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FEDERAL SUBSISTENCE BOARD
PUBLIC REGULATORY MEETING

VOLUME III

INTERNATIONAL COAST INN
ANCHORAGE, ALASKA

MAY 10, 2007
1:30 o'clock p.m.

MEMBERS PRESENT:

- Mike Fleagle, Chair
 - Gary Edwards U.S. Fish and Wildlife Service
 - George Oviatt, Bureau of Land Management
 - Judy Gottlieb, National Park Service
 - Denny Bschor, U.S. Forest Service (Telephonic)
 - Charles Bunch, Bureau of Indian Affairs
 - Ralph Lohse - Southcentral RAC
 - Daniel O'Hara - Bristol Bay RAC
 - Bertrand Adams - Southeast RAC (Telephonic)
 - Lester Wilde - Yukon-Kuskokwim Delta RAC (Telephonic)
 - Commissioner Denby Lloyd, State of Alaska Representative
 - Keith Goltz, Solicitor's Office
- Recorded and transcribed by:
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P R O C E E D I N G S

(Anchorage, Alaska - 5/10/2007)

(On record)

CHAIRMAN FLEAGLE: Good afternoon. Federal Subsistence Board is back on record. It's the afternoon of May 11th. No, 10th. May 10th. And I think we're out of Ground Hog Day.

MR. PROBASCO: We hope.

CHAIRMAN FLEAGLE: We hope. Okay. Denny Bschor is participating telephonically, and also on line, Pete, would you go ahead and announce on the record who is all on line, please.

MR. PROBASCO: Thank you, Mr. Chair. On line we have Vince Mathews, who's the Council coordinator for Eastern Interior and Western Interior. We have Dave Johnson from the Tongass Forest for the Forest Service. And we have Alex Nick, Council Coordinator for the Yukon-Kuskokwim Delta Regional Advisory Council. And then on line we have two Chairs, Bert Adams, Southeast Regional Advisory Council, and Lester Wilde from Y-K (Hooper Bay) Regional Advisory Council. And has anybody else signed up. Okay.

That's all we have on line at this time, Mr. Chair.

CHAIRMAN FLEAGLE: Okay. Thank you. And there will be opportunity for public comment. If you'd like to participate and comment before the Board, please fill out a yellow slip with Staff and turn it in, and we can get those comments read into the record -- well, we can hear your comments.

And first off, we're going to start out with a Staff briefing on the issue. And Ann Wilkinson, are you prepared to do that?

MS. WILKINSON: (No audible answer)

CHAIRMAN FLEAGLE: Thank you, Ann. Welcome.

MS. WILKINSON: Mr. Chair. Members of the Board. My name is Ann Wilkinson, and I serve as the

1 FACA coordinator. My primary responsibility is oversight
2 of the Regional Advisory Council system.

3

4 The Regional Advisory Councils are the
5 cornerstone of the Federal Subsistence Management
6 Program. Today you will examine the composition of that
7 stone to ensure that it remains strong and able to
8 support the building.

9

10 A court order last summer enjoined us
11 from using the 70/30 system of structuring representation
12 on the councils. We were given a reprieve through the
13 calendar year of 2006. Now, to proceed any further with
14 this year's selection of Council members, you need to
15 take action today.

16

17 I was assigned to summarize and prepare
18 an analysis of the written public comments and the
19 Council's recommendations regarding Council composition.
20 A copy of that report was distributed to you prior to
21 this meeting and you should have a copy of it before you
22 now.

23

24 In the appendix of that report, you will
25 find summaries of the written public comments and of the
26 Council recommendations. Complete copies of the written
27 public comments are available on the public information
28 table out in the hall, and on the Board tables. Council
29 Chairs also received copies.

30

31 The Council recommendations were compiled
32 or in conjunction with the Regional coordinators.

33

34 In the fall of 2006 the Office of
35 Subsistence Management solicited public comments
36 regarding Council composition through the Federal
37 Register and at the Regional Advisory Council meetings.
38 The Board received written comments from the Alaska
39 Department of Fish and Game, two tribal agencies, one
40 native organization, one sport fishing and hunting
41 organization, and seven private citizens.

42

43 The Regional Advisory Councils were
44 briefed on this subject at their fall 2006 meetings and
45 again at the spring 2007 meetings. All 10 Councils
46 discussed the topic and offered comments. Nine of the
47 Council offered formal recommendations to the Board.

48

49 Specific recommendations by the public
50 and the Councils regarding Council composition are listed

1 in the report on Pages 4 through 7. Their
2 recommendations addressed a percentage quota, membership
3 balance, Council member criteria and the member
4 appointment process. Excuse me. Many of the particular
5 recommendations require changes in the laws and the
6 charters. And if you note in the report, when that is
7 the case, I put it in parens.
8

9 The comments and recommendations offered
10 by the public and the Subsistence Regional Advisory
11 Councils present two basic options regarding Council
12 composition.
13

14 Option 1 would seat individuals who have
15 a comprehensive knowledge of the subsistence, commercial
16 and sport uses within their respective regions. In
17 combination, that is the public and the Councils, the
18 majority of the commenters and Councils prefer this
19 option. Those who do prefer this option believe it is
20 assures diverse representation, and more accurately
21 reflects Alaska's resource users than does a single
22 interest form of representation. Most past and current
23 Council members participate in multiple resource uses and
24 are therefore able to represent such multiple viewpoints
25 within their regions. Each -- excuse me. Such members
26 offer a comprehensive perspective which a single use
27 participant cannot.
28

29 Option 2 would maintain the goal of
30 seating a specific percentage of commercial and sport use
31 representatives on the Subsistence Regional Advisory
32 Councils. This option would clearly show that commercial
33 and sport uses are represented on the Councils. Councils
34 and public commenters would have the Board consider that
35 some regions have little or no commercial or sport use;
36 therefore, the percentage ratio should remain a goal
37 rather than to establish designated seats. If no
38 qualified commercial or sport use representatives apply
39 in any given year, seats could be filled by subsistence
40 use representatives, and the percentage ratio goal would
41 be sought with the next year's appointments. Excuse me.
42 Among Councils and commenters that favor this option, the
43 minimum percentage ratio acceptable is 70 percent
44 subsistence users to 30 percent commercial and sport
45 users.
46

47 Some things that you may like to consider
48 when you're working on this today. FACA requires the
49 membership of advisory committees to be fairly balanced
50 in terms of the points of view represented on the

1 committee and the functions to be performed by the
2 committee. These are the only two factors that have to
3 balance.

4
5 Other factors, such as demographics, may
6 be considered when developing a balanced membership;
7 however, the essential consideration is the member's
8 ability to perform the committee's functions.

9
10 Title VIII and the implementing
11 regulations describe the Councils' authorities or the
12 functions as they're referred to in FACA. In summary,
13 the Councils' function is to provide an open forum for
14 the public regarding subsistence matters, and to provide
15 recommendations to the Board that will accommodate
16 subsistence uses and needs. A full list of the Councils'
17 authorities is on Page 2 of the appendix.

18
19 The criteria for Council membership are
20 determined by Title VIII and its implementing
21 regulations. All Council members, whether they represent
22 subsistence, commercial or sport users, must meet all the
23 criteria. The criteria are that each member must be a
24 resident of the region he or she would serve. They must
25 have knowledge of the region and the region's subsistence
26 uses, which include customs and traditions. They must
27 have knowledge of the region's commercial and sport uses,
28 and must have demonstrated leadership and communication
29 skills.

30
31 Today you're called upon to develop a
32 method for balancing the points of view represented on
33 the Council with the Council's functions. Points of view
34 reflecting commercial and sport uses in addition to the
35 view of the subsistence users should be included on the
36 Councils; however, these additional points of view by law
37 must not be allowed to overwhelm or otherwise hinder or
38 prevent the Councils from fulfilling their purpose.

39
40 That concludes my overview of the report
41 and I'm ready to answer any questions you may have.

42
43 CHAIRMAN FLEAGLE: Thank you, Ann.

44
45 Questions. Denny, any questions from on-
46 line?

47
48 MR. BSCHOR: No.

49
50 CHAIRMAN FLEAGLE: Okay. Thank you. All

1 right. Thank you, Ann. Appreciate the overview.

2

3 At this time we're going to hear public
4 testimony. And we have a number of cards. Pete, would
5 you go ahead and let us know who's up.

6

7 MR. PROBASCO: Thank you, Mr. Chair.
8 First up is Anna Seidman.

9

10 CHAIRMAN FLEAGLE: Good afternoon.
11 Welcome, Anna.

12

13 MS. SEIDMAN: I'm not technological, so I
14 apologize. Good afternoon. My name is Anna Seidman, and
15 I'm chief litigation counsel for Safari Club
16 International.

17

18 I appreciate the opportunity to offer
19 testimony today on behalf of Safari Club International,
20 Safari Club International Foundation, and SCI's two
21 chapters here in Alaska.

22

23 Safari Club International has already
24 submitted written comments to the Federal Subsistence
25 Board that support the 70/30 membership balance.
26 However, upon reading the Federal Subsistence Board's
27 Staff Committee's analysis of the two alternatives
28 proposed for Federal Advisory Committee Act compliance,
29 we found it necessary to supplement our written comments
30 with our testimony today.

31

32 The Staff Committee's analysis suggests
33 to the Board that FACA compliance can be met through
34 seating, quote, members who have a comprehensive
35 knowledge of the subsistence, commercial and sport uses
36 within their regions, unquote. We disagree with the
37 Staff that this option would fulfill the Board's FACA
38 obligations. The focal point of FACA's, quote, fairly
39 balanced membership requirement, unquote, is
40 representation, not knowledge.

41

42 As Judge Holland stated in his memorandum
43 opinion dated August 7th, 2006, quote, although FACA does
44 not require that all possible interest groups be
45 represented on advisory committees, the court has already
46 held that a fairly balanced Regional Advisory Council
47 must include consumptive users of fish and wildlife on
48 public lands other than subsistence users, because those
49 users are directly affected by the subsistence priority.
50 Judge Holland did not say that a fairly balanced Council

1 must include individuals who are knowledgeable about uses
2 other than subsistence uses. He said that, quote, a
3 fairly balanced council must include consumptive users of
4 fish and wildlife other than subsistence users, unquote.

5
6 One cannot represent a community of users
7 simply because he or she is knowledgeable about those
8 uses. Take me as an example. As chief litigation
9 council for Safari Club International, I have acquired a
10 great deal of knowledge about the workings and rationales
11 of the animal rights organizations that SCI often opposes
12 in litigation. I doubt, however, that the Humane Society
13 of the United States would pick me to represent them in a
14 forum about animal welfare. Knowledge simply isn't
15 enough.

16
17 The true Litmus Test for whether the,
18 quote, knowledgeable about uses, unquote, alternative
19 would constitute fair representation would be to turn the
20 tables. If circumstances were reversed, would
21 representatives of the subsistence practicing communities
22 be satisfied being represented by non-subsistence users
23 who claim to be knowledgeable about subsistence
24 practices.

25
26 FACA requires a membership fairly
27 balanced in terms of points of view represented. But how
28 can it be determined whether an individual actually
29 represents a particular point of view? The key to
30 representation is the community being represented. An
31 individual doesn't represent any particular community
32 simply because he or she designates himself to be
33 affiliated with that community.

34
35 The way that the Board should determine
36 whether an individual represents a community is to ask
37 that community. The Board should never rely on an
38 individual's self-designation or even on the statement of
39 the hand-picked references supplied by the applicant.
40 Instead, the Board needs to compile a list of
41 organizations that support each user group and the Board
42 should consult those organizations about each applicant
43 who states that he or she intends to represent that user
44 group.

45
46 For example, for those who seek to
47 represent the recreational consumptive users, the Board
48 should seek an endorsement for the applicant from groups
49 such as SCI's chapters, the Alaska Outdoors Council, the
50 Alaska Professional Hunters Association, and other groups

1 in addition to the State of Alaska. That applicant
2 should not be nominated to represent that user group's
3 point of view unless a majority of those organizations
4 that share that point of view can verify that their
5 community agrees that the applicant can truly represent
6 them in RAC business.

7
8 Representation is the key to the outside
9 of the box thinking that Judge Holland emphasized.
10 Representation doesn't require, quote/unquote, single
11 interest membership. In fact, single interest really is
12 a misnomer. No one represents any single interest at any
13 given time. An individual can represent his or her
14 family, religion, community, occupation, et cetera. It
15 is certainly not impossible for an individual RAC member
16 to represent more than one user group, but there is
17 reason to question whether one individual can adequately
18 represent two or more competing, if not sometimes
19 antagonistic groups to the satisfaction of each group.
20 The true test for someone who indicates that he or she
21 can represent multiple groups should be whether each of
22 those groups agrees that it can be adequately represented
23 by that one individual.

24
25 It is true that fairly balanced
26 representation is tied to the function of the RACs, and
27 for that reason, an individual who represents any
28 particular user group should be prepared to act as that
29 group's advocate to raise difficult issues, ask difficult
30 questions, and at times to make a recommendation to the
31 Board that conflicts with the recommendation of the
32 majority. The ability to craft a minority report is an
33 essential part of fairly balanced representation.

34
35 When the FSB Staff first analyzed SCI's
36 written comments, they labeled our recommendation of the
37 minority report as irrelevant to the question of balanced
38 representation, but in so doing, the Staff missed the
39 whole point of fairly balanced representation. The
40 minority report was a specific component of the
41 membership balance analysis that the Department of the
42 Interior Solicitor's Office provided to the Federal
43 Subsistence Board back in 2002. As stated by the
44 Department of the Interior Assistant Solicitor Paul
45 Smythe in his June 17th, 2002 letter to former Federal
46 Subsistence Board Chairman Mitch Demientieff, the
47 minority interest on the Council must be given the,
48 quote, opportunity to craft a minority report, unquote,
49 on the recommendation submitted to the Federal
50 Subsistence Board. It is through this type of access to

1 the Federal Subsistence Board that the RACs, both
2 majority and minority, both subsistence and non-
3 subsistence have the requisite FACA representation in
4 terms of points of view.

5
6 Most likely the Board Staff has pointed
7 the Board toward the alternative that would seat members
8 based on their knowledge of their region's uses, because
9 of their interpretation of a single fleeting reference
10 that Judge Holland made in his August 7th memorandum
11 opinion. When discussing an option rejected by the Board
12 that would seat knowledgeable individuals who participate
13 in a variety of uses, Judge Holland mentioned that this
14 was another way in which, quote, compliance with FACA
15 could be established, unquote. In choosing this
16 alternative over the 70/30 split, the Staff likely
17 assumes that this alternative, if adequately explained,
18 would be approved by Judge Holland. But this assumption
19 fails to note that Judge Holland used the term could, not
20 would when describing whether this alternative would meet
21 FACA compliance standards. There is nothing in Judge
22 Holland's opinion that guarantees that this alternative
23 would be acceptable.

