

1 FEDERAL SUBSISTENCE BOARD
2
3 PUBLIC REGULATORY MEETING
4

5
6 VOLUME I
7

8 EGAN CONVENTION CENTER
9 ANCHORAGE, ALASKA

10
11 JANUARY 13, 2009
12 8:30 o'clock a.m.
13

14 MEMBERS PRESENT:

15
16 Mike Fleagle, Chair
17 Geoff Haskett, U.S. Fish and Wildlife Service
18 Thomas Lonnie, Bureau of Land Management
19 Sue Masica, National Park Service
20 Denny Bschor, U.S. Forest Service
21 Niles Cesar, Bureau of Indian Affairs

22
23 Bertrand Adams - Southeast RAC
24 Harry Brower - North Slope RAC
25 Sue Entsminger - Eastern Interior RAC
26 Ralph Lohse - Southcentral RAC
27 Myron Savetilik - Seward Peninsula RAC

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32 Commissioner Denby Lloyd, State of Alaska
33 Representative
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35 Keith Goltz, Solicitor's Office

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P R O C E E D I N G S

(Anchorage, Alaska - 1/13/2007)

(On record)

CHAIRMAN FLEAGLE: Well, good morning, I'd like to call the Federal Subsistence Board meeting to order and we'll start out with introductions. I'll start with the Board. My name is Mike Fleagle, I'm the Chairman. I live in Anchorage. And we'll start on my left.

MR. LONNIE: I'm Tom Lonnie. I'm the State director with the BLM here in Anchorage for Alaska.

MR. CESAR: I'm Niles Cesar, the regional director for the Bureau of Indian Affairs.

MS. MASICA: I'm Sue Masica. I'm the regional director for the National Park Service here in Anchorage.

MR. GOLTZ: I'm Keith Goltz, Regional Solicitor's Office.

MR. PROBASCO: Good morning. I'm Pete Probasco. I'm the assistant regional director for the Office of Subsistence Management, U.S. Fish and Wildlife Service.

MR. HASKETT: Good morning. I'm Geoff Haskett, regional director Fish and Wildlife Service here in Anchorage.

MR. BSCHOR: I'm Denny Bschor. I'm the regional forester for the U.S. Forest Service out of Juneau.

MR. SWANTON: I am Charlie Swanton representing the Alaska Department of Fish and Game for the time being.

CHAIRMAN FLEAGLE: All right, thank you, and welcome everybody to the main table. And I'd like to turn to the Council Chairs and start to my right there.

MR. ADAMS: Gunalcheesh, Mr. Chairman.

1 (In Tlingit) Good morning. My name is Bert Adams,
2 Sr., with the Southeast Regional Advisory Council.

3

4 MR. LOHSE: Ralph Lohse, Chair,
5 Southcentral.

6

7 CHAIRMAN FLEAGLE: Good morning. And
8 that's about it for Regional Advisory Councils for now,
9 we'll recognize others as they show up. And then for
10 Staff behind the table, would everybody just stand up
11 and introduce yourself starting over here, please.

12

13 DR. CHEN: Good morning. My name is
14 Glenn Chen with the Bureau of Indian Affairs.

15

16 MS. SWANTON: I'm Nancy Swanton with
17 the National Park Service.

18

19 MR. LORD: Ken Lord with the
20 Solicitor's Office.

21

22 MR. JACK: Carl Jack, OSM.

23

24 MR. BERG: Jerry Berg, Fish and
25 Wildlife Service.

26

27 MR. KESSLER: Steve Kessler, Forest
28 Service.

29

30 MR. USTASIEWSKI: Jim Ustasiewski,
31 Office of the General Counsel.

32

33 CHAIRMAN FLEAGLE: Great, thank you.
34 And then sitting at the table addressing the Board is
35 Dr. Polly Wheeler, who is now heading up the
36 operational side of the Office of Subsistence
37 Management, Pete's right arm, and mine too. Welcome
38 Dr. Polly Wheeler. Dr. Polly, that didn't sound quite
39 right.

40

41 (Laughter)

42

43 CHAIRMAN FLEAGLE: I'd like to also
44 recognize Hans Neidig and Ron McCoy from the Interior
45 -- the Office of the Interior, welcome to the meeting
46 guys.

47

48 (Pause)

49

50 MR. ADAMS: Mr. Chairman.

1 CHAIRMAN FLEAGLE: Bert.

2

3 MR. ADAMS: Yeah, I don't know whether,
4 you know, you're aware of a couple of people who, you
5 know, will not be here but I read an email from Jack
6 Reakoff last week and he's staying home because of the
7 cold weather. Sue Entsminger will be in tomorrow
8 afternoon, I understand. So right now it's just Ralph
9 and I holding down the fort for you.

10

11 CHAIRMAN FLEAGLE: Thanks for that
12 Bert. And we do have a couple other representatives
13 for the State and if I could get -- recognize --
14 introductions from you as well, please.

15

16 MR. PAPPAS: My name's George Pappas,
17 Department of Fish and Game, fisheries liaison for the
18 Fisheries Division. Thank you.

19

20 MR. DAUGHERTY: Steven Daugherty, State
21 of Alaska, Department of Law.

22

23 CHAIRMAN FLEAGLE: All right, thank
24 you. Welcome everyone. Looking forward to a good
25 meeting. We have three days scheduled for the meeting
26 starting at 8:30 a.m., daily here in the Egan
27 Convention Center and right now I'd like to take a look
28 at the agenda and ask if there's any corrections or
29 additions to the agenda, and right away I'd like to
30 point out that we have discussed, after the agenda was
31 printed and published, that we need to switch items 7
32 and 8 in their order, so if you'd just make note of
33 that on your agendas and with that, Pete, do we have
34 anything else that we need to change?

35

36 MR. PROBASCO: I don't see anything,
37 Mr. Chair. Just might want to give your Board members
38 a head's up on other business that we'll take care of
39 at the end of the meeting. And I was discussing with
40 Mr. Fleagle that we would like to get direction from
41 the Board if they would like to do a -- go out in the
42 field like they do annually this summer, we'd like to
43 have a determination as to where so that we can start
44 planning that.

45

46 Mr. Chair.

47

48 CHAIRMAN FLEAGLE: Thank you. And
49 we'll discuss that under topic 9, other business, so
50 keep that in mind Board members just to think about,

1 where, if any -- where you'd like to have a field trip
2 this summer. And also another item is that there's
3 some interest among Board members to have a brief
4 executive session for an update from legal counsel on
5 recent legal issues and I think the appropriate place
6 to put that would be after public comment on the
7 consensus items, which is Item 4, so we'll go into a
8 brief executive session at that point before we take up
9 the proposals.

10

(Pause)

12

13 CHAIRMAN FLEAGLE: Okay, if there's no
14 other suggested changes to the agenda then we'll move
15 on.

16

Board members.

18

(No comments)

20

21 CHAIRMAN FLEAGLE: Then we'll move on.
22 Board members.

23

(No comments)

25

26 CHAIRMAN FLEAGLE: All right, hearing
27 none, we'll -- hearing no objection we'll go ahead and
28 accept that as our amended agenda and we'll move on to
29 public comment period. And this opportunity to comment
30 on non-agenda items is available at the beginning of
31 each day and we ask that everybody that wants to sign
32 up to testify, fill out a card, and those will be
33 delivered up here to the Staff at the table and
34 testimony will be taken for non-agenda items at the
35 beginning of each day, consensus agenda items at the
36 beginning of each day and then as we get into the
37 proposals testimony will be accepted for individual
38 proposals for deliberation.

39

40 And, with that, do we have any
41 testimony for non-agenda items, Pete.

42

43 MR. PROBASCO: Mr. Chair, unless I hear
44 otherwise I believe the two individuals, Mr. Ricky
45 Gease and Mr. Kermit Ivanoff are speaking to proposals
46 specifically to proposal specifics, so I see a yes from
47 that and Mr. Ivanoff -- so I'm going to assume that
48 they're both talking on -- would like to speak on
49 proposal specific so I have none.

50

1 Mr. Chair.

2

3 CHAIRMAN FLEAGLE: Okay. Maybe I'd
4 just open it up briefly, if there's anybody in the
5 audience that hasn't had the opportunity to fill out a
6 testimony request form and wants to testify at this
7 time on non-agenda items, would you raise your hand.

8

9 (No comments)

10

11 CHAIRMAN FLEAGLE: All right, we don't
12 have any. Next.....

13

14 MR. ADAMS: Mr. Chairman.

15

16 CHAIRMAN FLEAGLE: Bert.

17

18 MR. ADAMS: Would this be an
19 opportunity for Council Chairs to make some comments at
20 this point too or.....

21

22 CHAIRMAN FLEAGLE: Sure.

23

24 MR. ADAMS: Okay. I'd just kind of
25 like to share with you some of the things, you know,
26 that our Council has -- and, you know, you probably got
27 our annual report already so I'm just going to take
28 some talking points off of that, if I might, Mr.
29 Chairman.

30

31 I need to apologize if I have a lisp in
32 my speech it's because on Christmas day I lost a cap on
33 my front tooth here and so there's a temporary cap in
34 there so, you know, I might talk a little bit
35 differently than I normally do.

36

37 But the letter addresses, you know,
38 several issues that the Southeast Regional Advisory
39 Council has some concerns and issues about.

40

41 So, you know, our last meeting focused
42 on developing of some recommendations for wildlife and
43 fisheries management proposals. And, you know, I'll
44 remind everyone that we are now in the 20th year of
45 Federal management of subsistence resources, you know,
46 on Federal lands. And so the Council wishes to raise a
47 number of concerns dealing with implementation of
48 ANILCA in our area, and so we'd like to bring forth the
49 following management and program issues to the
50 attention of the Federal Subsistence Board at this

1 time.

2

3

4 Last fall we had a report that was
5 given by a couple people from NMFS in regards to the
6 incidental harvest of chinook salmon. As you know
7 there's a lot of trawling going out on the oceans and
8 we have seen an increase, you know, of incidental
9 catches of salmon over the years and we've become quite
10 concerned about that. I have to say that I wasn't very
11 satisfied with the report. I think there needs to be
12 more in-depth, you know, data given to us, you know, in
13 the future. But the incidental harvest of salmon,
14 primarily the king salmon by commercial fisheries in
15 the Bering Sea and the Gulf of Alaska, we really think
16 must be minimized. And I don't know how, you know,
17 this Board will address that to another Federal program
18 but we really think that it's important that this be
19 addressed. Take into consideration the fact that, you
20 know, we have to deal with the Canadians on the Alsek
21 and the Stikine Rivers and, you know, we have this
22 TrounsBoundary Council, you know, that meets often and
23 there's negotiations on both sides of the border, you
24 know, as to how much salmon will be allocated for, you
25 know, so that they can make it up into their spawning
26 areas as well as to the subsistence users on the other
27 side of the border. And so we feel, you know, that
28 even though we are producing these salmon and they go
29 out into the ocean many of them don't come back, and
30 it's because, you know, of our concern, you know, for
31 the trawling fleet that is doing that.

31

32

33 Although a portion of the salmon from
34 the Yakutat and Southeast Alaska area may be small the
35 actual numbers of fish may be significant to local
36 streams and while the value of the commercial fishery
37 may be great to some individuals, it is the value of
38 the incidental salmon harvest that is valued by
39 subsistence users that is important to us.

39

40

41 Another issue that I'd like to address,
42 Mr. Chairman, is the subsistence priority on the
43 Makhnati Island area. We really need to address this
44 and, you know, I'm sure that it will be brought up for
45 discussion but a subsistence priority for herring,
46 particularly the harvest of the herring spawn in the
47 Makhnati Island area is a wish of the Sitka Tribes of
48 Alaska and the people of Sitka I could say as well.
49 Because we found that as subsistence users are having a
50 hard time of meeting.....

50

1 CHAIRMAN FLEAGLE: Bert.
2
3 MR. ADAMS: Yes.
4
5 CHAIRMAN FLEAGLE: Excuse me. This is
6 a proposal that we're going to be addressing.
7
8 MR. ADAMS: Do you want me to.....
9
10 CHAIRMAN FLEAGLE: Can I ask that you
11 hold off discussion on that.....
12
13 MR. ADAMS: Save it, you bet.
14
15 CHAIRMAN FLEAGLE:until we get to
16 that proposal.
17
18 MR. ADAMS: I'll be happy to do that,
19 Mr. Chairman.
20
21 CHAIRMAN FLEAGLE: Thank you. Yeah,
22 let's just go ahead and keep to your general comments
23 at this time.
24
25 MR. ADAMS: Okay.
26
27 CHAIRMAN FLEAGLE: Thanks.
28
29 MR. ADAMS: We have, Mr. Chairman, a
30 concern about the management of the sockeye stocks in
31 Southeast Alaska. Just to make a mention, you know,
32 Chatham Straits, you know, is having problems, you
33 know, having the sockeyes getting into the areas for
34 spawning.
35
36 A real big issue in the Yakutat area,
37 you know, I'm just going to throw out a couple numbers
38 here, I know Fish and Game has tried to make a quota of
39 19,000 fish beyond the weir a year for sockeye and the
40 sockeyes just didn't show up this year. And when it
41 was late in the season we only had 9,000 up to the
42 spawning areas and so they shut it down for the rest of
43 the season so we need to address the reasons why these
44 are happening and so forth.
45
46 So moving on then.
47
48 Subsistence wildlife regulations.
49 Wildlife regulations need to be reviewed to identify
50 situations where changes are needed to implement the

1 subsistence priority. The Council would like the
2 wildlife Staff to be more proactive in identifying
3 situations where the Council may be asked to provide a
4 recommendation on regulatory solutions. The Council
5 cannot provide adequate counsel when long anticipated
6 concerns are presented to the Council with meager
7 information and the expectation of an immediate
8 response. And so, I think, you know, I could add on to
9 this is that we really think that the Board should
10 really give honest deference to the Councils. It is
11 down at the Council, at the local levels where a lot of
12 the information and data are gathered and we spend a
13 lot of time in making sure, you know, that these
14 proposals, you know, are scrutinized as we consider
15 them on the Council level and when we make a
16 recommendation to the Board we would like to see more
17 positive action in those areas. I could mention a few
18 of the other problems that we've had but that can come
19 out later.

20

21 Another issue that we're concerned with
22 is the in-season management of wildlife. The Southeast
23 region has been faced with a number of situations in
24 the past two years where special actions were necessary
25 for conservation of wildlife resources. The last
26 couple years, particularly in Unit 4, you know, along
27 the northern part of Chichagof Island we've had
28 tremendous amount of snowfall and this has impacted the
29 deer population severely in those areas and so we would
30 like to see an opportunity for the district rangers to
31 make emergency openings and closures in these areas if
32 they feel it necessary. The Council's aware of the
33 differences of in-season management authorities between
34 fish and wildlife resources and any solution should
35 satisfy the needs or appropriate land management
36 agencies.

37

38 And then I'd like to ask, Mr. Chairman,
39 if the Board is going to consider the rural
40 determination issue, you know, with Saxman and
41 Ketchikan, you can answer that question, you know,
42 after I'm done here with my presentation.

43

44 I still feel -- our Council still feels
45 and I feel very strongly that RACs should be able to
46 submit RFRs. Again, I emphasize, you know -- I might
47 sound like a broken record here, but, again, I
48 emphasize that we represent the people in our areas and
49 in some cases where smaller communities are aggrieved
50 about, you know, a proposal that does not fit their

1 needs and the Board turns it down for some reason and
2 who's going to represent them. You know we were
3 fortunate enough to have, you know, some people step
4 forward with the rural determination issue with Saxman
5 and, of course Ketchikan, but that's not going to be
6 always happening, you know, for smaller communities who
7 have no ability to submit RFRs, and I think the RACs
8 are the best equipped body to represent those people;
9 we do represent them, we're supposed to.

10

11 The RAC is also concerned about Board
12 executive sessions. We would like to see more
13 transparency. Excess use of executive sessions by the
14 Subsistence Board are problematic for the Council.
15 There is a concern that the Board may have discussions
16 during these private sessions that are more appropriate
17 for public meetings. The Council recommends that the
18 need for Board executive sessions be minimized and
19 occur only when there's a clear legal requirement. And
20 I know in other bodies, you know, I served as the
21 tribal president for the Yakutat Tlingit Tribe for
22 about 12 years and we go into executive sessions, we
23 always have to make public the reasons why we are going
24 into executive sessions. It doesn't mean that we are
25 to come out explaining every little detail that we
26 discussed in those meetings but at least a decision had
27 been made and, you know, we think that transparency
28 with the Board, you know, falls within that same line.

29

30 The Southeast Regional Advisory Council
31 is also concerned about Council meeting locations. You
32 know the OSM recently or a couple years ago mandated
33 that -- well, I wouldn't say mandated but suggested
34 that we try to have our meetings in an area where it's
35 easier for Alaska Airlines or transportation to be met.
36 One of the reasons that we have in the past had had
37 meetings in areas like Kake and Angoon and, you know,
38 Hoonah and those are areas that are sometimes very hard
39 to get to in the wintertime is to -- the reason is to
40 be able to meet with those people and get their
41 feelings and get their input as to subsistence issues
42 that really affect their lives. And it's going to
43 cause, you know, some transportation problems for them
44 if we have it in Juneau or Ketchikan or Sitka, you
45 know, to come to these meetings and make their wishes
46 known. So we think that Councils should be able to
47 meet in any community that they determine appropriate.
48 Meetings in locations with daily jet service may be
49 fiscally responsible but it does not serve the interest
50 of the Council and the public. And so, you know, we

1 would like to see this addressed.

2

3 Another issue that we are concerned
4 with is the sea otter management problems. Sea otter
5 populations need to be controlled and the animals used
6 responsibly. Allowing the sale of raw pelts is
7 appropriate and current population levels are necessary
8 to justify the expense of harvesting these animals.
9 Sea lions are increasing in abundance and they're
10 influencing the ability of users in some communities to
11 harvest fish for subsistence. The Council would like a
12 report on any management measures and consideration to
13 control the numbers of sea otters and sea lions. The
14 Council also recommends that the Federal Subsistence
15 Program assist in changing sea otter harvest
16 regulations to allow the sale of raw pelts.

17

18 Just an example, in my area in Yakutat
19 area, we see all of our subsistence foods disappearing.
20 The clams and the cockles, the sea urchins, the crabs
21 and it's attributed, you know, to the increase of sea
22 otters in that area. So, you know, we think that there
23 needs to be some kind of a management plan that will
24 cover the balance so that our subsistence foods can be
25 with us for many years to come.

26

27 I'm almost done here, Mr. Chairman.

28

29 Another thing that we talked about in
30 the past was alternate Council members. I know that in
31 our region, and I also serve on the Wrangell-St. Elias
32 Subsistence Resource Commission -- Council and there
33 are only a couple of times in the last 10 years that I
34 have been a member of both parties when we've been
35 without a quorum to do business. And both bodies think
36 that, you know, think that it would be beneficial if we
37 had alternate Council members so that if for some
38 reason somebody can make it then that seat will be
39 filled for that meeting and we can do business.

40

41 One of the issues and I think when Sue
42 comes, she wanted me to mention the fact that she wants
43 a discussion about the State compliance with ANILCA.
44 And I have a letter here that addresses the fact that
45 she won't be here until tomorrow afternoon, but I'll
46 just read a statement here. She says I have a very
47 strong feeling about this continuing conversation that
48 you started about compliance with the State on Federal
49 lands. I want to make sure if I miss this morning
50 discussion of RAC concerns, which is not sure -- is not

1 sure if I miss the morning session of RAC concerns on
2 the agenda early like usual, that you would make note
3 for me that I want to continue discussion at this
4 meeting. And so, probably, you know, later on during
5 the agenda if the Board so feels we could bring that up
6 for discussion.

7
8 I also want to make mention about the
9 MOU that the Federal Board has -- or is about to sign
10 with the state of Alaska. I've talked to a lot of
11 other Board members and RAC Chairs and they feel very
12 unhappy in the fact that even though the MOU, in my
13 opinion, I've read it, is much better than the previous
14 one due to the fact that it also addresses very clearly
15 that the State will come in compliance with ANILCA and
16 that subsistence priorities would be met. However, I
17 think there is a matter of respect here that needs to
18 be given to the Councils at least an opportunity to
19 look at them and possibly, you know, share some
20 comments about it. As far as I was concerned I thought
21 it was a good one and, you know, but I'm also
22 expressing some concerns that other Council members and
23 RAC Chairs have on this issue.

24
25 I don't know whether this is true or
26 not, Mr. Chairman, but understand that mail was going
27 around to the Board members, you know, encouraging
28 that this be signed as soon as possible and I thought
29 I'd bring that up as a matter of concern as well and if
30 I need to be corrected in that issue then please feel
31 free to do so. And I understand, you know, probably
32 the reasons why, we're going into a new administration
33 and it would have been really beneficial if that were
34 signed at that time, but I also don't think that it was
35 appropriate to try to push that.

36
37 Mr. Chairman, that's about the extent
38 of what I have for you. I want to thank you for
39 considering my comments on behalf of the Southeast
40 Regional Advisory Council. These are concerns that we
41 are really trying to address and hopefully, you know,
42 we'll be able to get some good cooperation from the
43 Board as we further move this process forward.

44
45 Gunalcheesh.

46
47 Thank you.

48
49 CHAIRMAN FLEAGLE: Thank you, Bert.
50 There's several items that I think warrant a response

1 from your discussion. Before I go there I just wanted
2 to make an announcement that I wasn't really clear on
3 at the beginning of the meeting, by looking at the
4 agenda, that the Board -- the RAC Chairs and the
5 Federal Board have a longstanding practice of
6 discussing regional, statewide administrative matters
7 in conjunction with the Board's regulatory meetings and
8 usually these meetings are held at the beginning of the
9 Board meeting, and for this meeting, however, the
10 Council Chairs and Board discussion will occur at the
11 end of the meeting so we're going to have this open
12 dialogue session that we generally have now so I think
13 a lot of the topics that you raise will probably be --
14 generate some good discussion among other Council
15 Chairs as well. I don't want to get too far into that
16 at this time. We made this change to accommodate a
17 request made by the Eastern Interior Council Chair at
18 the Board's May meeting for an open discussion between
19 Council Chairs, the Board, the Department of Fish and
20 Game, regarding ways to improve the dual management
21 system and in scheduling the topic at the end of the
22 meeting should provide ample opportunity for discussion
23 without impeding the regulatory portion of the meeting.
24 So we didn't want to get too far into discussing issues
25 that we're going to be addressing through proposals or
26 regulatory action later in the meeting.

27

28 I did manage to stop the discussion on
29 one area that I think was going to go there and
30 appreciate your comments but just want to point out
31 that we will have an opportunity to fully discuss these
32 issues later.

33

34 In response to several points that you
35 raised though I think it would be appropriate to
36 address some of those and one is the harvesting of --
37 incidental harvest of chinook in the open seas. This
38 Board is fully aware of that issue. Very concerned.
39 When we read the report a little better than a year
40 ago, that reported 130,000 counted chinook that were
41 taken out on the drift seas fisheries, and very
42 concerned that that number of fish were being taken
43 from our rivers and our subsistence users. And we
44 spoke at that time as to how to best address the issue
45 and uncertain of the protocol of one department
46 addressing another department and Federal agencies. We
47 kind of left it up to the Board and Staff to come up
48 with the best way and we came up with there was a
49 public process by NMFS that was open for public
50 comments, the Office of Subsistence Management drafted

1 a comment letter that we signed and sent to them, and
2 Pete and other Staff attended that meeting in Kodiak
3 and, Pete, do you want to talk briefly about that.

4

5 MR. PROBASCO: Thank you, Mr. Chair,
6 and thank you, Mr. Adams, for bringing this up.

7

8 I think we want to add this on other
9 business towards the end of the meeting as well because
10 the North Pacific Fishery Management Council will be
11 taking, what may be perceived as final action at the
12 April meeting, and we need to discuss as a Board how we
13 want to comment on the various options that will be
14 before the North Pacific Fishery Management Council.
15 And my Staff, with Don Rivard as the lead, will be
16 ready to brief you at that point.

17

18 What Mr. Fleagle is speaking to is this
19 past summer in Kodiak, along with myself we had four
20 Council Chairs or their representatives attend that
21 meeting and testify, it went very well. It was well
22 received. And we plan on doing that also for the April
23 meeting.

24

25 Mr. Chair.

26

27 CHAIRMAN FLEAGLE: All right, thank
28 you, Pete. Thanks for bringing that up, too, yeah,
29 we'll definitely have more discussion.

30

31 I don't have anything to update on the
32 rural determination process regarding Saxman, and I
33 think we can maybe have a little more discussion on
34 that at the later Council Chairs talking point.

35

36 Board executive sessions, it's timely
37 that you mention that, I mean we do have one scheduled
38 momentarily here. And I share your concerns on
39 executive sessions. I believe in a fair and open
40 process. And since I've been the Chair have worked
41 hard to minimize the amount of executive sessions that
42 we do and try to do business at least in work sessions,
43 which are open, but don't involve all of the public
44 testimony and everything like that. Items that aren't
45 required to be processed through that process. But I'd
46 just like to ask Keith if he would just briefly
47 describe the nature of our executive sessions and why
48 we hold them.

49

50 MR. GOLTZ: Generally it's either for

1 personnel matters or legal matters. I share your
2 concerns. I think they're always received poorly and
3 whatever comes out of it people are going to blame on
4 the executive session. We'll try to keep this next one
5 brief. But I would be reluctant to say the Board can
6 have never have them, I think there are some matters
7 that just can't be fully aired in public and that
8 usually revolves, from my point of view, around legal
9 questions, very rarely around personnel ones.

10

11 CHAIRMAN FLEAGLE: Thank you, Keith.
12 The topic about Council meeting locations. That was a
13 decision made by OSM Staff, when we're faced with a
14 half a million dollar budget reduction a year and a
15 half ago and I don't think that our budget situation
16 has improved, in fact, the crystal ball might indicate
17 otherwise.

18

19 Pete, do you have anything to add to
20 that.

21

22 MR. PROBASCO: Mr. Chair. For fiscal
23 year 2009 we're still under a continuing resolution,
24 which means we're still under the same financial
25 constraints as FY 2008. Bert said it very well. He
26 understands the decision was based on our ability to
27 address the budget reductions and actually when the
28 dust settled it was closer to 900,000 than a half
29 million because of other reductions.

30

31 So, Mr. Chair, we're proceeding for FY
32 2009 in the same manner. We are encouraging our
33 Councils to help us fiscally with this issue. Bert
34 brings out very good points. Southeast is one of our
35 few RACs where we do have a lot of public participation
36 at their meetings. Southcentral is also another place
37 that has a great deal of public participation. We
38 don't see that across the Board though at our Councils,
39 but it is basically on trying to meet our budget.

40

41 So, thank you, Mr. Chair.

42

43 CHAIRMAN FLEAGLE: All right, thank
44 you, Pete. And the final item that I had for response
45 is the memorandum of understanding. And I think that
46 that would be an appropriate discussion to hold at the
47 end of the meeting when we have other Council Chairs
48 because I think that your concerns will probably be
49 shared by other Councils and I'd like to have an open
50 discussion about that as well at that time.

1 So I appreciate you raising the issues,
2 though, Bert, and also look forward to your involvement
3 in our process and you add considerably to it.

4
5 MR. ADAMS: Thank you, Mr. Chairman. I
6 appreciate your responses as well. So look forward to
7 the rest of the meeting going smooth.

8
9 Thank you.

10
11 CHAIRMAN FLEAGLE: Thank you. Ralph,
12 opening comments.

13
14 MR. LOHSE: Well, Bert his a couple of
15 the ones that I would echo but I'll wait until the end.
16 I don't have anything particular to bring to your
17 attention at this point in time.

18
19 CHAIRMAN FLEAGLE: Thank you. And good
20 morning to you.

21
22 Let's see where was I.

23
24 (Pause)

25
26 CHAIRMAN FLEAGLE: Okay, I got a lot of
27 cheat sheets up here and I got to get them organized.
28 I think as I use them I need to turn them upside down
29 maybe. All right, so we're going to go ahead and move
30 on to the next item in the agenda and that's consensus
31 agenda and we have one regulatory proposal on the
32 consensus agenda, it's listed on Page 2 of the Board
33 meeting book, as follows, it's Cook Inlet Management
34 Area, Fisheries Proposal 09-08, the recommendation is
35 to oppose, it's on Page 4 -- the recommendation, I
36 assume is on Page 4. As described on Page 2 of the
37 Board meeting book, this is a proposal for which
38 agreement exists among the Federal Subsistence Regional
39 Advisory Councils, the Federal InterAgency Staff
40 Committee and the Alaska Department of Fish and Game
41 concerning Board action. Anyone disputing the
42 recommendation on a proposal may request that the Board
43 remove the proposal from the consensus agenda and place
44 it on the regular agenda. The Board retains final
45 authority for removal of proposals from the consensus
46 agenda. The Board will take final action on the
47 consensus agenda after deliberation and decisions on
48 all other proposals.

49
50 With that I'd like to open the

1 opportunity for public comment on the consensus agenda.
2 Pete, do we have any comment.

3

4 MR. PROBASCO: Mr. Chair, this is a
5 Cook Inlet proposal and Mr. Ricky Gease -- no, Mr.
6 Gease is shaking his head so I have no public testimony
7 at this point.

8

9 CHAIRMAN FLEAGLE: Okay, great, thank
10 you. And I'd like to welcome to the table Tina
11 Cuning, hi Tina, and also I recognize Hans Neidig who
12 is now back in the room -- I recognized you earlier, I
13 think when you were probably out getting coffee, from
14 the Office of the Interior, good morning.

15

16 At this point this is where we've
17 decided to insert the brief executive session to
18 discuss legal issues and I'd like to step down and take
19 a 10 minute break and when we reconvene it'll just be
20 Board members only and legal counsel.

21

22 Thank you.

23

24 (Off record)

25

26 (On record)

27

28 CHAIRMAN FLEAGLE: Good morning. The
29 Federal Subsistence Board is back on record and I don't
30 know if it was from having the doors closed but it got
31 chilly in this room. I don't know, maybe it was the
32 discussion.

33

34 (Laughter)

35

36 CHAIRMAN FLEAGLE: Anyway, just I know
37 there was concern raised about executive sessions of
38 the Board and I just wanted to briefly state for the
39 record that we did not deliberate on any issues that
40 the Board has before it. We were briefed on the -- on
41 a recent court decision that may have some
42 implementations in process that we talked about, but
43 not substantive decisions or even directions were
44 formed in the executive sessions. For disclosure
45 purposes, our talking legal issues.

46

47 And before we continue on with the
48 agenda I'd like to recognize former Board member Judy
49 Gottlieb who, there she is in the back, welcome, Judy,
50 it's good to see you. And also we have been joined by

1 Commissioner Lloyd at the table and I'd like to turn it
2 over to him for introductions -- I mean -- yeah, go
3 ahead.

4

5 COMMISSIONER LLOYD: Thank you, Mr.
6 Chairman. Appreciate the opportunity to be here with
7 you and commiserate as well as participate with the
8 regional directors at your full session of the Federal
9 Subsistence Board.

10

11 With your indulgence, Mr. Chairman, I
12 would like to introduce two new senior staff within the
13 Alaska Department of Fish and Game. With us today we
14 have Deputy Commissioner Patrick Valkenburg, Pat, would
15 you stand up for a second. And we also have, not so
16 newly but perhaps since the last meeting, hired
17 subsistence director, Craig Fleener, Craig. So I
18 assume there have been some previous introductions of
19 staff so I'll leave it at that.

20

21 Thank you, Mr. Chairman.

22

23 CHAIRMAN FLEAGLE: All right, thank
24 you. And, welcome, both, Pat and Craig, to the
25 meeting, and look forward to our involvement with you
26 guys as well in our process.

27

28 Before we move on to the regulatory
29 issues that we have, there's a question on the
30 consensus items that was raised. I understand that
31 there is one proposal that was not on the consensus
32 agenda because the State wasn't in agreement, that has
33 since changed, and I'd like to give an opportunity to
34 Commissioner Lloyd to explain that and then we'll talk
35 about process.

36

37 COMMISSIONER LLOYD: Well, thanks,
38 again, Mr. Chairman. With regard to Fishery Proposal
39 09-06, we would like to add that to the consensus
40 agenda. And, again, with your indulgence I'll read
41 some comments that lead us to that conclusion and
42 hopefully recognize good work between the State and
43 Federal Staffs.

44

45 The Department submitted Proposal FP09-
46 06 because the Federal Subsistence regulations could be
47 misinterpreted by the public and, in fact, were
48 misinterpreted by some Federal fishery managers in Cook
49 Inlet fisheries last summer. The regulations also had
50 potential unintended impacts on the conservation of

1 rainbow steelhead trout, grayling and burbot
2 populations. The problems with these Cook Inlet area
3 regulations are addressed in detail in the Department's
4 written comments on Pages 159 through 166 of the
5 Federal Subsistence Board book. The Department's
6 intent in submitting this proposal was to reduce
7 confusion in the regulations for users and managers and
8 to clearly capture the Federal Subsistence Board's
9 intent when it adopted the regulations. The
10 Department, the Office of Subsistence Management and
11 the InterAgency Staff Committee worked throughout this
12 Federal fisheries cycle to come to an agreement
13 regarding the problems and a mechanism to clarify the
14 regulations. During the October 2008 meeting, the
15 Southcentral Regional Advisory Council members
16 expressed that these types of regulatory changes should
17 be done administratively instead of as proposals.
18 There also was confusion regarding the intent of the
19 proposal so the Council voted to oppose that proposal.

20

21 In the spirit of our memorandum of
22 understanding and commitment to avoid dueling
23 government agencies, the Department and the InterAgency
24 Staff Committee continued to work and were able to
25 reach an agreement, if implemented, will result in
26 clarifying the language in the regulations for managers
27 and in the handy-dandy summary booklet for the public
28 as follows:

29

30 First, the fact that grayling and
31 burbot may not be taken for subsistence
32 purposes will be stated twice in the
33 general section and the Kenai section
34 of the public booklet beginning in
35 2009/2010.

36

37 Second, the Federal Board's prohibition
38 of accumulation of harvest limits in
39 the Cook Inlet area with State harvest
40 limits was already provided and will be
41 clarified within the public booklet for
42 2009/2010 permits -- and permits.

