

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

FEDERAL SUBSISTENCE BOARD

PUBLIC REGULATORY MEETING

VOLUME I

EGAN CONVENTION CENTER
ANCHORAGE, ALASKA

JANUARY 9, 2007
8:30 o'clock a.m.

MEMBERS PRESENT:

- MIKE FLEAGLE, CHAIR
- NILES CESAR, Bureau of Indian Affairs
- JERRY BERG, U.S. Fish and Wildlife Service
- JUDY GOTTLIEB, National Park Service
- DENNY BSCHOR, U.S. Forest Service
- GEORGE OVIATT, Bureau of Land Management
- SARAH GILBERTSON, State of Alaska Representative
- KEITH GOLTZ, Solicitor's Office
- KEN LORD, Solicitor's Office

Recorded and transcribed by:

Computer Matrix Court Reporters, LLC
3522 West 27th Avenue
Anchorage, AK 99517
907-243-0668
jpk@gci.net/sahile@gci.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

P R O C E E D I N G S

(Anchorage, Alaska - 1/9/2007)

(On record)

CHAIRMAN FLEAGLE: Good morning. I'd like to call the Federal Subsistence Board meeting to order. We have an agenda prepared for us, it's in the binder. And I understand that there's a couple of stand-ins on the Board right now due to regular fill-in's not being able to attend. We'll just go ahead and start with introductions of who's here, and I'd like to start down on the left side of the table, Mr. Oviatt.

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

DR. CHEN: Good morning. My name is Glenn Chen. I'm representing our Regional Director, Mr. Niles Cesar, who will be arriving shortly after he concludes some medical appointments.

MS. GOTTLIEB: Hi. I'm Judy Gottlieb representing the National Park Service.

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

CHAIRMAN FLEAGLE: good morning. I'm Mike Fleagle, Chairman. I live here in Anchorage.

MR. PROBASCO: Good morning. My name's Pete Probasco. I'm the ARD for the Office of Subsistence Management.

MR. BERG: Good morning. Jerry Berg representing Fish and Wildlife Service for Gary Edwards this morning. Gary's stuck in Seattle trying to get out on the first flight up here so I'll be standing in for him until he does make it.

MR. BSCHOR: And I'm Denny Bschor with the U.S. Forest Service.

MS. GILBERTSON: Good morning. I'm Sarah Gilbertson with the State of Alaska, Department of Fish and Game.

CHAIRMAN FLEAGLE: Our Advisory Council

1 representatives, please.

2

3 MR. ADAMS: Good morning. I'm Bert
4 Adams, Sr., Southeast Regional Advisory Council.

5

6 MR. LOHSE: Ralph Lohse, Southcentral
7 Regional Advisory Council.

8

9 MR. HILSINGER: Thank you, Mr. Chairman.
10 John Hilsinger with the Alaska Department of Fish and
11 Game.

12

13 MR. ALVAREZ: Good morning. My name is
14 Randy Alvarez. I'm Chairman of the Bristol Bay RAC.

15

16 CHAIRMAN FLEAGLE: Okay, good morning.
17 Welcome everybody and we've got Staff behind us also,
18 could you just stand up and introduce yourself as well,
19 please.

20

21 MR. USTASIWSKI: Jim Ustasiwski with the
22 U.S.D.A., Office of the General Counsel.

23

24 MR. KESSLER: Steve Kessler with the
25 Forest Service.

26

27 MR. KLEIN: Steve Klein with Fish and
28 Wildlife Service.

29

30 MR. JACK: Carl Jack, OSM.

31

32 MS. SWANTON: Nancy Swanton with National
33 Park Service.

34

35 MR. ARDIZZONE: Chuck Ardizzone, Bureau
36 of Land Management.

37

38 CHAIRMAN FLEAGLE: All right, thank you.
39 And appreciate everybody coming out into what, for
40 Anchorage, is rather cold temperatures to come join us
41 here in the warm hospitality of the Egan Center. I
42 understand we also have some issues with the agenda as a
43 result of folks not being here, and I'd like to open it
44 up to you, Pete, for explanation -- well, you probably
45 have some opening comments anyway.

46

47 MR. PROBASCO: Yeah.

48

49 CHAIRMAN FLEAGLE: And then maybe just
50 talk about how you'd like to propose changes to the

1 agenda.

2

3 Pete.

4

5 MR. PROBASCO: Thank you, Mr. Chair. As
6 I looked across the audience, I noticed a friend that I
7 haven't seen in awhile, and I just think it's important
8 that we recognize him and welcome him home. Elijah
9 Waters, who works for the Bureau of Land Management has
10 recently just returned home from serving our country and,
11 Elijah, welcome back and it's good to see you.

12

13 (Applause)

14

15 MR. PROBASCO: Mr. Chair. Because of the
16 problems with flights and some Board members not here,
17 there's been a request to maybe rearrange our agenda,
18 that will be at your call and the Board's call. But it
19 was requested by Mr. Edwards that we take the Fisheries
20 Resource Monitoring Plan for 2007 and move that to the
21 end of the agenda, that would be our first order of
22 business.

23

24 Mr. Chair.

25

26 CHAIRMAN FLEAGLE: Okay, thank you, Pete,
27 appreciate that. Judy, you had a suggestion as well
28 concerning the agenda.

29

30 MS. GOTTLIEB: Yes, for Proposal 18, I
31 believe people from Sitka were trying to travel up here
32 and so I'd request, perhaps that we move that to after
33 lunch as well, and hope that they get here by then or
34 monitor the arrival time.

35

36 CHAIRMAN FLEAGLE: Any other suggested
37 changes?

38

39 (No comments)

40

41 CHAIRMAN FLEAGLE: Any objection to those
42 suggestions from Board members.

43

44 Go ahead, please, Jerry.

45

46 MR. BERG: Yeah, Mr. Chair, in addition
47 to moving the FRMP study discussion until the end of the
48 agenda, the reason that Gary wanted to move that was to
49 discuss the Unalakleet project. So, I guess, maybe just
50 to let people know that he'd like to remove that from the

1 consent agenda to have a discussion on the Unalakleet
2 project. I'm not sure what number that is right off the
3 top of my head, but, just so everybody's aware of what
4 Gary would like to discuss.

5
6 CHAIRMAN FLEAGLE: Pete.

7
8 MR. PROBASCO: Mr. Chair. On Page 9 that
9 would be Project 07-103.

10
11 CHAIRMAN FLEAGLE: Okay. Any objection
12 to those recommendations.

13
14 (No comments)

15
16 CHAIRMAN FLEAGLE: Hearing none, the
17 Board will adopt those changes to the agenda.

18
19 All right, before we begin public comment
20 period, are there any other announcements to be made.

21
22 Bert.

23
24 MR. ADAMS: Thank you, Mr. Chairman. I
25 just want to thank Judy for her suggestion in moving No.
26 18, you know, I don't see any Sitka people here yet and
27 -- although I think I can convince you on my own it'd be
28 better to have their support.

29
30 Thank you.

31
32 CHAIRMAN FLEAGLE: Thank you. And will
33 you let us know when the people from your region arrive,
34 I guess there was a problem with a flight overhanging
35 yesterday, but were they able to get out later on last
36 night or something?

37
38 MR. ADAMS: Mr. Chairman. That's what I
39 understand and when I see them popping in the door I'll
40 give you a signal or make an announcement somehow to you.

41
42 Thanks.

43
44 CHAIRMAN FLEAGLE: Okay, you bet. I just
45 went and helped my wife get established for the
46 legislative session down in Juneau and I came home Sunday
47 night and the plane out of Sitka was about two minutes
48 into the flight, they got hit by lightning and so when it
49 landed at Juneau they had to unload everybody off the
50 plane and give it a thorough once over. So it sounds

1 like they have some interesting weather there for jet
2 travel in the winter. I was surprised, lightening, in
3 January.

4
5 Pete.

6
7 MR. PROBASCO: Mr. Chair. Mr. Kessler
8 was whispering in my ear here that the bulk of the
9 proposals dealing with Southeast do affect Sitka,
10 Proposals 22 through 26, so maybe for further
11 consideration on the agenda, maybe we should just take
12 Southeast and put Bristol Bay next, Randy, on the agenda,
13 and that should allow time for other people to get here
14 and we'll start out with Bristol Bay first.

15
16 CHAIRMAN FLEAGLE: Okay, that's a good
17 idea. Any objections, Randy.

18
19 MR. ALVAREZ: No, that's fine with me. I
20 was -- I'd like to leave on the 11th if we were -- I was
21 kind of hoping to be done and that would be better to do
22 that, I've got other plans coming up on the 11th so I was
23 hoping to get out of here by then.

24
25 Thank you.

26
27 CHAIRMAN FLEAGLE: All right, thank you
28 for that suggestion. We'll go ahead and make note that
29 we'll deal with Bristol Bay issues before.

30
31 All right, obviously this meeting is my
32 first for a proposal meeting and the agenda's working a
33 little different than what I've been used to so far so
34 Pete is going to be helping me work through this.

35
36 There's comment periods for each
37 proposal. So when we look at the agenda for Item No. 3,
38 now, public comment period, on non-agenda items, this is
39 just basically open discussion from the public to the
40 Board?

41
42 MR. PROBASCO: That's correct. It's an
43 opportunity for the public to speak to the Board directly
44 on non-agenda items.

45
46 Mr. Chair.

47
48 CHAIRMAN FLEAGLE: All right. And do we
49 have a sign-up list for that or is it just open mic?

50

1 MR. PROBASCO: Same process. People can
2 turn in cards to Di as you enter the door there at the
3 front desk or you can just ask for, are there any
4 comments, and have them identify themselves by name on
5 the record.

6
7 CHAIRMAN FLEAGLE: Okay. That brings me
8 to the next question, we don't have any cards yet, right?
9

10 MR. PROBASCO: That's correct.

11
12 CHAIRMAN FLEAGLE: Is there anybody here
13 that would like to comment before the Federal Subsistence
14 Board on non-agenda items?

15
16 (No comments)

17
18 CHAIRMAN FLEAGLE: Okay, that dispenses
19 with that agenda item.

20
21 MR. ADAMS: Mr. Chairman, right here.

22
23 CHAIRMAN FLEAGLE: Bert Adams.

24
25 MR. ADAMS: You know, maybe I can offer a
26 suggestion here. One of the things that SERAC does when
27 they go over their agenda for adoption is they adopt it
28 as a guide, that way, you know, in situations where
29 something doesn't happen then you can move those agenda
30 items back and forth so just food for thought for you,
31 Mr. Chairman, if you would like to consider that.

32
33 CHAIRMAN FLEAGLE: You bet, thank you.
34 And that's definitely what we're doing in this case,
35 appreciate that.

36
37 (Pause)

38
39 CHAIRMAN FLEAGLE: Pete Probasco.

40
41 MR. PROBASCO: Thank you, Mr. Chair. The
42 next agenda item is an opportunity for the public to
43 comment on the consensus agenda items. And what a
44 consensus agenda item is, is when all entities line up
45 and agree on the recommendation of the Regional Advisory
46 Council. So in other words you have consensus by the
47 Regional Advisory Council, consensus by the Staff, and
48 consensus by ADF&G. The purpose of this agenda item is
49 for public to comment on those consensus agenda items
50 found on Page 3 and it's also an opportunity if the

1 public feels that these items should be discussed fully
2 before the Board to make a request to have them removed
3 off the consensus agenda item.

4

5 Mr. Chair.

6

7 CHAIRMAN FLEAGLE: Okay, than you, Pete.
8 And Page 3 shows that the consensus agenda contains
9 Proposals 19 and 20 from Southeast Alaska, 14 and 15 and
10 16 for Prince William Sound; that's it.

11

12 So do we have anyone interested in
13 commenting on those consent agenda proposals.

14

15 We do have one hand in the audience,
16 would you like to come up and give your testimony,
17 please.

18

19 MS. REBNEY: Thank you, Mr. Chair.
20 Brenda Rebney, AHTNA Incorporated. Am I just requesting
21 that these be brought to the agenda or am I actually
22 making comment on them?

23

24 CHAIRMAN FLEAGLE: Pete, either or,
25 right?

26

27 MR. PROBASCO: Either or.

28

29 MS. REBNEY: Okay. On the first one --
30 well, actually not 14, FP07-15, you have our comments
31 from the AHTNA Subsistence Committee in writing in front
32 of you -- well, they're actually in your book. But I
33 would just like to add that we recognize that there is --
34 between both these proposals, 15 and 16, the consensus
35 has been that it creates a hardship on Federal
36 subsistence users only and not State. However, I would
37 like you to -- I recognize that you won't reconsider this
38 but the issue here is over and above this. This is not
39 just a social issue between both of these items, there's
40 been a fishery that's created here that has created a
41 hardship on the local traditional users and that's the
42 point that the AHTNA people would like to emphasize.
43 There are traditional use for means and methods on this,
44 and having the fishwheels 200 feet apart, they're -- I
45 guess what I'm trying to say here is there's always a
46 difference in some ways traditional is used against us is
47 the way it feels, and I don't want to mix game and fish
48 here but, you know, in terms of like for the four-
49 wheelers, it's not traditional but for fishwheels, you
50 know, for them to be a certain distance away from each

1 other, the actual way that the AHTNA people use the fish
2 and the way they clean them, it does make a difference to
3 have them more than 75 feet apart. And I'd like you to
4 consider that. I'm not sure how that would work because
5 I recognize that the State system is different and there
6 are more State users. But the fact is, is they're
7 probably -- and I hope I'm not going to get in big
8 trouble here, you know, I don't think 30 years ago there
9 was 700 fishwheels on the Copper River, so I just would
10 like you to take that into consideration.

11
12 So I kind of mixed two things here. It's
13 not just a matter of it being visually unsightly to have
14 fishwheels floating down the river. We do think that
15 eventually, you know, as the numbers increase, that that
16 will have an ecological impact on the fishery, although
17 that is a big river and the consensus seems to be that
18 there's not that many that are floating down the river.
19 And I guess I recognize that obviously in this particular
20 area most of the land that is above the high water mark
21 is AHTNA property and we recognize that, but still if
22 some consideration could be taken by the Department,
23 Staff or something, to somehow address this particular
24 issue and that is the -- and I did mix two proposals
25 together here, I apologize, removing the fishwheels above
26 the high water mark or figuring out some kind of system
27 to address that issue because at this point it's probably
28 not an ecological issue, it will be probably down the
29 road if this continues to be a problem. And so we would
30 appreciate it if you could take some consideration into
31 addressing this further, even though I recognize that by
32 consensus everyone has agreed that this would create a
33 hardship on Federal users and not State users.

34
35 Thank you.

36
37 CHAIRMAN FLEAGLE: Thank you, Brenda.
38 Your concerns are noted and will be considered.

39
40 Thank you. Any comment -- any questions
41 or comments.

42
43 MS. GOTTLIEB: Mr. Chair.

44
45 CHAIRMAN FLEAGLE: Yeah, Judy, go ahead.

46
47 MS. GOTTLIEB: Yes, Mr. Chair. Thanks,
48 Brenda, for coming in. I know in the past AHTNA and
49 others has been really instrumental in pulling together
50 meetings and bringing together all the appropriate

1 parties to discuss some very difficult fisheries issues,
2 so I guess I'd encourage AHTNA and State and Park Service
3 would be willing to help to just try to talk over these
4 issues.

5

6 MS. REBNEY: Thank you.

7

8 CHAIRMAN FLEAGLE: Okay, thank you,
9 Brenda, for your comments.

10

11 Are there any other comments for the
12 consent agenda proposals?

13

14 (No comments)

15

16 CHAIRMAN FLEAGLE: Hearing none, we'll
17 move on.

18

19 Okay, the next item on the agenda is the
20 Fisheries Resource Monitoring Plan which we have already
21 agreed to wait until the end.

22

23 Pete.

24

25 MR. PROBASCO: Thank you, Mr. Chair. Our
26 next step now will be, based on Board's action, to move
27 Southeast after Bristol Bay. We'll go into the Bristol
28 Bay proposals on Page 2 of your agenda. Those are
29 proposals 5, 6 and 7. And the procedure that we will
30 follow in dealing with each proposal individually is
31 outlined on Page 4. We'll have the analysis by the lead
32 author, a summary of written public comments, then we'll
33 open the floor to public testimony; and, please, if you
34 want to testify on any of these proposals, please sign up
35 and see Di at the front desk there, and then we'll have
36 our Regional Advisory Council recommendation, Alaska
37 Department of Fish and Game comments, InterAgency Staff
38 Committee recommendation, and then the Board's discussion
39 and action.

40

41 Mr. Chair.

42

43 CHAIRMAN FLEAGLE: Okay, thank you. So
44 we're looking at Proposals for the Bristol Bay region, 5,
45 6 and 7, none of which are included in the consensus
46 agenda.

47

48 MR. PROBASCO: That's correct.

49

50 (Pause)

1 CHAIRMAN FLEAGLE: All right, so the
2 first proposal we have before us then would be Proposal
3 07-05, and who am I turning to for the analysis.

4

5 MR. PROBASCO: Rod.

6

7 MR. CAMPBELL: Thank you, Mr. Chairman.
8 Members of the Board. My name is Rod Campbell. I'm with
9 the Office of Subsistence Management. I am not the lead
10 author on these proposals but I will be providing an
11 overview of the three Bristol Bay area fishery proposals,
12 starting with 08-05, which begins on Page 301 in your
13 Board book.

14

15 FP07-05 was submitted by the Twin Hills
16 Village Council and requests that drift gillnets be
17 permitted as a legal gear type for Federally-qualified
18 subsistence users in the Togiak River.

19

20 The proponent is seeking this regulation
21 change to allow subsistence users to harvest fish more
22 efficiently. The recognized practice of subsistence
23 harvesting is to take only what is needed, therefore, the
24 use of drift gillnets should not lead to an increase in
25 the amount of fish harvested. In fact, the use of drift
26 gillnets may reduce harvest in some cases by providing
27 subsistence fishermen with more flexibility in the amount
28 of fish harvested compared to set gillnets, which may be
29 left unattended for varying lengths of time.

30

31 Due to the smaller size of tributaries in
32 the upper reaches in the Togiak River, salmon spawning in
33 these locations are more vulnerable to over exploitation
34 with drift gillnets but the proponent and a Regional
35 Advisory Council member familiar with the area agreed
36 that restricting the use of drift gillnets to the lower
37 portion of the river should protect most spawning salmon
38 from any over exploitation without placing an undue
39 burden on subsistence users.

40

41 The Department of Fish and Game, I'm sure
42 will address this later, but the Alaska Board of
43 Fisheries adopted a proposal at their December 2006
44 meeting in Dillingham to allow the use of drift
45 Department of Fish and Game no more than 10 fathoms in
46 length between the mouth of the Togiak River and upstream
47 approximately two miles to where there will be Fish and
48 Game regulatory markers.

49

50 The current Federal regulations were

1 adopted from existing State regulations in 1999 when the
2 Federal Subsistence Management Program expanded to
3 include fisheries on all Federal public lands and waters.
4 There is a provision in the regulations for the Bristol
5 Bay area, and in this case the Togiak district, that
6 allows the use of drift gillnets in any district, those
7 are commercial fishing districts, however, State district
8 boundaries only include the marine waters. When this
9 provision was adopted into Federal regulations, the
10 Federal district boundaries were modified to include
11 freshwater drainages that flow into the district. The
12 unintentional affect was to allow the use of drift
13 gillnets in all Federal districts of the Bristol Bay. As
14 I said this was definitely unintended. This oversight
15 was first noticed in November 2006 and will need to be
16 addressed by the Board at this meeting. Any action taken
17 by the Board will better define where or if drift
18 gillnets are to be allowed in the Togiak District.

19
20 As far as the biological background.
21 There are no conservation concerns that we're aware of.
22 All salmon stocks in the Togiak River appear to be
23 healthy. No Togiak River salmon stocks are currently
24 designated as a stock of concern by the Alaska Board of
25 Fisheries. Togiak River salmon are being maintained at a
26 relatively high level of abundance. If adopted, this
27 proposal would provide subsistence users with an
28 additional gear type and the use of drift gillnets would
29 allow subsistence users to harvest salmon in a more
30 efficient manner than set gillnets and provide more
31 flexibility in the amount of harvest. It would also make
32 Federal regulations comparable to new State regulations
33 and reduce regulatory complexity.

34
35 The potential impacts for the use of
36 drift gillnets appear to be primarily social. There may
37 be some conflict between user groups, sportfish groups
38 and subsistence, that has been pointed out. But right
39 now there is no evidence to indicate the use of drift
40 gillnets in the lower Togiak River pose a risk to this
41 river's fishery resources.

42
43 Thank you, Mr. Chairman.

44
45 CHAIRMAN FLEAGLE: Thank you. Okay, do
46 we have any questions for Rod's statements there, Board
47 members.

48
49 (No comments)

50

1 CHAIRMAN FLEAGLE: All right, hearing
2 none, we'll go ahead and move on to summary of written
3 public comments and is this Cliff.

4
5 MR. EDENSHAW: Thank you, Mr. Chairman
6 and Board members. There weren't any written public
7 comments.

8
9 CHAIRMAN FLEAGLE: Okay, thank you. Very
10 short summary then.

11
12 (Laughter)

13
14 CHAIRMAN FLEAGLE: And now we're open to
15 public testimony on this proposal. We don't have any
16 cards, so are there anybody here that would like to
17 testify on the proposal that we're dealing with, Proposal
18 07-05?

19
20 (No comments)

21
22 CHAIRMAN FLEAGLE: Okay, hearing none,
23 we'll move on to the Regional Advisory Council
24 recommendation, Randy Alvarez.

25
26 MR. ALVAREZ: Thank you, Mr. Chair. On
27 Page 303 is our Council recommendations.

28
29 We discussed this proposal for quite a
30 while, and I'm not going to go into any of that unless
31 later on during your deliberations, unless you want me to
32 comment on specific things, I will.

33
34 Thank you.

35
36 CHAIRMAN FLEAGLE: Okay, would you just
37 go ahead and describe what your Regional Council, you
38 mentioned that it should be modified?

39
40 MR. ALVAREZ: What do you mean modified,
41 pardon me?

42
43 CHAIRMAN FLEAGLE: I'm sorry, I'm just
44 reading from your recommendation on Page 303 that the
45 Bristol Bay Subsistence Regional Advisory Council
46 supported 07-05 with modification.

47
48 MR. ALVAREZ: Okay. Yes, we suggested
49 that two miles following the river because it's so bendy
50 -- windy, that it would be better to use the map that was

1 provided to us at the meeting. It was in the boundar --
2 the map, it was in squared about one mile for each square
3 and it was -- we decided it would be better just to go up
4 to the sections or whatever -- but it was about two miles
5 up by the map instead of trying to follow the river
6 because it was so windy, trying to figure out where two
7 miles was, it was a lot easier just to go up two sections
8 on the map.

9

10 CHAIRMAN FLEAGLE: All right, thank you.
11 Questions for Regional Advisory Council.

12

13 Judy.

14

15 MS. GOTTLIEB: Mr. Chair. Randy, it
16 looks like maybe the RAC also set the limits on the
17 length and depths of the net?

18

19 MR. ALVAREZ: The proposal was for 10
20 fathoms and for that depth, we didn't -- I don't believe
21 we changed that but what we probably should have did was
22 not put a recommendation on the depth because as most of
23 the people over there that utilize the subsistence
24 fishery utilize Bristol Bay drift nets, which are set at
25 a certain depth and that's all they have to use and so we
26 probably should have just not recommended the depth on
27 that but this -- the depth following to the limit of the
28 size that are being used.

29

30 CHAIRMAN FLEAGLE: Excuse my ignorance on
31 fathoms, I'm not a fisherman. I mean I have participated
32 in a driftnet fishery down on the Kuskokwim with other
33 family members but what's the difference between 15 feet
34 and two and a half fathoms? What is a fathom, exactly?

35

36 MR. ALVAREZ: Each fathom is six -- Mr.
37 Chair, it's the same thing, two and a half fathoms is 15
38 feet.

39

40 CHAIRMAN FLEAGLE: Okay, got it, thanks.
41 So that doesn't change anything then, not substantially
42 anyway.

43

44 All right, thank you for that
45 clarification.

46

47 Any other Board questions or comments to
48 Randy.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: Hearing none, we'll
2 move on to the Department of Fish and Game comments. And
3 is this going to be you Sarah?

4
5 MS. GILBERTSON: For the first part of
6 it, yes, thanks, Mr. Chairman.

7
8 What I'd like to do is just maybe make a
9 few brief comments that are policy themes that show up
10 throughout the State of Alaska's comments. And I'm only
11 going to say these once and then John Hilsinger will go
12 through each proposal as they come up and give our
13 technical comments, and then this way you're not hearing
14 the policy element of this over and over again.

15
16 But one of the primary themes throughout
17 our comments was jurisdiction. And several times
18 throughout the process, both at the RAC meetings and in
19 meetings with Federal Staff we asked for better maps, and
20 we feel that this is beneficial, not just for State
21 managers, but for Federal Staff and also for Alaskans so
22 that folks can tell where, exactly, Federal regulations
23 would apply. You'll hear, or at least read in our
24 comments that with respect to closures and customary and
25 traditional use determinations, that we requested that
26 the Federal Subsistence Board adopt policies and
27 procedures for making those determinations as requested
28 by the Secretary in October of 2005. We also repeat
29 throughout these proposals, or comments on them, that the
30 Federal Subsistence Board should follow its own
31 regulations and court direction. And then, finally, we
32 take issue with the Federal Subsistence Board adopting
33 duplicate regulations. Especially in areas where the
34 State is already providing for a subsistence opportunity
35 under the State regulations. The State does not see a
36 need for the Federal Subsistence Board to adopt
37 duplicative regulations because it's confusing for
38 Alaskans.

39
40 And, one more thing, and then I'll turn
41 it over to John on this proposal, but I wanted to bring
42 to your attention that the liaison team did take all of
43 these fishery proposals to the Alaska Board of Fish and
44 we briefed a subcommittee of the Board of Fish on these
45 proposals. We brought them to their attention and
46 explained each and every one of them and last -- at the
47 end of last year, in 2006, the Board of Fisheries met and
48 the Bristol Bay proposals, all three of these were within
49 their cycle, because as most of you know our State Boards
50 take up areas of the state every three years. So the

1 Bristol Bay cycle was up and the Board of Fish did
2 consider these three proposals and in this case they did
3 take action and it was after the RAC meetings and after
4 the original proposal had been submitted to the Board and
5 that's why you see the Board of Fish action is different
6 and is actually more liberal in some ways than the
7 original proposal.

8
9 So I'll turn it over to John, but I did
10 want you to know that the liaison team did make an effort
11 in this case to take all of these to the Board of Fish to
12 facilitate cooperation between the State and Federal
13 government on these, and in this case the Board of Fish
14 did take action. It was much more liberal than the
15 original proposal and I'll turn it over to John to make
16 some technical comments.

17
18 CHAIRMAN FLEAGLE: Hang on. Before we go
19 there, Sarah, I have a question and maybe other Board
20 members do, I'm not real familiar with your objection to
21 adopting duplicate regulations. In the case here, like
22 Proposal 07-05 that we're dealing with, you said that the
23 Board of Fisheries has adopted somewhat more liberal
24 guidelines. If the Board were to adopt something we
25 would want to match that so there wasn't a confusion.
26 But your suggestion is that we shouldn't adopt this
27 regulation at all because the State already did and the
28 issue therefore is resolved?

29
30 MS. GILBERTSON: Thank you, Mr. Chairman.
31 Yes, that's correct.

32
33 Essentially when the Board of Fish acted
34 at the end of 2006 they adopted this regulation, and you
35 have some notes on what was adopted, and John can discuss
36 that further, but that regulation adopted by the State
37 Board applies to all Alaskans. So right now if you take
38 action, you're putting something into regulation that
39 applies only to rural Alaskans under the Federal system,
40 but it's unnecessary because the State Board just took
41 action at the end of last year after the liaison team
42 took this proposal to them and they made a determination
43 that it applies to all Alaskans. So we don't think it's
44 necessary for the Federal Board to take action, you know,
45 we have two different regulatory books right now that
46 Alaskans have to look at. And if the State regulations
47 apply to all Alaskans, and there's no problem with that,
48 then we don't see a need for the Federal Board to expand
49 its regulations and, therefore, the handy-dandy Federal
50 book, it's just -- it's confusing to Alaskans.

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Thank you. And that
4 goes to a larger discussion that I know that the State
5 has been having with the Federal system and that's in the
6 whole concept of adopting the entire suite of State
7 regulations when the Federal Board resumed jurisdiction
8 for game first, and then fish, and so without trying to
9 solve that right now, would it be inconsistent on our
10 behalf, the Federal system, to begin to take issues like
11 this independently and not acting on them, based on past
12 practices where the Federal Board has put their own
13 regulations in place? Do you understand the question?

14

15 I mean I understand that the State would
16 like to fix the overall, I guess the better way to ask
17 the question would be is it -- would it be beneficial to
18 anybody to take the recommendation just based on single
19 proposals as this one?

20

21 MS. GILBERTSON: Thanks, Mr. Chairman.
22 I'm not sure I understand the question completely but,
23 you know, if we can't go back and fix the difference that
24 exists between the State and Federal government and we
25 have been disagreeing on whether or not you should adopt
26 duplicative regulations, you know, at this point I'm not
27 asking you, I don't think, to go back and fix everything
28 that's been done, but perhaps moving forward, consider
29 whether it's really necessary to adopt this into
30 regulation since the State just adopted something that
31 applies to all Alaskans.

32

33 CHAIRMAN FLEAGLE: Okay, thank you, that
34 was a good explanation, good clarification.

35

36 And, again, I, too, don't wish to go to
37 the overall discussion that the agencies are having on
38 the -- let's see, anyway other Board members, questions
39 or comments to Sarah on that issue?

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: Hearing none, we'll go
44 ahead and now turn it over to John for your comments,
45 please.

46

47 MR. HILSINGER: Thank you, Mr. Chairman.
48 Again, for the record, my name is John Hilsinger. As
49 Sarah noted the State recommendation is to take no action
50 on this proposal, FP07-05. You will find our detailed

1 comments on Page 312 in your book.

2

3 The Board of Fisheries did just take
4 action to allow drift gillnets in the lower two miles of
5 the Togiak River. Nets would be limited to 10 fathoms in
6 length. The Board did not put a depth restriction on the
7 nets because testimony at the committee meeting, at the
8 Board, and particularly from the Department of Fish and
9 Game was that they did not see a need to have a depth
10 restriction.

11

12 Also under the new State regulations, all
13 fish must be marked by removing both lobes of the caudal
14 fin or the dorsal fin and this would, we feel, help
15 alleviate the State's concerns about the potential of
16 those fish moving into the commercial market.

17

18 The Department does not see a
19 conservation issue with this change in the gear based on
20 testimony at the Regional Advisory Council that this
21 would be a relatively little used provision, probably not
22 more than 100 king salmon a year would be taken under
23 this regulation, and, so, therefore, we did not see a
24 conservation issue arising from it.

25

26 Sarah mentioned the jurisdiction issues.
27 And Togiak is one area, just so you're aware, that there
28 are, I think, significant disagreements on the
29 jurisdiction, both in the lower river because of the land
30 ownership along both sides of the lower river as well as
31 some of the bays in that area. And the State did raise
32 these issues at the InterAgency Staff level, and some of
33 the maps in the analysis were corrected, and I want to
34 say that we appreciate that, and I think it helps with
35 the understanding of the public as to where they can fish
36 and according to what regulations.

37

38 In conclusion, again, the Board of
39 Fisheries has adopted a regulation we believe that allows
40 all people to fish with the drift gillnets and provides
41 for that use that was requested by the local people. And
42 by taking no action the Federal Subsistence Board would
43 avoid the redundancy of regulations, which becomes a
44 problem because you get into this leapfrogging situation
45 of our regulations changing, then your regulations
46 change, then ours change and we're always trying to play
47 catch up and it's very confusing for the public.

48

49 We also recommend that if the Federal
50 Subsistence Board does deem it necessary to adopt the

1 regulation that it not be different. We run into the
2 permit problem, which I'd like to talk about a little
3 bit. This was discussed considerably in the InterAgency
4 Staff Committee and I just want to explain, I think some
5 people were kind of shaking their head and wondering
6 about the State's position. But we have been advised by
7 our Department of Law that we cannot issue a State
8 subsistence fishing permit that allows people to fish in
9 ways that are not legal under State regulations. And
10 that seems, I think, pretty self-evident, that if the
11 State doesn't allow a certain gear type or fishing in a
12 certain area that you can't then have State personnel out
13 issuing permits allowing people to do that.

14

15 The other issue there is the fact that
16 then doing so would also require State personnel to sort
17 among rural residents, and the State does not choose to
18 try to sort out and issue permits or not issue permits to
19 different rural residents based on the Federal criteria.
20 We feel that that's a job for the Federal Program.

21

22 So in order to avoid these problems of
23 duplication and confusion with the public and the extra
24 burden on the public of multiple permitting and that kind
25 of thing, we would encourage you to take no action on
26 this proposal.

27

28 Thank you.

29

30 CHAIRMAN FLEAGLE: All right, thank you.
31 Board members questions on that.

32

33 Jerry.

34

35 MR. BERG: Yes, thank you, Mr. Chair. I
36 first wanted to commend the Department for the liaison
37 team taking this up with the Board of Fish because I
38 think it does help facilitate cooperation with our
39 program, to have the Board of Fish take these up during
40 the Bristol Bay cycle, rather than waiting for three
41 years, so I do think it will help our programs work
42 closer together.

43

44 The one part of the action that the Board
45 of Fish did take that I have questions about and I don't
46 know, John, if you would be the best one to answer or,
47 Randy, if you guys were there at the committee meeting,
48 was the requirement to have all fish marked that are
49 caught with these drift gillnets, was there much
50 discussion from the public or did people perceive that as

1 being any kind of a burden to them?

2

3 I don't know who can best answer that
4 question.

5

6 MR. ALVAREZ: Mr. Chair. I can't.....

7

8 CHAIRMAN FLEAGLE: It looks like Randy's
9 going to try.

10

11 MR. ALVAREZ: Mr. Chair. I was at the
12 meeting, although, I was in a different committee when
13 that one was going on and I didn't have a representative
14 -- we didn't have a representative to go to the other one
15 so I'm not familiar with that. But we did discuss a
16 little bit on that but it didn't go very far, that having
17 to remove a fin, at our RAC meeting.

18

19 CHAIRMAN FLEAGLE: Thank you. Rod.

20

21 MR. CAMPBELL: Thank you, Mr. Chairman.
22 I was at that committee meeting and I don't recall any
23 significant discussion on that. There was discussions,
24 just general discussions about it was already required
25 for coho salmon and felt that with the drift gillnet
26 fishery, especially down at the lower part of the river,
27 that they felt that all drift gillnet caught salmon
28 should also be marked the way the current regulations are
29 for coho. But there wasn't a lot of discussion on that,
30 that I recall, and I don't recall seeing that in the
31 summary of the committee report either, where normally
32 they'll point out any significant issues.

33

34 MR. BERG: Thank you.

35

36 CHAIRMAN FLEAGLE: Thank you. Other
37 questions. Bert Adams.

38

39 MR. ADAMS: Thank you, Mr. Chairman. I'd
40 like to know what the difference is between duplicating a
41 regulation and one that mirrors a regulation? I know
42 that in many cases, you know, we have dealt with
43 regulations that mirrors the State regulations, and that
44 always manages, you know, to pass, you know, with flying
45 colors. But now we come up with another term here, on
46 duplication, and so I'd like to know what the difference
47 is, if maybe Sarah or John can answer that question for
48 me.

49

50 CHAIRMAN FLEAGLE: Sarah Gilbertson, and

1 then I think Keith would like to take a stab at it as
2 well.