24
25 On the other hand, Judge Holland in his
26 memorandum opinion of August 7th, 2006, made clear that
27 the 70/30 plan and/or the single interest representation
28 alternative would comply with the Federal Advisory
29 Committee Act. In fact, he stated that, quote, the 70/30
30 rule is not contrary to law. It simply has not been
31 adequately justified at this point, unquote. Judge
32 Holland did not prefer that alternative, but according to
33 his own memorandum opinions, he is obligated to accept
34 that alternative if he finds that the Board has
35 adequately considered other alternatives, and has
36 provided adequate explanation of their reasons for
37 picking the 70/30 rule over other alternatives.

38
39 The 70/30 plan, whether or not it
40 involves single interest representation or provides --
41 I'm sorry, can provide a reasonable means of FACA
42 compliance, if it is based on consultation with each
43 interest group being represented, and if it involves
44 access to the tool of minority recommendations to the
45 Federal Subsistence Board. This type of enhanced 70/30
46 plan is just the type of out-of-the-box thinking that
47 Judge Holland has directed the Board to conduct.

48
49 Once again I thank you for the
50 opportunity to appear before you here today. I will be

1 submitting a written copy of this testimony to supplement
2 our previous written comments.

3

4 CHAIRMAN FLEAGLE: Thank you, Anna,
5 appreciate the comments.

6

7 Questions, Board members. Gary.

8

9 MR. EDWARDS: Just one quick question.
10 Even under the 70/30, particularly some of our northern
11 RACs, we've had difficulty just because, you know, the
12 interest up there and the affected folks are primarily
13 made up of subsistence users. How would you apply your
14 sort of out-of-box thinking to trying to address those,
15 which would certainly be different than trying to address
16 let's say the Southcentral RAC.

17

18 MS. SEIDMAN: Understood. And we
19 recognize that there are certain regions that have a much
20 smaller percentage, if any percentage, of
21 commercial/recreational uses. But at this point that's
22 never been solidly substantiated in any of the
23 alternatives. So presumably if that is -- if there's
24 data to support it other than anecdotal references in the
25 representations of different members of the RACs, then it
26 would be appropriate to have a balance in those Councils
27 that reflects the regional balance of membership and
28 uses. And that could certainly be incorporated. My
29 understanding is the 70/30 rule as it was adopted
30 previously indicated that it was a goal, not a mandate.
31 That's not necessarily my preference for some of the
32 regions where there is a significant percentage of
33 recreational and commercial users, but it would
34 potentially work for areas where there isn't the same
35 balance.

36

37 MR. EDWARDS: One other question. It
38 seems that you were saying that that's sort of the Litmus
39 for -- let me back up. I mean, based upon your
40 discussions, it seems like representation and advocacy
41 are really one and the same. And so then the Litmus Test
42 for that, if that representative was truly an advocate
43 for their interests, then you would basically -- they
44 would have to go through some Litmus Test of
45 organizations or whatever determining that.

46

47 MS. SEIDMAN: Well, let me clarify.
48 First of all, that, yes, there is a level of advocacy in
49 my definition of representation, but that does not mean
50 that an individual who represents any particular user

1 group should be -- should assume or should be required to
2 vote the party line shall we say, to vote the same way,
3 to vote for his user group in every situation if he or
4 she is -- interprets the evidence that's presented and
5 finds that the opinion wouldn't necessarily go along with
6 his general user groups' opinion should be followed.

7
8 However, representation is the -- the way
9 that a person would represent a group is if they're
10 presented with testimony, that they ask questions of the
11 individual, that they not simply assume that what that
12 person is saying is correct, and they ask the difficult
13 questions. They ask the questions that the user group
14 that they represent would ask if they were there. And
15 similarly, that if they don't agree with the position
16 that they prepare a minority report that represents the
17 user group that they represent, their position.

18
19 And I think that the only way that you
20 can get individuals to take that role would be to make
21 sure that the groups that they represent agree that they
22 can fulfill that role. And that goes for either side,
23 and that's why I used the example of a Litmus Test, that
24 if the tables were turned, and if individuals who are
25 part of the subsistence community, would they feel
26 comfortable being represented by commercial or
27 recreational users who say that they have knowledge of
28 subsistence uses. That's not the -- knowledge is not the
29 same as the ability to represent. Knowledge is not the
30 same as being able to share a point of view. And that's
31 why I think there has to be something more than knowledge
32 of all kinds of uses.

33
34 CHAIRMAN FLEAGLE: Other questions.
35 Hearing none, thank you for the testimony. Oh, Dan
36 O'Hara.

37
38 MR. O'HARA: Hi. My name is Dan O'Hara,
39 sir. Is Judge Holland a State judge or a Federal Judge?

40
41 MS. SEIDMAN: Judge Holland is a Federal
42 District Court judge.

43
44 MR. O'HARA: He's handed down some
45 interesting things for a Federal judge.

46
47 MS. SEIDMAN: Absolutely. I would agree
48 with you.

49
50 MR. O'HARA: Thank you.

1 CHAIRMAN FLEAGLE: Ralph.
2
3 MR. LOHSE: May I ask a question?
4
5 MS. SEIDMAN: Yes, sir.
6
7 MR. LOHSE: I had a couple questions that
8 I came up with listening to you. You used two different
9 words. You used represent and participate in. Do you
10 consider participating in something as being sufficient
11 to give a person not just the knowledge in that area, but
12 an interest in continuing to participate in that area?
13
14 MS. SEIDMAN: No, I don't necessarily
15 think that they are parallel. An individual can
16 participate in an activity without being qualified to
17 represent. For example, in many of the Regional Advisory
18 Council transcripts that I've reviewed that were talking
19 about this decision, a number of the Council members
20 said, well, I have a commercial fishing license, does
21 that make me qualified to represent the commercial
22 community. Some thought they were, some thought they
23 didn't. They were not. Many people I'm sure participate
24 in what they consider to be a recreational opportunity
25 and yet that doesn't necessarily qualify them to say, I
26 know what the people from the recreational community
27 would ask if they had this witness in front of you -- in
28 front of us.
29
30 MR. LOHSE: Thank you. The other thing I
31 was very pleased to hear is when you talked about the
32 fact if you represent something, you're an advocate for
33 it, but you don't have to, if presented with other
34 information, vote the hard party line. And I know that
35 in a lot of things that I've worked in, I've always said
36 that if either side goes away happy, somebody did
37 something wrong. You have the -- you know, usually what
38 ends up happening, after you've listened to everything,
39 you have to make decisions that basically aren't
40 everything that you want as a representative, but are the
41 best that you can come up with as a group. And is that
42 kind of what you were talking about right there?
43
44 MS. SEIDMAN: Absolutely. And quite
45 frankly again in the Regional Advisory Council
46 transcripts, and I can't quote a particular one at the
47 moment, but what a lot of the Councils mentioned is
48 having the different, distinctly different points of view
49 improve their conversations, improve their discussions,
50 improve their opinions. And without having very distinct

1 points of view to offer Ideas that would not otherwise
2 come up, to offer questions that would otherwise -- would
3 not otherwise come up. The decisions that are being made
4 are not necessarily the best decisions to be made.

5

6 MR. LOHSE: One final question. You
7 mentioned a minority report a number of times. One of
8 the things that we were doing as a Council for a long
9 time was allowing the people who vote against to state
10 their reasons on the record why they voted against it.
11 Is that equivalent to a minority report or do you mean
12 that you'd need an official minority report on every
13 motion?

14

15 MS. SEIDMAN: Well, I would say the
16 latter and I don't think it necessarily has to be on
17 every motion, but I think that should be the decision of
18 the Council members. The reason that I suggest it as an
19 official report as opposed to just the individual
20 statements of Council members is that the report is the
21 official document that the Federal Subsistence Board uses
22 to make its determination, and therefore they review what
23 is, quote/unquote, the recommendation of the Regional
24 Advisory Council, but that may not always be the
25 recommendation of all of the Regional Advisory Council.
26 And I think that there is a component being left out when
27 there is not a minority recommendation when certain
28 Council -- when the Council members feel it's
29 appropriate.

30

31 MR. LOHSE: Thank you. Thank you, Mr.
32 Chair.

33

34 CHAIRMAN FLEAGLE: Other comments or I
35 mean questions. Denny, on line?

36

37 MR. BSCHOR: No, I don't have any,
38 thanks.

39

40 CHAIRMAN FLEAGLE: All right. Thank you
41 for the testimony.

42

43 MS. SEIDMAN: Thank you.

44

45 CHAIRMAN FLEAGLE: And once again, if
46 anybody in the audience wishes to speak on the issue,
47 fill out a yellow card. We're still taking cards.

48

49 Pete.

50

1 MR. PROBASCO: Thank you, Mr. Chairman.
2 And I apologize for not doing this the first time. Next
3 up will be Gloria Stickwan, followed by Linda Tyone, and
4 then Timothy Andrew. Gloria Stickwan.

5
6 CHAIRMAN FLEAGLE: Good afternoon,
7 Gloria. Welcome. And the other mic is turned on. Would
8 you reach over and turn it off, please. Thanks.

9
10 MS. STICKWAN: My name is Gloria
11 Stickwan. I'm here to represent myself.

12
13 We as a -- well, the Ahtna Subsistence
14 Committee opposed the 70/30 percent rule membership. And
15 they thought it could be improved upon without having --
16 differentiating subsistence use or personal use or sports
17 use or commercial use, that these people that are picked
18 should have experience, user experience of and to be
19 knowledgeable about all uses that are picked on to be on
20 these RACs. They should know the issues of the different
21 user groups, understand the regional subsistence uses and
22 areas, and they should know the rules of order, and they
23 should also upkeep the ANILCA mandates and protect
24 subsistence users. They also thought that two tribal
25 members should serve on the RACs. And they thought this
26 way that it could conform to FACA rules I guess.

27
28 I also wanted to say I serve on the
29 Southcentral Regional Advisory Council. And I also
30 support the RACs position that we voted on, and I'm sure
31 you'll hear about that from our Chairperson.

32
33 And about this Litmus Test, I don't know
34 what to think about that. Are we all going to have to go
35 through tests now to be on RACs or -- I didn't understand
36 that part at all. Are we going to have to ask questions
37 about our user knowledge, or just what is that? I guess
38 I'm not supposed to ask questions to the Board, but
39 that's -- I just think people that serve on there should
40 have knowledge of all uses, and they should protect
41 subsistence. We're there to uphold ANILCA and that is
42 our primary responsibilities, and to oversee the
43 conservation of fish and wildlife, and uses and to
44 protect subsistence uses. That's how I see it.

45
46 CHAIRMAN FLEAGLE: Okay. Thank you,
47 Gloria.

48
49 Questions, Board members. Charlie.
50

1 MR. BUNCH: Gloria, you said two tribal
2 members was your recommendation. Did you mean tribal
3 members or tribal council members?

4
5 MS. STICKWAN: Two tribal members. It
6 could be council members who really, you know, are
7 knowledgeable about the subsistence uses.

8
9 MR. BUNCH: Thank you.

10
11 CHAIRMAN FLEAGLE: Other questions.
12 Gary.

13
14 MR. EDWARDS: Gloria, thank you for your
15 testimony. Have you given any thought to how you would
16 go about accomplishing that kind of representation that
17 you've described?

18
19 MS. STICKWAN: Well, I think that, you
20 know, they should be knowledgeable of other uses, there
21 should be involvement, attending meetings, Federal and
22 State meetings. They should -- at these Federal and
23 State meetings you learn a lot, just another lesson, you
24 learn a lot by talking to people, to the recreation
25 users, you hear their public testimony. And during the
26 meetings, you are able to talk to the commercial users.
27 During the Board of Game -- I mean Board of Fisheries
28 they put us into little groups, so we're able to
29 understand and have a discussion among our different
30 concerns. So we do have a lot of knowledge and we know
31 what their concerns are. And, you know, I see that as we
32 -- as long as we understand what all the issues are, you
33 know, I think that that's the most important thing of
34 serving on this RAC. It's not whether you're a
35 commercial user or a subsistence user or a sport user,
36 but that you understand and that you protect ANILCA.
37 Protecting ANILCA is the most important thing I think.

38
39 CHAIRMAN FLEAGLE: Other questions.

40
41 (No comments)

42
43 CHAIRMAN FLEAGLE: On line?

44
45 (No comments)

46
47 CHAIRMAN FLEAGLE: All right. Hearing
48 none, thank you, Gloria.

49
50 Pete.

1 MR. PROBASCO: Next is Linda Tyone,
2 followed by Timothy Andrew, and then Heather Kendall.

3
4 CHAIRMAN FLEAGLE: Good afternoon, Linda.
5 Welcome. You need to turn the microphone on. There you
6 go. Thank you.

7
8 MS. TYONE: Thank you for the opportunity
9 to allowing me to testify on the Regional Advisory
10 Councils. I'm here today on behalf of the Ahtna
11 Subsistence Committee. I'm the current chair of the
12 committee.

13
14 And we oppose the 70/30 split. We think
15 this would be unfair to the subsistence users, because I
16 don't think we would get a fair representation from the
17 commercial and sports users. We would be outvoted and
18 that wouldn't be protection of subsistence. There are
19 mandates under ANILCA that need to be followed. So I
20 don't think -- we should have the direct knowledge and
21 interest on people that apply for these seats.

22
23 And the Regional Councils are advisory
24 members, so it's not like their recommendation's going to
25 go forward.

26
27 So I think that you need to have direct
28 knowledge, because the people that have direct knowledge
29 of the region knows about how the game populations are in
30 different years, and their history has been given from
31 generation to generation by the families in different
32 regions, villages. I think that's very important,
33 because families do pass on history from generation to
34 generation on how, you know, they used to hunt years ago
35 in the Copper River area, and that's all documented. So,
36 you know, you have to have the knowledge of your area.

37
38 I don't have any knowledge about areas up
39 in the north, because that's not my home region. My home
40 region is in the Copper River area. And, you know,
41 that's where we grow up and know the knowledge of things
42 that goes on there. So I think you need to consider the
43 background, experience.

44
45 And that's all I have to say.

46
47 CHAIRMAN FLEAGLE: Thank you, Linda.

48
49 Questions.

50

1 (No comments)
2
3 CHAIRMAN FLEAGLE: All right. Appreciate
4 the testimony.
5
6 MS. TYONE: Thank you.
7
8 CHAIRMAN FLEAGLE: Pete.
9
10 MR. PROBASCO: Next is Timothy Andrew,
11 followed by Heather Kendall, and then Art Ivanoff.
12
13 CHAIRMAN FLEAGLE: Good afternoon, Tim.
14
15 MR. ANDREW: Good afternoon, Mr.
16 Chairman. Members of the Board. Thank you for the
17 opportunity to testify before you today. My name is
18 Timothy Andrew. I'm the director of Wildlife Resources
19 for the Association of Village Council Presidents, based
20 in Bethel, Alaska, and I am here to testify to you about
21 the composition of our Regional Advisory Councils.
22
23 Over the past several years there's been
24 a lot of discussion by not only our RACs, but also people
25 within the area about the potential impacts of this 70/30
26 split if it were to occur on our Regional Advisory
27 Councils. We oppose this action.
28
29 During our recent Y-K Delta Regional
30 Advisory Council meeting in Hooper Bay during the month
31 of March, many of our members expressed their concerns
32 about the potential dilution of the RACs by non-
33 subsistence interests. And this process is currently
34 already occurring on the Federal Subsistence Board with
35 the inclusion of the non-voting participation by the
36 State of Alaska.
37
38 The State has always been extremely -- or
39 not always been, but has become more and more hostile to
40 people in the rural areas. And this is done through
41 primarily their administrative and legislative actions.
42 And they choose to fight their very own people, us, with
43 money that they have derived from the resources that are
44 right in our back door. They are motivated by
45 organizations that generate the most money, while
46 ignoring our social, cultural, economic and subsistence
47 needs of our people. I cannot ever recall the State of
48 Alaska ever suing on behalf of subsistence, but they will
49 always get up and sue for the other people.
50

1 Additionally, others on our Council
2 expressed their support for provision supported by the
3 Yukon River Drainage Fishermen's Association, which
4 include the following:

5
6 RACs should be exempt from FACA, and we
7 should seek Congressional changes to exempt the RACs.

