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## Canada-U.S. Environmental Cooperation

Alan Nymark

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## CANADA-U.S. ENVIRONMENTAL COOPERATION

*Alan Nymark*<sup>†</sup>

Thank you very much for the opportunity to address this conference once again. I am very pleased to be included among an impressive roster of speakers.

The Canada-U.S. relationship has always drawn its greatest strength from the strong person-to-person relationships between our populations, from prime ministers and presidents to governors and premiers to the individual acts of goodwill and friendship that flow across our border. In my career, I have had a few opportunities to deal with major issues of common interest to Canada and the United States. I have valued these opportunities to learn about the dynamics of the American system of government and politics.

Moreover, I have always been most fortunate to work alongside individuals and dedicated public servants from the United States. On that note, I am truly honored to share this podium with Frank Loy. He is a good friend of Canada and a strong advocate for environmental cooperation. It was his intellectual leadership, more than anything, which led to the agreements in Bonn<sup>1</sup> and Marrakech<sup>2</sup> last year, and *he was not even there!* But more than anything else, the world public-sector community recognizes Frank Loy for two things: one, his personal integrity and public service values, and, two, his courageous passion for the public good. So, Henry, thank you for bringing Frank and I together once again.

I would like to address three issues related to the Canada-U.S. environmental relationship. First of all, I want to talk about some of the environmental challenges that we face. Second, I will discuss the models of cooperation that have evolved over time between Canada and the United States. Then, finally, I will try to predict how those models of cooperation and the agenda might evolve in the future.

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<sup>†</sup> Deputy Minister of Environment, Environment Canada, Hull, Québec. M.A., Queen's University. Additional biographical information available at page xv.

<sup>1</sup> *Report of the Conference of the Parties*, U.N. Framework Convention on Climate Change, 6th Sess., Agenda Items 4 and 7, at 13, U.N. Doc. FCCC/CP/2001/5 (2001), available at <http://unfccc.int/resource/docs/cop6secpart/05.pdf>.

<sup>2</sup> *Report of the Conference of the Parties*, U.N. Framework Convention on Climate Change, 7th Sess., Agenda Item 3, at 25, U.N. Doc. FCCC/CP/2001/13 (2001), available at <http://unfccc.int/resource/docs/cop7/13.pdf>.

The temptation was to focus entirely on the issue of climate change. It is a major public sector issue – one that both Frank and I have much common experience with over the past few years. However, while climate change will not be my primary focus, it is a topic I would like to discuss later in my remarks.

## OUR ENVIRONMENTAL CHALLENGES

Like most partnerships, this bilateral relationship is based upon principles of both friendship and necessity. Our friendship relates to the many-shared values between our two countries. Both of our peoples care deeply about the environment and understand that environmental quality is absolutely critical to the quality of life on both sides of the border. Our relationship is also based on necessity because, frankly, we cannot solve our joint problems without working on them together. Whether we call ourselves Canadians or Americans, we breathe the same air and experience the same atmospheric conditions in many cities and towns. We drink the same water. Many of our communities make a livelihood out of common resources through industries such as fishing and tourism.

Our partnership draws strength from a simple reality: two sides, one broadly shared environment, including a number of regional cross-border ecosystems. Under the Canada-U.S. Great Lakes Water Quality Agreement,<sup>3</sup> we worked together to bring a dead Lake Erie back to life. We have worked together to track levels of contaminants in fish and herring gulls and we will continue to work together to restore environmental quality in each of the Great Lakes through our actions in implementing lake-wide management plans in binational Areas of Concern.<sup>4</sup> In the area of ground-level ozone, a joint scientific effort reported that high ozone concentrations occur in and around many of our urban industrialized areas in the transboundary region in both countries.<sup>5</sup> This finding resulted in stronger air quality objectives and standards on both sides of the border.<sup>6</sup> There are a large number of animal species that live in both countries. Indeed, thirty-three species of animals that are listed as threatened or endangered under the U.S. Endangered

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<sup>3</sup> Agreement on Great Lakes Water Quality, U.S.-Can., April 15, 1972, 23 U.S.T. 301, amended Nov. 22, 1978, 30 U.S.T. 1383 [hereinafter 1978 GLWQA], amended by Protocol, Nov. 18, 1987, T.I.A.S. No. 11,551.