3

4 Sarah.

5

6 MS. GILBERTSON: Okay, thank you, Mr.
7 Chairman. Well, Bert, I, you know, don't think it's a
8 new concern. I think it's one that's been echoed by
9 previous Governors and previous Commissioners. And as
10 John was alluding to, the problem is not so much
11 immediately where you have two of the same regulations.
12 The problem becomes when we change our regulation or the
13 Federal one changes and then we're always, as John said,
14 playing catch up with one another and then it causes
15 confusion for residents.

16

17 So I guess just from a practical
18 standpoint, it doesn't make sense to us, you know, I'm
19 thinking about the Alaskans out there on the ground and
20 having worked at Fish and Game for three years I know how
21 difficult it is to take those books, to look at which
22 land, if you can even figure that out, that you're
23 hunting or fishing on and then which regulations apply,
24 and for something as simple as, you know, hunting bear
25 someplace in a unit in Southeast, it's very difficult to
26 figure out. So I'm thinking, one, in terms of managers
27 on the ground, two, in terms of Alaskans on the ground,
28 and, just, three, in terms of those regulatory books, if
29 the State has a regulation that applies to all users
30 across the state, you know, my suggestion or the
31 suggestion of the State would be if, and when that State
32 regulation becomes a problem, if rural subsistence users,
33 which is the responsibility of this Board, to provide for
34 them, if it becomes a problem and their needs aren't
35 being met, then maybe the Board should take action to
36 change that State regulation, put it in on the Federal
37 side and change it. But until then I don't see a need,
38 and the State doesn't see a need to duplicate or mirror
39 regulations.

40

41 I hope that helps.

42

43 CHAIRMAN FLEAGLE: Keith Goltz.

44

45 MR. GOLTZ: Thank you. Bert, you've
46 raised a point that has been an item of discussion for
47 about two years with the State. And the State's position
48 is that if the words are the same in the State and
49 Federal regulations then the Federal program should
50 recede and allow the State's regulation to take

1 precedence. Our position, though, is quite different.
2 We say that just because the words are the same does not
3 mean the regulations are the same.

4
5 The critical element in the Federal
6 program is the Federal Regional Advisory Councils. The
7 difference between the State regulation and the Federal
8 regulation is that the Federal regulation has been vetted
9 through the Councils, it comes from the bottom up. Now,
10 if the Councils decide that they want a State regulation
11 to take precedence then this Board is perfectly free to
12 do that, and, in fact, we did start with the State
13 regulations. But once a Council brings us a regulation,
14 there's a statutory matrix that we have to consider and
15 the fact that the State may have a similar regulation is
16 not part of that matrix.

17
18 So the essential difference between the
19 State program and the State program is the Regional
20 Advisory Councils and it's for that reason that we have
21 two regulation books.

22
23 MS. GOTTLIEB: Mr. Chair.

24
25 CHAIRMAN FLEAGLE: Judy.

26
27 MS. GOTTLIEB: Thank you, Keith, for
28 providing that clarification because this has been an
29 ongoing discussion and, actually, I think, maybe it was a
30 couple meetings ago Drue Pearce spoke to this
31 specifically. I think there's also a couple of other
32 examples where the same words aren't going to necessarily
33 work for rural users as opposed to all Alaskans and that
34 has to do with the C&T is different, has to do with times
35 of shortage as well as State managers provide reasonable
36 opportunity, which is quite different than what the
37 Federal mandates require. And, lastly, in particular in
38 the case of Bristol Bay, customary trade. If a person
39 were in the State program they would not be eligible to
40 do customary trade as designed by the Regional Council
41 from Bristol Bay.

42
43 So I think those are reasons why this
44 Board needs to make a regulation per the request.

45
46 Thank you.

47
48 CHAIRMAN FLEAGLE: All right, thank you.
49 And I appreciate this discussion, having not been privy
50 to all the prior discussions for the last couple years or

1 however long the program has been in effect.

2

3 Sarah, you have additional comments.

4

5 MS. GILBERTSON: I guess I don't want to
6 belabor this, but -- and I would like to get through
7 these proposals as much as the rest of us but, you know,
8 maybe this is something for consideration and discussion
9 further down the road. We have a new Governor, we have
10 new leadership at Fish and Game, also, you know, here at
11 the Board, and I think it is an issue, maybe not in this
12 forum, but that we do need to discuss down the road. And
13 I don't disagree with Judy that the Federal system offers
14 different interpretations for C&T and reasonable versus
15 meaningful subsistence opportunity and customary trade,
16 those are key differences between the systems. However,
17 in a case like this where you're considering a regulation
18 that would be exactly the same as the one that the State
19 has, you know, perhaps it's worth consideration or
20 discussion down the road that the Board does not take up
21 -- does not allow proposals that are exactly the same as
22 these State regulations on gear types and methods and
23 means down the road.

24

25 So just food for thought. I don't want
26 to belabor it but I think there's room for communication
27 and cooperation down the road and this might be one area.

28

29 Thanks.

30

31 CHAIRMAN FLEAGLE: Thank you, Sarah, I
32 appreciate that. I agree that any type of open
33 communication our systems can have that would simplify or
34 better the program for the Alaskan users would be
35 beneficial and I'm in support of that.

36

37 Back to the proposal itself, on the State
38 Board of Fisheries action, was there any discussion as to
39 how this may apply to State users from other areas? I
40 mean was there any discussion about the potential for
41 people coming to Kodiak -- or, I'm sorry, not Kodiak,
42 Togiak, to participate in this drift fisheries?

43

44 John.

45

46 MR. HILSINGER: Thank you, Mr. Chairman.
47 I'm a little bit handicapped on that, too, because I was
48 not at the meeting either and Rod may be able to provide
49 some enlightenment on what they actually talked about.

50

1 But I would point out that by needing to
2 get to Togiak with a boat and an outboard motor and all
3 the gear to fish, I think that would -- you wouldn't get
4 the average person from Anchorage flying up there to go
5 subsistence fishing, having to put that kind of operation
6 together, and if you did it's highly likely that they
7 would be a close relative of a person who already lived
8 in Togiak.

9

10 Thank you.

11

12 CHAIRMAN FLEAGLE: All right, that's
13 fair. Rod.

14

15 MR. CAMPBELL: Mr. Chair. I really don't
16 recall much discussion on that. For all these proposals
17 there were general discussions about State regulations
18 applying to all state residents, but I don't recall any
19 specific concerns about that issue coming up in Togiak.

20

21 CHAIRMAN FLEAGLE: All right, thank you.
22 Any other questions, okay, we have Ralph. Ralph Lohse.

23

24 MR. LOHSE: Thank you, Mr. Chair. I'd
25 just like to make a comment on some of the things that
26 have been said. And one of the things that does come out
27 of this is the fact that the Federal regulation is
28 limiting. It's limited to local users, it's limited to
29 rural residents and so there probably would never be any
30 developed fishery that would take part in it. But if you
31 want to see what can happen with a State subsistence
32 fishery and whether or not you could have an increase in
33 pressure on it, go up to the Copper River, look at the
34 boats that charter to take people from other places down
35 the river to dip for salmon and to run fishwheels for
36 salmon. If we're talking about going up here to Togiak,
37 and it's true, nobody could afford to take their boat,
38 their skiff and their kicker, and their driftnet up there
39 just to go catch a couple of king salmon, but it's a
40 perfect opportunity for somebody to set up a business,
41 like on the Copper River, where they provide the boat and
42 the gillnet and all anybody has to do is get up there,
43 and then they can, as a state resident, participate in
44 that subsistence fishery. This could increase pressure
45 on the Togiak River to the point where it would have to
46 be shut down and that would adversely affect subsistence
47 users in the area. Where if there was a Federal
48 subsistence fishery there, the Federal subsistence
49 fishery would still remain open for rural residents.

50

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Thank you, Ralph.
4 That was the intent of my questioning exactly. I mean if
5 there were ever a -- and I realize that I'm stepping into
6 the area of deliberations here, which we'll probably hold
7 off on a little bit, but that was the intent of the
8 question and I appreciate you giving that analogy.

9

10 Other Board members, I guess, without
11 jumping into deliberations before we conclude the report
12 period.

13

14 Question's on the State. I saw the hand,
15 I was looking for the Board. Randy, go ahead.

16

17 MR. ALVAREZ: Mr. Chair, thank you. I
18 agree with Ralph on that comment he made but also I would
19 like to bring up the two and a half fathoms deep
20 restriction on this proposal.

21

22 We didn't discuss too much on that
23 because we didn't think of -- I just thought of something
24 that it would make a big affect on -- I'm a commercial
25 fisherman in Bristol Bay and we are restricted to 28
26 meshes deep, 29 counting the salvage, for our driftnets,
27 and with two and a half fathoms or 15 feet deep
28 restriction a rednet, say at five and a half inch mesh is
29 about a little over -- is about 14 feet, I was just doing
30 the math on it, about 14 feet deep, but if we go to king
31 gear, now if you get a seven inch king mesh, now we're
32 looking at about 17 feet deep, so we didn't -- nobody
33 thought of this at our RAC meeting or it was -- I don't
34 know if it was even brought up at the Board of Fish
35 meeting in Dillingham, but if you were to pass the two
36 and a half fathoms deep restriction then most king gear
37 that's being utilized in Bristol Bay would be more than
38 15 feet deep and if you figure the math out it would be
39 about 17 feet deep for a seven inch mesh, king net, so
40 just wanted to bring that up.

41

42 We -- nobody thought of that at our RAC
43 meeting but I suppose we wouldn't support -- we'd
44 probably support the Department of Fish and Game's no
45 restriction for the depth because most of the king nets
46 would be what Bristol Bay drift salmon fleet uses, so
47 that's what's available.

48

49 Thank you.

50

1 CHAIRMAN FLEAGLE: Thank you, Randy. Any
2 other questions while we're on the State's discussion.

3
4 Denny.

5
6 MR. BSCHOR: Mr. Chair. Just for a
7 clarifying question here since I'm not familiar with the
8 area and the land status in the area and that sort of
9 thing and I thought I understood Mr. Hilsinger to say
10 that there is other jurisdictions or I'm assuming maybe
11 private lands or other lands within the area and I do
12 agree with Sarah, we need to have good maps, and I'm not
13 able to -- I have to make assumptions on the maps in the
14 folder here, Page 307, is that a map of the wildlife
15 refuge, the grey area?

16
17 CHAIRMAN FLEAGLE: Pete.

18
19 MR. PROBASCO: Mr. Chair. Referring to
20 the map -- Mr. Bschor, referring to the map on Page 308,
21 the dotted line on the bottom that follows Togiak Bay is
22 the exterior boundary of the Refuge.

23
24 Mr. Chair.

25
26 MR. BSCHOR; Okay. I was looking at the
27 lighter dotted line of Togiak River and it led me to
28 nowhere so -- but, anyway, I did want to know that. My
29 concern is if there's other -- if there are ways, as far
30 as enforcement of regulations we ought to be looking at
31 the simplest method that way also when it comes to this
32 proposal.

33
34 CHAIRMAN FLEAGLE: Okay, thank you,
35 Denny. Keith Goltz.

36
37 MR. GOLTZ: Yeah, I was going to wait for
38 a couple of these comments for Board discussion but I
39 probably.....

40
41 CHAIRMAN FLEAGLE: Okay, well, we're
42 still just addressing questions to the State's comments
43 so if you want to hold off, that's fine.

44
45 MR. GOLTZ: Okay.

46
47 CHAIRMAN FLEAGLE: Any other questions or
48 discussion with the State.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: Hearing none, we'll go
2 ahead and move on to the InterAgency Staff Committee
3 recommendation, and we got Steve Klein at the table.

4
5 Steve.

6
7 MR. KLEIN: Thank you, Mr. Chair. For
8 the record I'm Steve Klein with the Office of Subsistence
9 Management and currently the acting Chair of the
10 InterAgency Staff Committee, and I'll be presenting the
11 Staff Committee recommendations today.

12
13 For this proposal, Proposal 07-05, the
14 InterAgency Staff Committee supports the proposal with
15 modification consistent with the Bristol Bay Council.
16 This would allow use of drift gillnets in the lower two
17 miles of the Togiak River. The modification from the
18 Staff Committee is a slight change to specify the upper
19 boundary as the north section line of Section 35, which
20 is consistent with the lower two miles.

21
22 The justification for the Staff Committee
23 recommendation is that it would provide Federally-
24 qualified users an additional gear type to improve
25 efficiency and it's not likely to result in an increase
26 in harvest. By restricting this fishery to the lower two
27 river miles of the Togiak River it should protect
28 spawning stocks. It would also legalize a method that is
29 currently in use in the lower Togiak River and further by
30 restricting it to the lower two miles it would reduce
31 potential conflicts between sport anglers and subsistence
32 users.

33
34 And that concludes the Staff Committee
35 recommendation and justification.

36
37 But subsequent to the Staff Committee
38 meeting, as Rod Campbell and Mr. Hilsinger have noted,
39 the Board of Fish did meet and we did prepare a handout
40 for the Board to kind of summarize in one area the
41 differences between all these different recommendations
42 and hopefully make a little more sense of it and perhaps
43 even steer this a little bit.

44
45 We didn't have time for the Staff
46 Committee to meet and discuss these, but subsequent to
47 the Board of Fisheries meeting, Staff, Rod Campbell and I
48 worked with the Staff Committee members that were
49 available to put together this table and draft a
50 recommendation so this would not be a Staff Committee

1 recommendation because we couldn't convene the Staff
2 Committee, but I would characterize it as a Staff
3 recommendation with Staff Committee input, and at the
4 pleasure of the Chair I would like to explain this in
5 more detail, the different recommendations and the
6 recommendation of this kind of informal group, if that
7 were okay.

8

9 CHAIRMAN FLEAGLE: (Nods affirmatively)

10

11 MR. KLEIN: Okay, I'll proceed.
12 Everybody should have a handout that says FP07-05 on the
13 top and it's a comparison of the original proposal, the
14 Bristol Bay Council, Staff Committee and Board of
15 Fisheries actions. And all the Board members should have
16 this, these are also available on the outside table for
17 members of the audience.

18

19 CHAIRMAN FLEAGLE: Hang on just a second,
20 Steve, do we have it Board members, it was on the table
21 when we came in.

22

23 (Board nods affirmatively)

24

25 CHAIRMAN FLEAGLE: Okay, everybody's got
26 it, go ahead.

27

28 MR. KLEIN: Okay, so the Staff
29 recommendation is that we adopt the regulation with,
30 first the clarifying language on the upper boundary to
31 the ADF&G markers. Secondly, to remove the gillnet depth
32 restriction. And, thirdly, to add the marking
33 requirement for salmon. And this is basically what the
34 Board of Fish recommended.

35

36 If you look at the boundary, which is one
37 of the three differences we have. In the original
38 proposal it was -- the proposal was to allow this drift
39 gillnet fishery for the entire Togiak River, the Bristol
40 Bay Council recommended the first two miles, Staff
41 Committee the north section line, those are basically the
42 same thing. The Board of Fish action was to limit the
43 fishery to the lower two miles and they were going to
44 place markers at that two mile junction on the river to
45 clearly delineate the area. So the three recommendations
46 from the Council, Staff, and Board of Fish are
47 essentially the same. The clearest definitely is the
48 ADF&G regulatory markers and that's what Staff would
49 recommend to the Board.

50

1 Secondly, was the -- there is a
2 difference in the depth. The original proposal, the
3 Council and the Staff Committee all recommended 10
4 fathoms in length, two and a half fathoms in depth, 15
5 feet, the Board of Fish action was to remove that depth
6 restriction. They didn't see a need for it, and the
7 Staff would also recommend removing that. And, in
8 addition, the recommendation from the Council, that
9 actually the gear, at least for king gear would exceed 15
10 feet, the removal of the depth restriction would be more
11 flexible and allow all gear by subsistence users.

12
13 And then the third difference among these
14 different recommendations is the marking of salmon. And
15 currently coho salmon is required to be marked under
16 Federal and State regulations and the Board of Fish
17 recommended that this be for all subsistence caught
18 salmon in this drift gillnet fishery. And given
19 potential for subsistence caught fish to move into
20 commercial markets, the Staff felt that that would be a
21 good, thoughtful recommendation to the proposal to
22 preclude that from happening.

23
24 And that concludes both the Staff
25 Committee and the Staff recommendations and I'd be happy
26 to take any questions, Mr. Chair.

27
28 CHAIRMAN FLEAGLE: Okay, thanks, Steve.
29 I, for one, appreciate the work that you did comparing
30 all of the different recommendations and then coming up
31 with one that kind of combines them all into one real
32 good one. I appreciate that.

33
34 Other Board members, questions on the ISC
35 report.

36
37 MS. GOTTLIEB: Mr. Chair.

38
39 CHAIRMAN FLEAGLE: Judy.

40
41 MS. GOTTLIEB: Thank you. This does help
42 us to see it all in one place, which is really useful.

43
44 Is there a marking requirement then for
45 any sport users, Steve or maybe John.

46
47 CHAIRMAN FLEAGLE: John Hilsinger.

48
49 MR. HILSINGER: Mr. Chairman. Ms.
50 Gottlieb. No. The sport harvest is not required to be

1 marked. The number of fish that they would take at any
2 one time is very small and doesn't represent, I guess,
3 the opportunity movement of those fish into the
4 commercial market, and that's why typically, and even
5 under State regulations, any of the fisheries that
6 harvest large numbers of fish at one time, be they
7 subsistence fisheries or personal use fisheries, normally
8 require a marking of the fish to prevent that.

9
10 CHAIRMAN FLEAGLE: Okay, it looks like
11 we're complete with that. Before we start moving into
12 discussion on -- further discussion on this proposal I'm
13 going to go ahead and call for a break. Let's stand down
14 for 10 minutes.

15
16 (Off record)

17
18 (On record)

19
20 CHAIRMAN FLEAGLE: Good morning. We're
21 back on record, and we're prepared to begin Board
22 discussion on Proposal No. 07-05, open for discussion,
23 Board members.

24
25 Jerry.

26
27 Keith.

28
29 MR. GOLTZ: Okay, there's just a couple
30 of points that have been brought up in the discussion
31 that I'd like to address.

32
33 One of them has to do with Bert's
34 original question, and I'd like to take another run at
35 that. Because it points out an essential difference
36 between the State system as it's now being administered,
37 and the Federal system.

38
39 In spite of the fact that the State does
40 have some Advisory Councils, it's system, in our view,
41 tends to be a top down system. It's imposed on the
42 users, whereas the Federal system is centrally a bottom
43 up system. Proposals come from and come through Regional
44 Advisory Councils, this Board is constrained in how it
45 reacts to Council recommendations, and it can only reject
46 a Council recommendation under certain very, very narrow
47 circumstances.

48
49 And that is a difference between the two
50 systems that has never been resolved, in fact, in our

1 discussions over the past two years it's my impression
2 that we haven't even made any progress in that. And
3 until we get resolution on that essential issue, it's
4 going to be very difficult to bring the two systems
5 together.

6
7 I think it's important to understand that
8 background when assessing whether or not there are
9 duplicate regulations. A regulation that comes from the
10 top down is likely to be perceived very differently than
11 the same words that come from the bottom up. It's a
12 difference, it's familiar to my dogs, they know the
13 difference between being tripped over and being kicked.
14 So it's not enough to say the words are the same, the way
15 these regulations are formed is critically important.

16
17 During the break I also discovered
18 several people also pointed out several important
19 differences between the State and Federal regulations.
20 As Bill Knauer points out, the definitions are different.
21 So that even if you do have the same technical words,
22 they're going to have different applications because the
23 words are defined differently. The customary trade rules
24 are different. So that under the State system you could
25 take salmon but you couldn't enter them into customary
26 trade, while in the Federal system you could. The
27 licensing requirements are different. And the pool of
28 users is dramatically different. And as Ralph points
29 out, this can have an enormous difference in your
30 conservation considerations because the State has such a
31 much larger pool and that has certain unintended
32 consequences. Ralph has pointed out one, but I'm sure we
33 could come up with others.

34
35 So I think this discussion of duplicate
36 regulations is not likely to be very productive. The
37 policy-makers on the Federal side have looked at this and
38 decided that there will be a distinct set of Federal
39 regulations and they will continue to be responsive to
40 the Regional Advisory Councils.

41
42 On that we differ.

43
44 And we differ, also, on how the Federal
45 Reser -- the Federal Reserved Water Rights, and those
46 differences are now in Federal District Court and
47 probably not a productive topic of conversation here.
48 But one thing there shouldn't be any difference on is the
49 effect of latorial ownership. Under Federal regulations
50 it simply doesn't make any difference who owns the

1 uplands. Federal regulations apply to all waters within
2 the external boundaries of the Togiak National Wildlife
3 Refuge. There are legal reasons for this, it has to do
4 with the nature of Federal Reserved Water Rights. There
5 are also very practical reasons for this, the Federal
6 system has made the judgment that you simply can't manage
7 fisheries with a checkerboard pattern of jurisdiction.
8 This is different for land mammals. For land animals we
9 do pay very close attention to land ownership, but not
10 for waters, all waters within the Togiak National
11 Wildlife Refuge are subject to Federal jurisdiction.

12
13 CHAIRMAN FLEAGLE: Thank you, Keith. And
14 I appreciate other Board members putting up with having
15 to listen to all these explanations but it's very
16 beneficial for me to know where, you know, what the past
17 history has been being the new Board member.

18
19 I also want to -- before you jump back
20 in, I want to welcome Niles to the table. I appreciate
21 having you here with us, and welcome.

22
23 Keith, go ahead.

24
25 MR. GOLTZ: You just apologized to the
26 Board for listening to their attorney, is that.....

27
28 (Laughter)

29
30 CHAIRMAN FLEAGLE: For making them listen
31 to the.....

32
33 (Laughter)

34
35 CHAIRMAN FLEAGLE:subjecting them
36 yet to another diatribe.

37
38 (Laughter)

39
40 CHAIRMAN FLEAGLE: Board members ready to
41 tackle the issue at hand.

42
43 Jerry.

44
45 MR. BERG: Thank you, Mr. Chair. Again,
46 I really appreciate the Board of Fish trying to
47 coordinate some of these proposals with us. I think it
48 probably helped that we had one of our outstanding former
49 Bristol Bay RAC members on the Board of Fish now, Robert
50 Heyano, I think he probably helped try to coordinate some

1 of this. And coming out of that Board of Fish meeting.

2

3 I think there are two main differences
4 that really, I think, come to the forefront, and that is
5 that they didn't place a depth net restriction on the
6 fishery, and it does seem like it would be a benefit to
7 subsistence users to not place that restriction on them,
8 especially after hearing what Randy talked about people
9 using king nets that could go over two and a half
10 fathoms. And it does sound like most people would be
11 targeting kings going down to drift.

12

13 And then the other one is marking fish,
14 to mark all fish caught with drift gillnets. And I did
15 talk to our in-season manager, Jim Larson, out in King
16 Salmon, about this and he did say that he thought that
17 that's why the restriction was in place for coho salmon,
18 to mark coho salmon, was to prevent them from entering
19 the commercial market. And he felt that since this
20 fishery would take place in the lower two miles of the
21 river, that it would be closer to a commercial market and
22 that it would help law enforcement to have that in place.
23 And I think it would be good to try to coordinate with
24 the State as best we can on this one and I think the
25 Board of Fish has done a good job and they had a public
26 process out in Dillingham that it seems like they came up
27 with a pretty reasonable approach to this.

28

29 I'll wait until I hear more discussion
30 and I'm prepared to make a motion when the time comes.

31

32 Thank you.

33

34 CHAIRMAN FLEAGLE: Thank you, Jerry.
35 Board members.

36

37 MS. GOTTLIEB: Mr. Chair.

38

39 CHAIRMAN FLEAGLE: Judy.

40

41 MS. GOTTLIEB: Thank you. I think the
42 suggestion made by the Board of Fishery to specifically
43 have markers will be helpful for clarity for this
44 proposal. And also eliminating the depth specificity
45 will also be helpful as Randy explained.

46

47 I'm a little less comfortable with the
48 marking. I know it's done in other fisheries, but it
49 doesn't sound as though the RAC really had much of a
50 chance or much reason to discuss it, and so it might be a

1 bit of an undue burden on subsistence users in this
2 particular case.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: Other Board members.

7

8 (No comments)

9

10 CHAIRMAN FLEAGLE: Jerry.

11

12 MR. BERG: Well, with that I guess I'm
13 prepared to make a motion.

14

15 I, too, am a little bit uncomfortable
16 requiring people to mark their fish, however, you know,
17 I, as well as probably many people in this room, have
18 dipnetted on the lower Kenai and you're also required to
19 mark your fish there and it is a pretty simple and easy
20 task to just chop the two lobes of the tail caudal fin
21 off and I really don't think it will be a significant
22 burden, although, I'm sure, you know, it will be a little
23 bit of an additional requirement. But I do think it's
24 worth coordinating with the State on this.

25

26 And so with that I'll make a motion to
27 support the Bristol Bay Regional Council with the
28 modification to allow drift gillnets no more than 10
29 fathoms in length without any depth net restrictions and
30 to allow these drift gillnets in the lower two miles of
31 the Togiak River from the mouth upstream to the ADF&G
32 regulatory markers and also require that all salmon
33 caught with drift gillnets be marked either by cutting
34 both lobes of the caudal fin or removing the dorsal fin.

35

36 And I could provide some justification if
37 there's a second.

38

39 Thank you, Mr. Chair.

40

41 CHAIRMAN FLEAGLE: Do we have a second.

42

43 MR. BSCHOR: I'll second that.

44

45 CHAIRMAN FLEAGLE: Okay, we got a second
46 from Denny.

47

48 Now, I'll turn it over to, for further
49 clarification, but just essentially what you're doing is
50 taking the ISC's recommended language that's been

1 prepared in the document, this would be the new
2 regulatory language, Jerry?

3
4 MR. BERG: That's correct. Just as you
5 read it on the one page handout that Steve Klein went
6 over.

7
8 Mr. Chair.

9
10 CHAIRMAN FLEAGLE: Okay, thank you. Go
11 ahead, if you wanted to give some supporting statements
12 for your motion, please.

13
14 MR. BERG: Thank you, Mr. Chair. I do
15 think that this will increase will increase opportunity
16 for subsistence harvest of salmon in the Togiak River by
17 allowing drift gillnets. Marking all salmon caught with
18 drift gillnets should not be a significant burden. And
19 it would align with State regulations. And there are no
20 conservation concerns so I do think that this is a wise
21 approach to go at this point.

22
23 Thank you, Mr. Chair.

24
25 CHAIRMAN FLEAGLE: Thank you, Jerry. I'd
26 like to add that I sincerely appreciate the State's
27 comments in suggesting that the Board doesn't need to
28 adopt the regulations because the State already applies
29 for a much broader, liberal application, but I do hear
30 the caution that Keith raises, that we do have a Council
31 recommendation and within the confines of the system we
32 should continue to honor those recommendations.

33
34 But I also have a real concern that I was
35 alluding to earlier in the questioning of the State and I
36 appreciate Ralph jumping in there and voicing those
37 concerns, and that is the potential for exploitation, I
38 guess, exists, and maybe it doesn't exist to a large
39 degree but it does exist, that there could be more use
40 that's concentrated on that river than what is
41 anticipated because the State's regulations are so
42 liberal, I mean it allows for any state resident to
43 participate. There could be an industry, or a mini-
44 industry that's established to meet the demands from
45 other state residents other than in the region to
46 participate in the fishery. I don't know that there will
47 be but there could be, I mean I'm just saying that the
48 possibility exists.

49
50 Having the Federal regulation in place

1 would protect the local subsistence users in the event
2 that there is an over exploitation and there needs to be
3 restrictions in place on that harvest.

4
5 I think for that reason I'm going to
6 support the motion as well.

7
8 Is there any other comments, Board
9 members.

10
11 George.

12
13 MR. OVIATT: Mr. Chairman. I think with
14 the recommended changes from the Staff and the proposal
15 that's put before us, which begins to mirror more closely
16 with what the State has put forth really makes sense,
17 and, I, too, will have a tendency to support this motion.

18
19 CHAIRMAN FLEAGLE: Thank you, George.
20 Other comments.

21
22 Randy.

23
24 MR. ALVAREZ: Mr. Chair, thank you. When
25 we discussed this proposal there was one -- one of our
26 members brought up that having to clip the fin, but there
27 was no -- it was just a short statement. We didn't
28 discuss having to do this to any length and there was no
29 second -- or no motion as having it be part of the
30 proposal, so we really didn't have any discussion on the
31 user having to be able to do this, and I don't know how
32 well received it would be. If they know how -- what to
33 do or have to do when they're -- to utilize this fishery,
34 but another comment I was going to -- that -- if somebody
35 from out of the area wanted to go utilize this fishery,
36 drift fishery, you know, what is the difference if they
37 wanted to go over there and put a setnet out for a
38 subsistence net, if they couldn't drift or right now at
39 the present time, could they not go over there and put a
40 subsistence net out that was tied to the beach in the
41 same area as it would be drifting, I don't think it would
42 make -- in my opinion that would make -- put any more
43 effort than there already is on the resource. Because
44 if, what I understand, is if somebody from Anchorage or
45 wherever, wanted to go over there and drift for kings, if
46 the proposal passes, couldn't they do the same with a
47 subsistence setnet where you have to have it anchored
48 out, where they could do that? So what I'm saying is, I
49 don't think it would make any more effort on the
50 resource.

1 CHAIRMAN FLEAGLE: Thank you, Randy,
2 appreciate that. It helps with some of my concerns.
3
4 Denny.
5
6 MR. BSCHOR: Yeah, Mr. Chair. I think
7 we've dealt with this marking issue before in other areas
8 if I'm not mistaken. It has been very advantageous to
9 the conservation of healthy fish populations, and I
10 appreciate what was said by the Advisory Council, but I
11 tend to think that's still a good idea.
12
13 CHAIRMAN FLEAGLE: Additional comments.
14
15 (No comments)
16
17 CHAIRMAN FLEAGLE: Ready for the
18 question. All right, the Chair will recognize the
19 question, although I didn't hear a call, go ahead, Pete,
20 poll the Board.
21
22 MR. PROBASCO: Thank you, Mr. Chair.
23 Final action on Proposal FP07-05. The motion was made to
24 follow the recommendation by the Regional Advisory
25 Council as modified and further modified by the Staff and
26 that was in the handout FP07-05, I won't read it, I'll
27 just reference it.
28
29 Mr. Bschor.
30
31 MR. BSCHOR: Aye.
32
33 MR. PROBASCO: Mr. Berg.
34
35 MR. BERG: Aye.
36
37 MR. PROBASCO: Mr. Fleagle.
38
39 CHAIRMAN FLEAGLE: Aye.
40
41 MR. PROBASCO: Ms. Gottlieb.
42
43 MS. GOTTLIEB: Aye.
44
45 MR. PROBASCO: Mr. Cesar.
46
47 MR. CESAR: Aye.
48
49 MR. PROBASCO: And Mr. Oviatt.
50

1 MR. OVIATT: Aye.
2
3 MR. PROBASCO: Mr. Chair. Motion
4 carries, six/zero.
5
6 CHAIRMAN FLEAGLE: Okay, thank you Pete.
7
8 MS. GOTTLIEB: Mr. Chair.
9
10 CHAIRMAN FLEAGLE: Judy.
11
12 MS. GOTTLIEB: Thank you. Because this
13 is different than what the RAC discussed or might have
14 expected so I'm sure Cliff and perhaps the in-season
15 manager and Randy will give feedback right away to the
16 Regional Council so that they're familiar with the
17 changes and know what to expect for the coming season.
18
19 Thank you.
20
21 CHAIRMAN FLEAGLE: Thank you, Judy.
22
23 (Pause)
24
25 CHAIRMAN FLEAGLE: All right, we're ready
26 to move into Proposal 07-06. And we're going to have the
27 analysis by Rod again.
28
29 MR. CAMPBELL: Yes, sir, Mr. Chairman.
30 Again, Rod Campbell with the Office of Subsistence
31 Management. And this next overview is on Fishery
32 Proposal 07-06, which begins on Page 315 in your Board
33 book.
34
35 FP07-06 was submitted by the Lake Clark
36 Subsistence Resource Commission and requests that
37 snagging with rod and reel, spear or arrow and hand
38 capture be permitted as legal methods and gear types for
39 use in Lake Clark by Federally-qualified subsistence
40 users. The proponent stated that snagging, spear or
41 arrow and hand capture would not occur regularly but
42 would be more of a selective method to be used
43 opportunistically when camping or providing a fish to eat
44 immediately.
45
46 The recognized practice of subsistence
47 harvesting is to take only what one needs, therefore, the
48 use of these alternative harvest methods should not lead
49 to an increase in the amount of fish harvested.
50

1 The Alaska Board of Fisheries adopted a
2 proposal at their December 2006 meeting to allow the
3 taking of salmon by spear in Lake Clark, excluding its
4 tributaries. However, the Board of Fisheries did not
5 adopt regulations to allow the taking of salmon by
6 snagging, by arrow or by hand capture as also requested
7 in this proposal.
8

9 The current Federal regulations were
10 adopted from existing State regulations as I previously
11 mentioned in 1999 when the program expanded to include
12 fisheries on all Federal public lands and waters. The
13 general provisions of the Federal Subsistence Management
14 Regulations lists spear as a legal gear type, however,
15 specific Bristol Bay area regulations prohibit the use of
16 spears within Lake Clark.
17

18 In 2003, the Alaska Board of Fisheries
19 elevated the Kvichak River sockeye salmon stock to a
20 stock of management concern due to its chronic inability
21 despite use of specific management measures to meet
22 management objectives. And the average sockeye salmon
23 escapement for the Kvichak River from 2000 to 2005 was
24 approximately 2.1 million fish, while the average
25 escapement for the Lake Clark area, Newhalen River was a
26 little over 310,000 sockeye during that same period.
27

28 During the period of 1994 to 2003, the
29 average subsistence harvest for residents of the resident
30 zone communities for the Lake Clark National Park, that's
31 Iliamna, Lime Village ,Newhalen, Nondalton, Pedro Bay and
32 Port Alsworth was approximately 32,000 sockeye salmon and
33 in 2004 the average harvest was 37,000 sockeye salmon.
34

35 If adopted, this proposal would provide
36 Federally-qualified subsistence users with additional
37 gear types that are less expensive to purchase than set
38 gillnets. As I previously mentioned, a recognized
39 practice of subsistence harvesting is to take only what a
40 person needs and we do not anticipate an increase in the
41 amount of fish harvested.
42

43 These gear types would allow fishermen to
44 target specific fish and/or species and should reduce the
45 take of non-target fish. When used opportunistically,
46 these methods are not likely to cause any conservation
47 concerns. The potential impacts for use of these gear
48 types appear to be primarily social, which could cause
49 conflicts between user groups, to point out subsistence
50 and perhaps sportfishermen, it would create a divergence

1 between State and Federal regulations, which may require
2 a separate Federal harvest permit and complicate
3 collection of harvest data.

4

5 Thank you, Mr. Chair.

6

7 CHAIRMAN FLEAGLE: Thank you, Rod. Board
8 members, questions.

9

10 (No comments)

11

12 CHAIRMAN FLEAGLE: Okay, hearing none, I
13 note from the page here we don't have any written public
14 comments on this one either?

15

16 MR. EDENSHAW: (Nods affirmatively)

17

18 CHAIRMAN FLEAGLE: Okay, thank you,
19 Cliff. No public testimony cards have been turned in, is
20 there anybody in the audience that does wish to testify
21 on this issue.

22

23 (No comments)

24

25 CHAIRMAN FLEAGLE: All right, hearing
26 none, we'll go ahead, Randy, for the RAC's
27 recommendation, please.

28

29 MR. ALVAREZ: Thank you, Mr. Chair. The
30 RAC supported the proposal and it was another proposal
31 that we had quite a bit of discussion on this one also.

