

MEETING SUMMARY

of the

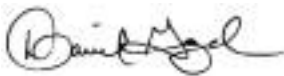
INDIGENOUS PEOPLES SUBCOMMITTEE

of the

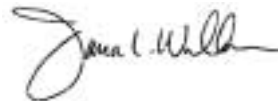
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Daniel Gogal
Designated Federal Official**



**Jana Walker
Vice Chair**

**CHAPTER FIVE
MEETING
OF THE
INDIGENOUS PEOPLES SUBCOMMITTEE**

1.0 INTRODUCTION

Exhibit 5-1

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 5, 2000, during a four-day meeting of the NEJAC in Seattle, Washington. In the absence of Ms. Jennifer Hill-Kelly, (Oneida Environmental Health & Safety Department, Ms. Jana Walker, attorney at law, holding the position of vice chair of the subcommittee, served as acting chair during the meeting. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the subcommittee. Exhibit 5-1 presents a list of the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which provides a summary of the deliberations of the Indigenous Peoples Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the acting chair and the DFO, as well as any administrative remarks made throughout the meeting. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report received by the subcommittee during its meeting, as well as a summary of questions asked and comments offered by the members of the subcommittee. Section 4, *Activities of the Subcommittee*, summarizes the discussions of the members of the subcommittee about the activities of the subcommittee, including their discussion of the NEJAC's Pre-Meeting Discussion Draft of the Fish Consumption Report (fish consumption report) and the Indigenous Peoples Subcommittee Strategic Plan for 2001 - 2003. Section 5.0, *Other Concerns of the Subcommittee*, summarizes the members' deliberations related to four issues relevant to indigenous communities.

2.0 REMARKS

As acting chair of the Indigenous Peoples Subcommittee, Ms. Walker opened the meeting by welcoming the members present and Mr. Gogal, the DFO. Ms. Walker explained that she was serving as the acting chair of the subcommittee, replacing Ms. Hill-Kelly who was unable to attend.

Mr. Gogal stated that the participants in the meeting represented a "most diverse group of people." He added that, although the meeting was conducted for

INDIGENOUS PEOPLES SUBCOMMITTEE

**Members Who Attended the Meeting
December 5, 2001**

Ms. Jana Walker, **Vice Chair**
Mr. Daniel Gogal, **DFO**
Mr. Bob Smith, **Alternate DFO**

Ms. Anna Frazier
Ms. Coleen Poler
Mr. Moses Squeochs
Mr. Dean B. Suagee

**Members
Who Were Unable To Attend**

Ms. Jennifer Hill-Kelly, **Chair**
Ms. Barbara Warner

the members of the Indigenous Peoples Subcommittee, the comments of observers would be welcome during the dialogue session scheduled for that afternoon.

Mr. Gogal requested that Mr. Moses Squeochs, Yakama Nation Environmental Program, Confederated Tribes and Bands of the Yakama Nation and member of the subcommittee, lead the subcommittee in an invocation "in the manner of his people." Mr. Squeochs first led the invocation in the form of a song-prayer and then interpreted the meaning of the song for those present.

In his interpretation, Mr. Squeochs stated that the song of invocation spoke of Mother Earth and the connection between the environment and every person on Earth. The song, he continued, is one way in which tribal elders teach Native peoples to always respect Mother Earth; making such an invocation appropriate for beginning a meeting of the Indigenous Peoples Subcommittee, he concluded.

During lunch, the members of the Indigenous Peoples Subcommittee watched the documentary film "In the Light of Reverence." Mr. Dean B. Suagee, Vermont Law School First Nations Environmental Law Program and member of the subcommittee, briefly introduced the film, stating that indigenous people around the world face many challenges as they work to preserve their sacred places. The need for such preservation was the motivation of filmmaker Toby Macleod, he explained,

adding that the film tells stories from three tribes, the Lakota, the Hopi, and the Wintu. The stories describe the struggles of the three tribes to preserve what remains of their sacred places. The film, Mr. Suagee continued, explores the relationship of American culture to nature in three places considered sacred by native peoples.

After the participants viewed the film, Ms. Walker stepped down as acting chair because she had been taken ill. Mr. Don Aragon, Wind River Environmental Quality Commission, served as acting chair for the remainder of the meeting.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Indigenous Peoples Subcommittee.