<sup>4</sup> See 1978 GLWQA, *supra* note 3, at Annex 2.

<sup>5</sup> See, generally, U.S.-CANADA AIR QUALITY COMMITTEE, GROUND-LEVEL OZONE: OCCURRENCE AND TRANSPORT IN EASTERN NORTH AMERICA (1999), available at [http://www.dfait-maeci.gc.ca/english/foreignp/envIRON/cda\\_us99-e.pdf](http://www.dfait-maeci.gc.ca/english/foreignp/envIRON/cda_us99-e.pdf).

<sup>6</sup> Protocol Amending the Agreement on Air Quality, Dec. 7, 2000, U.S.-Can., available at [http://www.ec.gc.ca/air/pdfs/can\\_usa\\_e.pdf](http://www.ec.gc.ca/air/pdfs/can_usa_e.pdf) [hereinafter Ozone Annex].

Species Act also live in Canada.<sup>7</sup> Furthermore, one hundred twenty-five animal and plant species on the Canadian list of the Committee on the Status of Endangered Wildlife are also found in the United States.<sup>8</sup> Our boundaries are crossed by some 300 rivers flowing north and south, and more than half the Canadian population lives in drainage basins shared with the United States.<sup>9</sup> These and other realities form the foundation of one of the world's most successful environmental partnerships.

## MODELS OF COOPERATION

Let us, for a moment, explore the lessons we can learn from the progression of the Canada-U.S. relationship up to the present day. I see it largely in four stages.

The first stage of the relationship between our two countries occurred primarily at the local level, at least in the economic context. However, there were early examples of international cooperation. These included the Migratory Birds Convention<sup>10</sup> and the 1909 Boundary Waters Treaty.<sup>11</sup> These agreements signaled the emergence of a common fact base for shared stewardship of our natural environment. Many of our joint activities – the migratory bird surveys and the North American Wildlife Research and Management Conference, to name a few – have been sustained for decades and still inform our current bilateral priorities.

Our progress towards a common fact-base characterized the second stage in the evolution of our relationship. In this stage, shared scientific data was applied towards more broadly based societal concerns, such as clean air. The signing of the Canada-U.S. Air Quality Agreement was among the most important milestones in this era.

In the third stage, our approach began to rely more heavily on informed public input from both sides of the border. Several mechanisms, such as the Commission for Environmental Cooperation, were created to facilitate the flow of information between policy makers, stakeholders and the public. The International Joint Commission has also embraced its role as a facilitator of public input by holding annual public meetings, conferences and round-table

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<sup>7</sup> See MINISTER OF PUBLIC WORKS AND GOVERNMENT SERVICES CANADA & U.S. DEPT. OF THE INTERIOR, *CONSERVING BORDERLINE SPECIES: A PARTNERSHIP BETWEEN THE UNITED STATES AND CANADA 1* (2001), available at [http://www.speciesatrisk.gc.ca/species/sar/publications/border\\_e.pdf](http://www.speciesatrisk.gc.ca/species/sar/publications/border_e.pdf).

<sup>8</sup> See *id.*

<sup>9</sup> See *Water Resources*, at <http://estat.statcan.ca/HAE/English/modules/module-5/mod-5f.htm> (last visited Jun. 5, 2002).

<sup>10</sup> Convention for the Protection of Migratory Birds, Aug. 16, 1916, U.S.-Gr. Brit., 39 Stat. 1702.

<sup>11</sup> Treaty Relating to Boundary Waters, Jan. 11, 1909, U.S.-Gr. Brit., 36 Stat. 2448.

discussions to ensure that the public is informed of progress in cleaning up the Great Lakes, one of our most important bilateral priorities. It is through these types of exchanges among citizens and communities from both our countries that we have encouraged further progression of our bilateral relationship to a fourth stage.

