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FEDERAL SUBSISTENCE BOARD

PUBLIC WORK SESSION

VOLUME II

GORDON WATSON CONFERENCE ROOM  
ANCHORAGE, ALASKA

July 12, 2011  
8:30 o'clock a.m.

MEMBERS PRESENT:

- Tim Towarak, Chairman
- Gene Virden, Bureau of Indian Affairs
- Larry Bell, U.S. Fish and Wildlife Service
- Steve Kessler, U.S. Forest Service
- Deb Cooper, National Park Service
- Bud Cribley, Bureau of Land Management
  
- Craig Fleener, State of Alaska Representative
  
- Keith Goltz, Solicitor's Office

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P R O C E E D I N G S

(Anchorage, Alaska - 7/12/2011)

(On record)

CHAIRMAN TOWARAK: I'm going to call this meeting back to session. We were on a recess.

OPERATOR: At this point, your participants are not hearing you. It will take me just one moment, please.

DR. WHEELER: Okay.

OPERATOR: Good morning and thank you for standing by. I would like to remind all telephone parties that your lines are on listen only until the question and answer segment of today's conference. At that time, if you're wishing to ask a question, please press star 1 on your touchtone phone and record your name when prompted. Your name is necessary in order to introduce your question. At this time, it is my pleasure to turn the call over to Mr. Tim Towarak, Federal Subsistence Board Chairman.

Thank you, sir. You may begin.

CHAIRMAN TOWARAK: Thank you very much. We will call this work session back to order. Before we get started on the agenda we've got a couple of announcements.

DR. WHEELER: Thank you, Mr. Chair. We've received -- yesterday, if you remember, we had Janice Jackson speaking to a resolution that was passed by the ANB and ANS Grand Camp. We did get it, so I have copies of that resolution here, which I can hand out.

Also yesterday we received two letters and the Board members have them and they're out at the table. We received one letter from Sitka Tribe of Alaska and one letter from Douglas Indian Association tribal government, both in support of revisiting or staying the Saxman decision. These will all be entered into the administrative record, but I just wanted everybody to know there's copies of all of those out there.

Just as a personal note, I did get a message from Pete Probasco's wife last night. He got

1 through surgery fine. He's not going to have to have  
2 another surgery, at least at this point, and he was  
3 recovering well. He's still not up for visitors, but  
4 they'll let us know when he is. So that's a good thing.  
5 Not that he's not ready for visitors, but that he got  
6 through surgery fine.

7

8 Thank you, Mr. Chair.

9

10 CHAIRMAN TOWARAK: Thank you. Our first  
11 agenda topic this morning is an update from Tribal  
12 Consultation Work Group and Crystal Leonetti and Della  
13 Trumble will handle that portion of the agenda.

14

15 MS. TRUMBLE: Good morning, Mr. Chair.  
16 My name is Della Trumble. I represent the Agdaagux Tribe  
17 of King Cove. I am the co-chair with Crystal on the  
18 committee and I'm also the vice-chair on the  
19 Kodiak/Aleutian Federal Subsistence Advisory Council and  
20 I work part time as the administrator for the Agdaagux  
21 Tribe of King Cove and part time as a finance manager for  
22 the King Cove Corporation, so I kind of have a split  
23 personality.

24

25 Like I say, we're on the committee and I  
26 represent the Agdaagux Tribe of King Cove. We also have  
27 John Andrew, who is with the Organized Village of  
28 Kwethluk, George Carlson Yaska, Jr. with Huslia Village,  
29 Richard Peterson, Organized Village of Kasaan, Rosemary  
30 -- I'm sorry, I can't pronounce her last name -- Inupiat  
31 Community of the Arctic Slope, Shawna Larson, Chickaloon  
32 Native Village and Pacific Environment, Bobby Andrew,  
33 Ekwok Village; Crystal as Fish and Wildlife; Gene Gamache  
34 with National Park Service; Lillian Petershoare, U.S.  
35 Forest Service; Brenda Takeshorse from BLM; Pete Probasco  
36 and Andrea, Office of Subsistence Management; Glenn Chen,  
37 Bureau of Indian Affairs; Nancy Swanton, National Park  
38 Service; and Andrea Medeiros, OSM.

39

40 With that, I'm going to turn it over to  
41 Crystal.

42

43 MS. LEONETTI: Good morning. My name is  
44 Crystal Leonetti. I'm the Alaska Native Affairs  
45 specialist for U.S. Fish and Wildlife Service and the co-  
46 chair with Della on this consultation workgroup for the  
47 Federal Subsistence Board.

48

49 Just to let you know, the packets that we  
50 handed out yesterday, there are six different documents

1 in that packet. The first one is a meeting summary of  
2 our June 21st to 22nd workgroup meeting, which was held  
3 in Anchorage at the Park Service building. The second  
4 document is the introduction packet for the workgroup  
5 members, including an agenda for that meeting, a list of  
6 the members and a timeline for the workgroup process.  
7 The third document is an interim protocol for  
8 government-to-government consultation. The fourth  
9 document is an interim protocol for  
10 government-to-ANCSA-corporation consultation. The fifth  
11 document is a list of values important to consider in the  
12 protocol. And the sixth document is a revised draft  
13 tribal consultation protocol still in progress,  
14 definitely not finished yet and a lot of work still to be  
15 done on that.

16  
17 I wanted to give an overview of our June  
18 21st and 22nd meeting of the workgroup. The beginning of  
19 the meeting was about getting to know each other, so  
20 there were a lot of introductions and discussions. The  
21 next step was to have a good baseline understanding of  
22 the Federal subsistence management processes and of  
23 government-to-government consultation and of the legal  
24 requirement to consult with ANCSA corporations.

25  
26 The third thing we worked on after taking  
27 a brief look at the draft tribal consultation protocol  
28 was listing the values that the workgroup believed to be  
29 important to consider in a consultation protocol and  
30 that's what that list of values is in your packet.

31  
32 We then started wordsmithing the draft  
33 document, but when the workgroup took an hour to  
34 wordsmith one paragraph, we realized we should probably  
35 begin working on the interim protocols instead and that's  
36 what we did. We wanted to create something that was a  
37 simple, easy to understand protocol for your  
38 consideration.

39  
40 So there are two stand-alone protocols.  
41 One is for government-to-government consultation. That's  
42 with the Federally recognized tribes. The other one is  
43 for consultation with the ANCSA corporations. The  
44 workgroup proposes the two interim protocols to be stand-  
45 alone in order to recognize the inherent sovereignty of  
46 tribes and to distinguish that from the statutory  
47 requirement to consult with ANCSA corporations. I'll  
48 present the ANCSA protocol after Della presents the  
49 government-to-government consultation protocol for you.  
50

1 MS. TRUMBLE: I'll work off the document.  
2 I think there's some changes from the one that's in the  
3 packet. I don't know if you have them. United States  
4 government has a unique relationship with American Indian  
5 governments as set forth in the Constitution of the  
6 United States, treaties, statutes, court decisions and  
7 executive orders and policies.

8  
9 In recognition of that special  
10 relationship on November 6, 2000, the President issued  
11 Executive Order 13175, Consultation and Coordination with  
12 Indian Tribal Governments, which provided guidelines to  
13 all Federal agencies for establishing regular and  
14 meaningful consultation with tribal officials in  
15 decision-making processes that may have tribal  
16 implications.

17  
18 On November 5th, 2009, a presidential  
19 memorandum was issued pursuant to Executive Order 13175  
20 reaffirming the Federal government's commitment to  
21 operate within a government-to-government relationship  
22 with Federally-recognized tribes. Pursuant to the  
23 direction provided by the Secretaries of Interior and  
24 Agriculture, this document lays out an interim protocol  
25 for consultation between the Federal government and  
26 Federally-recognized tribal governments located in Alaska  
27 for the Federal Subsistence Board processes.

28  
29 The following interim protocol sets out  
30 a framework for consultation during the 2011 cycle of the  
31 Federal subsistence management program with respect to,  
32 number one, the 2012-2014 wildlife proposals and, number  
33 two, the government-to-government subsistence  
34 consultation protocol.

35  
36 Number one. Each Federally-recognized  
37 tribe will be sent a letter from the Federal Subsistence  
38 Board inviting consultation on all 2012 to 2014 wildlife  
39 proposals. This letter will, A, explain the interim  
40 consultation process and the need for this interim  
41 consultation effort regarding the 2012 to 2014 wildlife  
42 regulatory proposals. B, explain the final consultation  
43 protocol is expected to be in place by May 2012, in time  
44 to be implemented for the fisheries regulatory cycle  
45 process. C, inform the tribes of the face-to-face  
46 consultation opportunity, focusing on the consultation  
47 protocol during the tribal service providers conference  
48 on the afternoon of December 1, 2011 in Anchorage.

49  
50 Number two. Government-to-government

1 consultation will take place during the 2012-14 wildlife  
2 proposals during the August 15 through August 16, 2011  
3 timeframe. A, conduct a consultation via teleconference  
4 for each Federal Subsistence Regional Advisory Council  
5 area prior to the Regional Advisory Council meeting. At  
6 least four Federal Subsistence Board members or their  
7 designees will participate in each teleconference.  
8

9 Federal officials will receive training  
10 on principals and practices of government-to-government  
11 consultation prior to participating in the  
12 teleconference. Following each consultation a tribal  
13 official and Federal official will be selected to jointly  
14 report the results of the consultation to the Federal  
15 Subsistence Regional Advisory Council. An in-person  
16 government-to-government consultation will be held a day  
17 prior to the January Federal Subsistence Board meeting  
18 regarding wildlife proposals and the May Federal  
19 Subsistence Board meeting regarding the consultation  
20 protocol.  
21

22 Crystal.

23  
24 MS. LEONETTI: Unless there's any  
25 questions on that, I'll move forward to the ANCSA  
26 consultation protocol.  
27

28 MR. BELL: Mr. Chairman. Larry Bell,  
29 Fish and Wildlife Service. Just one question on the part  
30 about at least four Federal Subsistence Board members on  
31 Section 2(a)(i). Is that a quorum of the Board and, if  
32 so, is that going to be problematic if a quorum of the  
33 Board comes together to conduct a consultation as far as  
34 needing to notice that as a meeting or any of those kind  
35 of issues?  
36

37 MS. LEONETTI: Can I defer that to Keith?  
38

39 MR. GOLTZ: I don't know. I haven't  
40 thought about that. I'll work with Crystal on that.  
41

42 MS. LEONETTI: The workgroup did discuss  
43 that. The workgroup felt that it was important to have  
44 a majority of the Federal agencies represented at the  
45 consultations. They felt that it didn't have to be one  
46 of the Board members. It could be their designee and  
47 could be any employee from those agencies.  
48

49 MR. VIRDEN: I just had one comment on  
50 here. I noticed you're going to send a letter to all the

1 recognized tribes. Will the regional non-profits be  
2 notified? The only reason I'm bringing it up, there's a  
3 couple of them -- some tribes that we've not been able to  
4 get a hold of. They don't have a phone or office anymore  
5 and they've been under one of those regional non-profits  
6 forever. I'm just curious if they're included. Like  
7 BBNA or TCC.