43

44 Third, administrative clarifying
45 language will be made in Kenai
46 Peninsula Federal subsistence fishing
47 regulation section 27(i)(10)(iv).

48

49 Fourth, the clarification in regulation
50 of the Board's prohibition of

1 accumulation on a statewide basis,
2 except where the Board specifically
3 authorizes accumulation will be brought
4 to the Board in the near future.
5

6 Personally, I commend the Federal and
7 State Staff effort that reached the above agreements,
8 Mr. Chairman, to resolve the issues in our proposal.
9 And, based on the solution, we're willing to change our
10 position and oppose our own proposal so that this
11 proposal could be moved to the consent agenda.
12

13 Thank you, Mr. Chairman.
14

15 CHAIRMAN FLEAGLE: Thank you,
16 Commissioner Lloyd. Just a process question for me,
17 is, that I know that we have a process for pulling an
18 item off the consensus agenda, how about putting one on
19 it, Pete.
20

21 MR. PROBASCO: Mr. Chair. I think for
22 the record it would be wise that we reverse the process
23 and just have a Board member make a motion and second
24 and then the Board act upon that to move it to the
25 consensus agenda. And as with other items we would
26 still provide opportunities for public comment, et
27 cetera.
28

29 CHAIRMAN FLEAGLE: All right, thank
30 you. Geoff.
31

32 MR. HASKETT: Mr. Chair. I'd like to
33 make that motion to place Proposal 09-06 on the
34 consensus agenda. The Alaska Department of Fish and
35 Game's revised position to address the issues Denby
36 just mentioned, and I can speak to those issues if I
37 get a second.
38

39 MR. LONNIE: Second.
40

41 CHAIRMAN FLEAGLE: Thank you. Go
42 ahead.
43

44 MR. HASKETT: It's my understanding
45 that we're going to make an administrative change to
46 clarify our fishing regulations on the Kenai Peninsula,
47 that they're not in addition to State's regulations
48 this could be interpreted in Section 10(iv). We also
49 intend to restate that grayling and burbot may not be
50 taken for subsistence purposes in the Kenai River

1 section of the public book. The Board has already
2 clarified our intent regarding accumulation of harvest
3 limits during our last work session and will be
4 inserting wording in our public book and on our permits
5 stating that accumulation of harvest limits is not
6 allowed for the Cook Inlet area.

7

8 In addition, Staff will be working to
9 better to find the accumulation of harvest limits
10 issues for our statewide regulations that will be
11 brought before this Board in the near future.

12

13 I would suggest that it may be good to
14 have a multi-agency work group to tackle the
15 accumulation issue. The work done between our
16 respective agencies in this proposal is a great example
17 of cooperation and coordination between the State and
18 Federal programs and I hope will continue with that on
19 other issues with our respective mandates in the
20 future.

21

22 CHAIRMAN FLEAGLE: All right, thank
23 you. Discussion Board members.

24

25 (No comments)

26

27 CHAIRMAN FLEAGLE: Is there any
28 objection to moving that proposal to the consensus
29 agenda.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: Hearing none, the
34 Board will act accordingly.

35

36 Thank you.

37

38 Now, before we move into proposals
39 there's one other announcement I meant to make when we
40 reconvened and that is evidently due to logistic
41 reasons several of the RAC Chairs are not going to be
42 present at the meeting, and so we're working to try to
43 accommodate telephonic participation, especially on the
44 Yukon River proposals by the Lower Yukon Advisory
45 Council and also for the Council Chairs discussion, we
46 want to invite all of the Council Chairs to participate
47 telephonically for that so by tomorrow we should have
48 an idea of when we're going to establish times for
49 those so that we can get telephone lines connected, and
50 we're going to have to figure out the -- how to set up

1 the equipment to do that. But that's just to inform
2 you that evidently there are several Council Chairs
3 that aren't going to be present in attendance.

4

5 So okay I do see that we do have
6 another Chair that has joined us, Ray Collins, from
7 McGrath, welcome. And I provided an opportunity for
8 other Chairs to introduce and make brief opening
9 statements and welcome you as well.

10

11 MR. COLLINS; Thank you, Mr. Chairman.
12 I have no comments to make at this time but I'm Ray
13 Collins, I'm the vice-Chair of Western Interior RAC and
14 reside in McGrath, Alaska.

15

16 Thank you.

17

18 CHAIRMAN FLEAGLE: All right, thank
19 you, Ray, and welcome. I hope you survived your cold
20 snap out there in tact, it looks like you have.

21

22 All right, Pete, comment.

23

24 MR. PROBASCO: Yes, Mr. Chair. I
25 wanted to sort of go in off of the comments that Mr.
26 Haskett made. I wanted to address, before we got into
27 Proposal 2, regarding the accumulation of limits and
28 just to remind the Board where we're at based on
29 earlier assignments given to us.

30

31 In going through the 12 proposals
32 before you at this meeting you'll notice that there are
33 four that address accumulation of harvest limits.
34 During the November 2008 executive session the Board
35 directed OSM Staff to review all subpart D regulations
36 to identify any regulations concerning accumulation
37 that need clarity, clarity to find specific
38 expectations by the Board and identify any regulations
39 on accumulation that may be more restrictive than State
40 regulations. In addition the Board directed that upon
41 completion of that review, OSM Staff would report back
42 to the Board on the findings and present options which
43 may include, but are not limited to, submission of
44 proposals, administrative corrections, just like we
45 talked about with Mr. Lloyd and Mr. Haskett reviewed
46 and then public outreach to clarify existing
47 regulations. My Staff is currently working on this
48 issue and while the proposals before you are specific
49 to areas in fishery resources, you'll have the
50 opportunity to address accumulation of harvest limits

1 on a much larger scale at your next meeting.

2

3 Mr. Chair.

4

5 CHAIRMAN FLEAGLE: Thank you, Pete.

6

7 I guess one more last announcement,
8 perhaps not the final last announcement, but one more.

9

10 Those of you that were kicked out of
11 the room for the executive session will have noticed in
12 the lobby a number of posters covering the Fisheries
13 Monitoring Program funded projects, and I want to
14 encourage Board members that haven't had a chance to
15 look at those, check them out, review the important
16 work that is being done through that Fisheries
17 Monitoring Program. And as a reminder the 2010 request
18 for proposals closed last night and we received 60
19 proposals in response to this RFP, which identified a
20 number of high priority issues for which information is
21 needed to better manage subsistence fisheries
22 throughout the state. Work on reviewing those
23 proposals will begin shortly and at the January 2010
24 Federal Board meeting we'll be voting on the projects
25 that comprise the 2010 Monitoring Program. So I thank
26 Staff for setting those up, I happened to glance at
27 them walking by and it looked like a pretty good
28 presentation so I encourage anybody interested to take
29 a look at those.

30

31 All right. We're going to move into
32 non-consensus agenda proposals and we're going to start
33 out with the Southeast and Yakutat areas and I see we
34 have at the table Larry Buklis from Fish and Wildlife
35 Service and Robert Larson from the Forest Service,
36 welcome, gentlemen, and we're going to start you out
37 with Proposal 09-02. And who's leading, okay, Bob.

38

39 MR. LARSON: Good morning. My name is
40 Robert Larson. I work for the Forest Service, I reside
41 in Petersburg. The executive summary for FP09-02 can
42 be found on Page 19 of your Board books. The Staff
43 analysis will begin on Page 21.

44

45 The issues contained in FP09-02 apply
46 to accumulation of limits. The proposal would prohibit
47 the accumulation of Federal subsistence harvest limits
48 with any daily or annual sportfishing harvest limit.
49 Action on this proposal will address the accumulation
50 of harvest limits component of Proposal FP09-03.

1 The only freshwater State sportfishery
2 with an annual harvest limit in Southeast Alaska is the
3 steelhead fishery. In the Federal subsistence
4 fisheries the annual harvest limits for subsistence
5 salmon on the mainstem of the Stikine River, there is a
6 general steelhead fishery that occurs in Southeast
7 Alaska that occurs away from Prince of Wales Island and
8 then there are 17 locations that are specified on
9 subsistence fishing permits for the subsistence sockeye
10 salmon fisheries. There are two subsistence steelhead
11 fisheries on Prince of Wales Island, both the winter
12 and the spring fishery, and they have seasonal harvest
13 limits.

14
15 Due to management from the Alaska
16 Department of Fish and Game that has provided a very
17 conservative program for harvest of these fish the
18 populations are generally healthy but they remain
19 vulnerable to overharvest.

20
21 Statewide Federal regulations do not
22 allow the accumulation of Federal subsistence harvest
23 limits with State of Alaska harvest limits.

24
25 In the Southeast Alaska area that
26 regulation is modified by specifying that once a
27 subsistence annual limit is taken a person may
28 subsequently participate in the State authorized
29 sportfishery. In addition that person cannot possess
30 subsistence taken and sport taken salmon at the same
31 time.

32
33 The question before the Board is, is
34 there intent to allow the accumulation of annual and
35 seasonal harvest limits in the Federal subsistence
36 fishery with annual, daily or possession harvest limits
37 in the State's sportfishery.

38
39 The Staff analysis conclusion is to
40 support the proposal with modification. And the
41 modification would allow the accumulation of Federal
42 annual or seasonal harvest limits with State
43 sportfishing harvest limits as long as they are not
44 possessed at the same time.

45
46 The effects of this modified language
47 can be found on Page 26 of your Board book, is that,
48 this language would prohibit the accumulation of
49 Federal subsistence harvest limits with any harvest
50 limit in the State subsistence or personal use

1 fisheries. It would prohibit the accumulation of
2 Federal subsistence harvest limits with the daily or
3 possession limits in the State's sportfishery but it
4 would allow the accumulation of annual or seasonal
5 Federal subsistence harvest limits with State
6 sportfishing harvest limits provided that they are not
7 possessed at the same time.

8

9 CHAIRMAN FLEAGLE: Thank you, Robert.
10 Question's Board members.

11

12 (No comments)

13

14 CHAIRMAN FLEAGLE: All right, next
15 we'll move into summary of public comments.

16

17 MR. LARSON: Mr. Chairman, there are no
18 written public comments.

19

20 CHAIRMAN FLEAGLE: Thank you. At this
21 time we'll open the floor to public testimony on this
22 proposal. Pete.

23

24 MR. PROBASCO: Mr. Chair, I have no one
25 signed up for Proposal 09-02.

26

27 CHAIRMAN FLEAGLE: Thank you. This is
28 a good time to remind folks that are here, if you want
29 to comment on any of the proposals that we're going to
30 be hearing you need to fill out a request for testimony
31 -- a testimonial request form that's out on the table
32 out in the lobby and turn those in and we're accepting
33 testimony on this issue -- I mean on proposals, on the
34 consensus agenda and on just general items as well. So
35 at any rate we'll go ahead and continue. We'll move to
36 the Regional Council recommendation. Bert.

37

38 MR. ADAMS: Thank you, Mr. Chairman. I
39 think the issue has been pretty well covered by Mr.
40 Larson so I don't have any comments on this particular
41 issue at this time.

42

43 Thank you.

44

45 CHAIRMAN FLEAGLE: Thank you. We know
46 have the Alaska Department of Fish and Game comments.
47 Commissioner -- going to George Pappas, George,
48 welcome.

49

50 MR. PAPPAS: Thank you, Mr. Chair. My

1 name is George Pappas, Department of Fish and Game.
2 I'm the liaison for the Fish and Game's Fisheries
3 Division.

4
5 I am summarizing the Department's full
6 comments that are in your Board book at Pages 29
7 through 31. Those full comments will also be entered
8 into the record at the end of my testimony.

9
10 Current Federal subsistence regulations
11 for the Southeast region could be misinterpreted to
12 allow the accumulation of stacking of annual and daily
13 Federal subsistence limits and State sportfishing
14 limits. In this proposal, the Department requests a
15 clarification of Federal prohibition against
16 accumulating annual and daily Federal subsistence
17 harvest limits with the State of Alaska sportfishing
18 harvest limits in Southeast Alaska.

19
20 The intent of our submitting in FP09-02
21 was simply to clarify the accumulation regulations in
22 the Southeast Alaska region. A portion of our
23 proposal, FP09-03, was submitted to address the
24 accumulation of harvest limits between Federal
25 subsistence fisheries and State sportfisheries only for
26 steelhead trout in Southeast Alaska and we request the
27 Board to separate the steelhead portion of FP09-02 and
28 address that in the Southeast Alaska steelhead
29 proposal, which will be up next, FP09-03.

30
31 If this proposal is adopted, a Federal
32 subsistence user would still be able to go sportfishing
33 on a different day after filling their Federal daily or
34 annual limits as long as the sportfishing annual limit
35 does not exist in that fishery. So adoption of this
36 proposal would eliminate a source of confusion and only
37 restrict non-salmon Federal subsistence fisheries who
38 want to transfer possession of their catch to another
39 person and go fishing again so they can accumulate
40 harvest limits of Federal subsistence and State
41 fisheries.

42
43 The Federal regulations are not as
44 clear as they should be for enforceability of the
45 Federal prohibition on lifeboat. This lack of clarify
46 puts the Federal subsistence fisher at risk of being
47 cited under State enforcement regulations. In
48 Southeast Alaska none of the four types of the State
49 fisheries allow possession of different harvest limits
50 on the same day, therefore, you cannot accumulate

1 harvest limits from multiple State fisheries on the
2 same day.

3

4 The Department has conservation
5 concerns regarding stacking daily and/or annual
6 accumulation limits in the State and Federal
7 subsistence fisheries because of potential for over
8 exploitation of small stocks in small systems such as
9 stacking harvest limits taken in a single fishing hole
10 in a small stream in the same day.

11

12 In summary, this proposal is not
13 intended to prohibit Federal subsistence users from
14 filling their annual or seasonal harvest limit on one
15 day and sportfishing for the same stock with legal
16 sportfishing gear and a sportfishing license on a
17 different day as long as the user has not achieved the
18 annual State harvest limit for the year. A cooperative
19 evaluation by Federal and State Staff on the proposal's
20 language, confusion evident at the Southeast Alaska
21 Regional Advisory Council meeting, and subsequent
22 consultation with InterAgency Staff Committee resulted
23 in the Office of Subsistence Management proposing a
24 modification that satisfactorily resolves the lack of
25 clarity in the existing Federal regulations which was
26 the basis for the State's proposal, therefore, we
27 recommend adopting the proposal with the modification
28 proposed by the Office of Subsistence Management.

29

30 Thank you, that concludes my comments.

31

32

STATE OFFICIAL WRITTEN COMMENTS

33

34

35

36

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

37

38

39

FP09-02 Accumulation of Harvest Limits
in Southeast Alaska

40

41

42

Introduction:

43

44

45

46

47

48

49

50

Proposal FP09-02 requests a
clarification of the federal prohibition against
accumulating annual and daily federal subsistence
harvest limits with State of Alaska (State) sport
fishing harvest limits in Southeast Alaska. Current
federal subsistence regulations for the Southeast
Region could be misinterpreted to allow accumulation of

1 federal annual subsistence limits and State sport
2 fishing limits. Current federal language which allows
3 accumulation of annual harvest limits should be revised
4 to clearly prohibit harvest from the same stock or
5 species in a sport fishery once the user has reached
6 the permitted federal subsistence daily or annual
7 harvest limit.

8

9

Background:

10

11 During the recent Southeast Regional
12 Advisory Council meeting, Forest Service staff reminded
13 the Council of federal subsistence program legal
14 counsel advice that the federal subsistence harvest
15 limits should be set high enough to meet the
16 subsistence user s needs (where there is no
17 conservation concern) without having to accumulate
18 federal and State harvest limits. The federal
19 subsistence program has no authority to regulate State
20 sport fishing except to close federal lands to non-
21 subsistence use, and the Federal Board should not
22 attempt to rely on accumulation of State sport fishing
23 limits to provide the federal subsistence priority.

24

25

Impact on Subsistence Users:

26

27 Adoption of this proposal should have
28 little or no effect on federal subsistence uses because
29 it would not prevent a federal subsistence user from
30 sport fishing on a different day after filling their
31 federal daily/annual limit as long as a sport fishing
32 annual limit does not exist in that fishery. Southeast
33 regional federal subsistence regulations already
34 prohibit federal subsistence users from possessing
35 federal subsistence and sport-taken salmon on the same
36 day, effectively prohibiting accumulation of daily
37 harvest limits for salmon. State sport fishing
38 regulations already prohibit possession of more than
39 the sport fishing harvest limit while sport fishing.
40 Other than eliminating a source of confusion, adoption
41 of this proposal would only impact non-salmon federal
42 subsistence fishers who desire to transfer possession
43 of their catch and then accumulate harvest limits of
44 federal subsistence and State fisheries.

45

46

Enforcement Issues:

47

48 Adoption of this proposal will reduce
49 the likelihood of State enforcement actions being taken
50 against federal subsistence users who might otherwise

1 incorrectly believe that they can possess and/or
2 harvest additional fish in a State fishery the same day
3 after filling their federal limit. The lack of clarity
4 in current federal regulations may impair
5 enforceability of the federal prohibitions on
6 accumulation while also putting federal subsistence
7 fishers at risk of being cited under State enforcement
8 regulations. These unclear regulations and enforcement
9 risks create concerns where effective daily limits are
10 needed for effective management and conservation.

11

12 Jurisdiction Issues:

13

14 Many streams in Southeast Alaska flow
15 through non-federal land. The State disputes many of
16 the federal reserved water right claims in Southeast
17 Alaska. The State also disputes application of federal
18 subsistence regulations in numerous streams and rivers
19 that are not within federal lands. Detailed maps are
20 needed of lands where federal jurisdiction is claimed,
21 and the basis of each claim should be explained. In
22 addition, fishers need to be provided copies of these
23 detailed maps and warned that the State will enforce
24 its regulations on fishers standing on nonfederal land.

25

26 Opportunity Provided by State:

27

28 Personal use fisheries are generally
29 established for areas which are considered non-rural or
30 non-subsistence areas by State of Alaska regulation
31 although they may extend into other areas. Personal
32 use fisheries are differentiated from commercial
33 fisheries because the sale of personal use harvest is
34 not appropriate or permissible under State law.
35 Personal use fisheries are differentiated from
36 subsistence fisheries because the personal use is not
37 customary and traditional use and is not prioritized.
38 Furthermore, the personal use fisheries are
39 differentiated from the sport fisheries because the
40 gear types used for personal use fisheries are usually
41 different from that historically associated with sport
42 fishing. Statewide sport fishing regulations (5 AAC
43 75.010) prohibit a person engaged in sport fishing from
44 possessing more than the limit of fish allowed for the
45 water on which the person is sport fishing. The State
46 also explicitly prohibits possessing sport and personal
47 use caught salmon (5 AAC 77.682 (e)) or sport and
48 subsistence caught salmon (5 AAC 01.730) on the same
49 day.

50

1 Conservation Issues:

2

3

4 Adoption of this proposal may protect
5 fish populations from over-exploitation by preventing
6 development of conservation concerns due to excessive
7 harvest that could occur in federal subsistence
8 fisheries if users are allowed to accumulate daily and
9 seasonal harvests from both the federal subsistence and
10 State fisheries. The Department, through the Alaska
11 Board of Fisheries, has invested decades into
12 developing conservative fisheries management plans,
13 sustainable exploitation rates, and time-proven fishery
14 regulations which establish daily and annual limits
15 ranging from sweeping regional limits and gear
16 restrictions applicable to specific sections of river
17 tributaries. The evolution of each conservative
18 fishing regulation is either based upon historic and
19 scientific data or, where such data are not available,
20 is based upon the best information available, including
21 long term average harvest information which indicates
22 levels of harvest of a fish stock with a high
23 probability of being sustainable.

23

24

25 The Department has conservation
26 concerns regarding daily and/or annual accumulation
27 limits between the State and federal subsistence
28 fisheries. These concerns revolve around the potential
29 for over-exploitation of diminutive stocks in small
30 systems by allowing federal subsistence users to
31 accumulate daily harvest limits from a single fishing
32 hole on a small stream on a single day. An example is
33 a federal subsistence user fishing for cutthroat trout
34 in a high use area harvesting the daily bag limit of 10
35 trout or one steelhead trout, then transferring
36 possession and continuing to fish under sport fishing
37 regulations to harvest another daily limit.

37

38

39 Other Issues:

39

40

41 Proposals FP09-02 and 09-03 contain
42 language which is similar in intent but different in
43 scope and specificity. FP09-02 was submitted to
44 clarify regional accumulation regulations in Southeast
45 Alaska. A portion of FP09-03 was submitted to address
46 accumulation of harvest limits between federal
47 subsistence fisheries and State sport fisheries for
48 steelhead trout only in Southeast Alaska.

48

49

50 State of Alaska fisheries in Southeast
Alaska do not allow possession of both sport and

1 subsistence or sport and personal use harvested salmon
2 on the same day. The State sport, subsistence, and
3 personal use fishery structure precludes exceeding more
4 than one harvest limit by targeting a single stock with
5 the same gear under separate fishery regulations. The
6 personal use and subsistence fisheries are normally in
7 different areas and require different gear types, and
8 the prohibition on possessing more than the sport fish
9 limit while sport fishing acts as a significant barrier
10 to accumulating limits across fisheries.

11
12 This proposal is not intended to
13 prohibit federal subsistence users from filling their
14 annual or seasonal harvest limit on one day and sport-
15 fishing for the same stock with legal sport-fishing
16 gear and with a sport-fishing license on a different
17 day as long as the user has not achieved the annual
18 State harvest limit for the year.

19
20 A cooperative evaluation by federal and
21 State staff of the proposal s language, confusion
22 evident at the Southeast Regional Advisory Council
23 meeting, and subsequent consultation with the
24 Interagency Staff Committee resulted in Office of
25 Subsistence Management proposing a modification that
26 satisfactorily resolves the lack of clarity in the
27 existing federal regulations, which was the basis for
28 the State s proposal.

29
30 Recommendation:

31
32 Support the modification proposed by
33 Office of Subsistence Management.

34
35 CHAIRMAN FLEAGLE: Thank you, George.
36 Questions, Board members.

37
38 (No comments)

39
40 CHAIRMAN FLEAGLE: I have one. I note
41 your comment in there, the example you gave was a
42 person that -- a Federal subsistence user fishing for
43 cutthroat in a high use area harvesting a daily bag
44 limit of 10 trout or one steelhead then transferring
45 possession, which you referred to, and continuing to
46 fish under sport regs to harvest another daily limit.
47 Is that something that actually occurs that we have,
48 you know, observed or is this just trying to foresee a
49 problem, a conservation issue and head it off before it
50 becomes an issue?

1 MR. PAPPAS: The intent is simply for
2 clarity.

3
4 CHAIRMAN FLEAGLE: Just clarity, okay,
5 thank you.

6
7 MR. ADAMS: Mr. Chairman.

8
9 CHAIRMAN FLEAGLE: Bert.

10
11 MR. ADAMS: Thanks for your
12 recognition, Mr. Chairman. I failed to mention that,
13 you know, the Southeast Alaska Regional Advisory
14 Council opposed this proposal. So for the record I'd
15 like to make that clarification.

16
17 CHAIRMAN FLEAGLE: Thank you. I had to
18 glance at the screen and see that was the
19 recommendation, but I appreciate that Bert. And I'm
20 sure that we're going to drag you into the discussion
21 on it. I'd also like to point out that we've been
22 joined by a new person at the Board and I'd like to
23 have you introduce yourself please, sitting in for Sue
24 for the Park Service.

25
26 MS. COOPER: Good morning, my name is
27 Deb Cooper. I'm the associate regional director for
28 natural resources for the National Park Service and
29 I'll just be sitting in for an hour or so while the
30 director's away taking a conference call with the
31 Secretary this morning.

32
33 CHAIRMAN FLEAGLE: Than you, Deb,
34 welcome. All right, with that we're going to go ahead
35 and move on to the InterAgency Staff Committee
36 comments. Polly.

37
38 DR. WHEELER: Thank you, Mr. Chair.
39 Again, I'm with the Office of Subsistence Management.
40 As of about a month ago I'm the deputy to Pete, and I
41 also serve as the Chair of the Federal InterAgency
42 Staff Committee.

43
44 The Staff Committee found the Staff
45 analysis for Proposal FP09-02 to be a thorough and
46 accurate evaluation of the proposal. The Staff
47 Committee discussed two substantive issues regarding
48 09-02.

49
50 The first issue is whether the primary

1 intent of the proposal was simply to provide clarity to
2 the current Federal subsistence regulations regarding
3 accumulation of limits or if the proposal was
4 simultaneously intended to change regulations to
5 address an imminent fishery conservation issue.
6

7 There was agreement that users will
8 benefit from having the Board provide clear,
9 unambiguous regulatory language regarding harvest
10 accumulation, however, contrary to the proponent's
11 views the general perception among the committee
12 members was that current levels of use by Federally-
13 qualified subsistence users is very low and has not
14 created any fish resource conservation problems. Staff
15 Committee members felt that the proposal is not
16 responding to conservation problems that currently
17 exist.
18

19 The second issue discussed by the Staff
20 Committee concerned the modifications to OSM's
21 conclusion. Some Staff Committee members questioned
22 whether there was a need to deal with same day
23 possession of subsistence taken and sport taken fish,
24 which is Section xi because of the wording which would
25 restrict accumulation of limits in Section vii, some
26 ISC members felt that the new language in Section xi
27 was unnecessary.
28

29 The Southeast Alaska Regional Advisory
30 Council opposed the original proposal as submitted by
31 the state of Alaska and did not vote on the modified
32 language put forth in the OSM analysis. Nevertheless
33 there was some discussion by the Staff Committee that
34 Section 11 as modified was potentially being viewed as
35 too restrictive towards Federally-qualified subsistence
36 users and not simply a modification of the existing
37 regulation.
38

39 The Staff Committee agreed that Federal
40 subsistence regulations were designed to allow
41 subsistence users to meet subsistence needs without
42 having to accurate State and Federal harvest limits and
43 that participation in subsistence activities should not
44 preclude an individual from engaging in lawful
45 sportfishing at a future time.
46

47 Thank you, Mr. Chair.

48
49 CHAIRMAN FLEAGLE: Thank you. We're
50 now prepared to have Board discussion on the proposal.

1 At this time, while we're in open session I encourage
2 participation by both the Department and by the Council
3 Chairs.

4

5 Board members, discussion. Denny.

6

7 MR. BSCHOR: Mr. Chair, just a
8 clarification on the OSM language on Page 26. What
9 does item xi do or not do? What effect does it have?

10

11 CHAIRMAN FLEAGLE: Robert.

12

13 MR. LARSON: Mr. Chairman. Mr. Bschor.
14 Item xi is a leftover provision, it's one of the items
15 that came with the initiation of our program and in
16 State regulations there is this prohibition that you
17 shall not possess subsistence taken and sport taken
18 salmon, we've adopted that, and this new language
19 includes steelhead, Dolly Varden, brook trout,
20 grayling, cutthroat and rainbow trout; those species
21 where we have a subsistence fishing permit or
22 regulations. It is, in addition, and a change to
23 regulations that we currently have. So it does quite
24 literally what it says, that you cannot possess those
25 species if they are taken under different management
26 regimes.

27

28 CHAIRMAN FLEAGLE: Thank you. Further
29 discussion.

30

31 MR. BSCHOR: I guess as a follow-up,
32 Mr. Larson, from your perspective, is that language
33 necessary? Is the language in the other modification
34 above, .27(i)(13) enough if it stood alone?

35

36 MR. LARSON: I don't mean to presuppose
37 what the Board thinks is necessary or not, but I could
38 further explain that the items under 13 are for harvest
39 regulations that are taken on the same day. The
40 expansion under xi are those species, they cannot be
41 possessed at the same time without regard to when they
42 were taken. So the clarification that we see is
43 contained under (i)(13), the new regulations or
44 expanded regulations would be under xi, a different --
45 a slightly different concept, yes.

46

47 CHAIRMAN FLEAGLE: All right, any other
48 comments.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: I know this one is
2 kind of a tough one to start out on because it's just
3 trying to make a determination whether there's a real
4 issue or not, first off, and then trying to clarify
5 what the issue may be. I think that if the Board wants
6 to consider substitute language we'd need to have a
7 motion to that effect, but I don't know that we've
8 adequately discussed before us to even get there so I'd
9 just like to open it up for further discussion.

10

11 Ralph.

12

13 MR. LOHSE: Mr. Chair, thank you. I
14 look at xi right there and I'm just going to talk from
15 Southcentral standpoint with some of the regulations
16 that we have for Southcentral. When you say possessed
17 under State regulations. If I understand right, a fish
18 quits being in your possession when it's at your place
19 of residence or when it's prepared in such a way that
20 it will keep, in other words, smoked or frozen or
21 canned or something like that. Basically what xi
22 would do, is if somebody was not going home to their
23 residence, if they were staying on a boat, if they were
24 camping out and they took their subsistence fish, until
25 they returned home, they would not be able to do any
26 sportfishing. I think number xi changes -- I think
27 number xi is a totally new regulation in line with what
28 we were talking about, accumulation of daily bag limits
29 or season bag limits. And I would think that you would
30 need some further discussion on that because this could
31 limit subsistence fisher people who have gone out and
32 made a special trip to go get their subsistence fish
33 and that are still in the area and haven't returned
34 home yet.

35

36 And I may be wrong on that and I'd like
37 clarification from the State on that if I am. But I
38 would think you'd have to look very seriously at number
39 xi.

40

41 CHAIRMAN FLEAGLE: Thank you, Ralph.
42 Keith.

43

44 MR. GOLTZ: Under Federal regulations,
45 Ralph, it doesn't strictly say you have to be home but
46 it does say that the fish have to be canned, salted,
47 frozen, smoked, dried or otherwise preserved so that
48 they will hold for 15 days.

49

50 MR. LOHSE: But what we're talking

1 about is clarifying regulations so that if a
2 subsistence user is taking part in a State fishery on
3 State land, after he's taken part in a Federal fishery
4 on Federal land, that he doesn't get in trouble, we're
5 trying to clarify things so that we have no legal
6 conflicts here, that's the idea with the accumulation
7 to begin with. And from that standpoint I could see
8 where number xi could cause a problem.

9

10 CHAIRMAN FLEAGLE: Commissioner Lloyd.

11

12 COMMISSIONER LLOYD: Thanks, Mr.
13 Chairman, could we get some comments from State legal
14 counsel.

15

16 CHAIRMAN FLEAGLE: Certainly. Steven.

17

18 MR. DAUGHERTY: Mr. Chair. The
19 Department may have further comments or clarifications
20 on this but just two issues that I would like to
21 present.

22

23 First, this regulation should be ready
24 by species. You might want to add those words where it
25 might just make it clearer that that is the intent.
26 But this would not prohibit someone from engaging in
27 trout fishing while they have subsistence taken salmon.
28 It would only keep them from fishing for the same
29 species that they have taken in the subsistence
30 fishery.

31

32 Mr. Chair.

33

34 The other point that I would like to
35 make is that the State law on possession is that you
36 may not possess more than the State possession limit
37 while engaged in sportfishing. So this would be a
38 clarification that would prevent citations of people
39 who might possess subsistence taken salmon and then
40 tried to engage in sportfishing for salmon; they would
41 be cited under State law if they were in possession of
42 more than the State sportfishing bag limit.

43

44 Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Okay, I understand
47 that attempt to clarify the regulations in case this
48 happens but I guess I go back to the question has it
49 happened and are we trying to fix a problem that
50 doesn't exist. I'm not sure that we have a real

1 clarity here by making this change, if it's going to do
2 a positive thing or not for the subsistence program;
3 and I just want to throw that out, maybe get a little
4 more discussion as to the overall purpose of this
5 regulatory change.

6

7 Comments.

8

9 George, no, okay.

10

11 I'm desperate for a hand here.

12

13 (Laughter)

14

15 CHAIRMAN FLEAGLE: All right, I'm going
16 to just summarize where we're at, just try and see if
17 we can get moved off the dime.

18

19 We have a proposal that proposes to
20 change the way we deal with the accumulation of Federal
21 and State annual limits. We have a modification
22 presented by OSM Staff, and the Board can choose to
23 vote on the proposal as it is, kill it, or you can vote
24 to support it as it is or we can move to amend it with
25 the OSM's modification and pass it that way. So
26 there's three options. If we need further discussion,
27 clarification, I encourage questions and more
28 discussion.

29

30 Denny.

31

32 MR. BSCHOR: Mr. Chair, where I am is
33 just a question over item xi and that's, you know, I
34 don't think we should just kill this, I think we've got
35 some general agreement on the wording, except item xi.
36 And if there's any more discussion on that I tend to
37 think that that's -- you know, we've heard from the
38 State they're concerned about what that does regulatory
39 wise or enforcement wise is what I've heard, and I'd
40 like more, if there's any more discussion on the
41 importance of that, whether that should stay in there
42 or not, I'd like to know.

43

44 CHAIRMAN FLEAGLE: All right. And that
45 whole discussion of xi that adds all the individual
46 species of fish is not in the original proposal, so
47 we're talking about whether or not it has merit to be
48 added as part of an amendment.

49

50 Okay, I'm open to that, if the

1 amendment doesn't include that piece and if there's
2 justification, we can certainly move forward with that
3 as well.

4

5 Further discussion.

6

7 MR. BSCHOR: Yes, that's where I was
8 heading as far as my thoughts.

9

10 MR. PAPPAS: Mr. Chair.

11

12 CHAIRMAN FLEAGLE: George.

13

14 MR. PAPPAS: George Pappas, Department
15 of Fish and Game. Yes, in item xi, Mr. Larson correct
16 me or help me out here, originally this language was
17 lifted or used -- utilized from the Department's --
18 State's regulations for the formation of these Federal
19 subsistence fisheries, and since the State fisheries do
20 not have a subsistence fish [sic] for steelhead, Dolly
21 Varden, brook trout, grayling, cutthroat and rainbow
22 trout they're not in State regulation, so this -- the
23 intent of number xi, does the Federal Subsistence Board
24 want to allow possession of subsistence harvested,
25 these species as listed and State sportfish harvests or
26 not; that's part of the main intent. We don't have
27 these specific fisheries, so what is the intent of the
28 Board.

