

1 FEDERAL SUBSISTENCE BOARD
2
3 PUBLIC REGULATORY MEETING
4

5
6 VOLUME II
7

8 EGAN CONVENTION CENTER
9 ANCHORAGE, ALASKA

10
11 JANUARY 14, 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 George Oviatt, 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 Ray Collins - Western Interior RAC
26 Sue Entsminger - Eastern Interior RAC
27 Ralph Lohse - Southcentral RAC
28 Myron Savetilik - Seward Peninsula RAC

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

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P R O C E E D I N G S

(Anchorage, Alaska - 1/14/2007)

(On record)

CHAIRMAN FLEAGLE: Good morning. Federal Subsistence Board is back on record. And we're starting a little late this morning due to the treacherous icy road conditions out there. I'm glad that everybody that's here made it here safely and avoided the accidents and hope that everybody else that's on their way is having the same luck.

We left off with Proposal 5 last night, but before we go there we have some opening comments to make again for testimony. And I'd like to welcome everybody and we've got a couple new people sitting at the Board table. I'd like to have you introduce yourself down there, please.

MR. OVIATT: George Oviatt from the Bureau of Land Management.

CHAIRMAN FLEAGLE: Welcome, George.

MR. CASIPIT: Cal Casipit with the Forest Service and I'm sitting in for Denny until he can get here. And as soon as Steve and Denny get here I'll vacate my seat and I'll go be back there.

CHAIRMAN FLEAGLE: Okay. Thank you, Cal, welcome. And before we get started, Pete, do you have any announcements this morning?

MR. PROBASCO: No, Mr. Chair. Maybe you have it on your list as well, we also give an opportunity for consensus of agenda item and an opportunity to speak on items that are before the Board.

CHAIRMAN FLEAGLE: All right. So we now turn to the first opportunity for public comment period and this is a comment on non agenda items. Pete, do we have anybody signed up to comment?

MR. PROBASCO: No, I don't, Mr. Chair.

CHAIRMAN FLEAGLE: All right. That moves us on to the consensus agenda. We now open the opportunity for public comment on consensus agenda which

1 is two proposals that are on the consensus agenda,
2 Proposal 8 and Proposal 6. Pete, do we have anybody that
3 wants to testify on those?

4

5 MR. PROBASCO: No, I don't, Mr. Chair.

6

7 CHAIRMAN FLEAGLE: All right. Great.

8 Thank you.

9

10 MR. PROBASCO: Sure.

11

12 CHAIRMAN FLEAGLE: I'd like to say good
13 morning to all the Council Chairs that are with us here
14 in the meeting. And as we discussed yesterday, they'll
15 be an opportunity for the ones that couldn't make it to
16 attend telephonically once we establish the schedule for
17 the Council Chairs' discussion and if there are any
18 issues that we need to have Council members from their
19 area attending, we'll schedule those in with
20 teleconferencing as well.

21

22 With that we're going to go ahead and
23 move on to Proposal 5 where we left off yesterday. And
24 leading off the discussion on this, I'm going to turn it
25 over to Bob Larson. You can give the introduction,
26 please.

27

28 MR. LARSON: Good morning, Mr. Chair.
29 The Staff analysis would -- for 05 will be presented by
30 Terry Suminski.

31

32 CHAIRMAN FLEAGLE: Good morning, Terry,
33 welcome.

34

35 MR. SUMINSKI: Good morning, Mr.
36 Chairman. The -- my name's Terry Suminski, I'm with the
37 U.S. Forest Service. The Proposal FP09-05, the Executive
38 Summary starts on Page 116 of your books and the analysis
39 starts on Page 118.

40

41 Proposal FP09-05 was submitted by the
42 Sitka Tribe of Alaska and seeks to close the Federal
43 public waters in the Makhnati Island area near Sitka to
44 the harvest of herring and herring spawn except for
45 subsistence harvest by Federally qualified subsistence
46 users. The proponent believes the closure of these
47 waters is necessary to ensure the continuation of
48 subsistence uses by Federally qualified subsistence users
49 and to provide a meaningful preference for qualified
50 subsistence users of herring.

1 The proponent states that the commercial
2 harvest of herring displaces subsistence users from
3 traditional harvesting sites, disrupts herring spawning
4 such that good quality deposition of herring eggs does
5 not take place at traditional sites and may seriously
6 reduce the biomass of spawning herring upon which
7 subsistence users depend.

8
9 Under existing Federal regulations all
10 rural residents of Alaska are eligible to harvest herring
11 and herring roe from Federal waters in Southeast Alaska.
12 There's no season or harvest limit in regulation.

13
14 The Federal Subsistence Program has
15 jurisdiction over approximately 800 acres of marine
16 waters near Makhnati Island near Sitka. The short
17 regulatory history is that the Board rejected a similar
18 proposal in the 2008 regulatory cycle, that was Proposal
19 FP08-18. The Board's rationale for rejection was that
20 there's not substantial evidence of a conservation
21 concern or a need for a closure to ensure the continuance
22 of subsistence uses.

23
24 The OSM conclusion is to oppose this
25 proposal. The just -- the proposal is effectively the
26 same proposal considered by the Board in December of
27 2007. At that time the Board determined there is no
28 conservation concern in this area for herring at recent
29 biomass levels and that closing Federal public waters to
30 non Federally qualified users may not be effective in
31 benefiting subsistence users. The biomass in Sitka Sound
32 has been try -- trending higher since 1978 with the
33 highest biomass levels recorded in recent years. There
34 have been no restrictions on subsistence uses, no
35 commercial harvest occurred in Federal public waters in
36 2007 or 2008 and the vast majority of commercial harvest
37 was taken well away from Federal public waters and
38 traditional subsistence harvest areas. In years when
39 subsistence needs were not met, it is unlikely that a
40 closure to other users in Federal public waters would
41 have made a difference. Adoption of this proposal would
42 result in an unnecessary closure to non Federally
43 qualified users and also the Alaska Board of Fisheries
44 will meet in February, 2009 to discuss southeast fin fish
45 issues and will be another forum to discuss Sitka Sound
46 herring issues.

47
48 Public testimonies during the Council
49 meeting in September of 2008 and Council recommendations
50 have been carefully considered, but the OSM conclusion

1 remains unchanged. Thank you.

2

3 CHAIRMAN FLEAGLE: Thank you, Terry.

4 Questions by Board members.

5

6 (No comments)

7

8 CHAIRMAN FLEAGLE: All right. Move to

9 Bob Larson for a summary of public comments.

10

11 MR. LARSON: Mr. Chairman. We have two
12 public comments, both in opposition to this proposal.
13 The first is from the Sitka Herring Association and they
14 note that this is the third consecutive year that this
15 proposal's been before the Board. It's unnecessary and
16 oversome -- overly burder -- burdensome to affected
17 parties. Withdrawal and closure of the Makhnati Island
18 group would have no affect on the outcome of subsistence
19 efforts.

20

21 The United Fishermen of Alaska also
22 submitted written comments. And the main points of their
23 comments was that this proposal does little or nothing
24 for subsistence users while usurping State jurisdiction
25 in the commercial fishery and it's an unnecessary
26 intrusion in the State fisheries management.

27

28 CHAIRMAN FLEAGLE: Thank you, Robert.

29 You know, we go to public testimony. Pete, have we
30 gotten anybody that wants to testify on this proposal?

31

32 MR. PROBASCO: Yes, Mr. Chair. We have
33 three and I'll shuffle them so there's no particular
34 order. And the first one is you, Mike. Mr. Mike Miller.

35

36 CHAIRMAN FLEAGLE: Thank you. Would you
37 please come to the vacant seat at the table next to Dr.
38 Polly Wheeler and -- oh, is he not in the room?

39

40 MR. PROBASCO: I just saw him.

41

42 CHAIRMAN FLEAGLE: I did too. Well,
43 let's call the next one.

44

45 MR. PROBASCO: Okay. The next person
46 will be Victoria -- excuse me, Victoria. Oh, here's
47 Mike.

48

49 CHAIRMAN FLEAGLE: Okay. We do have
50 Mike. Mike, there's a vacant seat up here in the middle

1 table. If you could please state your name and -- for
2 the record and go ahead and begin your testimony.
3 Thanks.

4
5 MR. MILLER: Thank you, Mr. Chair. Sorry
6 for the -- being out in the hallway there, I was getting
7 a cup of tea.

8
9 For the record my name is Mike Miller.
10 I'm here representing Sitka Tribe of Alaska. I'm a
11 Council member with the Sitka Tribe and I'm here to speak
12 to Proposal 05.

13
14 I want to take the time to just thank
15 everybody for the opportunity to come here and talk to
16 you guys again, it's becoming a bit of a annual
17 pilgrimage to come here and talk about herring issues
18 before you. So we're here once again.

19
20 The reason I -- we're here, of course, is
21 that indicates that we've had another failure of
22 subsistence harvest of herring eggs in Sitka sound. The
23 proposal you have is a proposal to close the Federal
24 waters in Sitka Sound. It's a small portion of waters in
25 the greater Sitka Sound area where the -- a lot of the
26 Sound gets herring eggs there which we harvest for
27 traditional uses, not just for Sitka, but for all around
28 the state. And right in the middle of that area is a
29 portion of Federal waters and that is what the proposal
30 speaks to.

31
32 Mr. Chair. I -- I realize there's some
33 new members here who haven't been -- been here for the
34 discussions in previous years and I don't know if you
35 want me to go into much historical depth or for the speed
36 of the meeting if I should just cut to the chase here.

37
38 CHAIRMAN FLEAGLE: It's your time, Mike,
39 whatever you feel is appropriate to edify us with.

40
41 MR. MILLER: So, Mr. Chair, I'll go back
42 to about the 1700s and.....

43
44 (Laughter)

45
46 MR. MILLER: Actually, Mr. Chair, there's
47 -- there is history, historical documents that go back to
48 the earliest recorded harvests of subsistence uses and
49 cultural harvest. The earliest Russian writings spoke to
50 these very same waters basically, the earliest

1 photographs of -- of harvest of -- traditional harvest of
2 herring eggs show the same islands that we're talking
3 about in the expanded Federal waters in -- in Sitka area
4 which is right around the airport area if any --
5 anybody's been to Sitka.

6
7 I'll jump from the 1700s to recent --
8 recent years. And the Tribe has been very concerned
9 about starting in 2001 especially about what was viewed
10 as a failure of the subsistence harvest in Sitka. So we
11 went to the State Board of Fish and worked through a
12 fairly long process there to try to address those
13 concerns. We came out with a MOU with the State that is
14 a good document, but admittedly -- admittedly by the
15 State and ourselves there's -- it -- it lacks teeth and
16 so the discretion still for the fishery is something
17 that's up to the fishery manager there. And that's where
18 we've been at odds a bit and -- and concern there --
19 there might not be enough protection for subsistence in
20 the State Tribe documents. So we're working --
21 continuing to work with the State to try to fix that
22 situation.

23
24 I want to focus really just on the
25 subsistence numbers. And just briefly the State Division
26 of Subsistence herring egg harvest numbers for Sitka for
27 the last five years go from 381,000 pounds in 2004 to
28 72,000 pounds in 2005. In 2006 we had a -- a fairly good
29 year again, 212,000 pounds. 2007, 84,000 pounds. 2008,
30 last year, 71,000 pounds.

31
32 When we went to the Board of Fish in 2002
33 -- 2001, 2002, we had -- knew we had to quantify the
34 numbers of eggs. That's something we take very
35 seriously. We work with Division of Subsistence to make
36 sure we get a accurate representation of the eggs that
37 are being harvested in Sitka. But at that time we --
38 we'd only had two surveys that we could -- we could use
39 as a baseline for what's considered a reasonable harvest.
40 That number was only on Sitka households, it wasn't
41 expanded to reflect the other communities that we share
42 herring eggs with which go from Barrow to Washington,
43 D.C. They're -- they're -- those eggs from Sitka go
44 everywhere, it's the last place in the State of Alaska to
45 get herring eggs on branches.

46
47 That number was set -- we came out with
48 a number of about 137,000 pounds. So the State set a
49 range of expectation for the amount necessary for
50 subsistence at 105 to 158,000 pounds. So that's based on

1 that data that was kind of the -- the low line of -- of
2 what we agreed to would be a reasonable harvest. At that
3 time we agreed with the State that when we got better
4 data of how many eggs go around the State that we'd --
5 we'd raise the amount necessary for subsistence. And we
6 do have a proposal in at the State Board of Fish at this
7 time to raise the amount. We have commitments from over
8 80 tribes now that are going to provide testimony or
9 people coming to that meeting. We have requests from
10 other communities outside of Sitka at this time for
11 228,000 additional pounds showing their patterns of usage
12 in other villages around the State.

13

14 But the bottom line is the needs aren't
15 getting met. And I know both from the State side, the
16 industry side and our side, we're working very hard to
17 find out what -- what's the problem. And it -- there's,
18 you know, lots of different ideas for what it is. And,
19 you know, specifically I don't think we fully know or
20 else we could come up with a specific proposal to fix --
21 fix it.

22

23 The one thing that we always know though
24 is if -- if we've got a problem that seems to be getting
25 worse, if we don't do anything that it probably won't get
26 better on its own. And I think that's not just in the
27 fishery issue, but just everything in life shows that
28 that seems to be the case.

29

30 It's been a bit frustrating to go through
31 the -- I guess we went to the RAC meeting and presented.
32 And I -- I don't think all the public testimony got into
33 your minutes from the Southeast RAC. There was a lot of
34 people that did testify there in -- in favor of support
35 of this proposal.

36

37 The State asked -- actually said and
38 there was Staff here that said there's no new
39 information. And it is a bit frustrating to me that, you
40 know, we can have subsistence representatives make the
41 statement that there's no new information when we had
42 another complete failure we're looking at of the
43 subsistence harvest. To us that's -- that's very much
44 new information, very pertinent to the -- to the issue.

45

46 But for additional information the Tribe
47 is continuing to work on research. And we're finding
48 some very, very interesting things on the status of the
49 stock of herring in Sitka. We do have working with
50 funding from BIA with some independent researchers that

1 are working on -- on the stock status, working to verify
2 the ASA modeling the State uses to predict herring.
3 We're seeing a lot of changes in herring in Sitka that
4 are unprecedented, I don't think anybody has ever seen
5 what's going on with the herring, aging of the fish and
6 lack of recruitment into the stock or as is being
7 proposed the fish are getting older and older before they
8 return to spawn which is -- is virtually unprecedented in
9 the Sitka area.

10

11 And definitely what we're thinking is
12 that -- we're scared that maybe the subsistence
13 harvesters are the canary in the coal mine essentially,
14 the showing beforehand or the -- the early warning signs
15 of some bigger issues with the herring stock in Sitka.
16 So we feel that it's definitely a time to be
17 conservative.

18

19 I -- I don't want to diminish the urgency
20 of the issue here because it's very, very important to
21 us, but, I guess, at this time for the Proposal 05, in
22 spite of the comments made here we are going to ask that
23 you defer action on this to -- we'd prefer the --the
24 January wildlife meeting. There's a couple reasons for
25 that. First of all there -- there is a lot of ongoing
26 studies that we have preliminary information, but I've
27 specially requested of our Staff that we not be releasing
28 preliminary information of independent studies until it's
29 gone thorough -- gone through a thorough review, a peer
30 review and -- and published information so that we don't
31 have the -- the impression from some of the outside
32 groups that's tainted information or just steered towards
33 -- towards -- or any kind of inaccurate information out
34 there. So we certainly want the information to be valid
35 when we present it to you.

36

37 And we do have three proposals that are
38 before the State Board of Fish in February. And those
39 proposals reflect raising the amount necessary for
40 subsistence and then some proposals that are geared
41 toward the fishery itself that we -- the Tribe has felt
42 that might be helpful in resolving this situation.
43 Certainly I think the State Board of Fish would if you
44 were to act negatively on this, they -- they would
45 possibly take that as a message that -- that you don't
46 feel that there's a concern there. So I'm hoping that --
47 that if you do decide to defer this in addition to that
48 that you could send some correspondence to the State
49 urging the Board of Fish to strive to provide a good
50 solution to this overall problem. And -- and I guess if

1 the overall problem gets fixed then -- then this -- this
2 problem here goes away as well. So we're hoping for
3 that.

4
5 We're -- we're getting a lot of support
6 for our proposals to the Board of Fish. I was reminded
7 this morning that raising the amount necessary for
8 subsistence to reflect that these eggs go all around the
9 state was a resolution that was passed by AFN this year
10 as well. And there was a couple other comments that just
11 slipped my mind I guess.

12
13 So I guess I'll go ahead and end my
14 testimony here. Again thanking you for your time
15 listening to this, I know it's -- probably gets long in
16 the tooth to have to come here every year and hear the
17 same -- same things, but if we're hearing the same things
18 it -- it shows that things are still broken there and
19 that we need to try to find the best solution. So
20 definitely the Tribe feels that like, you know, we want
21 to keep this right at the forefront, but we realize we
22 have other processes going on and are getting more
23 information and feel that'll be very relevant to a future
24 meeting and hopefully you'll move on this deferral to
25 next winter.

26
27 Thank you, Mr. Chair.

28
29 CHAIRMAN FLEAGLE: Thank you, Mike. Any
30 questions.

31
32 (No questions)

33
34 CHAIRMAN FLEAGLE: All right. Thank you
35 for the testimony. Pete.

36
37 MR. PROBASCO: Thank you, Mr. Chair. The
38 next person, and I apologize, Victoria, if I mispronounce
39 your last name, but Victoria Demmert.

40
41 MR. ADAMS: Mr. Chairman. Mr. Chairman.
42 If I -- while she's walking up here I'd like to take an
43 opportunity to make a few comments about Ms. Demmert if
44 I might.

45
46 CHAIRMAN FLEAGLE: Go ahead.

47
48 MR. ADAMS: Thank you, Mr. Chairman.
49 Victoria Demmert is, of course, the President of the
50 Yakutat Tlingit Tribe which position I held for about 12

1 years there. And -- and when I decided not to run in
2 2006, you know, she took over the seat. And when I think
3 that I told her -- oh, I've had previous experience with
4 her, she served as the General Manager when I was serving
5 as the President and so we've already got a pretty good
6 working -- had a pretty good working relationship. And
7 so I told her one time that if there was anyone that I
8 wouldn't mind losing to in an election it would be her.
9 She's a woman of high quality and -- and -- and good
10 character. And -- and I think, you know, I -- I want to
11 thank her for coming here, I invited her to be here and
12 -- and she responded to that request.

13

14 Mr. Chairman. Members of the Board.
15 Please meet Ms. -- Mrs. Victoria Demmert, President of
16 the Yakutat Tlingit Tribe.

17

18 CHAIRMAN FLEAGLE: All right. Thank you.
19 With that introduction welcome, Victoria.

20

21 MS. DEMMERT: Thank you. My name is
22 Victoria Demmert and for those who are taking the audio
23 minutes, it's D-E-M-M-E-R-T. I'm the President of
24 Yakutat Tlingit Tribe of Yakutat, Alaska. As Mr. Adams
25 said I was previously a General Manager of the Yakutat
26 Tlingit Tribe. I have been an owner of Raven's Table,
27 which we have recently had to shut down due to economic
28 reasons of high fuel costs and therefore high electricity
29 costs. Raven's Table was a fish processing and fish
30 smoking facility. I have been the Mayor of Yakutat and
31 the Magistrate there. I've probably had every job that
32 you can have. The only job I haven't held there is Store
33 Clerk and I'm thinking of doing that just so I can say I
34 did.

35

36 But it's -- it's the way it is living in
37 a small town. That's my hometown, I grew up there and I
38 was taught by my grandparents to give back to the
39 community. And in small communities we all have to help
40 and aid one another. And that goes not only to the
41 community that we live in, but the -- to the communities
42 around us. Yakutat to the north has Cordova which we are
43 -- have been working with to find out ways that we can
44 partner as a Tribe. And to the south of us we've been
45 talking with Sitka and looking at ways we can partner.
46 And other things that whenever we can help one another we
47 attempt in every way that we can to do so. And that is
48 why I'm here is to speak to this -- to this
49 recommendation before you from the Sitka Tribe.

50

1 It's been many, many years that we have
2 enjoyed herring eggs from Sitka. And we notice when
3 there aren't so many eggs. We're -- the Federal law and
4 also our traditional laws provide for bartering and
5 trading and that is what we do among the different
6 communities. We've bartered for herring eggs, we barter
7 for abalone, things that we may not have, different
8 seaweeds and we barter back and forth as I know the
9 people up north do and throughout Alaska in the -- all of
10 the communities. It's something that is just part of the
11 Alaskan spirit. So we really care what is happening in
12 Sitka with the subsistence.

13

14 Come springtime everyone in our community
15 is excited, have you heard, have you heard about the
16 herring eggs, have you heard whether or not they've
17 started spawning yet. And then, you know, making sure
18 that you're friends with whoever's going to be getting in
19 a box of herring eggs. And those boxes come off the
20 plane and, of course, other boxes with items from Yakutat
21 are going down. And it's an exciting, wonderful time and
22 it's just part of who we are. And we don't want to see
23 that stop and it doesn't have to stop.

24

25 The concern that we have is you have a
26 commercial user group and you have a subsistence user
27 group. There's no reason that you have to say one group
28 has to step back for the other group. We're absolutely
29 not against the commercial fishing. I'm a commercial
30 fisherman myself, I grew up commercial fishing, I still
31 do it and my son and my husband are commercial fishermen.
32 So I understand that. And in Yakutat we have a river
33 called the Situk River. We have three user groups that
34 are really concerned about that little river. They are
35 the commercial user group, the subsistence user group and
36 the sport fishermen. And I sit on a Board that oversees
37 what happens there. And the one thing that we always say
38 is this is going to work as long as no one user group
39 gets greedy. There's room for all of us.

40

41 And there's -- as we go forward and
42 progress we don't have to give up those things that are
43 good. I think this is one of the things that is so
44 important. I don't know how to stress to you that there
45 are things that are important that you can't put a money
46 value on and this is one of those things.

47

48 We have concern because we had herring in
49 Yakutat in I think it was the late '70s. Fish and Game
50 opened it up because they thought that there was enough

1 there to do a commercial harvest. And we were so
2 concerned we begged them to shut it down and after
3 approximately four days, and I could be wrong so don't
4 anybody hold my feet to the fire about exactly how many
5 days it was because that was a while ago, but
6 approximately four days they shut it down. It totally
7 wiped out, excuse me, our -- our herring harvest and so
8 therefore we depended even more on Sitka. And we have.
9 And our little herring spawn is just starting to make its
10 way back. And now we're really nervous because we think
11 are they going to open it back up again. Because there's
12 enough for us to go out and get some subsistence which is
13 used immediately. People have big gatherings and parties
14 and they use them at pot latches. It's necessary for us,
15 but we worry about will the dollar value, will -- will
16 someone say that is worth so many dollars and therefore
17 you people don't really need it. You don't need to eat
18 it and it's something you can just wish for because it
19 has dollar value.

20

21 And I think that it's real important that
22 we as a State not go the way some other states have in
23 saying everything has a dollar value. There are some
24 things that have value that you cannot put a dollar
25 amount on. And therefore I ask you to really consider
26 this. Don't consider it in just one box, consider it as
27 a whole, as a necessary part of our way of life.

28

29 The fish eggs that Sitka provides go all
30 over the State as Mike said and -- and everywhere else.
31 And we really want to see it continue. I know that when
32 my husband and I first got married way back in 1969, so
33 don't anybody try to figure out how old I am, it was a
34 wonderful time because it was April, it was spring. We
35 went to Sitka, we got -- my husband had a big boat and he
36 and his dad, it was their tradition, to go and set
37 branches. And then they went throughout Southeast Alaska
38 handing out herring eggs. Before we would even get to
39 the community, when we were on our way to Kake, there was
40 a movie going on and everybody in Kake was at the movie
41 theater. And they heard we were coming and they all ran
42 down to the float. And the float started sinking because
43 everyone had emptied out and the town was down there
44 waiting for their herring eggs.

45

46 So I just want to leave you with that
47 thought. It creates a wonderful happiness, it is a
48 tradition, it's cultural and it's Alaskan. So I ask that
49 you please hear Sitka Tribe and defer this without
50 negative remarks to your January meeting so that we can

1 gather more information for you. And I thank you for
2 your time.

3

4 CHAIRMAN FLEAGLE: Okay. Thank you.
5 Questions.

6

7 (No questions)

8

9 CHAIRMAN FLEAGLE: Thanks for the
10 testimony. Pete.

11

12 MR. PROBASCO: Thank you, Mr. Chair. The
13 last person that we have signed up is Mr. Chip Trinan.

14

15 MR. TRINAN: Good morning. Good morning,
16 Mr. Chairman. Members of the Board. Thank you very much
17 for the opportunity to testify. For the record my name
18 is Chip Trinan. I'm speaking today as one of 50 State of
19 Alaska Commercial Fisheries Entry Commission, Southeast
20 Sac Roe Herring Seine Permit Holders. And I'm also
21 representing other -- the other permit holders through
22 Sitka Herring Association, a Federally authorized
23 fishermen's marketing association.

24

25 I'd like to point out that most of the
26 permit holders and crews in the southeast herring fishery
27 in Sitka live in various rural Alaskan communities and
28 some of those take part in subsistence harvest activities
29 for herring spawn in Sitka Sound. In fact, the Demmert
30 name is -- and -- and family is pretty well represented
31 in the ranks of permit holders and it's always been a
32 pleasure to associate with members of that family. And
33 I appreciate their participation in the commercial
34 fishery and -- and understand their interest in
35 subsistence activities as well.

36

37 This is the third consecutive year that
38 I've been before you speaking on this particular issue
39 and as you might expect my comments will -- today will
40 pretty much mirror previous comments on -- on our
41 opinions on this proposal. Our comments are also written
42 in the comment -- in the -- in a letter that was
43 submitted earlier and was referenced by Mr. Larson.

44

45 Briefly our position is that we would
46 like you to vote this proposal down just as you did last
47 year. And any new forthcoming, incredible information or
48 changes that result from next month's Board of Fish
49 meeting can be dealt with as they come through and with
50 newly crafted proposals that deal with the situation in

1 the way is necessary and -- and appropriate for whatever
2 Board of Fish decisions are made.

3
4 The reasons that we as commercial
5 operators oppose this proposal is first of all it's
6 difficult to understand how a closure of the Makhnati
7 Island area can have much of an impact on subsistence
8 activities. The area is a bit sandy and prone to ocean
9 swell, not the ideal environment for subsistence roe on
10 branches or activities. Also the herring seem to spawn
11 in the area only some of the time. And from our
12 observations it appears that subsistence activity is much
13 more prevalent in other areas. So restricting this area
14 from commercial use has a minimal affect in -- from what
15 I can observe and what others in the commercial fishery
16 can see.

17
18 Secondly it seems that a closure of the
19 particular area limits management flexibility to direct
20 commercial activities away from the more populous
21 subsistence areas.

22
23 And as indicated by increasing stocks and
24 record levels of stock estimates this year, it seems like
25 the management plan is working as it should. There's
26 more effic -- there should be more roe available for
27 subsistence harvest as well.

28
29 And it -- and fourth it seems that the
30 correlation between the commercial guideline harvest and
31 subsistence harvest is weak at best and I guess one has
32 to infer that other factors are coming into play in
33 determining what the subsistence success is. And our
34 issue is that we don't see how restricting commercial
35 harvest from the Makhnati area will have any affect at
36 all.

37
38 As commercial users of the herring
39 resource we're acutely aware of our position that's
40 subordinate to subsistence use under State law. And so
41 we are very concerned about making sure that subsistence
42 opportunity is there and available for those who are
43 interested in -- in undertaking that activity. As a
44 result we have -- we're always working and have a
45 standing offer to assist subsistence harvesters in
46 whatever way we can. And we're sympathetic to those
47 interests, as I said earlier some of our members and
48 crewmen are subsistence users themselves and so -- so
49 they in particular have an interest in maintaining
50 subsistence opportunity.

1 We've offered the -- to the Sitka Tribe
2 whatever assistance we can give them. In 2008 along with
3 some herring buyers, Sitka herring buyers, we actually
4 chartered a vessel that could be used to transport
5 subsistence users to subsistence areas. It's not exactly
6 clear to me how well that worked. And but we're prepared
7 to continue assistance with our assistance offers and --
8 and activities as it is requested and -- and in a way
9 that we can be of real assistance.

10
11 As a user group with a critical interest
12 in maintaining healthy herring stocks, the commercial
13 fleet supports any new research that would assist in
14 determining what the stock status is. But we're
15 certainly reluctant to rely on scientific and statistical
16 methods that haven't really stood the test of time or had
17 any peer review. Had a lot of illusions it -- or it's
18 been alluded to that new information is available, but
19 it's not clear that that information has any validity at
20 this point. And until it does I guess we have to rely on
21 the Department's estimates of stock size.

22
23 So in conclusion I urge the Board to
24 reject the proposal just as you did with the -- almost
25 the same proposal last year. And appreciate the
26 opportunity to speak with you and let you know what our
27 opinion is on this issue. Thank you.

28
29 CHAIRMAN FLEAGLE: Thank you, Chip,
30 appreciate the testimony. Questions.

31
32 (No questions)

33
34 CHAIRMAN FLEAGLE: All right. Thank you.
35 We'll now move to -- that's it for public testimony,
36 right, Pete?

37
38 MR. PROBASCO: That's correct, Mr. Chair.

39
40 CHAIRMAN FLEAGLE: All right. We'll now
41 move to the Regional Council recommendation. Bert.

42
43 MR. ADAMS: Thank you, Mr. Chairman.
44 Even though there's, you know, a buzz in the air that
45 this proposal will be deferred for another year so I have
46 to, you know, go by what the Council has said. And the
47 Council supports this proposal.

48
49 The Council determined that there was
50 significant new information presented at the meeting by

1 the Sitka Tribe that was not available to the Council
2 when this issue was previously discussed in 2007. The
3 thing that was so impressive to me about this new
4 information was that the Sitka Tribe hired a biologist
5 and she conducted some research surveys in that area and
6 came up with this new information that we have available
7 to us now. The new information indicated that the Council
8 -- to the Council that it was necessary to close the
9 waters of Makhnati Island to non-subsistence users for
10 both conservation of herring in the Sitka Sound area and
11 to protect the continuation of subsistence uses of
12 herring -- herring spawn.

13

14 You know, this has always been our
15 position that this is the third time this has come before
16 the Board. The Southeast Regional Advisory Council, you
17 know -- you know, is in favor of -- of the closure. It's
18 evident that in 2007 and 2008 the needs have not been met
19 as far as subsistence harvest of herring roe are
20 concerned. And, you know, this has been repeated over
21 and over the past two or three times that it's been
22 before us and it doesn't seem like, you know, people want
23 to listen. I can say personally that being a recipient
24 of some of the Sitka roe from friends in Sitka as Ms.
25 Demmert indicated that we barter back and forth one with
26 another, that -- in the last couple years the -- the roe
27 that we have been receiving personally into our household
28 has been getting thinner and thinner. And, you know,
29 maybe some new data will figure out or help us understand
30 why that is happening, but it tells me that, you know,
31 the -- the testimonies that were born before the Board
32 where many, many years ago the herring roe used to be
33 knee deep. I have pictures, I should have brought it
34 with me, about the herring spawns, you know, in Douglas
35 Island area. People were actually bathing in it, you
36 know, in the early 18 -- 1900s. And -- and now we see,
37 you know, since more user groups have gotten involved in
38 that fishery, there has indeed been a decline over the
39 years.

40

41 The -- the Council concluded that closing
42 Makhnati Island area is the only means available to the
43 Council to provide a meaningful subsistence priority for
44 the waters under Federal jurisdiction. And it is under
45 Federal jurisdiction, members of the Council. I'm going
46 to bring your attention to a regulation in the CFR. This
47 came out in May of 2006. It's 50 CFR Part 100. And it
48 says in summary this proposed rule revised the
49 jurisdiction of Federal subsistence management programs
50 by adding some rich lands and waters in the area of

1 Makhnati Island near Sitka, Alaska. This would then
2 allow Federal subsistence users to harvest marine
3 resources in this area under -- under season's harvest --
4 harvest limits. And -- and the method's specified in
5 Federal subsistence management pro -- regulations.

6
7 So this is a five -- four and a half,
8 five acre of waters that are under Federal jurisdiction.
9 And -- and you do have the authority to open, close it or
10 do whatever you want with it. And -- and this proposal
11 has come before us three times already and I think, you
12 know, with the new information that is going to be
13 provided that, you know, the -- the Board really should
14 listen to what is happening in Sitka and -- and the
15 people that it's being affected by.

16
17 I know just as a matter of, you know,
18 review and information, the MOU between Sitka Tribes and
19 the State of Alaska, we determined that it would be
20 necessary, and I don't know if -- and I don't think it's
21 ever happened, is that a Federal manager needs to be
22 included in that -- in that MOU. And I think that's
23 still ongoing, but I would like to encourage that as
24 well. The Council believes that this is gravely needed.

25
26 As I was listening to other people speak
27 here, we need to remember that subsistence is the
28 priority. And that if there is a need to close any of
29 the other user groups then commercial and sport, you
30 know, would go first, but sub -- subsistence should
31 always be there for us.

32
33 Let me see if I can find another thing
34 here to read to you, Mr. Chairman. They kind of just
35 alluded to what I've talked to already before. The
36 affect of closing Makhnati Island in Federal waters.
37 Makhnati Island Reserve comprises the only Federal water
38 in Sitka Sound where herring spawn and where subsistence
39 harvest take place. This area has been occasionally open
40 to commercial harvest sac roe harvest. Closing this area
41 would provide at least one small area where subsistence
42 herring harvesting can take place undisturbed by
43 commercial harvesting.

44
45 And so, you know, we sympathize, you
46 know, with Sitka Tribe and the people of Sitka and
47 throughout all of Alaska who benefit from the herring roe
48 that comes out of Sitka. That we are seeing more and
49 more that their needs aren't being met and it's
50 affecting, you know, a lot of people as a result of it.

1 So with that, Mr. Chairman, the Council, you know, stands
2 by its position. You know, I just can't pull my Council
3 aside, you know, and reconsider, you know, whether we
4 want to defer or not. And so I have to stand by the
5 position that they took at the time of our last meeting.
6 So we do not -- we support this proposal and -- and ask
7 that the Council -- the Board, you know, listen -- listen
8 once again to the concerns of the Sitka Tribal -- Tribal
9 people. Thank you.

10
11 CHAIRMAN FLEAGLE: Thank you, Bert. And
12 I appreciate that comment. That's expected of -- of all
13 your Councils -- of all the Councils as well, I mean, you
14 can't speak on behalf of the Council an action that they
15 didn't take and I respect -- I -- I thank you for
16 recognizing that. And we do appreciate your -- your
17 statements on this issue. Thanks.

18
19 Next we have Department of Fish and Game
20 comments. George Pappas.

21
22 MR. PAPPAS: Good morning. George
23 Pappas, Department of Fish and Game. Summarizing the
24 Department's full comments that are in your Board books
25 at Pages 140 to 142. And these full comments will be
26 entered into the record following this verbal testimony.

27
28 No new information or peer reviewed data
29 accepted by the scientific community are available to
30 support a change in the overall management of the Sitka
31 Sound herring stock since the last time the Federal Board
32 rejected this closure proposal. The information
33 presented at the Southeast Regional Advisory Council
34 meeting is not new information or peer reviewed
35 scientific data pertinent to the management of the
36 herring fisheries within the vicinity of Makhnati Island
37 area within the Sitka Sound.

38
39 The Department agrees with the OSM
40 analysis and recommends that the Federal Board oppose
41 this proposal.

42
43 Thank you, Mr. Chair.

44
45 *****
46 STATE OFFICIAL WRITTEN COMMENTS
47 *****

48
49 Alaska Department of Fish and Game
50 Comments to the Federal Subsistence Board

1 FP09-05 MAKHNATI ISLAND AREA HERRING

2
3 Introduction:

4
5 Proposal FP09-05 requests closure of
6 marine waters of Makhnati Island and Whiting Harbor,
7 which are subject to federal claims of jurisdiction, to
8 harvest of herring by non-federally qualified users. The
9 closure would only allow subsistence herring fishing by
10 federally-qualified users and would bar state
11 subsistence, sport, and commercial fisheries for herring
12 or herring spawn in the area. The proposed closure area
13 is not where the primary subsistence herring fishing has
14 occurred, and commercial harvest rarely occurs in the
15 area. In addition, no new information has been provided
16 that would support the proposed closure.

17
18 Impact on Subsistence Users:

19
20 Adoption of this proposal would be
21 potentially detrimental to subsistence fisheries,
22 depending upon where and when herring spawn each year.
23 The commercial fishery is managed to minimize harvests
24 near heavily used subsistence areas. Actions by the
25 Alaska Department of Fish and Game (Department)
26 commercial fishery managers must be taken in a timely
27 manner to be effective. The proposed closure would limit
28 options for where a commercial fishery could occur,
29 potentially resulting in adding a commercial fishery in
30 other areas important to subsistence users. The proposed
31 closure would also prohibit subsistence and sport harvest
32 in this area by non-federally qualified individuals. A
33 closure in this small area (560 acres) would have little
34 or no impact on the total subsistence, sport, or
35 commercial harvests.

36
37 Opportunity Provided by State:

38
39 For the majority of subsistence herring
40 egg harvest, the Department does not restrict fishing
41 periods, seasons, or amounts of herring harvested for
42 subsistence purposes in this area. Harvest of spawn on
43 hemlock boughs or spawn on hair kelp is unrestricted, and
44 no State permit is required. Post-season evaluation of
45 subsistence harvest is accomplished by a harvest
46 monitoring program conducted by Sitka Tribe of Alaska in
47 cooperation with the Department's Division of
48 Subsistence. The Alaska Board of Fisheries found that
49 105,000 to 158,000 pounds of herring spawn is the amount
50 reasonably necessary for subsistence uses in Section 13-A

1 and Section 13-B north of Aspid Cape. The Department
2 requires a permit that may limit harvest of spawn on
3 Macrocyctis kelp and requires harvest reporting following
4 the season. (See 5 AAC 01.730(g)) Harvest of spawn on
5 Macrocyctis kelp accounts for an average of only two
6 percent of the subsistence harvest on all substrate
7 types, so State requirements for spawn on kelp harvest is
8 not a significant limitation.

9
10 The limited non-commercial exchange for
11 cash of subsistence-harvested herring roe on kelp,
12 harvested in Districts 1-16 under terms of a permit, is
13 allowed as customary trade. The annual possession limit
14 for spawn-on-kelp is 32 pounds for an individual and 158
15 pounds for a household of two or more people. The
16 Department has authority to issue additional permits for
17 herring spawn-on-kelp above the annual possession limit
18 if harvestable surpluses are available. Commercial
19 herring vessels, permit holders, and crew members may not
20 take or possess herring 72 hours prior to or following a
21 commercial herring fishing period.