8  
9 MS. TRUMBLE: Oh, the regional non-  
10 profits themselves. That's actually an interesting  
11 question that came up with one of our regional  
12 represented groups and it's something I think we're going  
13 to have to discuss. They should probably get copied --  
14 I would say copied. Maybe recommend they get copied on  
15 it and then just by mail. It's going to be -- I'd say  
16 regional organizations should maybe be copied on it so  
17 they're aware. They have access to be able to get  
18 information out to their tribes over and above what we  
19 can do.

20  
21 MS. LEONETTI: Okay. I'll move forward  
22 to the government-to-ANCSA-corporations consultation  
23 interim protocol. Pursuant to the direction provided by  
24 the Secretaries of Interior and Agriculture, this  
25 document lays out an interim protocol for consultation  
26 between the Federal government and Alaska Native Claims  
27 Settlement Act corporations, otherwise known as ANCSA  
28 corporations, to be utilized during the Federal  
29 Subsistence Board process.

30  
31 ANCSA corporations, by a mandate of 25  
32 USC Section 450 note 2010 must be consulted with by the  
33 Federal Subsistence Board with respect to, number one,  
34 the 2012-2014 wildlife proposals and, number two, the  
35 government-to-ANCSA-corporation subsistence consultation  
36 protocol.

37  
38 The interim consultation protocol is as  
39 follows: Number 1, each ANCSA corporation will be sent a  
40 letter from the Federal Subsistence Board inviting  
41 consultation on all 2012-2014 wildlife proposals. The  
42 letter will (a) explain the interim consultation process  
43 and the need for this interim consultation effort  
44 regarding the 2012-2014 wildlife regulatory proposals,  
45 (b) explain the final consultation protocol that's  
46 expected to be in place by May 2012, in time to be  
47 implemented for the fisheries regulatory cycle process,  
48 (c) mention the Board's interest in having a presentation  
49 made about the consultation protocol at the Alaska  
50 Federal of Natives convention in 2011.

1                   Number 2, two dates will be scheduled for  
2 government-to-ANCSA-corporations consultation  
3 teleconference opportunity prior to August 22, 2011.  
4 Consultation topics include the 2012-2014 wildlife  
5 proposals and the development of a long-term  
6 government-to-ANCSA-corporation consultation protocol.

7  
8                   (a) ANCSA corporations can choose to  
9 participate in either or both teleconferences, (b) at  
10 least four Federal Subsistence Board members or their  
11 designees will participate in each consultation  
12 teleconference, and (c) ANCSA corporations and Federal  
13 agencies each will appoint a representative to report the  
14 results of consultation to each of the 10 Federal  
15 Subsistence Regional Advisory Councils during the fall  
16 2011 Regional Advisory Council meeting cycle.

17  
18                   That's all we have unless you have  
19 anything to add.

20  
21                   CHAIRMAN TOWARAK: I've got a question  
22 regarding the process. Was there a request by any  
23 particular organization or group at the meeting that  
24 suggested that there be a separation of tribes versus  
25 village corporations?

26  
27                   MS. LEONETTI: At the workgroup meeting?

28  
29                   CHAIRMAN TOWARAK: Yes.

30  
31                   MS. TRUMBLE: Can you repeat your  
32 question.

33  
34                   CHAIRMAN TOWARAK: I was wondering if  
35 anyone suggested that the tribe be separated from village  
36 corporations.

37  
38                   MS. TRUMBLE: We discussed this, I think,  
39 at length in the meeting. Not only in part of the  
40 values, but given that the tribes are a different  
41 government structure and technically do have the  
42 sovereign immunity, whereas the ANCSA corporations are  
43 recognized but, however, don't have the same powers that  
44 a tribe has, we felt that it may be best to separate the  
45 two and not to have the conflict.

46  
47                   The other issue, I think, that came up a  
48 number of times was in some cases the tribes don't  
49 necessarily work closely with their ANCSA corporations,  
50 so we felt it was best to try to treat them separately.

1 MS. LEONETTI: Also we're sort of  
2 following a couple of different approaches both by the  
3 Forest Service and by Department of Interior. The Forest  
4 Service has a term called government-to-corporation  
5 consultation, which maybe Ms. Pendleton can answer this  
6 better, but a bit different than government-to-government  
7 consultation, as well as the DOI process, which is in  
8 process right now to create a separate, stand-alone  
9 Department of Interior consultation policy for ANCSA  
10 corporations.

11  
12 We hope that -- because these policies  
13 and protocols, the Department of Interior policy and its  
14 Federal Subsistence Board protocol are being developed  
15 simultaneously that we can coordinate those efforts and  
16 make them so that they're compatible.

17  
18 We hope to talk more about that with the  
19 ANCSA corporations in our August teleconference with them  
20 because this is a pretty short and sweet protocol. We  
21 didn't add a lot of verbiage or details to it on purpose  
22 and that's because we wanted to get direct input from the  
23 ANCSA corporations themselves.

24  
25 CHAIRMAN TOWARAK: When you say ANCSA  
26 corporations, is this both regional and village  
27 corporations?

28  
29 MS. TRUMBLE: Yes. We have tentative  
30 dates we've set for August 16th or 17th to try to do this  
31 by teleconference.

32  
33 MS. PENDLETON: Mr. Chair. Just to be  
34 clear, I appreciate your remarks, Crystal, we do  
35 recognize -- the Forest Service has recognized ANCSA  
36 corporations from tribal governments. However, I will  
37 say that we have done a number of consultations where  
38 both ANCSA corporations and tribes have been present in  
39 those meetings and I think there have been some benefits  
40 to that to hear different issues, different concerns and  
41 points of use, but we do recognize certainly the  
42 differences.

43  
44 MR. BELL: Mr. Chairman.

45  
46 CHAIRMAN TOWARAK: Go ahead.

47  
48 MR. BELL: Larry Bell, Fish and Wildlife  
49 Service. I'd first of all like to thank BIA. I know it  
50 was important to the group to be able to come together in

1 a face-to-face meeting initially to learn from each  
2 other, to get to know each other and without BIA's  
3 assistance I know that wouldn't have happened. Also to  
4 the other Federal agencies for their support.

5  
6 Then I would also like to thank the  
7 workgroup. I know this is probably not an easy task for  
8 you. I think the interim protocol that you developed is  
9 a very good approach. I personally like simple. I think  
10 it's very understandable. I think you're on the right  
11 track. I think you're going in a very good direction and  
12 I think getting a protocol out that provides meaningful  
13 input while not overly complicating the situation or  
14 adding such an excessive work load to the subsistence  
15 program is exactly the way it should be going.

16  
17 So I commend the workgroup for getting it  
18 this far and I look forward to your final product. From  
19 my point of view, you're on the exact right track in  
20 developing a protocol that's workable and meets the need  
21 intent and provides an opportunity for meaningful input  
22 into the process, so thank you for your work.

23  
24 MS. LEONETTI: Thank you. I just have  
25 one more comment. I think it's really -- what the  
26 Federal Subsistence Board is doing by having an interim  
27 protocol and then consulting on it after that interim  
28 protocol is put to test, I think it will allow the  
29 Federal Subsistence Board to have a stronger, long-term  
30 protocol because we're able to test it out first and then  
31 consult on it and see how it went and then make that  
32 longer-term protocol stronger.

33  
34 MS. COOPER: Mr. Chair. I'd like to  
35 first of all recognize Crystal and other tribal  
36 representatives for coming up on short notice and  
37 spending a couple days in Anchorage and doing such a  
38 thorough job and good job developing these protocols. I  
39 appreciate that.

40  
41 I'd like to ask through the Chair if  
42 Counselor Goltz might have some insight he might share on  
43 where bureaus have a trust responsibility to protect  
44 tribal interests. If there's anything he can share on  
45 the differences there between trust responsibilities to  
46 tribal entities and responsibilities to ANCSA  
47 corporations.

48  
49 Thank you.  
50

1 MR. GOLTZ: I think Della expressed it  
2 more than adequately. There are differences. We don't  
3 know at this point what all those differences are. We  
4 really haven't tested to see what the interest of the  
5 corporate entities would be. At this point, I'm simply  
6 following the national lead, which is still in flux.

7  
8 When this is done, we're going to have to  
9 assure Washington that whatever we've done locally is  
10 consistent with the national policies. In some sense,  
11 we're out ahead of the curve. But all I've done so far  
12 is to try to learn and stay in contact with both the  
13 local and national interests. I haven't tried to direct  
14 or judge the result at all.

15  
16 MS. COOPER: Thank you.

17  
18 CHAIRMAN TOWARAK: Is that it?

19  
20 MS. LEONETTI: That's all we've got.

21  
22 MS. PENDLETON: Mr. Chair. Just a  
23 question. Are we going to then motion to accept the  
24 interim protocol for use or what would be the next step  
25 there?

26  
27 CHAIRMAN TOWARAK: I think that's a good  
28 question. I think we should sit here and chat a little  
29 bit about where we see this heading and where we might be  
30 able to give some direction to the workgroup of where we  
31 would like to see it.

32  
33 MS. PENDLETON: Okay. I was also -- just  
34 about the capacity too to move forward on this protocol  
35 and who would, I guess, take the lead as far as noticing  
36 and setting this up, the Office of Subsistence  
37 Management, or how that would work.

38  
39 CHAIRMAN TOWARAK: I think these are all  
40 good questions. I think everyone here realizes that this  
41 whole process is a new process for everyone. As Keith  
42 said, in some cases we're almost ahead of the curve in  
43 setting up policies and a process. With that, I'd like  
44 to hear from other Board members or the Staff on the  
45 direction being driven by this workgroup and what kind of  
46 a process do we actually want to put in place. I'm  
47 impressed with the direction that the workgroup is taking  
48 this tribal consultation process through and we should at  
49 least acknowledge that.

50

1 I don't have any problem accepting the  
2 interim consultation process. I think it at least gives  
3 us a guideline to begin with, which I think is a long  
4 ways from where we were from the last meeting that we had  
5 regarding the tribal consultation process. I think by  
6 accepting it would give us a first step in setting a  
7 practice of how we bring the protocol forward.

8

9 MR. BELL: Mr. Chairman.

10

11 CHAIRMAN TOWARAK: Sure.

12

13 MR. BELL: I think something that will  
14 help me with that would be if I could ask Crystal, is  
15 this what the workgroup considers to be your final  
16 interim protocol or is the group still intending on  
17 working that and presenting to the Board a second time or  
18 are we looking at the final?

19

20 MS. LEONETTI: We consider this the final  
21 interim protocol.

22

23 MR. BELL: Okay. And then if I  
24 understood some of the timelines correctly, Mr. Chairman,  
25 or maybe didn't understand the timelines, if we consider  
26 this or were to adopt this as the Board's interim  
27 protocol, looking at the government-to-government  
28 consultation interim protocol, it said we would send a  
29 letter to the tribes regarding the 2012-2014 wildlife  
30 regulatory process. So what's the timeframe for getting  
31 those letters out in a timely manner to meet the  
32 protocol? If maybe Dr. Wheeler could address that.

