FEDERAL SUBSISTENCE BOARD
PUBLIC REGULATORY MEETING

VOLUME I

EGAN CONVENTION CENTER
ANCHORAGE, ALASKA

JANUARY 13, 2009
8:30 o'clock a.m.

MEMBERS PRESENT:

Mike Fleagle, Chair
Geoff Haskett, U.S. Fish and Wildlife Service
Thomas Lonnie, Bureau of Land Management
Sue Masica, National Park Service
Denny Bschor, U.S. Forest Service
Niles Cesar, Bureau of Indian Affairs

Bertrand Adams - Southeast RAC
Harry Brower - North Slope RAC
Sue Entsminger - Eastern Interior RAC
Ralph Lohse - Southcentral RAC
Myron Savetilik - Seward Peninsula RAC

Commissioner Denby Lloyd, State of Alaska
Representative
Keith Goltz, Solicitor's Office

Recorded and transcribed by:
Computer Matrix Court Reporters, LLC
700 W. Second Avenue
Anchorage, AK 99501
907-243-0668
jpk@gci.net/sahile@gci.net
CHAIRMAN FLEAGLE: Well, good morning, I'd like to call the Federal Subsistence Board meeting to order and we'll start out with introductions. I'll start with the Board. My name is Mike Fleagle, I'm the Chairman. I live in Anchorage. And we'll start on my left.

MR. LONNIE: I'm Tom Lonnie. I'm the State director with the BLM here in Anchorage for Alaska.

MR. CESAR: I'm Niles Cesar, the regional director for the Bureau of Indian Affairs.

MS. MASICA: I'm Sue Masica. I'm the regional director for the National Park Service here in Anchorage.

MR. GOLTZ: I'm Keith Goltz, Regional Solicitor's Office.

MR. PROBASCO: Good morning. I'm Pete Probasco. I'm the assistant regional director for the Office of Subsistence Management, U.S. Fish and Wildlife Service.

MR. HASKETT: Good morning. I'm Geoff Haskett, regional director Fish and Wildlife Service here in Anchorage.

MR. BSCHOR: I'm Denny Bschor. I'm the regional forester for the U.S. Forest Service out of Juneau.

MR. SWANTON: I am Charlie Swanton representing the Alaska Department of Fish and Game for the time being.

CHAIRMAN FLEAGLE: All right, thank you, and welcome everybody to the main table. And I'd like to turn to the Council Chairs and start to my right there.

MR. ADAMS: Gunalcheesh, Mr. Chairman.
(In Tlingit) Good morning. My name is Bert Adams, Sr., with the Southeast Regional Advisory Council.

MR. LOHSE: Ralph Lohse, Chair, Southcentral.

CHAIRMAN FLEAGLE: Good morning. And that's about it for Regional Advisory Councils for now, we'll recognize others as they show up. And then for Staff behind the table, would everybody just stand up and introduce yourself starting over here, please.

DR. CHEN: Good morning. My name is Glenn Chen with the Bureau of Indian Affairs.

MS. SWANTON: I'm Nancy Swanton with the National Park Service.

MR. LORD: Ken Lord with the Solicitor's Office.

MR. JACK: Carl Jack, OSM.

MR. BERG: Jerry Berg, Fish and Wildlife Service.

MR. KESSLER: Steve Kessler, Forest Service.

MR. USTASIEWSKI: Jim Ustasiewski, Office of the General Counsel.

CHAIRMAN FLEAGLE: Great, thank you. And then sitting at the table addressing the Board is Dr. Polly Wheeler, who is now heading up the operational side of the Office of Subsistence Management, Pete's right arm, and mine too. Welcome Dr. Polly Wheeler. Dr. Polly, that didn't sound quite right.

(Laughter)

CHAIRMAN FLEAGLE: I'd like to also recognize Hans Neidig and Ron McCoy from the Interior -- the Office of the Interior, welcome to the meeting guys.

(Pause)

MR. ADAMS: Mr. Chairman.
CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Yeah, I don't know whether, you know, you're aware of a couple of people who, you know, will not be here but I read an email from Jack Reakoff last week and he's staying home because of the cold weather. Sue Entsminger will be in tomorrow afternoon, I understand. So right now it's just Ralph and I holding down the fort for you.

CHAIRMAN FLEAGLE: Thanks for that Bert. And we do have a couple other representatives for the State and if I could get -- recognize -- introductions from you as well, please.

MR. PAPPAS: My name's George Pappas, Department of Fish and Game, fisheries liaison for the Fisheries Division. Thank you.

MR. DAUGHERTY: Steven Daugherty, State of Alaska, Department of Law.

CHAIRMAN FLEAGLE: All right, thank you. Welcome everyone. Looking forward to a good meeting. We have three days scheduled for the meeting starting at 8:30 a.m., daily here in the Egan Convention Center and right now I'd like to take a look at the agenda and ask if there's any corrections or additions to the agenda, and right away I'd like to point out that we have discussed, after the agenda was printed and published, that we need to switch items 7 and 8 in their order, so if you'd just make note of that on your agendas and with that, Pete, do we have anything else that we need to change?