29

30 Thank you, Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Okay, on that point,
33 Board members, discussion.

34

35 (Pause)

36

37 CHAIRMAN FLEAGLE: Let's stand down for
38 five minutes while we gather our wits and make some
39 sense of what we're trying to accomplish here.

40

41 (Off record)

42

43 (On record)

44

45 CHAIRMAN FLEAGLE: All right, we're
46 back on record on Proposals 02 and it looked like we
47 had a few huddles going on as to possible
48 clarifications and I'd like to open it back up for
49 discussion.

50

1 Denny.

2

3 MR. BSCHOR: Mr. Chair. I want to
4 unduly make this complicated, that's not my intent
5 here, I just want to make sure that what we do is
6 deliberate as far as the changes if we go this way and
7 what effect item xi has and it seems to me that we're
8 mixing a little bit of possession with accumulation and
9 with harvest and we're talking about a restriction on
10 the same day so that covers item xi in a way if we had
11 the old language we wouldn't need item xi anymore, with
12 the new language that's being proposed, that OSM's
13 proposing. And there's a potential that it could be
14 detrimental to subsistence users. We don't know that
15 for sure. I don't know if we have any examples that is
16 has been. And anything that -- if there was a problem,
17 if we did have a problem with that the in-season
18 manager could add permit stipulations to handle that.
19 So I tend to think that we could just eliminate item xi
20 and still be okay with it, or I could be okay with the
21 rest of the language that's proposed.

22

23 Mr. Chair.

24

25 CHAIRMAN FLEAGLE: Okay. My
26 understanding of what you just said is that you could
27 support the modification that OSM provided with the
28 understanding that the entirety of clause xi is
29 removed, not just the bold?

30

31 MR. BSCHOR: Mr. Chair. I'd also like
32 to hear from Mr. Adams to see if he has any input on
33 this because even if we go to this modification it's
34 still not what the Council wanted so I'd like to hear
35 his input.

36

37 CHAIRMAN FLEAGLE: Bert.

38

39 MR. ADAMS: Thank you, Mr. Chairman.
40 You know the Council recommendation is on Page 20 in
41 your book and one of the things that we were concerned
42 about was the fact that we didn't want to restrict, you
43 know, the taking of these species in any way. And item
44 number xi in the proposal does that for us and so, you
45 know, I'm in complete agreement with Denny if we take
46 that out of there that it will probably, you know,
47 bring us back to a good and wise management regulations
48 here. So, you know, that's our position here.

49

50 Let me see, is there anything else that

1 I need to say, yeah, it says here that no evidence is
2 presented to show that the restrictions contained
3 within this proposal are necessary for conservation
4 and, you know, the Council feels that the less
5 restrictions that we put on our resources the better
6 off it is, so that's kind of where we're coming from at
7 this point, Mr. Chairman, I hope it clarifies your
8 deliberations here.

9

10 CHAIRMAN FLEAGLE: It does, thank you.
11 board members.

12

13 Denny.

14

15 MR. BSCHOR: Mr. Chair, I'll ask what's
16 your preference as far as a motion, do you want a
17 motion to adopt with modification -- first of all I
18 need to make the motion to adopt the proposal, I
19 believe, according to our Board procedure, and then
20 after that what I would intend to do is modify that or
21 amend it, depending on what you wish me to do.

22

23 CHAIRMAN FLEAGLE: Yes, that would be
24 my preference is that the proposal be moved and then
25 any amendments added to that motion afterwards and then
26 that amendment would be voted on and the final adoption
27 of the proposal as amended. And this is a good time, I
28 know we've had the back and forth discussions on how
29 motions are formed, and I've kind of asked in the last
30 couple of meetings that we start changing from the
31 current practice, which was to voice the motion in the
32 form of the RAC's position, therefore, a motion might
33 go like this; I vote to support the Regional Advisory
34 Council's recommendation to oppose Proposal yada-yada
35 and that is just -- you're voting affirmative to take a
36 negative action in a roundabout way and it's really
37 confusing and, you know, the best way to do these
38 issues is to put forward a motion on its face on an
39 issue that you have before us, just put it forward as a
40 motion to pass and then the discussion and the vote
41 should be yes I vote to pass it, no I don't vote to
42 pass it. So this is what we've come up as the way to
43 do that and I'm going to read the talking points and we
44 want to still be clear that we're operating in
45 deference to the Regional Advisory Council where it's
46 appropriate, and so we still want to have some comment
47 to that in the motion.

48

49 So when we're making a motion it should
50 address the proposal and be made in the positive, that

1 is to adopt the proposal, that is what I just stated,
2 the motion should be clear and understandable, then
3 provide your position in terms of how you plan to vote
4 and this should be followed by a statement as to how
5 your position relates to the Regional Advisory Council
6 recommendation, whether it's contrary to or consistent
7 with and that way we're recognizing the Regional
8 Advisory Council's recommendation and position on the
9 issue without turning the motion around to accommodate
10 the position. If your position is contrary to a
11 Council's recommendation you must support your position
12 with rationale that addresses at least one of the three
13 criteria from Section .805 (c), which are; you may
14 reject a Council's recommendation when it is:

- 15
16 1. Not supported by substantial
17 evidence
18
- 19 2. Violates recognized principles
20 of fish and wildlife
21 conservation
22
- 23 3. Would be detrimental to the
24 satisfaction of subsistence
25 needs
26

27 And I appreciate Staff putting the
28 little handy card on the back of our name plates with
29 the procedure for the proposal process and it also
30 contains those three criteria so you can glance at them
31 if you need a little extra support there, but i
32 appreciate that being available.
33

34 Section .815 authorizes restrictions to
35 non-subsistence uses only when necessary for the
36 conservation of healthy population of fish and wildlife
37 or to continue subsistence uses of such populations for
38 reasons of public safety, administration, or pursuant
39 to other applicable laws. So that's another point.
40

41 Basically where that puts us now is I
42 would entertain a motion to adopt Proposal FP09-02, and
43 once that is seconded then I would open it for an
44 amendment. And that amendment may take the form of the
45 conclusion -- the modification presented or however you
46 feel is appropriate and we'll discuss that amendment
47 and if it needs further amendment after that amendment
48 is dealt with and voted on then we'll open it up for
49 that process as well.
50

1 And one thing I want to be careful is
2 the process does allow for amendments on amendments. I
3 don't mind one level amendment on an amendment but if
4 we get farther than that we just need to just shut it
5 down, vote on that and then open it up for a new
6 amendment process and it just makes for a lot easier
7 process to follow and understand and to keep track of.
8 And my job is to keep track of it so I'm trying to keep
9 it simple.

10

11 Denby.

12

13 COMMISSIONER LLOYD: Well, thank you,
14 Mr. Chair. Out of recognition that -- if I remember
15 correctly, once you have a motion on the table you're
16 not inviting further comments from the State of Alaska.
17 My concern of where.....

18

19 CHAIRMAN FLEAGLE: Not just the State
20 of Alaska, but also the Regional Advisory Councils.....

21

22 COMMISSIONER LLOYD: Thank you for that
23 clarification.

24

25 CHAIRMAN FLEAGLE:we close it
26 down to just Board, but, yeah, go ahead.

27

28 COMMISSIONER LLOYD: So it seemed like
29 you were about to entertain that motion and I'm
30 concerned that you are headed into a direction that --
31 and you may know this but just to make sure that it's
32 clear, a direction that may put Federal subsistence
33 users in a vulnerable position with regard to State
34 regulations and also at odds with some of the Staff
35 work that came to you that directly recommended
36 language in section xi. But further, if I understood
37 correctly, one of the actions that you may take as an
38 amendment here would be to eliminate all of section xi,
39 not just the bolded text, which means you would
40 actually be taking action to amend an existing Federal
41 regulation, dealing with sport taking salmon which was
42 passed at some presumably previous Federal Subsistence
43 Board meeting. So I guess I'd request that those three
44 items be reviewed for you by your Staff and whether
45 that's Robert Larson or somebody else, I guess that's
46 your discretion, but there are a number of aspects and
47 issues here that I'm wondering how they're going to be
48 included in a motion and whether you really do have a
49 clear understanding of how that could put you -- could
50 put subsistence users at odd between the Federal and

1 State regulatory regimes.

2

3 Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Well, I, for one,
6 will readily admit that I do not have a clear
7 understanding of what the issue -- how the issue is a
8 conflict now and how the proposed proposal fixes that
9 conflict or prevents a future conflict and how the
10 modified language does either or those either so that's
11 what we're trying to get at and I think in our
12 discussion we will get there. But you do raise a good
13 process point though and I'm going to ask this to our
14 legal counsel. My understanding is that we have an
15 open public process where we invite proposals to amend
16 regulations, we get those proposals in and the Board
17 has the opportunity to modify the proposed change, you
18 know, to regulation to fit the intent or to meet what
19 it feels is the best decision for subsistence users.
20 And so with that we would have the opportunity to
21 either add to or take away, repeal various sentences or
22 sections of regulation to meet that end; is that
23 correct, Keith?

24

25 MR. GOLTZ: Correct. I think Denby's
26 point is do we have an adequate record to do that and
27 that's a question that always is in front of the Board.

28

29 CHAIRMAN FLEAGLE: And, yeah, that's a
30 good point and we want to make sure that we do address
31 that as we move forward.

32

33 Denby.

34

35 COMMISSIONER LLOYD: Mr. Chairman.
36 That largely was my main point. In addition, however,
37 there had been some talk at the table that perhaps one
38 thing you were trying to do with clarifying regulations
39 but not creating new regulations and I was also trying
40 to point out that if you eliminate the portion xi that
41 deals with salmon in a way you'd be creating a new
42 regulations, just so you understand that it's a new
43 regulatory action that reverses one that you had
44 previously taken, it's not just taking out this
45 suggested language that is new to you at this meeting.

46

47 CHAIRMAN FLEAGLE: Okay. Just to
48 entertain that idea, would the -- would we not have a
49 duplicative regulation saying essentially the same
50 thing if we adopted the portion in section 13 and kept

1 section xi in place? I mean wouldn't the language in
2 13 sort of make section xi moot, I think that's the
3 discussion, but I'd like to hear from your perspective
4 what you think of that.

5
6 COMMISSIONER LLOYD: Well, thank you,
7 Mr. Chairman. I probably ventured further into an area
8 that I don't feel completely fluent in than I should
9 have which is why I actually framed my remarks with a
10 request to seek Staff clarification on these three
11 possible ramifications of your action. And so rather
12 than me commenting on that I'd still recommend we go
13 back to Staff one more time and see if they can help us
14 through this -- help you through this.

15
16 CHAIRMAN FLEAGLE: Okay, if you want to
17 just take us back to a clean starting point before I
18 muddled it up with all my comments would you restate
19 those three questions?

20
21 COMMISSIONER LLOYD: Mr. Chairman. We
22 have laid out some concerns about the potential
23 conflict between State and Federal regulations and the
24 vulnerability that that may place Federally-qualified
25 subsistence users in if you take the action that it
26 sounds like you may take.

27
28 There's also the issue of whether or
29 not section xi, 11, actually is necessary in order to
30 help clarify the amended language in digital section
31 13.

32
33 And then finally there was the question
34 of whether or not elimination of all of xi, 11,
35 including the existing language constitutes taking new
36 regulatory action at this meeting which seemed to be
37 the -- something that this Board -- some Board members
38 had said they didn't want to do at this meeting, that
39 doesn't mean you can't, but it's just an observation
40 that given that kind of record you'd want to clarify
41 yourself.

42
43 So those were the three items that I
44 was making observations about that perhaps the Staff
45 could help you sort through, Mr. Chairman.

46
47 CHAIRMAN FLEAGLE: Larry Buklis.

48
49 MR. BUKLIS: Thank you, Mr. Chairman.
50 Larry Buklis. I'm now the Fisheries Chief for OSM.

1 And I'll try to provide some framework
2 for your understanding on this. I won't speak
3 specifically to enforcement issues. I think the Forest
4 Service and the Council are closer to the resource use
5 than I am.

6
7 Section 13, the existing regulatory
8 language says quite clearly you may accumulate annual
9 limits, I'm going to paraphrase, you may accumulate
10 annual. On Page 26 of the Board book, the OSM Staff
11 work, the effect of that would say quite clearly, you
12 may not accumulate any harvest limits except as
13 follows, so it says you may not accurate except, and
14 what are the exceptions. The bolded language says you
15 may accumulate, the exception is annual and seasonal.
16 So what we've accomplished with that is we've made
17 clear that seasonal is part of this allowance now. But
18 it goes on to say so long as these limits we're
19 speaking to aren't accumulated on the same day.

20
21 You drop down to section xi, and that
22 goes further because it talks about possession limits.
23 I had spoken only to salmon but we've come to realize,
24 as the State has identified, we have subsistence
25 fisheries that they don't on certain species, so while
26 salmon only was listed as a carryover from the State
27 system, the Federal system has more species involved,
28 so to parallel that approach from the past you would
29 include the other species. We heard testimony from the
30 Council, I believe, and it might have been Southcentral
31 Council, that possession should not be a hinderance to
32 subsistence use. So while the State is correct that
33 the Staff work leading to today is what you see, you
34 did hear input that possession limits should not be a
35 further burden to the harvest limit regulation you're
36 working with.

37
38 So section xi goes further because it
39 brings into play possession which deals with that 15
40 day preservation factor.

41
42 I hope that provides some context for
43 13 being a clearer enunciation of seasonal and annual
44 are the exceptions, and xi which we came to you with
45 talks about possession but you've heard some testimony
46 about possession and subsistence uses.

47
48 Thank you.

49
50 CHAIRMAN FLEAGLE: Further

1 consideration. Bob.

2

3 MR. LARSON: Mr. Chairman. Mr. Bschor
4 asked earlier about whether or not these regulations
5 were necessary and during the break I had this
6 discussion with some of the other Staff and we could
7 find no recollections that we have any specific
8 instances where the regulatory change in xi would
9 address an enforcement issue or would be necessary. We
10 believe that the clarification involved in 13 would
11 certainly be beneficial for subsistence users, in that,
12 they would understand exactly. Now, we have to
13 remember that this issue is primarily steelhead in
14 Southeast Alaska so whether or not we want to branch
15 into all species is really not germane to this
16 particular issue and it wasn't the reason for the
17 original proposal. So we're talking about whether or
18 not you can continue to fish for steelhead once you've
19 taken a season limit, there's already a provision for
20 allowing a person to sportfish for steelhead if they've
21 taken an annual limit, however, the Board has passed
22 seasonal harvest limits for steelhead which then
23 there's the question, and we believe it would be the
24 Board's intent to allow sportfishing after a season
25 limit as well as an annual limit. So there's the
26 context of this question.

27

28 Thanks.

29

30 CHAIRMAN FLEAGLE: Thank you. Further
31 discussion Board members.

32

33 (No comments)

34

35 CHAIRMAN FLEAGLE: I guess the first
36 step would be to put a motion on the floor to adopt
37 Proposal 09-02.

38

39 MR. BSCHOR; Mr. Chair. I move to
40 adopt to Proposal 09-02.

41

42 MR. CESAR: I'll second it.

43

44 CHAIRMAN FLEAGLE: Speak to your
45 motion, please.

46

47 MR. BSCHOR: Well, my motion is to
48 clarify that it is not consistent with Regional
49 Advisory Council. I think with some wording of an
50 amendment to that would be helpful and it would

1 increase our ability to manage the program, I'm still
2 not sure whether that amendment would include item xi
3 or not and I think the issue comes down to whether it
4 would be detrimental to subsistence users, put them at
5 risk as far as enforcement or whether if we leave it in
6 does that reduce their ability to practice subsistence.
7 And I don't know what the risks are there, I don't
8 think they're very high either way personally. I think
9 they may -- as I listen to the discussion it sounds
10 like -- well, that's the nature of the issue so I'm
11 still not clear what my amendment might be there. I
12 can propose an amendment and we can vote on it, that's
13 the other thing. I'm prepared to do that. But if you
14 need more discussion, I don't know, maybe we've talked
15 it out all we can.

16

17 CHAIRMAN FLEAGLE: Excuse me, why don't
18 we just go ahead and give it a try, put an amendment on
19 the table and let's talk it up or down.

20

21 MR. BSCHOR: Well, I move to amend the
22 motion by substituting the language in paragraph
23 .27(i)(13) as shown in the conclusion on Page 26 of our
24 Board book. My substitute language would not include
25 the modification on xi.

26

27 Do you need my rationale?

28

29 CHAIRMAN FLEAGLE: Let's get a second
30 first.

31

32 MR. CESAR: I'll second it.

33

34 CHAIRMAN FLEAGLE: Okay, we got a
35 second to the amendment, go ahead, rationale.

36

37 MR. BSCHOR: Mr. Chair. I'm leaning
38 towards the fact that we don't know if we have a
39 serious problem, that there would be a problem with
40 enforcement, therefore, you know, I would rather err on
41 the side of not being detrimental to the satisfaction
42 of subsistence needs. I think by having accumulation
43 harvests that don't occur on the same day that speaks
44 to conservation reasons. I also think that if there is
45 an enforcement problem we have the ability through in-
46 season managers to manage that through the permit
47 system. And so, therefore, I don't think there's a
48 problem with conservation with the species relative to
49 this language.

50

1 Mr. Chair.

2

3 CHAIRMAN FLEAGLE: All right, thank
4 you, Denny.

5

6 So what we have now is we have an
7 amendment to replace language in Proposal 09-02 with
8 that in the first section of the OSM recommendation,
9 completely ignoring the change in the second section
10 and we can take action on this first one and I would
11 still be open to further action to address the second
12 language if we need to after this portion.

13

14 Discussion on Denny's amendment.

15

16 Niles.

17

18 MR. CESAR: Well, I'm still not real
19 clear on item xi. And, Denny, are you suggesting that
20 item xi be stricken in its entirety or are you saying
21 that item xi would say you may not possess subsistence
22 taken sport or sports -- and sports taken salmon,
23 period.

24

25 CHAIRMAN FLEAGLE: On the same day.

26

27 MR. CESAR: On the same day.

28

29 CHAIRMAN FLEAGLE: It would remain
30 unchanged.

31

32 MR. CESAR: Unchanged, right.

33

34 CHAIRMAN FLEAGLE: At this point,
35 that's open for further discussion.

36

37 MR. CESAR: Yeah.

38

39 CHAIRMAN FLEAGLE: Pete, do you want
40 to.....

41

42 MR. PROBASCO: Mr. Chair, I'll save my
43 comments on xi if there's an amendment to that, at this
44 time I have no comments.

45

46 CHAIRMAN FLEAGLE: Okay, at this point
47 we do have amended language that does not address
48 subsection -- or section xi, 11, is there any objection
49 to the amendment that Denny provided that would
50 substitute language with that provided in the first

1 section of the OSM's modifications.

2

3 (No comments)

4

5 CHAIRMAN FLEAGLE: Any objection.

6

7 MS. COOPER: Mr. Chairman. I have no
8 objection, a comment and that is the sticking point
9 that I hope we address at some point of Section .805(c)
10 the three areas where we need to justify if we're in
11 opposition to a RAC's position and I wasn't -- and now
12 that I'm thinking about it, I wish I would have asked a
13 follow-up question to Mr. Adams to find out if the
14 modification would -- if they would support that
15 language or if we're still at different -- looking at
16 it from different perspectives.

17

18 CHAIRMAN FLEAGLE: Sure. And by making
19 the motion and eliminating the opportunity for them to
20 have free discussion to just jump in, it doesn't mean
21 that we can't invite them and we certainly do and we
22 can certainly do that. And that's a good point, we do
23 need to address that, I mean it is our requirement to
24 address .805(c) so -- hang on.

25

26 (Pause)

27

28 CHAIRMAN FLEAGLE: Are we okay with a
29 non-objection on this or do you want a full voice vote?

30

31 MR. PROBASCO: Mr. Chair, your action
32 is adequate for the record at this point.

33

34 CHAIRMAN FLEAGLE: All right, I just
35 want to make sure.

36

37 Is there any objection?

38

39 (No comments)

40

41 CHAIRMAN FLEAGLE: All right. So we do
42 have the proposal as modified, further discussion.
43 Deb.

44

45 MS. COOPER: Mr. Chair. I'd like to
46 address a further request for clarity from Mr. Adams of
47 the Resource Advisory Council and that is I think I
48 understood you to say that if we did not change the
49 wording in section xi and narrowed the modification
50 just to what is shown in 27(i)(13) by the support with

1 modification that the RAC would be -- would no longer
2 be opposed, did I hear that correctly?

3

4 CHAIRMAN FLEAGLE: Bert.

5

6 MR. ADAMS: Thank you, Mr. Chairman.
7 What was your name, again?

8

9 MS. COOPER: It's Deb.

10

11 MR. ADAMS: Deb. I announced the
12 policy many, many years ago that I don't answer hard
13 questions, and that is a hard question but I'll do my
14 best.

15

16 Yes, the Council feels, you know, that
17 eliminating that and then keeping, you know, the other
18 portion of it would be fine so I hope that answers your
19 question.

20

21 MS. COOPER: It does, thanks.

22

23 MR. ADAMS: Thank you.

24

25 CHAIRMAN FLEAGLE: All right, so we do
26 have the amended proposal that incorporates the
27 modification provided by Staff without addressing any
28 change to the second portion and I would just want to
29 turn back to Commissioner Lloyd, how much heartburn
30 would the State have with making only half of this
31 amendment, which is what we just did?

32

33 COMMISSIONER LLOYD: Well, thank you,
34 Thank you, Mr. Chairman. If I can I'd defer my
35 comments either to George or Steve Daugherty.

36

37 CHAIRMAN FLEAGLE: Steven.

38

39 MR. DAUGHERTY: Mr. Chair. There would
40 be a danger that this would be detrimental to
41 subsistence users in that State Fish and Wildlife
42 enforcement officers would enforce possession limits
43 and they frequently do inspections in Southeast Alaska
44 at boat harbors when people come in.

45

46 5 AAC 75.010 regulates possession of
47 sport caught fish and provision (B) provides that a
48 person may possess only the limit of fish allowed for
49 the water on which the person is fishing as the
50 sportfishing limit and as a subsistence user who

1 possessed a -- was engaged in sportfishing and
2 possessed more than the limit for that fishery would be
3 cited under State law, Mr. Chair, so this regulation,
4 if adopted, could be detrimental to subsistence users
5 in that it would open them up to enforcement action by
6 the State.

7

8 Mr. Chair.

9

10 CHAIRMAN FLEAGLE: Thank you for that
11 clarification. Further consideration, Board members.

12

13 (No comments)

14

15 CHAIRMAN FLEAGLE: Tina, further.

16

17 MS. CUNNING: Just to further clarify
18 because it does get difficult. The language that's up
19 here that has been proposed is good language and we do
20 support that. Your question was was there any
21 heartburn about not fixing the possession piece too,
22 and Steven has just pointed out what the detriment is
23 for the subsistence user by not having it clear in the
24 Federal regs to match what is going to happen under the
25 State regs, and that was something that OSM brought to
26 our attention, which is why we agreed to support that
27 modification.

28

29 CHAIRMAN FLEAGLE: All right, thanks.
30 Let's let that stew over lunch and we'll come back at
31 1:15.

32

33 Pete.

34

35 MR. PROBASCO: Thank you, Mr. Chair.
36 Mr. Edwards did you want to say anything -- Mr. Haskett
37 had to step out because of a medical appointment he has
38 and so we get to have Mr. Edwards after lunch.

39

40 CHAIRMAN FLEAGLE: Yeah, welcome, Gary,
41 sorry I didn't recognize that. All right, let's stand
42 down for lunch.

43

44 (Off record)

45

46 (On record)

47

48 CHAIRMAN FLEAGLE: All right, good
49 afternoon. The Federal Subsistence Board is back on
50 record and we left a proposal hanging with an amendment

1 but before I go back to that I'm going to invite
2 Maureen to give a slight presentation on the artwork
3 that you see over on the wall over there.

4
5 Maureen.

6
7 MS. CLARK: Thank you, Mr. Chairman.
8 The art here in the room is part of our subsistence
9 student art contest. I'm sorry that no Council Chairs
10 are here right now because the Council Chairs are the
11 judges and they will pick a work from over there that
12 will go on the cover of our fisheries regulations book.
13 What you see here in the room has been selected for
14 honorable mention, we got about over 250 entries from
15 around the state and we have 40 honorable mentions.

16
17 We put the art, in addition to on the
18 cover, inside the book. It makes the book look nicer
19 and also, I think, people are picking up the book that
20 might not normally if neighbors and friends and
21 children they know have contributed to the art, so I'm
22 hoping that the Council Chairs will be available to
23 judge for us, if not, I may call on some folks for
24 help.

25
26 CHAIRMAN FLEAGLE: All right, well,
27 when we get them back at the table maybe you can give a
28 mention to that again. Well, thank you, Maureen. It
29 turns those otherwise once a year useful documents into
30 something worth saving in the archives, maybe framing
31 and hanging even.

32
33 All right, Pete, do you have anything
34 to open with after the break.

35
36 MR. PROBASCO: Yes, Mr. Chair, if I may
37 speak to Proposal 09-02 as far as roman numeral xi?

38
39 CHAIRMAN FLEAGLE: You bet, that is
40 where we're at, go ahead.

41
42 MR. PROBASCO: Okay, Mr. Chair, there's
43 been quite a few sidebar comments on this part of the
44 regulation and I think Mr. Adams started out very well
45 saying that his concern and his Council concern is that
46 they didn't want to adopt a regulation that would
47 result in being more restrictive. And if you really
48 take a look at xi and the way it's written it does
49 become more restrictive if it were adopted in this
50 manner, in that, and I'll just use a hypothetical case,

1 in that, if you were to go out subsistence fishing for
2 steelhead, that limited, and harvested that limit would
3 affect your ability to fish on any of those other
4 species as well in that given day and I don't think in
5 talking with Staff, both Forest Service and OSM, that's
6 not the intent of that language. The intent of that
7 language is to address species individually. In other
8 words if you're out Dolly Varden fishing for
9 subsistence you wouldn't accumulate a Dolly Varden
10 sportfish limit. And so with that, both Robert Larson
11 and Larry Buklis were working on -- you know the Board
12 can deal with it in whatever manner they so choose,
13 leave it as is or whatever, but they have provided some
14 language that would get at that to take the species and
15 treat them individually, and so when we get to that
16 point Staff will be ready to speak to that.

17

18 Mr. Chair.

19

20 CHAIRMAN FLEAGLE: All right, thanks.
21 We are at that point. Well, why don't we go ahead and
22 talk to the Staff suggested fix for this and then we'll
23 come back to the Board and see if the Board wants to
24 further address by a second amendment and go from
25 there.

26

27 Larry.

28

29 MR. BUKLIS: Thank you, Mr. Chairman.
30 As Mr. Probasco said the construction of the language
31 there is perhaps deficient and the intent would be
32 better captured by what I'm going to read now, we've
33 got paper copies if you want it.

34

35 It would read:

36

37 You may not possess subsistence taken
38 and sport taken fish of a given species
39 on the same day.

40

41 And, again, we have paper copies here
42 if you'd like to see that, we'll pass those out now.

43

44 (Pause)

45

46 CHAIRMAN FLEAGLE: And just to recap
47 what would this do, what would the intent of this
48 change be?

49

50 MR. PROBASCOS: Mr. Chair. If it's the

1 Board's wish the intent would deal with the possession,
2 which is not a take regulation, it's a possession,
3 whereas harvest limits are a take, this clarifies what
4 an individual fishing either under sportfish or Federal
5 subsistence could do with their possession limit and
6 would take it species by species with this language.

7

8 Mr. Chair.

9

10 CHAIRMAN FLEAGLE: Board members,
11 discussion.

12

13 If this is viewed as a change that has
14 merit, beneficial purpose then we would need an
15 amendment on it. If there are no amendments we're back
16 to the original proposal as previously amended for
17 action. That's where we're at.

18

19 Denny.

20

21 MR. BSCHOR: Well, Mr. Chairman, to
22 move this along, I'll make the motion to amend item xi
23 to read that:

24

25 You may not possess subsistence taken
26 and sport taken fish of any given
27 species on the same day.

28

29 MS. MASICA: Second.

30

31 CHAIRMAN FLEAGLE: Okay, we got a
32 second from Sue. Would you like to speak to that
33 amendment, please.

34

35 MR. BSCHOR: I think this is more
36 specific to more than just one species and I think that
37 might -- hopefully might take care of some of the
38 concern that the State has and still would not be
39 detrimental to the practice of subsistence.

40

41 CHAIRMAN FLEAGLE: Steven Daugherty,
42 does that address some of your concerns?

43

44 MR. DAUGHERTY: Mr. Chair, yes, I
45 believe that would address most of the State's
46 concerns.

47

48 CHAIRMAN FLEAGLE: Further discussion
49 on the amendment.

50

1 (No comments)
2
3 CHAIRMAN FLEAGLE: Any objection to the
4 amendment.
5
6 (No comments)
7
8 CHAIRMAN FLEAGLE: Hearing none, that
9 amendment carries.
10
11 Now, we're back to final action on
12 Proposal 09-02 as twice amended and now I think it's
13 probably appropriate to have the discussion addressing
14 .805(c) that Sue brought up earlier as how it applies
15 to this case because we do have on record a Council
16 recommendation to oppose and I think it would be
17 appropriate to have a brief discussion as to why we
18 would vote in opposition to that recommendation.
19
20 Board members.
21
22 Denny.
23
24 MR. BSCHOR; Mr. Chair. I think the
25 wording is beneficial to subsistence users and it
26 agrees, actually it helps with the con -- it takes care
27 of any conversation concerns, apparently would be more
28 enforceable and I think that's about the reasons I
29 would come up with, if anybody else has anything to
30 add.
31
32 Mr. Chair.
33
34 CHAIRMAN FLEAGLE: Further discussion,
35 Niles.
36
37 MR. CESAR: Mr. Chairman. Maybe it
38 might be appropriate to ask Mr. Adams, you know, to
39 weigh in at this point even though it's before the
40 Board.
41
42 CHAIRMAN FLEAGLE: Bert.
43
44 MR. ADAMS: Mr. Cesar is getting back
45 at me for all of the bad articles I wrote about him a
46 long time ago.
47
48 (Laughter)
49
50 MR. ADAMS: This simplifies everything

1 in my view, Mr. Chairman, so I am okay with that.

2

3 CHAIRMAN FLEAGLE: All right. Any
4 further discussion on Proposal 02.

5

6 (No comments)

7

8 CHAIRMAN FLEAGLE: All right, we're
9 ready for action, is somebody ready to call the
10 question.

11

12 MR. NILES: Question is called, Pete,
13 on Proposal 02, please poll the Board.

14

15 MR. PROBASCO: Thank you, Mr. Chair.
16 And before I poll the Board, for the benefit of our new
17 Board members it's our policy that we rotate who gets
18 to go first and so as we go through our votes you'll
19 notice the next one will have a different person on
20 step for the first vote.

21

22 So this one starts out with Mr. Lonnie.

23

24 MR. LONNIE: Yes.

25

26 MR. PROBASCO: Mr. Bschor.

27

28 MR. BSCHOR; Aye.

29

30 MR. PROBASCO: Mr. Cesar.

31

32 MR. CESAR: Aye.

33

34 MR. PROBASCO: Mr. Edwards.

35

36 MR. EDWARDS: Aye.

37

38 MR. PROBASCO: Mr. Fleagle.

39

40 CHAIRMAN FLEAGLE: Aye.

41

42 MR. PROBASCO: And Ms. Masica.

43

44 MS. MASICA: Aye.

45

46 MR. PROBASCO: Motion carries,
47 six/zero.

48

49 CHAIRMAN FLEAGLE: All right, thanks.
50 Well let's see 1:30 and we did one proposal, at this

1 rate what's everybody doing until Saturday.

2

3 (Laughter)

4

5 CHAIRMAN FLEAGLE: I'm kidding. It
6 always takes a little while to get used to the process
7 again on the first proposal and this was kind of a
8 difficult one in that it had a lot of intricacies that
9 needed to be vetted out and so it took a little extra
10 time. I don't anticipate that all of our issues are
11 going to be as lengthy in time.

12

13 With that we're moving on to Proposal
14 09-03. Larry Buklis -- okay, I'll call on Jeff Reeves
15 who has just joined us, welcome, Jeff, good to see you.

16

17 MR. REEVES: Thank you, Mr. Chairman.
18 Board members. My name is Jeff Reeves, I'm with the
19 Forest Service, I'm based out of Craig. I'll be
20 presenting the analysis of FP09-03. The executive
21 summary is on Page 32. And the analysis begins on Page
22 34 of the Board book.

23

24 This proposal was submitted by the
25 Alaska Department of Fish and Game and it would alter
26 various management components of the Prince of
27 Wales/Kosciusko and the Southeast Alaska Federal
28 subsistence steelhead fisheries. The proponent
29 believes that the Federal fisheries will lead to
30 overharvest. These changes along with anticipated
31 State regulation changes are said to ensure steelhead
32 conservation while continuing to provide a preference
33 to Federally-qualified subsistence users.

34

35 The proposal addressed six items of
36 concerns and these have either been considered before
37 through the Federal regulatory process or covered under
38 the consultation process that was directed by the
39 Federal Board when the fisheries were created.

40

41 This analysis is only going to cover
42 the use of bait, locations of harvest, handline use and
43 the fin clipping of subsistence taken steelhead as
44 daily and annual accumulation was already addressed in
45 the previous proposal.

46

47 Prior to the first Federal subsistence
48 fishery for steelhead, all steelhead harvest had
49 occurred under State of Alaska sportfishing regulations
50 or was incidental to subsistence or commercial

1 fisheries. Although there are customary and
2 traditional use determinations for steelhead in State
3 subsistence regulations for portions of District 3 and
4 of all of District 7 and 8 in Southeast Alaska, the
5 State regulations prohibit the issuing of subsistence
6 permits of steelhead but still allow the incidental
7 harvest under those permits -- or under permits for
8 salmon, excuse me. Permitholders are required to
9 report any steelhead taken but they're not required to
10 mark those fish.

