

1 FEDERAL SUBSISTENCE BOARD  
2  
3 PUBLIC REGULATORY MEETING  
4

5 VOLUME I  
6

7 SHERATON HOTEL  
8 ANCHORAGE, ALASKA  
9

10 APRIL 30, 2007  
11 8:30 o'clock a.m.  
12

13 MEMBERS PRESENT:  
14

15 Mike Fleagle, Chair  
16 Gary Edwards U.S. Fish and Wildlife Service  
17 George Oviatt, Bureau of Land Management  
18 Judy Gottlieb, National Park Service  
19 Wini Kessler, U.S. Forest Service  
20 Niles Cesar, Bureau of Indian Affairs  
21  
22 Bertrand Adams - Southeast RAC  
23 Ralph Lohse - Southcentral RAC  
24 Speridon Simeonoff - Kodiak/Aleutians RAC  
25 Randy Alvarez - Bristol Bay RAC  
26 Lester Wilde - Yukon-Kuskokwim Delta RAC  
27 Jack Reakoff - Western Interior RAC  
28 Mike Quinn - Seward Peninsula RAC  
29 Victor Karman - Northwest Arctic RAC  
30 Sue Entsminger - Eastern Interior RAC  
31 Harry Brower - North Slope RAC  
32  
33 Ken Taylor, State of Alaska Representative  
34  
35 Keith Goltz, Solicitor's Office  
36  
37  
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P R O C E E D I N G S

(Anchorage, Alaska - 4/30/2007)

(On record)

CHAIRMAN FLEAGLE: Good morning. We'll call the meeting to order of the Federal Subsistence Board wildlife issues. Today is April 30th, we're meeting at the Sheraton, Anchorage, Alaska. And first I'd like to start out with the introductions and it looks like we have all of the Board members present and I'm going to start at my left and work this way.

Mr. Oviatt.

MR. OVIATT: George Oviatt. I represent BLM.

MR. CESAR: Niles Cesar with the Bureau of Indian Affairs.

MS. GOTTLIEB: Judy Gottlieb, National Park Service.

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

CHAIRMAN FLEAGLE: Good morning. Mike Fleagle, Chairman.

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

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

MS. KESSLER: Wini Kessler, U.S. Forest Service.

MR. TAYLOR: Good morning. Ken Taylor from the Department of Fish and Game.

CHAIRMAN FLEAGLE: Good morning, Ken, and welcome.

I'd like to start with introductions at the back row tables, at that level, please.

MR. ARDIZZONE: Chuck Ardizzone, Bureau

1 of Land Management.  
2  
3 MR. RABINOWITCH: Sandy Rabinowitch,  
4 National Park Service.  
5  
6 MR. EASTLAND: Warren Eastland, Bureau of  
7 Indian Affairs.  
8  
9 MR. LORD: Ken Lord, Solicitor's office.  
10  
11 MR. JACK: Carl Jack, OSM.  
12  
13 MR. BOS: Greg Bos, Fish and Wildlife  
14 Service.  
15  
16 MR. KESSLER: Steve Kessler with the  
17 Forest Service.  
18  
19 CHAIRMAN FLEAGLE: Thank you. And then  
20 let's start with the inner table over here, good morning,  
21 Jack.  
22  
23 MR. REAKOFF: I'm Jack Reakoff, Western  
24 Interior Regional Advisory Council.  
25  
26 MR. QUINN: Mike Quinn, Seward Peninsula  
27 Regional Advisory Council.  
28  
29 MS. ENTSMINGER: Sue Entsminger, Eastern  
30 Interior Regional Advisory Council.  
31  
32 MR. BUKLIS: Larry Buklis, Office of  
33 Subsistence Management, acting Chair of the Staff  
34 Committee.  
35  
36 MR. HAYNES: Terry Haynes, Department of  
37 Fish and Game.  
38  
39 MS. CUNNING: Tina Cunning, Department of  
40 Fish and Game.  
41  
42 MR. DAUGHERTY: Steven Daugherty,  
43 Department of Law.  
44  
45 MR. WILDE: Mr. Wilde, Yukon-Kuskokwim  
46 Regional Advisory Council.  
47  
48 MR. ALVAREZ: Randy Alvarez, Bristol Bay  
49 RAC.  
50

1 MR. SIMEONOFF: Speridon Simeonoff,  
2 Kodiak/Aleutians.  
3  
4 MR. LOHSE: Ralph Lohse, Southcentral.  
5  
6 MR. ADAMS: (In Tlingit) That's good  
7 morning in my language. Bert Adams, Sr., Southeast  
8 Regional Advisory Council.  
9  
10 CHAIRMAN FLEAGLE: Thank you. Good  
11 morning. And I wouldn't mind if we just went through the  
12 crowd just so everybody'd stand up and have a chance and  
13 introduce yourself to the Board and folks present. Let's  
14 start at the table back here.  
15  
16 MR. MATUSKOWITZ: Theo Matuskowitz, OSM.  
17  
18 MS. CHIVERS: Michelle Chivers, OSM.  
19  
20 MR. LAPLANT: Dan LaPlant, OSM.  
21  
22 MS. WILLIAMS: Liz Williams, OSM.  
23  
24 MR. BANKS: Tom Banks, Defenders of  
25 Wildlife.  
26  
27 MS. SEE: Marianne See, Fish and Game.  
28  
29 MR. MATHEWS: Vince Mathews, OSM.  
30  
31 MS. WILKINSON: Ann Wilkinson, OSM.  
32  
33 MS. REAKOFF: Kristen Reakoff, Fish and  
34 Wildlife.  
35  
36 MR. RISDAHL: Greg Risdahl, OSM.  
37  
38 MS. GREFFENIUS: Laura Greffenius, OSM.  
39  
40 MR. WENTWORTH: Kevin Wentworth, Fish and  
41 Wildlife.  
42  
43 MS. HERNANDEZ: Melinda Hernandez, U.S.  
44 Forest Service.  
45  
46 MR. KRON: Tom Kron, OSM.  
47  
48 MR. BERG: Jerry Berg, Fish and Wildlife  
49 Service.  
50

1 MR. MIKE: Donald Mike, OSM.  
2  
3 MS. WRIGHT: Sherry Wright, Fish and  
4 Game.  
5  
6 MR. WHITWORTH: Kevin Whitworth with  
7 Forest Service.  
8  
9 MR. ANDREW: Tim Andrew, AVCP.  
10  
11 MR. IVANOFF: Art Ivanoff, AVCP.  
12  
13 MR. MCCOY: Ron McCoy, Department of  
14 Interior.  
15  
16 MS. CLARK: Maureen Clark, OSM.  
17  
18 MR. EDENSHAW: Cliff Edenshaw with OSM.  
19  
20 MR. NICK: Alex Nick, OSM.  
21  
22 MR. SCHROEDER: Bob Schroeder, Forest  
23 Service.  
24  
25 MR. WATERS: Elijah Waters, BLM.  
26  
27 MR. WRIGHT: Jeffrey Wright with U.S.  
28 Forest Service law enforcement.  
29  
30 MR. CHEN: Mark Chen, Forest Service.  
31  
32 MS. H. ARMSTRONG: Helen Armstrong, OSM.  
33  
34 MR. CAMPBELL: Rod Campbell, OSM.  
35  
36 CHAIRMAN FLEAGLE: All right, well, thank  
37 you, everyone. Appreciate getting to know who we have in  
38 the audience. I'm still learning people, obviously,  
39 relatively new yet. So we do have a compliment of Board  
40 members present, a quorum is established. And in way of  
41 just introduction to the meeting, I'm still learning the  
42 process obviously and at the last meeting I guess an  
43 oversight was not recognizing at the beginning of the  
44 meeting, the ability of RAC Chair representatives that  
45 are here to participate in the deliberations as they go  
46 on. So if we're discussing an item that is not in your  
47 area you still have the ability to weigh in on the issue,  
48 and I thank you, Judy, for bringing that up. And also I  
49 understand that typically at the end of the meeting,  
50 again, the RAC representatives are brought back into the

1 discussion for closing comments, and I didn't do that at  
2 the last meeting. So we'll do a couple changes like  
3 that. And as things come up we'll definitely make the  
4 process better.

5  
6 I do want to recognize Ken Taylor for the  
7 State Department of Fish and Game. Ken, welcome to the  
8 table, and, again, you weren't here when we had the  
9 discussion at the last meeting but the State liaison is  
10 given the privilege to participate in the deliberations  
11 as well at the recognition of the Chair.

12  
13 So I appreciate everybody's willingness  
14 to participate in the process.

15  
16 And with that we're going to go ahead and  
17 move on with the agenda and the first thing is  
18 corrections and additions to the agenda and I'm going to  
19 turn that over to Larry Buklis.

20  
21 Larry.

22  
23 MR. BUKLIS: Thank you, Mr. Chairman. I  
24 wanted to note for the record that in addition to the  
25 Federal Subsistence Board wildlife meeting materials,  
26 April 30th to May 2nd, 2007, which we often call the  
27 Board book, in addition to that material we have a folder  
28 of supplemental material. And for the public we have  
29 copies of the supplemental material at the back table.  
30 There should be five items in your supplemental material  
31 folder.

32  
33 The first item is an amended or revised  
34 agenda, which I'll speak to in a moment.

35  
36 The second item is the Alaska Department  
37 of Fish and Game final written comments.

38  
39 The third item is an addendum page for  
40 the Staff Committee comments on WP07-56. It should go in  
41 at Page 538. In production of the book the last two  
42 paragraphs had been cut off, so this addendum page  
43 includes what is on your Page 538 and on the back side  
44 are the missing two paragraphs.

45  
46 Fourth, you have the Staff analysis for  
47 fishery RFR 06-09 which comes up later on your agenda  
48 this week.

49  
50 And, finally, fifth, you have the

1 InterAgency Staff Committee comments on fishery RFR 06-  
2 09, again, later in your agenda this week.

3  
4                   Going back to the top on the amended or  
5 revised agenda you will note that it includes on Page 2  
6 of that supplemental item, not the agenda in your binder  
7 but in your folder, Page 2 shows 14 proposals on  
8 consensus and Pages 3 and 4 show 50 proposals on non-  
9 consensus. I will note that Proposal WP07-08 is  
10 correctly shown on the consensus agenda but it is also  
11 shown on Page 3, the non-consensus, it didn't -- just in  
12 terms of production, didn't get moved over, it's shown in  
13 both places, so it should not be appearing on Page 3.  
14 That's WP07-08 should appear on Page 2 only and it should  
15 not appear on Page 3. It is on the consensus agenda, and  
16 it's double listed. So with that correction, you should  
17 have 14 on consensus and 50 on non-consensus.

18  
19                   Mr. Chairman, that concludes my review of  
20 the materials.

21  
22                   CHAIRMAN FLEAGLE: Thank you, Larry.

23  
24                   MS. GOTTLIEB: Mr. Chair.

25  
26                   CHAIRMAN FLEAGLE: Judy.

27  
28                   MS. GOTTLIEB: I had two items, please,  
29 one concerns the agenda, but first I wanted to mention  
30 the passing of Gilbert Dementi, who has been a long time  
31 Regional Advisory Council representative as well as part  
32 of the National Park Service Subsistence Resource  
33 Commission, and we'll miss his service quite a bit.

34  
35                   In terms of agenda, we did have a request  
36 to withdraw Proposal 07-50, and I would like to suggest  
37 that we do so.

38  
39                   CHAIRMAN FLEAGLE: Is there any objection  
40 to just removing 07-50 from the agenda? Do we need a  
41 motion?

42  
43                   MR. PROBASCO: We should have a motion.

44  
45                   CHAIRMAN FLEAGLE: Well, we should  
46 probably just do it when we get to it then, right.

47  
48                   MR, PROBASCO: Uh-huh.

49  
50                   CHAIRMAN FLEAGLE: Right, okay, let's

1 leave it on the agenda and just take it up then.

2

3 Other comments.

4

5 MS. KESSLER: Mr. Chairman.

6

7 CHAIRMAN FLEAGLE: Go ahead.

8

9 MS. KESSLER: I will only be here to  
10 represent the Forest Service today and tomorrow and then  
11 Steve Kessler will be taking my place. One of the non-  
12 consensus agenda proposals that's likely to come up on  
13 Wednesday is WP07-56 concerning the proposal to lift the  
14 closure for sheep in Arctic Village Management Area. And  
15 I anticipate this might be somewhat controversial so if  
16 possible I'd like to have that come up before 5:00  
17 o'clock tomorrow, if possible.

18

19 CHAIRMAN FLEAGLE: Request noted.

20

21 MS. KESSLER: Thank you.

22

23 CHAIRMAN FLEAGLE: And we'll see how the  
24 scheduling goes, Wini. Thank you.

25

26 MS. KESSLER: Thank you.

27

28 CHAIRMAN FLEAGLE: Other comments, Board  
29 members.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: RAC representatives.

34

35 (No comments)

36

37 CHAIRMAN FLEAGLE: State.

38

39 (No comments)

40

41 CHAIRMAN FLEAGLE: None, okay.

42

43 All right, at this time we'd like to go  
44 ahead and open up public comment period on non-agenda  
45 items, and as noted on the agenda that we will provide  
46 this opportunity at the beginning of each day of the  
47 meeting. Is there anybody that would like to address the  
48 Board on any issue that is not on the agenda.

49

50 (No comments)

1 CHAIRMAN FLEAGLE: All right, thank you  
2 for those non-comments.

3  
4 Now, we move into the public comment  
5 period on the consensus agenda items. And as noted we  
6 have, I think, Larry said there were 14 total, if I  
7 remember the count. I'd like to welcome comments on the  
8 consensus agenda proposals.

9  
10 (No comments)

11  
12 CHAIRMAN FLEAGLE: All right, we don't  
13 have any there either -- oh, we do, Ken Taylor.

14  
15 MR. TAYLOR: Thank you, Mr. Chairman.  
16 Before you start your deliberations I do have some  
17 opening remarks from the State that I hope will help move  
18 the meeting along.

19  
20 Mr. Chairman, I'd like to thank you for  
21 the opportunity to provide these comments on the  
22 proposals you'll be deliberating this week.

23  
24 The Department has submitted copies of  
25 our detailed comments on these proposals and Staff will  
26 summarize key points during the Board's deliberations.  
27 But at the outset, however, I'd like to discuss the  
28 Department's positions on particular types of proposals  
29 that are on your agenda.

30  
31 CHAIRMAN FLEAGLE: Mr. Taylor.

32  
33 MR. TAYLOR: Yes.

34  
35 CHAIRMAN FLEAGLE: If these comments are  
36 just general in nature I'll accept them now but we do  
37 provide an opportunity at each proposal for comment as  
38 well so -- comments that are specific to proposals.

39  
40 MR. TAYLOR: Thank you, Mr. Chairman.  
41 These are general comments.

42  
43 CHAIRMAN FLEAGLE: Okay, thank you.

44  
45 MR. TAYLOR: And they have to deal with a  
46 couple of the policy issues that I'm sure you've heard of  
47 before. I thought it might speed things up to cover  
48 those general policy issues now so that we don't have to  
49 bring them up time after time during the proposals.

50

1                   We have a couple of overarching concerns.  
2 We mention these concerns in most of our comments but  
3 we've tried to keep them short and have left out  
4 discussion on a few proposals where the policy issues are  
5 applicable in order to avoid undue repetition and help  
6 move things along.

7  
8                   One of our overarching policy concerns  
9 regards duplication of State regulations. I'm sure  
10 you've heard of this before. The State law requires the  
11 subsistence priority on most lands in Alaska and where  
12 the harvestable surplus is sufficient State regulations  
13 adequately provide the subsistence preference for all  
14 Alaska residents, including rural residents while also  
15 allowing other beneficial uses consistent with ANILCA and  
16 State law. Numerous proposals on your agenda would  
17 modify current Federal regulations to match the  
18 corresponding State regulation. In most of these cases  
19 the Federal regulation is not needed to provide a  
20 subsistence preference on Federal public lands because  
21 the current State regulation is already providing the  
22 requested opportunity.

23  
24                   Furthermore, the Federal Board doesn't  
25 need to adopt duplicate regulations because Federal  
26 regulations already incorporate State hunting and  
27 trapping regulations by reference.

28  
29                   In cases where Federal regulation would  
30 mirror State regulations, the Department's preferred  
31 alternative is the deletion of duplicative Federal  
32 regulations allowing the Federal incorporation by  
33 reference of State regulations to apply. Reliance on  
34 State regulations through Federal incorporation by  
35 reference would prevent inadvertent regulatory drift and  
36 divergence. State regulations that have been  
37 incorporated by reference could be reflected in your  
38 Federal handy-dandy.

39  
40                   Another area where we have consistently  
41 discussed our concern has to do with customary and  
42 traditional use determinations. The Department  
43 recommends the Federal Board defer action on customary  
44 and traditional use determinations until criteria are  
45 established pursuant to the October 27th, 2005 directive  
46 issued by the Secretary of Interior. This will better  
47 enable the public to evaluate the underlying principles  
48 used by Federal Staff to recommend that a new positive  
49 C&T finding be made where one didn't exist previously or  
50 that an existing finding be expanded to include more

1 rural residents.

2

3 Under the current process it's difficult  
4 to determine the basis for Federal Staff recommendations  
5 on several C&T proposals on the agenda. In some cases  
6 the Federal position appears to be based on the view that  
7 any use, no matter how low the use or how it is  
8 documented is sufficient to demonstrate a long-term  
9 consistent pattern of community use and to support a  
10 positive customary and traditional use determination.  
11 This approach contradicts State regulations and is  
12 inconsistent with the Alaska National Interest Lands  
13 Conservation Act which established a policy of providing  
14 a preference only for continuation of subsistence uses  
15 and which defines subsistence uses as customary and  
16 traditional uses.

17

18 A third area is the closure of Federal  
19 public lands and as I understand it you have a draft  
20 policy in the works right now. We have several proposals  
21 on the agenda that address closures of Federal public  
22 lands to non-Federally-qualified subsistence users.  
23 Under ANILCA, Section .815 paragraph 3, Congress  
24 prohibits authorizing restriction on the taking of fish  
25 and wildlife for non-subsistence uses on the public lands  
26 unless necessary for the conservation of healthy  
27 populations of fish and wildlife or to continue  
28 subsistence uses of such populations unless proposed or  
29 existing closures are shown to be consistent with Section  
30 .815 of ANILCA the closures should be rescinded.

31

32 We understand that the Board has  
33 completed work on a draft proposed closure policy and we  
34 look forward to its completion so that the public will  
35 better understand the basis for future Board action on  
36 proposals to close State public lands to non-Federally-  
37 qualified subsistence users.

38

39 In summary, although the Department has  
40 objections to the adoption of the following proposals and  
41 these are, and I'll just abbreviate them as 09, 10, 11,  
42 12, 33, 39 through 45, 46/47, 48/49, 51/54, 57, 60, 61  
43 and 62, our objections on these proposals are based on  
44 the policy issues that I've just discussed. And  
45 depending on how the Board addresses these issues and  
46 gives the Department an opportunity for comment, we may  
47 agree to these proposals being voted on as a block.

48

49 Thank you, Mr. Chairman.

50

1 CHAIRMAN FLEAGLE: Okay, thank you, Ken.  
2 Appreciate the comments. And, you're right, those are  
3 pretty consistent.  
4  
5 Other -- Pete Probasco.  
6  
7 MR. PROBASCO: Thank you, Mr. Chair. Mr.  
8 Taylor, just for clarification, based on the list of  
9 proposals that you just read into the record, are we to  
10 assume that those would go on to the consent agenda or do  
11 you still want them to be brought up individually and  
12 dealt with in that manner?  
13  
14 CHAIRMAN FLEAGLE: Mr. Taylor.  
15  
16 MR. TAYLOR: Mr. Chairman. I think we  
17 are considering the possibility that they may go on the  
18 consent agenda but it depends a bit on how we work  
19 through some of those other issues through the course of  
20 the meeting.  
21  
22 MR. PROBASCO: Thank you, Mr. Chair. So  
23 then each of those proposals would still be dealt with on  
24 an individual basis.  
25  
26 Thank you.  
27  
28 CHAIRMAN FLEAGLE: Board members. Gary.  
29  
30 MR. EDWARDS: Mr. Chairman. Just  
31 clarification. You can request at any time an issue be  
32 taken off the consent agenda, we don't have to do it at  
33 this point; is that correct?  
34  
35 CHAIRMAN FLEAGLE: Pete.  
36  
37 MR. PROBASCO: Mr. Chair. Mr. Edwards,  
38 that is correct. The proposals that I was speaking to to  
39 Mr. Taylor would be in addition to the ones already on  
40 the consent agenda.  
41  
42 MR. EDWARDS: But if I have one that I  
43 may want to take off, pending also actions on other ones,  
44 I can do it at that point?  
45  
46 MR. PROBASCO: That's correct.  
47  
48 MR. EDWARDS: Thank you.  
49  
50 CHAIRMAN FLEAGLE: Ken Taylor.

1 MR. TAYLOR: Mr. Chairman. Just for my  
2 clarification, you can take proposals off the consent  
3 agenda at any time, can you put them on the consent  
4 agenda at any time?

5  
6 CHAIRMAN FLEAGLE: Pete.

7  
8 MR. PROBASCO: Mr. Chair. Mr. Taylor.  
9 The purpose of the consent agenda item is to help  
10 expedite the meeting and by placing items on the consent  
11 agenda usually the assumption is made that the majority  
12 of those we won't take up individually and we'll just  
13 hold them until the end of the meeting and then get  
14 concurrence. Without the proposal specifically placed on  
15 the consent agenda requires the Board to take each one up  
16 individually.

17  
18 MR. TAYLOR: Thank you, Mr. Chair. I  
19 guess then I would defer to the Department of Law as to  
20 whether or not we should place these items on the consent  
21 agenda at this time and then remove them, if necessary.

22  
23 MS. CUNNING: A little consultation back  
24 here, we do want those moved to the consent agenda now  
25 that those statements are on the record.

26  
27 CHAIRMAN FLEAGLE: Okay, for the record  
28 that was Tina Cunning. Thank you, Tina. Pete.

29  
30 MR. PROBASCO: Thank you, Mr. Chair. So  
31 Ms. Cunning with the statements that Mr. Taylor read into  
32 the record, to clarify the State's position, and as well  
33 as comments on the various policies, we can now, with  
34 those comments, move those proposals listed to the  
35 consent agenda.

36  
37 CHAIRMAN FLEAGLE: Ken Taylor.

38  
39 MR. TAYLOR: Thank you, Mr. Chairman.  
40 And thank you for that, I hope that does help speed up  
41 your meeting.

42  
43 CHAIRMAN FLEAGLE: Thank you.

44  
45 MS. GOTTLIEB: Mr. Chair.

46  
47 CHAIRMAN FLEAGLE: Judy.

48  
49 MS. GOTTLIEB: I was just wondering if  
50 Ken could please read the list again.

1 CHAIRMAN FLEAGLE: Ken Taylor.

2

3 MR. TAYLOR: Thank you. The list I had  
4 was Proposals 9, 10, 11, 12, 33, 39 through 45, 46/47,  
5 48/49, 51/54, 57, 60, 61 and 62.

6

7 CHAIRMAN FLEAGLE: All right, thank you.  
8 And just for clarification, the reason that they are on  
9 the main agenda is because the State objected during the  
10 consent agenda discussions, correct?

11

12 MR. PROBASCO: Mr. Chair. I would say  
13 that the State wanted to, before putting those items on  
14 the consent agenda, Staff wanted to go back and discuss  
15 it within house and then come back so they could made  
16 these type of statements and then move it to the consent  
17 agenda.

18

19 CHAIRMAN FLEAGLE: All right. I was just  
20 making sure that there wasn't any other reason to not  
21 move those to the consent agenda. We have Larry Buklis,  
22 comments.

23

24 MR. BUKLIS: Yes, thank you, Mr.  
25 Chairman. In further response to your comment, I've  
26 checked that list just announced against our records and  
27 I presume from the State saying that they're in a  
28 position to move them to the consensus agenda, they agree  
29 with the existing position of record of the relevant  
30 Regional Advisory Council and the Federal InterAgency  
31 Staff Committee, and so with them joining that position  
32 it would make it consensus.

33

34 Thank you, Mr. Chairman.

35

36 CHAIRMAN FLEAGLE: Thank you. That was  
37 the answer I was looking for. Do we have any objection  
38 from the Board for moving those listed proposals to the  
39 consensus agenda.

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: No objection. We'll  
44 adopt that as action by the Board. Thank you.

45

46 Okay, with that, that now moves us to the  
47 next item on the agenda and that is the announcement of  
48 the consensus agenda.

49

50 Larry.

1 MR. BUKLIS: Mr. Chairman. The consensus  
2 agenda would consist of the 14 proposals listed on the  
3 revised agenda dated April 27th, 2007, Page 2, there's 14  
4 proposals listed there numbers 8, 18, 19, 20, 21, 25, and  
5 then 27, 28, 31, 64, 35, 38, 52 and 53, and the positions  
6 of the recommendation are as shown on that page, I won't  
7 read them all.

8  
9 And joining that list of 14 are the  
10 additional proposals Mr. Taylor read off, number 9, 10,  
11 11, 12, 33, 39 through 45, 46, 47, 48, 49, 51, 54, 57,  
12 60, 61 and 62. And the positions would be as recommended  
13 by the Regional Advisory Councils on those proposals.

14  
15 We can develop a revised printed  
16 consensus agenda showing all these proposals and the  
17 positions recommended well before you get to returning to  
18 that agenda item at the end of your meeting, Mr.  
19 Chairman.

20  
21 CHAIRMAN FLEAGLE: Appreciate that,  
22 Larry, that'd be great.

23  
24 Comments. Wini. You microphone's not  
25 on.

26  
27 MS. KESSLER: Sorry. I'm not asking this  
28 to be removed from the consensus agenda, but I would like  
29 this subsistence council, the Southcentral Council to  
30 provide an explanation or clarification as to the reasons  
31 for its recommendation on WP07-21 concerning the C&T  
32 determination for certain communities in Unit 15 for  
33 moose.

34  
35 CHAIRMAN FLEAGLE: Mr. Ralph Lohse.

36  
37 MR. LOHSE: Thank you, Ms. Kessler. I  
38 think that what we're talking about was the request for  
39 consideration for C&T for -- I'm going to get the list of  
40 the names of the communities, I had it right here just a  
41 second ago.

42  
43 MR. EDWARDS: Mr. Chairman. Maybe to  
44 save Ralph some trouble, that was the one that I was  
45 thinking about taking off and I'm willing to go ahead and  
46 take it off and then you could save your discussion for  
47 when it comes up. Would that work for you?

48  
49 MR. LOHSE: It's your choice.

50

1 MR. EDWARDS: I mean that's the one I was  
2 referring to and it seems like somebody else has a  
3 concern for it and so I'd just go ahead at this point  
4 then and move that it be taken off because I'd like to  
5 have more lengthy discussion probably of it and I don't  
6 want to get it out ahead of anything.

7  
8 I didn't mean to interrupt you but.....

9  
10 MR. LOHSE: That's fine, Gary.

11  
12 CHAIRMAN FLEAGLE: Okay. So we do have a  
13 motion to remove WP07-21 from the consensus agenda for  
14 discussion during the normal deliberations. Is there a  
15 second to that.

16  
17 MS. GOTTLIEB: Mr. Chair. I think, help  
18 me procedurally, if a Board member asks for withdrawal  
19 from the consensus agenda that's all it takes.

20  
21 CHAIRMAN FLEAGLE: That's all it takes,  
22 okay. So one person can rule this process at this point.

23  
24 (Laughter)

25  
26 CHAIRMAN FLEAGLE: All right, so noted.  
27 Thank you, Judy. 21 is now to be considered off of the  
28 consensus agenda and during the normal deliberations and  
29 we'll have to determine exactly where to insert that  
30 during the course of the actions.

31  
32 MR. PROBASCO: Southcentral.

33  
34 CHAIRMAN FLEAGLE: So keep that in mind  
35 Staff.

36  
37 All right, so we're going to get ready to  
38 move into the proposals and if we have people that are  
39 interested in commenting on these proposals, we have the  
40 cards that need to be filled out and brought forward and  
41 we allow a comment period on each proposal so I just want  
42 to give the head's up that if you want to address any  
43 specific proposal, please fill out a card and state your  
44 interest in doing so.

45  
46 MR. PROBASCO: We'll start with  
47 statewide.

48  
49 CHAIRMAN FLEAGLE: Here, right.

50

1 MR. PROBASCO: Yes, statewide.

2

3 CHAIRMAN FLEAGLE: All right. We now  
4 move into the proposals under consideration and we're  
5 starting with the statewide proposals. The first up on  
6 the list is WP07-01 definitions and utilizations of  
7 wildlife, and who am I turning this over to for the lead  
8 analysis.

9

10 MR. PROBASCO: Liz Williams.

11

12 MS. WILLIAMS: Good morning, Mr. Chair.  
13 Members of the Board. I'm Liz Williams with OSM.

14

15 Proposal WP07-01 was submitted by the  
16 Alaska Department of Fish and Game and it requests that  
17 claws be removed from the Federal definition of fur and  
18 that sales of handicraft articles made from claws, bones,  
19 teeth, sinew or skulls of black and brown bears be  
20 allowed for sale only between Federally-qualified  
21 subsistence users statewide.

22

23 The proponents submitted this proposal  
24 because, in their view, if the definition of fur is not  
25 changed it will allow for unconstrained commercial sale  
26 of handicrafts made from bear parts and create market  
27 incentives for poaching. And I apologize, this is on  
28 Page 18 of your book.

29

30 Between 2002 and 2006, the Federal  
31 Subsistence Board considered six proposals regarding the  
32 sale of handicrafts made from some of the non-edible  
33 parts of bears. The Board has consistently supported the  
34 sale of handicrafts made from the skin, hide, pelt, fur,  
35 claws of black bear, statewide, and brown bear in three  
36 regions of the state, including claws by Federally-  
37 qualified subsistence users. Under current Federal  
38 regulation brown bear hides with claws can only be used  
39 in handicrafts for sale if the bears were harvested from  
40 Eastern Interior, Bristol Bay and Southeast Alaska.  
41 Other parts such as bones, teeth, sinew or skulls can  
42 only be used from brown or black bear taken in Southeast  
43 Alaska.

44

45 So the effects of this proposal would be  
46 that they would remove the unit-specific restrictions  
47 that I just mentioned and would negate the intent of the  
48 Board and the Regional Councils in recognizing the  
49 diverse customary and traditional uses of bears and bear  
50 parts throughout the state. So in other words, each RAC

1 decided what would and wouldn't happen in their region  
2 based on the opinions of their communities, and it was  
3 specifically set it up so that certain things would  
4 happen only in certain places and some places nothing.

5  
6 The proponents description for persons  
7 eligible to sell handicrafts from bear parts mentioned  
8 above would narrow sales only to Federally-qualified  
9 rural residents. This proposal would unnecessarily  
10 restrict the subsistence users of Federally-qualified  
11 subsistence users as specified in ANILCA, Section .803.

12  
13 The preliminary conclusion of OSM is to  
14 oppose the proposal.

15  
16 The State has conservation concerns  
17 related to this proposal, which are very valid, but so  
18 far there's been no evidence provided to indicate that  
19 Federal regulations adversely affect bear populations.  
20 There's been no evidence provided to indicate that these  
21 regulations have led to an increased legal or illegal  
22 harvest of bears. And, again, these bear parts that are  
23 used would only be taken from bears that are already  
24 legally harvested under Federal subsistence regulations.  
25 As I just said current Federal regulations apply only to  
26 bears harvested under Federal subsistence regulations on  
27 Federal lands and, of course, all meat from bears  
28 harvested under Federal subsistence regulations must be  
29 eaten.

30  
31 That's it.

32  
33 CHAIRMAN FLEAGLE: Okay, thank you.  
34 Summary of written public comments.

35  
36 MR. MATHEWS: Yes, Mr. Chairman. I'm  
37 Vince Mathews, Regional Coordinator for Eastern and  
38 Western Interior.

39  
40 Public comments are found on Page 30 and  
41 31. There was six written public comments, they were all  
42 in opposition. There were four of those six from the  
43 Subsistence Resource Commissions.

44  
45 Aniakchak National Monument, Lake Clark  
46 oppose it for the same justification, because this  
47 proposal restricts the opportunity for subsistence users  
48 to maximize the value they can derive from selling  
49 handicrafts made from parts of legally harvested bears.

50

1 Wrangell-St. Elias National Park and  
2 Denali National Park Subsistence Resource Commissions  
3 also opposed it for the same reasoning -- they had the  
4 same reasoning, excuse me, and their reasoning was based  
5 on the preliminary Staff conclusion. And that was that  
6 the proposal would unnecessarily restrict subsistence  
7 uses of Federally-qualified subsistence users as  
8 specified in ANILCA. There has been no evidence provided  
9 to indicate that the current Federal regulations  
10 adversely affect bear populations or have led to increase  
11 legal or illegal harvest of bears, and the proponents  
12 language for the Federal definition of fur would require  
13 the removal of claws from all hides such as fox, mink,  
14 not just bear, and lastly, this proposal, if adopted,  
15 would broaden the use of some of the non-edible parts of  
16 brown bears into regions where it is not allowed under  
17 current Federal regulations.

18  
19 The two additional written comments in  
20 opposition were from David McHoes of Skwentna. He  
21 opposes this proposal because nowhere in the reasons for  
22 the for the recommended change are there any biological  
23 reason for the recommended change. Most bear populations  
24 in the State are harvested well below sustainable levels.  
25 Passage of this proposal would be like telling a trapper  
26 he can sell only his pelts to other trappers. Most  
27 handicrafts are intended for sale to non-local residents  
28 to provide income from outside sources for the  
29 subsistence user and to bring money into rural areas.  
30 Subsistence harvest does not just relate to personal  
31 consumption, but also has always provided a limited  
32 amount of cash income to provide for things that a  
33 subsistence life might require.

34  
35 The AHTNA Tene Nene' Subsistence  
36 Committee also opposed this proposal and their  
37 representative is here if I capture this wrong, and they  
38 can correct it.

39  
40 They do not support this proposal to  
41 change the definition of handicrafts. They don't support  
42 changes to 25(j)(6)(i) or 25(j)(8). The definition of  
43 25(a) includes all animals, which is too broad of a  
44 definition. They oppose 25(j)(6), which would reopen a  
45 statewide selling of handicraft articles made from  
46 black bear to only another Federally-qualified  
47 subsistence user, which includes the skin, hide, pelt,  
48 fur, of a black bear; and it also eliminates claws, which  
49 is fine, but we do not support the selling any bear  
50 parts. They also oppose 25(j)(6)(i), which a State

1 proposal that would allow the Federally-qualified  
2 subsistence user to sell handicraft articles from claws,  
3 bones, teeth, sinew or skull of brown bear to only other  
4 qualified subsistence users. It also eliminates skin,  
5 hide and fur of brown bear, which is fine, but we do not  
6 support the selling of any brown bear parts.

7

8 Mr. Chair. That concludes the written  
9 comments for Proposal 1.

10

11 CHAIRMAN FLEAGLE: Thank you, Vince. Do  
12 we have any public testimony.

13

14 MR. PROBASCO: No, Mr. Chair.

15

16 CHAIRMAN FLEAGLE: Thank you, Pete.  
17 Okay, since this is a statewide proposal I'm going to  
18 open it up, Regional Advisory Council recommendations,  
19 raise your hand if you have comments.

20

21 Bert Adams.

22

23 MR. ADAMS: Thank you, Mr. Chairman.  
24 Wow, it must be about 3:00 a.m. in the morning, that's  
25 when I normally have my nightmares and I just kind of  
26 feel nervous today, maybe I had a cup of regular coffee  
27 this morning, but excuse me if my voice shakes a little  
28 bit as I go through my presentation here.

29

30 The Southeast Regional Advisory Council  
31 opposes this proposal. We find that, you know, as  
32 regulation is in place now that there are no problems  
33 with it. We have gone through this before and have  
34 always come up with the same conclusion. We don't see  
35 any conservation concerns. And we also feel that it  
36 would be detrimental to subsistence users.

37

38 According to the ADF&G, Division of  
39 Wildlife Conservation for the region there are no  
40 conservation concerns with bears in Southeast Alaska.  
41 This proposal addresses a punitive, possible,  
42 hypothetical problem rather than real management issues  
43 or concerns and should a demonstrateable problem arise  
44 from the selling of handicrafts incorporating claws and  
45 other of the non-edible parts of bears, the Council will  
46 urge action to protect bear resources. So passage of  
47 this proposal would be detrimental to the interests of  
48 subsistence users.

49

50 And so for this reason the Council, you

1 know, opposes this proposal.

2

3

4 The Council recognizes that in some  
5 regions in Alaska, the sale of bear parts may be  
6 culturally inappropriate, however, use of bear parts,  
7 including bear claws for handicrafts is an acceptable  
8 practice in Southeast Alaska and for that reason we don't  
9 think it should be curtailed.

9

10

11 The Council's on record supporting  
12 regulations that allow full utilization of bears taken  
13 for subsistence purposes, use of bear parts and  
14 traditional regalia and craft items and appropriate  
15 handicraft sales of items made from bear parts.

15

16

17 To summarize all this, Mr. Chairman, I'll  
18 just conclude by saying that the recommendation modified  
19 -- the recommended modified proposal will have minimal  
20 affect on Federally-qualified hunters. Black bears are  
21 abundant in Southeast Alaska existing and potential  
22 subsistence harvests are low relative to the harvest  
23 levels that may be maintained over time. Brown bear  
24 harvests are closely managed. The subsistence component  
25 of this harvest has been very low and is expected to  
26 remain at current levels. Region-wide data show that  
27 only a small number of bears are taken for consumption by  
28 Federally-qualified subsistence hunters. The Council  
29 believes that only a small subset of Federally-qualified  
30 hunters taking bears will use non-edible parts for  
31 handicrafts. The Council does not believe that this  
32 regulation will affect future harvest levels  
33 significantly.

33

34

35 And that's about the extent of my  
36 comments, Mr. Chairman, thank you.

36

37

38 CHAIRMAN FLEAGLE: Thank you, Bert.  
39 Other Advisory Council comments.

39

40

41 MR. SIMEONOFF: Mr. Chairman.

41

42

43 CHAIRMAN FLEAGLE: Speridon.

43

44

45 MR. SIMEONOFF: Speridon Simeonoff from  
46 Kodiak/Aleutians.

46

47

48 The Kodiak/Aleutians Advisory Council  
49 opposed this proposal and their justification was that  
50 the Council members stated that it was hard to make  
51 recommendations for other regions. The current Federal

1 regulations were carefully developed to consider regional  
2 subsistence practices.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: Appreciate those  
7 comments. Sue Entsminger.

8

9 MS. ENTSMINGER: Yeah, thank you, Mr.  
10 Chair. The Eastern Interior RAC also opposed this  
11 proposal. And I won't read everything in the book.

12

13 But I did want to add since our meeting I  
14 received a book that -- I'm a skin sewer and I've been  
15 sewing furs and things for years and I attend a lot of  
16 shows inside Alaska, like Anchorage Fur Rendezvous and  
17 winter shows where we sell our fur hats and stuff and  
18 I've walked around during shows and seen people with a  
19 little bear claw, prior to all of this being made legal,  
20 a little bear claw in a little item that they made and a  
21 Native gal from, you know, the Interior and I said, do  
22 you know that you shouldn't have that for sale here  
23 because it's illegal. And here's little examples, where  
24 you can go around to these shows, that isn't hurting  
25 anything for them to take that bear claw and make an item  
26 but often I'd see this over and over again. And then  
27 since our meeting I got a book in the mail from Inna's  
28 Furs out of Idaho and in that book, it's countless bear  
29 claws that are for sale, countless places where it's for  
30 sale and I guess I mean I have -- due respect to the  
31 State, I really appreciate our State Fish and Game, but  
32 at the same time I feel like we're -- in our neck of the  
33 woods we call it hand-wringers, you worry yourself silly  
34 about something that really is a non-issue, and I just  
35 wanted to add that here.

36

37 Thank you.

38

39 CHAIRMAN FLEAGLE: Thank you. Other  
40 Advisory Council comments. Randy Alvarez.

41

42 MR. ALVAREZ: Thank you, Mr. Chair. The  
43 Bristol Bay RAC opposed this proposal as does two of the  
44 SRCs in our region, Aniakchak and the Lake Clark and  
45 their reasons were discussed earlier. But we feel  
46 strongly that there is no problem with this right now,  
47 and to make a handicraft it takes more than just drilling  
48 a hole and tying a piece of string on it, you know, it  
49 takes craftsmen to do it and, you know, it takes time and  
50 it provides an opportunity, you know, for people in rural

1 Alaska to supplement their income. And we feel that  
2 there's no -- in the Bristol Bay area, our bear  
3 population is reasonably high, as was discussed at the  
4 Board of Game meeting a couple of months ago that was --  
5 you know it was pretty contentious issues there. We  
6 don't see a problem with this. Maybe at a later time  
7 there might be a problem, and it could be brought up  
8 later but for now we are opposed to the proposal.

9

10 CHAIRMAN FLEAGLE: Thank you, Randy.  
11 Other RAC comments. Jack Reakoff.

12

13 MR. REAKOFF: Mr. Chairman. The Western  
14 Interior Regional Council opposed the proposal. Our  
15 Council's not been in favor of the sale of bear parts for  
16 cultural reasons. People in our region have respect for  
17 the bears and don't feel that it's appropriate to all the  
18 parts from bears but we're not opposed to the other  
19 regions and their cultural practices from the sale of  
20 bear parts. And as most people are aware the bear  
21 population in Alaska is very high in most of the state  
22 and so we didn't feel that it was appropriate to exclude  
23 other regions from allowing the sale of bear parts. But  
24 our Council opposed the proposal and feel that other  
25 regions should be able to sell.

26

27 Thank you.

28

29 CHAIRMAN FLEAGLE: Thank you. Mike  
30 Quinn.

31

32 MR. QUINN: The Seward Peninsula RAC  
33 opposed this proposal also. We look forward to the  
34 increase in opportunities for rural residents to profit  
35 from their legal kills and we certainly hope we see them  
36 using other markets, such as the internet and eBay to do  
37 so.

38

39 CHAIRMAN FLEAGLE: Thank you. Michelle.

40

41 MS. CHIVERS: Mr. Chair. The Northwest  
42 Arctic Council did support this proposal with no  
43 discussion so there wasn't a reasoning behind here and  
44 the Chair is not here.

45

46 I'm also going to read the recommendation  
47 for the North Slope. They took no action on this  
48 proposal.

49

50 Thank you, Mr. Chair.

1 CHAIRMAN FLEAGLE: Thank you. Lester  
2 Wilde.

3  
4 MR. WILDE: The YK-Delta also opposed  
5 this proposal. I'm the newly appointed Chair of the YK-  
6 Delta and they got me a little bit off guard there and I  
7 can't really remember exactly what the recommendations  
8 were or what the reasoning was behind the proposal or the  
9 opposition to this proposal. But for the record we did  
10 oppose it.

11  
12 CHAIRMAN FLEAGLE: Okay, thank you.  
13 Ralph Lohse.

14  
15 MR. LOHSE: Southcentral took no action.  
16 Those of you that were at our last meeting realize how  
17 long the meeting took and we just plain ran out of time.  
18 In the past we've probably supported this but at the same  
19 time the culturally ambience of our community is  
20 basically that, like Western Interior, it's like you  
21 heard with the AHTNA thing, it's a respect of the bears  
22 and so we have mixed feelings on it. But we took no  
23 action for this meeting.

24  
25 CHAIRMAN FLEAGLE: Thank you. And yet  
26 another nuance of the Federal system that I'm beginning  
27 to be more and more acquainted with, I was calling those  
28 comments when they're, in fact, Council recommendations.  
29 Duly noted, thank you for the correction.

30  
31 With that we'll move on to the Alaska  
32 Department of Fish and Game for comments.

33  
34 Ken Taylor, or is this Tina Cunning.

35  
36 MS. CUNNING: This is Tina Cunning. And  
37 because this is so important to us I'm going to read a  
38 fair amount of our statement into the record.

