the 10-year history in this program, states have responded. I think sort of that program is exponentially farther along today than it was 10 years ago. I think there are opportunities there if better tools are put in the hands of state managers. I think perhaps not all, but many of them will sort of take advantage of those tools.

MS. YAMAGUCHI: Thank you.

MS. JARAMILLO: Okay. Concluding the discussion on chapter three, we talked about several modifications to the recommendations and also

added some new ideas, and that language will be provided to the workgroup. Are there any objections of any of these recommendations moving forward?

(No response.)

MS. JARAMILLO: Okay. Before we move on to conclude our afternoon and chapter four, I would like to give Michael Gelobter a couple of minutes to make a couple of comments.

MR. GELOBTER: Thank you.

MS. JARAMILLO: Or one comment, or two or three.

MR. GELOBTER: I have two minutes. That's it.

MS. JARAMILLO: Two minutes.

MR. GELOBTER: Thank you. This is my last meeting as a NEJAC Council member. This is the end of my third year, and I cannot unfortunately stay until the normal swan song on Thursday, so I'm going to do it now. I want to thank everybody for the privilege of working with you all. I think particular at a time like this when we are at, quote, unquote, "war" and so many of the things that we care about tend to slip away that it is really important that this NEJAC continue to work on the things we care about, whether it's hazards to fish, hazards to humans from fish, hazards to fish from air and water, the right to know where pollutants are in our communities and what they're doing to us, climate change, other things like that. I think it's really important to hold on and to continue to struggle for those things and to work together for those things. So being here today is a special privilege, because this meeting is so together about such an important and specific topic.

Really I want to congratulate the committee, the Air and Water Subcommittee, for the great work they've been able to accomplish in pulling this together, and everybody I've had the privilege of working with on that committee as well as Annabelle and Eileen for chairing that

committee, Annabelle the chair and Eileen the co-chair -- co-chairs. To our DFO, Charles, for keeping up -- keeping hope alive at EPA for environmental justice right now, particularly focusing folks. I think the words that occur to me is that there are times to fight and there are times to work, and as strange as it is when it seems like the world is trying to fight this is a very good time to try to work for the environment for the environmental justice communities; and I think that's what Charles and the other staff at EPA have been able to carve out, particularly at this period, but over the last few years. So thanks again. I'll miss this stuff, but keep up the good work, and I look forward to interacting with folks in other ways in the near future.

(Applause.)

MS. JARAMILLO: Thank you, Michael. Let's move on. Dean, are you ready to go? We'll let you take us through the last chapter, and believe it or not we're on schedule.

Chapter 4 Recommendations

By Dean Suagee

MR. SUAGEE: We might stay on schedule, because I intend to brief, but we know what happens with that intention sometimes. I should start out by saying perhaps that this is my presentation of the recommendations of chapter four. While I had some involvement in the workgroup, I was not actually part of the workgroup producing the report. So I hope that I can count on Jana and other members of the workgroup to fill in details that I might leave out.

I really just want to talk about the two overarching recommendations and then go back to recommendation -- the recommendation from chapter two, and these are very -- these recommendations are framed very broadly. I guess I would characterize the first recommendation as basically EPA should show -- you know, should act with respect for the unique

status of Indian tribes and Alaska Native tribes that basically reads, "Where tribes and American Indians/Alaska Natives are affected by polluted aquatic ecosystems and contaminated fish, aquatic plants, and wildlife, federal agencies must respond and resolve these threats and environmental and health impacts in ways that fulfill the federal trust responsibility owed to tribes and that are respectful of and consistent with the recognition of tribal sovereignty and tribal rights under federal laws and treaties."

This is a very broadly worded recommendation, and when we look into the details of the words and phrases that make it up we can see examples of how doing that in particular cases, actually living up to this, can be really challenging. But it's a challenge that is part of the federal government's trust responsibility, and we expect -- you know, we hope that EPA and other federal agencies can carry that out.

