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FEDERAL SUBSISTENCE BOARD

WORK SESSION

VOLUME II

U.S. FISH AND WILDLIFE SERVICE
GORDON WATSON CONFERENCE ROOM
NOVEMBER 17, 2006
8:30 o'clock a.m.

MEMBERS PRESENT:

- MIKE FLEAGLE, CHAIR
- NILES CESAR/GLENN CHEN, Bureau of Indian Affairs
- GARY EDWARDS, U.S. Fish and Wildlife Service
- JUDY GOTTLIEB, National Park Service
- WINI KESSLER, U.S. Forest Service
- GEORGE OVIATT, Bureau of Land Management

- SARAH GILBERTSON, State of Alaska Representative

- KEITH GOLTZ, Solicitor's Office
- KEN LORD, Solicitor's Office

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

2
3 (Anchorage, Alaska - 11/17/2006)

4
5 (On record)

6
7 CHAIRMAN FLEAGLE: Good morning. Today
8 is the 17th of November, I believe, and we're back
9 dealing with the issue that we left hanging yesterday. I
10 believe we're prepared for the deliberative portion of
11 the question. Board members -- Pete, do you have any
12 announcements to start us off.

13
14 MR. PROBASCO: Thank you, Mr. Chair. For
15 Board members, the status of this morning, we do have
16 this room for this morning. Another glitch that we have
17 is Nate, our court reporter, he has another work
18 commitment that starts at 1:00 o'clock, so I guess what
19 I'm saying is we got this morning to do our work, Mr.
20 Chair.

21
22 CHAIRMAN FLEAGLE: Thank you. All right,
23 Board members we heard all the analysis and
24 recommendations from the Council, the ADF&G, the
25 InterAgency Staff Committee and we're ready to enter into
26 deliberations. Anybody wishing to start out discussions.

27
28 Gary.

29
30 MR. EDWARDS: I don't know why you're
31 looking at me but, you know, I know Keith doesn't like me
32 to say this, but, you know, when it comes to C&T, you
33 know, I've used the expression several times it's kind of
34 like in my mind grabbing hold of smoke. I think it's a
35 very -- I find it a very elusive thing. I have
36 difficulty fully understanding what it is and when I look
37 at our eight factors and where it uses the term use,
38 throughout those, it seems to me if it's simply about
39 that the people utilize the resource then it seems to me
40 that much of the things that we've been discussing about,
41 you know, aren't overly relevant. I mean there is no
42 question that people all over this state and the folks in
43 Ninilchik use the resource for as long as they have been
44 there, and patterns of use and sharing and all of that, I
45 don't think -- I mean in my mind that's not a question.

46
47 But if it is defined by, you know, kind
48 of where that use occurs and all and is all use the same.
49 I know we talk about customary and traditional as not
50 being -- should not be limiting. But I guess in my mind

1 it's not limiting but it does define, I mean those terms,
2 if we look at the three kinds of subsistence that we have
3 in this state under three different regulations, the one
4 thing that's consistent is the term customary and
5 traditional. And it seems to me that using those terms
6 and defining use as having to be customary and
7 traditional, to find something, and says -- that not all
8 use is created equal. So I have real difficulty doing
9 that.

10

11 I also have difficulty comparing this
12 decision with the decisions that the Board might have
13 made in the past because, you know, that's supposing that
14 all those decisions were correct decisions and I would
15 say that you can show areas where we've been very
16 lenient, where we've been restrictive. As most folks
17 know I've been one of the strong supporters of the need
18 for us to, you know, get a policy. I think it would
19 really be helpful. Quite frankly I don't care what that
20 policy ultimately says but I know for me it would provide
21 better guidance than what I think we have. I just think
22 that we're all over the board and I have very difficulty
23 defining really what customary and traditional use is.
24 And in this case if it's simply a matter, did people in a
25 given area use the resource then it seems to me that this
26 is an easy answer. But I'm not convinced that that was
27 the intent and the intent of Congress. And, you know, if
28 you look at the three pieces of legislation that, again,
29 deal with subsistence it was some of the same people that
30 wrote all of those and it just seems to me that there was
31 -- it meant that there was a goal to define that and say
32 it's not equal for everyone, but maybe I'm wrong.

33

34 CHAIRMAN FLEAGLE: Thank you, Board
35 members. Judy.

36

37 MS. GOTTLIEB: Thank you, Mr. Chair.
38 Well, I would ask that our solicitor give us some
39 feedback on that comment and once again maybe set the
40 stage for our discussions on C&T determinations.

41

42 CHAIRMAN FLEAGLE: Keith.

43

44 MR. GOLTZ: Well, first let me declare
45 myself a little bit. I helped form the Kenai River
46 Sportfishing Association. I met weekly with Bob Penny
47 and others at the Golden Lion and we discussed a lot of
48 things but we never discussed subsistence and that
49 organization at its inception was never intended to
50 intrude on subsistence uses.

1 In addition, at about that time I was
2 appointed by Governor Hammond to the original Kenai River
3 Task Force. And equally we gave no thought to
4 subsistence. At that time, even our terms of reference
5 were different. What people now call the upper river, we
6 called the upper, upper, and nobody worried that we were
7 stuttering because nobody went there. It was, in those
8 days, an entirely different system. In fact in the early
9 '70s people didn't fish the Kenai, they drove across the
10 Kenai to get to the clear water streams to the south.

11
12 Of course we did learn to fish the Kenai.
13 And if any of you have read Fly Patterns of Alaska, you
14 know that I wrote the introduction, and I was going to
15 bring that with me today but I discovered I've given away
16 my last copy. But I did, in fact, pull out an article I
17 wrote for the Alaska Department of Fish and Game in one
18 of their publications. And I point out in here how
19 recent some of these sportfishing techniques are.

20
21 Now, the point of this for me is to
22 dispel this notion that this Board is somehow acting as a
23 brooding Federal presence ready to impose its will on a
24 resident public. We live here. We've lived here a lot
25 longer than some of our critics and we're dedicated to
26 Alaska, all of Alaska.

27
28 Now, let's move from the words of the
29 past to the words of the present, customary and
30 traditional. They come from a statute and in that --
31 they have a purpose in that statute and I think we
32 sometimes miss that. We tend to talk as if it's a noun,
33 C&T is a noun, it has substance. Well, if you look at
34 the statute, the words aren't used that way at all. It's
35 part of a sentence, a long sentence, which defines
36 subsistence uses and it says subsistence uses mean
37 customary and traditional uses for a long list of things.
38 They're adjectives, customary and traditional define
39 uses. The context is one of permission, it's not
40 constraint. And there apparent purpose is to protect
41 subsistence use, not limit it.

42
43 How do I know that. Well, the Alaska
44 Supreme Court has interpreted the identical phrase three
45 separate times, and those are their words. In addition
46 the Senate report which helps explain to us how we're
47 supposed to administer this program says that the
48 definition of subsistence uses is intended to include all
49 Alaska residents who utilize renewable resources for
50 direct personal or family consumption.

1 Where does that apply. Well, one thing
2 we know is that it applies to the Kenai Refuge. This is
3 a matter that has already been litigated. The question
4 of the purposes of the Kenai Refuge were presented to the
5 district court and what that said was, in about two
6 sentences, that there is no significance in the fact that
7 the relevant public lands lie within the Kenai National
8 Refuge.

9
10 When we took over the -- the Federal
11 government took over this program it had twin purposes.
12 One, was to keep the State's system in place to the
13 maximum extent possible. I recall vividly our first
14 meeting on this, we thought that the Legislature would
15 never allow the Federal program to last more than six
16 months so we just didn't want to disrupt anything if we
17 could. But the second thing that we said and we did
18 anticipate the possibility that that wouldn't happen. We
19 said we're going to modify the State's program so that it
20 complies with the spirit and intent of ANILCA so we did
21 three basic things that are relevant to our discussion
22 today that make a difference between the Federal program
23 and the State program.

24
25 The first thing we did, probably the most
26 critical thing we ever did was form the Regional Advisory
27 Councils. And we specifically said the changes to C&T
28 would occur only after the Councils had been given a
29 substantial role in the process. The effect of this is
30 that we listen and respond to local variations. And by
31 listening and responding locally we get results that vary
32 because they conform to the geography of the individual
33 regions. And people who say we're inconsistent or all
34 over the map are just wrong, we are consistent, we listen
35 to Councils and our process is the same in every case.

36
37 Another thing that we did is change the
38 administrative presumptions. Under the State system you
39 had to have a C&T before you could get an allocation.
40 Well, we reversed that. And we said that if we haven't
41 gotten -- doing a C&T, then these stocks and populations
42 are open to the taking by subsistence users all over the
43 state. Now, there are some legal ramifications to that
44 that we might want to explore later today. But I think
45 that it's important to understand that that's a see
46 change in attitude, and it's a driver for the Federal
47 program.

48
49 The other thing that we changed was how
50 we were going to do C&Ts and in our environmental impact

1 statement we had a study on C&Ts and what that study
2 recommended is that the factors, which we took in
3 modified form from the State, should be applied
4 differently. They should not -- and I'm quoting here:

5
6 They should not be used as a formula that
7 is a quantitative test as in assigning
8 numbers but they should be used as a
9 holistic concept considering as a whole
10 and arriving at a pattern.

11
12 As a result of that the Federal
13 Subsistence Program has developed guidelines and they're
14 extensive. I've got them in front of me. They're about
15 eight pages of very small type, and to say that we don't
16 have standards, I think, is something I call bologna, we
17 have lots of standards. We apply them. The people who
18 say we don't have standards are really saying they don't
19 like how those standards are applied. But they are
20 consistent with how we set up this program. And what we
21 said at the very beginning is that the overall intent of
22 the Federal program is to be sensitive to the customary
23 and traditional patterns for subsistence use of fish and
24 wildlife by rural Alaskans. Meaning that Federal
25 decisions related to this matter would try to reasonably
26 accommodate any such use patterns.

27
28 Now, I don't know how much time I have
29 but I want to be as brief as I can but also comprehensive
30 so if, when I'm done here anybody thinks they're happy
31 with what I've said you should raise your hand.

32
33 (Laughter)

34
35 MR. GOLTZ: I probably just missed you.
36 Because ANILCA is a compromised statute. Nobody got what
37 they wanted. Everybody has a grievance.

38
39 And I think it's important to understand
40 that. Because I hope to get a chance to say that we're
41 going to work together on this.

42
43 I don't know what the Board's going to do
44 today and I don't know if the Board knows what it's going
45 to do and I think that's right and proper. The Board is
46 supposed to listen to the evidence, do its deliberations
47 and then make its decision. But if it decides that there
48 is a C&T use here, the people who are opposing that
49 should not take that to mean that there are no
50 limitations. There are inherent limitations in the

1 program. The subsistence uses can only be accomplished
2 if you live in a rural area. It also means that it has
3 to be non-wasteful uses and that there are numerical
4 limits on the take. In addition to that the Board has a
5 great deal of flexibility in how it would implement any
6 subsequent allocations. I think the courts are not
7 likely to give us much more time to do something. But I
8 think they're likely to give us a good deal of
9 flexibility on how we implement any program here. And I
10 take that from our experience on Kenai moose. We were
11 able to integrate a subsistence harvest and to the
12 existing use patterns with very little, almost no
13 disruption. We could do that here.

14
15 And remember what we're talking about is
16 stocks and populations. It is possible that when we walk
17 out of this room we could be facing both letters of
18 criticism and somebody might even want to wake up their
19 attorneys and file another lawsuit, 17 days is certainly
20 days enough to do that, but it doesn't have to be that
21 way. There's a lot of room in the law, there's a lot of
22 geography involved here.