In the fourth stage of this relationship, we have recognized a full range of broadly based common goals. This is what builds the momentum for common objectives and concerted bilateral action, such as with the Ozone Annex<sup>12</sup> and the Great Lakes Water Quality Agreement.<sup>13</sup> The fourth stage is also characterized by a broadening of our relationship to include more cooperative action at other levels of government. There are many examples of this form of cooperation between Canadian provinces and the U.S. states, from the Puget Sound and the Detroit Rivers to the Gulf of Maine. The Conference of New England Governors and Eastern Canadian Premiers have been actively working on environmental issues such as acid rain, mercury reduction, energy transmission and climate change.<sup>14</sup>

The progression I have described has allowed our two countries to develop new models for working together so that we can respond effectively to new and much more complex environmental threats, which are increasingly addressed in a broader socio-economic context.

Within the past two decades, the most important of these emerging concerns has been the issue of climate change. As with many other major multilateral environmental issues, the United States and Canada shared similar positions throughout the negotiations phase of Kyoto. We have now chosen different paths with respect to the Protocol. I think that those different paths have been made enormously more difficult by the announcement of the Bush plan in February.<sup>15</sup> Until that time, it was a lot easier to see how we might be able to merge multilateral, bilateral and regional perspectives. However, the *status quo* approach of the Bush plan leaves us with a very large competitive issue between Canada and the United States, particularly as our two economies and energy markets drive towards further integration.

Nevertheless, it is important to build on our bilateral relationship with the United States. EPA Administrator Christine Todd Whitman pointed out in Washington last month that Canadian and American cooperation in combating climate change will require that we expand and intensify the

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<sup>12</sup> Ozone Annex, *supra* note 6.

<sup>13</sup> 1978 GLWQA, *supra* note 3.

<sup>14</sup> See *Press Release: Conference of New England Governors and Eastern Canadian Premiers*, at <http://www.cmp.ca/press-neg.htm> (last visited Jun. 5, 2002).

<sup>15</sup> See *Mr. Bush's Global Warming Plan*, Feb. 14, 2002, at <http://www.cbsnews.com/stories/2002/02/14/politics/main329372.shtml>.

cooperation that already exists between our two countries.<sup>16</sup> We support that sentiment; we look forward to developing approaches with the United States on key issues such as science, technology, carbon sequestration, emission measurement and accounting, as well broader-based areas of cooperation in terms of capacity-building in developing countries. Cooperation and collaboration on solutions to climate change is necessary whether we are pursuing it within a multilateral, a regional, or a bilateral framework. We learn that these different architectures can co-exist from our trade colleagues. It is not without difficulties – there are complications – but I believe that it is possible that these various approaches can be complementary and enforce and reinforce the need to move forward on this absolutely critical issue.

### PATHS AND MODES FOR FUTURE COOPERATION

Let me address the third question now. What are likely future directions in terms of how we can cooperate together? First, there is the trend towards further convergence in our bilateral relationships. Second, we will expand those existing relationships to trilateral and hemispheric ones. Third, we will increasingly see our bilateral relationship in terms of a broader global policy environment.

As economic and security issues dominate the Canada-U.S. agenda, the debate is focusing more and more on the issue of harmonization. Both industry and governments are asking whether convergence of standards is the best path. As early as in the 1920s, the harmonization of waterfowl harvest regulations demonstrated how this approach can ensure consistent actions throughout a shared ecosystem. Around the time of the Air Quality Agreement negotiations, the logic of using harmonized standards was applied to the debate over how to ensure a level economic playing field.

The integration of vehicle manufacturing across North America was also a significant factor in standard-setting.<sup>17</sup> Harmonization continues with recent changes to fuel regulations regarding sulfur content.<sup>18</sup> In the future, this approach may also be applied in reducing greenhouse gas emissions through the application of an emissions trading system. In any event, we are watching the U.S. Clean Air Emissions Trading System concerning NO<sub>x</sub> and mercury very closely.

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<sup>16</sup> See Christine Todd Whitman, Remarks at the 2002 Earth Technologies Forum (March 25, 2002) (transcript available at <http://yosemite1.epa.gov>).

<sup>17</sup> Agreement Concerning Automotive Products, U.S.-Can., Jan. 16, 1965, C.T.S. 1966/14.