The second recommendation is -- reads "In order to facilitate tribes' efforts to address contaminated and depleted aquatic ecosystems, NEJAC urges EPA to make available additional financial and technical resources to tribes to conduct their own research, to manage or co-manage tribal and culturally-important resources whether on- or off-reservation, and to consult on environmental decisions that affect them, but that are made at the federal and state levels."

I would characterize this as basically a capacity-building overarching recommendation. It responds to the point made in the chapter that the environmental protection infrastructure within Indian country is -- does not exist, generally does not exist, to the same extent that it exists elsewhere, and that that's a result of the fact Indian country was largely overlooked during the first generation of federal environmental laws and that tribes don't have the same kinds of -- don't have the kinds of resources that states have to bring to -- you know, to put into program development. That

they're largely dependent on EPA and other federal agencies, and there are -- in the draft focus recommendations there are several that talk about -- that suggest EPA play a role, you know, to play a coordinating role to bring other agencies to the table to find ways that other agencies can make their resources more effective in the context of Indian country. Other key agencies that are particularly important are the Bureau of Indian Affairs of course, the Indian Health Service, the Department of Housing and Urban Development among others, but those are three that have particular presence in Indian country.

I was reading this over, and I want to throw in overarching recommendation 4-3, which is that -- and I don't wording for this yet. I think that we need to come up with an overarching recommendation that is specific to Alaska Native tribes, and that's partly because of the -- partly because of the historic difference in the way Alaska Natives have been treated, the implications of the Alaska Native Claims Settlement Act and case law interpreting the angst, and the use of the term reservation in the provisions of the Clean Water Act and the Clear Air Act authorizing tribes to be treated like states. All but one tribe in Alaska don't have reservations as such, and so the implementation of the Clean Water Act and the Clean Air Act is -- the solutions that are available for Indian country in the lower 48 aren't apparently available in Alaska, and we need to focus some attention on what -- I think we need to come up with an overarching recommendation that is specific to Alaska.

Now let me move back to recommendation 2-8 from chapter two. This, you know, goes to the role of tribes as regulators in protecting the environment, and the introductory text notes that a very small number of federally-recognized tribes have approved promulgated water quality -- have water quality standards that have been approved by EPA. There are considerable gaps in water quality standards in Indian country.

There are gaps in the other statutes, too. So the recommendation reads as follows, "NEJAC recommends that EPA address promptly existing gaps in water quality standards coverage in Indian country and on Alaska Native lands to protect tribal resources and treaty-protected rights as well as the health of American Indian/Alaska Native people who are heavily reliant on subsistence activities and diet."

Let me elaborate a bit. In presentation this morning I mentioned EPA's proposal to promulgate core federal water quality standards for Indian country. That is a proposal that is -- EPA engaged in consultations with tribes for a period of about two-and-a-half years. The proposed rule was finally signed on January 19th. The rule was caught up in the moratorium on new rules. EPA sent it back to OMB, and my -- I'm not completely up to date on this. About at a meeting of the Tribal Caucus of the Tribal Operations Committee in Albuquerque about three weeks ago we were told that OMB had passed it back to EPA with two suggested options, and I'm not sure what has happened since then. There was near consensus among the Tribal Caucus that EPA ought to move forward with promulgating this as a proposed rule.

There are -- I'd be happy to talk about that in more detail, but the second -- the other part of this recommendation, we should note that the core standards proposal doesn't do much. The only reservation in Alaska is the Metlakatla reservation. So the core standards proposal doesn't really apply there. The wording of the Clean Water
-- Section 518 of the Clean Water Act talks about talks about tribes adopting water quality standards for waters within their reservations, so we need some other approach to deal with the Alaska issues.

