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FEDERAL SUBSISTENCE BOARD
PUBLIC REGULATORY MEETING

VOLUME III

SHERATON HOTEL
HOWARD ROCK BALLROOM
ANCHORAGE, ALASKA

JANUARY 12, 2006
8:00 o'clock a.m.

MEMBERS PRESENT:

- MITCH DEMIENTIEFF, CHAIR
- JUDY GOTTLIEB, Acting Chair, National Park Service
- CHARLIE BUNCH, Bureau of Indian Affairs
- GEORGE OVIATT, Bureau of Land Management
- DENNY BSCHOR, U.S. Forest Service
- GARY EDWARDS, U.S. Fish and Wildlife Service
- KELLY HEPLER, State of Alaska Representative
- KEITH GOLTZ, Solicitor's Office

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1 P R O C E E D I N G S

2
3 (Anchorage, Alaska - 1/12/2006)

4
5 (On record)

6
7 ACTING CHAIR GOTTLIEB: Good morning.
8 Yesterday we had a couple other people signed up to
9 testify who were not here because we ran longer than we
10 might normally. So I believe Art Ivanoff is here, maybe
11 he's out in the lobby but he had asked to testify.

12
13 (Pause)

14
15 ACTING CHAIR GOTTLIEB: In the meantime I
16 wanted to welcome everyone back to this session of the
17 Federal Subsistence Board. My name is Judy Gottlieb and
18 I represent, normally the National Park Service. Our
19 Chairman, Mitch Demientieff, has had a medical condition
20 that he mentioned to you on Tuesday, he's had problems
21 with his feet for several months now. When he first got
22 to town on Monday he made a doctor's appointment for
23 Wednesday morning, and, yesterday, while he went to the
24 appointment they told him to go back and put his feet up,
25 so unfortunately Mitch was not able to continue chairing
26 the meeting yesterday.

27
28 What he normally does when he reassigns
29 the Chairmanship is to give it to the person who has
30 served the Board the longest, who is usually Niles Cesar,
31 unfortunately Niles is not able to be with us today
32 either so then it's fallen to me next. So just thought
33 I'd give you a little bit of background. Mitch will be
34 joining us by telephone later today.

35
36 So, Art, with that, if you would like to
37 make your comments, we're dealing with Proposal No. 9 on
38 Cook Inlet. Yesterday we were asking people to keep
39 their comments under five minutes. We've got a lot of
40 discussions ahead of us today. Thank you for coming
41 today.

42
43 MR. IVANOFF: Good morning, Madame Chair.
44 Members of the Board. My Inupiat name is (In Native), my
45 English name is Art Ivanoff. I am from Unalakleet. The
46 Inupiats are a Conference, it's an international
47 organization with 150 delegates from Alaska, Canada,
48 Greenland and Russia. I'm here representing ICC Alaska.
49 It is under the authority of the Koojak (ph) Declaration
50 adopted on August 15th, 2002 and similar covenants that

1 leads our endorsement of a positive customary and
2 traditional use for salmon and other fisheries for our
3 indigenous peoples across the Kenai Peninsula.

4
5 Section of the Koojak Declaration states
6 that we shall, and, I quote:

7
8 Again, call upon national, provincial,
9 state governments to recognize the
10 inherent rights of Inuit with respect to
11 sustainable hunting, co-management and
12 other subsistence activities and direct
13 ICC to assist Inuit through advocacy,
14 education, litigation empowerment on
15 these matters.

16
17 We believe the indigenous peoples across
18 the Kenai Peninsula meet all eight factors used to
19 determine a positive customary and traditional use and
20 call for the immediate adoption of FP06-09.

21
22 We, as indigenous peoples, have adopted
23 to changing times and we hold onto tangible practices
24 that hold our families and values intact, our hunting and
25 fishing way of life. The methods and means have changed
26 dramatically but what remains is the realization that
27 these activities still blend our spiritual, social and
28 economic factors into our world view.

29
30 So simplify and expedite the process of
31 determining whether customary and traditional use exists
32 in rural Alaska the Federal Subsistence Board should
33 consider all lands and waters under Federal jurisdiction
34 and within close proximity to the 226 Federally
35 recognized tribes as positive customary and traditional
36 use areas. The rural preference provided under Title
37 VIII of ANILCA originates from our aboriginal rights to
38 hunt and fish. We fully expect to the Federal government
39 to live up to the obligation to protect what remains of
40 our customary and traditional rights as Alaska's
41 indigenous peoples to hunt and fish.

42
43 Further delay to our acknowledge our
44 customary and traditional uses by the Federal Subsistence
45 Board may call for action on Federally recognized tribes,
46 Alaska Native organizations and NGOs to seek
47 congressional relief and/or the platform in protecting
48 what remains as our rights to hunt and fish.

49
50 Again, we state support for the immediate

1 adoption of FP06-09.
2
3 Qyuana.
4
5 ACTING CHAIR GOTTLIEB: Thank you, Art,
6 for your comments.
7
8 Questions for Art.
9
10 (No comments)
11
12 ACTING CHAIR GOTTLIEB: Thanks very much
13 for taking the time to be here.
14
15 George Shade.
16
17 (Pause)
18
19 ACTING CHAIR GOTTLIEB: Good morning, go
20 ahead.
21
22 MR. SHADE: Okay, here we go. My name
23 is.....
24
25 ACTING CHAIR GOTTLIEB: Excuse me just
26 one minute. I believe the beep we heard, Mitch, have you
27 joined us?
28
29 CHAIRMAN DEMIENTIEFF: Yeah, I was in
30 here a little while ago.
31
32 ACTING CHAIR GOTTLIEB: Okay, thanks very
33 much, glad to have you. And, please, go ahead, then,
34 sorry.
35
36 MR. SHADE: My name is George Shade and
37 I'm from Bristol Bay. I'm a father of four and a
38 grandfather of four.
39
40 I'm a non-Treaty Yup'ik Aleut Eskimo.
41 I'm from Sqaw Creek on the Nushagak River and I'd like to
42 declare for the record that I'm not a part of the
43 Constitution of the state of Alaska, ANCSA or ANILCA, and
44 I believe what you guys are doing here is a violation of
45 the Indian rights.
46
47 The Indian certificates, of course, you
48 can ask Niles here, they were sent out and put out prior
49 to statehood, during statehood, or when you guys started,
50 these Indian certificates are labeled Indian, they're not

1 labeled Native. Native, by the name is an American
2 citizen.

3
4 Indian, the terminology of Indian, of
5 course, Niles can tell you that we have signed no
6 treaties. And the Lower 48 terminology of Indian gives
7 us our rights. You guys have a lot of Indian allotments
8 that are out there. These guys aren't subject to State
9 or any of your rules and regulations. They are actually,
10 because they aren't governed by any of your treaties they
11 actually hold quite a bit of power. Your subsistence and
12 the migrating routes of a lot of animals go across these
13 Indian allotments. These Indian allotments, they have
14 the right to subsist on, without any of your folks,
15 permission. A lot of you folks don't realize that these
16 people that are subsisting in a lot of different areas
17 that are on these allotments are contaminated.

18
19 Let's start off with the city of
20 Aleknigik. Of course.....

21
22 ACTING CHAIR GOTTLIEB: Excuse me.

23
24 MR. SHADY:a lot of you folks don't
25 realize that the city of Aleknigik.....

26
27 ACTING CHAIR GOTTLIEB: Excuse me.

28
29 MR. SHADY:is right at the
30 headwaters of the Wood River.

31
32 ACTING CHAIR GOTTLIEB: We're discussing
33 the Kenai Peninsula Federally managed waters so if you
34 have a comment on this particular proposal, No. 9, we'd
35 appreciate that.

36
37 MR. SHADY: So your interest is in the
38 Inlet and not through subsistence throughout the state of
39 Alaska?

40
41 ACTING CHAIR GOTTLIEB: This Board is
42 responsible for managing subsistence on Federal lands and
43 waters, we're allowed.....

44
45 MR. SHADY: Okay.

46
47 ACTING CHAIR GOTTLIEB: However this
48 particular proposal for which we're taking public
49 testimony has to do with Cook Inlet waters and drainages.
50 So if you could please summarize we'd appreciate it and

1 focus on those points.

2

3 MR. SHADY: Well, I have a lot of areas
4 that have severe contamination and there are some in the
5 Inlet here. There are some up Palmer, there's a lot of
6 them that were somewhat cleaned up. A lot of them are
7 draining into the waters and ending up similar to the
8 folks over in Bristol Bay.

9

10 I have here a statement from a young lady
11 over there and I have a tox metals (ph) deal here showing
12 that they went off the scale for mercury, lead, cadneim
13 and arsenic. These are human factors. You guys got the
14 same problem up there at Palmer. They dug out a whole
15 bunch of contaminants out from underneath the senior
16 center. And those barrels that left there ended up in
17 Naknek. Those barrels, the contaminants from the Inlet
18 here ended up in, what is known as, Fox Creek, and it has
19 been sitting there for about 20, 25 years. The drums
20 have melted away, what you've got is a great big zit, and
21 this zit is going to pop and it's going to go into the
22 drainages and it's going to affect the people that are
23 subsisting in them.

24

25 You guys keeping talking about
26 subsistence and nobody talks about the health of what
27 we're subsisting.

28

29 ACTING CHAIR GOTTLIEB: Mr. Shade, I
30 think your time is up and we do appreciate your comments,
31 what we need to do is focus on the specific proposal in
32 front of us so thank you very much.

33

34 MR. SHADY: All right, you have a good
35 day. This was -- yeah. All be seeking further
36 assistance in addressing this matter.

37

38 Thank you.

39

40 ACTING CHAIR GOTTLIEB: Thank you. I
41 think as we left off yesterday and I'm not sure if any
42 Board members have any comments for this morning but my
43 thought was as I understood, the State of Alaska provided
44 its presentation on and comments on Proposal 9. I know
45 Dr. Fall was here yesterday and I assume, or would like
46 to hear if he has some comments as well to add to the
47 record, unless anyone has something first.

48

49 (No comments)

50

1 ACTING CHAIR GOTTLIEB: Okay, Jim, if you
2 would, thank you.

3
4 MR. FALL: Thank you, Madame Chair. What
5 I intend to do is just follow up on some comments and
6 discussion that occurred late yesterday, and it's
7 basically following up on themes that Commissioner
8 Campbell and Marianne See have already introduced so I'll
9 try to be brief. And I'm primarily going to focus on the
10 Staff analysis for Proposal 9 so it might be useful if
11 everybody had that out.

12
13 On Page 190 in the Staff analysis there's
14 a summary of the justification for the majority
15 recommendation for Proposal 9, the majority
16 recommendation from the Interagency Staff Committee. The
17 second sentence there says substantial evidence to
18 document historical and current harvest of freshwater
19 fish species found in Federal public waters, salmon, lake
20 trout, Dolly varden, char, rainbow trout by Hope, Cooper
21 Landing and Ninilchik community residents is provided by
22 the data and information contained in the ADF&G Cook
23 Inlet customary and traditional use determination study,
24 the survey is conducted by the Ninilchik Traditional
25 Council and the public testimony from Ninilchik area
26 residents provide at the fall 2005 Council meeting. So
27 that invites a reading of the Staff analysis to see
28 whether, indeed, substantial information is available to
29 demonstrate that the eight factors are met for a positive
30 customary and traditional use determination.

31
32 In addition, as we, the Staff for Fish
33 and Game read this, we were also looking at specific
34 drainages and specific communities because the Staff
35 Committee in some of the earlier analysis by the Federal
36 Staff took that approach, were asking about how the
37 information about use patterns for particular communities
38 could be applied to particular drainages. So that's
39 basically how I and others read the Staff analysis and,
40 again, asking is there substantial evidence of a meeting
41 of the criteria.

42
43 Moving on to, let's see, I'm going to
44 skip to Page 203 where the eight factors used by the
45 Board for making the C&T findings are listed, and this
46 came up yesterday in a very important discussion that
47 occurred on how to interpret some of the criteria and
48 what standards are to be used for applying them. And as
49 Commissioner Campbell mentioned, we believe that criteria
50 No. 1 is particular important.

1 In reading all the criteria it's very
2 important to start out with the first phrase in this
3 paragraph. And it says a community or area's customary
4 and traditional use is generally exemplified through
5 eight factors. A community or area's customary and
6 traditional use. The focus of analysis, the unit of
7 analysis that this Board uses for making customary and
8 traditional use findings is a community or an area,
9 hence, the directive that my Division had from the
10 funding agency, the Office of Subsistence Management for
11 our study was to collect and discuss information about
12 the study communities. That means looking at their
13 history, at their components of those communities as well
14 as contemporary uses but it is a community focus.

15
16 Then looking at No. 1, it says a long-
17 term consistent pattern of use excluding interruptions
18 beyond the control of the community or the area. So when
19 we're looking for standards, we're looking for a pattern,
20 we're looking for something that's long-term. Our
21 Board's use at least one generation and they've adopted a
22 period of 25 to 30 years to define a generation because
23 that is the minimum for people, basically, to grow, to
24 marry and to have children and to start to pass on those
25 traditions to their children. So a minimum of 25 to 30
26 years.

27
28 It's also a consistent pattern. Does it
29 occur every year, well, no, I could cite you lots of
30 examples where an indisputable customary and traditional
31 use pattern does not occur every year. But it is a
32 pattern. It is something that is a community level that
33 can be identified over the long-term and that is
34 consistent.

35
36 Does consistent mean a large 50 percent,
37 75 percent, 100 percent of the community, we don't think
38 so. And we've advised our boards on that particular
39 point. But certainly a consistent pattern at a community
40 level suggests something beyond one or two or three or
41 four percent using and harvesting and sharing and so
42 forth. Now, that percentage of activity is going to vary
43 by resource. For what we're talking about here, which is
44 salmon, you would expect a relatively high level of
45 participation in the harvest and the use in the sharing
46 in order to demonstrate a consistent pattern of use.
47 That is the nature of salmon use in most of Alaska
48 communities, most of Alaska rural communities.

49
50 So I hope that adds to the discussion

1 yesterday about how we evaluate information on criteria
2 No. 1 that we consider to be particularly important.

3

4 Moving on to the Staff analysis on
5 criteria No. 1 which starts on Page 204 in my printout, I
6 don't know whether the pagination is exactly the same.

7

8 The Staff analysis draws from our report
9 to give background history on ethnography on the uses of
10 the various drainages on the Kenai Peninsula and does
11 that very well. What I wanted to point out on Page 204
12 is that the background from our report regarding the
13 ethnography and history of the use of the Kenai drainages
14 is based, from our report, entirely on the establishment
15 of those patterns by the Kenaitze people. And our
16 sources on that largely focus on the Kenaitze people who
17 now live in the Kenai/Soldotna area. It's our
18 understanding that they are the ones that established
19 those use patterns in that drainage, they're the ones
20 that named those areas in the Dena'ina language and they
21 were our source for the information that we provided.

22

23 Now, we heard very eliciting testimony
24 yesterday from Ninilchik tribal members about their
25 connections to the Kenaitze Tribe, the intermarriage and
26 sharing of traditions and areas over time. I do
27 emphasize this, however, because I think that a careful
28 reading of ethnography and anthropological literature on
29 subsistence as it exists in Alaska now and certainly as
30 it existed in the past, is that, traditionally there were
31 institutions, political and social institutions that
32 related to resource management and access to resources.
33 Those pertain to claims to particular drainages,
34 particular areas by particular bands, particular villages
35 of Alaska Native people. These were used for resource
36 management, they were used for social control and so
37 forth. And I think it is important in your analysis of
38 the establishment of traditions and the understanding of
39 history to ask, well, who has established the patterns in
40 that area, how do they control access to them and so
41 forth. Alaska wasn't, before the arrival of non-Natives,
42 totally open country, there were institutions there that
43 managed resources and managed people, there were tribal
44 institutions.

45

46 Okay, I think that's enough on that one.

47

48 On the next page, 205 -- well, one other
49 thing that I did want to say about the historic analysis
50 in the report, it's good as far as -- in the Staff

1 analysis, it's good as far as it goes but it kind of
2 stops short with some of the more recent, and I mean last
3 30 or 40 year history of much of the Kenai Peninsula,
4 and, I think, again, this is important and it came up
5 yesterday in public testimony. The tremendous social
6 demographic, political and economic changes that have
7 occurred on the Kenai Peninsula. And I'm going to
8 emphasize here demographic change. Because in looking at
9 whether there's a long-term consistent pattern that
10 you're trying to describe and determine whether it exists
11 or not, one cannot ignore the demographic changes, the
12 growth of the Kenai Peninsula area, including the rural
13 areas that you're focusing on here. Connected to that is
14 the statement on Page 205 under current fishing practices
15 and the second sentence says, their, meaning the
16 residents of the Kenai Peninsula, use of salmon is based
17 on three traditions, the Dena'ina, the Alutiiq and early
18 settlers and homesteaders. Well, there are other
19 traditions that you're learning about through our study
20 and other testimony. The more recent traditions that
21 have been brought to these communities by newcomers,
22 including recreational hunting and fishing, commercial
23 hunting and fishing, personal use hunting and fishing
24 that are different than some of the earlier patterns and
25 in some cases they built upon those earlier patterns and
26 in other cases they've displaced them. And I think a
27 thorough understanding of the history of the area needs
28 to account for that.

29

30 Moving on, under seasons of use and some
31 of the other factors, I thought that some of the
32 information that was offered on Tyonek and on Nanwalek
33 and Port Graham was somewhat irrelevant to what you're
34 really focusing on now. I know that the west side of
35 Cook Inlet was part of the analysis, but I would just
36 recommend that information regarding patterns of use in
37 Tyonek, Nanwalek and Port Graham are not necessarily
38 applicable to what you're looking at for Proposal 9 for
39 the Kenai Peninsula itself.

40

41 Moving on then to what I think is one of
42 the key, in fact, it is the key part of the analysis
43 which starts on Page 213 and has to do with areas of use.
44 And on the next page, 214, in the first full paragraph
45 there, the analysis does a very good job of drawing from
46 two studies that we have done. The study in technical
47 paper 285, the more recent study from 2002/2003 and then
48 the earlier technical paper 253 also done for the Office
49 of Subsistence Management, which describes use patterns
50 from 1998. The analysis correctly states that in both of

1 those studies we asked the respondents to indicate, not
2 only how much of various resources they harvested, but
3 also where they harvested those resources. It also
4 correctly points out that these two studies documented
5 use of areas for two years, so there are two snapshots.

6
7 What this paragraph does not mention,
8 however, is that in the more recent study we also had
9 questions that asked about historic use. There are
10 specific questions in the survey and data resulting from
11 the survey that document use of particular areas by every
12 person surveyed in their lifetime. It's a very similar
13 kind of question to what the Ninilchik Tribe asked their
14 respondents and it is information that can be directly
15 compared. Now, the sampling methods are quite different.
16 Ours pertained to the whole community, the Ninilchik
17 Tribe's pertained to a subsample of long-term
18 knowledgeable individuals. nevertheless, the comparison
19 is necessary in our view to do and as stated, it's
20 incorrect in this paragraph to stop, by saying that our
21 study's just had those two years of snapshots.

22
23 With that said it is interesting and it's
24 again correct -- oh, and by the way the analysis then
25 takes from our more recent report the tables that show
26 the percentages of use of various drainages by each
27 community for fishing various fish in the study year of
28 2002. And if you move on to the Ninilchik discussion
29 which starts on Page 21 the analysis correctly points out
30 that our findings regarding the study year of 1998 and
31 2002 were very similar in terms of where people were
32 going, this is, again the community overall, where they
33 were going for harvesting fish. And it notes that in
34 Ninilchik in 1998 an estimated two percent of the
35 households harvested salmon in Unit 15(A) on Kenai
36 Peninsula National Wildlife Refuge lands and three
37 percent in Unit 15(B). What I should say is the way we
38 did this is very similar to how the Ninilchik Tribe
39 approached the interviewing. In fact, the Ninilchik
40 Tribe took the map that we had done and used it in their
41 own interviewing, which I think was a really good
42 approach. And what we did is we -- the map divided up
43 the Kenai Peninsula into a number of units based upon
44 land status and water status and management so that we
45 did know where the fishing on Federally managed waters
46 and State managed waters was generally taking place.

47
48 And on Page 222, the analysis goes on to
49 point out what we found for the 2002 study year and
50 points out that the percentages were very similar. Four

1 percent of households harvested sockeye salmon in the
2 Russian River and one percent harvested rainbow trout and
3 lake trout in the Kenai Lake or Kenai Mountain streams as
4 a community overall of Ninilchik for 2002.

5
6 So getting back to the theme that I
7 introduced at the beginning is that substantial evidence
8 of a community wide customary and traditional use
9 pattern, one, to two or four or five percent. I know a
10 percentage hasn't been established but for fish such as
11 salmon and trout that are used generally by large
12 percentages of the population, we would say that the
13 statement that that's substantial evidence is probably
14 not supported by what's in the Staff analysis.

15
16 With that said the -- let's see, later on
17 Page 222, the Staff analysis does correctly point out
18 that we did do those additional questions regarding
19 lifetime use and that Division of Subsistence Staff did
20 dive into our data and the original survey forms and we
21 looked at the results of that particular question which
22 we did not summarize in our report. We didn't anticipate
23 every possible question that would be directed at our
24 results and so we did not summarize all this information
25 in the report. That said it is possible to summarize,
26

27 And there was a one page overview of our
28 analysis that I provided to Office of Subsistence
29 Management Staff back in November and it looked particu-
30 -- it looked specifically at lifetime use of the Kasilof
31 River drainage by Ninilchik residents. And that is
32 summarized in the Staff analysis. This could be done.
33 This analysis could be done for other drainages on the
34 Kenai Peninsula for the other study communities also and
35 would provide what we think is really essential
36 information if -- for this analysis, and is one of the
37 key things that Commissioner Campbell and Marianne See
38 pointed out yesterday. But we don't have that in the
39 analysis, it's not in our report. The analysis has not
40 been done.

41
42 The -- I'm almost done. The analysis
43 then goes on on Page 223 to address some of the other
44 information that's available about use of the various
45 drainages by the Ninilchik community. And it does note
46 in the last paragraph under Ninilchik, right above
47 Seldovia that there was public testimony at the
48 Southcentral Council meeting noted that fishing occurred
49 in the Skilak and Tustumena Lakes and the Swanson River
50 system. The analysis doesn't say how much fishing by how

1 many people, how frequently did this fishing occur, it's
2 pretty vague, and, again it raises the question of
3 whether the substantial evidence threshold has been met.
4 It also mentions discussions with users and
5 representatives of the Ninilchik community and says, fish
6 harvest locations in the Tustumena Lake for Dolly varden,
7 lake trout, rainbow trout and coho salmon were discussed,
8 One person at the meeting noted that 20 people in the
9 fall of 2005 took trout from Tustumena Lake.

10

11 So we have some general statements but I
12 think our point is that this information really needs to
13 be evaluated further, including the information from the
14 formal interviews that were done by the Ninilchik Tribe
15 in order to meet that standard.

16

17 The last point that I have on the Staff
18 report has to do with criteria No. 8 and it's' useful to
19 read that one before commenting. No. 8 is a community or
20 area, focusing on that, a pattern of use which relates
21 to a reliance upon a wide diversity of fish and wildlife
22 resources of the area and which provide substantial,
23 substantial cultural, economic, social and nutritional
24 elements to the community or the area.

25

26 The Staff analysis has one piece of data
27 relating to that criteria which -- or that factor which
28 is a key factor, and it has to do with the range of
29 resources used for subsistence in a study year by
30 communities. So that addresses a wide diversity. It
31 doesn't really put it in any context but there it is, but
32 in your analysis there is no information that focuses on
33 whether there is a substantial cultural economic social
34 and nutritional element to the community or the area by
35 the use pattern that's being analyzed. That information
36 is lacking in here and it is, in our view, an essential
37 component to the analysis. There's plenty of information
38 that could be used to develop that analysis, including,
39 in our report and it is missing.

40

41 I'd like to conclude by
42 addressing a few issues and questions that came up during
43 public testimony yesterday that had to do specifically
44 with the study that we did under contract to the Office
45 of Subsistence Management, the Fisheries Information
46 Service. And just to remind you all that we did receive
47 funding from FIS to conduct interviews in a number of
48 Kenai Peninsula study communities specifically on this
49 topic. And in Ninilchik itself, Ninilchik has
50 approximately 600 households. We could not interview

1 everybody there so we did do a random sample. And the
2 basic idea behind a random sample is to get a
3 representative picture of the community. We did a
4 hundred interviews, which is slightly less than 20
5 percent of the population.

6
7 In the case of Ninilchik we do have the
8 earlier study from 1998 to compare to 2002. It's always
9 risky, a one year, a random sample, it's a one year
10 snapshot, is it good, and so forth, but we can compare it
11 to 1998 and as Helen Armstrong pointed out yesterday, you
12 know, most of the findings from 2002 related to
13 demography, it related to harvest levels, it related to
14 use areas and the two studies match very, very closely.
15 That raises our confidence in our findings to a pretty
16 high level. So I think that the random sample approach
17 worked.

18
19 There was comments that, when asked,
20 people living in the community said that they had not
21 been interviewed as part of the survey and that's not
22 surprising. Most people in the community were not, it
23 was a random sample. However, I will say that the
24 percentage of Native households that were randomly
25 selected and interviewed was about 17, 18 percent of
26 Ninilchik overall, which matches the US Census estimate
27 for the Native population of that community. That's one
28 of the reasons we ask about ethnicity. There's a lot of
29 reasons to do it but one of them is to check how our
30 sampling is doing compared to other sources of
31 demographic information and I think we did okay there.

32
33 It was pointed out also, and this has
34 been a topic for some discussion that for Nikolaevsk,
35 which is the Old Believer community, we took a slightly
36 different approach in our survey, in that, we did a
37 stratified design, which means that we selected from two
38 pools within that community, the Old Believer pool and
39 everybody else. The reason we did that is that we were
40 sampling from the Nikolaevsk census designated place
41 which does not just include the Old Believer community.
42 We had done an analysis for our 1998 data that
43 demonstrated that the Old Believers had a very different
44 pattern of use than the rest of that community and we
45 thought that that warranted sampling them separately so
46 that that pattern of use was not missed.

47
48 We also did the same analysis for the
49 Ninilchik results from 1998 and we did not find
50 substantial differences, significantly different

1 differences in the harvest levels and other -- and the
2 other data that we collected for Native versus non-Native
3 in Ninilchik, and, therefore, we did not stratify the
4 design there.

5
6 Now, a survey such as the one we did gets
7 certain kinds of information. But if you want to get
8 history, if you want to learn more about trends you, of
9 course, do key respondent interviews, you track down
10 people who are knowledgeable and interview them and you
11 don't rely upon a stratified design or a random sample or
12 anything to do that. You do that through -- by
13 identifying who the knowledgeable people are. And the
14 study design that we implemented was not just a survey,
15 we also did key respondent interviews, we did community
16 outreach meetings before we designed the work, where we
17 got input into the kinds of questions to ask and how to
18 go about doing the work and we did review -- community
19 review meetings after the results were available in the
20 study communities.

21
22 So we recognize that not all kinds of
23 information that is necessary for C&T can be done through
24 a survey and we tried to accomplish that through our
25 design.

26
27 There was some comments on the role that
28 the Ninilchik Tribe played in our research and we tried
29 to have that role be multi-faceted. We did have a formal
30 contract with the Ninilchik Tribe to assist us with
31 implementing the survey itself and the tribe did hire two
32 tribal members to be trained in survey administration.
33 They did a large number of the interviews. They advised
34 us on how to find people, how to select people, on who
35 was living there, who was not living there and they were
36 really essential to the successful implementation of the
37 work. We also had Staff living in the community for
38 several weeks to also do interviews and to monitor the
39 progress.

40
41 Other involvement by the Ninilchik Tribe,
42 by the Seldovia Tribe, too, and this involved the
43 Kenaitze Tribe as well, where the initial planning
44 meetings that we had which were conducted in the
45 Ninilchik Tribal building and a lot of the information
46 that we have on history was a result of the excellent
47 discussion that we had with Ninilchik Community members
48 there. And then there was a follow up meeting as well
49 that the tribe helped us organize.

50

1 And finally one very specific point.
2 There was a comment about some of our findings related to
3 demography and I think this gets back to the discomfort
4 that there might be with a random approach to -- a random
5 approach to sample selection. And I think the comment
6 was that we didn't have anybody in our sample that had
7 lived in Ninilchik for more than 10 years, and I was
8 puzzled by the -- what the source of that could be
9 because the findings have the mean -- the mean for
10 household heads in Ninilchik at 17 years, with a range
11 from one to 74 years and for birth place, we had for
12 household heads, 17 percent born in Ninilchik and 80
13 percent born outside the United States. And of course
14 for the entire population -- not outside the United
15 States, other states, sorry.

16
17 (Laughter)

18
19 DR. FALL: Sorry about that. If that's
20 the only mistake I made I'm doing really well.

21
22 ACTING CHAIR GOTTLIEB: You're doing
23 good.

24
25 DR. FALL: 80 percent born in other
26 states. But for the population overall, of course, the
27 percentage born in Alaska is higher, it was almost 40
28 percent and that's because it includes kids and so forth.

29
30 And these numbers match almost exactly
31 the results that we got in 1998 and they also match what
32 you would expect from Ninilchik for the community
33 overall, that population has doubled and tripled over the
34 last 20 to 30 years, and this is right in line with what
35 you would expect. And I'm confident that that
36 information was accurate.

37
38 And it also, this particular concern
39 raised the question of whether we really did get a
40 representative sample for Ninilchik or were we just
41 talking to seasonal residents or part-time residents and
42 so forth. The answer is no. That's not how we
43 approached this. We did the survey in the winter time
44 when the year-round residents are there and like I say we
45 also engaged the assistance of local residents to advise
46 us and who were actually residents of the community
47 before we interviewed them. So I am confident in closing
48 that our study is an accurate picture of the community of
49 Ninilchik use patterns for 2002, for 1998, and that the
50 study could, with more analysis, provide some important

1 additional historical perspective for your C&T
2 determination.

3

4 And I thank you, Madame Chair.

5

6 ACTING CHAIR GOTTLIEB: Thank you very
7 much, Jim. Questions for Jim.

8

9 John.

10

11 MR. LITTLEFIELD: Thank you, Madame
12 Chair. First, Mr. Fall, I'd like to say that I've been
13 looking at your data for many years and I appreciate all
14 the information. I look back at the technical reports
15 and then I look around this room and I think you're
16 probably the only one that's still left working for the
17 State as I read those, most of them are now working for
18 the Federal program. But nevertheless, the data you
19 presented is only one picture that we're going to be
20 looking at. And it's good data. What I've seen, even
21 the incompleteness.

22

23 But I'm trying to get an idea of what you
24 would do if the State Board of Fish would ask you to do a
25 C&T determination on salmon for Kenai. Would your
26 directions be from the State to meet all of those
27 criteria, partial criteria, what would be where you would
28 draw the line on saying that this community, be it
29 Ninilchik or whatever, has met the test for C&T, and then
30 what criteria you used for this Federal analysis.
31 Because they are two completely different programs, and
32 you've made some assumptions in addition to presenting
33 data. You said this doesn't meet the test. That's for
34 our Board to determine whether it meets the test. But on
35 your data, maybe you could tie together what you do in
36 the State and how you looked at ours and what those
37 differences could be?

38

39 Thank you.

40

41 DR. FALL: Sure. Madame Chair. The
42 factors that this Board uses are very similar to the
43 eight criteria that the Alaska Board of Fisheries and
44 Alaska Board of Game use for making C&T determinations.
45 There are subtle differences but they are minor.

46

47 If I were preparing a C&T finding for
48 this Board -- or a C&t analysis for this Board as opposed
49 to the Fish Board or the Game Board, I would use the same
50 information in both. I would structure the analysis

1 exactly like Helen did here. It's the same information
2 that pertains to each of those criteria. They're all
3 relevant.

4
5 As far as how our Board approaches the
6 eight criteria, they have a similar approach to you, in
7 that, it is not necessary for all eight criteria to be
8 met for a fish stock or game population for a C&T --
9 positive C&T finding to be reached.

10
11 One difference, of course, John, as you
12 know, is that our Board makes the findings on fish stocks
13 and game populations and does not take the other step of
14 identifying which communities are eligible for that
15 participation. Because once the Game Board or the Fish
16 Board makes the positive determination all Alaskans are
17 eligible to participate in the fishery.

18
19 But that said, as I've mentioned many
20 times at the Fish Board especially, but at the Game
21 Board, we do provide information specific to particular
22 communities because it's communities of people that
23 establish the patterns. You cannot talk about uses of
24 fish stocks without talking about who it is that is using
25 the resource.

26
27 And finally I think that the Board of
28 Fisheries and the Board of Game tend to focus on some of
29 the same factors, the same criteria that we've emphasized
30 here that certainly the first factor is critical and
31 factor eight is also very, very important for the State
32 Boards in its approach.

33
34 And so I'll stop there and I hope I've
35 addressed your question.

36
37 MR. LITTLEFIELD: Thank you. Follow up,
38 Madame Chair.

39
40 ACTING CHAIR GOTTLIEB: Go ahead.

41
42 MR. LITTLEFIELD: And we've heard several
43 times from the Commissioner, as well as others from the
44 State, that unless criteria No. 1 is met the whole
45 process falls apart. And would you characterize that,
46 the Board of Fish and Board Game, that if criteria No. 1
47 is not met there then the whole thing falls apart, that
48 there is no C&t?

49
50 DR. FALL: Madame Chair. I'm searching

1 my memory for statements from Board members on this
2 particular point and I'm pretty confident in answering
3 John's question with a yes. And a recent C&T discussion
4 that the Fish Board had relating to the Chitina dipnet
5 fishery, several Board members specifically said that if
6 criteria one were not met that we probably wouldn't go
7 any further. They didn't say that if criteria one were
8 met that the whole thing was positive, but they did say
9 there's got to be a long-term consistent pattern or else
10 we don't see it as a customary and traditional use.

11

12 ACTING CHAIR GOTTLIEB: John.

13

14 MR. LITTLEFIELD: Thank you, Madame
15 Chair. I'll leave it there. The reason I'm asking these
16 questions is because I intend to bring these up later
17 under discussion in talking about those issues, but
18 that's all I needed from Dr. Fall.

19

20 Thank you.

21

22 ACTING CHAIR GOTTLIEB: Other questions
23 from the Board. Charlie.

24

25 MR. BUNCH: Yes. Dr. Fall, I apologize
26 for putting your name in the past-tense yesterday, I
27 understand -- but do you feel that the Ninilchik
28 Council's survey compliment the information that you
29 provided in your 2002 report concerning traditional
30 subsistence use?

31

32 DR. FALL: Madame Chair. It supplements
33 the research that we did. It -- our job, under our
34 contract, was not to focus specifically on the patterns
35 of use and the history of the Ninilchik Tribe. We tried
36 to learn something about that through our key respondent
37 interviews and more information could probably be pulled
38 out from our survey but we didn't focus on that segment
39 of the Ninilchik community.

40

41 The Ninilchik tribal study largely did,
42 and that's why I say that it's complimentary -- or
43 supplementary, I'm sorry, supplementary to our work.
44 Just how the findings from the two studies, especially as
45 they relate to more recent activities match is, I think,
46 something that needs further evaluation. And as I
47 mentioned before we have a question in our survey that
48 wasn't analyzed. It's very similar to the questions that
49 the Ninilchik Tribe asked its own members and it would be
50 very -- we think it's very important to make those

1 comparisons.

2

3 But I see the studies as supplementing
4 each other and certainly not as contradictory.

5

6 MR. BUNCH: Well, given all the
7 information that you're aware of, that includes your
8 report, the OSM Staff analysis, the survey that the
9 traditional council did and all the public testimony that
10 we've heard here at this meeting, do you feel that
11 there's sufficient information to document patterns of
12 long-term use of freshwater use in Federal public waters
13 by the communities of Hope, Cooper Landing and Ninilchik?

14

15 DR. FALL: Madame Chair. The Department
16 position right now is that there is not sufficient
17 evidence on the record to make that determination at this
18 meeting and our recommendation is that further evaluation
19 of the available information take place.

20

21 Madame Chair.

22

23 MR. BUNCH: Well, Dr. Fall, if you feel
24 that this information is insufficient and more is needed,
25 what specific type of information should be attained and
26 how should this information be obtained and how soon
27 should it be available to the Board?

28

29 DR. FALL: Madame Chair. I can't answer
30 the last part of that question, that's for you to decide.
31 But there -- for example, the questions that we asked in
32 each community about life time use of particular
33 drainages, the question was, what fisheries have you
34 participated in in your life time and where did they
35 occur, what gear type did you use and so forth. There
36 has not been an analysis of that except for the one
37 specific analysis that I did regarding Ninilchik in the
38 Kasilof River. That is not necessarily a straightforward
39 analysis. We can't push a couple of buttons and get a
40 table. We have to go back to the survey forms, we need
41 to read the marginal notes. There might be some follow
42 up that we need to do, that should be done.

43

44 Another analysis that could be done from
45 our information is cross tabulations. One could look at
46 our findings and relate them to ethnicity or length of
47 residency, those are two that come to mind. There might
48 be others to see whether there are strong subpatterns in
49 the communities that need to be brought up.

50

1 For other studies, we've been urging a
2 full write up of the Ninilchik Tribe's work. What we
3 have is a series of tables and some good maps and so
4 forth. And each time we hear a presentation of that
5 information we learn new things, questions are asked and
6 we learn more about it but it's been basically a step by
7 step approach and we'd really like an opportunity to read
8 a full description of how the work was done and how the
9 people who did the work interpret the findings and
10 perhaps supplement the interpretation of the findings
11 with additional historical information and key respondent
12 information, such as we've heard here, that basically
13 annotates and helps us understand the numbers.

14
15 So that's the kind of analysis that we
16 think should occur.

17
18 Madame Chair.

19
20 ACTING CHAIR GOTTLIEB: Gary.

21
22 MR. EDWARDS: Thank you, Madame Chairman.
23 Dr. Fall, to follow up a little bit on that. It's my
24 understanding that when you did your study you were not
25 aware of the two BIA studies, which we heard the
26 presentations on yesterday; is that correct?

27
28 DR. FALL: Madame Chair. We were aware
29 of both studies. And the 1993 study, we did have the
30 results from that and we also had an overview of the
31 findings that Taylor Brelsford prepared on the '94 study.
32 We were aware that the later study had been done and when
33 we began visiting with the Ninilchik Tribe we asked about
34 the availability of those study findings and as we've
35 heard those study findings were not available, really,
36 until this past summer, and we were told that they were
37 not available. So we were aware of both studies. We
38 knew the general findings from the earlier one but we had
39 no idea what the findings were for the second round of
40 interviews.

41
42 MR. EDWARDS: Well, now that we have a
43 more definitive findings from both studies and all and I
44 thought I heard you say that there would be value in
45 trying to further integrate them into your study and to
46 look more at that information and to try to tease more
47 from it, that might be of value in us making our
48 decisions.

49
50 DR. FALL: Madame Chair. Yes. That is

1 our recommendation.

2

3 MR. EDWARDS: A couple other questions if
4 I may. In reading your study, particularly chapter two,
5 which I found just very interesting from kind of a
6 history lesson. You referred to trappers who would come
7 into the Killi and the lower Killi and maybe even up to
8 Funny River on a pretty regular basis to trap. And as a
9 matter of routine most of them would bring small gillnets
10 along with them to try to obviously supplement their food
11 and all. But it doesn't allude very much to, you know,
12 where did these folks come from, what was their point of
13 origin and that. Is there any additional information on
14 that?

15

16 DR. FALL: Madame Chair. Without diving
17 back into the transcripts I can't say definitively. I do
18 recall that source for some of that information was some
19 interviews that Ron Stanek and I did with individuals
20 from Kenai. One was a non-Native person and another was
21 a Native person from Kenai. So that was a Kenai based
22 pattern.

23

24 Of course, we heard yesterday during
25 public testimony that there were people from Ninilchik
26 that also were moving in that direction and running
27 traplines up into that area. But as I said before, the
28 general patterns that we described for, especially the
29 upper portion of the Kenai, was information based mostly
30 from people from that drainage and from the Kenai
31 community.

32

33 Madame Chair.

34

35 MR. WILSON: Just a couple more.

36

37 ACTING CHAIR GOTTLIEB: Gary.

38

39 MR. EDWARDS: At the start of your
40 presentation this morning you sort of alluded to it, but,
41 you know, yesterday folks talked about, you know, we're
42 all one tribe on the Kenai Peninsula, Can you elaborate
43 a little bit more is it all one tribe, you know, is it
44 more definitive or what exactly is it or does it go to
45 what Ralph said yesterday about, is this, it's one large
46 community down there?

47

48 DR. FALL: Madame Chair. There obviously
49 are a number of tribes on the Kenai Peninsula that are
50 recognized by the Federal government, and the recognition

1 of those distinct tribes is a recognition of their unique
2 histories and political and social organization. And
3 what you have on the Kenai Peninsula with Ninilchik and
4 Salamatof and the Kenaitze Tribe, I guess those are the
5 main ones, I apologize if I'm forgetting one, and then
6 further down Nanwalek and Port Graham and Seldovia is
7 very similar to what you would have -- or what we have in
8 the Copper River basin where there are eight tribes
9 recognized by the Federal government. In the Copper
10 River basin they're all AHTNA. In the Cook Inlet it's a
11 combination of Dena'ina and people with Alutiiq and mixed
12 heritage.

13

14 So these tribes are distinct. If you
15 look at their history you will find that there are
16 particularly territories that are identified with those
17 tribes.

18

19 My understanding of the ethnography is
20 that these territories were recognized and respected and
21 acknowledged. That is not to say that people didn't
22 share those territories through permission, through
23 intermarriage, but nevertheless these areas -- these
24 institutions were used for resource management and people
25 management.

26

27 Is it all one community? I thin it's,
28 again, similar to what we see in the Copper River basin,
29 that the tribes are distinct but they are linked at a
30 higher level in their interactions and developing common
31 interests and common positions, but their distinctiveness
32 is also respected.

33

34 Madame Chair.

35

36 ACTING CHAIR GOTTLIEB: I know Ralph has
37 a comment. I just wanted to check, Mitch, of course any
38 time you want to ask a question, feel free?

39

40 CHAIRMAN DEMIENTIEFF: Yeah, thank you
41 very much, Judy. I will when I have questions.

42

43 ACTING CHAIR GOTTLIEB: Okay. Ralph, go
44 ahead, please.

45

46 MR. LOHSE: I have two questions for Dr.
47 Fall, if I may.

48

49 ACTING CHAIR GOTTLIEB: Yes, please.

50

1 MR. LOHSE: Dr. Fall. I really do
2 appreciate the data that you have here. And while I may
3 interpret it some of it a little different than you do,
4 the thought of having another survey and some other
5 questions that needed to be asked on that, I'm thinking
6 in context of what they have to deal with.

7
8 And I was just wondering, do you think it
9 would be legitimate to ask on a survey what resources
10 would you have used if they would have been legally
11 available or available in a non-confrontational or
12 uncrowded environment. And if you could have used, but
13 didn't make sue of these resources, what was your reason.
14 Because one of the things that we talk about over here is
15 disruption. And we've talked about how, you know, since
16 1952 the different regulations have been in place that
17 have basically stopped most of what we look at as rural
18 subsistence on the Kenai Peninsula.

19
20 Would a question like that be legitimate?
21 Could a question like that even be put on a survey?

22
23 DR. FALL: Madame Chair. We do as a
24 question like that, Ralph, and it's on each page of the
25 survey that we administered, and the question is how did
26 your harvest use of X, whether it's salmon or eulachon or
27 whatever in the study year, compare to other recent
28 years. And if people said it's less or it's more we
29 explore the reasons for that and then we code out the
30 reasons. So if we asked a person about king salmon and
31 they said, oh, we didn't use any king salmon this year
32 and we would follow up and say, well, how does that
33 compare to other years and they'd say, well, you know,
34 they closed the fishery down, it's -- it's less, that
35 would be the -- and then we'd say, well, why was it less,
36 well, they closed the fishery down or there wasn't a lot
37 of fish around or it was really crowded or I got sick
38 last year, I was out of the state and so we would -- we
39 have done that.

40
41 Now, without -- my memory isn't good
42 enough to know just how much analysis of that particular
43 data set we have done but it is a good question and we
44 actually have tried to administer it.

45
46 And I want to make one, what might be a
47 clarification here is we're not proposing another round
48 of interviews, we're suggesting that there's a fair
49 amount of information that's already collected that just
50 needs further analysis.

