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FEDERAL SUBSISTENCE BOARD
PUBLIC REGULATORY MEETING

VOLUME I

INTERNATIONAL COAST INN
ANCHORAGE, ALASKA

MAY 8, 2007
8:30 o'clock a.m.

MEMBERS PRESENT:

- Mike Fleagle, Chair
- Gary Edwards U.S. Fish and Wildlife Service
- George Oviatt, Bureau of Land Management
- Judy Gottlieb, National Park Service
- Denny Bschor, U.S. Forest Service
- Charles Bunch, Bureau of Indian Affairs
- Ralph Lohse - Southcentral RAC
- Daniel O'Hara - Bristol Bay RAC
- Commissioner Denby Lloyd, State of Alaska Representative
- Keith Goltz, Solicitor's Office

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P R O C E E D I N G S

(Anchorage, Alaska - 5/8/2007)

(On record)

CHAIRMAN FLEAGLE: Good morning. The Federal Subsistence Board is now on record. Today is May 8th, we're meeting in Anchorage, Alaska on Kenai Peninsula fisheries issues. And I'm going to start out with introductions and we'll start with the Board starting from the left.

MR. OVIATT: Thank you, Mr. Chairman. I'm George Oviatt representing the Bureau of Land Management.

MR. BUNCH: Good morning. I'm Charles Bunch representing Bureau of Indian Affairs.

MS. GOTTLIEB: Hello. Judy Gottlieb, National Park Service.

MR. GOLTZ: Keith Goltz, Solicitor's office.

CHAIRMAN FLEAGLE: Mike Fleagle, Chairman.

MR. PROBASCO: Pete Probasco, Office of Subsistence Management.

MR. EDWARDS: Good morning. Gary Edwards, U.S. Fish and Wildlife Service.

MR. BSCHOR: I'm Denny Bschor, U.S. Forest Service.

COMMISSIONER LLOYD: Thank you Mr. Chairman. I'm Denby Lloyd with the Alaska Department of Fish and Game.

CHAIRMAN FLEAGLE: Good morning, Board members. I do show that we do have a full compliment of Board members, quorum is established and I'd like to continue with introductions if we could start back here, please.

MR. USTASIWSKI: I'm Jim Ustasiwski with the U.S.D.A., Office of the General Counsel.

1 MR. KESSLER: Steve Kessler with the
2 Forest Service.
3
4 MR. BERG: Good morning. Jerry Berg,
5 subsistence fisheries coordinator with Fish and Wildlife
6 Service.
7 MR. JACK: Carl Jack, Office of
8 Subsistence Management.
9
10 MR. LORD: Ken Lord with the Solicitor's
11 office.
12
13 MS. SWANTON: Nancy Swanton with the
14 National Park Service.
15
16 DR. CHEN: Good morning. My name is
17 Glenn Chen, I'm a fisheries biologist for the Bureau of
18 Indian Affairs.
19
20 MR. ARDIZZONE: Good morning. Chuck
21 Ardizzone, Bureau of Land Management.
22
23 CHAIRMAN FLEAGLE: And that's most of our
24 able bodied assistants. We'll start here and I would
25 like to have this row of tables introduce themselves and
26 then if everybody in the audience would follow suit one
27 at a time and just say who you are and who you're with.
28 Start with Ralph.
29
30 MR. LOHSE: Ralph Lohse, Southcentral
31 Regional Advisory Council Chair.
32
33 MR. SEWRIGHT: Mike Sewright with the
34 State of Alaska Department of Law.
35
36 MS. CUNNING: Tina Cunning, Alaska
37 Department of Fish and Game.
38
39 MR. PAPAS: George Papas, Alaska
40 Department of Fish and Game.
41
42 MS. H. ARMSTRONG: Helen Armstrong,
43 Office of Subsistence Management.
44
45 MR. MIKE: Donald Mike, Regional Council
46 coordinator, OSM.
47
48 MR. BUKLIS: Larry Buklis, Office of
49 Subsistence Management, acting Chair of the Federal
50 InterAgency Staff Committee.

1 CHAIRMAN FLEAGLE: Then if we'd just
2 start, yeah, front row and just zig-zag.

3
4 (Introductions, no microphones - look to
5 sign in sheet)

6
7 CHAIRMAN FLEAGLE: We need our opera
8 glasses for you guys sitting way in the back row there.

9
10 (Laughter)

11
12 CHAIRMAN FLEAGLE: All right, well,
13 welcome everyone. I appreciate everybody taking the
14 opportunity to introduce yourself, it gives both members
15 of the audience and the Board members the flavor of what
16 type of representation is in the Board room or the
17 meeting room and appreciate that.

18
19 We move into the agenda, I want to make
20 one announcement real quickly. There was a proposed
21 amended announcement that went out within the last day or
22 two that would switch the order of testimony and
23 recommendations and comments that would deviate from the
24 normal, we're not going to adopt that, however, what I do
25 plan to do, the problem -- the reason this was raised an
26 issue is the Regional Advisory Council has looked at
27 these proposals and have worked at meetings and have come
28 up with recommendations that are different than what are
29 contained in the proposal book that the members of the
30 public and everybody had. So the intent was to try to
31 get the Regional Council recommendation out in front so
32 that people would know that there was a recommended
33 change from them and then the comments could pertain to
34 that as well as to the original proposal. And in doing
35 that some of the other comments and recommendations were
36 switched around possibly unfavorably.

37
38 So what I intend to do is just use the
39 normal process, the normal program that's in the book
40 that's been published for a couple of weeks with the
41 exception of we will put No. 4, which is the Regional
42 Advisory Council recommendation before public testimony,
43 No. 3, otherwise everything else stays the same. That
44 will get the RAC recommendation out in front.

45
46 Larry.

47
48 MR. BUKLIS: Mr. Chairman. I would ask
49 Ralph to comment, if he'd like, but in consultation with
50 him, I think what I understood was if you're going to

1 stay with the general procedure that's in the book that I
2 think he would prefer to stay the course with that as
3 well.

4

5 CHAIRMAN FLEAGLE: Ralph.

6

7 MR. BUKLIS: Of course it's your decision
8 but I think that was his preference.

9

10 CHAIRMAN FLEAGLE: I'm just trying to be
11 accommodating. Ralph.

12

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

14 Actually it really -- I was thinking about, you know,
15 when I talked to Larry about it, staying with the
16 original presentation would be fine with me. If you feel
17 it's better to put the Council first, that's fine because
18 I was thinking that as a Council I would also like to
19 hear the public testimony to respond to that. But I will
20 be given that opportunity at a later time. So if you
21 wish to have the Regional Council first that's your call.

22

23 But I'm totally happy with the way it was
24 set up to begin with.

25

26 CHAIRMAN FLEAGLE: All right. Between
27 Larry and Ralph, show of hands.

28

29 (Laughter)

30

31 CHAIRMAN FLEAGLE: I'm okay either way.

32 Do you want to stay with the original, that'd be the
33 simplest because that's how it's printed. And then,
34 Ralph, you always will have the opportunity as the
35 Council Chair to come back in at a later time.

36

37 MR. LOHSE: Like I said it doesn't really
38 affect one way or the other, whichever would be easiest
39 for you.

40

41 CHAIRMAN FLEAGLE: Okay. Why don't we
42 just stay with the printed agenda then. That'll be the
43 simplest to follow. For me it's nice to have something I
44 can look down and refer to what's next, some kind of
45 order.

46

47 All right, with that then, are there any
48 corrections or additions to the agenda.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: Hearing none.
2 Announcements. Pete.

3
4 MR. PROBASCO: I have a couple. Larry,
5 do you have anything you want -- do you want to go first.

6
7 MR. BUKLIS: Mr. Chairman. I was just
8 going to review the materials that are available for the
9 meeting at any point you'd like.

10
11 CHAIRMAN FLEAGLE: Yeah, great, go ahead.

12
13 MR. BUKLIS: Okay, Mr. Chairman, thank
14 you. The main reference material for the meeting is in
15 the green covered booklet entitled Federal Subsistence
16 Board meeting materials May 8 to 10, 2007.

17
18 That includes on Page 1 and 2 of the
19 agenda for the meeting and as you've described, we're
20 going to stay with sequence of steps on the bottom of
21 Page 1, which means we can disregard the revised agenda
22 dated May 7th, 2007, which was an attempt to resequence
23 procedure steps, that can be disregarded.

24
25 The additional supplemental material,
26 there's a packet of public comments that came in more
27 recently since the book was sent to the printer and those
28 have been collated and stapled as a supplement to the
29 comments that are in your book already.

30
31 Thirdly, you have a report to the Federal
32 Subsistence Board regarding public comments and Regional
33 Advisory Council recommendations on Council composition
34 dated May 10th, 2007. That also was prepared and
35 available after the book went to the printer so it's a
36 supplemental and that issue is later on your agenda, I
37 believe, 1:30 time certain for Thursday the 10th.

38
39 Finally, I understand there are some
40 additional comments from the State of Alaska, which
41 aren't in the book or a supplemental item yet but I think
42 we're having copies made now and they'll be available
43 soon.

44
45 Everything I've described, including the
46 State comments that have just arrived, will be available
47 on the public table. We may be out of the fully bound
48 green books that contain the bulk of the meeting
49 materials but we have the individual elements of the book
50 in subparts and those are available on the back table for

1 the public.

2

3

Thank you, Mr. Chairman.

4

5

CHAIRMAN FLEAGLE: I brought mine from
6 home if somebody needs a spare, I got an extra one.
7 Ralph's got an extra one. There's several extra ones.
8 If somebody needs a book and you can't find one, just let
9 Larry know and we can get them to you.

10

11

Pete.

12

13

MR. PROBASCO: Thank you, Mr. Chair. And
14 maybe at a break we'll just gather up those extra books
15 and put them out on the table there.

16

17

For the public, if you look at the front
18 of the green book you'll see the agenda and I just want
19 to clarify for the public that you will note that there
20 are three action items that the Board will deal with:

21

22

A. Kenai Peninsula C&T regulations.

23

24

B. Kasilof River drainage harvest
regulations.

25

26

27

C. Kenai River drainage harvest
regulations.

28

29

30

Based on the attendance that we have, we
31 are going to have a public testimony opportunity before
32 each of those three items. So actually if you wanted,
33 you could testify three different times throughout the
34 course of this meeting. We ask that you keep in mind the
35 topic that's before the Board and only testify on that
36 topic and then hold future comments based on the subject
37 before you.

38

39

So clarification on public testimony and
40 make sure you sign up, grab a yellow card out on the
41 front desk and she will bring it up front here.

42

43

Thank you.

44

45

CHAIRMAN FLEAGLE: Thank you, Pete.

46 Other announcements. Board members.

47

48

(No comments)

49

50

CHAIRMAN FLEAGLE: Other Staff.

1 (No comments)
2
3 CHAIRMAN FLEAGLE: All right. These are
4 from the State.
5
6 MR. PROBASCO: State.
7
8 CHAIRMAN FLEAGLE: Boy, they're hot off
9 the press.
10
11 MR. PROBASCO: Tina, these are the ones
12 we received last night so.....
13
14 MS. CUNNING: Mr. Chairman. I might
15 clarify that these are.....
16
17 CHAIRMAN FLEAGLE: Tina, go ahead.
18
19 MS. CUNNING:these are essentially
20 the same comments that were provided last Wednesday at
21 the Board meeting with just two documents that are very
22 short cover documents that explain them, additional
23 issues. Okay.
24
25 CHAIRMAN FLEAGLE: Pete.
26
27 MR. PROBASCO: Mr. Chair. Tina, would
28 you make sure that we got it laid out properly, too. I
29 believe I captured the two new right up front but would
30 you clarify that.
31
32 CHAIRMAN FLEAGLE: She doesn't have one.
33
34 (Laughter)
35
36 CHAIRMAN FLEAGLE: Larry, the State table
37 needs one too.
38
39 MS. CUNNING: Mr. Chairman. Pete
40 Probasco's asked that we clarify what the handout is.
41
42 The first document, which is two pages
43 long is just an explanation of the relationship of the
44 unresolved issues in our request for reconsideration for
45 FRFR06-09 and two other RFRs.
46
47 Then an actual attachments of our
48 comments on those documents and then at the very end a
49 one page third document explaining, again, and I'll go
50 through this in our comments, explaining again the

1 relationship.

2

3 So this is in the correct order, thank
4 you, Pete.

5

6 CHAIRMAN FLEAGLE: Okay, thank you. All
7 right, with that we're going to go ahead and move into
8 the agenda and first up is Proposal 07-28. And we have,
9 Helen, are you going to give us the analysis. Good
10 morning.

11

12 MS. H. ARMSTRONG: Thank you, Mr. Chair.
13 Good morning. Members of the Board. My name is Helen
14 Armstrong, I'm with the OSM. I'm an anthropologist for
15 them.

16

17 This proposal, Proposal FP07-28 appears
18 on Page 5 of the Federal Subsistence Board book and if
19 members of the public didn't get a spiral bound copy then
20 there are individual copies of the analysis that are out
21 on the table. The proposal was submitted by the Kenai
22 River Sportfishing Association and it requests that the
23 positive C&T use determination for taking fish by Hope,
24 Cooper Landing, and Ninilchik residents be rescinded in
25 the Kenai Peninsula district and that there be no Federal
26 subsistence priority for all fish.

27

28 I wanted to just note that the way the
29 proponent actually requested it was that no communities
30 qualify for customary and traditional use of fishery
31 resources under the Federal Program which is, in effect,
32 a no Federal subsistence priority, although that's not
33 how they actually worded it.

34

35 And also to clarify a determination of
36 now Federal subsistence priority is different from the
37 prior no determination status, where all Federally-
38 qualified rural residents in the entire state were
39 qualified to harvest fish under Federal regulations.

40

41 The proponent's concerns are focused on
42 legal interpretations of the implementation of ANILCA and
43 Federal Subsistence Management regulations, they also had
44 conservation concerns. However, we need to remember that
45 conservation concerns are addressed through the
46 implementation of seasons, harvest limits and methods and
47 means of the harvest and are not part of the
48 consideration in making customary and traditional use
49 determinations. So those conservation concerns will be
50 dealt with in the proposals following mine.

1 The areas affected by this proposal
2 include, the Federal public waters north of and including
3 the Kenai River within the Kenai Peninsula district and
4 the Kasilof River within the exterior boundaries of the
5 Kenai National Wildlife Refuge and the Chugach National
6 Forest.

7
8 The analysis for this proposal FP07-28
9 incorporates the information in the analysis for the
10 Proposal FP06-09 that the Board heard in January of 2006.
11 It also includes analysis for the request for
12 reconsiderations FRFR06-02/03/08 and FRFR06-09, the later
13 one heard by the Board last week, and public testimony to
14 the Board at the January and November 2006 meetings, as
15 well as testimony at the Southcentral Council meetings.

16
17 At the January 2006 meeting during
18 consideration of Proposal FP06-09 the Board applied the
19 eight factors to make a positive customary and
20 traditional use determination for Hope and Cooper Landing
21 for all fish in the Federal public waters of the Kenai
22 Peninsula district north of and including the Kenai River
23 drainage within the Kenai National Wildlife Refuge and
24 the Chugach National Forest. Ninilchik for all fish in
25 the Federal public waters of the Kasilof River drainage.
26 During consideration of FP06-09 both ADF&G and the
27 Ninilchik Traditional Council, NTC, indicated that they
28 could provide additional relevant information and as a
29 result of that new information that was provided, the
30 Board revisited its decision on November 16 and 17th,
31 2006 and after consideration of the new information on
32 lifetime uses of the Kenai River by Ninilchik residents
33 and new information from the NTC on its methodology for
34 its research as well as testimony from Dr. Robert Wolfe
35 and the public and Dr. Jim Fall, the Board determined
36 that there was sufficient evidence to determine that
37 Ninilchik residents had customarily and traditionally
38 harvested fish in the Kenai River area.

39
40 The Board then revisited its decision from
41 January 2006, again, last week in FRFR06-09 and upheld
42 its November 2006 decision for Ninilchik to have a
43 customary and traditional use determination for all fish
44 in the Kenai River area.

45
46 Since November 2006, when this new
47 information was presented, there are no new data
48 regarding the customary and traditional uses of fish by
49 Hope, Cooper Landing and Ninilchik's residents that would
50 change the existing customary and traditional use

1 determination. There were no new studies -- no new
2 information provided.

3

4 So, Mr. Chair, I assume that the Board
5 might not want to hear yet another presentation about
6 Ninilchik's uses of fish in the Kenai River area, as well
7 as Hope and Cooper Landing's uses of fish in the Kenai
8 River, if you'd like me to do a summary I can, but
9 otherwise all of the analysis from FP06-09 -- FRFR06-
10 02/03/08 and FRFR06-09, and the analysis in this book for
11 FP07-28 are all part of the administrative record.

12

13 Do you want any more summary?

14

15 CHAIRMAN FLEAGLE: I don't think it's
16 necessary at this time.

17

18 MS. H. ARMSTRONG: Okay.

19

20 CHAIRMAN FLEAGLE: Thank you, go ahead.

21

22 MS. H. ARMSTRONG: The preliminary OSM
23 conclusion is to oppose the proposal. The justification
24 for opposing the proposal is that there are no new data
25 regarding the customary and traditional uses of fish by
26 Hope, Cooper Landing and Ninilchik's residents that would
27 change the decision. The proponent's concerns were
28 focused on legal interpretations of ANILCA and
29 conservation concerns. And as I said conservation
30 concerns will be addressed through the implementation of
31 methods, means and seasons and harvest limits, and are
32 not part of this C&T determination.

33

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

36

37 CHAIRMAN FLEAGLE: Thank you, Helen.
38 Board members, questions.

39

40 (No comments)

41

42 CHAIRMAN FLEAGLE: All right.

43

44 MR. BSCHOR: Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Denny, go ahead.

47

48 MR. BSCHOR: Just one real quick because
49 I wasn't personally at the last two meetings, but could
50 you please review the information and the analysis

1 relating to Ninilchik's use of non-resident -- or
2 resident fish in the Kenai River area, just briefly,
3 please.

4
5 MS. H. ARMSTRONG: Okay. In all of Kenai
6 River area and just the resident species.

7
8 MR. BSCHOR: (Nods affirmatively)

9
10 MS. H. ARMSTRONG: Well, we do have
11 information on the lifetime use that was presented at the
12 meeting in November, and that's summarized in Table 1 on
13 Page 17. The problem we have with the lifetime use
14 information is that we don't actually know what they were
15 harvesting, whether they were harvesting salmon or
16 resident species, so that presents a little bit of a
17 difficulty. We just know that people went up there.

18
19 And for the Kenai River area, the
20 estimated percentage of all Ninilchik households, 21
21 percent harvested in the Kenai River area and 13 percent
22 in the Swanson River area. And of those, the frequent
23 use, so that they went almost every year, about 60
24 percent went in the Kenai River area and 75 percent went
25 in the Swanson River area. But we don't actually know
26 what they were targeting. I did actually ask a few
27 people this morning about the Swanson River area and we
28 know that trout is harvested there but also coho salmon
29 are harvested there as well. So it makes it a little
30 difficult because we're not really certain exactly what
31 they've harvested.

32
33 In terms of the study that Jim Fall did,
34 if you turn to the tables in the analysis for
35 Ninilchik.....

36
37 CHAIRMAN FLEAGLE: Page 22.

38
39 MS. H. ARMSTRONG:Page 22, well,
40 that's pounds harvested, I was looking for the location
41 of harvest, I'm not sure it's in this analysis.

42
43 CHAIRMAN FLEAGLE: Page 28.

44
45 MS. H. ARMSTRONG: 28. Then you see what
46 the harvest was for that particular year, and this is the
47 reason why they ask the lifetime use question because
48 ADF&G Subsistence Division recognizes that one year of
49 harvest data is just one year and that you need to try to
50 get some perspective on what people would do in multiple

1 years. But in that one year the area fish, you can see
2 in the Kenai Lake, Kenai Lake streams, Kenai Mountain
3 streams, Russian River there was very low level of
4 harvest with four percent for sockeye in the Russian
5 River and one percent of rainbow trout, one percent of
6 lake trout.

7
8 The other information that we have, we
9 have lifetime use maps that were done for non-salmon
10 species that Ninilchik did in 1994 and those maps aren't
11 in this analysis but I have them with me if anybody
12 wanted to see them, but they actually show the whole
13 Kenai Peninsula being used for non-salmon but they don't
14 break it down by species.

15
16 And then there was also information from
17 the NTC study that they did from when they asked about
18 uses from 1994 to 1999, and I would have to -- I think
19 that information is on Page 29, where it says that the
20 Upper Kenai River, Kenai Lakes were used by 32 percent of
21 households to harvest salmon, 28 percent to harvest non-
22 salmon fish and 16 percent to harvest chinook salmon. So
23 we have that information as well.

24
25 And then we do have some information from
26 testimonies from the Southcentral Council, from NTC
27 people testifying there, as well as at the Board meeting
28 saying that they did go up to some of the lakes and
29 drainages, streams in the Kenai River area.

30
31 I think that summarizes it.

32
33 CHAIRMAN FLEAGLE: Gary.

34
35 MR. EDWARDS: Mr. Chairman. Helen, how
36 does that harvest for resident species that you just
37 conveyed relate to or compare with what occurred for Hope
38 and for Cooper Landing as it refers to resident species?

39
40 MS. H. ARMSTRONG: We have a lot less
41 information for Hope and Cooper Landing. But what we do
42 have mostly is from the Fall study and that table for
43 Cooper Landing is on Page 26, and you can see, without me
44 actually reading through all these percentages, but you
45 can see, for example, 15 percent of the community took
46 Dolly Varden in the Kenai Lake and the Kenai Lake
47 streams, 39 percent took sockeye in the Russian River, 29
48 percent in the Upper Kenai, et cetera.

49
50 And then Hope is on Page 27, and they

1 had, for example, this isn't all inclusive, but 35
2 percent took coho in Kenai Mountain streams, 16 percent
3 took Dolly Varden in Kenai Mountain streams, and so you
4 can look at that table, Table 6 on Page 27 and see that.

5
6 So obviously those communities are closer
7 and they will utilize those areas much more heavily.

8
9 MR. EDWARDS: What about information
10 available on frequency of use by Hope and Cooper Landing
11 throughout the years, do we have data on that?

12
13 MS. H. ARMSTRONG: That was collected but
14 not tabulated so ADF&G has not tabulated that
15 information.

16
17 MR. EDWARDS: Do you have any maybe
18 explanation for this, it appears, you know, a difference,
19 at least on the percentages between the three
20 communities, any reason, explanation for that?

21
22 MS. H. ARMSTRONG: Well, Ninilchik is
23 farther away. I mean I think there's no doubt that their
24 use is going to be closer to home as it would be for any
25 community that the use would be less frequent -- the
26 farther you get away from a community, the less frequent
27 the use is. I mean if you looked in reverse for Hope and
28 Cooper Landing, you'd see that use is down closer to
29 Ninilchik, for example, would become less frequent.

30
31 CHAIRMAN FLEAGLE: Other questions.
32 Charles.

33
34 MR. BUNCH: Thank you, Mr. Chairman.
35 Helen, does your data show the method of taking of this
36 data for this fish, I mean was it by net or.....

37
38 MS. H. ARMSTRONG: Since nets have been
39 forbidden since 1952 all of the fish has been with rod
40 and reel and through the ice since then, pretty much. I
41 mean that's not true, I'm sorry. There are fish that are
42 taken as -- from when people have commercial catches,
43 there have been, over the years, fish that have been
44 taken from their commercial catch and there are fish
45 taken in the educational fisheries. But in the lifetime
46 use information it did note that the fish taken were in
47 that Kenai River area and Swanson River area by
48 Ninilchik, those were taken with rod and reel and through
49 the ice.

50

1 CHAIRMAN FLEAGLE: Other questions.

2

3 (No comments)

4

5 CHAIRMAN FLEAGLE: Okay, thank you.

6 Summary of written public comments. Donald.

7

8 MR. MIKE: Mr. Chair. The summary of

9 written public comments begins on Page 186.

10

11 The Office of Subsistence Management
12 received 30 written public comments and in the last few
13 days we received an additional three new comments
14 regarding Proposal 28. I'll just summarize briefly.

15

16 Seven comments received stated they
17 supported FP07-28 and the general focus on supporting
18 Proposal 28 focused on ANILCA, stating that the Kenai
19 Refuge, for purpose of subsistence was not identified.

20

21 Thank you, Mr. Chair.

22

23 CHAIRMAN FLEAGLE: Okay, appreciate it,

24 Donald. Questions.

25

26 (No comments)

27

28 CHAIRMAN FLEAGLE: Thank you. Public

29 testimony. Pete, have we got anybody interested in

30 testifying on this topic.

31

32 MR. PROBASCO: We got a few, Mr.

33 Chairman. And for those that have come in late, please

34 go see Diane Ray at the front desk if you plan on

35 testifying on Proposal 28 at this time.

36

37 CHAIRMAN FLEAGLE: If you can give me a

38 count of what we have.

39

40 MR. PROBASCO: We have six so far.

41

42 CHAIRMAN FLEAGLE: All on Proposal 28.

43

44 MR. PROBASCO: All on Proposal 28.

45

46 CHAIRMAN FLEAGLE: Okay, why don't you go

47 ahead and give me the first name, please.

48

49 MR. PROBASCO: Okay. First off is Mr.

50 Art Ivanoff.

1 CHAIRMAN FLEAGLE: Good morning, Art.
2
3 MR. IVANOFF: Good morning, Mr. Chair.
4 My name is Art Ivanoff. My Inupiat name is (In Inupiat).
5
6 On behalf of AVCP I'd like to state
7 support for the positive finding for Ninilchik, Hope and
8 Cooper Landing. We believe that going through the
9 criteria that you established that there was a need for
10 traditional harvest of fisheries along the Kenai area.
11
12 And basically that's it, Mr. Chair, I
13 wanted to state support. We see the need based on the
14 status of the tribes to continue the harvest.
15
16 CHAIRMAN FLEAGLE: Thank you, Art.
17 Questions.
18
19 (No comments)
20
21 CHAIRMAN FLEAGLE: Appreciate the
22 testimony. Pete, who do we have next.
23
24 MR. PROBASCO: And I'll read the names
25 Andy Szczesny, you're next. And following Andy will be
26 Mr. Timothy Andrew. And then in the hole is Mr. Darrel
27 Williams.
28
29 CHAIRMAN FLEAGLE: And this one is
30 Andy.....
31
32 MR. PROBASCO: Szczesny.
33
34 CHAIRMAN FLEAGLE:Szczesny. And
35 I'm sure we'll stand corrected here in a moment.
36
37 MR. SZCZESNY: Thank you, Mr. Chairman.
38 My name is Andy Szczesny. I've been on the Cooper
39 Landing AC for four years. I did a short-term on the
40 Alaska Board of Fisheries. For the last 22 years my wife
41 and I have run a fly fishing business in Cooper Landing.
42
43 I guess this -- the Ninilchik Tribal
44 Council wants to come up and fish in Cooper Landing.
45 They have to drive through the town of Soldotna and they
46 have to go through Fred Meyers, Safeway, Taco Bell, I
47 think that it's kind of a stretch to get up in Cooper
48 Landing for the Ninilchik people. Most of their use has
49 been in their area.
50

1 I was on a subcommittee for the
2 Southcentral RAC, and for three days we couldn't get much
3 of anything done on that subcommittee. In fact I asked
4 what is it that you guys really want because this
5 subsistence fishery, in my opinion, is a joke, number 1.
6 The high use in the Refuge right now is basically for
7 sportfishing and tourism. The proposed areas that are
8 going to be used on the Russian River at times are 30,000
9 people utilizing that area. It's going to be very
10 difficult to utilize a subsistence fishery in that area
11 and you guys are going to be in a very tough situation
12 with the priority that is given to them with the rest of
13 the people in Anchorage and the rest of the people that
14 are using the area.

15
16 You know, Anchorage has grown 100,000
17 people since 1985. The Kenai Peninsula Borough is almost
18 60,000 people right now. The twin cities of Soldotna,
19 Kenai and Sterling form the population center as a
20 borough.

21
22 In 1982 the U.S. Fish and Wildlife
23 Service and Department of Fish and Game signed a master
24 memorandum of understanding that defines the cooperative
25 management roles of each agency. ADF&G was recognized as
26 the agency with the primary responsibility to manage fish
27 and resident wildlife within the state of Alaska. So I
28 think that the Department of Fish and Game should hold a
29 lot more weight on these decisions in all these proposed
30 fisheries and the C&T determination.

31
32 Thank you, very much.

33
34 CHAIRMAN FLEAGLE: Thank you, Andy, for
35 the comments. Board members questions.

36
37 (No comments)

38
39 CHAIRMAN FLEAGLE: Appreciate the
40 testimony. Pete.

41
42 MR. PROBASCO: Now up is Mr. Andrew. On
43 deck is Mr. Darrel Williams. And in the hole is Ricky
44 Gease.

45
46 CHAIRMAN FLEAGLE: Timothy Andrew, good
47 morning.

48
49 MR. ANDREW: Good morning, Mr. Chairman.
50 Members of the Board. My name is Timothy Andrew. I'm

1 the director of wildlife resources for the Association of
2 Village Council Presidents.

3

4 We are here today to testify in support
5 of the positive customary and traditional use
6 determination for Hope, Cooper Landing and Ninilchik in
7 the areas that they have identified.

8

9 And, Mr. Chairman, I'd like to express,
10 you know, some of the situations that we've encountered
11 within our area regarding some of the use of resources
12 that our people depend on. And it's regarding the
13 sporadic use of resources, you know, not necessarily
14 focusing on the salmon and the moose or the caribou, some
15 of the big ticket or huge use resources. We had several
16 people within the area that have gone out hunting, that
17 have gone out berrypicking, that have gone out on just
18 family camping trips and utilized resources that are
19 around them, you know, things like muskrat, perhaps
20 ducks, perhaps rainbow trout, Dolly Varden, grayling, you
21 know, some of those items that are not necessarily taken
22 on a continuous basis. And I believe this is where those
23 three communities are basically at at this point, is
24 that, you know, they may not totally take -- this might
25 not be a situation where they totally take these
26 resources in a consistent manner and, you know, we are
27 basically -- in those situations, at certain times. And
28 those situations a year ago, or perhaps a couple years
29 ago where a young man from one of our villages were up
30 berrypicking in one of the streams along the Kuskokwim
31 River and he got cited for taking a rainbow and he did
32 not have customary and traditional use determination for
33 rainbow at all. And, you know, the rainbow trout within
34 the Kuskokwim River is a hotly -- it's a pretty -- it's a
35 hot potato basically because it's being utilized by the
36 sportfishery and, you know, people definitely make their
37 living utilizing the rainbow trout for their living.
38 But, you know, people within our area have utilized
39 rainbow trout even before the creation of the state of
40 Alaska, before the creation of the United States
41 government. Our people have been in the area for
42 thousands and thousands and thousands of years and we
43 basically believe that people from Ninilchik, Hope and
44 Cooper Landing are basically in the same situation, they
45 depend on these resources.

46

47 And this situation kind of reminds me of
48 the early beginnings of the Boat Decision or the Boat
49 case down in Washington where tribes within the Columbia
50 River asserted their treaty rights for salmon on that

1 river and, you know, this situation in Ninilchik is
2 basically going in that direction. And, you know, I
3 definitely don't want to see a situation where, you know,
4 we have a Boat Decision type of a situation occur within
5 the state of Alaska. I think we can likely accommodate
6 the people who depend on the resources and, you know,
7 through a process where we work together.

8

9 That concludes my testimony, Mr. Chair.

10

11 CHAIRMAN FLEAGLE: Thank you, Timothy.
12 Questions Board members.

13

14 (No comments)

15

16 CHAIRMAN FLEAGLE: Appreciate the
17 testimony. Pete.

18

19 MR. PROBASCO: Mr. Darrel Williams. And
20 then on deck is Mr. Ricky Gease. Followed by Mr. Rod
21 Arno.

22

23 CHAIRMAN FLEAGLE: Good morning, Darrel.

24

25 MR. WILLIAMS: Good morning, Mr.
26 Chairman. Members of the Board. My name is Darrel
27 Williams, I work for Ninilchik Tribal Council. Didn't we
28 do this last week.

29

30 (Laughter)

31

32 MR. WILLIAMS: To start off, this has
33 been addressed in the record many, many times and I
34 believe our record is very, very strong and I'd like all
35 the testimony and information and everything we've
36 brought forward to be noted in the record.

37

38 I'm sure everybody reads the Anchorage
39 Daily News, I'm pretty sure. I thought it was really
40 interesting after last week to see a statement in the
41 paper saying that the Kenai National Wildlife Refuge is
42 not a place that's eligible for subsistence use, which is
43 a very irresponsible statement. I was surprised that
44 came out and I was surprised I did not see anything come
45 out from OSM to address that.