8
9 (2) RACs are already fairly balanced, and
10 this is expressed on Page 6 of the appendix. And the Y-K
11 Delta Regional Advisory Council, many who sit on the RACs
12 serve as municipal council members, tribal councils, and
13 they sit on regional non-profit boards, village
14 corporation board, regional corporations and local school
15 boards. Additionally CDQ boards and other interests that
16 they may serve within the villages. So these people are
17 pretty well balanced as far as their knowledge of people
18 in their communities. And they are -- and we believe
19 that they serve as people that adds flavor to the
20 discussion while they deliberate o some of the regulatory
21 proposals. And if you are to review the biographies of
22 the people serving on our RACs, you will definitely find
23 that to be true, that they are varied in their local and
24 regional interests.

25
26 The other thing that I'd like to point
27 out is in the Y-K Council there have been a person of
28 other interests, one of the commercial services providers
29 within the region that was appointed to the Regional
30 Advisory Council. That individual never did show for the
31 meeting.

32
33 We only have two or three commercial
34 service providers within our area, and they're primarily
35 based in Bethel. The villages basically have none. We
36 have 6500 people in the Community of Bethel. The other
37 14 or 10,000 more people are based -- are in our
38 villages, which have populations from 80 people to the
39 biggest village, Beth -- I mean, Hooper Bay, of 1200
40 people.

41
42 Mr. Chairman and members of the Board,
43 ANILCA was adopted because the Federal and State agencies
44 were not fulfilling their obligations in protecting our
45 subsistence way of life. Intentionally diluting the RACs
46 with outside interests is slowly eroding our subsistence
47 way of life. Forcing our RACs to a 70/30 split would
48 inherently weaken the subsistence mission and lead to the
49 destruction of our way of life. And I know that's not
50 the intention of the Federal Subsistence Board.

1 Contained in AVCP Resolution 070502 are
2 segments directly quoted from the record of decisions in
3 the adoption of ANILCA that relate to our position. The
4 first, on the sixth whereas, or sixth whereas clause from
5 Page 10, of ANILCA 805 was created to provide subsistence
6 users the opportunity the opportunity to participate
7 effectively in the management and regulation of
8 subsistence resources. There was no mention of sport or
9 commercial interests participating in our decisions or
10 regulatory processes that affect our subsistence way of
11 life.

12
13 Another issue raised in the resolution is
14 the consultative process our Board desires. Since the
15 inception of the Federal Subsistence Management System,
16 the participation of our tribal governments has always
17 been continuously overlooked. As stated in the second be
18 it further resolved clause, our Board wants our
19 subsistence management system to consult with our tribes
20 and our tribal organizations in the implementation of
21 Title VIII of ANILCA. This is including the current
22 issue of the RAC composition. We have a total of 56
23 tribes out of the 226 in the State of Alaska. We have
24 over 20,000 people that reside in our area, most are in
25 very small villages that I had indicated earlier.

26
27 And we have the highest per capita
28 consumption of wild food of 664 per capita as stated in
29 the 2004 ISER report. A huge percentage of that is our
30 fishery resources, but other wild food that we consume is
31 just as important. And we believe to further dilute our
32 RACs would place our subsistence way of life in peril,
33 and would defeat the purposes of ANILCA, and the
34 subsistence management in Alaska.

35
36 Thank you, Mr. Chair. That concludes my
37 testimony.

38
39 CHAIRMAN FLEAGLE: Thank you, Timothy.

40
41 Questions.

42
43 (No comments)

44
45 CHAIRMAN FLEAGLE: All right. Hearing
46 none, thank you for the testimony.

47
48 Pete.

49
50 MR. PROBASCO: Thank you, Mr. Chair. Our

1 last three is Heather Kendall is next, followed by Art
2 Ivanoff, and then Rod Arno.

3

4 CHAIRMAN FLEAGLE: Good afternoon,
5 Heather. Welcome.

6

7 MS. KENDALL-MILLER: Good afternoon.
8 Thank you. I'm Heather Kendall. I work for the Native
9 American Rights Fund, and I actually am also representing
10 the Native Village of Venetie, and Gideon James, and
11 Ninilchik in this case.

12

13 We came into this case quite a number of
14 years ago. It's been around for a while, probably about
15 five or six years ago now I think. Eight. Eight years
16 ago. We intervened in the case to defend the challenge
17 against the Federal Subsistence Board. If you remember
18 Safari Club brought a very broad challenge against
19 basically all of the regulations that had been passed to
20 date by the Regional Advisory Councils on the basis that
21 they were not consistent with FACA's fair balance
22 requirement. And Judge Holland actually rejected that.
23 He rejected the invitation to go back and revisit all of
24 those and hold all those previous decisions to be
25 inconsistent with FACA.

26

27 However, he felt it important that you as
28 a body take this issue up through the proper rulemaking
29 process and allow the public and the RACs to have
30 opportunity to weigh in and give you their views as to
31 whether or not they believe that a 70/30 allocation
32 fairly does satisfy FACA and represent the views of all
33 participants.

34

35 I am here primarily to encourage you to
36 adopt option number 1. I think that Judge Holland would
37 probably find that you have actually done what he's asked
38 now, that you have gone through the rulemaking process.
39 You have vetted the issue. You have put it out to the
40 public. You have allowed the Councils, the Regional
41 Advisory Councils to give their views on this. And while
42 Judge Holland has also ruled that you don't have to defer
43 to the RACs on this particular question, because it's not
44 a question that involves fish and wildlife management, it
45 nonetheless would be great if you did.

46

47 And the reason why is because the RACs
48 are your partners. They're the ones that are out there
49 doing what ANILCA directs them to do. They are the ones
50 that are dealing most directly with the public on all of

1 these issues. And as you know from reading the comments
2 that were given to you, the practical reality is that
3 almost all RACs representatives have vast experience, not
4 just in the area of subsistence uses, but in commercial
5 and in sports and others.

6
7 When we were looking through the record
8 at the initial go round, it was very interesting to read,
9 and I think this is very true, of course, in Southeast,
10 where oftentimes the RAC members who have sat on the RACs
11 are likewise commercial fishing captains. Oftentimes the
12 RAC members up in the Interior Regions will also be
13 guides during the hunting seasons. They have vast, vast
14 experiences.

15
16 And by making the RACs have to identify
17 as a single interest representation, and as my colleague
18 here would suggest, even go further than that, have
19 specific organizations, have them show -- give a Litmus
20 Test, you're inviting not necessarily representation by
21 those with knowledge, which is the intent of ANILCA,
22 you're inviting organizational representation to have a
23 right to sit at the table. And that has never been what
24 ANILCA is about. It is about being able to have people
25 with the most knowledge, have a meaningful representation
26 or say in how subsistence regulations get developed.

27
28 I think option 1 best does that. I think
29 as the Staff have pointed out, in combination the
30 majority of commenters and Councils prefer this option.
31 So I would urge you to defer to the public on this. The
32 public has said that this is the better option to go for.
33 It more adequately represents interests of -- and the
34 reality of the fact that most RAC members have vast
35 knowledge of all uses, not just subsistence.

36
37 So I'll leave it at that. Thank you.

38
39 CHAIRMAN FLEAGLE: Thank you, Heather.

40
41 Questions, Board members. Gary.

42
43 MR. EDWARDS: Heather, I guess one
44 question. Kind of using the RACs, isn't it somewhat like
45 a catch 22, because before you could use the RACs,
46 wouldn't you have to ensure that the RACs are balanced
47 and fully representative so they could actually address
48 representation? I mean, what comes first? I mean, you
49 would need it seems to me a balanced RAC, that somebody
50 had determined that, to weigh in on the issue of how a

1 RAC ought to be balanced. You couldn't have an
2 unbalanced RAC it wouldn't seem to me weigh in on an
3 issue and say how we should be organized to object
4 objectivity in their response.

5
6 MS. KENDALL-MILLER: If I follow that
7 questions, and I'm not sure I do actually, but I think
8 that the way that you can assure balance is not by having
9 any kind of Litmus Test, but by having as this -- the
10 nominations process now does, have questionnaires that
11 ask people about the nature of their experience, and look
12 to see whether or not it includes a wide array of
13 experiences, not just one. If people want to attach a
14 letter of recommendation from a particular native
15 organization or Safari Club or something like that,
16 that's certainly can, you know, give assistance for
17 whether or not that person, you know, has experience or
18 whatever. But I don't think that there need be an rigid
19 criteria to be able to show that a balance is being met.

20
21
22 And I don't think that's what Judge
23 Holland expected either. What he expected is that this
24 Board would look hard at the issue and come up with a
25 reasonable solution for providing balance. And as I
26 said, that could be based upon, you know, knowledge of
27 all the resources.

28
29 MR. EDWARDS: But, you know, in general
30 it's not unusual on FACA committees to have -- ask
31 various organizations to identify an individual who they
32 think they could -- to represent them, and on a lot of
33 non-FACA things here even that we deal with, Fish and
34 Wildlife Service, we have all kinds of groups, including
35 native organizations, coming forward and saying, you
36 know, we would like to be the ones that identify, you
37 know, who sits in, or who goes to this meeting, or who
38 represents us. I mean, that's not all that unusual.

39
40 MS. KENDALL-MILLER: Unusual. I think
41 what you have to do is look at context though. In the
42 case law that's looked at this, they look at what are the
43 functions. What are the functions. And if you have a
44 function that your committee is carrying out that has a
45 broad mandate, then certainly, you know, it's been
46 allowed to have specific identified representation. But
47 the courts have also been very specific in saying that,
48 you know, that doesn't mean single interest
49 representation is necessary or even good. In fact,
50 that's where that term came from is the cases that have

1 thrown out challenge -- thrown out challenges by those
2 that would insist upon single interest representation,
3 because that was really what FACA was passed to prevent.
4 It was passed to allow inclusive views, not single
5 interest representation.

6
7 So I think -- and, Gary, I am aware of
8 the fact that some Federal committees are set up that
9 way. But there are plenty that aren't as well. And that
10 based -- you know, that really turns upon the function.
11 And as you all know, the function of the RACs primarily
12 is to deal with subsistence-related issues. So, again,
13 if they have experience and knowledge about commercial,
14 sports, great, but it shouldn't be a rigid requirement.

15
16 MS. GOTTLIEB: Mr. Chair.

17
18 CHAIRMAN FLEAGLE: Judy.

19
20 MS. GOTTLIEB: Thanks, Heather for your
21 testimony and I think I remember you testifying last
22 summer. That might be why we're here today, which is
23 fine.

24
25 I guess my question for you on option 1,
26 so it -- I don't hear a concern from you that there's a
27 risk or a chance that subsistence users may not be the
28 majority if you will of the members?

29
30 MS. KENDALL-MILLER: I don't read this
31 option as suggesting that. I read this option as not
32 setting any kind of a formula that would require a set
33 number of one group over other groups. I see this as
34 being a little bit similar to what was originally in
35 place, but was not really specific in that it
36 acknowledges that most people who are subsistence users
37 are likewise tend to be people with great knowledge of
38 other uses. When you look at specific regions, I mean,
39 that's kind of self-evident in many places with people
40 that have great knowledge of the land and the resources
41 that they use, they're also going to be aware of other
42 uses that take place in that area.

43
44 And I see this as more kind of an
45 evolution in the sense that it's become recognized that
46 the RACs should include views, a fair representation of
47 views by others, non-subsistence users. And where we
48 have always felt strongly about is that the RACs should
49 not be set up to be a group that -- where it is
50 political, where people with different agendas can come

1 to the table and air their various agendas. That's not
2 the work of the RACs.

3

4 You know, the work of the RACs is to
5 think about subsistence-related issues. And, of course,
6 if it impacts upon commercial and sports, then, sure.
7 But it's not a place for people with specific agendas to
8 come and argue about those agendas. And we think that a
9 formula that allows for single-interest representation
10 does exactly that. It comes with the expectations that
11 those individuals are there to represent those
12 constituencies.

13

14 CHAIRMAN FLEAGLE: Other questions.

15 Gary.

16

17 MR. EDWARDS: This is a question kind of
18 in responding to kind of the first testimony we heard
19 about the difference between knowledge and understanding
20 and representation. Do you see a difference between
21 those two? I mean -- go ahead.

22

23 MS. KENDALL-MILLER: Well, I think there
24 is a difference between those two. And kind of mixing
25 apples and oranges a little bit. The knowledge is really
26 something that is mandated under ANILCA itself. It's one
27 of the requirements of the regulations and stuff that a
28 person has knowledge of the region, come from that region
29 and such. And the views is the FACA requirement. And as
30 we know now, based upon the court's hold that the RACs
31 apparently, you know, have to comply with FACA while
32 carrying out the mandate of ANILCA.

33

34 But that again doesn't suggest that the
35 two are mutually exclusive. I do believe that, you know,
36 of course the knowledge base has to be satisfied, and
37 that is enhanced by a person's experience. And, again,
38 looking at the comments and stuff, what you see is that
39 as a practical reality, most people have vast experience.
40 And I reiterate that it's possible to be able to
41 establish that kind of experience through the nomination
42 process by being able to ask the kind of questions that
43 are now being asked. Well, you know, what is the basis
44 for your experience? You know, how many years have you
45 practiced in this area? All that can be done in that
46 fashion without going to a more rigid application of
47 formula.

48

49 CHAIRMAN FLEAGLE: Thank you. Other

50 questions.

1 (No comments)

2

3 CHAIRMAN FLEAGLE: All right. Heather,
4 thank you for the testimony.

5

6 MS. KENDALL-MILLER: Thank you.

7

8 CHAIRMAN FLEAGLE: Pete.

9

10 MR. PROBASCO: Next is Art Ivanoff, and
11 the last testifier will be Rod Arno.

12

13 CHAIRMAN FLEAGLE: Good afternoon, Art.
14 Welcome.

15

16 MR. IVANOFF: Good afternoon, Mr. Chair.

17 My name is Art Ivanoff. I'm the resource advocate for
18 AVCP out of Bethel. AVCP is a tribal consortium of 56
19 Federally-recognized tribes in western Alaska, as you're
20 aware.

21

22 After reviewing the proposal, the
23 proposed 70/30 split, AVCP calls on further efforts to
24 develop and implement sport and commercial interests in
25 the RAC process to cease based on the adverse effects,
26 and on further erosion of Title VIII of ANILCA.