23
24 For example, the State had an educational
25 -- meaningful educational fishery in State waters on
26 kings, for example, those would count against the total
27 subsistence allocation. So there's room in my opinion to
28 do this if that's what the Board decides without
29 disrupting or at least not greatly disrupting existing
30 patterns on the Kenai.

31
32 And that's probably enough for me to
33 speak right now, I can answer questions later.

34
35 MS. GOTTLIEB: Mr. Chair.

36
37 CHAIRMAN FLEAGLE: Judy.

38
39 MS. GOTTLIEB: Well, thank you Keith. I
40 found that very helpful. And you mentioned and I was
41 going to quote from a memo or paper you've put together
42 analyzing Kenai C&T determinations, which I hope we can
43 enter into the record as well. You quote from our 1990
44 regulations, which got us started on the Federal
45 Subsistence Program, and you mentioned it briefly but I'd
46 like to read it.

47
48 Overall the intent of the Federal program
49 is to be sensitive to the customary and
50 traditional patterns for subsistence use

1 of fish and wildlife by rural Alaskans
2 meaning that Federal decisions relating
3 to this matter would try to reasonably
4 accommodate any such use patterns.

5
6 So I hope we'll have that in the record.

7
8 Thank you.

9
10 MR. EDWARDS: Keith, I guess.....

11
12 CHAIRMAN FLEAGLE: Gary.

13
14 MR. EDWARDS:what I'm sort of still
15 wrestling with is when we use this term, use pattern.
16 Does that -- you know, what is the relationship between
17 that and where that use occurs. I mean we heard -- we
18 threw a lot of figures around yesterday, whether it's 18
19 percent, 28 percent, four percent, seven percent, it's
20 kind of like the battle of the numbers, and I don't know
21 which -- are they all accurate, or they're partly
22 accurate or what, but I'm still wrestling with sort of,
23 does the pattern of use, is it just a pattern of use of
24 the resource and therefore doesn't matter where that
25 occurs? I mean I guess I'm unclear then why aren't we
26 giving C&T to Cooper Landing for the Kasilof River if
27 Joseph Cooper found this and the affidavit said that he
28 went back and forth then you would assume that there
29 should be C&T for that. What about Happy Valley. I know
30 it was interesting when the Council first wrestled this
31 issue, they had originally have C&T to Happy Valley and
32 then the next day they came back and said, well, nobody
33 from Happy Valley came so we're not going to give them
34 C&T. I mean where does -- where this use occurs, where
35 does that factor into this pattern of use.

36
37 CHAIRMAN FLEAGLE: Keith.

38
39 MR. GOLTZ: All right, that's kind of a
40 long question, I'm not sure I got all of it because I was
41 having a side conversation.

42
43 I would just say to the Chairman, that if
44 the Chair wants to release this for the record, I don't
45 have any objection to that, but it's a decision that the
46 Chair has to make, I can't make that decision.

47
48 CHAIRMAN FLEAGLE: I have no problem.
49 Any objection to the document that was provided to us by
50 Keith yesterday. I think it's pertinent for the

1 discussion.

2

3 (No objections)

4

5 MR. GOLTZ: Okay. If the Staff wants to
6 distribute that, that'd be fine.

7

8 I'll try to respond to your questions
9 Gary in a couple of ways. First I think it's important
10 to remember that this is a bottom up program and we don't
11 have to conceive a broad, general bottom down approaches,
12 we can, in some cases, if we think it's necessary for
13 conservation, but we don't have to worry about every
14 possible applicant. This is something that comes up from
15 the people themselves and if certain people, like Hope,
16 don't want to participate that's fine, we shouldn't be
17 stirring that up.

18

19 If the people, locally, want to work this
20 out locally we should leave them to do that. It doesn't
21 all have to be run through us.

22

23 The other aspect to your question is I
24 think in important. I think we tend to think that if we
25 can get the anthropologists or the biologists to identify
26 certain patterns then we have to replicate those exact
27 patterns. I don't read ANILCA that way. The purpose of
28 ANILCA is to allow people to continue a traditional
29 lifestyle, that means in Alaska use of fish and wildlife
30 resources. But we do not have to in every case put that
31 use in its historical area. It may not even be the same
32 historic methods and means. I think what is required is
33 that we make a meaningful response to traditional uses.
34 But I think we've got a lot more flexibility in the
35 statute than we've really ever tried to exercise.

36

37 MR. EDWARDS: I'm not sure you really
38 answered the heart of my question and, you know, that is
39 under this consistent pattern of use, is the pattern
40 associated with, you know, where that use occurs?

41

42 MR. GOLTZ: Well, I did try to answer
43 that question. I think obviously the pattern is
44 associated with where that occurs, but do we have to
45 respond to that information in the identical way that it
46 occurred, I don't think so. I don't think we have to
47 necessarily replicate that historical pattern. And
48 remember in this particular case, nobody's arguing that
49 this is the primary pattern of Ninilchik, it was a
50 pattern as I understand their presentation.

1 CHAIRMAN FLEAGLE: Other Board members.
2
3 DR. KESSLER: Mr. Chair.
4
5 CHAIRMAN FLEAGLE: Yes, go ahead, please.
6
7 DR. KESSLER: I'm prepared to make a
8 motion.
9
10 CHAIRMAN FLEAGLE: All right.
11
12 DR. KESSLER: I move to adopt the
13 Southcentral Regional Advisory Council recommendation to
14 provide a customary and traditional use determination for
15 the community of Ninilchik in the Federal waters of the
16 Kenai Peninsula district including the Kenai River
17 drainage and those areas to the north. Now, this isn't
18 exactly what the Council's recommendation was but it
19 addresses the only issues that we need to with this
20 request for consideration. And if there is a second to
21 this motion I will provide my rationale.
22
23 MR. CESAR: Second.
24
25 CHAIRMAN FLEAGLE: All right, we do have
26 a second, would you go ahead and explain your motion,
27 please.
28
29 DR. KESSLER: Okay, thank you. First,
30 I'd like to say that I appreciate the huge amount of
31 input we've received from the public on this proposal. I
32 recognize that the Kenai River area receives a tremendous
33 amount of use by sportfishers directly and by commercial
34 fishers primarily in Cook Inlet. I've heard the phrase
35 used, that the fish are fully allocated. I also
36 recognize that the people of Ninilchik have not been able
37 to fully exercise their traditional ways of harvesting
38 fish for over 50 years, which is unfortunate.
39
40 ANILCA, Title VIII makes it very clear
41 that the continuation of subsistence opportunity for ural
42 residents is the top priority for the use of fish and
43 wildlife resources. Just because there is controversy or
44 because a fishery is fully allocated is not relevant in
45 providing the ANILCA priority for subsistence.
46
47 I've reviewed the Staff analysis,
48 listened and read comment from agencies and the public
49 and considered the new information summarized in the
50 Staff analysis and believe that there is substantial

1 evidence that a customary and traditional use
2 determination should be made for Ninilchik in the Kenai
3 River drainage and in other areas north of the Kenai, as
4 has been proposed.

5
6 I've looked at the figures in Table 1,
7 these numbers indicate to me that there is long-term use
8 by Ninilchik of the Federal waters. I recognize that
9 Ninilchik residents more often fish closer to home and
10 often in saltwaters but that doesn't really matter in
11 these considerations.

12
13 Although there is no threshold number to
14 simplify our task, I do believe that there is sufficient
15 use of the Federal waters for a customary and
16 traditional use determination. In fact, concerning
17 Ninilchik's use of the Kenai River we have a huge amount
18 of information. I'm told that there's more information
19 for this issue than for practically any customary and
20 traditional use determination we or the State has ever
21 made. In total, when I look at the data it seems clear
22 that Ninilchik residents use the Federal waters portion
23 of the Kenai River as well as the Swanson River area and
24 do so in fairly substantial numbers over a long period of
25 time. For me, each of the eight factors in our
26 regulations for making customary and traditional use
27 determinations are either specifically or generally met
28 and they describe an overall pattern of use by Ninilchik
29 residents.

30
31 Thank you.

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

35
36 MR. CESAR: Thank you, Mr. Chairman. I
37 agree wholeheartedly with the presenter before me. I
38 think that it's been demonstrated, certainly to a level
39 of comfort for me, you know, and I believe there has been
40 established a consistent and long use pattern down there.

41
42 And also, you know, I look back to when
43 we, in fact, granted C&T for moose for Ninilchik, we were
44 basically in the same position and I believe that that
45 has not disturbed a whole bunch of anything down there
46 since we've done that. So I think we have a caution to
47 proceed, you know, cautiously and conservatively, but
48 also I think the usage has been demonstrated. And I
49 think as we move forward in this, working with the
50 Council, I think the Council will be able to work with

1 Ninilchik and come up with seasons and bag limits, issues
2 like that that will, in fact, make the transition fairly
3 simple.

4

5 So I intend to support it.

6

7 CHAIRMAN FLEAGLE: Other Board members.
8 George.

9

10 MR. OVIATT: Mr. Chairman. I'm a little
11 bit on the same page as Gary is. C&T seems to be a lot
12 like smoke, you grab a hold of it and it seems to filter
13 through your fingers and I struggle with consistent
14 pattern of use and what that means.

15

16 You know we heard yesterday from Dr. Fall
17 that the numbers that were used by Staff, the 25 and 30
18 percent perhaps is not as accurate. He demonstrated two
19 different studies that showed a much less use of that,
20 but does seven percent or two percent or 30 percent
21 really matter in this case when we're trying to determine
22 use.

23

24 I'm not even sure and I said a number of
25 times that we should be doing a customary and traditional
26 use determination. And I, too, look forward, if we're
27 going to have to do this for our regulations, it may help
28 us define these terms, better define them. So I'm at a
29 position right now and I'll listen to the deliberations,
30 but I'm in a position where I'm really undecided whether
31 I can vote for this or not. I'm not sure that I really
32 believe we should be doing C&T determinations.

33

34 I think when we begin to divide and draw
35 boundaries we begin to cause tremendous conflict between
36 tribes and between use and so I'm rather confused as to
37 whether we really-- whether one, we should even be doing
38 C&T and, two, whether I have enough information here to
39 make a decision.

40

41 Thank you, Mr. Chairman.

42

43 CHAIRMAN FLEAGLE: Thank you, George.
44 Other Board members. Oh, Sarah Gilbertson, the State
45 liaison.

46

47 MS. GILBERTSON: Thanks. Well, you know,
48 speaking on behalf of the State I have to say, and I
49 think David would say if he were here today that I'm
50 quite troubled by what I heard in the motion that's

1 before you and I'm quite troubled by your Solicitor's
2 comments.

3

4 You know, there already are, as we
5 discussed yesterday, sufficient opportunities for the
6 community of Ninilchik, we're not talking about the
7 Traditional Council, we're not talking about a subgroup
8 of this community, but for the community itself to
9 harvest fish on the Kenai Peninsula, and those
10 opportunities as we've explained before include
11 educational fisheries which already exist. And
12 Ninilchik, and I've seen the numbers before, I don't have
13 those with me, but Ninilchik Traditional Council has been
14 participating in those educational fisheries and has not
15 taken all of the fish that they could under those
16 fisheries. So to me, that signals, one, that the
17 opportunity exists, they're already taking advantage of
18 it, but, two, that those opportunities are adequate.