22
23 Conservation Issues:

24
25 Currently, there are no conservation or
26 management concerns for the Sitka Sound herring stock
27 that potentially spawn in waters of the Makhnati area.
28 From 1979 through present, the Sitka Sound herring
29 resource has been above the current 20,000 ton threshold
30 every year, with only one exception, and the run has
31 averaged 75,342 tons per season in the recent five-year
32 period (2003 2007). Herring are managed under a
33 conservative management strategy that sets threshold
34 biomass levels below which commercial harvest is not
35 allowed and limits harvest rates to 10-20 percent of
36 total mature spawning biomass. This is a time-proven
37 strategy that provides for conservation of the resource.
38 The area proposed for closure is so small that it is
39 unlikely to provide conservation benefits above the
40 threshold level and harvest rate, especially given the
41 highly variable nature of herring spawning behavior.

42
43 Jurisdiction Issues:

44
45 The Federal Board does not have authority
46 to close this area solely to commercial herring fishing
47 as suggested by some closure proponents. Instead, the
48 Federal Board would have to close the area to herring
49 harvest by all non-federally qualified users, which would
50 include all subsistence, personal use, sport, commercial,

1 or other harvests occurring under State regulations.
2 Such a closure is not necessary to provide for continued
3 federal subsistence and would violate section 815 of
4 ANILCA. Such a closure may also be detrimental to
5 subsistence uses by unnecessarily limiting options for
6 management of commercial fisheries and, thereby,
7 potentially increasing impacts to areas that are more
8 important as subsistence use areas.

9

10

Other Issues:

11

12

Herring biomass in Sitka Sound has shown
13 a long-term increase and is considered healthy. The 55.3
14 total nautical miles of spawn in Sitka Sound in 2008 was
15 consistent with the recent five-year average of 54.8
16 nautical miles and above the long-term (1964-2007)
17 average of 42.4 nautical miles. The spawning biomass
18 after the 2008 fishery, as estimated by spawn deposition
19 surveys, is not available at this time, although
20 preliminary assessment of spawn deposition indicates a
21 record high level. The estimated average spawning
22 biomass from 1964-2007 is estimated at 30,617 tons, and
23 the recent five-year average spawning biomass (2003 2007)
24 is estimated at 75,342 tons. The 2008 season forecast
25 biomass of 87,715 tons was the highest on record. In
26 contrast to the 2007 spawning event, in 2008 a
27 significant portion of the biomass spawned on Kruzof
28 Island shoreline on the west side of Sitka Sound. The
29 Kruzof Island shoreline is not considered a viable
30 opportunity for setting subsistence branches due to the
31 distance from town, exposure to ocean surge, and
32 generally unfavorable shoreline structure for setting
33 branches. Significant spawning also occurred along
34 islands near the road system, including heavily used
35 subsistence areas of Kasiana and Middle Islands. Unlike
36 the 2007 season, very limited spawning occurred within
37 the federally claimed waters of Makhnati Island in 2008.
38 During the 2008 season, bad weather generally did not
39 impact subsistence users from accessing fishing sites,
40 and commercial harvests during the 2008 season occurred
41 well away from the Makhnati area. The 2008 commercial
42 sac roe GHL of 14,723 tons was harvested on three
43 separate days. Two openings occurred March 25,
44 harvesting 1,147 tons in an area over 4 nautical miles
45 distant from the Makhnati area. On March 26, two one-
46 half hour openings occurred harvesting 9,380 tons. The
47 fishery boundaries for the March 26, 2008, openings were
48 just over 3 nautical miles from the Makhnati area, though
49 the actual harvesting occurred over 7 nautical miles west
50 on Kruzof Island shoreline. The third opening occurred

1 March 31 harvesting 3,973 tons with the nearest open
2 waters being 5.5 miles distance from the Makhnati area.

3

4 Recommendation: Oppose.

5

6 CHAIRMAN FLEAGLE: Thank you, George. We
7 now turn to Dr. Polly Wheeler for the InterAgency Staff
8 Committee comments.

9

10 DR. WHEELER: Thank you, Mr. Chair. The
11 InterAgency Staff Committee found the Staff analysis for
12 Proposal FP09-05 to be a thorough and accurate evaluation
13 of the proposal. However consistent with the Southeast
14 Alaska Subsistence Regional Advisory Council's
15 recommendation, a minority of the Staff Committee
16 suggested that the Federal Subsistence Board consider new
17 information presented at the Council's meeting and that
18 this information could be used to draw a different
19 conclusion than that reached by OSM. The majority
20 suggested the new information presented to the Council is
21 mostly not new, is preliminary in nature, mostly without
22 peer review and even with the new information the OSM
23 conclusion remains relevant to the analysis and is still
24 valid.

25 Two parts of ANILCA for the Board to
26 consider are one, does the Board have rationale to choose
27 to not follow the Council's recommendation. That's
28 Section .805(c). And two, would the Board's closing of
29 Makhnati Island be consistent with Section .815(3) as
30 further refined through the Board's closure policy. The
31 majority, consistent with the OSM analysis and
32 conclusion, suggest that closure of Makhnati Island area
33 to non Federally qualified users is not needed for
34 conservation of the herring stock nor to continue
35 subsistence uses and is not supported by substantial
36 evidence. The minority suggest that a closure could be
37 an effective action, enable rural residents to continue
38 their subsistence uses of herring eggs which is
39 consistent with the Council's recommendation in Section
40 .815(3).

41

42 The Council's position is supported by
43 newly revised information on insufficient egg harvests in
44 2008, and that would be a second consecutive year, as
45 well as long term data which document the frequent,
46 consistent use of Makhnati Island waters for spawning by
47 Sitka Sound herring. This particular locality has been
48 especially valuable to subsistence users as it is an
49 important area for collecting highly prized herring roe
50 on kelp, has protected conditions for safe gathering and

1 was one of the few places where rural residents were able
2 to obtain good quantities of herring eggs during some of
3 the low harvest years.

4
5 Commercial fishing closures to protect
6 herring during their spawning activities have been
7 employed by fisheries managers in Washington and British
8 Columbia. While the Makhnati Island Federal waters are
9 of limited extent, the closure could nevertheless
10 increase the likelihood that herring are able to
11 successfully spawn with reduced disruption at a site
12 documented to be important for both herring reproduction
13 and subsistence harvests.

14
15 That concludes my comments, Mr. Chair.

16
17 CHAIRMAN FLEAGLE: All right. Thank you.
18 I think it's a good time to step down for a break for
19 those of us that were able to get here at 8:30 it's been
20 a little while. So -- I know we started late, but we're
21 going to take a 10 minute break.

22
23 (Off record)

24
25 (On record)

26
27 CHAIRMAN FLEAGLE: Good morning. The
28 Federal Subsistence Board is back on record. And we're
29 at the point of Board discussion on Proposal 5 and I'd
30 like to open that up for Board discussion. First of all
31 we turn to Bert.

32
33 MR. ADAMS: Mr. Chairman. I just want to
34 make mention that I just got a fax in from Central
35 Council Tlingit and Hyda. And I think it was passed
36 around to everyone. So I just want to bring to your
37 attention, you know, that they have comments on all of
38 the proposals that has been before us so far and
39 particularly with Proposal number 5 which is what you are
40 now.

41
42 Thank you, Mr. Chairman.

43
44 CHAIRMAN FLEAGLE: Thank you. Appreciate
45 that. And welcome back to Denny.

46
47 MR. BSCHOR: Thank you, Mr. Chair. I'm
48 sorry I was late, but I wasn't about to drive on that
49 slick of roads with a rental car and no studs. And --
50 and I went a block and I turned around, I figured it

1 wasn't worth it. So I was rescued by Steve Kessler.
2 Thank you.

3
4 CHAIRMAN FLEAGLE: Thanks, Steve. Well,
5 it's better that you're here late than show up in the
6 paper as a casualty. I'm sure there's going to be
7 several on the news tonight.

8
9 All right. Discussion on Proposal 5.
10 George.

11
12 MR. OVIATT: Thank you, Mr. Chairman.
13 This -- this proposal has been in front of us now for
14 about three years and I've always had difficulty
15 justifying the Council's recommendation under the Board's
16 closure policy in ANILCA, Section .805(c) and 815. I've
17 had trouble tying the commercial fishing when there
18 hasn't been any since '02 with the needs on -- and the
19 subsistence in the Federal waters.

20
21 Having said that, I kind of feel like
22 right now with this proposal we're sort of in between, I
23 think we have some information that we don't fully maybe
24 understand or hasn't been completed, it certainly hasn't
25 been peer reviewed. And I think the -- maybe you need to
26 take an opportunity to pause to have some of that done.

27
28 The Council determined there was
29 significant information presented by the Sitka Tribe
30 biologist regarding the chemical composition of herring
31 offalus (ph). The use of offalus -- microchemistry to
32 distinguish herring stocks may hold some promise for
33 discrete stock management. But I believe additional time
34 and research needs to occur to confirm the premise and to
35 demonstrate consistent, stable results.

36
37 We all know that this issue is broader in
38 scope than just the Federal waters around Makhnati
39 Island. And we've heard testimony from a, I think, Sitka
40 Tribe member or residents of Sitka that they have a
41 number of proposals in front of the State Board of Fish.
42 And I believe that this Board should take the opportunity
43 to let that process happen before we continue with
44 hearing this proposal.

45
46 So for those reasons, Mr. Chairman, I
47 believe I'm leaning toward deferring this for a year, but
48 before I put a motion on the table I would like to hear
49 from the rest of the Board members.

50

1 CHAIRMAN FLEAGLE: Thank you. Niles.

2

3 MR. CESAR: We also lean towards
4 deferral. Obviously we have funded some research into
5 this and we don't know what that's going to turn out. I
6 don't know if there's going to be any great revelations,
7 but without seeing that, without have it peer reviewed,
8 without all of the process taking place I just believe it
9 would be in our benefit to defer this too. And I -- the
10 timing of that deferral I'm not -- I won't speak to
11 because I just don't know. But our vote will be to
12 defer.

13

14 CHAIRMAN FLEAGLE: Thank you. I'll add
15 a few comments. I think that that's probably the best
16 route because I don't see any evidence that -- that the
17 closure -- I -- I'm not going to say I don't see any
18 evidence that the closure is not needed, I see no
19 evidence that it's going to help. And I think that's a
20 position that this Board has taken in the past.

21

22 It's -- it's really interesting to note
23 that in the analysis where we look at the -- the past
24 years when there were the sac roe herring fishing in the
25 area that were opened near Makhnati Island were only open
26 in a small portion of those years. And in the last two
27 years there were no fishing in the waters that we're
28 discussing closing yet the harvests for subsistence uses
29 were below what they anticipated. So whether we closed
30 the area around Makhnati or not because there was no
31 commercial fishing there they would have still been below
32 their harvest. That's the conclusion I can jump to with
33 the data here.

34

35 So it indicates that there's a larger
36 problem. What is the larger problem, are -- are the
37 herring simply going to other areas to spawn, are the
38 spawners that would normally be in the Makhnati Island
39 area being captured before they get there, I mean,
40 there's a number of -- of potential causes. We -- we
41 heard that herring eggs are getting lighter or smaller,
42 whatever the term used. I mean that -- I -- although
43 it's not scientific data before us, I do rely heavily in
44 this job on anecdotal information because that's how
45 native people, subsistence users relay information, they
46 -- by years and years and centuries of -- or of -- or
47 even millennia of observation that's passed on down. So
48 I don't discount that, but the fact is that if we were to
49 have closed this area around Makhnati Island two years
50 ago it wouldn't have made a difference because there

1 hasn't been fishing there.

2

3 So I don't see any reason -- I don't see
4 any substantial evidence to close it now. And -- but
5 with all these other circumstances that -- that haven't
6 been fully meshed out, I think that it's worthy to set it
7 aside and see what the -- the Board of Fish does to react
8 and what other science that may come in. So I think I'm
9 supporting the idea of deferral.

10

11 Other Board members. Denny.

12

13 MR. BSCHOR: Mr. Chair. I don't need to
14 repeat everything that's said, I'll just say ditto. But
15 because I -- I think at this point anything we can do to
16 get better information or whatever is -- is going to be
17 beneficial in the long run. I would say though that we'd
18 probably -- and I'm -- I'm tending towards deferring
19 here, I am interested in deferring this issue for a
20 period of time. That period of time though I would think
21 would be better if it were on a -- on the cycle, the next
22 fish cycle. But I don't know, I wasn't here for all the
23 testimony, I don't know if that fits with other's
24 desires, but that would be my -- my input on that part of
25 it.

26

27 Thank you, Mr. Chair.

28

29 CHAIRMAN FLEAGLE: Thank you. Geoff.

30

31 MR. HASKETT: I'm not going to be a whole
32 lot different than anybody else, Mr. Chair. I -- my
33 Staff had originally proposed that we oppose this based
34 upon there being not substantial evidence to support the
35 closure at least for the reasons asked for. It appears
36 to me that other factors may be responsible, but we don't
37 know. And so until we have better information, better
38 data, I think it probably does make sense to go ahead and
39 defer this.

40

41 CHAIRMAN FLEAGLE: Thank you. I have Sue
42 and then Denby.

43

44 MS. MASICA: I would just concur with
45 what's been said previously. I was -- I didn't that we'd
46 met the thresh -- the thresholds for closure were met,
47 but I think a deferral is appropriate in light of the
48 additional information, the need for further review and
49 peer review of that. So.....

50

1 CHAIRMAN FLEAGLE: Commissioner Lloyd.

2

3 COMMISSIONER LLOYD: Well, thank you, Mr.
4 Chairman. Following on what appears to be some sentiment
5 to potentially deferring the proposal, I'd like to echo
6 what Mr. Bschor was indicating though in terms of timing
7 of that. It would certainly be easier for Staff to
8 accommodate and I think for the Board to accommodate if
9 this were deferred to your next fisheries meeting rather
10 than complicating issues and deferring it for a single
11 year into your wildlife cycle. And it's not just a
12 simple consideration in that regard, there's a lot of
13 Staff work that goes into preparing for these meetings,
14 it's not just the meeting itself.

15

16 So I believe unless you've got reason to
17 schedule it otherwise we'd certainly appreciate from our
18 perspective, let alone what we think would help your
19 perspective, that you defer it to the next fishery cycle
20 meeting in your schedule, Mr. Chairman.

21

22 CHAIRMAN FLEAGLE: Thank you. George.

23

24 MR. OVIATT: Well, that would defer this
25 for what, two years. It -- it's hard to put an estimate
26 of time. I was thinking of deferring it for one year and
27 that it be heard during the wildlife cycle in 2010. And
28 I wonder if we couldn't put a time frame of one year on
29 it and then at that time if we need more time for studies
30 or -- I hate to see this linger on for one year and two
31 years and three years if we have the information and it's
32 been peer reviewed in time for consideration during that
33 cycle.

34

35 Thank you, Mr. Chairman.

36

37 CHAIRMAN FLEAGLE: Thank you. George,
38 what's the likelihood that given the amount of concern
39 that you hear about this area, what's the likelihood that
40 the state will voluntarily not open this area for the
41 next couple of years just based on the last two years
42 that you haven't opened it. I mean it hasn't -- well,
43 maybe you're not the right person to answer, but you can
44 pass it off, but I'm just looking for maybe some kind of
45 a verbal commitment that you recognize this as a concern
46 that the Sitka residents are not meeting their
47 subsistence needs, not by anything that you're not doing
48 obviously or apparently, but it would seem like it would
49 be a real tough situation to defer this for two years and
50 then have a fishery in the area while we're waiting.

1 Commissioner.

2

3 COMMISSIONER LLOYD: Well, thank you, Mr.
4 Chairman. I guess we'll hesitate to make a commitment at
5 this meeting. However we do have an ongoing MOU with the
6 Sitka Tribe. On a day to day basis the area managers of
7 the fishery are attempting to communicate with the Tribe.
8 And I think we'll continue that effort. So to the extent
9 that in any particular year or any particular day that,
10 you know, we understand where the biomass is being made
11 available, we'll have those conversations locally to best
12 locate the fishery. But to make that kind of commitment
13 now I think would be inappropriate because we wouldn't
14 have that kind of in-season knowledge to understand how
15 best to manage the fishery.

16

17 CHAIRMAN FLEAGLE: I appreciate the
18 response. It was worth asking though. Niles.

19

20 MR. CESAR: The only problem I see with
21 delaying to the next fish cycle would be of May 2010. So
22 we'd be looking at two full cycles of fishery. So I'm
23 concerned about that. And so, you know, the notion of
24 picking it up during the wildlife cycle or some even
25 special meeting. I mean I don't know and I -- and I'm --
26 it's tough to say that's exactly what I want, but it
27 seems to me like you're going to miss two herring cycles,
28 that's more than anybody I think was originally thinking.

29

30 CHAIRMAN FLEAGLE: Thank you. Comment on
31 the process. Pete, I think the -- as I understand it the
32 Board can set its own schedule so, I mean, we certainly
33 have the ability to postpone it until next year, but we
34 also have the ability to take it up whenever we want to,
35 I mean, not that we would hold a special meeting, but we
36 do have the subjectivity to take it up when we want to,
37 right?

38

39 MR. PROBASCO: That's correct, Mr. Chair.
40 And you're not confide to -- confined just to these
41 meetings that we have in the winter and spring, you could
42 actually have one anytime you wish, we just have to have
43 proper notice. So with that, Mr. Chair, it's the Board
44 call. You do have to take into consideration preparation
45 by the Staff. So when we get to that point as far as a
46 time I'll speak up if I see problems.

47

48 CHAIRMAN FLEAGLE: Okay. Denny.

49

50 MR. BSCHOR: I don't want to prolong this

1 discussion on the timing, but maybe a suggestion would be
2 not -- not longer than two years. Put an outside limit
3 to it, we want to hear it within two years.

4

5 CHAIRMAN FLEAGLE: Thank you. George.

6

7 MR. OVIATT: I suppose we could do that.
8 What would be the trigger to cause us to -- I guess if
9 the information is there in time for the wildlife meeting
10 we would move forward with it at that time. And we would
11 have to be done in -- in appreciation of what Pete is
12 saying we would have to know that well in advance of
13 January of 2010 in order for the Staff to prepare what
14 they need to. But, I guess, you know, leave it up to OSM
15 to kind of -- kind of lead us in that direction. I guess
16 I -- in reference to that I would be willing to make a
17 motion that we defer for a time period of not -- no
18 longer than two years and sooner if possible.

19

20 Thank you, Mr. Chairman.

21

22 CHAIRMAN FLEAGLE: I recognize that as a
23 motion.

24

25 MR. OVIATT: What process, do I have to
26 put the original motion on the table first?

27

28 CHAIRMAN FLEAGLE: Yeah, that's what
29 we've been doing. Yeah, good point. Good catch.

30

31 MR. OVIATT: Mr. Chairman. I'm prepared
32 to make a motion.

33

34 CHAIRMAN FLEAGLE: Please do.

35

36 MR. OVIATT: Mr. Chair. I move to adopt
37 FP09-05 as submitted by the Sitka Tribe of Alaska and
38 supported by Southeast Regional Advisory Council as shown
39 on Page 116 of our Board book. Given a second I would
40 like to place a motion before this Board to defer.

41

42 MR. BSCHOR: Second.

43

44 CHAIRMAN FLEAGLE: All right. You have
45 your second. George, continue.

46

47 MR. OVIATT: Mr. Chair. I move to defer
48 Proposal FP09-05 as submitted by Sitka Tribe of Alaska as
49 shown on Page 116 of our Board book for a period not to
50 exceed two years and sooner if possible. Given a second

1 I'll speak to this motion.
2
3 MR. BSCHOR: Second.
4
5 CHAIRMAN FLEAGLE: You have a second. Go
6 ahead.
7
8 MR. OVIATT: Real quick. This will allow
9 additional time for research to occur and the State Board
10 of Fish to consider the proposal submitted by the Sitka
11 Tribe.
12
13 Thank you, Mr. Chairman.
14
15 CHAIRMAN FLEAGLE: Board members. Pete,
16 you're not a Board member. Niles.
17
18 MR. CESAR: Well, I support George's
19 motion and amendment I think for all the reasons that
20 he's talked about. I will vote to -- vote for a
21 deferral.
22
23 CHAIRMAN FLEAGLE: Pete, comments.
24
25 MR. PROBASCO: Mr. Chair. And what we'll
26 do is we'll keep the Board apprised of the issue during
27 our work sessions and then we'll use that as a compass
28 when you would like to take it up.
29
30 CHAIRMAN FLEAGLE: That sounds good.
31 That will allow opportunity to see what the State Board
32 of Fisheries does to their proposals and any other
33 additional information that might come out of the fishery
34 next year. So -- okay. I'm for it as well. Are we
35 ready for the question? The question's called. Pete,
36 please poll the Board on 05.
37
38 MR. PROBASCO: Mr. Chair. To defer
39 Proposal FP09-05. And you're first, Mr. Fleagle.
40
41 CHAIRMAN FLEAGLE: Yes.
42
43 MR. PROBASCO: Ms. Masica.
44
45 MS. MASICA: Yes.
46
47 MR. PROBASCO: Mr. Oviatt.
48
49 MR. OVIATT: Yes.
50

1 MR. PROBASCO: Mr. Bschor.
2
3 MR. BSCHOR: Yes.
4
5 MR. PROBASCO: Mr. Cesar.
6
7 MR. CESAR: Yes.
8
9 MR. PROBASCO: And Mr. Haskett.
10
11 MR. HASKETT: Yes.
12
13 MR. PROBASCO: Motion to defer carries
14 six/zero.
15
16 CHAIRMAN FLEAGLE: All right. Thank you.
17 And that wraps up southeast area. I want to thank you
18 gentlemen that came north from the southeast to help us
19 out on these issues and also the testifier from Yakutat,
20 appreciate your attendance, other testifiers.
21
22 We'll give a few moments to change the
23 Staff as we move into the Cook Inlet suite of proposals
24 and grab a cup of coffee. Let's just stand down for five
25 minutes while we switch out Staff.
26
27 (Off record)
28
29 (On record)
30
31 CHAIRMAN FLEAGLE: All right. We're back
32 in session. Before we start with the Cook Inlet area
33 proposals I do have a -- Commissioner Lloyd wishes to
34 speak to the Board.
35
36 COMMISSIONER LLOYD: Thanks, Mr.
37 Chairman. I appreciate your action on that last
38 proposal. And to follow-up briefly I invite and request
39 that you, the Board, request the pertinent Staff, the
40 pertinent Federal Staff to attend the Alaska Board of
41 Fisheries meeting on this issue so that they're fully
42 apprised of the information that our Board process will
43 be listening to and also all the public testimony that
44 comes forward at that Board of Fisheries meeting. So
45 again kind of in the spirit of cooperation and cross
46 pollination I'm hoping that the pertinent Federal Staff
47 will join us at that Board of Fisheries meeting. I'm not
48 sure when that -- it's next -- it's in March. Yes.
49
50 CHAIRMAN FLEAGLE: Thank you,

1 Commissioner, appreciate the comments. And I see Staff
2 taking notes. All right. I see we have another Council
3 Chair, Lester Wilde from the Yukon Kuskokwim Delta
4 Advisory Council, welcome to the meeting.

5

6 MR. WILDE: Thank you.

7

8 CHAIRMAN FLEAGLE: With that we're going
9 to go ahead and move into our next proposal. Proposal 6
10 has been added to the consensus agenda so we're going to
11 skip to Proposal 7 and I see we have at the table Helen
12 Armstrong and Donald Mike. And, Helen, you're going to
13 lead off.

14

15 MS. ARMSTRONG: Thank you, Mr. Chair.
16 Members of the Board. Regional Council Chairs. My name
17 is Helen Armstrong and I'm an anthropologist for OSM.

18

19 Proposal FP09-07 begins on Page 168 in
20 your Board book. This proposal was submitted by the
21 Ninilchik Traditional Council. It requests that
22 Ninilchik be added to the communities with a positive
23 Customary and Traditional Use Determination for all fish
24 in the Kenai Peninsula district waters north of and
25 including the Kenai River drainage within the Kenai
26 National Wildlife Refuge and the Chugach National Forest.
27 For the rest of this analysis I will refer to this area
28 as the Kenai River area. A map of this area can be seen
29 on Page 172 of your Board book.

30

31 In the Kenai River area the Federal
32 Subsistence Board has recognized the customary and
33 traditional uses of salmon, but not resident species by
34 Ninilchik residents. Ninilchik also has a positive
35 Customary and Traditional Use Determination for all fish
36 in the Kasilof River drainage.

37

38 The proponent of Proposal FP09-07
39 requests that the Board recognize the community of
40 Ninilchik's customary and traditional uses of all fish in
41 the Kenai River similar to its uses of salmon and
42 comparable to the Customary and Traditional Use
43 Determination finding for the Kasilof River drainage.
44 Hope and Cooper Landing have a positive C&T for all fish
45 in the Kenai River area. So Hope and Cooper Landing have
46 all fish and Ninilchik has only salmon.

47

48 Such concerns are properly addressed
49 through the implementation of seasons -- I'm sorry. This
50 issue is not a conservation issue and such concerns are

1 properly addressed through the implementation of seasons,
2 harvest limits and methods and means of harvest.

3

4 The issue of C&T for fish on the Kenai
5 Peninsula has been before the Board off and on since
6 2001. I won't go through the whole history, but it's in
7 your -- in the analysis in your books.

8

9 Specific percentages regarding the use of
10 the area and use of resident fish species is included in
11 the analysis on Pages 180 to 188. Different studies have
12 been done by the ADF&G Subsistence Division as well as
13 the Ninilchik Traditional Council. There are different
14 methodologies used, some of them were lifetime uses, some
15 were just specific to one year. But the information that
16 we have is that somewhere between 1 and 28 percent of the
17 people of Ninilchik have harvested resident species in
18 the Kenai River area. Based on the holistic application
19 of the eight factors presented in the analysis, Ninilchik
20 residents have a pattern of use of customarily and
21 traditionally using resident species in the Kenai River
22 area.

23

24 The Southcentral Council's recommended
25 modification to the proposed regulation for C&T for
26 resident species of fish for the community of Ninilchik
27 would exclude burbot, Arctic grayling and pike. The
28 recommendation if adopted by the Board is not anticipated
29 to have any affect on the community of Ninilchik's use of
30 resident species in the Kenai River area. There is no
31 Federal open season for burbot and Arctic grayling and no
32 regulation for pike. There are no limits for harvesting
33 pike under State regulations.

34

35 Adopting the Southcentral recommendation
36 would result in a regulation broken out by species for
37 Ninilchik while Hope and Cooper Landing would have a C&T
38 for all fish, but the net effect would be the same for
39 all communities.

40

41 Contrary to the Southcentral Council
42 recommendation OSM Staff have chosen to recommend keeping
43 the C&T consistent for Hope, Cooper Landing and Ninilchik
44 and not break out Ninilchik's C&T by species because
45 breaking the C&T out by species is contrary to the
46 opportunistic nature of subsistence fishing. In this
47 case if grayling or burbot are harvested current
48 regulations would require that the fish not be harvested
49 thus the net effect is the same.

50

1 The OSM conclusion is to support Proposal
2 FP09-07.

3
4 Thank you, Mr. Chair.

5
6 CHAIRMAN FLEAGLE: Okay. Thank you for
7 that. Summary of public comments. Donald.

8
9 MR. MIKE: Thank you, Mr. Chair. Donald
10 Mike, Regional Council Coordinator. You'll find your
11 written public comments on Page 200 of your Board book.
12 We received one written public comment from the Kenai
13 River Sportfishing Association opposing the proposal.

14
15 Based on the prior analysis of the
16 historic pattern of use and eight criteria that are
17 required under ANILCA and the decision to not grant C&T
18 for freshwater species to residents of Ninilchik, Kenai
19 River Sports Fishing Association strongly opposes this
20 expansion of subsistence opportunity. As is the case in
21 this situation, we cannot simply afford additional
22 opportunity to a community that cannot demonstrate a
23 pattern of use of those resources present within the
24 Federally managed waters. Adoption of this proposal will
25 detrimentally impact other users and other uses of these
26 resources.

27
28 Subsistence opportunities for residents
29 of Ninilchik exist under State regulations. This
30 proposal revisits decisions already made by the Federal
31 Subsistence Board in November of 2006 and would grant
32 residents of Ninilchik a Federal subsistence priority for
33 freshwater species occurring in the Kenai River within
34 the Kenai National Wildlife Refuge and the Chugach
35 National Forest. Central to those earlier decisions was
36 the fact that C&T could not be demonstrated for
37 freshwater species within the Federally managed waters.

38
39 The justification provided for this
40 proposal recognizes this activity did not occur on the
41 allowable Federal property, but asks it be allowed anyway
42 because the Federal boundaries are not consistent with
43 their historic patterns of use.

44
45 That concludes the written part of the
46 comments, Mr. Chair. Thank you.

47
48 CHAIRMAN FLEAGLE: Thank you, Donald.
49 Now we're opening the floor for public testimony. Pete,
50 do we have anybody who wants to testify on this?

1 MR. PROBASCO: Yes, Mr. Chair. At this
2 time I have one public member and that's Mr. Ricky Gease.

3
4 CHAIRMAN FLEAGLE: Ricky Gease, please
5 step forward.

6
7 MR. GEASE: My name is Ricky Gease, I'm
8 speaking on behalf of the Kenai River Sportfishing
9 Association of which I am the Executive Director. I've
10 had the privilege also of serving on the Southcentral RAC
11 for the past year. I want to thank you for the
12 opportunity to speak today on this issue. It's an
13 interesting issue. It deals with C&T Determinations.

14
15 Kenai River Sportfishing Association
16 joined -- provided an amicus brief to the case in the
17 Chistochina case. We were concerned with C&T
18 determinations for fish stocks in that so we provided an
19 amicus brief on that.

20
21 FP09-07 concerns a C&T Determination for
22 the community of Ninilchik for resident species in the
23 Kenai River watershed and waters north in the Federal
24 lands of the Kenai National Wildlife Refuge and the
25 Chugach National Forest. An overview of my testimony
26 today, I'm going to touch on four topics. One speaks to
27 the problem with legal advice to the Federal Subsistence
28 Board, agencies, OSM, the RACs, subsistence and other
29 users in regards to the C&T process. And those problems
30 were described specifically in the court case itself.
31 The reason why I'm going to go into that is that it
32 speaks to the determination process and what should be
33 used as a rationale for making positive C&T
34 determinations. I'm also going to speak to the history
35 of decision making in regards to the C&T determinations
36 for salmon and resident species that we have in these
37 waters today. I'll speak to the data that is pertinent
38 to this specific C&T determination in the packet. I
39 think there's data in regards with this court case now,
40 there's specific data that is pertinent and data that is
41 not. Then I'll speak lastly to some remaining unresolved
42 issues on the C&T determinations for the Kenai Peninsula
43 as was touched on yesterday.

44
45 Specifically first I want to talk to the
46 court case itself because I'm in -- I think it's
47 important to go through some of the points that were in
48 the court case and so we're clear about what a C&T
49 determination process actually is. On Page 13442 of the
50 case, it's -- we're talking about, we will find an agency

1 action arbitrary and capricious if it offers an
2 explanation for its decision that runs counter to the
3 evidence before an agency. I think that's an important
4 point to it.

5
6 The second area that -- point two on Page
7 13445, Section (b)(5), when making C&T determinations the
8 Federal Subsistence Board must determine which fish
9 stocks and wildlife populations have been customarily and
10 traditionally used for subsistence. Additionally the
11 regulations provide that C&T determination shall identify
12 the specific community or area's use of specific fish
13 stocks and wildlife populations. The point being in
14 these points that I'm bringing up is that it's a specific
15 community or area, it's a specific fish stock and it's on
16 Federal lands in a specific area.

17
18 We go on to Page 13446, Section (b)(4),
19 point seven. The addition of the term stock or
20 population denotes a smaller group than a species.
21 Specifically the regulation directs the Federal
22 Subsistence Board to identify a community's use of
23 specific fish stocks and wildlife populations. In order
24 for the FSB to make -- consider the relevant factors when
25 making C&T determination the Federal Board must have
26 considered Chistochina subsistence use of specific moose
27 populations and not Chistochina's use of moose in
28 general. So the same thing points to here when you're
29 making this determination for resident species, it has to
30 be on a specific fish stock and not on these resident
31 species in general.

32
33 Continuing on, Page 13447, Section (c)
34 where it points out the decision was not arbitrary and
35 capricious, the second paragraph. The Federal defendants
36 first contend that the FSB properly extended Chistochina
37 C&T determination for moose to the whole of the area
38 because the Board in its discretion may grant a C&T
39 determination for a species in any area as long as the
40 community requesting the determination can demonstrate
41 subsistence use for that species anywhere. In order --
42 in other words the Federal defendants contend that
43 neither ANILCA nor its implementing regulations require
44 the FSB to limit C&T determinations to the area in which
45 the community has demonstrated subsistence use.

46
47 Point nine is the court found no merit to
48 this argument. The regulations clearly tie C&T
49 determinations to the specific location in which wildlife
50 populations have been taken. So in this process the

1 wildlife populations and the data are specifically tied
2 to harvests on Federal lands.

3

4 Point 10 in that same section, each C&T
5 determination must be tied to a specific community or
6 area and a specific wildlife population or fish stock.
7 C&T determination shall identify the specific community
8 or area's use of the specific fish stocks and wildlife
9 populations. Throughout this decision it's a specific
10 community, a specific fish stock and a specific area to
11 make a positive C&T determination.

12

13 Specific communities and areas and
14 specific fish stocks and wildlife populations are by
15 definitions limited to specific geographic areas. The
16 FSB has determined that rural Alaska evidence --
17 residents and the list of communities, areas and
18 individuals have C&T -- have customary and traditional
19 use of the specific specified species on Federal public
20 lands in the specified areas. A C&T determination is not
21 a determination that a community or area has used a
22 species for subsistence purposes, rather a C&T
23 determination is a determination that a community or area
24 has taken a species for subsistence use within a
25 specified area.

26

27 Going on on Page 13450, second paragraph
28 there. Thus the six of the eight factors direct the FSB
29 to consider use relative to the specific wildlife
30 population or fish stock and by extension relative to its
31 geographic reach of that population or stock.

32

33 Point 12, Federal defendants further
34 content that requiring a geographic basis for the C&T
35 determination works at cross purposes with ANILCA because
36 ANILCA was enacted to protect the subsistence lifestyle
37 enjoyed by rural Alaskans, not to limit subsistence use
38 to the traditional reach of those rural -- and not to
39 limit subsistence use to the traditional reach of those
40 rural communities. We do not find this argument
41 convincing. Further in that section it says the
42 geographic limitation protects the subsistence activities
43 traditionally practiced by rural Alaskans and protects
44 species by ensuring that only those communities that have
45 traditionally taken from a population are given priority
46 to do so in the future. Again it comes back to specific
47 communities, specific fish stocks and specific areas.

48

49 Point 13 on Page 13451, in fact, the
50 alternative proposed by the Federal defendants would give

1 the Federal Subsistence Board discretion to grant a rural
2 community a statewide C&T determination for a species as
3 long as that community could demonstrate a subsistence
4 use for that species. There is no support in ANILCA or
5 its implementing regulations for such unfettered
6 discretion.

7
8 So throughout the decision making process
9 -- and again point 13 continues on. The record shows
10 that the entire purpose of the C&T determination process
11 was to determine whether Chistochina residents
12 demonstrated C&T use of moose within the areas. If the
13 Federal Subsistence Board had not found so we doubt they
14 would have granted the C&T determination for moose in
15 those areas.

16
17 So the Federal -- the reason why it's a
18 problem, I know in deference to the Chair, he likes
19 issues, looking at problems, the problem is both legal
20 advice I believe in this argument and in this court case
21 is both the legal advice with all due deference to
22 lawyers and legal opinions is that we've had problems
23 with the legal advice to the Federal Subsistence Board,
24 to the OSM, to the agencies, to the subsistence users and
25 to the RACs about what a C&T determination actually is.
26 And this court case clearly defines it as a specific
27 community or area harvesting a specific species, not a,
28 you know, species, but specifically a stock of that
29 species, on specific Federal lands. That's what a
30 positive C&T determination is and that's what the issue
31 is before you today.

32
33 So with that clarity that the court case
34 and decision provides to this Board, I'd like to continue
35 on with the second point which is what data are we
36 looking at today. The data that you're looking at on
37 Pages 180 through 188, the most relevant data to this
38 point, there's a lot of data that's relevant to -- in
39 regards to the legal advice is did Ninilchik have -- show
40 a customary and traditional use of the resident species
41 for subsistence purposes. Clearly they did. However
42 that is not the point of a positive C&T determination.
43 The point of a positive C&T determination is where was
44 that harvest pattern documented.

45
46 And what is relevant to your decision
47 making process today is on Page 188 and if you would
48 please turn to that page. If you look at 188 it's
49 divided into two points. There are Federal public lands
50 and waters and there are other lands and waters. To the

1 decision making process other lands and waters are not
2 pertinent. The documented use on Federal public lands
3 and waters is what is pertinent. And if you look to the
4 right-hand column you'll see Dolly Varden, zero, zero,
5 zero; rainbow trout, 1 percent, 1 percent, 0 percent;
6 steelhead, zero, zero, zero; lake trout, 1 percent, zero,
7 zero; hooligan, zero, zero, zero on Federal lands. So
8 this in the -- when you're going through when the Staff
9 was looking at this survey which is a one year snapshot,
10 they found similar evidence and documentation of levels
11 of use consistent from year to year. So it's showing
12 that resident species are not -- there is not a
13 documented use of these resident species on Federal
14 public lands. However, there is documented use on the
15 Kasilof River, 4 percent and off on -- for Dolly Varden
16 in Ninilchik and in the Deep Creek area.

17
18 If you go back to your decision for
19 finding a positive C&T for Ninilchik in the Federal
20 waters on the Kenai River you will remember to look on
21 the right-hand side. On the right-hand side of the
22 column for salmon in your decision making process schnook
23 salmon was zero, sockeye salmon was 4 percent, coho was
24 zero, chum salmon was zero, pink salmon was zero. In
25 your decision making process what you articulated was
26 that those fish stocks migrated and they migrated past
27 Ninilchik. And if you go down into the other lands and
28 waters you'll look at for chinook salmon, for example, 12
29 percent, 9 percent, 4 percent, 4 percent, 19 percent. So
30 what you had is coming up to harvest rates of 50 percent
31 for chinook salmon on those fish stocks that you said
32 migrated past in the marine waters of Cook Inlet and in
33 the fresh water tributaries that were going up into
34 Federal lands. And you accepted that as a rationale. So
35 harvest on non-Federal lands of fish stocks was part of
36 your rationale. However if you go down sockeye salmon,
37 if you go down coho salmon, you had use levels coming up
38 into the 50 percent range in your decision making
39 process. Now that's a different court case whether or
40 not harvest on -- off Federal lands should be a factor
41 versus harvest on Federal lands. That's a separate issue
42 and you guys can revisit that issue with clarification on
43 this court case. And I would suggest that you would go
44 back and do that.