11
12 The regionwide sportfishing regulations
13 allow for the harvest of one fish daily, two annually,
14 36 inches greater in length. During 2003 the Board of
15 Fish revised the sport regulation specifying that a two
16 day harvest limit would only apply to the Klawock
17 Rivers and Ketchikan Creek where at that time adipose
18 clip steelhead could be found. In 2006 the Board of
19 Fish adopted a regulation giving authority to the
20 Commissioner to require steelhead harvested in the
21 commercial net fisheries and retained for personal use
22 to be reported on fish tickets. To-date the
23 Commissioner has only implemented the requirement in
24 the District 8 Stikine chinook salmon fishery.
25 Currently the Board of Fish has a steelhead related
26 proposal that they'll consider in February of 2009.
27 The proposal submitted by the fisheries would limit
28 retention of steelhead to 16 systems in Southeast
29 Alaska.

30
31 The Federal Subsistence Board
32 established the first Federal subsistence fishery for
33 steelhead in 2002 on Prince of Wales Island. The
34 following year the Board added Kosciusko Island to the
35 same fishery. In 2005 the Board allowed for the
36 subsistence steelhead fishery in the remainder of
37 Southeast Alaska. Rather than implementing separate
38 regulations by drainage in those fisheries the Board
39 directed that permit conditions in systems to receive
40 special attention would be determined by the local
41 Federal fisheries manager through consultation with the
42 ADF&G. Federal managers have applied stipulations to
43 Federal permits following consultation and examples of
44 those restrictions can be found in Appendix B.

45
46 Currently subsistence users are not
47 required to mark trout or steelhead or char by fin
48 clipping. Federal subsistence users must only remove
49 the caudal fin of salmon when taken. The primary
50 purpose of marking was to prevent subsistence taken

1 salmon from mixing -- with commercially taken salmon in
2 the marketplace. There is no commercial market for
3 trout or char except for a very limited sale of
4 steelhead taken in the troll fishery. In 2003 the
5 Board rejected a proposal which would have required fin
6 clipping of subsistence taken trout and char and
7 prohibited the accumulation of Federal and State
8 sportfishing limits for trout on the same day. The
9 Board did not discuss the proposal as it became a
10 consent agenda item. In 2005 the board further defined
11 the handline use for subsistence harvesting. Although
12 the proposal's intent was for harvesting salmon the
13 Board approved the Council's modification to add this
14 as a legal gear for harvesting steelhead. Prior to
15 2006 the use of bait was only allowed with rod and reel
16 gear from September 15th to November 15th in both the
17 State sportfishing and the Federal subsistence salmon
18 fishery. In 2006 the Board removed the prohibition of
19 bait to increase the harvest efficiency of rod and reel
20 gear. To eliminate catch and release mortality of
21 trout in steelhead language was added requiring the
22 fisher to retain all fish caught with bait and that
23 once a daily or annual limit of steelhead was harvested
24 that you could no longer fish with bait for any
25 species. Concern over particular drainages would be
26 covered through permit conditions as set by the local
27 Federal manager.

28

29 A three year steelhead assessment
30 project funded by the Fisheries Resource Monitoring
31 Program occurred from 2005 to 2007 on Prince of Wales.
32 Data from those joint agency study has helped to manage
33 the Prince of Wales fishery. Management changes
34 following the results of those studies can be found in
35 Appendix B.

36

37 Preliminary length data has suggested
38 that 1.4 percent of 1,029 steelhead sampled during
39 those projects met the sport size minimum.

40

41 There are three Federal steelhead
42 fisheries. Local Federal managers monitor harvest
43 during these fisheries. Law enforcement assists by
44 checking anglers to ensure that they have proper
45 permits or licenses. Using the monitoring information
46 the local Federal managers have the authority to close
47 down the fisheries when and if a conservation concern
48 arises. Federal permit returns for these three
49 fisheries has been nearly 100 percent reporting low
50 harvest and effort. The present Federal management is

1 commensurate with the level of harvest. Table 1 on
2 Page 42 summarizes the three Federal steelhead
3 fisheries by year, method -- gear type and harvest
4 locations.

5
6 From 1989 to 1994 the average sport
7 harvest was 2,700 steelhead per year for Southeast
8 Alaska. Since 1994 when the more restrictive
9 sportfishing regulations went into effect, the yearly
10 sport harvest in Southeast Alaska has averaged 138
11 steelhead. From 2001 through 2004 the average reported
12 sport harvest in Southeast has been 168 steelhead.
13 Thee average reported catch during the same time was
14 3,903 steelhead per year. If five percent of those
15 fish caught died after release the resulting mortality
16 average would be approximately 195 steelhead per year
17 during that same period. There are no directed
18 commercial fisheries for steelhead. Incidental harvest
19 in the commercial salmon fishery does occur and has
20 ranged from 533 to a high of over 11,000 for all of
21 Southeast Alaska. Since 1994 only steelhead taken in
22 the troll fishery could be sold. From 1997 to 2002
23 commercial trollers sold about 50 per year. Since then
24 the number has ranged from three to 108. Since 2006
25 the Commissioner has only required steelhead reporting
26 in the Stikine terminal chinook fishery, 14 were
27 reported taken in 2006 and eight reported in 2007.

28
29 Adopting the proposal would add
30 unnecessary restrictions to the Federal subsistence
31 harvest of steelhead in both the Prince of Wales,
32 Kosciusko and the Southeast Alaska subsistence
33 steelhead fisheries.

34
35 The OSM conclusion is to oppose the
36 proposal. The reported harvest from the Federal
37 steelhead fisheries has been small with the current
38 Federal management being commensurate to this level of
39 harvest. Heavily restricting the Federal steelhead
40 fisheries while other fisheries remain open does not
41 recognize subsistence use as a priority.

42
43 Thank you.

44
45 CHAIRMAN FLEAGLE: Thank you, Jeff.
46 Questions.

47
48 (No comments)

49
50 CHAIRMAN FLEAGLE: Alrighty. Summary

1 of public comments, Robert.

2

3 MR. LARSON: Yeah, Mr. Chairman, the
4 public comments for 03 are found on Page 62 of your
5 Board book. There is one in opposition and one in
6 support.

7

8 The comment in opposition is from a
9 resident of Sitka. The focus of his comments is that
10 this proposal would be an unnecessary restriction and
11 may be potentially dangerous to the resource. Focusing
12 all of the regional harvest on a handful of streams is
13 moving in the wrong direction as there are very few
14 systems that produce large numbers of steelhead.

15

16 The one comment in support is from the
17 Kenai River Sportsfishing Association. And they feel
18 that the proposal balances realities of managing small
19 fragile stocks of steelhead where the budget and
20 infrastructure does not exist to allow for
21 comprehensive monitoring. They believe that this
22 proposal would ensure conservation and reflects
23 anticipated changes that may be made by the Board of
24 Fish this spring.

25

26 CHAIRMAN FLEAGLE: Okay, thank you.
27 Public testimony on this proposal, Pete.

28

29 MR. PROBASCO: Mr. Chair, we do not
30 have anyone signed up for this proposal.

31

32 CHAIRMAN FLEAGLE: Regional Council
33 recommendation. Bert.

34

35 MR. ADAMS: Thank you, Mr. Chairman.
36 The Southeast Alaska Regional Advisory Council opposes
37 this proposal. Again, as in the previous proposal the
38 Council disagreed with the State's comments regarding
39 the potential for a conservation concern and it also
40 puts more restrictions on the subsistence users.

41

42 The great majority of steelhead
43 harvested in Southeast Alaska is taken in the
44 commercial fishery and the ADF&G has shown no interest
45 in documenting the troll harvest of steelhead.
46 Subsistence harvest at the current level is too small
47 to be considered a conservation issue at this point.
48 And so local managers can specify more restrictive
49 management measures as a permit condition as needed for
50 conservation purposes.

1 Thank you, Mr. Chairman.

2

3 CHAIRMAN FLEAGLE: Thank you, Bert.
4 Department of Fish and Game comments. George.

5

6 MR. PAPPAS; Thank you, Mr. Chair.
7 George Pappas, Department of Fish and Game. And I'm
8 summarizing the Department's full formal comments that
9 are in your proposal book at Pages 57 through 61 and
10 these full comments will also be entered into the
11 record. Additionally you should have two handouts,
12 that'd be Proposal 290 that has been submitted to the
13 Alaska Board of Fisheries and also you should have a
14 color copy of the brief PowerPoint presentation I'll
15 insert into these comments.

16

17 The State has repeatedly raised
18 concerns for steelhead stocks in Southeast Alaska
19 created by the Federal subsistence regulations.
20 Residents in Southeast Alaska and area managers went
21 through great lengths to have stocks rebound to
22 sustainable levels after they were significantly harmed
23 by liberal methods and means and harvest limits prior
24 to 1994, overall the current steelhead harvest levels
25 could probably be sustained but the potential for
26 overharvest that exists by the allowed harvest
27 opportunity in the Federal regulations causes serious
28 concern for the small stocks on unmonitored streams.

29

30 Some of the streams may consist of
31 populations of 10 or fewer returning adult steelhead.
32 In very small steelhead stocks, say 10 or less fish,
33 may not be able to be sustained if more than 10 percent
34 or one or two fish in this case are removed from the
35 population. Active steelhead monitoring in Southeast
36 Alaska occurs annually only 16 streams and the
37 necessary information required to evaluate increased
38 subsistence harvest levels is not available. The
39 current Federal subsistence regulations and permit
40 conditions are not conservative enough -- not
41 conservative enough to ensure conservation of steelhead
42 stocks in Southeast Alaska freshwater systems.

43

44 Under State regulations the 36 inch
45 length restriction is especially effective when applied
46 to smaller systems which tend to produce smaller
47 steelhead. In some small Southeast systems, less than
48 one percent of the steelhead may reach 36 inches in
49 length or longer. Additional restrictions are bait and
50 snagging prohibitions in the sportfishery, minimum size

1 limits of 11 inches which protects steelhead juveniles
2 and kelts and restrictions on harvest in the net
3 fisheries that reduce bycatch of steelhead including
4 prohibitions on the sale of steelhead captured in net
5 fisheries. In the absence of restrictive methods and
6 means and harvest limitations similar to those provided
7 by the State regulations Federal subsistence harvest of
8 steelhead trout should only be authorized in waters
9 with active stock assessment programs or documented
10 annual escapement large enough to with stand an
11 increased harvest.

12
13 Because the Federal Board has continued
14 to allow Federal harvest we believe could be
15 unsustainable, the Department has presented a
16 restrictive conservation base set of regulations to
17 both the Federal Board and the Alaska Board of
18 Fisheries. Proposal 290 going to the Alaska Board of
19 Fisheries for your consideration -- excuse me, for
20 consideration at the February 2009 meeting parallels
21 the proposal in front of you. It would close all but
22 16 streams to steelhead retention. This would result
23 in focusing harvest opportunities on larger monitored
24 streams with more robust populations.

25
26 Most steelhead populations in Southeast
27 Alaska receive an annual escapement of 200 or fewer
28 fish with only a handful of systems regularly receiving
29 escapements over 500 fish. Fisheries managers believe
30 that steelhead populations in Southeast Alaska need to
31 be managed very conservatively and may only sustain a
32 small harvest rate of say 10 percent or less. History
33 has shown that the levels of harvest opportunity
34 provided by the current Federal regulations cannot be
35 sustained. If this proposal passes people will still
36 be able to harvest other species of fish from streams
37 not listed within the 16 streams, they just won't be
38 able to retain steelhead. Regulations this restrictive
39 would be unnecessary and some additional harvest would
40 be allowed if the Federal Board mirrored more stringent
41 State regulations on smaller streams. Because the
42 Federal Board has not done so, those more restrictive
43 retention closures are needed in order to protect the
44 small stocks exposed to more efficient methods and
45 means and harvest limits approved by the Federal Board.
46 We would prefer the Federal Board adopt more
47 conservative limits and methods and means such as we've
48 proposed over the last few years. Because the Board
49 has been unwilling to make some of the modifications to
50 existing regulations this proposal is necessary to

1 provide for conservation of small steelhead stocks. If
2 this proposal is adopted, the Federal subsistence
3 steelhead fishery in Southeast Alaska will continue to
4 be -- will continue to provide a meaningful preference
5 for subsistence use of steelhead but the harvest should
6 be focused on monitored or surveyed streams where
7 sustainability can be assured. The use of bait may
8 also be reduced in some of the streams in order to
9 protect both juvenile and adult steelhead trout but
10 should not significantly impact subsistence users.

11

12 And I have a brief PowerPoint
13 presentation to support this.

14

15 I have a few slides which will assist
16 with understanding the scope of the conservation based
17 proposals which have been submitted to both the Federal
18 Subsistence Board and the Alaska Board of Fisheries.

19

20 Next slide, please.

21

22 The proposal -- the proposed -- the
23 purpose behind the Department's proposal to both Boards
24 is to ensure the sustainability of steelhead stocks in
25 Southeast Alaska. The Department has submitted or
26 supported steelhead conservation based proposals to the
27 Board beginning in the year 2000. The series of
28 proposals that have been presented to the Board over
29 the years contain a wide variety of regulatory options
30 to assist with ensuring steelhead populations in
31 Southeast Alaska or remain sustainable including small
32 and unmonitored steelhead streams. The Department
33 remains open for discussion for regulatory options to
34 address our conservation concerns.

35

36 Next slide, please.

37

38 This slide contains the Federal
39 subsistence proposals involving steelhead in Southeast
40 Alaska from 2000 through 2008. You'll notice the
41 retyped-face word, rejected, following the majority of
42 the proposals during this timeframe and many of these
43 rejected proposals contain requests for conservation
44 based regulations which include request for minimum
45 size, conservative harvest limits, specific methods and
46 means, seasons, reporting frequency, bait restrictions
47 amongst other conservation based requests. Very few of
48 the Department's concerns have been addressed through
49 this process although we've been consistent with our
50 attempts in every opportunity to alert the Board to our

1 concerns and provide the Board with more conservative
2 options consistent with the Board's procedurals --
3 procedures and legal responsibilities. The Department
4 cannot ensure sustained yield management without
5 cooperation of this Board and the Department's ideas
6 for regulatory options that would further sustain yield
7 management all have been virtually exhausted. Given
8 the Board's rejection of prior alternatives, at this
9 point the Department's regulatory options have been
10 narrowed down to and required submitting FP09-03 and
11 the Alaska Board of Fisheries proposal 290 as a final
12 administrative avenue for attempting to ensure that
13 conservation of steelhead stocks is provided for and
14 that the State's constitutional sustained yield
15 management -- mandate is achieved.

16

17 Next slide, please.

18

19 This brings us to Proposal FP09-03.
20 This is a slide of Southeast Alaska regional streams
21 which contain steelhead stocks which the Department has
22 determined could sustainably provide significant
23 harvest opportunity under conservation based
24 regulations. On this slide 16 streams the Department
25 proposes to allow steelhead harvest are identified with
26 the red lines. Other streams are not currently known
27 to support steelhead stocks robust enough to withstand
28 any significant harvest and it is clear that the stocks
29 could be threatened by harvest of only a few fish in
30 many small streams. The list of stream names that
31 could support conservation conservative harvest
32 strategies can be found on Page 2 of the Alaska Board
33 of Fisheries proposal 290 which was handed out earlier.
34 In reviewing both sport and Federal subsistence harvest
35 reports and statewide harvest survey estimates
36 approximately 60 percent of both the Federal
37 subsistence and State sport steelhead fishery harvest
38 takes place within these identified 16 streams, thus,
39 if this proposal was adopted by both the Federal and
40 State Boards all users would potentially share a 40
41 percent reduction in harvest from the Southeast region.

42

43 Next slide, please.

44

45 This slide identifies the communities
46 in the vicinity of the streams identified by the
47 Department to have conservation based harvest
48 opportunities and I believe this map includes all
49 communities within 20 miles of the identified 16
50 streams.

1 Next slide, please.

2

3 This brings us to Proposal 290
4 submitted to the Alaska Board of Fisheries. The above
5 effects are listed on Page 58 of your Board meeting
6 materials. If Proposal 290 is adopted sport anglers
7 will have their steelhead harvest restricted to the 16
8 identified streams. Additionally, the sport fishers
9 will have bait, seasons, gear type and accumulation
10 restrictions placed upon Southeast Alaska steelhead
11 sportfisheries.

12

13 Next slide, please.

14

15 In conclusion if both the Federal
16 Subsistence Board and the Alaska Board of Fisheries
17 adopted the submitted proposals the burden of
18 conservation will be shared between user groups and a
19 meaningful preference for Federal subsistence can be
20 provided through preferences on those streams where
21 harvest is allowed. If the Federal Subsistence Board
22 finds the Department's proposal too restrictive the
23 Department is open for discussions to other options for
24 attempting to meet the different users needs without
25 detrimentally impacting the fisheries resources.

26

27 That concludes my comments, thank you,
28 Mr. Chair.

29

30 *****

31 STATE OFFICIAL WRITTEN COMMENTS

32 *****

33

34 Alaska Department of Fish and Game
35 Comments to the Federal Subsistence Board

36

37 FP09-03 Southeast Alaska Steelhead
38 Conservation

39

40 Introduction:

41

42 Southeast Alaska steelhead conservation
43 has continuously arisen as a divisive issue between the
44 Alaska Department of Fish and Game (Department) and the
45 Federal Subsistence Board (Federal Board). While the
46 Department believes that overall Southeast steelhead
47 harvest levels could probably be safely sustained at
48 current levels, it has serious concerns regarding
49 harvests from smaller stocks on unmonitored streams.
50 The Department unwaveringly continues to submit

1 proposals, comments, correspondence, presentations,
2 requests for reconsideration, data, and data request
3 responses with the overall intent of conserving
4 vulnerable steelhead populations in small streams in
5 Southeast Alaska, while allowing some limited harvest
6 on most streams and focusing harvest opportunities onto
7 larger monitored streams with more robust steelhead
8 populations. The Department has submitted or supported
9 proposals advancing selective restriction options, such
10 as minimum length restrictions, harvest limits,
11 seasons, single hook requirements, limited stream
12 closures, and prohibitions on use of bait, which are
13 similar to those found in State of Alaska (state)
14 regulations to provide for the conservation of these
15 small stocks. Some streams may consist of populations
16 of 10 or fewer fish which could be decimated by fishing
17 under federal regulations with highly efficient gear
18 types and less restrictive harvest limits. The
19 Department believes that the meaningful priority for
20 subsistence use of steelhead should be provided by
21 mirroring protective state regulations on smaller
22 unmonitored streams and by providing enhanced harvest
23 opportunity greater than that allowed under state
24 regulations only on larger monitored streams.

25
26 The Department has continually
27 expressed concern to the Federal Board regarding the
28 importance of conservative regulations for the
29 steelhead fisheries in Southeast Alaska, and
30 particularly for those fisheries in small unmonitored
31 streams. The Department has exhausted all
32 administrative and procedural processes to install
33 conservation-based regulations allowing limited harvest
34 of steelhead with lower efficiency gear in the federal
35 subsistence fisheries. Due to continuously expansive
36 federal subsistence harvest provisions, the Department
37 has been forced to submit a more restrictive
38 conservation-based set of regulations disallowing
39 steelhead retention to the Alaska Board of Fisheries
40 and the Federal Board. Regulations this restrictive
41 would be unnecessary, and some additional harvest could
42 be allowed, if the Federal Board mirrored more
43 stringent state regulations on smaller streams.
44 Because the Federal Board has not done so, these more
45 restrictive retention closures are needed in order to
46 protect small stocks exposed to the more efficient
47 methods and means and higher harvest limits approved by
48 the Federal Board.

49
50 This conservation-based proposal

1 essentially mirrors and complements the restrictive
2 proposal (#290) submitted to the Alaska Board of
3 Fisheries for the February 17-26, 2009, meeting. This
4 proposal would modify federal subsistence regulations
5 regarding steelhead trout harvest in freshwaters on
6 federal public land in Southeast Alaska. It would help
7 ensure conservation of steelhead trout stocks in small
8 unmonitored streams throughout Southeast Alaska. These
9 proposed modifications to the federal regulations,
10 which have not been directly considered before, are
11 necessary to address the state s conservation concerns
12 with existing federal harvest limits and methods and
13 means. The proposed provisions include:

14
15 Restricting harvest of steelhead to
16 designated systems and seasons.

17
18 Allowing harvest of steelhead only from
19 streams that contain harvestable surpluses as
20 determined by the Department, e.g., by monitoring or
21 surveys.

22
23 Prohibiting use of bait in all
24 freshwaters where steelhead may be present from
25 November 16 through September 14, except in designated
26 systems and seasons where retention of steelhead is
27 authorized.

28
29 Restricting use of bait in the
30 designated systems and seasons when a daily, seasonal,
31 or annual limit of steelhead trout has been harvested
32 by a subsistence user.

33
34 Prohibiting snagging where a size limit
35 applies to a species present in the area.

36
37 Prohibiting possession of subsistence
38 and sport-harvested steelhead on the same day.

39
40 Prohibiting accumulation of federal and
41 state sport fishing harvest limits for steelhead.

42
43 If the Federal Board does not enact one
44 or more of the above conservation measures previously
45 recommended by the Department, then unnecessary impacts
46 on other uses will occur. This would be contrary to
47 the intent and spirit of ANILCA ^U815. The Alaska Board
48 of Fisheries may conclude it has no choice but to
49 protect steelhead by closing most freshwaters of
50 Southeast Alaska to all retention of steelhead, and, if

1 subsistence harvest of steelhead continues to grow,
2 perhaps to other fishing, to protect steelhead stocks.
3 Adoption of this proposal is not the ideal solution,
4 but if the Federal Board continues to allow higher
5 harvest limits and more efficient methods and means in
6 its general regulations, this proposal will be
7 necessary to provide for conservation of small
8 steelhead stocks.

9

10 Impacts to Subsistence Users:

11

12 The 2007 federal staff analysis to the
13 Southeast Regional Advisory Council (pp. 126-127) and
14 Federal Board reported only 100 steelhead were
15 harvested under federal subsistence permits in the past
16 three years. Although this number is not high, the
17 actual recent numbers of steelhead taken may be higher
18 because a recent study indicates that permit and
19 reporting compliance rates are low (Turek 2005). On
20 the other hand, if the federal subsistence harvest of
21 steelhead is in fact low, adoption of this proposal
22 should have no significant impact on subsistence. If
23 this proposal is adopted, the federal subsistence
24 steelhead fishery in Southeast Alaska will continue to
25 provide a meaningful preference for subsistence use of
26 steelhead, but the harvest effort will be focused on
27 monitored or surveyed streams where permit conditions
28 could be developed to prevent overharvest. If this
29 proposal is adopted, the use of bait may be reduced in
30 some streams in order to protect both juvenile and
31 adult steelhead trout, but should not significantly
32 impact subsistence harvests.

33

34 Opportunity Provided by State:

35

36 Steelhead trout, where taken
37 incidentally by gear operated under terms of a state
38 subsistence permit or combined subsistence/personal use
39 permit for salmon, may be legally harvested and
40 possessed. Reported incidental harvest from Southeast
41 Alaska personal use and subsistence fisheries from
42 2003-2007 was a total of seven fish. The holder of a
43 state subsistence salmon permit must report any
44 steelhead incidentally taken in this manner on his or
45 her permit calendar. The State has a comprehensive
46 package of sport, personal use, commercial, and
47 subsistence regulations that work together to conserve
48 steelhead and provide a limited opportunity for
49 subsistence harvest and use. These include a length
50 restriction of 36 or more, which is 2% to 3% of the

1 steelhead stocks in most Southeast systems and up to 5%
2 of the steelhead in the larger Situk system. The 36
3 length restriction is especially effective when applied
4 to smaller systems, which tend to produce smaller
5 steelhead. In some small Southeast systems, less than
6 1% of the steelhead may reach 36 or more. Additional
7 restrictions are bait and snagging prohibitions in the
8 sport fishery, and restrictions on harvest in net
9 fisheries that reduce bycatch of steelhead (including
10 prohibitions on the sale of steelhead captured in net
11 fisheries).

12
13 A state subsistence fishery for
14 steelhead in the Situk River was established in 1988 by
15 the Alaska Board of Fisheries (5 AAC 01.680 (d)). One
16 state subsistence permit was issued in the last 20
17 years for the Situk River, and that permit was not
18 fished. Although this state steelhead subsistence
19 fishery allows directed harvest of steelhead, the Situk
20 River is among the best understood and studied
21 steelhead rivers in Alaska. The Situk River is an
22 excellent example of a monitored steelhead stock which
23 will continue to allow harvest of steelhead under
24 proposed regulatory changes submitted to the Alaska
25 Board of Fisheries and the Federal Board as long as
26 continued monitoring evidences a harvestable surplus is
27 available.

28
29 Conservation Issues:

30
31 Current federal subsistence regulations
32 and permit conditions are not conservative enough to
33 ensure conservation of steelhead trout stocks in
34 Southeast Alaska freshwater systems, especially the
35 smaller (<100 annual escapement), easily accessed
36 systems that may receive intensive pressure. Steelhead
37 fisheries with less conservative regulations than
38 current regional sport fishery steelhead regulations
39 may not be sustainable. The only active steelhead
40 monitoring program in Southeast Alaska occurs annually
41 on 16 systems, and the necessary information required
42 to evaluate increased subsistence harvest levels is
43 simply not available. To compensate for potential
44 cumulative overexploitation of steelhead stocks, the
45 Department submitted proposal number 290 to the Alaska
46 Board of Fisheries to severely restrict the sport
47 fishery on all unmonitored steelhead stocks. Proposal
48 290 (Attachment 1), which would close all but 16
49 systems in Southeast Alaska to steelhead retention,
50 will be considered by the Alaska Board of Fisheries at

1 its February 2009 meeting.

2

3 Declines in steelhead population were
4 evident in Southeast Alaska prior to 1994 under the
5 sport fishing regulations then in effect, which were
6 similar to current federal subsistence regulations. In
7 1994, the Alaska Board of Fisheries enacted more
8 conservative regulations for steelhead in Southeast
9 Alaska, and these more restrictive regulations have
10 successfully contributed to reversing the decline in
11 steelhead populations observed in the late 1980s and
12 early 1990s.

13

14 Most steelhead populations in Southeast
15 Alaska receive an annual escapement of 200 or fewer
16 fish, with only a handful of systems regularly
17 receiving escapements over 500. Nearly all Southeast
18 Alaska steelhead stocks are difficult or impossible to
19 assess accurately or monitor on a regular basis.
20 Without basic specific stock status information
21 available, the steelhead stocks in Southeast Alaska
22 need to be managed conservatively and may only be
23 sustained with very low harvest rates of 10 percent or
24 less. History has shown that levels of harvest
25 opportunity provided by the federal subsistence
26 regulations cannot be sustained in absence of an
27 intensive stock assessment program.

28

29 In the absence of restrictive methods
30 and means provisions and harvest limitations similar to
31 those provided in state regulations, federal
32 subsistence harvest of steelhead trout should only be
33 authorized in waters with an active stock assessment
34 program or a documented annual escapement large enough
35 to withstand an increase in harvest. Federal
36 authorization to allow the use of bait for subsistence
37 steelhead users and required retention of steelhead
38 caught with bait effectively eliminates any minimum
39 size limit and does not protect steelhead smolt as they
40 emigrate to saltwater. State regulations protect
41 nearly all steelhead smolt under the no-bait and
42 minimum size limit (11 inches) regulations. Federal
43 officials are currently attaching stipulations to
44 permits matching state regulations concerning size
45 limits and prohibiting bait use for the streams
46 crossing the Sitka road system. Federal officials
47 currently prohibit the use of bait where a minimum size
48 limit is established by federal permit stipulation.
49 Other Southeast Alaska road systems that are crossed by
50 streams with steelhead have minimum size limits, though

1 not as conservative as in State regulations, and bait
2 prohibitions. Little impact to federal users would
3 result from changing the regulation to mirror existing
4 bait and size restrictions along the Southeast Alaska
5 road system federal subsistence steelhead fisheries.
6 On the other hand, there are some small systems on
7 Prince of Wales Island that do not have any size
8 limitations attached to the permit. This illustrates
9 the State's concern that the federal designated
10 official for these systems, for example, is not taking
11 a conservative enough approach to protect these small
12 accessible steelhead fisheries. If these restrictions
13 were in regulation rather than dependent on the
14 discretion of area officials to apply as stipulations
15 on permits, the State's concern for conservation of
16 these small systems would be reduced.

17
18 As previously discussed, permit
19 conditions establish less of a community standard for
20 compliance than do regulatory standards. The existing
21 federal regulations are inconsistent with the sound
22 management of these discrete steelhead stocks and will
23 likely result in unnecessary restrictions on other
24 uses. Adoption of this proposal would provide for
25 necessary conservation, would still provide a
26 meaningful subsistence priority, and would prevent
27 unnecessary restrictions on other users.

28
29 The Department urges the Federal Board
30 to respect the Department's concerns for stock
31 conservation. Federal subsistence limits and
32 regulations are creating the potential for
33 unnecessarily impacting the sustainability of distinct
34 Southeast steelhead stocks. Stock assessment and the
35 acquisition of reliable stock status data for numerous
36 small steelhead stocks are necessary before continuing
37 to authorize an expanded federal subsistence take of
38 these unique fish in Southeast Alaska under federal
39 fishing and harvest regulations.

40
41 Due to the continuation of the federal
42 take provisions, the Department has been forced to
43 present a more restrictive conservation-based set of
44 regulations to the Alaska Board of Fisheries and the
45 Federal Board. Although less restrictive alternatives
46 are preferable and some additional harvest could be
47 allowed if the Federal Board mirrored more restrictive
48 state regulations on smaller streams, absent that
49 response from the Federal Board, more restrictive
50 provisions including closures to retention are needed

1 to protect small stocks.

2

3

Enforcement issues:

4

5

Enforcement issues often create
6 conservation issues, and there remains a question
7 whether the federal permit system reflects actual
8 participation and harvest of steelhead throughout
9 Southeast Alaska. Low numbers of permits issued may
10 reflect a lack of compliance with the requirement to
11 have a permit and taking fish outside permit
12 stipulations. Data from recent studies indicate that
13 not all subsistence users are obtaining permits (Turek
14 2005), so permit stipulations may not be effective even
15 if well-designed. Some fishers who may ignore permit
16 provisions may be more likely to comply with regulatory
17 harvest limits and restriction requirements on methods
18 and means.

19

20

Jurisdiction Issues:

21

22

Many streams in Southeast Alaska that
23 support steelhead flow through nonfederal land. The
24 State disputes many of the federal reserved water right
25 claims in Southeast Alaska and the application of
26 federal subsistence regulations in numerous streams and
27 rivers that are not within federal lands. Detailed
28 maps are needed of lands where federal jurisdiction is
29 claimed and the federal basis for each of these claims
30 should be explained. In addition, fishers need to be
31 provided copies of these detailed maps to help ensure
32 they are not cited for standing on State or private
33 lands while using federal methods and means.

34

35

Recommendation: Support.

36

37

The Department would also consider
38 supporting less restrictive alternatives, previously
39 rejected by the Federal Board, that address the
40 concerns resulting in this proposal and provide for the
41 conservation of small steelhead stocks.

42

43

CHAIRMAN FLEAGLE: All right, thank
44 you, for that informative discussion.

45

46

We'll next move to the InterAgency
47 Staff Committee comments. Polly.

48

49

DR. WHEELER: Thank you, Mr. Chair.
50 The InterAgency Staff Committee found the Staff

1 analysis to be a thorough and accurate evaluation of
2 the proposal and provides sufficient factual basis for
3 the Regional Council recommendation and the Federal
4 Subsistence Board action on the proposal. And, Mr.
5 Chair, you'll note, if you've gone through the book,
6 which I assume you have, that this same general comment
7 is provided for a number of proposals as the entirety
8 of the Staff Committee comment or as the opening to the
9 comment. From this point on I will emphasize any
10 additional points the Staff Committee comments may
11 contain and skip reading this boilerplate comment. The
12 Board meeting book provides the Staff Committee in full
13 for the record.

14

15 The Staff Committee recognizes the
16 importance of sound management approaches for Southeast
17 Alaska steelhead populations. The low levels of
18 subsistence effort and harvest as indicated by permit
19 returns and extensive field surveys are currently
20 focused on a few systems which are recognized as having
21 numbers of fish sufficient to sustain such uses. Data
22 also demonstrate the concerns about substantial harvest
23 increases from recently approved gear types have not
24 been realized.

25

26 Managers have evaluated different
27 approaches to enumerate adult steelhead in the region
28 and have concluded that there are significant trade-
29 offs in technical complexity, effort, cost and data
30 accuracy associated with each methodology. Such
31 factors should therefore be considered in any
32 management strategy incorporating stock assessments,
33 collection of data on harvest levels and evaluations of
34 the effectiveness of site specific regulations.

35

36 We also share Alaska Department of Fish
37 and Game's interest in ensuring the viability of
38 steelhead found in many Southeast Alaska systems,
39 however, questions arise as to whether these groups of
40 fish and individual streams actually constitute
41 discreet populations. Field observations from studies
42 in the region indicate that adult fish appear to move
43 between different watersheds during their spawning
44 migrations. Further research is needed to verify if
45 managing these fish across a suite of shared streams
46 rather than management which is based on the assumption
47 that each stream is occupied solely by a separate and
48 isolated population may more accurately reflect the
49 ecology of Southeast Alaska steelhead.

50

1 That concludes our comments, Mr. Chair.

2

3 CHAIRMAN FLEAGLE: Well, thank you.

4 And next we'll move on to Board discussion and open it
5 up for Board members to ask questions or to begin
6 discussing the proposal.

7

8 MR. BSCHOR: Mr. Chair, I have a couple
9 questions.

10

11 CHAIRMAN FLEAGLE: Denny.

12

13 MR. BSCHOR: First of all for Forest
14 Service Staff, are you aware of any fisheries that have
15 been closed by us because of conservation concerns with
16 the use of our permit system?

17

18 CHAIRMAN FLEAGLE: Jeff.

19

20 MR. REEVES: Mr. Chairman. Mr. Bschor.
21 We've taken action once and that was back in 2006, I
22 believe, it is mentioned in the analysis, at Cable
23 Creek, which is managed as a smaller system and a noted
24 harvest of, I think it was 10 or 11 fish was caught
25 right at the beginning, and so immediate action was
26 taken to shut the drainage down to all fishing to
27 further protect the stock.