19

20 MR. CESAR: Mr. Chairman, I'd like to
21 call a point of order.

22

23 CHAIRMAN FLEAGLE: Yes.

24

25 MR. CESAR: The point of order is.....

26

27 CHAIRMAN FLEAGLE: Niles turn your
28 microphone on please.

29

30 MR. CESAR: Sorry. I'd like to call a
31 point of order. The point of order being that this
32 process has moved to the Board, that means that the Board
33 is deliberating. It does not mean that the State liaison
34 interjects, that's my point of order.

35

36 CHAIRMAN FLEAGLE: Okay. I'd like to get
37 clarification from legal counsel. My understanding was
38 that both the Regional Advisory Council Chairman and the
39 State liaison still had a participatory function in the
40 process, but I'd like verification there.

41

42 MR. GOLTZ: It's only if asked. Once the
43 matter has moved to the Board, the Board can ask
44 questions of the State or of the Council or anybody else,
45 but unless that happens, the participation of those two
46 entities is foreclosed.

47

48 CHAIRMAN FLEAGLE: Okay, I'll recognize
49 the point of order. Thank you, Niles. I apologize Sarah
50 for having to cut you off, I was just unaware of the

1 process here that this Board uses and you've heard me say
2 before that I'm a stickler for process and we need to
3 recognize that established process.

4

5 Thank you for that interjection, Niles.
6 And, now, hearing that back to the Board.

7

8 MS. GOTTLIEB: Mr. Chair.

9

10 CHAIRMAN FLEAGLE: Go ahead, Judy.

11

12 MS. GOTTLIEB: Thank you. I guess
13 clarification from Wini, you said in your motion that it
14 was slightly different from the Staff Committee
15 recommendation, so I wondered if.....

16

17 DR. KESSLER: No.

18

19 MS. GOTTLIEB: Excuse me.

20

21 DR. KESSLER: From the Southcentral
22 Regional Council's recommendation because it focuses in
23 on the Kenai and areas north for purposes of the RFR.

24

25 MS. GOTTLIEB: So your motion is
26 consistent with.....

27

28 DR. KESSLER: It's consistent with the
29 Staff recommendation, yeah.

30

31 MS. GOTTLIEB: Thank you. Mr. Chair, if
32 I could make a few comments then.

33

34 CHAIRMAN FLEAGLE: Judy, please.

35

36 MS. GOTTLIEB: Thank you. Well, I'm
37 sorry some of the Board members are still troubled with
38 what we're doing here today on C&T determination because
39 I think, Keith, you've talked to us many times about this
40 and today you provided even additional information from
41 what we've heard before and I think in a very clear
42 explanation. And I think the memo you put together has
43 been extremely helpful to giving history and context for
44 exactly what we're doing.

45

46 I think in January when we heard this
47 proposal I probably would have supported it then because
48 in my assessment at that point there seemed to be
49 sufficient information. But we heard there would be --
50 there was new information that could be analyzed

1 regarding some of these surveys. And the Board, as a
2 whole, felt it would be a good idea to get that
3 information and we did have that done.

4
5 I think the new information, as well as
6 the testimony we heard, as I mentioned yesterday, not
7 only today, but in January as well as last month at the
8 RAC reinforces what I've heard and thought before about
9 this issue. I think there's been a lot of credible
10 testimony that's been given and that needs to be weighed
11 in, whether it includes numbers or not. And I think
12 Keith has given us a good explanation about numbers, not
13 everything falls into numbers when you're doing C&T
14 determinations. That's clear from our guidelines, it's
15 clear from the factors.

16
17 I think there's clearly been some level
18 of historic and contemporary use. The lifetime use data
19 is legitimate and persuasive and reflects a long-term
20 pattern of use. Dr. Fall's information, while it's been
21 interesting and helpful, of course, relates to
22 contemporary use and not the pattern of use prior to
23 being cut off, I guess, from the subsistence customary
24 and traditional activities that had been practiced in the
25 '40s and earlier. And if folks had not been
26 disenfranchised, what would their patterns look like,
27 it's kind of hard to know for sure, isn't it, but it's
28 reasonable to assume that Ninilchik residents would have
29 used the Kenai River and doesn't have to be only on the
30 Federal waters as part of their subsistence use pattern.
31 Maybe as has been stated it was not the predominate
32 location or use but it was still one of the locations
33 that was important because I assume people follow fish
34 runs, people were out hunting, went for fish, brought
35 back to the community and passed on these traditions
36 along the generations.

37
38 I believe we have reliable and
39 substantial information regarding the use of the Kenai
40 River drainage and the freshwaters of what's now the
41 Kenai Refuge and the National Forest. The C&T factors
42 have been met and satisfied. The analysis is complete.
43 And I think we need to carefully think that the RAC and
44 the InterAgency Staff Committee also supports this C&T.

45
46 Thank you.

47
48 CHAIRMAN FLEAGLE: Thank you, Judy.
49 Other Board members. Gary.

50

1 MR. EDWARDS: Well, I'm not sure that
2 there wasn't any advantage to delaying this and starting
3 again today. All that does is let one to continue
4 reflect and lose sleep on, at least from my perspective,
5 which is a very difficult decision and certainly trying
6 to do what one feels is the right thing.

7
8 Back in January when we gave the initial
9 C&T to Hope and Cooper Landing and to Ninilchik, you
10 know, at that time we certainly recognized the use that
11 the folks from Ninilchik as well as Cooper Landing and
12 Hope utilize in the use of fish and wildlife resources,
13 and I think there was -- in nobody's mind there was no
14 question that they all met the eight factors that we have
15 laid out here and made it, you know, sufficiently that I
16 don't think you could question any one of those. You
17 know at that time, you know, we used the term interim C&T
18 because, you know, the idea was that we did understand
19 that there was some additional data and we wanted to have
20 the opportunity to look at that so we could make the
21 right decision.

22
23 I guess I don't agree with some of my
24 other fellow Board members. I don't feel that the new
25 information that we have received actually does provide
26 sufficient information for us to change from where we
27 were originally. I think there are discrepancies that
28 are difficult to explain within the survey data, whether
29 it's the data that Ninilchik collected or Dr. Fall
30 collected. I don't feel that the historical record is
31 there. I know -- maybe I shouldn't be putting as much
32 emphasis on that as I seem to be but I just think there
33 would be -- I mean if you look at Dr. Fall's data and
34 other things that I've read, I mean there's no question
35 that the Kenaitze and the Dena'ina people used that area
36 for hundreds of years. I think they were the primary
37 users. And I don't think there is data that supports,
38 you know, the historical data that supports this.

39
40 And I still and I'm not -- I'm not sure
41 -- at least, Keith, has, in my mind, has fully, at least
42 addressed my concern about that -- as I've said and I
43 think Keith said that customary and traditional is
44 defining of the term use and I do think it does refer to
45 those places where that occurs and where there's a
46 pattern of reoccurrence and is an important location to
47 meet one's needs. And I certainly think there is
48 difference between, you know, subsistence on fisheries
49 and the patterns that are demonstrated on there and then
50 the patterns that are demonstrated in wildlife, and I

1 think we have numerous examples over the state where
2 those patterns are significantly different. And I think
3 when it comes to fish, I just don't personally feel that
4 the pattern is there.

5
6 So I'm going to vote no on the motion
7 when it comes to my time to do so.

8
9 CHAIRMAN FLEAGLE: Judy.

10
11 MS. GOTTLIEB: Mr. Chair. I guess
12 another question for Keith, please, is being an important
13 location to meet one's needs, is that one of our factors
14 that we should be taking into account here today?

15
16 MR. GOLTZ: I'm not sure I understand the
17 question.

18
19 MS. GOTTLIEB: Well, that was one of the
20 items that was just stated as being a reason to not
21 support C&T.

22
23 MR. GOLTZ: Oh. We're trying to
24 determine if there were customary and traditional uses of
25 a stock or population, that's all.

26
27 Where a fishery might be implemented at a
28 later time is an entirely different question. It's
29 likely to excite a lot of intense interest and I regret
30 the decision of yesterday which leaves us without a forum
31 for discussing that. I think that whatever happens, it's
32 going to take a lot of work by the interested parties to
33 do this smoothly.

34
35 And we're not -- as far as I can tell,
36 we're not tied to a location. It could be on the Kenai
37 River it could be off, we're talking about the population
38 and stock. There's a long, long stretch of fishable
39 water where that stock or population could be harvested.

40
41 CHAIRMAN FLEAGLE: Thank you. I'm glad
42 you made that point. I guess I'll lay out my feelings.

43
44 And obviously this is going to be another
45 one of those decisions where my vote is either going to
46 allow this thing to pass or not, and I'm going to take
47 the criticism one way or the other where I -- I
48 anticipate that this Board and the Federal program will
49 continue to be challenged in court, especially on this
50 action, from one side or the other so I'm not worried

1 about which side I'm going to please or displease in what
2 I'm about to say but I'm going to say it. I think it's
3 necessary that additional information be placed on the
4 record.

5
6 First, I recognize and appreciate the
7 opinions of everybody that has testified and have
8 provided comments on the issue, including the State, the
9 Regional Advisory Council, the InterAgency Staff
10 Committee, the Kenai Peninsula Sportfishers Association,
11 everybody that has a stake in this, lays out very
12 compelling reasons for either approving the C&T or not,
13 very compelling.

14
15 Now, what I got to do is weigh those
16 arguments against law and statute and regulation. And if
17 anybody knows me, I do that, you know, I got the
18 regulations right here, I got the ANILCA language right
19 here and I do use that as the basis. I think that it
20 tends to take out quite a bit of the subjectivity that, I
21 think, the Board encounters on decisions.

22
23 One of the first problems that I noted
24 with whether or not whether we can find a positive C&T
25 for the community of Ninilchik and Cooper Landing and
26 Hope on the Kenai River was that we are not looking at
27 whether there is just a defined pattern of use for that
28 portion of the river system that happens to be Federal.
29 The regulation says fish stock. To me it's pretty clear
30 that if you take that entire river system and even that
31 entire area, if you include other river systems, other
32 than the Kenai, you got the Kasilof, you got the
33 Ninilchik, you got Deep Creek, you got several different
34 systems that could be defined as the same fish stock, I
35 think it's overwhelmingly evident that you do have
36 customary and traditional use, and that's where I have to
37 fall. I have to fall with the regulation. I have to
38 fall on the side of what the law, in my opinion,
39 supports.

40
41 I do find that it's irrefutable that the
42 rural residents of the Kenai Peninsula in this area have
43 a long-term customary and traditional use of fish on the
44 Kenai River. And I can get into it further, it's
45 probably not necessary, but I think part of the problem
46 here is that through regulatory action, all of the
47 subsistence users that used to use any of the Kenai
48 Peninsula were forced out of those activities because of
49 over fishing by commercial and then later on by over
50 exploitation by the sports industry. And I understand

1 that we have a balance now on the Kenai River under State
2 management that provides for a consistent return, it
3 still meets commercial and sports needs, but those are
4 not the consideration of this Board. This Board is
5 concerned with subsistence. And who's to say that the
6 person that used a rod and reel on the upper Kenai under
7 the sport regulations didn't take that salmon home and
8 eat it, that's subsistence.

9
10 I think the overlying problem with this
11 whole argument is not why we have to decide whether
12 there's a C&T there, it's that we have to. We have the
13 law that tells us we have to. We don't have a defining
14 threshold, you know, we don't have a five percent, we
15 don't have a 20 percent, we don't have 100 percent. And
16 I'm not sure once this Board moves through it's process
17 to come up with its C&T policy if there will even be a
18 threshold defined then. How can you define a threshold
19 on subsistence uses. The statute, the regulation are
20 clear. All it's looking for is subsistence uses,
21 customary and traditional.