Ken mentioned a focus on designated uses. It seems to me that maybe that's something that ought to be explored as that EPA in the state of Alaska work together with Alaska Native villages to come up with more

appropriate designated uses for culturally-important water bodies. In Alaska if we're going to talk about -- as we get into more specific recommendations we probably ought to also deal with waste water issues in Alaska. I think that that's -- I mean, some of you may have seen a video that is available in the room upstairs, and we heard the explanation of that problem earlier, but that brings me back to my suggestion for a third overarching recommendation that we have something that specifically relates to Alaska. Was that brief enough to open up for discussion?

MS. JARAMILLO: Thank you, Dean. Delores, your card is up.

MS. GARZA: Thank you, and I thank you very much for bring up that third concern, because it is a concern when you have 211-plus tribes that basically have no tribal lands, but the nonetheless use all the area around them, and they have very limited means of bringing forth that concern about DOD contaminants, about DEW sites, about all of these contaminants that have been -- fall into that first category of --- that were past sins.

MR. : The acronym DEW, some people may not know what that is.

MS. GARZA: Distant Early Warning.

MR. : Defense Early Warning System, and it's all these old Defense sites that have toxics and other stuff. It's not the morning dew.

(Laughter.)

MS. GARZA: But I also could not come up with language, so it's something that has to go into I think the parking lot of something that we need to address.

In terms of specific to chapter four, under 4-2, because the word resource is used twice, one in terms of monetary, I added where it says, "NEJAC urges EPA to make available additional financial technical resources to tribes to conduct their own research, to manage or co-manage tribal and culturally-important resources," I put in there, "Including

water and fish," so it's clear which resources we're worried about.

Then I at the urging of another Alaskan Native here, the lady who presented yesterday from the Barrow region, and this could be a 4-4, is that "In order to increase the knowledge and capabilities of tribes and communities, NEJAC urges EPA to make available postings or listings of EPA studies and data that may be relevant to issues tribes face." So it's the issue of accessing information that helps them decide whether or not resources are safe or data that can help them apply for grants to work on remediation.

MS. JARAMILLO: Let's make sure that that recommendation gets put on the chart.

MS. GARZA: Right, and I have it written.

MS. JARAMILLO: Okay. Thank you.

MS. GARZA: The one overarching concern that I have, and it just kind of popped into my head and it may fit better someplace else, is the issue of cost benefit analysis. This is something that I have faced as an Alaska Native. When you bring a concern up to a state or a federal agency is that they can sit down and agree with you, and agree with you, and agree with you that "This is an amazing concern. We really sympathize with you. We wish we could do something about it, but you know what, Ms. Garza, we have cost benefit analysis that we have to go through, and say on the Columbia River making 10 more fish available for those Yakima people just isn't cost benefit wise versus keeping cheap power or the ability to continue to provide non-point source pollution into that stream for such a large community or farmers or for Seattle people who want cheap power."

So there has to be a way to impact agencies so that they don't have to continue to make cost benefit the most important priority when they're making decisions, and as an example -- and I face this time and time

again. When you are looking at fisheries allocations, if you look at the benefit of providing four more jobs to a community versus the benefit that may be lost to subsistence communities of losing a subsistence harvest the loss doesn't seem as great as the benefit of four jobs. So consistently over time we lose. Anytime you compare money versus value, the value being either subsistence or cultural, that value has no monetary dollars associated with it. So it is always, and I mean always, considered less.

So the verbiage that I came up with was, "In order to insure that environmental justice be served, agency policies be amended to reduce the value of the cost benefit evaluation to a level equal with subsistence value and community health." I would like to consider this as one of the overarching goals. Thank you.

MS. NELSON: Right on.

MS. JARAMILLO: Thank you. Marianne, your card was up. Patrick, was yours up earlier? Okay.

MR. WEST: I finished my remarks.

MS. JARAMILLO: Okay. Marianne, and then, Anna, it will be your turn to share up here.