27

28 We've provided with your office a copy of
29 Resolution 070502 adopted by AVCP Board of Directors.

30

31 We feel a key element and an important
32 link missing from the inception of the Federal
33 Subsistence Program is the consultation process with the
34 Federally-recognized tribes. The U.S. Government holds a
35 political relationship with the Alaska native peoples.
36 Congress found there was a need to protect the cultural
37 integrity of the Alaska native people's hunting, fishing
38 and trapping way of life. And it's based on this
39 political relationship with the Federally-recognized
40 tribes that ANILCA was conceived. The intent of Title
41 VIII of ANILCA is to protect the subsistence way of life
42 of the Alaska native peoples and other rural Alaskans.

43

44 ANILCA Section 805 was created to provide
45 subsistence users the opportunity to participate
46 effectively in the management and regulation of
47 subsistence resources on Federal public lands. Section
48 805 of ANILCA does not reference other users in the
49 process.

50

1 We call on the immediate withdrawal of
2 diluting the Federal Subsistence Regional Advisory
3 Councils. In addition, we call on the Office of
4 Subsistence Management and the Federal Subsistence Board
5 to develop and implement a tribal consultation process in
6 the implementation of Title VIII of ANILCA.

7
8 That concludes my testimony. Mr. Chair.

9
10 CHAIRMAN FLEAGLE: Thank you, Art.

11
12 Questions, Board members.

13
14 (No comments)

15
16 CHAIRMAN FLEAGLE: Thanks for the
17 testimony.

18
19 Pete.

20
21 MR. PROBASCO: This is the last public
22 testimony, Mr. Chair, and it's Rod Arno.

23
24 CHAIRMAN FLEAGLE: Good afternoon, Rod.
25 Welcome.

26
27 MR. ARNO: Good afternoon. Chairman
28 Fleagle, Board members. Thanks for the opportunity to
29 allow the Outdoor Council to testify.

30
31 The Outdoor Council supports option 2
32 with the 70/30 split, that clearly that the Federal
33 Advisory Committee Act talks about fairly balanced, and
34 asking for a 70/30 seems to be a fair balance. When it's
35 only the people that I'm representing on the Outdoor
36 Council, the majority of them would just be in that 30,
37 mostly recreational users.

38
39 The function, you know, clearly under
40 FACA is subsistence uses. That's the only thing that the
41 Federal Subsistence Board can allocate, and that's
42 subsistence use. But the Outdoor Council feels that by
43 having that representation, that it will just open up
44 that dialogue between those Alaskans who do qualify under
45 the Federal program and the majority of Alaskans who
46 don't.

47
48 And clearly under option 2, having it
49 that if no qualified others apply, you know, there's
50 numerous region where, you know, subsistence isn't much

1 of a problem as we saw in the rural/non-rural
2 determinations that were just made by this Board this
3 last year. Bristol Bay and the Yukon-Kuskokwim Delta and
4 Western Interior, Seward Peninsula, Northwest Arctic,
5 you're going to be hard pressed to find someone there.
6 Of course, everyone who lives in those regions in order
7 to qualify would also be qualifying for subsistence.

8
9 And it's, you know, the problems that we
10 continue to see and we had here on the Kenai is just like
11 in the Southcentral RAC where you have a large population
12 of Alaskan residents who don't qualify under the Federal
13 rural qualifications that to have 30 percent
14 representation I think would be in Alaska's best
15 interest.

16
17 Thank you.

18
19 CHAIRMAN FLEAGLE: Thank you, Rod.

20
21 Questions. Gary.

22
23 MR. EDWARDS: Rod, one question. I mean,
24 if you look at option 1, and where it talks about having
25 comprehensive knowledge of use, but if you also said of
26 use and view, and if you actually could find 10 or 13
27 people in a region that would fit that description,
28 wouldn't that actually be a lot more balanced Regional
29 Advisory Council representing all interests as opposed to
30 ones that's 70/30 that only seems to be that -- where you
31 might only have 30 percent of that group trying to
32 represent the views of, in this case, commercial and
33 sport, whereas in the other one, if you could accomplish
34 what's asked there, you would have 13 people collectively
35 representing all those views.

36
37 MR. ARNO: Through the Chair. Mr.
38 Edwards. I certainly don't see that that's occurred,
39 that, you know, clearly that when we have had
40 representatives who were on the RAC here in Southcentral
41 from Anchorage, and was not qualified, you know, his
42 voice wasn't any -- you know, there wasn't any better
43 representation, that he, you know, clearly wasn't able to
44 do anything more than just say that, you know, to try to
45 get out some of the conservation issues on it.

46
47 But I think specifically if in areas like
48 Southcentral Alaska where there's a large population of
49 recreational users who aren't represented, I think just
50 by having that dialogue and having them here I think

1 would be better and far better than option 1.

2

3 MR. EDWARDS: I guess just a follow up,
4 you know, in some cases, you know, we haven't been overly
5 successful in getting a lot of interest for
6 representation in these groups. One could argue that
7 that's a different issue and we need to maybe be looking
8 at how we're trying to get candidates, but, you know, you
9 can -- it has not been that necessarily easy. When we
10 ask for, you know, people to look at, we don't have this
11 gigantic slate that's overwhelming, you know, that you
12 have so many applicants that you just -- and good
13 applicants, that you don't know what to do.

14

15 MR. ARNO: Yeah. Through the Chair. Mr.
16 Edwards. Clearly, and, you know, that's always going to
17 be a problem. Why would you want to participate on a
18 board that was allocating for something that you would
19 get no allocation of. It's only -- the only advantage of
20 having that 30 percent would be to have, and if there
21 were people that were, you know, represented a large
22 spectrum of recreational users, they could come and say,
23 well, I just don't want to lose that much more. So it's
24 always going to be a problem because of the way ANILCA's
25 written, that you're only representing one user group.
26 So the best that we could ask is for those who aren't
27 represented to at least have a say at the table.

28

29 CHAIRMAN FLEAGLE: Other questions.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: All right. Thank you,
34 Rod. Appreciate the testimony.

35

36 That concludes public testimony. The
37 Board will stand down for 10 minutes.

38

39 (Off record)

40

41 (On record)

42

43 CHAIRMAN FLEAGLE: Good afternoon. The
44 Federal Subsistence Board resumes discussions.

45

46 And just checking to make sure we've got
47 everybody still with us on line. Denny are you back with
48 us?

49

50 MR. BSCHOR: Yes, Mr. Chair, I am.

1 CHAIRMAN FLEAGLE: Okay. Thank you.

2

3 And during the break, Vince did let me
4 know, Vince Mathews, the Regional Coordinator, let me
5 know that he has been given the authority to represent
6 the Western Interior and the Eastern Interior RACs on
7 comments. So we'll just let that be known in the record.

8

9

10 Our next item is Council recommendations.
11 And let me see. We've got two Councils present, and then
12 we have one, two, three, four represented by telephone.
13 And I guess just simply I'll take the two that are here
14 present in person first, and then call for additional
15 comments telephonically when we get there.

16

17 And from the table that's present,
18 preference to who goes first? Dan O'Hara.

19

20 MR. O'HARA: Yes, Mr. Chairman. Dan
21 O'Hara, Bristol Bay Advisory Council.

22

23 The 70/30 thing is working well for us.
24 Picking up someone like Randy Alvarez who does -- truly a
25 subsistence user all of his life, a life-long commercial
26 fisherman, sport interest, is the Chair of our Council.
27 Nanci Morris, a professional sport fishing guide, just an
28 exceptional Council member. And Dan Dunaway, a retired
29 biologist. I mean, he knows every stream in the region.
30 It has done nothing but enhance, you know, the Council
31 even better. And so I don't see where.....

32

33 And the gentleman from the Outdoor
34 Council I believe made an interesting comment, that, you
35 know, you get 45 million fish coming back this year,
36 subsistence is -- and get one percent of that for
37 subsistence, it's hardly an issue to deal with. Rainbow
38 trout, we had a little fight, and how we've got that, we
39 got it taken care of.

40

41 But I think maybe just listening to some
42 of the testimony today, that perhaps maybe the
43 interviewing process of Council members, a little more
44 in-depth to the region, whether it be tribal or village
45 councils or local governments, whatever it might be. You
46 know, you don't want to open Pandora's box and start
47 something that you don't have any control over, but I
48 could write to the village, you know, health corporation
49 and native corporation, the BBEDC, Kadamidella (ph)
50 Corporation -- Association, and get all kinds of

1 recommendations to be on your Board. I can do that
2 politically.

3

4 So I think maybe when the Feds and the
5 State, if the State is involved in the interviewing of
6 Council members, maybe we should go a little deeper into
7 that system and see if perhaps maybe some of our true
8 cultural subsistence people who don't deal with the
9 Federal Government or the State might be a little more
10 involved in what Council member represents them on their
11 ability to transfer knowledge and make decisions, and get
12 into a good scrap with you guys. We do.

13

14 So that's my comments, Mr. Chairman.
15 Thank you.

16

17 CHAIRMAN FLEAGLE: Appreciate those, Dan.

18

19 Board members, questions.

20

21 (No comments)

22

23 CHAIRMAN FLEAGLE: All right. I'll go to
24 Ralph Lohse next. Ralph.

25

26 MR. LOHSE: Thank you. Thank you, Mr.
27 Chair. I'll start off by giving our official
28 Southcentral Alaska Subsistence Regional Advisory
29 Council's recommendations so that it's on the record, and
30 then I have a few things that I would like to add to it
31 if I can.

32

33 The Southcentral Council recommends that
34 given the purpose of the Regional Advisory Councils,
35 these Councils should be made up primarily of subsistence
36 users or people who have a strong background or knowledge
37 of subsistence uses, who are well-rounded, who are
38 familiar with local needs, and who represent a broad
39 cross section of consumptive uses of the area. Non-rural
40 members need to have a basic understanding of the
41 subsistence way of life and subsistence needs. All
42 Council members need to support and protect ANILCA. The
43 Council holds that the needs of non-subsistence users,
44 while not directly represented, would be represented by
45 people who can see both sides of all issues and vote and
46 look at issues in a rational way.

47

48 Setting any percentage for membership
49 could be counterproductive.

50

1 Council discussions included the
2 following subjects:

3
4 In order for the designated seats to
5 balance, all members must attend the meetings.

6
7 While it is important for members to have
8 a broad knowledge of all activities, this is a
9 subsistence Council, and that subsistence representatives
10 should be the primary members on the Councils.

11
12 That the Councils are local residents who
13 advise professionals who don't live the subsistence way
14 of life.

15
16 That Councils can't have non-consumptive
17 users, because by the very nature subsistence is
18 consumptive.

19
20 That OSM has done a good job of getting
21 people who have a broad understanding, are open-minded
22 and willing to learn.

23
24 And we feel that single interest
25 representation is too narrow for the work of the
26 Councils.

27
28 That's the official position of the
29 Southcentral Regional Advisory Council.

30
31 As the Chair, I'd like to speak to just
32 couple of things that I have seen and that have been
33 brought so far in this meeting, if that's okay with the
34 Chair.

35
36 CHAIRMAN FLEAGLE: Go ahead, Ralph.

37
38 MR. LOHSE: I was looking at your options
39 for consideration. And on option number 1 where it says
40 comprehensive knowledge, I have to agree with the lady
41 lawyer that was here from the Sierra Club. I don't think
42 just knowledge is enough. I think it has to be
43 comprehensive knowledge and a significant participation
44 in those areas, because I think the significant
45 participation is what gives the person the actual
46 interest in maintaining that type of activity.

47
48 I mean, an example would be if I would
49 decide to represent commercial fishing, but I was a
50 retired commercial fisherman, that would be different

1 than if my livelihood depended on commercial fishing, and
2 I was also a subsistence user, and I was representing as
3 a commercial fisherman. And so consequently, I think the
4 significant participation is very important.

5
6 I have a little problem with the Litmus
7 Test thing, simply because, and I'll have to use an
8 example that kind of illustrates that, but the Litmus
9 Test problem is how do we pick which organizations get to
10 make the Litmus Test and what kind of Litmus Test do we
11 give those organizations, and do those organizations have
12 to be local so that they represent those kind of people
13 that are involved in that local area and then what is
14 local. And I'm going to go back and use the same kind of
15 illustration again.

16
17 As you know I'm also a commercial
18 fisherman. If I would get CDFU, which is Cordova
19 Fisherman's United to say that I was a good commercial
20 fishermen representation, but Cook Inlet fishermen who
21 are also part of our area said, no, we can't accept him
22 and AFA says, no, he doesn't represent the commercial
23 point of view, would I be a good commercial fisherman
24 representation or not. Which one of those organizations
25 would hold the weight.

26
27 And so that's where I think that your
28 process, like Dan was saying, of looking at the
29 candidates, and one of the things they have to do is they
30 have to put down people that you can go to to see what
31 does this person really represent and organizations, and
32 you're going to have to make that kind of decision. But
33 you could still represent in a way, not a specific
34 organization, but a philosophical viewpoint.

35
36 I mean we've had -- if you take a look at
37 some of the things we've had people on our Council who
38 had a broad knowledge of subsistence but were very
39 directed to other areas, they were listened to, they
40 actually changed opinions on some of the things, their
41 information was welcome, but they also need to attend.
42 You can't accomplish something if they decide -- you
43 know, I can't accomplish anything here because this thing
44 comes out for ANILCA every time and I'm against ANILCA
45 basically. And so they give up and they go home. You
46 have to attend the meeting and bring the information to
47 the Council.

48
49 And from that standpoint, I --
50 personally, myself, I think that your goal should be to

1 have a broad representation but the knowledge and the
2 participation is a lot more important.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: Appreciate the
7 comments, Ralph. And just for correction, that's Safari
8 Club, not Sierra Club, a little bit of difference there.

9

10 (Laughter)

11

12 MR. LOHSE: I didn't realize that I said
13 Sierra Club and I'm sorry if I did because I didn't mean
14 that, that's for sure.

15

16 (Laughter)

17

18 CHAIRMAN FLEAGLE: That's okay. I'm just
19 correcting on the record. Gary.

20

21 MR. EDWARDS: I have just a couple of
22 questions. It didn't appear from the Council's position
23 whether you took -- sort of a position on the 70/30 or
24 not. It was more or less kind of describing what you
25 think the representation should be and the qualifications
26 of the individuals that should represent and then what
27 you talked on on participation; is that correct?

28

29 MR. LOHSE: That's pretty much what I
30 would think. I don't think that -- I know there's a lot
31 of people in our area that don't like the idea of a
32 specific 70/30 split meaning that this represents this,
33 you know, because we, as a Council, have had broad
34 discussions and included all the viewpoints and so what
35 we want is we want people that understanding the guiding
36 industry or participate in it but also understand
37 subsistence so that they can bring their information into
38 the discussion. And we didn't see where a rigid 70/30
39 would meet the qualifications of ANILCA, which is a broad
40 representation, and, yet, support ANILCA.