46

47 Also in the Anchorage Daily News, if you
48 read the obituaries, David Cooper, Sr., passed away. You
49 might want to read his obituary where he talks about
50 founding Cooper Landing from the people who don't travel

1 from Ninilchik, and it's in the paper and you guys are
2 more than welcome to read it.

3

4 For the sake of time and because we have
5 addressed this issue so many times, I believe it's the
6 right move to ask everybody to remember what the
7 meaningful preference is. In discussions that we've had
8 since we were up here testifying last time, the small
9 user group who would like to be able to subsist, when we
10 look at the upcoming summer that's coming up and look at,
11 you know, thousands and thousands of fishermen going and
12 able to fish and harvest and do all these kind of things,
13 the question keeps coming up about where is the
14 meaningful preference. And when we've been discussing
15 this, some of the issues that's come up about meaningful
16 preference and where you get to use, you know, the
17 information we provided everyone was pretty thorough,
18 well documented and I heard something before that really
19 got me thinking about the premise of ANILCA, where, I
20 don't recall where in ANILCA it says that use had to be
21 on Federal public lands, that are Federally public lands
22 today. There is a lot of use. There's been a lot of
23 traveling. There have been a lot of people who have done
24 a lot of different things.

25

26 We've done the eight factors over and
27 over again on the record and it is a matter of record.
28 And, again, I would like to remind everyone with a
29 meaningful preference that sometimes we have to ask the
30 tough questions. And the tough questions are or may be,
31 what fishery has to be reduced or eliminated in order to
32 have subsistence use. That's something I don't hear.
33 And everybody says that the sportfishermen can come and
34 they can claim their case, and the State comes and they
35 claim their case because they have allocations of fish
36 and they have fish that they use for other reasons so I
37 have to ask the question, if all these fish are available
38 for everyone else, why can't the subsistence users use
39 them.

40

41 That concludes my testimony. Is there
42 any questions.

43

44 CHAIRMAN FLEAGLE: Thank you, Darrel.
45 Board members any questions.

46

47 (No comments)

48

49 CHAIRMAN FLEAGLE: Appreciate it.

50

1 MR. WILLIAMS: Mr. Chair, thank you very
2 much.

3
4 CHAIRMAN FLEAGLE: Pete.

5
6 MR. PROBASCO: Next is Mr. Ricky Gease
7 followed by Mr. Rod Arno. And last will be Mr. Sky
8 Starkey.

9
10 CHAIRMAN FLEAGLE: Good morning, Ricky.

11
12 MR. GEASE: For the record my name is
13 Ricky Gease, I'm the Executive Director of Kenai River
14 Sportfishing Association. This is our proposal that
15 we've presented to you, you've read through the proposal
16 so our written comments on it speaks for itself.

17
18 I'll talk a little bit about where --
19 some questions about where, how much closures and changes
20 through time.

21
22 I'll start off, about 15 years ago,
23 today, I came to Alaska. I came up here to be a Park
24 Ranger at Kenai Fjords National Park. And the first
25 person I met at Kenai Fjords National Park is still my
26 best friend, he was the best man at my wedding. And he
27 said -- the first lesson I learned from him was that, he
28 said you got to learn something about working for the
29 Federal government because I had never worked for the
30 Federal government before, and he said since nobody wants
31 to be called stupid, the government created grey
32 language. I didn't quite know what he was talking about,
33 what grey language meant. And over time I've come to
34 figure out what grey language is.

35
36 Grey language means you write something
37 in regulation and it can mean different things to
38 different people. You're reading the same language but
39 it means different things to different people.

40
41 We're talking about ANILCA, what's
42 interesting to me about ANILCA was that in ANILCA -- I
43 want to talk about a couple different areas before I jump
44 into C&T here. ANILCA has grey language when it comes to
45 local hire. In the Park that I worked at, local hire,
46 when it was written in ANILCA, I think it's intent was to
47 get local Alaskans and local knowledge hired into the
48 Federal government, yet, how many people 25 years later,
49 through the local hire process have risen up through the
50 echelon or even been hired, truly hired by the Federal

1 government. A lot of what I say through the grey
2 language and interpretation at the Park that I worked at,
3 was that you became a local hire when your husband or
4 your wife or your sister or your brother or your mother
5 or your father took one of the FTE jobs and then as a
6 tag-along, if you lived there for three months you then
7 became the local hire.

8

9 In ANILCA it says that we're not going to
10 have entrance fees to the Parks that were created through
11 ANILCA, yet, through grey language we have user fees and
12 parking fees. They're not "entrance fees," but they're
13 still fees nonetheless.

14

15 That brings us to the Kenai Peninsula.
16 60 percent of the people live in the three boroughs, the
17 Mat-Su, Anchorage, and the Kenai Peninsula. We get
18 millions of people coming to Southcentral Alaska. In the
19 same lifetime history, if you look at the lifetime
20 history of where people were using stuff, over that same
21 period of time how many millions of people have come onto
22 the Kenai Peninsula, tens of millions of people. The
23 Kenai Peninsula, when we go back -- and our discussions
24 today stem back from your earlier decision of what was
25 rural and non-rural and you decided to make the Kenai
26 Peninsula a swiss cheese approach that says some
27 communities are rural on the Kenai Peninsula and some are
28 non-rural. And on the road system of the Kenai
29 Peninsula, that is a grey language approach, but in all
30 reality it's a hogwash analysis, it's a hogwash decision
31 to say that some of them are rural and some of them are
32 non-rural. Either the Kenai Peninsula should be rural,
33 all of it or it should all be non-rural. And I think
34 it's important for the Federal government to look to the
35 State and the State has determined that the whole Kenai
36 Peninsula on the road system is non-rural.

37

38 So when you look at our proposal that's
39 in front of us you have a vehicle today to rectify a
40 decision that in our mind was faulty. You could take
41 action today which, in effect, declares the whole Kenai
42 Peninsula non-rural.

43

44 So let's get on to our points.

45

46 Where something takes place. If it
47 doesn't matter where you're use takes place why have
48 customary and traditional determinations. Why go through
49 surveys. What's the point of having, you know,
50 information about where people fished if it doesn't

1 really matter. If it's just, well, yeah, I fished and
2 that fish might have swam on to Federal land, therefore,
3 I qualify. Or this moose is the same species of moose
4 that I hunt on State land, well, it's got to be the same
5 species, it's a moose, that I can hunt on Federal land.
6 By not having any criteria you open it up basically for
7 all rural residents to have C&T on all Federal lands,
8 period, so why have a C&T process. That's the road
9 you're going down, so why have a C&T process. If caribou
10 in one land, I shoot it it's the same caribou on Federal
11 land, well, obviously then I qualify. If my commercial
12 nets at the mouth of the Bristol Bay capture fish going
13 up into Lake Clark, I must qualify because it's the same
14 stock, it's the same fish. And if the lake trout that I
15 catch in Cook Inlet is the same stock and same species as
16 the one I would catch in Kenai Lake or the rainbow trout
17 that happened to be fishing out in Cook Inlet or the
18 Dolly Varden that happened to be swimming out there is
19 the same species that's on Federal land, well, that must
20 qualify me. Because I'm looking at Page 28 and I see a
21 bunch of zeros up there in terms of use on Federal land,
22 so it must be some other place where there's use from
23 Ninilchik, at least on the upper Kenai that qualifies
24 them.

25
26 So then we come to the question of how
27 much. How much qualifies me, is it one person going up
28 and fishing on Federal land, is that enough, is it two
29 people, is it three people, and how many fish, how often
30 is it a pattern of use. And what you do when you say
31 it's not really important how much or where, is that in
32 my mind you actually denigrate real subsistence. You say
33 that real subsistence really isn't meaningful when you
34 say one person intermittently going up to an area
35 catching fish is just as important as whole communities
36 on an annual basis every year going to fish camps and
37 making and utilizing fish in a subsistence fashion.

38
39 So let's talk about closure policy that
40 you should have in effect here because we had closures
41 last year on the Kenai River. A question you can ask
42 yourself, of course, we're not talking about closures
43 now, but as soon as this gets implemented we will be
44 talking about closures and Commissioner Lloyd there may
45 have to pull the trigger on some closures again this year
46 for the Kenai River if the sockeyes come back late, we
47 may not be fishing for sockeyes in the Kenai River, what
48 if they're late coming to the Kasilof. Are you going to
49 keep fishing in the Kasilof in Kenai. And what if we
50 open up the terminal area, again, at the mouth of the

1 Kasilof, and for 21 days we're fishing, both the drift
2 fleet and the setnet fleet and there's very little fish
3 getting up the Kasilof River, yet, that's the only
4 location where our commercial fisheries can fish in Cook
5 Inlet. And we have a person from Ninilchik who goes up
6 to the dipnet fishery in stage two here and says, hey,
7 look after 21 days of commercial fishing at the mouth of
8 Kasilof River, I can't catch a king, are you going to
9 close the commercial fisheries in Cook Inlet. That's a
10 tough question that you have to answer right here, and
11 that's a tough question that could be avoided or change
12 if you accept this proposal.

13

14 And let's talk about changes through time
15 on the Kenai Peninsula. If you don't accept the proposal
16 today and you go down the path, which I think is wrong
17 headed, of using the swiss cheese approach, of carving
18 the Kenai Peninsula into rural and non-rural areas, when
19 does it trigger it over. At what point will the whole
20 Kenai Peninsula become non-rural. I take care of we the
21 people, I take care for the last 10 years of my wife's
22 great-aunt, she's 94. She's one of the oldest members of
23 a Native descendent on the Kenai Peninsula. She fell
24 down last week and broke her hip. We went to the new
25 Soldotna Hospital, the Central Peninsula Hospital, she
26 had hip replacement surgery, she's up walking around
27 again. It's a \$100 million facility an hour away from
28 Cooper Landing and Ninilchik. What other subsistence
29 community off the road system in Alaska is located next
30 to a \$100 million hospital facility. What other
31 communities off the road system in Alaska are located
32 next to a Wal-Mart, Lowes, Home Depot, Three-Bears,
33 Safeway, Fred Meyer, Trustworthy Hardware, then you go
34 down to Homer and they have the same set of stores there
35 and you go to Anchorage and they have even more. None of
36 the rural communities are more than an hour and a half
37 away from metropolita, all over the place.

38

39 And it comes back down to a same
40 fundamental question. With the rules and regulations
41 that you have in place right now, under State
42 regulations, what person on the Kenai Peninsula is not
43 getting enough fish. I dare anybody to come up here and
44 say that under State regulations they cannot catch fish
45 on the Kenai Peninsula following the State regulations.
46 You have commercial fisheries that kill fish by the
47 metric ton. You have sportfisheries which are very
48 generous in their harvest amounts. You have personal use
49 fisheries where you can catch hundreds and hundreds of
50 pounds of fish. And you have educational fisheries that

1 teach about subsistence. So where in this mandate for
2 what we're talking about in ANILCA here has the State
3 failed to provide opportunities for its citizens to catch
4 fish on the Kenai Peninsula on the road system. I don't
5 see it.

6
7 So when we talk about grey language, we
8 can sit here and we can say, well, it really doesn't
9 matter where we catch it, it really doesn't matter what's
10 in the language because we're going to do what we want to
11 do.

12
13 CHAIRMAN FLEAGLE: Ricky, can I have you
14 summarize, wrap up, please, I didn't set time limits but
15 I don't want these unlimited.

16
17 MR. GEASE: Okay. So, again, in summary,
18 we feel where people catch fish is important and it's not
19 been demonstrated. How much fish is important, and
20 that's not been demonstrated.

21
22 Nobody has talked about your closure
23 policies, and revisiting the Peninsula rural/non-rural
24 through time. And that's what we'll be looking at,
25 through time, and we'll be here and continue to be here.

26
27 Thank you.

28
29 CHAIRMAN FLEAGLE: All right, thank you.
30 Board members, questions.

31
32 (No comments)

33
34 CHAIRMAN FLEAGLE: Appreciate the
35 testimony. Pete.

36
37 MR. PROBASCO: Mr. Chair, next, is Mr.
38 Rod Arno, followed by Mr. Sky Starkey, and then last, Mr.
39 Ron Rainey.

40
41 CHAIRMAN FLEAGLE: Rod Arno. Good
42 morning, Rod, and your microphone's already on for you.

43
44 MR. ARNO: Good morning, Mr. Chairman.
45 Board members. I'm Rod Arno, the Executive Director of
46 the Alaska Outdoor Council. And the Alaska Outdoor
47 Council is on record in our written comments supporting
48 Proposal 28 and the reasons are stated clearly in there.
49 And this seems to me like about a last ditch effort to go
50 down this grey area and open up the Kenai to a

1 subsistence fishery that is not and was not the intent of
2 ANILCA.

3
4 That clearly when ANILCA was established,
5 Title I of ANILCA, purpose, definitions, and Section
6 .101(c) says:

7
8 It is further the intent and the purpose
9 of this act, consistent with management
10 of fish and wildlife in accordance with
11 recognized scientific principles. And
12 the purpose for which each conservation
13 unit is established, designated or
14 expanded.

15
16 And when you look in ANILCA, Title III
17 for the Kenai National Wildlife Refuge, which was once
18 the Kenai National Moose Range, and then it was expanded
19 it lists the purposes.

20
21 For the Kenai National Wildlife Refuge,
22 it's established and shall be managed and
23 the purposes are the conservation of fish
24 and wildlife populations and their
25 habitat, in part, to fulfill the
26 international treaties, to insure the
27 maximum extent possible in a manner
28 consistent with these purposes set forth,
29 water quality necessary, water quality
30 within the Refuge to provide in a manner
31 consistent with paragraphs one and two,
32 opportunity for scientific research,
33 interpretation, environmental education
34 and land management training, and five,
35 the last one, to provide in a manner
36 compatible with these purposes,
37 opportunities for fish and wildlife
38 orientated recreation.

39
40 Unlike the other Refuges that were
41 created by ANILCA, under Title III, that all have a
42 provision to provide in a manner consistent with the
43 purposes set forth in paragraphs one and two, the
44 opportunity of continued subsistence uses by rural
45 residents. So clearly the intent in ANILCA was not to
46 have subsistence priorities in the Kenai. And that's
47 consistent with testimony that I attended in the late
48 '70s in Anchorage when Moe Udall and Cecil Anders were
49 there and the majority of testimony in Anchorage was
50 people saying that they use the Kenai for their

1 recreation. And clearly if we are not going to not have
2 it so much grey area then, you know, that needs to be
3 looked at.

4
5 And the only reason now that it's -- I've
6 been notified that that was not part of the discussion of
7 the Federal Subsistence Board when they looked at this,
8 was because of a court case, that said, well, that wasn't
9 the intent, well, that's some of that grey area that's
10 clearly a problem. And in that court case in 1996, you
11 know, it clearly states that this is for the purpose of
12 this present controversy, and it was not addressed by the
13 courts after that.

14
15 The Outdoor Council also during the last
16 rural/non-rural determination, public comments, the
17 Outdoor Council commented that the review of the rural
18 determination based on Alaska communities from the 2000
19 census should be evident enough to convince most hunters
20 and fish harvesters that the Federal rural priority won't
21 work for communities and areas in Southcentral Alaska,
22 Region 2 because of the proximity road-connectedness.
23 The Federal Subsistence Board should determine all
24 communities and areas within the state, Anchorage, Mat-
25 Su, Kenai non-subsistence area as Federal non-rural
26 status. So there are two possibilities to save this
27 Board from having to go through dividing people standing
28 shoulder to shoulder with different zip codes on their
29 back.

30
31 Thank you.

32
33 CHAIRMAN FLEAGLE: Thank you, Rod.
34 Questions.

35
36 (No comments)

37
38 CHAIRMAN FLEAGLE: Appreciate the
39 testimony. Pete.

40
41 MR. PROBASCO: Mr. Sky Starkey, and then
42 Mr. Ron Rainey.

43
44 CHAIRMAN FLEAGLE: Sky Starkey, good
45 morning.

46
47 MR. STARKEY: Good morning, Mr. Chairman
48 and Board members. I guess I would begin my comments,
49 and I'll get into what I had prepared in a moment, but if
50 there was ever a demonstration of why ANILCA was passed

1 it's what you've heard up to this point in testimony.

2

3 I mean essentially ANILCA was passed and
4 it's clear, it's explicit in the findings, I don't have
5 to rely on my recollection of what Moe Udall said in
6 Anchorage, but it's explicit in ANILCA that the
7 subsistence protections were for situations where there
8 was an influx of a population into a traditional area and
9 there was going to be political pressure and other
10 pressure to force subsistence users out. And ANILCA was
11 designed and intended and implemented for precisely the
12 reason that we're here. And the Kenai Peninsula is where
13 the rubber meets the road in subsistence.

14

15 We're here because the Board is trying to
16 figure out what's customary and traditional use and
17 what's not. What does it mean.

18

19 Well, one thing that we know for sure, it
20 absolutely does not mean what the State says it means.
21 The State's Supreme Court -- here's what the Supreme
22 Court said in Madison about the State's customary and
23 traditional use standards and how they want you to apply
24 it and how they intended to apply it. In Madison, the
25 last paragraph in Madison:

26

27 Unanimous Supreme Court.

28

29 Under the Board's regulation, customary
30 and traditional use and the way they
31 applied it, many individuals who have
32 historically depended on subsistence
33 fishing are eliminated from subsistence
34 uses at the out set. Under a statute
35 designed to protect subsistence uses, the
36 Board has devised a regulation to
37 disenfranchise many subsistence users who
38 interests that statute was designed to
39 protect.

40

41 The State Supreme Court.

42

43 It does not mean what they want you to
44 apply in this case.

45

46 It does not mean comparing the uses of
47 Hope, Cooper Landing and Ninilchik. You don't compare
48 the use of Quinhagak and Sleetmute for moose but they
49 both get to use moose. They both use moose in Unit 18,
50 they both use moose on the Holitna. Quinhagak doesn't

1 use as many moose as Sleetmute does. Quinhagak's closer
2 to the mouth of the river, they have access to fresher
3 king salmon, they have other resources, but they use
4 moose, they have customary and traditional use of moose
5 and no one on this Board, I venture to say, would say
6 that they don't. And no one on this Board would sit
7 there and ask the Subsistence Division to compare how
8 many people in Quinhagak use moose to how many people in
9 Sleetmute do, and, why, because everybody understands
10 it's the pattern of use, why, because it's moose. But
11 it's not about comparing. And why isn't it about
12 comparing, and how did ANILCA and how did Congress
13 understand that and what did they do about it, they
14 understood because they listened to Alaska Natives and
15 they knew and they'd heard a great amount of testimony
16 and Alaska Native people were there. And this is about
17 Alaska Natives and we all know that ANILCA was about
18 Alaska Natives, and without Alaska Natives and tribes
19 there wouldn't be ANILCA. And so we can all skirt the
20 issue but it's the truth and it's why customary and
21 traditional use is in the statute. Customary and
22 traditional was in the statute when it was a Native
23 priority and rural was added.

24

25 And the reason that Congress put it in
26 there and the reason they put Regional Councils in there
27 is they understood that every place in the state has a
28 different pattern of use. And the pattern of use for
29 rainbow trout may not be the same pattern of use for
30 salmon and it may not be the same pattern of use as Hope
31 as it is in Cooper Landing as it is in Ninilchik. And
32 that doesn't mean that it's more or less important for
33 the way of life. It might mean that it's more or less
34 important in terms of a nutritional needs, and if that
35 was all ANILCA protected your job would be done and you
36 could just go your way and say we've taken care of it.
37 But ANILCA says that it was to protect a way of life, to
38 provide the opportunity for the continuation of a way of
39 life, and that included cultural as well as nutritional
40 needs.

41

42 Subsistence is about using a wide variety
43 of resources in an area opportunistically. It's not
44 about frequency of use, it's not about percentage of use.
45 Even on the AYK-Delta where no one would argue about what
46 wide diversity of use is, people in villages don't go
47 fishing for rainbow trout everyday, they don't go maybe
48 even every year, people go when they need to, they want
49 fresh fish, there's no salmon around, they're hunting,
50 they're fishing, they're berrypicking, they want to just

1 go up the river with their family.

2

3 Some of the testimony you've heard today
4 is understandable because people, perhaps, want to look
5 at things in terms of a narrow scope of need and
6 subsistence's welfare and there's a Fred Meyers there and
7 there's a hospital there. Nobody in ANILCA said you had
8 to be poor. No one said that you weren't entitled to
9 have a hospital or health care to live your way of life.
10 It wasn't about making people choose. It wasn't about
11 keeping Alaska Native's poor. It wasn't about making
12 them say, you can't develop economically. It was about
13 giving them the choice to continue their way of life and
14 when they decided that they didn't or when their needs
15 changed, that was up to them. It was a period of self-
16 determination, not termination.

17

18 So customary and traditional use doesn't
19 mean percentages, comparing. It doesn't mean frequency.
20 It means a pattern of use. And how did Congress deal
21 with it. Congress never -- you can't find anything in
22 ANILCA, and the Supreme Court of Alaska found nothing,
23 and no court has found anything in ANILCA which would
24 legitimize a process that you're undertaking now to try
25 to limit Ninilchik to a staple resource rather than a
26 diversity of resources.

27

28 Congress said customary and traditional
29 use because that was their way, its way of implementing
30 its intent to protect a way of life and a way of life
31 that's customary and traditional, and how did it do it,
32 it provided Regional Advisory Councils. And Regional
33 Advisory Councils, as this Board and its council and
34 everybody's acknowledged, one of the main purposes of a
35 Regional Advisory Council is to take local knowledge and
36 turn that local knowledge into a reflection of customary
37 and traditional uses. And it's about takings. It's not
38 about numbers and comparisons and frequencies, it's about
39 taking a pattern and designing seasons and methods and
40 means and takings around a customary and traditional use
41 pattern to satisfy those customary and traditional uses.
42 And I'm not the only one that thinks that.

43

44 The Federal District Court, in the most
45 thoughtful decision about customary and traditional use,
46 the Bobby Decision, which is still the best law on this
47 issue, Judge Holland had this to say, and this is right
48 after he quotes the definition of subsistence uses,
49 customary and traditional uses and he says:

50

1 This definition is critical to the proper
2 implementation of Alaska's second
3 subsistence law.

4
5 And at this point he was interpreting
6 State law because the State was managing but it was the
7 same definition of subsistence.

8
9 The Court would emphasize at this initial
10 stage of review that the Board of Game
11 should not take the Court's foregoing
12 comments to mean that the availability of
13 a one game population or fish stock is an
14 element or consideration which may be
15 employed to restrict or reduce the
16 demonstrated customary and traditional
17 use of another game population.

18
19 Established use of moose may not be
20 restricted solely because fish are
21 available.

22
23 The Board of Game must determine
24 separately the level of subsistence use
25 of each game population. If bag limits
26 and seasons are imposed on subsistence
27 hunting there must be substantial
28 evidence in the record that such
29 restrictions are not inconsistent with
30 customary and traditional uses of the
31 game in question. It must be clear in
32 the record that subsistence uses will be
33 accommodated in regards to both quantity
34 or volume of the use and the duration of
35 the use, subsistence customary and
36 traditional uses.

37
38 Need is not the standard. Again, it
39 matters not.....

40
41 CHAIRMAN FLEAGLE: Sky, again, no time
42 limit doesn't mean unlimited, I'd like to have you wrap
43 up and summarize if you would, please.

44
45 MR. STARKEY: Thank you, Mr. Chairman. I
46 hope if somebody has some questions that I can continue
47 to explain this.

48
49 But the Board's obligation is not to
50 restrict customary and traditional uses through some

1 artificial definition of customary and traditional's uses
2 that doesn't reflect the subsistence way of life.

3
4 The Board has the authority and the
5 responsibility through the takings part of the regulation
6 and following the recommendations of the Regional Council
7 to implement customary and traditional uses.

8
9 Four times the RAC's addressed this
10 issue, four times they've found customary and traditional
11 uses.

12
13 Ralph Lohse spoke eloquently about this
14 very proposal in March saying that the RAC didn't depend
15 on studies, didn't depend on numbers, it looked at their
16 local understanding, the stories, the history, the
17 patterns of use and had no doubt that their finding was
18 correct on this issue.

19
20 I'm out of time, I won't press my luck.
21 I have more to say, this is an important issue. If you
22 go down this path essentially and look at customary and
23 traditional uses this way the end result or the precedent
24 is, and which the State may very well like that
25 subsistence use is narrowed to those resources that you
26 can define as staples rather than the variety of
27 resources which subsistence users have a right to as
28 their way of life.

29
30 Thank you, Mr. Chairman.

31
32 CHAIRMAN FLEAGLE: Thank you, Sky. And I
33 apologize for killing your mic, I thought my priority
34 button just overrode it temporarily. I'll use it more
35 judiciously. That's the first time I've used it.

36
37 (Laughter)

38
39 CHAIRMAN FLEAGLE: Gary.

40
41 MR. EDWARDS: Mr. Chairman. Sky, I will
42 let you -- I'll give you an opportunity to continue to
43 elaborate. Throughout your testimony you used the phrase
44 pattern of use, I mean would you define, you know, what
45 you view as a pattern. What is a pattern, what creates a
46 pattern, what isn't a pattern and what is a pattern, or
47 is there a definition to pattern.

48
49 MR. STARKEY: Mr. Chairman. Mr. Edwards.
50 I would -- it's -- I'm reluctance to say this because of

1 the State's handling of this particular issue, but I
2 would say that if you were to look at all the subsistence
3 research that has been done up until the Fall report,
4 which I think is an anomaly, you would find that
5 virtually every study, every person who's described
6 subsistence, subsistence, and it's patterns, would
7 describe it as opportunistic. Would describe it as a use
8 of a wide variety of resources, in fact, all the
9 resources, all the wild renewable resources, which is
10 what ANILCA says, in the area, in the area where people
11 travel, in the area where they go.

12

13 And it's generally throughout the state,
14 if you also look at the pattern of use, for example, if
15 you look at any of the community studies, the Kwethluk,
16 for example, I'm familiar with, it covers several game
17 management units, and that's the pattern of use. The
18 pattern of use that's consistent throughout subsistence
19 is opportunistic. It is a wide variety of resources.

20

21 Now, does that mean that the Board
22 necessarily has to provide -- the Board's response to
23 that pattern then is to look at what the pattern of use
24 is and implement taking regulations which reflect the
25 pattern, and that's where the Regional Councils help.

26

27 MR. EDWARDS: Mr. Chairman, if I could
28 follow up. You know, last.....

29

30 CHAIRMAN FLEAGLE: Gary.

31

32 MR. EDWARDS:last week, for
33 example, when we looked at C&T for black bear and for
34 brown bear, and we got the information from the harvest
35 of brown bear, kind of the historical harvest, at least,
36 based upon the sealing data for residents of Ninilchik,
37 there was some 30-some-odd, I think, brown bears taken
38 and that harvest ranged from there in Unit 15 to Kodiak
39 to Bethel to Glennallen, I think, were some of the
40 communities, and so certainly people from Ninilchik
41 traveled to those places to take brown bear, but it
42 sounds like from your definition a pattern then, those
43 areas would also be areas of where folks from Ninilchik
44 would have customary and traditional use.

45

46 MR. STARKEY: Thank you for asking that
47 question. Thank you, very much.

48

49 That's the -- that's kind of the other
50 side of the argument, isn't it. It's kind of like let's

1 -- I mean what I've said is if I take your argument to
2 the extreme, subsistence are limited to salmon and moose
3 essentially, those are the two where you can show the big
4 pattern. The other side of the argument's one you've
5 just made, which is, well, if we look at this pattern of
6 use then if they used a bear in Kodiak in the past then
7 we have to, you know, we have to expand our use to there.
8 But the truth is that what you said as a Board is that
9 you rely on your Regional Councils to put the sense in
10 the system, to reflect what the customary and traditional
11 use patterns are. And as far as I understand it and what
12 you've told people at AFN, and what you've told the
13 courts and what you've told each other is that's the
14 purpose your Regional Councils serve, and very
15 particularly so with customary and traditional use
16 determinations, and it's worked.

17

18 And so is the pattern of use still that
19 someone from Ninilchik would travel to Kodiak and expect
20 that they would have a customary and traditional use and
21 a priority to harvest brown bear, well, I mean I think
22 you'd have to go to the Regional Council and look but my
23 thought is they would probably say, no, that's not the
24 customary and traditional pattern of harvest that
25 occurred. Did it occur, it may have. But that's not the
26 pattern of use that they're reflecting.

27

28 And so that's how you make sense of the
29 system, you make sense of the system and that's what
30 Congress intended and it doesn't go to that extreme.

31

32 MR. EDWARDS: Mr. Chairman, one more
33 follow up. I mean but then using that same rationale,
34 why wouldn't that apply to other areas, let's say on the
35 Kenai where also the use was very limited or not
36 frequent, certainly more than one opportunity but it
37 seems to me that same rationale would apply in both
38 areas, that's where I'm having trouble following your
39 rationale.

40

41 MR. STARKEY: Well, it could be that
42 people traveled to, let's say, Kodiak, and they may have
43 gone there and there may have been some kinship link,
44 there may have been some reason why people were there and
45 they hunted and they fished while they were there, and it
46 might be that a subsistence regulation would still allow
47 that, would still allow someone from Ninilchik to travel
48 with kin to Kodiak and join in a hunt and share, and I
49 think that's clear in ANILCA, and that may have been the
50 pattern of use that was described to you when you looked

1 at this.

2

3 It's also true, as I said, if you look at
4 virtually every community subsistence survey in the
5 state, that you will see that people used a fairly
6 significant area around their community as their primary
7 harvest areas. And so it makes sense that that's the way
8 things are. And Ninilchik's use is consistent with that
9 pattern of use.

10

11 The other thing that's going on here, of
12 course, that is remarkably not discussed, there's been 50
13 years in terms of fishing when people haven't been able
14 to practice their customary and traditional patterns of
15 use. The Fall report looks at three years when
16 sportsfishing was the pattern and then people are
17 criticized for taking advantage like sportsfishing when
18 that's the only pattern of use they could explore. So
19 what was the pattern of use 50 years ago, has there been
20 interruptions beyond control, why didn't the Fall report
21 address that. You know these are other questions that
22 come into play here, but the pattern is to travel and
23 share and to join in the hunt with your kin and family
24 members and perhaps that's what happened and perhaps that
25 pattern should be allowed, and what's wrong with it if it
26 is.

27

28 CHAIRMAN FLEAGLE: Hold your question,
29 Judy, please. I'm going to call a 10 minute break, and
30 when we come back Sky you'll be back on the table and
31 Judy will be back with the question. Ten minutes.

32

33 (Off record)

34

35 (On record)

36

37 CHAIRMAN FLEAGLE: Okay, we have a full
38 compliment of Board members back. We're back on record,
39 continuing public testimony with Sky Starkey. Judy.

40

41 MS. GOTTLIEB: Thank you, Mr. Chair.
42 Sky, I just wondered if you could repeat the last part of
43 the ruling on the Madison case because I didn't hear it.

44

45 Thank you.

46

47 MR. STARKEY: Thank you, Mr. Chairman.
48 The Madison case basically just reinforced the Alaska
49 Supreme Court's interpretation of the way the State was
50 applying the customary and traditional use standard and

1 the way it's encouraging this Board to do it. Saying
2 that under a statute designed to protect subsistence
3 uses, the Board has devised a regulation to
4 disenfranchise many subsistence users.

5
6 The Bobby Decision is the one that spoke
7 to the fact it's not about whether or not you're
8 targeting a species, it's not about whether or not --
9 need's not the standard, it's about customary and
10 traditional use, and that means if the pattern is
11 incidental taking while you're fishing for salmon, that's
12 a legitimate pattern as well. If the pattern's the
13 incidental take sometimes and directed -- direct take in
14 the winter, that's a pattern as well.

15
16 The Court said, again, it matters not
17 what other food sources may be available
18 at any given time or place. The standard
19 is customary and traditional use of game.

20
21 MS. GOTTLIEB: Mr. Chair.

22
23 CHAIRMAN FLEAGLE: Continue, Judy.

24
25 MS. GOTTLIEB: Thanks. And, well, you
26 mentioned targeting and I probably should have asked
27 Darrel when he was up here, but if you're comfortable
28 speaking on behalf, I mean there has been a lot of
29 discussion about what subsistence users might be setting
30 out to do at any point in time, did people target
31 resident species or not and, I know, we've heard from
32 Ralph many times going out for subsistence is
33 opportunistic and people are looking for food. I just
34 wondered if you had any more comments along those lines.

