

1 FEDERAL SUBSISTENCE BOARD  
2  
3 PUBLIC WORK SESSION MEETING  
4

5  
6 VOLUME II  
7

8 DENINA CONVENTION CENTER  
9  
10 ANCHORAGE, ALASKA  
11 May 4, 2011  
12 9:00 o'clock a.m.  
13  
14  
15

16 MEMBERS PRESENT:

- 17  
18 Tim Towarak, Chair  
19 Geoff Haskett, U.S. Fish and Wildlife Service  
20 Julia Dugan, Bureau of Land Management  
21 Sue Masica, National Park Service  
22 Beth Pendleton, U.S. Forest Service  
23 Kristin K'eit, Bureau of Indian Affairs  
24  
25 Ralph Lohse - Southcentral RAC  
26 Daniel O'Hara - Bristol Bay RAC  
27 Bertrand Adams - Southeast RAC  
28 Sue Entsminger - Eastern Interior RAC  
29 Lester Wilde - Yukon-Kuskokwim Delta RAC  
30 Timothy Smith - Seward Peninsula RAC  
31 Rosemary Ahtuanguaruak - North Slope RAC  
32 Jack Reakoff - Western Interior RAC  
33 Spiridon Simeonoff - Kodiak/Aleutians RAC  
34  
35 Kelly Hepler, State of Alaska Representative  
36  
37 Keith Goltz, Solicitor's Office  
38  
39  
40  
41  
42

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

2  
3 (Anchorage, Alaska - 5/4/2011)

4  
5 (On record)

6  
7 CHAIRMAN TOWARAK: Good morning. I'm  
8 going to call this meeting to order. We were on recess  
9 since yesterday morning, and we're ready to reconvene.

10  
11 Before we get started, I'd like to  
12 recognize North Pacific Fishery Management Council member  
13 Sam Cotton. Sam, welcome to our meetings.

14  
15 We were on Item No. 8, a draft tribal  
16 consultation protocol, and Mr. Steve Kessler will walk us  
17 through that issue. Steve.

18  
19 MR. KESSLER: Thank you, Mr. Chairman.  
20 Good morning, Board members, Council Chairs, State of  
21 Alaska liaison, tribal representatives, and members of  
22 the public.

23  
24 My name is Steve Kessler. I serve on the  
25 InterAgency Staff Committee representing the U.S. Forest  
26 Service. I had a lead role in developing this  
27 preliminary tribal consultation protocol which you will  
28 be discussing today. That preliminary tribal  
29 consultation protocol starts on Page 31 of your book.

30  
31 First I would like to provide some  
32 background. Executive Order 13175, titled Consultation  
33 and Coordination with Indian Tribal Governments, requires  
34 regular and meaningful consultation and collaboration on  
35 a government-to-government basis when there are  
36 substantial direct effects on one or more Indian tribes,  
37 on the relationship between the Federal Government and  
38 Indian tribes, or on the distribution of power and  
39 responsibilities between Federal Government and Indian  
40 tribes.

41  
42 In the past, because of the foundational  
43 role of the Regional Advisory Councils in the Federal  
44 program, as well as the requirement in ANILCA, Title VIII  
45 that the Board defer to the Councils' recommendations,  
46 the Board has not explicitly consulted with tribes during  
47 the development of regulations. However, the Board has  
48 always been clear about inviting and encouraging tribes  
49 to engage in the regulatory process at every step,  
50 including at Council and Board meetings.

1                   In 2009 as the Board was developing the  
2 proposed wildlife rule for the 2010 to 2012 regulatory  
3 periods and finalizing the fisheries rule for the 2009 to  
4 2011 regulatory period, the U.S. Department of  
5 Agriculture became concerned about the language in our  
6 rule's preambles concerning the executive order. As a  
7 result, the Secretaries offices for the Department of the  
8 Interior and the Department of Agriculture agreed to  
9 modify language in the proposed wildlife rule and to  
10 clarify the opportunities for tribal involvement in the  
11 Board's regulatory process.

12  
13                   In 2010 the Department of the Interior  
14 Deputy Solicitor for Indian Affairs asked for a more  
15 explicit consultation procedure with tribes. As a  
16 result, the Board decided to develop a tribal  
17 consultation protocol.

18  
19                   In December 2010 the Board initiated  
20 discussion with the tribes and ANCSA corporations across  
21 the state to figure out what that protocol should look  
22 like. The ANCSA corporations were included because the  
23 corporations must be consulted with on the same basis as  
24 tribes as required by Public Law 108-199 as amended by  
25 Public Law 108-447.

26  
27                   A letter to the tribes and corporations  
28 said that on January 21st the Board would discuss with  
29 tribes how best to structure future tribal consultation,  
30 working with the Board and the Regional Councils, and  
31 that to ensure more comprehensive and effective future  
32 tribal involvement, we also intend to develop a tribal  
33 consultation protocol. The Board also stated their  
34 intent to discuss with Regional Councils how they  
35 envision tribal government-to-government consultations  
36 should occur.

37  
38                   The Board continued that based on input  
39 and the discussion at the meeting on January 21st and  
40 later with the Regional Advisory Councils, the Board will  
41 develop a draft approach to tribal consultation, and that  
42 the Board will share that approach with tribes and  
43 Regional Councils prior to finalizing the process.

44  
45                   In a letter to the Department of the  
46 Interior Deputy Solicitor for Indian Affairs dated  
47 December 20th, 2010, the Board said it expected to adopt  
48 the final consultation protocol at its meeting in May  
49 2011, which is this meeting.

50

1                   On January 21st, 2011, the Board heard  
2 from many different tribal members concerning their  
3 interest in consultation. Summarized comments can be  
4 found on Page 82 to 83 of your Board packet. Written  
5 comments were also received and are summarized on Pages  
6 83 and 84. Those comments helped build the preliminary  
7 consultation protocol in front of you now.

8  
9                   In February and March 2011, the Regional  
10 Advisory Councils met for their winter meetings. The  
11 Regional Advisory Councils also provided comments  
12 concerning tribal consultation, and those can be found on  
13 Pages 85 and 86 of your packet. And I think you'll be  
14 hearing from the Council Chairmen today also.

15  
16                   A common theme from the comments included  
17 the need for better communication, including increased  
18 tribal awareness of the Federal regulatory process, and  
19 greater involvement of tribes. Some on the Regional  
20 Advisory Councils were concerned that this process should  
21 not diminish the role of the Councils.

22  
23                   So consistent with the Board's intent to  
24 develop a tribal consultation protocol based on  
25 discussion at your January 21st meeting with tribes and  
26 Alaska Native corporations, and with input from the  
27 Regional Advisory Councils, this preliminary tribal  
28 consultation protocol in front of you has been developed.

29  
30  
31                   Before we discuss the preliminary  
32 protocol, I would like to point out the timeline as  
33 expressed as a flow chart on Page 37 of your book. That  
34 chart shows possible next steps in the development of the  
35 protocol. If you were to follow the plan as laid out,  
36 there would be two opportunities for further discussion  
37 of this protocol with tribes, including government-to-  
38 government consultation, government-to-corporation  
39 consultation at the BIA Providers Conference in late  
40 November, and one opportunity for further discussion with  
41 the Regional Advisory Councils at their fall meetings.  
42 This is consistent with our intent stated in letters to  
43 the tribes, corporations, and Regional Advisory Councils  
44 to have them involved in further review, discussion and  
45 modification of this approach prior to finalization.

46  
47                   The flow chart shows final protocol  
48 completion at your January 2012 public meeting. And the  
49 flow chart is up on the screens right now.

50

1 I won't go further into this flow chart  
2 now unless you would like me to. We can do that during  
3 further discussion, if you wish.

4  
5 I'll now go into the tribal consultation  
6 protocol package itself, which starts on page 31.

7  
8 The preliminary draft of the protocol was  
9 developed and then shared with your InterAgency Staff  
10 Committee members and your Native liaison or tribal  
11 relations program managers. Based on their review in a  
12 meeting held with them on April 20th, the version of the  
13 consultation protocol in your book was developed.

14  
15 At that meeting there were a number of  
16 suggestions that have not been specifically included, but  
17 I will mention some of them as I go through the protocol.  
18 Since that meeting, additional ideas have also surfaced  
19 from participants, but they're not included here, and I  
20 think there will be some discussion of those later on.

21  
22 There's also at least one modification  
23 that must be made, a typo, in one of the definitions.

24  
25 I'd like to go over the protocol and some  
26 of the key parts. There are some areas of concern or  
27 areas that may need some decisions from you, assuming you  
28 agree that this is an appropriate starting point.

29  
30 The introduction is on Page 31. This  
31 section provides a short history of the development of  
32 this protocol, and proposes further review by tribes and  
33 Regional Advisory Councils. In the final protocol, this  
34 section would be modified to show what process was  
35 actually followed, and not the process that is proposed  
36 to be followed.

37  
38 This section also provides a definition  
39 of tribes for this protocol. That includes both  
40 Federally-recognized tribes for which we have government-  
41 to-government relationships and ANCSA corporations for  
42 which we have government-to-corporation relations. We  
43 did struggle some with what to call this combination of  
44 federally-recognized tribes and ANCSA corporations.

45  
46 The introductory section also refers to  
47 the Department of the Interior's draft policy on  
48 consultation with Indian tribes and the Department of  
49 Agriculture's action plan for consultation and  
50 collaboration. It states that the Board's intent is that

1 this protocol would tier to both Department's department-  
2 wide policies. It appears that the protocol as now  
3 presented to you is consistent with both the USDA action  
4 plan on Page 38 of your book and the draft Department of  
5 the Interior policy on Page 72.

6

7 When the DOI's policy's finalized,  
8 probably later this summer, and the USDA departmental  
9 regulations are adopted under the action plan, this  
10 protocol may need some modification.

11

12 On Page 31 then is the section on  
13 policies. This section states that the role of -- states  
14 the role of the Board and then it defers to  
15 recommendations of the Councils. It recognizes Executive  
16 Order 13175 on consultation and coordination with Indian  
17 tribal governments, and it says why the Board has not  
18 explicitly consulted with tribes in the past, and states  
19 a new policy, which I'm going to quote, to formally  
20 incorporate regular and meaningful consultation with  
21 tribes into the Federal Subsistence Management Program in  
22 order to help ensure more comprehensive and effective  
23 tribal involvement.

24

25 On Page 32 are goals and objectives, and  
26 they are an important part of this document. They drive  
27 the actual steps of the protocol. I won't go through  
28 them, but hopefully everybody has read through those  
29 goals and objectives.

30

31 The procedures start on Page 32. The  
32 section recognizes that there are many parts of the  
33 Federal subsistence program that can be consulted on with  
34 tribes, and that consultation can be prompted by either  
35 a tribe's specific request to the Board or a specific  
36 action proposed by the Board.

37

38 This section also states the  
39 consultations would occur on a recurring annual basis  
40 during the promulgation of Part C and D regulations. And  
41 this section also says that generally the Board will  
42 offer to consult on all topics presented to the Councils  
43 for their comment.

44

45 The consultation process, other than the  
46 regular annual cycle would be determined on a case-by-  
47 case basis.

48

49 Steps for the promulgation of the annual  
50 regulations are first presented in this section and then

1 expanded in the section called consultation protocol  
2 which I will discuss next. That section starts on Page  
3 33.

4  
5 The annual cycle of rule promulgation has  
6 five steps, and a sixth step is added to this protocol.

7  
8  
9 First, the proposed rule notice is  
10 published. The proposed rule is always to continue the  
11 previously adopted rule. In the past all tribes have  
12 been on the mailing list to receive the proposed rule.  
13 The changes in this step are (1) to ensure that mailings  
14 are received by keeping an up-to-date contact list; and,  
15 second, offering assistance to tribes in preparing  
16 regulatory proposals or to just talk about potential  
17 proposals.

18  
19 So a few notes on this step. DOI is work  
20 -- currently working separately to figure out ways to  
21 maintain an up-to-date contact list. Hopefully the  
22 Federal Subsistence Board will be able to depend on that  
23 DOI effort.

24  
25 As far as assisting tribes with  
26 developing proposals, the program has always done that,  
27 but it may not have been clear to tribes that we actually  
28 provide that service. It would be clear through this  
29 protocol.

30  
31 The next step is publication of a book  
32 with proposed regulatory changes and a request for  
33 comments. The changes in this step are similar to the  
34 previous step: ensure tribes receive copies of the  
35 proposed change; and offer tribes help in understanding  
36 and commenting on the proposed changes. Again the  
37 program has done that in the past, but it may not always  
38 have been clear. Here in this protocol we make it  
39 explicit.

40  
41 The third step is the Council meetings.  
42 In this step there are a few significant additions from  
43 past practice. Step 3.b., and you can see these steps if  
44 you look on -- in the protocol here, I'm on Page 33.  
45 Step 3.b. requires personal contact if proposals of  
46 special interest to a tribe or tribes will be discussed.  
47 The idea here is that there will be no surprises. The  
48 step includes the already in place practice of having a  
49 location on the agenda for discussion by tribes with the  
50 Council of regulatory proposals of tribal interest.

1                   One change is that the Chair of the  
2 Council would specifically ask if the speaker officially  
3 represents a tribe.

4  
5                   Also, in step 3.c.iii., if a Board member  
6 is present, they sit with the Council during the  
7 discussion with tribes. That is a change.

8  
9                   But any discussion would not be  
10 considered government-to-government consultation. That  
11 would occur only with the entire Board.

12  
13                   Step 3.d. is also new. Testimony by a  
14 tribe at a Council meeting would be presented to the  
15 Board when the tribe is unable to present to the Board in  
16 person.'

17  
18                   Step 4, and it's on Page 34, is the Board  
19 meeting. There should be government-to-government,  
20 government-to-corporation consultation at the Board  
21 meeting. There are at least two ways to do it: As you  
22 did at the last fish meeting by having a consultation  
23 meeting in advance of the regular meeting; or as proposed  
24 here, adding a specific tribal consultation section  
25 during the step-wise discussion of each proposal.

26  
27                   Besides this change, there are a number  
28 of additional changes proposed:

29  
30                   First, if there is a proposal of special  
31 interest to a tribe, personal contact should be made so  
32 that they know that a proposal will be discussed. Again,  
33 no surprises.

34  
35                   Second, if there is a known objection by  
36 a tribe to a proposal, that proposal would not be placed  
37 on your consensus agenda.

38  
39                   And, third, through consultation,  
40 although the Board must defer to a Council's  
41 recommendation, the Board may have some latitude to  
42 respond to a tribe's concerns in a meaningful way.

43  
44                   The last step, step 5, which is on Page  
45 34, is new. It would provide for a follow-up to tribes  
46 so that they are informed of the Board's decision on a  
47 proposal. The Board already does this for the Regional  
48 Advisory Councils. With this change, the Board would  
49 also inform tribes.

50

1                   That includes [sic] the steps of the  
2 protocol for the annual rulemaking.

3  
4                   The final step in the overall tribal  
5 consultation protocol would a monitoring step as shown on  
6 Page 34 of your book. Within two years following the  
7 adoption of this protocol, the Board with Regional  
8 Advisory Councils and tribes would review this process,  
9 see if it resulted in meaningful interaction and  
10 effective tribal involvement, and continue to respect the  
11 role of the Councils. The protocol would be revised if  
12 necessary.

13  
14                   So that's the end of the protocol, except  
15 for some definitions. I'd call your attention to the  
16 definitions on Page 36. We know that these will need to  
17 be modified based on the final adoption of the  
18 departmental consultation policies.

19  
20                   One error should be noted in the first  
21 definition where the wording says, a substantial effect  
22 an Indian tribe. That should be worded as a substantial  
23 direct effect an Indian tribe, consistent with Executive  
24 Order 13175.

25  
26                   Some points that I mentioned as I went  
27 through the protocol, and a few others that the Board may  
28 want to discuss include the development of this protocol  
29 was by Staff only. It built off the comments received  
30 from tribes and Councils. It was not developed jointly  
31 with them. Note that the December letters to tribes,  
32 corporations and RACs envisioned this and had the Board  
33 building the first draft of the protocol.

34  
35                   Another item, it's not clear what we  
36 should call that combination of tribes and ANCSA  
37 corporations. In the protocol as written, the  
38 combination is referred to as tribes. One option has --  
39 is to have protocols for each which eventually may be  
40 found consistent with the Department of the Interior's  
41 consultation policy.

42  
43                   Also, how to go about consultation  
44 associated with the Regional Advisory Council meetings is  
45 not clear. Perhaps it is not possible since the Regional  
46 Advisory Councils do not directly represent the Federal  
47 Government. The protocol presented to you would have a  
48 Federal Board member, perhaps their designee sit with the  
49 Council during discussions on a proposal with tribal  
50 representatives.

1                   Also, how do the tribes consult with the  
2 Federal Subsistence Board? The proposal here is to  
3 incorporate consultation during the regular step-wise  
4 discussion of proposals. Should there instead be  
5 government-to-government consultation and government-to-  
6 ANCSA corporation consultation prior to the Board meeting  
7 on all proposals as one -- at once as was done at your  
8 last fisheries regulatory meeting? There's some  
9 questions about that. Would it be it be a closed  
10 session? Would the Regional Advisory Council Chairs be  
11 invited? There will need to be a decision on how to  
12 consult on the proposed wildlife regulations coming out  
13 this January with a stand-alone consultation or using the  
14 methods in this preliminary protocol.

15  
16                   Finally, you need to decide actual  
17 process of completing this protocol. There's the flow  
18 chart proposal on Page 37. Note that it includes an  
19 important step of consultation on the protocol to be held  
20 as part of the BIA Providers Conference in late November.  
21 That would be an additional meeting of the Board.

22  
23                   And that's all I have. Thank you, Mr.  
24 Chairman.

25  
26                   CHAIRMAN TOWARAK: Thank you, Mr.  
27 Kessler.

28  
29                   Are there any questions from the Board or  
30 the RAC Chairs.

31  
32                   (No comments)

33  
34                   CHAIRMAN TOWARAK: Our normal process is  
35 to open the floor to any public comments, and then we  
36 will hear from the State to make any comments on the  
37 presentation, and then listening to the Regional Advisory  
38 Council Chairs.

39  
40                   Mr. Adams.

41  
42                   MR. ADAMS: Mr. Chairman. Before you go  
43 any further, I did have a question and a comment to make.  
44 And I was trying to gather my thoughts while we were at  
45 pause there.

46  
47                   But I thank Mr., you know, Kessler, for  
48 the presentation he made to us today, but I'm really  
49 concerned about whether we have any know -- you know, we  
50 got this on Page 36, Federally-recognized tribes.

1 Actually there's two categories of Federally-recognized  
2 tribes. There's a tribe that operates 638 contracts and  
3 then there is a compacting tribe. And, you know, I that  
4 definition needs to be placed in here somewhere.

5  
6 And the difference between the two is  
7 that a 638 contracting tribe, you know, can enter into  
8 contracts, you know, with the Federal Government on very  
9 limited types of programs, services, functions or  
10 activities. A compacting tribe can actually take over a  
11 program, function, service or activity, you know, if they  
12 so wanted. And so those -- I think that definition also  
13 needs to be included, you know, in that section there,  
14 because it does really identify, you know, the power and  
15 authority of tribes.

16  
17 And I'm kind of concerned about where  
18 ANCSA corporations are going to fit into the category.  
19 They may be regarded as tribes, but they are not  
20 Federally-recognized tribes. And so I think the process  
21 here is that if ANCSA corporations have any issues to  
22 bring before the Board, that they should work through  
23 Federally-recognized tribes.

24  
25 Thank you, Mr. Chairman.

26  
27 CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
28 I see Mr. Kessler making notes on your comments.

29  
30 MR. ADAMS: I promised him I wouldn't ask  
31 him a hard question.

32  
33 (Laughter)

34  
35 CHAIRMAN TOWARAK: Mr. Smith.

36  
37 MR. SMITH: I had a question for Mr.  
38 Kessler, too. In part of your presentation you talked  
39 about discussions on whether the meetings would be opened  
40 or closed. I'm just wondering what the legal basis for  
41 closing the meetings would be.

42  
43 MR. KESSLER: Well, I think, that they're  
44 -- Mr. Chairman. Mr. Smith. I think that there are  
45 probably others that are more expert in tribal  
46 consultation than I am, but typically tribal consultation  
47 between designated members, designated representatives of  
48 a tribe and the Federal government can be a closed  
49 meeting. And as such done in private without a record or  
50 anything else.

1                   The way this program is set up, it's a  
2 very open and inclusive process, and with transcripts  
3 that are done, both at Council meetings and at the  
4 Federal Subsistence Board level.

5  
6                   So exactly how the meetings with tribes  
7 would be conducted, whether they would be conducted as  
8 closed sessions or as open sessions as part of the  
9 regular Federal Subsistence Board process is a question  
10 I think that needs to be addressed by the Board.

11  
12                   MR. SMITH: Just to follow up on that, I  
13 think that as a practical matter, having them closed  
14 might be a problem. For example, in our community, I  
15 think there are five tribes, and then probably the  
16 majority of residents of Nome are not members of any of  
17 the tribes that are based in Nome. If you held a meeting  
18 in -- a closed-door meeting, you would exclude almost  
19 everybody, almost the entire community would be excluded,  
20 you know, if you met with a single tribe. It just  
21 doesn't seem efficient. If the goal -- then you would  
22 have to have some kind of -- I would think you would have  
23 to have some kind of a separate meeting to inform the  
24 other stakeholders.

25  
26                   MR. KESSLER: Thank you, Mr. Chairman.  
27 At this point, the way this protocol is written, there  
28 are no closed meetings. But the question is whether  
29 there should be some closed meetings, and the opportunity  
30 for a closed government-to-government consultation event.

31  
32                   CHAIRMAN TOWARAK: I think the Nome  
33 situation would also apply to Barrow, to Kotzebue, to  
34 Bethel, you know, to the major regional hubs. So I think  
35 we should review that and make sure it doesn't exclude  
36 people.

37  
38                   Do we have any further questions of Mr.  
39 Kessler.

40  
41                   (No comments)

42  
43                   CHAIRMAN TOWARAK: We'd like to take  
44 maybe a three-minute break to do a little consultation  
45 here before we proceed. So if you would excuse us, we'll  
46 take a three-minute break.

47  
48                   (Off record)

49  
50                   (On record)

1                   CHAIRMAN TOWARAK: I'd like to reconvene.  
2 As we're coming back to our chairs, I'd like to point out  
3 that we -- this whole tribal consultation process is a  
4 new one with the new administration and the directions I  
5 think that were set by the President himself. I attended  
6 his first meeting with the nationwide tribes, and it was  
7 very interesting. And the reactions that we felt at that  
8 time were very positive.

9  
10                   As far as how it relates to the Federal  
11 Subsistence Board, I think we've been very careful to  
12 make sure that we're approaching this whole issue right.  
13 And so as we work our way through this issue, we're  
14 trying to make sure that we cover as much of the grounds  
15 as we could during the whole process.

16  
17                   And I'd like to turn the mic over to  
18 Board Member.....

19  
20                   MR. HASKETT: Geoff.

21  
22                   CHAIRMAN TOWARAK: Geoff.

23  
24                   MR. HASKETT: Thank you, Mr. Chair. So  
25 let me explain a little bit what's happening here,  
26 because I think I've thrown some concern into the ranks  
27 as you can see for our quick discussion there.

28  
29                   So I want to thank Steve and the Staff  
30 that worked on this. I think it's an excellent proposal.  
31 I think this is a very complicated, tough issue to figure  
32 out how to do it right.

33  
34                   And we had some other ideas that we've  
35 been talking about over the last couple of days, and  
36 since this is a work session as opposed to one of our  
37 regular sessions, we're making sure it's okay to go ahead  
38 and put some possible amendments in for consideration.

39  
40                   And what I'd ask for was I thought it  
41 would make more sense to go ahead and do that early on  
42 instead of later, so it might change the number of  
43 questions, the kind of questions people might ask. So  
44 what I've asked is for Crystal Leonetti, who's my native  
45 liaison, to go ahead and make some potential proposals on  
46 some other things we might look at for this in terms of  
47 the process. And this is not meant to be something  
48 that's it came from, you know, any certain group. I  
49 think there's been lots of discussions here. You know,  
50 some of the native liaison's from the other bureaus have

1 been involved. This is not a position, this is just hear  
2 some other ideas to look at and think about.

3  
4 So I appreciate the Board giving me the  
5 chance to go ahead and have Crystal through a couple  
6 other ideas on the table. So with that, I'll turn it  
7 over to Crystal.

8  
9 MS. LEONETTI: Quyana. (In Yup'ik) My  
10 Yup'ik name is (Yup'ik), and for all of my relatives who  
11 I haven't met in the room yet, my parents are Al and  
12 Grace Poindexter from Anchor Point. My paternal  
13 grandparents are Chuck and Beula Poindexter from Anchor  
14 Point. And my maternal grandparents are Harry and Daisy  
15 Barnes from Dillingham.

16  
17 Again, my name is Crystal Leonetti and  
18 I'm the Alaska Native affairs specialist for U.S. Fish  
19 and Wildlife Service.

20  
21 First I just wanted to read a definition  
22 of consultation, because I think everybody has a  
23 different definition in their head, and for a lack of a  
24 statutory definition of consultation, this is what Fish  
25 and Wildlife Service has as a definition. The plain  
26 meaning, the dictionary definition, is to consult -- to  
27 consult means to ask for advice or to see an opinion. It  
28 does not mean obtaining consent. For a working  
29 definition, what we go by is a mutual, open and direct  
30 two-way communication conducted in good faith to secure  
31 meaningful participation in the decisionmaking process as  
32 allowed by law. So that's just a precursor.

33  
34 So what I'm presenting as Geoff said has  
35 been agreed upon by Fish and Wildlife Service and the  
36 Native liaisons from the DOI agencies.

37  
38 And, again, thank you, Steve, for all the  
39 work you've done putting together the draft protocol.

40  
41 So we need to have something going  
42 forward for the fall cycle. We need to do consultation  
43 for the fall cycle of RAC meetings.

44  
45 And what I'm going to recommend for the  
46 Board to consider is three things. One is that we have  
47 an interim process for the fall cycle. And I'll go into  
48 in addition to this protocol what that recommendation  
49 would be.

50

1                   The second thing is consultation in  
2 December at the BIA Service Providers Conference, which  
3 Steve already mentioned, which is, I've talked to BIA,  
4 the afternoon of December 1st. It will be at the BIA  
5 Service Providers Conference. So consultation with  
6 tribes on December 1st.

7  
8                   And then the third thing I'm recommending  
9 to the Board is that a work group made up of InterAgency  
10 Staff Committee members, Native liaisons, and tribal  
11 leaders to further work on this consultation protocol.  
12 And the reason for that is the shortfall that I've seen  
13 so far is that tribal leaders have not been at the table  
14 in drafting this and they need to be at the table if it's  
15 going to be fair to them.

16  
17                   So going into an interim process for the  
18 fall cycle, the premise about tribal consultation is that  
19 it should be done early. And because the Federal  
20 Subsistence Board gives deference to the RACs,  
21 consultation should be done before the RAC meetings  
22 occur. Consultation should be a dialogue and not  
23 confined to the rigid structure of the RAC meetings.  
24 Consultation is between the two governments, the Federal  
25 government and the tribal government.

26  
27                   So for the interim fall cycle, I would  
28 recommend to the Board that at least one Board member  
29 with at least one other Federal Staff visit four hub  
30 locations to consult on proposals prior to the start of  
31 the RAC cycle, and that that be done before the Federal  
32 Staff analysis of all the proposals so that the analysis  
33 can include results from the consultations and the RACs  
34 can meaningfully consider what occurred at the  
35 consultations. So the consultation summaries will be  
36 used in the Federal analyses and incorporated into the  
37 RAC books. The RACs will use consultation summaries as  
38 a piece of information to consider.

39  
40                   As far as the development of a final  
41 protocol and this is again just a recommendation for the  
42 Board to consider, a work group made up of equal numbers  
43 of InterAgency Staff Committee, Native liaisons from each  
44 of the agencies, and tribal leaders would convene at  
45 least twice prior to finalizing the protocol. The work  
46 group would help put together the consultation at the BIA  
47 Service Provider's Conference, and also present the draft  
48 protocol and announce the December consultation during  
49 the AFN convention.

50

1                   The work group will be responsible for  
2 developing the final protocol for the Federal Subsistence  
3 Board to consider in either January 2012 or May 2012, and  
4 I leave that up to the Board to decide. But I think this  
5 probably needs to be done before January 2013.

6  
7                   Okay. That's all.

8  
9                   CHAIRMAN TOWARAK: Thank you, Crystal.  
10 If you could stay on the microphone, are there any  
11 questions of Crystal and the recommendations that she's  
12 made. Are there any objections to any of the  
13 recommendations.

14  
15                   (No comments)

16  
17                   CHAIRMAN TOWARAK: Personally I think  
18 they are very well -- it's been well thought out on your  
19 part, and I appreciate that.

20  
21                   MR. ADAMS: Mr. Chairman. I do have a  
22 question for Crystal, because I was taking notes real  
23 quick, and sometimes, you know, my mind doesn't catch up  
24 with them as fast as I'd like to any more.

25  
26                   But you mentioned, you know, a  
27 consultation to be done before the RAC meetings with  
28 tribal governments on a real government-to-government  
29 relationship as I understood that. How do you envision  
30 that taking place? Because one of the things that I  
31 found very difficult to do when we have our meetings, you  
32 know, we have two meetings a year, and we try to have  
33 them in areas where tribal members or people in that area  
34 have an opportunity to come to our meetings. We have a  
35 difficult problem trying to get as many people involved  
36 in our meetings.

37  
38                   And tribes have a real problem, because  
39 they don't have the funds. I know -- I think I mentioned  
40 this before, the tribe I belong to only has a \$1200  
41 budget on subsistence. And you can't do very much with  
42 that kind of money for that.

43  
44                   Even though we're saying tribes get more  
45 and more involved, I'm kind of curious, how are you going  
46 to reach out to those tribes and, you know, get them  
47 excited? I think they're excited about it. They just  
48 need to have some guidance on how they can become more  
49 involved. I think education and training and so forth is  
50 in order, but I'm kind of curious what you might have in

1 mind right now.

2

3

Thank you.

4

5 MS. LEONETTI: Well, that was a lot of  
6 stuff. Well, the first thing is, how would tribes be  
7 involved in the consultations, and how would especially  
8 tribes with limited resources get to those consultations.  
9 I would say that just like tribes have limited resources,  
10 so do the Federal agencies, and we can't get to every  
11 single village across the state. I think a good middle  
12 ground would be to go to some hub locations and then open  
13 up the phone line. And I've asked tribes if that's  
14 amenable to them, and they agreed that that would be very  
15 nice for them to be able to be on the phone and  
16 participate in a dialogue.

17

18 The other part of your question was about  
19 how do you get the word out to tribes and make sure that  
20 they're meaningfully involved. And that's actually a  
21 hurdle that the Federal government has been trying to  
22 tackle for at least since the Obama administration began.  
23 And one of the things is having a really good contact  
24 list, making sure that tribes are getting the information  
25 that you're sending them.

26

27 We've piloted an idea at Fish and  
28 Wildlife Service to have a share-point site that tribes  
29 can access on the internet. And if tribes don't have  
30 good internet access, we would note that and make sure  
31 they're receiving information by fax or by mail. But you  
32 could have a lot of information, instead of sending  
33 tribes stacks and stacks of paper in the mail. They can  
34 take what they want from -- I think there's 99 proposals  
35 and look at the ones they want.

36

37 So that -- it is a struggle, but I think  
38 it can be done.

39

40 MR. ADAMS: A follow-up, Mr. Chairman.

41

42 Thank you, Crystal. That, you know, is  
43 encouraging, you know, that you're going to be reaching  
44 out to tribes, and just hopefully, you know, we'll be  
45 able to be successful in getting them to come out and  
46 actually participate.

47

48 I know I've been encouraging my tribal  
49 council to even come up here and sit in the audience here  
50 and listen to what's going on. But they -- you know,

1 we've already addressed it. they have limited resources,  
2 and they just don't have the ability to be able to be  
3 involved as much as they would like to.

4  
5 But I would -- I'm going to be, you know,  
6 really concerned if, you know, we don't get as much  
7 people involved as they should.

8  
9 I sit on the Wrangell-St. Elias  
10 Subsistence Resource Commission meeting, and one of the  
11 things that I always tell our coordinator to do long  
12 before our meeting is reach out to those communities or  
13 those villages. We invite a tribal leader to come in and  
14 make opening comments, you know, and somebody will even  
15 offer a prayer for us. Try to get them involved that  
16 way, and it's very difficult trying to get them to come  
17 to those meetings. And here we are making decisions that  
18 directly affects their lives and then when they see a  
19 regulation or something, an issue that comes up before  
20 them, then, you know, they start, you know, crying about  
21 not being involved. But, you know, I know we try to  
22 reach out to them.

23  
24 And in the past few years, you know,  
25 we've seen how Tlingit and Haida Regional Housing  
26 Authority has been more and more involved, and they  
27 represent, you know, about 18 tribes in Southeast Alaska,  
28 and I think a situation like that would be -- is really  
29 encouraging to me.

30  
31 But you've got 250 some tribes in Alaska,  
32 and try to reach them all, you know, to be involved is I  
33 think going to be a real issue. And I hope we're  
34 successful in reaching them also, that they can be  
35 involved. There's a lot of power in tribes, you know.  
36 And it would be really nice to see that process, you  
37 know, take place and get them all involved.

38  
39 Yeah, money is a problem, but I think we  
40 need to work a little bit harder at it.

41  
42 Thank you. Mr. Chairman.

43  
44 CHAIRMAN TOWARAK: Mr. Lohse.

45  
46 MR. LOHSE: Thank you, Mr. Chair. Can I  
47 talk to Crystal, ask her a question?

48  
49 Crystal, you brought up a question or  
50 something in my mind anyhow when you talked about

1 government-to-government, and when we start dealing with  
2 it from a Council standpoint. And a Council can't deal  
3 with a tribe on a government-to-government basis, so we  
4 cannot consult with the tribes, so what I got from your  
5 presentation was that you would have with members -- with  
6 a member of the Board and Staff or something, you would  
7 have a prior consultation with the tribes involved and  
8 present their information in part of our -- in our  
9 booklet form. In other words, as information to the  
10 Council.

11  
12 But that doesn't preclude us from  
13 allowing tribes and tribal individuals from testifying at  
14 our Council just as anybody else can testify at our  
15 Council. I mean, it's not a government-to-government,  
16 but they can still come and testify as concerned  
17 individuals, concerned tribes, concerned entities. I  
18 mean, we'll have the Advisory Councils and stuff come and  
19 testify to us. So they still have that opportunity. I  
20 mean, we're not being -- just because we have it in our  
21 book as information from a government-to-government  
22 consultation, that doesn't preclude us from including  
23 them in our discussions, does it?

24  
25 MS. LEONETTI: No, not at all. And, in  
26 fact, in the protocol that Steve laid out, I think having  
27 a spot on the agenda where tribes can come and talk about  
28 the government-to-government consultation that they had  
29 with the Federal government, as well as any other  
30 positions that they would like to state to the RAC, I  
31 think it's important.

32  
33 MR. LOHSE: Well, that's the question  
34 that I had then though, because we can't have government-  
35 to-government -- we can't put it on our agenda as a  
36 government-to-government consultation, but we can still  
37 have it on our agenda as the opportunity to testify just  
38 like everybody else does, and recognize where they're  
39 coming from. But technically speaking, we could not put  
40 it on our agenda as the Council consulting with a tribal  
41 government.

42  
43 MS. LEONETTI: That's right.

44  
45 MR. LOHSE: Yeah. And I'll go on to one  
46 thing that Bert said, and one of the things I've read  
47 through here a lot is it keeps saying that the Federal  
48 government shouldn't have any unfunded mandates. And to  
49 me this looks like a lot of unfunded mandates about the  
50 time that you start telling people that we need to have

1 consultation with you, but we're not funding your ability  
2 to come and have that consultation. And I think that's  
3 a real shortcoming in here, like what he was saying.  
4 Somehow or another if the government wants government-to-  
5 government consultation, and the other party does not  
6 have the funding to have that consultation, it's the  
7 responsibility of the government then to fund that  
8 consultation; otherwise it's an unfunded mandate.