33

34 DR. WHEELER: As a first order of  
35 business, OSM will take care of the public notice  
36 requirements, assuming that there are any. We still need  
37 to investigate with Keith. If four members of the Board  
38 is a quorum, does that mean we have to do public notices.  
39 We will investigate that and we will -- although I'm  
40 seeing a slight shake no of the head over there. So I'm  
41 thinking maybe we don't have to publicly notice it. But  
42 if we do, we'll deal with it and we will do it.

43

44 In terms of getting the letters out, you  
45 probably all remember right around Christmas last year we  
46 sent out letters to Federally-recognized tribes inviting  
47 them to consult on the fisheries regulations prior to the  
48 Board meeting and also to come after the meeting. So we  
49 are prepared to do that and I guess time is of the  
50 essence, so we would need to do it sooner rather than

1 later, so I will add it to my list. I guess we probably  
2 won't wait for Pete to come back to do that one.

3  
4                   So we'll get it done sooner rather than  
5 later. I can't tell you exactly when we'll get it done  
6 by, but we can certainly fairly easily explain the  
7 process and what we're doing and I would envision that we  
8 would include this packet of material as well just  
9 because. Probably a lot of tribes have it already, but  
10 it doesn't hurt to duplicate -- kill a few trees, I  
11 guess, to keep people informed. So OSM will take care of  
12 that and we will be working closely with the committee  
13 too if we have any questions or issues that come up or  
14 pop up, then we will deal with that.

15  
16                   I will say that when we -- it's a little  
17 bit frustrating to me because when we sent the set of  
18 letters out last Christmas a lot of the things came back.  
19 For whatever reason we couldn't find a current list of  
20 tribes and addresses and that sort of thing. We've been  
21 refining the list as we've gone along. Village  
22 corporations is the same kind of thing. So I would say  
23 that it seems amazing to me that the Department of the  
24 Interior doesn't have such a list or at least doesn't  
25 have a current list. I recognize that contacts change,  
26 but still that's something that we probably all need to  
27 collectively work on because it's not rocket science,  
28 it's just keeping track of things. I know Crystal was  
29 working on a share point database and trying to keep that  
30 up to date. So we'll be working on that, but it is a  
31 work in progress. Even with the regional corporations a  
32 lot of the letters came back. So that is something that  
33 we can all collectively work on.

34  
35                   Mr. Chair.

36  
37                   MR. BELL: Thank you, Dr. Wheeler. Mr.  
38 Chairman, that was probably a lot more answer than I was  
39 expecting, but good information. So if I read this  
40 correctly in interim protocol, we're then looking at an  
41 August 15th start date according to protocol number two  
42 and running the consultation process then through  
43 September 16th. So August 15th is, for practical  
44 purposes, upon us.

45  
46                   So that means we need to start getting  
47 letters out almost immediately, notifying the tribes and  
48 given what I know of the workload and the staffing issues  
49 with OSM, I would make a suggestion, Mr. Chairman, that  
50 perhaps, if not at this meeting then soon thereafter,

1 that each Federal agency take the lead in establishing  
2 and setting up two of the teleconferences and then, of  
3 course, that lead agency would automatically then be one  
4 of the participants -- one of the four needed  
5 participants on the teleconference.

6  
7 I just don't think OSM can entirely take  
8 on the burden of getting these consultations going, at  
9 least for this first round. So I think it's an area  
10 where we need other Federal agency support from the  
11 representative agencies. Certainly getting the letters  
12 out, you know, something maybe OSM in association with  
13 Crystal can do, but I think we're going to need some help  
14 on the lead agency.

15  
16 Again, I think the timeframe works. I  
17 think we can begin doing it. Again, I'm supportive of  
18 the protocol as it stands and we just need to work out  
19 some of the details of how we'd make that happen.

20  
21 Thank you, Mr. Chairman.

22  
23 DR. WHEELER: Mr. Chair. I appreciate  
24 Mr. Bell's concern over OSM. I think that the first  
25 order of business is writing the letter. I would ask the  
26 Board to help us get that letter written. Obviously OSM  
27 can write the draft, then the draft needs to go out to  
28 the Staff Committee. I would ask that the Board make  
29 sure that the Staff Committee reviews it in a very quick  
30 fashion so that we can just get it moving forward. In  
31 terms of getting the meeting set up, I guess I would look  
32 to the committee and some of the key players in the  
33 Federal agencies, the Native liaisons in the Federal  
34 agencies.

35  
36 I think that would be a completely  
37 appropriate role and I'm not assigning work here. I  
38 recognize I have no authority to do that, but I guess I  
39 would ask the Board to think about that in terms of -- it  
40 seems like a logical link. It keeps the work within the  
41 committee and it also utilizes the people that have the  
42 skill set that is needed here.

43  
44 Mr. Chair.

45  
46 CHAIRMAN TOWARAK: Thank you. To an  
47 earlier question, personally I feel that it would be in  
48 order for the Board to accept the interim protocol to get  
49 the process going.

50

1 MS. COOPER: Mr. Chair. I was just  
2 wondering if we could revisit the language about Federal  
3 Subsistence Board members or their designees. Mr. Chair,  
4 I'd just like to ask Crystal if there had been any  
5 discussion about who their designees may be and whether  
6 or not tribal liaisons might be able to fulfill that  
7 role.

8

9 Mr. Chair, thank you.

10

11 MS. LEONETTI: Mr. Chair. We did talk  
12 about that and we talked about what the wildlife  
13 proposals entailed, who those designees might be. They  
14 could be a wildlife biologist from the agency, they could  
15 be a Refuse manager depending on where that consultation  
16 is held. They could be a Native liaison. They could be  
17 one of the Staff Committee members. It's totally up to  
18 that agency. I think it makes sense to ensure that  
19 whoever the person is they can relevantly speak to what  
20 they're consulting about.

21

22 MS. COOPER: Thank you, Mr. Chair. That  
23 answers my question perfectly.

24

25 DR. WHEELER: Mr. Chair. I think it's  
26 important -- you know, it's great to be able to reach out  
27 and get Staff in attendance at these meetings, but we  
28 also need to have somebody at those meetings that's  
29 prepared to speak to ANILCA because they are wildlife  
30 proposals. Yes, it is wildlife biology or, in many  
31 cases, anthropological in nature, but our statute is  
32 ANILCA. So whoever is there representing as a Federal  
33 Board designee has to be prepared to speak to ANILCA  
34 because that's the framework within which we're operating  
35 here.

36

37 Mr. Chair.

38

39 MR. BELL: Mr. Chairman. Sensing that we  
40 may be getting ready to work on the interim protocol or  
41 perhaps make other suggestions or amendments, I would  
42 offer a motion that the Board adopt the Federal  
43 Subsistence Board interim protocol for government-to-  
44 government consultation and the Federal Subsistence Board  
45 interim protocol for government-to-ANCSA-corporation  
46 consultation as presented by the workgroup to the Board  
47 at today's meeting.

48

49 MS. COOPER: I second that motion.

50

1 CHAIRMAN TOWARAK: There's a motion and  
2 a second on the floor. Any discussion on the motion,  
3 questions.

4  
5 MR. BELL: Mr. Chairman. The only  
6 discussion I would have is that in adopting this that the  
7 Board give itself latitude to make any necessary  
8 amendments as to on the government-to-government  
9 consultation protocol, protocol number 2(a)(i), to  
10 address the concern about whether that's a quorum of the  
11 Board and that in adopting they can make necessary  
12 changes to that if need be after advice from legal  
13 counsel. Then the same would apply, Mr. Chairman, to the  
14 government-to-ANCSA corporation consultation protocol  
15 number 2(b). That we allow ourselves to make those  
16 changes in adoption after consultation with legal  
17 counsel.

18  
19 Thank you.

20  
21 CHAIRMAN TOWARAK: Thank you. If the  
22 second concurs, we will include that.....

23  
24 MS. COOPER: I do.

25  
26 CHAIRMAN TOWARAK: .....in the main  
27 motion. Any further discussion.

28  
29 (No comments)

30  
31 CHAIRMAN TOWARAK: Not hearing any. All  
32 those in favor of the motion say aye.

33  
34 IN UNISON: Aye.

35  
36 CHAIRMAN TOWARAK: Any opposed say nay.

37  
38 (No opposing votes)

39  
40 CHAIRMAN TOWARAK: Motion passes  
41 unanimously. Thank you for your presentation this  
42 morning. If the group could be asked to give us  
43 direction as we go along on the process of accepting, we  
44 would like to hear your recommendations on what we, as a  
45 Board, should do to make sure that the process continues  
46 and that we eventually come up with a workable tribal  
47 consultation process. I appreciate all the work that  
48 you're doing. Go ahead.

49  
50 DR. WHEELER: Sorry, Mr. Chair. One more

1 question for the group. In the interim protocol it says  
2 inform the tribes of the face-to-face consultation  
3 opportunity, focusing on consultation protocol during the  
4 service provider's conference on December 1, 2011. I  
5 would think that that would probably be a time where  
6 Federal Subsistence Board members themselves should think  
7 about attending so that they can actually -- the Board  
8 members can consult directly with the tribes.

9

10 Just a note to self. Put that on your  
11 calendar, December 1st. If you weren't already planning  
12 on attending the provider's conference, it would probably  
13 be a good opportunity. So I would think that that would  
14 be something that you all want to put on your Blackberry  
15 or your paper calendar if you're using one of those these  
16 days.

17

18 Mr. Chair.

19

20 CHAIRMAN TOWARAK: Thank you. I'll make  
21 a note of that. If there aren't any other discussions or  
22 questions on the tribal consultation process, we will  
23 move on then to item number 7, an update on wildlife  
24 hunting closures with Mr. Ardizzone.

25

26 MR. ARDIZZONE: Mr. Chair, Board members,  
27 good morning. For the record, Chuck Ardizzone. This  
28 morning I'm just going to give you a quick update  
29 briefing on where we are in our closure reviews for this  
30 three-year cycle. For this presentation there's two  
31 documents. There's the closure policy for your review if  
32 we need to go to it and then there's a one-page table,  
33 front and back. It's just a quick summary of the actions  
34 by the RACs and their recommendations on the closures.

35

36 Based on the closure review policy that  
37 was adopted in 2007, we're tasked to review at least a  
38 third of all the wildlife closures every three years.  
39 This past review we reviewed 15 of the closures.

40

41 The purpose of the reviews are to ensure  
42 that Federal public lands and waters do not remain closed  
43 beyond the time necessary to assure conservation of  
44 healthy populations of fish and wildlife resources or to  
45 provide a meaningful preference for qualified subsistence  
46 users. These analyses were reviewed by the OSM  
47 leadership team, the inter-agency staff committee and  
48 subsequently they were taken to the affected Regional  
49 Advisory Councils.

50

1                   At the Council meetings, the Councils  
2 provided the recommendations as whether or not to retain  
3 the closure or to lift the closures or to take other  
4 actions on the closures. In the table, there's a summary  
5 of all those recommendations by the Councils.

