

1 FEDERAL SUBSISTENCE BOARD
2
3 PUBLIC REGULATORY MEETING
4
5 VOLUME II
6
7 EGAN CONVENTION CENTER
8 ANCHORAGE, ALASKA
9
10 DECEMBER 12, 2007
11 8:30 o'clock a.m.
12
13 MEMBERS PRESENT:
14
15 Mike Fleagle, Chair
16 Thomas Melius, U.S. Fish and Wildlife Service
17 Thomas Lonnie, Bureau of Land Management
18 Marsha Blaszak, National Park Service
19 Denny Bschor, U.S. Forest Service
20 Niles Cesar, Bureau of Indian Affairs
21
22 Ralph Lohse - Southcentral RAC
23 Randy Alvarez - Bristol Bay RAC
24 Bertrand Adams - Southeast RAC
25 Virgil Umphenour - Eastern Interior RAC
26 Victor Karmun - Northwest Arctic RAC
27 Robert Aloysius - Yukon-Kuskokwim Delta RAC
28 Jack Reakoff - Western Interior RAC
29
30 Commissioner Denby Lloyd, State of Alaska
31 Representative
32
33 Keith Goltz, Solicitor's Office
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P R O C E E D I N G S

(Anchorage, Alaska - 12/12/2007)

(On record)

CHAIRMAN FLEAGLE: Good morning. The Federal Subsistence Board reconvenes on Day 2. Today is the 12th of December, downtown Anchorage. And before we resume deliberations on proposals, we need to go through a couple of other public comment periods.

But first, before we go there, I just want to welcome everybody back. Thank you for being here. Thanks. Good to see you, Jack. Welcome. We had a lively discussion with your other representative yesterday, and also we have Virgil at the table. Good to see you, Virgil. But I'll give you guys an opportunity to say good morning in a minute.

I just wanted to ask Pete if there's any announcement before we proceed.

MR. PROBASCO: No, Mr. Chair. I think the only announcement we have is that you and I agreed based on Commissioner Lloyd's request that we'll reevaluate where we're at right before lunch, and may or may not make an adjustment to our agenda based on where we're at.

CHAIRMAN FLEAGLE: Right. Thanks. All right. With that, I'd like to turn it over to our Advisory Council Chairs that have joined us.

Jack, would you like to say a few comments.

MR. REAKOFF: Thank you, Mr. Chairman. This is Jack Reakoff. I'm Western Interior Chair. Sorry I'm late to the meeting. And I'm very anxious to enter into the discussions here at -- on our agenda items and see how the motor is working. So appreciate all your hard work here, and looking forward to a good meeting. Thank you.

CHAIRMAN FLEAGLE: Thank you, Jack, and welcome. Virgil, would you like to say a few comments?

MR. UMPHENOUR: Well, not much for me to say I showed up late yesterday. My name is Virgil

1 Umphenour. I'm from the Eastern Interior RAC. I'm the
2 vice chair. Our Chair, Sue Entsminger, was here
3 yesterday, and she's at the Big Game Commercial
4 Services Board meeting right now. Thank you.

5
6 CHAIRMAN FLEAGLE: Thank you, Virgil.
7 Welcome. With that we go to public comment period on
8 non-agenda items. Oh, just a second, let me back up.
9 Other Council Chairs.

10
11 Ralph.

12
13 MR. LOHSE: Mr. Chair. I'm sorry to
14 have to ask that I be excused from about 9:00 o'clock
15 until noon today. I have a prior doctor appointment
16 that I couldn't reschedule. And it looks like the
17 Southcentral will possibly come up during that time.
18 If it's at all possible and the people in the audience
19 that with to testify would agree to it, I would request
20 that you would put it off until I be back at 1:00
21 o'clock.

22
23 If that's not possible, I'd like to
24 bring to the Board's attention that Southcentral
25 supported both of those proposals, but we had no
26 consensus on it. It was a majority of 1. And I think
27 you're going to have some work ahead of you on coming
28 up with something to meet the needs of those two
29 proposals. And I would like to be here for it, but if
30 I can't, I'll turn it over to you guys.

31
32 CHAIRMAN FLEAGLE: Okay, Ralph. Thanks
33 for that heads up, and certainly a doctor's appointment
34 is very important and we understand, and we'll see
35 where we're at after we complete this proposal 18 and
36 if the time looks good to shift some other regions
37 around, we may try to accommodate that. We'd certainly
38 want to have all the discussions and masterminds
39 available. So thanks for that.

40
41 Other Council Chairs, opening comments.

42
43 (No comments)

44
45 CHAIRMAN FLEAGLE: All right. Hearing
46 none, we'd now go to public testimony on non-agenda
47 items. And again this is not specific to the agenda.
48 This opportunity is provided each morning before we
49 start the other portion of the Board meeting. And do
50 we have any comments, Pete?

1 MR. PROBASCO: Excuse me. Mr. Chair.
2 We do have two, and the first person is Don Bremner
3 [sic].

4
5 MR. BREMNER: Bremner.

6
7 MR. PROBASCO: Bremner. Excuse me.

8
9 CHAIRMAN FLEAGLE: Don Bremner. Good
10 morning.

11
12 MR. BREMNER: Mr. Chairman and members
13 of the Board. Good morning. My name is Don Bremner.
14 I'm the natural resource coordinator for the Southeast
15 Alaska Intertribal Fish and Wildlife Commission. I
16 want to take a few minutes to comment on why we're here
17 as a Federal Subsistence Board and as members of
18 tribes.

19
20 We're here -- as Natives, we're here to
21 preserve our rights to practice our Native way of life
22 on paper. The western world calls it subsistence, but
23 in Tlingit we say, Haa Atxaayi Haa Kusteeyix Sittee,
24 our food is our Tlingit way of life. This is what
25 we're doing here.

26
27 Look at some of our own history and
28 your history. In 1899 George Grinnell with the
29 Harriman Expedition, he went to Yakutat. And when he
30 saw my ancestors, this is what he said. The changing
31 seasons give them their seal, their salmon, their
32 berries, their fish, their fowl, and their deer. He
33 says, they fish, they hunt, they feast and they dance.
34 This is our culture. This is our way of life. This is
35 what we're doing here.

36
37 He went on to say that these dwellers
38 along the coast depend on their subsistence wholly on
39 their exertions and draw their food wholly from the
40 sea. We're still doing that. That was 108 years ago
41 when he said that. We're still doing this.

42
43 It was written about the Harriman
44 Expedition, they chronicles an Alaska on the cusp of
45 the inevitable, and in some instances, devastating
46 change to the environment. What he didn't write there
47 was that the Alaska Native people are part of that
48 environment being affected by that devastating change.
49 That's why we're here. We didn't ask for that
50 devastating change. We're still here trying to protect

1 our way of life.

2

3 Haa Atxaayi has always been our core
4 value of our existence. Our Native food, land,
5 culture, customs, and traditions and language has
6 defined us. We can't change that, and it can't be
7 taken from us.

8

9 Our Tlingit history and relationship to
10 our way of life is understood to be from time
11 immemorial. You've heard our elders say that. It's
12 just not something we dreamt up yesterday.

13

14 We know how hard our ancestors worked
15 to preserve our way of life, and we honor our ancestors
16 and promise to ourselves we'll continue to value this
17 inheritance. It's not viewed by us as some kind of
18 law, rule, a policy or a permit. Our Tlingit world is
19 firmly established, our Tlingit being isn't optional.
20 We can't go home after you're done deliberating here if
21 you deprive us of our right to subsistence.

22

23 Our ancestors and our people have
24 always told western governments that subsistence as you
25 know it, it's a matter of survival. You hear it at
26 every AFN convention. It's a matter of survival.

27

28 And now look, the State of Alaska and
29 special interest groups have been and continue to be
30 reluctant to recognize the importance of our Haa
31 Atxaayi way of life. And we fight every day to
32 preserve this way of life. If you look in the room
33 here, not all of our native people could afford to come
34 here to be here. To the State of Alaska and many
35 others, our subsistence way of life has become a
36 political and legal issue in a western sense. Now to
37 the point where Congress has intervened to protect
38 Native subsistence in Alaska. And the role of this
39 Federal Subsistence Board is to carry out that
40 intervention and Congressional mandate.

41

42 Congress recognized that when Native
43 subsistence is subject to Alaska laws, it isn't secure.
44 Congress worked to entrench Native subsistence rights
45 so they could not be placed in jeopardy by any future
46 State action. ANILCA of 1980 is that entrenchment
47 tool. That's the law. We're stuck with even as
48 Natives to trying to follow the law.

49

50 The State has tried numerous schemes to

1 implement subsistence in Alaska, filed numerous
2 lawsuits to prevent Native subsistence, but they all
3 failed. They failed because they do not meet the
4 Congressional mandate. And they spend time trying to
5 define our subsistence eligibility based on rural/urban
6 determinations. And that's just not us. It's not
7 Native. It's just a reflection of the State trying to
8 expand state's rights outside of that Congressional
9 mandate.

10
11 Congress took measures took measures to
12 protect our way of life and that's this Board's job.

13
14 I'll close by saying as my ancestors
15 have said, Haa Atxaayi Haa Kusteeyix Sittee, our food
16 is our Tlingit way of life. This is not just my
17 reality and my world, but it's all of my clansmen and
18 tribesmen. All of Alaska Natives. This is our
19 reality. It's not just on paper. And that's why we're
20 here.

21
22 So I want to thank you for letting me
23 remind us as managers and as a user group, this is why
24 we're here.

25
26 And I'll close by what my elders
27 usually say during this kind of deliberation or in
28 times of challenge. They always say, Yi gu.aa yax
29 X'wan, courage to you all. Courage to you all. We
30 know it's not easy, but we're here to try to preserve
31 and protect our rights.

32
33 So, Mr. Chairman, thank you.

34
35 CHAIRMAN FLEAGLE: Appreciate those
36 comments, Don. Thank you.

37
38 Pete, who do we have next.

39
40 MR. PROBASCO: Mr. Chair. We have one
41 more individual. Merle Hawkins.

42
43 CHAIRMAN FLEAGLE: Good morning, Merle.

44
45 MS. HAWKINS: Good morning. Merle
46 Hawkins, Ketchikan Indian Community. I'm also a member
47 of the Southeast RAC Committee.

48
49 I wanted to discuss Ketchikan's --
50 Ketchikan Indian Community's request for

1 reconsideration to classify Ketchikan area as non-
2 rural, and hopefully get an idea of when that decision
3 will be made or where that is at.

4
5 In reading the request for
6 reconsideration, I think my feeling about the decision
7 that was made, a lot of the information that we
8 provided I don't think was taken into consideration.
9 And I think the Board failed to accord deference to the
10 recommendation of the Southeast Regional Advisory
11 Council and failed to provide written findings to the
12 Southeast RAC in a timely fashion. The Southeast RAC's
13 recommendations were based on facts as presented by
14 overwhelming testimony and recent subsistence harvest
15 data. There was new and relevant information presented
16 regarding the use of fish and wildlife. It was unclear
17 what information the Board was actually using to make
18 their findings.

19
20 Because Ketchikan has historically been
21 designated as an urban community, it's inappropriate to
22 compare harvest levels in Ketchikan to that of rural
23 areas. Subsistence use in Ketchikan has been
24 increasing in response to the harder economic times.
25 In a 2000 survey, the Alaska Department of Fish and
26 Game estimated that 33 pounds of salmon and deer were
27 used, but in the survey that KIC did with funding from
28 the BIA, that was in 2006, we got that number up to 73
29 pounds. That was a community-wide survey of both
30 Native and non-Native.

31
32 Also KIC strongly supports Saxman's
33 position that the Board erred in putting Saxman and
34 Ketchikan together. Saxman has always been a separate
35 community. It's kind of like the situation with
36 Ketchikan. Ketchikan originally was a Tlingit fish
37 camp, and the community has just grown around them.
38 And it's the same situation that Saxman's in. And both
39 of those are beyond our control.

40
41 In regards to the development and
42 diversity of the economy, I think the Board failed to
43 properly consider the change in economic conditions in
44 Ketchikan. Ketchikan was once a center for industrial
45 logging. After the closure of the Ketchikan pulp mill,
46 that was a direct loss of 516 jobs that were high-
47 paying jobs year round and with benefits. A lot of
48 those people that once worked in tourism (sic) are now
49 bus drivers for tourism or started their own tour
50 businesses, but those jobs are just seasonal and they

1 don't pay as well. And also the majority of people
2 that work in tourism just come there for the summer,
3 for five months, and then they take all their profits
4 and leave the community. So a majority of the tourism
5 jobs don't benefit us.

6
7 I myself work in tourism for 11 seasons
8 now, and there's very few people -- because I'm single
9 and don't have any children, I'm able to make about
10 \$10,000 in tourism, and then supplement my income
11 through working for the tribe and other things that I
12 pick up, but not many people can work in tourism and
13 make a living.

14
15 The Board's findings point to fishing
16 as a support of a healthy economy in Ketchikan. I
17 don't believe that's true, because of the farmed salmon
18 that we must now compete with. The declines in salmon
19 prices have seriously hurt the local fishermen.

20
21 Also unemployment has been a major
22 problem with Ketchikan residents. In January 2007
23 United Way of Southeast Alaska released the
24 Ketchikan/Saxman Compass two community building
25 assessment. It took into account the Ketchikan Gateway
26 Borough and it was to identify issues that are
27 important to the community. Among the themes
28 identified was the fact that Ketchikan has an economic
29 identity crisis, and that a diverse year-round economy
30 is needed in order to thrive and resolve many of its
31 social ills. Poverty remains a root cause of many
32 community problems.

33
34 As far as transportation goes, the
35 Board failed to truly consider that despite the
36 existing small road system, Ketchikan has limited
37 transportation options and most importantly the road
38 system does not connect to any other communities.
39 Access in and out of Ketchikan, you have to go by
40 ferry, plane, or private boat, and that includes
41 bringing any of our food in and out of Ketchikan. We
42 do have daily jet service, but it takes five hours to
43 get up here from Ketchikan, so that's an all day ordeal
44 to get to Anchorage and an hour and almost two hours to
45 get to.....

46
47 CHAIRMAN FLEAGLE: I'm sorry. I did
48 that. I was going to ask you to -- if you could just
49 please summarize.....

50

1 MS. HAWKINS: Okay. Sure.

2

3 CHAIRMAN FLEAGLE:where you're
4 at. We have time constraints, please. Thanks.

5

6 MS. HAWKINS: Yeah. I think the main
7 concern is I think that the Board's actions were
8 arbitrary in the application of the rural criteria and
9 was not being uniformly applied to communities across
10 Alaska. If you look at Kodiak and Ketchikan side-by-
11 side, they're almost identical in all the criteria,
12 except for Ketchikan might have a few hundred more
13 people in population, but also in Kodiak they did not
14 take into consideration the Coast Guard base, whereas
15 in the population for Ketchikan they added in Saxman,
16 which was over 400 people.

17

18 So I hope the Board seriously looks at
19 our reconsideration and takes all those details into
20 heart when they make their decision. And if you have
21 any information on when that might happen, that would
22 help.

23

24 Thank you.

25

26 CHAIRMAN FLEAGLE: Thank you.
27 Appreciate the comments. The Board is not going to
28 deliberate the request for reconsideration at this
29 meeting, but the process questions I think we can
30 certainly answer. Pete or Larry. Larry.

31

32 MR. BUKLIS: Thank you, Mr. Chairman.
33 Yes, the Federal Subsistence Board received six
34 requests for reconsideration regarding your rural/non-
35 rural review process. And I'm leading a team of Staff
36 that are conducting the threshold analyses of those
37 requests. We prioritized working on the 10 fisheries
38 RFRs we had received, and there was also three wildlife
39 RFRs we had received. So those 13 RFRs are in various
40 stages of completion, but the six rural are next to be
41 addressed by the team I'm speaking of that I'm leading.
42 And we are working to have threshold analysis
43 assessments for the Board's review in the new year. I
44 can't give you an exact time frame for when that work
45 will be completed. But it is in progress.

46

47 Mr. Chairman.

48

49 CHAIRMAN FLEAGLE: Thank you, Larry.
50 And the information that she was presenting here is

1 available in what you're working with?

2

3 MR. BUKLIS: Yes, Mr. Chairman. What I
4 was hearing reported is familiar to me from the request
5 for reconsideration.

6

7 CHAIRMAN FLEAGLE: Okay. Appreciate
8 that. Thank you. Thank you for your comments. Would
9 you go ahead and turn the microphone off, please.

10

11 MS. HAWKINS: Yes.

12

13 CHAIRMAN FLEAGLE: Thanks. Pete.

14

15 MR. PROBASCO: Mr. Chair. That
16 concludes the people that have signed up for this
17 portion of the public testimony prior to getting into
18 the proposals.

19

20 CHAIRMAN FLEAGLE: All right. Thank
21 you. And we do have one more public comment period on
22 the consensus agenda items, including both the
23 Fisheries Resource Monitoring Plan and Subpart B and C
24 proposals, which I believe there were three proposals,
25 01, 03 and 06. Do we have any comments on that portion
26 of the meeting?

27

28 MR. PROBASCO: No, Mr. Chair. We took
29 care of the Resource Monitoring, so all we have left is
30 the subpart C and D regulations consensus agenda.
31 That's all that remains.

32

33 CHAIRMAN FLEAGLE: Thank you. Okay.
34 With that, we will now move back into the deliberative
35 portion of the meeting. And we're moving on to
36 Proposal 08-18. And for the Staff analysis we turn to
37 -- is this Terry? Good morning.

38

39 MR. SUMINSKI: Good morning. I'm Terry
40 Suminski, a fisheries biologist with the U.S. Fish and
41 Wildlife Service in Sitka.

42

43 Proposal FP08-18 starts on the
44 executive summary on Page 245, and the analysis starts
45 on Page 247.

46

47 Proposal FP08-18 is the result of the
48 Federal Subsistence Board deferring action on their
49 January 2007 meeting on Proposal FP07-18 which was
50 submitted by the Southeast Subsistence Regional

1 Advisory Council. The Board took no action on an
2 identical proposal, FP07-19, which was submitted by the
3 Sitka Tribe of Alaska.

4
5 Both proposals asked to close the
6 Federal public waters in the Makhnati Island area near
7 Sitka. You can find maps 1 and 2 on Pages 248 and 249.
8 This was a closure to commercial herring fishery
9 fishing during the months of March and April.

10
11 The Board also directed Staff to work
12 with the Council to form a subcommittee to study the
13 situation and report their findings to the Board at
14 this meeting.

15
16 The Council believes that a regulatory
17 change is needed to insure that subsistence needs for
18 herring and herring roe are met. The proponent feels
19 commercial fishing activities displace subsistence
20 users from traditional harvest sites, and may disrupt
21 herring spawning such that good quality deposition of
22 herring does not take place on traditional sites, and
23 may cause herring to spawn away from subsistence sites,
24 and may also seriously reduce the biomass of spawning
25 herring upon which subsistence users depend.

26
27 The proponent stated that excluding
28 this area from commercial fishing would provide a
29 refuge for herring in Sitka Sound, which would increase
30 the number of herring produced in this area, and
31 ultimately increase the population of herring within
32 Sitka Sound.

33
34 Subsistence users in the area would be
35 protected from competition from commercial activities
36 both for herring, and space to conduct harvest
37 activities.

38
39 The existing Federal regulations, all
40 rural residents of Alaska are eligible to harvest
41 herring, herring roe on *Macrocystis* kelp, herring roe
42 on hemlock or herring roe on other substrates from
43 Federal waters in Southeast Alaska. There are no
44 seasons or harvest limits in regulation.

45
46 The Federal public waters near Makhnati
47 Island comprise a small part of the spawning area of
48 herring in the Sitka Sound. They also make up a small
49 but important part of the subsistence herring -- of
50 where subsistence herring eggs are gathered.

1 Evaluating the effect of a closure in a
2 small area of Federal public waters is extremely
3 difficult due to the large yearly fluctuations and the
4 intensity and location of herring spawning activity in
5 Sitka Sound. Some areas are more consistent than
6 others, but spawn is not guaranteed in every year --
7 every area every year. Spawn and subsistence harvest
8 occur in most years within the Federal public waters,
9 but there's no way to know how much of the harvest
10 comes from only Federal public waters.

11
12 The traditional harvest of eggs in
13 substrates is affected by many natural factors such as
14 weather, where and when and how much the herring spawn.
15 Subsistence users are allowed to harvest herring and
16 herring eggs anywhere in Sitka Sound.

17
18 The area from the commercial -- or, I'm
19 sorry, the area where the commercial sac roe herring
20 fishery occurs also varies widely from year to year.
21 From 1992 to 2007, the Federal public waters near
22 Makhnati Island have made up a part of the areas open
23 to commercial sac roe herring fishery 6 out of 16
24 years. No commercial herring harvest occurred in
25 Federal public waters in 2007.

26
27 In 2002 a memorandum of agreement was
28 signed between the Sitka Tribe and the Alaska
29 Department of Fish and Game in response to poor spawn
30 harvest in 2001. Since the agreement was signed,
31 amounts necessary for subsistence as determined by the
32 Alaska Board of Fisheries were met in 2003, 2004 and
33 2006, but not in 2005, and it looks like probably not
34 in 2007.

35
36 A Federal closure of a fishery may only
37 be exercised when it is necessary to conserve fish
38 stocks or to continue subsistence uses. In most years
39 subsistence needs for herring spawn and subsistence --
40 or substrates have been met. In years when subsistence
41 needs were met, a permanent closure in regulation would
42 not have been necessary. In the years when the
43 subsistence needs were met, it is unclear is a closure
44 to commercial fishing in public waters would have made
45 a difference in the success of the subsistence fishery.

46
47 The OSM preliminary -- or the OSM
48 conclusion is to oppose Proposal FP08-18. This is the
49 original proposal for an outright closure, a permanent
50 closure.

1 Then during their meeting in Haines on
2 September 25th, the Council received the subcommittee
3 report and accepted it as their own. The Council used
4 the recommendations in the report to formulate
5 regulatory recommendations, along with some non-
6 regulatory recommendations.

7
8 And a summary of that report can be
9 found on Page 268 of your books. And Mr. Adams will
10 present that report in his testimony.

11
12 So, thank you.

13
14 CHAIRMAN FLEAGLE: Thank you, Terry.
15 Summary of written public comments. Robert.

16
17 MR. LARSON: Yeah. Mr. Chairman. We
18 have four written public comments. You'll note in your
19 Board book that there's listed at none, but subsequent
20 to the formulation of the book we've had four. One in
21 support and three in opposition.

22
23 The letter in support is from the Sitka
24 Tribe of Alaska. It's a Federally-
25 recognized tribe, tribal government
26 based in Sitka. This organization
27 supports a 40,000-ton threshold for
28 Makhnati Islands. A summary of their
29 written statements. The Sitka Tribe of
30 Alaska has changed their position and
31 does not support a complete closure of
32 the Makhnati Islands as written in the
33 original proposal. Their current
34 recommendation is to adopt a regulation
35 that closes the Makhnati Islands when
36 the Sitka Sound spawning biomass falls
37 below 40,000 tons. The Sitka Tribe
38 also recommends that the Federal
39 Subsistence Program become a signatory
40 to a memorandum of agreement with the
41 tribe and the Alaska Department of Fish
42 and Game regarding management of
43 herring in Sitka Sound.

44
45 The Sitka Herring Association is a
46 trade organization representing the
47 interests of the commercial sac roe
48 herring seine permit holders for
49 Southeast Alaska. That organization
50 submitted a letter in opposition to

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Proposal FP08-18.

A summary of their document is that the Federal public waters around Makhnati Island provides a very minimal portion of the subsistence harvest, and is likely to provide substandard product when used. The closure due to -- is due to a subjective spawning aggregation threshold as presented in this latest RAC-approved proposal. That number is arbitrary and capricious. The Sitka Herring Association requests that the Federal Subsistence Board rule against Proposal FP08-18, maintaining the State of Alaska's management control over Federal waters of the Makhnati Island complex, providing for flexible commercial fishing management strategies that best preserve options for meeting subsistence needs.

The United Fishermen of Alaska is a trade organization made up of 36 Alaska commercial fishing organizations as well as individual members who collectively represent commercial fishing interests throughout the state. That organization is opposed to Proposal FP08-18 as well.

The United Fishermen of Alaska is aware of ANILCA mandates for protection of Federally-qualified subsistence users. They are concerned that Proposal FP08-18 regarding potential closer of Federal waters near Makhnati Islands in Sitka Sound to commercial herring fishing in March does little or nothing to protect subsistence users while potentially closing historically fished commercial areas.

A more recent version of Makhnati Island proposal approved by the Southeast Alaska Subsistence Regional Advisory Council goes further in restricting State management by establishing an arbitrary 35,000-ton

1 threshold for closure of the Federal
2 waters around Makhnati Island as well
3 as participation as -- in in-season
4 management decision-making for the
5 entire Sitka Sound herring fishery.
6 While the above referenced RAC proposal
7 clearly exceeds Federal authority by
8 imposing constraints to State
9 management of State waters, they're
10 also recommending actions that are
11 marginally, if not at all, useful in
12 fulfilling ANILCA mandates in Federal
13 waters.

14
15 And finally we have a letter from Mr.
16 Ron Porter. Mr. Ron Porter is a Southeast Alaska purse
17 seine commercial fisherman. He speaks in opposition to
18 Proposal FP08-18.

19
20 Mr. Porter believes the proposal does
21 nothing to address valid issues relating to subsistence
22 use. The original proposal called for complete closure
23 of the Makhnati Island group. It did not meet the
24 standards for closure set forth by ANILCA. The new
25 proposal is just a way of getting around the intent of
26 that rule. There's no evidence that harvesting causes
27 depletion of local herring stocks, since herring do not
28 home to one beach or area as salmon do, nor can you
29 infer that fishing for herring causes the fish to come
30 and go from a particular beach or shoreline. The area
31 we are talking about is in the middle of a major
32 spawning area.

33
34 That completes the summary of written
35 comments.

36
37 CHAIRMAN FLEAGLE: Thank you, Robert.

38
39 We now go to public testimony, and,
40 Pete, do we have people wanting to testify on this
41 issue?

42
43 MR. PROBASCO: Yes, Mr. Chair. Right
44 now I have a total of seven individuals, and I shuffled
45 them, and the first person up is Jessica Perkins.

46
47 CHAIRMAN FLEAGLE: Okay. Thank you.
48 Jessica, would you please come forward, and push the
49 button on the microphone to turn it on.

50

1 And I would ask that people testifying
2 try to confine their comments to within five minutes.
3 Thank you.

4
5 MS. PERKINS: Good morning. My name is
6 Jessica Perkins. I'm an attorney. I work for Sitka
7 Tribe of Alaska in Sitka. I've been fortunate in going
8 first.

9
10 I guess I just wanted to start out with
11 that the Federal Subsistence Board closure policy
12 points that proposed closures of Federal public lands
13 and waters will be analyzed to determine whether such
14 restrictions are necessary to provide a meaningful
15 preference for qualified subsistence users. And under
16 the closure policy there were several different types
17 of things that the Board can look to to figure out if
18 it is in fact necessary to provide for meaningful
19 subsistence preference.

20
21 The current State management plan is
22 pretty complex. The State has taken some efforts to
23 enact regulations to protect subsistence. We have
24 entered into a memorandum of agreement which was
25 referred to this morning, as well as is i your
26 materials. This -- the tribe has worked really hard to
27 work with the State on this issue, and the current
28 regulations, you know, set an amount reasonably
29 necessary for subsistence at 105,000 to 158,000 pounds
30 per year. And they require the State fish and game
31 manager to disperse the commercial harvest of herring
32 if he finds it necessary to protect subsistence
33 resources or subsistence opportunity.

34
35 These regulations unfortunately have
36 not resulted in the results that the Sitka Tribe feels
37 is necessary, meaning that we have not been meeting the
38 amount necessary for subsistence. In two of the past
39 three years, the amount necessary for subsistence has
40 not been met under the State management scheme. We
41 have been conducting a survey according to the
42 memorandum of agreement since 2002, and during those
43 years, like I said, two of the last three years, we
44 have not met the amount necessary for subsistence.

45
46 And I think that the crux of what I am
47 here to kind of talk about is that, you know, the State
48 system as well as the Federal system both say they have
49 a subsistence priority, but what we're seeing is with
50 the State management system, the way it is, that the

1 commercial fishery is able to get their quota every
2 single year, but the subsistence fishery is not. And
3 that doesn't equal a subsistence priority in my mind.
4 I know that the State is trying. We're trying, too.
5 And I think that something further, and in this
6 instance a closure, is warranted under ANILCA.

7

8 This past year during our herring
9 survey, in addition to the numbers we collect, which
10 are being analyzed by Fish and Game right now, but our
11 preliminary numbers show that during 2007, only 66,378
12 pounds of herring eggs were harvested, which is well
13 below the 105,000 to 158, 000 threshold.

14

15 The survey comments, which these are
16 harvesters -- these are subsistence harvesters that go
17 out on the grounds each year, this is what I would
18 consider traditional ecological knowledge, because
19 these people have been harvesting year after year.
20 They've learned this from their families, from their
21 ancestors.

22

23 And the comments that we got, there's
24 at least 40 comments that speak to the fact that the
25 spawn this year was not as plentiful in years past.
26 Some of the -- I'm going to read a couple of the
27 comments, because I think that they're worth listening
28 to, worst ever spawn, lots of milky water, but no eggs.
29 There used to be hundreds of miles of spawn. This year
30 was a lot of hard work. This year the spawn is very
31 thin and not as heavy, and the spawn was not as
32 extensive or prolific. It was not a big spawn this
33 year. Light branches and not very high quality. I was
34 very sad about this year and last year. And the last
35 one I wanted to relay was that it was not very thick
36 eggs, very short spawning time and it was
37 heartbreaking.

38

39 And I think that what we're asking the
40 Board is to implement some type of regulation here that
41 is going to insure a meaningful subsistence preference.

42

43

44 There's been some discussion about the
45 insignificance of the Makhnati waters to the
46 subsistence herring harvest. In 2007 according to the
47 Fish and Game spawning map, which they distribute each
48 year, generally kind of on a daily basis, the last one
49 that I pulled up, which I realize didn't show all of
50 the spawning in the sound, but as of April 12th, which

1 was a bulk of the spawn in 2007, there were, let me see
2 -- there was, sorry, 36 nautical miles of spawn, and
3 according to Fish and Game and their little map, the
4 Makhnati area, excuse me, has 5.7 nautical miles of
5 spawn, and all of those nautical miles were -- in fact,
6 had spawn recorded on those areas. So if you say it's
7 insignificant, because Makhnati Island area is only
8 this small area compared to this huge area of the
9 sound, well, in this year particularly, it was not that
10 small of an area. I mean, I can do math, and that's
11 about one-sixth of the area. And one-sixth of the area
12 is a pretty significant area. And so.....

13
14 CHAIRMAN FLEAGLE: Would you please
15 wrap up your comments. You're over the five minutes.
16 Thanks.

17
18 MS. PERKINS: Uh-huh. So I guess to
19 summarize, subsistence needs are not being met under
20 the current regulatory scheme under the State standard.
21 Federal law, of course, has a higher standard than
22 State. This Board is responsible to management the
23 Federal waters around Makhnati, and the RAC is due
24 deference in their recommendation, and it's very
25 important that you realize that according to your
26 policy the Board will adopt closures to fishing by non-
27 Federally-qualified users when one or more of the
28 following conditions is met. Closure is necessary to
29 insure the continuation of subsistence users (sic) by
30 Federally-qualified subsistence users.

31
32 Thank you.

33
34 CHAIRMAN FLEAGLE: Thank you for the
35 comments. Pete.

36
37 MR. PROBASCO: Thank you, Mr. Chair.
38 The next individual is Mark Vinsel.

39
40 CHAIRMAN FLEAGLE: Mark Vinsel.

41
42 MR. VINSEL: Hello, members of the
43 Board and members of the RACs. Thank you for the
44 opportunity to testify. My name is Mark Vinsel, and
45 I'm executive director for United Fishermen of Alaska.
46 You've heard the summary of our written comments, and
47 you have those in your books, so I won't belabor
48 reading those.

49
50 First off, I have a comment that it was

1 a little difficult to provide clear written comment on
2 this proposal, because the proposal as it was put on
3 the subsistence web site isn't the proposal that we
4 have before us now. And we weren't able to really have
5 that available in the proper -- or the timing that we
6 would like to have to really provide valid comments.
7 So I recommend that if possible when RACs make major
8 changes to the proposals, that they be posted on the
9 web site well in advance of the meeting time and
10 comment deadlines.

11
12 I also was unclear on the comment
13 deadline for written comments to be included in this
14 meeting.

15
16 Anyways, what we have is a new thresh
17 -- a new proposal. It has a threshold in it that we
18 don't see the basis or this threshold. A basis in
19 science. I've reviewed the recommendations of the
20 subcommittee, and I don't see any mention of it in
21 there, although the -- it is clear that the RAC adopted
22 the subcommittee report as their own.

23
24 So getting to the closure policy, we
25 don't feel that this proposal -- or this situation
26 really warrants or meets the qualifications of the
27 closure policy. I don't think -- it doesn't appear
28 that it's necessary for conservation or to continue
29 subsistence uses of these populations, or for public
30 safety or administrative reasons.

31
32 Now, I'm a little confused, because I
33 understand with the closure policy that you would have
34 to go by that if you were to close a fishery. But then
35 there's also the justification that the Subsistence
36 Boards needs to not adopt a -- or abide by the
37 recommendation of the Council. I understand that that
38 criteria would be -- you would be required to see that
39 it was either detrimental to the satisfaction of
40 subsistence needs or is not supported by substantial
41 evidence, or violates recognized principles of fish and
42 wildlife management. And I think --- actually I think
43 all three cases apply here. Or, actually, I'm sorry,
44 two of them. I don't think it would be detrimental to
45 satisfaction of subsistence needs, but I don't see that
46 the proposal, and in particular the threshold, does not
47 appear to be supported by substantial evidence. And we
48 do feel that unless there's presented a valid
49 scientific basis for this threshold, then it seems to
50 violate recognized principles of fish and wildlife

1 management.

2

3 That's the gist of our comments at this
4 time.

5

6 CHAIRMAN FLEAGLE: Thank you.
7 Appreciate the comments. Pete.

8

9 MR. PROBASCO: Thank you, Mr. Chair.
10 The next person is Eric Morrison.

11

12 CHAIRMAN FLEAGLE: Eric Morrison.

13

14 MR. MORRISON: Thank you. It's a
15 pleasure to be here to testify.

16

17 And I want to thank the State of Alaska
18 for the memorandum of agreement. It's something that
19 Sitka Tribe has been very concerned about and we're
20 glad to be in an agreement. And we're all looking for
21 the same intent, and that's to recognize and preserve
22 the subsistence rights of the Sitka Natives, as well as
23 other people in Sitka, to harvest herring eggs. It has
24 been very important.

25

26 I think what we look for, our harvest
27 as you've heard from earlier testimony that two out of
28 the last three years our herring harvest have not been
29 met. This is of very concern to us from the beginning.
30 One quarter -- at least one quarter of the areas where
31 commercial fishing goes on has been in areas that has
32 been subsistence harvesting areas in the past. And we
33 look at 20 percent has been a worldwide accepted
34 numbers for harvesting. But when you look at other
35 areas within the Pacific Rim, British Columbia as well
36 as Washington State, Washington State harvests at six
37 percent. But both British Columbia and Washington
38 State protect spawn areas. And that's very unique.
39 And I think that's something that we should look at and
40 that's something certainly the tribe is advocating
41 here.

42

43 What impact will it have on commercial
44 fishery and subsistence fishery is -- it really isn't
45 known, but we do know that this is a well-known area
46 for herring spawn in Makhnati Island, as well as other
47 areas that are very important to us. But this is a
48 beginning. All we're asking for is for you to take one
49 small step forward in order to protect our subsistence
50 harvest, so that we can -- and I appreciate the

1 scientific -- your giving us a grant so we can look
2 into this and do some scientific research. That's
3 really what's needed.

4
5 The agreement on its face, it should
6 work, but when we get to the ground, it doesn't work.
7 Oftentimes our agreement -- when we look at the Council
8 as it's made up, for a subsistence user, this was the
9 intent where -- to address subsistence concerns. The
10 Council that reviews the fishing that goes on each
11 year, is -- has six commercial fishermen and two
12 subsistence fishermen that review each day. Is that
13 fair? Well, I'll leave it for you to look into that
14 and formulate your own ideas.

15
16 On the other hand when we -- when the
17 on-the-ground manager addresses us and asks for our
18 concerns, he can take them, but does he have to utilize
19 our concerns and issues? No. Sometimes he doesn't.
20 So what does that do to the agreement?

21
22 So it obviously needs some work, so
23 we're invoking on you to take this and become involved
24 more with the herring harvest in the Sitka area. It's
25 very important.

26
27 As you well know, the herring stock
28 throughout the Pacific Rim has been reduced, and we're
29 very concerned about that. We don't want to be
30 included in other areas such as Lynn Canal where
31 somebody can come in and say it's endangered. We
32 realize it's a healthy harvest. The commercial harvest
33 has never not been met. But the subsistence harvest,
34 at least 50 percent over the last seven years as not
35 been met. And that's our concern. I think that should
36 be a priority. That should be looked at.

37
38 And to set aside one small acreage, 560
39 acres, over what, 70 miles of fishing, commercial
40 fishing? Can you imagine that 70 miles that's
41 available to them, and yet they're concerned about a
42 footstool of 560 acres. Does that make a whole lot of
43 sense? Is that really going to destroy commercial
44 fishing? I don't think so. So I look for you to take
45 a conscious effort, and at least take a small
46 progressive assertive step in looking at the herring
47 harvest and the subsistence rights of the Natives in
48 the Sitka area.