45
46 However with this positive C&T
47 determination here for resident species, Page 118 doc --
48 188 documents there is no use on Federal public lands,
49 documented positive for that positive determination if
50 you consider those three factors, community, area and the

1 specific fish stocks.

2

3 Resident species by definition for the
4 rainbow trout and the lake trout are not migrating
5 Ninilchik in State waters. So the same kind of loophole
6 if you want to call it that cannot be used for the
7 resident species determination as has been used in the
8 salmon determination.

9

10 Lastly I'll point out -- and thus it's
11 based on the evidence that is before you that we say that
12 no, we don't think that this community, this specific
13 community has demonstrated a positive C&T determination.
14 So that's why we're against that determination process.

15

16 Yesterday you had some issues when you
17 were talking about C&T determinations around the Juneau
18 road system and some other areas. I want to point out
19 how that issue also affects other areas on the Kenai
20 Peninsula relative to C&T determinations. Kenai Fjords
21 National Park is not a subsistence area however it butts
22 up next to the Chugach National Forest, the Resurrection
23 River, it goes along that, it bisects the boundary
24 between the Chugach National Forest and the Kenai Fjords
25 National Park. You do have salmon species in that river
26 system. Currently right now there's no C&T determination
27 for that. In my reading of what your opinion is, that
28 area's open to subsistence fishing for salmon stock such
29 as coho which are up in that region. That's another area
30 which I think in your -- when you're tasking Staff to
31 look at areas of the State that are open that haven't had
32 positive C&T determinations for fish stocks, that's an
33 area that should be listed on as is 4th of July Creek
34 which headwaters are in the Chugach National Forest area.

35

36 One of the things that's an issue in
37 terms of why is it important for communities to have
38 specific areas listed is you have a changing State as
39 time goes on. The rationale that you use to make your
40 decisions is important. If you allow a positive C&T
41 determination for a 1 percent use of a community for
42 resident species, you're setting the default bar for one
43 person in a small community. Cooper Landing has 100
44 people, I'm going to walk you through a little bit of
45 logic here. Where I see the downfall is for other rural
46 communities in the State, and I believe this is an
47 important issue that's going to affect this Board through
48 time, I can move to Cooper Landing and I'm a qualified
49 Federal user. If your bar for use or a pattern of use is
50 set at 1 percent, one person from a rural community, two

1 people or a group of people could go hunting or fishing
2 in an area, build up a pattern of use through State
3 measures and say I want to go outside that area, I'm a
4 Federally qualified user. I -- our community may not do
5 it a lot, but I want a positive C&T determination.
6 You're seeing a migration from rural communities into
7 urban areas, but you're also seeing the reverse, you're
8 seeing migrations of people from urban areas to rural
9 areas. And on -- we're seeing that on the Kenai
10 Peninsula. You're seeing people with wealth and means
11 moving for retirement into rural communities just
12 establishing their residency and then looking for other
13 areas of the State where they can go hunting and fishing
14 specifically for that. The question posed to this Board
15 when ANILCA was established and you set up the specific
16 process for positive C&T determinations, it's an area,
17 it's a community on specific stuff. If you set that bar
18 too low you're going to have more migration into areas
19 from other qualified rural residents that may not have
20 demonstrated that use. And that's the danger of setting
21 precedent of the bars too low in these specific
22 instances.

23

24 Thank you for your time and opportunity
25 to speak before you.

26

27 CHAIRMAN FLEAGLE: Thank you, Ricky. Any
28 other testifiers, Pete?

29

30 MR. PROBASCO: No, Mr. Chair.

31

32 CHAIRMAN FLEAGLE: All right. Thank you.
33 We'll then move to the Regional Council recommendation,
34 turn to Ralph Lohse. Welcome, Ralph.

35

36 MR. LOHSE: Thank you, Mr. Chair. As was
37 noted before, I think this is about the third time we've
38 had this same recommendation before the Board. I think
39 the last time the Board dealt with it it was a tie vote.
40 All three times that the -- this recommendation or this
41 proposal was before the Board the Council supported it,
42 this last time we supported it was a modification by a
43 10, zero vote. We as a Council felt that there was
44 documented use of fish by residents of Ninilchik. We
45 also felt that we had heard enough personal testimony
46 from residents in Ninilchik and from elders in Ninilchik
47 about previous patterns of use in the area and previous
48 use of it.

49

50 We did look at the survey, we looked at

1 the survey at -- the same survey that's on Page 188 and
2 we considered that as a snapshot, that's a snapshot in
3 current time, but we also looked at the fact that we're
4 dealing with a -- we're dealing with an area where the
5 pattern of use, the historical pattern of use has been
6 interrupted since 1952. We don't say that there's a lot
7 of use on the Kenai River, but it's our understanding
8 that what we're looking at for C&T is use, not lots of
9 use and that there is no threshold. It's the nature of
10 subsistence to be opportunistic, we have lots of
11 testimony from elders and older people and old written
12 testimony and stores that showed that people from
13 Ninilchik did go up into the Kenai River for other
14 purposes and we felt that during that time they would
15 have harvested the fish or the -- they would have
16 harvested I'll say the resources that are available for
17 their daily living. Harvest of resources is
18 opportunistic, it's the nature of subsistence to do that
19 and it's often associated with other subsistence
20 activities.

21

22 While we never had any testimony that
23 anybody went to the Kenai River to get fish to put up for
24 the winter or to store or to -- or to fill their winter's
25 needs, we did have testimony of people going up there on
26 moose hunting and trapping trips and other kind of
27 traveling trips and things like that and taking the
28 resource for the use of daily food or for a week's food
29 or for camping food. The Council therefore recommended
30 that the Customary and Traditional Use Determination be
31 limited to freshwater species that were historically
32 harvested prior to the closure in 1952 when subsistence
33 as allowed.

34

35 We do not think that a low threshold is
36 a danger if what it's connected to is a long term,
37 meaning historical use of C&T resource. We have little
38 problems with what long term is at times, but I doubt if
39 long term would equal somebody moving in today and using
40 a resource for two or three years.

41

42 So with that I would like to say that the
43 Council -- Southcentral Regional Advisory Council
44 supports this proposal by Ninilchik and in the -- in the
45 interest of making sure that we're dealing with fish that
46 were available and were used, we limited it to Dolly
47 Varden, Arctic char, lake trout, rainbow and steelhead
48 trout. That was not a unanimous vote. We had members of
49 the Council who voted against that because they felt that
50 that was limiting subsistence users, but we put it in

1 anyhow. But the vote for the proposal was 10, zero.
2 Thank you.

3
4 CHAIRMAN FLEAGLE: All right. Thank you,
5 Ralph. We now turn to the Alaska Department of Fish and
6 Game for comments. George.

7
8 MR. PAPPAS: Good afternoon. George
9 Pappas, Department of Fish and Game. Summarizing the
10 Department's full, formal comments that are in your Board
11 books, Pages 198 to 199. Those full comments were also
12 entered into the record following this testimony.

13
14 This proposal, FP09-07 is identical in
15 intent to the proposed -- to the portion of the Proposal
16 FP06-09 which the Federal Board rejected in September
17 13th, 2007, based on insufficient evidence to support a
18 determination of customary and traditional use of
19 resident species within the Kenai River area by residents
20 of Ninilchik and Happy Valley.

21
22 The Federal Board decision was the
23 outcome of a lengthy public process and intense
24 examination lasting over a year. They observed that the
25 Federal Staff analysis of this proposal mirrors its
26 analysis of that portion of the rejected Proposal FP06-
27 09. The proposal and Federal Staff analysis provide no
28 new or substantial evidence of Ninilchik or Happy Valley
29 customary and traditional taking of discrete resident
30 fish stocks of the upper Kenai River area with Federal
31 public lands.

32
33 The September 23rd, 2008 opinion of the
34 Ninth Circuit Court in the State of Alaska versus the
35 Federal Subsistence Board, commonly called the
36 Chistochina case supports the correctness of the Federal
37 Board's prior C&T determination in this instance. In its
38 decision on September 13th, 2007, the Board found no C&T
39 use of the resident fish stocks within the Federal lands
40 on the Kenai River area by Ninilchik and Happy Valley
41 residents. In its Chistochina decision the court held
42 the Federal Board's C&T determination must be supported
43 by substantial evidence or specifics -- substantial
44 evidence of a specific rural community or area's
45 demonstrated customary and traditional taking of specific
46 fish stock or wildlife population, not general species,
47 within specific geographic locations. The Federal
48 Board's determination must have a quote, substantial
49 basis in fact, unquote for C&T determination. The court
50 added that the Federal Board's quote, regulations clearly

1 tie C&T determinations to the specific location in which
2 the wildlife population have been taken, unquote. And
3 quote, each C&T determination must be tied to a specific
4 community or area and a specific wildlife population,
5 unquote.

6
7 As previously determined by the Federal
8 Board, resident species fish stocks found within the
9 Federal boundaries of the Kenai River area constitute
10 distinct stocks and residents of Ninilchik and Happy
11 Valley have not quote, customarily and traditionally
12 quote -- unquote, taken significant numbers of those
13 distinct stocks in that area. Any evidence of these
14 communities' take of the same general species or fish in
15 other waters closer to Ninilchik or Happy Valley cannot
16 be used to grant these communities C&T determinations to
17 that specific fish stock in the upper Kenai River area.

18
19 Ninilchik and Happy Valley are located
20 far away from the upper Kenai River, they have not
21 historically relied on the discrete resident fish stocks
22 for their subsistence needs. No new information is
23 presented in the proposal or in the Federal Staff
24 analysis which justifies reversing the 2007 Federal
25 Board's C&T determination. Granting a customary and
26 traditional finding without substantial evidence of a
27 prior pattern of take of specific fish stocks in specific
28 geographic areas by a specific community would be in
29 direct conflict with the September 23rd, 2008 opinion in
30 the Alaska versus the Federal Subsistence Board. There's
31 no substantial evidence that the use of specific resident
32 stocks in the Kenai River area by Ninilchik and Happy
33 Valley residents satisfies the Federal Board's regulatory
34 definition of customary and traditional use or the
35 Board's regulatory factors for making a positive C&T
36 determination for any specific resident fish stock.

37
38 The Federal Board's previous --
39 previously properly concluded those communities have
40 rarely harvested or fished from those specific stocks in
41 those Kenai waters. The Department urges the Federal
42 Board to oppose this proposal.

43
44 Thank you very much. That concludes my
45 comments.

46
47 *****
48 STATE OFFICIAL WRITTEN COMMENTS
49 *****
50

1 Alaska Department of Fish and Game
2 Comments to the Federal Subsistence Board
3
4 FP09-07 Ninilchik Customary and
5 Traditional Use Determination for Resident Species in the
6 Kenai River Area
7

8 Introduction:
9

10 Proposal FP09-07 requests that recent
11 customary and traditional use (C&T) findings by the
12 Federal Subsistence Board (Federal Board) for the
13 communities of Ninilchik and Happy Valley be changed to
14 allow those residents to harvest resident fish stocks
15 under federal subsistence regulations from federal lands
16 within and north of the Kenai River drainage (Kenai
17 River area). Proposal FP09-07 is identical in intent to
18 the portion of Proposal FP06-09 which the Federal Board
19 rejected on September 13, 2007, based on insufficient
20 evidence to support a determination of customary and
21 traditional use of resident species within the Kenai
22 River area by residents of Ninilchik and Happy Valley
23 after a lengthy public process and intense examination
24 lasting over a year. The federal staff analysis of this
25 proposal mirrors its analysis of that portion of the
26 previous proposal that the Federal Board rejected. The
27 proposal and federal staff provide no new or substantial
28 evidence of Ninilchik or Happy Valley customary and
29 traditional taking of discrete resident fish stocks of
30 the upper Kenai River area within federal public lands.
31

32 Background:
33

34 Application of the September 23, 2008,
35 Ninth Circuit Court opinion in State of Alaska v. Federal
36 Subsistence Board, 544 F.3d 1089, reinforces the
37 correctness of the Federal Board s prior C&T
38 determination regarding nonuse of the resident fish
39 stocks within federal lands in the Kenai River area by
40 Ninilchik and Happy Valley residents. The Court held
41 that Federal Board C&T determinations must be supported
42 by substantial evidence of a specific rural community or
43 area s demonstrated customary and traditional taking of
44 a specific fish stock or wildlife population, not general
45 species, within specific geographic locations. Alaska v.
46 Federal Subsistence Board at 1094-99. The Federal
47 Board s determination must have a substantial basis in
48 fact. Id. at 1094. The Court held: Under 50 C.F.R.
49 ^U100.16, C & T determinations should identify the
50 specific community s or area s use of specific fish

1 stocks and wildlife populations, . . . and not
2 Chistochina s use of moose in general. Id. at 1096. The
3 Court added that the Federal Board s regulations clearly
4 tie C & T determinations to the specific locations in
5 which wildlife populations have been taken and each C
6 & T determination must be tied to a specific community or
7 area and a specific wildlife population. Id. at 1097
8 (emphasis in original). The Court further emphasized:
9 Specific communities and areas and specific fish stocks
10 and wildlife populations are, by definition, limited to
11 specific geographic areas and a C & T determination is
12 a determination that a community or area has taken a
13 species for subsistence use within a specific area. Id.
14 at 1097-98 (emphasis in original). As previously
15 determined by the Federal Board, resident species fish
16 stocks found within federal boundaries in the Kenai River
17 area constitute distinct stocks, and residents of
18 Ninilchik and Happy Valley have not customarily and
19 traditionally taken significant numbers of those
20 distinct stocks from that area. Any evidence of those
21 communities take of the same general species of fish in
22 other waters closer to Ninilchik and Happy Valley cannot
23 be used to grant Ninilchik or Happy Valley C&T
24 determinations to the specific fish stocks in the upper
25 Kenai River area at issue. Ninilchik and Happy Valley
26 are located far away from the upper Kenai River area.
27 They have not historically relied on those discrete
28 resident fish stocks for their subsistence needs. Given
29 the Federal Board s prior analysis and recent
30 pronouncements by the Ninth Circuit Court in Alaska v.
31 Federal Subsistence Board, a C&T determination for the
32 communities of Ninilchik and Happy Valley to take the
33 specific resident fish stocks of the upper Kenai River
34 area cannot be supported. No new information has been
35 provided that would support reversing the Federal Board s
36 recent determination that insufficient evidence exists to
37 support a determination of customary and traditional use
38 of the specific resident fish stocks within the Kenai
39 River area by residents of Ninilchik and Happy Valley.

40
41 Opportunity Provided by State: The Kenai
42 River area is located in the Anchorage-MatSu-Kenai
43 Nonsubsistence area designation under State law. The
44 State provides a broad array of personal use,
45 recreational, and educational fisheries to meet needs for
46 personal and family consumption as well as cultural
47 purposes. In addition to personal use and educational
48 fisheries for salmon, State sport fishing regulations
49 provide adequate opportunities for harvest of
50 rainbow/steelhead trout, lake trout, and Arctic

1 char/Dolly Varden in addition to salmon.

2

3

Conservation Issues:

4

5

No separate harvest proposal was submitted by the proponent, but, if this proposal is adopted, presumably Ninilchik and Happy Valley residents would become eligible to harvest resident species under existing federal subsistence harvest regulations which apply to residents of Hope and Cooper Landing for taking resident species in the Kenai River area. The State previously documented that resident species are easily over-harvested, and a conservative management approach has been developed by the State over time to assure harvest opportunity while sustaining these distinct, vulnerable resident stocks in the Kenai River area. Most trout fishermen in that area practice catch-and-release fishing, and the proportion of rainbow trout that are harvested in the State fishery is only about 2.4 percent. Current federal regulations providing for use of dip nets and multiple baited treble hooks and for high daily harvest and possession limits for these Kenai River area resident stocks already raise serious conservation issues that are amplified by inadequate reporting requirements. Adding a new subsistence harvest of these resident fish by Ninilchik and Happy Valley to existing federal subsistence harvests of these fish by Hope and Cooper Landing residents would significantly increase these concerns.

30

31

Department Recommendation: Oppose.

32

33

No new information is presented in the proposal or in the federal staff analysis which justifies reversing the 2007 Federal Board C&T determination. Granting a customary and traditional finding without substantial evidence of a prior pattern of take of specific fish stocks in a specific geographic area by a specific community would be in direct conflict with the September 23, 2008, opinion in Alaska v. Federal Subsistence Board. The recent federal staff analysis contains the same information, taken from the same surveys and data compilations reported in 2003-2006, that the federal staff reported before. No substantial evidence that use of the specific resident stocks in the Kenai River area by Ninilchik and Happy Valley residents satisfies the Federal Board's regulatory definition of customary and traditional use, see 50 C.F.R. 100.4, or the Board's regulatory factors for making a positive C&T determination for any specific resident fish stock. See

1 50 C.F.R. 100.16(b). The Federal Board previously
2 carefully considered the relevant information and
3 properly concluded those communities had rarely harvested
4 or fished from those specific fish stocks in those Kenai
5 waters.

6
7 CHAIRMAN FLEAGLE: Thank you, George.
8 InterAgency Staff Committee Comments. Dr. Polly Wheeler.
9

10 DR. WHEELER: Thank you, Mr. Chair. The
11 InterAgency Staff Committee found the Staff analysis for
12 Proposal FP09-07 to be a thorough and accurate evaluation
13 of the proposal. The majority of the Staff committee
14 noted that a holistic application of the eight factors
15 demonstrates that residents of Ninilchik do have a
16 customary and traditional pattern of use of resident fish
17 in the Federal public waters of the Kenai Peninsula
18 district while a minority of these Staff committee noted
19 that there is not a pattern of use by the community of
20 resident fish species in these same waters. The majority
21 also believed that there is insufficient information to
22 distinguish between individual species and that use of a
23 species cut off date -- and that use of a species cut off
24 date prior to 1952 could be detrimental to Federally
25 qualified subsistence users. In reaching its conclusion
26 the minority believes the Customary and Traditional Use
27 Determination for residents of Ninilchik for any resident
28 fish species in this area is not supported by substantial
29 evidence, Mr. Chair.

30
31 CHAIRMAN FLEAGLE: Thank you. And we now
32 open it for Board discussion. George.

33
34 MR. OVIATT: Thank you, Mr. Chairman.
35 Helen, I have a couple of questions maybe you can help
36 clear up for me. I refer to the book on Page 187, I
37 think it's Dr. Fall's report. He reports 1 percent of
38 harvested rainbow trout, lake trout in the Kenai Lake or
39 Kenai Mountains. I refer to Page 189 where it talks
40 about 8 percent down to 2 percent. Could you help me
41 understand your 1 to 27 percent that you talked about
42 that use this. I mean, it's a wide variance for me and
43 I just -- could you help me understand?

44
45 MS. ARMSTRONG: Thank you, Mr. Oviatt,
46 for your question. What we have is Dr. Fall did two
47 studies in 1998 and in 2002. Both of those were as Mr.
48 Gease referred to them, a snapshot -- those were snapshot
49 years. Those were studies of one year of use and so you
50 -- and you get these really low levels of use for the

1 resident species. The Ninilchik Traditional Council,
2 because this has been an issue for a long time before the
3 Board and, I mean, it was -- it had come up in the early
4 '90s in terms of other uses for Ninilchik. So they did
5 a study in 1994 and in that one they because they were
6 concerned about historical levels of use and recognizing
7 that things had changed significantly in the past, you
8 know, couple of decades on the Kenai Peninsula, so
9 Ninilchik Traditional Council had done a survey where
10 they asked households what their lifetime use was. And
11 when they looked at the lifetime use those numbers were
12 much higher. The study was -- there have been as those
13 of you who have been around for a long time on this,
14 there's been a lot of controversy about whether or not
15 their methods were appropriate or not.

16
17 I think in November of 2006, I believe it
18 was, there was a lengthy discussion with Dr. Robert Wolfe
19 who was on teleconference, he used to be the Subsistence
20 Director at the ADF&G Subsistence Division, who testified
21 that their methods were the type of methods -- they were
22 comparable to what the Subsistence Division has done in
23 the past. And what they do is they sit down with a
24 number of people and ask, you know, where -- what are
25 your traditional use areas. I did get the maps, the
26 actual surveys -- responses from that. The quality of
27 the printing was not good enough that I felt I could
28 actually reproduce what they had done, but they did have
29 a map that they ended up drawing and it showed that they
30 had used pretty much all the Kenai Peninsula area. Now
31 they also did not break out non salmon and resident
32 species so that was a problem.

33
34 In Dr. Fall's study in 2002 he did a --
35 asked a question that was not in his original report, but
36 he produced for us later on of lifetime uses. And again
37 that wasn't broken out from resident species from salmon.
38 And in that one -- that table is on page -- just a
39 second, sorry, I didn't have the page number memorized,
40 but that table of his lifetime uses and this is from Dr.
41 Fall, was on Page 182. And it didn't break it out
42 between salmon and resident species, but it did break it
43 out by Kenai River and Swanson River. And there were
44 questions on, you know, total use and then -- and then
45 the breaking out Kenai River and Swanson River. And in
46 that one -- and this was Federal public waters as well,
47 this was a study that was funded by OSM to ADF&G. You
48 can see that their frequent use and then intermittent
49 use, that those percentages are actually fairly
50 significant.

1 The position that we have is that as
2 Ralph was saying is that fishing is opportunistic and if
3 people are going to get salmon and they actually harvest
4 a rainbow trout instead they're not going to throw it
5 back, they're not sport fishermen who are just, you know,
6 going fishing to, you know, with hook and release,
7 they're going to harvest that rainbow trout. So I think
8 it's actually quite telling that that wasn't broken out
9 between salmon and resident species, that they asked the
10 question about -- just about fish in general.

11
12 So that's where we get some of the
13 differences. I mean there are different methodologies
14 and it could be argued, you know, that -- that maybe some
15 of them aren't as rigorous as others, but they were
16 asking different questions between lifetime use and more
17 recent use.

18
19 And then Ninilchik, I should add that the
20 Ninilchik Traditional Council also did a study in 1999
21 because the Board wanted to know about their harvest
22 between okay, we know what lifetime use was, what are
23 they doing today. And in that study there was
24 significant reduction in what they were harvesting and
25 where. That table is on Page 185 and you can see that
26 they did it by unit rather than by looking at the -- this
27 was a study that was done on all species, it wasn't just
28 done on fish and this was actually before we had our Fish
29 Program, it was prior to that. So they recorded the
30 information by unit. But 15C is basically the Kenai
31 River area. It also did not say whether it was on
32 Federal public lands or not. So but it does demonstrate
33 that they -- people were harvesting those resources.

34
35 Does that help, do you have any other
36 questions?

37
38 MR. OVIATT: It does. In other words
39 we've got a lot of studies and the -- and they go from
40 anywhere from 1 percent to 27 percent of the different
41 studies.....

42
43 MS. ARMSTRONG: Well.....

44
45 MR. OVIATT:and different methods
46 and different ways they've done those?

47
48 MS. ARMSTRONG: Well, and what you're --
49 what question you're asking. Whether you're asking about
50 lifetime uses, have you ever gone there or whether --

1 what you did last year. And I think the really critical
2 factor is that if you look at -- or a thing to remember
3 is that factor one of the eight factors says a long term,
4 consistent pattern of use excluding interruptions beyond
5 the control of the community or area. And there were
6 some big interruptions that occurred. So do you look at
7 what they harvested in 2002 and you base your Customary
8 and Traditional Use Determination on that one year use
9 when, in fact, their historical use was something very
10 different. And I -- our regulations don't say well, look
11 at one year of use from 2002, they say, you know, long
12 term, consistent use excluding the interruptions beyond
13 the control of the community or area.

14

15 MR. OVIATT: Thank you, Ms. Armstrong.

16

17 CHAIRMAN FLEAGLE: Other discussion.

18 Ralph.

19

20 MR. LOHSE: Mr. Chair. As is shown by
21 these surveys and the variance in the surveys and the
22 variance in the methods, the Council couldn't really rely
23 on the surveys. And I'd like to read -- I've got a few
24 notes here, I'd like to come across a couple of things,
25 but one of the things Mr. Henrichs brought up at our last
26 meeting is that in the absence of a written history, oral
27 history is admissible evidence in courts and has been
28 used in many native American cases. And the one thing
29 this Council has done is heard a lot of oral history, we
30 sat in a lot of meetings on this now, we've heard from a
31 lot of members from the community of Ninilchik, we've
32 heard from elders, we've heard from tribal leaders, we've
33 heard from all kinds of things and the one thing that
34 we've consistently heard was that in the past people from
35 Ninilchik made use of the Kenai River.

36

37 Now right in our own things that we have
38 in front of you guys, it says right here testimony
39 presented at the October, 2006 Southcentral Council
40 meeting in Homer noted that the Kenai River was preferred
41 over the Kasilof River prior to the prohibition for
42 subsistence fishing in 1952 because the Kenai River is
43 slower moving than the Kasilof and easier to pole up.
44 Those are the kind of things we don't take into affect
45 anymore today. We've got kickers, we've got cars, we
46 drive here, we drive there, we're not traveling by dog
47 sled, we're not traveling on winter trails, we're not
48 pushing boats up the river. But when we're supposed to
49 as a council look at the long term use and a consistent
50 pattern without interruption we have to go and we listen

1 to the people and we listen to Council members who live
2 in the area who have other people that don't come to our
3 meetings, but that they know because they live there.
4 And we listen to their oral testimony and the only
5 conclusion we could come down to as a Council was that
6 the people of Ninilchik have used the Kenai River for
7 subsistence purposes in the past. We also admit that
8 they do not use it to a large extent in the present.
9 Part of that's competition, part of that's easier access
10 to places closer to them, part of that's due to new
11 equipment that makes it easier to do things in a
12 different area.

13

14 And we -- you know, I could go through my
15 notes here, I mean, the testimony from the meeting and
16 time after time we're basing our decision on this one
17 here as a Council on what we hear from people. We
18 recognize that there's data that shows use, it doesn't --
19 some of it doesn't show much use, but from what we've
20 understood there is no threshold of use. And I might be
21 corrected on that, but there is no threshold of use,
22 subsistence is about use, customary and traditional is
23 about use. And from that standpoint we as a Council have
24 felt in the past and probably still feel -- I mean, still
25 feel and probably will feel in the future no matter what
26 your decision is, that the people in Ninilchik deserve
27 customary and traditional use findings on the Kenai
28 River.

29

30 And I don't know how better to say it and
31 I don't -- I can't sit here and repeat everything I've
32 heard at all of these meetings, but I've listened to a
33 lot of people and I've listened to people from the area
34 and I thought that's what the idea of a Council was, we
35 deal with people who live there, who've used the
36 resource, who remember people who've used the resources,
37 whose fathers and grandfathers have done the different
38 things there or great grandfathers or even farther back
39 than that. And from that we make a decision and our
40 decision as a Council has been that we had to support
41 Ninilchik as having customary and traditional findings
42 for the Kenai River.

43

44 And with that I'm going to shut up and
45 let you guys make the decision.

46

47 CHAIRMAN FLEAGLE: Thank you, Ralph.
48 Discussion, Board members.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: Well, does somebody
2 want to -- if we're done with preliminary discussion
3 we're open for a motion to put the issue on the floor and
4 begin deliberation. Steve.

5
6 MR. KESSLER: Thank you, Mr. Chairman.
7 I move to adopt Proposal FP09-07 as originally proposed.

8
9 CHAIRMAN FLEAGLE: Thank you.

10
11 MR. CESAR: I second.

12
13 CHAIRMAN FLEAGLE: We have a second. The
14 proposal is before the Board for deliberation. Steve,
15 would you like to lead off.

16
17 MR. KESSLER: I can do that, yes, Mr.
18 Chairman. The -- first of all I would like to say that
19 the proposal is somewhat different than the
20 recommendation of the Regional Advisory Council. That
21 the Regional Advisory Council recommends limiting of this
22 Customary and Traditional Use Determination to -- and I'm
23 -- just make sure I get it right, to salmon which already
24 exists, Dolly Varden, Arctic char, lake trout and rainbow
25 slash steelhead trout.

26
27 I at this point plan to support my
28 original motion which includes all the species not just
29 the limited species that the Council is recommending. My
30 rationale is laid out quite well in the OSM conclusion on
31 Page 192 of our Board book, it's a very complete
32 justification for their conclusion. Some key points that
33 I've considered in this recommendation or my motion,
34 residents have consistently harvested all fish on the
35 Kenai Peninsula since the community was settled in the
36 mid 1800s. Information and analysis shows that a
37 lifetime use of fish species by Ninilchik residents in
38 the Kenai River area is about 28 percent of the
39 households. That's a pretty high number actually.
40 Recent use has decreased some, but that may be due to
41 regulations and competition with other users. Although
42 recent use of resident fish has been relatively low, the
43 data also show what I consider to be a consistent pattern
44 of use. Further as explained in the analysis there are
45 no unimportant uses. The holistic view using the eight
46 factors leads me to the resident fish customary and
47 traditional use. We know that people fishing are
48 opportunistic. They will fish when doing other
49 activities such as hunting, berry picking, fishing for
50 anadromous fish, for salmon, et cetera.

1 We must -- we really should allow that
2 opportunistic uses to continue and it generally makes
3 little sense to limit it to just specific species. We
4 could adopt the Council's recommendations, but my
5 rationale really doesn't take me there because of -- sort
6 of this opportunistic nature. I think it would be
7 detrimental to subsistence users and is not based on
8 substantial information. And that's referring to the
9 Council's recommendation. Further it doesn't make sense
10 to allow Hope and Cooper Landing to have a Customary and
11 Traditional Use Determination for all resident fish while
12 those people from Ninilchik would be excluded from taking
13 some species like burbot, grayling and pike. However I
14 also would like to point out that though it's not
15 directly relevant to a Customary and Traditional Use
16 Determination, that there is currently no season for
17 burbot and grayling and that we have o Federal
18 regulations for pike.

19

20 That pretty much covers my rationale.

21

22 CHAIRMAN FLEAGLE: Thank you, Steve.
23 Further discussion. Deliberation. Geoff.

24

25 MR. HASKETT: So being as new as I am to
26 the Board, if I get the way to do this wrong, please, I
27 guess, bear with me and correct me and let me know how to
28 do this. This is one I've had just really a lot of
29 questions about and a lot of interest in and still have
30 a lot of questions that I don't think have been answered
31 here. I look and see -- again if it's not okay for me to
32 talk about this stop me, but I look and see how the
33 vote's gone the last three times and it's worked out
34 based upon the information that have been given that this
35 did not go forward. And, you know, when I look at what
36 Staff has made available here, I guess, I don't see
37 anything new or any major new information that would
38 change my position on that. I have questions though
39 because I keep hearing these different percentages of use
40 and questions about, you know, which fish we're talking
41 about and when it was fished for and when you ask the
42 question if that makes a difference because people were
43 precluded from being able to go out or if you need to be
44 looking at the current use as opposed to the past use.
45 Again I apologize for my ignorance on this, but just
46 really does leave me with lots and lots of questions
47 about have we even done the right or the ultimate studies
48 to figure this out, to figure out what the actual use
49 would be.

50

1 So at this point I think it's okay for me
2 to go ahead and say what I intend to do? Okay. That
3 being the case based upon the past decisions we've made
4 as a Board and looking at what I think is still lots of
5 questions and no new information, my intent would be to
6 not vote in favor of this.

7

8 CHAIRMAN FLEAGLE: Thank you, Geoff.
9 Niles.

10

11 MR. CESAR: My intent is to support the
12 motion. I believe that Steve laid out the rationale very
13 clearly in my mind and so I intend to support it.

14

15 CHAIRMAN FLEAGLE: Thank you. George.

16

17 MR. OVIATT: Thank you, Mr. Chairman. I
18 think BLM's stand has been similar to what Geoff had just
19 stated that there's been an awful lot of information put
20 out and it's, you know, what is substantial evidence that
21 they use those fish. I've gone back and studied reports
22 written of the conditions in the -- in the Kenai prior to
23 1952, I've read Peter Kalfornsky, a number of other folk
24 and these -- you know, these people they said that the
25 Ninilchik was intrusive to the Kenaitzes and the
26 Kenaitzes to me really owned the Kenai River. I went
27 back and looked again at trapping patterns and it was
28 reported they gave who trapped in what river drainages.
29 And they said the Ninilchik area was in the Ninilchik
30 area, not in the Kenai area. And they said that this was
31 the conditions in the '30s, '40s and '50s. It just seems
32 to me that Ninilchik and when the -- Ninilchik was formed
33 by the Russians they told them that they were to remain
34 within themselves and not get involved into the
35 communities of the Kenaitzes. So when I read all of
36 that, we've got a huge break in between and I get
37 confused with the 1 percent and all of these percentages.

38

39

40 But we have opposed this proposal in the
41 past and I don't see where there's any new information so
42 I'm probably not going to change our vote in support of
43 this. Thank you.

44

45 CHAIRMAN FLEAGLE: Thank you, George.
46 Sue.

47

48 MS. MASICA: Mr. Chairman. As with Geoff
49 I'm new to all of this and still finding my way through
50 it and trying to understand all the pieces of these

1 issues. I go back to the law and the deference to the
2 subsistence -- the Regional Committees, the Councils
3 rather and the thresholds for which we would not act in
4 a way consistent with what their recommendations have
5 been. I understand the opportunistic and doing slightly
6 different, but I come out in a different place which is
7 to be in favor of the -- what Steve put on the table in
8 terms of the motion.

9

10 CHAIRMAN FLEAGLE: Thank you, Sue. Go
11 ahead, Keith.

12

13 MR. GOLTZ: I should put on the record
14 that we have not been granting deference to Councils on
15 this question of C&T, only on the question of take.

16

17 CHAIRMAN FLEAGLE: Duly noted, thank you.
18 My position -- I want to lead out by saying it's not
19 based on the personalities or the politics of the area,
20 I know that there are a lot of politics around this area
21 because of the extreme competitive uses of fish on the
22 Kenai River. But I'm going to support the Board's
23 decision in the past based on the rationale that we used
24 for the prior decisions.

25

26 And I'd also like to add that with the --
27 I know that both sides of the issue have raised the
28 recent court decision as to how it should apply to this
29 and my take from the Chistochina decision is that the
30 Board still retains the authority and the discretion to
31 grant C&Ts according to the method that they have been
32 using. We were affirmed that the methodology that we
33 used were correct. And in the case of the Chistochina
34 moose in Unit 12, obviously there was a demonstrated use
35 of moose in Unit 12 by residents of Chistochina. And
36 using that same logic we were able to extend a customary
37 -- a positive customary and traditional use to the
38 residents of Ninilchik on the Kenai River for salmon
39 because those were a moving stock that went beyond the
40 community of Ninilchik that they showed that they did
41 harvest from outside of the public waters. They were not
42 able to convince the Board or the majority of the Board
43 at the time that that same use -- pattern of use were --
44 was extended to the portion of the Kenai River that's
45 Federal -- under Federal authority. And I want to be
46 really careful, I heard percentages thrown out, we're
47 discussing 1 percent. I think that we need to maintain
48 the discretion that the Board has used, that we use
49 common sense when we're applying these C&T decisions and
50 determinations and that if we tie ourself to a percentage

1 that may work in one area and we're stuck with it in
2 another area that just has no bearing, I mean, we're
3 going to be a point -- I think that it was said before,
4 we could find ourselves to a point to where all rural
5 residents qualify for all species everywhere based on
6 some of the rationale that I've heard presented on this
7 case. And if that's the case then we don't need to C&Ts
8 anymore, we just need to open it wide up. And I don't
9 think that that's the right track to go on either.

10

11 I think that the Board has demonstrated
12 really good common sense use of their C&T determinations
13 and I think that the C&T determination that we made in
14 the past on this resident species for Ninilchik on the
15 Kenai River are substantiated and defensible and I don't
16 see any compelling evidence to suggest we reverse our
17 decision. So that's my decision and it sounds like that
18 shows where the vote is going to go.

19

20 Are we ready for the question?

21

22 MR. CESAR: Question.

23

24 CHAIRMAN FLEAGLE: The question's called.

25 Pete.

26

27 MR. PROBASCO: Thank you, Mr. Chair.

28 Final action on FP09-07, the motion. And first is Ms.

29 Masica.

30

31 MS. MASICA: We're voting on the proposal
32 originally not modified by.....

33

34 CHAIRMAN FLEAGLE: That's correct. The
35 motion is to adopt a positive C&T for those fish.

36

37 MS. MASICA: In favor, yes.

38

39 MR. PROBASCO: That's yes?

40

41 MS. MASICA: Yes.

42

43 MR. PROBASCO: Okay. Mr. Oviatt.

44

45 MR. OVIATT: No.

46

47 MR. PROBASCO: Mr. Kessler.

48

49 MR. KESSLER: Yes.

50

1 MR. PROBASCO: Mr. Cesar.
2
3 MR. CESAR: Yes.
4
5 MR. PROBASCO: Mr. Haskett.
6
7 MR. HASKETT: No.
8
9 MR. PROBASCO: And Mr. Fleagle.
10
11 CHAIRMAN FLEAGLE: No.
12
13 MR. PROBASCO: Three, three, motion
14 fails.
15
16 CHAIRMAN FLEAGLE: All right. Thank you.
17 Appreciate everybody's time on the issue and heartfelt
18 testimony and good work. I'd like to call for a lunch
19 break and we'll return at 1:00 o'clock.
20
21 MR. LOHSE: Just for future reference as
22 a Council member and we're dealing with C&T and we're
23 dealing with long term consistent use, but if we have
24 surveys that take place in the last 10 years that
25 disagree with what we see as long term, we should put
26 more credence on the surveys that are from the last 10
27 years than in the long term then. Because what you're
28 saying -- but what I've heard today was the fact that we
29 have surveys in the last 10 years that show 1 to 2
30 percent use overrides surveys that show that lifetime use
31 is 27, 28 percent.....
32
33 CHAIRMAN FLEAGLE: Well.....
34
35 MR. LOHSE:and overrides historical
36 thing. I -- it just.....
37
38 CHAIRMAN FLEAGLE: I appreciate your
39 frustration and your -- you know, you're not happy with
40 the Board decision, but the decision has been made and
41 obviously this is an issue we can discuss in a Council
42 Chairs' discussion later if you'd like. But at this time
43 I -- you know, the decision has been made and I'd like to
44 go ahead and call for the lunch break.
45
46 Sorry for cutting you off, but -- Pete.
47
48 MR. LOHSE: Thank you, Mr. Chair.
49
50 MR. PROBASCO: Just real quick.

1 Commissioner Lloyd corrected that the Board of Fish
2 dealing with Sitka is not in March, but February 17th
3 through the 26th.