6  
7                   Based on local knowledge, the  
8 Southcentral Regional Advisory Council submitted one  
9 proposal to lift the closure in Kings Bay, which is  
10 closure number three. The public submitted two proposals  
11 to open areas to non-Federally-qualified users, which was  
12 closure number 34. The Eastern Interior Regional Council  
13 submitted one proposal to add additional areas to a  
14 closure and that would be closure 21.

15  
16                   Those proposals are in the process of  
17 being analyzed. They will be reviewed by the Staff  
18 Committee shortly, then they will go back out to the  
19 Regional Advisory Councils for their recommendations on  
20 the proposals, and then those proposals will be before  
21 the Board in January 2012 to vote on whether those  
22 closures should be lifted or those areas should be added  
23 to the remaining closure.

24  
25                   Since the removals of closures or  
26 additional areas added to closures are an action that  
27 falls under subpart D of our regulations, that's the  
28 reason it must go through the public process and go  
29 through the RACs and then be voted on at your public  
30 meeting.

31  
32                   As an aside, anyone, including the  
33 Councils, the State or the public, has an opportunity to  
34 submit a proposal at any time during a call for wildlife  
35 proposals to remove an existing closure or it can be done  
36 through special action if need be. That would be the  
37 purview of the Board if they would like to lift it during  
38 a special action request.

39  
40                   That concludes my presentation. If  
41 there's any questions I can answer.

42  
43                   CHAIRMAN TOWARAK: At this point there  
44 aren't any required actions by the Board.

45  
46                   MR. ARDIZZONE: No, Mr. Chair. Action on  
47 any closures that were submitted for proposal would be  
48 taken in January 2012.

49  
50                   CHAIRMAN TOWARAK: Okay. Go ahead.

1 MR. VIRDEN: I have a question about if  
2 there's a proposal or something that's in place that's  
3 going to limit the antler size in the Kenai. Is that  
4 something you're going to talk about next?

5  
6 DR. WHEELER: Mr. Chair. As you may  
7 remember or maybe don't remember, we added that to the  
8 agenda under item 9 for other business. That was added  
9 to the agenda yesterday, so we'll give you an update on  
10 that later on today.

11  
12 Mr. Chair.

13  
14 CHAIRMAN TOWARAK: Any further questions  
15 from the Board regarding this update on the wildlife  
16 hunting closures.

17  
18 (No comments)

19  
20 CHAIRMAN TOWARAK: Thank you very much,  
21 Chuck. We're going to declare maybe a 15-minute break  
22 before we take the next agenda topic.

23  
24 (Off record)

25  
26 (On record)

27  
28 CHAIRMAN TOWARAK: I'd like to call us  
29 back into session. We are on item number 8, review of  
30 threshold analysis of the request for reconsideration RFR  
31 11-01 of the Ninilchik customary and traditional use  
32 determination. We've got Helen Armstrong here to walk us  
33 through the process. We'll turn the mic over to you,  
34 Helen.

35  
36 MS. ARMSTRONG: Thank you, Mr. Chair.  
37 For Board members, in your packet it's the rather large  
38 document. The analysis I'm going through is just a small  
39 portion of that document. There are a lot of appendices,  
40 so this is what I'll be walking you through. This is an  
41 action item. You will be asked to come to some kind of  
42 vote at the end of this presentation.

43  
44 This request for reconsideration was  
45 submitted by the State of Alaska, Alaska Department of  
46 Fish and Game in January of 2011. The actual request can  
47 be found in Appendix A. The request asks that the  
48 Federal Subsistence Board reconsider its decisions of  
49 November 12, 2009 and November 9, 2010 on Fisheries  
50 Request for Reconsideration (FRFR) 09-01 and related

1 Fisheries Proposal FP09-07.

2

3 Proposal FP09-07, which is Appendix B in  
4 your packet, requested that the community of Ninilchik be  
5 added to the communities with a positive customary and  
6 traditional use determination for all fish in the waters  
7 north of and including the Kenai River drainage, within  
8 the Kenai National Wildlife Refuge and Chugach National  
9 Forest within the Kenai Peninsula district. I will refer  
10 to that as the Kenai River Area.

11

12 The Request for Reconsideration RFR09-01,  
13 which is Appendix C in your packet, reconsidered the  
14 Board's action on Proposal FP09-07. The State maintains  
15 that reconsideration of the Board's action on RFR09-01  
16 is warranted because the Board's actions were based on  
17 incorrect information and/or because, in taking those  
18 actions, the Board's interpretation of information,  
19 applicable law, or regulation was in error or contrary to  
20 existing law.

21

22 I'm going to go through a little bit of  
23 the regulatory history. I'm not going to go through all  
24 of it. It is in your packet. There's a table  
25 summarizing it. I don't know if yours is in gray shades,  
26 but it actually has it in yellow. You can see from the  
27 table that it has a rather long history starting when we  
28 adopted those C&T determinations in 1999 and then in  
29 December of 2000 there was a request for C&T for salmon  
30 and then in 2001 a request for all fish. So we started  
31 in 2001. I'm going to jump forward -- just so you know  
32 it's been around for a long time -- to 2008 when the  
33 Ninilchik Traditional Council submitted Proposal FP09-07,  
34 the proposal they're asking for reconsideration of today.

35

36 That requested a positive C&T use  
37 determination for Ninilchik for all fish in the Kenai  
38 River area. The Board rejected Proposal FP09 in January  
39 of 2009 and that resulted in no change to Ninilchik's  
40 positive C&T determination for salmon only in the Kenai  
41 River area.

42

43 Then the Ninilchik Traditional Council  
44 submitted RFR09-01 in May of 2009 and the Board  
45 considered the threshold analysis on November 12, 2009,  
46 much as you're considering it here, and they voted to  
47 reconsider the decision on FP09-07.

48

49 Then they met November 9th, 2010 to  
50 reconsider the decision on Ninilchik Traditional

1 Council's Proposal FP09-07 and after reconsidering all  
2 the information and data that had previously been  
3 submitted for Proposal FP09-07, the Board reversed its  
4 earlier decision on Proposal FP09-07 and unanimously  
5 supported the Ninilchik Traditional Councils request for  
6 positive customary and traditional use determination for  
7 Ninilchik for all fish in the Kenai River area. If you  
8 look at the analysis, you can see a rationale on Page 4  
9 for why they made that decision.

10

11 I'd also like to note that in 2008 the  
12 courts affirmed the Board's general approach to doing  
13 customary and traditional use determinations as evidenced  
14 by the Ninth Circuit's decision in the State of Alaska  
15 vs. Federal Subsistence Board, Cheesh-Na Tribal Council.

16

17 Are there any questions about the history  
18 before I go on? At any point, because this is a long  
19 analysis and I am going to summarize. Just let me know  
20 if you have questions.

21

22 So to assess whether or not a request for  
23 reconsideration meets the threshold for further  
24 consideration -- and we're not actually voting on the new  
25 -- if you choose to address the analysis, that will come  
26 later. What we're doing today is only looking at did  
27 these claims pass the threshold for further  
28 consideration.

29

30 So the Board evaluates a request using  
31 three criteria based upon information not previously  
32 considered by the Board -- and there were no claims under  
33 that criteria. The second is the existing information  
34 used by the Board is incorrect and the third is the  
35 Board's interpretation of information, applicable law, or  
36 regulation is in error or contrary to existing law.

37

38 So the request for reconsideration from  
39 ADF&G submitted January 6, 2011 included a letter and it  
40 had three claims. These three claims are in the  
41 threshold analysis I've listed as being Part I of the  
42 threshold analysis. Then there were two other  
43 supplemental documents that they submitted. One was  
44 dated March 8, 2007 and the other April 30, 2007. These  
45 were in support of previous requests for reconsideration.  
46 The supplemental from March 8, 2007 has already been  
47 addressed by the Board, but I did include it just for  
48 documentation. That I have as Part 2. Then Part 3 is  
49 the document from April 30th.

50

1                   So Part 1 responds to the letter the  
2 State submitted. I'm going to provide a little more  
3 detail on these than the others because two of the three  
4 were issues that have not been addressed by the Board  
5 previously.

6  
7                   In the first part, there were no claims  
8 for the first and second criteria, but in criterion 3,  
9 the Board s interpretation of information, applicable  
10 law, or regulation is in error or contrary to existing  
11 law, there were three claims.

12  
13                   Claim 3.1 was that the Board improperly  
14 accepted a request for reconsideration on November 12,  
15 2009 contrary to the  
16 analysis and recommendation of its staff and without any  
17 basis satisfying the Board s regulation on  
18 reconsideration.

19  
20                   Our response is that the criteria  
21 established in our regulations for accepting requests for  
22 reconsiderations provide guidance to the public regarding  
23 what the Board might or might not accept for  
24 reconsideration. However, the criteria are not intended  
25 to limit the Board s discretion for reconsidering a  
26 decision the Board made previously. The Board retains  
27 complete discretion over whether or not to accept  
28 requests for reconsideration. Our conclusion is that  
29 there does not appear to be merit to this claim.

30  
31                   The second one is one that has been  
32 submitted, the content and the issue, previously. It's  
33 the claim that the Board s action on November 9, 2010 was  
34 contrary to the Board s own regulations and unsupported  
35 by substantial evidence and that Ninilchik residents have  
36 not harvested resident species in meaningful numbers and  
37 that Ninilchik s take of resident species stocks has been  
38 too small and infrequent to demonstrate a consistent,  
39 long-term pattern of community use.

40  
41                   In our response, we note that the Board  
42 makes its decisions on customary and traditional use  
43 determinations based on an assessment of the community s  
44 pattern of use in accordance with the eight factors set  
45 forth in the Federal subsistence  
46 management regulations. These factors are treated as  
47 general guidelines to assist the Board in making a  
48 decision based on a totality of the evidence.

49  
50                   When making a customary and traditional

1 use determination, one of the factors considered by the  
2 Board is a long-term consistent pattern of use, excluding  
3 interruptions beyond the control of the community or  
4 area. The residents of Ninilchik have been prevented  
5 from engaging in subsistence activities since 1952  
6 because of prohibitions imposed by the government.  
7 Because such a prohibition constitutes an interruption  
8 beyond the control of Ninilchik residents, the Board  
9 necessarily makes its decision on the best available  
10 information concerning historical patterns of use prior  
11 to the imposition of the prohibition or contemporary  
12 patterns of use under sport regulations.

13  
14 In this instance, the available  
15 information shows that Ninilchik residents did indeed  
16 subsistence fish in the Kenai River Area prior to 1952  
17 and that they continue to fish in the area. There was a  
18 survey in 1994 that showed subsistence use areas by  
19 Ninilchik residents covering the entirety of the Kenai  
20 Peninsula prior to 1952.

21  
22 There was a study done by the ADF&G  
23 Subsistence Division in 2002 and 2003 that showed that  
24 Ninilchik residents continued to harvest fish in the  
25 Kenai River drainage under State sport fishing  
26 regulations. This information indicated that 28 percent  
27 of all Ninilchik households harvested fish in the Federal  
28 waters in the Kenai River Area. Of these, 17 percent  
29 harvested fish with frequent use in the Federal waters  
30 and the amount of use could not be considered  
31 insignificant.