MS. YAMAGUCHI: I apologize for doing this, and I'm a little bit out of turn here. I'm not even sure where this would go, but it occurs to me that there was a parking issue that I had wanted to raise in my last comment, and I forgot to do that. That is the whole issue that was raised actually I think earlier by Peggy, about this question about the movement of illegal and potentially illegally-harvested contaminated fish and its movement into the commercial marketplace. It's something that we really didn't touch on very much in this report. Not that I want to give our committee anymore work to do, but I think it's something that's a real issue and has been a real issue in Los Angeles that I would just like to make sure we remember to put up there someplace.

MS. JARAMILLO: I think it adds an important piece of data. Anna.

MS. FRAZIER: Thank you. My comment is to chapter 4-2, under where it says, "EPA to make available additional financial and technical resources to tribes to conduct their own research, to manage tribal and culturally-important resources." I wonder if we could add "non-profit tribal organizations"? The reason for that is because we have a lot of grassroots organizations within the Indian reservations that know their issues. You know, they have issues in their communities that they want addressed, and they've done a lot of -- I mean, they want to do research studies and what not like on the water, but we can't seem to find any money most of the time. So I think that would be helpful to include that in there, and not only in the -- regarding water, but other issues as well. You know, like doing studies, data, gathering data and what not.

There's also a federal policy that was just recently -- I don't know how recent this was, but maybe it was in 1996, that was implemented into the tribal Indian reservation government policies that has to do with health review. Some of the tribes have that in place, and it's very hard to I guess penetrate through the government because of those policies that are set by the tribal government. In our case we have -- we received an approval from a foundation to do research or study, just kind of a planning. You know, beginning a research planning within our -- on our reservation, but there's that policy in place that the tribe will not allow us to continue. So that's kind of jeopardizing us from having to get the money, and so sometimes that can -- the federal policies can also be kind of like a stumbling block for some of the grassroots communities that want to resolve their issues at their community.

So I think that sometimes we can I guess as a -- looking from the grassroots community it's sometimes some of these policies are there to, you know, just shut us down. We want to resolve our issues, but we come

up against those things, you know, so that's -- so those are some things that I think we have to be really careful of when we develop these federal policies for the people. Because tribal governments are -- well, the government that I -- that my tribal government, the Navajo tribal government, is a replica of Washington, DC. I guess you know what that means.

(Laughter.)

MS. FRAZIER: So it's a government. As a grassroots group we always have to continuously, you know, just continuously fight almost to get things done at a grassroots level in the area of environmental issues. Not everything. I mean, you know, other health studies and all that other stuff it's okay, but -- and services and what not, you know, comes down to the grassroots communities, but when it comes to environmental issues all because of the federal funds being cut back, at least what we hear from our tribal council is federal funds being cut back, monies are scarce and what not. You know?

So they're going into natural resources to produce more oil, more uranium, more coal mining, more power plants. You know, and that's all to us, you know, that's contaminating. That's contaminating our people. So for those kinds of reasons I think that we have to really watch what we -- the kind of policies that we want to recommend, you know, from here for our Native tribes. Thank you.

MS. JARAMILLO: Thank you, Anna. Bob, your card was up next.

MR. HARRIS: Thank you. All four chapters have references to make available additional financial, technical resources, et cetera, and then several others that would require funding. I was wondering whether or not the subcommittee had given any consideration as to what amount would be requested in order to make these recommendations become reality, and I think at least from my perspective if you are making

recommendations concerning money you ought to at least be astute enough to indicate what you want, whether you get it or not. So I was just wondering whether or not you guys had considered any of that.

MS. JARAMILLO: Maybe as a percentage of imposed fines or something?

(Laughter.)

MS. JARAMILLO: Let me get the next person and then you get -- I'll bring you back to it, Larry. Phillip, your card is up, and we haven't heard from you yet.