49
50 Thank you.

1 CHAIRMAN FLEAGLE: Thank you.
2 Appreciate the comments.

3
4 Next, Pete.

5
6 MR. PROBASCO: Next, Mr. Chair, is Don
7 Bremner. Don Bremner.

8
9 MR. BREMNER: Mr. Chairman and members
10 of the Council. My name is Don Bremner. I'm the
11 natural resource coordinator for the Southeast Alaska
12 Intertribal Fish and Wildlife Commission.

13
14 We speak in support of this proposal.
15 Looking at the historical Tlingit, Haida, and Tsimsian
16 use of the area prior to Russian and America influence,
17 in the springtime thousands and thousands of Tlingit
18 and Haida and Tsimsian people came to this area in
19 cooperation with the Sitka Tribes. The Sitka Tribes
20 have been protectors and stewards of preserving this
21 Native way of life from that time. And we've honored
22 and respected their stewardship here.

23
24 The Sitka Tribe is our Native eyes and
25 ears regarding this way of life, and their traditional
26 knowledge should be heavily considered in this
27 proposal.

28
29 Looking at the implementation of the
30 proposal, and using closed land and water areas as
31 management tools isn't new to the Federal Government or
32 State of Alaska. The Federal Government has national
33 parks and wilderness areas. The State uses fish and
34 game refuges. The Federal Government with the
35 Migratory Bird Commission has closed areas to
36 subsistence hunting and gathering when there are other
37 predators competing for the resource, when the resource
38 or species is reaching to the point where it's
39 threatened, the Federal Government through the
40 Migratory Bird Commission doesn't hesitate to use that
41 tool. So it's an appropriate tool, it's an appropriate
42 proposal, and a vital way to protect this resource as
43 requested by the Sitka Tribes and others.

44
45 Thank you.

46
47 CHAIRMAN FLEAGLE: Thank you for the
48 comments, Don. Pete.

49
50 MR. PROBASCO: Next, Mr. Chair, is Mike

1 Miller. Mike.

2

3 CHAIRMAN FLEAGLE: We'll call this

4 Exhibit A.

5

6 (Laughter)

7

8 MR. MILLER: Thank you, Mr. Chair.

9 Good morning, everybody. My name is Mike Miller. I'm

10 representing Sitka Tribe of Alaska. I'm a council

11 member with Sitka Tribe. I spend a lot of times on

12 subsistence issues with them. I'm also one SEALaska's

13 two subsistence representatives to AFN subsistence

14 committee.

15

16 What I've got there is a bag of herring

17 eggs. Actually it's not from last year, because I

18 didn't get any last year, to keep for myself at least.

19 It's from two years ago. Feel free to eat some if you

20 want. There we go. So just a little bit of hands on

21 there so you can look and see what we're talking about.

22

23

24 Some of you might not be familiar with

25 what herring eggs are, how we harvest them or such.

26 For lack of time, I guess I won't really go into the

27 how we harvest specifically with the trees and the

28 kelp, but just I think it goes without saying that one

29 of the longest standing traditional fisheries in the

30 state that's been documented for hundreds of years is

31 the herring egg harvest in Sitka. The earliest

32 Russians talked about thousands of Natives coming to

33 Sitka to harvest herring eggs, and that continues on

34 today.

35

36 In my comments I want you to really

37 think about the problem that we're presenting. It's a

38 very real problem in harvesting subsistence. We are

39 facing a problem. And I hope that you'd reflect on the

40 comment that, you know, if a problem is known, if you

41 are not a part of the solution, then you're part of the

42 problem.

43

44 Subsistence needs are not being met.

45 Two out of the last three years we've not been able to

46 get even the low expectations of ANS. And that's very

47 much troubling to us. Since 2001 we've also had --

48 actually 2001 we had a year that was very similar to

49 that. And to be honest, I'm not fully sure exactly why

50 that is. You know, there's obviously competition for

1 the resource out there, a commercial fishery that takes
2 the fish prior to them laying the eggs. But there's
3 also -- I mean, we're dealing with fish, so there's a
4 lot of unseen things and climate and other changes
5 there that we don't know. I don't know if we ever
6 will. And I think sometimes we're trying to say that
7 at some point we're going to figure it out to the point
8 where we can guarantee things. And I don't think we --
9 any of us ever will. So I think we need to make the
10 best decisions based on trying to fix the problem.

11
12 We have a proposal from the tribe that
13 really is a compromise situation. We came here last
14 year, we asked for full closure, and you directed us to
15 work with the State, with the RAC to come up with a
16 solution to this. And once again we went with a good
17 faith effort to try to work through this and create a
18 proposal that's a compromise. The State did not work
19 in that process. They refused to work in the process.
20 They showed up at the meetings, and essentially
21 provided early on, in my eyes it was testimony against
22 this. They really were gumming up the process, but
23 they officially refused to work in that process.

24
25 In spite of that, the tribe did back
26 away from that and came to what they felt was a
27 reasonable compromise, 40,000 tons is what the tribe
28 was asking, although it's supporting the 35,000
29 threshold that the RAC produced. We have heard
30 testimony that -- from the commercial industry that
31 possibly that wouldn't fix things, and so maybe we were
32 low in the threshold estimate. Maybe there's a higher
33 number that they feel would be better at providing
34 subsistence needs being met.

35
36 I remember, Mr. Chairman, your comments
37 last year, that you're hoping that we could work with
38 the State, and eventually we're going to have to work
39 with the State to fix subsistence issues in the State.
40 And I really feel that when the State says, no, we're
41 not going to work in this process, no, you can't tell
42 us how we should be managing your Federal waters. By
43 just saying, okay, you're not helping the State.
44 You're not helping fix the situation. So eventually we
45 are going to have to work together, and your role right
46 now can help insure that that takes place.

47
48 Again, there's a lot of unknowns, but
49 some of the known things are, you know, before us, is
50 that we have the problem of not meeting the subsistence

1 needs. This proposal is a step in protecting
2 subsistence needs. It is right in the middle as the one
3 -- Mr. Porter's letter said. It's right in the middle
4 of a major spawning area, a traditional spawning area.
5 And, of course, it's important then. It's even
6 recognized by the commercial industry.

7
8 There's a lot of other repercussions.
9 By not acting on this, we're having real problems
10 getting people to do surveys on other species now.
11 They feel that the process is not working, and I
12 testified in our Pacific council last week, speaking to
13 that issue. And I really think it's because of the
14 herring is what I testified, because we're providing
15 the data that says we have a problem, and nothing's
16 being done. So just allowing things to continue like
17 that, I don't think is the answer.

18
19 There's four of us that came up from
20 the tribe.

21
22 CHAIRMAN FLEAGLE: Our time is running
23 out.

24
25 MR. MILLER: Okay. I'm sorry.

26
27 CHAIRMAN FLEAGLE: Would you please
28 summarize?

29
30 MR. MILLER: Yeah, I'm gabbing away.

31
32 CHAIRMAN FLEAGLE: Thanks.

33
34 MR. MILLER: There are probably -- you
35 know, it's very important. There's four of us that
36 came up here. If we had the budget, we probably would
37 have brought more. In hindsight, if we'd maybe cut
38 coffee and tea out of our meetings last year, we could
39 have brought a whole bunch more people up.

40
41 All things being equal though, you have
42 an area. The commercial harvest in there historically
43 is low, the traditional harvest has been low in
44 recorded years recently. So what do you do? You know,
45 you have this proposal. Virtually no negative impact
46 on the commercial, and arguably it can help
47 subsistence, which is having a problem.

48
49 So we're saying that the State process
50 does -- is not working well enough. We enjoy working

1 with the State. We're going to continue to do that, ut
2 we need your help, too. So all things being equal,
3 what side are you going to lean towards? Towards the
4 commercial, the State interest, or towards subsistence.
5 So I hope that you'll lean towards subsistence, because
6 that's your name.

7

8 Thanks.

9

10 CHAIRMAN FLEAGLE: Thank you. Pete.

11

12 MR. PROBASCO: Next, Mr. Chair, is

13 Charles Trinan. Chip.

14

15 MR. TRINAN: Mr. Chairman. Members of
16 the Board. And the RAC Council Chairmen. I appreciate
17 the opportunity to testify here today. My name,
18 Charles Trinan.

19

20 And I'm representing the Sitka Herring
21 Association. That's a trade association of State of
22 Alaska Commercial Fisheries Entry Commission permits
23 specific to Southeast herring seine fishery. And there
24 are approximately 50 permit holders. I say
25 approximately a handful of them are under adjudication.

26

27 But as a group, Sitka Herring
28 Association has -- and I also want to point out that
29 I'm a permit holder myself. So as well as representing
30 that group, I'm also a permit holder and representing
31 my own interests.

32

33 As a group, the Sitka Herring
34 Association has taken steps to assist the subsistence
35 users, and we're fully aware of a subsistence priority
36 and do what we -- whatever we feel is reasonable and
37 productive in helping the subsistence users in
38 fulfilling their desires.

39

40 As Mr. Larson pointed out, we did send
41 in a letter that -- in opposition of this proposal,
42 FP08-18, consistent with our opposition to the previous
43 one in nine -- last year's meeting.

44

45 I would just like to point out that
46 some of the efforts that we -- in this letter we point
47 out that -- some of the efforts that we've made in
48 trying to assist the Sitka Tribe, and to work together
49 with them to meet their needs, and we found that it's
50 been very difficult, and that it's often been a moving

1 target, and so most of the time we're not really sure
2 what the Sitka Tribe wants as far as assistance in
3 getting their needs met. And often it seems like their
4 proposals are designed just to throw -- just to do
5 something regardless of its effect on subsistence.

6
7 As some of the reports show, like, you
8 know, we've had increasing biomasses in recent years
9 that have been recorded by the Department of Fish and
10 Game, and still the Sitka Tribe is complaining that
11 their subsistence needs have not been met. And that is
12 reflected the InterAgency Staff comments on the
13 modified proposal. That's Page 270 of the sheet, and
14 the one, two -- third paragraph, it specifically states
15 a successful subsistence harvest is not guaranteed even
16 at a high biomass level.

17
18 So what can we do as commercial
19 fishermen to help them get that -- their subsistence
20 needs met, and it's not clear to us what we can do, and
21 it's certainly not clear that there would be any effect
22 if there was a closure in the Makhnati Island area.
23 And some of the comments from the agency comments, Fish
24 and Game comments indicate that it's questionable
25 whether that would have any effect, and it could
26 feasibly have a negative effect on the ability of the
27 subsistence users to fulfill their needs.

28
29 Just a little bit of information on
30 what the situation is our liaison with -- and the MOU
31 that the State has. This is based on Ron Porter, one
32 of our members, who attended the meetings with the
33 advisory group that talks with the tribe and Fish and
34 Game. He states that it should be noted that in the
35 '07 sac roe fishery, prior to each opening the tribe
36 objected to the fishery going forward unless certain
37 areas were excluded from the fishery. And all the
38 major spawning areas were included with the exception
39 of Whiting Harbor and the Makhnati Island group. So in
40 nine -- in 2007 the tribe didn't even care whether that
41 was excluded from the commercial harvest or not,
42 according to what -- how they objected to any openings
43 that were scheduled.

44
45 Also I want to point out a little bit
46 of history on threshold levels. In.....

47
48 CHAIRMAN FLEAGLE: Excuse me. Can I
49 have you summarize your comments, please. Your five
50 minutes are up.

1 MR. TRINAN: Okay. Excuse me for
2 exceeding my time. I'd just like to say that the
3 threshold that has been proposed at 35,000 tons is
4 hardly based on any kind of biologic justification.
5 It's not supported by recognized principles of fish and
6 wildlife management, and we think that this proposal
7 has no merit and it won't help the subsistence users in
8 fulfilling their needs.

9
10 Thank you.

11
12 CHAIRMAN FLEAGLE: Okay. Thank you.
13 Appreciate the comments.

14
15 Pete, we have one more?

16
17 MR. PROBASCO: Yes, Mr. Chair. The
18 last person is Michael Baines.

19
20 CHAIRMAN FLEAGLE: Mike.

21
22 MR. BAINES: Good morning. Mr.
23 Chairman. Members of the Board. And RAC committee
24 members and Chairmen. My name is Michael Baines. I'm
25 on the Sitka Tribal Council representing at least 4,284
26 tribal citizens, and I'm also the chairman of the Sitka
27 Tribe of Alaska's herring committee.

28
29 There's a lot of concern that this
30 proposal won't help our subsistence use or anything,
31 but I think if you look back at some of our elders,
32 they'll say that the stocks are not in good shape. One
33 of our Tlingit elders, Herman Kitka, says that all of
34 Sitka Sound used to turn white with -- during the
35 spawn. All the bays and coves in the whole area, and,
36 you know, it's -- I'm sure you've all been to Sitka,
37 and it's a pretty big area. And we're only talking
38 about a small area, Makhnati Island, but we only used
39 traditionally certain small areas, because Sitka Sound
40 is exposed to all the waves and swells and breakers of
41 the Pacific Ocean. And so there are only small areas
42 that we use traditionally, because other areas will --
43 or herring eggs will get sandy and muddy and
44 everything. So it will just be a refuge for the
45 herring.

46
47 And just the actual fishing, whether
48 they catch anything or not, the fishing disrupts the
49 herring spawn. There's 51 seiners and 51 skiffs.
50 Maybe some of them are in jail or whatever, but during

1 the fishery there's also 50 -- up to 50 packers I'd
2 estimate, I've never counted them because there are so
3 many boats out there. And also I'd guess another 50 to
4 100 other boats, you know. Enforcement. Coast Guard.
5 And observers and people holding up their corks to keep
6 their seines from sinking, because they catch so much
7 fish it sinks their seine. Just the fishery itself
8 disrupts the herring. It scares the herring away.

9
10 There's a big biomass in the channel
11 area. Last year I went out with one of the fishermen,
12 Jamie, I can't remember his last name. He had some
13 fancy electronics. You could see a pretty big biomass,
14 but they fished a little later that day or the next
15 day, and it scared them all away. They -- nobody knows
16 where they spawned or anything. So just the fishery
17 itself scares the fish away.

18
19 And the thing is, they say the fish
20 have tails, and that that's not their problem. But the
21 thing is, their boats have propellers, and they can
22 chase after the fish. If the fish move, they just move
23 the boundary and reopen it. And they're just about
24 guaranteed their catch. And our branches that we set
25 during the fish -- to get our herring eggs, they're
26 pretty much set, they -- you can't move them. It's --
27 we could tow them a little ways, but it takes hours and
28 hours to tow them very far. And it's not very
29 practical to do that. And nobody seems to care. The
30 fishermen are guaranteed their fish, and the processors
31 process it, and they catch so much they can't even
32 process it all during one opening. They have to
33 disburse it during three or four openings.

34
35 And that's another thing. For this
36 next year their GHJ is 14,000 tons approximately. And
37 I predict another disastrous years for our subsistence
38 gathering. Just from the fishery itself, just from so
39 many boats running around they scare the herring away,
40 and they won't spawn on our branches.

41
42 And this isn't just a Sitka issue.
43 Historically for thousands of years we've shipped --
44 people would come from other places to harvest herring
45 eggs and they ship them home and we locals also ship
46 them all over on Alaska Airlines.

47
48 I'm pretty convinced that they're going
49 to over-fish the stocks just from -- they say the
50 stocks are in good shape, but they're going to catch

1 14,000 tons again next year. And like I said, I
2 predict a bad year for our harvest, and herring egg
3 harvest.

4
5 And I'd just like to say that although
6 there's a cordial relationship with the State and the
7 fishermen, Ron Porter comes to our herring committee
8 meetings and tells us where the herring are spawning
9 and everything. Everything's cordial and everything,
10 but it's just not working. The herring happens -- the
11 fishery happens before the herring egg harvest, and
12 they get their herring, but we're -- we just don't our
13 herring eggs, at least for two out of the last three
14 years, and also for three out of the last seven years
15 we haven't had -- it was very poor herring egg harvest.

16
17 You know, the State has even -- at one
18 of our preseason meetings, the State's own scientist
19 said that there's evidence that the biomass is
20 shrinking, but the GHF keeps going up. And they say
21 they're managing it conservatively, but they're
22 catching 14,000 tons next year, and things just don't
23 seem to add up.

24
25 And I guess that's all I had. I'd be
26 open to any questions if anybody has any questions.

27
28 CHAIRMAN FLEAGLE: Okay. Thank you.

29
30 MR. BAINES: Thanks.

31
32 CHAIRMAN FLEAGLE: Appreciate your
33 comments.

34
35 Denny, go ahead.

36
37 MR. BSCHOR: I have a quick question.
38 Do you support the RAC recommendation or only the
39 closer?

40
41 MR BAINES: I guess I don't understand
42 that question. You mean with the 35,000 pound (sic) --
43 yeah, I think there should be some limit, because like
44 I said before, there used to be -- the whole Sitka
45 Sound area used to turn white during the spawn, and
46 there should be some number, because 35,000 tons is
47 actually a pretty small number compared to the amount
48 of fish that used to spawn there.

49
50 MR. BSCHOR: Thank you.

1 CHAIRMAN FLEAGLE: All right. Thank
2 you. Thanks for the comments.

3
4 Before we move on, I think I'll go
5 ahead and call the first morning break. And we'll
6 reconvene in about 10 minutes.

7
8 (Off record)

9
10 (On record)

11
12 CHAIRMAN FLEAGLE: Good morning. We're
13 back in session, and I guess I should apologize to the
14 Board members that haven't been with us in this level
15 of process for a long time yet. And I kind of just
16 moved right quickly through those people that
17 testified, just given the lot of stacks of people
18 signing up to testify. And it's going to be even more
19 evident when we reach the Yukon proposals. But there
20 is an opportunity for Board members to ask questions of
21 the testifiers, and I was calling the next testifier
22 right up, having not heard anybody jump out and request
23 the asking of questions until Denny did at the last
24 there, but I should just pause and ask Board members,
25 so if there are any of the testifiers that have just
26 testified, any of the six or seven I guess it was, that
27 you feel may have more information on this based on
28 these issues -- on this issue here, I'd entertain
29 calling them back up for questions I just want to open
30 it up, because I think I may have slighted the board.
31 So if there's any interest in that, I'd like to do that
32 at this time.

33
34 (No comments)

35
36 CHAIRMAN FLEAGLE: All right. Thank
37 you then.

38
39 So with that, we'll go ahead and
40 continue, and we move to the Regional Council
41 recommendation. Bert, please. Good morning.

42
43 MR. ADAMS: Good morning. Mr. Chairman
44 and members of the Board. Thank you.

45
46 I want to thank the Board for deferring
47 this issue. You know, we had this on the table last
48 year, and you deferred it to give an opportunity for
49 more information to come forth, and hopefully we have
50 done that today. The Board authorized the RAC to form a

1 subcommittee, and as a result of the meeting of that
2 subcommittee, the RAC in Haines accepted the
3 subcommittee's report, and now, you know, it belongs to
4 the RAC.

5
6 The Council recommendation is to
7 support the proposal. I'm going to have Chuck, who is
8 responsible for gathering the subcommittee together,
9 you know, give a report on that here in a little bit.
10 But I just want to say that the Council concluded that
11 the proposed regulation would conserve herring and
12 benefit subsistence users by providing a meaningful
13 subsistence priority for the waters under Federal
14 jurisdiction. This action will have no effect on non-
15 subsistence users as the area under consideration is a
16 very small fraction of the total herring spawning area
17 within the Sitka Sound.

18
19 The Council thought that there was
20 substantial evidence regarding the importance of this
21 area to the subsistence fishery and the need to
22 conserve herring in this area to identify and justify
23 the needs for this action.

24
25 There's a long drawn-out process in how
26 the Council also came to this conclusion, but I think
27 one of the most important ones, that we listened to the
28 people from Sitka, and other areas as well, because all
29 of Southeast benefits from the herring spawn from the
30 Sitka area, as well as in their own areas, but Sitka is
31 the producer of the most herring in the Southeast area,
32 and so we listened. We listened to the people who were
33 the most affected by it.

34
35 We listened to the tribe. It's a
36 tribal government, a Federally-recognized tribe. And
37 we took their rec -- we took their issues very
38 seriously.

39
40 I'd just like to mention the importance
41 of a tribal government, and think we need to get more
42 of them involved in the process here in the future.
43 Felix Cohen, who is an expert at Indian law said, and I
44 don't know it word for word, but I can just paraphrase
45 it, said that self-governance in the true send of the
46 form is -- is formed not by anyone from heaven or from
47 some throne in Washington, but they are derived by
48 people who are most affected by those decisions. In
49 other words, it comes from the people themselves. And
50 that's why I've always advocated and reminded the board

1 that deference should be given to councils, because of
2 the fact that we gather all of the information from
3 experts and then we come to conclusion. And for that
4 reason, you know, the Board really should listen to
5 these issues. And I've said it before, I'm just
6 reminding us all again, when it comes from the bottom
7 up and works its way up. And ANILCA was designed for
8 that purpose as well.

9

10 But the subcommittee, you know, met in
11 Sitka, and I want to give Chuck an opportunity to
12 report on what happened there, and then I'll also make
13 some comments afterwards.

14

15 Chuck.

16

17 CHAIRMAN FLEAGLE: Chuck, go ahead,
18 please.

19

20 MR. ARDIZZONE: Mr. Chair. Board
21 members. And RAC Chairs.

22

23 Based on the deferral of last year, the
24 RAC formed a subcommittee which met on September 5th in
25 Sitka. On Page 268 and 269 there's a brief summary of
26 what happened at the subcommittee. On Page 268 you can
27 see the subcommittee members and other attendees. We
28 actually had a facilitator at the meeting to help
29 facilitate and capture all the comments at the meeting.

30

31

32 We had agency presentations. We had
33 the Federal Staff present background relevant to the
34 Makhnati Island proposals. We had State Staff present
35 data from the commercial and subsistence fisheries.
36 And then the subcommittee went into discussions,
37 discussed all the information that was presented, had
38 interaction between all the subcommittee members. And
39 in the end we came up with three recommendations which
40 start on Page 268.

41

42 The Federal Government should become a
43 party to the MOA that provides for in-season
44 consultation between fishery managers and harvesters.

45

46 The second was that fishery managers
47 and participants in the MOA need timely annual data on
48 subsistence egg harvest in Sitka Sound.

49

50 The third was that in-season fishery

1 managers and biologists, the Sitka Tribe, and
2 representatives of the commercial seine fleet and
3 others with knowledge of the Sitka herring population
4 and fisheries should work together to determine what
5 may have been the cause of low subsistence harvest in
6 the three years out of -- three of the seven past
7 years.

8
9 The subcommittee also discussed an
10 alternative to the regulatory proposal which as we know
11 is a full closure. This substitute language didn't
12 reach consensus, but it is listed on Page 269 and
13 basically it is where the Council pulled their language
14 from for their recommendation.

15
16 If there's any questions, I can try and
17 answer those, but that's a brief synopsis of what
18 happened.

19
20 CHAIRMAN FLEAGLE: Thank you, Chuck. I
21 have one. The number 35,000 tons, did that come up
22 from the subcommittee or was that inserted by the
23 Regional Advisory Council?

24
25 MR. ARDIZZONE: I believe the number
26 that was discussed at the subcommittee was 30,000 tons,
27 but there was no consensus reached on that number, and
28 then the 35,000 came from the RAC itself.

29
30 CHAIRMAN FLEAGLE: Thank you, Chuck.
31 Bert.

32
33 MR. ADAMS: Let me address the
34 threshold there a little bit. There was a long
35 discussion, no one could agree. Sitka Tribe came forth
36 with a 40,000 threshold, and we just, you know,
37 accepted the 35,000. And then it was included in the
38 subcommittee's reported. The Council accepted that and
39 adopted it as its own. So that's where that came from.
40 There was no discussion among the Council members about
41 that threshold, so I'm assuming that it's okay with
42 them, otherwise it would have been brought up as an
43 issue.

44
45 I'd just like to say a few more things,
46 Mr. Chairman, if I might be, in regards to this issue.

47
48 You've listened to testimonies from,
49 you know, six or seven people here, and they pretty
50 much, you know -- the ones who are in favor pretty much

1 said the same thing that the ANS is not being met, you
2 know, and they're concerned about that. One of the
3 things that I've learned is that most of the herring
4 harvesters have to go further and further away to meet
5 their needs, and then they're out there competing, you
6 know, with the commercial industry as well. And
7 sometimes the weather does not permit them to, you
8 know, meet their needs and I know that, you know,
9 there's the commercial industry in Sitka who is
10 offering to help in that effort by also using their
11 vessels, you know, to help with the subsistence fisher
12 -- meet the subsistence in Sitka, but as far as we have
13 determined, you know, that hasn't really happened. And
14 you heard the gentleman mention earlier that he was
15 saying that he could not understand what Sitka is
16 asking for, but I think those people need to meet and
17 discuss this issue some more so that there can be some
18 meeting of minds.

19
20 The eggs are not being thick, as
21 mentioned, and there are shorter spawning periods. We
22 received, you know, a 50-pound box of herring spawn
23 from Sitka from friends every year. We live in
24 Yakutat. And we've noticed over the past few years,
25 you know, they have been a lot thicker, and the people
26 who supply those for us are saying that they're getting
27 harder and harder to get. So hearing from the users
28 themselves and being a part of that user group, I can
29 feel comfortable in saying that their needs aren't
30 being met.

31
32 Okay. Let me see. The MOU with the
33 State, we thought is a real good idea. However, we
34 also think that a Federal manager needs to be a part of
35 that signatory. And I think that's what we are
36 requesting here as well.

37
38 The small area which we're talking
39 about is Federal waters, Mr. Chairman and members of
40 the Board. You do have the authority to open or close
41 or do whatever you want with that area, because it is
42 under our -- under your jurisdiction. And I know we
43 can get a lot of testimony and pressure, you know, from
44 the commercial user groups, but when it comes right
45 down to it, I'm a commercial fisherman as well, okay.
46 I am a subsistence fisherman. I'm a sport fisherman.
47 I sit on the RAC Council representing the subsistence
48 issues. And when it comes time to -- comes down to
49 making decisions, it's good to have a good background
50 on all of these user groups as well, but the

1 subsistence issue that is on the table needs to be
2 thought of thoroughly and made -- and the decision
3 should be made, you know, on the best interest of the
4 subsistence users rather than the other user groups,
5 and I would encourage the Board to look at it in that
6 direction. You have the authority to do what is being
7 asked for, but you should look at it from the
8 subsistence user's point of view rather than any other
9 user group.

10
11 So thank you, Mr. Chairman. I
12 appreciate the opportunity to comment.

13
14 CHAIRMAN FLEAGLE: Thank you, Bert.
15
16 Department of Fish and Game comments.
17 Tina.

18
19 MR. BUKLIS: Excuse me, Mr. Chairman.

20
21 CHAIRMAN FLEAGLE: Oh, Larry.

22
23 MR. BUKLIS: I think we need -- Robert
24 Larson wanted to supplement the Council Chair's
25 comments if he could.

26
27 CHAIRMAN FLEAGLE: That didn't sound
28 like that needed much supplementing.

29
30 MR. ADAMS: Well, if Robert Larson has
31 something to supplement there, I would go for it.

32
33 Thank you, Mr. Chairman.

34
35 CHAIRMAN FLEAGLE: Okay. You bet.
36 Robert.

37
38 MR. LARSON: Yeah. Mr. Chairman. I
39 just wanted to make it clear that sitting in the
40 audience that Bert was referencing the proposal, and I
41 wanted to make sure that the Board understood, and I
42 think that Bert would, of course, correct me if I'm
43 wrong, but the -- his testimony at the last when he
44 referenced the proposal, he's speaking of the modified
45 proposal as adopted by the RAC.

46
47 CHAIRMAN FLEAGLE: I think that was
48 pretty clear.

49
50 MR. ADAMS: Was it? Okay. If I

1 didn't make it clear, I'm sorry, but that was the case.
2 Thank you. Thank you, Bob, for making that clear.

3

4 CHAIRMAN FLEAGLE: All right. Now the
5 State Department of Fish and Game. Tina.

6

7 MS. CUNNING: Consistent with the
8 agreement we reached yesterday, we would like to
9 request permission to enter our full Department
10 comments into the record, and George is going to
11 provide just a summary.

12

13 CHAIRMAN FLEAGLE: Okay. Great. Thank
14 you. George.

15

16 MR. PAPPAS: For the record my name is
17 George Pappas, Department of Fish and Game, subsistence
18 liaison team.

19

20 Adoption of this proposal could be
21 detrimental to both subsistence and commercial
22 fisheries depending upon where and when the herring
23 span in a given year. The commercial fishery is
24 managed to minimize commercial harvest near heavily
25 used subsistence harvest areas, but is a very short and
26 fast fishery. So effective action must be taken in a
27 timely manner. The proposed closure would limit the
28 options for where commercial fishery could occur,
29 potentially resulting in a commercial fishery in higher
30 subsistence use areas. The proposed closure would also
31 prohibit subsistence harvest in that area by other
32 Alaskans that are not Federally-qualified.

33

34 A closure in small area is expected to
35 have little or no impact on the total commercial or
36 subsistence harvest. Yet this proposal as modified by
37 the Southeast RAC, if adopted, non-Federally-qualified
38 users could be prohibited from participating in the
39 Makhnati Island and Whiting Harbor area herring
40 fisheries if the ANS was not met for two prior years
41 due to factors that are not based on the health of the
42 herring stock for reasons of conservation. Excuse me.
43 For -- excuse me. Based on the health of the herring
44 stock or for reasons of conservation.

45

46 The 2007 season is an example where the
47 herring stocks were considerably healthy, the core
48 herring spawning areas was observed to be in the
49 vicinity of the Sitka road system, but the timing of
50 the event and the unfortunate pursuing bad weather

1 likely prevented subsistence users from collecting
2 --collectively achieving the ANS. During the 2007
3 herring fishery season, the Alaska Department of Fish
4 and Game commercial fisheries managers widely
5 distributed the commercial herring fishing fleet, which
6 effectively reduced competition with subsistence user.
7
8

9 The proposed closure is not necessary
10 to provide for the continued Federal subsistence and
11 would violate Section .815 of ANILCA. Such a closure
12 may also be detrimental to subsistence uses by
13 unnecessarily limiting options for the management of
14 the commercial fisheries and thereby increasing the
15 likelihood of impacts to higher subsistence use areas.
16

17 Herring biomass in the Sitka Sound has
18 shown a long-term increase and is considered healthy.
19 In 2005, the year that ANS was not met, the biomass was
20 at record or near record levels sine the biomass
21 estimations were first reported in 1978. The
22 commercial sac roe harvest of 11,366 tons in 2005 was
23 about 14 percent of the total estimated spawning
24 biomass, a very conservative harvest rate. The
25 difficulty in meeting subsistence needs that year was
26 primarily due to a large portion of the herring biomass
27 spawning in areas inaccessible to subsistence
28 fishermen. The estimated 50.2 nautical miles of span
29 in Sitka Sound in 2007 was close to the average range,
30 which the short-term average was 53.4 nautical miles,
31 and the long-term range -- long-term average was 55.9
32 nautical miles. The spawning biomass after the
33 fishery, as estimated by spawning deposition surveys,
34 remained at a high level of an estimated 84,501 tons.
35 The severe weather occurred during the peak of the
36 spawning event in 2007, which likely limited many
37 subsistence harvesters access to the spawning grounds
38 during that critical time.
39

40 Collective harvest success can be
41 diminished during any particular season when one or
42 more of the factors do not favor subsistence users,
43 including inclement weather, spawning time, spawn
44 location, loss or theft of sets, subsistence
45 harvesters' schedules, and the amount of participation
46 by a limited number of individuals known as high
47 harvesters who harvest for distribution to others. If
48 one or more of these factors is unfavorable, the amount
49 harvested can drastically fluctuate and remain below
50 ANS. It is important to note that how the commercial

1 fishery is managed, either inside or outside Makhnati
2 Island area, may be less of a factor for the
3 subsistence fishery than these other factors.

4
5 Also, poor harvests are not necessarily
6 linked to the health of the Sitka Sound herring stocks,
7 or the management of the commercial fishery.

8
9 Alaska Department of Fish and Game
10 Preliminary Comments to the Federal Subsistence Board.

11
12 FP08-18 MAKHNATI ISLAND AREA HERRING

13
14 Introduction: Proposal FP07-18 was
15 deferred by the Federal Subsistence Board (Board) at
16 the January 2007 meeting. That proposal has been
17 renumbered and resubmitted for consideration to close
18 marine waters in the Makhnati Island and Whiting Harbor
19 area, which are subject to federal claims of
20 jurisdiction. The closure would apply to commercial
21 herring fishing during March and April and only allow
22 subsistence herring fishing by those federally-
23 qualified. Commercial harvest rarely occurs in the
24 proposed closure area, and the area is not the primary
25 subsistence herring fishing area used by federally-
26 qualified local residents. The Southeast Regional
27 Advisory Committee (RAC) supported modification to
28 proposal FP08-18. These modifications included closing
29 the harvest of herring and herring spawn except for
30 subsistence harvests by federally qualified subsistence
31 users when the forecast spawning biomass for the Sitka
32 Sound herring spawning area is less than 35,000 tons or
33 when the Amounts Necessary for Subsistence (ANS), was
34 not reached in the two prior consecutive years.

35
36 Impact on Subsistence Users: Adoption
37 of this proposal could be detrimental to both
38 subsistence and commercial fisheries, depending upon
39 where and when herring spawn in a given year. The
40 commercial fishery is managed to minimize commercial
41 harvests near heavily used subsistence harvest areas
42 but is a very short and fast fishery, so effective
43 actions must be taken in a timely manner. The proposed
44 closure would limit the options for where a commercial
45 fishery could occur, potentially resulting in a
46 commercial fishery in higher subsistence use areas.
47 The proposed closure would also prohibit subsistence
48 harvest in this area by non-federally qualified
49 individuals. A closure in this small area (560 acres)
50 is expected to have little or no impact on the total

1 commercial or subsistence harvests.

2

3 If this proposal, as modified by the
4 RAC, is adopted, non-federally qualified users could be
5 prohibited from participating in the Makhnati Island
6 and Whiting Harbor area herring fisheries if the ANS
7 was not met the two prior years due to factors that are
8 not based on the health of the herring stock or for
9 reasons of conservation. The 2007 season is an example
10 where the herring stocks were considered healthy, the
11 core herring spawning areas were observed to be in the
12 vicinity of the Sitka road system, but the timing of
13 the event and the unfortunate pursuing bad weather
14 likely prevented subsistence users from collectively
15 achieving the ANS. During the 2007 herring fishing
16 season, the Alaska Department of Fish and Game
17 (Department) commercial fisheries managers widely
18 distributed the commercial herring fishing fleet which
19 effectively reduced competition with subsistence users.

20

21

22 Opportunity Provided by State: For the
23 vast majority of the subsistence herring egg harvest,
24 the Department does not restrict fishing periods or
25 seasons and does not restrict amounts of herring
26 harvested by individuals for subsistence purposes in
27 this area. The harvest of spawn on hemlock boughs or
28 spawn on hair kelp is unrestricted, and no state permit
29 is required. Post season evaluation of the subsistence
30 harvest is accomplished by a harvest monitoring program
31 conducted by the Sitka Tribe of Alaska (STA) in
32 cooperation with the Division of Subsistence in the
33 Alaska Department of Fish and Game (Department). The
34 Alaska Board of Fisheries has found that 105,000 to
35 158,000 pounds of herring spawn is the amount
36 reasonably necessary for subsistence uses (ANS) in
37 Section 13-A and Section 13-B north of Aspid Cape.

38

39

40 The Department does require a permit
41 that may limit harvest of spawn on kelp and requires
42 harvest reporting following the season. (See 5 AAC
43 01.730(g)) The harvest of spawn on kelp accounts for
44 an average of only 2% of the subsistence harvest on all
45 substrate types, so state requirements for spawn on
46 kelp harvest is not a significant limitation.

46

47 The limited, non-commercial exchange
48 for cash of subsistence-harvested herring roe on kelp,
49 legally taken in Districts 1-16 under terms of a
50 permit, is permitted as customary trade. The annual

1 possession limit for spawn-on-kelp is 32 pounds for an
2 individual and 158 pounds for a household of two or
3 more people. The Department has authority to issue
4 additional permits for herring spawn-on-kelp above the
5 annual possession limit if harvestable surpluses are
6 available.
7 Commercial herring vessels, permit holders, and crew
8 members may not take or possess herring in the 72 hours
9 prior to or following a commercial herring fishing
10 period.

11
12 Conservation Issues: There currently
13 are no conservation or management concerns for these
14 healthy stocks. From 1979 through present, with only
15 one exception, the Sitka Sound herring resource has
16 been above the current 20,000 ton threshold, and the
17 run has averaged 71,000 tons in the past five-year
18 period. Herring are managed under a conservative
19 management strategy that sets threshold biomass levels
20 below which commercial harvest does not occur and
21 limits harvest rates to 10-20% of the total mature
22 spawning biomass. This is a time-proven strategy that
23 provides for conservation of the resource. The area
24 proposed for closure is so small that it is unlikely to
25 provide conservation benefits above the threshold and
26 harvest rate, especially given the highly variable
27 nature of herring spawning behavior.