1 MR. LOHSE: Thank you. I recognize that
2 question there. But to me that's kind of a short-term
3 question. Because that deals with the individual that
4 you're talking to and, you know, basically a fairly short
5 period of his life, what did you do this year that you
6 didn't do last year, what did you do two years ago that
7 you didn't do this year or something like that.

8
9 But what we're talking about here is
10 we're talking about things that happened in the parents
11 lifetime of some of the children who are talking to you
12 and are talking to you about their children. I mean we
13 heard yesterday that, you know, so and so's father was
14 born in 1940, somebody else's '44, these regulations took
15 place when they were children, they took place in 1952,
16 1953, that has an affect then on the children and the
17 grandchildren from that standpoint that they never
18 actually -- they wouldn't put that down on a survey
19 because they never had that opportunity to start off
20 with, that was a disruption that took place before their
21 lifetime. And that's kind of what I was thinking of.

22
23 And I had one other question I was going
24 to ask you and, you know, while we recognize that the
25 tribes themselves are distinct entities and with distinct
26 cultural backgrounds and everything, in the current
27 community, as we have it today, with the mobility we
28 have, with the education we have, with putting people in
29 the same schools that we do, and when we listened to the
30 testimony yesterday we heard -- you know, there's a lot
31 of intermarriage, there's a lot of marriage between
32 cultures, both Native and non-Native cultures to the
33 point where wouldn't you think of it today as one
34 community with different backgrounds instead of different
35 communities in the one community? I mean from an
36 anthropological background type thing?

37
38 DR. FALL: Madame Chair. That's a tough
39 question, Ralph. My understanding of the Kenai Peninsula
40 right now, which is what we're focusing on, is that we've
41 had a very rapid arrival of many new families, many new
42 people, and to the extent that new arrivals which can
43 represent 75, 80 percent of the population of some of
44 these communities, to the extent that they have
45 integrated with older patterns or brought new patterns
46 and new values to that area is an important question.
47 And I think what we find in Alaska is that a large and
48 rapid introduction of people into an area for reasons
49 other than subsistence, such as oil and gas development,
50 or recreational, hunting and fishing, or retirement,

1 introduces a different community, a different set of
2 patterns that can exist next to an older pattern. Now,
3 over time there's going to be movement between those two.

4
5 But I think that is different from what
6 you might see in a smaller place where people move in and
7 out, marry in and are incorporated into that community
8 fairly readily. I can give you lots of examples of that
9 so I think scale makes a difference, I think -- in terms
10 of numbers of people and time, that can affect the kind
11 of pattern that you're talking about.

12
13 So I hope I got somewhere towards
14 answering your question.

15
16 MR. LOHSE: Thank you, Dr. Fall. I was
17 thinking of, from that standpoint, but I was also
18 thinking of it from the standpoint of the core group. To
19 me the evidence that you show right here and the
20 percentages that you show right here in comparison with
21 the percentages that came on the Ninilchik survey
22 basically show that what we have, even in a community
23 like Ninilchik, is we have two communities. We have --
24 and Ninilchik is a community in flux, it's a growing --
25 like you said it's rapidly growing. But in that
26 community there's a core group and that core group is the
27 core group that has the long-term ties. And we heard in
28 the testimony yesterday that that core group, it's tied
29 to Kenaitze's, it's tied to the Aleuts, it's, you know,
30 tied to the early Russian settlers, it's tied to the
31 homesteaders, it's tied to the early fur traders. That's
32 the core group that has that subsistence lifestyle. And
33 basically it makes up about the percentage that you come
34 up with in your survey right here. Just like when they
35 went out and made their survey and they took their survey
36 of 20, 25 families, they recognized them as the core
37 group and that's about the same numbers that you came up
38 with as users of these areas in your survey right here.

39
40 Now, the question is, in that core group
41 we see that that that core group is not made up of a
42 distinct entity of people. That core group is, like we
43 heard, the Aleut's related to Kenaitze's to Russians, to
44 fur trappers, to early prospectors, to homesteaders but
45 they're all related to basically a rural people or people
46 who practiced a rural lifestyle down through time.

47
48 And that core group then would have what
49 we call a long-term continuum use of subsistence
50 resources, would you agree to that part?

1 DR. FALL: Madame Chair. As I pointed
2 out when I started, I believe that the Board is making a
3 finding based upon a community pattern, and Ralph has
4 really focused right on the key question. Is when does
5 an older community subgroup within that community, how do
6 you -- can you use that pattern to characterize the whole
7 community, and when does that shift, for example? And
8 that, I think, is exactly -- that question is a hard one
9 to answer and I think that's exactly why we're
10 recommending that further analysis and more clear
11 standards about C&T findings be developed. Because it's
12 certainly, in this case, it highlights the difficulty of
13 identifying customary and traditional uses in providing
14 for those uses in areas that are road connected that are
15 rapidly changing in terms of economy and demography. And
16 on the one hand if you're making the community as a
17 whole, the finding as a community as a whole, this is the
18 information we have, the information we provide. But if
19 -- and so the question is when do you focus on a sub --
20 what is an older, but now perhaps not the most typical
21 pattern in that community as the information to support a
22 customary and traditional use. And there's some --
23 there's probably several factors that could be identified
24 to when that use area -- that use pattern is in such a
25 minority that it no longer is a particularly strong
26 character within that community, and in other cases where
27 it still is.

28
29 And you know the Copper basin pretty
30 well, and up there it's in some ways kind of a similar
31 situation on a continuum, where the population has also
32 changed but the older patterns are strong, they
33 incorporate people and they're recognizable and they do
34 characterize the overall way of life in that place.
35 Whether they do in the case of Ninilchik and other Kenai
36 places is the question, that needs to be answered and
37 we're suggesting that further discussion is needed.

38
39 ACTING CHAIR GOTTLIEB: I believe now's
40 the time for some clarification from our solicitor on
41 this question.

42
43 MR. GOLTZ: I'm probably going to have
44 several points of entry today.

45
46 But I detect some tension in the room and
47 I'd like to back up for a minute and talk about what a
48 remarkable day we had yesterday. We had a visit by what
49 is, in effect, the Secretary of Interior, that's a
50 direct delegation, and Drue Pearce was here talking as

1 the Secretary. We also had a visit, which I think was an
2 inaugural visit, by the Commissioner of Fish and Game.
3 And this is a level of attention that this program has
4 never had before. We have come a long way and I want to
5 thank the Office of the Secretary, not only for appearing
6 yesterday, but what you guys may not realize is that they
7 take my calls and they understand what I'm talking about
8 and this is news. You would be surprised at some of the
9 questions I've heard about Alaska originating from the
10 Platonic, some of them you wouldn't believe. I had one
11 attorney express great surprise that Alaska wasn't an
12 island.

13

(Laughter)

14

15
16 MR. GOLTZ: So we have a lot to be
17 thankful for there. And we also have a lot to be
18 thankful for, that the Commissioner should come here.
19 There was a time during this early program that the State
20 and Federal tensions were intense. And every single
21 thing we tried to do was opposed. We would have dozens
22 of RFRs after every one of these meetings. And for the
23 Commissioner to come and offer, what I thought were very
24 helpful comments, is something I'm personally
25 appreciative of.

26

27 This is not to say that I have anything
28 against Kelly.

29

(Laughter)

30

31
32 MR. GOLTZ: I like him and in some
33 subjects he probably does exceed the Commissioner in
34 knowledge, but the symbolism is very, very important, and
35 I want to thank the Commissioner and thank ADF&G Staff in
36 that regard.

37

38 As some of the specifics that we're going
39 to be talking about here soon, I hope we don't get all
40 tangled up in these eight factors. ANILCA does not
41 mandate eight factors. They're simply a tool to lead us
42 to something else. What is that, a meaningful use
43 preference. That meaningful use preference is not
44 necessarily the same as the historic preference. That
45 meaningful use preference is applied in context.
46 Conditions change. People change.

47

48 We want to give some reality to
49 subsistence but we're not in a search for some amorphous
50 time in the past that we can replicate now, it's not

1 possible.

2

3 And I have said this privately, I'll say
4 it publicly now, I tend to think we vastly over
5 complicate this whole subject. I tend to agree with the
6 Commissioner, in the past everybody used every resource
7 all over the state. What's the custom and tradition,
8 killing, cooking and consuming. It doesn't have to be
9 this complicated, this is not statutory.

10

11 But I also agree with the Commissioner
12 that we do have to follow the eight factors. They are in
13 regulation now. I want to inform my good friend, John
14 Littlefield, that we did not adopt them as a kneejerk
15 response. We were very carefully considering whether or
16 not we should adopt the eight factors when we began this
17 program. And we decided we should because we wanted to
18 be as compatible as we could be with the State. And
19 remember the history of that, we were thinking about six
20 months until the Legislature had time to act and then we
21 would turn it back.

22

23 It's probably time to reexamine that, but
24 that's the origin of the eight factors. We have them, we
25 have to follow them.

26

27 That does not mean we have to hover like
28 hummingbirds over every word. If we do that we turn them
29 to butter and we'll be here forever and nobody will ever
30 be satisfied with our decisions.

31

32 They paint a picture, they point us in
33 the direction, they're guidelines for us but they are not
34 the law. What we are trying to do is construct a
35 meaningful use preference. How do we do that?

36

37 We do it in balance. On the Kenai
38 Peninsula, on moose, we have a Ninth Circuit decision and
39 what the Ninth Circuit said was ANILCA is a combination
40 of recreation, conservation and subsistence and we have
41 to put those together in context. We take the world as
42 it is.

43

44 We aren't necessarily making yes/no,
45 stop/go decisions on C&T. There are gradations. One of
46 the best studies I ever read was one done by the State in
47 Angoon and there's a very graphic depiction there of four
48 use areas. There's the core area. There's the area that
49 was frequently used. There's the area that was used
50 during some seasons. And there was the area that was

1 used rarely. Now, Alaska being what it is, those third
2 and fourth areas may have been trespassing on other
3 users. That's something we haven't really gotten into.
4 But we don't have to assume that because there was an
5 occasional use sometime of an area that means that the
6 entire community, it necessarily has a subsistence
7 allegation right now. We can use common sense. I miss
8 my friend Dan O'Hara sometimes because he would
9 constantly remind us of that.

10
11 We can, we must make a meaningful use
12 preference, allocation on the Kenai Peninsula. We should
13 do that in balance and we should do that peacefully if at
14 all possible.

15
16 ACTING CHAIR GOTTLIEB: Thank you, Keith.
17 John.

18
19 MR. LITTLEFIELD: That's the longest
20 speech I've ever heard you make since I've been here.
21 Anyway did you read my first six pages here of the yellow
22 paper I have.

23
24 (Laughter)

25
26 MR. LITTLEFIELD: Anyway, I guess in
27 trying to relieve the tension, you know, sometimes you
28 might look for a second opinion, and I don't know where
29 we are on the agenda, I know we went back to Fish and
30 Game and when that happens you had asked maybe if there's
31 a doctor in the house, but what I would like to do is Mr.
32 Bunch had some questions for Dr. Fall, and I'd like to
33 refer those questions, if you could, the same questions
34 to our doctors that happen to sit over here on this side
35 of the table because they are the ones that made the
36 analysis for us. And my friend here to the right also
37 had some questions that I believe he had on the paper. I
38 think it would be helpful if, our side of the table, and
39 I'm saying our because it's a Federal program, if our
40 doctors could respond to their doctors, if that's
41 possible.

42
43 (Laughter)

44
45 ACTING CHAIR GOTTLIEB: Thank you, John.
46 And I'm sure we'll all be fine when that's done. But
47 actually I had one more question for Jim, if I could, and
48 then I think it would be worthwhile to hear from Helen
49 and Polly and pursue these issues a little bit more and
50 hopefully not end up like the hummingbirds or the butter.

1 But one comment you mentioned, Jim, and
2 it had to do with criteria 8, which is not only, of
3 course, the diversity of resources used but the
4 importance of subsistence activities. And I'm not sure
5 if I heard you correctly when you were speaking to the
6 cultural importance and significance of subsistence to
7 Ninilchik, are you suggesting that it's not a subsistence
8 community?
9

10 DR. FALL: Madame Chair. No, I wasn't
11 saying that. I was saying that the information that
12 could be organized to address criteria 8 is missing from
13 the analysis, so fully address criteria 8 is missing in
14 the analysis. I didn't offer an opinion as to what that
15 analysis might show.
16

17 ACTING CHAIR GOTTLIEB: Okay, thanks,
18 very much. So maybe we will turn to Helen and Polly, and
19 I don't know if you want to make a general statement or
20 if you want some specific questions from people.
21

22 MS. ARMSTRONG: Thank you, Madame Chair.
23 Helen Armstrong, Office of Subsistence Management. I'd
24 rather have specific questions, please.
25

26 ACTING CHAIR GOTTLIEB: Charlie.
27

28 MR. BUNCH: Helen, can you summarize
29 again the available information about the use of the
30 lower and the upper Kenai, the Federal waters by
31 Ninilchik residents?
32

33 MS. ARMSTRONG: Thank you, Madame Chair.
34 I know there was a lot of information given yesterday so
35 it probably got a little bit lost in all of that. But if
36 people want to follow along, Page 221 of my analysis does
37 go through that.
38

39 And I would like to say that I should
40 give some credit to Dr. Fall's staff because they did
41 rewrite this whole section for me or the portion about
42 Ninilchik and they were very useful in helping me in the
43 development of this analysis and making sure that I had
44 adequate information in here. And I would like to say
45 that this morning was the first time I had heard through
46 all of those reviews, that they had any issues with,
47 particularly factor eight, it was overlooked by their
48 staff. So I have a good relationship with Dr. Fall, we
49 both went to graduate school together and it's not that
50 we don't work well together so there was some oversight

1 in that, perhaps, but I did want to mention that I think
2 it would be nice to get those comments a little bit
3 earlier sometimes.

4
5 In terms of Ninilchik, the Fall survey
6 that was done in 1998, they interviewed 100 households,
7 that was 19 percent of the 527 known permanent
8 households, and of those households two percent of the
9 households harvested salmon on Wildlife Unit 15(A) on the
10 Kenai Refuge. They did not do these by drainages. That
11 was an estimated 11 households. I talked yesterday about
12 how there is this expansion factor that is in their
13 analysis, that when they talk about two percent of
14 households, that's two percent of households survey but
15 that isn't all of the households in Ninilchik. So that
16 expands out to 11 households. Plus or minus some unknown
17 amount because there aren't confidence limits
18 established.

19
20 Three percent of households harvested
21 salmon on 15(B) in Kenai, the Kenai Refuge, that's an
22 estimated 16 households.

23
24 Two percent harvested salmon in Unit 7 on
25 the Kenai Refuge and the Chugach National Forest and
26 that's an estimated 11 households.

27
28 Then in 2002/2003, again, it was 100
29 randomly selected households. Seventeen percent of the
30 sample of the total community of 577 households, and,
31 again, no confidence limits were established, and this
32 time it was by drainage. And these aren't so far off in
33 terms, if you're looking at it statistically, from what
34 they found in 1998.

35
36 Four percent of households harvested
37 sockeye salmon which is an estimated 23 households and I
38 did have someone in the Staff, as I said yesterday,
39 establish for me what the confidence interval would be
40 and it was 18 to 28 households.

41
42 Kenai Lake or the Kenai Mountain streams
43 on the Kenai Refuge, one percent was an estimated six
44 households harvested rainbow trout and one percent lake
45 trout so that would be an estimated 12 households total.

46
47 So those were the upper Kenai. So you
48 have, again, Russian River, 23 household, Kenai Lake,
49 Kenai Mouna -- for salmon -- and Kenai Lake and Kenai
50 Mountain streams you have rainbow trout, lake trout 12

1 households.

2

3

4 For the Kasilof River drainage area and
5 as I said yesterday, that in the report that Dr. Fall
6 did, they coded Tustumena Lake as being Kasilof River
7 drainage and was listed in their table as being non-
8 Federal waters. But when I asked them to further look at
9 the surveys, which they very willingly did, they found
10 that there was one household that had harvested Dolly
11 varden, which is an estimated six households and eight
12 percent harvested sockeye salmon, estimated 48 households
13 and four percent harvested rainbow trout and four percent
14 harvested lake trout, those were estimated 24 households
15 each.

15

16

17 So their staff also did some further
18 analysis, as Dr. Fall said, on Ninilchik surveys and
19 found that an estimated six households said specifically
20 that they harvested trout over their lifetime in
21 Tustumena Lake, which is the Kenai Refuge.

21

22

23 So you can see that we have some
24 information for both Tustumena Lake and for the upper
25 Kenai. It's not a lot. I will say that, you know, I'm
26 not a statistician. I think when I first looked at these
27 and I saw one household, that's not very much, then when
28 it became, oh, right, it's expanded, sounded like more, I
29 had a conversation with our FIS statistician the other
30 day and she has not been involved, she has no idea what
31 C&T is about, I just asked her from a statistical
32 viewpoint, I said, what do you think if you have 577
33 households, are 23 households, is that a few, she said,
34 yeah, it's not very many. It's not a few, it's 23
35 households, she said, you know, you don't refer to it as
36 a few but statistically it's not a lot.

36

37

38 My thought is, and I think this is where
39 it's a difficult decision for the Board, I said yesterday
40 it was definitive. I think I should clarify that, that
41 by not being definitive, I mean that it's not like Unit
42 26(C) caribou, it's all Federal lands, it's a community
43 that's 90 percent or something, Inupiat, they have long
44 -- lived there forever and ever and they've taken
45 caribou, it's not that definitive. This is where we're
46 talking about a small number of households that have
47 shown use. And it's up to the Board to make that
48 decision of whether or not this is substantial evidence,
49 as Dr. Fall said.

49

50

I'm not the Queen, it's not the way it

1 works, and that's not something that I really could give
2 you an opinion on really. I think it's up to the Board to
3 weigh all of this and make that decision.

4
5 We do have some information, though, that
6 shows that there is use in both the upper and the lower
7 Kenai.

8
9 Because Dr. Fall brought this out, I did
10 look at -- wanted to bring out that in the 2002 survey of
11 Ninilchik, households were also asked to indicate the
12 locations of their non-commercial fisheries in which
13 their members had ever participated and not just where in
14 the past year. And seven percent of the households which
15 is approximately 42 households indicated that they had
16 fished in the Kasilof River drainage at some time in the
17 past, again, there wasn't that breakdown of Tustumena in
18 this particular table. We could deduce that some number
19 of households at or below that have used Tustumena in the
20 past, it's probably consider -- you know, some -- I'm
21 sure it is lower than the 42 because the number is rather
22 low.

23
24 In terms of potential sites for
25 fisheries, the question was asked, should there be a
26 subsistence fishery and where should that be and the
27 respondents from Ninilchik said Tustumena Lake, five
28 percent of households which is an estimated 30 households
29 said they'd like to see a fishery there, eight percent of
30 households in the Kenai National Wildlife Refuge, four
31 percent in the Kenai River -- upper Kenai River, two
32 percent in Swanson Lake. And I'm bringing this out
33 because I think this is also consistent with what we
34 found in terms of the numbers of people who have been
35 there, that they would also like to establish a
36 subsistence fishery there, it's not a lot of people. And
37 I think it's up to the Board to decide how much is
38 enough.

39
40 ACTING CHAIR GOTTLIEB: Charlie.

41
42 MR. BUNCH: Madame Chair. Well, if I
43 could, now that Keith's on a roll, let me ask him, Keith,
44 is there any legal definition of substantial as it
45 applies to Title VIII?

46
47 MR. GOLTZ: Well, substantial always
48 depends on context. And the amount of evidence you need
49 always depends on context. If you're in a remote area
50 where there are no countervailing forces you might need

1 very little. If you're in a more populated area where
2 there are other interests involved you may need a lot.
3 And it's also going to depend on the gradations. We're
4 slipping back and talking as if it has to be a yes/no,
5 stop/go decision. It doesn't have to be that.

6
7 What we have as a goal is a meaningful
8 use preference for rural Alaska residents.

9
10 All of this data and what may be an
11 impending debate among experts is not really what we're
12 after. We don't have to resolve that. What we have to
13 do is grant a meaningful use preference in a balanced
14 way.

15
16 MR. BUNCH: Thank you.

17
18 ACTING CHAIR GOTTLIEB: Helen, I was
19 going to ask since No. 8 was brought up, when I read the
20 analysis, I mean I'm not sure if you specifically said or
21 not, but there's all the tables that show the diversity
22 of use so to me I received the information via the tables
23 from the analysis. And I guess I'm not sure if there
24 were specific statements about the importance of
25 subsistence to the communities but yet we've had
26 testimony, I guess, in the past as well as at this
27 particular meeting on that importance, but is there
28 anything you'd like to add that does reflect on No. 8?

29
30 MS. ARMSTRONG: Thank you, Madame Chair.
31 I think one of the things that maybe could be added is
32 that the reliance upon a wide diversity of fish and
33 wildlife resources and it is a question that's asked, you
34 know, always, we do look at this as being sort of an
35 indicator of if a community is a subsistence community or
36 not because the more diversity that is used in harvesting
37 resources indicates that they're not just maybe targeting
38 moose and as it's more of a sport hunt, quote/unquote.

39
40 But I think what is interesting about
41 the table is that it's fairly consistent in the road
42 connected communities. They're not far off on any of
43 these, and where you see a bigger difference is the non-
44 road connected communities and those fit a pattern of
45 statewide of how many resources are used. I know that in
46 Proposal 14 and 15 we also talk about that, the same
47 question for Whittier and it is consistent for the same
48 way, that there's not a lot of difference between them.

49
50 ACTING CHAIR GOTTLIEB: Yes, John.

1 MR. LITTLEFIELD: Thank you, Madame
2 Chair. I'll put Mr. Goltz on the hot seat again because
3 he was just asked a question and I wanted to follow up a
4 little bit on that question that was answered and maybe
5 you could expand on it and we could cut through all this.
6 I'm trying to let the State and everybody have their say
7 and OSM and everything, but, really, Mr. Goltz captured a
8 lot of the points that I wanted to make, in that, none of
9 these eight criteria are hard and fast required. And I
10 think that if he could explain that a little bit better
11 that nowhere in ANILCA, which is what we're required to
12 follow, ANILCA, this is Federal we're talking about,
13 we're not talking about the State. Dr. Fall talked about
14 their criteria, but our criteria are different, Federal
15 criteria.

16
17 In an application of the law, the
18 statute, nowhere in there does it say a C&T determination
19 is required before you grant meaningful priority to those
20 residents.

21
22 And I think that's the key. And if we
23 could just get over that hump, that nothing says, as far
24 as I can read ANILCA that a C&T determination is required
25 before we can give a meaningful priority to the
26 residents, the rural residents of Alaska that have
27 customary and traditional use. We can just dispense with
28 this. We can take the general applicability that's in
29 the regulations, which as Mr. Goltz said, were foisted on
30 us thinking we would be living with them for six months
31 and now we're 10, 12, 15 years down the road dealing with
32 things we never thought we would have to deal with. If
33 you could expand on that a little bit, maybe we could
34 just dispense with all the remaining doctor's opinions
35 and stuff and get to the issue here and, that is, that no
36 C&T -- in my opinion, no C&T determination is required to
37 grant those rural residents on the Kenai a meaningful
38 preference by this Board.

39
40 Thank you. Madame Chair.

41
42 MR. GOLTZ: Well, there are really two
43 parts to your question and I'll try to answer both of
44 them.

45
46 The overarching point I think you're
47 driving at is that ANILCA does not require a C&T
48 determination. You will search the Federal statutes
49 forever and you will find nothing in either them or the
50 Legislative history that talks about a C&T determination.

1 And the statute, in my opinion, works
2 perfectly well if we dispensed with this whole process.
3 What we would do then is make subsistence allocations,
4 who is eligible, rural Alaska residents. How do we
5 manage that to avoid chaos, seasons and bag limits,
6 methods and means. What do the words C&T mean in the
7 statute, cooking, cleaning, eating. What don't they
8 mean, they don't mean exotic uses like taking out gall
9 bladders and sending them to Asian countries. That's a
10 common sense simple approach that I have been advocating
11 since 1990.

12

13 I get no place with it for two reasons.

14

15 One, I think is represented by some of
16 the State comments and they think that this is a too
17 expansive reading of the statute that will result in an
18 increase in subsistence uses. I don't see why that would
19 be. Subsistence uses are constrained by statute to non-
20 wasteful uses by rural residents.

21

22 Where they take that resource seems to me
23 is largely a factor of convenience for the rural users.
24 If we have a conservation problem we use closures and our
25 other normal tools to address that issue. That's one set
26 of objections I've never been able to overcome.

27

28 But there's another set that probably is
29 surprisingly to a lot of people, and that's the
30 discomfort that rural users seem to have with doing away
31 with any C&T process. There's a certain security in
32 having C&T amounts and studies on the record and when we
33 went through this in 1988 we found that two of the
34 Councils saw C&T as what I think it is, as we're
35 presently using it, and that's a restriction on
36 subsistence. Those two Councils are represented here in
37 this room. Craig Fleener was the Chairman of one of them
38 and Bill Thomas was the other. Most of the other eight
39 Councils, though, were very uneasy with that approach.
40 And that's why we are where we are. We adopted the
41 State's C&T analysis and approach, really as a matter of
42 comity, we reexamined that eight years later and we left
43 it right where it is. It's not statutory but it is an
44 important part of our system right now, we do have to
45 follow it and change would require, not just a
46 regulation, but full public hearing on it.

47

48 There's one other thing I'd like to add
49 and it's bothersome from a technical, legal point of
50 view. I don't know how important it is to the users but

1 ANILCA is really set up into two tiers. A first tier
2 where basically everyone participates and a second tier
3 where we make distinctions between user groups. And both
4 State courts and the Federal courts have called our
5 attention to the fact that we have to administer it that
6 way. And much of our discussion tends to conflate those
7 two tiers, and even yesterday what we were talking about
8 seemed to me is not customary and traditional uses but
9 customary and direct dependence; that's the second tier.
10 That's where the security level is for the rural users.
11 And as we examine C&T over the past year, I'd like people
12 to give some attention to that and see if maybe we really
13 ought to be changing our language to do customary and
14 direct dependence and that might make it somewhat easier
15 for the doctors, which I think are doing that now anyway.

16
17 ACTING CHAIR GOTTLIEB: Keith, I wonder
18 if you would also.....

19
20 MR. GOLTZ: Now, that's the longest
21 speech I've ever given.

22
23 (Laughter)

24
25 ACTING CHAIR GOTTLIEB: There might be
26 more to come. Earlier you mentioned the word, balance,
27 and so for those who may be searching in ANILCA or
28 elsewhere, could you just explain a little bit more why
29 you're using that word?

30
31 MR. GOLTZ: Okay. The word, balance,
32 doesn't appear in ANILCA either. It comes from a Ninth
33 Circuit decision and as most of you know many of the same
34 faces were in a room similar to this a few years ago and
35 discussing Kenai moose.

36
37 And what we did with Kenai moose,
38 essentially, is create a slot limit, where you can take
39 the little ones and you can take the big ones but you got
40 to throw the medium sized ones back, I'm exaggerating a
41 little, but I think you know that what we did was adopt a
42 conservation measure that was not at all what people
43 would have used on the land 50 years ago. And that was
44 challenged by the Ninilchik Tribe and the case went to
45 the Ninth Circuit, and the Ninth Circuit said that
46 subsistence is a primary purpose of ANILCA but there are
47 other purposes, including recreation and conservation.
48 And they allowed us to administer the Kenai moose on the
49 basis of a slot limit. They told the administrators that
50 they were to balance these interests and they told us

1 that our job was to provide a meaningful use preference.
2 That phrase also comes from the Kenai moose decision.

3
4 And so that's our goal. Is to provide a
5 meaningful use preference in a balanced way. And I get
6 uneasy and I have to leave the room time to time when we
7 agonize over all this menusia about what happened in the
8 past, that's not our job. Our job is to provide a
9 meaningful use preference in context, in today's context,
10 something that has workability now. And I hope that as
11 this discussion progresses we will get away from these
12 data points and keep our mind on our goal, on the end
13 result.

14
15 ACTING CHAIR GOTTLIEB: Thank you, Keith.
16 What I'd like to do, I know John has one more question,
17 and maybe Ralph, too, then we'll call a break. So, John,
18 go ahead.

19
20 MR. LITTLEFIELD: Thank you, Madame
21 Chair. Mine's relatively short. I'm getting of the age
22 in the golden years now where I can't hear quite as well
23 because as a rural resident I spent a lot of my youth
24 shooting and I can't hear very well listening to engines
25 so I just had a question for Mr. Goltz on his longest
26 speech he ever made, whether he said the words, comity or
27 comedy when he talked about adopting the State's
28 regulation?

29
30 MR. GOLTZ: Comity. And I think it's an
31 important point. And the Ninth Circuit also said this,
32 we have to work together. There's no other way. And I
33 am very, very heartened by the fact that the State has
34 high level representatives with us and I look forward to
35 a better day starting right now.

36
37 ACTING CHAIR GOTTLIEB: Ralph.

38
39 MR. LOHSE: Thank you, Judy. Can I
40 address, Keith?

41
42 ACTING CHAIR GOTTLIEB: Please, go ahead.

43
44 MR. LOHSE: Keith, I want to thank you
45 for what you said, too. And I just have a question and
46 when you use the word, dependence, dependence changes
47 with time, with the environment and with what goes on
48 around you, right?

49
50 MR. GOLTZ: Correct.

1 MR. LOHSE: But dependence doesn't just
2 apply to sustenance. Dependence can also apply to
3 cultural values, can't it?

4
5 MR. GOLTZ: Yes.

6
7 MR. LOHSE: Thank you.

8
9 MR. GOLTZ: Poss -- we haven't really
10 gotten into that, that's part of the problem. What the
11 words, customary and direct dependence mean, I'm not
12 sure. I do know at this point, that's something we have
13 yet to decide. And I think it's an important thing that
14 we do decide that. And I think that we would clarify
15 everything that we do if we started to use that language
16 because that's really what we seem to be flailing for but
17 don't quite have the vocabulary yet to describe it.

18
19 MR. LOHSE: Madame Chair.

20
21 ACTING CHAIR GOTTLIEB: Ralph.

22
23 MR. LOHSE: Well, then this dependence as
24 a part of a community characteristic and I guess I'll put
25 you on the spot as to what a significant portion of the
26 community has to have this dependency for the community
27 as a whole or at large would have that dependence.

28
29 MR. GOLTZ: I think we're slipping again.
30 The priority is for rural Alaska residents. The use is
31 fish and wildlife, the ability to get a portion of your
32 sustenance from the land. That's what we're talking
33 about. Everybody's qualified who is a rural resident in
34 some way. And what they get to do with those resources
35 are kill them, cook them and eat them. We don't have to
36 parse out who's what in each community. I think we're
37 making this whole thing far, far too difficult.

38
39 MR. LOHSE: Then a portion of the
40 community could choose to make use of that dependence and
41 a portion of that community could choose not to make use
42 of that dependence as they will, but that wouldn't change
43 the characteristics of the fact that it's a rural
44 community that has access to that dependence if they
45 wanted it?

46
47 MR. GOLTZ: Right. That's exactly right.
48 And it may even be true that some communities may choose
49 not to participate. There's some indication in this case
50 that Hope doesn't have all that intense interest in this

1 question.

2

3 One of the unique factors of ANILCA and
4 what makes this a wildlife system that is different from
5 all others is that it starts with the users. And the
6 users can make decisions that are different from what an
7 overall management scheme might do, and that decision may
8 include silence. We are here because of proposals
9 generated by the local users. They come through Regional
10 Advisory Councils, that's a constraint on management, we
11 respond to the Councils and that's basically it. We are
12 not, except in very rare cases, the Federal management is
13 not top down. We do not set the agenda, we do not set
14 the cadence. That's set by local users.

15

16 ACTING CHAIR GOTTLIEB: With that, I
17 think we will take a break until 10:15, and thank you
18 very much.

19

20 (Off record)

21

22 (On record)

23

24 ACTING CHAIR GOTTLIEB: Thanks everybody.
25 And Mitch, you're on?

26

27 CHAIRMAN DEMIENTIEFF: Yes, ma'am.

28

29 ACTING CHAIR GOTTLIEB: Thank you very
30 much, hope you're feeling better today. Okay, are there
31 other questions for Helen or for Dr. Fall?

32

33 MR. EDWARDS: I have a question that any
34 of the doctors can respond to as they see fit.

35

36 ACTING CHAIR GOTTLIEB: Gary.

37

38 MR. EDWARDS: One of the questions I
39 asked yesterday when the folks from Ninilchik presented
40 their study, which, one of the figures that really kind
41 of jumped out to me, and I thin it was more so in the
42 results from the '94 study was that it showed
43 considerable, I don't know, maybe it wasn't considerable,
44 but it certainly showed more use of salmon from the upper
45 Kenai River than it did from within, let's say, the lower
46 Kenai or areas closer to Ninilchik, and, you know, I
47 wondered, that sort of just jumped out at me and seemed a
48 little strange where you'd assume that people would fish
49 closer to home. Mr. Littlefield provided one explanation
50 to that, which I hadn't thought of, but that sort of

1 makes sense to me. But I just was curious whether the
2 data actually also supported that, and, if so, what would
3 be the explanation or if there's an additional
4 explanation, I guess I should say?

5
6 MS. ARMSTRONG: Was that directed at me
7 or you said any of the doctors?

8
9 MR. EDWARDS: It's directed to anybody
10 else who has a view as to why that, is that sort of an
11 anomaly of the survey or does that coincide with the
12 other work that was done or what?

13
14 MS. ARMSTRONG: I don't really have an
15 answer to that. It doesn't -- I mean that was from 1994,
16 the 1991 -- I mean 1999 doesn't show that difference. I
17 think that might have to do with the fact that it was
18 where have you ever gone is the time period. I mean it
19 would show that in their lifetime they did perhaps go up
20 there more probably when there was more trapping would be
21 my guess.

22
23 MR. EDWARDS: I actually have a question
24 for Ralph. Last night I spent some time sort of trying
25 to wrap my mind around your discussions about communities
26 and what it was and particularly my response to Cooper
27 Landing and Hope, which basically, you know, said they
28 didn't go over to sort of the other side and I guess I
29 was curious then, why, for example, wasn't Happy Valley
30 included as part of your proposal, given that that's
31 still -- I would look -- geographically, certainly, that
32 would seem to be part of that same community?

33
34 MR. LOHSE: Possibly just plain an
35 overlook. You know, I really can't answer that question.
36 I don't remember Happy Valley ever being brought up or
37 discussed one way or the other.

38
39 I know that we had -- most of what we
40 heard from was Ninilchik. We heard from Cooper Landing,
41 and via Cooper Landing we heard from Hope. I think we
42 pretty much just got wrapped up in Ninilchik and the
43 other ones carried along with it and Happy Valley just
44 wasn't brought up. That's the best I can answer on that.
45 I know there was no decision one way or the other or no
46 discussion one way or the other on it, that I remember.
47 I mean it's possible there was and I just don't remember
48 it.

49
50 MS. ARMSTRONG: Madame Chair.

1 ACTING CHAIR GOTTLIEB: Helen.

2

3 MS. ARMSTRONG: If it's all right, maybe
4 I can add a little bit to that. Happy Valley is a census
5 designated place, it's not a community so I would think
6 that that's the other reason why the Council would have
7 overlooked that. And I don't know this and perhaps
8 somebody from Ninilchik knows this, but it may be that
9 the people from Happy Valley have P.O. Boxes in
10 Ninilchik, too, I don't know if they even have their own
11 P.O. Box, I'm guessing they may not. So they may be
12 considered part of Ninilchik because of that, I don't
13 know.

14

15 ACTING CHAIR GOTTLIEB: Other questions
16 or discussion.

17

18 John.

19

20 MR. LITTLEFIELD: Thank you, Madame
21 Chair. I assume we're on Board deliberation, right, is
22 that correct?

23

24 ACTING CHAIR GOTTLIEB: We're on Board
25 discussion with Council Chairs and State liaison.

26

27 MR. LITTLEFIELD: Okay, good. All right,
28 with your indulgence, I'd like to address why I support
29 the Southcentral RAC on this.

30

31 In most cases, as a matter-of-fact
32 there's very few cases that I can even think of where our
33 Council has come on record as interfering or trying to do
34 something that was adverse to the home regions. In this
35 particular case, we're not doing anything adverse, we're
36 supporting the Southcentral because of a matter of
37 process. In other words, ANILCA .805 Section C requires
38 deference to the RACs and I think that's what I'm trying
39 to get here, is this is looking at the big pictures and
40 it applies to all Regional Advisory Councils. Is that
41 that deference is due to them on this proposal because it
42 concerns take. .805(c) says that deference is due to the
43 Councils on take and in our opinion customary and
44 traditional determinations are a restriction, as the
45 lawyer mentioned earlier. We consider those to be a
46 restriction of the users. You've gone from all rural to
47 a smaller subset of people so, therefore, that's a
48 restriction.

49

50 And we firmly support the Regional

1 Advisory Council, whatever they came up with, whether it
2 had been to vote no or yes, I would just say that I
3 support their decision and I would urge you to do the
4 same.

5
6 I got into this even though I was going
7 to hold this until 23, but I got into this because as I
8 looked at what happened in this meeting, we had the
9 Secretary here and we had the Commissioner here, and the
10 Secretary -- the Secretary's representative, Ms. Pearce,
11 mentioned the White paper, and I've had several people
12 ask me what this White paper is. Well, the White paper
13 is something that was brought to my attention prior to
14 the meeting in Wrangell and as soon as that became
15 available to me, I distributed that White paper to all
16 the members of the Regional Advisory Council and told the
17 Federal representatives there that I was going to do that
18 and we were going to have a discussion on that White
19 paper. But I've had some people here say, what's the
20 White paper, it's like it's a secret, you know, and in
21 the interest of open government, Madame Chair, what I
22 would request is that that White paper, a copy of that be
23 made available to all the RAC Chairs here. I don't know
24 if they all have that but I know that the White paper
25 came from the State, so the other liaison, I know they
26 have it, I'm sure you guys have seen the White paper, but
27 I don't know if all the RAC Chairs have seen it. And
28 this is free and open government, I'd like to have that
29 White paper put on the back table back there, copies of
30 that made so that that White paper is a matter of public
31 record. The public can look at that and see what we're
32 talking about here, that White paper, as our -- Mr. Goltz
33 mentioned, this was kind of unique having the Secretary's
34 representative here and I think it's because of this
35 White paper.

36
37 The White paper to me and the comments of
38 the Commissioner yesterday as well as the ADF&G comments
39 on all of the Southeast proposals and this one make it
40 clear to me that this is an attack on ANILCA, the Federal
41 process. They want us to follow their rules, and that's
42 why I'm jumping into this. And Mr. Goltz today addressed
43 a lot of my concerns that I had on -- I thought he was
44 cribbing my notes because about half of them here, but
45 those were some of my concerns, that we need to recognize
46 that this program is a Federal program.

47
48 So if you could, Madame Chair, direct the
49 Staff, hopefully, to have that White paper made available
50 so that everybody could look at that, I think that's

1 important.

2

3

Secondly.....

4

5 ACTING CHAIR GOTTLIEB: John, do you want
6 me just to respond to that?

7

8

MR. LITTLEFIELD: Yes, ma'am.

9

10

11 describe the discussions that took place maybe at the
12 last set of RAC meetings.

13

14

15 MR. BOYD: I'm not sure I'm going to
16 answer the question directly, Madame Chair. But with
17 regard to the White paper, I think as soon as it became a
18 public document I made it available within our Staff.
19 I'm trying to recall whether or not we made it available
20 to the Regional Advisory Councils or to the Chairs, at a
21 minimum, and my memory's failing me right now. When I
22 looked immediately at Mr. Sam and he nodded that he'd
23 received it, but I'm trying to recall that. Maybe he can
24 help us.

24

25

ACTING CHAIR GOTTLIEB: Ron.

26

27

28 MR. SAM: Thank you, Madame Chair. I did
29 receive it and I believe a few of our Council members
30 also received it. I'm not sure that the whole Council
31 received it but I know that quite a few of us, it may be
32 just the officers, but we do have copies of this.

32

33

ACTING CHAIR GOTTLIEB: Raymond.

34

35

36 MR. STONEY: Thank you, Madame Chair. In
37 the last eight hours now, I appreciate all the comments,
38 you know, from the public here about this area. My
39 opinion is, you know, that we're -- the RAC body here,
40 we're RAC councilmen, I think the Board should always
41 look at the recommendations from the certain locations
42 made by the RAC.

42

43

Thank you, very much.

44

45

ACTING CHAIR GOTTLIEB: Thank you.

46

47

48 MR. BOYD: Madame Chair. I'm not
49 remembering the breadth of the distribution of the White
50 paper, however, as it has been requested, we've made it
51 available to people. And if the request is that we

1 distribute to all the Chairs at this time we would be
2 happy to do that.

3

4 ACTING CHAIR GOTTLIEB: John.

5

6 MR. LITTLEFIELD: Thank you, Madame
7 Chair. That is my request, is that, a copy be made
8 available to all the Chairs whether they have one or not
9 and hopefully they will share that with their Council
10 members and my request is also that as this is a public
11 document, that this public document be made available in
12 the back room for the members of the public to refer to
13 as well.

14

15 The Secretary's representative here also
16 mentioned several things that were in this White paper,
17 closures, and what we're talking about here on Proposal
18 9, C&Ts, and that White paper made some specific
19 suggestions by the State of Alaska on how to handle those
20 and I think the State made that clear. The
21 Commissioner's comments and the ADF&G comments are that
22 they defer this. She also mentioned that there were
23 drafts available on the closure and the C&Ts. Now, those
24 are drafts. I would like to make sure that the Regional
25 Advisory Councils look at those drafts. I'm not saying
26 that the public needs to look at those because they're
27 drafts, but I think it's very clear that the Councils,
28 because we are, as Mr. Goltz mentioned, this is a
29 grassroots type organization, we start proposals at the
30 bottom, we give them to the RAC and they come forward to
31 you. But all of those things need to come through the
32 RAC, and I think the RAC needs to be kept in the loop on
33 this. This is not -- nothing secret should be going on
34 here. So hopefully we could look at those drafts that
35 were mentioned by Ms. Pearce and if possible I would like
36 to have a copy sooner rather than later, maybe, I don't
37 know, did you want to respond to that?

38

39 ACTING CHAIR GOTTLIEB: John. Yes,
40 clearly, the plan and Keith and Tom can elaborate more,
41 but the Board has heard this, is that the RACs will see
42 the drafts, especially at this winter meeting,
43 specifically the ones on closures.

44

45 MR. LITTLEFIELD: Okay. But we're
46 talking about, you know, we're getting a lot of pressure
47 right now from the State to adopt things that are
48 probably -- may or may not be in this draft but I would
49 like to look at them. We're talking about right now a
50 C&T for Proposal 9. We're going to be talking later this

1 afternoon about C&T for Gustavas. These are issues that
2 were raised in the White paper. And if there are any
3 drafts in there that somehow mimic what's going to happen
4 at this Board I would like to see that now.

5
6 ACTING CHAIR GOTTLIEB: There's nothing
7 right now. Keith.

8
9 MR. GOLTZ: Yes. For the record, Keith
10 Goltz, Solicitor's Office. I think the commitment of the
11 Secretary is that everything will, in fact, come through
12 the RACs. I don't believe there are any drafts now. I
13 think what you may have been keying off of was a phrase
14 that the Staff will prepare drafts and submit them to the
15 Councils. But the commitment is complete. We work
16 through the RACs on this and all other issues.

17
18 CHAIRMAN DEMIENTIEFF: Yeah, Keith, Mitch
19 here. I'd just like to reinforce that. That we are
20 participatory and we don't do anything in a vacuum and
21 that's the best I can say. And I know we've been as
22 open as we were allowed to be with regard to the
23 questions that John is talking about. And when it was
24 necessary we -- not necessary, I shouldn't say that, when
25 things were ready to be leased in the public we did our
26 best we can.

27
28 So I think all of his requests are being
29 honored, John, I'm sorry if you want to disagree, but
30 that was part of our process.

31
32 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
33 John.

34
35 MR. LITTLEFIELD: Thank you, Mr. Chair.
36 Madame Chair. I don't disagree with that. I'm just
37 making that request and I would like those things
38 available today, the White paper, if there are drafts,
39 today, I would like to see them. But, and I'm taking you
40 were going to give them to me, but if you have one I
41 would like to see it. But if you don't want to give it
42 to me until later, that's fine, I have the assurances I
43 will get it, that's good.