41

42 MR. EDWARDS: And then let me follow up,
43 like Bristol Bay, your Council has been operating under
44 this kind of 70/30 and i think some of your membership
45 has come about maybe because of it. I mean Dan spoke,
46 you know, very highly of sort of the folks that have come
47 on to their Council under that, I mean would you echo
48 that for your Council or has it been problematic or good
49 or bad or indifferent?

50

1 MR. LOHSE: I think that, as a Council,
2 we have been very blessed with the kind of people that we
3 have had come to represent these different viewpoints. I
4 mean they've been strong advocates of different -- other
5 than straight subsistence viewpoints and yet had a strong
6 knowledge of subsistence and subsistence uses in the area
7 and subsistence users.

8
9 Actually the truth of the matter is they
10 were part of the community and that even includes the
11 representative that we had from Anchorage, he was still
12 part of the community. He had lived with the kind of
13 people that do subsistence enough that he had that kind
14 of understanding and yet he could bring a strong
15 viewpoint of, I'll say, sportfishing, and represent it
16 well and even change opinions and minds with it, but at
17 the same time you have to recognize that he's probably
18 going to get outvoted when it comes down to a subsistence
19 versus sport issue if it looks like the sport would
20 impact the subsistence because everybody on the Council
21 feels that the thing is to look for a subsistence
22 priority.

23
24 CHAIRMAN FLEAGLE: Other questions, Board
25 members. Dan.

26
27 MR. O'HARA: I just didn't want to leave
28 Thomas Hedland out, who is a guide on our Council, born
29 and raised up at Knudsen Bay area and lifelong Native
30 Alaskan subsistence user, commercial fisherman and a
31 guide, so there you are. And just a good contribution.
32 He'll be coming on new with us is my understanding.

33
34 Thank you.

35
36 CHAIRMAN FLEAGLE: All right, thanks,
37 Dan. Appreciate your comments, Ralph. And I'm going to
38 turn to the other RAC Chairmen that we have present and
39 first I'm going to call on Lester Wilde, Yukon -- no.

40
41 MR. PROBASCO: Yukon-Kuskokwim.

42
43 MR. WILDE: Thank you, Mr. Chairman. Our
44 RAC feels that we don't have too much of a problem with
45 the 70/30 split, although we would like to insist that
46 all of our members be primarily subsistence users, which
47 they are, except for one person that was appointed to our
48 RAC who did not attend any of our meetings and happened
49 to be the author of Proposal 32 that was passed at your
50 last Board meeting. And the only -- we haven't had any

1 problem in that 70/30 split because all the members that
2 are on there are primary users of the resource.

3

4 Mr. Chairman.

5

6 CHAIRMAN FLEAGLE: Thank you, Lester.
7 Questions, Board members.

8

9 (No comments)

10

11 CHAIRMAN FLEAGLE: All right, appreciate
12 the comments. Bert Adams.

13

14 MR. ADAMS: Thank you, Mr. Chairman and
15 Members of the Board. Appreciate the opportunity to be
16 able to make some comments in regards to the SERAC's
17 position on this 70/30 rule.

18

19 Let me see here, on November 27th, 2006 I
20 wrote the Chair a letter indicating to you, Mr. Chairman,
21 that I submitted some personal comments concerning the
22 subsistence management regulations for public lands in
23 Alaska and it also regarded the Federal Subsistence
24 Regional Advisory Council membership. That was submitted
25 before we had a Council meeting and so I submitted that
26 on a personal note using the word, I.

27

28 On November 21st, 2006 the Council had a
29 teleconference meeting and they reviewed my proposal and
30 then voted to submit these comments as Council comments.
31 So the letter that you have is, of course, adopted by the
32 Regional Advisory Council. Let me say that our Council
33 vehemently opposes the changes in Regional Advisory
34 Council selection procedures and the composition.

35

36 We wish to provide comments concerning --
37 I'm going to make some comments in regards to the
38 structure of the Council.

39

40 We acknowledge the Democratic intent of
41 the Federal Advisory Committee Act and would point out
42 that it is primarily an open government law intended to
43 have important decisions that's subject to public review.
44 You know ANILCA was developed to provide a process where
45 the public can participate in issues that pertain to
46 subsistence and the Regional Advisory Councils are the
47 avenue in which they are able to accomplish that.

48

49 On that letter that I submitted to you,
50 Mr. Chairman, it was on October 18th, 2006, on Page 2 of

1 5, it gives an appendix to the subpart A and B, of which
2 you all have and so I'm not going to go through that at
3 all. I'm just going to take some highlights of that
4 letter and kind of emphasize on them a little bit.

5
6 It says here that FACA requires that
7 agencies have a plan by the agency sets quotas for
8 committee membership. So the Council believes that the
9 program is in compliance with the 70/30 rule. I
10 personally feel that way, I think -- I feel strongly that
11 before this 70/30 rule came upon us that our Council,
12 particularly, was well balanced in all of these user
13 groups. On the bottom of that page and on Page 3 of 5
14 you will see the names of the members of the Council who
15 you will notice, you know, are involved in commercial,
16 sport and subsistence. I, for one, can give you a for
17 instance. I am a subsistence user. I'm also a
18 commercial fisherman. And I also am a charter boat
19 captain. And when I sit in our Southeast Regional
20 Advisory Council meetings, I can use that knowledge that
21 I have in all of these user groups to make, I believe,
22 you know, I would (ph) say a wise or proper decision, in
23 regards to the subsistence issues that are before us.
24 The main idea is that we deal with the subsistence issues
25 and make our recommendations based on that with the
26 knowledge that we do have with the commercial industry as
27 well as the sport.

28
29 The Council believes that, as I said
30 earlier, was in compliance with the 70/30 rule and if the
31 program was, in fact, in compliance during the 1993 and
32 2000 time period then Regional Council recommendations
33 and Federal Subsistence actions based on those
34 recommendations would be really questionable and we don't
35 believe that it would be unsupportable at that.

36
37 The Council also believes that membership
38 can be balanced without trying to program to an
39 artificial quota designated seats. Now, we live in the
40 real world, and Alaskans are not neatly divided into
41 subsistence, sport, guide or commercial users. In my
42 experience, almost all seated Council members are strong
43 participants in most of these interest categories. And I
44 gave you an example of myself for instance.

45
46 The following table shows the interests
47 represented by 13 Regional Advisory Councils [sic] and,
48 you know, you can look at those, you know, at your own
49 leisure, you have probably already done that anyhow.
50

1 Subsistence fishermen frequently hold
2 commercial fishing licenses. Commercial fishing may be a
3 part of sportfishermen or hunters. Sport hunters may
4 have personal use fishing permits while hunting guides
5 may also hold sportfishing licenses. In almost all
6 cases, however, an individual usually holds certain
7 convictions and beliefs that would cause him or her to
8 represent one of his or her interests more strongly than
9 other interests when making recommendations on potential
10 regulations or policies that would impact his or her use
11 of that resource.

12
13 RACs are supposed to be strong advocates
14 for subsistence use of fish and wildlife. And if this
15 highly subjective method of categorizing applicants,
16 mainly self-identification, is flawed because so many
17 Alaskans represent multiple interests then the 70/30 rule
18 approach of designated seats is not really supportable.

19
20 ANILCA does not provide for quotas on RAC
21 seats and so we recommend dropping the quota system for
22 Council seats. We would propose that we meet the
23 guidelines through expanded outreach, and I'm referring
24 to guidelines of 41 CFR 102-3.61 (ph), through expanded
25 outreach to encourage diverse applicants to apply by
26 revising applicant evaluation criteria to encourage the
27 desired diversity and requiring designated Federal
28 officials or other FACA officials to report on how
29 balance has been achieved on their Councils.

30
31 We would also note that balance should
32 consider age, gender, ethnicity, income, education,
33 geographic residence and other factors that are important
34 in terms of the points of view represented and the
35 functions to be performed. I believe that this approach
36 would meet FACA's fairly balance requirements by insuring
37 that a diversity of interests are represented on each
38 Regional Advisory Council.

39
40 Finally, I request that the plan for
41 meeting the FACA representational guidelines in the above
42 -- above this letter here be subject to rulemaking, and I
43 think that process is already being done at this point.
44 The rulemaking should include public hearings in affected
45 communities and consultation with tribal governments. I
46 think that we really need to include tribal governments
47 in the process here. I've tried to, in this area, you
48 know, keep our tribal government informed on all of the
49 things that we are doing in the Southeast and they really
50 appreciate that and we've had a lot of tribal people, you

1 know, attend our meeting and testify and I think that
2 process is really healthy for us because we are then
3 representing, you know, people that are really affected
4 by the issues that are before us in the ways that we are
5 recommending subsistence regulations be changed or
6 adopted. Formal rulemaking is required to insure that a
7 full range of alternatives is considered and to develop a
8 strong administrative record required for what may be
9 controversial regulations.

10

11 And, Mr. Chairman, I would be open for
12 some questions at this point. I said I have this rule,
13 you know, don't make them too hard and then I'd like to
14 make some comments after that, if I may.

15

16 CHAIRMAN FLEAGLE: Questions. Gary.

17

18 MR. EDWARDS: Hey, Bert, this is Gary
19 Edwards. As part of your testimony you had indicated
20 that you felt that the Council was well balanced before
21 the 70/30 split. Now, that that has been in place, do
22 you feel that the Council's no longer well balanced?

23

24 MR. ADAMS: I feel that the people that
25 we have on the Council right now are truly representative
26 of -- and, yes, we are balanced. I believe that we still
27 maintain our balance.

28

29 MR. EDWARDS: Thank you.

30

31 CHAIRMAN FLEAGLE: Other questions, Board
32 members.

33

34 (No comments)

35

36 CHAIRMAN FLEAGLE: That's it for
37 questions. Bert, you want to go ahead and wrap up.

38

39 MR. ADAMS: Sure, I'll wrap up, Mr.
40 Chairman, thank you. I've got to find my notes here,
41 excuse me.

42

43 Title VIII, as I said earlier, opens a
44 forum for public to participate in the subsistence issue.
45 And through that forum is, of course, the Regional
46 Advisory Councils. And to meet requirements to sit on a
47 RAC you have to be a resident of that area. You have to
48 have knowledge of the subsistence in your region and you
49 also to have some knowledge of the sport and commercial
50 fishing industry.

1 I was interested in the comments that the
2 lady from the Safari Club made in regards to
3 representation and knowledge. It's my understanding that
4 all we needed to have was representation but no
5 knowledge. I have found myself in a very bad situation
6 on many, many occasions when I was trying to represent a
7 group and I didn't have the knowledge. That's how come I
8 have the rule, you know, don't ask any hard questions of
9 me, if I don't have any knowledge of the subsistence
10 issues, the sportfishing or the commercial fishing
11 issues, then I am not representing my constituents very
12 well. And so I just wanted to make that comment.

13
14 There was also a comment made on
15 consumptive users. You know, if you come into my home,
16 you will find that about 90 -- yeah, about 90 percent of
17 my home is gathered with subsistence foods. Right now I
18 have a smokehouse outside that is filled with king
19 salmon. You look into my freezer and there is moose meat
20 from last fall and there's some deer meat and there's
21 other, you know, subsistence meats and fishes, you know,
22 that we are still using. And first of all I am a
23 subsistence user and then I am a commercial fisherman and
24 I'm also a sport person. But like ANILCA I have a
25 priority over subsistence over anything else. And so I
26 am somewhat concerned on the fact that something was made
27 about advocating for their interests, that if we get a
28 very powerful person that is on the commercial -- and I
29 have seen this happen, you know, even on our RAC, or the
30 on the sportfishing side, that things could change very
31 easily and I'm afraid of this kind of dilution in the RAC
32 as we see it now.

33
34 So ANILCA species that the RACs are to
35 address issues pertaining to subsistence and as I
36 mentioned our Council is very well balanced on that. We
37 have commercial fishers, we have sportfishers and guides
38 and, you know, they use that knowledge and information
39 that they have of these various users and I think, you
40 know, that they make wise and good decisions as a result
41 of that knowledge.

42
43 I'd also like to say that deference
44 should be made, and I think I've said this before, you
45 might have heard me repeating myself again, should be
46 given to the Regional Councils. They are the ones who do
47 all of the leg work and the research and they, you know,
48 seriously look over the proposals that are before us and
49 then we put our stamp of approval on it and it goes to
50 you and we hope and pray, you know, that through your

1 efforts that they will become regulations. But I think,
2 you know, the idea that we work from the bottom up should
3 be emphasized more and more as we deliberate.

4
5 Another thing that I'd like to say, you
6 know, and I don't think I've emphasized this or said it,
7 you know, very strongly before, is that if the State of
8 Alaska would only come in compliance with ANILCA, all the
9 problems and issues that are before us right now would go
10 away. And I'm very concerned, you know, that we're still
11 going to have this tug-of-war between our way of managing
12 resources and their way. We both believe that we do a
13 better job but, you know, it's something that's nagging
14 on me all the time, that all the State needs to do is
15 come in compliance with ANILCA and then they could take
16 over the subsistence management of the resources in the
17 state of Alaska.

18
19 I'd also like to make reference, Mr.
20 Chairman, if I might. The letter that was written to --
21 I believe it was to the Secretary of Interior on October
22 22nd, 2001, and it was signed by Senator Rick Halford and
23 Representative Brian Porter, the Legislative Speaker of
24 the House, Senator Halford was the president of the
25 Senate at that time. I'm very curious about who they
26 were representing on this issue. I remember reading the
27 letter but I don't remember it being stamped by the state
28 of Alaska Legislature or the state of Alaska in general,
29 were they representing themselves or were they actually
30 representing the views of the state of Alaska and I have
31 a real problem with that and maybe somebody can answer
32 that question for me. It doesn't have to be now but
33 sometime down the line.

34
35 You know the State has not been effective
36 in developing steps needed to bring the State in
37 compliance with ANILCA and we are going to continue to
38 have this tug-of-war between us if nothing is done in
39 that area.

40
41 I'm just challenging, you know, the State
42 that this is the problem that we are having right now
43 with dual management and it really shouldn't be that way
44 because if they would come in compliance with ANILCA then
45 subsistence would be a priority and as long as they don't
46 do that then the next step is to follow the Federal law,
47 which is ANILCA.

48
49 Thank you, Mr. Chairman. And I wish I
50 could have been up there with you today to be personally

1 there to testify but, you know, your budget, as you said,
2 was not able to afford that. I realize that with the
3 cuts that the Federal government has to make with the war
4 in Iraq and Afghanistan and other parts of the world,
5 that it probably is necessary but I feel kind of left out
6 when, you know, it has to be with, for instance, you
7 know, Regional Advisory Council Chairs not being able to
8 come to a meeting and testify in a forum like this. I
9 think it's really important that we be present rather
10 than trying to communicate our issues, you know, over the
11 telephone.

12

13 But anyhow thank you, Mr. Chairman, for
14 allowing me to share my views with you and talk on behalf
15 of the Southeast Regional Advisory Council.

16

17 Gunalcheesh.

18

19 CHAIRMAN FLEAGLE: Thank you, Bert. And
20 your concerns about the budget and travel are noted.
21 Thank you. I'm going to turn over to Vince Mathews, on
22 line, for comments from the Western and Eastern Interior
23 RACs. Vince.