32

33 Although that it was not a unanimous vote
34 as were the other two proposals that you're going to take
35 up were, this one here snagging was an issue that why it
36 was not unanimous.

37

38 I talked to the writers of the proposal.
39 The reason why they asked for this is because when
40 they're out camping, whether hunting or picking berries
41 or whatever, to utilize all these methods would be --
42 instead of having to bring along a subsistence net and to
43 -- for subsistence harvesting, and it's -- this would not
44 be their main subsistence means, it would be just being
45 able to utilize these methods whenever they're out
46 camping, picking berries or hunting or whatever they
47 might be out doing. So we did support this. We felt
48 that it would not be utilized that much so -- but it was
49 -- it was not a unanimous vote on this proposal, as I
50 said.

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Thank you, Randy.
4 Board members questions for the RAC's position.

5

6 (No comments)

7

8 CHAIRMAN FLEAGLE: Hearing none, we'll
9 now turn to the State of Alaska for comments. Is that
10 John -- John Hilsinger.

11

12 MR. HILSINGER: Thank you, Mr. Chairman.
13 Again, the State's detailed comments are found on Page
14 323 in the book.

15

16 ADF&G recommends that the Federal
17 Subsistence Board take no action on this proposal since
18 the Alaska Board of Fisheries just took action to allow
19 the use of spears in Lake Clark, excluding its
20 tributaries. The Board of Fisheries considered, but did
21 not allow use of bow and arrow, snagging, or hand
22 capture. The State and the Board recognized that in some
23 years when runs are very low in that area and especially
24 those years, 2000 through 2003, when Kvichak escapement
25 goals were not met, that people did have a more difficult
26 time meeting subsistence needs, and after reviewing the
27 use of those other gear types, decided that adding the
28 use of spears would be a reasonable improvement and
29 improvement in the ability to provide subsistence
30 opportunity.

31

32 As Rod noted the Kvichak River sockeye
33 has been a stock of management concern. We note that
34 escapements have been increasing in recent years and we
35 hope that that management concern will be lifted.

36

37 But this proposal also allows targeting
38 of the other species besides just sockeye.

39

40 The Department feels that there was not
41 sufficient information to justify the use of snagging,
42 bow and arrow and hand capture. Snagging, as noted,
43 potentially would create some significant social problems
44 and user conflicts. And we understand that the intent of
45 this may be that people use it while they're camping,
46 during hunting or berry picking or those types of
47 activities, but the proposal is not limited to that.
48 There's no season associated with it. There's no
49 requirement that you have to camp overnight before you
50 can snag a fish. It would be allowed any time for any

1 species in any part of the area. So we do have concerns
2 about that potential for conflict.

3
4 Bow and arrow seems to negate the desire
5 to have an inexpensive means of harvesting fish. I'm not
6 a bow and arrow user but I get my Cabela's catalog and I
7 see that bow and arrow set ups for fishing, probably
8 quite expensive.

9
10 And, finally, the hand capture. The
11 State has concerns about hand capture and the potential
12 for molesting fish which would be in violation of State
13 law. We've talked to numerous people that actually have
14 experienced hand capturing fish, and while there may be
15 ways of doing it without a lot of disturbance, most of
16 the people that we've talked to indicated that the final
17 method that they used was quite disruptive.

18
19 And we believe that using a spear in
20 those situations would be equally or more effective and
21 could allow the harvest of those fish. I think, many of
22 us have been in a sockeye stream and the fish are very
23 close off and around your feet, you could spear one quite
24 easily but chasing it down and grabbing it with your bare
25 hands may be a different matter. And so we felt that use
26 of spears would fulfill that need for that additional
27 opportunity and an inexpensive simple gear type.

28
29 So, again, in conclusion, as with the
30 previous proposal, we would recommend that you take no
31 action.

32
33 Thank you.

34
35 CHAIRMAN FLEAGLE: Thank you. Question's
36 for the State's recommendation. Judy.

37
38 MS. GOTTLIEB: Yes, thank you, Mr. Chair.
39 On the State regulation that was just passed, now,
40 Federal regulations close waters within 300 feet of a
41 stream mouth used by salmon, does the new State reg do
42 that as well?

43
44 CHAIRMAN FLEAGLE: John.

45
46 MR. HILSINGER: Mr. Chairman. Not as far
47 as I'm aware, no, it simply excludes tributaries.

48
49 CHAIRMAN FLEAGLE: Other questions.

50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: So just to one
4 ambiguity in my mind that still exists, you said that
5 there is the potential for a conservation concern on the
6 sockeye because the additional use of snagging would
7 increase the take, right?

8

9 MR. HILSINGER: Mr. Chairman. Sockeye
10 salmon are designated as a conservation concern, and so
11 that's been quite a subject with the Board of Fisheries
12 and they've taken numerous actions throughout fisheries
13 in Bristol Bay to try to deal with that. And I think the
14 prospect of having additional harvest due to snagging and
15 the potential for illegal harvest through snagging by
16 people who would not be qualified, I think, in some
17 situations could raise a conservation issue.

18

19 Now, I have to explain that the State
20 defines conservation concern, and a conservation concern
21 under the State's definition is roughly equivalent of a
22 threatened or endangered species listing. I mean it's
23 extremely severe, and so we don't tend to use that term
24 unless it meets our definition. And so as Rod noted
25 Kvichak sockeye are a management concern, which means,
26 that there's a chronic inability to meet the escapement
27 goals, and so that's a different level of concern. And
28 so this would not raise it, in our language, to a
29 conservation concern. But I think it would be an issue
30 that would be raised if there was widespread use of
31 snagging. Particularly on certain tributaries. I mean I
32 doubt, you know, out of a two million run into the
33 Kvichak River you're not going to probably put much of a
34 dent in that but on individual tributaries I think that
35 possibility could exist.

36

37 Thank you.

38

39 CHAIRMAN FLEAGLE: All right ,thanks for
40 the clarification.

41

42 Randy.

43

44 MR. ALVAREZ: Thank you, Mr. Chair. I
45 just wanted to comment on John's testimony. I also serve
46 the Lake Iliamna -- Chairman of the Fish and Game
47 Advisory Committee up there. And the Kvichak drainage is
48 a stock of concern, but the last three years it's gotten
49 well over the minimum escapement and it's going to take
50 five years, I believe, of successful returns to take it

1 off that stock of concern.

2

3 Last year the Kvichak escapement was a
4 little over three million and of that Lake Clark received
5 about 700,000 sockeye, which is about a half a million
6 more than what is needed up there, so there is no concern
7 in our opinion with Lake Clark not getting enough
8 sockeye.

9

10 And then last year was about 700,000, the
11 year before that was about 450 and then the year before
12 that was about 300,000, so it's been -- from what I
13 understand, Lake Clark needs about 10 percent of two
14 million, which is about 200,000 sockeye, the minimum for
15 Lake Clark so it's gotten well above minimum and we
16 didn't feel there was a concern. Although it is still a
17 stock of concern but it's going to take a certain amount
18 of time for that to go away, and I think it needs to have
19 a five year cycle from what I understand.

20

21 And we also discussed hand capture, you
22 know, and also snag -- being able to snag with rod and
23 reel, you know, and if you -- it was brought up at our
24 RAC meeting that the sportfishermen are fishing sockeye,
25 most of those sockeye aren't biting, they're being
26 snagged and there's just so many out there they can't
27 help but catch them and if you'd look at the guys that
28 are standing there, the sportfishermen in the streams for
29 six, eight hours a day, what kind of impact are they
30 making on the stream beds as somebody that's trying to
31 catch a fish for five minutes where all the bears that
32 are running around and chasing the fish around, we didn't
33 feel that hand capture would make that much more impact
34 on the river, than what's already going on.

35

36 And so I just wanted to bring those two
37 issues forward, what we discussed at -- you know, we
38 discussed this at the meeting, that's why we supported
39 the proposal.

40

41 CHAIRMAN FLEAGLE: Appreciate that Randy.
42 Other questions from Board members for the State's
43 comments.

44

45 Denny.

46

47 MR. BSCHOR: Yes, very quickly. As we
48 get to the next proposal, the Board of Fish adopted a use
49 of beach seines. Can you tell me the difference between
50 the numbers of fish caught by that method versus by hand

1 or by snagging, would it be more or less or what?

2

3

CHAIRMAN FLEAGLE: John.

4

5

MR. HILSINGER: Mr. Chairman. Mr. Bschor. It would really depend on the area you were fishing. Beach seines are known to have the potential to be very effective as do the set gillnets that they would replace. So certainly the overall harvest by set gillnets and beach seines would likely exceed the harvest by these other methods. I think the difference is that where those harvests might take place. You're probably more likely, and I think the way the proposal was adopted, the beach seines would be limited to use in the lakes and not in the tributaries, whereas you would be more likely to see the other methods used in the tributaries.

18

19

Thank you.

20

21

CHAIRMAN FLEAGLE: Other questions. We have Ralph Lohse.

23

24

MR. LOHSE: Thank you, Mr. Chairman. It's always interesting to see how things are portrayed. Myself, having known a few subsistence fishermen, I can't imagine anybody chasing a salmon up and down a stream, trying to catch a salmon by chasing it up and down the stream. Everybody I know that ever took a salmon by hand stands very quietly, let's the salmon come to him, reach down, tickles it under the stomach and lifts it out of the water, you know, I mean it's not a case of destroying a bunch of spawning grounds just to try to get a salmon.

34

35

We can always look at the worst case scenarios and we always seem to do that when it applies to subsistence. We don't do that when it applies to sport or commercial. We look at it from the standpoint, you know, what kind of damage can they do, what kind of impact can they have; and that's what I was trying to point out before when I was talking about the difference between a State subsistence fishery and a Federal subsistence fishery.

44

45

A State subsistence fishery works just like any other fishery that the State has, whether it's a sportfishery or whether it's a commercial fishery, it affords economic opportunity. Somebody can find a way to exploit that fishery to make money off of it, yet, we worry about whether some Federal subsistence fisherman

1 might sell a fish as opposed to selling the opportunity
2 to catch a fish, which is what we do under the State
3 system. And it's the same thing here, you know, nobody
4 is going to go out and impact two million salmon by
5 catching salmon by hand, if they're allowed to snag,
6 nobody's going to probably try to catch one by hand
7 anyhow, but if they do catch one by hand they're not
8 going to catch one by chasing it up and down the stream
9 and running it down and wearing the salmon out, they're
10 going to quietly sit there, throw a salmon on the bank
11 and cook it for supper.

12
13 It just doesn't make sense to me to
14 always look at, you know, this is what could happen as
15 opposed to, this is probably what will happen.

16
17 CHAIRMAN FLEAGLE: Are we allowed to look
18 at these regulatory changes with reason, Keith?

19
20 (Laughter)

21
22 MR. GOLTZ: I'm a big fan of common
23 sense.

24
25 (Laughter)

26
27 MR. GOLTZ: Put it on the record.

28
29 CHAIRMAN FLEAGLE: Sarah Gilbertson.

30
31 MS. GILBERTSON: Thanks, Mr. Chairman. I
32 guess I just want to point out, you know, one other
33 difference, we're talking about differences today between
34 the State and Federal system. And, you know, on the
35 State side under our Constitution we're required to
36 manage for sustained yield, we're required to look at
37 conservation of the species and I think that, too, is a
38 reason that we see differences between what the Board of
39 Fish may do and what this Board does here today because
40 your primarily responsibility is to subsistence users and
41 under ANILCA you're supposed to consider these other
42 things, but we have different priorities; and so that
43 just speaks, I think, to maybe some of the differences
44 that Ralph was alluding to.

45
46 CHAIRMAN FLEAGLE: Appreciate that, thank
47 you. Judy, did you have a comment or question for the
48 State?

49
50 MS. GOTTLIEB: No.

1 CHAIRMAN FLEAGLE: Okay. Any other
2 questions for the State's recommendations.

3
4 (No comments)

5
6 CHAIRMAN FLEAGLE: Okay, with that we'll
7 go to the InterAgency Staff Committee recommendation,
8 Steve Klein.

9
10 MR. KLEIN: Thank you, Mr. Chair. For
11 Proposal FP07-06, the InterAgency Staff Committee
12 supports the proposal with modification consistent with
13 the Bristol Bay Council recommendation.

14
15 And the slight modification is to specify
16 rod and reel and handline as the allowable gear types for
17 snagging and adding the word, bow, to arrow to read bow
18 and arrow. And on Page 315 in the middle in bold is that
19 clarifying language.

20
21 So it adds:

22
23 By handline or rod and reel in
24 parenthesis after snagging and the words,
25 and arrow.

26
27 And the justification for the Staff
28 Committee recommendation is that this would provide
29 additional methods and means for Federally-qualified
30 subsistence users, it would not present a conservation
31 concern but expand opportunities. The expectation is
32 that these methods would be used to harvest salmon to
33 provide food while camping or otherwise out in remote
34 locations. Users would be able to harvest individual
35 fish as compared to setting a net. And our expectation
36 is that this would be a very low harvest.

37
38 So the Staff Committee supports the
39 Bristol Bay Council with the clarifying language.

40
41 Again, the Board of Fish acted on this
42 proposal after the Staff Committee met. Staff worked
43 with members of the Staff Committee that were available
44 and in the handout I previously referenced, there's a
45 page for this proposal, 07-06, and a table summarizing
46 the differences among all these various recommendations.

47
48 Here there's two differences. One is
49 with the methods. The original proposal, the Council and
50 the Staff Committee all recommended a snagging, spear,

1 arrow and hand capture be permitted. Again, the Staff
2 Committee added some clarifying language. The Board of
3 Fish action there just recommended spears only. So the
4 Board of Fish did not recommend snagging, bow and arrow
5 and hand capture as Mr. Hilsinger alluded to.

6
7 Then in terms of area, again, the
8 original proposal, the Council and the Staff Committee
9 recommended Lake Clark and its tributaries. The Board of
10 Fish action included Lake Clark but excluded tributaries.

11
12 And Ms. Gottlieb brought up the 300 foot
13 buffer around spring mouths, the net effect of this would
14 be for -- if we include the tributaries, Federally-
15 qualified subsistence users would be able to harvest in
16 the tributaries 300 feet above the stream mouth, whereas
17 with the Board of Fish action, no fishing in the
18 tributaries would be permitted.

19
20 The Staff and the Staff Committee members
21 that worked on this, again, this is not a Staff Committee
22 recommendation that all gear types be included,
23 consistent with the Staff Committee and Council, and that
24 tributaries be included rather than excluded.

25
26 Mr. Chair.

27
28 CHAIRMAN FLEAGLE: Thank you, Steve.
29 Board members questions on the ISC recommendations.

30
31 (No comments)

32
33 CHAIRMAN FLEAGLE: All right, appreciate
34 that. We're ready to begin discussions between -- or
35 discussions on the Board action. Board members.

36
37 MS. GOTTLIEB: Mr. Chairman.

38
39 CHAIRMAN FLEAGLE: Judy.

40
41 MS. GOTTLIEB: Thank you. I was
42 fortunate enough to be at the Lake Clark Subsistence
43 Resource Commission as they discussed and devised and
44 crafted this proposal and so I think this is, yet, again,
45 a really good example as Keith was saying before of, from
46 the ground to our meeting in terms of crafting
47 regulations. People spoke to their personal experiences
48 and to this need that provides food while perhaps while
49 camping or out in remote locations. These methods target
50 individual fish, and certainly not going to be a way that

1 people fill their freezer, it's more a fishery of
2 convenience shall we say.

3

4 I wanted to make one clarification on the
5 Staff analysis as to eligible people for this fishery.
6 We did name the resident zone communities and their
7 residents are eligible for this fishery. The fishery
8 would also include people who live in Lake Clark National
9 Preserve, not necessarily within any of those
10 communities, but also people who have what we call a 1344
11 subsistence permit, so for eligibility, just so that we
12 have that on the full record.

13

14 I think I'll stop there. I'll be
15 prepared to make a motion after we have some discussion.

16

17 CHAIRMAN FLEAGLE: Other discussion Board
18 members.

19

20 Sarah Gilbertson.

21

22 MS. GILBERTSON: Thanks, Mr. Chairman.
23 Just to reiterate what John was speaking to earlier and
24 that is, to the extent that the Federal Board adopts
25 something different than what the Board of Fish just
26 adopted, the State cannot put those -- require those
27 elements to be on its permit and so, therefore, we would
28 recommend that there be a Federal permit associated with
29 a fishery that's different than the State fishery.

30

31 Thanks.

32

33 CHAIRMAN FLEAGLE: Thank you. More
34 discussion.

35

36 Niles Cesar.

37

38 MR. CESAR: Thank you, Mr. Chairman. I'm
39 just having a problem with the numbers, I guess, in terms
40 of what the take would be. And as a guy who grew up
41 chasing salmon up and down a stream, I tell you I don't
42 think I ever did catch one but I hit one with a rock one
43 time and I probably broke the law, but it tasted good.

44

45 (Laughter)

46

47 MR. CESAR: It just seems to me like the
48 Federal Board is approaching this with thinking, well,
49 you know, there are times when folks are out there
50 camping, very often, you know, in the summertime to early

1 fall and to be able to get a salmon to eat, you know, is
2 a treat out there and I want to give the subsistence user
3 every opportunity I can to do that without, you know,
4 causing a conservation concern out there. I just don't
5 see the numbers telling me that, quite frankly. I think
6 if you took every resident of Lake Clark and sent them
7 all out there with a spear and they all got one fish, you
8 know, I think that pales in comparison to setting a net.
9 And I've drifted on the Kuskokwim and you don't even see
10 any fish and all of a sudden you come up with 30 fish,
11 you know, I mean there's a big difference between using
12 hand gear of whatever type, whether it's your hands or
13 rod and reel, snagging, to using a net in a lake.

14
15 So I guess I don't understand the numbers
16 concern.

17
18 And I've been unfortunate enough to fish
19 the Kenai at the Russian River there and, you know, I
20 grew up on a boat, my dad was a commercial troller for 30
21 years and someone told me, after I moved up here, that
22 sockeye were biting and I said, geez, I never seen a
23 sockeye bite, what is this, a sockeye bite, where do they
24 do that at. What I see is, you know, fish who get
25 annoyed and hit at something because it's flashed in
26 front of their face and when you're on the Russian and
27 there's 10,000 of things flashing in your face, they snag
28 a lot of fish. That, too me, is snagging, it's not
29 fishing. So I think we have a problem in terms of
30 definitions about what is real out there. And, you know,
31 I don't think we're going to cure that today, and,
32 probably never will because the person with the most
33 money usually wins those kinds of decisions, not the
34 person who's living out there in the village and so I,
35 hopefully, will be able to support whatever proposal --
36 motion is made, because, again, I just don't see us
37 spending this much time over something that makes
38 ultimate sense to the person out there in the Bush.

39
40 Thank you.

41
42 CHAIRMAN FLEAGLE: Other comments. Judy.

43
44 MS. GOTTLIEB: Well, I will move then,
45 consistent with the Bristol Bay RAC recommendation and
46 with slight clarification that's been provided by the
47 Staff and InterAgency Staff Committee, that outside the
48 boundaries of any district, you may take salmon by set
49 gillnet only, except that you may also take salmon by
50 spear in the Togiak River excluding its tributaries.

1 Salmon may also be taken in Lake Clark and it's
2 tributaries by snagging, by handline, or rod and reel
3 using a spear, bow and arrow and capturing by bare hand.

4

5 CHAIRMAN FLEAGLE: Is there a second.

6

7 MR. OVIATT: I'll second.

8

9 CHAIRMAN FLEAGLE: Thank you, George.

10 Judy, do you want to lay out some more supporting
11 statements to support your motion.

12

13 MS. GOTTLIEB: Sure. I think this
14 provides additional opportunity for people who may not be
15 hauling their setnet with them as they're out hunting.
16 It does not present a conservation concern to the Park,
17 and targets individual fish so we don't expect that this
18 would result in a large harvest by any means.

19

20 Thank you.

21

22 CHAIRMAN FLEAGLE: Other discussion.

23 Ralph.

24

25 MR. LOHSE: Mr. Chair. I'd just like to
26 address something about this proposal that I've been
27 seeing the subsistence community trying to do, and that's
28 to take common practices that are in effect, that are
29 probably going to continue whether it's legal or not
30 legal and put them on the table and make them legal so
31 that the next generation can get used to abiding by the
32 law.

33

34 And we've had some real good ones before
35 us in the past that we've turned down, where subsistence
36 users have come and said, you know, this is what we do,
37 this is what we're going to continue doing, this has had
38 no conservation impact on the species over the centuries,
39 but let's make it legal so that what we can do is we can
40 abide by the law, and that's the same thing that what
41 this proposal is trying to do right here. I mean
42 somebody that's up in that area that's out camping is
43 going to take a salmon to eat for supper, whether they
44 use a spear, whether they use a hook that they've got in
45 their pocket and snag it, whether they reach out and grab
46 it or I'll even go so far as to say whether they shoot it
47 with a 30.06, and they're going to eat a salmon, and what
48 they're doing is saying, let's make this -- let's put
49 this on the books, this is a practice that takes place,
50 let's make it legal as long as there's no conservation

1 impact, so that we and our children can learn to abide by
2 the law. Let's make the law applicable to the people
3 that are out there.

4
5 And from that standpoint I'd have to --
6 if I was in your position I'd have to support this
7 proposal, simply because what it's doing is it's saying
8 -- they're saying this is common practices, this is what
9 we do, let's make it legal so that we can do it legally.
10 And if there's a conservation issue, the subsistence
11 community has come before you time and time again and
12 said there's a conservation issue on something, let's put
13 some regulations in place to protect it. And just like
14 the thing with the marking of the fish, the subsistence
15 community has come before you before and said, yes, it's
16 a hardship but we recognize the fact that we need to mark
17 and keep track of what's going on. And so from that
18 standpoint when something like this comes, we should just
19 look at it and say, does this adversely impact the
20 resource? What they're saying is this is what we do,
21 let's make it legal so that we can do it legally.

22
23 Thank you.

24
25 CHAIRMAN FLEAGLE: Jerry Berg.

26
27 MR. BERG: Thank you, Mr. Chair. If we
28 do pass this motion it would be unfortunate that we might
29 diverge from the State regulations because then we might
30 have to have a State [sic] permit, and that's, you know,
31 somewhat of a burden on our program and the public, the
32 subsistence users as well and it could create some law
33 enforcement problems, some social problems that John
34 mentioned. But really, I think, Ralph hit it on the head
35 that, you know, what are really the numbers we're talking
36 about.

37
38 I think it's most likely that these
39 methods would be used to catch an occasional fresh fish
40 and they're not likely to be used to harvest large
41 quantities of salmon, and for those reasons I'm going to
42 support the motion.

43
44 Mr. Chair.

45
46 CHAIRMAN FLEAGLE: Thank you. Judy.

47
48 MS. GOTTLIEB: I'm not sure if this has
49 to be in the motion or in the regulation but since this
50 would not then be managed under a State permit anymore, I

1 assume we would work with the in-season manager and the
2 Park is ready to assist in distribution of any Federal
3 permits then.

4
5 CHAIRMAN FLEAGLE: Pete Probasco, can you
6 answer that.

7
8 MR. PROBASCO: I think technically Ms.
9 Gottlieb we do not need it in regulation but to help
10 clarify to the public we may want to say that a Federal
11 permit would be required.

12
13 CHAIRMAN FLEAGLE: Okay, thanks. I'll
14 let you think about that for a minute as to how we want
15 to do that and turn to Niles for comments.

16
17 MR. CESAR: I would just like to say that
18 I support the comments that were made by Jerry Berg,
19 Denny, and our Chairman earlier when we were discussing
20 this. That, you know, it just seems to me like this is
21 a way for us to try to clear up some issues for the
22 people out there who, on a day to day basis, would, you
23 know, like to catch a fish or, you know, it just makes
24 common sense to me and for the reasons that everyone has
25 listed out before, I intend to support the motion.

26
27 CHAIRMAN FLEAGLE: All right, thank you.
28 Judy.

29
30 MS. GOTTLIEB: I guess I'm waiting
31 regulatory advice to see if we specifically need to say
32 Federal permit will be required.

33
34 CHAIRMAN FLEAGLE: Okay. Why don't we
35 just take a brief break, five minutes, and then we'll
36 come back to the issue.

37
38 MR. GOLTZ: Our regulations already
39 provide for the permitting and that would be in our book,
40 so you don't have to put it in this specific regulation.

41
42 CHAIRMAN FLEAGLE: Okay. You didn't turn
43 your mic off. All right, so it's good to go then.

44
45 Other discussions.

46
47 Randy.

48
49 MR. ALVAREZ: Mr. Chair, thank you. All
50 three of these proposals that came before the Bristol Bay

1 RAC are issues that have -- the subsistence users have
2 utilized all these methods and means and we've supported
3 them because it makes them legal and it's like Ralph had
4 said before and Niles, that, you know, we want to make it
5 easy to -- as -- you know, for the user to get their
6 subsistence fish and we -- during our RAC meeting we
7 realized and it was discussed that it has been and that
8 it is a way that people have been utilizing these methods
9 and means, these three proposals will just make it legal
10 for us to do it.

11

12 Thank you.

13

14 CHAIRMAN FLEAGLE: Alrighty, appreciate
15 all the comments that have been made. And I guess I'll
16 weigh in, I'm going to support the proposal.

17

18 I think I, just personally, I have a
19 little issue with allowing snagging as an allowable
20 harvest, and I know that it used to be legal back in the
21 olden days. But, you know, we've pretty much gotten away
22 from that, allowing that as a common practice. I have a
23 little problem with that.

24

25 I also have a little problem with the bow
26 and arrow portion. It just seems like we're tending to
27 go away from what we've established over long-term, and I
28 say, we, collectively, as a population in the state of
29 Alaska, whether it's under the Federal program or the
30 State program is irrelevant at this point. It's just
31 that we've established fair methods and means, and I
32 think this tends to deviate from those in my mind. But I
33 find that those concerns don't negate my obligation to
34 accept the RAC's recommendation, I even looked up the
35 statute here, and, you know, it's pretty clear as to what
36 I can apply, and I asked about the conservation issue. I
37 know that there could be a conservation issue in some
38 areas, although I don't hear it here, where if snagging
39 would be allowed because that is a pretty efficient way
40 to catch fish.

41

42 But with those reservations, my personal
43 reservations, I am going to support the proposal.

44

45 So I think we're ready for the vote, do I
46 hear the question.

47

48

MR. CESAR: Question.

49

50

CHAIRMAN FLEAGLE: All right, the

1 question is called.
2
3 Pete, on the action, please, poll the
4 Board.
5
6 MR. PROBASCO: Thank you, Mr. Chair.
7 Final action on Proposal FP07-06, the motion is outside
8 the boundaries of any district you may take salmon by set
9 gillnets only except that you may also take salmon by
10 spear in the Togiak River, excluding its tributaries,
11 salmon may also be taken in Lake Clark and its
12 tributaries by snagging, by handline, or rod and reel,
13 using a spear, bow and arrow and capturing by bare hand.
14
15 Mr. Berg.
16
17 MR. BERG: Aye.
18
19 MR. PROBASCO: Mr. Fleagle.
20
21 CHAIRMAN FLEAGLE: Aye.
22
23 MR. PROBASCO: Ms. Gottlieb.
24
25 MS. GOTTLIEB: Aye.
26
27 MR. PROBASCO: Mr. Cesar.
28
29 MR. CESAR: Aye.
30
31 MR. PROBASCO: Mr. Oviatt.
32
33 MR. OVIATT: Aye.
34
35 MR. PROBASCO: Mr. Bschor.
36
37 MR. BSCHOR: Aye.
38
39 MR. PROBASCO: Mr. Chair. Motion carries
40 six/zero.
41
42 CHAIRMAN FLEAGLE: All right, thank you,
43 Pete. We're now prepared to.....
44
45 MS. GOTTLIEB: Mr. Chair.
46
47 CHAIRMAN FLEAGLE: Judy, go ahead.
48
49 MS. GOTTLIEB: Sorry, one more comment
50 having to do with the permit and the reporting system.

1 Certainly the Park is more than willing and will work
2 with the State on coordinating permits and coordinating
3 reporting and having communication with the communities
4 and the RAC about how we're going to work the permit
5 system.

6
7 CHAIRMAN FLEAGLE: Okay, thanks. Okay,
8 we're now moving on to Proposal 07-07, and we're going to
9 go to the analysis. Rod.

10
11 MR. CAMPBELL: Thank you, Mr. Chair.
12 Members of the Board. Again, my name is Rod Campbell
13 with the Office of Subsistence Management. And as
14 Chairman Fleagle said the next overview is for Fishery
15 Proposal 07-07, which begins on Page 326 in your Board
16 book.

17
18 FP07-07 was submitted by the Lake Clark
19 Subsistence Resource Commission and requests that beach
20 seines be permitted as a legal gear type for use in Lake
21 Clark by Federally-qualified subsistence users. The
22 proponent is seeking this regulatory change to provide an
23 additional gear type and to allow subsistence users to
24 harvest fish in a more selective manner.

25
26 Beach seining is a traditional method,
27 which unlike gillnets can be non-lethal and allows
28 fishermen to take the salmon they need and release the
29 surplus salmon or non-target species. And as I
30 previously mentioned this recognized practice of
31 subsistence harvesting is to take only what a person
32 needs, therefore, the use of this alternative method
33 should not lead to an increase in the amount of fish
34 harvested.

35
36 As in the previous discussion the Alaska
37 Board of Fisheries did adopt a proposal at their December
38 2006 meeting to allow the taking of salmon by beach seine
39 in Lake Clark and in addition to that Six Mile Lake and
40 Iliamna Lake, excluding all their tributaries. So these
41 new State regulations would allow the use of -- also
42 allow the use of a set gillnet as a beach seine and beach
43 seines may not exceed 25 fathoms in length.

44
45 Also as I previously mentioned the
46 current Federal regulations were adopted from existing
47 State regulations in 1999 and under Federal subsistence
48 regulations you may take salmon by set gillnet only
49 within the Lake Clark area. You may not fish,
50 subsistence fish from waters within 300 feet of a stream

1 mouth used by salmon.

2

3 The biological background and harvest
4 history is the same as in the previous proposal so I'd
5 just refer to my comments that I provided in FP07-06 as
6 far as stocks of concerns and harvest in that area.

7

8 If adopted, this proposal would provide
9 Federally-qualified subsistence users an additional gear
10 type that is more selective and in some cases more
11 efficient than set gillnets. The recognized practice of
12 subsistence harvesting is, again, is to take what a
13 person needs and we do not expect any increase in harvest
14 or any significant increase. These gear types, again,
15 would allow fishermen to target specific fish and reduce
16 the take of non-targeted fish. And if adopted as
17 proposed, to allow the use of beach seines in the
18 tributaries, however, it could place some groups of
19 spawning and salmon staging near the mouth at risk of
20 over exploitation. Those are concerns that have been
21 brought up to me. Reports indicate that beach spawning
22 populations are genetically well mixed and do not appear
23 to be at as much risk of over exploitation using beach
24 seines as tributary spawning populations.

25

26 And another potential impact for the use
27 of this gear types is social, as we mentioned in some of
28 the others where subsistence and sportfishermen may be
29 targeting -- be fishing in the same areas.

30

31 Thank you, Mr. Chair.

32

33 CHAIRMAN FLEAGLE: Thank you. I have a
34 question. Being not familiar with beach seines, my
35 people come from the upper Kobuk, yeah upper Kobuk and
36 upper Koyukuk River where they did seine but they used a
37 small net for whitefish that they tossed out, so I'm
38 trying to picture somebody tossing out a 150 foot net if
39 25 fathoms is -- can somebody explain to me what the
40 process for beach seine? I guess by definition it
41 doesn't include the use of a boat, right?

42

43 Randy.

44

45 MR. ALVAREZ: Thank you, Mr. Chair. Yes,
46 it does. When you -- the method of beach seining is you
47 -- it takes more than one person, you got to have
48 somebody on the beach holding the end of the net, the
49 rest of the net's in the boat and then you kind of feed
50 it out and go around in a circle around a school of fish,

1 and that's kind of how beach seining, and then you just
2 go back to the beach so you're kind of circling fish
3 there close to the beach. It's -- you're not beach
4 seining -- this kind of seining is not out in open water
5 where you just make a circle, it's just off the beach and
6 back to the beach.

7
8 CHAIRMAN FLEAGLE: Excellent. Thank you.
9 Haven't seen it.

10
11 Other questions for Rod Campbell's
12 presentation, Board members.

13
14 (No comments)

15
16 CHAIRMAN FLEAGLE: Hearing none, we'll go
17 ahead and move to the summary of written comments and we
18 don't have any for that, right?

19
20 MR. EDENSHAW: No, Mr. Chair.

21
22 CHAIRMAN FLEAGLE: Thank you, Cliff.

23
24 Public testimony, we don't have any
25 cards. Is there anybody here that wishes to testify to
26 this issue.

27
28 (No comments)

29
30 CHAIRMAN FLEAGLE: Regional Advisory
31 Council recommendation, Randy.

32
33 MR. ALVAREZ: Thank you, Mr. Chair. Our
34 Council supports the proposal with the modification that
35 exclude the tributaries, as Mr. Campbell has stated,
36 concerned about the over exploitation of the fish that
37 are already in the tributaries, we would -- we support
38 seining but fish that are kind of moving around in the
39 lake, basically what this -- what this amounts to, not
40 fish that are staged in a little tributary. And we -- we
41 kind of wanted to not jeopardize individual streams, so
42 we support the proposal excluding the tributaries to kind
43 of protect that.

44
45 We did not put a limit on the length as
46 the State of Alaska recommends. Most people use --
47 utilize Bristol Bay nets, which are 50 fathoms longs -- a
48 25 fathom net is kind of short for doing this and at the
49 meeting over in Dillingham, the Board of Fish meeting,
50 Dr. Fall, the subsistence -- of the Subsistence

1 Department had a picture of seining in Lake Iliamna in
2 the late 60s and it was -- it was probably about a 50
3 fathom net, which was up by -- across from Pile Bay up in
4 Iliamna Lake, so there had been evi -- he just showed
5 that for evidence that there was seining done in Iliamna
6 Lake by subsistence people but it's -- we did not support
7 a length because having it too short, it'd just make it a
8 lot more work, you'd have to do it a lot more -- a lot
9 more seining to catch what you want. And this method
10 would just -- just to try to catch all your -- what you
11 -- your -- how much you would like with, you know, least
12 amount of effort.

13

14 So, thank you.

15

16 CHAIRMAN FLEAGLE: Thank you, Randy.

17 Questions.

18

19 MS. GOTTLIEB: Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Judy.

22

23 MS. GOTTLIEB: Randy, I was going to ask
24 because this is going to come up in a little bit, whether
25 there was any discussion when you were talking about area
26 of whether you were including Six Mile Lake when you were
27 talking about Lake Clark?

28

29 MR. ALVAREZ: Yeah, that was basically
30 the -- what was my understanding, Six Mile Lake, the
31 Preserve takes in part of that so I think we -- my
32 understanding and feeling is, yes, that was, but not
33 Iliamna Lake because that is not State and our -- our
34 comments were just related to Lake Clark and Six Mile
35 Lake, not the Iliamna Lake, but we would support that --
36 we supported that, too, at the Board of Fish, that --
37 when the Board did for Lake Iliamna although we did not
38 support their 25 fathom limit.

39

40 MS. GOTTLIEB: Thank you.

41

42 CHAIRMAN FLEAGLE: Jerry.

43

44 MR. BERG: Thank you, Mr. Chair. Yeah,
45 Randy, my understanding was that the 25 fathom length
46 came about because setnets are required to be no longer
47 than 25 fathoms and that's why the Board of Fish went
48 along with that because a lot of people would use their
49 set gillnets kind of as beach seines. Did you guys
50 discuss that at all, that connection?