35
36 MR. STARKEY: Mr. Chairman. Member
37 Gottlieb. Well, I have gone out to Ninilchik and we have
38 talked with elders but also in your record, people from
39 Ninilchik wrote nine letters to the RAC and those I
40 submitted to the record on -- when was that Wednesday,
41 Thursday, there's nine letters in the record, there's the
42 testimony of several people from Ninilchik, there's
43 testimony at the RAC, there's testimony by RAC members
44 that demonstrate that the use of rainbow trout, Dolly
45 Varden and lake trout and other freshwater resident
46 species is both incidental and directed. Incidental as
47 part of the salmon fisheries, people keep as subsistence,
48 the pattern again, customary and traditional use pattern
49 that we're trying to identify is that people keep what
50 they catch, that they don't waste and that they use and

1 they share. And then at times when salmon aren't
2 available and subsistence users are just like the rest of
3 us, they like fresh food sometimes, so then it's more
4 directed fishery for freshwater fish, and people will
5 fish through the ice or when the salmon run's over then
6 go after trout or Dolly Varden. So it's both.

7

8 CHAIRMAN FLEAGLE: Other questions.

9

10 (No comments)

11

12 CHAIRMAN FLEAGLE: All right, Sky, for
13 your testimony.

14

15 MR. STARKEY: Thank you. Thank you, for
16 your indulgence, Mr. Chairman.

17

18 CHAIRMAN FLEAGLE: Pete.

19

20 MR. PROBASCO: Okay, last public
21 testimony on Proposal 28 is Mr. Ron Rainey. Good
22 morning, and your microphone's already on.

23

24 MR. RAINEY: Good morning, Mr. Chairman.
25 And thank you, I see that it is on.

26

27 This is a touch act to follow, Ricky
28 Gease, I think, presented our objections to C&T for
29 Ninilchik on the upper Kenai very, very well, far better
30 than I can.

31

32 I would like to touch on one point though
33 and that's the eight criteria. A long and consistent
34 pattern of use, excluding interruptions and that's what
35 -- the intent of that, I see, has been bent a little bit,
36 or as we're talking about, grey areas here, because of
37 the 50 year closure of -- by the Federal fisheries. I
38 think that's less than accurate. If you look at the
39 historic sites, the Kenaitzes have a historic site in
40 that area, in the Upper Kenai River, they are the ones
41 that fish the upper river, not Ninilchik. There are
42 other tribes in the area that, of course, could lay claim
43 to the same thing. The Salamantoffs, they fished up
44 there, too, I'm sure, and they're not fighting for
45 subsistence in that area. The Kenaitzes, who truly did
46 fish in that area and history bears that out, they're not
47 allowed to fish there, and the Tyenoks even came over
48 across the Inlet to moose hunt so they could stake a
49 claim that they fished in that area also because there is
50 testimony that during times of shortage of moose on that

1 side, they did come to the Kenai side to hunt, therefore,
2 they probably caught a salmon, a Dolly and a rainbow,
3 that species been taken by probably every tribe in that
4 area. And, yet, we have the Kenaitzes who have a
5 historic site there, Ninilchik has nothing more than any
6 of the other tribes that are not fishing there and it
7 seems very weak now that they say they have customary and
8 traditional rights to that area. It just does not pass
9 the straight face test. It really doesn't.

10

11 Sure you could find elders in every one
12 of these tribes that, say, yes, we fish that area, who do
13 you give it to, you give it to the one area in the Kenai
14 Peninsula that the swiss cheese approach has allowed to
15 be rural and say, oh, by golly the Ninilchik Tribe should
16 have customary and traditional, not true. The Kenaitzes
17 were there long, long before and they dominated that
18 area.

19

20 And we presented information at another
21 meeting that the Kenaitzes and Ninilchik did not share
22 that much, in fact, the Kenaitzes had a village on the
23 north shore of the Kasilof River and that was about as
24 far as they normally let the Ninilchik Tribe extend to
25 and I think someone from the -- in fact, the director of
26 Kenaitzes said, well, we did -- a woman about 30 years
27 old said that there is a pattern of sharing, in fact she
28 went clamming on the beach down in Ninilchik that summer
29 and I thought, you know, what an odd way to say that they
30 share because so did 30,000 other people go down there
31 and nobody from Ninilchik knew she was there. You know,
32 it's just the anecdotal information that they share and
33 fish that area, it isn't there, it doesn't hold water.

34

35 And I think Ricky provided good testimony
36 on why they shouldn't have C&T and when it comes up
37 again, certainly Ninilchik will not be rural, they are as
38 much of the Kenai Peninsula infrastructure as any other
39 part. In fact, Ricky mentioned that his mother-in-law
40 had -- or aunt had a hip replacement. I called the
41 hospital a few days ago, they have 101 physicians working
42 in that hospital and in that area, you can get almost
43 anything up to a heart transplant on the Kenai Peninsula
44 now and if that's a rural area, I don't know what is, it
45 just does not, as I've said many times, pass the straight
46 face test. I really don't believe that.

47

48 We're a non-rural area, we have other
49 tribes that have fished that area much, much more than
50 Ninilchik and this is not just about tribes. We have an

1 area, Ninilchik, that has, yes, prob -- I don't know how
2 many in their organization but that's a retirement area
3 now, we have many, many people moving in that area, and
4 what are opening, Pandora's Box, are we going to have
5 people with nets up there from Ninilchik scooping up
6 rainbows that we've nurtured for 30 years trying to
7 restore that run, we're going down a slippery slope
8 folks, let's don't go there.

9

10 I'd be happy to answer any questions. I
11 know I'm being redundant in some ways.

12

13 CHAIRMAN FLEAGLE: Questions.

14

15 (No comments)

16

17 CHAIRMAN FLEAGLE: Thank you for your
18 testimony.

19

20 MR. RAINEY: Thank you.

21

22 CHAIRMAN FLEAGLE: That's it, right,
23 Pete.

24

25 MR. PROBASCO: That concludes public
26 testimony, Mr. Chair, on Proposal 28.

27

28 CHAIRMAN FLEAGLE: Thank you. We'll now
29 turn to Ralph Lohse for the Regional Council
30 recommendation. Good morning, Ralph.

31

32 MR. LOHSE: Good morning, Mr. Chair.
33 With the Chair's permission I'd like to present the
34 Regional Council's recommendation, and in the interest of
35 saving time, with the Chair's permission, I would like to
36 answer some of -- make comments on some of the things
37 that were brought up by the public testimony and make one
38 comment and then I won't have to come back and make those
39 in the future.

40

41 CHAIRMAN FLEAGLE: Okay.

42

43 MR. LOHSE: Okay. As you know the
44 Council opposed the proposal stating that no new evidence
45 was presented to the Council to rescind the customary and
46 traditional use determination for the taking of fish on
47 the Kenai. The C&T process and the findings were
48 thoroughly completed in our mind.

49

50 And on that I'm going to go back and just

1 say like Darrel said, yes, that was true last week, that
2 was true last year and that was true the year before and
3 it was probably true five years ago. And if you want to
4 go back to when we were dealing with moose you'll find
5 that this Council actually thought that the Kenai should
6 be all rural or non-rural but under current law, under
7 current Federal regulations the reason the Kenaitzes
8 don't have a C&T for fish on the Kenai River, is under
9 current regulations they're not classed as a rural
10 community. But ANILCA says that rural residents have a
11 subsistence priority. And under our current regulations
12 the few communities that are found to be rural are Hope
13 and Cooper Landing and Ninilchik and that can change in
14 the future and that can change if the Board decides to
15 change them to a non-rural status. But under current
16 status they are the ones that are rural and they are the
17 ones that we have to deal with as a Council.

18
19 Now, our Council did look at the
20 statistics but just like it was pointed out by Sky, we're
21 people who have knowledge of subsistence, we either use
22 it or no people who use it or have an understanding of it
23 and so we look at the communities that are involved from
24 the standpoint of subsistence users or knowledgeable of
25 subsistence and we say do they have a pattern of use.
26 And one of the things that's been brought up time and
27 time again here is do they depend on these things, no,
28 it's brought up that they opportunistically use them.
29 Now, if subsistence is not based on the size of the use
30 or the frequency of the use that kind of puts it in the
31 category of being sporadic in my way of thinking.

32
33 So if a sporadic use is not every day and
34 you don't depend on it then sporadic use must be a use of
35 the resource.

36
37 When we listen to the stories and we talk
38 to people, we start talking about fish on the Kenai. And
39 if you get back with the older people, you don't find
40 them saying, oh, let's see I caught a Dolly Varden or I
41 caught a steelhead or I caught a rainbow trout, they say
42 I caught, you know, we ate some trout while we were
43 there, and trout is trout. I'll give an example because
44 we did this thing on Bristol Bay where all fish, when I
45 was teaching school on the Peninsula in an unnamed
46 village back in the early '60s, we were out on a hunting
47 trip, we wanted something to eat for supper that night,
48 there was a little creek there, we built a little stone
49 weir, took a t-shirt off, tied the t-shirt in the little
50 stone weir, went up the creek with some sticks, came

1 running down the creek with the sticks and one guy stood
2 by the t-shirt and when it had enough fish in it we
3 picked the t-shirt up we took it over to the campfire and
4 we cooked a bunch of fish. Now, I happen to know that
5 there were probably coho smolt in there, there were
6 probably small rainbow trout, there probably were Dolly
7 Varden, there probably could have been some other fish in
8 there that I don't know because there's pink salmon and
9 dog salmon in that same creek but they wouldn't have
10 smolt in there but nobody sat down and said, oh, I want a
11 Dolly, I don't want one of these salmon smolt over here,
12 it was just a pan full of fish, we cooked a pan full of
13 fish and had fish for supper that night. That, to me, is
14 opportunistically making use of a subsistence resource.

15
16 Legal, no, I don't think it would
17 probably class as legal although we probably had enough
18 people that we were within the limits of what we could
19 have taken for fish, they were just kind of small but
20 that's how we took them.

21
22 Now, some of the things that were brought
23 up, Ricky Gease brought up this rural versus non-rural,
24 and I'll agree with him it would sure simplify things if
25 the Kenai Peninsula was all rural or the Kenai Peninsula
26 was non-rural. If you look at the Kenai Peninsula in
27 characteristic with the rest of the United States and you
28 look at the majority of the Kenai Peninsula it looks
29 pretty rural. If you look at it in comparison with
30 Chitina or McCarthy or Glennallen it looks pretty non-
31 rural. But under current regulations unless you change
32 what your definition is Ninilchik, Hope and Cooper
33 Landing are rural communities and it's our responsibility
34 to see whether they have -- as a Council, whether they
35 have a C&T for the resources that we're looking at and as
36 a Council we felt that they did.

37
38 It is grey language, that's why the
39 Federal government and State are always in litigation on
40 all these different points. And so for me to sit down
41 and say what ANILCA means and for somebody else to say
42 what ANILCA means it's pretty interesting because the
43 courts can't decide what ANILCA means. The courts can't
44 decide on what the waters, which waters go to who and
45 which waters don't go to who or they haven't decided yet.
46 So I find it pretty hard when somebody comes up and makes
47 a statement and says this is what ANILCA meant. If they
48 say this is what ANILCA means to me, that's fine.

49
50 I'll tell you what ANILCA means to me, it

1 said, that the rural lifestyle of Alaska was important
2 enough to protect for Natives and for non-Natives. For
3 the kid down in the state that's 12 year's old and is
4 dreaming about going out into the woods and living an
5 "Alaska experience" and never gets around to doing it but
6 he's able to dream about it because the Congress said,
7 you know, that the rural lifestyle of Alaska was
8 important enough to protect, that we'll write it into law
9 and we'll give it a priority that says that rural
10 residents of Alaska have a subsistence priority to use
11 these game resources and fish resources, not just because
12 they'll depend on them or they'll starve to death, not
13 just because there's not a store close by, but for
14 purposes of subsistence which includes cultural, and part
15 of cultural is being able to dream about it, to be able
16 to think about it, and that's what ANILCA says to me.

17
18 And that's why I sit and I get a little
19 bit emotional about this, I'm not sitting there arguing
20 for Ninilchik, I'm not even sitting there arguing for
21 myself, I'm arguing for the fact that the next generation
22 down the road, the kid that's sitting in Minnesota, the
23 kid that's sitting in a village in Alaska, the kid that's
24 sitting in Anchorage can sit down and dream about the
25 fact that he can go out into rural Alaska and live an
26 "Alaska lifestyle" that was important enough to Congress
27 that they wrote a law to protect it.

28
29 Now, pattern of use, Gary Edwards brought
30 it up, and that's where the Council come in, we look at a
31 pattern of use. The fact that people from Ninilchik went
32 to Kodiak and used brown bear when brown bear was closed
33 in their area doesn't give us a pattern of -- as a
34 Council doesn't make us feel that they have a pattern of
35 use in Kodiak for brown bear, it shows that they used
36 brown bear, but we looked at the Kenai the same way as if
37 I lived in Glennallen, I'd want to look at the area up
38 the highway to Paxson, the same way I live in the Chitina
39 Valley or I live in Cordova, and I want to look -- if I
40 live in Cordova, I look at the Copper River Flats and the
41 mouth of the Delta and everything as where Cordova does
42 it subsistence. And when I look at the Kenai and I look
43 at the rural communities on the Kenai, I look at the
44 Kenai and I say the Kenai, you know, wasn't divided up
45 into little squares at one time, the Kenai was an area.
46 We look at why did they settle in Ninilchik, Ninilchik
47 wasn't a tribe, Ninilchik's not the Kenaitze. Ninilchik
48 was settled because it was a good spot for displaced
49 Alutiiqs and Creoles and Russians to settle on the Kenai
50 because there was good resources to use there and on the

1 Kenai for them to make a living with and they did. We go
2 back and we look at what they did, they traveled around
3 the Kenai. That community wasn't a tribal community,
4 it's a tribe today under Federal recognition but it
5 wasn't a tribal community the same the way the Kenaitzes
6 were. It was people who came at that time and they came
7 because that was a good place to live. Now, as things
8 have changed their subsistence has been cut back because
9 of other people coming in as we heard. The road didn't
10 open up an area for them, the road closed areas down
11 because it brought other people with it.

12

13 Just a couple more comments and I'm going
14 to shut my mouth.

15

16 Okay, I'm going to read you one thing and
17 I'm going to read it from testimony that was -- or
18 comments that I made in 2005. This is dealing with the
19 subsistence lifestyle as I know it, not from use, but
20 from having dealt with people who's short-term memory,
21 two or three generations, have taken part in it, and this
22 is some of my Athabascan friends up country. And the
23 idea is that in the subsistence lifestyle, life is a
24 trail. Now, you've heard me on this before, but I think
25 it's very, very applicable. And this was out of our
26 thing in 2005 and we were talking about criteria as to
27 whether or not we could first decide they had C&T before
28 we decide how we make regulations to meet those C&T
29 needs, and that's where you've got your choices. And
30 this is what I've got:

31

32 I guess I'm going to have to go to
33 comments that some of my Athabascan friends that I've got
34 from up country and they talk about life being a trail.
35 I think we don't have to go very far back in history and
36 we find out, especially in the subsistence community life
37 was a trail. You didn't have any specific place where
38 you spent the night, if you happened to get a moose
39 that's where you stayed until you ate up the moose. Just
40 like I just explained, if you happen to decide this is
41 where you're going to camp and you put your t-shirt in
42 the creek and you caught a bunch of fish that's where you
43 had supper that night. And that's especially what I
44 found out when I talked to some of the older folks.

45

46 But the question that you brought up was
47 that the first criteria has to be settled before you can
48 go to all the other criterias and that criteria was did
49 they have C&T.

50

1 So does consistent long-term use mean
2 putting up large quantities of subsistence food, storing
3 it up for the future, for the long-term, or does
4 consistent long-term use mean that down through the ages
5 and through the years when the opportunity's presented
6 itself, when you were in the area did you take that food
7 for subsistence.

8
9 I mean that's what the life is a trail
10 idea is. You may have only come around there once every
11 10 years, you may have only camped on this side of Mt.
12 Drum every 10th year and we're going to be dealing with
13 that in Unit 12, because we're dealing with the
14 Athabascans up there, and the idea, if you go back and
15 you look at where their old trails were and you talk to
16 the old-timers where their trails were you'll see that
17 different families had different trails that went through
18 different places that they lived on. And you might not
19 have camped there that night if the caribou weren't
20 there, you might have gone down to the creek and caught
21 some fish instead because you didn't run into the caribou
22 until you got all the way over to the Mud Volcanos on the
23 other side of Mt. Drum, but did you have consistent long-
24 term use down through the years of the resource if, when
25 the opportunity presented itself you made use of the
26 opportunity.

27
28 Now, I've been told, and this is just
29 what I've been told sitting on this Council in our
30 discussions, that subsistence is opportunistic. When the
31 opportunity presents itself you make use of it. We're
32 told by some of our Athabascan friends up there, you
33 don't even tell somebody that you're going to go out and
34 hunt for a specific animal because that's in ge, that's
35 taboo. You don't tell them that you're going to hunt for
36 a specific animal or fish because you feel like the
37 animal gives itself to you. So if you're there and this
38 animal presents itself you take it but you don't say that
39 ahead of time.

40
41 Now, that's not part of my culture, and
42 that's not part of the culture of most of the people that
43 are sitting at this table and I will guarantee you that,
44 but that's how some of the subsistence users, the older
45 subsistence users up in our area look at subsistence.

46
47 From that standpoint, we're talking about
48 the people on the Kenai traveling back and forth on the
49 Kenai, they ran traplines, they did gold mining and
50 everything else, I've done the same thing. When you're

1 running a trapline and you've got a dog team to feed, you
2 catch a lynx, you feed the dog team the lynx and you eat
3 a chunk of the lynx yourself, that's because that's what
4 you had. Otherwise you feed the dog team oatmeal and you
5 have a piece of oatmeal and some of the margarine
6 yourself and you hope to find something better tomorrow.
7 And that's how subsistence users lived.

8

9 I think the people from Ninilchik
10 presented a use pattern that was consistent with
11 subsistence on the Kenai Peninsula, not just this little
12 place or this little stream, that's why my own personal
13 belief is and that's why I'm asking, what does long-term
14 consistent use mean, and that's where you guys have got
15 to make the decision. And what you decide, if you find
16 C&T then you have to decide how do we meet that C&T, and
17 you know it's going to take -- it's possibly going to
18 take some reallocation, it's possibly not. And the
19 things that they asked for are within reason.

20

21 And the other thing is, look what we did
22 with the moose. Do you remember how hot and heavy we
23 went around on the moose. I mean it was to the point
24 some of the Council members didn't want to go to the
25 Kenai, they felt threatened. In fact some of them did
26 get threatened. Some of the Council members from up
27 country who were a little bit less involved in this kind
28 of confrontational thing. Now, how much of an issue has
29 the moose hunt on the Kenai proved to be in the 10 years
30 that we've had it. How much damage has it done on the
31 Kenai and how much has it kept other people on the Kenai
32 from enjoying the resource.

33

34 And we can even go back to the last one
35 that you did, that October hunt last year, and you can
36 ask yourself what damage did it do and how much did it
37 affect other users.

38

39 Thank you.

40

41 CHAIRMAN FLEAGLE: Questions. Gary.

42

43 MR. EDWARDS: Mr. Chairman. Ralph.
44 Listening to some of your examples and some of the things
45 you said, in your mind or I guess maybe asking you to
46 speak more for the Council, is there a difference between
47 opportunistic use and a pattern of use and when does
48 opportunistic use become a pattern or does just one
49 opportunity become a pattern?

50

1 MR. LOHSE: I think, and I know our
2 Council thinks because I've listened to them time and
3 time again on that and that's why our Council would find
4 C&T for Ninilchik and it would find C&T for any other
5 rural community on the Kenai that met your definition of
6 rural, opportunistic use is subsistence use.

7
8 You talk about a wide variety of
9 resources. You talk about using what's available. This
10 Board has found C&T for -- and, you know, I even objected
11 to some of these. It's found C&T for moose and deer in
12 Prince William Sound. Moose and deer in Prince William
13 Sound didn't exist until 1935. Probably the first hunt
14 was in the '40s for deer and probably in the '60s for
15 moose. But the reasoning behind it was that if they
16 would have been there they would have used them because
17 they opportunistically used the resources that were
18 available and that's the reasoning of the Board that's
19 sitting right up there, that they would have used it
20 because you recognized a lifestyle pattern. You set that
21 in place.

22
23 The problem comes, now we're dealing with
24 a lifestyle pattern that we're trying to fit into and I
25 agree -- I agree and I disagree with the person that said
26 -- with what Rod said, that, you know, when they wrote
27 the Kenai Refuge thing, they recognized that recreation
28 was an important use of the Kenai National Wildlife
29 Refuge. And if we go -- in fact, what's happening in
30 wildlife refuges all over the states and the groups that
31 would like to take consumptive uses out of the wildlife
32 refuges, we can see why it was important that they wanted
33 to recognize that. They were telling the people we're
34 going to make this refuge but we're not going to cut off
35 the recreational consumptive uses on this refuge but in
36 making that, were the precluding uses that had already
37 prior been made use of on the refuge, were they
38 precluding subsistence uses, the fact that they didn't
39 mention it, or did they mention that so that they made
40 sure that that was included. And down the road as the
41 Kenai becomes less rural it's going to be even more
42 important that that recreational use was written into law
43 because eventually that will become the only use on the
44 Kenai Wildlife Refuge because there won't be any rural
45 Kenai in the future and at the same time you're going to
46 have people that are going to say let's turn all our
47 Refuges into Parks, but they wrote it in there to protect
48 the recreational user. But in writing it in to protect
49 the recreational user, did they preclude other users. We
50 can sit and we can argue about that because it's a grey

1 area they didn't specifically come right out and say.

2

3 CHAIRMAN FLEAGLE: I'd rather not.

4

5 MR. LOHSE: They did say they'd protect
6 it.

7

8 CHAIRMAN FLEAGLE: Other questions Gary.

9

10 MR. EDWARDS: Just one follow up. You
11 know, towards the end, you know, you keyed on the thing
12 that you wrestle with, this definition of long-term.
13 And, you know, it's true, that our regulations did not
14 just say use, if a regulation said use, my guess is that
15 this discussion would have probably ended months ago,
16 maybe years ago but our regulations, at least, a couple
17 of those talk about defining that use and it has to be a
18 long-term consistent pattern and that pattern needs to be
19 occurring for many years. And at least in my mind that
20 seems to separate a pattern of use from an opportunistic
21 use. Because I don't think anybody would disagree that
22 anyone out there in the wild's, in the bush, whatever you
23 want to determine it, call it, is going to take advantage
24 of what is there and I don't think that ever has been a
25 question. But trying to wrestle with this definition of
26 long-term consistent pattern seems to me to imply more
27 than sporadic.

28

29 MR. LOHSE: Okay, Gary, I'll ask you a
30 question. How long do you.....

31

32 MR. EDWARDS: (Indiscernible - microphone
33 not on)

34

35 MR. LOHSE: How -- can I ask him a
36 question, Mr. Chair?

37

38 CHAIRMAN FLEAGLE: Could you just answer
39 the question, please.

40

41 MR. LOHSE: Okay, I'll answer the
42 question but you're going to have to answer what I'm
43 going to say.

44

45 I would ask the question, how long do you
46 think the rural communities on the Kenai Peninsula, the
47 rural residents of the Kenai Peninsula have used all of
48 the resources on the Kenai Peninsula for subsistence, and
49 that to me is a long-term use because they've used all
50 the resources on the Kenai Peninsula for subsistence.

1 The problem is I'd have to apply the same thing to
2 Kenaitze. I'd have to apply the same thing to the other
3 residents on the Kenai but Federal law limits it to rural
4 residents and we only have this small group of rural
5 residents. But the rural residents, including this group
6 of rural residents have used all the resources on the
7 Kenai Peninsula for as far back as you can read records,
8 as far back as you can listen to stories and as far back
9 as we know pre-history goes. And that brings up a
10 question, you know, somebody brought up -- when I came
11 across on the ferry, they brought up the fact that we're
12 basing this on pre-history, we're not basing this on pre-
13 history. As a Council we sat and listened to people talk
14 about what they did, what their parents, what their
15 grandparents did, what their uncles did, what people that
16 they read about and knew about did. And so consequently
17 we're not basing this on the fact that this has been
18 10,000 years, we're basing this on the fact that this is
19 a long-term consistent pattern of making use of resources
20 on the Kenai Peninsula.

21

22 MR. EDWARDS: Thank you. Mr. Chair, I
23 will answer the question, my answer would have been
24 forever.

25

26 CHAIRMAN FLEAGLE: Judy.

27

28 MS. GOTTLIEB: Mr. Chair. I think a lot
29 of our discussion, at least this morning has been focused
30 on long-term consistent pattern of use but there are
31 other factors that have been analyzed and I was just
32 wondering, Ralph, if people spoke to some of the other
33 patterns of use including the sharing of knowledge, the
34 sharing of the resources or distribution of the
35 resources, if that came up in your testimony, I know some
36 of that has come up in ours, but whether you heard that
37 at the RAC as well, please.

38

39 MR. LOHSE: Thank you. Mr. Chair. To
40 Judy. You know, when you're dealing with the subsistence
41 community, most of that stuff, as a Council, and we're
42 dealing with people who take part in subsistence, most of
43 that stuff is expected. You don't -- I don't know
44 anybody on the Council that takes part in subsistence
45 that doesn't share his knowledge with his children, or
46 any other children that come around. I never heard
47 anybody on the Council or on the Kenai talk about just
48 catching fish for themselves and not giving fish to other
49 people. In fact, we heard quite often the opposite,
50 especially when we dealt with game. And the whole thing

1 that I've learned in the years that I've been on this
2 Council and the thing that I see, and the funny thing is
3 most of the people that are pushing for this, are, I'll
4 say older people, my age, why, because they want to make
5 sure and pass these opportunities, this information, this
6 knowledge and everything down to their children and their
7 grandchildren and their great-grandchildren and they want
8 it to be available to them. Most of the people that I
9 run into that are fighting for this stuff, if you go to a
10 lot of the other Councils and you look at who's sitting
11 on the Chair there, they're people like myself, I don't
12 do the hunting in my family anymore, I've got three sons
13 that do the hunting. I don't have any opportunity to do
14 hunting because they furnish what we need. And people
15 say, oh, they do a good job because you taught them well.
16 And that's what everybody's hoping that they're able to
17 do. How do we teach the next generation, how do we give
18 them the opportunity to do it.

19

20 Does that answer your question, Judy?

21

22 MS. GOTTLIEB: Thanks, very much.

23

24 CHAIRMAN FLEAGLE: All right, thank you,
25 Ralph. We now turn to the State of Alaska Department of
26 Fish and Game for comments, who's doing this, Tina.

27

28 MS. CUNNING: The Department requests
29 that the additional comments that we provided be part of
30 the record, and that that include all the additional
31 comments and specifics related to stock, fish uses and
32 studies that were provided on the record at last week's
33 meeting and the previous RFRs.

34

35 Since last week -- at last week's
36 meeting, as part of the Board's reconsideration of our
37 RFR, two of the Board members who had voted in favor of
38 granting a C&T determination for Ninilchik and Happy
39 Valley to all fish in the Kenai River area on November
40 17, 2006 clarified that their thinking at that time
41 actually supported a C&T determination for those
42 communities to that area only for salmon, not resident
43 species, meaning their votes on November 17, 2006 were
44 mistaken. Those two Board members, plus the Board member
45 who voted against the C&T determination on November 17
46 sought to correct the situation by voting for the motion
47 to revise the C&T determination.

48

49 Although the resulting three/three vote
50 on that motion would have defeated the November C&T

1 action, the Board's legal counsel advised that their
2 motion to amend the C&T determination in order to achieve
3 that same result actually failed for the lack of one more
4 vote. Therefore the information on stocks and
5 subsistence uses contained in these additional materials
6 should also be considered by the Board as part of the
7 Kenai Peninsula harvest proposals which provide an
8 opportunity for Board members to both, again, the C&T
9 determination by species in FP07-28 but also to achieve
10 their intent of eliminating at least the resident fish
11 C&T determination as to the affected communities for the
12 Kenai River area.

13

14 Moreover, in addition to the record of
15 extremely low use by Ninilchik residents of resident fish
16 species in the upper Kenai River drainage as was noted in
17 the justification section of that motion, there is no
18 demonstrated record of Ninilchik residents customary and
19 traditional harvest of resident species, including
20 steelhead from Nikolai Creek or the main stem Kasilof
21 River below and including Tustumena Lake within the
22 claimed Federal areas or even from Crooked Creek or the
23 Kasilof River on State lands, below the area of claimed
24 Federal jurisdiction. As Federal Staff recently
25 acknowledged those steelhead, at least, are also distinct
26 separate stocks of fish. Therefore proposals for a
27 Federal subsistence harvest targeting those particular
28 species and stocks of fish also warrant particular close
29 examination including consideration of whether a pattern
30 of long-term consistent customary and traditional use of
31 those particular fish in those areas by that community
32 has been demonstrated.

33

34 The proposal before you would repeal
35 customary and traditional priority harvest eligibility
36 determinations for Hope, Cooper Landing and Ninilchik,
37 including Happy Valley for the Kenai Peninsula district
38 waters situated within the Kenai National Wildlife Refuge
39 and Chugach National Forest. It would also specify that
40 there is no Federal subsistence priority in those waters
41 and repeal the C&T determination for Ninilchik for the
42 Kasilof River.

43

44 The State of Alaska opposed those
45 original C&T determinations and the State supports
46 Proposal FP07-28.

47

48 The C&T determinations were not supported
49 by substantial evidence that the communities under
50 consideration met the eight criteria consistent with the

1 Federal regulatory definition of customary and
2 traditional use, which is:

3

4 "A long established consistent pattern of
5 use incorporating beliefs and customs
6 which have been transmitted from
7 generation to generation.

8

9 This use plays an important role in the
10 economy of the community."

11

12 Neither was there substantial evidence
13 showing that the necessary use occurred within the
14 Federal public lands in question or that the specific
15 stocks of fish under consideration for subsistence
16 harvest on Federal public lands are the same stocks that
17 have been harvested by those communities in other areas.
18 Indeed the stock analysis on which the Board relied did
19 not come up until the last minute in the Board's
20 deliberations on November 17, 2006 immediately before the
21 Board passed the motion adopting the request of the
22 Ninilchik Traditional Council for that C&T determination
23 without any evidence on the subject of fish stocks having
24 been presented to or requested by the Board.

25

26 The only evidence on the subject of fish
27 stocks in these areas was first presented by OSM Staff in
28 its recent analysis of harvest proposals, only after the
29 C&T determinations had been decided and in a supplemental
30 submittal presented by ADF&G to the Board on March 8.
31 Both analysis show different distinctive fish stocks
32 within the affected river drainages than the Board
33 assumed.

34

35 And I would like to draw your attention
36 to the preamble of the Federal regulations adopted in
37 1992 by which the Federal government adopted its new C&T
38 process for its assumption of the Federal subsistence
39 priority. And in this preamble they describe the
40 comments that were received on their regulations, and I
41 quote:

42

43 Several cementers felt that customary and
44 traditional use determinations should be
45 made on an area basis rather than an
46 individual species or community basis.
47 People also suggested that any species
48 within the area should be considered a
49 subsistence resource. The Legislative
50 history of ANILCA clearly indicates that

1 with the exception of lands managed by
2 the National Park Service, customary and
3 traditional use should be evaluated on a
4 community or area basis rather than on an
5 individual basis. It also indicates that
6 the subsistence use of each wildlife
7 population or fish stock must be
8 identified.

9
10 Consequently the Federal process for
11 customary and traditional use
12 determinations will consider the
13 customary and traditional use of each
14 wildlife population or fish stock within
15 a given area by the residents of that
16 area.

17
18 The customary and traditional use
19 determination process followed by the
20 Board will permit evaluation of each
21 community to determine if it exhibits
22 characteristics of a subsistence
23 community.

24
25 The Kenai Peninsula district is in the
26 Anchorage, Mat-Su, Kenai non-subsistence area under State
27 law. The State provides a broad array of personal use,
28 recreational, educational fisheries to meet the needs for
29 personal and family consumption as well as cultural and
30 educational purposes. In general, the State already
31 provides more opportunity for harvest than these
32 communities take advantage of. And the opportunities for
33 use provided by the State are sufficient.