22
23 I could say more but I think I'll stop
24 there. I think my point is clear. I support the motion.

25
26 Other comments.

27
28 MR. CESAR: Mr. Chairman.

29
30 CHAIRMAN FLEAGLE: Niles.

31
32 MR. CESAR: I appreciate your comments.
33 I mean they demonstrate to me very thoughtful,
34 deliberative, you know, thinking on your part and it
35 helps me understand, you know, your role as Chair and
36 your thinking process, decision process, so I appreciate
37 that. And, you know, whether you were going to vote for
38 it or against it is not the relevant issue, the issue was
39 that obviously you gave a lot of thought to where you
40 were coming from and that's very heartwarming to me.

41
42 I don't know, I'm prepared to call for
43 the question, I just didn't want to cut anybody off.

44
45 CHAIRMAN FLEAGLE: Are we ready for the
46 question.

47
48 (Board nods affirmatively)

49
50 CHAIRMAN FLEAGLE: Question is

1 recognized. Pete.

2

3 MR. PROBASCO: Thank you, Mr. Chair. The
4 motion before us by Dr. Kessler is consistent in part
5 with recommendation of the Southcentral Regional Advisory
6 Council to provide to the community of Ninilchik a
7 customary and traditional use determination for all fish
8 in the waters north of and including the Kenai River
9 drainage, within the Kenai National Wildlife Refuge and
10 Chugach National Forest within the Kenai Peninsula
11 district.

12

13 I'm going to take roll call.

14

15 Ms. Gottlieb.

16

17 MS. GOTTLIEB: Aye.

18

19 MR. PROBASCO: Mr. Edwards.

20

21 MR. EDWARDS: Nay.

22

23 MR. PROBASCO: Mr. Fleagle.

24

25 CHAIRMAN FLEAGLE: Aye.

26

27 MR. PROBASCO: Mr. Cesar.

28

29 MR. CESAR: Aye.

30

31 MR. PROBASCO: Dr. Kessler.

32

33 DR. KESSLER: Aye.

34

35 MR. PROBASCO: Mr. Oviatt.

36

37 MR. OVIATT: I'm going to vote aye. And
38 I was swayed by our Chairman, and I'm going to vote aye.

39

40 MR. PROBASCO: Mr. Chairman. Motion
41 carries five, one.

42

43 CHAIRMAN FLEAGLE: Thank you, Pete. The
44 Board will stand down for 10 minutes, or Gary you got a
45 comment.

46

47 MR. EDWARDS: I just want to say one
48 thing. Based upon this vote my assumption is that the
49 Board isn't interested in revisiting our previous vote on
50 the new Council, but I do want to say that at our January

1 meeting, you know, we did pass a motion and part of that
2 motion recognized that, you know, at some point in time
3 as we were going through these C&Ts that the landscape
4 was going to be changed on the Kasilof and on the -- and
5 throughout the whole Peninsula, and, you know, at that
6 point, you know, recognizing that, you know, I think this
7 Board felt very strongly that the Council would benefit
8 from having a stakeholders sit down and try to figure out
9 how to work our way through that. In fact, we went as
10 far as to say we were not going to take any proposals
11 until such a stakeholders group was formed. I'm not
12 quite sure where that motion is. We passed that but I
13 guess events have overcome it and so therefore it's no
14 longer a motion. And as we all know the Council sort of
15 refused to -- I don't know, maybe refused isn't the right
16 word, but elected not to take that approach.

17
18 I still feel very strongly that it's a
19 good approach. And one of the things we said at that
20 time is that we have a real opportunity here on the Kenai
21 to try to address issues ahead of time and figure out how
22 to do these as opposed to how we have had in the past,
23 whether it's Unit 2 deer, or others, kind of wait for
24 things to blow up and then try to figure out to solve
25 them and maybe having the 11th Council is not the proper
26 approach but this idea of the need for a stakeholder
27 group to get the various parties, you know, who have a
28 vested stake in this, you know, to sit down and everybody
29 try to be part of the solution and not part of the
30 problem. Otherwise, I think to some extent we're playing
31 Russian Roulette, but I mean I hope if anything I'm wrong
32 but I guess I would just maybe echo what Keith said the
33 importance of folks, you know, trying to figure out how
34 do we do this, you know, how do we make this work that
35 it's not divisive that we provide this meaningful
36 preference and everybody kind of work together to figure
37 out how to do it. I just think it's very important that
38 we do so.

39
40 CHAIRMAN FLEAGLE: Thank you, Gary. I
41 agree. And as far as -- I'll get to you, Keith, in a
42 moment, and as far as bringing that vote back for
43 reconsideration that is an option. It would take a
44 motion from the prevailing side to do that and that would
45 have to be one of the no votes and it could be brought
46 back up if we had a majority vote to consider that. I
47 mean if you want to try to do that then work with other
48 Board members, that's fine, if you want to -- it would
49 take a motion from one of the no votes, though.

50

1 Anyway, the whole concept of having some
2 kind of a stakeholder's group, I totally don't disagree
3 with that at all, I think that would be important and I
4 think we do have within our authority, it wouldn't be
5 under the Southcentral Advisory Council but we can name
6 an advisory committee, for instance, I understand that
7 would be a committee to the Board and not to the RAC,
8 though, and I think there might be some objection there.
9

10 But I think that we have options and it
11 may be worth exploring those. I got a couple hands.

12
13 Gary, go ahead and.....

14
15 MR. EDWARDS: Well, let me follow up.
16 And I mean, I agree, you know, like I said we originally
17 said we weren't going to take any proposals and obviously
18 we've taken proposals and that, I guess, is down the
19 track.

20
21 But, Sarah, I guess I would encourage the
22 State, I mean we tried to -- as we sat down with
23 Ninilchik and tried to figure out how to, you know,
24 provide a fishery on the Kasilof and I think that was a
25 very good exchange from our folks from the Refuge and
26 subsistence fishery's office as well as the folks from
27 Ninilchik. And, you know, we invited the State to sit in
28 and be a participant in that process and, you know, they
29 were unwilling to do so. And I guess as we go down and
30 start looking at these proposals, I guess I would really
31 encourage the State to, you know, try to be
32 participating. They bring a lot of expertise to the
33 table and I think it was unfortunate when we asked for
34 that participation on the Kasilof, you know, for various
35 reasons they felt uncomfortable providing it, but I would
36 really encourage them to try to, you know, bring their
37 expertise to the table.

38
39 CHAIRMAN FLEAGLE: All right, thanks,
40 Gary. I got Keith and then Tom.

41
42 MR. GOLTZ: Yeah, I was going to make
43 comments along Gary's general lines but I wasn't going to
44 use the term Russian Roulette. We do have interests here
45 who feel strongly about this issue and my experience
46 tells me that the decision here today will come to the
47 attention of some excitable people. We're going to need
48 some mechanism to make this work. I'm not sure what that
49 mechanism at this point.

50

1 The way our program is set up, though,
2 it's from the bottom up, so in the next 10 minutes I hope
3 to talk to the people in this room and see if we can
4 gather some ideas about how we can pull this program
5 together in a way that works for everybody.

6
7 The commitment of our office and I'm sure
8 we can get a similar commitment from the Department of
9 Agriculture and probably from the Attorney's General
10 office is to assist in whatever way we can to pull
11 together a mechanism so we can work together on this.

12
13 CHAIRMAN FLEAGLE: Thank you, Keith. Tom
14 Carpenter.

15
16 MR. CARPENTER: Thank you, Mr. Chairman.
17 I guess from the RAC's point of view I'd like to voice
18 our appreciation that the Board has supported this RAC
19 and hopes that it allows the RAC to work with the process
20 that we have. Notwithstanding some of the concerns that
21 you have, Mr. Edwards, and Keith from the solicitor's
22 office, that understanding the perplexity and the amount
23 of different parties that are potentially involved on the
24 Peninsula, it is such a different situation you have
25 anywhere else in the state. I'm not necessarily --
26 wouldn't necessarily say that a working group that the
27 Board came to the RAC with originally isn't a possibility
28 still, I guess what I'm trying to say is, without being
29 -- without putting words into the other members of the
30 RAC, is that I don't think that we appreciated the way
31 that it was -- it was like we were given an ultimatum by
32 the Board and I don't think people of the RAC appreciated
33 that. I think that it's probably something that could be
34 worked out. I think things to consider when bringing a
35 situation like this is I think it's very important that
36 if this were to happen that the people of the RAC, who
37 tend to be people with some knowledge of the areas, they
38 are the ones that would put together the list of people
39 that would participate in this type of forum. And I
40 don't think that when this was brought to our attention
41 last time that that was the way it was going to happen.
42 And I don't think that the people, especially the people
43 of the Kenai Peninsula that are on the RAC appreciated
44 that.

45
46 So I think there is room to address the
47 concerns that some of the members of the Board have. I
48 don't think that the Southcentral RAC is trying to be
49 difficult. I just think that we would like to be more
50 involved and not have ultimatums put to us in regards to

1 the situation. And I think ultimately when the Board
2 said that we weren't going to hear any proposals until
3 you do this, that it just kind of bent some people the
4 wrong way and I assume that some of you can probably
5 understand the way that they felt.

6

7 So taking that as it may be, I think we
8 can probably work something out in the future.

9

10 DR. KESSLER: Mr. Chair.

11

12 CHAIRMAN FLEAGLE: Wini.

13

14 DR. KESSLER: I'm really glad to hear
15 that Tom. You know, yesterday I talked about thorny and
16 lingering issues and the one that was the thorniest for
17 us in Southeast for the longest time was, of course,
18 Prince of Wales deer and we knew we had to somehow engage
19 stakeholders to come up with some kind of solutions. And
20 we started along the path not being a Council driven
21 thing and the Council stepped forward and essentially
22 made it clear they wanted it to be their process and it
23 turned out very successfully. So I think probably -- and
24 assuming that the Southcentral Council should forge ahead
25 with something like this was not intended, so much to be
26 orders as building on a success that we had seen with
27 another Council. So I think the whole thing got off on
28 the wrong foot, I agree with you.

29

30 But I'm comforted to hear that, perhaps,
31 at least from your perspective we can get beyond that and
32 try something.

33

34 Thank you.

35

36 CHAIRMAN FLEAGLE: Thank you, Wini.

37 Sarah, would you like to have any comments on the
38 stakeholder or cooperative.....

39

40 MS. GILBERTSON: (Shakes head negatively)

41

42 CHAIRMAN FLEAGLE: Okay, thank you.

43

44 MS. GOTTLIEB: Mr. Chair.

45

46 CHAIRMAN FLEAGLE: Judy.

47

48 MS. GOTTLIEB: Thank you. I guess I hope
49 the Board will reinforce our support to the Southcentral
50 RAC, and I'm assuming any discussions Keith has

1 informally now will include Tom as well. I think there
2 are many ways the Board could work with the proponents,
3 with the Council, with others to try to make this
4 proposal process and your meeting and our meeting as
5 smooth as possible. We have adequate time, we now know
6 who the players are. On my part, I join the Board in
7 supporting the efforts of the Southcentral RAC and we'll
8 count on you to let us know also how we can assist.

9

10 CHAIRMAN FLEAGLE: The Board will stand
11 down for 10 minutes.

12

13 (Off record)

14

15 (On record)

16

17 CHAIRMAN FLEAGLE: Good morning, we're
18 back on record. And before we proceed, I'd like to
19 welcome Glenn Chen to the table on behalf of BIA, Niles
20 has departed for the day. Welcome. And look forward to
21 interacting with you for the rest of the meeting.