9

10 MS. LEONETTI: I'll leave that to the  
11 Board to decide.

12

13 MR. ADAMS: Mr. Chairman.

14

15 CHAIRMAN TOWARAK: Mr. Adams.

16

17 MR. ADAMS: I'm trying not to say too  
18 much today.

19

20 But in the consultation process, Crystal,  
21 I think that's a real good start. But I also think that  
22 during that process tribes should be encouraged to go  
23 through the process of developing a proposal, you know,  
24 and encourage them to do -- develop proposals on their  
25 behalf.

26

27 And as a member of the Southeast RAC, I  
28 look at proposals from the standpoint of who put that in.  
29 You know, sometimes an individual does it, and I have  
30 some very strong suspicions about that, because, you  
31 know, my question is, you know, was there public comment,  
32 you know, involved in this? and if there's no evidence  
33 of that, then, you know, I have a tendency to not support  
34 that. If there's an organization, then it has a little  
35 bit better, you know, power and authority for me to, you  
36 know, vote positive on that issue, because they're  
37 representing a group of people.

38

39 And when I mentioned earlier that tribes  
40 have a lot of power, I think this is where their power is  
41 going to come from is through that process. And if we  
42 can encourage them to represent their villages that they  
43 have jurisdiction over, and when they see a problem with  
44 subsistence in any shape, form, or whatever, you know,  
45 then they should have the ability to be able to submit  
46 proposals. I don't see very many tribal councils, you  
47 know, submitting proposals. And that would really,  
48 really throw a lot of weight, you know, on how our  
49 Council votes. And so I think that's really important,  
50 is the training process or encouraging them at least to

1 go through the process of developing a proposal and  
2 submitting it. And I think that's, you know, where they  
3 can be most effective.

4  
5           The government-to-government relationship  
6 I think, you know, is another subject that is not in that  
7 category. The government-to-government issue is, you  
8 know, tribe dealing with another government, a Federal  
9 government agency, like if a tribe, you know, wants to  
10 work with any one of these agency people, you know, the  
11 Park Service or Fish and Wildlife Service, you know, to  
12 enter into, you know, co-management agreements and so  
13 forth. I think that's really appropriate, you know.

14  
15           And then, you know, if they have issues  
16 that they need to address in other areas like submitting  
17 a proposal to address a problem they're experiencing,  
18 that would be another avenue that they can become more  
19 effective -- more involved in.

20  
21           But it's going to -- you guys have got a  
22 tough job ahead of you. I mean, I can tell you that  
23 right now, but I feel confident, you know, that we are  
24 going to make some good headway. Tribes are the way to  
25 go as far as I'm concerned.

26  
27           Thank you.

28  
29           CHAIRMAN TOWARAK: Thank you, Mr. Adams.

30  
31           MS. K'EIT: Mr. Chair.

32  
33           CHAIRMAN TOWARAK: Geoff, did you have a  
34 comment?

35  
36           MR. HASKETT: Just a point of  
37 clarification to kind of help how this conversation goes.  
38 I want to make it clear what Crystal's doing and what  
39 she's not doing here, is that -- I want to recognize that  
40 the work done by the Staff group and what Steve  
41 presented, we think was very, very well done. And I  
42 think that most of the bones of what we're talking about  
43 is there.

44  
45           What we're bringing forward and what's a  
46 little bit different is we had some specific ideas about  
47 some ways we might amend that and do some things slightly  
48 differently. And so the questions to Crystal, there's  
49 not a full blown, here's everything we have on how to do  
50 this yet. What we're talking about doing is putting

1 together a group that will include Staff, Native  
2 liaisons, some native representations that will bring  
3 something back to the group, taking a look at this kind  
4 of combined thing.

5  
6 So we don't have all the answers yet.  
7 And I know there's going to be a lot of questions, but I  
8 want to make it clear, it's not kind of a final product  
9 here. We're going to put a group together to come back  
10 to us with something that will take what was presented  
11 here with some amendments to be considered.

12  
13 Thank you, Mr. Chair.

14  
15 CHAIRMAN TOWARAK: Kristen.

16  
17 MS. K'EIT: Mr. Chair. Thank you.

18  
19 I have some comments, not actually any  
20 questions, but comments for our consideration as a Board,  
21 for our RACs and also for the public, as those of you who  
22 have signed up to provide comments, some additional food  
23 for thought as you prepare your comments.

24  
25 One thing to keep in mind I think is  
26 that, you know, it's been over a decade since the first  
27 executive order came out concerning government-to-  
28 government consultation. And none of the work done by  
29 the Staff Committee or in other discussions is meant to  
30 preclude the work of the RACs and the importance of what  
31 the RACs do on behalf of subsistence users.

32  
33 And it is though to recognize that very  
34 unique legal and trust relationship between the Federal  
35 government and Federally-recognized tribes. And the  
36 Board represents two agents of the Federal government.  
37 We represent the Secretary of Interior and the Secretary  
38 of Agriculture. And this is a very important step  
39 towards establishing a better mechanism for tribes,  
40 Federally-recognized tribes, to be involved in the  
41 process of regulations for subsistence.

42  
43 You know, Board members who have been  
44 here many years longer than I, and newer Board members,  
45 we recognize the importance of subsistence to the members  
46 of Federally-recognized tribes as well as non-tribal  
47 members.

48  
49 And one of the points that Crystal  
50 brought up was that this process is also looking at a

1 dialogue between the Federal government and Federally-  
2 recognized tribes. And I think that's part of the  
3 impediment of this -- the existing process of RACs and  
4 the Board is that there isn't a real opportunity for  
5 dialogue. There's a great benefit to Robert's Rules of  
6 Order and the formal structure of that, but there's -- it  
7 can be an impediment, too, to the conversation of what a  
8 Federally-recognized tribe is working towards for its  
9 tribal members.

10

11 And I think about the history of how many  
12 proposals tribes have brought forward to the Board  
13 through the RACs and how many of those have actually  
14 succeeded in doing what the tribe was requesting that the  
15 Board do. And, I mean, my short time on the Board, my  
16 short time in the Federal government, you know, just  
17 barely 10 years, I have not seen a lot of success for our  
18 tribes.

19

20 So this is an opportunity to acknowledge  
21 and to honor that unique relationship with Federally-  
22 recognized tribes and provide them a better opportunity.

23

24 I'm also concerned, as both Bert and  
25 Ralph brought up, the issue of unfunded mandates. This  
26 has been a unfunded mandate since the executive order was  
27 first put in place in the 90s. But I also know that for  
28 tribes, when there's an issue that is of utmost  
29 importance to them, they will do what they can to find  
30 the mechanisms to be involved. And it is our  
31 responsibility on the Federal side to make that as easy  
32 as possible. It's not always a matter of being able to  
33 give them money to participate, but it can mean we send  
34 our Staff, or we send an agent of the government to  
35 initiate and participate in that government-to-government  
36 dialogue.

37

38 A key point I think that I was going to  
39 bring up as we do the budget discussion for OSM is that  
40 OSM has a position of a Native liaison, and that person,  
41 part of their responsibility is assisting tribes and  
42 being a part of the Federal Subsistence Board process.  
43 That position has been vacant for a while. And the  
44 budget concerns, all the cuts in the overall Federal  
45 budget have been a concern to filling that position, but  
46 as we go forward with this protocol and those activities,  
47 that position is going to be key. I mean, it's going to  
48 be I think the number 1 -- well, maybe not the number 1,  
49 but it's going to be a high effect to whether this  
50 process succeeds or not.

1                   And lastly, I really appreciate the idea,  
2 and I think it's a useful idea, of having those  
3 government-to-government consultation opportunities  
4 before the RAC meetings so that RACs can hear the input  
5 that Federally-recognized tribes have provided, and that  
6 it be part of their overall process and part of their  
7 consideration as they do their work in the RAC meetings.

8

9                   Thank you, Mr. Chair.

10

11                   CHAIRMAN TOWARAK: Thank you Kristen.  
12 And I think you bring out a very interesting point to me,  
13 that, you know, talking about Robert's Rules of Order,  
14 we're going to have to now include tribal rules of order,  
15 and I think that's a worthy effort on our part.

16

17                   Sue, you had some comments.

18

19                   MS. MASICA: Thank you, Mr. Chairman.

20

21                   I had a question for Crystal. I just  
22 want to make sure from a sequencing standpoint, using the  
23 protocol that was in the book as the starting point, what  
24 I had understood was suggested would be the addition of  
25 a pre-RAC, these hub area meetings of some sort with a  
26 subset of the Board, either one or two members or  
27 whatever it would be, and then there would still be the  
28 opportunity as I understand the draft of the protocol,  
29 before for the entirety of the Board, when the Board  
30 formally meets, there would still be a tribal  
31 consultation section at that point also. Is that -- did  
32 I understand what you were proposing correctly?

33

34                   MS. LEONETTI: Almost. I didn't say  
35 anything about before the Federal Subsistence Board  
36 meets, but I think that's a valid idea as well.

37

38                   MS. MASICA: Or in conjunction with that  
39 I guess would -- I was going by 4.d. in the protocol in  
40 terms of what had been laid out, that there would still  
41 be an opportunity in conjunction with the Board  
42 consideration of a regulatory proposal.

43

44                   MS. LEONETTI: Yeah. So what I was  
45 recommending is taking the protocol laid out by Steve and  
46 adding to that the four hub locations, four or five hub  
47 locations prior to the RAC meetings.

48

49                   MS. MASICA: Mr. Chairman. That leaves  
50 me with I guess a legal question. Maybe we don't know it

1 yet, or it's out there, but sort of this can -- and maybe  
2 this is something the work group's going to have to  
3 grapple with, a piece of the Board versus the entirety of  
4 the Board at that first step. I mean, given that we have  
5 the entirety of the Board at the second step, maybe  
6 that's sufficient, I don't know, but I don't know if  
7 there's clarity on that point out there, but it's an  
8 unresolved question in my mind.

9  
10 MS. LEONETTI: I think there's some FACA  
11 considerations, and I don't -- I'm not a FACA expert, but  
12 I think having the entire Board in one location at one  
13 time means that you have to have an open meeting that's  
14 published ahead of time, and government-to-government  
15 should be the Federal government with the tribal  
16 government, and that's why I just recommended one or more  
17 Board members at each of those hub locations.

18  
19 MR. GOLTZ: I think there's a lot of  
20 legal uncertainty about how we're going to be able to put  
21 this all together. I think we have to remember that we  
22 do not have a departmental policy yet either from  
23 Agriculture or Interior. What we are doing is trying to  
24 craft something to get us through the next six months so  
25 that we can improve our process, but the -- it's too  
26 early for me to say what the final is going to look like.

27  
28 MR. HASKETT: And I think whatever the  
29 group comes up with will clearly be subject to legal  
30 review as well.

31  
32 There's one other part of that, too, that  
33 I'm not sure people heard. So these pre-meetings, if we  
34 decide to go this way, where one of us goes to different  
35 place, there was also an option in there I think where if  
36 there's a specific area that's not covered by one of  
37 those four places we go to, that we could also have the  
38 option of having one of us go there as well. So that's  
39 just some clarification from Crystal I'm asking for.

40  
41 MS. LEONETTI: Yeah, I think so. And  
42 then depending on what items are on the table or what  
43 tribes want to consult about, you would decide which  
44 agencies most pertain to those subjects that are on the  
45 table.

46  
47 CHAIRMAN TOWARAK: If you don't mind,  
48 we're going to switch to the tribal rules of order here  
49 and begin our hearing process. Public comments first.  
50 Pete.

1 MR. PROBASCO: Thank you, Mr. Chair. And  
2 we also have Lee Wallace on the phone that we'll take  
3 after I go through a couple, giving us time to dial them.

4

5

6 So first up will be Mr. John Sky Starkey.

7

8 MR. STARKEY: Thank you, Mr. Chairman.

9 I'm going to give this testimony on behalf of Myron  
10 Naneng and AVCP, the Association of Village Council  
11 Presidents, which is a tribal consortium representing 56  
12 villages out in the Y-K Delta region.

13

14 AVCP sponsored a resolution through the  
15 Yukon-Kuskokwim Delta RAC, which I'm sure you've seen.

16

17 The draft that was produced seems like a  
18 good start, and Crystal's ideas seems like also a good  
19 start in an interim effort, and I appreciate those  
20 efforts. It's good to get some kind of a straw man up  
21 there so people can at least have a basis on which to  
22 formulate comments and consultation.

23

24 A couple of ideas for thought. Years ago  
25 the Secretaries of Interior and Agriculture engaged in a  
26 thorough consultation process with the tribes in the  
27 Lower 48 in term of what to do for Endangered Species Act  
28 issues. There's two Secretarial orders out. There's a  
29 Secretarial order for Agriculture and Interior about how  
30 the agencies will consult with tribes on Endangered  
31 Species Act issues.

32

33 And why that's relevant is because of the  
34 legal context that came up was it wasn't clear the tribes  
35 have a hunting and fishing right when there's an  
36 endangered species finding, but because it wasn't clear,  
37 they needed to figure out a way to engage the tribes in  
38 a meaningful way around these issues, because they do  
39 have treaty rights.

40

41 There's also a part of that order that  
42 applies specifically to Indian tribes, and requires some  
43 fairly very extensive tribal consultation process, so  
44 that might be a model for this working group to take a  
45 look at.

46

47 A couple of substantive comments. It  
48 seemed appropriate for the Board to consider that if  
49 they're going to have a tribal consultation process, and  
50 because tribes have a government-to-government

1 relationship just as the State of Alaska does, and  
2 because Alaska Native corporations control some 44  
3 million of acres of land and the resources on those lands  
4 to some degree, that you may find it advantageous and I  
5 appropriate to include a tribal liaison that sits in the  
6 same capacity as the state does with your Board as you  
7 meet, and has the same capacity to provide input on the  
8 tribal consultation issues. I would suggest if you think  
9 this is a good idea to consider having that person hired  
10 maybe through the Bureau of Indian Affairs rather than  
11 OSM or the current structure and that the tribes and I'm  
12 sure BIA could work out a way to make sure that the  
13 tribes had a lot of input into who and how that position  
14 would work, and who that person would be.

15  
16 I would foresee that if that was a good  
17 idea, that person would make it their responsibility to  
18 make sure and communicate with the tribes on exactly what  
19 their consultation positions were and keep them informed  
20 so that they would be informed and could provide kind of  
21 a continuing input and dialogue as the Board is engaged  
22 in it decisionmaking process much as the State does.

23  
24 The other sub -- another substantive  
25 issue, in terms of the definition of consultation, it  
26 would be nice to see something in that definition that  
27 indicated that when the Board was making its decisions,  
28 it was going to try to accommodate the positions taken in  
29 that consultation to the degree that it san consistent  
30 with its legal an other responsibilities rather than just  
31 a listening session. And I think there is -- there's  
32 foundation for that in some of the memorandums and  
33 executive orders that came out, and that are laid out in  
34 the Agriculture policy that's included in your book.

35  
36 And then finally consultation also  
37 includes coordination and eliminating procedural barriers  
38 so that tribes can be more meaningfully involved in the  
39 entire process.

40  
41 And one part of this program in ANILCA  
42 that has really never been implemented really to any  
43 meaningful degree with tribes, except for maybe the  
44 fisheries research positions, has been Section .809 of  
45 ANILCA which allows the Federal Board and the OSM to  
46 engage in cooperative management agreements with  
47 organizations such as tribes, and Alaska Native  
48 corporations. So one aspect of consultation that could  
49 be included would be to ensure that you are opening up to  
50 the degree possible this .809 process so the tribes can

1 be meaningfully involved.

2

3                   And that would also help with some of the  
4 Staffing and participation issues that the Southeast RAC  
5 Chair was pointing to. It is overwhelming for many  
6 tribes to engage meaningfully in consultation, because of  
7 their staffing, et cetera.

8

9                   And I think one thing to think about as  
10 this thing all moves forward is, it's a different  
11 proposition to ask a question. For example, some of the  
12 questions that the Board asks are fairly complex. It may  
13 not be as complex if the Board asks a question about a  
14 season for caribou or something like that, but if the  
15 board asks and wants meaningful comments on something  
16 what criteria should we be employing when we make our  
17 determinations about rural status, what criteria should  
18 we be looking at for customary and traditional use, and  
19 those kinds of issues, to ask the question without people  
20 understanding the body of information and the underlying  
21 issues, and having a sophisticated view of the issues to  
22 understand the question determines greatly the quality of  
23 the impact -- of the input in the consultation you're  
24 going to get.

25                   And, you know, I think that's even, from  
26 my experience, a problem with some of the questions that  
27 get asked the RACs. You know, how does customary and  
28 traditional use determinations work? Well, a lot of the  
29 RACs say it works fine, but it's a complex and there's a  
30 lot of thought that needs to go -- I mean, customary and  
31 traditional use, for example, is really the heart of  
32 protection for village use, and in ANILCA is what  
33 determines whether or not you're talking about  
34 essentially a welfare situation where people are provided  
35 subsistence, or whether it protects a way of life. And  
36 so it's a complex issue.

37

38                   My point is that some thought needs to go  
39 into this in terms of how the question will be asked and  
40 what kind of analysis will go out. And my thinking on  
41 it, and AVCP's, is that it would be the most advantageous  
42 if there were, for example, through an .809 contract, an  
43 independent staff of people who could help facilitate the  
44 consultations by providing information, background and  
45 other informations and options and ideas for tribes  
46 before they go into the consultation so that they go into  
47 it in sort of an educational and meaningful way.

48

49                   So that will conclude my comments, but I  
50 do want to really support the idea of the task force, or

1 the working group that Crystal mentioned. And on that  
2 note, I think it's important that you include in that  
3 work group the ability for the tribes to have their own  
4 staff there as well, and for their staff to be  
5 meaningfully involved at the table. Too often at these  
6 kind of a task force, you've got the tribes there and  
7 you've got the agency people there who are well informed,  
8 and their staff, but you don't -- then, you know, you  
9 don't allow the tribal people to have their staff and  
10 have it meaningfully engaged, and I think that's really  
11 important on an issue like this.

12

13 So thank you, Mr. Chairman.

14

15 CHAIRMAN TOWARAK: Thank you Mr. Starkey.

16

17

18 Is there any questions.

19

20 (No comments)

21

22 CHAIRMAN TOWARAK: Thank you. Next.

23

24 MR. PROBASCO: Mr. Chair, we have Mr. Lee  
25 Wallace on line. Mr. Wallace, can you hear us okay?

26

27 MR. WALLACE: Yes, I can.

28

29 MR. PROBASCO: Okay. The floor is yours.

30

31 MR. WALLACE: All right. Well, Mr.  
32 Chair, thank you for this opportunity to participate in  
33 this way.

34

35 Originally on with the beginning of the  
36 meeting yesterday, I received email that it was going to  
37 be a listen only, and that type of a reply was to me  
38 totally unacceptable. I believe this FSB, Southeast RAC  
39 process should be very open and transparent.

40

41 Let me speak to tribes like Saxman.  
42 Saxman's a small and needy tribe. We have a population  
43 of about 400 citizens on our village. We have very  
44 little funds to attend important meetings, and many  
45 tribes like Saxman are in the same situation. And so for  
46 the program to make it available for small tribes like  
47 Saxman to participate either on the web with ability to  
48 give dialogue, comment and testify, it's the utmost  
49 importance. With today's technology, there's no excuse  
50 that this program should make that available to tribes.

1                   But, Mr. Chair, I do thank you for  
2 allowing me to participate in this way, and I want to  
3 thank the regional RACs for their participation. That  
4 hadn't been there in the past, so there has been some  
5 slow changes since Secretary Salazar's address back in  
6 2009.

7  
8                   And I want to specifically thank the  
9 Southeast RAC and the Chairman, Mr. Adams, for their past  
10 and continued support for the Saxman rural status issue.

11  
12  
13                   Yesterday I did send some emails out with  
14 some attachments. I sent it to Mr. Bert Adams and I sent  
15 it to -- I faxed one to you, Mr. Chair, and other Board  
16 member of the FSB. And I'd like, Mr. Chair, and FSB to  
17 revisit the Saxman decision. The decision was made when  
18 the system was broken, and the decision was bad and  
19 wrong, and it just simply needs to be revisited.

20  
21                   I want to remind individuals that ANILCA  
22 was enacted to protect users. Users like the residents  
23 of Saxman. Well, one has to look at it as the data  
24 that's available of our take of fish and game and  
25 gathering, of our way of life. Tests in current  
26 regulations make it harder and harder for users like  
27 Saxman. You notice I said our way of life. I really  
28 step away from using the S word. It's our way of life.

29  
30                   In the very beginning of the FSB program,  
31 Saxman was determined to be rural. At subsequent  
32 decennial review periods FSB and supporting Staff added  
33 criteria on to make it harder and harder for communities  
34 to be determined rural. And communities had to use  
35 valuable time to dedicate towards, you know, making sure  
36 that the village would remain rural.

37  
38                   And there's many villages like Saxman.  
39 We have a total of about three and a half staff members.  
40 And those are the staff members that are dedicated to  
41 look at the issues, and also you have the council members  
42 that are voted in by the citizens to oversee these  
43 programs. But again we are very limited on things we can  
44 do, especially with the funding situation.

45  
46                   Where you talked about consultation,  
47 there's many tribes again like Saxman that don't funds to  
48 go to consultation meetings. They just simply don't have  
49 the funds, and so how meaningful could that be. And  
50 again I ask use of technology. Here we are on a simple

1 phone call, but again there is other technologies that  
2 are available, and they should be used in a wise manner.  
3 So I asked the -- well, let me get back.

4  
5 Last year with the support of Southeast  
6 RAC's annual report, central council's resolution, Saxman  
7 submitted a resolution, to revisit the Saxman rural  
8 issue. This is one of the easy quick fixes that this  
9 current Chair and Board could address. And they've  
10 simply got to do a few things, is review the RFR that we  
11 submitted from the Organized Village of Saxman, re-  
12 examine that, and you would simply see that the process  
13 of adding all the different criteria on that staff  
14 members had placed on the Board for Board decision was  
15 totally uncalled for.

16  
17 Earlier today you guys were talking about  
18 closed meetings. That's simply out of the question.  
19 This program should be open and a very transparent  
20 process.

21  
22 And I ask that my letter that I -- that  
23 is dated May 3rd, addressed to the Chair, to be entered  
24 into the record for the FSB meeting, and other  
25 attachments that I sent or faxed to individuals. And I  
26 say that because last month I requested the Southeast RAC  
27 coordinator, Robert Larson, to enter into the record a  
28 letter dated March 22nd, 2011 that I e-mailed to him  
29 addressing Chairman Adams. That was not done as I read  
30 the transcripts this past weekend of the meeting they  
31 recently had in Sitka. All I read is that it was  
32 mentioned that the Council had the letter before them,  
33 but did not read the letter that I submitted for the  
34 record. It wasn't in the transcripts. It was just  
35 mentioned that they had it before them.

36  
37 Many tribes in Alaska would agree that  
38 the process has been slow after the address from  
39 Secretary Salazar in 2009. The system's broke. It's  
40 still broke. Here we are in 2011 after his 2009 address,  
41 almost a year and a half later. Very few things have  
42 been changed or addressed.

43  
44 There is a few things that have been  
45 great. The new Chairman. I applaud that. I applaud  
46 that the RACs are sitting there with you folks at your  
47 FSB meetings.

48  
49 But one thing again, it's been slow.  
50 Maybe it's time to discard the broken vehicle and start

1 with a new one.

2

3 Tribes like Saxman should maybe consider  
4 a true nation-to-nation approach and have direct  
5 consultations with Secretary of Interior Ken Salazar,  
6 Secretary of Agriculture Tom Vilsack, because what we're  
7 -- what's occurring now is something that is  
8 dissatisfying to tribal leaders and tribal councils, that  
9 the process is much too slow, and maybe with direct  
10 nation-to-nation consultation with the Secretaries, maybe  
11 then we could preserve our precious way of life.

12

13 Our way of life. We've been leading this  
14 way of life for generations to generations. And the  
15 clock is ticking for Saxman. We have until May 2012  
16 before we lose our rural status. We enjoy it now, and we  
17 enjoy the opportunities that a small village like Saxman  
18 is able to have that rural status. But if the decision  
19 isn't overturned and reversed, the summer of 2012, what  
20 you'll end up doing is turning law abiding citizens into  
21 outlaws. I would imagine that many of us that lead this  
22 way of life will continue to lead that way of life. And  
23 the law was enacted to protect our way of life. And  
24 right now it isn't the case at all.

25

26 I thank you for this opportunity to call  
27 it. Gunalcheesh howa.

28

29 CHAIRMAN TOWARAK: Thank you, Mr.  
30 Wallace.

31

32 Are there any questions from the Board.  
33 Go ahead.

34

35 MS. K'EIT: Mr. Chair. Thank you.

36

37 Mr. Wallace, I was thinking that it might  
38 be helpful for you describe or define the term small and  
39 needy tribes for Board members and RAC Chairs that may  
40 not be familiar with that term.

41

42 Thank you.

43

44 MR. WALLACE: Okay. It's a term that's  
45 determined -- we have our funding that comes to tribes  
46 like Saxman, and we're in that category of small and  
47 needy and we receive about \$163,00 a year to operate our  
48 government. Like I say, we have a small staff of a  
49 tribal administrator, half-time secretary, a social  
50 worker, and that's pretty much it. And so all these

1 programs that we run from our citizens, you know, the  
2 financial situation is so small that we just can't afford  
3 to, you know, fly off to all these important meetings  
4 that occur. Every year we're very careful of which  
5 important meeting are we going to attend. So that's kind  
6 of the basics of a small and needy tribe in Alaska and  
7 throughout the nation.

8

9 I hope that adequately informed or  
10 answered the question for you.

11

12 CHAIRMAN TOWARAK: Thank you, Mr.  
13 Wallace.

14

15 Mr. Adams.

16

17 MR. ADAMS: Thank you, Mr. Chairman.

18

19 Mr. Wallace, this is Bert here. I really  
20 apologize for not having the oppor -- not taking the time  
21 for the Council to look at your letter when you submitted  
22 it to us. I believe that it was toward the end of our  
23 meeting, and we were already running behind, you know.  
24 We had about an hour for people to catch their airplanes.  
25 And if I remember correctly, you know, we just didn't  
26 have the time to do that. However, we do have it, and,  
27 you know, at our next meeting we will address it.

28

29 I also argued your cause yesterday. I  
30 don't know whether you were on line, Lee, at the  
31 beginning of the meeting, but in our opening remarks I  
32 made mention of your email to me, and I addressed the  
33 same issues that you addressed here. So I just wanted  
34 you to know that as well.

35

36 Thank you.

37

38 MR. WALLACE: Thank you, Chairman Adams.  
39 Yes, I did, you know. Again thank you for your past and  
40 your present support. I know you've always been behind  
41 Saxman in our rural status issue.

42

43 In regard to the quality of the audio  
44 yesterday on the internet, it was poor. We have good  
45 internet access here in Saxman. We're on DSL, so that  
46 wasn't the issue of our end having poor quality. The  
47 quality somehow generating up in Anchorage with the  
48 system you guys are using, that needs to be looked at.  
49 I know it's you're second time attempting using the  
50 internet. There are difference software you could use

1 where people that log onto the internet could have  
2 interaction. I've been to webinars with that, different  
3 types of systems where I'm able to participate. And I  
4 think I'd request from the FSB and Staff is that you look  
5 into different programs that you could use that would be  
6 more user friendly and better quality.

7

8 Thank you.

9

10 CHAIRMAN TOWARAK: Thank you, Mr.  
11 Wallace, for your testimony. The next.

12

13 MR. WALLACE: Thank you, Mr. Chair.

14

15 CHAIRMAN TOWARAK: That's it.

16

17 (No comments)

18

19 MR. PROBASCO: Thank you, Mr. Wallace,  
20 and I will sign off now.

21

22 MR. WALLACE: All right. Thank you.

23

24 MR. PROBASCO: Our next person to testify  
25 is Mr. Carl Wassilie.

26

27 MR. WASSILIE: Yeah. Quyana. (In  
28 Yup'ik) My name is Carl Wassilie. I'm currently  
29 occupying the whole State of Alaska, but my family is  
30 from here, been here since time immemorial. I could go  
31 into a long story that would take a few days to where I  
32 come from. And I'm a Yup'ik biologist.

33

34 And regarding these, I thank the Board  
35 for taking a look at this, at the tribal consultation  
36 policy. It's very important, especially looking at the  
37 history, the state is very new here as far as being  
38 fairly young historically. So the conflict can go back,  
39 and very deep racial conflict that has -- which is  
40 probably the reason why there's so much confusion and  
41 difficulty at this point in time in 2011. A lot of these  
42 policies by various agencies, not just the Feds, but also  
43 the State, have brought us here to this point.

44

45 And so I'd also like to thank those that  
46 have been working their lifetimes to have an adequate  
47 voice in continuing the way of our ancestors. I think  
48 that's very important at this point in time to  
49 acknowledge and recognize the current policy which is the  
50 tribal government, the trust responsibility that the

1 Federal government has, and the State is failing  
2 miserably at upholding any trust to the tribal  
3 governments. And I think that's where a lot of the  
4 problems can be rooted to.

5  
6 But to get to the point of this policy,  
7 I think it's really important to look at the definition.  
8 There's still -- there is a lot of conflict within  
9 multiple agencies, the President, the administration, as  
10 well as the courts regarding definition of Alaskan Native  
11 tribes, and the tribal -- the Federally-recognized tribes  
12 are the authority.

13  
14 And there's been a lot of shifting of  
15 funds away from tribes and, of course, the State through  
16 the corporation -- incorporation of Alaska Native  
17 corporations, which they're not tribes. The Alaska  
18 Native corporations have been able to -- are very  
19 successful at securing funds for the Indian Self-  
20 Determination Act, which should be going directly to  
21 tribes. That would help significantly in the funding  
22 issue that's being discussed here. The Self-  
23 Determination Act, the Indian Self Determination Act. So  
24 I'd recommend that language be changed on a Federal  
25 level.

26  
27 Some recommendations to clarify the  
28 tribal governments is the tribal governments are the --  
29 in some areas are much different than tribal governments  
30 in other areas. My experience working with the Alaska  
31 Intertribal Council, there's a lot of differences between  
32 tribes.

33  
34 There's also -- there's major language  
35 barriers. So I think one of the things that I'd  
36 recommend also is make sure there's adequate translation,  
37 and peer reviewed consultation in these government-to-  
38 government meetings. The translations are always a  
39 challenge. The differences in direct translation and to  
40 translation on paper. I think the paper translation is  
41 important.

42  
43 As a Yupi'k biologist in which hundreds  
44 of my family members are extremely dependent upon the  
45 abundance of the earth, the migratory birds, the  
46 migratory fish, the anadromous fish, and the whales, the  
47 seal, and all the abundance of the earth, the water and  
48 the air.

49  
50 I think this is a step in the right

1 direction to address the Board to -- I support the  
2 movement of Saxman also to really rearrange and start  
3 fresh here. I mean, the Board originally when ANCSA  
4 passed was to have -- the discussion that took place was  
5 to have the Native people to take -- to have management  
6 in the regions, and that was before Alaska Native Claims  
7 Settlement Act was passed. There was discussion on this  
8 regional management issues.

9  
10 I think these things need to be looked  
11 at, the history is an important part of this discussion  
12 on the framework and the communications. There's still  
13 massive cross communication differences, and this can be  
14 solved by putting the tribes at the forefront with  
15 adequate translation protocols.

16  
17 So that's about it for now regarding this  
18 specific topic. I do support the inclusion of tribal  
19 governments onto the Board. That would be a significant  
20 barrier to the communication problems.

21  
22 CHAIRMAN TOWARAK: Thank you, Mr.  
23 Wassilie.

24  
25 We will proceed on to the next.

26  
27 I might announce here, too, that we're  
28 planning to take a lunch break between 11:30 and 1:00  
29 o'clock today. We have a couple of Board members that  
30 have an obligation during the lunch period today, so if  
31 we could -- if I could ask whoever comes up to testify to  
32 focus on tribal consultation, that would help us in our  
33 meeting our schedule today.

34  
35 Pete.

36  
37 MR. PROBASCO: Thank you, Mr. Chair.  
38 Next, Mr. Tony Delia. Pass? Okay. I apologize if I  
39 mispronounce. Nikos Pastos.

40  
41 MR. PASTOS: Good morning. My name is  
42 Nikos Pastos. I'm a person from the Confederated Salish  
43 and Kootenai Tribes of the Flathead Nation. I was born  
44 here in Anchorage, Alaska, and I've lived most of my life  
45 in Alaska. I'm a tribal person.

46  
47 Some of my comments, which I'll leave for  
48 the end of what I have to say are personal. But  
49 professionally I work with the Center for Water Advocacy.  
50 We're a nonprofit advocacy organization based in Homer,

1 Alaska. We were formerly known as the Center for Tribal  
2 Water Advocacy. And in that capacity, I'm their human  
3 rights coordinator, on the board of directors for the  
4 Center for Water Advocacy.

5  
6 Specifically we have some comments on the  
7 tribal consultation protocol which is number 8 on the  
8 agenda. And this is a brief outline of our comments. We  
9 will submit substantive comments in writing via U.S. Post  
10 this week after we hear some more of what you folks are  
11 deliberating today.

12  
13 And first of all, all of my comments and  
14 the work that we do at the Center for Water Advocacy are  
15 offered respectfully, and any criticism is -- we hope  
16 would be taken as constructive criticism.

17  
18 I guess the idea with the Center for  
19 Water Advocacy is that we are focusing a lot on  
20 environmental justice and human rights matters having to  
21 do with customary and traditional life ways of hunting,  
22 fishing, gathering, navigation, commerce, barter and  
23 trade. And with that in mind, we would like to remind  
24 everybody in the room that indigenous peoples in tribes  
25 have -- since time immemorial have long-standing  
26 traditional governments that carry on through to this  
27 day.

28  
29 That whatever management scheme we have  
30 now in conjunction with the State of Alaska has managed  
31 to horribly squander the global commons. And we wish to  
32 offer support for anyone who wants to move forward in  
33 working in good faith and a good way to properly manage  
34 what we consider to be fundamental human resources of  
35 food and water.

36  
37 So in a global context, food security is  
38 a huge matter, and in international law, which -- by the  
39 way, I'm a sociologist. I am not a lawyer. But in  
40 international law the resources of Alaska, food resources  
41 and the natural resources are of vital strategic interest  
42 to the United States and the various tribal nations.  
43 This is very serious when we talk about how we regulate  
44 people's food and water.

45  
46 When we get to the definition on Page 15,  
47 number 1, of Federally-recognized tribe, the Federally-  
48 recognized Indian Tribe List Act of 1994 does not include  
49 Alaska Native Claims Settlement Act corporations or any  
50 other corporations. Corporations are not tribes.

1 Corporations are created to develop profit and develop  
2 resources or activities for their shareholders, which may  
3 or may not be in the interest of tribal governments or  
4 tribal peoples.

5  
6 Let's see. So some of the -- we really  
7 question -- I guess there's -- and I'm trying to keep  
8 things very simple here, but we really question the  
9 underpinnings of recognizing ANCSA corporations as  
10 tribes. Yes, they're very significant landholders. Yes,  
11 they benefit greatly tribal governments and tribal  
12 peoples. Alaska Native Claims Settlement Act  
13 corporations I say again are not tribal governments.

14  
15 We had trouble finding where the ANCSA  
16 part for the tribal consultation protocol was spoken  
17 about in the previous meetings. We weren't sure how it  
18 arrived on the agenda. Perhaps we didn't have those  
19 minutes.

20  
21 Okay. The next thing is there are a list  
22 of authorities, such as Executive Orders 13175, 13084,  
23 12898, which mandate government-to-government  
24 consultation, environmental justice, and those are listed  
25 in the USDA and Department of the Interior guidelines.

26  
27 A couple of things that we'd like to  
28 recommend that you look at are Native American Graves  
29 Protection and Repatriation Act and the National Historic  
30 Preservation Act. There are several guidances from  
31 assistant solicitors which show that Alaska.....