<sup>18</sup> See DEPARTMENT OF ENERGY, THE TRANSITION TO ULTRA-LOW-SULFUR DIESEL FUEL: EFFECTS ON PRICES AND SUPPLY 42 (2001), available at <http://www.eia.doe.gov/oiaf/servicrpt/ulsd/chapter6.htm>.

Because we have such a close trading relationship with the United States, both industry and government are concerned about how environmental policies will affect competitiveness. We do recognize that harmonizing standards is often a straightforward way of dealing with that issue. A single system can reduce the production and administrative costs of tailoring products to meet the two sets of standards.

However, we also recognize that there is no silver bullet here that will, on its own, align the economic and environmental interests of our two countries. There are also other issues beside competitiveness. Social and environmental values and performance are also important components to quality-of-life equation.

In any case, there is a growing body of knowledge suggesting that we do not have to choose between environmental objectives and economic growth productivity. Indeed, the pursuit of one does not require a reduction in the other; these goals can be mutually supportive. This has been our experience in Canada, and there is evidence from other countries around the world that appears to bear this out.

First, let me put environmental costs in perspective. In Canada, the cost of environmental protection in the economy is estimated to be about 1.8 percent of GDP.<sup>19</sup> It is comparable to, but somewhat less than, the estimate of U.S. expenditures, which stands at about 2.6 percent of GDP.<sup>20</sup> Overall, a great majority of studies reviewed conclude that, generally, environmental protection measures do not generate competitive disadvantages. More positively, at the 2000 World Economic Forum, it was noted that areas with stringent environmental policies do not experience weaker economic growth. In fact, high levels of strict regulations are strongly associated with increased economic competitiveness and a higher standard of living.

We need to listen to this evidence that shows that environmental protection and economic growth really need not be at odds. We really do need to reject the win-lose model. Let us embrace the win-win model and pursue policies that are compatible with both objectives.

The Canada-U.S. relationship on environmental and economic issues has implicitly borne this out. We have both prospered economically while still pursuing bilateral action on the environment. However, throughout the

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<sup>19</sup> In 1994-1995, approximately CAN\$16.7 billion was spent on environmental protection and pollution abatement. See ANIK LACROIX, ENVIRONMENTAL PROTECTION EXPENDITURE ACCOUNTS IN CANADA: ISSUES, SOURCES AND METHODS 16 (EUROSTAT Working Paper No. 12, 1997), available at [http://www.unece.org/stats/documents/1997/09/env\\_meth/12.e.pdf](http://www.unece.org/stats/documents/1997/09/env_meth/12.e.pdf). Canada's GDP was about CAN\$700 billion in 1995. See *Canada: Environmental Review*, at <http://www.eia.doe.gov/emeu/env/canada.html> (Oct. 1995).

<sup>20</sup> The United States spent approximately 2.6 percent of GDP on environmental protection in 1997. See *What Do We Spend on Environmental Protection?*, at <http://yosemite.epa.gov/> (last visited Jun. 5, 2002).

history of our bilateral relationship, Canada and the United States have often followed different environmental approaches. The United States, contrary to mythology in Canada, has focused relatively more on regulations and litigation, while Canada has followed a more conciliatory process with provinces and industry.

Despite this difference in approach, we found ways to work together – even when national outcomes have been different. Common objectives, combined with a common “tool kit,” help us get the job done.

An effective policy tool kit is increasingly important as we build a broader market in the Americas. We must ensure that it contains the right mix of smart regulation, economic instruments and voluntary initiatives to meet the challenges of environmental management. The move towards hemispheric cooperation in the signing of NAFTA to include Mexico advanced that trend enormously.

The North American Agreement for Environmental Cooperation and the subsequent creation of the Trilateral North American Commission for Environmental Cooperation are leading to a number of successful models that can be applied to a broader regional context. Programs such as the Sound Management of Chemicals,<sup>21</sup> the North American Pollutant Release and Transfer Registry<sup>22</sup> and the North American Biodiversity Information Network<sup>23</sup> have potential for broader hemispheric applications.