39  
40 This proposal, submitted by the  
41 Department of Fish and Game would revise the definition  
42 of skin, hide, pelt or fur, to exclude claws and would  
43 authorize only the sale of handicraft articles made from  
44 allowable bear parts to other Federally-qualified  
45 subsistence users. This proposal addresses potential  
46 commercial sales of bear handicrafts but does not  
47 prohibit sales between Federally-qualified subsistence  
48 users who use these handicrafts for ceremonial, religious  
49 and cultural purposes. Adoption of this proposal will  
50 make the Federal regulations more enforceable and

1 consistent with sound management principles and will  
2 reduce the incentive for illegal harvest and overharvest  
3 of bear populations in Alaska and elsewhere.

4  
5 Last year the Federal Subsistence Board  
6 rejected a proposal to limit sales of bear part  
7 handicrafts and constrain the sale of bear parts.  
8 Instead of taking action to prohibit commercial exchanges  
9 or put reasonable and enforceable limitations on such  
10 exchanges as has been done in the fisheries context, the  
11 Federal Board adopted only an unenforceable generalized  
12 prohibition against sales of handicrafts that are  
13 "significant commercial enterprises." The unenforceable  
14 revisions created incentives for new commercial  
15 enterprise and illegal harvest of bears potentially  
16 jeopardizing a species recognized under the Endangered  
17 Species act in other states and undermining State  
18 conservation. The State filed a request for  
19 reconsideration on August 25, 2006, which the Federal  
20 Board concluded did not meet the criteria to warrant  
21 further reconsideration.

22

23 The current regulations:

24

- 25 1. Authorize unconstrained sales as  
26 a customary and traditional  
27 activity despite a record  
28 demonstrating that only limited  
29 non-cash exchanges were  
30 traditional and that cash sales  
31 did not traditionally occur;
- 32  
33 2. Allow the commercial sale of bear  
34 parts handicrafts including  
35 internet based sales;
- 36  
37 3. Provide no tracking mechanism for  
38 sales or the source of bear parts  
39 used in making handicrafts, and;
- 40  
41 4. Have been interpreted to allow  
42 purchase of claws, teeth, skulls  
43 and bones by non-Federally-  
44 qualified subsistence users  
45 despite the fact that such  
46 purchase is prohibited under  
47 State law.

48

49 Through its actions the Federal Board  
50 created and is perpetuating a new market for bear claws,

1 skulls and bones that will mask illegal sales. This  
2 action compounds problems with the international trade of  
3 endangered species and contributes to the illegal  
4 harvest, overharvest, and waste of bears in Alaska and in  
5 other states and countries. With the North American  
6 brown and black bears listed in appendix two of the  
7 Convention on International Trade and Endangered Species  
8 of Wild Fawn and Flora and brown bear populations in the  
9 48 contiguous states listed as threatened under the  
10 Endangered Species Act, regulations allowing unlimited  
11 and untracked sales of bear claws, teeth, bones and  
12 skulls violate sound management principles.

13

14 By permitting internet and eBay sales the  
15 Federal regulations potentially create a commercial  
16 market for bear claws. As a result in addition to  
17 increased levels of legitimate subsistence hunting,  
18 illegal hunting and illegal use of bears taken in other  
19 hunts likely will also increase creating an entirely  
20 "commercial" market.

21

22 The Department supports this proposal.  
23 Adoption of this proposal is necessary in order to:

24

- 25 1. Reduce incentives for illegal  
26 harvest of bears in Alaska and  
27 other states;
- 28 2. Prevent sales of high value parts  
29 of bears taken for subsistence  
30 purposes from becoming  
31 "significant commercial  
32 enterprises" because the current  
33 Federal regulation is  
34 unenforceable, and;
- 35 3. Improve the enforceability of the  
36 Federal regulations by  
37 eliminating differences in  
38 permissible uses based on area of  
39 harvest, which is particularly  
40 important in the absence of a  
41 harvest tracking mechanism.

42

43 The Department did not intend for this  
44 proposal to apply to species other than bears, so the  
45 Department would support minor revisions to the proposed  
46 changes to eliminate possible unintended consequences.  
47 This can be accomplished by modifying the language  
48 proposed for addition to Section .25(a) to read: "but  
49  
50

1 does not include bears claws."

2

3 Another modification option is to modify  
4 the wording proposed for deletion from Sections .25(j)(6)  
5 and .25(j)(7) to read: "excluding claws" instead of  
6 "including claws."

7

8 We believe the proposal as modified,  
9 these modifications addresses the concerns of several of  
10 the Regional Councils and we have copies of this  
11 available to distribute to you so you could actually see  
12 what it would read like if you'd like us to pass those  
13 out.

14

15 CHAIRMAN FLEAGLE: Okay, thank you.  
16 Okay, we now turn to the -- okay, I left a question  
17 hanging there, why don't you go ahead and pass them out  
18 and the Board can have those for their review for  
19 deliberations in case anybody's interested in going  
20 there.

21

22 Now, we'll turn it over to the  
23 InterAgency Staff Committee comments and that's Larry  
24 Buklis.

25

26 MR. BUKLIS: Thank you, Mr. Chairman.  
27 Larry Buklis acting Chair of the Staff Committee. Just  
28 as a reminder, this is our first Board meeting at which  
29 the Staff Committee is presenting their comments instead  
30 of a recommendation consistent with the procedures  
31 enacted by the Board.

32

33 Our comments will speak to the proposal  
34 or the analysis of it or the recommendations of the  
35 Council or the State comments, but we won't be making a  
36 concluding recommendation.

37

38 Mr. Chairman.

39

40 On this proposal, WP07-01, the Staff  
41 Committee comments are on Page 30 of your Board book and  
42 I'll highlight some key points from it. Of the eight  
43 Subsistence Regional Advisory Councils making  
44 recommendations, we note that seven Councils opposed and  
45 one supported, Northwest Arctic, there is some concern by  
46 Staff that the Northwest Arctic Council may have  
47 misunderstood the proposal, in part, because their  
48 meeting was held by teleconference. The Council members  
49 did not discuss the proposal nor did they provide any  
50 rationale for their position. However, the Council has

1 been on record as opposing some of the proposals allowing  
2 the selling of handicrafts from bear.

3

4           The proposal as submitted by ADF&G  
5 includes an unintended consequence as the State noted, it  
6 would broaden the allowance for using some of the non-  
7 edible parts of brown bears into regions where that use  
8 is not allowed under current Federal regulations. At  
9 many of the meetings ADF&G stated on the record that this  
10 effect is unintended and that they would support language  
11 eliminating this unintended consequence. None of the  
12 Councils proposed modifications to the proposal.

13

14           ADF&G is concerned, we note, that the  
15 current Federal regulations "provide no tracking  
16 mechanism for the sales or the source of bear parts used  
17 in making handicrafts." But the Staff Committee notes  
18 that ADF&G by regulation approved by the Alaska Board of  
19 Game in 2006 issues permits allowing hunters to sell bear  
20 untanned hides with claws attached and skulls, after  
21 sealing, in predator control areas. For hides sold under  
22 these State regulations there also is no methodology for  
23 tracking bear parts such as claws if a person chooses to  
24 separate them from the hide if a person chooses to  
25 separate them from the hide. We note that the Department  
26 of Fish and Game permit states that persons who resell  
27 the hide must possess a valid fur dealer license, claws  
28 may not be sold separately and the hide may not be sold  
29 after it is tanned, however, it is unclear what would be  
30 allowed after the hide is sold to a fur dealer who then  
31 may resell the hide.

32

33           Mr. Chairman, that concludes the comments  
34 from the Staff Committee.

35

36           CHAIRMAN FLEAGLE: Thank you, Larry.  
37 Now, I'll open it for Board discussion. Gary Edwards.

38

39           MR. EDWARDS: Mr. Chairman. I have a  
40 couple questions of the State. I know our enforcement  
41 folks haven't put a lot of effort down in the Southeast  
42 and it's my understanding that the Forest Service  
43 enforcement folks haven't been able to detect anything as  
44 a result of this but the question would be to the State  
45 is that since this regulation has been in effect, are you  
46 aware of any evidence sales of handicraft articles that  
47 contain bear claws or any evidence of increased harvest  
48 as a result or this as an incentive for taking more bears  
49 or any increase in illegal harvest as a result of this?

50

1 MR. DAUGHERTY: Through the Chair, Steven  
2 Daugherty with State of Alaska Department of Law. We are  
3 not aware of any cases that have been made as a result of  
4 this, however, we are aware of increased sales that are  
5 occurring. Sales are occurring on the internet, you can  
6 go down to the Anchorage Saturday Market and see products  
7 made with bear claws that are being sold in an urban  
8 area.

9  
10 We are concerned on the precautionary  
11 principle. Once a commercial market has developed, it's  
12 hard to put the cat back in the bag and you've got all  
13 these items out there that have been illegally sold once  
14 then you have a takings issue when you restrict the  
15 ability to resell those items, it just becomes a real  
16 nightmare trying to address the problem once it develops  
17 so this is a precautionary measure at this point. We can  
18 see it becoming a problem in the future.

19  
20 Thank you, Mr. Chair.

21  
22 CHAIRMAN FLEAGLE: Thank you, Steven.  
23 Gary.

24  
25 MR. EDWARDS: Mr. Chairman. As a follow  
26 up question, I mean, why doesn't when that applies to now  
27 what you have done to allow people to get permits that  
28 are taking bears, both brown and black on, you know, on  
29 their predator permits, then to get a permit then to turn  
30 around and sell them, I'm assuming you can sell those  
31 skins on eBay?

32  
33 MR. DAUGHERTY: Mr. Chair. You have to  
34 have a permit for the sale of those items and they cannot  
35 be resold, that's the main difference in the system, is  
36 that there is no resale allow. So it's a one time sale,  
37 it is monitored and you don't have something floating  
38 around in the chain of commerce after the initial sale.

39  
40 Thank you, Mr. Chair.

41  
42 MR. EDWARDS: So can you clarify. So if  
43 I have a permit so I can go out and take a bear under --  
44 for predator control, so to speak, then I can apply to  
45 you for a permit, do you know how many permits have been  
46 requested for brown and for black bear this year?

47  
48 MR. DAUGHERTY: Mr. Chair. We don't have  
49 that information.

50

1 MR. EDWARDS: I think it's 12 for black  
2 bear and two for brown bear. But if I'm one of those and  
3 I take those I'm allowed to sell that skin as long as  
4 it's not tanned with the claws attached, can I put that  
5 up on the -- if I'm one of those 12 people that have  
6 gotten those permits then can I put that up on eBay and  
7 sell it to anybody who wants to buy it?

8  
9 MS. CUNNING: Mr. Chairman. We have a  
10 copy of the permit here, we're studying it.

11  
12 CHAIRMAN FLEAGLE: While they're studying  
13 that why don't we go ahead and take our first break, 10  
14 minute break and stand down.

15  
16 (Off record)

17  
18 (On record)

19  
20 CHAIRMAN FLEAGLE: All right, good  
21 morning we're back in session and I understand the State  
22 has answers to questions that were raised just prior to  
23 the break. Would that be Steven.

24  
25 MR. DAUGHERTY: Thank you, Mr. Chair.  
26 There is nothing that would prohibit a sale over the  
27 internet in State regulations. However we note that it  
28 is covered by an individual permit for each sale and so  
29 we do have an enforcement mechanism because if a sale is  
30 not covered by that permit, which contains the sealing  
31 information for that bear, it is an illegal sale, Mr.  
32 Chairman.

33  
34 Thank you.

35  
36 CHAIRMAN FLEAGLE: Go ahead, Gary.

37  
38 MR. EDWARDS: Okay, but then to follow  
39 up, then it could be sold on the internet, you certainly  
40 know who is doing the selling but then once it gets on  
41 the internet it fully goes out into commerce and can be  
42 done with it whatever the person who receives it wants to  
43 do with it, right?

44  
45 MR. DAUGHERTY: Mr. Chair. Our  
46 regulations specifically prohibit resale and they also  
47 prohibit removal of the sealing data so we do believe  
48 that there a mechanism for enforcement.

49  
50 And Mr. Haynes can also cover this, but

1 the areas in which we -- and the number of permits is  
2 very low, the areas which are done are also very  
3 limited,, Mr. Chair.

4

5 CHAIRMAN FLEAGLE: Gary.

6

7 MR. EDWARDS: Let me just follow up. I  
8 mean so somebody puts it on the internet and I'm in  
9 Peoria, Illinois on eBay and I buy this and are you  
10 trying to imply that you're going to be able to follow  
11 what I do with that bear skin once I get it?

12

13 MR. DAUGHERTY: Mr. Chair. We may not be  
14 able to actively follow what's going on, however, any  
15 additional sale would be a violation of State law and  
16 would also be a Federal violation of the Lacey Act  
17 because it is a violation of State wildlife law.

18

19 Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Other comments.

22 Questions.

23

24 MS. KESSLER: Mr. Chair.

25

26 CHAIRMAN FLEAGLE: Wini.

27

28 MS. KESSLER: So how would the  
29 enforcement aspect work?

30

31 MR. DAUGHERTY: Mr. Chair. If we have a  
32 sale, if we note a sale on the internet and there's no  
33 permit information or anything listed, our enforcement  
34 officers could serve a warrant on that person and check  
35 for a permit. If they do not have a permit, that  
36 proposed sale would be in violation of State law. And  
37 also if a hide is being sent through the mail or through  
38 some other shipping mechanism there should be a copy of  
39 the permit attached with that hide and if someone were to  
40 open it up and inspect it and not find a copy of that  
41 permit there would be a violation, Mr. Chair.

42

43 CHAIRMAN FLEAGLE: Terry Haynes.

44

45 MR. HAYNES: Thank you, Mr. Chair. Just  
46 so the record shows this, that regarding the permit,  
47 State permit that's being discussed, it applies only to  
48 the bears taken from the Unit 19D East Black and Brown  
49 Bear Controlled Area and from the Upper Yukon Tanana  
50 Brown Bear Controlled Area in a portion of Unit 20E. So

1 those are the only two areas in the state to which this  
2 predator control permit applies.

3

4 CHAIRMAN FLEAGLE: Thanks, Terry. Other  
5 questions. Comments. Discussion. Sue.

6

7 MS. ENTSMINGER: Mr. Chair. I assume  
8 it's appropriate that I interject here. I was talking to  
9 the State at break here, and I'm probably am one of the  
10 ones that put this proposal in that involved into this  
11 situation.

12

13 And your intent as a user is to see  
14 things not be so invasive for the user and it's been  
15 uncanny to me to watch the process between the State  
16 system and the Federal system, in that, how you put a  
17 proposal forward and the State doesn't include claws and  
18 then in this proposal it did include claws and it just  
19 gets so bloody confusing sometimes, but I guess it's job  
20 security for the attorneys sometimes. But at any rate I  
21 can see the State's concern about brown and grizzly bears  
22 but I cannot see the State's concern on conservation on  
23 black bears when there's three black bears per person in  
24 many of the units of the state.

25

26 I guess I have to see clear examples, to  
27 me, to understand that it's a real problem and I haven't.  
28 I hear some questioning here but I haven't heard clear  
29 examples of where the problem lies, if they could help me  
30 out on that, I'd appreciate it.

31

32 CHAIRMAN FLEAGLE: Steven Daugherty.

33

34 MR. DAUGHERTY: Mr. Chair. Most of our  
35 concern does surround brown bear, grizzly population.  
36 And we believe that this population should be managed on  
37 a precautionary principle. It's much like elephant  
38 ivory, when you're talking about the value of grizzly  
39 bear claws and the way that they have controlled the  
40 trade in elephant ivory is to prohibit sales in elephant  
41 ivory. And there may be other mechanisms as well but  
42 that is the mechanism that has proven to be effective.

43

44 Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Sue Entsminger.

47

48 MS. ENTSMINGER: Yeah, thank you, Mr.  
49 Chair. In my history in this life I have noticed that  
50 making an illegal market some take -- or making something

1 illegal creates an illegal market and in this case I  
2 think that we should make a legal market and how the  
3 State can help us out in that I would like us to work  
4 this out hand in hand. I believe that we can make a  
5 legal market for this, and I believe it would be real  
6 helpful to the people, the users out there, because when  
7 someone's out making a fur hat out of a black bear claw  
8 or want to put a -- like me, myself, I make black bear --  
9 I call them Mountain Man hats, but I actually make a lot  
10 of hats that are sold to Native people for regalia. My  
11 wolf hats go to Southeast Alaska and I have a lot of  
12 people wanting to do this and the same for my black bear  
13 hats. And I would have to cut out, cut all the claws off  
14 the feet when I put them in the hat and I think it's -- I  
15 want to see the users, I know in the Yukon River they  
16 feel real strongly about the use of these claws and I  
17 think that we need to figure out a way to make a legal  
18 market so it can be done and I think it should be able to  
19 be done -- we should be able to sell it to -- the user  
20 should be able to sell it to somebody that's a non-  
21 subsistence user.

22

23 CHAIRMAN FLEAGLE: That really -- I mean  
24 that's interesting discussion but we have a proposal here  
25 that would either curtail or not and you're talking about  
26 a compromise. Do you have a proposed solution?

27

28 MS. ENTSMINGER: Well, I guess maybe if I  
29 hear it clearly with the State, is it possible that we  
30 work these details out and then bring it forward to the  
31 Board and then look at it again?

32

33 CHAIRMAN FLEAGLE: Okay, I'll take that  
34 request into consideration while I call on other Board  
35 members.

36

37 MS. GOTTLIEB: Mr. Chair. Well, I was  
38 going to suggest we kind of get back to the proposal at  
39 hand here and remind everybody that what this Board is  
40 doing is looking at the ANILCA mandates, which does  
41 include the making and selling of handicrafts. The  
42 number of brown and black bears legally taken and the  
43 number of brown and black bears allowed for in our  
44 regulations do not, in our view, present a conservation  
45 concern.

46

47 So I would like to move consistent with  
48 the four Subsistence Resource Commissions and the  
49 Regional Advisory Councils who did oppose this proposal.  
50 I move to oppose the proposal.

1 CHAIRMAN FLEAGLE: I have a motion.

2

3 MS. KESSLER: I'll second.

4

5 CHAIRMAN FLEAGLE: All right, we do now  
6 have a second. Discussion. Do you want to add to that  
7 Judy.

8

9 MS. GOTTLIEB: Thank you, Mr. Chair.

10 Well, I think we've heard from almost all the Councils  
11 and from those SRCs that particularly limiting the sales  
12 between only Federally-qualified subsistence users is  
13 quite a restriction on subsistence users and that would  
14 be inconsistent with .805(c) principles that the RACs are  
15 following. So I don't think we should support something  
16 that would be more restrictive to subsistence users.

17

18 CHAIRMAN FLEAGLE: Niles Cesar.

19

20 MR. CESAR: I agree with Judy and I plan  
21 to oppose this. The State mentioned there have been some  
22 increase in take but as I understand it, that increase  
23 was within the long-term variation harvest numbers and  
24 never exceeded harvest goals. So, you know, again, I  
25 feel like we're restricting when we don't need to be  
26 restricting, in my mind. I think the sale of handicrafts  
27 is important to our people. I think that -- I purchase  
28 handicraft stuff and certainly my wife does, she bought  
29 this for me, you know, and to curtail that on the notion  
30 that we're trying to be conservative, I think is fine,  
31 and when we reach that point that it becomes a  
32 conservation issue then I think we have the ability to go  
33 back and change it.

34

35 CHAIRMAN FLEAGLE: George Oviatt.

36

37 MR. OVIATT: Thank you, Mr. Chairman. It  
38 will always be a concern of ours that the sale and  
39 limited commercial sale of bear parts, especially bear  
40 claws could create an increase in the legal or illegal  
41 harvest of the bear.

42

43 However, as has been pointed out there's  
44 no evidence to indicate that the current State  
45 regulations adversely affect bear populations and there's  
46 been no evidence provided to indicate the current Federal  
47 regulations have led to an increased legal or illegal  
48 harvest of the bears. And I think until we begin to see  
49 an indication in that arena that I would oppose this.

50

1 Thank you, Mr. Chairman.

2

3 CHAIRMAN FLEAGLE: Gary Edwards.

4

5 MR. EDWARDS: Mr. Chairman. I think as  
6 most people on the Board knows that I've been opposed to  
7 the selling of bear claws from the very beginning and, in  
8 fact, sometimes have probably been the lone voice to do  
9 that and I'm maybe one of those hand-wringers that Sue  
10 referred to. But I think we certainly know that parts of  
11 wildlife have led to overharvest, bear gallbladders, I  
12 think, is certainly a good example. And we know here  
13 even in Alaska we have had illegal harvest as a result of  
14 people taking bears just for their gallbladders.

15

16 However, saying that, the continued  
17 actions of the Board of Games, from my perspective, makes  
18 it increasingly difficult to kind of maintain that same  
19 position. I mean if the Board of Game, quite frankly, in  
20 my view hadn't opened it up to the selling of brown bear  
21 parts we probably wouldn't have even have been in this  
22 because that was the action that caused this Board to  
23 follow suit to that and because we had differences in  
24 definitions, it included and then that implied -- and  
25 then that rolled over to black bears. And there does not  
26 seem to be the evidence that are there, and certainly we  
27 do have the mechanisms as has been said and I think we  
28 heard it repeatedly from all of the Councils that if, in  
29 fact, there was evidence of either increased illegal  
30 harvest, increased harvest or increased sales then folks  
31 seem to be willing to do that, so I guess for the first  
32 time I'm going to vote in opposition to the motion.

33

34 CHAIRMAN FLEAGLE: Thank you, Gary. I  
35 have Wini, and then Ken Taylor.

36

37 MS. KESSLER: Thank you, Mr. Chair. I  
38 plan to vote in support of the seven Regional Advisory  
39 Councils who opposed the proposal. There's been no  
40 evidence provided to indicate that current Federal  
41 regulations adversely affect bear populations or have led  
42 to an increased legal or illegal harvest of bears and so  
43 I find there's no conservation concern for adopting this  
44 proposal.

45

46 Thank you.

47

48 CHAIRMAN FLEAGLE: Thank you. Ken  
49 Taylor.

50

1 MR. TAYLOR: Thank you, Mr. Chairman.  
2 It's pretty evident from what the Board members have said  
3 how this vote's going to go. I think it should be  
4 evident to all of you that since this is the third year,  
5 I think, in a row that we've brought some form of this  
6 proposal to this Board that it is a concern, a great  
7 concern of the State. And Sue is correct it's a  
8 conservation concern for brown bears. It may be true  
9 that we haven't reached the point yet where take under  
10 the Federal system is causing a concern but this does  
11 open the door to abuse by potentially non-subsistence  
12 hunters and I think you will see a modified proposal at  
13 your next meeting.

14  
15 Thank you.

16  
17 CHAIRMAN FLEAGLE: Thank you, Mr. Taylor.  
18 And, Sue, it sounds like there's adequate interest in the  
19 Board to just reject the proposal so your comment,  
20 suggestion was a good one, appreciate that willingness to  
21 enter into some type of a compromise on that but it  
22 sounds like we have enough votes to not want to go there.  
23 Appreciate the comments though.

24  
25 Just from my perspective, of course, I've  
26 been involved with this issue before I came to the  
27 Federal Board and I think I've gone against the wishes of  
28 the State in that time as well, where I've never seen the  
29 potential problems that were raised by both the  
30 Department of Fish and Game and the Alaska Bureau of  
31 Wildlife Enforcement or Division of Fish and Wildlife  
32 Protection, whoever they might be at any given day. I  
33 think that's still in flux with the new Governor.

34  
35 But anyways my feeling has always been  
36 that laws are often written trying to make somebody not  
37 do something wrong. And we don't consider the 95 percent  
38 or 99 percent or whatever that percentage is, I don't  
39 think it's been defined, that go out there and do use the  
40 law correctly. We try to make the laws for that small  
41 percentage that are going to violate them. And I don't  
42 see adequate reasoning or rationale to limit the sale of  
43 these claws for either brown or black based on the fact  
44 that it might be abused.

45  
46 I'm going to follow the recommendations  
47 and vote for the motion as presented.

48  
49 Any other comments.

50

1 (No comments)  
2  
3 CHAIRMAN FLEAGLE: Are we ready for the  
4 question. Question's called for the vote action on  
5 Proposal WP07-01. Pete.  
6  
7 MR. PROBASCO: Thank you, Mr. Chair.  
8 Final action on Proposal 07-01 to oppose.  
9  
10 Ms. Kessler.  
11  
12 MS. KESSLER: Aye.  
13  
14 MR. PROBASCO: Mr. Edwards.  
15  
16 MR. EDWARDS: Aye.  
17  
18 MR. PROBASCO: Mr. Fleagle.  
19  
20 CHAIRMAN FLEAGLE: Aye.  
21  
22 MR. PROBASCO: Ms. Gottlieb.  
23  
24 MS. GOTTLIEB: Aye.  
25  
26 MR. PROBASCO: Mr. Cesar.  
27  
28 MR. CESAR: Aye.  
29  
30 MR. PROBASCO: Mr. Oviatt.  
31  
32 MR. OVIATT: Aye.  
33  
34 MR. PROBASCO: Motion carries, six/zero.  
35  
36 CHAIRMAN FLEAGLE: Okay, thank you, Mr.  
37 Probasco. We now move on to Proposal 07-02 -- oh, hang  
38 on, George Oviatt, thank you.  
39  
40 MR. OVIATT: Mr. Chairman. I'm going to  
41 have to step out for a couple hours. Chuck will sit in  
42 for me.  
43  
44 CHAIRMAN FLEAGLE: Thank you. Appreciate  
45 that. Enjoy your break. Enjoy the sunshine.  
46  
47 (Laughter)  
48  
49 MR. ALVAREZ: Mr. Chair.  
50

1 CHAIRMAN FLEAGLE: Randy.

2

3 MR. ALVAREZ: Can I make a comment on the  
4 last proposal. Ken Taylor had mentioned that probably  
5 the State will come back with an amended proposal  
6 concerning bear claws. And at our last RAC meeting, when  
7 we discussed that, it came up that, for instance, when  
8 big game hunters are allowed to take brown and grizzly  
9 bears and take them back to another state that some of  
10 the states allow that those hides be sold after it's been  
11 tanned, mounted in some way and if that's the case  
12 I don't understand why if those non-residents in another  
13 state are allowed to do that, why the State is asking the  
14 subsistence user not be able to do the same thing. In  
15 other words, my view of this -- and the Lacey Act was  
16 mentioned, Federal regulations that it's not supposed to  
17 happen -- at our last meeting we had asked our State rep  
18 on that and he didn't know so I guess with the  
19 appropriate State people here, the law, and maybe they  
20 could give me some information on that during recess or  
21 something, but what the Federal law says and if other  
22 states are actually doing that and if the State is asking  
23 those other states to not allow that to happen, if  
24 they're going to come back with another proposal to not  
25 allow sale of bear parts.

26

27 Thank you.

28

29 CHAIRMAN FLEAGLE: Thank you, Randy. And  
30 Steven, would you just get with Randy some time and  
31 explain that.

32

33 I believe I heard you during the  
34 deliberations there that the Lacey Act would prohibit any  
35 law of any state being -- would prohibit -- something  
36 that's prohibited in one state from carrying out in  
37 another and I think that's the answer to the question  
38 there. Would you just go ahead -- oh, you want to speak  
39 to it Steven.

40

41 MR. DAUGHERTY: Yes, Mr. Chair, we'll  
42 discuss it further and I can do some research later but  
43 we have in other context to look to this issue and the  
44 State's wildlife laws have continued to be enforceable  
45 when products are removed from Alaska under the Lacey  
46 Act.

47

48 Mr. Chair.

49

50 CHAIRMAN FLEAGLE: Okay, that was the

1 question, appreciate that. And now we'll go ahead and  
2 move on to Proposal WP07-02, and the lead on this.

3

4

MR. PROBASCO: Tom Kron.

5

6

CHAIRMAN FLEAGLE: Tom Kron.

7

8

MR. KRON: Mr. Chairman. Members of the  
9 Board. The analysis for Proposal 2 begins on Page 32 of  
10 your book. Proposal WP07-02 was submitted by BLM and  
11 would change the regulatory wording for the permit  
12 reporting penalty clause from calendar year to regulatory  
13 year.

14

15 The proponent believes that this change  
16 would increase compliance with the regulatory  
17 requirement, facilitate improved harvest data collection  
18 and lead to better management that will result in a  
19 positive impact on the resource.

20

21 The existing Federal regulation reads as  
22 follows:

23

24 If the return of harvest information  
25 necessary for management and conservation  
26 purposes is required by permit and you  
27 fail to comply with such reporting  
28 requirements you are ineligible to  
29 receive a subsistence permit for that  
30 activity during the following calendar  
31 year unless you demonstrate that failure  
32 to report was due to the loss in the  
33 mail, accidents, sickness or other  
34 unavoidable circumstances.

35

36 This proposal would affect all Federal  
37 public lands and waters in Alaska where Federal permits  
38 are used for subsistence hunts and fisheries. The  
39 consequence for failing to report was originally derived  
40 from the State regulations and has been in Federal  
41 regulations since the inception of the Federal  
42 Subsistence Management Program in 1990. The Federal  
43 regulatory year for wildlife begins on July 1st and runs  
44 through June 30th of the subsequent year, while the  
45 Federal regulatory year for fisheries runs from April 1st  
46 through March 31st. The current situation allows  
47 individuals that did not comply with the permit reporting  
48 requirement in a regulatory year to legally participate  
49 in subsistence harvests later in the calendar year during  
50 open seasons through December 31st.

1                   The State of Alaska has different penalty  
2 clause regulations for hunting and subsistence fishing  
3 permits. Current State of Alaska hunting regulations use  
4 the regulatory year wording in the parallel hunting regs.  
5 Current State of Alaska subsistence regulations use the  
6 calendar year wording in the parallel regulatory  
7 provision.

8  
9                   Since the inception of the Federal  
10 Subsistence Management Program in 1990 there has been  
11 very limited enforcement of this Federal regulation. The  
12 BLM Glennallen Field Office has begun enforcement of this  
13 regulation for hunting permits recently. Federal  
14 Subsistence Management Program regulations provided for  
15 77 different hunts and fishery permits across Alaska in  
16 regulatory year '05 and '06. These hunts and fisheries  
17 involved brown bear, caribou, elk, goat, moose, sheep,  
18 muskox, salmon, trout, char, eulachon and freshwater  
19 fish. That regulatory year a total of 5,117 permits were  
20 issued and 92.7 percent of the permit reports were  
21 returned.

22  
23                   Good harvest data is critical for sound  
24 management of fish and wildlife resources. BLM, the Fish  
25 and Wildlife Service, the National Park Service and the  
26 U.S.D.A. Forest Service field staff across the state are  
27 working closely with subsistence users to facilitate  
28 subsistence harvest reporting. The proposed change would  
29 have the most affect on situations where Federal  
30 subsistence permits overlap the calendar year. There are  
31 Federal permits for brown bear, caribou, goat, moose,  
32 sheep, muskox, salmon and trout that overlap the calendar  
33 year. If adopted, this proposal would not change the  
34 regulatory consequences for failing to comply with permit  
35 conditions.

36  
37                   There is not a clear understanding among  
38 all subsistence users about the fish and wildlife  
39 regulations, permit reporting requirements or what the  
40 harvest reports are used for. Rural Alaskans continue to  
41 subsistence hunt and fish to feed their families as their  
42 forefathers did for generations prior to government  
43 regulations. There are concerns about the effect of  
44 strict application of the ineligibility provisions on the  
45 subsistence way of life. Application of the penalty  
46 clause in some areas of rural Alaska will defeat the  
47 primary objective of this regulation, it will result in  
48 the loss of harvest data.

49  
50                   The ineligibility provision allows

1 flexibility for Federal field staff and enforcement  
2 officers to consider the importance and time sensitivity  
3 of harvest information and the wide range of rural Alaska  
4 issues, traditions and cultures. There's some  
5 flexibility to adjust wording on the permits to the  
6 situation. The current regulations also allows field  
7 staff and enforcement officers to be responsive to, other  
8 unavoidable circumstances.

9

10 Mr. Chairman, the preliminary OSM Staff  
11 conclusion is to support the proposal.

12

13 Thank you, Mr. Chairman. I'd be happy to  
14 answer any questions you may have.

15

16 CHAIRMAN FLEAGLE: Thank you. Questions.

17

18 (No comments)

19

20 CHAIRMAN FLEAGLE: Hearing none. Summary  
21 of written public comments. Vince.

22

23 MR. MATHEWS: Yes, thank you, Mr. Chair.  
24 They're found on Page 46 and 47 of your book. There were  
25 four in support as written; one support with  
26 modification.

27

28 The Aniakchak National Monument and the  
29 Lake Clark National Park Subsistence Resource Commissions  
30 support the proposal. They support changing permit  
31 compliance from a calendar year to a regulatory year to  
32 encourage more timely returns of harvest reports.

33

34 The Denali -- I mean, excuse me, the  
35 Wrangell-St. Elias National Park Resource Commission  
36 unanimously supports the proposal. The proposal would  
37 simplify regulations associated with harvest reporting,  
38 specifically the penalties for failure to report. This  
39 will help facilitate the collection of harvest data that  
40 are needed to manage subsistence resources.

41

42 The one written comment that supported  
43 with modification came from the Denali National Park  
44 Subsistence Resource Commission. They support the  
45 proposal with the Staff modification to change the  
46 wording from you are, to you may be ineligible to hunt.  
47 This proposal was proposed by the BLM Glennallen office,  
48 which had helped Denali work out the Cantwell permits.  
49 This proposal would simplify potential confusion that  
50 ensues between a calendar year versus regulatory year.

1 The caribou season is most affected by this confusion  
2 because caribou season straddles the new year. Another  
3 recommendation was made not to use the calendar year but  
4 to use the regulatory year which is a fixed period from  
5 July 1 to the 30th.

6  
7 The other comment that was in support of  
8 the proposal as written came from the AHTNA Tene'  
9 Subsistence Commission. They support to change wording  
10 from calendar year to regulatory because it would clean  
11 up confusion -- clear up, excuse me, clear up confusion  
12 of ineligible provisions for those failing to turn in a  
13 moose and caribou permit at the end of the hunting season  
14 to BLM.

15  
16 Thank you, Mr. Chair. That concludes the  
17 written comments.

18  
19 CHAIRMAN FLEAGLE: Thank you. Any public  
20 testimony.

21  
22 MR. PROBASCO: No, Mr. Chair.

23  
24 CHAIRMAN FLEAGLE: Thank you, Pete. RAC  
25 recommendations. Bert Adams.

26  
27 MR. ADAMS: Thank you, Mr. Chairman. The  
28 Southeast Regional Advisory Council unanimously supported  
29 this change. And the reason is that this proposal would  
30 improve management and harvest reporting for species  
31 whose hunting seasons cross calendar years and for that  
32 reason we support this change.

33  
34 Thank you.

35  
36 CHAIRMAN FLEAGLE: Thank you. Other RAC  
37 recommendations. Jack.

38  
39 MR. REAKOFF: Mr. Chairman. The Western  
40 Interior Council voted to support the proposal.

41  
42 The Council discussions revolved around  
43 least adverse impact to the subsistence users and  
44 regulatory processes can be trying for subsistence users  
45 to try and comply with all these regulations and so  
46 forth. The Council did express concern about there's  
47 some terminology that's unclear for not completing on  
48 time other unavoidable circumstances. There needs to be  
49 clarification of what those circumstances might be and,  
50 you know, why, if you did not complete the permit

1 requirements on time, we felt that it should be more  
2 clear as to what those circumstances are. The Council  
3 understands the need for permitting and compliance and  
4 there's a lot of regulatory hunts that go through into  
5 the next calendar year and so we're in support of the  
6 proposal.

7

8 Thank you.

9

10 CHAIRMAN FLEAGLE: Thank you. Other RAC  
11 recommendations.

12

13 MR. SIMEONOFF: Mr. Chairman. Speridon.

14

15 CHAIRMAN FLEAGLE: Speridon.

16

17 MR. SIMEONOFF: Kodiak/Aleutians RAC  
18 supported this proposal. And the Advisory Council voted  
19 unanimously to support this proposal. The Council felt  
20 it was important to have consistency and it is important  
21 to have information for proof of use.

22

23 Thank you, Mr. Chair.

24

25 CHAIRMAN FLEAGLE: Thank you. I'd really  
26 like to hear why the Eastern Council suggests making a  
27 change to the wording.

28

29 MS. ENTSMINGER: Yeah, thank you, Mr.  
30 Chair. They wanted to change it that you're not  
31 permanently going to get ousted by it, you know, that you  
32 may, so there would be a choice if they're going to not  
33 allow them to have a permit next year, if that helps.

34

35 CHAIRMAN FLEAGLE: Basically that the  
36 discretion would be there to not reissue the permit the  
37 following year.

38

39 MS. ENTSMINGER: Right. That they --  
40 it's real hard to say -- yes. I'm just trying to look at  
41 it here.

42

43 CHAIRMAN FLEAGLE: I'll give you a  
44 moment, we can come back to that during the deliberative  
45 portion.

46

47 Other RAC recommendations. Randy.

48

49 MR. ALVAREZ: The Bristol Bay Council  
50 supported this proposal. It would make it easier to

1 understand and I think it would also be more timely  
2 because of the way the bag limit seasons are, go over the  
3 year, they don't stop at the end of the year so we felt  
4 -- we feel that it would make it a lot better so we were  
5 in support of the proposal.

6  
7 CHAIRMAN FLEAGLE: Thank you, Randy. We  
8 have Lester Wilde.

9  
10 MR. WILDE: The YK-Delta Council  
11 supported this proposal. We felt that there's a need to  
12 communicate with the affected subsistence users because  
13 they needed to know what was going on in this area.

14  
15 CHAIRMAN FLEAGLE: Thank you. Ralph  
16 Lohse.

17  
18 MR. LOHSE: Southcentral took no action  
19 on this proposal.

20  
21 CHAIRMAN FLEAGLE: Thank you. Sue.

22  
23 MS. ENTSMINGER: Yeah, I'm stumbling, I'm  
24 sorry. In looking at what is written in the book, the  
25 Council modification gives additional flexibility to be  
26 responsible to the subsistence needs that provide need to  
27 feed families in communities.

28  
29 So they wanted that flexibility of law  
30 enforcement, so if the person didn't, for whatever reason  
31 didn't turn it in, mail or how difficult it is to speak  
32 to any of the people from that region they did not want  
33 them to definitely lose their opportunity to take an  
34 animal that year because they didn't turn in their  
35 permit.

36  
37 MR. REAKOFF: Mr. Chairman.

38  
39 CHAIRMAN FLEAGLE: Yeah, just a sec. I  
40 was just going to point out that there are extenuating  
41 circumstances listed in the regulation that cover mail,  
42 accident, sickness or other unavoidable circumstances, so  
43 I was just curious why the additional leeway would be  
44 requested. Any way we can discuss that more in  
45 deliberations.

46  
47 Jack Reakoff.

48  
49 MR. REAKOFF: Mr. Chairman. The Western  
50 Interior Council also discussed the rigidity of

1 regulations and the importance to subsistence users.  
2 There's people who do not fully understand the compliance  
3 aspects. These permit report cards get thrown in a  
4 drawer, they're lost for a while. For a sporthunter it  
5 can be, you know, the ineligibility to hunt the next year  
6 may or may -- for a species of animal may or may not be  
7 very much of an impact, to a subsistence user, to lose  
8 their right to harvest moose or so forth, the rigidity of  
9 these regulations needs to be contemplated by the Federal  
10 Board. These harvest of resources is very important, we  
11 understand the necessity for proper harvest reporting and  
12 I'm a proponent of that, but the rigidity issue was  
13 discussed by the Council, and there are concerns about  
14 being too rigid.

15

16 Thank you.

17

18 CHAIRMAN FLEAGLE: Thank you. I see  
19 Michelle Chivers at the table, do you have comments.

20

21 MS. CHIVERS: Thank you, Mr. Chair. The  
22 Northwest Arctic, they did support. And also the North  
23 Slope took no action.

24

25 Thank you.

26

27 CHAIRMAN FLEAGLE: Thank you. It looks  
28 like we got everybody. Alaska Department of Fish and  
29 Game comments. Terry Haynes.

30

31 MR. HAYNES: Thank you, Mr. Chairman.  
32 The Department supports this proposal.

33

34 Accurate and timely harvest reporting and  
35 harvest data are important components of wildlife  
36 management and often are necessary for timely management  
37 decision-making. This is equally true for hunts that are  
38 administered under either the State or Federal  
39 regulations. If this proposal is adopted, Federally-  
40 qualified subsistence users who fail to comply with  
41 Federal permit reporting requirements will be ineligible  
42 to receive Federal permits following the regulatory year  
43 instead of following the calendar year. Adoption of this  
44 proposal would improve consistency with the State's  
45 failure to report program.

46

47 The need for harvest reporting and  
48 adherence to permit reporting requirements are not well  
49 understood through rural Alaska as Mr. Reakoff pointed  
50 out. Consequently Federal Staff believes that

1 application of a penalty in all cases will defeat the  
2 objective of this regulation and have suggested that  
3 Federal field Staff and enforcement officers exercise  
4 some discretion in determining when to apply penalties.  
5 The Department recommends further discussion of when,  
6 where and how such discretion would apply so that  
7 flexibility and application of penalties is administered  
8 consistent with the regulation and does not undermine the  
9 purpose of the failure to report program.

10

11 We point this out because there are  
12 inconsistencies already in the administration and  
13 enforcement of the Federal subsistence hunts that require  
14 Federal registration permits.

15

16 Thank you, Mr. Chairman.

17

18 CHAIRMAN FLEAGLE: Thank you, Terry.  
19 Board discussion.

20

21 MS. ENTSMINGER: Mr. Chairman.

22

23 CHAIRMAN FLEAGLE: Sorry, I moved ahead  
24 one too fast, but we still have a RAC interaction. Sue  
25 Entsminger.

26

27 MS. ENTSMINGER: Yeah, I just remembered  
28 one of the things that was discussed at the meeting. And  
29 that is, often times -- there was some study taken some  
30 time back about you get these little harvest reports and  
31 you're supposed to send them in and often times there's a  
32 percentage of them that don't even come into the  
33 Department, or come in, they get lost in the mail, and I  
34 think that was a discussion that we were concerned about.

35

36 CHAIRMAN FLEAGLE: Okay, appreciate the  
37 clarification. Now we have InterAgency Staff Committee  
38 comments. Larry.

39

40 MR. BUKLIS: Thank you, Mr. Chairman.  
41 The Staff Committee comments can be found on Page 46 of  
42 your Board book, I'll highlight a few key points.

43

44 We note that seven Councils recommended  
45 supporting the proposal as written. Two Councils took no  
46 action. And, one, the Eastern Interior Council supported  
47 the proposal with modification to the penalty clause of  
48 the regulation as you've been discussing.

49

50 The current regulation provides that a

1 permittee who fails to comply with the reporting  
2 requirements of the permit will be ineligible to receive  
3 a permit the following year. The Eastern Interior  
4 Council recommended changing the wording from you are  
5 ineligible to you may be ineligible. Other Councils  
6 considered such a change but decided that if such a  
7 change were warranted it should be addressed as another  
8 proposal in a future regulatory cycle.

9  
10 The Staff Committee agrees with those  
11 Councils because it would allow a more thorough analysis  
12 of this proposed modification and would allow for public  
13 input and would result in recommendations to the Board  
14 from all Councils on that aspect.

15  
16 The Staff Committee noted that the  
17 current wording of the regulation already allows  
18 considerable flexibility to consider the importance and  
19 time sensitivity of the harvest information and the wide  
20 range of rural Alaska issues, traditions and cultures  
21 when addressing the ineligibility provision in this  
22 regulation.

23  
24 Thank you, Mr. Chairman.

25  
26 CHAIRMAN FLEAGLE: Thank you, Larry. All  
27 right, now, we'll move into Board discussion with Council  
28 Chairs and State liaison. Any Board members ready to  
29 discuss the issue. Gary.