24

25 MR. MATHEWS: Thank you, Mr. Chairman.
26 Can you hear me?

27

28 MR. PROBASCO: We got you loud and clear,
29 Vince.

30

31 CHAIRMAN FLEAGLE: Go ahead.

32

33 MR. MATHEWS: Okay. Thank you for
34 allowing the newly elected Chair, Jack Reakoff, who would
35 have loved to have been involved with this discussion but
36 his travels with the Gates of the Arctic Subsistence
37 Resource Commission, but last week's Board meeting
38 affected his normal subsistence pattern of harvesting
39 caribou so right now he's out trying to find a caribou.

40

41 For the Chair of Eastern Interior, she
42 also wanted to be involved, but she's also called away to
43 be working on her garden as well as possibly a bear hunt.

44

45 So with that, Mr. Chairman, the comments
46 and recommendations for Western Interior are found on
47 Page 8 of your packet there and I'm just going to do the
48 highlights of it.

49

50 But basically the Western Interior

1 Council recommends that the composition should never be
2 below 70/30. They talked extensively during their
3 discussion on this about it worked with having
4 commercial/sport interests on their Council and how
5 they've benefitted from that. But in light of that and
6 in light of their make up for their region, they felt
7 that demographics should be considered for each Council
8 and for the Western Interior region, which should be
9 80/20, always favoring the subsistence priority.

10

11 And the basis of their direction on that
12 is from ANILCA, that the advisory structure should be
13 that it enables rural residents to have a meaningful
14 forum to review and dialogue on subsistence issues.

15

16 They also acknowledged there may be
17 regions or areas that have no commercial interests and,
18 again, that reinforced their recommendation for
19 demographics but they concluded on that that it should
20 never go below 70 percent for subsistence issues.

21

22 Eastern Interior is found on Page 9 of
23 your book, again, I'll just get the highlights of it.

24

25 They did not recommend any hard and fast
26 rule on percentages. They would rather have the
27 application process determine the make up of the
28 interests of people applying. Similar to basically how
29 the State runs their Advisory Committees. So the
30 applicant interview process should determine the
31 percentage of interests and the various fish and wildlife
32 uses for each applicant and those would be combined to
33 get to a balance to meet the FACA requirements.

34

35 That Council, when they brought up this
36 issue discussed at length about the concerns about when
37 people declare that they are subsistence but may be
38 viewed as commercial or may actually be commercial. So
39 they discussed at length but took no official action on
40 possible ethics disclosures for the benefit of the Board,
41 but again they did not take any action on that.

42

43 That concludes the discussion of
44 recommendations for Western and Eastern Interior.

45

46 Thank you.

47

48 CHAIRMAN FLEAGLE: Thank you, Vince.

49 Questions, Board members.

50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: All right, appreciate
4 those comments. I'm going to turn it over to Barbara
5 Armstrong. Do you have any comments for your Advisory
6 RACs, please.

7

8 MS. B. ARMSTRONG: Yes, Mr. Chair. I
9 have one for North Slope Subsistence Regional Advisory
10 Council who unanimously recommended to oppose the
11 rationale for using the 70/30 Council composition plan.
12 The Council opposes any mandatory requirement to have
13 commercial, sport representation on the Council and is
14 satisfied with Council composition that consists solely
15 of subsistence users.

16

17 The Council acknowledges that the North
18 Slope region does not have commercial users that reside
19 on the North Slope.

20

21 And Seward Penn did not make a formal
22 recommendation but this is a Council where they had no
23 problems working with the 70/30 split. They've meshed in
24 real well. And currently Seward Penn is being Chair'd by
25 a comm/sport, probably the only one statewide.

26

27 Thank you, sir.

28

29 CHAIRMAN FLEAGLE: Thank you, Barbara.
30 Questions.

31

32 (No comments)

33

34 CHAIRMAN FLEAGLE: Hearing none.
35 Michelle, for your Council please.

36

37 MS. CHIVERS: Thank you, Mr. Chair. The
38 Kodiak/Aleutians Council recommends that the current
39 system be left in place. The Council believes that the
40 current nominations process allows for a diverse Council
41 make up and they urge the Board not to get locked into a
42 hard numbers formula.

43

44 As for the Northwest Arctic Council, they
45 did not make a formal recommendation, however, members
46 did offer comments during the Council's winter meeting.
47 The Council agreed that the 70/30 balance of membership
48 is satisfactory with one condition. If there is not
49 enough qualified commercial or sport use representatives
50 to fill the 30 percent of the seats, those seats will

1 continue to be filled by qualified subsistence use
2 representatives. Members noted that few commercial
3 operators live in the region but that the Council will
4 welcome them provided that they live in the region year
5 round. A member stated that it seems that we are
6 heading towards a system that leads people to support the
7 Federal system in the first place and caution that the
8 Board needs to make sure the Councils remain within the
9 intent of ANILCA.

10

11 Thank you, Mr. Chair.

12

13 CHAIRMAN FLEAGLE: Thank you, Michelle.

14 Questions.

15

16 (No comments)

17

18 CHAIRMAN FLEAGLE: I think that concludes
19 all of the Regional Advisory Councils.

20

21 MR. PROBASCO: That's correct, Mr. Chair.

22

23 CHAIRMAN FLEAGLE: All right. We now
24 move to the Alaska Department of Fish and Game for
25 comments. And who's taking this, Tina -- Tina Cunning.

26

27 MS. CUNNING: Thank you, Mr. Chairman.
28 The Department is concerned, both with the way the
29 background for this discussion was presented to the Board
30 and with the way the State of Alaska's comments were
31 interpreted and summarized by the Federal Staff in the
32 report.

33

34 First regarding the background section.
35 It ignores Judge Holland's January 16, 2004 summary
36 judgment order which found that the Regional Advisory
37 Councils are subject to FACA's "fairly balanced
38 requirement" and that "Councils which exclude the
39 viewpoints of non-subsistence users" do not meet this
40 requirement. Thus the Staff's compilation of Option 1 is
41 not a valid option for consideration because the Court
42 expressly stated "in light of the national policies of
43 ANILCA and the functions served by Regional Advisory
44 Councils, a Council composed of only subsistence users is
45 not fairly balanced."

46

47 In our letter to the Board we noted that
48 the balance required under FACA is particularly important
49 because the Federal Board defers to the Regional Advisory
50 Council recommendations on many issues and is often

1 reluctant to exercise its responsibilities or use its
2 authorities under Sections .805 and .815 of ANILCA to
3 reject recommendations even when the recommendations are
4 not supported by substantial evidence, violate recognized
5 principles of fish and wildlife conservation, would be
6 detrimental to the satisfaction of subsistence needs or
7 would unnecessarily restrict non-subsistence uses. Thus
8 balanced RACs are needed to insure that the competing
9 purposes of ANILCA, as recognized by the Ninth Circuit
10 Court in the Ninilchik Traditional Council versus United
11 States 2000 Decision are considered by the RACs as well
12 as the Board.

13

14 Second I want to clarify our comments
15 that were not fully represented in the Staff's report.
16 The Department wants to make it clear that it sees the 30
17 percent non-Federal subsistence representation as an
18 absolute minimum necessary for meeting the FACA's "fairly
19 balanced" requirement unless major modifications are made
20 to the way RAC membership is determined and even then 30
21 percent should serve as a minimum for, except in rare
22 circumstances where primary purpose representatives of
23 other user groups are not available in the region, in
24 which case flexibility could be considered.

25

26 In most areas of the state regional
27 representation targets should be higher and it should be
28 possible to find representatives who are willing to
29 primarily represent non-Federal subsistence users if you
30 modify your selection process, which I'll explain later.

31

32 In order to achieve the balance it is
33 important to maintain a requirement that the RACs must
34 include membership that represents other uses, i.e.,
35 sport, personal use, commercial, and State subsistence
36 uses. And also that the RACs continue to allow
37 membership from Alaskans in non-rural areas in the
38 region. The current regulatory requirement for all
39 members to be knowledgeable about the subsistence uses of
40 the public lands in the region should be eliminated as an
41 individual who is not primarily representing subsistence
42 uses may have limited knowledge of subsistence uses but
43 still be knowledgeable about other uses of fish and
44 wildlife in the region. Since decisions by the Federal
45 Board affect all Alaskans, including representatives from
46 non-rural areas on the RACs, in those regions that
47 include large population centers will achieve a more
48 balanced approach representative of the entire region.
49 And we note that ANILCA .805 specifically established the
50 RACs to provide, quote, the provision of a forum for the

1 expression of opinions and recommendations by persons
2 interested in any matter related to the subsistence uses
3 of fish and wildlife within the region.

4

5 The Department urges the Board to
6 implement major modification of the way the RAC
7 membership is determined.

8

9 The current process of appointment based
10 on Federal Staff recommendations has serious flaws. This
11 is not representative as a problem in all of the RACs but
12 one of these flaws is the lack of consultation with the
13 State in the selection which is inappropriate and
14 contrary to the requirements of ANILCA Section .805(a),
15 which provides that the "Secretary in consultation with
16 the State shall establish a Regional Advisory Council in
17 each subsistence resource region." To date the State has
18 not been consulted on the membership in any official or
19 formal way.

20

21 We urge the Board to consider modifying
22 the RAC selection process to use the National Park
23 Service Resource Commission approach so that the RACs are
24 comprised of local people from the region, some members
25 nominated by the State, some members nominated by the
26 Federal Board and some members nominated by local Fish
27 and Game Advisory Committees. The fairly balanced
28 requirement could be met by requiring each nominating
29 entity to nominate at least one individual who actively
30 participates in these various uses and has various
31 interests and also actively participates in Federal
32 subsistence hunting or fishing. All nominated members
33 would then be appointed by the Secretary. This approach
34 could result in a balanced RAC, foster increased
35 communication between the Fish and Game Advisory
36 Committees and Federal RACs and insure that members
37 appointed are local residents who are users of the
38 resource and representative of their communities.

39

40 Regardless of the model that's selected
41 we think there's some clear procedural things that need
42 to be resolved. And one thing I want to mention here is
43 people may not be aware that in the early years of ANILCA
44 implementation the State run Regional Advisory Councils
45 were comprised of the Chairs of the local elected Fish
46 and Game Advisory Committees in their region. In this
47 manner the Councils comprised persons who were elected by
48 the residents of the region and we suggest that the Board
49 consider establishing a few seats on each Federal Council
50 to be nominated from the local Fish and Game Advisory

1 Committees, not necessarily the Chairs. In this manner
2 the Board would be assured that elected representatives
3 who are most interested in the fish and game uses in
4 their region are also among those selected to serve on
5 each Council. These nominations could be selected to
6 fill both the subsistence and non-subsistence user group
7 seats on the Council.

8
9 Irregardless of these models we'd like to
10 see some very clear process changes. And one of those is
11 we need to require, as several RACs have mentioned,
12 active participation for representation. Each nominating
13 authority should be required to nominate representatives
14 from various users groups. And there needs to be
15 representation of the State subsistence users, not just
16 the Federal subsistence users. Secretarial rejection of
17 State Advisory Committee nominations should only occur
18 for cause. But there needs to be a provision for
19 procedures for removal of RAC members for cause at the
20 request of the local Advisory Committees or the
21 nominating appointing authorities. There needs to be a
22 provision for dissenting recommendations to reach the
23 Board where a RAC is not unanimous in its recommendation.
24 And elimination of the requirement to be knowledgeable of
25 subsistence uses as the statute only requires that they
26 be a resident of the region.

27
28 As I stated, we have a serious problem
29 with the current selection process. As Mr. Edwards
30 suggested, people in some parts of the state are not
31 going to apply to serve on a Federal committee and
32 particularly where they don't feel that their viewpoint
33 is welcome by a majority. But if elected by the local
34 Fish and Game Advisory Committee or their hunting or
35 fishing club or some other entity they might be willing
36 to serve.

37
38 Second. The selections are currently
39 done by Federal employees who then make the
40 recommendations based on their own philosophy or agency
41 policy out of the public eye, not necessarily based on
42 the interest of the local area.

43
44 Then, third, because some are selected to
45 represent minority views, those individuals have no
46 mechanism to provide their interest in other uses, the
47 impacts on other uses, and other interests for the Board
48 to hear in their deliberations.

49
50 The Board has a charge to consider other

1 beneficial uses and balance competing uses. But the
2 current RACs, regardless of the model of their
3 composition, do not provide views to the Board of those
4 that are not in the majority. The Board, then, does not
5 have the benefit of the local users various interests,
6 other use data and the Board is taking action, gives
7 deference to the RACs but only the majority view, as
8 selected by the Federal officials who nominated them.
9 Judge Holland made it very clear that the RACs must be
10 fairly balanced and include the viewpoints of many users.

11

12 Thank you.

13

14 CHAIRMAN FLEAGLE: Thank you, Tina.
15 Questions, Board members. Gary.

16

17 MR. EDWARDS: Tina. You were suggesting
18 kind of a formal nomination process, but there seems to
19 me that there's never been anything that would prevent,
20 let's say, the State for example, everything there is a
21 call that goes out for a membership to identify people
22 who you think would be good representatives and
23 encouraging them to apply and if they did write letters
24 of support for them. My sense is that that would take a
25 lot of weight and carry a lot of weight because I'm
26 assuming you would be identifying good people. So I mean
27 it's the same process it's just not a formal process. I
28 haven't seen any of that, in fact I've seen very few
29 groups, you know, kind of step up and try and encourage
30 people to be members and then write letters in support on
31 their behalf.

32

33 CHAIRMAN FLEAGLE: Tina. John Hilsinger.

34

35 MR. HILSINGER: Thank you, Mr. Chairman.
36 I think that's a good idea and I think that's maybe
37 something that would be really good for the Federal
38 Subsistence Board to develop more of an outreach plan
39 for. I don't think most groups realize that they would
40 have the opportunity to nominate people and have those
41 nominations well considered. So I think that's an
42 excellent idea and I think the outreach on that aspect
43 would be good.

44

45 I think many people here have mentioned
46 the problem of getting representatives of those other
47 user groups to apply and to continue to participate and,
48 you know, we have had some feedback from people that it
49 can be fairly difficult to be one of the minority people
50 out of a group of 10 and it's often contentious. And so

1 I think that's another area where some outreach could
2 really maybe help encourage those people not only to
3 apply but also to continue to participate.

4
5 Thanks.

6
7 MR. EDWARDS: You know I've been on the
8 minority a lot of times and I continue to participate.

9
10 (Laughter)

11
12 MR. LOHSE: Mr. Chair.

13
14 CHAIRMAN FLEAGLE: Other Board members,
15 questions.

16
17 (No comments)

18
19 CHAIRMAN FLEAGLE: Hearing none. Ralph
20 Lohse.