As our economies become more closely linked with our hemispheric partners, both Canada and the United States should work together to ensure that our close trading partners have strong sustainable societies. Canada has moved ahead with free trade and environmental agreements with Chile<sup>24</sup> and Costa Rica,<sup>25</sup> and is exploring agreements with four other Central American countries.<sup>26</sup> We remain committed to pursuing environmental issues within the context of the ongoing negotiations for a Free Trade Zone of the Americas.

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<sup>21</sup> See *Sound Management of Chemicals*, at [http://www.cec.org/programs\\_projects/pollutants\\_health/321/index.cfm?varlan=english](http://www.cec.org/programs_projects/pollutants_health/321/index.cfm?varlan=english) (last visited Jun. 5, 2002).

<sup>22</sup> See, e.g., *NAFTA Environmental Issues Bibliography*, at <http://www.csa.com/hottopics/ern/00jul/00jul15.html> (last visited Jun. 6, 2002).

<sup>23</sup> See *North American Biodiversity Information Network*, at [http://www.cec.org/programs\\_projects/conserv\\_biodiv/218/index.cfm?varlan=english](http://www.cec.org/programs_projects/conserv_biodiv/218/index.cfm?varlan=english) (last visited Jun. 5, 2002).

<sup>24</sup> Free Trade Agreement, Dec. 5, 1996, Can.-Chile, 36 I.L.M. 1067; Agreement on Environmental Cooperation, Can.-Chile, Feb. 6, 1997, 36 I.L.M. 1196.

<sup>25</sup> Free Trade Agreement, Apr. 23, 2001, Can.-Costa Rica, available at [http://www.dfait-maeci.gc.ca/tna-nac/Costa\\_Rica\\_toc-e.asp](http://www.dfait-maeci.gc.ca/tna-nac/Costa_Rica_toc-e.asp); Agreement on Environmental Cooperation, Can.-Costa Rica, Apr. 23, 2001, available at [http://www.ec.gc.ca/international/costarica/index\\_e.htm](http://www.ec.gc.ca/international/costarica/index_e.htm).

<sup>26</sup> Those countries are El Salvador, Guatemala, Honduras and Nicaragua. *Canada – Central America Four Free Trade Agreement Negotiations*, at <http://www.dfait-maeci.gc.ca/tna-nac/ca4-e.asp> (last updated March 4, 2002).



At a recent meeting in Ottawa of thirty-four health and environment ministers of the Americas, there was strong support to improve our understanding of the links between the environment, human health, and economic development. The ministers demonstrated a strong commitment to work together across the hemisphere to find solutions in these areas.<sup>27</sup> There has never been a more timely opportunity for such discussion between the hemispheric partners.

The broader international community is involved in the same debate. Four months from now, leaders will gather in Johannesburg for the World Summit on Sustainable Development.<sup>28</sup> While there has been a degree of re-energizing interest in the issue of sustainable development, I think we have to be frank and say that the scant amount of preparation at the global level leaves the future success of Johannesburg in some question. There are some concerns about the lack of focus and the lack of vision for the tenth anniversary of Rio.

Nevertheless, a number of key issues are emerging as countries prepare for the summit. These include poverty eradication and sustainable development, access to water and energy, and renewable energy resources in particular. Secondly, environment and health issues are becoming increasingly important in the public reaction to the environmental agenda. And, thirdly, strengthening environmental governance is essential to bringing greater coherence to an agenda that will translate promises into greater action at international, national and local level. Many ideas are coming to the fore from government, business, labor and international organizations, as partnerships between them are becoming a dominant theme of the preparations for Johannesburg.

Canada and the United States can still influence the process; it is not too late. Indeed, in Alberta this past weekend, the G-8 environment ministers issued a statement to the World Summit on Sustainable Development (WSSD), setting out what they viewed as the priorities for Johannesburg.<sup>29</sup> The Conference will have significant input from other organizations as well, including the United Nations Environmental Programme (UNEP), through its *Third Global Environmental Outlook Report*.<sup>30</sup> In looking ahead to the next

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<sup>27</sup> See *Meeting of Health and Environment Ministers of the Americas Ministerial Communiqué* (issued Mar. 4-5, 2002), at [http://www.ec.gc.ca/international/regorgs/docs/english/hema\\_Comm\\_e.htm](http://www.ec.gc.ca/international/regorgs/docs/english/hema_Comm_e.htm).