30  
31 MR. EDWARDS: Mr. Chairman. I guess I  
32 would just say in response to the Western Interior,  
33 probably the more vague the term unavoidable  
34 circumstances is the better. I would say that it might  
35 not be beneficial to define that, because I think the way  
36 it's written it provides a lot of latitude to the manager  
37 to make the argument, well, it was never received and  
38 those types of things.

39  
40 CHAIRMAN FLEAGLE: Other comments.  
41 Chuck.

42  
43 MR. ARDIZZONE: Well, I guess for  
44 discussion purposes, I'd like to make a motion to adopt  
45 the proposal as recommended by eight of the 10  
46 Subsistence Regional Advisory Councils.

47  
48 CHAIRMAN FLEAGLE: Okay.

49  
50 MS. KESSLER: Second.

1 CHAIRMAN FLEAGLE: All right, we have a  
2 motion and a second to adopt. Do you want to speak to  
3 the motion, your supporting statement for it.

4  
5 MR. ARDIZZONE: I will. Obviously BLM  
6 submitted this and we support this proposal. BLM,  
7 Glennallen Field Office issues well over 2,000 permits  
8 for caribou and this would just make it a cleaner, better  
9 for the subsistence users. We do believe there is  
10 flexibility in the regulation. Currently we don't  
11 strictly enforce this, we actually send out three  
12 letters, they're spaced about a month apart, so that's  
13 why our compliance, if you look at the tables in the  
14 book, our compliance is about 98 percent. And I don't  
15 think we've actually denied any permits at the moment,  
16 we're just trying to get compliance up because the  
17 Nelchina Herd does have conservation concerns, but we do  
18 take that flexibility into account.

19  
20 MS. GOTTLIEB: Mr. Chair.

21  
22 CHAIRMAN FLEAGLE: Judy Gottlieb.

23  
24 MS. GOTTLIEB: Thank you. I would intend  
25 to support the motion but I do think since this is a  
26 major change, those individuals who are issuing permits  
27 need to really have either standard information available  
28 across our program or, of course, as you're making  
29 contact with everybody that you issue your permits to,  
30 really carefully explain this. So I do think it warrants  
31 a good amount of outreach and have discussions with  
32 people about what kinds of things could occur or have  
33 occurred in the past that has prevented them from  
34 returning permits so that you understand what some of  
35 those extenuating circumstances could be in the future.

36  
37 CHAIRMAN FLEAGLE: Thank you. I got a  
38 question for Chuck on that discussion about this  
39 regulation not being entirely forced yet, is there -- do  
40 you have some kind of a grace period that your agency is  
41 looking at fully enforcing this regulation? Again, I  
42 guess the question I'm getting to here is why we would we  
43 want a regulation, a definitive regulation on the books  
44 that we don't intend to support, I mean I understand the  
45 need to change it to regulatory that's a good move, but  
46 I'm just trying to find some justification for the  
47 Eastern Interior's comment, which I think is a good one.

48  
49 Chuck.  
50

1 MR. ARDIZZONE: Currently, like I said we  
2 issue the three letters, the last one's certified and I  
3 don't think we're going to go into full-blown mode, we're  
4 going to deny everybody a permit, it's -- there are some  
5 people that just refuse to return the permit and we've  
6 had law enforcement go to the door and knock on the door  
7 and ask for, you know, their permit and what they've  
8 harvested, if at all, I don't think -- I think that's  
9 where we're exercising our flexibility so we don't have  
10 to deny permits, if at all possible. I'm unaware of any  
11 denials at the moment, I guess I should say.

12  
13 CHAIRMAN FLEAGLE: Which -- Devil's  
14 Advocate here, it sounds like a real inconsistency to me  
15 that we, the Federal agencies establish a regulation that  
16 we choose not to follow, and I'll just throw that out for  
17 further discussion I guess I'm.....

18  
19 MR. EDWARDS: I'm not sure that you can  
20 make that broad of a statement, you know, I can't.....

21  
22 CHAIRMAN FLEAGLE: Okay, Gary, go ahead.

23  
24 MR. EDWARDS: .....give you.....

25  
26 CHAIRMAN FLEAGLE: Enlighten me.

27  
28 MR. EDWARDS: .....any specific examples,  
29 but my assumption is that there could be certainly cases  
30 where the feeling is it's the deliberate unwillingness to  
31 do it for no good reason or no good extenuating  
32 circumstances and my assumption is, is that we would  
33 follow through.

34  
35 CHAIRMAN FLEAGLE: Appreciate that.  
36 Chuck.

37  
38 MR. ARDIZZONE: Mr. Chair. I think  
39 that's where BLM stands, too, is if there's, you know,  
40 deliberate lack of reporting I think we might  
41 enforcement. But, you know, there are a lot of reasons  
42 people don't mail their things in like Mr. Reakoff said,  
43 you know, they're put in a drawer and they forget about  
44 it and those are the things we're taking into account at  
45 the moment.

46  
47 CHAIRMAN FLEAGLE: All right, thank you.  
48 Well, my dilemma, as Chairman, I don't get to make  
49 motions or amendments and I like the amendment from the  
50 Eastern Interior. I think that it gives you the

1 flexibility that you're already exercising while not  
2 making us look like we have a strong tooth regulation  
3 that we just choose not to enforce.

4  
5 So that's my only comment.

6  
7 Further discussion on the motion.

8  
9 (No comments)

10  
11 CHAIRMAN FLEAGLE: Are we ready for the  
12 question.

13  
14 (No comments)

15  
16 CHAIRMAN FLEAGLE: It sounds like we are.  
17 Question, Pete, is now recognized on Proposal 07-02.  
18 Please poll the Board.

19  
20 MR. PROBASCO: Thank you, Mr. Chair.  
21 Final action on Proposal WP07-02 to adopt the proposal as  
22 recommended by the seven on the 10 Subsistence Regional  
23 Advisory Councils.

24  
25 Mr. Edwards.

26  
27 MR. EDWARDS: Aye.

28  
29 MR. PROBASCO: Mr. Fleagle.

30  
31 CHAIRMAN FLEAGLE: Aye.

32  
33 MR. PROBASCO: Ms. Gottlieb.

34  
35 MS. GOTTLIEB: Aye.

36  
37 MR. PROBASCO: Mr. Cesar.

38  
39 MR. CESAR: Aye.

40  
41 MR. PROBASCO: Mr. Oviatt. Mr.  
42 Ardizzone.

43  
44 MR. ARDIZZONE: Aye.

45  
46 MR. PROBASCO: Ms. Kessler.

47  
48 MS. KESSLER: Aye.

49  
50 MR. PROBASCO: Motion carries, six/zero.

1 CHAIRMAN FLEAGLE: Thank you. We now  
2 move into Proposal 07-03 and it looks like we've got Liz  
3 Williams coming back to the table for the analysis.

4  
5 MS. WILLIAMS: Thank you, Mr. Chair..  
6 Members of the Board. Proposal WP07-03 is the  
7 combination of three separate proposals submitted by the  
8 Eastern Interior Alaska Subsistence Advisory Council, the  
9 Upper Tanana Fortymile Fish and Game Advisory Committee  
10 and the Wrangell St-Elias National Park Subsistence  
11 Resource Commission.

12  
13 The proponents request Federal  
14 regulations that allow the sale of raw untanned hides and  
15 capes of goat, sheep, caribou or moose that have been  
16 legally harvested on Federal public lands by Federally-  
17 qualified subsistence users. The people that would  
18 harvest these animals would already have C&T to harvest  
19 these animals. The proponent states that the adoption of  
20 this proposal would align Federal subsistence harvest  
21 regulations with State of Alaska hunting regulations  
22 which allow for the sale of raw untanned hides and capes  
23 from legally harvested goat, sheep, caribou and moose.

24  
25 Current Federal subsistence regulations  
26 do not allow the sale of unmodified, non-edible  
27 byproducts of fish and wildlife. They must have been  
28 made into handicrafts. So raw untanned hides and capes  
29 don't meet the Federal definition of handicraft. They  
30 may be, however, consistent with the definition of  
31 customary trade, and the Federal definition of customary  
32 trade is the exchange of cash for fish and wildlife  
33 resources regulated in this part not otherwise prohibited  
34 by Federal law or regulation to support personal and  
35 family needs and does not include trade which constitutes  
36 a significant commercial enterprise.

37  
38 There's been a long history of trade of  
39 untanned hides and capes that began prior to the arrival  
40 of Europeans in Alaska and continues today.

41  
42 It's legal for State of Alaska residents  
43 to harvest ungulates under State of Alaska hunting  
44 regulations on Bureau of Land Management, National  
45 Wildlife Refuge, National Preserve and National Forest  
46 Service lands and sell the raw or untanned hides and  
47 capes from these animals. However, the State of Alaska  
48 hunting regulation does apply to National Park or  
49 National Monument lands.

50

1                   The proponent state that adoption of this  
2 proposal would not increase harvest but would allow  
3 Federally-qualified subsistence users to fully utilize  
4 the animals they harvest for food and to obtain cash  
5 needed to access traditional hunting areas.

6  
7                   The adoption of this regulation would  
8 allow Federally-qualified subsistence users to sell raw  
9 untanned hides and capes of goat, sheep, caribou or moose  
10 that have been legally harvested under Federal  
11 subsistence regulations on Federal public lands.

12  
13                   Regional variation in uses of raw  
14 untanned hides and capes can be addressed by regional  
15 specific regulations such as those for brown bear  
16 handicrafts and customary trade of fish. Current harvest  
17 limits are not affected by this proposal and there don't  
18 appear to be conservation concerns associated with this  
19 proposal. The proposal shouldn't affect other user  
20 groups.

21  
22                   Our OSM preliminary conclusion is to  
23 support the proposal.

24  
25                   Thanks.

26  
27                   CHAIRMAN FLEAGLE: Thank you. Questions  
28 Board members.

29  
30                   (No comments)

31  
32                   CHAIRMAN FLEAGLE: None. All right.  
33 Summary of written public comments. Vince.

34  
35                   MR. MATHEWS: Yes, Mr. Chairman. I need  
36 to explain to the Board how I present these so you don't  
37 get confused. The way we do it in the Council meetings  
38 is we give deference to the Subsistence Resource  
39 Commissions. So instead of giving you all the ones  
40 support as written, I'm trying to hit those first and  
41 then move to other comments if that's okay with you, I'm  
42 not trying to lose the Board.

43  
44                   Mr. Chairman, the summary of public  
45 written comments are found on Page 63 and 64. Again,  
46 I'll start off with the Subsistence Resource Commissions.

47  
48                   There were, in total, three that support  
49 as written, two support with modification, that's the  
50 total amount. The Wrangell-St. Elias National Park

1 Subsistence Resource Commission unanimously supports this  
2 proposal with the modification that the provisions apply  
3 to deer and elk in addition to the species listed in the  
4 original proposal. State regulations allow the sale of  
5 untanned capes and hides. Passage of this proposal will  
6 allow Federally-qualified subsistence users the same  
7 opportunity to fully benefit from the animals harvested.

8  
9                   Following on that theme there of fully  
10 benefit from animals harvested, the Lake Clark National  
11 Park and the Aniakchak National Monument Subsistence  
12 Resource Commissions support the proposal. Lake Clark  
13 with modification that the reference to raw, untanned  
14 hides should be deleted to allow the sale of any hide so  
15 subsistence users may maximize the value they can derive  
16 from selling parts of legally taken animals. The  
17 Aniakchak just supported it as written.

18  
19                   Okay, now we have the Denali National  
20 Park Subsistence Resource Commission supports this  
21 proposal as written. The justification for supporting  
22 the proposal is that the change in regulation will allow  
23 for the sale of raw hides taken from animals for  
24 subsistence needs. This proposal is consistent with  
25 Federal definition of customary trade. Adoption of this  
26 proposal would result in an alignment with existing State  
27 regulations and is within the intent of the existing  
28 Federal regulations regarding customary trade.

29  
30                   The other written comment in support was  
31 from -- well, it's from the AHTNA Incorporation and they  
32 support the proposal. We favor Federally-qualified  
33 subsistence users being able to earn money from a legally  
34 harvested goat, sheep, caribou, or moose.

35  
36                   And I just received a written letter here  
37 that was sent to the Southeast Subsistence Regional  
38 Advisory Council from Mr. Tom Banks, Alaska Associate,  
39 and I haven't had a chance to read it so I'll try to  
40 cover it -- oh, Southcentral, it was sent to the  
41 Southcentral Subsistence Regional Advisory Council March  
42 9th, from Mr. Tom Banks, Alaska Associates.

43  
44                   The Defenders of Wildlife appreciate this  
45 opportunity to comment on the proposals to be considered  
46 by the Southcentral Regional Advisory Council at its  
47 March meeting. Established in 1947 the Defenders is a  
48 National non-profit organization dedicated to protect all  
49 Native wild animals and plants in their natural  
50 communities. Comments regarding WP07-03 and 04 oppose.

1                   These statewide subsistence wildlife  
2 proposals seek to allow the sale of untanned hides of  
3 goat, sheep, caribou and moose and allow the sale of  
4 horns and antlers from goat, sheep, deer, elk, caribou,  
5 muskox and moose. These proposals would allow the  
6 commercial sale of wildlife parts without first  
7 converting them to handicrafts which is the current  
8 restriction for subsistence under Title VIII of ANILCA.  
9 This is inconsistent with State law which also permits  
10 the buying and selling of horns and antlers that have  
11 been naturally shed or completely removed from any part  
12 of the skull. Historically there have been longstanding  
13 reluctance by game management agencies in this country to  
14 commercialize wildlife. This was based on past abuses  
15 that led to poaching and bootlegging of wildlife for  
16 commercial gain. The only exception has traditionally  
17 involved conversion and alteration to handicrafts in the  
18 case of subsistence authorized under special Federal  
19 legislation and naturally shed parts. Naturally shed  
20 horns or antlers or horns or antlers that have been  
21 removed from the skull plate disqualifies the trophy from  
22 any record book which is in turn dramatically depreciates  
23 its Black Market value.

24  
25                   Defenders agree with the conservative  
26 policy that is currently in place.

27  
28                   Defenders also oppose these proposals for  
29 the following reasons.

- 30  
31                   1.        Adopting a Federal regulation  
32                               allowing commercialization of  
33                               wildlife that is inconsistent  
34                               with State regulation presents  
35                               serious resource conservation  
36                               issues because it will invite  
37                               illegal harvest of game animals  
38                               on State lands for the purpose of  
39                               sales of parts with the claim  
40                               that they were taken on nearby  
41                               Federal lands. This presents  
42                               unacceptable enforcement  
43                               problems;
- 44  
45                   2.        Allowing the sale of game animal  
46                               parts without first converting  
47                               them to handicrafts creates a  
48                               precedence that will likely lead  
49                               to pressure for the sale of other  
50                               lucrative parts like bear gall

1 bladders, et cetera. Such trade  
2 would foster illegal activity to  
3 supply the worldwide demand for  
4 parts used for medicinal  
5 purposes.  
6

7 Thank you for these comments. Tom Banks,  
8 Alaska Associate Defenders of Wildlife.  
9

10 Thank you, Mr. Chair.  
11

12 CHAIRMAN FLEAGLE: Thank you, Vince.  
13 Public testimony.  
14

15 MR. PROBASCO: No public testimony, Mr.  
16 Chair.  
17

18 CHAIRMAN FLEAGLE: Thank you, Pete.  
19 Regional Council recommendations. Randy.  
20

21 MR. ALVAREZ: Thank you, Mr. Chair. The  
22 Bristol Bay Council supports the proposal. Our  
23 justification is that it is consistent with the Federal  
24 definition of customary trade, the exchange for cash for  
25 fish and wildlife resources regulated in this part not  
26 otherwise prohibited by Federal law or regulation to  
27 support personal and family needs and does not include  
28 trade with significant commercial enterprise.  
29

30 The adoption of this proposal would  
31 result in alignment with existing State regulations and  
32 is within the intent of other Federal subsistence  
33 regulations regarding customary trade of fish and  
34 wildlife resources by Federally-qualified subsistence  
35 users.  
36

37 Thank you.  
38

39 CHAIRMAN FLEAGLE: Thank you. Bert  
40 Adams.  
41

42 MR. ADAMS: Thank you, Mr. Chairman. The  
43 Southeast Regional Advisory Council supports the proposal  
44 with a modification to include tanned and untanned hides  
45 and to add deer and elk to the list of species covered.  
46

47 The modified proposal should read:  
48

49 You may sell the tanned or raw untanned  
50 hide or cape from a legally harvested

1 deer, elk, goat, sheep, caribou or moose.

2

3 The Council reviewed the Staff report for  
4 this proposal pretty thoroughly and the report documented  
5 the long history of selling of both tanned and non-tanned  
6 hides and it falls within, you know, the Section .803 of  
7 ANILCA which defines customary trade as subsistence use.  
8 Council members also provided additional information  
9 concerning a long-term trade of hides along traditional  
10 routes during both pre- and post-contact periods so this  
11 tells us that this has been happening, you know, since  
12 time immemorial.

13

14 After reviewing information presented,  
15 the Council concluded that the modified proposal was  
16 supported by historical and TEK evidence and was  
17 consistent with principle wildlife conservation and that  
18 it would be beneficial to subsistence users by allowing  
19 them to fully utilize the animals they take. No change  
20 in harvest levels and no effect on non-subsistence users  
21 is anticipated from this regulatory change.

22

23 For this reason, Mr. Chairman, we support  
24 the proposal as I have identified to you.

25

26 Thank you.

27

28 CHAIRMAN FLEAGLE: Thank you. Sue  
29 Entsminger.

30

31 MS. ENTSMINGER: Yeah, thank you, Mr.  
32 Chair. This was a proposal brought forth by the Eastern  
33 Interior RAC and we ditto the Southeast addition to add  
34 tanned and untanned hides and deer and elk.

35

36 And I'd also like to add it was brought  
37 to our attention that under State regulations which  
38 allows the sale of hides, raw and tanned, actually, the  
39 State system is somewhat different than the Federal  
40 system and when this intent to allow the sale of  
41 handicrafts made from other species besides bear was  
42 brought forth by the Federal Board then, it in turn, made  
43 this sale illegal only on Park Service lands because you  
44 have to have a subsistence permit from the Federal  
45 government there and we didn't want to see subsistence  
46 more restrictive than what was allowable by State land  
47 and that's why it came forth.

48

49 Thank you.

50

1 CHAIRMAN FLEAGLE: Speridon.  
2  
3 MR. SIMEONOFF: Thank you, Mr. Chair.  
4 The Kodiak/Aleutian RAC took no action on this proposal.  
5  
6 MR. REAKOFF: Mr. Chairman.  
7  
8 CHAIRMAN FLEAGLE: Jack Reakoff.  
9  
10 MR. REAKOFF: Western Interior supported  
11 this proposal.  
12  
13 Our justification was that there was  
14 discussion about various people who had sold capes and  
15 skins and I discussed the Nunumiut people from Anaktuvuk  
16 Pass traded caribou skins and so forth to the coast in  
17 pre-contact times and so the sale is a long and customary  
18 use for customary trade and so we supported the proposal.  
19  
20 CHAIRMAN FLEAGLE: Thank you. Mike  
21 Quinn.  
22  
23 MR. QUINN: Seward Peninsula supported  
24 the proposal also.  
25  
26 We welcome increase in opportunities for  
27 Federal subsistence users to profit from their legal  
28 kills and takes.  
29  
30 CHAIRMAN FLEAGLE: Thank you. Michelle  
31 Chivers.  
32  
33 MS. CHIVERS: Thank you, Mr. Chair. The  
34 Northwest Arctic did support this proposal because it  
35 will allow full utilization of legally harvested of  
36 wildlife. The sale and trade of untanned hides has  
37 always been a customary practice in this region.  
38  
39 And then the North Slope Council took no  
40 action.  
41  
42 Thank you, Mr. Chair.  
43  
44 CHAIRMAN FLEAGLE: Thank you. Lester.  
45  
46 MR. WILDE: The YK R AC supported this  
47 proposal also.  
48  
49 CHAIRMAN FLEAGLE: Thank you. Ralph  
50 Lohse.

1 MR. LOHSE: Southcentral didn't take  
2 action on this due to time constraints.

3  
4 CHAIRMAN FLEAGLE: Okay, appreciate the  
5 comments. ADF&G comments. Tina.

6  
7 MS. CUNNING: Thank you, Mr. Chairman.  
8 The intent of this proposal is to align State and Federal  
9 regulations. However, the Federal Board does not have  
10 jurisdiction over general sales.

11  
12 Under ANILCA provisions and the Board's  
13 framework regulations the Board, Federal Board only has  
14 jurisdiction over subsistence uses and thus may only  
15 authorize sales where such sales are customary and  
16 traditional and qualify as customary trade. The Board  
17 has appropriately reflected this jurisdictional  
18 limitation in its regulations at Sections .7(a) which  
19 establishes a bright line rule prohibiting sale of fish  
20 or wildlife except where specifically provided. And in  
21 the context of customary trade authorizations for fish in  
22 Section .27(c) through 12 has been careful to set limits  
23 on those transactions to prevent them from becoming  
24 significant commercial enterprises. Federal provisions  
25 allowing sale as customary trade should only be adopted  
26 on area by area basis where the Board first make a  
27 factual finding that such sales are customary and  
28 traditional. Federal users who wish to engage in sales  
29 do not qualify as customary trade, without violating  
30 Federal law may do so by conducting harvest activities  
31 under State law.

32  
33 The Department opposes this proposal in  
34 the absence of evidence that the sale of untanned hides  
35 of goat, sheep, caribou and moose is a customary and  
36 traditional use statewide. Rural residents wishing to  
37 sell untanned hides can do so under the State regulations  
38 without the use having to constitute a subsistence use.  
39 The proposal as modified by several Regional Councils to  
40 authorize the sale of tanned or processed hides also  
41 would conflict with State regulations when such hides  
42 fall under the definition of a trophy.

43  
44 If the Federal Board moves forward with  
45 this proposal the Department recommends customary and  
46 traditional use determinations be made consistent with  
47 the eight factors listed in 50 CFR Section 100.16(b) that  
48 would limit the scope of the Federal regulation to those  
49 areas of the state where selling raw and untanned hides  
50 of legally harvested goat, sheep, caribou and moose is a

1 customary and traditional activity and further recommends  
2 that limitations be established to prevent such sales  
3 from becoming significant commercial enterprises.

4

5 CHAIRMAN FLEAGLE: Thank you. Questions.

6

7 (No comments)

8

9 CHAIRMAN FLEAGLE: InterAgency Staff  
10 Committee comments.

11

12 MR. BUKLIS: Thank you, Mr. Chairman.

13 The Staff Committee comments are found on Page 63 of your  
14 Board book. The Staff Committee noted that three of the  
15 Councils modified the proposal to include tanned capes  
16 and hides to be sold as part of customary trade and two  
17 Councils expanded the list of ungulates in the proposal  
18 to include deer and elk. And overall the majority of the  
19 Councils supported the proposal.

20

21 The rationale for the inclusion of deer  
22 and elk was that they are ungulate species used for  
23 subsistence purposes. Although not part of a formal  
24 modification or recommendation one Council Chair did not  
25 that muskoxen are also used for Federal subsistence  
26 hunting in some areas and should be included along with  
27 deer and elk.

28

29 The Staff Committee finds that these  
30 reasons are consistent with the intent of the original  
31 proposal and consistent with Section .805(c), however, it  
32 should be noted that at least two Councils were aware of  
33 the other Council's modified proposals and chose not to  
34 include any modifications but to support the proposal in  
35 its original form.

36

37 Staff Committee noted that the state of  
38 Alaska currently allows the sale of both tanned and  
39 untanned capes and hides of ungulate species as long as  
40 they are not part of a trophy mount.

41

42 Thank you, Mr. Chairman.

43

44 CHAIRMAN FLEAGLE: Thank you. Questions.

45

46 (No comments)

47

48 CHAIRMAN FLEAGLE: Discussion. It looks  
49 like Keith Goltz has a comment, it probably pertains.....

50

1 MR. GOLTZ: Not yet.  
2  
3 CHAIRMAN FLEAGLE: No. Not yet, not yet,  
4 but he's brewing one, I see him highlighting over here.  
5  
6 Get ready.  
7  
8 Gary Edwards.  
9  
10 MR. EDWARDS: Mr. Chairman. I guess I  
11 have a couple of questions and maybe for Staff now. A  
12 couple of things. One, currently on furbearers under  
13 Federal subsistence regulations you can sell the complete  
14 tanned skin including claws; is that correct?  
15  
16 MS. WILLIAMS: Yes.  
17  
18 MR. EDWARDS: Okay. So if you can do  
19 that with furbearers what has been the rationale why we  
20 haven't been able to do that with the species that are  
21 listed, that would be one question. And then the other  
22 question is if you can currently do it under State law,  
23 what does this do that you can't do currently under State  
24 law.  
25  
26 MS. WILLIAMS: In response to your first  
27 question, Mr. Edwards, I think that it just hasn't been  
28 brought up yet, that no one has submitted a proposal  
29 before about this. And when it comes to customary trade  
30 each instance is specific and the Board has to consider  
31 it specifically, like the customary trade of fish and of  
32 bear handicrafts, those are all very specific amendments  
33 or additions to the customary trade regulations.  
34  
35 And then what was your second question?  
36  
37 MR. EDWARDS: Well, if you can currently  
38 under State law sell skins of legally taken, then why  
39 doesn't that, what does this do for you that you can't do  
40 under the State law?  
41  
42 MS. WILLIAMS: These would be animals  
43 that are harvested under Federal subsistence regulations  
44 so currently you can't sell the hide of an animal that  
45 you harvest under Federal subsistence regulations so it  
46 would be a different harvest regulation that you would be  
47 harvesting under.  
48  
49 MR. EDWARDS: Does -- I guess ask the  
50 State, does the State agree with that answer?

1 CHAIRMAN FLEAGLE: Steven.  
2  
3 MR. DAUGHERTY: Mr. Chair. There would  
4 be no violation of State law if a Federal subsistence  
5 user sold a hide that was taken in a Federal subsistence  
6 hunt.  
7  
8 Mr. Chair.  
9  
10 MR. EDWARDS: So if that is the case then  
11 why do we need this regulation if you can currently do it  
12 now under State law, we have to do it because we don't  
13 have it under our law?  
14  
15 CHAIRMAN FLEAGLE: It's now allowable  
16 under certain Park lands -- let's see we got somebody  
17 else coming up here. Dan LaPlant.  
18  
19 MR. LAPLANT: Yes, Mr. Chairman. Section  
20 .7 of our Federal subsistence regulations specifically  
21 states that sales of subsistence harvested products are  
22 prohibited unless specifically authorized in these  
23 regulations and as was pointed out before the Board has  
24 made those specific provisions in some areas sale of  
25 furbearers, customary trade of fish, sale of handicrafts  
26 but without any specific reference to these products,  
27 Section .7 says it's unauthorized.  
28  
29 MS. GOTTLIEB: Mr. Chair.  
30  
31 CHAIRMAN FLEAGLE: Gary looks like he's  
32 got it figured out now. Judy Gottlieb.  
33  
34 MS. GOTTLIEB: Okay, if Gary's finished.  
35  
36 MR. EDWARDS: I am.  
37  
38 MS. GOTTLIEB: Okay. I guess I was  
39 wondering since we heard from some of the Regional  
40 Councils that would like to include tanned hides in this  
41 regulation and so I wondered if we could get some  
42 feedback from those other RAC Chairs if we saw any  
43 problem if we were to include that statement.  
44  
45 CHAIRMAN FLEAGLE: Jack Reakoff.  
46  
47 MR. REAKOFF: Mr. Chairman. Western  
48 Interior didn't deliberate that but it's my impression  
49 that from my history in the upper portion of the Western  
50 Interior region that people traded tanned and untanned

1 hides and so I would not be opposed to the inclusion of  
2 tanned hides into the regulation.

3  
4 I would like to comment to the State's  
5 comments, in that, there is a customary and traditional  
6 use determination for the species for the people of these  
7 regions and the Federal Subsistence Board has made these  
8 various customary and traditional use determinations and  
9 so I don't see where that needs to be done on a case by  
10 case basis. Are the Councils supposed to prove these  
11 longstanding practices of sales which are basically -- a  
12 lot of those have taken place within the region and out  
13 of the region, I feel that would be an undue burden on  
14 the subsistence users and so I feel that the Federal  
15 Board's determinations that there is a customary and  
16 traditional use of these species suffices for the  
17 allowances of the sale of the skins or bones or other  
18 non-edible byproducts.

19  
20 Thank you.

21  
22 CHAIRMAN FLEAGLE: Thank you.

23  
24 MR. EDWARDS: Mr. Chairman.

25  
26 CHAIRMAN FLEAGLE: Gary.

27  
28 MR. EDWARDS: Again, ready for Staff.

29  
30 CHAIRMAN FLEAGLE: Go ahead.

31  
32 MR. EDWARDS: There's nothing to prohibit  
33 the exchange of either tanned or untanned furs between  
34 rural residents either for barter or for cash or exchange  
35 of food or other products, right, I mean we don't have to  
36 pass a regulation to do that, I mean that's something  
37 that people can currently do now. I mean what this  
38 really does is allow people to either sell, exchange,  
39 barter or -- what, either tanned or untanned fur with  
40 non-rural residents; isn't that correct?

41  
42 MR. LAPLANT: Mr. Edwards, through the  
43 Chair. The Federal regulation currently prohibits the  
44 sale of these items so it would prohibit -- without this  
45 provision, prohibit the sale of these items. Bartering  
46 is allowed without restriction but it's the sale, the  
47 cash sale, the cash exchange that's currently prohibited  
48 that this provision would therefore allow.

49  
50 MR. EDWARDS: So if I was a rural

1 resident and I shot a caribou and I tanned it, I couldn't  
2 sell it to Jack is what you're telling me, but I could  
3 trade it to him for services or for berries or some of  
4 his handicraft or what?

5  
6 MR. LAPLANT: Yes, Mr. Edwards, that's  
7 our understanding, correct.

8  
9 CHAIRMAN FLEAGLE: Other questions.  
10 Comments. Wini.

11  
12 MS. KESSLER: Mr. Chair. If at all part  
13 of the State's perspective is that the Board needs to  
14 make customary and traditional use determinations on area  
15 and species basis consistent with the eight factors, I  
16 know that's not how we interpret the requirement but it's  
17 real helpful to me, maybe, if Mr. Goltz would help me  
18 with that one and, again, explain how we differ on our  
19 perspectives there.

20  
21 CHAIRMAN FLEAGLE: Keith Goltz are you  
22 prepared to address the issue?

23  
24 MR. GOLTZ: I better be. I'm told by the  
25 reporter that this mic doesn't work very well so -- is it  
26 working?

27  
28 REPORTER: Yes, for recording but the  
29 volume is not.....

30  
31 MR. GOLTZ: Anything. Anything.

32  
33 REPORTER: Yes. Now.

34  
35 MR. GOLTZ: Anything.

36  
37 (Laughter)

38  
39 MR. GOLTZ: Okay. All right, if I turn  
40 that one off and.....

41  
42 CHAIRMAN FLEAGLE: Here.

43  
44 MR. GOLTZ: Use this one?

45  
46 REPORTER: Yes.

47  
48 MR. GOLTZ: All right, are we working  
49 now?

50

1 CHAIRMAN FLEAGLE: Yeah, you don't need  
2 to be that close.

3  
4 (Laughter)

5  
6 MR. GOLTZ: All right. I'm looking over  
7 at the reporter to.....

8  
9 REPORTER: (Nods affirmatively)

10  
11 MR. GOLTZ: Okay. I kind of thought this  
12 might come up when I heard Mr. Taylor's statements this  
13 morning, and I was puzzling over some of Tina's last  
14 comments. We actually may be [sic] agreement on some  
15 points. But when the question is can I deal with the  
16 differences between the two systems that's something I  
17 can do and I think I can do that fairly clearly.

18  
19 When the Federal government assumed  
20 subsistence management, it tentatively adopted the  
21 State's C&T determinations but it did not adopt the  
22 State's process. In fact that process was changed in  
23 three major ways.

24  
25 The first change was that the Regional  
26 Councils became the foundation of the Federal Subsistence  
27 Program. And the concept of C&T was made a part of the  
28 Council's operation manual, so when the Council makes a  
29 recommendation on C&T, the Board considers that very  
30 seriously.

31  
32 The second thing that happened was that  
33 the State's criteria were renamed into factors and the  
34 whole such concept was reapplied as a general framework  
35 for consideration. This was done to assure that C&T  
36 wouldn't turn into a barrier, something the users might  
37 have to overcome. The purpose of C&T is to protect  
38 subsistence use, not limit it.

39  
40 But thirdly, and probably the most  
41 important change was that the starting point was  
42 reversed. Under the State system nothing happens until a  
43 C&T is made, that's a necessary antecedent, a precursor  
44 to a subsistence allocation. Under the Federal system  
45 the situation is entirely reversed. If the Board has not  
46 made a C&T determination then all Alaskans who are  
47 residents of rural areas may harvest for subsistence.

48  
49 So the sum of it all is but this, Title  
50 VIII is more than a museum piece. Historical uses are

1 important and the law protects them. But Title VIII is  
2 also much broader than that, and it's entitlements go to  
3 rural residents who seek a subsistence harvest on Federal  
4 public lands in Alaska.

5  
6 Now, this whole issue is now in  
7 litigation in the Chistochina case and what I've just  
8 stated was the Federal position, the State has a  
9 different one, which is very narrowly defined and I'm  
10 sure Steven can elaborate on that if you ask him to, but  
11 the position of the Federal Board has been established in  
12 the Department of Justice briefing and what I've just  
13 said is an exposition of that position.

14  
15 MS. KESSLER: Thank you.

16  
17 CHAIRMAN FLEAGLE: Other questions.  
18 Comments.

19  
20 MR. LOHSE: Mr. Chair.

21  
22 CHAIRMAN FLEAGLE: Ralph Lohse.

23  
24 MR. LOHSE: I'd just like to, while our  
25 Council took no action on this, looking at the proposed  
26 changes by some of the other Councils, then I would just  
27 like to speak in favor of the ones on the tanned hides.

28  
29 As we all know one of the biggest trade  
30 items that there used to be in tanned hides was in smoked  
31 tanned moose hide. It enters into a lot of handicrafts  
32 and things like that. And the way I read the original  
33 language here, the trade in smoked tanned moose hide  
34 would be illegal and currently I know you end up having  
35 to get it in Canada or someplace like that, but under  
36 State law it's legal and I think it should be legal under  
37 Federal law, too.

38  
39 CHAIRMAN FLEAGLE: Thank you, Ralph.  
40 Other comments. Questions. Discussion. Randy.

41  
42 MR. ALVAREZ: Thank you, Mr. Chair. In  
43 regard to Ms. Gottlieb's comment that she wanted to hear  
44 about that issue, looking at Lake Clark SRC, they asked  
45 for a modification that while untanned has been deleted  
46 so it's just hides. And then the Aniakchak which is also  
47 in the Bristol Bay Council area, they support it but they  
48 also support other opportunities to maximize the value of  
49 those. So basically they prob -- from reading that they  
50 would also be in support of that amendment.

1                   And I can't speak for the Council but as  
2 myself I would also be in support of it.

3  
4                   Thank you.

5  
6                   CHAIRMAN FLEAGLE: Thank you, Randy.  
7 Terry Haynes.

8  
9                   MR. HAYNES; Thank you, Mr. Chairman. I  
10 think we would appreciate some further discussion of what  
11 uses are not being provided under the current State  
12 regulations, kind of following up on some of Mr. Edwards  
13 earlier questions. It's unclear what this proposed  
14 Federal regulation would do that isn't already allowed  
15 under State regulation.

16  
17                   Now, I understand some earlier comments  
18 that Federal regulations don't authorize certain things  
19 to happen but that doesn't preclude use of the State  
20 regulations for those activities, unless I'm missing  
21 something. So we're still a little unclear as to what is  
22 actually going to be accomplished in terms of uses of  
23 resources by adoption of this proposal that already can't  
24 happen under State regulations.

25  
26                   MS. GOTTLIEB: Mr. Chair.

27  
28                   CHAIRMAN FLEAGLE: Judy.

29  
30                   MS. GOTTLIEB: I think for those who were  
31 at this Board's fisheries meeting a year ago in January,  
32 Drue Pearce, Special Assistant to the Secretary, provided  
33 the information on, I get what was generally called  
34 duplicative regulations, and she explained that our  
35 process is different, as Keith is explaining, that even  
36 though our regulations might read the same, the process  
37 by which we get to them is quite different. And so I  
38 guess I'd like to ask Keith to explain one more time on  
39 this issue and I guess, I hope that, you know, since I  
40 know this is a comment that may come up over and over  
41 again during this meeting maybe we can have one  
42 discussion and not have it for each proposal.

43  
44                   So, Keith, if I could ask you to explain  
45 a little bit further, please.

46  
47                   CHAIRMAN FLEAGLE: Keith Goltz.

48  
49                   MR. GOLTZ: All right, I'm becoming a  
50 feature again. As some of you know I think the best

1 meeting is the one when the lawyer doesn't speak.

2

3 (Laughter)

4

5 MR. GOLTZ: I think the program ought to  
6 be run by biologists, not lawyers.

7

8 But this is an issue that I did pick out  
9 of the comments which I received at 4:30 on Friday, and  
10 it's probably something we should address as a whole  
11 because they relate directly to some of Mr. Taylor's  
12 earlier comments.

13

14 The issue was raised in 2005 in the  
15 State's white paper and it was rejected by the Secretary  
16 in January of 2006, as Judy's just pointed out. And for  
17 the Board that disposes of the matter. But for the  
18 audience, I guess including the State, it may be  
19 worthwhile to go through some of the specifics.

20

21 First, what the State is calling  
22 duplicate regulations are not so. There are no State,  
23 Federal -- or State regulations that comply with Federal  
24 law. And in particular they were adopted without  
25 deference to the Regional Advisory Councils. Now, this  
26 is critical because Title VIII demands an administrative  
27 structure that is built from the bottom up. And the  
28 foundation of that structure is the Regional Advisory  
29 Councils. So until the State puts Councils in place and  
30 gives them deference it simply doesn't have any  
31 regulations that comply with Title VIII.

32

33 Secondly, the suggestion, even the  
34 surface suggestion that there's a similarity between  
35 State and Federal regulations is really superficial, I  
36 think. Some of the numbers might be the same, but the  
37 rules regarding designated hunters, customary trade and  
38 wildlife utilization are all substantially different. So  
39 if you rubberstamp a State season you're going to get a  
40 substantially different result.

41

42 Thirdly, it's been suggested that the  
43 confusion might be a factor here. But if confusion's a  
44 factor the State is in complete control, it can adopt the  
45 Federal regulations or it can simply publish the Federal  
46 regulations as it has done in some cases. There is no  
47 copyright issue involved.

48

49 Lastly, I think it's important to realize  
50 that you just can't change direction of the Federal

1 system without public notice and comment under the APA  
2 procedures. The Federal rulemaking procedures have been  
3 in place for 15 years now, they've become established  
4 policy. In order to change them would require the Board  
5 to go through a specific set of processes so even if  
6 everything I said weren't true this still wouldn't be a  
7 proper subject for the Board at this meeting.

8

9 CHAIRMAN FLEAGLE: Thank you. I'll get  
10 right to you Ken. I just want to point out, I heard this  
11 in the overview and it's on Page 58, the net effect of  
12 the regulation if adopted, would allow the sale of goat,  
13 sheep, caribou and moose hides on National Park lands and  
14 National Monuments that are not covered under the State  
15 regulations, that would be the net effect. I think  
16 that's the simplest way to put it out.

17

18 Ken Taylor.

19

20 MR. TAYLOR: Thank you, Mr. Chairman.  
21 I'm not certain that the State agrees with the State  
22 regulations not being applicable to National Park lands  
23 or Monuments but that's a different issue.

24

25 I think what I want to make clear here is  
26 that the State supports the sale of tanned and untanned  
27 hides by rural residents. That's not the issue. I think  
28 the issue here is the process the Federal Board is using  
29 to establish this regulation consistent with ANILCA. And  
30 I'm not an attorney but I think our argument is that in  
31 order for it to be consistent with ANILCA you have to  
32 follow certain steps and if you want any elaboration on  
33 that I think Steven probably could provide it.

34

35 Thank you, Mr. Chairman.

36

37 CHAIRMAN FLEAGLE: Do we want  
38 elaboration.

39

40 (No comments)

41

42 CHAIRMAN FLEAGLE: I'm not hearing any  
43 request for it so we'll just go ahead and move forward.

44

45 I think the issue -- I do -- I think it's  
46 pretty clear where the State is coming from, Ken, and I  
47 don't mean any disrespect to Steven in that. I think the  
48 Board does understand the State's resistance, but I think  
49 we're ready to continue discussion. Further discussion.

50

1 We've got Jack Reakoff.

2

3 MR. REAKOFF: Mr. Chairman. It'd also be  
4 my perception it would not only be Park lands it would  
5 also be other Federal administered permits that are  
6 specific to Federal subsistence users, there are various  
7 Federal permits that are issued that are not issued by  
8 the State of Alaska and those would be drawing permits  
9 for moose down on the Kuskokwim and various other  
10 permits. So those would be falling under Federal hunts  
11 that Federal subsistence hunters that would be taking  
12 game on that aren't a State hunt so it would be my  
13 impression that it would also include those.

14

15 Thank you.

16

17 CHAIRMAN FLEAGLE: Thank you.

18

19 MR. EDWARDS: Mr. Chairman.

20

21 CHAIRMAN FLEAGLE: Gary.

22

23 MR. EDWARDS: When somebody passes a  
24 motion -- or makes a motion I'm probably going to vote in  
25 favor of the motion but I guess what maybe concerns me  
26 and maybe it's some of my concerns with bear claws is  
27 coming from, we seem to be, over the last few years or  
28 few months -- I guess it'd be years because we seem to  
29 operate that way, we seem to be getting more and more  
30 proposals that focus in my mind more on the  
31 commercialization of fish and wildlife as opposed to, you  
32 know, what I always believed was, you know, subsistence  
33 really wasn't about so much commercialization of the  
34 products but the utilization that it's for substance and  
35 handicraft and traditional ways and customary ways, but  
36 more and more we're having these proposals that seem to  
37 be driven to some extent to be able to further use the  
38 products taken in a more commercial venture. And I  
39 recognize we certainly have -- part of our regulation  
40 says that, you know, it cannot be a significant  
41 commercial enterprise but it just seems to me the more  
42 and more that we allow these we tend to be going in that  
43 direction.

44

45 I'm certainly not opposed to the  
46 utilization, that's why I asked the question about what  
47 could be done between subsistence users because we had  
48 that argument with the folks in the Southeast on bear  
49 claws and that all the things that folks were describing  
50 that they wanted to do with bear claws, you know, our

1 response was well you can currently do that now, this  
2 doesn't provide you anything different that you couldn't  
3 do.

4  
5                   So, I don't know, that's just kind of a  
6 general concern and maybe I'm alone in thinking about  
7 that. But if you look at all of these, they all seem to  
8 be kind of driven by the opportunity to expand, and  
9 particularly the cash value of these fish and wildlife  
10 resources.

11  
12                   CHAIRMAN FLEAGLE: Thank you, Gary.  
13 Niles.

14  
15                   MR. CESAR: And I don't disagree with  
16 that Gary, you know, but the reality of life in the Bush  
17 is it's costing a hell of a lot of money to partake in  
18 subsistence, and that people are not getting rich, what  
19 they're doing in my estimation is being able to pay for  
20 their ability to subsist and the cost of handicrafts is  
21 going up. I mean I don't even know what this cost my  
22 wife, but I know it's probably 10 times more than a tie.  
23 And people take hours and hours and hours to try to make  
24 their handicrafts, there has to be some recognition of  
25 the increased cost of doing that. So rather than I think  
26 there's more commercialization, I think there's a  
27 realization by the rural people that they really got to  
28 take advantage of everything in order to survive out  
29 there and I see what they're doing is simply that.

30  
31                   CHAIRMAN FLEAGLE: Jack Reakoff.