28
29 Jurisdiction Issues: The Board does
30 not have authority to close this area solely to
31 commercial herring fishing as suggested by the
32 proposal. Instead, the federal Board would have to
33 close the area to herring harvest by all non-federally
34 qualified users, which would include all subsistence,
35 commercial, or other harvests occurring under state
36 regulations. In this case, such a closure is not
37 necessary to provide for continued federal subsistence
38 and would violate section 815 of ANILCA. Such a
39 closure may also be detrimental to subsistence uses by
40 unnecessarily limiting options for management of
41 commercial fisheries and thereby increasing the
42 likelihood of impacts to higher subsistence use areas.

43
44 Other Issues: Management of the
45 commercial fishery involves a Memorandum of Agreement
46 (MOA) between STA, the Alaska Board of Fisheries, and
47 the Department. The MOA provides in-season
48 collaboration that includes: 1) daily contact between
49 STA and the Department; 2) Department consultation with
50 STA regarding whether a proposed opening might affect

1 subsistence opportunity; and 3) verbal and written
2 communication from STA explaining its reasoning to the
3 Department if STA concludes there is potential for a
4 proposed opening to negatively impact the subsistence
5 fishery. A formal objection by STA to a proposed
6 opening does not necessarily result in a commercial
7 closure, and the Department maintains discretion
8 regarding whether or not to open the fishery. However,
9 STA's objections are thoroughly considered by the
10 Department. The in-season consultative process
11 provides STA an opportunity to provide input for
12 consideration by the Department and may affect the
13 decision regarding whether to open an area for a
14 commercial fishery. Any changes to the MOA would
15 require approval by all of the signatories, including
16 the Alaska Board of Fisheries.

17
18 The state's regulatory management plan
19 for the Section 13-B sac roe fishery is: distribute
20 the commercial harvest by time and area if the
21 Department determines that it is necessary to ensure
22 subsistence users have a reasonable opportunity to
23 harvest. Closing a fixed area will provide less
24 opportunity for the Department to distribute the
25 harvest and may increase the chance of commercial
26 fishing taking place in [the vicinity of] better
27 traditional egg harvesting areas. Since the
28 management plan has been in effect (2002-2006),
29 subsistence ANS was not met in 2005. Preliminary
30 information recently provided to the Department
31 indicates subsistence harvest in 2007 again was below
32 the ANS range. Reasons that cumulative harvests may be
33 below ANS are only partly understood as described
34 below.

35
36 Herring biomass in Sitka Sound has
37 shown a long-term increase and is considered healthy.
38 In 2005 (the year that ANS was not met) the biomass was
39 at record, or near record, levels since biomass
40 estimates were first reported in 1978. The commercial
41 sac roe harvest of 11,366 tons in 2005 was around 14%
42 of the total estimated spawning biomass, a very
43 conservative harvest rate. Difficulty in meeting
44 subsistence needs that year was primarily due to a
45 large portion of the herring biomass spawning in an
46 area inaccessible to subsistence fishermen. The
47 estimated 50.2 total nautical miles of spawn in Sitka
48 Sound in 2007 was close to the average range (short-
49 term 53.4 nm and long-term 55.9 nm) averages. The
50 spawning biomass after the fishery, as estimated by

1 spawn deposition surveys, remained at a high level of
2 an estimated 84,501 tons (1997-2006 average = 54,321
3 tons, 2001-2006 average = 65,116 tons). Severe weather
4 occurred during the peak of the spawning event in 2007,
5 which likely limited many subsistence harvesters access
6 to the spawning grounds during that critical time.

7
8 Collective harvest success can be
9 diminished during any particular season when one or
10 more factors do not favor subsistence users, including:
11 inclement weather, spawn timing, spawn location, loss
12 or theft of sets, subsistence harvesters schedules,
13 and the amount of participation by a limited number of
14 individuals known as high harvesters who harvest for
15 distribution to others. If one or more of these
16 factors is unfavorable, the amount harvested can
17 drastically fluctuate and remain below ANS. It is
18 important to note that how the commercial fishery is
19 managed, either inside or outside of the Makhmati
20 Island area, may be less of a factor for the
21 subsistence fishery than these other factors.

22
23 Department Recommendation: Oppose.

24
25 MR. PAPPAS: And Tina has some
26 additional comments for us.

27
28 MS. CUNNING: In addition to our
29 official Department comments in your Board book, which
30 George just summarized, I'd like to make three
31 observations for your.

32
33 Someone testified earlier that the
34 State did not attend the subcommittee meeting which was
35 held in September at the request of the RAC, and that
36 is simply not true. We had Staff participate
37 extensively for the full morning, giving presentations
38 and historical information on herring stock, harvest
39 locations, and work clear back 20, 30 years. This was
40 done right in the middle of a fishery when other
41 fisheries were going on. It was a hardship for our
42 Staff. We were very understaffed right in the middle
43 of that fishery, and they were able to be there and
44 they participated as much as they could for that full
45 day. We had one staff person stay the whole day, as
46 well as the one doing the presentation.

47
48 As Chuck summarized, there is a need to
49 do further work on why the State's ANS is not being met
50 by the local subsistence harvesters, and we are just as

1 concerned about that as they are. There's -- when the
2 spawn is increasing like it has been, and it's healthy,
3 there's a number of other factors that have played into
4 it. One is that the weather -- both years ANS wasn't
5 met, the weather was a significant contributing factor,
6 and in the meetings that have been held which -- the
7 communication has been I think particularly helpful on
8 this issue, in those meetings when the -- some of the
9 commercial fishermen who were participating in those
10 meetings learned that it was the access due to size of
11 boats, being unable to get out during heavy weather
12 conditions, there was an offer made to use the
13 commercial boats to help transport the subsistence
14 harvesters to the spawn sites. And that's the kind of
15 cooperation and help that we want to see in the future.
16 That's a step, it's a good step.

17
18 Another problem that we have related to
19 that is that the amount of harvest -- the actual
20 information on the amount of harvest for ANS is done
21 late after the season. The data is not collected right
22 during the time that the harvest is occurring. It's
23 done through surveys later, and there's a lot of work
24 going on to try to perfect that information. Sitka
25 Tribe has got some money and investment in that. We're
26 working with OSM on trying to get better data on those
27 needs.

28
29 The third observation I'd like to be
30 sure you're aware of is that our Staff have worked
31 particularly hard. There was only one bad year where
32 the commercial fishery was probably conducted too close
33 to town. They're worked very hard to have these weekly
34 openings away from town and away from where the favored
35 harvest locations are for the Sitka Tribe. And, in
36 fact, every time we do an emergency opening, this is
37 how we do those fisheries, and the Sitka Tribe
38 petitions us related to what they want us open or not
39 open, the areas that they have expressed the most
40 concern in the last number of years have not included
41 Makhnati Island.

42
43 So I just wanted to add these
44 additional points for your consideration.

45
46 We agree with both Bert's comments and
47 Chuck's, that this is an on-going matter that involves
48 some close cooperation between the various entities.
49 We're committed to that. We have excellent Staff down
50 there. And it's probably one of the best run herring

1 fisheries in the State. And they will continue to be
2 committed to working closely with the Sitka Tribe as
3 they have.

4

5 CHAIRMAN FLEAGLE: Okay. Thank you.

6

7 MR. MELIUS: Mr. Chair.

8

9 CHAIRMAN FLEAGLE: Tom.

10

11 MR. MELIUS: You mentioned the offer to
12 utilize the larger boats. Is that being utilized or
13 taken advantage of?

14

15 MS. CUNNING: As far as we know, this
16 is the first year this has come up in which the -- I
17 don't think there was an awareness that it was really
18 the size of boats during inclement weather that was
19 limiting their access, and a couple of the herring
20 fishermen made it clear during those meetings that they
21 were willing to offer their boats. So I think you're
22 going to see some effort toward doing that this next
23 year.

24

25 MR. MELIUS: Thank you.

26

27 CHAIRMAN FLEAGLE: Okay. Thank you for
28 the comments. Can I hold this for the next session,
29 which is Board discussion with Council Chairs and State
30 liaison?

31

32 MR. ADAMS: Mr. Chairman. I just
33 wanted to make a comment about, you know, I failed to
34 observe the fact that the State were involved in this
35 process here, and I just wanted to let you know we
36 recognize that and appreciate it. George's
37 participation at the RAC meeting was very valuable to
38 us, and I'd just like to emphasize that. So that's it.

39

40 Thank you, Mr. Chairman.

41

42 CHAIRMAN FLEAGLE: Okay. Thank you,
43 Bert. Appreciate it.

44

45 Now move to the InterAgency Staff
46 Committee comments. Larry.

47

48 MR. BUKLIS: Thank you, Mr. Chairman.
49 The Staff Committee comments on FP08-18 can be found on
50 Page 270 and 271. I'll summarize the main points.

1 The Council believes -- the Staff
2 Committee noted that the Council believes that
3 forecasted biomass and non-attainment for two
4 consecutive years of the State's amounts necessary for
5 subsistence are two criteria that could be used to
6 close the area in a given year. The Council's
7 recommendation is to place these two criteria into
8 formal regulation.

9
10 The Staff Committee discussed those
11 criteria and the difficulty justifying the Council's
12 recommendation under the Board's closure policy, and
13 ANILCA Sections .805c and .815. Currently a successful
14 subsistence harvest is not guaranteed even at a high
15 biomass level. There are also no apparent correlations
16 between ANS not being met in one year and the following
17 year's subsistence harvest.

18
19 The Staff Committee discussed the need
20 for regulatory action. Some of the Staff Committee
21 felt that there is no reason regulatory action should
22 be taken since the forecasted biomass is usually
23 determined in February and the subsistence harvest from
24 the previous is reported before the sac roe fishery
25 occurs in March and April. Currently the in-season
26 manager has the delegated authority to close the area
27 around Makhnati Island to non-Federally-qualified uses
28 before the season for conservation reasons or for the
29 continuation of subsistence uses.

30
31 Conservation of herring was also
32 discussed. It has been mentioned that the area around
33 Makhnati Island, if closed, could provide a sanctuary
34 for herring spawning. The State's management threshold
35 of 20,000 tons seems to take into consideration
36 conservation of the resource as well as some level of
37 subsistence herring roe harvest.

38
39 Consistent with the Council's
40 recommendation, some of the Staff Committee felt that
41 having a higher threshold to trigger a closure to non-
42 Federally-qualified users in waters under Federal
43 jurisdiction would provide a meaningful subsistence
44 preference, and a higher standard for protection of the
45 resource for subsistence use in that area.

46
47 Finally, others have talked about the
48 size of the area. The Staff Committee noted that the
49 area under Federal jurisdiction is approximately 610
50 acres. Of that, approximately 537 acres are water,

1 with a lesser amount suitable for herring spawning.
2 The Staff Committee discussed the effects of closing
3 this small area and whether it would actually make a
4 difference to the resource or to commercial or
5 subsistence users.

6

7 Thank you, Mr. Chairman.

8

9 CHAIRMAN FLEAGLE: Thank you, Larry.

10

11 We're now ready for Board discussion,
12 including the State liaison and Council Chairs. Open
13 for comments. Denny, you look like you're leaning
14 forward.

15

16 MR. BSCHOR: Mr. Chair. I just wanted
17 to say thanks to everybody for the efforts this past
18 year. All in all I see some progress, and that's what
19 we intended by our action last year. And maybe it's
20 not perfect from everybody's perspectives, but I see
21 some progress.

22

23 I guess relative to the ANS question,
24 which this Board doesn't normally deal with by the way,
25 the -- I guess I need more information about what's
26 significant about the 20,000 figure versus the 35,000
27 figure, and what's the science behind that. That's for
28 anybody who thinks they want to answer. I'm not going
29 to specifically ask -- I'll just throw it open to the
30 group.

31

32 MR. ADAMS: Shame on you, that's a hard
33 question.

34

35 CHAIRMAN FLEAGLE: Terry.

36

37 MR. SUMINSKI: Mr. Chairman. Mr.
38 Bschor. I can speak more towards where the 35,000-ton
39 number came from. Maybe the State can help with the
40 20,000-ton number.

41

42 But basically the 20,000-ton number
43 comes from the State's management plan for the
44 commercial fishery. It's a threshold below which there
45 would be no commercial fishing. And the 35,000-ton
46 number is I think the Council's attempt to reach a
47 compromise between different numbers that were being
48 discussed. In the subcommittee the Sitka Tribe
49 presented a number of, you know, 40,000 tons.

50

1 Talking to one of the Council members
2 about where he came up with the 35,000-ton number, it
3 was the average between the 40,000-ton number and the
4 30,000-number that was kind of talked about in the
5 subcommittee, not really as a scientific number, but
6 just to start discussion. And then he also looked at
7 the long-term forecasted average for the fishery, which
8 is about 37,000 tons, so he just used that number of
9 35,000 tons. But we don't have an analysis, a
10 scientific analysis that that's the magic number.

11
12 I'm not sure if that helps, but that's
13 pretty much where that number came from, and maybe the
14 State can help you with where the 20,000-ton number
15 came from.

16
17 CHAIRMAN FLEAGLE: Tina.

18
19 MS. CUNNING: Regarding the 20,000
20 figure, it's in our comments under the conservation
21 issues where we say, from 1979 through present, with
22 only one exception, the Sitka Sound herring resource
23 has been above the current 20,000-ton threshold.
24 That's the threshold at which we would open it. That's
25 -- there has -- it's closed unless we know there's
26 above 20,000 tons out there. And the average run in
27 the last five years has been 71,000 tons.

28
29 CHAIRMAN FLEAGLE: Is that good, Denny?
30 Other discussion. Marsha.

31
32 MS. BLASZAK: Yeah. First of all, I
33 want to commend everybody who's been I think diligently
34 working on a very complex and difficult issue.

35
36 And some of the recommendations that I
37 wanted to point to that came out in the discussion
38 already is the suggestion that the Federal Government
39 become a party to the MOA with the State also with the
40 Tribe, that perhaps -- you know, not that we're any
41 better at collaboration than the rest of you, but
42 perhaps having another voice in the mix that can help
43 sort through these issues would be of benefit.

44
45 And, you know, I also want to
46 appreciate the volunteering of members of the Sitka
47 Herring Association to transport in larger vessels. I
48 think that -- and I guess I'd like to hear what kind of
49 feedback from that offer, if there was any discussion
50 on whether that was meaningful to members of the tribe

1 or not for fulfilling their concerns.

2

3 It just seems like there's a lot of
4 collaboration going on on this topic, and is there a
5 solution other than us regulating a number that we
6 apparently can't quite figure out how we got to.

7

8 CHAIRMAN FLEAGLE: On the question of
9 whether the offer to use larger vessels to assist, I
10 think that was addressed by one of the testifiers, but
11 I don't remember which one, from Sitka. Can you raise
12 your hand if that was -- they said basically it
13 was.....

14

15 MS. BLASZAK: Excuse me, Mr. Chairman.
16 I heard that there was an offer. I didn't hear that
17 there had been an acceptance of the offer, or if there
18 was a discussion amongst those who would potentially
19 accept or decline that offer as to why they might or
20 might not accept that offer. Is that unfair to.....

21

22 CHAIRMAN FLEAGLE: No, I think that
23 would fit in our discussion mix here, and we had either
24 Mike Miller or Mike Baines, if I could ask one or the
25 other to come forward. Mike Miller. Would you go
26 ahead and restate your question?

27

28 MS. BLASZAK: Yeah. Thank you, Mr.
29 Chairman. And perhaps it's -- because it was only
30 offered this year -- no? I'm getting a reaction. I
31 know that the offer and the concern that was raised
32 about the vessel size and getting out in rougher
33 waters, the question I have is whether that is an offer
34 that is potentially acceptable to members of the tribe,
35 if the alternative is not getting enough herring eggs.

36

37 MR. MILLER: Mr. Chair. That offer has
38 been on the table for quite some time. There actually
39 is a fair amount of commercial seiners that harvest
40 herring eggs also, and they share with the communities,
41 and also take it to a lot of other communities. We've
42 talked about that as a solution, you know, a stop-gap
43 thing or last resort thing, but there's a lot of
44 complexities to that. I think anybody that owns a
45 vessel can appreciate the liability that arises from
46 bringing somebody else on board to -- if they twist a
47 foot or break a leg or something like that. So we have
48 had other vessel owners that said they would not do
49 that for that reason. I wouldn't recommend that.

50

1 And one of the other things that we're
2 doing is -- you know, this is an on-going fishery. The
3 kids are embracing it. It's a food that's being used
4 more and more, and it's really hard for us as a group
5 to say, if you complain about something or if you have
6 problems, just complain and somebody will give you --
7 take care of it for you. They'll just bring it to you.
8 I mean, we're really trying to teach the younger kids
9 to go out and work for these things, and, you know, it
10 means so much more to learn about protecting resources
11 in general if they're hands on. And so we really don't
12 like to go that route of saying, well, somebody will
13 just give it to us later on.

14
15 So it is a generous offer and we do at
16 times take it on. We've even had boats transport eggs
17 for us to different communities. But it certainly
18 doesn't fix the situation.

19
20 Thank you.

21
22 CHAIRMAN FLEAGLE: Thanks, Mike.
23 Niles.

24
25 MR. CESAR: I'd just like to amplify
26 the point that Mike made. I mean, many vessels who may
27 be home-ported in Ketchikan or Craig, somewhere of
28 Prince of Wales Island, have in fact taken eggs every
29 year. They generally provide eggs to their relatives
30 and friends in those locations. But I think I agree
31 with Mike in terms of is that a long-term solution?
32 Probably not in my estimation.

33
34 CHAIRMAN FLEAGLE: Thanks, Niles. Tom
35 Lonnie.

36
37 MR. LONNIE: Thank you, Mr. Chairman.
38 I think I'd direct this question to Terry. But there's
39 been quite a bit of discussion regarding the 35,000-ton
40 cut-off.

41
42 The proposal also calls for a cut-off
43 after two consecutive years of not reaching ANS. Is
44 there a correlation between what happens one year, and
45 what may happen the next year in terms of the harvest?

46
47 MR. SUMINSKI: Mr. Chairman. Mr.
48 Lonnie. And if -- I think what you're leaning towards
49 is what is really the core of the issue, is what is the
50 connection between the commercial fishing activity and

1 amounts necessary for subsistence being met.met.

2

3 And if you look at the numbers on the
4 table on Page 252, there's years where there's fairly
5 high biomass estimates and needs weren't met. And, you
6 know, we haven't done a statistical, you know, analysis
7 of correlation, but, you know, just looking at those
8 numbers, you would see, no, maybe not, you know. But
9 on the other hand, there could be other reasons that
10 explain why the fishery didn't -- the subsistence
11 fishery didn't perform other than just the overall
12 biomass that was in Sitka Sound.

13

14 And I think overall in general, as with
15 most fisheries, the more fish that are available, the
16 better chance that people have of catching fish.

17

18 So, you know, that really is the issue.
19 What is that connection there, and I don't know if we
20 know that. So I hope -- does that help?

21

22 MR. LONNIE: Yes, thank you.

23

24 CHAIRMAN FLEAGLE: Thanks, Mike. I
25 thought maybe the question was going to be directed at
26 you, but appreciate you coming back up.

27

28 Continued discussion, Board members.
29 Commissioner.

30

31 COMMISSIONER LLOYD: Thank you, Mr.
32 Chairman. I guess I'm presuming that there will be a
33 motion on the table to accept the RAC's recommendation,
34 and I wanted to reaffirm some comments from the
35 InterAgency Staff Committee and some of those from the
36 Department, but in a more general way.

37

38 Certainly closures of areas are very
39 serious steps to take. And in this regard, although we
40 don't believe that your closure policy is specific
41 enough to utilize the existing -- your new existing
42 closure policy to make a few remarks.

43

44 Closures are stated to be necess -- are
45 to be imposed under a suite of identifiable conditions.
46 And the first one of those is that a closure would be
47 necessary for the conservation of healthy populations.
48 And in this case, it's fairly clear from the data that
49 there's no concern, no real concern for the health of
50 this population, and in act we're slated to have a

1 fishery this coming year, based on established fishery
2 management principles, of a very high harvest. And
3 it's indicative of a very high biomass.

4
5 The second criterion in your new
6 closure policy is that closures must be necessary to
7 ensure the continuation of subsistence uses. And
8 there's been no assertion here that there's a threat to
9 the continuation of the subsistence uses. They will
10 continue.

11
12 The issue at hand seems to be whether
13 or not the amount that is being accessed by the
14 subsistence users is satisfactory by one measure or
15 another. And one measure is the State's ANS
16 requirements, and maybe we need to fall back on those,
17 because there is no Federal subsistence use amount
18 program, but also it's clear from public testimony that
19 there's some concern more generally that subsistence
20 uses haven't been satisfied at least in a few
21 identifiable years.

22
23 What has come -- what is pointedly of
24 interest to me is that even the subcommittee that was
25 put together at the request of the Southeast RAC, as
26 one of their main recommendations, indicates that
27 agency managers and biologists, the tribe, commercial
28 seine representatives and others knowledgeable of the
29 fishery should work together to determine what's been
30 the cause of the low subsistence harvest. So there's
31 no indication that the closure of the Makhnati Island
32 area would serve to solve that unidentified problem.
33 And, in fact, you've heard testimony from the
34 Department that it's possible that a closure like that
35 would displace effort that would actually increase
36 competition in other areas where subsistence users
37 might be trying to access the resource. So in that
38 case, an action in this regard might have unintended
39 consequences and actually produce a negative result
40 rather than a positive one.

41
42 I'm also reminded that the primary
43 focus of your program is the regulation of subsistence
44 uses. We've heard some suggestions here that a closure
45 at Makhnati Island might be a prudent move to establish
46 a conservation zone, and that is not the regulation of
47 subsistence uses, but rather would be an entirely
48 different management action, and not that we in the
49 State of Alaska believe is under the purview of the
50 regulation of subsistence uses.

1 And finally I'm concerned, and I hope
2 you'll take my concern to heart, that a closure such as
3 this does not follow reasonable fishery management
4 approach to a question such as this where we have
5 spawning herring that in any particular year could be
6 found to spawn in different locations around Sitka
7 Sound. So establishing one particular closed area is
8 not a responsive management approach to that kind of
9 fishery management problem. And I would suggest that,
10 in fact, this type this type of closure would violate
11 recognized fishery management practices for this type
12 of fishery.

13

14 Thank you, Mr. Chairman.

15

16 CHAIRMAN FLEAGLE: Thank you,
17 Commissioner Lloyd.

18

19 Further discussion. Bert.

20

21 MR. ADAMS: I have a question for
22 Commissioner Lloyd. I appreciate your comments, but
23 last year when we were deliberating this, there was a
24 commercial harvester, I don't see him in the audience
25 now, but he came and gave a testimony, and he was also
26 asked a question that if that particular area was left
27 open for commercial fishing, would he go in there and
28 harvest herring out of that area, and his answer was,
29 yes. And being such a small area, you know, this
30 really concerned me and a lot of other people when that
31 statement was made, and it won't take very much of a
32 sweep, you know, to wipe out that area completely.

33

34 I'll use Yakutat as an example. Way
35 back in the 1950s, you know, we used to have herring in
36 abundance there, but it was only enough to meet our
37 local needs. And we had a commercial herring boat come
38 in there and they made about three sweeps off of Knight
39 Island, and they wiped out that whole herring stock out
40 there, and it took nearly 50 years for it to come back
41 again.

42

43 And so, you know, I think this is a
44 concern that needs -- for me, needs to be addressed, a
45 statement like that, if a commer -- if that place was
46 open, would any commercial activity be taken there,
47 and, you know, and the answer was in the affirmative.
48 So I think my question would be, you know, how would
49 you handle a situation like that if it occurred.

50

1 CHAIRMAN FLEAGLE: Thanks, Bert.
2 Denby, do you want to respond?

3
4 COMMISSIONER LLOYD: Well sure, I mean,
5 he asked me a direct question. I don't necessarily
6 have a direct answer. But we don't manage the Sitka
7 herring fishing on a site specific basis in terms of
8 permanent closures. We're responding to annual
9 conditions as we see them on the grounds. And that
10 same type of question I suppose could be applied to any
11 place along the coastline of Sitka Sound. It could be
12 applied to other islands groups, it could be applied to
13 various portions of the road system. But what we are
14 managing there is the whole stock within Sitka Sound
15 that we do know rotates its areas of spawning year to
16 year. So I guess I don't have an immediate response to
17 why, you know, a particular fisherman might want to go
18 in a certain area and whether or not that in and of
19 itself is a risk. But I would suggest that our current
20 management program has kept the spawning stock at a
21 fairly high and productive level, and we're enjoying
22 productive fisheries.

23
24 Mr. Chairman.

25
26 CHAIRMAN FLEAGLE: Further discussion.
27 Randy.

28
29 MR. ALVAREZ: Thank you, Mr. Chair.

30
31 I've got a question. I don't know who
32 can answer it, but -- and I'll provide a little
33 information of the herring fishery that I'm familiar
34 with is the Togiak fishery. And I believe it's the
35 biggest in the state. My question is that are there
36 any areas in the Sitka herring fishery that are closed
37 currently? Because in Togiak, the fishery over there,
38 there are a couple of areas that are usually closed.
39 And my memory is one area has been open a few times,
40 Maribeck Bay, and Ungalikthluk Bay I think it's --
41 somebody said it was open once since '80, and it's
42 closed to commercial fishing or commercial harvest.
43 And people, I assume they're allowed to gather
44 subsistence kelp, eggs from there when it's closed.

45
46 But another comment I wanted to make
47 is, you know, it's when you're gathering, it needs to
48 be protected waters, because you can't harvest sub --
49 you know, eggs on kelp or branches if it's buddy or
50 sandy, it's just no good to you. You know, it has to

1 be clean eggs and kelp, and, you know, have protected
2 areas. So not every area in the whole fishery is going
3 to be suitable for gathering. And I just wanted to
4 make that comment, and -- if there an area that is
5 closed in the Sitka fishery, because, you know, in my
6 opinion, having a closed area, or a couple of closed
7 areas like we do in Togiak, everybody still gets their
8 -- you know, catches their quota, or just about, you
9 know.

10

11 Thank you.

12

13 CHAIRMAN FLEAGLE: Thank you, Randy.
14 Is there somebody that can answer the question about
15 closed, current closed areas in the Sitka Sound
16 fishery? Tina.

17

18 MS. CUNNING: We're working on that
19 over here.

20

21 One thing I would observe in response
22 to Randy's comments is that the herring fishery in
23 Sitka is opened by emergency order, and it's -- the
24 areas that are preferred areas for harvest for
25 subsistence are relatively easily accessible by the
26 community are well known by our Staff. And as each of
27 those weekly openings comes up under emergency order,
28 the fishery is distributed. It's moved around to
29 protect those spawning areas. And that's why that
30 fishery's managed so tightly and so carefully that it's
31 got an increasing biomass. It's probably even more
32 tightly regulated to protect biomass than the Togiak
33 fisheries, which is an excellent fishery.

34

35 Steven, do you have something you want
36 to add to that?

37

38 MR. DAUGHERTY: I would just add that
39 the regulatory areas that can be opened for the Sitka
40 Sound herring stock do not include all of the area in
41 which that stock is found. We've had testimony before
42 the Alaska Board of Fisheries that that stock can be
43 found extending into other subdistricts that are not
44 open -- or that cannot even be opened, or they're not
45 included in the list of places that be opened by
46 emergency order.

47

48 Thank you, Mr. Chair.

49

50 CHAIRMAN FLEAGLE: Thank you. Bert.

1 MR. ADAMS: I was just going to say,
2 you know, I forgot to mention this, you know, at the
3 beginning of the meeting, for the benefit of Tom and
4 Marsha and Tom over there, I made it pretty clear, you
5 know, on previous meetings that I don't answer hard
6 questions. It's a policy of mine. And that's why I
7 have excellent staff members such as the coordinator
8 and, you know, staff people like Terry Suminski. And I
9 wonder if Terry might have an answer for that question.
10 Or Bob.

11
12 CHAIRMAN FLEAGLE: Terry.

13
14 MR. SUMINSKI: Mr. Chairman. Mr.
15 Adams. There are no areas within Sitka Sound that have
16 -- that are permanently closed to either commercial or
17 subsistence fishing. There may be areas outside of the
18 authorize fishermen -- or fishery like the State has
19 offered, but, no, there's no -- nothing that's off
20 limits within Sitka Sound.

21
22 CHAIRMAN FLEAGLE: All right. Thank
23 you. Marsha.

24
25 MS. BLASZAK: It strikes me with the
26 tight management that Tina's described that this
27 fishery in combination with the voluntar -- or, excuse
28 me, the collaborative work under the MOA, is there any
29 way to perhaps voluntarily through your opening
30 process, try a closure in this Makhnati area for two
31 seasons to see if there is a significant difference in
32 the subsistence success rather than having this Board
33 regulate?

34
35 MS. CUNNING: We're not aware that
36 there's been any directed subsistence harvest in that
37 area in the last couple of years. The preferred areas
38 for the subsistence harvest have been other accessible
39 areas off the road system, and not within the Makhnati
40 area.

41
42 CHAIRMAN FLEAGLE: Other discussion.
43 Denny.

44
45 MR. BSCHOR: No, I'm just curious about
46 the question, and maybe I should ask clarification.
47 Were you talking about closure relative to not allowing
48 commercial harvest in there, or just closing
49 everything?

50

1 MS. BLASZAK: Because we're considering
2 a proposal specific to Makhnati Island, and my
3 understanding is it would be closed to commercial
4 harvest, if I understand the proposal correctly. Yes,
5 that's the answer. Or, yes, that's my assumption,
6 Denny.

7
8 CHAIRMAN FLEAGLE: Commissioner Lloyd.

9
10 COMMISSIONER LLOYD: Well, Mr.
11 Chairman, I'm becoming confused now, because the
12 original proposal did refer directly to a closure of
13 commercial harvest, but as I understood it, the amended
14 proposal talked about a general closure. So is there a
15 Staff member that can help clarify that potential
16 distinction?

17
18 CHAIRMAN FLEAGLE: Terry.

19
20 MR. SUMINSKI: Mr. Chairman. Mr.
21 Lloyd. Yeah, the original proposal was phrased with
22 not allowing commercial fishing in March and April, but
23 since we're -- we don't regulate state fisheries, it
24 would -- the closure that we would implement would be
25 one that would be to all by Federally-qualified
26 subsistence users. That would be the actual technical
27 way of doing it.

28
29 Thank you.

30
31 MR. BSCHOR: Which is our only
32 authority.

33
34 MR. SUMINSKI: Right. If I could offer
35 one point of clarification on the use of Makhnati by
36 subsistence users, there is subsistence use in there
37 every year. So I'm not -- not to conflict with Tina,
38 but I -- and maybe she was talking about something
39 different.

40
41 Thank you.

42
43 CHAIRMAN FLEAGLE: I saw heads shaking
44 negative behind her as well, and I think that we heard
45 in testimony that people have used that area.

46
47 Other comments. Marsha.

48
49 MS. BLASZAK: I just want to
50 acknowledge Commissioner Lloyd's comment that we don't

1 regulate commercial fishing.
2
3 MS. CUNNING: We'd like to clarify our
4 comment.
5
6 CHAIRMAN FLEAGLE: Tina, go ahead,
7 please.
8
9 MS. CUNNING: Do you want to do it? Go
10 ahead.
11
12 MR. PAPPAS: Yes. At this time I'm not
13 sure -- the Department's not aware of a survey that
14 estimates amount of harvest in that area by subsistence
15 users. That's what we were trying to get towards. Not
16 that it's not used. Okay.
17
18 CHAIRMAN FLEAGLE: Thanks for the
19 clarification.
20
21 We got the round robin discussion to
22 where we're ready to start deliberating. Somebody
23 ready to put a motion out? Tom.
24
25 MR. LONNIE: Mr. Chair. I'm prepared
26 to put out a motion. Mr. Chair. I move to adopt
27 Southeast Regional Advisory Council's recommendation on
28 Proposal FP08-18.
29
30 MR. CESAR: I'll second that. Mr.
31 Chairman. Did you get that?
32
33 CHAIRMAN FLEAGLE: Yes, we do. Thanks,
34 Niles.
35
36 We have a motion and a second. Mr.
37 Lonnie, would you go ahead and speak to your motion,
38 please.
39
40 MR. LONNIE: Mr. Chairman. I'm having
41 difficulty justifying the Council's recommendation
42 under the Board's closure policy and ANILCA Sections
43 .805c and .815. I do not believe there's substantial
44 evidence that a conservation concern exists or that the
45 closure's needed to insure the continuity of
46 subsistence uses. Based on those reasons, I do not
47 intend to support this motion.
48
49 It is obvious to me through testimony
50 and data presented that there are years where

1 subsistence needs have not been met. But it is unclear
2 to me what the reason is. Therefore, I do not believe
3 we have substantial evidence to support the Regional
4 Council's recommendation at this time.

5

6 Thank you, Mr. Chairman.

7

8 CHAIRMAN FLEAGLE: Thank you, Tom.

9 Other discussion. Denny.

10

11 MR. BSCHOR: Mr. Chairman. I'm right
12 where Tom is. But that said, I still think there is a
13 lot more room for figuring out what criteria might be.
14 We do have the capability on a case-by-case basis on
15 the Federal waters for in-season closures, you know,
16 and it sounds like we still don't have really good
17 criteria yet to even make such a decision. And that
18 decision-maker I believe is sitting in the room, Carol
19 Gallark (ph), our ranger there, would be responsible
20 for that. For her sake, I would hope that if this
21 motion is not -- or is defeated, that we would still
22 work together to manage this fisheries in a way that's
23 coordinated and continues to improve the situation with
24 the resource.

25

26 CHAIRMAN FLEAGLE: Tom.

27

28 MR. MELIUS: Mr. Chair. Likewise I
29 appreciate everybody's testimony and comments on this
30 particular proposal. We're now at a point where we're
31 having proposals being made by an author that's not
32 supporting the proposal, so maybe that's going to avoid
33 our confusion that we had yesterday with some of these.

34

35 I do though believe that in listening
36 to the testimony and information that there is not a
37 conservation concern with the biomass information that
38 we've heard. I do have some concern though about the
39 conservation -- or the subsistence need not being met,
40 but due to weather or areas where the spawn is for that
41 particular years could lead towards the ANS not being
42 achieved. I do -- I am aware of the efforts going on
43 with other ways to use vessels to maybe get the
44 subsistence need, and I hope that those continue. But
45 at this particular point, I don't believe there's a
46 conservation concern, and I would not be supportive of
47 Council's proposal.

48

49 CHAIRMAN FLEAGLE: Thank you. Marsha.

50

1 MS. BLASZAK: Yeah. I really
2 appreciate the difficulty of this issue, but I'm also
3 having a hard time reaching the conclusion that we're
4 meeting the criteria laid out for us in ANILCA to vote
5 in favor of a closure at this time.

6
7 I would highly recommend, and I think
8 it's already underway and ongoing, that the continued
9 collaboration and problem solving that I see, a strong
10 willingness on everybody's part to accomplish continue,
11 and continue in earnest as, you know, hopefully there
12 will be some relief in the amount of take that's
13 available for subsistence. But I don't see the
14 conservation concern here, and I'm not going to be able
15 to support the proposal.

16
17 CHAIRMAN FLEAGLE: Niles.

18
19 MR. CESAR: Well I certainly think we
20 hit one criteria, which is the subsistence take. I
21 think there was some real concern by the folks from
22 Sitka about that ability to get as much as they need.
23 And I think the last -- three of the last seven years
24 it's been demonstrated.

25
26 And I would remind the Board that we
27 are here to protect the subsistence opportunity. We're
28 not here to protect any other things that I'm aware of
29 but that opportunity within conservation of the stock.
30 And I'm concerned that I hear talk of the State and the
31 tribe and the RAC trying to come to some agreement on
32 this, but I'm not certain in my mind it's reaching any
33 help to the subsistence user in the Sitka Sound. So I
34 -- although obviously I'm not very good at science, but
35 I can count the numbers as far as I know, so I know
36 that this is not going to pass. But I just remind the
37 Board that we do have in fact a responsibility to
38 protect, as you all know and more than I, that we need
39 to press on with making sure that the subsistence use
40 is protected.

41
42 And for that reason, I intend to
43 support the proposal.

44
45 CHAIRMAN FLEAGLE: Thank you, Niles.

46
47 I'll weigh in. I want to first of all
48 say that I am sympathetic to the folks in the Sitka
49 area that bring this issue forward. And just based on
50 the information that we were looking at last year,

1 which was again provided for us as Appendix A in the
2 Board book this year, the waters around Makhmati
3 Island, while not entirely always used, sometimes it's
4 the whole portion or just the north portion or south
5 portion, have been fished 6 out of 15 of the years
6 prior to last year. And when you break those numbers
7 down, according to the report, a lot of those harvests
8 occurred in the recent years, 2001, 2003, 2005, 2006.
9 So, I mean, it just stands to reason that, yeah, there
10 is probably a correlation in the fishing -- the
11 commercial fishing occurring and the problems with the
12 harvest. So I do recognize that.

13

14 But I also recognize that I think we've
15 heard ample evident that a closure of this area would
16 probably not have any significant benefit to either the
17 commercial industry or the sac roe -- I mean, the
18 herring roe harvest. And when we look at our reasons
19 that we're authorized to make closures, it's based on
20 the conservation of the resource, and in this case I
21 feel clearly that with an increasing biomass of
22 herring, we don't have a conservation issue.

23

24 I recognize your argument, Niles, that
25 we are primarily responsible to look at subsistence,
26 but when it comes to closures, our charge is more
27 pointed, and that's the conservation of the resource.