44
45 CHAIRMAN DEMIENTIEFF: Yeah, John, it's
46 part of doing diligence. Because of the seriousness of
47 our job that we have to do, you know, that's the whole
48 part of it, we have to make sure and I'll give you this
49 much, that the way I raised my kids and the way I'm
50 raising my grandkids, you don't bring an incomplete

1 thought, you go out to all of your resources and gather
2 as much information as is available and you bring a
3 complete thought. Now, that doesn't mean that that
4 complete thought is going to prevail, but if you don't
5 have the total argument, total reason then it just
6 doesn't do any good. So that's part of our doing
7 diligence, John.

8

9 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
10 John.

11

12 MR. LITTLEFIELD: Thank you. Let me -- I
13 need to skip around a little bit because Mr. Goltz
14 captured some of my points.

15

16 I guess what I'd like to say is the
17 support that I have for the Southcentral RAC hinges on
18 .805(c), and as we've discussed many times in here, I've
19 talked to the Board before about .805(c) but basically it
20 requires deference and it also says that you can reject
21 that recommendation of the RAC for only three specific
22 reasons; and that's in the statute, it's right in there,
23 it's all in there and I don't need to read that verbatim
24 but basically it says that if there's not substantial
25 evidence you can reject it; if it's a conservation
26 concern you can reject it; or if it's detrimental to
27 subsistence users.

28

29 So in this particular case, on Proposal
30 No. 9 I think there's more substantial evidence provided
31 than I've ever heard of on any C&T that this Board has
32 done in the last 15 years. And you've made C&T decisions
33 -- this Board has made C&T decisions on the basis of one
34 person coming here and testifying before you, one person.
35 In this particular case, you have volumes of information
36 presented by ADF&G, our Federal Staff, you have a number
37 of individuals who got up here and testified before you,
38 all of those things are substantial evidence and they're
39 all you need to make a decision today. And to defer as
40 the State has asked you to do is not necessary and it
41 would basically say that what you've been doing in the
42 last 14, 15 years has been incomplete and I don't think
43 it is.

44

45 As Mr. Goltz said, you don't need to
46 satisfy those eight criteria. So I think you fully have
47 the evidence, substantial evidence. You can't meet that
48 test to reject the RAC's recommendation.

49

50 Is it detrimental to conservation or does

1 it violate recognized rules? There is no way possible
2 just by making a C&T determination you're doing anything
3 at all of a conservation issue, so the answer to that is
4 no. You can't refute what the RAC says based on that.
5 And the third, is this a detriment to subsistence users?
6 In no way in making a C&T determination is that a
7 detriment to subsistence users other than those who
8 you're -- right now we have all rural eligible and we're
9 shortening that pool, but there's no detriment to the
10 subsistence users that actually have customary and
11 traditional use of that resource. And I'm not saying in
12 any way that as a rural resident of Sitka that I have
13 customary and traditional use and can prove that on the
14 upper Kenai or anywhere else and suspect that others in
15 my region would not, too.

16
17 So by showing deference to the RAC, I
18 would say that you adopt their proposal or at least bring
19 it forward on the Board and debate that and then if you
20 cannot refute it for those three reasons then you must
21 support it. That's the way I read the law. And you
22 don't have any latitude on it, that's what the law says,
23 the statute says.

24
25 Okay. Further, it was my understanding
26 that the Chair, Mr. Demientieff, is not going to be
27 allowed to vote on this because of a decision that has
28 been made. And Madame Chair I would ask that there is a
29 method where that could be allowed to happen. And what I
30 would propose to you is that you delay the vote on
31 Proposal 9, the actual vote on Proposal 9 until a time
32 certain, and that time certain shall be at such time that
33 the recording that has been made at this meeting, in
34 other words, they can tell me what I've said right now
35 two minutes later, that that recording has been made
36 available to Mr. Demientieff and he's allowed to read
37 that and if he's allowed to listen to that, and he can
38 then make a decision and vote on this and the term,
39 Secretary, which is represented by the six members of the
40 Federal Subsistence Board becomes whole, it's not a five,
41 six members that are making a decision here. I believe
42 that you can extend that opportunity to the Chair who is
43 sick today and this could happen, again, to any member
44 and to do that, it would be allowed.

45
46 So what I would ask you to do is to
47 direct the, whoever is taking the minutes here, and
48 taking the transcripts, to make that available to Mr.
49 Demientieff today for him to read or tonight and tomorrow
50 morning say at 8:00 o'clock or 9:00 o'clock take your

1 vote on 9. Nothing demands that this be done today. And
2 I think we're going to be here, maybe until Saturday the
3 way things are going. So if you could do that, I would
4 ask the Chair, maybe you would like to rule on that right
5 now, that would be my request, is that the full Board be
6 allowed to vote on this, including Mr. Demientieff.

7
8 CHAIRMAN DEMIENTIEFF: Chairman
9 Littlefield, let me just say and this is one of the
10 things that I was going to talk about. Everyone else on
11 the Board has the ability to delegate their
12 responsibilities. In this case I deferred -- when I was
13 at the doctor's appointment yesterday, I deferred to my
14 Staff Committee representative, Carl Jack, and we were on
15 the phone into the night, I'll guarantee you and I feel
16 like I'm just exactly as informed as everybody else but
17 I'm told I can't vote because I didn't listen to the
18 public testimony. But that doesn't mean that I didn't
19 listen to the public testimony, I had ears there. So,
20 you know, I'm -- but the thing about it is I believe
21 in the integrity of the process and if the integrity of
22 the process tells me that I can't vote, I don't intend to
23 John. But I don't feel it's right. I feel I'm just as
24 prepared as anybody else in that room right there and did
25 all the work and got all the briefings, so I agree with
26 it but I'm not going to violate with integrity of the
27 process.

28
29 And if Counsel or whoever says I can't
30 vote I don't intend to vote, but if I can, I will. But
31 just because you guys sat in that meeting or heard the
32 public testimony don't mean that I didn't hear it, so I
33 am prepared but I will not because of the importance of
34 the work that we do and it's preserving the integrity of
35 the process.

36
37 Okay.

38
39 ACTING CHAIR GOTTLIEB: Mitch, are you
40 still on?

41
42 CHAIRMAN DEMIENTIEFF: Yes.

43
44 ACTING CHAIR GOTTLIEB: Okay, good. I
45 guess the practicality of it is that tapes or transcripts
46 would not be available to you until early next week to
47 review, so it wouldn't be possible to simply delay it
48 until tomorrow morning unfortunately.

49
50 Keith.

1 MR. GOLTZ: The law has sometimes been
2 characterizes as a three letter animal appearing very
3 early in the alphabet and this may be one of those cases
4 where we're just snagged. In every other case the
5 representative here has an assistant behind them who can
6 easily move in and out of the chair and there's going to
7 be no legal question about whether a vote was proper.
8 Frankly, we simply have not anticipated the situation
9 that appears before us now. We do not have anybody in
10 line to delegate to. As a practical matter Carl provides
11 able assistance to Mitch but it's not in line. Carl is
12 employed as a Native liaison by the Fish and Wildlife
13 Service. If we were to find a substitute for Mitch it
14 would have to be in the Secretary's office, that's where
15 the line is for him.

16
17 This is awkward. It doesn't fit the
18 factual landscape that we see before us but my legal
19 advice is that Mitch not vote on this issue.

20
21 CHAIRMAN DEMIENTIEFF: Keith, I'm not
22 going to argue the point. You and I had went through it
23 briefly yesterday and I understand the point. Okay. But
24 the point is that what I -- every other Board member has
25 a Staff Committee person and I do, okay, so Carl's role
26 that he serves to me is not any different than what any
27 Staff Committee member for any one of the other voting
28 members have. And as I indicated to you, I am not going
29 to violate the process, I believe in the integrity of the
30 process.

31
32 So, you know, I will follow along.

33
34 ACTING CHAIR GOTTLIEB: John.

35
36 MR. LITTLEFIELD: Okay, thank you Madame
37 Chair. And certainly I don't want anybody to violate the
38 process here. I'm saying I thought you could get those
39 available. I know that at the Regional Advisory Council
40 I've asked those people that do the transcripts to tell
41 me what I said two minutes or 10 minutes earlier or what
42 I said yesterday afternoon and let's make sure we're on
43 the record correctly and they were able to produce that
44 instantously, they just say, pop, pop, pop, here it is.
45 Now, I can't hardly believe that we can't have this until
46 Monday, I don't know if I believe that. But
47 nevertheless, there's still the case for the Chair to be
48 made to vote on this. Because he did not hear the public
49 testimony is only missing number 1 or number 8 of the
50 criteria.

1 We painted a picture here that's been
2 presented for four years I understand and the Chair has
3 been involved in every one of those picture paintings
4 except maybe the last little signature, the dot on the
5 signature. He is fully aware of every implication, the
6 substantial evidence that's been presented here, with
7 only the minor exception of hearing the public testimony.
8 And I don't know how you can -- you know, I'm not the one
9 making this decision, I think Mr. Goltz is, but clearly
10 the Chair is aware of everything that's taken place on
11 this issue with the exception of the public testimony and
12 I don't know if I believe that he can't read that
13 tonight. But nevertheless, even if he can't I still
14 think he should vote because he knows what the picture is
15 and that's what Mr. Goltz talked about, we painted a
16 picture here that the Staff gave us and we're looking at
17 the whole thing, and I think he can look at enough of
18 this to make a decision and maybe you could rule on that
19 or comment on that particular part.

20
21 CHAIRMAN DEMIENTIEFF: Well, before we do
22 that, Keith, I think -- and I don't mean to put pressure
23 on people or make anybody uncomfortable, like I said, I'm
24 going to do everything that is necessary but I just want
25 Carl to verify the fact that we were on the phone into
26 the night with regard to what was going on.

27
28 Carl, are you there, somewhere, please?

29
30 ACTING CHAIR GOTTLIEB: Hang on a second,
31 Mitch, until Carl can get to a microphone.

32
33 CHAIRMAN DEMIENTIEFF: Okay.

34
35 MR. JACK: For the record, I had lengthy
36 conversation with Mr. Demientieff about what was
37 presented by whom and what subject areas were covered by
38 each testifier.

39
40 Thank you.

41
42 CHAIRMAN DEMIENTIEFF: Okay. And then
43 the second part of that is, again, I just want to put on
44 the record that I was prepared and I did all of the
45 homework that was necessary, as all of you know that I do
46 for every issue. So that's all. But I am prepared to
47 preserve the integrity of the program and if I can't, I
48 won't. And I certainly don't want to challenge anything
49 as far as where -- because of the importance of the
50 issue, I don't want this to be a deciding factor.

1 So that's where I'm at on this but I
2 think these things just need to come out as a matter of
3 record.

4
5 ACTING CHAIR GOTTLIEB: Keith.

6
7 MR. GOLTZ: John, there are times when I
8 don't like my own legal advice very much and this may be
9 one of those times. But that advice never was meant to
10 suggest that Mitch couldn't review the transcript and
11 then vote. It was premised on the fact that he had not
12 reviewed all the evidence. So if there is a way, if we
13 do have time for him to review the transcript, that
14 could, in fact, be done.

15
16 At the same time, I want to say that it's
17 probably not necessary, that this Board could also
18 legally act with a quorum which it has before it now.

19
20 CHAIRMAN DEMIENTIEFF: Keith, I'm not
21 arguing any of those points. So just whatever is going
22 to unfold is going to unfold but I think for future
23 consideration, that we need to decide this. If it turns
24 out I can't vote, I'm willing to live with that. I want
25 to vote, because I'm as prepared as any one of the
26 members there, but if it turns out I can't, I'm not going
27 to violate the process, and I've said that how many times
28 now. So that's just the way it is.

29
30 ACTING CHAIR GOTTLIEB: Mr. Chair. I
31 think what we're seeing is that if the tapes could be
32 copied they would be available to you either late tonight
33 or early tomorrow morning, that would also take you
34 approximately four to six hours to listen to them and
35 that would probably preclude you from listening to some
36 of the other discussions we have, I don't know it's hard
37 to tell how late it's going today. I guess I might also
38 note that, and I mean no disrespect to those people who
39 testified, some of the people who testified yesterday did
40 testify at a rural meeting and so we heard some of the
41 information before, we also heard a lot of other new
42 information. So I know you're familiar with the issue
43 but I think we have also mentioned that you are able to
44 enter into Board discussion, deliberation, which I think
45 we ought to move to now and see where that takes us.

46
47 John.

48
49 MR. LITTLEFIELD: Okay, Madame Chair, my
50 request to you would be that you make a ruling that

1 allows Mitch Demientieff to participate in this tomorrow
2 and if the rest of the Board doesn't like that then they
3 can overrule your ruling. I mean let's get on with this
4 because I have some other items and Mitch said he would
5 live with whatever you said so I would ask that you make
6 a ruling to hold this to a time certain tomorrow and that
7 those transcripts be made available, because apparently
8 it is that they can be made available, and then we'll
9 proceed with the rest of it because I have some other
10 stuff.

11

12 MR. BOYD: Madame Chair. In attempt to
13 try to accommodate the request by Chairman Littlefield,
14 I've been inquiring with the court reporter that we
15 contract and he's making an attempt to see if he can get
16 the tapes prepared as soon as possible. I don't know how
17 soon that will be, we're speculating at this point in
18 time and I think the Chair has correctly noted that it
19 could be sometime today or this evening. In any case one
20 possible outcome is that in order to review those tapes
21 that Chair Demientieff would then miss other parts of the
22 meeting, so it becomes a complicated thing. If we can
23 make those tapes available and Mr. Demientieff is willing
24 to listen to them this evening, it's possible to do
25 exactly what you're saying, but we don't have an answer
26 right now but we're looking into it and trying to make
27 that happen.

28

29 CHAIRMAN DEMIENTIEFF: I don't intend to
30 miss any other parts of the meeting. Just because I have
31 to participate by teleconference at the current time
32 doesn't mean that I'm not willing -- well, actually I'm
33 pretty much confined to my room as far as my medical
34 condition, I don't envision me going anywhere else. And
35 if I have to work into the night to get caught up I'm
36 certainly willing to do that.

37

38 (Pause)

39

40 ACTING CHAIR GOTTLIEB: We'll do what we
41 can. Other comments, John.

42

43 MR. LITTLEFIELD: Thank you, Madame
44 Chair. Just for the record I was not up all night and
45 didn't talk to Mitch last night but I just heard that he
46 wasn't going to be allowed to vote and this really set
47 off some jingles to me because when you look in ANILCA,
48 the Regional Advisory Councils are mentioned in there.
49 It doesn't talk about the Federal Subsistence Board but
50 it does talk about the Secretary and the Secretary is

1 made whole by the six of you acting together. The
2 designees for the others, the deputies whatever and Mr.
3 Demientieff fulfill the word, Secretary in ANILCA, so I
4 think it's really important that this, as you mentioned,
5 this is the first time it's come up but I think it's
6 really important that we address this issue, in future,
7 what would happen if God forbid Mitch gets sick for two
8 meetings or something, and has to miss those, it's
9 important that we have a full Board there discussing the
10 issues that are important to the rural residents of
11 Alaska.

12
13 So I'm not glad it came up but I think it
14 needs to be resolved.

15
16 I had some other things that I wanted to
17 bring up but Mr. Goltz kind of stole my thunder and I
18 would say he did a really good job of it, and that was on
19 .804, which is what we're talking about here, is the
20 providing a meaningful priority and the definitions.
21 When you hear the word, subsistence, I know non-Natives
22 and Natives look at this work differently and some tribal
23 members look at it again even with different terms. But
24 for our bureaucratic view, subsistence is defined in
25 .803. And it's defined as, and I'm not going to read the
26 whole thing, but basically it's defined as the customary
27 and traditional use of the fish and wildlife resources by
28 rural Alaska residents and then it goes on to list a
29 whole bunch. So if you just substitute that wherever you
30 see the word, subsistence, substitute customary and
31 traditional uses, which is what we're talking about here
32 and then go read .804, and .804 as mentioned by Mr. Goltz
33 and the court cases have confirmed a meaningful priority.
34 It's my understanding and I'm only looking at this from a
35 few things I see in the book that there have been
36 proposals that were presented to the Board asking for
37 some limits on methods, means, whatever, by the
38 residents, the rural residents of that area, and I would
39 say that I would urge you to move on those. Because
40 nowhere do I read in .804 or anywhere else in ANILCA, as
41 Mr. Goltz said, you are required to do a C&T
42 determination as the State is demanding or that you use
43 the rigid criteria.

44
45 So I would urge that you move forward on
46 this. You have all the information that you need to
47 have. If you need to have criteria you need look no
48 farther than .804 as Mr. Goltz talked about this morning
49 and maybe a little bit about asking my colleague to the
50 right about the word, dependence, if you would look in

1 .804 you're going to find that there is three of those.
2 Customary and direct dependent upon populations is the
3 mainstay of your livelihood; local residency and
4 availability of alternative resources. All things the
5 State has steadfastly refused to acknowledge. There's a
6 huge difference between the meaningful priority of the
7 Federal program and the State program. And for the State
8 to say that we need to adopt their program and the
9 rigidity that they have, as Dr. Fall said, if they can't
10 meet No. 1 they can't make it, that's not what we are
11 required to do at this Board.

12
13 And so I'd say that there is a
14 difference. And the difference is also in the next
15 section, .805, that says the Regional Advisory Council
16 are the grassroots and you need to follow what they say
17 and refute what they say. So that's why I entered in on
18 this. We're going to have a -- hopefully I won't have to
19 talk so long when we get to Proposal 23, but I may be
20 talking out the other side when we get to 23, but it
21 still says defer to the Councils and that's what I'm
22 asking you to do is to defer to the recommendation of the
23 Southcentral Council.

24
25 And I guess with that I'll just end it
26 there. Thank you, Madame Chair.

27
28 ACTING CHAIR GOTTLIEB: Andy.

29
30 MR. BASSICH: Thank you, Madame Chair.
31 In an effort to save a little bit of time I'd like to
32 echo support for what Mr. John Littlefield just spoke to
33 you about. I think he has a very good point of view on
34 the reasons why I feel that support should be given to
35 the Southcentral decision to grant C&T determination to
36 the three communities.

37
38 And I'd like to build just a little bit
39 more on that. Yesterday's discussion by the Commissioner
40 kind of sent up a few alarms, kind of got my hackles up a
41 little bit. I'm very concerned when people try and take
42 subsistence and bring it down to a few data points and a
43 few technical items that we can put on a piece of paper.
44 Subsistence is not something that can be put down as a
45 small data point on a piece of paper. It's not something
46 that you can put tidy little data points on. It's a
47 life. It's a philosophy. It's almost a spiritual thing
48 for the people that live out there and how do you
49 interpret that and put it on a piece of paper.

50

1 And to build on that a little bit, I'd
2 really like to ask the Board in making their decisions,
3 how do they incorporate the TEK information that's been
4 collected by both the State and the Federal agencies, and
5 I would like to maybe hear a little bit on how the State
6 would incorporate that and interpret that in their
7 findings.

8
9 I was very happy to hear the
10 clarifications that Mr. Goltz had. I was beginning to
11 become very concerned and I think he helped me to realize
12 that maybe what was described by the Commissioner isn't
13 something that we have to follow here.

14
15 Subsistence -- a big part of subsistence
16 is telling stories and most importantly the practices and
17 the means are passed down by doing subsistence. And to
18 me, and I think to the Regional Council in the Interior,
19 this is a very important part, it has to be practiced to
20 be passed down. Even if a small group of people are the
21 ones that are doing the practice and passing down, it
22 still is valid and it's very, very important.

23
24 Mr. Edwards, you asked a question a
25 little bit earlier today of the two doctors and you were
26 asking about how it could be that some of these people
27 would do a practice sometimes and not other times in an
28 area and this is one of those things that's sometimes
29 hard to put on paper but it's been my experience that a
30 subsistence lifestyle ebbs and flows within communities.
31 There's periods of times where subsistence happens in an
32 area and then for whether it be community dynamics or
33 possibly a strong leader of the community, an elder
34 passes away, it kind of dies off until someone picks that
35 up again. And many of the practices, local practices of
36 people are greatly influenced by particular leaders of a
37 community or users of a resource, they have a tendency of
38 influencing how a resource or where a resource is used.
39 And so I'd just like to offer that as a possible reason
40 why you might see such diverse or sporadic use in areas.

41
42 So I guess in closing I guess I would
43 just like to say that I think the Eastern RAC would like
44 to very strongly support the recommendations by
45 Southcentral and as I said Mr. Littlefield's arguments on
46 the three criteria is, as I believe, a very valid one and
47 one that has to be held very high in standard.

48
49 Thank you, Madame Chair.

50

1 ACTING CHAIR GOTTLIEB: Thank you. Those
2 were very good comments, appreciate it.

3
4 Ron.

5
6 MR. SAM: Thank you, Madame Chair. I,
7 too, as Chair of Western Interior support Southcentral's
8 effort to establish a positive C&T determination.
9 However, I would just recommend that only the community
10 of Ninilchik be involved. Yesterday we clearly heard
11 Cooper Landing say that they didn't want anything to do
12 with this and I'm pretty sure -- I mean I would follow
13 the request of the local people of Ninilchik and grant
14 them that positive C&T. As or solicitor so elaborately
15 stated that even though the whole community of Ninilchik
16 doesn't participate the people that do not want to
17 participate do not have to. And that's why I would only
18 recognize Ninilchik because of their aggressive efforts
19 to find or get the positive C&T.

20
21 Thank you, Madame Chair.

22
23 ACTING CHAIR GOTTLIEB: Thank you. Any
24 other Regional Advisory Council comments.

25
26 Ralph.

27
28 MR. LOHSE: Judy, should I save my
29 comments until deliberation?

30
31 ACTING CHAIR GOTTLIEB: No. Why don't
32 you go ahead now, please.

33
34 MR. LOHSE: Okay. Well, one of the
35 things that the State brought up, Dr. Fall brought up,
36 was that when we're looking at C&T we're looking at a
37 community or an area. And a community and area, as he
38 pointed out was the first words in the paragraph. If you
39 go back and you look at the record from Southcentral, I
40 think this is the -- I don't know if it's the third or
41 the fourth time, I didn't go back and look that close
42 myself, where we've made a recommendation on the Kenai
43 and all the recommendations have basically been the same,
44 that the rural people of the Kenai have preference, have
45 C&T, and have preference for the resources on the Kenai.
46 And that's basically what we're repeating right now.

47
48 Which is why we didn't just stick with
49 Ninilchik, we looked at the other rural communities and
50 included them. And while it's not meant to be

1 disrespectful or to belittle the indigenous Native
2 culture of the area, but for purposes of this ANILCA
3 discussion, the close connections that the people have
4 demonstrated with the rural Dena'ina, the rural Kenaitze,
5 the rural Aleuts, the rural early Russians, the rural
6 furtraders, and the homesteaders, in my mind, is proof
7 positive of the continuum of long-term use by the rural
8 residents of the Kenai Peninsula and especially as
9 demonstrated by the core people of the community of
10 Ninilchik.

11
12 And from the standpoint of ANILCA these
13 rural residents have shown that they use the resource, to
14 what degree that's going to have to be your decision,
15 what kind of regulation will be in place to provide for
16 the dependence, that's your decision in the future, but
17 what you're trying to decide right now is have they shown
18 long-term use, do they use this as the rural people of
19 the Kenai Peninsula. And I have to go along with John,
20 I've seen decisions on C&T made on a lot less data, a lot
21 less testimony and a lot less everything else. And I
22 recognize the importance of this area to the various
23 parts of the state and that's one of the reasons, I know
24 that we've talked about, you know, the need to convene a
25 working group. But the working group doesn't decide C&T.
26 The working group decides how, as good neighbors, the
27 rural and the non-rural people of the larger community of
28 the Kenai Peninsula work together to provide that
29 preference with the least disruption, the least
30 confrontation between the different users. But the
31 working group can't decide C&T, you guys have to do that
32 and you have to do that on the basis of the evidence
33 that's been put in front of you which, in my way of
34 looking at it, is pretty proof positive that the rural
35 residents have used the resources.

36
37 And with that, I think I'm done for the
38 rest of discussion, thank you, unless somebody asks me
39 something.

40
41 ACTING CHAIR GOTTLIEB: Keith.

42
43 MR. GOLTZ: I'm probably going to have
44 some comments directed to both Ralph and John as we
45 proceed in this discussion. But right now I'd like to
46 turn my attention to Andy because he raises an important
47 point. I think there's some concern in the audience and
48 although I'm telling the Board members what they already
49 know I think it's worth repeating. The standard of
50 evidence that we use as we assess each individual

1 proposal.

2

3 In particular, do we honor and respect
4 the traditional ecological knowledge. And the answer to
5 that question is yes, we do. We honor and respect the
6 testimony of the Ninilchik Council and we do not -- this
7 program is not entirely driven by data points, although
8 the discussion may sometimes seem so.

9

10 Very early on in the program we had a
11 very sharp debate over whether the biologists drove this
12 program or whether what they called anecdotal evidence
13 drove this program. And it got to the point where we
14 actually had a conference on traditional ecological
15 knowledge. The tensions that were extent at that time, I
16 think, reduced if not eliminated. I think that all sides
17 recognize the need for science and for as much of the
18 information that the biologists can give us. On the
19 other hand I think the biologists recognize that the
20 users, the one close to the resource can provide insights
21 that Western science just does not have. So I think we
22 have in front of us a coordinated effort. Neither one is
23 diminished. All sorts of evidence are used. We regard
24 them all as substantial. And we certainly do respect the
25 individual anecdotal story testimony that comes before
26 us.

27

28 ACTING CHAIR GOTTLIEB: Thanks Keith,
29 that was really helpful. Did you have any follow up on
30 that Andy.

31

32 MR. BASSICH: Thank you, Madame Chair. I
33 guess my only thought on that would be, I can see how
34 biologist information coming before you is a very
35 measurable entity or a measurable piece of information
36 but I guess what I'm wondering is as a Board member how
37 do you measure or how do you weigh the importance of the
38 TEK information that you get. I'm not really sure how
39 you do that and if anybody could maybe enlighten me a
40 little bit about, even a personal experience of how they
41 would do it it would be very helpful to me, both now and
42 in the future.

43

44 CHAIRMAN DEMIENTIEFF: The importance of
45 the information you're talking about, the TEK, the
46 importance of that is weighed with the importance of
47 everything else. So when we consider these really tough
48 issues, we consider all of the input.

49

50 ACTING CHAIR GOTTLIEB: I guess I might

1 turn it even back a little bit to you because the RACs
2 hear very similar information that we do so it's part of
3 all the information that we have for our use and coupled
4 with the deference to the Regional Advisory Councils it's
5 very important.

6
7 Keith, did you want to make a couple
8 other comments then on John and Ralph's remarks?

9
10 MR. GOLTZ: No, I think I'll wait for the
11 Board discussion.

12
13 ACTING CHAIR GOTTLIEB: Okay. Any other
14 thoughts or comments from RAC Chairs at this point.

15
16 (Pause)

17
18 ACTING CHAIR GOTTLIEB: Excuse me, Nancy.

19
20 MS. SWANTON: Yes, thank you, Madame
21 Chair. Being the greenhorn and beginner here at the
22 table I've been rather reluctant to add my two cents
23 realizing, you know, how the deliberations are going and
24 the importance thereof in them. But I would just like to
25 say to the Board that I think when you take into
26 consideration the things that have been said this
27 morning, especially by Mr. Goltz, who, I really
28 appreciate your comments because it made a huge learning
29 curve for me, there's no doubt about the passions that
30 were shown through the testimonies that we all heard
31 yesterday through the residents of Ninilchik and the
32 long-term, people who have lived down there, and I think
33 that a lot of that needs to be considered as very
34 powerful evidence in fulfilling the word, meaningful,
35 when your task as a Board is to find a meaningful
36 preference. And I don't know that there's a measurement
37 for that and I think that also is alluding to what Andy
38 is saying, but I think that it needs to be taken into
39 consideration as fulfillment of that necessary
40 problematic result.

41
42 I do realize that, you know, passing this
43 proposal is going to open a huge can of worms, you know,
44 it will open a huge can of worms as Kelly has pointed out
45 in the past, but I also don't know that it possibly is
46 not time for that can of worms to be opened. And I feel
47 that I know that I would support the Southcentral
48 Council's hard work and I think it needs to be
49 acknowledged probably by you recognizing their
50 recommendations and recognizing how much hard work

1 they've gone through in order to bring them to you. I
2 think just evidence of how much you've been through and
3 listened to in the past couple of days is evidence of
4 that.

5
6 Thank you.

7
8 ACTING CHAIR GOTTLIEB: Thanks for your
9 comments and don't hesitate to provide some more then.

10
11 Other comments.

12
13 Well, my suggestion is that, because
14 Mitch when you handed over the gavel to me you forgot to
15 remind me just how large the shoes are that you wear, so
16 we are having a little bit of technicality difficulties
17 here. I suggest we break for lunch, come back at 12:40
18 and, Mitch, we'd like to call you back in a minute, if we
19 could, so I can consult with the.....

20
21 CHAIRMAN DEMIENTIEFF: Well, actually I
22 didn't turn over the gavel, you know, I just.....

23
24 (Laughter)

25
26 CHAIRMAN DEMIENTIEFF:am physically
27 unable to perform. Yeah, I didn't turn over the gavel.
28 You're there, in what I call, directing traffic.

29
30 (Laughter)

31
32 CHAIRMAN DEMIENTIEFF: You're in the
33 room.

34
35 ACTING CHAIR GOTTLIEB: I have a question
36 on directing traffic I need to talk to you about, please.

37
38 CHAIRMAN DEMIENTIEFF: Okay. Well,
39 anyway, it's early, isn't it only 11:30?

40
41 ACTING CHAIR GOTTLIEB: It is.

42
43 CHAIRMAN DEMIENTIEFF: Okay. Well, why
44 are we quitting -- I mean I do have -- this is my number
45 1 priority as far as this meeting goes, but I did make
46 commitments for myself tomorrow at noon in Clear (ph) and
47 I have obligations on Saturday and Sunday, now, this is
48 my number 1 priority, okay, understand me, and I will
49 take the time that I need -- whatever I need to devote to
50 this because of what the importance I think we're doing.

1 Well, I guess one thing I could say is
2 absence makes the heart grow fonder.
3
4 ACTING CHAIR GOTTLIEB: That's what's
5 happening right now, right.
6
7 CHAIRMAN DEMIENTIEFF: Okay, I understand
8 that but I'm here, okay, so, I don't know, however you
9 want to deal with it but I don't suggest you quit right
10 now.
11
12 ACTING CHAIR GOTTLIEB: Mitch, I'd prefer
13 that we have a private conversation about this particular
14 situation so if we can just call you back in a minute
15 please.
16
17 CHAIRMAN DEMIENTIEFF: Okay.
18
19 ACTING CHAIR GOTTLIEB: Thank you. Okay,
20 12:40 everybody, thanks.
21
22 (Off record)
23
24 (On record)
25
26 ACTING CHAIR GOTTLIEB: Okay, thanks very
27 much. Welcome back everybody from lunch. I guess
28 there's something to be said for flexibility and we'll
29 all get a chance to continue to prove that today. What
30 we're going to do is, at the request of the Chair, Mitch
31 is going to be able to review the tapes of yesterday's
32 testimony this evening and we're really grateful to the
33 court reporting service for making the extra effort to
34 get those to him later today. So what we'll do right now
35 is -- and we will take up discussion at Board
36 deliberation tomorrow morning at 8:00 a.m. So for
37 Proposal 9, 8:00 a.m., tomorrow morning. Unfortunately
38 Denny Bschor is not going to be able to attend here
39 tomorrow since we hadn't anticipated going to tomorrow
40 but he does have his Staff Committee representative,
41 Steve Kessler, who will sit in for him and they have both
42 been hearing all of the discussions throughout the last
43 few days.
44
45 So with that, we will proceed to
46 Proposals 14/15 and hear Staff presentation. And thank
47 you to everybody for being flexible to an ever changing
48 agenda. So whenever you're ready then.
49
50 MS. ARMSTRONG: Thank you, Madame Chair.

1 Helen Armstrong, Office of Subsistence Management for the
2 record.

3
4 Proposal 14 and 15 is on Page 240 of your
5 book and this is a combined proposal, FP06-14 and FP06-
6 15. FP06-14 asked for a narrowing of customary and
7 traditional use determination from a no determination,
8 all Federally-qualified residents statewide to a specific
9 determination in the Prince William Sound area down
10 stream from Haley Creek for the freshwater fish for
11 Cordova, Tatitlek, Chenega Bay and then 15 was for
12 Nuchek, those three communities and then Nuchek and
13 Katalla.

14
15 It was submitted by the Copper River
16 Prince William Sound Fish and Game Advisory Committee,
17 the Native Village of Eyak and Robert Henrichs. Because
18 they were for the same areas, with the addition of those
19 two, Nuchek and Katalla, we combined the analysis.

20
21 The proposal book listed an error, I'd
22 like to just say this on the record, a request for C&T
23 for freshwater fish in the Cook Inlet area, but this was
24 not in the original request and it has not been included
25 in the analysis.

26
27 As I said the existing C&T is that there
28 is no current determination. The extent of Federal
29 public waters is the Federal public waters of the Prince
30 William Sound area as it's shown in Map 1 and it's up
31 above you here. And it's all the waters within the
32 exterior boundaries of the Gulkana Wild and Scenic River,
33 the Wrangell-St. Elias National Park and Preserve and the
34 Chugach National Forest, excluding marine waters, and
35 inland waters adjacent to these exterior boundaries and
36 all non-navigable waters on lands managed by the BLM.
37 And I think it's marked on the map where Haley Creek is
38 up from the Copper River. And the reason Haley Creek was
39 put in as the distinguishing boundary is not that it was
40 the boundary where the Federal public waters were but
41 because the other C&T regulation for this area extends
42 all the way south to Haley Creek and so this would have
43 been just a clean cut between them.

44
45 In the Prince William Sound coastal area
46 there are four rural communities, Chenega Bay, Cordova,
47 Tatitlek and Whittier. There are three major culture
48 groups, the Chugach Alutiiq, the Eyak and the Tlingit.
49 And they've inhabited the region before settlement by the
50 Russians and the Americans in the late 19th Century.

1 Cordova is the largest of the communities
2 with a population of about 2,400 and is predominately
3 non-Native but has a population of about 15 percent
4 Alaska Native.

5
6 Chenega Bay and Tatitlek are contemporary
7 villages that are located in traditional settlement areas
8 of the Chugach Alutiiq. Tatitlek is the longest
9 continuously occupied community in the Prince William
10 Sound. Chenega Bay was resettled in 1983 by residents
11 from the original community of Chenega located on Chenega
12 Island. The original settlement was destroyed by its
13 tsunami in the 1964 earthquake and the survivors were
14 relocated in Cordova and Tatitlek. Before that some
15 Chenega families had lived in Cordova temporarily to
16 allow their children to attend high school.

17
18 And the reason I give you this history is
19 to show that the histories of Chenega Bay, Tatitlek and
20 Cordova have created strong kinship ties between these
21 three communities.

22
23 The population of Chenega Bay was 86 in
24 the 2000 census and Tatitlek was 107 and both are
25 predominately Alaska Native.

26
27 Nuchek and Katalla are a little bit more
28 complicated in this. They were also included in Proposal
29 15. They're old village sites that no longer permanently
30 are inhabited year-round except for maybe a few people,
31 and it's used primarily as a seasonal fishing camp.
32 Nuchek was a seasonal village site for the people of
33 Tatitlek later settled by the Russians in 1793. In 1900
34 the Ellamar Mine opened and Native Alaskans from Nuchek
35 and Chenega were relocated to work in the Ellamar Mine
36 and the current village of Tatitlek was established.
37 Neither Nuchek nor Katalla are currently listed as
38 communities in the state of Alaska community database nor
39 are they listed in the U.S. Census.

40
41 Whittier is also in the Prince William
42 Sound and is on the west side. It's predominately non-
43 Native with a population of 172 and was built as a
44 military post and deep water port during the 1940s.
45 There are also year-round permanent residents in the
46 Prince William Sound living in remote sites and these are
47 not specifically mentioned in the proposal, but I have
48 included some discussion of these in my analysis. Those
49 places are Boswell Bay, Deep Bay, Canoe Pass, Ellamar and
50 Two Moon Bay. There are cabins scattered also throughout

1 the area. We don't have any data in the literature
2 regarding the individuals living there but we have been
3 told by people from the region that there are year-round
4 residents and they are known to live a subsistence
5 lifestyle and they only come into a larger community to
6 get supplies every month or two. There are also some
7 people living permanently around the salmon hatcheries at
8 Cannery Creek, Esther Bay and Port San Juan. There may
9 be other places where people live that I have not
10 accounted for but these are the ones that I have been
11 told about.

12
13 As in all of our C&T analysis we'll have
14 a discussion of the eight factors, beginning with a long-
15 term consistent pattern of use. There is a lot of
16 information on these communities, a lot more than we have
17 on most communities in the state because of the Exxon
18 Valdez Oil Spill. The ADF&G Subsistence Division
19 conducted, I think, in some of them there are about eight
20 studies so we actually get some idea of patterns of use
21 over a number of years and you also see some variation
22 although the Oil Spill could have influenced some of
23 those uses as well. It's particularly, of course, marine
24 waters.

25
26 The Cordova residents from these studies
27 primarily harvested of the freshwater fish Dolly varden,
28 lake trout, grayling, sturgeon, cutthroat trout, rainbow
29 trout, steelhead, unknown trout and whitefish were also
30 harvested. Tatitlek had the highest harvest of unknown
31 trout, this is overall of these years, I'm lumping them
32 together. You can refer to the tables and the text to
33 see the specifics, Table 1 for Chenega Bay, Table 2 for
34 Cordova, Table 3 for Tatitlek.

35
36 Chenega Bay had, in most of the years,
37 harvested no grayling, rainbow trout and cutthroat trout,
38 but then in 1997 the survey reported a harvest of 280
39 grayling and 181 cutthroat and 52 rainbow trout. There
40 were also unknown trout that were harvested. I think
41 what's really interesting to me is to see some of the
42 variation that goes on from year to year.

43
44 We also looked at Whittier even though it
45 wasn't in the proposal but it is in the Prince William
46 Sound, and this showed a little different picture.
47 There's only one year of data from Whittier so we don't
48 have as much information and there were between 21 and 24
49 each of Dolly varden, lake trout, grayling and cutthroat
50 taken and only one steelhead, but there were also 220

1 rainbow trout harvested.

2

3 The discussion at the Southcentral
4 Regional Council meeting indicated that rainbow trout are
5 not available in the Prince William Sound, or at least
6 very, very rarely and that their belief was that those
7 rainbow trout were taken in the Cook Inlet area.

8

9 I did go -- the one study that was done
10 on Whittier has not been published and I did go over to
11 visit with Dr. Fall about it and they did have maps that
12 were created for Whittier and so even this has not been
13 published I did look at those maps.

14

15 The information on Whittier from that
16 1992 study, they lumped all of the non-salmon uses
17 together and that included halibut so that it made it
18 very difficult to really tell -- well, you couldn't tell
19 what was harvested where that was freshwater fish because
20 it was lumped with halibut but you could assume that
21 these large areas where the circles were drawn around,
22 much of it was marine waters and that those were for
23 halibut. The map wasn't very cleared that's why I
24 haven't reproduced it here, to really be able to tell
25 where people might have gotten -- it looks like there
26 might have been some freshwater fish taken, it looked
27 like it was drawn over by Cordova and possibly by
28 Whittier. It really wasn't clear and it never had been
29 published so it was a draft map. So I really felt like
30 with Whittier there was some uncertainty there as to
31 where people might have gone precisely.

32

33 In terms of Cordova, we do know that
34 Dolly varden harvest areas were in the freshwater streams
35 around Cordova and on the Copper River Delta as well as
36 the Eyak River. There were people in 1985 and that study
37 they said they took grayling and whitefish in the
38 vicinity of Cordova, grayling is a stocked fish in the
39 area. And trout were taken in ponds and streams in the
40 Copper River Delta and on Hinchinbrook Island. All of
41 those waters are within the Federal public waters of the
42 Chugach National Forest. And a few rainbow trout were
43 also taken from Tebay and Hanagita Lakes, excuse me for
44 my pronunciation, in the Wrangell-St. Elias National
45 Park. The areas for taking non-salmon by Chenega Bay
46 residents included the Copper River Delta and Tatitlek
47 residents took lake trout from a lake behind the village
48 and off of the Tatitlek dock.

49

50 The other eight factors, I'm not going to

1 go through every single one, I'm incorporating them by
2 reference into this presentation, they're in the book. I
3 think in the interest of time I'm not going to go through
4 them. I will go over the information on the reliance
5 upon a wide diversity of resources.

6
7 The data from the household surveys
8 conducted in 1997 for the three communities and in 1992
9 for Whittier are in Table 5. In Chenega Bay and
10 Tatitlek, 100 percent of the households use subsistence
11 resources, and in Cordova and Whittier this percentage
12 was less, '97 percent and 93 percent in -- I'm sorry, 97
13 percent in Cordova and 94 percent in Whittier. Chenega
14 Bay showed the highest ever of resources with an average
15 of 23.2, Tatitlek ranked second with 18.8, Cordova showed
16 an average of 12.8, and Whittier had the lowest with 8.8.
17 And as I discussed this morning, that the variety of
18 resources used in these communities is consistent with
19 other subsistence communities in the state except for
20 Whittier's, which was consistent with road connected
21 communities.

22
23 For the effects of the proposal, adoption
24 of this proposal would recognize the customary and
25 traditional use of freshwater fish by residents of
26 Cordova, Chenega Bay and Whittier, and adoption of the
27 proposal would not have any affect on freshwater fish as
28 the harvest of freshwater fish in the Prince William
29 Sound is currently allowed by Federally-qualified rural
30 residents statewide so that no increase in fish harvest
31 is expected.

32
33 Thank you, Madame Chair. That concludes
34 my presentation.

35
36 ACTING CHAIR GOTTLIEB: Thank you very
37 much. Are there questions for Helen.

38
39 MR. EDWARDS: Helen, based upon your last
40 statement then, what's the advantage or disadvantage of
41 not doing a C&T?

42
43 MS. ARMSTRONG: Well, I think this is
44 true in all cases of doing C&T is that it allows them to
45 have subsistence priority in times of shortage.

46
47 MR. EDWARDS: Maybe this is not the best
48 question to ask of you, but are you aware of any types of
49 proposals that might follow, ultimately follow this
50 determination?

1 MS. ARMSTRONG: I don't -- I think that
2 -- Jerry Berg might be a better one to ask that to, but I
3 don't think there were any -- I don't know of any. There
4 might be others but you might want to ask some of the
5 people who really work in the region because this is a
6 new region for me.

7
8 ACTING CHAIR GOTTLIEB: Tom.

9
10 MR. BOYD: Madame Chair. I'm not sure
11 what the question was. If I may try to get
12 clarification, is the question, do we have any pending
13 proposals?

14
15 MR. EDWARDS: What I was just trying to
16 understand is that right now everybody has C&T for -- and
17 under that -- and everybody has methods and means and are
18 able to go out and harvest freshwater fish. And other
19 than providing a priority during times of shortage, I was
20 just trying to understand if there were any other
21 rationale for having to get the C&T determination?

22
23 ACTING CHAIR GOTTLIEB: I see Tim at the
24 microphone, perhaps he's got some answers for us.

25
26 MR. JOYCE: Madame Chair. There's two
27 proposals in a packet. I think some of these are on the
28 consent calendar, in fact, that were somewhat tied to the
29 freshwater fish in Prince William Sound. Right now we
30 have no priority, it's just open to all rural residents
31 and regardless of what the status of the C&T finding,
32 those particular proposals that are before you would have
33 applied to all residents.

34
35 I know of no other proposals that are
36 pending other than those ones that are in the packet
37 today.

38
39 ACTING CHAIR GOTTLIEB: Okay, thank you.
40 Written public comments. I'm sorry, Denny you had a
41 question.

42
43 MR. BSCHOR: I had a question very
44 quickly. Tim you might be able to answer this, too, that
45 on Table 4 for Whittier, do you know which of the species
46 that are listed in the table were likely harvested in the
47 Prince William Sound?

48
49 MS. ARMSTRONG: Well, I know that.....
50

1 ACTING CHAIR GOTTLIEB: 246.

2

3 MS. ARMSTRONG: Rainbow -- the only one I
4 -- well -- and Tim can maybe speak to this but rainbow
5 trout isn't available in Prince William Sound. And in
6 the mapping that was done in conjunction with this study,
7 there was a little circle for use area over -- it was
8 along the highway I think over near Cooper Landing
9 somewhere, I don't remember exactly. And when I was
10 looking at that with Dr. Fall, he said, oh, that's where
11 they're taking rainbow trout. I'm not a fish expert so I
12 -- and other people agreed with that statement. So I
13 don't really -- we don't know because they didn't list
14 them by species, they listed it by non-salmon species.
15 So definitively I don't know, but we could have some
16 assumptions maybe from -- do you know?