32  
33                   MR. REAKOFF: Mr. Chairman. I would like  
34 to point out that the Federal program has recognized a  
35 mixed subsistence cash economy and the high cost of fuel  
36 in rural Alaska, I'm very concerned about the demise of a  
37 lot of the elders in rural Alaska in my region, the fuel  
38 costs are exorbitant. I got people that are paying  
39 between six and seven, almost \$8 a gallon, \$12 a quart  
40 for oil. The State has recognized the use of the sale of  
41 these resources, these skins forever, so this is all just  
42 fluff. The bottom line is rural Alaska is very expensive  
43 at this point, I'm very concerned about the decline and  
44 the high cost of fuel and so forth, the sale of these  
45 items by rural residents allows them to continue their  
46 mixed subsistence cash economy and this is very important  
47 to many people to supplement their high cost.

48  
49                   So I would like to point that out to the  
50 Board.

1 Thank you.

2

3 MR. EDWARDS: Mr. Chairman. Maybe a  
4 response to both of those.

5

6 CHAIRMAN FLEAGLE: Gary.

7

8 MR. EDWARDS: I don't disagree with any  
9 of that. Then I guess my question is maybe we ought to  
10 look for opportunities to more liberalize the sale of  
11 these instead of putting restrictions on it. Maybe we  
12 shouldn't be using the term, you know, significant  
13 commercial enterprise, you know, you can get what you can  
14 get for it.

15

16 CHAIRMAN FLEAGLE: I got Mike Quinn and  
17 then Lester Wilde. Mike.

18

19 MR. QUINN: Okay, thank you, Mr. Chair.  
20 I think our members don't see subsistence as just hunting  
21 or just eating some meat, subsistence is providing for  
22 your family and in that respect maximum benefit from our  
23 harvest is important. As Mr. Reakoff's pointed out, the  
24 expense of living in these areas, what you're seeing is  
25 these proposals blurring the line between what many  
26 people consider commercial and what many people consider  
27 subsistence, and you're going to see more of these  
28 proposals in the future as it gets harder and harder to  
29 live in rural areas.

30

31 There's a lot of people who live in these  
32 areas because of family and traditional ties, but there's  
33 a lot of people, like me, who live there by choice,  
34 although everybody technically lives there by choice, and  
35 people like me are going to continue to support proposals  
36 like these because it helps us to live in that region and  
37 provide for our families. And I can tell you myself and  
38 whatever work I can do with the RAC I'm on will continue  
39 to push for and support proposals that blur the line  
40 between commercial and subsistence.

41

42 CHAIRMAN FLEAGLE: Thank you.

43

44 MR. ARDIZZONE: Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Just a second Chuck, I  
47 got Lester Wilde recognized. Lester.

48

49 MR. WILDE: Yeah, I agree with Mike, you  
50 know, the days that we, where we go out subsistence -- I

1 come from an area where it's totally subsistence mainly,  
2 and anything that's being put up we got to go out and get  
3 and going out subsisting and going out doing our  
4 subsistence hunt we get a lot of byproducts from the  
5 animals that we go out and hunt, like the skins that are  
6 no longer being used for muk-luks and parkas and clothing  
7 that we used to manufacture those from the byproducts  
8 from the subsistence animals that we are getting now. So  
9 we have a lot of surplus of the byproducts of the  
10 subsistence animal that we go out and acquire. And as  
11 Mike said a lot of those sales that are being done out in  
12 the villages are in support of other and further  
13 subsistence activities in the area.

14

15 CHAIRMAN FLEAGLE: Thank you. Chuck.

16

17 MR. ARDIZZONE: I was going to say we're  
18 concerned about commercialization of the resource also  
19 but there are already harvest limits in regulation for  
20 all these species, so it's not like the subsistence user  
21 is going to go and harvest 35 caribou and sell all the  
22 hides. I think that is some control on this issue. And  
23 then I'd just like to say it would allow the full  
24 utilization of the resource by the subsistence user and  
25 allow them to make some money from what they already have  
26 so it doesn't go to waste.

27

28 CHAIRMAN FLEAGLE: It sounds like I'm  
29 ready to hear a motion.

30

31 MR. PROBASCO: Sue.

32

33 CHAIRMAN FLEAGLE: Sue. Sue Entsminger,  
34 you can't make a motion.

35

36 MS. ENTSMINGER: I can't make a motion,  
37 okay. But I would like to just reiterate the short of  
38 this and that is all our Council wanted to do was to make  
39 it legal under Federal regs which is already legal under  
40 State regs and understanding how it comes across on your  
41 system that's what we had to do. So to me we're not  
42 making any more new things at all, it's just allowing  
43 what's already been done.

44

45 CHAIRMAN FLEAGLE: But look what you  
46 started.

47

48 (Laughter)

49

50 MS. ENTSMINGER: Look what the government

1 started.

2

3 (Laughter)

4

5 MS. ENTSMINGER: Excuse me.

6

7 CHAIRMAN FLEAGLE: We're ripe for a  
8 motion, Board members.

9

10 MS. KESSLER: Mr. Chair.

11

12 CHAIRMAN FLEAGLE: Wini.

13

14 MS. KESSLER: I move to adopt the  
15 recommendation of seven Regional Advisory Councils which  
16 is to support the proposal. I suggest that any proposed  
17 modifications that the Councils have recommended could be  
18 considered by amendment to this main motion if desired by  
19 the Board and after a second I'll provide my rationale.

20

21 CHAIRMAN FLEAGLE: Is there a second.

22

23 MS. GOTTLIEB: Second.

24

25 CHAIRMAN FLEAGLE: We do have a second.

26 Go ahead.

27

28 MS. KESSLER; I'm voting to support this  
29 because the Board has the authority to allow these sales  
30 under customary take, which is within the definition of  
31 subsistence in ANILCA. The main opposition is coming  
32 from the State but it's based on a concept of customary  
33 and traditional use that doesn't apply to the Federal  
34 program.

35

36 So that's why I support this.

37

38 CHAIRMAN FLEAGLE: Okay, thank you.

39 There is an invitation for amendment. Anybody willing to  
40 jump there -- Niles.

41

42 MR. CESAR: I would like to amend the  
43 main motion to also include deer, elk and muskox. I  
44 believe that the same should apply for those species.

45

46 CHAIRMAN FLEAGLE: Do I hear a second.

47

48 MR. ARDIZZONE: I'll second.

49

50 CHAIRMAN FLEAGLE: All right, we do have

1 a motion, the amendment is now seconded. Is there a --  
2 do you want to add anything to the record, Niles, in  
3 support of the amendment.

4

5 MR. CESAR: No. I think the several  
6 Regional Councils felt that that was appropriate and I  
7 think that I see no reason not to go along with those  
8 Councils. And I think the same applies, the same  
9 rationale applies why I would support that as well as the  
10 other species, so that's the reason.

11

12 CHAIRMAN FLEAGLE: Are we ready for the  
13 question on the amendment.

14

15 (No comments)

16

17 CHAIRMAN FLEAGLE: Further discussion.

18

19 MS. GOTTLIEB: Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Bert Adams.

22

23 MR. ADAMS: Mr. Chairman. I was  
24 wondering if you were going to consider, maybe through  
25 another amendment, you know, tanned and untanned hides.

26

27 CHAIRMAN FLEAGLE: I was preparing to do  
28 that after we dispense with this one, Bert.

29

30 MR. BERT: Okay, thank you, Mr. Chairman.

31

32 CHAIRMAN FLEAGLE: At least open the  
33 invitation. I can't obviously make the amendment. Judy.

34

35 MS. GOTTLIEB: Mr. Chair. I know muskox  
36 wasn't specifically mentioned by Seward Penn but I was  
37 hoping maybe we could ask the representative if there had  
38 been some discussion or if it just hadn't come up, how it  
39 might work.

40

41 CHAIRMAN FLEAGLE: Mike Quinn.

42

43 MR. QUINN: Well, I guess that didn't  
44 come up but I want to thank Mr. Cesar for bringing it up.  
45 There's actually very little muskox hunting done around  
46 there on the Federal level, it's mostly through Tier II  
47 and registration hunts, but I certainly can see a benefit  
48 to having muskox on it and I would support that.

49

50 CHAIRMAN FLEAGLE: Ready for the question

1 on the amendment.

2

3 It sounds like we are, Pete, on the  
4 amendment to add deer, elk and muskox, please poll the  
5 Board.

6

7 MR. PROBASCO: Thank you, Mr. Chair.  
8 Final action on the amendment to Proposal WP07-03 to add  
9 deer, elk and muskox. Mr. Fleagle.

10

11 CHAIRMAN FLEAGLE: Aye.

12

13 MR. PROBASCO: Ms. Gottlieb.

14

15 MS. GOTTLIEB: Aye.

16

17 MR. PROBASCO: Mr. Cesar.

18

19 MR. CESAR: Aye.

20

21 MR. PROBASCO: Mr. Oviatt -- I mean Mr.  
22 Ardizzone.

23

24 MR. ARDIZZONE: Aye.

25

26 MR. PROBASCO: Ms. Kessler.

27

28 MS. KESSLER: Aye.

29

30 MR. PROBASCO: And Mr. Edwards.

31

32 MR. EDWARDS: Aye.

33

34 MR. PROBASCO: Mr. Chair. Motion carries  
35 -- amendment carries, six/zero.

36

37 CHAIRMAN FLEAGLE: All right, thank you,  
38 Pete. We're now back to the main motion to support the  
39 passage of the proposal with the addition of deer, elk  
40 and muskox. There was one other item raised during the  
41 heated debate prior to this point and that would be  
42 whether or not there's some consideration for tanned  
43 hides as well and I heard a couple of different options.  
44 One would be to add the word tanned hides and the other  
45 one would be to delete the word, untanned hides, and just  
46 make it hides. So I'll leave that open for discussion.  
47 Board members is there any intent to add a further  
48 amendment.

49

50 MS. GOTTLIEB: Mr. Chair.

1 CHAIRMAN FLEAGLE: Judy.  
2  
3 MS. GOTTLIEB: I would like to offer an  
4 amendment that would include tanned hide or cape from  
5 legally harvested animals. And I don't have a preference  
6 on the wording.  
7  
8 CHAIRMAN FLEAGLE: Do we have a second.  
9  
10 MR. CESAR: Second.  
11  
12 CHAIRMAN FLEAGLE: Niles, seconded it.  
13 Would you like to speak to your amendment, Judy, please.  
14  
15 MS. GOTTLIEB: Well, thank you. I  
16 believe that between several of the Subsistence Resource  
17 Commissions and some of the Regional Councils who made  
18 that suggestion, it does seem to be a reasonable and  
19 practical amendment to have.  
20  
21 CHAIRMAN FLEAGLE: Further discussion.  
22  
23 (No comments)  
24  
25 CHAIRMAN FLEAGLE: Ready for the  
26 question. It looks like we're ready for the question on  
27 the question -- the question on the amendment to add  
28 tanned hides to the definition of hides that are  
29 available to be sold. Pete.  
30  
31 MR. PROBASCO: Thank you, Mr. Chair.  
32 Final action on amendment number 2. Ms. Gottlieb.  
33  
34 MS. GOTTLIEB: Aye.  
35  
36 MR. PROBASCO: Mr. Cesar.  
37  
38 MR. CESAR: Aye.  
39  
40 MR. PROBASCO: Mr. Ardizzone.  
41  
42 MR. ARDIZZONE: Aye.  
43  
44 MR. PROBASCO: Ms. Kessler.  
45  
46 MS. KESSLER: Aye.  
47  
48 MR. PROBASCO: Mr. Edwards.  
49  
50 MR. EDWARDS: Aye.

1 MR. PROBASCO: Mr. Fleagle.  
2  
3 CHAIRMAN FLEAGLE: Aye.  
4  
5 MR. PROBASCO: Amendment carries,  
6 six/zero.  
7  
8 CHAIRMAN FLEAGLE: Thank you. That now  
9 brings us back to the main motion, WP07-03 as amended  
10 twice to add deer, elk and muskox and to add tanned hides  
11 to the untanned hide portion.  
12  
13 Further discussion.  
14  
15 Judy.  
16  
17 MS. GOTTLIEB: Mr. Chair, thank you. I  
18 think what we usually do is since the deer and elk and  
19 muskox are not found statewide, perhaps as this gets  
20 firmed up then our regulation's specialist will list  
21 exactly which units that this part would apply to.  
22  
23 CHAIRMAN FLEAGLE: I was going to ask  
24 Jack how that deer and elk was going to work up there in  
25 Wiseman.  
26  
27 (Laughter)  
28  
29 CHAIRMAN FLEAGLE: If that's normal  
30 procedures I'm fine with that. Just having the statewide  
31 regulation that allows it seems to me, by deference, it  
32 allows it where they are.  
33  
34 UNIDENTIFIED VOICE: In case one wandered  
35 up there.  
36  
37 (Laughter)  
38  
39 CHAIRMAN FLEAGLE: Okay, further  
40 discussion.  
41  
42 (No comments)  
43  
44 CHAIRMAN FLEAGLE: Are we ready for the  
45 question.  
46  
47 (No comments)  
48  
49 CHAIRMAN FLEAGLE: Hearing no objection  
50 to the question, final action on Proposal 07-03 as

1 amended twice, Pete.  
2  
3 MR. PROBASCO: Final action on Proposal  
4 WP07-03 to read:  
5  
6 You may sell the tanned and raw untanned  
7 hide or capes from a legally harvested  
8 deer, elk, goat, sheep, caribou, muskox  
9 and moose.  
10  
11 Mr. Cesar.  
12  
13 MR. CESAR: Aye.  
14  
15 MR. PROBASCO: Mr. Ardizzone.  
16  
17 MR. ARDIZZONE: Aye.  
18  
19 MR. PROBASCO: Ms. Kessler.  
20  
21 MS. KESSLER: Aye.  
22  
23 MR. PROBASCO: Mr. Edwards.  
24  
25 MR. EDWARDS: Aye.  
26  
27 MR. PROBASCO: Mr. Fleagle.  
28  
29 CHAIRMAN FLEAGLE: Aye.  
30  
31 MR. PROBASCO: Ms. Gottlieb.  
32  
33 MS. GOTTLIEB: Aye.  
34  
35 MR. PROBASCO: Mr. Chair. Motion carries  
36 as amended, six/zero.  
37  
38 CHAIRMAN FLEAGLE: Thank you, Pete. At  
39 this time the Chair would like to go ahead and call a  
40 lunch break and I know there's eating facilities within  
41 the hotel but if anybody wants to leave I think we'll go  
42 ahead and add a little extra time, return at 1:00  
43 o'clock.  
44  
45 (Off record)  
46  
47 (On record)  
48  
49 CHAIRMAN FLEAGLE: Good afternoon, the  
50 Federal Subsistence Board will resume business.

1                   Before I start out, any announcements  
2 Pete.  
3  
4                   MR. PROBASCO: I have none, Mr. Chair.  
5  
6                   CHAIRMAN FLEAGLE: Board members.  
7  
8                   (No comments)  
9  
10                  CHAIRMAN FLEAGLE: Hearing none, we'll go  
11 ahead and move on.  
12  
13                  We've got Proposal 07-04. The last  
14 statewide proposal before us now and is this Liz again --  
15 okay, Liz, welcome, thank you.  
16  
17                  MS. WILLIAMS: Thank you, Mr. Chair.  
18 Proposal WP07-04 is the combination of two similar  
19 proposals submitted by the Eastern Interior Alaska  
20 Regional Advisory Council and the Upper Tanana Fortymile  
21 Fish and Game Advisory Committee.  
22  
23                  The proponents requests Federal  
24 regulations that allow the sale of antlers or horns of  
25 goat, sheep, deer, elk, caribou, moose or muskox that  
26 have been naturally shed or removed from the skull of an  
27 animal harvested on Federal public lands under Federal  
28 subsistence regulations by Federally-qualified  
29 subsistence users. The proponents state that adoption of  
30 this proposal would align Federal subsistence harvest  
31 regulations with the State of Alaska hunting regulations  
32 which allow for the sale of antlers or horns that have  
33 been naturally shed or if legally harvested completely  
34 removed from any part of the skull of the animal, except  
35 in Unit 23.  
36  
37                  State regulations specifically prohibit  
38 the sale of caribou antlers from Unit 23 unless the  
39 antler is not naturally shed or made into a handicraft.  
40 And this prohibition is due to local conservation  
41 concerns about the Western Arctic Caribou Herd because of  
42 the Asian antler market.  
43  
44                  Federal subsistence regulations don't  
45 include the gathering of naturally shed antlers because  
46 they're not a product of a harvested animal. Gathering  
47 of naturally shed antlers is prohibited on National Park  
48 lands.  
49  
50                  The current subsistence regulations do

1 not allow the sale of unmodified, non-edible byproducts  
2 of fish and wildlife. They must first be made into  
3 handicrafts. And as you can tell this is similar to the  
4 previous proposal. Unmodified antlers or horns do not  
5 meet the Federal definition of handicraft. The proposed  
6 sale of antlers or horns from animals harvested under  
7 Federal subsistence regulations, though, may be  
8 consistent with the Federal definition of customary  
9 trade, which is the exchange of cash for fish and  
10 wildlife resources regulated not otherwise prohibited by  
11 Federal law or regulation to support personal and family  
12 needs and doesn't include trade which constitutes a  
13 significant commercial enterprise.

14  
15                   There's a long history of trade in  
16 unmodified horns and antlers in Alaska that began prior  
17 to the arrival of Europeans and continues today.

18  
19                   The proponent state that adoption of this  
20 proposal would not increase harvest but would allow  
21 Federally-qualified subsistence users to fully utilize  
22 the animals they harvest under Federal subsistence  
23 regulations for food and to obtain cash needed to get  
24 access traditional harvesting areas.

25  
26                   If adopted, this proposed regulation  
27 would allow hunters to sell horns and antlers from  
28 animals harvested under Federal subsistence regulations.  
29 However, as I noted before, shed antlers are not  
30 regulated under Federal Subsistence Board jurisdiction.

31  
32                   The gathering of naturally shed antlers  
33 is specifically prohibited on National Park Service  
34 lands, it's also prohibited on Fish and Wildlife Service  
35 lands without a special use permit from the Refuge  
36 manager. Authorization to collect animal parts from  
37 animals not harvested within the approved subsistence  
38 harvest limits would not be consistent with Federal  
39 subsistence harvest regulations.

40  
41                   So we propose that the regulation or the  
42 proposal be modified to exclude reference to shed antlers  
43 or collections from animals obtained outside of Federal  
44 subsistence harvest regulations.

45  
46                   Regional variation in uses of horns and  
47 antlers can be addressed by region specific regulation  
48 such as those used for bear handicrafts and customary  
49 trade of fish. Current harvest limits of animals will  
50 not affected by this proposal. The proposal should not

1 affect other user groups. The adoption of this proposal  
2 would not lead to an increase in subsistence harvest, but  
3 would allow Federally-qualified subsistence users to  
4 fully utilize the animals they already have C&T for that  
5 they harvest for food and also for cash needed to access  
6 traditional harvesting areas.

7  
8 The preliminary conclusion from OSM is to  
9 support the proposal with modification to address only  
10 horns and antlers from animals harvested under Federal  
11 subsistence regulations.

12  
13 Thanks.

14  
15 CHAIRMAN FLEAGLE: Thank you. Questions  
16 Board members.

17  
18 (No comments)

19  
20 CHAIRMAN FLEAGLE: Hearing none. Summary  
21 of written public comments, Vince.

22  
23 MR. MATHEWS: Yes, Mr. Chair. The  
24 written comments summaries are found on Page 80 and 81.  
25 There were five written comments, they supported the  
26 proposal as written.

27  
28 Lake Clark and Aniakchak National  
29 Monument Subsistence Resource Commission supported the  
30 proposal because they feel that measures that allow for  
31 subsistence users to maximize the value they derive from  
32 legally taken animals.

33  
34 The Wrangell-St. Elias National Park  
35 Subsistence Resource Commission unanimously supports the  
36 proposal as written. The proposal would allow Federally-  
37 qualified subsistence users to more fully make use of the  
38 animals they harvested. The allowance to sell antlers  
39 and horns should apply to shed antlers and horns as well  
40 as those legally harvested animals.

41  
42 The Denali National Park Subsistence  
43 Resource Commission aligned with the Wrangell-St. Elias  
44 in their support and their justification.

45  
46 The other written comment came from the  
47 AHTNA Tene' Subsistence Committee. They support the  
48 statewide proposal to allow the sale of shed horns,  
49 antlers and antlers -- well, the sale of shed horns and  
50 antlers or horns and antlers that have been separated

1 from the skull from a legally harvested goat, sheep,  
2 deer, elk, caribou, moose or muskox.

3  
4 Mr. Chairman, that's a summary of all the  
5 written comments.

6  
7 CHAIRMAN FLEAGLE: Okay, thank you very  
8 much. Public testimony.

9  
10 MR. PROBASCO: Mr. Chair. We have no  
11 public testimony at this time.

12  
13 CHAIRMAN FLEAGLE: Thank you. Regional  
14 Council recommendations. Mike Quinn.

15  
16 MR. QUINN: Seward Peninsula supported  
17 it. It's pretty similar to the previous proposal on the  
18 capes and hides and we're all for increasing  
19 opportunities for using our subsistence resources.

20  
21 CHAIRMAN FLEAGLE: Randy Alvarez.

22  
23 MR. ALVAREZ: Thank you, Mr. Chair. The  
24 Bristol Bay RAC supports the proposal with modification  
25 to address those that have been legally harvested under  
26 the Federal regulations.

27  
28 And our justification here, the sale of  
29 antlers and horns from animals harvested under Federal  
30 subsistence regulations is consistent with the Federal  
31 definition of customary trade. The exchange of cash for  
32 a fish and wildlife resources regulated herein not  
33 otherwise prohibited by the State -- Federal law or  
34 regulation to support personal and family needs and does  
35 not include trade which constitutes as a significant  
36 commercial enterprise. Adoption of this modified  
37 proposal is within the intent of other regulations  
38 regarding sales by Federally-qualified subsistence users.

39  
40 The new modified Federal regulation would  
41 be consistent with State regulations relative to  
42 harvested animals.

43  
44 The collection of naturally shed antlers  
45 is not under Federal Subsistence Board jurisdiction, the  
46 opportunity to sell shed antlers will continue under  
47 State of Alaska regulations and can be applied to those  
48 resources found on Federal public lands only to the  
49 extent consistent with specific Federal land management  
50 regulations.

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Thank you, Randy. Sue  
4 Entsminger.

5

6 MS. ENTSMINGER: Yeah, thank you, Mr.  
7 Chair. The Council supported this and there was one  
8 opposition with the modification as suggested by the  
9 Staff Committee and I'm just going to read that -- that  
10 person was me, one to six.

11

12 And basically I felt that because you did  
13 have the authority to do so, to allow the subsistence  
14 user to also sell a shed antler. And more of that is  
15 because of the Park Service. Since 1980 since the Park  
16 Service came in our area there's been just a long history  
17 of things you can and can't do and we just felt that it  
18 would be, that we, or you the Federal Board, I apologize,  
19 could allow that, we don't feel like the Park Service  
20 should be saying that, no, you can't be picking up a shed  
21 antler. That'd be me, one person, I'm sorry, and a few  
22 others in our area.

23

24 CHAIRMAN FLEAGLE: Jack Reakoff.

25

26 MR. REAKOFF: Thank you, Mr. Chairman.  
27 The Western Interior Advisory Council voted in favor of  
28 this proposal with the modification for the animal to be  
29 harvested so that we -- the Gates of the Arctic Resource  
30 Commission has discussed this issue of antlers being  
31 picked up to be utilized for customary handicrafts and so  
32 forth and has a recommendation before the Park Service  
33 regarding that issue for various uses of those non-  
34 commercial and not to be sold in the raw state.

35

36 The Western Interior Council felt that  
37 under our authority we can deal with the harvested antler  
38 and so there's been many people in our region speak to  
39 the high cost of fuel and how these antlers are cut off  
40 and sold to be -- to buy gasoline and so these -- we feel  
41 that the State of Alaska allows the sale of antlers that  
42 have been cut from the skull and we feel that that's  
43 reasonable for the -- the subsistence users have been  
44 doing that for many, many years and utilizing them for  
45 handicrafts also.

46

47 Thank you.

48

49 CHAIRMAN FLEAGLE: Thank you. Speridon  
50 and then I'll call on Bert and then Lester after that.

1 Speridon.

2

3 MR. SIMEONOFF: Thank you, Mr. Chairman.  
4 The Kodiak/Aleutians RAC opposed Proposal WP07-04. And  
5 the justification was that there was already regulations  
6 that allowed for the proposed action.

7

8 Thank you.

9

10 CHAIRMAN FLEAGLE: Thank you. Bert  
11 Adams.

12

13 MR. ADAMS: Thank you, Mr. Chairman.  
14 Just to make note here that I'm also on the Wrangell-St.  
15 Elias Subsistence Resource Commission and while the  
16 Commission, you know, accepted this proposal as written,  
17 on the other hand the Southeast Regional Advisory Council  
18 also supports this proposal with modification.

19

20 We accepted -- or we accepted the  
21 modified portion of it on the advice of Staff and that  
22 was to eliminate the shed antlers and horns. It's also  
23 noted that shed horns and antlers are not under the  
24 jurisdiction of the Federal Subsistence Program. But the  
25 modification of this proposal that we submitted should  
26 read as such:

27

28 You may sell the horns and antlers that  
29 have been separated from the skull from  
30 legally harvested goat, sheep, deer, elk,  
31 caribou except caribou harvested in Unit  
32 3 [sic], moose or muskox.

33

34 The Council found that the modified  
35 proposal was supported by substantial evidence, that it  
36 was consistent with wildlife management principles and  
37 that it would be beneficial to subsistence users by  
38 allowing them to fully utilizing the animals they take.  
39 And it also noted that there was no adverse affects on  
40 non-Federally-qualified users. We also determined that  
41 there was no real conservation concern here.

42

43 So that's the extent of my comments on  
44 this issue, Mr. Chairman. Thank you.

45

46 CHAIRMAN FLEAGLE: Thank you. Lester  
47 Wilde. Just a second, microphone, please.

48

49 MR. WILDE: Thank you. The Yukon-  
50 Kuskokwim RAC supports this proposal with modification to

1 address only the horns and antlers from animals harvested  
2 under the Federal subsistence regulations except for Unit  
3 23 caribou. And for the life of me I'm trying to  
4 remember why we didn't include Unit 23 caribou, one of  
5 our Staff members probably can enlighten you on that.

6

7 Thank you, Mr. Chair.

8

9 CHAIRMAN FLEAGLE: Thank you. Michelle  
10 Chivers.

11

12 MS. CHIVERS: Thank you, Mr. Chair.  
13 Northwest Arctic, they opposed this proposal because they  
14 support utilization of legally harvested wildlife and  
15 they are concerned about the potential of want and waste.

16

17 And the North Slope Regional Advisory  
18 Council took no action.

19

20 Thank you, Mr. Chair.

21

22 CHAIRMAN FLEAGLE: Thank you. Ralph  
23 Lohse.

24

25 MS. LOHSE: We also took no action on  
26 this one due to lack of time.

27

28 CHAIRMAN FLEAGLE: Alaska Department of  
29 Fish and Game. Tina Cunning.

30

31 MS. CUNNING: Thank you, Mr. Chairman.  
32 The sale of horns or antlers is allowed under current  
33 State law and there are no seasonal or area restrictions  
34 on gathering of naturally shed antlers.

35

36 Only a State hunting license is required,  
37 which is also required for subsistence hunting under  
38 Federal subsistence regulations, consequently the  
39 opportunity requested in the portion of the original  
40 proposal related to naturally shed antlers is already  
41 provided in State regulations. And since there are no  
42 seasons or area restrictions under State law, Federal  
43 regulations regarding gathering are not needed. Sales  
44 are also authorized where a Federal subsistence user  
45 conducts harvest activities pursuant to State law.

46

47 Regarding a conservation concern. The  
48 proposed regulation would diverge significantly in some  
49 cases from State regulations. In Unit 23, for example,  
50 the State, at the request of local residents who are

1 concerned about waste specifically prohibits the sale of  
2 separated caribou antlers unless they're made into a  
3 handicraft. The proposed regulation would create  
4 incentives for illegal or wasteful harvest in Unit 23  
5 where caribou can easily be taken in large numbers under  
6 high daily harvest limits while migrating and  
7 particularly when crossing rivers. Because of the  
8 significant commercial market for antlers generally and  
9 the high market value of antlers containing blood, unless  
10 enforceable limits on sales are added to this proposal,  
11 sales of antlers could easily be significant commercial  
12 enterprises.

13

14 As far as our other comments go, the  
15 intent of this proposal is to align State and Federal  
16 regulations, however, the Federal Board does not have  
17 jurisdiction over general sales. Under ANILCA's  
18 provisions and the Board's framework regulations the  
19 Federal Board only has jurisdiction over subsistence uses  
20 and, thus, may only authorize sales where such sales are  
21 customary and traditional and qualify as customary trade.  
22 The Board has appropriately reflected this jurisdictional  
23 limitation in its Federal regulations as we stated in the  
24 previous regulation.

25

26 The Department supports the modification  
27 to exclude caribou antlers in Unit 23 from the scope of  
28 this proposal, however, before authorizing use in all of  
29 the other units, the Department recommends that the  
30 Federal Board make customary and traditional use  
31 determinations on an area and species basis consistent  
32 with the eight factors listed in Federal regulations.  
33 Such determinations should be made based on substantial  
34 evidence demonstrating that this use of each of these  
35 species is customary and traditional, and if no such  
36 evidence exists, that the regulation be limited to those  
37 areas which is found to be a customary and traditional  
38 use.

39

40 In conclusion, the Department opposes  
41 this proposal in the absence of evidence that the sale of  
42 antlers that have been removed from the skulls of goat,  
43 sheep, deer, elk, caribou, moose and muskox are customary  
44 and traditional uses statewide. The proposal, as  
45 modified to exclude shed antlers and horns and antlers of  
46 caribou taken in Unit 23 could be interpreted to align  
47 with current State regulations. However, it is possible  
48 that it could also be interpreted differently than State  
49 regulations unless the phrase "that have been separated  
50 from the skull" is replaced with "not attached to any

1 part of the skull." If the Federal Board moves forward  
2 with this proposal, the Department recommends that its  
3 language be modified as I just described, that its scope  
4 be limited to those areas of the state where the Federal  
5 Board has found such sales to be customary and  
6 traditional uses and that limitations be established to  
7 prevent such sales from becoming significant commercial  
8 enterprises.

9

10 Thank you, Mr. Chairman.

11

12 CHAIRMAN FLEAGLE: Thank you, Tina. And  
13 Ralph, I noticed your microphone is still hot.

14

15 Questions for the State. Gary.

16

17 MR. EDWARDS: Could you differentiate  
18 between separated from and not attached to?

19

20 CHAIRMAN FLEAGLE: Steven Daugherty.

21

22 MR. DAUGHERTY: Mr. Chair. Separated  
23 from could be interpreted to mean that part of the skull  
24 is still allowed to be attached, while not attached to  
25 any part of the skull is crystal clear and that is the  
26 regulatory language that is used in the State  
27 regulations.

28

29 Mr. Chair.

30

31 MR. EDWARDS: So I guess by your  
32 definition like a European mount would be classified as  
33 separated from as opposed to not attached to?

34

35 MR. DAUGHERTY: Mr. Chair. That is  
36 correct. That could be interpreted in that manner.

37

38 CHAIRMAN FLEAGLE: Other questions.

39

40 (No comments)

41

42 CHAIRMAN FLEAGLE: Thank you.

43 InterAgency Staff Committee comments. Larry.

44

45 MR. BUKLIS: Thank you, Mr. Chairman.  
46 The Staff Committee noted that five Councils recommended  
47 regulatory wording as presented in the OSM preliminary  
48 conclusion to address only horns and antlers taken from  
49 legally harvested animals of the listed species and  
50 excluding antlers of caribou harvested in Unit 23.

1                   If adopted by the Board this  
2 recommendation would be consistent with State regulations  
3 regulating to these species.

4  
5                   The Staff Committee also noted that the  
6 Eastern Interior Council, the proponent of the proposal,  
7 recommended inclusion of the naturally shed horns or  
8 antlers in the regulation providing for sale.

9  
10                   Kodiak/Aleutians Council opposed the  
11 proposal.

12  
13                   And we noted that the Northwest Arctic  
14 Council opposed the proposal due to its concerns with  
15 potential excessive harvest and waste resulting from the  
16 commercial incentive provided by sale similar to  
17 conditions experienced in the past with regards to sale  
18 of caribou antlers in Unit 23 in their area.

19  
20                   The exclusion of caribou in Unit 23 in  
21 the modified regulation as recommended by five of the  
22 Councils would mirror State regulations which have been  
23 effective in preventing exploitation of caribou  
24 experienced in past years in that unit. So the Staff  
25 Committee noted that that concern could be addressed with  
26 the exclusion.

27  
28                   Thank you, Mr. Chair.

29  
30                   CHAIRMAN FLEAGLE: Thank you, Larry.  
31 Questions. Judy.

32  
33                   MS. GOTTLIEB: Actually I had a question  
34 for Michelle, if she wouldn't mind, about the Northwest  
35 recommendation.

36  
37                   CHAIRMAN FLEAGLE: Go ahead.

38  
39                   MS. GOTTLIEB: The question was, and I'm  
40 not sure if you were there Michelle or remember what the  
41 exact transcript was, was the Northwest RAC, their only  
42 concern was caribou then and not some of the other  
43 species that would be found up there?

44  
45                   MS. CHIVERS: Yes - (microphone not on)

46  
47                   MS. GOTTLIEB: Okay, thanks.

48  
49                   CHAIRMAN FLEAGLE: All right, other Board  
50 discussion.

1 MS. GOTTLIEB: Excuse me, Mr. Chair, I  
2 guess just because we're off mic, the answer I got was  
3 yes.  
4  
5 CHAIRMAN FLEAGLE: Thank you. Other  
6 Board discussion.  
7  
8 MS. GOTTLIEB: Mr. Chair.  
9  
10 CHAIRMAN FLEAGLE: Judy.  
11  
12 MS. GOTTLIEB: I guess I'll also just  
13 clarify for the record because there have been a couple  
14 comments here in terms of where the Federal Subsistence  
15 Program regulations stand and where Park Service  
16 regulations stand.  
17  
18 Our own regulations through the Federal  
19 Subsistence Program say that the regulations in this part  
20 do not supersede agency specific regulations, and the  
21 Park Service regulations, you'll find in Page 71 in our  
22 book, which does say one cannot pick up shed antlers.  
23 That's a summary of it anyhow.  
24  
25 Thank you.  
26  
27 CHAIRMAN FLEAGLE: So the proposed  
28 amendment that several RACs have brought would totally  
29 address that?  
30  
31 MS. GOTTLIEB: Yes, it would.  
32  
33 CHAIRMAN FLEAGLE: Other Board  
34 discussion. George.  
35  
36 (No comments)  
37  
38 CHAIRMAN FLEAGLE: No. We're ready for a  
39 motion.  
40  
41 MR. EDWARDS: I have one more discussion.  
42  
43 CHAIRMAN FLEAGLE: Gary.  
44  
45 MR. EDWARDS: Getting back to my eBay  
46 question. So if this passes then you can sell horns on  
47 eBay, is that right, or any other through the internet to  
48 whoever wants to buy as long as they're not a significant  
49 commercial enterprise; is that correct?  
50

1 MS. WILLIAMS: Yes.  
2  
3 CHAIRMAN FLEAGLE: And that was Liz  
4 Williams. Thank you. Judy, your microphone is still on,  
5 I thought you wanted to talk.  
6  
7 MS. GOTTLIEB: Sorry.  
8  
9 CHAIRMAN FLEAGLE: Others.  
10  
11 (No comments)  
12  
13 CHAIRMAN FLEAGLE: Are we ready for a  
14 motion.  
15  
16 (No comments)  
17  
18 CHAIRMAN FLEAGLE: I can't make them.  
19 Judy.  
20  
21 MS. GOTTLIEB: Mr. Chair. I will move  
22 that the proposed regulation should read:  
23  
24 You may sell the horns and antlers that  
25 have been separated from the skull from  
26 legally harvested goat, sheep, deer, elk,  
27 caribou, except those caribou harvested  
28 in Unit 23, moose, or muskox.  
29  
30 And upon getting a second I'll make a few  
31 other comments.  
32  
33 MS. KESSLER: Second.  
34  
35 CHAIRMAN FLEAGLE: Okay, we do have the  
36 second, thank you.  
37  
38 MS. GOTTLIEB: Thank you, Mr. Chair. I  
39 believe this recommendation is consistent with the  
40 majority of the Regional Advisory Councils. I would have  
41 a suggestion, as we've done before, that since a couple  
42 of the regions out right oppose -- or at least one region  
43 out right opposed it, that perhaps we say except for the  
44 Kodiak/Aleutian region. We have the exception here for  
45 Northwest and caribou, but Kodiak/Aleutian doesn't want  
46 to be included in it, we may want to note that in the  
47 regulation as well.  
48  
49 CHAIRMAN FLEAGLE: Yeah, it would have to  
50 be a motion as Pete just pointed out, but in the

1 regulation you would want to -- anyways, we can further  
2 discuss that if you want.

3  
4 Right now we do have a motion before us  
5 to basically lift the language right off of Page 75 in  
6 the OSM preliminary conclusion. That would add the  
7 words, legally harvested, and the rest of the language is  
8 pretty much consistent.

9  
10 Is there any discussion on the motion.  
11 Gary.

12  
13 MR. EDWARDS: Well, I guess in my  
14 discussion it will sort of address what the State raised  
15 about the language separated from as opposed to attached  
16 to. Certainly separated from would allow people to sell  
17 full European mounts on plaques and all that, it would  
18 significantly, I think increase the value of those horns  
19 and I don't know if that was the intent was but -- and,  
20 again, I don't know whether you can interpret separated  
21 from to mean what I just said but if it does, then I  
22 guess the point they made, attached to [sic], would be  
23 better language to have.

24  
25 CHAIRMAN FLEAGLE: Or not attached to?

26  
27 MR. EDWARDS: Not attached to.

28  
29 CHAIRMAN FLEAGLE: Ken Taylor.

30  
31 MR. TAYLOR: Thank you, Mr. Chairman.  
32 The proponents of this proposal wanted this proposal to  
33 align the Federal subsistence harvest regulations with  
34 the State of Alaska's hunting regulations, and they went  
35 on to say to completely remove from any part of the skull  
36 of the animal. So if you are looking to adopt the  
37 modified regulation by including, after antlers that have  
38 been separated from, the words, all parts of the skull,  
39 you would meet the intent of the proponent.

40  
41 Thank you, Mr. Chair.

42  
43 CHAIRMAN FLEAGLE: All right. So we have  
44 two options of accommodating the State's desire here and  
45 it sounds like Ken's words would be probably simpler, not  
46 although entirely consistent with the State regulation.  
47 How to proceed, Board members. Judy.

48  
49 MS. GOTTLIEB: Mr. Chair. I guess I was  
50 just wondering if there's an explanation from Staff as to

1 why this particular language was used, if there was a  
2 special reasoning for that.

3

4 CHAIRMAN FLEAGLE: Liz Williams.

5

6 MS. WILLIAMS: Yes, Mr. Chair. Ms.  
7 Gottlieb. It was to prevent the sale of anything  
8 remotely resembling a trophy.

9

10 CHAIRMAN FLEAGLE: Pete Probasco, can you  
11 clarify.

12

13 MR. PROBASCO: Yes, Mr. Chair. I think  
14 this is Staff language. It can be modified. The intent  
15 of the language that was presented by OSM Staff was to  
16 have the antlers or horns removed from the skull.

17

18 Mr. Chair.

19

20 MS. WILLIAMS: (Nods affirmatively)

21

22 CHAIRMAN FLEAGLE: She's nodding so  
23 apparently an affirmative. I think we can move this on  
24 pretty quickly if somebody just wants to throw an  
25 amendment on the floor that would either add those words  
26 or change the words.

27

28 Gary.

29

30 MR. EDWARDS: Mr. Chairman. Then I guess  
31 I would amend the proposal to -- let me see exactly what  
32 it said. Well, where we had separated from we would not  
33 -- and just replace it by not attached to. I think we  
34 could certainly do what was proposed by the State but I  
35 think the other would be a little cleaner just by putting  
36 not attached to.

37

38 CHAIRMAN FLEAGLE: All right. So it  
39 would read:

40

41 You may sell the horns and antlers that  
42 are not attached to the skull, et cetera.

43

44 Right, is that your amendment?

45

46 MR. EDWARDS: Yeah, well, I'm just  
47 replacing.....

48

49 CHAIRMAN FLEAGLE: Your microphone.

50

1 MR. EDWARDS: .....that's how it was when  
2 it said separated from the skull, not attached to the  
3 skull (no microphone on).  
4  
5 MR. TAYLOR: Mr. Chairman. I'm on the  
6 wrong page, but I think the State regulation says not  
7 attached to any part of the skull and it makes it crystal  
8 clear.  
9  
10 MR. EDWARDS: That would be my intent.  
11  
12 CHAIRMAN FLEAGLE: All right, so maybe we  
13 don't have to worry about the exact language right now in  
14 the amendment and if it would just match it to what the  
15 State's regulatory language, so we can do that, is that  
16 okay with your intent?  
17  
18 MR. EDWARDS: That's my motion.  
19  
20 CHAIRMAN FLEAGLE: All right, we do have  
21 a motion for amendment.  
22  
23 MR. OVIATT: I'll second.  
24  
25 CHAIRMAN FLEAGLE: Seconded by George.  
26 And do you want to speak any further to that Gary.  
27  
28 MR. EDWARDS: Other than what I said, I  
29 think, then that would clearly make what the intent of, I  
30 think, are the people who proposed it, I think it would  
31 make it consistent with State law and the proper thing to  
32 do.  
33  
34 CHAIRMAN FLEAGLE: Further discussion on  
35 the amendment.  
36  
37 (No comments)  
38  
39 CHAIRMAN FLEAGLE: Ready for the question  
40 on the amendment. The question is recognized, Pete, on  
41 the amendment to change the wording as noted, please  
42 signify -- excuse me, please poll the Board.  
43  
44 MR. PROBASCO: Thank you, Mr. Chair. The  
45 amendment:  
46  
47 Not attached to any part of the skull  
48  
49 And we start with Mr. Cesar.  
50

1 MR. CESAR: Yes.  
2  
3 MR. PROBASCO: Mr. Oviatt.  
4  
5 MR. OVIATT: Yes.  
6  
7 MR. PROBASCO: Ms. Kessler.  
8  
9 MS. KESSLER: Aye.  
10  
11 MR. PROBASCO: Mr. Edwards.  
12  
13 MR. EDWARDS: Aye.  
14  
15 MR. PROBASCO: Mr. Fleagle.  
16  
17 CHAIRMAN FLEAGLE: Aye.  
18  
19 MR. PROBASCO: Ms. Gottlieb.  
20  
21 MS. GOTTLIEB: Aye.  
22  
23 MR. PROBASCO: Amendment carries,  
24 six/zero.  
25  
26 CHAIRMAN FLEAGLE: We now have Proposal  
27 07-04 as amended before the Board for final  
28 consideration. Comments. Deliberation. Further  
29 consideration.  
30  
31 (No comments)  
32  
33 CHAIRMAN FLEAGLE: Ready for the  
34 question.  
35  
36 It looks like we're ready for the  
37 question on the proposal as amended, Pete.  
38  
39 MR. PROBASCO: Thank you, Mr. Chair.  
40 Proposal WP07-04 as amended:  
41  
42 You may sell the horns and antlers not  
43 attached to any part of the skull from  
44 legally harvested goat, sheep, deer, elk,  
45 caribou, except caribou harvested in Unit  
46 23, moose or muskox.  
47  
48 Mr. Oviatt.  
49  
50 MR. OVIATT: Aye.