3.1 Klamath River Inter-Tribal Fish and Water Commission

Mr. Merv George, Administrator, Klamath River Inter-Tribal Fish and Water Commission and member of the Hupa Tribe, first provided information about the history of the commission on which he serves. The commission was founded in 1995, he explained, and has focused on a number of issues related to water quality. Mr. George stated that four tribes living in northern California make up the current membership of the commission. Continuing, he explained that the tribes and the state government have developed a cooperative working relationship, and that the majority of the tribes reside on tribal reservations.

The five issues of greatest importance to the member tribes of the commission, he continued, are:

- Habitat restoration, particularly in the case of the salmon population
- Hydroelectric dams and their effects on the salmon population
- Agricultural issues related to water quality
- Economic issues and the balancing of economic needs with environmental rights
- Maintenance of tribal sovereignty

Turning to the issue of hydroelectric dams, Mr. George explained that the salmon population on which the Hupa and Yura tribes subsist can not reach pristine habitat because their paths are blocked by hydroelectric dams. Mr. George then

stressed that the Hupa and Yura tribes constantly must balance environmental and economic issues when developing standards for water quality. He stated that a “political jujitsu” forces tribes to struggle to maintain their cultural practices, while at the same time incorporating modern politics and economics into their lifestyles.

In conclusion, Mr. George presented his recommendations to the subcommittee. First, he suggested that the subcommittee urge EPA to provide resources to the tribes so that the tribes will be able to conduct studies (such as testing of tissue samples). He also recommended that the subcommittee add language to the NEJAC fish consumption report that recognizes the importance and necessity of subsistence living to indigenous peoples. “Fish are not less important than the blood that flows through our veins,” he stated. He also added that he would submit formal written testimony to the subcommittee and the NEJAC by the January 31, 2002 deadline that had been established for such submittals.

Mr. Suagee expressed interest in obtaining written comments on disruptions in water flow and their effects on the lifestyles of the Hupa and Yura peoples.

3.2 Presentation on Survey of Fish Consumption by Tulalip Tribes

Ms. Gillian Mittelsteadt, environmental policy analyst, Tulalip Tribes Natural Resource Program, and Mr. Daryl Williams, Tulalip Tribes Natural Resource Program, presented the results of a study of consumption of fish among members of the Tulalip tribe. Ms. Mittelsteadt described the statistical framework of the study, as well as the benefits it produced and lessons learned. The study took place in 1993 and 1994, she explained, and was a non-random survey of the two Tulalip tribes that reside in the Puget Sound area. The survey, she added, was a joint effort of EPA Region 10 and U.S. Ecology Inc., the objective of which was to quantify the rates and patterns of fish consumption of the members of the two tribes. The study analyzed the rates of consumption of both shellfish and finfish and reported a median consumption rate of 58 grams per day (gpd), she explained. That rate, Ms. Mittelsteadt pointed out, is 10 times the national average that has been documented by EPA.

Ms. Mittelsteadt then stated that, although the survey served as a catalyst for follow-up studies, much remains to be accomplished. One benefit of the study, she said, was that the state of Washington

now has modified its human health standard to a value higher than the median value identified through the survey. Ms. Mittelsteadt then described some lessons her team learned by conducting the survey. She stressed the importance of educating the Tulalip tribal communities about issues of environmental justice.

Mr. Williams first added a footnote to Ms. Mittelsteadt's presentation, reporting that male members of the tribes surveyed consumed more fish than the female population. He also stated that, because the Tulalip tribes do not have off-reservation fishing rights, they must fish areas in which the highest levels of contamination are present. Mr. Williams then discussed problems caused by pollution credit programs and the negative effects such programs have on native tribal communities. After describing a pollution credit program designed to promote the trading of such credits, he stated that such programs provide those groups that can afford to buy pollution credits the "right to pollute." However, he continued, tribes that reside along the Puget Sound are limited in what they can discharge because they do not have the resources to purchase pollution credits. Consequently, he explained, the tribes have no impact on the other sources of pollution that affect their local fish populations.

Mr. Williams expressed concern that the NEJAC fish consumption report recommends that tribal communities alter their diets to incorporate non-traditional food sources. He explained that it is not healthy for tribal communities to do so. The Tulalip survey supported his position, he added, by identifying increased rates of cancer and diabetes among members of the two tribes who had altered their diets in response to fish advisories.