17

18 MR. JOYCE: Yeah. Madame Chairman --
19 Chairperson.

20

21 The rainbow trout are found in Cook
22 Inlet, definitely, and they're also found east of the
23 Copper River. There's some rainbow trout in that area.
24 The rest of Prince William Sound does not have rainbow
25 trout other than some stocked lakes by Valdez. There was
26 some rainbow that was stocked there. There are cutthroat
27 trout in Prince William Sound that are not found in Cook
28 Inlet, so if somebody is harvesting cutthroat they would
29 be taking those out of Prince William Sound or off the
30 Copper River Delta, in that area. Now, there are some
31 rainbow trout also up in the Wrangell-St. Elias, in TeBay
32 Lakes, for example, there's rainbows up there, but when
33 you're right down in the coastal area it's cutthroat
34 trout.

35

36 ACTING CHAIR GOTTLIEB: Thank you. Other
37 questions.

38

39 MR. EDWARDS: Yes.

40

41 ACTING CHAIR GOTTLIEB: Gary.

42

43 MR. EDWARDS: On patterns of use and all,
44 what did some of that show on that, Katalla, for example,
45 is there data that shows that moved throughout the Sound
46 and, you know, harvested freshwater fish and vice versa
47 for communities on the other side, what kinds of those
48 patterns of distribution does the information show?

49

50 MS. ARMSTRONG: If I understand your

1 question correctly, my understanding from what I have
2 heard about people in the Prince William Sound and I
3 think probably Ralph Lohse can talk about this more than
4 I can, but from what I've read that people are -- a large
5 number of them are commercial fishermen and they're
6 moving all over the Sound and what I've understood is
7 that it's quite possible that people from Whittier, for
8 example, could be taking some freshwater fish while
9 they're over near Cordova. That's the imp -- that's what
10 I have been told.

11

12 I imagine Ralph might have some more
13 things to enlighten us about some of that.

14

15 I do know from what I've read that these
16 communities, particularly Cordova, Tatitlek and Chenega
17 Bay have a lot of interconnectedness, a lot of
18 intermarrying, people have gone to school in Cordova,
19 there does seem to be a fair amount of integration
20 between those communities. I hope this is accurate to
21 say Ralph.

22

23 ACTING CHAIR GOTTLIEB: Ralph, please.

24

25 MR. LOHSE: Thank you, Helen. I think
26 you had a pretty good accurate description of it. I
27 know, especially after the earthquake and that people
28 from Chenega moved to Cordova and people from Tatitlek
29 moved to Cordova and they've moved back to Tatitlek and
30 they've moved back to Chenega, and those three
31 communities are pretty connected.

32

33 I was reading through the minutes and I
34 know that side of Prince William Sound just basically,
35 and those villages and everything, just, when I read it,
36 they just don't consider Whittier part of Prince William
37 Sound, they almost consider Whittier part of Cook Inlet.
38 And I wouldn't -- you know, I think the problem is they
39 look at the fact that most of the freshwater fishing
40 that's done is done on just a couple of the islands or
41 it's done in the Cordova area and that's why they
42 recognize Chenega and Tatitlek as taking part in that
43 freshwater fishery.

44

45 We'll get more on that when we get to the
46 Council's recommendations on the proposal.

47

48 ACTING CHAIR GOTTLIEB: Thank you. We're
49 ready to move to written public comments.

50

1 MR. MIKE: Thank you, Madame Chair.
2 Donald Mike, Council coordinator.

3
4 On Proposal FP06-14 there was three
5 written public comments received. One in opposition and
6 two in support.

7
8 And in addition, on Proposal 15 there was
9 one written public comment, similarly to the Cooper
10 Landing Advisory Committee.

11
12 On Proposal 14 the AHTNA Subsistence
13 Committee supports 14 to establish a customary and
14 traditional use determination for freshwater fish for
15 residents of Cordova, Tatitlek and Chenega Bay for all
16 waters of the Copper River drainage down stream of Haley
17 Creek. If this proposal was passed methods and means of
18 harvest should be limited to gaffs, spears and rod and
19 reel. Fishwheels should not be permitted.

20
21 The Cooper Landing Advisory Committee is
22 in opposition of this proposal as written. We do not
23 believe that the people of the rural communities of
24 Cordova, Tatitlek and Chenega Bay ever came to the waters
25 of the Cooper Landing area.

26
27 And in regards to 15, the communities of
28 Nuchek and Katalla to harvest their subsistence fish when
29 more plentiful and fresher fish were available near their
30 own communities. We do not believe that the eight
31 factors for customary and traditional use determination
32 can be shown for these communities for that portion of
33 the Chugach National Forest outside of Prince William
34 Sound area. No long-term consistent pattern of use,
35 consistent harvest and use near or reasonably accessible
36 from the community could be shown along the other
37 factors.

38
39 The Cooper Landing Advisory Committee
40 amended this proposal to read that a customary and
41 traditional use determination proposal would only apply
42 to that portion of the Chugach National Forest that lies
43 within the Prince William Sound area. If this amendment
44 is accepted then we would not further oppose this
45 proposal.

46
47 The Wrangell-St. Elias National Park
48 Subsistence Resource Commission, who were present for
49 discussion of this proposal generally supported it. Mr.
50 Adams commented that it meant the eight factors to

1 evaluate customary and traditional use determinations.
2 Mr. Marshall stated that he was not aware of Whittier
3 residents fishing in the Copper River but that he had no
4 reservations about other communities discussed in the
5 analysis.

6
7 Thank you, Madame Chair.

8
9 ACTING CHAIR GOTTLIEB: Thank you. At
10 this point we had one person signed up to testify, Delice
11 Calcote.

12
13 (No comments)

14
15 ACTING CHAIR GOTTLIEB: Okay, I think
16 we'll go to Regional Advisory Council recommendation then
17 please.

18
19 MR. LOHSE: Thank you, Madame Chair. the
20 Southcentral Alaska Regional Advisory Council's
21 recommendation is that you support this with
22 modification. And we modified it to include all rural
23 residents of Cordova, Tatitlek, Chenega Bay, Nuchek,
24 Katalla, Tebay, Two Moon Bay, Boswell Bay and all
25 residents of Prince William Sound except Whittier.

26
27 This motion passed with one nay and two
28 abstentions, including the Chair.

29
30 And I'll answer any other questions you
31 wish to ask me on it.

32
33 ACTING CHAIR GOTTLIEB: Thank you. Any
34 questions on the recommendation now.

35
36 Gary.

37
38 MR. EDWARDS: So can you elaborate a
39 little bit why the vote was sort of the way it was?

40
41 MR. LOHSE: Well, the two abstentions, I
42 know for a fact didn't feel there was good enough
43 justification for excluding Whittier and I think that was
44 the nay vote also.

45
46 There was strong feelings by some of the
47 members of the Council to exclude Whittier. And the
48 proponents of the proposal spoke to the proposal and I'll
49 just read it right out of the record here. This is Bruce
50 Cain, Native Village of Eyak. Just for the record, that

1 proposal, when we drafted it we had no intention of
2 including Whittier, we were strictly dealing with the
3 villages of Chenega, Tatitlek, Cordova and then Nuchek
4 and Katalla and I think the scattered the residents.
5 That's probably a good thing to do. But we had no
6 intention of including Whittier, and I think it would be
7 -- it's going to open the floodgates to a lot of use that
8 we don't want to see. And I think that carried a lot of
9 the Council.

10

11 ACTING CHAIR GOTTLIEB: Other comments.

12

13 MR. LOHSE: One other comment on that,
14 Judy.

15

16 The other comment that came up quite
17 frequently was the fact that Whittier was a large enough
18 community -- Cordova -- basically Cordova asked for it
19 and included the villages of Chenega and Tatitlek because
20 they're very connected. And the other small communities
21 and residents of Prince William Sound got included
22 because they're too small to really speak for themselves.
23 But one of the comments that came up a couple times in
24 the testimony, as I was reading through it, is that
25 Whittier is a large enough community that if it wishes to
26 be included it should put in a proposal for itself. And
27 that was the comments of some of the members of the
28 committee.

29

30 ACTING CHAIR GOTTLIEB: Thank you.

31 Charlie.

32

33 MR. BUNCH: Ralph, I notice that you --
34 can you comment on Cooper Landing's objection to that, is
35 that because the way it's stated to include Chugach
36 National Forest?

37

38 MR. LOHSE: I think Cooper Landing had a
39 misunderstanding of how it was stated. If you read it,
40 it says, the Prince William Sound area, it doesn't say
41 Chugach National Forest, and like they put in their
42 amendment there at the end of it, if it only includes
43 Prince William Sound they don't object to it. But they
44 objected to the fact that they thought it included all of
45 the Chugach Forest. And I think part of that
46 misunderstanding came from the fact that a lot of
47 Whittier's freshwater fish were out of the Chugach Forest
48 in the Cooper Landing area, and that was one of the
49 things that was brought up in our discussions, was that,
50 the largest component of freshwater fish that Whittier

1 had on their list of uses obviously didn't come out of
2 Prince William Sound, they came off the Kenai Peninsula
3 because they wouldn't have been available in Prince
4 William Sound. And I think that might have been some --
5 I think that might have been some of Cooper Landing's
6 fears.

7
8 ACTING CHAIR GOTTLIEB: Thank you.
9 Denny, do you have a comment.

10
11 MR. BSCHOR: Yeah, how many people,
12 permanent residents live in Whittier? Did somebody say
13 that earlier and I just forgot.

14
15 MS. ARMSTRONG: I think it's around 192.

16
17 MR. BSCHOR: Okay. How many residents
18 live in Cordova?

19
20 MR. LOHSE: I'll just say in the winter
21 time 2,200, approximately.

22
23 MR. BSCHOR: I'm just having a hard time
24 trying to figure out how that would open the floodgates.
25 And Whittier, I guess, Whittier, you know, if we don't
26 act on Whittier and go along with the proposed
27 recommendation, they would have an opportunity if they
28 wanted to be included at a later date; is that true?

29
30 ACTING CHAIR GOTTLIEB: I might insert
31 here, I guess we've had this happen before in other
32 situations and, Helen, we might ask you to go over it one
33 more time. Sometimes we've had a couple communities ask
34 for something but then based on the level and depth of
35 analysis we find out more and so with all respect to the
36 proposer, once they submit it to the system, it's not
37 only the proposers anymore, it becomes all of ours.

38
39 So Helen perhaps you could add to that,
40 please.

41
42 MS. ARMSTRONG: What we do, and this is
43 in our C&T author's guides is that if there's a C&T made
44 for the first time that has never been made and you're
45 going from a no determination or all rural residents,
46 then we try to be inclusive rather than just focusing on
47 that community because you don't want -- we have had
48 requests from just one community and then you could be
49 excluding people so we do try to look at everybody within
50 that area. Sometimes we make mistakes, sometimes we miss

1 a community that's a little bit outlying and so what
2 we've done is that when a request comes in after a C&T's
3 been done and already been established, we'll only look
4 at the community that's proposing it.

5
6 So if, in fact, the Board decided not to
7 give it to Whittier then Whittier could come back next
8 year and say, no, we want to be included and then we
9 would look at them next year. That's what would happen
10 in the process. I'm just using that as a hypothetical
11 situation. I'm not advocating that Whittier shouldn't be
12 included.

13
14 MR. BSCHOR: And then relative to Cooper
15 Landing's concern, the map, is the black line on the map
16 the C&T area, I assume it is, I just want to be clear on
17 this?

18
19 MS. ARMSTRONG: The black line on the map
20 that you're looking at is the boundary of the Prince
21 William Sound.

22
23 MR. BSCHOR: Oh, okay.

24
25 MS. ARMSTRONG: That's the -- yeah.

26
27 MR. BSCHOR: Yeah, I'm just wondering
28 relative to the wording of the Chugach National Forest
29 waters, all these rural communities have access to that
30 right now but as far as a C&T it doesn't go to Cooper
31 Landing, right; is that correct?

32
33 MS. ARMSTRONG: Actually right now all
34 rural residents of the state can go into the Prince
35 William Sound area, yes.

36
37 The problem that happened was the
38 proposal book was in error and that's why Cooper Landing
39 got confused because that's what it said in the proposal
40 book because the proponent had said all waters of the
41 Chugach National Forest without -- and not realizing that
42 that included Cook Inlet area but the intention was only
43 to cover Prince William Sound.

44
45 ACTING CHAIR GOTTLIEB: Other questions
46 or comments.

47
48 Ralph.

49
50 MR. LOHSE: One other comment on that,

1 from the discussion and everything else, there probably
2 would have been absolutely no objection to Whittier if
3 the proposal would have read the Prince William Sound
4 area and didn't include the waters of the Copper River
5 drainage down stream of Haley Creek. In other words, the
6 main objection was not to the Prince William Sound area
7 itself, it was actually to the waters that are included
8 in the Prince William Sound area that are the Copper
9 River Delta, and that was the feeling of most of the
10 Board when we talked to them.

11
12 ACTING CHAIR GOTTLIEB: Okay, thanks for
13 that clarification. Interagency Staff Committee report,
14 please, Pete.

15
16 MR. PROBASCO: Thank you, Madame Chair.
17 The Interagency Staff Committee recommends to support
18 with modification consistent with the recommendation of
19 the Southcentral Alaska Regional Advisory Council, except
20 to include Whittier in the customary and traditional use
21 determination.

22
23 The Interagency Committee also revised
24 the Council recommendation to more efficiently describe
25 the communities included in the customary and traditional
26 use determination. And, Madame Chair, that's found on
27 Page 237.

28
29 The justification by the Interagency
30 Staff Committee to support this broadening of the C&T use
31 determination recommendation of the Southcentral Alaska
32 Regional Advisory Council to all residents of Prince
33 William Sound are except those who live in the Copper
34 River drainage up stream of Haley Creek, which is more
35 inclusive than the original proposal, however, the
36 Southcentral Alaska Regional Advisory Council those to
37 exclude residents of Whittier in their recommendation.
38 The Interagency Staff Committee does not agree with this
39 part of their recommendation.

40
41 And, Madame Chair, and Board members if
42 you look, the remainder of the justification is as
43 printed on Page 238.

44
45 Madame Chair.

46
47 ACTING CHAIR GOTTLIEB: Thank you, very
48 much. Any questions on the recommendation.

49
50 (No comments)

1 ACTING CHAIR GOTTLIEB: If we could have
2 Department of Fish and Game comments, please.

3
4 MS. SEE: Thank you, Madame Chair. For
5 the record my name is Marianne See with the Department of
6 Fish and Game.

7
8 The Department recommends that this and
9 all current proposals regarding customary and traditional
10 use findings for fish should be deferred until the
11 Federal Subsistence Management Program establishes policy
12 and procedures for these analysis and findings as
13 directed October 27th, 2005 by the Secretary of the
14 Interior. So our recommendation is to defer this
15 proposal until procedures for analysis of customary and
16 traditional use are developed and adopted by the Federal
17 Subsistence Board.

18
19 We do note that if the Board elects today
20 to action on this proposal we recommend that you look
21 closely at the documentation for the areas used. Also an
22 additional comment on the Fish and Game data for the --
23 that has been raised by Helen Armstrong about Whittier,
24 we concur largely with her description of the issue about
25 data there. The study that was used as the basis for
26 looking at some of the information was distinguishing
27 salmon, mapped use of salmon versus any other kind of
28 fish and so that brought in both marine species, like
29 halibut and rock fish as well as freshwater species, and
30 that's why using the map from that study wouldn't be
31 particularly helpful to the question of Whittier.

32
33 Thank you.

34
35 ACTING CHAIR GOTTLIEB: Thank you. Any
36 questions or anything to add, Kelly.

37
38 MR. HEPLER: Marianne, do you think, is
39 the information, then, inclusive, of whether or not
40 Whittier actually uses Prince William Sound for
41 freshwater food gathering, or I mean for fish gathering
42 or is it -- I guess I'm just trying to articulate this
43 because there's a question I want to follow after this?

44
45 MS. SEE: Through the Chair, the data
46 that the Department, through the Division of Subsistence
47 studies looked at -- or gathered, rather, did not find
48 evidence for freshwater use by Whittier in Prince William
49 Sound proper. There were responses in the survey they
50 did that Whittier used areas for freshwater species,

1 specifically on the Kenai Peninsula, however, there's not
2 specific documentation about freshwater fish species use
3 in Prince William Sound proper.

4

5 ACTING CHAIR GOTTLIEB: Go ahead.

6

7 MR. HEPLER: Thank you, Madame Chair. So
8 I guess the question is, and this after listening to John
9 this morning, the question in front of the Board is going
10 to be whether or not there is substantial information to
11 override the recommendation from the Southcentral RAC,
12 and that's obviously not my call, it's your call so
13 that's based on the information, of whether -- at least
14 from our viewpoint, we didn't see it. I think from my
15 own viewpoint it's maybe sketchy at best.

16

17 So, Madame Chair.

18

19 ACTING CHAIR GOTTLIEB: Thank you.

20 Ralph.

21

22 MR. LOHSE: Madame Chair. That was
23 basically the same discussion we had at the Council.

24

25 And I'll just read something out of the
26 minutes here by Mr. Marshall who is on the St. Elias
27 Subsistence Resource Council, and his words came down to
28 us and he said that, he stated, he was not aware of
29 Whittier residents fishing on the Copper River but that
30 he had no reservations about the other communities
31 discussed in the question; he knew that they did.

32

33 And that was the same feeling that we
34 had, we had no knowledge of them fishing on what we
35 consider the Copper River, Copper River Delta. We had no
36 question that if they were out on Prince William Sound
37 and they went someplace, they might take fish on Prince
38 William Sound but the data that we got appeared to us to
39 be the kind of fish you would take on the Kenai and that
40 was part of our justification. And, you know, whether
41 that's valid or not that's something you guys are going
42 to have to decide. But we did decide, as a Council, to
43 leave them out based on that and other reasons.

44

45 ACTING CHAIR GOTTLIEB: Thank you.

46 Denny.

47

48 MR. BSCHOR: This is probably a question
49 for Ralph again. Do you know if the people of Whittier
50 are aware that they've been left out of this proposal?

1 MR. LOHSE: You mean, did I tell them?
2
3 (Laughter)
4
5 MR. BSCHOR: Would it be a surprise to
6 them if we passed this?
7
8 MR. LOHSE: I don't think it would be a
9 surprise to them because it's happened before. Now,
10 whether somebody's actually told them, I don't know.
11 It's been published, they have contacts with other
12 people, it maybe isn't even a concern to them but I can't
13 state that for sure.
14
15 MR. BSCHOR: And, Marianne, where did the
16 cutthroat come from in your study?
17
18 MS. SEE: Through the Chair. We don't
19 have definitive information on where those came from.
20
21 Through the Chair, if I could add to
22 that?
23
24 ACTING CHAIR GOTTLIEB: Sure.
25
26 MS. SEE: They could have come from the
27 western side of the Sound, but we don't have specific
28 location data.
29
30 Thank you.
31
32 ACTING CHAIR GOTTLIEB: Thanks. I think
33 we're ready for Board discussion then.
34
35 Charlie.
36
37 MR. BUNCH: Ralph, if I may, you said
38 that Whittier had been left out before, have we made --
39 or have previous decisions been made that omitted
40 Whittier?
41
42 MR. LOHSE: I'm just kind of going back
43 over my memory on different things and I think on some
44 things decisions have been made to leave them out and on
45 other things decisions have been made to include them, if
46 I go back over past history.
47
48 I think it depends on what we were
49 dealing with. And in this case here, like I said, part
50 of it was strong feelings, part of it was just the fact

1 that we didn't see any compelling evidence that they
2 actually used, at least, the Cordova side of Prince
3 William Sound. And the evidence seemed to indicate, and
4 I was reading through some of the minutes, the thing that
5 was brought up quite frequently is the fish that were on
6 their list looked like the kind of fish that came from
7 the Kenai, not the Prince William Sound. In fact, there
8 was a high percentage of rainbows there and we don't have
9 access to rainbows in Prince William Sound, at least not
10 in any numbers. I disagree with Tim, there are a few
11 stocks of rainbows, but they are so small that it's a
12 rarity if somebody ever comes across them.

13

14 But from that standpoint we didn't see
15 any compelling evidence that they used it and there was
16 just a feeling that if they did use it they needed to
17 come forward and say so because they're a large enough
18 community that they could do that.

19

20 MR. BUNCH: So the precedent has been
21 made, you've made decisions before that omitted Whittier
22 from the proposals?

23

24 MR. LOHSE: Definitely. We've definitely
25 made proposals that include communities of Prince William
26 Sound for different species that are in that area that
27 have not included Whittier.

28

29 MR. BUNCH: Thank you.

30

31 ACTING CHAIR GOTTLIEB: Gary.

32

33 MR. EDWARDS: Ralph, given that you've
34 done that then how does that coincide with our discussion
35 we had yesterday on communities?

36

37 MR. LOHSE: I knew you'd do that, Gary,
38 would you repeat that please?

39

40 (Laughter)

41

42 MR. EDWARDS: Well, I'm just trying to
43 wrap my mind around all of this. And it just doesn't
44 seem to me we can have it one way in one place and
45 another way in another place, and maybe that speaks well
46 for why maybe the Secretary instructed the Board that it
47 needed to look at C&T a little more and define it's
48 structure and all.

49

50 MR. LOHSE: Well, I'll try to answer that

1 and I think there is a legitimate reason behind it.
2 Because Whittier is looked at as part of the community of
3 the road connected system of the Peninsula and Anchorage
4 to the people of Prince William Sound.

5
6 Despite the fact that they've only had a
7 road for a very short time and they've been dependent on
8 the railroad tunnel, the average resident of Prince
9 William Sound, most people from Whittier don't take part
10 in the commercial fishing. Whittier is a different kind
11 of community than the rest of the communities in Prince
12 William Sound. And I'm dealing with, you know, people
13 from that area and I guess I'll just say that most of
14 them consider Whittier as part of the road connected
15 Kenai system.

16
17 And in the past if you look at the
18 proposals that Whittier has been part of, a lot of what
19 they've been part of is the game and the fish over in
20 that section and not the game and the fish on the other
21 side of Prince William Sound. And well I abstained from
22 the vote, I abstained from the vote. I'll be honest with
23 you, because to me in some ways, like you're saying Gary
24 it isn't consistent, but remember we're dealing with
25 human beings and human beings are not always consistent
26 and to their way of thinking Whittier is a different
27 community than the communities of Tatitlek and Chenega
28 and Cordova. They don't think of it as a Prince William
29 Sound community even though it's sitting on Prince
30 William Sound.

31
32 ACTING CHAIR GOTTLIEB: George.

33
34 MR. OVIATT: Madame Chair. Ralph, I
35 guess trying to grasp all of this and decide why Whittier
36 should not be considered amongst those, I don't believe
37 they subsist in the Cook Inlet or the Kenai Peninsula,
38 they do subsist in the Sound, so I'm having a little bit
39 of trouble figuring out why they are not a part of that
40 community, unless they are considered and they consider
41 themselves to be isolated from the rest of the
42 communities. Is there any light you could shed on that?

43
44 MR. LOHSE: Again, you're asking me to
45 look into other people's minds and I recognize it as a --
46 you know it's something that's really hard to explain.

47
48 Most of the communities of Prince William
49 Sound that we're dealing with right here, their tie is
50 the Copper River. If you really thought of these

1 communities, the thing that they all participate in is
2 the Copper River, Cordova, Tatitlek, Chenega. We get
3 together when the fish come in in the Copper River. They
4 all show up in Cordova when the fish come in in the
5 Copper River. We fish together on the fish on the Copper
6 River. And then we fish together on the fish on the
7 Prince William Sound. And Whittier has never been --
8 I'll just say Whittier has never been a part of that.
9 And so as a community of people they don't think to
10 include Whittier.

11

12 Like I said this was not a 100 percent
13 vote on this issue.

14

15 Whether or not Whittier should have C&T
16 on Prince William Sound, I'm not going to argue with you
17 one way or the other on that. I'm just trying to explain
18 to you how the people that were involved with look at it.

19

20 And I know for a fact that the Copper
21 River is the tie, and the Copper River Delta. And all of
22 these other people use the Copper River and the Copper
23 River Delta and when they start talking Prince William
24 Sound, when you start talking Prince William Sound to the
25 people in Cordova, you're really talking the Copper River
26 Delta and the islands right around there, I mean that's
27 their idea of where the -- that's the basis -- that's the
28 biggest food source, the biggest income source and
29 everything else, you know, next to the commercial fishing
30 in Prince William Sound itself, and it's the tie, and
31 Whittier is not a part of that.

32

33 MR. OVIATT: Thank you.

34

35 ACTING CHAIR GOTTLIEB: But I guess there
36 was probably not a controversy that Whittier used other
37 portions of this area on the map?

38

39 MR. LOHSE: No, I don't think there'd be
40 any controversy at all that they use other portions of
41 Prince William Sound. I'm not sure that there would be a
42 controversy if you went the way that the Staff
43 recommended. I'm not sure that anybody's going to get up
44 in arms or anything like that. But like the original
45 proposers of the proposal put in, you know, they didn't
46 even think to include them because that wasn't what they
47 were trying to do and it's up to you guys to decide
48 whether there's sufficient data to show that they use the
49 freshwater fish of Prince William Sound up to Haley Creek
50 on the Copper River, and that's the part of it right

1 there that they should be included in this C&T.

2

3 All I can do is give you the Council's
4 recommendation and tell you what the vote on it was.

5

6 ACTING CHAIR GOTTLIEB: And you've done a
7 great job of doing that as always. Mr. Chair, I thought
8 we just better check with you, do you have any comments
9 before we're ready to go for a motion here?

10

11 (No comments)

12

13 ACTING CHAIR GOTTLIEB: Mitch, are you
14 on?

15

16 (No comments)

17

18 ACTING CHAIR GOTTLIEB: Denny, do you
19 have something.

20

21 (No comments)

22

23 ACTING CHAIR GOTTLIEB: We'll just check
24 the connection if you want to hold on a second.

25

26 (Pause)

27

28 CHAIRMAN DEMIENTIEFF: Hello.

29

30 ACTING CHAIR GOTTLIEB: Okay, you're
31 back. We just wanted to check with you if you have any
32 comments before we're ready for a motion here?

33

34 CHAIRMAN DEMIENTIEFF: No.

35

36 ACTING CHAIR GOTTLIEB: Okay, thank you.

37

38 MR. BSCHOR: Before I make a motion, we
39 can deal with Whittier in one of two ways. We can either
40 move to accept the Council's recommendation which
41 excludes Whittier and then vote on that -- or not vote on
42 that, get a second and then have an amendment to include
43 Whittier and we could have discussion on that amendment.

44

45 And I guess I've heard enough to know
46 that there's use from Whittier, it's not a great amount
47 of use and so that's the question before us, whether we
48 want to deal with that Whittier issue.

49

50 So I can start -- and I think the other

1 thing is I think that the wording that the Staff
2 Committee recommendation has is more, in my opinion, more
3 acceptable, so you might want to take a look at that
4 before I go any further. And my amendment might include
5 that wording. And it would -- well, let's see.

6

7 Here's what I'm going to do, I'm going to
8 make a motion to accept the Southcentral Advisory
9 Committee's recommendation on the C&T.

10

11 ACTING CHAIR GOTTLIEB: There's a motion,
12 is there a second.

13

14 MR. BUNCH: Second.

15

16 ACTING CHAIR GOTTLIEB: It's been
17 seconded. Discussion.

18

19 MR. BSCHOR: Can I amend my own motion;
20 is that process correct?

21

22 ACTING CHAIR GOTTLIEB: Go ahead.

23

24 MR. BSCHOR: Okay, everybody's shaking
25 their heads yes.

26

27 ACTING CHAIR GOTTLIEB: Okay.

28

29 MR. BOYD: Yes.

30

31 MR. BSCHOR: I'd like to amend this
32 motion to include the words of the -- insert the words of
33 the Interagency Staff Committee recommendation and that's
34 my amendment, and to include Whittier.

35

36 ACTING CHAIR GOTTLIEB: We'll need a
37 second for the amendment.

38

39 MR. OVIATT: I'll second.

40

41 ACTING CHAIR GOTTLIEB: Thank you,
42 George.

43

44 MR. BSCHOR: Let me go through my
45 reasoning before we get any more discussion on this so I
46 can have it in the record.

47

48 Once again we heard that this a narrowing
49 of the C&T so when it comes to the principles of fish and
50 wildlife conservation, there should be a negligible, if

1 any, effect; the C&T is supported by evidence,
2 substantial evidence in this case, in my opinion; and it
3 is actually helpful to subsistence needs, satisfaction of
4 subsistence needs.

5
6 Whittier has customary and traditional
7 finding for salmon in the Prince William Sound area as we
8 heard. We've heard about the transcripts of the reasons
9 why or why not or why it was not included but there is
10 evidence that there is use from Whittier. And true, that
11 not all the species are from the Prince William Sound
12 area, but some are.

13
14 In summary, Whittier is a rural community
15 in the Prince William Sound and there is supporting
16 information qualifying for customary and traditional use
17 for freshwater fish in the Prince William Sound, and the
18 action to exclude Whittier, I don't think is supported by
19 substantial evidence and would possibly detrimental to
20 the satisfaction of the Federally-qualified subsistence
21 users residing in Whittier.

22
23 ACTING CHAIR GOTTLIEB: Thank you. Any
24 other comments.

25
26 Charlie.

27
28 MR. BUNCH: Well, again, I'd have to give
29 a lot of deference to the Regional Advisory Committee's
30 recommendation and they saw fit to leave Whittier out of
31 there. I think under the terms or what the proposal says
32 to me is the freshwater waters and the data would seem to
33 say that the residents of Whittier don't, apparently, use
34 a lot of the freshwater waters around Prince William
35 Sound.

36
37 ACTING CHAIR GOTTLIEB: Other comments or
38 discussion.

39
40 Pete, go ahead, please.

41
42 MR. PROBASCO: Just so I can help
43 understand the motion from Mr. Bschor is that you have
44 amended the motion with the Interagency Committee's
45 recommendation, correct?

46
47 MR. BSCHOR: (Nods affirmatively)

48
49 MR. PROBASCO: So what we have on the
50 table is the Southcentral Council's proposal, or

1 recommendation on Page 237 which addresses waters of
2 Haley Creek and then you're amending it to include
3 residents of Prince William Sound only except those who
4 live in the Copper River drainage up stream of Haley
5 Creek. So you're going to have two parts of this C&T
6 recommendation. Is that your intent, Mr. Bschor?

7
8
9

MR. BSCHOR: Yes.

10 MR. PROBASCO: So with that clarification
11 what that's doing, Mr. Bunch, is that Whittier residents
12 would have C&T finding for Prince William Sound waters
13 except for Copper River drainage up stream of Haley
14 Creek.

15
16

ACTING CHAIR GOTTLIEB: I think, if
17 possible, it'd be great to get that wording on the screen
18 so we're all clear on it. So we'll take a minute to do
19 that.

20

21 MR. PROBASCO: If you'd give us a little
22 time, Madame Chair.

23

ACTING CHAIR GOTTLIEB: Sure.

24

25

(Pause)

26

27

ACTING CHAIR GOTTLIEB: Gary, go ahead.

28

29

30 MR. EDWARDS: Madame Chair. I guess I'm
31 still having a little bit of trouble even understanding
32 why we need to do a specific C&T for this area and why we
33 cannot just leave it as a statewide C&T for all rural
34 residents. I haven't heard really any argument other
35 than what was brought up by Ms. Armstrong that in times
36 of shortage it provides something, and I guess I can't
37 see in this case why we could not wait until that time
38 occurs and if there are sufficient uses by people outside
39 of Prince William Sound then we could address those, I
40 think in my mind, is somewhat of a different issue than
41 on the Kenai where I think there is some real potential
42 without doing a more definitive C&T and then trying to go
43 with methods and means of a real potential for conflict
44 and overharvest but I guess I haven't seen any evidence
45 that would even indicate that we just couldn't maintain
46 the status quo.

47

48

49

50

ACTING CHAIR GOTTLIEB: Any other

comments.

1 MR. BSCHOR: I think maybe it would be
2 helpful if I use the correct terminology here as far as I
3 really wanted to use the substitute language from the
4 Interagency Staff Committee.

5
6 ACTING CHAIR GOTTLIEB: Do you want to
7 read that off to us and see if that's what we have here,
8 if we've captured what your intent is?

9
10 (Pause)

11
12 MR. BSCHOR: I can't read that screen from
13 here, is that it?

14
15 (Pause)

16
17 MR. BSCHOR: Sorry, I can't read that
18 screen from here but -- oh, it's back here -- yes, that's
19 correct.

20
21 ACTING CHAIR GOTTLIEB: I guess my
22 question would be what does it mean, revise the wording
23 to more efficiently describe the communities included.

24
25 Pete.

26
27 MR. PROBASCO: Madame Chair. I was
28 looking for the clarification, was it an amendment to the
29 motion or a substitute? And since it's a substitute then
30 you would refer to Page 237 and that language in bold
31 under the Interagency Staff Committee recommendation is
32 the motion by Mr. Bschor.

33
34 Madame Chair.

35
36 ACTING CHAIR GOTTLIEB: Now, please help
37 me out, Tom, we had a motion, we had an amended motion.

38
39 MR. BOYD: That's where we're at, not
40 substitute.

41
42 ACTING CHAIR GOTTLIEB: Not, as far as I
43 know, a substituted -- or you were substituting wording
44 but.....

45
46 MR. BOYD: We've had an amendment and a
47 second.

48
49 ACTING CHAIR GOTTLIEB: Right. We've had
50 an amendment and a second to that amendment.

1 MR. BOYD: And we're discussing the
2 amendment and we're needing to get clarification on the
3 amendment.

4
5 ACTING CHAIR GOTTLIEB: Are you trying to
6 reword your amendment?

7
8 MR. BSCHOR: No. No, I think this is
9 what I want, this includes Whittier. Okay. So if you
10 don't want to include Whittier, you got to vote against
11 this amendment, right?

12
13 MR. BOYD: Madame Chair. To try to
14 clarify, what I understand is we have a main motion and
15 that is to adopt the recommendation of the Southcentral
16 Advisory Council. Then we have an amendment which would
17 be to add Whittier to the customary and traditional use
18 determination and that's the amended part. And I guess I
19 was struggling to understand if there was more to the
20 amendment than just simply adding Whittier.

21
22 Madame Chair.

23
24 MR. BSCHOR: That's why I hesitated
25 before I made the motion because I think there is -- the
26 wording as you see right there includes Whittier, I want
27 to make sure of that.

28
29 MR. BOYD: Right.

30
31 MR. BSCHOR: I just got a clarification
32 and it's the way I thought. Basically the affect of the
33 wording, the substitute of wording, is the same as the
34 wording from the Southcentral except their wording says,
35 except Whittier, this wording would include Whittier.

36
37 ACTING CHAIR GOTTLIEB: Okay.

38
39 MR. BSCHOR: So does that help?

40
41 ACTING CHAIR GOTTLIEB: It does help. So
42 what we'll need to do is vote on the amendment, but I see
43 Ralph, do you have a comment?

44
45 MR. LOHSE: Yes. Actually if you use the
46 substitute language right there, I see that we've
47 addressed the question that Cooper Landing brought up,
48 too. And that was one of the things that I guess we
49 missed in our discussion before, the language that the
50 Southcentral put forward said the waters of the Chugach

1 National Forest and didn't delineate those to the Prince
2 William Sound waters of the Chugach National Forest,
3 where this does. And I think that that, in itself, is a
4 good clarifying amendment right there.

5
6 Now, the last part of it, I'll leave that
7 up to you.

8
9 ACTING CHAIR GOTTLIEB: Thank you. Tom.

10
11 MR. BOYD: Madame Chair. I'll try to
12 articulate what I understand to be the amendment to the
13 main motion.

14
15 The amendment would be in two parts.
16 Include Whittier in the communities that would have
17 customary and traditional use; and secondly to revise the
18 description of the area in which they have customary and
19 traditional use. And that revision would change the
20 language that says waters of the Chugach National Forest
21 to -- let me read the whole thing.

22
23 It would change the description from
24 waters of Copper River drainage down
25 stream of Haley Creek and waters of the
26 Chugach National Forest to:

27
28 Federal public waters of the Prince
29 William Sound area, except for the Copper
30 River drainage upstream of Haley Creek.

31
32 Madame Chair.

33
34 ACTING CHAIR GOTTLIEB: Thank you for
35 that clarification. Are we ready to vote on the
36 amendment.

37
38 John.

39
40 MR. LITTLEFIELD: Yeah, I didn't want to
41 get involved in this procedure but I just had a question
42 here, we have -- I looked in the book here and we've got
43 one, two, three, four, five, six, 10 existing C&T
44 determinations for the waters of Prince William Sound
45 right now, 10 of them already existing, so I have to
46 assume they went through some kind of process. But I'm
47 struggling with what the heck is a freshwater fish, you
48 know, these are all talking about salmon, I thought
49 salmon was a freshwater fish at some time, too, so I just
50 didn't know what freshwater fish meant. Does it include

1 salmon or what are we talking about here?

2

3 Because you've got eulachon C&Ts, which
4 are freshwater some of the time, sometimes they're not.
5 You've got salmon, which are freshwater some of the time,
6 sometimes they're not. Dolly varden which are freshwater
7 some of the times; I don't understand what freshwater
8 fish means and I just would ask if you guys knew.

9

10 ACTING CHAIR GOTTLIEB: We'll let one of
11 the doctors answer the question, please.

12

13 MR. EDWARDS: Wait a minute, one of the
14 doctors said that she wasn't a fish expert so we don't
15 want her answering it.

16

17 (Laughter)

18

19 ACTING CHAIR GOTTLIEB: The one next to
20 her.

21

22 MS. ARMSTRONG: Well, I'm also not a
23 doctor so there, I'm excluded.

24

25 (Laughter)

26

27 MS. ARMSTRONG: But I think -- no, I was
28 going to make a joke, but we had this question come up
29 because somebody made an error saying all freshwater
30 fish, meaning to include salmon and it was fish
31 biologists, so I'm not even sure the fish biologists
32 always know but anyway I'm not going to answer the
33 question. You can ask a fish biologists, we've got one
34 right here.

35

36 ACTING CHAIR GOTTLIEB: Tim, or Bill, can
37 you help us on this one, or Pete.

38

39 MR. PROBASCO: Madame Chair, if you'll
40 give me a second, I think this is a very good question
41 that we need to clarify, freshwater fish. When the
42 Interagency Staff Committee discussed it we were looking
43 specifically at the species and recognizing the fact that
44 when we do C&T and we do address salmon, salmon is
45 treated independently of other species. So I think it's
46 very important that we clarify what the intent is of
47 freshwater fish.

48

49 When we acted on it, we were looking at
50 Dolly varden, lake trout, grayling, those species, Madame

1 Chair, I think we need to clarify that.
2
3 ACTING CHAIR GOTTLIEB: We'll wait for
4 the clarification.
5
6 (Pause)
7
8 ACTING CHAIR GOTTLIEB: Kelly.
9
10 MR. HEPLER: At least in the State
11 regulations, we define it in location of the harvest, so
12 if not you get into this kind of discussion that John
13 articulated. Because any one of these fish, at least
14 most of them, that he mentioned are anadromous fish. So
15 it's the location of the harvest is how we looked at it,
16 it's not the actual species itself.
17
18 So very easily in Prince William Sound
19 you could catch salmon in freshwater, I have, so, Madame
20 Chair.
21
22 ACTING CHAIR GOTTLIEB: Thanks very much.
23
24 (Pause)
25
26 MR. LOHSE: Madame Chair.
27
28 ACTING CHAIR GOTTLIEB: Ralph.
29
30 MR. LOHSE: Could I ask Kelly a question.
31
32 ACTING CHAIR GOTTLIEB: Yes.
33
34 MR. LOHSE: Kelly, would a good
35 description that would solve this problem be all other
36 fish except salmon caught in freshwater?
37
38 MR. HEPLER: Yeah, and I'm also looking
39 for the area management biologist, Matt, I mean for me
40 that's pretty clear to me and, Madame Chair, with your
41 indulgence we could ask Matt Miller, the area management
42 biologist if he would agree with that, but that makes
43 sense to me.
44
45 ACTING CHAIR GOTTLIEB: Go ahead.
46
47 MR. MILLER: Madame Chair. Yeah, for the
48 record I'm Matt Miller, sportfish area management
49 biologist for Prince William Sound.
50

1 Yes, I mean, as was stated, many of the
2 species that are freshwater fish are anadromous, spend
3 their times both ways so it depends on your definition of
4 it, but that certainly seems to be a reasonable one.

5
6 Madame Chair.

7
8 ACTING CHAIR GOTTLIEB: Thank you. Well,
9 we'll wait for Staff Committee to come back and I think
10 if we're able to convey intent of our motion and
11 regulation I think we'll get it squared away, so hang on
12 for a minute.

13
14 (Pause)

15
16 ACTING CHAIR GOTTLIEB: Keith.

17
18 MR. GOLTZ: Well, during the break just
19 to dispel anybody who might be confused or apprehensive,
20 the Federal jurisdiction does not extend to marine waters
21 in Prince William Sound.

22
23 MS. ARMSTRONG: Madame Chair.

24
25 ACTING CHAIR GOTTLIEB: Yes, Helen.

26
27 MS. ARMSTRONG: I also would just like to
28 make the comment that I did the analysis on freshwater
29 fish assuming that it did not include salmon. So if
30 anyone wanted to do that that analysis did not cover
31 salmon.

32
33 ACTING CHAIR GOTTLIEB: Thanks for that
34 clarification.

35
36 MR. EDWARDS: Madame Chair.

37
38 ACTING CHAIR GOTTLIEB: Gary.

39
40 MR. EDWARDS: One of the things that some
41 of us are questioning up here is the reference to
42 sturgeon. I'm not aware of sturgeon in any waters in
43 Alaska. Well, if somebody can help me out then, tell me
44 where I can go to get one.

45
46 (Laughter)

47
48 MR. LOHSE: We have sturgeon in the
49 Copper River.

50

1 MR. LITTLEFIELD: You can't get one.
2
3 (Laughter)
4
5 MR. LOHSE: And we have sturgeon on the
6 Copper River Flats also.
7
8 MR. EDWARDS: Madame Chair. I don't know
9 if we're still in deliberation or not but I'm going to
10 say.....
11
12 ACTING CHAIR GOTTLIEB: We seem to be.
13
14 (Laughter)
15
16 MR. EDWARDS: Actually I'm going to vote
17 no both for the amendment and vote no for the original
18 motion for the reason that I previously stated.
19
20 However, if I was to vote yes, I would
21 vote, I guess, yes, with the Council because I personally
22 don't feel that there's been sufficient evidence to show
23 that Whittier should be included other than having the
24 change in the language, so that's where I'm going to be
25 coming from.
26
27 ACTING CHAIR GOTTLIEB: Just to clarify,
28 a change in which language then?
29
30 MR. EDWARDS: Well, no, I said I'm going
31 to vote no for both the amendment, and if the amendment
32 fails I'm still going to vote for the original motion.
33 But I'm just saying if I did have to -- would vote, yes,
34 it would be basically in support of what the Southcentral
35 Regional Advisory Council is recommending.
36
37 ACTING CHAIR GOTTLIEB: Tom.
38
39 MR. BOYD: Madame Chair, if I might lead
40 a little bit, I think what we're going to try to do here
41 recognizing that we've sort of created a mystery about
42 what freshwater fish means, I don't think that was our
43 intent. I think the intent was to sort of capture the
44 breadth of the species that were involved here. And, you
45 know, I'm not sure exactly what the regulatory language
46 should be, but the intent was to capture a list of
47 species that we were looking at and I think if you will
48 allow us to read that list we can, at a separate time,
49 work on, and that would capture the intent of the
50 recommendation and I believe, hence, the intent of the

1 motion. We would then work on the appropriate regulatory
2 language. But if you can get the intent with the list of
3 species that we're talking about, hopefully that will
4 clarify that we mean by freshwater fish.

5
6 Madame Chair.

7
8 ACTING CHAIR GOTTLIEB: Thanks. Why
9 don't we hear from Pete.

10
11 MR. PROBASCO: Thank you, Madame Chair.
12 And that was a very good catch, to clarify it.

13
14 I worked with Bill Knauer, Steve Kessler
15 and Tim Joyce and we also looked at the current C&T
16 regulations for this area to define what freshwater
17 species this proposal is discussing.