28

29 MR. BSCHOR; Mr. Chairman. I'd ask the
30 State also if they agree with the figures or have seen
31 the figures that our Staff has indicated as far as the
32 sport catch per year, are your figures the same,
33 estimated sport catch per year?

34

35 MR. PAPPAS: Mr. Chairman. Mr. Bschor.
36 The sport catch, yes, the -- the only difference we --
37 the sportfish managers in Southeast and a lot of places
38 that use two to three percent catch and release
39 mortality, yes, that is also mentioned, a range from
40 two to five percent, but we use two to three percent
41 mortality -- catch and release mortality.

42

43 Thank you.

44

45 MR. BSCHOR: Does anyone have an
46 indication of the amount of use on small versus large
47 streams? I know the large streams I've read is -- it
48 sounds like they're more impacted with -- because of
49 the -- I would guess because they have bigger stocks
50 but do we have any figures on small versus large stream

1 use, and I'll ask both of you that question.

2

3 CHAIRMAN FLEAGLE: Jeff, go ahead.

4

5 MR. REEVES: Mr. Chairman. Mr. Bschor.
6 From the Federal subsistence fishery I can definitely
7 speak for Prince of Wales Island since I live down
8 there, there is a very minute amount of subsistence
9 reported, particularly the harvest, and that does show
10 in the table on Page 43, and our permit does ask that
11 if a fisher is even un -- if they fish but they're
12 unsuccessful to report their location of fishing, and I
13 don't recall if we had a whole lot of reports of the
14 small systems, but you can tell that basically a lot of
15 -- or looking at this list most of these are bigger --
16 managed bigger systems, unless you start seeing like
17 handline or spear, some of those are considered smaller
18 systems.

19

20 CHAIRMAN FLEAGLE: George.

21

22 MR. PAPPAS: Mr. Chairman. Mr. Bschor.
23 Regarding the large versus small streams, the
24 information I have in front of me is, you know, 60
25 percent of the harvest from recent years has come from
26 those 16 streams and it depends upon effort, the
27 statewide harvest survey may not have the resolution
28 for one person.

29

30 Thank you, Mr. Chair.

31

32 MR. BSCHOR: And then one last question
33 for Forest Service Staff again. An estimate of -- this
34 may be in here, maybe I missed it, but what percentage
35 of the permits that we issue would be considered to be
36 on small stream systems, or maybe number of permits,
37 whatever figure you might have there.

38

39 MR. REEVES: Mr. Chairman. Mr. Bschor.
40 We do not issue the permit, you know, the -- by the
41 drainage, it's a blanket permit. But when the permits
42 come back like I said the amount of small systems
43 showing up is really -- it's actually fairly small.
44 One thing off the top of my head, I keep a spreadsheet
45 each year of, you know, how the permits report and
46 typically what I can tell you is about two-thirds to
47 three-quarters of the permits come back to us reporting
48 they had no fishing effort or they did not fish.

49

50 CHAIRMAN FLEAGLE: Further comments,

1 discussion. Gary.

2

3 MR. EDWARDS: I appreciated putting up
4 that one slide, I knew we had looked at this issue many
5 times but I hadn't realized that many and just as a
6 comment, in looking at it, it almost begs the question
7 is what part of rejected don't you understand because I
8 didn't realize how many times we had rejected this
9 issue but it was kind of interesting to see it all at
10 once.

11

12 You know I think this Board and I know,
13 I, personally, I've always had conservation concerns
14 about down there, in fact, it almost begs the question,
15 why do we allow any fishing at all, whether it's
16 subsistence or even catch and release sportfish on many
17 of these populations but, you know, the question still
18 continues to come up is the amount of fish that are
19 taken in the commercial fishery and, you know, several
20 times when this issue has come in front of the Board,
21 you know, we've raised that question just as the RAC
22 has raised the question and I know there's been an
23 effort to go back to some level of reporting but it
24 seems to me that before, you know, we take this issue
25 on that we ought to have a much better understanding of
26 exactly what's taking place out in that commercial
27 fishery and what impact that is having and every time
28 we raise that there seems to be a general
29 acknowledgement of it but then there doesn't seem to be
30 any follow through and it seems to me that if we had
31 that information in front of us it might make it easier
32 for this Board to try to maybe share that same level of
33 conversation that the State has.

34

35 CHAIRMAN FLEAGLE: Other Board
36 questions, comments, discussion.

37

38 Ralph.

39

40 MR. LOHSE: Mr. Chair. I was just
41 listening to both sides and I just had a couple
42 questions I'd like to ask and one of the things that
43 I'm wondering is what is the current Federal reporting
44 periods for our permits, what's our time -- how timely
45 is our reporting and what are the current State
46 reporting permits, State reporting requirements for the
47 sportfishery, what kind of timelines do both of those
48 have?

49

50 CHAIRMAN FLEAGLE: I'm scanning for

1 responses, we got Jeff for the Federal side it looks
2 like.

3

4 MR. REEVES: Mr. Chair. Mr. Lohse.
5 For the Federal permits they have a season on them and
6 we ask -- or require that the permit be returned within
7 15 days of the end of the season or of completion of
8 the harvest limit and in the analysis, and I think I
9 mentioned this, it's at nearly 100 percent and I
10 believe since then we are at 100 percent permit
11 returns. And with the few that we do have that just
12 don't come right back we do take the time to track
13 those permits down.

14

15 MR. LOHSE: But there is no in-season
16 reporting, there's no way to keep track of what's going
17 on as the season progresses?

18

19 MR. REEVES: We have no requirements
20 other than, I believe, one year we asked that people
21 fishing small systems, you know, get a hold of us if
22 they harvested. Since then we -- I, personally, make
23 contact via phone calls to permit holders during the
24 course of the fishery to keep track and we spend a lot
25 of time on the ground on these drainages, at least on
26 Prince of Wales Island, and depend on law enforcement
27 also to report into myself, you know, every -- as they
28 make comments. Because at 85 drainages and one of me
29 it's hard to get everywhere.

30

31 MR. LOHSE: Thank you. Mr. Chair,
32 could you ask the Alaska Department of Fish and Game
33 what they have for in-season monitoring?

34

35 CHAIRMAN FLEAGLE: Sure. Just a brief
36 comment on Jeff's response, I like that he said it's
37 hard but not impossible, 85 streams, right.

38

39 George.

40

41 MR. PAPPAS: Yes, reporting
42 requirements at this time are you're merely required to
43 record the steelhead harvest on the back of your
44 license, sportfish license once retained.

45

46 CHAIRMAN FLEAGLE: But that's not
47 reported, that's recorded but not reported, correct?

48

49 MR. PAPPAS: That is correct. The
50 harvest is estimated through the statewide harvest

1 survey post-season and the conservative regulations
2 that are established by the Department of Fish and Game
3 that less than one percent of the fish being over 36
4 inches solves the need for in-season management in most
5 streams.

6
7 CHAIRMAN FLEAGLE: Okay, and there's
8 the difference Ralph.

9
10 MR. LOHSE: Thank you. And I had one
11 other question. I was just -- we've been talking about
12 small streams and small stocks and possibly we have
13 someone here that can enlighten me on the biology of
14 that. Are steelhead prone to stray, I mean do
15 steelhead return to their original stream or do they do
16 like Dolly Varden and cutthroats and go up streams of
17 opportunity and maybe these small streams only can
18 support so many fish and those fish aren't necessarily
19 the same fish that were raised there, and I was just
20 wondering if anybody has any information on that?

21
22 CHAIRMAN FLEAGLE: Charlie.

23
24 MR. SWANTON: Mr. Chairman. Mr. Lohse.
25 I think that Dr. Wheeler said it best in her summary
26 comments that steelhead by and large are a very complex
27 multi-life history species that that's sort of a
28 question that would be very difficult. I think that
29 one thing to keep in mind is that if they didn't do
30 some straying then there'd be very few drainages with
31 them in them but I think that Mr. Pappas cited that
32 there were 331 given drainages in Southeast Alaska so I
33 think that that gives you some indication with regards
34 to the fidelity. But, you know, there are spring runs,
35 fall runs, they show up at different periods of time.
36 There were references earlier to, you know, fish
37 showing up in different drainages pre- and post-
38 spawning. You know the life history characteristics of
39 steelhead are fascinating but at the same time for
40 somebody such as myself that's a little bit more salmon
41 centric, they're frustrating at the same time.

42
43 MR. LOHSE: Thank you. Mr. Chair, can
44 I make a comment on that?

45
46 CHAIRMAN FLEAGLE: (Nods affirmatively)

47
48 MR. LOHSE: I do know from personal
49 experience that one year you can have Dolly Varden in a
50 stream and nobody catches them and the next year you

1 don't have Dolly Varden in the stream and two years
2 later you've got Dolly Varden in the stream and I was
3 just wondering if steelhead possibly did the same
4 thing, whether there was enough migration that the fact
5 that you've only got 10 pair of spawners in a stream
6 this year really doesn't mean that that stream's only
7 supporting 10 pair of spawners, that you might have
8 more the next year or you might have none the next
9 year.

10
11 CHAIRMAN FLEAGLE: That didn't sound
12 like it wanted a response but thank you for the
13 comment.

14
15 MR. LOHSE: I would have liked a
16 response if somebody had anything that they could add
17 to that. Because I think it really enters into this
18 discussion when we start talking about these small
19 streams and small populations. Many of these small
20 streams go directly into the ocean, many of these small
21 streams go into larger streams that have viable
22 populations. You can't -- when you have a fish that
23 doesn't return necessarily to its natal stream, you
24 can't decide whether a stream is in trouble or not by
25 how many fish are there every year because they're
26 still viable streams and some years they're not viable
27 because food conditions -- some years are not viable
28 because of water conditions, now do -- and I know --
29 I'm just talking Dollys and cutthroats, I don't know
30 what happens with steelhead but I do know that they
31 will go to other -- you know, if the conditions are
32 wrong they'll go to another stream instead of to that
33 stream and when the conditions are right they'll go to
34 that stream and that affects this idea of protecting
35 our small streams. You can't protect something that's
36 a constant moving target and that's why I was wondering
37 about it.

38
39 CHAIRMAN FLEAGLE: Any additional
40 comments. Niles.

41
42 MR. CESAR: I'd like to ask Dr. Glenn
43 Chen to comment on this as he was one of the principal
44 authors for the Staff Committee.

45
46 CHAIRMAN FLEAGLE: Glenn, welcome.

47
48 DR. CHEN: Mr. Chair. Members of the
49 Board. Glenn Chen with the Bureau of Indian Affairs.
50 As the Department has mentioned steelhead have a very

1 complex life history and we were looking at the
2 question of whether the issue of small populations, or
3 "populations" in some of these streams. Some
4 indications that there are a lot of straying in some of
5 these -- between these streams. These observations
6 come from some existing studies of steelhead in
7 Southeast Alaska. So this brings the question, are
8 these truly discreet populations, a stream with 10 or
9 20 fish or is it truly a closed population. A couple
10 things would argue against that.

11
12 If you look at the conservation biology
13 literature, there's this notion of minimum viable
14 population size and under conditions where there's
15 absolutely no harvest or any human impacts a population
16 of 10, 20 or 30 individuals of animals would eventually
17 go extinct through factors such as genetic and so
18 forth. This notion that there's -- or this observation
19 that there's straying where fish go between streams
20 suggests that there actually might be something such
21 along the lines of what's called a meta-population (ph)
22 going on here so you might have fish that are ascending
23 a series of streams for spawning, not necessarily the
24 same stream every year but perhaps a different stream,
25 but that they're using a collection of streams and this
26 then would imply that a meta-population approach where
27 you manage a series of streams as a suite with this
28 "meta-population" might be more appropriate than just
29 looking at a single stream and it's "individual"
30 isolated population.

31
32 Thank you.

33
34 CHAIRMAN FLEAGLE: Thank you,
35 appreciate the comments. Other Board discussion.

36
37 (No comments)

38
39 CHAIRMAN FLEAGLE: Are we ready to
40 place a motion on the floor. Denny.

41
42 MR. BSCHOR: Before we do that, Mr.
43 Chair, I have one more just point that we've -- since
44 we've heard this, how many years, five years in a row
45 now or something like this, we've discussed these
46 issues, I think we all have a pretty good idea of
47 what's really happening and what isn't. One of the
48 issues that didn't come up today is the size limit
49 situation on the sportfishing, and why not do that in
50 the Federal regs, and we have quite a -- for the new

1 members of the Board, I want to make sure you
2 understand we've had a lot of discussion about that and
3 there was -- I remember testimony in the past where
4 there was concerns about, you know, catching a smaller
5 fish, not being able to take it and then trying to
6 catch that 36 incher and the likelihood of that is less
7 and that sort of thing, and I think in the past we've
8 looked upon that as being quite a limit to getting the
9 subsistence fish and being done. So I just wanted to
10 reiterate that for the new Board members.

11
12 But I also have not -- I'm still where
13 I have always been as far as the amount of use, I mean
14 30 fish on average a year for subsistence users
15 throughout Southeast Alaska I can't see that that's a
16 major problem. Now, we can speculate a whole lot
17 about, well, maybe more are taken, there probably are
18 but even if it was twice as many it wouldn't be many
19 compared to sportsfishing and commercial fishing so I'm
20 still right where I was the last five years we've dealt
21 with this, or the last four years we've dealt with
22 this.

23
24 So, yes, Mr. Chair, I'm prepared to
25 make a motion.

26
27 CHAIRMAN FLEAGLE: Please do.

28
29 MR. BSCHOR: In line with the Chair's
30 request, I move to adopt Proposal FP09-03, however, I
31 need to mention that I plan to vote against that
32 proposal and that would be in line with the Regional
33 Advisory Committee -- Southeast Regional Advisory
34 Committee's position -- recommendation.

35
36 CHAIRMAN FLEAGLE: I have a motion, is
37 there a second.

38
39 MR. CESAR: I'll second.

40
41 CHAIRMAN FLEAGLE: Got a second. Do
42 you want to speak further to that motion, Denny.

43
44 MR. BSCHOR: Yes, Mr. Chair, I will. I
45 said some of that already but just to reiterate
46 reported Federal harvest is extremely low Southeast
47 wide, as I said 30 fish, or I made that point as far as
48 the differences in harvest. The Federal Program has
49 the ability to determine how many fish are being taken
50 where and I don't see that the State systems are that

1 specific. Federal managers can make in-season
2 adjustments and we have done that if conservation
3 problems arise -- conservation concerns arise. We have
4 adjusted permit stipulations to reduce conservation
5 concerns and there is information in Appendix B that
6 talks about that. I think we've been operating in an
7 adaptive way and I don't see that that has caused any
8 conservation problems.

9

10 I will say again as I have said every
11 time I've spoken on this issue, that I am very
12 concerned that we have steelhead management that's
13 effective and that maintains the resource because I
14 think steelhead is an extremely important fisheries
15 resource. I want to make sure everyone understands my
16 position on that.

17

18 I do think the proposal would burden
19 the subsistence users without a demonstrated need.

20

21 I don't believe -- I probably should
22 have asked this question, but I don't believe our
23 Federal law enforcement officers have experienced any
24 problems, although I can't say that for certain, that's
25 what I think has happened but I could be corrected on
26 that issue. If there have been I don't think there
27 have been major ones or a lot of them.

28

29 And then lastly requiring fin clipping,
30 once, again, is unnecessary for identification of
31 subsistence taken fish in my opinion.

32

33 Mr. Chair.

34

35 CHAIRMAN FLEAGLE: Thank you, Denny.
36 Other Board members.

37

38 (No comments)

39

40 CHAIRMAN FLEAGLE: Well, I'd like to
41 agree with Denny's assessment on the proposal. And in
42 addition to what he said I want to recognize the
43 State's insistence in bringing this issue forward. I
44 mean there's obviously some concern to be forward
45 looking in their management of steelhead in Southeast
46 and I do recognize that, you know, strong desire to be
47 proactive in a conservation manner and I do acknowledge
48 that without some type of oversight or regulation
49 scheme to protect some of these smaller streams there
50 could be a small chance that a local stock could be

1 harmed but I think I've heard that we have adequate
2 protection through the in-season management with the
3 closure authority. I also find that in agreement with
4 Denny that we're trying to address a problem that
5 hasn't yet occurred and that, to me, to use the same
6 words, I haven't been shown that there's a demonstrated
7 need to institute a regulation change that would cause
8 some restriction on subsistence uses. And finally this
9 one would be a hard issue to go against the Council
10 recommendation under .805(c) the three criteria. So I
11 think that I'm going to go along with Denny and vote
12 against this proposal.

13

14 Any other comments.

15

16 Gary.

17

18 MR. EDWARDS: Again, Mr. Chairman, just
19 to kind of echo what you said, obviously the State
20 feels very concerned -- is real concerned about this
21 issue otherwise they wouldn't keep bringing it back and
22 I think Board certainly has a good track record when it
23 comes to putting conservation first and I think the
24 same could be said of the RAC and I guess the question
25 is is there something we're missing here, you know, the
26 fact that obviously, you know, each time we handle this
27 the State is obviously not satisfied with the decision
28 so they keep bringing it back because of the concerns
29 they have and I don't know if there's something in
30 between here that we're missing that we could come up
31 with collectively that addresses their concerns,
32 addresses the subsistence concerns and more importantly
33 ensures the conversation of the species. Because I'm
34 like you and I think Denny said if very well in all the
35 points he made, I can certainly support, but it just
36 seems to me we haven't kind of reached the right
37 resolution and I don't know if there is this magic
38 silver bullet out here that we could all come together
39 on and say that's the answers, but.....

40

41 CHAIRMAN FLEAGLE: Thank you. These
42 are the types of issues that I think the Board is
43 trying to be able to work a little more closely with
44 the State on in proactive measures and I think that's
45 kind of one of the major intents of the recently signed
46 memorandum of understanding, is that we want to have
47 the managers work more closely together and not come to
48 the Boards with competing issues that -- competing
49 biology and et cetera, et cetera. And this might be a
50 good opportunity for our State and Federal managers in

1 the area to just sit down and say what is it that we
2 can address, you know, which is real favorable from the
3 Board's perspective. I'm not going to say that I don't
4 want to see this coming back to us, I think that Gary's
5 right I mean there's obviously some concern and if that
6 concern could be worked out to where there's some type
7 of positive change, but for right now I think I'm going
8 to vote against the proposal as I stated before.

9

10 Any other comments.

11

12 (No comments)

13

14 CHAIRMAN FLEAGLE: Ready for the
15 question.....

16

17 MR. CESAR: Question.

18

19 CHAIRMAN FLEAGLE: Hang on, question's
20 called but not recognized. Bert.

21

22 MR. ADAMS: Okay, thank you, Mr.
23 Chairman. I just want to make a point here that, you
24 know, the Board uses three criteria to determine, you
25 know, whether you're going to vote this way or that
26 way. I want to, you know, apprise you of the fact that
27 the Council, the Southeast Regional Advisory Council
28 uses four criteria. And all of the three that you have
29 here but we also add to it, you know, is there any
30 adverse or, you know, effect on non-subsistence users
31 as well as subsistence and conservation and, of course,
32 is it -- is the proposal substantiated with good data
33 and so forth. But I just thought I'd make that point
34 to you and, you know, that gives us good reason then
35 that the Board, we think, you know, will give us
36 deference in the fact that we use four criteria.

37

38 Thank you.

39

40 CHAIRMAN FLEAGLE: Thank you, Bert.
41 The question's now recognized on Proposal 3. Pete.

42

43 MR. PROBASCO: Thank you, Mr. Chair.
44 Final action on FP09-03. Mr. Bschor.

45

46 MR. BSCHOR: No.

47

48 MR. PROBASCO: Mr. Cesar.

49

50 MR. CESAR: No.

1 MR. PROBASCO: Mr. Edwards.
2
3 MR. EDWARDS: No.
4
5 MR. PROBASCO: Mr. Fleagle.
6
7 CHAIRMAN FLEAGLE: No.
8
9 MR. PROBASCO: Ms. Masica.
10
11 MS. MASICA: No.
12
13 MR. PROBASCO: And, Mr. Lonnie.
14
15 MR. LONNIE: No.
16
17 MR. PROBASCO: Mr. Chair, motion fails
18 zero/six.
19
20 CHAIRMAN FLEAGLE: All right, thank
21 you, Pete. Commissioner.
22
23 COMMISSIONER LLOYD: Thank you, Mr.
24 Chairman. I was trying, again, to respect your process
25 where you weren't really looking for State comments
26 within your deliberation and your vote but I wanted to
27 follow-up since I think the offer or the entreaty was
28 made of further cooperative work, especially between
29 our Staff prior to the State potentially coming back
30 with yet another invitation for you to say no, and
31 there may well be some room for better collaboration
32 particularly if this Board made it known to their Staff
33 that that type of attitude in terms of looking for
34 potential positive means of collaborating on the
35 conservation concerns that the State continues to have
36 on these small populations in Southeast. So I'm
37 wondering if you're willing either to give the Federal
38 Staff a sense of the Board or even some form of
39 direction to work specifically on steelhead
40 conservation issues in Southeast prior to your next
41 fishery meeting with the goal of coming back to the
42 Board, if warranted, with a joint proposal with the
43 State of Alaska.
44
45 CHAIRMAN FLEAGLE: That's a good
46 suggestion. And I think, we, as a Board, talked about
47 the newly negotiated memorandum of understanding, that
48 was -- not to be that specific but it was our intent to
49 try to have this stuff largely worked out before it
50 comes to this level and I think that's a really good

1 idea. I don't know how much directive authority we
2 have over our Staff but I'm going to ask Board members
3 if there's any opposition to at least the idea to give
4 to Pete and to Dr. Wheeler to work with OSM Staff on
5 it.

6

(No comments)

7

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idea. I don't know how much directive authority we have over our Staff but I'm going to ask Board members if there's any opposition to at least the idea to give to Pete and to Dr. Wheeler to work with OSM Staff on it.

(No comments)

CHAIRMAN FLEAGLE: None. Pete, what are your thoughts?

MR. PROBASCO: Mr. Chair. I think the way to tackle this, there's two parts to it.

One, my Staff needs to work very closely with Mr. Bschor's Staff, since this is Forest Service and I think what we need to do along with working with the State is draft a charge statement so that we're clear on both sides what we're trying to tackle and then we go from there on each respective side, we'll look at it, and once we get agreement on that then we could best utilize our resources towards something that can be resolved by the next fishery meeting.

Mr. Chair.

CHAIRMAN FLEAGLE: Would that be something that we have to do formally here or just by a nod of consent and you and I work up that, from this side, what our understanding would be?

MR. PROBASCO: Mr. Chair. I think with hearing no objections from the Board members as well as Commissioner Lloyd's willingness I think we can at least work towards reaching some type of charge statement. We do have this smaller group that you and Mr. Oviatt along with Ms. Cunning and others that we can probably get to that step initially and then bring it back to our side to review on how the State would like to do it.

CHAIRMAN FLEAGLE: Okay. Is there any objection from Board members that we handle this at our level and try to work at least towards some positive goal here. Denny.

MR. BSCHOR: My light is not on to object.

1 (Laughter)

2

3 MR. BSCHOR: It's to support doing
4 that. Because I think if we don't start looking for
5 that common ground every cycle of fish we will have
6 this issue coming back to us so why not work on it and
7 see if we can make some headway.

8

9 CHAIRMAN FLEAGLE: Great. Okay, that
10 will be our charge at this level anyway. Thank you for
11 the suggestion Commissioner.

12

13 COMMISSIONER LLOYD: Well, thank you,
14 Mr. Chairman. And I do appreciate the sense of the
15 Board in this regard and as we go along I'll be looking
16 for further opportunities for that kind of cooperation
17 between the Federal and State systems.

18

19 Thanks.

20

21 CHAIRMAN FLEAGLE: Only one per cycle.

22

23 (Laughter)

24

25 COMMISSIONER LLOYD: We'll see how that
26 goes.

27

28 CHAIRMAN FLEAGLE: Okay, comment
29 withdrawn. Okay, and real quick response to Mr.
30 Lohse's comments. I knew I heard it in some discussion
31 somewhere and I finally found it and they did state it
32 in the InterAgency Staff Committee comments that field
33 observations from studies in the region indicate that
34 adult fish appear to move between different watersheds
35 during their spawning migrations. So we did have a --
36 it was said it just was -- I couldn't identify where
37 and how specific but at any rate just to answer that
38 hanging question.

39

40 MR. LOHSE: Thank you, Mr. Chair. I
41 was pretty sure I had read that but I just wanted it on
42 the table because I think it was very applicable to
43 what we were discussing.

44

45 CHAIRMAN FLEAGLE: All right, okay,
46 thank you. At this time I want to recognize some new
47 Council Chairs with us. We have -- I'll just let you
48 guys introduce yourselves because I'm not sure I could
49 pronounce the last name.

50

1 MR. BROWER: Thank you, Mr. Chair. My
2 name is Harry Brower, I'm the Regional Council Chair
3 for the North Slope.

4
5 MS. ENTSMINGER: I'm Sue Entsminger and
6 I'm Chair of the Eastern Interior.

7
8 MR. SAVETILIK: Myron Savetilik.

9
10 CHAIRMAN FLEAGLE: Welcome. And I also
11 recognize Ray and I gave everybody an opportunity for
12 opening statements if anybody wants to have just an
13 opening comment.

14
15 Sue.

16
17 MS. ENTSMINGER: Yeah, I just wanted to
18 comment on the discussion you just had. I'm really
19 excited to hear stuff like this. And this working
20 together, to me, is critical. I think Alaska has a lot
21 of growing pains and maybe government has gotten too
22 big and it sometimes becomes very frustrating for the
23 user and I really appreciate it and I'd like to see us
24 go forward in steps like that.

25
26 Thank you.

27
28 CHAIRMAN FLEAGLE: Appreciate it.
29 Thanks. And right after we came back from lunch we had
30 Maureen give a little discussion on the student art
31 contest posters in the back of the room and she was
32 saying that she wished that there were some Council
33 Chairs present to hear her discussion because you guys
34 are going to help her decide the winner. And, Maureen,
35 would you like to just address that again real quickly
36 and the expectation from the Council Chairs.

37
38 MS. CLARK: Thank you, Mr. Chairman.
39 Just very quickly, if the Council Chairs would take a
40 look at the student art and hand me your ballots when
41 you get a chance to pick. You'll be picking the cover
42 art for our fisheries regulation book.

43
44 Thank you.

45
46 CHAIRMAN FLEAGLE: Great, thank you.
47 We'll now move on with our agenda. And we have
48 Proposal 15. I see we have a changing Staff.

49
50 (Pause)

1 CHAIRMAN FLEAGLE: We have now joining
2 us Pippa Kenner who's going to do the analysis for
3 Proposal 15, welcome.

4
5 MS. KENNER: Thank you, Mr. Chair.
6 Members of the Board. I am Pippa Kenner,
7 anthropologist with OSM. The Staff analysis for FP09-
8 15 begins on Page 65 of your book.

9
10 FP09-15 submitted by the Alaska
11 Department of Fish and Game requests that a fisheries
12 no-Federal subsistence priority customary and
13 traditional use determination be made for the Juneau
14 road system. A companion proposal, FP09-04 requests
15 that no Federal subsistence fishing permits be issued
16 for any streams flowing across or adjacent to the
17 Juneau road system.

18
19 The proponent submitted FP09-15 because
20 in its view the Board did not evaluate the eight
21 factors concerning customary and traditional use of
22 each fish stock within fishing Districts 11 and 15 by
23 specific rural communities. The Juneau Road System
24 lies within Districts 11 and 15 as indicated on Map 1
25 on Page 66 of your book. This is a similar request as
26 in FP08-04 last year which addressed the State's
27 conservation concerns.

28
29 Both the Council and the Board did not
30 support FP08-04. The Council determined, and I quote
31 from the Council recommendation:

32
33 That there was no information presented
34 that indicated that subsistence fishing
35 in the Juneau area waters was
36 inappropriate. No need was seen to
37 make a location specific customary and
38 traditional use determination for the
39 Juneau Road System.

40
41 No new information has become available
42 since last year that would create a reason to change
43 the conclusion.

44
45 The OSM conclusion as presented in the
46 Board materials is to oppose Proposal FP09-15.

47
48 Thank you.

49
50 CHAIRMAN FLEAGLE: Thank you.

1 Questions.

2

3

(No comments)

4

5 CHAIRMAN FLEAGLE: Next we hear summary
6 of public comments. Robert Larson.

7

8 MR. LARSON: Mr. Chairman. We have no
9 written public comments.

10

11 CHAIRMAN FLEAGLE: Thank you. Do we
12 have any public testimony, Pete.

13

14 MR. PROBASCO: We have no public
15 testimony, Mr. Chair.

16

17 CHAIRMAN FLEAGLE: All right, we'll
18 move to the Regional Council recommendation. Bert.

19

20 MR. ADAMS: Thank you, Mr. Chairman.
21 The Council recommendation is found on Page 64 of your
22 handbook. The Council opposes this proposal. The
23 Council determined that subsistence fishing in the
24 Juneau area waters was appropriate and would not result
25 in a conservation concern for any species. The
26 proposal would not affect non-subsistence users but
27 would be potentially detrimental to subsistence users.
28 There was no evidence presented that a conservation
29 concern currently exists or would potentially exist in
30 the future.

31

32 Title VIII specifies the taking of
33 public lands of fish and wildlife for non-wasteful
34 subsistence uses shall be accorded priority over the
35 taking on such lands of fish and wildlife or other
36 purposes, there is a continuing sportfishery on streams
37 adjacent to the Juneau Road System. Now, if this
38 proposal was adopted continued road construction in the
39 Juneau area would increase the area closed to
40 subsistence without action by the Council. The narrow
41 interpretation of the eight criteria was described by
42 the State, we don't believe it's very valid. The
43 Council interprets the regulation more boldly and
44 agrees that there is sufficient evidence to support the
45 continued customary and traditional use of this area by
46 rural residents.

47

48 Thank you, Mr. Chairman.

49

50 CHAIRMAN FLEAGLE: Thank you, Bert.

1 Department of Fish and Game. Oh, sorry, Pete, go
2 ahead.

3

4 MR. PROBASCO: I apologize to the
5 Board, Staff just handed me a public testimony on
6 Proposal 15 and it's Mr. Frank Woods.

7

8 CHAIRMAN FLEAGLE: Frank Woods, come on
9 up to the table. There's a blank spot to the table,
10 there we go. Thank you, please identify yourself for
11 the record and go ahead with your testimony.

12

13 MR. WOODS: Good afternoon. My name is
14 Frank Woods and I'm from Dillingham. And I'm
15 interested in the subsistence priority because I am a
16 subsistence user and I come from a long generation of
17 subsistence users and without this priority in place, a
18 lot of our people in our region wouldn't be able to
19 sustain themselves with the economy and the way it is
20 within the state of Alaska. There is no Carrs, there
21 is no Safeway and there are no supermarkets in a lot of
22 the villages that I represent. They hunt off the land.
23 And I take it this is within Juneau boundaries, this
24 could set precedence for how we look and manage
25 subsistence in Alaska. The priority keeps people fed,
26 it keeps people being able -- it keeps their ability to
27 sustain their families, and that's all subsistence is.

28

29 I'm here to testify on behalf of that
30 user group that this group has a priority to protect
31 and I appreciate -- this is my first Federal
32 Subsistence Board so I'm just getting involved because
33 it's time for me to speak up to protect my family and
34 my family's right to subsist off of this great land of
35 ours.

36

37 But appreciate -- I was late, the
38 weather's been bad, we were stranded -- good to see
39 you, Pete. Thanks for the intervening and letting me
40 testify.

41

42 Thank you.

43

44 CHAIRMAN FLEAGLE: Thank you.
45 Appreciate the comments. Questions.

46

47 (No comments)

48

49 CHAIRMAN FLEAGLE: Thanks. Fish and
50 Game comments. George.

1 MR. PAPPAS: Thank you, Mr. Chairman.
2 George Pappas, Department of Fish and Game. I'm
3 summarizing the Department's full comments that are in
4 your Board book on Page 94 through 99 and these full
5 comments will be entered into the record following my
6 verbal comments.

7
8 FP09-15 requests the Federal
9 Subsistence Board demonstrate customary and traditional
10 findings for individual communities use of fish stocks
11 within Fisheries Districts 11 and 15 and the waters
12 crossed by the roads within the current boundaries of
13 the city and borough of Juneau, what we'll call the
14 Juneau Road System. We request the eight regulatory
15 factors concerning customary and traditional use of
16 each specific fish stock by each community for each
17 stream be evaluated and be reviewed by the Federal
18 Board.

19
20 The Juneau non-rural area has no
21 specific customary and traditional use determination
22 and currently falls under the Federal regulation
23 category of remainder of Southeast Alaska area. Under
24 this designation the Juneau Road System area is open to
25 the Federal subsistence harvest of Dolly Varden, trout,
26 smelt, eulachon by all residents of Southeast Alaska
27 and Yakutat areas and to subsistence harvest of salmon
28 by all rural residents of Alaska. This overly broad
29 designation provides a Federal priority -- a Federal
30 subsistence preference for the far northern residents
31 of Barrow to fish for salmon on the streams in a
32 southeastern urban community over 1,000 air miles away.
33 This designation also provides a preference to rural
34 residents of -- for example, the southern Southeast
35 community of Hydaburg an urban northern Southeast
36 community over 225 air miles from home. These
37 priorities are unnecessary, unsupportable and contrary
38 to both common sense and the law as recently
39 interpreted by the Ninth Circuit. The Federal Staff
40 analysis does not provide substantial evidence to
41 support a customary and traditional use finding for any
42 specific fish stock in these waterways by any residents
43 from rural communities living outside of the Juneau
44 area. There is nothing in the Staff analysis that
45 would support an argument that a taking of any fish
46 stock on the Juneau Road System constitutes as stated
47 in your regulations, a long established consistent
48 pattern of use incorporating beliefs and customs which
49 have been transmitted from generation to generation for
50 any rural community or that taking of any fish stock on

1 the Juneau Road System plays an important role in the
2 -- in economy for any rural community.

3
4 Because there are no substantial
5 evidence it is clear that the use of the Juneau Road
6 System fish stocks falls outside the regulatory
7 definition of customary and traditional use under 50
8 CFR Section 100.4. There's no evidence presented in
9 the Federal Staff analysis that indicates a subsistence
10 opportunity along the Juneau Road System would ever be
11 used by any community in Southeast Alaska.