32  
33 This information provided a sound basis  
34 for Board decision making. Then we went on to talk about  
35 that the determination of all fish is consistent with  
36 other customary and traditional use  
37 determinations statewide and that even though the number  
38 of fish that are harvested in the Kenai River area may be  
39 low, that it's the nature of subsistence that subsistence  
40 users utilize all resources harvested and occasionally  
41 fish species may be harvested incidentally while  
42 harvesting another species.

43  
44 The Board's determination of all fish  
45 recognizes that subsistence users harvest the fish that  
46 are available and that fish are harvested  
47 opportunistically. Specifically, if a subsistence user  
48 is fishing for salmon, but harvests a rainbow trout  
49 instead, the trout would be harvested. This is the nature  
50 of subsistence fishing.

1                   We again commented that the courts have  
2 affirmed the Board's general approach to doing customary  
3 and traditional use  
4 determinations. There does not appear to be merit to  
5 this claim.

6  
7                   Claim 3.3 in Part 1. The Board's action  
8 on November 9, 2010 was unfairly predisposed in its  
9 customary and traditional use  
10 determination by an internal July 12, 2010 memorandum of  
11 its legal counsel that was prejudicial against the State.

12  
13                   Our response to that is that the internal  
14 memorandum dated July 12, 2010 from the Department of the  
15 Interior, Office of the Regional Solicitor to the Chair  
16 of the Federal Subsistence Board was an internal  
17 attorney-client communication that was not intended for  
18 release to the public, as noted on the top of the  
19 memorandum, nor has it actually been released to the  
20 public. Because this memorandum is subject to the  
21 attorney-client privilege, it is inappropriate for the  
22 requestor, who obtained a copy by unknown means, to rely  
23 on it when presenting its position.

24  
25                   Furthermore, simply because the requestor  
26 disagrees with the content of a legal memorandum, it does  
27 not mean that the opinions in that memorandum are  
28 improperly prejudicial. It is the legal counsel's job to  
29 provide advice and opinions to the Board, and he or she  
30 must be free to respond to the Board's questions without  
31 fear that his or her words will be misused to undermine  
32 the Board's decision-making process.

33  
34                   Finally, it appears that the requestor  
35 has either misinterpreted the contents of the memorandum  
36 or taken quotations out of context. The memorandum  
37 itself is the best evidence of its own content, and we  
38 find nothing in that memorandum that appears to be  
39 anything more than an attorney's legal analysis and  
40 opinion rendered in response to questions raised by the  
41 Board.

42  
43                   There does not appear to be any merit to  
44 this claim. So in the letter our Staff conclusion was  
45 that there didn't appear to be any merit to the claims in  
46 the letter.

47  
48                   Then in Part 2, this was the supplement  
49 from March 8, 2007, there were eight claims. None  
50 claimed that there is new information that was previously

1 considered by the Board, one claimed that existing  
2 information used by the Board was incorrect and seven  
3 were under criterion 3, the Board's interpretation of  
4 information, applicable law, or regulation is in error or  
5 contrary to existing law.

6  
7 All of these claims, as I said  
8 previously, were previously addressed by the Board and  
9 one claim in those was actually found by the Board  
10 previously to have merit and the Board did revisit the  
11 proposal.

12  
13 I'm not going to go through the claims.  
14 I'll just say that the gist of the claims were that there  
15 wasn't substantial evidence to support the customary and  
16 traditional use determinations, that there wasn't a  
17 consistent recurring pattern of use for the community of  
18 Ninilchik that's customary and traditional use  
19 determination was arbitrary and capricious, that there  
20 weren't written procedures and policies for rendering  
21 customary and traditional use determinations and that the  
22 Board violated its own procedures by denying ADF&G the  
23 ability to provide information to the Board and discuss  
24 relevant issues during deliberations. The last one was  
25 a question that is in the litigation regarding Federal  
26 jurisdiction.

27  
28 In Part 3, these were again supplemental  
29 materials submitted April 30th, 2007 and they were  
30 submitted just prior to a Board meeting, so they weren't  
31 ever responded to directly but they are claims that  
32 mostly were in the Part 2, so I'm not going to go through  
33 those. There were a couple of exceptions I'm just going  
34 to note.

35  
36 The State claimed in Part III, Claim 3.1  
37 that Federal subsistence policy guidelines in the OSM  
38 2005 Technical Writing Guide and other Staff analyses  
39 support the State's position that it matters where the  
40 harvest customarily and traditionally occurred, and that  
41 the use must be consistent, long-term, and recurring.

42  
43 Our response is that the OSM 2005  
44 Technical Writing Guide is an internal writing guide and  
45 not a policy guideline, as noted by the State, and it's  
46 not a guideline that's been approved by the Board. The  
47 Board does not have a policy guideline for customary and  
48 traditional use determinations.

49  
50 Additionally, the 2005 Technical Writing

1 Guide and the analysis referred to in this claim were  
2 written prior to the 2008 Ninth Circuit's decision in  
3 State of Alaska v. Federal Subsistence Board, Cheesh-na  
4 Tribal Council. As I noted earlier, the courts affirmed  
5 the Board's general approach to doing customary and  
6 traditional use determinations in this decision.

7  
8 Along that same theme about policies in  
9 Claim 3.3, the State claimed that the Board has failed to  
10 develop written procedures and policies for making  
11 further customary and traditional use determinations.

12  
13 We note that the Administrative Procedure  
14 Act does not require the development of a policy prior to  
15 rulemaking as long as the agency acts in accordance with  
16 its regulations, based on substantial evidence, the APA  
17 is not violated. In addition, there was nothing in the  
18 direction from the Secretary of the Interior in a letter  
19 dated October 27, 2005 that obligated the Board to  
20 complete written procedures or policies before acting on  
21 customary and traditional use determination requests.

22  
23 That concludes my summary and the OSM  
24 preliminary conclusion is do not support reconsideration  
25 of any of the claims in request for reconsideration  
26 FRFR11-01.

27  
28 Are there any questions? I made it  
29 shorter. I didn't go through every claim.

30  
31 CHAIRMAN TOWARAK: Are there any  
32 questions from the Board.

33  
34 (No comments)

35  
36 CHAIRMAN TOWARAK: If there aren't any  
37 questions, I'm going to ask to hear comments from the  
38 Southcentral Council. Judy Caminer.

39  
40 MS. CAMINER: Thank you, Mr. Chair and  
41 Board members. For the record, my name is Judy Caminer.  
42 I'm the representative from the Southcentral Regional  
43 Advisory Council today. I just wanted to mention as a  
44 former Board member I certainly appreciate and commend  
45 your actions yesterday with regard to Saxman and look  
46 forward to more discussions along those lines.

47  
48 Our Council has not made a recommendation  
49 on this request for reconsideration because we haven't  
50 met since these materials have been prepared, but the

1 Council has consistently, over many many years, supported  
2 Ninilchik's customary and traditional use of the Kenai  
3 waters.

4

5 We also were ably represented by  
6 Ms. Gloria Stickwan at your November meeting where you  
7 did discuss the RFR and she presented her views -- our  
8 views and recommendations quite ably. She said the Board  
9 and the Staff did a very thorough job in the analysis and  
10 that, of course, we supported your conclusion from that  
11 meeting.

12

13 I looked over the transcripts and  
14 certainly would agree with her that you discussed the  
15 issues very objectively and thoroughly and you have a  
16 copious administrative record to back up your decisions.

17

18 During our March meeting we were, in  
19 fact, informed about the RFR and I believe the members  
20 have been sent copies of it. So we did have a little bit  
21 of a discussion about it at that point. One of our  
22 members from Clam Gulch said that he had read the RFR and  
23 he went through with some of our new members how we had  
24 come to the conclusion about the C&T and how C&T was, in  
25 fact, warranted and disagreed with the points brought up  
26 by the State regarding fish off Ninilchik and Deep Creek.  
27 Our Ninilchik representative asked that the RFR be  
28 rejected and that was during our March meeting.

29

30 Our Chairman, Mr. Lohse, who is very busy  
31 with fishing at this part of the year, has been part of  
32 the process since the beginning. Since the beginning of  
33 the subsistence program and since the beginning when  
34 Ninilchik first asked for this C&T. As we discussed any  
35 comments we might make on how the C&T policies in general  
36 might change, Ralph said our Council has always been  
37 inclusive and not excluding people based on the evidence  
38 presented to us. The Council has recognized the value of  
39 personal knowledge and just recognition of subsistence  
40 characteristics of a community.

41

42 I reviewed all the analytical materials  
43 that are in your packet today, find them to be of very  
44 high quality and accurate. I certainly agree with the  
45 conclusion on Page 18 as well as the justification and  
46 urge you to end this very lengthy process. Do not  
47 support reconsideration of any claim and continue to  
48 provide for the positive customary and traditional use  
49 determination for all fish in the waters that are  
50 described for Ninilchik.

1 Thank you very much.  
2  
3 CHAIRMAN TOWARAK: Thank you. Are there  
4 any questions of Judy.  
5  
6 (No comments)  
7  
8 CHAIRMAN TOWARAK: Thank you very much  
9 for your presentation. Is there anyone else that would  
10 like to -- come on up.  
11  
12 MR. WILLIAMS: Thank you, Mr. Chairman.  
13 My name is Darrel Williams. I spoke yesterday. I'm a  
14 rural resident. I work for Ninilchik Traditional Council  
15 and I'm here to represent them today. In the rural  
16 community, I believe it's interesting to provide a little  
17 bit of insight for you. I also sit on the Citizen's  
18 Advisory Council for State Parks and I'm also the vice  
19 president of Ninilchik Emergency Services. Where in the  
20 incorporated community we have to make things work and we  
21 discuss issues like this.  
22  
23 Our position is that we do not support  
24 the RFR. We support the threshold analysis. I believe  
25 Helen summarized it the best in saying there's a very  
26 long history in all this and paraphrasing is probably the  
27 best way to go.  
28  
29 Is everybody up to date on the fishery  
30 proposal? I assume you are. I think it's important to  
31 be able to express how important this fishery is to the  
32 people in Ninilchik. This fishery is used. The impact  
33 is very very small and it allows the meaningful  
34 preference that is mandated in this particular system.  
35  
36 Please don't support the RFR. Thank you.  
37  
38 CHAIRMAN TOWARAK: Thank you. Are there  
39 any questions of Mr. Williams from the Board.  
40  
41 (No comments)  
42  
43 CHAIRMAN TOWARAK: Thank you for your  
44 presentation. Anyone else? It's my understanding that  
45 we will not be hearing from the State because it is their  
46 request for reconsideration. Is that your understanding?  
47  
48 (No comments)  
49  
50 CHAIRMAN TOWARAK: That concludes then

1 this step. The next step is for the Board to either  
2 accept any of the State's claims or a motion to adopt the  
3 Staff's recommendation, which is that there is no merit  
4 to any of the claims in the request for reconsideration.  
5 Go ahead.