MR. HILLMAN: I was also thinking about that particular question, but the one thing I would ask the committee, you've done a lot of good work, have you given any thought about what would success look like? There are about 25 recommendations here, and it is 25 out of 25? Is it five out of 25? Have you thought about prioritizing to say, "If I get these key items this effort would have been extremely successful"? The reason why is because you put a lot of good work into this, and so the question will be, something I'd ask you to consider, "What needs to happen so we can feel this effort has been successful on our part?"

MS. JARAMILLO: Thank you. Richard, I'm going to let you respond in a minute, but Jana had her card up. So I'm going to let her get her comments in, and then I'll get back to you to a response here. Thank you, Phillip, for that question.

MS. WALKER: I just had a quick comment on what Anna brought up, and I'm getting a little weary that I thought that earlier we discussed at some point a recommendation concerning funding for community empowerment, something about that. So I'm thinking perhaps that, Anna's concern could be rolled in there. Or perhaps as a separate one under chapter four, but chapter four is really focusing on I would say more the tribal status rather than the individuals. Particularly on two because it's

talking about tribal efforts and co-management, really more of the regulatory issues I think. That might not be the best spot to include the funding for the Native grassroots groups.

MS. JARAMILLO: Jana, it's my understanding wording will be really key on that kind of recommendation and that in the pure sense of what a FACA's responsibility is we can't ask for a direct dollar amount, but the kind of funding things you are talking about are kind of in an overarching recommendation in terms of meeting some of the goals we're talking about. So I think that if you find a place for it, to make sure that Anna's thought doesn't get lost. That would be important.

Richard, I'm going to let you respond to Phillip's comments. Then, Jane, I'm going to go to you because your card has been up for a while.

MR. GRAGG: Thank you, Annabelle. Phillip reminded me of something that I had in my notes on priority or prioritization, and I think I would like to recommend that the committee prioritize in addition to what to Phillip said, but when we talk about certain exposures I think they've listed -- they have specifically mentioned five or six chemicals, and to me we need to prioritize where we might want to recommend for EPA to start with which chemical; and that may be related to the effects or the amount or something, but I think there needs to be some direction on that also.

MS. JARAMILLO: Okay. Did you catch that? I think it's being put up on the chart here, Richard. Jane?

MS. STAHL: I'm not letting my turn go, but I know that Leonard's card went up right after Phillip asked his question, and if in fact it was to answer --

MS. JARAMILLO: Oh, okay.

MR. : You better take the chance, Jane.

MS. JARAMILLO: Well, let's let Leonard ask his.

MS. STAHL: Yes. That's fine.

MS. JARAMILLO: And I didn't see your card, Leonard. I apologize.

MR. ROBINSON: Oh, no problem. I kind of blend in. (Laughter.)

MS. STAHL: It's that blond hair and blue eyes.

MR. ROBINSON: Well, just a couple of responses about money. You are right. As a FACA we can't list specific dollar values, but there is a game I play, and one of the terms is all money is not good money. We tend to think we throw money at the situation and it's going to go away. I think Enron, the energy company, is an example of all money is not good money, but I like the term "resources". To answer Phillip's question, if we get one of these initiatives passed by this group I would consider that a victory considering what I've experienced before. I put the question back the NEJAC. What has to happen for this draft to be finalized? What has to happen for these recommendations to be finalized? We can word smith it, we can add overarching questions to underline problems, there are a lot of things we can do, but at what point do we take that first step on that 1,000 mile journey that I alluded to earlier? So I think it's we're putting this out, we can put everything up there and throw in the parking lot and the kitchen sink, but when do we get the green light to go forward? So my question -- I hate to answer a question with a question, but I think the ball is in your court.

MS. JARAMILLO: And I think we're going to get to that shortly, responding to that. Jane.

MS. STAHL: This is me being creative, Annabelle. You said before that we were creative?

MS. JARAMILLO: Yes. I know. I knew you would come forth.

MS. STAHL: I actually, with everyone's indulgence, I'm going to take us backwards a little bit, and it's things that have struck me as we've gone forward as needing to go back into the existing authority recommendations. Which I thought were excellent and very specific, and I think that perhaps

we would -- it could be enhanced by throwing in a few generalities.