Continuing, Mr. Williams suggested additional revisions of the NEJAC fish consumption report. First, he stated that the two Tulalip tribes have adopted their own water quality standards; however, EPA had not approved those standards. However, the tribes continue to enforce the standards themselves, he added. Mr. Williams then urged that the subcommittee recommend that the NEJAC request that EPA approve the water quality standards of both tribes.

In response to the suggestions offered by Mr. Williams, Mr. Aragon stated that EPA had made some progress in recognizing tribal water quality standards. He then stated that tribal water quality standards must be as stringent as federal standards, or more so; tribes therefore encounter economic

difficulties when they attempt to enforce and maintain the standards they have implemented, he said. Mr. Squeochs asked Mr. Williams whether the two tribes had developed their water quality standards independently of one another. Mr. Williams responded that the Tulalip tribes had received funding from EPA to develop the standards together, noting again that the standards have not been approved by the Agency.

Continuing, Mr. Aragon asked Mr. Williams whether the activities of the U.S. Navy have had adverse effects on the Tulalip tribes. Mr. Williams answered that the tribes are not affected directly, noting that the Navy base located near the tribal communities actually is "a good neighbor" to those communities.

Ms. Anna Frazier, DINE' CARE, asked Mr. Williams whether the Tulalip tribes are recognized by the federal government. Mr. Williams responded that several tribes banded together to form the federally recognized Tulalip Tribes, which has 3,200 members.

3.3 Mr. Tom Goldtooth, Indigenous Environmental Network

Mr. Tom Goldtooth, Indigenous Environmental Network and former chair of the Indigenous Peoples Subcommittee, presented his recommendations for improving the NEJAC fish consumption report. He urged that the subcommittee:

- Promote outreach to tribal communities to communicate information about the responsibilities and activities of the NEJAC
- Include in the fish consumption report the negative effects of radioactive contaminants on native habitats
- Focus attention not on traditional risk assessment but on precautionary actions

Mr. Goldtooth then distributed packets of handouts, including "Environmental Injustice in the Great Lakes Water Quality Agreement," "Preventing Mercury Contamination for Native Peoples of the Great Lakes," and a pamphlet that provided background information about the Indigenous Environmental Network.

Mr. Goldtooth then summarized the written testimony he had read during the public comment period held on the previous evening. It is essential, he said to analyze the effects of all toxics and chemicals when applying a risk assessment model to the issues of

environmental justice that affect indigenous people. Mr. Goldtooth also urged that the subcommittee adopt a focus on precautionary actions, rather than the traditional risk assessment approach. See Section 3.11 of Chapter Two of this report for a summary of that statement.

Mr. Goldtooth then submitted another document, "Tracking Dioxins," and summarized the principal points set forth in it. The document, said Mr. Goldtooth, describes a groundbreaking study performed by the North American Commission for Environmental Cooperation (NACEC) that linked dioxins accumulating in the new polar territory of Nunavut to source regions thousands of kilometers away. Mr. Goldtooth also stated that the scientists who conducted the study used a model to track "puffs" of dioxin-containing air pollution released at various locations in North America and deposited in eight regions in the polar territory of Nunavut.

Finally, Mr. Goldtooth suggested two objectives for the consideration of the subcommittee. First, he urged that the subcommittee develop a guide for environmental justice, noting as well that it is important to reach out to tribal leaders. Second, Mr. Goldtooth recommended that the subcommittee review the precautionary principle approach to risk assessment and recommend the NEJAC urge EPA to consider using such an approach. In conjunction with that second recommendation, he added the subcommittee should promote active outreach related to its document "Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making."

Mr. Aragon then expressed agreement with the recommendations that Mr. Goldtooth had offered, citing a need for more studies that perform risk assessment, rather than needs assessment. Continuing, he stated that there is a need to analyze the long-term effects of persistent pollutants throughout the world because such contamination crosses national as well as international boundaries.

3.4 Presentations by Members of the Alaskan Native Community

Representatives of the Alaskan Native community presented their concerns and recommendations to the subcommittee.