32  
33 Oh, Alaska Native corporations are not  
34 tribes in the regulations of like the National Park  
35 Service. And that is not fully -- it's not fully -- I  
36 guess legally fully defined yet. So it's legally  
37 questionable anyway. I think that's fair to --  
38 especially if you look at NAGPRA, for certain agencies of  
39 the Department of the Interior. Also the Indian Self-  
40 Determination Education Assistance Act. So there's a  
41 hodgepodge of agency regulations that do not lead to a  
42 clear definition of how lands are transferred, or natural  
43 resources between the Federal agencies and corporations.

44  
45 I guess in closing, for the Center for  
46 Water Advocacy, we believe that there's three natural  
47 resource trustees in the United States. And that would  
48 be the Federal government through its Federal agencies,  
49 and then the tribal governments, which are on the same  
50 parity, and then the states as they have asserted

1 themselves. So we have three natural resource trustees  
2 that are entrusted to protect these very significant food  
3 and water resources and energy resources.

4  
5 And we would like to encourage the  
6 Federal Subsistence Board to move forward in good faith  
7 efforts to create meaningful and real consultation, but  
8 recognize that if you don't have the tribal sovereign  
9 governments on the RACs, Regional Advisory Councils, it  
10 may be that you're going on that unfunded mandate off the  
11 end of a diving board which will cause more confusion.

12  
13 I think we've reached a point in history  
14 where Alaska's not too big. The resources are  
15 significant. The relationships that we have with the  
16 peoples who have been here since time immemorial need to  
17 be honored. We can do that. And we could start here  
18 when we're talking about the very substantial what we  
19 call subsistence, but it's much more than that. It's the  
20 sacred way of life, to protect our food, water, the  
21 migratory birds, the fish, you know, all of the creatures  
22 of the land and the air and the water.

23  
24 And having said that, I want to say one  
25 last personal thing and I'll conclude. There's a famous  
26 writer from my tribe named Darcy McNichol, and he wrote  
27 a lot of influential poetry and literature as well as  
28 helped start the National Congress of American Indians.  
29 And one of his most famous novels is called Wind from an  
30 Enemy's Sky. It's advocacy of a land ethic. But he  
31 spent his whole life, and this is how I'll finish, trying  
32 to help resolve the cultural differences between tribal  
33 peoples and non-tribal peoples, Indian and white  
34 relations for -- we call ourselves Indians and white  
35 people where I come from in Montana. And despite the  
36 good efforts of many, his novel ends disjunctively and  
37 violently. And Alaska's a place where we can instead of  
38 perpetuating confusion and conflict, can move forward  
39 with the beautiful lives that we have.

40  
41 Thank you for the opportunity to comment.

42  
43 CHAIRMAN TOWARAK: Thank you, Mr. Pastos.  
44 Next.

45  
46 MR. PROBASCO: Mr. Chair. Next is Ms.  
47 Mary Ann Mills.

48  
49 MS. MILLS: Thank you. Just a minute.  
50 Oh, geez. My computer for some reason is logging off.

1 I don't know why. Is there someone else you'd like to  
2 call until I get this up, because I don't want to waste  
3 time. Okay.

4  
5 CHAIRMAN TOWARAK: Bring your i-pod next  
6 time.

7  
8 (Laughter)

9  
10 MR. PROBASCO: We'll come back to you,  
11 Mary Anne.

12  
13 MS. MILLS: All right. Thank you.

14  
15 MR. PROBASCO: Next is Faith Gemmell.  
16 Ms. Faith Gemmell.

17  
18 MS. GEMMELL: (In Gwich'in) I'm Faith  
19 Gemmell, and that's language in Pit River and Windto. I  
20 was raised in Bushrike-o (ph), known to all as Arctic  
21 Village, Alaska. And so today I'm here speaking on  
22 behalf of the Arctic Village Council.

23  
24 As I was preparing for this meeting, I  
25 was struck by a thought. We, the indigenous nations of  
26 Alaska, our lineage and ties run deep here. This  
27 relationship between ourselves and our homelands is one  
28 of spirit, which I believe some have no comprehension of.  
29 Otherwise we would not even be having this dialogue  
30 today.

31  
32 So deep is our connection to our  
33 ancestral territories all the way back to the time of  
34 creation when the Creator bestowed on us our natural  
35 laws. These laws supersede man's laws and are ingrained  
36 in our way of life.

37  
38 The issues on the table when regarding  
39 our traditional way of life, which is now termed  
40 subsistence, are of sacred significance to us.  
41 Generation upon generation have continued to live in our  
42 customary and traditional ways unbroken. This way of  
43 life encompasses our rights which were bestowed on us by  
44 the Creator. Our inherent rights to live as our  
45 ancestors have since time began, an unbroken connection  
46 to our homelands which provide us with our necessary  
47 physical, cultural, spiritual, social and economic means.  
48 Subsistence for us is more than food security.

49  
50 Many have come before you and referenced

1 laws and acts since the treaty succession with a litany  
2 of each unjust law and act that followed, so I will not  
3 reference those. I want to focus on one act to make my  
4 point to you today in regard to the protocol.

5  
6 The discovery of oil at Prudhoe Bay  
7 established an alignment of the oil companies and the  
8 U.S. Federal government to promote their combined  
9 interests. This alliance provoked an urgency to settle  
10 indigenous land claims in Alaska in order to provide a  
11 right-of-way for the Trans Alaska Oil Pipeline. The U.S.  
12 Congress unilaterally passed the Alaska Native Claims  
13 Settlement Act, known as ANCSA, in 1971 to legitimize  
14 U.S. ownership and governance over indigenous peoples,  
15 our lands and access to our resources.

16  
17 The lands which were taken from us  
18 through this Act became corporate assets of newly created  
19 state-chartered limited liability for profit Native  
20 regional and village corporations. ANCSA conveyed  
21 indigenous traditional lands, ancestral lands to the  
22 corporations instead of our existing indigenous  
23 traditional governing structures, because our governments  
24 were perceived as an impediment to assimilation and a  
25 threat to U.S. control in Alaska.

26  
27 Section 4.b. of ANCSA is the reason we  
28 are discussing this issue today. ANCSA changed the  
29 dynamics of how Alaska Natives relate to the land, but  
30 also how we relate to one another. State-promoted  
31 economic development interests are aligned with these  
32 Native corporations that pursue lands and marine  
33 ecosystems for economic gain despite adamant opposition  
34 by Alaska tribes whose subsistence way of life is  
35 endangered by economic development proposals.

36  
37 In a nutshell, the difference between the  
38 Native corporations and tribes is very simple. The  
39 corporations' bottom line is profit at all costs and  
40 business interests. Our sovereign tribal governments'  
41 bottom line is the health and well-being of our peoples.  
42 Two very different values.

43  
44 If the effort to recognize corporations  
45 as tribes is allowed within government-to-government  
46 consultations, you basically will have the fox guarding  
47 the henhouse. And handing over authority illegitimately  
48 to entities that by their very nature are the very ones  
49 in partnership to exploit our homelands and resources for  
50 profit, which undermines and threatens our subsistence

1 way of life, you would choose to consult these entities  
2 instead of our sovereign governments.

3  
4 No corporation should be granted  
5 sovereign status. It can be likened to granting BP  
6 sovereignty. And I really question that part of this  
7 protocol.

8  
9 Most alarming is the draft protocol will  
10 be used as precedent-setting protocol in all government-  
11 to-government negotiations from here on. In reality, if  
12 this language is passed in this protocol and policy, it  
13 would be termination policy, which would be set by this  
14 insidious language that's right at the beginning of this  
15 protocol, which states, consistent with the Secretaries  
16 of the Interior and Agriculture's Secretaries, emphasis  
17 on respectful relationship with tribes, the Federal  
18 Subsistence Board has developed this draft protocol to  
19 enhance our government-to-government relationship with  
20 Alaska's Federally-recognized tribes and government-to-  
21 corporation relationships with ANCSA corporations,  
22 collectively called tribes in this document.

23  
24 This language diminishes and undermines  
25 sovereign tribes here in Alaska as well as the Federal  
26 trust responsibility in government-to-government  
27 consultation processes. This language is a violation of  
28 your own laws that confirm the relationship with tribes.  
29 So to me this process is flawed if that language is  
30 maintained. So to correct this, that language at the  
31 beginning of this protocol should be stricken from this  
32 document today. Today.

33  
34 I've read the transcripts from the  
35 meetings that were held in January, and there were no  
36 comments whatsoever from any Federally-recognized  
37 sovereign tribe to include corporations in the protocol,  
38 so I don't understand why it's there. And I surmise  
39 there must have been closed-door negotiations or meetings  
40 without our presence, which points out that that's also  
41 flawed process if that is what had occurred. And that  
42 would dishonor us as sovereign tribes of Alaska as well  
43 as our ancestors and future generations.

44  
45 In closing, I recommend you reference and  
46 adhere to Resolution 2011-33 from the Tanana Chiefs  
47 Conference which advocates for 42 Interior tribes which  
48 resolves, TCC requests that tribal consultation protocols  
49 be amended by Congress to include tribal governments only  
50 in their required consultation protocols and not include

1 ANCSA corporations.

2

3 In this process, I support Mr. Adams'  
4 statement in part. If the government is requesting  
5 tribal consultation to draft the protocols, then it  
6 should be the responsibility of the Federal government to  
7 fund the government-to-government protocols and  
8 consultation process so that our tribes can meaningfully  
9 participate within the process.

10

11 Thank you. (In Gwich'in) And I thank you  
12 all my relations.

13

14 CHAIRMAN TOWARAK: Thank you, Ms.  
15 Gemmell. Next.

16

17 MR. PROBASCO: Thank you, Mr. Chair.  
18 Next is Ms. Irene Dundess.

19

20 MS. DUNDESS: Thank you. My name is  
21 Irene Dundess. I currently serve on Ketchikan Indian  
22 Community Tribal Council. We have 5,338 tribal members  
23 in Ketchikan. I'm Tlingit. I grew up in Saxman and  
24 Kake. And bought a house in Ketchikan, and that's why I  
25 am on the tribal council for KIC and not in Saxman,  
26 because of jurisdiction.

27

28 I have not had time to go over the  
29 protocols intensely where I read them line by line. I  
30 think it's a good start. And I think in the future I  
31 would like to probably see procedures and processes that  
32 define when the tribe can officially consult with the  
33 Board.

34

35 In Ketchikan we have an excellent working  
36 relationship with the tribe -- or with the Forest  
37 Service, and we have flexed our muscle in the government-  
38 to-government relationship when we use -- when we are  
39 making amendments to TLMP. And because of those rules  
40 and procedures that defined how KIC can -- well, at the  
41 time it was Denny Bschor, talked to him and we demanded  
42 our president talk to your president. And we made  
43 amendments to that. And by us knowing those procedures  
44 allowed us to have a wonderful working relationship.

45

46 There was some comments about tribal  
47 citizens not participating in the process or even  
48 attending. I think once the protocols are defined more  
49 and timelines and procedures are put inside the  
50 protocols, I would really like to see that it allow for

1 tribes to have some times, like a month in advance, when  
2 giving notice to the tribes. Our tribes sometimes only  
3 meet -- or our council only meets once a month. And at  
4 times when we get notices from the Forest Service or any  
5 other government agency, our tribal council has already  
6 meet and the time -- we cannot officially respond by  
7 resolution or official letter.

8  
9 And somebody else mentioned the closed  
10 door that the Board -- I also agree that there should not  
11 be a closed-door consultation or closed-door meetings  
12 with this Federal Subsistence Board, but I believe when  
13 -- I just believe that it should be explored. I don't  
14 think that this group should meet closed doors, but I  
15 think if there was an opportunity that the tribe can meet  
16 with -- on a government-to-government relationship with  
17 specific issues that are specifically for a particular  
18 tribe that deal with sacred issues or even within our own  
19 cultural protocols that we have within our nations, I  
20 think that government-to-government relationship with a  
21 specific tribe, and not necessarily closed doors as in  
22 nobody can come into the room, but hopefully that when  
23 the tribe is meeting with the government agency that --  
24 because I know as a tribal council member I am elected.  
25 I have 5,338 members who elect me to a position. I am  
26 the lawmaker and I am the policy and procedure maker and  
27 that when I'm meeting with the government agency, our  
28 rules are the rules. So I just want to make that  
29 statement. So there's some issues that I think that  
30 should be allowed in a closed-door room with the Board,  
31 but I don't agree with this Board meeting in private.

32  
33 So that's all I have. Thank you.  
34 Gunalcheesh.

35  
36 CHAIRMAN TOWARAK: Thank you, Irene. The  
37 next.

38  
39 MR. PROBASCO: Mary Ann's nodding. Ms.  
40 Mary Ann Mills.

41  
42 MS. MILLS: My name is Mary Ann Mills.  
43 I'm vice chair.....

44  
45 UNIDENTIFIED VOICE: Turn your mic on.

46  
47 MS. MILLS: I am vice chair for the  
48 Sovereign Nation of Kenaitze and chair of the Cook Inlet  
49 Treaty Tribes, which is a consortium of eight tribes.  
50

1 Thank you, Mr. Chairman and Board members  
2 for the opportunity to speak on the draft tribal  
3 consultation protocol that the Board has developed.

4  
5 According to your introduction, the  
6 Secretaries of Interior and Agriculture request the  
7 Federal Subsistence Board to place emphasis on respectful  
8 relationships with the tribes. The Board, however,  
9 developed the draft protocol to enhance our government-  
10 to-government relationships with Alaska's Federally-  
11 recognized tribes and government-to-corporation  
12 relationships with ANCSA corporations, and have  
13 collectively ANCSA corporations tribes in this document.  
14 As a tribal leader, I object to the assimilation and  
15 regionalization the Board is attempting to implement upon  
16 the tribes of Alaska.

17  
18 State-chartered corporations are not  
19 governments. Corporations are for-profit entities  
20 mandated to make profits for its shareholders or  
21 stockholders. How ridiculous would it be if the tribes  
22 decided to ask Ford Motor company to give us 97 percent  
23 of state's fish and wildlife. And what if Ford Motor  
24 Company said yes? What would the United States say? The  
25 United States would not oblige nor would any other  
26 government.

27  
28 Executive Order 13175 directs agencies to  
29 establish regular and meaningful consultations and  
30 collaborations with tribal officials in the development  
31 of Federal policies and have tribal implications, yet the  
32 Board admittedly -- admitted they did not consult with  
33 tribes during the development of regulations and does not  
34 take tribal concern seriously unless it is done through  
35 the strict format of ANILCA, which falls short of Alaska  
36 Native people's legal status and international  
37 obligations of the United States of America.

38  
39 Former Secretary of Interior Stuart Udall  
40 stated, economic life of rural -- of Alaska rural  
41 villages is the loom of which the thread of Native  
42 culture continue to be woven, and the contextual  
43 framework for every traditional village life. He  
44 continued, Title VIII wouldn't have been enacted if non-  
45 Native subsistence was the primary focus of concern.  
46 Udall stated, subsistence title and other subsistence  
47 provisions of this bill are derivative of ANCSA.

48  
49 The Federal court consistently recognizes  
50 the Settlement Act to be Indian legislation entitled to

1 all the presumptions and statutory interpretations  
2 associated with that generic class of status.

3  
4 Congress finds and declares and con --  
5 declares continuation of opportunity for subsistence uses  
6 by rural residents of Alaska on public land by Alaska  
7 Natives and non-natives, and by Natives on Native land is  
8 essential to Native physical, economic and traditional  
9 and social existence.

10  
11 The State of Alaska cannot find room for  
12 our way of life. One state, one people deny Native  
13 peoples our cultural values based upon communal sharing.  
14 ANILCA does not protect native hunting and fishing. The  
15 State gave 97 percent to the commercial fishing industry  
16 and the lion's share to sports hunters.

17  
18 The United States Constitution guarantees  
19 our right to our religion. The United Nations guarantees  
20 freedom of religion. The Bible gives us free will. Our  
21 religious beliefs requires certain things such as  
22 potlatches which require fish and wildlife. The  
23 International Declaration on the rights of indigenous  
24 peoples gives us the right to our food and culture, yet  
25 we are deprived of these things.

26  
27 We never consented to ANCSA. We never  
28 voted for statehood. And we were never conquered. The  
29 indigenous peoples of Alaska has never ceded its land,  
30 nor have we relinquished or voluntarily abandoned our  
31 land. When are the United States and the State of Alaska  
32 going to be satisfied? How much more of our souls are  
33 they planning to take? The United States and the State  
34 of Alaska is destroying us slowly and purposefully. The  
35 late and very well-respected human rights scholar,  
36 Christian Bay stated, ethnocide is genocide on an  
37 installment plan.

38  
39 Mr. Chairman. A paltry two percent of  
40 fish and game is designated by Federal agencies, leaving  
41 villages in danger of winter -- in winter due to food  
42 scarcity. Food has been airlifted in the past couple of  
43 years to some villages. The Federal Field Commission  
44 report of the Alaska Natives and their lands recognized  
45 that 60 to 80 million acres of land were needed for  
46 village survival. Mr. Chairman and Board members, I  
47 strongly recommend 30 to 40 million acres is needed for  
48 village life and that the amount of land be set aside  
49 from Federal and State lands.

50

1 Thank you very much.

2

3 CHAIRMAN TOWARAK: Thank you, Mrs. Mills.

4

5 MR. PROBASCO: Next, Mr. Chair, we have  
6 Mr. David Harrison.

7

8 MR. HARRISON: Good morning. I wanted to  
9 clarify who I am speaking in behalf of. I'm the  
10 executive director for the Alaska Intertribal Council.  
11 The Alaska Intertribal Council was created after almost  
12 80 Federally-recognized tribes signed a treaty. Our  
13 charge is to advocate for the Federally-recognized tribes  
14 across Alaska. We are the only organization in Alaska  
15 that advocates in behalf of all Federally-recognized  
16 tribes. And therefore the comments from those Federally-  
17 recognized tribes should carry a great weight in making  
18 Federal decisions.

19

20 We've heard this morning several  
21 discussions about funding and the authority of the  
22 tribes. My comments yesterday, there's been inferences  
23 and outright statements that the present management style  
24 of the State and the Federal government is genocide. And  
25 you have to look at the terms that are written in Federal  
26 legislation. And you can find the definitions of  
27 genocide in United States Code under Title 18, Section  
28 1091. It's very real.

29

30 Bringing the issue of corporations to  
31 this table of government-to-government consultations is  
32 a direct violation of Federal statute. The late Senator  
33 Stevens attached many riders to many bills that has  
34 caused and continues determination of Federally-  
35 recognized tribes and their citizens. He did great  
36 things for the ANCSA corporations and the State of Alaska  
37 as corporations. For tribal citizens it was an assault,  
38 and we have yet to this day found a Federal  
39 Congressperson that will champion legislation for the  
40 Federally-recognized tribes in Alaska or elsewhere.

41

42 We mentioned yesterday that the Alaska  
43 Natives, the Alaska First People, their villages, their  
44 tribes, their nations and their citizens own Alaska, not  
45 the State, not the Federal government. So inclusion of  
46 ANCSA corporations into any type of government-to-  
47 government consultation is a slap in our face.

48

49 The United States has a Federal  
50 obligation under the United Nations Charter, Article 73,

1 to assist us in determining what type of government that  
2 our indigenous nations in Alaska choose.

3  
4 The unfunded mandate, there doesn't need  
5 to be that unfunded mandate. The United States has  
6 negotiated with other sovereign nations in assisting them  
7 to determine what type of government they want. They  
8 have spent billions of dollars assisting other nations  
9 around the globe establish their governments.

10  
11 The resources here are many. The United  
12 States does not want to establish those negotiations with  
13 Alaska's indigenous peoples. And they do want to  
14 maintain a foothold in Alaska, not only for the  
15 resources, but Alaska is a very strategic military  
16 location. I've recently heard, and which I'm in the  
17 process of confirming, the ratio of military personnel in  
18 Alaska to Alaska Natives is six to one. Why is that?

19  
20 The issues of this consultation must be  
21 directly with those Federally-recognized tribes.

22  
23 I heard talk about going to hub cities,  
24 four or five. What's that, Juneau, Anchorage, Fairbanks  
25 and Barrow? That does not assist those small, poor  
26 tribes out in Yup'ik country. It does not help the poor  
27 tribes in Cook Inlet area. It does not help the poor  
28 tribes in the Interior or Southeast. Four or five  
29 locations does not help. There are more hub regions, hub  
30 cities that this Board and other Federal agencies need to  
31 go to for attempting to have meaningful consultation as  
32 the regulation and the mandate from the Presidency of the  
33 United States.

34  
35 The United States has failed in assisting  
36 the indigenous people in Alaska on many levels. This  
37 just happens to be one of them.

38  
39 You send out information on  
40 consultations, and I wonder what your rate of return is  
41 if you send it through the U.S. Post Office.

42  
43 The Alaska Intertribal Council has  
44 probably got the most up-to-date list of Federally-  
45 recognized tribes in Alaska. In our last mailing we had  
46 10 envelopes returned out of 229 Federally-recognized  
47 tribes.

48  
49 So the consultation and the information  
50 getting out to these tribes and these tribal leaders is

1 very critical. And to have meaningful consultations, you  
2 have to go to where they're at, not to Anchorage.  
3 Anchorage happens to be one of the hub cities for some of  
4 the local tribes in this area, but you have to get out  
5 and get close to the people so they can actually sit down  
6 across the table from you and see you, because our elders  
7 need to be in these conversations as well. They're the  
8 ones who are guiding our people's, our villages, our  
9 traditional governments. It is the younger people like  
10 myself who have the ability to get out and walk around  
11 and have learned the English language extremely well.

12  
13 I've also studied Federal Indian law for  
14 more than 30 years. And I know the United States laws  
15 that affect our people. And the United States refuses to  
16 utilize those laws for their own gain and for the gain of  
17 those multi-national optimgopolies [sic] that not only  
18 the State of Alaska, but the Federal government has  
19 working for them at the demise of the people who own this  
20 land.

21  
22 I want to bring to your attention a  
23 recent solicitor's opinion of March 18th, 2011 on NAGPRA.  
24 And it relates to whether the ANCSA corporations should  
25 be included in government-to-government consultations.  
26 Their conclusion is, no. This opinion was delivered,  
27 like I said, March 18, 2011 on the Native American Graves  
28 Repatriation Act. And I would recommend that this Board  
29 review that and adhere to that policy of denying ANCSA  
30 corporations government-to-government consultations and  
31 exclude the ANCSA corporations from being deemed as  
32 tribes as Mr. Kessler has stated in his protocol.

33  
34 Mr. Chairman, I think I really like your  
35 determination of tribal rules of order. It is not many  
36 Federal meetings that indigenous people have with the  
37 Federal government do they understand tribal rules of  
38 order. And the protocols and procedures that are  
39 necessary to have a meaningful consultation with a  
40 sovereign government. Yet they do those processes and  
41 protocols with other nations. The United States can do  
42 the same with our nations.

43  
44 I don't like the term regionalization.  
45 Regions. There are seven indigenous nations in Alaska,  
46 not 12 regions. We have seven nations. And those  
47 nations need to be respected and honored. And those  
48 leaderships in those nations, from their traditional  
49 governments, need to be respected and honored. And the  
50 laws that those nations, their villages and their tribes

1 create need to be respected and honored by the State of  
2 Alaska and the Federal government.

3  
4 Thank you for allowing me to advocate in  
5 behalf of the 229 Federally-recognized tribes.

6  
7 CHAIRMAN TOWARAK: Thank you, Mr.  
8 Harrison.

9  
10 Earlier I had stated that we would  
11 probably take a lunch break, but I think in wanting to  
12 have continuity, we're going to continue this here until  
13 we hearing until we hear from the last person. We have  
14 six more people to go, and we'll continue that and then  
15 break for lunch.

16  
17 Next.

18  
19 MR. PROBASCO: Thank you, Mr. Chair.  
20 Next is Mr. John Andrew.

21  
22 MR. ANDREW: Thank you, Mr. Chairman,  
23 members of the Board, RAC Chairs. My name is John W.  
24 Andrew for the record. I'm from the Organized Village of  
25 Kwethluk.

26  
27 I had a lot of things in mind to bring  
28 up, but some of them were presented by the other  
29 testifiers. I thank them for that.

30  
31 Our Organized Village of Kwethluk met  
32 with the City of Kwethluk city council along with the  
33 Kwethluk Corporation, and sometime back we met with the  
34 Native Villages of Allakaket, Atqasuk and Tuluksuk on  
35 this tribal consultation. On tribal consultation, and  
36 they were unanimously opposed to the corporations being  
37 includ -- to be included on the consultation process.

38  
39 For centuries our people or precontact in  
40 the rural villages, tribal governments are the only form  
41 -- tribal governments were the only form of governments.  
42 And sometime later, is that after they came into contact  
43 with the outsiders, in those days they called them  
44 outsiders or non-Natives, and they realized there were  
45 people out in the villages. And the Federal government  
46 take them as their wards, and then -- and they -- in the  
47 territorial days, the BIA was entrusted to look after the  
48 tribes, and all these years we've been governed by the  
49 Federal Government.

50

1                   Then statehood came in 1959. Now we have  
2 dual government. And it created a mess right in the  
3 villages. We have our own tribal government, then we  
4 have the State government and the Federal government  
5 trying to tell us when and where we can go on subsistence  
6 and to support our families.

7  
8                   Now this protocol wants the corporations  
9 to be involved. And when we met, we -- our people did  
10 not go with it, because there -- for a number of reasons.  
11 One is being will this -- back in around 1980 after ANCSA  
12 came about, they said the corporations were created to  
13 look after your land, that is, separate entities to look  
14 after your land and corporate affairs, not tribal  
15 affairs.

16  
17                   There's several other reasons which they  
18 described, one was that under the Federally-recognized  
19 tribe terminology, regional corporations and corporations  
20 are not recognized. The other one was they were afraid  
21 that if this becomes a reality, it will further erode the  
22 tribal sovereignty of the villages, and the corporations  
23 will be fighting for the same funds that the villages are  
24 supposed to get. And it -- if you have three separate  
25 entities within your community, they're actually fighting  
26 for each -- fighting each other. In our terminology, in  
27 the Native way of life, a community is a tribe, not three  
28 separate entities. Those are some of the reasons they  
29 brought up.

30  
31                   And thank you for letting me do my little  
32 presentation. Quyana.

33  
34                   CHAIRMAN TOWARAK: Thank you, Mr. Andrew.  
35 Next.

36  
37                   MR. KRON: Our next testifier is Richard  
38 Bender. Richard Bender.

39  
40                   MR. BENDER: Hello. My name's Richard  
41 Bender. I stumbled on this event. I stopped by our CDQ  
42 Yukon Delta, they told me to come testify. I also got  
43 permission from tribal chiefs. So I'm up here. I'm a  
44 college student majoring in economics.

45  
46                   And a lot of stuff I want to say has  
47 already been discussed, but I want to present it again in  
48 view of an economics student.

49  
50                   One of my concerns about the tribal

1 consultation is the financial problems that tribes are  
2 facing. The fear of unfunded mandates. This is a  
3 control problem, and if there's conflict, there's no room  
4 for constructive conflict. We just need to wait to  
5 assure that this consultation can continue through until  
6 the end.

7

8                   As for ANCSA, I believe they do have a  
9 lot of benefits. I don't see it as cultural extinction,  
10 but a more diverse, stronger culture that helps us deal  
11 with today's environment.

12

13                   With ANCSA and statehood they brought us  
14 health care, and I want to quote, health care and all  
15 kinds of good stuff that made the life easier for us.  
16 One elder told me that we live in a material culture, not  
17 in two worlds. Another elder told me that -- I shared  
18 this view, and said, what are you going to do if you die  
19 in one world, hop to the other?

20

21                   Our subsistence lifestyle and our cash  
22 economy go together. Subsistence users and the  
23 commercial user are the same people that go home to the  
24 same family, so we've got to figure out ways, you know,  
25 to get us to get along and cooperate.

26

27                   As for ANCSA being a tribal entity, I  
28 don't think they should be a tribal entity, but, you  
29 know, a business sector for the tribe. You know, we're  
30 -- there are benefits from the CDQs and the ANCSA  
31 corporations are essential to the survival of the  
32 villages and subsistence way of life.

33

34                   And my -- what I want to ask for is a way  
35 to strengthen the tribes for three reasons, is that the  
36 brain drain that's caused by no opportunity in the tribes  
37 and village. We're sending all our -- all the youth out  
38 to college, and then we're educated and there's no  
39 opportunity for us to go back. And this escalates into  
40 a communication problems. I believe that the college,  
41 the educated college Natives are going to be the  
42 intermediaries that has to deal with the Federal  
43 Subsistence Board and the other agencies, and if we're  
44 talking apples and oranges, we're going to end up with  
45 bananas, you know.

46

47                   (Laughter)

48

49                   MR. BENDER: And there's conflict within  
50 the corporate and the subsistence users. I heard there's

1 supposed to be a subsistence summit that's supposed to  
2 address this. Are any of you guys aware of the  
3 subsistence summit?

4  
5 CHAIRMAN TOWARAK: Not immediately. We  
6 haven't heard of it.

7  
8 UNIDENTIFIED VOICE: There's a leadership  
9 summit that's going to be happening this week, the 5th,  
10 6th and 7th at the Millennium Hotel.

11  
12 MR. BENDER: I think the purpose of this  
13 summit is to try to find ways to come to a consensus with  
14 the subsistence and the corporate entities. And this is  
15 a real problem. I heard on the grapevine on one of our  
16 past meetings that one of the corporate people are going  
17 to cut off the funding to the nonprofit, because there's  
18 disagreement. And this problem needs to be addressed --  
19 I mean, fixed. My suggestion is to strengthen the tribes  
20 through business, some kind of business opportunities so  
21 that we can attract the college-education people back  
22 into the tribes, and we can make better decisions.

23  
24 The pollock industry is a big potential  
25 for a lot of us communities on the coast. It's in full  
26 swing, and there's probably no way that we're going to  
27 stop the pollock industry and the bycatch, and the  
28 externalities that's caused by the pollock industry is  
29 directly affecting us as subsistence users. And if we  
30 could somehow get a bigger piece of that pie so we can be  
31 compensated for what we're missing out, because it's  
32 going to be pretty hard to stop the pollock industry.

33  
34 I'm here today, because two scholarships  
35 from the Bureau of Indian Affairs, they paid for most of  
36 my -- all of my tuition, and then some, and then the CDQ  
37 groups paid for my education. If it wasn't for them, I  
38 wouldn't be here. So we rely on all these agencies,  
39 including that my tribe pays for my housing rental, so we  
40 all need each other, and we all need to cooperate.

41  
42 And one way I think would be a good way  
43 to get the tribes making money is to do like a tribal  
44 development quota similar to a community development  
45 quota, and then we could build relationships with the  
46 other organizations that are here, and then they can  
47 incubate us to get ourselves on our feet so that we can  
48 fulfill -- I mean, complete our goal as a tribal-to-  
49 government consultation.

50

1 Thank you, Chair and Board, for allowing  
2 me to speak.

3  
4 CHAIRMAN TOWARAK: Thank you, Mr. Bender.  
5 Next.

6  
7 MR. KRON: Our next testifier is Maurice  
8 McGinty. Maurice McGinty.

9  
10 MR. MCGINTY: I'm carrying this along for  
11 balance. I don't have nothing written on it.

12  
13 Thank you, Mr. Chair. In reading the  
14 protocol, I pretty much agree with what speakers before  
15 me have said, you know.

16  
17 I don't believe out corporation has -- is  
18 the right organization that the Federal government should  
19 be consulting when it comes to subsistence way of life,  
20 simply because they're a business-oriented corporation  
21 that focuses 100 percent on profits, very, very little,  
22 if any, to do with our way of life out in the village.

23  
24 The region I'm from is Tanana Chiefs.  
25 And we deal with about 46 villages in our region. And I  
26 want to say the leader of that group is usually Tanana  
27 Chiefs. They're the ones who deal with us directly on  
28 subsistence issues and ways of life directly in our  
29 communities.

30  
31 I do not believe that we have  
32 representation on the RAC Council. I might be wrong.  
33 But for that reason -- and we don't have anyone on the  
34 Board that's from our region, so we never get represented  
35 on anything that pertains to subsistence other than the  
36 laws that come down, you are going to do this, you are  
37 going to do that, and you will not do this, and you will  
38 not do that. And it makes for a subsistence way of life,  
39 a community like Nulato to become invalids to the Federal  
40 and State.

41  
42 You hear -- since yesterday you've been  
43 hearing people talk about subsistence way of life. And  
44 I would just like to know just how many of you actually  
45 live the subsistence way of life that pertains to  
46 Alaskans like myself. I'll tell you right now if I ask  
47 for a raise of hands, there would not be very many people  
48 that would raise their hand to the questions I'm going to  
49 ask you.

50

1                                 How many of you in here eat bear meat?  
2 How many constantly? Equals to one bear a year? How  
3 many of you eat moose meat just about every meal of the  
4 day? How many of you eat fish at least once a week taken  
5 out of the Yukon River, and every day in the salt strips  
6 form, in the barrel form, in the dried form? How many of  
7 you eat sun dried fish with seal oil whenever they get a  
8 chance like I do? How many people beg from people from  
9 Unalakleet so that I can get some white muktuk so that I  
10 can keep it on my table for myself so I can eat it  
11 whenever I want? How many of you make bear grease that  
12 you can use to dip your dried meat in when you eat around  
13 a table by yourself?

14  
15                                 These are subsistence way of life,  
16 gentlemen and ladies. How many of you make your own  
17 fruit from raspberries and salmon berries like I do? How  
18 many of you make all of your jam from blueberries,  
19 raspberries, and salmonberries and high bush cranberries  
20 and low bush cranberries like I do?

21  
22                                 Ladies and gentlemen, it's good to see  
23 some hands come up. This is subsistence way of life.  
24 This is subsistence way of life.

25  
26                                 I don't like beef, because there's too  
27 much injection of different kind of forms that they need  
28 to preserve the meat when they put it on the shelves in  
29 the store, so I try to -- I'm not saying that there's any  
30 less on the shrimp, but I try to eat shrimp whenever I  
31 come to town. I just stay away from beef, because it's  
32 a cholesterol forming piece of -- that you inject into  
33 your body.

34  
35                                 This is subsistence, ladies and  
36 gentlemen. This is what we're talking about. And for  
37 that reason, when you look at that protocol up there, I  
38 don't like the idea of ANILCA on there. I think ANILCA  
39 should be scratched from that protocol before it's  
40 introduced to the Secretary of the Interior and whoever,  
41 and tribal governments be included as the form that they  
42 reach for communications, so that when things like this  
43 that pertain to subsistence are introduced, we have an  
44 input in it, direct input. It's very important.

45  
46                                 You know, we are at a point now where we  
47 cannot continue living by the non-Native laws, because  
48 they're battling our Native laws. Ladies and gentlemen,  
49 there's not much that you need to discuss on the matter.  
50 It's our way of life versus yours, and right now you're

1 winning, because we're not given the opportunity to  
2 express our feelings like I am today.

3

4 I was told, by who I don't know if it was  
5 Federal or State, that we're going to reduce your fishnet  
6 size now by half an inch. We're going to reduce your  
7 fishnet from 8-inch mesh to 7-1/2-inch effective this  
8 summer. I wonder how much we're going to kill because  
9 they make that mesh smaller while they're thinking about  
10 how many fish they're going to see get to the spawning  
11 area.

12

13 And not only that, but I just found out  
14 that they're going to send a fishnet that I cannot use.  
15 Why? Because there's no float line on it and no lead  
16 line. They're just going to send me the webbing. I in  
17 turn am going to send them a fully usable eight-inch mesh  
18 fishnet that's ready to drop in the water. That's  
19 nonsense. I'm not going to live with that kind of law  
20 over my head.

21

22 Now, I've been told that I may have to  
23 apply for a permit to go out and king salmon. That's  
24 again a nonsense. I will not do it. I'll go to jail  
25 first. I'm sorry to say that, but I will. I have to  
26 fight for my way of life. And if that means going to  
27 jail to do it, then so be it.