34
35 The array of proposals and amended
36 proposals currently under consideration demonstrates the
37 conservation issues raised as a result of the Federal C&T
38 determination for Ninilchik in the Kenai and Kasilof
39 Rivers and for Hope and Cooper Landing in the Kenai River
40 area. The various fish stocks of the freshwaters
41 draining into the Upper Cook Inlet are some of the most
42 intensively managed in the state. In order to conserve
43 stocks and preserve viable fisheries, salmon are managed
44 conservatively under a vast array of detailed management
45 plans. Fisheries for resident species are also managed
46 conservatively. The array of harvest proposals under
47 consideration by the Federal Board for the Kenai
48 Peninsula area requests harvest of many thousands of
49 salmon and resident fish species including during
50 spawning in areas for which there is often little to no

1 information on stock size or sustainable harvest levels.

2

3 Given the complexity of these fisheries
4 and the lack of precise information on stocks the
5 potential for creating conservation problems is greater
6 than it is for other fisheries in Alaska.

7

8 C&T determinations should be supported by
9 substantial evidence that the communities under
10 consideration meet the eight criteria consistent with the
11 Federal regulatory definition of customary and
12 traditional use. There should also be substantial
13 evidence showing that the use occurred within the Federal
14 public lands in question, and that the specific stocks of
15 fish under consideration for subsistence harvest occur
16 within these same Federal areas. That much is clear from
17 the applicable Federal statutes and regulations and also
18 from the Federal Subsistence Management Program's
19 technical writing which provides at Page 21, "is it
20 appropriate to recommend approval of a C&T if the use is
21 not on Federal public lands or waters. No, the C&T
22 analysis would not recommend a positive determination if
23 the C&T analysis determines that the use is not on
24 Federal public lands or waters."

25

26 As set forth in our RFRs on the C&T
27 determinations for Hope, Cooper Landing and Ninilchik in
28 several supplemental documents, those C&T determinations
29 were not sufficiently supported and were made in the
30 absence of written policies, procedures and criteria and
31 that the Federal Subsistence Board was directed by the
32 Secretary of Interior to develop on October 27, 2005.
33 Those C&T determinations did not satisfy the Board's
34 regulatory factors for making a positive customary and
35 traditional use harvest determination.

36

37 Given the potential for harm to stocks
38 and unnecessary disruption of other uses in violation of
39 Section .815 of ANILCA, those C&T determinations should
40 be repealed and rescinded until they can be reconsidered
41 under the appropriate policies and criteria and new
42 positive determinations should not be made in the absence
43 of substantial supporting evidence.

44

45 The Federal Staff analysis on this
46 proposal provides little information on subsistence
47 harvest upon Federal public lands in Kenai Refuge or
48 Chugach Forest, which are the subject of the Board's C&T
49 determinations addressed by the proposal. The analysis
50 also provides little information on customary and

1 traditional subsistence uses prior to the 1952 "closure"
2 it mentions. The information on uses that is provided
3 for that period is not linked to residents of Hope,
4 Cooper Landing or Ninilchik but is for the uses by the
5 Dena'ina Athabascans. Use of the Dena'ina are not shown
6 to be consistent with and are not linked to usages by the
7 current communities. What the Federal analysis indicates
8 is that, at most, a few people, trappers for example, may
9 have historically harvested and consumed fish from the
10 freshwaters at issue but any long established consistent
11 pattern of use of the communities at issue was to rely on
12 the abundant marine and freshwater fishery resources much
13 closer to their home. Therefore, there was no long-term
14 recurring consistent pattern of use by these communities
15 of the specific fish species and stocks within the
16 Federal lands.

17
18 Since there were no roads or highways
19 connecting these communities to the area of the Federal
20 lands at issue prior to 1952 it is doubtful that there
21 was much, if any, subsistence harvest of any fish by
22 those communities within those far away freshwaters. The
23 Board's prior deliberations and the current Federal Staff
24 analysis do not provide any reliable evidence that a long
25 established pattern of customary and traditional
26 subsistence use of those alleged Federal public lands or
27 of stocks of fish found that occurred prior to 1952 or
28 afterwards, there is no evidence that the closure in 1952
29 interrupted an existing long-term pattern of use. There
30 was no such pattern of use to interrupt. Virtually all
31 harvest by the communities was of different stocks in
32 marine waters or rivers much closer to the communities.

33
34 The regulatory requirement for customary
35 and traditional use determinations is to determine and
36 identify the specific communities or area's use of
37 specific fish stocks and wildlife populations.

38
39 Thus, wherever the regulations require
40 "pattern of use" they're referring to a pattern of use of
41 a specific area and of a specific stock or population by
42 a specific community. Six of the eight factors refer to
43 a long-term consistent recurring pattern of use. This
44 pattern of use required by factors one through three and
45 six through eight is not shown in the Federal Staff
46 analysis. The analysis does not demonstrate the
47 necessary use to support the Board's previous C&T
48 determinations for these communities for all or even some
49 of the species and stocks of fish in the areas.
50

1 Much of the Federal Staff analysis and
2 conclusion regarding this proposal rests on the idea that
3 "there are no unimportant subsistence uses." While that
4 may be true, only substantial customary and traditional
5 subsistence uses are afforded a priority under the law.
6 Rather than showing substantial use, the numbers for non-
7 salmon harvest and consumption from all areas are very
8 low for all three communities.

9
10 For example, per capita consumption of
11 lake trout, Dolly Varden and rainbow trout in Ninilchik
12 in 2003 -- 2002 was .3 pounds, .6 pounds, and .6 pounds
13 respectively. That translates into an average of about
14 one 15 inch lake trout per family, per year, which hardly
15 supports a C&T determination for lake trout, Dolly Varden
16 and rainbow trout or the Federal subsistence harvest
17 limits for those fish now being proposed based on these
18 C&T determinations. Even the per capita consumption of
19 salmon for Ninilchik was only 46.8 pounds. Assuming a
20 six pound average salmon, that is only eight salmon per
21 person per year. For a coastal community with immediate
22 nearby access to a virtually unlimited harvest of fish
23 that number is surprisingly low.

24
25 The Federal Subsistence Board established
26 Federal subsistence fisheries that mirror State fisheries
27 on the Kasilof River in 2002, however, ADF&G understands
28 from conversations with Federal Staff, that harvest and
29 effort for these Federal fisheries has been and remains
30 very low. Such low participation levels suggest that
31 State regulations are already fulfilling harvest needs.

32
33 In conclusion ADF&G objected to the C&T
34 determinations when they were adopted and has filed
35 requests for reconsideration on each of the three
36 determinations. The Board has not yet addressed the
37 shortcomings of its original decisions. C&T
38 determinations for Hope, Cooper Landing and Ninilchik
39 were made in the absence of written policies, procedures
40 and criteria that the Board was directed to develop.
41 Neither did the Board properly apply the eight criteria.

42
43 In the Board's C&T determination for
44 Ninilchik in the Upper Kenai River and other waters a
45 novel and unsupportable definition of the term, stock,
46 was invoked. That definition incorrectly portrays "all
47 fish" inhabiting the Upper Kenai River and other waters
48 of the Northern Kenai Peninsula as the same stocks as
49 those fish harvested in the Ninilchik River, Deep Creek
50 and marine waters near Ninilchik. ADF&G requests that

1 the InterAgency Staff Committee and the Federal
2 Subsistence Board use Proposal FP-078 as a means to
3 revisit and reassess the prior C&T decisions.

4
5 Given the potential for harm to stocks
6 and unnecessary disruption of other uses in violation of
7 Section .815 of ANILCA and other reasons previously
8 stated, the Federal Subsistence Board should rescind and
9 repeal those determinations until they can be
10 reconsidered under the appropriate policies and criteria
11 in accordance with Federal regulations as previously
12 directed by the Secretary of Interior.

13
14 And I would just draw to the Board's
15 attention that there's a lot of very specific information
16 in specific species stock use by the communities on Pages
17 14 through 16 of our RFR, which we've provided you a
18 complete copy of.

19
20 CHAIRMAN FLEAGLE: Thank you, Tina.
21 Questions.

22
23 (No comments)

24
25 CHAIRMAN FLEAGLE: All right. We're now
26 open for -- no, wait a minute, we're going to the
27 InterAgency Staff Committee comments. Larry.

28
29 MR. BUKLIS: Thank you, Mr. Chairman.
30 The InterAgency Staff Committee comments on Proposal
31 FP07-28 are provided on Page 285 of the Board book. The
32 comments are not lengthy so I will read them rather than
33 attempting to summarize them.

34
35 The InterAgency Staff Committee found the
36 Staff analysis for Proposal FP07-28 to be a thorough
37 evaluation of the regulatory history and customary and
38 traditional use information available for the three
39 communities that currently have a C&T use determination
40 for fish in the Kenai Peninsula district.

41
42 The information presented provides a
43 factual basis for the Federal Subsistence Board action on
44 the proposal. However, depending on the outcome of the
45 Board's reconsideration of Ninilchik's customary and
46 traditional use determination for the Kenai, Fishery
47 RFR06-09 during their April 30th to May 2nd meeting, the
48 Board may also want to review additional information
49 regarding the use of fish stocks in the lower Kenai River
50 by the three communities. This could include information

1 such as personal use, dipnet participation by residents
2 of Ninilchik, Hope and Cooper Landing in the Kenai River.

3
4 The Southcentral Regional Advisory
5 Council recommendation is consistent with ANILCA, Section
6 .805(c) given the broad context of past C&T use
7 determinations in many areas around the state. For
8 instance, the Kenai Peninsula district is an extremely
9 small area compared to such places as the Yukon Northern
10 area, which covers about one-third of the state, however,
11 if the Board chooses to use a narrower viewpoint of C&T
12 use, there may be some concern regarding the limited
13 information available that specifically addresses the use
14 of fish in Resurrection Creek, Sixmile Creek, Summit Lake
15 or other areas north of the Kenai River, excluding the
16 Swanson River and Lake system. The Board may want to
17 strengthen the record for these areas.

18
19 There is also very little evidence that
20 Ninilchik residents used grayling or burbot and no
21 evidence was presented that residents of Hope used burbot
22 from any areas on the Kenai Peninsula.

23
24 Thank you, Mr. Chairman.

25
26 CHAIRMAN FLEAGLE: Thank you, Larry.
27 Questions.

28
29 (No comments)

30
31 CHAIRMAN FLEAGLE: All right. We're now
32 open to Board discussion.

33
34 Judy.

35
36 MS. GOTTLIEB: Mr. Chair. I guess we've
37 heard quite a bit this morning, of course, but some
38 particular comments that caught my attention was the
39 conservation concern that if the C&T were granted that
40 there might immediately be some conservation concerns in
41 particular areas or particular fish, and I guess I just
42 wanted to remind everyone of the process that once there
43 is a C&T for a specific area, specific species, then we
44 have the seasons, bag limits, methods and means and then
45 the Board looks at Council recommendations and other
46 advice that we receive in terms of the health of any
47 particular species. And I think as you can probably see
48 for some of the proposals that have been designed and I
49 think we take a very careful approach and that our
50 mandate is to maintain the health of those populations.

1 So I just wanted to put that on the
2 record.

3
4 CHAIRMAN FLEAGLE: Gary Edwards.

5
6 MR. EDWARDS: Mr. Chairman. I guess in
7 response, I guess the question would be is whether
8 there's a conservation concern or not, is that a
9 justification for giving or not giving a C&T, you know,
10 the way I look at it, Judy, it's not one of the factors
11 that we look at, you know, whether one might agree that
12 providing a C&T and then following that with providing
13 opportunities might not create a conservation concern but
14 that might not be a justification or rationale for
15 granting a C&T would be my only response.

16
17 CHAIRMAN FLEAGLE: Judy.

18
19 MS. GOTTLIEB: Right. I wasn't using
20 that as a rationale for the C&T I just wanted people to
21 understand that C&T doesn't authorize any taking, and
22 that any takings we do look at case by case, by proposal
23 with conservation in mind and also in recognition that
24 there are other users and we try to put forward our
25 regulations that minimize any impact to other users and
26 of course meet the subsistence meaningful priority
27 mandate as well.

28
29 CHAIRMAN FLEAGLE: Denby Lloyd.

30
31 COMMISSIONER LLOYD: Thank you, Mr.
32 Chairman. On the agenda for Item 7, I had understood we
33 were under Board discussion but the Council Chairs and
34 State liaison and, I guess to the extent that I'm the
35 State liaison I wanted to put forward five items of
36 discussion that I hope the Federal Board would engage in
37 prior to making a decision on this item. And I'd like to
38 introduce those topics and then with your indulgence ask
39 Ms. Cunning to amplify on our concerns with regard to
40 each of those five.

41
42 The first one deals with where the Board
43 would find that C&T uses occur and specifically in
44 relation to Federal public lands. There's been a fair
45 amount of discussion about whether you're talking about
46 large groups of people, specific groups of people, small
47 identifiable stocks, large groups of all fish, the whole
48 Kenai Peninsula or Federal public lands. And our
49 concerns revolve around some of the regulatory
50 restrictions requiring the Federal Board to make findings

1 with regard to specific communities and with -- and to
2 specific stocks and to eventually determine uses on
3 Federal public lands. So the first item of discussion,
4 I'm hoping you will engage in, again, is where C&T uses
5 are actually being found for and their relationship to
6 Federal public lands.

7
8 The second item of discussion I'm hoping
9 you'll engage in, is how much use constitutes customary
10 and traditional use and how incidental use, as we've
11 heard the term here utilized, should be handled in that
12 regard.

13
14 The third item of discussion is, at
15 least, in previous meetings I understand that there have
16 been comments that if there is a conservation concern,
17 that there be some deference given to the Regional
18 Advisory Councils to determine that. And I would hope
19 that this Board would consider that the State management
20 agency as well as the Federal land management agencies
21 are ultimately responsible for the conservation of the
22 stocks in question.

23
24 The fourth point is an apparent lack of
25 action by the Subsistence Board in previous -- two
26 previous RFRs that the State of Alaska has put forward.
27 If I remember right those are 06-02 and 06-03. Last
28 week's meeting dealt with, if I remember right 06-09, but
29 not explicitly with the other two RFRs.

30
31 And the fifth item is a discussion of the
32 intent and, I guess the effect, of OSM's recent document
33 regarding the, and I use the word, in quotes,
34 "disposition" of ADF&G's comments prior to the document
35 being put out.

36
37 Mr. Chairman. I would ask your
38 indulgence to allow Ms. Cuning to amplify on each of
39 these five points so that you'll know beyond my brief
40 discussion here, what it is we're requesting of the
41 Board.

42
43 Thank you.

44
45 CHAIRMAN FLEAGLE: I'm not sure that we
46 need clarification, Commissioner Lloyd, I think it's
47 pretty clear what the points are. These are points that
48 have been raised and I think that we'll certainly
49 consider it in the discussions unless Board members
50 specifically want to hear additional comments from the

1 State on these topics.

2

3 (No comments)

4

5 CHAIRMAN FLEAGLE: Not hearing any
6 interest we'll just go ahead and move on. Other
7 discussion. Gary.

8

9 MR. EDWARDS: Mr. Chairman. Maybe to get
10 some of those on the table and all, I guess I would be
11 prepared to make a motion. And after I make my motion,
12 if there's a second to that motion, then I'm going to
13 offer an amendment to that, if that would be okay, at
14 this time.

15

16 CHAIRMAN FLEAGLE: Go ahead, Gary.

17

18 MR. EDWARDS: Mr. Chairman. I move that
19 we adopt the Southcentral Regional Advisory Council's
20 recommendation for Proposal FP07-28.

21

22 MR. OVIATT: I'll second that.

23

24 CHAIRMAN FLEAGLE: You do have a motion
25 before you, Board members. Discussion. Gary.

26

27 MR. EDWARDS: Mr. Chairman. With that
28 second I'm going to offer an amendment, but before I
29 offer the amendment I guess I'll provide -- take this
30 opportunity to provide some background for this
31 amendment.

32

33 As we talked -- or as I said last week on
34 this same subject and as Darrel said, didn't we visit
35 this last night, and it does really seem like Groundhog
36 Day because I'm sure I went to bed last night putting
37 this to rest and I wake up this morning and we're right
38 back here. And whether this is the last time or not, I
39 certainly don't know but I guess time will tell.

40

41 And I guess some of my remarks are going
42 to be pretty consistent with, I guess, what I've been
43 saying for the last couple of years. You know, from my
44 perspective, again, this is not about if the community of
45 Ninilchik is a subsistence community that uses fish on
46 the Peninsula including resident species to maintain a
47 subsistence lifestyle and it's not about if that
48 community also hasn't harvested resident species in the
49 Kenai drainage. I think the evidence is very clear that
50 they did and that they do. You know, what I continue to

1 wrestle with is trying to determine if that pattern of
2 use, you know, particularly for me for resident species
3 is significant enough, you know, for this Board to grant
4 C&T. And as I've said on more than one occasion when I
5 look at that and look at the data, the answer for me is
6 no. I think based upon the information that we have
7 heard on numerous and numerous occasions and based upon
8 the studies that have been done, I just don't feel that
9 the evidence is sufficient to support a C&T particularly
10 for resident species.

11
12 You know my view is that it's -- and I
13 used the term last week, that I thought it was sporadic
14 at best, and therefore I don't think that reaches the
15 threshold that our guidelines, you know, suggest that we
16 use particularly those that talk about this long-term
17 consistent pattern of use and a pattern of use that
18 recurs for many years. You know when I think of the
19 term, pattern, I think of something that is recognizable
20 that can be described. When I look at this carpet, you
21 know, I can see a pattern in this carpet and I can
22 describe that. When Sky used the example Quinhagak
23 moose, I think if you look at the use on moose for the
24 Native Village of Quinhagak, I think you can describe a
25 pattern. I personally don't feel that you can describe
26 this same pattern for resident species for the community.

27
28 So in my mind, you know, the evidence
29 certainly isn't there to support that, in fact, you know,
30 we should be granting C&T.

31
32 And the other thing, I guess, beyond, you
33 know, the merits of my amendment, which I personally
34 think are compelling, I do think we do have the issue of
35 whether this Board or whether the majority of this Board,
36 you know, feels that Ninilchik should have C&T for
37 resident species in the Kenai drainage. You know based
38 upon our actions of the Board last week, where we had a
39 three/three vote on this same issue, I think makes it
40 clear that there is not a majority of the Board that
41 believes C&T should be granted for resident species. And
42 I think that it's important that our regulations need to
43 reflect the will of the Board. And I certainly think,
44 based upon our actions last week, that our regulations
45 would not reflect the will of the Board.

46
47 So I guess in addition to the merits of
48 what I think my amendment brings forward, I do think we
49 need to take into consideration this other issue. And,
50 therefore, Mr. Chairman, at this point I would make my

1 amendment.

2

3 And my amendment would be to amend the
4 existing C&T for the Kenai Peninsula district to provide
5 Ninilchik with C&T for salmon only in waters north of and
6 including the Kenai River drainage within the Kenai
7 National Wildlife Refuge and the Chugach National Forest.

8

9 MR. OVIATT: I'll second that.

10

11 CHAIRMAN FLEAGLE: All right, we do have
12 a second for discussion. I think we need to probably
13 take a look at how this amendment would play out.

14

15 Part of the problem from last week was
16 that on the move to reconsider, there's some confusion as
17 to the process and I think that technically Gary's right
18 if, you know, the vote on that reconsideration vote last
19 week shows that there were clearly three members that
20 agreed that it should apply only to salmon but it didn't
21 reverse anything because it wasn't enough to overturn the
22 vote.

23

24 Now, typically in a reconsideration
25 motion, when the Board accepts a reconsideration motion
26 the action that's being -- and I'm talking generically,
27 I'm not talking Federal Subsistence Board here, this is
28 where, as a new Chairman I'm a little confused about the
29 process here, but in reflection, when there's a
30 reconsideration motion, that reconsideration motion
31 brings back to the Board the action that the Board is
32 considering reconsideration on and its final action,
33 minus that final vote. It is then open for further
34 amendment and should the vote carry or fail, that action
35 supersedes the previous action. And then that the amend
36 -- I mean the amendment, if the amendment carries or
37 fails then you're back to the main motion which then gets
38 another vote and that's the step we missed last week in a
39 normal reconsideration process in the Robert's Rules.
40 After Gary's amendment failed last week the action should
41 have been considered for a final vote again, and my
42 feeling is that that motion would have failed with the
43 three votes that were on the amendment.

44

45 And we -- the Chair and the legal counsel
46 accepted that vote. Now, that does throw us into a
47 quicksand area here where we do have a vote on record
48 that three Board members clearly don't support and so is
49 it a legal vote.

50

1 Now, I think what Gary's intent here in
2 putting this amendment on to this motion is to clarify
3 that. But I'm not sure that this is exactly the way to
4 do it because if we do end up with another three/three
5 vote here we're back to status quo with nothing being
6 decided.

7
8 I guess I'd like to be really clear
9 before we continue with this and end up with a vote that
10 nobody understands and leaves us still in a situation
11 that the entire Board or a majority thereof don't
12 support. I'd like to just step down, take a little time,
13 maybe confer with Counsel and just make sure that this is
14 what we want to do before we start taking a vote. I
15 don't want to end up where we did last week.

16
17 So let's go ahead and call an early lunch
18 break. We'll return at a quarter to 1:00, and that will
19 give us an opportunity to discuss this a little bit and
20 then we'll come back on record at 12:45 ready to further
21 discuss the issue.

22
23 Thanks.

24
25 (Off record)

26
27 (On record)

28
29 CHAIRMAN FLEAGLE: Good afternoon. The
30 Federal Subsistence Board is back on record.

31
32 And prior to the break we had an
33 amendment on a motion that after consideration I feel is
34 inappropriate given the fact that the amendment is stated
35 in a positive language to take a negative action, which
36 means to reject, and then the amendment was given in a
37 positive language to amend the proposal. It would have
38 really muddied up the boat if we would have voted to
39 reject the proposal, all of the amendments would die,
40 would just disappear. So I'm going to rule the amendment
41 out of order and I'm going to ask the maker of the motion
42 if he would withdraw and start anew.

43
44 Gary, would you withdraw your original
45 motion.

46
47 MR. EDWARDS: Well, after that strong
48 criticism of what I did, I'm not so sure I'm willing to
49 do so, but I will, Mr. Chair.

50

1 CHAIRMAN FLEAGLE: Concurrence from the
2 second.

3
4 MR. OVIATT: Concurrence.

5
6 CHAIRMAN FLEAGLE: All right. Motion
7 withdrawn. We start with a new clean slate on Proposal
8 28. And my intention here is -- I understand that the
9 Federal Subsistence Board has guidelines on how to take
10 motions and the motions are to give deference to the
11 Regional Advisory Councils' actions so the motion can be
12 a positive action to reject. I can live with that, but
13 sometimes, as in this case, it just doesn't work. So
14 what I'd like to hear is a positive motion to adopt
15 Proposal 28, and then amended down to what portion you
16 wish to adopt.

17
18 Gary.

19
20 MR. EDWARDS: Mr. Chairman. Saying that,
21 what I'm prepared to do at this time is move that we
22 adopt Proposal 07-28 as submitted by the Kenai River
23 Sport Fishing Association. And if I get a second to
24 that, then I will -- I am prepared to offer an amendment
25 to that.

26
27 MR. OVIATT: I'll second.

28
29 CHAIRMAN FLEAGLE: Okay. You do have
30 your second, Gary. Go ahead and speak to it, please.

31
32 MR. EDWARDS: Mr. Chairman. For the
33 reason that I had previously stated as it applies to
34 determination for C&T, my amendment would remove all
35 language from that proposal, except for C&T use for
36 Ninilchik for resident species taken in the -- excuse me,
37 in the waters north and including the Kenai River
38 drainage within the Kenai National Wildlife Refuge and
39 Chugach National Forest. So that does do it?

40
41 CHAIRMAN FLEAGLE: Yes, sir. Need a
42 second.

43
44 MR. OVIATT: I'll second.

45
46 CHAIRMAN FLEAGLE: All right.

47
48 MR. EDWARDS: Can I -- let me think that
49 through. I'm not sure what I just said actually does it.
50 Oh, yes, it does. Okay. Go ahead.

1 CHAIRMAN FLEAGLE: The net effect now, if
2 the amendment carries, it will cause this proposal to
3 only the C&T use determination for resident species on
4 the Kenai and north for Ninilchik residents. The net
5 effect.

6
7 MR. EDWARDS: Yes. That's correct, Mr.
8 Chair. And relooking at it, I think that my amendment I
9 think was stated properly.

10
11 CHAIRMAN FLEAGLE: You're correct, it
12 was. And now once this amendment gets debated and voted
13 on, depending on how the amendment carries, if the
14 amendment does pass, and the Board chooses to follow
15 through with that, basically repealing that one portion
16 of the C&T determination, then you would vote in the
17 affirmative on the motion. If the amendment fails, then
18 you would -- to remain status quo, you would vote in the
19 negative on the motion, on the main motion. So do you
20 want to have further debate on the.....

21
22 UNIDENTIFIED VOICE: Was there a second.

23
24 CHAIRMAN FLEAGLE: Yes, we got it
25 already. George seconded it. Do you want to speak
26 further to your amendment. Do you want any more debate.

27
28 MR. EDWARDS: Mr. Chairman. From my
29 standpoint, I think I've basically said all I need to
30 say, and I've laid out what I think is good justification
31 for not providing C&T for Ninilchik for resident species.

32
33 CHAIRMAN FLEAGLE: Other comments. Judy.

34
35 MS. GOTTLIEB: Mr. Chair. First of all,
36 I think it's really important that we see it properly on
37 the screen, so if there's any way you can increase the
38 size so we can read it, that would sure be helpful.

39
40 And, secondly, I guess we've been through
41 all the discussion before. I'm not sure there's much
42 more new to say or to resummarize. I mean, we've done
43 all fish in other areas of the state previously for this
44 particular -- for the Kenai Peninsula. We used to have
45 all fish for all rural residents. We're actually trying
46 to narrow it now to those areas closest to the areas
47 we're talking about. So I see no reason to keep that
48 language in there, and I'll oppose this.

49
50 CHAIRMAN FLEAGLE: Thank you, Judy.

1 Other comments. Denny.

2

3 MR. BSCHOR: Yeah, Mr. Chair. Thank you.
4 I think, first of all, thanks to everyone who testified
5 today. It was some very eloquent testimony and very
6 informative.

7

8 As we look at this specific issue of
9 stocks, I don't think that the U.S. Forest Service's
10 position has changed throughout the several meetings,
11 several formal meetings and early meetings before that,
12 that it's been consistent all along that we're looking at
13 ANILCA. As ANILCA reads, it's a very broad look at areas
14 relative to stocks and not getting into specific stocks.
15 And the only reason I can see about getting into specific
16 stocks is if there's a conservation concern. We haven't
17 dealt with conservation concern with C&T right now. We
18 will be discussing that later and ways of managing
19 through that. So that's not a reason.

20

21 I also am struck by Mr. Lohse's comments
22 and explanation of the opportunistic need for subsistence
23 use, realizing that there is a lot of competitive use, in
24 fact, that's understated, in the Kenai Peninsula area,
25 but to restrict that to one -- to just salmon seems to me
26 to be over-restrictive, and I think I'm going to stay
27 where we've been in the past, as our past testimony says,
28 and would oppose this.

29

30 Thank you, Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Thank you, Denny.
33 Other comments. George.

34

35 MR. OVIATT: Thank you, Mr. Chairman. I
36 don't believe my position has changed from what I have
37 stated before. For the resident species, the three
38 single seasons use studies all had small results showing
39 one to two percent. In my mind, this does not exhibit a
40 long-term constant pattern of use. So I think what I've
41 stated on the record before, my mind is not changed.
42 I'll be voting for this.

43

44 Thank you.

45

46 CHAIRMAN FLEAGLE: Thank you. Charles.

47

48 MR. BUNCH: Thank you, Mr. Chair.
49 Although I lack Ralph's eloquence in speech, I do have to
50 go with the Council's recommendations. I've seen nothing

1 that would overturn their recommendation on this matter.
2 And I think, you know, it would take a lot of evidence
3 for me to change the vote on that.

4
5 CHAIRMAN FLEAGLE: Are we ready for the
6 question. Gary.

7
8 MR. EDWARDS: Mr. Chairman. I guess I
9 wanted to raise one other issue. As part of my
10 justification, I also raised the issue which has been
11 raised by others about based upon our actions that we
12 took last week, does this -- that vote, and where we may
13 be -- seem to be now, does that really reflect the view
14 of the Board, particularly the majority view of the
15 Board. And maybe I could ask our solicitor if he would
16 address that. You know, is our record sufficient, you
17 know, based upon particularly how we voted last week,
18 will our regulations actually truly reflect the will of
19 the Board.

20
21 CHAIRMAN FLEAGLE: Hold that, Keith,
22 please.

23
24 That -- I now this issue is tied, but
25 it's really not pertinent to how this vote is going to go
26 down. Let's take care of this action and then come back
27 to how we deal with last week's action. And we talked
28 about this a bit on the break as well.

29
30 So what's -- are we ready for the
31 question on the amendment. The amendment is to remove
32 all reference to all C&T determinations except for
33 resident species on the Kenai and north for Ninilchik.
34 On the amendment. Pete.

35
36 MR. PROBASCO: Amendment to Proposal
37 FP07-28, the amendment to retain current C&T regulations
38 with the exception for resident species in waters north
39 of and including the Kenai River drainage within Kodiak
40 (sic) National Wildlife Refuge and Chugach National
41 Forest for the communities of Hope and Cooper Landing.

42
43 MS. GOTTLIEB: That's the intent.

44
45 CHAIRMAN FLEAGLE: Well, that's the
46 intent, but that wasn't the amendment. Go ahead.
47 Let's.....

48
49 MR. PROBASCO: Judy wanted it.....
50

1 MS. GOTTLIEB: I'm just questioning, is
2 it written correctly up there.
3
4 CHAIRMAN FLEAGLE: The second paragraph
5 that talks to the Kenai Peninsula district, Kenai
6 Peninsula says just salmon instead of all fish, and it
7 says residents of the community of Ninilchik. And that's
8 the intent of the amendment.
9
10 MR. EDWARDS: Well, that's the intent.
11 You know, what I said was that.....
12
13 CHAIRMAN FLEAGLE: To remove.....
14
15 MR. EDWARDS:my amend was to remove
16 all language from Proposal 07-28, except for that that
17 applies for C&T for Ninilchik for resident species.
18
19 CHAIRMAN FLEAGLE: Right, because
20 Proposal 28 as before the Board would remove the C&T for
21 everything on the Kenai, and Gary's intent is to remove
22 all the reference to everything else except this portion.
23 So if this amendment carries, this proposal will only
24 address that small part that's left. It was just stated
25 wrong, but I think the intent is clear. We know how
26 people are going to vote. Let's go ahead and poll the
27 Board, Pete.
28
29 MR. PROBASCO: To the amendment. Mr.
30 Oviatt.
31
32 MR. OVIATT: Aye.
33
34 MR. PROBASCO: Mr. Bunch.
35
36 MR. BUNCH: Nay.
37
38 MR. PROBASCO: Ms. Gottlieb.
39
40 MS. GOTTLIEB: No.
41
42 MR. PROBASCO: Mr. Fleagle.
43
44 CHAIRMAN FLEAGLE: Yes.
45
46 MR. PROBASCO: Mr. Edwards.
47
48 MR. EDWARDS: Yes.
49
50 MR. PROBASCO: And Mr. Bschor.

1 MR. BSCHOR: Nay.
2
3 MR. PROBASCO: Amendment fails,
4 three/three.
5
6 CHAIRMAN FLEAGLE: Okay. Amendment
7 fails. You now have before you Proposal 28 as originally
8 proposed, and if the Board's intent is to not repeal all
9 C&T findings, a negative vote is in order.
10
11 Are we ready for the question. Pete,
12 please poll the Board.
13
14 MR. PROBASCO: Final action on Proposal
15 FP07-28. Mr. Bunch.
16
17 MR. BUNCH: No.
18
19 MR. PROBASCO: Ms. Gottlieb.
20
21 MS. GOTTLIEB: No.
22
23 MR. PROBASCO: Mr. Fleagle.
24
25 CHAIRMAN FLEAGLE: No.
26
27 MR. PROBASCO: Mr. Edwards.
28
29 MR. EDWARDS: Aye.
30
31 MR. PROBASCO: Mr. Bschor.
32
33 MR. BSCHOR: No.
34
35 MR. PROBASCO: And Mr. Oviatt.
36
37 MR. OVIATT: No.
38
39 MR. PROBASCO: Motion fails, one/five.
40
41 CHAIRMAN FLEAGLE: Thank you, Pete.
42 Proposal 28 is now disposed on. The status quo remains
43 in effect.
44
45 Now, the discussion as to whether or not
46 this addresses the State's concern that the vote taken
47 last week leaves us hanging in limbo, which basically we
48 do have three Board members on the record stating their
49 opposition to the application of C&T findings on resident
50 species on the Kenai for Ninilchik residents.