There are three, and they're somewhat linear. The first one being a recommendation to EPA to establish some basic quality assurance, quality control guidelines, so that as community research is encouraged it is also encouraged in a way that will meet the needs of the existing authority to become implementable by either states, tribes, or EPA itself.

The second would be that EPA explore with states and tribes the prioritization of TMDL development and implementation for water bodies which serve or which could serve subsistence fishers. The third is that EPA explore the use of supplemental environmental projects to further the goals of restoring contaminated water bodies which serve or could serve subsistence fishers.

I think that the trio starts to speak to the actually corrective measures, whether or not we all agree on what the criteria and standards should be, or whether -- but it starts to get us into the realm of taking some actions and putting it into the framework of existing authorities. So I throw that out for the consideration of the group.

MS. JARAMILLO: Thank you, Jane. Delores, you're next, and then I'm going to go back to Dean. Then we're going to wrap it up.

MS. GARZA: Okay. Two points. I guess I did agree with Anna on item 4-2, adding the non-profit tribal organizations, and maybe that has to be discussed by the working group, but what I find is that the tribes in Alaska are so busy working on concerns that are specific to their community and it may almost be all heath. Immunization, that they don't have time to do environmental things. So they create these non-profit Native organizations to do this type of work, and because of EPA's wording it's my understanding that those types of non-profit organizations are not able to take some types of funding because they are not tribal. They are a tribal organization, but they are not tribal themselves. So we need to

make sure we provide that opportunity.

In terms of your question on should we try to focus on what is the most important contaminant or what is the most important thing that we should do, I found that this document in being broad was very valuable, and I had asked the question earlier, "Who is this four?" For me I see this document taking it back to the tribes I work with and saying, "This is some of the wording that you can use to go to Region 10 and knock on their door and say, 'Hey, it's in here. This is a priority. Help me write a grant.'" If we focus it to one thing, to mercury, you know, it would help the East Coast, but it wouldn't help the Yakima DDT issue. If we focus on current contaminants that wouldn't help Alaska where the majority of the contaminants are from past sins. So I would urge the Council to be broader when they look at accepting this document. Thank you.

MS. JARAMILLO: Thank you for your comments. Dean?

MR. SUAGEE: I have a couple of comments. One is in response to Jane's suggestion, focusing on the specific mention of the TMDL Program. If we write that up and we make that specific we need to pay attention to how tribes can be involved in setting TMDLs when they have either reservation lands or off-reservation resources in a watershed where there's an impaired segment.

It's my understanding that the EPA rules on TMDLs talk about -- it's a function under the Clean Water Act that tribes can be treated like states and the rule talks about treating authorized tribes like states, but none of the tribes have become authorized for TMDLs. Yet they have reservations that are in watersheds where there are impaired waters. They could ultimately adopt water quality standards, but if the TMDL is in place and, you know, the right to pollute is effectively allocated the tribe that after that comes in and sets more stringent water quality standards is going to face an enormous amount of political opposition to having their standards

approved and implemented. So I think that is a level of detail that goes beyond overarching recommendations, but it's something that I think we need to pay attention to.

My other comment is about this recommendation 4-2 and, you know, whether and how to incorporate non-profit grassroots organizations. I think it's important to pick up on that suggestion that there ought to be, you know, funding for non-profit grassroots organizations. I tend to agree with Jana that I don't think it should be in recommendation 4-2, but maybe it should be in a different -- in chapter one, or perhaps partly here and partly there. The distinction that I would draw is this, that in this chapter as Jana said we are talking about tribes are regulators, tribes as, you know, administrators in environmental protection programs.