6  
7 MR. FLEENER: Thank you, Mr. Chair.  
8 Perhaps you could indulge my ignorance of the proper  
9 process. I was, I guess, a little curious as to maybe  
10 why we can't at least give a summary or perhaps present  
11 a little bit on some of the -- or I guess reiterate some  
12 of the analysis just for the benefit of the Board. Maybe  
13 you have something in your process that doesn't allow for  
14 that. I'm not sure. It seems that it would be  
15 beneficial to at least hear a recap from our Staff if  
16 possible, Mr. Chair.

17  
18 Thank you.

19  
20 CHAIRMAN TOWARAK: This is a  
21 discretionary decision and I'm going to allow you to  
22 summarize the State's position.

23  
24 MR. FLEENER: Thank you, Mr. Chair. We  
25 will keep it brief and do appreciate the opportunity.

26  
27 MS. YUHAS: Thank you, Mr. Chairman. For  
28 the record, my name is Jennifer Yuhas and I am the  
29 State/Federal subsistence liaison team leader. I will  
30 keep things very brief.

31  
32 Staff analysis says that there's no merit  
33 to our request and that's Staff's job to support the  
34 Board's original decision and to leave no room for  
35 admitting an error may have been made and that a  
36 reconsideration may be necessary. That's the way things  
37 operate once we enter into a legal proceeding like this.  
38 I apologize that our counsel is not here. We really  
39 clipped along our agenda and he's not out of court yet,  
40 so Mike Mitchell is not here sitting next to me while I  
41 go through this. I will keep things brief.

42  
43 Our main complaint was that a blanket  
44 finding was made for all species after the Board had  
45 prohibited Staff from Fish and Game to fully explain that  
46 some species are not found in this area and we had  
47 petitioned during the long course of this discussion for  
48 a separation between the stocks rather than this all fish  
49 finding.

50

1                   The Board doesn't have a policy guideline  
2 for C&T, but you have maintained a criteria and our  
3 understanding at the State is that that's included four  
4 major things. That a use of a species occurred over time  
5 by a people. The State is quite confused as how a people  
6 can use a species over time if it's not present and we'd  
7 like to see a reconsideration so that those can be better  
8 defined rather than this blanket finding.

9  
10                   While it was stated by Staff that the  
11 legal opinions were an internal document and that they  
12 contained simply legal opinions, the State finds that  
13 those were personal opinions and that they were  
14 prejudicial. Some of the content of that was actually  
15 quite derogatory and is included in your packet. Those  
16 are not actually legal opinions that were included and we  
17 think that that does bring merit to our complaint that we  
18 were treated prejudicially even though the Staff analysis  
19 says we have no merit.

20  
21                   That's about what I have to add, Mr.  
22 Chairman, unless Mr. Fleener has something else.

23  
24                   MR. FLEENER: I have nothing more to add  
25 other than thank you for allowing us to give that recap.  
26 I'll leave it at that. Thank you, Mr. Chair.

27  
28                   CHAIRMAN TOWARAK: Thank you.

29  
30                   MR. LORD: Mr. Chair. With your  
31 permission, I'd like to respond to one thing that Ms.  
32 Yuhas said, which concerned the Staff's job. The Staff's  
33 job is not to support a Board's decision once it's made.  
34 The Staff's job is to make sure that the Board makes the  
35 correct decision based on the facts and the law and they  
36 are well aware of that. I'm well aware of that and  
37 that's always our goal. We recognize the Board is not  
38 infallible, which is why we have an RFR process. We are  
39 willing to change our minds if we find that we've been  
40 wrong.

41  
42                   Thank you.

43  
44                   CHAIRMAN TOWARAK: Thank you for that.  
45 Are there questions.

46  
47                   MR. BELL: Mr. Chairman. Larry Bell,  
48 Fish and Wildlife Service. A follow-up question for Ms.  
49 Yuhas if I may. I read the documents thoroughly last  
50 night. Actually took homework home, which I seldom, if

1 ever, do, but I wanted to be as best prepared as I could  
2 for today's meeting. Your statement about your concern  
3 about a blanket finding for all fish, I think that's  
4 directed at the various stocks that occur on the Kenai  
5 Peninsula, the State's claim that the stock in the  
6 Kasilof River would not be the same stock of fish that  
7 would be in the Kenai River.

8  
9                   So I guess what I'm unclear on, if there  
10 has been shown a customary use by Ninilchik residents on  
11 the Kenai River and on the Kasilof River and on Deep  
12 Creek and on the Anchor River, I'm not sure how the stock  
13 plays in. It seems like our role is to determine if  
14 there's been a use of the various waters regardless of  
15 what stock of fish might be in there and that our burden  
16 is to show the customary use of whatever fish occur in  
17 those waters. So help me understand that. What am I  
18 missing from the State's perspective?

19  
20                   MS. YUHAS: Through the Chairman. Thank  
21 you for taking the packet home and being fully prepared.  
22 We appreciate you reading our materials. The State  
23 maintains that there has not been a finding of use for  
24 each of those species and each of those stocks in that  
25 area. Although I don't have the history that Mr. Lord  
26 may be able to contribute to previous decisions by the  
27 Board, it's my understanding that the Board has made  
28 differentiation between stocks in the Yukon; redfish,  
29 sockeye, chum, kings, have been treated differently for  
30 different findings. The State maintains that all fish is  
31 not an appropriate finding for this area.

32  
33                   MR. BELL: Thank you for that response.  
34 Following up then on that, in the Staff analysis were  
35 provided information that in Alaska Department of Fish  
36 and Game's own report from 2002 and 2003 indicate that 28  
37 percent of all Ninilchik households harvested fish. So  
38 can you elaborate on that finding. Did that finding  
39 break it down as to the stocks of fish in the waters or  
40 did it just encompass all fish?

41  
42                   MS. YUHAS: Through the Chairman. I  
43 cannot break it down. Our biologist could have broken it  
44 down at the previous meeting and that's part of the  
45 reason why we've requested the reconsideration.

46  
47                   MR. BELL: Thank you, Mr. Chair. Maybe  
48 Subsistence Staff also knows the answer to that if they  
49 could help guide me.

50

1 Thank you.

2

3 MR. LORD: Mr. Chairman. I just wanted  
4 to remind the Board that we're at the threshold stage,  
5 which means we didn't come armed with all the facts. We  
6 haven't done a full analysis. We're just here to decide  
7 whether or not to accept this RFR for that full analysis  
8 that would come later and, if so, which elements of those  
9 arguments laid out in the RFR we would accept. So I  
10 wouldn't expect the Staff to have all the information  
11 right at their fingertips at this point.

12

13 MR. BELL: Thank you.

14

15 MS. ARMSTRONG: But I do know the answer  
16 to that question.

17

18 (Laughter)

19

20 MS. ARMSTRONG: We've been doing this  
21 long enough. That study that was done by Jim Fall and  
22 others at the Subsistence Division, they did not ask the  
23 specific question about which fish. The question was on  
24 use in the past, so it was done for all fish. They  
25 didn't break it down. For whatever reason, that part of  
26 the questionnaire wasn't included in the original report  
27 that they did, but we knew that the information had been  
28 asked, so we ended up asking them to pull that out and  
29 they prepared a separate document for us and that was  
30 presented at one of the Board meetings on this issue in  
31 this very same room along the way. So it wasn't asked.

32

33

34 I think you have to -- we have to  
35 reiterate that subsistence users, when they're fishing,  
36 they may be targeting salmon, but they may get something  
37 else and if they get something else, then they're going  
38 to eat it. I would bet that most of the people in this  
39 room have been fishing on the Kenai River and have had  
40 that experience upon occasion where they've maybe been  
41 targeting rainbow trout but gotten a salmon or vice versa  
42 or some other fish. So it happens when you're fishing.  
43 It's a little different when you're hunting.

44

45 MR. BELL: Mr. Chairman. Helen, thank  
46 you for that. I would just clarify for counsel my  
47 purpose in asking the questions is simply to help me  
48 determine if the RFR has merit and if we should proceed  
49 further, so I'm taking it within that context, so thank  
50 you very much.

1 CHAIRMAN TOWARAK: Any further questions  
2 or discussions.

3  
4 (No comments)

5  
6 CHAIRMAN TOWARAK: Is the Board ready to  
7 submit a motion?

8  
9 MS. PENDLETON: I would motion that there  
10 isn't sufficient merit to reconsider the RFR.

11  
12 MR. BELL: Mr. Chairman, I'll second for  
13 discussion purposes.

14  
15 CHAIRMAN TOWARAK: You heard the motion  
16 and the second. The floor is open for discussion.

17  
18 MS. PENDLETON: In looking at the  
19 reconsideration and also the extensive, I think,  
20 deliberations of the Board back in November in  
21 considering my comments relative to Ninilchik, I still  
22 maintain that the proposal that was submitted by the  
23 Traditional Council is simpler. Furthermore, the fact  
24 that all food fish have been consistently harvested since  
25 the 1800s and, furthermore, the information indeed  
26 provided by ADF&G that the use of fish species by  
27 Ninilchik residents in the Kenai River area is at  
28 approximately 28 percent, which is, you know, still a  
29 fairly high number. Also, as Helen has discussed, Ms.  
30 Armstrong has discussed, that fishing is opportunistic  
31 and that it's not unusual for other fish to be taken and,  
32 of course, used.

33  
34 Furthermore, we have a similar finding  
35 for Hope and Cooper Landing for C&T determination for all  
36 resident fish and it still remains for me very plausible  
37 that we maintain this C&T determination for Ninilchik for  
38 all species.

39  
40 Thank you.

41  
42 CHAIRMAN TOWARAK: Further questions or  
43 discussion. Go ahead.

44  
45 MR. BELL: Mr. Chairman. Again, having  
46 looked at the information on the request for  
47 reconsideration, as to the parts laid out in Staff  
48 analysis on the threshold analysis in Parts II and III,  
49 I'm thoroughly convinced that the Board has done its  
50 diligence in those matters and that the claims relating

1 to that have been fully addressed by the Board and  
2 decisions rendered appropriately, leaving me then to just  
3 address the issues in Part I under the threshold analysis  
4 where the State claims that the Board improperly accepted  
5 a request for reconsideration of November 12th contrary  
6 to the analysis and recommendations of its Staff.

7  
8 I think in looking at the materials I  
9 agree with the threshold analysis, that the Board did  
10 adequately address that. They followed the procedures  
11 for accepting requests. Since the criteria are not  
12 intended to limit the Board's discretion for  
13 reconsidering a decision that the Board made previously,  
14 that the Board acted appropriately.

15  
16 Then looking at Claim 3.2 where the State  
17 contends that the Board's own regulations are unsupported  
18 by substantial evidence. The stocks of rainbow trout,  
19 lake trout, Dolly Varden, and other resident species  
20 within Federal boundaries in the Kenai River Area  
21 constitute distinct stocks which Ninilchik residents  
22 have not harvested in meaningful numbers.