1 CHAIRMAN FLEAGLE: Randy.

2

3 MR. ALVAREZ: At our RAC meeting, no, we
4 did not discuss that because we didn't know that the
5 Board of Fish was going to be taking up this issue over
6 -- in December over in Dillingham so we did not discuss
7 the limit and as I was saying, I've seined before and 25
8 fathoms is kind of short, it's hard to -- hard to catch
9 seined fish with a too short of net.

10

11 CHAIRMAN FLEAGLE: All right, thank you.
12 We'll now turn to.....

13

14 MR. PROBASCO: Rod Campbell.

15

16 CHAIRMAN FLEAGLE: Oh, Rod Campbell,
17 please.

18

19 MR. CAMPBELL: Thank you, Mr. Chair. I
20 just might add a little bit to that. I was at the
21 Dillingham Board of Fish meeting and participated in the
22 committee. And as Mr. Alvarez said, the Subsistence
23 Division was very clear that they wanted to have set
24 gillnets to be used -- be allowed to be used as a drift
25 gillnet, and they went in and made special clarifications
26 in their regulations, and the State can address that much
27 better than I can, but that was a specific thing that was
28 brought up, to allow people that already had set
29 gillnets, which is already mentioned in this area as a
30 maximum of 25 fathoms, to be able to use those as a drift
31 gillnet, that was discussed and I don't believe there was
32 -- and besides that, I can't recall any other discussions
33 on that except people were using this type of gear as a
34 beach seine.

35

36 Thank you.

37

38 CHAIRMAN FLEAGLE: Thanks, Rod. We'll
39 now turn to the State Fish and Game for comments, John
40 Hilsinger.

41

42 MR. HILSINGER: Thank you, Mr. Chairman.
43 The ADF&G recommendation on this proposal found on Page
44 333 with our detailed comments is, again, to take no
45 action because of the Board of Fisheries just took action
46 to allow beach seines and gillnets to be used as seines
47 in Lake Clark, Six Mile Lake and Lake Iliamna, excluding
48 all tributaries. Under the new State regulation, which
49 will go into effect this coming 2007 season, the beach
50 seines are limited to 25 fathoms in length. And I agree

1 with Mr. Campbell that that was done because that's the
2 length of the set gillnets in that area.

3
4 It also was brought up at the Bristol Bay
5 Regional Advisory Council that people that had experience
6 with these beach seines in some of these lakes felt that
7 they could be very effective and I suspect, although I
8 don't know, that the 25 fathom length would help
9 alleviate any concerns about the effectiveness of this
10 type of gear on schools of fish in the lakes.

11
12 So there was considerable documentation
13 of seining as traditional gear type in Bristol Bay, so in
14 conclusion the Department supports the idea of allowing
15 seining and, again, suggests that the best way to
16 accomplish this is by taking no action.

17
18 Thank you, Mr. Chairman.

19
20 CHAIRMAN FLEAGLE: Questions.

21
22 (No comments)

23
24 CHAIRMAN FLEAGLE: Thanks, John.

25
26 The InterAgency Staff Committee
27 recommendation, Steve Klein.

28
29 MR. KLEIN: Thank you, Mr. Chair.
30 InterAgency Staff Committee supports the proposal with
31 modification consistent with the Bristol Bay Council,
32 which would allow use of beach seines in Lake Clark but
33 not its tributaries.

34
35 And our justification was that this would
36 provide an additional gear type for harvest and not
37 present a conservation concern. It would provide users a
38 selective way to harvest salmon and avoid harvest of more
39 salmon than desired and if there was too many they could
40 be released. It would also probably result in better
41 quality of salmon harvested compared to gillnets.

42
43 The Staff Committee also supported the
44 Council's recommendation that it exclude tributaries to
45 protect spawning and staging fish.

46
47 And, again, with this proposal the Board
48 of Fish met after the InterAgency Staff Committee met.
49 In your handout on the last page is the summary of
50 Fisheries Proposal 07-07, here's there's two differences

1 among the various recommendations, both have been
2 discussed.

3

4 In terms of seine length the original
5 proposal, Council recommendation and Staff Committee
6 recommendation was to not limit length. Board of Fish
7 action was to limit length to 25 fathoms for both
8 gillnets and seines.

9

10 And then in terms of area, the original
11 proposal, Council and Staff Committee recommendation
12 addressed Lake Clark and excluded its tributaries in the
13 case of the Council and the Staff Committee. Board of
14 Fish action was taken on Lake Clark, Six Mile Lake,
15 Iliamna Lake and excluded all tributaries. The Staff
16 working with the Staff Committee members available during
17 the holidays recommended that we include Six Mile Lake in
18 addition to Lake Clark and that we limit beach seines to
19 25 fathoms.

20

21 In terms of the 25 fathoms, we didn't
22 have the benefit of Mr. Alvarez' testimony provided here
23 today. The Staff Committee members that worked on this,
24 it was basically the rationale to adopt the 25 fathom
25 maximum was to be consistent with the Board of Fish
26 action. As Mr. Alvarez' testified that may actually be
27 too short and, in fact, at least in Iliamna 50 fathom
28 seines have been utilized so we would -- I would
29 encourage the Board to take that up under their
30 deliberation.

31

32 In the case of Lake Iliamna, that's
33 outside Federal jurisdiction and no action would -- we
34 recommend no action.

35

36 That concludes the Staff Committee
37 recommendation and the subsequent Staff analysis.

38

39 Mr. Chair.

40

41 CHAIRMAN FLEAGLE: Okay, thanks, Steve.

42 Questions.

43

44 (No comments)

45

46 CHAIRMAN FLEAGLE: Ready to start
47 discussions. Judy.

48

49 MS. GOTTLIEB: Mr. Chairman. Just for
50 clarification, since we don't really have a very good map

1 of Six Mile Lake in our book, I have one page here I'll
2 just maybe back and forth -- distribute it briefly with
3 Six Mile Lake circled. It's basically on the southern
4 end of Lake Clark Lake and has approximately one-half
5 mile of Park land owned that's adjacent to it, so it's a
6 little bit complicated and up until now, to some extent,
7 hadn't unanimously been considered part of the Federal
8 Program.

9

(Pause)

10

11

12

CHAIRMAN FLEAGLE: Thank you, Judy.

13 Niles.

14

15

MR. CESAR: Thank you, Mr. Chairman. I
16 was a little concerned about the, and I guess I still am,
17 about the length of the net, you know, the original
18 proposal was not to limit the length of the net. I don't
19 know if I would support that either but, you know, I do
20 think that the testimony by Mr. Alvarez in terms of the
21 efficiency of a 25 fathom gillnet or beach seine as
22 opposed to a 50 fathom, I mean obviously, I think there's
23 some validity there because you never can tell how close
24 they are, you know, to running to the shoreline and
25 extending out there further does give you that -- more
26 opportunity, if the fish are there. Again, this is one
27 that we don't really have numbers on and we don't really
28 -- haven't been told there is a conservation concern
29 about, so I wonder why the Staff Committee -- I mean I
30 hear what they said, they had a discussion on it and
31 decided to adopt, you know, or try to match the Board of
32 Fisheries. And in the discussion that the State had as
33 well as their documentation. I don't see a reason that
34 we would necessarily limit ourselves to 25 fathoms.

35

36

I think the issue is what is in the best
37 interest of the subsistence fishermen. How can we allow
38 them to get their take in the most efficient, productive
39 way and get on with it. So I'm a little concerned about
40 that, and maybe further discussion will clarify that for
41 me.

42

43

CHAIRMAN FLEAGLE: Judy.

44

45

MS. GOTTLIEB: Thank you, Mr. Chair. I
46 guess a couple other thoughts and comments about the
47 beach seine. The way I understand it is the quality of
48 the fish would be higher versus using a gillnet and that
49 in a beach seine, because the fish are pretty much taken
50 live, you can sort out any incidental catch of fish that

1 you wouldn't want. So it's a type of net that would do
2 less damage than the gillnet.

3

4 CHAIRMAN FLEAGLE: Steve Klein.

5

6 MR. KLEIN: Mr. Chair. I'd like to try
7 to provide a little clarification here.

8

9 First, for the Staff Committee, their
10 recommendation was to have no limit on the seine length,
11 and it was only the subsequent discussion among select
12 Staff Committee members that were around during the
13 holidays and Rod and myself, where we recommended the 25
14 fathom maximum.

15

16 I think part of the discussion -- so I
17 want to make that clarification. Part of the discussion
18 is the use of gillnets as the seine, and if you're -- and
19 you could fish it still the way where Mr. Alvarez talked,
20 where somebody's holding it on shore and circle the fish
21 and then bring it in, you would have some gilling if you
22 used your set gillnet because of the mesh size versus a
23 seine, which typically has a smaller mesh and it would be
24 totally encircled. So there would be some concern in
25 terms of the length with some gilling, now, how much
26 gilling occurs I really can't answer that when you use a
27 gillnet mesh as the seine. And I would ask Mr. Campbell
28 if he had anything else to add to it.

29

30 CHAIRMAN FLEAGLE: Rod Campbell.

31

32 MR. CAMPBELL: No, Mr. Chair, I think he
33 covered it very well. Thank you.

34

35 CHAIRMAN FLEAGLE: Sarah Gilbertson and
36 then I have a couple other hands, Bert, and then Jerry.

37

38 MS. GILBERTSON: Thank you, Mr. Chairman.
39 It's a little bit off the subject but having seen the map
40 of Six Mile Lake, I think -- I understand that these
41 jurisdiction questions are being currently litigated in
42 court but I wouldn't be doing my job if I didn't express
43 concern. Six Mile, there's a portion of the lake that is
44 adjacent to the Park land. But just on behalf of the
45 State expressing jurisdiction concerns.

46

47 CHAIRMAN FLEAGLE: Thank you for that
48 Sarah. The side discussion, can we not do this, please,
49 while we're discussing.

50

1 UNIDENTIFIED VOICE: Sorry.
2
3 CHAIRMAN FLEAGLE: Thank you. I have
4 Bert Adams, and then Jerry and then Pete, and then Denny.
5 It sounds like we got a full slate here. Go ahead, Bert.
6
7 MR. ADAMS: Okay, thank you, Mike. I
8 kind of find it impractical to see something here that
9 would put a limit of 25 fathoms on a beach seine. That's
10 a very short, you know, length of net to try to encircle,
11 you know, a school of fish, you know, close to shore. So
12 I don't know if Randy has, you know, tried that or if he
13 knows of anybody in his area that have done that and have
14 been successful, but I don't think that would be very
15 practical, you know, to put a limit there.
16
17 There's such a thing as a dime set that
18 you can make real quick, you know, around a school of
19 salmon. Normally for sockeye, because they travel, you
20 know, pretty fast, you know, I'm sure Niles might be
21 familiar with a dime set but it's very quick, and you
22 could easily, you know, chase, you know, the salmon away
23 if you're trying to do it with a lot shorter net. So I'm
24 just kind of concerned about that.
25
26 Thank you.
27
28 CHAIRMAN FLEAGLE: Thank you. Jerry.
29
30 MR. BERG: Yeah, you know, the whole
31 discussion around the 25 fathoms centered around the
32 Board of Fish action and the length of set gillnets is my
33 understanding, so I was just going to ask Randy if he
34 thought people would actually go out and buy nets that
35 were longer than 25 fathoms or are they more likely to
36 just use their existing set gillnets that are already
37 required to be 25 fathoms, do you think people would
38 actually go out and buy separate seines?
39
40 CHAIRMAN FLEAGLE: Randy.
41
42 MR. ALVAREZ: Mr. Chair, thank you.
43 Jerry, our nets are 50 fathoms long. When they make a
44 subsistence net they cut it in half. So most of the nets
45 -- well, all the nets start out at 50 unless you cut it
46 down.
47
48 So, you know, thank you.
49
50 CHAIRMAN FLEAGLE: All right, thanks. I

1 had Pete Probasco, and then after that Denny and then
2 Ralph.

3

4 MR. PROBASCO: Mr. Chair. For the
5 Board's consideration on our Federal regs, as they deal
6 with gear, we do have a definition in our regs for set
7 gillnet gear which says a set gillnet is 25 fathoms. On
8 beach seines we are silent on the mesh size that
9 constitutes a beach seine. And so consequently if we
10 were to adopt a greater length for a beach seine and
11 remain silent on the mesh size for that beach seine, we,
12 essentially increase the length of a legal set gillnet as
13 well.

14

15 Mr. Chair.

16

17 CHAIRMAN FLEAGLE: That would have to be
18 clarified then because it doesn't appear to be the intent
19 of the proposal, so I guess we would have to go there
20 when we get there.

21

22 Denny.

23

24 MR. BSCHOR: I think Pete just covered
25 one of my concerns on that, is the size of the mesh, and
26 if gillnets are going to be used, you know, the
27 conservation issue raises higher in my mind, whatever the
28 length is, especially if the length's longer.

29

30 CHAIRMAN FLEAGLE: Okay, appreciate that.
31 Ralph.

32

33 MR. LOHSE: Thank you, Mr. Chair. Well,
34 I'm kind of a visual person so I'll just give you guys a
35 point of reference. If you took this circle right here,
36 right now, this circle is what a 25 fathom gillnet -- I
37 mean a 25 beach seine will go. These tables, around this
38 corner, right now is 25 fathoms. So if you want to see
39 how far 25 fathoms would go, add those tables to the end
40 of these and that's the kind of circle you'll have.

41

42 CHAIRMAN FLEAGLE: Is it enough?

43

44 (Laughter)

45

46 MR. LOHSE: It's been way past the
47 statute of limitations that I ever used a beach seine, I
48 think it's been close to 40 years ago and we used a lot
49 less than this but we were beach seining a small amount
50 of fish for a village, and in small waters. But I don't

1 know, I would think personally that I could catch all the
2 fish I needed to eat with a beach seine that was this
3 long, that would be my personal opinion.

4

5 CHAIRMAN FLEAGLE: Thank you. I was just
6 curious as to, you know, the visual is good, but what the
7 intent, whether it was good or bad, enough or not enough.

8

9 Randy.

10

11 MR. ALVAREZ: Thank you, Mr. Chair. You
12 can -- 25 fathoms will work but as I was saying you got
13 to do it a lot more times and, you know, there's only so
14 many areas. You know, once you get those fish pretty
15 spooked, the more you do it the less you're going to --
16 the less you're going to catch, you know, because they're
17 going to be -- the size -- you have to be so close to the
18 fish when you're seining them, try to keep them inside
19 your seine and with 25 fathoms you're going to be right
20 by them trying not to spook them and the more you have to
21 try the harder it's going to be. And most people, when
22 they do this, they're trying to do -- catch what they
23 need in one set and most of the time you've got more than
24 one person so there's probably two people that are trying
25 to catch subsistence fish.

26

27 And as for our committee, we -- under the
28 assumption to use gillnets and probably a little --
29 probably more than half of the fish are probably going to
30 be gilled when you're using a gillnet, when you're doing
31 this, but this, what we supported, being able to use a
32 regular gillnet, what -- what the commercial fishery
33 uses, the same size and depth is what's available to
34 everybody. And to have to order special nets and seines
35 from -- well, the net companies would be a bigger cost,
36 and most of the time when this seining is going on it has
37 been -- not all the time, but most of the time it's been
38 with gillnets that's what's available.

39

40 CHAIRMAN FLEAGLE: Okay, thank you,
41 Randy. I think before we take a motion on this issue it
42 sounds like we need to think a little bit about the
43 definitions of seine or whether we're going to allow the
44 use of gillnets, et cetera, et cetera, I think that it's
45 probably a good thing to do over lunch. Why don't we
46 break and with the cold temperatures, why don't we take a
47 little longer than normal lunch break.

48

49 MR. PROBASCO: How does that affect
50 Randy's flight?

1 CHAIRMAN FLEAGLE: Randy, do you have to
2 get out of here?

3
4 MR. ALVAREZ: No, I wasn't planning on
5 leaving until Thursday, so I'm available today, tomorrow
6 and, you know, if you need me Thursday I could stay
7 longer, too, but I'll just -- I'll be here as long as I
8 have to be here.

9
10 CHAIRMAN FLEAGLE: Okay, thanks. I know
11 there's, at least, a few people in the audience that
12 might want to go cycle their vehicle for awhile, let it
13 warm up so that it's not totally stone cold when we leave
14 here this evening. So why don't we plan on returning to
15 session at 1:15, that gives us a little longer lunch
16 break to accommodate.

17
18 (Off record)

19
20 (On record)

21
22 CHAIRMAN FLEAGLE: Good afternoon. The
23 Federal Subsistence Board is now back in session. And we
24 left hanging the issue Proposal 07. And I understand,
25 Randy, you want to start us out with some more
26 discussion, Randy Alvarez.

27
28 MR. ALVAREZ: Thank you, Mr. Chair. This
29 relates back to the first proposal for driftnetting in
30 the Togiak River. My question was, that with having to
31 cut the fins off, the fish, is that consistent with the
32 current regulation where the setnet subsistence fish, are
33 they having to cut those fins off those fish also? If
34 you have to cut the fins off the fish when you're
35 driftnetting, it would be a different regulation than
36 what it is now, wouldn't it?

37
38 CHAIRMAN FLEAGLE: I'm not sure. Hang
39 on, why don't we just store that question for a minute
40 and let's go ahead and finish up on Proposal 7 and then
41 I'll open up discussion on the suite of on the whole
42 area, again, Randy. But Pete's got an answer for you.

43
44 But back to Proposal 7 that we're working
45 on, on the seining issue, we had some questions in Board
46 member's minds about whether the mesh size should be
47 different than that of setnet, whether the length should
48 be limited to 25 fathoms or unlimited as the State says
49 [sic] and we don't have a motion on the table at this
50 time, but if somebody would like to have some more

1 discussion or if we're ready for a motion, then at any
2 rate that's where we're at.

3
4 Judy.

5
6 MS. GOTTLIEB: Thank you, Mr. Chair.
7 Yeah, I think we do have a few questions that still seem
8 unresolved.

9
10 One would be, if we were talking about
11 beach seines, I don't think I would have a problem if it
12 were 50 fathoms, but if it sounds like what we're talking
13 about is using gillnets, then I think the 25 fathom limit
14 is, in fact, appropriate, because we do know those are
15 more effective and result in higher mortality.

16
17 The second issue has to do with Six Mile
18 Lake. It really hadn't been clear up to now and maybe it
19 still isn't 100 percent clear, but it hadn't been clear
20 that Six Mile Lake was, if you will, within Federal
21 jurisdiction and hasn't really been managed that way up
22 until now. The in-season manager has not really attended
23 to that area. So I'm wondering if perhaps we could defer
24 that part of the proposal, that just affects Six Mile
25 Lake, perhaps until maybe we could take it with the Kenai
26 proposals or defer it next year, but still address the
27 proposal with respect to Lake Clark at this meeting? I
28 guess the concern is, I don't think we've really spent
29 enough time analyzing what the potential impacts are to
30 Six Mile Lake from this. Our Lake Clark SRC, I don't
31 believe, talked that much about Six Mile, I'm not sure,
32 so, again, this would be new information for them to
33 review. And I think maybe most importantly the
34 boundaries are not clear, to me, what we're talking about
35 for Federal management in Six Mile Lake and that could
36 have some effects on the Newhalen or Lexie Creek and so
37 on and so forth.

38
39 CHAIRMAN FLEAGLE: Okay, thank you, Judy,
40 good comments.

41
42 Now, I'm not sure, I think I asked this
43 question after the break, but I think it'd be good to ask
44 because I think I got a couple of different answers.
45 When the State established its seining regulation for
46 Lake Clark did it define a mesh size for the net.

47
48 John.

49
50 MR. HILSINGER: Mr. Chairman. No, it did

1 not. And it's my understanding that the Board of
2 Fisheries intended that people could use their gillnets
3 in order to seine, that's typically, when you talk about
4 seining in Western Alaska, that's typically what you're
5 talking about. We have other areas that I'm familiar
6 with, like Norton Sound, where people seine and they
7 seine with their gillnets, and so that's what the Board
8 intended and they did not set any mesh size.

9

10 Thank you.

11

12 CHAIRMAN FLEAGLE: Okay. I think there
13 may have been some impression here that we're discussing
14 a whole different net gear than with a special net. So
15 if we're discussing gillnets then I just want to make it
16 clear that that is what we're discussing since that's
17 what the State did, unless we want to go to a defined
18 seining net with a different mesh.

19

20 Randy, you have a question or comment.

21

22 MR. ALVAREZ: Yes. The RAC, when we
23 discussed the proposal, we supported the proposal as
24 written by the SRC, which didn't state mesh size or
25 length of the seine. And talking to Lee Fink earlier, a
26 little while ago, I guess most of the seining is done
27 with 25 fathoms, but they do use gillnets also but there
28 also is seine nets available sometimes, they have in the
29 past, so I think we supported the no mesh size on that as
30 it was written.

31

32 Thank you.

33

34 CHAIRMAN FLEAGLE: Pete.

35

36 MR. PROBASCO: Thank you, Mr. Chair. And
37 thank you for your questions. The concern is when we
38 look at exceeding 25 fathoms and we're trying to address
39 beach seines. Right now our restrictions are for
40 gillnets not to exceed 25 fathoms. And because we don't
41 define beach seines by mesh size and if we wanted to
42 increase the length of the beach seine, like Judy
43 suggested, to 50 fathoms, without a definition of mesh
44 size, then we're technically allowing a beach seine to
45 whatever length the Board decides on to be gillnet width.

46

47 Mr. Chair.

48

49 CHAIRMAN FLEAGLE: Right. I think we
50 understand that. All right, other discussion, questions,

1 deliberations, motions. Are we ready for adjournment?

2

3 (Laughter)

4

5 (Pause)

6

7 MS. GOTTLIEB: Mr. Chair.

8

9 CHAIRMAN FLEAGLE: Judy.

10

11 MS. GOTTLIEB: Thank you. I'll move that
12 we amend our current regulation and this is consistent
13 with the Bristol Bay Regional Advisory Council and the
14 InterAgency Staff Committee recommendation with a little
15 bit of modification, amend the current regulation to
16 read:

17

18 You may also take salmon by beach seine
19 in Lake Clark excluding its tributaries.

20

21 And then I think we ought to have a
22 statement in there that the beach seines or nets may not
23 exceed 25 fathoms in length.

24

25 CHAIRMAN FLEAGLE: Do we have a second.

26

27 MR. OVIATT: I'll second the motion.

28

29 CHAIRMAN FLEAGLE: All right, we do have
30 a second. We have discussion. And basically I think the
31 best document to use for the language would be that
32 provided by the ISC that was on the table, the second
33 page, the comparison, the language there would fit your
34 motion with the deletion of the reference to Six Mile
35 Lake. So it does include the statement on the net
36 length. Would you like to speak to your motion, Judy,
37 supporting statements.

38

39 MS. GOTTLIEB: Sure. This continues the
40 prohibition in tributaries so that this regulation would,
41 therefore, protect some of the spawning aggregations.
42 The harvest is basically dictated by the need and this
43 increased efficiency would not expect then to create a
44 larger harvest than usually happens but also creates
45 better use of people's time and fuel money, and if
46 possible any incidental takes can be released pretty
47 quickly from this method.

48

49 CHAIRMAN FLEAGLE: Other Board members.

50 Jerry.

1 MR. BERG: Thank you, Mr. Chair. It does
2 seem like most people are going to be using their set
3 gillnets for beach seines so it does seem like it makes
4 most sense to stick with 25 fathoms. And somebody could
5 still submit a proposal next year to allow greater length
6 with different size mesh if they so chose to do that.
7 And it does seem like it's a more selective harvest
8 method, and so for that reason I'll support the motion.

9
10 I do think, you know, we do need to
11 address the Six Mile Lake issue at some point so I think
12 it's a good idea maybe to just defer it at this time and
13 just address it when we figure out some of those boundary
14 issue details at a later date.

15
16 Thank you, Mr. Chair.

17
18 CHAIRMAN FLEAGLE: Okay, thank you. Once
19 we vote on this I'll ask Staff as to what the appropriate
20 procedure of what deferral of just a small portion since
21 this wasn't a part of the original proposal but is
22 basically a Staff recommendation, I'm not sure what the
23 process would be. You could think about it for a minute.
24 Let's work on the motion that we have before us.

25
26 Did you have a comment Denny.

27
28 MR. BSCHOR: Yes, Mr. Chair. With that
29 caveat that Jerry just explained, that we could revisit
30 this, these items that he just mentioned, although in one
31 place we go with Board of Fish action and other places we
32 don't. We do -- we aren't going with the RAC's
33 recommendation at this point but they have the
34 opportunity to come back and say that -- give their
35 further consideration of this, I can go along with this
36 proposal.

37
38 CHAIRMAN FLEAGLE: Niles.

39
40 MR. CESAR: I also will support this
41 proposal. I would just hope that Staff Committee can
42 address the issue of Six Mile Lake in a reasonable time.
43 I think that it's February and we're probably looking at
44 July and I don't know if there's a possibility to take
45 this up at our May meeting somehow, but I just want us
46 not to let this fall off the table too far.

47
48 CHAIRMAN FLEAGLE: Okay, sounds good.
49 We'll definitely address the issue as to how to deal with
50 procedurally on that portion.

1 George.

2

3 MR. OVIATT: With the modifications that

4 have been talked about, and reducing the size -- or not

5 reducing the size but limiting the size of the net. And,

6 I, too, encourage Staff to work on the Six Mile as soon

7 as possible. I think it's important that we try and move

8 this forward. But with what has been said before by

9 other members I intend to support this, too.

10

11 CHAIRMAN FLEAGLE: Was that the call for

12 the question?

13

14 MR. OVIATT: (Nods affirmatively)

15

16 CHAIRMAN FLEAGLE: Question's called on

17 the proposal, on the as motion, Pete, please poll the

18 Board.

19

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

21 Final action on Proposal FP07-07, motion reads as

22 follows:

23

24 Outside the boundaries of any district,

25 you may take salmon by set gillnet only,

26 except that you may also take salmon by

27 spear in the Togiak River, excluding its

28 tributaries.

29

30 You may also take salmon by beach seines

31 in Lake Clark, excluding their

32 tributaries.

33

34 Beach seines may not exceed 25 fathoms in

35 length.

36

37 Mr. Fleagle.

38

39 CHAIRMAN FLEAGLE: Aye.

40

41 MR. PROBASCO: Ms. Gottlieb.

42

43 MS. GOTTLIEB: Aye.

44

45 MR. PROBASCO: Mr. Cesar.

46

47 MR. CESAR: Aye.

48

49 MR. PROBASCO: Mr. Oviatt.

50

1 MR. OVIATT: Aye.
2
3 MR. PROBASCO: Mr. Bschor.
4
5 MR. BSCHOR: Aye.
6
7 MR. PROBASCO: Mr. Berg.
8
9 MR. BERG: Aye.
10
11 MR. PROBASCO: Mr. Chair. Motion
12 carries, six/zero.
13
14 CHAIRMAN FLEAGLE: Thank you, Pete.
15
16 MS. GOTTLIEB: Mr. Chair.
17
18 CHAIRMAN FLEAGLE: That appears to
19 conclude the suite of proposals for the Bristol Bay area,
20 however, I do have a few issues that still need to be
21 raised.
22
23 One is the consideration of Six Mile Lake
24 and how the procedure would relate to that. And then
25 after that we will go back to providing an answer to
26 Randy's question on clipping the fins in the Togiak
27 driftnetting issue. And then I was prenoticed that there
28 was going to be a request for reconsideration of a prior
29 action this morning. So we'll do that in that order.
30
31 First is the process for bringing the Six
32 Mile Lake portion of this proposal back, Pete, you had a
33 comment as to the process.
34
35 MR. PROBASCO: Well, first, Mr. Chair, if
36 I may a question, I think that what Ms. Gottlieb was
37 asking for Staff to clarify boundaries and jurisdiction
38 issues dealing with Six Mile Lake; is that correct, Ms.
39 Gottlieb?
40
41 MS. GOTTLIEB: (Nods affirmatively)
42
43 MR. PROBASCO: Mr. Chair, that can be
44 done as directed by the Board through OSM and the Staff
45 Committee and we can report back to the Board at a Board
46 work session and then the Board can reschedule on how
47 they would like to deal with that issue based on the
48 information that's provided at a work session.
49
50 CHAIRMAN FLEAGLE: Well, assuming that

1 that information would support the Board adding Six Mile
2 to this action, how would the process look like after
3 that.

4

5 Judy.

6

7 MS. GOTTLIEB: Thank you, Mr. Chair. The
8 Lake Clark Subsistence Resource Commission meets about
9 mid-February, Lee?

10

11 MR. FINK: (Nods affirmatively)

12

13 MS. GOTTLIEB: About mid-February. So
14 that would be, I think a really ideal time to aim for in
15 terms of information on a Staff analysis on Six Mile Lake
16 from this kind of fishery. So that's one option and a
17 great place to start and then it would go through the RAC
18 after that.

19

20 CHAIRMAN FLEAGLE: Pete.

21

22 MR. PROBASCO: Mr. Chair. Ms. Gottlieb.
23 I guess we got two issues then.

24

25 First, was the question of jurisdiction
26 which we would look at regulations and review and discuss
27 those. The second point that you're making then is
28 getting that information to the public for their
29 comments, correct?

30

31 MS. GOTTLIEB: (Nods affirmatively)

32

33 MR. PROBASCO: Okay.

34

35 CHAIRMAN FLEAGLE: Basically I think what
36 I heard interest by Board members was that they don't
37 have any objection to adding Six Mile Lake to this
38 action, we just need to have the justification -- I mean
39 the jurisdiction issue explained and then how to
40 correctly bring this back to the Board. Because if we
41 dispense with this proposal now we don't have the vehicle
42 to do it under this proposal, how would we then defer
43 just this minor portion of it, and that's my procedural
44 question. I'm just not familiar with your process.

45

46 You know, would it be redrafted as
47 another proposal that we would accept at the next winter
48 fisheries meeting or, you know, Niles has expressed an
49 interest of bringing it back sooner than that. Would it
50 be a fisheries proposal at the game meeting or, you know,

1 these are the questions that I'm trying to throw out
2 there and see what the process would look like.

3

4 MR. PROBASCO: Mr. Chair. You are
5 correct, this would take final action on Proposal 7, and
6 that's why I was alluding to the work session. We could
7 look at that information and assuming that it does
8 recommend to include Six Mile Lake, then we would have
9 Staff generate a proposal and it could go into our
10 regular fishery proposal process which would result in us
11 dealing with it at our next fisheries cycle, which is
12 next fall.

13

14 I think the important thing to note that
15 we're talking about jurisdiction, the practical -- what's
16 happening on the grounds, if you look at the Board of
17 Fish action, Alaskan residents will still be able to
18 subsistence fish in Six Mile Lake with 25 fathom gear.
19 So what we're trying to clarify is the jurisdiction point
20 at this time.

21

22 Mr. Chair.

23

24 CHAIRMAN FLEAGLE: Okay, I accept that,
25 it's a good point.

26

27 Niles.

28

29 MR. CESAR: Well, the sense that I get
30 from, you know, this end of the table, the three of you
31 keep whispering in my ear here, is that, we would really
32 like to see if we could accomplish something to affect
33 the fishery which would begin, we assume, in July. But,
34 you know, with the action we've taken we don't have a
35 vehicle. To bring forth a new motion throws it into the
36 regulatory cycle for next year, it seems to me that we've
37 wasted one opportunity that we may not need to do. I
38 mean I don't know, maybe if we had voted to table that
39 one portion of, you know, the motion probably would have
40 been the most effective way, to table it until May, we
41 could have done that but we didn't. So I'm not real
42 positive what the -- how to do it from here.

43

44 CHAIRMAN FLEAGLE: Okay, thank you,
45 Niles. Well, I understood where you were coming from and
46 I understood your sense of wanting to do something
47 quickly to get this accomplished, but Pete just, you
48 know, I mean like hit me on the side of the head and made
49 me realize that no matter what we do everybody is still
50 going to beach seine on Six Mile Lake because the State

1 has already allowed it. And so it's kind of moot.

2

3 I mean we would come in with our mirrored
4 regulations which would doubly allow it, I guess, I mean
5 not double-harvest, but allow it on the Federal portion
6 of Six Mile Lake, wherever we have jurisdiction, but
7 right now it will be allowed for anyone anywhere. So
8 it's kind of moot as to whether we do it now or in the
9 next cycle. And so I think that relieves mine a little
10 bit about trying to do it expeditiously.

11

12 Judy.

13

14 MS. GOTTLIEB: Mr. Chair. I guess I hear
15 what you're saying but this is kind of exactly what we
16 were saying earlier in the meeting, that it is different
17 if it's a Federal regulation than a State regulation.
18 You're right, on the ground for this particular summer
19 season there may not be a practical difference, but there
20 is a difference in how this regulation is formed. Who's
21 eligible, so on and so forth.

22

23 So I think I bet the Lake Clark SRC would
24 be more than willing to put together a proposal that just
25 addresses Six Mile Lake, although, to be honest I'm not
26 sure if that was their original intent or not. But I
27 think it would be good to go back to them and find that
28 out, if they want to pursue it, they can pursue it.

29

30 But that's why it would be really good to
31 have information for them, you know, in about five weeks.

32

33 Thank you.

34

35 CHAIRMAN FLEAGLE: All right, that's a
36 good point, too. Pete, go ahead.

37

38 MR. PROBASCO: Mr. Chair. Ms. Gottlieb.
39 We can have, as far as the jurisdictional question
40 answered by that period of time. I'm still technically
41 sticking to our process because we've done final action
42 on Proposal 7, we would have to have another vehicle so
43 that all parties, the Council, the SRCs, the public, the
44 State, et cetera, would have an opportunity to comment on
45 that, and the best vehicle for that is our call for
46 proposals through the fisheries cycle.

47

48 CHAIRMAN FLEAGLE: I concur. I think
49 that's the cleanest way to do it and we stay within a
50 defined process.

1 Niles.

2

3 MR. CESAR: Mr. Chairman. That's
4 probably the way we probably should do it, but let me
5 just throw this wrinkle out there because it's there.
6 What's to stop a Board member, who voted in the
7 affirmative, which we all did, for asking for
8 reconsideration of that motion and amending that motion
9 to simply table that part of the motion until May, at
10 which time a decision would be made?

11

12 CHAIRMAN FLEAGLE: That's certainly an
13 option. And we're going to be moving into a section
14 shortly here where we are going to be entertaining a
15 reconsideration motion, so if that's the intent then that
16 would be appropriate.

17

18 Thanks, Niles.

19

20 All right, let's go ahead and move on to
21 the next question and that's Randy Alvarez asked a
22 question about clipping the fins on the driftnet
23 subsistence fishery on the Togiak versus the setnet
24 subsistence fishery and Pete you were going to answer
25 that. Go ahead.

26

27 MR. PROBASCO: Thank you, Mr. Chair. Mr.
28 Alvarez asked this question during our lunch break and
29 it's a very good catch on Mr. Alvarez' part. Currently
30 the way the regulation is drafted, as passed by the
31 Board, we are all inclusive on the species of coho as far
32 as subsistence harvested coho salmon have to have either
33 both lobes of the caudal fin or dorsal fin removed.
34 However, when we got to the issue of salmon harvested
35 under a drift gillnet, that would include all species of
36 salmon, coho, sockeye, chinook, et cetera, and that would
37 require those additional species in addition to coho to
38 have their fins removed, but would not require that for
39 set gillnets.

40

41 And if that's the intent of the Board
42 then that's what was passed. If that was not the intent
43 of the Board we should have removed the section of
44 marking from Subsection B and reworded it so it addressed
45 all salmon.