28

29 One last item I do want to touch on
30 though, and that's the deference to the RAC
31 recommendation, and I know that we have Section .805c
32 that gives -- that says that we shall -- the Secretary
33 may choose not to follow any recommendation which he
34 determines is not supported by substantial evidence,
35 violates recognized principles of fish and wildlife
36 conservation, or would be detrimental to the
37 satisfaction of subsistence needs I think that it's
38 pretty clear in my mind at least that we don't have
39 substantial evidence that this closure would in fact
40 produce the results that are being requested.

41

42 And I am encouraged that the State is
43 willing to step up their efforts to work with the Sitka
44 Tribe in this area and with the commercial fishers'
45 interest in helping out in any way they can. And I
46 think that with that, we should see some improvement in
47 this harvest.

48

49 I guess that's all I have to say. I
50 intend to vote against the proposal as well.

1 Further comments.
2
3 (No comments)
4
5 CHAIRMAN FLEAGLE: We're ready for the
6 question?
7
8 MR. MELIUS: Call the question.
9
10 CHAIRMAN FLEAGLE: The question's
11 called. Pete.
12
13 MR. PROBASCO: Thank you, Mr. Chair.
14 Final action on FP08-18 to adopt the proposal with
15 modifications as recommended by the Southeast Alaska
16 Subsistence Regional Advisory Council. Mr. Bschor.
17
18 MR. BSCHOR: No.
19
20 MR. PROBASCO: Mr. Melius.
21
22 MR. MELIUS: No.
23
24 MR. PROBASCO: Ms. Blaszak.
25
26 MS. BLASZAK: No.
27
28 MR. PROBASCO: Mr. Fleagle.
29
30 CHAIRMAN FLEAGLE: No.
31
32 MR. PROBASCO: Mr. Lonnie.
33
34 MR. LONNIE: No.
35
36 MR. PROBASCO: And Mr. Cesar.
37
38 MR. CESAR: Yes.
39
40 MR. PROBASCO: Motion fails, 1/5.
41
42 CHAIRMAN FLEAGLE: Okay. Thank you.
43 That concludes our discussion on the Southeast area
44 proposals. And I want to thank Bert for all your hard
45 work in helping us move through those, and for the
46 Southeast Staff.
47
48 Now, we did have a request from
49 Southcentral Chair Lohse, who is not going to be able
50 to be back with us until 1:00 o'clock, that he would

1 like to be present for those Southcentral issues, and
2 I'd like to honor that request. So I'm wondering if --
3 we've got 40 minutes before we break for lunch, if we
4 should just go ahead and move down the agenda and take
5 up the Proposal 11, which is the Alaska Peninsula and
6 Chignik areas.

7

8 MR. PROBASCO: We're ready.

9

10 CHAIRMAN FLEAGLE: Do we have Staff
11 that would -- okay. Let's stand down for five minutes
12 while we change out Staff, and then we'll come back on
13 with Proposal 11.

14

15 (Off record)

16

17 (On record)

18

19 CHAIRMAN FLEAGLE: Good morning. The
20 Federal Subsistence Board reconvenes. And we're taking
21 Proposal 08-11 slightly out of cycle to give the Chair
22 of the Southcentral RAC an opportunity to be present
23 for his area concerns.

24

25 And we have new Staff ready to do the
26 presentation. And I'd like to welcome both Cliff and
27 Liz to the table. And I'll turn it right over to you,
28 Liz, for the presentation.

29

30 MS. WILLIAMS: Thank you, Mr. Chair and
31 the Council. My name is Liz Williams. I'm an
32 anthropologist at the Office of Subsistence Management.

33

34

35 And the analysis for Fisheries Proposal
36 08-11 begins on Page 323 in the book. And this
37 proposal was submitted by the Aniakchak Subsistence
38 Resource Commission, and they request the addition of
39 snagging to the legal methods of harvesting salmon for
40 the Alaska Peninsula and Chignik areas. Communities in
41 these two areas include Chignik, Chignik Lagoon,
42 Chignik Lake, Port Heiden, Perryville, Ivanof Bay,
43 Meshik, Sand Point, Port Moller, Nelson Lagoon, False
44 Pass, Cold Bay and King Cove.

45

46 According to the proponent, snagging
47 provides an efficient and selective method for the
48 harvest of individual salmon. The proponents would like
49 to harvest one or two salmon for a camp meal, or one or
50 two salmon at specific spawning stages. This proposal

1 is not intended to replace or supplement fisheries in
2 which the bulk of the subsistence harvest occurs.

3
4 The practice of harvesting individual
5 salmon for immediate use is a customary and traditional
6 practice throughout rural areas of South Coastal
7 Alaska.

8
9 Last January at a Board meeting a
10 similar proposal, FP07-06 was approved by the Board
11 with modification, and that proposal requested the
12 legalization of these same methods, snagging, spear or
13 arrow, and hand capture, as legal methods and gear
14 types for the harvest of salmon in Lake Clark and it's
15 tributaries by Federally-qualified subsistence users,
16 and that's adjacent to the Chignik and Alaska Peninsula
17 areas in this proposal.

18
19 The intent of this proposal, like that
20 proposal from last year, is to legalize a traditional
21 method of harvesting salmon.

22
23 It's not standard procedure for a
24 proposal analysis to expand upon a proposal request.
25 However, I consulted with several of the proponents,
26 members of the Aniakchak SRC, and they confirmed that
27 modification to include the same types of harvest
28 methods, spear or arrow, hand capture, that were
29 adopted through FP08-06 is also consistent with their
30 proposal, which is to provide for varied harvest
31 methods for harvest of individual specific salmon. The
32 Bristol Bay RAC also supported the modifications to
33 this proposal.

34
35 The areas affected by this proposal as
36 I mentioned before are the Federal public waters within
37 the Alaska Peninsula and Chignik areas. Federal
38 jurisdiction includes all navigable and non-navigable
39 waters within the exterior boundaries of the Aniakchak
40 National Monument and Preserve and the Alaska Peninsula
41 National Wildlife Refuge, and inland waters adjacent to
42 the exterior boundaries of the Aniakchak National
43 Monument and Preserve and the Alaska Peninsula National
44 Wildlife Refuge.

45
46 If you look at the map on pages 330 and
47 331, you can see that this is a cross-over proposal,
48 because the Bristol Bay and the Kodiak/Aleutians RAC
49 boundaries straddle the boundaries of the Alaska
50 Peninsula and Chignik areas and the Alaska Peninsula

1 National Wildlife Refuge. So the eastern Aleutian
2 Island communities of Sand Point, Port Moller, Nelson
3 Lagoon, False Pass, Cold Bay and King Cove are within
4 the Alaska Peninsula area, and these communities would
5 also fall under the proposed regulations if this
6 proposal is adopted by the Board.

7
8 Currently there isn't a representative
9 from these communities on the Kodiak/Aleutians RAC,
10 which took no action on this proposal, because they
11 felt they didn't have enough information to make an
12 informed decision.

13
14 If these regulations aren't agreeable
15 to these communities, however, they don't have to
16 participate in the type of fisheries proposed.

17
18 If this proposal is adopted, Federally-
19 qualified subsistence users could legally engage in
20 snagging, spear/arrow, or hand capture to harvest
21 salmon in more efficient and selective manner. These
22 proposed gear types might affect the efficiency of the
23 harvest, but they probably won't increase the overall
24 harvest.

25
26 When the Board approved FP07-06, ADF&G
27 stated its inability to allow harvest by these methods
28 to be reported on the State subsistence fishing permit,
29 because these methods of harvest are illegal under
30 State law. In response to ADF&G concerns about the
31 permit, the Board decided that salmon may also be taken
32 without the State subsistence permit in Lake Clark and
33 its tributaries by snagging, and this same language has
34 been added to this modified proposal. And this is
35 because it's expected to be a very small harvest.

36
37 So the OSM preliminary conclusion is to
38 support Proposal FP08-11 with modification to allow
39 harvest without a permit of salmon by snagging, using a
40 spear, bow and arrow or capturing by bare hand. And
41 the regulation should read, in the Chignik and Alaska
42 Peninsula areas, you may also take salmon without a
43 permit by snagging, using a spear or bow and arrow, or
44 capturing by bare hand.

45
46 Thank you, Mr. Chair. That concludes
47 my analysis summary.

48
49 CHAIRMAN FLEAGLE: Thank you, Liz. Do
50 we have a summary of written public comments on this,

1 Cliff?

2

3 MR. EDENSHAW: Mr. Chair and Board
4 members. There weren't any written public comments.

5

6 CHAIRMAN FLEAGLE: Thank you. Any
7 interest in public testimony, Pete.

8

9 MR. PROBASCO: Mr. Chair, I have no one
10 signed up for Proposal 11.

11

12 CHAIRMAN FLEAGLE: Okay. Thank you.
13 And we now turn to the Regional Advisory Council. As
14 stated, Kodiak/Aleutians did not take any action.
15 They're not represented here. But we do have Randy
16 from the Bristol Bay. Randy.

17

18 MR. ALVAREZ: Thank you, Mr. Chair.
19 Our Council supports the proposal with modification as
20 it states here. And will discuss it later on at the
21 discussion period, if that would be appropriate.

22

23 Thank you.

24

25 CHAIRMAN FLEAGLE: Thank you. Alaska
26 Department of Fish and Game comments. George.

27

28 MR. PAPPAS: Thank you, Mr. Chair.
29 George Pappas, Department of Fish and Game.

30

31 This proposal would add snagging with a
32 hook and line as a legal means to harvest all species
33 of salmon in freshwaters in the State of Ala -- Alaska
34 Peninsula and Chignik fisheries management areas.
35 Federal Staff recommends the proposal be expanded to
36 include additional methods and means recently adopted
37 in Lake Clark. Federal Staff also recommends expanding
38 the original proposal to include communities and areas
39 which have not requested liberalization of Federal
40 subsistence fisheries.

41

42 The Alaska Board of Fisheries recently
43 considered and decided not to allow snagging as a means
44 of harvest in freshwaters of Alaska.

45

46 If this proposal's adopted, a separate
47 Federal permit will be required because this method is
48 not allowed by the State. Federally-qualified
49 subsistence users would be required to use a separate
50 Federal permit to sue the proposed methods because

1 such cannot be authorized by State permits. Federally-
2 qualified subsistence users would also have to be sure
3 they are on -- standing on Federal lands or in a boat
4 if they are using the proposed methods.

5
6 And, Federal Staff, if you don't mind
7 putting up our map there that's on Page 337 and 338 of
8 your book.

9
10 MS. CUNNING: Theo.

11
12 MR. PAPPAS: He's working on it.

13
14 MS. CUNNING: Is he?

15
16 MR. PAPPAS: Yeah. Okay. Travel to
17 use this method on Federal lands would be costly in
18 some situations. Liberal State subsistence fisheries
19 are allowed on all lands, so the methods are not needed
20 for meaningful subsistence harvest and would be
21 confusing for users and complicated for enforcement --
22 complicating -- excuse me -- complicated for
23 enforcement personnel.

24
25 To see an example, here's a map that's
26 also on Page 338 of your books. You'll see the Chignik
27 watershed there, and you'll notice that the tan area is
28 not Federal properties. And for someone from Chignik
29 Lagoon, Chignik Lake or Chignik Bay to actually travel
30 to Federal properties to fish from shore, it would be a
31 significant investment of time and effort, energy, to
32 actually get up past the delta, up in the Black Lake
33 area and up into a tributary to fish from Federal
34 lands.

35
36 The use of snagging as a legal method
37 may increase harvest and, incidently, mortality of
38 salmon throughout the drainages of the Alaska Peninsula
39 by an unknown amount. It is not known whether such
40 harvest would be large enough to raise any conservation
41 concerns or issues on individual tributaries of on
42 creeks and streams with small salmon populations.

43
44 We'd also reiterate Trooper Waldron's
45 comments yesterday that a person standing on State or
46 private land, using methods prohibited by State
47 regulations would likely be cited.

48
49 If the Federal Subsistence Board allows
50 snagging the Federal agencies would be responsible for

1 permitting, reporting and monitoring the fishery.
2 Issuing multiple permits and requiring separate
3 reporting would be confusing and cumbersome for
4 Federally-qualified subsistence users. Discussions at
5 the Regional Council level indicated that if this
6 proposal is adopted, Federal subsistence permits would
7 not be required for Federally-qualified users who
8 choose to snag, spear, use a bow and arrow or hand
9 capture as methods of harvest. If Federal Staff are
10 not going to require permits, there will be no
11 mechanism to advise Federally-eligible users where they
12 can fish under Federal regulations. No information
13 would be available on effort and annual harvest
14 information would not be collected.

15
16 The Department's recommendation is to
17 oppose this, and we have some more comments from Tina.

18
19 MS. CUNNING: I just want to reiterate
20 in summary with George's comments that we have an
21 objection to the efforts that are made to expand the
22 original proposals to include methods and means and
23 areas that are not being originated by the subsistence
24 users.

25
26 Secondly, with this proposal, it's
27 really important that the Federal responsibility to
28 monitor the harvest and effort be conducted, because
29 otherwise, with little monitoring and little
30 enforcement, we'll have no idea what actual uses are
31 occurring or what kind of harvests are happening on the
32 ground.

33
34 Thank you.

35
36 CHAIRMAN FLEAGLE: Thank you. I have
37 InterAgency Staff Committee comments. Larry.

38
39 MR. BUKLIS: Thank you, Mr. Chairman.
40 The Federal InterAgency Staff Committee found the Staff
41 analysis to be a complete and accurate evaluation of
42 the proposal, and the recommendations of the Regional
43 Advisory Councils to be consistent with ANILCA Section
44 .805c.

45
46 CHAIRMAN FLEAGLE: Thank you, Larry.

47
48 Board discussion. Marsha.

49
50 MS. BLASZAK: Mr. Chairman. I have a

1 question. Because we approved a similar proposal last
2 year in FP07-06 for Lake Clark. Do we have any
3 information from that harvest if there were any
4 problems with the adoption of that regulation for Lake
5 Clark?

6

7 CHAIRMAN FLEAGLE: George.

8

9 MR. PAPPAS: Sorry. No comment.

10

11 CHAIRMAN FLEAGLE: Okay. Larry.

12

13 MR. BUKLIS: Mr. Chairman. Ms.
14 Blaszak. Permits were not required for that
15 incidental, small scale harvest method, and so we don't
16 have permit report data. I think your question
17 included something about permits or information. As
18 Ms. Williams said, with this sort of use, there wasn't
19 a permit required.

20

21 CHAIRMAN FLEAGLE: So basically we can
22 jump to the conclusion that there -- without any
23 reporting, we have no idea of what the results of
24 allowing this method to go. I think that was the gist
25 of the question, what kind of harvest and problems that
26 were maybe associated with it.

27

28 MS. BLASZAK: Mr. Chairman, this is
29 understood to be a very small scale opportunity, and
30 we're not aware of any problems enforcement-wise.

31

32 CHAIRMAN FLEAGLE: Thank you. I'm just
33 curious. The proposal is presented by the Aniakchak
34 Subsistence Resource Commission, and what communities
35 are represented on that council? I don't know, Marsha,
36 if you have that information or if somebody else does.

37

38 MS. BLASZAK: I think Liz provided that
39 in her remarks. Do you want to.....

40

41 CHAIRMAN FLEAGLE: Thanks, Liz.

42

43 MS. WILLIAMS: It's the Chigniks, and
44 then Chignik Lake -- well.....

45

46 MR. ALVAREZ: Mr. Chairman and Board
47 members. The Aniakchak SRC submitted the proposal so
48 proponents must be living in the preserve, and Chignik
49 Lake is the only one within the preserve.

50

1 CHAIRMAN FLEAGLE: Okay. Thanks.
2 Marsha.

3
4 MS. WILLIAMS: I did want to add, the
5 adoption of the proposal would align harvest methods
6 for the Chignik and Alaska Peninsula areas within the
7 Bristol Bay area. And allowing these harvest methods
8 would not increase the total harvest. In fact, the
9 proposal could reduce total harvest, because in some
10 situations, harvesting individual fish could replace
11 the harvest of multiple fish with a seine or gillnet.
12 So the proposal from the SRC doesn't appear to provide
13 any conservation concerns.

14
15 CHAIRMAN FLEAGLE: Other discussion.
16 Randy.

17
18 MR. ALVAREZ: Thank you, Mr. Chair.
19 You passed this -- a similar proposal last year for the
20 Lake Clark area, and we discussed this one here at our
21 last RAC meeting. And as was during the first --
22 during the Lake Clark proposal, you know, our RAC, it
23 was no unanimous. There was people that didn't feel
24 that snagging should be allowed, but our Council
25 supported the proposal mainly because it was -- it is
26 going -- it would be very small harvest, mainly done
27 when -- it would not replace the subsistence gillnet
28 fishery. It's mainly done when they are camping,
29 picking berries, or hunting to allow them another
30 method that some feel that they've always had so that
31 they can get something to eat. And it would be in our
32 opinion very small. That's why we did not support
33 needing a permit, because the reasons for that I
34 believe was there is no Federal permit. And so we went
35 along with not having to need a permit. And we
36 supported it because you had passed it, this pro -- in
37 the Lake Clark area, which is part of the Bristol Bay
38 water, our committee, Council jurisdiction.

39
40 So if there's any questions, I would
41 like to -- I can try to answer or Cliff or Liz who were
42 also at the meeting, so they can probably help.

43
44 Thank you.

45
46 CHAIRMAN FLEAGLE: Thanks, Randy.
47 Tina.

48
49 MS. CUNNING: Mr. Chairman. I would
50 like to point out that the salmon may be harvested

1 under the Alaska Board of Fisheries regulations using
2 gillnets and purse seines, and the State provides a
3 subsistence preference on all lands and liberal State
4 subsistence fisheries for salmon are provided on the
5 Alaska Peninsula. For example, the subsistence
6 fisheries in Chignik and Alaska Peninsula have a
7 liberal household limit of 250 fish, and subsistence
8 fishermen can be authorized to take more if they need
9 it.

10
11 This is an expansion of a methods and
12 means that just -- we don't believe necessary. It's
13 going to create additional problems with no monitoring
14 and no enforcement. The subsistence preference is
15 already adequately being provided. And we would urge
16 you to consider that.

17
18 CHAIRMAN FLEAGLE: Thank you. I wanted
19 to kind of explore the issue you raised about a local
20 issue raised by Chignik that's being applied to a
21 broader range. And it's not real clear from the maps,
22 but if the proposal were to be passed as recommended,
23 how many other communities on the Peninsula would this
24 change apply to. Liz.

25
26 MS. WILLIAMS: The SRC communities were
27 the Chigniks as I mentioned, and Port Heiden,
28 Perryville, Ivanof Bay and Meshik. It's the eastern
29 Aleutian communities that you're talking about I
30 believe, Sand Point, Port Moller, Nelson Lagoon, False
31 Pass, Cold Bay and King Cove.

32
33 CHAIRMAN FLEAGLE: Thank you. Other
34 discussion. Marsha.

35
36 MS. BLASZAK: I'm able to provide the
37 resident zone communities for Aniakchak include
38 Chignik, Chignik Lagoon, Chignik Lake, Meshik, and Port
39 Heiden.

40
41 CHAIRMAN FLEAGLE: Thank you. Other
42 discussion. Commissioner Lloyd and then Virgil.

43
44 COMMISSIONER LLOYD: Thank you, Mr.
45 Chairman. Again, with regard to the general nature of
46 the proposal here, I'm concerned that given the State's
47 testimony that there is a -- the issue has been put
48 before this Board that this is not a recognized method
49 of managing fisheries, and particularly in salmon
50 spawning areas in the State of Alaska. To encourage

1 the use of methods and means that accentuate the
2 potential to disturb spawning areas, to injure fish
3 without taking them, and to do so in a subsistence area
4 that has very liberal subsistence opportunity provided
5 by other methods and means, and to encourage people in
6 at least large land areas to potentially fish in
7 violation of State law on non-Federal lands I think is
8 a general violation of recognized principles of fish
9 and wildlife conservation, and I would urge you to
10 consider that in your deliberations. Thank you.

11
12 CHAIRMAN FLEAGLE: Thank you. Virgil
13 Umphenour.

14
15 MR. UMPHENOUR: Thank you. Our RAC did
16 not address this, and so the comments I'm making are
17 just from my personal experiences.

18
19 The State used to -- it used to be
20 legal to snag sockeye salmon in the Copper River
21 drainage down by Copper Center in the 70s, and a lot of
22 people participated in that. I can fully -- and in my
23 tenure on the Board of Fisheries, the Board of
24 Fisheries almost always rejected these type of
25 proposals. And I can appreciate the Department's
26 concerns.

27
28 However, I can also appreciate the
29 proposer's concerns where they're out camping. It's
30 not convenient to haul a gillnet around or a seine if
31 you're out backpacking and camping and you want to
32 catch a fish to eat. That is an efficient method to do
33 it, and it used to be on the books with the State where
34 you could snag in the ne case I know for sure.

35
36 Thank you.

37
38 CHAIRMAN FLEAGLE: Jack Reakoff.

39
40 MR. REAKOFF: Thank you, Mr. Chairman.
41 I would agree with Virgil there. I'm on the Gates of
42 the Arctic Subsistence Resource Commission, and when
43 you're afield harvesting subsistence resources, the
44 lightness of your gear, and especially looking at this
45 map, that it actually reiterates the need for this type
46 of proposal, because it's distant from where their
47 village is and where they can utilize a gillnet.

48
49 These are -- you have to realize these
50 are -- there's a limited eligibility to hunt and fish

1 in these areas. And there's a limited pool of people
2 that will actually be doing it would be like a nominal
3 effect on the resource. And catch and release fishing
4 is allowed by State regulations, so that's hurting fish
5 and releasing them in spawning areas.

6

7 And so from my personal perspective, I
8 would agree with the subsistence users that a method
9 and means that facilitates lightness of gear as you're
10 travelling is -- would be -- have a nominal effect on
11 the population, and it would be beneficial to the
12 subsistence users.

13

14 CHAIRMAN FLEAGLE: Bob Aloysius.

15

16 MR. ALOYSIUS: Thank you, Mr. Chairman.
17 This method of harvesting fish of any species has been
18 our way of life for thousands of years.

19

20 CHAIRMAN FLEAGLE: Thank you. Further
21 open discussion.

22

23 (No comments)

24

25 CHAIRMAN FLEAGLE: Ready to move
26 forward with a motion? Marsha.

27

28 MS. BLASZAK: Mr. Chairman. I would
29 like to move to adopt Proposal 08-11 as recommended by
30 the Bristol Bay Regional Advisory Council. The
31 original proposal request to take salmon by snagging,
32 and I think the Council's recommendation was to adopt
33 and also modify that proposal to allow the harvest of
34 salmon by snagging, by use of a hand line or rod and
35 reel, and by spear, bow and arrow, or by hand capture.
36 The Council recommendation also provided no permit
37 would be required to snag fish. The language in the
38 Council's motion can be found on Page 322 of the Board
39 book. And following second, I'll speak more to the
40 motion.

41

42 MR. MELIUS: I'll second the motion.

43

44 CHAIRMAN FLEAGLE: You got it.

45

46 MS. BLASZAK: Thank you. This proposal
47 was originally submitted by the Aniakchak Subsistence
48 Resource Commission. The SRC requested the harvest
49 methods in the Alaska Peninsula and Chignik fishery
50 management area be expanded to allow the take of salmon

1 by snagging.

2

3 The intent was so that subsistence
4 users in the field, we've discussed that, in camping
5 could harvest individual salmon with readily available
6 gear.

7

8 Adoption of the Council's
9 recommendation would align harvest methods for the
10 Chignik and Alaska Peninsula areas with those of the
11 Bristol Bay area. The lack of a permit requirement for
12 snagging would also be the same.

13

14 I agree this harvest method should be
15 provided for, and also the Bristol Bay Council's
16 modification to the original text of their proposal
17 that I summarized a few minutes ago. And allowing
18 these harvest methods would not be expected to increase
19 the harvest. I don't see a permit as necessary as the
20 number of salmon harvested by these types of gear would
21 be reasonably expected to be very small. And I will be
22 supporting the recommendation of the Bristol Bay
23 Council.

24

25 CHAIRMAN FLEAGLE: Further discussion,
26 Board.

27

28 MR. MELIUS: Mr. Chairman.

29

30 CHAIRMAN FLEAGLE: Tom.

31

32 MR. MELIUS: I also believe that we've
33 heard from the testimony that there's a traditional use
34 here to catch an occasional fresh fish. I don't
35 believe that the intent of the harvest would be in any
36 way a large quantity of salmon. I don't really believe
37 that there's a conservation concern here with such a
38 low harvest anticipated. So I would be supporting the
39 motion.

40

41 CHAIRMAN FLEAGLE: Denny. Oh, I
42 thought you looked like you were ready to speak.

43

44 I'll speak. I'm going to vote for the
45 motion, took but I do want to recognize the cautions
46 that the State presented, and that, one, we do have the
47 proposal being presented basically by Chignik where
48 this may not even be used their residents unless they
49 travel quite a ways from their locale. But, you know,
50 rural people do travel, and it's likely that they may.

1 The other concern is that taking a
2 proposal and applying it to people who didn't request
3 it, I kind of have a little merit to that concern as
4 well.

5
6 But I think I'm convinced that we're
7 talking about a very low level of harvest. It's just
8 an additional subsistence opportunity for somebody who
9 may need it while out, travelling light, doing
10 subsistence things or checking the hills or whatever
11 you've got going on. And I see that it's not going to
12 be a major problem. And that goes with the lack of
13 permitting as well. So I'm going to support it.

14
15 Are we ready for the question.

16
17 MR. CESAR: Question.

18
19 CHAIRMAN FLEAGLE: The question's
20 recognized on Proposal 11. Pete.

21
22 MR. PROBASCO: Thank you, Mr. Chair.
23 Final action on FP08-11, to support with modification
24 the Bristol Bay Subsistence Regional Advisory Council's
25 recommendation. And the reference was to Page 322.

26
27 Mr. Melius.

28
29 MR. MELIUS: Aye.

30
31 MR. PROBASCO: Ms. Blaszak.

32
33 MS. BLASZAK: Aye.

34
35 MR. PROBASCO: Mr. Fleagle.

36
37 CHAIRMAN FLEAGLE: Aye.

38
39 MR. PROBASCO: Mr. Lonnie.

40
41 MR. LONNIE: Aye.

42
43 MR. PROBASCO: Mr. Cesar.

44
45 MR. CESAR: Aye.

46
47 MR. PROBASCO: And Mr. Bschor.

48
49 MR. BSCHOR: Aye.

50

1 MR. PROBASCO: Motion carries six/zero.
2 Mr. Chair.
3
4 CHAIRMAN FLEAGLE: Thank you. All
5 right. That concludes the Alaska Peninsula and Chignik
6 area suite of proposals. And as advertised, we will
7 return from the lunch break with Cook Inlet area
8 proposals.
9
10 And looking at how we're tracking on
11 the agenda, those Cook Inlet and the Bristol Bay will
12 probably consume most of the afternoon, if not all.
13 And just to give a time line for people that are here
14 for the Yukon fisheries proposals, I think that we will
15 go ahead and establish tomorrow morning at the first
16 start of business as the -- when we will take up
17 Proposal 13 and 14. I know there's some folks that
18 have got travel concerns, and this will guarantee that
19 the first out of business, first order of business
20 tomorrow will be the Yukon Proposal 13/14, and that
21 will be at 8:30 tomorrow.
22
23 So with that, we're going to go ahead
24 and stand down for lunch and.....
25
26 MR. ALVAREZ: Excuse me, Mr. Chairman.
27
28 CHAIRMAN FLEAGLE: And return at 1:00
29 o'clock.
30
31 MR. ALVAREZ: Mr. Chair.
32
33 CHAIRMAN FLEAGLE: Randy.
34
35 MR. ALVAREZ: Are you going to take up
36 the other Bristol Bay proposal next, or are you going
37 to switch back to Cook Inlet?
38
39 CHAIRMAN FLEAGLE: We're going to
40 switch back to Cook Inlet, unless I'm compelled
41 otherwise.
42
43 MR. ALVAREZ: We're all ready, but.....
44
45 CHAIRMAN FLEAGLE: Pete.
46
47 MR. PROBASCO: Mr. Chair. May I. We
48 have one more proposal that deals with the area that
49 Mr. Alvarez in part represents, and that's Proposal No.
50 12. And, you know, that would probably take, as far as

1 amount of time, equal to what we just did with the
2 Chignik.

3
4 CHAIRMAN FLEAGLE: So you're asking me
5 to be reasonable?

6
7 MR. PROBASCO: Indirectly.

8
9 CHAIRMAN FLEAGLE: Thank you. Yeah, I
10 failed to notice that, Randy. We would be basically
11 holding you hostage through all of Cook Inlet area
12 until we brought up one your one remaining proposal. So
13 I'll go ahead and entertain that, and let's go ahead
14 and deal with Proposal 12 right after the lunch break
15 and then we'll go into Cook Inlet issues, and we'll for
16 sure have Chairman Lohse here at that time.

17
18 Bob.

19
20 MR. ALOYSIUS: Could you extend the
21 lunch break, because the roads are very hazardous and
22 some people have further to go than others do.

23
24 CHAIRMAN FLEAGLE: I usually try to
25 give an hour and 10 or an hour and 15 for the reason
26 that we're downtown and it's hard to get a place to eat
27 at lunch time. So with that, let's return at 1:15.

28
29 MR. ALOYSIUS: Thank you.

30
31 (Off record)

32
33 (On record)

34
35 CHAIRMAN FLEAGLE: There we go. The
36 Federal Subsistence Board is back on record. And I'd
37 note that Chairman Lohse is back. Thanks, Ralph, but
38 we made another executive decision in your absence.
39 You get to wait since we waited for you.

40
41 MR. LOHSE: Thank you, Mr. Chair. I'm
42 more than willing to wait for as long as it takes.

43
44 CHAIRMAN FLEAGLE: Okay. What it was,
45 Ralph, is we went ahead and skipped over the Cook Inlet
46 area proposals, because we finished up on Southeast
47 before the lunch break, and we took the Alaska
48 Peninsula proposal up before lunch. And we were going
49 to jump right back into Cook Inlet, and then Randy
50 jumped up and said, hey, wait a minute, I've only got

1 one more proposal. So we're going to go ahead and take
2 his before we go into Cook Inlet.

3

4 Pete, announcements.

5

6 MR. PROBASCO: Yes. Thank you, Mr.
7 Chair. In keeping with the holiday and Christmas
8 spirits here, building management felt sorry for us,
9 listening to our plight. We find ourselves with a lack
10 of coffee and tea and stuff like that. And so Greg
11 Spears, the person that manages this office, has
12 offered us coffee and it's on behalf of the building.
13 So I thank the building.

14

15 So, Keith, you're going to do okay this
16 afternoon.

17

18 CHAIRMAN FLEAGLE: I thank the
19 building, too.

20

21 MR. GOLTZ: Well, that's great. Thank
22 you, but where some see problems, others find
23 solutions. I was fine.

24

25 CHAIRMAN FLEAGLE: All right. With
26 that, let's go ahead and move back into our proposals.
27 And we're dealing with Fisheries Proposal 08-12 at this
28 time. And I'd like to turn it over to Staff for the
29 Staff analysis. Liz.

30

31 MS. WILLIAMS: Thank you, Mr. Chair.
32 Liz Williams again, anthropologist at the Office of
33 Subsistence Management.

34

35 And the analysis for Fisheries Proposal
36 08-12 begins on Page 342 in your book. This proposal
37 was submitted by the Lake Clark Subsistence Resource
38 Commission, and it requests the addition of traditional
39 small scale subsistence fish traps and weirs made of
40 wooden stakes to the list of legal subsistence fishing
41 gear in the Federal regs for the Naknek/Kvichak
42 district, which is the Kvichak/Iliamna/Lake Clark
43 drainage of the Bristol Bay area. And their requesting
44 the use of this type of equipment specifically in
45 tributaries of Lake Clark, not the lake itself.

46

47 The Federal definition of fyke net and
48 lead already includes fish traps and fences or weirs.
49 So we don't need to add that to regulation. However,
50 there are several general Federal subsistence reg --

1 fishery regulations, and some specific Bristol Bay
2 Federal subsistence fishery regulations that apply if
3 this proposal is adopted.

4
5 And the two most important ones are,
6 you may not obstruct more than one-half of the width of
7 any stream with gear used to take subsistence fish.
8 And you may not take fish from waters within 300 feet
9 of a stream mouth used by salmon. So those will apply
10 to the use of this type of gear.

11
12 The areas affected by this proposal
13 include the Federal public waters within the Bristol
14 Bay area that are in the Kvichak/Iliamna/Lake Clark
15 drainage. Federal jurisdiction includes all navigable
16 and non-navigable waters within the exterior boundaries
17 of the Lake Clark National Park and Preserve, and
18 inland waters adjacent to the exterior boundaries of
19 the Lake Clark National Park and Preserve.

20
21 All residents of the
22 Kvichak/Iliamna/Lake Clark drainage have a positive
23 customary and traditional use determination for all
24 species of fish. Communities in this drainage affected
25 by this proposal include Iliamna, Lime Village,
26 Newhalen, Nondalton, Pedro Bay, and Port Alsworth. And
27 these are the resident zone communities of Lake Clark
28 National Park, and they're also the Lake Clark SRC
29 member communities.

30
31 As I noted, the proposal asks for the
32 use of fyke nets and leads for all fish. And I
33 attended the Lake Clark SRC meeting in September to
34 clarify several aspects of this proposal. The SRC
35 specified that their target species were suckers,
36 whitefish, grayling, Dolly Varden, pike, an occasional
37 salmon and no rainbow trout. The only species for
38 which there appears to be any biological concern is the
39 Kvichak River sockeye salmon. But again salmon are
40 sort of the last priority for use with these types of
41 gear.

42
43 At the SRC meeting I asked the
44 proponents to draw a picture of what they're proposing,
45 because there are many types of fyke nets and leads.
46 And if you look on Page 343 and 344, I took the hand
47 drawing that the SRC did back to our office, and a
48 skilled person recreated it on the computer, and those
49 are the images you see on those two pages. And so you
50 can see that the fyke net and lead is very small and

1 would not go across more than one-half of the stream.

2

3

4 The SRC said that these are small
5 temporary devices, and they included the provisions
6 that the fyke nets and leads must be attended at all
7 time, and that all materials used to construct them
8 should be and would be removed once fishing has
9 stopped.

9

10

11 The specified that they submitted this
12 proposal because the legal use of small scale fyke nets
13 and leads will allow them to teach younger generations
14 how to use and construct fyke nets and leads. And they
15 said specifically that this is how they can teach
16 traditional conservation ethics that must be learned by
17 doing, and learned by fishing, and using these devices
18 as a community.

18

19

20 Adoption of this proposal would allow
21 subsistence users to harvest fish in a more selective
22 manner in tributaries of Lake Clark. It would also
23 allow subsistence users to harvest only selected
24 species, which will reduce bycatch, because they would
25 release unwanted fish unharmed, and that's one aspect
26 of the traditional conservation ethic that they spoke
27 of.

27

28

29 There's a long history of the use of
30 fyke nets and leads to harvest fish in the Lake
31 Clark/Iliamna area.

31

32

33 In order to insure conservation of
34 fishery resources in this area, a permit from the
35 Federal in-season manager will be required if this
36 proposal is adopted. And these permits can also serve
37 as harvest reports which could be shared with ADF&G to
38 add to their subsistence salmon harvest data base if
39 salmon are even harvested with these types of gear.

39

40

41 Several other topics were discussed at
42 the Lake Clark meeting on September 21st, and those
43 included the use of wood only for Fyke nets and leads,
44 and the addition of Sixmile Lake to the area included
45 under this proposal. The Lake Clark SRC and the
46 superintendent of the park both specified that they
47 wanted only locally available wood to be the material
48 used for fyke nets and weirs. However, OSM staff has
49 discussed this matter several times, and we concluded
50 that specifying the materials to be used is sort of
unnecessarily restrictive under the broad sort of

1 flexible guidelines of ANILCA.

2

3 As we worked through this analysis,
4 we've also realized that the adoption of this proposal
5 would necessitate changes in other aspects of the
6 Bristol Bay regulations. And these were regs that said
7 you can only take salmon under the authority of a State
8 subsistence salmon permit. And we wanted to say that
9 you can take salmon under the State permit as well as
10 the Federal permit for using the fyke net. We didn't
11 want people to be stuck with just one or the other.
12 That's not the intent.

13

14 The other one was that only -- each
15 household can only get one permit per year, and again
16 we just wanted to state that people can get one of each
17 per year.

18

19 So the Office of Subsistence Management
20 conclusion is to support Proposal FP08-12 with
21 modification to specify regulations for the use of fyke
22 nets and leads in tributaries of Lake Clark, but not to
23 add the term fish trap or weir, because it's not
24 necessary, nor to specify the materials used in their
25 construction. So the proposed regulation that's
26 modified should read, for Bristol Bay area fish, you
27 may also take salmon with a fyke net and lead in
28 tributaries of Lake Clark unless otherwise prohibited.
29 You may only use a fyke net and lead with a permit
30 issued by the in-season manager, the Federal in-season
31 manager. All fyke nets and leads must be attended at
32 all time while in use, and all materials used to
33 construct the fyke net and lead must be removed from
34 the water when the fyke net and lead is no longer in
35 use.

36

37 Thank you. That concludes my
38 presentation.

39

40 CHAIRMAN FLEAGLE: Thank you, Liz.

41 Questions?

42

43 (No comments)

44

45 CHAIRMAN FLEAGLE: All right. Any
46 written public comments, Cliff.

47

48 MR. EDENSHAW: Thank you, Mr. Chair and
49 Board members. There was one.....

50

1 CHAIRMAN FLEAGLE: I'm sorry, I turned
2 off your mic accidentally. I wish I didn't learn how to
3 do that.

4
5 MR. EDENSHAW: Okay. We can set up a
6 bypass, Mr. Chair.

