

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

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44 Recorded and transcribed by:

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46 Computer Matrix Court Reporters, LLC
47 700 West 2nd Avenue
48 Anchorage, AK 99501
49 907-243-0668
50 jpk@gci.net/sahile@gci.net

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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

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

17

18

19 A third area is the closure of Federal
20 public lands and as I understand it you have a draft
21 policy in the works right now. We have several proposals
22 on the agenda that address closures of Federal public
23 lands to non-Federally-qualified subsistence users.
24 Under ANILCA, Section .815 paragraph 3, Congress
25 prohibits authorizing restriction on the taking of fish
26 and wildlife for non-subsistence uses on the public lands
27 unless necessary for the conservation of healthy
28 populations of fish and wildlife or to continue
29 subsistence uses of such populations unless proposed or
30 existing closures are shown to be consistent with Section
31 .815 of ANILCA the closures should be rescinded.

31

32

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

38

39

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

48

49

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

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

48

49

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

30

31 Dr. Schroeder, thank you.

32

33 (Applause)

34

35 CHAIRMAN FLEAGLE: Comments.

36

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

49

50 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)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 2 through 184 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME I taken electronically by Nathan Hile on the 30th day of April 2007, beginning at the hour of 8:30 o'clock a.m. at the Sheraton Hotel in Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 7th day of May 2007.

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