Ms. Rosemary Ahtuanguak, Inupiat Community of Arctic Slope and native of the Village of Nuiqsut, Alaska, expressed her concerns about and recommendations for improving the representation of

Alaskan Natives on the Indigenous Peoples Subcommittee. She also urged that, in the NEJAC fish consumption report, the subcommittee address Alaskan tribal land, such as Prudhoe Bay, where residents rely on fishing and whaling for subsistence. See sections 2.4 and 3.9 of Chapter Two of this report for a summary of her comments during the public comment period.

After Ms. Ahtuanguak's presentation, Ms. June Martin, Alaska Community Action on Toxics, presented a story about a health aide in her village who had spoken out on behalf of the tribal community and had been awarded a grant from the National Institute for Environmental Health Sciences (NIEHS) to support a survey of the health problems of members of the tribe. Ms. Martin then discussed the failure of the U.S. Army Corps of Engineers (USACE) to take action to clean up the military facility located near her village. She urged that the subcommittee assist Alaskan Native communities to hold the federal government accountable for contamination left by military actions. See section 3.20 of Chapter Two of this report for a summary of her comments during the public comment period.

Ms. Pam Miller, Alaska Community Action on Toxics, expressed her concern about the health of Alaskan Native tribal communities residing on or near abandoned U.S. Department of Defense (DoD) sites. She reported that there are five military Superfund sites and approximately 700 formerly used defense sites (FUDS) in Alaska. She added that many of the sites are contaminated with polychlorinated biphenyls (PCB) and dioxins, in addition to solvents, fuels, radioactive waste, and chemical munitions. Historically, continued Ms. Miller, DoD has preferred remedies such as institutional controls, landfills, and natural attenuation, which, she declared, are not adequate to protect the health of the Alaskan Native people. The native people who reside near the DoD sites are deeply concerned about health problems that could be linked to chemical exposures, including cancer, diabetes, miscarriages, and low birth weight in babies, she said.

Ms. Miller insisted that federal agencies, especially EPA, must hold DoD accountable for the cleanup of hazardous waste sites in Alaska, including FUDS. Additional sites merit inclusion on the National Priorities List, she added. She then discussed tribal concerns about persistent organic pollutants (POP), such as dichlorodiphenyltrichloroethane (DDT), toxaphene, mirex, and lindane, which originate thousands of miles south of Alaska, travel northward, and accumulate over northern Alaska. Contaminants from the long-range transport of POPs

and military sites in Alaska pose a serious threat to the health of people who rely on traditional diets of fish and marine mammals, she stated.

In addition, Ms. Miller reported that the method of risk assessment EPA uses fails to consider major pathways of exposure, including pharmaceutical uses, residues in food from previous uses of lindane, breast milk, and residues in water. Ms. Miller stated that the signing in May 2001 of the international treaty on POPs, known as the Stockholm Convention, was an important first step toward the long-term protection of the health of all people. Ms. Miller requested that the subcommittee and the NEJAC take a leadership role in advising the United States Senate to ratify the Stockholm Convention.

3.5 Dr. Roseanne Lorenzana, EPA Region 10

Dr. Roseanne Lorenzana, EPA Region 10, presented a list of five specific recommendations to be made to EPA, which she suggested the subcommittee consider: (1) study and document the tribal health effects on tribes of mixtures of contaminants in fish and shellfish; (2) develop cumulative risk guidelines that are appropriate to the needs of tribes; (3) complete EPA's assessment of non-cancer health effects of PCBs and characterize the health risks posed by methyl mercury at exposure levels higher than the EPA reference dose (RfD); (4) allow informed decision-making about contaminants in fish and shellfish in the categories of comparative dietary risk, benefits data, and peer review comments; and (5) use understandable language in discussions of mixtures and cumulative risk. Dr. Lorenzana, who serves as science liaison between EPA Region 10 and the EPA Office of Research and Development (ORD), also recommended that the Indigenous Peoples Subcommittee provide enhanced support for meaningful participation in EPA's Tribal Science Council.

Dr. Lorenzana also presented the report "Comparative Dietary Risks: Balancing the Risks and Benefits of Fish Consumption," for which a risk assessment model was used to define the conditions under which consumption of fish is a healthy choice. She urged the subcommittee to advise EPA to work with tribes to develop cumulative risk guidelines that are appropriate to the needs of the tribes. In conclusion, Dr. Lorenzana recommended that the subcommittee advise EPA to specifically identify adequate and ongoing research funds to address tribal issues related to subsistence, including risk to children, and provide an annual report on the agency's efforts.