21
22 MR. LOHSE: Mr. Chair. I really
23 appreciate what John just said there and it's really
24 something that's been evident in Southeast and
25 Southcentral. I know that a couple of people that are on
26 our RAC were directly nominated by a local Fish and Game
27 Advisory Board which chose to take part in this Advisory
28 Program. I also know other Advisory Board in our
29 Southcentral region, that the only thing they've done is
30 come to our meeting and tell us that we shouldn't be here
31 at the meeting and now some of them have now chosen to
32 start participating in this process but you can't force
33 people to participate in the process. You can't force
34 Advisory Committees to recommend somebody to the Council,
35 if they want to choose the actions of the Council, by
36 nature, are not within what they consider legality, but
37 we have also had other Councils that have chosen to
38 participate and members on our Board have been nominated
39 by those councils and are sitting on our council -- or
40 Advisory Committees, my fault, I keep mixing Councils and
41 Committees up but Fish and Game Advisory Committees that
42 have chosen to participate and have recommended members
43 and those members sit on our Council.

44
45 CHAIRMAN FLEAGLE: Other questions.

46
47 (No comments)

48
49 CHAIRMAN FLEAGLE: All right. We don't
50 have any Staff Committee comments. We'll go right into

1 Board deliberation. Board members discussion.

2

3 MS. GOTTLIEB: Mr. Chair.

4

5 CHAIRMAN FLEAGLE: Judy.

6

7 MS. GOTTLIEB: I just make a general
8 comment on this question of attendance. From some of the
9 RAC meetings I've gone to, I mean attendance is sometimes
10 difficult for all the members, whether it's weather
11 logistics or connections or commitments that conflict, so
12 I know we focused a lot about attendance by sport and
13 commercial representatives but I think that also affects
14 subsistence users. So I think it's something that the
15 coordinators continue to struggle with to encourage
16 everybody's participation and work on those logistics to
17 make sure that everybody gets there.

18

19 CHAIRMAN FLEAGLE: Other Board members.

20 I'd like to remind the public and the Board that we do
21 have Denny Bschor participating telephonically. Just
22 pipe up if you want to be recognized, Denny.

23

24 Gary.

25

26 MR. EDWARDS: Well, I think it's
27 interesting if you listened to all the testimony and
28 listened to the RACs, if you sort through it all I'm not
29 sure it's -- in a lot of ways the messages were kind of
30 the same in all, I mean it seems to be general agreement
31 by all that -- for most of all, that the Councils should
32 be balanced, should have this broad representation with
33 people are willing to participate and who do participate,
34 and certainly the Council meetings that I have been to,
35 you know, obviously there is a degree of participation,
36 you have some Council members that basically don't say a
37 thing at the meeting and it's pretty clear that they
38 didn't do a whole lot of coordinating within their own
39 community let alone with a neighbor community and other
40 Council members it's obvious that they've put a lot of
41 time and effort into this and we salute those. So I
42 think everybody sort of wants to get the same and I guess
43 it comes down to the devil's in the details and how do
44 you go about doing that.

45

46 I guess in my mind there is nothing
47 necessarily magical about the 70/30. I mean intuitively
48 if you carry out Option 1 and do it right and get the
49 right balance you'd probably come out with something
50 close to 70/30 or 60/40 or in some communities obviously

1 don't have a lot of commercial sport it would be higher
2 so, you know, I'm not sure -- I guess I'm somewhat maybe
3 ambivalent about both of those but I agree with the basic
4 premise of the kind of people that we're looking for to
5 be on these Councils and what I think is required by
6 FACA.

7

8 I guess maybe the more important question
9 is how do we go about getting what we really think
10 everybody seems to want.

11

12 CHAIRMAN FLEAGLE: Charles.

13

14 MR. BUNCH: Mr. Chair. It's my
15 understanding of the law that you have to look at the law
16 in whole and it seems to me that if all we had to do was
17 follow ANILCA then that would be a fairly easy hurdle to
18 clear, however when we get FACA in here that requires us
19 to get the fairly balanced, it seems to me like if we do
20 the job right, what Gary was saying, that Option 1 should
21 do that. That may require, like the State is talking
22 about, a greater outreach or some modification of the way
23 that we do the process, but it looks like it could be
24 done.

25

26 MS. GOTTLIEB: Mr. Chairman.

27

28 CHAIRMAN FLEAGLE: Judy.

29

30 MS. GOTTLIEB: Well, one thing that
31 struck me from the testimony in our application process,
32 and I believe that people have been very thorough and
33 diligent, we do have criteria in that process so I think
34 we've been fair and done a good job on our selections.
35 It sounds like, and I'm sure it is, hard for a person to
36 self-declare, maybe one category because as many people
37 have stated many of our RAC members most likely fulfill
38 two, if not all three of those categories. And perhaps
39 in broadening those categories we can also insure that
40 broad participation that's absolutely necessary in the
41 RAC and representation and fulfill both ANILCA and FACA
42 requirements.

43

44 That may be able to give us even a more
45 diverse group.

46

47 MR. BSCHOR: This is Denny.

48

49 CHAIRMAN FLEAGLE: Go ahead, Denny.

50

1 MR. BSCHOR: Excuse me, if I remember
2 correctly when I first got on the Board we were operating
3 under an Option 1 kind of situation and then we went to
4 70/30 and that was a goal, I want to remind everybody of
5 that, that wasn't set in concrete, had to be 70/30, it
6 was try to show that we're trying to get more diversity
7 on the RACs.

8
9 But after listening to the testimony, it
10 seems like maybe, you know, the 70/30 is putting this
11 into the too hard box, as long as we meet the intent of
12 ANILCA and of FACA, it seems like I could live with
13 either one. I mean I'm not stuck. But it seems like th
14 70/30 seems to line up people on positions, at least,
15 that we really don't need to be arguing over as long as
16 we can show as a Board that if we go with Option 1, you
17 know, that we can show that we're meeting the intent and
18 doing everything possible to be fair and balanced,
19 perhaps that's good enough.

20
21 That's all I have to say.

22
23 Thank you, Mr. Chair.

24
25 CHAIRMAN FLEAGLE: Thank you, Denny.
26 George.

27
28 MR. OVIATT: Thank you, Mr. Chair. Well,
29 the 70/30 certainly guarantees that we would have a
30 split, but we've had difficulty in reaching that 70/30 at
31 times. It looks like to me or it appears to me that we
32 can meet FACA and ANILCA simply by looking at our process
33 and working at that process to guarantee that we have a
34 good and fair representation across the Board.

35
36 So I'm not sure a 70/30 split is
37 benefiting us the way that we -- if we really worked at
38 our process and worked at our outreach that we could
39 accomplish those tasks without it.

40
41 Thank you.

42
43 MR. BSCHOR: Mr. Chair. It's hard to
44 hear Mr. Oviatt.

45
46 CHAIRMAN FLEAGLE: Okay, we'll have him
47 speak up next time. Thanks, Denny.

48
49 Other comments.

50

1 MR. EDWARDS: Again, like I said.....

2

3 CHAIRMAN FLEAGLE: Gary.

4

5 MR. EDWARDS: I guess I could kind of go
6 either one. I think again intuitively when you finally
7 get ready to make a recommendation to the Secretary, my
8 guess is to try to insure balance we're going to probably
9 do a head count of the people that we send in and so, you
10 know, we'll probably still end up, even though we might
11 not say it vocally, we'll probably still say, well, this
12 looks like about 70/30 I think we've met our goal. So
13 I'm not sure one way or the other.

14

15 I guess the one thing the 70/30 does, I
16 guess, does send a clear signal that that's what our
17 intent is. But, again, I'm not weighted to either one.
18 And at least from what I heard from the RACs it doesn't
19 seem to -- it certainly wasn't unanimous. You know I
20 think we've heard from several RACs that 70/30's working
21 fine with them and they've gotten good representation on
22 it and they're very pleased and they feel that it's been
23 value added. So I didn't hear anything that was
24 overwhelming from the RACs that were necessarily opposed
25 to the 70/30. I didn't necessarily hear anything that
26 was over supportive of the 70/30 either.

27

28 MS. GOTTLIEB: Mr. Chair.

29

30 CHAIRMAN FLEAGLE: Judy.

31

32 MS. GOTTLIEB: Well, I think we did hear
33 both maybe in different ways. For some regions where the
34 70/30 composition couldn't be achieved because of
35 scarcity of some of the 30 percent, let's say, that was
36 one situation. For some of the other Councils where that
37 representation was fully on the Councils, I think this
38 Board has benefited tremendously from the input of the
39 other user groups. I think going back to my earlier
40 point that as we've heard from many people, most members
41 do have a diverse background and I think that benefits
42 this program tremendously and maybe as people are saying,
43 instead of perhaps categorizing them as one -- as a
44 certain type of representative let's let that full
45 background come forward with recommendations to the Board
46 consistent with ANILCA.

47

48 Thank you.

49

50 CHAIRMAN FLEAGLE: Gary.

1 MR. EDWARDS: Just one other question. I
2 guess I'm a little unclear what, you know, our task is
3 here. I mean ultimately we're going to select one of
4 these options, and I guess I would ask Keith this, is
5 that really what the Judge expects us to do, I thought
6 there was a bigger expectation than for us to just pick
7 one of two options. I mean isn't there -- I think he
8 expects -- doesn't he expect more than that or are we
9 just trying to get this on the record. So I'm unclear
10 what we're really supposed to be doing.

11
12 CHAIRMAN FLEAGLE: Keith Goltz.

13
14 MR. GOLTZ: The Judge expects a complete
15 administrative record. A rationalization of what you're
16 doing and why you're doing it. The fact that there are
17 two options are a function of Staff work. You can choose
18 one or the other, create your administrative and either
19 would be defensible as far as I can tell.

20
21 MR. EDWARDS: I mean is one of the
22 options not to choose anything at this point and, you
23 know, we've had several suggestions about doing the
24 process and all a little bit different and that, and
25 basically try to address some of those types of issues
26 before we kind of make any final decision.

27
28 MR. GOLTZ: I think nothing is not an
29 option. We have to comply with ANILCA, we have to comply
30 with FACIA. And we don't have the luxury of an Ivory
31 Tower, we have to make things work.

32
33 CHAIRMAN FLEAGLE: All right. I'm going
34 to call a break, a 10 minute break and we'll come back to
35 this discussion.

36
37 (Off record)

38
39 (On record)

40
41 CHAIRMAN FLEAGLE: Good afternoon, we're
42 back on record. And we have our telephonic participation
43 turned back on. Denny Bschor is with us by telephone.
44 And just like nature, bureaucracy abhors a vacuum and we
45 got the room extended to 7:00 so that means we've got to
46 fill it, right.

47
48 (Laughter)

49
50 CHAIRMAN FLEAGLE: Oh, I'm kidding.

1 MR. PROBASCO: It says right here.....

2

3 (Laughter)

4

5 CHAIRMAN FLEAGLE: It says right

6 here.....

7

8 (Laughter)

9

10 CHAIRMAN FLEAGLE: Gary.

11

12 MR. EDWARDS: Mr. Chairman. I'll try to

13 avoid that and maybe to get us moving forward, I guess I

14 am prepared to make a motion.

15

16 You know as I look at both of these

17 options, I guess I've indicated -- I guess my view is

18 that really each one of them could work and I think each

19 one of them are trying to get us to the same place and

20 that is to follow what our responsibilities are under

21 FACA and that is to have balanced Councils. And I guess

22 I would argue even if FACA didn't require that, that I

23 think that's something actually that we should seek for.

24

25

26 And while I think Option 1 would, I

27 think, certainly would work I think in my mind it would

28 be a challenge to make it work, I guess I feel that

29 Option 2 does give us clarity to the whole process that

30 we're supposed to try to achieve. We have been utilizing

31 it. And I think as we heard today from the RACs it seems

32 to actually have been working very well.

33

34 Dan O'Hara gave some really glowing

35 testimonies to the people that the Bristol Bay have been

36 able to bring on their RAC as a result of it and even in

37 the Southeast, although they were opposed to it did

38 indicate that since it's been implemented, that they

39 still feel that they have a balanced Council as a result

40 of it. I just think that it seems to be a good process,

41 it seems to be working and, you know, like I said I think

42 it does really add some clarity to the process and what

43 we're trying to achieve.

44

45 I think we certainly need to recognize

46 that in some of the communities, particularly the

47 northern communities, it's not going to be that easy to

48 achieve that. I'm not so sure that that's necessarily

49 problematic. I do think also that we've heard some other

50 good suggestions here on some other thing that we ought

1 to consider, but I think we can still go forward with
2 this and still consider some of these other things and,
3 particularly, how do we get better nominations and how
4 the State or other groups or as well as some of the
5 Native organizations, I think we all could probably do a
6 better job of trying to identify good people out there
7 and encouraging them to participate and apply them and
8 endorsing them when they do apply.

9

10 CHAIRMAN FLEAGLE: Were you going to make
11 a motion out of that somehow.

12

13 (Laughter)

14

15 MR. EDWARDS: Oh, I guess I didn't make
16 the motion, I'm sorry.

17

18 (Laughter)

19

20 MR. EDWARDS: I got carried away I guess.

21

22 (Laughter)

23

24 MR. EDWARDS: Mr. Chairman. I would move
25 that we would select Option 2, which was to stipulate a
26 percentage of seats for commercial/sport use
27 representation and that percentage would be 70 percent
28 subsistence users and 30 percent commercial and sport
29 users.

30

31 CHAIRMAN FLEAGLE: We have a motion, is
32 there a second.

33

34 MR. OVIATT: I'll second that.

35

36 CHAIRMAN FLEAGLE: We have a second. You
37 already laid out your rationale in support of that.
38 Board members, discussion.

39

40 George.

41

42 MR. OVIATT: Could I ask Marianne to come
43 forward and talk a bit about.....

44

45 MR. PROBASCO: Ann.

46

47 MR. OVIATT: Ann, I'm sorry. To come
48 forward and talk about our outreach program, I'd like to
49 know just a little bit more about that. Would that be
50 appropriate or.....

1 CHAIRMAN FLEAGLE: Sure. Ann Wilkinson.
2 Would you go ahead and ask the question, George.

3
4 MR. OVIATT: Yes. Ann, would you explain
5 what outreach that we do at this time.

6
7 Thank you.

8
9 MS. WILKINSON: Yes. Beginning in the
10 fall at the fall Council meetings it's announced that we
11 will be accepting applications and nominations for the
12 upcoming year. Then we send out applications, we have a
13 general mailing and send out 1,300 in that general
14 mailing to government agencies that would be involved,
15 that's generally local government agencies, tribal
16 agencies, hunting and fishing organizations, individuals,
17 Fish and Game Advisory Committee officers as well. And
18 then also we do at least 14 newspaper -- advertise in at
19 least 14 newspapers statewide over a two month period.
20 We run approximately seven advertisements in each one of
21 those 14 newspapers within two months. We do paid radio
22 ads and public service announcement ads during a two
23 month period statewide. Often times we get lucky and
24 they'll run them a lot for us and sometimes not as often,
25 but I do hear feedback from people that those are heard
26 statewide. And then also the Council coordinators will
27 notify people in the region. The field Staff from the
28 different Federal agencies notify people in the region
29 that the opportunity is there for them to apply or to
30 nominate people.

31
32 So we do have a pretty good thrust, I
33 believe, for -- we are and the funding we have.

34
35 Thank you.

36
37 CHAIRMAN FLEAGLE: Thank you, Ann.
38 George.