You know, this recommendation recognizes that there's an enormous need for tribes to have funding to create environmental protection programs. If to the extent that a non-profit organization is in fact, you know, contributing to the development of an environmental protection program then it's analogous to a tribal organization under the Indian Self-Determination Act, and maybe that's an appropriate inclusion of grassroots organizations or non-profit organizations in this section.

To the extent that what the grassroots organization is doing is research and education, which is a really important function, then I think that probably ought to be in the chapter one recommendations. The point that I -- I mean, the underlying intention here is that I don't want to be making recommendations that are going to end up putting grassroots organizations in the position of competing with tribal governments for funding, because that's a formula for antagonism that we don't need. We need to set this up so that we're working together as much as we can.

MS. JARAMILLO: Thank you. Oh, Peggy, I didn't see your card. Peggy, go ahead.

MS. SHEPARD: Yes. I just want to mention that I thought that some of Anna's concerns and the concerns around non-profits and community groups and capacity building is already mentioned in 3-4, and perhaps that could be enhanced to reflect some of the additional ideas. But there's at least four parts to 3-4 that talk about community capacity building, you know, working to consult and implement.

MS. JARAMILLO: Okay.

MR. WEST: It's also implicit in the last recommendation for chapter one if you want to flush that out.

MR. SUAGEE: And it could be made explicit.

MR. WEST: Yes. It could be made explicit, or just add the word "NGO" in it.

MS. JARAMILLO: Okay. There's going to be I think some work for you to do in doing some cross-referencing here as well, because I think there's a lot of cross-over if you will between chapters. There are several issues that have been laid out. Several new recommendations have been put on the table, some modifications to the recommendations in chapter four. I'm going to ask the same question. Are there any objections to these recommendations moving forward to the fish group to finalize?

(No response.)

MS. JARAMILLO: If not, thank you for working hard on that. I want to take this opportunity to thank you all for the hard work that we've put together. I know that Leonard is a little impatient, and he wants kind of the bottom line time lines, and Charles will be putting that together for us and giving us some -- the marching orders on Thursday morning I believe. In terms of what next happens next, the record will be open for 30 days I understand for comment. He'll give us the parameters of what that time line is, and then what the time frames are for the workgroup to complete the project, or the product. Then we can move forward. So we'll get all

that from Charles on Thursday morning.

Again I need someone to take the issues charts and the parking lot charts and kind of synthesize those down to a 10-minute summary presentation for Thursday morning. I know that all of you are dying to do this, but only one will have the opportunity.

(Laughter.)

MS. JARAMILLO: So if somebody doesn't jump up then I will tap somebody, but don't all leave the room right away, please. I know people that can do this that sit around this table.

I want to thank you for your interaction in this. I think that we all together have put together a very good piece of work. I've had opportunities to moderate very different and diverse groups if you will. I've sat in rooms trying to moderate a group of politicians, and believe me, this has been by far superior to that kind of process. I've also had an opportunity to moderate groups of scientists who come together to talk, and believe me, the respect shown one another at this table just really has risen to the highest level in my estimation. I've been in some pretty scrappy meetings, and this has been by far the best that we've ever done, and I really appreciate everybody working together to do this. I want you to congratulate yourselves. This is a fine piece of work, but it's not over yet. Then I'm going to hand this back over to Charles and Peggy.

MR. LEE: Thank you, Annabelle.

(Applause.)

MR. LEE: Well, first of all, I wanted to ask you to give Annabelle, our esteemed moderator for the day, a big round of applause.

(Applause.)

MR. LEE: Just like she said to you that your job is not over, her job is not over either. There's going to be a one-hour -- on your agenda there is a one-hour discussion that summarizes this -- today's discussion on

Thursday morning, the business session's agenda. So that is there is going to be this continuation which will wrap up. It would seem to me that that wrap-up should also to whatever extent possible take in the discussions that any of the subcommittees have around this issue, and I know on many of the subcommittees' agendas the issue of fish consumption is on your agenda. So those of you who are chairs of the subcommittees I think, you know, should come to provide some sense of, you know, the discussions there.