22

23 DR. CHEN: Thank you, Mr. Chair.

24

25 CHAIRMAN FLEAGLE: Pete Probasco.

26

27 MR. PROBASCO: Mr. Chair, thanks. I
28 won't take very long here. I just was really glad to
29 hear the conversation on trying to get our arms around
30 and working with the public as we deal with this issue on
31 the Kenai Peninsula. But as I was listening it became
32 very apparent that I needed to let the Board know where
33 we're at in our process, because that's the reality.
34 Submitted to us were eight proposals for the Kenai
35 Peninsula and the way those proposals were presented, it
36 actually expanded to 12.

37

38 Staff is in the process of doing analysis
39 on those 12 proposals right now. Those analysis will be
40 completed sometime in January and we're preparing for our
41 Council meetings, the Southcentral Council meeting occurs
42 in March and so this process, as I like to say, the
43 boat's left the dock, and so if we're looking at an
44 opportunity to bring the public to work with the Staff,
45 particularly the in-season managers both on the State and
46 Federal side, our time is very compressed as we move
47 forward on thee proposals.

48

49 Mr. Chair.

50

1 CHAIRMAN FLEAGLE: Thank you, Pete.
2 Comments Board members. Judy.

3
4 MS. GOTTLIEB: Mr. Chair. Thanks, Pete.
5 That certainly helps clarify the schedule. But I think
6 for those who are willing and want to participate they'll
7 work within the schedule. I think the kind of
8 preliminary work that Staff did with Ninilchik on the
9 special action, that kind of idea can be replicated
10 perhaps or expanded as Southcentral's Council helps us
11 direct that.

12
13 CHAIRMAN FLEAGLE: Go ahead, Pete.

14
15 MR. PROBASCO: Mr. Chair. Ms. Gottlieb.
16 I guess what I was fishing for is that it's left open-
17 ended that we want to work with the group and if the
18 Board does wants to explore that they don't need to
19 explore that now but the time to explore that and then
20 put that task on OSM is very compressed. And so if we're
21 going to look at that and make a decision in that manner
22 we need to make that sooner than later.

23
24 CHAIRMAN FLEAGLE: Tom Carpenter.

25
26 MR. CARPENTER: Thank you, Mr. Chair.
27 Yeah, Pete I understand your concern there. You know it
28 would be a suggestion of mine and I don't know if this is
29 exactly the way it needs to take place. I know that what
30 I said before was what I thought the general consensus of
31 the RAC was, but we would need to get a formal opinion
32 from the RAC in regards to is this the way we want to
33 proceed. I don't want to completely speak for them but I
34 think it needs to be put on the record, is this the way
35 that we want to go. So my suggestion would be that there
36 be a special meeting called for the Southcentral RAC,
37 either telephonically, whatever could be the most
38 expedient way that this be noticed and that whatever, two
39 weeks or 30 days or whatever it has to be, that this take
40 place sometime in early December and that we get an
41 opinion from the RAC, and if that's the opinion that the
42 RAC or the way the RAC wants to proceed, then I think we
43 can go forward with this process and I think we still
44 have time to do it.

45
46 You know like I said I'm more than
47 willing to -- I'm not speaking for our Chairman, Mr.
48 Lohse, but, you know, I'm more than willing to
49 participate in this process as much as, you know, I have
50 to do other than this but I think it is important and I

1 want to try and make sure that the Board knows that the
2 RAC is supporting this whole process. We're not trying
3 to alienate ourselves from the Board. We want a
4 cooperative working, you know, situation that we've seen
5 in the past. So whatever you think we need to do, Pete,
6 in regards to that, I think that's what -- whatever the
7 quickest way to go is the way we should do it.

8

9 CHAIRMAN FLEAGLE: Quick and efficient.

10

11 MR. PROBASCO: Mr. Chair. I would
12 proceed down the path that Mr. Carpenter is talking about
13 if so directed by the Board.

14

15 CHAIRMAN FLEAGLE: Any objection.

16

17 (No objections)

18

19 CHAIRMAN FLEAGLE: It sounds like that's
20 the direction. Pete, thank you.

21

22 MR. PROBASCO: Thank you, Mr. Chair.

23

24 CHAIRMAN FLEAGLE: All right. Let's
25 switch gears a little bit and get out your blue folder
26 again, that's the one with the information on the next
27 item for discussion, it's FRFR06-1, and we'll go first to
28 Pete for introduction of Staff for the analysis.

29

30 Pete.

31

32 MR. PROBASCO: Well, Mr. Chair, Dr.
33 Schroeder's been very patient sitting here waiting for
34 his time. We actually had him earlier in the agenda but
35 we switched it on him and Bob's going to take us through
36 the Southeast issue as it deals with Gustavus. So Dr.
37 Schroeder.

38

39 CHAIRMAN FLEAGLE: Welcome Bob. It's
40 been awhile since you and I sat together in one of these
41 meetings. Good to see you.

42

43 DR. SCHROEDER: It's true, I think we
44 have a little bit of history on the State side, maybe
45 eight or 10 years ago.

46

47 I think this issue, well, who knows,
48 Southeast tends to have controversies associated with it.
49 But I think this FRFR will probably proceed fairly
50 clearly. What I'd like to do is just give some

1 background and then focus on the changes that the new
2 information that's become available since the proposal
3 was acted upon by the Board at its January meeting.

4
5 FRFR06-01 requests reconsideration of the
6 Federal Subsistence Board's action on Proposal FP06-23.
7 Proposal FP06-23 was submitted by a resident of Gustavus
8 and it requested that the Board recognize customary and
9 traditional use of fish in two sections in Southeast
10 Alaska shown on the Map on Page 2. The sections in
11 question are 14(B) and 14(C). Currently in regulation
12 customary and traditional use of fish in 14(B) and 14(C)
13 is recognized for the community of Hoonah. This
14 customary and traditional use determination is one of
15 those that was adopted by the Federal Subsistence Board
16 when the Federal government assumed management of
17 fisheries in the early '90s and the Board hasn't
18 revisited customary and traditional use determinations
19 for fish in this area before.

20
21 In looking at your map on Page 2 there
22 are no customary and traditional use determinations for
23 the area immediately the left or to the west of 14(B),
24 which should be labeled 14(A) and also there aren't any
25 specific customary and traditional use determinations for
26 the top part of 12 in this area. The Council at its
27 meeting recommended tabling this proposal after a good
28 deal of discussion. The main reason that the Council had
29 for tabling the proposal was that it didn't have enough
30 information to provide a recommendation.

31
32 Now, teasing out by what the Council
33 meant by that. The Council had no doubt that people in
34 Gustavus used fish, that they were rural community and
35 that they, in general met the customary and traditional
36 use determination criteria. What the Council had a lot
37 of trouble with was figuring out where that use occurred.
38 The proponent participated in that discussion and the
39 Council felt that the information provided by Staff and
40 by the proponent just was too soon to make a
41 recommendation at that time. The Board concurred with the
42 Council's recommendation to table in January with the
43 understanding that the Council would submit a Council
44 generated proposal to be acted on this year. So coming
45 up at your January meeting is Proposal FP07-17 which
46 concerns customary and traditional use of fish throughout
47 this Icy Strait Cross Sound area. And Icy Strait and
48 Cross Sound is basically that body of water south of
49 Glacier Bay National Park and going over to Chatham
50 Strait on Page 2.

1 So the recommendation on Proposal FP07-17
2 is coming your way and the Council has made a
3 recommendation on that proposal. The proponent -- the
4 Gustavus proponent of last year's proposal FP06-23 filed
5 a request for reconsideration on various grounds. In the
6 screening process, the Staff looked through information
7 and found that there was additional geographic
8 information showing where Gustavus used fish that wasn't
9 presented in detail in the previous analysis. So the
10 Board found that there was grounds to reconsider this
11 proposal and that this new information perhaps would give
12 the Board what it needed to decide on Gustavus' customary
13 and traditional use of fish in this area.

14
15 The new pieces of information which were
16 looked at more carefully included two sets of maps
17 prepared by the Division of Subsistence, Alaska
18 Department of Fish and Game. One series of maps were a
19 set of intensity of use maps that were prepared from a
20 large sale survey done in 1988 covering the 1987 year.
21 In that survey respondents were asked to draw on mylar
22 sheets where they had fished while they had lived in the
23 study community. Overall this was a really large project
24 in Southeast Alaska, large and very expensive. It was
25 done primarily to advise Forest Service on timber
26 management policy so it wasn't really directed at Federal
27 management, obviously because it was in 1988. These
28 mylar sheets were then digitized and produced a set of
29 intensity of use maps that showed where different
30 communities did their fishing, hunting by resource
31 category. I think there were seven resource categories
32 that were mapped.

33
34 The second set of maps that were prepared
35 by the Division of Subsistence were again a work product
36 for Forest Service management purposes and those were
37 sensitivity to disturbance maps, wherein staff from
38 Division of Subsistence looked at all available
39 subsistence information for 30 communities in Southeast
40 and then attempted to analyze which areas would be more
41 sensitive to disturbance and which would be less
42 sensitive to disturbance. Again, this was focused on the
43 Forest Service program.

44
45 The third set of information which wasn't
46 presented in detail in the analysis for FP06-23 was
47 subsistence permit data showing where people have fished
48 from Gustavus and other communities under State of Alaska
49 subsistence fishing permits.

50

1 So Staff looked through these sources of
2 information and did their best to compile these, at least
3 on my Page 12 of the document which is just a sketch map,
4 and this map isn't really a research product it's more
5 Staff's best attempt at synthesizing these different
6 sources of information saying this is where the sources
7 we looked at show fishing to take place from Gustavus.
8 So there are a lot of qualifiers around that because this
9 particular map hasn't been closely reviewed in Gustavus
10 but it is the Staff's best attempt at showing the Board
11 where we believe fishing takes place by Gustavus
12 residents.

13

14 As you'll see this document's use of fish
15 by Gustavus in 14(B) and into 14(C). The sources of
16 information for this map are the ones that mentioned.
17 It's quite likely that there's greater use of 14(C)
18 that's shown here, that's based on more personal
19 knowledge of Staff and contact with people in Gustavus
20 which isn't reflected right here.

21

22 The Southeast Regional Advisory Council
23 received the information in this RFR along with similar
24 information and maps for the other communities and Icy
25 Strait and Cross Sound when they were reviewing Proposal
26 FP07-17, the one that's coming up this cycle. And their
27 recommendation on that proposal would recognize Gustavus
28 customary and traditional use of fish in these two
29 sections 14(B) and 14(C) as well as other areas that
30 Gustavus uses.

31

32 Council recommendation on this RFR, the
33 Council basically has taken two actions on the RFR.
34 After the RFR was submitted, the Council had a
35 teleconference meeting in May and because the RFR was
36 available at that time, the Council made a recommendation
37 not to accept it because they felt that it wasn't
38 necessary to accept it. This was in May. At that time
39 they hadn't seen the analysis because the analysis hadn't
40 been done. At its October meeting, the Council first
41 acted on the larger proposal dealing with all of the
42 customary and traditional use of fish in the Icy Strait
43 Cross Sound area. And they finished their work on that
44 and then they voted to take no action on the FRFR06-01.
45 The Council action was basically motivated by the fact
46 that the Council felt that it had dealt with this issue.