7
8 The Lake Clark SRC supports the
9 proposal with modifications suggested
10 by the Office of Subsistence
11 Management. As modified the proposal
12 will allow subsistence fishers to use
13 fykes made from wood stakes in
14 tributaries of Lake Clark and Sixmile
15 Lake.

16
17 And that was all.

18
19 CHAIRMAN FLEAGLE: Okay. Thank you.

20
21 Any public testimony requests, Pete.

22
23 MR. PROBASCO: Mr. Chair. We have no
24 one signed up for Proposal 12.

25
26 CHAIRMAN FLEAGLE: Thank you.

27
28 Regional Advisory Council
29 recommendation. Randy.

30
31 MR. ALVAREZ: Thank you, Mr. Chair.
32 The Bristol Bay RAC supports the proposal with the
33 modification to -- as Liz has stated.

34
35 And I believe it should be -- it says
36 the tributaries of Lake Clark and then Sixmile Lake. I
37 think it should be tributaries also of Sixmile Lake,
38 not just Sixmile Lake as it says right here. That's
39 what our recommendation was.

40
41 And I'll elaborate more on our
42 reasoning more in discussion later before deliberation.
43 Thank you.

44
45 CHAIRMAN FLEAGLE: Thank you, Randy. I
46 guess it's just all in a matter of how you read it. I
47 read it as tributaries of Lake Clark and Sixmile Lake,
48 tributaries of. I think that's the intent, right, Liz.

49
50

1 Keith.

2

3 MR. GOLTZ: Our Federal jurisdiction
4 applies only to Sixmile Lake and to waters within the
5 external boundaries of the park. It would not apply to
6 tributaries of Sixmile Lake on the west.

7

8 CHAIRMAN FLEAGLE: Thank you. Okay.
9 The Department of Fish and Game comments. George. Or
10 Tina.

11

12 MS. CUNNING: Mr. Chairman, we request
13 our entire Department's comments to be entered into the
14 transcript for this proposal. And George will just hit
15 some highlights, summary comments.

16

17 CHAIRMAN FLEAGLE: Thank you. Just a
18 sec. Keith.

19

20 MR. GOLTZ: I want to ask Tina, because
21 I was asked by the court reporter, how you prefer that?
22 They can type those into the record or they can simply
23 affix them as an appendix the way you've presented
24 them. And I suggested the second, but it's really up
25 to you.

26

27 MS. CUNNING: As long as they're
28 electronically searchable.

29

30 MR. GOLTZ: Okay. Maybe you and I
31 should talk to the court reporter. All right.

32

33 CHAIRMAN FLEAGLE: Okay. Thank you.
34 Go ahead, George.

35

36 MR. PAPPAS: For the record, George
37 Pappas, Department of Fish and Game.

38

39 The Federal Board approved the use
40 spears, snagging, hand lines, drift gillnets, and beach
41 seines at the January 2007 Board meeting. Discussions
42 at the winter 2007 Bristol Bay Regional Advisory
43 Council meeting focused on the RAC's concerns about
44 improving the overall health of the Kvichak River and
45 Lake Clark area sockeye salmon, which was determined by
46 the Alaska Board of Fisheries to be a stock of concern
47 in 2003. Use of a fish weir or trap as harvest methods
48 may increase harvest in small tributaries on discrete
49 stocks, compounding current conservation concerns.
50 Adoption of this proposal would be inconsistent with

1 the concerns for sockeye salmon stocks previously
2 expressed by the RAC and the State.

3
4 The Kvichak River sockeye salmon stock
5 was determined by the Alaska Board of Fisheries to be a
6 stock of management concern in 2003 and previously as a
7 stock of yield concern in 2000. Such harvest by fish
8 weir or trap could be large enough to raise
9 conservation concerns on individual tributaries because
10 the complete stock status is unknown for all the
11 tributaries of Lake Clark.

12
13 Conservation issues will exist if fish
14 traps or weirs are installed in specific -- to
15 specifically target salmon in tributaries or lakes that
16 do not have established escapement goals, stock
17 assessment projects, estimated exploitation rates or
18 established abundance-based harvest limits per body of
19 water. Installation of site-specific harvest gear
20 types which could harvest most or all salmon migrating
21 into a small tributary is not sound fisheries
22 management.

23
24 Weir and fish traps with attached leads
25 that obstruct the navigational channels would likely be
26 the most effective gear type that a user could install
27 in a small tributary, but strategic design and
28 installation of such gear type could effectively limit
29 salmon migration in specific tributaries.

30
31 Trapping, crowding and holding fish
32 causes injuries and stress if fish are left in a fish
33 trap for any amount of time, especially in small,
34 shallow tributaries where water temperatures may be
35 elevated. Injuries induced by passing through a trap
36 may result in decreased spawning success depending upon
37 the frequency of occurrence.

38
39 Small tributaries likely could not
40 support a significant concentrated harvest. Even a
41 moderate harvest from small tributaries with small or
42 unknown salmon returns could result in localized
43 depletion issues.

44
45 If adopted despite these serious
46 conservation concerns, the Board will need to limit the
47 number of weirs, traps operated on a single stream,
48 establish how the limit amongst users will be
49 implemented, and determine the number of households
50 that could use a weir or fish trap. Harvest limits by

1 species are needed for each tributary where weirs or
2 fish traps would be operated based on the best
3 scientific assessment information available for each
4 tributary, and should not be allowed in tributaries
5 where recent stock assessment information is not
6 available.

7

8 The Department also has concerns about
9 the impacts weirs and fish traps may have on habitat of
10 a salmon stream. Driving stakes into the bed of a
11 creek or stream to trap or handle salmon and other
12 species of fish will disturb riparian and river bottom
13 habitat. Installing a weir can cause significant
14 scouring and alter the river channel during high water
15 events. Habitat damage may also occur if fish traps
16 and weirs, including fyke nets, are authorized for use
17 by multiple households.

18

19 Installing a structure such as a weir
20 or trap will preempt other user groups wishing to fish
21 in the vicinity or upstream of that structure.

22

23 The Department recommendation is to
24 oppose this proposal. The proposal further exacerbates
25 conservation concerns, necessitates new Federal
26 permits, will intensify needs for Federal drainage-by-
27 drainage limits and monitoring, and cause subsistence
28 users unnecessary complications due to Federal/State
29 jurisdictional claims without providing a use that is
30 necessary to provide for Federal subsistence priority.

31

32 I would also like to refer to
33 yesterday, to Trooper Waldron's comments about fishing
34 from non-Federal lands or attaching non -- excuse me,
35 attaching non-approved equipment, fishing equipment or
36 gear to non-Federal lands.

37

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

40

41 FP08-12 Lake Clark and Tributaries,
42 Wood Stake Fish Traps and Weirs.

43

44 Introduction: This proposal allows use
45 of fish traps or weirs¹ constructed of wooden stakes as
46 an additional method for take of all species of salmon
47 by federally qualified subsistence users in Lake Clark
48 and its tributaries. Both the Alaska Board of
49 Fisheries and the Federal Subsistence Board (Board)
50 recently took actions to liberalize methods used in

¹ The proponent originally requested fish traps and weirs. Authorization of a modified proposal is suggested by the federal staff in order to allow fyke nets and lead instead, but the federal definition of fyke net and lead includes fish traps or fences or weirs. Thus if fyke net and lead are allowed the designated federal official would have to limit the federal permit in order to not allow traps and weirs as a stipulation.

1 subsistence fisheries in Lake Clark. The federal Board
2 approved use of spears, snagging, hand lines, drift
3 gillnets, and beach seining at the January 2007 Board
4 meeting. Discussion at the winter 2007 Bristol Bay
5 Regional Advisory Council (RAC) meeting focused on the
6 RAC s concerns about improving the overall health of
7 Kvichak River and Lake Clark area sockeye salmon, which
8 was determined by the Alaska Board of Fisheries to be a
9 stock of concern in 2003. Use of a fish weir or trap
10 as harvest methods may increase harvest in small
11 tributaries on discrete stocks, compounding current
12 conservation concerns. Adoption of this proposal would
13 be inconsistent with concerns for sockeye salmon stocks
14 previously expressed by the RAC and the State.

15
16 In addition, if adopted, federally
17 qualified fishers would need to use a separate federal
18 subsistence permit and be certain they are standing on
19 federal lands to operate fish traps and weirs
20 (including fyke nets and lead), because these methods
21 are prohibited by State statute². At the urging of
22 federal staff during the fall 2007 meeting, the Lake
23 Clark Subsistence Resource Commission recommended
24 expanding the area that this proposal would apply to
25 include Sixmile Lake and its tributaries. Sixmile Lake
26 is outside of the park boundary and is not adjacent to
27 any park lands, so subsistence users cannot participate
28 in those waters under federal regulations.

29
30 Opportunity Provided by State: Salmon
31 may be harvested under state regulations using set
32 gillnets and beach seines with no limit on the amount
33 harvested. To provide additional subsistence
34 opportunity, the Alaska Board of Fisheries liberalized
35 gear types for subsistence harvest beginning in the
36 2007 season to allow use of spears and beach seines.
37 In 2000 through 2003, the Kvichak River drainage
38 escapement goals were not met and the Amounts Necessary
39 for Subsistence, as determined by the Alaska Board of
40 Fisheries, were not met. During years of poor returns,
41 people may fish more intensively in the Lake Clark area
42 and also in other areas.

43
44 Conservation Issues: The Kvichak River
45 sockeye salmon stock was determined by Alaska Board of
46 Fisheries to be a stock of management concern in 2003
47 and previously as a stock of yield concern in 2000.
48 Such harvest by fish weir or trap could be large enough
49 to raise conservation concerns on individual
50 tributaries because the complete stock status is

² Use of traditional basket traps is currently allowed under the state regulations in the form of an educational fishery permit in the Swanson River of Cook Inlet ,and fyke nets are allowed as a gear type in subsistence and personal use to target species “other than salmon” in some parts of Alaska.

1 could result in localized depletion issues. If adopted
2 despite these serious conservation concerns, the Board
3 will need to limit the number of weirs or traps
4 operated on a single stream, establish how this limit
5 among users will be implemented, and determine the
6 number of households that could use a weir or fish
7 trap. Harvest limits by species are needed for each
8 tributary where weirs or fish traps would be operated,
9 based on the best scientific assessment information
10 available for each tributary, and should not be allowed
11 in tributaries where recent stock assessment
12 information is not available.

13

14 The Department also has concerns about
15 the impacts weirs and fish traps may have on the
16 habitat of a salmon stream. Driving stakes into the
17 bed of a creek or stream to trap and handle salmon and
18 other species of fish will disturb riparian and river
19 bottom habitat. Installing a weir can cause
20 significant scouring and alter the river channel during
21 high water events. Habitat damage may also occur if
22 fish traps and weirs (including fyke nets) are
23 authorized for use by multiple households.

24

25 Jurisdiction Issues: Under Section
26 .103(c) of ANILCA, federal regulations do not apply to
27 state or private lands within the exterior boundaries
28 of federal conservation system units. Further, the
29 State owns nearly all submerged lands in navigable
30 waters. Less than 40% of the Lake Clark shoreline is
31 non-federal ownership, including virtually all of the
32 shoreline from Port Alsworth south along both shores to
33 the Lake s outlet, along with much of the northwestern
34 shoreline. The State requests that the Office of
35 Subsistence Management provide detailed maps of
36 specifically where federal subsistence users can fish
37 and where federal jurisdiction is claimed and the basis
38 of each claim. These requests for clarification of
39 ownership were most recently documented in the January
40 2007 Board meetings materials book on page 324 and in
41 the Request for Reconsideration of proposals FP07-06
42 and FP07-07 submitted to the Board on May 15, 2007.
43 Federal subsistence users who install and operate fish
44 traps in Lake Clark while standing on property that is
45 not federally owned could be cited for violation of
46 State regulations that do not authorize fish traps or
47 weirs.

48

49 The Department objects to the proposed
50 expansion to apply this proposal to include Sixmile

1 Lake and its tributaries. Little, if any, of the land
2 or waters are under federal ownership or adjacent to
3 federal land. See attached map. Expanding the
4 application of this proposal to a large area outside of
5 federal jurisdiction will result in federal subsistence
6 users being unnecessarily subject to citation under
7 State regulations with little or no added subsistence
8 harvest benefit.

9

10 Other Comments: The Department agrees
11 with the proponent that the proposed usage of a weir or
12 fish trap may impact other user groups. Allowing the
13 installation of a weir or trap for the purpose of
14 harvest will create significant social conflict and
15 allocation issues. Installing a structure such as a
16 weir or trap will preempt other user groups wishing to
17 fish in the vicinity or upstream of the structure.
18 State regulations prohibit fishing within 100 yards of
19 a weir. If consecutive weirs or traps are installed,
20 all accessible and preferred fishing sites may be
21 occupied and prevent other users from fishing in a
22 creek or along the Lake Clark shoreline. This would be
23 especially true if weirs or fish traps are installed in
24 small tributaries which possess limited sections of
25 water where anglers may successfully target and harvest
26 fish.

27

28 Fish weirs have been documented to
29 become an attractant to bears. A fish weir or trap
30 that successfully captures, holds, or concentrates
31 salmon in a small tributary could likely be considered
32 a productive feeding ground that will attract bears
33 over time. If this proposal is adopted, there is a
34 great potential to increase interaction with bears.

35

36 In addition to displacing other users,
37 altering fish behavior through holding, crowding, and
38 handling trapped fish may impact the success of other
39 users. Weirs and traps do alter fish behavior to
40 different degrees. Weirs that are opened for fish
41 passage for short periods of time tend to make fish
42 congregate and build up behind a weir. Fish passing
43 through a weir or passed by hand out of a fish trap
44 have been observed to be spooked and/or stressed.
45 Angler success will likely be impacted if the behavior
46 of the fish they are targeting is altered. Anglers
47 tend to sport fish in the most productive area
48 available which will likely be down stream of a weir or
49 trap. If an angler fishes down stream of a weir or
50 fish trap and his location is deemed too close to the

1 weir or trap by the federal subsistence users, social
2 conflict will likely ensue.

3

4 Department Recommendation: Oppose.
5 This proposal further exacerbates conservation
6 concerns, necessitates new federal permits, will
7 intensify needed federal drainage-by-drainage limits
8 and monitoring, and causes subsistence users
9 unnecessary complications due to federal-state
10 jurisdictional claims, without providing a use that is
11 necessary to provide the federal subsistence priority.

12

13 MR. PAPPAS: And Tina has some other
14 comments, please.

15

16 MS. CUNNING: In addition, I'd like to
17 summarize that this is a very significant issue to the
18 Department. We don't want fish traps in the rivers
19 again. They may be being called fyke nets and leads to
20 avoid public outcry over fish traps and weirs, but the
21 Board, the Federal Board and the State Board already
22 took significant action to expand methods and means
23 this past year under both Federal and State
24 regulations, and we don't believe that this is
25 necessary to provide subsistence. Even moderate
26 harvests from some of the small tributaries with small
27 or unknown salmon returns could result in localized
28 depletion issues. Approval of this proposal will
29 likely create significant social conflict and
30 allocation issues, and we have serious concerns about
31 focused exploitation on any particular components of
32 the Lake Clark watershed.

33

34 In addition, we have to again raise our
35 objection to the expansion of this proposal to include
36 Sixmile Lake, the tributaries of Sixmile Lake. This
37 request for expansion to include Sixmile Lake came up
38 last year at the Federal Board meeting. It was raised
39 at the SRC meeting by a representative from a Federal
40 agency, and they were encouraged multiple times to make
41 it a part of their recommendation to the RAC. And it
42 was raised at least five or six times again by Federal
43 representatives at the RAC meeting and asked to expand
44 the proposal to include Sixmile Lake. Sixmile Lake
45 creates tremendous jurisdictional issues, enforcement
46 problems. We don't believe that it's necessary, and we
47 already expanded to include seining under State
48 regulations at Sixmile Lake. So we would ask that you
49 not expand it.

50

1 CHAIRMAN FLEAGLE: Thank you, Tina and
2 George.

3
4 Okay. InterAgency Staff Committee
5 comments. Larry.

6
7 MR. BUKLIS: Thank you, Mr. Chairman.
8 The Staff Committee comments are found on Page 353, and
9 I'll summarize the main points.

10
11 The Staff Committee discussion centered
12 on the proponent's request that fish traps and weirs be
13 specified in regulation. We talked about this at some
14 length, Mr. Chairman, and we did understand -- we do
15 understand the connotation perhaps of fish traps in
16 Alaska, but these are very small, hand constructed
17 capture methods.

18
19 Some on the Staff Committee felt that
20 since the definitions of fyke nets and leads, which are
21 equivalent to fish traps and weirs, which are already
22 allowed under our regulations, are broad and ANILCA
23 allows advances in gear and techniques, there is no
24 need to be specific for this proposal. In other words,
25 some on the Staff Committee felt that since fyke net
26 and lead are in the regulations, and allow for this
27 specific request, we didn't need to get specific in the
28 regulations. Others on the Staff Committee felt that
29 the specification of materials was a well-considered
30 provision of the proposal and should be thoughtfully
31 considered.

32
33 The Staff Committee discussion also
34 centered on a second main point which was the
35 recommendation of the Council to support the proposal
36 with modification to add the tributaries of Sixmile
37 Lake to the proposal. At it September 2007 meeting,
38 the proponent, the Lake Clark National Park SRC had
39 expressed a desire to add Sixmile Lake to the proposal
40 for consideration by the Council and by the Board. Our
41 analysis does not include that additional feature
42 following the Staff -- following the Council meeting,
43 but that should not limit the Board's treatment of the
44 subject.

45
46 The analysis, as Ms. Williams went
47 over, focuses on the gear and how it would be operated
48 and regulated, and there's nothing about the Sixmile
49 Lake versus Lake Clark situation anthropologically or
50 biologically that would limit the Board's decision-

1 making.

2

3 Since the Council is recommending that
4 the tributaries of Sixmile Lake be included, the Board
5 will need to consider that recommendation and respond
6 consistent with ANILCA .805c.

7

8 Thank you.

9

10 CHAIRMAN FLEAGLE: Thank you, Larry.

11

12 Board discussion with Council Chairs
13 and State liaison present. Marsha.

14

15 MS. BLASZAK: There's merit in adopting
16 this proposal, and particularly as modified by the RAC.
17 I think it's important to note here that this is a very
18 limited request in terms of the numbers of individuals
19 or households who are proposing to use this harvest
20 method, and that it will be through a permit process
21 that would I think afford a level of regulation and
22 attention that has been brought up as a concern.

23

24 The adoption of this proposal as
25 amended would be consistent with the proponents'
26 request that a fyke and lead be constructed with wooden
27 stakes. It would be a non-lethal harvest method that
28 would allow the release of unwanted or excess fish.
29 Again, we'd track the harvest by requiring a permit and
30 so any resource conservation concerns we believe would
31 be not an issue.

32

33 And probably the most important aspect
34 of this request is the ability to transfer the
35 customary and traditional harvest methods to future
36 generations.

37

38 The Park Service Staff is very willing
39 to work with the Fish and Wildlife in-season manager to
40 both design and monitor the permit and also willing to
41 issue the permits from our Lake Clark office to make
42 sure there's no additional burden on the Fish and
43 Wildlife manager. And I will be supporting this
44 request.

45

46 CHAIRMAN FLEAGLE: Thank you, Marsha.
47 Randy.

48

49 MR. ALVAREZ: Thank you, Mr. Chair.
50 Our Council, we discussed this proposal for quite a

1 while, and we did support the proposal. I believe it
2 was unanimous. But we did discuss how it would work,
3 because it hadn't been done in so long a time. And in
4 my opinion, in our opinion, it probably isn't going to
5 be very widely used, because of the amount it's going
6 to take and the amount of sticks that you have to put
7 in the ground, you know, to keep the fish from escaping
8 after they go in there. And then, you know, it would
9 -- also they can be real selective on what they wanted
10 to keep and let the rest go. So that was basically,
11 after that long discussion, that we supported it, you
12 know.

13

14 And I think that the State's comments,
15 you know, the Kvichak has been a management concern,
16 because, you know, there was -- I believe it was five
17 years in a row that the Kvichak was unable to make the
18 minimum escapement. And this is another opportunity
19 for the subsistence user to get their fish, be it not
20 salmon, but other species. And because of this
21 concern, it would allow the Board to restrict other
22 user groups, which we are not asking to do. We would
23 just elect to see that this means and method be
24 allowed. And like I say, it's probably not going to be
25 that widely used, but it would be excellent traditional
26 knowledge that used to happen. And so we did support
27 the proposal. In fact, it was less -- we had more
28 support than the snagging issue on this one.

29

30 Thank you.

31

32 CHAIRMAN FLEAGLE: Thanks, Randy.

33

34 Other Board discussion. Council
35 Chairs. Department.

36

37 (No comments)

38

39 CHAIRMAN FLEAGLE: Ready for a motion.
40 Go ahead, Marsha.

41

42 MS. BLASZAK: Mr. Chairman. I move to
43 adopt FP08-12 as recommended by the Bristol Bay
44 Regional Advisory Council with one further
45 modification. We would modify the Council
46 recommendation to specify the gear be constructed with
47 wooden stakes as requested by the proponent. Again,
48 that's the Lake Clark SRC.

49

50 I would also clarify the use of fyke

1 net and lead would be allowed in the tributaries, I
2 think we've covered that as well, but I want to make
3 sure that's specific, of both Lake Clark and Sixmile
4 Lake.

5
6 The language in the Council's motion --
7 the language for the Council's motion can be found on
8 Page 341 of the Board book, and following a second of
9 the motion, I'll speak additionally.

10

11 MR. CESAR: I'll second.

12

13 CHAIRMAN FLEAGLE: You have your
14 second. Go ahead.

15

16 MS. BLASZAK: Thank you. Adopting this
17 proposal has merit, and I will be supporting the
18 Bristol Bay recommendation with the clarification and
19 further modification I described when I made the
20 motion.

21

22 Specifically, this regulation would
23 allow for use of a fyke net and lead to harvest fish,
24 except for rainbow trout, in the tributaries of Lake
25 Clark and Sixmile Lake; allow a household to obtain two
26 permits, one permit would be a State permit to allow
27 the harvest of salmon under existing practices, and a
28 second permit would be a Federal permit for a fyke net
29 and lead obtained from the Federal in-season manager;
30 require that the fyke nets and leads be attended when
31 the gear is in use; provide that the fyke and lead are
32 constructed with wooden stakes as originally requested
33 by the Lake Clark Subsistence Resource Commission and
34 affirmed by the SRC at its meeting this fall; require
35 that the materials used in constructing the fyke and
36 lead be removed when fishing with this gear type.

37

38 I believe the regulatory language in
39 the Board book is not accurate in that it indicates
40 that a fyke net and lead would be allowed in Sixmile
41 Lake when it should be the tributaries of Sixmile Lake.
42 Since flowing water is needed to use this type of gear,
43 the tributaries of Sixmile Lake and not the lake itself
44 is the appropriate location. I believe the transcript
45 of the Bristol Bay Regional Advisory Committee meeting
46 shows that the Council's intent was to provide for this
47 gear in tributaries and not in the lakes.

48

49 Specifying that the materials would be
50 wooden stakes is consistent with the proponent's

1 request, and a review of the transcript shows that
2 Council members commented favorably about this aspect
3 of the proposal. The Council did not provide rationale
4 as to why this provision was not included in its
5 recommendation.

6
7 Adoption of the Bristol Bay Council
8 recommendation as clarified and further modified would
9 allow qualified Federal subsistence users another gear
10 type that is customary and traditional; provide a non-
11 lethal harvest method that allows release of unwanted
12 fish; facilitate the release of rainbow trout that
13 would not be allowed to be retained; clarify that a
14 household would be able to obtain two permits, one
15 State and one Federal, which would provide for harvest
16 monitoring; not create a resource conservation issue;
17 and again allow the continuation and transfer of
18 knowledge of this customary and traditional harvest
19 method across generations.

20
21 The Park Service, which has in-season
22 management authority for Lake Clark, would be quite
23 willing to work with the U.S. Fish and Wildlife in-
24 season manager for Sixmile Lake to design the Federal
25 permit.

26
27 CHAIRMAN FLEAGLE: Thank you. Keith.

28
29 MR. GOLTZ: I'd just like to clarify
30 once again that the tributaries that we're talking
31 about are those that are within the external boundaries
32 of the CSU, and we're not talking about the tributaries
33 on the west.

34
35 CHAIRMAN FLEAGLE: Thanks. Your
36 microphone's still on, Marsha. That's what I was
37 trying to signal.

38
39 MS. BLASZAK: Sorry.

40
41 CHAIRMAN FLEAGLE: Other discussion.
42 Pete.

43
44 MR. PROBASCO: Thank you, Mr. Chair.
45 Just so we're all on the same sheet of music, Marsha,
46 your motion is Page 341, and you've modified that
47 motion further to re-specify that we're talking about
48 tributaries for both Lake Clark and Sixmile, and that
49 materials for the fyke trap is constructed of wooden
50 materials. That's the two differences I see.

1 CHAIRMAN FLEAGLE: Keith.

2

3 MR. GOLTZ: I just looked again at the
4 map. My comments were directed to Sixmile. Waters
5 within the external boundaries or adjacent to are where
6 we are making a Federal claim. We are not claiming on
7 Sixmile that the western tributaries are within Federal
8 jurisdiction.

9

10 CHAIRMAN FLEAGLE: Further discussion.
11 Anybody. Tom, you're brewing.

12

13 MR. MELIUS: Thank you, Mr. Chairman,
14 for that recognition. I think as laid out by my
15 colleague from the Park Service, along with the
16 modification and the explanation by our OSM folks, I
17 think the proposal has merit. It is a traditional gear
18 type that has been used in the area in the past. I
19 believe the quantity of harvest is going to be very low
20 and selective. Requiring a Federal permit does provide
21 us feedback if there is a particular problem in a
22 tributary. So therefore I would be supportive of the
23 motion.

24

25 CHAIRMAN FLEAGLE: Other comments.

26

27 (No comments)

28

29 CHAIRMAN FLEAGLE: I'm going to
30 comment. Okay. I was just going to ask that it quiet
31 down so I can speak and think.

32

33 UNIDENTIFIED VOICE: Sorry, sir.

34

35 CHAIRMAN FLEAGLE: This is kind of a
36 tough one, but I'm not going to support the motion. I
37 think that there's real convincing evidence that, of
38 course, fish traps, fykes and leads were used
39 traditionally in the past. But the overuse of them led
40 to some real conservation concerns that led to the
41 abolishment of the fish trap at about the time of
42 statehood. And that I think had some real merit.

43

44 I think that we have demonstrated that
45 there's adequate opportunities for subsistence take in
46 this area with methods and means that are already
47 allowed. And we just allowed additional methods and
48 means for incidental harvest just to supplement a
49 backpacker or somebody out in the field. And I don't
50 see that allowing the use of a very controversial

1 method in today's world as being warranted to provide
2 further subsistence opportunity.

3
4 Now, that's not speaking to the
5 educational portion. I think that there's some valid
6 argument for education and passing on knowledge to
7 future generations. I just question why you would want
8 to teach a method that's not allowable for use except
9 in that small circumstance. And that's just my
10 thinking. But I'm wondering if there's a possibility
11 that the people that are interested in doing this would
12 explore the possibility of getting an educational
13 permit like the fishwheel, you know, fisheries down on
14 the Kenai, and -- I didn't mean to say fishwheel, but,
15 you know, for the Kenai. And that may more adequately
16 address a simple request that would be really
17 localized, and maybe one or two permits.

18
19 But I don't see any limitations on
20 this. How many of these weirs, fish traps are we going
21 to allow per stream. What's the overall impact. There
22 may be some conservation concern with the red salmon as
23 explained earlier. That's not fully explored in my
24 mind. And I think that I can justify voting against
25 this under .805c where to me it does violate recognized
26 principles of fish and wildlife conservation.

27
28 So that's my position and that's where
29 I'll be voting. And I realize that I'm in the
30 minority, but the statements are now on the record, and
31 that's how I feel.

32
33 Niles.

34
35 MR. CESAR: Let me put you further in
36 the minority if you will. I grew up on a fishing boat
37 in Southeast both in the troll fishery and the seine
38 fishery. And I'm probably the only one at the table
39 who has pulled up the fish trap, saw their efficiency,
40 in the early 50s that I'm aware of. So I abhor them.
41 I don't think that that is the proper way to commercial
42 fish.

43
44 But I think we're talking about a whole
45 new different world here. I mean, those things would
46 catch 100,000 fish, you know. We're talking about a
47 weir or a fish trap that would be very selective, and
48 be marginally used by a few people. So I think the
49 benefit of passing that kind of information on to
50 future generations in my mind is sufficient for me to

1 support the motion, and I intend to.

2

3 CHAIRMAN FLEAGLE: Thank you, Niles.

4 Randy.

5

6 MR. ALVAREZ: Thank you, Mr. Chair.

7 I'd like to comment on your testimony there a minute
8 ago. This method, it would do what a subsistence net
9 wouldn't do, because in the area a subsistence net, you
10 have to stay 300 feet away from the mouth and you can't
11 fish up the river with that net, because mostly those
12 systems are so small. And it would -- they would tend
13 to -- what it would do is they would be able to harvest
14 fish species they wouldn't otherwise be able to --
15 would be hard to get down below in the mouth, you know,
16 mainly because of the size of the net or maybe they're
17 not down there in concentrations like they would be in
18 the stream. Did I kind of relate that fairly?

19

20 CHAIRMAN FLEAGLE: You did, you did
21 well. But, yeah, I'm not changing my mind.

22

23 Bob.

24

25 MR. ALOYSIUS: Thank you, Mr. Chairman.

26 It really boggled my mind that you used the example of
27 a commercial fish trap that was outlawed years ago.
28 And this -- you know, if you take two blocks in
29 Anchorage, that's about the size of the fish trap we're
30 talking about -- I mean, that you're talking about.
31 We're talking about maybe anywhere from 5 to 10 feet
32 from the beach. And it's like a runway, a selective
33 runway with a trap on the end of it. You know, we use
34 them all the time. I mean, you can ask the guys from
35 the lower Yukon and the Kuskokwim River, that we use
36 them all the time. We never knew that they were
37 illegal. And it's just one of those what you always
38 refer to as customary and traditional. It's just our
39 natural way of harvesting something that's there. And
40 these things are very selective. You know, we take
41 what we want to catch and then let the rest go.

42

43 So, I mean, when you talk about the
44 size of those commercial traps, you know, like the sun
45 compared to the earth, or a postage stamp compared to a
46 basketball court. And, you know, they're not there to
47 harvest hundreds of thousands of fish. They're just
48 there to harvest whatever you might need.

49

50 And as far as the educational part,

1 that is something we do. We bring our children to set
2 up these kind of traps. And I don't know where this
3 word fyke net comes in, because I've never heard of
4 that before, but, you know, we use, you know, small
5 fish traps to harvest whatever we need. So, you know,
6 I just want to comment on that.

7

8 Thank you.

9

10 CHAIRMAN FLEAGLE: I appreciate that,
11 Bob. And I don't see any danger of my position
12 prevailing here, so go ahead and object to it. But I
13 think that it's important that concerns that are
14 involved in an issue be spoken whether they're in the
15 minority or not. I think it's in a better -- it makes
16 the decision-making process better, more defensible,
17 and people can disagree all they want. But in the end
18 of it, my viewpoint's not going to prevail on this, but
19 I felt it was important to lay out.

20

21 Denny.

22

23 MR. BSCHOR: Yeah. Mr. Chair. I also
24 want to express concern about the conservation issue.
25 I think though as proposed, this can be managed to not
26 be a conservation issue if it's closely managed and
27 there's -- the size and all that can be dealt with, the
28 number of fish, that sort of thing. But I am concerned
29 about that.

30

31 But as a traditional method that
32 happened in the past, that education's I think
33 important, but it's also important to make sure that
34 along with that along with that education that it's
35 known that that use on non -- in the non-Federal waters
36 would not be appropriate, and that should be part of
37 the education.

38

39 With those conditions, I will support
40 the proposal.

41

42 CHAIRMAN FLEAGLE: Was that a call for
43 the question? Oh, Niles, go ahead.

44

45 MR. CESAR: Mike, I just wanted you to
46 know that I feel your pain, because I was on the losing
47 end of a five to one decision this morning, and so I
48 know where you're coming from, buddy.

49

50 MR. MELIUS: Call the question

1 CHAIRMAN FLEAGLE: I appreciate that.
2 Well, you know, at some point I guess, just
3 philosophically speaking, there's a line that at some
4 point, you know, an individual has to make that
5 determination within his own mind. But we make that
6 decision, and that decision is going to have
7 ramifications outside of what we're trying to do, and
8 sometimes you have to question whether it's appropriate
9 to poke that hornets nest with the stick for something
10 in this case. And that's my reasoning. But, again,
11 that's where I'm at.

12
13 And I have Commissioner Lloyd I guess,
14 do you have something to add to the discussion.

15
16 COMMISSIONER LLOYD: Well, Mr.
17 Chairman, thank you for recognizing me, and I'm still
18 kind of -- well, I'm trying to come to grips with your
19 process here. I know in a previous action, once the
20 motion was made, I was asked not to enter comments for
21 deliberation, and I was concerned about your
22 recognition of other liaisons, and that's certainly
23 within your purview.

24
25 But in this case, I do have a couple of
26 points to add, although I don't want to aggravate your
27 indulgence in this regard.

28
29 CHAIRMAN FLEAGLE: No, that's fine.
30 And I did -- you're right, I did recognize Council
31 Chairs, and it's appropriate, if you have something to
32 add to the discussion, I feel at this point. Go ahead.

33
34 COMMISSIONER LLOYD: Well, thank you,
35 Mr. Chair.

36
37 With that, I don't want to reiterate
38 all the State comments that have gone on before, but i
39 do want to add my concern with some things I've heard
40 expressed since the motion was made. And that's in
41 regard to possible consideration of limitations to size
42 of these structures that may be permitted, and whether
43 or not there's consideration of limitations to the
44 number that may be permitted, per drainage, depending
45 on the size of the drainage, and where there's been
46 consideration to the numbers of fish that might be
47 taken within any particular drainage compared to the
48 population that we believe might be in those drainages.
49 Those are all relatively simple, fundamental
50 conservation issues that I think are involved in the

1 decision you're about to make.

2

3 Thank you.

4

5 CHAIRMAN FLEAGLE: Lohse.

6

7 MR. LOHSE: Thank you. I'm not taking
8 sides one way or another on this. I just have a
9 question. And I may be wrong on this, but I was under
10 the impression that under our Federal subsistence
11 regulations we had a regulation that said that no net
12 or weir could block more than half of a stream. Am I
13 correct on that?

14

15 CHAIRMAN FLEAGLE: Keith.

16

17 MR. GOLTZ: I think that's correct.
18 Liz, do you have it in front of you?

19

20 MS. WILLIAMS: It's cited in the regs,
21 and it's also on the picture on Page 343. We did take
22 that into consideration, but it's 50 CFR 27(c)(4),
23 except as otherwise provided for in this election, you
24 may not obstruct more than one-half of the width of any
25 stream with any gear used to take fish for subsistence
26 purposes. And there's also the other one that I
27 mentioned, that you can't take fish from waters within
28 300 feet of a stream mouth.

29

30 CHAIRMAN FLEAGLE: All right. I heard
31 the question called earlier. If there's no further
32 discussion, the question will now be recognized. Pete,
33 on Proposal -- what are we on, 11?

34

35 MR. PROBASCO: 12.

36

37 CHAIRMAN FLEAGLE: 12. Go ahead.

38

39 MR. PROBASCO: Thank you, Mr. Chair.
40 Final action on FP08-12. The motion focused on the
41 Council's recommendation found on Page 341 with the
42 modifications noted by Ms. Blaszak to specify
43 tributaries only, and that the fyke trap had to be
44 constructed with wooden material or wooden stakes.

45

46 Ms. Blaszak.

47

48 MS. BLASZAK: Aye.

49

50 MR. PROBASCO: Mr. Fleagle.

1 CHAIRMAN FLEAGLE: Nay.
2
3 MR. PROBASCO: Mr. Lonnie.
4
5 MR. LONNIE: Aye.
6
7 MR. PROBASCO: Mr. Cesar.
8
9 MR. CESAR: Aye.
10
11 MR. PROBASCO: Mr. Bschor.
12
13 MR. BSCHOR: Aye.
14
15 MR. PROBASCO: And Mr. Melius.
16
17 MR. MELIUS: Aye.
18
19 MR. PROBASCO: Mr. Chair. The motion
20 carries five/one.
21
22 CHAIRMAN FLEAGLE: Okay. Thank you.
23 That now concludes the Bristol Bay area proposal. And
24 I appreciate you bringing that up to us so that we
25 could accommodate taking that before Cook Inlet, Randy,
26 and thanks for hanging around with us.
27
28 We're going to go ahead and take a
29 brief at least to allow the Staff to change out for the
30 Cook Inlet area proposals, and we'll start working on
31 those when we come back from break.
32
33 (Off record)
34
35 (On record)
36
37 CHAIRMAN FLEAGLE: Good afternoon,
38 we're back on record. And we're now moving into the
39 Cook Inlet area suite of proposals, starting out with
40 Proposal 08-08. And with that, we're going to turn it
41 over to Dr. Steve Fried from OSM for the analysis
42 presentation. Welcome, Steve.
43
44 DR. FRIED: Good afternoon. For the
45 record my name is Steve Fried. I'm a fisheries
46 biologist with the Office of Subsistence Management.
47
48 And I'd like to direct the Board to
49 Pages 277 to 284 for the Staff analysis for this
50 proposal. It was a proposal submitted by Ninilchik

1 Traditional Council, and it requests that the salmon
2 dipnet and rod and reel fishery allowed to occur from
3 shore within the Moose Range Meadows side of the Kenai
4 River. It sounds like a very simple request, you're
5 soon going to learn it's kind of a complex issue.