18
19 And the list that we would recommend
20 addresses:

21
22 Trout, which includes cutthroat, rainbow
23 and steelhead;

24
25 Char, which would include Dolly varden;

26
27 The various whitefish species;

28
29 Grayling;

30
31 Burbot; and

32
33 Suckers.

34
35 Madame Chair.

36
37 ACTING CHAIR GOTTLIEB: Thank you for
38 clarifying that for us. Any other comments.

39
40 John.

41
42 MR. LITTLEFIELD: Just as a matter of
43 process, Madame Chair. I would suggest that first you
44 have a vote on whether to accept the substitute language
45 and then discuss it.

46
47 ACTING CHAIR GOTTLIEB: Okay, we'll take
48 a vote on the amended motion. I think we decided we
49 didn't have substitute language, we have an amended
50 motion in front of us.

1 Okay, is everybody clear what the amended
2 motion is.
3
4 (No comments)
5
6 ACTING CHAIR GOTTLIEB: All those in
7 favor signify -- Mitch, is it clear enough to you on the
8 phone, it's got to be pretty confusing.....
9
10 CHAIRMAN DEMIENTIEFF: No, I'm --
11 I'm.....
12
13 ACTING CHAIR GOTTLIEB: Okay, very good.
14
15 All those in favor signify by saying aye.
16
17 IN UNISON: Aye.
18
19 ACTING CHAIR GOTTLIEB: All those
20 opposed, same sign.
21
22 (No opposing votes)
23
24 ACTING CHAIR GOTTLIEB: The amended
25 motion carries and becomes the main motion.
26
27 Any further discussion on the main motion
28 then.
29
30 CHAIRMAN DEMIENTIEFF: Question on the
31 main motion.
32
33 ACTING CHAIR GOTTLIEB: All those in
34 favor signify by saying aye?
35
36 IN UNISON: Aye.
37
38 ACTING CHAIR GOTTLIEB: All those
39 opposed, same sign.
40
41 MR. EDWARDS: Aye.
42
43 ACTING CHAIR GOTTLIEB: Motion does pass.
44 And we thank you for your assistance on this one.
45
46 We'll move to Proposal 19, and we'll take
47 a break after 19.
48
49 (Pause)
50

1 ACTING CHAIR GOTTLIEB: Whenever you're
2 ready, thank you.

3
4 MR. BERG: Thank you, Madame Chair.
5 Jerry Berg with Fish and Wildlife Service. And just for
6 the record I did want to mention that there are a few
7 sturgeon in the Copper River, they're not very many, but
8 as Ralph said there are a few and actually documented one
9 green sturgeon in the Kuskokwim River last summer. So
10 it's a pretty off event but it does happen.

11
12 Proposal 19 was submitted by the Copper
13 River/Prince William Sound Advisory Committee in Cordova
14 and requests that the seasons, harvest and possession
15 limits for cutthroat trout, rainbow trout, lake trout,
16 Dolly varden, whitefish and grayling be identical to the
17 Alaska sportfishing regulations for these species in the
18 Prince William Sound area except for the Copper River
19 drainage up stream of Haley Creek.

20
21 Federal regulations for freshwater fish
22 species in the Prince William Sound area fall under the
23 general provision section since there are no specific
24 Federal regulations for freshwater fish in this area.
25 The proponent is concerned that the current regulations
26 may lead to conservation concerns with the growing
27 interest in the Federal subsistence fishing permits.

28
29 There are a few stipulations for
30 freshwater water fish harvest identified on the Federal
31 permit for this area of Prince William Sound. As I
32 mentioned before the Federal subsistence fishing permit
33 for this area has only been issued for one year and
34 stipulations for that permit were identified at a meeting
35 held in Cordova a little over a year ago. These permit
36 stipulations allow for the harvest of freshwater fish
37 with rod and reel and spears year-round, and with
38 gillnets from January 1 to April 1 only. The permit does
39 specify harvest limits for trout since trout populations
40 are on the edge of their range and are especially
41 vulnerable to overharvest in this area. The term, trout,
42 includes cutthroat trout, rainbow trout, and rainbow
43 cutthroat hybrids.

44
45 The annual harvest limit for trout is
46 five trout per person with a household limit of 30. The
47 permit also limits trout taken incidentally in a gillnet
48 to an annual limit of 10 per household. The permit also
49 has a closed season for trout with from April 15 to June
50 15 to protect spawning fish. And only allows rainbow

1 trout or steelhead trout to be retained if caught
2 incidentally in a net. And as I mentioned yesterday, the
3 permit must be in the users possession and all fish must
4 be recorded on the permit prior to leaving the fishing
5 site.

6
7 State subsistence harvest limits, methods
8 and seasons for freshwater fish in the Prince William
9 Sound area are also established by permit similar to the
10 Federal permit requirement in this area.

11
12 Obviously there are numerous Alaska
13 sportfishing regulations for Prince William Sound
14 freshwaters and they are summarized in the analysis, I
15 won't go into those unless there are questions.

16
17 Adopting this proposal would limit
18 Federal subsistence users to the same restrictions for
19 freshwater fish as identified in sportfishing
20 regulations for this area of Prince William Sound. This
21 change could also preclude the use of gillnets to harvest
22 whitefish for subsistence during the winter months
23 because incidental harvest of trout and/or Dolly varden
24 would likely exceed the sportfishing harvest limits.
25 Since these incidental harvests of trout with gillnets
26 could easily exceed the sportfishing harvest limits this
27 could also put subsistence users in violation of the
28 proposed regulation.

29
30 Of the 46 Federal subsistence fishing
31 permits issued this year, only 21 were used, and of those
32 21 permit holders, there were only two freshwater fish
33 harvested, and those were two Dolly varden that were
34 taken by a rod and reel fisherman while fishing for coho
35 salmon.

36
37 The seasons and harvest limits for
38 freshwater fish for Federal subsistence users could also
39 be addressed at the meeting that we mentioned yesterday
40 that's planned to be held in Cordova this winter to
41 discuss the permit provisions for the 2006 season.

42
43 I'd be happy to try to answer any
44 questions, Madame Chair.

45
46 ACTING CHAIR GOTTLIEB: Thank you. Are
47 there questions for Jerry.

48
49 (No comments)

50

1 ACTING CHAIR GOTTLIEB: Are there public
2 comments, please.

3
4 MR. MIKE: Thank you, Madame Chair. I'm
5 Donald Mike, Council coordinator for the Southcentral
6 region.

7
8 At the meeting in Kenai, October 2005,
9 the Native Village of Eyak submitted a written comment
10 during this proposal.

11
12 And it states, it has come to my
13 attention that the Southcentral
14 Subsistence Regional Advisory Council
15 passed FP06-19 at its Kenai meeting
16 yesterday against Staff recommendation.
17 I strongly recommend that you bring this
18 action up for reconsideration and vote
19 against it. Our staff was present at the
20 meeting but not able to testify due to
21 the rapid manner in which this proposal
22 was brought up for consideration and the
23 short deliberations. This is out of the
24 ordinary for the practice of the Council,
25 which normally allows plenty of time for
26 comment from the public and takes
27 considerable time in its deliberations.

28
29 I request that you have Donald Mike read
30 this into the record at the meeting, and
31 if you choose bring up this proposal for
32 reconsideration using this additional
33 information.

34
35 This proposal request that seasons,
36 harvest limits and possession limits for
37 cutthroat trout, rainbow trout, lake
38 trout, Dolly varden, whitefish and
39 grayling be identical to the Alaska
40 sportfishing regulations for these
41 species in the waters of Prince William
42 Sound, except for those waters of the
43 Copper River drainage up stream of Haley
44 Creek.

45
46 The reasons the Native Village of Eyak
47 opposes this proposal and requests that
48 you bring it up for reconsideration are
49 as follows:
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Alaska sportfishing regulations do not provide a priority for the subsistence users as required under Federal law.

Some areas are only catch and release in the sportfish regulations, other areas have restrictive size and different bag limits. While the proposal does not specifically restrict gear types and methods and means, they, in effect, do restrict gear types. How can you catch only one trout in a gillnet under the ice?

The needs of subsistence users are different enough and at odds with the needs of sports users and the conflict and diminishment of subsistence opportunity of such a regulation now and over time can meet the needs of subsistence users is painfully obvious.

One stated reason given by the Council member was that State sportfishing bag limits were more liberal than the subsistence bag limits, this is not true. Even if it was, the way to address it is to amend the subsistence bag limits if there is a requested need. Do not make a blanket change based on the sportfishing limits.

The regulation is unduly restrictive. No one has brought up a conservation concern. There is no need to blanket restrict the subsistence fishery in this way. If there is a conservation concern, restrictions should be placed on sport and commercial fisheries before subsistence fisheries. If there is a need to expand opportunity it should be done in response to a specific need and request.

There is no need to address bag limits or seasons at this time, if there was, it should be done in restriction and conversion of the entire subsistence regulation. This is unwarranted, uncalled for and circumvents the advisory

1 process and is totally out of line.

2
3 The Staff Committee recommendation was to
4 oppose this proposal. The Staff
5 Committee recommendation is well founded
6 and well researched. We feel the Council
7 needs to go over these recommendations
8 and ask more questions of Staff to better
9 understand why they made this
10 recommendation.

11
12 The Native Village of Eyak agrees with
13 the Staff recommendation to oppose this
14 proposal for the reasons given in the
15 Staff analysis and urges the Council to
16 evaluate this further.

17
18 This proposal will unnecessarily limit
19 the Federal manager's ability to make
20 adjustments for response to local needs
21 as they come up. And the Native Village
22 of Eyak Traditional Council strongly
23 recommends that you reconsider this
24 proposal and vote it down.

25
26 Sincerely, Robert J. Henrichs.

27
28 Thank you, Madame Chair.

29
30 ACTING CHAIR GOTTLIEB: Thanks very much.
31 Any questions or comments.

32
33 (No comments)

34
35 ACTING CHAIR GOTTLIEB: We have no people
36 signed up for public testimony so we'll go to Regional
37 Advisory Council recommendation, please.

38
39 MR. LOHSE: Well, Madame Chair, another
40 boo-boo by the Chairman.

41
42 Actually, I went back through the minutes
43 and I called for a lot of discussion on it and nobody
44 came up with any discussion, the question was called and
45 it slipped by us, the fact that there were areas that had
46 closed. At the time the only thing that came out was
47 the fact that the current subsistence regulations were
48 smaller than the current sportfishing regulations and so
49 they chose to adopt the sportfishing regulations.

50

1 However, as is pointed out by the Native
2 Village of Eyak, part of the area that's not very
3 accessible has got a catch and release only and it's
4 pretty hard to have a catch and release subsistence
5 fishery.

6
7 With that, I'll just say the Southcentral
8 Regional Advisory Council supported the proposal as
9 written and we do miss things and do mistakes. It was
10 called back up to come up for reconsideration and it was
11 voted down, the reconsideration was voted down, so that's
12 where we're at.

13
14 ACTING CHAIR GOTTLIEB: Thank you. John.

15
16 MR. LITTLEFIELD: Thank you, Madame
17 Chair. I have no position on this but I just, you know,
18 the discussion we just had on ANILCA should make it clear
19 that adopting -- wholesale adoption of the State
20 regulations does not provide a meaningful priority for
21 the rural residents because we're losing some stuff here.

22
23 I mean these have to be discussed to
24 provide a meaningful priority that's why I asked about
25 the Copper River, what's happening there, why are we just
26 using State regulations. And I fail to see where the
27 meaningful priority that we're charged with comes from by
28 adopting State regulations. There is no meaningful
29 priority.

30
31 So just a comment.

32
33 ACTING CHAIR GOTTLIEB: Thank you. Other
34 comments.

35
36 MR. LOHSE: Madame Chair.

37
38 ACTING CHAIR GOTTLIEB: Yes.

39
40 MR. LOHSE: I'd like to answer my
41 colleague in defense of the Council that didn't do a real
42 good job on this one. But at the time that they looked
43 at it, they saw the meaningful priority as the fact that
44 it was allowing other gear types other than rod and reel,
45 which were asked for, and they looked at the fact that in
46 most of the waters it increased the limit over the
47 current subsistence bag limit, which was a yearly bag
48 limit while the sportfishing bag limit was a daily bag
49 limit. And so they thought it was a meaningful, but like
50 I said we didn't do our homework well, we missed part of

1 the area that was closed completely and never gave a
2 thought to slot bag limits.

3

4 ACTING CHAIR GOTTLIEB: Well, we know
5 your Council is extremely diligent and none of these
6 proposals ever seem to be straightforward so it's
7 understandable to sometimes perhaps have them not be
8 entirely clear.

9

10 With that we'll go to the Interagency
11 Staff Committee recommendation, please.

12

13 MR. PROBASCO: Thank you, Madame Chair.
14 Reference Page 294. The Interagency Staff Committee
15 opposes this proposal, contrary to the recommendation of
16 the Southcentral Alaska Regional Advisory Council.

17

18 This proposal would change the Federal
19 seasons, harvests and possession limits for cutthroat
20 trout, rainbow trout, lake trout, Dolly varden, whitefish
21 and grayling to be identical to the State of Alaska
22 sportfish regulations in the waters of Prince William
23 Sound except Copper River drainage up stream of Haley
24 Creek.

25

26 While supporting the proposal, the
27 Southcentral Alaska Regional Advisory Council provided no
28 rationale for this recommendation. The proposal should
29 be rejected because Proposal 19 would place restrictions
30 on Federally-qualified subsistence users that would be
31 detrimental to the satisfaction of their subsistence
32 needs. There is no evidence that the subsistence harvest
33 of freshwater fish would violate recognized principles of
34 fish and wild conservation. A Federal subsistence permit
35 is required to harvest freshwater fish and that permit
36 requires a record of the harvest and the location of the
37 harvest.

38

39 The subsistence fishery can be monitored
40 through these permits and changes made by the Federal in-
41 season manager to the permit conditions, if needed.

42

43 It is recommended that a meeting be held
44 in Cordova with all interested users and agency personnel
45 to discuss to permit provisions for the 2006 season as
46 was done in 2005.

47

48 Madame Chair.

49

50 ACTING CHAIR GOTTLIEB: Thank you very

1 much. Department -- Gary.

2

3 MR. EDWARDS: Well, Pete, let me ask you,
4 given the previous vote on the previous motion, does that
5 have any implications for this and if that vote was
6 previously -- do you think the Staff Committee would have
7 reached the same decision?

8

9 MR. PROBASCO: Madame Chair. Mr.
10 Edwards. The previous vote was on a C&T determination,
11 this is for methods and means, and I don't think that
12 would have any -- it wouldn't have any affect because of
13 the way this fishery is managed with the permit.

14

15 MR. EDWARDS: Right. I guess what I was
16 trying to get at, now, that we've determined it does now
17 -- the folks using now these methods and means is now a
18 smaller group than potentially what was a larger group,
19 correct?

20

21 MR. PROBASCO: Madame Chair. Mr.
22 Edwards. On freshwater fish, that's correct, it'd be a
23 smaller group of users.

24

25 ACTING CHAIR GOTTLIEB: Keith.

26

27 MR. GOLTZ: I just want to speak to the
28 matter of a meaningful use preference. And I hope I'm
29 not being quoted as saying that the State cannot provide
30 a meaningful use preference. And if Steve wants to jump
31 in on this I'll welcome it.

32

33 What I see as the critical difference
34 between the State and Federal programs is the Councils,
35 its process. And the State does have in place its own
36 regulation dealing with councils, it seems to me if they
37 activated that and gave the councils deference, they
38 could, in fact, provide a meaningful use preference as
39 it's defined under ANILCA.

40

41 We should not lose sight of the fact that
42 the goal of this Secretary and every Secretary before it
43 has been to get this program back to the State, and our
44 ultimate goal is unity, not division, on these questions.

45

46 ACTING CHAIR GOTTLIEB: John.

47

48 MR. LITTLEFIELD: I didn't know we were
49 going to get into it too much, but I guess the way I look
50 at this is the existing State regulations on subsistence

1 apply to all residents. We're talking about a program
2 here and I talked about this several times today, and the
3 clear reading of ANILCA is to provide a meaningful
4 priority for the rural residents for their customary and
5 traditional uses of Alaska.

6
7 Adopting State regulations that mirror
8 and allow everybody to come in from Anchorage, in other
9 words, Mr. Edwards could go get a sturgeon, if he felt
10 like, under State regulations, he could not under the
11 Federal regulations because they are for rural residents.

12
13 That's why I thought there was quite a
14 difference there and I'm talking only about the rural
15 residents. That priority is the same right now by
16 adopting State regulations as it is for a resident of
17 Anchorage. You can both go down there under the same
18 sportfish regulations, there is no meaningful priority.
19 And that was my observation.

20
21 I didn't mean it couldn't apply but in
22 this particular case it doesn't.

23
24 ACTING CHAIR GOTTLIEB: Ralph.

25
26 MR. LOHSE: Madame Chair. I think that
27 listening to John, and I'm not disagreeing with him, but
28 I think in this case the -- it did not apply to methods
29 and means it just applied to bag limits. And you could
30 have -- we've done it before in other areas, we've had
31 the same bag limits as the State for Federal subsistence
32 fisheries. And that still is a meaning preference
33 because of access and methods and means.

34
35 ACTING CHAIR GOTTLIEB: Kelly.

36
37 MR. HEPLER: Madame Chair. Since your
38 learned Counsel gave us the opportunity, Steve, do you
39 have anything you want to add to what Keith had on
40 record.

41
42 MR. DOUGHERTY: Thank you. Through the
43 Chair, the State does believe that a meaningful
44 preference can be provided while using -- under the State
45 system, under the State regulations. As was noted by the
46 Council members, there are different means -- methods and
47 means. There is also the fact that in times of shortage
48 the Federal subsistence users would be able to claim a
49 priority on the Federal public lands.

50

1 So we also believe that the Councils are
2 able to look at what they need to meet their subsistence
3 uses and that ANILCA does not require, if there's enough
4 for everyone to take and the subsistence uses are being
5 met, ANILCA does not require that more be provided to
6 subsistence users if their needs are being met. The
7 preference is when there isn't enough for everyone.

8

9 Thank you, Madame Chair.

10

11 ACTING CHAIR GOTTLIEB: Thank you. Any
12 other comments. Department comments, please, on this
13 proposal.

14

15 MR. MILLER: Madame Chair. The State
16 fisheries have developed over the years based on research
17 and strong public input on fisheries issues. Management
18 plans, season closures and bag limits have been developed
19 to assure sustainable fisheries and address biological
20 and social concerns. Failure to adopt this proposal puts
21 Federal and State regulations in direct conflict and will
22 cause conflicts between user groups.

23

24 The analysis states that the Federal
25 delegated official can adjust permit provisions as needed
26 based on the latest harvest data. However, Federal
27 subsistence fisheries do not have any form of in-season
28 reporting requirements so it's difficult to see how this
29 is possible.

30

31 As stated in the Federal analysis under
32 biological background and harvest history, Prince William
33 Sound is at the most northern and western extreme of the
34 natural range for cutthroat trout. As a result the
35 cutthroat trout population in Prince William are small
36 and scattered in their distribution. In general
37 populations of fish on the outer extremes of the range
38 tend to be more susceptible to environmental changes and
39 their survival rates are highly variable. Cutthroat
40 trout are also subject to incidental catch in nearby
41 commercial fisheries adding further potential risks to
42 these small stocks. Allowing gear types that increase
43 the success of harvest providing liberal bag limits and
44 not having any form of in-season harvest reporting places
45 these small stocks at risk of over exploitation.
46 Obtaining abundance information on these stocks is very
47 expensive. And it is likely that it will not be
48 collected on a regular basis.

49

50 It is not premature to place conservative

1 provisions on uses when considering the capability of
2 gillnets to harvest small discreet fish stocks. The
3 reason these stocks are sustainable is because they have
4 been managed very conservatively.

5
6 If the intention of the Federal delegated
7 official is to alter permit stipulations in-season to
8 deal with annual variations and stock strength, effort,
9 et cetera, there should be clear and valid standards for
10 such action established before the season as well as an
11 identified means of notifying all participants. The
12 mechanism for altering requirements listed on the permit
13 is not clear from the analysis.

14
15 There also needs to be clear definition
16 of what constitutes a conservation concern that will
17 trigger such action. Use of the term conservation
18 concern may be somewhat unclear to State managers and
19 users alike since the usage in this analysis is
20 inconsistent with the State's definition.

21
22 We support the intent of this proposal to
23 adopt State seasons, harvest and possession limits for
24 freshwater fin fish other than salmon, would help align
25 State and Federal regulations and enact closures on areas
26 for which current regulations seek to maintain historical
27 cutthroat trout age and length compositions. These
28 provisions would not restrict Federally-qualified
29 subsistence users from opportunity to fish in easily
30 accessible areas. Federal regulation is not required to
31 accomplish this.

32
33 We support the proposal.

34
35 Madame Chair.

36
37 ACTING CHAIR GOTTLIEB: Thank you. Other
38 comments or questions. Gary.

39
40 MR. EDWARDS: I just had one comment. I
41 think this is the first time, at least, I'm ever aware of
42 at where the State has supported the Regional Advisory
43 Committee and the Staff Committee has not. So we ought
44 to mark this as a historical moment.

45
46 (Laughter)

47
48 ACTING CHAIR GOTTLIEB: Thank you.
49 Further discussion.

50

1 MR. BSCHOR: Yeah, I have a question for
2 the State.

3
4 ACTING CHAIR GOTTLIEB: Denny.

5
6 MR. BSCHOR: Can you tell me why the
7 State sportfishing regulations don't allow retention of
8 trout east of the Copper River?

9
10 MR. MILLER: Madame Chair. Mr. Bschor.
11 East of the Copper River, as you see in our
12 regulations, the State regulations, there's a special
13 management area for trout that was adopted by the Board
14 of Fish, I believe, six years ago, I believe it was in
15 '99 -- at the '99 meeting. The reason for that is
16 because it's a fairly inaccessible area. Basically you
17 have to get in by flying in or else a few jet boats or
18 the air boats can get back in there and there was a road
19 that was supposed to go back through. As a Federally
20 mandated highway that was going to go off the Copper
21 River Highway, cut through the Forest Service land to
22 access Chugach Regional, I believe's property, Mr. Lohse
23 can speak to that, but it was property up inside there
24 they wanted to develop for timber. The road started
25 being built there, we put projects in the field to go see
26 what the age and length distribution was going to be in
27 there trying to put some regulations in effect to
28 preserve some of that before increased access changed the
29 population dynamics back there.

30
31 MR. BSCHOR: And so that road wasn't
32 built, hasn't been built yet?

33
34 MR. MILLER: Madame Chair. The road
35 hasn't been built yet. My understanding is that timber
36 prices dropped, the road started, I believe it got to
37 Sheep Creek. They're probably, from what I understand,
38 again, are waiting for timber prices to come back up
39 before they continue with the construction on that road.

40
41 MR. BSCHOR: One more question. Is there
42 a resource concern of the remote area east of the Copper
43 River to not allow a subsistence harvest, while there is
44 not a concern -- there's not that concern west of the
45 Copper River along the road system.

46
47 MR. MILLER: Madame Chair. Mr. Bschor.
48 Well, again, the State's regulations back there are to
49 try and maintain some sort of historical population
50 status. The road accessibility from the eastern -- from

1 the western side of the Copper is from Cordova out to the
2 Copper, it had already been fished pretty heavily. We
3 still have very conservative State limits out there.

4

5 Did that answer your question?

6

7 MR. BSCHOR: (Nods affirmatively)

8

9 ACTING CHAIR GOTTLIEB: I wonder if I
10 could ask Tim, several references have been made to this
11 meeting that you plan on holding, I assume you'll invite
12 the proponent, the Copper River/Prince William Sound
13 Advisory Committee to this meeting, and what other topics
14 might be discussed there, what would be your key points
15 at that meeting, please?

16

17 MR. JOYCE: Madame Chair. This would
18 just be a meeting that would be providing input to the
19 in-season manager. We would certainly put -- advertise
20 it in the paper, local paper, radio and notices at the
21 Post Office, et cetera, just for folks, and we'd probably
22 send letters out to, particularly like to the proponent,
23 as you said, advertise it, we would like to have input.
24 So those folks would then come and it would be certainly
25 open to anybody that would like to participate and
26 provide any input to the in-season manager on any
27 particular regulations. Particularly since the ones you
28 have talked about and sent back basically to us to deal
29 with. So that's what it would do.

30

31 ACTING CHAIR GOTTLIEB: And so you
32 probably would also discuss the harvest that have taken
33 place and your ways to monitor and perhaps make in-season
34 changes, if necessary?

35

36 MR. JOYCE: yes, Madame Chair. We would
37 certainly review last year's' harvest and what happened
38 and if there was any concerns that would be generated
39 from that. And certainly the Department is always
40 invited to these things. We had Department involvement
41 last year. There was at least two or three members from
42 the Department that were at the meeting last year when we
43 discussed these stipulations for the permit. So, yes,
44 they would be involved, too.

45

46 ACTING CHAIR GOTTLIEB: Thank you.

47 Gary.

48

49 MR. EDWARDS: Just one more question of
50 Ralph. Ralph, maybe despite some of the lack of

1 oversight maybe by the Council, I mean do you think
2 there's still a general feeling that the net benefits
3 outweigh the potential net losses with some of these
4 areas being closed?

5
6 MR. LOHSE: Well, I don't know if that's
7 the general prevailing feeling in the community. I know
8 that the areas that he's talking about being closed are
9 pretty much inaccessible to anybody in the community
10 anyhow. You'd have to either own an air boat or a jet
11 boat or spend some money to fly in there. So the
12 community itself doesn't make use of the areas that are
13 closed.

14
15 I recognize the reasoning behind it and I
16 know members of the Council that support that reasoning
17 with the idea that here's a stock of fish that haven't
18 been exploited, it's nice to keep them as a barometer so
19 that you've got something to check the other fish by.

20
21 However, you know, like the letter that
22 was brought out, it really doesn't make sense in a
23 subsistence fishery to have a no take fishery or a catch
24 and release fishery.

25
26 Now, whether there'd ever be any effort
27 on those fish that's another question. They're off the
28 road system, they're inaccessible. The one danger and
29 one of the reasons that it was pushed through to start
30 off with to close it was the potential, like he pointed
31 out, that they might put a road in there to reach the
32 timber. At that time these small stocks of cutthroats
33 that, at this point in time haven't been touched and are
34 kind of, you might say your reserve, and as we're finding
35 out with cutthroat research, cutthroat don't necessarily
36 go back to the same stream all the time. They have a
37 tendency to stray to other streams. So if you have an
38 area that's not touched it also becomes a reservoir. And
39 once you put a road system into there these streams would
40 be readily accessible, we're not talking about big
41 rivers, we're talking about streams that could be fished
42 very easily. And that was the reasoning behind it.

43
44 Now, is that reasoning accepted by
45 everybody in Cordova, I'll say no. Are those fish used
46 by very many people in Cordova, I'll say no. Obviously
47 how does it fit in the subsistence program, I don't know
48 if it's going to make any impact one way or the other.
49 But as far as it sitting in regulation, that you have a
50 catch and release subsistence fishery it doesn't make

1 sense. The rest -- part of the rest of it did, but that
2 doesn't.

3

4 ACTING CHAIR GOTTLIEB: Thank you. I
5 think Denny had a comment.

6

7 MR. BSCHOR: No, that's fine.

8

9 ACTING CHAIR GOTTLIEB: No, okay. John.

10

11 MR. LITTLEFIELD: Thank you, Madame
12 Chair. I guess I need to talk a little bit more about
13 what Mr. Dougherty said.

14

15

16 ACTING CHAIR GOTTLIEB: He said that
17 these are only applied during times of shortage. And
18 I've heard that so many times that I need to remind
19 everybody that .804 talks -- there's two parts of .804.
20 One of which is always forgotten by the State when they
21 talk about this. And that is the second part, or to
22 continue such uses. In other words if you have a
23 customary and traditional use that is existing, you need
24 to recognize that. So it's the second part of that that
25 needs to be remembered, that it's not only for a
26 conservation issue, it's to continue such uses.

27

28 Now, I just wanted to make that point
29 because many times I hear that neglected and I think
30 that's an important part of it.

31

32 And I can give you a lot more information
33 than you want to hear on what meaningful priority means
34 but I think you guys all know and can figure that out for
35 yourself what the difference would be, but I'll leave it
36 at that.

37

38 Madame Chair.

39

40 ACTING CHAIR GOTTLIEB: Thank you, John.
41 Are we ready for a motion. Denny.

42

43 MR. BSCHOR: I just have one more
44 question for Mr. Joyce. I understand there's a winter
45 gillnet fishery, a subsistence fishery, what affect would
46 that this have on that -- would the proposal have on that
47 fishery?

48

49 MR. JOYCE: Madame Chair. Within our
50 permit, one of the stipulations is to allow a gillnet

1 fishery for whitefish on some of the lake systems around
2 Cordova, actually within Prince William Sound. And this
3 regulation, if sportfish regulations were adopted the
4 harvest limits was changed at the last Board of Fish
5 meeting to two trout, it had been five, at least, on the
6 road system near Cordova, it was two in Prince William
7 Sound, but they standardized everything so it was all
8 changed to just two trout.

9
10 I believe it would be, at least, in the
11 lake systems that I'm aware of where there are whitefish
12 that could be utilized for winter sportfishery or winter
13 gillnet fishery, I'm sorry, for subsistence, if the sport
14 bag limit applied it would be two trout and I think it
15 would be very difficult for people to set a gillnet for
16 whitefish under the ice and not harvest more than two
17 trout. So in that case they very well would be in
18 violation of the regulations, as adopted, because two
19 trout would be their limit and they would potentially
20 come out of the lake with a gillnet with three or more.
21 It is very possible they could do it without catching
22 any, but I would think that would be difficult.

23
24 Madame Chair.

25
26 ACTING CHAIR GOTTLIEB: Thank you. Go
27 ahead, Denny.

28
29 MR. BSCHOR: Madame Chair, I'm prepared
30 to make a motion.

31
32 ACTING CHAIR GOTTLIEB: Go ahead.

33
34 MR. BSCHOR: I move to reject the
35 recommendation of the Southcentral Regional Advisory
36 Council, and following a second I'll give my reasoning.

37
38 MR. BUNCH: I second it.

39
40 ACTING CHAIR GOTTLIEB: Thank you. Go
41 ahead.

42
43 MR. BSCHOR: Well, I think we've heard
44 that, once again, under the Federal subsistence
45 management we are doing up there right now, we've got a
46 very regulated and very strict permit system that we've
47 talked about before that we can -- and, you know, it
48 seems to be working and I don't think there's, in my --
49 from what I've heard I don't believe there's a concern
50 with conservation.

1 The other thing is that it's nice to be
2 able to match where we can and I think we always continue
3 to try to do that, however, I think there are some
4 effects if we go with the proposal that would be
5 detrimental to the satisfaction of subsistence needs.

6
7 We heard about what Mr. Joyce just said,
8 about the gillnet fisheries, that's an example. So I
9 think with that reasoning that's why I proposed the
10 motion.

11
12 ACTING CHAIR GOTTLIEB: Thank you.
13 Charlie.

14
15 MR. BUNCH: Madame Chair. And that's the
16 reason I seconded it also. I think it would have a
17 detrimental affect on subsistence users in that area.
18 And as much as I hate to go against the Regional Advisory
19 Council's recommendation, I think Ralph has shown that
20 there may be some reasoning for that proposal.

21
22 ACTING CHAIR GOTTLIEB: Other Board
23 comments. Ralph.

24
25 MR. LOHSE: Madame Chair. One thing that
26 was just brought out that I forgot to mention is that the
27 Board of Fish did change the bag limit since we put this
28 proposal in. The bag limit went down from five to two.

29
30 Thank you.

31
32 ACTING CHAIR GOTTLIEB: Thank you. Well,
33 I also have confidence in the in-season management system
34 that's going on and would not like to see these two
35 fisheries eliminated because I think it would be to the
36 detriment of subsistence users. So I will support the
37 motion and reject the Council's recommendation.

38
39 Okay, we have a motion, all those in
40 favor signify by saying aye.

41
42 IN UNISON: Aye.

43
44 ACTING CHAIR GOTTLIEB: All those
45 opposed, same sign.

46
47 MR. EDWARDS: Aye.

48
49 ACTING CHAIR GOTTLIEB: Thank you.
50 Motion carries. We'll be back here at 10 to 3:00. John.

1 MR. LITTLEFIELD: One quick privilege, if
2 you would, I neglected to turn this in and maybe if you
3 could allow -- they were supposed to be turned in at noon
4 today and I see there's at least three of these student
5 art things and if it's possible, could we turn them in by
6 the end of the day, just a matter of privilege to do
7 that?

8
9 ACTING CHAIR GOTTLIEB: Sounds like
10 that's workable, thank you. Ten to.....

11
12 CHAIRMAN DEMIENTIEFF: Judy, also, if
13 they could ring me back in.

14
15 ACTING CHAIR GOTTLIEB: Okay.

16
17 CHAIRMAN DEMIENTIEFF: We've got some
18 call that we have to make.

19
20 ACTING CHAIR GOTTLIEB: We'll call you in
21 about 15 minutes.

22
23 CHAIRMAN DEMIENTIEFF: Yeah, okay, we'll
24 try to get our business done here.

25
26 ACTING CHAIR GOTTLIEB: Thank you, Mitch.

27
28 (Off record)

29
30 (On record)

31
32 ACTING CHAIR GOTTLIEB: Go right ahead.
33 Thank you.

34
35 MS. HERNANDEZ: Thank you, Madame Chair.
36 For the record my name is Melinda Hernandez, I'm staffed
37 with the U.S. Forest Service in Juneau, and also to let
38 you know I'll be filling in for Dr. Schroeder in reading
39 the other comments for the other proposals.

40
41 FP06-23 begins on Page 331 of the Board
42 book. This proposal's requesting positive customary and
43 traditional use determinations for salmon, Dolly varden,
44 trout, smelt, and eulachon for the community of Gustavas
45 located in District 14, Sections 14(B) and (C). This
46 proposal was submitted by Mr. Chuck Burkhardt, resident
47 of Gustavas. And he believes that residents of Gustavas
48 should be able to fish under subsistence regulations in
49 these two sections. At the present time only residents
50 of Hoonah and portions of Chichagof Island are Federally-

1 qualified subsistence users in these sections.

2

3 Present day Gustavas includes a number of
4 households of descendants of early homesteaders. In
5 addition to its permanent year-round residents, Gustavas
6 has an influx of people associated with summer charter
7 fishing and tourism activities. These temporary
8 residents would not be eligible to fish under Federal
9 subsistence regulations in the mentioned sections.

10

11 Subsistence harvest surveys were
12 conducted in 1988 by the Division of Subsistence as part
13 of the Tongass Resource Use Cooperative Study. These
14 household surveys provided a description of subsistence
15 use patterns and document the strong subsistence
16 involvement for Gustavas.

17

18 Tables 2 and 3 on Pages 340 and 341
19 present data for the estimated participation and harvest
20 activities and harvest levels for resources given and
21 receiving of fish and wildlife in Gustavas. Residents
22 were found to harvest significant quantities of fish and
23 wildlife in this study. No comprehensive subsistence
24 harvest assessment or community study has taken place in
25 Gustavas since this time.

26

27 The Southeast team made a field visit to
28 Gustavas in June of 2005. Seven people were interviewed
29 using a standard interview schedule. These respondents
30 represented a cross section of Gustavas residents who are
31 concerned with community and natural resource issues.
32 These interviews provided the opportunity to gather
33 general community information on Gustavas and explore
34 questions related to this proposed C&T use determination.

35

36 The interviews that were conducted in the
37 summer of 2005 were conducted to ensure those patterns
38 documented in the TRUC study are still prevalent today
39 and that no significant changes have taken place since
40 that time. The small scale survey began with key
41 respondents and had to be kept small with considerations
42 to time and budget limitations. Also these interviews
43 were conducted primarily to confirm that those
44 subsistence use patterns are still evident in Gustavas.
45 The overall goal was not to go into great detail
46 especially considering that the existing data for
47 Gustavas, primarily the 1988 TRUC study has been seen as
48 sufficient by the Board in many areas of Southeast Alaska
49 to make C&T determinations.

50

1 Five of the individuals interviewed,
2 including the Mayor and four other active harvesters feel
3 that Gustavas is a subsistence oriented community.
4 Several noting that their family's consumption of wild
5 harvested foods versus purchased food exceeds 60 percent.
6 Two persons interviewed, including a National Park
7 Service resource specialist and a former Fish and Game
8 Advisory Committee member did not believe that Gustavas
9 was a subsistence oriented community.

10
11 With regard to sharing patterns and
12 handing down of knowledge to younger family members and
13 community members all respondents identified these
14 patterns as occurring in Gustavas. Children often
15 participate in and observe the harvest of wild foods,
16 methods are passed down in this manner.

17
18 It is also common for redistribution of
19 harvested foods to take place in Gustavas both on an
20 individual and community basis, especially with elder
21 members of the community. Fish, deer, clams and garden
22 foods are the items most readily identified as shared
23 foods in the community.

24
25 Harvest areas that Gustavas residents
26 identified included locations in and around Gustavas,
27 Pleasant Island, Homeshore and throughout the Icy Straits
28 area.

29
30 These interviews indicated that there are
31 a number of Gustavas residents who still participate in
32 harvest and rely heavily on a wide variety of subsistence
33 foods.

34
35 As Helen Armstrong pointed out yesterday,
36 a long-term pattern of use has not been clearly defined
37 in terms of a specific amount of time, though, the
38 community of Gustavas has only been in existence since
39 1914,, I believe that they do satisfy the eight criteria
40 for determining customary and traditional use is evident
41 in the TRUC study, the analysis and the above mentioned
42 information.

43
44 If this proposal is passed, it would
45 recognize customary and traditional subsistence use of
46 the selected fish species in the two sections by
47 residents of Gustavas and would allow them to fish under
48 Federal subsistence regulations. Gustavas residents
49 currently harvest fish under the State of Alaska
50 regulations. This proposal's unlikely to affect overall

1 harvest levels.
2
3 That concludes my presentation. I'd be
4 happy to answer any questions.
5
6 ACTING CHAIR GOTTLIEB: Thanks very much.
7 Are there any questions for Melinda.
8
9 (No comments)
10
11 ACTING CHAIR GOTTLIEB: Thanks for that
12 presentation. Summary of written public comments.
13
14 MS. HERNANDEZ: Madame Chair. It's going
15 to be a little longer than a summary. I received a
16 request from Ms. Wanda Culp of Hoonah to have the
17 entirety of her written comments read and I was informed
18 she was unable to attend these proceedings and to be fair
19 to the other parties who submitted comments I've been
20 instructed to read their comments in their entirety as
21 well.
22
23 ACTING CHAIR GOTTLIEB: That'd be fine,
24 okay.
25
26 MS. HERNANDEZ: Okay. Starting with the
27 letter from Ms. Wanda Culp.
28
29 To all this concerns. Only yesterday
30 Hoonah got wind that Gustavas is
31 requesting a customary and traditional
32 use designation. What, personal use
33 subsistence is not enough for them?
34 Already they have free reign on the use
35 of our customary and traditional
36 homeland, Glacier Bay. They harvest
37 Glacier Bay crab for their bed and
38 breakfast guests and guess who received
39 the lion's share of the Glacier Bay crab
40 fishing compensation, certainly not those
41 who customary and traditionally fished
42 Glacier Bay before there was a Gustavas.
43
44 If anyone cares to examine just who
45 received all the Federal settlement money
46 it would be found in thriving Gustavas.
47 It was not the Hoonah fishermen, the ones
48 who had the most to lose, that is for
49 sure.
50

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How many businesses were started in Gustavas with all that money.

Everyone is so bent on making sure that low income is connected with subsistence, does this not count for Gustavas and all their existing advantages.

Hoonah Tlingit Haida Highligner seine fishing fleet that numbered over 30 before the State of Alaska closed our islands from us in the 1970s for experimental purposes as was ANCSA that stripped us of our aboriginal claims to hunting and fishing.

Today Hoonah has two operating commercial multi-fishing vessels that also seine.

Let's go back in time to 1925 when the National Park Service and conservation groups designated Glacier Bay a National Monument under the fallacy that the Bay was useless and unused by the Hoonah Tlingit because we were, afterall, so busy being assimilated by force.

Now, let's check out the very first expansion of the Glacier Bay Monument Boundaries in 1938 that very negatively affected the Hoonah people with absolutely no regard to our existence much less to our use and occupancy of sacred homeland.

Hoonah had and still today have patented Native allotments that supposedly are protected under trust responsibility by the Department of the Interior who is doing a lousy job of providing that protection I might add. That is demonstrated by the recent Glacier Bay, National Park Service and State of Alaska land swap to accommodate a private enterprise that will negatively affect two patented Native allotments at Falls Creek inside Glacier Bay. One man has been able to manipulate the entire system to benefit his hydroelectric scam at the detriment to not only a salmon stream but

1 to the so called trust responsibility,
2 the SOI holds to the restricted patented
3 lands that have existed before our
4 homelands was so rudely claimed by the
5 National Park Service. It does not
6 matter that one allottee claimed water
7 rights to that stream on behalf of his
8 family two years prior to Dick LaVett's
9 claim. That second one was honored by
10 the State of Alaska.

11
12 Back in 1938 the Department of the
13 Interior gave more regard to the
14 unpatented land user's concerned about
15 being included in the National Park
16 Service expansion boundaries by
17 eliminating the not yet established
18 community of Gustavas. That formal
19 recognition came in 1955, I believe.
20 Heaven forbid that the expansion of
21 Glacier Bay Monument cause injustice to
22 the settlers. The expansion or the
23 withdrawal concern was branded by the
24 editor of the Alaska Daily Empire as a
25 monstrous crime against development and
26 advancement. Back then the settlers laid
27 claim to the rich farming country where
28 now can law claim to numerous other
29 businesses where farming has been a
30 distant and past notion.

31
32 The ANCSA extinguished our aboriginal
33 hunting and fishing rights with the
34 promise of a Federal, State and Native
35 compromise that resulted in ANILCA Title
36 VIII, a law that serves absolutely no
37 benefit to Hoonah people because the
38 regulations do not recognize our
39 thousands of generations of use and
40 occupancy of the very area we are
41 indigenous to, Glacier Bay.

42
43 The National Park Service is clinging to
44 the fallacy of John Mears that our
45 precious Glacier Bay was uninhabited by
46 humans, though it was the Hoonah people
47 that first took him into Glacier Bay on
48 their way to seal hunt in our ice box.

49
50 All attitudes of that time clearly

1 demonstrate that the White people did not
2 consider us as human beings therefore do
3 not merit civil or human rights. As a
4 matter of fact, the Hoonah Tlingit is
5 officially banned from Glacier Bay
6 Federal regulations of 1996, while almost
7 doubling the number of large cruise ships
8 allowed to enter those pristine waters of
9 Glacier Bay. Those are very recent laws
10 everybody.

11
12 ANILCA, Title VIII will always be the
13 Federal government's part of the Federal,
14 State, Native compromise. Ours was the
15 extinguishment of our aboriginal hunting
16 and fishing rights.

17
18 The State of Alaska has not fulfilled
19 their part of this compromise and the
20 courts are not any better by denying that
21 Title VIII was created because of our
22 extinguished rights. All to the benefit
23 and gain of the White population that
24 never ends.

25
26 What on our mother's good Earth have
27 Gustavas settlers sacrificed to think
28 that they merit C&T use. How outrageous
29 that they should even try this.

30
31 (In Native) Our God help us.

32
33 The best of the best fishermen are now
34 defeated and left on the beach while the
35 State of Alaska officials and ex-State
36 officials now own the fisheries after
37 they were privileged to the information
38 extracted from the best of the best, the
39 Tlingit fishermen while on official
40 business for the State of Alaska.

41
42 The State of Alaska's Coastal Management
43 Plan only recognizes subsistence use
44 areas for Hoonah that is right in front
45 of our own village. None of this we, as
46 Tlingit, buy into. We know too well who
47 we are and where we come from. We know
48 our traditional use area boundaries and
49 the magnificent history that comes with
50 thousands of generations of use and

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traditional knowledge.

None of the ones who live in Gustavas can say with the passion we do that this land of ours that they live in within our midst. They do not have the history of knowledge to claim customary and traditional use of subsistence. This is an ongoing battle of the Hoonah Tlingit that we will never give up. Gustavas dares to further distort the true meaning of customary and traditional use.

Wooshketaan Eagle Shark clan leader, Sam Hanlen, Jr., is frustrated that there is not adequate time for Hoonah to answer this claim of Gustavas. He did say, however, that he is all for it if they can show one quarter or more Hoonah blood quantum.