12
13 Application of the September 23rd, 2008
14 Ninth Circuit Court Opinion in the state of Alaska
15 versus Federal Subsistence Board makes it clear that an
16 adequate record to support C&T determination for a
17 fisheries on the Juneau Road System has not been
18 developed and cannot be established. The Court
19 Decision held the Federal Board's C&T determinations
20 must be supported by substantial evidence of a specific
21 rural community or areas demonstrated customary and
22 traditional taking of a specific fish stock and not a
23 general species within a specific geographic location.

24
25 According to the Court, the Board's
26 determination must have substantial basis and fact.
27 The Court added the Federal Board regulations clearly
28 ties C&T determinations to a specific location in which
29 the wildlife population have been taken and each C&T
30 determination must be tied with specific community or
31 area and a specific wildlife populations.

32
33 The Court further emphasized that
34 specific communities and areas and specific fish stocks
35 and wildlife populations are, by definition, limited to
36 specific geographic areas and a C&T determination is a
37 determination that a community or area has taken
38 species for -- a species for subsistence within a
39 specified area.

40
41 The Ninth Circuit pointed out that six
42 of the Federal Board's eight factors refer to a pattern
43 of use of a specific fish stock or wildlife populations
44 and a seventh factor also imposes explicit geographic
45 limitations by directing the Board to consider whether
46 there is a consistent harvest or use of fish or
47 wildlife near or reasonably accessible from the
48 community or area.

49
50 Available information cannot support a

1 determination that any rural community has a pattern of
2 use for any fish stocks on the Juneau Road System.
3 There has been no consistent harvest of fish stocks on
4 the Juneau Road System by any rural community and the
5 Juneau Road System fish stocks are not near or
6 reasonably accessible to any rural community.

7
8 The Federal Staff analysis failed to
9 provide substantial evidence to support arguments that
10 use -- that the use of the isolated Juneau Road System
11 stocks can satisfy the Federal Board's regulatory
12 definition of customary and traditional use and
13 likewise fails to provide any substantial evidence to
14 support any argument that the communities in the area
15 generally exhibits the Board's regulatory factors for
16 making a positive C&T determination for any specific
17 stocks of fish on the Juneau Road System.

18
19 The salmon and trout found on the
20 individual streams on the Juneau Road System repr --
21 represent distinct stocks. Evidence to take --
22 evidence of take of the same general species of fish in
23 other districts or even in other portions of the same
24 district cannot be used to establish historic taking of
25 a specific fish stock on the Juneau Road System. The
26 Juneau stocks are different stocks than -- of fish than
27 any -- historically taken by any Southeast rural
28 community. The Federal Board has not developed a
29 customary and traditional use determination specific to
30 freshwaters for Districts 11 and 15. It is extremely
31 unlikely that any rural community would be able to
32 provide substantial evidence of customary and
33 traditional use factors for any of the fish stocks on
34 the Juneau Road System.

35
36 Separating out this non-rural area as
37 having a no demonstrated customary and traditional use
38 of its fish stocks by Southeast rural communities also
39 -- would also allow the Board to carry out its
40 responsibilities of balancing the competing purposes of
41 ANILCA and avoiding unnecessary restrictions on non-
42 subsistence users.

43
44 In summary, the current Federal Staff
45 analysis provides no evidence of customary and
46 traditional takings of any specific fish stock along
47 the Juneau Road System by any specific rural community.
48 Based on the Board's regulatory factors and the
49 September 23rd, 2008 Ninth Circuit Court Opinion in the
50 state of Alaska versus the Federal Subsistence Board we

1 think you would agree that including the Juneau Road
2 System fish stocks in the current remainder of --
3 remainder area of C&T determination is overly broad and
4 unsupportable. We urge the Federal Board to correct
5 this determination by evaluating the evidence of any
6 takings of specific fish stocks from the Juneau Road
7 System streams by specific rural communities within the
8 Fisheries Districts 11 and 15. If it does so, the
9 Board will find there's no substantial evidence to
10 support subsistence C&T priority for Federally-
11 qualified rural residents of any rural community in
12 Southeast Alaska or any rural community in other areas
13 of Alaska to fish under Federal regulations in these
14 limited freshwater streams for any of these streams
15 sensitive and tightly restricted Juneau Road System
16 stocks.

17

18 We recommend the Federal Board adopt
19 this proposal.

20

21 Thank you, Mr. Chair.

22

23 *****

24 STATE OFFICIAL WRITTEN COMMENTS

25 *****

26

27 Alaska Department of Fish and Game
28 Comments to the Federal Subsistence Board

29

30 FP09-15 Juneau Road System Customary
31 and Traditional Use Determination

32

33 Introduction:

34

35 Proposal FP09-15 requests that the
36 Federal Subsistence Board (Federal Board) demonstrate
37 customary and traditional findings for individual
38 communities for fish stocks within Fisheries Districts
39 11 and 15 on waters crossed by roads within the current
40 boundaries of the City and Borough of Juneau,
41 consistent with the course of action suggested by a
42 member of the Federal Board on January 13, 2006. The
43 proponent requests the eight regulatory factors
44 concerning customary and traditional use of each
45 specific fish stock by each community for each stream
46 be evaluated and reviewed by the Federal Board. The
47 Juneau non-rural area has no specific customary and
48 traditional use determination and currently falls under
49 the federal regulation category Remainder of the
50 Southeastern Alaska Area. Under this designation, the

1 Juneau road system area is open to the federal
2 subsistence harvest of Dolly Varden, trout, smelt, and
3 eulachon by all rural residents of the Southeast Alaska
4 and Yakutat areas, and to subsistence harvest of salmon
5 by all rural residents of Alaska. These overly broad
6 designations which provide a federal subsistence
7 preference for the far north rural residents of Barrow
8 to fish for salmon on streams in a southeastern urban
9 community over 1000 air miles from home, and which
10 provide a preference to rural residents of the southern
11 southeast community of Hydaburg, in an urban northern
12 southeast community over 225 air miles from home, are
13 unnecessary, unsupportable, and contrary to both common
14 sense and the law as recently interpreted by the Ninth
15 Circuit.

16

17 Background:

18

19 The waters that would be subject to
20 this determination constitute a very small portion
21 (less than 10%) of the freshwater fisheries in
22 Districts 11 and 15 of Southeast Alaska. They are very
23 important to the residents of the Juneau area but are
24 not important to rural residents and are rarely used
25 for any purpose by rural residents of any community.
26 In acting on previous proposals, the Federal Board
27 suggested it would be appropriate to adopt a
28 determination of no Federal subsistence priority."
29 But later, in December 2007, the Federal Board rejected
30 the State's proposal (FP08-04) requesting such a
31 determination, without evaluating the eight regulatory
32 factors concerning customary and traditional use of
33 each fish stock by each community. As early as 2000,
34 the Interagency Staff Committee informed the Federal
35 Board that there was a lack of substantial evidence to
36 show that communities in the region have customarily
37 and traditionally harvested and used the stocks of
38 rainbow trout, cutthroat trout, and Dolly Varden along
39 the Juneau road system. The current federal staff
40 analyses does not provide substantial evidence to
41 support a customary and traditional use finding for any
42 specific fish stocks in these waterways by any
43 residents from rural communities living outside the
44 Juneau area. There is nothing in the staff analysis
45 that would support an argument that the taking of any
46 fish stock on the Juneau road system constitutes a
47 long established, consistent pattern of use,
48 incorporating beliefs and customs which have been
49 transmitted from generation to generation for any
50 rural community, or that the taking of any fish stock

1 on the Juneau road system plays an important role in
2 the economy for any rural community. Because there is
3 no substantial evidence for these arguments, it is
4 clear that any use of Juneau road system fish stocks
5 falls outside the regulatory definition of customary
6 and traditional use, see 50 C.F.R. ^U100.4. No evidence
7 is presented in the federal staff analysis that
8 indicates a subsistence opportunity along the Juneau
9 road system would ever even be used by any community in
10 Southeast Alaska.

11
12 Application of the September 23, 2008,
13 Ninth Circuit Court opinion in *State of Alaska v.*
14 *Federal Subsistence Board*, 544 F.3d 1089, makes it
15 clear that an adequate record to support a C&T
16 determination for the fisheries on the Juneau road
17 system has not been developed and cannot be
18 established. As the Court held in its decision,
19 Federal Board C&T determinations must be supported by
20 substantial evidence of a specific rural community or
21 area s demonstrated customary and traditional taking of
22 a specific wildlife population or specific fish stock,
23 not general species, within specific geographic
24 locations. *Alaska v. Federal Subsistence Board*, at
25 1094-99. The Board s determination must have a
26 substantial basis in fact. *Id.* at 1094. The Court
27 held: Under 50 C.F.R. ^U100.16, C & T determinations
28 should identify the specific community s or area s use
29 of specific fish stocks and wildlife populations,
30 and not Chistochina s use of moose in general. *Id.*
31 at 1096. The Court added that the Federal Board s
32 regulations clearly tie C & T determinations to the
33 specific locations in which wildlife populations have
34 been taken and each C & T determination must be tied
35 to a specific community or area and a specific wildlife
36 population. *Id.* at 1097 (emphasis in original). The
37 Court further emphasized: Specific communities and
38 areas and specific fish stocks and wildlife populations
39 are, by definition, limited to specific geographic
40 areas and a C & T determination is a determination
41 that a community or area has taken a species for
42 subsistence use within a specific area. *Id.* at 1097-
43 98 (emphasis in original).

44
45 The Ninth Circuit pointed out that six
46 of the Federal Board s eight C&T factors refer to a
47 pattern of use of specific fish stocks or wildlife
48 populations and a seventh factor also imposes explicit
49 geographic limitations by directing the Board to
50 consider whether there is consistent harvest and use

1 of fish or wildlife . . . near, or reasonably
2 accessible from the community or area. Id. at 1098;
3 see also 50 C.F.R. 100.16(b). Available information
4 cannot support a determination that any rural community
5 has a pattern of use of any fish stock on the Juneau
6 road system. There has been no consistent harvest of
7 fish stocks on the Juneau road system by any rural
8 community, and the Juneau road system fish stocks are
9 not near or reasonably accessible to any rural
10 community. Federal staff reports fail to provide any
11 substantial evidence to support arguments that use of
12 the isolated Juneau road system stocks can satisfy the
13 Federal Board s regulatory definition of customary and
14 traditional use, see 50 C.F.R. 100.4, and likewise fail
15 to provide any substantial evidence to support an
16 argument that any community or area generally
17 exhibits the Boards regulatory factors for making a
18 positive C&T determination for any specific stock of
19 fish on the Juneau road system. See 50 C.F.R.
20 100.16(b).

21
22 In Alaska v. Federal Subsistence Board,
23 the Court upheld a C&T determination for Chistochina
24 residents to take moose upon all federal lands within
25 Game Management Unit 12 based on: (1) the assumption,
26 which the Court thought had support in the record, that
27 the populations of moose which had been historically
28 taken by Chistochina residents within a 2500 square
29 mile area were the same populations of moose on other
30 federal lands within the Unit; and that (2) the
31 alternate rationale, somewhat dependent on the first,
32 that the Federal Board was justified by a benefit to
33 management in designating a C&T area for Chistochina
34 to take those moose within all 5900 square miles of
35 federal lands within the Board s pre-determined areas
36 A, B and C, rather than being required to carve out a
37 new area for Chistochina limited to just the 2500
38 square miles of that community s actual historic use.
39 Id. at 1096-97, 1099-1100.

40
41 On the Juneau road system, the
42 situation is far different from what the Ninth Circuit
43 Court believed the situation to be for moose in GMU 12.
44 First, the salmon and trout stocks found in individual
45 streams on the Juneau road system represent distinct
46 stocks. Evidence of take of the same general species
47 of fish in other districts, or even in other portions
48 of the same districts, cannot be used to establish
49 historic taking of the specific stocks on the Juneau
50 road system. The Federal Board has not developed a

1 customary and traditional use determination specific to
2 fresh waters of Districts 11 or 15. It is extremely
3 unlikely that any rural community would be able to
4 provide substantial evidence of the customary and
5 traditional use factors for any fish stock on the
6 Juneau road system.

7
8 Second, because there has been no
9 historic customary and traditional taking of the
10 specific fish stocks on the Juneau road system by any
11 Southeast rural community, a perceived benefit to
12 management cannot justify including these Juneau fresh
13 waters within the rest of Districts 11 and 15. The
14 Juneau stocks are different stocks of fish than those
15 which any Southeast rural community has historically
16 taken. Moreover, federal and state fisheries
17 management both benefit by utilizing a separate
18 regulatory framework for these easily accessed high use
19 waters where fish stocks must be managed through much
20 more conservative regulations than are required in
21 other areas of the districts. Separating out this non-
22 rural area having no demonstrated customary and
23 traditional use of its fish stocks by Southeast rural
24 communities also allows the Board to carry out its
25 responsibilities of balancing the competing purposes of
26 ANILCA and avoiding unnecessary restrictions on non-
27 subsistence users. Even if the Board were to conclude
28 that there has been customary and traditional taking of
29 other fish stocks by some rural communities within
30 Southeast Alaska and were to mistakenly believe that it
31 has discretion to lump the specific fish stocks of the
32 Juneau road system together with those other fish
33 stocks taken within Districts 11 and 15, there would be
34 good reason for the Board to decline asserting that
35 perceived discretion.

36
37 Impact on Subsistence Users:

38
39 Although both Southeast Alaska general
40 federal subsistence fishery permits and the Southeast
41 Alaska spring steelhead permits allow fishing on the
42 Juneau road system and require reporting of harvest by
43 stream, no federal subsistence harvests by rural
44 residents have been reported for the freshwaters of the
45 road system within the City and Borough of Juneau
46 boundaries. In fact, only two sport-caught fish were
47 reported as having been caught by rural residents of
48 Southeast Alaska on the Juneau road system by
49 responders to the Statewide Sport Fish Harvest Survey
50 from 2004 through 2006. There is no evidence of

1 customary and traditional taking of specific fish
2 stocks for subsistence use by any rural resident in
3 freshwaters that cross the road system within the City
4 and Borough of Juneau boundaries. Meaningful
5 subsistence fishing priorities for rural residents
6 exist in streams that are closer to their respective
7 communities. Eligible rural residents would have to
8 travel substantial distances by boat or airplane in
9 order to fish on Juneau roads, and such harvest would
10 not be cost effective. Based on the lack of
11 documentation of any subsistence use, the Federal Board
12 should exempt the fresh waters of the Juneau City and
13 Borough road system area from region-wide regulations
14 by making a negative customary and traditional finding
15 for all communities for all fish stocks in freshwaters
16 that cross the road system within the City and Borough
17 of Juneau boundaries. This action would have no impact
18 on federally qualified rural subsistence users.

19

20 Opportunity Provided by State:

21

22 State regulations provide for a variety
23 of sport fishing opportunities in freshwaters and
24 adjacent shoreline areas, but these opportunities are
25 more restricted than elsewhere in Southeast Alaska.
26 Most people fish for subsistence and recreational use
27 in marine waters. The Department s sport fisheries
28 website for the Juneau road system lists only 15
29 freshwater streams and, although saltwater shoreline
30 areas are also available for anglers to fish, fishing
31 in saltwater for trout and Dolly Varden is more
32 restricted and subject to lower bag limits than in
33 other areas of Southeast Alaska. Nearly all freshwater
34 sport fishing activity (roughly 80%) along the Juneau
35 road system takes place in four primary streams (Cowee
36 Creek, Montana Creek, Peterson Creek, and Fish Creek).
37 Fish populations in these streams are relatively small.
38 Given Juneau s relatively large human population and
39 road access, the potential exists for over harvesting
40 local fish resources if additional harvest opportunity
41 is provided. Several small roadside streams are closed
42 to sport fishing altogether, and others are closed to
43 salmon or Dolly Varden fishing. Restrictive bag and
44 possession limits are in effect for many species as
45 well. Juneau roadside bag limits, possession limits,
46 and size requirements differ in several respects from
47 regional regulations. Bag and possession limits have
48 been reduced for coho salmon, sockeye salmon, and Dolly
49 Varden. In addition, cutthroat trout size limits are
50 more conservative in the Juneau area than in other

1 areas of Southeast Alaska. These restrictions on Dolly
2 Varden and cutthroat trout are also effective in all
3 salt water adjacent to the Juneau City and Borough road
4 system to a line mile offshore.

5
6 Because Juneau is a non-rural area,
7 residents of Juneau who historically used fish stocks
8 in the area are ineligible to participate in the
9 federal subsistence fishery and cannot qualify for a
10 federal customary and traditional use determination.
11 The existing federal subsistence regulations could lead
12 to even more restrictions on non-federally qualified
13 users (e.g., Juneau residents) in the non-rural area
14 along the Juneau road system on both state and federal
15 lands. These further restrictions -- which are
16 unnecessary since there are no existing subsistence
17 uses in need of continuation -- could potentially force
18 Juneau residents to travel long distances to rural
19 areas to participate in freshwater sport fisheries.
20 They might also result in increased state subsistence
21 and personal use participation in these areas. They
22 could thus create increased competition and be
23 detrimental to the satisfaction of subsistence needs in
24 those rural areas. Further state restrictions along
25 the Juneau road system would also impact opportunities
26 for those who relocate from rural areas to Juneau and
27 rely upon opportunity in the Juneau area to continue
28 their fishing activities.

29

30 Conservation Issues:

31

32 While conservation concerns are not a
33 factor in the Federal Board s C&T analysis, they do
34 provide a common sense rationale for separating the
35 Juneau Road system and specific stocks in the area from
36 other remainder areas of Southeast Alaska and for
37 making sure that only communities with established
38 customary and traditional use of the specific stocks in
39 the area receive a federal subsistence priority on
40 those stocks. The Department has continually expressed
41 conservation issue concerns to the Federal Board about
42 sustainability of highly accessible fisheries on the
43 Juneau road system if these fisheries are subjected to
44 any participation under liberal federal subsistence
45 harvest regulations. This proposal specifically
46 requests a Customary and Traditional determination for
47 specific fish stocks in a specific area. Comments
48 illustrating the Department s ongoing concerns and
49 conservation issues were previously presented both in
50 writing and orally to the Federal Board for proposals

1 FP06-31, FP08-04, and the Department s Fisheries
2 Request for Reconsideration 06-05, these prior comments
3 are incorporated by reference. Additional concerns are
4 published in the Department comments for FP09-04
5 contained in this Federal Board meeting book.

6

7

Jurisdiction Issues:

8

9

10 According to the Department s Fish
11 Distribution Database, the majority of fish habitat and
12 documented fish observations in these streams are not
13 located within federal lands. Some streams have
14 relatively inaccessible headwaters on federal land, but
15 they flow through State, private, and other land
16 ownership and are not within the Tongass Forest
17 boundary prior to crossing Juneau roads to enter marine
18 waters. Other streams along the Juneau road system
19 flow entirely on non-federally owned land. The federal
20 analysis in the September 2007 Southeast Regional
21 Advisory Council Fisheries Meeting Materials book, page
22 84, incorrectly states:

22

23

24 Federal waters comprise all fresh
25 waters draining into fishing District 11 and those
26 fresh waters draining into fishing District 15 south of
27 Chilkat Peninsula (near Haines) . . . all within
28 exterior boundaries of the Tongass National Forest (Map
29 1). These waters include all streams crossed by roads
30 connected to the City and Borough of Juneau road
31 system.

31

32

33 We requested this statement be
34 corrected before providing the 2008 analysis to the
35 Regional Advisory Council, Federal Board, and
36 subsistence users. We also requested that the federal
37 maps be corrected to accurately portray the Tongass
38 Forest boundary which specifically excludes a
39 significant portion of the Juneau area. To date these
40 corrections have not been made.

40

41

42 In order for rural residents to know
43 where they can legally participate in federal
44 subsistence fisheries, and to aid enforcement personnel
45 in determining whether activities are legal, we request
46 detailed land status maps showing areas and specific
47 boundaries of waters claimed to be within federal
48 subsistence jurisdiction and the basis for those
49 claims. Maps provided by federal staff to date are not
50 accurate enough to ensure federal subsistence users do
51 not inadvertently fish from lands not claimed under

1 federal jurisdiction. Significant portions of lands
2 surrounding the Juneau road system are bordered by
3 state or private lands, where there either is no
4 federal jurisdiction or where persons cannot
5 participate in federal subsistence fisheries while
6 standing on non-federal lands. During the December
7 2007 Federal Board meeting, State of Alaska Wildlife
8 Trooper testimony (Federal Board Transcripts December
9 11, 2007 pages 89-91) illustrated to the Federal Board
10 the importance of users understanding and knowing
11 jurisdiction and land status. This testimony explained
12 that when an enforcement officer encounters an
13 individual conducting an activity that is prohibited by
14 State regulations and the individual is on State or
15 private lands, including State-owned submerged lands,
16 the person may be cited. A negative C&T determination
17 for fish stocks on the Juneau road system will
18 significantly decrease the likelihood that rural
19 residents will be cited for violation of state law for
20 subsistence fishing on non-federal lands along that
21 road system.

22

23 Recommendation: Support.

24

25 The current Staff Analysis provides no
26 evidence of customary and traditional takings of any
27 specific fish stock along the Juneau road system by any
28 specific rural community. Based on the Board s
29 regulatory definitions and factors, and on the
30 September 23, 2008 Ninth Circuit Court opinion in State
31 of Alaska v. Federal Subsistence Board, the current
32 remainder area C&T determination including Juneau
33 road system fish stocks is overly broad and
34 unsupported. The Federal Board should correct this
35 determination by specifically evaluating the evidence
36 of any takings of specific fish stocks from the Juneau
37 road system streams by specific rural communities. If
38 it does so, the Board will find there is no substantial
39 evidence to support a subsistence C&T priority for
40 federally qualified residents of any rural community in
41 Southeast Alaska or any rural community in other areas
42 of Alaska to fish under federal regulations in these
43 limited freshwater streams for any of these small,
44 sensitive, and tightly restricted Juneau road system
45 stocks.

46

47 CHAIRMAN FLEAGLE: Thank you, George.

48 Are there any questions.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: I have one, I'm just
2 trying to figure out how to ask it.

3
4 I was just curious, now, I know we've
5 asked about this Juneau road system before and I know
6 it does strike me as somewhat odd that we have a stream
7 system that's accessible to a large -- the third
8 largest community in Alaska that aren't allowed to fish
9 there but yet somebody from Kotzebue can fish there.
10 Does -- I do see the point. We had some pretty good
11 discussion on this the last time this was before the
12 Board. Now, I'm just curious, why would the State make
13 this claim just for the Juneau Road System and not for
14 the entirety of the remainder of the -- of Southeast,
15 the other districts that aren't mentioned, the 11 and
16 15, there's 4, 6, 7 and 8, they're still, under this,
17 going to still be open to any other rural user? I mean
18 is there some reason that you're focusing just on the
19 road system other than the access to Juneau?

20
21 Tina.

22
23 MS. CUNNING: These stocks, as you
24 know, are in a high use area and are already tightly
25 regulated. In fact, most of the streams along the
26 Juneau Road System are closed to harvest. But one of
27 the things that we heard a lot of discussion at the
28 Southeast RAC meeting was the people that live in the
29 Juneau area are very concerned about having the fishery
30 closed. And they are a lot of residents that live in
31 the Juneau area that may have lived in other places of
32 Southeast Alaska that now live there and this is their
33 opportunity to go fishing.

34
35 That is not the issue. Conservation is
36 not the issue before you in this proposal. The
37 conservation issue is before you in Proposal 4, which
38 you are going to take up next, depending on how you
39 vote on 15, but 15 is a C&T proposal. And this is a
40 remnant of the transfer and the adoption of regulations
41 when you moved into fisheries and because it is an area
42 that has a lot of competing uses, we are really
43 concerned about this and we've tried to go at it in a
44 couple different ways, and there needs to be a C&T for
45 this specific area. That doesn't mean that there isn't
46 a need to address the fish stocks and C&Ts for the
47 remainder of 11 and 15 but this is the most imminent
48 issue in front of us.

49
50 CHAIRMAN FLEAGLE: Okay, I appreciate

1 that. That's a good explanation. But at some point I
2 suppose we can foresee that these broad areas that we
3 just accepted from the State when the Federal Program
4 started will eventually all need to be sorted out and I
5 guess that's where we're going. But I can understand
6 the explanation, thanks.

7

8 All right, then with that we're going
9 to go to the InterAgency Staff Committee comments. Dr.
10 Polly Wheeler.

11

12 DR. WHEELER: Thank you, Mr. Chair. I
13 referenced the boilerplate statement that I referenced
14 on the previous statement so I won't read that to you.

15

16 But I would add that FP09-15 seeks a
17 finding of no subsistence priority for fish along the
18 Juneau Road System because of concerns over
19 conservation should the existing customary and
20 traditional use finding be retained. However,
21 customary and traditional use determinations are for
22 the sole purpose of recognizing the pool of users who
23 demonstrate a customary and traditional pattern of use
24 and not for resource management or restriction of
25 harvest. Conservation concerns are best addressed
26 through the imposition of harvest limitations or
27 seasonal restrictions rather than by limiting the
28 customary and traditional use finding.

29

30 Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Thank you.
33 Questions.

34

35 (No comments)

36

37 CHAIRMAN FLEAGLE: All right. Now, I'm
38 going to lead off with some discussion. This is one of
39 those issues as the State made a very good comment
40 toward, that the Ninth Court Decision on the
41 Chistochina case could have implication on this
42 decision and it's my understanding that the Staff
43 Comments that were prepared on this issue were prepared
44 prior to the handing down of that decision so it
45 appears that we could probably benefit from further
46 analysis on the State's -- or not the State but on this
47 issue based on the court case and -- and I think that's
48 just a brief summary of my understanding of how that
49 court case could be applied. It appears that we don't
50 have adequate recommendations or discussion on that new

1 court case on this issue right now.

2

3 Is that a clear character -- or a fair
4 characterization, Pete?

5

6 MR. PROBASCO: I won't repeat, Mr.
7 Chair, what you said, but the decision on the
8 Chistochina occurred, if you will, part way through our
9 process as we deal with this proposal and before this
10 meeting. And so a lot of this analysis was written
11 prior to that, so you are accurate, Mr. Chair, in that
12 context.

13

14 CHAIRMAN FLEAGLE: Keith.

15

16 MR. GOLTZ: Good time for me to express
17 my appreciation to the State for its comments during
18 this cycle, they were timely, they're, I think, well
19 written and they help, me, at least, understand what
20 the issues are and where the conflicts sometimes are.

21

22 And I found them particularly helpful
23 in this case because we do have sort of a time warp.
24 We had the State proposal, then we had a Staff analysis
25 and a Council meeting and then we got a Court decision
26 and then we got your comments. And the comments, I
27 think, raise some important questions, but they're not
28 really directed toward the original proposal, they're
29 more toward an exposition of the Court case and as I
30 read them they're really asking for a C&T analysis in
31 11 and 15. The first proposal I read differently, it
32 was framed in the C&T language but it's really not
33 asking for a C&T analysis, it's asking for an area
34 where there is no C&t, which could, in fact, be the
35 result, but it's a little different characterization.

36

37 My recommendation would be that we
38 respond to both, to both the first proposal and to the
39 comments but what we do is take the comments as our
40 starting point and my recommendation would be that
41 based on those comments we direct the Staff to do a C&T
42 analysis for these two subdistricts 11 and 15.

43

44 CHAIRMAN FLEAGLE: Process-wise that
45 would be, obviously not available at this meeting now
46 so process-wise, Pete, if we were to take counsel's
47 recommendation to further the analysis, to put more
48 information in front of us in light of that Court case,
49 what would the process look like?

50

1 MR. PROBASCO: Well, Mr. Chair,
2 following the proposal process since we're in a two
3 year cycle, our next opportunity for fishery related
4 proposals would be 2011, and so that when we would
5 prepare that. However, the Board can set their own
6 agenda and we will respond accordingly and if it's too
7 compressed then we will tell you that and ask for some
8 leniency.

9

10 Mr. Chair.

11

12 CHAIRMAN FLEAGLE: All right, so I'm
13 not trying to lead the discussion on this but I am.

14

15 (Laughter)

16

17 MR. PROBASCO: You're the Chair.

18

19 CHAIRMAN FLEAGLE: But what I'm
20 suggesting is the process, just based on the
21 understanding that I've heard and the concerns laid out
22 by Staff and by legal counsel, probably the best course
23 of action would be to put this proposal on the floor
24 and then take a vote to defer to the next fisheries
25 meeting or if somebody wants to speed it up maybe
26 assign it to the wildlife meeting next year, but that
27 may not be the appropriate place to put it since we
28 have Staff that come up from the far reaches of
29 Southeast for this meeting. I guess that doesn't
30 really matter but it sounds like I -- I would prefer
31 that we step back and make sure that we have a clear
32 understanding of what we need to do to be in compliance
33 with the Court case and that would be a good
34 recommended track that I'm going to put out there.

35

36 Commissioner.

37

38 COMMISSIONER LLOYD: Well, thank you,
39 Mr. Chairman. I'm wondering if you'll entertain some
40 comments from our legal counsel given that this does
41 seem to be, you know, not simply a biological or a
42 regulatory issue but a legal one as well and without
43 getting too far into the weeds, I think Mr. Daugherty
44 has a number of comments to add to those of Mr. Goltz
45 and the rest of the Board.

46

47 CHAIRMAN FLEAGLE: Steven.

48

49 MR. DAUGHERTY: Mr. Chair. A couple of
50 points.

1 First, the Board already has an
2 existing C&T. That C&T is not supported by available
3 evidence. That C&T provides a preference, it will
4 continue to exist if the Board defers this proposal.
5 And deferral of the proposal is effectively allowing an
6 unsupported C&T to remain in place so the State objects
7 to that deferral, Mr. Chair.

8
9 The second issue is that the State did
10 not ask for a C&T for the districts, it asked for a C&T
11 for the portion of the districts on the Juneau Road
12 System. And while the State would not object to a
13 separate C&T done for the entire subdistricts, it does
14 believe that the Juneau Road System warrants its own
15 analysis and that an analysis, as far as just the
16 district would not be sufficient, Mr. Chair. We don't
17 believe that the C&T would be found for the districts
18 for most communities, however, in parts of that
19 district there may be a couple of communities in
20 northern Southeast Alaska such as Haines that might
21 have a C&T for part of the district, but we do not
22 believe that a just -- a C&T could be justified for the
23 Juneau Road System and we believe that a separate
24 analysis is needed for that, Mr. Chair.

25
26 And the third point, Mr. Chair, is the
27 State has continuously raised this issue of specific
28 stocks and asked for the Board and for Staff to analyze
29 those specific stocks. They have had adequate
30 opportunity to do so, the Court decision was issued
31 over four months ago, Mr. Chair, and we believe that
32 the Board should go ahead and apply the standards that
33 were set forth by the court and make a determination
34 based on the fact that there are -- is no substantial
35 evidence of use of any specific fish stock on the
36 Juneau Road System, Mr. Chair, by any rural community.
37 And if the Board believes that further information
38 might change that analysis, it's certainly free to come
39 back in the future if there is a community that
40 additional evidence can be found for and propose a C&T
41 for that community, Mr. Chair, but at this point the
42 State believes that there is no reason for the Board to
43 defer action and believes that it should apply the
44 criteria set forth in its regulations. They're not
45 just something that the Court came up with that are
46 new, these are requirements that have always existed in
47 the Board's regulations, Mr. Chair, and we don't see
48 any need for additional analysis.

49
50 Thank you, Mr. Chair.

1 CHAIRMAN FLEAGLE: Appreciate those
2 comments. And before I come back to the Board I just
3 got another question, I think -- well, I'm sure it's in
4 here but how much harvest is there by rural subsistence
5 users on these streams, currently? George.

6
7 MR. PAPPAS: Mr. Chair. Maybe better
8 answered by Mr. Larson but during previous meetings the
9 statement was Federal subsistence permits were issued
10 for Southeast Alaska as a whole and there hasn't been
11 any reported harvest from the permitting system at this
12 time.

13
14 MR. LARSON: Mr. Chairman, that is
15 correct.

16
17 CHAIRMAN FLEAGLE: So basically we
18 don't know of any subsistence harvest on these Juneau
19 Road System streams?

20
21 MR. LARSON: Mr. Chairman. The
22 question that I was answering was from our subsistence
23 fishing permits, now they've been in place only since
24 2004 so since we started that process we have had no
25 returns from permits for the Juneau Road System -- for
26 streams crossing the Juneau Road System, yes.

27
28 CHAIRMAN FLEAGLE: Okay. So from my
29 perspective it doesn't sound like we have a glaring
30 conservation issue that we're trying to correct. And
31 I'll be straight up in saying it it's jurisdictional
32 struggle just to establish a, you know, and I don't
33 disagree with the justification for it, but it --
34 again, we're trying to fix a problem that hasn't
35 presented itself as a problem yet and I don't see where
36 jumping to try to take immediate action is that
37 necessary. I'm just responding to Department of Law's
38 comments.

39
40 Anyway those are my comments and now
41 I'm going to open it up to the Board and I'm going to
42 shut up.

43
44 Gary.

45
46 MR. EDWARDS: Okay. I just kind of
47 need some clarification, so currently for the road
48 system, do we have or do we not have C&T or is it open
49 statewide to any rural resident can fish there if they
50 so desire, and so do we have -- and the State's

1 proposal, putting aside the Court's decision, the
2 original proposal which basically says no one should
3 have C&T for that area and therefore it wouldn't be
4 open to any rural resident, right, and then do we have
5 other places in the state that that would apply to, for
6 example, the Anchorage area, can -- well, let's say
7 Campbell Tract, you got a stream running through
8 Campbell Tract, so right now is that open or close to
9 subsistence harvest? We don't have any C&T for it, I
10 know, so I'm assuming that -- or we don't have any
11 regulations but I'm assuming that anybody, any rural
12 resident can go and fish Campbell Tract, subsistence, I
13 mean I'm just trying to understand how this applies to
14 other areas within the state.