4

5 CHAIRMAN FLEAGLE: In Sitka. 1:00
6 o'clock we'll resume. Thanks.

7

8 (Off record)

9

10 (On record)

11

12 CHAIRMAN FLEAGLE: Good afternoon. We're
13 back on record. And yesterday we mentioned that today we
14 would probably have a better idea of when the Council
15 Chairs' issue was going to come up. And because of the
16 telephonic deal I see that's not as much of a problem now
17 as we've got of the Council Chairs here, but I still
18 don't see that I'm going to be able to make it to a time
19 certain. Maybe if we proceed for a couple more hours
20 today and see how the proposal rate of proposals works
21 out we might be able to establish a time certain. If not
22 we can set it for first thing in the morning, something
23 like that. I'm anticipating that at the rate we're
24 moving we probably will need some time tomorrow. But we
25 may surprise ourselves, we just -- it's kind of unknown
26 right now. We dealt with some -- what with the Executive
27 Session yesterday and then some issues that took a lot of
28 discussion. So these other -- these remaining four
29 proposals may not require as much discussion. We'll know
30 that as we move along.

31

32 With that, are there any announcements or
33 comments. Denny.

34

35 MR. BSCHOR: Mr. Chair, yes. Just so
36 everyone knows, about 2:30 I'm going to have to excuse
37 myself for a doctor's appointment I've been trying to get
38 for several months and was able to do so. So I'll be
39 gone I imagine the -- maybe the rest of the afternoon if
40 it's minor, if not I'll hopefully be back tomorrow
41 morning. And Steve will sit in for me.

42

43 CHAIRMAN FLEAGLE: You bet. Thanks,
44 Denny. Appreciate the heads up. Other comments,
45 announcements. Pete.

46

47 MR. PROBASCO: No.

48

49 CHAIRMAN FLEAGLE: Okay. Looks like
50 we're prepared to continue moving forward with our Cook

1 Inlet proposals. And up next is Proposal 09. And we
2 have at the table Steve Fried and Donald Mike. Good
3 afternoon.

4

5 MR. FRIED: Good afternoon, Mr. Chairman.
6 For the record my name is Steven Fried, I work as a
7 fisher biologist for OSM. And I will summarize the Staff
8 analysis for regulatory Proposal FP09-09 which was
9 submitted by the U.S. Fish and Wildlife Service and can
10 be found on Pages 203 to 211 of the Board books.

11

12 This proposal requests that Cook Inlet
13 area regulations be modified to better define
14 requirements for marking fish and entering harvest
15 information on permits, to clarify the lower boundary for
16 the Kasilof River fishing area and to align permit due
17 dates so only one permit could be used for both the
18 salmon and resident species fisheries in each drainage.
19 So if adopted the proposal would clarify existing Federal
20 subsistence regulations concerning where -- when and
21 where harvested fishes must be recorded on permits and
22 must be marked to show it was harvested in a Federal
23 subsistence fishery, would better describe the location
24 of the lower boundary of the Kasilof River fishing area
25 which is currently described just by a place name and it
26 would require that a return date be printed on fishing
27 permits to reduce the amount of paperwork for subsistence
28 users and management agencies since only one permit could
29 be used for all the fisheries in each drainage.

30

31 The proposal would not affect fish
32 populations or other uses and the OSM conclusion is to
33 support this proposal for the previously cited reasons.
34 And this concludes my presentation. Thank you.

35

36 CHAIRMAN FLEAGLE: All right. Thank you.
37 And for a summary of public comments, Donald Mike.

38

39 MR. MIKE: Thank you, Mr. Chair. You'll
40 find your summary of written public comments beginning on
41 Page 216. The Kenai River Sportfishing Association is in
42 support of the proposal. This proposal seeks to address
43 ambiguity in the regulatory language regarding reporting
44 requirements, clarify management area boundaries and
45 adjust reporting dates. Specifically the proposal states
46 the reporting and recording requirements are worded in a
47 way that makes it difficult for officers to enforce the
48 regulations as currently written. The lower boundary
49 limit on the Kasilof River will not change, but there has
50 been confusion because of different maps available that

1 show Silver Salmon Rapids at different locations. And
2 the permit due dates need to be aligned so that only one
3 permit is needed to -- for salmon and one for resident
4 species. The seasons end dates are different for the
5 dipnet season versus the rod and reel fishing season
6 which would require multiple permits for the same species
7 caught with different gear types.
8

9 We believe the changes help clarify
10 implementation of the existing fisheries and will adjust
11 Federal regulations following the Alaska Board of
12 Fisheries' actions. We view these things as principally
13 housekeeping and therefore recommend the Board pass them.
14

15 Thank you, Mr. Chair.
16

17 CHAIRMAN FLEAGLE: Thank you, Donald.
18 Public testimony. Pete, do we have anybody signed up to
19 testify on this proposal?
20

21 MR. PROBASCO: Yes, Mr. Chair. Mr. Ricky
22 Gease.
23

24 CHAIRMAN FLEAGLE: Ricky.
25

26 MR. GEASE: I'll pass on comments.
27

28 CHAIRMAN FLEAGLE: Okay. He passes.
29 Thank you. And Regional Council recommendation. Ralph
30 Lohse.
31

32 MR. LOHSE: Through the Chair. Mr.
33 Chair. Southcentral Regional Advisory Council supports
34 this proposal. Southcentral Regional Council has always
35 been in support of clarifying regulations. We've also
36 been in support of timely and accurate reporting and
37 boundaries that are clear and consistent. We feel that
38 this would simplify permit requirements by allowing a
39 single permit and we think the changes will benefit
40 subsistence users, will not affect fish populations or
41 other users and will help in the aid of enforcement.
42 Thank you.
43

44 CHAIRMAN FLEAGLE: Thank you, Ralph.
45 Appreciate those comments. And Department of Fish and
46 Game, George Pappas.
47

48 MR. PAPPAS: Thank you. George Pappas,
49 Department of Fish and Game. Summarizing the
50 Department's full comments that are in your Board books

1 at Pages 214 through 215 and the comments we entered into
2 the record following this presentation. Additionally mid
3 comment they'll have a brief Power Point presentation to
4 illustrate the Department's points.

5
6 Proposal FP09-09 is intended to
7 streamline the Federal subsistence fisheries permitting
8 process, improve enforceability of permit reporting
9 requirements and further define regulatory boundary
10 limits of the fisheries. The Department supports the
11 intent of the proposal submitted by Fish and Wildlife
12 Service, but we are requesting additional modifications
13 to better achieve the intent without creating unintended
14 ambiguities and conflicts.

15
16 I'll ask you that you look at Pages 214
17 and 215 of your Federal Subsistence Board book. The OSM
18 proposed language is shown in bold and the modified State
19 language is shown in bold and underlined. I'll explain
20 or suggest some modifications so that you can follow
21 along with me.

22
23 First under Section 27(i)(10)(ii) Cook
24 Inlet on Page 214, fourth paragraph down on the -- I
25 apologize for the inconvenience here. The additional
26 requested modification is intended to help ensure that
27 first harvests are properly allocated to a specific gear
28 type and location of a subsistence fishery. This changes
29 are needed because different limitations and requirements
30 apply to the different gear types, areas and fisheries of
31 which these -- there are often several fisheries
32 occurring at the same time. Current Federal subsistence
33 fishery regulations do not have the reporting resolution
34 necessary to accountably manage the multiple fisheries.
35 Improvement in reporting resolution will assist with the
36 management of individual fisheries by year or season,
37 will help with tracking of harvest allocations among
38 fisheries, communities and gear types and will assist
39 with fisheries management decisions when necessary by
40 both Federal and State Staff. The Department --
41 additional modifications are offered to assist with the
42 improvement -- improving the manageability of the
43 multiple Federal subsistence fisheries on the Kenai
44 Peninsula. In addition the provisions clarifying the
45 requirements that harvest must be recorded on site should
46 help prevent Federal subsistence users from being cited
47 while in possession of unmarked and/or unrecorded fish in
48 areas outside of the Federal jurisdiction or away from
49 the fishery.

50

1 I'd like to give a brief scenario to
2 follow on this Power Point presentation and to assist in
3 the understanding of the problems that we are trying to
4 manage these fisheries and the need for recommended
5 changes as stated. This brief presentation should
6 illustrate the necessity of clear and concise fishery
7 regulations. As all of us know the fisheries on the
8 Kenai Peninsula are likely the most complex managed
9 regulated fisheries in Alaska, thus the following
10 scenario was made complex. Please bear with me as I run
11 through the following scenario of a rurally qualified
12 fisherman who was contacted in season while participating
13 in multiple fisheries in the Kasilof River watershed
14 while in possession of 54 fish.

15

16 Next slide, please.

17

18 Here's an example of the confusion which
19 results from the management of complex fisheries. A
20 Federally qualified subsistence user is contacted at the
21 outlet of Tustumena Lake while fishing from the bank on
22 Federal public lands with a rod and reel in hand,
23 standing next to a skiff with a large dipnet on board
24 which would be out of this picture. The date is August
25 7th and the fish harvested have been three rainbow trout
26 over 24 inches, 27 sockeye, seven coho, nine Dolly
27 Varden, three schnook salmon over 20 inches and five lake
28 trout.

29

30 Next slide, please.

31

32 Some questions need to be answered in
33 this scenario. Which fishery limits apply. There are 10
34 Federal subsistence fisheries in regulation for the Kenai
35 Peninsula and four on the Kasilof and Tustumena
36 watershed. The two Kasilof rod and reel only fisheries,
37 the dipnet slash rod and reel slash fish wheel fishery
38 and the Tustumena Lake fishery and the State sport
39 fishery. Different limits and types of limits apply to
40 the different gear types or the same gear types can be
41 used for more than one fishery at the same time on the
42 same -- or excuse me, at the same day on the same site.

43 How do enforcement officers know what's
44 legal. With multiple fisheries comes multiple harvest
45 limits, multiple interchangeable gear types, different
46 permits, various reporting and recording requirements and
47 multiple season dates.

48

49 When will each of these harvested be
50 reported. Since there's four different types of Federal

1 harvest limits and quotas and some fisheries require 72
2 hours reporting while others require end of season
3 reporting, this can be confusing. Current Federal
4 subsistence fishermen can choose when to report depending
5 on which fishery the harvest is attributed to.

6
7 What's the best means for ensuring
8 harvests are allocated to the right harvest limits,
9 fisheries and communities quotas. This question can only
10 be answered with accurate permitting and reporting
11 requirements. Without an accurate and timely reporting
12 mechanism the harvest accounting alone for the Federal
13 subsistence fisheries will develop into a nightmare as
14 the fisheries potential is developed on the Kenai
15 Peninsula.

16
17 What's the best means of removing risk of
18 citation or confusion to the subsistence user,
19 enforcement personnel and the public. Clear, defensible
20 and citeable regulations are the foundation of accurate
21 fisheries management. Additionally publication of
22 concise and easy to follow handy dandy regulation
23 summaries as well as understandable permit stipulations
24 are also key in addressing confusion. Of course the
25 education element is key to the program's success which
26 we assume takes place when the Federal subsistence users
27 are issued permits by Federal Staff.

28
29 Next slide, please.

30
31 This is a very difficult question to
32 answer in the scenario. The fisherman could have
33 participated in five fisheries to fill his stringer.
34 Most of these fisheries have different sets and types of
35 harvest limits and harvest limits include household
36 limits, daily limits, annual limits, annual limits with
37 fish with different size limits and provisions for
38 incidental harvest which in some situations eliminates or
39 authorizes unlimited harvest. The -- to illustrate
40 further confusion with this example, some of the limits
41 of the different Federal and State fisheries may be
42 legally combined in accordance to regulation. So let me
43 explain that. Some of the Federal limits between the
44 different Federal subsistence fisheries can be combined
45 by regulation and also some of the State and Federal
46 limits can also be accumulated in accordance to current
47 regulation.

48
49 Next slide, please.

50

1 This is -- these are the sport fishing
2 limits and we don't have the time to go through all the
3 different limits so let's just stick with resident
4 species. Highlighting the resident species, specifically
5 rainbow trout, you'll see the State limit in the Kasilof,
6 you're allowed two fish per day, one over 20 inches and
7 two over 20 inches per year. In the Dolly Varden you'll
8 see two per day, two in possession and no annual limit.

9

10 Next slide, please.

11

12 Now for the Federal subsistence fisheries
13 limit for dipnet slash road and reel slash fish wheel
14 combination fishery, the rainbow trout are 200 total fish
15 and that's through August 15th of no size limit. So 200
16 people can catch one fish or one person can catch 200
17 fish of any size. And though there is an annual limit
18 for rainbow and steelhead trout and since there is no
19 size limit in place for this particular fishery so
20 Federal subsistence users can accumulate over the State
21 20 inch, two fish per year regulation. I'll also note on
22 this particular fishery there is no limit for Dolly
23 Varden.

24

25 Next slide, please.

26

27 The Federal subsistence fisheries limits
28 for rod and reel only fisheries which is one for salmon
29 and one for resident species, you'll note that the -- for
30 rainbow/steelhead trout you're not allowed to retain fish
31 over 20 inches. So that's a third type of regulation.

32

33 Next slide, please.

34

35 Bringing us back to this exercise in
36 confusion, after a quick matrix exercise of the fish in
37 possession versus the fish -- the different fisheries --
38 the harvest limits, it appears that the fisherman could
39 have legally participated in all available fisheries if
40 permitted and licensed properly. Accumulation of harvest
41 limits between the different Federal subsistence
42 fisheries, such as between the dipnet fishery and the rod
43 and reel only fishery, in addition to accumulation of
44 both Federal and State sport fish fishery limits such as
45 harvesting one coho in the sport fishery and the rest in
46 the dipnet fishery that day, could have legally taken
47 place in one form or another. Now I do not have an
48 answer for how many of the 54 fish were allocated to what
49 fisheries' limits and I don't have the answer of how this
50 broke out, there's multiple different options that could

1 have happened.

2

3 Some options to address this scenario for
4 the benefit of users and managers include A, clarify
5 regulations to avoid current and future issues of
6 confusion and that's what we're trying to do here with
7 our modifications to the Forest Service proposal --
8 excuse me, fish -- Refuge proposal. Work with the ADF&G
9 to address complex fisheries management issues through
10 regulation which will happen over time and the
11 Department's doors are always open for that, that's what
12 we do for our business. Educate users on how to figure
13 out which fisheries to allocate their harvest under
14 current regulations. It appears that combination of 54
15 fish was legal, just to figure out the mathematics or the
16 accounting procedure, it was an option, but that is a
17 short term solution. Or no action due to low
18 participation to date thus no need to address current or
19 future concerns until it's actually unavoidable.

20

21 Next slide, please.

22

23 At this point I assume the majority of
24 the folks here are wondering how this presentation is
25 applicable to this proposal. The answer is it is
26 imperative to have accurate harvest recording and
27 reporting mechanisms and they must be developed for the
28 multiple Federal subsistence fisheries on the Kenai
29 Peninsula. The Department's proposed modification should
30 assist with orderly management of the fisheries from the
31 early stages of the fishery where only a few folks were
32 fishing and they catch only a handful of fish to the more
33 developed stages where the harvest allocations are
34 achieved in short order. Unlike the non road system
35 fisheries, the management of the Kenai Peninsula
36 fisheries will be complex and will continue to demand
37 extreme detailed attention of regulatory -- extreme
38 attention to detail. Specifically to regulations if you
39 want to allow -- if we want to continue sustainability of
40 the fisheries. This scenario was not intended to
41 disrespect anyone involved with this process, but rather
42 the approach was chosen to illustrate what can go wrong
43 when a complex set of dueling regulations fall on the
44 shoulders of a user who just wants to put fish up for the
45 winter. The Department is attempting to share holistic
46 insight for the management of multiple fisheries with the
47 complex allocation strata, diverse user groups and weak
48 stock management components.

49

50 And I'll shift back to the -- thank you

1 very much, shift back to our main comments.

2

3 Next if you turn to Page 215 of your
4 Board book, the first sentence in the first paragraph.
5 This modification that we request will assist the users
6 in locating the regulatory marker located approximately
7 2.8 miles below the boat ramp. With this slight
8 modification the proposed physical definition of the
9 Federal subsistence fishery on the Kasilof River is more
10 clearly described and the boundaries -- excuse me, the
11 Kasilof River or more clearly describes the claimed
12 boundary which should help Federal subsistence users
13 identify the physical limits of the fishery and avoid
14 citation for illegally fishing in waters closed to
15 Federal subsistence fishing. For example, fishing from
16 State or private shorelines located outside of the Kenai
17 Refuge boundaries alongside the upper Kasilof River is
18 subject to State violations or State regulation.

19

20 Last on Page 215, third paragraph at
21 approximately the middle of the paragraph, the proposed
22 modification is intended to ensure that the due date
23 listed on the permit is for the same year as the fishing
24 season while retaining the administrative benefits of
25 having only one permit.

26

27 Adoption of these modifications to this
28 proposal should not impact subsistence users. It chiefly
29 provides for streamlined processes, eliminating the need
30 for separate seasonal permits while also providing the
31 clarification of regulatory requirements to aid in the
32 enforcement and prevent unnecessary enforcement actions.
33 The proposed changes, if accompanied by the State
34 recommended additional changes, will make it easier for
35 Federal subsistence users to obtain the necessary permits
36 and better understand Federal regulations and avoid
37 violating the law or being charged with a violation.

38

39 The Department supports this proposal
40 with our recommended modifications.

41

42 Thank you, Mr. Chair.

43

44 *****
45 STATE OFFICIAL WRITTEN COMMENTS
46 *****

47

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

50

1 FP09-09 Clarify Kenai Peninsula Fishery
2 Regulations

3

4 Introduction:

5

6 Proposal FP09-09 is intended to
7 streamline the federal subsistence fishery permitting
8 process, to improve enforceability of permit reporting
9 requirements, and to further define fishery regulatory
10 boundary limits of the fisheries. The Alaska Department
11 of Fish and Game (Department) supports the intent of the
12 proposal but proposes modifications to better achieve
13 this intent without creating new unintended ambiguities
14 and conflicts.

15

16 Additionally, current federal subsistence
17 fisheries regulations do not allow for the reporting
18 resolution necessary to accountably manage multiple
19 fisheries which may take place concurrently at the same
20 location targeting the same species, with the same or
21 different gear types, seasons, reporting requirements,
22 and varying individual household, seasonal, community,
23 and fishery quota limits. Improvement in reporting
24 resolution will assist with management of individual
25 fisheries by year or season, will help with tracking of
26 harvest allocations among fisheries, communities, and
27 gear types, and will assist with fisheries management
28 decisions when necessary. Current federal subsistence
29 regulations do not provide inseason managers with the
30 tools necessary to make informed decisions.

31

32 The Department s recommended
33 modifications are offered to assist with improving the
34 manageability of the multiple federal subsistence
35 fisheries on the Kenai Peninsula.

36

37 Impact on Subsistence Users:

38

39 Adoption of this proposal should not
40 result in significant impacts on federal subsistence
41 users. It chiefly provides for streamlined processes,
42 eliminating the need for separate seasonal permits, while
43 also providing clarification of regulatory requirements
44 to aid enforcement and prevent unnecessary enforcement
45 actions. The intent of proposal FP09-09 is to increase
46 permitting efficiency and clarify regulations. The
47 proposed changes, if accompanied by the modifications
48 suggested below to avoid unintended conflicts and
49 ambiguities in the proposal, will make it easier for
50 federal subsistence users to obtain necessary permits,

1 better understand the federal regulations, and avoid
2 violating the law or being charged with a violation.

3

4 In particular, the provisions clarifying
5 the requirement that harvests must be recorded on site
6 should help prevent federal subsistence users from being
7 cited while in possession of unmarked and/or unrecorded
8 fish in areas outside of claimed federal jurisdiction or
9 away from the fishery. With slight modification, the
10 proposed physical definition of the federal subsistence
11 fishery on the Kasilof River is a clearer specification
12 of the claimed boundary, which should help federal
13 subsistence users identify the physical limits of the
14 fishery and avoid citations for illegal fishing in waters
15 closed to federal subsistence fishing.

16

17 Opportunity Provided by State:

18

19 Kenai and Kasilof rivers are located in
20 the Anchorage-MatSu-Kenai Nonsubsistence area designation
21 under state law. The State provides a broad array of
22 opportunities to participate in personal use, sport, and
23 educational fisheries in these rivers and nearby areas to
24 meet needs for personal and family consumption as well as
25 cultural purposes.

26

27 Conservation Issues:

28

29 No stocks of salmon or resident species
30 from the Kenai or Kasilof rivers have been designated as
31 a stock of concern by the Alaska Board of Fisheries.
32 However, extensive Department comments previously
33 submitted during 2006-2008 to the Federal Subsistence
34 Board and Southcentral Regional Advisory Council
35 described conservation issues that could develop for the
36 Kenai and Kasilof rivers with implementation of the
37 federal subsistence fisheries.

38

39 Jurisdiction Issues:

40

41 The Department requests detailed land
42 status maps that distinctly illustrate land ownership,
43 easements, and exact boundaries within which it is
44 claimed that federal regulations would apply and
45 justification for claiming those boundaries. Portions of
46 both the upper and lower Kenai and Kasilof rivers are
47 bordered by state, private lands, and claimed areas of
48 federal jurisdiction. While standing on state and
49 private lands (including state-owned submerged lands),
50 persons must comply with state law and cannot harvest

1 under conflicting federal regulations. Fishers need to
2 be provided copies of these detailed maps and advised
3 that the State of Alaska will enforce its regulations on
4 fishers standing on nonfederal land.

5
6 Recommendation:

7
8 Support the proposal with modification
9 (shown as underlined), as follows:

10
11 The following requested modification
12 under .27(i)(10)(ii) Cook Inlet Area is intended to help
13 ensure that fish harvests are properly allocated to a
14 specific gear type and location of a subsistence fishery.
15 These changes are needed because different limitations
16 and requirements apply to different gear types, areas,
17 and fisheries and, as stated above, there are often
18 several fisheries occurring at the same time. The
19 modification qualifies language regarding the fishing
20 site to avoid misleading fishers into incorrectly
21 believing that all shorelines adjacent to claimed federal
22 public waters can be fished from under federal
23 regulations. For example, fishing from state and private
24 shorelines located outside of the Kenai Refuge boundaries
25 alongside the upper Kasilof River is subject to state
26 regulation.

27
28 .27(i)(10) Cook Inlet Area.

29
30 (ii) You may take fish by gear listed in
31 this part unless restricted in this section or under the
32 terms of a subsistence fishing permit (as may be modified
33 by this section). For all fish that must be marked and
34 recorded on a permit in this section, they must be marked
35 and recorded by species, harvest site, fishery, and
36 harvest method (such as dipnet or rod and reel),
37 prior to leaving the fishing site or switching to a
38 different method of harvest or fishery. The fishing site
39 includes the particular Federal public waters, and/or
40 adjacent shoreline where allowed, from which the fish
41 were harvested.

42
43 The following additional modification is
44 requested to assist users in locating the regulatory
45 marker located approximately 2.8 miles below the boat
46 ramp.

47
48 .27(i)(10) Cook Inlet Area.

49
50 (iv)(A) Residents of Ninilchik may take

1 sockeye, Chinook, coho, and pink salmon through a dip net
2 and a rod and reel fishery on the upper mainstem of the
3 Kasilof River from a Federal regulatory marker on the
4 river below the outlet of Tustumena Lake downstream to a
5 marker on the river approximately 2.8 miles below the
6 Tustumena Lake boat ramp in the vicinity of Silver Salmon
7 Rapids (strike at Silver Salmon Rapids). Residents using
8 rod and reel gear may fish with up to 2 baited single or
9 treble hooks. Other species incidentally caught during
10 the dip net and rod and reel fishery may be retained for
11 subsistence uses, including up to 200 rainbow/steelhead
12 trout taken through August 15. After 200
13 rainbow/steelhead trout have been taken in this fishery
14 or after August 15, all rainbow/steelhead trout must be
15 released unless otherwise provided for in this section.
16 Before leaving the fishing site, all retained fish must
17 be recorded on the permit and marked by removing the
18 dorsal fin. Harvests must be reported within 72 hours to
19 the Federal fisheries manager upon leaving the fishing
20 location.

21

22 The following modification is intended to
23 ensure that the due date listed on the permit is for the
24 same year as the fishing season, while retaining the
25 administrative benefits of one permit.

26

27 ^U____.27(i)(10) Cook Inlet Area.

28

29 (E) For Federally managed waters of the
30 Kenai River and its tributaries, in addition to the dip
31 net and rod and reel fisheries on the Kenai and Russian
32 rivers described under paragraph (i)(10)(iv)(D) of this
33 section, residents of Hope, Cooper Landing, and Ninilchik
34 may take sockeye, Chinook, coho, pink, and chum salmon
35 through a separate rod and reel fishery in the Kenai
36 River drainage. Before leaving the fishing site, all
37 retained fish must be recorded on the permit and marked
38 by removing the dorsal fin. Permits must be returned to
39 the Federal fisheries manager that year by the due date
40 listed on the permit (strike at the end of the fishing
41 season). Incidentally caught fish, other than salmon,
42 are subject to regulations found in paragraphs
43 (i)(10)(iv)(F) and (G) of this section. Seasons, areas
44 (including seasonal riverbank closures), harvest and
45 possession limits, and methods and means (including motor
46 boat restrictions) for take are the same as for the
47 taking of these salmon species under State of Alaska
48 fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54),
49 except for the following bag and possession limits:

50

1 NOTE: The Department s comments and
2 support for clarifying federal regulations and better
3 defining the permitting and harvest recording
4 requirements and fishery area boundaries represented by
5 this proposal do not indicate Departmental support for
6 the content of the regulations as a whole. The past and
7 present record, including requests for reconsideration
8 still pending, documents the State s objections to and
9 concerns with many of the regulations.

10
11 CHAIRMAN FLEAGLE: All right. Thank you,
12 George. InterAgency Staff Committee comments. Polly.

13
14 DR. WHEELER: Thank you, Mr. Chair. In
15 addition to the standard comments that I referenced
16 yesterday, the Staff committee noted that the proposal as
17 supported by the Regional Council recommendation would
18 provide clarification in the Cook Inlet area of Federal
19 subsistence fishing regulations and more flexibility to
20 the Federal in season manager.

21
22 That's it, Mr. Chair.

23
24 CHAIRMAN FLEAGLE: Thank you. Board
25 discussion.

26
27 (No comments)

28
29 CHAIRMAN FLEAGLE: I'm wondering the
30 question has OSM Staff had an opportunity to review the
31 State's recommended modifications and how would -- how --
32 what would your reaction be to those. I know your
33 analysis didn't address them, but would you speak on
34 that, Steve?

35
36 MR. FRIED: Yes, I can, Mr. Chair. The
37 Staff looked at these and they felt that some of the
38 State's recommendations are requesting very specific
39 instructions to be added into the regulations as to what
40 specifically would be required on permits, in other words
41 specific due dates, species, harvest site. A lot of this
42 information is already on the permits. If you put it in
43 regulation it takes a way a little bit of regulatory
44 flexibility from the managers. It -- any kind of -- if
45 you want to revise the permits we might have to come in
46 front of the Board again and have a formal rule making
47 process to change those. I mean right now it doesn't
48 appear that there's any information that's being lost in
49 the way the permits are -- you know, are being issued and
50 the information being reported. And so it's sort of, I

1 guess, maybe a little difference in philosophy as to
2 whether or not you want to put -- try to put every little
3 thing specified in the regulations or allow, you know,
4 the agencies and their managers to take care of this and,
5 you know, allow them to collect the information that they
6 need.

7
8 And, you know, as far as the -- whether
9 or not when you -- changing to the lower boundary of the
10 Kasilof River fishing area, part of the confusion there
11 was some of the maps showed Silver Salmon Rapid in two
12 different places or at least it might be two areas that
13 are called the same thing. And so the U.S. Fish and
14 Wildlife Service recommendation provided a mileage, 2.8
15 miles and there's also a marker there. And they got rid
16 of the Silver Salmon Rapids designations within the
17 proposed regulations. And the State is saying that well,
18 but along with the mileage and the marker keep, you know,
19 Silver Salmon Rapids. So like I said we -- the Fish and
20 Wildlife Service got rid of it because there was some
21 ambiguity and they thought that just a mileage and a
22 marker would be sufficient.

23
24 CHAIRMAN FLEAGLE: Okay. Thank you. I
25 just wanted to kind of get a comparison there. We don't
26 have that modification before us for consideration at
27 this time, I mean, while we're still open to discussion.
28 Sorry, we don't even have the motion yet.

29
30 But Board members, discussion.

31
32 Geoff.

33
34 MR. HASKETT: Well, I was going to -- I
35 think actually that was covered pretty well. The
36 differences -- I was going to offer up Jerry Berg if
37 there was more specific questions on the differences. I
38 think we're more in agreement than we're not overall and
39 it's mostly places we're different are things that we
40 think are essentially unneeded or already covered other
41 ways.

42
43 CHAIRMAN FLEAGLE: So you're happy with
44 the language as proposed in your proposal?

45
46 MR. HASKETT: Yes, Mr. Chair, we are
47 happy with our proposal as proposed.

48
49 CHAIRMAN FLEAGLE: I'll just say thanks.
50 Other discussion.

1 (No comments)

2

3 CHAIRMAN FLEAGLE: Are we ready for a
4 motion?

5

6 MR. HASKETT: Okay. Mr. Chair. I'd like
7 to make a motion to adopt Proposal 09 consistent with the
8 Regional Council recommendation that was covered before
9 and I'll provide my rationale if I get a second.

10

11 CHAIRMAN FLEAGLE: Okay. You have your
12 second. Go ahead.

13

14 MR. HASKETT: Thank you, Mr. Chair.
15 These changes are mostly administrative and they'll make
16 it easier for subsistence users, they will need to have
17 fewer permits, will clarify the fishing boundary on the
18 Kasilof and will better define when and where subsistence
19 users need to mark their fish. This will also make
20 administration of the permits easier for our in season
21 manager. These changes would define when and where
22 subsistence caught fish need to be marked and recorded on
23 the permit. It allows flexibility on permit due date to
24 benefit the users and the in season manager. As I said
25 before the -- Fish and Game supports us with their
26 modifications. Some of their modifications are already
27 being done and others are not needed.

28

29 CHAIRMAN FLEAGLE: Further discussion.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: Sounds like the
34 presentation by the Staff and the backup information
35 provide by the Fish and Wildlife Service is adequate for
36 the Board at this time and I have heard the question
37 called so I recognize that. Pete, on this proposal
38 please poll the Board.

39

40 MR. PROBASCO: Thank you, Mr. Chair.
41 Final action of FP09-09. Mr. Oviatt.

42

43 MR. OVIATT: Yes.

44

45 MR. PROBASCO: Mr. Bschor.

46

47 MR. BSCHOR: Yes.

48

49 MR. PROBASCO: Mr. Cesar.

50

1 MR. CESAR: Yes.
2
3 MR. PROBASCO: Mr. Haskett.
4
5 MR. HASKETT: Yes.
6
7 MR. PROBASCO: Mr. Fleagle.
8
9 CHAIRMAN FLEAGLE: Yes.
10
11 MR. PROBASCO: And Ms. Masica.
12
13 MS. MASICA: Yes.
14
15 MR. PROBASCO: Motion carries six/zero.
16
17 CHAIRMAN FLEAGLE: All right. Thank you,
18 Pete. And now -- go ahead, Denby.
19
20 COMMISSIONER LLOYD: Thanks, Mr.
21 Chairman. Similar to some of my other comments on other
22 proposals, I appreciate the action you've taken here and
23 given some of the amendments that we had proposed that
24 Staff had indicated -- Federal Staff had indicated may
25 well be administratively dealt with, we'd ask that there
26 be some consideration of contacting and working with Fish
27 and Game staff on whether or not these conditions could
28 or should be placed in the permits since at this point
29 you're not placing them in the regulation. So rather
30 than let the issue die at this point, I guess I'm holding
31 out the hope that by virtue of this discussion we will
32 have Federal Staff work with State Staff to see if some
33 of these are warranted in some of the permit conditions,
34 Mr. Chairman.
35
36 CHAIRMAN FLEAGLE: Thank you,
37 Commissioner. And maybe I can get some words of response
38 from Geoff and maybe from Pete.
39
40 MR. HASKETT: Yeah, I'm -- we're
41 definitely more than willing to work with you and see
42 what we can get to.
43
44 COMMISSIONER LLOYD: Great. Thank you.
45
46 MR. PROBASCO: Mr. Chair. Commissioner
47 Lloyd. Most definitely. And I'd also like to offer you
48 a current copy of the permit so you can see what's
49 currently being done for these vast fisheries.
50

1 Mr. Chair.

2

3 CHAIRMAN FLEAGLE: All right. Thank you.
4 Moving on to Proposal 10. We have the same Staff at the
5 table so, Steve, would you go ahead and lead off with the
6 analysis, please.

7

8 MR. FRIED: Thank you, Mr. Chair. For
9 the record my name is Steven Fried, I work as a fisher
10 biologist for OSM. I will summarize the Staff analysis
11 for regulatory Proposal FP09-10 that was submitted by
12 U.S. Fish and Wildlife Service and can be found on Pages
13 219 to 230 of the Board books. I'll probably be taking
14 a little bit more time than I took on the other one, it's
15 a little bit more complex. This proposal requests that
16 Cook Inlet area regulations be modified so that they are
17 realigned with two changes that were made to State
18 regulations in February, 2008 by the Alaska Board of
19 Fish. And these refer to the slot limit, the slot size
20 limit for early run chinook salmon in the Kenai River and
21 daily harvest and possession limits for lake trout in
22 Hidden Lake.

23

24 As far as early run chinook salmon, both
25 State and Federal regulations do specify a slot size
26 limit that's meant to protect age seven early run chinook
27 salmon which are the most abundant spawning component,
28 but have been declining in abundance. Federal
29 subsistence regulations initially incorporated the
30 State's slot limit by reference and then they
31 specifically were included in Federal regulations in
32 2007. The State changed the slot limit in 2008 to allow
33 retention of early run chinook salmon less than 46 inches
34 or greater than 55 inches in length. And so the Federal
35 regulations are no longer in alignment. The proposal
36 before you would align the Federal slot limit with the
37 new State slot limit and this would -- what this would
38 entail would be a two inch increase to the lower
39 retention size limit.

40

41 In 2008 the State also adopted a
42 regulation that allowed sport anglers to harvest early
43 run chinook salmon less than 28 inches long without
44 including them as part of the annual harvest limit. The
45 proposal before you would not allow this under Federal
46 regulations. The Staff discussed this and it just seemed
47 -- most of the Staff seemed to feel that there were very
48 few chinook salmon in this size, it would unduly
49 complicate Federal regulations, they didn't really see
50 this as providing a real good opportunity to Federal

1 users plus the fact that the Federal annual limits are
2 already double those of the state.

3

4 Early run chinook salmon escapement since
5 1996 have been within or above the optimal range of 5,300
6 to 9,000 chinook salmon. If you take a look at table 1
7 on Page 225, Federally qualified subsistence fishers have
8 not reported any harvest of chinook salmon from the Kenai
9 River during either 2007 or 2008.

10

11 Moving to lake trout, the State daily bag
12 limit in the Kenai River drainage was 10 lake trout
13 through 1996. In 1997 it was reduced to two lake trout
14 of any size in Hidden Lake and to two lake trout over 20
15 inches long in the remainder of the drainage and this was
16 done due to size that these populations had been
17 overexploited. Federal subsistence regulations initially
18 incorporated the State lake trout daily harvest limits by
19 reference and then they specifically included daily
20 harvest limits that were double those for sport fishing
21 in 2007. The State reduced the Hidden Lake bag limit to
22 one in 2008 to allow for continued rebuilding of this
23 population which was overexploited in past years and has
24 apparently not yet recovered. And you can take a look at
25 figure 1 on Page 227 and table 3 on Page 228 if you want
26 to see some statistics and get an idea of what the
27 population numbers have been and catches have been.
28 Actually not the population numbers, the catches. The
29 proposal before you would reduce the Federal harvest
30 limit from four to two and this would assist in
31 rebuilding efforts, but it would still maintain the
32 opportunity for qualified Federal subsistence fishers to
33 harvest double the daily limit, allow sport fishers.
34 Federally qualified subsistence fishers have not reported
35 any harvest of lake trout from the Kenai River drainage
36 in either 2007 or 2008.

37

38 So in summary if adopted the proposal
39 would align Federal slot size limit regulations for early
40 run chinook salmon in the Kenai River with those recently
41 adopted by the State to allow this run to continue to
42 rebuild. And it would also be consistent with recently
43 adopted State regulatory changes and the original Federal
44 Subsistence Board intent for lake trout in Hidden Lake
45 and allow rebuilding of the population.

46

47 The OSM conclusion is to support this
48 proposal for these previously cited reasons. And this
49 concludes my presentation. Thank you.

50

CHAIRMAN FLEAGLE: Thank you, Steve. And

1 summary of public comments. Donald.

2

3 MR. MIKE: Thank you, Mr. Chair. You'll
4 find your written public comments starting on Page 235 on
5 your Board book. We've received public comment from the
6 Kenai River Sportfishing Association in support of the
7 proposal. The Alaska Board of Fisheries recently passed
8 a regulatory change affecting the measurement of chinook
9 salmon and lake trout in upper Cook Inlet waters. This
10 proposal would help bring into alignment the Federal and
11 State regulations.

12

13 Lake trout harvest limits are proposed to
14 be reduced by this proposed action. This is necessary to
15 address conservation concerns for this stock. It is our
16 understanding that a study is being conducted by the
17 Kenai Fish and Wildlife Field Office during the 2008
18 field season, results of which will be helpful in
19 assessing the population status of lake trout in Hidden
20 Lake.

21

22 We support the changes to king salmon and
23 lake trout regulations proposed.

24

25 Thank you, Mr. Chair.

26

27 CHAIRMAN FLEAGLE: Thank you. Public
28 testimony. Pete.

29

30 MR. PROBASCO: Mr. Chair. We have no one
31 signed up for this proposal.

32

33 CHAIRMAN FLEAGLE: Thanks. Regional
34 Council recommendation. Ralph.

35

36 MR. LOHSE: Thank you, Mr. Chair. The
37 Regional Council -- Regional Advisory Council supports
38 this proposal. We feel it's -- aids conservation needs
39 and provides the opportunity for the subsistence user.

40

41 CHAIRMAN FLEAGLE: Okay. Thank you.
42 InterAgency -- no, sorry. Alaska Department of Fish and
43 Game comments. George.

44

45 MR. PAPPAS: Thank you, Mr. Chair.
46 George Pappas, Department of Fish and Game. Once again
47 the Department's full comments I'm summarizing from and
48 will be in your -- in your Board book, Page 232 through
49 234. And the full comments are also entered in the
50 record following this presentation.