Signed Wanda Culp, (Native) Descendent of Glacier Bay.

A second written public comment is from Dr. Steven Langdon, Professor of Anthropology, University of Alaska-Anchorage.

Wanda Culp from HIA informed me today about an application from Gustavas to be recognized as customary and traditional in some areas of subsistence but did not indicate what areas the request is being made for. Therefore, I have no written information about the request and little time to prepare these observations. I am offering the following comments based on research conducted concerning commercial fishing activities by Gustavas residents that I engaged in in 1997 and 1998 for the National Park Service.

During that time I made a number of trips to the community and interviewed most of the commercial fishermen who reside in the area. I also wrote a number of documents concerning the history of Gustavas and the special exemption it received in the mid-1950s from being incorporated into Glacier Bay National

1 Monument. It would appear to me that it
2 would require a substantial stretch of
3 the meaning of customary and traditional
4 use as it is used for ANILCA, a
5 designation of activities to apply to
6 Gustavas as a community now or at any
7 time during its history.
8

9 The area now known as Gustavas falls
10 within the traditional territory of the
11 Wookaton Clan -- I think he might have
12 meant Wooshkatan, Clan of the Hoonah
13 Tlingit known as Hoonah Kawoo (sp), a
14 large traditional clan house was located
15 in Strawberry Point and there are at
16 least three, ,perhaps more Tlingit
17 allotments in the Gustavas area to the
18 east towards Excursion Point. At the
19 time of the coming of White settlers to
20 the area in the early 1900s several
21 Tlingit families had fish camps along the
22 Salmon River and other subsistence camps
23 were located to the east towards
24 Excursion Point.
25

26 I would note for the record that James
27 McCovjiks (ph) of hope and hard work
28 recounts these actions taken by the early
29 White settlers to eliminate Tlingit
30 subsistence Federal Subsistence Board
31 camps on the Salmon River that preceded
32 Euro-American arrival. The earliest
33 settlers at Gustavas Deboe family and
34 others came to this area to establish
35 farming and not subsistence farming, but
36 market farming, sale to markets in
37 Juneau. Cattle were brought in later and
38 sold for many years to Excursion Inlet
39 Cannery or canneries, the men worked at
40 the cannery and as cannery watchmen, but
41 also in Juneau at the mines. The men
42 found trolling boring and no interest or
43 heritage in commercial fishing from
44 boats. There was little involvement in
45 actual fishing, putting up fish or other
46 uses characteristics of standards
47 generally used for customary and
48 traditional subsistence activities.
49 Little, if any contact occurred with
50 local Tlingit for the acquisition of

1 knowledge about resource use of a wider
2 subsistence nature. It was the
3 importation of the Euro-American farm
4 wage labor adaption that did little to
5 accommodate local knowledge, resources or
6 conditions. It was not a subsistence
7 based existence and the subsequent
8 generations did not sustain the initial
9 form of Euro-American adaptation at
10 Gustavas.

11
12 Unlike Alaska Native communities where
13 customary and traditional subsistence
14 practices can be traced back numerous
15 generations from the past residents,
16 there are very few, if any, descendants
17 of the original Gustavas settlers who
18 remain in Gustavas. There are some who
19 return on a seasonal or occasional basis
20 but those cannot be considered residents.
21 The contemporary population of Gustavas
22 is a heterogeneous mixture of Euro-
23 American immigrants from different times,
24 locations and backgrounds. Their
25 traditions are fundamentally Euro-
26 American and lack the complex cultural
27 and historical ties to locations,
28 resources, products, distribution and
29 ceremonies that the true customary and
30 traditional users of the area, the Hoonah
31 Tlingit practice.

32
33 Gustavas is a seasonal, recreational
34 community and an alternative back to the
35 land community and not a community with
36 some degree of identity itself. These
37 characteristics, however, do not make it
38 a subsistence community. What other
39 customary and traditional subsistence
40 community in Alaska has a golf course as
41 a land mark of identity and cultural
42 practice.

43
44 In sum the community of Gustavas does not
45 meet the standards associated with
46 customary and traditional uses that are
47 characteristics of subsistence
48 communities under ANILCA and therefore
49 should not receive such designation.
50

1 Signed, Dr. Steven J. Langdon, PhD

2

3 The third written public is from the
4 Hoonah Indian Association.

5

6 ACTING CHAIR GOTTLIEB: Melinda, if I
7 could, if you're able to kind of excerpt a few of the
8 paragraphs that'd be great because it is part of the
9 public record that we received them.

10

11 MS. HERNANDEZ: Well, when I received the
12 request from Wanda, I was instructed everything -- that
13 if one letter was going to be read into the record
14 completely they all needed to be read today. This is the
15 last letter and then there's a short comment.

16

17 ACTING CHAIR GOTTLIEB: Okay, go ahead.

18

19 MS. HERNANDEZ: This is from David
20 Belton, Director of Cultural and Natural Resources for
21 the Hoonah Indian Association.

22

23 Dear Members of the Southeast Federal
24 Subsistence Regional Advisory Council and
25 the Federal Subsistence Board. As
26 director of cultural and natural
27 resources for the Hoonah Indian
28 Association, I appreciate the opportunity
29 to submit comment on FP06-23 to consider
30 positive determination of customary and
31 traditional use for the community of
32 Gustavas, another community that has been
33 suggested on drainages flowing into the
34 areas of District 14, Sections 14(B) and
35 (C) specifically.

36

37 In the past several days I've had the
38 opportunity to have many conversations
39 regarding this proposal with members of
40 Hoonah Native community and others. I
41 feel that it may be appropriate to share
42 some of my observations and thoughts
43 regarding this proposal.

44

45 Interestingly in every case this proposal
46 has elicited a dramatic response and
47 spurred an emotional discussion
48 concerning the very definition of the
49 term, subsistence, and the concept of
50 customary and traditional uses of wild

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renewal resources.

First, I found that almost everyone I spoke to was initially confused about the significance and implication of a positive C&T use determination for the community of Gustavas as it applies to the Federal subsistence opportunity in our area.

With regard to the management regulations for harvest of fish and shellfish on Federal public lands and waters, no one that I spoke to ever gave much thought to or had much reason to consider the residents of other communities outside of Hoonah are excluded from the Federal subsistence opportunity in these sections simply because they are not identified in the regulations as having positive customary and traditional use for District 14.

It was evidently assumed that these communities were most likely provided for by the reason of their rural designation. I understand now that they are not and I find it interesting that now an individual from Gustavas seeks just a determination for that community. Certainly many residents of these other communities do indeed have a pattern of wild renewable resource use that is significant for their direct personal and family consumption. What seems, however, to fuel the criticism here in Hoonah regarding this proposal is the extent to which this pattern of use and consumption can be defined and justified as customary and traditional. It is very difficult for many residents here who do indeed continue to embrace and maintain a subsistence way of life as Tlingit people to accept a determination of customary and traditional use for residents of communities such as Gustavas.

The reason for this is simple and clear. For the Tlingit people the term subsistence and the concept of customary

1 and traditional use imply critical ways
2 the Tlingit people reassert and maintain
3 their Native identity and the connection
4 to their cultural heritage and ancestry
5 in ways that are not only economic and
6 social and nutritional but, indeed,
7 culturally and spiritually. To apply
8 these terms to personal use harvest
9 activities to the residents of Gustavas
10 and elsewhere is for the most part
11 unacceptable and absurd. The reason for
12 changing the regulation as listed in the
13 proposal states to allow residents of
14 Gustavas to harvest fish for subsistence
15 purposes on Federal lands and waters in
16 Sections 14(B) and (C).

17
18 I would like to suggest that the
19 residents of Gustavas do not now nor have
20 they ever harvested fish for subsistence
21 or for customary and traditional
22 purposes. Residents of Gustavas harvest
23 for personal use. To suggest otherwise
24 is a mockery and an insult to many Native
25 residents of Hoonah whose clans first
26 occupied Glacier Bay forelands and the
27 area now called Gustavas for those places
28 are, indeed, their ancestral homes.

29
30 I suggest also that the community of
31 Gustavas fails to meet the required
32 factors for establishing a positive
33 determination for C&T use. If the
34 Federal Subsistence Board feels an
35 obligation to provide Federal opportunity
36 to the community of Gustavas residents
37 based on their rural designation and
38 their patterns of wild resources use,
39 fine, but it would be a callous
40 disservice to provide that opportunity
41 under the guise of subsistence or
42 customary and traditional use.

43
44 Do we now wish to proceed down the road
45 where the definition of subsistence and
46 customary and traditional becomes the
47 generic term for the activity of any
48 individual who has merely chosen to live
49 or can afford to retire in a rural area
50 where they are able to consume preferred

1 varieties of wild resources. Does merely
2 living in rural Alaska along with the
3 pattern of wild resource harvest and
4 consumption qualify one to make the claim
5 that they now live a subsistence or
6 customary and traditional lifestyle. I
7 would most certainly hope not.

8
9 I would ask the members of the Southeast
10 Federal Regional Advisory Council not to
11 water down and malign the definitions of
12 customary and traditional use and
13 subsistence by allowing them to be
14 denigrated and used for additional
15 personal use harvest opportunities
16 disguised as subsistence or customary and
17 traditional need. Personal use
18 opportunities are already amply provided
19 for by the State of Alaska and the U.S.
20 Forest Service under other regulatory
21 mechanisms.

22
23 I thank the Board for the opportunity to
24 submit these comments and I would ask
25 that the Hoonah Indian Association be
26 provided the opportunity to contribute
27 additional input into this consideration
28 as it progresses through the process.

29
30 Respectfully, David M. Belton.

31
32 And one last written comment from the
33 Chilkoot Indian Association. They spoke in favor of the
34 proposal.

35
36 The Gustavas region of Southeast Alaska
37 is fairly unpopulated and with limited
38 economic opportunities. Gustavas is in
39 need of the same rules for subsistence
40 gathering as other similar areas in the
41 region.

42
43 This was from the Chilkoot Indian
44 Association.

45
46 ACTING CHAIR GOTTLIEB: Thanks very much.
47 Any questions or comments.

48
49 CHAIRMAN DEMIENTIEFF: Judy. Yeah, even
50 though it took a little while to connect me, I just want

1 to note for the record that I did review all the written
2 material that was submitted and heard that. I just want
3 to make sure that there's no questions.

4
5 ACTING CHAIR GOTTLIEB: Very good, you're
6 on board then.

7
8 CHAIRMAN DEMIENTIEFF: Yeah. Yeah, I've
9 been on board. I heard everything.

10
11 ACTING CHAIR GOTTLIEB: Right. Gary.

12
13 MR. EDWARDS: Well, I was just going to
14 note that listening to some of those letters certainly
15 doesn't express the sense of community that we heard
16 expressed with regard from the Southcentral Council.

17
18 ACTING CHAIR GOTTLIEB: We have no
19 request for public testimony. We'll take Regional
20 Council recommendation, please.

21
22 MR. LITTLEFIELD: I guess I'm up, Madame
23 Chair. The Regional Advisory Council recommendation is
24 on Page 332 of your book.

25
26 The Regional Advisory Council's
27 recommendation is to table Proposal 23 and our intention
28 is to submit a RAC generated proposal, customary and
29 traditional use proposal covering all of the rural
30 communities of District 14 in the 2007 fisheries
31 regulatory cycle.

32
33 In addition to the well written Staff
34 analysis, the Council considered information provided by
35 the proponent via teleconference, written public
36 comments, which we just heard, all of those before, and
37 personal information provided by Council members living
38 in or familiar with District 14.

39
40 And maybe I'll try to summarize this so
41 we can move along here because this is part of the
42 record. The Council definitely recognizes that Gustavas
43 is a rural community and supports their use of
44 subsistence resources. The Council was troubled,
45 however, by the lack of substantial data. What we had is
46 a proponent who we allowed to engage quite a bit, who was
47 unable to provide us with specific examples of where he
48 was using freshwater, he would talk about salmon and
49 halibut and all these things that were in marine waters.
50

1 So the Council believes that Gustavas
2 residents may fish in all or some parts of District 14,
3 however, the material before the Council did not provide
4 the substantial data needed to support a positive Council
5 recommendation.

6
7 The Council reviewed the existing C&T
8 determinations for District 14 as described in the
9 analysis but there were no determinations at all for the
10 residents of Elfin Cove, Excursion Inlet, Game Creek,
11 Gustavas or Pelican and the existing determinations for
12 Hoonah do not cover all of the area used by that
13 community.

14
15 What we did is when we looked at the
16 existing determination, which includes the community of
17 Hoonah for District 14, what we found is that we know
18 Hoonah uses part of 13, if you'll look at the map that's
19 on Page 336 in your book, and the community of Hoonah is
20 shown right there at the bottom where it says 14 (C), but
21 you'll actually find that their use goes over into 14(B),
22 over into 14(A), down into 13 to the west, their use
23 extends out into 12 and we don't even know where it all
24 extends beyond that. So we're covering at least three
25 sections here and we believe that applies to the other
26 residents there in the community.

27
28 And the Staff analysis included a
29 statement, that in analyzing this proposal we found that
30 further review of customary and traditional
31 determinations for District 14 may be needed, we agree
32 with that. The Council would have preferred a Staff
33 analysis that provided a more comprehensive examination
34 of subsistence fishing in District 14 and the portions of
35 District 12 and 13 that are used by the Icy Strait cross
36 down communities, all of them, and this would be similar
37 to the analysis done in the earlier regulatory cycles for
38 subsistence fishing on Prince of Wales Island and the
39 Stikine River drainage. We just did proposals in the
40 previous year for areas of Kake, Meyerschuck, POW
41 communities that was all inclusive, and that's what we
42 were looking for and we didn't get that, we only talked
43 about one community.

44
45 And the Council will work with Staff, we
46 have a commitment to do that, we asked them if they
47 understood what our wishes were and we would work with
48 Staff to develop a Council generated C&T proposal for the
49 2007 regulatory cycle that will examine the subsistence
50 uses of all the communities in District 14, uses by some

1 communities may extend into portions of District 12 and
2 13. By submitting the proposal we will also allow the
3 Staff to go wherever. There may be some use in 11, there
4 may be some use in 15, we want to flesh all that out and
5 that proposal will do that.

6

7 And I guess I'll leave it there.

8

9 Madame Chair.

10

11 ACTING CHAIR GOTTLIEB: Thank you very
12 much. Questions. Comments for John. Gary.

13

14 MR. EDWARDS: John, so what would be the
15 end results of the, I forget you characterized it, the
16 study that you're going to do that would then be
17 submitted for 2007? What do you visualize it would be or
18 what it would do or encompass?

19

20 MR. LITTLEFIELD: Well, the way I look at
21 it is those communities that are rural which are Elfin
22 Cove, Game Creek, Pelican as well as Gustavas in my mind
23 are all rural communities. This is my personal thoughts,
24 they're all rural communities and they all can
25 demonstrate customary and traditional use of Federal
26 waters in that area. And so I see that proposal to be
27 inclusive by the Council to say describing those areas,
28 providing the substantial evidence, the eight criteria or
29 one criteria, but in any case, describing those customary
30 and traditional uses and I see them all included next
31 year, including Gustavas.

32

33 MR. EDWARDS: But let me follow up. I
34 mean in this proposal, I mean Gustavas, at least my
35 understanding is, is not saying, you know, look we should
36 have it for 13(C) or 15 or 11 or 12, they're just simply
37 saying we should have it for basically what's in our
38 front yard; is that correct, but what you're saying is
39 that this further analysis might look and say well you
40 also ought to have 15 and 13(C), potentially?

41

42 MR. LITTLEFIELD: Yes, sir, that's
43 correct. And what was troubling to us is we had a
44 proponent who was probably not familiar with subsistence
45 -- I mean anybody can submit a subsistence proposal,
46 anyone, whether -- they can be from Hawaii and submit one
47 and tell you they want to stop all steelhead fishing on
48 POW. He submitted a proposal, we gave him the time and
49 opportunity to defend that and he was unable to convince
50 us that he had ever used Federal waters to any extent,

1 and we tried to drag that out of him, many Council
2 members did, so we were unsure whether he did.

3
4 The seven respondents, five of them said
5 they wanted it, two didn't and I think most of the
6 Council recognizes that this is a rural community that
7 has -- this is kind of a complicated deal because it was
8 opposed so strenuously by -- you talked about the co --
9 the Hoonah community feels real strongly on this, we did
10 not hear from the Park Service which surrounds Gustavas
11 and perhaps I could ask if the Park Service would comment
12 on that, they surround Gustavas, which is an enclave in
13 the Park and as is mentioned here is mostly non-Native.
14 I don't know any Natives that live over there. And there
15 is not a sense of community here because you basically
16 have two communities that are at odds with one another,
17 and we recognize that. So we took a vote on it and the
18 first vote, quite frankly failed, we would not support
19 this at all. We had a little talk about that, it was
20 brought up for reconsideration and we decided that it
21 needed to be fleshed out different. So it was kind of a
22 complicated proposal that originally failed, brought back
23 on reconsideration and we got tabling out of it.

24
25 But if you're asking me whether you want
26 to do just this one proposal, I can tell you what the
27 Council said, table, but if you were to accept this 14,
28 it's not going to give me any heartbreak.

29
30 ACTING CHAIR GOTTLIEB: Thanks. Any
31 other comments or questions. Charlie.

32
33 MR. BUNCH: John, in your opinion, if,
34 you know, we were to go against the Regional Advisory
35 Council's proposal on the recommendation, would it affect
36 subsistence in that area?

37
38 MR. LITTLEFIELD: That's a good question,
39 I don't know that. But if you were to go against it you
40 would say you had substantial -- you believe there was
41 substantial data, we just didn't believe it was ready to
42 go until next year, until we had a little bit more, but
43 that's your call. I don't know what those people are
44 going to do, I suspect they, like the proponent, and I
45 know there are others certainly in this room that go to
46 Mud Bay and others that are here from Southeast that use
47 Federal waters. I don't have any doubt that they're
48 using it right now. How much that use is, Mr. Bunch, I
49 couldn't tell you. To me it wouldn't -- I can't see any
50 harm coming from it and that's what I'd have to say is we

1 are lucky we have had no bad winters, because that's what
2 determines what we get on deer and I don't see how the
3 people of Gustavas could decimate their resources over in
4 the Federal lands.

5
6 I don't know if that answered your
7 question or not.

8
9 MR. BUNCH: Yes, it did, thank you.

10
11 ACTING CHAIR GOTTLIEB: Mitch.

12
13 CHAIRMAN DEMIENTIEFF: So there's not a
14 biological reason.

15
16 MR. LITTLEFIELD: If you're asking me
17 whether there's a conservation concern, the answer is no.
18 When we looked at this, you know, we always try to look
19 at the four criteria that we've developed and used in
20 Southeast for RAC is number 1, is the data sufficient for
21 you to make your substantial evidence case, and we didn't
22 think it was in this particular case, it wasn't complete
23 enough.

24
25 We also look at whether there's a
26 conservation concern. There's no conservation concern in
27 our mind on this proposal.

28
29 We look at the effect on subsistence
30 users, whether it is detrimental to them. In this case
31 it would be a slight detriment to people who we believe
32 are rural residents, right now, Gustavas. But as they're
33 already participating in the personal use and State
34 sportfishing, we didn't think that it was a significant
35 detriment to them to wait one year.

36
37 And the effect on other users is the
38 fourth point that we look at and it's just not there,
39 none of it.

40
41 So the only thing we looked at in this
42 that we wanted more evidence and data, no conservation
43 concerns.

44
45 ACTING CHAIR GOTTLIEB: Gary.

46
47 CHAIRMAN DEMIENTIEFF: And the commitment
48 -- I'm sorry, I don't mean to dominate here, but the
49 commitment that I'm hearing is that the Council is
50 willing to do the work to bring something more back; is

1 that what I'm hearing John?

2

3 MR. LITTLEFIELD: Madame Chair. Mitch.
4 I don't have the minutes in front of me, I didn't think
5 we were going to get into these today. But I believe if
6 you research the minutes you will find somewhere in there
7 after this motion to table was adopted, I believe I asked
8 Dr. Schroeder who is our coordinator if he understood
9 exactly what we wanted as a Council, and I think that's
10 in the transcript and he did, and he understands that we
11 are going to prepare a comprehensive proposal covering
12 all of this area, and I don't even know where it's going
13 to go. I know what my own personal opinion is of how far
14 it's going to go, but hopefully Staff will be able to
15 flesh out how far this goes. We have a commitment, we
16 already directed Staff, we didn't take a motion because
17 we didn't feel it was needed, but we have already
18 directed Staff to work on this.

19

20 And maybe Mr. Casipit or Ms. Hernandez
21 could comment on this but I think it's clear that the
22 Council gave them marching orders of what we expected
23 them to do.

24

25 CHAIRMAN DEMIENTIEFF: So the Council,
26 bottom line, it's a work in progress?

27

28 MR. LITTLEFIELD: Yes, sir.

29

30 CHAIRMAN DEMIENTIEFF: Okay, thank you.

31

32 ACTING CHAIR GOTTLIEB: Gary.

33

34 MR. EDWARDS: If I may ask, Mr.

35 Littlefield.....

36

37 ACTING CHAIR GOTTLIEB: Excuse me, Gary.
38 I just want to check if there was any follow up from Cal
39 or Melinda based on John's comments from the RAC meeting
40 itself.

41

42 MR. CASIPIT: Yes, thank you, Madame
43 Chair. Mr. Littlefield. Actually our first draft of
44 this analysis did look at other communities, specifically
45 Excursion Inlet, Pelican and Elfin Cove for inclusion
46 into District 14, Sections (B) and (C), however, at a
47 leadership team meeting we were instructed that since
48 this is an analysis that's going the other way -- you
49 know, before we were talking about going from all rural
50 residents to a smaller subset, you know, we always try to

1 be inclusive that way but when we're going the other way,
2 from a very specific determination, we only analyze the
3 communities that have requested that.

4
5 Since Elfin Cove, Pelican, and Excursion
6 Inlet and other areas did not request this, you know, we
7 were instructed by leadership team not to include them
8 and that's why the analysis that the Council saw and what
9 you see before you only deals with the community of
10 Gustavas.

11
12 I also wanted to add that, like Melinda
13 said, this was based on the TRUC study and over the next
14 year if we were to broaden this out and look at other
15 communities over a broader area, about all we're going to
16 have is the TRUC study, you know, we do have the HaAhNee
17 (ph) work that was done back in the '30s and '40s, the
18 Goldschmidt and Haas stuff, but that was only particular
19 to Native communities, you know, and they didn't cover
20 areas like Pelican, Elfin Cove, and HaAhNee does not
21 cover areas like Pelican, Elfin Cove and Excursion Inlet.

22
23 Thank you, Madame Chair.

24
25 ACTING CHAIR GOTTLIEB: Thank you. John.

26
27 MR. LITTLEFIELD: Madame Chair. As I
28 remember the discussion, one of the Council members asked
29 whether we would then notify Gustavas and Excursion Inlet
30 and others that we were going to be doing this proposal
31 and the answer was yes, our intent was to notify every
32 community that was in that area and allow them to
33 participate, including as was mentioned here the Icy
34 Straits Fish and Game Advisory Council, Gustavas City
35 Council, was to be all inclusive and bring them all in.

36
37 ACTING CHAIR GOTTLIEB: Thank you. Gary.

38
39 MR. EDWARDS: I guess I'm then a little
40 unclear then. As part of this -- this applies to
41 Gustavas then, you're going to be doing more surveys to
42 determine use patterns and frequency of use and that type
43 of stuff, because that seems to me is what the Council
44 says is lacking in the way of data so I'm just trying to
45 understand what you would be doing to provide them
46 additional information to maybe make, what they would
47 feel, a more informed decision.

48
49 MS. HERNANDEZ: Mr. Edwards, were you
50 talking about Gustavas specifically or.....

1 MR. EDWARDS: Yes. I mean one of their
2 reasons was they didn't feel that there was sufficient
3 information but I'm unclear of what you're going to be
4 doing, is actually going to provide any more information
5 than is in the Staff analysis?

6
7 MS. HERNANDEZ: Well, I think with
8 concerns to Gustavas, specifically, I don't think that
9 any new substantive information is going to come out
10 other than what is already in the analysis.

11
12 I hope that answers your question.

13
14 MR. EDWARDS: So there won't be any
15 benefit -- so they won't have any more information than
16 they currently have now in which to make a decision?

17
18 MS. HERNANDEZ: With, Gustavas, no, I
19 mean we could expand the interviews from what we've
20 already done, we could expand it further. But I don't
21 think that anything new is going to come out of that.

22
23 ACTING CHAIR GOTTLIEB: Okay, can we move
24 to the Interagency Staff Committee recommendation,
25 please.

26
27 John, sorry.

28
29 MR. LITTLEFIELD: Before we get off the
30 Regional Councils, I'd just like to say that this
31 proposal, to table, just happens to align with the State
32 recommendation, so we're at No. 2, so that's all I have.

33
34 (Laughter)

35
36 MR. EDWARDS: But I do think the
37 rationale for doing so is not consistent so.....

38
39 (Laughter)

40
41 MR. LITTLEFIELD: I didn't say anything
42 about that, I just said we are now having alignment at
43 No. 2.

44
45 (Laughter)

46
47 ACTING CHAIR GOTTLIEB: Thank you. Pete.

48
49 MR. PROBASCO: We're going to stay
50 consistent. Okay, Interagency Staff Committee did not

1 reach consensus resulting in a majority and minority
2 recommendation to the Board.

3
4 The majority recommendation is to support
5 the proposal contrary to the recommendation of the
6 Southeast Regional Advisory Council. The majority
7 considered the information presented in the Staff
8 analysis and determined that there were sufficient data
9 on which to make a C&T use determination for Gustavas, a
10 rural community in the vicinity of their community,
11 Section 14(B). Although the Council states that there
12 was a lack of substantial data, these types of data,
13 primarily the 1988 Tongass Resource Use Cooperative study
14 has been seen as sufficient by the Board in many areas of
15 Southeast Alaska to make customary and traditional use
16 determinations. Staff has stated that a delay of this
17 proposal for one year would not result in any new
18 substantive information concerning Gustavas' use of
19 Sections 14(B) and 14(B).

20
21 The minority recommendation was to table
22 the proposal as consistent with the Southeast Regional
23 Advisory Council. The Southeast Regional Advisory
24 Council's recommendation cannot be rejected using any of
25 the criteria outlined in ANILCA, Title VIII, Section
26 .805(c) as it does not present a conservation concern.
27 Tabling the proposal would not be detrimental to
28 subsistence users. At present Gustavas residents are
29 currently able to harvest salmon in Districts 14(B) and
30 14(C) under State regulations. A short-term delay should
31 not cause a significant hardship.

32
33 And, Madame Chair, there's more
34 justifications as outlined on Page 333 and 334.

35
36 Madame Chair.

37
38 ACTING CHAIR GOTTLIEB: Thank you. Any
39 questions for Interagency Staff Committee.

40
41 (No comments)

42
43 ACTING CHAIR GOTTLIEB: If we could have
44 the Department's comments please.

45
46 MS. SEE: Thank you, Madame Chair. Our
47 comments have two main elements.

48
49 The first is the comment that pertains to
50 this and all current proposals regarding customary and

1 traditional use findings for fish and that is that they
2 should be deferred until the Federal Subsistence
3 Management Program establishes policies and procedures
4 for these analysis and findings as directed by the
5 October 27th, 2005 instructions from Secretary of
6 Interior. And that would be then to defer until those
7 procedures are developed and adopted actually by the
8 Board.

9
10 The second portion of our recommendation,
11 however, is that, and there's a very extensive record as
12 John Littlefield states of the discussions by the
13 Regional Advisory Council, about this issue of the extent
14 of use and the documentation for use in the area -- the
15 entire area that might be used by the community of
16 Gustavas as well as some other communities in that
17 general area. And that that is our understanding of the
18 scope of what they want to look at, which is beyond the
19 scope of what's presented before you in the current
20 Federal analysis.

21
22 So I would just offer that clarification
23 to the question asked of Ms. Hernandez that, in fact,
24 there would be additional examination of other kinds of
25 resource uses in the general area and it would go beyond
26 the scope of what you see before you.

27
28 We also were asked and replied to the
29 Council that the Department's information, which comes
30 from work out of the Division of Subsistence would be
31 made fully available as it pertains to any of those
32 questions so that would help enable a full analysis of
33 the scope of the questions raised by the Regional
34 Advisory Council. So we concurred with the Council on
35 the record there, as we do here, that deferring to allow
36 a more thorough evaluation of use would, in fact, be an
37 appropriate step at this time.

38
39 Thank you.

40
41 ACTING CHAIR GOTTLIEB: Thanks. Maybe I
42 could follow up on that. When you mentioned the
43 availability of the Department's data, does that mean
44 that perhaps not all of it was available at the time some
45 of the analysis was being done?

46
47 MS. SEE: Madame Chair. If you expand
48 the scope of the question about what other communities
49 may be using in the area then, in fact, all the
50 information wasn't presented at the Council for that

1 extent of question. As was noted, the information
2 largely presented in the Staff analysis for Gustavas is,
3 in fact, from a Departmental report, very specifically
4 regarding Gustavas, and that is correctly tabulated -- or
5 those tables come right out of that report for Gustavas.
6 But the scope of what the Council wants to look at is
7 beyond the original scope of the proposal and maybe
8 Chairman Littlefield would like to further clarify.

9
10 ACTING CHAIR GOTTLIEB: Thanks. Sure, go
11 ahead, John.

12
13 MR. LITTLEFIELD: Thank you, Madame
14 Chair. The recommendation of the SERAC was to table this
15 with the intent of coming out with a new proposal that
16 would be commented on by everyone in the country because
17 we're going to search out the comments, so it's not
18 included in this one. And for noticing, we would include
19 all of those other communities.

20
21 ACTING CHAIR GOTTLIEB: Any other Board
22 discussion. Charlie.

23
24 MR. BUNCH: Well, yeah, give me some
25 guidance here. I'm not sure of what's going to happen if
26 we turn down the RAC's proposal, does it just table then?

27
28 CHAIRMAN DEMIENTIEFF: It would be
29 probably appropriate if you just want to move to table
30 per the RAC's recommendation, fine. But, of course,
31 there's no discussion on a tabling motion. So, yes, by
32 adopting the RAC's recommendation then we would table.

33
34 MR. BSCHOR: Madame Chair.

35
36 ACTING CHAIR GOTTLIEB: Denny.

37
38 MR. BSCHOR: If I could ask on that last
39 question, is your intent to know what would happen with
40 the broader proposal -- or not the proposal or the
41 broader action that the RAC has said they were going to
42 conduct if we rejected their deferment of Gustavas at
43 this point; is that correct?

44
45 MR. BUNCH: I'm assuming that if we
46 reject the Southeast Alaska, their proposal, that's my
47 question, what happens to the study?

48
49 ACTING CHAIR GOTTLIEB: Tom.

50

1 MR. BOYD: Madame Chair, I'm going to try
2 to answer that, and I'll look to Chairman Littlefield
3 with a nod, but I think it's quite simple.

4
5 What they're saying is they're going to
6 come forward with a new proposal and over the course of
7 the next year or through the regulatory process, just as
8 this proposal has, and it will be analyzed in its full
9 content to cover all of those new areas and new
10 communities and we'll be back here next year discussing
11 it in a much broader fashion. Now, you can table this
12 proposal and it will be back before you next year, but my
13 guess is you'll consider them all at the same time when
14 you're doing it next year.

15
16 ACTING CHAIR GOTTLIEB: In other words, a
17 new proposal might include other communities, perhaps
18 make adjustments on the specific fishing areas, that kind
19 of thing?

20
21 CHAIRMAN DEMIENTIEFF: Yes, basically --
22 this is Mitch here again. It'd be more work -- it's a
23 work in progress, so that we would be able to get
24 something, a more well developed proposal is basically
25 what it comes down to.

26
27 MR. EDWARDS: Madame Chair.

28
29 ACTING CHAIR GOTTLIEB: Yes.

30
31 MR. EDWARDS: I mean personally I think I
32 could support what the Council is recommending. But I
33 guess a couple things trouble me, at least what I heard,
34 I'm not quite sure whether folks are really going
35 forward, and at least what I heard doesn't seem to
36 coincide with what at least the RAC is assuming is going
37 to occur so I'm not quite sure what we'll have in 2007.
38 And if I thought there was an opportunity, as part of
39 that, if we were going to be able to gather more
40 information that specifically focused on Gustavas it
41 seems to me then that would be of value, but what I also
42 heard is that that -- and also from the State, that all
43 the information as it applies to Gustavas has been
44 gathered and there will not be any new information, so I
45 don't see how that's going to benefit us for waiting to
46 2007 because nothing is going to change as it applies to
47 Gustavas.

48
49 And I guess the other thing I also want
50 to say is I guess I was somewhat very uncomfortable

1 listening to the letters that -- most of the letters that
2 were read and I guess kind of disappointed from them and
3 I think that's just an unfortunate situation, and I don't
4 know if we can do anything. I guess when you have
5 communities that don't see eye to eye, that's just the
6 case, but at least as I've sat on this Board, we don't
7 normally, you know, confront those kinds of situations.
8 And I do feel, although I don't always agree with Ralph,
9 my sense is throughout this program there has been this
10 general sense of community, and I think that's good. But
11 anyway, I just felt I needed to say that.

12

13 ACTING CHAIR GOTTLIEB: George.

14

15 MR. OVIATT: Yeah, if I could ask a
16 question of Melinda. By expanding the -- what the
17 Council wants to do is expand the area and bring in other
18 -- is that going to change, do you feel that would change
19 your analysis of Gustavas?

20

21 MS. HERNANDEZ: I mean what this
22 proposal, you know, the proponent was asking for, 14(B)
23 and (C), so I mean as far as expanding it, I mean if that
24 was what was being requested that would be fine, but as
25 far as this proposal's concerned and as far as 14(B) and
26 (C) are concerned, nothing in this area is going to
27 change as far as information from now until next year.

28

29 ACTING CHAIR GOTTLIEB: John.

30

31 MR. LITTLEFIELD: Let's get some things
32 straight here first. I don't have my minutes and I would
33 like the Staff to clarify whether I directed them to do
34 this and whether they understood it or not because that
35 seems to be the gist of Mr. Edwards question and I
36 remember specifically directing Staff and asking Dr.
37 Schroeder if he understood our comments and had enough
38 direction, did that happen or not?

39

40 MR. CASIPIT: Yes, Madame Chair. Mr.
41 Littlefield. Yeah, I do recall you asking Dr. Schroeder
42 if he understood what you wanted and he responded in the
43 positive that he understood what you wanted. The
44 question here is would any new information come out over
45 the next year that would change, you know, our conclusion
46 on Gustavas in 14(B) and (C) at this time, and I heard
47 Melinda answer, no, we're not going to find any new
48 information for Gustavas in 14(B) and 14(C) in the next
49 year.

50

1 Now, as far as broadening out the area,
2 looking at Section 14(A) and 12 and 13, yeah, we would
3 analyze that and there is some information out there as
4 far as those other areas and as far as use of wild
5 renewable resources in communities like Pelican, Elfin
6 Cove, and Excursion Inlet. That would all be new
7 information and analysis, but the same information you
8 see on Gustavas now is what you're going to see next year
9 in that same analysis.

10

11 ACTING CHAIR GOTTLIEB: John.

12

13 MR. LITTLEFIELD: I'm looking for it in
14 here but let me talk about what I'd like you folks to do.
15 And if you'll look at Page 332, that says if you support
16 the RAC recommendation, that tells you what we're going
17 to do and it says in there clearly our intention is to
18 submit a Regional Advisory Council C&T proposal, it's in
19 there, that's what we told you we'd do.

20

21 If you look further down here, I have to
22 disagree with Staff on this, and I do this occasionally,
23 right in there it says that we want them to get support
24 and we intend for the Icy Straits Fish and Game Advisory
25 Committee, which is composed of people from -- half from
26 Gustavas and half from Hoonah to take a stand on this, as
27 well as the Gustavas City Council. We expect them to be
28 included as part of this package, not seven people picked
29 off the street, and that was our intent, we wanted more
30 data.

31

32 So I'll find it in here but I think it
33 was really clear that we expect better data. In answer
34 to your question, Mr. Oviatt, I think there is more data
35 to come, that Fish and Game Advisory Council, we expect
36 them to weigh in on this proposal, the City Council of
37 Gustavas, we expect them to weigh in on it. I mentioned
38 that the Park Service had not weighed in on this and
39 they're an enclave and where there are streams, where
40 there are Federal waters that flow through Gustavas,
41 there is information that's going to come forward that I
42 expect to see that's new. And I'd just like to make that
43 clear while I look up what I said here.

44

45 ACTING CHAIR GOTTLIEB: John, we'll give
46 you a minute to find what you're looking for and then
47 maybe take a couple other questions.

48

49

Cal.

50

1 MS. CASIPIT: Thank you, Madame Chair. I
2 just wanted to clarify that that enclave of private and
3 State land in the Gustavas area surrounded by National
4 Park Service is beyond the jurisdiction of the Federal
5 Subsistence Program, just so that was clear.

6
7 ACTING CHAIR GOTTLIEB: Thank you we
8 appreciate that.

9
10 Charlie.

11
12 MR. BUNCH: Cal, you made some mention to
13 Area 14(A), I don't see that marked on the map, where is
14 that?

15
16 MR. CASIPIT: It would be that area east
17 of the line at 14 -- it'd be that area east of the line
18 with 14(B), it runs -- let me get it here -- 336 -- if
19 you look at that line that goes -- it kind of splits
20 Elfin Cove, and it's right near 14(B), that area east of
21 14(B) is Section 14(A) -- west, I'm sorry, get my
22 directions wrong.

23
24 ACTING CHAIR GOTTLIEB: Okay. It just
25 wasn't on the map.....

26
27 MR. CASIPIT: Right.

28
29 ACTING CHAIR GOTTLIEB:so that's
30 why we were confused here.

31
32 MR. CASIPIT: Right, it's just not
33 labeled.

34
35 ACTING CHAIR GOTTLIEB: Okay. Kelly.

36
37 MR. HEPLER: Madame Chair. I'm sitting
38 here listening to this conversation. I just, you know,
39 first of all, John, I applaud your diligence to good
40 process and too good data gathering and I think that's
41 important. But I'm sitting here listening to what he's
42 saying and there's some new players coming into this
43 discussion.

44
45 Now, I'm assuming trying to get the Fish
46 and Game Advisory Committee and City Council, new
47 players, you could very easily hear new information which
48 Cal and other people may not have had in front of them at
49 the time they did this analysis on a process that prides
50 itself at TEK, I can't imagine you're not going to hear

1 something from those people who didn't have something
2 they could add constructively into the process to help
3 you. So just that alone, I think, is important to get as
4 much information as you can to make sure you get a good
5 product for Gustavas, let alone try to broaden it out.

6
7 So I think -- you know, I applaud him for
8 trying to do that.

9
10 ACTING CHAIR GOTTLIEB: That's a good
11 point, thank you.

12
13 MR. EDWARDS: Madame Chair. I'm
14 convinced, I'm ready to make a motion.

15
16 (Laughter)

17
18 ACTING CHAIR GOTTLIEB: Okay. Do you
19 need any more time to look something up?

20
21 MR. LITTLEFIELD: I don't know where it
22 is, these are all out of order and everything. Madame
23 Chair, you have our -- on Page 332, it says we have the
24 intention to submit a proposal and I'll guarantee you
25 that that was going to go forward because we're going to
26 make that real clear to Staff that they understand that
27 completely.

28
29 ACTING CHAIR GOTTLIEB: Thank you. Gary.

30
31 MR. EDWARDS: Madame Chair. I move that
32 we support the proposal of the Southeast Regional
33 Advisory Council that it's my understanding, it would
34 table the original proposal and with the understanding
35 that they will be proceeding -- go forward to try to find
36 additional information, not only for Gustavas but for
37 some of the other communities and we would be looking
38 forward for the Council coming back to us, I believe it
39 would be at this time next year, with a broader proposal
40 for C&T which would include Gustavas and hopefully would
41 bring additional information that would make it easier
42 for all of us, I think, to make an informed decision.

43
44 ACTING CHAIR GOTTLIEB: Thank you. Is
45 there a second.

46
47 MR. BUNCH: Second.

48
49 ACTING CHAIR GOTTLIEB: I guess I'll just
50 mention at the risk of making somebody cringe, we just

1 had a discussion of Whittier and I think we had some
2 eloquent arguments for including Whittier and this is a
3 different situation but we have some arguments that are
4 different for now tabling this and pressing on for the
5 next year so I'll just bring that up as a concern I have.

6

7 Denny.

8

9 MR. BSCHOR: Yeah, this is all ironic
10 isn't it. But it's back to what Keith said, there are
11 reasons to look at the context of the C&T and I think
12 we've got some different examples here today. So I'm not
13 extremely concerned about that, although I do think that
14 if we have a situation where the parties want to get more
15 information and as long as it's not detrimental to the
16 subsistence needs of the people of Gustavas in the
17 interim then maybe a slower approach is appropriate.

18

19 So I have the same concern you have as
20 far as consistency but I think in this situation --
21 because I think in this situation we've got quite a bit
22 of information on Gustavas but once again in the context
23 maybe there's more we need and what does it hurt to get
24 that information and have this before us in another
25 cycle.

26

27 ACTING CHAIR GOTTLIEB: I agree, it does
28 sound like and I know that John and Forest Service Staff
29 and others will do this, that there does need to be a
30 greater deal of consensus achieved among the Regional
31 Advisory Council and representatives from Gustavas about
32 exactly what this is or what this isn't.

33

34 CHAIRMAN DEMIENTIEFF: Since, I think
35 technically it's not a tabling motion I just want to
36 agree, even though that is the consensus, but again I
37 just want to compliment people for willing to work on the
38 issue and bring back a better developed thought, I think
39 it's just wonderful. So I intend to support.

40

41 ACTING CHAIR GOTTLIEB: Any other
42 discussion. Gary.

43

44 MR. EDWARDS: I mean I guess from a
45 procedure standpoint, maybe the Chairman is right, in
46 that, I guess by tabling it we're not going to be looking
47 at this same proposal next year, right, we're going to be
48 looking at a different proposal, so tabling may not be
49 the appropriate vehicle. So maybe I need some guidance
50 as to what the appropriate vehicle is.

1 MR. BOYD: Well, as I understand Robert's
2 Rules, when you table something it goes off the agenda
3 during this meeting and, you know, unless you pick it
4 back up. It won't be on the agenda in the next meeting,
5 on the written agenda, but the new proposal will be, but
6 you may take it off the table at the next meeting as
7 well, this same proposal.

8
9 CHAIRMAN DEMIENTIEFF: Or you can table
10 to a time specific also.

11
12 ACTING CHAIR GOTTLIEB: But we do need to
13 vote on it is my understanding.

14
15 MR. BSCHOR: I don't want to speak for
16 Mr. Littlefield, but the recommendation is to table the
17 proposal with the intention to submit a Council generated
18 customary and traditional use proposal covering the rural
19 communities in District 14 in the 2007 fisheries
20 regulatory cycle, so that's time based. Is that correct,
21 John?

22
23 MR. LITTLEFIELD: That's correct. The
24 motion as I understood it was to accept the Southeast
25 Alaska Regional Advisory Council's recommendation on
26 Proposal 23, if you accept that, you're accepting all of
27 the language that's on Page 332 as well as the top of
28 333, which means that we will be back here before you
29 next year with a proposal that is generated by the
30 Southeast Alaska Regional Advisory Council that will be
31 all inclusive of all of those areas, and I don't know how
32 far they're going to go but it's going to be all
33 inclusive. That was our direction.

34
35 CHAIRMAN DEMIENTIEFF: That's also my
36 understanding, that's why we're having discussions. It's
37 not a tabling motion, it's taking the opinion of the
38 Southeast RAC.

39
40 Anyway, if there's no other discussion
41 I'll call for the question. Gee, all these things I
42 haven't been able to do for awhile.

43
44 ACTING CHAIR GOTTLIEB: I think we're
45 ready for a vote.

46
47 All those in favor of tabling the
48 proposal.....

49
50 CHAIRMAN DEMIENTIEFF: That's not the

1 motion, ma'am. Accepting the Southeast Alaska
2 recommendation.

3
4 ACTING CHAIR GOTTLIEB: Correct. All
5 those in favor of accepting the Southeast Regional
6 Advisory Council's recommendation say aye.

7
8 IN UNISON: Aye.

9
10 ACTING CHAIR GOTTLIEB: All those
11 opposed, same sign.

12
13 (No opposing votes)

14
15 ACTING CHAIR GOTTLIEB: Motion carries
16 then. Next proposal.