23  
24 I think the issue for me here is it's not  
25 so much the numbers that's important as establishing the  
26 use and I think in the information provided that the use  
27 has been well established that Ninilchik residents do, in  
28 fact, use all species of fish within those waters. While  
29 I recognize fully there are different stocks within those  
30 drainages, I think our burden is to determine whether use  
31 has occurred and not particular use of stock.

32  
33 I understand the State's concern for  
34 instance in the Yukon River, but in that instance we're  
35 talking about very different stocks of fish within the  
36 same drainage. I think that's a different analogy or  
37 analysis than would occur of stocks of fish within  
38 different drainages used by the same groups of people.  
39 So I'm not sure that's a parallel kind of analysis in my  
40 mind.

41  
42 And then relative to the State's claim in  
43 Part I, Claim 3.3, that's the issue that addresses  
44 perhaps attorney/client privileged document. I would  
45 just say on the record that it's always been my belief  
46 that even when we receive a document from the attorneys  
47 on an issue those are advisory in nature and I don't  
48 think that an advisory memo reflects a decision of the  
49 Board. I've dealt with many, many of these issues in the  
50 past where we seek advice from counsel. We often take

1 that advice, but we're not mandated in which to do so.

2

3                   Furthermore, since the memo went only to  
4 the Chairman of the Board, perhaps with copies to other  
5 Board members, again I don't think that reflects a  
6 decision on the Board, merely advice from counsel that  
7 the Board is free to accept or reject. So even if that  
8 memo were to be held to be completely accurate and not to  
9 the discretion of the Board, I think the Board exercised  
10 appropriately its discretion addressing that.

11

12                   With that, Mr. Chairman, certainly I  
13 would offer my vote to reject the request for  
14 reconsideration.

15

16                   Thank you.

17

18                   MR. CRIBLEY: Mr. Chairman. After having  
19 reviewed the documentation that's been provided to us  
20 previous to the meeting today, being briefed on this by  
21 my staff on the history of this issue and the information  
22 that was presented and then also listening to the  
23 testimony in discussion today, I'm not hearing a  
24 compelling reason of why we should reconsider or accept  
25 this reconsideration.

26

27                   I agree with other Board members about  
28 the fact that I don't think we should accept this or move  
29 forward with doing a reconsideration on the previous  
30 Board decisions. If that makes sense. I don't know if  
31 I said that right.

32

33                   CHAIRMAN TOWARAK: You did.

34

35                   MR. CRIBLEY: Okay. Thank you.

36

37                   CHAIRMAN TOWARAK: In my analysis, and I  
38 don't have as much history with this issue as some of the  
39 other Board members have or the Staff, from the public I  
40 haven't heard any support for the State's RFR request,  
41 but we did hear from the Regional Advisory Council to  
42 oppose RFR. Based on directions from the Secretary of  
43 Interior of deferring as much as possible to the Regional  
44 Advisory Councils, I personally will vote in favor of  
45 rejecting the RFR based on the recommendations from the  
46 Regional Advisory Council.

47

48                   Further discussion.

49

50                   MS. COOPER: Yeah, Mr. Chair. I have one

1 other follow-up question based on the information  
2 provided by Alaska Department of Fish and Game, Division  
3 of Subsistence, indicating that 28 percent of all  
4 Ninilchik households harvested fish in Federal waters in  
5 the Kenai area. It says of these 17 percent harvested  
6 fish with frequent use. Is that 17 percent of the 28  
7 percent?  
8

9 Through the Chair.

10  
11 MR. FLEENER: Not having read the report,  
12 I can't say definitively, but I'm pretty darn sure that  
13 that is normally how that's written, that it would be 17  
14 percent of the 28 percent.

15  
16 MS. COOPER: That actually uses it  
17 frequently?  
18

19 MR. FLEENER: That's correct.

20  
21 MS. COOPER: Thank you, Mr. Chair.

22  
23 CHAIRMAN TOWARAK: Is there a call for  
24 the question if there are no further discussions on the  
25 motion. The motion in review then is to reject the  
26 State's request for reconsideration.

27  
28 MR. BELL: Mr. Chairman. Call for the  
29 question.

30  
31 CHAIRMAN TOWARAK: The question has been  
32 called for. All those in favor of the motion say aye.

33  
34 IN UNISON: Aye.

35  
36 CHAIRMAN TOWARAK: Any opposed say nay.

37  
38 (No opposing votes)

39  
40 CHAIRMAN TOWARAK: The motion passes  
41 unanimously. That concludes item number 8. We have item  
42 number 9, other business, Kenai moose. Go ahead.

43  
44 DR. WHEELER: Thank you, Mr. Chair. This  
45 is, again, a heads up to the Federal Subsistence Board.  
46 There's no action needed at this time, but it's just to  
47 give you a heads up. A wildlife special action was  
48 submitted by the Kenai National Wildlife Refuge a month  
49 or two ago, I think. I wasn't here. It requests that  
50 the Federal moose regulations for Units 7 and 15 be

1 changed to align with recent changes made by the Board of  
2 Game in those units.

3

4                   The current Federal regulation is one  
5 antlered bull with spike fork or 50-inch antlers or with  
6 three or more brow tines on either antler by Federal  
7 registration permit.

8

9                   The request submitted by the Kenai  
10 National Wildlife Refuge would eliminate the spike fork  
11 harvest, it would remove the harvest of three brow tine  
12 moose, changing it to moose with four brow tines and it  
13 would add an antler sealing requirement.

14

15                   There are conservation concerns for the  
16 moose populations in both Units 7 and 15. There's low  
17 and declining bull/cow ratios. The intent of the  
18 regulatory change is to reduce the harvest of bulls to  
19 address these conservation concerns. Again, in March of  
20 2011, the Alaska Board of Game made these regulatory  
21 changes and without similar action in Federal regulations  
22 any conservation gains may be compromised as the majority  
23 of lands in Unit 7 and 15 is Federal public land.

24

25                   So why am I telling you this. Well, I'm  
26 telling you this because we had the special action  
27 request. An analysis is being developed by Staff as we  
28 speak. The Staff Committee met last week and recommended  
29 further additions to the analysis. So Cole Brown is  
30 upstairs working away on the particular changes. She's  
31 adding some options, she's looking at -- well, she's  
32 adding some options and making some other changes  
33 requested by the Staff Committee.

34

35                   Once the analysis is complete, which  
36 we're hoping will be done by the end of this week, it  
37 will go out to the Federal Subsistence Board so that you  
38 all can take action on this. It wasn't unanimous. As  
39 you probably remember, with special actions, if there's  
40 unanimous consent of the Staff -- or if the Staff  
41 Committee can reach a unanimous decision, then it doesn't  
42 need to go to the Federal Board, but this issue is pretty  
43 complicated, somewhat controversial, as you might  
44 imagine. Anything that has Kenai attached to it, it  
45 seems to be controversial. So the analysis will be going  
46 to the Federal Subsistence Board for its deliberation and  
47 action.

48

49                   Mr. Chair.

50

1                   The reason why it's sort of on the fast  
2 track is that the moose season starts August 10 and  
3 registration permits, if these changes were to be made,  
4 would need to be issued, so we need to have as much lead  
5 time as possible, but we also want to have as solid an  
6 analysis as possible.

7  
8                   I would also add this is a wildlife  
9 special action, but we also have a proposal that's going  
10 to be before you for action in January to make these  
11 changes permanent. So you've got a special action to  
12 carry through this fall season and then there will be a  
13 proposal to make these regulatory changes permanent.

14  
15                   So, Mr. Chair, I don't have -- this isn't  
16 an issue for Board action at this time, but by the end of  
17 the week or early next week it will be an issue for Board  
18 action. So it's just reminding you to -- we'll keep you  
19 apprised of what's going on with this and as soon as we  
20 have the analysis completed and ready to go as per the  
21 Staff Committee and my review, then it will be going out  
22 and the Board will be expected to take action. This is  
23 an issue that can be done electronically. We've done  
24 electronic polling on wildlife special actions before and  
25 on fishery special actions, so it wouldn't require  
26 necessarily -- it wouldn't require an in-person meeting.

27  
28                   And your Board guidelines, that's all  
29 legal. Just for the record, for the public, this is how  
30 wildlife special actions can be addressed by the Board.

31  
32                   Mr. Chair, I know this isn't an issue  
33 that the Board is being expected to take action on today,  
34 but Ms. Caminer did ask if she could say a few words on  
35 behalf of the Council. The Council did discuss this  
36 issue at its meeting here in town in March. So that's up  
37 to the Board, Mr. Chair, if you are so inclined, but she  
38 looks anxious.

39  
40                   Mr. Chair.

41  
42                   (Laughter)

43  
44                   CHAIRMAN TOWARAK: Consistent with my  
45 views, I'd like to hear from the Regional Advisory  
46 Council.

47  
48                   MS. CAMINER: This is Judy Caminer. I'm  
49 sorry, I didn't mean to look anxious or sound anxious.  
50 I did just want to speak to you because we did receive a

1 copy of this special action through our council  
2 coordinator a few weeks ago and our council was briefed  
3 by the Fish and Game biologist as well as the Refuge  
4 manager and Jerry Berg at our March meeting, as Polly  
5 said. So we were told that the moose population was  
6 declining, that there could be a special action this fall  
7 or a new proposal might be in front of us at our fall  
8 meeting, so this is a bit of a different schedule than I  
9 suppose everybody anticipated when we were briefed.

10

11                   The question was how many moose were  
12 taken through subsistence permits this last year and this  
13 was to the Refuge manager and the answer was four. So  
14 people didn't feel like there was a need to change the  
15 regulation in terms of the size of the moose taken and  
16 that there would be many opportunities for in-season  
17 management. So that was kind of the gist of our  
18 discussion that people really emphasized the desire to  
19 have in-season management, more careful management by the  
20 Refuge and the Forest Service.

21

22                   One of our people who hunt on the Refuge  
23 was concerned that hunters who have been using State  
24 regulations would, if restricted, then use the Federal  
25 regulations and that's something that I'm sure will be  
26 brought out in the analysis as well because they would be  
27 eligible for Federal and that could give subsistence  
28 users, as he said, a bit of a black eye if it were  
29 perceived that subsistence users were the cause of these  
30 declines.

31

32                   Our representative from Ninilchik was  
33 absolutely opposed to eliminating the spike fork hunt and  
34 I'm sure that will come out in the analysis as well. Our  
35 vice chair said, as I mentioned before, just manage the  
36 hunt. That was his advice. I believe you can accomplish  
37 that through your registration permit system. Our Chair  
38 said that his expectation of the new Refuge manager was  
39 to, of course, protect the resources but also protect  
40 subsistence rights.

41

42                   We were also told that there is a model  
43 by Fish and Game, but that would be an important tool but  
44 that was not available at our meeting, so perhaps that  
45 will be available when you have your further discussions.

46

47                   So my comments would be that I'm not sure  
48 if the special action will also apply to the later season  
49 hunt. I didn't see that exactly. It also mentioned a  
50 sealing requirement, but I'm not sure -- and maybe this

1 is something you can find out, whether that's part of the  
2 State regulation now.