46

47 Mr. Chair.

48

49 CHAIRMAN FLEAGLE: Okay, I guess I'm not
50 real clear as to what's best here. But I thought I

1 understood the language as being presented as the intent
2 and that all fish caught with the drift process would
3 require trimming because it was a different method of
4 harvest. I don't know, maybe it shouldn't be different,
5 but I thought that's what it was there for.

6

7

Pete.

8

9

10 MR. PROBASCO: Mr. Chair. If we could
11 clarify the Board's intent that they wanted to have all
12 Federal subsistence harvested salmon have either both
13 lobes of the caudal fin or the dorsal fin, we could get
14 clarification on that intent and then just rewrite that
15 accordingly to the regulation.

15

16

Mr. Chair.

17

18

19 CHAIRMAN FLEAGLE: Well, we need to have
20 a little discussion of the Board members to see if that
21 was indeed the intent.

21

22

Jerry Berg.

23

24

25 MR. BERG: Thank you, Mr. Chair. That
26 was the intent of my proposal, and I realize that fish
27 caught with a set gillnet, you're only required to mark
28 coho salmon currently and if you catch them with a drift
29 gillnet now, you'd be required to mark all salmon and I
30 realized that when I made the motion, and it is a
31 difference, Randy's right, in the regulation. But I
32 think the intent was to try to cover this new gear type
33 and for chinook salmon specifically that would be caught
34 with the drift gillnet, and that's my understanding.

34

35

36 And I don't know the history of why only
37 coho salmon are covered under a set gillnet, I don't know
38 if the State can provide any information on that, but I
39 was certainly aware of that in my motion.

39

40

Mr. Chair.

41

42

43 CHAIRMAN FLEAGLE: John Hilsinger. The
44 question is why just coho?

44

45

46 MR. HILSINGER: Mr. Chairman, thank you.
47 I believe that the reason that that requirement only
48 applies to coho is because of the problem they had in the
49 past there, in the Togiak area, with salmon -- coho
50 salmon that were taken under the subsistence regs in the
51 river, that were then sold commercially. And I know that

1 that occurred in 1998 and the Department actually closed
2 the commercial fishery there in order to help stop that
3 activity and we had a discussion of that at the Regional
4 Advisory Council meeting and that history of that. And
5 the subsistence salmon fishermen in Togiak were not happy
6 when that happened either, I mean everybody viewed it as
7 an illegal activity. And so I don't know for sure but I
8 suspect that that's the genesis of this regulation that
9 only requires the coho to be marked.

10

11 Thank you.

12

13 CHAIRMAN FLEAGLE: Okay, thanks. Is that
14 okay. I mean I know it's inconsistent on the method of
15 catching the fish, but I think it's pretty clear that the
16 Board did understand that if you got a setnet you cut
17 only the silvers, but if you're drifting you cut them
18 all. And I'm not sure that I can provide you a
19 justification why it's inconsistent, but it sounds like
20 that's what we meant to do.

21

22 Randy.

23

24 MR. ALVAREZ: Okay, thank you. I was
25 just concerned that it would be different. And it's the
26 Board's intent for it to be different, from what I
27 understand, so I'll -- that's why I raised the question,
28 if it was the Board's intent that it would be different
29 and I didn't know that -- what I didn't understand is if
30 it was to be different, that's why I brought it up.

31

32 CHAIRMAN FLEAGLE: Okay, thank you.

33 Niles.

34

35 MR. CESAR: Thank you, Mr. Chairman. I
36 know, you know, from listening to that, that there was a
37 problem in '98, which eventuated in having to clip the
38 coho, you know, and I don't know, how does one judge when
39 there's no longer that problem. I guess what I'm
40 thinking, do we then assume it will be a problem forever
41 and just keep something in place forever or after nine
42 years now, is it worthy of another look. It seems to me
43 like we're placing more work on the subsistence user, and
44 additionally now we're asking him or her to do further
45 steps, not just for the coho, but the other species of
46 salmon. And I wonder at what point do we look at that
47 again so we don't find ourselves having reports or
48 activities go on because they've always gone on.

49

50 So I just bring that out because it's

1 kind of like when George Custer was in charge of the
2 Bureau of Indian Affairs and we got called back to Indian
3 country to suppress all the issues that were going on, he
4 got all the folks together in the Interior Building and
5 he said, okay, I want you guys not to do anything until I
6 return.

7

8 (Laughter)

9

10 MR. CESAR: And, you know, we've been
11 suffering from that the last 150 years.

12

13 (Laughter)

14

15 MR. CESAR: So let's not just do stuff
16 because we've done it, you know, thank you.

17

18 CHAIRMAN FLEAGLE: Caution duly noted,
19 than you, Niles.

20

21 Okay, now we do have a request for a
22 reconsideration motion. And what's required for a
23 reconsideration is that a member of the prevailing vote
24 can ask for reconsideration on any action, and with the
25 concurrence of a second from the prevailing vote that
26 action -- that request then comes to the Board and at
27 that point since we're all on the prevailing side,
28 anybody can make the reconsideration request and anybody
29 can second it and then the likelihood of a need to have a
30 vote to record a split vote or anything is probably nil.
31 I would just ask if there's any objection at that point.

32

33 The motion, as it was passed at final
34 action at the vote would then be before the Board again,
35 not the original proposed action, but the final action
36 that was either amended or however the motion, in its
37 final form, when it was voted on, and it would stand
38 before the Board for one, either further amendment or,
39 two, for a new vote based on different information that
40 was received.

41

42 So with that, Jerry, you had a desire to
43 reconsider an action before.

44

45 MR. BERG: Thank you, Mr. Chair. Yes, I
46 think I've talked to most Board members and some Staff,
47 Tom Kron was helping me over lunch, regarding Proposal 6,
48 for the methods of snagging, bow and arrow, hand capture
49 and spears to take salmon in Lake Clark and its
50 tributaries, we thought we ought to revisit that and

1 address the permit requirement for those methods. And
2 after talking to Pete I'm not so sure it's a wise move,
3 but I think maybe we ought to at least have a discussion
4 amongst the Board to see what the Board members would
5 like to do.

6

7 So I would like to make a motion to
8 reconsider Proposal 06, Mr. Chair.

9

10 CHAIRMAN FLEAGLE: Thank you. Is there a
11 second.

12

13 MS. GOTTLIEB: I'll second.

14

15 CHAIRMAN FLEAGLE: Okay, we do have a
16 motion to reconsider Proposal 6.

17

18 Is there any objection.

19

20 (No comments)

21

22 CHAIRMAN FLEAGLE: Hearing none, the
23 motion carries. We now have Proposal 6 before the Board
24 for further action.

25

26 Jerry.

27

28 MR. BERG: Thank you, Mr. Chair. As I
29 mentioned there's a -- in Bristol Bay you're required to
30 have a permit if you're going to harvest salmon and so
31 those methods that we just approved under Proposal 06,
32 snagging, bow and arrow, hand capture and spears, would
33 require a permit, and as the State has said they don't
34 want to -- they would not allow Federal users to use a
35 State permit with those methods, which would require us
36 to have a Federal permit. And it just doesn't seem like
37 we would get many people that would want to go snag a
38 fish or hand capture that would want to actually go get a
39 permit, a Federal permit to do that. And it doesn't seem
40 like the harvest would be very, that there would be much
41 harvest at all.

42

43 So I passed out some wording, and I was
44 thinking that Theo might have some wording that he could
45 flash on the screen that would show an amendment to that.
46 You can't see it very well.

47

48 But basically I would make a motion that
49 we would amend Judy's language to insert the words,
50 without a permit, basically using those methods in Lake

1 Clark and its tributaries, and that way people using
2 those methods would not be required to have a permit.

3
4 CHAIRMAN FLEAGLE: All right. And that
5 was the motion for amendment, Jerry, or are you just
6 throwing it out for.....

7
8 MR. BERG: That is a motion to amend
9 Judy's language, Mr. Chair.

10
11 CHAIRMAN FLEAGLE: Thank you. Do we have
12 a second.

13
14 MS. GOTTLIEB: I'll second it.

15
16 CHAIRMAN FLEAGLE: All right, it sounds
17 like we have a second. For discussion, Jerry, would you
18 -- I guess you already did lay out why you wanted to do
19 this, maybe we'll just go ahead and open it up for
20 discussion unless you have anything to add.

21
22 Go ahead, Jerry.

23
24 MR. BERG: Well, I guess I'll bring up
25 Pete's point as to why not to do it, which I think is a
26 pretty valid point as well, is if we don't have a Federal
27 permit, then State users from Anchorage or anywhere in
28 the state could also go out there and use snagging and
29 hand capture and say well, I'm fishing under Federal regs
30 and I don't know how you would tell the difference
31 between a Federal or a State user, so that would be
32 somewhat of a problem, I suppose, if it became a wide use
33 -- if these became wide use methods. But still it just
34 seems like it's a little bit burdensome to require people
35 that are going to catch an occasional fresh fish to have
36 a Federal permit before they go out to do so. So I guess
37 I'm still inclined to not require the permit.

38
39 MS. GOTTLIEB: Mr. Chair.

40
41 CHAIRMAN FLEAGLE: Judy.

42
43 MS. GOTTLIEB: We do have our Chief
44 Ranger from Lake Clark here, and I did ask him at lunch
45 time the same question, how are you going to know who's a
46 qualified Federal user and who isn't and I guess the
47 relatively easy answer is you find out where they live
48 and then we know their eligibility. So if we have any
49 other questions, Lee, is here in the audience.

50

1 CHAIRMAN FLEAGLE: But is that a
2 producible -- you know, I mean I could say that I live in
3 Lake Clark, is that all it takes or do you have something
4 that.....

5
6 MS. GOTTLIEB: I guess Lee would probably
7 want to see something that show where you lived, driver's
8 license, fishing -- not necessarily fishing license,
9 because subsistence users don't have to have one. But
10 some sort of proof of residency.

11
12 CHAIRMAN FLEAGLE: Thanks, Judy. Sarah.

13
14 MS. GILBERTSON: Thanks, Mr. Chairman. I
15 guess from the State's perspective, you know, paramount
16 to us is the harvest data and the permit's important in
17 terms of, number 1, identifying who qualifies to
18 participate in your fishery, and then number 2 for
19 collecting harvest data. But not that it matters but I
20 think that, you know, we would object to that, it's not
21 responsible, it's not in the best interest of the
22 resource.

23
24 CHAIRMAN FLEAGLE: Other Board
25 discussion. Randy, do you want to weigh in on this at
26 all?

27
28 MR. ALVAREZ: Sure. Couldn't the harvest
29 be recorded on the State subsistence report, then there
30 would be a record of it. That's -- but I guess if it
31 doesn't need to be -- the Lake Clark residents don't need
32 to have a subsistence -- to get a State subsistence --
33 I'm not real familiar because I don't utilize that area.
34 I'm a resident of Igiogik and we get State subsistence
35 permits and all our catch goes on that. So I'm not real
36 familiar with the users up at Lake Clark.

37
38 CHAIRMAN FLEAGLE: John Hilsinger, do you
39 have an answer to that?

40
41 MR. HILSINGER: Thank you, Mr. Chairman.
42 Currently the way that the harvest is recorded is on the
43 permit. But the permit specifies legal gear, and that
44 would be State legal gear under State regulations and so
45 we would not issue a State permit that said you could
46 snag, use bow and arrow, or hand capture in Lake Clark,
47 so you either would have a person with a State permit and
48 if they were using one of those three methods they would
49 have no legal authorization as far as the State was
50 concerned, to do that.

1 You know, they could write their catch
2 data on their State permit. I don't know how we would
3 ever distinguish how they got it, but they would not be
4 legally fishing under a State permit.

5
6 The other reason, as I mentioned, the
7 other problem with the State doing that is that only
8 certain people are eligible to fish in this area and
9 particularly with certain types of gear and the State is
10 not in the -- when a state resident comes in and gets a
11 permit, all we have to do is ascertain that they're a
12 state resident. We don't ascertain whether they live in
13 a particular community or not and we don't want to be in
14 the situation of having to do that according to Federal
15 criteria for who can fish and who can't. And so the
16 person wouldn't have a State permit that would allow them
17 to use one of those three gear types. You know the best
18 solution, I think, is to have a Federal permit.

19
20 Now, one thing we could think about and
21 Ms. Gottlieb talked about cooperation in the harvest
22 reporting is there's, I think, the potential, at least to
23 consider separating the harvest reporting from the
24 permit. That would still required, I guess, depending on
25 what you decided, a Federal permit, but, you know, there
26 may be some opportunity for some kind of joint harvest
27 reporting.

28
29 I did discuss this issue with our
30 protection people and they were fairly adamant that they
31 would like to see the people fishing under Federal
32 regulations have some kind of identification that says
33 that they're a qualified Federal subsistence user so that
34 when they walk up to a group of people and one person in
35 the middle is snagging, they could easily ascertain that,
36 yeah, this person is doing it legally under Federal
37 regulations and they're qualified to do that and these
38 other six are under State regulations and if they're
39 doing it they're in trouble.

40
41 Thank you.

42
43 CHAIRMAN FLEAGLE: Pete.

44
45 MR. PROBASCO: Mr. Chair, if I may, Mr.
46 Hilsinger, if in that situation you had six or seven
47 people and one in the middle was snagging, what would
48 State enforcement do with that person, what's your
49 speculation?

50

1 MR. HILSINGER: Mr. Chairman. If he did
2 not have a permit, a Federal permit or some kind of
3 identification that identified him as a legal Federal
4 subsistence user, I don't know that they would arrest him
5 but I think they would certainly investigate it and he
6 may have to stop his fishing activities until they could
7 ascertain that he was doing that legally.

8
9 CHAIRMAN FLEAGLE: Other discussion.

10
11 Judy. George.

12
13 MR. OVIATT: It appears that we're
14 talking about a small group of people who are out camping
15 and wanting to catch some fish to eat. But I can
16 certainly understand and picture in my own mind a
17 situation that is being talked about here and that could
18 be rather uncomfortable, too. I just wonder how
19 difficult it would be for those people who do go out and
20 camp and recreate to pick up a permit. You know,
21 administrating a permit, how difficult would that be?

22
23 MS. GOTTLIEB: Mr. Chair.

24
25 CHAIRMAN FLEAGLE: Judy.

26
27 MS. GOTTLIEB: I think it would be good
28 if we have Lee come up here, please, and talk about, you
29 know, what is happening practically on the shores of Lake
30 Clark.

31
32 CHAIRMAN FLEAGLE: There's been a
33 summons.

34
35 (Laughter)

36
37 CHAIRMAN FLEAGLE: Yeah, there's a
38 microphone up by Steve, we just don't have a name tag for
39 you so introduce yourself, please.

40
41 MR. FINK: My name is Lee Fink. I'm the
42 Chief Ranger at Lake Clark National Park and Preserve.

43
44 Well, there's some good points here. I
45 think that requiring a permit for this limited use would
46 be a burden to the average subsistence user. I mean a
47 lot of people do things spontaneously, you know, if
48 they're going to go camping tonight, well, they might not
49 think about it until 6:00 o'clock at night and they may
50 or may not have a permit from a previous venture. I

1 think we're talking about a very small catch. If you
2 wanted a lot of fish why would you snag them or shoot
3 them with a spear when you can use or a net or a seine --
4 a gillnet or a seine. I mean if you're going to be
5 putting up numbers of fish, I think there's better catch
6 techniques available than maybe the three techniques, or
7 catch methods that we're speaking of here.

8
9 So there is some confusion. We do have
10 State enforcement -- we're talking about a relatively
11 small population, and while we don't know everybody on
12 sight, you know, it's pretty easy to determine local
13 rural residents in the Lake Clark area. Even if they
14 don't have I.D., I suppose there is a -- you know if we
15 weren't sure, if somebody did have no documentation and
16 we didn't know them as a local rural resident, you know,
17 we may ask them to stop that activity also. So for the
18 protection of a subsistence user, it would not be bad if
19 they were carrying some type of identification because if
20 a State enforcement officer was to contact them in the
21 field, certainly they don't have the local knowledge that
22 we do of, you know, a few hundred residents. So that
23 could be encouraged for the subsistence user, it's not a
24 huge burden to carry some form of I.D., it's certainly
25 easier than getting a permit. Whether that would be --
26 you know, then would it be a seasonal permit or a -- you
27 know, just that whole permit process for maybe, I don't
28 know, a dozen fish a year or something, seems like it
29 would be cumbersome and quite a big bureaucratic
30 nightmare.

31
32 CHAIRMAN FLEAGLE: So, Lee, you don't see
33 this as ever having the potential for being anything
34 other than an incidental opportunity to hook a fish, to
35 snag a fish, I mean the situation that John described
36 sounds like some of the typical fishing opportunities you
37 have here in Southcentral, where people line up virtually
38 shoulder to shoulder, you don't see this as being a
39 problem?

40
41 MR. FINK: We don't have that, you know
42 -- we don't have the same level of use that say the
43 Russian River or the Kenai has, you know, I mean a busy
44 day at the mouth of the Kijik River might be a dozen
45 people and they probably all came from a lodge, and it's
46 pretty easy to distinguish the lodges; they have the
47 table clothes and the umbrellas.....

48
49 (Laughter)
50

1 MR. FINK:from the local
2 subsistence users, who usually don't travel with that.

3
4 So, you know, it's not a huge problem.
5 We do have some snagging problems with some folks that
6 would not be qualified if this regulation was set in
7 place, but it's fairly easy to distinguish usually in the
8 field and I think the number of local folks that would do
9 this as a supplemental subsistence activity, they would
10 be catching, you know, very limited fish. Most people in
11 the Lake Clark area have kind of a family tradition, they
12 pick a time of the season, they spend, you know, the
13 majority of that timeframe, very consistently catching
14 fish and putting them up, however they're going to do it
15 whether they're smoking them or canning them but, you
16 know, they do it in large numbers, get the job done and
17 then they're done with it. And then, you know, this
18 would supplement basically when they're out in the field
19 doing something else, just getting a fish for the day.

20
21 I think that was certainly the intent
22 that I understood and I've been to several of the
23 Regional Advisory Council meetings when they -- or the
24 Subsistence Resource Commission meetings when they
25 discussed this at work sessions and in public meetings
26 that they've had at Lake Clark.

27
28 CHAIRMAN FLEAGLE: Okay, thank you. I
29 think I'm willing to try it, support the amendment. I
30 first, I think, had some opposition to it, but there
31 comes a point where you do have to draw the line between
32 what you think people are going to do what's right or
33 you're going to have the law to remind them of what's
34 wrong. And this is a case where I'm willing to try on a
35 small basis to, you know, we've heard testimony from both
36 the Staff and from Lee there that it's a very limited
37 opportunity that people are going to take advantage of.
38 If it does prove to be a problem it can always be
39 revisited through the form of another proposal or some
40 type of action.

41
42 I'm willing to go along with the
43 amendment.

44
45 Other discussion, George.

46
47 MR. OVIATT: Yeah, I appreciate your
48 comments. And, you know, it seems like we're talking
49 about something that isn't a big deal except for the
50 people that would maybe have to get a permit to do this.

1 I think I'd be willing to try this and see how it works.
2 We're just not talking about a lot of people, a lot of a
3 concern.

4
5 Thank you.

6
7 CHAIRMAN FLEAGLE: Judy.

8
9 MS. GOTTLIEB: Thank you, Mr. Chair. I
10 mean I agree. I think the level of harvest here is
11 expected to be so low as to probably not even be
12 noticeable on our reporting systems or just the general
13 harvest within the Bristol Bay area.

14
15 I think I might suggest some slight
16 wordsmithing just to make the whole regulation read one
17 sentence less.

18
19 We could just say, our addition last time
20 was salmon may also be taken, and we
21 could just add the words, without a
22 permit, in Lake Clark and it's
23 tributaries by snagging, by hand line or
24 rod and reel, using a spear, bow and
25 arrow and capturing by bare hand.

26
27 You wouldn't have to have a whole new
28 sentence, if that's okay, Jerry.

29
30 CHAIRMAN FLEAGLE: Yeah, that is the
31 intent, they just gave the whole language with that
32 change inserted, but, yeah, that's what we mean.

33
34 Other comments. Denny.

35
36 MR. BSCHOR: Yeah, it seems to me we're
37 making a whole lot of discussions on these discussions
38 we've been having today and those assumptions may be true
39 and I'd like to have a practical approach also.

40
41 However, we have created a situation
42 where the State has a permit, the State has different
43 wording as far as what they allow and what don't allow
44 now than we do or we have different wording than they do,
45 however you want to put that. And we have a difference.
46 If it was the same, we wouldn't have to worry about a
47 permit. It isn't though. So since it isn't, to me, if I
48 was the one that didn't have a permit out there and got a
49 ticket for that confused situation I don't know if I'd be
50 too happy about that.

1 In that respect it seems to me that we've
2 created a situation where we need some sort of a permit
3 to enforce what's out there. So I think that's the way
4 I'm going to vote on this one.

5
6 CHAIRMAN FLEAGLE: Okay. I have Niles
7 and then Jerry.

8
9 MR. CESAR: Well, Mr. Chairman thank you.
10 I was hoping we'd be able to discuss this for another
11 three or four hours because we're talking.....

12
13 (Laughter)

14
15 MR. CESAR:because we're talking
16 about a significant catch of a few fish here. And so,
17 you know, if we would spend this much time on some of our
18 real fisheries, you know, then I guess I could be more
19 excited about this.

20
21 I don't think we need a permit. I think
22 someone who lives in a village should carry some kind of
23 an identification card that demonstrates he lives in a
24 village, flash that, that should be it. If you can't
25 flash it then you're not eligible. I just don't see, you
26 know, setting up a permit system to do an occasional
27 thing. Like the Park Manager said, you know, we're
28 talking here guys who go out there and get all their
29 subsistence fish, that's all put away or even before it's
30 put away, they go out there camping, snag a fish, grab a
31 fish, however they get the fish, and they cook it and eat
32 it, I would venture to say that we're not talking a
33 harvest of more than several hundred fish a year, you
34 know, even if you -- like I said earlier, gave everybody
35 one fish and we're done with it, we're still not talking
36 a great number of fish. And I'm opposed to putting in
37 processes that require more for a subsistence fisherman
38 to do unless it makes some kind of sense, some, you know,
39 some common sense. And I don't think our regulations
40 preclude us from making proposals and accepting proposals
41 that make common sense, and that's where I'm coming down.

42
43 I'm going to vote for it.

44
45 Thank you.

46
47 CHAIRMAN FLEAGLE: Jerry Berg.

48
49 MR. BERG: Thank you, Mr. Chair. Yeah, I
50 think in general I do support -- whenever we deviate

1 significantly from the State and I think these
2 regulations are a pretty significant deviation that we
3 ought to have some way to try to track who the users are
4 and what the harvest is, but in this case it just seems
5 like the harvest is just going to be so small.

6
7 And I was intimately involved in
8 administering the rainbow trout permit we had out in
9 Bristol Bay the last few years and it was a fair amount
10 of work, not a lot, to come up with the permit, issue it,
11 and send it out there and we paid people in the villages
12 to distribute the permits and we issued some news
13 releases here and there, and so there was a fair amount
14 of administrative actions that we went through to put
15 that in place and in the end we ended up withdrawing the
16 requirement for that permit. And so I think even if we
17 did require this permit, I think in a few years we'd end
18 up retracting the requirement for a permit, so I'm
19 inclined to just do it at this time.

20
21 Mr. Chair.

22
23 CHAIRMAN FLEAGLE: Are we ready for a
24 vote on the amendment.

25
26 MR. CESAR: Question.

27
28 CHAIRMAN FLEAGLE: Okay, on the
29 amendment, Pete.

30
31 MR. PROBASCO: Thank you, Mr. Chair.
32 Amendment to Proposal FP07-06:

33
34 You may also take salmon without a permit
35 in Lake Clark and its tributaries by
36 snagging, by handline or rod and reel,
37 using a spear, bow and arrow and
38 capturing by bare hand.

39
40 Ms. Gottlieb.

41
42 MS. GOTTLIEB: Aye.

43
44 MR. PROBASCO: Mr. Cesar.

45
46 MR. CESAR: Aye.

47
48 MR. PROBASCO: Mr. Oviatt.

49
50 MR. OVIATT: Aye.

1 MR. PROBASCO: Mr. Bschor.
2
3 MR. BSCHOR: No.
4
5 MR. PROBASCO: Mr. Berg.
6
7 MR. BERG: Aye.
8
9 MR. PROBASCO: Mr. Fleagle.
10
11 CHAIRMAN FLEAGLE: Aye.
12
13 MR. PROBASCO: Mr. Chair, motion carries
14 -- or amendment to the motion carries, five/one.
15
16 CHAIRMAN FLEAGLE: Thank you. We now
17 have before us the motion as amended for final action,
18 any other discussion before we take the final vote.
19 Ready for the question, question is recognized on final
20 action for Proposal 6 as amended, Pete.
21
22 MR. PROBASCO: Thank you, Mr. Chair.
23 Final action. Mr. Cesar.
24
25 MR. CESAR: Aye.
26
27 MR. PROBASCO: Mr. Oviatt.
28
29 MR. OVIATT: Aye.
30
31 MR. PROBASCO: Mr. Bschor.
32
33 MR. BSCHOR: Aye.
34
35 MR. PROBASCO: Mr. Berg.
36
37 MR. BERG: Aye.
38
39 MR. PROBASCO: Mr. Fleagle.
40
41 CHAIRMAN FLEAGLE: Aye.
42
43 MR. PROBASCO: Ms. Gottlieb.
44
45 MS. GOTTLIEB: Aye.
46
47 MR. PROBASCO: Motion carries, Mr. Chair,
48 six/zero.
49
50 CHAIRMAN FLEAGLE: Okay, thank you. That

1 dispenses with Proposal 6, once again.

2

3 Was there another possible
4 reconsideration request. Niles.

5

6 MR. CESAR: Yes, Mr. Chairman. I would
7 like to move that we reconsider Proposal No. 7.

8

9 CHAIRMAN FLEAGLE: Is there a second.

10

11 MS. GOTTLIEB: I'll second it.

12

13 CHAIRMAN FLEAGLE: Okay, Niles, we have a
14 motion and a second, would you like to speak to your
15 motion for reconsideration.

16

17 MR. CESAR: Yes, Mr. Chairman. I didn't
18 have any problem with motion 7 except that it didn't deal
19 with Six Mile Lake, I thought, appropriately. And I
20 thought by bringing this motion back we could make an
21 amendment to it saying that we would table that portion
22 of Motion 7 dealing with Six Mile Lake until the May --
23 meetings of the Board in May at which time all the
24 information relative to boundaries and enforcement, those
25 kinds of issues would be known and will have been seen by
26 the RAC.

27

28 CHAIRMAN FLEAGLE: All right. So the
29 motion for reconsideration, the intent would be if we
30 vote in the affirmative to reconsider, you would then
31 make a statement -- I don't think it would necessarily
32 take another -- I don't know that it would take an
33 amendment, but that you would move to table that portion
34 that referred to Six Mile Lake to a subsequent meeting
35 outside of the call for proposals. So is everybody clear
36 of that intent for reconsideration.

37

38 Is there any objection to reconsideration
39 motion.

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: Hearing none, we now
44 have Proposal 7 back before the Board as voted on.
45 Niles.

46

47 MR. CESAR: Yes, Mr. Chairman. I just
48 think that by putting it back in the regular process, we
49 would more than likely put it out there a year and even
50 though it may not have any practical effect on the

1 ground, as explained earlier, I still believe that it's
2 an opportunity to put in place our regulation in a timely
3 fashion, which would address the same issue.

4
5 Clearly it doesn't sound like it's a
6 difficult thing to compile the information, and get it to
7 the RACs, have them absorb it, make a recommendation back
8 to us and have us deal with it and that would still give
9 us time to have the motion affect our summer fishery.

10
11 Thank you, Mr. Chairman.

12
13 CHAIRMAN FLEAGLE: Thank you. Other
14 discussion. I'm just trying to think of the best way to
15 -- we discussed adding Six Mile and we had a
16 recommendation from the ISC to add Six Mile, but the
17 motion we passed did not include any reference to Six
18 Mile, so we do need to.....

19
20 MR. PROBASCO: Make an amendment.

21
22 CHAIRMAN FLEAGLE: I guess you're right,
23 we do need to make an amendment, Peter is saying. Let's
24 just take a minute to see how that amendment would sound.
25 We would restate the motion to read it as it was
26 presented by the Staff Committee and then take a motion
27 to table the portion that refers to Six Mile Lake, right,
28 Pete?

29
30 MR. PROBASCO: To a time certain date,
31 07.

32
33 CHAIRMAN FLEAGLE: All right, so that
34 would be appropriate. We would -- let's take a little
35 break. We need to think this out, procedurally, how you
36 put it back in to set it aside. Five minute break.

37
38 (Off record)

39
40 (On record)

41
42 CHAIRMAN FLEAGLE: The Federal
43 Subsistence Board is back on record. And I think we just
44 decided that the best way to do this would be to make an
45 amendment to have the language include Six Mile Lake and
46 then a motion to defer that portion that refers to Six
47 Mile Lake. So would somebody like to move for that
48 amendment.

49
50 MS. GOTTLIEB: Mr. Chairman.

1 CHAIRMAN FLEAGLE: Judy.
2
3 MS. GOTTLIEB: So I would like to move
4 that the regulation read:
5
6 You may also take salmon by beach seines
7 in Lake Clark, in Six Mile Lake,
8 excluding its tributaries.
9
10 Beach seines may not exceed 25 fathoms in
11 length.
12
13 However, I'd like to suggest that the
14 Board defer action on the Six Mile Lake aspect of this
15 regulation until such an opportunity as we have to sort
16 out actual boundaries and locations and affects that this
17 regulation might have on Six Mile Lake and that would be
18 deferring it for about six months so we address it in the
19 May cycle.
20
21 CHAIRMAN FLEAGLE: Does that work for
22 you, Pete?
23
24 MR. PROBASCO: Mr. Chair, that works for
25 me, because the intent is very clear what the Board would
26 like to do. They would like, as Judy mentioned, provide
27 Staff the opportunity to research the jurisdiction issues
28 of Six Mile Lake and report back to the Board at their
29 May 2007 meeting, which would provide ample opportunity
30 for Councils, publics and SRCs to review.
31
32 Mr. Chair.
33
34 CHAIRMAN FLEAGLE: Okay. Do I have a
35 second to the amendment.
36
37 MR. OVIATT: I'll second it.
38
39 CHAIRMAN FLEAGLE: The motion has been
40 seconded. We now have the language as amended, well,
41 actually that was the amendment. Let's take the vote on
42 the amendment and then we'll talk about the rest of it,
43 Pete.
44
45 MR. PROBASCO: Okay. I'm not going to
46 repeat myself.
47
48 Motion FP07-07 as amended.....
49
50 CHAIRMAN FLEAGLE: No, the amendment.

1 MR. PROBASCO: The amendment to FP07-07.
2 Mr. Oviatt.
3
4 MR. OVIATT: Yes.
5
6 MR. PROBASCO: Mr. Bschor.
7
8 MR. BSCHOR: Yes.
9
10 MR. PROBASCO: Mr. Berg.
11
12 MR. BERG: Aye.
13
14 MR. PROBASCO: Mr. Fleagle.
15
16 CHAIRMAN FLEAGLE: Aye.
17
18 MR. PROBASCO: Ms. Gottlieb.
19
20 MS. GOTTLIEB: Aye.
21
22 MR. PROBASCO: Mr. Cesar.
23
24 MR. CESAR: Aye.
25
26 MR. PROBASCO: The amendment carries, Mr.
27 Chair, six/zero.
28
29 CHAIRMAN FLEAGLE: Thank you. We now
30 have the motion as amended for final action, ready for
31 the vote on that. Pete.
32
33 MR. PROBASCO: Thank you, Mr. Chair.
34 Final action on the amended motion FP07-07. Mr. Bschor.
35
36 MR. BSCHOR: Aye.
37
38 MR. PROBASCO: Mr. Berg.
39
40 MR. BERG: Aye.
41
42 MR. PROBASCO: Mr. Fleagle.
43
44 CHAIRMAN FLEAGLE: Aye.
45
46 MR. PROBASCO: Ms. Gottlieb.
47
48 MS. GOTTLIEB: Aye.
49
50 MR. PROBASCO: Mr. Cesar.

1 MR. CESAR: Aye.
2
3 MR. PROBASCO: Mr. Oviatt.
4
5 MR. OVIATT: Aye.
6
7 MR. PROBASCO: Motion carries, six/zero,
8 Mr. Chair.
9
10 CHAIRMAN FLEAGLE: Okay, thank you, we
11 now have apparently completed the Bristol Bay area
12 proposals, and it looks like we're ready to move into the
13 Southeast Alaska region. As promised we did get to it
14 today, thanks for hanging out and we do have folks
15 present from Sitka that were hoping to be here. I do
16 have some testimony cards.
17
18 And, Keith, you have something to say.
19
20 MR. GOLTZ: Yeah, I'd like to make one
21 correction for the record. This morning I said that my
22 dogs know the difference between kicked over and being
23 tripped, and during the break somebody said that made it
24 sound like I kicked my dogs.
25
26 (Laughter)
27
28 MR. GOLTZ: I was only trying to make the
29 point that even though the physical effects can be the
30 same, the impact is sometimes quite different. And I
31 want to state on the record that, no, I was only speaking
32 as dogs in general. I think they all know the same
33 thing. And I do not kick my dogs.
34
35 (Laughter)
36
37 CHAIRMAN FLEAGLE: Okay.
38
39 MR. PROBASCO: Unless they don't retrieve
40 his.....
41
42 (Laughter)
43
44 CHAIRMAN FLEAGLE: All right, I'd like to
45 go ahead and turn our attention to the first page of the
46 agenda now. We're back at the area dealing with
47 Southeast Alaska proposals, and our first proposal out of
48 the chute is No. 17. I'd like to turn to the Staff for
49 analysis and we have at the table a new fellow helping us
50 out, not new to the system, but new to this meeting, and

1 that's Bob Schroeder. Bob, welcome.

2

3 DR. SCHROEDER: Thank you, Mr. Chairman.
4 Proposal FP07-17 begins in your book on Page 146 and it
5 continues on until Page 190 or so. There's a good deal
6 of information presented in this Staff analysis. What
7 I'd like to do is present a general summary and then open
8 for any questions that might arise.

9

10 FP07-17 was submitted by the Southeast
11 Alaska Subsistence Regional Advisory Council. SERAC
12 requested review and revisions to customary and
13 traditional use determinations for all fish species used
14 by residents of the Icy Strait-Cross Sound communities
15 and remote locations within this area. The fishing
16 districts in question are Districts 12, 13 and 14.

17

18 The Council requested that determinations
19 should reflect all customary and traditional subsistence
20 use of fish by residents of this area.

21

22 The current regulations, when the Council
23 submitted the proposal recognized customary and
24 traditional use of fish in District 14, Sections 14(B)
25 and 14(C) only by Hoonah residents. All rural residents
26 of Southeast Alaska and Yakutat at that time could fish
27 in the other parts of this area.

28

29 SERAC considered FP06-23 on October 11,
30 2006 at its fisheries -- that should be 2005, cycle
31 meeting, in Wrangell. This proposal requested a
32 customary and traditional use determination for fish for
33 the community of Gustavus in Sections 14(B) and 14(C).
34 At that time the Council recommended tabling that
35 proposal and wanted this Council generated proposal to go
36 forward in this cycle. Map 1 shows the fishing districts
37 that we're talking about here as well as the location of
38 communities.