17
18 MR. CASIPIT: Thank you, Madame Chair.
19 FP06-24, the executive summary begins on Page 345. The
20 analysis itself begins on Page 350. I'm going to -- I'm
21 sorry, 24, it starts on Page 350, the actual Staff
22 analysis. I'm going to try to truncate this a bit to try
23 to save some time.

24
25 Proposal FP06-24 was submitted by Mr.
26 John Littlefield of Sitka, requests that bait be allowed
27 for all Federal subsistence fisheries in Southeast Alaska
28 and the Yakutat fisheries management areas where it's not
29 currently allowed. This proposal was submitted so that
30 Federally-qualified subsistence users could harvest the
31 fish they need in a quick and efficient manner. The
32 proponent states that subsistence users normally keep
33 what they catch and catch what they need.

34
35 The proponent also states that the
36 existing bait restrictions are tailored more towards the
37 sportfishery where catch and release applies or there are
38 slot limits or size limits for legal fish.

39
40 I wanted to point out also that currently
41 in the Federal regulations there are no prohibitions
42 against the use of bait in the Yakutat management area.

43
44 The effect of this proposal would be to
45 legalize the use of bait in all Federal subsistence
46 fisheries in the Southeast Alaska fisheries management
47 areas and the Yakutat fisheries management areas.

48
49 This proposal would have the effect of
50 increasing the efficiency of an efficient gear type which

1 is rod and reel. I wanted to note, though, that Federal
2 subsistence harvest levels would probably remain the same
3 since harvest limits are in place and the use of bait in
4 and of itself will not increase harvest beyond the
5 harvest limits in Federal regulations. I also wanted to
6 point out that local Federal managers would still have
7 the authority to restrict the use of bait through our
8 Federal permitting process as needed to ensure
9 conservation of steelhead, trout, char, and coho salmon
10 stocks.

11

12 Thank you, Mr. Chair -- Mrs. Chair.

13

14 ACTING CHAIR GOTTLIEB: Thank you. Any
15 questions for Cal.

16

17 (No comments)

18

19 ACTING CHAIR GOTTLIEB: Could we have a
20 summary of written public comments, please.

21

22 MS. HERNANDEZ: Madame Chair. Melinda
23 Hernandez, Forest Service. We received one written
24 public comment from the Chilkoot Indian Association.

25

26 They're writing in favor of the proposal.
27 There should be no reason to restrict the methods of
28 taking fish for subsistence. Whatever methods that are
29 the quickest, safest and most efficient should be used to
30 harvest subsistence fish.

31

32 That's it.

33

34 ACTING CHAIR GOTTLIEB: Thank you. We
35 had no request for public testimony. Could we have the
36 Regional Advisory Council recommendation, please.

37

38 MR. LITTLEFIELD: Thank you, Madame
39 Chair. If you look on Page 347 of your Board book you'll
40 find the recommendation on FP06-24.

41

42 And the recommendation of the Southeast
43 RAC was to support with a modification. And the modified
44 language is shown on Page 347 and 348 and I'm not going
45 to read all of it because I assume you have but it
46 basically was to accept to modify retention, and I'll go
47 through our second paragraph on Page 348.

48

49 The SERAC supported this proposal as
50 modified because it provides for the efficient harvesting

1 of fish taken for subsistence and is a practice that has
2 typically been done by subsistence users. The Council
3 found that the existing regulatory restrictions were
4 geared to catch and release and other sportfishing with
5 the intention of making fish harvest more difficult and
6 challenging. Restricting harvest in this way is not
7 appropriate for subsistence fishing. The Staff
8 modifications were accepted by the Council because the
9 retention requirement protects against waste of fish that
10 may be caught with bait and because they provide a
11 protection for steelhead stocks region wide. The Council
12 is aware that in the interest of conservation Federal
13 managers may have more restrictive permit conditions and
14 disallow the use of bait in specific Federal subsistence
15 fisheries. The Council believes that the Staff analysis
16 and information provided by the Council members provides
17 substantial evidence to support this proposal. With the
18 proposed modifications in place and existing regulatory
19 bag limits, potential conservation concerns are
20 addressed. This proposal would benefit subsistence users
21 by allowing them to legally take fish efficiently and
22 there are no effects on non-subsistence users.

23

24 That's all, Madame Chair.

25

26 ACTING CHAIR GOTTLIEB: Thank you. Any
27 questions or comments for John.

28

29 (No comments)

30

31 ACTING CHAIR GOTTLIEB: Interagency Staff
32 Committee, please, Pete.

33

34 MR. PROBASCO: Thank you, Madame Chair.
35 The Interagency Staff Committee supports this proposal
36 with modification consistent with the recommendation of
37 the Southeast Alaska Regional Advisory Council to require
38 that fish caught with bait must be retained.

39

40 Allowing the use of bait in Southeast
41 Alaska will provide Federally-qualified subsistence users
42 a more efficient method for harvesting fish with rod and
43 reel. Bait restrictions are more tailored to catch and
44 release sportfisheries or where there's a minimum size or
45 slot limit. Local Federal managers have the authority to
46 restrict the use of bait to provide for conservation in
47 specific locations. The modified regulatory language
48 would provide for conservation of steelhead and eliminate
49 hook and release mortality when using bait in Southeast
50 and Yakutat fisheries management areas.

1 Madame Chair.

2

3 ACTING CHAIR GOTTLIEB: Thanks very much.
4 Any questions.

5

6 (No comments)

7

8 ACTING CHAIR GOTTLIEB: If we could have
9 Department comments, please.

10

11 MR. BROOKOVER: Madame Chair. For the
12 record, my name is Tom Brookover, I work for Department
13 of Fish and Game, Division of Sportfish.

14

15 For this proposal we have previously
16 stated that the current Federal subsistence harvest
17 regulations jeopardize steelhead and trout stocks in
18 Southeast Alaska. History has shown that a level of
19 harvest opportunity similar to the current level could
20 not be sustained in the absence of an intensive stock
21 assessment program. To date we're not aware of any
22 evidence to the contrary and we continue to maintain that
23 neither the State nor the Federal managers have the
24 information or manpower necessary to effectively
25 implement the new Federal subsistence regulations.

26

27 This proposal will increase harvest
28 success for targeted and non-targeted species under
29 Federal rules. The use of bait could be supported as a
30 means to harvest fish in abundance-based management
31 strategy, however, trout and steelhead fisheries are not
32 activity managed using an abundance-based framework.
33 The existing Federal regulations, in our view, are not
34 conservative. Without evidence that existing Federal
35 regulations are needed and would be sustainable we can't
36 support the additional pressure that this proposal would
37 bring to those species.

38

39 And I will not that my comments are a
40 little bit different than what you have in written form
41 -- our written comments also addressed increased
42 incidental mortality as an effect of this proposal. And
43 my understanding in recent discussions with Federal
44 managers is that's not a concern. The reason it was a
45 concern for us initially or earlier in the development of
46 our comments was because 2005 permit stipulations had
47 size limits in effect for various species and with those
48 size limits there would be a conflict between requiring
49 fish to be retained as proposed and be released as
50 permitted under size limit stipulations. So that's

1 abated, but our recommendation still stands because of
2 the increased effects to harvest and the concerns for the
3 additional pressure without some type of intrinsic
4 management strategy that would assure conservation.

5
6 So our recommendation remains to oppose
7 the proposal.

8
9 ACTING CHAIR GOTTLIEB: Thanks for your
10 comments and for the clarification, too. Any other
11 comments.

12
13 John.

14
15 MR. LITTLEFIELD: The honeymoon is over.

16
17 (Laughter)

18
19 MR. LITTLEFIELD: Madame Chair. There's
20 a statement in the State's -- it's the middle of the last
21 paragraph there, it says they could not -- could not be
22 supported unless there were conservative regulations that
23 do not result in fish being released.

24
25 Now, I only got these Monday, that's when
26 I received these, and they weren't written and we didn't
27 have them at our meeting. But if you look at what our
28 recommendation was it says that all fish have to be
29 retained if we're catching them with bait and once you
30 catch them your limits are over.

31
32 So my question is just, isn't that
33 conservative enough to make you want to support this? In
34 other words we're going to keep every fish we catch and
35 you're going to soon reach your two fish limit and that's
36 going to be the end of it.

37
38 MR. BROOKOVER: Madame Chair. Mr.
39 Littlefield. That was the point I was trying to address,
40 is that there were two concerns, one, is the lack of an
41 abundance-based management strategy or some type of a
42 strategy that assured conservation. On the State side in
43 the sportfishery regulations we use a strategy that's
44 goal is to ensure that the majority of female cutthroat
45 trout have the ability to spawn at least once and we do
46 that by implementing a minimum size limit and we have
47 data that supports that size limit under that strategy.
48 So without that strategy we have a concern with this
49 regulation because it would increase the harvest
50 efficiency.

1 The second part of our earlier comments
2 address the incidental mortality, that's ameliorated by
3 the proposed regulation and the reference you made, Mr.
4 Littlefield, to the fact that people would retain those
5 fish.

6
7 But we still believe that without a
8 management strategy this would lead to increased harvest,
9 increased efficiency, increased harvest and therein still
10 lies our concern.

11
12 ACTING CHAIR GOTTLIEB: John.

13
14 MR. LITTLEFIELD: I guess I just read
15 that wrong. The sentence says the use of bait could be
16 supported as a means to harvest fish in an abundance-
17 based management strategy, or under conservative
18 regulations that do not result in fish being released.

19
20 So I thought it was two, but if you want
21 to tie them both together that's fine, end of story.

22
23 ACTING CHAIR GOTTLIEB: Gary.

24
25 MR. EDWARDS: Yeah, I guess I had a
26 question along the same lines because, you know, you
27 could argue that when you have artificial only
28 regulations then people can -- well, tend to be
29 selective, possibly because you can release the fish and
30 catch another one and we know that there is some level of
31 mortality with that. But when we went to a bait fishery
32 in which you have to retain everything you caught then
33 that would reduce that potential mortality that may be
34 associated with a catch and release program associated
35 with artificial bait when you're basically trying to
36 select for a certain size of fish.

37
38 Now, whether that makes up in the
39 difference of the efficiency or not, is there any way to
40 quantify what the efficiency is and what the expectation
41 would be between fishing with artificial lures as opposed
42 to fishing with bait? That's one question.

43
44 Then the second question is, I notice, my
45 understanding is once you reached your limit with
46 steelhead then you could not continue to use bait; how
47 would that apply with cutthroat, for example, that also
48 has a limit? Should there be similar language in there
49 that would basically say that any time you reached your
50 limit with any species then you can no longer fish with

1 bait?

2

3 Actually I was addressing that to them,
4 but anybody can answer that, I know that was kind of two
5 questions in one.

6

7 MR. BROOKOVER: Madame Chair. Mr.
8 Edwards. I'll take a crack at the first one.

9

10 I think your question got at the tradeoff
11 in total mortality between incidental mortality rates of
12 fish being released versus the requirement in the
13 proposal that any fish caught be retained as long as it's
14 caught with bait.

15

16 There are studies on incidental mortality
17 rates of cutthroat and steelhead that I'm aware of now.
18 I believe there are also some on Dolly varden, but I
19 don't have those statistics in my head.

20

21 For cutthroat, most of the literature
22 suggests incidental mortality rates without using bait of
23 five percent. So in a scenario where bait's not allowed,
24 theoretically one out of every 20 fish or thereabouts
25 would be susceptible to incidental mortality. When you
26 use bait those rates go up to 40 or 45 percent. So
27 that's the tradeoff. If you're required to keep one the
28 incidental mortality on fish caught and released would
29 theoretically occur after you caught the 20th fish. So I
30 think that's the balance you were looking for there.

31

32 With steelhead, steelhead are generally a
33 more hearty fish. The incidental mortality rates
34 commonly used by managers in these types of discussions
35 is five percent also, actually studies suggest it's a
36 little less, three percent, I believe, but they're very
37 similar.

38

39 The second question I might defer to
40 Federal Staff on.

41

42 MR. EDWARDS: The other question was do
43 you have any studies with regards to really what is the
44 difference in efficiency between artificial bait and with
45 bait -- or artificial lures, I guess I should say and
46 bait?

47

48 MR. BROOKOVER: Madame Chair. Mr.
49 Edwards. We believe that the use of bait is more
50 efficient. I believe there are studies available but I

1 don't know what the rates are.

2

3 ACTING CHAIR GOTTLIEB: Thanks. Cal, do
4 you have any comments to add to that?

5

6 MR. CASIPIT: No.

7

8 ACTING CHAIR GOTTLIEB: Well, I might ask
9 then, there's been some discussion of how managers would
10 be able to monitor the take, can you explain to us a
11 little bit how that might be done?

12

13 MR. CASIPIT: Well, we would have, you
14 know, several options open to us. Like I had mentioned
15 before, our local managers have the ability to set permit
16 conditions, so we could require, you know, frequent
17 reporting, we can -- you know, there's a whole suite of
18 things that we could do. We could prohibit the use of
19 bait in certain areas that we know have conservation
20 issues with them. We can even, you know, restrict
21 fishing in areas where we have a conservation issue.

22

23 Just as an example of the kind of permit
24 stipulations that we can put into place, I'd call your
25 attention -- I'm probably jumping ahead to future
26 proposals here, but if you look at Page 426 of your book
27 you can see the types of permit stipulations that we put
28 on the steelhead and trout permits last year -- no, these
29 are the steelhead permit stipulations so for instance
30 steelhead you can see the types of restrictions we put in
31 place last year.

32

33 ACTING CHAIR GOTTLIEB: Gary.

34

35 MR. EDWARDS: Going back to kind of the
36 last question I asked. I guess one of the things, and,
37 John, if you could look at any one of your proposal,
38 let's say the Yakutat management area, would there be a
39 problem with that last sentence, kind of modifying that
40 to say once your daily or annual limit is met you may no
41 longer fish with bait for any species or do we -- what
42 I'm trying to do is to do the same thing for other
43 species that have limits on them that you, you know, seem
44 to be willing to do with steelhead. I don't know if
45 that's a problem or not but my understanding is that
46 there are limits on cutthroat, for example, both daily
47 and annual, so why wouldn't there be the same problem
48 with cutthroats as seems to be recognized with steelhead?

49

50 MR. CASIPIT: Thank you, Madame Chair.

1 Mr. Edwards. When we began work on these Staff analysis
2 we coordinated fairly early with Mr. Brookover and his
3 staff and in conversations with him and his staff we
4 honed in pretty quickly that steelhead was kind of an
5 issue as far as this regulation, this bait regulation.
6 Also since, you know, a limit for steelhead is two
7 annually, again, we were concerned that if we didn't have
8 that in there there could be catch and release, if you
9 will for steelhead with bait and the kind of mortalities
10 that would be associated with that. Since the harvest
11 limits for cutthroats are so much greater, you know, we,
12 as a Staff, didn't really think about that.

13

14 ACTING CHAIR GOTTLIEB: John.

15

16 MR. LITTLEFIELD: I would like to ask Mr.
17 Casipit to look something up while I'm talking and that
18 would be the limits on Dolly varden, cutthroat so that we
19 can look at what those limits are, the daily and annual
20 bag limits.

21

22 And then if you look at the language
23 here, for streams with steelhead, once your daily or
24 annual limit of steelhead is harvested you may no longer
25 fish with bait for any species. So if you were to catch
26 two fish on the first two catch you would be done. If we
27 look at the State regulations and apply their five
28 percent and their legal fish is a 36 inch size, less than
29 one percent, around .6 percent of all the steelhead that
30 were sampled were above 36 inches, which means you would
31 have to catch 166 on the average, 166 fish to get one
32 that was legal. Five percent of 166 fish is more than
33 the waste that's going -- I think this is a net benefit.
34 If you were to ask me, I would say the State should go
35 Kumbya with us and say this is a cool deal but then that
36 would be three, but they're not going to because -- I
37 don't know what the reasons are. But I think it is going
38 to be a benefit. I think there's going to be less
39 mortality than catch and release trying to find 36 inch
40 fish than going out and catching the first two fish you
41 catch, take them home, I think it's a plus.

42

43 Then if Mr. Casipit has found the numbers
44 on the other fish, I'll talk about those. I don't think
45 they're great enough to cause a conservation concern, but
46 if -- the way this regulation reads is if you're fishing
47 with bait and you catch -- if you catch those fish, once
48 your applicable limit is done, you got to retain every
49 one of them, you're done fishing, so.....

50

1 MR. EDWARDS: But what it says is you're
2 done fishing with bait, you can continue fish.
3
4 MR. LITTLEFIELD: No, no, no, no.
5
6 MR. EDWARDS: Yes, it says no longer fish
7 with bait, it doesn't say you can no longer fish, at
8 least that's the way I read it.
9
10 MR. LITTLEFIELD: With bait for any
11 species.
12
13 MR. EDWARDS: Right. But you can
14 continue to fish as long as you don't use bait.
15
16 MR. LITTLEFIELD: Okay, yeah, but I mean
17 you can't use bait. So the cutthroat goes away, the
18 first two fish you catch, well, whatever, Mr. Casipit, if
19 you could help me out on what these other limits are.
20
21 MR. CASIPIT: Thank you, Madame Chair.
22 Mr. Littlefield. I'll just start with the steelhead.
23
24 Steelhead for other than Prince of Wales
25 and Kosciusko Islands, it's one steelhead per day, two
26 steelhead per household, annual limit. It's one
27 steelhead per day per household, two steelhead per
28 household annual limit.
29
30 For Prince of Wales and Kosciusko Island
31 it's slightly different. For the winter season, it's two
32 trout per household, and that's an annual limit -- season
33 limit. For the spring season it's five steelhead on
34 Prince of Wales and Kosciusko, again, a season harvest
35 limit.
36
37 For trout, char and grayling fisheries in
38 Southeast there are no annual limits, however, we do have
39 daily harvest and possession limits of 20 brook trout per
40 household, 20 grayling per household, 20 Dolly varden per
41 household, and six cutthroat or rain -- or six rainbow
42 trout, 12 -- that's in combination and 12 per household
43 in combination.
44
45 So cutthroat and rainbows are considered
46 the same fish in terms of our regulations in Southeast.
47
48 ACTING CHAIR GOTTLIEB: Any other Board
49 discussion. Denny.
50

1 MR. BSCHOR: Yeah, I have a question and
2 it's probably for law enforcement, but maybe you can
3 answer it Cal as far as, how do you enforce the use of
4 bait, I mean how do you know when they've used their bait
5 if they're out fishing again and still using bait? I
6 mean they get two fish with bait then they're still out
7 fishing, of course, then -- I'm just -- I don't know how
8 that works. Is that a problem? Maybe I better just stop
9 there.

10
11 MR. LITTLEFIELD: It's a Federal permit.
12 I'll make it simple, the Federal permit has to be filled
13 out. You ask Marty.

14
15 MR. MEYERS: Thank you. My name is Marty
16 Meyers. I'm the Special Agent U.S. Forest Service out of
17 Juneau. Through the Chair. Mr. Bschor, basically so far
18 as an enforcement effort, I mean this is another
19 situation where we have -- the person has to be on site
20 to see that happen.

21
22 And it does complicate things when we mix
23 up things you're supposed to have with things you're not
24 supposed to have at different times and that's -- we're
25 -- you know, a limited number of fish you can catch with
26 bait and the rest of them you don't have to use bait,
27 then in order to -- it does complicate things somewhat
28 because it requires the officer to stay out there a much
29 longer period of time if he has an indication that the
30 person is continuing to use bait when they're not
31 supposed to, if I understand the question correctly.

32
33 MR. EDWARDS: Yeah, but in this case the
34 way I read it is that if you check an angler, a
35 subsistence angler, and they have a steelhead in their
36 crill and if they're still fishing with bait regardless
37 of what they're fishing for, they're in violation of this
38 regulation?

39
40 MR. MEYERS: If they've already got their
41 limit?

42
43 MR. EDWARDS: Yes. And if the limit is
44 one fish, so if you check one and they have a steelhead
45 on the line, and if they're fishing with bait they're in
46 violation of the regulation.

47
48 MR. MEYERS: Correct.

49
50 ACTING CHAIR GOTTLIEB: Other discussion.

1 Kelly.

2

3 MR. HEPLER: This is more of a policy
4 comment, and then I have a more specific comment.

5

6 One thing that Keith challenged us, I
7 think, this morning, as much as possible is to try to --
8 don't have a divergence of regulations if we can help
9 that, and this is where we've seen a slow divergence of
10 regulation through time. That, in itself is not as
11 problematic to me, I guess, is that the bottom line, that
12 all of us sitting around the table, are these sustainable
13 or not. I'm saying -- and I don't have the answer to
14 this and if I was a lawyer, I probably should never ask a
15 question that I don't have an answer to, but collectively
16 between the harvest regime that's been set up under the
17 Federal side and what we have on the State side, I guess
18 the question -- I guess I am directing this to my own
19 Staff, to Tom, is that still sustainable, can we tell,
20 are we seeing warning signs or we're not going to know it
21 until it goes over to the other side? I mean you were a
22 manager there for a long time are you getting butterflies
23 in your stomach, I mean I don't know, Tom, that's why I'm
24 asking the question.

25

26 MR. BROOKOVER: Madame Chair. Mr.
27 Hepler. Again, there's some history behind this.

28

29 On the State side prior to 1994 the
30 sportfishing regulations were much more liberal than they
31 are now. They allowed the harvest of, I can't remember
32 what the bag limit was, but it was above two fish per day
33 for cutthroat and rainbow in combination like it is now.
34 And probably the bigger mechanism that's in place now,
35 which is this 12 inch size limit, was not in place at
36 that time. Together with those two things there was a
37 much higher level of harvest prior to '94 per year than
38 there is now. We saw declines in harvest estimates
39 combined with increases in sportfishing effort during
40 that time period. We had a lot of anecdotal reports of
41 people being unable to catch the large fish and the
42 number of fish that they had been able to catch in
43 previous decades. There was other information that we
44 had that suggested cutthroat stocks in Southeast were
45 being depleted, hence the Board's -- State Board's action
46 in 1994 that reduced the bag limit and implemented the
47 size limit. At the same time the bait prohibition that's
48 currently in place in sportfishing regulations was put
49 into place not necessarily as an additional restrictive
50 mechanism but coincident with the incidental mortality

1 that would be caused by the size limit regulations that
2 was put into place at that time.

3
4 The real, you know, the real notion, I
5 think, for us at that time was that with the information
6 we had at hand we were forced to develop a fishery
7 objective or a fishery management strategy and the best
8 available information at the time was that if you protect
9 a majority of female cutthroat trout so that they can
10 have the opportunity to at least spawn one time,
11 scientific literature suggested that was the most robust
12 strategy that you could put in place.

13
14 You heard earlier today when Mr. Miller
15 was speaking of Prince of William Sound cutthroat, he
16 used a different strategy, there's a different strategy
17 in place up there and that is to maintain historic size
18 and age composition.

19
20 In Southeast, after the problems that we
21 saw we put into place what the best science at the time
22 had to say and that remains our best take on what the
23 best strategy is.

24
25 Without that size limit, the Federal
26 regulations don't have that intrinsic mechanism, there is
27 no strategy there designed to assure conservation or
28 assure sustainability of the fishery. Now, is that a
29 problem, it depends on the fishing effort. If there's no
30 fishing effort, no harvest, then there's little
31 biological problem. At this time I think there is
32 relatively low reported levels of harvest. Are there
33 problems in specific places because of those low levels
34 of harvest, probably not. But we don't have the
35 information to know because there's no stock assessment
36 programs on the ground. We do have three stock
37 assessment programs that we conduct within Fish and Game,
38 long-term monitoring assessment programs. They show
39 mixed results. There's some concern for migratory
40 stocks, anadromous stocks. The resident stocks overall I
41 think look okay without having the data before me.

42
43 But the problem is we just don't have the
44 information to determine from a scientific standpoint
45 whether there are current problems with specific stocks
46 at this time. That's one of the reasons that our
47 regulations are designed to be somewhat conservative
48 using the strategy that we do for the region as a whole.
49 There is just no feasible way to implement a stock
50 assessment program over hundreds of stocks in an area

1 like Southeast.

2

3 ACTING CHAIR GOTTLIEB: Pete, do you have
4 a comment.

5

6 MR. PROBASCO: Thank you, Madame Chair.
7 When the Interagency Staff Committee was deliberating on
8 this proposal, we carefully looked at the existing
9 regulations that the Board has adopted as far as
10 safeguarding steelhead populations and conserving those
11 stocks and still allowing a subsistence harvest. And the
12 big issue that played was how can we allow that harvest,
13 allow bait and still safeguard those populations, and
14 that's where this concept that the Southeast RAC came up
15 with as far as those annual limits and the use of bait,
16 looking at the mortality of bait were allowed to be
17 continued was a key factor in that recommendation.

18

19 Madame Chair.

20

21 ACTING CHAIR GOTTLIEB: Thank you. Gary.

22

23 MR. EDWARDS: I don't know how much more
24 we want to discuss this. I mean I think I can probably
25 support this. I guess I would still like to see to the
26 last sentence in each one of these after steelhead,
27 added, and trout, assuming that trout also include
28 cutthroat, I think it would be -- for my mind it would be
29 the appropriate way to go.

30

31 But that's probably the main problem I
32 have.

33

34 ACTING CHAIR GOTTLIEB: Any comments on
35 that suggestion. Please.

36

37 MR. MEYERS: Marty Meyers, Forest Service
38 Law Enforcement. I wanted to bring up something that I
39 don't think too many people are aware of that our folks
40 are out in the field and I'm primarily talking about the
41 Prince of Wales and we specifically go out to check for
42 -- on the Federal waters check for crill checks and check
43 for those who are fishing there. And we've actually
44 noted that for the most part and especially when it comes
45 to the steelhead fishery, is that, you know, bait would
46 allow those who want to catch a steelhead to actually
47 probably catch it easier but for the most part, most of
48 the people we've come across that are subsistence users
49 are still doing catch and release with steelhead and I
50 think at least they have the ability to keep the fish if

1 it's too damaged.

2

3 So we're not seeing too much take when it
4 comes to the steelhead fishery there even though they
5 have the ability to keep the other sizes. Just some food
6 for thought.

7

8 ACTING CHAIR GOTTLIEB: Thank you. Are
9 we ready for a motion.

10

11 MR. BSCHOR: Yeah, I'm prepared to move
12 to accept the -- to adopt the proposal as modified by the
13 Southeast Regional Advisory Council. And I think if the
14 Board members feel strongly enough that they needed to
15 add some more wording they can amend my motion at that
16 point in time. And I'll give my reasoning following a
17 second.

18

19 ACTING CHAIR GOTTLIEB: There's a motion,
20 is there a second.

21

22 MR. BUNCH: I'll second it.

23

24 ACTING CHAIR GOTTLIEB: Thank you,
25 Charlie. Discussion.

26

27 MR. BSCHOR: I guess all in all, assuming
28 this can be managed in the way that I've heard and with
29 the benefit of being able to catch your two fish and
30 that's it, to me it seems to be a more efficient and
31 effective way of getting your subsistence.

32

33 The conservation of fisheries resources
34 is provided through the harvest limits in place and we've
35 been working with that and I think we've been, so far,
36 successful with that and I would also want our folks to
37 continue to work on those stocks that where there is
38 questions to make sure that we're being very careful
39 about what permits we're issuing and it should be in
40 conjunction and cooperation with the State's concerns.
41 And that we can be very specific about locations of
42 stocks, I think that satisfies some of the conservation
43 concerns.

44

45 And I think with that it does provide for
46 a more efficient ability to actually satisfy subsistence
47 needs.

48

49 ACTING CHAIR GOTTLIEB: Thank you. Other
50 discussion.

1 (No comments)

2

3 ACTING CHAIR GOTTLIEB: From my
4 observation in Southeast Alaska as well as other places
5 the Federal and State managers have worked together
6 really well so I'm sure that strategies that are jointly
7 developed can carefully manage this fishery.

8

9 (Pause)

10

11 ACTING CHAIR GOTTLIEB: Other questions
12 or comments.

13

14 (Pause)

15

16 ACTING CHAIR GOTTLIEB: Charlie.

17

18 MR. BUNCH: Dr. Chen asked me a question
19 and I'll have to ask the Staff, if you add trout to the
20 list, would that affect people's ability to fish for coho
21 because anywhere where you've got coho there's going to
22 be trout?

23

24 MR. CASIPIT: Madame Chair. Mr. Bunch.
25 If we were to add that clause about once you've reached
26 your daily limit of cutthroat trout that you wouldn't be
27 able to fish for bait for any other species, so, yes, in
28 the case of coho salmon, on that day if you happen to
29 reach your daily limit of trout, which would be six, you
30 would not be able to -- you could still go ahead and fish
31 for cohos but you wouldn't be able to use bait.

32

33 MR. BUNCH: Okay.

34

35 MR. EDWARDS: I don't think it reads that
36 way. I mean correct me if I'm wrong and I hope I am, but
37 the way I read it right now, for steelhead, for example,
38 you're fishing in a stream that has both steelhead and
39 trout in it and you catch six trout using bait and you
40 had to keep -- and it says you have to keep each one of
41 those six trout, but you can continue to fish for your
42 steelhead using bait, correct, and so if you catch -- if
43 the next fish you catch is another trout you're over your
44 limit so you have to release that trout because you're
45 over your limit but you've just caught it with bait,
46 which means you're probably going to have a higher
47 mortality rate on that trout; is that not correct?

48

49 MR. CASIPIT: Madame Chair. Mr. Edwards.
50 I thought the sentence that potentially being talked

1 about being modified here was the last sentence so I was
2 assuming that it would read for streams with steelhead
3 and trout, once your daily or annual limit of steelhead
4 or trout is harvested, you may no longer fish with bait
5 for any species.

6
7 MR. EDWARDS: That's what I was
8 suggesting but nobody took me up on my suggestion so
9 I.....

10
11 MR. CASIPIT: Well, I was answering Mr.
12 Bunch's question in the case that trout was added.

13
14 MR. EDWARDS: Okay, I'm with you, sorry.

15
16 MR. BUNCH: Thank you, Cal.

17
18 ACTING CHAIR GOTTLIEB: So, I'm,
19 therefore, a little confused by what's appearing on the
20 screen. I believe the motion was to adopt the Southeast
21 Alaska Regional Advisory Council's recommendation. I
22 haven't heard yet any modification to that.

23
24 MR. BSCHOR: That's correct, there hasn't
25 been. If there's a modification, it's going to have to
26 be amended.

27
28 ACTING CHAIR GOTTLIEB: Okay. Any
29 further discussion. Gary.

30
31 MR. EDWARDS: Well, I guess, you know, I
32 was going to let it ride but maybe I have another
33 opportunity at it. I guess I would amend it by adding
34 the words, steelhead and trout, and in my mind that would
35 address the issue of potentially catching over your limit
36 of trout with bait which would pretty much prohibit you
37 from releasing that fish. I mean obviously you would
38 have to release it because you're over your limit but
39 you're going to have a higher mortality rate on it as a
40 result.

41
42 ACTING CHAIR GOTTLIEB: Is that your
43 motion to amend.

44
45 MR. EDWARDS: Well, it's just been
46 suggested to me maybe the word should be or, but I hadn't
47 thought that through, or maybe I ought to just forget it,
48 I don't know.

49
50 (Laughter)

1 MR. EDWARDS: I mean I guess I appreciate
2 the fact that folks recognize that there's a problem with
3 trout, I mean with steelhead and I just wanted to know if
4 we ought to look at it the same way for trout.

5
6 John, what do you think?

7
8 MR. LITTLEFIELD: I think we ought to get
9 with it and get out of here. There was no second to your
10 amendment.

11
12 CHAIRMAN DEMIENTIEFF: I agree. Call for
13 the question on the main motion.

14
15 ACTING CHAIR GOTTLIEB: Steve.

16
17 MR. DOUGHERTY: Madame Chair. The
18 Solicitor can correct me if I'm wrong, but I believe with
19 the current wording, once they catch the seventh fish
20 they're going to be in violation if they're still using
21 bait because if you're using bait, you're required to
22 catch it but you're over your bag limit, you're going to
23 be in violation at that point if you're still using bait
24 under the current wording.

25
26 Madame Chair.

27
28 ACTING CHAIR GOTTLIEB: Thank you.
29 Question's been called.

30
31 All those in favor of the motion, please
32 signify by saying aye.

33
34 IN UNISON: Aye.

35
36 ACTING CHAIR GOTTLIEB: All those
37 opposed, same sign.

38
39 (No opposing votes)

40
41 ACTING CHAIR GOTTLIEB: Motion carries.
42 The next proposal is No. 25.

43
44 MR. LITTLEFIELD: Madame Chair. Just a
45 question, how long are we going to go tonight, do you
46 have any idea?

47
48 ACTING CHAIR GOTTLIEB: Maybe we can aim
49 to complete this proposal by 5:30.

50

1 MR. LITTLEFIELD: I'm all in favor of
2 that.

3
4 ACTING CHAIR GOTTLIEB: Okay. Go ahead,
5 please.

6
7 MR. SUMINSKI: Madame Chair. Board
8 members. Council Chairs. My name is Terry Suminski,
9 Sitka subsistence fisheries biologist with the Forest
10 Service. You'll find this analysis begins on Page 357 of
11 your Board books.

12
13 Proposal FP06-25 submitted by Mr. Mike
14 Jackson of the Organized Village of Kake would remove the
15 Federal harvest limit for sockeye salmon in the streams
16 draining into the Bay of Pillars.

17
18 The proponent believes that the Federal
19 harvest limit for sockeye for streams draining into the
20 Bay of Pillars has become obsolete and should be removed.
21 Kutlaku Lake is the sockeye system that flows into the
22 Bay of Pillars.

23
24 Proposal FP01-31 was submitted by the
25 Organized Village of Kake and the city of Kake and
26 requested that the Federal Subsistence Board close the
27 Federal waters draining into Falls Lake, Gut Bay Lake and
28 Bay of Pillar drainages to the harvest of sockeye salmon
29 by non-Federally-qualified subsistence users. The Board
30 closed Kutlaku to the taking of sockeye to non-Federally-
31 qualified subsistence users because of the uncertainty of
32 escapement data and the potential for other users to
33 interfere with subsistence fishing. At that time there
34 was no Federal regulation that would tie the Federal
35 limit to the State subsistence limit so the Board set the
36 Federal harvest limit at 15 sockeye per individual and 25
37 sockeye per household in possession with mirrored the
38 State subsistence limit in effect at that time. Then
39 March 5th, 2002 the Department of Fish and Game, Division
40 of Commercial Fisheries sponsored a subsistence salmon
41 task force which was attended by community
42 representatives from Angoon, Kake, Sitka, Kake and
43 Pelican as well as ADF&G and USDA Forest Service Staff.
44 Representatives of the Organized Village of Kake proposed
45 a daily limit of 50 sockeye at Kutlaku to increase
46 harvest efficiency by subsistence users.

47
48 Users expressed a desire to go once
49 rather than numerous trips to harvest the fish they
50 needed. It was thought that harvest reporting would also

1 improve since the higher limit would allow users to
2 report what they had actually taken. ADF&G managers have
3 the authority to change harvest limits on State permits
4 and in 2002 season changed the State subsistence harvest
5 limit for Bay of Pillars from the possession limit of 15
6 sockeye per individual and 25 per household to a daily
7 possession and an annual harvest limit of 50 sockeye per
8 household or individual. This caused a divergence of
9 State and Federal limits.

10

11 If this proposal is adopted, the sockeye
12 limits for Kutlaku Lake would be determined by the limits
13 listed on the State permit as directed by regulation and
14 adopted by this Board during the 2005 regulatory cycle,
15 which states:

16

17 If a harvest limit is not otherwise
18 listed for sockeye in this section, the
19 harvest limit for sockeye salmon is the
20 same as provided for State subsistence or
21 personal use fisheries.

22

23 It goes on, but that's the pertinent

24 part.

25

26 This proposal would have no effect on the
27 resources since subsistence users are not limited by the
28 Federal harvest limit. Users can simply fish under the
29 State permit on which the daily limit is higher at this
30 time. Removing the Federal harvest limit from regulation
31 would allow Federal and State managers the flexibility to
32 work with users to determine appropriate harvest limits
33 on an annual basis, which are responsive to changes in
34 sockeye abundance in Kutlaku and accounts for the needs
35 of users.

36

37 This proposal would align State and
38 Federal subsistence harvest limits without adversely
39 impacting subsistence users. There would be no effect on
40 other users since subsistence fishing practices will
41 likely remain unchanged.

42

43 Thank you.

44

45 ACTING CHAIR GOTTLIEB: Thank you very
46 much. Any questions.

47

48 (No comments)

49

50 ACTING CHAIR GOTTLIEB: Were there any

1 written comments.

2

3 MS. HERNANDEZ: Madame Chair. There was
4 one written public comment from the Chilkoot Indian
5 Association. They write in favor of the proposal.

6

7 This change of regulation would make
8 subsistence fishing safer for those living in the Kake
9 area. Anything that takes danger and risk out of a
10 fishery is supported by the Chilkoot Indian Association.

11

12 ACTING CHAIR GOTTLIEB: Thanks very much.
13 We have no one signed up for public testimony. Regional
14 Council recommendations, please, John.

15

16 MR. LITTLEFIELD: Thank you, Madame
17 Chair. Our recommendation is on Page 355 of your Board
18 book. The regional Advisory Council supports the
19 proposal.

20

21 This proposal would remove the Federal
22 harvest limit that is no longer necessary. The current
23 Federal permit is lower than the State of Alaska harvest
24 limit. Subsistence harvesters from Kake may harvest
25 sockeye salmon under the higher State of Alaska harvest
26 limit at Pillar Bay. Pillar Bay is some distance from
27 the community, and in the past has been a main source of
28 sockeye for Kake residents. Federal possession limits
29 were set by the Board when it limited sockeye harvest in
30 Federal public waters of the Bay of Pillars to Federally-
31 qualified subsistence users. Since that time the State
32 of Alaska Board of Fisheries has changed its harvest
33 limits to allow for more efficient harvest of sockeye
34 salmon. For Kake residents making multiple trips to
35 Pillar Bay to get sockeye salmon they need is both
36 dangerous and expensive.

37

38 The Southeast Alaska Regional Advisory
39 Council reviewed substantial data supporting this
40 proposal. No data was presented opposing this proposal.
41 The change would mirror State of Alaska limits and make
42 for simplified regulations consistent with sound
43 management principles without adversely affecting the
44 subsistence users.

45

46 The Council anticipates that there are no
47 effects on non-subsistence users from this change.

48

49 The Council will also note that the
50 health of the Pillar Bay subsistence sockeye fishery is

1 strongly affected by the commercial interception fishery
2 that takes place on returning sockeye. The Council
3 supports better management of the interception fishery to
4 ensure that numbers of sockeye salmon returning to Pillar
5 Bay and other important subsistence systems are adequate
6 to meet the escapement goals and to provide for
7 subsistence needs.

8

9 Madame Chair.

10

11 ACTING CHAIR GOTTLIEB: Thank you. Any
12 questions for the Council.

13

14 (No comments)

15

16 ACTING CHAIR GOTTLIEB: Interagency Staff
17 Committee report, Nancy.

18

19 MS. SWANTON: Yes, the Interagency Staff
20 Committee supports the proposal consistent with the
21 recommendation of the Southeast Alaska Regional Advisory
22 Council.

23

24 Justification mirrors that of the RAC.
25 The proposal potentially gives subsistence users a more
26 efficient way to harvest sockeye salmon. Staff reports
27 the current Federally-permitted harvest level is zero
28 fish and they believe the harvest level likely would
29 remain that if the proposal is adopted. Removing the
30 Federal harvest limit from regulation would provide the
31 State and Federal managers the opportunity to work with
32 all users to determine an appropriate level of harvest
33 which can be modified annually, if needed, so again it
34 gets at this mirroring of State and Federal regulations.

35

36 There would be no effect on other users.
37 Since Federal subsistence fishing practices probably
38 won't change. And no conservation concerns are
39 anticipated.

40

41 ACTING CHAIR GOTTLIEB: Thank you. Any
42 questions for Staff Committee.

43

44 (No comments)

45

46 ACTING CHAIR GOTTLIEB: Department
47 comments, please.

48

49 MR. BROOKOVER: Madame Chair, thank you.
50 Our comment on the proposal at this time is to recommend

1 to oppose and I'll explain why, I'll refer to our written
2 comments and I have a couple of additional points I'd
3 like to voice as well.

4
5 The regulatory history here, as we say in
6 our written comment, is key to understanding our
7 position. And as Terry Suminski alluded to earlier
8 existing limits used to mirror the State limits in 2001.
9 The system was closed to non-Federally users and -- non-
10 Federally-qualified users in 2001 in response to public
11 testimony that the system was overharvested and
12 sportfishing was interfering with subsistence fishing.
13 In 2002 in response to request for more efficient
14 subsistence fishing and to bring reporting in line with
15 actual harvest, the State increased the limits on the
16 permit to 50. In a request for reconsideration to the
17 Federal Subsistence Board in 2001, ADF&G requested
18 rescinding the Federal closure since there was not
19 sufficient evidence for concern about stock status and
20 that request failed. In 2005 we, again, proposed
21 removing the closure following two years of study funded
22 by OSM, which showed that salmon escapements to the
23 system were adequate for harvest, but that request failed
24 over uncertainty voiced at the time by the Forest
25 Service. More recently in 2005 the State removed a small
26 closure at the mouth of the stream on the State permits
27 since it was unnecessary.

28
29 This was a difficult proposal for us to
30 analyze. And we may have a different position in
31 different circumstances.

32
33 In this case we felt it illogical and
34 unacceptable to raise the bag and possession limits for
35 the fishery while the fishery still excluded non-
36 Federally-qualified subsistence users because of a
37 perception that the stock status is poor and can't
38 support the extra harvest that non-Federally-qualified
39 users would take.

40
41 That exclusion, we felt was
42 unsubstantiated due to the fact that there's apparently
43 no harvest occurring at all in waters where the Federal
44 government claims jurisdiction. As we've asked before,
45 we felt that the analysis in this case should have
46 evaluated the effects of the proposal on the harvest and
47 on the spawning escapement. It didn't address the
48 biological or conservation issue. It didn't identify any
49 biological or conservation related concerns. And the
50 potential effects of the proposal in that regard.

1 We also felt the analysis should have
2 summarized findings of the stock assessment work at
3 Kutlaku Lake explaining harvest trends before and after
4 the 2001 closure and projecting the likely harvest.
5

6 So that was one issue. We felt that the
7 conservation issue should have been addressed in the
8 analysis since the proposal had the effect of increasing
9 at least daily harvest opportunity.
10

11 So we felt that if evidence of a
12 conservation concern wasn't presented then the Federal
13 Subsistence Program should recommend that the current
14 closure to non-Federally-qualified be repealed. We felt
15 that the Federal program has an obligation under ANILCA
16 to not unnecessarily impact other users and keeping it
17 closed to non-Federally-qualified subsistence users
18 despite the stock status being adequate to support
19 increased harvest limits when Federally-qualified users
20 are not using it is an unnecessary restriction on other
21 users.
22

23 If the existing exclusion is lifted then,
24 like I said, I think we would probably come to a
25 different conclusion or a different recommendation under
26 the circumstances.
27

28 So our recommendation at this time is to
29 oppose, given the closure to non-Federal use.
30

31 Now, there's a couple other things.
32 There's a benefit to this proposal that we see and that
33 is aligning of regulations and simplifying the
34 regulations for the user by defaulting to the State
35 regulation; we feel that's a benefit.
36

37 The other is that we have had some recent
38 discussions with the Forest Service and I think if we can
39 come to some resolve on the conservation aspect of the
40 issue we may resolve this. And we'll look forward, we've
41 had some discussions in the past, we've had some
42 discussions about meeting with folks in Kake to discuss
43 this issue. Where we're at at this point is trying to
44 discuss between the Forest Service and ADF&G and Staff
45 from the Forest Service may want to clarify or elaborate,
46 but I think where we're at at the point -- my sense is,
47 we need to identify whether we've got a conservation
48 concern or not between us.
49

50 We've jointly operated and conducted a

1 project at Kutlaku Lake. I believe the plan is to conduct
2 that for one more year. So we would look forward to a
3 discussion with the Forest Service and ultimately with
4 folks in Kake on whether or not we've got a conservation
5 concern. I think that's the next step, so that's where
6 we are at this point.

7
8 Thank you.

9
10 ACTING CHAIR GOTTLIEB: Thanks very much.
11 Kelly.