3

4 I think, you know, don't have to exactly  
5 mirror the State. I think there are ways to still  
6 provide a meaningful preference for subsistence users but  
7 be mindful of the conservation and that could be through  
8 this permit and reporting system. So we'll look forward  
9 to working with you further.

10

11 Thank you.

12

13 CHAIRMAN TOWARAK: Thank you for your  
14 comments. Mr. Fleener.

15

16 MR. FLEENER: Thank you, Mr. Chair.

17

18 MS. YUHAS: Thank you, Mr. Chairman.  
19 Jennifer Yuhas at the State of Alaska. Thank you for  
20 adding this agenda item because we come to these Board  
21 meetings and one item can be contentious and then we have  
22 an opportunity to wrap a meeting up saying that we're in  
23 agreement with something and thank our Federal  
24 counterparts for a positive working relationship.

25

26 There will actually be two proposals on  
27 this at the upcoming Subsistence Board meeting. They  
28 aren't identical, but our Staff has worked  
29 collaboratively with the Refuge Staff in trying to find  
30 a solution for this issue and we've been generally  
31 supportive of the concept that's moving forward and I  
32 just wanted to put that on the record.

33

34 Mr. Chairman.

35

36 MR. FLEENER: Thank you, Mr. Chair. I  
37 wanted to add something. Ms. Caminer said that the  
38 proposals don't necessarily have to mirror one another,  
39 but I think down through the ages you've heard from  
40 subsistence users, I've heard from subsistence users,  
41 hunters across the state, that they would prefer things  
42 to be as closely aligned as possible. There are times,  
43 there are places where there can be differences, but I  
44 think as much alignment as possible is going to be best  
45 for the users and the managers.

46

47 Thank you, Mr. Chair.

48

49 CHAIRMAN TOWARAK: Thank you for those  
50 comments. I think that reflects my own personal

1 philosophy also. Just having heard a lot from  
2 subsistence users both from the State and the Federal  
3 government. The more alignment that we could find, I  
4 think the better off our users will be and I think reach  
5 conservation goals also. So I appreciate your comments.  
6

7

8 Anything else? Go ahead, Mr. Virden.

9

10 MR. VIRDEN: My name is Gene Virden,  
11 Bureau of Indian Affairs. I just wanted to make one  
12 point. What Staff presented me was that there were 24  
13 bulls harvested last year down there that would qualify  
14 in the future if this goes through. There's concern by  
15 one of the tribal councils down there that they may not  
16 get any that qualify in that size range. You know,  
17 they've been harvesting down there for generations.  
18

19

20 That's all I have for comment.

21

22 CHAIRMAN TOWARAK: Thank you.

23

24 MR. ARDIZZONE: Mr. Chair. This will be  
25 clarified in the analysis, but the 24 bulls was four brow  
26 tines. There are plenty of other bulls that are 50  
27 inches or more that were also harvested, but it will all  
28 be in the analysis for your review.

29

30 CHAIRMAN TOWARAK: Okay. Well, I guess  
31 we could look forward to receiving your analysis. I  
32 assume if there's a decision that we would probably do it  
33 telephonically.

34

35 DR. WHEELER: Yes, Mr. Chair. If that's  
36 the request of the Chair, we can do it telephonically, we  
37 can do it electronically. I guess what I will promise  
38 you is that you will get the analysis by the end of the  
39 week and it may require more homework, Mr. Bell. Sorry.  
40 But you can take the analysis and look at it and you may  
41 prefer to have a discussion over the phone or do it  
42 electronically. I guess that's your call. We will stand  
43 by. We will get you the analysis by the end of the week  
44 and then we'll stand by as to what your preference is,  
45 Mr. Chair.

46

47 CHAIRMAN TOWARAK: Thank you. I'll ask  
48 the Board to convey their wishes on how the decision will  
49 be made after receiving the analysis. If there's no  
50 other discussion -- I've got a question. It's not on the  
51 agenda, but I'm wondering where the process is for

1 appointing two new Board members.

2

3 DR. WHEELER: Fortunately Pat Pourchot's  
4 in the room, so Pat Pourchot can -- I'll punt that one to  
5 you, Mr. Pourchot.

6

7 MR. POURCHOT: Mr. Chairman, thank you  
8 very much. As you know, you, on behalf of the Board,  
9 sent a letter to the Secretary making some  
10 recommendations to the draft regulation, which was  
11 published in the Federal Register I think back in  
12 February and then your comments and the Board's comments  
13 came after quite a bit of written testimony, in-person  
14 testimony, there was tribal contacts. So in our internal  
15 Secretarial process, what we do to get things moving is  
16 send a decision memo with backup information to the  
17 Secretary.

18

19 That memo has been sent. So the  
20 Secretary, hopefully soon, will be looking at that and  
21 when he makes a final decision on the language of the  
22 regulation that would be then, thanks to OSM Staff, they  
23 will and Theo will put that in a final regulatory format,  
24 send it back up for required surnaming, I assume, again.  
25 We will try to expedite that and it will have to be  
26 published in final in the Federal Register, then the  
27 Secretary will initiate a process to make the  
28 appointments.

29

30 It's certainly my recommendation to  
31 utilize the kind of criteria in the selection process  
32 that the Board and others had testified to. I think all  
33 those considerations are appropriate and then, of course,  
34 those appointments are coordinated through the Forest  
35 Service and the Department of Agriculture for Secretarial  
36 concurrence by the Secretary of Agriculture.

37

38 I would remind the Board of our  
39 experience, much to some of our frustrations last go  
40 around, it turned out to be a lengthy process. There's  
41 a required vetting process, background check of  
42 appointments. Not everybody passes those background  
43 checks for a variety of reasons. I'm recommending that  
44 we would pursue a process similar to the appointment of  
45 the Chair last year for widespread advertisement if you  
46 will, but letters to rural user groups, tribal groups,  
47 soliciting names for nomination or self-nomination and  
48 then those names would be considered, maybe a short list  
49 developed, RAC consideration given, then move to a  
50 recommendation or short list to present to the Secretary

1 for approval.

2

3

4 I think we've all looked ahead and as a  
5 goal, certainly my goal and I'm sure the Board's goal  
6 that we would have two new public members in place in  
7 time for some orientation and briefing and certainly for  
8 attendance at the January Board meeting for consideration  
9 in the next regulatory process. So, with that, we will  
10 do all we can to kind of advance this process knowing  
11 that sometimes it bogs down from time to time.

12

13 CHAIRMAN TOWARAK: Thank you. I was just  
14 curious where the process is at and you've answered my  
15 question. Anything further. Go ahead.

16

17 MR. BELL: Mr. Chairman. I apologize,  
18 but just going back to the special action request that  
19 will be coming before the Board on the Kenai moose  
20 situation. Just to let the Board know that the Refuge is  
21 currently receiving requests for permits and they have,  
22 in fact, issued three permits. We've asked them to put  
23 any additional issuance of those permits on hold until  
24 such time as the Board can reach its decision. So I  
25 think time is of the essence has been expressed.

26

27 In addition, I think it is important that  
28 we, in going forward on this issue in particular, allow  
29 some form of public participation. I would certainly  
30 support a teleconference or something in that nature  
31 within the next week or so and encourage the Board to  
32 make available in their scheduled time within the next  
33 week or so that we can let the public participate  
34 somewhat and then reach some kind of Board decision after  
35 we have had a chance to deliberate on the issue.

36

37 Thank you, Mr. Chairman.

38

39 CHAIRMAN TOWARAK: Go ahead, Gene.

40

41 MR. VIRDEN: Mr. Chair. I just have a  
42 couple questions for OSM. I'm curious on the Native  
43 liaison position, which will be key in the consulting  
44 process of the tribes here, the status of that. And also  
45 Mr. Lee Wallace yesterday asked I believe who did the  
46 summary for the June 8th executive session.

47

48 DR. WHEELER: I'm sorry. I'm going to  
49 have to plead ignorance on both counts and I will get  
50 back to you on that. We have had a lot of difficulty  
51 advertising positions through OSM or through HR. I don't

1 believe that that position has been advertised, so that's  
2 the answer to your first question.

3  
4 In answer to your second question, I  
5 don't know, but I will get back to you on that. I don't  
6 know if -- I don't even know of the session -- I don't  
7 know about the session of which you speak. So once I do  
8 know I will get back to you on that.

9  
10 Mr. Chair.

11  
12 CHAIRMAN TOWARAK: Thank you.

13  
14 MS. COOPER: Mr. Chair. I apologize.  
15 Also going back to the special action. I would just like  
16 through the Chair to request of the acting lead for OSM  
17 if it is possible in the analysis for that special action  
18 to include any type of analysis so we can gain  
19 understanding on what was behind the Board of Game's  
20 decision for any changes, whether it's transcripts from  
21 the Board of Game or just so that we can understand where  
22 they were coming from to help our analysis on that  
23 special action.

24  
25 Thank you, Mr. Chair.

26  
27 DR. WHEELER: Mr. Chair. Actually, the  
28 Board of Game doesn't do transcripts. They tape their  
29 meetings, but they don't do transcripts. They will do  
30 them if you ask specifically, but since time is of the  
31 essence we're probably not going to do that. What we do  
32 have is that Mr. Ardizzone has the dubious distinction of  
33 sitting at the table of every Board of Game meeting that  
34 happens, so he is well connected with this issue and is  
35 very familiar. We have to be careful in speaking about  
36 another agency -- you know, why another body did what a  
37 body did.

38  
39 We can speak to what they did and I think  
40 the over-arching issue for the Board of Game and for the  
41 Federal Subsistence Board is and should be conservation  
42 of the resource and I think that the Board of Game is  
43 very concerned about conservation of the resource of  
44 moose in Unit 7 and 15 and particularly that spike fork  
45 component.

46  
47 So we will do the best we can, but we do  
48 have to be careful about implying rationale to another  
49 body. It's hard enough with Federal Subsistence Board  
50 let alone another body that we don't have a real clear

1 connection with. But we'll do our best.

2

3 MS. COOPER: Thank you, Mr. Chair. Just  
4 as much insight as we can have would be appreciated.  
5 Thank you.

6

7 CHAIRMAN TOWARAK: That seems to, I  
8 think, take care of all the questions of the Board. We  
9 have an executive session scheduled for 1:00 to review  
10 our Council membership applications. If there is no  
11 further business to handle this morning. I don't know if  
12 anybody is interested in going to the executive session  
13 now or do you want to wait until 1:00? Wait until 1:00?  
14 Oh, do it now? Okay. We'll take a five-minute break and  
15 then we'll reconvene our executive session to review the  
16 applications for RACs.

17

18 (Off record)

19

20 (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, Salena A. Hile, Notary Public in and for the State of Alaska and Owner of Computer Matrix, do hereby certify:

THAT the foregoing pages numbered 44 through 89 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD WORK SESSION MEETING, VOLUME II taken electronically on the 12th day of July 2011, beginning at the hour of 8:30 a.m. at the Gordon Conference Room, Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed under my direction;

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

DATED at Anchorage, Alaska, this 20th day of July 2011.

\_\_\_\_\_  
Salena A. Hile  
Notary Public, State of Alaska  
My Commission Expires: 9/16/14