28

29 It's not a fun thing. I feel sorry for  
30 you guys, because you're going to have to make decisions  
31 that's going to be recommended to the Secretary of the  
32 Interior and Department of Agriculture. For you RAC  
33 people, I feel sorry for you as well, because you have a  
34 lot of work ahead of you. You know, it's nothing that's  
35 easy. It's easy for me to sit here and testify, but it  
36 isn't easy for you people to sit down with all the  
37 information that you've been fed yesterday and today and  
38 formulate that into some kind of usable documentation  
39 that will come back and represent us as subsistence users  
40 in the State of Alaska, and more importantly on the Yukon  
41 River where very, very little representation is ever  
42 brought to us in the form of a human being. Where do  
43 they go? Ketchikan, Kenai, Anchorage, Cordova, Yakutat,  
44 Sitka, Nome, Bethel. Any place when depending on the  
45 season of the year they can fish or they can hunt, but  
46 very little is brought to the Yukon River where actuality  
47 is the means of survival.

48

49 So, ladies and gentlemen, I thank you for  
50 your time to listen. I'm sincere in what I ask and say

1 to you. I can only hope that you listen to the people  
2 out here, and I know you do, and come up with something  
3 that's going to be usable by all of us.

4

5 Thank you for your time.

6

7 CHAIRMAN TOWARAK: Thank you, Mr.  
8 McGinty. And the next time you mention all that good  
9 food right before lunch, we're go penalize you.

10

11 MR. MCGINTY: Yeah.

12

13 (Laughter)

14

15 CHAIRMAN TOWARAK: Next.

16

17 MR. KRON: Okay. The next testifier is  
18 Larry Simeon. Larry Simeon.

19

20 MR. SIMEON: Good afternoon. Or is it  
21 morning yet? Good morning. My name is Larry Simeon, I'm  
22 with the Cheesh'Na Tribal Council.

23

24 Consultation. I think it's -- you know,  
25 when you're talking about subsistence and our subsistence  
26 issues, it seems like it's after the commercial use is  
27 dealt with, and the State use is all dealt with, and then  
28 they come and deal with subsistence users in the rural  
29 areas. All that -- even if it's the last item, it's not  
30 the smallest issue. The consultation should start way at  
31 the beginning, you know, before like you're dealing with  
32 commercial. That's just all money. We're not dealing  
33 with selling our subsistence rights or anything.

34

35 And yesterday the chief from Huslia spoke  
36 plain as day about how subsistence is. And then here  
37 comes this piece of paper from Ahtna, Incorporated.  
38 People favored that from here, from the Board. You  
39 favored something from -- that's not even a tribe issue.  
40 I mean, it didn't even come from a tribe and you guys  
41 favored that. That's not consultation.

42

43 And a couple years ago the State, we  
44 ended up in court with the State over subsistence moose  
45 hunt that Federal made available, but they didn't do any  
46 consultation with the tribes. It ended up in court  
47 because they adopted the State's subsistence, however  
48 they did it. There was no consultation there. So we  
49 need to work with that up front I think.

50

1                   And another deal that -- it's not  
2 Federal, but it's an example, the State brought up this  
3 potlatch moose which is, you know, a sacred time of honor  
4 for any Alaskan Native anywhere in the State. It's time  
5 to honor, you know, the people, whether it's loss or  
6 whatever. The potlatch moose is taken by another clan,  
7 there's rules about it in our culture. And the State  
8 went ahead and recognized Ahtna, Incorporated Board of  
9 Directors to manage that, which is -- I think that's  
10 illegal from the North Slope all the way down to the tip  
11 of South America in our culture.

12  
13                   There's -- consultation is a serious  
14 matter. I think it needs to be dealt with.

15  
16                   That's what I have. Thank you.

17  
18                   CHAIRMAN TOWARAK: Thank you, Mr. Simeon.

19  
20  
21                   MR. KRON: Okay. The next testifier is  
22 Gloria Stickwan. Gloria. Gloria Stickwan.

23  
24                   MS. STICKWAN: I want to start by saying  
25 that the Ahtna Customary and Traditional Use Committee is  
26 a subcommittee of the Ahtna Corporation, and it  
27 represents the Ahtna regional subsistence, seeing  
28 customary and traditional use, because the Ahtna tribes  
29 in CRNA, Copper River Native Association nonprofit, does  
30 not have the monies to attend meetings. That's why you  
31 don't see our villages here, is because they don't have  
32 the funds to attend these meetings. And so the only way  
33 they could represent customary and traditional use of the  
34 resources was through the Ahtna Corporation forming a  
35 subcommittee.

36  
37                   That will probably change. We're working  
38 towards that. When it changes, I don't know when, but we  
39 are working towards forming another entity, a nonprofit,  
40 a tribal conservation district to represent the tribes,  
41 but that's going to take a while for that to form, and  
42 it's being worked on right now. When it gets formed, I  
43 don't know.

44  
45                   But that C&T committee is made up of  
46 people from our villages, from all the seven villages in  
47 our area. They live in those villages and they make the  
48 decisions at statewide meetings on behalf of the Ahtna  
49 people. And that's the system we have to work with right  
50 now.

1                   What we talked about at our C&T meeting  
2 in January concerning this issue, was that we wanted to  
3 have a commission like Sky said earlier. All the things  
4 Sky said this morning is what we talked about at our C&T  
5 meetings, that we wanted to have a commission formed. A  
6 commission formed. It would have to be decided by the  
7 tribes, of course. And it should be funded by OSM or BIA  
8 or Section .809 of ANILCA.

9  
10                   We -- all of the issues that are brought  
11 before the Federal Subsistence Board should be brought  
12 before this commission. They should have someone helping  
13 them that's independent, like he said.

14  
15                   All of those things he said this morning  
16 is what we talked about at our meeting, and I'm not going  
17 to go over them again. That's what we supported.

18  
19                   CHAIRMAN TOWARAK: Thank you, Gloria.

20  
21                   MR. KRON: Our next testifier is Michael  
22 Peter. Michael.

23  
24                   MR. PETER: Thank you, Mr. Chair. My  
25 name is Michael Peter. I'm from Fort Yukon. I'm the  
26 Gwitchyaa Zhee Tribe first chief. And also I'd like to  
27 thank my family and my wife for letting me come down  
28 here, because right now I'm taking time away time for me  
29 for gathering of the geese and birds that we store for  
30 winter.

31  
32                   And I think that some of the things that  
33 I've got here, there's so much that I don't even know  
34 where to start.

35  
36                   It would be nice if we had help in the  
37 hub villages, not Fairbanks or Anchorage to where that  
38 some of our people -- that we can actually have some more  
39 government-to-government consultation. And I think that  
40 a lot of the decisions that are made, that the agency  
41 leaders should be there, also our tribal leaders. And I  
42 think this draft here, I think it should -- now the cat  
43 is out of the bag, I think this draft needs to be drafted  
44 up by the tribes and presented to the Secretary of  
45 Interior from the tribes and the tribal leaders of  
46 Alaska.

47  
48                   And I think also like has been mentioned  
49 before, corporations shouldn't be viewed as tribes. And  
50 I think the main Board, you know, like Mr. McGinty was



1 I don't -- I'm not telling you anything new there.

2

3 So, anyway, that's all we have, Mr.  
4 Chairman. Thank you, and have a good lunch.

5

6 CHAIRMAN TOWARAK: Thank you. We will  
7 then recess for lunch. It's about 12:00 o'clock. We'll  
8 be back at 1:30.

9

10 (Off record)

11

12 (On record)

13

14 CHAIRMAN TOWARAK: We are ready to  
15 reconvene. I will call this meeting back to order.

16

17 We're on Item 8. And down to the last  
18 portion of our hearing process, to hear from the Regional  
19 Advisory Council Chairs. We'll start this time with Mr.  
20 Smith.

21

22 MR. SMITH: I don't really know where to  
23 start on this one. We didn't discuss this a lot at our  
24 Regional Advisory Council meeting.

25

26 It says in the report that we didn't take  
27 a position. That's not quite true. The Chairman talked  
28 at some length about our concern that this was going to  
29 be a way of circumventing the Regional Advisory Council  
30 process, and I didn't -- we didn't pass any motions or  
31 anything, but I know I shared his concerns.

32

33 I think the Regional Advisory Councils  
34 work very well. I think they're much better for rural  
35 users, rural people than the State's Fish and Game  
36 Advisory Committees. And I wouldn't want to do anything  
37 to circumvent or work around the Regional Advisory  
38 Councils.

39

40 I'm not sure -- you know, I'm speaking  
41 mostly for myself now. I'm not sure exactly what the  
42 benefit of this would be. Again, I think the Regional  
43 Advisory Councils are good.

44

45 You know, I've lived in rural Alaska and  
46 western Alaska most of my life, and communications in the  
47 multi-cultural environment are tough enough. They're --  
48 it's always a problem, but to filter it through this  
49 bureaucratic process, you know, if I understand what's  
50 going on, somebody from an agency will meet with a tribal

1 entity, and then pass their input on to the Federal  
2 Subsistence Board and maybe through the Regional Advisory  
3 Councils. Well, it's going to be kind of like, you know,  
4 the old game of telegraph, you know, where one person  
5 tells another person, and that person tells another  
6 person. I think we're going to have an awfully hard time  
7 getting a clear view of what the input was. Not being  
8 able to ask questions, not being able to -- not having  
9 the persons there to provide clarification, and so I  
10 don't really see the advantage of doing this.

11  
12                   And I can also tell you that the first  
13 result of this is some people are going to feel like  
14 they're not properly represented. You know, they're  
15 going to feel like some people have -- are getting more  
16 than their share of input into the fish and wildlife  
17 regulatory process. And so, you know, even if it's not  
18 true, it creates a perception of unfairness I think  
19 that's really a real problem.

20  
21                   Again, I just don't know where to start  
22 or where to stop on this.

23  
24                   The ANCSA corporations, you know, I think  
25 40 years ago there was an idea, a perception that these  
26 corporations were going to serve a social welfare  
27 function. But that's long since gone. They're the  
28 biggest corporations. They're for-profit corporations  
29 and some of the biggest corporations in Alaska.  
30 Corporations exist to grow, not necessarily even to  
31 benefit their shareholders. They exist to grow. In some  
32 cases their objectives, their profit objectives may go --  
33 work against the wishes of the subsistence hunters and  
34 fishermen, you know. And we see that in offshore oil  
35 drilling, mining. These corporations are there for  
36 growth. It makes about as much sense I think as putting  
37 British Petroleum in charge of representing fishermen and  
38 hunters in Louisiana.

39  
40                   And, so, I don't know, I would like to  
41 see this go -- I would like to go back to our Council  
42 with what I've learned here. I'm still pretty confused  
43 on what's going on, but I'd like to take what I've  
44 learned, go back to them and talk about it some more, and  
45 provide more meaningful input on it before any action is  
46 taken, if that's possible.

47  
48                   Thank you.

49  
50                   CHAIRMAN TOWARAK: Thank you, Mr. Smith.

1 I think, and perhaps Keith is going to explain it, but it  
2 came down as a Presidential directive.

3

4 MR. GOLTZ: Yeah, it's hard to know when  
5 to jump in. And I listened intently to a lot of people  
6 talk this morning about the tensions between ANCSA  
7 corporations and tribes.

8

9 But the simple fact is we don't have any  
10 choice. This is a Congressional directive that says that  
11 we shall consult with ANCSA corporations on the same  
12 basis as tribes. And if you take a look at Steve's  
13 presentation this morning, there should have been copies  
14 in your packet and there should be copies for the  
15 audience out in front. If you'll look at the first  
16 footnote on Page 5, you'll find the legal citation there.

17

18 And, in addition, we have checked with  
19 Washington as to how they're interpreting this. There is  
20 no budge on this. It's not a choice we're making. It's  
21 a choice that's been made by other people.

22

23 What the Department of the Interior is  
24 doing in recognition of the tensions is to have two  
25 separate consultation policies. We have a draft now  
26 that's either out for public review or soon to be out for  
27 public review, and a committee in Washington is now  
28 starting to craft a separate ANCSA corporation document.  
29 We haven't seen that. We can only guess at what it's  
30 going to look like, but the people who strongly object to  
31 that are take -- and expressing their objection here, are  
32 taking it to the wrong forum. It really has to go back  
33 to Congress. There's no room on that one.

34

35 CHAIRMAN TOWARAK: If it's any  
36 consolation to those of you here today, I attended the  
37 first tribal conference with President and he had all the  
38 regular tribes sit in front and all the corporations sat  
39 way in the back. You had to watch him on a little TV.

40

41 (Laughter)

42

43 CHAIRMAN TOWARAK: Is that it, Mr. Smith?

44

45 MR. SMITH: I just want to say one thing,  
46 that I've been to a lot of meetings like this, and I've  
47 got to say, Mr. Goltz, you're the most clear speaking  
48 attorney I've ever listened to.

49

50 (Laughter)

1 MR. SMITH: I mean, I just -- I really  
2 appreciate that. You come up with very, very good  
3 answers.

4  
5 MR. GOLTZ: Thank you. I try.

6  
7 CHAIRMAN TOWARAK: Rosemary.

8  
9 MS. AHTUANGARUAK: I want to thank  
10 everyone for coming and participating in this meeting.  
11 It has had a lot of burden upon my shoulders coming  
12 before this process. I was very concerned about the way  
13 that we're being put into this process, and there's a lot  
14 of rubbing of shoulders and there isn't the direct  
15 interaction to facilitate some of these communications.

16  
17 In light of that, the discussions that  
18 we've had from the tribal membership that came and  
19 presented today were very powerful. They gave good  
20 history, they gave references to documents that led some  
21 of these processes. They gave presentations of decades  
22 of participation in this process. That's very important  
23 to me as I have to look at the process and look at the  
24 way the consultation has occurred.

25  
26 At our last meeting in January I  
27 commented about the way consultation had been done in our  
28 area and how things were not done in a good way. The  
29 damages that come from poor consultation can affect  
30 generations. Damages that affect the health of our  
31 generations cannot be tolerated. Our generations have  
32 carried on traditions and cultures that have sustained  
33 our survival to this point, and now we have efforts  
34 before us that are trying to control our resources, but  
35 they're creating laws that affect our daily lives.  
36 They're creating laws that cause some of our people to  
37 become illegal when they're trying to care for their  
38 elders in our traditional foods, our traditional cultures  
39 and our traditional sustenance. It's not right when  
40 we're doing those kinds of things.

41  
42 There are many things that affect our  
43 resources, and when we're pulled into a way of  
44 participation that narrows the understanding, we're  
45 limited on the tools that we can bring to the table to  
46 help us make some of these decisions.

47  
48 I had to go to meetings and discuss  
49 concerns about health for our people. I talked to some  
50 of our corporations about these concerns, but they told

1 me, we're not a health department, but yet they were  
2 contributing to some of the health issues that we're  
3 facing.

4  
5 I talked to them about some of the social  
6 impacts that were being caused because there were changes  
7 that were affecting our lands and waters, that were  
8 affecting that we hunt and live in our lands, in our  
9 waters. And again they said, we don't deal with social  
10 impacts.

11  
12 It's important when we come to the table,  
13 because these discussions are affecting our health.  
14 they're affecting our interactions with our communities,  
15 our leadership and our process for decisionmaking. But  
16 the importance of our tribes and looking at the  
17 wholeheartedness of who and what we are is different than  
18 the corporations that come to the table.

19  
20 We have a very difficult task before us,  
21 but the effort is to improve the consultation. Some of  
22 the work that has gone forward in presenting this has  
23 been very good. Some of the work that has come from out  
24 participants to share has added some discussion to this  
25 process.

26  
27 I agree with my colleague who says that  
28 we need to go back into our regions and discuss this  
29 further. There is information that we bring. There's  
30 information that has been brought to others in this  
31 process that affect the way that we decide these things.  
32 We need to go forward in a good way. And we need to look  
33 at where we're coming from and we need to bring it back  
34 to where we're coming from to do a good consultation.

35  
36 I feel that we are pushing the cart very  
37 fast, trying to meet the decisionmaking process. And we  
38 need to allow us to do it the way it should be. We  
39 should be receiving this information, coming back into  
40 our communities, meeting with our councils, allowing our  
41 councils to absorb this process, bring additional  
42 information into an additional meeting, and coming back  
43 to us at this table with our decisions. We need to have  
44 the involvement going at the way it should be. And if  
45 we're going to do meaningful consultation, that's how we  
46 must do things. We have to allow the interactions to  
47 occur that allow us to move forward as we need to, not at  
48 a timeline.

49  
50 Thank you.

1 CHAIRMAN TOWARAK: Thank you, Rosemary.  
2 Mitch.

3  
4 MR. SIMEONOFF: Thank you, Mr. Chairman.  
5 If I could, I could just read the comments made at our  
6 last RAC meeting. At the Kodiak/Aleutians they discussed  
7 the consultation process at some length, and I can take  
8 the comments made by Council members.

9  
10 One of them thought that there was a  
11 reason why ANILCA speaks to rural and not Native  
12 priority, and while it is important and very valuable for  
13 tribes to give their input, he does not supportive of  
14 tribes going around the Council.

15  
16 And some Council members were very  
17 supportive of tribes consulting with the Board since  
18 tribes are governments and they have a role to play in  
19 the process.

20  
21 And another council member pointed out  
22 that it is not a conflict to get tribes involved.  
23 Subsistence is for rural residents, and we are all in the  
24 same boat.

25  
26 Another Council member stated that tribal  
27 governments are a political reality and tribal  
28 consultation is good, because it have a -- we have a way  
29 to express our opinions, that tribal consultation could  
30 be a good thing. We can all work together and help  
31 support each other.

32  
33 Another member explained that the tribal  
34 consultation process is different than his role on the  
35 Council. He has to communicate with the tribes and other  
36 people, and he would never go against anything that a  
37 tribe decided on, but the Council role is to review and  
38 make recommendations on a bunch of subsistence issues.  
39 And having government-to-government consultation is in  
40 addition to having individual tribal members on the  
41 Council. Tribal consultation is above the Council.

42  
43 Another Council member pointed out that  
44 as Council members, we are advisory, and in some ways  
45 tribes have a stronger voice.

46  
47 Another Council member stated that tribes  
48 talking to Councils doesn't make sense. You have the  
49 Councils -- the Council should not be in the middle of  
50 tribal consultation. Excuse me. I get a little nervous

1 once in a while. The tribes should talk to the Federal  
2 Board.

3

4 Another Council member pointed out that  
5 there are five representatives of tribes on the  
6 Kodiak/Aleutians Council, so the tribes -- so tribal  
7 councils do have some representation on the Council.

8

9 Another pointed out that the Council --  
10 pointed out by the Council is that it would be good if  
11 members of the Federal Board went to Council meetings.  
12 That way they could year the Council recommendations.

13

14 And that was the discussion at the  
15 Kodiak/Aleutians RAC meeting in March.

16

17 And one other question that came up  
18 earlier, was if tribes -- during consultation if they  
19 wanted a private consultation, would that be open to them  
20 given if there was a real touchy issue and there were  
21 other -- and there were people from the public that just  
22 persisted in coming in to make comments, instead of  
23 making progress, the discussion would just go around in  
24 circles if they did not have a private consultation.  
25 That question was, would they be able to request a  
26 private consultation with the Board.

27

28 CHAIRMAN TOWARAK: Go ahead.

29

30 MR. PROBASCO: Mr. Chair. Mr. Simeonoff.  
31 As far as how the tribal consultation protocol will be  
32 developed and the issue of meeting with the tribes in  
33 private or behind closed doors, that will be an issue  
34 that the Board will be discussing. My discussion with  
35 Staff and that, it -- and what I've learned so far, and  
36 I'm not 100 percent on this, but the information I've  
37 learned is that it can occur. There's nothing against  
38 that.

39

40 Mr. Chair.

41

42 MR. SIMEONOFF: Thank you. I'll take  
43 that back.

44

45 MR. GOLTZ: Yeah. I just want to clarify  
46 that the RACs could not do that. The RACs could not meet  
47 in private with an individual entity. And that's because  
48 of the restrictions in the Federal Advisory Act. But the  
49 Board is not subject to FACA; it probably could meet in  
50 private.

1 MR. SIMEONOFF: Yes, sir. That was  
2 understood. They weren't asking to meet in private with  
3 the RAC. They were asking to have a tribal consultation  
4 with the Board. A private consultation with the Board.  
5 That was their question.  
6  
7 MR. GOLTZ: Okay. I'll have more to add  
8 later.  
9  
10 CHAIRMAN TOWARAK: Is that it, Mitch?  
11  
12 MR. SIMEONOFF: Yes.  
13  
14 CHAIRMAN TOWARAK: Sue.  
15  
16 MS. ENTSMINGER: Thank you, Mr. Chair.  
17 First of all I'd like to apologize for not being here for  
18 the time that I was absent. I have some health issues  
19 and I had doctor's appointments, so I wasn't able to be  
20 here, and I wish I could have been. I'll get an update  
21 from my cohorts here.  
22  
23 Also, the Eastern Interior, we found out  
24 at our last meeting that we've got so much on our plate  
25 that this did not get discussed like it could have. So,  
26 I mean, a lot of the Yukon fisheries stuff, we have -- we  
27 had so much come at us that time, and I -- we were all  
28 kind of making statements like, man, we need a three-day  
29 meeting, and then Polly there, and she said, yes, you can  
30 have a three-day meeting, so that's probably what's going  
31 to happen to the Eastern Interior in the future and there  
32 will be more discussion on something like this. I can  
33 see from what I'm hearing here that the Eastern Interior  
34 would really like to look at it and evaluate it more.  
35  
36 And then I'm looking at what's in the  
37 book here, and they said that we didn't have much  
38 comments, but when we discussed the Arctic Village sheep  
39 issue, someone on the Council felt that due to the  
40 sensitivity of the sheep issue, it might be good for that  
41 village to come directly to the Board with their  
42 concerns.  
43  
44 So that was the only thing that we ended  
45 up taking up at that time.  
46  
47 Thank you.  
48  
49 MR. REAKOFF: Thank you, Mr. Chair.  
50 Western Interior Council reviewed and recognizes and felt

1 that communication lines to the tribes needs to be  
2 improved. And communities and tribes should be made  
3 aware of the RAC meetings and what the agenda items are,  
4 and what the RACs are going to be working on. We need  
5 better communication flow. It's going out -- we had  
6 people that stated to myself that they were unaware of  
7 the meeting. We need better publication, better  
8 communication to the tribes as a basis of communicating  
9 with the tribes.

10  
11 The tribal involvement should be  
12 encouraged through participation at the RAC meetings,  
13 inviting tribal members to the RAC, or providing written  
14 comments or some information flow to the RACs that could  
15 provide a basis for tribal involvement in the process.  
16 The tribal council recog -- the Council, Western Interior  
17 Council recognized that the Federal Board has deference  
18 to the Regional Councils, and the RACs are the final  
19 gathering point for information and recommendations to  
20 bring before the Federal Subsistence Board, and also  
21 recognizing that Councils can come and speak directly to  
22 the Board themselves.

23  
24 But a lot of times, as was stated,  
25 there's not a lot of funding to go to the Federal Board  
26 process.

27  
28 My review of the draft document, my  
29 personal feelings are that the draft document has good  
30 basis as a building point, but needs some tweaking and  
31 adjustment and there's a real need for an interim  
32 document before our next regulatory cycle, but I do feel  
33 that there needs to be an extension to the process to  
34 allow thorough vetting.

35  
36 And one of the issues that was unclear,  
37 and maybe I missed it in the document, that the RACs  
38 have, you know, how our communication to the tribal  
39 councils is going to work. The councils need to bring us  
40 information, but we need to be able to ask information,  
41 and we seem to be precluded from doing that. And during  
42 our discussion on the sub -- the customary trade  
43 subcommittee issue that the Board directed the Councils  
44 to review, I wanted to consult the tribes and send out a  
45 questionnaire to the tribes and develop a process of  
46 questioning the tribes. But I was told that if there was  
47 over 10 persons that you poll, we'd fall under some  
48 preclusion.

49  
50 And so there needs -- the Board needs to

1 develop some mechanism for when the Councils need  
2 information from tribes and have to be able to convey  
3 that, whether that's through OSM that goes filtering back  
4 out to the Council -- or to the tribal councils. There  
5 needs to be a recognition that the information flow, the  
6 Council -- there has to be a two-way conversation between  
7 the RACs and the tribal councils. and so that would be  
8 my summation.

9

10 Thank you.

11

12 CHAIRMAN TOWARAK: Thank you, Jack. Mr.  
13 Adams.

14

15 MR. ADAMS: Thank you, Mr. Chairman. I'm  
16 going to share with you the points, you know, that our  
17 RAC in the form of a letter submitted to our Chairman and  
18 the Federal Subsistence Board.

19

20 We did, you know, consider the concept of  
21 how to best incorporate tribal consultation in the  
22 Federal management process during our meeting in Sitka.  
23 The Council does believe that there is an important role  
24 for tribes in managing our wildlife and renewable  
25 resources, and encourages the Board to formalize tribal  
26 consultation protocol, which you have already done, and  
27 Mr. Kessler had done an excellent job in presenting that  
28 to us.

29

30 These are the recommendations that some  
31 of the members of our Board came up with. There's only,  
32 you know, four of them that we have recorded in our  
33 letter.

34

35 But number A is a written report should  
36 be prepared for the Councils by the Office of Subsistence  
37 Management to all relevant tribal consultations regarding  
38 topics under consideration by the Council in their  
39 region. This report will cover the time period since the  
40 previous Council meeting and include all Federal  
41 agencies.

42

43 There should be a place on the agenda at  
44 each Council meeting for tribes to provide testimony to  
45 the Council. Now, we do this in our meetings. You know,  
46 there is a protocol that is -- or a process that is  
47 followed after, you know, a proposal has been introduced  
48 and is analyzed, you know, by the Federal agency person  
49 that's doing, we then open it up for discussion, you  
50 know, for agency people and so forth to make their

1 comments. And one of the things that we do call on are  
2 tribal governments.

3  
4 I mentioned earlier that I particularly  
5 am somewhat disappointed in the fact that we don't get as  
6 much tribal involvement at our meetings, and I think that  
7 really needs to be improved.

8  
9 There should be, going on here, another  
10 person said there should be a place on the agenda at each  
11 Council meeting for tribes to consult with any Board  
12 member or any member of the Board that may be in  
13 attendance. Any member of the Board, you people over  
14 there, should be able to, you know, have an oppor -- give  
15 an opportunity for tribal people to consult with that  
16 individual.

17  
18 And then there should be a place on the  
19 agenda at each Board meeting for tribes to consult with  
20 the Subsistence Board. So that just means that, you  
21 know, you're -- I think you're doing quite a bit of that,  
22 but it maybe needs to be recognized, you know, as tribes,  
23 anyone from a tribe can have an opportunity to come up  
24 and make their comments over there.

25  
26 So that's, you know, the extent of, you  
27 know, the comments that were made by the Southeast  
28 Regional Advisory Council.

29  
30 And I'd just like to maybe, Mr. Chairman,  
31 if you will, you know, elaborate on some of the other  
32 things that has already been mentioned and reemphasize  
33 those.

34  
35 Better communication is really needed.  
36 The word needs to get out to those tribal entities that  
37 the RAC is having a meeting at such and such a place,  
38 and, you know, you're encouraged to attend.

39  
40 Another thing that I think is really  
41 important is that we should see more tribal entities  
42 submitting proposals. And then it should go through the  
43 process, you know, just like any other proposal. I think  
44 that's going to give a lot of weight to RACs when we see  
45 those, you know, increasing more. We hardly see any, you  
46 know, tribal entities, you know, involved in that  
47 process, and I think it's really important.

48  
49 When I first got involved in tribal  
50 government in 1994, the very first time that I got on

1 board, I was elected the chairman or the president of the  
2 council, and one of the very first things that the  
3 council wanted me to do is to go to Washington, D.C. in  
4 about three weeks to attend a self-governance  
5 demonstration project convention that was taking place  
6 there. And this is where I got involved, you know.

7  
8 That job that I took was an appointment  
9 by the council, and it was only supposed to last for  
10 eight months. Because I said, no, three times, you know,  
11 at the invitation to that -- fill that seat, and finally  
12 they pulled me in by saying, well, you can only -- you  
13 know, we want you just to serve it for the term that's  
14 going to end, which is eight months, and then you can,  
15 you know, not have to run after that.

16  
17 Well, they sent me to that self-  
18 governance conference in D.C. that year, and at the same  
19 conference there was a Forest Meeting that was taking  
20 place, and I was encouraged to go to that, because there  
21 was going to be a guest speaker. I can't remember the  
22 tribe that he came from, but he was a judge there. His  
23 name is William H. Burke I believe. And I was really  
24 impressed by his opening remarks. He said that there are  
25 three government entities that we will be -- that we  
26 ought to be involved in and become familiar with he says.  
27 Number 1 is the Federal government. Number 2 is the  
28 state governments. And then he said it in this way, and  
29 then there are the sleeping giants, the tribal  
30 governments. And then he went on and he explained the  
31 reasons why tribal governments should play an important  
32 part in the self-governing process.

33  
34 So I just wanted to emphasize that, you  
35 know, at this point, too, because tribes have been way in  
36 the background, and they need to start coming out into  
37 the forefront and playing their role. And it's difficult  
38 for them, because of the funding, you know, the limited  
39 amount of funding that they have. And if that can be  
40 improved, I'm sure that you will see more participation,  
41 you know, in the consultation process.

42  
43 Another thing that I want to share with  
44 you, too is when the Indian Reorganization Act came into  
45 being, that was a real big step forward for tribal  
46 organizations. And soon after that became law, there was  
47 an individual, Felix S. Coen, wrote an article in the  
48 Indian Report about the Indian Reorganization Act. And  
49 I think this is really important. He said that not all  
50 who think of self-government mean the same thing by the

1 term. Self-governance, he says, is something that is not  
2 determined by some throne in Washington or in heaven, but  
3 that it is where decisions are made by the people who are  
4 most affected by it. And that means, you know, the  
5 common person out in the villages and in rural areas,  
6 they're the ones, you know, that really should bring  
7 forth, you know, the issues that affect them in every way  
8 and take it through the proper process and so forth.

9

10 So, you know, ANILCA was designed from  
11 bottom up. And, you know, it needs to be really  
12 emphasized that, you know, the villages, the people in  
13 the villages need to be more involved through their  
14 tribal governments.

15

16 And then the self-governance  
17 demonstration project, ladies and gentlemen, didn't come  
18 from the government. If any of you are familiar with it.  
19 It came from tribal leaders throughout the country who  
20 were not satisfied with the way the Bureau of Indian  
21 Affairs was administering their funds. And so a group of  
22 tribal leaders started petitioning Congress to start a  
23 self-governance demonstration project. And I think it  
24 was John McCain and Senator Inouye from Hawaii who  
25 introduced the bill, and they were able to get 50,000 --  
26 \$500,000 to do a demonstration project. It was supposed  
27 to last for four years.

28

29 And what it did is it enabled tribes to  
30 be able to take more of the programs that the Indian --  
31 or that the Bureau of Indian Affairs was administering to  
32 tribes, except for the inherent ones, you know, that the  
33 Bureau had. But all of the other programs and services  
34 and functions and activities was supposed to be taken  
35 down to the tribal level.

36

37 And it became such a successful  
38 demonstration project that after it became permanent, you  
39 know, other tribes began to enter into the program. I  
40 think they were accepting, you know, anywhere between 7  
41 to 10 tribes every year. And until, you know, eventually  
42 there was a bunch. But, you know, there's 500 and some  
43 tribes in the United States and there's very few tribes  
44 who have the compacting abilities or the self-governance,  
45 you know, category. In Alaska there are 120 some tribes,  
46 and of that there are only about 28 who have the self-  
47 governing compact program. They have to meet certain  
48 criteria in order to reach that, but it does open a door  
49 for a lot of tribes to be able to be more involved and  
50 actually, you know, administer some of the programs that

1 any one of you people have in your agencies.

2

3                   The criteria that was set when I was  
4 involved in that working group was that if there is any  
5 historical, geographical or cultural significance to a  
6 tribe that -- like, for instance, you know, the Forest --  
7 well, the Forest Service wasn't included, because they're  
8 under the Department of Interior. Let's take the  
9 National Park Service or the Fish and Wildlife Service.  
10 If there was a program, function, service or activity  
11 that they had under their belt, that tribe should be able  
12 to start working on an annual funding agreement to have  
13 those programs taken down to their tribal level. And as  
14 far as I know, ladies and gentlemen, there's only about  
15 five tribes in the whole United States who are in that  
16 category right now, because many people don't know about  
17 it, and some of the agencies, you know, are resisting it,  
18 because they don't want to give up the money or the  
19 control, or for some other reason. That's an important  
20 program, folks, and I encourage many of the tribal  
21 leaders in this room here, you know, to look into it a  
22 little bit more.

23

24                   But I'm going to stop right now, Mr.  
25 Chairman. I appreciate the opportunity to share these  
26 thoughts with you. And just wish us all good luck as we  
27 go through this process. It's not an easy one. And good  
28 luck.

29

30                   Thank you. Gunalcheesh.

31

32                   CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
33 Ralph.

34

35                   MR. LOHSE: Thank you, Mr. Chairman.  
36 Like I've said before, if you're going to do anything,  
37 you better lead before Mr. Adams, because if you go after  
38 Mr. Adams, there's nothing you can say.

39

40                   (Laughter)

41

42                   MR. LOHSE: He pretty well covers  
43 everything. But I'd like to just give some observations  
44 that I've picked up out of all of this.

45

46                   And as a Council, we didn't come up with  
47 any direct recommendations or anything. We kind of  
48 adopted a wait and see. We recognize the importance of  
49 it.

50

1                   And the thing that's come out of this  
2 meeting to me is the difference between the Board and the  
3 Council. There's a tremendous difference from what I'm  
4 getting, for what I'm hearing between the consultation  
5 process at the Board level, which is government-to-  
6 government, and the Council level which is neighbor-to-  
7 neighbor, or rural resident-to-rural resident, or  
8 subsistence user-to-subsistence user, or however we want  
9 to put it. And like Mr. Adams said, you know, we've  
10 always had a place in our process for tribal comments.  
11 And again these aren't at government levels, because in  
12 case anybody has never noticed it, tribes don't always  
13 agree with other tribes. All You have to do is look at  
14 some of the competition and conflict on some of our major  
15 rivers or our river systems, and you can see that they're  
16 individuals. They're different groups. They have  
17 different ideas.

18  
19                   In fact, on Page 12 in your thing right  
20 here, like it says, many tribal leaders have, however,  
21 cautioned Federal agencies against the sole use of such  
22 bodies as a means of input since tribal communities and  
23 cultures vary so wildly, and no one tribal government is  
24 empowered to speak for all either at the national or  
25 regional level. And that's what we're dealing with,  
26 because a lot of times these proposals have out -- I  
27 don't like to use the word, but they basically have an  
28 allocation issue at stake.

29  
30                   And Kristen said that she hasn't seen  
31 many positive things come out of the Councils from tribal  
32 input. And I'm going to have to take exception to that,  
33 at least I'll take exception to that for our Council.  
34 And maybe we have an advantage. Our Council has road  
35 access, so funding's not quite such a big issue, and I  
36 can look out in the audience and I can see tribal members  
37 that have attended our Council meetings and I know  
38 proposals that have been brought forward, and I know of  
39 proposals that we have pushed forward as a Council even  
40 when the Board voted them down, and we pushed them  
41 forward again and again and again in response to tribal  
42 entities. Issues of C&T, issues of subsistence seasons,  
43 issues that weren't popular with the State or weren't  
44 popular with somebody else on subsistence fish issues.

45  
46                   And so I do think that they have had an  
47 opportunity, at least I'll say in our Council for input.  
48 And that's what I see as part of the Council process. I  
49 see them coming. I see the things that we need to  
50 encourage. And I've encouraged them for as long as I've

1 been there. Get proposals in. Come and present your  
2 stuff. Give us the information, and that's what a  
3 Council then does. And then the Council gives advice to  
4 the Board level.

5  
6 The Board level has got a mandate to  
7 directly government-to-government consult with tribes.  
8 The Councils are made up of people who -- they're not all  
9 subsistence users, but they're supposed to represent the  
10 subsistence users in the area that they have. Those  
11 subsistence users, those rural users are tribal members  
12 and non-tribal members. And their input is all  
13 important. And the input is all accessible.