1 MR. PROBASCO: Ms. Kessler.  
2  
3 MS. KESSLER: Aye.  
4  
5 MR. PROBASCO: Mr. Edwards.  
6  
7 MR. EDWARDS: Aye.  
8  
9 MR. PROBASCO: Mr. Fleagle.  
10  
11 CHAIRMAN FLEAGLE: Aye.  
12  
13 MR. PROBASCO: Ms. Gottlieb.  
14  
15 MS. GOTTLIEB: Aye.  
16  
17 MR. PROBASCO: And Mr. Cesar.  
18  
19 MR. CESAR: Aye.  
20  
21 MR. PROBASCO: Mr. Chair. Motion as  
22 amended carries, six/zero.  
23  
24 CHAIRMAN FLEAGLE: Okay, thank you. That  
25 concludes the proposals that we have under the statewide  
26 grouping. Do we need a few minutes to regroup, Larry  
27 Buklis, you have comments.  
28  
29 MR. BUKLIS: Thank you, Mr. Chairman,  
30 yes. Since your morning session we have updated the  
31 printed agenda to capture your discussion this morning on  
32 consensus/non-consensus and I can have those distributed  
33 now if you'd like.  
34  
35 CHAIRMAN FLEAGLE: You bet, we'd like.  
36  
37 MR. BUKLIS: And I'll comment as we hand  
38 them out, as we noted before there are a total of 64  
39 proposals or parts of proposals, some are (a) and (b) and  
40 we counted those as individual elements, so 64 total,  
41 that remains the total, given the discussion this morning  
42 we now have 35 consensus, 29 non-consensus and you've  
43 addressed the first four of those, so you have 25 more  
44 non-consensus at this point, Mr. Chairman.  
45  
46 CHAIRMAN FLEAGLE: Thank you, Larry.  
47 Let's take a five minute at ease while this is going  
48 around.  
49  
50 (Off record)

1 (On record)

2

3 CHAIRMAN FLEAGLE: Okay, we're back in  
4 session and we do have the hand out, the new agenda. And  
5 Larry do you want to go ahead and speak any further to  
6 it.

7

8 MR. BUKLIS: No.

9

10 CHAIRMAN FLEAGLE: No.

11

12 MR. BUKLIS: No, thank you, I think I've  
13 covered it Mr. Chairman. And unless you want us to read  
14 into the record what the consensus are, I think we  
15 covered that this morning, by reference.

16

17 CHAIRMAN FLEAGLE: We did. Okay, then  
18 we're ready to move into the next suite of proposals and  
19 that are dealing with the Southeast Alaska region. We  
20 see new Staff at the table, introductions, please.

21

22 MR. JOHNSON: Mr. Chairman. Board. My  
23 name is Dave Johnson, I'm the subsistence coordinator for  
24 the Tongass National Forest. To my right, immediately to  
25 my right is Bob Schroeder who is the Southeast Regional  
26 Advisory Council coordinator. And on his right is  
27 Melinda Hernandez, also subsistence staff and  
28 anthropology.

29

30 The proposal before you is WP07-05, which  
31 was submitted by the Southeast Regional Advisory Council  
32 and it would eliminate the requirement that a  
33 representative of ADF&G remove and retain the skin of a  
34 skull and front claws of brown bear hides at the time of  
35 sealing.

36

37 The Federal and State regulations differ  
38 with respect to harvest of brown bear and the use of non-  
39 edible parts. Federal regulations allow harvest of one  
40 brown bear per year by Federal registration permit. The  
41 meat must be salvaged. The skin is not required to be  
42 salvaged. The skin and skull are not required to be  
43 sealed unless they are taken from the Yakutat area. The  
44 skin and skull must be sealed before they are removed  
45 from the Yakutat area and at the time the skin of the  
46 head and the front claws must be removed. Federal  
47 regulations allow the skin, including claws and other  
48 non-edible body parts to be used in the making of regalia  
49 and handcrafts that may be sold.

50

1 State regulations allow the harvest of  
2 one brown bear every four regulatory years. The meat is  
3 not required to be salvaged, the skin and skull must be  
4 salvaged. And they must be sealed within 30 days after  
5 taking. Under State regulations all body parts must --  
6 may be used to create regalia and handcrafts for personal  
7 use but may not be bartered or sold. Handcrafts for sale  
8 under State regulations may only be made from the bear  
9 fur, not including claws.

10

11 Rural residents of Yakutat have a  
12 positive C&T determination for brown bear in Unit 5. The  
13 Federal Subsistence Board passed regulations allowing the  
14 sale of handcrafts made from brown bear fur in 2004,  
15 including claws. In 2005 further modifications to the  
16 regulations were made including special provisions for  
17 Southeast Alaska allowing the use of bones, teeth, sinew,  
18 or skulls of both black and brown bears taken in the  
19 region.

20

21 Based on ADF&G harvest data bear  
22 populations appear capable of supporting current harvest  
23 levels and there appears to be no conservation concern.  
24 Figure 1 on Page 93 shows all of the known annual  
25 mortality including harvest from 1970 through 2005 as  
26 shown in the ADF&G sealing data base. All harvest data  
27 shown in Figure 1 refers to bears harvested under State  
28 general harvest regulations. Figure 1 also shows the  
29 harvest by Federally-qualified users that chose to hunt  
30 under State harvest regulations.

31

32 Table 2 on Page 94 shows number of  
33 permits issued and bears harvested for State registration  
34 hunt.

35

36 Most Federally-qualified users choose to  
37 harvest under State regulations.

38

39 The Federal subsistence harvest of brown  
40 bears in Units 5 is .5 percent of the total known  
41 mortality.

42

43 Adopting this proposal would eliminate  
44 the requirement to remove the front claws and skin of the  
45 skull when a brown bear is sealed before taking it out of  
46 the Yakutat area. This would allow Federally-qualified  
47 subsistence users to maintain possession of these items  
48 for use in making of handicrafts consistent with current  
49 Federal handicraft regulations.

50

1                   Adopting this proposal would also allow  
2 the hides of bears harvested under Federal subsistence  
3 regulations to retain their value as trophies.

4  
5                   No substantial increase in Federal  
6 subsistence harvest rates is expected. If harvest  
7 increases occur they should be easily monitored by the  
8 current State registration permit and State sealing  
9 requirements.

10  
11                   The preliminary conclusion was to support  
12 the proposal. And the removal of the claws and skin of  
13 the skull is not consistent with current regulations  
14 permitting the use of these body parts and handcraft  
15 items. Existing permit and reporting requirements would  
16 be retained to facilitate identification of legally  
17 harvested bears and this proposal should not increase  
18 harvest levels, affect brown bear populations or result  
19 in conservation concerns.

20  
21                   Thank you, Mr. Chairman.

22  
23                   CHAIRMAN FLEAGLE: Thank you. Questions  
24 on the analysis.

25  
26                   (No comments)

27  
28                   CHAIRMAN FLEAGLE: Written public  
29 comments. Larry -- or excuse me, Bob.

30  
31                   DR. SCHROEDER: Mr. Chairman. We have  
32 one written public comment from the Wrangell-St. Elias  
33 National Park Subsistence Resource Commission.

34  
35                   The Commission unanimously supports the  
36 proposal for the reasons that are stated in the  
37 justification for the Staff recommendation, namely that  
38 removal of the front claws and skin of the skull is not  
39 consistent with current regulations, permitting the use  
40 of these body parts in handicraft items, that existing  
41 permit and sealing requirements would be retained to  
42 facilitate the identification of legally harvested bears  
43 and that this proposal would not increase harvest levels,  
44 affect brown bear populations or result in a conservation  
45 concern.

46  
47                   Mr. Chairman, that's the only public --  
48 written public comment we've received.

49  
50                   CHAIRMAN FLEAGLE: Thank you, Bob. Any

1 public testimony.

2

3 MR. PROBASCO: No, Mr. Chair.

4

5 CHAIRMAN FLEAGLE: Bert Adams for the  
6 Regional Council recommendation.

7

8 MR. ADAMS: Thank you, Mr. Chairman. The  
9 Council recommends that we support the proposal.

10

11 Current Federal subsistence regulations  
12 provide for subsistence harvesting of brown bears in Unit  
13 5 but requires that the skin of the skull and front claws  
14 of bears taken to be removed when hides are sealed.  
15 Hides must be sealed before being taken from Unit 5.  
16 This harvesting regulation was passed in 1994.  
17 Subsequently in 2002 to 2006 the Federal Subsistence  
18 Board passed regulations recognizing the handicraft use  
19 of brown bears within Southeast Alaska. The Federal  
20 handicraft regulations allow the use of brown bear hides,  
21 including claws as well as other non-edible parts of  
22 brown bears.

23

24 This proposal would make the Federal  
25 subsistence brown bear harvesting regulations for Unit 5  
26 consistent with the Federal handicraft regulations  
27 concerning use of hides, claws and other non-edible parts  
28 of brown bears.

29

30 The Council reviewed the thorough Staff  
31 analysis for this proposal and since 1994, from 27 to 24  
32 brown bears have been harvested annually in Unit 5.  
33 Almost all of these bears were taken under State  
34 registration permits. During this time period only two  
35 bears were taken under Federal subsistence registration  
36 permits. Hunters are required to salvage the meat from  
37 bears taken under Federal subsistence registration  
38 permits, State registration permits do not require  
39 salvage of the meat. No useful purpose is served by  
40 requiring removal of the skin of the skull and the front  
41 claws of bears taken under Federal subsistence  
42 regulations. This requirement limits subsistence  
43 harvester's ability to fully utilize the bears they take.

44

45 The Council reviewed substantial evidence  
46 supporting the proposed regulatory change, found that the  
47 changes were consistent with principles of wildlife  
48 management and that it would benefit subsistence users.  
49 And because of the low harvest of brown bears under  
50 Federal subsistence regulations no affect to non-

1 Federally-qualified hunters are anticipated.

2

3 So that's the extent of my comments, Mr.  
4 Chairman. Thank you.

5

6 CHAIRMAN FLEAGLE: Thank you, Bert.  
7 Alaska Department of Fish and Game comments. Tina.

8

9 MS. CUNNING: For background, if a  
10 harvester utilizes existing State regulations rather than  
11 the Federal regulations which allow more liberal harvest,  
12 the proponent's desire to use brown bear parts for making  
13 traditional regalia and handicraft is allowed. A  
14 harvester does not lose the hide or the skull or the  
15 claws if the brown bear is harvested under State general  
16 hunting regulations and the bear is sealed within 30 days  
17 under the State sealing requirements. Thus, under  
18 current State regulations the entire brown bear is  
19 available to make Tlingit regalia and for other  
20 traditional uses. Similarly, a hunter does not lose  
21 the skull or claws of a bear taken under the more liberal  
22 Federal regulations and may utilize these parts so long  
23 as the bear is not transported out of Unit 5.

24

25 Our conservation issues. In response to  
26 declining brown bear populations, the State began  
27 conservative management in 1969 by reducing the bag limit  
28 to one bear every four regulatory years. Under the  
29 State's management for sustained yield, the brown bear  
30 population in Unit 5 has been relatively stable  
31 supporting a harvest of approximately 30 bears annually  
32 since the early 1980s. The Department does not believe  
33 that any significant increase in harvest would be  
34 sustainable.

35

36 The effect of this proposal is to  
37 authorize increased sale and barter outside of Unit 5.

38

39 In 1994, the Federal Subsistence Board  
40 authorized Yakutat residents to harvest one bear annually  
41 in Unit 5 by Federal registration permit, deleted the  
42 requirement for Federally-eligible residents to acquire a  
43 State tag and eliminated the requirement for the hide and  
44 skull to be sealed by the Department. The State filed  
45 request for reconsideration 94-05 contending that the  
46 Federal subsistence regulation for brown bear created  
47 numerous problems for the State sustained yield  
48 management of brown bears. In addition to authorizing a  
49 significantly higher harvest, one bear every year, the  
50 Federal regulation eliminated a means of obtaining timely

1 information on sex, age, size and location of harvested  
2 bears and deprived the State of the tag fees needed to  
3 fund bear management tasks. In response to the RFR, the  
4 Federal Board modified its regulation to require brown  
5 bears that are transported out of Unit 5 to be sealed by  
6 the Department. The State regulations provide a similar  
7 exception to the mandatory sealing requirement for brown  
8 bears harvested, but not removed from several units, but  
9 the State does not provide that exception for Unit 5. In  
10 the last four regulatory years only seven Federal  
11 subsistence registration permits were issued for the Unit  
12 5 brown bear and only one brown bear was reported to have  
13 been harvested.

14

15                   Our other comments. The use of brown  
16 bear parts including use of bear claws in handicraft so  
17 long as the handicraft are not purchased, sold or  
18 bartered is already legal under State regulations and  
19 some bear handicraft may also be purchased, sold and  
20 bartered under State regulations. The State does  
21 recognize that some bartering of bear claw handicrafts  
22 may be customary and traditional, would not oppose  
23 regulatory changes to facilitate such barter if  
24 enforceable prohibitions on sale were imposed.

25

26                   The Federal Board adopted regulations in  
27 2005 that allow sale of handicrafts from the skin, hide,  
28 pelt, fur, claws, bones, teeth, sinew, or skulls of brown  
29 bear. In 2006 the Federal Board rejected a proposal to  
30 limit sales of bear parts and handicrafts and retained  
31 unconstrained sale of bear parts which undermine the  
32 State's National and International Wildlife Protection  
33 enforcement efforts and we described this in our earlier  
34 regulation.

35

36                   If a Federally-qualified subsistence  
37 hunter wants to remove a brown bear from Unit 5, this  
38 proposal would delete the Federal requirement that a  
39 Department representative remove and retain the skin of  
40 the skull and front claws of the bear. In Unit 5 the  
41 State authorizes only one bear every four regulatory  
42 years and requires that a harvested bear be sealed within  
43 30 days. The Federal regulation authorizes one bear  
44 every year. Thus allowing retention of the valuable  
45 skull and claws, particularly if the Federal Board  
46 continues to allow unconstrained sales of handicrafts  
47 made from these parts will provide incentive for  
48 significant increased harvest under the Federal  
49 regulations.

50

1                   We request the Federal Board focus on  
2 customary and traditional uses that are the basis of  
3 local practices in those local areas. In other words,  
4 handicrafts and regalia should be made in Unit 5 if the  
5 customary and traditional finding specifies that such  
6 uses exist in Unit 5 for brown bears that are harvested  
7 in the unit.

8  
9                   Because Proposal WP07-01 was not adopted  
10 this morning, the Department opposes this proposal. The  
11 Department cannot support a proposal that will make it  
12 easier to transport brown bear hides outside of Unit 5  
13 and retain bear claws and other bear parts for sale. The  
14 ability to sell these desirable bear parts will result in  
15 increased incentives to harvest bears so that handicrafts  
16 made from bear parts can readily be sold. If the intent  
17 is to allow retention of all the bear parts for regalia  
18 and traditional uses, such uses are authorized under  
19 Federal regulation so long as the bear is not removed  
20 from Unit 5. Such uses are also authorized under State  
21 regulations so long as the regalia or handicrafts are not  
22 purchased, sold or bartered. Therefore, based on the  
23 stated intent of the proposal, there is no need for the  
24 Federal Board to take any action because the desired use  
25 is already authorized.

26  
27                   CHAIRMAN FLEAGLE: Questions for the  
28 State. Gary.

29  
30                   MR. EDWARDS: Yes, Mr. Chairman. When  
31 you use the terminology, so long as the bear is not  
32 transported out of Unit 5, is there a statute of  
33 limitation on that, is that all of the bear, or parts of  
34 the bear, what does that actually mean on the ground?

35  
36                   CHAIRMAN FLEAGLE: Steven.

37  
38                   MR. DAUGHERTY: Mr. Chair. Under the  
39 common reading of our regulations a reference to a bear  
40 is a bear or any part of the bear, however, as far as  
41 practical enforcement goes, if the pieces are made in  
42 Unit 5, I don't think there would be any practical way we  
43 could enforce if someone was taking them out because we  
44 would have to prove where that part came from and that  
45 would be very difficult to do.

46  
47                   Mr. Chair.

48  
49                   MR. EDWARDS: Well, I guess that would  
50 apply if I lived in Unit 5 and I took a bear and made a

1 bear skin rug out of it, if I moved out of Alaska I could  
2 take it with me even though your regulations say I can't.

3

4 CHAIRMAN FLEAGLE: Steven.

5

6 MR. DAUGHERTY: Mr. Chair. In the case  
7 of a bear skin rug, that would be enforceable because the  
8 skull would still be attached. There is a sealing  
9 requirement and if we checked and it was not sealed there  
10 would be a violation.

11

12 Mr. Chair.

13

14 MR. EDWARDS: Okay, so the moral of this  
15 story is that if you live in Unit 5, don't make a rug out  
16 of your bear because if you leave Alaska you can't take  
17 it with you.

18

19 CHAIRMAN FLEAGLE: Other questions.

20

21 (No comments)

22

23 CHAIRMAN FLEAGLE: Thanks. InterAgency  
24 Staff Committee comments. Larry.

25

26 MR. BUKLIS: Mr. Chairman. The  
27 InterAgency Staff Committee found the Staff analysis for  
28 WP07-05 to be a complete and accurate evaluation of the  
29 proposal. And the Staff Committee believed the  
30 recommendation of the Southeast Council was consistent  
31 with ANILCA Section .805(c).

32

33 CHAIRMAN FLEAGLE: Thank you. Board  
34 discussion.

35

36 Judy.

37

38 MS. GOTTLIEB: Well, Mr. Chair,  
39 appreciate the information and the thorough analysis  
40 that's been presented to us and I would support the  
41 proposal because I believe that it is consistent with our  
42 regulations and that it is to the benefit of subsistence  
43 users and would not present any conservation concerns.

44

45 CHAIRMAN FLEAGLE: Go ahead, discussion.  
46 Do I have any other Councils that want to be addressed on  
47 this. Go ahead, Bert.

48

49 MR. ADAMS: Thank you, Mr. Chairman. The  
50 real intent for this proposal to be brought before us at

1 this time was -- let me just give you a for instance.

2

3 In Yakutat we have a Teikukeidi Clan that  
4 has the crest of the brown bear. If a member of that  
5 clan wanted to make a regalia out of a brown bear they  
6 had taken by subsistence means, they would have to take  
7 that out to the Fish and Game Department as the law reads  
8 now and they would have to remove the skulls and the  
9 claws and then they would be able to use it, you know,  
10 for their purpose. But to remove the skull and the  
11 claws, particularly the claws, that particular hide would  
12 be no use to them anymore because you have taken out some  
13 pretty important parts of that bear. And I just wanted  
14 to, you know, use that as an example.

15

16 Thank you, sir.

17

18 CHAIRMAN FLEAGLE: Thank you. Further  
19 comments.

20

21 (No comments)

22

23 CHAIRMAN FLEAGLE: Ready for a motion.

24 Wini.

25

26 MS. KESSLER: Mr. Chair. I move to adopt  
27 the recommendation of the Southeast Alaska Regional  
28 Advisory Council, which is to support the proposal. And  
29 after a second I'll provide my rationale.

30

31 MR. CESAR: I'll second.

32

33 CHAIRMAN FLEAGLE: We have a second from  
34 Niles. Go ahead, please.

35

36 MS. KESSLER: The current requirement for  
37 the removal of the front claws and skin of the skull is  
38 not consistent with our current Federal regulations  
39 permitting the use of the parts in handicraft items for  
40 sale, and so in that respect it's no longer meaningful or  
41 pertinent. And as well the proposal should not increase  
42 harvest levels, effect brown bear populations or result  
43 in a conservation concern based on the information that  
44 we have gone over.

45

46 Thank you.

47

48 CHAIRMAN FLEAGLE: Ken Taylor.

49

50 MR. TAYLOR: Thank you, Mr. Chairman. I

1 believe our attorney had something he wanted to impart to  
2 the group.

3

4 CHAIRMAN FLEAGLE: Steven.

5

6 MR. DAUGHERTY: Mr. Chair. On the  
7 example that was given, I just wanted to clarify that  
8 there are two ways that those parts could be used.

9

10 One, if the product is not removed from  
11 Unit 5, then there's no problem with retaining it. It  
12 does not need to be sealed and those parts do not need to  
13 be removed.

14

15 Two, if it's taken under State law, those  
16 parts would not be removed.

17

18 Thank you, Mr. Chair.

19

20 CHAIRMAN FLEAGLE: Thank you. Welcome,  
21 Victor.

22

23 Other discussion. Niles.

24

25 MR. CESAR: I'm just still a little  
26 confused with saying that it cannot be removed from Unit  
27 5. What does that literally mean, you cannot take that  
28 hide out of Unit 5? I'm asking the State, is my  
29 interpretation correct?

30

31 CHAIRMAN FLEAGLE: Steven.

32

33 MR. DAUGHERTY: Yes, Mr. Chair, that's  
34 correct.

35

36 MR. CESAR: So any benefit that a  
37 subsistence user in making regalia and bringing it up to  
38 Southcentral Alaska for the Alaska Federation of Natives  
39 would be negated; is that correct?

40

41 MS. CUNNING: They still have the ability  
42 to do it under the State's regulation.

43

44 CHAIRMAN FLEAGLE: Do you have an  
45 opinion, Keith.

46

47 MR. GOLTZ: No.

48

49 CHAIRMAN FLEAGLE: No.

50

1 (Laughter)  
2  
3 CHAIRMAN FLEAGLE: Further comments.  
4  
5 MS. GOTTLIEB: Question.  
6  
7 CHAIRMAN FLEAGLE: Question. The  
8 question is recognized. Pete, on the proposal, please  
9 poll the Board.  
10  
11 MR. PROBASCO: Thank you, Mr. Chair.  
12 Proposal WP07-05 to adopt the proposal as recommended by  
13 the Southeast Alaska Subsistence Regional Advisory  
14 Council; if you remove the skin or skull of a bear taken  
15 in Unit 5 from the area you must first have it sealed by  
16 ADF&G representative in Yakutat.  
17  
18 Ms. Kessler.  
19  
20 MS. KESSLER: Aye.  
21  
22 MR. PROBASCO: Mr. Edwards.  
23  
24 MR. EDWARDS: Aye.  
25  
26 MR. PROBASCO: Mr. Fleagle.  
27  
28 CHAIRMAN FLEAGLE: Aye.  
29  
30 MR. PROBASCO: Ms. Gottlieb.  
31  
32 MS. GOTTLIEB: Aye.  
33  
34 MR. PROBASCO: Mr. Cesar.  
35  
36 MR. CESAR: Aye.  
37  
38 MR. PROBASCO: Mr. Oviatt.  
39  
40 MR. OVIATT: Aye.  
41  
42 MR. PROBASCO: Mr. Chair. Motion  
43 carries, six/zero.  
44  
45 CHAIRMAN FLEAGLE: Thank you, Pete. We  
46 now have 07-06, Dave Johnson.  
47  
48 MR. JOHNSON: Thank you, Mr. Chairman.  
49 Board. WP07-06 was submitted by Dick Stokes, Mark  
50 Armstrong and Mike Bangs of Wrangell and would increase

1 the harvest limit for deer in Unit 1B and most of Unit 3  
2 and increase the length of the deer season for Unit 3 as  
3 well. The intent of this proposed regulation is to align  
4 the subsistence harvest limits and seasons of Units 1B  
5 and 3 with Unit 2.

6  
7 One of the proponents, Dick Stokes  
8 believed that the all rural hunters should have the same  
9 hunting opportunity on the area around Wrangell that  
10 residents of Craig, Hydaburg, Klawock, Port Alexander,  
11 Port Protection, Point Baker, Thorne Bay and Coffman Cove  
12 and Wrangell and Petersburg have on POW. However, when  
13 contacted, Mr. Stokes did not want to include the Mitkof,  
14 Woewodski and Butterworth Islands, he was mainly  
15 concerned about the remainder of Unit 3.

16  
17 During the '70s and late '60s,  
18 significant deer population declines occurred as a result  
19 of a series of severe winters. The population declines  
20 then led to restrictive regulations and harvest limits in  
21 1973. Unit 1B remained open with one antlered deer limit  
22 from '73 to '80 and then was increased to two antlered  
23 deer from '81 to present. Additionally Unit 3 was closed  
24 to deer hunting from '73 through '79 and the area south  
25 of Sumner Strait had a harvest limit of only one antlered  
26 deer during the period 1980 to 1991. In 1991 a  
27 registration permit hunt with an October 15 to 31 season  
28 and a one antlered deer harvest limit was opened on parts  
29 of Mitkof, Kupreanof, Woewodski and Butterworth Islands.

30  
31 Current regulations in Unit 3 allow the  
32 harvest of two buck deer from August 1 to November 30th.  
33 During its meeting in Wrangell, Alaska in November 2006  
34 the Board of Game opened an archery season only within  
35 the city limits of Petersburg and changed the season to a  
36 two buck only deer limit. This was done to provide  
37 increased hunting opportunity adjacent to Petersburg  
38 where discharge of firearms is prohibited.

39  
40 Deer population in most of Unit 3 is at  
41 current, moderate levels and has made a remarkable  
42 recovery since the population crash of the early '70s.  
43 The unit was closed to deer hunting until 1991 and then  
44 Zarembo Island is preferred hunting -- is a preferred  
45 hunting location for residents of Wrangell. From 1991 to  
46 1994 deer harvest was below 200 deer annually and then  
47 from 1995 to 2001 deer numbers increased to over 400 deer  
48 annually. From 2000 to the present to the present,  
49 however, the number has, again, decreased. There may be  
50 several reasons that have resulted in this decline.

1 Second-growth stands on Zarembo Islands have matured and  
2 stands have gone from stand initiation stage to stem  
3 exclusion stage and while these stands may still maintain  
4 healthy deer populations, hunter effectiveness is much  
5 reduced due to hunters inability to see deer. Also the  
6 wolf population and wold predation on Zarembo Island has  
7 increased since the early '70s. Also, similarly, the  
8 number of deer harvested on Mitkof Island has decreased  
9 because of the same reasons.

10

11 ADF&G describes what happened in Unit 3  
12 by stating that over the last eight years deer harvest  
13 has ranged from 626 to 1,173 in the remaining portion of  
14 Unit 3. And while the number of hunters in the subunit  
15 has varied from 892 to 1,224, deer harvest declined  
16 between 1998 and 2002 and increased between 2002 and  
17 2003. Trends in deer harvest and effort in this unit  
18 have been affected by regulatory changes that resulted in  
19 liberalization of deer hunting on the Lindenberg  
20 Peninsula beginning in 2003. This also resulted in an  
21 increased harvest in the fairly large but localized part  
22 of the unit.

23

24 Adopting this proposal may cause an  
25 increase in harvest throughout the two units. Unit 1B  
26 will probably get more use but because of inaccessibility  
27 of the area and low deer densities and high snow load, a  
28 significant increase in animals harvested is not  
29 anticipated nor likely. Deer harvest on Kupreanof Island  
30 will probably increase because the proximity of  
31 Petersburg and Kake and deer harvest on Edlund, Wrangell  
32 and Zarembo Islands will probably increase due to the  
33 proximity to Wrangell. Kuiu Island will probably not be  
34 impacted because of the low deer numbers and the low  
35 hunter success rate.

36

37 The preliminary conclusion is to support  
38 the proposal with a modification to keep the harvest  
39 limit the same but to lengthen the season date by one  
40 month for the remaining portion of Unit 3.

41

42 The low deer density and potential for  
43 large accumulations of snow in Unit 1B are two important  
44 factors that do not support a change in the harvest limit  
45 from two to four deer for any of these units. The  
46 sporadic distribution of deer in Units 1B and 3 may  
47 result in conservation concerns if the proposal to  
48 increase harvest limits is adopted.

49

50 Further information, Mr. Chairman, since

1 the presentation that was given to the Council, during  
2 the winter of '71 -- I'm sorry, a record snowfall event  
3 occurred during the 2006/2007 winter season in several  
4 locations in Southeast, the previous record snow season  
5 in 1971 and '72 resulted in extensive deer mortalities  
6 throughout Unit 3. As a result deer seasons and harvest  
7 limits were severely restricted. During the winter of  
8 '71, '72 221 inches of snow was recorded in Petersburg,  
9 Alaska, the majority fell during the month of December,  
10 51 inches, 48 inches, and 54 inches respectively with an  
11 additional 35 inches in March. Snow covered almost all  
12 of the brow species until late May. During 2006/2007  
13 Petersburg recorded 225 inches of snow and this snowfall  
14 occurred in a different pattern than that during the  
15 '71/72 season. Again, the initial winter mortality may  
16 be moderate to high in some locations but probably not as  
17 severe as experienced during the '71/72 winter. There  
18 were no deer mortalities due to starvation documented  
19 during the single deer mortality transect conducted thus  
20 far on Edlund Island by the area wildlife manager Rich  
21 Lowell. Deer mortality and population monitoring is a  
22 cooperative effort between the State and the Forest  
23 Service, and during this week of April 30th, teams of  
24 personnel from Wrangell, Petersburg and Juneau will  
25 conduct deer mortality and deer pellet surveys throughout  
26 Unit 3. The result of the monitoring effort will be  
27 available in a written report during the summer or fall  
28 of 2007.

29

30 Thank you, Mr. Chairman.

31

32 CHAIRMAN FLEAGLE: Thank you. Questions.

33

34 (No comments)

35

36 CHAIRMAN FLEAGLE: Summary of written  
37 public comments. Bob Schroeder.

38

39 DR. SCHROEDER: Mr. Chairman. We  
40 received one written public comment just a couple of days  
41 ago from a Theodore Mataskaw -- excuse me, from Dave  
42 Roundtree. And Mr. Roundtree is a long-term Petersburg  
43 resident and he opposes this proposal basically on  
44 conservation grounds. We believes that the deer  
45 population will not be able to sustain further harvest at  
46 this time and he also refers to the heavy winter that  
47 we've just experienced.

48

49 And that's the extent of our written  
50 public comments.

1 CHAIRMAN FLEAGLE: Thanks, Bob. Public  
2 testimony.  
3  
4 MR. PROBASCO: Mr. Chair. We have no  
5 public testimony at this time.  
6  
7 CHAIRMAN FLEAGLE: Bert Adams for the RAC  
8 recommendation.  
9  
10 MR. ADAMS: Thank you, Mr. Chairman. The  
11 Southeast Regional Advisory Council supports the proposal  
12 as modified.  
13  
14 SERAC modified the proposal to keep the  
15 harvest limit the same but to allow for a lengthier  
16 season and we didn't see any concerns with conservation  
17 there. We didn't see any data that would cause any  
18 adverse effect on it and wouldn't affect any other  
19 subsistence or other user groups.  
20  
21 Thank you, Mr. Chairman.  
22  
23 CHAIRMAN FLEAGLE: Thank you, Bert.  
24 Alaska Department of Fish and Game comments.  
25  
26 Terry Haynes.  
27  
28 MR. HAYNES: Thank you, Mr. Chairman.  
29 The proposal to increase Federal harvest limits in Units  
30 1B and 3 to more closely align with harvest limits in  
31 other units where deer densities are higher is not  
32 consistent with sustained yield management of these deer  
33 populations. Deer numbers in Units 1B and 3 are markedly  
34 lower than they are in Units 1C, 2 and 4.  
35  
36 Contrary to the intent of this proposal,  
37 the long-term consequences of increasing the harvest  
38 limit and extending the season may be a decline in the  
39 deer population and resulting conservation issues. Lower  
40 deer populations will necessitate reduced hunting  
41 opportunities in the affected units. Because of the  
42 relatively stable but low populations, conservation  
43 concerns could also result in closing several areas  
44 within Units 1B and 3.  
45  
46 The Department opposes this proposal,  
47 both as proposed and as modified. The proposal as  
48 modified retains the current harvest limits for deer in  
49 Units 1B and 3, but adds the month of December to the  
50 current season in the remainder of Unit 3. The

1 Department supports retention of the current harvest  
2 limits but does not support the proposed season extension  
3 in the remainder of Unit 3 where the process of  
4 rebuilding the deer population is being impacted by  
5 habitat loss, predation and high snow accumulations.  
6 Adding a month of hunting opportunity may increase deer  
7 harvest in areas where higher harvest are not  
8 biologically desirable in a rebuilding population where  
9 it is not consistent with management of wildlife and  
10 accordance with recognized scientific principles and  
11 where it would be detrimental to the long-term  
12 satisfaction of subsistence needs. The addendum to the  
13 Staff analysis references the heavy snow fall this past  
14 winter that pushed deer on to the beaches in some areas  
15 of Unit 3. Had the December season been open last year,  
16 excessive deer mortality from hunting could easily have  
17 occurred so we are concerned about the cumulative effects  
18 of all these different activities; snowfall, a rebuilding  
19 population, habitat loss, and even though the -- you  
20 know, there is a need to really look and see what the  
21 research that's going to be done will reveal about the  
22 effects of this past winter's snowfall in Southeast.

23

24 Thank you, Mr. Chairman.

25

26 CHAIRMAN FLEAGLE: Thank you, Terry.

27 Questions.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: Go to the InterAgency  
32 Staff Committee for comments.

33

34 MR. BUKLIS: Thank you, Mr. Chairman.

35 The InterAgency Staff Committee noted that the Staff  
36 analysis for WP07-06 as prepared for review by the  
37 Southeast Council was a complete and accurate evaluation  
38 of the information and of the proposal, and that the  
39 recommendation of the Council at that time was consistent  
40 with ANILCA, Section .805(c). However, given the new  
41 information regarding winter conditions, the Federal  
42 Subsistence Board may wish to defer this proposal for one  
43 year.

44

45 As was noted, with the addendum material,  
46 winter 2006/2007 had one of the highest snowfalls on  
47 record throughout Southeast Alaska. Limited observations  
48 suggest that this year's high snowfall occurred  
49 throughout Units 1B and 3 but did not follow the same  
50 pattern as the deep snows recorded during the early

1 1970s. Forest Service Staff working with the Department  
2 of Fish and Game will conduct deer mortality and pellet  
3 group surveys this spring in these units and based on  
4 those results a more up to date evaluation of the effects  
5 of this proposal could be developed later.

6

7                   Although the Council recommended a  
8 lengthening of the deer hunting season, based on the  
9 severe winter it may be prudent for the Board to defer  
10 this proposal for one year. This would allow the  
11 gathering and summarization of the data as I described  
12 and let Staff analyze the effects on deer conservation  
13 and allow for the Southeast Council to review these data  
14 and reconsider their recommendation based on the new  
15 information.

16

17                   Thank you, Mr. Chairman.

18

19                   CHAIRMAN FLEAGLE: Thank you. Board  
20 members open for discussion.

21

22                   (No comments)

23

24                   CHAIRMAN FLEAGLE: Bert Adams.

25

26                   MR. ADAMS: Mr. Chairman. I just failed  
27 to, you know, include this in my comments earlier. But  
28 at the time that the Council, you know, was considering  
29 this proposal, we felt that, you know, the position that  
30 we took, you know, was proper but with new evidence  
31 coming out about the weather and so forth, I think that,  
32 you know, needs to be considered as you do your  
33 deliberations as well because you know that is still out  
34 there to do some research and study on before I think we  
35 could go any further.

36

37                   So I just wanted to make that comment to  
38 you for when you go into your deliberations.

39

40                   Thank you.

41

42                   CHAIRMAN FLEAGLE: Discussion. Wini.

43

44                   MS. KESSLER: I would like to make a  
45 motion.

46

47                   CHAIRMAN FLEAGLE: Go ahead.

48

49                   MS. KESSLER: I'd move to defer this  
50 proposal until the next regulatory cycle. If I can get a

1 second I'll explain a little more.

2

3 MR. CESAR: Second.

4

5 CHAIRMAN FLEAGLE: Got a second, go  
6 ahead.

7

8 MS. KESSLER: It's essentially the same  
9 comments that Mr. Adams was just sharing with us. When  
10 the Council considered this proposal, it really wasn't  
11 known how severe this winter would turn out to be and we  
12 still don't know the effects that this very harsh winter  
13 might have on the deer populations of this area. So I  
14 really believe the prudent thing is to defer the proposal  
15 and that will allow the gathering and summarization of  
16 data on the estimated deer winter mortality. We can  
17 analyze those data and this would allow Council to review  
18 the results and reconsider the recommendation in light of  
19 the new information.

20

21 CHAIRMAN FLEAGLE: Board discussion.  
22 Judy.

23

24 MS. GOTTLIEB: Mr. Chair. Well, just  
25 sort of a procedural question. So maybe once your  
26 surveys and information are in and if there were not any  
27 signs of a significant decline, I guess the Council or  
28 others could ask for a special action for this Board to  
29 make some time later in the year then; is that correct?

30

31 CHAIRMAN FLEAGLE: Is that correct, Pete?

32

33 MR. PROBASCO: Mr. Chair. Ms. Gottlieb.  
34 That is, indeed, correct, the Board does have special  
35 action authority to make changes outside of the  
36 regulatory cycle.

37

38 CHAIRMAN FLEAGLE: Other comments.

39

40 (No comments)

41

42 CHAIRMAN FLEAGLE: I'm going to comment.  
43 I'm going to vote against deferring because I don't  
44 support the proposal, even with the proposed amendment.

45

46 My take on what has been presented here  
47 and I do give deference to the RAC's position but I do  
48 have a conservation issue with the fact that it sounds  
49 like the deer population in this 1B and Unit 3 is about  
50 maxed out at its utilization level currently. And even

1 with the elimination of the doubling of the bag limit,  
2 we're still proposing to add a 25 percent increase in  
3 time to the hunting season for the one portion in Unit 3.  
4 And a review of the harvest data shows that we are  
5 running roughly one deer per hunter and, again, it sounds  
6 to me like we're at a pretty sustainable level there with  
7 a lower population of deer than what we'd be happy with.

8  
9 By increasing that season 25 percent, you  
10 have an average of -- well, the range of hunters over the  
11 last eight years has been 892 to 1,224, I think you could  
12 potentially have a significant increase with that  
13 extension of the season and I don't support that.

14  
15 So I'm going to vote for the deferral  
16 because even if this comes back I'm going to vote against  
17 it. I guess that's a roundabout way to speak against the  
18 deferral but that's where I'm at.

19  
20 Other comments.

21  
22 (No comments)

23  
24 CHAIRMAN FLEAGLE: Question.

25  
26 (No comments)

27  
28 CHAIRMAN FLEAGLE: Are we ready for the  
29 question, I meant.

30  
31 (No comments)

32  
33 CHAIRMAN FLEAGLE: It sounds like we are,  
34 Pete, on the motion to defer Proposal 07-06, please poll  
35 the Board.

36  
37 MR. PROBASCO: Thank you, Mr. Chair. To  
38 defer Proposal WP07-06.

39  
40 Mr. Edwards.

41  
42 MR. EDWARDS: Nay.

43  
44 MR. PROBASCO: Mr. Fleagle.

45  
46 CHAIRMAN FLEAGLE: Nay.

47  
48 MR. PROBASCO: Ms. Gottlieb.

49  
50 MS. GOTTLIEB: Aye.

1 MR. PROBASCO: Mr. Cesar.  
2  
3 MR. CESAR: Aye.  
4  
5 MR. PROBASCO: Mr. Oviatt.  
6  
7 MR. OVIATT: Aye.  
8  
9 MR. PROBASCO: Ms. Kessler.  
10  
11 MS. KESSLER: Aye.  
12  
13 MR. PROBASCO: Mr. Chair. Motion  
14 carries, four/two.  
15  
16 CHAIRMAN FLEAGLE: Thank you. Proposal  
17 07-06 is deferred. We will now move on to Proposal 07-  
18 07, Dave Johnson.  
19  
20 MR. JOHNSON: Thank you, Mr. Chairman.  
21 Board. We're back to Unit 2 deer again. WP07-07 was  
22 submitted by the Klawock Cooperative Association, and  
23 requests changing the Black-tail deer antlerless hunting  
24 season to every other year or eliminate the hunting of  
25 antlerless deer in the unit completely.  
26  
27 The proponent expressed concern that the  
28 current Federal regulation, which allows harvest of  
29 female deer is having a negative effect on the overall  
30 deer population in Unit 2 and believes that the  
31 elimination of the antlerless deer season or hunting  
32 antlerless deer every other year would lead to an  
33 increase in the deer population and provide additional  
34 deer for subsistence users in the future.  
35  
36 On November 14th the Federal Staff met  
37 with the Klawock Cooperative Association and determined  
38 that eliminating the Unit 2 deer antlerless season was  
39 the priority for the Association's position, rather than  
40 every other year. The real issues include whether there  
41 is a decline in the deer population in Unit 2 and, if so,  
42 what role is being played in that decline by the harvest  
43 of antlerless deer and whether or not adopting the  
44 proposal would maintain increase or decrease subsistence  
45 opportunity, and also whether adopting the proposal would  
46 negatively impact subsistence users or other uses of deer  
47 in Unit 2.  
48  
49 The antlerless deer hunt in Unit 2 has  
50 been considered several times by this Board during the

1 2000, 2002, and 2004 regulatory cycles, and at that time  
2 it was determined there was no overall population  
3 concerns requiring elimination of the antlerless deer  
4 harvest in Unit 2.

5  
6 The current regulation provides for five  
7 deer harvest from July 24th until December 31st with the  
8 stipulation that if the Forest -- if there is a decline,  
9 the Forest supervisor is authorized to reduce harvest to  
10 four deer based on conservation concerns in consultation  
11 with Department of Fish and Game and the Chair of the  
12 Southeast Regional Advisory Council.

13  
14 The existing State regulation is for four  
15 bucks August 1 through December 31st. The Alaska State  
16 Game regulations permitted the harvest of antlerless deer  
17 from 1925 to 1978, that's Table 1. Between '78 and '95  
18 antlerless deer were not legally harvested except 1987.  
19 There's currently no antlerless season in the Alaska  
20 State hunting regulations for Unit 2 and the current  
21 Federal regulation, which allows the harvest of one  
22 antlerless deer in Unit 2 was established in 1995.

23  
24 Fish and Game and Forest Service Staff  
25 have expressed concerns for potential winter deer  
26 mortality throughout Southeast due to extreme high  
27 snowfall levels. Currently Unit 2 has received less  
28 snowfall and persistent snow accumulations than most of  
29 Southeast Alaska. However, local trappers and hunters  
30 have reported overall Unit 2 snow conditions do not  
31 appear to be severely limiting deer movement or winter  
32 feeding patterns. However, localized heavy snowfall  
33 conditions have been reported especially at higher  
34 elevations and on the north end of Prince of Wales  
35 Island.

36  
37 The Forest Service and the Department of  
38 Fish and Game have collected deer pellet data since the  
39 early '80s, Figure 1. This long-term monitoring effort  
40 was designed to provide an indication of overall deer  
41 population trends throughout the region. Currently a  
42 study involving DNA analysis of surveyed deer pellets is  
43 being conducted on Prince of Wales Island to estimate  
44 deer population abundance and monitor trends.

45  
46 Unit 2 has experienced a limited  
47 antlerless deer season in most years since 1955. At the  
48 present time Federal regulations allow subsistence  
49 hunters to take one antlerless deer between October 15th  
50 and December 31st. During the past 10 years, the

1 reported antlerless deer harvest has ranged from a low of  
2 75 in 2004 to a high of 231 in 2000. Unit 2 deer hunter  
3 success rates from 2003 to 2005 have shown a slight  
4 increase from the 10 year average. Also the number of  
5 hunter days per unit deer effort declined from the 10  
6 year average during those years which corresponds with  
7 and supports the slight increase in success rate.  
8 Harvest data from 2005 indicated a 63 percent hunter  
9 success rate and an average unit effort of 4.1 days per  
10 harvested deer.

11  
12 The effects of the proposal. The  
13 adoption of WP07-07 would prohibit rural hunters from  
14 harvesting antlerless deer would occur on alternate  
15 years. There are eligible subsistence hunters who object  
16 to antlerless deer harvest for a variety of reasons.

17  
18 The preliminary conclusion is to oppose  
19 the proposal. Variables such as road access, wolf and  
20 bear predation and weather patterns, levels of  
21 enforcement, public education and habitat changes are  
22 likely to impact the deer population and harvest levels  
23 much more than elimination of the antlerless season or  
24 allowing antlerless deer to be hunted every other year.  
25 The current information indicates the deer population  
26 across Unit 2 is imbalance with its habitat with areas  
27 reflecting stable or increasing deer populations in  
28 harvest and a few areas suggesting some level of decline.