1 The Department agrees with the Fish and
2 Wildlife Service intent for the Federal regulations
3 concerning the Kenai River early run chinook salmon slot
4 size and Hidden Lake lake trout harvest limits to mirror
5 the changes to State regulations by the Alaska Board of
6 Fisheries in February, 2008. We support the Service's
7 proposed changes, but ask for some additional changes in
8 order to fully address our mutual conservation concerns.
9

10 First, regarding Chinook salmon, please
11 refer to your Board book on Page 234, paragraphs 1
12 through 6, under Sections 27(i)(10)(e)(2) through (6).
13 Please note the bold and underlined portions of these
14 paragraphs are the additional modifications that we
15 propose. We support the slot size limit liberalization
16 for the Kenai early run chinook salmon, but are
17 requesting modification of the daily harvest limits to be
18 reduced from two to one. The Department does not support
19 the more Federal liberal subsistence fisheries early run
20 chinook daily harvest limit of two fish per day. The
21 Department strongly requests the Federal Board to
22 consider taking a conservative approach that mirrors the
23 Alaska Board of Fisheries by adopting one fish daily
24 harvest limit.
25

26 In addition, the Department added
27 clarifying language that ensures that all references to
28 the term bag limit are changed to harvest limit which
29 matches the proponent's language in number 2 of this
30 regulation.
31

32 The Department also added clarification
33 language under paragraph (4) and (5) which states that
34 chinook salmon less than 20 inches in length daily
35 harvest and possession limits are 10 per day and 10 in
36 possession. And the annual harvest limits do not include
37 chinook salmon under 28 inches long as long as they're
38 harvested between May 1 through June 30th. And chinook
39 salmon less than 20 inches long harvested between July 1
40 and July 31st.
41

42 According to OSM's analysis, no chinook
43 salmon have been harvested to date in the Kenai River
44 drainage by Federal subsistence users. Therefore they
45 should be little or no affect on Federally qualified
46 subsistence users if these more conservative harvest
47 limits are adopted.
48

49 Second regarding Hidden Lake lake trout.
50 We agree with the OSM analysis which indicates the

1 proposed reduction to the daily harvest limit is expected
2 to have little or no affect on Federally qualified
3 subsistence users since there have been no reported
4 harvest or effort for the species in Hidden Lake in 2007,
5 2008 in the Federal subsistence fisheries.

6
7 Please refer to your book on Page 234,
8 last paragraph under Section 27(i) and (g)(1) which is
9 basically the last paragraph. The Department recommended
10 changes are in bold and underlined. We support reducing
11 the lake trout harvest limits at Hidden Lake from four to
12 two fish per day, but we request a further modification
13 so that only one of the two allowed harvest -- excuse me,
14 that only one of the two allowed harvest of lake trout
15 per day be over 20 inches in length. Because of an --
16 over exploitation concerns the Alaska Board of Fish
17 recently reduced the State harvest limits of lake --
18 Hidden Lake lake trout from two to one fish of any size.
19 Little is known about the lake trout population size and
20 appropriate harvest levels in Hidden Lake. The
21 Department is very concerned that with good stock
22 assessment information -- without good stock assessment
23 information and reporting, excessive harvest may not be
24 detected in time. Lake trout which are known to be a
25 long living and slow growing species are susceptible to
26 overexploitation and require many, many years to rebuild
27 after populations have been depleted. Last, the word
28 harvest has been substituted for the word bag to be
29 consistent throughout this section's language.

30
31 The Department supports the proposal with
32 these additional modifications to address our mutual
33 conservation responsibilities.

34
35 Thank you, Mr. Chair.

36
37 *****
38 STATE OFFICIAL WRITTEN COMMENTS
39 *****

40
41 Alaska Department of Fish and Game
42 Comments to the Federal Subsistence Board

43
44 FP09-10 Modify Kenai River Chinook and
45 Hidden Lake Lake Trout Harvest Limits

46
47 Introduction:

48
49 Proposal FP09-10 is intended to reflect
50 and correspond to the Alaska Board of Fisheries

1 regulatory changes made in February 2008. It proposes
2 the following specific changes:

3

4 1. Reduce the slot limit for Kenai
5 River early-run Chinook salmon from 44 -55 in length
6 to 46 -55 in length. This will allow retention of any
7 fish that are less than 46 in length or greater than
8 55 in length, thus increasing opportunity of retaining
9 Chinook salmon.

10

11 2. Reduce the federal subsistence
12 daily harvest and possession limit for Hidden Lake lake
13 trout from 4 fish per day of any size down to two fish
14 per day of any size. (Note: The new State limit is
15 one fish per day, which is half the proposed federal
16 limit)

17

18 Impact on Subsistence Users:

19

20 The Kenai River slot limit reduction
21 will provide additional opportunity to harvest early-
22 run Chinook salmon. Decreasing the Hidden Lake lake
23 trout daily harvest limit from four fish per day to two
24 fish per day will reduce the amount of fish a federal
25 subsistence user can harvest on a daily basis.

26

27 Opportunity Provided by State:

28

29 The Kenai and Kasilof Rivers are
30 located in the Anchorage-MatSu-Kenai Nonsubsistence
31 area designation under state law. The State provides a
32 broad array of personal use, sport, and educational
33 fisheries in these areas to meet needs for personal and
34 family consumption as well as cultural purposes.
35 Adequate opportunities for harvest of lake trout and
36 Arctic char/Dolly Varden presently occur under State
37 sport fishing regulations.

38

39 Conservation Issue:

40

41 1. The early-run Kenai River Chinook
42 salmon stock is currently considered healthy and is
43 managed for sustainability through a myriad of
44 conservative regulations developed by the State over
45 decades of managing the stock. The extensive list of
46 restrictions placed upon the sport fishery is credited
47 for the current sustainable stock level. The sport
48 fishery is presently managed by using a combination of:
49 (1) a slot limit that prohibits harvest of early-run
50 Chinook salmon between 46 inches and 55 inches in

1 length to protect seven-year-old spawners and help
2 preserve genetic characteristics and diversity of the
3 Kenai River Chinook salmon stocks; (2) a daily harvest
4 limit of one such fish; and (3) a two-fish annual limit
5 (excluding fish less than 28 inches in length before
6 June 30). The Alaska Department of Fish and Game
7 (Department) supports the federal staff recommendation
8 to mirror the Alaska Board of Fisheries February 2008
9 decision to reduce the early-run Kenai River Chinook
10 salmon slot limit from 44 -55 to 46 -55 in length.
11 The Alaska Board of Fisheries reviewed all available
12 data and the Department analysis of this issue and
13 determined slightly liberalizing the sport fishery by
14 adjusting the slot limit was appropriate. This slight
15 liberalization of the sport fishery was intended to
16 provide additional opportunity to harvest available
17 fish which have been determined to be in surplus of
18 established escapement goals.

19

20 Although the Department supports the
21 intent of the proposed modification of the early-run
22 Kenai River Chinook salmon slot limit in the federal
23 subsistence rod and reel fishery, the Department does
24 not support maintaining the liberal federal subsistence
25 fishery early-run Chinook salmon daily/annual harvest
26 limit of two fish per person, which will be easier to
27 achieve with the reduced slot limit and which could
28 create conservation concerns if widely utilized. The
29 Department strongly requests the Federal Subsistence
30 Board (Federal Board) to consider all the information
31 previously submitted to the Federal Board and take a
32 conservative approach that mirrors the Alaska Board of
33 Fisheries by adopting the one fish daily harvest limit.
34 This action would be consistent with the proponent s
35 stated intent to adopt changes corresponding to those
36 in the State regulation.

37

38 2. Because of over-exploitation
39 concerns, the Alaska Board of Fisheries recently
40 reduced the State harvest limit for lake trout in
41 Hidden Lake to one (from two) fish of any size. The
42 Department recommends that the Federal Board adopt a
43 corresponding reduction to two (from four) lake trout
44 as the harvest limit and place a maximum size
45 restriction of 20 in length for one of the two lake
46 trout. Little is known about lake trout population
47 sizes and appropriate harvest levels in Hidden Lake.
48 The Department is very concerned that, without good
49 stock assessment information and reporting, excessive
50 harvest may not be detected in time. Lake trout, which

1 are known to be a long-lived, slow-growing species
2 susceptible to over-exploitation, require many years to
3 rebuild populations after depletion, if they are able
4 to do so at all.

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Jurisdiction Issues:

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Recommendation:

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The Department s recommended modified
regulation language (strike should read):

^U____.27(i)(10) Cook Inlet Area. (E) For
Federally managed waters of the Kenai River and its
tributaries, in addition to the dip net and rod and
reel fisheries on the Kenai and Russian rivers
described under paragraph (i)(10)(iv)(D) of this
section, residents of Hope, Cooper Landing, and
Ninilchik may take sockeye, Chinook, coho, pink, and
chum salmon through a separate rod and reel fishery in
the Kenai River drainage. Before leaving the fishing
site, all retained fish must be recorded on the permit
and marked by removing the dorsal fin. Permits must be

1 returned to the Federal fisheries manager at the end of
2 the fishing season. Incidentally caught fish, other
3 than salmon, are subject to regulations found in
4 paragraphs (i)(10)(iv)(F) and (G) of this section.
5 Seasons, areas (including seasonal riverbank closures),
6 harvest and possession limits, and methods and means
7 for take are the same as for the taking of these salmon
8 species under State of Alaska fishing regulations (5
9 AAC 56), except for the following (strike bag) harvest
10 and possession limits: (2) For early-run Chinook salmon
11 less than (strike 44) 46 inches or 55 inches or longer,
12 daily (strike bag) harvest and possession limits are
13 (strike 2) 1 per day and (strike 2) 1 in possession.(3)
14 For late-run Chinook salmon 20 inches and longer, daily
15 (strike bag) harvest and possession limits are 2 per
16 day and 2 in possession.

17
18 (4) For all Chinook salmon less than 20
19 inches in length, daily harvest and possession limits
20 are 10 per day and 10 in possession.(strike 4) (5)
21 Annual harvest limits for any combination of early- and
22 late-run Chinook salmon are 4 for each permit holder.
23 Annual harvest limits do not include Chinook salmon
24 less than 28 inches long harvested May 1 through June
25 30 and Chinook salmon less than 20 inches long
26 harvested July 1 through July 31.(strike 5) (6) For
27 other salmon 16 inches and longer, the combined daily
28 (strike bag) harvest and possession limits are 6 per
29 day and 6 in possession, of which no more than 4 per
30 day and 4 in possession may be coho salmon, except for
31 the Sanctuary Area and Russian River, for which no more
32 than 2 per day and 2 in possession may be coho salmon.

33
34 (G) For Federally managed waters of the
35 upper Kenai River and its tributaries above Skilak Lake
36 outlet at river mile 50

37
38 (Strike (G)) (1) For lake trout 20
39 inches or longer, daily (strike bag) harvest and
40 possession limits are 4 per day and 4 in possession.
41 For fish less than 20 inches, daily (strike bag)
42 harvest and possession limits are 15 fish per day and
43 15 in possession. For Hidden Lake, daily harvest and
44 possession limits are (strike 4) 2 per day and (strike
45 4) 2 in possession of which only one can be (strike
46 over) 20 or longer (strike regardless of size).

47
48 CHAIRMAN FLEAGLE: Thank you, George.
49 I'd like to turn to Polly for the InterAgency Staff
50 Committee comments.

1 DR. WHEELER: Mr. Chair. Nothing
2 beyond the standard comments that I referenced earlier
3 yesterday. Thank you.

4
5 CHAIRMAN FLEAGLE: Yesterday was a long
6 time ago. I think -- well, never mind. Never mind.

7
8 DR. WHEELER: I'm happy to enter them
9 into the record, but for the record they are a part of
10 the Board book on Page 231. And I can.....

11
12 CHAIRMAN FLEAGLE: Thanks.

13
14 DR. WHEELER:I can adlib.

15
16 CHAIRMAN FLEAGLE: All right. We're
17 moving on to Board discussion and I'm going to ask the
18 same question of Staff as to -- you know, that the
19 analysis was presented on the proposal that was before
20 us and I just wonder if you had an opportunity to
21 review the State's proposed changes to what are
22 proposed here and how those might interact with what
23 we're already doing or -- same question as last time.

24
25 Steve.

26
27 MR. FRIED: Thanks, Mr. Chairman. Yes,
28 well, one of the changes is actually a request to lower
29 the daily harvest and possession limit for the early
30 run chinook from the -- currently it's two per day, two
31 in possession to one per day, one in possession. And
32 the two per day, two in possession actually was adopted
33 by the Board I think in 2007 where their -- they had
34 actually doubled the sport fishing bag limit to make a
35 subsistence, you know, harvest limit of two instead of
36 one to provide some extra opportunity for subsistence
37 users. As indicated nobody's -- none of these
38 subsistence users have reported a harvest of chinook
39 salmon from the Kenai River in either 2007, 2008, but
40 it does provide an additional opportunity to these
41 users above those of State sport fish users.

42
43 I think on Page 234 there was a
44 suggestion for all chinook salmon less than 20 inches
45 in length, the daily harvest possession limits are 10
46 per day, 10 in possession. I believe that's --
47 currently would be our regulation, and our regulation
48 is by reference to State regulations. Because I think
49 that's currently what's allowed under State sport
50 fishing regulations for these small chinook salmon. So

1 it just depends on whether or not to specifically put
2 it in our Federal regulations or just do it by
3 reference.

4
5 The next point was the not including
6 chinook salmon less than 28 inches harvested during a
7 certain date within the annual limit for chinook
8 salmon, I already touched on that one in the Staff
9 analysis. It does -- by not including it it does make
10 Federal regulations actually more restrictive than
11 State regulations, but there's a quite a bit of
12 discussion as to whether or not they're really provided
13 much of an opportunity for Federal users. So the Board
14 can decide whether or not they think it too should be
15 included in the Federal regulations.

16
17 And the last one was for Hidden Lake
18 lake trout. And for this one the State modification
19 was that out of the two per day, two in possession for
20 Federal users, that only one of them could be 20 inches
21 or longer. The State regulation if you recall is one
22 per day, one in possession and there's no size limit.
23 There haven't been any harvests reported by Federal
24 subsistence users, doesn't seem like this is needed as
25 a conservation measure. I don't know if I could -- you
26 know, there's not much more I can say about it,
27 nobody's reporting a harvest, that doesn't seem like a
28 problem at this point in time.

29
30 CHAIRMAN FLEAGLE: Thank you.
31 Appreciate that. Board members, discussion. Denny.

32
33 MR. BSCHOR: Mr. Chair. I believe
34 we've talked about this before at times where, you
35 know, whether we reference the State regs if we're
36 trying to match, I think that's a better way than
37 trying to match them through regulation every time
38 because if the States changes we'd have to change
39 again. So I think -- but I don't know if these all
40 match totally. So I think you -- some of them would by
41 reference. But that would be my thoughts on how to do
42 this with -- every time we make it specific to the
43 State's in our regs then if it changes -- the State
44 changes then we've got to change our regs again. So I
45 think that I'd rather see them by reference if we're
46 truly trying to match.

47
48 CHAIRMAN FLEAGLE: Thanks, Denny.
49 Steven Daugherty.

50

1 MR. DAUGHERTY: Mr. Chair. Steven
2 Daugherty, State of Alaska, Department of Law. I would
3 just like to note that where you reference the State's
4 regulations, that's usually done in a place where the
5 regulations for that species mirror the State's
6 regulations. And where they don't and you try to
7 reference the State's regulations it causes confusion
8 both for the users and for the enforcement officers and
9 may lead to citations of users who if they are
10 operating under State sport fishing regulations and
11 they also have a Federal limit in possession, our State
12 officers would cite them if they're -- if it's not
13 clear that they are operating under Federal
14 Regulations, Mr. Chair.

15
16 CHAIRMAN FLEAGLE: All right.
17 Appreciate that clarification from the State. Yes,
18 Pete, go ahead.

19
20 MR. PROBASCO: Steve, this is a
21 question as far as -- I saw in your comments and you've
22 stated that the State's recommendation changes limits,
23 you've mentioned lake trout, is there other areas where
24 the limits are recommended to be changed from the
25 State's recommended changes to what is being proposed?
26 In other words there -- is there a recommendation to
27 reduce the lake trout limit from the State's.....

28
29 MR. FRIED: No, it was a recommendation
30 to reduce the early chinook salmon possession and --
31 the harvest and possession limit from two to one. The
32 lake trout would stay what -- the same as we've
33 recommended. We're reduce -- we were recommending that
34 we reduce from four to two.....

35
36 MR. PROBASCO: Okay.

37
38 MR. FRIED:and the State's not
39 arguing with that part. But what they we were asking
40 for is that only one of those lake trout of those two
41 be 20 inches or longer. That would be the different in
42 what the Fish and Wildlife proposal is and what the
43 State's asking.

44
45 MR. PROBASCO: Okay. And that's the
46 only difference then as far as limits?

47
48 MR. FRIED: Yes. Just the -- one's for
49 chinook and then it's just the other one for -- it was
50 just a size restriction on the lake trout.

1 MR. PROBASCO: Thank you.
2
3 CHAIRMAN FLEAGLE: Further discussion.
4 Denny.
5
6 MR. BSCHOR: I'm just not clear. And
7 are you saying that those changes would match the State
8 regulations?
9
10 MR. FRIED: If we reduce the early
11 chinook harvest and possession limit from two and two
12 to one to one then that would match the sport fishing
13 limits. The lake trout limits are -- would -- we're
14 actually asking that they be reduced from four to two.
15 They still don't match, they're still double what the
16 State limit would be, but the State's already reduced
17 theirs from two to one so it's just sort of keeping
18 that parity between the two. And in addition the State
19 was asking that if we allow users to take two lake
20 trout at Hidden Lake that only one of those be 20
21 inches or longer.
22
23 MR. BSCHOR: And their regulations
24 don't say that last -- that last one where it would be
25 20 inches or longer, one of them would have to be 20 --
26 20 inches or longer?
27
28 MR. FRIED: Well, the State's
29 recommended modification was that it would be, you
30 know, as -- in addition to our saying two per day, two
31 in possession of which one can be 20 inches or longer.
32
33 MR. BSCHOR: And does that match the
34 State regulation?
35
36 MR. FRIED: No, there's no size
37 restrictions on it, but it's one per day, one in
38 possession, any size for the State's sport fishing.
39
40 MR. BSCHOR: Then I would ask the State
41 why isn't yours that way.
42
43 CHAIRMAN FLEAGLE: Hang on. It's just
44 that Larry Buklis who -- you wanted to jump in here
45 before that question was posed and then I'll -- then
46 I'll reference back to the State for you, Denny.
47 Larry.
48
49 MR. BUKLIS: Thank you, Mr. Chair.
50 Thank you, Mr. Chairman. Just a little context. When

1 the Board developed the fishery regulations for the
2 Kenai Peninsula initially they were completely a match,
3 they paralleled to the State's sport fishing
4 regulations entirely by reference. Then in 2007 when
5 you liberalized the subsistence regulations you
6 retained that phrase about parallel to sport fishing by
7 reference except as follows. And then you developed
8 some exceptions. So if you haven't specified an
9 exception, then the general premise of as per sport
10 fishing regulations applies. So we don't have to get
11 into all the terminal, tackle and all the other
12 features, just your exceptions. And typically your
13 exceptions focused on harvest limits and recall you
14 typic -- I think generally doubled them.

15
16 So if you go now with that context --
17 if you go to Page 234, the State comments if I
18 understand correctly have tried to highlight where they
19 would further modify. And so, for example, that
20 feature in clause number 2, it has the number 2
21 stricken and the number 1 bold underlined. So the
22 underlined text is the State's additional language they
23 would have you adopt. So if you look on Page 234 the
24 underlined numbers or text are the additional features
25 the State would have you adopt. So if you're looking
26 at numbers, the two per day, two in possession chinook
27 have been stricken and an underlined 1 is shown. So
28 that is a difference, a reduction the State would have
29 you adopt and so forth. And for lake trout they are
30 not striking the number 2 and replacing it with
31 something smaller, but they're adding a feature of a
32 limit on the size of the fish for one of those fish.

33
34 CHAIRMAN FLEAGLE: But they are
35 reducing -- proposing reducing the limit -- the
36 possession limit -- harvest and possession limit from
37 four down to two. So there is a change there in the
38 numbers.

39
40 MR. BUKLIS: Mr. Chairman. If you'll
41 note the number 2 is not underlined so it's not a State
42 additional term. They're taking.....

43
44 CHAIRMAN FLEAGLE: I get your -- I get
45 your clarification.

46
47 MR. BUKLIS:they're taking our
48 package of changes.....

49
50 CHAIRMAN FLEAGLE: Right. Right.

1 Right. Right.

2

3 MR. BUKLIS:and adding yet more.

4 And what they've added as yet more is underlined. So

5 focus on the underlined terms and numbers for the

6 State's additional features.

7

8 CHAIRMAN FLEAGLE: I understand. Okay.

9 Thank you. I caught you now. Back to George in

10 response -- or Tina in response to the question.

11

12 MS. CUNNING: Mr. Chairman. The reason

13 why that we suggested that one be limited to size is

14 because the Board of Fish did limit just to one take

15 and we're accepting the two, but we would like to

16 respect the conservation issues that the Board of Fish

17 went through at great length. And by suggesting that

18 one of those two be long enough to be providing spawn

19 into the -- back into the population.

20

21 CHAIRMAN FLEAGLE: Geoff.

22

23 MR. HASKETT: I really have nothing to

24 add now. It seems to me that it's -- the proposal out

25 there, there's some differences between us and the

26 State. So if you ask for a motion I'm ready to do

27 that.

28

29 CHAIRMAN FLEAGLE: You may do so.

30

31 MR. HASKETT: Okay. Thank you, Mr.

32 Chairman. I'd like to make a motion to adopt Proposal

33 09-10 consistent with the Regional Council

34 recommendation and I can provide rationale if I get a

35 second.

36

37 MR. CESAR: I'll second.

38

39 CHAIRMAN FLEAGLE: Go ahead.

40

41 MR. HASKETT: Okay. The intent of

42 these changes is fairly straightforward, actually it's

43 really straightforward, to bring Federal and State

44 regulations closer to alignment where possible, where

45 we agree. While we have not been able to go as far as

46 the State would like us to, we're trying to be

47 responsive to changes made by the Alaska Board of

48 Fisheries and this proposal does get us closer to being

49 in alignment.

50

1 CHAIRMAN FLEAGLE: Further discussion.

2

3 (No comments)

4

5 MR. OVIATT: Call the question.

6

7 CHAIRMAN FLEAGLE: Hang on before I
8 recognize that. All right. We've got pretty good
9 discussion on the table about possible amendments that
10 the State has provided to the discussion. We do have a
11 motion that I believe encapsulates the intent of the
12 questions and the discussion prior to the motion and
13 would support the proposal as presented. And I just
14 want to -- I don't like it when we have an issue that
15 just goes slam dunk without any discussion because our
16 lawyer might need to refer to some discussion that's
17 not there if it's necessary to defend. And something
18 like this may not need defending, but I still prefer to
19 have some justification for it. And rather than just
20 having the motion. And I think I did a little bit on
21 the last one and it would be good if somebody maybe
22 would just add a little more justification for the
23 proposal as presented and then I'll go with it. Denny.

24

25 MR. BSCHOR: Mr. Chair. While we
26 haven't totally met all the State's desires, I still
27 don't see what we've done would have any negative
28 affect on the principles of wildlife and fish
29 conservation. So I would like to put that on the table
30 that I don't think if we vote for this proposal as
31 worded that we would affect that in a negative way.
32 And I don't think it would be detrimental to the
33 satisfaction of subsistence needs either.

34

35 CHAIRMAN FLEAGLE: All right. Thank
36 you. Niles.

37

38 MR. CESAR: I would agree with both
39 Denny and Geoff. I believe that the proposal as
40 outlined is supportable and defensible and that I am a
41 little concerned that making an amendment to more -- to
42 completely align us with the State may, in fact, be a
43 restriction on subsistence. And so I propose to
44 support the proposal as.....

45

46 CHAIRMAN FLEAGLE: All right. With
47 that justification I do now recognize the question,
48 Pete, on the proposal. Please poll the Board.

49

50 MR. PROBASCO: Thank you, Mr. Chair.

1 Final action on FP09-10. Mr. Bschor.
2
3 MR. BSCHOR: Aye.
4
5 MR. PROBASCO: Mr. Cesar.
6
7 MR. CESAR: Aye.
8
9 MR. PROBASCO: Mr. Haskett.
10
11 MR. HASKETT: Yes.
12
13 MR. PROBASCO: Mr. Fleagle.
14
15 CHAIRMAN FLEAGLE: Yes.
16
17 MR. PROBASCO: Ms. Masica.
18
19 MS. MASICA: Yes.
20
21 MR. PROBASCO: And Mr. Oviatt.
22
23 MR. OVIATT: Yes.
24
25 MR. PROBASCO: Motion carries six/zero.
26
27 CHAIRMAN FLEAGLE: All right. Thanks.
28 Let's take a -- thank you I meant. Let's take a brief
29 stand down, 10 minute break. Thanks.
30
31 (Off record)
32
33 (On record)
34
35 CHAIRMAN FLEAGLE: Good afternoon.
36 We're back on record. Before we move into the last
37 couple of proposals the big question hanging was
38 whether we anticipated going into tomorrow or not and
39 how we would deal with the -- how much time the Board
40 discussion with Council Chairs would take and
41 discussion on the Yukon River fisheries proposals. And
42 I understand that at least one of our Council Chairs
43 has to leave for a funeral in McGrath tomorrow. So --
44 and I talked to at least one other Board member about
45 just timing and I think that we can do it, I think that
46 we can wrap up today. And even if it means staying
47 just a little overtime, we've only got two proposals
48 left, we did the last two in an hour.
49
50 UNIDENTIFIED VOICE: You need to check

1 in with them on the overtime.

2

3 CHAIRMAN FLEAGLE: Overtime. Well,
4 what I meant was the meeting may go overtime, not --
5 you may not get overtime. And I was just looking at
6 the agenda, we do have the remaining two proposals, we
7 do have a DVD of the fisheries monitoring program
8 process, Board counsel discussion, deferred proposals,
9 consensus agenda items, but even with that looking at
10 three hours, I think that we should be able to do it.
11 If it takes a little extra time we'll get there. So
12 the plan now is to just go ahead and move through the
13 agenda with the intent that we're going to wrap up
14 today.

15

16 So with that we're going to take of
17 running. And we have Proposal 11 and we have new Staff
18 at the table. I'd like to welcome Beth Spangler and we
19 also have Donald Mike back with us.

20

21 Welcome, Beth.

22

23 MS. SPANGLER: Good afternoon, Mr.
24 Chair. Members of the Board. My name is Beth Spangler
25 with the Office of Subsistence Management. And I'm
26 going to summarize fisheries Proposal 09-11, that
27 starts on Page 236 of the Board book. Proposal 09-11
28 was submitted by the Bristol Bay Regional Advisory
29 Council. And the proposal requests Federal subsistence
30 fishing regulations be more aligned with State
31 subsistence fishing regulations for the Chignik
32 management area.

33

34 Fisheries Proposal 09-11 would allow
35 subsistence salmon fishing in the Chignik Lake
36 tributaries of Clark River and Home Creek from their
37 confluence with Chignik Lake upstream one linear mile.
38 And maps can be found on Pages 240 and 241 of your
39 books.

40

41 The proposed regulation would provide
42 Federally qualified subsistence users the opportunity
43 to continue long established fishing practices while
44 providing additional fishing areas in Clark River and
45 Home Creek currently allowed under State regulations.
46 This regulation could potentially create enforcement
47 concerns between Federal and State regulations
48 regarding methods and means of harvest in this area.
49 Federally qualified subsistence users are required to
50 have a State subsistence permit to take salmon with

1 seines and gill nets in the Chignik area. However
2 federally qualified users are not required to have a
3 permit to take salmon by snagging with hand line, rod
4 and reel, spear, bow and arrow or capture by hand in
5 the Chignik area. State regulations do not allow
6 subsistence take of salmon by these methods. However
7 additional fishing opportunities by snagging with hand
8 line, rod and reel, spear, bow and arrow and capture by
9 hand are not expected to greatly impact subsistence
10 harvest levels or the sockeye salmon population within
11 the Chignik management area. These opportunities are
12 intended to provide late season sockeye and an
13 occasional fresh fish for immediate consumption. The
14 proposed Federal regulation states that you may not
15 take salmon in the Chignik River from a point 300 feet
16 upstream of the ADF&G weir to Chignik Lake from July
17 1st through August 31st in Black Lake or any tributary
18 of Black or Chignik Lakes except those waters of Clark
19 River and Home Creek from their confluence with Chignik
20 Lake upstream one linear mile.

21

22 The Office of Subsistence Management
23 conclusion is to support Proposal 09-11 with
24 modification. The modification is to change linear
25 mile to mile to clarify the areas open to subsistence
26 fishing, reduce regulatory complexity and enforcement
27 concerns.

28

29 Mr. Chair. This concludes my
30 presentation.

31

32 CHAIRMAN FLEAGLE: Okay. Appreciate
33 that. Thank you. Summary of public written comments.
34 Donald.

35

36 MR. MIKE: Thank you, Mr. Chair. There
37 were no written public comments received for Proposal
38 FP09-11.

39

40 Thank you, Mr. Chair.

41

42 CHAIRMAN FLEAGLE: Thank you. Pete,
43 public testimony.

44

45 MR. PROBASCO: I believe I have -- we
46 have no one here to testify on this proposal.

47

48 CHAIRMAN FLEAGLE: All right. Thanks.
49 While we're on the topic of testimony, there was a
50 question raised during the break that I failed to

1 address clearly. But when we do take up the topic of
2 the deferral of the Yukon River proposals, we do intend
3 to listen to public comment on that issue. So if
4 somebody's in the audience that has a -- has something
5 they want to say on that topic, please sign a card and
6 turn it in.

7

8 Anyway so we'll move on with this
9 proposal. The Regional Council recommendation. Let's
10 see, who's going to give that. Donald.

11

12 MR. MIKE: Thank you, Mr. Chair.
13 Chairman Alvarez couldn't make this meeting, Mr.
14 Chairman. You'll find the Council recommendation
15 starting on Page 237 of your Council book. The Bristol
16 Bay Regional Advisory Council support Proposal FP09-11
17 with modification to remove the word linear from the
18 proposed regulatory language. And you can see the
19 modified regulation that the Council's supporting in
20 italics.

21

22 And the justification, the Council
23 supported the proposal with modifications to remove the
24 word linear from the proposed regulatory language and
25 they describe the area only as one mile. Conflicting
26 interpretation as to who has jurisdiction of the
27 resource should not hinder subsistence users. The
28 Council supported the proposal with the caveat that the
29 Federal Subsistence Board will address the issue of
30 State and Federal jurisdiction.

31

32 Thank you, Mr. Chair.

33

34 CHAIRMAN FLEAGLE: Thank you, Donald.
35 Department of Fish and Game comments. George.

36

37 MR. PAPPAS: Yes, thank you, Mr. Chair.
38 George Pappas, Department of Fish and Game. Again I'm
39 summarizing the Department's full comments that are in
40 your book -- Board book on Page 246 through 250. And
41 these comments will be entered into the record
42 following this testimony.

43

44 This proposal would open Federal
45 subsistence fishing for one linear mile of water in
46 both Clark River and Home Creek upstream from the
47 confluence at Chignik located in the State Chignik
48 fisheries management area. This proposal purports to
49 align a Federal regulation with recent actions taken by
50 the Alaska Board of Fisheries to liberalize the State's

1 subsistence fishery, however it does not do that and
2 creates numerous serious issues.

3
4 First is a significant conservation
5 issue. Last year the Federal Board liberalized methods
6 and means for the Federal subsistence fisheries,
7 allowing Federally qualified users rod and reel, bow
8 and arrow, spear, bare hand capture and snagging. The
9 Federal Board eliminated permits and reporting
10 requirements. The combination of no reporting and
11 liberal methods in these important spawning areas
12 causes the Department serious concerns that any
13 significant increase in harvest could cause depletion
14 of sockeye salmon in the -- sockeye salmon stocks in
15 the Clark River and Home Creek. Since the Federal
16 Board does not monitor the Federal subsistence fishery
17 in this area, authorizing additional freshwater
18 subsistence fisheries that target unmonitored wild
19 stocks is not consistent with principles of sound
20 management and conservation of fish resources.

21
22 The second issue is a serious
23 enforcement dilemma that this proposal creates for
24 rural residents. Please refer to the land status map
25 on Page 250 of your Federal Board book so you can
26 visualize the problem with adoption of this proposal.
27 Current Federal regulations allow methods and means
28 that are significantly different from what's allowed
29 under State regulations in Clark River and Home Creek
30 without requiring a Federal subsistence permit or
31 harvest report. This causes confusion, exposes
32 Federally qualified users to State citations because
33 there is no Federal public lands in or near the area
34 identified in this proposal. Federally qualified
35 subsistence users using methods and means not
36 authorized under State regulations are at risk for
37 being cited if they're standing on State and/or private
38 lands including State owned submerged lands when
39 fishing under Federal subsistence fishing regulations
40 in this area.

41
42 The third serious issue is that there's
43 no subsistence need for the Federal Board to further
44 expand methods and means by authorizing nets. The
45 Alaska Board of Fisheries' regulations allow for the
46 use of gillnets and purse seines, but also require
47 permits and reporting. The State provides a
48 subsistence preference in all lands and liberal State
49 subsistence fisheries for salmon are provided
50 throughout the Alaska peninsula. The subsistence

1 fisheries in Chignik area provide an annual household
2 limit of 250 fish and subsistence fishermen can be
3 authorized to take more fish if they need it. Legal
4 gear types allowed for the Chignik area subsistence
5 fishery including gillnets and seines except for the
6 Chignik Lake itself purse seines may not be used.
7 Additional gear types can simply be added to the
8 State's subsistence permit under Alaska regulations.

9

10 To further explain our conservation
11 concern with the opportunity to over harvest provided
12 by liberal methods and means, let me explain that no
13 salmon runs on the Alaska peninsula are currently
14 listed as a stock of concern by the Alaska Board of
15 Fisheries. However in recent late run sockeye salmon
16 returns which are -- which preliminary or primarily
17 migrate to Chignik Lake and its tributaries, have
18 slightly decreased over time. Both Clark River and
19 Home Creek are the primary spawning beds for the
20 tributary bound portion of the late run sockeye salmon
21 which return to Chignik River watershed. Significant
22 increases of harvest could incur in these easily
23 accessible Clark River and Home Creek waters and
24 because the Federal Board does not require a permit or
25 reporting conservation issues could not -- would not be
26 detected until after the damage is done, if at all.

27

28 Several of the Federal Board members
29 are relatively new so I'd like to be sure to -- sure
30 you are aware of that when FP08-11 was adopted by the
31 Federal Subsistence Board last year which significantly
32 liberalized the methods and means and removed harvest
33 and reporting mechanisms, the Federal Board deliberated
34 and concluded that the proposal should not
35 significantly increase subsistence harvest because the
36 proponent's intent was to harvest only one or two fish
37 at a time. I -- you can read these deliberations in
38 the Federal Board transcripts from December 20th, 2007
39 on Pages 228 through 229. The Federal Board and
40 Regional Advisory Council Chairs focused their
41 deliberations on liberalizing the Federal subsistence
42 user's methods and means to allow for harvest of salmon
43 while -- for immediate subsistence in traveling in
44 light or say when they're going on a course of camping,
45 picking berries or hunting.

46

47 Discussions at the Federal Board
48 meeting did not consider the impacts of FP08-11 would
49 have on the fish stocks within the spawning areas of
50 Clark River and Home Creek because both were closed to

1 Federal subsistence fishing at the time of the Board
2 meeting. Unfortunately during 2008 the Department
3 received reports of Federal subsistence users
4 harvesting their winter supply of salmon from these
5 tributaries of concern by Federal methods and means
6 without a permit and harvest reporting. It should be
7 noted that the winter supply of fish is significantly
8 higher than more than one or two fish at a time and
9 it's in the hundreds of fish and it would be occurring
10 on the spawning beds.

11
12 The Department continues to have
13 serious conservation concerns with unreported harvests
14 and methods and means allowed that are Federally
15 authorized by last year's regulations when they were
16 liberalized. Those concerns, increasing with the
17 possible adoption of this proposal -- those concerns
18 will increase with the possible adoption of this
19 Proposal FP09-11 and the disclosure that significant
20 Federal subsistence harvest occurred in Home Creek and
21 Clark River.

22
23 One additional technical edit is needed
24 if this proposal is to be adopted. During the Bristol
25 Bay Regional Advisory Council meeting the Council
26 recommended modifying the proposed regulation to read,
27 those waters of Clark River and Home Creek from their
28 confluence with the Chignik Lake upstream one mile
29 which is on Page 236 of your Board book. The
30 Department agrees that the description of one mile
31 should match -- should match the State regulatory
32 language to avoid confusion. However changes --
33 changing the regulations to also match and only allow
34 the same gear types allowed by the State regulations
35 would address any confusion, reporting and potential
36 conservation concerns.

37
38 I ask you to please look in your Board
39 book on Pages 248 and 249 at our proposed modified
40 language. The Department recommends modification to
41 the proposed regulations to address the RAC's
42 modification and our conservation concerns as follows.
43 First look under Chignik area salmon, Section
44 27(i)(8)(ii) which is at the bottom of Page 248. After
45 Black Lake or Chignik Lake change -- changing the words
46 to read, except those waters of Clark River and Home
47 Creek with their confluence of Chignik Lake upstream
48 one mile, not one linear mile, one mile. Then after
49 the prohibition of use of purse seines change it to
50 read, in the waters of Clark River and Home Creek from

1 their confluences with Chignik Lake upstream one mile
2 you may only use gillnets. In other words you may also
3 take salmon, but only with a subsistence permit by --
4 by snagging -- excuse me, with a subsistence permit.
5 With these changes the distance of one mile would be
6 the same as the State -- as in State and Federal
7 regulations. The unnecessary liberal methods and means
8 would be removed, but the use of gillnets would be
9 allowed so long as a subsistence permit was required in
10 order to track harvest.

11
12 In summary the Department opposes the
13 proposed as written, but it could support it with these
14 modifications so Federal subsistence users are
15 authorized to use only the same methods and means in
16 Clark River and Home Creek waterways as authorized in
17 State regulations. Adopting a modified version of the
18 proposal would allow Federally qualified subsistence
19 users to fish in the lower mile of Clark River and Home
20 Creek with gillnets and it would mirror the State
21 subsistence fishery regulations. Federally qualified
22 users who participate in the Federal subsistence
23 fishery while using a gillnet would be required to
24 obtain a permit and report harvests. The Department
25 would support the above proposed modified regulations
26 which ensure the same gear type usage and annual
27 reporting of harvest in order to allow these fisheries
28 consistent with sound management principles.

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

32
33 *****
34 STATE OFFICIAL WRITTEN COMMENTS
35 *****

36
37 Alaska Department of Fish and Game
38 Comments to the Federal Subsistence Board

39
40 FP 09-11 Opening Fishing in Tributaries
41 of Chignik Lake

42
43 Introduction:

44
45 This proposal would open federal
46 subsistence fishing for one linear mile of water in
47 both Clark River and Home Creek upstream from their
48 confluence with Chignik Lake, located within the state
49 Chignik Fishery Management Area. This proposal
50 purports to align the federal regulations with recent

1 actions taken by the Alaska Board of Fisheries to
2 liberalize the State subsistence fishery. However,
3 modifications to the proposal are needed in order to
4 align federal and state regulations as intended. The
5 Alaska Department of Fish and Game (Department) opposes
6 the proposal as written, but could support it with
7 modifications outlined below.