15

16 MR. GOLTZ: Should we go in executive
17 session?

18

19 (Laughter)

20

21 MR. EDWARDS: No, I mean I'm just.....

22

23 MR. GOLTZ: I think the answer is, yes,
24 it could apply to Campbell Tract, it could apply to
25 areas in Fairbanks, it could apply to Mat-Su Borough.

26

27 CHAIRMAN FLEAGLE: Road system in Nome.

28

29 MR. GOLTZ: It's an anomaly that is a
30 result of the way our present regulations are written.
31 We have excluded from the reach of the term Federal
32 lands, our military bases, we did not exclude urban
33 areas. It's probably something we should look at. But
34 because we didn't, we're in this situation where we
35 have an area that we have designated as Federal lands
36 that has this urban overlay which technically we're
37 allowing subsistence use on. It has not been a problem
38 yet, even in Juneau as far as I know, but it's probably
39 -- if we want to be forward looking, it's probably
40 something we should address soon.

41

42 CHAIRMAN FLEAGLE: So I'm breaking my
43 promise already by speaking. But the State's way to
44 get around this is they have non-subsistence use areas
45 and we don't utilize that concept in the Federal
46 system, we just have.....

47

48 MR. GOLTZ: That's correct.

49

50 CHAIRMAN FLEAGLE:communities,

1 place of residence that qualify.

2

3 MR. GOLTZ: We designate non-rural
4 areas and then everything else that's Federal is within
5 the system with the exception of military basis.

6

7 CHAIRMAN FLEAGLE: Sue.

8

9 MS. ENTSMINGER: Could I add into this
10 discussion, how would you determine which -- I mean I
11 know it's all in the courts, but isn't some of the
12 waters in Alaska not Federal, and maybe some waters
13 here in Anchorage are not considered Federal?

14

15 MR. GOLTZ: I think the State wants to
16 argue. Yes, that's true, waters. That's a different
17 analysis though. What we're.....

18

19 MS. ENTSMINGER: But my question in my
20 mind is then you have to determine which waters that
21 you have Federal jurisdiction over so if he's asking
22 about this place in Anchorage, I mean do you know for
23 sure if you have Federal jurisdiction over it?

24

25 MR. GOLTZ: He was asking about the
26 Campbell Tract which is -- if BLM wants to jump in here
27 it's.....

28

29 MR. LONNIE: I don't think the Campbell
30 Tract's been determined to be navigable.

31

32 MR. GOLTZ: Well, the way we do our
33 analysis is different. We identify Federal lands and
34 then the waters that are associated with those lands
35 are what we manage, we don't start with waters we start
36 with lands.

37

38 MS. ENTSMINGER: So there is waters
39 that do not come under Federal jurisdiction is what I'm
40 trying to point out, correct?

41

42 CHAIRMAN FLEAGLE: Right. But not
43 waters.....

44

45 MS. ENTSMINGER: Yes.

46

47 CHAIRMAN FLEAGLE:that are either
48 in, adjacent to or, yeah, those are Federal but, you
49 know, it's interesting that you raise that because that
50 is another case that we're waiting to see the result of

1 too and that's what we call the which waters case.

2

3 MS. ENTSMINGER: I understand.

4

5 CHAIRMAN FLEAGLE: Gary.

6

7 MR. EDWARDS: If I could ask one
8 question of the State, you were talking about
9 communities and I thought you said something that
10 implied that Haines might have a legitimate claim or
11 legitimate use of some of the road system waters in
12 Juneau or did I misunderstand that?

13

14 MR. DAUGHERTY: Mr. Chair. We did not
15 imply that Haines would have a legitimate claim to a
16 C&T on the Juneau Road System, that's why we said the
17 district should be considered separately from the road
18 system. We do believe there might be a claim in part
19 of District 15 around the area of Haines.

20

21 Mr. Chair.

22

23 CHAIRMAN FLEAGLE: Well, let's take a
24 break, 10 minutes.

25

26 (Off record)

27

28 (On record)

29

30 CHAIRMAN FLEAGLE: Good afternoon. The
31 Federal Subsistence Board is back in session. And
32 we're still discussing Proposal 15 without a motion so
33 I'm opening back up for comment discussion.

34

35 Keith Goltz.

36

37 MR. GOLTZ: I have a couple quick
38 comments. First I was wrong about Campbell Tract. And
39 the reason I was wrong is I had forgotten how we put
40 the program together, and what we did when we formed
41 this program is simply set out lines, basically around
42 CSUs and other Federal reserves and say Federal lands
43 within those lines are subject to Federal management
44 jurisdiction. Then we said if there are other Federal
45 lands, like isolated Federal tracts, like the Campbell
46 Tract, you can come and petition the Board and if it's
47 appropriate we'll put them in. And nobody's petitioned
48 to have Campbell Tract in and so right now it's not
49 part of our program. These are some of the things we
50 just have to work out over time.

1 On the issue of Chistochina I was
2 circulating and some people may have thought that I
3 agreed with Mr. Daugherty's comments. I don't. We
4 differ. The Federal Subsistence Board was affirmed on
5 each of the four issues that the Court addressed and we
6 do not see the case based on those isolated that are in
7 the State comments. When I expressed my appreciation
8 for the comments, I didn't want anybody to infer that I
9 agreed with everything in them. I'm appreciative of
10 the fact that they're there and that they're well done
11 and I think, as a whole, even though I may not agree
12 with them they're well done, and I was intending to be
13 responsive to the underlying concern. I think you've
14 raised, again, a point of legitimate concern and it's
15 simply my intent to advise the Board that we should
16 address that concern.

17
18 CHAIRMAN FLEAGLE: Thanks Keith.
19 Comments. Discussion. Denby.

20
21 COMMISSIONER LLOYD: Well, Mr.
22 Chairman, I may have some further comments and
23 discussion but I'm curious about Mr. Goltz' -- what the
24 concern was you were referring to just at the end
25 there.

26
27 MR. GOLTZ: I think your -- as I read
28 your concern, it's the fact that we're applying a rural
29 priority to a rural area that's particularly visible
30 and may have conservation impacts. And that.....

31
32 COMMISSIONER LLOYD: Thank you, Mr.
33 Chairman. And that is certainly part of our concern.
34 A larger aspect of our concern is our desire to see the
35 Federal Subsistence Board follow what we believe are
36 the requirements of ANILCA and the regulations and that
37 is to apply very specific analysis to findings of
38 customary and traditional use and that's involved in
39 our request for the Board to consider this particular
40 area as not having that supporting documentation, and
41 according to our view, the regulations and statutes
42 that are binding on you, we believe that in this case
43 the Board is in error in asserting that there's
44 customary and traditional use for the Juneau Road
45 System. So to us that's also a very important part of
46 our concern in this regard.

47
48 MR. GOLTZ: Well, I don't think we're
49 asserting that. The question at this point is, are we
50 going to do a C&T -- we've never done a C&T analysis.

1 Where we are is we're sort of backed into this thing
2 based on other regulations so I'm advising the Board,
3 don't just throw this back and say, well, we don't do
4 no Federal subsistence priority areas, I'm saying let's
5 address the concern, and I think we now agree on it. I
6 hope we do.

7

8 CHAIRMAN FLEAGLE: Other discussion.

9

10 (No comments)

11

12 CHAIRMAN FLEAGLE: Ready to move on

13 this proposal. We need a motion.

14

15 MR. BSCHOR: Well, Mr. Chair, it just
16 seems like there are questions about what reality is
17 here relative to these issues and I don't think we can
18 deal with that reality just with the Juneau part of 11
19 and 15, I think we need to deal with 11 and 15 with
20 Juneau as a part of that analysis. And we need time to
21 do that. And we only have two choices, we could oppose
22 the proposal, and I don't know that that's the right
23 thing to do, I don't know what the reaction would be to
24 that or we could defer the proposal and give our Staff
25 time to do a thorough analysis, I mean what would that
26 hurt. I mean we're not showing any conservation
27 concerns or problems that we know of right now so if
28 conservation is not an issue at this point as far as
29 taking more time it seems to me that that would be to
30 work together again on an issue that keeps coming back
31 to us and we're, in some cases, talking past each
32 other, similar to the other issue and with the action
33 included I think we might not be sitting here in two
34 years arguing with each other -- or not arguing with
35 each other but just not communicating or agreeing with
36 each other in a way that's productive.

37

38 Mr. Chair.

39

40 CHAIRMAN FLEAGLE: Gary.

41

42 MR. EDWARDS: Keith, let me ask one
43 more question based on what you said about the Campbell
44 Tract and what I heard you said that, yes, it's Federal
45 lands but it's closed to subsistence use unless we got
46 a proposal to open it. I mean could you have an equal
47 proposal to close an area that is currently open. I
48 mean what, in response to -- to the Commissioner's
49 question, I mean the reason that we have a statewide
50 C&T on the Juneau Road System is because by policy or

1 procedure or whatever, we say if there isn't any
2 specific C&T then there's a blanket C&T. Well, anybody
3 in the whole state can participate, so as you said we
4 didn't make that determination it is what it is because
5 of how we look at this. But by the same token, could
6 we entertain a proposal that would come in and try to
7 make the argument that this area should be closed
8 similar to these other areas that are apparently
9 currently closed until we get a proposal to open them?

10

11 CHAIRMAN FLEAGLE: Keith.

12

13 MR. GOLTZ: Keith, I'm not sure it's
14 accurate to say Campbell Creek is closed, Campbell
15 Creek simply -- or Campbell Tract is simply not part of
16 the Federal Subsistence Management Program. To make it
17 part, somebody would have to come before actually the
18 Secretaries but they could go through this Board and
19 say we want that added to the list of Federal
20 jurisdiction. And that's -- we knew that there were
21 these scattered Federal tracts throughout the state, we
22 didn't know where they were and we didn't know how
23 important they were, we said to the users, if they are
24 important to you, you come to us at a later date and
25 then we'll consider it. That's how we set up the
26 program. That was done when we took over fisheries.

27

28 The default that you're talking about
29 was done in the beginning, in 1990, and there we saw we
30 had a choice, either we could take the State's position
31 which was no subsistence until we open it or we could
32 say it's open to everybody until we do our C&Ts. We
33 chose the latter, unfortunately we -- I think it's
34 unfortunate, we rejected the middle ground, which would
35 have said you can hunt and fish within the unit, Game
36 Management Unit in which you reside, and then we'll do
37 our refinements off that, either narrow it or expand it
38 from there.

39

40 But as of right now our regulations put
41 us in the position where, if we haven't done a C&T then
42 everybody within the state qualifies.

43

44 CHAIRMAN FLEAGLE: So I'd like to add
45 to Denny's option, so we do have three options. We do
46 have the option of moving forward with the proposal and
47 granting a positive -- you know, passing the proposal
48 with negative C&T, sorry, that still remains one of the
49 options.

50

1 Bert.

2

3 MR. ADAMS: Thank you, Mr. Chairman.
4 You know, in Southeast, because of the economy and
5 everything, in fact, throughout the state we see a
6 migration of people moving from the rural areas into
7 the urban areas and in Southeast we have seen people
8 from Angoon and Hoonah, small villages like that move
9 into Juneau and so how -- the question is for Keith,
10 you know, how do they fit into this scheme, you know,
11 would they be able to subsistence hunt in the Juneau
12 area or not?

13

14 MR. GOLTZ: No, I don't think so.
15 ANILCA's based on residency, and that can flow either
16 way. You can go from Juneau to a rural area and become
17 a subsistence user or you could lose that subsistence
18 right if you migrate into Juneau. It's not based on
19 personal history, it's based on residency.

20

21 MR. ADAMS: Follow-up, Mr. Chairman.
22 Some of these people, you know, are going to move back
23 to their communities so, you know, I think this is a
24 concern that SERAC, you know, brought up at our last
25 meeting and we were under the impression that they
26 would be able to, you know, hunt and fish in the Juneau
27 area because of the fact that they're there only
28 temporary or nothing permanent, you know, so.....

29

30 MR. CESAR: Mr. Chairman.

31

32 CHAIRMAN FLEAGLE: Niles.

33

34 MR. CESAR: That just brings up an
35 interesting question. If you had a kid from Yakutat
36 move to Juneau for two semesters University of Alaska-
37 Southeast, and as a rural resident, if you were living
38 in Yakutat on a full-time basis could come down and
39 hunt and fish the Juneau Road System, so if the person
40 were in school, still be a resident of Yakutat and
41 intending to go back to Yakutat as soon as the school
42 semester was out, could that person hunt and fish on
43 the Juneau Road System?

44

45 CHAIRMAN FLEAGLE: Further defining
46 residency.

47

48 MR. GOLTZ: Right. And Bert's very
49 last comment tripped my interest, too. If you -- we
50 have a very precise definition of what a resident is,

1 it's in our regulation, it's possible for someone to
2 remain a resident of a rural area and be temporarily in
3 Juneau and I suppose then they would qualify under our
4 present regulations, which is really a default and is
5 meant to be a temporary regulation.

6

7 MR. CESAR: And would that also might
8 apply to a military person, so there are ways that
9 people could hunt, fish that road system given the
10 situation as it is now. Now, if we take and adopt this
11 proposal that person would not be eligible then to hunt
12 and fish the road system, so we would be restricting
13 access for rural people in those specific conditions.

14

15 MR. GOLTZ: Yeah, the proposal would
16 say no Federal subsistence at all.

17

18 MR. CESAR: Right.

19

20 MR. GOLTZ: Right.

21

22 CHAIRMAN FLEAGLE: Just for the streams
23 in the road system, though, right, in this context, it
24 wouldn't apply to hunting?

25

26 MR. GOLTZ: Right.

27

28 CHAIRMAN FLEAGLE: That would be
29 another can of worms, or I mean issue.

30

31 MR. COLLINS: Mr. Chairman.

32

33 MR. GOLTZ: No, I think.....

34

35 CHAIRMAN FLEAGLE: Ray Collins.

36

37 MR. COLLINS: Yeah, I think there's
38 another point that should be made here, too, that we
39 need to remember that subsistence harvest is
40 opportunistic and you're talking about closing an area
41 to subsistence hunting that could potentially remain
42 open and might be important in the future. And we've
43 already mentioned some of the people there that -- I
44 mean somebody may be working in Juneau for a week or
45 something like that and want to use that to hunt or to
46 fish and take the game home. The question is, do you
47 have the right to close Federal lands to subsistence
48 users because there is not use now and you don't even
49 know if there has been in the past or not. Shouldn't
50 that remain open unless there's a biological or some

1 other strong reason for closing it to subsistence, why
2 restrict subsistence opportunities on any Federal land
3 without some strong reason behind it.

4

5 CHAIRMAN FLEAGLE: Thank you, Ray.
6 Tina.

7

8 MR. COLLINS: Mr. Chairman. I'd like
9 to be sure we clarify on the record that this proposal
10 is very specific to fish in the waters that cross the
11 Juneau Road System, it is not related to hunting or to
12 any other harvesting on the land itself. We're very
13 specific. And the second part of that is this proposal
14 is specific to customary and traditional use
15 determination, it is not in any way related to the
16 conservation issues which are brought up in Proposal 4.
17 Proposal 15 is specific to C&T and this has come before
18 the Federal Subsistence Board before, the Federal Staff
19 analysis, very lengthy analysis shows that there has
20 never been any use of these stocks in these streams by
21 rural communities along the Juneau Road System. And
22 with no evidence of use, of customary and traditional
23 use determination we are simply asking that the Board
24 acknowledge that for the narrow boundaries of the
25 current Juneau Borough city boundary, not a future one,
26 the current one.

27

28 CHAIRMAN FLEAGLE: Thank you, Tina.
29 And the Board's aware of that, we're talking about
30 specific streams for fisheries. I think we were just
31 branching off into the bigger what if's and areas here
32 and I appreciate that discussion.

33

34 Back to the matter at hand, the Board's
35 desire. We don't even have a motion on the floor yet
36 for action or inaction and I'd like to just move back
37 -- get back to the proposal and see where we're ready
38 to go on it.

39

40 Denny.

41

42 MR. BSCHOR: Mr. Chair. I move to
43 adopt Proposal FP09-15, and need to mention that I
44 don't plan on voting for that. I would further move
45 afterwards to defer if that -- if we get a second.....

46

47 MR. LONNIE: I'll second.

48

49 CHAIRMAN FLEAGLE: All right, we got
50 your second. And one further comment is that the

1 motion to adopt is in competition with the Southeast
2 Regional Council's -- okay, go ahead, Denny.

3

4 MR. BSCHOR: That's what I was going to
5 say, it is in opposition to the Southeast Alaska
6 Regional Advisory Council's recommendation.

7

8 CHAIRMAN FLEAGLE: Okay, with that,
9 then further discussion.

10

11 (No comments)

12

13 CHAIRMAN FLEAGLE: Denny.

14

15 MR. BSCHOR: Mr. Chair. If I make a
16 motion to move to defer this that also would be in
17 opposition to the Southeast Alaska Regional Advisory
18 Council's recommendation. But considering all the
19 dialogue we've had today there's still questions and I
20 still think that being able to look at a C&T of 11 and
21 15, which includes the Juneau area which is a part of
22 it and currently we have very broad C&T for Dolly
23 Varden, trout, smelt, eulachon and for all residents of
24 Southeast Alaska and Yakutat and for all other fish
25 including salmon for all rural residents of the state,
26 I think there's a reason to take a look at this and see
27 if we can refine, at least, it may not be refined as
28 far as what the State's asking for right now or it may
29 be, depending on what we come up with, but I think it's
30 worth doing and like I say in the interim I think we --
31 I don't think time is a large factor although the State
32 might disagree with me as far as the fish conservation
33 but I don't think we have any documented use so I'm
34 going to base my proposal on that assumption, or those
35 facts if they're there.

36

37 And I think then I would also suggest
38 that it would give OSM and Southeast Council a chance
39 to work with that also. And I would expect to
40 readdress this in not any longer than two years from
41 now during the regular cycle again.

42

43 Mr. Chair.

44

45 MR. CESAR: Mr. Chairman.

46

47 CHAIRMAN FLEAGLE: Go ahead, Niles.

48

49 MR. CESAR: I just want to be clear,
50 Denny, so what you're suggesting or your motion would

1 be to place it before us and vote against it so we're
2 not -- so at this point we're not talking about a
3 deferral to do further study, this would be an out
4 right vote against it?

5
6 MR. BSCHOR: Or I could make another
7 motion to defer.

8
9 MR. CESAR: No, I'm happy with what you
10 did.

11
12 MR. BSCHOR; Okay.

13
14 MR. CESAR: I just want to be
15 clear.....

16
17 MR. BSCHOR: All right.

18
19 MR. CESAR:on how I'm voting
20 because I intend to vote against the motion as
21 presented the way you've presented it.

22
23 CHAIRMAN FLEAGLE: Denny.

24
25 MR. BSCHOR: Help me out, do I.....

26
27 CHAIRMAN FLEAGLE: Okay, well, the
28 point that Pete just.....

29
30 MR. BSCHOR: Do we have a second on the
31 motion to adopt?

32
33 CHAIRMAN FLEAGLE: We do.

34
35 MR. BSCHOR: And then -- now am I --
36 I've forgotten, do we have a motion to defer.....

37
38 CHAIRMAN FLEAGLE: No.

39
40 MR. BSCHOR:with a second.

41
42 CHAIRMAN FLEAGLE: Not yet.

43
44 MR. BSCHOR: If we did that and we
45 voted for that then would we be done?

46
47 CHAIRMAN FLEAGLE: For now.

48
49 MR. BSCHOR: For now.

50

1 CHAIRMAN FLEAGLE: Yes.

2

3 MR. BSCHOR: So that's what I was
4 proposing to do if the Chair.....

5

6 CHAIRMAN FLEAGLE: And that -- rather
7 than just out right dismissing this proposal I would
8 prefer that we set it aside because looking at the
9 proposal there is some justification for passage and if
10 we do choose to lead into it, at least a vote to kill
11 it, we need to go through the process. If we're
12 prepared to do that then that's fine, I'm not going to
13 try to stop that. But from my listening to the
14 discussion that we've been having on this issue it
15 would be wise to defer it because there's some larger
16 questions that are not being answered. I know it's a
17 really site specific specific proposal but it has some
18 other implications in the program that I'm not sure
19 that we're seeing right now and this would give us a
20 chance to look at that. I think that there may be some
21 concern that the Board would be seating authority in an
22 area that is currently under our authority without
23 clear justification or might be setting a precedent
24 that may be detrimental to future decisions similar to
25 this and I think that the Board -- what I'm hearing in
26 discussions is that we want to make sure that we're
27 careful in how we go about this decision. Not --
28 again, I'd like to state, I totally agree that it's a
29 crazy situation that we have on this Juneau Road System
30 where the residents of Juneau can't fish but somebody
31 from Akiachak can. I mean it doesn't make sense but
32 I'm not sure that just applying a no C&T determination
33 is the right approach. And if we kill the proposal
34 it's going to come back to us in two years anyway.
35 This will give us an opportunity to look at it, bigger
36 lenses, work out a solution that maybe we can start
37 applying to other areas that come before us.

38

39 So I'm not trying to steer the process
40 but if I were to be able to make a motion I think
41 that's probably what I would do.

42

43 MR. EDWARDS: Mr. Chairman. I think I
44 agree with your analysis. I think there is some
45 legitimate issues here. I don't think this proposal is
46 the proper format or vehicle to try to address those
47 issues. Again, I'm not sure what is. Maybe in
48 retrospect we should have done the same thing for the
49 Juneau Road System that we did for Campbell Tract and
50 we wouldn't be having this discussion but we mentioned

1 students but there's really no difference than students
2 going to school at UofA from rural communities that one
3 could legitimately say they ought to be able to go
4 subsistence fish up on the Campbell Tract. So I don't
5 know what the proper vehicle is to try to address the
6 issue but I don't think this proposal is the proper
7 approach.

8

9 CHAIRMAN FLEAGLE: Pete.

10

11 MR. PROBASCO: Mr. Chair, if I may, I'm
12 just trying to get the Board to understand where
13 they're currently at. We currently have a motion on
14 the floor to adopt Proposal FP09-15 and we have no
15 motion at this time to defer.

16

17 CHAIRMAN FLEAGLE: Right. We're still
18 discussing the merits of a deferral action. And if we
19 don't have a motion to defer then we need to start
20 discussing the merits of the proposal on its face and
21 working toward a vote either up or down.

22

23 Denny.

24

25 MR. BSCHOR: Mr. Chairman. I move to
26 defer this proposal and as I said earlier it's not
27 consistent with the Southeast Alaska Regional Advisory
28 Council's recommendation but I do not support the
29 proposal itself. So this is an opportunity to have
30 some discussion on the merits of deferring and if we --
31 if this is passed, we're done, if it doesn't, we're
32 back to the original proposal as I understand the
33 process. And for the reasons I mentioned before, do I
34 need to go over those again, I think they're pretty
35 sufficiently on the record.

36

37 CHAIRMAN FLEAGLE: Yeah, we're good.
38 And just for clarification, you're talking deferral for
39 no more than two years, so you're leaving the
40 scheduling up to Staff, whether this should be done at
41 the next fishery meeting or before?

42

43 MR. BSCHOR: (Nods affirmatively)

44

45 CHAIRMAN FLEAGLE: Is there a second.

46

47 MR. EDWARDS: Second.

48

49 MR. LONNIE: Second.

50

1 CHAIRMAN FLEAGLE: All right, we got
2 two seconds, take your pick. Discussion.
3
4 (No comments)
5
6 CHAIRMAN FLEAGLE: Pete.
7
8 MR. PROBASCO: Mr. Chair. So there's
9 no misunderstanding, the motion to defer as I
10 understand it, is that this issue will be readdressed
11 no later than 2011 by the Board and that it is sent
12 back to the Staff to expand the analysis to look at
13 Districts 11 and 15.
14
15 Mr. Chair.
16
17 MR. EDWARDS: Mr. Chair.
18
19 CHAIRMAN FLEAGLE: Gary.
20
21 MR. EDWARDS: One question, by
22 expanding the analysis that wouldn't preclude at some
23 point excluding a specific area or including it, right?
24
25 MR. PROBASCO: Unless I stand corrected
26 that's how I understand it, Mr. Chair.
27
28 CHAIRMAN FLEAGLE: So the proposal
29 would still be presented as written, that it would
30 address the streams that cross the road in the Juneau
31 area but the analysis will address a larger area
32 including the specific zone. All right.
33
34 Niles.
35
36 MR. CESAR: Mr. Chairman. I guess I am
37 not in support of the proposal but given what I've
38 heard I'm not opposed to a deferral so it would seem to
39 me that it's the middle ground that I could go with so
40 I would support a deferral.
41
42 CHAIRMAN FLEAGLE: Are we ready for the
43 question then.
44
45 MR. CESAR: Question.
46
47 CHAIRMAN FLEAGLE: Question's called
48 but not recognized. Bert.
49
50 MR. ADAMS: What happens -- Mr.

1 Chairman, what happens to the first proposal now, does
2 that just automatically go away or do you have to
3 address that too?

4

5 CHAIRMAN FLEAGLE: It's being deferred.
6 By this action it'll be deferred. If the action -- if
7 the vote passes it'll be deferred no later than two
8 years. If it fails, the proposal is still before us.

9

10 MR. ADAMS: Okay, thank you.

11

12 CHAIRMAN FLEAGLE: All right, question
13 is now recognized, Pete, on deferral.

14

15 MR. PROBASCO: Thank you, Mr. Chair.
16 Motion to defer Proposal FP09-15, and we start with Mr.
17 Cesar.

18

19 MR. CESAR: Yes.

20

21 MR. PROBASCO: Mr. Edwards.

22

23 MR. EDWARDS: Yes.

24

25 MR. PROBASCO: Mr. Fleagle.

26

27 CHAIRMAN FLEAGLE: Yes.

28

29 MR. PROBASCO: Ms. Masica.

30

31 MS. MASICA: Yes.

32

33 MR. PROBASCO: Mr. Lonnie.

34

35 MR. LONNIE: Yes.

36

37 MR. PROBASCO: And Mr. Bschor.

38

39 MR. BSCHOR: Yes.

40

41 MR. PROBASCO: Motion to defer carries,
42 six/zero.

43

44 CHAIRMAN FLEAGLE: All right, thank
45 you, Pete. That moves us on to Proposal 09-04
46 beginning on Page 101.

47

48 MR. CASIPIT: Thank you, Mr. Chair.
49 For the record my name is Cal Casipit, I'm with the
50 Forest Service in Juneau, Alaska. The executive

1 summary for this proposal begins on Page 101 of your
2 book and the actual analysis begins on Page 103.

3

4 As Pippa mentioned before this is sort
5 of a companion with the proposal that you just
6 deliberated. Proposal FP09-04 was submitted by the
7 Alaska Department of Fish and Game and requests that no
8 Federal subsistence fishing permits be issued for
9 streams crossed by or adjacent to the Juneau Road
10 System.

11

12 The proponent is concerned that the
13 streams crossed by or adjacent to the Juneau Road
14 System support small populations of fish that can be
15 easily over-exploited. This proposal is similar to
16 proposals FP06-31, which was submitted to remove the
17 Federal Subsistence Board's current area-wide Federal
18 subsistence fishing regulations for steelhead, Dolly
19 Varden and cutthroat trout in streams crossed by or
20 adjacent to the Juneau Road System and replace them
21 with State of Alaska sportfishing regulations.

22

23 At its January 2006 meeting the Board
24 rejected this proposal, FP06-31.

25

26 I think the Board is familiar with the
27 regulatory history with fishing on the Juneau Road
28 System. A summary of that is provided on Page 104
29 through 105 of your book. The biological background
30 and the current events are covered between 105 and 106
31 and I'm not sure I'm going to -- I'm not going to go
32 through all that but I just wanted to say on the record
33 that we do have permits. Our permits that we do issue
34 for fishing on the Juneau Road System, like I said
35 they're general permits for the entire area but we have
36 special conditions on these permits for the Juneau Road
37 System. Among them is a 32 inch minimum size limit and
38 rod and reel without bait gear restrictions. This has
39 likely discouraged participation by Federally-qualified
40 subsistence users on the Juneau Road System. In
41 addition we instituted for trout an 11 inch minimum
42 size limit. Again, it appears that this is
43 discouraging use on the Juneau Road System.

44

45 I did want to point out under harvest
46 history that to-date no fish have been reported on
47 Federal subsistence fishing permits from the Juneau
48 Road side System since it's inception. Pippa did cover
49 use of Districts 11 and 15 under the statewide
50 sportfish harvest surveys and I won't go over that

1 again, that's included in both these analysis under
2 harvest history.

3
4 The effects of this proposal. If this
5 proposal were implemented there would be no opportunity
6 for Federally-qualified subsistence users to harvest
7 fish in Federal public waters on the Juneau Road
8 System. This could be detrimental to the satisfaction
9 of subsistence needs if a Federally-qualified
10 subsistence user does desire to harvest fish on the
11 Juneau Road System.

12
13 Known conservation concerns for
14 steelhead and trout on the Juneau Road System are
15 addressed by our restrictive permit conditions. And
16 additional restrictions could be placed on the permit
17 under our local Federal fisheries manager's authority
18 if additional conservation concerns arise.

19
20 The OSM conclusion is to oppose this
21 proposal.

22
23 Adopting the proposed regulation change
24 would not provide subsistence users with a subsistence
25 priority as required in Section .804 of ANILCA and
26 could be detrimental to the satisfaction of their
27 subsistence needs.

28
29 Again, known conservation concerns for
30 steelhead and trout on the Juneau Road System are
31 addressed by restrictive permit conditions and
32 additional restrictions could be placed if additional
33 conservation concerns arise.

34
35 That concludes my presentation. Thank
36 you, Mr. Chair.

37
38 CHAIRMAN FLEAGLE: Thank you, Cal.
39 Next we go to a summary of public comments. Bob.

40
41 MR. LARSON: Mr. Chairman. There are
42 no written public comments on 04.

43
44 CHAIRMAN FLEAGLE: Thank you. We're
45 open to public testimony. Pete.

46
47 MR. PROBASCO: No one's signed up for
48 public testimony on this proposal, Mr. Chair.

49
50 CHAIRMAN FLEAGLE: Regional Advisory

1 Council recommendation. Bert.

2

3 MR. ADAMS: Thank you, Mr. Chairman.
4 Again, the Southeast Regional Advisory Council opposes
5 this proposal. We know that current regulations allow
6 fishing -- allow subsistence fishing in the Juneau Road
7 System but the gear is restricted by permit and rod and
8 reel only. This management strategy provides for a
9 subsistence use of the area while providing adequate
10 safeguards necessary for conservation of local fishery
11 resources. Title VIII requires a subsistence priority
12 and if additional restrictions are determined to be
13 necessary the non-Federally-qualified users should be
14 restricted first.

15

16 The proponent did not adequately
17 consider the historical use of the area adjacent to the
18 current Juneau Road System when making or supporting
19 this proposal and so the proposal would necessarily
20 restrict access to local streams which have a long
21 history of subsistence use. Opposing this proposal
22 will have no effect on non-Federally-qualified
23 subsistence users.

24

25 Thank you, Mr. Chairman.

26

27 CHAIRMAN FLEAGLE: Thank you, Bert.
28 Department of Fish and Game comments. George.

29

30 MR. PAPPAS: Thank you, Mr. Chair.
31 Department of Fish and Game. Once again I'm
32 summarizing the Department's full comments that are in
33 your Board book, Pages 111 through 115, and those
34 comments will be entered into the record following this
35 presentation.

36

37 Proposal FP09-04 disallows issuance of
38 Federal subsistence permits for streams crossing the
39 Juneau Road System within the city and borough of
40 Juneau based on concerns for these specific relatively
41 small and vulnerable fish stocks. These streams
42 constitute a very small portion, less than 10 percent
43 of the freshwater fisheries in the Districts 11 and 15
44 of Southeast Alaska.

45

46 Although Southeast Alaska general
47 Federal subsistence fishery permits in Southeast Alaska
48 Federal spring steelhead permits allow for fishing on
49 the Juneau Road System and require harvest by stream,
50 no Federal subsistence harvest by rural residents have

1 ever been reported for the freshwaters of the road
2 systems within the city and borough of Juneau
3 boundaries.

4
5 If any Federal subsistence fishing were
6 to occur these fish stocks could be impacted before
7 evidence of unsustainable harvest would be available.
8 In addition, testimony from the public and the Council
9 members at the October 2008 Southeast Regional Advisory
10 Council meeting expressed concerns about restricting
11 the Juneau residents, non-Federally-qualified users if
12 fishing pressure on the Juneau Road System increased.
13 Public testimony requested that the Regional Advisory
14 Council not approve regulations which would prohibit
15 residents from the Juneau area from participating in
16 the local fisheries. Adoption of this proposal would
17 prevent further fisheries restrictions by removing the
18 issuance of Federal subsistence permits on the Juneau
19 Road System and preventing unsustainable future fishing
20 pressure by non-local residents.

21
22 This proposal is similar to and
23 consistent with the Federal regulations previously
24 adopted in Petersburg, Wrangell and Sitka area under
25 Section 27(i)(13)(ix) which prohibit the issuance of
26 Federal subsistence permits for the use of nets along
27 the road system.

28
29 Meaningful subsistence fishing
30 priorities for rural residents exists in streams that
31 are closer to the respective communities. Eligible
32 rural residents would have to travel substantial
33 distances by boat or airplane in order to fish a Juneau
34 Road System even though daily air and ferry service,
35 the Juneau Road System -- the Juneau area is not near
36 or reasonably accessible to rural residents of
37 Southeast Alaska for the purposes of subsistence
38 fishing or for the purposes of sportfishing. In fact,
39 the Federal Staff analysis indicates there is no
40 evidence that the Juneau Road System is being utilized
41 by rural residents outside the Juneau city and borough
42 boundaries for subsistence.