39

40 Under the C&T determinations that were on
41 the books last year, residents of the city of Hoonah
42 proper and in Chichagof Island drainages on the east
43 shore of Port Frederick between two points, Gartina Creek
44 and Port Sofia had recognized customary and traditional
45 use determinations for salmon, Dolly Varden, trout, smelt
46 and eulachon in Sections 14(B) and (C). This
47 determination didn't include the residents of nearby Game
48 Creek, located just a few miles from Hoonah in Port
49 Frederick and it also didn't include any other rural
50 residents in the Hoonah, Port Frederick area.

1 With current events, we should refresh
2 our memory of request for reconsideration that the Board
3 decided just recently. Chuck Burkhart, who was the
4 proponent for FP06-23 requested a reconsideration of the
5 Board decision on that proposal. He requested that May
6 -- that reconsideration was on basically a separate track
7 from this current proposal. Based on additional analysis
8 provided by Staff, the Board made a positive customary
9 and traditional determination for Gustavus for fish in
10 Sections 14(B) and (C). This determination took place
11 just this last November, and so that last Board action in
12 this area took place after the Regional Council met this
13 year, this cycle in 2006.

14
15 The current regulations are shown on Page
16 154. We've included the customary and traditional use
17 determinations for Angoon and Sitka. These communities
18 are not major users of the Icy Strait-Cross Sound area,
19 but they do have customary and traditional use
20 determinations, they're on the books, and we wanted to
21 make sure that action on this particular proposal didn't
22 adversely affect the existing customary and traditional
23 use determinations.

24
25 The proposed regulations as submitted
26 simply called for recognition of customary and
27 traditional use of all fish in Districts 12, 13 and 14 by
28 all residents of those districts. All freshwaters that
29 drain into fisheries Districts 12, 13 and 14 that are
30 within the exterior boundaries of the Tongass National
31 Forest, as well as the marine waters of the Makhnati
32 Island Reserve are considered Federal public waters for
33 the purposes of Federal subsistence fisheries management.
34 The marine waters in this area are managed by the State
35 of Alaska, and the waters of Glacier Bay National Park
36 are closed to subsistence uses under present regulation.

37
38 The existing customary and traditional
39 use determinations for this area, there now are two of
40 them that exist. One is the customary and traditional
41 use determination for Hoonah, which is one which was
42 adopted when the Federal Program assumed management of
43 fisheries. This was a determination made by the Alaska
44 Board of Fisheries in 1989 or '90, and it applied only to
45 Hoonah and only into Districts 14(B) and (C). The other
46 customary and traditional use determination that's on our
47 books right now is the one I just mentioned, which was
48 the result of Board action in November for the community
49 of Gustavus.

50

1 On the State side, the Board of Fisheries
2 has not reviewed customary and traditional use
3 determinations for this area since it's '89/90 decisions,
4 and the Federal Subsistence Board, apart from the
5 proposal last year concerning customary and traditional
6 use of fish by Gustavus also has not looked at its
7 customary and traditional use determinations in this
8 area. So a positive Federal Subsistence Board action on
9 this proposal, FP07-17 would provide Federal customary
10 and traditional use determinations for all residents of
11 the proposed districts. Residents of other parts of
12 Southeast Alaska and Yakutat would no longer be able to
13 fish in these particular districts.

14
15 Fishing District 14, again, referring to
16 your map on Page 153 includes the communities of Hoonah,
17 Gustavus, Elfin Cove, Excursion Inlet and Game Creek.
18 Game Creek is located just southwest of Hoonah and is not
19 labeled on that map. The community of Pelican located in
20 District 13, Section 13(A) also fishes in District 13.
21 There are also other residents who live outside the named
22 communities in the Icy Strait-Cross Sound area at
23 Excursion Inlet, Home Shore across from Hoonah on the
24 mainland side, Game Creek, Gull Cove, Swanson Harbor and
25 perhaps other locations. Again, referring to the map,
26 the communities of Angoon and Tenakee Springs are located
27 in District 12, Section 12(A), some portion of which is
28 also part of Hoonah's traditional fishing area.

29
30 Another difficulty with the
31 determinations that are on the books at the present time
32 is that although Hoonah residents have had a positive
33 customary and traditional use determination for Sections
34 14(B) and 14(C), much of their fishing is known to take
35 place outside these two sections in Sections 14(A) in
36 northern Chatham Strait and Sections 12(A) and 12(B) and
37 in Outer Coast Section 13(A).

38
39 As we'll see in this analysis the use
40 areas for the Icy Strait-Cross Sound communities
41 frequently overlap with each other and with neighboring
42 communities.

43
44 In the southern end some of these use
45 areas may overlap areas used by Angoon, Kake and Sitka --
46 may also overlap. This analysis, however, we're focusing
47 on the Icy Strait-Cross Sound area and the uses in
48 Federal public waters in Districts 12, 13 and 14.

49
50 Table 1 on Page 157 gives an overview of

1 population based on the census data. What you'll note is
2 that Hoonah is by far the largest of the Icy Strait-Cross
3 Sound communities. I've also included Sitka in there.
4 Sitka's really outside this area. And we have at least
5 two of the listed communities or census places are really
6 quite small, Elfin Cove and Excursion Inlet would be in
7 the micro community category.

8
9 The analysis provides thumbnail sketches
10 of communities, I won't go through those at this time.

11
12 I would like to give an overview of what
13 sources of information are available for these
14 communities. Really, there are quite a bit of
15 subsistence research that has been done, unfortunately
16 not all of it is not very current. Ethnographic baseline
17 studies were done in Angoon, Hoonah, and Tenakee in the
18 mid-80s. These were done mainly focusing on timber
19 management effects. The Tongass Resource Use Cooperative
20 Survey was a region-wide survey which was done in 1988
21 and it collected harvest data and mapping data as it was
22 at the 1987 harvest year. The maps that were done at
23 that time were based on map biographies wherein someone
24 interviewed, drew on maps, the areas where they hunted,
25 fished, et cetera, about five or six research categories.
26 Those individual map biographies were aggregated to come
27 up with community subsistence maps. Division of
28 Subsistence did much of this work. It was published in
29 the early '90s. Note that with these maps we're talking
30 about original work that was done fully 19 years ago.

31
32 Other household surveys were done in
33 Angoon, Hoonah and Sitka in 1996 and that was basically
34 updating harvest level research that had been done
35 earlier.

36
37 Further work has been done funded by the
38 Federal Subsistence Management Program looking at
39 traditional ecological knowledge projects which did focus
40 on geography of use. That work took place in Angoon and
41 Hoonah and Sitka.

42
43 Let's see where we are here.

44
45 We also have subsistence salmon permit
46 data from Department of Fish and Game and that provides
47 another indication of what areas are used by communities.

48
49 Additionally, Federal Staff made field
50 visits to some of the affected communities in the year

1 2005 and 2006 in developing the analysis for the earlier
2 proposal and then for this one.

3
4 The main question before the Council,
5 when it requested deferral of the proposal last year for
6 Gustavus was where do we have information showing that
7 people actually fish. Staff spent a fair amount of time
8 preparing the analysis for this proposal looking through
9 these sources of information that I just outlined and
10 doing a best attempt at drawing maps that showed where
11 fishing by each community was documented in these data
12 sources. These maps are presented in this analysis as an
13 appendix starting on Page 167.

14
15 And I'd just point out at this time that
16 this is -- these are not exactly research projects,
17 they're the best attempt of Staff to summarize the
18 information available in written sources and from the
19 field studies and that the Council reviewed these and
20 possibly was able to verify them from the experience of
21 Council members who are familiar with this area.

22
23 We've provided descriptions of the use
24 areas in the analysis.

25
26 Let's see where we are here.

27
28 As a summary table, on Page 163, that
29 tries to make some -- a little -- tries to make sense of
30 the different sources of information available showing
31 where people from each community fish, and also provides
32 the data sources that Staff were able to look at. Not
33 surprisingly we have better data for Angoon, Hoonah and
34 Sitka where there's been a lot of work done and our
35 information sources for the other places aren't quite as
36 rich.

37
38 The harvest amount data is presented in a
39 series of tables, which are also in the appendix starting
40 on Page 173. Table 3 presents the familiar percentage of
41 households using, harvesting, receiving and giving wild
42 resources, again, focusing on the communities in the Icy
43 Strait-Cross Sound area. To note there that there is a
44 really high level of participation in hunting fishing
45 activities based on -- and, these, again, would be based
46 on available survey data which may be a bit dated at this
47 time.

48
49 Table 4 presents a harvest level data.
50 Everyone's familiar with the summaries of subsistence

1 harvest per capita, that would be the second column, all
2 resources per capita and the range there would be from
3 187 pounds per capita in Game Creek up to over 300 pounds
4 per capita, or 385 pounds in Hoonah in the various times
5 that Hoonah was studied.

6

7 If I could ask one of my colleagues to
8 pass out to the table, that's inadvertently missing from
9 the text, Steve. We did break out the table to see what
10 fish harvests were in these communities and the handout
11 table breaks out -- it looks at fish as -- per capita
12 harvest levels of fish and looks at salmon, non-salmon
13 fish and then also breaks out Dolly Varden and trout.
14 Not surprisingly fish are a major component of the
15 overall subsistence harvest level, salmon is generally
16 the most used fish in terms of pounds per capita with
17 non-salmon fish also being quite high, that's typically
18 halibut with some rock fish and some other things. And
19 substantial harvest, but at a much lower level, of Dolly
20 Varden and trout.

21

22 Let's see, Table 6 presents detail --
23 excuse me. I think we may have a labeling problem.

24

25 The table that begins on Page 174
26 presents the subsistence salmon permit data by community
27 and year. This is from Alaska Department of Fish and
28 Game sources, of course. This is broken out in a couple
29 of ways. The one way just shows the overall number of
30 permits issued and fish reported, and then as you move
31 along and look at Table 6, particularly starting on Page
32 182, there's a listing of all the streams where people
33 from each community in this area have said that they have
34 caught fish under the terms of subsistence permits.

35

36 Let's see where we are here.

37

38 Looking at other criterias, the other
39 customary and traditional use determination criteria,
40 these aren't particularly different for the different
41 communities in this area since there is a high level of
42 subsistence use, wide level -- a high level of
43 distribution and exchange of fish and wildlife resources.
44 We do provide detail on methods and means. These are the
45 typical ones for this area, there isn't anything
46 particularly unusual there. Also concerning the methods
47 and means of preparing -- handling, preparing and
48 preserving and storing fish, we note that the ways that
49 knowledge of fishing skills, values and lore are
50 transmitted, pointing out that the community of Hoonah

1 has particularly rich heritage in this area as being the
2 main Native community in this area. And also that other
3 communities have been there quite a while and passed the
4 knowledge of fish and wildlife use inter-generationally.
5 We've provided data on the sharing within families and
6 within community networks.

7
8 Just moving ahead to the effects of the
9 proposal, accepting the proposal as written would
10 recognize the customary and traditional use of all of the
11 Icy Strait-Cross Sound rural residents of all the fish
12 resources found in Federal public waters in Districts 12,
13 13 and 14. The determination also needs to consider
14 neighboring rural communities that may use these
15 districts. We've mentioned Angoon, Funner Bay, Hawk
16 Inlet, as well as residents living outside named
17 communities use portions of Districts 12 and 14. Angoon
18 presently has a positive customary and traditional use
19 determination for the southern portion of Section 12(A).
20 Sitka uses Section 13(A) and has a positive customary and
21 traditional use determination for a portion of that area.

22
23 Dolly Varden, steelhead and other trout
24 species are the primary species likely to be harvested
25 under Federal Subsistence Management regulations in the
26 Icy Strait-Cross Sound area. Some harvest of eulachon,
27 herring and salmon may also occur, however, fishing for
28 these species generally takes place in marine waters
29 under State of Alaska jurisdiction.

30
31 No resource conservation issues are
32 anticipated with any of these species that would require
33 restrictions placed on subsistence harvesters or
34 discrimination among eligible subsistence harvesters
35 through Section .804 procedures.

36
37 Mr. Chair, that completes my summary of
38 the information available and I'm open for questions.

39
40 CHAIRMAN FLEAGLE: Thank you, Bob.
41 Questions, Board members.

42
43 Judy.

44
45 MS. GOTTLIEB: Well, Mr. Chair, just a
46 quick comment, Bob, and others who contributed. I
47 thought this was a really good and thorough analysis and
48 I thought the maps were very helpful also.

49
50 Am I understanding that there might be a

1 review for C&T for Angoon and Sitka in the future, just
2 kind of to be as thorough as this and make sure that we
3 have everything covered?

4

5 DR. SCHROEDER: Mr. Chair. Judy. The
6 Council isn't saying that it wants to submit a proposal
7 and generally Staff don't submit proposals on these
8 things, we just are noting that the situation for the
9 customary and traditional use determinations that we have
10 on our books for those communities don't really reflect
11 all the places that people actually fish.

12

13 CHAIRMAN FLEAGLE: All right, we'll now
14 turn to summary of written public comments, and I see you
15 have one, Bob.

16

17 DR. SCHROEDER: Mr. Chairman. We've got
18 one written public comment. Wanda Culp, who's also been
19 involved in other issues concerning this area wrote a
20 letter on behalf of the customary and traditional users
21 of Hoonah, Alaska. This October 26th letter was signed
22 by four people, possibly more, the copy I received had
23 four signatures.

24

25 She does not support a positive customary
26 and traditional use determination as recommended by the
27 Regional Advisory Council. The letter says that Hoonah,
28 Angoon and Sitka were unaware of this proposal, that this
29 proposal was under discussion. Her letter quotes ANILCA
30 sections and points out that the subsistence provisions
31 were intended to address Native cultural patterns. The
32 letter questions the adequacy of the information
33 presented. She points out that traditional management of
34 thinning the trout populations to protect salmon runs.
35 And she objects to the protection of trout for
36 sportfishermen. She does not believe that Elfin Cove,
37 Gustavus and Tenakee Springs have a customary and
38 traditional use history.

39

40 She also requested that her letter be
41 read into the record in its entirety.

42

43 And, Mr. Chairman, that's the only
44 written public comment we have.

45

46 CHAIRMAN FLEAGLE: Thank you, Robert.
47 Public testimony, we do have one card turned in for
48 Proposal 17, and at this time I'll go ahead and call that
49 person forward. Danielle Dinovelli-Lang.

50

1 MS. DINOVELLI-LANG: (Away from
2 microphone)
3
4 CHAIRMAN FLEAGLE: I can't hear, please,
5 come up to the mic.
6
7 MS. DINOVELLI-LANG: If possible I would
8 like to delay that comment for the general procedural
9 comments in the morning tomorrow.
10
11 CHAIRMAN FLEAGLE: Okay, let me back at
12 the -- you're referring to the public comment period for
13 non-agenda items at the beginning of the day?
14
15 MS. DINOVELLI-LANG: Yes.
16
17 CHAIRMAN FLEAGLE: And you'll withdraw
18 your comment card for this portion and you'll make a
19 comment tomorrow morning?
20
21 MS. DINOVELLI-LANG: Correct.
22
23 CHAIRMAN FLEAGLE: Okay, duly noted,
24 thank you.
25
26 MS. DINOVELLI-LANG: Thank you.
27
28 CHAIRMAN FLEAGLE: Okay, we'll now turn
29 to Bert Adams for the Regional Advisory Council
30 recommendation. Bert.
31
32 MR. ADAMS: Thank you, Mr. Chairman. I'd
33 just like to make a comment about a statement that Dr.
34 Schroeder made earlier, he had, you know, this piece of
35 paper distributed and he said that he wanted a colleague
36 of his to pass it out, in Southeast Alaska Tlingit,
37 Tsimshians and Haida, you know, don't like the word, pass
38 out, and if you're sitting in an ANB, ANS Grand Camp
39 Convention, anyone who uses that is heavily fined. We
40 prefer mostly the word, distribute. So I just wanted to
41 chastise Dr. Schroeder on that here in public.....
42
43 (Laughter)
44
45 MR. ADAMS:so he'll know better the
46 next time.
47
48 DR. SCHROEDER: Mr. Adams, I promise I'll
49 never pass out in a public meeting.
50

1 (Laughter)

2

3 MR. ADAMS: Good. Thank you. Council
4 recommendation for this proposal is to support it as
5 modified. And that modification is found, you know, as
6 Dr. Schroeder alluded to on Page 146. The modification,
7 more precisely, specifies the determinations recommended
8 for each fishing district or section. And the existing
9 positive customary and traditional use determinations for
10 Sitka and Angoon are not reduced by this modification in
11 no way.

12

13 Last year there was a proposal, it was
14 Proposal -- I think Dr. Schroeder alluded to it, 23, and
15 this concerned Gustavus residents, customary and
16 traditional use of fish in Sections 14(B) and 14(C). At
17 that time the Council found that data presented and the
18 public testimony showing that there were used for
19 subsistence purposes by Gustavus residents were very
20 limited, and the Staff analysis for Proposal 23 also
21 noted that other communities used the Icy Strait Sound
22 area and that all of Hoonah's traditional territory was
23 not recognized as Dr. Schroeder also made mention of.
24 The Council stated that it would submit a customary and
25 traditional proposal for this area that would call for
26 more comprehensive determination and, you know, I was in
27 on a teleconference, you know, I think it was in November
28 when the Council [sic] took up the Gustavus issue and I
29 was kind of disappointed in the fact that the Council
30 [sic] moved on this, I felt, prematurely because the
31 Gustavus issue would have been included in this proposal,
32 which is, you know, the one we're going through, Proposal
33 17, which the Council has submitted.

34

35 The Staff analysis for Proposal 17
36 included new sources of information and more thorough
37 analysis of data were considered for 06-23, in
38 particular, this analysis examined Tongass Resource Use
39 Cooperative Study intensity of use of maps and the State
40 of Alaska subsistence salmon harvest permit data and the
41 State of Alaska subsistence sensitivity to disturbance
42 maps. In addition, Staff made field visits to Elfin Cove
43 and Pelican and were able to do limited interviewing with
44 fishers in these communities.

45

46 All of the communities of the area show
47 high levels of subsistence use of fish and wildlife and a
48 reliance on a wide variety of resources and subsistence
49 patterns of sharing and exchanging of subsistence foods.
50 And they more than meet the criteria that the Council has

1 used as a guidelines in making its recommendations. So
2 the analysis provides the basis for a positive customary
3 and traditional use determination for rural residents
4 using the Icy Strait-Cross Sound.

5
6 I'd just kind of like to, you know, make
7 a comment in regards to Mrs. Culp's statement and her
8 letter. And I'll just say it in this way, the Council
9 recognized that Icy Strait-Cross Sound area is part of
10 the traditional territory of the Hoonah Tlingit (In
11 Native) Kaagwaantaan and (In Native) clans. Their long-
12 term pattern of use stretches of millennia, perhaps into
13 the earliest human habitation of this area. The shared
14 outer coast areas with Sitka Tlingit and Upper Chatham
15 Straits and Tenakee Inlet with Angoon as well as, you
16 know, the Yakutat people. In fact the (In Native)
17 people, you know, came from the Yakutat area, they're a
18 branch of the (In Native) from that area. These clans
19 have accommodated a few -- the newer residents in their
20 traditional territory whose history of use is much more
21 limited.

22
23 Now, the subsistence protections in
24 ANILCA does not consider ethnicity, therefore, the
25 Council recommendation covers all of the rural residents
26 of this area.

27
28 And, you know, Mr. Chairman I thank you.
29 I tried to make this short and sweet as I possibly could
30 and I still carry that policy, you know, that I'll answer
31 any questions as long as you don't make it a hard one.

32
33 Thank you.

34
35 CHAIRMAN FLEAGLE: Thank you, Bert.
36 Board members questions for Bert's testimony -- or his
37 analysis.

38
39 (No comments)

40
41 MR. ADAMS: Thanks.

42
43 CHAIRMAN FLEAGLE: Those are easy. Oh,
44 Denny.

45
46 MR. BSCHOR: Yes, Mr. Chair. Just a
47 quick question, you referred to the proposal that you
48 support is on Page 146, did you mean 148?

49
50 MR. ADAMS: Yes.

1 MR. BSCHOR: Okay, thank you.

2

3 CHAIRMAN FLEAGLE: Okay, 148 is the
4 amended version. All right, Department of Fish and Game
5 comments, John Hilsinger.

6

7 MR. HILSINGER: Thank you, Mr. Chairman.
8 The Department of Fish and Game recommendation for this
9 proposal is to defer action and consistent with comments
10 that we've made over the past year. We believe that
11 actions on these customary and traditional use
12 determinations should occur after the Board adopts its
13 written policies and criteria for adoption of C&T
14 determinations.

15

16 In this case, we note that the original
17 proposal appears to be overly broad. Many of the
18 communities in the area do not show, at least, according
19 to the data in the analysis, a usage of some of the
20 sections that are included, and so when this does come up
21 for determination, we would support a much narrower view
22 of it than the original proposal. And in particular we
23 would like to see documentation of customary and
24 traditional use of the Federal waters in these areas. It
25 appears from the data presented, that much of the harvest
26 that occurs, occurs in waters under State regulations. I
27 look at Table No. 4 that Dr. Schroeder passed out, the
28 non-salmon fish harvest, in many cases exceeds the salmon
29 harvest, which leads me to believe that it's probably
30 halibut and -- but I don't see any documentation of the
31 catch of halibut in waters subject to Federal
32 jurisdiction.

33

34 The other issue is making the
35 determination for all fish and, of course, we discussed
36 this at length at the InterAgency Staff Committee and the
37 State's position is that the C&T determinations should be
38 made for those fish species for which there's data to
39 support making it. And we're somewhat concerned that
40 this may be confusing because many of the fish species
41 may not even occur in waters subject to Federal
42 jurisdiction.

43

44 So in conclusion, I just would reiterate
45 that the State's recommendation is to defer action until
46 the criteria and policies are done and then proceed
47 forward according to those criteria and policies.

48

49 Thank you.

50

1 CHAIRMAN FLEAGLE: Thank you, John.
2 Questions.

3
4 (No comments)

5
6 CHAIRMAN FLEAGLE: Hearing none, we'll
7 move to the InterAgency Staff Committee recommendations,
8 Steve Klein.

9
10 MR. KLEIN: Thank you, Mr. Chair. The
11 InterAgency Staff Committee recommendation is found on
12 Pages 150 and 152, and the Staff Committee supported the
13 proposal with modification, and exactly as outlined by
14 the Southeast Alaska Council. So you'll note Pages 150
15 and 148 mirror each other.

16
17 And the Staff Committee felt that the
18 proposed determination accurately reflects the customary
19 and traditional uses of fish by Icy Strait-Cross Sound
20 rural residents. It also recognizes the uses in these
21 areas of other rural residents in the nearby Chatham
22 Strait, of other rural residents living in Sitka and
23 remote locations on the outer coast of Baranof and
24 Chichagof Islands.

25
26 The Council's recommendation is
27 consistent with the intent of the original proposal by
28 recognizing C&T use of fish for communities in the areas
29 where available information show that community residents
30 have fished. The modification recognizes C&T use of fish
31 in a district or section for community if available
32 information sources show fishing in that district or
33 section. And using a fishing district or section allows
34 for clear and concise regulations consistent with most
35 other determinations in Southeast Alaska.

36
37 All communities discussed in the analysis
38 were considered with regard to the eight factors for
39 determining C&T uses and were found to meet the criteria.

40
41 The Staff Committee felt that the
42 analysis, public testimony at the Council meeting and
43 personal knowledge of Council members provided
44 substantial information to support the Southeast Alaska
45 Council recommendation.

46
47 And I would add that it's an excellent
48 example of local rural residents working with Staff on
49 C&T determinations.

50

1 So there's our recommendation on Page
2 150, Mr. Chair.
3
4 CHAIRMAN FLEAGLE: Okay, thank you. Any
5 questions.
6
7 (No comments)
8
9 CHAIRMAN FLEAGLE: All right. We're at
10 the stage where we're open for discussion on the issue.
11
12 (Pause)
13
14 CHAIRMAN FLEAGLE: Anybody want to lead
15 off. Denny.
16
17 MR. BSCHOR: Yes, Mr. Chair. I want to
18 thank the Staff and the Council for the effort they've
19 put into this, realizing that with this sort of
20 determination and the eight factors that they have to
21 look at, the information is -- what you've found is
22 extensive, although you never have all the information,
23 but I do want to thank them for the work they've put into
24 this.
25
26 We've also -- this is a follow up to
27 actions we had earlier in other meetings with RFRs on
28 Gustavus and so forth and I think, from what I've seen of
29 the presentations and the information that that has been
30 accomplished.
31
32 CHAIRMAN FLEAGLE: We have Ralph Lohse.
33
34 MR. LOHSE: Mr. Chairman. I just have a
35 question because it came up in the State's comments. And
36 I just wondered, does C&T have to be based on the use of
37 resources on Federal land or is it proper to show that
38 the usage of multiple species demonstrates the usage of
39 subsistence resources, even if they are unavailable on
40 Federal land, and if they're not available on Federal
41 land, even if you have C&T that uses those as proof that
42 you are using subsistence resources, you're not going to
43 be getting them under Federal regulations anyway, but the
44 idea was that to be a subsistence user you had to use a
45 broad spectrum of resources, and those resources aren't
46 necessarily all available on Federal land, but it's still
47 a broad spectrum of resources? Am I correct on that or
48 am I wrong?
49
50 CHAIRMAN FLEAGLE: I'm looking at an

1 empty chair here. But I think the first part of your
2 question was to the State's determination of C&Ts?

3

4 MR. LOHSE: Negative. My comment, it was
5 based on the comment by the State that it's possible that
6 some of these fish that are on this chart right here
7 aren't even available on Federal waters or Federal land,
8 but this chart to me is just showing a multiple use, a
9 broad spectrum of use of subsistence resources, whether
10 they're available on Federal land or whether they're not
11 available on Federal land to show that these communities
12 use subsistence resources. And so the fact that these
13 resources aren't taken in Federal waters, in this case,
14 really shouldn't affect the fact that these communities
15 use subsistence resources. And so that -- I mean if we
16 have to -- in order to show C&T show that all of the
17 resources that are used in proving that a community uses
18 C&T are taken on Federal land, then that means that in a
19 lot of cases a lot of the things that we use to show that
20 a community uses a broad spectrum of resources just isn't
21 available because it's not available on either Federal
22 lands or Federal waters.

23

24 And to me, what we're using these for is
25 to show that these communities do use subsistence
26 resources, so it's customary and traditional for them to
27 use, in this case, all species of fish, whether they take
28 them on Federal land or Federal waters or State waters.
29 Now, any regulations that you make are only going to
30 apply to Federal waters, but the determination is based
31 on the fact that they use a broad spectrum of resources.

32

33 And that's what I was wondering, if in
34 the future, if we have to look at whether these resources
35 are used on Federal lands or whether the community uses
36 this broad spectrum of resources?

37

38 CHAIRMAN FLEAGLE: Did you understand the
39 question, Keith, do you want to try to give an answer to
40 that.

41

42 MR. GOLTZ: Yes. I think the proper
43 inquiry is whether the community uses that broad spectrum
44 of resources. We should remember that Federal lands in
45 this state are not static, they change. We have certain
46 occasions where lands come into Federal ownership, we
47 have more occasions when lands go out of Federal
48 ownership. We can't chase that.

49

50 What our regulations do is say that the

1 Title VIII priority applies to Federal lands, wherever
2 they are, at the present. And that's the way our
3 regulations are written, both for land and for water.

4

5 MR. LOHSE: Mr. Chair.

6

7 CHAIRMAN FLEAGLE: Yeah, go ahead.

8

9 MR. LOHSE: Can I ask Keith -- through
10 the Chair, can I ask Keith a question on that then?

11

12 CHAIRMAN FLEAGLE: Go ahead, you may.

13

14 MR. LOHSE: While we recognize, Keith,
15 that the actions and the regulations only apply to
16 current Federal land or Federal water, the actions or the
17 regulations that are made only apply to current Federal
18 land and Federal water, when it comes to determining C&T,
19 which is to basically say that this community or that
20 community uses a broad spectrum of subsistence resources,
21 do we only have to use subsistence resources that are
22 available on Federal land or Federal water, or can we
23 consider all subsistence resources that they use?

24

25 MR. GOLTZ: For the purposes of C&T
26 determination under the present regulations we're
27 considering all resources that they use. And I just
28 happen to have, just by luck, a copy of the Federal
29 Register where we discuss a similar issue.

30

31 And this is dated April 4th, 1996, and
32 what we said was, that land ownership patterns within
33 CSUs are complex. Most of the land has not been surveyed
34 and ownership is still changing as land selections are
35 conveyed to the State of Alaska and Alaska Native
36 corporations. So the way it works is, under the present
37 system, we make a determination, much as Dr. Schroeder
38 has done, and then the application of that will vary
39 within units depending on the land patterns.

40

41 This is especially clear when we're
42 talking about wildlife species, because land ownership
43 will be the ultimate determination. Within water it's
44 not quite so clear because what we -- well, it's clear
45 but it's a little bit different. Waters within CSUs are
46 subject to Federal jurisdiction as are adjacent waters.

47

48 But if we were to try to sharpen our
49 pencil as finely as the State would have us sharpen it it
50 would be an impossible task, we would be making

1 determinations which we would then find ourselves
2 undercut as land patterns change, and we have never taken
3 that approach.

4
5 CHAIRMAN FLEAGLE: Okay, thank you. I
6 think it's pretty easy to determine, in my mind, whether
7 or not those long-term customary and traditional uses
8 occurred at Point A geographically or Point B, the point
9 is that it occurred, so I don't see where that makes a
10 real big issue.

11
12 But here's a question that I have along
13 the same vein, and that's under our regulations of 100.16
14 customary and traditional use determination process where
15 it says, the Board shall determine which fish stocks and
16 wildlife populations have been customary and
17 traditionally used for subsistence. Next sentence
18 states, that these determinations shall identify the
19 specific community or area's use of specific fish stocks
20 and wildlife populations.

21
22 So I think that my read on that
23 regulation there is that we wouldn't be able to, for
24 instance, find a positive determination for one species
25 of fish just because we found a positive determination
26 for another species of fish, am I clear on that? I mean
27 just the fact that people have subsisted there, if that
28 particular species wasn't among their subsistence uses,
29 we can't find for a positive on that, right?

30
31 MR. GOLTZ: I think that's correct. I
32 think what you're saying is we do it by stocks and
33 population and if a stock and population has not been
34 used then it would not be subject to a C&T determination.

35
36 I think as an intellectual matter, that's
37 correct. I've yet to discover a stock or population in
38 the state yet that hasn't been at some time used for
39 subsistence. I think Ralph's question was a little bit
40 different. I understood it to be focused on the location
41 of take. But the C&T determinations are, in fact, made
42 on stocks and populations, that's correct.

43
44 CHAIRMAN FLEAGLE: No, I'm not confused
45 at all about Ralph's question. I think we dispensed with
46 that okay. But I just raise a minor concern, I'm not
47 sure. If we go to the statement all fish, what are we
48 adding that's not already allowable under the salmon,
49 Dolly Varden, trout, smelt and eulachon and is it
50 something that the Board has found a positive customary

1 and traditional use for, you know, for whatever we're
2 adding?

3
4
5 the.....

Why go to all fish, I guess, that's

6
7 MR. GOLTZ: I think I'd defer to Dr.
8 Schroeder on that. I don't think halibut or rock fish
9 appear, generally, in fresh waters, but I think that
10 there are some small portions of Federal marine waters
11 that are within our jurisdiction and those species may
12 occur in those, I don't know.

13
14 CHAIRMAN FLEAGLE: Bob.

15
16 DR. SCHROEDER: Mr. Chairman. I don't
17 have a lot to add to this part of the discussion. I may
18 pass the ball a little bit to my colleague, Cal Casipit.
19 We did look at just the way we have our C&T
20 determinations on the books for Southeast, and we do have
21 determinations for all fish and I can't say exactly how
22 those got there. I think it's a certain economy of
23 effort also following Keith's remarks, that any fish that
24 can be used is likely to be used somewhere around the
25 state.

26
27 We also have this situation, which should
28 be apparent from my presentation of data for this C&T
29 that the major work in this area was done fully 19 years
30 ago, we're not funding research for studies and neither
31 is the State to provide in-depth documentation for each
32 and every of the dozens, if not, hundreds of species that
33 occur in Southeast Alaska, so we may be up against this
34 issue of what's practical to accomplish and what serves
35 the interest of ANILCA.

36
37 CHAIRMAN FLEAGLE: All right, thanks.
38 I'm not in any way trying to find reason to vote against
39 this proposal, I just want to make sure that whatever
40 action the Board does is in compliance with the statutes
41 and regulations that we have to operate under. It's just
42 kind of a nebulous question, I realize, but it has little
43 bearing on, I guess the overall -- Keith.

44
45 MR. GOLTZ: I think one point we want to
46 keep in mind is that the introduction to our regulations
47 are the introductory sections. Make it clear that
48 Federal regulations apply only where the Federal
49 government has jurisdiction. So that would be inland
50 waters within CSUs, it would be certain selected marine

1 waters and it would be Federal public lands within CSUs
2 and it's basically -- there are a few others but
3 basically our regulations apply only where the Federal
4 government has jurisdiction and nowhere else.

5
6 CHAIRMAN FLEAGLE: Thank you. Other
7 Board members. John Hilsinger, comments.

8
9 MR. HILSINGER: Thank you, Mr. Chairman.
10 It seems like there's an issue of transference.

11
12 If you determine that a community has a
13 customary and traditional use of a resource in the State
14 area and then if you provide -- use that to give it a C&T
15 for the area of Federal jurisdiction, you've sort of
16 transferred that usage that occurred under State
17 jurisdiction over to an area where it may have never
18 occurred before under Federal jurisdiction. And when you
19 do that you cut out other users. If there's no C&T
20 finding, for instance, all rural residents of Alaska can
21 harvest those species on Federal public lands, and once
22 there's a C&T determination they can't.

23
24 So I think it's more than just sort of
25 academic to try to be sure that that usage occurred on
26 those Federal public lands before you make a C&T finding
27 that excludes -- potentially excludes other users.

28
29 And the other part is just, I think,
30 we've talked a lot about common sense here today but it
31 seems like we ought to be sure that a species exists
32 before we find that there's been a customary and
33 traditional use of it in that area.

34
35 Thank you.

36
37 CHAIRMAN FLEAGLE: Yeah, go ahead Keith
38 Goltz.

39
40 MR. GOLTZ: I don't want to make this an
41 extended legal debate but I do want to point up one
42 thing. We have never contended that the subsistence
43 harvest must always take place where it had
44 traditionally or historically occurred. There can be
45 good legitimate conservation reasons for a shift, and
46 there can be accommodation reasons for a shift, which we
47 will be facing probably in May. But what we're dealing
48 with are stock or population, not historical location of
49 harvest.

50

1 CHAIRMAN FLEAGLE: Yeah, and I know I'm
2 the one that's asking a lot of these questions because
3 I'm not intimately, you know, aware of the Federal
4 system's processes and procedures yet so, again, I
5 apologize if I'm belaboring a lot of these issues, you
6 know, because most of you have gone through them, but
7 it's important for me to have my head wrapped around an
8 item or issue before I make a decision on it and that's
9 part of it.

10
11 But, anyway, on that issue, I just don't
12 have any problem with that question at all. I recognize
13 the State's objection and that they don't want to have us
14 find a C&T on -- you know, what we're doing is we're
15 cutting out other users by our process, and I recognize
16 that, that's the intent of this process, though, is the
17 Federal Board's process. And whether or not that harvest
18 occurred on a piece of State land or Federal land is
19 irrelevant. I mean before time immemorial, you know,
20 before this state was divvied up between the State and
21 the Federal governments, people were free to travel
22 wherever and whenever, they did whatever they wanted to
23 within confines of running into an opposing band or
24 something. But I just have a really hard time trying to
25 make any justification based on a specific geographic
26 location.