3.6 Presentations by Other Tribal Representatives

After the presentations by those individuals who had been scheduled to appear, the floor was opened to presentations by members of the audience.

Ms. Cheryl Steele, Elem Indian Colony, stated that fish advisories do not sufficiently address issues related to the consumption of fish. She urged that EPA provide more guidance to indigenous peoples and that EPA work with the people to eliminate sources of contamination, especially contamination from mercury mine tailings. See section 3.17 of Chapter Two of this report for a summary of her comments during the public comment period.

Mr. Kevin McKernan, Yurok Tribe, offered specific recommendations for improving the NEJAC fish consumption report. He suggested that EPA acknowledge those tribes that have adopted their own water quality standards. Specifically, he said, the report should be expanded to include discussion of: (1) the number of tribes that had developed their own water quality standards; (2) how many tribes have standards that are pending approval; and (3) why so few tribes have done so. In addition, Mr. McKernan recommended that Chapter 4 of that report include a discussion of the resources available to tribes for use in establishing approved water quality standards.

Mr. McKernan added that the use of core standards might direct resources away from tribes that have their own water quality standards. He suggested the subcommittee add the following text to chapters 2 and 4 of the fish consumption report:

"NEJAC strongly urges the EPA administrator to make tribal water quality standards a priority. This recommendation is consistent with and embraces EPA's Indian Policy."

Mr. McKernan also stated that EPA, by limiting the amounts of fish that the tribal members may consume, the agency is reducing the rate of consumption and having a direct suppression effect on the diets and subsequently the subsistent lifestyles of tribal communities. Mr. McKernan urged that the subcommittee add to Chapter 4 of the report text that describes the issues related to the effect of suppression and discusses the effects related to statutory limitations. Finally, Mr. McKernan emphasized the importance of addressing the quality and quantity of fish when conducting scientific surveys because the quality of the fish, he pointed

out, has direct implications for tribal consumption rates. EPA also should address quantity and quality of fish in the review of permits and National Environmental Policy Act documents that assess fish populations for contamination from non-point sources.

After Mr. McKernan's presentation, Mr. Bill Doyle, Sierra Club, discussed the adverse effect the dams along the lower Snake River in southeastern Washington are having on the salmon populations. Mr. Doyle stated that several dams along the river are not in compliance with federal clean water standards; the conditions such dams cause are fatal to salmon populations. USACE is responsible for the cleanup of many of the sites and bringing them into compliance, he added, but no action had yet been taken, he pointed out. Mr. Doyle stated that the situation is another example of a federal agency that is out of compliance and that has a negative effect on the tribes in the Columbia River basin area.

Ms. Augusta Rozema, Swinomish Tribe, stated that the subcommittee and the NEJAC must "spread the word" about future meetings of the NEJAC. She also offered specific comments to the NEJAC fish consumption report and encouraged the subcommittee to make specific changes in the language of the report that, she suggested, would clarify the definition of the word "fish" to include both fin- and shell fish. Ms. Rozema urged the subcommittee to use numbers from the 2000 census in Chapter 4, rather than the 1990 census numbers that the report currently contains.

4.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included discussion of the NEJAC's Pre-Meeting Discussion Draft of the Fish Consumption Report and the Indigenous Peoples Subcommittee Strategic Plan for 2001 - 2003.

4.1 Discussion of the Pre-Meeting Discussion Draft Fish Consumption Report

Ms. Coleen Poler, Mole Lake Sokoagon Defense Committee, began the discussion by providing an overview of the of the draft fish consumption report. Ms. Poler highlighted several recommendations made by the NEJAC during the first two days of Executive Council sessions, specifically the recommendations that more emphasis be placed on prevention, enforcement, and protection and that the NEJAC as well as its subcommittees, promote more participation on the part of the EPA regional offices. Ms. Poler added other recommendations, such as

adding bioaccumulation to the risk assessment portion of the report and ensuring that every indigenous community is represented equally in the report. Exhibit 5-2 summarizes the recommendations of the subcommittee for revising the NEJAC draft fish consumption report.