43
44 State regulations provide for a variety
45 of sportfishing opportunities in freshwaters and
46 adjacent salt -- saltwater shoreline areas of the
47 Juneau Road System but these opportunities are more
48 restricted and elsewhere in Southeast Alaska. The
49 Department lists only 15 freshwater streams along the
50 Juneau Road System where anglers may fish. Nearly all

1 freshwater sportfishing activity approximately 80
2 percent along the Juneau Road System takes place in
3 four primary streams, which are Kelly Creek, Montana
4 Creek, Peterson Creek and Fish Creek. The fish
5 populations in these streams are relatively small and
6 several other road -- small road side streams in the
7 area are closed to sportfishing altogether and others
8 are closed to salmon or Dolly Varden fishing.
9 Restrictive bag and possession limits are in effect for
10 many species. The Juneau road side bag and possession
11 limits and size requirements differ and are more
12 restrictive than the regional requirements or
13 regulations. Bag and possession limits have been
14 reduced for coho salmon, sockeye salmon and Dolly
15 Varden. Cutthroat trout size limits are also -- may be
16 -- be more restrictive than regional regulations,
17 existing harvest levels on these small stocks can only
18 continue if effort does not increase substantially, if
19 most fishers continue to practice non-retention and if
20 the streams are conservatively managed.

21

22 The Department has continually
23 expressed concerns about the sustainability of the
24 highly accessible and liberal Federal subsistence
25 fisheries on the Juneau Road System. For example, the
26 Federal steelhead 32 inch size limit in the area allows
27 a harvest rate that is unsustainable. The Federal
28 Staff analysis proposal FP06-31 at the January 2006
29 Federal Subsistence Board meeting provided no
30 biological justification for the 32 inch size limit
31 other than to state the size limit was set less than
32 the State sportfishing limit of 36 to give Federally-
33 qualified users a subsistence priority.

34

35 The State's 36 inch size limit and
36 other State regulations were adopted to rebuild
37 depleted stocks and are based on biological standards
38 to achieve a sustainable harvest rate. Likewise the
39 sportfishing cutthroat regional minimum size limit is
40 11 inches in length, it was established to protect 60
41 percent of the trout population until they can -- can
42 spawn at least once.

43

44 The regulations in the Juneau area are
45 even more restrictive, they impose a 14 inch minimum
46 size limit to allow all female cutthroat trout to spawn
47 at least one time. In contrast the Federal regulations
48 applicable to the area allow retention of cutthroat
49 trout of less than 14 inches in length, which allows
50 the harvest of juvenile cutthroat trout in areas of

1 high usage.

2

3 These size regulations are not
4 consistent with sound management and principles.

5

6 The State's current regulations that
7 protect such stocks were successfully developed
8 utilizing the most current scientific knowledge and
9 management methods. The Federal regulations could
10 jeopardize the fish stocks because harvest limits are
11 excessive for the size of the streams and damage would
12 not be evident until after it was reported.

13

14 The Federal subsistence permit appears
15 to be the foundation for the Federal's offi -- belief
16 that they're assuring stock conservation but the
17 Federal permit reporting requirements are too little
18 and too late for small stocks.

19

20 Under the current Federal subsistence
21 fishing regulations these small Juneau area fish stocks
22 could be impacted if even a few rural residents chose
23 to use the opportunity to subsistence fish under
24 Federal regulations along the Juneau Road System within
25 the current borough boundaries.

26

27 In addition to our significant
28 conservation issues that could be alleviated simply by
29 not issuing permits for this area, there's an
30 additional enforcement problem created by the Federal
31 regulations for the rural user. According to the
32 Department's fish distribution database a majority of
33 the fish habitat and documented fish observations in
34 these streams are not located within Federal land.
35 Some streams have relatively inaccessible headwaters on
36 Federal land but they are -- they flow through State,
37 private and other land ownerships to marine waters.
38 Most of the lengths of these streams are also not
39 within the Tongass Forest boundary and the Federal
40 regulations can only apply to those waters within the
41 exterior boundaries of the Tongass and the Juneau area.
42 The Juneau area was specifically excuded -- excluded
43 from the Tongass boundaries before statehood. Other
44 streams along the Juneau Road System flow entirely on
45 non-Federally owned land, however, the Federal analysis
46 continues to incorrectly and overbroadly claim, as I
47 quote, Federal public waters comprise all freshwaters
48 draining into fishing -- fisheries Districts 11 and
49 those freshwaters draining into fisheries Districts 15
50 south of Chilkat Peninsula near Haines but also

1 include eastern side of Chilkoot Inlet north to Skagway
2 all within the exterior boundaries of the Tongass
3 National Forest, which is Map 1 in the Federal
4 analysis. These waters include all streams crossed by
5 the roads, connected by the city and borough in Juneau
6 -- road system. The latter statement is not only
7 untrue but it sets up the Federally-qualified user to
8 cited for violating State regulations while standing on
9 State or private lands as well as lands outside the
10 exterior boundaries of the Tongass Forest.

11
12 In summary, adoption of this proposal
13 would be consistent with the previously adopted Federal
14 regulations prohibiting issuance of permits for net
15 fishing in Petersburg, Wrangell and for Sitka road
16 system. The Federal Board should exempt the current
17 Juneau and city -- the current Juneau city and borough
18 boundary area from the region wide regulations by not
19 allowing subsistence permits to be issued for the
20 freshwaters accessible through the water system. This
21 action will not have any impact on Federally-qualified
22 rural subsistence users since none have ever fished for
23 subsistence uses there. The protection would be
24 afforded to the specific small and vulnerable stocks
25 found along the Juneau Road System and, therefore, the
26 Department urges the Federal Board to adopt this
27 proposal.

28
29 That concludes my comments. Thank you,
30 Mr. Chair.

31
32 *****
33 STATE OFFICIAL WRITTEN COMMENTS
34 *****

35
36 Alaska Department of Fish and Game
37 Draft Comments to the Federal Subsistence Board
38
39 FP09-04 Juneau Road System No Federal
40 Subsistence Permits

41
42 Introduction:
43
44 This proposal disallows issuance of
45 federal subsistence permits for streams crossing the
46 Juneau road system within the City/Borough of Juneau
47 based on concern for specific relatively small and
48 vulnerable fish stocks. These streams constitute a
49 very small portion (less than 10%) of the freshwater
50 fisheries in Districts 11 and 15 of Southeast Alaska.

1 Although both Southeast Alaska general federal
2 subsistence fishery permits and the Southeast Alaska
3 spring steelhead permits allow fishing on the Juneau
4 road system and require reporting of harvest by stream,
5 no federal subsistence harvests by rural residents have
6 been reported for the freshwaters of the road system
7 within the City and Borough of Juneau boundaries. If
8 any federal subsistence fishing were to occur, these
9 fish stocks could be impacted before evidence of
10 unsustainable harvests would be available. In
11 addition, testimony from the public and Council members
12 at the October 2008 Southeast Regional Advisory Council
13 meeting expressed concerns about restricting non-
14 federally qualified uses if fishing pressure on the
15 Juneau road system increased. Public testimony
16 requested that the Regional Advisory Council not
17 approve regulations which would prohibit residents of
18 Juneau from participating in the local fisheries.
19 Adoption of this proposal would prevent potential
20 fishery restrictions by removing the issuance of
21 federal subsistence permits on the Juneau road system
22 and preventing unsustainable future fishing pressure by
23 non-local residents from developing. FP09-04 is
24 similar to and consistent with federal regulations
25 previously adopted in the Petersburg, Wrangell, and
26 Sitka area under ^U_.27(i)(13)(ix) prohibiting issuance
27 of permits for the use of nets.

28

29 Impact on Subsistence Users:

30

31 No prior harvests by rural residents
32 have been documented for subsistence use in fresh
33 waters of the road system within the Juneau
34 City/Borough boundary. There is no evidence of a
35 customary and traditional use of fish stocks for
36 subsistence by any rural resident in fresh waters that
37 cross the road system within the Juneau City/Borough
38 boundary. Most Juneau area fishing occurs within
39 marine waters, just as most fishing throughout
40 Southeast Alaska occurs in marine waters -- outside of
41 claimed federal waters. Meaningful subsistence fishing
42 priorities for rural residents exist in streams that
43 are closer to their respective communities. Eligible
44 rural residents would have to travel substantial
45 distances by boat or airplane in order to fish on the
46 Juneau road system. Though daily air and ferry service
47 exists, the Juneau area is not near or reasonably
48 accessible to rural residents of Southeast Alaska for
49 purposes of subsistence or sport fishing. In fact,
50 only two sport-caught fish were reported as having been

1 caught by rural residents of Southeast Alaska on the
2 Juneau road system by responders to the Statewide Sport
3 Fish Harvest Survey from 2004 through 2006. No
4 evidence supports a contention that subsistence
5 opportunity along the Juneau road system is utilized by
6 rural residents living outside the Juneau City/Borough
7 boundary.

8

9

Opportunity Provided by State:

10

11 State regulations provide for a variety
12 of sport fishing opportunities in fresh waters and
13 adjacent saltwater shoreline areas of the Juneau road
14 system, but these opportunities are more restricted
15 than elsewhere in Southeast Alaska. The Alaska
16 Department of Fish and Game (Department) lists only 15
17 freshwater streams along the Juneau road system where
18 anglers may fish. Although salt water shoreline areas
19 are also available, fishing even in saltwater in the
20 area for trout and Dolly Varden is more restricted and
21 subject to lower bag limits than in other areas of
22 Southeast Alaska. Nearly all freshwater sport fishing
23 activity (approximately 80%) along the Juneau road
24 system takes place in four primary streams (Cowee
25 Creek, Montana Creek, Peterson Creek, and Fish Creek).
26 The fish populations in these streams are relatively
27 small. Several small roadside streams in the area are
28 closed to sport fishing altogether, and others are
29 closed to salmon or Dolly Varden fishing. Restrictive
30 bag and possession limits are in effect for many
31 species. Juneau roadside bag and possession limits and
32 size requirements differ in several respects from
33 regional regulations and are more restrictive. Bag and
34 possession limits have been reduced for coho salmon,
35 sockeye salmon, and Dolly Varden. Cutthroat trout size
36 limits are also more restrictive than regional
37 regulations.

38

39

Conservation Issues:

40

41 Two dozen Juneau area streams support
42 small populations of fish and can be easily accessed
43 from the local road system. Seven of the streams have
44 been closed to all fishing and four streams have salmon
45 retention prohibitions in order to assure continued
46 sustainability. All other streams open to fishing are
47 conservatively managed for high use and have severely
48 restricted methods and means, size limits, harvest
49 limits, fishing schedules (e.g., no bait, seasonal
50 closures, slot limits, and species prohibitions).

1 Existing harvest levels can only continue if effort
2 does not increase substantially, most fishers practice
3 non-retention, and the streams are conservatively
4 managed.

5
6 The Department has continually
7 expressed concerns about sustainability within highly
8 accessible, liberal-harvest federal subsistence
9 fisheries on the Juneau road system. The federal
10 steelhead 32 size limit in this area allows a harvest
11 rate that is unsustainable. The Federal Staff Analysis
12 for proposal FP 06-31 at the January 2006 Federal
13 Subsistence Board meeting (pages 395-400 in the meeting
14 materials book) provided no biological justification
15 for the 32 size limit other than to state the size
16 limit was set less than the state sport fish limit of
17 36 to give federally qualified users a subsistence
18 priority. The State 36 size limit and other State
19 regulations were adopted to rebuild depleted stocks and
20 are based on biological standards to achieve a
21 sustainable harvest rate. Likewise, the sport fishing
22 cutthroat regional minimum size limit of 11 in length
23 was established to protect about 60% of trout
24 populations until they can spawn at least once. The
25 regulations in the Juneau area are even more
26 restrictive; they impose a 14 minimum size length to
27 allow all female cutthroat trout to spawn at least one
28 time. In contrast, the federal regulations applicable
29 to the area allow retention of cutthroat trout less
30 than 14 in length, which allows harvest of juvenile
31 cutthroat trout in areas of high use.

32
33 The State fishing regulations in place
34 near or within highly populated areas of Alaska for
35 fish stocks exposed to elevated exploitation pressures
36 were developed to conserve and rebuild a variety of
37 fish stocks. The current regulations in place that
38 protect such stocks were successfully developed through
39 utilizing the most current scientific knowledge and
40 management methods. When all of the required data
41 needed to manage a fishery are not available or if a
42 fish stock has been identified as potentially over-
43 exploited, fragile, or of concern, the fisheries are
44 managed conservatively through restrictive regulations.
45 In the absence of critical information about stock
46 sizes and harvest rates, the State regulations should
47 be used by the Federal Board to help ensure
48 sustainability of the resource. The federal
49 regulations could jeopardize fish stocks because
50 harvest limits are excessive for the size of streams

1 and damage would not be evident until after it is
2 reported. The federal subsistence permit appears to be
3 the foundation for federal stock conservation, but its
4 reporting requirements may be too little, too late
5 for small stocks.

6
7 Under the current federal subsistence
8 fishing regulations, these small Juneau area fish
9 stocks could be impacted if even a few rural residents
10 chose to travel to Juneau to subsistence fish. These
11 federal regulations apply to the area where non-
12 federally qualified Juneau residents and other users
13 are subject to State sport fishing regulations. The
14 current federal regulations provide an exemption from
15 State sport fish license requirements, allow
16 liberalized gear, and allow liberalized size limits.
17 In contrast to other areas in Districts 11 and 15 open
18 to subsistence fishing under the federal regulations,
19 streams that cross the road system within the
20 City/Borough of Juneau are relatively accessible to
21 Juneau visitors, support small fish stocks, and receive
22 increasing pressure from a large Juneau resident
23 population, thus necessitating increased restrictions
24 on size, gear, and limits in order to assure
25 sustainability of those stocks while also retaining an
26 opportunity for residents of the area to participate in
27 fishing.

28
29 Jurisdiction Issues:

30
31 According to the Department's Fish
32 Distribution Database, the majority of fish habitat and
33 documented fish observations in these streams are not
34 located within federal land. Some streams have
35 relatively inaccessible headwaters on federal land, but
36 they flow through State, private, and other land
37 ownership to marine waters. Most of the lengths of
38 these streams also are not within the Tongass Forest
39 boundary. Other streams along the Juneau road system
40 flow entirely on non-federally owned land. However,
41 federal analysis (i.e., December 2007 Federal
42 Subsistence Board Meeting Materials book page 181)
43 continues to incorrectly and over-broadly claim:

44
45 Federal public waters comprise all
46 fresh waters draining into fishing District 11 and
47 those fresh waters draining into fishing District 15
48 south of the Chilkat Peninsula (near Haines), but also
49 including the eastern side of Chilkoot Inlet north to
50 Skagway, all within the exterior boundaries of the

1 Tongass National Forest (Map 1). These waters include
2 all streams crossed by roads connected to the City and
3 Borough of Juneau road system.

4
5 In order for rural residents and
6 enforcement personnel to know where they can legally
7 participate in federal subsistence fisheries, we
8 request detailed land status maps showing areas and
9 specific boundaries of waters claimed to be within
10 federal subsistence jurisdiction and the basis for
11 those claims. Maps provided by federal staff to date
12 are not accurate enough to ensure federal subsistence
13 users do not inadvertently fish from lands not under
14 federal jurisdiction. Significant portions of federal
15 lands surrounding the Juneau road system are bordered
16 by state or private lands, where there is either no
17 federal jurisdiction or federally qualified subsistence
18 fishers cannot participate in federal subsistence
19 fisheries while standing on non-federal lands. During
20 the December 2007 Federal Board meeting, State of
21 Alaska Wildlife Trooper testimony illustrated to the
22 Federal Board the importance of users understanding and
23 knowing jurisdiction and land status. This testimony
24 explained that when an enforcement officer encounters
25 an individual conducting an activity that is prohibited
26 by State regulations on State or private lands,
27 including State-owned submerged lands, the person will
28 likely be cited. Closing the Juneau road system area
29 to the issuance of federal subsistence fishing permits
30 will significantly decrease the likelihood that rural
31 residents will be cited for violation of state law for
32 subsistence fishing on non-federal lands along the
33 Juneau road system.

34
35 Recommendation:

36
37 Support (if the Board fails to adopt
38 FP09-15). This action is consistent with the
39 previously adopted federal regulation prohibiting
40 issuance of permits for net fishing in the Petersburg,
41 Wrangell, and Sitka road system areas
42 (^U.27(i)(13)(ix)). The Federal Board should exempt
43 the current Juneau City and Borough boundary area from
44 region-wide regulations by not allowing subsistence
45 permits to be issued for fresh waters accessible
46 through the road system. This action would not have an
47 impact on federally qualified rural subsistence users,
48 who would retain a meaningful preference for the
49 harvest of species found along the Juneau road system
50 in other more reasonably accessible locations near

1 their communities and primary residences and even in
2 other portions of Districts 11 and 15; but protection
3 would be afforded to the specific small and vulnerable
4 stocks found along the Juneau road system. This
5 proposal will be unnecessary and would have no effect
6 if the Board accepts FP09-15.

7
8 CHAIRMAN FLEAGLE: Thank you, George.
9 We now look to the InterAgency Staff Committee
10 comments, Dr. Polly Wheeler.

11
12 DR. WHEELER: Thank you, Mr. Chair.
13 This is the same general comment I referenced earlier
14 so I don't have anything to add.

15
16 Mr. Chair.

17
18 CHAIRMAN FLEAGLE: Thank you. Board
19 discussion.

20
21 (No comments)

22
23 CHAIRMAN FLEAGLE: Questions.
24 Comments.

25
26 (No comments)

27
28 (Pause)

29
30 CHAIRMAN FLEAGLE: Keith. In just in
31 referencing, I don't have a map that's just -- perhaps
32 I do in the information, but just in reviewing the
33 comments submitted by the Department of Fish and Game,
34 these streams originate in the Forest and flow down
35 through State and private lands to their termination
36 and we're -- we regulate -- we exercise authority over
37 those waters why?

38
39 MR. GOLTZ: We're talking a lot about
40 defaults today. Where is the map that just came up on
41 the screen, is it in this book?

42
43 CHAIRMAN FLEAGLE: Yeah, it's hard
44 to.....

45
46 MR. GOLTZ: It's a little hard to see
47 there. But we, generally, have said that waters within
48 the external boundaries of a CSU are Federal waters.
49 The State denies that and they have brought a case in
50 Federal District Court. That case has now been fully

1 briefed and we're simply waiting for Judge Holland's
2 decision. Until we're told otherwise by the court,
3 though, our position is that waters within the external
4 boundaries are Federal waters and we manage them. The
5 State's argument is that particularly in this case
6 that's not true because there's another competing type
7 of reserve. I don't have an answer for that. All I
8 can say is that our present position is the position
9 that's stated in the regulations.

10

11 The other sort of related question is
12 who gets to what on which lands.

13

14 Now, on private lands within the CSU,
15 we've never tried to assert jurisdiction. So you can
16 get a situation with somebody standing on, let's call
17 them State lands with a pole and line in Federal
18 waters, and what the State is saying is we're going to
19 cite you. That is, in fact, the way our regulations
20 read right now. Whether -- if that ever came to a
21 head, whether the Secretary would jurisdiction or not I
22 don't know. If the Secretary asked me I would advise
23 that he could do it but the fact is we haven't at this
24 time so this is another one of those tangles that we're
25 faced with in dual jurisdiction.

26

27 CHAIRMAN FLEAGLE: So to just more
28 clearly understand, the reason that we are claiming
29 jurisdiction over the waters that flow through non-
30 public lands is because the external boundary of the
31 Forest encompass a much larger area, including to the
32 west, even though that land is broken by marine waters
33 that we don't have authority over?

34

35 MR. GOLTZ: That's correct. We've not
36 asserted jurisdiction over marine waters generally. We
37 have a few specific areas which we do for very specific
38 reasons unique to those areas, but as a general matter
39 we do not manage marine waters.

40

41 CHAIRMAN FLEAGLE: All right. And this
42 is the matter that we're waiting for the court decision
43 to help clarify whether we have it all or we have some
44 part of -- and I know this is going to apply to some
45 major streams as the Yukon as well.

46

47 MR. GOLTZ: It applies to the Yukon.
48 It's a very large complicated piece of litigation. I
49 don't know if Steve wants to get in and add to it. But
50 it's what I would characterize is a broad general

1 attack on Federal jurisdiction and how we've done
2 things with waters. And at this point I don't think
3 anybody knows what the result is going to be.

4
5 CHAIRMAN FLEAGLE: All right. But
6 suffices to say that we do recognize our own authority
7 at this point.....

8
9 MR. GOLTZ: At this point we can do
10 nothing else, we have to -- as the Commissioner pointed
11 out, follow our own regulations.

12
13 CHAIRMAN FLEAGLE: Thank you. Pete.

14
15 MR. PROBASCO: Keith, just to follow up
16 on Mike's question, is this decision something in the
17 near future or is it a ways away?

18
19 MR. GOLTZ: It could be. I think that
20 final briefing was late July, early August, the final
21 brief.

22
23 CHAIRMAN FLEAGLE: Steven.

24
25 MR. DAUGHERTY: Mr. Chair. Briefing
26 was completed in April.

27
28 CHAIRMAN FLEAGLE: All right, well, if
29 we're back -- if we're ready for some discussion. I
30 just had a little -- wanted to have a little discussion
31 as to why we're even doing this but it's because we can
32 so Denby.

33
34 COMMISSIONER LLOYD: Thank you, Mr.
35 Chair. Furtherance of that exploration, Mr. Goltz
36 indicated that we, which presumably is you, have
37 regulations that dedicate this area as being within
38 Federal jurisdiction. I guess I'm asking a little more
39 specific definition of we, was it the agencies, was it
40 the Federal Board, who was the Federal decision-maker
41 that is asserting that the appropriate interpretation
42 of the regulations would include this within Federal
43 waters?

44
45 MR. GOLTZ: I thought I heard your
46 question and now I'm not sure.

47
48 The initial decision was Secretarial.
49 And we -- I guess we interpret the Secretary but you
50 know that we write them and the Secretary signs them

1 and they come back so in effect if was a collaborative
2 effort. And in this case it actually was. I mean
3 there was interchange and it was -- frankly it was done
4 largely because we didn't know how else to do it. We
5 did not think that we could responsibly manage
6 fisheries piecemeal. So we took a different approach
7 with fisheries than we took with land animals.

8

9 CHAIRMAN FLEAGLE: All right. Board
10 members, where do we want to go on this one. Gary.

11

12 MR. EDWARDS: Just one more question.
13 If this proposal was to pass, it still wouldn't
14 prohibit fishing, would it allow fishing but without
15 the need of a permit? You don't necessarily have to
16 have a permit to fish, not everywhere do you, in
17 Southeast, so that's the discriminator there, okay.

18

19 CHAIRMAN FLEAGLE: Ready to move.

20

21 (No comments)

22

23 CHAIRMAN FLEAGLE: We don't even have
24 the proposal on the table yet -- I mean on the floor.

25

26 Denny.

27

28 MR. BSCHOR: Just a couple of questions
29 for both Cal Casipit and the State, whomever wants to
30 answer these just for my information or our
31 information.

32

33 Is there evidence that rural residents
34 fish on the Juneau Road System even though we know that
35 no harvest has been reported with a Federal subsistence
36 permit so I don't care who goes first, Cal, you want to
37 go first.

38

39 MR. CASIPIT: Thank you, Mr. Chair.
40 Mr. Bschor. I guess what I'll do is I'll just go back
41 to the analysis and I'll just read into the record
42 what's written there, it starts on the Bottom of Page
43 107 and it ends at 108 but it basic -- but this is,
44 again, I'll -- I'll just read it into the record.

45

46 To-date no fish have been harvested on
47 Federal subsistence fishing permits in the Juneau Road
48 side system since the fisheries inception, however,
49 limited data are available from the statewide sportfish
50 harvest survey, a mail out survey conducted by ADF&G.

1 The survey was designed to provide statewide and
2 regional estimates of effort and harvest of fish by
3 sportfish license holders using sportfish gear under
4 sportfish regulations. The statewide sportfish harvest
5 survey is not designed to provide detailed harvest and
6 effort estimates for individual streams. From 1996 to
7 2006 there were 107 responses to the statewide harvest
8 survey from rural residents of Southeast Alaska who
9 reported sportfishing in Districts 11 and 15. Of these
10 107 entries 32 fished in the freshwaters. A further
11 examination of which streams were fished found that 24
12 of these entries were for waters crossed by the Juneau
13 Road System including fishers from the communities of
14 Skagway, Sitka, Wrangell, Pelican, Haines and Gustavus.
15 A single survey respondent may have provided more than
16 one of the 107 entries in the survey results. Although
17 these harvests were reported under the statewide
18 sportfish harvest survey, the intent and purpose of
19 these harvests is unknown. It is possible that the
20 fishers were harvesting for subsistence under
21 sportfishing regulations and the absence of subsistence
22 regulations.

23
24 MR. BSCHOR: Any comments or
25 anything.....

26
27 CHAIRMAN FLEAGLE: George.

28
29 MR. BSCHOR:to add to that.

30
31 MR. PAPPAS: George Pappas, Department
32 of Fish and Game. Can you please clarify your question
33 again.

34
35 MR. BSCHOR: Just trying to get a feel
36 for how many rural residents fish there under whatever
37 conditions and then also I was wondering if there's any
38 data as far as the amount of take and that sort of
39 thing?

40
41 MR. PAPPAS; Mr. Chair. Mr. Bschor.
42 The statewide harvest survey didn't provide the
43 resolution to expand exactly how many fish were
44 harvested by each community in Southeast Alaska. The
45 statewide harvest survey provided information that
46 folks from the rural area were licensed and
47 sportfishing on the Juneau Road System during certain
48 years. So I cannot provide you specific data on that.

49
50 Thank you, Mr. Chair.

1 CHAIRMAN FLEAGLE: Tina.

2

3 MS. CUNNING: Mr. Chairman. We -- I
4 think the key point there is that these are people who
5 are sportfishing under sportfish regulations with a
6 sportfish license and those regulations are very
7 restrictive on sizes of fish and take. They provide an
8 opportunity for people who live in the Juneau area as
9 well as people who fish from rural areas under the
10 sportfishing provisions.

11

12 What this proposal does is acknowledge
13 a very serious conservation concern without diminishing
14 a Federal subsistence priority. No one is
15 participating under the Federal subsistence priority on
16 those lands. It wouldn't impact that priority. It
17 would -- it would protect those stocks crossed by the
18 Juneau Road System in the same fashion that the Federal
19 Program has adopted net restrictions for gear types in
20 several other communities where there's high use. Our
21 State regulations are much more restrictive on length
22 of fish in order to protect spawning resident species
23 in those small stocks.

24

25 One of the things that we heard at the
26 Southeast RAC meeting eloquently stated by a number of
27 Juneau residents was their concern that people moving
28 into the system would hurt their opportunities to fish
29 along the Juneau Road System, and you heard the
30 Chairman speak to that earlier, that when they move
31 into that area, coming and going, they want to have
32 those opportunities to participate in fishing. We
33 manage those high use area fisheries very restrictively
34 in order to provide the maximum opportunity possible.

35

36 CHAIRMAN FLEAGLE: It sounds like we're
37 getting close to at least putting a motion on the floor
38 to work on this proposal.

39

40 Denny.

41

42 MR. BSCHOR: Mr. Chair. I move to
43 adopt Proposal FP09-04 and following a second I'll get
44 some rationale for that but plan to vote against my
45 motion.

46

47 CHAIRMAN FLEAGLE: Do we have a second.

48

49 MR. LONNIE: (Nods affirmatively)

50

1 CHAIRMAN FLEAGLE: Tom seconds. Go
2 ahead, Denny.

3
4 MR. BSCHOR: Mr. Chairman. My
5 rationale is really the same as written in the
6 Council's justification on Page 102 and OSM conclusion
7 on Page 108 of our Board book. And Juneau residents
8 who live in the non-rural area are ineligible to fish
9 under the Federal regulations, therefore, people
10 potentially fishing under Federal regulations are only
11 visitors from rural areas and are relatively small
12 numbers as far as what we know. There are some people
13 who fish the Juneau freshwaters from some other
14 communities, we've heard that. We don't know if
15 they're subsistence fishermen, we don't have any
16 permits for them so we don't think they are but that's
17 the best information we have. And ANILCA still
18 provides priority for rural residents to fish on
19 Federal public lands. And I think not providing for
20 fishing and a priority would be detrimental to the
21 satisfaction of subsistence needs. If utilization of
22 the resources becomes a problem, once again we have the
23 Federal in-season manager who has authority to deal
24 with that.

25
26 So those are some of the reasons why I
27 would vote against it.

28
29 CHAIRMAN FLEAGLE: Other comments.

30
31 (No comments)

32
33 CHAIRMAN FLEAGLE: I'll make the
34 observation that once again this is an interesting
35 situation because on the one hand we have a positive
36 C&T determination, therefore, requiring us to have a
37 rural preference and we don't have a documented
38 subsistence use as yet, but we have the opportunity.
39 And I don't see where we have the legal ground to
40 remove that opportunity while we have a positive C&T
41 and I think that the Council's comments raise that
42 issue well. If there are restrictions needed to be
43 placed on that fishery -- on those fisheries, that it
44 should come from non-subsistence. I mean granted we
45 don't have any subsistence fishery and this is -- I
46 know it's kind of a conundrum here but I can see the
47 legal clarity that we don't have adequate reason to
48 restrict subsistence uses, even though we don't have
49 any right now.

50

1 So whether that clarified or didn't,
2 I'm going to vote against the motion as Denny has laid
3 out.

4
5 Other comments.

6
7 MR. EDWARDS: Mr. Chairman. Do we
8 actually have a positive C&T, I thought we didn't have
9 a positive C&T and that's why it's open statewide.

10
11 CHAIRMAN FLEAGLE: Isn't that a.....

12
13 MR. EDWARDS: I don't know, I'm asking.

14
15 CHAIRMAN FLEAGLE: Isn't that a generic
16 positive C&T for all rural residents?

17
18 MR. GOLTZ: Well, it's our default
19 position. It acts like one, I suppose.

20
21 CHAIRMAN FLEAGLE: Other discussion.

22
23 (No comments)

24
25 CHAIRMAN FLEAGLE: Ready for the
26 question.

27
28 MR. CESAR: Question.

29
30 CHAIRMAN FLEAGLE: All right,
31 question's called on Proposal 04.

32
33 MR. PROBASCO: Thank you, Mr. Chair.
34 Final action on FP09-04 and we start out with Mr.
35 Edwards.

36
37 MR. EDWARDS: No.

38
39 MR. PROBASCO: Mr. Fleagle.

40
41 CHAIRMAN FLEAGLE: No.

42
43 MR. PROBASCO: Ms. Masica.

44
45 MS. MASICA: No.

46
47 MR. PROBASCO: Mr. Lonnie.

48
49 MR. LONNIE: No.

50

1 MR. PROBASCO: Mr. Bschor.
2
3 MR. BSCHOR: No.
4
5 MR. PROBASCO: And Mr. Cesar.
6
7 MR. CESAR: No.
8
9 MR. PROBASCO: Motion fails, zero/six.
10
11 CHAIRMAN FLEAGLE: Thank you. That
12 concludes discussion on 04. We now move to Proposal
13 05, which is the Makhnati Island Sitka herring, and we
14 have Staff change coming up.
15
16 (Pause)
17
18 MR. CESAR: Mr. Chairman.
19
20 CHAIRMAN FLEAGLE: Go ahead.
21
22 MR. CESAR: It's now 4:30, and even in
23 my wildest dreams I don't see us doing much with
24 Makhnati in the next half hour, you know, and I would
25 prefer for us to start fresh tomorrow on Makhnati
26 Island.
27
28 CHAIRMAN FLEAGLE: I appreciate that.
29 I seem to have gotten some indication that this may go
30 fairly quickly.
31
32 MR. CESAR: Oh, really.
33
34 CHAIRMAN FLEAGLE: And we might be able
35 to wrap up all of Southeast today and start fresh
36 tomorrow or move on to the next area.
37
38 MR. CESAR: I'm glad to move my
39 comments.
40
41 CHAIRMAN FLEAGLE: Well, no, your
42 comments are valid and recognized, thank you.
43
44 Bert.
45
46 MR. ADAMS: Yeah, there is some people
47 who are -- I know that we might move this, you know,
48 quite quickly today but there is some people who will
49 probably come in tomorrow because they can't be here
50 today who would like to address this issue so would

1 they be given an opportunity to at least, for the
2 record, if we finish this proposal today, to address it
3 as well?

4

5 CHAIRMAN FLEAGLE: Pete.

6

7 MR. PROBASCO: Mr. Chair. It's really
8 the call of the Board. We've done that in the past,
9 allowed people that came in late to speak. Just for
10 your record we have two people that have already signed
11 up to testify on this proposal.

12

13 Mr. Chair.

14

15 CHAIRMAN FLEAGLE: Thank you. Before
16 we get going down -- hang on.

17

18 (Pause)

19

20 CHAIRMAN FLEAGLE: All right, my short
21 process is still going to take a long time so I think
22 I'll take Niles' lead and we'll postpone this until
23 first thing in the morning. And no audience applause
24 please.

25

26 (Laughter)

27

28 CHAIRMAN FLEAGLE: I'm kidding. All
29 right, so we'll go ahead and put that first order of
30 business in the morning, appreciate the suggestion.

31

32 Are there any other comments or action
33 before we close for the evening.

34

35 MR. PROBASCO: Mr. Chair.

36

37 CHAIRMAN FLEAGLE: Pete.

38

39 MR. PROBASCO: I just want to check
40 with Di, can we leave stuff in this room?

41

42 MS. DI: Yes.

43

44 MR. PROBASCO: Okay. Board members
45 it's okay to leave your stuff.

46

47 CHAIRMAN FLEAGLE: All right, good,
48 well, with that we'll go ahead and stand down for the
49 day and reconvene.....

50

1 MS. ENTSMINGER: Quick question.
2
3 CHAIRMAN FLEAGLE:at 8:30 in the
4 morning. Thank you, everyone -- oh, Sue.
5
6 MS. ENTSMINGER: Just one question.
7 There was talk of the meeting taking just two days,
8 does this mean that it's possible it will be over two
9 days?
10
11 CHAIRMAN FLEAGLE: That was a rumor.
12
13 (Laughter)
14
15 CHAIRMAN FLEAGLE: Before we started.
16 Now, that we're crawling along at three proposals per
17 day I'm thinking we're going to go until Saturday.
18 We'll know better tomorrow, probably by midday
19 tomorrow.
20
21 All right, we'll stand down until 8:30
22 tomorrow.
23
24 (Off record)
25
26 (PROCEEDINGS TO BE CONTINUED)