6
7 Current regulations allow dipnetting at
8 Moose Range Meadows site only from boats. The
9 dipnetting site encompasses about 2 and a half miles of
10 the river from river mile 29 downstream to about river
11 mile 26 and a half, and there's a map on Page 279 that
12 you can refer to. The site has a mix of private and
13 Federal public lands on the north shore, and the south
14 shore I think is all Federal public lands.

15
16 Household members can use a rod and
17 reel to help fill the dipnet fishery annual limit. And
18 actually using a rod and reel, they could have probably
19 used the fishing platform that was in the boundaries of
20 the fishing site, but it was destroyed by ice during
21 the winter of 2006/2007. The existing platform is
22 outside of the current dipnet fishing site.

23
24 Residents of Ninilchik, Cooper Landing
25 and Hope all have positive customary and traditional
26 use determinations for salmon in the Kenai River. And
27 the salmon populations seem to be healthy and harvests
28 seem to have been within sustainable limits to date.

29
30 The reason for the request basically
31 was it was expressed that shore-based dipnetting could
32 expand the subsistence opportunities. And this was
33 because not all subsistence users have access to boats,
34 so not everybody could participate, and there's some
35 argument that could be made that dipnetting from a bank
36 could be more effective than fishing from a boat, but
37 this is probably more so for sockeye than any other
38 salmon species since they're bank oriented.

39
40 The site does have very few good
41 dipnetting areas. The water is generally deep, has
42 very fast currents. The public can fish from the bank
43 on public lands. And they'd have some difficulty
44 accessing the bank on the Federal lands -- excuse me,
45 the public can fish from the bank on the private lands,
46 and they have difficulty accessing the bank on most
47 Federal public lands, because there is a lack of trails
48 and walkways.

49
50 In this area, and the near shore area

1 is quite important for salmon, and it's also prone to
2 damage from excessive human use. Much of the riparian
3 zone at this site provides rearing habitat for juvenile
4 salmon, and I said, it can be degraded through human
5 use. There was a sockeye sport fishery that developed
6 during the 1980s at this area, and it caused extensive
7 bank trampling and large sections of this trampled bank
8 were lost during the 1995 flood.

9
10 The decision to allow dipnetting only
11 from boats was made to balance subsistence
12 opportunities with these kind of conservation concerns.

13
14 The Federal public lands at the site
15 all have conservation covenants. These lands were
16 actually purchased with Exxon Valdez oil spill funds,
17 and it was land that was originally part of the Moose
18 Range Meadows that was selected by Salamatoff
19 Corporation as part of their land selections. And the
20 land was purchased back from them to restore and
21 protect fish habitat in the area. And these covenants
22 preclude development on these public lands, and this
23 includes construction of trails, walkways and fishing
24 platforms.

25
26 Existing public access and sport
27 fishing, there are closures to both to avoid bank
28 damage during part of the year. This occurs during
29 July 1 to August 15th in which -- at which time the
30 refuge closes the public access easements on private
31 lands. And this is the peak of the sockeye run, and
32 also the peak of fishing for sockeye. And at the same
33 time sport fishing in near shore areas of the Federal
34 public lands is closed to sport fishing.

35
36 Subsistence and sport rod and reel
37 fishing is allowed on the north bank fishing platforms
38 during this time period, and this is because the
39 associated walkways and the platforms provide
40 protection to the riparian vegetation and the habitat.

41
42 As I mentioned before, there's
43 currently no platform within the dipnet fishing site.

44
45 Now, the Staff and also the Council
46 actually discussed various alternatives to just
47 allowing dipnetting from shore. They discussed
48 allowing dipnetting from fishing platforms. As I
49 mentioned, right now there's no platform in the area.
50 That platform was destroyed. It could be rebuilt, and

1 it could allow dipnetting on the platform, or a mix of
2 dipnetting and rod and reel fishing. Private lands
3 could be purchased and developed solely for dipnetting.

4
5 Another alternative that was discussed
6 was allowing dipnetting from shore only prior to July 1
7 and after August 15th, you know, on either side of the
8 bank closure time. There was some discussion of
9 whether or not this would actually provide any real
10 fishing opportunity, because there would probably be
11 few sockeye salmon available at that time, and chinook
12 and coho aren't really bank oriented, and so it might
13 be pretty difficult to catch them dipnetting from
14 shore. And there's still some concern that even this
15 low level use could possibly result in some riparian
16 habitat damage.

17
18 So the OSM Staff conclusion is to
19 oppose this proposal. And this was because trying to
20 judge the benefits of expanding opportunities against
21 the potential for habitat damage, you know, it could --
22 allowing dipnetting from shore could provide some
23 additional fishing opportunity, and this use should be
24 much less than the past sport fishing use that resulted
25 in the damage in which a lot of the bank areas were
26 lost, but even low level use over time could be
27 detrimental to this habitat.

28
29 Also there's some concerns the sites
30 might not be a very good one for dipnetting either from
31 boats or from shore. It wasn't one of the ones that
32 the Staff had recommended initially as a dipnetting
33 site. And I'm not sure there is much, if any,
34 dipnetting that occurred at this site last year.

35
36 Staff feels that taken as a whole, the
37 existing Federal subsistence salmon fisheries provide a
38 meaningful preference while also providing for healthy
39 fish populations. Dipnetting is allowed from boats at
40 the Moose Range Meadows site. It's allowed from boats
41 or standing in the river at the mile 48 site. And it's
42 allowed from the bank or standing in the river at the
43 Russian River site. In addition, a rod and reel can be
44 used during the dipnet fishery at all three sites to
45 help fill the household annual salmon limits. There's
46 also a separate salmon rod and reel fishery that
47 exists, and it can occur basically in other areas of
48 the river, anywhere, anytime sport fishing can occur in
49 Federal public waters. It has greater daily and annual
50 harvest limits, it has expanded use of bait. And in

1 addition, the next proposal that the board will hear
2 would establish temporary community-based fishwheel
3 fisheries, and that would provide additional
4 opportunities.

5
6 That concludes my summary at this point
7 in time. Thank you.

8
9 CHAIRMAN FLEAGLE: Thank you, Steve.
10 Question.

11
12 (No comments)

13
14 CHAIRMAN FLEAGLE: All right. Summary
15 of written public comments. Donald Mike.

16
17 MR. MIKE: There are..... Chair.

18
19 (Pause)

20
21 CHAIRMAN FLEAGLE: Only the Board gets
22 to talk now. Are we ready for a motion?

23
24 (Laughter)

25
26 CHAIRMAN FLEAGLE: Pete, go ahead.

27
28 MR. PROBASCO: While we're working on
29 the mics, the written public comments that Donald has
30 put together and summarized for us are on Page 289 and
31 conclude on 290. I will not that there was three
32 letters received from the Kenai River Sports Fish
33 Association, the Alaska Outdoor Council, and the
34 Kenai/Soldotna Fish and Game Advisory committee. All
35 three oppose the proposal. And Donald may have some --
36 any other comments in addition to those three? Those
37 are it, Mr. Chair. So I'd go by reference. You can
38 see Donald's write-up that summarizes those comments,
39 but all three are opposed.

40
41 Mr. Chair.

42
43 CHAIRMAN FLEAGLE: Thank you, Pete.
44 That's what we were looking for.

45
46 At this time we want to turn to the
47 public testimony. Do we have any interested in
48 testimony on this issue.

49
50 MR. PROBASCO: Yes.

1 CHAIRMAN FLEAGLE: How many do you
2 have?

3
4 MR. PROBASCO: We have four individuals
5 who would like to testify on Proposal 08. Mr. Chair.

6
7 CHAIRMAN FLEAGLE: All right. Is the
8 microphone system still down? Let's stand down while
9 they get this figured out before we call people up to a
10 microphone that doesn't work

11
12 (Off record)

13
14 (On record)

15
16 CHAIRMAN FLEAGLE: The microphones are
17 working, so Pete has four people that want to testify.
18 We're going to ask you to confine your testimony to
19 within five minutes, please, for time conservation.
20 And Pete will call your name, and when you get called,
21 please come up to the middle table, turn the microphone
22 on, state your name for the record and commence. Thank
23 you.

24
25 MR. PROBASCO: Okay. And these were
26 shuffled. The first one up will be Mr. Ricky Geese,
27 followed by Mr. Darrel Williams, followed by Mr. Sky
28 Starkey, and we finish up with Mr. Andy Szczesny. Mr.
29 Geese.

30
31 MR. GEESE: Good afternoon. My name is
32 Ricky Geese. I'm the executive director of Kenai River
33 Sport Fishing Association. We're a 501(c)(3) fishery
34 conservation organization focused on habitat and
35 fishery conservation issues on the Kenai River.

36
37 We're opposed to this proposal, if you
38 note our written comments. Last year the Board looked
39 at this issue of creating meaningful priority
40 dipnetting areas on the Kenai River. The habitat
41 issues last year were discussed. They're still in
42 effect. Even small amounts of use in these areas over
43 time can lead to habitat degradation. We've seen that
44 in the past, and we don't want to repeat the mistakes
45 of the past in the future.

46
47 There's a lot of different areas on the
48 Kenai River that have habitat closures that affect
49 sport fishing users. We abide by those closures,
50 because we believe that a healthy habitat is important

1 for healthy fish in the future.

2

3 So with all respect, we ask you to
4 oppose this proposal.

5

6 Thank you.

7

8 CHAIRMAN FLEAGLE: Thank you, Ricky.
9 Appreciate the comments.

10

11 Questions.

12

13 (No comments)

14

15 CHAIRMAN FLEAGLE: All right. Pete.

16

17 MR. PROBASCO: Next is Mr. Darrel
18 Williams.

19

20 CHAIRMAN FLEAGLE: And, Darrel, your
21 microphone is already on, so don't worry about it.

22

23 MR. WILLIAMS: Mr. Chairman. Members
24 of the Board. My name is Darrel Williams. I'm with
25 Ninilchik Traditional Council. Just a second here.

26

27 We would like to ask that you support
28 this proposal as written particularly.

29

30 There's quite a few things that I've
31 read through as was submitted with this proposal. And
32 we discussed it at length at the Southcentral Regional
33 Advisory Council. And I hope everybody's had time to
34 be able to review that so we don't do redundancy and
35 have to repeat different issues.

36

37 One of the things that I was concerned
38 about was the reference that I've seen to this riparian
39 habitat degradation is from a technical paper of I
40 believe his name is Lypits (ph) in 1994. And one of
41 the questions I have about that is does this paper
42 represent this type of degradation well. And it was
43 kind of old, 1994, so I thought I would try to find
44 some stuff a little more recent, and maybe reference to
45 bring some good information for everybody to help them
46 make good decisions.

47

48 And what I thought I would provide for
49 everyone is a report from the Alaska Department of
50 Natural Resources where they interpret this particular

1 technical paper. The report is Kenai River Habitat
2 Restoration and Recreation Enhancement Project,
3 Restoration Project 99180. And when they look at the
4 Kenai River cumulative impact assessment of development
5 impacts on fish habitat, their interpretation of this
6 technical paper is that it was, and I quote, was
7 designed to identify and evaluate the cumulative
8 impacts of development actions, including public and
9 private land use impacts on the Kenai River fish
10 habitat.

11
12 And so one of my concerns that came
13 from that is, subsistence really isn't about
14 development, and maybe it's not as appropriate as it
15 could be. So I did a little more digging to try to
16 find something that was a little more recent. And the
17 Division of Sport Fish did some research and technical
18 work by Mary King, and it was really interesting. The
19 title of the paper is Fishery Data Series No. 99-9.
20 And this was done in 1997, so it's a little more
21 recent. And the title of it, I think is a very good
22 title, is The Assessment of Angler Impacts to the Kenai
23 River Riparian Habitats. I think that probably clearly
24 addresses what we're -- some of the concerns that have
25 been brought up here.

26
27 And in the summary of this technical
28 paper, so as to not to be redundant and read a whole
29 bunch of it into it, and everybody can reference this
30 paper, Mary King mentions that the data did not support
31 a relationship between bank integrity variables with
32 angler traffic.

33
34 So it's kind of interesting about where
35 you look for different information and how you apply
36 it. And these are the controversial issues that were
37 brought up at the Southcentral Regional Advisory
38 Council meeting about benefits of -- what is and what
39 is not benefits to riparian habitat. And there was a
40 lot of research like that. It's a little more recent.
41 I thought I'd provide that for everybody. I thought
42 this might help. Excuse me.

43
44 There have been some other issues
45 that's been brought up during this particular Federal
46 Subsistence Board meeting. One of them I've heard is
47 the social conflicts. My understanding is it's not
48 really our task to address the social conflicts.

49
50 I was very concerned and very alarmed

1 to have a state trooper sit here and tell the Federal
2 Subsistence Board that they're going to cite tickets to
3 people who are doing what they're supposed to do. In a
4 lot of areas that's considered a bad thing. And for
5 myself particularly, I was very alarmed.

6

7 I'm not sure if we can address the
8 social issues that's going to come along with these
9 kind of things, but I think it's going to be up to the
10 user groups. And I think we can all get along if we're
11 given the chance to do that.

12

13 I believe that it was already covered
14 in the summary that was given earlier, too, that not
15 all the folks down there have boats and access to boats
16 to be able to dipnet out of a boat. And I think it
17 would provide some opportunity for some folks to be
18 able to go and have a little preference being able to
19 fish in that area.

20

21 And those are the topics I wanted to
22 cover.

23

24 Thank you, Mr. Chair.

25

26 CHAIRMAN FLEAGLE: Thank you, Darrel.

27

28 Questions.

29

30 (No comments)

31

32 CHAIRMAN FLEAGLE: Appreciate your
33 testimony. Pete.

34

35 MR. PROBASCO: Next, Mr. Chair, is Mr.
36 Sky Starkey.

37

38 CHAIRMAN FLEAGLE: Five minutes.

39

40 (Laughter)

41

42 MR. STARKEY: Thank you. Mr. Chairman
43 and Board members. Sky Starkey representing Ninilchik
44 Traditional Council in support of FP 08.

45

46 Just a few things. At the RAC meeting,
47 it's my recollection that some of the reasons that the
48 RAC supported this proposal was, in addition to the
49 ones that are in the Staff report, are there was
50 concern that dipnetting out of a boat in this stretch

1 of water is not safe. It's not a safe thing to do at
2 least for some subsistence users. So in addition to
3 needing a boat, there's some safety concerns.

4
5 I mean, essentially you've got two
6 proposals before you that would expand the opportunity
7 in the Moose Range Meadows, and that's a dipnet fishery
8 and the fishwheel. The dipnet fishery by most accounts
9 is not going to provide significantly more additional
10 opportunity, but it will provide some. And it's our
11 view that along the Kenai River now there's not a
12 meaningful priority. Rod and reel, yes, but rod and
13 reel is not really considered subsistence gear in most
14 places in the state. It's an additional means, but
15 most people like to get their fish in a more effective
16 and efficient way.

17
18 Dipnetting is limited here to boats.
19 There's a small stretch of the river where you can
20 dipnet below Skilak Lake. And then to go to Russian
21 River Falls, you've got to hike in up to the falls and
22 carry your fish out. Now, that's not really a
23 meaningful opportunity for elders and other people who
24 are not going to be able to carry that burden.

25
26 So there needs to be some expansion of
27 the opportunity here, and you have two chances to do
28 it. Our view is that you should do both. You should
29 provide this possibility to explore the dipnet fishery
30 here in a meaningful way.

31
32 In addressing the concerns that Staff's
33 brought up, there's a few things to look at. People
34 talk about the habitat and how important it is, but the
35 State closure and the Federal closure for these lands
36 is only from June 15th -- excuse me, from July 1st
37 through August 15th. But the subsistence fishery is
38 open from June 15th through August 31st. Well, that
39 means that the subsistence fisherman is not allowed on
40 the banks while sports fishermen are allowed on the
41 banks for a significant part of the season. So how is
42 there a priority for subsistence and why is the habitat
43 so important that numerous sports fishermen can use it,
44 you know, before July 1st and after August 15th, but
45 subsistence users can't use it during any period of
46 time. I mean, there's a disconnect there. And it just
47 doesn't make sense, and we don't think it's legal to
48 keep subsistence fishermen off the bank if you're going
49 to allow sports fishermen during these periods of time.
50

1 Also, there's a corresponding Federal
2 regulation which closes the access points along the
3 power line, et cetera. It's our view that Section .811
4 of ANILCA would control there, and that requires
5 subsistence users to have access to subsistence fishing
6 sites. And so we don't think that regulation should be
7 applicable to subsistence fishermen.

8
9 There's also the issue of the boardwalk
10 and that only be used by sports fishermen. And perhaps
11 that's a good idea to separate gear, but Section .810
12 of ANILCA again requires that whenever the Federal
13 Government makes any use of public lands, including
14 building a boardwalk, they would have to go through the
15 810 process and demonstrate that it's not going to have
16 an impact on subsistence users. And this is, the
17 boardwalk is, and so the 810 process hasn't been
18 followed for the boardwalk.

19
20 So there's some legal concerns in the
21 Staff analysis.

22
23 It's a modest proposal, and it's one
24 that should be adopted in addition to a fishwheel,
25 which will expand the opportunity there.

26
27 Thank you, Mr. Chairman. Did I make
28 it?

29
30 CHAIRMAN FLEAGLE: You did great, Sky.
31 Thanks.

32
33 Questions.

34
35 (No comments)

36
37 CHAIRMAN FLEAGLE: All right.

38
39 MR. STARKEY: Thank you.

40
41 CHAIRMAN FLEAGLE: Next, Pete.

42
43 MR. PROBASCO: Thank you, Mr. Chair.
44 Last is Mr. Szczesny.

45
46 MR. SZCZESNY: Thank you, Mr. Chairman.
47 Board members. My name is Andy Szczesny for the
48 record. I'm here representing Cooper Landing Fish and
49 Game Advisory Committee.

50

1 We took up, at our last meeting, last
2 Tuesday, these two proposals FP-08 and FP-09.
3 Basically it was very easy and I'm not going to be
4 redundant with a lot of the OSM office did because
5 that's what we came to the conclusion of, too. It was
6 easy to vote on, it was seven/zero to oppose this just
7 because of the habitat issues.

8
9 There's already a dipnet fishery at the
10 mouth of Russian River Falls. The people of Cooper
11 Landing are utilizing that and they like it. The
12 people of Ninilchik don't like it because they have to
13 drive, and it's a long ways away. So this proposed
14 fishery basically is logistics. It's closer to them to
15 utilize the fishery, period. But when you take the
16 habitat issues into it, this is the first time, I think
17 I've ever been to a meeting where somebody wanted to
18 argue habitat issues and go in and use them when we
19 know for a fact that they're problem in these areas.

20
21 So that's about it and we have a lot of
22 areas on the Kenai River from Cooper Landing all the
23 way to the tide water that are closed for these habitat
24 reasons and as far as I know no one has ever challenged
25 them.

26
27 Thank you.

28
29 CHAIRMAN FLEAGLE: Thank you, Andy.
30 Questions. Appreciate the testimony. That concludes
31 public testimony, right, Pete.

32
33 MR. PROBASCO: That's correct, Mr.
34 Chair.

35
36 Okay. Regional Council recommendation.
37 Mr. Lohse.

38
39 MR. LOHSE: Thank you, Mr. Chair. I'm
40 going to have to echo to start off with what Steve
41 said, sounds simple, I assure you that it isn't. Our
42 Council's got 65 pages of transcript right here in
43 front of me where we tried to understand the
44 limitations and ramifications that supposed habitat
45 impact has on what appears to most of the Council to be
46 a legitimate request for more general opportunity.

47
48 We ended up not coming to a consensus,
49 we came to a majority vote, the majority vote was to
50 support Proposal 08.

1 And I'd just like to close with two
2 comments from the winning side just to show you some of
3 the issues that were in front of us and also what we
4 figure is going to have to happen.

5
6 I'd like to quote Ms. Stickwan, and
7 like she said:

8
9 She'd like to say something about the
10 degradation of the bank, it has to be
11 watched. If we vote in favor of this
12 proposal then, you know, that they
13 watch and make sure that it isn't
14 entirely ruined by the subsistence
15 users, that it be monitored and I
16 wouldn't vote in favor of this proposal
17 unless, and she finished it off but
18 it's not here in the transcript, unless
19 I believe that would happen.

20
21 The majority of the Council felt that
22 protection could be in place, could be put in place and
23 it could be watched close enough that if there was any
24 major problem it could be stopped before there was a
25 major problem. Again, we're always dealing with the
26 idea of what might happen and it's kind of like in this
27 last one that we were talking about with the fyke traps
28 and what Randy was trying to point out on the fyke
29 traps. To make a fyke trap, it's a lot of work. You
30 might do it once for educational purposes, but you're
31 probably not going to do it on a daily basis and
32 probably not a lot of people are going to do it, and I
33 can say that from personal experience. We had a permit
34 for a fyke trap once for burbot, cut a hole in the ice,
35 by the time we did the work once and the return we got
36 was small enough we never did it again. And that's the
37 same thing here, we don't know what kind of impact the
38 subsistence fisherman has.

39
40 This looked like a reasonable request
41 to most of the Council, to the majority of the Council,
42 but at the same time they recognized that there were
43 problems in it that were going to have to be dealt
44 with.

45
46 And with that I'm just going to quote
47 Mr. Showalter to you:

48
49 He says: I'm going to have to vote for
50 it and let them, and them means, you,

1 work out the final decisions after
2 that.

3
4 And that's actually what's going to
5 have to happen. We spent, like I said, 65 pages of
6 transcript here trying to figure out all the
7 ramifications of it and we came to the conclusion with
8 the data that's there and the data that's going to be
9 presented to you, you guys are going to have to make
10 the final decision on it. The idea was it's a
11 reasonable question, we voted for it, the proposal
12 passed as written, but at the same time the recognition
13 that there were problems in implementing it was very
14 strong all the way through our discussion, and there
15 were things like safety out of boats and stuff like
16 that that took part of our discussion. But the big
17 thing was we didn't know if we had the capability to
18 tell you how to implement it. But as a Council we
19 thought it was a good idea. And I'll repeat again, it
20 was a 5/4 vote, it was one of the closest votes that
21 our Council has, we usually work to try to get a
22 consensus. We couldn't get a consensus on this one.

23
24 CHAIRMAN FLEAGLE: Thank you, Ralph.
25 Questions.

26
27 (No comments)

28
29 CHAIRMAN FLEAGLE: Appreciate it.
30 Department of Fish and Game comments.

31
32 George.

33
34 MR. PAPPAS: Thank you, Mr. Chair. For
35 the record, Department of Fish and Game.

36
37 Adoption of this proposal would create
38 conservation, enforcement and confusion issues.

39
40 The State provides a broad array of
41 personal use, recreational, educational fisheries to
42 meet the needs for personal and family consumption as
43 well as cultural purposes. The personal use and
44 educational fisheries provide for more opportunity to
45 harvest salmon more efficiently and closer to home than
46 is used and adequate opportunities for harvest of
47 rainbow and steelhead trout, lake trout, Arctic char
48 and Dolly Varden occur in State recreational fishing
49 regulations.

50

1 As for conservation issues. Adoption
2 of this proposal would result in the impact on fish and
3 their habitat in two ways.

4
5 Allowing fishing from shore will impact
6 the riparian habitat closure areas. The Department's
7 1994 study which was talked about earlier identified
8 and evaluated a variety of Kenai River habitat types
9 and conditions. The study concluded that the riparian
10 habitat zone for River Mouth 17.5 to 39.5, which
11 includes this area in concern, Moose Range Meadows,
12 contains the greatest amount, 42.3 percent of the total
13 main stem of over hanging vegetation and under cut
14 banks on the Kenai River. Testimony given by Staff --
15 by the OSM and the Fish and Wildlife Service Staff at
16 the October 2007 meetings at the Southcentral RAC
17 meeting indicated the riparian habitat within the Moose
18 Range Meadows area is the significant and is the
19 highest quality for rearing juvenile chinook and coho
20 salmon in the Kenai River water shed. Additionally the
21 study concluded the river substrait between Mile 17.5
22 and 39.5 contains the greatest amount of gravel and
23 cobble materials within the entire main stem which
24 supports the greatest opportunity for spawning and
25 provides ample cover -- excuse me, cover habitat in the
26 crevices between the cobbles for juveniles to rest,
27 feed, and rear.

28
29 There would be an increased potential
30 of the over-exploitation of Kenai River fish stocks,
31 which is inconsistent with conservation purposes of the
32 Federal lands and State management for sustainable
33 fish. The Department is concerned that the Federal
34 subsistence harvest levels may not commensurate with
35 the availability of fish and their ability to withstand
36 harvest. In particular, the harvest levels for the
37 late-run Kenai chinook salmon and coho salmon are quite
38 high comparison to their abundance in that area. No
39 stock assessment information exists for Dolly Varden in
40 that area and information has not been collected
41 recently for rainbow trout below Skilak Lake. Given
42 the lack of ongoing stock assessment programs, stock
43 declines could not be identified in a timely enough
44 fashion to prevent serious, possibly irretrievable --
45 excuse me irreversible depletion of the stocks.

46
47 The Department position on this and
48 recommendation is to oppose the proposal.

49
50 Thank you, Mr. Chair.

1 CHAIRMAN FLEAGLE: Thank you, George.
2 We now move to the InterAgency Staff Committee
3 comments. Larry, please.

4
5 MR. BUKLIS: Thank you, Mr. Chairman.
6 The Staff Committee noted that adopting this proposal
7 and allowing the dipnet and rod and reel salmon fishery
8 to occur from shore could lead to damage of critical
9 shoreline rearing habitat for salmon, however an
10 alternative view was also expressed, that there would
11 not be enough subsistence use in the area to warrant
12 such a concern for habitat damage.

13
14 Thank you, Mr. Chairman.

15
16 CHAIRMAN FLEAGLE: Thank you, Larry.
17 Now, open for Board discussion with Council Chairs and
18 State liaison. Ralph.

19
20 MR. LOHSE: Mr. Chair. I'd just like
21 to bring out one thing that was not brought out and
22 looking through the Council transcript I noticed it was
23 never mentioned.

24
25 We talked a lot about the fact that the
26 stream bank was closed for habitat protection. Never
27 once in our transcript, never once was it brought out
28 to us that -- well, maybe it was brought out, but it
29 was never once was it noticed, that it's only closed
30 for that period of the year and for the rest of the
31 year sportfishermen can go up and down the bank and
32 fish for other species. Which basically means that
33 it's closed during the red season because recognizing
34 how many personal use and sportfishermen there are in
35 the Anchorage and Mat-Su area, the impact on the banks
36 would be unsustainable. But obviously Fish and Game
37 and other people concerned, feel that after the lure of
38 the red salmon is gone, the lure of the other fish
39 won't attract enough people to damage the bank so we
40 can let other people trample up and down the bank.

41
42 Now, as a subsistence user, as somebody
43 who recognizes how many people are involved in all of
44 these things and has gone through this for so many
45 years and sees how many people actually use the
46 procedures that we put in place to give them access, I
47 would be willing to bet that more sportfishermen
48 trample the banks before and after the red season than
49 subsistence fishermen will ever trample the banks
50 during the red season. Just simply because of the

1 amount of people involved. And I'm sure that if that
2 would have come out to the Council, I'm sure -- I'm
3 sure of one thing, I'm sure the vote would have been
4 one vote higher in favor of it. And possibly more.

5
6 I really -- as I've said before, I
7 can't spit that word out tonight, but as I've said
8 before, if you can allow it for sportfishing, I really
9 can't see how you can close it for subsistence fishing.
10 And that goes to walking on the bank just as much it
11 goes to fishing on a particular stock.

12
13 And with that, I'll shut up.

14
15 CHAIRMAN FLEAGLE: Thanks, Ralph.
16 Other comments. Marsha.

17
18 MS. BLASZAK: I really appreciate you
19 bringing that point up because I was a little confused
20 by the earlier testimony that it was closed, but it was
21 open, and that clarification really helped me as well.

22
23 I have a question I have that I haven't
24 heard introduced into the discussion yet is if there's
25 some notion of the number of dipnet users that might be
26 involved in this and I don't know who the appropriate
27 is to ask that question of.

28
29 CHAIRMAN FLEAGLE: Steve.

30
31 MR. FRIED: I mean I suppose you could
32 look at the number of potential users from the three
33 communities, but that doesn't mean everybody's going to
34 do it. And like I said since there's no opportunity to
35 do this now, we have no idea, and I don't think anybody
36 -- or very few people used this site to dipnet even
37 from a boat last season that I know of. I might be
38 wrong. I haven't seen data since the end of August or
39 something, but I think there were only like four
40 sockeye reported caught out of this area, and I think
41 those were all rod and reel, so I have no idea. It
42 could be very few, could be, I suppose hundreds, but I
43 doubt it.

44
45 MS. BLASZAK: Thank you.

46
47 MR. MELIUS: Mr. Chairman.

48
49 CHAIRMAN FLEAGLE: Tom.

50

1 MR. MELIUS: For the newer members on
2 the Board, I would ask, as Steve indicated, a little
3 bit of a complex issue, I would ask that our on the
4 ground Refuge manager Robin West, who is in attendance
5 and who, I think, Ralph had an opportunity to visit on
6 this issue when you met, if he would come forward with
7 the Board's indulgence to address a little bit of the
8 issues that we had and answer any questions that Board
9 members may have on this.

10
11 So with your approval.

12
13 CHAIRMAN FLEAGLE: Sure, Robin, please.

14
15
16 MS. CUNNING: While he's on his way up,
17 can we add something?

18
19 CHAIRMAN FLEAGLE: Sure. I'll give the
20 State, they had their hand up, I'll give them an
21 opportunity to speak, and then I'll come over to you,
22 Robin.

23
24 George.

25
26 MR. PAPPAS: Yes, Mr. Chair. George
27 Pappas for the record.

28
29 As presented at the RAC meeting, the
30 Southcentral RAC meeting and also contained in our
31 comments, in addition to the reason that this time
32 period was selected, it was also the most important
33 part of the vegetation growing season, is that
34 timeframe, where the vegetation is most sensitive to
35 trampling.

36
37 Thank you, Mr. Chair.

38
39 CHAIRMAN FLEAGLE: Thank you. Robin
40 West, welcome.

41
42 MR. WEST: Thank you, Mr. Chair. Robin
43 West, Refuge Manager, Kenai National Wildlife Refuge.
44 And I'd be happy to give history and answer questions
45 but there's been a few things that have been said that
46 I'd just like to maybe clarify or add a little bit more
47 clarity to, perhaps.

48
49 One, is the way the proposal is
50 written, at least the way I read it, it's not just a

1 dipnet fishery and, you know, it also allows rod and
2 reel activity, which is the historical use of that area
3 and is probably -- has been a popular area in the
4 middle of summer for rod and reel. So as the proposal
5 is written, it would be dipnet or rod and reel with the
6 rod and reel given bait, treble hooks and double bag
7 limits, so that could definitely increase the use from
8 folks trying to utilize a dipnet.

9
10 I think, you know, there was enough
11 history given probably for you to generally understand
12 the way the area was developed and some of the
13 complexities of easements and private property. But
14 one of the things that I think is important for the
15 Board to also understand is as this proposal is
16 written, we don't have jurisdiction to implement over
17 approximately 53 percent of it. With the River Mile
18 markers that were used last year for the dipnet fishery
19 from a boat, where we do have Federal waters, if you
20 just take those mile markers and take them to the shore
21 as it's written, we don't have jurisdiction. Most of
22 that is less than fee title interest, where we have
23 easements over private property, so we couldn't
24 implement really as written. We would have to rework
25 this proposal to something far different.

26
27 With that said, it would take you then
28 to the up river area that people are largely talking
29 about. This EVOS acquisition that doesn't have much
30 access except from the end of the road that is
31 protected through a July 1 to August 15th State closure
32 from fishing within 10 feet of the bank. And the
33 volume of use is kind of unknown but the things that
34 have been said need to be reemphasized here, is that,
35 it was determined by the former Habitat Division of the
36 Department, to be the highest quality king salmon
37 rearing habitat remaining in the drainage and we know
38 we're losing it. And at the time the Board of Fish
39 granted authority to the Department to do closures to
40 access on public lands, the Division of Sportfish was
41 arguing to close all the private property below that as
42 well where we had easements because of that nexus for
43 public lands, because of the easement. So that should
44 just give you an indication of how strongly the
45 managers at the time felt about it, they were pushing
46 to close to where an individual property owner couldn't
47 be on it, one person, two person or whatever, for the
48 damage that might occur. That did not happen because
49 down stream we put in our -- closed all the public use
50 for the same time period where then the Department put

1 up stream the closure to fishing within 10 feet of the
2 bank, but it basically accomplished the same thing.

3

4 So maybe I confused you a little bit
5 but I did want to emphasize some concerns with the
6 proposal as written on how you could possibly implement
7 it and it would be very difficult to impossible, I
8 think.

9

10 Thank you.

11

12 CHAIRMAN FLEAGLE: Thank you, Robin.

13 Further discussion. Board. Tom.

14

15 (No comments)

16

17 CHAIRMAN FLEAGLE: I don't see anybody,

18 okay.

19

20 Denny.

21

22 (No comments)

23

24 CHAIRMAN FLEAGLE: Are we ready for a

25 motion. Marsha.

26

27 MR. MELIUS: I can make a motion, Mr.

28 Chairman.

29

30 CHAIRMAN FLEAGLE: Tom.

31

32 MR. MELIUS: I would move to support
33 Proposal FP-08 as recommended by the Southcentral
34 Regional Council. I, though, have strong concerns that
35 this area is a prime chinook rearing habitat with bank
36 closures in place for habitat protection, plus this
37 area as we've heard, not a safe place to use dipnets on
38 this river. This area could easily manage with minimal
39 use and opening it to this gear type would not be
40 consistent with recognized principles of fish and
41 wildlife management, and I'll provide additional
42 justification on why I will not be supporting my motion
43 if I get a second.

44

45 MS. BLASZAK: Second.

46

47 CHAIRMAN FLEAGLE: Marsha seconds, go

48 ahead Tom, please.

49

50 MR. MELIUS: As we have heard from OSM

1 or others, that most of the Moose Range Meadows area is
2 private lands and would fall outside Federal
3 jurisdiction for dipnetting from shore. The area,
4 though, that is within Federal lands, as I indicated,
5 not conducive to the use of dipnets since people would
6 have to be at least 10 feet from the shore.

7

8 It is a deep area, as I'm told, with
9 large boulders and I would have concerns about the
10 safety factor of folks using a dipnet in that area.

11

12 It's also important to keep in mind
13 that we currently allow opportunities in this area that
14 include a double bag limit with rod and reel for salmon
15 and dipnetting from a boat for up to 25 sockeye, 10
16 coho -- I'm sorry 20 coho, and 10 chinook per
17 household. In addition, we allow dipnetting from shore
18 and a boat in the Kasilof, an area below Skilak Lake
19 and up near the Russian River Falls.

20

21 Mr. Chairman, although we have yet to
22 talk about another proposal, I think in the evaluation
23 about a proposal using fishwheels, it might appear that
24 that might be a more appropriate opportunity to help
25 subsistence users meet their needs and so I would
26 encourage support for rejecting of the motion.

27

28 CHAIRMAN FLEAGLE: Thanks, Tom. Other
29 comments. Tom.

30

31 MR. LONNIE: I have concerns similar to
32 what has just been expressed by Tom Melius and will
33 also be opposing the motion.

34

35 CHAIRMAN FLEAGLE: Other comments.
36 Marsha.

37

38 MS. BLASZAK: I think I'm having
39 difficulty, obviously a very complex proposal from all
40 sides, but I'm still having difficulty if we're
41 providing for that meaningful subsistence preference
42 and I'm certainly very concerned about the issues
43 regarding the habitat that have been brought up and
44 it's a -- I think an important consideration that we
45 make sure that we are providing that access to the
46 resource for subsistence users. And I'm not -- I'm not
47 confident that we're resolving that issue here. And
48 for those reasons I'm going to vote supporting the
49 proposal.

50

1 CHAIRMAN FLEAGLE: As will I. Just
2 looking at the effort that has been expended through
3 August 21st, 2007 is the data that we have available to
4 us in our Board packet, and of the 33 permit holders
5 for dipnet fishing on the Kenai, it appears that 99
6 percent of the salmon harvest was taken at the Russian
7 River Falls and the remaining one percent, which is
8 four salmon, were taken from the Moose Range Meadows
9 site. It doesn't look like this is a real popular site
10 to fish from and to maybe increase the availability for
11 the people that do want to go there, the three or the
12 two, yeah, from Ninilchik that went there to that site,
13 I don't see it as being a really -- causing that much
14 problem. I would guess that, as we have seen, in
15 Ninilchik's stepped approach to providing subsistence
16 preference in small areas spread around, that what they
17 have told the Board in previous testimony is showing
18 true, that the conflicts aren't there, that over use
19 isn't there, the problems just are not evident that we
20 were cautioned against. And I would suggest that we're
21 probably in a similar situation here, to where the
22 conservation issues with the bank, maybe more fish
23 being taken, I don't feel are adequate to not allow
24 this extra opportunity.