Ms. Walker added two more recommendations that had been addressed by the NEJAC to be referred to EPA for consideration. The NEJAC, she said, had recommended that the draft fish consumption report include discussion of the suppression and peak effects on members of indigenous communities. She explained that peak effects occur when tribes suffer more severe effects than other populations from contaminated water because they consume peak amounts of fish during short periods of time, rather than an average amount of fish consistently throughout the year. The fish consumption work group will address all the recommendations made by the NEJAC, as well as the information provided during the public comment period, she added.

Continuing, Ms. Walker stated that the way subsistence activities are viewed and how they should be valued need to be addressed adequately in the fish consumption report. She asked that the subcommittee add more insight into those issues and submit recommendations to the NEJAC. Particularly in Chapter 4, she said, the concept of subsistence living should be examined more thoroughly, she explained.

Ms. Poler then stated that the text in the draft fish consumption report also should include all indigenous people around the world, including Alaskan, Hawaiian, and Caribbean natives, as well as low-income people and people of color. Ms. Poler expressed concern about the time scale over which such changes will take place. She stated that, because she comes from a grassroots background, she is not content to wait for action to take place. She stated that she rather would see concrete modifications of the document. She urged that the subcommittee continue to search for a mechanism that would increase local involvement and provide recommendations to the NEJAC.

Ms. **Ahtuanguaruak** then recommended that the issues related to Alaskan tribal land, such as the Village of Oltiklik near Prudhoe Bay where the people subsist on fishing and whaling, be incorporated into Chapter 4 of the fish consumption report. Ms. Martin expanded on Ms. **Ahtuanguaruak**'s point by recommending that the text of the chapter discuss the role of non-profit organizations and clarify that all Alaskan Native peoples do not reside on reservations. Therefore, she said, it is not

relevant to distinguish between “on- and off-” reservation. Ms. **Ahtuanguak then stated that** EPA should consult with the tribes at an early stage, rather than after contamination has become a problem. She added that, although there is a recommendation for tribal consultation in the report, there must be stronger language in the report that supports enforcement of that recommendation.

Mr. Enoch Shiedt, Subsistence Coordinator, Maniilaq Association, explained that the native people of Alaska are nomadic and therefore move to locations at which food is available. Consequently, he continued, there are few boundaries between tribes when there is no concept of “on- and off-” reservation.

Mr. Francis Chin, environmental justice coordinator, Maniilaq Association, then emphasized the importance of a subsistence lifestyle to Alaskan Native communities. In the opinion of an Alaskan Native, he pointed out, fishing is not just a method of obtaining food, but is rather a spiritual experience. Continuing, Mr. Chin stated that, in the Indian community, the unemployment rate is 90 to 95 percent. Therefore, he said, a subsistence lifestyle is essential for survival and cannot be compromised.

Concluding the discussion, Mr. Art C. Ivanoff, Native Village of Unalakleet, expressed his concern about the effects of climate change on the health of Alaskan natives. He requested that the fish consumption report include climate change as a factor that affects the quality of fish. Climate change has depleted the running stock of salmon, he said, adding that the migration patterns of salmon and other animals used for food have not been sufficiently studied.

Ms. Poler also suggested that a list of points of contact for Alaskan Native organizations, as well as grassroots organizations, be included in Appendix A to the fish consumption report.

4.2 Discussion of the Indigenous Peoples Subcommittee Strategic Plan

The members of the subcommittee reviewed the seven objectives outlined in the subcommittee’s strategic plan for 2001 through 2003. Mr. Suagee reviewed the objectives and provided insight on several necessary changes. Objective one, Mr. Suagee stated, has been completed for the most part, and objective two will be completed in the coming year when the next NEJAC meeting takes place. He added that the subcommittee was meeting its schedule for completing the next five

objectives, with minor modifications to be made. Specifically, he stated that Mr. Goldtooth’s recommendations should be made available to the members of the subcommittee and added to the text of objective five. Mr. Suagee also stated that the subcommittee must give more attention to objective seven and that the subcommittee must work on institutionalizing its role as an advisory body to EPA.

Ms. Poler then offered her recommendations for changing the strategic plan. She first reminded the members of the subcommittee that the needs of Alaskan Native people must be considered an objective of the subcommittee in the upcoming year.