39
40 MR. OVIATT: Thank you, Ann. And I'm
41 sorry for calling you Marianne.

42
43 That helped me because I was just a
44 little unclear as to all of what we did do with our
45 outreach. I think that, you know, we've heard from the
46 RACs and for the most part the 70/30 is working. There's
47 no doubt we can work on the process and we can better
48 this process, we can work maybe even more on our
49 outreach, although I think we're doing a pretty good job
50 at that.

1 So, I, too, am going to support the
2 70/30, continuing the process that we have, I think it's
3 facilitating the program fairly well and it does give us
4 criteria.

5
6 Thank you, Mr. Chairman.

7
8 CHAIRMAN FLEAGLE: Thank you, George.
9 Charles.

10
11 MR. BUNCH: Mr. Chairman. I think that
12 from the testimony that I've heard from the Board
13 members, from the RAC, that they could live with the
14 70/30. I'm kind of hesitant to set 70/30 in concrete
15 because as we've seen some areas just can't meet the
16 70/30 so rather than having that a hard and fast rule it
17 would seem like a guideline would be a better tag to put
18 on that rather than -- because if you can't make it then
19 you've already failed right off the bat.

20
21 CHAIRMAN FLEAGLE: I think that Option 2
22 does speak to that. That if you can't achieve the 30
23 percent non-subsistence representation the seats would be
24 filled by other subsistence users.

25
26 Is that correct, Pete?

27
28 MR. PROBASCO: Mr. Chair. Mr. Bunch.
29 That is a goal, the 70/30, as stated in Option 2.

30
31 CHAIRMAN FLEAGLE: Thank you.

32
33 MS. GOTTLIEB: Mr. Chair.

34
35 CHAIRMAN FLEAGLE: Judy.

36
37 MS. GOTTLIEB: I think that this option
38 would meet the FACIA requirement that membership to be
39 fairly balanced in terms of the point of view, which we
40 talked a lot about but also as Ann had mentioned in the
41 briefing, the functions to be performed and that's in
42 Title VIII.

43
44 I think that Mr. Arno's question, I
45 thought about it quite a bit, you know, why would people
46 participate in this, and I'm hoping that maybe one of the
47 answers is because in ANILCA and other laws we want to
48 conserve healthy populations, and so hopefully that is a
49 goal of all residents of the state of Alaska and
50 certainly people who would want to serve on these

1 Councils.

2

3 I also think, as Ralph mentioned, as a
4 member of a community, hopefully a person or a region
5 would want to serve on these Councils.

6

7 And so maybe those are the kinds of
8 things we can all encourage as we all, perhaps, seek
9 membership here.

10

11 And, lastly, should this motion pass, I
12 hope maybe we can change our way of referring to this
13 from 70/30 split to 70/30 make up or membership, whatever
14 we want to say but let's try not for this to be divisive.
15 I think it has been shown in a lot of cases that it can
16 make for stronger recommendations and maybe unify people,
17 so let's aim for that.

18

19 CHAIRMAN FLEAGLE: Denny, do you have any
20 comments you'd like to put in.

21

22 MR. BSCHOR: Yeah, I have a couple, Mr.
23 Chair. I think the idea of making sure that this is a
24 goal and not an absolute is important. That our intent,
25 whenever we talk about this, is to achieve a balance of
26 interests, recognizing that the basic charge is to have
27 people who are knowledgeable and really interested in the
28 subsistence issue. That we get that base -- the base of
29 knowledge there is extremely important, I heard that
30 today, very clearly.

31

32 I'm a little concerned about the motion
33 says stipulate but I think if that means stipulate a goal
34 or whatever, that I can live with that, too.

35

36 And I do think it does help, at least
37 show that the Board is looking at diverse interests also,
38 and that there meets FACA.

39

40 I think with that, Mr. Chair, those are
41 my comments.

42

43 CHAIRMAN FLEAGLE: Thank you, Denny.
44 Before I call on you, John, I'm going to go ahead and
45 weigh in as a Board member myself on this.

46

47 I, too, find that the process being
48 utilized -- that had been utilized by the Federal
49 Subsistence Board in its selection of Council membership
50 prior to the Judge's decision is adequate. I think we've

1 heard adequate response from Advisory Council
2 representatives as to how it works. It brings good
3 discussion. I think that in my history, anyway, in
4 serving on public boards and other boards, I've been in
5 the majority, I've been in the minority and I've even
6 been on a board that was all majority and didn't have the
7 minority view present, and I think that that situation of
8 the three that I described was probably the worse because
9 you don't have a fair and accurate discussion that
10 considers all of the factors of the discussion and you
11 open yourself up to litigation, to criticism, what not.
12 I think that having a board that has a minority viewpoint
13 included leads to better discussion, better decisions
14 that are defensible. And you have the "other side" being
15 heard and giving their part of the process.

16
17 And I don't see it as potentially
18 diluting our RAC composition. I know that in some places
19 they're going to struggle hard to find people to fill
20 this 30 percent but we leave it open that if they don't
21 they can continue to operate up to 100 percent pure
22 subsistence users.

23
24 What gives me a lot of comfort in saying
25 this is ANILCA, under Title VIII, 100.11.b states that
26 RAC members must be knowledgeable about the region in
27 which they are appointed and of the subsistence users of
28 the public -- subsistence uses, I'm sorry, of the public
29 lands within that region. So even if they are sport or
30 commercial users, they still have to be knowledgeable of
31 the subsistence uses, and I think that criteria has to be
32 considered in reviewing the application process. So
33 you're still going to have a full compliment of committee
34 members that are speaking to the subsistence uses, and I
35 think when you have that minority viewpoint present you
36 have a better decision, more defensible.

37
38 With that, turn it over to John
39 Hilsinger.

40
41 MR. HILSINGER: Thank you, Mr. Chairman.
42 I agree with the Board that Option 1 is really not an
43 option given this prior decision by the Court. And I
44 think what the Court asked the Board to do was look at
45 valid options, select one, explain why that one was
46 selected but also why other options were not selected.
47 And so I would recommend that as a part of this decision-
48 making you do that. And then ideally go back out to
49 rulemaking and explaining why the preferred option was
50 selected and why the other options were not.

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Appreciate the
4 comments.

5

6 MR. ADAMS: Mr. Chairman.

7

8 CHAIRMAN FLEAGLE: Denny -- oh, wait a
9 minute, who's calling, please.

10

11 MR. ADAMS: This is Bert.

12

13 CHAIRMAN FLEAGLE: Yeah, Bert, go ahead.

14

15 MR. ADAMS: Okay. I'd just like to
16 clarify a statement that I made in answer, I think, to
17 George's question, you know, does our RAC -- is our RAC
18 balanced as it is right now, and it is, I admit that.
19 But there was a time I, personally, really feared that we
20 were going to have too much controversy in our Council
21 because we did experience, you know, a couple of people
22 who got appointed to the board who were strong commercial
23 and sport advocates and, of course, they eventually got
24 weeded out but I just caution you that there is a danger
25 that that could happen in the future, you know, if we're
26 not careful.

27

28 I think my closing thoughts here would be
29 that when people submit their applications to serve on
30 the RAC, that I hope that they are submitted and received
31 within the framework of the true intent of ANILCA. You
32 know there is always that danger out there that, you
33 know, bad things could happen to RAC if we are not
34 watchful, and it looks like you're trying to cover that,
35 you know, through the application process. But just keep
36 in mind there is that potential out there.

37

38 Thank you.

39

40 CHAIRMAN FLEAGLE: Thank you, Bert.
41 Gary.

42

43 MR. EDWARDS: Mr. Chairman. And maybe
44 also in an effort to strengthen the record, you know, in
45 my motion I included 70/30 as the split, but I do want --
46 in our Federal Register notice we do lay out why we
47 picked that number as opposed to 60/40 or 80/20 and I
48 think there's good rationale in there. And I just think
49 that -- I guess I would refer to that Federal Register
50 notice is the rationale for that 70/30 recommendation.

1 CHAIRMAN FLEAGLE: Thanks, Gary.
2 Additional comments.

3
4 (No comments)

5
6 CHAIRMAN FLEAGLE: Keith, I want to just
7 ask you, given that this is a request from the Ninth
8 Circuit Court, that this discussion be had, in your
9 opinion you said earlier that both options could work if
10 the Board gave an administrative record as to the purpose
11 for that. We've selected -- tentatively selected Option
12 2, do you feel that the administrative record is adequate
13 to support that or do we need more.

14
15 MR. GOLTZ: I think it's adequate. The
16 District Court doesn't issue requests though, we're under
17 a court order, and I'm comfortable with the record.

18
19 CHAIRMAN FLEAGLE: Thank you. And,
20 Denny, are you still with us on line?

21
22 MR. BSCHOR: Yes, Mr. Chair, I am.

23
24 CHAIRMAN FLEAGLE: Okay, thanks. Board
25 members, hearing no other discussion are we ready for the
26 question.

27
28 MR. BUNCH: Question.

29
30 CHAIRMAN FLEAGLE: Question's called,
31 Pete, on the motion, please poll the Board.

32
33 MR. PROBASCO: Final action on Council
34 composition as stated by Mr. Gary Edwards, Option 2, the
35 goal of 70/30 Council composition.

36
37 Mr. Bschor.

38
39 MR. BSCHOR: Aye.

40
41 MR. PROBASCO: Mr. Oviatt.

42
43 MR. OVIATT: Aye.

44
45 MR. PROBASCO: Mr. Bunch.

46
47 MR. BUNCH: Aye.

48
49 MR. PROBASCO: Ms. Gottlieb.

50

1 MS. GOTTLIEB: Aye.
2
3 MR. PROBASCO: Mr. Fleagle.
4
5 CHAIRMAN FLEAGLE: Aye.
6
7 MR. PROBASCO: And Mr. Edwards.
8
9 MR. EDWARDS: Aye.
10
11 MR. PROBASCO: Mr. Chair. Motion
12 carries, six/zero.
13
14 CHAIRMAN FLEAGLE: Thank you, Pete. That
15 concludes action on that agenda item. I understand that,
16 Judy, you had some issues that you wanted to raise before
17 the Board before adjournment.
18
19 MS. GOTTLIEB: I'd appreciate that, yes,
20 Mr. Chair. Thank you. Yesterday at the end of the day
21 after end of two pretty rough days where I think most of
22 us, including myself, were focused on the Kenai we had a
23 discussion about Sixmile Lake, and I just wanted to bring
24 back to the Board a little bit of our history so that
25 when we deal with this again maybe we'll have a common
26 recollection of events that took place. So if I could
27 just do a quick summary of what had happened on that
28 proposal so we're kind of all at the same starting place.
29
30 CHAIRMAN FLEAGLE: You mean the evolution
31 from the inception to the final product.
32
33 MS. GOTTLIEB: But rapidly described.
34
35 (Laughter)
36
37 CHAIRMAN FLEAGLE: Okay.
38
39 MS. GOTTLIEB: Thank you. So Sixmile
40 Lake. In the spring of 2006 the Lake Clark Subsistence
41 Resource Commission developed a proposal that would allow
42 beach seines in Lake Clark in the lake of a lake called
43 Lake Clark. At the fall 2006 RAC meeting the RAC
44 supported that proposal for Lake Clark and also stated no
45 use of beach seines in tributaries. As was stated
46 yesterday, some of the State Staff put that similar
47 proposal in front of the Board of Fisheries who met
48 before our Federal Board met and after the RAC met. So
49 the State Board looked at that proposal and approved the
50 use of beach seines, not only for Lake Clark, but also

1 Sixmile Lake. Consequently at our meeting and maybe not
2 everybody was at that meeting, we, the Staff, our Staff
3 suggested that we entertain the idea of also adding
4 Sixmile Lake.

5
6 The motion to allow the use of beach
7 seines less than 25 fathoms long on Lake Clark, excluding
8 its tributaries passed six/zero. Regarding Sixmile Lake,
9 the direction that was said and what was given, was,
10 basically, I think what I heard by Board members, was
11 that they don't have any objection to adding Sixmile Lake
12 to this action, we just need to have the jurisdiction
13 issue explained and then how to correctly bring this back
14 to the Board. That's from our own transcripts.

15
16 So we agreed unanimously to defer until
17 May 2007 to provide the chance for the SRC and the RAC to
18 weigh in during their winter meetings. Now,
19 unfortunately neither one of them did that at their
20 winter meetings because, I think, they probably thought
21 all that needed to be done was our clarification on
22 jurisdiction. The Solicitor's office did work on this,
23 the Federal jurisdiction exists for Sixmile Lake because
24 the National Park boundary is adjacent to Sixmile Lake.
25 To clarify that boundary description the Board had tasked
26 and Park Service and OSM to clarify the actual boundary,
27 that was done, a draft of that was sent to all the
28 InterAgency Staff Committee members, to OSM and to the
29 State. The comments were included on the map, I think,
30 that was distributed yesterday, both maps that were on
31 the maps distributed.

32
33 So that's where we were. We were only to
34 be clarifying the jurisdiction issue and that's what we
35 were attempting to do yesterday and then proceed with
36 voting on the actual proposal for beach seines in
37 Sixmile.

38
39 CHAIRMAN FLEAGLE: Thank you, Judy.
40 Appreciate those comments.

41
42 All right, is there other business that
43 needs to come before the Board before adjournment.

44
45 Pete.

46
47 MR. PROBASCO: Thank you, Mr. Chair.
48 Just real quick, just a head's up, Board members, I will
49 be sending each of you an email looking for a date in the
50 very near future where we can discuss the options dealing

1 with the OSM budget for FY'07. It's something I need to
2 get resolution from the Board as soon as possible. So
3 we'll be trying to find a date with your busy schedules.

4

5 So, thank you.

6

7 CHAIRMAN FLEAGLE: Thank you. I want to
8 thank everybody who remained with us through the
9 termination of this meeting, for the participation from
10 the State, from the RACs, from the public, from other
11 agencies. I think that involvement, even if it's not
12 willingly or on the majority side is good involvement,
13 and I appreciate everybody's involvement and
14 participation.

15

16 With that, is there a motion for
17 adjournment.

18

19 MR. EDWARDS: So moved.

20

21 CHAIRMAN FLEAGLE: Got a motion from
22 Gary.

23

24 MR. OVIATT: Second.

25

26 CHAIRMAN FLEAGLE: Second by George.
27 Meeting's adjourned.

28

29 (Off record)

30

31 (END OF PROCEEDINGS)

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C E R T I F I C A T E

UNITED STATES OF AMERICA)
)ss.
STATE OF ALASKA)

I, Joseph P. Kolasinski, Notary Public in and for the State of Alaska and reporter for Computer Matrix Court Reporters, do hereby certify:

THAT the foregoing pages numbered 293 through 356 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC REGULATORY MEETING, VOLUME III taken electronically by Nathan Hile on the 10th day of May 2007, beginning at the hour of 1:30 o'clock p.m. at the International Coastal Inn in Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by under my direction and reduced to print to the best of our knowledge and ability;

THAT I am not an employee, attorney, or party interested in any way in this action.

DATED at Anchorage, Alaska, this 14th day of May 2007.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/2008