1 Basically, Keith, now it's your turn. Do
2 you want the question restated?

3
4 MR. GOLTZ: I don't think so. I think if
5 Gary's asking me to confirm his statement, I will do
6 that. I think the regulations have to reflect the will
7 of the Board. I think our discussions last Wednesday
8 left considerable question in the minds of much of our
9 public as to whether or not we really do have that
10 situation. I would encourage the Board to discuss this
11 and make it clear whether or not we have really
12 accurately reflected the Board's will in our present
13 regulation.

14
15 CHAIRMAN FLEAGLE: Do you want some more
16 discussion now.

17
18 MR. GOLTZ: I think there is unclarity.
19 I agree with the statements in that regard.

20
21 CHAIRMAN FLEAGLE: But we don't have the
22 process to go back and fix it is the issue. As we spoke
23 about earlier, the request for reconsideration is in a
24 meeting that has adjourn, so we're not bringing that back
25 up. And clarification would be basically that because we
26 didn't have enough votes in the affirmative on that last
27 action last week on Gary's new motion, we're status quo.
28 And I think that's pretty clear to the Board. Now,
29 whether that's clear to the legal system is another
30 question, because you do now have three Board members on
31 record as being opposed to the finding for resident
32 species on the Kenai. And that was unclear in the
33 original action back in, when was it, November. So I
34 guess that will have to be decided outside of this arena.

35
36
37 Gary.

38
39 MR. EDWARDS: Well, I guess my only I
40 guess quick response is that ultimately that decision has
41 implications for where we proceed from here with these
42 proposals. I mean, I for one am going to have difficulty
43 voting on any proposal that addresses resident species
44 for Ninilchik in the Kenai River. If at some point we go
45 back and those still pass and then we find that the
46 action really wasn't warranted or whatever ultimate
47 decision is made, it seems to me then we're going to have
48 to have a mechanism to go back and change any regulation
49 that would allow the take of either incidental or direct
50 take of resident species, would we not?

1 MS. GOTTLIEB: Mr. Chair.

2

3 CHAIRMAN FLEAGLE: Judy.

4

5 MS. GOTTLIEB: I think by this vote just
6 now, while it wasn't exactly the same issue, we are
7 retaining the customary and traditional use as is written
8 in our regulations. So that was a majority vote, so
9 that's a smaller step, but it was a majority vote.

10

11 CHAIRMAN FLEAGLE: Right. And I don't
12 quite see it the same way. I mean, there's two different
13 ways to look at the issue. My intent to voting against
14 the proposal was not to remove C&T for everything else
15 everywhere else. So that wasn't a tacit approval of
16 retaining the non-resident species portion. And
17 unfortunately, it's still mixed up in the whole mix, but,
18 no, I don't think that's exactly the case. It is
19 evidently what stands, but I don't think it was the
20 intent over all.

21

22 Keith.

23

24 MR. GOLTZ: I don't want a lawsuit over
25 this, and I would be happy if the State could help us out
26 of this tangle. If you're not so inclined or don't have
27 a way out of this tangle, one mechanism would be a motion
28 for reconsideration on the entire issue of C&Ts. I think
29 that what we want is a discussion about whether or not
30 the present regulation actually reflects the will of the
31 Board. And that was my concern with Gary's motion. It
32 seemed to mix the procedural question with the
33 substantive question. And that may have affected the
34 outcome here.

35

36 My concern, I share, is that procedurally
37 there is at least an apparent defect on the record, that
38 we've got a regulation that the vote truly didn't vote
39 for.

40

41 CHAIRMAN FLEAGLE: I share that exact
42 concern, Keith, and I don't see the way out of it through
43 the process that this Board affords itself, that with the
44 motion making, the amendments, the proposal. If there
45 were a simple way to go back to last week and redo that
46 reconsideration properly, I think we could get there.
47 But I don't think we can reach back a whole meeting.

48

49 We've got two days, two and a half days
50 -- no, we don't, because we've got issues that hinge on

1 this.

2

3

George Oviatt.

4

5

MR. OVIATT: Well, I'm going to have trouble voting on some of these issues, too, until we have really cleared up this matter, because we've got a regulation that I'm not sure this Board supports. And when it comes to some of the other proposals in front of us for us to discuss at this meeting, I'm going to have to abstain, because I don't know how to vote on those. I don't know -- and, you know, until I feel we've cleared up this first issue, and I don't know how to go about clearing that up. I just don't.

15

16

17

I'm at a loss like I think you are, Mr. Chairman.

18

19

Thank you.

20

21

CHAIRMAN FLEAGLE: Keith Goltz.

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CHAIRMAN FLEAGLE: Good afternoon. We're back on record. And after ample discussion, I don't see that we have found a way out of this, have we, Keith?

MR. GOLTZ: Right now I'm dyspeptic. I think we have a legal defect on the record. I think that our votes do not reflect the regulation. But to answer your question directly, no, we have not found a way out

1 of it.

2

3 CHAIRMAN FLEAGLE: All right. And I
4 think that just for head's up, I agree with those Board
5 members that do not agree with the positive C&T for
6 resident species on the Kenai for residents of Ninilchik.
7 There's going to be some difficulty in passing regulation
8 to that effect. So let's keep that in mind as we go
9 forward, so that you've got some head's up.

10

11 With that, we're moving forward on the
12 agenda which I've got -- oh, wait a minute, we've got a
13 -- I want to recognize -- oh, Donald Mike was going to do
14 it. Donald, go ahead.

15

16 MR. MIKE: Mr. Chair. I was going to
17 remind the Board to acknowledge Mr. Dan O'Hara, former
18 Chair of Bristol Bay Regional Advisory Council.

19

20 MR. O'HARA: Nice to be back in a rodeo
21 again.

22

23 CHAIRMAN FLEAGLE: Welcome, Dan.

24

25 All right. We're up to Item B, which is
26 the harvest regulation overview and summary. And we
27 have coming up Doug McBride.

28

29 MR. PROBASCO: May I, Mr. Chair.

30

31 CHAIRMAN FLEAGLE: Go ahead, Pete.

32

33 MR. PROBASCO: Thank you, Mr. Chair.
34 And, Doug, would you explain how the Staff oral reports
35 will be handled from here on out. You have this
36 overview, and when we get to the specific areas, would
37 you explain that, too, as well, what your plans are.

38

39 MR. MCBRIDE: Mr. Chairman. Members of
40 the Board. My name is Doug McBride. I'm a fishery
41 biologist with the Office of Subsistence Management, and
42 one of the Staff who authored the analyses for the
43 fishery harvest proposals for the Kenai Peninsula.

44

45 Pete, did you want me to give an overview
46 first, or just as part of my comments on what's to follow
47 for the proposals?

48

49 MR. PROBASCO: I just want you before you
50 get into your detailed overview, just explain how we're

1 going to go through this.

2

3 MR. MCBRIDE: Mr. Chairman. What our
4 intent is, is first of all to go through the overview
5 materials, which are in your book, and they start on Page
6 38 and then they go to Page 44. I will be giving that
7 presentation, and that just gives you some of the
8 background and some of the key analytical things that we
9 did to do these analyses. Then once that is concluded,
10 our intent is to then present all of the Kasilof
11 information so there would actually be four
12 presentations. There would be a representation on
13 Kasilof salmon given by Steve Fried, then a presentation
14 on Kasilof resident species, which will be given by Rich
15 Cannon, and a presentation on Kasilof steelhead, which
16 will also be given by Rich Cannon, and then finally a
17 short summary of all that information which will be
18 presented by myself. And then at that point, at least it
19 was our presumption, you would go through your procedures
20 for deliberating the Kasilof proposals. Once that is
21 done, then we would give a presentation on Kenai salmon
22 by Steve Fried, a presentation on Kenai resident species
23 by Rich Cannon, and then a summary of the Kenai
24 information given by myself. And then again going
25 through the procedures for the agenda items on the first
26 page of your agenda.

27

28 Mr. Chairman.

29

30 CHAIRMAN FLEAGLE: Thank you. That means
31 we can go. All right. Just proceed with the overview.
32 Okay, cool.

33

34 MR. PROBASCO: Thanks, Doug. I just
35 wanted to make sure the public understood how we were
36 going to go through this. So, thank you.

37

38 MR. MCBRIDE: All right. Mr. Chairman.
39 The first presentation is on the over. And the first
40 point that I'm going to cover, I'm just going to try to
41 hit the highlights of this, if we could go to the next
42 slide.

43

44 Just very briefly, the -- and also in
45 these presentations, on the slides, you'll see page
46 numbers, and what we're always referring back to are the
47 page numbers in your analysis.

48

49 And very briefly, I'm sure the Board's
50 aware of this, but the current status of the Federal

1 subsistence fisheries, there's been -- the initial
2 fisheries regulations have been in place since 2002, and
3 those regulations mirror sport fishing regulations.

4
5 Then in 2006 the customary and
6 traditional determinations for the Kenai Peninsula were
7 made. I won't go into any more of that.

8
9 And then the only other thing that's
10 changed on the current fishery then this past winter --
11 last fall the Board approved Fishery Special Action 06-
12 01b which provided for a temporary fishery in the Kasilof
13 drainage for eligible residents, which would people that
14 lived -- from the Community of Ninilchik. That fishery
15 did occur. We'll talk about it a little bit more later,
16 but basically four people participated. They fished
17 basically with gillnets and with jigging gear, and the
18 total harvest was six Dolly Varden and 20 lake trout.

19
20 And that fishery ended on March 31st. So
21 that's everything that's gone on with fisheries as they
22 exist.

23
24 Now moving ahead to the current
25 regulatory proposals, as I'm sure you remember, the
26 window to submit proposals was extended to last October.
27 We received nine proposals for harvest limits, gear, and
28 seasons. And if you look at Figures 1 and 2, which are
29 on Pages 39 and 40 of your book, that's a schematic of
30 the proposals that we received.

31
32 And as you can see, like, for instance,
33 looking at Figure 1 on Page 39, these are proposals that
34 address the Kasilof River drainage. And you have to
35 understand that some of these proposals went across both
36 drainages. Okay. Some of the proposals were specific to
37 a drainage, but most of the proposals were not. And so
38 what we did was we pulled them apart and said, for
39 instance, like Proposal 27b, it addressed both the
40 Kasilof and then the Kenai River drainage.

41
42 But what you can see here is that these
43 proposals requested various gear types. They made
44 requests in many cases for total annual harvest quotas.
45 They made requests for household and dependent limits.
46 And some of the proposals had all of those components,
47 some of them did not. And you can also see from this
48 schematic that if you look across the top, you see all
49 the various species, the salmon species and the resident
50 species. And a lot of the proposals addressed multiple

1 species.

2

3 And so, let's say, on Figure 1 you can
4 see all the proposals that we received that addressed the
5 Kasilof. If you turn the page to Page 40, Figure 2,
6 you'll see a very similar looking proposal (sic) of all
7 the proposals that addressed the Kenai River. And all
8 the same facets are in place in terms of the request for
9 gear types, harvest quotas, household limits. And
10 actually in this case there was also requests for mesh
11 sizes in the gillnet fishery. And most of those
12 proposals addressed multiple species.

13

14 Obviously, and I don't think we need to
15 spend a lot of time on this, but an incredibly important
16 aspect of all this are the existing non-subsistence
17 fisheries. The existing fisheries basically are
18 comprised of sport fisheries, personal use fisheries,
19 educational fisheries, and commercial fisheries. It
20 should come as no surprise these fisheries are heavily
21 utilized, already contentious in an allocative sense, and
22 very intensively managed already.

23

24 And those fisheries as managed by the
25 State are intensively managed and heavily regulated. And
26 if you look at Table 1 on Page 41, you will see a whole
27 series of State of Alaska regulatory management plans
28 that relate to most of these fisheries. And the reason
29 we point this out is because these management plans
30 contain a lot of instructions for the State and the -- a
31 lot of those are allocative instructions, but the
32 instructions that we are concerned with is there's a lot
33 of instructions in there for conservation. And there is
34 an MOU between the Federal Government and the State for
35 these management plans, these and other management plans
36 around the State.

37

38 And there's an obligation on our part, on
39 the part of the Federal subsistence program to pay
40 attention, if you will, to the conservation aspects of
41 these management plans. And those instructions take
42 several different forms. Probably the most common one
43 that people are aware of are escapement goals. A lot of
44 these regulatory management plans have escapement goals
45 in them for salmon, but there are other instructions in
46 there as well for conservation for several of the
47 species, notably chinook salmon and rainbow trout. There
48 are instructions in there to maintain the unique size
49 composition of those particular species in these
50 drainages.

1 There's also instructions in these
2 management plans, again conservation instructions, that
3 relate to protection and preservation of riparian habitat
4 as it relate to fisheries.

5
6 So there's a lot of things in here that
7 deal with conservation that are important as we look at
8 the regulatory proposals in front of us.

9
10 The next thing I'd like to just briefly
11 summarize, and again I probably don't need to spend a lot
12 of time on this certainly with the Board, but is the
13 implementation of Title VIII of ANILCA, and I'm looking
14 at the information in the middle of Page 41. And as we
15 the Staff looked at analyzing these proposals, there were
16 basically three things obviously to come right from
17 ANILCA that we need to be pretty mindful of.

18
19 First and foremost is to make sure that
20 whatever we recommend addresses the conservation of
21 healthy populations of fish, and that is the first
22 priority. Second of all is to provide for a priority for
23 subsistence use. And then third is that any
24 recommendations we make, we need to remain mindful of the
25 existing fisheries, and that any restrictions on non-
26 subsistence use would only be for reasons of
27 conservation, public safety or to continue subsistence
28 uses. But in terms of the analysis of proposals, just
29 simply remaining mindful of these heavily utilized and
30 extensively, intensively managed existing non-subsistence
31 fisheries.

32
33 With all that as a backdrop, I guess to
34 be quite frank, we started off trying to do just, you
35 know, what you would term a normal proposal-by-proposal
36 analysis. We tried to pick an individual proposal up and
37 do the analysis on that, and we basically found that
38 impossible to do, and for all the obvious reasons. Like
39 I say, there is a fishery in place, but it's one that
40 just mirrors State sport fishing regulations. And as you
41 pick each individual one up, you had multiple species you
42 had to deal with, there were some gear type
43 considerations in there, and you didn't know how the
44 other proposals were going to end up getting dealt with,
45 and it just -- it became just this morass.

46
47 So we did several things in our analysis
48 that basically drove the rest of the analysis, and that's
49 what I'll cover next.

50

1 The first thing we did was we implemented
2 what we call an organizational strategy, and I'm looking
3 on Pages 41 and 42 of the book. And the first thing that
4 we did as a matter of analysis is we limited our analysis
5 only to the Kasilof and Kenai River drainages. And you
6 have to remember that some of these proposals were very
7 explicit, that they were about either the Kenai and/or
8 the Kasilof River drainage, but some of the proposals
9 addressed all Federally-managed waters in the Cook Inlet
10 area, which go beyond these two drainages certainly to
11 some degree. You know, places like Chickaloon, Sixmile,
12 Resurrection Creek, those kind of places.

13
14 As a matter of analysis, we limited our
15 analysis only to the Kasilof and Kenai River drainages.
16 We did that because many of the proposals were explicit
17 to those drainages, and I think it's quite clear that the
18 focus of the proponents and the focus of concerns that
19 people truly have with these proposals are -- the focus
20 is n those two drainages. So everything that we have in
21 the analysis is limited to those two drainages.

22
23 The second thing that we did then was we
24 split the proposals apart as they are in Figure 1 and
25 Figure 2 by drainage. So, for instance, a proposal, say,
26 I mentioned earlier, like 27b or 27c or 27d for that
27 matter, those proposals that address both the Kenai and
28 the Kasilof, we split them apart and analyzed them
29 separately. So our analysis is separate for the Kasilof
30 from the Kenai.

31
32 And then within each one of those
33 drainages, the third part of our organizational strategy,
34 was then we grouped proposals -- or we grouped the
35 species. We grouped proposals within drainages to
36 address the different management needs of the species, so
37 that's how we ended up with Kasilof salmon, Kasilof
38 resident species, Kasilof steelhead, and then Kenai
39 salmon and Kenai resident species.

40
41 Mr. Chairman. The next part of our
42 organizational strategy had to do with gear types. And
43 this was of all the things we did analytically, this was
44 probably the most contentious and received the most
45 attention as we went through this process.

46
47 The first thing that we did as a matter
48 of analysis was any recommendations that we made, we had
49 to be sure that we provided for subsistence gear types
50 that allow for species, stock and size selective

1 management. And we did that to address conservation.
2 Now, we received requests for a lot of different gear
3 types. If you go back to those Figures 1 and 2, you will
4 see requests for dip nets, rod and reel, winter gillnets,
5 jigging gear, and just gillnets. Okay. And because of
6 all of the conservation issues in these drainages, and
7 again this goes back to a lot of those instructions that
8 are in the State regulatory management plans, to address
9 those conservation issues, we found it as a matter of
10 analysis imperative to make recommendations that provided
11 for gear types that allowed for species, stock and size-
12 selected management.

13

14 Now, what that does is it precludes the
15 widespread use of gillnets, and gillnets was not in all
16 of the proposals, but it was in many of the proposals.
17 And I think for all the obvious reasons. As you set
18 gillnets in the fresh waters of these drainages, you've
19 got the various species of salmon, the various stocks of
20 salmon, and the resident species and fish of critical
21 size almost always commingled. And when you stretch a
22 gillnet out in there, the ability to target only certain
23 species or certain stocks or certain fish of certain size
24 classes basically goes away. And then if you catch those
25 fish, trying to successfully release them out of that
26 gear type becomes problematic.

27

28 So as a matter of analysis, the
29 recommendations that were made were to stay with all
30 those other requested gear types, but not the widespread
31 use of gillnets.

32

33 The second thing we did as a matter of
34 analysis was that we needed to develop fisheries, or make
35 recommendations for fisheries that provided a subsistence
36 priority for all eligible rural residents. And what this
37 is about is part of the proposals that we received,
38 particularly for gillnets were for a community gillnet
39 fishery. And the point of those proposals was a
40 recognition that lots of gillnets was problematic and
41 what could be done instead was to try to limit the amount
42 of gillnet gear to just a finite numbers of units of gear
43 organized by community.

44

45 And if you look ahead in the book, and
46 you'll see the analysis of this later on. In fact the
47 first place it occurs is on Page 59 for Kasilof River
48 salmon, but we did an analysis of the Federal subsistence
49 programs history of providing for both community
50 fisheries and community hunts, and I'm sure it will come

1 as no surprise to the Board, we obviously do provide for
2 community fisheries and communities hunt. We look at all
3 those examples, but the feature that is common to every
4 one of them is whatever is provided for a community
5 fishery or community hunt elsewhere in the state is
6 against the regulatory backdrop of that same opportunity
7 available to all eligible rural residents. So it is not
8 a mechanism to limit a gear type. It simply provides an
9 additional opportunity for a community, but any member of
10 that community can then, if they so choose, participate
11 simply on their own in that exact same opportunity. So
12 as a limiting mechanism for gear type, it doesn't work.
13 And so that became a key and quite frankly contentious
14 part of our analysis that received a lot of review and a
15 lot of discussion.

16

17 Mr. Chairman. The last thing that we did
18 as far as analytical strategy is then we provided
19 recommendations that provided for accurate and timely
20 reporting of subsistence harvest and identification of
21 subsistence-caught fish. Now, in some of the proposals,
22 these aspects were in some of the proposals, they were
23 not in most of the proposals. But all of the
24 recommendations that you will see include mandatory
25 marking of any subsistence-caught fish, and reporting on
26 permits, and then for some of the fisheries, in-season
27 reporting. And the fisheries where you'll see that in-
28 season reporting recommendation are fisheries with I
29 think what we would term more liberal gear types and
30 limits, things like dipnet fisheries or winter gillnet
31 fisheries or any-- or on a fishery on a very finite
32 resource, and the one that stands out there is for
33 steelhead in the Kasilof River drainage. So there's in-
34 season reporting recommendations for those fisheries.

35

36 These next two slides, I'm just going to
37 skip over those quickly, because that was the first thing
38 Pete asked me to address. This is the organization of
39 the presentations yet to come. You'll get all the
40 Kasilof information for salmon, yeah, resident species
41 and steelhead and then once that's done, then the Kenai,
42 and that will be for salmon and resident species.

43

44 Mr. Chairman. Just very briefly, I think
45 it would be worthwhile to go through the review process
46 that this analysis has already undergone, and it's been
47 extensive even by the standards of this program.

48

49 If you'll remember back, the window to
50 accept proposals was extended through October of 2006.

1 We went through a team field review, drafted analyses,
2 and then these analyses have been reviewed, started in
3 late January by a leadership team within Office of
4 Subsistence Management. Then in early February we
5 presented this analysis and received review comments from
6 the stakeholders subcommittee to the Southcentral
7 Council. And we also did the same thing for the
8 InterAgency Staff Committee, a joint review from the
9 InterAgency Staff Committee and the Alaska Department of
10 Fish and Game. Then in late February we presented it
11 again and received review comments on this analysis a
12 second time with the stakeholder committee to the
13 Council. Then in March we presented this information and
14 received comments from the Southcentral Regional Advisory
15 Council. And then last month we went back to the Staff
16 Committee and to Alaska Department of Fish and Game. And
17 throughout that process we've been incorporating comments
18 from all those entities into this analysis, and that's
19 what is before you today.

20

21 Mr. Chairman. The last thing that I will
22 just simply point ahead to is the last chapter of all
23 this, and we'll go through this again when we go through
24 the Kasilof information and the Kenai information, is the
25 summary information. And that is contained on Pages 171
26 to 174. And I'm just pointing that out, because I think
27 what you'll find, we found this happen, it's very easy
28 even for the Staff that have been doing this for six
29 months, you get way down into the individual trees of the
30 forest if you will, you know, you're trying to look at,
31 well, okay, what's the opportunity for resident species
32 or salmon in this drainage, in this fishery, and there's
33 a rod and reel aspect and maybe there's a dipnet aspect,
34 and you get down and you kind of lose the bigger picture.
35 The whole point of the summary, and there's some tables
36 there, and I won't go into any detail now, we'll do those
37 later, but those tables kind of bring it all back
38 together by drainage so that you can see what the
39 recommendations are, and those are the recommendations of
40 the Southcentral Council, and you can also see, and
41 there's text in there that explains the disposition of
42 the original proposals in terms of the total harvest
43 quotas, the gear types, the household limits and the
44 various species.

45

46 Mr. Chairman. That concludes my summary
47 of the overview and I'll be happy to answer any
48 questions.

49

50 CHAIRMAN FLEAGLE: Thanks, Doug.

1 Questions, Board members.

2

3 (No comments)

4

5 CHAIRMAN FLEAGLE: Okay. We appreciate
6 that. Thank you. All right. Pete just explained to me
7 the intent is to have all of the -- Pete, would you
8 explain that on the record, please.

9

10 MR. PROBASCO: Okay. Thank you, Mr.
11 Chair. If everybody would refer to the agenda, our next
12 topic is the Kasilof River drainage harvest regulations,
13 and you will see three parts: salmon, resident species
14 and steelhead. And that's what Doug was referring to.

15

16 Now, procedurally, we will hear all three
17 Staff reports. At the end of the Staff reports, then we
18 will go through our procedure for agenda items 3.A., 3.C.
19 as listed below. For the public, that would be your
20 opportunity to comment on the Kasilof River drainage
21 proposals, so if you intend on commenting, you need to
22 fill out a yellow slip from Di there at the front desk
23 and then get it to Mike here.

24

25 After we finish the Kasilof and the Board
26 deliberates on those proposals, then we would get into
27 the Kenai and follow the same order.

28

29 Questions on that.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: Okay. Thank you. So
34 that opens this up then to the Kasilof River drainage
35 harvest regulations portion, Item C, and we'll have a
36 report. Who's going to be doing this. Okay.

37

38 MR. PROBASCO: Or Steve Fried.

39

40 CHAIRMAN FLEAGLE: Doug, do you want to
41 go ahead and make the introductions.

42

43 MR. MCBRIDE: Yeah. I'm sorry, Mr.
44 Chairman. A senior moment. Mr. Chairman. Dr. Steve
45 Fried with the Office of Subsistence Management will be
46 making the presentation on Kasilof River salmon, and then
47 following that presentation and any questions, then there
48 will be two presentations by Mr. Richard Cannon, the
49 gentleman to my left, on Kasilof River resident species
50 and steelhead. And then following that I'll briefly go

1 through the Kasilof part of the summary information.

2

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Mr. Chairman.

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CHAIRMAN FLEAGLE: Okay. I appreciate that. Mr. Fried.

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DR. FRIED: Thank you, Mr. Chairman. What I'm going to do is try to briefly summarize the Staff analysis for the Kasilof River salmon proposals, FP07-27b and c, originally submitted by Ninilchik Traditional Council.

I was going to bring your attention to the map, but basically the Federal waters are all associated with the Kenai National Wildlife Refuge, and there's a map on Page 51 in the green book you can look at. And it's basically the upper portion of the Kasilof River through the Tustumena Lake drainage, and that's the area we're looking at.

As far as the regulatory history and State fisheries go, you can find a summary on Page 55, 56, but basically currently there are State fisheries for personal use using gillnets and dipnets for sockeye primarily. There are educational gillnet fisheries for chinook, sockeye and coho that also primarily use gillnets. There's commercial set and drift gillnet fisheries in the inlet, primarily targeted on sockeye salmon. And there's also sports fisheries for early run chinook, sockeye and coho salmon. So a Doug had mentioned earlier, there's quite a bit of fishing effort in this area in the Kasilof River.

As far as current events go, on Page 59 in your books, essentially Ninilchik Traditional Council had filed a preliminary injunction when this Board did not approve an RSA for a coho salmon dipnet fishery, and the U.S. District Court actually denied the motion, but they did instruct the Board to deal with the issue during the normal regulatory cycle and here we are right now.

As far as the species we're looking at for salmon, it's primarily three species: sockeye, chinook and coho. You can find information on sockeye beginning on Page 60. Essentially the Kasilof, there's an escapement -- a spawning escapement goal is in place, and it's assessed with sonar. The sustainable harvest level for sockeye is estimated in hundreds of thousands. You can take a look at Page 2 on -- I mean Table 2 on

1 Page 61 to get an idea of what the harvests are like.

2

3 There was an enhancement program in which
4 fry were stocked in Tustumena Lake. This has ended and
5 probably the runs are going to decrease maybe by 16
6 percent after 2008/2009. So we're still seeing some of
7 the effects of the enhancement, but it's currently over,
8 and there's probably going to be some decline in the
9 sockeye run after that.

10

11 For chinook salmon, there's information
12 on Pages 60-62. Unlike sockeye, there's no escapement
13 goal in place, and there's really no assessment program
14 for either the early or the late run of chinook salmon.
15 But it's really only the late run that's available in
16 Federally-managed waters. Most of the early run returns
17 to Crooked Creek, which is below the Federally-managed
18 waters. For the late run, the sustainable harvest level
19 is likely around 1,000, and basically -- this is based on
20 past sport fishery performance. And you might take a
21 look at Table 3 on Page 62 to get some idea of what the
22 past harvests have been for chinook salmon and the
23 fisheries that harvest them.

24

25 The third species of interest is coho.
26 In your books it's on Pages 62, 63. Similar to chinook,
27 there is no spawning escapement goal, there's no
28 assessment program in place. Again most of the run
29 returns to Crooked Creek, which is below Federally-
30 managed waters.

31

32 There are some coho that do, you know, go
33 further up the drainage and spawn in the Federally-
34 managed waters. In Tustumena Lake, this population, the
35 sustainable harvest level is probably likely only in the
36 hundreds. And again this was based on past sport fishery
37 performance. And I again direct your attention to a
38 table in the report, Table 4, on page 64 to get some idea
39 of what this -- what the harvest would look like.

40

41 Well, as far as the original proposal
42 goes, we looked at what the effects might be, and again
43 Doug had covered some of this in the overview, but
44 basically while the proposal asked for a community set
45 gillnet fishery for salmon, it's really not possible to
46 limit this just to community fisheries, so while we could
47 have a community fishery, it doesn't really -- wouldn't
48 really stop anyone else in the community from actually
49 applying or a permit to fish, you know, gillnets on their
50 own. And widespread gillnet use really doesn't lend

1 itself to selective harvest of species and stocks, and so
2 this is a problem with gillnet use. And also in the
3 original proposal, you know, just a minor concern, there
4 was no provisions for marking of harvested fish or for
5 any in-season reporting.

6
7 Through the process, the original
8 proposal had been modified, and at the Southcentral
9 Regional Council meeting, Ninilchik Traditional Council
10 actually proposed some modifications. They're on Pages
11 46 and 47. And using that, the Council actually made a
12 recommendation with some other modified language in it
13 from that, and it's on Pages 48 and 49.

14
15 And essentially I'd just like to say
16 something about the analysis -- you know, analyze the
17 Regional Council recommendation which you can find our
18 analysis on Page 47 and 49. And right up front, I mean,
19 the OSM recommendation would be to support the proposal
20 with the modification as recommended by the Council at
21 their meeting.

22
23 As far as the effects of the Council
24 recommendation would be, you could look at Page 65, 66 in
25 your books, but basically it would establish household-
26 based dipnet, rod and reel fishery in the upper Kasilof
27 River, just below Tustumena Lake. This fishery would
28 target late-run chinook, sockeye, coho and pink salmon,
29 and it would also set seasons, annual and household
30 limits, and it would allow households to also reach these
31 limits by fishing in the Kenai River as well as the
32 Kasilof, since currently Ninilchik has positive C&T for
33 both systems.

34
35 This dipnet, rod and reel fishery would
36 also allow incidental take of up to 200 rainbow trout
37 through August 15th.

38
39 Another aspect of the proposal would
40 increase the coho and pink salmon bag limits in Tustumena
41 Lake for the existing subsistence rod and reel fishery,
42 and also it would allow the use of two baited single or
43 treble hooks for all subsistence rod and reel fishing.

44
45 The Council recommendation also provides
46 for permits, for in-season reporting, and also for
47 marking harvested fish by removal of their dorsal fin.

48
49 And it also would exclude provision for a
50 community gillnet fishery.

1 The OSM preliminary conclusion, which you
2 can find on Pages 66 to 68 is basically to support the
3 proposal with modifications as recommended by the
4 Southcentral Alaska Regional Advisory Council. And our
5 justification for this is that the Southcentral Council's
6 recommendation actually fulfills all the criteria in I
7 guess it's ANILCA 805(c). We cited the regulation in the
8 book instead of that. And it's -- their recommendation
9 is consistent with the available information. We felt it
10 addressed the conservation principles for the affected
11 stocks and species, and it also increased the subsistence
12 fishing opportunities and provided a priority for
13 qualified users.

14
15 Thank you. If any questions, I'll be
16 happy to answer them.

17
18 CHAIRMAN FLEAGLE: Questions, Board
19 members.

20
21 (No comments)

22
23 CHAIRMAN FLEAGLE: Okay. Thank you. And
24 now we turn it over to Rich Cannon for the next portion.

25
26 MR. CANNON: Thank you, Mr. Chairman.
27 Board members. For the record, my name is Richard
28 Cannon.

29
30 I will present the Staff analysis for
31 Proposals 07-11, 12, 13, 27d and 30 dealing with resident
32 species in the Kasilof River. The analysis can be found
33 on Pages 71 through 88 of your Board briefing books.

34
35 These proposals address other Federal
36 public waters in the Cook Inlet area, but as Doug said,
37 only the Kasilof River drainage is addressed in this
38 analysis. If you refer to Map 1 on Page 77, it will
39 identify the Federal waters in the Kasilof River
40 drainage. As you can see, the boundaries of the Kenai
41 National Wildlife Refuge includes the upper Kasilof River
42 and essentially all of the Tustumena Lake and its
43 tributaries.

44
45 State sport fishing regulations provide
46 for methods, means and harvest limits for rainbow trout,
47 lake trout and Dolly Varden. Limits will vary for
48 flowing waters and lakes and by the size of the fish.
49 Generally the fishing season is open year round for these
50 species.

1 I'm not going to go into any detail on
2 the regulations, but you can -- that is in your Board
3 book. That's the summary of the State regulations.

4
5 A request for special action submitted by
6 the Ninilchik Traditional Council establishing a
7 temporary winter gillnet and jig fishery for the 2006 and
8 2007 season was approved by the Federal Subsistence Board
9 in November 2006. Provisions for these fisheries were
10 similar to the proposals being considered.

11
12 This winter fishery had four
13 participants, and five permits were issued. Twenty-six
14 fish were caught, 20 lake trout and 6 Dolly Varden were
15 harvested in that fishery.