12
13 MR. HEPLER: Madame Chair. I mean this
14 is a proposal that -- you always wish yourself in these
15 kind of meetings to be able to speak as candidly as you
16 want. You want to go back and touch that place called
17 common sense that Keith talked about this morning, and
18 I'm going to do some of that. And I realize that we all
19 have our positions on this and I don't want to, I guess,
20 upset people's sensibilities.

21
22 But honestly in this one, this is
23 somewhat of a foolish proposal to be at the table to
24 begin with. Not this one, but the cause.

25
26 I've seen a lot of my with the Board of
27 Fish, I've seen them take up causes at times where it's
28 just either allocation fights or it's time, it's battle
29 between people. They'll bring that into the Board of
30 Fish process and wrap it in the cloak of conservation.
31 I've seen the Board use that themselves at times. And it
32 always troubles me, I think that's bad public process,
33 bad public policy when those things happen. There's a
34 lot of important things that Boards could be dealing with
35 without dealing with those. This is another one of those
36 issues. At least what I've seen of it. I'm not the
37 expert here. This is my read, as I've seen, some local
38 users are having some conflict, potentially some charter
39 operators out in saltwater, out in State waters, that
40 built to the point to where it is now.

41
42 And I think what we're trying to do, and
43 I talked to Denny today is to inject this common sense
44 back into this discussion. Let's get this back away from
45 here, I don't want this to show back up in front of the
46 Board of Fish, let's resolve it.

47
48 You know, we value our relationship with
49 the Forest people completely because there's a lot of big
50 issues we're dealing with down on the Tongass and this

1 isn't one of them. And I'm not trying to say this isn't
2 a concern, I just, you know, the Federal users are not
3 using their own waters to collect their own fish, they're
4 out in State waters, so there's no way this handful of
5 sport charter operators or people standing in freshwater,
6 I can't even imagine how many there were, five, 10, six,
7 10, I don't know, were impacting anybody's ability. This
8 is all out in saltwater.

9
10 And so just like we talked about with
11 Andy and the Yukon, what we want to see here is a local
12 driven solution.

13
14 Now, since we had the conservation issue
15 raised we have to respond to it. Now, that always argues
16 about do we have criteria to say whether there's a
17 conservation issue or not and we can debate that and I
18 think at some point we need to have that discussion
19 collectively. But beyond in this one, we're not going to
20 solve that today, so I guess when I talked to Denny, I
21 mean the very first thing we also say is that we'd like
22 to be able to align our regulations, any other time we
23 would be singing Kumbaya, John, you're right. The only
24 thing that's kind of holding out there is this process
25 around the conservation issue and how it ever got in
26 front of the Board. So, you know, I'm going to stop in
27 response again like I did a couple days ago, you know,
28 with Bergstrom, is that, I'm not hard on saying we're
29 opposed to this thing, I'm opposed to how we got here,
30 that's what bothers me. And so if you want to align your
31 regulations, that's fine, and we can deal with it and we
32 work well with that, but I want to get this last year
33 (sp) and I applaud Denny for throwing the money in to
34 find the information but let's get this information and
35 then bring back to you is a success story that outside of
36 this process right here, two agencies got together and
37 acted responsibly and resolved it on a local level. And
38 that's what my goal is.

39
40 Madame Chair.

41
42 ACTING CHAIR GOTTLIEB: Thanks very much.
43 Denny.

44
45 MR. BSCHOR: I just want to add to what
46 Kelly said and agree that I think the goal is to work
47 cooperatively to solve a problem that I'm not saying
48 there isn't a conservation problem at this point in time,
49 we've gotten data from two years now, one year State data
50 and one year of ours, we'll have another by the end of

1 this summer, and we also know that there's some user
2 conflicts that are involved, so I won't deny that at all.
3

4 But, you know, the stakeholder groups got
5 to include the right people and it includes the agencies
6 plus the people of Kake and some of the other fishermen
7 out there and I thin that's doable. My people are
8 telling me that if we can just get people together within
9 this next year we've got a high likelihood of being able
10 to work out those situations.

11
12 In the meantime, relative to
13 conservation, I think we've got to be clear on this, this
14 proposal is to mirror the State harvest level, which,
15 maybe in another year you might go down to 10, I don't
16 know there might be a reason to do that. So it's not
17 really -- yeah, right now it's an increase from what we
18 had set as a Board for this particular, you know, for the
19 near future, but that could change. So I just want to
20 make that point.

21
22 With that said, there just -- in the long
23 run, I think that's probably the best thing to do as we
24 move forward.

25
26 There was one other point I was going to
27 make and I forgot what it was -- oh, I was going to ask a
28 question about the actual use out there this past season
29 and was there, in fact, no fish caught in the Federal
30 waters, do we know that for sure?

31
32 MR. CASIPIT: Madame Chair. Mr. Bschor.
33 Yes, that is correct. I think -- well, since the
34 beginning, since that closure was put in place there has
35 been zero fish on Federal permits, I believe.

36
37 MR. BSCHOR: Okay, Madame Chair, just a
38 couple other points.

39
40 ACTING CHAIR GOTTLIEB: Yes.

41
42 MR. BSCHOR: I don't want to -- my
43 position on this particular proposal to get in the way of
44 getting that stakeholder group together, I think if it
45 would have the effect of lessening the need or whatever
46 on somebody's part to do that relative to the stakeholder
47 group and then getting on top of these issues then, then
48 that would be an unfortunate so I just want to say that,
49 that as I look at this issue, I have that same goal that
50 Kelly has, let's get this done because I think that's a

1 key part of moving forward.

2

3

Madame Chair.

4

5 ACTING CHAIR GOTTLIEB: Cal, I was going
6 to follow up on the question if I'm remembering the
7 geography right as we heard it last year of the area. I
8 mean people, it sounds like, there was no harvest
9 reported way up in the lake, but I assume there are
10 Federally-qualified users coming over to fish either in
11 -- well, in State waters or in the river leading up to
12 the lake so people are catching maybe fresher fish from
13 State managed waters as Federally-qualified users; is
14 that correct, and do we have any numbers of harvest
15 there?

16

17

18 MR. CASIPIT: Madame Chair. You are
19 correct. Under the Federal permits for that system we've
20 had zero reported harvest and that is the fresh waters
21 above the straight line drawn at the headland, mean high
22 tide -- virtually all the fishing occurs in State managed
23 saltwater and I don't have the harvest information in
24 front of me from the State permits. Maybe the State
25 does, I don't have that in front of me.

26

27 The other thing I wanted to point out is
28 this Board dealt with a real similar issue a few years
29 ago at Redoubt Lake. And the stakeholder group in that
30 situation came up with what we thought was a very good
31 solution to the issue and things seem to be working
32 pretty good there, you know, and I'd like to ask Terry to
33 add to that since he was, you know, one of the agency
34 advisors to that stakeholder group for Redoubt Lake.

34

35 ACTING CHAIR GOTTLIEB: Terry, go ahead,
36 if you'd like, if you have something to add.

37

38 MR. SUMINSKI: I'd be happy to tell you
39 how it worked but it seemed to work out really well. We
40 got all the -- it was a consensus based group and we got,
41 what seems to be all the interested parties together and
42 identified the problem, came up with some solutions, went
43 through both this Board and the State Board of Fish and
44 so far it seems to have worked out very well on the
45 ground the last couple of years.

46

47 ACTING CHAIR GOTTLIEB: Thank you. I
48 mean I agree with the earlier comment, when I first heard
49 of this proposal it didn't make logical sense to me but
50 hearing a little bit more about where actually people are

1 fishing it does. But what clearly makes sense is the
2 need for people to get together and so are we hearing a
3 commitment that Forest Service and Fish and Game and
4 others will be getting together soon on this issue, if
5 this is the way we pursue it?

6

7 MR. BSCHOR: You are from me.

8

9 ACTING CHAIR GOTTLIEB: Gary.

10

11 MR. EDWARDS: Well, I guess I agree with
12 what Denny said. I'm a little unclear, ultimately, what
13 that means with regard to where you stand on the
14 proposal. And, I guess, Judy, I'm just like you, when I
15 first read this my first comment is, what's wrong with
16 this picture? I mean we closed it to non-subsistence
17 users because of conservation concerns and now here we
18 have a proposal to harvest more fish and it just -- and
19 so it seems to me all of a sudden we're in this position
20 where, yeah, I think we ought to increase the harvest and
21 so I don't want to penalize the subsistence users where
22 this makes sense for them, but at the same time, I'm torn
23 between, well, then how can we tell other people that
24 they can't fish there. And I don't know how we balance
25 that and I don't know what that means that we're going to
26 get this stakeholders group together and does that mean
27 that this is going to take awhile to make a decision
28 whether to continue to restrict other uses or not.

29

30 ACTING CHAIR GOTTLIEB: Denny.

31

32 MR. BSCHOR: I can only speculate that if
33 runs are reasonably good this coming summer we'll have
34 three years of information. My concerns become a lot
35 less. I think that it's reasonable that we could move to
36 a point with the stakeholder -- if the stakeholder group
37 works well, to not be sitting here talking about Kutlaku
38 next year, that'd be the goal I'd have in my mind.

39

40 MR. EDWARDS: So maybe with -- I'm still
41 unclear what you feel we ought to do with the current
42 proposal that's in front of us.

43

44 MR. BSCHOR: Well, I had the same
45 concerns you did and I worked through that in my mind
46 that, why should I allow this apparent inconsistency, I'm
47 not saying it is an inconsistency, but it sure could be
48 perceived that way, that why should I let that get in my
49 way of a good proposal that matches State regulations and
50 gets us to a point where we've got better management out

1 there and that might, in fact, even help with the
2 solution of the user problem.

3
4 So where I am is to -- I'm prepared to
5 make a motion if you're ready. But do you want me to
6 just.....

7
8 MR. EDWARDS: Just one more question.
9 That conflict, I mean we said, well, we're going to have
10 an opportunity to gather one more year of data, so why
11 wouldn't getting that one more year of data also apply to
12 us making a decision on this proposal?

13
14 MR. BSCHOR: Well, yeah, I think part --
15 I guess there's three points that we ought to look at as
16 far as agreeing to, you know, if we accept this proposal.

17
18 One of the points is that we match the
19 State's regulations, and that makes some sense here.

20
21 That we also agree that we will assure
22 that the stakeholders will meet. I need that agreement
23 from the State also and in my conversations I've had, at
24 least, informally, I've heard that.

25
26 And that we all have a goal in mind to
27 make sure that we validate those concerns.

28
29 But I can't guarantee that, you know, if
30 we have a really bad run this summer then there might
31 still be a conservation concern on my part. I can't
32 speculate on that. But that's where I think that if we
33 could have that basis then I can feel a little better
34 about voting for this proposal.

35
36 MR. EDWARDS: Let's say that the data we
37 get in this third year is not good data, but now we have
38 this larger bag limit, right, and so then what do we do
39 about that?

40
41 MR. BSCHOR: Well, at that point in time
42 what we said, we'd defer to the State's regulations as
43 far as harvest and hopefully they have faith that if the
44 runs are that bad they're going to lower the harvest. I
45 guess that'd be my answer.

46
47 ACTING CHAIR GOTTLIEB: That was going to
48 be my next question. My next question was going to be,
49 do you know yet what the limit will be next year for the
50 sockeye in that area? I mean we're saying 50 in this

1 regulation but do you have the information yet as to what
2 the limit may be next year?

3

4 MR. BROOKOVER: Madame Chair. Thanks.
5 No, I don't know what it will be. I haven't heard that
6 there's going to be any change, but that doesn't mean
7 that there won't be.

8

9 ACTING CHAIR GOTTLIEB: Okay. So it's
10 not necessarily an increase. John.

11

12 MR. LITTLEFIELD: I'm finding this a
13 little hard to follow, Madame Chair. This is a proposal
14 that says very simply we're going to remove the Federal
15 harvest limit. We gave you our recommendation. Our
16 recommendation was to support the proposal, it had
17 absolutely nothing to do, nothing to do with the
18 Federally-qualified restrictions, nothing. They're two
19 different items. We're talking about going to the
20 Federal harvest limit. We gave you substantial data why
21 to do it, you don't want to do it, don't do it. I mean
22 that's fine.

23

24 But I think you're spiting your face to
25 chop off your nose. This was the State's golden
26 opportunity to come to number 3, there's no reason for
27 them to oppose not having their limits apply here with
28 the once exception, they said as long as you're doing
29 that we're not going to do it. In other words, we're
30 going to stick you for that. Well, that's cool. But
31 they also are taking \$51,000 from us on Proposal 604 that
32 we agreed to adopt two days ago to have that year of
33 study that we're talking about. That FIS project is
34 proceeding. One year's data does not make a trend for
35 sockeye, it's a six year fish. And we're going to look at
36 it and when that happens, as Mr. Bschor says, then we'll
37 come back and we'll Kumbya then but this has nothing to
38 do with this proposal. This proposal says remove the
39 Federal harvest limits because the people are -- if you
40 have a person that goes there, say me, if I go there and
41 I have a Federal permit and a State permit I can fish
42 either or, there's no problem here, and you're making it
43 a huge problem.

44

45 And next year, after the study, we gave
46 you the 50-some thousand bucks and look at if if you want
47 to, it's 602, and we can address that problem. But it
48 has nothing to do with Proposal 25.

49

50 Thank you.

1 ACTING CHAIR GOTTLIEB: Thank you. Other
2 comments or are we ready for a motion.

3
4 (No comments)

5
6 ACTING CHAIR GOTTLIEB: Denny.

7
8 MR. BSCHOR: Yes, Madame Chair. I move
9 that we adopt the regulation as recommended by the
10 Southeast Regional Advisory Council. After a second,
11 I'll explain some more rationale, although I've talked
12 about some of that already.

13
14 ACTING CHAIR GOTTLIEB: Is there a
15 second.

16
17 MR. BUNCH: I'll second it.

18
19 ACTING CHAIR GOTTLIEB: There's a second.
20 Further discussion. Denny.

21
22 MR. BSCHOR: Yeah, just a couple of
23 things, I guess, in addition to the -- you know,
24 potentially it gives the subsistence users a more
25 efficient way to harvest sockeye salmon, although it
26 shouldn't result in any additional harvest in Federal
27 waters. The State harvest limits as I said, are set by
28 the preseason by the area manager, and anticipated run
29 strength is looked at and can be modified in-season and
30 adjusted for the actual run size. We talked about that
31 already.

32
33 I think removing the Federal harvest
34 limit from regulation would provide the State and the
35 Federal managers an opportunity to work with all users to
36 determine the appropriate levels of harvest, too, it adds
37 to that.

38
39 It would have no effect on other users
40 since the Federal subsistence fishing practices will
41 probably not change, we heard that already. And at this
42 point in time I think that would show that since weren't
43 caught in the Federal waters, that probably wouldn't
44 change.

45
46 And I think with that, that's my
47 explanation, and it adds to the ability for obtaining
48 subsistence uses.

49
50 ACTING CHAIR GOTTLIEB: Thank you. Any

1 other comments or discussion. Gary.

2

3 MR. EDWARDS: You know, even I don't
4 think that you can separate the two issues as easy as Mr.
5 Littlefield believes, I think I can go ahead and support
6 the motion.

7

8 ACTING CHAIR GOTTLIEB: Thank you. I
9 mean I heartedly endorse a stakeholders meeting, whatever
10 we want to call it, interested parties, in Kake. I mean
11 I guess I'm personally just curious why people from Kake
12 aren't fishing in the lake and maybe that will provide us
13 with some answers for next time.

14

15 Any other discussion.

16

17 (No comments)

18

19 ACTING CHAIR GOTTLIEB: All those in
20 favor of the motion signify by saying aye.

21

22 IN UNISON: Aye.

23

24 ACTING CHAIR GOTTLIEB: All those
25 opposed, same sign.

26

27 (No opposing votes)

28

29 ACTING CHAIR GOTTLIEB: Thanks very much.
30 And I think we're going to press on for one more, please,
31 that's 26.

32

33 MR. L. WILDE: Madame Chair.

34

35 ACTING CHAIR GOTTLIEB: Yes, Lester.

36

37 MR. L. WILDE: Would I be in order to
38 call for suspension of the rules because we're going to
39 be leaving in the morning, and I don't know what time
40 it's going to be in the morning, but I'd like to put into
41 the record a letter that was written to the Board from
42 the Chairman of the Yukon-Kuskokwim Regional Advisory
43 Council, if possible.

44

45 ACTING CHAIR GOTTLIEB: Of course, go
46 ahead, please.

47

48 MR. L. WILDE: This is a letter that was
49 written to the Federal Subsistence meeting topics and it
50 was written by the Chairman of the Yukon-Kuskokwim Delta

1 Subsistence Regional Advisory Council, Harry Wilde.

2

3 It states that -- Mr. Chair, for the
4 record my name is Harry Wilde, Chair of the Yukon-
5 Kuskokwim Delta Subsistence Regional Advisory Council.

6

7 On behalf of the Yukon-Kuskokwim Delta
8 Regional Advisory Council thank you so much for this
9 opportunity to provide Federal Subsistence Board topics
10 from the Yukon-Kuskokwim Delta Regional Advisory Council.
11 In the past Council provides topics through the Chair or
12 Council representatives. Here is the Yukon-Kuskokwim
13 Delta Subsistence Regional Advisory Council's regional
14 concerns.

15

16 Council suggests that Federal Subsistence
17 Board include Council public meeting agendas, Federal
18 Subsistence Board agendas and the OSM policies on the OSM
19 web site. This is very important because rural users in
20 Region 5 and other regions access OSM web sites for
21 information they need on subsistence issues. The U.S.
22 Fish and Wildlife Service of subsistence fish and
23 wildlife management is favored by rural subsistence users
24 over the Alaska Department of Fish and Game. They favor
25 Federal management of the resource because the Service
26 allows more lenient management on rural subsistence
27 activities.

28

29 Currently there are growing concerns on
30 the current State and Federal agencies management of
31 subsistence fish and wildlife resources throughout Region
32 5. Local subsistence users are starting to consider
33 options to take over, if not all, part of the wildlife
34 habitat and resource management within the region. Why
35 are subsistence users interested in taking over the
36 management of the resource, because local recommendations
37 on the management of fish and wildlife resources through
38 the Regional Advisory Councils, local Fish and Game
39 Advisory Committees and the Association of Village
40 Council Presidents is apparently being ignored by the
41 State and government agencies. In the past there has
42 been apparent ignorance on Council organization or
43 regional tribal organization recommendations.

44

45 There also is a growing concern on both
46 big game and migratory bird harassment by the privately
47 owned aircrafts.

48

49 In Unit 21(E), Lower Yukon moose hunters
50 have recently experienced aircraft harassing animals they

1 targeted which were chased away by the airplanes.

2

3 In the coastal portion of the Delta other
4 incidents related to aircraft harassment of migratory
5 birds, such as snow geese has occurred. Local migratory
6 bird hunters in the fall migratory bird hunting season
7 targeted snow geese and the birds were driven away by
8 aircraft from the hunters. Are villages doing something
9 about these incidents, the answer is yes.

10

11 Affected villages are dialoguing and
12 communicating amongst themselves on waterfowl harassment
13 incidents.

14

15 I am bringing this up to your attention
16 because in the past Yukon-Kuskokwim Delta Council heard
17 testimony during its meeting about similar incidents in
18 Tuntutuliak and Quinhagak area. I brought up similar
19 issues to the Regional Councils and to the Federal
20 Subsistence Board in the past.

21

22 Last of all, on behalf of the Yukon-
23 Kuskokwim Delta Subsistence Regional Advisory Council I
24 am coming forward asking for your support. Please do
25 something about the concerns and issues brought to your
26 attention, not only by myself as Chair, but by all other
27 Council Chairs.

28

29 Mr. Chair -- or Madame Chair, I think, he
30 meant Madame -- he didn't know you were going to be a
31 Madame.

32

33 (Laughter)

34

35 But anyway, Madame Chair, I greatly
36 appreciate this opportunity to bring forward the issues
37 of the Yukon-Kuskokwim Delta Council to your attention.
38 If there are any questions on this topic, on any of the
39 topics I've brought forward I'll be -- he's available by
40 phone at number 591-2850.

41

42 Thank you, and happy belated New Year to
43 all.

44

45 Thank you, Madame Chair.

46

47 ACTING CHAIR GOTTLIEB: Thank you. And
48 please give Harry our regards and be sure to tell him you
49 were a great representative for the Council while you
50 were here.

1 Are there any questions on that or are
2 there any other Council Chairs who are not able to be
3 here tomorrow morning who want to say anything.

4
5 (No comments)

6
7 ACTING CHAIR GOTTLIEB: Any further
8 comments.

9
10 MR. BASSICH: Thank you, Madame Chair. I
11 guess the only other further comment I would like to make
12 that at the previous two Eastern RAC meetings, once
13 again, harping on TEK a little bit, it has been suggested
14 that a portion of the Staff analysis actually include TEK
15 information. And we felt that this might be one of these
16 methods of measuring or giving some weight to that or
17 recognizing that and I would just like to bring it before
18 the Board as a suggestion. It should be in our minutes,
19 but I think it's appropriate at this meeting to also
20 bring it to you personally that we feel very strongly
21 that this could potentially greatly improve the quality
22 of the reports by the Staff.

23
24 Thank you for allowing me to sit in for
25 our Chair here. I got a lot out of this and really
26 enjoyed the process.

27
28 ACTING CHAIR GOTTLIEB: Thank you. And
29 we want to thank you and Lester for your service for this
30 round.

31
32 Ron.

33
34 MR. SAM: Thank you, Madame Chair. I
35 guess I would like to commend the YK-Delta for bringing
36 that vast delegation in and the Federal Subsistence Board
37 for putting them right on schedule first because a lot of
38 our people cannot come in and cannot afford to come in
39 and just sit down for a couple of days. Again, I would
40 like to commend the YK-Delta for bringing in their vast,
41 a good portion of their people for the testimony and
42 testifying before the Federal Subsistence Board.

43
44 Thank you.

45
46 MR. L. WILDE: Madame Chair, the thanks
47 to YK-Delta actually goes to Yukon Delta Fisheries on the
48 Lower Yukon, they're the ones that brought in that
49 contingent of people who testified.

50

1 MR. SAM: Thank you for that
2 clarification. Again, I guess you notice throughout this
3 meeting we are dialoguing and we've been meeting, tri-
4 Council has been talking and opening up a new line of
5 communication and we hope to further these communications
6 and try to move forward during the YRDFA at Ruby.

7
8 Thank you, again.

9
10 ACTING CHAIR GOTTLIEB: Thank you. I
11 guess it probably wouldn't or shouldn't surprise us that
12 the three of you are getting together way ahead of any
13 request we made of you so thank you for taking that
14 initiative, appreciate it.

15
16 Okay, if we can get a quick start on No.
17 26, I'd appreciate it.

18
19
20 MR. SUMINSKI: Madame Chair. This
21 analysis begins on Page 364 of your Board books.
22 Proposal FP06-26 submitted by Mr. John Littlefield of
23 Sitka would remove all requirements to remove fins to
24 identify subsistence caught fish in the Southeastern and
25 Yakutat areas.

26
27 The proponent believes that removing fins
28 from subsistence caught fish interferes with traditional
29 means of handling, processing and preserving fish and is
30 an unnecessary burden on subsistence users. In Federal
31 regulations there is no requirement to remove fins on any
32 fish except salmon. In the Southeast Alaska area
33 subsistence users are required to remove the pelvic fins
34 of salmon when taken, while in the Yakutat area users
35 must remove the dorsal fin.

36
37 State regulation makes it unlawful to buy
38 or sell subsistence taken fish. State regulations
39 require the removal of the dorsal fin of subsistence
40 caught salmon in the Southeastern Alaska and Yakutat
41 areas.

42
43 Public testimony from the Southeastern
44 and Yukon areas indicate that the removal of the dorsal
45 fin exposes the meat of the fish which allows bacteria to
46 enter and reduce the quality of the food. Although
47 pelvic fins are not used during preservation, the
48 proponent states they are used to handle the fish during
49 the catching and processing. Marking fish imposes a
50 burden on subsistence users that is not imposed on sport

1 or commercial fishermen.

2

3 The reason for marking subsistence caught
4 salmon by clipping fins is to prevent those fish from
5 entering the commercial marketplace. In the Southeastern
6 Alaska and Yakutat areas, there are commercial and
7 subsistence fisheries which occur in the same areas.
8 Forest Service law enforcement has received complaints
9 that subsistence caught fish were not properly marked and
10 entered commercial markets. Law enforcement indicates
11 that marking subsistence fish by subsistence users is
12 working, as intended, and is effective in keeping those
13 fish out of the commercial market.

14

15 Thank you.

16

17 ACTING CHAIR GOTTLIEB: Thank you. Any
18 questions.

19

20 (No comments)

21

22 ACTING CHAIR GOTTLIEB: Were there any
23 written comments.

24

25 MS. HERNANDEZ: Madame Chair. There is
26 one written public comment written in support of the
27 proposal from the Chikloot Indian Association.

28

29 The Chilkoot Indian Association agrees it
30 is an unnecessary chore to remove a fin.

31

32 That concludes public comments.

33

34 ACTING CHAIR GOTTLIEB: Thanks very much.
35 We have no public signed up to testify.

36

37 Regional Council recommendation, please,
38 John.

39

40 MR. LITTLEFIELD: Thank you, Madame
41 Chair. On Page 362 of your Board book is the Regional
42 Council recommendation on FP06-26.

43

44 The Regional Council supports the
45 proposal. Current regulations call for the removal of
46 pelvic fins of all subsistence salmon in Southeast and
47 dorsal fins in Yakutat. And the main reasons for
48 changing these regulations are that, one, fins are used
49 in subsistence fish processing; two, cutting fins off
50 contaminants subsistence fish with dirt and grit; and,

1 three, removing fins makes subsistence fish more
2 vulnerable to spoilage.

3
4 The SERAC noted that marking subsistence
5 fish may be intended to avoid illegal sales of
6 subsistence caught fish in commercial markets.
7 Commercial fishers on the Council did not know of cases
8 where this had, in fact, taken place. Federal
9 enforcement staff supported maintaining the current
10 regulation and referred to one ongoing investigation
11 concerning salmon. No details could be provided. They
12 did not know of any citations or of any prosecutions
13 under Federal regulations concerning illegally sold
14 subsistence caught fish.

15
16 The Council noted that cutting fins off
17 fish was not required in the sport fisheries in the
18 region.

19
20 The Council believes that the amount of
21 salmon taken for subsistence purposes is small relative
22 to the commercial and sportfishing that takes place in
23 the region and that the subsistence fisheries are closely
24 regulated. Existing permit requirements calling for
25 recording subsistence fish harvest at the time of harvest
26 are sufficient for enforcement purposes.

27
28 And I would like to note there was some
29 additional information that came to light in our meeting
30 on 12/1. We had a teleconference meeting on 12/1,
31 legally noticed, and during that meeting we discussed the
32 sideboards that I would be allowed to use at this meeting
33 under discussing this proposal. And the Council at that
34 time gave me the right to say that we could cut an
35 alternative fin if we could not win this proposal. But I
36 clearly believe that the Southeast RAC's proposal can be
37 supported. I disagree completely with the statement of
38 Federal enforcement staff and you can get them up here to
39 answer this if you want, but you'll note that the State
40 is going to say the same thing. It's interesting to note
41 that Federal law enforcement have received a number of
42 complaints, complaints. We talked about that, too, and
43 the number is one, that we were able to get out. And he
44 couldn't determine whether it was on State land or
45 Federal jurisdiction. It was a complaint, no citation,
46 no prosecution. So these sky is falling defenses on law
47 enforcement kind of irritate me. There's no reason for
48 this. We have a very small contained 20 coho's, you can
49 add up everything that's in our book and that's legally
50 taken under these regulations and you put that along side

1 the sport fishery and it's like comparing subsistence,
2 you know, the two percent, it just pales in comparison
3 and they don't do anything to those fish, nothing.

4
5 So that was the reason for this. If you
6 want to go into how to use those fins, I can tell you
7 it's a customary and traditional use and if you want me
8 to discuss that further, how we use those fins, I can do
9 so.

10
11 Madame Chair.

12
13 ACTING CHAIR GOTTLIEB: Thank you. Any
14 questions for John. Gary.

15
16 MR. EDWARDS: John, you indicated that
17 there might be some willingness to go to a different kind
18 of a marking, and, if so, what might that be, or maybe
19 you didn't say that?

20
21 MR. LITTLEFIELD: How about taking the
22 guts out.

23
24 (Laughter)

25
26 MR. LITTLEFIELD: No, I'm being
27 facetious. When we talked at the Council, what we
28 talked about was the coddle fin. I realize that that is
29 a personal use marking, I believe, in Southeast Alaska.
30 But just as there's no problem with those personal use
31 there's not going to be any problem with chopping off the
32 coddle fin, the tail fin, we're assuming we would take
33 the little nicks off the end so that you could tell, when
34 we were selling those, where we got them from.

35
36 ACTING CHAIR GOTTLIEB: Gary.

37
38 MR. EDWARDS: You indicated problems with
39 contamination, do you have any kind of specific example,
40 is it because of the manner that the fins are currently
41 being removed as, you know, maybe a wholesale slice as
42 opposed to, you know, a more kind of refined type of
43 removal of the fins?

44
45 MR. LITTLEFIELD: First, it's important
46 that you understand there are different ways to process
47 fish.

48
49 The customary and traditional way to
50 harvest fish years ago was to dry them completely to

1 their driest state, we don't do that now. And I
2 shouldn't say, we, because I do, as well as some others
3 who do fish in customary -- we call that dry fish, it's a
4 newspaper style fish, or the Tlingit name is Nayidee or
5 (In Native), non-Natives don't do that. But what it
6 requires is when you take these fish apart is it's
7 balance. On the first day that you do the fish you're
8 hanging skins -- the skin side is out, the head is on one
9 side, the tail is on the other side and if you don't
10 balance it, if we were to cut off the tail or something
11 like that, they're going to -- you know if you were to
12 cut off the tail they'll slip off and drop on the floor
13 so you have them balanced the first day.

14
15 And the next day or day and a half, you
16 turn them over and you cut them down one side, including
17 through the pectorial -- or I don't know, whatever that
18 fin is in the front, you cut through that fin and you cut
19 through down to the side fin on the first day -- or the
20 first cutting and then you continue to do this, rolling
21 this fish out so those fins become an important part of
22 keeping that fish together.

23
24 And the dorsal fins are especially
25 susceptible to spoilage and you need those to stay --
26 that little fin holds it on there on the first day and
27 then after that you can cut that off because they'll
28 spoil.

29
30 But each one of those fins, you know,
31 they serve a purpose. If you take a fish, like we do,
32 and cut it in half and then flip it over and if it
33 doesn't have that fin and you try to do the next
34 manoeuver, I can't fillet a fish completely from the
35 minute I start to the minute it's done in 30 seconds,
36 like I could otherwise, I mean physically it's -- if
37 you've done a lot of cutting fish you know that without
38 having those fins there it doesn't work very good.

39
40 And also, any one of those fins you cut
41 off, even the tail one, introduces some bacteria to that
42 fish, you've made some cuts on it. Some of the Council
43 members were mad that, you know, you get grit and stuff
44 like that in them. So that was our complaint. We could
45 see no reason for it. But there are differences between
46 customary and traditional use and just whacking up a fish
47 and throwing it in a jar like you do now so it was mostly
48 for the customary and traditional users.

49
50 So I don't know if that answered your

1 question but it's a little bit different handling.

2

3 MR. EDWARDS: Thank you.

4

5 ACTING CHAIR GOTTLIEB: Thank you. Other
6 questions for John.

7

8 (No comments)

9

10 ACTING CHAIR GOTTLIEB: Interagency Staff
11 Committee. Nancy, please.

12

13 MS. SWANTON: Yes, thank you. The
14 Interagency Staff Committee did not reach consensus
15 resulting in a majority and minority recommendation to
16 the Board.

17

18 The majority opinion, contrary to the
19 recommendation of the Southeast Alaska Regional Advisory
20 Committee was to oppose the proposal. Again, the
21 proposal would eliminate the requirement to remove fins
22 for the identification of subsistence caught fish in
23 Southeast Alaska and Yakutat areas. In the Yakutat area
24 it's the dorsal fin, in the Southeast Alaska area it's
25 the pelvic fin. Again, Federal law enforcement officials
26 feel the regulation is working as intended and is
27 effective in keeping unauthorized subsistence fish out of
28 the commercial market.

29

30 The majority of the Staff Committee
31 recommends that the Southeast Council consider
32 alternative ways to mark fish to minimize Council concern
33 and perhaps to submit that as a proposal with respect to
34 the concern about fish contamination. The majority had
35 recommended for, example, that a coddle fin marking is
36 used in many areas of Alaska, so it's not a new idea.

37

38 The minority recommendation was to
39 support the proposal consistent with the recommendation
40 of the Southeast Alaska Regional Advisory Committee. The
41 justification being that the current requirement to
42 remove the pelvic fins from all subsistence caught salmon
43 in Southeast Alaska and dorsal fins in the Yakutat area
44 is to increase the likelihood of spoilage by exposing the
45 fish's flesh to bacteria. If the marking requirement is
46 to be retained in regulations the Council, again, may
47 want to consider other alternatives such as clipping of
48 the tail fin instead. That would minimize degradation of
49 the harvested fish prior to processing and/or
50 consumption.

1 ACTING CHAIR GOTTLIEB: Thank you. Any
2 questions for Staff Committee.

3
4 (No comments)

5
6 ACTING CHAIR GOTTLIEB: Department
7 comments please.

8
9 MR. HILSINGER: Madame Chair. My name is
10 John Hilsinger. I'm with the Commercial Fisheries
11 Division.

12
13 The Department believes the requirement
14 to mark subsistence fish taken under Federal regulations
15 by fin removal is effective in helping ensure that
16 subsistence caught fish do not move into the commercial
17 market. And I note, too, as said, that the State
18 requires fin clipping on both subsistence and personal
19 use caught fish under State regulations. As noted also
20 Federal law enforcement has received a number of
21 complaints about illegal sale of unmarked fish. The
22 Department considers that adopting this proposal as
23 written would make the situation worse, not better.

24
25 An alternate means of marking subsistence
26 taken fish from Federal waters might be a way to solve
27 the problem of allowing the customary and traditional
28 processing practices. And as you've heard the method
29 that we recommended was to remove both lobes of the
30 coddle fin or tail. This can be easily accomplished with
31 heavy scissors or shears.

32
33 So the State's recommendation is to
34 oppose the proposal to remove all marking requirements
35 but we would be supportive of a less intrusive method.

36
37 Thank you.

38
39 ACTING CHAIR GOTTLIEB: Thanks very much.
40 Any additions or questions for the Department.

41
42 (No comments)

43
44 ACTING CHAIR GOTTLIEB: Board discussion.
45 I guess I recall that we had a somewhat similar situation
46 over in the Copper River area where the request was to
47 change which particular fin was removed from cultural
48 reasons and sensitivities and the Board did that and I
49 think we ended up clipping the tail fin as a solution for
50 that. So I'll just bring that up as a possible past

1 example.

2

3

Discussion.

4

5

Charlie.

6

7

MR. BUNCH: John, I got a note here that
8 says that the RAC met after this initial meeting and came
9 up with a recommendation to require clipping a tail, is
10 that a correct statement or is that just.....

11

12

MR. LITTLEFIELD: I believe I mentioned
13 that. I wasn't expecting to get into this today so I
14 left my copy of draft minutes of the 12/1 meeting and I
15 can bring those tomorrow. But maybe perhaps a member of
16 Staff can do that. I think the record is clear in there
17 that we asked for what sideboards would be acceptable and
18 as far as I remember that we were allowed to cut that
19 coddle fin and I think it was unanimous, maybe the Staff
20 could look at that, I don't think there was any objection
21 to that. And the reason it came up is because we knew
22 that there was some resistance to that from law
23 enforcement, even though we don't believe in that and we
24 will accept that. And that's the Council's
25 recommendation.

26

27

Maybe Melinda has that for you.

28

29

Madame Chair. Mr. Bunch.

30

31

MR. CASIPIT: Melinda went to get the
32 minutes from that 12/1 teleconference. I was on that
33 teleconference. You know, the major part of that agenda
34 for that teleconference were Board of Fish proposals, but
35 like Mr. Littlefield stated they did discuss this fin
36 marking requirement and from what I remember I think the
37 Council still wanted to stick with the recommendation you
38 see in your book on Page 362. They just granted Mr.
39 Littlefield some negotiation room in case he sensed that
40 the Council's recommendation was going to be opposed.

41

42

That's my recollection of that
43 discussion. Thank you, Ms. Chair. Mr. Littlefield.

44

45

ACTING CHAIR GOTTLIEB: Thank you. Other
46 comments or Board discussion.

47

48

MR. BUNCH: Well, my question is going to
49 be stupid.

50

1 ACTING CHAIR GOTTLIEB: No. No.
2
3 MR. BUNCH: You're going to have to make
4 me smart here and I'll ask the biologist, which is the
5 coddle fin, is that the tail fin?
6
7 MR. HILSINGER: Madame Chair. Yes,
8 that's the tail fin.
9
10 MR. BUNCH: So the little fin right in
11 front of that, that's the atapose?
12
13 MR. HILSINGER: That's correct. And I
14 think if there's a copy of the State sportfishing
15 regulations on that side, there's a diagram in it. It
16 looks like Mr. Kessler has that. That shows you how you
17 make the two cuts, kind of in a diagonal direction to
18 take those lobes off.
19
20 ACTING CHAIR GOTTLIEB: John.
21
22 MR. LITTLEFIELD: Thank you, Madame
23 Chair. I'd like to read the minutes, and these are draft
24 minutes and I must apologize for that. Under other
25 business, number 1, sideboard, what John will be allowed
26 to do on the fin proposal. The action in Wrangell to
27 eliminate fin clipping requirement determined that
28 cutting a fin was a health hazard and allowed for
29 spoilage and contamination. Nothing on record exactly
30 what fin to be used, and John suggested the cottal, C-O-
31 T-T-A-L, um, I don't know, the coddle fin.
32
33 (Laughter)
34
35 MR. LITTLEFIELD: But this is already
36 used by the personal use fishers. Dick Stokes, how about
37 a tail clip. John, that's already used and that would be
38 in the personal use fisheries. It's the least obtrusive
39 in processing out of all the fish uses for hanging and
40 drying. No one objected to John putting the issue out
41 there. And John will first support no fins, and that's
42 my recommendation, is to support the RAC, and will
43 perhaps suggest the tail fin, and I was asked by one
44 Staff member to bring it forward at the beginning so I
45 did, like we're not going to throw this at you at the
46 last minute. And I was to consult with Mr. Adams on this
47 issue and I went to Yakutat, did not find Mr. Adams, but
48 I'm going ahead with it anyway, the pelvic requirement in
49 Southeast and Yakutat is the dorsal fin, so there's two
50 different fins we're talking about here. But Mr. Adams,

1 in Wrangell, stated he had no problem with it. And I
2 didn't check with him other than this, so -- Madame
3 Chair.

4

5 ACTING CHAIR GOTTLIEB: Thank you for
6 that clarification. Are we ready for a motion.

7

8 MR. BSCHOR: A little discussion first.
9 If, in fact, adding a different name to the fins in the
10 current regulations would fix this, I think that would be
11 a good way to go and probably get us out of here.

12

13 As far as making a motion, I think I
14 would first have to reject the Council's recommendation
15 and modify -- let's see, I don't know, I don't know where
16 I'd go from there, give me some advice, how do I add the
17 wording in for the fin?

18

19 ACTING CHAIR GOTTLIEB: John.

20

21 MR. LITTLEFIELD: If I could suggest
22 something on that. I would, again, show deference to the
23 RAC and move to adopt the SERAC proposal and then if you
24 would care to, Mr. Bschor, you could move to substitute
25 language, in Option B, the minority recommendation which
26 I believe covers that, talking about other alternatives
27 such as clipping the tail fin instead and that would
28 allow you then to debate that then under substitute
29 language.

30

31 That would be my recommendation. Madame
32 Chair.

33

34 ACTING CHAIR GOTTLIEB: I guess with one
35 clarification, I think that wording came from the
36 majority.

37

38 MS. SWANTON: That clarification came
39 from both with respect to the Staff Committee.

40

41 ACTING CHAIR GOTTLIEB: Right.

42

43 MS. SWANTON: From both.

44

45 ACTING CHAIR GOTTLIEB: Okay, thank you.

46

47 MR. LITTLEFIELD: I'm normally in the
48 minority, Madame Chair, that's why I went there.

49

50 (Laughter)

1 ACTING CHAIR GOTTLIEB: Okay.
2
3 MR. BSCHOR: I'll give that a try. I
4 move to accept the recommendation from the Southeast
5 Advisory Committee and upon a second I would be prepared
6 to present an amendment, or a substitution, excuse me.
7
8 ACTING CHAIR GOTTLIEB: Is there a
9 second. Charlie.
10
11 MR. BUNCH: I second.
12
13 ACTING CHAIR GOTTLIEB: Thank you.
14 Further discussion.
15
16 MR. BSCHOR: Okay, I'd like to amend my
17 motion by accepting the recommendations of the minority
18 position of the Interagency Staff Committee which refers
19 to clipping the coddle fin, in place of the words in the
20 current regulations.
21
22 MR. EDWARDS: Well, if I may, as a
23 suggestion, it might be just very easy to use the
24 language that the State has, which would say that you
25 shall immediately remove both tips of the tail. And then
26 what we could do with the regulation, I don't know if
27 it's possible, but to actually include a picture similar
28 to what the State has in their regulations.
29
30 ACTING CHAIR GOTTLIEB: John.
31
32 MR. LITTLEFIELD: Madame Chair. Assuming
33 you get a second, I think you can direct Staff to write
34 that any way you want. Everybody knows we're going to
35 clip the tail fin, and I hope you won't clip it five
36 times or something. It just seems something that Mr.
37 Knauer could write up very easily.
38
39 ACTING CHAIR GOTTLIEB: All right, we
40 have an amendment to the motion, is there a second.
41
42 MR. BUNCH: I'll second it.
43
44 ACTING CHAIR GOTTLIEB: Thank you,
45 Charlie. And now we need to, if there's not further
46 discussion on the amendment we need to vote on the
47 amendment.
48
49 (No comments)
50

1 ACTING CHAIR GOTTLIEB: Okay, and the
2 amendment is to adopt with modification to clip the tail
3 fin, contrary to the recommendation of the Southeast
4 Regional Advisory Council. All those in favor of the
5 amendment please signify by saying aye.
6
7 IN UNISON: Aye.
8
9 ACTING CHAIR GOTTLIEB: All those
10 opposed, same sign.
11
12 (No opposing votes)
13
14 ACTING CHAIR GOTTLIEB: Okay, so the
15 amendment motion carries. Further discussion on this.
16
17 CHAIRMAN DEMIENTIEFF: Question.
18
19 ACTING CHAIR GOTTLIEB: All those in
20 favor of the motion please signify by saying aye.
21
22 IN UNISON: Aye.
23
24 ACTING CHAIR GOTTLIEB: And all those
25 opposed, same sign.
26
27 (No opposing votes)
28
29 ACTING CHAIR GOTTLIEB: The motion
30 carries.
31
32 MR. LITTLEFIELD: Let's say we do the
33 next three.
34
35 ACTING CHAIR GOTTLIEB: Pardon me?
36
37 MR. LITTLEFIELD: Let's say we do the
38 next three.
39
40 ACTING CHAIR GOTTLIEB: I say we do the
41 next three tomorrow. Okay, it sounds good we'll do those
42 tomorrow. So a reminder we're beginning at 8:00 a.m.,
43 tomorrow with Board deliberation on Proposal 9. And then
44 we will resume our place on the agenda which includes
45 discussion Proposals 30 through 34 and at the conclusion
46 of the meeting we will discuss the consent agenda.
47
48 Thank you everybody for your
49 participation today. And, Mitch, the tapes either have
50 arrived at your hotel or you have them?

1 CHAIRMAN DEMIENTIEFF: (No response)
2
3 ACTING CHAIR GOTTLIEB: Mitch are you on?
4
5 CHAIRMAN DEMIENTIEFF: Yes, I am.
6
7 ACTING CHAIR GOTTLIEB: And do you have
8 the tapes, yet?
9
10 CHAIRMAN DEMIENTIEFF: Yes, I got them a
11 while ago.
12
13 ACTING CHAIR GOTTLIEB: Okay, thank you
14 everybody.
15
16 (Off record)
17
18 (PROCEEDINGS TO BE CONTINUED)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 300 through 492 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME III taken electronically by Nathan Hile on the 12th day of January 2006, beginning at the hour of 8:00 o'clock a.m. at the Sheraton Hotel in Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 22nd day of January 2006.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/08