27
28 But the regulations do talk about
29 specific populations and species, that's what I'm kind of
30 having a little struggle with. So the whole issue about
31 whether a positive C&T can be found based on harvest off
32 of Federal lands, I have no problem with that.

33
34 I just want to treat carefully, though,
35 you know, like John did say, you don't want to
36 necessarily find a positive C&T for a species that hasn't
37 existed in that customary and traditional use
38 determination. Which, in today's climate change could be
39 a possibility, we could have a new species of fish moving
40 into these waters that has never been seen by the
41 indigenous peoples of the area, ever, or even a
42 terrestrial mammal, and, are we going to find a positive
43 C&T based on that just because they used anything and
44 everything that was before. That's a little more
45 nebulous to me.

46
47 I think that one person could make the
48 stretch and say, yes, because indigenous people have made
49 use of those resources, no matter what they were, when
50 they were available. And, you know, we harvested

1 muskoxen and woolly mammoth, they're not around anymore,
2 that doesn't mean that we didn't, or the wood bison in
3 the Interior of Alaska, I mean these things were
4 harvested.

5
6 Anyway, you know, I'm just postulating
7 here.

8
9 Niles.

10
11 MR. CESAR: We used to harvest
12 Athabascans, too, but we gave that up.

13
14 (Laughter)

15
16 CHAIRMAN FLEAGLE: I resemble that
17 remark.

18
19 (Laughter)

20
21 CHAIRMAN FLEAGLE: Jerry.

22
23 MR. BERG: And we had some of these same
24 discussions in our InterAgency Staff Committee and I was
25 wondering also, at that time, why we made the leap from
26 salmon, Dolly Varden, trout, smelt and eulachon to all
27 fish and I asked some of the same questions, about what
28 other fish species do people harvest there and I see that
29 they did add in herring into the effects of the proposal,
30 that those were -- it was one other species that they
31 listed. And I don't know if it really makes a difference
32 whether you just list all fish and they're allowed to
33 take any fish that's there because people always say, for
34 subsistence they take whatever they can get, or whether
35 you list it by species, you know, we're just trying to
36 list all the species that they take so it's just kind of,
37 you know, half dozen to one, six the other, I guess. But
38 it would be good to just list all species, I guess,
39 because they're only going to take what's available in
40 the Federal waters.

41
42 CHAIRMAN FLEAGLE: Thanks, Jerry.
43 Further discussion.

44
45 Ralph Lohse.

46
47 MR. LOHSE: Mr. Chair, I have another
48 question and I guess I'm getting things thrown at me this
49 meeting that I've never heard before.

50

1 I know that when you find a C&T for a
2 community or a group, you're recognizing their usage of a
3 resource, but finding a C&T doesn't necessarily cut out
4 other users, in fact, I think the only time that that C&T
5 ever has the possibility of cutting out other users is in
6 times of shortage if you go to an .804. And I may be
7 wrong on that and I'd like to be corrected on that if I
8 am wrong, but I was under the impression that C&T did not
9 necessarily -- I mean I can think of a lot of things that
10 we have C&T for in Southcentral that we have an awful lot
11 of people using despite that certain groups are the ones
12 that have C&T on them.

13

14 C&T only sets a priority system up, it
15 does not necessarily cut out other users by finding C&T,
16 am I correct on that, Keith?

17

18 CHAIRMAN FLEAGLE: Go ahead, Keith Goltz.

19

20 MR. GOLTZ: You're absolutely correct and
21 it's something I probably should have mentioned, too.
22 The allocations are made later. And you can make a
23 pretty good argument that what C&T really is, is a
24 restriction on other subsistence users, and not on
25 anybody else because the immediate effect of C&T is to
26 take what is generally the whole state and to reduce it
27 down to a local area. So, right, C&T does not restrict
28 other users in and of itself.

29

30 MR. LOHSE: Thank you. And then along
31 that same lines, Mike, you brought up something and I
32 know this came up quite a few years ago, it dealt with
33 moose in Nome. And I mean I sat here in this Board
34 meeting and I listened to it being discussed, the fact
35 that we have a C&T for moose in Nome when there weren't
36 moose in Nome, not that long ago. But exactly what you
37 brought up was the fact that they used a broad spectrum
38 of subsistence resources that were equivalent to the
39 moose and if the moose would have been there, they would
40 have used them. And the Board found a C&T for moose in
41 Nome.

42

43 They found a C&T for deer in Prince
44 William Sound based on the same criteria, which was,
45 that, if they would have been there they would have been
46 used, they are now used by the current community that's
47 there, and the current community is what counts, not what
48 happened a thousand years in the past, not what happened
49 a hundred years in the past, but what is the current
50 subsistence community using. And the current subsistence

1 community in Prince William Sound uses deer and they
2 would have used them in the past if they would have been
3 there.

4
5 But that was the argument, that was the
6 discussion that came from this Board, I don't remember if
7 this was 10 years ago or 12 years ago or where it was in
8 the process but it was a long time ago and that's what
9 the finding was, that there was a C&T for moose in Nome
10 and there's a C&T for deer and moose in Prince William
11 Sound.

12
13 CHAIRMAN FLEAGLE: Appreciate that,
14 Ralph. And I do know that those decisions were not
15 without controversy because of that application. And,
16 you know, that's just part of the reason why I raise it,
17 I'm curious as to what belies that philosophy or, you
18 know, is it regulation or is it just an unspoken
19 philosophical understanding that the Board has made a
20 determination on.

21
22 In fact, I'm comfortable with it either
23 way, honest, even on the State Board, we -- when I was on
24 the State Board we made a positive determination for
25 muskoxen on the Seward Peninsula that a lot of people
26 thought was a stretch so I mean these things are not cut
27 in stone, so I'm not trying to pick apart or oppose this,
28 I just want to understand it. So I guess I'll shut up
29 after Keith talks and then I'll let somebody else go.

30
31 MR. GOLTZ: ANILCA refers to wild,
32 renewable resources. And the position we've taken is
33 that once, usually a game animal is released, it becomes
34 wild and, therefore, it's susceptible to subsistence
35 harvest.

36
37 I remember Sidney Huntington has a
38 chapter in his book on when moose first came into the
39 Koyukuk Valley and it didn't take the subsistence users
40 very long to figure out what to do with a moose, and
41 that's sort of the history that we've keyed in to.

42
43 CHAIRMAN FLEAGLE: I appreciate the
44 discussion. All right, let's then get back to the
45 proposal at hand, Proposal 17. Are we ready for a motion
46 or do we want to have a little more discussion on the
47 presentations we've heard.

48
49 Denny.
50

1 MR. BSCHOR: Well, Mr. Chair, this has
2 been an interesting discussion and as you said lots of
3 situations will come and go and we've got to respond to
4 those accordingly but at the moment, unless we want to
5 list all the species that we can think of that are on
6 Federal lands and stick to that, and we might forget one,
7 I'd rather error on the other side and keep all in here.

8

9 But I am prepared to make a motion.

10

11 CHAIRMAN FLEAGLE: Go ahead.

12

13 MR. BSCHOR: Okay, I move to adopt the
14 Southeast Alaska Regional Advisory Council recommendation
15 for Proposal FP07-17 and following a second I'll provide
16 my rationale and that relates to the items on either Page
17 148 or 150 since they're the same. I won't read through
18 all of that.

19

20 MR. CESAR: I'll second that.

21

22 CHAIRMAN FLEAGLE: All right, we do have
23 a second. Go ahead, Denny, rationale.

24

25 MR. BSCHOR: Well, once again as far as
26 following through with the instructions we had for the
27 Council to take a look and try to define this and refine
28 it more, I think they've done that to the best of our
29 ability at this time. I think it's in line with the
30 eight criteria as best as we can do at this time, and it
31 also -- we've asked them to modify the original proposal,
32 they've done that. The analysis examined all sources of
33 information for this area of the north part of Southeast
34 Alaska and based on the maps, 2 through 7, in appendix A,
35 I believe that the Council's recommendation is a correct
36 one.

37

38 I do want to make the point, and
39 reiterate and emphasize that we're just talking about the
40 use of subsistence resources in Federal jurisdiction.

41

42 Mr. Chair.

43

44 CHAIRMAN FLEAGLE: Thank you, Denny.
45 Board members further discussion.

46

47 MS. GOTTLIEB: Mr. Chair.

48

49 CHAIRMAN FLEAGLE: Judy.

50

1 MS. GOTTLIEB: Thank you. Likewise, I
2 think this was a thorough analysis. I think the RAC has
3 been working on this for several sessions and done a
4 really good job on it. And I guess if there's any
5 concern for species by species, once it came time to do
6 species specific allocations, then they would be named,
7 so I'm comfortable with saying all at this point in time.
8

9 CHAIRMAN FLEAGLE: I appreciate the fact
10 that the Regional Advisory Council amended their own
11 proposal based on objections raised by communities in
12 their district and left those alone, amended them out, I
13 appreciate the work there.

14
15 I agree with the intent of the proposal
16 as it's before us in its new form that we have before us
17 by motion.

18
19 Other discussion.

20
21 (No comments)

22
23 CHAIRMAN FLEAGLE: Question's called on
24 the motion to adopt Proposal 17, Pete, please poll the
25 Board.

26
27 MR. PROBASCO: Thank you, Mr. Chair.
28 Final action on Proposal FP07-17 and that motion is as
29 presented on Page 148.

30
31 Mr. Berg.

32
33 MR. BERG: Aye.

34
35 MR. PROBASCO: Mr. Fleagle.

36
37 CHAIRMAN FLEAGLE: Aye.

38
39 MR. PROBASCO: Ms. Gottlieb.

40
41 MS. GOTTLIEB: Aye.

42
43 MR. PROBASCO: Mr. Cesar.

44
45 MR. CESAR: Aye.

46
47 MR. PROBASCO: Mr. Oviatt.

48
49 MR. OVIATT: Aye.

50

1 MR. PROBASCO: And Mr. Bschor.
2
3 MR. BSCHOR: Aye.
4
5 MR. PROBASCO: Mr. Chair, motion carries,
6 six/zero.
7
8 CHAIRMAN FLEAGLE: Thank you, Pete. All
9 right, let's go ahead and take up Proposal 18. We'll get
10 started on it at any rate, I'm not sure if we'll be able
11 to finish it by day's end but we'll go ahead and do the
12 analysis, and we have a new person at the table to do the
13 analysis.
14
15 MR. PROBASCO: Terry Suminski.
16
17 CHAIRMAN FLEAGLE: Terry Suminski.
18 Welcome Terry.
19
20 MR. SUMINSKI: Thank you, Mr. Chairman.
21 Members of the Board. My name is Terry Suminski, I'm a
22 fisheries biologist with the U.S. Forest Service
23 stationed in Sitka.
24
25 You'll find the executive summary for
26 Proposal 18 starts on Page 191 of your Board book and the
27 analysis starts on Page 200.
28
29 Proposal FP07-18 was submitted by the
30 Southeast Alaska Regional Advisory Council. Proposal FP-
31 19, which is on your consent agenda was submitted by the
32 Sitka Tribe of Alaska, these are almost identical. Both
33 proposals would close the Federal public waters of
34 Makhnati Island area near Sitka to commercial herring
35 fishing during the months of March and April.
36
37 The Council and STA believe that a
38 regulatory change is needed to ensure that subsistence
39 needs for herring and herring roe are met. The
40 proponents feel that commercial fishing activities
41 displace subsistence users from traditional harvesting
42 sites, may disrupt herring spawning such that good
43 quality deposition of herring eggs does not take place at
44 traditional sites, may cause herring to spawn away from
45 subsistence sites, and may seriously reduce the biomass
46 of spawning herring upon which subsistence users depend.
47
48 The proponents feel that closing Federal
49 marine waters to commercial harvesting during March and
50 April will be a constructive step in ensuring that

1 subsistence needs may be met.

2

3

4 Under current Federal regulations all
5 rural residents of Alaska are eligible to harvest
6 herring, herring roe on macrocytic kelp, herring roe on
7 hemlock or herring roe on other substrates from Federal
8 waters in Southeast Alaska. There are no seasons or
9 harvest limits in regulation.

9

10

11 The Federal public waters near Makhnati
12 Island comprise a small part of the spawning area of
13 herring in Sitka Sound and also make up a small part of
14 where subsistence herring eggs are gathered. Evaluating
15 the effects of a closure in a small area of Federal
16 public waters is extremely difficult due to the large
17 yearly fluctuations and intensity and location of herring
18 spawning activity in Sitka Sound.

18

19

20 From 1978 to 2006 the nautical miles of
21 beach in which herring spawn has varied from 13 to 104
22 nautical miles and is not in the same area every year.
23 Some areas are more consistent than others, but spawn is
24 not guaranteed in any area every year. Spawn and
25 subsistence harvest occurs in most years within the
26 Federal public waters but there is no way to know how
27 much of the harvest comes only from the Federal waters.
28 The traditional harvest of eggs in substrates is affected
29 by many natural factors such as weather, where and when
30 and how and how much the herring spawn.

30

31

32 Subsistence users are allowed to harvest
33 herring and herring eggs anywhere in and around Sitka
34 Sound. Established in a small area for only subsistence
35 use may not provide additional benefit to subsistence
36 users if herring lack spawning fidelity and simply don't
37 spawn in that area in a given year, where people that
38 harvest herring eggs is ultimately determined by where
39 herring spawn.

39

40

41 The area where commercial sac roe herring
42 fishery occurs also varies widely from year to year.
43 From 2002 to 2006 the Federal public waters near Makhnati
44 Island have made up a part of the area's open to
45 commercial sac roe herring fishing six out of the 15
46 years. Since the area of Federal public waters has been
47 a part of larger areas open to commercial fishing,
48 there's no way to apportion harvest from only Federal
49 public waters. The closure of a relatively small area of
50 Federal jurisdiction would probably not affect whether
51 the commercial quota is reached, but it would reduce the

1 area available for commercial fishing and may increase
2 the chance of commercial fishing taking place in better
3 traditional egg harvesting areas.

4
5 In 2002 a memorandum of agreement was
6 signed between the Sitka Tribe of Alaska and the Alaska
7 Department of Fish and Game in response to poor spawn
8 harvest in 2001. Since the agreement was signed, amounts
9 necessary for subsistence as determined by the Alaska
10 Board of Fisheries were met in years 2003, 2004 and 2006,
11 but were not met in 2005.

12
13 A Federal closure of a fishery may only
14 be exercised when it's necessary to conserve fish stocks
15 or to continue subsistence uses. The spawning biomass of
16 Sitka Sound herring has shown a strong upward trend since
17 1978. In most years subsistence needs for herring spawn
18 on substrates have been met. In years where subsistence
19 needs are met a permanent closure in regulation would not
20 be necessary. An alternative to a permanent regulatory
21 closure would be for Federal managers to continue to work
22 closely and coordinate with ADF&G and Sitka Tribe of
23 Alaska. During the 2006 herring harvest, the
24 coordination and communication between Sitka Tribe and
25 ADF&G was quite successful. Supporting and building upon
26 this success is key to ensuring subsistence harvests are
27 as successful as possible.

28
29 While in-season action by Federal
30 managers would be difficult to implement in a timely
31 manner since commercial fishery largely takes place first
32 and subsistence harvest may not be known for months
33 afterwards, it is more practical for Federal managers to
34 take action pre-season based on previous year's harvest
35 trends and predicting herring abundance.

36
37 Thank you.

38
39 CHAIRMAN FLEAGLE: Questions.

40
41 (No comments)

42
43 CHAIRMAN FLEAGLE: All right, thank you
44 for that overview.

45
46 And let's see, we don't have any written
47 public comments; is that correct?

48
49 DR. SCHROEDER: Mr. Chair. No written
50 public comments for this proposal.

1 CHAIRMAN FLEAGLE: Thank you. We now
2 turn to public testimony and I do have three people
3 indicated a desire to testify before the Board on this
4 issue and I'm not going to set any time limits, we
5 obviously don't have a huge rush of testifiers here. So
6 the first one I'm going to call up is Mike Miller.

7
8 (Pause)

9
10 CHAIRMAN FLEAGLE: There's a space right
11 up here next to Steve Klein with a microphone at the
12 front table.

13
14 MR. MILLER: Thank you, Mr. Chairman.
15 Board members. So I can talk for a long time then.

16
17 (Laughter)

18
19 CHAIRMAN FLEAGLE: When you have made
20 your point I'll suggest that you stop.

21
22 (Laughter)

23
24 MR. MILLER: Just throw something at me
25 or whatever and I'll stop. So thanks again, my name is
26 Mike Miller from Sitka, representing Sitka Tribe of
27 Alaska.

28
29 I'm here to talk about Proposal 18. I
30 speak in favor of that proposal and extend the support of
31 the Sitka Tribe and it's 4,000 enrollees from the tribe.
32 I actually could go on for quite some time but I'll try
33 to make it a little bit brief, try to condense several
34 hundred years of history of herring egg harvest in Sitka
35 Sound, for not just Sitka but for all of the state and
36 quite a few other states, too.

37
38 But I guess, briefly, to start, Sitka has
39 had one of the longest standing histories, the most well
40 documented histories of herring egg harvest. The
41 earliest Russian people that came there documented the
42 large gathering of people that came there in the spring
43 to harvest herring eggs, and actually there's a lot of
44 people in this room that eat herring eggs from Sitka.
45 There's -- I'm not pointing any fingers, but some of the
46 older people also ate herring eggs from Auke Bay, they
47 ate herring eggs from Kashakes (ph), they ate herring
48 eggs from Prince of Wales Island, but if they're eating
49 herring eggs now, they're eating herring eggs from Sitka,
50 because of the demise of the other herring eggs -- or

1 herring fisheries and the lack of harvest from those
2 areas.

3
4 It's a very, very important fishery for,
5 not just Sitka, but there's lots of people that come from
6 other communities throughout the state during herring
7 eggs time to harvest for their own selves.

8
9 As I said I'm a member of Sitka Tribe of
10 Alaska and I am a harvester of herring eggs, I harvest as
11 much as I can physically, ship it out to people, I ship
12 about -- just airlines alone, about 60 boxes a year. I
13 lose a lot of money doing it but people -- it's so
14 important to people, it's absolute amazing to hear the
15 response of people who get it. I'm reminded of an
16 elderly lady from Metlakatla one time and she stopped me
17 and she said that when she gets her box of fish eggs,
18 that that's only time each year that she doesn't worry
19 that she doesn't have any money, and that's how it made
20 her feel. I think a lot of people have that same feeling
21 about the cultural importance and I guess it's a comfort
22 food for a lot of people.

23
24 I've been involved with the tribe for
25 quite some time now, since 2001, representing the tribe
26 on fisheries issues. The tribe, itself, has been
27 involved in the herring fishery issue for years prior to
28 that, but we had an incident in 2001 that I got involved
29 with, because of that, and that was the collapse on our
30 part of the subsistence fishery and our concern that the
31 way that the commercial fishery was being prosecuted was
32 having a dramatic impact on the subsistence fishery. As
33 a result of that involvement from the tribe and we had
34 representation from all the tribes in Southeast, we had
35 representation from SeaAlaska, we had representation from
36 AFN supporting our argument to work with the State,
37 approach the State Fish Board and try to find some
38 resolution to this problem. As a result of that the
39 State Fish Board directed the Department to enter into an
40 MOA with the tribe, memorandum of agreement, we did that,
41 and in doing that we came up with an amount reasonably
42 necessary. The State had asked for some numbers there of
43 105,000 to 158,000 pounds. Obviously the State was
44 concerned when we went to them and we just said we have a
45 problem, and they said well, what -- how much did you
46 harvest, and we said, well, not as much as we normally
47 do. The State needed numbers and we realize that that
48 was the route we had to go. So as a part of this
49 agreement we took to heart that request from the State to
50 document this fishery better and so that when future

1 problems happened we could definitively say that the
2 numbers are going up or down.

3
4 The amount reasonably necessary was based
5 on previous survey information. And just quickly, 2002,
6 the amount that we harvested was 170,000 documented.
7 2003, 269,000 pounds. 2004, 293,000 pounds. 2005, 75,000
8 pounds. There was quite a drop, and actually that came
9 in well under the amount reasonably necessary set by the
10 State.

11
12 Now, this is just a little bit of history
13 that's the overall background to getting to where we are
14 now. It might not seem like the Makhnati thing is a
15 great big part of it, but realistically it's a very
16 important part of an essential core harvest area for
17 subsistence. There's a lot of weather issues that we
18 presented to the State previously. There's quality
19 issues that the Makhnati area is an area that is
20 essential, it's part of a bigger area but it is an area
21 that the tribe recognizes as an area that's safe, an area
22 that produces good quality eggs, and also an area that
23 provides opportunities for harvest on kelp that are
24 limited in other areas, kelp and seaweed that seem to
25 favor that rocky beaches around there.

26
27 So in the overall picture we really feel
28 that it's very important that we protect this area around
29 Makhnati.

30
31 Again, the equivalent of what the value
32 is of the subsistence fisheries is very hard to -- like I
33 say, I can't hardly have enough time here to go over the
34 importance of it to people and what it works out to be,
35 but I would encourage you to, I guess -- where was I
36 going with that. I guess I'll just leave it at the point
37 that it is very, very important to people.

38
39 When we look at conservation issues with
40 the herring in Sitka, the Sitka Tribe has been taking to
41 heart again it's role in the management of the -- or
42 pseudo-management of the herring, and doing its own
43 research so when you talk about conservation of herring,
44 a lot of times people just view Sitka Sound as just one
45 great big bunch of herring, but the information that our
46 biologists have been finding out in collaboration with
47 the University of Alaska-Fairbanks, and the University, I
48 think BC, Victoria, is that, we don't have final results
49 on the Makhnati area, but the areas that we have results
50 for which is Salisbury Sound are showing a really

1 interesting thing that even I didn't believe was true
2 before, but that those herring from that area were born
3 there and actually return to that same area to spawn.
4 And so that shows a pretty high fidelity rate to a natal
5 area for fish. And we're still a bit out from getting
6 the results back from Makhnati Island but we started this
7 study prior to this proposal being put forward.

8
9 So there's definitely some questions that
10 could be raised in the conservation issues of even the
11 Makhnati fish, are they separate or part of a smaller sub
12 stock instead of the overall stock of Sitka Sound, which
13 the State is presently managing it as one big group.

14
15 After our -- the collapse basically, the
16 documented collapse in 2005, we went to the Fish Board
17 and our agreement early on in the MOA was if things don't
18 work, we can go back and revisit it if we need to fine
19 tune it, which, you know, any MOA only works as good as
20 the partners want to work it. We went to the Fish Board
21 and asked for any kind of adjustment to the MOA, to help
22 remedy the problem, the numbers were there and no one
23 denied that we were well under the amount reasonably
24 necessary. We didn't get any response. It was very
25 frustrating. We were told from the Department of Law
26 that they felt that just one year doesn't make a trend so
27 there's no need for any change, and to me that's -- I
28 don't feel like that's really putting subsistence at any
29 stage of priority when that's your response, when you
30 admit that there's a problem but you're not really
31 wanting to change anything, just hoping it will get
32 better on its own and that's basically why we're here.

33
34 I could go on and on. I talked about
35 this lots and lots of times but I realize it's been a
36 pretty long day and there's other people that want to
37 talk.

38
39 I think the question here is what do we
40 do in this situation, identified Federal waters. To the
41 tribe there certainly is a question as to whether the
42 opportunity that's being provided by the State is
43 reasonable. We've had experiences where on the two
44 problem years where the State said you could go other
45 places, it's not a problem of not having enough fish, but
46 the fish are spawning further away and you could have
47 gone and got your subsistence harvest there, but
48 realistically that wasn't reasonable for subsistence
49 people. The skiffs couldn't go there, the weather
50 conditions were adverse there and the quality of eggs

1 wouldn't have been any good. So there definitely is the
2 question in the tribe's mind as to whether the
3 opportunity being provided is reasonable. With the
4 present management, without any stronger teeth in our
5 MOA, at any given year, we could have a failure of the
6 subsistence fishery. The Department of Law went further
7 at the Fish Board meeting and said that they felt that
8 the MOA was doomed to failure because of the lack of --
9 well, they didn't say because of the lack of teeth in it,
10 that's me adding that, but that was basically my
11 perception of what they meant.

12
13 And so that being the case, I mean we're
14 questioning the reasonable opportunity as certainly is a
15 far stretch from meaningful preference, and I believe
16 that's something that this Board should take to heart. I
17 think it's well within your charge to want to manage the
18 Federal waters that you have under your authority in a
19 way that really does protect the priority in a meaningful
20 way and I'm just hoping that this Board would move to act
21 on that until its own standards of meaningful preference
22 are met.

23
24 I've taken probably enough of your time,
25 I'll stop there.

26
27 CHAIRMAN FLEAGLE: Okay, don't go away,
28 you may have questions.

29
30 Questions, Board members, Judy.

31
32 MS. GOTTLIEB: Thank you, Mr. Chairman.
33 Thanks, Mike. You certainly raised a lot of questions in
34 my mind. Are you the rep from STA who works with Fish
35 and Game and the Board of Fisheries on that MOA?

36
37 MR. MILLER: Yes, Mr. Chair. I have been
38 one of the representatives. I actually did -- I did work
39 on the language of the MOA, I was a representative at
40 that Fish Board meeting, and I don't know if it's one of
41 those things where they just picked the dumbest one and
42 send him there, go get beat up or what, but I have been
43 representing the tribe for quite some time. We do have
44 another representative here today, though, so.....

45
46 MS. GOTTLIEB: I guess, if I may, one of
47 the reasons I was asking, in our write up, it says that
48 the MOA's successful, and so I don't want to put words in
49 your mouth but what I'm hearing from you is that there is
50 dissatisfaction from STA about how the MOA is working, or

1 would you call it successful?

2

3 MR. MILLER: Mr. Chair. There are parts
4 of the MOA that are very successful. I mean we brought
5 the State and the tribe together to address issues. I
6 had this same discussion with the fishery manager from
7 Sitka the other day and where it becomes unsuccessful is
8 one party raises questions and the other party doesn't
9 act on them; that the whole thing starts disintegrating
10 at that part of it. It's only as strong as both sides
11 are willing to follow through on what they said and we
12 have several concerns. I didn't want to get specifically
13 into them but there's quite a few things that did go
14 wrong.

15

16 But the main thing is when we came in
17 well under the amount reasonably necessary set by the
18 State and the State itself was unwilling to change
19 anything, to me, there's a problem then.

20

21 MS. GOTTLIEB: Thanks, Mr. Chair. And so
22 have you, or are you planning to go to the Board of
23 Fisheries to try to raise that ANS and if so when would
24 you anticipate they'd act on that?

25

26 MR. MILLER: Mr. Chair. The cycle would
27 be 2009 for the Board of Fish. Our intention was at the
28 last board meeting to go in and raise the amount
29 reasonably necessary but because as we got better in our
30 surveying we felt that we were getting all the harvesters
31 and the number was coming up appropriately with that and
32 so we're in the mid-250 to 300,000 pound range and our
33 intent was to be, at that meeting, asking for a raise to
34 that amount reasonably necessary and then we came in at
35 75,000 pounds and it just really threw everything out of
36 whack there. And I mean we're hoping to go in and ask
37 for a higher amount but it's yet to be seen for the
38 future harvest in the next couple of years.

39

40 MS. GOTTLIEB: Thank you.

41

42 CHAIRMAN FLEAGLE: Other Board members.
43 I have Jerry Berg and then I'll call on you Sarah.

44

45 MR. BERG: Yeah, I have a couple
46 questions for you Mike. Thanks for coming up from Sitka,
47 I think it's great to have you because you're intimately
48 involved with that fishery, to get your perspective, and
49 I've worked on a couple of other working groups around
50 the state where they get the local people involved, and I

1 think that always serves the public in the best interest.

2

3 I did have a question about, you guys
4 coordinate with the State basically on a daily basis
5 during the season; is that right?

6

7 MR. MILLER: The -- as outlined in the
8 MOA, there is a liaison position, kind of a central point
9 of contact with the tribe and that person's role is to be
10 on call basically and be updated constantly by the Fish
11 and Game as to the status of the fishery and potential
12 openings and provide comment from the tribe on those
13 openings.

14

15 MR. BERG: And the MOA's been in place
16 since 2002; is that right?

17

18 MR. MILLER: Yes, that's correct.

19

20 MR. BERG: And how many times has there
21 been the Fish and Game and the tribe actually disagreed
22 on an opening that was scheduled or suggested by the
23 State?

24

25 MR. MILLER: That, Mr. Chairman, we've
26 had one instance and that was in the year that the 75,000
27 pound harvest occurred, that was 2005. We'd been
28 informed from the Department that after the second
29 fishery occurred in the core areas -- or the third
30 fishery had occurred in the core area of subsistence
31 harvest, and this is commercial fishery mind you, that
32 they were getting ready for the last fishery and that
33 there was no opportunities in other places, the tribe
34 chose to agree with that, unbeknownst to us there
35 actually was a bunch of fish someplace else but it wasn't
36 reported to us or no one knew they were there, whatever
37 the case. Once we found out that we felt the harvest was
38 compromised, they went up into essentially a clean up
39 fishery after that opening. At that point they called
40 for that clean up fishery the tribe did oppose it but
41 there was communication problems as to cell phones and
42 the Fish and Game's line and apparently the Fish and Game
43 manager didn't get the message until after he'd returned
44 from actually the fishery, so the one time that we did
45 oppose the fishery, it didn't affect the fishery.

46

47 MR. BERG: Okay. I'm just trying to get
48 a sense -- and approximately how many openings do they
49 have in an average year? I'm just trying to get a sense
50 of how many.

1 MR. MILLER: It really depends on the
2 quota and processing capacity, so it seems to average in
3 the -- I think 2,500 tons and 3,000 tons per day
4 processing capacity so they usually try to -- it might be
5 a little bit higher than that but they usually try to
6 have an opening based around what that capacity is and
7 the amount of openings is dictated by overall GHL,
8 guideline harvest, which last year was around -- between
9 10 and 11,000 pounds -- or tons, sorry, and this year is
10 in excess of 11,000 tons. And those are actually the
11 years that we feel are the -- the ones that have probably
12 the greatest potential for damage to the subsistence
13 fishery because you have a large area, I mean you're
14 talking, with that big of biomass of 40 to 80,000 tons of
15 fish running around, you're talking 40 miles to 70 miles
16 of area that's having spawn on it as reported by the Fish
17 and Game. Our proposals have always been just to protect
18 the -- and not even eliminate commercial fishing from it,
19 but to protect the areas that are safely accessible to
20 the skiffs and it's about seven lineal miles. And so
21 actually we're facing that same issue again, where this
22 year it's going to be, at least, probably four openings
23 and our real hope, which we always ask, is that, just
24 don't take everything from the spot that -- which is
25 actually just adjacent and including Makhnati Island
26 waters, please, you know, spread it out, disperse it as
27 best possible. But clearly we've seen that that has room
28 for error in that.

29

30 MR. BERG: One more question, Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Go ahead.

33

34 MR. BERG: So in 2005, do you think if
35 the Makhnati area had been closed during that one opening
36 that you guys disagreed with in 2005, do you think that
37 would have had much of an impact on the subsistence
38 harvest?

39

40 MR. MILLER: The -- actually in 2005 the
41 areas in Makhnati weren't opened anyway. The fish, it
42 was -- the areas that were directly adjacent to Makhnati
43 waters were opened but the Makhnati waters, as defined
44 for your purposes, weren't a part of the openings that
45 year. The fish that probably would have been there, I'm
46 sure were amongst the ones that got caught right next to
47 it but not specifically in those waters.

48

49 MR. BERG: Thank you.

50

1 CHAIRMAN FLEAGLE: Okay, next I have
2 Sarah, and then Denny.

3
4 MS. GILBERTSON: Thanks, Mr. Chairman.
5 Mike, as you and I discussed at the Southeast RAC
6 meeting, this proposal and the concerns and the level, I
7 guess, of frustration on the part of the Sitka Tribe did
8 come as a surprise to Fish and Game because we believed
9 then and continue to believe that the MOA that we have in
10 place is working. And so I guess I have two questions
11 for you.

12
13 You mentioned concerns about funding at
14 the time and concerns about this MOA when we spoke in
15 Sitka and my suggestion to you was that you talk to the
16 Commissioner and elevate those concerns within Fish and
17 Game. So first question is, have you elevated those
18 concerns within Fish and Game? And then secondarily,
19 what changes, short of the State of Alaska seating
20 management authority to the tribe, would you suggest go
21 into that MOA?

22
23 MR. MILLER: Thanks. So the first
24 question was about contacting the State?

25
26 CHAIRMAN FLEAGLE: Have you elevated the
27 concern in the Department up to the Commissioner level?

28
29 MR. MILLER: Right. Commissioner
30 Campbell, I did talk directly to him. Obviously that --
31 we weren't able to follow through on that because he's
32 not there now. In the mean time we have raised the
33 concerns to the local area manager. We asked that they,
34 in an upcoming meeting, send people from Juneau to that
35 meeting. They have indicated that they don't intend to
36 do that, they don't feel it's necessary, and I'm not
37 quite sure -- I haven't asked them why that's the case.

38
39 I know the State feels that this was a
40 surprise to them, but I was looking back at the records
41 from the Fish Board meeting and I was the representative
42 in the working group, there was, I think, 17 other
43 commercial interests on that group and I was the lone
44 duck there, but I said in support of Proposal 81, it
45 wasn't the tribe's proposal, but we just had to grab
46 something, I told the Board, very specifically, and if
47 you'd like to go back to the records there it's very
48 clearly written out, that we supported that proposal or
49 anything that will help protect subsistence.

50

1 We had, already, the evaluation from the
2 Department of Law that something had to change in the MOU
3 because it would not work. And I said, very clearly,
4 that unless there is some change to help protect
5 subsistence, I cannot go back to Sitka and tell the tribe
6 that the process is working. And that's specifically
7 what I said. And I don't know how to make it more clear
8 that -- nothing changed and so obviously we had to go
9 back and say, in spite of our rather disastrous year
10 we're viewed as it's not enough of an anomaly, just one
11 year, the State says that's okay, and by not acting on
12 it, that's what they're saying, that it's okay. And I
13 went further to say that our only other recourse would be
14 to go, and at least seek some relief at the Federal
15 Board, and that's all in the record from the Ketchikan
16 meeting, the Fish Board meeting.

17
18 So I'd have to disagree that it should be
19 that much of a surprise. There's people that weren't
20 there, maybe it's a surprise to them, but somehow or
21 another the message got lost, I guess.

22
23 As to the question as to, you know, what
24 the relief is, I -- I think the only thing that we could
25 say is go back to the MOA and look at some of the
26 stronger points that we have in there. The language was
27 something at the Fish Board that we wrestled over quite a
28 bit. There was language early on that said that the
29 Department shall distribute the fishery to protect
30 subsistence. That was fairly controversial. And it
31 ended up being changed to the Department may distribute
32 the fishery to protect subsistence and citing other
33 criteria of quality and quantity and things like that.

34
35 Our recommendation last year was that
36 probably there needs to be some kind of strengthening of
37 that and get back away from the Department may, because
38 even the fishery manager himself has said, I've got no
39 direction to do this, it's not mandated that I have to do
40 it, I just do it, you know, as best I can, but it's a
41 tough call for him because he's got all the commercial
42 interests and everyone else telling him you got to do it
43 different, you know, and they're not necessarily -- and
44 rightly so they're looking out for their own interests,
45 but obviously there needs to be some strengthening of the
46 language there to mandate that it has to happen.