47

48 Let's see if I have something else to put
49 in here. Mr. Chairman, I think that's a quick and
50 adequate summary. If there are any questions I'd

1 entertain it at this time. And I would point out that I
2 believe Chairman Bert Adams is on the line.

3

4 CHAIRMAN FLEAGLE: Yeah, I think he's
5 probably wants to have something to say, too.

6

7 Board members, questions. Glenn.

8

9 DR. CHEN: Thank you, Dr. Schroeder for
10 that excellent presentation. I had some questions about
11 Map 2 on Page 12. And as you mentioned this is what your
12 Staff has assembled in terms of a geographical depiction
13 of the data information regarding fishing usage by
14 Gustavus residents. And I just want to verify that the
15 grey-shaded areas encompass some of the fresh waters in
16 addition to the marine waters in these fishing districts;
17 is that correct?

18

19 DR. SCHROEDER: Dr. Chen, that is
20 correct.

21

22 DR. CHEN: Thank you, Bob.

23

24 DR. SCHROEDER: I could point out that in
25 the analysis we do lay out that really most of the
26 fishing that takes place by Gustavus residents and for
27 that matter in the Icy Strait Cross Sound area does take
28 place in marine waters that are not under Federal
29 management at this time. However there is fresh water
30 fishing that does take place on Federal jurisdictions.

31

32 CHAIRMAN FLEAGLE: Thank you, Bob. All
33 right, I'm going open it up for public testimony. We
34 don't have any cards from the room here. Do we have
35 anybody on line that wants to testify, Steve.

36

37 MS. CULP: Yes, I.....

38

39 (Line cuts out)

40

41 (Laughter)

42

43 CHAIRMAN FLEAGLE: All right. If that
44 was Bert, we're going to go to.....

45

46 MS. GOTTLIEB: I think it was Wanda.

47

48 CHAIRMAN FLEAGLE: Oh, Wanda, okay, all
49 right.

50

1 (Pause)

2

3 CHAIRMAN FLEAGLE: Okay, we did hear
4 somebody was trying to reach us by telephone, Steve would
5 you go ahead and extend that invitation for comment
6 please.

7

8 OPERATOR: Excuse me, Bert Adams has
9 joined and also Ms. Wanda Culp.

10

11 MR. KESSLER: Thank you, and I apologize
12 for disconnecting on the phone, that was a mistake by me.
13 Yes, we're looking for any public testimony, I believe
14 Wanda Culp, are you on and wishing to provide testimony.

15

16 MS. CULP: Yeah, I'd like to address
17 this. Just a quick comment on the Federal Subsistence
18 Board making the positive designation for Ninilchik, I
19 appreciate that.

20

21 But I did see that they had to jump
22 through all kind of hoops and initially they should not
23 have been denied, I don't think this designation because
24 the process pitted family against family.

25

26 Now, on the other hand, in Southeast here
27 one man has been successful in this customary and
28 traditional use designation effort for Gustavus. This is
29 a community established in 1955. He's been successful in
30 making all this headway through the Federal Subsistence
31 Board system on customary and traditional use
32 designation. Initially this should have been denied.
33 There has been no real new information brought forward by
34 this man. I see the information is primarily brought
35 forward by the Federal Staff and it seems to be a huge
36 waste of time at this moment. The customary and
37 traditional criteria is dreadfully consistent as we can
38 see from the Ninilchik and Gustavus requests, how they've
39 been handled totally different. I think the eight
40 criteria should be considered, scraping it and start with
41 just ANILCA law because the criteria is not in ANILCA.

42

43 Also please consider that there is a
44 science to customary and traditional use and the strategy
45 of how we make sure stocks are healthy before we go out
46 to use it. And this is, of course, to assure sustained
47 yield.

48

49 The real sports interests that are
50 occurring in Gustavus have been showing their way into an

1 area that is no threat to their existence at all because
2 they are under the rural designation. Gustavus has
3 access to Glacier Bay which is traditional home land to
4 the Hoonah people and we don't have that access because
5 we're not connected by land to Glacier Bay. So now the
6 proposal coming across Icy Straits and into the Hoonah
7 area, it's primarily a sports interest, I'm not convinced
8 that this is customary and traditional use effort.

9

10 I'd like to thank you for hearing me out
11 and that's all I have to say at this moment, thanks.

12

13 CHAIRMAN FLEAGLE: Thank you, Wanda.
14 Board members, questions.

15

16 (No comments)

17

18 CHAIRMAN FLEAGLE: All right, thanks for
19 your testimony. Do we have anybody else who wishes to
20 testify.

21

22 (No comments)

23

24 CHAIRMAN FLEAGLE: Okay, hearing none,
25 we'll close the public testimony period and we'll now
26 turn to the Council for their recommendation.

27

28 MR. KESSLER: Bert Adams, are you on
29 line.

30

31 MR. ADAMS: Bert Adams is here.

32

33 MR. KESSLER: We're looking for the
34 Council recommendation now, Bert.

35

36 MR. ADAMS: Okay, would you like to hear
37 my comments now?

38

39 MR. KESSLER: Yes, please.

40

41 MR. ADAMS: Okay. I think Dr. Schroeder
42 did a fine job, you know, of making the SERAC's position
43 pretty clear. But I do appreciate some of the comments
44 that Wanda Culp just got through emphasizing and I think,
45 you know, every one of those points that she addressed to
46 us all needs to be seriously considered.

47

48 In Southeast Alaska, you know, there are
49 12 communities that do have C&T and then there are 15
50 others that have not been. And the Council, as Dr.

1 Schroeder has indicated, you know, is considering
2 submitting a proposal for the 2007/2008 regulatory cycle
3 to include all of the Icy Strait Cross Sound area, which
4 would include communities like Pelican, Tenakee Springs
5 and also Gustavus. So this will be forthcoming, you
6 know, from the Southeast RAC in the next cycle.

7

8 And so I just wanted to emphasize, you
9 know, the fact that we seriously want to do the proper
10 thing for the region in which we are servicing. And
11 those areas, you know, I think we will be considering
12 each and every one of them as they are presented to us,
13 but as far as Gustavus is concerned, the Council has
14 decided that they wanted to table this until this new
15 proposal comes forth. And I think that that's about all
16 that I have to say at this point.

17

18 Mr. Chairman, thank you.

19

20 CHAIRMAN FLEAGLE: Thank you, Bert.
21 Board members, questions.

22

23 (No comments)

24

25 CHAIRMAN FLEAGLE: All right, hearing
26 none, we'll move on to the State Department of Fish and
27 Game, Sarah.

28

29 MS. GILBERTSON: Thank you, Mr. Chairman.
30 We do have some concerns that the Federal Staff analysis
31 has not demonstrated evidence of a long-term consistent
32 pattern of community use of the fishery resources in
33 Sections 14(B) and (C) by residents of Gustavus and we're
34 also concerned that the community of Gustavus -- that the
35 Federal Staff analysis has not demonstrated that the
36 community of Gustavus even generally exhibits any of the
37 eight factors for a positive C&T determination listed in
38 Federal regulation.

39

40 And I have a handout today and I think
41 it's important that we discuss this issue here because
42 when the State brings these issues up at Staff Committee
43 meetings we're told this is not the appropriate place to
44 discuss these issues. So I want to talk for a moment
45 about where exactly the C&T would apply. And if you look
46 in the Federal Staff analysis on Page 2 at Map No. 1 the
47 State finds this map very misleading for a number of
48 reasons. If you're a resident trying to find out where
49 this C&T would apply, this map is very confusing. It
50 does not distinguish between those waters that are under

1 State jurisdiction, which are those marine waters that
2 are outside of Glacier Bay National Park and those where
3 Federal jurisdiction is claimed, that would be the small
4 upland streams within the Tongass National Forest, south
5 of the marine waters. This map does not show the entire
6 exterior boundaries of where Sections 14(B) and 14(C)
7 would occur on Federal uplands, only those boundaries
8 that -- the only boundaries shown are those in marine
9 waters.

10
11 And the map does not depict the
12 significant upland area on both sides of the boundary
13 between 14(B) and 14(C) south of State marine waters that
14 are not within the Tongass National Forest and that's not
15 subject to Federal regulations.

16
17 And finally this map does not show the
18 boundaries of the Glacier Bay National Park in which no
19 subsistence fishing is allowed.

20
21 The map that Theo just passed out shows
22 the same boundaries in marine waters for 14(B) and 14(C),
23 although 14(B) and 14(C) are not denoted on here, but
24 14(B) is the area that is just south of Gustavus and the
25 unit to the right of it where it says Icy Strait is
26 14(C), so those are the two sections in question.

27
28 And what I was speaking to just now is
29 that those black lines on the Federal maps do not extend
30 below marine waters so there's no real way for anyone
31 trying to make sense of where the C&T would apply, to
32 know exactly which systems on Federal uplands are
33 included. Furthermore, the land around Gustavus that's
34 shown in white is excluded from the Forest withdrawal and
35 is not, in our view subject to Federal jurisdiction. The
36 land in white that is denoted around Hoonah is non-public
37 land the State argues that Federal jurisdiction does not
38 apply there either.

39
40 When we look at 14(C) similar denotations
41 are missing from the Federal maps including the land that
42 is within Glacier Bay National Park and the water that
43 surrounds it.

44
45 So we do have jurisdiction questions and
46 those constantly arised [sic] during our conversations at
47 the InterAgency Staff Committee meeting and they don't
48 get resolved there. So I bring this up because it's an
49 issue of importance to the State, it doesn't seem to be
50 resolved at those ISC meetings. So it's important, it's

1 important to residents to know where exactly you're
2 talking about and where this would apply.

3
4 So with respect to that, in our view the
5 C&T applies to very in land waters when you take into
6 consideration that the State manages from zero to three
7 in those three miles off shore and that's within State
8 jurisdiction. This also -- this C&T would apply to very
9 little marine waters which would be difficult to find
10 because it would include just a very small portion, if
11 any, of the marine waters between the north and south
12 portions of the land that we're talking about.

13
14 Moving on to the Federal Staff analysis.
15 The State does not believe that the analysis demonstrates
16 that the community of Gustavus exhibits any of these
17 eight factors for salmon, Dolly Varden, trout, smelt,
18 most of these fish that are listed in the Federal public
19 lands in Sections 14(B) and (C). We still question, as
20 we did in 2005 whether eulachon even exist in these
21 sections. Also the analysis fails to provide that
22 evidence that trout, smelt and eulachon are even
23 harvested by residents of Gustavus. And without evidence
24 of a long-term consistent pattern of community use of
25 Federal public lands for the community of Gustavus in
26 Sections 14(B) and (C), this C&T determination should be
27 denied.

28
29 Moving on to Map 2, which is on Page 12
30 of the Federal Staff analysis. This map depicts some
31 documented subsistence use in the area by the community
32 of Gustavus but it only illustrates that use in a portion
33 of 14(C) and therefore to avoid a situation similar to
34 what occurred in Chistochina, we would recommend limiting
35 any C&T to where actual use did occur in that portion of
36 14(C) and where you have evidence and you can actually
37 demonstrate that that use occurred.

38
39 And then finally, I guess, we would
40 suggest, although I know it's somewhat of a moot point,
41 but that the Board delays any further C&T determinations
42 until it comes up with policies and guidelines for making
43 such determinations.

44
45 Thank you.