16
17 There is limited information about
18 resident fish species abundance or distribution in the
19 Kasilof River drainage. However, there is a substantial
20 history of sport fishing catch and harvest for these
21 species in Tustumena Lake. Table 1 on Page 83 provides
22 this information, including a list of 10 year average.

23
24 These sport fisheries appear to be
25 sustainable for each of these species. Sport harvest and
26 catch has varied considerably over time with no obvious
27 pattern over a 15 to 20 year period of time. In the
28 absence of abundance estimates, the annual sport harvest
29 can serve as a rough approximation of the magnitude of
30 harvest that can be sustained until more specific
31 information is available.

32
33 Sport harvest and total catches in the
34 Tustumena Lake drainage for each species are in the
35 hundreds of fish, with harvest and catches of Dolly
36 Varden being somewhat greater than for lake trout and
37 rainbow trout. Harvest for Dolly Varden range from 37 to
38 729 fish. Again referring to Table 1, reported annual
39 harvest of rainbow trout range from zero to 548 fish.

40
41 Both rainbow and steelhead occur in the
42 Kasilof drainage, but fishermen often cannot tell them
43 apart, so the Department uses a length requirement of 20
44 inches or greater for large rainbow and steelhead. This
45 is important to protect steelhead, because spawning
46 steelhead predominantly greater in length than 20 inches.
47 Sustainable harvest of rainbow trout appear to be less
48 than 500, but they are in the hundreds of fish.

49
50 Lake trout harvest have ranged from zero

1 to 473 annually in Tustumena Lake. Lake trout are long-
2 lived, slow-growing and have a well-documented history of
3 over-exploitation in other Alaska river drainages.
4 Sustainable exploitation for those populations is no
5 greater than about 10 percent. Age and size sampling at
6 Tustumena Lake demonstrates a similarly structured
7 population to those found in the Copper and Tanana River
8 drainages, and are indicative of low reproductive
9 potential.

10
11 It is recommended that harvest levels in
12 the range of hundreds of fish be used by Federal
13 fisheries managers as a guide for subsistence fisheries.
14 If combined subsistence and sport fisheries harvest stay
15 within the limit of hundreds of fish, then these
16 fisheries should be sustainable and can operate without
17 restrictions until more information is corrected.

18
19 Distribution of these species within the
20 lake is simply not know. Spawning for lake trout and
21 Dolly Varden occurs in the fall, and for rainbow trout in
22 the spring.

23
24 Some or all of these species may
25 concentrate near the lake outlet or tributary mouths to
26 feed, especially in winter months when food is likely to
27 be scarcer.

28
29 Proposals 27d and 30 would create winter
30 gillnet and jig fisheries similar to the temporary
31 fishery that has occurred this winter. Requirements of
32 the permit protect tributary outlets, require checking
33 and marking of nets and a 72-hour reporting of harvest.
34 Ten-fathoms of gillnet would be allowed in the winter
35 fishery. Once any portion of the community gillnet quota
36 is met, the fishery would be closed, while jigging could
37 continue to operate.

38
39 It must be emphasized that widespread use
40 of gillnets in open waters during periods of time when
41 many species and stocks of fish are migrating and often
42 commingled isn't consistent with conservation of these
43 resident species. Of particular concern is the potential
44 by-catch of stocks or species that are spawning, less
45 abundant, and prone to over-harvest, or that are of a
46 critical size.

47
48 Okay. The Council recommendation, which
49 you can reference in Page 73 and 75 would permanently
50 establish the regulatory -- the fishery created by the

1 Federal Subsistence Board via special action during the
2 2006 and 2007 fishing season, and would allow for rod and
3 reel subsistence fishing for lake trout and Dolly Varden
4 under more liberal daily harvest and possession limits.

5
6 Subsistence fisheries addressing
7 opportunities for individual fishermen, households and a
8 community fishery would be established.

9
10 The winter gillnet and jig fishery would
11 be limited to Tustumena Lake and safeguards put in place
12 to address conservation issues for any of the targeted
13 species. A gillnet no longer than 10 fathoms could be
14 fished under the provisions of a Federal subsistence
15 permit. The total annual harvest quota for this fishery
16 is 200 lake trout, 200 rainbow trout and 500 Dolly Varden
17 or Arctic char.

18
19 The use of a gillnet would be prohibited
20 by special action after the harvest quota of any species
21 has been met. Gillnets must be checked at least once
22 every 48 hours for unattended gear. The owner of the net
23 must be clearly marked at one end of the net. Gillnets
24 in the lake are not allowed to be set within one-quarter
25 mile radius of any tributary or outlet of the lake.

26
27 For the winter jig fishery, annual
28 household limits would be 30 fish in any combination of
29 lake trout, rainbow trout or Dolly Varden/Arctic char.

30
31 The reporting requirements of 72 hours
32 upon leaving the fishing area will allow the in-season
33 manager the ability to make adjustments to the fishery as
34 appropriate. Also requiring that incidental fish be
35 reported will provide feedback to the in-season manager
36 about other potential conservation concerns for species
37 before large-scale problems could occur.

38
39 Information from harvest records would
40 also provide the manager with timely harvest managers.

41
42 In addition, for the subsistence rod and
43 reel fishery, the existing State sport fishing
44 regulations would apply, except the daily harvest and
45 possession limits for lake trout and Dolly Varden would
46 be doubled, except the limit for lake trout less than 20
47 inches would be increased from 10 to 15.

48
49 Under subsection (c) of the Council's
50 proposal, marking by removal of the dorsal fin at the

1 time of landing would also be required to clearly
2 identify all subsistence-caught fish.

3

4 Under the Regional Council
5 recommendation, the rod and reel bag and possession
6 limits for rainbow/steelhead less than 20 inches would
7 remain the same. In addition, subsistence fishermen
8 would be able to take up to 200 rainbow in the salmon
9 dipnet fishery through August 15th. By restricting
10 retention after August 15th, most spawning steelhead
11 should have migrated out of the river.

12

13 The OSM Staff supports Proposals 27d and
14 30 with modifications recommended by the Southcentral
15 Regional Advisory Council. We believe the recommendation
16 of the Regional Council is consistent with available
17 evidence, addresses recognized principles of conservation
18 for these species within the Kasilof River drainage and
19 increases subsistence opportunities for Federally-
20 qualified users, thereby fully addressing the three
21 criteria.

22

23 That concludes my presentation. Mr.
24 Chairman.

25

26 CHAIRMAN FLEAGLE: Thank you, Rich.

27 Questions.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: All right. You can
32 resume with the next one. Thank you.

33

34 MR. CANNON: Okay. Mr. Chairman. The
35 next presentation deals with Kasilof River steelhead and
36 Proposal 07-10. And that analysis is presented on Pages
37 92 through 100 of your Board briefing books.

38

39 Federal public waters that support
40 indigenous steelhead returns are found within the Kasilof
41 drainage. A map showing the location of Federal lands
42 and waters is found on Page 93.

43

44 Current Federal regulations allows
45 subsistence harvest of steelhead consistent with State
46 sport fishing regulations which allow harvest of two fish
47 per angler annually, only one can be harvested per day.
48 State regulations use a total length of 20 inches or
49 greater to distinguish spawning steelhead and large
50 rainbows from other rainbow ground for regulatory

1 purposes.

2

3 State regulations have closed sport
4 fishing for steelhead below the Sterling Highway bridge
5 and in Crooked Creek, which is a major tributary of the
6 Kasilof River.

7

8 Information regarding the steelhead
9 population in the Kasilof River is very limited. Kasilof
10 steelhead are thought to enter fresh water in the fall,
11 spend the winter in either the Kasilof River or Tustumena
12 Lake, and then small populations migrate to either
13 Crooked Creek or Nikolai Creek to spawn in the spring.
14 However, the Alaska Department of Fish and Game and
15 public testimony have stated that other small spawning
16 stocks may be present in the drainage. And that's based
17 mainly on angler observation.

18

19 Since most of Crooked Creek is outside of
20 Federal waters, under consideration for this proposal are
21 waters of Tustumena Lake and its tributaries, including
22 Nikolai Creek, and the upper seven river miles of the
23 Kasilof River down to Silver Salmon Rapids that are
24 within the Refuge boundaries.

25

26 In the 1980s management practices includes
27 a steelhead stocking program at Crooked Creek. Because
28 of the enhanced numbers of steelhead produced, sport
29 catches averaged over 5800 fish, supporting harvest of
30 nearly 1400 fish annually. However, by the early 1990s
31 concerns over straying of hatchery-produced steelhead had
32 surfaced and the program was terminated in 1993.
33 Anticipating that a sharp decline in steelhead available
34 for harvest might occur by 1996, the Board of Fisheries
35 restricted Crooked Creek and the main stem below the
36 Sterling Highway Bridge to only catch and release
37 fishing.

38

39 Both State and Federal fisheries managers
40 have expressed concern about the sustainability and
41 overall health of steelhead in the Kasilof. Recent
42 harvest of steelhead above the Sterling Highway Bridge
43 are typically fewer than 50 fish annually. Table 1 on
44 Page 96 provides reported sport harvest from 2000 to
45 2005, just the recent harvest.

46

47 Most steelhead are caught and released
48 alive by sport anglers.

49

50 Sustainable exploitation rates for small

1 coastal populations of steelhead at the outer limits of
2 their range, such as those in the Kasilof River, are very
3 low and probably less than 10 percent.

4
5 It is not known whether past enhancement
6 and resulting high harvest affected productivity of
7 Kasilof River populations. Issues associated with
8 enhancement and mixed stock, wild and enhanced, harvest
9 elsewhere include straying of hatchery fish into other
10 spawning populations and over-harvest of wild fish. A
11 long-term impact of the past Crooked Creek enhancement
12 program has not been fully evaluated for the Nikolai
13 Creek stocks at this point in time.

14
15 To gain more information pertaining to
16 the abundance of spawning steelhead in Crooked and
17 Nikolai Creek, U.S. Fish and Wildlife Service installed
18 and operated underwater video systems in each creek
19 during 2005 and 2006. Estimates of spawning adults for
20 Nikolai Creek were a partial count of 84 fish in 2005 and
21 373 fish in 2006. Funding for these monitoring projects
22 will continue in 2007. In addition, the U.S. Fish and
23 Wildlife Service will add a video weir at Chantilly Creek
24 and a radio telemetry study to evaluate in more detail
25 the distribution of steelhead within the entire drainage.

26
27 Adopting Proposal 10 would provide for an
28 expanded subsistence fishery with rod and reel, gillnets
29 and dipnets for steelhead in the Kasilof River. The
30 proposed fishery would increase the potential for
31 exploitation of a small stock of steelhead and may not be
32 within sustainable harvest levels based upon available
33 information. Use of gillnets or dipnets to target this
34 small stock is not recommended, and because of their
35 increased efficiency, could lead to over-exploitation.

36
37 The Southcentral Regional Advisory
38 Council recommendation would maintain the existing
39 harvest opportunity in the rod and reel fishery for
40 Federally-qualified subsistence users, and addressed
41 deficiencies of the original proposal concerning
42 reporting and conservation.

43
44 Individual Federally-qualified
45 subsistence fishermen would continue to be allowed to
46 harvest steelhead in Nikolai Creek, Tustumena Lake and
47 the main stem Kasilof River down to the Refuge boundary.
48 The harvest permit would also require removal of the
49 dorsal fin upon landing to mark the fish to assist with
50 enforcement. In addition, subsistence fishermen would

1 have to report their harvest of steelhead to the Federal
2 manager within 72 hours of their harvest.

3

4 Passage of this proposal would maintain
5 subsistence harvest opportunity for individually
6 qualified subsistence users even if the sport fishery for
7 the entire drainage at some time is changed to catch and
8 release only. These actions provide for a subsistence
9 gear type that allows for species, stock, and size
10 selected management.

11

12 The Staff recommendation is to take no
13 action on Proposal 10 and support the Southcentral
14 Regional Council recommendation that would allowed
15 qualified subsistence users to harvest two steelhead
16 annually by means of rod and reel. Again it's our view
17 that the recommendation of the Southcentral Regional
18 Advisory Council is consistent with available evidence,
19 addresses the recognized principles of conservation for
20 this stock within the Kasilof drainages, and increases
21 subsistence opportunities for Federally-qualified users,
22 therefore fully addressing the three criteria in ANILCA
23 805(c).

24

25 That concludes the steelhead
26 presentation.

27

28 Mr. Chairman.

29

30 CHAIRMAN FLEAGLE: Thank you, Rich.
31 Questions. Gary.

32

33 MR. EDWARDS: Mr. Chairman. I guess I
34 have a couple. All right. So for rod and reel, although
35 there is a harvest limit per household of two, there's
36 total harvest limit for rod and reel on steelhead; is
37 that correct?

38

39 MR. CANNON: No, there's not. No, it's
40 just for rod and reel.

41

42 MR. EDWARDS: All right. But there is a
43 total harvest limit that are caught incidently during the
44 -- potentially incidental during the dipnet fishery, but
45 it's my understanding there's not a concern there about
46 that 200, because that dipnet fisheries ends on the 15th
47 of August and the belief is, or the data shows that there
48 should not be any steelhead, or virtually very few that
49 would be caught in that dipnet fishery; is that correct?

50

1 MR. CANNON: Yeah. Mr. Edwards, yes,
2 that is correct.

3
4 MR. EDWARDS: All right. So then how --
5 and then what are the dates for the rod and reel fishery,
6 or are there any. Is that a year-round fishery. It's a
7 year-round fishery, so you can go down there any time you
8 want and you can fish, but the limitation is that you can
9 only catch two fish per household.

10
11 And then our process is that you have to
12 report your catch within 72 hours, and then that would be
13 the way to keep tabs of what's going on, so if it did
14 look like the sport fishery was taking a lot of fish,
15 then who would have the authority to close that sport
16 fishery -- or, excuse me, close that subsistence fishery
17 by rod and reel -- to close it. How would that take
18 place?

19
20 MR. CANNON: Well, Mr. Chairman, to Mr.
21 Edwards, my understanding is that the Federal manager
22 through special action can take some action; however,
23 that action is -- with regard to a sport fishery would
24 only allow him to close the fishery.

25
26 MR. EDWARDS: No, what I'm referring is
27 that -- it's my understanding that if you go down there
28 and a subsistence user is using rod and reel, takes a --
29 what are those fish -- steelhead, within 72 hours they
30 have to report it. So the manager's getting this report.
31 I'm assuming at some point there could be a threshold
32 where the manager feels that there are too many being
33 taken by the subsistence users, and would exercise some
34 authority to do that, to stop that subsistence fishery;
35 is that correct?

36
37 MR. CANNON: I apologize for that answer.
38 I thought you were talking about the sport fishery. The
39 Federal subsistence manager can with special action take
40 action in the subsistence fishery.

41
42 MR. EDWARDS: Right. Is there kind of an
43 anticipated threshold when he might say too many
44 steelhead have been caught and kept?

45
46 MR. CANNON: I would imagine when you
47 start getting into that range of harvest that are
48 approaching 50 fish, it would be concerned.

49
50 MR. EDWARDS: Okay. I guess my last

1 question would -- and maybe the State's probably in a
2 better position to ask this, but does the State have the
3 same reporting requirement for steelhead that might be
4 kept by sport anglers so there's an accumulative
5 understanding of what the harvest is?

6

7 CHAIRMAN FLEAGLE: George Pappas.

8

9 MR. PAPPAS: Mr. Chairman. The answer
10 is, no, we don't have a 72-hour reporting period. I
11 believe the Kasilof is the only river you're allowed to
12 harvest steelhead on the Kenai Peninsula.

13

14 MR. EDWARDS: Well, what I guess I'm
15 trying to get at, you know, at the start of your
16 presentation there seemed to be general acknowledgement
17 by everyone that this isn't an abundant population, and
18 that we need to approach it from a conservative
19 standpoint. But I guess my concern is that we're kind of
20 keeping track of what the subsistence users are doing,
21 but nobody's keeping close track, at least within 72
22 hours track, of what the sport fisherman is doing. So
23 don't we have a potential for, you know, maybe shutting
24 off the subsistence users too soon if we meet this
25 magical threshold of 50, and then allowing the sport
26 fishery to go forward. It seems to me that at a minimum
27 you'd almost have to take simultaneous action, wouldn't
28 we?

29

30 CHAIRMAN FLEAGLE: Tina, can you answer
31 that.

32

33 MS. CUNNING: Mr. Chairman. We actually
34 can answer some of these questions in some prepared
35 comments that we have to give related to these
36 modifications on these proposals. But with regard to
37 that particular fishery, it is a catch and release
38 fishery, and it's largely operated as a catch and release
39 fishery. And according to our records, we've had
40 approximately 20 fish a year that's actually harvested
41 out of that fishery.

42

43 MR. EDWARDS: I guess my clear response,
44 it's not really a catch and release fishery. It's a
45 voluntary catch and release fishery, so it is a catch and
46 keep fisheries is what it is; isn't that correct?

47

48 MS. CUNNING: You're correct, sir. This
49 is addressed on Page 96 in quite some detail.

50

1 MR. EDWARDS: Okay. Thank you.
2
3 MS. CUNNING: But for all practical
4 purposes it's not a take fishery except in those cases
5 where people perhaps damage a fish and then they can take
6 it home and not be illegal.
7
8 MR. EDWARDS: Or unless you're kind of a
9 hook and cook type fisherman, then I guess it would be,
10 right?
11
12 CHAIRMAN FLEAGLE: Your mic's still on,
13 Gary. Other questions.
14
15 (No comments)
16
17 CHAIRMAN FLEAGLE: All right. Thank you.
18
19
20 MR. PROBASCO: May I say something.
21
22 CHAIRMAN FLEAGLE: Go ahead, Pete.
23
24 MR. PROBASCO: Thank you, Mr. Chair. I
25 just wanted to remind the public that if you plan on
26 testifying, please go see Diane Rey at the table and get
27 a yellow card and get it up here. Mr. Chair, we have two
28 people that are ready to testify when it's their time.
29
30 CHAIRMAN FLEAGLE: Doug McBride.
31
32 MR. MCBRIDE: Mr. Chairman. We have a
33 summary of all this Kasilof information before you do
34 testimony.
35
36 CHAIRMAN FLEAGLE: All right. Okay. I
37 was getting to that next. Summary of written public
38 comments. Doug.
39
40 MR. MCBRIDE: This is not a summary of
41 written public comments, Mr. Chairman. It's a summary of
42 everything you just heard from Staff.
43
44 CHAIRMAN FLEAGLE: Oh, the Staff report
45 summary. Go ahead, please.
46
47 MR. MCBRIDE: Thank you, Mr. Chairman.
48 Yeah, we're long winded. We're not done yet. Mr.
49 Chairman, I'll make this mercifully brief.
50

1 At the end of the all the analyses, there
2 is a summary chapter in your book. And the first thing I
3 would point you to is Table 1 on Page 172. And as I
4 stated during the overview, you -- I mean, you just heard
5 a tremendous amount of information. We've talked about
6 all the salmon species, we talked about resident species,
7 we talked about steelhead, we've talked about dipnet
8 fisheries, winter fisheries, and rod and reel fisheries.
9 And it's very -- we found it very easy to get kind of
10 lost in the details. Table 1 is an attempt to try to
11 pull it all together on one page and be able to stand
12 back and kind of look at the whole package if you will of
13 the Council's recommendation for the Kasilof River
14 drainage.

15
16 And the way to read Table 1, obviously
17 going down the far left-hand side are all the various
18 species that we talked about, and then the Table from a
19 column standpoint is really divided into two major
20 sections. First of all there's the non-rod and fisheries
21 if you will, and, for instance, up at the top you'll see
22 like dipnet, but you could use rod and reel during that
23 time frame, but there's basically dipnet fishery and a
24 winter fishery for resident species. And then for
25 virtually all the species on the far right-hand side of
26 the table are rod and reel fisheries.

27
28 So just for instance, so you can see kind
29 of how all this works, like for Chinook salmon, I'm
30 looking at the top left-hand part of Table 1, there is a
31 season date for chinook. It would be from June 16th to
32 August 15th. There's a total harvest quota of 500 in
33 that fishery, and this is for dipnetting now. There's a
34 household independent limit of 10 per permitted user,
35 plus an additional 2 for each dependent in their family.

36
37
38 And those limits are, at least in large
39 part, consistent with the original request in Proposal
40 27d. And when I say in large part, that's because as
41 originally proposed by the proponents, they had asked for
42 a total harvest quota of 1,000 chinook but that was
43 across both the Kenai and Kasilof River drainages, so
44 there's -- we had to do a little bit of translation here
45 if you will as we looked at the individual drainages. So
46 within the Kasilof River drainage, based on harvest
47 performance in the sport fishery, we thought we could
48 responsibly offer a total harvest quota of up to 500.
49 Now the remaining chinook we'll talk about later when we
50 get to the Kenai in terms of the individual request. But

1 there would be a total harvest quota of 500, the
2 household/dependent limit is as requested in that
3 proposal. And then there would be no rod and reel
4 fishery outside of this, because, I mean basically the
5 chinook go to the upper Kasilof River drainage, and that
6 fishery would occur in that upper seven miles from the
7 outlet of Tustumena Lake down to Silver Salmon rapids.
8 And beyond that for all practical purposes there kings
9 don't go beyond -- or the chinook don't go beyond there.
10

11 I guess as, you know, maybe to look at a
12 different species, if you go down a couple, if you look
13 at coho salmon, so I'm going down three rows to coho
14 salmon, again there would be a season, June 16th to
15 October 31. A total harvest quota of 500. A household/
16 dependent limit of 10 per household, plus two -- or head
17 of household, plus two for each dependent. And that is
18 consistent with the analysis that we provided you last
19 fall for Fisheries Special Action 06-01a.
20

21 In addition to that, then throughout the
22 remainder of the drainage there would be a rod and reel
23 fishery where the recommendation is to double the
24 existing sport bag and possession limits, so you'd be
25 allowed to take four coho per day and have four in
26 possession.
27

28 If you move down on that table and look
29 at the resident species, for instance, for Dolly Varden,
30 and then the left-hand part of that table is the winter
31 gillnet/jig fishery. And this is basically identical to
32 the temporary fishery that just ended this past March
33 31st. There would be -- this would occur within
34 Tustumena Lake. There would be a total harvest quota of
35 500. That is what was requested. There would be a
36 household dependent limit of 30 across all 3 of those
37 species. Again, that is what is what was requested.
38

39 In addition to that, then moving across
40 to the right-hand side of the table, there would be a rod
41 and reel fishery throughout the drainage. The water is
42 open to sport fishing, and the bag and possession limits
43 would be double those in the sport fishery. And it gets
44 a little complicated, because they have different bag and
45 possession limits for flowing waters and for lakes.
46

47 And then moving to the far -- the very
48 bottom of the table, that's the information for
49 steelhead, and those are defined as Rich told you as
50 rainbow/steelhead, 20 inches in length or longer. That's

1 the field definition of a steelhead. There would be
2 nothing but a rod and reel fishery for all the obvious
3 conservation reasons, and that would be an annual limit
4 of two.

5
6 Mr. Chairman. In the text we provided an
7 analysis of whether this recommendation in total, when
8 you stand back and look at it, provides for the
9 subsistence priority. And the reason we provided this is
10 because this became a matter of debate and it was debated
11 and questioned at the Regional Advisory Council meeting.
12 And at least from Staff perspective, we feel that this
13 total package of recommendations does provide for
14 subsistence.

15
16 (Off record)

17
18 (On record)

19
20 MR. MCBRIDE: I highlighted several of
21 the total harvest quotas in here. The annual harvest
22 quotas. Most of the total annual harvest quotas were as
23 requested in the original proposals. There were some
24 that weren't, notably for chinook salmon, coho salmon,
25 and pink salmon. And the reason those weren't were for
26 reasons of conservation. But if you then, standing
27 further back, and later on in the meeting when we get
28 into the Kenai part of the drainage, you'll see that the
29 total harvest quotas for each one of those species across
30 both drainages were in fact met.

31
32 The household dependent limits, it's the
33 same story. Most of them were met. The ones that were
34 not were for coho and king salmon, again for reasons of
35 conservation. We didn't -- the recommendation from Staff
36 and then from the Council not to meet those just in the
37 Kasilof, but if you stand back and look at the Kasilof
38 and the Kenai, you'll see that those were met for most of
39 the proposals, and they were met for the resident species
40 in the winter fishery.

41
42 And then as far as gear types, again
43 going back to some of the information we covered in the
44 overview, all requested gear types were provided for in
45 the Council's recommendation, except for the widespread
46 use of gillnets for all the obvious reasons that we've
47 already gone through.

48
49 Mr. Chairman. The last point that I will
50 mention in the Staff analysis is at the Council meeting

1 there -- and it actually came up during the stakeholder
2 working group. There was a lot of discussion about
3 developing a fishwheel fishery, and that received some
4 discussion at the Council meeting. The Council asked --
5 requested OSM staff to develop a proposal for their
6 consideration at their upcoming meeting this fall to
7 develop a temporary fishwheel fishery, which we did.
8 That is in the package, in the upcoming package for the
9 '08 fishery regulatory proposals.

10

11 Mr. Chairman. That concludes the Staff
12 analysis, and we'd be happy to answer any further
13 questions.

14

15 CHAIRMAN FLEAGLE: Okay. Thank you.
16 Questions, Board members. Gary.

17

18 MR. EDWARDS: Yeah. Mr. Chairman, I have
19 a couple of kind of general questions. It's my
20 understanding that the Refuge boundaries on both sides of
21 the river, and on the south side, and maybe you can't
22 answer that, maybe somebody from the Refuge needs to, how
23 much of the south side of the river, I guess it would be
24 the south side, is within the Refuge boundary. And I
25 guess the question I'm trying to get at, is that going to
26 present any kind of issue for a subsistence dipnet
27 fishery to occur on the south side of the river. Well, I
28 don't want you to just think you'd wasted your time,
29 Robin, from coming back the second week.

30

31 MR. WEST: Thank you, Mr. Chair. Mr.
32 Edwards. The Refuge boundary question I understand is in
33 dispute with some research that the State of Alaska has
34 done. In some ways whether that is resolved in terms of
35 the boundary actually being on the left bank or the right
36 bank probably makes little difference in terms of
37 administering the fishery due to reserved water rights
38 and in the Katie John decision.

39

40 But to answer your specific question, and
41 I don't have an actual answer to that, because I don't
42 have the conveyance information in front of me when the
43 land was conveyed under ANCSA to CIRI a number of years
44 ago. So my understanding is the State's researched it
45 and says it's on one side, our realty people say it's on
46 the other side. But in either case, to answer your
47 specific question on the land, you know, on the parking
48 lot side, the near shore side, that is private land.
49 It's CIRI land. There is a 17(b) easement that accessed
50 the boat launch area. It's managed for access, parking,

1 boat launch, and restroom facility there, but private
2 land is adjoining that. And then downstream is State
3 land. So then on the far side is Refuge land.

4

5 MR. EDWARDS: All right. That said though, I
6 mean, this dipnet fisheries can be from a boat or from
7 shore, that's correct, right? And I guess what I've
8 heard you say, it's going to be fairly difficult for it
9 to occur on the south side of the river or not, from the
10 shore?

11

12 MR. WEST: Assuming that CIRI would not
13 give permission for trespass, I guess that would be a
14 reasonable assumption, if they're required to use the
15 bank and did not have permission, that could be an issue.

16

17 MR. EDWARDS: Okay. All right. Thanks,
18 Robin. A couple of other questions for OSM Staff. It's
19 my understanding reading this is that the total harvest
20 on salmon is accumulative between the harvest on the
21 Kenai and the harvest on the Kasilof; is that correct?

22

23 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
24 For the household limits and the bag limits, that would
25 be correct.

26

27 MR. EDWARDS: I mean, then, so how does
28 that get reconciled. Who's kind of keeping track of both
29 of those harvests to know when that would be reached by a
30 given household?

31

32 MR. MCBRIDE: Mr. Chairman. That would
33 be the responsibility of the in-season manager, and it
34 would be accomplished in two ways. Harvests have to be
35 recorded on the permits and we will have separate permits
36 by drainage. So, I mean, the recorded information will
37 be explicit by drainage. And then in addition to that
38 for certainly the dip -- talking about salmon now, for
39 the dipnet fisheries, there is the in-season reporting
40 requirement within 72 hours, so the users would be
41 reporting their harvests, and again by drainage to the
42 manager.

43

44 MR. EDWARDS: And this would not include
45 the personal use fishery that we're all able to take part
46 of down in the lower Kenai, right. I mean, that harvest
47 does not add to the total household harvest or does it?

48

49 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
50 Well, the Federal manager would not be tracking the

1 personal use harvest in any way that I'm aware of.

2

3 MR. EDWARDS: No, that wasn't my
4 question. I mean, it's my understanding that the
5 personal use fishery, it would be over and above this
6 harvest or any other harvest, for example, the
7 educational harvest. I mean; is that correct? I mean,
8 let me put my -- if I'm somebody from Ninilchik and I
9 dipnet fishery both within Federal waters on the Kasilof
10 and the Kenai and I take my 400 sockeye I guess it is, or
11 whatever I'm allowed. Let's say it's 400. I can still
12 go and participate in the Kenai personal use fishery,
13 right, as well as participate in the educational fishery,
14 and that catch does not -- is not accumulative against my
15 400 total household?

16

17 MR. MCBRIDE: Mr. Chairman. Mr Edwards.
18 I think you're in part correct. You can certainly
19 participate in any of those fisheries, but there is a
20 Federal regulation, not specific to the Kenai, but across
21 all Federal subsistence fisheries that you cannot
22 accumulate annual harvest limits. So if there's an
23 annual harvest limit, and for instance -- well, you can't
24 accumulate annual harvest limits. So if there's an
25 annual harvest limit in say the PU fishery, which there
26 is, and there's an annual harvest limit in the dipnet
27 fishery for salmon, which there is, you can't add those
28 together. You can't have -- you can't accumulate them in
29 total. Now, you could take part of your limit in one
30 fishery and part of your limit in another fishery, but
31 you could not accumulate the two annual limits.

32

33 MR. EDWARDS: But there is an annual
34 harvest limit for the personal use fishery in the Kenai,
35 but there's not an annual harvest for the sport fishery
36 in the Kenai other than assuming I guess if you
37 multiplied three fish times the number of days of the
38 season. I guess that would by itself give you an annual
39 harvest. I'm trying to understand. Because the way I
40 read this, for sockeye, for example, the total harvest is
41 4,000, and that's combined between the two systems?

42

43 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
44 Looking at the sockeye salmon, looking at Table 1, Page
45 172, there is a total annual harvest quota for the dipnet
46 fishery, the subsistence dipnet fishery only in the
47 Kasilof River drainage only of 4,000 sockeye salmon.
48 Subsistence users could then take by household 25 per
49 head of household, plus an additional 5 for each
50 dependent in their household. So if there's a one-person

1 household, they can take 25. If there was a two-person
2 household, they could take 30, and so on.

3
4 The annual limit part of that that is
5 important in the accumulation of limits is the household
6 limit. Okay. And so, for instance, if a resident of
7 Ninilchik wanted to also go participate let's just say in
8 the personal use fishery in the Kasilof, which is
9 obviously under State jurisdiction, it has nothing to do
10 with the Federal subsistence fishery, I can't remember
11 off the top of my head what the limits are there, I think
12 it's -- whatever it is, yeah, I believe it's 25 plus 10
13 for each dependent. They could not take -- let's say
14 it's a one-person household, to make this simple. They
15 couldn't end up with 50 sockeye between those two
16 fisheries. You can't accumulate those annual limits.
17 That's my understanding of how it works. Now, they could
18 take 25 fish between the two fisheries. They could take
19 12 in one and 13 in the other, or 24 and 1, or whatever.
20 But by our regulation, you cannot accumulate annual
21 limits.

22
23 Now, you asked about the sport fishery.
24 There is no annual limit for sockeye salmon in any sport
25 fishery at least that I'm aware of, in any of these
26 waters. There are daily bag limits and there are
27 possession limits, but they are not annual limits, so
28 they are not pertinent to this discussion -- to the
29 discussion or the question you've raised.

30
31 Mr. Chairman.

32
33 MR. EDWARDS: Mr. Chairman, I'm going to
34 ask it one more way so maybe I can understand it.

35
36 All right. So I'm single and i live in
37 Ninilchik, so my limit is 25 fish. So I get up in the
38 morning and I go over to the Russian River, and I get my
39 -- and I dipnet 15 sockeye. Then I drive back over and I
40 go up the Kasilof, and I can only dipnet 10 sockeye
41 there, and then I'm done for the season.

42
43 UNIDENTIFIED VOICE: For those two
44 fisheries.

45
46 MR. EDWARDS: For those two fisheries.
47 And then you're saying I can't then go down to the mouth
48 of the Kasilof and dip my personal use fishery?