29  
30 The preliminary conclusion is to oppose  
31 the proposal. And, again, in 2006 and 2007 the winter on  
32 Prince of Wales Island in Unit 2 is experiencing a  
33 considerable amount of deer pellet -- I'm sorry, deer  
34 mortality surveys with the Department of Fish and Game.  
35 To date nine winter mortality transects have been  
36 conducted on Unit 2 and these transects average from zero  
37 deer mortalities to a high of six deer mortalities. At  
38 this time it is too early to make any assumptions or  
39 conclusions that this winter's mortality is equal to or  
40 higher than normal Unit 2 winter deer mortality. Upon  
41 completion of the winter mortality transects and Unit 2  
42 deer pellet transects a further detailed report will be  
43 completed.

44  
45 And one additional item, Mr. Chairman, as  
46 the Board knows and as the Board directed, the Forest  
47 Service and Department of Fish and Game have been -- this  
48 is now in the second year of the required harvest  
49 reporting for all hunters in Unit 2 and the current  
50 reporting rate for this year, which is not yet completed,

1 is 69.5 percent and that was of 2,612 hunters that picked  
2 up harvest tickets to hunt in Unit 2, 1,815 have returned  
3 those. We just want to say thanks to the Department of  
4 Fish and Game who's working to get this increased harvest  
5 reporting with the Forest Service biologist there on  
6 Prince of Wales Island and we should have further  
7 information for your later in the spring.

8

9 Thank you.

10

11 CHAIRMAN FLEAGLE: Okay, thank you.  
12 Summary of written public comments. Bob.

13

14 DR. SCHROEDER: Mr. Chairman. There are  
15 none.

16

17 CHAIRMAN FLEAGLE: Public testimony.

18

19 MR. PROBASCO: Mr. Chair. We have no  
20 public testimony for this agenda item.

21

22 CHAIRMAN FLEAGLE: Regional Council  
23 recommendation -- oh, sorry, Bert, I'm looking over the  
24 wrong way, Bert Adams, please.

25

26 MR. ADAMS: Just briefly, the Council  
27 does have concerns with the accuracy of reporting of the  
28 number of does taken and we are requesting that Staff  
29 examine the options to improve reporting. And we are  
30 requesting that they report back to the Council at the  
31 fall 2007 meeting in Haines.

32

33 That's about all I have, Mr. Chairman.

34

35 Thank you.

36

37 CHAIRMAN FLEAGLE: Thank you, Bert.  
38 Alaska Department of Fish and Game comments. Terry  
39 Haynes.

40

41 MR. HAYNES: Mr. Chairman, thank you.  
42 The proposal to reduce or eliminate harvest of does is  
43 designed to increase deer populations and to provide  
44 additional deer for subsistence users in future years.

45

46 The proposal is consistent with the  
47 State's management for sustained yield which allows the  
48 harvest of only four bucks. The Southeast Regional  
49 Council and Federal Staff oppose both options proposed in  
50 this proposal.

1                   The Department supports removal of the  
2 antlerless deer season in Unit 2 as requested consistent  
3 with management for sustained yield. The Department  
4 would also support the alternative proposal to change the  
5 antlerless deer season to every other year in Unit 2  
6 which would be an improvement over the current Federal  
7 regulations which are inconsistent with recognized  
8 scientific principles. The Department has long been on  
9 record as opposing the harvesting of does in Unit 2. The  
10 State's management rationale for opposing doe harvest in  
11 this unit is based on information that wolves and black  
12 bears in the unit effectively keep the deer population  
13 below the carrying capacity of the available habitat.  
14 Harvesting does when more deer can be supported only  
15 serves to unnecessarily limit the numbers of deer, which  
16 ultimately leads to fewer deer being available for human  
17 harvest.

18  
19                   Typically the State regulations reserve  
20 doe hunts for situations where the goal is to reduce deer  
21 numbers because of the likelihood of compensatory deer  
22 mortality where populations are at or near carrying  
23 capacity. The latter situation was the case in Unit 4  
24 where deer occur at much higher level in the absence of  
25 wolves or black bears.

26  
27                   While harvesting of does throughout Unit  
28 2 may not affect the unit-wide status or trend of the  
29 overall deer population, harvest concentrated in and  
30 around easily accessible areas where resident hunters  
31 typically concentrate most of their hunting will  
32 undoubtedly reduce local deer numbers and their  
33 availability. As an example, harvesting does along the  
34 Prince of Wales road system may not be an issue for the  
35 island population, in general, but harvesting road  
36 accessible does could greatly affect numbers and  
37 availability of deer in heavily traveled parts of the  
38 island. Similarly, deer numbers may be affected near  
39 human population centers because of hunter focus and  
40 access. This issue was illustrated in the Unit 2 Deer  
41 Planning effort when several hunters testified that they  
42 either could not find deer or were having a harder time  
43 finding deer in some of their favorite hunting areas.

44  
45                   Current regulations are not consistent  
46 with management of wildlife in accordance with recognized  
47 scientific principles and are detrimental to the long-  
48 term satisfaction of subsistence needs, which would be  
49 resolved by adoption of this proposal.  
50

1 Thank you, Mr. Chairman.

2

3 CHAIRMAN FLEAGLE: Thank you, Terry.

4 Questions for the State.

5

6 Gary.

7

8 MR. EDWARDS: Mr. Chairman. Both for the  
9 State or the Forest Service.....

10

11 CHAIRMAN FLEAGLE: Microphone.

12

13 MR. EDWARDS: In looking at the data it  
14 appears that the doe harvest has contributed over the  
15 last 10 years somewhere around 5.6 percent of the total  
16 harvest, what -- and either one of you could answer this  
17 or maybe both of you could, what would you anticipate  
18 would take place with regards to the harvest if the  
19 proposal to not to have a doe hunt was -- occurred, would  
20 that -- would we expect the total harvest to remain the  
21 same and that difference to be picked up by bucks or what  
22 would we assume might happen as a result of going to this  
23 hunt?

24

25 CHAIRMAN FLEAGLE: Dave.

26

27 MR. JOHNSON: Gary. That's a good  
28 question, Gary, the variables involved with that, though,  
29 present some questions in terms of where the does are  
30 being harvested, which is another reason why the current  
31 cooperative harvest reporting is so critical that we know  
32 where antlerless deer are being taken.

33

34 Number 2, there are considerable  
35 questions about both wolves and bears in terms of the  
36 amount of predation that's occurring throughout the  
37 island.

38

39 Thirdly, the information that we're  
40 getting from the beach mortality transects hopefully will  
41 provide some additional information regarding overall  
42 condition of the herd, particularly with respect to the  
43 does as well as deer in general.

44

45 So you're talking about an area in Unit 2  
46 that's two million acres, so I think these other  
47 variables raise questions about whether or not you'd be  
48 able to see that depending on where the harvest would be  
49 occurring.

50

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Other questions.

4

5 MR. EDWARDS: I wondered if the State had  
6 a response, too.

7

8 CHAIRMAN FLEAGLE: Terry.

9

10 MR. HAYNES: Mr. Chairman. Mr. Edwards.  
11 The State doesn't allow the harvest of does so I wouldn't  
12 speculate how that might affect Federal harvest.

13

14 MR. EDWARDS: Let me just kind of follow  
15 up that question. So what you were saying is this annual  
16 roughly 136 does that are harvested, we don't really have  
17 good data showing where they came from within the unit,  
18 so we don't know if they are more heavily taken along the  
19 road system or more deeper into the interior. If you had  
20 that data, because in the analysis it indicates that in  
21 general the populations are stable with some declines in  
22 some areas, and if the data would show that that harvest  
23 is occurring in those areas, either along the road system  
24 or where you feel you have some declines, would that  
25 change your sort of view or your recommendation?

26

27 MR. JOHNSON: I still don't think it  
28 would change the recommendation because of the total  
29 number.

30

31 CHAIRMAN FLEAGLE: It does say on the  
32 analysis on Page 117 that the majority of the antlerless  
33 harvest occurs near the road system with 21 percent of  
34 the antlerless in wildlife analysis area 1422 Stoney  
35 Creek, Naukati, Sarkar, 18 percent in wildlife analysis  
36 area 1315 Kasaan, Thorne Bay, 10 percent harvested in  
37 wildlife analysis area 1421 Sweetwater Lake, Logjam Creek  
38 and the other 51 percent are well distributed across Unit  
39 2, so we do have some distribution data but I don't know  
40 if that's one year or if that's average.

41

42 And maybe while we're thinking for the  
43 answer to that, I've got a question as well. The data  
44 that we do have for harvest data and this was provided by  
45 the ADF&G shows from 2003 to 2005 total deer harvest in  
46 Unit 2 increasing by a thousand animals in two years, and  
47 that was following a three -- four year decline from  
48 roughly the same level of harvest as 2005, I just wonder,  
49 do you have any idea what the harvest might look like for  
50 2006? I realize that data isn't in but any preliminary

1 guesstimates based on, you know, anecdotal reports or  
2 anything else?

3

4 MR. HAYNES: Mr. Chairman. I've not  
5 discussed this with Staff in Southeast Alaska. It wasn't  
6 even something that occurred to me to see if they had any  
7 sense of what the harvest was doing this year compared to  
8 previous years, but it's certainly too early for us to  
9 provide hard data.

10

11 CHAIRMAN FLEAGLE: Okay, thanks. Yeah,  
12 it's really hard for me to make a decision based on the  
13 data we do have, I mean we have a hugely increasing  
14 harvest but not knowing what the population is really  
15 doing or what the harvest is in this last year, which has  
16 had a lot more snow than previous years. I understand  
17 that the proposal would take a conservative approach,  
18 which may be appropriate if that harvest increase is  
19 contributing to a decline in deer numbers, but I don't  
20 know that.

21

22 Anyway, those are just questions that I  
23 have and it doesn't sound like we're going to get a clear  
24 answer to. When we get into deliberations maybe we can  
25 discuss it further.

26

27 InterAgency Staff Committee comments.  
28 Larry.

29

30 MR. BUKLIS: Mr. Chairman. The Staff  
31 Committee comments are on Page 123. The Staff Committee  
32 found the analysis for this proposal to be complete and  
33 accurate and the recommendation of the Southeast Council  
34 to be consistent with ANILCA Section .805(c) but went on  
35 to note that winter 2006/2007 conditions might be a  
36 factor to consider. However, the Staff Committee noted  
37 that the winter conditions likely are less extreme south  
38 such as in Unit 2. And I think Mr. Johnson spoke to the  
39 extent he could on what we know about those conditions.

40

41 CHAIRMAN FLEAGLE: Board discussion.  
42 Wini.

43

44 MS. KESSLER: How many miles are there of  
45 roads in this area, is it about 3,000, something like  
46 that?

47

48 CHAIRMAN FLEAGLE: Dave.

49

50 MR. JOHNSON: Mr. Chair. Ms. Kessler.

1 It depends on your definition of a road but currently  
2 there are about 1,500 miles as I understand it of system  
3 and temporary roads that are currently on the system --  
4 3,000 is probably the -- closer to the number of roads  
5 that have been built and are either in some state of no  
6 longer being a road, grown in, water barred, but may  
7 still have a place on the land.

8

9 MS. KESSLER: But this average 136  
10 females taken is spread over that area?

11

12 MR. JOHNSON: That's my understanding.

13

14 MS. KESSLER: Okay.

15

16 MR. JOHNSON: Also I don't have the  
17 current numbers but at one point, not all that long ago,  
18 about 70 to 80 percent of the reported harvest to the  
19 State was within a 10 WAA area which is basically the --  
20 I don't know if we could bring a map up on the screen  
21 here for Unit 2, would show that that's basically the  
22 center portion of Prince of Wales. And also Zumiez  
23 Island and Heceta Island Kosciusko also all have -- are  
24 heavily roaded as well.

25

26 MS. KESSLER: Thank you.

27

28 CHAIRMAN FLEAGLE: Gary.

29

30 MR. EDWARDS: Mr. Chairman, one more  
31 question. If we look a little more long-term, could one  
32 say that what's going to take place with the habitat in  
33 Unit 2 and further development is probably going to have  
34 more impact on what takes place with regards to harvest  
35 either by subsistence or non-subsistence users.

36

37 MR. JOHNSON: Thank you, Mr. Chair.  
38 Gary. A couple things. There's a significant effort  
39 ongoing right now for a significant amount of restoration  
40 work that's actually already started. We just had a  
41 presentation this past week from the Nature Conservancy  
42 along with several other potential partners on work that  
43 has taken place and then additional work that's planned.  
44 So the other factors include the high-speed -- not, high-  
45 speed, but the increased use from the new ferry system  
46 that's both on the north end and on the west side, you  
47 know, from a negative standpoint. From a positive  
48 standpoint, a lot of the original concerns that were  
49 raised about effects on deer and deer habitat have not  
50 materialized because the two long-term sales that were

1 driving a lot of the volume -- or the harvest -- the  
2 timber harvest are gone, so in terms of those effects,  
3 you know, they've somewhat gone away. But in the future  
4 there will be some additional opportunity for more  
5 cooperation with the Native corporations as well on young  
6 growth restoration work that will be needed.

7

8 MS. GOTTLIEB: Mr. Chair.

9

10 CHAIRMAN FLEAGLE: Judy.

11

12 MS. GOTTLIEB: Just maybe a little  
13 history refresher on the idea of taking antlerless deer.  
14 And I assume this is something -- it looks like something  
15 that the Federal Board passed before we formed the  
16 stakeholder's group for Unit 2, but then I assume but  
17 this is where I'd like some verification, that those  
18 discussions continued during that stakeholder's group and  
19 was part of the package that was developed by the group.

20

21 MR. JOHNSON: What was the question,  
22 again?

23

24 MS. GOTTLIEB: I'm just looking to find  
25 out if the stakeholder's group kind of vetted this  
26 concept of being able to take antlerless deer.

27

28 MR. JOHNSON: The answer is yes.

29

30 CHAIRMAN FLEAGLE: More discussion.

31

32 (No comments)

33

34 CHAIRMAN FLEAGLE: I guess I'll jump in.  
35 I'm really nervous about this deer population and the  
36 trends. And I think that the intent of the proposal is a  
37 good one, it's to try to control a problem before it  
38 happens.

39

40 Looking at some of the graphs, now these  
41 graphs are not typically -- well, anyway, they're not as  
42 clear as -- I won't even say that -- what I can ascertain  
43 from the graphs here is that we have had a huge increase  
44 in the harvest over two years that we know of, you know,  
45 obviously I know that these are estimated but we do have  
46 an increase from 2003 to 2005 of a thousand animals, from  
47 1,800 to 2,800. Looking at another graph on Page 118,  
48 what I was looking for was hunter numbers and we don't  
49 have that in the graphs, evidently we use here hunting  
50 trips versus successful trips, okay, so the hunting trips

1 increased by a thousand. So not knowing what the trends  
2 this year are showing, even anecdotely, I can only assume  
3 that because the hunter trips have increased by thousand  
4 and the harvest have increased by a thousand that we  
5 could be potentially doing an overharvest situation here.  
6 And with this year's unknown snow data my immediate  
7 wildlife conservation action would be to put the brakes  
8 on now, be cautious and if we find in a couple of years  
9 that it was unwarranted, maybe relieve it.

10

11 But anyway that's where I'm leaning, and  
12 I'm just real uncomfortable about this situation with the  
13 data that we have.

14

15 Gary.

16

17 MR. EDWARDS: Mr. Chairman. I appreciate  
18 that. But I guess what I was trying to get at in one of  
19 my earlier questions is, is if we would do that, would  
20 that 136 does still get taken up, so would the harvest  
21 number really not change, instead of killing 136 does,  
22 they kill 136 more bucks and you have the same harvest.  
23 That's what I was just trying to understand what would  
24 actually take place on the ground, what affect would this  
25 have on the overall harvest. I don't know if you could  
26 automatically assume that it's going to reduce the  
27 harvest by 136 animals because you still have -- you can  
28 still go out and hunt, so if you don't get your doe, why  
29 wouldn't you be taking -- you just got to hunt a little  
30 harder and you can get a buck, so you're harvesting the  
31 same number.

32

33 Ultimately it'd come down to what the  
34 ratio would be. And if we're interested that we're  
35 taking too many then it seems to me that we ought to be  
36 reducing the bag limit maybe more so than anything else,  
37 right.

38

39 CHAIRMAN FLEAGLE: Well, I can see where  
40 you would assume that but we don't know, we don't have  
41 adequate data to make that assumption. I think that the  
42 first step is to protect your breeding stock. And by  
43 eliminating the antlerless you're at least taking a  
44 proactive step.

45

46 I mean that's the way I see it, anyway.  
47 I don't know if it would change the overall harvest and I  
48 don't even know if we have a dangerous harvest level.  
49 I'm just seeing effort has increased, harvest has  
50 increased and we don't know what the population is doing.

1 It shows that it tends to increase over the last couple  
2 of years by the deer pellet densities but I just don't  
3 have a clear -- maybe Dave does.

4

5 Dave, go ahead.

6

7 MR. JOHNSON: Mr. Chairman. Board.  
8 There's no discernible long-term trends here with the  
9 deer populations in Unit 2. One of the factors that  
10 could be considered by the Board is that part of the  
11 reason for the increased harvest and the increased  
12 numbers is because this is the first time we've had  
13 required deer harvest reporting in Unit 2. So prior to  
14 that you had volunteer reporting and I can't speak to the  
15 numbers that the State got back during the voluntary  
16 reporting but we feel much better with the numbers that  
17 we do have maybe more reflective of what's been going on  
18 anyway in the past.

19

20 We don't know that either right now,  
21 but.....

22

23 CHAIRMAN FLEAGLE: It gets muddier as we  
24 go. Ken Taylor.

25

26 MR. TAYLOR: Thank you, Mr. Chairman. I  
27 think when the State is facing a situation where we have  
28 a multi-predator single prey situation like we do in this  
29 unit, and we have also winter mortality due to deep snows  
30 and we're facing a record snowfall this winter, we tend  
31 to be conservative.

32

33 I think the management of this particular  
34 population has been -- we've recognized that this  
35 population is under carrying capacity and when we have a  
36 population in that state, we typically don't have a  
37 harvest of the reproductive segment of the population.  
38 If we do it's usually very limited and for specific  
39 reasons.

40

41 Thank you.

42

43 CHAIRMAN FLEAGLE: George Oviatt.

44

45 MR. OVIATT: Thank you, Mr. Chairman.  
46 Yeah, I have real questions. I mean this does sound like  
47 a fairly conservative proposal, I mean to go with a doe  
48 hunt every other year. And we increased the hunt to five  
49 deer last year and you can see that they pretty much took  
50 those five deer too. And with the heavy snowfall, I,

1 too, am questioning whether -- why we shouldn't support  
2 this proposal.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: At this time we don't  
7 even have a motion in front of us so just still kind of  
8 deliberating the data, so are we prepared to have a  
9 motion or do you have some more questions Wini.

10

11 MS. KESSLER: I was going to have more  
12 discussion but he's got his hand up so I'll wait and be  
13 recognized.

14

15 CHAIRMAN FLEAGLE: Dave.

16

17 MR. JOHNSON: Mr. Chair. Board. I would  
18 just reiterate in terms of what the data shows thus far  
19 this year, nine winter mortality transects have been  
20 conducted on Unit 2 during April. These transects have  
21 averaged from zero deer mortalities being detected to a  
22 high of six deer mortalities. At this time it is too  
23 early to make any assumptions or conclusions about the  
24 winter mortality.

25

26 And, again, I would just reiterate that  
27 the Forest Service and ADF&G Staff are out there as we  
28 speak conducting the mortality transects with the  
29 protocols established by the State and by the end of the  
30 spring here we should have much better data to support  
31 what effect the winter had on the deer in Unit 2.

32

33 CHAIRMAN FLEAGLE: Thank you, Dave.

34 Wini.

35

36 MS. KESSLER: I guess I look at the  
37 numbers a little different.

38

39 You know, if we had evidence that this  
40 population was declining, the biologist in me would  
41 scream that the first thing you want to do is cease the  
42 antlerless harvest but we don't have any evidence that  
43 the population is declining. It appears to be stable.  
44 So from that standpoint we don't have evidence of a  
45 conservation concern.

46

47 As well, when I put the numbers in  
48 perspective, 136 female deer per year, considering  
49 there's about 45,000, 55,000 deer in the population, so  
50 we're talking about less than one-half of one percent of

1 the total estimated population that is harvested is  
2 antlerless, I mean that's a pretty small figure.

3

4 As well, you know, I -- this is not  
5 scientific data I have to offer you, but I was on Prince  
6 of Wales Island last weekend, I guess I went there  
7 expecting the worst case scenario deer-wise, and I've got  
8 to say that the deer I saw and the deer sign I saw just  
9 made me feel a lot better. So for whatever that's worth  
10 that personal vignette.

11

12 CHAIRMAN FLEAGLE: There's the anecdotal  
13 information we were looking for.

14

15 (Laughter)

16

17 CHAIRMAN FLEAGLE: Ralph Lohse.

18

19 MR. LOHSE: Mr. Fleagle. I've been  
20 looking at these charts too and I read something totally  
21 different into them. I'll take that amount of deer, that  
22 female amount of deer that's taken right there and just  
23 knowing what actually happens out in the field, I'm just  
24 wondering if what you have here is you have a reported  
25 doe harvest that you might have had the same take if it  
26 was a bucks only season but the does wouldn't have been  
27 reported, which is, as we all know, something that does  
28 happen out in the field, people do shoot a doe when they  
29 were trying to shoot a buck, and if there's no doe season  
30 it goes down as buck or doesn't get reported at all. So  
31 you're looking at, like she said, less than one percent.

32

33 But let's take a look at those graphs on  
34 Page 119, hunter days per deer, top one, the success rate  
35 goes up, we have less hunter days per deer taken, that's  
36 usually not a symbol of a declining population. Deer per  
37 trip, we have more deer taken per trip, that's usually  
38 not a symbol of a declining population.

39

40 Both of these graphs indicate to me that  
41 you've got a population that's growing right there. And  
42 like she was saying before about the doe harvest, which  
43 is within that small percentage, that small percentage  
44 could be the amount of does that would have been taken  
45 anyhow or at least a portion of it.

46

47 So I don't see where you have a  
48 conservation concern. I'm not saying one way or the  
49 other how to vote on this, but those graphs don't tell me  
50 a bad story, they tell me a good story about the deer

1 down there.

2

3 CHAIRMAN FLEAGLE: Let's take a break, 10  
4 minutes, and then we'll come back and see if we can't get  
5 a motion on the floor.

6

7 (Off record)

8

9 (On record)

10

11 CHAIRMAN FLEAGLE: Good afternoon, we're  
12 back in session. And we are now still proceeding with  
13 WP07-07 with much discussion but no motions yet.

14

15 Wini.

16

17 MS. KESSLER: I'm ready to make a motion.

18

19 CHAIRMAN FLEAGLE: Okay.

20

21 MS. KESSLER: I move to support the  
22 Southeast Alaska Regional Advisory Council and oppose  
23 this motion. And if there's a second I'll explain  
24 further.

25

26 CHAIRMAN FLEAGLE: Can I get a second.

27

28 MS. GOTTLIEB: I'll second.

29

30 CHAIRMAN FLEAGLE: Okay, we've got a  
31 second. Judy seconded, go ahead, Wini.

32

33 MS. KESSLER: Okay. Again, as I already  
34 pointed out, you know, we really have a population that  
35 for all indications appears to be stable. We don't have  
36 evidence of a declining population which means there's  
37 not a conservation concern here. And, as well, Ms.  
38 Gottlieb brought this up, we've had a really successful  
39 cooperative deer planning exercise here and this  
40 antlerless doe -- or antlerless deer hunt was part of  
41 that package. And I really do not see a reason, based on  
42 the information we have to date, not to support the  
43 recommendation of the Southeast Council.

44

45 Thank you.

46

47 CHAIRMAN FLEAGLE: Other comments. Judy.

48

49 MS. GOTTLIEB: Mr. Chairman. I want to  
50 thank Diane for bringing me a copy of the report on Unit

1 2 Deer Management, which was by the Deer Planning  
2 Subcommittee of the Southeast Regional Advisory Council,  
3 which, you know, one of the recommendations that they  
4 made was that there be no major changes to Unit 2 deer  
5 harvest management. So, you know, in respect to that and  
6 I think we have very excellent information on Page 120 on  
7 the effects of this proposal, and that includes the  
8 communication from, not only, I assume Forest Service but  
9 Fish and Game folks that show about up to 450 to 550  
10 antlerless deer could be harvested without impacting the  
11 populations and that, as it says in the third paragraph,  
12 although the buck only harvest may alter the buck/doe  
13 ratios and age structure of the male segment of  
14 population it does not reduce the reproductive potential  
15 of the population.

16

17 So I'm very comfortable with what the  
18 Forest Service is telling us and what the Regional  
19 Advisory Council has recommended as well.

20

21 CHAIRMAN FLEAGLE: Other comments.

22

23 (No comments)

24

25 CHAIRMAN FLEAGLE: My initial concerns  
26 have been relieved, somewhat, by a comment that was laid  
27 on the record just prior to the break. And that there  
28 has been an effort to increase reporting, and that the  
29 results in apparent increase in harvest and apparent  
30 increase in effort may have just been a reflection of  
31 that increase in reporting. So I'm willing to let things  
32 go and see how this plays out into the future. My  
33 concerns aren't as high as they were, but it still does  
34 raise some red flags when you start looking at those bars  
35 jumping like that.

36

37 Anyways, any other comments.

38

39 (No comments)

40

41 CHAIRMAN FLEAGLE: Are we ready for the  
42 question. Question on 07, Pete.

43

44 MR. PROBASCO: Thank you, Mr. Chair.  
45 Proposal WP07-07 to reject the proposal as recommended by  
46 the Southeast Alaska Subsistence Regional Advisory  
47 Council.

48

49 Mr. Fleagle.

50

1 CHAIRMAN FLEAGLE: Yes.  
2  
3 MR. PROBASCO: Ms. Gottlieb.  
4  
5 MS. GOTTLIEB: Aye.  
6  
7 MR. PROBASCO: Mr. Eastland for Mr.  
8 Cesar.  
9  
10 MR. EASTLAND: Aye.  
11  
12 MR. PROBASCO: Mr. Oviatt.  
13  
14 MR. OVIATT: Aye.  
15  
16 MR. PROBASCO: Ms. Kessler.  
17  
18 MS. KESSLER: Aye.  
19  
20 MR. PROBASCO: And Mr. Edwards.  
21  
22 MR. EDWARDS: Aye.  
23  
24 MR. PROBASCO: Motion carries, six/zero.  
25  
26 CHAIRMAN FLEAGLE: Thank you, Pete. We  
27 now move into Proposal WP07-15 and move to Dave Johnson  
28 for the analysis.  
29  
30 MR. PROBASCO: 08.  
31  
32 CHAIRMAN FLEAGLE: Oh, no. Okay, we got  
33 a problem here, we got two different agendas and the old  
34 agenda shows 08 and it wasn't shown as one being moved to  
35 the consent agenda, the new agenda does not show 08.  
36  
37 Larry.  
38  
39 MR. BUKLIS: Mr. Chairman. I noted this  
40 morning with the original agenda that 08 should be shown  
41 on the consensus agenda only and it was shown on both  
42 listings. But regardless of that point, that's all been  
43 superseded by the April 30th, 9:30 agenda, handed out  
44 about an hour ago and that one shows that you're correct,  
45 the next non-consensus proposal after No. 7 is No. 15.  
46  
47 CHAIRMAN FLEAGLE: Okay, Pete, catch up.  
48  
49 (Laughter)  
50

1 MR. PROBASCO: I will.

2

3 (Laughter)

4

5 CHAIRMAN FLEAGLE: Fifteen. Dave.

6

7 MR. JOHNSON: Thank you, Mr. Chairman.

8 Proposal WP07-15 was submitted by Elijah Winrod and  
9 requests that the Federal regulations for wolf trapping  
10 season in Unit 2 be changed from November 15th to March  
11 15th to November 15th through March 31st. The proponent  
12 expressed concern that the current Unit 2 State wolf  
13 trapping regulations are not aligned with State wolf  
14 trapping regulations.

15

16 The existing Federal regulation has no  
17 limit for trapping in Unit 2 and, again, the Forest  
18 supervisor may close the Federal hunting and trapping  
19 season in consultation with the Department of Fish and  
20 Game and the Chair of the Southeast Alaska Subsistence  
21 Regional Advisory Council when the combined Federal/State  
22 harvest quota is reached.

23

24 Additional changes that we encountered  
25 when we began the analysis is the requirement on the  
26 State side for retaining the radius and ulna of the left  
27 foreleg was dropped some years ago and so we're also  
28 requesting that that provision be dropped as well in the  
29 current proposal.

30

31 The existing State regulation also  
32 provides for no limit but the season is from December 1st  
33 through March 31st. The Alexander Archipelago wolf has  
34 been identified as a potentially distinct sub-species of  
35 the grey wolf. Conservation concerns over the short-term  
36 and long-term viability of wolf populations in Southeast  
37 Alaska led to a petition to list the Alexander  
38 Archipelago wolf as a threatened species under the  
39 Endangered Species Act. The decision by the U.S. Fish  
40 and Wildlife Service not to list the wolf was based, in  
41 part, on species specific conservation strategies placed  
42 in the Tongass Forest Plan revision and this identified  
43 three strategies to address viability concerns. One was  
44 deer habitat capability, secondly a roadless reserve  
45 system, and third a road density management where wolf  
46 mortality concerns exist.

47

48 Wolf harvest data from trapping and  
49 hunting in Unit 2 is obtained from the Department of Fish  
50 and Game from required sealing of wolf pelts and harvest

1 data from Unit 2 from '91 to 2005 is presented in Table  
2 2. The harvest quota has been used by the State since  
3 1997 to ensure that only a certain percentage of the  
4 estimated wolf population is harvested in Unit 2 in order  
5 to maintain population viability.

6

7 This proposal would likely result in an  
8 additional two weeks of opportunity for subsistence  
9 trappers to harvest wolves. Accepting Proposal WP07-15  
10 will align State and Federal Unit 2 wolf trapping and  
11 wolf hunting season closure dates.

12

13 The preliminary conclusion is to support  
14 the proposal with modification to remove the four leg  
15 requirements. Again, extending the subsistence trapping  
16 season should not increase the total number of wolves  
17 harvested in Unit 2 because subsistence trappers also  
18 operate under State regulations and the State wolf  
19 trapping season is opened under March 31st. This  
20 proposal will decrease complexity and confusion in the  
21 trapping regulations by aligning closing dates of the  
22 State and Federal wolf trapping regulations. The  
23 combined Federal/State harvest quota currently at 37  
24 percent of the harvest of the estimated population will  
25 close hunting and trapping seasons in Unit 2 once the  
26 harvest quota is reached.

27

28 Currently there are no wolf research  
29 projects ongoing or planned that would require  
30 subsistence users to collect the radius and ulna of the  
31 foreleg of a harvested wolf.

32

33 Some additional items that should be  
34 noted is that under State trapping regulations it  
35 requires trappers to place a sign identifying the trap  
36 locations. Trappers wanting to trap the additional two  
37 weeks after the Federal season is closed may have to  
38 travel considerable distance to meet the requirements and  
39 with gas prices being as high as they are it may be  
40 somewhat prohibitive. Also wolf trappers by nature tend  
41 to avoid visiting trap sites except to remove an animal  
42 or to remake the set. Increased human presence to place  
43 signs in close proximity to the sets increases potential  
44 for human scent and causing wolves to avoid the location.

45

46 Thank you, Mr. Chairman.

47

48 CHAIRMAN FLEAGLE: Thank you, Dave.

49 Questions.

50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: We now go to the  
4 summary of written public comments. Bob Schroeder.

5

6 DR. SCHROEDER: Mr. Chairman. We have no  
7 written public comments for this proposal.

8

9 CHAIRMAN FLEAGLE: Public testimony.

10

11 MR. PROBASCO: Mr. Chair. We have no  
12 public testimony for this agenda item.

13

14 CHAIRMAN FLEAGLE: And Bert Adams for the  
15 Regional Council recommendation.

16

17 MR. ADAMS: Thank you, Mr. Chairman. Mr.  
18 Johnson did a pretty good job of explaining the rationale  
19 for this proposal, we do support it.

20

21 The requirement to turn in the left  
22 foreleg radius and ulna bones was put into place to allow  
23 study of Unit 2 wolf populations, and so that portion of  
24 the study is completed and the requirement is no longer  
25 needed to serve its purpose.

26

27 Thank you, Mr. Chairman.

28

29 CHAIRMAN FLEAGLE: Thank you, Bert.  
30 Alaska Department of Fish and Game. Terry Haynes.

31

32 MR. HAYNES: Thank you, Mr. Chairman.  
33 The Department opposes the proposal as written because  
34 lengthening the season is inappropriate in view of the  
35 sensitivity and concerns associated with the Alexander  
36 Archipelago wolf in Unit 2 and the previous petition to  
37 list the species as threatened under the Endangered  
38 Species Act.

39

40 Statewide State regulations at 5 AAC  
41 92.008.1 require the Department to limit the total  
42 harvest of wolves in Unit 2 to no more than 30 percent of  
43 the unit-wide pre-season population as estimate by the  
44 Department.

45

46 Although not the preferred option, the  
47 Department would not object to modification of the  
48 proposal to open the wolf trapping season in Unit 2 on  
49 December 1 and to eliminate the requirement in Units 1  
50 through 5 that the foreleg remain attached to the hide

1 until the wolf is sealed. This modification would align  
2 the Federal and State wolf trapping seasons in Unit 2.  
3 The Department is advised that the proponent informed  
4 Federal Staff that he does not oppose the seasoning  
5 opening date being changed from November 15 to December 1  
6 if the closing date is extended from March 15 to March  
7 31.

8  
9 No evidence is presented in the Staff  
10 analysis justifying the need to extend the Federal season  
11 by two weeks to provide a meaningful preference for  
12 Federally-qualified subsistence users. Additionally  
13 opening the Federal season on December 1st instead of  
14 November 15th will provide greater value to harvested  
15 wolves because pelts are of higher quality in December.

16  
17 Thank you, Mr. Chairman.

18  
19 CHAIRMAN FLEAGLE: Thank you, Terry.  
20 Questions for the State.

21  
22 (No comments)

23  
24 CHAIRMAN FLEAGLE: InterAgency Staff  
25 Committee comments. Larry.

26  
27 MR. BUKLIS: Mr. Chairman. The Staff  
28 Committee didn't have any specific comments other than to  
29 find, again, that this analysis was complete and  
30 accurate, and that the recommendation of the Southeast  
31 Council was consistent with ANILCA Section .805(c).

32  
33 CHAIRMAN FLEAGLE: Thank you, Larry.  
34 Board discussion. Gary.

35  
36 MR. EDWARDS: Mr. Chairman. I guess a  
37 couple questions for the State. The process of  
38 determining when the 30 percent threshold is reached is  
39 what?

40  
41 CHAIRMAN FLEAGLE: State. Terry.

42  
43 MR. HAYNES: Mr. Chairman. In recent  
44 years the Department has had a research project going on  
45 in Unit 2 that was estimating the number of wolves that  
46 were present so there would be a population estimate that  
47 was available to use to determine what the 30 percent  
48 would be.

49  
50 MR. EDWARDS: I understand that. I guess

1 what I was asking is when you know you reach that, is  
2 that just based upon the sealing information and is there  
3 some lag time between that and actually then closing the  
4 season, is that what you do, close the season when the 30  
5 percent is reached?

6

7 MR. HAYNES: That's the intent.

8

9 MR. EDWARDS: Okay. So now I guess what  
10 do we do when the 30 percent is reached, is the season on  
11 wolves closed once that is reached by both -- under  
12 Federal as well as under State?

13

14 CHAIRMAN FLEAGLE: Dave Johnson.

15

16 MR. JOHNSON: Mr. Chairman. Gary. Yes.  
17 Again, through consultation Forest Supervisor, ADF&G and  
18 consultation with the Chair of the Southeast Regional  
19 Advisory Council closes the season once it reaches the  
20 threshold of 30 percent.

21

22 MR. EDWARDS: Thank you, David. And then  
23 one other question for the State. You had a -- you said  
24 you could go along with kind of a modified proposal and  
25 that was backing off the 15 days on the end of the season  
26 and adding them to the front of the season; isn't that  
27 correct, and what does that do for you in your overall  
28 concerns about trying to keep the harvest down?

29

30 CHAIRMAN FLEAGLE: State.

31

32 MR. HAYNES: Mr. Chairman. We would  
33 prefer that option because that would -- you know, the  
34 proponent wasn't asking for additional time according to  
35 the information we have, the proponent wanted to shift  
36 the season dates. So we think that's the preferable  
37 option. And it would correspond with the State seasons  
38 if we had a December 1 to March 31 season. So that would  
39 be our preference.

40

41 CHAIRMAN FLEAGLE: Other questions.

42 Discussion.

43

44 MS. GOTTLIEB: Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Okay, Judy and then  
47 I'll come back to you Dave -- Judy.

48

49 MS. GOTTLIEB: No, go ahead.

50

1 CHAIRMAN FLEAGLE: Dave.  
2  
3 MR. JOHNSON: Mr. Chairman. Board. If  
4 you look on Page 161 in terms of reaching this harvest  
5 threshold you'll see by year the number of wolves that  
6 have been taken and I would just note that very few years  
7 has the quota been reached, if at all.  
8  
9 CHAIRMAN FLEAGLE: Judy.  
10  
11 MS. GOTTLIEB: Thanks. I guess it always  
12 seem like we get into what did the proponent mean or what  
13 did they originally say but at this point, I believe,  
14 Keith can help me out here if this is not right, I mean  
15 we're dealing with what the Council has recommended and  
16 so that kind of needs to be the focus of our discussion  
17 here.  
18  
19 CHAIRMAN FLEAGLE: And contained therein  
20 is a motion. Wini, are you ready for one.  
21  
22 MS. KESSLER: I'm ready.  
23  
24 CHAIRMAN FLEAGLE: Okay. Go ahead,  
25 please.  
26  
27 MS. KESSLER: I move to adopt WP07-15  
28 with modification as recommended by the Southeast Alaska  
29 Regional Advisory Council, and that modification is to  
30 remove the foreleg requirement. And if there's a second  
31 I will explain further.  
32  
33 MR. CESAR: I'll second it.  
34  
35 CHAIRMAN FLEAGLE: Okay, we got a second  
36 by Niles. Welcome back. Go ahead.  
37  
38 MS. KESSLER: Well, quite simply the  
39 Council's recommendation is consistent with ANILCA  
40 Section .805(c). There really is no reason for  
41 conservation purposes to oppose the proposal and,  
42 further, because there is a guideline harvest level or  
43 quota established of approximately 30 percent of the  
44 wolves on Prince of Wales every year, this change in  
45 regulation would not result in any wolves being harvested  
46 beyond that guideline level.  
47  
48 CHAIRMAN FLEAGLE: Further discussion.  
49  
50 (No comments)

1                   CHAIRMAN FLEAGLE: Sounds like you got a  
2 winner there, Wini.  
3  
4                   Everybody ready for the question.  
5 Question's recognized. Pete, on the proposal, please  
6 poll the Board.  
7  
8                   MR. PROBASCO: Thank you, Mr. Chair.  
9 Proposal WP07-15 to adopt with modification consistent  
10 with the recommendation of the Southeast Alaska  
11 Subsistence Regional Advisory Council:  
12  
13                   Any wolf taken in Unit 2 must be sealed  
14 within 30 days of harvest.  
15  
16                   Ms. Gottlieb.  
17  
18                   MS. GOTTLIEB: Aye.  
19  
20                   MR. PROBASCO: Mr. Cesar.  
21  
22                   MR. CESAR: Aye.  
23  
24                   MR. PROBASCO: Mr. Oviatt.  
25  
26                   MR. OVIATT: Aye.  
27  
28                   MR. PROBASCO: Ms. Kessler.  
29  
30                   MS. KESSLER: Aye.  
31  
32                   MR. PROBASCO: Mr. Edwards.  
33  
34                   MR. EDWARDS: Nay.  
35  
36                   MR. PROBASCO: Mr. Fleagle.  
37  
38                   CHAIRMAN FLEAGLE: Aye.  
39  
40                   MR. PROBASCO: Motion carries, five/one.  
41  
42                   CHAIRMAN FLEAGLE: Thank you, Pete. And  
43 before we dispense with the Southeast Alaska crew, Pete.  
44  
45                   MR. PROBASCO: Mr. Johnson, I believe  
46 we're done; is that correct?  
47  
48                   (No comments)  
49  
50                   MR. PROBASCO: Are we done with

1 Southeast?

2

3

MR. JOHNSON: That's correct.

4

5

MR. PROBASCO: Well, not totally.

6

7

(Laughter)

8

9

MR. PROBASCO: A while back I got this  
10 email from a gentleman that sometimes when he's on  
11 vacation you're not sure if he's serious or not but we  
12 found out that Dr. Schroeder has announced his retirement  
13 from Federal service to occur sometime this summer and  
14 Mr. Schroeder, Dr. Schroeder, on behalf of the Board,  
15 we'd like to recognize your work not only as a Council  
16 coordinator, which unsolicited comments from the Council  
17 members, greatly appreciate your service, but also as a  
18 Forest Service Staff anthropologist. You bring a degree  
19 of expertise from your past, and add to the science,  
20 that's greatly appreciated on this Board. I think you've  
21 been here almost seven years with our program and with  
22 the Federal Subsistence Program and we appreciate your  
23 dedication.

24

25

26

27

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I know that your colleagues in the near  
future plan on the opportunity to get to roast you and  
Mr. Schroeder we wish you the best on your motorcycle  
trips and hopefully you'll be able to get that snow  
chariot one of these days.

Dr. Schroeder, thank you.

(Applause)

CHAIRMAN FLEAGLE: Comments.

DR. SCHROEDER: Well, just thanks very  
much and I've truly enjoyed my time with the Federal  
Subsistence Program, especially getting to know the Staff  
in Anchorage and the other people who work with the  
program. And then, in particular, just the opportunity  
that it's given me to get some perspective on what's  
going on in rural Alaska, both in my home region in  
Southeast Alaska, where I know I'll continue to interact  
with my friends down there, but also to have briefer  
contacts with folks from other regions around the state  
and I really appreciate the super volunteer work that  
people are doing to make this program a success.

And, finally, we do get balled up in

1 regulatory decisions, as we should, and in policy  
2 questions, but I would point out that something is  
3 working in the program and that from my perspective, and  
4 working on subsistence for a couple of decades now,  
5 somehow or another, possibly against the odds, things  
6 seem to be alive and well in rural Alaska.

7

8                   So I thank all of you for that.

9

10                   CHAIRMAN FLEAGLE: Thank you, Bob. Let's  
11 take a brief stand down -- okay, before we do that, let's  
12 turn to Bert Adams.

13

14                   MR. ADAMS: Thank you, Mr. Chairman. I'd  
15 just kind of like to publicly also acknowledge the value  
16 that Dr. Schroeder has provided, you know, to the  
17 Southeast Regional Advisory Council. I really did not  
18 fully understand the importance of a coordinator until I  
19 became the Chair. Now, we are all volunteers and we  
20 don't get paid for what we do although we do spend a  
21 tremendous amount of time, you know, with preparation for  
22 coming to meetings like this and also, you know, for the  
23 Regional Advisory Council meetings, and that person is  
24 very, very important, and I hope that his replacement  
25 will be just as good as he is because he has provided me  
26 with all of the information that I have been sharing with  
27 you, you know, over the last couple of times that I have  
28 been at your meetings. And being able to put those ideas  
29 and concepts together, you know, is very, very important  
30 and to be accurate is really crucial.

31

32                   And I just wanted to let you know and Dr.  
33 Schroeder know how I appreciate the great work that he  
34 has done for us.

35

36                   Gunalcheesh. Gunalcheesh.

37

38                   CHAIRMAN FLEAGLE: Thank you. All right,  
39 let's step down just briefly to allow the Staff change  
40 and we'll come back in five minutes.