47
48 So that's basically our response, and
49 we're still trying to work through that, you know. The
50 tribe for a long time had a stand that actually was a

1 moratorium on that fishery and I didn't think that was
2 the right answer, you know, we're not trying to wipe out,
3 get rid of commercial fishing, we're just hoping that it
4 gets prosecuted in a way that doesn't impact subsistence.
5 And when we're starting to see a pattern of a big fishery
6 displacing a subsistence fishery that's wrong as far as I
7 know, as far as I feel, according to the law, so that's
8 my impression there.

9

10 CHAIRMAN FLEAGLE: Sarah, excuse me, go
11 ahead.

12

13 MS. GILBERTSON: Thanks. Just a follow
14 up question. It was my understanding that the commercial
15 fishery rarely occurs in the area that this proposal
16 talks about closing and that, in fact, if you did close
17 this area to that commercial fishery, then you have less
18 area to be able to disperse that commercial fishery; is
19 that not true?

20

21 MR. MILLER: Mr. Chair. The fishery does
22 move around some, that's correct. Last year the fishery
23 was actually -- one of the fisheries was directly in
24 these waters, the previous year not, this isn't going to
25 fix everything. This isn't going to kill the commercial
26 fishery, it's not going to save the subsistence fishery.
27 But when we're talking to our tribal citizens -- I got in
28 trouble last year because we, early on, when things were
29 looking pretty good with our subsistence fishery we said,
30 well, it's okay to let the commercial fisheries go and
31 not watch them as closely and I had a lot of people that
32 came and said, look, we have these core areas, there's
33 not one of them that's any less important than the other
34 one. These are core areas because they're safe and they
35 provide the eggs that we need. Saying Makhnati Island
36 waters is any less important than the waters right next
37 to it is inaccurate for us and I certainly hope it's not
38 treated as anything less important.

39

40 CHAIRMAN FLEAGLE: Okay, thank you.
41 Denny.

42

43 MR. BSCHOR: Thank you, Mr. Chair. Mike,
44 once again thanks for coming up here for the meeting and
45 appreciate your time.

46

47 I'm just curious, as I have studied this
48 issue in preparation for this meeting, in approaching
49 life even, I look at what's the problem, what can we find
50 a problem specifically and are we talking about what the

1 causes are, are we talking about what the problem is, et
2 cetera. So in that vein, I'm just curious about a couple
3 of things. Maybe you can answer this, maybe you can't.

4
5 But as we look at the detail of the 2005
6 harvest of herring roe charted on Page 208, it's going
7 pretty well from 1997 to 2004 and then 2005 drops
8 significantly, then 2006 the projections are it's going
9 to be better, I don't know if that's the case, but I
10 think that estimate is still in draft form, but it's back
11 to where it was previous 2005 roe harvest levels were.
12 Now, when you compare that to the chart in 2010, which is
13 a chart of herring harvest and herring spawn information,
14 it appears to me that 2005 was a record year for the
15 resources there.

16
17 So, you know, what would cause that, I
18 guess I'm looking for the problem again, what would cause
19 -- in fact you got very little roe when you had that many
20 herring harvested, and was it a spawning problem, was it
21 weather, was it some other factor, help me out with that,
22 please?

23
24 MR. MILLER: Right. Mr. Chair, thank
25 you. Yeah, 2005, you look at that and it really doesn't
26 make any sense and I think that's getting closer to our
27 problem there. It was a huge amount of fish, but the
28 subsistence harvest was very small, the commercial
29 harvest was great. The subsistence harvest was one of
30 the lowest, certainly the lowest since we started
31 recording it. And so all of a sudden you say, well, how
32 can that be, you know, and I think that's where we start
33 getting into that whole -- the concept that the
34 commercial harvest, if it's not properly prosecuted, is
35 -- could have a very negative effect.

36
37 If you say that -- I've used this kind of
38 before, the core areas, that the skiffs can go to, and
39 you have to use skiffs because you got to go get them to
40 go cut trees down and drag them in the water, and anchor
41 them out, your near shore areas and your in and out on
42 the beaches and the areas that are close to Sitka that
43 are accessible to the skiffs and not having to cross open
44 areas of water, the areas that are close to Sitka that
45 are kind of rocky areas, not next to big sand stretches
46 are preferred areas for the quality of eggs, but when you
47 look at all these tables together and you say that that's
48 the entire Sound, what's going on spawning, and when
49 you're talking seven miles out of 70, those are the
50 important ones that are essential for subsistence so you

1 take a couple of these tables and say that that's the
2 area that is the important part for subsistence. In
3 2005, which actually mirrored 2001, which was our other
4 trouble year, they had a big quota and so out of all
5 those fish, out of all those tables, they took the entire
6 quota from these two, which were the subsistence areas
7 and we had a correspondingly bad year for harvest.

8
9 So we feel that the subsistence harvest
10 was compromised because of that directed fishing in its
11 entirety based on all the tables, just all on that one
12 group of fish. Now, in 2001 and 2005 we would get the
13 reports back from the Department, that they'd say, well,
14 over there there's opportunity at Kruzeof, you could have
15 got fish there, that's not reasonable for -- it's
16 impossible for the skiffs. In 2001 we had tribal
17 citizens that went to the Department's office and they
18 said you could go to Goddard, it's only 40 miles away,
19 but it's all exposed water getting there and that's not
20 reasonable.

21
22 So the numbers, you know, we're not
23 saying that it's -- that there's just no fish to go
24 around, but in the areas of Makhnati and the areas right
25 next to it, there's, at times, we feel, too much effort
26 there and at least this proposal goes -- again, it's not
27 fixing everything but it's a step in that direction of
28 protecting some of it.

29
30 Did I answer your question or was I just
31 off on that.....

32
33 MR. BSCHOR: Well, to a certain extent, I
34 think, but I'm just still curious as to what would have
35 helped for to close just the Makhnati area when that's a
36 bigger problem than just in that particular place? Where
37 does Makhnati fit in that whole scheme, you did say that
38 it's one of the core areas.

39
40 MR. MILLER: Right.

41
42 MR. BSCHOR: Were there eggs in other
43 core areas?

44
45 MR. MILLER: There was but just the
46 quality was not -- I mean there's eggs that are scattered
47 all through that but I think you want to keep as much of
48 that core area as possible because on any given year
49 there is some variation, some fluctuation on the quality
50 of eggs and I don't know if it's because of a school that

1 was intended to go to that area gets caught or whatever
2 the case, but, again, it's really hard to measure exactly
3 how much it's going to be because there's enough
4 variables in there. But, again, I just go back to the --
5 especially the elders saying that don't ever say that
6 it's less important than the area right next to it
7 because we're still looking at a really small area in
8 comparison to everything that's going on there and,
9 again, it's not -- we're not saying it's going to fix
10 everything but it certainly is a step in helping out.

11

12 CHAIRMAN FLEAGLE: George.

13

14 MR. OVIATT: Hi, Mike, and thanks for
15 coming up. We appreciated the help you gave us when we
16 were in Sitka and let us look at the area.

17

18 Going back to this 2005, is it my
19 understanding that the herring spawned but just in
20 different areas than where you normally subsist that you
21 couldn't get to or was it a factor of commercial
22 preventing the herring from coming into the waters that
23 you normally subsist from? I'm trying to understand
24 really because the chart on Page 210 shows the spawning
25 disposition estimates to be double of what a normal year
26 would be, so I'm just trying to understand what may have
27 caused this drop in 2005.

28

29 MR. MILLER: Okay, in 2005, and I don't
30 know if you're looking at your charts or not, you'll
31 notice that there was some spawn in the areas that we
32 consider, which are right next to Makhnati, that we
33 consider important and then there was a major spawn that
34 happened on Kruzeof Island, which is -- it's the opposite
35 shore, it's exposed, it's sandy, there was a big spawn
36 there, that's essentially useless to us for harvesting on
37 branches. It's just not feasible from safety issue and
38 for quality, it just would not work.

39

40 Again, the fish obviously had to have
41 been a big bunch of fish in our area next to Makhnati
42 because the commercial fishery caught over 10,000 tons
43 there. Our contention is that those were the fish that
44 were going to spawn in that area but they got caught up.
45 All this time there was a whole 'nother huge biomass at
46 the other location but for our purposes they were not
47 fishable. There's debate amongst the commercial industry
48 if they were fishable for them or not, some people say
49 definitely they were and others, you know, feel that they
50 weren't. But, again, my overall analysis of that was

1 that the subsistence fishery was precluded by the -- or
2 displaced by the commercial fishery, and that's the same
3 as what happened -- it was a different area for the big
4 mass of fish in 2001 but same circumstances, which we
5 actually are facing again quota-wise this year.

6

7 MS. GOTTLIEB: Mr. Chairman.

8

9 CHAIRMAN FLEAGLE: Judy.

10

11 MS. GOTTLIEB: Thank you. So I guess
12 I've heard you say and we really appreciate all the
13 information that you're providing to us, that you feel
14 that the commercial boat, industry, displaced the
15 subsistence fish and, of course, by harvesting then that
16 takes them out of the spawning pool, so to speak, are
17 there other impacts from the commercial fishery that you
18 feel are affecting this area?

19

20 MR. MILLER: That one's a little bit more
21 -- I mean I don't think that they're nearly the impact
22 that just taking the fish are from, you know, there's --
23 we have tribal citizens that are worried about fishing in
24 the -- say like in the Makhnati's, the people that were
25 going out there last year to look for kelp, we had
26 reports from our tribal citizens that the opening there
27 tore up the kelp. And, I, personally didn't check that
28 out but I was fishing at the time actually so, tearing up
29 the kelp, but so there's some of those concerns but the
30 actual, you know, the biggest concern is just the removal
31 from the fish that appears to be headed to these spawning
32 areas and that -- I mean if the fish aren't there they
33 can't spawn there.

34

35 CHAIRMAN FLEAGLE: It looks like we're
36 through with you, Mike, thanks for your testimony.

37

38 MR. MILLER: Thank you very much.

39

40 CHAIRMAN FLEAGLE: Up next is Jessica
41 Perkins.

42

43 MS. PERKINS: Good afternoon. My name's
44 Jessica Perkins. I'm the attorney for Sitka Tribe. I
45 took that position in July of this year, prior to that
46 time I was the resource protection director for the tribe
47 and I've been working on the herring issue since 2001 as
48 a staff person, sometimes supervising the in-season
49 herring liaison, sometimes supervising the person who's
50 the traditional foods coordinator for the tribe, who is

1 technically a high harvester in the fishery.

2

3 I think that Mike did a pretty good job
4 explaining the fishery and explaining our current
5 concerns. And I thought it would be really useful, when
6 I've been looking at all this, to highlight, I guess the
7 legal part of what we think is going wrong here. And
8 when the question comes, is the MOU working, well, it
9 works, in that, yes, we communicate with Fish and Game.
10 Yes, they give us a seat at the table. Yes, we get
11 information from them on a daily basis. But it is not
12 ensuring that subsistence is getting the priority when it
13 comes to the herring and the herring eggs in Sitka Sound.
14 And I think that's, to me, the core of the argument, the
15 core of the problem, the reason why we're here.

16

17 And, you know, when we are here, I
18 realize that the Federal system has different standards
19 than the State system. Sitka Tribe, you know, under the
20 State system really does not feel that the State is
21 meeting its responsibility to provide a reasonable
22 opportunity for subsistence for herring eggs in Sitka
23 Sound.

24

25 And the reasoning behind that is because,
26 you know, in the past six years there were two years
27 where the tribe did not get enough eggs but the
28 commercial fishery got their harvest, they got their
29 quota. And, you know, to me, that's not providing for a
30 subsistence priority.

31

32 And under the Federal system, you know,
33 subsistence also gets a priority and my understanding is
34 that it's supposed to be a meaningful preference and
35 under the Federal system, I think that that's what the
36 Board's charged with, is forgetting about all the
37 politics, forgetting about the money involved with the
38 commercial fishery, forgetting about all that other
39 stuff, about how the State and the tribe are getting
40 along, or how we're able to manage what's going on with
41 the commercial fishery, but our subsistence users getting
42 a meaningful preference for herring eggs in the Federal
43 waters. That's the question in my mind about what's
44 going on here with whether the Board should support a
45 closure of the Makhnati Island waters.

46

47 You know, the RAC has recommended to the
48 Board that these waters be closed to the commercial
49 fishery and, you know, I understand that you can't just
50 close them to the commercial fishery, that you would be

1 closing them to what I understand as non-Federally
2 qualified subsistence users. And when the RAC makes a
3 recommendation like that, you know, that recommendation
4 is due deference unless the Board can find one of three
5 things.

6
7 They could find that the recommendation
8 of the RAC is not supported by
9 substantial evidence.

10
11 You could find that the recommendation of
12 the RAC violates fish and wildlife
13 conservation principles.

14
15 Or you could find that the RAC
16 recommendation is detrimental to
17 satisfaction of subsistence needs.

18
19 In each of those cases, I don't see where
20 the record shows that the RAC recommendation doesn't meet
21 those criteria. The RAC report lists very clearly what
22 the conservation concerns were that were brought to them.
23 The conservation concerns were, as reported in the RAC
24 report, and I'm sure will be provided when the RAC gives
25 their summary, you know, is that, in Sitka Sound there
26 used to be a year-round herring, herring used to be in
27 Sitka Sound year-round. There used to be spawn in Sitka
28 Sound up to a foot thick. Today, when we do our 2006
29 herring report, when we do our subsistence monitoring
30 survey with tribal citizens and harvesters we get
31 comments, and the State -- this is one of the things in
32 the MOA that we disagree upon, is that, when the State
33 crunches our surveys they will not process the comments
34 that were received. They won't write them up, they won't
35 put them into the system. They say that they're just --
36 to the tribe it's important because it's telling us the
37 qualitative information, how do people really feel and
38 the State will only take the quantitative information,
39 how much people are getting and what can we crunch.

40
41 So in the 2006 subsistence survey, you
42 know, there's at least 22 comments from subsistence
43 harvesters that speak to either the fact that there's no
44 spawn south of Sitka anymore; where did it go, or that
45 there's a shorter spawn than they can ever remember and
46 that there was no, what they call secondary spawn or just
47 in general that where is the herring, where is the
48 herring and where is the spawn. And I have a copy of the
49 draft report from the 2006 survey which kind of speaks to
50 these things.

1 And then the second point I wanted to
2 raise about substantial evidence is that there's also
3 substantial evidence in that RAC recommendation regarding
4 how important this is for continued subsistence uses
5 because as you guys all know in order to have a closure,
6 you either need to find that there's a conservation
7 concern, which are the issues I just covered, or that
8 it's necessary for continued subsistence uses.

9
10 And under that, you know, vein, you know,
11 historically as Mike pointed out, herring eggs were able
12 to be gathered in lots of locations throughout Southeast
13 Alaska and a lot of those places you can't harvest them
14 anymore. And even in the Sitka Sound fishery there's
15 reports, historical reports, which I find really hard to
16 believe, but it's been recorded, that there are upwards
17 20,000 subsistence harvest herring eggs harvesters that
18 would harvest the eggs in Sitka Sound. And today if you
19 look at the eggs that are in the Makhnati area, if you
20 look at the subsistence harvest there, you know, I don't
21 see how you can ensure that there's a meaningful
22 preference for the herring eggs in Makhnati unless you
23 close them, unless you close the waters to the commercial
24 fishery because otherwise it's not a meaningful priority.
25 Under the State system where the current regulations
26 require if the Fish and Game manager believes it's
27 necessary to protect subsistence, it requires the manager
28 to disperse the fishery, there's still been times when we
29 don't get our subsistence needs met. And so I think it's
30 very -- there's evidence in the record that's contained
31 in the RAC recommendations that this closure is necessary
32 for continued subsistence uses.

33
34 And so I guess, in summary, I read ANILCA
35 to require the Federal Subsistence Board to provide a
36 meaningful preference for subsistence users, and that's
37 not just in ANILCA, it's also the Ninth Circuit's
38 interpretation of what it means in .804 when it says that
39 subsistence users are to be given the priority, the Ninth
40 Circuit says that that means it's a meaningful preference
41 for subsistence users. And what that means is, an actual
42 preference, a real preference. A real preference
43 subsistence users are supposed to be given in the Federal
44 waters.

45
46 And, you know, in reading through the
47 InterAgency Staff Committee recommendation, and where
48 they say that the majority report says that the RAC
49 recommendation does not show substantial evidence, and
50 when they say that, there's a lot of discussion about how

1 the Makhnati Island waters are only a small portion of
2 the fishery, they're only a small portion of the
3 subsistence fishery, they're only a small portion of the
4 commercial fishery, that this isn't going to make a big
5 effect, but the Federal government can't rely on the
6 State to fulfill your ANILCA mandate, I mean that's why
7 we're here. I mean the Federal government has to fulfill
8 its own ANILCA mandate. And ANILCA says a meaningful
9 preference. And so to say, well, the tribe subsistence
10 users, go work it out with the State because that's who
11 your beef is really with, it doesn't address what I
12 understand ANILCA says that this Board is supposed to be
13 doing.

14

15 And I don't see any reason for the Board
16 to reject the RAC's recommendation. And, you know, in
17 ANILCA it says you've got to accept it unless you find
18 that there's not substantial evidence, you know, unless
19 you find that it violates fish and wildlife principles,
20 or it's detrimental to the satisfaction of subsistence
21 needs. And I don't see where any of those things have
22 been triggered here. And so I guess on behalf of Sitka
23 Tribe, I urge the Board to accept Proposal 07-18, which
24 would close the Makhnati Island waters to commercial
25 fishery for the months of March and April.

26

27 Thank you.

28

29 CHAIRMAN FLEAGLE: Thank you, for the
30 testimony. Board members, questions. Judy.

31

32 MS. GOTTLIEB: Mr. Chair. Thanks very
33 much for your thoughtful testimony and got me thinking
34 about a few different things but maybe just sort of to go
35 back to the context of the actual subsistence use area.

36

37 We heard it's really close to town and so
38 maybe you could just describe -- my understanding is,
39 sure, there are some subsistence users who have big boats
40 and can go where the herring eggs are, but my
41 understanding is and so some clarification from you, that
42 there are -- that the majority of subsistence users have
43 relatively small skiffs and this area then -- I don't
44 know about how far it is to run out in a skiff, and that
45 it's accessible because young people, old people can go
46 and continue traditions.

47

48 MS. PERKINS: Uh-huh.

49

50 MS. GOTTLIEB: Maybe you can just talk a

1 little bit about the area itself.

2

3 MS. PERKINS: Of the Makhnati Island
4 area. It's actually, I mean, you wouldn't necessarily
5 need to have a skiff, I mean you could get there off the
6 road system. I mean it's one of the few areas that you
7 could. Makhnati Island is the area around the Sitka
8 airport. It's the area around the back side, the north
9 side, the south side, it even actually incorporates part
10 of the Sitka airport. And those are the waters that are
11 close to town, they're very close to town and very
12 accessible to anybody, I mean, who would want to be able
13 to lay a branch or their trees or gather kelp without
14 having, maybe some of the bigger rigs that some people do
15 have.

16

17 CHAIRMAN FLEAGLE: George.

18

19 MR. OVIATT: Thank you, Ms. Perkins,
20 appreciate your testimony.

21

22 In your estimation is Makhnati Island one
23 of the major areas for subsistence? How does it compare
24 with where most of the people subsist from?

25

26 MS. PERKINS: Mr. Chair. That's actually
27 one of the questions that we'd like to be able to answer
28 but we don't have the data specific to the Makhnati
29 Island area. We know that it is a major area for folks
30 to get kelp, that there's good kelp beds there. And we
31 also know that in 2006, that not as many people actually
32 got kelp, eggs on kelp, according to the survey, and so
33 it shows that only two people harvested from the Makhnati
34 Island waters according to the '06 surveys, but it also
35 showed that we had a significant reduction in the amount
36 of kelp that was gathered this year. And so this was the
37 first year that we had on the survey any type of site
38 specific information about where people were harvesting
39 or what they were harvesting. And we'd like to be able
40 to actually be able to answer that question.

41

42 CHAIRMAN FLEAGLE: Are you done, George
43 -- go ahead and continue until you are finished.

44

45 MR. OVIATT: Just kind of a follow up.
46 So this is a work in progress is what you're saying,
47 through your studies that you have ongoing through the
48 tribe; is that right?

49

50 MS. PERKINS: The annual harvest

1 monitoring survey is supposed to be a joint project
2 between Fish and Game and the tribe and it is ongoing, we
3 just did add, this last year, the question at the request
4 of the Commercial Fishing Division, that we ask
5 harvesters for site specific information. It's not
6 something that harvesters really want to actually divulge
7 to the public, they don't really want to divulge it to
8 CommFish, they don't really want to divulge it to the
9 State, but we actually, in addition to asking them the
10 information, asked if it was okay if we shared that, and
11 so yes it's a work in progress. And we've talked about
12 trying to get more site specific information about
13 historical and current and harvest in that area so we can
14 have better harvest data for that area.

15

16 CHAIRMAN FLEAGLE: Okay. Niles.

17

18 MR. CESAR: Yeah, I was wondering about
19 the cystic surface (ph) kelp fishery on Makhmati. The
20 pond right, you know, where the airport is, as you're
21 headed out, it's on the left-hand side, is a big kind of
22 ponding area and I know that they used to gather quite a
23 bit of cystic surface there and I wondered, I thought
24 that that was closed now. That it was either under city
25 control or something, is.....

26

27 MS. PERKINS: Are you talking about
28 Whiting Harbor?

29

30 MR. CESAR: Yeah, right in the harbor
31 there as you head out, going on the runway headed towards
32 Juneau it's on the left-hand side.

33

34 MS. PERKINS: Uh-huh, I don't think it's
35 closed. I know that there is a commercial oyster farm in
36 there. But besides that, I don't think that there's any
37 other -- I think that it's open for folks to get eggs on
38 kelp.

39

40 MR. CESAR: Oh, really, well, I'll be
41 there.

42

43 (Laughter)

44

45 MS. GOTTLIEB: Mr. Chair.

46

47 CHAIRMAN FLEAGLE: Judy.

48

49 MS. GOTTLIEB: I guess give one key
50 difference between the way the fishery's operated now is,

1 the focus is on the harvest and how much is taken, but in
2 terms of what ANILCA provides for, it's that opportunity
3 to go out, and whether there's a harvest or not, we don't
4 make any guarantees on harvest of course. So maybe to
5 ask George's question in a different way, how important
6 is this area to subsistence users in terms of opportunity
7 for subsistence use.

8
9 MS. PERKINS: I think that's a hard
10 question to answer. I think, you know, Mr. Oviatt's
11 question was almost, you know, probably equally as hard.
12 And I think it's a personal kind of thing and even when
13 we do the harvest monitoring survey, you know, we know we
14 don't talk to every harvester. I mean I know we're not
15 getting information from every single person that goes
16 out and gets eggs and so, you know, as far as the area
17 that the core subsistence area or the core subsistence
18 zone, the herring committee has spent a lot of time
19 trying to define that and, you know, what is the most
20 important area for the subsistence harvester, and
21 Makhnati's in there. I mean it's part -- it's the
22 characteristics of the place. It's the, you know, can
23 you get there, does it have the right kind of shoreline,
24 you know, do the herring usually spawn there, those types
25 of things.

26
27 CHAIRMAN FLEAGLE: Jerry.

28
29 MR. BERG: Thank you, Mr. Chair. Thanks,
30 Jessica, for coming up to help us work through this
31 issue.

32
33 Yeah, I'm just trying to get a hold of,
34 you know, how a blanket closure is going to help the
35 situation when it sounds like, you know, according to
36 Mike there was that just one closure that -- or there was
37 one opening, I guess, that the tribe disagreed with and
38 then that opening was really in another area, so for the
39 most part it sounds like the tribe agrees with most of
40 the commercial openings that have occurred for, it sounds
41 like, you know, maybe 90 percent of them and, so, you
42 know, to just have a blanket closure when the tribe does
43 agree for the most part, I'm just trying to come to terms
44 with, you know, how that's going to all of a sudden solve
45 the subsistence harvest situation there.

46
47 MS. PERKINS: I think that's a good
48 question. And I guess when you ask it, what I think of
49 is a question, unfortunately, but I can't figure out
50 another way to ensure that there's a meaningful

1 preference for subsistence users in those waters without
2 a closure. And the reason why I say that is because the
3 commercial fishery happens very rapidly and it happens
4 directly in front of when the subsistence fishery
5 happens. And so if Fish and Game says on Thursday, do
6 you mind if we make this opening here, today, and we're
7 not even going to lay our branches until the following
8 Thursday, it's hard to say no because we don't know. And
9 so, to me, you know, that's not my own quest -- I mean
10 it's almost unanswerable or it's only answerable with a
11 question because I don't know how else you can ensure
12 that there's an actual subsistence priority on those
13 waters.

14

15 CHAIRMAN FLEAGLE: All right, it looks
16 like we're through with your questions, thank you for
17 your testimony. And Board members we got one more person
18 that wishes to testify before us, I'll allow that last
19 testimony with a question period and then we'll break for
20 the evening. And with that I'm going to go ahead and
21 call up Chip Treinen.

22

23 MR. TREINEN: Thank you, Mr. Chairman and
24 members of the Subsistence Board. Appreciate the
25 opportunity to testify here. I'm testifying on behalf of
26 the Sitka Herring Association, it's a trade group of
27 commercial herring, seine permit holders for Southeast
28 Alaska, Sitka is the only area that's presently open for
29 seine harvesting. There are 51 permits in that fishery.
30 And it's a seine fishery and they have -- and so, you
31 know, it's larger vessels, have larger crews, and there
32 are all kind of support vessels that are used, tenders,
33 small skiffs that hold up corks and help out during the
34 fishery.

35

36 And a lot of the -- some of the permit
37 holders live outside of the Southeast Alaska area. The
38 majority live in the Southeast area. I'm, as a permit
39 holder myself, I'm the only one who lives here in
40 Anchorage, most are from -- there's a few -- a
41 concentration of permit holders from the Puget Sound area
42 who are outside of Alaska, and there's a few from Homer,
43 a few from Kodiak, but primarily they're Southeast
44 people, and a lot of them are subsistence users. A lot
45 of the permit holders as well as their crews.

46

47 So the point is as commercial fishermen,
48 we generally don't have any interest in compromising the
49 subsistence harvest ability -- users in that fishery.

50

1 I'd like to just point out that in
2 looking at the majority recommendation, I think that
3 there were some people that realized there that there
4 isn't -- trying to act on this proposal to restrict a
5 small area in effect limits the flexibility to
6 accommodate the needs of subsistence users. So I'm just
7 -- I kind of have difficulty in understanding the world
8 that's represented at times because it seems like closing
9 that specific small area doesn't really do anything to
10 support or assure that subsistence needs are met.

11
12 To, I guess, reiterate some of the
13 statements that have been made about the fishery, it
14 occurs quickly and needs to occur quickly because of the
15 way that the product that we're trying to get -- is a roe
16 from the fish, that's close to -- that's ripe and within
17 a few days of when the fish will actually spawn, so, of
18 course, it's prior to when they actually start spawning,
19 but it's critical to get them at the right time.

20
21 I've fished in that fishery, have owned a
22 permit since 1994 or '95, I can't remember exactly which
23 one, and we don't always get fish in the prime. I
24 remember two out of those years that I fished, we've
25 missed the bulk of the fish and had to fish a less
26 desirable product. So what I'm trying to point out here
27 is it's important for the managers to have flexibility to
28 allow the harvest of those fish for our commercial
29 purposes, and to allow that to occur in -- as flexible of
30 a way as possible so that we can take the fish and get
31 out.

32
33 I'd like to point out and -- also point
34 out that this is a resource that has generally been
35 increasing over the years, certainly over the years that
36 I've been in the fishery, and I'm having a hard time
37 figuring out why the commercial fishery is blamed for
38 reduced subsistence harvest when there's an increasing
39 number of -- increasing biomass of fish that's there.

40
41 So I think that as a commercial
42 fisherman, I'm interested in allowing the Department of
43 Fish and Game to have the most flexibility they can to
44 accommodate the MOU and be able to provide for
45 subsistence uses and I think that restricting one area
46 that's only marginally useful -- or marginally preferred
47 for subsistence uses, I think is -- doesn't really
48 accomplish a goal that the subsistence people claim to
49 have.

50

1 I've worked a lot in trying to figure out
2 just what it is that the Sitka Tribe is asking for when
3 they want to change the MOU but I guess I'm -- after
4 spending quite a bit of time at a Board of Fish meeting
5 last fall, I'm not really sure what changes they actually
6 want and I haven't been able to get a clear picture of
7 what that might be.

8
9 I guess I'm going to conclude by saying I
10 agree with the majority recommendation of the InterAgency
11 Staff Committee in saying that they oppose FP07-18. I
12 think that it will do little to improve the prospects for
13 subsistence users, if there is a problem at all. I'm not
14 sure what that problem is, there have been a few years
15 where they claim not to have gotten their full amount,
16 but those are years where fish may not have spawned in
17 the areas that they expected them to spawn in and, you
18 know, that's a fact of herring behavior. Sometimes they
19 spawn in the places you expect, sometimes they don't,
20 and, you know, they move, they're not -- they don't come
21 back to the same barn every night like milk cows or
22 anything. They're going to go where they want to go and
23 it's not clear how they make that determination.

24
25 So thank you, Mr. Chairman and Members of
26 the Board.

27
28 CHAIRMAN FLEAGLE: Okay, thanks for your
29 comments. Questions members.

30
31 (No comments)

32
33 CHAIRMAN FLEAGLE: None. No, okay, we
34 got Denny, go ahead.

35
36 MR. BSCHOR: Yeah, I'm curious again I'll
37 ask the same question of you from your perspective. What
38 do you think happened in 2005?

39
40 MR. TREINEN: In 2005 there was very
41 strong spawning activity in some of the areas that were a
42 little farther away from the town of Sitka and in the
43 area very close to Sitka where I have most often seen the
44 subsistence activity, there wasn't as much spawning, you
45 know, that was what the -- the herring went to a
46 different location. In some of the locations where they
47 did spawn it was -- you know, they were -- and had very
48 thick spawn and very concentrated activity. I mean and
49 it's borne out by Fish and Game surveys as well.

50

1 CHAIRMAN FLEAGLE: I have one question.
2 Staff may be able to answer it but I'll ask you since
3 you're familiar with your fleet.

4
5 That does appear to be a really small
6 area, oh, let's say a mile square, roughly, how much
7 fishing -- how much of the fleet does fish in that area
8 when they are fishing?

9
10 MR. TREINEN: If that area was open by
11 Fish and Game it would be 100 percent of the fleet that
12 would fish there and that is the case on last year -- we
13 did have one opening out of three -- three openings,
14 essentially three major openings, we had one of those
15 openings that was conducted in that area and, yes, the
16 fleet fished there and, you know, when -- and it was a
17 restricted area and that's -- whatever's open is where
18 the fleet's going to be.

19
20 CHAIRMAN FLEAGLE: Thank you. George.

21
22 MR. OVIATT: Chip, is that right?

23
24 MR. TREINEN: Yeah.

25
26 MR. OVIATT: In 2005, where did you do
27 most of your commercial fishing?

28
29 MR. TREINEN: Where it was open. I mean
30 the -- I -- if I recall right we had -- it was -- in
31 contrast to 200 -- the previous year we did most of our
32 fishing near the road system, if that -- and that is
33 typically closer to the areas that are used for
34 subsistence or at least that I observed being used for
35 subsistence. In contrast in 2004 the fish showed up in
36 areas away from the road system and where the fish are is
37 where we need to fish otherwise you can't catch them.
38 I'm sorry. And I only fish where it's open and that's
39 what Fish and Game needs to have flexibility to determine
40 where those openings are because the fish show up in
41 different places in different years.

42
43 MR. OVIATT: Just a follow up question.
44 Was 2005 a successful commercial fishing for you guys,
45 was it a good year?

46
47 MR. TREINEN: I guess you can look at a
48 number of different factors for a good year, one is
49 market price, and then I guess there's no control over
50 that that anyone here would have. I believe the quota

1 was 10,000 tons or something and that's a relative -- any
2 time it gets over 10,000 tons that's a significant amount
3 to catch and it's also a limiting factor, in that -- in
4 being able to conduct a successful fishery is the
5 processing capacity. You can't process all of that fish
6 in a one day opening window. So it has to take place
7 over a period of time and there's a limited period of
8 time when those fish -- when the main body of fish would
9 be in prime condition and the most marketable.

10

11 CHAIRMAN FLEAGLE: Go ahead, Judy.

12

13 MS. GOTTLIEB: Thank you. And I think
14 you've provided us with some useful information,
15 especially -- I mean some of your comments about, well,
16 you need to go where the fish are and sometimes there had
17 been high biomass and the commercial fleet was able to
18 use that. I guess, again, my understanding is if
19 subsistence users are in smaller skiffs it's not as easy
20 to get to some of the areas where the herring might be,
21 so that may be reflected in what their take is.

22

23 But I guess I wanted to ask you in
24 response to Mike's question, if all of the fleet goes to
25 this particular area if it's open, if the herring are
26 there, how do you navigate through smaller boats that may
27 be there at the same time, how does that all work, if
28 subsistence users are there at the same time?

29

30 MR. TREINEN: Well, I guess most of the
31 fishermen, all of the fishermen there are adept at
32 navigating through crowded areas. In a seine operation
33 you've got your own -- you know, the bigger boat and then
34 a seine skiff that -- I mean you have to be adept at
35 getting through there and I mean I guess the subsistence
36 fishermen aren't necessarily in their skiffs during an
37 opening in the place where it would be opening. If
38 there's -- in fact, I guess when there is a lot of
39 subsistence activity, it's pretty typical that Fish and
40 Game would not be opening that area so there generally is
41 not a conflict. The people who are supporting that
42 commercial fishery generally have enough understanding of
43 what's going on so that they stay away until the fleet
44 has -- until nets have been set and the initial scramble
45 is over, and that can be pretty exciting when the gun
46 goes off and there's a lot of black smoke and, you know,
47 half a million dollar, million dollar vessels playing
48 bumper boats, so it can get -- it's pretty exciting at
49 times.

50

1 CHAIRMAN FLEAGLE: Yeah, just one more
2 question from me and I'm not a herring fisherman so I
3 apologize if I ask stupid questions about how it's done,
4 where it's done, that sort of thing, but as you look at
5 -- if you get a chance to look at the map on Page 202 of
6 the actual are, and what I'm curious about is, if we had
7 a permanent closure there and the fish did show up there,
8 would you still harvest fish outside of that area and how
9 close to that would you be, can you fish that reasonably
10 or do you have to be in places like Whiting Harbor to be
11 successful in harvesting the herring?

12
13 MR. TREINEN: Clearly, I think the
14 fishery would be able to harvest the quota without ever
15 going into Whiting Harbor. But Whiting Harbor is a
16 reasonable option at times for harvesting those fish.
17 And if you don't harvest them in Whiting Harbor you might
18 go somewhere else that may be more -- you know, in order
19 to get that quota that's available and conservatively
20 managed by Fish and Game, you might have to go somewhere
21 else that compromises the subsistence fishery, more
22 favorable subsistence areas, so, you know, what that
23 accomplishes, closing that area, doesn't appear to me to
24 really compromise my ability to harvest the fish but it
25 might be more likely to compromise the subsistence
26 fishery that does occur.

27
28 Certainly I'd prefer to allow Fish and
29 Game managers to have maximum amount of flexibility so
30 that we can take our fish in at the most marketable time
31 and giving us the highest value.

32
33 CHAIRMAN FLEAGLE: Okay, it looks like
34 we're done with questions for you, appreciate your
35 testimony.

36
37 Thank you.

38
39 MR. TREINEN: Thank you, Mr. Chairman.

40
41 CHAIRMAN FLEAGLE: And with that the
42 Board will recess until 8:30 tomorrow morning, same
43 location.

44
45 (Off record)

46
47 (PROCEEDINGS TO BE CONTINUED)