49
50 MR. MCBRIDE: Mr. Chair and Mr. Edwards.

1 That is correct.

2

3 MR. LOHSE: Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Other questions. Who
6 do we have, oh, Ralph.

7

8 MR. LOHSE: I know that you can't
9 accumulate bag limits, but I -- and I don't know the
10 Kenai that well, but I was under the impression that the
11 dipnet fisheries on the Kasilof were personal use
12 fisheries. The current State dipnet fisheries are
13 personal use fisheries, am I correct? Okay. And what
14 we're talking about here is a subsistence fishery. And a
15 subsistence and a personal use fishery is not
16 accumulating bag limits any more than a subsistence
17 fishery and a sport fishery is. Those would be two
18 separate bag limits. Now, if you had a State subsistence
19 fishery like we do on the Copper and you had a Federal
20 subsistence fishery, you can't accumulate bag limits for
21 the two subsistence fisheries, but I may be wrong, but
22 that would be my current interpretation, that a personal
23 use fishery is not classed as a subsistence fishery,
24 because the State definitely says it's not a subsistence
25 fishery.

26

27 CHAIRMAN FLEAGLE: Pete.

28

29 MR. PROBASCO: We'll clarify it as far as
30 what the regulations -- and this is subpart (d)
31 subsistence taking of fish and wildlife, section (27)
32 subsistence taking of fish. The harvest limits specified
33 in this section for a subsistence season, a Federal
34 season, for a species and the State harvest limit set for
35 a State season, it's not specific, for the same species,
36 are not cumulative unless the Board says otherwise or
37 modified by regulation.

38

39 CHAIRMAN FLEAGLE: Other questions.

40

41 MR. EDWARDS: My only comment, given that
42 there's a limit of 4,000 sockeye and that's a total
43 harvest of sockeye that can be taken, it almost seems
44 like one would be better off fishing in a personal use
45 fishery for the whole community, because overall they
46 could probably end up taking more fish under that than
47 they could under our regulations.

48

49 CHAIRMAN FLEAGLE: All right. Thanks for
50 the comments. Now, I think you for the reports.

1 We'll go ahead and hear summary of
2 written public comments before we go on a break. Donald.

3
4 MR. MIKE: Mr. Chair. The written public
5 comments begins on Page 186 and ends on Page 216 of your
6 Board book. And additional comments were received prior
7 to the start of the meeting today. We received
8 additional comments via email yesterday and you have
9 copies handed out to you this morning.

10
11 And for the record, there's additional
12 comments out on the front desk for the public to review.

13
14 Rather than going over each individual
15 proposal, Mr. Chair, this summary I'm going to be reading
16 into the record will cover the Kasilof salmon, Kasilof
17 resident species, the Kasilof steelhead, the Kenai salmon
18 and Kenai resident species. Mr. Chair.

19
20 The Office of Subsistence Management
21 received 33 written public comments. Comments were
22 received from individuals, sport/ commercial fish, or
23 non-profit fisheries organizations, and from local
24 advisory committees.

25
26 One local advisory committee unanimously
27 accepted and adopted the Federal Staff analysis on Pages
28 4 through 6 dated February 22, 2007 as their own.

29
30 Seventeen individuals were opposed to all
31 the proposals in general.

32
33 One individual wrote in support of the
34 subsistence fisheries proposals for the Kenai and Kasilof
35 Rivers.

36
37 Two of the cementers stated that the only
38 viable solution for a subsistence fisheries would be
39 through a manned fishwheel.

40
41 And two commented in support of a
42 subsistence dipnet fishery.

43
44 One commentor stated that they would
45 support a jig fishery as long as the harvest limits are
46 reasonable and within biological limits.

47
48 Two commented that rod and reel will be
49 an ineffective method and dipnet fisheries will be an
50 impossible method in clear shallow water.

1 The overall theme of the comments
2 received oppose a gillnet fishery on the Kenai and
3 Kasilof River drainages, citing conservation concerns and
4 the economic impact it will have on the sport fishing
5 industry, and that a gillnet fishery is an indiscriminate
6 method of harvesting fish other than the targeted
7 species.

8
9 That summarized the written public
10 comments, Mr. Chair. Thank you.

11
12 CHAIRMAN FLEAGLE: Thank you, Donald.
13 Questions.

14 (No comments)

15
16
17 CHAIRMAN FLEAGLE: Hearing none, let's
18 step down for 10 minutes.

19
20 (Off record)

21
22 (On record)

23
24 CHAIRMAN FLEAGLE: Good afternoon. We're
25 back on record, and at this time we're going to open the
26 floor to public testimony. And, Pete, I understand we
27 have some interest in testimony on these issues.

28
29 MR. PROBASCO: Thank you, Mr. Chair.
30 Dealing with the Kasilof River drainage harvest
31 regulation proposals, we have two that have signed up.
32 And going in the order that the cards are presented,
33 we'll first have Mr. Ricky Geese followed by Mr. Sky
34 Starkey.

35
36 CHAIRMAN FLEAGLE: Okay. Appreciate it.
37 And these are both individuals that I asked to shorten
38 their testimonies this morning. So if you guys wouldn't
39 mind just being considerate of the process and maybe
40 don't go over 10 or 15 minutes max, something like that.

41
42 MR. GEASE: Good day. My name is Ricky
43 Geese. I'm the executive director of Kenai River Sport
44 Fishing Association.

45
46 My only comment has to do with the use of
47 treble hooks versus single hook. I think treble hooks
48 when you use bait don't really increase the efficiency of
49 the catch over single hooks. And I think in terms if you
50 have incidental catch of non-targeted fish, it's easier

1 to release with a single fish than with a treble hook.
2
3 Thank you.
4
5 MR STARKEY: Mr. Chair.
6
7 CHAIRMAN FLEAGLE: Wait, just a second.
8 Questions. Gary.
9
10 MR. EDWARDS: Yeah. I guess, and I guess
11 I agree with you in principle, but aren't a lot of the
12 fisheries, the recreational and the sport fisheries both
13 on the Kasilof and the Kenai, do they not allow treble
14 hooks?
15
16 MR. GEASE: They went to single hook in
17 '99.
18
19 MR. EDWARDS: Not during all fisheries I
20 don't believe.
21
22 MR. GEASE: Wait a minute. I haven't
23 fished the Kasilof that much, so maybe you're correct on
24 that.
25
26 MR. EDWARDS: But I also don't believe
27 that the Kenai is 100 percent single hook year round.
28
29 CHAIRMAN FLEAGLE: You know, we can
30 research that and try to figure this out. Ricky, your
31 comment still applies.
32
33 MR. GEASE: Okay. Yeah.
34
35 CHAIRMAN FLEAGLE: You're not in favor of
36 treble hooks.
37
38 MR. GEASE: Right.
39
40 CHAIRMAN FLEAGLE: Okay. Thanks. Sky
41 Starkey.
42
43 MR. STARKEY: Thank you, Mr. Chairman.
44 Ricky really put the pressure on me. He just got up and
45 down so quick. I'm going to try to match him, but I'll
46 have to talk faster.
47
48 No, really the only reason I'm here is
49 because, you know, we are the main proponents of the
50 proposal, and just to be here and to note that, you know,

1 we're here. There's several people from Ninilchik back
2 there if you have any questions.

3

4 From our perspective, you know, we don't
5 agree necessarily with the State -- or with OSM's
6 analysis about gillnets, but understand that this is an
7 evolving process and no one really knows how the
8 fishery's going to work, but we have to start somewhere,
9 and so here we are.

10

11 And really that's it, Mr. Chair.

12

13 CHAIRMAN FLEAGLE: All right. Great.

14 Thank you. Questions.

15

16 (No comments)

17

18 CHAIRMAN FLEAGLE: Thank you for your

19 testimony.

20

21 Ralph Lohse for the Regional Council

22 recommendation.

23

24 MR. LOHSE: Thank you, Mr. Chair. Would
25 you like me to speak to all the Kasilof proposals at one
26 time.

27

28 (No comments)

29

30 MR. LOHSE: In that case, what I'll just
31 tell you is what you have in front of you are the
32 Council's modified proposals. We feel like we looked at
33 them very conservatively. In fact, very many of them
34 don't even have a potential increase over the amount of
35 fish that can be taken today legally, because we have to
36 remember that all subsistence fishermen on the Kenai are
37 also potential sport fishermen or personal use fishermen.
38 And if they have their choice between taking them between
39 sport, personal use, or subsistence and the limits come
40 out the same, it really is no increase.

41

42 So I'm just going to ask you as you go
43 through these to look at the Council's proposed
44 modifications, because that's what you have in front of
45 you, or if you would like, I can read to you on each one
46 of these the Council's proposed modifications and tell
47 you that's what we support.

48

49 CHAIRMAN FLEAGLE: Okay. I think we can
50 read them.

1 I was just curious, did your Council -- I
2 guess I could hold this for the Board discussion with
3 Council Chairs. I'll wait. I appreciate it.

4
5 Any other questions.

6
7 (No comments)

8
9 CHAIRMAN FLEAGLE: Thank you. Alaska
10 Department of Fish and Game comments, and welcome back,
11 Commissioner Lloyd. And we have -- Tina, are you going
12 to be -- or we have George Pappas, please.

13
14 MS. CUNNING: Mr. Chairman, we actually
15 have two combined sets of comments, and he'll start.

16
17 MR. PAPPAS: Good day, Mr. Chairman. My
18 name is George Pappas for the record.

19
20 I'll start off with the Department of
21 Fish and Game's response to -- or, excuse me,
22 recommendation for Proposal 07-27b and c. The Department
23 of Fish and Game opposes this proposal as modified by the
24 Southcentral Regional Advisory Council and the Federal
25 Staff. The Department has serious concerns about the
26 potential cumulative effects of rainbow/steelhead trout
27 harvest from the Kasilof drainage of the two proposed in-
28 river Federal subsistence fisheries, which are the dip
29 net, rod and reel and the proposed Federal -- the
30 Tustumena Lake winter under the ice gillnet fishery
31 together with the existing sport fishery.

32
33 The potential for cumulative harvest from
34 these combined fisheries is quite large. Too little is
35 known about the stocks at this time.

36
37 There's a serious concern that the
38 exploitation rate that may result from adding the Federal
39 fisheries as proposed is unsustainable. The most recent
40 analysis from Federal Staff states the proposed harvest
41 limits for the fisheries proposals being presented at
42 this meeting are based upon historic catch and the
43 harvest data that -- or from the sport fisheries. Please
44 keep in mind that increasing an exploitation rate on a
45 stock of unknown characteristics and tolerance
46 thresholds, size and age structures is likely not a
47 decision based upon biological theory.

48
49 Cumulative annual harvest -- excuse me,
50 cumulative annual harvest of rainbow/steelhead trout over

1 20 inches in length between the proposed dipnet, rod and
2 reel and under the ice subsistence fisheries is not
3 clear. As currently proposed, the subsistence users
4 would apparently be allowed to harvest two
5 rainbow/steelhead trout over 20 inches with a rod and
6 reel and harvest an additional 400 rainbow/steelhead
7 trout over 400 -- or, excuse me, over 20 inches in length
8 in the dipnet fishery and under the ice fisheries.

9
10 The Department has serious concerns about
11 the increase of hook and release mortality caused by the
12 use of multiple hooks and bait in a fishery where a
13 segment of the targeted or incidently-caught populations
14 must be protected. The example of this is the catch and
15 release of steelhead in the fall as they're migrating --
16 that are incidently caught while fishing for coho or pink
17 salmon as they're migrating through the area.

18
19 Current State of Alaska regulations do
20 not allow for the use of multiple treble hooks and bait
21 during the time period when steelhead pass through the
22 waters of the outlet of Tustumena Lake.

23
24 The Department has serious concerns about
25 the potential over-harvest and mortality of over-20
26 inches spawning and spawning-age segments of
27 rainbow/steelhead trout populations in the Kasilof
28 watershed under the amended proposal as presently
29 recommended.

30
31 The Department recognizes the merit of
32 the efforts being made by the Ninilchik Traditional
33 Council and Federal Staff to modify the proposed Kasilof
34 River rod and reel Federal subsistence fisheries and the
35 Tustumena Lake rod and reel fisheries for resident
36 species and steelhead to mirror the bag, possession and
37 annual limits found in the Alaska sport fisheries
38 regulations. However, the Department believes that the
39 best way to do this is simply to defer to those -- to
40 defer to the State regulations for rainbow and steelhead
41 trout.

42
43 The Department has concerns regarding
44 potential localized depletion of Kasilof River late run
45 chinook salmon if subsistence anglers are allowed to fish
46 with multiple hooks and bait on the spawning beds. The
47 waters of the Kasilof River above the Sterling Highway
48 Bridge are closed to sport fishing for chinook salmon
49 after June 30th for a reason. The proposed Federal
50 subsistence fishery would occur on late run chinook

1 salmon spawning grounds where the salmon are in full
2 spawning phase, and are concentrated and easy to catch,
3 especially with bait and multiple hooks. From recent
4 studies, data suggests that the notable percentage of the
5 Kasilof River chinook salmon late run has entered the
6 river by August 15th. The Kasilof River late run chinook
7 salmon begin to stage on the grounds as early as the
8 second week in July, and by the third week in August,
9 some of the chinook salmon have already spawned and are
10 beginning to die.

11
12 The application of the term localized
13 depletion to this proposal needs to be clarified to the
14 Board. When possible, the State of Alaska currently
15 manages chinook salmon fisheries with the fisheries
16 management practice of estimating an allowable or proven
17 exploitation rate on stocks -- on a stock that is passing
18 through a fishery, or in this case of the Kasilof,
19 multiple fisheries.

20
21 The Kasilof early run chinook salmon
22 sport fishery is an example where the Department has a
23 good estimate of escapement, catch, and harvest in the
24 river. Exactly what the exploitation rate is for the
25 late run is not possible to estimate at this time,
26 because we don't have population characteristic
27 information. We're working on that.

28
29 But that is not the point I'm trying to
30 make. The point is that this fishery and those fisheries
31 that are mandated to allowed for a certain exploitation
32 percentage of the salmon to return -- the salmon
33 returning to pass through a fishery, while harvesting
34 equally across the stock is a goal for managing the
35 fisheries. For an example, if 1,000 kings pass through a
36 fishery and 300 of them are harvested, that gives you an
37 exploitation rate of what, 30 percent, and it's applied
38 across the stock, meaning all sizes and ages of the fish
39 have an equal opportunity of being caught. When a
40 discreet population is targeted such as a gravel bar used
41 for spawning in the upper Kasilof, the exploitation rate
42 or mortality rates significantly increase for the fish
43 specialized to spawn on that gravel bar. Thus, fish
44 spawning on that particular gravel bar are susceptible to
45 localized depletion if the theory holds true that salmon
46 are returning to the point of origin with some precision,
47 and a focused fishery directly or indirectly targets
48 these fish.

49
50 On river or any public resource

1 accessible to the masses, this issue is a major concern
2 for all managers. The period of primary concern would be
3 from August 1 to mid September. Recently collected
4 information suggests that the largest percentage of late
5 run arrives on the spawning beds from the second week of
6 August through the first week of September. Anglers,
7 Staff and enforcement agents reports have indicated that
8 incidently hooking a late run king salmon on its spawning
9 bed while fishing with terminal tackle intended for coho
10 salmon can be the rule instead of the exception up there,
11 depending on what time of the year it is, and where you
12 have your boat stationed in the river.

13

14 The Federal Staff analysis and other
15 comments from the Federal Staff do not address incidental
16 handling of king salmon by subsistence users during the
17 peak of the spawning period for late run kings.

18

19 If the Federal Subsistence Board adopts
20 this proposal, the Department agrees with the proposed
21 modifications of removing the dorsal fin rather than the
22 lobes of the caudal fin. No other fisheries in Cook
23 Inlet require this, and it will make enforcement in
24 identifying and distinguishing the subsistence harvest
25 much easier for everybody.

26

27 In conclusion, the Department recommends
28 that the Federal Subsistence Board discuss the potential
29 hook -- reduction of hook and release mortality of
30 rainbow/steelhead trout by limiting the use of bait after
31 the -- excuse me, September, beyond September 16th.
32 Additionally, the Department requests consideration of
33 elimination or reduction of the incidental dipnet in
34 Tustumena Lake allowed harvest of these fish as
35 currently proposed, the retention of any rainbow and
36 steelhead trout over 20 inches in length.

37

38 The Department does not believe this
39 fishery is sufficiently well justified and has concerns
40 about the level of harvest that may occur. There's
41 little of no stock information, assessment -- there's
42 little or no stock assessment information for any species
43 that would be harvested in this harvested in this fishery
44 other than sockeye salmon.

45

46 That concludes the comments for those
47 proposals.

48

49 CHAIRMAN FLEAGLE: Tina.

50

1 MS. CUNNING: Thank you, Mr. Chairman.
2 We have one additional comment which was brought up
3 earlier and which we had a side conversation with the
4 Refuge manager, and that is with regards to the use of
5 the maps. The Department has always strongly requested
6 that the Federal Staff and the Board provide detailed
7 maps and descriptions specifically showing the boundaries
8 and waters over where subsistence jurisdiction is being
9 claimed. We recognize that we're in litigation, and
10 that's a side issue. We think that it's very important
11 for the Board and the Staff to always clearly articulate
12 where these regulations are going to apply. And that's a
13 bottom line for the users as well as for those of us who
14 are managing and enforcing these various regulations.

15
16 I'd like to point out for you that the
17 Federal Staff presentation in the Book that was
18 summarized for you and the map that was shown up on the
19 screen there labeled Map 1, it shows waters adjacent to
20 the Refuge as being within the Refuge boundary, and
21 there's been a dispute over whether that line should be
22 on the private boundary side of the water, of the Kasilof
23 River, or on the Refuge side of the river. And what
24 Refuge Manager West and I both agreed to is that after
25 this meeting that we're going to work with realty at BLM
26 and Fish and Wildlife Service and our own realty, and try
27 to get some agreement to this, and then be sure that
28 corrected maps are put out.

29
30 If the area shown is intended to show
31 Federal jurisdiction, which is actually outside a Refuge
32 boundary, then it should be shown with some kind of hatch
33 marks. Otherwise there's confusion for the public about
34 whether they can fish under State regulations if they're
35 within waters, versus only the Federal regulations
36 applying. It just creates more confusion.

37
38 So we just agreed we're going to work
39 together and try to come up with some accurate maps
40 related to this fishery. And we would encourage that
41 that same cooperation occur in other areas where we've
42 had some disputes or concerns over where the boundaries
43 show on these maps.

44
45 Thank you.

46
47 CHAIRMAN FLEAGLE: Thank you. Questions.
48 All right. Oh, Gary, go ahead.

49
50 MR. EDWARDS: Yeah, Mr. Chairman. I

1 wanted to sort of get back, I don't know if the State had
2 time to try to research, but it's my understanding that
3 you can use bait and treble hooks in the Kasilof up until
4 September 15th. Is that correct?

5
6 MR. PAPPAS: Through the Chair. That is
7 correct.

8
9 MR. EDWARDS: All right. And certainly
10 during -- up until Sep -- by September 15th, you would
11 have steelhead that would be available for recreational
12 anglers to catch using treble hooks and bait, is that not
13 correct?

14
15 MR. PAPPAS: Yeah, I'm not sure if
16 there's any studies out there that show exactly when the
17 fish pass through the fishery, but in theory if they were
18 there, that is correct.

19
20 MR. EDWARDS: Yeah, but my understanding
21 is generally by September 15th, there are steelhead in
22 the area. So some of the concerns it seems to me that
23 are expressed about conservation concern would equally
24 apply to the State regs as well.

25
26 MR. PAPPAS: Yes, I have more comments in
27 the proposals addressing steelhead that address that.

28
29 MS. GOTTLIEB: Mr. Chairman.

30
31 CHAIRMAN FLEAGLE: Judy.

32
33 MS. GOTTLIEB: Well, actually a question
34 maybe for one of our FIS Staff as maybe raised by the
35 State's comments, and that would be what studies do we
36 have for the Kasilof that's part of our program?

37
38 CHAIRMAN FLEAGLE: Doug.

39
40 MR. MCBRIDE: Mr. Chairman. Ms.
41 Gottlieb. Doug McBride with OSM.

42
43 There are currently for the last several
44 year Fish and Wildlife Service outside of the subsistence
45 fisheries resource monitoring program has been conducting
46 studies in Nikolai Creek and actually Crooked Creek as
47 well, which is outside of what we're talking about, but
48 specifically in Crooked Creek they've had underwater
49 video, weir, if you will, where they're been counting
50 steelhead into Nikolai Creek. And you have to remember

1 these are fall run fish, so they're entering late summer,
2 fall, early winter. They over-winter in the system, and
3 then they go into Nikolai Creek, and so that's where
4 they're counted and that's where they spawn. And so
5 that's been going on. And as part of our fisheries
6 resource monitoring program, then we received two
7 proposals again from the Fish and Wildlife Service for
8 implementation this year, in 2007, and those were funded,
9 and those studies would first of all look at steelhead.
10 So in addition to the Nikolai Creek weir, there would be
11 a radio tagging studying to look at distribution and
12 timing of steelhead into the drainage, and that will
13 start this year.

14
15 And then in addition to that, for coho
16 salmon, we received a proposal which again was funded for
17 this year to run several weirs, I believe two weirs into
18 tributaries going into Tustumena Lake, and then also
19 radio-tag coho salmon. So we would get estimates of
20 escapement of coho salmon into a couple of the
21 tributaries, and a radio-tagging program again to look at
22 distribution and timing.

23
24 And then in addition to that, what's
25 going on right now in the monitoring program is we're --
26 we've received proposals for 2008, and the Nikolai Creek,
27 the steelhead distribution and timing, and the coho
28 escapement distribution and timing, all three of those
29 proposals were just advanced for investigation plans.
30 And so those are under consideration then for further
31 funding in 2008.

32
33 Mr. Chairman.

34
35 CHAIRMAN FLEAGLE: Other questions for
36 the State's comments. Okay. George.

37
38 MR. OVIATT: Yeah. I have a question.
39 The studies that are currently being conducted are as I
40 understand just a weir count for two years, and that's
41 the only information that's been collected on the Kasilof
42 watershed about steelhead besides the Crooked Creek
43 information. So I was just looking for clarification on
44 that. As I understand, the only information available is
45 a few members.

46
47 CHAIRMAN FLEAGLE: Tina.

48
49 MS. CUNNING: We also have our biologist,
50 Tom Vania, here who could address some additional

1 questions that were asked earlier if you would like to
2 have him at the table.

3

4 CHAIRMAN FLEAGLE: Okay. How about we do
5 that under Item 7, Board discussion with Council Chairs
6 and State liaison, if we need to pull people up for
7 further discussion, we can do it then. Let's go ahead
8 and move through our little road map here for doing
9 comments. And if there aren't any more questions to the
10 Department for what they presented.

11

(No comments)

12

13
14 CHAIRMAN FLEAGLE: Hearing none, we'll go
15 ahead and move on.

16

17 InterAgency Staff Committee comments.
18 Larry.

19

20 MR. BUKLIS: Mr. Chair. I'm prepared to
21 give those comments on salmon, resident species and
22 steelhead for the Kasilof River drainage as did Chairman
23 Lohse for the Council.

24

25 I'm not sure if the State covered all
26 aspects of the issue. I think they've got more elements.
27 And I thought Mr. Probasco directed us to cover the whole
28 watershed issue as a package. Is that what you wanted,
29 Pete.

30

31 CHAIRMAN FLEAGLE: Yes. And I guess I
32 should refer back to the State then. We are dealing with
33 the whole package, all three suite of proposals, salmon,
34 resident species and steelhead.

35

36 MR. PAPPAS: Yes, through the Chair. The
37 first set of comments I made were specifically for the
38 salmon-related proposal, even though it does have an
39 impact on resident species and steelhead. I can continue
40 on now with the Kasilof River resident species for the
41 proposal comments, and also the Kasilof River steelhead
42 proposal comments.

43

44 CHAIRMAN FLEAGLE: Please so. Sorry.
45 Thanks, Larry.

46

47 MR. PAPPAS: For Fisheries Proposal 07-
48 11, comma -- or, excuse me, and 12, 13, and 27d and 30,
49 the Kasilof River resident species proposals, the
50 Department of Fish and Game recommendation is to oppose

1 the proposals as modified by the Southcentral Regional
2 Advisory Committee and the Office of Subsistence
3 Management Staff.

4
5 There's little stock assessment data in
6 the Kasilof watershed for rainbow and steelhead trout.
7 It is impossible to say whether this modification of the
8 Federal Staff recommendation is sufficient to offset the
9 200 rainbow trout/steelhead trout that the Office of
10 Subsistence Management Staff recommends for an annual
11 harvest as part of the Kasilof salmon dipnet subsistence
12 fishery being proposed to end of August 15th. And the
13 additional harvest 1000 combined lake trout, rainbow
14 trout, Dolly Varden and possibly steelhead amongst there
15 as incidental catch being proposed for the recommended
16 annual separate Tustumena under the ice Federal fishery.

17
18
19 As found in the Federal Staff analysis,
20 the cumulative proposed resident species harvest limits
21 significantly exceed that of the recent State of Alaska
22 sport fisheries in the Kasilof watershed above the
23 Sterling Highway Bridge.

24
25 The bag and possession limits proposed
26 for other resident species in the revised proposal are
27 generally twice those allowed by the State. The
28 Department still does not see the biological rationale
29 for assuming that arbitrarily doubling the State's bag
30 and possession limit will provide for a sustainable
31 fishery that is consistent with Section .815 of ANILCA,
32 and Alaska constitution and statutes.

33
34 Harvest limits proposed for other
35 resident species are arbitrary and no biological
36 rationale is provided. While the Department appreciates
37 Ninilchik Traditional Council's modified proposal and the
38 Office of Subsistence Management's recommendations to
39 reduce rainbow and steelhead trout harvest limits and
40 size, those recommendations do not go far enough. And
41 the Department requests that the Federal Subsistence
42 Board ask for clarification in regards to the
43 justifications of these recommendations.

44
45 And that concludes the resident species
46 comments.

47
48 CHAIRMAN FLEAGLE: Questions on those.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: Go ahead.

2

3 MR. PAPPAS: Okay. To continue on with
4 steelhead, for Fisheries Proposal 07-10, Kasilof River
5 steelhead. The Department of Fish and Game opposes the
6 proposal.

7

8 The Southcentral Regional Advisory
9 recommendation to adopt this proposal by itself and in
10 combination with other Office of Subsistence Management
11 recommended harvest proposals for the Kasilof drainage
12 area violates recommended principles of fish and wildlife
13 conservation. Both the Department of Fish and Game and
14 the Office of Subsistence Management Staff recommend
15 against high exploitation rates from small coastal
16 steelhead populations at the northern limits of their
17 range, but this proposal can result in precisely such
18 exploitation.

19

20 It's very important for the Department to
21 ensure that the Board understands the differences between
22 designing a harvest oriented fishery and a fishery geared
23 towards mainly catch and release anglers. Establishing
24 the same limit for a harvest oriented fishery is not the
25 same as a limit for a catch and release oriented fishery.
26 If there was a harvest oriented fishery regarding the
27 Kasilof River steelhead where the harvest was in the
28 hundreds if not the dozens of fish, the fishery would
29 likely reflect the southern Kenai Peninsula stream
30 fishery regulations, and it would become a catch and
31 release fishery. Catch and release only fishery.

32

33 One harvest oriented angler will kill the
34 same number of fish, say that 10, 20, even 100 average
35 catch and release anglers would do on any given day. The
36 Department and the Alaska Board of Fisheries understands
37 these principles in crafting or modifying plans and
38 regulations for sport fisheries.

39

40 Given the lack of substantial evidence
41 about these special stocks and populations of steelhead
42 fish, this proposed increase in harvest is not wise or
43 likely sustainable.

44

45 We need also to keep in perspective that
46 even though in other remote parts of the Pacific
47 Northwest where a steelhead population is say maybe four
48 to 100 to 1,000 fish and those may be considered above
49 average or even large, very few of them have runs that
50 are located on the interstate highway and have thousands

1 of angler days per year of effort focused on that
2 particular system.

3
4 The Department requests that the Federal
5 Subsistence Board carefully consider and address the
6 Department's concerns in these regards, including the
7 Department's recommendations for improving the Kasilof
8 River proposals referenced in the previous proposed
9 comments.

10
11 And that concludes our comments. Thank
12 you.

13
14 CHAIRMAN FLEAGLE: Thank you. Gary.

15
16 MR. EDWARDS: Thank you, Mr. Chairman.
17 George, has the State given some consideration -- given
18 that this is a very small population at the extreme point
19 of their range, has consideration been given to not have
20 a sport fishery at all, be it catch and release or
21 otherwise?

22
23 MR. PAPPAS: Your question is, have we
24 considered actually closing the sport fishery period even
25 for catch and release.

26
27 MR. EDWARDS: Yes.

28
29 MR. PAPPAS: In the last four years, no.

30
31 MR. EDWARDS: Well, let me ask you
32 another question, and maybe the gentleman on my right
33 might be in a better position to answer it, but -- and
34 I'm not -- I'm only speaking for myself, and not the rest
35 of the Board, but if the Board would elect not to provide
36 a subsistence fishery for steelhead in these waters,
37 would the Board of Fish be willing to also close it to
38 the sport fishery.

39
40 COMMISSIONER LLOYD: Mr. Chair. I guess
41 I'm still -- maybe of similar mind as George. I'm not
42 sure of the context of the question. We haven't
43 identified a particular concern at the moment. So is
44 there a particular.....

45
46 MR. EDWARDS: Well, I guess my point is
47 there seems to be a concern expressed about what the
48 impact of the subsistence fishery is likely to have while
49 at the same time we are maintaining a sport fishery. And
50 I would agree that it does seem to be targeted more from

1 catch and release. I'm not sure I would necessarily
2 agree that the mortality is one percent. And any action
3 that we take certainly to restrict subsistence users I
4 think this Board finds its very difficult when we
5 continue to allow sport fisheries to occur. And so if
6 we're all collectively concerned about this population of
7 fish, and, you know, there has been some suggestion that
8 it might even get proposed for listing, you know, one way
9 to address those is for both Boards to collectively
10 recognize the conservation concerns and not provide any
11 targeted fishery for it, be it catch and release or keep.

12

13 CHAIRMAN FLEAGLE: Mr. Lloyd.

14

15 COMMISSIONER LLOYD: Mr. Chair. I guess
16 at this point we're not seeing ourselves in that
17 predicament, but if there's going to be a consumptive
18 fishery that is going to specifically harvest these
19 animals, with a much higher mortality rate, then we would
20 have to reevaluate our position on the State side, that's
21 correct. But in lieu of any increase in mortality by
22 virtue of an additional set of fishing pressures, I guess
23 we haven't thus far felt the need to restrict the ongoing
24 fishery. Does that get to your question, Mr. Edwards?

25

26 MR. EDWARDS: Yeah. Thank you very much.

27

28 CHAIRMAN FLEAGLE: Other questions.

29

30 MR. BSCHOR: Yeah, Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Denny.

33

34 MR. BSCHOR: On that same note, I see on
35 the charts that we have in our book on Page 62 and 64,
36 for example, there's no indication what the commercial
37 use is or what the escapement is, and I understand
38 there's -- I'm assuming there's not escapement goals been
39 set, but the commercial side of it. And it brings me to
40 the steelhead again, because I've asked this questions in
41 other places in the State. What is the bycatch. Do you
42 have any idea what that amount is comparatively to what
43 might be taken by subsistence users and/or sport fishers
44 and how does that all play out. I'm still curious why
45 we're looking so closely at the subsistence use if we
46 don't know what that balance is. And I'm not saying --
47 I'm with Gary, if there's a conservation problem here, I
48 want to know what it is and I would want to work together
49 with the Department to get in front of that.

50

1 CHAIRMAN FLEAGLE: Tina.

2

3 MS. CUNNING: We manage the fishery based
4 on the escapement and the runs and the spawning that
5 occur, and it's a stable and sustainable fishery at the
6 present time. But if there is a dramatic increase in the
7 harvest, then we'll have to revise our regulations. So
8 regardless of whether those fish are caught incidental in
9 a commercial fishery or a personal use fishery or by
10 bears or eagles or anything else, we're still managing
11 for the runs that we have at the present time.

12

13 MR. BSCHOR: And, Mr. Chairman, a follow
14 up. So then I would assume then that your answer would
15 be that it's run so well that we can't afford to have any
16 more use relative -- or it's run so well that the
17 conclusion I would make is that subsistence, a little
18 more subsistence use wouldn't matter. Is that a correct
19 assumption?