41

42                   (Off record)

43

44                   (On record)

45

46                   CHAIRMAN FLEAGLE: Good afternoon, we're  
47 back in session and we now move to the Southcentral  
48 region of Alaska, Proposal 07-16a and we have new Staff  
49 at the table and we'll call on Donald Mike, introductions  
50 please.

1 MR. MIKE: Donald Mike, Council  
2 coordinator.

3  
4 MS. WILLIAMS: Liz Williams,  
5 anthropologist, OSM.

6  
7 MR. RISDAHL: Greg Risdahl, wildlife  
8 biologist, OSM.

9  
10 CHAIRMAN FLEAGLE: Okay, welcome. Go  
11 ahead and give the Staff analysis for 16a please and is  
12 this Liz that's going to start out.

13  
14 MS. WILLIAMS: This is Liz Williams.

15  
16 CHAIRMAN FLEAGLE: Okay.

17  
18 MS. WILLIAMS: Proposal WP07-16a  
19 submitted by the Ninilchik Traditional Council requests a  
20 customary and traditional use determination for black  
21 bear in Unit 15 for Ninilchik residents. Currently  
22 there's no Federal subsistence priority in Unit 15A and B  
23 for black bear. There is a customary and traditional use  
24 determination for black bear in Unit 15 for residents of  
25 Port Graham and Nanwalek.

26  
27 When the Federal Subsistence Management  
28 Program took over management in 1990 on Federal lands the  
29 State's customary and traditional use determinations were  
30 adopted but there were no State subsistence regs, really,  
31 on the Kenai Peninsula because they consider it a non-  
32 subsistence area and I'm talking about the road-connected  
33 part. In the beginning for black bear, because there was  
34 no determination, the regs read all rural residents were  
35 eligible to hunt black bear.

36  
37 Eventually the Federal Subsistence Board  
38 had to address customary and traditional uses for large  
39 land mammals on the Kenai Peninsula and this started in  
40 1994. It was deferred but it was addressed in May of  
41 1996. And what happened is there was a proposal, 22,  
42 submitted by the Kenai Peninsula Outdoor Coalition,  
43 Chaired at the time by Elaina Spraker that specifically  
44 requested a subsistence priority or a customary and  
45 traditional use determination in 15C for Port Graham and  
46 Nanwalek only. This proposal passed and when it did, it  
47 led to the no determination status for Ninilchik and  
48 Seldovia to become a no subsistence status, which meant  
49 they didn't have a C&T. But the Board made that decision  
50 with very little information. They had a huge backlog of

1 proposals at the time, they had -- to show their  
2 deliberations to all the RACs because the Kenai Peninsula  
3 C&T determinations were so contentious and so there were  
4 a lot of delays, there was a lot of rush work, also  
5 Ninilchik moose was really the priority at the time. And  
6 so several people have asked me, well, how did this  
7 happen and why did it end up that way and what does it  
8 mean as far as Ninilchik and Seldovia.

9

10 I'll read to you the May 3rd, 1996 Board  
11 transcript and it was Dave Allen who sort of summed up  
12 the fact that they were leaving the door open for  
13 Ninilchik and Seldovia if more information became  
14 available in the future, and he was the Fish and Wildlife  
15 Representative on the Board at the time, and he said:

16

17 You know, I guess we've recognized this  
18 issue before that there may be other  
19 communities that might be eligible, but I  
20 think we've also recognized that when  
21 information is brought to use to us that  
22 indicates such a determination is correct  
23 for some communities, we have acted for  
24 those communities, understanding that  
25 should other information become available  
26 that other communities are also eligible  
27 and that the Board could consider  
28 information in the future.

29

30 We also have to remember that Port Graham  
31 and Nanwalek were not in the State non-subsistence area,  
32 there were a lot of studies done on these places by the  
33 Division of Subsistence, whereas Ninilchik there were  
34 virtually none. So there just wasn't a lot of good  
35 information for the Federal Staff to deal with at that  
36 time.

37

38 I'm sure most of you know the history of  
39 Ninilchik probably better than your own home town at this  
40 point.

41

42 (Laughter)

43

44 MS. WILLIAMS: But I just want to say  
45 that there's some key points I'd like to bring up.

46

47 Ninilchik was founded in 1847 in an  
48 already inhabited part of the Kenai Peninsula, and we  
49 know the Kenaitze were there, and who came were Russian  
50 Aleut or Russian Alutiiq Creole's, and all three of these

1 cultural groups that came together, the Kenaitze, the  
2 Russians and the Alutiiq and the blended people that were  
3 part of that group all have a history of bear hunting and  
4 harvest. There are no black bear on Kodiak but people  
5 were used to eating bear, it wasn't out of the realm of  
6 possibility at all. And there was a lot of contact  
7 between the Kenaitze and the people of Ninilchik. In the  
8 early census data, they are described in 1890 as  
9 inhabited by 50 Russian Creoles and a small number of  
10 Natives of the Dena'ina Tribe, they were described -- or  
11 they were enumerated as 12 White, 53 mixed and 16 Indian,  
12 so like most cultures, the culture of Ninilchik is a  
13 blend of these, and also the subsequent people that came  
14 to Ninilchik later.

15  
16 As you go through this analysis, you'll  
17 see a lot of examples of first Russian explorers or  
18 company workers and then later American accounts, and  
19 they don't talk about bear a lot but they all mention it.  
20 And one thing we have to look at, as far as Ninilchik's  
21 culture, is that they were definitely a subsistence-based  
22 culture. The Russia America company wouldn't have been  
23 able to do anything if they didn't live off the land  
24 because they couldn't get enough supplies.

25  
26 The local people adapted by harvesting or  
27 they didn't adapt, they were forced to harvest furs for  
28 the Russians but they also became involved in their own  
29 trapping enterprises, later mining was a part of the  
30 subsistence economy at Ninilchik, and most recently  
31 commercial fishing. And what we need to keep in mind is  
32 that all three of these, or really all four of these  
33 economic pursuits are pursuits that caused people to move  
34 all over the place, you know, they didn't just hang out  
35 by Ninilchik, they were up at Susitna Station, they were  
36 across the Inlet, they were all over the place, whether  
37 they were just subsistence harvesting, trapping, mining  
38 or commercial fishing. And so when we think about  
39 Ninilchik's harvest history they were eating -- well,  
40 they didn't have roads, but to say so, on the road, while  
41 they were doing all these things as most people who were  
42 indigenous to Alaska always did. They didn't always eat  
43 the same thing, they ate what came to them.

44  
45 So when we look, sort of reminiscent of  
46 the fish proposals, too, there wasn't a specific closure  
47 like the road in 1950 but from a Ninilchik person's  
48 perspective you might see the road coming but it goes to  
49 a narrow point for you because as the road, maybe from  
50 Anchorage showed, a widening area for people, for

1 Ninilchik it started to narrow things because there were  
2 private lands, public lands, new regulations, the moose  
3 refuge, all these things that suddenly started putting  
4 boundaries where maybe they didn't have any or the  
5 boundaries were different.

6  
7 So that's kind of the historical  
8 perspective I like to look at when I think about this.

9  
10 As I said before there were a couple of  
11 Russian accounts that noted people eating bears and  
12 harvesting them. There was an American who came through  
13 in about 1887 who talked about people going into the  
14 mountains, all over the interior to harvest bear and  
15 other food, and also the uses of bear for bedding, for  
16 snowshoes and then we come to some more recent stuff.

17  
18 Grassim Oskolkoff, a past president of  
19 Ninilchik Traditional Council, sent a letter in '92 to  
20 Curtis McFee, the Chair of the Federal Subsistence Board,  
21 and he listed the subsistence uses by Ninilchik  
22 residents, and he said regarding bear, bear is only  
23 hunted when dire need in any part of the year with pits  
24 and spears -- in pits with spears and the meat and hide  
25 used. Later he testified to the Federal Subsistence  
26 Board in 1995 and he talked about going into the Caribou  
27 Hills and people looking for young black bear as a  
28 delicacy and going up into the Caribou Hills is important  
29 for several reasons. It's Federal lands, it's part of  
30 the Refuge, most of it, but it's a very traditional  
31 hunting pattern of Native Alaskans to go up into the  
32 mountains, maybe on foot, harvest upland game, which a  
33 lot of people say taste better because it doesn't eat out  
34 of the rivers and then float your quarry down because you  
35 have this Deep Creek or some other river that takes you  
36 right back to your home.

37  
38 There's a book called Agifina's Children  
39 by Wayne Lemman, son of Nick Lemman, brother of Loren, of  
40 Ninilchik and it's a family history or chronicle of the  
41 original people of Ninilchik, and throughout this book  
42 there are pictures of all the things that Ninilchik  
43 people have done including lots of fishing and moose  
44 pictures, there's also a picture of a bear, you can't  
45 tell if it's a black or brown, at least I can't. But  
46 it's probably in the '50s or the '60s, the guys have on  
47 lace-up boots with brace buckles and they're holding up a  
48 bear. Another thing, when you're looking for community-  
49 wide use pattern I just found by accident a Homesteader's  
50 Handbook which was prepared by the Ninilchik Parent

1 Teacher Association in approximately 1951 according to  
2 Southcentral RAC member Blossom who had it on his shelf  
3 when I called him. But there's a recipe for bear ribs  
4 and there's also directions for canning meat and there's  
5 a drawing of a moose on one side and a bear on the other.  
6 And so it's not explicit but it's pretty clear that  
7 people were canning bear meat.

8  
9 And now I'll just go quickly to recent  
10 subsistence studies because there just wasn't a lot of  
11 information, again, like I said for the Board in '96 when  
12 they made their decision, and so there are two  
13 Subsistence Division studies and two Ninilchik  
14 Traditional Council studies that I'll talk about. Two of  
15 each were already available in '96 and two came after.  
16 The commonality between all four of these studies is that  
17 Ninilchik residents talk about competition and increasing  
18 regulation as an impediment to their subsistence  
19 harvests. In 1982/1983 Subsistence Division did a study,  
20 Technical Paper 106 and they interviewed people or they  
21 surveyed people, rather, in Kenai, Homer, Ninilchik and  
22 Seldovia. There were an estimated 217 households in  
23 Ninilchik at the time of the study, the sample size was  
24 11 percent of the community or 24 households, a very  
25 small sample. This study indicated no use of black bear  
26 during the study year of '82/83. The author noted,  
27 though, there appeared to be no stable seasonal-round and  
28 harvest quantities were relatively low, however, with  
29 such a small study population the representativeness of  
30 the findings were difficult to ascertain.

31  
32 In 1998 Subsistence Division did another  
33 study, it's Technical Paper 253 and this information was  
34 not available to the Board in '96, and they looked at the  
35 communities of Ninilchik, NorthFork Road, Fritz Creek,  
36 and Nikolaevsk from the calendar year of 1998. There  
37 were 400 households in the study area at this point and  
38 it included the Happy Valley CDP, census designated  
39 place, and Clam Gulch in addition to Ninilchik. And this  
40 sample was larger and much more representative, it was  
41 25.3 percent of the community or 101 households. This  
42 study showed, once they took the same size and expanded  
43 the numbers, that Ninilchik probably harvested about 12  
44 black bear that year. It showed that five percent,  
45 approximately 20 households within the entire community  
46 of 400 households of Ninilchik residents used black bear,  
47 seven percent, approximately 28 tried to harvest it,  
48 three percent, approximately 12 households of 400  
49 harvested it and two percent, approximately eight percent  
50 of households of 400 received it and one percent,

1 approximately four households of 400 shared it. In  
2 addition to harvest data, residents were asked about the  
3 location of their harvest, and I'm on Page 177.

4  
5 In Table 63 in that Technical Paper it  
6 showed that one percent, approximately four households of  
7 400 reporting hunting black bear in Unit 15B within the  
8 Kenai National Wildlife Refuge, five percent  
9 approximately 20 reported hunting in Unit 15C outside of  
10 the Kenai National Wildlife Refuge and one percent  
11 approximately four households of 400 reported hunting  
12 black bear elsewhere. There were no other black bear  
13 hunt locations noted in this table by Ninilchik  
14 residents.

15  
16 So just to repeat these data were not  
17 available, and it's a small amount of use but when you  
18 look at a subsistence repertoire of a community,  
19 especially a coastal community like Ninilchik that gets a  
20 lot of its wild food from the sea, everything's not used  
21 every day, a bear can be a supplemental food and still be  
22 a very important subsistence food.

23  
24 The two studies by Ninilchik Traditional  
25 Council were very different from the Subsistence Division  
26 studies, they were a very targeted group of long-time  
27 tribal residents, as well as non-Native residents of  
28 Ninilchik who had lived there for a long time.

29  
30 And the first one was done in 1994 and it  
31 included 26 households and they were supposed to talk  
32 about their lifetime harvest recollection of everything,  
33 and so the time data from that survey was 1994 to as far  
34 back as people could remember. The '94 surveys showed  
35 that approximately four households out of the 26 sampled  
36 used black bear, four tried to harvest, eight households  
37 received it and approximately eight households shared it.  
38 They reported attempting to harvest black bear at some  
39 point in their lifetimes in all units of 15.

40  
41 In 1999 the survey sample included just  
42 21 households similar, though, group of people, the  
43 targeted sample to the '94 survey. And they showed that  
44 32 percent approximately seven households of the 21  
45 sampled used black bear, 32 percent approximately seven  
46 households of 21 tried to harvest, 32 percent  
47 approximately seven received black bear and 32 percent  
48 approximately seven shared black bear.

49  
50 When all of these C&T determinations in

1 the early '90s were going on, Alaska Legal Services took  
2 affidavits from 11 people in Ninilchik, one person of 11  
3 that were spoken with reported taking a bear, presumably  
4 a black one.

5  
6 We also looked at the Department of Fish  
7 and Game bear sealing database and this is just one piece  
8 of the data we should consider when looking at C&T. This  
9 database is not designed for a C&T determination, it  
10 doesn't show harvest effort, which, I think, when you're  
11 looking at populations as you just saw in that deer thing  
12 in Southeast, you really need to have both kill data and  
13 effort data to interpret what's going on with the  
14 population. So if you turn to Page 181 you can see what  
15 we did with the map there, again, Ninilchik residents  
16 take most of their black bear closest to home on State  
17 land, but there do appear to be black bear takes in other  
18 units in 15 -- or subunits of 15 and some of these appear  
19 to be comprised primarily of Federal lands. So if you  
20 look at 15A we divided the units into Uniform Coding  
21 Units so we could narrow the harvests better, the ones  
22 that this database does show and we note that it doesn't  
23 show them all. I don't really understand why but the  
24 Subsistence Division data showed 12 bears harvested in  
25 '98 and this sealing database shows just one, but I think  
26 you can see the distribution -- is that clear to  
27 everybody what we did with that map?

28

(No comments)

29

30  
31 MS. WILLIAMS: So, again, when we look at  
32 this, it shows that there are bear taken on Federal  
33 lands, the majority are on State land, but they're  
34 harvested throughout the Peninsula by this community.

35

36 In the most recent Southcentral RAC  
37 meeting, Doug Blossom, who is a Southcentral RAC member  
38 talked about his life on the Kenai Peninsula, I think he  
39 moved there when he was 12 and I don't know how old he is  
40 now, 60-ish, but anyway, he said:

41

42 I've lived on the Kenai Peninsula about  
43 60 years, we used to think nothing of  
44 shooting a brown bear or a black bear  
45 and, of course, you know, -- well, he  
46 goes off about brown bears, but I think  
47 last year's take of black bear was  
48 something like 450 or 420, something in  
49 15 and 7. And personal history from me,  
50 back in the early '50s any black bear

1 that I ever took was usually up behind  
2 Tustumena Lake up on the Bench where  
3 blueberries. I was up sheep hunting and  
4 we'd take black bear for camp meat. In  
5 more recent years I've not taken a black  
6 bear, I've never sealed a black bear.  
7 That's just personal history. But the  
8 black bear that I have seen shot in the  
9 lower Kenai in 15C normally are shot  
10 above timberline and Caribou Hills where  
11 there's the berry crop.

12  
13 So just to sort of reiterate what I've  
14 said before, black bear's not the most widely used  
15 resource in Ninilchik, however, it's part of the  
16 diversified subsistence repertoire of resources harvested  
17 in its community.

18  
19 The additional studies on Ninilchik  
20 customary and traditional uses that have been conducted  
21 since the Federal Subsistence Board first made customary  
22 and traditional use determinations for black bear on the  
23 Kenai Peninsula in 1996 have added new information that  
24 indicates they're harvested in small numbers but it's  
25 clear that they have been and continue to be harvested in  
26 Unit 15 by Ninilchik residents for subsistence.

27  
28 Thanks.

29  
30 CHAIRMAN FLEAGLE: Thank you, Liz.  
31 Questions.

32  
33 MR. EDWARDS: Yeah, Mr. Chairman.

34  
35 CHAIRMAN FLEAGLE: Gary.

36  
37 MR. EDWARDS: I have a couple. I guess  
38 first of all I'm trying to understand in this proposal  
39 and in your analysis, are we talking about Ninilchik or  
40 are we talking about Ninilchik and Happy Valley and if  
41 we're talking about Happy Valley are we talking about all  
42 of Happy Valley or part of Happy Valley or what is it  
43 that we're talking about so that when we ultimately pass  
44 something will we have a good handle on who it will  
45 affect and who it doesn't affect?

46  
47 MS. WILLIAMS: Yes, Mr. Chair. Mr.  
48 Edwards. We have been working internally on a memo to  
49 define this thing and what we've done is worked with the  
50 Refuge and looked at the moose residence eligibility

1 requirements for the Federal moose hunt and Helen's  
2 passing around a map that shows Falls Creek Road as the  
3 northern boundary and the Starichkof Radio Tower as the  
4 southern boundary which does include Happy Valley. I  
5 might have Helen speak more about it, it used to be that  
6 the Ninilchik CDPs were the boundary but with the recent  
7 census data the Ninilchik CDP boundary's have changed and  
8 they're different from what we used to describe as the  
9 exact CDP boundary.

10

11 But I understand that what happens with  
12 the moose hunt is that people go to the Refuge, and show  
13 on a map where they live and the Refuge either does or  
14 doesn't issue a permit based on the exact location of  
15 their residence.

16

17 MR. EDWARDS: Well, given that we have  
18 the Refuge here, they may also want to speak to that.  
19 But I guess from what you said, then, there would be some  
20 people who say that they live in Happy Valley that would  
21 be considered rural residents and some who live in Happy  
22 Valley would be considered non-rural?

23

24 MS. WILLIAMS: I don't think that's the  
25 case, I think it is in Ninilchik, though. I'm going to  
26 have Helen speak to you on this.

27

28 MS. H. ARMSTRONG: Helen Armstrong, OSM.  
29 What happened is that this -- we've been distributing  
30 moose permits since the mid-90s, I think, and these  
31 boundaries were created, the rural boundaries came from  
32 1990, and it had been that people living within the CDP  
33 of Ninilchik but in 2000 the Census Bureau changed the  
34 CDP boundaries, so there are some people who may call  
35 themselves members of Ninilchik who actually live in a  
36 non-rural area and that happens up on the Falls Creek  
37 Road where you see the northern boundary up there. As  
38 far as we know it's just a couple of people, but it has  
39 to do more with the rural, non-rural boundaries than it  
40 does with the Ninilchik boundaries, if people are just  
41 living in the non-rural area.

42

43 MR. EDWARDS: Okay. So with that said,  
44 do we have definitive number of the number of households  
45 that would be affected in this proposal, and I guess the  
46 reason I ask that is that, you know, we throw around a  
47 lot of these studies used percentage of households and,  
48 you know, they do the survey and then they extrapolate it  
49 to a larger number, and if we've been dealing with the  
50 smaller number then you're going to get a larger

1 percentage, but, you know, is it 400 households or is it  
2 700 households and I'm just trying to get at that so we  
3 can put some of these studies in proper context.

4  
5 MS. H. ARMSTRONG: I think the Refuge  
6 might have a better handle on how many people live in the  
7 non-rural area, but I think we're talking about a handful  
8 of people, if that, so that you can -- the people who  
9 live in Happy Valley and Ninilchik, and I don't know how  
10 many households that is off the top of my head, it's  
11 around 1,200 people, are the people we're talking about  
12 who would qualify.

13  
14 MR. EDWARDS: So then when we just use  
15 some examples like when we're talking about 400  
16 households, what 400 are we referring to in that case?

17  
18 MS. WILLIAMS: Yes, Mr. Edwards, let's  
19 see, that was, I think the second Division of Subsistence  
20 study, which did include Ninilchik CDP and Happy Valley  
21 CDP. I tried to really clearly write it out so let me  
22 look and I will see.

23  
24 MR. EDWARDS: Again, then why wouldn't  
25 that be 1,200 households instead of 400.

26  
27 MS. H. ARMSTRONG: No, that's 1,200  
28 people.

29  
30 MR. EDWARDS: 1,200 people.

31  
32 MS. H. ARMSTRONG: Yes.

33  
34 MR. EDWARDS: Roughly 400 households.

35  
36 MS. H. ARMSTRONG: Yes.

37  
38 MR. EDWARDS: Okay.

39  
40 MS. WILLIAMS: Right. The 1998 Division  
41 of Subsistence study includ -- there were 400 households  
42 in the study area, which included Happy Valley CDP and  
43 Clam Gulch in addition to the Ninilchik CDP. And the  
44 sample size of that study was 25.3 percent of the  
45 community of 400 households. Is that clear?

46  
47 MR. EDWARDS: Yeah, as long as the -- so  
48 the 400 households includes both Ninilchik and some folks  
49 -- a majority of folks that consider themselves living in  
50 Happy Valley, I guess is what you said?

1 MS. WILLIAMS: In 1998.

2

3 MR. EDWARDS: 1998, okay. A couple more  
4 questions if I may, Mr. Chairman.

5

6 I was looking at the study that was done  
7 by the Ninilchik Traditional Council, and right at the  
8 ends of that it says that the folks were identifying  
9 lifetime use identified 15, 15A -- well, all of 15 where  
10 they had hunted over -- do you know if they identified  
11 any other units, such as maybe Unit 16 or Unit 7 or did  
12 we just put those units because that's what this  
13 proposal's about?

14

15 MS. WILLIAMS: Mr. Chair. Mr. Edwards.  
16 Mostly it was 15. There were a couple of people who  
17 referred to Unit 8, which is Kodiak, and it may be  
18 related to commercial fishing but there were, I think,  
19 some people that had gone to Unit 8 -- no, I may be  
20 confusing that with -- sorry, that's brown bear, I'm  
21 getting these two confused. These were the only ones I  
22 remember seeing but I might have just written these down  
23 because they were related to this proposal. I would have  
24 to check those surveys again, I'm sorry, Unit 8 doesn't  
25 have black bear.

26

27 MR. EDWARDS: Okay. Just one other, kind  
28 of as a side note, as I was running all these  
29 percentages, it seemed interesting where it said that 32  
30 percent of the folks said that they received black bear  
31 but only 14 percent of people said that they used black  
32 bear, I don't know if that means that people received it  
33 and didn't use it or what or if I'm just looking at the  
34 percentages wrong, but they just seemed a little  
35 interesting in reading it.

36

37 Another question on the Alaska Legal  
38 Services, why did it's survey seem to kind of differ from  
39 both the State's and the Tribal Council in finding only  
40 one percent -- or one of the households of what they  
41 surveyed had expressed interest, although that is  
42 interesting that it coincides actually with the sealing  
43 data in 1991 so maybe those are the ones that got the  
44 only bear that apparently was taken.

45

46 MS. WILLIAMS: Mr. Chair. Mr. Edwards.  
47 That was just 11 people that gave affidavits. I'm not  
48 sure of the circumstances surrounding who was chosen to  
49 give an affidavit and who wasn't, but it was, essentially  
50 at the time that all of those C&T determinations for the

1 Kenai Peninsula were being worked on and I think Alaska  
2 Legal Services, in preparation for litigation, got  
3 whoever would volunteer, I'm imagining, I don't know. So  
4 it was just 11 people.

5

6 MR. EDWARDS: Thank you.

7

8 CHAIRMAN FLEAGLE: Other questions. Ken  
9 Taylor.

10

11 MR. TAYLOR: Thank you, Mr. Chairman. In  
12 your statement you said something to the effect that the  
13 Department of Fish and Game sealing data doesn't show  
14 harvest effort which should be a part of this  
15 determination, can you clarify that for me, please?

16

17 MS. WILLIAMS: Yes, Mr. Chair. Mr.  
18 Taylor. When -- I think when there is a permit hunt  
19 people fill out a permit before they go hunting and so  
20 you have an idea of how many people are a field, as we  
21 saw in that Southeast proposal where you could see hunter  
22 days and you could correlate it with kills, and I don't  
23 think that that data for black bear on the Kenai  
24 Peninsula are gathered, there aren't not permits, is that  
25 -- my colleague Greg Risdahl is doing the biological  
26 analysis and he can answer that better than I can. But  
27 there is no permit data so we don't have a lot of hunter  
28 effort essentially is what my conclusion is.

29

30 CHAIRMAN FLEAGLE: Go ahead, Ken.

31

32 MR. TAYLOR: I guess my question then is  
33 since none of your C&T determination regulations even  
34 address hunter effort but address consistent patterns of  
35 use why hunter effort would be important in making a C&T  
36 determination.

37

38 MS. WILLIAMS: Mr. Chair. Mr. Taylor.  
39 In response to some of the community comments about  
40 competition which, you know, it could mean a lot of  
41 different things, we would know how many people maybe are  
42 trying but are not actually harvesting. It would be a  
43 way to show how people are going out to maybe getting  
44 something that they don't for whatever reason.

45

46 I used to work for Subsistence Division  
47 and the surveys are always set up where, did you use it,  
48 did you try to harvest it, did you harvest it, did you  
49 share it, and it's a little bit different than just  
50 saying did you get one because then you can see the

1 effort involved, perhaps in pursuing something that you  
2 don't get or maybe you get it from somebody else so it's  
3 a more qualitative way of looking at the harvest data.  
4 And like I said, with that Southeast proposal I just  
5 think that if you know how many people are going out  
6 there and you can correlate it with how many people are  
7 actually harvesting and how many days they are applying  
8 to their attempt to harvest, you get a much more  
9 qualitative well-rounded picture.

10

11 MR. EDWARDS: Mr. Chairman, I had one  
12 more question, if I may.

13

14 CHAIRMAN FLEAGLE: Go ahead, Gary.

15

16 MR. EDWARDS: On the harvest data that  
17 you have on Page 181, do you know how many of those are  
18 defense of life and property as opposed for taken for  
19 subsistence purposes?

20

21 MS. WILLIAMS: Yes, Mr. Chair. Mr.  
22 Edwards. Thank you, Mr. Edwards, that's a good question.  
23 We would have to call the biologist and specifically find  
24 out. The database that we have doesn't really show to us  
25 which way that might have been and I would very much be  
26 sure that some of these are DLPs. We talked to the  
27 biologist in regard to the brown bear sealing database  
28 and a lot of those that we saw as harvests were actually  
29 DLPs because they were taken in years when there was no  
30 season.

31

32 CHAIRMAN FLEAGLE: Other questions.

33

34 (No comments)

35

36 CHAIRMAN FLEAGLE: All right. Summary of  
37 written public comments. Donald Mike.

38

39 MR. MIKE: Mr. Chair. There are no  
40 written public comments. Thank you.

41

42 CHAIRMAN FLEAGLE: Public testimony.

43

44 MR. PROBASCO: Mr. Chair. We have no  
45 public testimony for this agenda item.

46

47 CHAIRMAN FLEAGLE: Regional Council  
48 recommendation. Ralph Lohse.

49

50 MR. LOHSE: Thank you, Mr. Chair. As you

1 know the Southcentral Regional Council supports Proposal  
2 WP07-16a.

3

4 As requested by the community of  
5 Ninilchik our Council, after considering the information  
6 provided by the Staff, and the information brought  
7 forward by the Ninilchik Traditional Council and provided  
8 by the information and anecdotal stories that were given  
9 to us by many Ninilchik residents who came forward in  
10 public testimony, we found that the community of  
11 Ninilchik has a longstanding harvest and customary and  
12 traditional use of black bear and so we believe this  
13 proposal should be supported.

14

15 CHAIRMAN FLEAGLE: Questions.

16

17 (No comments)

18

19 MR. LOHSE: Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Let's see, who am I  
22 hearing?

23

24 MR. PROBASCO: Mr. Lohse.

25

26 CHAIRMAN FLEAGLE: Oh, Ralph, go ahead.

27

28 MR. LOHSE: I have just two more little  
29 things that I would like to give you just to give you an  
30 idea as to why we came to that and these are by two of  
31 our different Council members, and I'm just taking them  
32 out of the testimony we had at the meeting or the  
33 questions we had at the meeting.

34

35 The first one's by Gloria Stickwan, and  
36 she says:

37

38 I just want to say that customary and  
39 traditional use is based on historical  
40 use. It's not based on numbers, it's  
41 based on historical use. I believe that  
42 Ninilchik has used bears, brown and black  
43 bears, I don't have any question in my  
44 mind that they do.

45

46 And Ms. Waggoner also said:

47

48 I also support the finding for customary  
49 and traditional use for Ninilchik.  
50 They've shown a long-term use, you know,

1 low numbers specific location reporting  
2 or the actual reporting of numbers and  
3 the actual reporting of specific  
4 locations has been a statewide problem,  
5 but I believe they've basically met the  
6 intent of the criteria that are  
7 established.

8  
9 And that's how our Council looked at it  
10 and that's how our Council felt about it and I just would  
11 like to share those two statements by members of my  
12 Council with you.

13  
14 Thank you.

15  
16 CHAIRMAN FLEAGLE: Thank you. Alaska  
17 Department of Fish and Game comments. Tina Cunning.

18  
19 MS. CUNNING: Mr. Chairman. As you've  
20 heard from the Staff the Federal Board evaluated the  
21 customary and traditional use determinations for all  
22 large mammals on the Kenai Peninsula beginning in 1994  
23 and in 1996 the Federal Board made a determination that  
24 no rural communities had a customary and traditional use  
25 of black bear in Units 15A and 15B and concluded that  
26 only the communities of Port Graham and Nanwalek had a  
27 customary and traditional use of black bear in Unit 15C.

28  
29 The Staff analysis, Department  
30 Subsistence studies and Ninilchik Traditional Council  
31 surveys provide little new evidence, none of which  
32 documents changes in the composition of the community or  
33 its uses in the subsequent 13 years that would warrant a  
34 reversal of the previous Federal Board decision. These  
35 communities have continued to grow and become more non-  
36 rural in character during the intervening years, so  
37 changes within the community certainly would not warrant  
38 a new customary and traditional use determination.

39  
40 The Staff analysis discusses only some of  
41 the eight regulatory factors that must be evaluated by  
42 the Federal Board to determine if the community or area  
43 generally exhibits the "long-term consistent pattern of  
44 use" for a stock or population in a particular geographic  
45 area. The Staff analysis does not include a detailed  
46 analysis of the factors and includes very little, if any  
47 substantive evidence that could be interpreted to show  
48 that the community generally exhibits any of the factors,  
49 thus, the Staff analysis provides no substantial evidence  
50 that supports recommending the Federal Board reverse its

1 earlier findings and provides no basis for the Staff's  
2 preliminary conclusion to support the proposal.

3  
4           The Staff analysis suggests that any  
5 documented use, no matter how small or infrequent within  
6 the community is a customary and traditional use. The  
7 Staff analysis also suggests that quantity of harvest of  
8 fish and wildlife for subsistence home use in Ninilchik  
9 is "greater than other rural communities in the area" but  
10 looks only at other road-connected communities in the  
11 area and ignores the fact that use is low compared to  
12 rural areas elsewhere in the state, including other areas  
13 on the Kenai Peninsula such as Seldovia, Port Graham, and  
14 Nanwalek. This approach of focusing primarily on uses of  
15 other resources is inconsistent with the Federal  
16 regulatory requirements for rendering a positive and  
17 customary and traditional use determination, which  
18 require a community to generally exhibit eight separate  
19 factors, most of which require a "pattern of use" with  
20 relation to particular fish stocks and wildlife  
21 populations.

22  
23           The analysis accurately sites Division of  
24 Subsistence Technical Paper 253 which found in a 1999  
25 household survey of one-quarter of all residents that in  
26 1998 only seven percent of Ninilchik residents "tried to  
27 harvest" black bear. Only five percent used, only three  
28 percent harvested black bear and only one percent shared  
29 it. These levels of use are very low and are consistent  
30 with the findings of the Division of Subsistence 1982  
31 survey. The Staff analysis presents little or no  
32 information about how black bear are currently hunted and  
33 does not provide details on how they are used by the  
34 community of Ninilchik. Even the non-representative  
35 samples conducted by Ninilchik Traditional Council among  
36 core users that are not reflective of the community at  
37 large showed very fairly low levels of black bear  
38 harvest. The Federal Staff comments properly notes that  
39 "only three bears were reported taken in 15A, none since  
40 1976 and only four in Unit 15B, none since 1987"  
41 demonstrating the lack of substantial evidence for these  
42 subunits. However, the Federal Staff comments fail to  
43 make it clear that even within 15C where 59 bears were  
44 taken over this 31 year period, none of these were  
45 harvested on Federal public lands.

46  
47           For the same reasons that the Department  
48 and Federal Staff oppose Proposal 21, which would give  
49 the communities, the Russian communities a customary and  
50 traditional use determination for moose in Unit 15, the

1 Department opposes the proposed determination and Federal  
2 seasons for black bear for Ninilchik.

3

4 1. The community of Ninilchik, as it  
5 exists today is just as much a  
6 new community as those  
7 communities are new communities,  
8 and the purpose of ANILCA is to  
9 insure customary and traditional  
10 subsistence use opportunities are  
11 allowed to continue, not to  
12 create new subsistence  
13 opportunities;

14

15 2. The few black bear that were  
16 harvested by residents of  
17 Ninilchik that could be argued to  
18 have any pattern of harvest,  
19 those in Unit 15C, were harvested  
20 in Uniform Coding Units that  
21 consist entirely or almost  
22 entirely of State and private  
23 lands, thus there is insufficient  
24 evidence in terms of frequency of  
25 use, area of use, community use  
26 or otherwise to support a  
27 determination that there has been  
28 a long-term consistent recurring  
29 pattern of customary and  
30 traditional use for subsistence  
31 harvest of black bear on the  
32 Federal public lands by residents  
33 of Ninilchik. The evidence of  
34 harvest of black bear on Federal  
35 public lands by the community of  
36 Ninilchik appears even weaker  
37 than the evidence of harvest of  
38 moose on Federal public lands by  
39 the Russian communities.

40

41 With regard to Proposal 21 and the  
42 Russian communities, the Federal Staff recommended  
43 against a customary and traditional harvest determination  
44 consistent with the Office of Subsistence Management  
45 instruction manual, which states, "is it appropriate to  
46 recommend approval of a C&T if the use is not on Federal  
47 public lands and waters, no, the C&T analysis would not  
48 recommend a positive determination if the C&T analysis  
49 determines that the use is not on Federal public lands or  
50 waters." That's from OSM's 2005 Technical Writing Guide

1 at 21.

2

3

4                   However, despite the fact that evidence  
5 of use of the Federal public lands for harvest of black  
6 bear by residents of Ninilchik is no stronger than the  
7 evidence of harvest of moose on Federal public lands by  
8 residents of the Russian villages, the Federal Staff make  
9 an inconsistent recommendation for Ninilchik.

9

10                   In summary the Staff analysis includes no  
11 information that could reasonably be interpreted to  
12 support a positive finding that the community of  
13 Ninilchik has a customary and traditional use of black  
14 bear on the Federal public lands in Unit 15A, 15B or 15C.

15

16

17                   The Staff analysis indicates support for  
18 the proposal based on the view that any use, no matter  
19 how low the use or how it is documented is sufficient to  
20 demonstrate a long-term pattern of community use and to  
21 support a positive customary and traditional use  
22 determination. This approach contradicts Federal  
23 regulations and is inconsistent with ANILCA which  
24 established a policy of providing a preference only for  
25 "continuation" of subsistence uses and which defines,  
26 "subsistence uses" as "customary and traditional uses."  
27 It is also inconsistent with the Federal instruction  
28 manual and Federal regulations.

28

29

30                   The Department questions the value and  
31 relevance of the reference that's included in the Staff  
32 analysis to the 1986 Secretary of the Interior letter and  
33 the extended quote therein. The circumstances, court  
34 guidance, and State's role were significantly different  
35 in 1986 than now after two more decades and establishment  
36 of Federal court direction. Significantly the Ninth  
37 Circuit Court rejected the idea that ANILCA provides an  
38 "absolute priority" in the Ninilchik Traditional Council  
39 case 2000. The State has previously pointed out that a  
40 1986 Solicitor's analysis can no longer be reasonably  
41 relied upon, this quote is not relevant to the issue of  
42 determining whether or not Ninilchik residents have a  
43 customary and traditional use of black bear and not  
44 relevant to the harvest history that should be allowed if  
45 a positive determination is made.

45

46

47                   In conclusion the Department opposes this  
48 proposal. The documented level of use of any Unit 15  
49 black bear population by residents of Ninilchik does not  
50 generally exhibit a long-term recurring consistent  
51 pattern of customary and traditional community use as

1 required by Federal regulations. No substantial evidence  
2 is provided in the Staff analysis to support a reversal  
3 of the existing negative customary and traditional use  
4 finding by the Federal Board. Thus, the Department  
5 opposes Proposal WP07-16a in the absence of substantial  
6 evidence demonstrating that residents have a customary  
7 and traditional use of black bear in Unit 15.

8

9 CHAIRMAN FLEAGLE: Questions.

10

11 (No comments)

12

13 CHAIRMAN FLEAGLE: Thank you.

14 InterAgency Staff Committee comments.

15

16 MR. BUKLIS: Thank you, Mr. Chairman.

17 Our comments can be found on Page 185 in your Board book.

18

19 The Staff Committee found the Staff  
20 analysis for Proposal WP07-16a to be a thorough review of  
21 available information of historical and contemporary use  
22 of black bears by the community of Ninilchik.

23

24 In it's review of the Southcentral  
25 Council recommendation, the Staff Committee discussed the  
26 application of the factors evaluated to determine  
27 customary and traditional use. In particular, the  
28 geographical scope of a determination is unclear, where  
29 the determination of past use is -- where the  
30 documentation of past use is limited or not available.  
31 Different perspectives may be held regarding the amount  
32 and pattern of use over time that supports a positive  
33 determination.

34

35 Some species such as bears may not be  
36 harvested in large numbers or consistently over time if  
37 they are not a heavily used resource or if they require  
38 specialized skills to harvest. In many of its customary  
39 and traditional use determinations for different species  
40 across the state, the Federal Subsistence Board has  
41 placed particular emphasis on a long-term consistent  
42 community or area pattern of use recurring in specific  
43 seasons for many years. The Board has exercised its  
44 discretion in making determinations for specific  
45 management units or portions of units where subsistence  
46 use has been shown on Federal public lands.

47

48 The Southcentral Council is recommending  
49 that the community of Ninilchik be determined to have  
50 customary and traditional use of black bears on Federal

1 public lands throughout Unit 15. The Council has  
2 concluded, based on the Staff analysis and on public  
3 testimony before the Council, that Ninilchik has a long-  
4 standing harvest and customary and traditional use of  
5 black bears. Although the Staff analysis presented very  
6 limited documented information on the harvest of black  
7 bears in Units 15A and 15B, the Council believes the  
8 customary and traditional use determination should be  
9 inclusive for all subunits of Unit 15. Division of Unit  
10 15 into subunits can be viewed as useful for resource  
11 management purposes but may not be necessary for  
12 customary and traditional use determinations.

13

14 An alternative view is that the Staff  
15 analysis provides support for a positive customary and  
16 traditional use determination for Ninilchik on Federal  
17 public lands within Unit 15C. By far most of the  
18 documented use of black bears by Ninilchik has occurred  
19 in Unit 15C. And although the number of bears reported  
20 taken in most years is relatively small, the data  
21 demonstrates a long-term consistent pattern of use  
22 recurring in most years. The very limited use of black  
23 bears in Units 15A, and 15B could be considered to not  
24 provide substantial evidence of customary and traditional  
25 use in those units. Over a period of 31 years of black  
26 bear harvest documented in the State's bear sealing  
27 database presented in the Staff analysis, only three  
28 bears were reported taken in Unit 15A, none since 1976  
29 and only four in Unit 15B, none since 1987; in contrast  
30 59 bears were reported taken in Unit 15C over this period  
31 with only two years indicating no harvest.

32

33 Thank you, Mr. Chairman.

34

35 CHAIRMAN FLEAGLE: Thank you, Larry.

36 Questions.

37

38 (No comments)

39

40 CHAIRMAN FLEAGLE: Discussion. Gary, do  
41 you have -- Board discussion with Council Chairs and  
42 State Liaison.

43

44 MR. EDWARDS: I guess I'll start this off  
45 and to the relief of our Solicitor I won't give my C&T is  
46 like grabbing hold of smoke speech.

47

48 But, you know, as I look at the data I  
49 don't think that there's any question that -- that the  
50 data's not sufficient that shows that people in the

1 Ninilchik area certainly used -- used bear meat for  
2 various occasion, even though the -- their past president  
3 said when in dire need, which sort of implies that they  
4 didn't usually serve it for Sunday dinner, it was -- at  
5 least from his opinion it was in dire need. But they --  
6 they certainly did use it, I think there's sufficient  
7 evidence. And then so it boils down to me is, you know,  
8 where does that use occur and how does it fit with what  
9 our responsibilities are to -- on determining customary  
10 and traditional use.

11  
12                   Unfortunately the way Unit 15 is broken  
13 up into UCUs, I don't think that there's one UCU that's  
14 either entirely -- or there's none that are within the  
15 Federal land that's not entirely within State land, at  
16 least those on the map that shows where bears were  
17 harvested, so, quite frankly, it's kind of hard to, I  
18 guess, know for sure, and it's my understanding the way  
19 the data is presented it doesn't really pinpoint, it  
20 doesn't give you a GPS location of where that particular  
21 bear was taken so, you know, you could argue, well, I  
22 added it up there could have been a maximum of 11 bears  
23 taken on Federal lands and a minimum of maybe eight bears  
24 but, you know, you could argue that it might have been  
25 even less than that but that, you don't know.

26  
27                   So as I look at it, trying to, you know,  
28 balance this idea of long-term consistent pattern of use  
29 and the patterns of use, you know, recurring in a  
30 specific season for many years, I guess, I find it  
31 difficult, particularly for Units 15A and 15B to find  
32 that that pattern did occur. I think it's clearly that,  
33 you know, harvest probably did occur in 15, 7 and I think  
34 we heard enough testimony to lead one to believe that it  
35 occurred on Federal lands there.

36  
37                   Why I asked the earlier question of when  
38 they did their study and they asked about 15, did they  
39 really ask about other areas because I thought I heard  
40 something that said that there was feeling that bears  
41 were taken up in Unit 7 and I know Unit 7 is not being  
42 discussed because that's not part of the proposal, but it  
43 would be interesting to know, you know, what people  
44 identified.

45  
46                   But, Mr. Chairman, so I guess what I'm  
47 wrestling with is not so much the issue of whether bears  
48 were used, whether frequently or not, they were, I think  
49 a very important part of the culture and the use but then  
50 how far should that extend, and then as was pointed out,

1 particularly in Unit 15A, there was a maximum of three  
2 bears taken and none taken since 1976, so in my mind that  
3 doesn't demonstrate a very consistent pattern of use or  
4 an area that really was customary and traditionally used  
5 for the harvesting of black bears in this case.

6

7 MS. GOTTLIEB: Mr. Chair.

8

9 CHAIRMAN FLEAGLE: Judy.

10

11 MS. GOTTLIEB: Thanks. I guess I'll ask  
12 Keith a question that I think I asked in November and  
13 that has to do with how much does C&T depend on the  
14 location where a species is taken? My understanding from  
15 the Department of Justice is we're just talking about  
16 that one doesn't have to show that one was standing in a  
17 particular spot that is now Federal land to meet our  
18 criteria.