14  
15 So from that standpoint, I hope to see  
16 out of this, I hope to see a little bit of a dichotomy.  
17 I hope to see the Councils remain as Councils. And the  
18 Councils remain as being open and willing to get  
19 information from everybody, and to recognize the  
20 information, and recognize that even two neighbors might  
21 have a different idea of how something should be handled.  
22 And so that's going to be true as you gather things  
23 together. And I think what we've -- and I'll just use  
24 our Council as an example, because that's all I can do.  
25 We have tried to work with the idea of consensus, you  
26 know, let's do the best we can with the least damage we  
27 can do to anybody else. And I hope that continues as a  
28 RAC. If it doesn't continue, I think the RAC process is  
29 gone.

30  
31 But at the same time, that doesn't cut  
32 down from the responsibility of the Board to have a  
33 consultation problem -- consultation -- a government-to-  
34 government consultation process. Protocol, process,  
35 whatever you -- whatever word you want to use that's  
36 directly applicable to tribal involvement. And the idea  
37 that somebody presented of, okay, now you've had this  
38 official consultation. That kind of information should  
39 be in our RAC books so that we have it just like we have  
40 the other information that comes from the other  
41 government agencies or whatever that comes and is  
42 presented to us, that we can still take, and we can still  
43 use our neighbor's input, and we can still use our  
44 personal knowledge, and we can still use our --whatever  
45 you want to call it, let's say just the fact that we know  
46 what's going -- you have this feeling, you know what's  
47 going on in your area. And we can use that to make our  
48 RAC decisions for giving our advice to the Board, so it's  
49 all part of the same picture, but it's not the thing that  
50 drives it. Where you have a different mandate than we

1 have, and I hope that separation stays, because if it  
2 doesn't stay, if -- then I think what we're going to do  
3 is then we become a one-focus group, and that doesn't  
4 work, not when you're dealing with neighbors.

5  
6 Thank you.

7  
8 CHAIRMAN TOWARAK: Thank you. And I  
9 assume that our Staff are taking notes.

10  
11 MR. ADAMS: Mr. Chairman. May I just  
12 make one footnote to my comment?

13  
14 CHAIRMAN TOWARAK: Sure.

15  
16 MR. ADAMS: That eight-month's job that  
17 I was given turned out to be 12 years. So I became a  
18 student of tribal government.

19  
20 CHAIRMAN TOWARAK: Thank you. Mr.  
21 O'Hara.

22  
23 MR. O'HARA: No kidding.

24  
25 (Laughter)

26  
27 MR. O'HARA: Was that the last word?

28  
29 (Laughter)

30  
31 MR. O'HARA: Let's quote somebody here.  
32 Write it down.

33  
34 Well, I was -- I 'm not the Chair of the  
35 Bristol Bay Advisory Council, Mr. Chairman. And I look  
36 around the table, and a few familiar faces, and, Pete,  
37 you were sitting in the back of the room the last time I  
38 was here; now you're at the front table. I don't know  
39 how you managed to do that, but I'm not so sure it's a  
40 good thing, but that's okay.

41  
42 (Laughter)

43  
44 MR. O'HARA: Molly Chythlook, our Madam  
45 Chair, could not be here. She's down at some big Indian  
46 powwow probably digging up tribal stuff in America. And  
47 so Richard Wilson, he was fairly new, and he said, you've  
48 got some nasty issues at that Council meeting; I'm not  
49 going in there; you go in, O'Hara and sit with those  
50 guys. So I kind of come in here, you know, sideswiped by

1 this issue that's before you today.

2

3 But, Mr. Chairman, if you look at the  
4 original, how Title VIII started, it started from the  
5 ground on up, and that's exactly where it should start  
6 from. It started right from the Councils, supposedly  
7 from the traditional councils and tribes coming to the  
8 Chairs and us taking that to your Board level. And the  
9 State of Alaska did not do that. The State of Alaska  
10 made the mistake of starting with the Commissioner and  
11 the Board and working on down.

12

13 Now, granted, I know about the State of  
14 Alaska. I sat on the Naknek/Kvichak Advisory Committee  
15 for 20 years. Long enough to retire and then come to  
16 this Board. I'm the original chairman of the Bristol Bay  
17 Council. So it's not like I haven't been here before.  
18 Okay.

19

20 Now, the State of Alaska did something  
21 pretty good though. They had an advisory board that  
22 represented actually every village actually. And they  
23 would fly those advisory board members to -- say it was  
24 the Ugashik Advisory Committee. Ugashik, Pilot Point,  
25 Port Heiden, Igiugig would all meet. Naknek was big  
26 enough where they had their own advisory committee. The  
27 Kvichak, Iliamna Lake area, Nondalton, Kakhonak, Pedro  
28 Bay, all those villages, they got together and they all  
29 fly in there.

30

31 And then it comes to the main board. And  
32 then occasionally a board member from the State of Alaska  
33 would come down. They had to make sure it was King  
34 Salmon or Dillingham or Bethel, you know, where they had  
35 rugs that thick on the floor, you had to use a pair of  
36 snowshoes to walk across it, and make sure they had to  
37 get out the next day. You can't stay there too long.

38

39 (Laughter)

40

41 MR. O'HARA: Yeah. I mean, that's -- and  
42 you people, you have never showed up in the region, you  
43 know that? You have never showed up in the region where  
44 we do subsistence. And we'll talk about that at the end  
45 of the presentation today, because I wrote down some  
46 notes, which I usually don't do.

47

48 So that is not bad. But I told Mr.  
49 Probasco over there, Pete, I said, don't even mention  
50 ANCSA Native corporations with the Federal Subsistence

1 Advisory Board and the Council and traditional councils.  
2 It should not even be mentioned. Not one testimony was  
3 given out here today, not one member of the corporation  
4 showed up here. Is that right, Mr. Chairman?

5

6 CHAIRMAN TOWARAK: It's true.

7

8 MR. O'HARA: It is true. They don't even  
9 know. And I'll tell you why. I can write a chapter on  
10 this, because I served on the Bristol Bay Corporation  
11 board of directors for 31 years. Started off on the land  
12 committee, ended up on finance. That's not bad. Seven  
13 stock market people that we go to the Hilton down in  
14 Hollywood, and they've really got thick rugs down there,  
15 and they feed you really good, and you make really good  
16 money. You think these people are -- they're not  
17 interested in subsistence, and they don't want to be.

18

19 But they're our same people. They are --  
20 I have 100 shares in the BBNC, and all the board members  
21 that are on the BBNC are subsistence people, and they  
22 have a great empathy for subsistence, you know. We have  
23 a slogan, you know, protecting our traditional lifestyle.  
24 That's a wonderful thing.

25

26 But they're profit-making people. We  
27 have 34 subsidiaries. We have stockbrokers, you know.  
28 They're not interested in subsistence. And wherever this  
29 idea ever came from. This Federal Board should today  
30 say, forget it, Secretary of Interior and Secretary of  
31 Agriculture. It has no place there.

32

33 And you know what, another thing I would  
34 think that would be good, since we're talking about it,  
35 is I don't care if the tribes or the traditional council  
36 replaced our advisory council. What difference does it  
37 make? Those are the people that really -- when that  
38 gentleman gave us a resume on what we eat, and I don't  
39 like brown bear meat, by the way.

40

41 (Laughter)

42

43 MR. O'HARA: Very much any more. But I  
44 used to eat it when I was young. Seal meat's pretty  
45 good. It's slimy. Seal oil and caribou roast is good,  
46 too. Those are the people who know what subsistence is  
47 all about. When I grew up, we drove dogs, and I never  
48 saw a chainsaw, double-bladed ax. And I fly a very nice  
49 Aero Cherokee 6 now. What's way better than a chainsaw  
50 that I ever got introduced to.

1 (Laughter)

2

3 MR. O'HARA: And so I know both  
4 lifestyles. I know both lifestyles. And so I think that  
5 I just can't imagine where we got in this quagmire of  
6 talking about ANCSA corporations dealing with  
7 subsistence.

8

9 The young university student back there  
10 gave us an analogy I thought was pretty good. He said,  
11 you've got apples and oranges, and you end up with a  
12 banana. I tell you what, that is so incredible.

13

14 But in closing I would like to mention  
15 that GCI came to Igiugig on Lake Iliamna, the largest  
16 lake in the State of Alaska, compared to the Great Lakes  
17 actually, 93 miles long. That's where I grew up, in the  
18 headwaters. And they took a line from Igiugig down to  
19 Levelock by snowmachine. They started off and then they  
20 got down there and they couldn't get back for dinner, and  
21 so they had to find -- they had a helicopter to finish it  
22 up. Now they're going to take a line from Homer all the  
23 way across Cook Inlet, across the portage at Pile Bay  
24 where I grew up, down Lake Iliamna, hook it up, and we're  
25 going to have internet coming to our community that's  
26 very fast.

27

28 And if these tribes and these councils  
29 want to deal with our Councils, it's getting to the place  
30 any more where you can go the University of Alaska or  
31 Fairbanks, get a degree, and live in rural Alaska in a  
32 remote village, and still do business by computer. And  
33 I don't even like turning one on, you know.

34

35 My cell phone. Nobody has a cell phone  
36 like this any more. But it works two ways. I can make  
37 a call and I can get a call. That's good enough for me.  
38 Good enough for me.

39

40 But these young people, Mr. Chairman,  
41 coming in now -- we had a lady in South Naknek, and  
42 you've got to fly our kids across to school every day  
43 there, and I'm a bush pilot of PenAir. And they can --  
44 she can sit there in her computer and work at Naknek  
45 Electric in a remote community. And it's improving all  
46 the time.

47

48 And if AT&T and GCI, these tribal and  
49 traditional councils dealing with our Councils, I see the  
50 Chair sitting here today. It can be done. Not those

1 profit-making corporations.

2

3                   You know, BBNC is worth \$1.6 billion. We  
4 have 34 subsidiaries and seven stock markets. Do you  
5 think they're interested in seal meat that somebody's --  
6 up in the Arctic Circle?

7

8                   Thank you for your time, Mr. Chairman.  
9 Okay. We saved the best to last.

10

11                   (Laughter)

12

13                   CHAIRMAN TOWARAK: Mr. Wilde.

14

15                   MR. WILDE: Thank you, Mr. Chair. Ditto,  
16 ditto, ditto.

17

18                   (Laughter)

19

20                   MR. O'HARA: No, you've still have to  
21 talk.

22

23                   MR. WILDE: First of all, I want to thank  
24 the tribal representatives and tribal members for coming  
25 here and testifying on this very important subject. And  
26 I know it's not easy for you to come up from the village  
27 and sit in front of these people up there and testify  
28 without shaking like I do when I get started sometimes.

29

30                   But, Mr. Chairman, the Yukon-Kuskokwim  
31 Delta Regional Council didn't know the timeline and the  
32 process that we were going to use to -- are you ready?  
33 Okay. We didn't know the timelines and the process that  
34 we were going to use to discuss this subject, but AVCP  
35 submitted a resolution that the Yukon-Kuskokwim Delta  
36 Council considered, and we supported it unanimously. And  
37 for the record, Mr. Chairman, the resolution is as  
38 follows.

39

40                   It's a resolution of the Yukon-Kuskokwim  
41 Delta Subsistence Regional Advisory Council regarding  
42 tribal consultation and adding public members to the  
43 Federal Subsistence Board to represent rural subsistence  
44 users.

45

46                   Whereas many members of the Yukon-  
47 Kuskokwim Subsistence Delta Regional Advisory Council  
48 recognize the essential role tribes and tribal  
49 organizations play in protecting subsistence resources,  
50 subsistence opportunity, and the customary and

1 traditional way of life that define the region; and

2

3                   Whereas the Regional Advisory Council  
4 believes meaningful and substantial tribal participation  
5 and involvement in all facets of subsistence management  
6 is critical to the success of the Federal Subsistence  
7 Management Program, and to the well-being of the tribal  
8 subsistence users and the tribal subsistence way of life;

9

10                   Whereas after it's May 3rd, 2011 meeting  
11 the Federal Subsistence Board will be making  
12 recommendations to the Secretaries regarding the  
13 appointment of two members of the public to the Federal  
14 Subsistence Board to represent rural Alaska subsistence  
15 users; and

16

17                   Whereas the Federal Subsistence Board and  
18 the Office of Subsistence Management have begun process  
19 of establishing a protocol for government-to-government  
20 consultation with Alaska tribes and plans to develop a  
21 draft approach to tribal consultation in the near future;

22

23                   Now therefore be it resolved that the  
24 Yukon-Kuskokwim Delta Subsistence Regional Advisory  
25 Council recommends that the Federal Subsistence Board  
26 include in its recommendation to the Secretaries that the  
27 voting membership of the Federal Subsistence Board should  
28 be include tribal representation; and

29

30                   Be it further resolved that the Yukon-  
31 Kuskokwim Delta Subsistence Regional Advisory Council  
32 recommends that the Federal Subsistence Board and the  
33 Office of Subsistence Management help facilitate and fund  
34 a meeting of tribal leaders from throughout Alaska to  
35 discuss among themselves and make recommendations to the  
36 Federal Subsistence Board on how government-to-government  
37 consultation should be conducted with tribes in Alaska,  
38 and this should be done as soon as possible and prior to  
39 the OSM developing a draft tribal consultation policy for  
40 the Federal Subsistence Board.

41

42                   Dated this 24th day of February 2011 at  
43 Mountain Village. I signed this. I know I did, but this  
44 resolution didn't have my signature on it. But it was  
45 sent. Our coordinator sent this to OSM and you should  
46 have a signed copy of this.

47

48                   Mr. Chairman. Thank you.

49

50                   CHAIRMAN TOWARAK: Thank you, Mr. Wilde.

1 And our Staff acknowledges that we do have a copy of your  
2 resolution.

3

4 That concludes the testimony on tribal  
5 consultation. What's our next -- the next step I guess  
6 is for the Staff to review all the comments, especially  
7 from the Regional Council Chairs and continue following  
8 on the steps that we've set, although this is just a  
9 draft, right?

10

11 MR. PROBASCO: Mr. Chair. You're  
12 correct, we've heard the comments. Mr. Kessler has the  
13 summarized comments prior to. And what's before you now  
14 is the concepts, not only presented by Mr. Kessler, but  
15 Ms. Leonetti as well as the public testimony. And now  
16 it's up to the Board to give direction to Staff how we  
17 want to proceed.

18

19 The point I want to make is that we have  
20 two processes from my viewpoint. One is what do we do in  
21 the interim, and then, two.....

22

23 CHAIRMAN TOWARAK: The audience is  
24 signalling they can't hear.

25

26 MR. PROBASCO: Can you guys hear me now?

27

28 MR. BENDER: I can hear you now.

29

30 MR. PROBASCO: Okay. You can hear me.

31

32 CHAIRMAN TOWARAK: He's got young ears.

33

34 MR. PROBASCO: Young ears.

35

36 (Laughter)

37

38 MR. PROBASCO: But there's two parts to  
39 the process that I see. One is what do we do in the  
40 interim, because we are in our wildlife cycle; and, two,  
41 how do we proceed on developing the protocol that the  
42 Board will follow in the long term.

43

44 And, Mr. Chair, I think some Board  
45 members have some issues or comments that they'd like to  
46 make.

47

48 CHAIRMAN TOWARAK: Okay. Let's open the  
49 floor for discussion from the Board. Go ahead, Sue.

50

1 MS. MASICA: Thank you, Mr. Chairman. I  
2 just want to thank everybody for the testimony and all  
3 the input that was received today. I think there were  
4 a lot of comments and suggestions made, and things for us  
5 to ponder as we think about how to go forward.

6  
7 I think we do have a lot of -- there's  
8 additional work to be done, and I think we all recognize  
9 that.

10  
11 Speaking on behalf of the National Park  
12 Service, certainly we recognize the trust relationship  
13 with the tribes, and that is very different and a very  
14 different kind of relationship than exists that's a  
15 government-to-government relationship. But then as Keith  
16 has pointed out, there is the statutory requirement in  
17 terms of interacting with the ANCSA corporations. And I  
18 think we need to figure out how to deal with both, but to  
19 separate them out. And I think that that's something  
20 that maybe is -- if we form this work group that was  
21 talked about this morning, we might be able to work our  
22 way through that.

23  
24 My understanding is the DOI policy is  
25 likely to separate them out, and that might prove to be a  
26 model that we could follow.

27  
28 You know, I think that we're all  
29 committed to doing effective consultation. We want that  
30 consultation to be meaningful and also not burdensome.  
31 That was certainly something that was made reference to  
32 by a number of folks today.

33  
34 And what we've come up with ultimately  
35 does have to still recognize and respect the statutory  
36 defined role for the RACs that ANILCA provides for, and  
37 that we're trying to accommodate, as we frequently have  
38 to do, multiple requirements to meet both the  
39 consultation needs and also the RAC process that the law  
40 calls for.

41  
42 So personally I think the idea of a work  
43 group that was put out there this morning is a good one.  
44 I think that that's a way to move the discussion forward,  
45 to engage folks in the discussion, and as Pete reminded  
46 us, the need to also have something that's an interim  
47 step, given that we don't want to stymie effectively  
48 dealing with the wildlife cycle that's before us. And  
49 get hung up. We don't want to keep that process from  
50 moving forward also.

1 Thank you, Mr. Chairman.

2

3 CHAIRMAN TOWARAK: Go ahead.

4

5 MS. DUGAN: Thank you, Mr. Chair. And I  
6 want to thank everyone who took the time to come and talk  
7 to us.

8

9 And there were several things that I  
10 noted that I wanted to refer to and put on the record.  
11 And I understand why statutorily we may be required to  
12 consult with Alaska Native corporations on the same basis  
13 as tribes. I would ask that as we develop these  
14 documents that we refer to the tribes and Native  
15 corporations separately and not collectively as tribes.  
16 I think that's almost insulting to use that term.

17

18 One of our RAC Chairs, and I think it --  
19 I'm not sure who it was, and perhaps it was you, Mr.  
20 Simeonoff, but you said, RACs shouldn't be put in the  
21 middle between tribes and the Federal Subsistence Board,  
22 you know, and I think that's right. And I think if  
23 there's one thing that probably all of us are going to  
24 come away from today with is more understanding of that  
25 Federal Subsistence Board government-to-government  
26 relationship with tribe is far different than the RACs.  
27 And I certainly don't want to see the RACs be put in the  
28 middle of trying to work through those issues for the  
29 Board. I don't think that's the right place. And as our  
30 other Chair said, I think then it completely changes the  
31 focus of the RACs if we ask them to do that.

32

33 And, you know, Mr. O'Hara, you mentioned  
34 that Federal subsistence has been set up in Alaska to  
35 come from the ground up, from the people up, develop  
36 proposals, move it up.

37

38 And then I think, Mr. Wilde, you followed  
39 up with that -- with the idea of could we bring tribal  
40 leaders together to talk and develop a protocol that  
41 would be brought from the ground up. And while I think  
42 a working group is a good idea, too, I really liked that  
43 idea, because who better to ask how to work this than the  
44 people that we need to be consulting with. So I thought  
45 that was a very good idea, and follows along with our  
46 concept of how subsistence is developed.

47

48 And I think we've heard over and over  
49 again you can't have effective consultation without money  
50 behind it. That's the reality of it. We can't ask

1 people to join in our processes without giving them some  
2 support.

3

4                   And I think that also I heard very  
5 clearly that there's a need in some way to help people  
6 understand the process and develop proposals. And I  
7 don't know what kind of training's been provided in the  
8 past, but I think that's something that we really should  
9 look at.

10

11                   And then I think it was -- Rosemary, I  
12 think it was you that said, it seems like we're pushing  
13 the cart really, really fast. And, Pete and Sue, you  
14 know, I understand that we don't want to trip up our next  
15 cycle, and I don't think anybody wants to do that. It's  
16 complicated enough as it is. But I would hope if we are  
17 engaging in a meaningful way, continuing to talk about  
18 this, continuing to work on this, that we wouldn't create  
19 something just to just stick in the middle, because we're  
20 checking a box. And I would hope that maybe -- is there  
21 some way we can agree we're working towards this and we  
22 don't have to have some structured process we're jamming  
23 in the middle of this cycle. I would hope we could  
24 respectfully agree we're working on our government-to-  
25 government relationship.

26

27                   I think that's all for me right now, Mr.  
28 Chair.

29

30                   CHAIRMAN TOWARAK: Anybody next.

31

32                   MS. PENDLETON: I just want to build on  
33 a couple of the comments that I've heard and that really  
34 stood out.

35

36                   And I, too, really want to thank the  
37 public for their comments this morning, and for the RACs  
38 for your input as well. And I also want to thank the  
39 work of the committee for drafting the draft protocol,  
40 and then for the amendments that were offered by Ms.  
41 Leonetti.

42

43                   I think that there is probably a little  
44 bit more urgency relative -- given that we're in the  
45 midst of the wildlife cycle to really focus in and come  
46 up with an interim protocol so that we can continue to  
47 move forward with the cycle and the work ahead of us in  
48 the next few months. So I do feel that before we leave  
49 today that we need to have, you know, some agreement on  
50 that.

1 I think the protocol that was presented  
2 by Mr. Kessler and as amended by Ms. Leonetti, it gets us  
3 I think pretty much there so that we can move, you know,  
4 that work forward.

5  
6 I did hear from a number of the RAC  
7 Chairs that because of the very busy last set of RAC  
8 meetings they had that some of them may not have had the  
9 full opportunity to really ponder and consider this item.  
10 And I feel that providing them in fairly short order  
11 with, based on everything that we've heard here today, a  
12 more refined protocol for the longer term would be  
13 important that they could take back to their Councils to  
14 more thoroughly consider and provide feedback to the  
15 Federal Subsistence Board.

16  
17 And I think that was it. Thank you, Mr.  
18 Chairman.

19  
20 CHAIRMAN TOWARAK: Thank you.

21  
22 MR. HASKETT: Mr. Chair. Thank you. So  
23 I also agree there's been lots and lots of good  
24 conversation here today.

25  
26 It's interesting though, because I only  
27 heard two place where I heard a lot of agreement. And  
28 where I heard the most agreement on was -- actually the  
29 second most agreement on, was that whatever we do needs  
30 to be meaningful, substantial. Consultation has to be  
31 real. And I dint' hear anybody disagree on that,  
32 although I didn't hear a lot of agreement of how we get  
33 there. There's lots of different ideas on what it will  
34 take to do that.

35  
36 The other place that there's universal  
37 agreement from everybody I heard from today is that  
38 there's a real concern about corporations being treated  
39 the same way as villages, you know, in terms of the  
40 consultations. It's too bad, that's the one place where  
41 we have a Congressional directive where I don't know that  
42 we have a lot of choice, although I kind of like the way  
43 I think that Julia put it is that then whatever we do  
44 though, we need to make sure that we do a clear  
45 distinction, and we figure out what we're legally  
46 directly to do, but I think we can make some distinctions  
47 there to make it clear just what that means and there are  
48 differences.

49  
50 As I said earlier, I think the proposal

1 by the Staff Committee was very well done. I mean,  
2 clearly I thought what Crystal presented is something  
3 that will be helpful, although not all the answers are  
4 there. I think when we're all done here my intent is to  
5 make a motion I think to have some kind of combination  
6 for that group to look at, with some interim policy done  
7 by the end of May, because I hear about pushing the cart  
8 too fast, but we need something just to be able to get  
9 through the cycle, with the intent of coming up with  
10 something final, continue to work on this consultation  
11 process and hopefully doing it the right way where  
12 sometime early in 2012, and I don't know what the exact  
13 dates are that we need to have that done by, whether it's  
14 January or May or something in between, we can come up  
15 with something final that, you know, we can come to some  
16 kind of agreement where most people, if not get where  
17 everyone does, where most people say, yeah, that works  
18 pretty good.

19

20 So I think we went a long ways today,  
21 and, well, I've kind of telegraphed what I intend to do  
22 at some point. We haven't heard from everybody yet, but  
23 I think we're getting close to where we can at least get  
24 moving on this.

25

26 So thank you, Mr. Chair.

27

28 CHAIRMAN TOWARAK: Thank you. Kristen.

29

30 MS. K'EIT: Thank you, Mr. Chair. I  
31 think I provided the bulk of my comments earlier this  
32 morning, but just a few areas that I'd like to expand on.

33

34 One is I agree with some of the other  
35 Board and the RACs, you know, this -- the draft that we  
36 looked at the first time around was really well done  
37 under the circumstances of trying to get it done quickly  
38 and having a large number of people to work with, and a  
39 lot of different ideas to try to accommodate or  
40 incorporate. And I think then with Crystal's  
41 presentation this morning, that demonstrates that there  
42 are still lots of ideas, and as we've heard today, areas  
43 for improvement.

44

45 One thing that, this is kind of a  
46 semantics thing specific to the document, is there's a  
47 few places where the document references either proposals  
48 of special interest to the tribes, or subjects of tribal  
49 interest and so forth. I think that then takes away the  
50 opportunity from the tribes to themselves determine

1 what's of interest to them and what's of special priority  
2 or interest to them. So I think there needs to be some  
3 work in that area so that we're not assuming that either  
4 the Board or the RAC or a Council coordinator or Staff  
5 knows what's of special interest to their tribes. Let's,  
6 you know, make sure that we don't take any authority or  
7 opportunity from the tribes in that area.

8  
9 Also again I'm going to emphasize the  
10 need for the Native liaison position at OSM. We really  
11 need to get that filled to make this process and future  
12 work successful. I believe it is part of that position's  
13 responsibility to help tribes be aware of the cycles  
14 coming up, of what the proposals are, of how they can  
15 participate, and even directing them to the right people  
16 if there's a question about some of the science stuff,  
17 that the Native liaison can then direct the tribe to the  
18 right person to talk to either at OSM or another agency  
19 on the science. So that liaison position is really  
20 desperately needed.

21  
22 And I really like the idea that, and I  
23 think it was Jack from Western Interior brought up that  
24 there should also be a process for the RACs and the  
25 tribes to communicate. There is that already in a sense  
26 of the tribes can participate as any other member of the  
27 public can, but maybe what has been successful at  
28 Southcentral's RAC could be discussed as a model or a  
29 process that could be built on or adapted for the other  
30 RACs. I think that would be useful and I think it would  
31 increase the cooperation and the usefulness of the work  
32 that the Board has to do through the other RACs.

33  
34 Definitely we heard resources, resources,  
35 money, money is needed. That's always going to be an  
36 issue until all our tribes, I don't know, become casino  
37 tribes or something, you know, and that's not happening  
38 any time soon. So a couple suggestions on that topic of  
39 funding. Bert referred to a couple times the .638  
40 process, the Self-Determination Act process, and that  
41 could be one mechanism. And I bring forward an example  
42 that Alaska Region BIA used when we worked on our  
43 regional strategic plan. And we notified all our tribes  
44 of this process that we were wanting to start. We  
45 recommended that they decide how they wanted to  
46 participate, and one of the regional tribal consortia  
47 stepped forward and said, we could facilitate the process  
48 of getting tribes to your meetings if you have funding  
49 that you could provide. And so that -- one, that  
50 relieved a large administrative burden off of the Bureau

1 and it also simplified the process for tribal members to  
2 attend our strategic planning meetings where that  
3 consortium was funded specifically to provide travel,  
4 logistics, and pay for -- take care of the travel for  
5 tribal members to attend our meetings. So, you know,  
6 that could be a possibility.

7  
8 One way, if BIA doesn't have the funding  
9 to do something like that, we could still be used as the  
10 mechanism where if funding comes from the Secretary's  
11 Office or another agency, there are interagency  
12 mechanisms to distribute funding, that kind of thing.

13  
14 And also I don't have very much  
15 experience with the .809 Section of ANILCA, but that was  
16 something Bert brought up. And I'd like to hear some  
17 more discussion about that. What is Section .809  
18 referring to, where's that funding at, how does that  
19 provide an opportunity to fund tribal involvement.

20  
21 A very key point that came out was  
22 timelines for any consultation or requests for review by  
23 a tribe needs to have more than 30 days in there, and I  
24 think that was Rosemary brought that up, because it's  
25 true. Most of our tribal councils only meet once a  
26 month, and during the busy, busy, you know, spring to  
27 fall subsistence season, you're not going to be able to  
28 call those council members up and do a phone poll or an  
29 email poll. So, you know, if we give them something and  
30 say, we need this in two weeks, you know, it's going to  
31 be like luck of the draw if they're having a council  
32 meeting.

33  
34 Translators. That's really important.  
35 We have a number of villages where English is the second  
36 language, especially for our elders. That needs to be  
37 considered.

38  
39 Again, two different policies. That's a  
40 great idea. One for tribes, one for the corporations and  
41 the statutory requirement.

42  
43 And I would suggest for my fellow Board  
44 members to consider that very simple process we used for  
45 the fisheries regulations earlier this year, using that  
46 for wildlife. I mean, it was simple, it was easy, it  
47 wasn't the best method, but then we're not going to be  
48 wrangling or arguing over definitions and semantics and  
49 some of the other pieces that we have to work out.

50

1 Thank you, Mr. Chair.

2

3 CHAIRMAN TOWARAK: Thank you. I myself  
4 appreciated all of the testimony that we heard today, and  
5 I think the message came across very strongly about the  
6 reference to the regional corporations, the ANCSA  
7 corporations.

8

9 Personally I would have preferred to see  
10 it -- see the regional nonprofits assigned that duty if  
11 you call it that on the region, because those regional  
12 nonprofits, their base are tribes. The tribes are the  
13 ones that elect the board members. And that would be  
14 another process I think we should take a look at on  
15 whether or not we could utilize the existing regional  
16 nonprofits. They're represented in every region of the  
17 state.

18

19 So although I worked for a regional for-  
20 profit corporation for 11 years, I personally don't think  
21 that's the right vehicle either to work subsistence  
22 issues.

23

24 I like the proposals to use the fish  
25 process that we used as an interim. I think that's a  
26 good suggestion. We do need some interim process to  
27 carry until the final process is done.

28

29 I also wanted to point out that I would  
30 hope that this consultation protocol will be a living  
31 document, and by that I mean, it will change. It's not  
32 going to be, you know, something that we can't change.  
33 Even the Bible's being changed nowadays, so if they can  
34 change the Bible, we can change a protocol.

35

36 (Laughter)

37

38 MR. O'HARA: I'm not so sure that's a  
39 good idea, okay.

40

41 (Laughter)

42

43 CHAIRMAN TOWARAK: If you see lightening  
44 strike my head, don't do it.

45

46 (Laughter)

47

48 CHAIRMAN TOWARAK: Anyway, I think we've  
49 got pretty good direction from people. We still -- the  
50 door will still be open. I think we should continue

1 taking in suggestions, because this is a new process.  
2 It's being done I think by every Federal agency. And I  
3 think with patience we could come up a workable protocol.

4  
5 MR. PROBASCO: Mr. Chair. If I may, I  
6 think it would -- I think we're getting near our final  
7 discussion on this issue, but I think it would be very  
8 wise so the record is clear and so the Staff is clear on  
9 what the Board would like on how we would like to  
10 proceed. You heard two concepts on what to do during the  
11 interim, also how to develop the more longer term  
12 protocol if you will. So, Mr. Chair, I would seek that  
13 direction.

14  
15 CHAIRMAN TOWARAK: Go ahead.

16  
17 MR. HASKETT: Thank you, Mr. Chair. So  
18 I hope I've condensed this to kind of be a synthesis of  
19 what we've talked about here.

20  
21 And one thing I guess I explain first  
22 before I make the motion, too, because a friend in the  
23 audience pointed out to me that maybe everybody doesn't  
24 know what we're talking about when we're talking about  
25 Native liaisons. So just -- it's come up a couple times  
26 that OSM has a position that we need to hire again that's  
27 been there for a long time, but a lot of the bureaus have  
28 our own Native liaison's, too. So Crystal Leonetti, for  
29 instance, is my person we've hired over the last year  
30 who's my representative on lots of Native issues. And so  
31 a lot of the bureaus have that. So when I'm talking  
32 about Native liaisons, that's the kind of position that  
33 I'm talking about, which will be part of my proposal, so  
34 I thought I should go ahead and explain that.

35  
36 So I think that I would move that we take  
37 the proposal that was presented by Steve Kessler that  
38 came from the Staff Committee this morning, take that as  
39 the basis for a working group to work on. And that  
40 working group would be comprised of our native liaisons  
41 from the different bureaus; also members from the Staff  
42 Committee that worked on the original proposal; and  
43 representatives from the tribes.

44  
45 And I recognize the devil's in the  
46 details on what -- to figure out how we're going to do  
47 that, but we'll figure out some way to bring  
48 representatives into that as well.

49  
50 With the idea of coming up with an

1 interim policy really fast, I mean, because we need  
2 something pretty quickly, so by end of May, something  
3 interim that we can utilize to get through this process,  
4 but with the intent of coming up with something as a  
5 draft policy for consideration to come back and get  
6 public comment and again go through this process by  
7 January of 2012 with the idea of coming up with a final  
8 by May of 2012.

9

10 And that that group would be -- I'm going  
11 to go ahead and offer up Crystal as a person to head up  
12 the group, and with the charge again of an interim policy  
13 within the next month, draft by January 2012 and a final  
14 by May of 2012.

15

16 Everybody's looking at me like I'm crazy.

17

18

19 (Laughter)

20

21 CHAIRMAN TOWARAK: We need a second.

22

23 MS. DUGAN: Mr. Chair, could I ask Mr.  
24 Haskett a clarifying question?

25

26 CHAIRMAN TOWARAK: We do need a second  
27 before we do any discussion.

28

29 MS. DUGAN: Okay.

30

31 CHAIRMAN TOWARAK: Is there a second.

32

33 MS. DUGAN: I'll.....

34

35 MS. PENDLETON: I second.

36

37 CHAIRMAN TOWARAK: Okay. The motion's  
38 been moved and seconded. Discussion. Go ahead.

39

40 MS. DUGAN: Thank you, Mr. Chair.

41

42 Geoff, were you -- I know you tried to be  
43 really clear there in what you were tasking at. Are you  
44 suggesting we task this group with doing an interim  
45 protocol for this upcoming cycle, and you said by the end  
46 of May, but that group would also be the same group that  
47 would work on, if you will, a full protocol to be used  
48 from this point on?

49

50 MR. HASKETT: Yes. Through the Chair.

1 The intent is for that same group, because they're going  
2 to be the ones most knowledgeable. We've already put  
3 them together. And to come up with something again, they  
4 can go through a process to where we can actually get  
5 input and get something final, but recognizing we need  
6 something on a more fast track by May. So the same group  
7 would continue to do this work.

8

9 CHAIRMAN TOWARAK: Any further question  
10 or any further discussion. Go ahead.

11

12 MS. PENDLETON: I like the proposal. I'm  
13 just a little concerned about by the end of the month  
14 having this interim process worked out given how we're  
15 going to involve the tribes. I'm just cognizant it's a  
16 very short window. So giving a little more flexibility  
17 here until the end of June, if that work. Just --  
18 because we're going to have to get a lot of folks  
19 together to have that conversation, and I'm concerned  
20 that it may not be an opportunity for meaningful dialogue  
21 given that very short window.

22

23 Thank you, Mr. Chair.

24

25 CHAIRMAN TOWARAK: Go ahead.

26

27 MR. HASKETT: So can I amend my -- the  
28 reason -- the question, clarification, so I was getting  
29 clarification from Pete on what the latest it could be to  
30 still make this meaningful and so we can use it. The end  
31 of June is the latest he said, so I'd be more than  
32 willing to go ahead and amend my original to go from --  
33 instead of end of May to end of June, which is still not  
34 a lot of time, but at least it's another month.

35

36 CHAIRMAN TOWARAK: I think we can do that  
37 without going to a vote, and just.....

38

39 MR. PROBASCO: If Julia is okay with it.

40

41 CHAIRMAN TOWARAK: Are there any  
42 objections to the proposed change?

43

44 MS. DUGAN: I just -- I don't have an  
45 objection, I have a question. Which is, Pete, can you  
46 just sort of articulate why the end of June is a trigger  
47 point from a date standpoint?

48

49 MR. PROBASCO: Mr. Chair. Ms. Dugan. A  
50 couple of things are going why we have to have this by

1 the end of June. The first is we need to know what  
2 process we're going to go through to be prepared for our  
3 first Council meeting, which is the latter part of  
4 August.

5  
6 On top of that, we're all going through  
7 the process of FBMS where we're consolidating our  
8 expenditures, and I have to have airline tickets, meeting  
9 places, et cetera, all confirmed by July 29th. And so I  
10 don't have that flexibility that I have in prior years.