20

21 MS. CUNNING: These are very small
22 populations. And I think we gave you the figures that
23 right now the estimated harvest is approximately 20 fish
24 a year. And when you authorize more allocation than
25 that, you're going to immediately have an impact on what
26 we can allow in our current fisheries.

27

28 MR. EDWARDS: Well, I don't think, Tina,
29 you totally answered Denny's question. One had to do, do
30 you have any idea or numbers what -- how many steelhead
31 are taken in the bycatch as part of the commercial
32 fishery and if not, you know, why haven't you tried to
33 gather that information?

34

35 MS. CUNNING: Our biologist that had some
36 of that information has gone home. I'm sorry.

37

38 CHAIRMAN FLEAGLE: Okay. Other
39 questions.

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: All right. Now we go
44 to Larry for the InterAgency Staff Committee comments.

45

46 MR. BUKLIS: Thank you, Mr. Chairman.
47 The Federal InterAgency Staff Committee comments on the
48 Kasilof River, beginning with salmon, start on Page 285.

49

50 The Staff Committee found the Staff

1 analysis for Kasilof River salmon to be a thorough
2 evaluation of the regulatory history, biological
3 background and harvest information that provides a
4 sufficient factual basis for Federal Subsistence Board
5 action.

6
7 The Southcentral Council recommendation
8 is consistent with ANILCA Section .805(c); however, there
9 may be a concern for the potential incidental catch of
10 steelhead when using treble hooks and bait after
11 September 16th. The target species for subsistence use
12 while using rod and reel and bait would likely be coho
13 salmon in September and October with the potential for
14 incidental catches of steelhead. The small population of
15 steelhead available on Federal public waters could be
16 over-exploited if bait is allowed through October 31st as
17 recommended. Bait is more effective for catching
18 steelhead than some methods and fish caught while using
19 bait are often hooked deep enough to cause fatality.

20
21 If the harvest of steelhead is higher
22 than expected during the season, the in-season manager
23 may need to modify the use of bait to help reduce the
24 incidental catch of steelhead.

25
26 Another option the Board may want to
27 consider is a regulation similar to that used in
28 Southeast Alaska within the Federal subsistence
29 regulations designed specifically to guard against over-
30 harvest of steelhead. Steelhead are the targeted species
31 in the Southeast Alaska streams, and the regulation for
32 Southeast Alaska is shown on the top of Page 286. And
33 the relevant clause that relates here is underlined
34 there. If you use bait, you must retain all Federally-
35 regulated fish species caught, and they apply to your
36 applicable daily, seasonal and annual harvest limits for
37 that species. For streams with steelhead, once your
38 daily, seasonal or annual limit of steelhead is
39 harvested, you may no longer fish with bait for any
40 species.

41
42 Regarding Kasilof River resident fish and
43 steelhead, the Staff Committee found the Staff analyses
44 to be complete and accurate evaluations of the proposals,
45 and found the recommendations of the Council to be
46 consistent with ANILCA Section .805(c).

47
48 Thank you, Mr. Chairman.

49
50 CHAIRMAN FLEAGLE: Thank you, Larry.

1 Questions.

2

3

(No comments)

4

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Questions.

(No comments)

CHAIRMAN FLEAGLE: Okay. Board discussion. Okay. Now, just for clarification, we took the reports and testimony and comments, recommendations for all three species of fish in the Kasilof, but now we're going to be dealing with proposals independently. Correct, Pete.

MR. PROBASCO: Yes, Mr. Chair. I would recommend you start out with as they are in order, Proposal FP07-27b and c, and that starts on Page 45, and the Regional Advisory Council's recommendations, I guess for a quick reference you could go to 66 which OSM put into regulatory language the Southcentral Alaska Subsistence Regional Advisory Council's recommendation.

Mr. Chair.

CHAIRMAN FLEAGLE: Yeah. Just for a cleaner process. I think that we'll go ahead and do this Board discussion with Council Chair and State Liaison portion for each independent proposal, because we need to be specific as to the proposal.

UNIDENTIFIED VOICE: We're doing 27b and c?

CHAIRMAN FLEAGLE: Correct. Go ahead, Gary.

MS. GOTTLIEB: Mr. Chair. One more clarification for Pete on which page to look at.

CHAIRMAN FLEAGLE: Sure.

MS. GOTTLIEB: Page 48 or Page 66, and what would be the difference.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. Ms. Gottlieb. Unless I'm corrected, I'm making the assumption, without going through it, they are the same language. And Doug McBride is nodding yes.

MR. EDWARDS: Mr. Chairman. To get our discussion started and maybe a little more focused, I'm

1 going to go ahead and move that we adopt the Southcentral
2 Regional Advisory Council's recommendation for Proposal
3 07-27b and c.

4

5 MS. GOTTLIEB: I'll second.

6

7 CHAIRMAN FLEAGLE: Do you want to speak
8 to your motion.

9

10 MR. EDWARDS: Mr. Chairman. I guess
11 before I do, I guess I personally want to I guess
12 certainly thank the OSM Staff for, I know, putting a lot
13 of time and effort into all of these proposals, and I
14 think did a yeoman job and really an excellent job in
15 doing that. And also I think we owe a vote of gratitude
16 to everyone who tried to work to put these proposals
17 together. I know for those who actually were out there
18 on the ground and in the trenches, this wasn't maybe the
19 most favorite thing to do, but at least from my
20 perspective, we ended up overall with proposals that were
21 far different than I might have feared that we might have
22 ended up with. So I feel pretty -- I guess I take my hat
23 off to everyone who tried to recognize that this
24 situation we had in trying to balance a subsistence
25 fishery in an area, that's certainly from my perspective
26 as a sport fisherman was way over-use, and some of those
27 people should go home so I have more place to fish. But
28 I do think it's been yeoman's job, and I think regardless
29 of how we come out, how we vote, I do think folks really
30 tried to work hard to some up with some really good
31 proposals that tried to meet our subsistence needs as
32 well as recognize the other use, so I just did want to
33 get that out for the record.

34

35 With regards to my proposal, I believe
36 that in our charge, now that we have determined C&T for
37 the Community of Ninilchik on the Kasilof, our charge
38 then was to try to provide a meaningful subsistence
39 opportunity, and I think this proposal and following
40 regulation for salmon, I believe that it will do that. I
41 think it's a reasonable proposal with very adequate
42 monitoring safeguards that will allow the in-season
43 manager if necessary to timely respond and take action
44 where necessary.

45

46 And as I said, I think it's a modest
47 proposal. I'm not even totally convinced that
48 subsistence people who'll be using it are even
49 necessarily better off with some of the limits that have
50 been requested. I don't think they're unreasonable, and

1 I think this meets all of our requirements with regards
2 to conservation as well as providing the subsistence
3 opportunity.

4
5 CHAIRMAN FLEAGLE: Other comments. Judy.

6
7 MS. GOTTLIEB: Thank you, Mr. Chair. I
8 concur with the excellent work that's been done on this.
9 I also want to, of course, especially commend the
10 Regional Council who carefully went through the three
11 criteria that they needed to meet for each proposal, who
12 looked at whether each of these proposals provided a
13 meaningful priority and meaningful preference.

14
15 By this proposal, it will be not only a
16 lot of responsibility on the in-season manager to be
17 monitoring, but I think subsistence users would be
18 expecting -- accepting, excuse me, accepting
19 responsibility for conservation and management of the
20 resources as well. We're providing for a permit, we're
21 providing for recording and reporting and marking. So
22 all sorts of extra efforts that I think show very
23 conservative first steps. And I appreciate everybody's
24 efforts towards that end.

25
26 CHAIRMAN FLEAGLE: Other comments.
27 George.

28
29 MR. OVIATT: I would like to add my
30 comments to that, too. I concur. I think it looks --
31 they've done a yeoman's job as Gary says of coming up
32 with a meaningful priority here. And reflected in the
33 final product.

34
35 CHAIRMAN FLEAGLE: I wonder if some small
36 discussion might be warranted on a couple of issues that
37 were raised in comments and discussion, that being the
38 use of treble hooks and the other one is using bait
39 through October 31st with the issue as it pertains to
40 steelhead. Gary.

41
42 MR. EDWARDS: Now, does this proposal
43 cover the steelhead, or it would cover them from an
44 incidental standpoint, or a direct harvest?

45
46 CHAIRMAN FLEAGLE: It doesn't cover the
47 steelhead, but it does allow baited fishing through the
48 31st of October.

49
50 MR. BSCHOR: Well, I guess I think the

1 answer to that is yes. Yes, I mean, I'm just responding.
2 I mean, I guess my personal view is I guess I have
3 somewhat problematic concerns with the use of both treble
4 hooks and bait as a matter of principle. But I find it
5 pretty difficult given that the State allows it at least
6 up until September 15th, to raise it as an issue.

7
8 I guess one option that could be
9 considered would be to modify it, and then instead of
10 going to the October date, going to the September 15th
11 date. I guess at this point, you know, given that we're
12 monitoring it all, I'm not so sure that that's necessary.
13 But I guess I am troubled by it, but again, when you look
14 at what's allowed under State regs, it doesn't seem maybe
15 the concern is all that great.

16
17 CHAIRMAN FLEAGLE: Okay. Thanks, Gary.
18 I just wanted to make sure we at least recognized those
19 concerns.

20
21 And I intend to support the proposal as
22 well. I think that it is modest. It's -- I appreciate
23 the spirit in which the Ninilchik Traditional Council has
24 brought their issues forward, and that trying to find
25 small niches where they can practice their customary and
26 traditional use and spread it out per se so that we're
27 not trying to have a great huge impact on any one
28 resource in any one location. And it appears that with
29 the proposal as amended, those issues are -- sound okay
30 to me. I think this is the way to say it now.

31
32 Other comments.

33
34 MR. BSCHOR: Mr. Chair.

35
36 CHAIRMAN FLEAGLE: Denny.

37
38 MR. BSCHOR: I, too, want to add my
39 commendation to everybody who -- on all sides of this
40 issue who have worked very -- you know, apparently and,
41 well, obviously very, very hard at coming with a proposal
42 that considers the conservation needs and also considers
43 the methods of take that are acceptable and I feel at
44 least moderate at this point in time, and I intend to
45 vote for this.

46
47 CHAIRMAN FLEAGLE: Thank you. Tina, did
48 I note that you had additional comments?

49
50 MS. CUNNING: Mr. Chairman, yes. Mr.

1 Lloyd was trying to get your attention. We are very
2 concerned about allowing the baited treble hooks after
3 September 15th, because that is when the steelhead start
4 running through there.

5
6 And we're also concerned about the take
7 of 200. That's a serious problem for us.

8
9 CHAIRMAN FLEAGLE: Thank you. Gary.

10
11 MR. EDWARDS: Mr. Chairman. Maybe
12 somebody can correct me if I'm wrong, but my
13 understanding is that the in-season manager, among other
14 things, would have the authority to allow bait anytime
15 throughout the season if he felt that that was necessary.
16 Could somebody verify that that's correct.

17
18 UNIDENTIFIED VOICE: Which in-season
19 manager?

20
21 MR. EDWARDS: Well, I believe it's Gary
22 Sonnevil. Gary, aren't you the in-season manager for
23 that area?

24
25 MR. SONNEVIL: That's correct.

26
27 MR. EDWARDS: Is that correct, my
28 understanding that under that you would have the
29 opportunity if you felt it necessary, you would be able
30 to disallow the use of bait as well as treble hooks? You
31 might want to wait until you get to the mic to answer
32 that, and tell folks who you are.

33
34 MR. SONNEVIL: Mr. Chairman. Mr.
35 Edwards. I'm Gary Sonnevil with the U.S. Fish and
36 Wildlife Service, and am the designated in-season manager
37 for the Federal subsistence fishery on the Kenai
38 Peninsula and Cook Inlet.

39
40 In regards to Mr. Edwards' question, it
41 is my understanding that we could -- I could restrict the
42 use of bait if the harvest reports are coming in that
43 they appear to be excessive.

44
45 MR. EDWARDS: Mr. Chairman, if I can just
46 follow up. What are your thoughts about, you know, I
47 guess the use of baits as well as treble hooks and
48 extending it past the September 17th time line that it is
49 allowed under State regulations? September 15th I
50 believe, excuse me.

1 MR. SONNEVIL: In my opinion, Mr.
2 Edwards, this would be the first time we've ever had this
3 type of a fishery extended beyond that. How much
4 participation we will have, what sort of harvest we will
5 have, we don't know. This would be the very first start
6 of that, and it would be important to monitor it as best
7 we can, and see how it develops at this point.

8
9 MR. EDWARDS: Thank you.

10
11 CHAIRMAN FLEAGLE: Board members, are we
12 -- okay. Commissioner Lloyd.

13
14 COMMISSIONER LLOYD: Thank you, Mr.
15 Chairman. As you know, we're uncomfortable with this
16 proposal as well as this extension. I guess I need to
17 understand that you're very specifically going beyond the
18 September 15th date without criteria against which your
19 in-season manager would exercise the authority that
20 you've just asked him whether or not he has. Do you
21 intend to have some further conversations on what it
22 would -- what conditions would need to be apparent for
23 that action to be taken, because this is an expansion
24 beyond, as the biologist noted, beyond anything that's
25 gone on thus far.

26
27 CHAIRMAN FLEAGLE: Thank you Denby. I
28 share the concern, and really if it were -- if I were
29 sitting in a seat other than the chair, I would probably
30 move to amend this to a not allow baited hooks after the
31 15th of September specifically for that purpose, for the
32 conservation of the steelhead. I mean, we still have the
33 steelhead issue to deal with coming up. Right now we're
34 talking about allowing baited hooks in that river for
35 another month and a half while the steelhead are in
36 there, and we don't know the effect of that. And ISC has
37 proposed some language that says that like what is used
38 out in Southeast, if the limit of steelhead is reached
39 then all fishing stops. That's another option to look at
40 this, another way. I just don't want to -- I do hear
41 loud and clear the conservation concerns with the
42 steelhead and if we can craft these regulations to
43 recognize the importance of that issue by either limiting
44 bait to a date certain, September 15 like the State does,
45 or by adding the language that we use in Southeast Alaska
46 where steelhead are available or both may be appropriate.

47
48 I just throw that out. I can't make
49 motions or amendments.

50

1 MS. GOTTLIEB: Mr. Chair.
2
3 CHAIRMAN FLEAGLE: Okay, Judy, go ahead.
4
5 MS. GOTTLIEB: Well, first I guess I'd
6 like to -- I think Ralph wanted to say something, but I
7 think we need to be very careful or diligent if we're not
8 accepting something that the RAC has recommended when
9 they have already taken a look at some of these concerns
10 and the modest limits that they've suggested, their view,
11 did not pose a conservation concern.
12
13 CHAIRMAN FLEAGLE: I appreciate those
14 comments and I will call on Ralph. But I'd like to just
15 make an observation of my own. If we are obligated to
16 just follow the RAC's recommendations without further
17 consideration or discussion then why are we here. I
18 think that they're here, I mean they're definitely given
19 to us for consideration and we're due to give them
20 deference, but we definitely need to look at them maybe a
21 little further. And I feel that I have a role that I may
22 vote against the RAC, you know, based on what I hear or
23 otherwise.
24
25 Pete.
26
27 MR. PROBASCO: Yes, Mr. Chair, just to
28 add. I think all the Board members are aware that we do
29 give deference to our Regional Advisory Council, however,
30 if there are conservation concerns or there may be a
31 negative affect on other subsistence users, then the
32 Board can go down a different path in their
33 deliberations.
34
35 CHAIRMAN FLEAGLE: I understand that,
36 Pete.
37
38 MR. PROBASCO: Sure.
39
40 CHAIRMAN FLEAGLE: I was just making a
41 statement.
42
43 MR. PROBASCO: Sure.
44
45 CHAIRMAN FLEAGLE: Gary.
46
47 MR. EDWARDS: Mr. Chairman. Looking at
48 these regulations, I guess my question is that, after
49 August 15th, if you're out fishing for co -- I mean
50 fishing for chinook or other salmon, and you do catch a

1 trout, rainbow, or a steelhead, you cannot keep that,
2 that's correct, I'm assuming that we're doing that for
3 conservation purposes. I mean so if that's the case,
4 wouldn't it then logically follow that you might want to
5 restrict bait earlier than it's being restricted now,
6 unless I'm reading this wrong.

7

8

CHAIRMAN FLEAGLE: Doug.

9

10 MR. MCBRIDE: Mr. Chairman. Doug McBride
11 with OSM. Mr. Edwards, I presume you're looking at -- or
12 probably the best place to look is Table 1 on Page 172,
13 that looks at all the pieces of this.

14

15 I think, Mr. Edwards, what you were
16 referring to is the proposed dipnet fishery for salmon
17 and the allowance for incidental harvest. In that
18 fishery, as proposed -- or as recommended by the Council,
19 there's incidental harvest of up to 200 rainbow trout --
20 or rainbow trout, steelhead through August 15th. The
21 reason for that date is explicitly to provide protection
22 for steelhead. You've got to remember that steelhead in
23 this drainage are what are called fall run fish so they
24 enter roughly the same time as coho salmon do but they
25 spawn in the spring, okay, so they overwinter in the
26 drainage. So there's a dipnet fishery going on for
27 salmon, that dipnet fishery start June 16th and it would
28 end October 31st for coho and pink salmon. And so in
29 that fishery as recommended by the Council, subsistence
30 could incidentally harvest up to 200 rainbow trout prior
31 to August 15th. The reason for that August 15th date is
32 to provide for protection for steelhead, there should be
33 no steelhead present in those waters prior to August
34 15th.

35

36

37 Now, in addition to that there is the
38 opportunity for rod and reel harvest. And, again, you
39 got to now go ahead to the regulations for steelhead.
40 For steelhead and now I'm at the very bottom right-hand
41 part of that table, the only opportunity for subsistence
42 fishers is in the rod and reel fishery. They're allowed
43 up to two steelhead annually, that's rainbow steelhead 20
44 inches or longer, remember 20 inches is the field
45 definition of a steelhead here. So they're allowed up to
46 two in the rod and reel fishery.

46

47

48 As far as bait goes, the Council
49 recommendation is to provide for two baited hooks. Now,
50 that would be year-round, okay, that'd be year-round.

50

1 Now, in the existing sportfishery you're
2 allowed up to two baited hooks from January 1 through
3 September 15th. After September 15th, there is no
4 provision in State sportfishing regulations that
5 restricts the number or the kind of hooks. So the only
6 difference between the Council recommendation and State
7 sportfishing regulations as far as baited hooks is from
8 September 15th to December 31st, in the subsistence
9 fishery you would be allowed to use bait, and you would
10 not in the sportfishery. From January 1 to September
11 15th the terminal tackle regulations would be the same,
12 after September 15th in the sportfishery you could use up
13 two hooks, including treble hooks without bait, but in
14 the subsistence fishery you would be allowed to use the
15 bait.

16

17 Mr. Chairman.

18

19 MR. EDWARDS: Just a follow up.

20

21 CHAIRMAN FLEAGLE: Thank you, Doug.

22

23 MR. EDWARDS: So under this proposal that
24 we're working on, does the chinook salmon season end at
25 some point?

26

27 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
28 Yes, it does.

29

30 MR. EDWARDS: All right. And what's that
31 date.

32

33 CHAIRMAN FLEAGLE: August 15th.

34

35 MR. MCBRIDE: August 15th.

36

37 MR. EDWARDS: All right. So then after
38 August 15, so getting at our issue, which is the concern
39 for steelhead, it doesn't seem that any action that we
40 might take here will necessarily, it doesn't per se,
41 allow the harvest of steelhead after the 15th as a
42 bycatch because people aren't fishing for chinook so if
43 we waite.....

44

45 CHAIRMAN FLEAGLE: But they are fishing
46 for coho and pink through October 31.

47

48 MR. EDWARDS: All right, coho and pink.

49 Okay.

50

1 CHAIRMAN FLEAGLE: Ralph Lohse.

2

3 MR. LOHSE: Thank you, Mr. Chair. Just a
4 couple things that I'd like to point out. And I thank
5 the comments from the other Board members about the way
6 we looked at this.

7

8 One thing that we put in place and if you
9 take a look at it, you'll see that it's stronger for the
10 subsistence fishery than it is for the State fishery
11 because we put a reporting period in here of 72 hours.
12 There is no State fishery, there's no sportfishery on the
13 Kasilof that they have to report what they're catching in
14 72 hours. And in 72 hours your manager is going to be
15 able to see what kind of an increase is going on. Up to
16 this point in time, if we take a look at the average for
17 those six years, basically it says 28 steelhead a year
18 have been killed by the sportfishery from their surveys.
19 From a low of zero up to 65. I would expect that our
20 manager, if he started seeing a take that was greater
21 than the sportfishery would start reacting, and he'd have
22 -- in 72 hours he could start reacting. That would be my
23 own personal way of looking at it because that would be a
24 dramatic increase.

25

26 Potentially today you have a half a
27 million fishermen on the average who could take two
28 steelhead a year out of the Kasilof by State regulations,
29 there is no 72 hour reporting, there is nothing in the
30 place for quick closures like that, and what we've just
31 done is we've taken out of that half a million fishermen
32 who can currently catch two steelhead a year, we've taken
33 1,200 of those fishermen who are currently entitled in
34 that half a million fishermen and we've said that you can
35 use two hooks of bait, but you can still only keep two
36 steelhead so we haven't potentially increased the number
37 of steelhead fishermen, we gave the subsistence fishery,
38 we'll say, not a precedent, but a better chance by
39 allowing them two hooks of bait, but they we then stick
40 them with a 72 hour reporting system so if there's a
41 problem, the thing can be closed.

42

43 I think that the subsistence community
44 and the Council has made it, almost like Gary said when
45 he was talking about the dipnet fishery, have made it
46 stronger than what the current sport regulations are.
47 And I think that we have tried to meet the conservation
48 concerns. And if a conservation concern comes up, we've
49 put in place a means of checks and balance, not an end of
50 the year krill survey, not an end of the year reporting

1 period, but a 72 hour reporting period so that if the
2 catch of steelhead starts ringing a bell, somebody can do
3 something about it.

4
5 And, you know, personally I'll go along
6 with the bait and the treble hooks myself, too, that's my
7 own personal opinion, but I know that the subsistence
8 community asked for that. Underneath these conditions,
9 we, as a Council, did not see this as a conservation
10 concern.

11
12 And I agree with the Chairman, you do not
13 have to agree with the Council, in fact you are expected
14 to be held to a higher degree than the Council is because
15 the Council looks at people, you're supposed to look into
16 a higher degree. If there's a conservation concern and
17 you feel there's a conservation concern, you have not
18 only every right, you have the responsibility to vote
19 against the Council.

20
21 CHAIRMAN FLEAGLE: Thanks, Ralph, I
22 appreciate that. And I like how you explain about how
23 that 72 hour reporting will certainly give rise to the
24 issue if there's a concern that too many steelhead are
25 being harvested. And it goes back to, I guess that first
26 question that Gary asked of -- I'm sorry, I forgot your
27 name.

28
29 MR. SONNEVIL: Gary Sonnevil.

30
31 CHAIRMAN FLEAGLE: Gary. My question was
32 can he just close a portion of this, will he just be able
33 to close -- eliminate the use of baited hooks, for
34 instance, or is he going to have to close the whole
35 season so that other fish don't get caught and will that
36 be a detriment to subsistence uses if we've allowed the
37 steelhead to get caught up to a level to where we have to
38 shut everything off.

39
40 So I don't know what level of closure
41 we're talking about, clearly, I guess. Can you just take
42 a small piece of this out of it and allow the -- or I
43 mean ban the use of bait, for instance, after a certain
44 period.

45
46 MR. SONNEVIL: Mr. Chair. It's my
47 understanding that I could do that. There's another
48 piece of information, too, that the Board should be aware
49 of, this coming fall, my office will be on the Kasilof
50 River, we have two concurrent studies going. We're going

1 to be looking to collect coho trout for implantation of
2 radio transmitters as well as steelhead following the
3 coho so we will be on the water probably five days a week
4 every week to capture and attract those fish so we will
5 have a presence out there. We'll have our own -- the
6 reporting, the 72 hour reporting from those people that
7 choose to participate in a fishery, but we will also be
8 out there ourselves and if it's becoming apparent to us
9 that problems are developing then we'll take steps to
10 address it.

11
12 We know very little about the life
13 history of these steelhead in the Kasilof system. We
14 know we have two major runs right now or I guess we'd
15 call them major, they're both very small populations,
16 Crooked Creek and Nikolai Creek, but we know they enter
17 for the most in the fall, there is some anecdotal
18 information that we may have a few coming in over the
19 winter and the spring, too. We don't know where they
20 overwinter in the main stem. Do they winter in the lake,
21 we have no idea, but we will know quite a bit more next
22 winter after we go through our first year of study on
23 that to get a better feel for just what these fish are
24 doing.

25
26 CHAIRMAN FLEAGLE: Okay, thank you for
27 that answer. Pete.

28
29 MR. PROBASCO: Thank you, Mr. Chair. And
30 to answer your question, along with Mr. Sonnevil,
31 throughout the State the Board has issued letters that
32 have delegated to the agency field officials the
33 authority to set harvest and possession limits, define
34 harvest areas, specify methods or means of harvest,
35 specify permit requirements which could capture some of
36 those if the in-season manager felt that it was necessary
37 and open or close specific fish or wildlife harvest
38 seasons within frameworks established by the Board.

39
40 MR. EDWARDS: So you're saying he's not
41 God but.....

42
43 CHAIRMAN FLEAGLE: Gary.

44
45 MR. EDWARDS:pretty close to being.

46
47 (Laughter)

48
49 CHAIRMAN FLEAGLE: George Oviatt.

50

1 MR. OVIATT: Thank you, Mr. Chairman.
2 Hearing what I have about the 72 hour notice, and I'm
3 feeling more comfortable about that. I'm still a little
4 concerned about the triple hooks [sic] and the bait after
5 that, but I, too, wanted to add my congratulations to the
6 people that put this proposal in front of us, I think you
7 far exceeded anybody's anticipation on this Board of
8 getting to where you're at right now. So I add my
9 congratulations to everyone who's worked hard on this.

10

11 I would like to have a little more
12 conversation about the treble hooks and the bait after
13 the August time period.

14

15 CHAIRMAN FLEAGLE: Ralph Lohse.

16

17 MR. LOHSE: Mr. Chair. I'd just like to
18 add one more thing. I guess it's been about 13 years
19 that I've sat on this Council and we've gone through this
20 same thing on moose. I've sat and listened to the Board
21 with all the discussions on the steelhead on the Prince
22 of Wales Island, I have sat there and listened to it go
23 on and on and on and then we get the harvest reports
24 later and we find out, I think if I remember right, four
25 fish were taken on Prince of Wales last year under the
26 subsistence fishery for steelhead, and what we're trying
27 to do is we're trying to put safeguards in place here.
28 But what we want to see is what happens. And if there's
29 a problem, this Council, and I know our Council, for a
30 fact, is very conservation minded and if we start seeing
31 a problem, we're going to propose stronger regulations.
32 But more than likely what's going to happen is the same
33 thing that happened with moose on the Kenai or steelhead
34 on Prince of Wales or something like that, we have a
35 means of reacting, let's see what happens.

36

37 You've got 28 fish right now taken by
38 sportfishermen on the average, I'm willing to bet you
39 don't have 28 steelhead taken -- I mean this is personal,
40 but I'm willing to bet you don't have 28 steelhead taken
41 out of that Kasilof by the subsistence community next
42 year. But if you do, you've got the means and place to
43 take care of it.

44

45 CHAIRMAN FLEAGLE: Other comments. Judy.

46

47 MS. GOTTLIEB: Mr. Chair. Well, I
48 appreciate the commitment on the part of the Fish and
49 Wildlife Service to be out there during this sensitive
50 time for a variety of reasons and I feel assured that you

1 will be able to monitor and interact with people and that
2 the permitting and feedback requirements will be
3 effective.

4

5 CHAIRMAN FLEAGLE: Further discussion.
6 Daniel O'Hara.

7

8 MR. O'HARA: Thank you, Mr. Chairman. In
9 regards to the treble hook and the bait, I understand, I
10 believe this is going to be a subsistence issue so you're
11 going to catch the fish, you're not going to play with
12 them and let them go with a treble hook and bait, you're
13 going to get that fish and eat it. So that's the purpose
14 of the proposal, I assume, it's not in our region but I
15 know that's what we would do. And it sounds to me like
16 you have good safeguards in there.

17

18 But I think you need to be kind of
19 careful about the Advisory Boards, you know, I've been on
20 -- I'm an original Advisory Board member and Chair'd this
21 Council for many years, Randy's now our Council [sic],
22 the State of Alaska did a good job of totally ignoring
23 their Advisory Boards and I've gone to both Game Boards
24 and Fish Board meetings, so I'd caution you to be really
25 careful about not taking the advice of the Advisory
26 Boards, because we live on the grounds and we're just --
27 Bristol Bay is very conservation oriented. We had a big
28 fight here a few years back on getting rainbow trout as a
29 C&T, and a big knockdown drag out.

30

31 To give you an example of how far-fetched
32 these things can be, if you were to get a rainbow trout
33 in Egegik, you'd travel 25 miles by a jet boat to catch
34 an eight inch rainbow trout, no one's going to go up
35 there, gas is \$6 a gallon, you know, so we got to be
36 reasonable about how we handle these things. And
37 subsistence is even getting very expensive now. A lot of
38 people in our region without jobs don't even do it
39 because they don't have the gas to do it. So we have got
40 to be really careful of serving the best we possibly can
41 for our people on this means of subsistence versus
42 sports. Sports is important, too, but we have the first
43 right to eat that fish instead of being sports about it.
44 They got to make a living, too, so I think there's a
45 balance there.

46

47 Thank you, Mr. Chairman.

48

49 CHAIRMAN FLEAGLE: Thank you, Danny. I
50 certainly meant no disrespect to the Council Chairs,

1 Council RACs. I think Ralph understood my concerns
2 and.....

3
4 (Laughter)

5
6 CHAIRMAN FLEAGLE: Yeah, just -- anyway,
7 yeah, I don't mean to raise a big issue about that, I
8 guess I just put my foot down a little bit and maybe I
9 didn't need to.

10
11 But anyway, my apology if I offended
12 anyone. Further.....

13
14 MR. EDWARDS: Call.....

15
16 CHAIRMAN FLEAGLE:discussion.

17
18 MR. EDWARDS: Call for the question.

19
20 CHAIRMAN FLEAGLE: Question's called on
21 the proposal. Pete, please poll the Board.

22
23 MR. PROBASCO: Thank you, Mr. Chair.
24 Final action on FP07-27b and c:

25
26 To support the proposal with modification
27 as recommended by the Southcentral Alaska
28 Subsistence Regional Advisory Council.

29
30 Ms. Gottlieb.

31
32 MS. GOTTLIEB: Aye.

33
34 MR. PROBASCO: Mr. Fleagle.

35
36 CHAIRMAN FLEAGLE: Yes.

37
38 MR. PROBASCO: Mr. Edwards.

39
40 MR. EDWARDS: Aye.

41
42 MR. PROBASCO: Mr. Bschor.

43
44 MR. BSCHOR: Aye.

45
46 MR. PROBASCO: Mr. Oviatt.

47
48 MR. OVIATT: Aye.

49
50 MR. PROBASCO: And Mr. Bunch.

1 MR. BUNCH: Aye.
2
3 MR. PROBASCO: Mr. Chair. Motion
4 carries, six/zero.
5
6 CHAIRMAN FLEAGLE: Thank you, Pete. And
7 that took care of both 27b and c, correct.
8
9 MR. PROBASCO: Correct.
10
11 CHAIRMAN FLEAGLE: What's the will of the
12 Board, do you want to step down for the day before we
13 break -- now's a good break time.
14
15 (Council nods affirmatively)
16
17 CHAIRMAN FLEAGLE: I see lots of nodding.
18 I think we'll go ahead and call a recess and reconvene at
19 8:30 in the morning and we'll start a whole new set of
20 proposals in the morning with new discussion. So
21 goodnight everyone.
22
23 (Off record)
24
25 (PROCEEDINGS TO BE CONTINUED)

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Joseph P. Kolasinski, Notary Public in and for the State of Alaska and reporter for Computer Matrix Court Reporters, do hereby certify:

THAT the foregoing pages numbered 2 through 138 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC REGULATORY MEETING, VOLUME I taken electronically by Nathan Hile on the 8th day of May 2007, beginning at the hour of 8:30 o'clock a.m. at the International Coastal Inn in Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by under my direction and reduced to print to the best of our knowledge and ability;

THAT I am not an employee, attorney, or party interested in any way in this action.

DATED at Anchorage, Alaska, this 13th day of May 2007.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/2008