Concluding the discussion, Mr. Aragon recommended that the subcommittee add another objective to the strategic plan that would address his concern that the Indian community is “getting too fragmented.” The objective, he stated, would be to advise EPA to provide funds to the Office of Environmental Information (OEI) to support a network through which tribes could share data.

5.0 OTHER CONCERNS OF THE SUBCOMMITTEE

This section summarizes the members’ deliberations related to four issues relevant to indigenous communities: the precautionary principle, regulatory enforcement, the representation of Alaskan Natives on the subcommittee, and tribal sovereignty.

5.1 Precautionary Principle

Mr. Squeochs expressed his interest in learning more about the precautionary principle discussed by Mr. Goldtooth during the public comment period. Mr. Squeochs stated that he would like the subcommittee to obtain more information from Mr. Goldtooth and present any recommendations about the principle to the NEJAC. In response, Mr. Suagee stated that the precautionary principle is a basic idea in the study of ecology; “if there is not enough information, don’t upset the system,” he said. If EPA errs, he continued, the Agency should err on the side of protection. The precautionary method of risk assessment embodies such an approach, he pointed out.

5.2 Regulatory Enforcement

Ms. Frazier expressed her concern about the enforcement of EPA regulations. It seems, she said, that the only way for a grassroots organization to be heard is through a lawsuit, adding that the politics involved might block progress in many situations.

Ms. Frazier then expressed her concern that, although the purpose of the Indigenous Peoples Subcommittee is to advise the EPA, she is frustrated at the lack of action taking place and believes that the subcommittee should help “put more teeth” into its recommendations and provide more support to organizations at the grassroots level.

Mr. Aragon then commented on the public comment period that took place on the previous evening; he asked to hear more from Alaskan Native communities in the future. He added that he had been troubled to hear that, in some cases, federal agencies are the perpetrators that contaminate the water on which such communities depend for subsistence. The fish consumption work group, he said, should analyze the actions of federal agencies in the local area and address issues related to their presence, such as leaking underground storage tanks and lead paint, he stated. Mr. Aragon then stated his concern about contamination left behind by military activities in northern Alaska and expressed his desire that affected communities in Alaska develop remedies for such problems, or be provided the opportunity to identify such remedies.

5.3 Representation of Alaskan Native Peoples on the Indigenous Peoples Subcommittee

In response to the concern expressed by representatives of Alaskan Native peoples that such peoples are not represented on the Indigenous Peoples Subcommittee, Mr. Squeochs stated that such an individual had held a seat on the subcommittee and that the subcommittee currently was searching for new representation of Alaskan Native communities. Mr. Squeochs added that tribes should be included regularly in the deliberative process and that the subcommittee should change its role from that of “consultation” to that of “collaboration,” a role that would include deliberative dialogue and improvement of communication between the NEJAC and indigenous communities.

5.4 Tribal Sovereignty

Mr. Aragon stated that the government must clarify the distinction between on-and off-reservation fishing rights and must determine to what degree tribes have authority over individuals who are not members of the tribe but who live on the reservation. Mr. Suagee cited *Atkinson v Shirley* and *Nevada v Hicks*, two Supreme Court cases decided in May and June 2001 that had resulted in rulings in which Indian tribes asserted their inherent sovereignty. In both cases, he explained, the Supreme Court had applied the “general proposition” that the Court had

announced in 1981 in *Montana v United States* – that “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” The Court’s decision in *Montana* has been criticized heavily because it marked a profound departure from the established principles of federal Indian law. In fact, said Mr. Suagee, the Court had to acknowledge that there were a number of cases upholding inherent tribal sovereignty over non-Indians, and so the Court said that there are two exceptions to the “general proposition:”

- “A tribe may regulate, through taxation, licensing . . . the activities of nonmembers who enter into consensual relationships with the tribe,”
- “A tribe may also retain inherent power to exercise civil authority over conduct of non-Indians on fee lands within its reservation when that conduct threatens . . . the political integrity, the economic security, or the health or welfare of the tribe.”

Mr. Suagee stated that in the two cases decided in May and June 2001, the Supreme Court has once again changed the rules and has made it that much harder for tribal governments to regulate the activities of nonmembers residing on the reservation.

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