11  
12  
13 And on top of that, we have to put out  
14 proper notification for the tribes and the involvement  
15 and in the RACs.

16  
17 So it's a process that's not expedient  
18 and time is of the essence to get it done.

19  
20 CHAIRMAN TOWARAK: Go ahead.

21  
22 MS. K'EIT: Mr. Chair. I'd also point  
23 out that once that draft interim document is approved or  
24 whatever our process is so that we start using it for the  
25 wildlife cycle, if we say the end of June, then we have  
26 a month and a half to actually do the consultation with  
27 the tribes. So if we want to meet a 30-day timeline to  
28 give tribes opportunity to review the review the  
29 material, digest it, meet at their counsel with it,  
30 prepare a resolution and comments, that only gives our  
31 Staff two weeks to take that draft interim policy and  
32 create the letter about the wildlife proposals and  
33 prepare all of that and get it out in the mail in time  
34 for the tribes to receive it with more than 30 days for  
35 the tribes to respond. And I would say that's probably  
36 -- or that was one reason for my suggesting we keep with  
37 a simpler process of similar to what we did in January,  
38 so that we're not really using a lot of Staff time to  
39 develop a draft interim policy, but rather we're using  
40 Staff time to prepare materials to get it to the tribes  
41 with enough time to comment.

42  
43 Because then the third issue we have to  
44 consider is from June to July and August, how many of our  
45 tribes are going to be out fishing and hunting and  
46 gathering and won't have frequent time in the office to  
47 be prepared.

48  
49 Thank you, Mr. Chair.

50

1 CHAIRMAN TOWARAK: The motion then is  
2 to.....  
3  
4 MR. HASKETT: .....with the mic on.  
5  
6 (Laughter)  
7  
8 CHAIRMAN TOWARAK: The motion on the  
9 floor then is using the July?  
10  
11 MR. PROBASCO: End of June.  
12  
13 CHAIRMAN TOWARAK: End of June.  
14  
15 MR. HASKETT: End of June.  
16  
17 CHAIRMAN TOWARAK: Does everybody  
18 understand the motion that's on the floor that we're  
19 going to be voting on?  
20  
21 Go ahead, Geoff.  
22  
23 MR. HASKETT: Mr. Chair, yes. My  
24 original proposal, except for end of June, recognizing  
25 the tough time constraints with that, but as opposed to  
26 end of May.  
27  
28 MR. PROBASCO: And just for  
29 clarification, based on what you said, Ms. K'eit, I think  
30 the interim process can include your concept, the concept  
31 that Ms. Leonetti put out, or whatever. All I'm asking  
32 is that we have an idea of what it is by the end of June.  
33  
34 MR. HASKETT: Okay. Okay. And I  
35 apologize for anybody who heard my little exclamation  
36 here. Hopefully it didn't go out.  
37  
38 So my proposal is to take the proposal  
39 originally presented by Mr. Kessler this morning that  
40 came from the Staff Committee, and use that as the basis  
41 for -- and a working group will take that to go ahead and  
42 come up with an interim policy that will be done by end  
43 of June. That group will be comprised of Native  
44 liaisons, Native representatives and Staff Committee, and  
45 that that group will continue to work on a process that  
46 will be proposed as of next January as a draft, to go  
47 through the whole process to make sure that what we have  
48 is, you know, understood and going through the  
49 consultation process, with the idea of ultimately  
50 adopting whatever that we end up with as final by May of

1 2012.

2

3 Thank you, Mr. Chair.

4

5 CHAIRMAN TOWARAK: Are there -- is there  
6 further discussion on the motion.

7

8 MS. MASICA: Yeah.

9

10 CHAIRMAN TOWARAK: Go ahead.

11

12 MS. MASICA: Geoff, can I clarify? You  
13 said Native representatives, but you mean tribal  
14 representatives?

15

16 MR. HASKETT: Yes.

17

18 CHAIRMAN TOWARAK: Go ahead.

19

20 MS. K'EIT: Mr. Chair. Thank you. And  
21 also who and when is the policy protocol going to be  
22 written from consulting with corporations, the ANCSA  
23 corporations? Is that going to be a separate motion?

24

25 MR. HASKETT: Mr. Chair.

26

27 CHAIRMAN TOWARAK: Go ahead.

28

29 MR. HASKETT: So this group will have the  
30 charge to consider that, too, but I think what I'd said  
31 was that we have some Congressional direction so that  
32 needs to be part of the process, but we'll make it very  
33 clear, and that group will have to take on how we do  
34 that, that there's different kinds of consultation going  
35 on. I don't know how to define it more than that. So I  
36 think they need to work it out, but the group will work  
37 on that as well.

38

39 MR. PROBASCO: Thank you, Mr. Chair and  
40 Board members.

41

42 The question that I had, and also Mr.  
43 Kessler has, is on the interim policy, I think our goal  
44 would be to have the draft developed and then that we  
45 would share it with Board members before acting on that  
46 interim policy. In other words we would get the draft to  
47 where we felt it was comfortable, then share it with the  
48 Board members for their green light.

49

50 MS. MASICA: Based on the work group's

1 work, right? I mean, that's really the work group's  
2 product. Yeah. Okay.

3

4 CHAIRMAN TOWARAK: Further discussion.

5

6 (No comments)

7

8 CHAIRMAN TOWARAK: Is there a call for  
9 the question.

10

11 (No comments)

12

13 CHAIRMAN TOWARAK: No.

14

15 MS. MASICA: So I guess my only hesitancy  
16 is are we going to expend a lot of energy on an interim  
17 policy process. Would it -- as an alternative to that,  
18 to just say we're going to follow -- we'll do what we did  
19 similar to the fisheries cycle. We'll add a day at the  
20 front end of the January meeting for wildlife, do the  
21 tribal consultation then, and have the effort -- the  
22 energy of the work group and the tribal representatives  
23 who are going to participate in it working the bigger  
24 long-term policy.

25

26 It's just an alternative. And that's  
27 where my hesitancy is in moving the question, is I'm must  
28 processing in my own mind, are we going to spend a lot of  
29 time on an interim step when we have an interim step that  
30 worked and might be worthwhile to use again.

31

32 CHAIRMAN TOWARAK: Geoff.

33

34 MR. HASKETT: I guess I'm having some  
35 resistance to -- I mean, we could do that as an  
36 alternative, but I'm feeling a fair amount of pressure,  
37 I think, a need to actually get something a little --  
38 yeah, I mean, something just started. I mean, something  
39 that's a little more substantive. And I don't see that  
40 that's wasted effort, because I'm hoping whatever the  
41 group comes up with will not be totally alien to what  
42 they're doing for the rest of the time anyway. It just  
43 seems important to me to actually get the group heading  
44 in a direction where it's not going to be a wasted step  
45 to have an interim policy.

46

47 CHAIRMAN TOWARAK: There's no aliens in  
48 tribes.

49

50 (Laughter)

1 MR. HASKETT: Thank you, Mr. Chair.  
2  
3 CHAIRMAN TOWARAK: Now, I assume that we  
4 have clarity on the motion on the floor.  
5  
6 (No comments)  
7  
8 CHAIRMAN TOWARAK: Not hearing any  
9 further discussion, all those in favor of the motion say  
10 aye.  
11  
12 IN UNISON: Aye.  
13  
14 CHAIRMAN TOWARAK: Those opposed say nay.  
15  
16 (No opposing votes)  
17  
18 CHAIRMAN TOWARAK: The motion passes  
19 unanimously.  
20  
21 In the interest of time, could we just  
22 take a five-minute break before we go on to the next  
23 item, which is customary and traditional use  
24 determination.  
25  
26 (Off record)  
27  
28 (On record)  
29  
30 CHAIRMAN TOWARAK: Could we reconvene.  
31  
32 (Pause)  
33  
34 CHAIRMAN TOWARAK: I'm going to call this  
35 meeting back to order. The next item, No. 9, customary  
36 and traditional use determination process. We've got Mr.  
37 Kron and Ms. Armstrong to guide us through this process.  
38  
39 MR. KRON: Mr. Chair. Members of the  
40 Board and Council Chairs. First of all brief comments  
41 about Ms. Armstrong, she's here with me today. Helen is  
42 the OSM Anthropology Division Chief and has 18 years of  
43 experience working with customary and traditional use  
44 issues.  
45  
46 In the December 17th letter, Secretary  
47 Salazar requested that the Board review, with RAC input,  
48 the customary and traditional use determination process  
49 and present recommendations for regulatory change. This  
50 is Item No. 5 from the Secretary's letter on Page 3 of

1 your Board notebook.

2

3 To date more than 300 C&T determinations  
4 have been made by the Federal Subsistence Board. The  
5 Board's decision on C&T have been affirmed by the courts  
6 when they have been challenged. At their winter 2011  
7 meetings, the meetings this past February and March, we  
8 asked the 10 Regional Advisory Councils for their input  
9 on the customary and traditional use determination  
10 process. We asked them if the Federal C&T process is  
11 working for them; we asked them what could be changed.  
12 A draft summary of the RAC comments on the customary and  
13 traditional use determination process is included in your  
14 Board notebook on Pages 87 and 88.

15

16 Nine of the 10 Councils feel that the  
17 Federal customary and traditional use determination  
18 process is working. There were several recommendations  
19 concerning the C&T process. There may be some value in  
20 allowing a little more time for review of this issue;  
21 it's the Board's call.

22

23 Thank you, Mr. Chair.

24

25 (Pause)

26

27 CHAIRMAN TOWARAK: What's the process.

28

29 (Pause)

30

31 CHAIRMAN TOWARAK: I'm sorry, do we have  
32 questions from the Board, or from the RACs.

33

34 (No comments)

35

36 CHAIRMAN TOWARAK: We will then do the  
37 process of the public comments.

38

39 MR. PROBASCO: Thank you, Mr. Chair.  
40 First up is Mr. John Sky Starkey.

41

42 (No comments)

43

44 MR. PROBASCO: Mr. Starkey.

45

46 (No comments)

47

48 MR. PROBASCO: Mr. Carl Wassilie.

49

50 (No comments)

1 MR. PROBASCO: Mr. Carl Wassilie.  
2  
3 (No comments)  
4  
5 MR. PROBASCO: Mr. Larry Sinyon.  
6  
7 (No comments)  
8  
9 MR. PROBASCO: And Mr. Nikos Pastos.  
10  
11 (No comments)  
12  
13 MR. PROBASCO: Mr. Chair. That's all I  
14 had signed up.  
15  
16 MR. HARRISON: No, I signed up.  
17  
18 MR. PROBASCO: David.  
19  
20 MR. HARRISON: Yeah.  
21  
22 MR. PROBASCO: Okay. You weren't  
23 specific on C&T but we can take it.  
24  
25 MR. HARRISON: Yes, it was. Look a  
26 little further.  
27  
28 MR. PROBASCO: Go ahead.  
29  
30 MR. HARRISON: Keep looking.  
31  
32 CHAIRMAN TOWARAK: Go ahead.  
33  
34 MR. HARRISON: The issue of customary and  
35 traditional use is vital to our tribal citizens.  
36 Traditionally ever since United States began to occupy  
37 our country, Alaska's First Peoples have provided the  
38 United States occupiers with food in exchange for goods  
39 and services in exchange.  
40  
41 Those that built what is known as the  
42 Alcan Highway, my tribe, the AHTNA people, sold to the  
43 military moose, caribou, fish so they could eat while  
44 they were building that road. Today in many villages  
45 they don't make hundreds of thousands of dollars a year  
46 as many people think across America -- think Alaska First  
47 People are rich because of all the oil. They think we're  
48 rich because many of these ANCSA Corporations have  
49 created 8(a) companies and that that those dollars get to  
50 our tribal citizens. Those dollars stay primarily with

1 ex-military personnel running those 8(a)s and the  
2 executives in these regional corporations. In many of  
3 our communities we have three or four families living in  
4 one home. We have an extremely high rate of suicide. We  
5 have an extremely high rate of Diabetes in our  
6 communities. And we have to ask the question, why?  
7

8                   When you have your grandparents, your  
9 parents, aunts, uncles and their kids all living in the  
10 same home, our young people are not dumb; they don't want  
11 to be a burden on the family. And when they're denied  
12 their access to their traditional foods and life ways,  
13 rather than be a burden, they disappear, so that what  
14 little food sources that they have in their family, those  
15 elders can have.  
16

17                   This issue is close to my heart. I grew  
18 up living in a customary and traditional use life ways.  
19 Even though we're close to Anchorage we still lived off  
20 the land. We went and hunted. We went and fished. We  
21 went and gathered our birds. As a 10 year old, I watched  
22 my father get killed and I was put into a foster home.  
23 I continued to live a subsistence lifestyle because all  
24 the time I was in a foster home, my foster parents  
25 understood that I grew up in the woods, and they had  
26 family on Lake Clark so every summer I went to Lake Clark  
27 and I hunted and I fished and I gathered at Lake Clark.  
28 It wasn't until I was a little older that I really  
29 appreciated being able to hunt off the land.  
30

31                   When I got involved I was 19 years old.  
32 I watched our caribou herd go from a couple of hundred  
33 thousand animals down to somewhere around maybe 20 and  
34 30,000. It's the Nelchina Caribou Herd. I can't go hunt  
35 them without asking pretty please to the State and by the  
36 luck of the draw getting a permit under that system. I  
37 have not went and got a State license that I can remember  
38 since I was 16. No one is going to tell me that I can't  
39 go hunt or fish to feed my family. I have been charged  
40 and I have been arrested many times for it. I will go do  
41 it again.  
42

43                   Many of our people, especially in the  
44 areas off the highway system have it a lot easier than  
45 those along the road system to hunt and fish and gather  
46 in a customary and traditional way. They don't have a  
47 grocery store down the street that they can run to and  
48 trade these green pieces of paper for whatever is on the  
49 shelf. Many of us that live along the highway system,  
50 when we can't go and hunt and gather that's what we have

1 to do. We trade little green pieces of paper that don't  
2 have no value for food stuff to eat that cause Diabetes,  
3 obesity. And then you wonder why our people are ill when  
4 you make determinations that restrict our access to our  
5 traditional way of life.

6

7 And I have a question -- and I have a  
8 question for you, Mr. Haskett, what is your role as a  
9 Federal official?

10

11 MR. HASKETT: Well, my role is a Federal  
12 official is -- well, I mean there's a lot of roles. I'm  
13 the Director of Fish and Wildlife Service so I have  
14 authority over the Refuge system, which is 80 million  
15 acres of land. I am a member of this Board. My main  
16 reason for being on this Board is to, both, make sure  
17 that we are meeting requirements under ANILCA for  
18 subsistence but also making sure that it's legal under  
19 the other authorities that I deal with in the Refuge  
20 system. I have responsibilities for Endangered Species  
21 Act.

22

23 I have responsibility for all kinds of  
24 different things so it's not an easy question to answer  
25 in just like one or two sentences.

26

27 (Telephone interruption)

28

29 (Laughter)

30

31 MR. HASKETT: She was watching out for  
32 me, I think.

33

34 (Laughter)

35

36 MR. HARRISON: Well, in growing up in  
37 Chickaloon, it's at the north end of the Matanuska  
38 Valley. The Matanuska Valley is one of the most racist  
39 place in Alaska. And so we've had a lot of trouble with  
40 asserting our tribal authority as it relates to our  
41 customary gathering, traditional uses of food sources.

42

43 And I say that the Matanuska Valley was  
44 one of the most racist places because as a kid going to  
45 school we were shipped from Chickaloon to Palmer and we  
46 were known as the dirty rotten little Indian from  
47 Chickaloon. But it wasn't until the mid'70s that any  
48 African-American people were allowed to move into the  
49 Valley because all those colonists, some of their  
50 children would go and harass those people and run them

1 out.

2

3 Alaska First Peoples have been the source  
4 of many experiments that started with the Matanuska  
5 Valley in the 1930s. The state of Alaska and the United  
6 States has not stopped experimenting since on our  
7 peoples. Alaska Natives, Alaska First Peoples are a  
8 control group. Military personnel are another control  
9 group that they can control.

10

11 The access to our customary and  
12 traditional uses for our food sources is critical for our  
13 health.

14

15 And in looking at all of these issues you  
16 want us to stay narrowed focused with blinders on, that's  
17 not our way. We try and look at the whole picture  
18 because everything is related and there is a connection  
19 and if you don't see what's going on over here you're not  
20 going to know what to do here.

21

22 So it's really important that when our  
23 elders get up and speak before you, when our Alaska First  
24 Peoples get up and speak before you, that you hear them.  
25 I know you're listening, but I want you to hear what  
26 they're saying. It's important that you hear, not so  
27 much that you listen but that you actually hear.  
28 Because there's subtleties in what they're saying, that  
29 if you don't hear you're not going to pick up on.

30

31 And with all due respect when you hold  
32 consultations, don't hold them during our subsistence  
33 times of year. Don't try and rush something through  
34 that's so important to the very lives of thousands of  
35 thousands of people. There's many things that our people  
36 have to deal with, not just consultations with Federal  
37 Subsistence Board, but consultations with Department of  
38 AG, Department of Justice, Bureau of Indian Affairs,  
39 Department of Interior, National Park Service, Forest  
40 Service, the State Department, and do a little  
41 coordination with these other consultations. Another one  
42 is Department of Energy.

43

44 Alaska's First People have been denied  
45 access to participate with the Ocean Policy. And we know  
46 that we're critical and a lot of damage is being done out  
47 there that affect our access to our fish. At a recent  
48 meeting that I had with the Commander of the Navy for the  
49 Northwest Region, I asked for their assistance to help us  
50 patrol the Bering Sea, to help us protect our resources

1 from those bottom trawlers and making sure that there's  
2 enough fish getting to our people so that they can have  
3 sustenance. Subsistence just isn't what you can eat,  
4 it's a means of life. You can go to any dictionary and  
5 look up subsistence and it's the very basic of sustaining  
6 life; then we have the United States trying to tell us we  
7 can't feed our family and have the very basics. Our  
8 tribal citizens won't stand for that. Our tribal  
9 citizens are going to go hunt, we're going to go fish and  
10 we're going to go get our birds and we're going to get  
11 our berries and we're going to do that on our traditional  
12 lands, our traditional territories.

13

14                   And I ask any of these Staff members,  
15 Federal agencies who are looking at our customary and  
16 traditional use, what credentials do you have. Have you  
17 lived a subsistence lifestyle. Have you went out there  
18 and lived off of the land. Or is it from books. Is it  
19 from data from a university. Because without their  
20 living it you don't know it. And the ones that you  
21 should be consulting with are these elders who lived it  
22 their whole life, in those villages. They're the ones  
23 who have the doctorate degree in subsistence, not a  
24 nonNative person that goes out there once in a while and  
25 says tell me what you know. They're the ones that need  
26 to go back to school, but you can't get that in a year or  
27 two either, you have to live the cycle to understand what  
28 true living off the land means.

29

30                   Again, I thank you for allowing me this  
31 time to advocate on behalf of the 220 Federally-  
32 recognized tribes.

33

34                   Thank you.

35

36                   CHAIRMAN TOWARAK: Thank you, Mr.  
37 Harrison. While you're here I'd also like to suggest  
38 that the Staff contact you and get some of the addresses  
39 of all of your tribes.

40

41                   MR. HARRISON: I will contract with you  
42 and help you disseminate information. I will not give it  
43 freely to the Federal government, they have to pay for  
44 it.

45

46                   (Laughter)

47

48                   (Applause)

49

50                   MR. PROBASCO: Mr. Chair. I'll run

1 through the names once more and then we can move on. Mr.  
2 Sky Starkey.

3  
4 (No comments)

5  
6 MR. PROBASCO: Mr. Carl Wassilie.

7  
8 (No comments)

9  
10 MR. PROBASCO: Mr. Larry Sinyon.

11  
12 (No comments)

13  
14 MR. PROBASCO: And Mr. Nikos Pastos.

15  
16 (No comments)

17  
18 MR. PROBASCO: That's it, Mr. Chair.

19  
20 MS. TEPP: Mr. Chair. Is it okay for me  
21 to go up and speak on this, I didn't sign a piece of  
22 paper for it.

23  
24 MR. PROBASCO: It's your call. Testimony  
25 for the public record.

26  
27 CHAIRMAN TOWARAK: Go ahead, if you can  
28 focus on the customary and trade issue specifically --  
29 customary and traditional use, I'm sorry.

30  
31 (Laughter)

32  
33 CHAIRMAN TOWARAK: If you could state  
34 your name and who you represent.

35  
36 MS. TEPP: My name is Rosalie Tepp. I'm  
37 the tribal Chair person of Kenaitze Indian Tribal  
38 Council.

39  
40 First of all I would like to say I don't  
41 feel intimidated by this Federal Board Group, the last  
42 one I did, they weren't very friendly. They weren't very  
43 friendly to the Kenaitze people and they weren't friendly  
44 to the tribal people. I feel that I can sit here and  
45 speak my heart and not be threatened, and I thank you  
46 personally for that.

47  
48 When I testified last year at a  
49 traditional hunting fishing, gathering of the Native  
50 people taking moose for funeral potlatches I was

1 successful in helping an elder explain what it meant to  
2 them and us when the Board didn't understand. When you  
3 go and use your foods, gather your foods, get together  
4 with your family and go out on your traditional hunting  
5 and fishing grounds it's your whole human self, your  
6 language, your love, your spirit, your whole sense of  
7 being with a family and teaching them to respect the  
8 land, to give back; when you take you give back.

9

10                   And a lot of people have forgotten that.

11

12                   And as a Native person that still speaks  
13 my language -- when I go home to my village I get  
14 humanized again. I get away from the kind of city life  
15 but I still practice my ways in my home, which is now  
16 Kenai, Alaska. It has been for 35 years, 37 years. When  
17 I went to Kenai I was appalled that those -- that the  
18 Kenaitze people couldn't go out like I did in the village  
19 and gather without looking behind our backs to see if  
20 there was Fish and Game. I was 18 years old, I didn't  
21 understand that, and I made a vow to change that, and now  
22 I'm 57. I'm not going to stop. I'm not going to quit.  
23 Because I have children, grandchildren now, I'm a  
24 grandmother. To tell my granddaughter, she's six now, I  
25 want you to take my place someday, I take her to  
26 meetings, once in awhile she'll correct me when I get  
27 upset because I'm very vocal, I'm up front, to go out and  
28 hunt, to teach my people, seven generations ahead of  
29 time, I want them to live the way I did. I have a broken  
30 heart when I come, very broken. Why is it that my people  
31 they take away from. Why do I have to beg, and I beg all  
32 the time when I come and testify, I shouldn't. I'm a  
33 'Uk, I'm a Yup'ik of this land, nobody should have to  
34 beg.

35

36                   Remember Thanksgiving, the nonNative  
37 wouldn't have survived if it wasn't for the Indian down  
38 Lower 48, they gave with no payment of any sort coming,  
39 asking, that's all I ask. I don't want no stipulations  
40 because I'm Native to go out and ask that my people eat.  
41 Very sad. I have a very broken heart. But one thing I'm  
42 'thankful for, there's a difference in this group  
43 compared to the last one, listen with your hearts, teach  
44 your kids about -- your grandchildren and your kids and  
45 your sons that are growing, and your daughters that are  
46 growing about sharing, about taking in a good way, that  
47 we have done for thousands of years, and I apologize for  
48 crying a little bit because it means so much to me.

49

50                   Those that we are teaching, those that we

1 have and you're sitting there, you need to teach your  
2 kids, too, to listen to your heart, that's all I ask, let  
3 us use our traditional hunting grounds, let us eat so we  
4 don't get sick anymore. Like look at me, I'm overweight,  
5 I never used to be. I never used to eat chocolates, now  
6 I do, that's nonNative way. If I could go out and have  
7 more berries the way I used to eat I'd be healthier,  
8 think about those things.

9

10 Thank you.

11

12 CHAIRMAN TOWARAK: Thank you.

13

14 MS. MILLS: I have something.

15

16 CHAIRMAN TOWARAK: If you've got  
17 something specific.....

18

19 MS. MILLS: Yes, I do.

20

21 CHAIRMAN TOWARAK: .....to customary  
22 trade [sic].

23

24 MS. MILLS: And I won't take up -- very,  
25 very short.

26

27 CHAIRMAN TOWARAK: Thank you.

28

29 MS. MILLS: My apology, I don't know why  
30 I didn't see the customary and traditional. In our area,  
31 on the Kenai Peninsula was aggregated with several other  
32 communities and that's one of the reasons that we don't  
33 have -- we are considered nonrural. But, yet, there's  
34 people who have recently moved into areas that are  
35 considered rural that has subsistence, and, you know, we  
36 believe in sharing. That's -- I'm not bringing it up  
37 because of, you know, of not wanting to share with who  
38 comes into our country, but our traditional foods have  
39 been in our genetics for 30,000 years and because of that  
40 when we don't have our traditional food we do get sick.  
41 We have the highest rate of cancer, the highest rate of  
42 Diabetes, the highest -- we have the highest -- among the  
43 highest disease rate in the whole nation and subsistence  
44 is vital to us, not only for our health but it keeps our  
45 communities together.

46

47 We have a story that was brought to us  
48 about probably, I don't know, long before my time, of  
49 Raven, when he came and he gave us these fish, he gave  
50 the fish to us because at one time our people were

1 starving. Now, that we don't have our subsistence food,  
2 you know, we have insulin for our Diabetes, we have heart  
3 medicine for our heart but we're still unhealthy people.  
4 And some of us are criminals. We've been made into  
5 criminals instead of hunters and fishers. And in our  
6 culture we respect everything. Everything living. And  
7 everything even not living. We believe everything has  
8 the spirit of Creator.

9  
10 So in our -- subsistence is so important  
11 for us and I know we have tried to get back to the  
12 nonrural status and we are told we can't but, you know,  
13 if it wasn't for the sharing of other indigenous peoples  
14 and in barter and trade, I think we would be -- have a  
15 lot more problems than what we have today.

16  
17 I'd like to thank everyone for listening  
18 and for being here and I do appreciate the Board and the  
19 Councils.

20  
21 Thank you very much.

22  
23 CHAIRMAN TOWARAK: Thank you. This  
24 concludes the public portion of our comments. We'll give  
25 the floor to the State if you have any comments regarding  
26 customary and traditional.

27  
28 MR. HEPLER: Mr. Chairman, thank you.  
29 Just a very brief comment. It seems like a majority of  
30 the Regional Councils agree with the process -- working  
31 right now, but if the Board does entertain some proposed  
32 changes, we look forward to working with your Staff and,  
33 you know, the ability to comment on those.

34  
35 Mr. Chairman, thank you.

36  
37 CHAIRMAN TOWARAK: We will go to the  
38 Regionals and this time we'll start with Lester. Mr.  
39 Wilde.

40  
41 MR. WILDE: Thank you, Mr. Chairman. The  
42 Yukon Kuskokwim Delta felt that the current C&T process  
43 is working. I got some hair in my mouth, sorry.

44  
45 (Laughter)

46  
47 MR. WILDE: Even though we feel that we  
48 don't always agree with the determinations that are made  
49 but we feel that it is fine just the way it is.

50

1 Mr. Chairman.

2

3 CHAIRMAN TOWARAK: Thank you. Ralph.

4

5 MR. LOHSE: Thank you, Mr. Chair. In the  
6 interest of brevity I'll say that our comments are on  
7 Page 87 and we pretty much echo what Lester just said.  
8 We're generally satisfied with the process, we think it  
9 has worked in a lot of cases, we also have had our  
10 disagreements with how things have worked out and we've  
11 worked back through them and some of them have worked out  
12 to a way, we, as a RAC, thought they should, and some  
13 they haven't.

14

15 Our Council basically has worked with the  
16 premise that C&T is inclusive and not exclusive and we've  
17 kind of worked from that premise.

18

19 It's interesting sometimes that the C&T  
20 for one group is a little different than the C&T for the  
21 other group and what kind of information is needed, but  
22 that's also got to be remembering that you're taking into  
23 account the fact that you're dealing with RAC members who  
24 are supposed to apply the knowledge that they have from  
25 having lived that kind of lifestyle or are living in the  
26 area or knowing the people involved. Some of those  
27 things can't be set down on paper so we think it's worked  
28 to a certain -- to a good extent.

29

30 CHAIRMAN TOWARAK: Thank you, Mr. Lohse.  
31 Mr. Adams.

32

33 MR. ADAMS: Thank you, Mr. Chairman. I'm  
34 going to refer to the letter that our Regional Advisory  
35 Council submitted to the Chair and to the Board.

36

37 We did, you know, have a committee, a  
38 subcommittee that looked at the C&T regulations at that  
39 time and the Council provided -- they thought that the  
40 Council was provided inadequate information to make any  
41 real comprehensive comments, you know, about the  
42 customary and traditional use determination process. The  
43 Council should have been provided additional background  
44 information, including a copy of the regulations  
45 regarding C&T determinations, a history of the past Board  
46 actions taken on customary and traditional use  
47 determinations in this region and a review of public  
48 comments received on the draft customary and traditional  
49 use policy from 2007. Without that information it is not  
50 possible to make a determination at this Council meeting

1 whether the customary and traditional use regulatory  
2 process is working to the benefit of subsistence users in  
3 the Southeast Alaska region. However, we would like to  
4 make the following observations and there's bullet No. 1  
5 here.

6

7 ANILCA does not require that customary  
8 and traditional use determinations be  
9 made, nor that the eight factors be  
10 utilized in evaluating subsistence uses.

11

12 The C&T determination and eight factors  
13 analysis is a carryover in implementing  
14 regulations from the State of Alaska  
15 when it was unknown how long the Federal  
16 government would maintain management  
17 authority.

18

19 The State of Alaska has a strict  
20 interpretation of the eight factors and  
21 there is uncertainty in how the Federal  
22 Subsistence Board should apply the eight  
23 factors as evidenced by recent requests  
24 for reconsideration and litigation.

25

26 The Council also recommended the Board  
27 incorporate the following concepts in making the new  
28 regulations.

29

30 The Board gives deference to the Council  
31 recommendation for customary and  
32 traditional use determinations.

33

34 The Council also felt that 50 CFR  
35 100.16(a) should be modified:

36

37 The regulation should  
38 read the Board shall  
39 determine which fish  
40 and wildlife have been  
41 customarily and  
42 traditionally used for  
43 subsistence. These  
44 determinations should  
45 identify the specific  
46 communities or areas  
47 use if possible -- and  
48 then they struck this  
49 part out -- of specific  
50 fish stock and wildlife

1 populations and then  
2 put in bold, all  
3 species of fish and  
4 wildlife that have  
5 traditionally used in  
6 their past and present  
7 geographical areas.  
8

9 If an eight factor approach is continued  
10 then the regulations should be modified  
11 to include specific language for a  
12 holistic approach rather than a strict  
13 interpretation that the State of Alaska  
14 has applied.  
15

16 The final paragraph says, that the  
17 Council is looking forward to additional  
18 dialogue on the issue of C&T and with  
19 the Board and Office of Subsistence  
20 Management during the September 2011  
21 Council meeting.  
22

23 That's the extent of my comments, Mr.  
24 Chairman, thank you very much.  
25

26 CHAIRMAN TOWARAK: Thank you, Mr. Adams.  
27 Mr. Reakoff.  
28

29 MR. REAKOFF: Thank you, Mr. Chair. The  
30 Western Interior Regional Council has worked through the  
31 customary and traditional use determination process with  
32 the Federal Subsistence Board, we feel that the process  
33 is working adequately.  
34

35 We felt that changing the process at this  
36 point would jeopardize the over 300 customary and  
37 traditional use determinations that have already been  
38 made and we don't want to throw the baby out with the  
39 bath water. And so we felt that, you know, if there's  
40 contentious concerns, like, you know, we have this Unit  
41 21E moose request for 19A residents, the Board -- in  
42 contentious positions, the Board has directed the Council  
43 to work these out with the various tribal entities and at  
44 our fall meeting we will work that through a one day  
45 process prior to our meeting.  
46

47 And so we feel that the customary and  
48 traditional use determination process is working and it  
49 may need a tiny bit of tweaking but to our interpretation  
50 we feel that the process is adequate for meeting

1 subsistence users within our region.

2

3 Thank you.

4

5 CHAIRMAN TOWARAK: Thank you, Mr.

6 Reakoff. Ms. Entsminger.

7

8 MS. ENTSMINGER: Thank you, Mr. Chair.

9 The Eastern Interior felt comfortable with the process.

10 They said in most cases there is no need to change the

11 process. One member expressed the thought that the only

12 time it doesn't work is when you pit user against user,

13 which they feel happens at times.

14

15 CHAIRMAN TOWARAK: Thank you. Mr.

16 Simeonoff.

17

18 MR. SIMEONOFF: Thank you, Mr. Chairman.

19 The Kodiak/Aleutians felt, in general, that the process

20 was working and that -- they had some comments and

21 questions. One member thinks that the process is good

22 and they thought that sometimes the process was a little

23 too liberal and sometimes a little too literal, but it's

24 a process that -- it's improving and it works, you know,

25 they expressed that they didn't know another way of doing

26 it.

27

28 They wanted to make sure that customary

29 and traditional use determinations, while it isn't

30 perfect, they wanted to make sure that the subsistence

31 priority remains in the process. And the questions that

32 were raised were how does the introduced species fit into

33 the process of traditional use and determination, and the

34 question of what does long-term use and seasonal use mean

35 in regards to determining customary and traditional use

36 of those introduced species.

37

38 That's what came from Kodiak/Aleutians.

39

40 Thank you.

41

42 CHAIRMAN TOWARAK: Thank you, Mitch.

43 Rosemary.

44

45 MS. AHTUANGARUAK: I want to thank

46 everyone for your discussions, it's really been good to

47 be able to listen to the way things have been going at

48 these meetings and the communications that we're

49 receiving are very important and relevant to the issues.

50

1 In the North Slope we did not have -- we  
2 were fine with the current C&T process and had no  
3 suggestions for changes.

4  
5 Getting to hear Mr. Adams communications  
6 and the observations that he provided are very relevant  
7 and I wanted to support that also.

8  
9 Thank you.

10  
11 CHAIRMAN TOWARAK: Thank you, Rosemary.  
12 Mr. Smith.

13  
14 MR. SMITH: The Seward Peninsula Regional  
15 Advisory Council found that the C&T determinations are  
16 working well enough. It's, you know, the nature of C&T  
17 makes it very arbitrary. I like things a little more  
18 black and white but it's just not possible.

19  
20 (Cell phone ringing)

21  
22 MR. SMITH: Sorry about that I thought I  
23 turned it off.

24  
25 But I came to Alaska to work on -- I did  
26 a graduate study on muskox on Nunivak and I worked  
27 afterwards afterward on reintroduction of muskox into  
28 Alaska and so I was in customary and traditional use  
29 determinations in several areas.

30  
31 (Cell phone ringing)

32  
33 MR. SMITH: Oh, wow.

34  
35 (Laughter)

36  
37 MR. SMITH: It's a difficult situation.  
38 The Board of Game ruled one time that there was no C&T  
39 and then in a subsequent C&T finding they ruled that  
40 there was C&T based on exactly the same information, it's  
41 just very arbitrary. And, you know, I don't know how I  
42 could make it any better so, you know, I'm glad I don't  
43 have to do the C&T findings, I could just provide  
44 information, so, you got a tough job.

45  
46 CHAIRMAN TOWARAK: Thank you. This  
47 concludes the hearing process, what's the next step.

48  
49 MR. PROBASCO: Thank you, Mr. Chair. As  
50 Mr. Kron pointed out, this is one of the directives that

1 the Secretary gave to the Board and that was to review,  
2 with the Councils input, the customary and traditional  
3 use determination process and present recommendations for  
4 regulatory changes, if necessary.

5  
6 And so at this point in time the Board  
7 has heard from the Councils and the question before the  
8 Board is to direct Staff how they would like to proceed.  
9 Is the current process sufficient or are there areas that  
10 have caught your interest where you would like to explore  
11 possible changes.

12  
13 Mr. Chair.

14  
15 CHAIRMAN TOWARAK: Thank you. Let's hear  
16 brief discussion by each Board member starting with you,  
17 Sue.

18  
19 MS. MASICA: Mr. Chairman. I would say  
20 I didn't hear a whole lot that said we should be rushing  
21 to make a whole lot of changes in the short-term.