25
26 So I'm going to support it.

27
28 Denny.

29
30 MR. BSCHOR: Yeah, Mr. Chair. it's
31 always a little difficult to try to second guess or try
32 to just piece together what the situation is entirely
33 on the ground, and it's been my experience that usually
34 the on the ground manager has the best handle on that.
35 And I've heard some pretty serious concerns, I think
36 about the potential habitat damage from increased use
37 on that bank. Now, that can be mitigated in some ways
38 but I think it's sufficient for me to consider not
39 supporting this.

40
41 CHAIRMAN FLEAGLE: Any other
42 discussion. Niles.

43
44 MR. CESAR: Well, I don't think it
45 matters which way I vote, you know, that if I vote to
46 oppose it it will die, if I vote to support it it will
47 die because it will be a three-three vote and it won't
48 pass. So I agree with you, Mike, it doesn't seem to be
49 -- it seems to be an area that we're all concerned
50 about the habitat and I understand that, but at the

1 same time it seems like a reasonable approach by
2 Ninilchik and I intend to support it.

3
4 CHAIRMAN FLEAGLE: Did I hear the
5 question in that statement.

6
7 MR. CESAR: Yes, sir.

8
9 CHAIRMAN FLEAGLE: Thank you. Pete.

10
11 MR. PROBASCO: Thank you, Mr. Chair.
12 Final action on FP08-08 to adopt the proposal as
13 recommended by the Southcentral Regional Advisory
14 Council. And we're starting with Mr. Fleagle.

15
16
17 CHAIRMAN FLEAGLE: Aye.

18
19 MR. PROBASCO: Mr. Lonnie.

20
21 MR. LONNIE: No.

22
23 MR. PROBASCO: Mr. Cesar.

24
25 MR. CESAR: Aye.

26
27 MR. PROBASCO: Mr. Bschor.

28
29 MR. BSCHOR: No.

30
31 CHAIRMAN FLEAGLE: Mr. Melius.

32
33 MR. MELIUS: No.

34
35 MR. PROBASCO: And Ms. Blaszak.

36
37 MS. BLASZAK: Aye.

38
39 MR. PROBASCO: Mr. Chair. Motion fails
40 three/three.

41
42 CHAIRMAN FLEAGLE: Thank you, Pete.
43 That now brings us up to Proposal 08-09. And, once
44 again we turn to Steve Fried for the presentation of
45 the analysis.

46
47 MR. FRIED: Thank you, Mr. Chairman. I
48 guess I'd direct the Board's attention to Pages 297 to
49 311 in their books. This proposal was submitted by the
50 Southcentral Regional Advisory Council and it requests

1 that a temporary community fishwheel salmon fisheries
2 be established on the Kenai and Kasilof Rivers. As
3 part of this request, the proponent also is asking that
4 there be one fishwheel per river, that permits, live
5 boxes, monitoring, fish marking and reporting be
6 required. That the Kenai fishwheel site be in Federal
7 waters below Skilak Lake and the Kasilof site be in
8 Federal waters below Tustomena Lake. There are maps on
9 both Pages 298 and 299 in your book. They're not very
10 detailed, but just give you a general idea of the
11 Federal waters in relation to those two lakes, those
12 two systems.

13

14 The fishwheel fisheries would have the
15 same seasons as the existing dipnet fisheries. This
16 means on the Kenai they'd go from June 15th through
17 September 30th, and on the Kasilof from June 16th
18 through October 31st. The fishwheel fisheries would
19 also share the annual harvest limits with the dipnet
20 fisheries and this would mean that on the Kenai they'd
21 share a limit of 4,00 sockeye, 500 late run chinook,
22 3,000 coho and 2,000 pink salmon, while on the Kasilof
23 it would be 4,000 sockeye, 500 late run chinook, 500
24 coho and 500 pink salmon.

25

26 Rainbow and steelhead trout would be
27 released on both rivers. And in addition to this, on
28 the Kenai River Dolly Varden and early run chinook
29 salmon would have to be released.

30

31 There'd be an evaluation of these
32 fisheries so that the Board would be able to make a
33 well-informed decision on how to proceed since these
34 would be only temporary in nature if this proposal is
35 adopted.

36

37 Residents of Ninilchik have a positive
38 customary and traditional use determination for all
39 fish on the Kasilof and for salmon on the Kenai.

40

41 Residents of Cooper Landing and Hope
42 have a positive customary and traditional use
43 determination for all fish on the Kenai.

44

45 In both rivers salmon populations
46 appear to be healthy and harvest seem to be within
47 sustainable limits.

48

49 This interest in fishwheel fisheries is
50 because this could be an effective harvest method that

1 also serves to conserve fish populations. While the
2 effectiveness of fishwheels on the Kenai and Kasilof
3 Rivers really isn't known, the gear is used in
4 subsistence fisheries in other Alaskan rivers, and on
5 the Kenai River the Department of Fish and Game uses
6 fishwheels to sample salmon. Fishwheels with a well
7 designed live box and monitored regularly can keep fish
8 mortality at a low level and most incidentally caught
9 fish can be released unharmed.

10

11 The proposed temporary fishwheel
12 fishery should have few effects on existing fisheries
13 or fisheries resources since there would be no increase
14 in the existing annual harvest limits. There would be
15 only one wheel on each river and the operations would
16 have to be approved by the Federal fishery and land
17 managers.

18

19 A three year fishery would allow time
20 to evaluate this gear type. Subsistence users and
21 resource managers would have three years to evaluate
22 the gear and develop community based fisheries. And
23 the Board would then have three years of information to
24 decide whether these fisheries should be continued on a
25 temporary basis, on a permanent basis or be terminated.
26 And the three year duration for each river would be
27 based on the time the fishwheel was first installed on
28 that river, that's when the clock would start counting.

29

30 The regulation should describe the
31 responsibilities of the fishwheel owner, the fishwheel
32 users and the fishery managers.

33

34 Suggested Council and Staff
35 modifications to the propose, the original regulation
36 were offered to clearly describe responsibilities for
37 these owners, managers and fishwheel operators. For
38 example, the Federal fishery manager in consultation
39 with the Kenai Refuge manager would award the permits
40 based on the operating plan merits and would consult
41 with the owners of the fishwheels on construction,
42 installation, operation, use and removal of the wheels.
43 The fishwheel owners would have to provide a written
44 operating plan to the Federal fishery manager, they'd
45 have to have a fishing permit to operate the wheel for
46 community members. The fishwheel would have to be
47 marked as specified in regulation. And the fishwheel
48 owners would also have to provide a written
49 documentation, evaluation information to the Federal
50 fishery manager. Fishwheel operators, if they are not

1 the owners, would also have to have a separate permit.
2 They'd also have to mark the wheel as specified in
3 regulations. The operator would have to be on site to
4 monitor the wheel. Would have to remove all fish at
5 least every two hours and you'd have to mark the
6 harvested fish and record the harvest on the permit
7 before leaving the fishing site and the reported
8 harvest would have to be made to the Federal fishing
9 managers within 72 hours of leaving the site.

10
11 One concern is that it might be
12 difficult to serve three communities with only one
13 fishwheel allowed on the Kenai River. Allowing one
14 fishwheel is consistent with the temporary nature of
15 the fisheries and would also simplify the situating
16 monitoring and management of the wheels but the Kenai
17 fishwheel owner would then have more difficulty in
18 administering the fishwheel on this river than on the
19 Kasilof because residents of three communities would
20 have to have harvest opportunities, at least provide --
21 at least be provided with some opportunity on the Kenai
22 whereas only one community would have to be provided
23 with this on the Kasilof.

24
25 The OSM Staff conclusion is to support
26 this proposal with modification as recommended by the
27 Council. And we also have some -- a few further
28 modifications just to clarify some issues.

29
30 You might notice there is an addendum
31 that was provided in addition to the Staff analysis,
32 and I think this begins on Page 305 of your book. And
33 I guess this was done to capture the sequence of
34 proposed regulatory language modifications. The Staff
35 analysis itself contains suggested Staff modifications
36 that provided to the Council, so the regulatory
37 language that you'll see on Pages 305 to 307 is
38 actually what the Council was provided with by the
39 Staff as to how they would suggest their original
40 proposal be modified.

41
42 The Council's recommended modified
43 language, which is on Pages 294 to 296 was developed
44 from the Staff modification presented at the Council
45 meeting rather than from the original language. And so
46 the addendum actually contains the further modification
47 the Staff is suggesting, and these are really just
48 minor ones. One is just to clarify the need to release
49 Kenai early run chinook salmon, and this is done by
50 saying that all chinook caught prior to July 16th would

1 be released, and this is consistent with the existing
2 dipnet fishery harvest regulations for chinook salmon
3 on the Kenai. And also it more clearly states that the
4 fishwheels must be stopped when they are not being
5 monitored or used.

6
7 That concludes my summary of the Staff
8 analysis.

9
10 Thank you.

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

14
15 (No comments)

16
17 CHAIRMAN FLEAGLE: Summary of written
18 public comments. Donald.

19
20 MR. MIKE: Thank you, Mr. Chair, Donald
21 Mike, Regional Council Coordinator.

22
23 You'll find your written public
24 comments starting on Page 316 of the Board book. We
25 received three written public comments. The Kenai
26 River Sportfishing Association. The Alaska Outdoor
27 Council. Keith Phillips.

28
29 The Kenai River Sportfishing
30 Association opposes the proposal. The
31 issue of a single site community based
32 Federal subsistence fishery on the
33 Kenai and Kasilof Rivers was considered
34 at the May 2007 Board meeting and was
35 rejected for a variety of reasons,
36 including significant fishery
37 conservation and logistical concerns.

38
39 Specifically the most important concern
40 brought up at the level of discussion
41 for a single site community based
42 gillnet subsistence fishery was that
43 it'd open the door to future widespread
44 use of gillnets in both drainages.
45 Since there is no legal basis available
46 to restrict the gear type amongst
47 users, while it may start as a single
48 site community based subsistence
49 fishery, the allowance of a fishwheel
50 as a method and means for one group of

1 individuals, even one on a community
2 basis opens the door for its widespread
3 use by any and all future users who
4 want to make use of this same methods
5 and means.
6

7 The KRSA does not support fishwheels as
8 a method and means and as such adoption
9 would, in due course, allow widespread
10 use of fishwheels as a subsistence
11 harvest methods and means on the Kenai
12 and Kasilof Rivers. Whereas fishwheels
13 have never been a customary and
14 traditional harvest method in either
15 drainage and the Board in May of 2007
16 provided for a subsistence priority
17 through the use of individual and
18 household means -- methods and means of
19 subsistence fisheries in the Kenai and
20 Kasilof River drainages, there is no
21 basis for adoption of Proposal '09.
22

23 The Alaska Outdoor Council opposed the
24 proposal.
25

26 A temporary fishwheel fishery would
27 only increase the divisiveness among
28 those Alaskan's living in Federally-
29 qualified subsistence areas on the
30 Kenai Peninsula.
31

32 And Mr. Keith Phillips opposes the
33 proposal.
34

35 Thank you, Mr. Chair, that concludes
36 the written public comments.
37

38 CHAIRMAN FLEAGLE: Thank you, Donald.
39 Pete, do we have any public testifiers signed up.
40

41 MR. PROBASCO: Yes, we do, Mr. Chair.
42 And I reversed the order from the last four and so
43 we'll start with Mr. Szczesny.
44

45 CHAIRMAN FLEAGLE: Okay, we have four
46 folks, and Andy if you'd come and turn the microphone
47 on and comment, please, and I ask the testifiers again
48 to confine their comments to within five minutes.
49

50 Thanks.

1 MR. SZCZESNY: Thank you, Mr. Chair.
2 My name is Andy Szczesny for the record representing
3 Cooper Landing Fish and Game Advisory Committee.

4
5 This was a little bit more complicated
6 when we went through this. Basically we just had more
7 questions than answers to deal with this. It was just
8 continuous. Who's going to manage it? Who's going to
9 design it? Where is it going to be? Who's going to
10 schedule this thing? I mean it just went on and on and
11 on and I'm not going to bore you with more of them.

12
13 But one of our biggest concerns was, is
14 that we have two distinct runs of sockeye. We have the
15 first run that comes and goes only into the Russian
16 River, and the second run goes to the whole river,
17 utilizes the whole river. One of our concerns was is
18 that's a very small run of fish and you put a fishwheel
19 in there and there's a potential, not even a potential,
20 it will happen, they're going to catch a lot of that
21 first run sockeye if they start fishing that in June,
22 and that's a pretty small run. And there's a reason
23 why the commercial fishermen don't fish it, because
24 it's a small run. And so that was one of our biggest
25 concerns with the fishwheel on the Kenai.

26
27 If it's going to be -- we came to a
28 conclusion that if you're going to have an experimental
29 fishery, the easiest one to experiment would be in the
30 Kasilof. You would have one user using it. You
31 wouldn't have the schedule problems, but at the same
32 time we did have a problem with the area that the
33 fishwheel would go in in the Kasilof, it's king salmon
34 spawning area, would be probably where it was put. So
35 that was a concern with us.

36
37 But the lesser of two evils would be,
38 if you were going to put an experimental one in, you're
39 going to have one user utilizing it, put it on the
40 Kasilof and see how it works.

41
42 And we were very concerned that if they
43 were going to use the fishwheel that they stay and
44 monitor it, don't leave it, because you're going to
45 have a mixed stock fishery with steelhead and so forth
46 in there. And we do know, even with Fish and Game's
47 wheels, that if you leave them for any amount of time,
48 the high rate of mortality is a lot.

49
50 So that's it, thank you very much.

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

3
4 (No comments)

5
6 CHAIRMAN FLEAGLE: Appreciate it.
7 Pete.

8
9 MR. PROBASCO: Mr. Chair. The next
10 individual is Mr. Sky Starkey.

11
12 MR. STARKEY: Thank you, Mr. Chairman.
13 This proposal seems one, in particular, where I would
14 view it as a place where the RAC is due deference and I
15 can't see that there's any reason to deny the RAC's
16 recommendation. I don't know how many pages of
17 transcripts Ralph will cite on this one but I will tell
18 you that it was substantial, I was there. There are
19 people on that RAC that have first-hand knowledge
20 operating fishwheels, which I don't know anybody on OSM
21 Staff or otherwise has. There's no habitat concerns.
22 There's no conservation concerns. And the RAC found
23 that it was necessary to provide a meaningful
24 opportunity.

25
26 So I simply cannot find any valid
27 reason why a person could choose to vote against it
28 given the constraints of ANILCA, it's a taking
29 regulation.

30
31 Ninilchik had talked in front of the
32 RAC wanting the opportunity for three fishwheels on the
33 Kenai, but the RAC didn't accept that and Ninilchik is
34 very much supportive of what the RAC did, thinks it's
35 well reasoned.

36
37 Are there a lot of questions about how
38 to administer a fishwheel on the Kenai River for three
39 communities, yes. But I guess we won't know how that
40 will play out until we give it a try. And support the
41 RAC's recommendation, fully, for both the Kasilof and
42 Kenai River.

43
44 Thank you, Mr. Chairman.

45
46 CHAIRMAN FLEAGLE: Thank you, Sky.
47 Questions.

48
49 (No comments)
50

1 CHAIRMAN FLEAGLE: Thanks. Pete.

2

3 MR. PROBASCO: Mr. Darrel Williams.

4

5 MR. WILLIAMS: Mr. Chairman. Members
6 of the Board. My name is Darrel Williams.

7

8 We would like to support the proposal
9 for the fishwheel. This would be a good place to start
10 and provide the meaningful preference and allow the
11 subsistence users an opportunity to work on these
12 issues or even identify some of these issues. I'm not
13 even sure if these issues are going to be issues. And
14 I'm afraid of a knee-jerk reaction because somebody may
15 think, somebody may have an issue or not, on a maybe.

16

17 I guess as far as the history of this
18 proposal, it might be -- it might help a little bit for
19 everyone, when we got our C&T determination and tried
20 to establish methods and means years ago, this has been
21 an ongoing process. And Moose Range Meadows was one of
22 the areas that was suggested by the Federal Subsistence
23 Board to be considered because of the limited areas
24 that we are allowed to use. And we ran into issues of
25 delineation and who is allowed to harvest where and C&T
26 determinations given to communities who didn't
27 participate in the process and most of these things are
28 outlined in the Southcentral Regional Advisory
29 Council's notes from our meetings and, again, I hope
30 everybody's had time to review those because there has
31 been some changes here.

32

33 This efforts gone on and on and on and
34 we've evaluated a lot of different methods and means
35 and been used on the Kenai before and they've been
36 condoned in other areas to be used. And we're really
37 hoping that we can actually be able to put this forth
38 and try to make some good use to it and make a more
39 meaningful preference for everyone, and I think you'll
40 have more subsistence opportunity and you'll have more
41 people who will be able to harvest this kind of thing.

42

43 One example is, I don't have a boat. I
44 can't go dipnet at Moose Range Meadows, and I'm not
45 allowed to walk down on the bank, so what options do I
46 have, as a Federally-qualified subsistence user I have
47 none. Not only is it not a preference, it's not even
48 an option. So it makes it much more difficult to be
49 able to do something like this. And this could be a
50 really meaningful good solution for everyone so I hope

1 you guys can consider that.

2

3 Thank you, Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Thank you, Darrel.

6 Questions.

7

8 (No comments)

9

10 CHAIRMAN FLEAGLE: Pete.

11

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

13 The last person to testify on Proposal 9 is Mr. Ricky

14 Gease.

15

16 MR. GEASE: Good afternoon. Thank you

17 once again for the opportunity to be able to speak in

18 front of you. My name is Ricky Gease, Executive

19 Director, Kenai River Sportfishing Association.

20

21 I participated in the subcommittee for

22 the Southcentral RAC. We looked at this issue. In our

23 comments we noted specifically the legal issue of your

24 ability to authorize the use of one methods and means

25 specifically at one area and if you can do that then

26 that's no problem. But if you can't then I think there

27 is a real concern of the widespread use of fishwheels

28 popping up along the Kasilof and Kasilof Rivers -- I

29 mean the Kenai and Kasilof Rivers over time. Now, this

30 would authorize a temporary use of one location either

31 on the Kasilof or two on the Kasilof and the Kenai, but

32 what are we going to know after three years that you

33 don't know now? What's the point to limiting it to

34 just three years? What specific questions do you want

35 answered over that three year period of time is

36 something that I think you should ask yourself and have

37 those really delineated out if you go ahead and approve

38 the use of fishwheels. Because if you allow them in

39 one area, you know, Ninilchik has already said they

40 wanted to have them in three different locations.

41 Well, speaking from the educational fishery side of

42 things in Ninilchik there are already three different

43 groups in Ninilchik who have, in the past, participated

44 in the educational fisheries that the State provides.

45 So I think over time you would see different people

46 wanting to participate in fishwheels, the use of

47 fishwheels as a methods and means.

48

49 In our subcommittee we didn't want to

50 see the widespread use of gillnets along the Kasilof

1 and Kenai Rivers and we didn't want to see the
2 widespread use of fishwheels along the Kenai and
3 Kasilof Rivers and that subcommittee had members from
4 across the Kenai Peninsula. So I think that,
5 specifically, what are issues of, to see the widespread
6 use of these. If it was in one location and you could
7 just limit it to that, I think then some of our major
8 concerns would be alleviated.

9
10 I would like to point out that these
11 river beds and the fish patterns of how they migrate
12 change over time, so although there might be a good
13 fishwheel site right now, I think Fish and Game learned
14 this year that after the flood that we had, the ice
15 jams this winter, that a location that they had had a
16 coho fishwheel for many years didn't track the same as
17 it had in prior years. So over time you may get
18 requests to say, well, this location isn't maybe
19 producing enough because we had a winter event or a
20 summer flood event so I want to try a different
21 location also. So not only just for this year, but you
22 may have a three year period of time where there's
23 stability in the riverbed, but over time that stability
24 may change and, again, it just opens up the
25 consideration of, well, instead of just one location
26 that's variable through time, I want three or four
27 locations where we can have a fishwheel.

28
29 The other thing is, drawing from just
30 my experience of participating in the educational
31 fishery through the Kenaitze Indian Tribe, I would make
32 a very strong recommendation that in order to
33 participate, if you do authorize a fishwheel, that the
34 head of household, who these fish are going to,
35 participate in the fishery itself, that they be on
36 site. I think it's important that that happen.

37
38 Thank you.

39
40 CHAIRMAN FLEAGLE: Thank you, Ricky.
41 Questions.

42
43 (No comments)

44
45 CHAIRMAN FLEAGLE: Thanks. Regional
46 Council recommendation. Ralph.

47
48 MR. LOHSE: Thank you, Mr. Chair. And
49 just so that somebody's happy we had 100 pages of
50 transcript on this one. We put forth four amendments

1 in trying to come to a complete consensus. All the
2 amendments failed except one minor which changed a few
3 words in the end and set an ending date on it.
4 Basically we ended up supporting this on a six/three
5 vote as the original proposal with the minor word
6 changes. This is a hard one too and we recognize the
7 potential impact and ramifications of it but we also
8 saw it -- at least the majority of the Council saw it
9 as a legitimate way to do what we're trying to do which
10 is to provide subsistence opportunity.

11
12 I'd like to answer a couple questions
13 that have been brought up or a couple things that we
14 actually dealt with as a Council. One of the things I
15 hear all of the time is the potential to catch too
16 many. I think we've set a conservative bag limit for
17 the total, I think you guys have set a conservative bag
18 limit for the total subsistence catch on the Kenai and
19 on the Kasilof River and this fishwheel doesn't add
20 anything to the bag limit, it just is a way of catching
21 part of that bag limit. The fish that are taken with
22 that fishwheel come out of the bag limit that's set
23 aside or the allocation or whatever use you want to use
24 that's been set aside for subsistence.

25
26 The question was asked, what can we
27 learn in three years. Well, one of the things and
28 that's one of the reasons that, I think, the Council
29 ended up settling for one wheel on the Kenai instead of
30 settling on three wheels, is, can this be done fairly,
31 can the people -- can the subsistence community sit
32 down and work together in a way that the subsistence
33 community, the entire subsistence community can feel
34 happy with the way it's administered. Is there
35 somebody that's going to step up to the plate, say
36 we'll build this thing, we'll administer it in a way
37 that's fair to all.

38
39 Another question that can be answered
40 in three years is can this be done without any adverse
41 impact to the resource.

42
43 If, in the course of three years, being
44 well-monitored and with conservative bag limits we see
45 it as a potential adverse impact on the resource, three
46 years from now we're going to have to vote on whether
47 or not this fishwheel is renewed, whether the permit is
48 renewed, whether we go forward from there. I think
49 that's a legitimate -- and that's why the Council put
50 that three year moratorium on there, I think it's a

1 legitimate concern. I think it's a legitimate way of
2 saying, let's see what happens.

3

4 It's always interesting to me because
5 there's some standard things that we hear, and this is
6 not pointing fingers at anybody or anything else but
7 there's some standard things we hear constantly when we
8 deal with subsistence issues and one of my main gripes,
9 as you all know, is that you can't take moose during
10 the rut it's inedible. Well, that's a cultural
11 preference, it depends on who you are. What's edible
12 to one person is inedible to another and that can't be
13 an argument against having a moose hunt for
14 subsistence, I've said that before.

15

16 One of the ones that came up today was
17 there's a safety factor involved. Subsistence users
18 are totally capable of taking care of deciding whether
19 or not it's safe for them to do something or not safe
20 for them to do something, we don't need to take that
21 factor into account. If you take a look at what goes
22 on on the Copper River you see people hanging from
23 cliffs by ropes so that they can dipnet over water that
24 I'd be afraid to death to be over and they think it's
25 great fun. They're out there drifting in boats, little
26 dinky boats with great big nets drifting down the river
27 that, you know, to those of us that handle boats all
28 the time we think, wow, that's got to be as unsafe as
29 you can get but they choose to do it. We don't make
30 the decision to operate the fishery because somebody
31 might do the fishery in an unsafe manner. Every time
32 there's a storm on the Copper River flats somebody
33 operates their boat in an unsafe manner. I may decide
34 to go out through breakers and somebody else will
35 decide not to go out through them, that's a choice of
36 the individual. You can't use that for deciding -- you
37 can't use that for a deciding thing on whether or not
38 there should be a subsistence fishery.

39

40 Potential users, it comes up all of the
41 time. How many potential users do you -- what's the
42 potential impact on this. Every time we deal with
43 subsistence we say, oh, let's see there's how many
44 people in Ninilchik, Cooper Landing and Hope and they
45 could take, you know, in other words 100 percent of the
46 subsistence users are potential users, yet we have a
47 State subsistence fishery on the Copper River that has
48 500,000 potential users of the Copper River with great
49 big bag limits that if they all went out and went
50 fishing there wouldn't be enough fish in the entire run

1 to supply them. So let's look at what actually
2 happens.

3
4 We've talked about it on the steelhead
5 fisheries in Southeastern, what's the potential users
6 of the steelhead fisheries. The potential users are
7 there but what are the actual users. And that's why,
8 to us, we looked at this and we said we've put some
9 safeguards in place, we want monitoring, we want
10 reporting. We've put a conservative bag limit. All of
11 these things. Now, how do we give it a chance with
12 those kind of things in place and learn something from
13 it and maybe we'll learn that it's not a problem.
14 Maybe we'll learn that it's totally impossible for
15 everybody to work together. But if we don't do it
16 we're not going to learn anything.

17
18 And from that standpoint, like I said
19 our Council voted six/three in favor of it. We tried
20 to come up with all the answers and amendments, we
21 couldn't come up with it, we're leaving that -- we
22 ended up going back to the original proposal. We ended
23 up going back to the one wheel on the Kenai, one wheel
24 on the Kasilof. And it was brought up that maybe we
25 should just have a wheel on the Kasilof because that's
26 the one that is uncontroversial, if the Board feels
27 that we can learn enough from that, then that's their
28 choice. If they want to support what the Council did,
29 we voted for a wheel on both the Kenai and the Kasilof.

30
31 And with that I'm open to any questions
32 or I'll shut my mouth.

33
34 CHAIRMAN FLEAGLE: Questions.

35
36 (No comments)

37
38 CHAIRMAN FLEAGLE: Thank you, Ralph.
39 Department of Fish and Game comments. Tina.

40
41 MS. CUNNING: The State provides a
42 broad array of personal use, recreational and
43 educational fisheries that provide more opportunity
44 than is used by these communities to meet needs for
45 personal family consumption and cultural purposes.

46
47 The Department continues to express
48 serious conservation concerns about the fish stocks in
49 both the Kasilof and Kenai Rivers and these were
50 provided extensively to you at the May 8th through 10

1 meeting and are in the Board meeting materials from
2 there.

3

4 In addition, locating a fishwheel near
5 River Mile 46, which is a major late run chinook salmon
6 spawning area will necessitate the Alaska Board of
7 Fisheries evaluating whether changes to the late run
8 management plan are needed. Placing a fishwheel near
9 the vicinity of any tributary to the Kenai River may
10 focus harvest on a particular stock and should be
11 prohibited. The Department currently has little data
12 about the stock contribution by tributary of the Kenai
13 River with the exception of the Russian River
14 watershed.

15

16 Incidental handling of rainbow
17 steelhead trout, Arctic char, Dolly Varden and other
18 resident species is a serious concern. Although
19 harvest of rainbow steelhead trout will be prohibited
20 in the fishwheels, handling mortality of resident
21 species caught and released from a fishwheel may be
22 greater than that caused in the sportfishery.

23

24 The Department is particularly
25 concerned about the modification made to Proposal 09 by
26 the RAC that would eliminate the requirement to
27 continuously monitor the fishwheels. Continuous
28 monitoring reduces the potential damage and injury
29 larger fish inflict upon smaller fish held in a live
30 box prior to harvest or release and reduces damage and
31 injury larger fish inflict upon each other. A
32 Southcentral RAC member suggested fishwheel design
33 modification can effectively reduce the bycatch of
34 smaller size fish and fishwheel use in the Copper
35 River. If the proposal is adopted, installation of
36 such modifications to a fishwheel should be required so
37 only salmon are retained in the fishwheel boxes. The
38 requirement in the modified proposal to empty the
39 fishwheel live boxes every two hours does not address
40 the Department's experience with fishwheels on the
41 Kenai River which indicates hundreds of fish could be
42 damaged or sustained lethal injuries in a short time
43 during high salmon escapement periods. Fishwheels
44 operated by the Department can and have caught over a
45 thousand fish in one hour per fishwheel. Continuous
46 monitoring of fishwheels is also important to address
47 serious safety concerns due to the need to remove heavy
48 debris loads, such as objects as large as 75 foot
49 cottonwood and spruce trees that we catch.

50

1 Adding to our conservation issues there
2 is a potential of handing mortality caused by the catch
3 and release of captured rainbow steelhead trout during
4 the migration timing of steelhead trout in the Kasilof
5 River. Operation of a fishwheel for six weeks after
6 the proposed season closure for the retention chinook
7 salmon may induce unnecessary handling mortality of
8 incidentally captured weakened chinook salmon well into
9 their spawning phase.

10

11 The reporting of the number of chinook
12 salmon released during the spawning season needs to be
13 a permit stipulation.

14

15 Department Staff are currently
16 conducting fisheries research projects on the Kasilof
17 River. Requiring the reporting of captured tagged fish
18 would assist the agencies with understanding the
19 impacts of a new fishery will have on populations of
20 fish about which little is known.

21

22 Operating a fishwheel on the Kenai
23 River requires permitting and/or written permission by
24 the Kenai National Wildlife Refuge, the Alaska
25 Department of Natural Resources Division, Parks and
26 Recreation and Office of Habitat and Permitting.
27 Installing and operating a fishwheel for the specific
28 purpose of subsistence fishing would be illegal if done
29 from non-Federal properties or on 17(b) easements.
30 Fishwheels should not be allowed within areas
31 identified as critical habitat and closed to fishing
32 within 10 feet of the shoreline.

33

34 The Department recommends language be
35 inserted into regulation which would prohibit the
36 installation of a fishwheel within 500 yards down
37 stream of a Department fishwheel. The Department is
38 concerned that if a fishwheel is installed within 500
39 yard down stream of a research fishwheel fish migration
40 patterns may be altered which would impact project
41 results and disrupt our long-term data sets.

42

43 The Department's recommendation is to
44 oppose this proposal. The use of a fishwheel in the
45 Kenai and/ or Kasilof Rivers could create serious
46 conservation problems, social conflicts and enforcement
47 issues.

48

49 CHAIRMAN FLEAGLE: Thank you, Tina.
50 Questions.

1 (No comments)

2

3 CHAIRMAN FLEAGLE: Now go to the
4 InterAgency Staff Committee, Larry.

5

6 MR. BUKLIS: Thank you, Mr. Chairman.
7 The Staff Committee identified additional
8 considerations relative to requiring an organization to
9 plan and coordinate the use of a single fishwheel for
10 up to three communities on the Kenai River. The Staff
11 Committee saw this as a task that could be extremely
12 complex and which could be considered detrimental to
13 subsistence uses. The proposed operational plan would
14 need to provide details of how all three communities
15 would be able to participate using one fishwheel. This
16 would include coordination of the building, deploying,
17 operating and scheduling of fishing time for anyone
18 interested in using a fishwheel from all three
19 communities.

20

21 We looked at two alternatives.

22

23 One alternative would be to limit the
24 use of fishwheels to only the Kasilof River since
25 Ninilchik is the only community with a positive C&T use
26 determination on the Kasilof River and residents of
27 Ninilchik have been the ones requesting to try this
28 type of gear.

29

30 The other alternative we discussed would
31 be to expand the area where fishwheels could be used to
32 include the upper Kenai River and allow up to three
33 fishwheels, one per community. This would decrease the
34 coordination required by any one community, reduce the
35 possibility of conflicts among them and should provide
36 more locations for possible fishwheel sites.

37

38 Thank you, Mr. Chairman.

39

40 CHAIRMAN FLEAGLE: Thank you, Larry.

41 Questions.

42

43 (No comments)

44

45 CHAIRMAN FLEAGLE: All right. Before
46 we get into discussions, I think this is an appropriate
47 time to step down and take a break and we'll come back
48 in 10 minutes and be in discussions.

49

50 (Off record)

1 (On record)

2

3 CHAIRMAN FLEAGLE: Good afternoon,
4 we're back on record and we have been notified that
5 there is one more individual who would like to testify
6 on this proposal that is present in the room and we're
7 going to go ahead and allow that to occur.

8

9 Pete.

10

11 MR. PROBASCO: Thank you, Mr. Chair.
12 The individual is Mr. Ed Moeglein. Ed.

13

14 CHAIRMAN FLEAGLE: Welcome. Now, you
15 need to push the button to turn the microphone on and
16 we ask you to confine your comments to within five
17 minutes, please.

18

19 Thank you.

20

21 MR. MOEGLEIN: Thank you, Mr. Chairman.
22 Subsistence, it's all about food. I mean it's what we
23 need to live on. I'm the subsistence member of the
24 Kenai River Fish and Game Advisory Committee. I
25 participate in a lot of the personal use and set net
26 fisheries and was quite successful even being a
27 handicapped citizen.

28

29 We heard numbers that could quite
30 easily be handled in a number that could be caught in a
31 fishwheel as well as -- I haven't been here for the
32 meetings, I just got out of the hospital, but I know
33 keeping in contact with Gary Sonnevil of Fish and
34 Wildlife Service with our committee, the large numbers
35 and the numbers that I reported to him, in the personal
36 use, the -- the education permit right off the mouth of
37 the Kasilof River, the two user groups from Ninilchik
38 that fish that, between the two groups they caught 600
39 king salmon. Now, that's a lot of fish for a lot of --
40 you know, for the people that were fishing in it and
41 the effort that was being done to fish it. We heard
42 how fast the fishwheel can catch fish, why not try one
43 on the Kasilof River to see how fast they can fish, but
44 how much fish do you need. How much fish do you really
45 need? I heard a quantity of what it takes for Federal
46 subsistence pounds per person and I was trying to put
47 those figures together before I went into the hospital
48 with Gary Sonnevil and I never got to the final reports
49 of the permits that are being turned in, but that's a
50 lot of pounds that they caught just in the educational

1 fishery and I just would not support a fishwheel in the
2 Kenai River, I would recommend they try one in the
3 Kasilof River and see if they can catch enough fish to
4 eat right there.

5
6 Thank you.

7
8 CHAIRMAN FLEAGLE: Thank you, Ed.
9 Appreciate the comments. Questions.

10
11 (No comments)

12
13 CHAIRMAN FLEAGLE: All right, thanks.
14 Now, we'll open it for Board discussion with Council
15 Chairs and the State liaison. Go ahead, Commissioner.

16
17 COMMISSIONER LLOYD: Thanks, Mr.
18 Chairman. I'll ask for you to acknowledge me again
19 later on but for right now I understand that there
20 might be some restrictions to motorized boat access in
21 at least part of the area that we're talking about. I
22 don't have the details on that but it wasn't covered
23 under our State comments to the record and I'd like to
24 ask George or Tina to make that mention and inform the
25 Board about the details of that restriction.

26
27 CHAIRMAN FLEAGLE: George.

28
29 MR. PAPPAS: Thank you, Mr. Chair.
30 George Pappas for the record. The original proposal as
31 published was for the upper Kenai River and just
32 talking about the Kenai River itself, it was changed at
33 some point in time after that -- a long story short,
34 motorized boats are prohibited in the upper Kenai River
35 main stem, all vessels are manoeuvred by either oars
36 or paddles. The Department would like to draw the
37 Board's attention to this fact that placement of a
38 fishwheel in a channel or part of a river heavily
39 traveled by vessels that are not under power should
40 generate safety concerns.

41
42 Additionally, the Board should take
43 into consideration requiring signage, news releases,
44 marking and installation of lighted warning buoys to
45 warn of new navigational hazards. This is practiced
46 currently by the Department even in motorized areas for
47 something that's new, introduced to an area that folks
48 have not seen before, just as a safety issue.

49
50 Use of a fishwheel in an area contained

1 in the original proposal that would be somewhat limited
2 in waters or Federal government claims its regulations
3 apply, unless it could be operated from a non-motorized
4 craft. State regulations 11 AAC 20.865 non-motorized
5 areas prohibits the use of motors year-round between
6 River Mile 80.7 and Skilak Lake and on the Kenai River
7 below the outlet of Skilak Lake and River Mile 47 from
8 March 15th to June 14th. And I believe that latter
9 closure is the Federal regulation.

10

11 Thank you, Mr. Chair.

12

13 CHAIRMAN FLEAGLE: Thank you, George.
14 Just to clarify you were talking that only applies to
15 the Kenai River and not the Kasilof?

16

17 MR. PAPPAS: That is correct, Mr.
18 Chair. That's the upper Kenai River.

19

20 CHAIRMAN FLEAGLE: Thank you. Other
21 discussion. Ralph.

22

23 MR. LOHSE: Yes. I have a couple
24 things I'd like to bring out. I'd like to remind the
25 Board that -- and that's for the new people,
26 especially, that our subsistence limits that we applied
27 on the Kenai and the Kasilof, the way they're written
28 up in the newspaper it's as if we gave them additional
29 fish, we have to remember that all of those subsistence
30 users were already qualified to take fish under State
31 personal use and one of the stipulations that we wrote
32 in our regulation was that any fish that they took in
33 the subsistence fishery came off of their State
34 personal use fishery. In other words they couldn't
35 catch fish on the subsistence and then go catch fish on
36 the State fishery, those weren't accumulative bag
37 limits. If you have 25 limit on the personal use
38 fishery from the State and I'm just picking a number
39 out of the air, and you caught 25 fish under the
40 subsistence fishery you no longer had a limit under the
41 State fishery. So all of those fish, that wasn't an
42 increase in take on the Kenai River, those fish were
43 already available for take.