MS. STAHL: I didn't know it was optional, Charles.

MR. LEE: I'm sorry?

MS. STAHL: I didn't know it was optional.

MR. LEE: Well, everything here is optional, you know. I want everyone to thank the workgroup, the Fish Consumption Workgroup. I think they deserve a round of applause.

(Applause.)

MR. LEE: What you should know is that this is a labor of -- I don't know if you could call it a labor of love on their part, for 18 months. The idea -- and Leonard Robinson I think we should, you know, give a lot of credit to, was the chair of the little workgroup in the Air and Water Subcommittee way back when, with this issue of having a meeting around this; and there has been many things, many reorientations in terms of the tasks of this group relative to the mission and end product that you are beginning to see that they had to go through. So, you know, I think that we really need to appreciate the kind of effort that went into this, and of course as I said before, this is really the reflection and the coming together of two things, understanding the strategic plan of the NEJAC and what kind of products that it can produce.

Certainly I would like you to acknowledge Catherine O'Neill. Her work, aside from this encyclopedic knowledge of fish consumption issues

that Catherine has, I think the one -- one of the attributes that really caused us to engage her services as the report consultant for this issue is her sensitivity to the concerns, issues, and voice of the impacted communities and tribes, and I think you could see that in the report and you could see that in the sense that I think certain -- somebody said to me that they believed that the communities and the tribes will see themselves in the report when they read it, and that's a real credit to this and the way that it was put together.

You should know that the Indigenous Environmental Network has already put the draft report on their website as well as another organization I don't recall the name of. You should know that the National Congress of American Indians has had a major conference in Spokane I think last week, and they had wanted information and the information was distributed. You should know that the EPA's tribal coordinators are meeting here this week largely because they wanted to meet in conjunction with you, or the same time with you so that -- because of this issue of fish consumption, and the report was on the table.

I certainly think that Dr. Garza's characterization of what the audience is and what the purpose of this is really hits it on the nose, because you know what was said in terms of this is I think this gives articulation to many people who are very concerned about this issue. Now they have an instrument by which they can present their issues. You know, there is a book called Speaking Truth to Power, so I guess that's one way of putting it. Certainly this is going to be I believe a real educational and reference piece to the -- for a long time, for many, many years, and it is certainly a contribution to a literature, not only of environmental justice, but environmental protection; and certainly we are only beginning I think to see the kind of impact that a report like this will have, and I really believe that, like I said before, all of you should be really proud to be associated with it.

It was my goal, you know, as we started to talk about the transition of the NEJAC not only for the NEJAC to produce not just products which were credible, but authoritative, and I said it I think to the OEJ staff that if we were doing this just to be credible I don't think we needed to spend the time on it. Because certainly I think you can be, you can really have, you can really reach that plateau of being authoritative, and I think it's a real credit to the people that worked on this that this is a real contribution to the literature.

So having said that, I just have a few announcements. I would like to meet with the Fish Consumption Workgroup for a couple of minutes, this is regarding some logistically matters, right after we close. Secondly, there is going to be a showing of the video In the Light of Reverence at 12:30 p.m. tomorrow at the room of the meeting of Indigenous Peoples Subcommittee, and this video is one-hour long and focuses on tribal, cultural, and sacred sites protection issues, and everyone is welcome. Lastly, Peggy, did you want to talk about the public comment period? Okay. So with that, let me turn it back to Peggy Shepard.

MS. SHEPARD: Okay. Let me first just let you know that Administrator Whitman's statement of commitment to environmental justice is on the back table. The public comment period, we will reconvene at 7:00 p.m. Registration will cease at 7:00. We have 25 people signed up to speak. Tomorrow the subcommittees meet at 9:00 a.m. So thank you all who spoke and presented today. Thank you to the workgroup. We're adjourned.

(Whereupon, the meeting adjourned at 5:00 p.m.)