22  
23 MS. K'EIT: Mr. Chair, thank you. I --  
24 although we didn't hear a lot of discussion about changes  
25 I did note a couple Councils seemed to not have had  
26 enough information or enough time to really prepare a lot  
27 of remarks and I appreciated Southeast RAC's letter, that  
28 provided more information they were able to work on a  
29 little after the fact.

30  
31 I'm wondering if it might be an idea of,  
32 much like we do with our wildlife and our fish  
33 regulations, to put the regulation out there and request  
34 formal comment and proposed changes and then that might  
35 spur a little more activity or provide time for  
36 additional thought from our RACs or the public or the  
37 tribes that are definitely affected. And I have a little  
38 concern, though, about how that might fit in with the  
39 workload for the RACs now, with all the wildlife  
40 proposals, but it's still something I think would be  
41 beneficial.

42  
43 Thank you.

44  
45 CHAIRMAN TOWARAK: Beth [sic].

46  
47 MS. DUGAN: Mr. Chair. I did hear, I  
48 think, some things that we certainly should consider.

49  
50 One, being the more holistic approach

1 rather than a species by species, and I have to admit I  
2 don't understand all the rationale for why it has to be  
3 done species by species but I know every time I hear it  
4 I wonder why we do it that way.

5  
6 And then -- now, I've lost -- there was  
7 one other comment that -- oh, introduced species was very  
8 interesting, too, to consider, but I didn't hear the  
9 overwhelming need to make -- to move into significant  
10 changes.

11  
12 CHAIRMAN TOWARAK: Thank you. Geoff.

13  
14 MR. HASKETT: Thank you, Mr. Chair. So  
15 this, to me, was the area we had the least amount of  
16 disagreement. I mean what I heard from the public, from  
17 the RACs, from the Board comments so far, from Staff  
18 comments, from the State under discussion earlier today  
19 is that no one's saying it's perfect but there's not a  
20 whole lot of major concern with this process, how it's  
21 working, that doesn't mean there aren't things we  
22 couldn't listen to in terms of maybe addressing some of  
23 these things. But I think overall, I think if we got one  
24 that's working as well as it appears to be, this is one  
25 we ought to keep using the way it is for the most part,  
26 so to me it's a fairly simple decision to make; on this.

27  
28 MS. PENDLETON: Mr. Chair. I, would,  
29 too, agree in considering the comments of the RACs as  
30 well as public testimony, that generally the comments are  
31 supportive that the existing process is working fairly  
32 well.

33  
34 The one area that certainly sparked my  
35 interest was the comment from the Southeast RAC, again  
36 relative to what Ms. Dugan brought up, that the  
37 determinations, that we consider identifying that more  
38 holistic approach, particularly for fish, as subsistence  
39 users are gathering fish, that all species of fish and  
40 wildlife that have traditionally been used be considered.

41  
42 Other than that I think that it seems  
43 that this process is working well.

44  
45 Thank you.

46  
47 CHAIRMAN TOWARAK: Thank you. Go ahead.

48  
49 MR. GOLTZ: I think I can clarify a  
50 couple of points.

1                   First we do it species by species because  
2 that's the way the State did it. When we first drafted  
3 these regulations we thought they'd be in effect for  
4 about six months and then we would be returning it back  
5 and that didn't happen and so here we are 20 years later  
6 and we're still doing species by species.

7  
8                   As to the introduced species, once it's  
9 out there it's a wild renewable resource and, therefore,  
10 subject to the terms of ANILCA. Whether it becomes a  
11 subsistence species or not becomes an individual  
12 determination. But we have a long list of introduced  
13 species that also have C&Ts on them.

14  
15                   CHAIRMAN TOWARAK: Ms. Armstrong, you  
16 have a comment and any suggestions.

17  
18                   MS. ARMSTRONG: Well, I did have just --  
19 I just wanted to reemphasize, I think, because we started  
20 talking about species, doing it species. I think where  
21 the difficulty has come in and I'm particularly sensitive  
22 to this because I've had to work on the Kenai Peninsula,  
23 specifically Ninilchik customary and traditional use  
24 determinations, for fish for many years, the deletion  
25 that Southeast suggested was the specific fish stocks and  
26 wildlife population and instead of saying stocks saying  
27 all species of fish and that's where we've gotten into  
28 some real difficulties with, you know, do we have to look  
29 at specific stocks in every stream and that sort of thing  
30 and what Southeast has suggested is doing it by species,  
31 which would clarify it.

32  
33                   And I did find the other day, because  
34 I've been working on this, an old memo from the previous  
35 regulatory specialist, who has since retired, he was here  
36 from the beginning of the program, that the intention had  
37 not been to do it on stocks, but that the people who  
38 wrote the regulations weren't fisheries biologists and  
39 didn't really understand what they were doing, and I  
40 think that this would -- what the intent was, was to do  
41 it by species. I believe -- now, Keith -- Keith, I  
42 think, could clarify that, maybe that's not true, but I  
43 was curious when I ran into this old memo. Anyway that  
44 would be -- I just wanted to clarify when you were  
45 talking about species, that really what it is is to get  
46 rid of the stocks language.

47  
48                   MR. GOLTZ: Well, it's time to declare  
49 myself. I think I remember the memo, and the group of  
50 people that he was talking about who were not biologists,

1 included me, so it's come full cycle now.

2

3 (Laughter)

4

5 CHAIRMAN TOWARAK: Is there a desire to  
6 do something with that specific suggestion from the  
7 Southeast Council.

8

9 Geoff.

10

11 MR. HASKETT: Well, I think we should  
12 probably explore it. I mean I think if that's something  
13 they want us to look at, I'd say, yeah, sure, we could go  
14 ahead and take a look at it, but I don't know that we  
15 need to do anything official in terms of this request  
16 from the Secretary for that. It seems like that's  
17 something we could work on and try and get an answer on.

18

19 CHAIRMAN TOWARAK: Well, we basically  
20 want to leave the door open, I don't think we're  
21 restricted by time are we, Pete?

22

23 MR. PROBASCO: Mr. Chair. You know, the  
24 process is the question. I think the one that's probably  
25 the cleanest and since it came from Mr. Adams' Council,  
26 that Staff could work with Southeast and if they felt  
27 after getting additional information and going through  
28 the history, if they felt that it was necessary they  
29 could come back to the Board and say, hey, we looked at  
30 this and we think this should be changed, or we looked at  
31 it, we have a better understanding, whatever. I mean we  
32 could leave it up to the Council to come back to the  
33 Board.

34

35 Mr. Chair.

36

37 CHAIRMAN TOWARAK: Geoff.

38

39 MR. HASKETT: So I just got the  
40 regulations brought to me and actually what it says, is  
41 these determinations shall identify the specific  
42 communities or areas, use of specific fish stocks and  
43 wildlife populations. So, again, we could still look at  
44 it, but it sounds like it might be a little more  
45 complicated than I was thinking at first in terms of  
46 making changes, but, I mean we could also make regulatory  
47 changes, too, if we decided to go that direction.

48

49 CHAIRMAN TOWARAK: Go ahead, Pete.

50

1 MR. PROBASCO: Mr. Chair. Board members.  
2 I'm trying to keep it so we don't get stuck and get  
3 quagmired in the mud and I think Mr. Adams' letter  
4 clearly articulates the request for more information and  
5 a little bit better understanding. Their experience,  
6 though, is very wide and their history is very wide on  
7 C&T but I think they're looking at some possible  
8 suggestions for changes, but I think putting it back to  
9 the Councils and have them work with Staff would give a  
10 better clarification instead of us trying to, you know,  
11 what are we looking at?

12  
13 CHAIRMAN TOWARAK: Mr. Adams.

14  
15 MR. ADAMS: Yeah, I really don't want to  
16 bog you down on, you know, anything specific right now.  
17 You know, what I think we could probably do is -- a  
18 change to the regulation is probably come back with a  
19 proposal in the future so we can do that.

20  
21 Thank you.

22  
23 CHAIRMAN TOWARAK: Is there any  
24 objections from the Board for that suggestion?

25  
26 (No comments)

27  
28 CHAIRMAN TOWARAK: We will do that then.  
29 We will basically defer this back to your Council.

30  
31 Go ahead, Pete.

32  
33 MR. PROBASCO: Or any other Council that  
34 would want to take it on but you were specifically  
35 addressing Southeast and I was using that example but,  
36 you know, North Slope, whoever, if they wanted to, could  
37 also look at it.

38  
39 Mr. Chair.

40  
41 CHAIRMAN TOWARAK: Geoff, go ahead.

42  
43 MR. HASKETT: So then just a question, to  
44 help clarify the record, since this was a direction from  
45 the Secretary's office, then we just need to, as a Board,  
46 I think, go back, I'm not sure what the process is for  
47 doing that, just let them know that we actually think it  
48 doesn't need to change, other than minor tweaks, we think  
49 it works pretty well.

50

1 CHAIRMAN TOWARAK: We will just leave  
2 that issue on the table for the Staff.

3  
4 MR. PROBASCO: Yes, Mr. Chair, and just  
5 to remind the Board that a year from the date that the  
6 Secretary gave us the letter, we are to report back to  
7 the Secretary and so we are going to be reporting back  
8 and if you see the draft status report I have in your  
9 booklet I gave in the beginning, that's sort of a  
10 template that we would work from. But we will, at some  
11 point down the road, be developing a response back to the  
12 Secretaries on our progress.

13  
14 Mr. Chair.

15  
16 CHAIRMAN TOWARAK: Thank you. I think  
17 that takes care of that issue without any -- it doesn't  
18 need any Board action, the Staff will follow up on this  
19 discussion.

20  
21 That concludes the discussion on  
22 customary and traditional use determination process.

23  
24 We will then move on to No. 10, the  
25 Memorandum of Understanding, it's the MOU with the State  
26 of Alaska, it's on Page 89 through 91 -- or 93.

27  
28 MR. PROBASCO: Thank you, Mr. Chair.  
29 I'll take the lead and then look for assistance from my  
30 Staff Committee friends.

31  
32 But an additional directive from the  
33 Secretaries was to review, with RAC input, the December  
34 2008 Memorandum of Understanding with the State to  
35 determine either the need for the MOU or the need for  
36 potential changes to clarify Federal authorities in  
37 regard to the Subsistence Program.

38  
39 And during the winter cycle this  
40 Memorandum of Understanding was sent out to the Councils,  
41 as well as posted for public comment, and the document  
42 was reviewed.

43  
44 Just briefly, Mr. Chair, I think  
45 everybody's well aware of the history of the MOU. It  
46 actually started out as a MOA. It went through a long,  
47 tedious process, and through that process the MOA was  
48 initialed by both the State and the Federal groups and  
49 then they agreed to work towards finalizing the MOU and  
50 it was in 2008 that the MOA was changed to an MOU and we

1 were successful in getting it signed by both parties,  
2 both the Federal Board and then the representatives --  
3 the Chairs from each respective Board of Game and Board  
4 of Fish and Commissioner.

5  
6 I just want to state that the purpose of  
7 the MOU is to provide a foundation and direction for  
8 coordinating interagency fish and wildlife management for  
9 subsistence uses on Federal public lands consistent with  
10 specific State and Federal authorities and will protect  
11 and promote the sustained health of fish and wildlife  
12 populations; insure conservation and stability in fish  
13 and wildlife management; include meaningful public  
14 involvement.

15  
16 That was the purpose of the MOU.

17  
18 As I stated it went out for review, and  
19 I'm not going to speak for the Councils, they are here,  
20 but their comments are on Page 96 and I know you'll refer  
21 to them for their direction.

22  
23 As I stated, this is a directive from the  
24 Secretaries. Today, before you is the direction you want  
25 to proceed, and we'll go from there.

26  
27 As far as Staff, and when I say Staff,  
28 the OSM and the Staff Committee met on this issue and we  
29 felt that the MOU, based on the RACs input was a  
30 meaningful document. We also felt that based on the  
31 comments received and that both signatories to the MOU,  
32 both sides agreed that it was a living document, we felt  
33 from the review comments and as well as our review, that  
34 there could be some tweaking and clarifications to the  
35 documents. If you look at the comments, a lot of the  
36 comments talked about clarifying and putting it in terms  
37 that are more easily understood.

38  
39 A possible process that the Board could  
40 consider is that when this MOU was developed, there was  
41 a smaller group, it was called the MOU working group on  
42 the Federal side, that consisted of Mr. Steve Kessler  
43 from the Forest Service, Mr. Sandy Rabinowitch from the  
44 Park Service and myself and we worked with our  
45 counterparts with the State in developing a draft and  
46 then that draft went to the respective parties and they  
47 worked through various meetings in finalizing that  
48 document. You could reorganize that MOU working group  
49 and task them with looking at the comments and make  
50 recommendations back to each respective side. But keep

1 in mind we're only speaking for the Federal side. So to  
2 make that possible we may want to look at drafting a  
3 letter for your signature to the State counterparts  
4 requesting that they reform the working group to look at  
5 the comments, both from the Federal side and I know the  
6 State is working through a process, they haven't  
7 completed yet, to get comments from their Advisory  
8 Committees, and then we could come back and take a look  
9 at those comments collectively and see where that  
10 document could be tweaked and provide another draft for  
11 both sides to review and go from there.

12  
13 If you look at the current MOU the goal  
14 is for the signatories to meet annually. We have -- on  
15 both sides, we have a new administration with the State,  
16 we have new Board members here and some of them have not  
17 had the opportunity yet to meet. If you look at the last  
18 time we met, it's time for us to meet again. When that  
19 should occur, I think, needs to be tied in with how we  
20 proceed on this MOU.

21  
22 So, Mr. Chair, I would look towards the  
23 Board's direction. I think the Board should focus on how  
24 they view the MOU and if they want to consider a  
25 recommitment to the MOU and then look at how best to  
26 proceed in bringing the State side in, and then working  
27 towards taking this document, which was identified as a  
28 living document, and see how we can improve upon it. And  
29 as far as a timeframe, and the State may have some  
30 comments we may want to look at something drafted either  
31 for the fall or winter meeting cycles and try to shoot  
32 for something 2012 or whatever.

33  
34 Mr. Chair.

35  
36 CHAIRMAN TOWARAK: Thank you. Did we  
37 have anyone from the public that wanted to testify?

38  
39 MR. PROBASCO: No, Mr. Chair.

40  
41 CHAIRMAN TOWARAK: Okay.

42  
43 MR. PROBASCO: The State.

44  
45 CHAIRMAN TOWARAK: Could we hear from the  
46 State on your thoughts.

47  
48 MR. HEPLER: Thank you, Mr. Chairman.  
49 Pete, I think, did a real nice job articulating, I think,  
50 where the process is. And we're going through another

1 process, we have MOUs with, you know, Park Service,  
2 Forest Service, US Fish and Wildlife Service and we're  
3 entertaining going and looking through those same types  
4 of MOU processes, seeing what's working, where we still  
5 think maybe there's some tension we need to work through  
6 and we're going -- you know, the commitment there is  
7 we're going to work with the Regional Directors and their  
8 Staff and with meetings this fall, at the latest, to try  
9 to work some of those things out. This falls under the  
10 same process, Mr. Chairman.

11  
12 This is -- you know I was part of the  
13 original MOA working group, I, you know, hate to date  
14 myself that long ago and it has gone through some changes  
15 and, you know, we appreciate seeing what -- you know,  
16 what's came in from the RACs, we also got comments back  
17 already, Pete, from our Advisory Committees, so it's  
18 important to get their input, and then we'll get back and  
19 we'll work this thing out. I think we'll sit down with  
20 Pete and we'll figure out the size of the group we need  
21 to work on this, and we'll get, you know, on the State  
22 side, too, make sure we get the right people at the  
23 table. But our commitment is that we're committed to  
24 this MOU, we're committed to working with the Board.

25  
26 I think it would be good for, for a  
27 chance, like Cora to come back and meet you guys, we have  
28 a new -- different Board, at least some of the Board  
29 members are new, bringing them back and having a chance  
30 to talk to you guys, too, so we'll work out a process and  
31 get back to you, Mr. Chairman, we're on board with it.

32  
33 CHAIRMAN TOWARAK: Thank you. Let's hear  
34 from the Regional Council Chairs, starting with Mr. Smith  
35 at this time.

36  
37 MR. SMITH: The Seward Peninsula Regional  
38 Advisory Council voted to support the wording of the MOU.  
39 The only thing we added was there's an issue about data  
40 collection, and we thought it would be useful, since we  
41 have a number of hunts for the same species under Federal  
42 and State rules, but with different rules and there was  
43 no way to determine whether an animal was taken under  
44 Federal rules or under State rules, that it would be  
45 useful to get the State to add a box to the harvest  
46 report so that the hunter could indicate whether he was  
47 hunting under Federal rules or State rules. As it is now  
48 we can't really determine how many people are  
49 participating in the two types of hunts. It affects  
50 muskox hunts, moose hunts, grizzly bear hunts on the

1 Seward Peninsula.

2

3 CHAIRMAN TOWARAK: Is that the most  
4 honest way to do it?

5

6 MR. SMITH: Well, it's the only way to do  
7 it, really, because it depends.....

8

9 CHAIRMAN TOWARAK: Yeah.

10

11 MR. SMITH: .....whose line you're on  
12 when you take the animal in most cases.

13

14 CHAIRMAN TOWARAK: Yeah. My concern --  
15 well -- Rosemary.

16

17 MS. AHTUANGARUAK: The North Slope was  
18 supportive of the MOU and felt that it was a valuable  
19 document. It also recommended the following changes.

20

21 Section 1, paragraph 2; change such as to  
22 especially.

23

24 Wording needed to be added throughout the  
25 MOU wherever it states who is involved in the MOU to  
26 include knowledgeable subsistence uses and/or tribal  
27 representatives.

28

29 For example the following edit should be  
30 made, Section 4, No. 9, additions in italics, to  
31 designate liaisons for our policy communications as  
32 appropriate to identify tribal and/or local agency  
33 representatives who are knowledgeable out subsistence  
34 uses.

35

36 Thank you.

37

38 CHAIRMAN TOWARAK: Thank you, Rosemary.  
39 The Staff has the notes on your comments.

40

41 Mitch.

42

43 MR. SIMEONOFF: Thank you, Mr. Chairman.  
44 The Kodiak/Aleutians Council supports the idea of the MOU  
45 as it reduces redundancy and includes local input as  
46 possible. The MOU basically states that the State and  
47 Federal programs will try and work things out and cause  
48 the least adverse impact possible on subsistence users,  
49 which the Council supports.

50

1                   One Council member stated that she wasn't  
2 sure how the MOU addresses the Nunivak issue, but she  
3 felt it was a good idea to work together.

4

5                   Thank you, Mr. Chairman.

6

7                   CHAIRMAN TOWARAK: Thank you, Mitch.

8 Sue.

9

10                   MS. ENTSMINGER: Thank you, Mr. Chairman.  
11 The Eastern Interior does like this MOU and there was  
12 some discussion at our meeting regarding the sharing of  
13 data, raw data. And we had put together a letter, I  
14 don't know if you guys got it, specifically to this, it  
15 said, we generally support it but the Council does not  
16 recommend the -- I'm sorry -- the Council does recommend  
17 the protocol for data sharing between agencies be  
18 reviewed and updated. It's been the experience of the  
19 Council members that fisheries raw data are not released  
20 and shared but often held back until a finished product  
21 is published. The Council feels that the opportunity for  
22 interested scientists to review and analyze raw data as  
23 they become available could support and improve timely  
24 management decisions.

25

26                   So we had sent that to you guys.

27

28                   And I wanted to say, too, in our region,  
29 on the Fortymile Caribou Herd, there's a joint  
30 Federal/State permit and that really works well. People  
31 tend to understand where the Federal land is, where the  
32 State land is, when State land is closed there's a little  
33 bit more opportunity for the people to go hunting on  
34 Federal land and they don't have to get another permit  
35 and for the user it's really nice to have that working  
36 relationship with the State and Federal people.

37

38                   Thank you.

39

40                   CHAIRMAN TOWARAK: Thank you. Jack.

41

42                   MR. REAKOFF: Thank you, Mr. Chairman.  
43 The Western Interior Council reviewed the MOU and  
44 supports and recognizes that working with the State is a  
45 very important position in the comanagement regime that  
46 we have in Alaska but at the ground level, Western  
47 Interior last year, in our annual report, requested  
48 basically management -- maintaining viable ungulate  
49 management plans and so we received a response from the  
50 Federal Subsistence Board that basically stated a

1 subservient role to the State's management, and I will  
2 read our response from the Federal Subsistence Board.

3

4           The Board acknowledges the Council's  
5 concerns regarding maintaining viable  
6 ungulate populations as noted in last  
7 year's annual report. The Office of  
8 Subsistence Management, the Federal  
9 managers pay close attention to the  
10 population data and make management  
11 recommendations and decisions based on  
12 this information.

13

14           We understand the Council would like to  
15 see the development of comprehensive  
16 management strategies region by region,  
17 however, the Board has elected to work  
18 with the State to coordinate efforts to  
19 address population declines and other  
20 wildlife issues statewide, generally  
21 using State development management  
22 objections.

23

24           The Memorandum of Understanding between  
25 the Federal Subsistence Board and the  
26 State of Alaska facilitates better  
27 collaboration between the agencies and  
28 local managers to address wildlife  
29 management issues.

30

31           However, the Board has, and will  
32 continue to make management decisions to  
33 insure there's a subsistence priority on  
34 the Federal public lands.

35

36           But the reality is we have management  
37 regimes implemented by the State Board of Game that  
38 highly affect populations and I could name several  
39 populations within our region, the Mulchatna Caribou  
40 Herd, the bull/cow ratio was killed down to 14 bulls per  
41 100 cows, far below any recognized scientific principle.  
42 Unit 19A and B, we had moose populations killed off by  
43 excessive hunting pressure to eight bulls per 100 cows.  
44 What we were requesting was that management plans like  
45 the Federal Board and the Councils entered into a process  
46 on the Koyukuk and we developed a moose management plan  
47 with the State of Alaska that is the template of how to  
48 manage moose, we have 30 bulls per 100 cows, we have good  
49 access, we also have higher encounter rates and so  
50 subsistence needs are more satisfied with healthy

1 populations of game.

2

3 I passed out, the Council has wording  
4 stated in your packet, but I passed out this document  
5 that's been lettered, it's on the table here, it's 08,  
6 May 3rd, 2011; this document, I went through the ANILCA  
7 law and it's very clear that Congress stated that the  
8 continuation for the opportunity of subsistence uses of  
9 resources on public and other lands in Alaska is  
10 threatened by the increasing population of Alaska with  
11 result and pressure on subsistence resources by sudden  
12 decline in the populations of some wildlife species which  
13 are crucial subsistence resources by increased  
14 accessibility of remote areas containing subsistence  
15 resources and by taking of fish and wildlife in a manner  
16 inconsistent with recognized principles of fish and  
17 wildlife management. This is .801(3). Section .802 of  
18 ANILCA says that Congress mandated that -- it says -- we  
19 state that Congress mandated that the Federal managers  
20 adhered to sound management -- according to recognized  
21 scientific principles. It is hereby declared in Section  
22 .802 to be the policy of the Congress consistent with  
23 sound management principles and the conservation of  
24 healthy populations of fish and wildlife the utilization  
25 of the public lands in Alaska is to cause the least  
26 adverse impact possible on rural residents who depend  
27 upon subsistence uses of the resource of such lands  
28 consistent with management of fish and wildlife in  
29 accordance with recognized scientific principles and the  
30 purpose for each established unit.

31

32 The crux of our contention is that the  
33 response that utilizing State management principles,  
34 which the State Board may choose to overharvest the  
35 population, putting subsistence users, of highly  
36 impacting subsistence users is not what Congress  
37 intended.

38

39 What our recommendation here, it should  
40 be clear in the Memorandum of Understanding is that the  
41 Federal management has an obligation to manage for  
42 healthy populations using recognized scientific  
43 principles. The State calls it sustained yield. If the  
44 Board of Game chooses, I would like the Board of Game and  
45 the Federal Subsistence Board to work together on  
46 developing management objectives for populations, and if  
47 those objections are violated by the State Board process,  
48 if the populations are declining, it's incumbent upon the  
49 managing agencies to preclude further decline of  
50 populations, it puts the subsistence users in hardship

1 and it's contrary to Title VIII of ANILCA.

2

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50

So the language that we would like to be brought before the Memorandum of Understanding consultation that you will do with the Board of Game and the Board of Fish is, ANILCA Title VIII requires Federal managers to adhere to fish and wildlife management consistent with sound management principles and the conservation of healthy populations of fish and wildlife, in accordance with recognized scientific principles for the purpose for each unit established. Federal managers shall scientifically delineate and manage healthy populations.

If State management Board's actions jeopardize fish and wildlife population health, Federal managers shall preempt State regulations to assure population health in accordance with ANILCA.

That is something that this Board has not wanted to go to, but the reality is ANILCA, Title VIII mandates that, protection of the subsistence resources for the subsistence users. If the State chooses to exceed sustainability then it's incumbent upon the managing agencies to preclude that continued use.

That concludes my statement on the Memorandum of Understanding.

CHAIRMAN TOWARAK: Thank you. Any questions of Jack.

(No comments)

CHAIRMAN TOWARAK: I'm assuming that these suggestions are going to a committee?

MR. PROBASCO: Mr. Chair. If the Board elects to go down that path, along with Western Interior's comments that Mr. Reakoff articulated as well as the other Councils and public, those all would be put into consideration.

CHAIRMAN TOWARAK: Mr. Smith.

1 MR. SMITH: I have a question for you  
2 Jack. Don't you think the, like the, State  
3 Constitution's requirement for sustained yield provides  
4 that level of attention?

5  
6 MR. REAKOFF: No, we have a political  
7 board process. And it's incumbent upon the Board of Game  
8 to adhere to sustained yield, but that's not occurred on  
9 caribou and moose within the Western Interior Region.  
10 It's recognized principles that you got to have 35 bulls  
11 per 100 cows in many management objectives, yet, the  
12 Board process and continued hunting pressure allowed  
13 depletion to 14 bulls on Mulchatna with one adult bull  
14 per 100 cows, that's hunting pressure that does that,  
15 nothing more. And so the State Board violated sustained  
16 -- well, we can't sue the State but a lot of those  
17 Federal public lands, the managing agencies have -- if  
18 it's Lake Clark Preserve they have to close the season  
19 down. It's a hard pill to swallow and it's something  
20 that this Board has not wanted to go to.

21  
22 But I want it very clear this is becoming  
23 more and more rampant. In our region we've got caribou  
24 populations and moose populations that have been taken  
25 below recognized scientific principles, Congress did not  
26 intend this Board to do that. This Board -- Congress  
27 intended Federal management agencies to preclude that.

28  
29 It's very clear. Your solicitor  
30 will.....

31  
32 CHAIRMAN TOWARAK: Keith, are there any  
33 legal issues?

34  
35 MR. GOLTZ: Well, conservation is number  
36 1 in the statute, that's clear. I think the problem  
37 you're alluding to has to do more with jurisdiction. I  
38 think the management principles on the Federal units are  
39 clear. It becomes less clear once we get off the Federal  
40 units what our authorities would be and you're right we  
41 have not gone off Federal lands.

42  
43 CHAIRMAN TOWARAK: Go ahead.

44  
45 MR. REAKOFF: Mr. Chair. I'm not  
46 referring to extraterritorial, I'm strictly referring to  
47 harvest under State regulations that affect subsistence  
48 resources on Federal lands, public lands, and when those  
49 parameters are exceeded, I feel, and it's feeling of the  
50 Congress and declared by Congress, that there should be

1 a preclusion to have the least adverse impact on the  
2 subsistence users. Not extraterritorial.

3

4 CHAIRMAN TOWARAK: Any feelings from the  
5 Board.

6

7 (No comments)

8

9 CHAIRMAN TOWARAK: On the Eastern  
10 Interior.

11

12 MR. PROBASCO: Western.

13

14 CHAIRMAN TOWARAK: Oh, the Western  
15 Interior Council proposal to incorporate the language  
16 into the preamble into the MOU.

17

18 CHAIRMAN TOWARAK: Go ahead.

19

20 MR. HASKETT: I understand the concern.  
21 I'm not sure that I want to agree that that's something  
22 -- I think if we have any kind of discussion in terms of  
23 things we address in the MOU but not as a position for  
24 us. I mean I certainly -- I'm not going to put this very  
25 well -- but we could have discussions, we could talk  
26 about it but if we're asking for direction -- the Board  
27 to make a decision right now I wouldn't be prepared to do  
28 that.

29

30 CHAIRMAN TOWARAK: Pete, go ahead.

31

32 MR. PROBASCO: Thank you, Mr. Chair. I  
33 think Mr. Reakoff's comments are something that we need  
34 to consider, but keep in mind the MOU, as Mr. Haskett was  
35 articulating, is two bodies, the State and the Federal  
36 side, and so I don't think we want to solidify a position  
37 at this time until we sit down and hear from the other  
38 side and work in that manner, Mr. Chair.

39

40 CHAIRMAN TOWARAK: Go ahead, Geoff.

41

42 MR. HASKETT: And I guess I'm going to  
43 have more general comments once we work our way through  
44 here, we, maybe could come back to that a little bit, but  
45 I think there's a specific reason why the MOU's a good  
46 idea and why we need to continue to do it and I don't  
47 want something else to bog us down in that process, but  
48 I'm prepared to talk about that later.

49

50 CHAIRMAN TOWARAK: Okay, what's next.

1 MR. PROBASCO: Go to the next.....  
2  
3 (Pause)  
4  
5 MR. PROBASCO: Mr. Adams.  
6  
7 CHAIRMAN TOWARAK: Oh, Mr. Adams.  
8  
9 MR. ADAMS: Thank you, Mr. Chair. Mr.  
10 Lohse asked me to apologize he had to leave to catch an  
11 airplane and if he was still here I would let him go  
12 before me, but he's zipped now.  
13  
14 (Laughter)  
15  
16 MR. ADAMS: He asked me to read  
17 Southcentral's comments into the record when I'm done  
18 with ours.  
19  
20 The Southeast Council -- you know, we had  
21 a committee look at the MOU and these are their comments,  
22 and it's found on Page 98 of your book. And, you know,  
23 let me just highlight a couple things here.  
24  
25 The Council agrees that an agreement  
26 describing communication and coordination protocols  
27 between Federal and State governments and supporting  
28 agencies is required for effective management of fish and  
29 wildlife resources.  
30  
31 The Council had the following general  
32 comments and concerns.  
33  
34 MOU is unnecessarily difficult to  
35 understand and it should be written in plain language.  
36  
37 That there has been testimony that the  
38 information sharing protocol has not been working as  
39 intended and that the document should be reviewed.  
40  
41 That information vital for management of  
42 fish and wildlife is more than scientific data. The role  
43 of traditional and ecological knowledge needs to be  
44 emphasized.  
45  
46 That the wording and tone of the  
47 agreement appears to highlight the role of the State and  
48 how the Board manages subsistence and minimizes the role  
49 of the Councils.  
50

1                   That there needs to be a process to  
2 evaluate and monitor whether the purpose and guiding  
3 principles of cooperation are working to the advantage of  
4 subsistence users.

5  
6                   And that there needs to be a process to  
7 monitor and evaluate how the information sharing protocol  
8 is working.

9  
10                   The Council had the following specific  
11 recommendations.

12  
13                   In Section 4, paragraph three, they're  
14 suggesting that you delete the reference  
15 to the State Statute 16.05.258 in the  
16 last sentence. The Federal Program is  
17 concerned with providing a priority for  
18 rural residents, that is the paramount  
19 distinction between the State and  
20 Federal government programs and should  
21 be made clear in this section. The  
22 Council rejects the reasonable  
23 opportunity standard specified in the  
24 State statute.

25  
26                   And then in Section 4, paragraph 11,  
27 delete the second sentence that begins,  
28 consider the State fish and so forth and  
29 so forth, you know, it's in the MOU  
30 there. There is no need to incorporate  
31 State rules unnecessary to Federal  
32 Program. If there is need to adopt a  
33 management plan or policy it should be  
34 considered rulemaking and be subject to  
35 our regular public process. The  
36 standards for addressing subsistence  
37 needs and priority are different under  
38 State and Federal rules and so it is  
39 impossible for the Board to commit to  
40 providing for subsistence priority under  
41 both Federal and State law.

42  
43                   Mr. Chairman, this is the extend of the  
44 report that the committee had submitted to us to share  
45 here with you today.

46  
47                   And if it's okay I could read into the  
48 record Southcentral's comments.

49  
50                   CHAIRMAN TOWARAK: I think it would be

1 appropriate since Mr. Lohse had asked you to do that.

2

3 MR. ADAMS: Thank you, Mr. Chairman.

4 It's very short.

5

6 Southcentral supports the MOU in  
7 principle but had a number of comments. The Council  
8 agreed that the two programs, the ADF&G FSMP need to  
9 coordinate because both have different mandates.  
10 Additional revisions recommended by the Council included:

11

12 Strengthening the tribal consultation  
13 component.

14

15 Ensuring that the third paragraph in  
16 Section 4 is clear, that it only  
17 references the State Program, and not  
18 that the Federal Program is agreeing to  
19 the mandate.

20

21 And suggesting that TEK be added as an  
22 important source of information whenever  
23 biological information is mentioned.

24

25 The Council also agreed that the Federal  
26 terms and the State terms be included to  
27 the MOU.

28

29 The Council is interested in feedback  
30 once the MOU is revised.

31

32 And that's the extent of their comments,

33 Mr. Chair.

34

35 Thank you.

36

37 CHAIRMAN TOWARAK: Thank you, Mr. Adams.

38 Mr. O'Hara.

39

40 MR. O'HARA: Yes, Mr. Chairman. I think  
41 the only thing -- I think you have our Bristol Bay  
42 comments on the MOU. I think it's a really good thing.

43

44 The very first one might give you a  
45 little bit of heartburn there.

46

47 This includes keeping an open mind to  
48 the possibility of implementation of  
49 predator control when the conservation  
50 of a particular species is in peril.

1                   So it doesn't seem to me like the Federal  
2 Board isn't really happy about predator control, but it's  
3 something that we put in there and you can read the rest  
4 of it for yourself, it's pretty common.

5  
6                   Thank you, very much, Mr. Chairman.

7  
8                   CHAIRMAN TOWARAK: Thank you. Mr. Wilde.

9  
10                  MR. WILDE: Thank you, Mr. Chairman. The  
11 Yukon Kuskokwim -- I'm just going to read what's in the  
12 book here.

13  
14                  The Yukon Kuskokwim Council requests that  
15 the MOU be written in plain language that people who  
16 speak English as a second language can understand it  
17 better.

18  
19                  And the specific guidance for edits was  
20 as follows:

21  
22                  Section 3, guiding principle number 5.  
23 After the end of principle, after and  
24 add through active management where  
25 conservation of the resource or  
26 continuation of subsistence uses is of  
27 immediate concern reviews shall not  
28 delay timely management action.

29  
30                  Section 4, number 9, addition in  
31 italics, to designate liaisons for  
32 policy communication and as appropriate  
33 to identify tribal and/or local agency  
34 representatives.

35  
36                  The point the Council wanted to make was  
37 that the tribes should be communicated with and not city  
38 offices. Several commenters said that tribal government  
39 are more active in fish and wildlife management issues  
40 than the village corporations or the city governments.  
41 Tribal governments have more influence on the Federal  
42 process than city governments and city governments know  
43 what the State wants them to do and are reluctant to be  
44 involved in tribal affairs.

45  
46                  Section 4, number 10, the Council  
47 focused some discussion on this portion.  
48 Provide advance notice to Council and/or  
49 State Advisory Committee representatives  
50 before issuing special action or

1 emergency orders.

2

3 Council members noted that they do not  
4 hear about changes to regulations. They would like to  
5 make sure that Council members and State Advisory  
6 Committee members are told when there are special actions  
7 and emergency orders. No change in the MOU was  
8 suggested. This had to do with informing after special  
9 actions and emergency orders were implemented.

10

11 Section 4, number 12. Reporting  
12 systems.

13

14 Council members noted that there is a  
15 problem with relying on locals reporting harvest using  
16 the harvest ticket system. They always run out of  
17 harvest tickets and don't receive enough. It was  
18 suggested that harvest tickets should be distributed  
19 through tribal council or city council offices and not  
20 the store.