46
47 CHAIRMAN FLEAGLE: Thank you, Sarah.
48 Board members, questions.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: I guess I have a
2 comment. It seems like the -- well, obviously the
3 Council's recommendation is just to table this so it goes
4 away but the proposal is obviously going to come back
5 before the Board with three communities involved and
6 you'll be here presenting this same information again, so
7 maybe just for my clarification, I didn't quite follow
8 your narrative on the map that you handed out as to what
9 you feel the State has jurisdiction over and what the
10 Federal system has jurisdiction in those waters of 14(B)
11 and 14(C). Can you just maybe retouch on that?

12
13 MS. GILBERTSON: Sure, Mr. Chairman.
14 It's complicated but the white areas that the State
15 believes that there's no Federal jurisdiction over. The
16 land around Gustavus, because it was excluded from the
17 Forest withdrawal and the land around Hoonah because
18 those are non-public lands, and so we would argue that
19 the waters within those white areas, and there are a few
20 in 14(C) would not be subject to Federal jurisdiction and
21 we know that the Glacier Bay National Park and which this
22 map includes in the cross-hatched area, those are off
23 limits to subsistence fishing and then finally -- and
24 this boundary is not shown but the State has jurisdiction
25 from zero to three miles off shore. So when you think
26 about zero to three miles, there's very little marine
27 waters in between this Gustavus and the Hoonah land
28 masses that would be under Federal jurisdiction.

29
30 So I guess our point is is that there's
31 very land in 14(B) and 14(C) or very little water that is
32 subject to Federal jurisdiction and so we can disagree on
33 that, but whatever you do, please make it clear to
34 residents where this C&T would apply and please insure
35 that there is actually a long-term consistent pattern of
36 use of those areas.

37
38 CHAIRMAN FLEAGLE: Okay, thank you.
39 Well, that gives me a little more information for, I
40 think future discussions at any rate.

41
42 Gary.

43
44 MR. EDWARDS: I guess, I don't know
45 whether Steve or Mr. Schroeder can respond to that, I
46 mean is there -- what the State characterizes, is that
47 accurate from your interpretation of what is and isn't
48 Federal lands, Federal waters.

49
50 CHAIRMAN FLEAGLE: Bob Schroeder.

1 DR. SCHROEDER: Mr. Chair. Gary. This
2 outline on Page 6 of the RFR analysis, and I think we
3 have a fair mention of what the extent of Federal public
4 waters might be and I don't think this is any variance of
5 what Mr. Gilbertson was presenting. On the other point
6 the way we've done our C&T regulations in Southeast
7 Alaska has used the State fishing districts or sections
8 and the interpretation of this is waters draining into
9 these sections or districts. And you obviously could do
10 this quite a few different ways, this is the way that the
11 program's been presenting its C&Ts and this is also the
12 way that the State made its original C&Ts and so we're
13 following the State procedure so that what was on the
14 books in 1990 were C&Ts by districts and sections, and
15 they included the fresh waters that drained into those.

16
17 MR. EDWARDS: Well, I guess that answer
18 yes there is concurrence with what the State described as
19 Federal lands versus State lands and putting aside
20 Glacier Bay, which is a different issue.

21
22 DR. SCHROEDER: I believe so. I didn't
23 hear anything that was of variance with my understanding.
24 And basically in Southeast Alaska it would be extremely
25 tedious, if not impossibly to come up with an exact
26 listing of all the lands that are under Federal and State
27 -- under State jurisdictions in addition to the lands
28 that Sarah Gilbertson mentioned there would be numerous
29 in-holdings and mine sights and other sorts of things.

30
31 CHAIRMAN FLEAGLE: Okay, while he's
32 looking there, Wini, you had a question.

33
34 DR. KESSLER: Well, I have difficulty
35 understanding the relevance of the jurisdictional points
36 that Ms. Gilbertson brought up to the proposal at hand
37 here so I was going to look to Keith for some
38 clarification there.

39
40 CHAIRMAN FLEAGLE: Keith.

41
42 MR. GOLTZ: I was lost in the
43 presentation, too. Our jurisdiction is over freshwater
44 streams that are within the external boundaries of the
45 Forest. Our regulations clearly state that we're not
46 claiming any subsistence use in Glacier Bay National Park
47 so I don't really know where the conflict is.

48
49 If the point is that we should make an
50 effort to be clearer I agree with that but I don't think

1 there's any jurisdictional question here.

2

3

DR. KESSLER: Thank you.

4

5

CHAIRMAN FLEAGLE: All right. But is not
6 the intent of the request for reconsideration to allow
7 for fishing of salmon, Dolly Varden, trout, smelt and
8 eulachon, I'm going to say it the easy way, in the waters
9 contained in 14(B) and (C) or just the waters on the
10 land?

11

12

DR. SCHROEDER: Mr. Chairman. Our
13 regulations and our C&Ts only can result in fishing on
14 Federal waters because that's where we have jurisdiction.

15

16

CHAIRMAN FLEAGLE: I understand that, I'm
17 just trying to make the distinction of what is being
18 requested as to where that Federal waters -- where those
19 waters are.

20

21

Steve.

22

23

MR. KESSLER: Thank you, Mr. Chairman. I
24 think that there may be one area that we may not be in
25 agreement with the State and maybe Ms. Gilbertson you can
26 repeat what your concerns are, about in the Hoonah area,
27 the areas of white in the map that you've given to us. I
28 think that there that you've stated that the State does
29 not believe there's jurisdiction on those lands.

30

31

MS. GILBERTSON: Mr. Chairman. Mr.
32 Kessler. Yes, and Steve and I discussed this before this
33 proposal -- or before this RFR came before the Board.
34 That is an area where the State and I think Federal
35 government disagree, we do not believe that the lands
36 that are in white around Hoonah are subject to Federal
37 jurisdiction because they're non-public lands. And to
38 answer Ms. Kessler's question, you know, this discussion
39 is relevant because if you don't have Federal
40 jurisdiction then C&T can't apply there. So it's
41 important, I think, to Alaskans to be very clear about
42 the area that we're talking about. And if you don't know
43 the area that you're talking about, how can you determine
44 whether there's customary and traditional use of that
45 area.

46

47

CHAIRMAN FLEAGLE: Thank you, Sarah.
48 Keith, again.

49

50

MR. GOLTZ: Bill, were you going to get

1 up here, he's got the regulations in hand, I don't have
2 them. But generally speaking to the Chair, we do not, on
3 the wildlife side, we do not manage in-holdings, either
4 private or State. Go ahead.

5

6 CHAIRMAN FLEAGLE: Bill Knauer.

7

8 MR. KNAUER: This is Bill Knauer, Mr.
9 Chairman. C&T, we apply to an area. And if there are
10 private lands within that area it doesn't apply, it
11 applies only to where there is Federal jurisdiction.
12 Now, on conservation system units we do apply it to
13 selected but not yet conveyed lands, and for a whole set
14 of listed areas, it applies to all inland waters, both
15 navigable and non-navigable which would mean that area
16 around Gustavus. And so whether or not the State agrees
17 or disagrees, this is really not the venue for that, the
18 venue for that disagreement is in court where it is
19 currently. So that's not an issue now.

20

21 CHAIRMAN FLEAGLE: Thank you, Bill. And
22 I apologize if I've given anybody the impression that I'm
23 trying to decide that.

24

25 MR. KNAUER: Yeah, right. Right.

26

27 CHAIRMAN FLEAGLE: I'm just trying to
28 decide what the intent of the proposal or the request for
29 reconsideration is.

30

31 MR. KNAUER: Yes.

32

33 CHAIRMAN FLEAGLE: I don't have the
34 history that everybody else here does.

35

36 MR. KNAUER: Excuse me, Mr. Chairman, I
37 misspoke. I mean around Gustavus, not around Hoonah --
38 or around Hoonah, it's -- the area that's within the
39 boundary of the Tongass National Forest which is around
40 Hoonah, not Gustavus. I'm sorry.

41

42 CHAIRMAN FLEAGLE: Okay, clarification
43 noted.

44

45 Other questions for the State's
46 presentation.

47

48 (No comments)

49

50 CHAIRMAN FLEAGLE: All right, hearing

1 none, we'll move on. We have the InterAgency Staff
2 Committee recommendation. Steve.

3

4 MR. KESSLER: Thank you, Mr. Chairman.
5 The InterAgency Staff Committee supports this proposal to
6 add Gustavus to the customary and traditional uses for
7 the areas for Sections 14(B) and (C). This is somewhat
8 contrary to the recommendation of the Southeast Alaska
9 Regional Advisory Council. However, the Southeast
10 Council, as been stated earlier, has considered Proposal
11 FP07-17 in the 2007/2008 regulatory year and they have
12 recommended that 14(B) and 14(C) does have a customary
13 and traditional -- should have a customary and
14 traditional use determination for the community of
15 Gustavus.

16

17 The Staff Committee looked at all of the
18 information in the Staff analysis and found that the
19 information for a C&T for Gustavus was compelling. The
20 Staff Committee also believes that it's incumbent upon
21 the Board to consider this RFR now and independently of
22 FP07-17. And that it is appropriate to take action,
23 therefore, at this point.

24

25 I think I'll leave it there, thanks.

26

27 CHAIRMAN FLEAGLE: Thank you, Steve.
28 Board members, questions.

29

30 (No comments)

31

32 CHAIRMAN FLEAGLE: All right, hearing
33 none. I guess we're at the point to where we can begin
34 to discuss all of the information presented and begin
35 deliberations.

36

37 Board members.

38

39 (Pause)

40

41 CHAIRMAN FLEAGLE: We're short a Board
42 member. Wini, are you ready to speak.

43

44 DR. KESSLER: I'm ready to put a motion
45 forward.

46

47 CHAIRMAN FLEAGLE: Okay, go ahead,
48 please.

49

50 DR. KESSLER: I move to adopt the

1 proposal as written on Page 3 of the analysis. This
2 essentially adds Gustavus to the stated regulation. And
3 following a second I'll provide my rationale.

4

5 CHAIRMAN FLEAGLE: Do we have a second.

6

7 DR. CHEN: I'll second that motion.

8

9 CHAIRMAN FLEAGLE: We got a second by
10 Glenn. Wini, if you'd go ahead and explain your motion,
11 please.

12

13 DR. KESSLER: Okay. On the surface my
14 motion may appear inconsistent with the Southeast's
15 Council recommendation, which was to take no action on
16 the request for reconsideration, however, I'm confident
17 that my motion does not conflict with the spirit and with
18 the desired outcome of the Council's recommendation on
19 this RFR. As Dr. Schroeder has explained with his
20 history of these proposals, the Council's vote to take no
21 action was largely procedural.

22

23 In developing their recommendation on
24 Proposal 07-17 they felt that they had completed their
25 work on customary and traditional for the rural residents
26 of the Icy Straits Cross Sound area which includes
27 Gustavus. And if I've misspoken, Mr. Adams is on the
28 phone and can straighten me out.

29

30 But the Council's recommendation action
31 to the Board on Fisheries Proposal 07-17 would accomplish
32 the same action as this request for reconsideration 06-01
33 and more. The Council believes that there is substantial
34 evidence to make the recommendation on 07-17. If we were
35 to follow the Council recommendation on that proposal at
36 the January 2007 meeting, the Federal Subsistence Board
37 public meeting, a customary and traditional use
38 determination for Sections 14(B) and 14(C) would be
39 provided for the community of Gustavus.