<sup>28</sup> The World Summit on Sustainable Development will be held in Johannesburg, South Africa from 26 August through 4 September 2002.

<sup>29</sup> See *Banff Ministerial Statement on the World Summit on Sustainable Development*, available at [http://www.g8.gc.ca/kan\\_docs/20020414-e.asp](http://www.g8.gc.ca/kan_docs/20020414-e.asp).

<sup>30</sup> UNITED NATIONS ENVIRONMENTAL PROGRAMME, *GLOBAL ENVIRONMENT OUTLOOK 3: PAST, PRESENT AND FUTURE PERSPECTIVES* (2002), available at <http://grid2.cr.usgs.gov/geo3/>.

30 years, the Report identifies enormous potential for market-based instruments and technology to protect environmental resources and to address social development concerns in emerging economies.<sup>31</sup> The Organization for Economic Cooperation and Development (OECD) is also focusing on policy options that will improve the integration of environmental consideration into the economic system.<sup>32</sup>

Further engagement of the private sector is a key theme, one in which both Canada and the United States are global leaders. The World Business Council on Sustainable Development (WBCSD) has put forward a challenge to the private sector to incorporate sustainability into its practices and adopt the “triple-bottom-line” approaches to doing business.<sup>33</sup> Specifically, the WBCSD and the International Chamber of Commerce have developed a joint body called the Business Action for Sustainable Development (BASD) as a proactive response to challenges facing the private sector. The BASD is actively urging corporations to commit to these principals for sustainable development.

## CONCLUSION

Canada and the United States are among the most prosperous nations on earth. Our economies are large users and producers of natural resources. We belong at the vanguard of the movement to align economic growth in corporate performance with environmental success. By our actions, we have shown that transboundary innovation and determination can lead to real societal change that strengthens both countries and leads to a healthy environment on both sides of the border. We must extend this ethic and engage our international partners in protecting the integrity of the global system in innovative new ways. I want to emphasize the strong relations between our countries and our citizens are at the heart of the way we manage the environmental relationship. From time to time, there will be differences; there are differences on climate change now.

As an aside, I was particularly pleased that when I woke up this morning, I noticed that under my door was slipped a newspaper indicating that the Senate had voted against the development of oil and gas reserves in the Arctic National Wildlife Refuge (ANWR).<sup>34</sup> Canada has strongly opposed the exploration and development of oil and gas reserves in the ANWR. The

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<sup>31</sup> *Id* at 407-408.

<sup>32</sup> See, e.g., *Home Environment and Sustainable Development: Economic Issues*, at <http://www.oecd.org> (last visited Jun. 6, 2002).

<sup>33</sup> See *Sustainable Development Reporting*, at [http://www.wbcsd.org/projects/pr\\_sustreport.htm](http://www.wbcsd.org/projects/pr_sustreport.htm) (last visited Jun. 6, 2002).

<sup>34</sup> See Tom Diemer, *Senate Blocks Oil Drilling in Alaskan Arctic Refuge*, *PLAIN DEALER* (Cleveland, OH), Apr. 19, 2002, at A1.

coastal plain comprises the core of an internationally-shared porcupine caribou herd and other wildlife resources which migrate seasonally between our two countries.<sup>35</sup> And we believe very strongly that this habitat warrants permanent protection.

The differences also extend to the integrity of Canada's fresh water resources. While this is a key concern in some regions in the United States, it has a much larger national profile in Canada. That is why the Government of Canada and many provinces have strongly opposed interbasin transfers of fresh water within Canada, as well as across the Canada-U.S. border. However, we do not believe that even these differences can shake the very foundations of our partnership with the United States; we believe that even our disagreements build on the strength of the strong foundation we already possess. Opportunities for dialogue, such as this conference, have always been an essential ingredient in our successes.

I want to thank Henry King and our host, Case Western Reserve University School of Law, and I very much appreciate the opportunity to have spoken to you today. Thank you very much.

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<sup>35</sup> See *Caribou in the Arctic Refuge*, at <http://arcticcircle.uconn.edu/ANWR/anwrcaribou.html> (last visited Jun. 5, 2002).