8

9

Impact to Subsistence Users:

10

11 If adopted as proposed, federally
12 qualified subsistence users would be allowed to
13 subsistence fish in the lower mile of Clark River and
14 Home Creek, currently closed under federal regulations.
15 The Federal Subsistence Board recently authorized
16 expanded methods and means and eliminated permit and
17 reporting requirements in the Chignik watershed. If
18 this proposal were adopted, current federal regulations
19 would allow federally qualified subsistence users to
20 utilize methods and means significantly different from
21 what is allowed under State regulations (rod and reel,
22 bow and arrow, spear, bare-hand capture, and snagging)
23 in Clark River and Home Creek without a federal
24 subsistence permit. State regulations prohibit using
25 the above-listed means for subsistence fishing.
26 Adoption of FP09-11 would cause confusion and expose
27 federally qualified users to State citation because
28 there are no federal public lands in or near the area
29 identified in this proposal. Federally qualified
30 subsistence users using methods and means not
31 authorized under State law would risk being cited if
32 they are standing on State and/or private land,
33 including state-owned submerged lands, when fishing
34 under federal subsistence regulations in the area.
35 (See attached land status map.) Liberal State
36 subsistence fisheries are allowed on all lands (state,
37 federal, and private), so adoption of this proposal is
38 not necessary for meaningful subsistence opportunity.

39

40

Opportunity Provided by State:

41

42 Salmon may be harvested under Alaska
43 Board of Fisheries regulations using gillnets and purse
44 seines. The State provides a subsistence preference on
45 all lands, and liberal state subsistence fisheries for
46 salmon are provided on the Alaska Peninsula. The
47 subsistence fisheries in the Chignik area provide an
48 annual household limit of 250 fish, and subsistence
49 fishermen can be authorized to take more if they need
50 it. Legal gear types allowed for the Chignik area

1 subsistence fishery include gill nets and seines,
2 except that in Chignik Lake purse seines may not be
3 used. Additional gear types can be specified and added
4 to the state subsistence permit (5 AAC 01.470).

5
6 Each management area has specific
7 stipulations on the respective area s subsistence
8 permits, e.g., timing restrictions to separate
9 subsistence and commercial fishing, gillnet length
10 limits in areas open to commercial fishing, and closed
11 waters. A commercial salmon license holder or a
12 Commercial Fisheries Limited Entry Salmon Permit holder
13 may subsistence fish for salmon during a commercial
14 salmon fishing period (5 AAC 01.485) but may not
15 subsistence fish 12 hours before or 12 hours after each
16 commercial fishing period. If a commercial salmon
17 license holder or a Commercial Fisheries Limited Entry
18 Salmon Permit holder in the Chignik Management Area
19 goes subsistence fishing in Chignik Lagoon, Lake or
20 River, that holder is required to contact Department
21 staff at the Chignik weir in order to separate
22 subsistence and commercial harvests.

23
24 The Alaska Board of Fisheries
25 established the combined amounts necessary for
26 subsistence for communities in the Alaska Peninsula
27 area as 34,000-56,000 salmon annually. The amounts
28 necessary for subsistence for the Chignik Area (Chignik
29 Bay, Central, and Eastern Districts of Chignik
30 Management Area) is 5,900 14,250 salmon annually.

31
32 Conservation Issues:

33
34 No salmon runs on the Alaska Peninsula
35 are currently listed as a stock of concern by the
36 Alaska Board of Fisheries. However, the recent late-
37 run sockeye salmon returns, which primarily migrate to
38 Chignik Lake and its tributaries, have slightly
39 decreased over time. Both Clark River and Home Creek
40 are the primary spawning beds for the tributary bound
41 portion of the late-run sockeye salmon which return to
42 the Chignik River watershed. Increases in undocumented
43 in-tributary exploitation would not be detectable due
44 to the lack of a federal reporting requirement.
45 Significant increases of unreported harvest in Clark
46 River and Home Creek may lead to conservation issues
47 which might not be detected in a timely manner and
48 might require severe fishery restrictions when
49 detected.

50

1 The Federal Board recently liberalized
2 allowable methods and means for federal subsistence
3 fisheries and eliminated permitting and reporting
4 requirements for federally qualified users who choose
5 to utilize rod and reel, bow and arrow, spear, bare-
6 hand capture, and snagging. The elimination of
7 permitting and reporting requirements by federally
8 qualified users causes the Department to have serious
9 concerns about the potential for localized depletion of
10 sockeye salmon stocks in Clark River and Home Creek if
11 a significant increase of harvest results. Since the
12 Federal Board does not monitor the federal subsistence
13 fishery in this area, authorizing additional freshwater
14 subsistence fisheries that target unmonitored wild
15 stocks is not consistent with principles of sound
16 management and conservation of fish and wildlife
17 resources.

18
19 Deliberations on FP08-11 at the
20 December 2007 Federal Board meeting included specific
21 discussions by three Federal Board members who were in
22 support of adopting the proposal because the expected
23 increase in harvest was estimated to be reasonably
24 small and the proponent s intent was to harvest one or
25 two fish at a time (Federal Board Transcripts, December
26 20, 2007, pages 228 and 229). Further discussion by
27 the Federal Board and Regional Advisory Council chairs
28 also focused on liberalizing Federal subsistence users
29 methods and means to allow for harvests of individual
30 salmon for immediate sustenance while traveling light
31 in the course of camping, picking berries, or hunting.
32 Discussions at the Federal Board meeting did not
33 consider the impacts adoption of FP08-11 would have on
34 the sockeye salmon stocks within Clark River and Home
35 Creek, because both were closed to federal subsistence
36 fishing at the time of the Board meeting. Cumulative
37 unreported harvest from creeks that are near
38 communities and easily accessible was also not
39 considered by the Federal Board at the December 2007
40 meeting when the methods and means were liberalized to
41 allow snagging, bare-hand capture and similar means for
42 light travelers within the federal subsistence
43 fisheries on the Alaska Peninsula.

44
45 At the December 2007 meeting, the
46 Federal Board approved FP08-11, which liberalized
47 methods and means and eliminated reporting requirements
48 while using those methods and means, based on
49 information suggesting the level of harvest would be a
50 small number of individually harvested fish by

1 subsistence users traveling light in the field. During
2 2008, the Department received reports of federal
3 subsistence users harvesting their winter supply of
4 salmon from these tributaries of concern by federal
5 methods and means without permits and harvest
6 reporting. As stated in objections to FP08-11, the
7 Department has serious conservation concerns with
8 unreported harvests and the methods and means which
9 were allowed. Those concerns have increased with FP09-
10 11 and the recent disclosure of significant federal
11 subsistence harvests in Home Creek and Clark River.

12

13

Jurisdiction Issues:

14

15

16 In order for rural residents and
17 enforcement personnel to know where they can legally
18 participate in federal subsistence fisheries, the
19 Department requests detailed land status maps showing
20 areas and specific boundaries of waters claimed to be
21 within federal subsistence jurisdiction and the basis
22 for those claims. Maps provided by federal staff to
23 date are not accurate enough to ensure federal
24 subsistence users do not inadvertently fish from lands
25 not under federal jurisdiction. Significant portions
26 of federal lands surrounding the area are bordered by
27 state or private lands, where there is either no
28 federal jurisdiction or federally qualified subsistence
29 fisheries cannot participate in federal subsistence
30 fisheries while standing on non-federal lands. During
31 the December 2007 Federal Board meeting, State of
32 Alaska Wildlife Trooper testimony (Federal Board
33 Transcripts December 11, 2007 pages 89-91) illustrated
34 the importance of users understanding and knowing
35 jurisdiction and land status. This testimony explained
36 that when an enforcement officer encounters an
37 individual conducting an activity that is prohibited by
38 State regulations while on State or private lands,
39 including State owned submerged lands, the person may
40 be cited.

41

42

Other Issues:

43

44

45 During the Bristol Bay Regional
46 Advisory Council meeting, the Council recommended
47 modifying the proposed regulation language from those
48 waters of Clark River and Home Creek from their
49 confluence with Chignik Lake upstream one linear mile
50 to those waters of Clark River and Home Creek from
51 their confluence with Chignik Lake upstream one mile.
52 The description change of one linear mile to one

1 mile was recommended by the Regional Advisory Council
2 to match the existing State regulation description of
3 one mile in order to reduce confusion. The
4 Department agrees that the description of one mile
5 should match the State regulatory language. However,
6 changing the regulation to also match the gear type
7 allowed by State regulations would address confusion,
8 reporting, and potential conservation issues. The
9 Department recommends the following regulatory
10 language:

11
12 Area Salmon

13
14 ^U____.27(i)(8)(ii) Chignik River/Black
15 and Chignik Lakes areas. You may not take salmon in
16 the Chignik River, from a point 300 feet upstream of
17 the ADF&G weir to Chignik Lake from July 1 through
18 August 31, in Black Lake, or any tributary to Black or
19 Chignik Lakes, except those waters of Clark River and
20 Home Creek from their confluence with Chignik Lake
21 upstream one mile.

22
23 ^U____.27(i)(8)(iv) You may take salmon
24 by seines, gillnets, rod and reel, or with gear
25 specified on a subsistence fishing permit, except that
26 in Chignik Lake, you may not use purse seines and in
27 the waters of Clark River and Home Creek from their
28 confluence with Chignik Lake upstream one mile you may
29 only use gillnets. In all other waters, you may also
30 take salmon (strike without a permit) with a
31 subsistence permit by snagging (by handline or rod and
32 reel), using a spear, bow and arrow, or capturing by
33 bare hand.

34
35 Recommendation: Oppose.

36
37 The Federal Board is urged to modify
38 the proposal so that federal subsistence users are
39 authorized to use only the same methods and means in
40 the Clark River and Home Creek waterways as are
41 authorized in state regulations. Adopting a modified
42 version of the proposal which would allow federally
43 qualified subsistence users to fish in the lower mile
44 of Clark River and Home Creek with gill nets would
45 mirror State subsistence fishery regulations.
46 Federally qualified users who participate in the
47 federal subsistence fishery while using a gill net
48 would be required to obtain a permit and report
49 harvests. The Department would support the above
50 proposed modified regulation which ensures same gear

1 type usage and annual reporting of harvests to allow
2 continuation of sound management of the fisheries.

3

4 CHAIRMAN FLEAGLE: Thank you, George.
5 InterAgency Staff Committee comments. Polly.

6

7 DR. WHEELER: Mr. Chair. I'll
8 reference the standard comments that I referenced
9 previously and that's that.

10

11 CHAIRMAN FLEAGLE: Okay. Thanks.
12 Board discussion. Questions. Discussion. Steve
13 Kessler.

14

15 MR. KESSLER: Well, I guess first of
16 all just a question here. The Bristol Bay Council
17 talked about jurisdiction. The Council supports the
18 proposal with the caveat that the Federal Subsistence
19 Board will address the issue of State and Federal
20 jurisdiction. And the State brings up the same sort of
21 jurisdictional questions. And I guess maybe a question
22 for the attorneys, is there a jurisdictional problem.

23

24 CHAIRMAN FLEAGLE: Keith.

25

26 MR. GOLTZ: Is there a jurisdictional
27 problem or a jurisdictional question.

28

29 MR. KESSLER: The Council supports it
30 if that -- with the caveat that the Board will address
31 the State and Federal jurisdiction. So it seems clear
32 to me that there is Federal jurisdiction in this area.
33 Is that -- is that true, it's within the boundaries of
34 the Refuge even though the land surrounding that area
35 is all non-Federal land.

36

37 MR. GOLTZ: Right.

38

39 MR. KESSLER: Is there a jurisdictional
40 question there.

41

42 MR. GOLTZ: Well, the larger question
43 is in litigation. As a part of that litigation the
44 State is claiming that we ought not be regulating these
45 waters at all. As we discussed yesterday our over
46 arching position is that if the waters are within the
47 external boundaries of a Federal reserve then we are
48 managing them as part of the Federal subsistence
49 program. The ultimate resolution of that is going to
50 be court driven and we don't know the answer. But I

1 think for our purposes today we follow the Federal
2 regulation.

3

4 But I think there's another question
5 and it's been referred to several times by the State
6 and that's what happens if part of an action takes
7 place in Federal waters and part of an action takes
8 place on State lands. The State Supreme Court in the
9 Totemoff case is saying that if part of that action is
10 criminal under State law and part is allowed under
11 Federal law, we're going to prosecute under State law.
12 And I think that probably the condition that we're
13 dealing with right now. I don't think that's an
14 unsolvable problem or that it's necessarily permanent.
15 We will wait the court resolution of the larger issue,
16 but if the court resolves that in the favor of the
17 State then there's probably going to be a regulatory
18 response by the Secretaries. But there is considerable
19 uncertainty at this point.

20

21 The actual legal analysis was done
22 skillfully by the Office of the General Counsel, I see
23 Jim isn't here right now, but if you recall that
24 opinion that -- that is our present guidance.

25

26 CHAIRMAN FLEAGLE: Further questions.
27 Discussions. Ralph.

28

29 MR. LOHSE: This is just a question out
30 of curiosity because I don't -- I'd like to ask the
31 State in that mile on the Clark River and Home Creek
32 you're objecting to the use of hand lines, rod and
33 reel, spear, bow and arrow or capturing by bare hand,
34 but at the same time you're suggesting the use of
35 gillnets and you're worrying about over capture with
36 the hand line and the rod and reel and spear, bow and
37 stuff like that. I'm lost right there, I don't see the
38 correlation because I would think that a gillnet would
39 be a much more efficient way to take fish.

40

41 CHAIRMAN FLEAGLE: George.

42

43 MR. PAPPAS: Through the Chair. Ralph,
44 the -- it's not the over harvest, it's the unreported
45 harvest. The Board of Fish just liberalized the
46 subsistence fishery to allow harvest in there, but
47 there is strict reporting requirements and that'll come
48 out in the reporting, permitting system. Looking at
49 the Chignik area watershed harvest, a significant
50 portion comes from that area. And if it suddenly goes

1 unreported because folks are catching one or -- more
2 than one or two, but they're actually catching 100 or
3 so fish that direction, that potentially could affect
4 the brood tables for forecasting.

5
6 Thank you, Mr. Chair.

7
8 CHAIRMAN FLEAGLE: Ralph.

9
10 MR. LOHSE: Mr. Chair. Can I ask
11 George another question then or through the Chair.
12 Then if that -- if the -- if it required a permit to
13 use -- and a reporting to use those other methods, it
14 isn't the methods that you would object to as much as
15 it's the fact that it goes as an unreported take?

16
17 CHAIRMAN FLEAGLE: George.

18
19 MR. PAPPAS: Through the Chair. Yes,
20 Ralph, that's -- our most important concern is
21 unreported harvest. The second concern as it says in
22 our comments is that we don't approve of those methods.

23
24 Mr. Chair.

25
26 MR. LOHSE: Thank you, Mr. Chair.

27
28 CHAIRMAN FLEAGLE: Thank you, Ralph.
29 Other comments. Questions. Board members. Are we
30 ready to have a -- okay. Steve, go ahead.

31
32 MR. KESSLER: Thank you, Mr. Chairman.
33 I guess the follow-up to that is -- and I guess it's
34 sort of related to Ralph's question is it just seems
35 that the gillnet is so much more efficient that -- I
36 mean, what would we anticipate would be harvested by
37 these other methods. I mean it seems like it would be
38 an extraordinarily small amount, right, given that --
39 given that a gillnet is such an efficient method. Has
40 anybody made any estimates of the numbers that would be
41 harvested by these other methods. And I don't know if
42 that's a question to Staff or who.

43
44 CHAIRMAN FLEAGLE: Oh, I don't know if
45 Staff is prepared to jump forward with an answer, but I
46 do remember when we talked about this in the Lake Clark
47 area it was meant -- yeah, it was felt that it was
48 going to be very insignificant, somebody just happened
49 to be out with a hand line or a spear grabbing a fish
50 for dinner, of that nature. And that's the

1 recollection I have was that it wasn't going to lead to
2 any major quantities of fish being harvested. Niles.

3

4 MR. CESAR: Well, the State made
5 reference to that there was some reporting of people or
6 a person or somebody getting their winter supply of
7 fish there. And I -- I'm assuming that was not done by
8 hand line and/or snagging, but it was, in fact, done by
9 a gillnet. I mean I don't know that. George.

10

11 CHAIRMAN FLEAGLE: George.

12

13 MR. PAPPAS: Mr. Chair. Mr. Cesar.
14 It's a sensitive issue, but it was done with snagging,
15 Mr. Chair, as I understand.

16

17 MR. LOHSE: Mr. Chair.

18

19 CHAIRMAN FLEAGLE: Ralph.

20

21 MR. LOHSE: Well, I -- having lived out
22 in that area and been on some of those hunting trips
23 and taken salmon with a t-shirt or a club which I don't
24 see down here as official equipment, but it was 40
25 years ago so I'm not too worried about prosecution.
26 But I can understand -- I can understand the reasoning
27 behind putting this in place, but I can also see where
28 the problem comes with this Clark and Home Creek. But
29 if you're going to allow gillnetting in Clark and Home
30 Creek, couldn't you just say that for Clark and Home
31 Creek you have to have a subsistence permit and these
32 -- and record it and everything else and all of these
33 methods are legal in Clark and Home Creek. I mean
34 because if you're going to go out there to take your
35 winter supply I can understand somebody maybe getting
36 them snagging, but it's a lot easier with a gillnet.
37 And the idea I understood and maybe I'm wrong on that,
38 was is these other methods were so when they were on a
39 caribou trip or they were out duck hunting or something
40 like that they could take one of these fish or two of
41 these fish out of any stream on the -- any stream in
42 the area. But you're having a subsistence fishery on
43 Clark and Home Creek with a gillnet so why not include
44 these other methods and means and just say that to fish
45 in that area you have to have a permit and you have to
46 record them.

47

48 CHAIRMAN FLEAGLE: That is part of the
49 request and it sounds like a logical compromise, I
50 mean, if the Board is ready to go there, but we don't

1 even have a proposal on the table yet. I appreciate
2 the round about discussion and I'm going to let it
3 continue as long as it needs to, but I have Larry
4 Buklis has a comment.

5
6 MR: BUKLIS: Mr. Chairman. I just
7 wanted to clarify in case it wasn't clear that in this
8 area we use the State permit for reporting. And where
9 gillnets are used the State permit is used whether
10 you're under the State or Federal systems. These other
11 methods are ancillary methods which you recently
12 allowed a year ago. The Board's decision was to not
13 implement a Federal permit system for those other
14 methods, to go with the State permit system for the
15 primary method, gillnet, and to allow these other
16 methods which only the Federal system allowed without a
17 Federal permit. So you didn't have a Federal and State
18 permit system, that was the background. And so if you
19 wanted to introduce a permit requirement for these
20 other methods either in your former geographic range or
21 just these streams or both, then you'd have to
22 implement a Federal permit because my understanding is
23 the State wasn't going to allow their permit to be used
24 to report catches under these methods.

25
26 CHAIRMAN FLEAGLE: Right. That's the
27 same understanding I have too. And I think that the
28 Board was comfortable doing that, I remember some round
29 about discussion about it because it was so incidental
30 and temporary and, you know, minor numbers. But now
31 we're talking about -- I didn't realize that you were
32 talking about a pretty substantial harvest by other
33 methods than gillnets. So, I mean, that does warrant
34 further discussion. Further discussion.

35
36 MR. COLLINS: Mr. Chairman. Would you
37 entertain comment from.....

38
39 CHAIRMAN FLEAGLE: Absolutely. Go
40 ahead, Ray.

41
42 MR. COLLINS: Well, if the concern is
43 the number under those means and methods and the fact
44 that they're unreported, what if you just had a
45 possession limit of five for those methods or something
46 like that that would limit it as another way of getting
47 at this, but still allowing them, but not going out and
48 getting the whole year's supply that way, something
49 like that.
50 something like that.

1 CHAIRMAN FLEAGLE: Sue.

2

3 MS. ENTSMINGER: Yeah, I'd like to just
4 add to his comments in -- you know, just the keeping it
5 simple for people, government and the user, you could
6 have the one permit, the State permit, and then you
7 have a season and bag limit on the Federal side and you
8 have a season and bag limit on the State side. And the
9 people that get that one permit are saying how they
10 took it. And it -- and it does get report to one
11 permit.

12

13 CHAIRMAN FLEAGLE: Which is the -- we
14 do only have the one permit now, it's a State permit,
15 but they were not going to issue permits for the
16 Federal fishery because it included snagging, hand
17 grabbing, spearing and several other methods and means
18 that they didn't support. And we agreed at the time to
19 go ahead and allow those additional methods and means
20 without a permitting reporting process because it was
21 such an incidental take. That was the difference and I
22 think I'm hearing that the State is still unwilling to
23 permit this under their permit system and that's where
24 -- what Larry's comments are saying is it would be --
25 if we needed to do this we would have to come up with
26 our own permitting system.

27

28 MS. ENTSMINGER: I hear that, but I'm
29 suggesting as a user it seems so simple to have one
30 permit and agree that it could be reported in that
31 manner. And, you know, they can separate out the
32 harvest, this person said they took this. And I
33 understand, I'm just asking the State, I don't see how
34 -- why you have to be so rigid on how you report.

35

36 CHAIRMAN FLEAGLE: Thank you. We've
37 got Polly Wheeler and then I'll go to Steve.

38

39 DR. WHEELER: Thank you, Mr. Chair. I
40 did want to point out on Page 248 in the State's
41 comments they talk about a report of Federal
42 subsistence users harvesting their winter supply of
43 salmon. My understanding is that that was discussed at
44 the Bristol Bay Regional Advisory Council meeting. It
45 was kind of somebody was talking about it, it was an
46 anecdotal report. I mean I just want to make sure that
47 it's not confirmed, it's not a certainty so lest it be
48 -- less there be the perception that there's hundreds
49 of thousands of fish being taken, we don't know that
50 and it was based on one report, it wasn't followed up

1 on, but I think there is still the perception with 08-
2 11 that it's for a few fish. Oftentimes these methods
3 are used to target a specific kind of fish that people
4 prefer to eat. And I don't know that this concern over
5 lots and lots of fishing being taken is -- has been
6 verified.

7

8 Mr. Chair, thank you.

9

10 CHAIRMAN FLEAGLE: Thank you. Steven
11 Daugherty.

12

13 MR. DAUGHERTY: Thank you, Mr. Chair.
14 I would just like to note that on the State's side we
15 do have legal issues, it's not just a policy issue with
16 permitting methods and means that are not allowable
17 under State law. We have equal protection concerns
18 under the Alaska Constitution, we also have the open
19 access provisions of the Alaska Constitution and as
20 noted in the McDowell opinion. So we can't treat
21 people differently based on whether or not they are a
22 Federally qualified user or a State user.

23

24 Mr. Chair.

25

26 CHAIRMAN FLEAGLE: Thanks for that
27 clarification. Commissioner Lloyd.

28

29 COMMISSIONER LLOYD: Thanks, Mr.
30 Chairman. At the end of the meeting I may have some
31 closing comments about future opportunities for us to
32 iron some of these things out before we get to a
33 Federal Board meeting per se. But in this case we are
34 here and I'm wondering if we can take a 10 minute stand
35 down or a five minute stand down because it seems like
36 we're perilously close to a sense of agreement, but if
37 we just forge ahead without a little bit of discussion
38 we may not come to an amicable solution.

39

40 CHAIRMAN FLEAGLE: Yeah, that's a good
41 suggestion. Let's go ahead and do that, 10 minute
42 stand down.

43

44 (Off record)

45

46 (On record)

47

48 CHAIRMAN FLEAGLE: All right. We're
49 back on record. I'm going to turn to Commissioner
50 Lloyd for a comment.

1 COMMISSIONER LLOYD: Thank you, Mr.
2 Chairman. I appreciate the opportunity for the break
3 and hopefully the benefit of some of those less formal
4 conversations will come to fruit in the motion that may
5 be put before you. But regardless, again I want to
6 thank you for the opportunity to work some of these out
7 and maybe in future cases we'll be able to do more of
8 this prior to the meeting rather than during the
9 meeting.

10

Thank you, Mr. Chairman.

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MS. ENTSMINGER: Oh, you don't have a requirement, but if you had a requirement it could be

1 on a dual permit and that's what I was trying to point
2 out. It could be done because it is done in the
3 Fortymile Country and it works great.

4
5 CHAIRMAN FLEAGLE: Okay. Great.
6 Thanks. Thanks for the clarification.

7
8 Geoff.

9
10 MR. HASKETT: Thank you, Mr. Chairman.
11 From the stand down I guess what I'd like to do if I --
12 if we can do it this way is go with our original motion
13 I was going to do and follow-up with an amendment that
14 I think works out the conflict between the State and
15 us.

16
17 CHAIRMAN FLEAGLE: All right. Let's
18 take a motion to put the proposal on the table first.

19
20 MR. HASKETT: Okay.

21
22 CHAIRMAN FLEAGLE: So, Steve. Geoff.

23
24 MR. HASKETT: Yeah. I'd like to put the
25 motion on.

26
27 CHAIRMAN FLEAGLE: Okay. Go ahead.

28
29 MR. HASKETT: Okay. The motion's to
30 adopt proposal with modifications consistent with the
31 Bristol Bay Regional Council recommendations as shown
32 on Page 237 of our books. I'll provide my
33 justification if there's a second to the motion.

34
35 MR. KESSLER: Second.

36
37 CHAIRMAN FLEAGLE: And we do have a
38 second.

39
40 MR. HASKETT: So can I now do the
41 amendment?

42
43 CHAIRMAN FLEAGLE: Okay. Certainly.

44
45 MR. HASKETT: All right. The motion to
46 amend the proposal to allow the harvest of salmon by
47 gillnets in Clark River and Home Creek by State permit
48 and allow the harvest of up to five salmon per day in
49 possession in Clark River and Home Creek by snagging,
50 spear, bow and arrow or capture by bare hand without a

1 permit.

2

3 CHAIRMAN FLEAGLE: Is there a second on
4 the amendment.

5

6 MR. OVIATT: I'll second.

7

8 CHAIRMAN FLEAGLE: George. Thank you.
9 Further discussion, justification.

10

11 Geoff.

12

13 MR. HASKETT: Okay. The justification
14 -- original justifications that this opens up the same
15 area recently opened by State regulation. The problem
16 was that while doing that the State did not agree with
17 some of the methods allowed in Federal Regulations for
18 the area, those being methods traditionally used to
19 catch occasional fresh fish. We didn't think it was
20 likely those methods were likely used to harvest large
21 quantities of salmon especially when nets can also be
22 used in the same area. We don't really have any
23 conservation concerns for what was anticipated to be a
24 relatively low level of harvest. If we do get reports
25 of widespread use of these methods or any problems
26 associated with these methods then we would evaluate
27 the issue again at some later time. The amendment is
28 intended to maintain the original intent of the
29 proposal while gathering harvest information while
30 allowing users to harvest an occasional fresh fish
31 using these other methods without having to get a
32 permit to do so.

33

34 CHAIRMAN FLEAGLE: Further discussion,
35 Board members. Steve.

36

37 MR. KESSLER: I'd just be hopeful you
38 could maybe read that amendment one more time. We
39 don't have it available on the screen I don't think.
40 So could you read that one more time, please. Thank
41 you.

42

43 CHAIRMAN FLEAGLE: Geoff.

44

45 MR. HASKETT: Okay. Motion to amend to
46 allow the harvest of salmon by gillnets in Clark River
47 and Home Creek by permit and allow the harvest of up to
48 five salmon per day in possession from Clark River and
49 Home Creek by spear, bow and arrow or capture by bare
50 hand without a permit. Oh, and snagging. Sorry.

1 CHAIRMAN FLEAGLE: Steve.
2
3 MR. KESSLER: Thank you, Mr. Chairman.
4 And I'm trying to figure out does that include the
5 upstream one linear mile from Chignik Lake or one mile
6 from Chignik Lake, is that included in that because it
7 sounds like it's sort of almost a replacement
8 amendment.
9
10 MR. PROBASCO: Say it again, Steve.
11
12 CHAIRMAN FLEAGLE: The question was
13 whether it was inclusive of the one mile delineation of
14 these two streams that were mentioned in the original
15 motion which I am assuming is yes, but we do need
16 clarification.
17
18 MR. HASKETT: Okay. Yes, that does
19 cover the same area, that linear mile.
20
21 CHAIRMAN FLEAGLE: Not linear mile,
22 right, the word linear was.....
23
24 MR. HASKETT: Mile without the --
25 without linear. Sorry. One mile.
26
27 CHAIRMAN FLEAGLE: One mile. Steve.
28
29 MR. KESSLER: Did that need a second
30 still, I think -- did that -- that amendment needed a
31 second; is that correct?
32
33 CHAIRMAN FLEAGLE: Correct.
34
35 MR. OVIATT: I seconded it.
36
37 CHAIRMAN FLEAGLE: George amend --
38 George seconded the amendment. Yeah, we did have a
39 second to the amendment. Further discussion. Steve.
40
41 MR. KESSLER: To me this sounds like a
42 very good amendment, a way to deal with sort of the
43 current situation where we do want to allow under
44 Federal regulation harvest in these systems, but to
45 make sure that any harvest that -- with these other
46 methods and means stays sort of within the numbers
47 within the overall sort of process that was discussed
48 for this whole regional area for using these other
49 harvest means. So I think this is a good solution and
50 certainly would be -- I'd vote favorable on the

1 amendment.

2

3 CHAIRMAN FLEAGLE: All right. I'll
4 support the amendment as well. I think it still
5 reaches the intent of the proposal while addressing the
6 concerns about possible excessive harvest by the other
7 methods that aren't reported which I don't see as a
8 problem, but I know we had some anecdotal evidence or
9 report as Polly pointed out that it might have been
10 used at some point, but in my knowledge or just my
11 understanding of subsistence taking, you're not going
12 to go out there and spend 40 hours doing what you can
13 do in a half an hour with a net I don't think. I'm --
14 I don't know, maybe I'm wrong there and some people
15 like it -- doing it a little harder. But we already
16 have ample opportunity to catch the fish in nets and
17 this is just addressing the additional methods and
18 means and I don't see it as being any reduction in
19 subsistence opportunity or any restriction on harvest.
20 So yeah, I support it. I think that it's a good
21 compromise.

22

23 Any other discussion. George.

24

25 MR. OVIATT: Well, I took am going to
26 support this amendment. I believe that we have
27 addressed maybe all of the concerns on all of the sides
28 and still allow the incidental take by those other
29 methods and means. And kind of fits into that way of
30 life by those people who are out hunting or doing
31 whatever and want to catch some fish. So I too will
32 support the amendment.

33

34 CHAIRMAN FLEAGLE: Ready for the
35 question on the amendment.

36

37 MR. CESAR: Question.

38

39 CHAIRMAN FLEAGLE: The question's
40 called. Pete, on the amendment, please poll the Board.

41

42 MR. PROBASCO: Okay. Mr. Chair. If I
43 may with your approval to just read the intent of the
44 amendment so it's clear. Okay. The intent of the
45 amendment is to allow by the methods stated by Mr.
46 Haskett which includes snagging, hand line or rod and
47 reel, spear, bow and arrow or capturing by bare hand in
48 Home Creek and Clark River, five salmon per day or five
49 in possession. The other regulations pertaining to
50 gillnets are the same as proposed on Page 243 in the

1 OSM conclusion.
2
3 CHAIRMAN FLEAGLE: And the limit of
4 area open to one mile is still in the original.
5
6 MR. PROBASCO: That's in there, yes.
7 All right.
8
9 CHAIRMAN FLEAGLE: Go ahead, poll the
10 Board.
11
12 MR. PROBASCO: On the amendment to
13 FP09-11. And first is Mr. Cesar.
14
15 MR. CESAR: Yes.
16
17 MR. PROBASCO: Mr. Haskett.
18
19 MR. HASKETT: Yes.
20
21 MR. PROBASCO: Mr. Fleagle.
22
23 CHAIRMAN FLEAGLE: Yes.
24
25 MR. PROBASCO: Ms. Masica.
26
27 MS. MASICA: Yes.
28
29 MR. PROBASCO: Mr. Oviatt.
30
31 MR. OVIATT: Yes.
32
33 MR. PROBASCO: And Mr. Kessler.
34
35 MR. KESSLER: Yes.
36
37 MR. PROBASCO: The amendment carries
38 six/zero.
39
40 CHAIRMAN FLEAGLE: Thank you.
41
42 MR. CESAR: Call the question on the
43 main motion.
44
45 CHAIRMAN FLEAGLE: Okay. We do have
46 the question called on the main motion. Pete, please
47 poll the Board.
48
49 MR. PROBASCO: Thank you, Mr. Chair.
50 Final action on FP09-11 as amended. Mr. Haskett. Main

1 motion as amended, final action.

2

3 MR. HASKETT: Yes.

4

5 MR. PROBASCO: Mr. Fleagle.

6

7 CHAIRMAN FLEAGLE: Yes.

8

9 MR. PROBASCO: Ms. Masica.

10

11 MS. MASICA: Yes.

12

13 MR. PROBASCO: Mr. Oviatt.

14

15 MR. OVIATT: Yes.

16

17 MR. PROBASCO: Mr. Kessler.

18

19 MR. KESSLER: Yes.

20

21 MR. PROBASCO: And Mr. Cesar.

22

23 MR. CESAR: Yes.

24

25 MR. PROBASCO: FP09 as amended carries,

26 six/zero.

27

28 CHAIRMAN FLEAGLE: That's FP09-11. But
29 anyway now we're moving on to 14. I thank you, Beth,
30 for coming up and for Donald for being here. And we'll
31 just allow just a few moments for new Staff to join us.
32 And Proposal 14 dealing with Norton Sound port
33 clearance area is -- begins on Page 251.

34

35 Good afternoon. I see we're joined by
36 new Staff and we have not Donald Mike anymore, but
37 Barbara Armstrong and we have Karen Hyer. Welcome.

38

39 MS. HYER: Good afternoon, Mr.
40 Chairman. Members of the Board. My name is Karen Hyer
41 and I'm with OSM. I'm going to summarize for you
42 fisheries Proposal 09-14. It begins on Page 251 in
43 your notebook.

44

45 This proposal was submitted by the
46 Native Village of Unalakleet and it requests a closure
47 of Federal public waters to the taking of chinook
48 salmon June 15th through July 5th by non-Federally-
49 qualified subsistence users. The map for the river is
50 on Page 255. And the Federal public waters of the

1 Unalakleet include the upper 81 river miles. The river
2 is 106 miles in total length.

3
4 Currently assessment of chinook salmon
5 escapement into the drainage is conducted by using a
6 tower, counting tower on the North river, a tributary
7 of the Unalakleet. Radiotelemetry work conducted by
8 Alaska Department of Fish and Game showed 60 percent of
9 the chinook salmon entering the drainage migrate up the
10 Unalakleet River, the remaining 40 percent migrate up
11 the North River. Chinook salmon returns to the
12 Unalakleet River have been poor since 2000. Since 2003
13 the chinook salmon escapement goal has only achieved
14 once and that was in 2007. Concerns over this stock
15 led the Alaska Board of Fisheries to identify chinook
16 salmon in the Unalakleet and Shaktoolik subdistricts as
17 a stock of yield concern in 2004. This decision was
18 reconfirmed in 2007 with the adoption of the new
19 management plan. Several conservation measures were
20 taken under this new management plan. A threshold --
21 execution of the commercial fishery was established, a
22 subsistence fishing schedule was put into regulation
23 and there was a reduction in the sportfishing bag limit
24 to one fish and an annual possession limit of two fish.

25
26
27 Because of conservation concerns
28 several management actions have occurred. A chinook
29 salmon directed commercial fishery has not occurred
30 since 2005. In 2006, 2007 and 2008 sportfishing in the
31 Unalakleet River under State jurisdiction was closed to
32 sport harvest of chinook salmon. During the same
33 period of time subsistence chinook salmon fishing in
34 the Unalakleet River under both State and Federal
35 jurisdiction was closed to the harvest of chinook
36 salmon.

37
38 While things could change in the
39 future, currently subsistence harvest occurs entirely
40 down river under State jurisdiction, BLM regulates
41 commercially guided sportfishing in Federal public
42 waters through special recreation permits and to-date
43 no permits have been issued. Most sportfishing occurs
44 near the mouth of the North River within the drainage,
45 use of the up river by non-guided sportfishers is hard
46 to determine but it is thought that little or no
47 harvest occurs in Federal public waters.

48
49 OSM's conclusion is to oppose Proposal
50 09-14 because subsistence fishing in the Unalakleet

1 River occurs entirely in the lower portion of the
2 river, which is outside Federal jurisdiction, a closure
3 to the upper Unalakleet River to chinook salmon fishing
4 would not provide additional subsistence opportunity
5 since there is little -- since there are little or
6 chinook salmon harvested in Federal public waters, such
7 a closure would only have meaning if it was done in
8 concert with a closure to State public waters.
9 Currently the Federal manager has been working with
10 Alaska Department of Fish and Game to provide whole
11 river closures for chinook salmon conservation.

12

13 This concludes my presentation.

14

15 CHAIRMAN FLEAGLE: All right, thank
16 you. Summary of public comments. Barbara.

17

18 MS. B. ARMSTRONG: Thank you, Mr.
19 Chair. There are no public written comments on
20 Proposal 14.

21

22 Thank you.

23

24 CHAIRMAN FLEAGLE: Thank you. Public
25 testimony. Pete.

26

27 MR. PROBASCO: Yes, Mr. Chair, we have
28 two individuals. First one up is Michael Sloan.

29

30 CHAIRMAN FLEAGLE: Good afternoon,
31 welcome.

32

33 MR. SLOAN: Yes, good afternoon. My
34 name is Michael Sloan with Kawerak in Nome.

35

36 Kawerak would like to support this
37 proposal as modified by the Regional Advisory Council.
38 And I guess we feel like that we should do whatever we
39 can to conserve the chinook salmon on the Unalakleet
40 River and that the spawning areas, anything we can do
41 -- we realize that the impact might be very slight on
42 both the resource and the users and -- but we feel like
43 even this little bit, given the situation there with
44 chinook might be warranted for this.