40

41 I agree with the InterAgency Staff
42 Committee recommendation that the Board should take actio
43 now on this request for reconsideration. The request for
44 reconsideration process requires action even though the
45 Board will act on a customary and traditional proposal
46 for this area including Gustavus at its January meeting.
47 The residents of Gustavus, including the proponent, have
48 waited a long time for a customary and traditional use
49 determination in Sections 14(B) and 14(C) right in their
50 own front yard, as we can see on Map 2. so in my mind it

1 would be detrimental to the subsistence uses of Gustavus
2 residents to not allow them to start fishing under
3 Federal subsistence regulations immediately. There's no
4 reason to wait until the next regulatory cycle and we now
5 have substantial evidence provided to the Board that
6 making this customary and traditional use determination
7 is appropriate.

8

9 Thank you.

10

11 CHAIRMAN FLEAGLE: Thank you, Wini.
12 Board members, discussion.

13

14 Judy.

15

16 MS. GOTTLIEB: Mr. Chair, thank you. I
17 agree that we now have nw information, substantial
18 information that supports our taking action now. I think
19 if we don't act it would be detrimental to subsistence
20 users and I also believe that we'll have accurate
21 descriptions in the regulation book so that people will
22 be clear on what is and what is not allowed, which areas
23 are allowed and not allowed, that's all we're talking
24 about right now.

25

26 Thank you, very much. And from a process
27 standpoint, a request for reconsideration is an
28 administrative method that parties have to ask us to do
29 something and so I think this is the proper way to handle
30 this rather than defer a decision to the next cycle.

31

32 Thank you.

33

34 CHAIRMAN FLEAGLE: Thank you, Judy.
35 Other discussion.

36

37 (No comments)

38

39 CHAIRMAN FLEAGLE: Nobody's ready.

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: I obviously don't have
44 as much information on this issue as others do. I am
45 compelled by the Regional Advisory Committee's
46 recommendation to take no action, though, so that the
47 entire issue and area can be brought before the Board in
48 the form of that proposal 17, I think you were talking
49 about. I didn't write the number down, I'm sorry.

50

1 MS. GOTTLIEB: Uh-huh.

2

3 MR. PROBASCO: Yes.

4

5 CHAIRMAN FLEAGLE: Okay, FP-17. And I'm
6 compelled that that would be probably the best way to
7 handle the issue as a package. I feel that there's
8 probably going to be quite a bit more information
9 available to the Board at that time. Understanding that
10 you guys have probably already heard the presentation
11 when this was first acted on. But from my perspective I
12 think that I'd like to have the benefit of looking at it
13 overall when we do have it before us in January.

14

15 So I'm going to vote against the motion,
16 not because I'm against the intent but because I support
17 the deferral or, you know, the consideration that the
18 normal cycle, when this is going to come up anyway. And
19 in the event that this motion either passes or not, well,
20 I should restate that, if the motion does not pass, then
21 I don't think that precludes action on this when it comes
22 before the Board in proposal form in January. I guess
23 we'd have to make that clarification based on the outcome
24 of the vote.

25

26 I guess that's all I've got.

27

28 Judy.

29

30 MS. GOTTLIEB: Mr. Chair. Well, I wonder
31 if we could ask Bob if we expect any new or different
32 information to be available in January regarding this
33 proposal or this RFR or Keith, if we need to look at this
34 request in the context of future requests to add other
35 communities. So maybe Bob, if you expect anything.

36

37 CHAIRMAN FLEAGLE: Bob Schroeder.

38

39 DR. SCHROEDER: Mr. Chair. Judy. The
40 new information would simply be information that might
41 come in public testimony. There wouldn't be any new
42 Staff generated information.

43

44 CHAIRMAN FLEAGLE: Keith.

45

46 MR. GOLTZ: No, I think the context
47 question is up to the Board. I don't have any legal
48 insights whether you should do it now or do it later, I
49 think both are legally permissible.

50

1 CHAIRMAN FLEAGLE: Thank you. Steve.

2

3 MR. KESSLER: Thank you, Mr. Chair. I
4 guess just a comment for you.

5

6 What we show here is Map 2 on Page 12 is
7 the map that is in the analysis for FP07-17. FP07-17 has
8 gone to the Council and has gone through that part of the
9 public process. They have supported the information and
10 made a recommendation as shown on here along with all the
11 other recommendations that they have made for Icy Straits
12 and Cross Sound. The only thing that's still remaining
13 as far as consideration of 07-17 is the Board meeting in
14 January, that's all. The whole public process has gone
15 through. We've had multiple comment periods already on
16 that. The Council has taken action which subsumes this
17 action that is before you today.

18

19 So I don't think there will be any more
20 information. As Dr. Schroeder has said we could have
21 some more public comment that would come to the Board at
22 the Board meeting but that would be the limit of it.

23

24 Thank you.

25

26 CHAIRMAN FLEAGLE: Thank you, Steve.

27 George.

28

29 MR. OVIATT: Mr. Chair. I would not want
30 to circumvent the opportunity for public to comment and
31 if we're going to be a little bit premature here by not
32 giving them that ample opportunity then I'm not sure that
33 I could support this. It may be that we would want to
34 wait for the normal cycle.

35

36 MS. GOTTLIEB: Mr. Chair.

37

38 CHAIRMAN FLEAGLE: Judy.

39

40 MS. GOTTLIEB: This request for
41 reconsideration provided an opportunity for public
42 comment and of course we did have some. I think somewhat
43 consistent with what we just did on Ninilchik, I mean we
44 need to act today.

45

46 DR. KESSLER: Mr. Chair.

47

48 CHAIRMAN FLEAGLE: Wini.

49

50 DR. KESSLER: I'd just like to point out

1 that this forum is opportunity for public comment on this
2 and it follows five or six other opportunities on this
3 one. I mean we've had ample, ample opportunity for the
4 public to comment on this particular proposal.

5

6 CHAIRMAN FLEAGLE: Glenn.

7

8 DR. CHEN: Thank you, Mr. Chair. I guess
9 I'd like to address an item of information regarding this
10 proposal. And one piece of information that was not
11 available to us during the prior Board was some specific
12 information detailing where people from Gustavus might
13 have fished on Federal public waters.

14

15 Now, the Staff has been able to gather
16 that information to the TRUC survey and other things,
17 that information is shown on Map 2 that demonstrates that
18 people from Gustavus did actually use Federal public
19 waters in these fishing districts. So in my mind some of
20 the information that was missed before has now been
21 provided and as such I am ready to support the motion.

22

23 CHAIRMAN FLEAGLE: Am I hearing a call
24 for the question in all that somewhere.

25

26 MS. GOTTLIEB: Mr. Chair.

27

28 CHAIRMAN FLEAGLE: Judy.

29

30 MS. GOTTLIEB: If I could just ask one
31 more question of Bert or of Steve.

32

33 So is it correct that at the recent
34 Southeast Regional Advisory Council meeting the RAC did
35 decide to recommend that Gustavus would have C&T, that's
36 what would be before us at the Board meeting?

37

38 CHAIRMAN FLEAGLE: Steve.

39

40 MR. KESSLER: Bert, would you like to
41 answer that.

42

43 MR. ADAMS: Yes. Like I said earlier,
44 you know, those communities in that area like Elfin Cove,
45 Pelican and a few other communities in that area will be
46 considered in the proposal for the 2007 and '08 cycle and
47 included in that will be Gustavus, that is the plan as it
48 is right now.

49

50 CHAIRMAN FLEAGLE: Bob Schroeder.

1 DR. SCHROEDER: Through the Chair.
2 Perhaps we could ask Bert, since he is our Council Chair
3 for Southeast, just his take on the action that the
4 Council made on the RFR at our last meeting. Because
5 what took place is the Council first spent a good deal of
6 time being very diligent about discussing FP07-17, and
7 then the next item on the agenda was to see whether the
8 Council wanted to do something on FRFR06-01 and the
9 motion that was made was by Mike Bangs and it was based
10 on our action on 07-17, I move that we take no action on
11 the RFR.

12
13 So that's what I recall, Bert, perhaps
14 you could help the Board out on this.

15
16 MR. ADAMS: Well, I think you explained
17 it pretty well. I think, you know, that the Council is
18 more likely looking at doing a whole package rather than
19 just concentrating on one community at this time. And
20 since those other communities, like those communities I
21 mentioned Pelican, Elfin Cove and a couple other
22 communities -- a few other communities in that particular
23 area hasn't been granted C&T status, you know, it just
24 made sense for the Council to consider all of them as a
25 whole rather than to just concentrate on one at this
26 time.

27
28 CHAIRMAN FLEAGLE: Okay, appreciate that.

29
30 MR. ADAMS: Does that help you.

31
32 CHAIRMAN FLEAGLE: Yeah, I think what I'm
33 understanding is pretty clear now. If the Board does
34 approve this request and pass this it's not going to go
35 against what the Council is recommending on Proposal 17,
36 it will just do away with a minor portion of that and
37 when the Board takes up Proposal 17, this section of it
38 will already have been dealt with.

39
40 So it's not contrary to anything that the
41 Council wishes, I understand that.

42
43 Other comments.

44
45 (No comments)

46
47 CHAIRMAN FLEAGLE: Ready for the
48 question.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: Does somebody want to
2 call it. All right, question's implied, now recognized
3 it.

4
5 Pete.

6
7 MR. PROBASCO: Thank you, Mr. Chair.
8 Motion forwarded by Dr. Kessler for the Southeastern
9 Alaska area Districts 14 -- Sections 14(B) and 14(C) for
10 the species of salmon, Dolly Varden, trout, smelt and
11 eulachon, residents of Gustavus, the city of Hoonah, and
12 in Chichagof Island, drainages on the eastern shore of
13 Port Frederick from Gartina Creek to Point Sophia.

14
15 Mr. Edwards.

16
17 MR. EDWARDS: Yes.

18
19 MR. PROBASCO: Mr. Fleagle.

20
21 CHAIRMAN FLEAGLE: No.

22
23 MR. PROBASCO: Dr. Chen.

24
25 DR. CHEN: Aye.

26
27 MR. PROBASCO: Dr. Kessler.

28
29 DR. KESSLER: Aye.

30
31 MR. PROBASCO: Mr. Oviatt.

32
33 MR. OVIATT: Aye.

34
35 MR. PROBASCO: Ms. Gottlieb.

36
37 MS. GOTTLIEB: Aye.

38
39 MR. PROBASCO: Mr. Chair. Motion carries
40 five, one.

41
42 CHAIRMAN FLEAGLE: Okay, thank you.
43 Thank you for -- and, again, just for the record that my
44 vote was not against the content of the proposal, but
45 just the desire of the Council to deal with it as a
46 package which I supported. So we do have affirmative
47 action on that item.

48
49 So that dispenses with all the action
50 that I had on the agenda before the Board. Is there

1 Board comments, closing comments before we adjourn.
2
3 Pete.
4
5 MR. PROBASCO: Mr. Chair. I looked
6 across the audience at my Staff and it looks like we
7 don't have anything for you until later on in the month.
8
9 CHAIRMAN FLEAGLE: Yeah, right.
10
11 MR. PROBASCO: Rural.
12
13 CHAIRMAN FLEAGLE: Check your email inbox
14 when you get home.
15
16 (Laughter)
17
18 CHAIRMAN FLEAGLE: All right. Is there a
19 motion to adjourn.
20
21 MR. EDWARDS: Move that we adjourn.
22
23 CHAIRMAN FLEAGLE: All right, meeting's
24 adjourned, thank you everyone.
25
26 (Off record)
27
28 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 151 through 198 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD WORK SESSION, VOLUME II taken electronically by Nathan Hile on the 17th day of November 2006, beginning at the hour of 8:30 o'clock a.m. at the Gordon Watson Conference Room, 1011 E. Tudor Road, 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 24th day of November 2006.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/08