19

20 CHAIRMAN FLEAGLE: Keith.

21

22 MR. GOLTZ: That's correct. The focus of  
23 our concerns is stocks and populations.

24

25 MS. GOTTLIEB: Mr. Chair, if I could  
26 follow up.

27

28 CHAIRMAN FLEAGLE: Yes.

29

30 MS. GOTTLIEB: What do you mean by stocks  
31 and populations then?

32

33 MR. GOLTZ: We're not talking about GPS  
34 locations. The purpose of ANILCA is to promote a  
35 subsistence lifestyle and the purpose of C&T is to  
36 protect ongoing historical uses. So those are the  
37 elements that you have to deal with.

38

39 MS. GOTTLIEB: Mr. Chair. So from what I  
40 heard from the presentation that Liz gave and other  
41 information that's been presented is that black bears  
42 were used probably from all over what we call the Kenai  
43 Peninsula. And, you know, normally we don't do C&T by  
44 subunits, we usually do it by Game Management Units, so I  
45 see that there's a consistent pattern of use that we have  
46 substantial information in front of us and that the RAC  
47 recommendation is supported by that substantial evidence.

48

49 MR. EDWARDS: Mr. Chairman. I guess.....

50

1 CHAIRMAN FLEAGLE: Gary.

2

3 MR. EDWARDS: .....in response to Mr.  
4 Goltz then, I guess the basic question is then why would  
5 we limit it to Unit 15. We talked about to people going  
6 over to Tyonek, why wouldn't we include Unit 6, why  
7 wouldn't we include Unit 7, and there's nothing magical  
8 about the boundaries, they just happen to be lines drawn  
9 on a map that both establish the overall boundary as well  
10 as establishing the various units within the boundary.

11

12 MR. GOLTZ: That's true. I think another  
13 way to approach the whole subject would be just to open a  
14 subsistence season. The qualified users would be rural  
15 residents, the limitations would be non-wasteful uses.  
16 The statute could probably be administered that way.  
17 However, we do have a set of regulations that set up a  
18 C&T process, the purpose of that process is largely  
19 administrative and that's -- it operates as a sort of  
20 rural zoning, it's just the way we've approached it.

21

22 In the next few weeks, perhaps we could  
23 take a look at entirely a new approach. But the reasons  
24 we're limiting it to units is because of administrative  
25 purposes.

26

27 MR. LOHSE: Mr. Chair.

28

29 CHAIRMAN FLEAGLE: Ralph Lohse.

30

31 MR. LOHSE: Well, I'll speak from a  
32 standpoint as the Chairman of the RAC. I know why we  
33 limited it to Unit 15, because that's what they asked  
34 for, that's what they provided the information for. They  
35 didn't provide information for Unit 6, they didn't  
36 provide information for Unit 7, they didn't ask for C&T  
37 for Unit 13 or 14, they asked for C&T for Unit 15 and we,  
38 as a RAC, looked at the information that was presented to  
39 us and I'll just say that as a RAC we voted unanimously,  
40 in other words, all members of the RAC were convinced  
41 that they had C&T for Unit 15. Not 15A, not 15B, not  
42 15C, but for Unit 15, the Kenai Peninsula where they  
43 lived, and that's how we looked at it as a RAC.

44

45 Thank you.

46

47 CHAIRMAN FLEAGLE: Keith.

48

49 MR. GOLTZ: I've just been shamed by my  
50 law partner, I think he gave a better answer than I did.

1 (Laughter)

2

3 CHAIRMAN FLEAGLE: Further discussion.

4 George.

5

6 MR. OVIATT: I've heard what you've said  
7 Judy, but I really have difficulty looking at the map and  
8 use, which is mostly on State land, very little on  
9 Federal lands, there seems to be a sustained use on 15C  
10 but not on 15A and 15B. I often wonder why we go down  
11 this road of determining customary and traditional use  
12 patterns when maybe that's better left up to the managing  
13 agencies and the people on the ground to determine how  
14 subsistence use should be used, and maybe it shouldn't be  
15 a part of our Board discussion as to why -- or to draw  
16 the boundaries but to simply say that a rural community  
17 has subsistence use of those areas and let the managing  
18 agencies and the RACs and the people on the ground  
19 determine how that is distributed.

20

21 I'm going to have difficulty going with  
22 C&T for this simply because there just doesn't seem to be  
23 a sustained and long-term use in a good share of Unit  
24 15C.

25

26 Thank you.

27

28 MS. GOTTLIEB: Mr. Chair.

29

30 CHAIRMAN FLEAGLE: All right, before we  
31 get too far involved in deliberations, it sounds like  
32 we're getting to where we could -- should possibly have a  
33 motion to consider. Is there anybody willing to place  
34 something on the record.

35

36 Gary.

37

38 MR. EDWARDS: Well, since this falls  
39 within our jurisdiction as far as the land, I'll take a  
40 shot at it just to get the discussion.

41

42 Mr. Chairman, I would move that we would  
43 adopt the recommendation of the  
44 Southcentral Regional Council on Proposal  
45 16a with modification, and that  
46 modification would be to provide a  
47 positive customary and traditional use  
48 determination for black bear in Unit 15C  
49 for the community of Ninilchik.

50

1                           If I have a second then I can provide  
2 some additional rationale.

3  
4                           MR. OVIATT: I'll second that motion.

5  
6                           CHAIRMAN FLEAGLE: Okay, you do have your  
7 second. Go ahead, Gary.

8  
9                           MR. EDWARDS: Mr. Chairman. I guess most  
10 of my rationale follows what I previously said, you know,  
11 I think it's certainly clear that the community of  
12 Ninilchik did utilize black bear. I don't personally  
13 feel that the Staff analysis, you know, demonstrated that  
14 in those two units particularly that there was a, you  
15 know, long-term consistent pattern of use or use that  
16 recurred in a specific season over many years. I  
17 understand what our counselor said and I almost would  
18 argue that if what he says, if that's what we're going  
19 by, we shouldn't even probably be having these  
20 discussions because it seems to me the decision's already  
21 been made, but given that I have, I guess, the liberty,  
22 to make this motion, those are the rationale behind it.

23  
24                           CHAIRMAN FLEAGLE: Okay. Pete's  
25 requesting clarification on the motion before we hear any  
26 more, Gary, would you restate it.

27  
28                           MR. EDWARDS: It would be to give a  
29 positive C&T for Unit 15C for the community of Ninilchik.  
30 So that's a modification to the proposal by the Regional  
31 Advisory Council, which was for all of 15.

32  
33                           CHAIRMAN FLEAGLE: Okay, thanks, we got  
34 it now.

35  
36                           Discussion. Judy.

37  
38                           MS. GOTTLIEB: Mr. Chair, thank you.  
39 Well, I think people seem to be looking at the map on  
40 Page 180 which shows, yes, very few bears have been taken  
41 between 1973 and 2004 and as our Staff has told us, this  
42 is a small piece of the puzzle, and I think the analysis  
43 presents many other pieces, especially of the historical  
44 context of the puzzle and I also think our deference to  
45 the Regional Council is not something we should ignore  
46 here, where we have several statements from a variety of  
47 members, their personal use as well as the testimony that  
48 they heard at their Council meeting.

49  
50                           So I do disagree that the map is the only

1 thing we should be looking at here.

2

3 MR. CESAR: Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Go ahead, Niles.

6

7 MR. CESAR: I agree with Judy. And when  
8 I look at not supporting the RAC recommendation it's got  
9 to be pretty clear to me that I feel they are going off  
10 in a direction they shouldn't be. I think that they're  
11 deliberations, their unanimous support for this proposal  
12 and not having what I would consider overwhelming  
13 evidence not to support them, I intend to support the  
14 RAC.

15

16 CHAIRMAN FLEAGLE: Which means that  
17 you're in opposition to the motion as stated?

18

19 MR. CESAR: Yeah. As stated, yeah.

20

21 CHAIRMAN FLEAGLE: Thank you. Further  
22 discussion. Wini.

23

24 MS. KESSLER: Based on what Keith has  
25 explained to us it seems really important, the fact that  
26 this is one population we're talking about, I mean I  
27 really don't think the population of bears divides  
28 themselves up on these internal boundaries so I'm leaning  
29 with Niles and Judy about the need to look more broadly.

30

31 CHAIRMAN FLEAGLE: Gary.

32

33 MR. EDWARDS: Mr. Chairman, if I could  
34 ask Ralph a couple questions if that's okay, to kind of  
35 follow up on your deliberation.

36

37 When you folks looked at it -- well, let  
38 me back up a little bit. You know, theoretically you  
39 could look at 15A and you might be able to argue that no  
40 bears were taken in there based upon this because both of  
41 -- where the bears were taken also include both Federal  
42 and State land, I don't believe that's true, I'm assuming  
43 that at least maybe one or two of them were. But let's  
44 say that we knew for a fact that there were no bears  
45 taken in 15A so when you folks looked at it, did you look  
46 at the harvest in those three areas or you just simply  
47 looked at 15 in its entirety?

48

49 MR. LOHSE: Well, first of all we had  
50 testimony that bears had been taken in 15A in the Federal

1 land by members of the Council. So while it doesn't show  
2 it on -- it doesn't show it exactly on that, like you  
3 said, it says one bear, two bears, you don't know for  
4 sure where they are in 15A, you don't know for sure where  
5 they're not either, you know, but we did, we looked at  
6 15A, B and C as the Kenai Peninsula.

7  
8                   These were residents of the Kenai  
9 Peninsula, they were an old community on the Kenai  
10 Peninsula, and we had lots of anecdotal information that,  
11 you know, they went all over the Kenai Peninsula and they  
12 did things all over the Kenai Peninsula in the past --  
13 probably more in the past -- like somebody said, they  
14 were probably more active and more mobile before the road  
15 than they were after the road as far as hunting and stuff  
16 was concerned. And to us, like Mrs. Kessler said,  
17 they're not different distinct stocks, you don't -- the  
18 same bear that you shot in 15C you could have shot in  
19 15A, the same bear that's in 15A could be in 15C, anybody  
20 that's done any capturing of nuisance bears and releasing  
21 them knows how far they can go, how fast they can go.  
22 We've taken bears out of Cordova, hauled them to Montague  
23 Island or Hinchinbrook Island and had them show back up  
24 in Cordova in a very short time period. These aren't  
25 animals that just stay in one spot.

26  
27                   In the Chitina Valley, we have salmon at  
28 Long Lake where I live, we know for a fact that bears  
29 come all the way from T-Bay and the Bremner to Long Lake  
30 to take salmon, clean on the other side of the range, so  
31 if this is -- if you could say that these were three  
32 stocks of bear right here and the Kenai wasn't one  
33 Peninsula and the people on the Kenai didn't go all over  
34 the Kenai, I'd probably agree with you, but as a Council,  
35 looking at it as people who live in an area, we look at  
36 it and just say that, you know, this is the backyard, and  
37 these bears go all over. We're talking about the black  
38 bears of the Kenai Peninsula, not the black bears of Unit  
39 15C, 15B or 15A. And that's how we looked at it as a  
40 Council.

41  
42                   MR. EDWARDS: So with that said, if the  
43 request, let's say, for example, would have included Unit  
44 7, you would have probably supported that also?

45  
46                   MR. LOHSE: If information would have  
47 been provided that would have shown that they had an  
48 interest in it, that they did use it. Unit 7's on the  
49 other side of the mountain range. It's totally possible  
50 that they went through the Whittier Portage and used Unit

1 7 but it sounds to me pretty much like the Cook Inlet  
2 people stayed over on the Cook Inlet side.

3

4 MR. CESAR: Mr. Chairman.

5

6 CHAIRMAN FLEAGLE: Niles.

7

8 MR. CESAR: It really doesn't help me to  
9 be including stuff we're not really dealing with. We're  
10 specifically dealing with Unit 15 and throwing in Unit 7  
11 doesn't help my deliberation much.

12

13 CHAIRMAN FLEAGLE: Okay, point noted,  
14 thank you. Okay, more discussion. George.

15

16 MR. OVIATT: Thank you, Mr. Chairman.  
17 Mr. Lohse, I don't read this, this data necessarily as  
18 where the bears come from but more of where the people  
19 from Ninilchik traditionally hunted. And it seems like  
20 that they very seldom hunted up in 15A and 15B, but they  
21 did hunt in their backyard of 15C and, in fact, to me the  
22 data is overwhelming. Can you respond, please, thank  
23 you.

24

25 MR. LOHSE: I'll agree with you 100  
26 percent on that, that they did hunt in 15C, it was in  
27 their backyard. They did also go to 15A and 15B to hunt  
28 other things and like has been pointed out, a subsistence  
29 hunter is an opportunistic hunter. And if they were  
30 hunting something else and they had the opportunity to  
31 take a bear and they wanted a bear, they took a bear,  
32 they didn't necessarily have to go there to look for  
33 them.

34

35 But if you go back and you listen, and we  
36 listened to a lot of testimony from people who've lived  
37 there or had fathers that lived there or grandfather's  
38 that lived there and they talked about where they went  
39 and what kind of hunting they did and things like that,  
40 and they didn't look at just hunting in their backyard,  
41 you know, they went for, like somebody pointed out, for  
42 other reasons, winter trapping, gold mining, work on the  
43 road, things like that, and they went to other areas on  
44 the Peninsula but they lived there. The Peninsula was  
45 their home range. The same as I would consider -- I  
46 would consider the fact that, you know, when I'm in  
47 Cordova and I go out on Prince William Sound and I go to  
48 Hawkins Island or Hinchinbrook Island, I don't live there  
49 but I go there to go hunting. But, you know, if I can do  
50 all of my hunting at Deep Bay right across from town, I

1 don't bother to go to Hinchinbrook and I definitely don't  
2 go to Montague unless I would happen to go there for some  
3 other reason and I think it's the same thing with them.

4  
5                   And, to me, I can't imagine somebody  
6 living in Ninilchik as a community, not as an individual,  
7 as a long community that went for as long as Ninilchik's  
8 been there and we talk about it being a new community,  
9 just like we talk about the Russian New Believer's being  
10 a new community, Ninilchik's been there a long time.  
11 There's a core of people in Ninilchik that can trace  
12 their ancestors back right to the first people moved to  
13 Ninilchik. And that core group, which is what the core  
14 of Ninilchik is has probably hunted the whole Kenai  
15 Peninsula. And I -- I mean I just have to -- and I know  
16 as a Council -- as a Council, it's like Gloria said,  
17 you're looking at a historical use, you're not looking  
18 and sitting, now, did they get enough of them in this  
19 area to count, did they get enough of them to -- did they  
20 hunt black bear on the Kenai Peninsula, did they eat  
21 black bear on the Kenai Peninsula; the answer to that  
22 should either be yes or no, they either traditionally  
23 used black bear on the Kenai Peninsula or they  
24 traditionally didn't use black bear on the Kenai  
25 Peninsula. And that's pretty much what we looked at it  
26 as.

27  
28                   MS. GOTTLIEB: Mr. Chairman.

29  
30                   CHAIRMAN FLEAGLE: Judy.

31  
32                   MS. GOTTLIEB: I guess if I could also  
33 remind Mr. Lohse one of the things that he mentioned at  
34 the RAC meeting had to do with sealing, and we're putting  
35 a lot of emphasis on this one chart that relies on people  
36 having their bears sealed. And I think, Ralph, you  
37 mentioned that it's certainly possible people at the time  
38 didn't realize bears needed to be sealed, they maybe were  
39 taking them for ceremonial purposes and, you know,  
40 certainly not trophy and didn't get themselves on the  
41 record, so I think we need to keep that in mind as well.

42  
43                   CHAIRMAN FLEAGLE: Additional comments.  
44 Ralph.

45  
46                   MR. LOHSE: Was she asking for an  
47 additional comment?

48  
49                   CHAIRMAN FLEAGLE: I think she was just  
50 asking you to focus.

1 (Laughter)

2

3 CHAIRMAN FLEAGLE: No, I'm kidding.

4

5 MR. LOHSE: Okay, I will answer Judy.

6

7 CHAIRMAN FLEAGLE: Ralph.

8

9 MR. LOHSE: And I'll answer from the  
10 standpoint, we've talked about the fact that you went and  
11 you asked people for their long-term remembrance of what  
12 they did on the Kenai Peninsula, but you and I all know  
13 we have short-term memories if it comes to the fact that  
14 we're not comfortable with what we did and we're not  
15 sure, especially older people, we're not sure we want to  
16 tell somebody that we did something because maybe I  
17 didn't quite obey the letter of the law.

18

19 I used an example. I taught school in  
20 1966 in an unknown village out on the Peninsula, we ate  
21 four brown bears the year I was there and I will  
22 guarantee you that not one of those brown bears ever got  
23 reported to the Fish and Game, and it wasn't the case  
24 that they were trying to be illegal or anything like  
25 that. It was the case the Fish and Game was in  
26 Anchorage, we were out, you know, 400 miles out on the  
27 Aleutian Peninsula and the bear was eaten, why bother to  
28 tell them. And anybody that's been in rural Alaska knows  
29 this is what happened, especially with bears. Bears were  
30 something that, if they shot them and ate them, they  
31 didn't bother to go tell somebody about them. And, in  
32 fact, in part of our culture, if we look in the Copper  
33 River Valley to tell somebody about killing a bear was  
34 bragging and it was against their culture. If you killed  
35 a bear, you treated it with respect, you didn't brag  
36 about the fact that you were going bear hunting and you  
37 didn't tell anybody that you went out and killed a bear  
38 afterwards.

39

40 And so, you know, with that I'll shut up.

41

42 (Laughter)

43

44 CHAIRMAN FLEAGLE: Okay.

45

46 MR. EDWARDS: Mr. Chairman.

47

48 CHAIRMAN FLEAGLE: Well, we're going to  
49 bat this back and forth it sounds like, quite a bit here,  
50 but basically what I'm seeing here is two issues.

1                   Number 1, should there be a C&T finding.  
2 Number 2, should it be confined to just the small  
3 geographic area that Gary proposed in his amendment.

4  
5                   And just to state for the record, this  
6 amendment goes against the RAC's recommendation and  
7 therefore should be voted down, I do see that we have  
8 split rural determination, or C&T determinations by  
9 subunit previously in this same area, by existing  
10 regulation. And, you know, Section -- the section that  
11 says that we shall follow the recommendations -- the  
12 Secretary may choose not to follow the recommendations  
13 where determines are not supported by substantial  
14 evidence, I think refers to maybe where Gary's coming  
15 from for the motion that he made. But the question is  
16 now, if we vote on this as proposed and pass it, we  
17 eliminate the other two subunits from consideration. And  
18 just procedurally here, if we vote to reject the motion,  
19 then we're probably dispensing with the entire situation,  
20 unless I'm mistaken there, or would we be open for  
21 another motion to cover the entire area. I think that's  
22 a grey area, Keith Goltz.

23  
24                   MR. GOLTZ: I think you'd be open to  
25 another motion unless somebody else wants to comment.

26  
27                   MR. PROBASCO: That's correct.

28  
29                   CHAIRMAN FLEAGLE: Pete.

30  
31                   MR. PROBASCO: I see it the same way you  
32 do Keith. If the Board so elected they could provide  
33 another motion on this issue.

34  
35                   Mr. Chair.

36  
37                   CHAIRMAN FLEAGLE: Good enough. I'll now  
38 call back on you Gary.

39  
40                   MR. EDWARDS: Yes, Mr. Chairman. You  
41 know one thing first is that, at least it's my  
42 understanding on C&T there's no requirement for the Board  
43 to give deference to the Regional Advisory Council; isn't  
44 that correct?

45  
46                   MR. GOLTZ: That's our present  
47 interpretation.

48  
49                   MR. EDWARDS: All right, thank you. I  
50 just wanted to follow up on one thing Ralph said. I

1 guess I'm a little bit concerned that while I recognize  
2 that all things don't get reported, I don't think we  
3 necessarily ought to overly state that somehow this  
4 harvest is three or four times what's being reported  
5 here. My assumption is probably on the Peninsula we  
6 probably have as good as compliance as probably anywhere  
7 in the state and even though that might not be the  
8 greatest, my guess is it's better than a lot of places  
9 just because of the nature of it and certainly probably  
10 since the 1973 when we started doing it. My guess is a  
11 lot of people were aware about it and, you know, there's  
12 maybe a tendency maybe more opportunity to get caught on  
13 the Peninsula or whatever. So I think we have to be  
14 careful somehow implying that this number of 59 ought to  
15 be 259 and that's really not accurate and I just would  
16 encourage us in our thinking not to totally throw this  
17 information out and say, well, it's not really accurate  
18 and somehow the harvest was much greater than this.

19

20 CHAIRMAN FLEAGLE: Keith.

21

22 MR. GOLTZ: Yeah, on the subject of  
23 numbers, I agree with Ralph, that this is a yes or no  
24 determination. But low levels of use, if that's what the  
25 Board determines could be reflected in low levels of  
26 allocation at a later time.

27

28 MR. LOHSE: Mr. Chair.

29

30 CHAIRMAN FLEAGLE: Other comments.

31 Ralph.

32

33 MR. LOHSE: I'll go along with Gary there  
34 and I was not suggesting that in recent history there was  
35 a lot of unreported use, but what I'm saying is when we  
36 start dealing with long-term memory and we start dealing  
37 with historical data, one of the things that you're  
38 dealing with is you're dealing with the fact that --  
39 especially when you're dealing with older people, that  
40 you have a tendency to not to want to remember things  
41 that possibly weren't right or weren't legal that you did  
42 or, you know, that your grandfather did or your father  
43 did.

44

45 And I know -- I mean I'll just say that I  
46 know for a fact from talking to people, and I talk to a  
47 lot of people, that sometimes you get around some people  
48 they like to talk about the things that were on the edge,  
49 but other people don't want to bring out the fact that,  
50 you know, we -- we lived off of this stuff, you know,

1 simply because they weren't sure whether they could or  
2 couldn't. and this is -- I think if you talked to  
3 Gloria, you'd find that this is even more true in a lot  
4 of your Native culture in Alaska. The fear of reporting  
5 something that might possibly be wrong even if you and I  
6 understand the statute of limitations, but sometimes it's  
7 hard to get that across to other people when you go out  
8 to try to make a survey.

9

10 CHAIRMAN FLEAGLE: All right, the  
11 discussion is becoming repetitive. We should move on to  
12 more new information or bring this to a vote.

13

14 MR. CESAR: Question.

15

16 CHAIRMAN FLEAGLE: Question. Are we  
17 ready for the question.

18

19 MR. CESAR: Question.

20

21 CHAIRMAN FLEAGLE: The question is  
22 recognized on the motion.

23

24 MR. PROBASCO: Thank you, Mr. Chair.  
25 WP07-16a, adopt the proposal with modification to provide  
26 a customary and traditional use determination for the  
27 community of Ninilchik in Unit 15C only.

28

29 And up first, Mr. Oviatt.

30

31 MR. OVIATT: Aye.

32

33 MR. PROBASCO: Ms. Kessler.

34

35 MS. KESSLER: No.

36

37 MR. PROBASCO: Mr. Edwards.

38

39 MR. EDWARDS: Aye.

40

41 MR. PROBASCO: Mr. Fleagle.

42

43 CHAIRMAN FLEAGLE: Aye.

44

45 MR. PROBASCO: Ms. Gottlieb.

46

47 MS. GOTTLIEB: No.

48

49 MR. PROBASCO: And Mr. Cesar.

50

1 MR. CESAR: No.  
2  
3 MR. PROBASCO: Motion fails, three/three.  
4  
5 CHAIRMAN FLEAGLE: Okay. So now we're  
6 back to square one with nothing before us and this is why  
7 it's most beneficial to start with what the proposal  
8 states or something large and try to pare it down to  
9 something that's smaller, because now I see a little  
10 conflict. We've already found that no C&T determination  
11 exists for 15C, but now we're proposing to put a motion  
12 back on the table that says one exists, you see the  
13 conundrum for doing it this way.  
14  
15 However, be that as it may, if it's the  
16 intent of the Board to propose a new motion which  
17 includes 15C and other areas then we'll go ahead.  
18  
19 Niles.  
20  
21 MR. CESAR: That would be my intention,  
22 Mr. Chair, is to forward a motion which would find a  
23 positive C&T for Ninilchik in Unit 15.  
24  
25 MS. GOTTLIEB: I'll second.  
26  
27 CHAIRMAN FLEAGLE: Okay. And do you want  
28 to give some supporting statements there for the entirety  
29 of the unit, Niles.  
30  
31 MR. CESAR: Well, I think it goes along  
32 with what I've said before and continue to say is that,  
33 like Mr. Lohse, I see where people are opportunistic in  
34 their take, and if you're in an area where you run across  
35 a bear, then you would do that. I mean one of the things  
36 we haven't talked about is the bear population in total  
37 moving, you know, maybe in future years, maybe we will  
38 see them more in A and B than we do in C, I mean I just  
39 don't know that. But I believe that if I am going to  
40 error, then I'm going to error on the part of the  
41 subsistence user.  
42  
43 Thank you.  
44  
45 CHAIRMAN FLEAGLE: Other comments.  
46  
47 MS. GOTTLIEB: Mr. Chairman.  
48  
49 CHAIRMAN FLEAGLE: Judy.  
50

1 MS. GOTTLIEB: I guess in keeping with  
2 many of the comments that we've read through the legal  
3 system, I mean the way I understand our ANILCA mandates,  
4 is that this Board is to be permissive and protective and  
5 not exclusionary or constraining. Our purpose is to  
6 protect subsistence, not limit it. And so when one of my  
7 colleagues mentioned, well, maybe we should just open  
8 this up to all rural residents, right now parts of this  
9 unit have no Federal priority. So if it is our intent to  
10 open it up, that's what we need to do through this  
11 customary and traditional use determination.

12  
13 I think there's been a great deal of  
14 evidence, there's a lot of historical information in this  
15 write up that we have that supports a customary and  
16 traditional use determination for the entire unit.

17  
18 CHAIRMAN FLEAGLE: Wini.

19  
20 MS. KESSLER: Yes, I agree with that.  
21 And also I believe that the bears in all of Unit 15 and  
22 probably all of the Kenai are expectedly one population,  
23 that influences me as well.

24  
25 MR. EDWARDS: Mr. Chairman.

26  
27 CHAIRMAN FLEAGLE: Gary.

28  
29 MR. EDWARDS: Mr. Chairman. I'm going to  
30 vote against the motion obviously for a lot of things I  
31 previously said.

32  
33 I mean I think it's clear, one, this is a  
34 species that's not overly sought, you know, assuming this  
35 number's correct, 59 bears taken in 30 years by over a  
36 thousand people and as the previous -- as I mentioned the  
37 previous president of the Council said only taken in dire  
38 need, so it's not a species that one is high, but  
39 certainly there is clear evidence that it certainly is  
40 used and maybe I want it kind of both ways. Maybe I want  
41 to find a positive C&T for the community of Ninilchik but  
42 at the same time limit that because I have difficulty,  
43 you know, getting around, you know, two requirements that  
44 talk about a long-term consistent pattern of use, I don't  
45 believe that it's there, whether that's important  
46 anymore, I'm unclear of that. And I don't think that  
47 there's a pattern of use that it's recurring in specific  
48 seasons for many years in those two particular areas, the  
49 data is just not there to support it.

50

1 CHAIRMAN FLEAGLE: George Oviatt.

2

3 MR. OVIATT: Well, I'm not going to  
4 reiterate what Gary has said, but I agree with what he  
5 said and I just have a real hard time figuring that  
6 there's a customary and traditional use by Ninilchik at  
7 any place other than 15C. We have divided units before.

8

9 I often wonder if we were talking about  
10 the Kenaitze Tribe out of Kenai then maybe it would be a  
11 different story about who really used the whole Kenai,  
12 but I think Ninilchik, historically, as we went through  
13 other issues of Ninilchik that they didn't necessarily  
14 utilize the whole Kenai as maybe the Kenaitze Tribe out  
15 of Kenai did.

16

17 So, I, like Gary have a very difficult  
18 time going beyond 15C.

19

20 Thank you, Mr. Chairman.

21

22 MS. GOTTLIEB: Mr. Chair.

23

24 CHAIRMAN FLEAGLE: Judy.

25

26 MS. GOTTLIEB: Well, I wondered if I  
27 might ask Keith a question whether there's some sort of  
28 statistical minimum that this Board is supposed to meet  
29 or a threshold that we're supposed to pass in terms of  
30 numbers.

31

32 MR. GOLTZ: No, we've never set a  
33 numerical minimum. In fact, the general standard has  
34 been that there are no unimportant subsistence uses. If  
35 they're low or documentation is remote then we can  
36 reflect that at the time of allocation. But as Ralph  
37 said, this is a yes/no decision.

38

39 CHAIRMAN FLEAGLE: All right, I'm going  
40 to jump in.

41

42 I find that we do meet the requirements  
43 of the eight factors for determining a customary and  
44 traditional use for the community of Ninilchik as laid  
45 out in information provided by Staff.

46

47 They have shown to me that we do have a  
48 long-term consistent pattern of use.

49

50 A pattern of use recurring in specific

1 seasons for many years, in fact the table presents that.

2

3                   The pattern of use consisting of methods  
4 and means of harvest, which are characterized by  
5 efficiency and economy of effort and cost, and this does  
6 not refer to just a species in question.

7

8                   A lot of these factors can apply broadly  
9 to just the lifestyle.

10

11                   The consistent harvest and use of fish or  
12 wildlife is related to past methods and means; and I'm  
13 summarizing these.

14

15                   Means of handling, preparing, preserving,  
16 storing fish or wildlife which has traditionally been  
17 used by past generations.

18

19                   Pattern of use which includes the handing  
20 down of knowledge of fishing and hunting skills, values  
21 and lore.

22

23                   Pattern of use in which the harvest is  
24 shared or distributed within a definable community of  
25 persons.

26

27                   And a pattern of use which relates to  
28 reliance upon a wide diversity of fish and wildlife  
29 resources of the area.

30

31                   I do find that those conditions exist.  
32 And I think I would have more easily have found that they  
33 exist to 15C but now that the proposal includes all of  
34 Unit 15, basically the table blends now. I don't see 15A  
35 as having only three bears taken over the course of the  
36 last, well, 30 years. I don't see 15B as only having  
37 four bears. I see the total being, whatever it is, 66,  
38 for all of 15, you know, now we're looking at it as a  
39 larger geographical area.

40

41                   So I will support the motion. And it  
42 sounds like I might be the tie-breaker, so are we ready  
43 for the question.

44

45                   Ken Taylor.

46

47                   MR. TAYLOR: Thank you, Mr. Chairman. I  
48 think the difficulty that the State has is, in trying to  
49 determine what you use as a threshold for your C&T  
50 determinations. And when your policy manual says it's

1 not appropriate to recommend approval of C&T if the use  
2 is not on Federal public lands and waters and while our  
3 UCUs don't necessarily follow Federal land management  
4 boundaries, it's pretty easy for us to determine that a  
5 great percentage of the harvest in Unit 15 was not  
6 conducted on Federal lands. So trying to develop a long-  
7 term consistent pattern of use when you're looking at a  
8 take of a handful of bears, perhaps, over the course of  
9 two or three decades leaves us with some difficulty.

10

11 In looking through your criteria for  
12 making those determinations, your eight criteria, they  
13 talk about a pattern of use recurring in specific seasons  
14 for many years, a pattern of use consisting of methods  
15 and means of harvests which are characterized by  
16 efficiency, economy of effort and cost. I didn't see  
17 either one of those actually addressed in your analysis  
18 here. A consistent harvest and use of fish and wildlife  
19 as related to past methods and means of taking near or  
20 reasonably accessible from the community or area. Most  
21 of the area that's reasonably accessible to Ninilchik is  
22 not Federal lands, you have to travel a good many miles  
23 to get over into the Federal areas.

24

25 So I think we've talked, and probably in  
26 previous Board meetings, and since I haven't been to one  
27 of these since 1998, I am not current on the  
28 conversations but one of the things the State, I think,  
29 has repeatedly asked the Federal Board is to develop a  
30 policy for making your C&T determinations that we can  
31 actually follow through the steps, that it's not just a,  
32 you know, that we can clearly see how you've addressed  
33 each one of the steps that are in your regulations.

34

35 Thank you, Mr. Chairman.

36

37 CHAIRMAN FLEAGLE: Thank you, Ken,  
38 appreciate the comments, and we have heard those comments  
39 and have been dealing with that issue with the State, and  
40 I'm speaking from the perspective of my role here as the  
41 Federal Board Chairman. Now, I do know the process that  
42 you refer to that the State uses, it is a different  
43 process. They go through a checklist and each one of  
44 these criteria are addressed individually in the  
45 recommendation and the analysis, and each one is weighted  
46 by that criteria and by the evidence against that  
47 criteria and then the whole -- all eight criteria are  
48 then addressed as a whole and the determination is based  
49 on that.

50

1                   And, you know, I remember that you don't  
2 have to find that -- if I remember correctly you didn't  
3 have to find that all eight of those criteria were fully  
4 met, you could have a -- I don't think you could kill --  
5 not find a C&T if just one of those may be not met, some  
6 threshold, which I don't remember that there being a  
7 threshold.

8  
9                   Now, the difference is, under the Federal  
10 program, they have reduced these to factors and the  
11 Federal regulations state that the community or area  
12 shall generally exhibit the following factors, which  
13 exemplify customary and traditional use. And while I  
14 recognize the State's objections based on the State's  
15 system we are dealing with a different understanding and  
16 interpretation of those factors which were, I think,  
17 pretty much adopted from the State's criteria. And there  
18 is quite a bit more room for judgment in how these are  
19 applied.

20  
21                   Now, whether or not it would be wise to  
22 have, in the future, some policy that laid out a  
23 procedure for walking through each factor and identifying  
24 the level that it meets the factors, requirements for  
25 C&T, that may be a good suggestion, you know, it may  
26 bring some consistency to determining these based on more  
27 data, but is it necessary. At this point it appears that  
28 it's not.

29  
30                   One last comment, I know that the word  
31 significant seems to get used when we're talking about  
32 C&T determinations, and that's not anywhere in the  
33 regulation or the statute, it's a use. And I do see the  
34 difference, I do recognize the concerns, but I do see the  
35 difference, you know, from the program.

36  
37                   Gary.

38  
39                   MR. EDWARDS: Mr. Chairman. I wanted to  
40 respond, you used the number of 66 bears taken in Unit  
41 15, but, you know, the reality is that a maximum of those  
42 66, based upon the charts, only 11 of those were taken on  
43 Federal lands there, and that number could be smaller and  
44 some of those 11 could be in defense of life and  
45 property. So we really don't know if those are 11 or  
46 not. So I guess my only point is 11 bears taken over 30  
47 years in my mind does not establish any kind of a pattern  
48 or a use or a demonstrated pattern, and I don't see how  
49 we can get there from here, you know, with that minimal  
50 of use. And I guess it kind of gets back to the

1 question, if it would have been only one bear, would we  
2 still be at this same place.

3  
4 I know Keith responded that there's no  
5 number but I'm assuming that there's a number above zero.  
6 Anything but zero apparently then would be okay for us to  
7 find a C&T finding and there is -- it's true there isn't  
8 a threshold, but I still have difficulties saying, you  
9 know, 11 bears in 30 years demonstrates some kind of a  
10 pattern and I don't see how a reasonable person would  
11 look at that and say, yeah, this is a reasonable pattern.

12  
13 CHAIRMAN FLEAGLE: But I guess from my  
14 perspective, again, as a Board member, the people that  
15 existed in, what is now known as the community of  
16 Ninilchik, way back when, they didn't have these lines  
17 drawn that said this is State and this is Federal, they  
18 went out and they harvested those bears, and I think  
19 that's what we're looking here, is for that long-term  
20 consistent pattern of use, and I don't read in here and  
21 I'm not sure that it's our charge to determine whether  
22 that use occurred on the Federal land or not, but that  
23 use occurred.

24  
25 Now, am I wrong there? I don't read  
26 that.

27  
28 Keith.

29  
30 MR. GOLTZ: I thought we were ready for a  
31 vote.

32  
33 (Laughter)

34  
35 MR. GOLTZ: We're pushing the envelope  
36 here. It seems to me that we're going to the point where  
37 we're asking if a use could be established off Federal  
38 lands but realized on Federal lands, as long as we had  
39 the same stock and population. We've never directly  
40 addressed that question. The portion that's in our  
41 drafting manual, I think, was intended to acknowledge  
42 that there are limits to Federal jurisdiction, but you're  
43 asking to push those limits. I think it's arguable  
44 either way. You could start with the purposes of ANILCA  
45 and say that as long as that use is established on a  
46 specific stock and population, it doesn't matter where  
47 that use was, I think the State would probably object to  
48 that and say we're intruding on State jurisdiction. I'd  
49 rather not give a definitive statement at that time -- at  
50 this time. If this becomes an issue we can research it

1 more and give a written opinion on this one.

2

3 MS. GOTTLIEB: Mr. Chairman.

4

5 CHAIRMAN FLEAGLE: Judy.

6

7 MS. GOTTLIEB: I mean, I guess, again,  
8 this was my earlier question so I'm sorry if we are  
9 getting repetitive, but I mean I agree with what you  
10 said, Mr. Chair, because, again, as I understand the  
11 Department of Justice's position is that ANILCA and the  
12 priority afforded is not limited for specific species,  
13 only to the area where there's a record of that species  
14 having been taken. So, yeah, I don't think we need to  
15 make the distinction was it taken on Federal land or was  
16 it taken on State land, we're talking about the Kenai  
17 Peninsula here and Unit 15 in particular.

18

19 MR. EDWARDS: I guess just in response

20 and.....

21

22 CHAIRMAN FLEAGLE: Go ahead, Gary.

23

24 MR. EDWARDS: .....I just told Keith this  
25 earlier, I mean if that is the case then it seems to me  
26 we've wasted a lot of time this afternoon because it  
27 sounds to me like the Department of Justice has already  
28 decided what this Board's decision is and should be and  
29 is.

30

31 CHAIRMAN FLEAGLE: Well, I would disagree  
32 with that, I think we still have a vote here.

33

34 Ken Taylor.

35

36 MR. TAYLOR: Thank you, Mr. Chairman. I  
37 don't know how your Subsistence Management Instruction  
38 Manual figures into this, but it clearly states in there  
39 that you're supposed to be looking at uses on Federal  
40 lands and not uses off Federal lands.

41

42 Perhaps our attorney could help clarify  
43 this a bit.

44

45 MS. GOTTLIEB: Mr. Chairman.

46

47 CHAIRMAN FLEAGLE: Judy.

48

49 MS. GOTTLIEB: I guess, I mean we have  
50 our regulations which we're trying to put forward here

1 and the manual's a tool that helps us get there but it  
2 certainly doesn't override our regulations. I think that  
3 section can be construed in several different ways, and I  
4 just don't know that it benefits our discussion and how  
5 we cast our vote at this point.

6

7 CHAIRMAN FLEAGLE: That's true. I mean  
8 that's a valid statement, whether the use occurred off of  
9 Federal lands or not, we do have use and whether that  
10 number is 11 or 66 we still do have a demonstrated use.  
11 And, again, I don't find the regulation as saying that we  
12 need to have a significant use, that's the problem, is  
13 it's not really well defined as to -- you know, we could  
14 find all kinds of reasons for it and we're going to get  
15 some help right now.

16

17 Liz Williams.

18

19 MS. WILLIAMS: Thank you, Mr. Chair. I'd  
20 like to point out that the two other communities on the  
21 Kenai Peninsula that have C&T are Nanwalek and Port  
22 Graham and they hunt primarily on State lands, but they  
23 still have a Federal C&T recognition. Also Unit 7, which  
24 I think isn't really relevant, there's a no  
25 determination, which means all rural residents are  
26 eligible. And I think we just really are stuck in our  
27 time in our own lens, because Ninilchik people didn't  
28 always have backyards or their backyard was everywhere  
29 they went when they were doing all those -- I guess what  
30 I'm trying to say is that factor about, you know, doing  
31 it the most expeditious way, well, if you're out  
32 trapping, if you're out subsistence harvesting, if you're  
33 out mining, if you're out commercial fishing, nobody goes  
34 to the grocery store for one package of sugar, they would  
35 get whatever was out there while they were doing other  
36 things.

37

38 And I regret now that I put this map in  
39 here, I thought it would really support the proposal,  
40 because this is an ephemeral epic in the lifetime of a  
41 Ninilchik subsistence history, 30 years is just like that  
42 when you think about the time that people have wandered  
43 all over that land. And so this was intended just sort  
44 of a supplemental thing to have the one, maybe, way of  
45 modern day documentation to show that uses did occur all  
46 over the Peninsula, that people were all over just in  
47 these last 30 years. This is a tiny, tiny slice that  
48 just is a little tiny bit of evidence for a much bigger,  
49 longer term, deeper picture.

50

1 Thanks.  
2  
3 CHAIRMAN FLEAGLE: New information, Mr.  
4 Taylor.  
5  
6 MR. TAYLOR: Thank you, Mr. Chairman. I  
7 know our attorney has been wanting to say something but  
8 I'm not sure exactly what it is. If you'd recognize him  
9 I'd appreciate it.  
10  
11 CHAIRMAN FLEAGLE: New information,  
12 Steven.  
13  
14 MR. DAUGHERTY: Mr. Chair. Just a point  
15 of clarification. I believe that the State's arguments  
16 were mischaracterized and I just wanted to clarify them,  
17 is that the State's objection is not based on an argument  
18 that the Federal factors should be interpreted in the  
19 same manner as the State's criteria. The State's  
20 objection is that the Federal regulations should be  
21 followed. The Federal regulations speak of a -- of  
22 patterns and they also speak of generally demonstrated,  
23 and we do not feel that a tiny bit of evidence for one or  
24 two factors generally demonstrates the eight factors.  
25  
26 Mr. Chair.  
27  
28 CHAIRMAN FLEAGLE: Thank you, appreciate  
29 it. Ready for the question. Question's called -- or the  
30 question's recognized for final action on Proposal --  
31 which one were we on, 16a. Pete.  
32  
33 MR. PROBASCO: Thank you, Mr. Chair.  
34 Proposal WP07-16a, adopt the proposal as recommended by  
35 the Southcentral Alaska Subsistence Regional Advisory  
36 Council for:  
37  
38 A positive C&T determination for Unit 15  
39 for black bear for the community of  
40 Ninilchik.  
41  
42 Ms. Kessler.  
43  
44 MS. KESSLER: Aye.  
45  
46 MR. PROBASCO: Mr. Edwards.  
47  
48 MR. EDWARDS: Nay.  
49  
50 MR. PROBASCO: Mr. Fleagle.

1 CHAIRMAN FLEAGLE: Aye.  
2  
3 MR. PROBASCO: Ms. Gottlieb.  
4  
5 MS. GOTTLIEB: Aye.  
6  
7 MR. PROBASCO: Mr. Cesar.  
8  
9 MR. CESAR: Aye.  
10  
11 MR. PROBASCO: And Mr. Oviatt.  
12  
13 MR. OVIATT: Nay.  
14  
15 MR. PROBASCO: Motion carries, four/two.  
16  
17 CHAIRMAN FLEAGLE: All right, thank you.  
18  
19 MR. CESAR: Mr. Chairman.  
20  
21 CHAIRMAN FLEAGLE: Niles.  
22  
23 MR. CESAR: If I may.  
24  
25 CHAIRMAN FLEAGLE: Yes.  
26  
27 MR. CESAR: I know we're getting ready to  
28 close for the evening, I would like to request a 15  
29 minute executive session with the Board, either this  
30 evening or before we start tomorrow. And the issue would  
31 be the memorandum that our attorney has provided us  
32 earlier today and I want to clarify a couple of issues in  
33 there.  
34  
35 CHAIRMAN FLEAGLE: We'll do it tonight --  
36 we'll do it now -- now. All right, that request is  
37 recognized, the Board will step down for 10 minutes to  
38 allow the public to clear the room and then we'll resume  
39 in the executive session briefly.  
40  
41 (Off record)  
42  
43 (Board Executive Session)  
44  
45 (End of Day One)  
46  
47 (PROCEEDINGS TO BE CONTINUED)