21

22 And that was the end of our discussion on  
23 that.

24

25 Mr. Chairman.

26

27 CHAIRMAN TOWARAK: Thank you. That  
28 concludes the process on the MOU.

29

30 What are the wishes of the Board.

31

32 (Pause)

33

34 MR. GOLTZ: Do you want to get State  
35 comments.

36

37 MR. PROBASCO: They don't have anything.

38

39 MR. GOLTZ: Okay.

40

41 CHAIRMAN TOWARAK: Okay. Go ahead.

42

43 MR. HASKETT: Thank you, Mr. Chair. So  
44 just a couple of things. And, Jack, I understand your  
45 concerns, I think there's other places we can deal with  
46 that. I think it's very, very important to go ahead and  
47 keep this MOU in place. I think right now, I mean both  
48 Fish and Game and Fish and Wildlife Service have some  
49 fairly high profile disagreements, they've been played  
50 out in the papers and they're fairly -- probably a lot

1 more out there than either one of us want to have out  
2 there, and even in saying that though, over and over  
3 again I'm telling my people and I tell public folks and  
4 they are the group that's one of the most important  
5 groups for us to work with and probably especially when  
6 we have, you know, mandates that are different but have  
7 authorities and responsibilities covering the same areas  
8 and certainly subsistence is one of the most important  
9 areas we both have responsibilities for and I thought the  
10 MOU was a really good thing.

11  
12 I understand there were lots of concerns  
13 about it.

14  
15 I was actually very happy to hear most of  
16 the comments from the RACs because I wasn't hearing major  
17 concerns about the MOU, in fact, mostly I heard from  
18 people saying they think it's good so, to me, that's an  
19 area that -- I mean if we put a work group together to  
20 continue looking at it, I think that's not a bad idea.  
21 I looked at the signatories and the only two people that  
22 are still on that list are me and Sue Masica, who were  
23 really new when we actually signed that, so I think it is  
24 probably time to go ahead and take a look again.

25  
26 So I think the MOU is a good idea,  
27 continue working with the State, I think it's very  
28 important to work with the State and I guess I was  
29 encourage not hearing anything too different from the  
30 folks coming around this room here.

31  
32 MS. PENDLETON: Thank you, Mr. Chair. In  
33 considering the comments that we've heard from the RACs  
34 and then as I've reflected upon the MOU, I think the  
35 concept of the MOU is generally supported by the  
36 Councils, and certainly by myself and the principles that  
37 are described around, you know, strengthening  
38 communication, coordination and cooperation is very  
39 important. And I also think that the focus on really  
40 minimizing adverse impacts to subsistence users is  
41 critical.

42  
43 So fully support continuing the MOU.

44  
45 But I think it could use some refinement,  
46 some strengthening. And I support the idea of having a  
47 small work team that would work on this that would  
48 consider, I think, some really important comments and  
49 clarifications from the Council, this small team that  
50 would include representatives from the State and Federal

1 agencies. I also think that it's important that we look  
2 at having somebody who's a really good writer/editor be  
3 a part of that small team. There's a number of comments  
4 that focus on the complexity of the language and for  
5 those that, where English is a second language, that we  
6 insure that this is written so that it could be clearly  
7 understood, so having somebody with those writer/editor  
8 skills I think would be very important. And then once  
9 there's a revised draft of the MOU that we seek Council's  
10 review, the Regional Advisory Council's review on that  
11 draft.

12

13 Thank you, Mr. Chairman.

14

15 CHAIRMAN TOWARAK: Any further comments.

16 Go ahead, Sue.

17

18 MS. MASICA: Mr. Chairman. I concur with  
19 what's been said. I don't know where -- if it's possible,  
20 in terms of where the State is at in sort of assimilating  
21 the comments through the parallel process that the  
22 State's been using, but if there'd be any way to have  
23 that work group to work with the State to come up with  
24 that sort of revised draft, we meet again in July, that  
25 we could see it, so that if we're going to do a further  
26 step with the RACs in the fall cycle, it'd be great if we  
27 could meet that timeframe. I don't know if that's doable  
28 or not but I think we should try to keep this moving  
29 forward, if we can, at all possible.

30

31 CHAIRMAN TOWARAK: Pete.

32

33 MR. PROBASCO: Ms. Masica, you scared me  
34 when you said July. What I was -- from my perspective  
35 and the work load that we have and I've already got a  
36 little push back from the State, but I'm not sure  
37 exactly, but my idea, recognized it may be a little  
38 pushed back, is that we get the MOU work group, whoever  
39 that will be, together, they work through the summer on  
40 the document, with the goal of having the signatories  
41 meet in the fall prior to our fall cycle to look at that  
42 document, and then we utilize the fall cycle as an  
43 opportunity to have the RACs input.

44

45 The other caveat is if the State's  
46 concerned about timing, then we could just push that back  
47 a little bit further and use the winter cycle, still  
48 looking to have something finalized by the spring of  
49 2012.

50

1 MS. MASICA: I think the fall cycle  
2 starts like August 24th, that's why I was saying July, so  
3 if it's winter, I understand.

4  
5 CHAIRMAN TOWARAK: Go ahead, Kristin.

6  
7 MS. K'EIT: Mr. Chair. Having taken in  
8 all the comments and information I'm prepared to make a  
9 motion of action for this topic.

10  
11 CHAIRMAN TOWARAK: Do you have any  
12 comments.

13  
14 MS. K'EIT: Should I go ahead?

15  
16 MS. DUGAN: Mr. Chair, just briefly. As  
17 Mr. Haskett said, there certainly has been tension  
18 between the Federal government and the State of Alaska.  
19 And I know one thing relationships don't get better with  
20 less communication and cooperation and so I really  
21 support moving forward with looking at where we need to  
22 strengthen this MOU, it still is in effect, you know,  
23 we'll be operating under it as we move forward, so we  
24 haven't broken that communication, so I would be very  
25 interested in listening to a motion.

26  
27 CHAIRMAN TOWARAK: I think the direction  
28 we're heading is the right direction and having a work  
29 group come up with recommended changes on the MOU working  
30 closely with the State. If it were up to me personally,  
31 I would put into that MOU, that this MOU is terminated as  
32 soon as the State passes a Constitutional amendment on  
33 subsistence.

34  
35 (Laughter)

36  
37 CHAIRMAN TOWARAK: I say that rather  
38 lightly, but I think it would be worth thinking about.

39  
40 Anyway are you ready for your motion.

41  
42 MS. K'EIT: Mr. Chair. I move that the  
43 OSM Staff prepare a letter to the State requesting  
44 reconvening of the MOU working group, where our Staff  
45 would incorporate comments from the RACs into a draft  
46 revised MOU to bring to the first working group meeting,  
47 should the State agree with our reconvening that working  
48 group, and that the working group will look at all  
49 comments received and in drafting a revised MOU they will  
50 include the RAC comments, the AC comments, and any public

1 comments in the draft. If the working group does not do  
2 that, they will prepare a report with explanation of why  
3 that wasn't appropriate or not legally possible and so  
4 forth. Further, the working group will return the draft  
5 and the described report to the Federal Subsistence Board  
6 for our review and our distribution to the RACs for  
7 review and for tribal consultation.

8

9 CHAIRMAN TOWARAK: You heard the motion,  
10 is there a second.

11

12 (No comments)

13

14 CHAIRMAN TOWARAK: The motion dies  
15 because of a lack of a second.

16

17 (No comments)

18

19 MR. HASKETT: So is it appropriate  
20 to.....

21

22 CHAIRMAN TOWARAK: Second the motion.

23

24 MR. HASKETT: No, I don't want to second.

25

26 (Laughter)

27

28 CHAIRMAN TOWARAK: That's the only way  
29 that a discussion could take place is if a motion is made  
30 and seconded. If it's not seconded then the motion dies.

31

32 (No comments)

33

34 CHAIRMAN TOWARAK: Not hearing a second  
35 the motion dies.

36

37 MR. HASKETT: So we can't have any  
38 discussion.....

39

40 CHAIRMAN TOWARAK: It's open discussion  
41 now. Go ahead, Geoff.

42

43 MR. HASKETT: Okay, because I didn't want  
44 to make a motion yet, I just wanted to discuss why I  
45 didn't second it, if that's appropriate.

46

47 (Pause)

48

49 MR. HASKETT: So I think it's good to  
50 have the working group. Where I started getting

1 concerns though was where you had provisions in there  
2 where we'd be required to put in all of the comments from  
3 the RACs, you know, regardless of how diverse they are  
4 and I think in order to have a good working group with  
5 the State we need to be able to have discussions that are  
6 more wide open than that, but certainly we should  
7 consider all of the comments here but not be required to  
8 make it part of it. I think we will have a rationale for  
9 what we come up with at the end, it was just too  
10 restrictive for me and there was too much requirements  
11 tied into your motion. So if you were little less  
12 restrictive in your motion I'd be much easier to be able  
13 to second it and have discussion on it.

14

15 MS. K'EIT: Mr. Chair.

16

17 CHAIRMAN TOWARAK: Go ahead.

18

19 MS. K'EIT: Thank you, Mr. Haskett. I do  
20 just really have great concern that we represent our RACs  
21 in the MOU and represent the users -- the subsistence  
22 users and the priority for subsistence and I don't want  
23 to tie people's hands so much that the MOU fails, but I  
24 do want to make sure that our RACs concerns are heard and  
25 addressed and if we're not going to address them then we  
26 have an explanation and that's part of the communication  
27 process between our Board and the RACs. And I build from  
28 that, particularly because of Western Interior's  
29 comments of the Board's response to their annual report  
30 last year and having some dissatisfaction with that and  
31 so I want -- yeah, that's enough.

32

33 Thanks.

34

35 (Pause)

36

37 CHAIRMAN TOWARAK: What are the wishes of  
38 the Board.

39

40 (Pause)

41

42 CHAIRMAN TOWARAK: The floor is open.

43

44 MR. HASKETT: Okay, so I'll try for a  
45 motion. I would like to see a working group put  
46 together. And as I said I think it's a very positive  
47 thing to make sure we have an MOU with the State and  
48 recognize that we have a government relationship with the  
49 State as well, a different one, obviously. Recognize  
50 that that working group needs to pay attention to

1 everything we heard from the RACs. And certainly we  
2 should be able to explain when we're done, if there are  
3 things we didn't adopt, again, but not having a  
4 requirement though that we start by having all those in  
5 the document itself, that we need to have a wide open  
6 discussion with the State in terms of what we end up with  
7 in the MOU.

8

9 I made that way too complicated, I'm  
10 sorry.

11

12 Let me try and rephrase it one more time.  
13 I gave you rationale there.

14

15 (Laughter)

16

17 MR. HASKETT: So my motion is that we  
18 should have a wide open process with the State, it's a  
19 positive thing to continue with this MOU, that we not  
20 have requirements for specific language that needs to be  
21 in there prior to the negotiations but that we certainly  
22 give rationale when we're done for areas that we didn't  
23 adopt that are outstanding from the RACs or other places.

24

25 MR. PROBASCO: I got it.

26

27 MR. HASKETT: Okay, Pete's got it. Thank  
28 you, Mr. Chair.

29

30 CHAIRMAN TOWARAK: You heard the motion,  
31 is there a second to the motion.

32

33 MS. PENDLETON: Second it.

34

35 CHAIRMAN TOWARAK: It's been seconded.  
36 Any discussion on the motion.

37

38 MS. K'EIT: Mr. Chair. We didn't really  
39 talk about when we want anything done and when we're  
40 going to submit a draft to the RACs or the tribes for  
41 consultation.

42

43 CHAIRMAN TOWARAK: Go ahead.

44

45 MS. PENDLETON: Maybe I'll offer a couple  
46 of amendments, is that.....

47

48 CHAIRMAN TOWARAK: Go ahead.

49

50 MS. PENDLETON: First would be that we

1 would continue to operate under the existing MOU, and  
2 then the second piece would be that we would -- as the  
3 small work team is reworking the MOU, in consideration of  
4 the comments that we've heard in public testimony and  
5 from the RACs, that we would have a draft ready for the  
6 fall cycle or winter -- winter cycle, thank you -- winter  
7 cycle, I'm just checking on dates, that would be this --  
8 for the RACs to consider this -- this coming -- thank  
9 you, for the winter cycle, to provide comment on that  
10 draft back to the Board.

11  
12 CHAIRMAN TOWARAK: There's a motion to  
13 amend the original motion, is there a second.

14  
15 MS. K'EIT: Second.

16  
17 CHAIRMAN TOWARAK: You heard the second,  
18 any further discussion. Pete.

19  
20 MR. PROBASCO: Thank you, Mr. Chair. I  
21 just wanted to respond to why the winter cycle. I spoke  
22 to the work load that the RACs are going to have, we have  
23 100 proposals and some RACs are going to have a lot of  
24 work to just get through their meeting, so this is an  
25 important document and listening to what -- speaking to  
26 Ms. Yuhas prior to this, there were concerns about  
27 getting Advisory Committee comments, and the proposal  
28 where I was looking at the fall cycle, my Staff was  
29 concerned about trying to put something in the fall  
30 cycle, so me having to deal with the work load, I  
31 recommend the winter cycle.

32  
33 Thank you.

34  
35 CHAIRMAN TOWARAK: Any further  
36 discussion. Go ahead, Beth.

37  
38 MS. PENDLETON: No, I think we're okay.  
39 I just wanted to make sure I didn't need to amend it,  
40 because my intention was for the winter cycle, that it  
41 would be available for RAC review and input.

42  
43 MR. HASKETT: Call for the question.

44  
45 CHAIRMAN TOWARAK: Question's been called  
46 for, all those in favor of the motion say aye.

47  
48 IN UNISON: Aye.

49  
50 CHAIRMAN TOWARAK: Any opposed say nay.

1  
2 (No opposing votes)  
3  
4 CHAIRMAN TOWARAK: Motion passes  
5 unanimously. This brings us back to the original motion  
6 as amended. Any further discussion on that motion.  
7  
8 (No comments)  
9  
10 MS. MASICA: Question.  
11  
12 CHAIRMAN TOWARAK: Question's been called  
13 for, all those in favor of the motion say aye.  
14  
15 IN UNISON: Aye.  
16  
17 CHAIRMAN TOWARAK: Any opposed say nay.  
18  
19 (No opposing votes)  
20  
21 CHAIRMAN TOWARAK: Motion passes  
22 unanimously. Pete.  
23  
24 MR. PROBASCO: Mr. Chair. I just  
25 whispered to Mr. Haskett, and the intent is to have a  
26 letter to go to the State requesting the working group be  
27 put back together and he nodded, so Board members, okay.  
28  
29 (Board nods affirmatively)  
30  
31 CHAIRMAN TOWARAK: Okay, that takes care  
32 of Item 9. In other business we have two short issues,  
33 I assume, the update on the budget process and then the  
34 July Board meeting.  
35  
36 MS. K'EIT: Mr. Chair.  
37  
38 MR. PROBASCO: Mr.....  
39  
40 MS. K'EIT: Excuse me. May I add one  
41 item.  
42  
43 CHAIRMAN TOWARAK: Sure.  
44  
45 MS. K'EIT: Thank you, Mr. Chair. I'd  
46 just like a brief, if Mr. Goltz would be willing, a brief  
47 description of the options open to Saxman for under the  
48 RFR -- or under the rural determination process because  
49 that was brought up during our public comment period and  
50 in different areas. So just some discussion or

1 explanation that we can take away with us to think about.

2

3 Thank you.

4

5 CHAIRMAN TOWARAK: Go ahead, Keith.

6

7 MR. GOLTZ: Let me check with the Staff.  
8 An RFR was submitted and it was denied. So the only  
9 options I see are the Board could take it up on their own  
10 initiative. But the way the regulations read is that  
11 once we've acted on an RFR, that's a final agency action.  
12 So Saxman's next legal move would be in the court.

13

14 CHAIRMAN TOWARAK: Geoff.

15

16 MR. HASKETT: So I'm glad you asked that  
17 question because I've been thinking about this for awhile  
18 and I got the opportunity to take a tour of Saxman when  
19 I was out there and I ended up with lots of questions and  
20 I would prefer not to get to the point where they were  
21 forced to litigate over this, I think if the Board has  
22 the ability to take this one up again then I'd be more  
23 than willing to do that whatever the process is, for us  
24 to go ahead and take a look at that, or at least have  
25 some discussion among the Board about making that happen.

26

27 MR. GOLTZ: It would be a special out of  
28 cycle action which we have done once before with the  
29 Kenai Peninsula, so we do have a template for it.

30

31 MR. HASKETT: So would it just be a  
32 motion?

33

34 CHAIRMAN TOWARAK: Yes, I think a motion  
35 would kick that in.

36

37 MR. GOLTZ: No, no, I don't believe we  
38 could do that at this meeting, this is a work session.

39

40 MR. HASKETT: So the next opportunity we  
41 could have to go ahead and propose that would be?

42

43 MR. GOLTZ: The next public meeting.

44

45 MR. PROBASCO: July 12.

46

47 MR. HASKETT: Okay.

48

49 MR. GOLTZ: It would be our next public  
50 meeting, whenever that is.

1 MR. PROBASCO: July 12th.  
2  
3 MR. GOLTZ: July 4th.  
4  
5 (Laughter)  
6  
7 MR. PROBASCO: The 12th.  
8  
9 CHAIRMAN TOWARAK: 12th.  
10  
11 MR. PROBASCO: July 12th, and, Keith,  
12 help me, but I think if the Board elects to put that on  
13 the agenda as a discussion then we'd have to notice it.  
14  
15 MR. GOLTZ: I believe that's correct.  
16  
17 CHAIRMAN TOWARAK: Go ahead.  
18  
19 MR. HASKETT: So I'd like to make a  
20 motion to put it on the agenda for the July 12th meeting  
21 and do whatever we need to do to make that happen.  
22  
23 CHAIRMAN TOWARAK: Is there.....  
24  
25 MS. K'EIT: Second.  
26  
27 CHAIRMAN TOWARAK: .....a second to the  
28 motion.  
29  
30 MS. K'EIT: Yes, I second.  
31  
32 CHAIRMAN TOWARAK: Seconded. Discussion.  
33 Pete.  
34  
35 MR. PROBASCO: Mr. Chair. Since we're  
36 going to one of the items, let me tell the Board what's  
37 on their agenda and then ask them if they think one day's  
38 going to be enough now.  
39  
40 Right now what's on your agenda is the  
41 State's RFR on Ninilchik. We have to go through the  
42 Council nominations which would be an executive session  
43 and that's for all the nominees for the 10 Councils. And  
44 then Staff will be presenting you an update on their  
45 review of closures and their recommendations for your  
46 consideration. That, in itself, is a full day. If we  
47 add Saxman to it we might not have enough time for a one  
48 day meeting.  
49  
50 Mr. Chair.

1 MR. GOLTZ: That's probably correct,  
2 you're going to need a record for your Saxman motion so  
3 there will be some Staff work involved.

4  
5 CHAIRMAN TOWARAK: The motion remains.  
6 Any further discussion on the motion.

7  
8 MS. K'EIT: Mr. Chair.

9  
10 CHAIRMAN TOWARAK: Sure.

11  
12 MS. K'EIT: I agree with Mr. Haskett's  
13 statement earlier that we work on doing what we need to  
14 to bring this to the next meeting because of the -- we  
15 have less than a year now before the situation expires  
16 and it has to go to court, so I'm fully aware of the time  
17 constraints or the additional time that this will add,  
18 but I also don't see a lot of options for doing this at  
19 another time.

20  
21 Thank you.

22  
23 CHAIRMAN TOWARAK: Is there any objection  
24 to adding a second day to our July 12th meeting? Beth.

25  
26 MS. PENDLETON: I would ask consideration  
27 that it be the 11th and 12th. It's going to be difficult  
28 for my participation after the 12th, that week.

29  
30 Thank you.

31  
32 CHAIRMAN TOWARAK: Could we leave that  
33 discretion to the Staff?

34  
35 MR. PROBASCO: I heard what Ms. Pendleton  
36 said, the 11th, if it's the 11th, that's fine, we would  
37 have to put out another notice, which is fine, to add a  
38 day. The other thing to consider is our Technical Review  
39 Committee for the Fish Monitoring Proposals meets on the  
40 13th and 14th, and it does involve some of our Staff, but  
41 I think we can work around that. So our dates to look  
42 at, I would say, based on what we have is the 11th, to  
43 add, but I don't want to -- right now we have the Board  
44 members here, I would need either a yea or a nay that the  
45 11th would work.

46  
47 CHAIRMAN TOWARAK: Is there any objection  
48 to it.

49  
50 (No comments)

1 CHAIRMAN TOWARAK: Not hearing any then  
2 it will be the 11th and 12th.

3  
4 MR. PROBASCO: Thank you, Mr. Chair.  
5 And, Tina, we'll need you.

6  
7 REPORTER: (Nods affirmatively)

8  
9 (Laughter)

10  
11 MR. PROBASCO: Thanks.

12  
13 CHAIRMAN TOWARAK: Is there any other  
14 business that needs to come to the Board.

15  
16 MR. PROBASCO: Thank you, Mr. Chair.  
17 This next issue will be a tag team, myself and Ms.  
18 LaVerne Smith. Again, this is part of the Secretarial  
19 directive. And if you look at the letter that's on Page  
20 3, at the request of the Director of the Fish and  
21 Wildlife Service and under departmental procedures,  
22 review and submit recommendations for departmental  
23 consideration of the annual budget for the Federal  
24 Subsistence Program. And then if you look at the  
25 directive from the Secretary to the Director, which is in  
26 your draft document on Page 4, where it's stated in the  
27 annual budget formulation process, seek input from the  
28 Federal Subsistence Board and other stakeholders on  
29 budgetary requirements and priority for the Subsistence  
30 Program.

31  
32 And at this time, Mr. Chair, we'd like to  
33 review with the two draft documents, they're draft, and  
34 I'll turn the table over to Ms. Smith.

35  
36 MS. SMITH: Okay, thank you, Mr.  
37 Chairman, and also to the Federal Subsistence Board,  
38 we'll try to go through this quickly because we realize  
39 we're late in the day but we really do need input and  
40 this is one of the tasks that was assigned to us and  
41 we've tried to sort of capture this effort in several  
42 different ways.

43  
44 One, we've tried to come up with a  
45 document that will look at the directives that came from  
46 the Secretary's report and to show what action we're  
47 taking, what we're doing to monitor that we're carrying  
48 those actions, what the cost of those actions will be,  
49 and then to report our progress. So I think that this  
50 document is actually a document that we can use as we

1 continue to check off carrying out the directives that  
2 came to the members of the Federal Subsistence Board,  
3 that came to the Director of the Fish and Wildlife  
4 Service and other folks in the Department of Interior and  
5 sort of show our progress.

6

7                   The most important thing and the most  
8 timely thing to do right now is the input into the budget  
9 because discussions are already starting relative to the  
10 Federal 2013 budget process.

11

12                   So what we would like to do today is just  
13 sort of walk you conceptually through these two documents  
14 and then ask for your input and review. We'd like to ask  
15 for that input and review on a pretty fast time scale  
16 because we do need to go back and do briefings in D.C.,  
17 probably for both the Department of Interior and the  
18 Department of Agriculture and we'll work more with the  
19 Forest Service to figure out how we carry that out.

20

21                   One of the things that we have done is  
22 tried to go through and take each of the directives and  
23 analyze the -- what is the -- you know, what's being  
24 asked of us, are there additional costs, can those costs  
25 can be absorbed within the existing agency budgets or is  
26 there a need for additional funding. And you'll see that  
27 in both the Word document, as well as in the PowerPoint.  
28 I think the PowerPoint, we sort of put it together to  
29 sort of help us conceptualize our thinking and is  
30 something that would be a tool when we go back to brief  
31 the Secretaries of both Interior and Agriculture on the  
32 progress that we're making. And I think I can very  
33 quickly sort of sum up what's in the PowerPoint and then  
34 just ask you to review it after the meeting today. So if  
35 you sort of stay with me for a few minutes and, Pete, you  
36 jump in too if you feel like you need to.

37

38                   Pages 1 through 9 are simply sort of the  
39 overview of the Subsistence Program, so I don't think we  
40 have to spend any time on those.

41

42                   If you go to Page 10, I think it'll help  
43 you see sort of how we've organized the remainder of the  
44 PowerPoint. One of the things where I think there was a  
45 lot of confusion, this is in the PowerPoint -- everybody  
46 is flipping madly through -- does everyone have copies?

47

48                   MS. K'EIT: Mr. Chair. I'm wondering if  
49 Ms. Smith meant slides one through nine?

50

1 MS. SMITH: Yes.

2

3 MS. K'EIT: Okay, thank you.

4

5 MS. SMITH: They're pages in mine, but  
6 slides in yours. Okay.

7

8 One of the issues that I think was of  
9 confusion when the review of the Subsistence Program was  
10 being conducted, was over the functions. The core  
11 functions that are carried out by the InterAgency, Office  
12 of Subsistence Management versus those functions that are  
13 carried out by the individual agencies. And I think this  
14 is one of the directives, is to look at how we're  
15 organized and how we carry out the responsibilities for  
16 subsistence.

17

18 So the first thing we did was to try to  
19 describe the functions of the InterAgency core Office of  
20 Subsistence Management. And what we put into this  
21 section are the things that are done by the InterAgency  
22 Office that Pete leads and the budget that is available  
23 for carrying out those actions.

24

25 The next thing we did was go through and  
26 try to describe what are the functions of the agencies,  
27 what are the responsibilities that the agencies carry out  
28 from sitting on the Federal Subsistence Board to managing  
29 hunts and fisheries and a number of -- law enforcement,  
30 outreach and other actions.

31

32 And then we get into the Secretarial  
33 Review and the directives and out status on those.

34

35 So quickly flipping through the  
36 InterAgency core functions, we tried to lay out the most  
37 important things and highlight the major portions of the  
38 budget for the Office of Subsistence Management. And I  
39 think those are ones we would like to hear feedback on  
40 and to see if, you know, if you guys think we have  
41 captured those correctly. And then we tried to lay out  
42 the funding, and the funding history. And then I think  
43 if you look at Slide 14, and then Slide 15, we did try to  
44 capture the fact that from the time we started with  
45 getting wildlife funding in 1991 and fisheries funding in  
46 2001, that that funding has declined over time, probably  
47 at about 12 percent. We have made changes as that  
48 funding declined. One of the major changes we made was  
49 we went to a two year cycle in 2008 because we lost  
50 500,000 of funding.

1                   So that sort of leaves sort of the  
2 history, the functions that we do through OSM and the  
3 history of the funding for OSM.

4  
5                   And then we move to Slide 16, to the  
6 agency functions and budget.

7  
8                   And we tried to pick up the Federal  
9 Subsistence Board membership duties, the monitoring and  
10 assessment that agencies do to contribute data to the  
11 process. The hunt and fishery administration. Law  
12 enforcement. Outreach. And then we put in several  
13 examples to try to help people sort of picture what  
14 happens during a normal subsistence season. What are  
15 sort of the processes that agencies are responsible for.  
16 And these are slides that, I have to say we struggled  
17 with in the Fish and Wildlife Service, and if they're  
18 Fish and Wildlife Service centric, we apologize, so this  
19 is really the place that the other agencies who sit on  
20 the Federal Subsistence Board, we need your input. We  
21 tried to capture some of the areas that are big  
22 commitments, like in-season fisheries management, and  
23 where those responsibilities break out. So these -- and  
24 we used the Yukon River sort of as an example to try to  
25 dramatize these huge systems and multiple Federal  
26 management units that are in the system. So if someone  
27 has a better example we're glad to incorporate it, but  
28 this was sort of why we chose the Yukon and why that's in  
29 there as an example.

30  
31                   And then on Slide 22 you'll see that --  
32 you know the 2001 fisheries funding, there's pretty good  
33 records for that and we certainly know what funding each  
34 agency has in 2010, and soon we can probably update that  
35 for 2011, but it got very murky when we went back trying  
36 to pull the history of what folks got back in 1991 for  
37 the wildlife funding, so I just left those blank at this  
38 point. If someone has some good data and something  
39 that's documented we can certainly enter it, but what I  
40 think I heard from talking to agencies and looking at all  
41 the documents that were reviewed during the review, is  
42 all the agencies feel like they're spending more money  
43 than what they receive in their subsistence line item, so  
44 I don't know that that '91 history is particularly  
45 helpful at this point, but if anybody has documentation  
46 for those earlier figures that would be helpful.

47  
48                   So we've reviewed two sections, one on  
49 OSM, one on the agency functions. And now moving to the  
50 final section, it's where we try to walk through the

1 directives that came out of the review and looking at the  
2 cost of each of those.

3  
4           And I think where we're going with that  
5 and I think probably the best place to see it in a  
6 summary form is actually back to the WordPerfect  
7 document, on Page 5, the summary of the budget  
8 implications. I'm trying not to talk through this slide  
9 by slide, but to give you a feel for what we're trying to  
10 do so that'll help you guys when you review it and  
11 provide us with comments and suggestions.

12  
13           So the budget implications, many of the  
14 things that we were asked to do I think we've already  
15 started. I think we're trying to take the directives of  
16 the Secretaries very seriously, but some of the things I  
17 think will require additional funding, and those are the  
18 ones that are identified on Page 5, and these estimates  
19 have been put together by Pete and his Staff, and what  
20 we're trying to do is just sort of T those up and I think  
21 probably some discussion about priorities, given tight  
22 budget times, which ones of those can we do in 2013,  
23 which ones can we do in further out years. But I think  
24 that as we increase the membership of the Board and  
25 there's increased travel cost, we tried to capture those.  
26 The increase in tribal consultation, I think we've heard  
27 today we want to make it a meaningful process and we want  
28 to make it a process where we're doing consultation in  
29 communities where it's most effective and there will be  
30 additional costs, and we estimate that at 300,000. And  
31 keep in mind these are the estimates for increased  
32 funding for the InterAgency Office of Subsistence  
33 Management. If other agencies see additional costs that  
34 you think need to be captured, we haven't captured any  
35 for the Fish and Wildlife Service, as an agency, but  
36 simply as the OSM needs, and then training and support  
37 for Regional Advisory Councils we added 100K, more  
38 Subsistence Board meetings in rural areas, we added 100K  
39 and the wildlife monitoring program, which is one of the  
40 big ticket items, we added \$2 million, recognizing that  
41 that would be a start, but certainly would probably  
42 nowhere near meet the full need. We also added some  
43 capacity within the Office of Subsistence Management  
44 200K, as we add more wildlife program we would also need  
45 the corresponding support, research support there. And  
46 then if we reinstate the annual fish and wildlife  
47 regulatory cycle, we estimate that would cost 800,000.

48  
49           So those are sort of -- it adds up to 3.5  
50 million to do all the things that we believe the

1 directives ask us to do and to do it well. I think this  
2 is something that we do have to get in front of the, you  
3 know, the decisionmakers and the Department of Interior  
4 and Department of AG very soon for it to be able to be  
5 addressed in the 2013 budget. So I think -- I'm sorry  
6 it's the end of the day, and I'm trying to rush and get  
7 you guys out of here, but what we really need is for you  
8 to all look at it, give us your comments and input and we  
9 were hoping that we could ask for that by a week from  
10 today, and then we can incorporate that and hopefully get  
11 it in a form that we could have the Chair forward this to  
12 the Secretaries of Interior and AG.

13

14 So that's sort of the path that we wanted  
15 to lay out from here, to get this information back to  
16 D.C., and get it considered in the 2013 budget process.

17

18 So, Pete, what did I leave out or what  
19 did you want to add?

20

21 MR. PROBASCO: Verna, you did a great  
22 job. The only thing I would add, is more of an emphasis.  
23 The PowerPoint is also going to serve the function that  
24 we're going back to people within some of these agencies  
25 that don't understand our program. If you'll recall,  
26 Sue, a couple years ago she was with us when we went  
27 through the various entities explaining the Subsistence  
28 Program. As everybody knows, this program is unique to  
29 Alaska, and, quite frankly there's a fair number of  
30 people there that don't understand the importance of this  
31 program so that PowerPoint is going to serve that  
32 function.

33

34 And I think the other point I want to  
35 emphasize is what LaVerne finished with, is that, I think  
36 the strength in this document is it coming from the  
37 Board. In other words, we envision a letter going back  
38 to the Secretaries signed by Mr. Towarak with these two  
39 documents.

40

41 Mr. Chair.

42

43 CHAIRMAN TOWARAK: Thank you. Are there  
44 any questions of the Board.

45

46 Geoff.

47

48 MR. HASKETT: Not so much a question, is  
49 just to add some emphasis to what Pete just said, because  
50 obviously I'm involved in the Fish and Wildlife Service's

1 budget process, and I can second what Pete just said, I  
2 mean back in Washington and my other regions, Alaska  
3 subsistence is something they don't deal with, it's not  
4 something they're really aware of, it's not something --  
5 it never has like a huge priority, so I think this is a  
6 great opportunity because the Secretary said that he  
7 wanted input from the Board, as opposed to any of our  
8 individual bureaus, so the ability you have, as Chair,  
9 for the Board to go ahead and send something back, I  
10 think, has not come up in quite as good a place before,  
11 so there's a real opportunity here for us to educate and  
12 give the Secretary what the budget needs are and let the  
13 Secretary make a determination and it goes back on down  
14 to the bureaus. So I think it's really good timing on  
15 this.

16

17 MS. MASICA: I would just include, when  
18 you're briefing folks, we can talk about it off line, but  
19 there's some targeted folks you ought to make sure you  
20 talk to.

21

22 MS. SMITH: Okay, thanks.

23

24 CHAIRMAN TOWARAK: I have a note here  
25 that we have to be cleared out of this place by 6:00  
26 o'clock. Is there any action that we need on the budget,  
27 or I assume that the Staff is just requesting that we  
28 review -- go ahead.

29

30 MS. PENDLETON: Just clarification, so  
31 the comments go to you, LaVerne or.....

32

33 MS. SMITH: Yes.

34

35 MS. PENDLETON: Okay.

36

37 MS. SMITH: You can send them to me.

38

39 MS. PENDLETON: All right.

40

41 MS. SMITH: We'll work on them and get a  
42 new version out to folks. And we'll be sure we have  
43 everyone's approval before we, you know, put anything in  
44 front of the Chairman to send back, but we do need to  
45 sort of fast track this, and I apologize to go through it  
46 so quickly, but we'll look forward to your input.

47

48 CHAIRMAN TOWARAK: Pete.

49

50 MR. PROBASCO: And I would just add that

1 LaVerne and I are hoping to go back soon, probably the  
2 latter part of May, maybe early June, we don't have a  
3 definitive date, but we need to get the documents down  
4 there prior to us traveling.

5  
6 CHAIRMAN TOWARAK: Anything else on the  
7 agenda.

8  
9 (No comments)

10  
11 CHAIRMAN TOWARAK: If not then we are at  
12 the floor opening for adjourning.

13  
14 MR. HASKETT: We need a motion for that.

15  
16 MS. PENDLETON: Do you need a motion for  
17 that?

18  
19 CHAIRMAN TOWARAK: (Nods affirmatively)

20  
21 MS. PENDLETON: I motion we adjourn.

22  
23 MR. HASKETT: And I'll second it.

24  
25 CHAIRMAN TOWARAK: There's a motion, is  
26 there any objection to it.

27  
28 (Laughter)

29  
30 (No comments)

31  
32 CHAIRMAN TOWARAK: Motion passes.

33  
34 MR. PROBASCO: Thank you.

35  
36 (Off record)

37  
38 (END OF PROCEEDINGS)

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C E R T I F I C A T E

UNITED STATES OF AMERICA )  
 )ss.  
STATE OF ALASKA )

I, Salena A. Hile, Notary Public in and for the State of Alaska and Owner of Computer Matrix, do hereby certify:

THAT the foregoing pages numbered 2 through 118 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME I taken electronically on the 3rd day of May 2011, beginning at the hour of 9:00 a.m. at the Dena'ina Convention Center, Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed under my direction;

THAT I am not an employee, attorney, or party interested in any way in this action.

DATED at Anchorage, Alaska, this 18th day of May 2011.

\_\_\_\_\_  
Salena A. Hile  
Notary Public, State of Alaska  
My Commission Expires: 9/16/14