45

46 But, anyway, we would like to support
47 that.

48

49 CHAIRMAN FLEAGLE: Okay, thank you.
50 Appreciate the comments. Pete.

1 MR. PROBASCO: Yes, Mr. Chair. The
2 next individual is Kermit Ivanoff. Mr. Ivanoff, did
3 you sign up twice?
4
5 MR. IVANOFF: What's that?
6
7 MR. PROBASCO: Did you sign up twice?
8
9 MR. IVANOFF: No.
10
11 MR. PROBASCO: Is there a junior there,
12 a Kermit Ivanoff.....
13
14 MR. IVANOFF: I'm sorry, I'm hard of
15 hearing.
16
17 CHAIRMAN FLEAGLE: We have two
18 testimony cards and they're both Kermit Ivanoff but one
19 looks like it might be junior or maybe they're both
20 you. You're the only Kermit Ivanoff here?
21
22 MR. IVANOFF: Yes.
23
24 CHAIRMAN FLEAGLE: Okay, thank you.
25
26 MR. IVANOFF: Mr. Chairman. Board
27 members. Hello, my name is Kermit Ivanoff, Sr. I'm
28 the vice-President of Native Village of Unalakleet
29 Council and I thank you for allowing me to participate
30 today.
31
32 I'm here to support Proposal FP09-14,
33 that would close the taking of chinook salmon from the
34 mouth of Chirokey River and up stream from July 1 to
35 July 31st to all users. The protection of Unalakleet
36 River chinook stock listed as a stock of concern by the
37 Alaska Department of Fish and Game is needed because
38 escapement goals have not been met in the last three
39 years and the low chinook runs continue. The Council
40 feels ultimate protection of the chinook is required.
41
42 Two years ago the ADF&G biologist
43 identified the high male ratio count compared to female
44 and the large number of jack kings in the escapement
45 numbers. In the next four to five years when the
46 chinook return we anticipate another dismal year of
47 abundance. The chinook salmon are extremely important
48 to commercial, subsistence and sportsfishers in
49 Unalakleet and all fishers have experienced in the last
50 three years restrictions and closures. Subsistence

1 fishers for the first time in history have restrictions
2 in the marine waters last summer. We have supported
3 and written proposals to the ADF&G Board of Fish to
4 close the commercial fishing, to place restrictions on
5 sportsfishers who come from all parts of the United
6 States to target chinook and coho salmon and work with
7 Fish and Game biologists to place restrictions for
8 subsistence users because we felt chinook are in
9 danger. Our commercial fishermen refused except for
10 four or more to fish three years ago when they realized
11 that the chinook run was very weak and the commercial
12 catches reflected that.

13

14 What used to take one or two days to
15 harvest chinook salmon for subsistence use now takes
16 one week or more trying to fulfill our subsistence
17 requirements to feed our families. Historically one or
18 two days fishing by gillnet in marine waters produce 30
19 to 60 chinook, now the same effort takes one week or
20 more and a few families did not reach their goal
21 because of weather, economics, lack of good sea worthy
22 boats and motor. The elders are hit especially hard.
23 Our 75 to 85 year old men still fish in the marine and
24 river water and still have historically chosen when the
25 weather was good but are now forced to fish when the
26 window openings occur. Understandably some do not fish
27 because of inclimate weather.

28

29 There are international and Lower 48
30 sportfishermen who pay high prices to catch chinook and
31 coho, some arrive in mid-July when the pink salmon are
32 in the rivers and the chinook are at or near their
33 spawning grounds. Pink sportfishing is not challenging
34 for most folks so there is a tendency to travel up
35 river to find chinook. That practice is not done in
36 high numbers but the potential exists to do so.

37

38 Subsistence fishers do not target
39 chinook past Chirokey, that's Chirokey River, nor do
40 they usually fish for chinook there. We have lived in
41 the river most of our lives and recognize the spawners
42 in that area perpetuate the return of future stocks and
43 so they are left alone. Conservation concerns are
44 acknowledged by the ADF&G, commercial and subsistence
45 users of the area and by the local fishing lodges. And
46 there is one critical area where no protection of the
47 chinook salmon exists, the most important area, the
48 place they spawn. The rivers and tributaries from
49 Chirokey and up stream are identified as chinook
50 spawning areas by the ADF&G and by the elders and

1 fishers who live and camp there in the summer.

2

3 The reason for low returns of chinook
4 salmon coming back to spawn are many and uncertain.
5 Continuing restrictions and regulations of all uses
6 have not proved sufficient to increase the returns.
7 The downward trend continues. The ADF&G continues to
8 improve a management approach which incorporates
9 collaboration and cooperation that is good but
10 restrictions on harvesting and fishing of chinook
11 salmon who finally make it to their spawning grounds is
12 required for the pure sake of conservation. That is
13 the ultimate protection for the stock on a downward
14 spiral and I have yet to hear a biologist or a fisher
15 who does not support spawners and protection of
16 spawning grounds.

17

18 We recognize the Federal Subsistence
19 Board uses the best scientific data to help make
20 decisions. While we do not have numbers and data to
21 provide we have the local knowledge and where the
22 spawners and where the spawning areas are and feel a
23 vital tool is needed to help, to help sustain the most
24 important fish we depend on for our livelihood.

25

26 Your help is greatly appreciated and I
27 thank you all for the work you have done.

28

29 Thank you.

30

31 CHAIRMAN FLEAGLE: All right, thank you
32 for the testimony. We do have any others, Pete, for
33 this issue?

34

35 MR. PROBASCO: For this proposal that
36 completes the public testimony, Mr. Chair.

37

38 CHAIRMAN FLEAGLE: All right, thank
39 you. We'll go to the Regional Council recommendation.
40 Barbara.

41

42 MS. B. ARMSTRONG: The Seward Peninsula
43 Regional Council supported Proposal FP09-14 with
44 modification. The modification would close the Federal
45 public waters of the Unalakleet to all users instead of
46 only non-subsistence users as written on Page 251.

47

48 Thank you, Mr. Chair.

49

50 CHAIRMAN FLEAGLE: Thank you, Barbara.

1 Alaska Department of Fish and Game comments. George
2 Pappas.

3

4 MR. PAPPAS: Thank you, Mr. Chair.
5 Fish and Game. I'm summarizing the Department's full
6 formal comments that are in your Board book on Pages
7 263 and 264. Those full comments will also be entered
8 into the record following my presentation here.

9

10 This proposal as amended by the
11 proponent and the Seward Peninsula Regional Advisory
12 Council to close all fishing for chinook salmon in the
13 Unalakleet River within Federal public lands from June
14 15th to July 5th. The area of proposed closure is the
15 waters upstream of the confluence of Chirokey River
16 approximately 20 miles east of Unalakleet.

17

18 The stated intent of this proposal is
19 to protect spawning chinook salmon that are migrating
20 through these waters into this area. However, the
21 majority of chinook salmon are not likely to reach the
22 spawning grounds until July 5th.

23

24 The closure would provide little or --
25 would provide little benefit to Federally-qualified
26 subsistence users because few, if any chinook salmon
27 are harvested that far upstream in the Unalakleet
28 watershed. Chinook salmon are primarily harvested
29 closer to the village of Unalakleet or in marine
30 waters. Few non-Federally-qualified users target
31 chinook salmon in Federally public where the fish are
32 more water marked than the brighter fish closer to the
33 mouth of the Unalakleet. In addition travel upriver to
34 fish on Federal public lands is increasingly cost
35 prohibitive due to the high cost of fuel.

36

37 Under State of Alaska regulations all
38 residents can subsistence fish with gillnets in both
39 fresh and marine waters. Beach seines can only be used
40 by emergency order and all chinook salmon must be
41 released by regulation. The State subsistence chinook
42 salmon fishery in the Unalakleet watershed is normally
43 open all year and is limited by regulation, being June
44 1 to the use of -- use of set gillnets to July 15th.
45 From June 15th to July 15th subsistence fishing is
46 normally allowed twice a week for 36 hour fishing
47 periods. Commercially fisheries targeting chinook
48 salmon are not allowed unless midpoint of the
49 escapement goal is projected to be met as determined in
50 the Unalakleet River King Salmon Management Plan.

1 The Unalakleet River chinook salmon
2 stock was designated as a stock of yield concern by the
3 Alaska Board of Fisheries in 2004. Since 2002 the
4 chinook salmon commercial fishery has been closed
5 except for two 24 hour fishing periods in 2005. Since
6 2003 subsistence and sportfishing -- fisheries
7 targeting Unalakleet watershed salmon -- or chinook
8 salmon have been significantly restricted or closed to
9 allow for escapement.

10
11 Under the conserva -- conservative
12 management plan adopted by the Alaska Board of
13 Fisheries in February 2007 the State subsistence
14 fishery has been restricted to in-river -- restricted
15 to in-river by reducing the fishery time periods to two
16 36 hour fishing periods during the week -- during --
17 per week during the open season in freshwaters and two
18 48 hour fishing periods per week in the marine
19 fisheries.

20
21 When escapement goals still are not
22 projected to met in-season subsistence fishing has been
23 further restricted or closed. When the lower
24 escapement goals are projected to be met in-season the
25 State subsistence fishery may be liberalized. The
26 sportfishery has been closed by emergency order in
27 early June -- or in early July for the retention of
28 chinook salmon in 2003, 2004, 2006, 2007 and 2008, and
29 that's due to conservation concerns. Management
30 actions taken by the State managed fisheries include
31 State, private and Federal public lands. Because of
32 the migratory timing these actions are taken prior to
33 any fishing effort occurring in the Federal claimed
34 waters.

35
36 In summary, the Department opposes this
37 proposal because it will not improve the health of the
38 Unalakleet chinook salmon stocks and will not improve
39 the opportunity for subsistence use. In years of low
40 returns the State closures or restrictions are in place
41 before chinook salmon reach the waters subject to
42 Federal jurisdiction claims. Simply put, the proposed
43 closed -- closure does not meet the requirements of the
44 Federal Subsistence Board's closure policy adopted in
45 August 2007.

46
47 Thank you, Mr. Chairman, those are the
48 comments.

49
50 *****

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STATE OFFICIAL WRITTEN COMMENTS

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

FP09-14 Unalakleet Chinook Salmon

Closure

Introduction:

This proposal would close all fishing for Chinook salmon in the Unalakleet River within federal public lands from June 15 July 5, except by federally-qualified subsistence users. The area of proposed closure is the waters upstream of the confluence of Chirokey River, located approximately 20 miles east of Unalakleet. This proposal was submitted with the stated intent of protecting spawning phase Chinook salmon that are migrating through the area. However, the majority of Chinook salmon is not likely to reach the spawning grounds by July 5.

Impact on Subsistence Users:

If adopted, the proposal would prohibit taking of Chinook salmon for subsistence purposes by Alaska residents and sport fishermen but not by federally-qualified subsistence users. The closure would provide little benefit to federally-qualified subsistence users because few, if any, Chinook salmon are harvested that far upstream in the Unalakleet watershed. Chinook salmon are primarily harvested closer to the village of Unalakleet or in marine waters. Few non-federally qualified users target Chinook salmon in federal public lands where the fish are more watermarked than the brighter fish closer to the Unalakleet River mouth. In addition, travel upriver to fish on federal public lands is increasingly cost-prohibitive due to high fuel costs.

Opportunity Provided by State:

Subsistence salmon fishing occurs in freshwaters of the Unalakleet River and surrounding marine waters of the Unalakleet Subdistrict. All Alaska residents can subsistence fish with gillnets in both fresh and marine waters under State of Alaska (State) regulations. Beach seines can only be used by emergency order, and all Chinook salmon must be

1 released by regulation. The State subsistence Chinook
2 salmon fishery in the Unalakleet watershed is normally
3 open all year and is required by regulation beginning
4 June 1 to use only set gillnets until July 15. From
5 June 15 through July 15, subsistence fishing is
6 normally allowed twice a week for 36-hour fishing
7 periods. Commercial fishery targeting Chinook salmon
8 is not allowed unless the midpoint of the escapement
9 goal is projected to be met, as described in the
10 Unalakleet River King Salmon Management Plan. The
11 Unalakleet River salmon sport fishery is normally open
12 all year, and the daily bag and possession limit is 2
13 fish, only one 20 or longer. There is an annual limit
14 of 2 Chinook salmon 20 or longer.

15

16 Conservation Issues:

17

18 The Unalakleet River Chinook salmon
19 stock was designated as a stock of yield concern by the
20 Alaska Board of Fisheries in 2004. This designation
21 was due to the inability to maintain near average
22 yields despite use of management measures to provide
23 harvestable surpluses above the stock escapement needs
24 during the previous 5-year period. Since 2002, the
25 Chinook salmon commercial fishery has been closed,
26 except for two 24-hour fishing periods in 2005. Since
27 2003, subsistence and sport fisheries targeting
28 Unalakleet watershed Chinook salmon have been
29 significantly restricted or closed to allow for
30 escapement. Under the State Policy for the Management
31 of Sustainable Salmon Fisheries, if the Unalakleet
32 River Chinook salmon stock chronically fails to meet
33 its escapement goal, Alaska Department of Fish and Game
34 would recommend changing the stock of concern status
35 from a yield concern to a management concern until the
36 stock recovers.

37

38 Annual commercial fishery harvests of
39 Chinook salmon in the Unalakleet Subdistrict have
40 dropped from a long term annual average of 5,717 fish
41 (1980-2000) to a recent average of 32 fish (2001-2007).
42 The annual State subsistence fishery harvests of
43 Chinook salmon in the Unalakleet Subdistrict during the
44 last 14 years have ranged from 6,325 fish in 1997 to
45 1,665 fish in 2007 with a decreasing trend in recent
46 years. The sport fish harvest from 2001-2007 has
47 averaged 286 Chinook salmon and ranged from 97 to 544
48 fish annually. A trend of harvest transfer from
49 commercial fisheries to subsistence fisheries has
50 developed due to the severe restrictions or closure of

1 commercial fisheries in recent years in response to
2 smaller returns of Chinook salmon to the Unalakleet
3 River.

4
5 Under the conservative management plan
6 adopted by the Alaska Board of Fisheries in February
7 2007, the State subsistence fishery has been restricted
8 in-river by reducing the fishery time periods to two
9 36-hour fishing periods per week during the open season
10 in fresh water and two 48-hour fishing periods per week
11 in the marine fishery. When escapement goals still are
12 not projected to be met inseason, subsistence fishing
13 has been further restricted or closed. When lower
14 escapement goals are projected to be met inseason, the
15 State subsistence fishery may be liberalized. The
16 sport fishery has been closed by emergency order in
17 early July to retention of Chinook salmon in 2003,
18 2004, 2006, 2007, and 2008 due to conservation
19 concerns. Management actions taken in State-managed
20 subsistence and sport fisheries to conserve Chinook
21 salmon include federal public lands upriver. Because
22 of migratory timing, these actions are taken prior to
23 any fishing effort occurring in those waters.

24

25 Jurisdiction Issues:

26

27 The majority, if not all, of
28 subsistence and sport Chinook salmon harvest in the
29 Unalakleet River watershed and nearby marine waters
30 occurs within marine and freshwaters not subject to
31 federal regulations. The lands and waters from the
32 mouth of the Unalakleet River to river mile 22 are
33 State, corporation, or other non-federal property. The
34 area addressed in the proposal is within State waters
35 in the lower extent of the Unalakleet Wild and Scenic
36 River area. Detailed maps are needed, showing
37 boundaries and areas where federal regulations are
38 claimed to apply and justification for claiming those
39 boundaries.

40

41 While standing on state and private
42 lands (including state-owned submerged lands), persons
43 must comply with State law and cannot harvest under
44 conflicting federal regulations. If this proposal is
45 adopted, enforcement difficulties and user confusion --
46 concerning where and how federal regulations that are
47 different than State regulations apply -- will result
48 unless detailed maps and explanations specific to the
49 area are provided.

50

1 Recommendation: Oppose.

2

3 Adoption of this proposal will not
4 improve the health of the Unalakleet River Chinook
5 salmon stock and will not improve opportunity for
6 subsistence use. In years of low returns, State
7 closures or restrictions are in place before Chinook
8 reach the waters subject to federal jurisdictional
9 claims. The proposed closure does not meet the
10 requirements of the Federal Subsistence Board's Closure
11 Policy adopted August 2007.

12

13 CHAIRMAN FLEAGLE: Thank you, George.

14

15 InterAgency Staff Committee comments.
16 Polly.

17

18 DR. WHEELER: Thank you, Mr. Chair.

19 And this goes beyond the template that I mentioned
20 earlier, the standard comments.

21

22 The InterAgency Staff Committee found
23 the Staff analysis for Proposal FP09-14 to be a
24 thorough evaluation of the proposal.

25

26 However, rather than adopting the OSM
27 conclusion, some Staff Committee members suggested the
28 Board could adopt the Regional Advisory Council's
29 recommendation for closure based on the same
30 information. The closure would be consistent with
31 ANILCA .815(3) and Section .816(b) since there is
32 clearly a conservation concern as evidenced by State
33 and/or Federal fisheries managers restricting or
34 closing subsistence, sport and/or commercial fishing
35 repeatedly year after year.

36

37 The in-season manager currently has the
38 authority to close Federal public waters during the
39 season and has been so doing through special action
40 authority delegated by the Board and in coordination
41 with the Alaska Department of Fish and Game.
42 Instituting a closure in Federal regulation would
43 alleviate the in-season manager from having to continue
44 issuing special actions each year and also would inform
45 the public that Federal waters are closed to fishing
46 for chinook salmon unless run strength improves enough
47 to warrant opening by special action.

48

49 Sound fishery management principles
50 suggest that when virtually the same in-season action

1 is taken repeatedly year after year a regulatory action
2 may be warranted.

3

4 The Council is sufficiently concerned
5 about the status of the Unalakleet River chinook salmon
6 that it recommends modifying the proposal to restrict
7 subsistence users as well as non-subsistence users.
8 The Council acknowledged that a decision by the Federal
9 Subsistence Board to close Federal waters to both
10 subsistence and non-subsistence fishing may result in
11 conservation of only a small number of chinook salmon
12 because of the limited amount of fishing that occurs in
13 these waters. Nonetheless, because of the continuing
14 depressed nature of the run, any chinook salmon
15 conserved is importance to restore the run to previous
16 sustainable levels.

17

18 The Staff Committee discussed the
19 Council's recommendation to further modify the proposal
20 to allow the Federal in-season manager to relax the
21 closure if run strength warrants. If the Board were to
22 adopt the Council's recommendation the Staff Committee
23 suggested the Board clarify the Council's wording
24 associated with the in-season manager's authority to
25 relax the closure. That new wording could be, and I
26 quote here:

27

28 The in-season manager is authorized to
29 open the closed area to Federally-
30 qualified users or to all users when
31 run strength warrants.

32

33 New information since the Council
34 meeting is that the local Southern North Sound State
35 Fish and Game Advisory Committee supports the Council
36 recommendation.

37

38 And that concludes our comments, Mr.
39 Chair.

40

41 CHAIRMAN FLEAGLE: Thank you. Board
42 discussion. George.

43

44 MR. OVIATT: Without a doubt there's --
45 everybody agrees that there's a shortage issue with
46 salmon on the Unalakleet and we've had some issue, I
47 believe we're talking about is -- is this regulation
48 really necessary and that's one place I want to go.
49 But I wanted to ask a question, if we allow the in-
50 season manager to open or relax the closure of this, is

1 that open until closed again or has anybody put any
2 thought into that because I'm not sure this Board has
3 ever allowed an in-season manager to open a fisheries
4 that has been closed and I'm a little concerned that we
5 would do that by use of an in-season manager rather
6 than going through this Board. So that's one concern I
7 have with this proposal by the RAC. Could someone.....

8

9 CHAIRMAN FLEAGLE: Larry.

10

11 MR. BUKLIS: Mr. Chairman. If the
12 regulation was that the system is closed but there's
13 delegated authority to the manager, then that person's
14 action would be a special action with a 60 day life and
15 when that was over we would revert to the regulation,
16 which is a closure.

17

18 CHAIRMAN FLEAGLE: Pete.

19

20 MR. PROBASCO: Thank you, Mr. Chair.
21 And add to what Mr. Buklis said, is that, the Board has
22 delegated to our fisheries managers in-season authority
23 to close and open already. But your specific question
24 is if the Board adopt a closure have we allowed in-
25 season managers to reopen, without looking at the regs
26 I'm not sure but if you were to look at the big picture
27 we already give them authority to open and close in-
28 season based on run strength.

29

30 CHAIRMAN FLEAGLE: Geoff.

31

32 MR. HASKETT: Just a question, what
33 I've got here is talking about the Federal waters or
34 upstream of most, maybe all the chinook salmon fishing,
35 so is there any kind of -- if that's true is there any
36 kind of study that's been done that identifies what we
37 think that we're actually going to be able to conserve
38 by doing this?

39

40 CHAIRMAN FLEAGLE: Karen.

41

42 MS. HYER: Through the Chair to Mr.
43 Haskett. The problem is there's not good documentation
44 of what is happening up river so the answer to that is
45 no, most of the information I got from was from talking
46 to either locals or agency people that work in that
47 area.

48

49 CHAIRMAN FLEAGLE: I think the point
50 that's pertinent here is that the people that are

1 asking for the closure recognize that the closure would
2 prevent minimal numbers of fish from being caught but
3 every fish conserved is another fish to help increase
4 the spawning grounds so it's probably a very small
5 number. If -- I mean I know we don't have the -- what
6 that number may be but talking pretty small.

7

8

George.

9

10 MR. OVIATT: Thank you, Mr. Chairman.
11 When I look at this from a practical standpoint and I
12 try to do that whenever possible, it appears to me that
13 the State has this fisheries well managed. And most of
14 the fishing occurs in the State waters, not all of it
15 except for an occasional fish that's caught up stream
16 that maybe has been documented or not, I just think
17 this is so well managed by the State and the State and
18 the locals and BLM and -- and Park Service all are
19 working together in this whole area, I just think this
20 group works very well together. And to put
21 regulations, additional Federal regulations in place
22 when I'm -- I'm just not seeing the purpose, I'm not
23 seeing what it's going to buy us. I think it's a -- I
24 think it's not going to improve or take away, in fact,
25 it may take away something -- may -- it could take away
26 some possible subsistence uses.

27

28 So I guess I'm having really an issue
29 here. I really believe that this is a situation that's
30 being well managed. I think the State is doing a very
31 good job. I'm really having trouble wanting to
32 implement some regulations that I just don't think have
33 a real purpose.

34

35 However, I did want to say one thing
36 that BLM is working with the State to field an
37 escapement monitor project in the mainstem of the
38 Unalakleet River. We hope to put that in place this
39 summer. So we will have additional information on the
40 escapement upriver to help out. But I'm really having
41 trouble supporting the RAC's recommendation because I
42 just think it's a regulation that we're going to put on
43 the books that is of no value, it isn't going to
44 improve the situation at all.

45

46 CHAIRMAN FLEAGLE: Thank you. Steve.

47

48 MR. KESSLER: Thank you, Mr. Chairman.
49 I guess I just find it real interesting that the
50 proposal came from the Native Village of Unalakleet and

1 they support this closure and support a closure to both
2 Federally-qualified and non-Federally-qualified users.
3 So they support the closure to subsistence users also,
4 recognizing that they just don't feel like anybody at
5 this point should be fishing up in that upper area.
6 That can occur right now through actions of the
7 managers every season to close, both the State and the
8 Federal in-season managers, but the proponent and the
9 -- the proponents support this as does the Council, so
10 I think we need to give a hard look at what they're
11 saying and that they actually want to impose a closure
12 on subsistence users.

13

14 And as discussed in the Staff Committee
15 comments, it does seem like that that is consistent
16 with Section .815 and .816.

17

18 CHAIRMAN FLEAGLE: Thank you, Steve.
19 I'm along your lines.

20

21 I think when this proposal was first
22 being discussed I questioned also whether the closure
23 would be meaningful or if it would be purely symbolic
24 and would it, therefore, then be necessary. What I
25 think I'm finding is that like Steve suggested, that
26 you have the subsistence users themselves suggesting
27 the closure and by modification through the RAC are
28 suggesting the closure should apply to themselves
29 therefore they're indicating a huge buy-in to the
30 conservation of the species and I think that although
31 the savings in fish may be minimal I agree that when
32 you're down to trying to protect a stock every fish
33 saved is, I don't know, how many more fish you can
34 expect to come back from the one that gets to go spawn
35 but I think that it is more than meaningful, and that
36 you have a buy-in from the local users, and I would
37 support that. But I mean not in its original form,
38 it'd have to be modified per the RAC's amendment to fit
39 the closure to the appropriate timing and to also
40 include the subsistence users in it.

41

42 So that's where I'm at, any other
43 discussion.

44

45 Sue.

46

47 MS. MASICA: I don't need to belabor
48 what's been said previously, Mr. Chairman, but I would
49 agree with you. I think the -- the issues related to
50 healthy populations, there's obviously a problem up

1 there with the number of closures that have been having
2 during the seasons and I'm -- I think the amendments
3 are needed -- the refinements from the Council need to
4 be included in whatever we work on.

5
6 CHAIRMAN FLEAGLE: Are we ready for a
7 motion. George.

8
9 MR. OVIATT: Yes, Mr. Chairman, I'm
10 ready to make a motion. I move to adopt Proposal FP09-
11 14 as recorded in our book.

12
13 CHAIRMAN FLEAGLE: Is there a second.

14
15 MR. CESAR: I'll second that.

16
17 CHAIRMAN FLEAGLE: Got a second. Okay,
18 George, go ahead.

19
20 MR. OVIATT: Mr. Chairman. With the
21 concurrence of that second I'd like to offer an
22 amendment to proposal language identical to that put
23 forth by the Seward Peninsula Regional Advisory Council
24 on Page 251 of the Board book.

25
26 MR. CESAR: And I'll second that.

27
28 CHAIRMAN FLEAGLE: Okay, you do have
29 that amendment and seconded. George, you want to go
30 ahead and speak to that.

31
32 MR. OVIATT: Sure. My understanding is
33 that the RAC's modifications were crafted in
34 cooperation of proponent's original proposal contrary
35 to the recommendation of the Seward Penn RAC.

36
37 I'm presently opposed to this proposal
38 and I'll address my reasons.

39
40 While it's quite clear that the
41 Unalakleet River chinook salmon stock is experiencing
42 poor returns, I don't believe there's substantial
43 evidence of any chinook harvest occurring in the
44 Federal public waters in the upper Unalakleet. A
45 closure, therefore, would have little effect, if any,
46 on restoring or conserving a viable chinook salmon
47 resource. In five of the past six years the State has
48 closed its chinook sport harvest in early July. The
49 State's consistent and timely in-season action
50 essentially duplicates the intent of the effect of this

1 proposal.

2

3 I believe the most prudent approach
4 would be to continue working with the State to focus
5 appropriate conservation efforts on those fisheries and
6 locations where chinook harvest does occur.

7

8 CHAIRMAN FLEAGLE: Appreciate that
9 George. Other discussion on the amendment.

10

11 Polly.

12

13 DR. WHEELER: Mr. Chair, sorry to
14 interrupt. I did want to point you to the language on
15 the bottom of Page 262, the second to the last
16 paragraph that the InterAgency Staff Committee offered,
17 apparently, according to our reg specialist, the last
18 sentence of the Regional Advisory Council modification
19 is a little problematic from a regulatory standpoint so
20 we would ask that you consider the language offered by
21 the InterAgency Staff Committee, like I said the last
22 sentence on the second to the last paragraph on Page
23 262.

24

25 Mr. Chair.

26

27 CHAIRMAN FLEAGLE: Okay, thank you. At
28 this time that is not included in the amendment, the
29 in-season manager's discretion to open but appreciate
30 the clarification if it is to be considered -- oh, it
31 is, okay, my.....

32

33 MS. MASICA: I think we just -- Mr.
34 Chairman, isn't.....

35

36 CHAIRMAN FLEAGLE: I'm corrected.

37

38 MS. MASICA: Mr. Chairman. Isn't it
39 just changing the wording to, rather than may be
40 relaxed by the in-season manager it would be in-season
41 manager is authorized to open the closed area; is that
42 correct, Polly?

43

44 DR. WHEELER: That's.....

45

46 CHAIRMAN FLEAGLE: Yeah, I'm --
47 I'm.....

48

49 DR. WHEELER:correct.

50

1 CHAIRMAN FLEAGLE:sorry, I
2 totally missed your.....
3
4 MS. MASICA: So just substitute the
5 language on that paragraph on Page 262 to what's on
6 Page 251?
7
8 DR. WHEELER: Through the Chair, Member
9 Masica, that's correct.
10
11 CHAIRMAN FLEAGLE: And that's the
12 intent of the amendment, George.
13
14 MR. OVIATT: Could I have a quick stand
15 down, just time for me to consult, all I need is about
16 five minutes?
17
18 CHAIRMAN FLEAGLE: You bet.
19
20 MR. OVIATT: Thank you.
21
22 (Off record)
23
24 (On record)
25
26 CHAIRMAN FLEAGLE: Okay, we're back on
27 record. Pete, statement.
28
29 MR. PROBASCO: Yes, Mr. Chair. I just
30 wanted to just go back in time a little bit for the
31 Board and to remind them that we try to avoid writing
32 actual regulatory language here. What we want on the
33 record is the clear intent and then we leave it up to
34 our legalize, solicitors and our regulatory specialists
35 to capture the language. If we try to write the
36 regulatory language like we'd see it in the book we're
37 going to add days to this meeting so I would say let's
38 clearly get our intent and then take it from there.
39
40 CHAIRMAN FLEAGLE: All right. And with
41 that I understand that the maker of the amendment to
42 the maker of the motion wants to make a further
43 amendment. Actually I'd prefer that we don't go a
44 double step on the amendment, maybe we can vote on the
45 amendment that's before us now and then further amend,
46 if that's where you want to go, George, or withdraw.
47
48 MR. OVIATT: I guess.....
49
50 CHAIRMAN FLEAGLE: I just.....

1 MR. OVIATT:I guess if we.....
2
3 CHAIRMAN FLEAGLE:it's just.....
4
5 MR. OVIATT:vote for the
6 amendment and it passes then I would make an amendment
7 to that.
8
9 CHAIRMAN FLEAGLE: Or we can -- well, I
10 see where your point is, you're potentially amended
11 language into the final action then that you'd want and
12 then going to make some kind of a motion to reamend it
13 out, it would probably be best to just withdraw the
14 first amendment and then just start afresh.
15
16 MR. OVIATT: Okay, Mr. Chairman, I'd
17 like to withdraw my first amendment.
18
19 MR. CESAR: I'll withdraw my second.
20
21 CHAIRMAN FLEAGLE: With concurrence
22 that action has been taken. We now have the original
23 motion before us ripe for a new amendment.
24
25 MR. OVIATT: Mr. Chairman. I'd like to
26 make a new amendment -- or make an amendment to the
27 motion according to -- that follows the language of the
28 Resource Advisory Council [sic], and I don't remember
29 what page it's on, with the exception, I would like to
30 take out the in-season manager and replace that with
31 the Bureau of Land Management's -- or field office
32 manager as having that authority.
33
34 We are the ones that are on the ground,
35 it's a wild and scenic river and I would -- and we're
36 working very closely with the communities and the
37 State. And so if we could replace that with the field
38 -- BLM's field manager then we would be able to support
39 this.
40
41 Thank you, Mr. Chairman.
42
43 CHAIRMAN FLEAGLE: All right. So just
44 for clarity, the amendment would be the language
45 provided on Page 252, which is the Regional Advisory
46 Council recommendation but you would substitute the
47 word in-season with BLM field manager -- yeah, BLM
48 field?
49
50 MR. OVIATT: That's correct, Mr.

1 Chairman.

2

3 CHAIRMAN FLEAGLE: All right. And it
4 is on the TV screen, thanks. Is there a second.

5

6 MR. CESAR: I'll second.

7

8 CHAIRMAN FLEAGLE: We do have the
9 amendment before the Board, further discussion.

10

11 Niles.

12

13 MR. CESAR: Mr. Chairman. I'm opposed
14 to giving BLM any more authority than they already
15 predispose but I will support this motion.

16

17 (Laughter)

18

19 CHAIRMAN FLEAGLE: Are we ready for the
20 question on the amendment.

21

22 MR. KESSLER: Question.

23

24 CHAIRMAN FLEAGLE: Question's called on
25 the amendment, Pete, please.

26

27 MR. PROBASCO: Amendment to FP09-14,
28 Federal public waters, the Unalakleet River upstream
29 from the mouth of the Chirokey River are closed to the
30 taking of chinook salmon from July 1 to July 31st by
31 all users. The BLM field manager is authorized to open
32 the closed area to Federally-qualified users or to all
33 users when run strength warrants.

34

35 Mr. Fleagle.

36

37 CHAIRMAN FLEAGLE: Yes.

38

39 MR. PROBASCO: Ms. Masica.

40

41 MS. MASICA: Yes.

42

43 MR. PROBASCO: Mr. Oviatt.

44

45 MR. OVIATT: Yes.

46

47 MR. PROBASCO: Mr. Kessler.

48

49 MR. KESSLER: Yes.

50

1 MR. PROBASCO: Mr. Cesar.
2
3 MR. CESAR: Yes.
4
5 MR. PROBASCO: And Mr. Haskett.
6
7 MR. HASKETT: Yes.
8
9 MR. PROBASCO: Mr. Chair. Amendment
10 carries, six/zero.
11
12 CHAIRMAN FLEAGLE: Thank you. You now
13 have before you the main motion as amended. Further
14 discussion.
15
16 (No comments)
17
18 MR. CESAR: Question on the main
19 motion.
20
21 CHAIRMAN FLEAGLE: The question is
22 called on the main motion. I think that we've had
23 adequate discussion as to the merits of the motion and
24 the amendment and don't feel that we need any
25 additional record and I will recognize the call for the
26 question, and, Pete, will you please poll the Board.
27
28 MR. PROBASCO: Thank you, Mr. Chair.
29 Final action FP09-14 as amended. Ms. Masica.
30
31 MS. MASICA: Yes.
32
33 MR. PROBASCO: Mr. Oviatt.
34
35 MR. OVIATT: Yes.
36
37 MR. PROBASCO: Mr. Kessler.
38
39 MR. KESSLER: Yes.
40
41 MR. PROBASCO: Mr. Cesar.
42
43 MR. CESAR: Yes.
44
45 MR. PROBASCO: Mr. Haskett.
46
47 MR. HASKETT: Yes.
48
49 MR. PROBASCO: And Mr. Fleagle.
50

1 CHAIRMAN FLEAGLE: Yes.
2
3 MR. PROBASCO: Motion carries, as
4 amended, six/zero.
5
6 CHAIRMAN FLEAGLE: Thank you, Pete. We
7 need to take up the consensus agenda and at this time
8 we have heard no testimony at both starting processes
9 both days for Proposals 08 and 06. We need a motion to
10 adopt the consensus agenda, right, Pete?
11
12 MR. PROBASCO: Correct.
13
14 CHAIRMAN FLEAGLE: Is there a motion.
15
16 MR. CESAR: I so move.
17
18 MR. OVIATT: Second.
19
20 CHAIRMAN FLEAGLE: Moved by Niles,
21 seconded by George. Discussion.
22
23 (No comments)
24
25 MR. KESSLER: Question.
26
27 CHAIRMAN FLEAGLE: It appears that the
28 rationale provided by all agencies are in agreement on
29 those two proposals are adequate for the action and
30 with that I'm going to recognize the question. Pete,
31 on the consensus agenda, please poll the Board.
32
33 MR. PROBASCO: Final action on the
34 consensus agenda, FP09-08 and 06. Mr. Oviatt.
35
36 MR. OVIATT: Yes.
37
38 MR. PROBASCO: Mr. Kessler.
39
40 MR. KESSLER: Yes.
41
42 MR. PROBASCO: Mr. Cesar.
43
44 MR. CESAR: Yes.
45
46 MR. PROBASCO: Mr. Haskett.
47
48 MR. HASKETT: Yes.
49
50 MR. PROBASCO: Mr. Fleagle.

1 CHAIRMAN FLEAGLE: Yes.
2
3 MR. PROBASCO: And Ms. Masica.
4
5 MS. MASICA: Yes.
6
7 MR. PROBASCO: Motion carries six/zero.
8
9 CHAIRMAN FLEAGLE: Great, thank you.
10 That concludes the regulatory portion of the meeting.
11 And we do have a Council Chair that has a time
12 constraint even tonight and has made a request that we
13 forego the viewing of the DVD until the Council Chair
14 discussion and -- I mean, not the Council Chair, but
15 the Yukon proposal discussion and with concurrence from
16 the Board I'm going to allow that.
17
18 No objection.
19
20 (No comments)
21
22 CHAIRMAN FLEAGLE: All right. Thank
23 you. I want to thank Staff and public and everybody
24 that was present for the regulatory proposals that were
25 before us.
26
27 Now, we're moving forward with the
28 discussion on deferral of the Yukon River fisheries
29 regulatory proposals and for a lead in I'd like to turn
30 to Pete -- Pete.
31
32 MR. PROBASCO: Thank you, Mr. Chair.
33 Just a real brief reminder, in July 2008 the Board made
34 the decision to defer consideration of two regulatory
35 proposals seeking changes to the mesh size and the
36 depth of gillnets used for subsistence fishing for
37 chinook salmon on the Yukon River. These proposals
38 have been numbered FP09-12 and 13 and they were put on
39 a deferred track leading to their future consideration
40 by the Board in a special meeting that we called in
41 spring of 2009.
42
43 The State of Alaska has then sent a
44 letter to the Board requesting further deferral of the
45 Yukon regulatory proposals 12 and 13 to a point in time
46 after the Alaska Board of Fisheries meeting in January
47 of 2010. The Board agreed to discuss the State's
48 request following the regulatory agenda portion of this
49 meeting, this discussion will lead to a decision by the
50 Board as to whether consideration of these proposals

1 will be further deferred until after the Alaska Board
2 of Fisheries meeting in January 2010 or to proceed
3 ahead as scheduled, which would be to take up these
4 proposals at the special meeting in April.

5
6 This discussion is to focus only on
7 process, not the content of the analysis that Staff are
8 working on, and we're ready to go forward if there are
9 any questions.

10
11 CHAIRMAN FLEAGLE: Questions.

12
13 (No comments)

14
15 CHAIRMAN FLEAGLE: All right, this is a
16 request from the State, Commissioner Lloyd, are you
17 prepared to have some opening statements.

18
19 COMMISSIONER LLOYD: Thank you, Mr.
20 Chairman. I hope you've all had a chance to read our
21 letter of October 27th but we have laid out some
22 detailed comments in that letter for why we believe
23 your consideration of these proposals ought to be
24 deferred and deferred until after the Alaska Board of
25 Fisheries can act on information and some similar
26 requests.

27
28 There are three major points, however,
29 I won't go through the entire letter but there are
30 three major points that we believe you ought to take
31 into consideration.

32
33 First of all we think that taking the
34 proposals up now, in fact, this season, would be
35 counter-productive. Fish and Game and Fish and
36 Wildlife Service are working with Yukon River fishers
37 on pre-season management strategies to voluntarily
38 reduce the subsistence harvest of chinook in 2009
39 because of a projected poor run. Low run size in 2008
40 emphasized the point that controlling the harvest is
41 the most important management objective which these
42 proposals really don't address. And we believe that
43 jeopardize an agreement to reduce harvest will be,
44 indeed, counter productive.

45
46 Secondly, allowing -- we believe that
47 it would be good to allow more time for all of us and
48 our respective Staffs and the public to review the
49 Bromaghin report that's recently come out and also the
50 upcoming results of the Fish and Game mesh size study.