44

45 And that's why I always have problems
46 with, you know, when we start talking about we have
47 stock concerns for these subsistence fish that are
48 caught in a limited subsistence fishery and at the same
49 time we have operating a sportfishery, a personal use
50 fishery that everybody in the state is entitled to and

1 a commercial fishery and we have stock concerns for the
2 fish that the subsistence fisherman is going to take
3 when he could have taken those under those other
4 fisheries anyhow. So that's just -- that's a hang up
5 for me and I'm sorry that it's a hang up but I really
6 hate to see that argument put forward unless you've got
7 concerns about the other ones, too, and if you've got
8 concerns about the other ones they shouldn't be
9 operating.

10

11 And then I'd like to address one things
12 because it reflects on the Council.

13

14 This Council has pushed for monitoring,
15 it's pushed for record keeping. I think we've done a
16 good job of trying to say that what we want is
17 information. And we did strike the word, continuously,
18 but if you look at where we struck the word,
19 continuously, we say, you have to remain on site to
20 monitor the fishwheel. The reason we struck the word,
21 continuously, is because some of our fishwheel users
22 from up on the Copper River said, you know, if we get a
23 real active enforcement agent down here and I have to
24 get off the fishwheel to go to the bathroom on the bank
25 I'm not continuously monitoring my fishwheel and we
26 want to remain on site, we want to monitor it but we
27 don't want to put that legal word in there that
28 somebody can come back on us and sting us because we
29 had to go get ourselves a bite of lunch or we had to go
30 make a sandwich on shore or go to the bathroom on shore
31 or something. So we definitely go along with the
32 State, the fishwheel needs to be monitored.

33

34 And like Ricky Gease was talking about,
35 we're talking about a fishwheel, not that's catching a
36 whole bunch of fish for everybody and then going out
37 and distributing it, the head of the family who's on
38 the permit needs to be on that fishwheel when whatever
39 they decide is his limit is caught the fishwheel is
40 stopped. And if the fishwheel is not operating to
41 catch somebody's fish, it's stopped, it's not sitting
42 there turning 24 hours a day accumulating a lot of fish
43 that you've got to go out and hand out here, there and
44 everywhere.

45

46 Those are the kind of stipulations --
47 there is one thing I'd like to say and we didn't put it
48 in ours and I can understand the concern. There's a
49 finite limit on the subsistence fishery, 4,000 reds, I
50 can't remember what it is on kings, I can't remember

1 what it is on coho's, but basically it's a finite
2 limit. The fishwheel should be limited to a portion of
3 that limit so that other subsistence users that want to
4 make use of, you know, other methods and means have the
5 opportunity to make use of that, too. We didn't put
6 that in our proposal, and that might be something you
7 guys want to deal with.

8

9 Thank you.

10

11 CHAIRMAN FLEAGLE: Further discussion.

12

13 MR. MELIUS: Yes, Mr. Chair.

14

15 CHAIRMAN FLEAGLE: Tom.

16

17 MR. MELIUS: I have several items I'd
18 like to explore first with Ralph since the vote was a
19 six/three on the final adoption, I want to explore a
20 little bit of how it's envisioned with the three --
21 well, first off, was there a unanimous support of all
22 three communities to move forward this proposal?

23

24 CHAIRMAN FLEAGLE: Ralph.

25

26 MR. LOHSE: One of the amendments that
27 was put forward that failed was to have it for
28 Ninilchik only because Hope and Cooper Landing at that
29 time hadn't expressed an interest in the fishwheels.
30 The majority of the Council felt that that was unfair,
31 illegal or whatever and that amendment failed.

32

33 There was talk about -- there was talk,
34 I don't think there ever was an amendment to include
35 three fishwheels. We decided that that was expanding
36 it farther than we wanted to expand it.

37

38 What we're counting on and I think if
39 you look at our thing, we're counting on the fact that
40 this is -- whoever is going to operate this fishwheel
41 has to get a permit and it will probably be handled
42 through -- oh, boy, my name's are bad, but it will be
43 handled through Fish and Wildlife Service on the Refuge
44 more than likely, and they're going to have to submit
45 an application for the permit. And in that permit
46 they're going to have to spell out how -- and there may
47 be half a dozen people submit an application for a
48 permit, and he's going to have to pick the one that
49 basically does the best job of meeting the needs of all
50 of the communities as fairly as possible. And that was

1 an understanding that we had when we discussed it, you
2 know, and somebody's going to have to come forward and
3 say we're going to pay for building this fishwheel,
4 we're going to manage this fishwheel and we'll put a
5 written application in spelling out what we're going to
6 do and the manager can say, you know, you haven't
7 answered this concern and that concern, how are you
8 going to do that. And so from that standpoint we just
9 decided to go with the one.

10

11 MR. MELIUS: Okay. But I guess the
12 question I was asking, Mr. Chairman, was that there was
13 consensus among all three communities, but I thought I
14 understood you to say that there was for several
15 communities, that this was not something that they were
16 pushing for.

17

18 MR. LOHSE: That was our understanding.

19

20 MR. MELIUS: Okay.

21

22 MR. LOHSE: That was debated and that
23 was an amendment that was put forward that failed and
24 part of the reason it failed was because of testimony
25 of people that were there.

26

27 And from that standpoint there was no
28 consensus on it, no.

29

30 MR. MELIUS: Okay. I'm just trying to
31 get my head wrapped around how it's envisioned to
32 operate one fishwheel with three communities where
33 there's equity among the three communities, but not
34 possibly the same equity in interest. So I'm just
35 trying to envision down the road if we are entering
36 into this arena, the ruberick of how a manager would
37 look at how to analyze this, to show equity when there
38 wasn't equity in the originating request. So that's
39 where I was going with that question.

40

41 I'd also like to ask, Mr. Chairman, of
42 the OSM Staff, Steve, if you don't mind, could you go
43 over the season dates allowed to harvest the various
44 species of salmon on the Kasilof and if there are any
45 concerns for bycatch of other fish than salmon on that
46 river.

47

48 CHAIRMAN FLEAGLE: Steve.

49

50 MR. FRIED: Yes, I can. Since they're

1 the same as the salmon dipnet rod and reel fishery
2 seasons then basically the season would extend from
3 June 16th on the Kasilof through October 31st but there
4 are specific ones for each species so that, you know,
5 for chinook it would be June 16th through August 15th;
6 sockeye is June 16th through August 15th; coho is June
7 16th to October 31st; pinks are June 16th through
8 October 31st. And within the regulations I think all
9 the rainbow steelhead that are caught have to be
10 released in the fishwheel. So there's no retention.

11
12 MR. MELIUS: Thank you, Steve. That's
13 it for me at this time. Thank you.

14
15 CHAIRMAN FLEAGLE: The key phrase there
16 I caught, at this time, okay, thanks, Tom.

17
18 Virgil.

19
20 MR. UMPHENOUR: Thank you, Mr. Chair.
21 Our RAC did not discuss this issue but I've been
22 involved in fishing with a fishwheel commercially on
23 the Tanana River and the Yukon River for 23, 24 years
24 and so I have a couple of questions or things that
25 would be concerns of mine.

26
27 The first one is two hours on the live
28 box, that's way too long. You're going to have
29 mortality because of the fish being in the live box too
30 long and there have been studies done on that. And so
31 I know that two hours is too long, that's going to --
32 you're going to get mortality from that.

33
34 The other thing is the fish friendly
35 fishwheel, and when I say fish friendly I mean is it
36 going to have net -- is it going to have chicken wire
37 baskets, what kind of a basket is it going to have
38 because you're going to -- it's going to be located in
39 the spawning grounds on the Kenai River is where it's
40 going to be located so a lot of these fish are going to
41 be in advanced spawning stages, especially the chinook
42 salmon and so their teeth parts and stuff are going to
43 get hooked on the webbing or the wire or whatever you
44 have the fishwheel made out of so you're going to need
45 some type of a chute system that's made so that fish
46 are not going to be getting injured. And then the box
47 itself, the live box, of course it's going to have to
48 have hard sides up high where the fish slide in there
49 and if they come sliding down the chute, flopping like
50 crazy the way they do when they get caught in a

1 fishwheel and they smack head first into the side of a
2 plywood box or on a post or something, now that's not
3 doing them too much good.

4

5 But anyway, so I have a lot of concerns
6 about the mortality and the fishwheel being a fish
7 friendly fishwheel. I think I can honestly take credit
8 for driving the train for having a personal use fishery
9 that's meaningful on the Kenai River when I was a
10 member of the Board of Fisheries because when I got on
11 the Board of Fisheries they had one on the books but it
12 was totally meaningless because the people never got to
13 utilize it.

14

15 And so that brings me to the next point
16 and that is the quality of the fish being harvested on
17 the spawning grounds. I don't think the quality's
18 going to be that good plus interrupting the fish on the
19 spawning grounds, and I can also personally say that
20 I'm partially responsible for some of the spawning
21 closures on the Kenai River. I've heard lots -- I've
22 been to meetings discussing these salmon stocks for, I
23 know, more than 100 days just these salmon stocks we're
24 talking about right now, and so those would be my
25 concerns.

26

27 Plus one other concern, and that is
28 when the water level rises and you get lots of debris
29 in the water, fishwheels catch that debris. And so
30 someone would have to be there constantly checking that
31 fishwheel to get all the logs and the other debris that
32 get on it because once you get a certain amount of
33 debris on your fishwheel it destroys the fishwheel.
34 The cable in the front is going to snap the front part
35 of the fishwheel in half and it's going down the river.
36 And so someone would also have to assume that
37 responsibility.

38

39 I just wanted to bring up from being an
40 experienced fishwheel fisherman some of my concerns.

41

42 Thank you, Mr. Chair.

43

44 CHAIRMAN FLEAGLE: Thank you, Virgil.

45 Other discussion.

46

47 COMMISSIONER LLOYD: Thank you, Mr.
48 Chairman. I don't want to, again, re-echo the detailed
49 comments from the State of Alaska but I do want to
50 remind the Board that the Department is the overall

1 manager for the health of these resources and
2 responsible for the overall conservation has outlined a
3 number of conservation concerns and possibilities for
4 damage to either individual fish or potentially to
5 stocks in this area. And I haven't heard much
6 discussion amongst Board members responding to those
7 concerns.

8
9 Secondly, during testimony and some of
10 the comments in front of the Board there seemed to be a
11 tacit equation developed that suggests that if there
12 are other fisheries allowed, for example, sportfishing,
13 then provision for an additional type or multiple types
14 of subsistence opportunity with alternative gear is
15 necessarily to be provided, and I don't believe that
16 that's your legal advice, it's certainly not our
17 interpretation of what provision of reasonable
18 opportunity or meaningful preference requires.

19
20 So our contention is so long as you,
21 the Board, under your jurisdiction conclude that there
22 is a meaningful preference and reasonable opportunity
23 required, the direct comparison or equation relating to
24 each particular location and each particular timeframe
25 between provision of one type of opportunity and
26 another doesn't have to be made.

27
28 Thank you, Mr. Chairman.

29
30 CHAIRMAN FLEAGLE: Thank you,
31 Commissioner. Other discussion.

32
33 (No comments)

34
35 CHAIRMAN FLEAGLE: Ready for a motion.

36
37 MR. MELIUS: Sure.

38
39 CHAIRMAN FLEAGLE: Tom Melius.

40
41 MR. MELIUS: Thank you, Mr. Chairman.
42 And I hope this doesn't get too confusing as we move
43 through this process of motions and any amendments that
44 might be offered but I'd like to move to adopt Proposal
45 9 consistent with the recommendations of the RAC with,
46 though, a modification, that would allow one fishwheel
47 to be located on the Kasilof River, also with the minor
48 changes to stop the fishwheel when it is not being used
49 as suggested by OSM; and also as Virgil just mentioned,
50 a removal of fish every hour. I think this would

1 establish a temporary fishwheel fishery for the
2 residents of Ninilchik to see how well this gear works.
3 One fishwheel for three communities on the Kenai River,
4 though, does seem to be -- does not seem to be a very
5 reasonable approach at this time.

6

7 I will expand and provide more
8 justification in support of the amendment if I get a
9 second.

10

CHAIRMAN FLEAGLE: Okay.

11

MR. LONNIE: Second.

12

13 CHAIRMAN FLEAGLE: Got your second.
14 Tom Lonnie seconds. Go ahead, Tom Melius.

15

16 MR. MELIUS: I guess in listening to
17 the discussions that we had and the testimony that
18 we've received that the Kasilof is really a closer body
19 of water to the community of Ninilchik, which would, I
20 guess make it more convenient to operate the fishwheel.
21 This would also allow the residents of Ninilchik to
22 meet their subsistence needs with the same household
23 harvest and possession limits that were established
24 last year.

25

26 But, again, for the Kenai, any proposed
27 operational plan as Ralph and I were talking, would
28 need to provide the details on how three communities
29 would have to operate to participate in just using one
30 fishwheel. This would include the coordination of the
31 building, the deployment, the operating, the scheduling
32 of fish time for anyone interested in using a fishwheel
33 from these three communities. And to do so in an
34 equitable fashion with three communities that I'm not
35 certain have an equitable interest in doing so. I
36 think this would place a manager in a very difficult
37 position at this time with a very extremely complex
38 issue to try to oversee through permitting process.

39

40 It makes sense, though, to provide
41 residents of Ninilchik the opportunity to try this new
42 gear on the Kasilof in kind of a temporary fishery
43 basis to see how well it works for the community.

44

45 I think, as Virgil mentioned, we can
46 through permitting process address the issues of
47 material used in the wheel. I guess, Mr. Chairman,
48 having said all of that, though, I would also like to

1 offer an amendment to that motion, if you would allow
2 me, of the -- basically the amendment would be to place
3 for three -- place this regulation for a three year
4 period when the gear is first installed in the river,
5 there is a possibility that the gear may not be used
6 and so I think we need to include a sunset date for
7 what is supposed to be a temporary regulation.

8
9 So my amendment, and if seconded and
10 adopted would basically be to sunset this regulation on
11 December 31st, 2011 or three years from when this gear
12 is first installed on the Kasilof, whichever would come
13 first. This would give the users up to basically four
14 years to try out this new gear and to see how well or
15 how not well it's working.

16
17 Thank you, Mr. Chairman, and I guess
18 the amendment is awaiting a second.

19
20 MR. LONNIE: Second.

21
22 CHAIRMAN FLEAGLE: Okay, we got a
23 second from Tom Lonnie. Now, just procedurally we need
24 to address the amendment before we go back to the main
25 motion. And it seems to be probably fairly non-
26 controversial with the discussion we had prior to this
27 motion and so I'm just going to ask is there any
28 objection to the amendment as stated.

29
30 (No comments)

31
32 CHAIRMAN FLEAGLE: Hearing none, we'll
33 just go ahead and include that amendment to the main
34 motion.

35
36 Now, what I'd like to do now, though,
37 procedurally, is we do have a fairly lengthy regulatory
38 statement that's provided by the Regional Advisory
39 Council that has been substantially changed by the
40 motion, and I wondered if we could get Larry or Steve's
41 assistance and just go through that motion that's
42 provided -- the regulatory language that's provided for
43 the motion by the Regional Advisory Council, paragraph
44 by paragraph and just line out what's not appropriate
45 and maybe add what is.

46
47 I think that would allay any confusion
48 about what the Board has before itself, if we put it in
49 writing.

50

1 If you look on Page 924 of the Board
2 book is the proposed regulatory language. I would
3 propose that we just go through starting with Paragraph
4 H and just stating what remains or what needs to be
5 lined out and then we have a paper to look at as we
6 further work.

7
8 Does that sound reasonable. Okay,
9 Steve.

10
11 MR. FRIED: Mr. Chairman. Starting
12 with H. Basically you'd line out the second sentence
13 where it says residents of Ninilchik, Cooper Landing
14 and Hope may harvest various species of salmon through
15 a temporary fishwheel in the Federal waters of the
16 Kenai. Don't need that.

17
18 Then the very last sentence where it
19 says residents of Hope and Cooper Landing may retain
20 other species incidentally caught in the Kenai except
21 for, we can line that sentence out.

22
23 And I think what remains then only
24 speaks to the Kasilof in that one.

25
26 And then on No. 1, you would line out
27 the second part of the first sentence where it says and
28 only one fishwheel can be operated on the Kenai River.
29 The next sentence would start with the fishwheel since
30 there's not -- there's only going to be one. And I
31 think that takes care of No. 1.

32
33 No. 2. It would be one registration
34 permit will be available and I guess you can line out
35 for each river since we're just talking about Kasilof.

36
37 Let's see, the second sentence where it
38 says each permit would just be the permit, I think the
39 rest of that on No. 2 is okay.

40
41 On i, I think that's fine.

42
43 MR. BUKLIS: Single community.

44
45 MR. FRIED: Where -- okay, and
46 residents, okay, there you go, good catch Larry. Yeah,
47 and at the end of that sentence it says description of
48 how fishing time and fish will be offered and
49 distributed among households and residents of the
50 community or it could just read Ninilchik I suppose.

1 MR. BUKLIS: Yes.
2
3 MR. FRIED: And get rid of all that
4 other one.
5
6 I don't see anything in the next two,
7 ii, or iii.
8
9 So if we go to No. 3, people operating
10 the fishwheel must, that might be fine the way that is.
11 I don't think anything in that one needs to be changed
12 unless anybody else sees anything. Oh, here we go on 3
13 and then iii, it's remove all fish at least every hour
14 instead of every two hours.
15
16 No. 4. Again, that first sentence it
17 talks about members of the communities, it would just
18 be on behalf of residents of Kasilof or Kasilof
19 residents -- excuse me, Ninilchik residents.
20
21 Good thing somebody's keeping me honest
22 here.
23
24 And I think we get to No. 5 and that
25 first part can be omitted because it talks about the
26 Kenai and it would just be fishing would be allowed
27 from June 16th to October 31st in the Kasilof River
28 unless closed, so the other part, you know, that refers
29 to the Kenai would be omitted.
30
31 The second one, salmon taken in
32 temporary fishwheel fisheries would be included as part
33 of dipnet, rod -- annual total for, I guess it could be
34 just for the Kasilof River instead of for the river in
35 which they are taken.
36
37 And then No. 8 it would just be the
38 regulation expires, I don't think we have to say on the
39 Kasilof and Kenai River, it could just say the
40 regulation expires three years from the date the
41 fishwheel is first installed in each river or December
42 31st, 2011. I don't know if you need to say whichever
43 one comes first, or just state that, unless renewed by
44 the Federal Subsistence Board.
45
46 And then I think the only other thing I
47 missed is the thing about stop -- making sure the
48 fishwheel is stopped. And that would be under H, No.
49 1, instead of each fishwheel -- it says must have a
50 live box, be monitored when fishing and then have a

1 means to stop it, just say, and must be stopped from
2 fishing when it's not being monitored and used.

3

4 Did you find something else?

5

6 CHAIRMAN FLEAGLE: Could you restate
7 that?

8

9 MR. FRIED: Instead of saying, have a
10 means to stop it from fishing when it is not being
11 monitored and used, just say must be stopped from
12 fishing when it is not being monitored or used.

13

14 In other words that's more -- that
15 would be more direct than just -- you'd have to stop
16 it, just having a means to stop it is not any good
17 unless it's actually stopped.

18

19 CHAIRMAN FLEAGLE: Pete.

20

21 MR. PROBASCO: Steve, you were asked a
22 question earlier as far as specific seasons by species,
23 is that covered in A through G or does that need to be
24 included?

25

26 MR. FRIED: For the -- excuse me, that
27 was for the limits, for the season limits in the.....

28

29 MR. PROBASCO: For the Kasilof by
30 species, there's different seasons you can subsistence
31 fish, is that covered in A through G?

32

33 MR. FRIED: I think that's the way it
34 should work, yeah, it should be -- that's what we'd
35 refer to.

36

37 MR. PROBASCO: I just wanted to clarify
38 that on the record.

39

40 MR. FRIED: Yeah.

41

42 CHAIRMAN FLEAGLE: Keith.

43

44 MR. GOLTZ: I just want to clarify that
45 we do have a technical writing Staff and that they are
46 generally given the authority to adapt the language to
47 conform with the intent of the Board. So if we missed
48 anything it can be picked up by our own Staff.

49

50 CHAIRMAN FLEAGLE: You bet. But this

1 is so substantially different than what was provided to
2 the Board I thought it was well worth the effort to go
3 through and modify it so we could actually see what's
4 changed. And I just -- I think Virgil's comments were
5 really good about the two hours being too long of a
6 time before emptying the live box, is an hour.....

7

8 MR. UMPHENOUR: An hour's good, but it
9 needs to be fish friendly as well materials.

10

11 CHAIRMAN FLEAGLE: I'm not sure how you
12 would write that in there but I guess the Staff.....

13

14 (Laughter)

15

16 CHAIRMAN FLEAGLE:I mean which
17 fish do you ask?

18

19 (Laughter)

20

21 MR. LOHSE: Mr. Chair. Don't you think
22 that that would be part of the manager's responsibility
23 to make sure that the plan that was presented to him
24 would be a fish friendly deal.

25

26 CHAIRMAN FLEAGLE: If it's.....

27

28 MR. UMPHENOUR: The Fairbanks Staff has
29 a lot of experience in that of Fish and Wildlife
30 Service with the fishwheels in the rapids area.

31

32 CHAIRMAN FLEAGLE: Thanks, Virgil. All
33 right, so we do have a motion with an amendment that
34 changes the expiration date.

35

36 Further discussion.

37

38 Denny.

39

40 MR. BSCHOR: Yes. Just one point and
41 maybe Mr. Lohse could respond to this. On Page 295
42 under No. 3, Item V, within 72 hours of leaving the
43 site, report their harvest to the Federal fisheries
44 manager, I guess that would be for either the State
45 and/or Mr. Lohse, I heard the State's concern that
46 reporting was important to do it fast, is that fast
47 enough, is that reasonable, give me some feedback.

48

49 MR. LOHSE: Well, the only thing I
50 could say on that is that it's a lot faster than any

1 State's reporting for any of their subsistence
2 fisheries so I would consider 72 hours on a fishery
3 that has a limit and everything quite sufficient. I
4 mean that was the consensus of our Council, it's a lot
5 better than having to report on a subsistence fishery
6 that you make up in October and send in and try to
7 remember how many fish you caught.

8

9 CHAIRMAN FLEAGLE: Marsha.

10

11 MS. BLASZAK: No.

12

13 CHAIRMAN FLEAGLE: No. Question,
14 Commissioner Lloyd.

15

16 COMMISSIONER LLOYD: Mr. Chairman. I
17 guess I would ask Staff, with your indulgence, to
18 comment on the requirement for reporting. Plus, also,
19 there was some discussion just now about one hour
20 versus two hour attendance on the wheel and I'll just
21 alert you back to our comments, in your written record,
22 that in the Kenai some of our experience has been catch
23 rates of up to a thousand fish per hour, so there's
24 still some concern there.

25

26 Mr. Chairman.

27

28 CHAIRMAN FLEAGLE: Yeah, I was
29 wondering about that myself. But if a person is
30 monitoring this wheel and continuously removed but it
31 still the intent is that somebody is at this wheel, I
32 would guess that they would be removing those fish as
33 they were caught until they got their number and then
34 shut the darn thing down. I don't see anybody that's
35 sitting there watching a wheel is going to let it fill
36 until it's overflowing. I've run around wheels a
37 little bit when I was a kid but I don't have the
38 experience Virgil does, but you're pointing to whom?

39

40 COMMISSIONER LLOYD: The first part of
41 my comment, Mr. Chairman, was whether you would allow
42 Staff to respond to the reporting requirement, the 72
43 hour reporting issue?

44

45 CHAIRMAN FLEAGLE: Certainly. Tina.

46

47 MS. CUNNING: Denny asked about the
48 reporting requirement. In our comments, which we
49 didn't read into the record, we noted that 72 hours is
50 not sufficient. Frequent catch reporting must be

1 required if this is going to go forward.

2

3 Given the lack of stock status
4 information and the harvest potential of this fishery,
5 given how many you can catch in a very, very short
6 period of time, if the proposal is adopted the
7 Department recommends 24 hour reporting requirement to
8 ensure compliance with the established limits.
9 Remember that there is community limits that you've
10 established for both rivers and a reporting period
11 that's longer than 48 hours could result in significant
12 overharvest of that community permit.

13

14 CHAIRMAN FLEAGLE: Thank you, Tina.
15 Board members another comment for consideration on the
16 proposal. Actually two issues.

17

18 Further discussion.

19

20 (No comments)

21

22 CHAIRMAN FLEAGLE: How about any
23 supporting or dissenting statements for the record.

24

25 Marsha.

26

27 MS. BLASZAK: I sincerely appreciate
28 the amendment that my colleague from Fish and Wildlife
29 has proposed but I think it's important that we
30 understand the basis under .805c to reject the
31 recommendation for Kenai.

32

33 It's a question.

34

35 CHAIRMAN FLEAGLE: Tom Melius.

36

37 MR. MELIUS: I guess the rationale,
38 while it is not a strong conservation concern, I do
39 feel that as the State has mentioned, some of those
40 concerns, I guess it's the best use of fish and
41 wildlife management to approach these things in a
42 fashion that we can study at a rate to make sure that
43 there isn't a conservation concern or that the
44 management technique is indeed working and I believe
45 that having it on two rivers, two wheels with a very
46 complex process of trying to manage a permit for three
47 communities just isn't the best fish and wildlife
48 management practice that I would envision at this time,
49 though, trying it on the one river with the
50 stipulations that we've laid out in the motion, I

1 think, will help us, help the Board as we move forward
2 on this issue.

3

4 MS. BLASZAK: Thank you.

5

6 CHAIRMAN FLEAGLE: More discussion.

7 Denny.

8

9 MR. BSCHOR: Yeah, Mr. Chair. It seems
10 that you can assume that there's going to be less
11 impact to the banks, I'm going to make this assumption,
12 tell me if I'm wrong, with a fishwheel than having
13 people dipnet off the banks.

14

15 There's also still the concern about
16 the spawning beds in the location on the Kenai, I still
17 have some concerns about that.

18

19 I do I think I would agree with Mr.
20 Melius that this appears to be a way to do this on a
21 smaller scale basis and to keep in mind that as we
22 learn from this, that there's still the opportunity to
23 look at it on the Kenai in the future and I didn't hear
24 anything other than just what I said, as far as there's
25 still some question but I think for those reasons I
26 would be favoring this motion.

27

28 CHAIRMAN FLEAGLE: Thank you. And,
29 Tom, your mic's still on as well.

30

31 Niles.

32

33 MR. CESAR: I intend to support the
34 motion although I'm troubled by the deletion of the
35 Kenai wheel. I think one thing for certain, by not
36 placing a wheel on the Kenai it will give us no
37 information, I mean it will give us no information
38 about the Kenai because we're not going to have a wheel
39 on the Kenai. It will give us information about the
40 Kasilof and that's good and I guess you could
41 extrapolate that knowledge somewhat to the Kenai but it
42 still doesn't answer the Kenai issue. So the deletion
43 of the Kenai troubles me. But, you know -- and, you
44 know, I guess we're operating on a half loaf theory
45 here, that half a loaf will maybe stir the bakery next
46 year, I don't know.

47

48 CHAIRMAN FLEAGLE: I'll add my
49 comments. The initial proposal caused some concern
50 with me and it would have been hard for me to accept

1 the fishwheels on both rivers especially when you got
2 multiple communities on the Kenai, there's a lot of
3 issues there that I think are addresses in just
4 narrowing it down to the one community that's
5 requesting it, well, the Southcentral RAC is requesting
6 basically on their behalf.

7
8 But I think that all the safeguards
9 that have been put into the concept have diminished my
10 concern levels, especially the fact that we have a
11 limited number of fish allowable for subsistence
12 harvest under any of the methods and means that we've
13 allowed and this does not add to that limit, that it
14 may take over as being the better method of harvest but
15 we still are capped by what we've established as the
16 harvest limits, and that gives me some comfort knowing
17 that there isn't a potential to overstep that.

18
19 The one issue that still remains an
20 issue that I don't have firmly resolved in my mind yet
21 is the reporting period, 72 hours is three days, and if
22 you can drop a thousand fish in an hour into one of
23 these wheels where they're running them, there is a
24 potential that the fish could get caught a lot quicker
25 than what we realize and I don't see any problem with
26 the State's suggestion of a 24 hour reporting. People
27 are going to need to get that fish home anyway to
28 process it and I would be a lot more comfortable, I
29 think, if we had the 24 hour reporting at least for the
30 trial basis, for this three year trial basis.

31
32 Now, I'm the Chair, I can't move but I
33 would certainly open that back up for further amendment
34 if somebody wanted to address that one issue.

35
36 MR. BSCHOR: Mr. Chair. I think it
37 would be worth at least seeing where the Board is on
38 that issue so I'm prepared to propose an amendment to
39 the motion, to change the timeframe from 72 hours to 24
40 hours.

41
42 CHAIRMAN FLEAGLE: It's been moved, is
43 there a second.

44
45 MR. MELIUS: I second it.

46
47 CHAIRMAN FLEAGLE: And I laid out my
48 concerns, I don't know if we need any further
49 justification or rationale, but on the amendment,
50 discussion.

1 Niles.

2

3 MR. CESAR: You know I just -- the
4 issue that Ralph raised in terms of this going to a 24
5 -- a 72 versus 24, that 24 would, at least, according
6 to Ralph, would be the fastest reporting requirement
7 that we have and I'm not sure, Ralph, if you wanted to
8 comment on that, am I mistaken or.....

9

10 CHAIRMAN FLEAGLE: Mr. Lohse.

11

12 MR. LOHSE: Well, it's always
13 interesting to me because our Council has pushed for
14 reporting and it's pushed for record keeping, but it's
15 always interesting to me that we want to put faster
16 reporting on subsistence users than we do on anybody
17 else. And the other thing is you're going to have a
18 plan to operate this fishwheel, this fishwheel is going
19 to be being operated under somebody's plan. You can
20 only take -- whether the fishwheel has the potential to
21 take that many fish in that time doesn't count, how
22 many people can you get there in that time to take that
23 many fish. This fishwheel is not going to be a
24 fishwheel like on the Copper that's running 24 hours a
25 day, seven days a week, 90 days for the summer, this
26 fishwheel's going to be operated under a plan that's
27 going to be obviously under the Ninilchik, either
28 tribal council or one other organization in Ninilchik,
29 they're going to be limiting who goes to the fishwheel,
30 they're going to have a schedule of who's fishing on
31 the fishwheel, they're going to have a means to stop
32 the fishwheel. They said that they would report in 72
33 hours, which is plenty of time to stay within their bag
34 limit if they're going to do all of that, and all of a
35 sudden we want to have them have a reporting of 72
36 hours, when we have a reporting on the Copper River of
37 five months.

38

39 You know, I'm sorry I shouldn't get all
40 shook up about this but it just gets to me that we try
41 to put reporting, we try to put record keeping in, but
42 it's never enough. And if you need 24 hours, go 24
43 hours.

44

45 CHAIRMAN FLEAGLE: Well, I'd like to
46 address Niles' concerns, which were echoed by Ralph
47 there. In those other fisheries that are being
48 referred to, we don't have a harvest cap and currently
49 this method is unused on the Kenai and it's been
50 demonstrated -- by Kenai, I mean the Peninsula, not the

1 river, and it's been demonstrated to be a highly
2 efficient method and so I'm -- its justifiable in my
3 mind and maybe after three years it turns out that if
4 the Board wants to continue the practice of harvest by
5 fishwheel, maybe by then that reporting rate, time
6 period can be extended if it shows that it's
7 unwarranted but at this time I have enough concern with
8 a three day reporting time that we may exceed the
9 allowable harvest.

10
11 I think it's different. I think we're
12 talking apples and oranges.

13
14 Other comments.

15
16 (No comments)

17
18 CHAIRMAN FLEAGLE: Ready for the
19 question on the amendment.

20
21 (No comments)

22
23 CHAIRMAN FLEAGLE: Let's go ahead and
24 do a poll vote on the amendment.

25
26 MR. LONNIE: Mr. Chairman.

27
28 CHAIRMAN FLEAGLE: Tom Lonnie.

29
30 MR. LONNIE: Are we talking about
31 amendment No. 2 now or No. 1, okay, No. 2.

32
33 CHAIRMAN FLEAGLE: Just No. 2. Just
34 shortening the reporting from 72 to 24 hours.

35
36 MR. LONNIE: Okay.

37
38 CHAIRMAN FLEAGLE: All right. On the
39 amendment, Pete, please poll the Board.

40
41 MR. PROBASCO: Thank you, Mr. Chair.
42 Amendment No. 2, harvest must be reported within 24
43 hours of leaving the site.

44
45 First up is Mr. Lonnie.

46
47 MR. LONNIE: No.

48
49 MR. PROBASCO: Mr. Cesar.

50

1 MR. CESAR: No.
2
3 MR. PROBASCO: Mr. Bschor.
4
5 MR. BSCHOR: No.
6
7 MR. PROBASCO: Mr. Melius.
8
9 MR. MELIUS: No.
10
11 MR. PROBASCO: Ms. Blaszak.
12
13 MS. BLASZAK: No.
14
15 MR. PROBASCO: Mr. Fleagle.
16
17 CHAIRMAN FLEAGLE: No.
18
19 (Laughter)
20
21 CHAIRMAN FLEAGLE: All right, that's
22 unanimous, how about that.
23
24 MR. PROBASCO: Motion fails.
25
26 CHAIRMAN FLEAGLE: I'm not going to be
27 the lone ranger on that one.
28
29 All right, we have the proposal as
30 stated and amended and then read into the record with
31 the corrections, which are just a guideline for the
32 Board to look at.
33
34 MR. CESAR: Question.
35
36 CHAIRMAN FLEAGLE: We do now have the
37 question. If there's no further discussion the
38 question is recognized, Pete, on the final action on
39 Proposal 9.
40
41 (No comments)
42
43 CHAIRMAN FLEAGLE: Please poll the
44 Board.
45
46 MR. PROBASCO: Thank you, Mr. Chair.
47 Final action FP08-09, and this is to address the
48 concept that was proposed by Mr. Melius, adopt the
49 proposal with modification consistent with
50 recommendations of the Southcentral Alaska Regional

1 Advisory Council with the modification to allow one
2 fishwheel only for the Kasilof River and the
3 requirements to stop the fishwheel from operating when
4 it's not monitored or used and the requirement to
5 remove all fish at least every hour. The fishery will
6 sunset December 31st, 2011, or three years from the
7 date when the gear is first installed, whichever comes
8 first.

9

10 Mr. Cesar.

11

12 MR. CESAR: Yes.

13

14 MR. PROBASCO: Mr. Bschor.

15

16 MR. BSCHOR: Yes.

17

18 MR. PROBASCO: Mr. Melius.

19

20 MR. MELIUS: Yes.

21

22 MR. PROBASCO: Ms. Blaszak.

23

24 MS. BLASZAK: Yes.

25

26 MR. PROBASCO: Mr. Fleagle.

27

28 CHAIRMAN FLEAGLE: Yes.

29

30 MR. PROBASCO: And Mr. Lonnie.

31

32 MR. LONNIE: Yes.

33

34 MR. PROBASCO: Mr. Chair, motion

35 carries six/zero.

36

37 CHAIRMAN FLEAGLE: All right, thank

38 you.

39

40 MR. LOHSE: Mr. Chair.

41

42 CHAIRMAN FLEAGLE: And as stated at the

43 beginning of the meeting Proposal 10 is no longer a

44 valid proposal and there will be no action on it, no

45 Staff presentation, no vote, it just goes away.

46

47 Okay, Mr. Lohse.

48

49 MR. LOHSE: Mr. Chair. I would like to

50 apologize for getting so emotional on that and I

1 probably will quit getting emotional on that the day
2 that the State starts putting reporting requirements on
3 their subsistence and personal use fisheries that match
4 what they want to require on the Federal subsistence
5 fisheries, and when that day comes I probably will quit
6 being so emotional. But I apologize to you that I
7 raised my voice and got carried away on that. But it
8 is something important.

9

10 We've talked about it as a Council. We
11 would like reporting on the subsistence fisheries and
12 the personal use fisheries and we'd like reporting on
13 the State ones the same way.

14

15 CHAIRMAN FLEAGLE: Thank you, Mr.
16 Lohse. All right. That concludes the Cook Inlet area
17 suite of proposals. And concludes business for the
18 day. We will resume tomorrow morning, right out of the
19 chute at 8:30 with the Yukon River proposals which will
20 be starting with Proposal 13 and 14 on the fishnet
21 size.

22

23 And, Pete, do you have an announcement.

24

25 MR. PROBASCO: Thank you, Mr. Chair.
26 And Staff have posted by proposal the order which we
27 will start public testimony. Currently we have 29
28 people to testify on Proposal 13 and 14, six to testify
29 on Proposal 15/16 and seven to testify on Proposal 17.
30 That's how we will start out tomorrow, with the
31 anticipation of receiving more yellow cards.

32

33 Mr. Chair.

34

35 CHAIRMAN FLEAGLE: Thank you. And with
36 that, we're recessed for the evening. See everybody at
37 8:30.

38

39 Thank you.

40

41 (Off record)

42

43 (PROCEEDINGS TO BE CONTINUED)

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C E R T I F I C A T E

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

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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 23rd day of December 2007.

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