1 This would allow more time to review potential effects
2 as I suggested, for the Bromaghin report and the mesh
3 size data. And also would respond to some initial
4 indications, the data from net selectivity studies,
5 Pilot Station Sonar indicate that, for example, a seven
6 and a half inch mesh gillnet are more effective at
7 harvesting chinook salmon than six and a half and eight
8 and a half mesh sizes. And so until we get good study
9 results I don't think the Federal Subsistence Board
10 would like to make an interim decision that, in effect,
11 exacerbates the potential problem.

12

13 The third main point we'd like you to
14 consider is that taking the proposals out of, kind of,
15 the context of a larger review process and the State
16 regulatory consideration would be divisive and would
17 complicate management.

18

19 And, so, Mr. Chairman, I guess I'll cut
20 my remarks to those three points and ask you to very
21 seriously consider deferring consideration until the
22 State process can be fully developed, full deliberation
23 of a large suite of information that won't be ready
24 until next year and the Board of Fisheries can consider
25 the impact of these proposals, drainage and basinwide.

26

27 Thank you.

28

29 CHAIRMAN FLEAGLE: All right, thank
30 you. Appreciate that lead in.

31

32 We are going to hear public testimony
33 on this issue and like Pete suggested, we don't want
34 the testimony to be pertinent to the biological data or
35 reasons for the -- that the proposals address, but the
36 process that we're proposing, or that is being
37 proposed, is what we're looking for input on from
38 public and from Council Chairs, if you want to jump in.

39

40 At this time I want to open it up to
41 public comments. Pete, do we have anybody that wants
42 to testify, no, okay.

43

44 (Laughter)

45

46 CHAIRMAN FLEAGLE: Oh.

47

48 MR. PROBASCO: We got a few here, Mr.
49 Chair. And Polly just reminded me that Commissioner
50 Lloyd, your letter is in the Board's packet so they can

1 reference that.

2

3 CHAIRMAN FLEAGLE: Thank you.

4

5 MR. PROBASCO: So first up in batting
6 order, is Mr. Ragnar Alstrom.

7

8 CHAIRMAN FLEAGLE: Good afternoon,
9 welcome.

10

11 MR. ALSTROM: Good afternoon, Mr.
12 Chairman. Thank you. My name is Ragnar Alstrom. I'm
13 the executive director of Yukon Delta Fisheries
14 Development Association. A community development quota
15 group consisting of six villages on the lower Yukon
16 River. I'm from the village of Alakanuk on the south
17 mouth of the Yukon River.

18

19 YDFDA supports the letter from ADF&G in
20 their request to defer action on Proposals 09-12 and
21 09-13 until after January of 2010. And to the issue of
22 why we support that is in recent years the fishery has
23 been subsistence driven and in the early -- the pre-
24 season analysis of what's going to happen next year in
25 the summer, 2009, the prediction is there may have to
26 be -- ADF&G may have to take action to reduce
27 subsistence harvest, our -- or at least the subsistence
28 opportunity to try to conserve chinook salmon going up
29 the river and at this point it doesn't look like there
30 will be a directed commercial fishery on chinook
31 salmon.

32

33 And to take up a discussion in April
34 about possible mesh size restrictions, mesh size and
35 depth restrictions I think would, you know, cause a lot
36 of disruption and consternation among those subsistence
37 users about what's going to happen this summer. And
38 whether mesh size and depth restrictions are useful, I
39 think there needs to be buy-in by the public, and one
40 of the ways the public buys-in, and someone referenced
41 here earlier the Bromaghin study, which is -- I don't
42 know if it's a good study or a bad study, but it's a
43 modeling study and what the public needs to see, you
44 know, is what actually happens out there and ADF&G
45 currently has a mesh size study ongoing and that's, you
46 know, due to be completed this summer. And I think for
47 the public to buy-in they need to see that and see the
48 results from the study.

49

50 But my major concern is for what's

1 predicted this coming summer, to take up issues in
2 April concerning mesh size restrictions is very
3 disruptive to the commercial -- I'm sorry, I mean to
4 the subsistence fishermen on the lower river there.

5
6 Thank you.

7
8 CHAIRMAN FLEAGLE: Thank you, Ragnar,
9 we appreciate your comments.

10
11 Pete.

12
13 MR. PROBASCO: Thank you, Mr. Chair.
14 And I apologize on my pronunciation of this last name,
15 Jack Schultheis. And following Jack will be Francis
16 Thompson.

17
18 MR. SCHULTHEIS: Mr. Chairman. Board
19 members. With all due respect, staying within the
20 parameters of what you requested concerning the process
21 here, I'd like you to consider that to bring this --
22 these proposals up again after, you know, we -- this
23 was addressed last year, now they're being brought up
24 again, you know, during a very difficult time for the
25 people who actually live on the river and participate
26 in the subsistence fishery, I think, you know, I'm
27 asking you all to understand the economic hardship that
28 the people have already in place out there, the cost of
29 fuel, you know, the cost of just living there and, you
30 know, with what's already been put out by the
31 Department on what they're going to do restrict
32 subsistence fishing, I think to throw this into the mix
33 would only further hurt the people out there, both, you
34 know, economically and socially.

35
36 I mean as it stands now with what they
37 go through I just thinking bringing something like this
38 out at this point in time would be awfully wrong for
39 the Board to look at it right now. You know, the
40 people there, they don't have money to come in and
41 testify. It cost \$1,000 just to travel in here and,
42 you know, so I think this is something that should be
43 deferred. There's studies going on now that I think
44 are going to shed some real scientific data to this. I
45 think it's pushing it way too quickly for what's
46 happening with the fishery. It's, you know, as stated
47 before, it's a subsistence driven fishery. And, you
48 know, I always understood your job as a Subsistence
49 Board is to protect the people's rights to be
50 subsistence fishermen and pro -- you know, I think this

1 would just put more hardships on the people already as
2 it stands. And to me they have enough hardships out
3 there and why bring this upon them at this in point
4 with as difficult as it is there.

5
6 So, you know, with all due respect I
7 think this should be deferred, and I think in time this
8 -- you know, once these studies are completed, I think
9 both the Board of Fish and the Fish and Wildlife
10 Service who, to me, have been cooperating, you know,
11 for years on this issue will come to a conclusion on
12 what to do with this. So, again, one more time, I hope
13 you will defer these until after 2010.

14
15 Thank you.

16
17 CHAIRMAN FLEAGLE: Appreciate your
18 comments, Jack, thank you.

19
20 Pete.

21
22 MR. PROBASCO: Next is Francis Thompson
23 and following Francis will be Timothy Andrew.

24
25 CHAIRMAN FLEAGLE: Francis.

26
27 MR. THOMPSON: Thank you, Mr. Chairman.
28 Members of the Board.

29
30 First of all I'd like to wish the
31 Russian Orthodox Faithful a Happy New Year, today is
32 January 14th, it's their new year, so Happy New Year.

33
34 My testimony is on supporting the
35 deferral of FP09-12 ad FP09-13, I also included two
36 other topics in there because they have a direct and
37 indirect impact for why we have low salmon escapements
38 to salmon streams in Alaska and lower returns to meet
39 community obligations.

40
41 My name is Francis Thompson, I am a
42 subsistence and commercial fishermen from St. Mary's
43 which is located on the lower Yukon River. I'm a panel
44 member of the US/Canada -- US-Yukon River Panel since
45 2001 to present and was an advisory member from 1996 to
46 2000.

47
48 I would like to support the
49 recommendation to defer the mesh size mesh depth
50 proposals that are brought before you every year by the

1 Eastern Interior RAC. I would like to recommend the
2 Federal Subsistence Board defer these two proposals
3 until after January 2010 when the State Board of
4 Fisheries receives a report from the Yukon River
5 Fisheries Drainage Association [sic] and the Alaska
6 Department of Fish and Game.

7
8 Customary trade for cash. I had
9 testified in opposition for allowing for the cash sale
10 of subsistence caught Yukon chinook salmon. When the
11 Federal Subsistence Board adopted this new policy in
12 2003 because it would make it hard for both the State
13 and Federal fisheries managers to manage and rebuild
14 the chinook runs. This has been abused and is in
15 danger of depleting this precious salmon resource and
16 further placing restrictions on the need for
17 subsistence harvest for those that depend on salmon for
18 food on the table. It has not been managed and
19 regulated. This was an unfunded mandate and was not
20 studied to see if it would harm the chinook salmon
21 runs.

22
23 I am at this time recommending the
24 Federal Subsistence Board to review the decision made
25 in 2003 to allow for the cash sale of Yukon River
26 chinook salmon under customary trade.

27
28 High seas salmon bycatch by the pollock
29 fishery. The bycatch of salmon by the pollock industry
30 is of great concern and the Federal Subsistence Board
31 needs to address this matter in support of the
32 subsistence users in the AYK region, please help us.
33 We are recommending an annual cap of 29,700 for chinook
34 salmon bycatch.

35
36 Thank you.

37
38 CHAIRMAN FLEAGLE: Thank you for the
39 comments, Francis.

40
41 Pete.

42
43 MR. PROBASCO: Next we have Timothy
44 Andrew, and following Timothy will be Billy Charles.

45
46 MR. PROBASCO: Timothy Andrew.

47
48 MR. ANDREW: Thank you, Mr. Chairman.
49 Members of the Board.

50

1 I like her smiley tab up here on the
2 microphone.

3
4 My name is Timothy Andrew, I'm the
5 director of natural resources for the Association of
6 Village Council Presidents based out of Bethel. We
7 have a total of 17 Yukon River communities that we
8 represent of the 56 villages that we provide services
9 for.

10
11 And in much of the 17 villages within
12 the lower Yukon, many families there depend on both the
13 subsistence and the commercial fisheries to sustain
14 themselves and without the fishery it would be a very
15 hard situation for people to live out in our small
16 communities there. We are currently, actively pursuing
17 an economic fishery disaster for our lower Yukon
18 village due to the absence of the commercial fishery
19 during this past year and what's projected in 2009.

20
21 The Eastern Interior has bombarded us
22 with these proposals to severely restrict our fisheries
23 for the last several years. And in many of our
24 situations out in our area we believe that we are
25 contributing to the escapement of fish into the
26 spawning grounds we're restricted down to 36 hour
27 openings for the subsistence fishery and sometimes
28 we're restricted down to two 18 hour openings.

29
30 And we are -- AVCP totally supports the State's
31 position to defer these proposals until after 2010.

32
33 Thank you, Mr. Chair.

34
35 CHAIRMAN FLEAGLE: All right, thank
36 you, Timothy, appreciate the comments.

37
38 Pete.

39
40 MR. PROBASCO: Thank you, Mr. Chair.
41 Billy Charles, and after Billy is Judy Caminer.

42
43 CHAIRMAN FLEAGLE: Welcome, Billy.

44
45 MR. CHARLES: Good afternoon, Mr.
46 Chairman. Members of the Board. I'm Billy Charles.
47 I'm from Emmonak. I'm a long-time, lifetime commercial
48 -- I mean subsistence user. And I'm here before you in
49 favor of deferring the Yukon River fishery proposals.

50

1 I think you've heard, you know, there
2 are some studies out there and the results of those
3 tests might -- I mean -- excuse me -- the tests out
4 there and the results of those tests may be forthcoming
5 and I think we need to wait.

6
7 Mr. Chairman. Just recen -- we've been
8 bombarded with regulations and I think this might be a
9 break for us. In the Yukon Delta, like Timmy says,
10 we're looking for assistance because of the economic
11 crises out there. Compounded by the early freeze-up
12 this year, we've had, I think our fuel prices are going
13 to go up to about \$11 and I think this would be a
14 break. If you imposed -- if we imposed restrictions
15 for commercial fishermen, that's going to create even
16 more hardship, but, I think, you know, if you defer
17 this it'll give us a little bit of break here and I
18 think -- I just wanted to let you know or share with
19 you the reasons we think that we should defer it and
20 it's mostly the economic crises that we have out there.

21
22 Thank you, Mr. Chairman.

23
24 CHAIRMAN FLEAGLE: Thank you, Billy,
25 appreciate your comments. Pete.

26
27 MR. PROBASCO: Next, Mr. Chair, is Judy
28 Caminer, and our last, following Judy, will be Mike
29 Smith.

30
31 CHAIRMAN FLEAGLE: Welcome, Judy.

32
33 MS. CAMINER: Thanks, Mr. Chairman, RAC
34 Chairs, State of Alaska, Staff Committee, Staff and
35 public. For the record my name is Judy Caminer,
36 formerly known as Judy Gottlieb, Federal Subsistence
37 Board member.

38
39 After retiring from the National Park
40 Service last year I decided to go back to my family
41 name, so either way, I'm still Judy and appreciate the
42 opportunity to be here today.

43
44 I urge you to discuss the proposals in
45 April as scheduled. There's no harm in doing so and
46 the seriousness of this conservation issue warrant it.
47 An April meeting is preferable to today's discussion
48 where you might effectively be deferring the proposals
49 for two years without hearing the merits of the
50 proposals themselves.

1 Since, I believe it was 2003, and I
2 take responsibility for those years I was a voting
3 member, the Board rejected or deferred similar or
4 nearly identical proposals. We wanted the Regional
5 Councils to work more together, we responded to the
6 State's earlier requests for additional cooperation and
7 deferral, we wanted the Board of Fisheries to act, we
8 wanted the Yukon River Drainage Fisheries Association
9 to gather stakeholders, we wanted the Federal Program
10 as well as the State Program to do more studies and for
11 the North Pacific Management Council to do their part.
12 Each year there seemed to be a valid reason for delay
13 but in hindsight the cumulative effects of those
14 decisions have not improved the run strength, the age
15 structure, the size distribution of the fish
16 population. In short the Board has already
17 accommodated requests for delays so others could take
18 action. While some actions like the fishing windows,
19 the closures, the changing the mesh size have taken
20 place, the health of the chinook salmon in the Yukon
21 River continues to be of concern. I believe 2009 is
22 the time for the Federal Subsistence Board to act,
23 otherwise you're not scheduled to meet again on
24 fisheries proposals until 2011.

25
26 In addition, I believe riverwise we are
27 facing a conservation issue. There no longer should be
28 any debate about that.

29
30 The proposals address the issue so I
31 urge you to hear them in April of this year.

32
33 The Federal Subsistence Board has the
34 responsibility and the jurisdiction. I felt there was
35 some misunderstanding about that last year. You must
36 fulfill your mandates today and throughout the year.

37
38 Several years ago the Board recognized
39 the seriousness of the Yukon River situation. We took
40 a field trip to the upper river to see fishing sites
41 first-hand and to speak to affected users. Many of the
42 trip participants are here today and still involved
43 with the Federal Program. I hope in recalling what we
44 learned on that trip and in consideration of the
45 lengthy period of time proposals have been before this
46 Board to address what is now clearly understood to be a
47 legitimate conservation issue you would vote to hear
48 the proposals in April.

49
50 If today's discussion turns into one of

1 who should act first, Board of Fisheries or Federal
2 Subsistence Board I remind you the proposals do have a
3 phase-in proposals, so if you were to adopt them in
4 April, you would have an opportunity to change them if
5 the Board of Fisheries takes an action you believe is
6 different than yours.

7
8 In conclusion, the Federal Subsistence
9 Board may have a small part in the management scheme,
10 but that does not relieve you of your ANILCA
11 responsibilities and mandates for the conservation of
12 healthy populations in Federal public waters.

13
14 A decision to defer these proposals
15 until after the Board of Fisheries meets in another
16 year will send a wrong message to the subsistence who
17 rely on you to act in the interest of healthy resources
18 and the subsistence priority, and a message to the
19 Board of a Fisheries that the conservation concern is
20 not sufficiently serious for the Board to act now. The
21 concern is serious and the Federal Subsistence Board
22 should not defer your responsibilities.

23
24 Thank you.

25
26 CHAIRMAN FLEAGLE: Thank you, Judy,
27 appreciate hearing from you.

28
29 Pete.

30
31 MR. PROBASCO: Okay, we did get one
32 more after Mike Smith, Mike, you're next, and after
33 Mike is Jill Klein.

34
35 CHAIRMAN FLEAGLE: Mike Smith.

36
37 MR. SMITH: Thank you, Mr. Chairman.
38 My name is Mike Smith and I'm the director of
39 subsistence resources for Tanana Chiefs Conference.

40
41 We represent 42 tribes in the Interior
42 portion of Alaska, and as Judy indicated we've been
43 coming before you for many years discussing the
44 conservation concerns we've seen on the Yukon River.

45
46 The issue of deference of this
47 particular proposal, I think, centers upon a question
48 as to whether or not there is a conservation concern on
49 the Yukon River. I think -- I was pleased to see all
50 the down river guys come up and express their concerns

1 about the hardships we've been having on subsistence
2 fishing and fishing on the Yukon River because that
3 exemplifies exactly what we're talking about, there is
4 a conservation concern on the Yukon River. We've been
5 forced to endure the issue of windows for the last, who
6 knows how many years, the issue of last year alone, we
7 were asked to voluntarily redu -- or we were forced to
8 reduce our subsistence time in half. Our Canadian
9 counterparts were even more adversely affected as a
10 result of the poor run next year.

11

12 The question I guess is whether or not
13 there's going to be enough fish next year.

14

15 It's' been mentioned to us and it's
16 been mentioned in YRDFA teleconferences and on the
17 Board that we need approximately 170,000 fish to make
18 our escapement goal needs on the Yukon River as well as
19 our subsistence needs. We had less than 140,000 last
20 year, and they're projecting a run similar next year.
21 I think that exemplifies a conservation concern that is
22 affecting Yukon River king salmon. And then to sit
23 back and ask the subsistence users to voluntarily
24 reduce their subsistence time to come in and then
25 request and solicit regul -- you will be asked to limit
26 customary trade, subsistence users will be asked not to
27 give fish to their family members and extended families
28 and elders and stuff and to keep those fish to
29 themselves next year while at the same time the Board
30 of Fish and the Federal Subsistence Board are doing
31 nothing as far as the subsistence users can see. So
32 the issue of deference is just a matter of time.

33

34 You can either do it next or -- my
35 thought was April might be a good time because at April
36 at least we'll have an indication as to what the
37 projection for the run next year will be and if it is
38 as low as they are anticipating then there is a huge
39 conservation concern.

40

41 And, of course, big nets take big fish.

42

43 I think the study that was originally
44 this was deferred for, the Bromaghin study is pretty
45 definitive and pretty much clarifying what every other
46 net selectivity study on the books shows, that there is
47 an effect, that it does have detrimental effects upon
48 the integrity of that run. It's not rocket science,
49 it's nothing new, it's been proven over and over again
50 in various fisheries around the world. Why we cannot

1 accept that assumption on the Yukon River is beyond me.

2

3 But having said that, Mr. Chairman, I
4 think that the deferral, the problem that we see for
5 that is we wait for a year for the Board of Fish to
6 act, we're not sure what the Board of Fish is going to
7 do, we have asked them as little as six months ago to
8 list the Yukon River king salmon as a stock of
9 management concern and we were declined and so
10 apparently it's not a management concern to the Board
11 of Fish at this time.

12

13 Then you guys will have to wait for a
14 year for your cycle to come around like Judy indicated.

15

16 But everyone of those net selectivity
17 proposals has a three year phase-in period in it so in
18 effect what you're going to be doing is waiting for
19 five years before there's any definitive action done on
20 net selectivity on the Yukon River king salmon and we
21 just think that that's too long of a time and that the
22 integrity of the run cannot sustain that.

23

24 So, Mr. Chairman, we urge you to take
25 some positive actions in your responsibilities to
26 protect conservation of Yukon River king salmon and
27 just do it. It's too late, we can't wait any longer.
28 It's just amazing, you know, we talk about the economic
29 crises and stuff like that and, sure, there is, but why
30 is that, because there's no fish and, you know, we have
31 control over one thing and that is how many fish we
32 take and how we take them. Now, there's a lot of other
33 environmental considerations out there, I understand
34 that, that have impacts on salmon, but what do we have
35 control over, we have control over how many fish we
36 take and what we use to take those fish with. And to
37 be blunt, I think we're blowing it.

38

39 So, Mr. Chairman, with that, I thank
40 you for your time and urge you to support and consider
41 those proposals in April.

42

43 CHAIRMAN FLEAGLE: Thank you, Mike, for
44 your eloquent statements, appreciate the comments.

45

46 Pete.

47

48 MR. SMITH: I just remembered, I'm
49 sorry about this. But we talked about the studies and
50 stuff and it's my understanding that those studies

1 won't be done, the studies that were commented on
2 earlier as far as the net selectivity, it's my
3 understanding that that wasn't done this year because
4 of the low number of fish and if we're projecting the
5 same run next year it's probably not going to be done
6 next year. So the net selectivity study that's being
7 done at Pilot Station, I'm betting will not be
8 completed by the Board of Fish meeting.

9

10 Thank you, Mr. Chairman.

11

12 CHAIRMAN FLEAGLE: Thank you, Mike.

13 Pete.

14

15 MR. PROBASCO: The last person that I
16 have is Jill Klein.

17

18 CHAIRMAN FLEAGLE: Welcome, Jill.

19

20 MS. KLEIN: Good afternoon. My name is
21 Jill Klein. I'm the executive director for the Yukon
22 River Drainage Fisheries Association also known as
23 YRDFA.

24

25 We work riverwide with both -- with all
26 lower river, middle river and upper river fishermen and
27 for better or worse we didn't take action on if we
28 should defer these proposals, so I'm not going to
29 address this at this time, but just want to mention
30 that the proposals are very important to our board,
31 they're very important to people along the river.

32

33 And I wanted to mainly inform you about
34 a process that YRDFA will be embarking on next week
35 through the support of the Yukon River Panel and that
36 is to begin an outreach process through a few
37 teleconferences. We'll be holding them in the lower
38 river, middle river and up river, there'll be two
39 teleconferences in each region and then we'll do an in-
40 person meeting and try to bring people together to
41 inform them and hear what people have to say about the
42 potential poor return to the river next year and try to
43 get people involved in the process of how to address
44 the issue of conservation.

45

46 And I think adding these proposals into
47 the mix in April could potentially -- it will add a
48 layer of complexity to the process that we're already
49 embarking on. There's a lot of meetings, a lot of
50 people coming together already trying to address this

1 issue and I think the proposals do deserve the review
2 by the Staff to the Federal Subsistence Board and to
3 the members, yourselves, I think you all bring a lot of
4 insight into the topic and the public should hear that
5 and be a part of that process as well but I think that
6 we'd like to, I guess, see what -- see the public go
7 through the process as well and not just the Federal
8 Subsistence Board and so I just wanted to let you know
9 about that.

10

11 CHAIRMAN FLEAGLE: Okay, great, thank
12 you.

13

14 MS. KLEIN: Thank you.

15

16 CHAIRMAN FLEAGLE: Appreciate your
17 comments.

18

19 MR. PROBASCO: That's it for public
20 testimony, Mr. Chair. And now you have the Chairs.

21

22 CHAIRMAN FLEAGLE: All right, thank
23 you. There's been some question raised in testimony
24 and I think that people here at the table may also
25 have, as to the continuation of the studies, and I know
26 that last year there was a report that the primary
27 study had a problem because of the low fish run and the
28 person that's primarily responsible for the studies is
29 here and I'd like to just see if she'd give us an
30 update on the State's studies down there in Emmonak.

31

32 MS. EVENSON: Thank you, Mr. Chair. My
33 name is Dani Evenson. And I'm the AKY regional
34 research biologist for Fish and Game. And I'm also the
35 principal investigator for the mesh size study that was
36 mentioned.

37

38 And we did pull that project last year
39 in response to the poor runs. We were unsure in-season
40 what was happening and we had to make a snap decision,
41 and in retrospect, I think it was the correct decision,
42 but this year we have made the determination that it is
43 an important study. It's very important to the region,
44 there's a lot of public support for it and we are going
45 to go ahead and continue that study.

46

47 And through gracious study from the
48 Yukon Delta Fisheries Development Association, they
49 have offered to help bolster our sampling effort so we
50 can ensure that we have an adequate sample size to make

1 some conclusions.

2

3 Thank you.

4

5 CHAIRMAN FLEAGLE: So the pulling of
6 the study last year, did that -- did you -- does that
7 mean that that year is out or did you catch enough fish
8 to at least have a partial sample or how does that fit
9 in?

10

11 MS. EVENSON: Well, what we're going to
12 do is we're going to pool all our samples from all the
13 years together and then stratify them by mesh size and
14 we'll do our statistics off of that and make
15 conclusions.

16

17 CHAIRMAN FLEAGLE: So the samples you
18 did take last summer are going to be included, yeah,
19 okay, thanks.

20

21 MS. EVENSON: Correct.

22

23 CHAIRMAN FLEAGLE: Questions, Board
24 members.

25

26 (No comments)

27

28 CHAIRMAN FLEAGLE: All right, thank
29 you, appreciate that.

30

31 I'd like to hear from the Eastern
32 Interior Council, as the proponent on these proposals,
33 we'll just start with you and maybe give an opportunity
34 for other Council reps to weigh in.

35

36 Sue.

37

38 MS. ENTSMINGER: This is a difficult,
39 difficult, difficult one. The Eastern Interior RAC
40 really never took up what's at hand here, to defer or
41 not to defer, so it's hard for me, you know, to give
42 you a big full report on just that. So all I can do is
43 speculate. And if that's what you want me to do I can
44 -- I'm a little bit confused on how I can report to you
45 here.

46

47 CHAIRMAN FLEAGLE: Yeah, that's a good
48 point. Speculate.

49

50 (Laughter)

1 MS. ENTSMINGER: I could probably
2 speculate.

3
4 (Laughter)

5
6 MS. ENTSMINGER: As you know we have
7 some very strong personalities on the Council and the
8 feeling of the three-three vote brought forth, you
9 know, a lot of push to put these proposals back and
10 maybe they would pass this next time and that's why
11 they got out.

12
13 And it's real hard, something you need
14 to remember. If you look at unit -- our GMUs in the
15 Eastern Interior, you have the road system and you have
16 the river system, I'm part of the road system so I
17 don't have first-hand knowledge of the river system. I
18 have the knowledge of the people that come before us
19 and I have to rely on that and I hear, I hear the cry
20 that there's a conservation issue. So, you know, and
21 sometimes the stronger personalities might not bring
22 those out in a manner that people feel comfortable
23 listening to, but as far as the Eastern Interior, they
24 see the conservation issue.

25
26 And, actually, I'd like to maybe get a
27 little help here if I could. A former Chair of the
28 Eastern Interior is sitting here, he's now a State
29 employee, and I don't know if the Commissioner would
30 allow him to help me out in some of this.

31
32 (Laughter)

33
34 MS. ENTSMINGER: I think he could take
35 his hat off and help me.

36
37 (Laughter)

38
39 MS. ENTSMINGER: No, seriously, Craig
40 has a lot of first-hand knowledge because he spent a
41 lot of time on the Council and he lives there and he
42 knew the situation probably better than I and if it
43 would.....

44
45 CHAIRMAN FLEAGLE: Commissioner.

46
47 COMMISSIONER LLOYD: Thank you. Before
48 we get too far down the road and wrap ourselves around
49 the axle, I'm going to suggest that we not go down this
50 road.

1 Thank you, Mr. Chairman.

2

3 CHAIRMAN FLEAGLE: Thank you, thank
4 you. What I'm just looking for, and the Board has got
5 -- you know the Board has wrestled over this,
6 obviously. I mean the fact that we even deferred it to
7 April was an exercise that was not real easy to go
8 through, I mean we should be dealing with it now. But
9 the problem is, is that, the Board acted on these two
10 proposals last year and bam they're right back in the
11 system and we don't have any mechanism to say, hey, we
12 just dealt with this, let's let it rest, those
13 proposals were reintroduced by the Eastern Interior
14 Regional Advisory Council and, therefore, we're
15 compelled to run them through the process. And we, at
16 the Board level, made a decision and Staff was
17 supportive of this, that we didn't have anything
18 substantially different to present to the Board by this
19 meeting now and hoping that by April we would have at
20 least the results of the Bromaghin study, which we do,
21 and get some indication as to what the State might be
22 doing to further their studies.

23

24 So the State came with the letter
25 asking that we further defer because the results that
26 the State is working on and the Board of Fisheries
27 meeting and all of these other reasons may give us more
28 information to act on.

29

30 And so I'm not sure really what I was
31 looking for when I called on you, I know that other
32 Council Chairs are probably interested in the process
33 and we're talking about process so, yeah.

34

35 MS. ENTSMINGER: Mr. Chair.

36

37 CHAIRMAN FLEAGLE: Yeah.

38

39 MS. ENTSMINGER: I'd like to point out
40 some things then.

41

42 CHAIRMAN FLEAGLE: Go ahead.

43

44 MS. ENTSMINGER: In listening to this
45 entire meeting that I have sat through, you took --
46 number 5 was a deferral to one year on the herring, and
47 I listened to that and I thought, well, gee whiz, you
48 know, and I'm not trying to be confrontational at all
49 with the State but it just doesn't make sense to me why
50 this one wouldn't come into the same schedule, one

1 year, if it was deferred, that it would be two years.
2 If we're going to take a Southeast proposal up
3 regarding a deferral that's fisheries and taking into
4 wildlife, then why not this one?

5
6 CHAIRMAN FLEAGLE: Yeah, it was up to
7 two years, I mean we could deal with it in the next
8 fisheries cycle or sooner, but I don't think that we're
9 setting a time certain to defer these issues now, I
10 mean that's open for discussion too.

11
12 MS. ENTSMINGER: I've written down a
13 lot of notes here.

14
15 Yeah, and now you've made it
16 complicated, you know, and I haven't talked to my
17 Council and I would say if I went back to them right
18 now they'd say take it up.

19
20 CHAIRMAN FLEAGLE: Yeah, and that's
21 what I anticipated, and I didn't realize that you guys
22 didn't have a chance to talk about it. But, all right,
23 I just want to open it up for comments from other
24 Councils, I mean just -- and then we're going to
25 discuss it as a Board.

26
27 MS. ENTSMINGER: Mr. Chair. If I could
28 add a couple more things.

29
30 CHAIRMAN FLEAGLE: Sue.

31
32 MS. ENTSMINGER: One of the things that
33 I like to see is this working together. And, you know,
34 I don't know what you're going to do here but, you
35 know, Lester Wilde is on the lower Yukon there and I
36 just feel like there's got to be a way to make the -- a
37 system for RAC Chairs to maybe get together and talk
38 about these hard issues and have some working
39 relationships so it isn't so contentious when you
40 start, and this is something that I've observed in
41 working in the process. And I think of a lot of
42 things, I write them down, and then I probably don't
43 have them really concise like I like to, but if you
44 give me the opportunity I can bring up other ones as I
45 think of what I've missed here.

46
47 Thank you.

48
49 CHAIRMAN FLEAGLE: Okay, we can
50 probably take those up in the subsequent discussion,

1 right, the Council Chair's discussion.

2

3 MS. ENTSMINGER: Are you delaying this?

4

5 CHAIRMAN FLEAGLE: Well, I'm just
6 looking for -- you know, I want to make that -- the
7 reason we decided to do this in this public meeting was
8 to get public input and just to do it out in the open
9 because we know how contentious it is so I'm just
10 affording that opportunity. I know we can go all night
11 doing this but I still think it's important that we
12 provide an opportunity to have it out in the open so
13 any other comments. Lester, do you want to weigh in on
14 it?

15

16 MR. WILDE: Mr. Chairman. When we
17 made the decision to defer this in our Council, we
18 weren't speculating on anything. We know what it is to
19 go out and try and get our subsistence -- chinook
20 subsistence resource to last us for the year. I,
21 myself, this year, got one king salmon in Hooper Bay.
22 And I think there was a total of 50 at the most caught
23 for a village of 1,200 and whenever we're talking about
24 the equipment that we use, first we -- prior to the
25 time that the -- this -- the mesh size was cut down to
26 45 we were all able to fish with larger mesh size nets,
27 but we all agreed to cut down to 45 meshes, but one
28 thing that is never brought out is that the Yukon is
29 not just one river with the same depth coming from the
30 -- the depths in that river, it varies, from mile to
31 mile. So in some areas you have to have deeper nets to
32 get the fish that are swimming deeper. And we all know
33 as fishermen that whenever there is any activity on the
34 river the fish has a tendency to swim away from the
35 activity to get down to the deeper waters.

36

37 And I feel -- this is not coming from
38 the Council but this is my own feeling, is that,
39 deferring these until such time that we do get the
40 information to make a sound judgment, that is going to
41 be affecting us in our subsistence way of life, is
42 something that we should do, is to wait and get the
43 information that is being investigated right now and
44 that's the way I feel.

45

46 Mr. Chairman.

47

48 CHAIRMAN FLEAGLE: Thank you, Lester.
49 And I appreciate having you state those concerns. And
50 this is indicative of the situation this Board finds

1 itself, is that, we have one group of subsistence users
2 saying do it, do it, do it, and we have another group
3 saying don't do it, don't do it, don't do it, and so
4 we're trying to give deference to subsistence users,
5 well, which one, you know, so we need, in my opinion
6 complete data and I think that's why we failed these
7 two proposals last year and that's why I was supportive
8 of deferring up to this meeting this time.

9

10 I guess we probably have enough
11 discussion.

12

13 MR. COLLINS: Mr. Chairman.

14

15 CHAIRMAN FLEAGLE: Ray, please, go
16 head.

17

18 MR. COLLINS: Yeah, I have an
19 appointment, I have to leave here. But I would like to
20 make -- the Western Interior RAC has discussed these
21 issues many times. We are concerned about the
22 conservation issues on the Yukon River and seriously
23 concerned about the declining size of the salmon
24 because those bigger ones, it isn't just a matter that
25 they're bigger fish, they carry a lot more eggs, they
26 have more impact on your spawning return than smaller
27 fish.

28

29 So I'm hoping that this can be dealt
30 with in a timely manner and we won't see this delayed
31 for five years, if you see what I mean, if there's
32 going to be time in implementing it. And the Councils
33 are meeting again in mid-February so we will be able to
34 discuss this at the local level and have input for you
35 in April if you want to have a discussion on it in
36 April then.

37

38 The other thing is that I'm on the
39 Kuskokwim River Fisheries Management Group, and this
40 year we had a limited commercial opening and they
41 limited the gear size and as a result of that the catch
42 in that was mostly jacks and males so we do have some
43 information on what happens when you go to smaller,
44 they were not catching the bigger fish, obviously, and
45 so there was a more limited impact on escapement and
46 run by those methods so there is some information out
47 there that should be brought into this debate when you
48 get to it.

49

50 And I just hope that if you do delay,

1 that it's not going to be for a long period of time,
2 that it can be as timely as possible and get whatever
3 data you need in a timely manner.

4
5 Thank you.

6
7 CHAIRMAN FLEAGLE: Thank you, Ray,
8 appreciate those comments.

9
10 Board members.

11
12 Ralph Lohse.

13
14 MR. LOHSE: Well, Mr. Chair, I've been
15 sitting and listening to this and I listened to Judy
16 and I listened to everybody else and the one thing that
17 seems very obvious is you do have a conservation
18 concern on the Yukon River.

19
20 Lester brought up a very good point and
21 I think this is something that I think you have to
22 consider is that one size doesn't fit all. If I'm
23 fishing a 45 mesh net and I'm fishing down at the mouth
24 in 80 feet of water I have a total different chance of
25 catching fish than if I'm fishing up stream in 20 feet
26 of water. So you have to take that into consideration.

27
28 Now, speaking from a commercial
29 fisherman standpoint there's no question in my mind
30 that larger mesh catches larger fish. In the Copper
31 River we've been limited away from king gear for, what
32 is it, 20 years now, almost, if we were allowed king
33 gear I'd have king gear on. We're allowed small mesh
34 now so that we can protect some of the kings.

35
36 But at the same time you've got to be
37 fair to the different parts of the river and the
38 different people who fish on the river.

39
40 If you're going to give the person who
41 fishes down at the mouth of the river in deep water a
42 shallow net and small gear he's not going to catch
43 much. You can give the same gear, and the same size
44 mesh to somebody that fishes up in the riffles (ph) or
45 fishes upstream where the water is shallow and he'll do
46 real good. So I think you need to -- I think when you
47 sit down and you actually decide what you're going to
48 do on net size and stuff like that, you need to realize
49 one size does not fit all, that you have to take into
50 account what actually works in the fishery.

1 Now, the other thing is that I
2 personally think that if you've got a problem here and
3 you're going to have a three year implementation period
4 on it, it behooves you to get started on it because,
5 you know, if you wait three years and there actually --
6 and you decide that there is effect with it, you've
7 already missed half of a run cycle. If it takes you
8 five years, you've missed a run cycle.

9
10 And my opinion would be that if you've
11 deferred this before and this has been deferred before
12 then take it up and work on it, and that'd be my
13 opinion as a Council Chair.

14
15 CHAIRMAN FLEAGLE: Thank you, Ralph.
16 Sue.

17
18 MS. ENTSMINGER: Mr. Chairman. I
19 appreciate all of these comments from the other Chairs
20 and I just want to reiterate conservation of this
21 resource and, you know, having not known this area like
22 a lot of these people that fish there, this whole
23 process that you go through, the managers go through,
24 windows, and then this whole built in thing, the
25 waiting period, I know you look cross but.....

26
27 CHAIRMAN FLEAGLE: Go ahead.

28
29 MS. ENTSMINGER: Oh, okay. But you
30 can't wait on something when there's a conservation
31 issue.

32
33 And I'll give you an example, the
34 bycatch fishery, when we had the National Marine
35 Fisheries Management Council at our last meeting,
36 they're telling us that their process takes four years
37 to shut down and you just are flabbergasted that we've
38 gotten into a mess like that and that's something that
39 you don't want to get into here.

40
41 CHAIRMAN FLEAGLE: Thanks, Sue. Board
42 members, you have a request where do you want to go
43 with it.

44
45 Discussion.

46
47 (No comments)

48
49 CHAIRMAN FLEAGLE: Let's take a five
50 minute break.

1 (Off record)

2

3 (On record)

4

5 CHAIRMAN FLEAGLE: The Board's back in
6 session and Mr. Probasco's got some words of wisdom.

7

8 Pete.

9

10 MR. PROBASCO: Thank you, Mr. Chair. I
11 don't know, words of wisdom, okay. As I look what's
12 ahead of us yet on this issue, as well as what's before
13 us after this issue, I think from my view, my
14 recommendation is to recommend to my Board to step down
15 for the evening and then come back in the morning.
16 We're starting to rush our discussion with the Chairs,
17 we're starting to rush the discussion amongst ourselves
18 and this is a very important issue and I would
19 recommend we take some time.

20

21 Mr. Chair.

22

23 CHAIRMAN FLEAGLE: Sounds like the
24 original focus of trying to focus of trying to finish
25 tonight is, if we do, we're going to push into probably
26 6:30, 7:00 o'clock and I think we're already starting
27 to lose steam. I'm okay with that. Any objection to
28 stand down for the evening and return at 8:30 tomorrow.

29

30 (No comments)

31

32 CHAIRMAN FLEAGLE: So ordered.

33

34 (Off record)

35

36 (PROCEEDINGS TO BE CONTINUED)