MR. PROBASCO: I don't see anything, Mr. Chair. Just might want to give your Board members a head's up on other business that we'll take care of at the end of the meeting. And I was discussing with Mr. Fleagle that we would like to get direction from the Board if they would like to do a -- go out in the field like they do annually this summer, we'd like to have a determination as to where so that we can start planning that.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. And we'll discuss that under topic 9, other business, so keep that in mind Board members just to think about,
where, if any -- where you'd like to have a field trip this summer. And also another item is that there's some interest among Board members to have a brief executive session for an update from legal counsel on recent legal issues and I think the appropriate place to put that would be after public comment on the consensus items, which is Item 4, so we'll go into a brief executive session at that point before we take up the proposals.

(Pause)

CHAIRMAN FLEAGLE: Okay, if there's no other suggested changes to the agenda then we'll move on.

Board members.

(No comments)

CHAIRMAN FLEAGLE: Then we'll move on.

Board members.

(No comments)

CHAIRMAN FLEAGLE: All right, hearing none, we'll -- hearing no objection we'll go ahead and accept that as our amended agenda and we'll move on to public comment period. And this opportunity to comment on non-agenda items is available at the beginning of each day and we ask that everybody that wants to sign up to testify, fill out a card, and those will be delivered up here to the Staff at the table and testimony will be taken for non-agenda items at the beginning of each day, consensus agenda items at the beginning of each day and then as we get into the proposals testimony will be accepted for individual proposals for deliberation.

And, with that, do we have any testimony for non-agenda items, Pete.

MR. PROBASCO: Mr. Chair, unless I hear otherwise I believe the two individuals, Mr. Ricky Gease and Mr. Kermit Ivanoff are speaking to proposals specifically to proposal specifics, so I see a yes from that and Mr. Ivanoff -- so I'm going to assume that they're both talking on -- would like to speak on proposal specific so I have none.
Mr. Chair.

CHAIRMAN FLEAGLE: Okay. Maybe I'd just open it up briefly, if there's anybody in the audience that hasn't had the opportunity to fill out a testimony request form and wants to testify at this time on non-agenda items, would you raise your hand.

(No comments)

CHAIRMAN FLEAGLE: All right, we don't have any. Next.....

MR. ADAMS: Mr. Chairman.

CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Would this be an opportunity for Council Chairs to make some comments at this point too or.....

CHAIRMAN FLEAGLE: Sure.

MR. ADAMS: Okay. I'd just kind of like to share with you some of the things, you know, that our Council has -- and, you know, you probably got our annual report already so I'm just going to take some talking points off of that, if I might, Mr. Chairman.

I need to apologize if I have a lisp in my speech it's because on Christmas day I lost a cap on my front tooth here and so there's a temporary cap in there so, you know, I might talk a little bit differently than I normally do.

But the letter addresses, you know, several issues that the Southeast Regional Advisory Council has some concerns and issues about.

So, you know, our last meeting focused on developing of some recommendations for wildlife and fisheries management proposals. And, you know, I'll remind everyone that we are now in the 20th year of Federal management of subsistence resources, you know, on Federal lands. And so the Council wishes to raise a number of concerns dealing with implementation of ANILCA in our area, and so we'd like to bring forth the following management and program issues to the attention of the Federal Subsistence Board at this
Last fall we had a report that was given by a couple people from NMFS in regards to the incidental harvest of chinook salmon. As you know there's a lot of trawling going out on the oceans and we have seen an increase, you know, of incidental catches of salmon over the years and we've become quite concerned about that. I have to say that I wasn't very satisfied with the report. I think there needs to be more in-depth, you know, data given to us, you know, in the future. But the incidental harvest of salmon, primarily the king salmon by commercial fisheries in the Bering Sea and the Gulf of Alaska, we really think must be minimized. And I don't know how, you know, this Board will address that to another Federal program but we really think that it's important that this be addressed. Take into consideration the fact that, you know, we have to deal with the Canadians on the Alsek and the Stikine Rivers and, you know, we have this TrounsBoundary Council, you know, that meets often and there's negotiations on both sides of the border, you know, as to how much salmon will be allocated for, you know, so that they can make it up into their spawning areas as well as to the subsistence users on the other side of the border. And so we feel, you know, that even though we are producing these salmon and they go out into the ocean many of them don't come back, and it's because, you know, of our concern, you know, for the trawling fleet that is doing that.

Although a portion of the salmon from the Yakutat and Southeast Alaska area may be small the actual numbers of fish may be significant to local streams and while the value of the commercial fishery may be great to some individuals, it is the value of the incidental salmon harvest that is valued by subsistence users that is important to us.

Another issue that I'd like to address, Mr. Chairman, is the subsistence priority on the Makhnati Island area. We really need to address this and, you know, I'm sure that it will be brought up for discussion but a subsistence priority for herring, particularly the harvest of the herring spawn in the Makhnati Island area is a wish of the Sitka Tribes of Alaska and the people of Sitka I could say as well. Because we found that as subsistence users are having a hard time of meeting.....
CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Yes.

CHAIRMAN FLEAGLE: Excuse me. This is a proposal that we're going to be addressing.

MR. ADAMS: Do you want me to.....

CHAIRMAN FLEAGLE: Can I ask that you hold off discussion on that.....

MR. ADAMS: Save it, you bet.

CHAIRMAN FLEAGLE: .....until we get to that proposal.

MR. ADAMS: I'll be happy to do that, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Yeah, let's just go ahead and keep to your general comments at this time.

MR. ADAMS: Okay.

CHAIRMAN FLEAGLE: Thanks.

MR. ADAMS: We have, Mr. Chairman, a concern about the management of the sockeye stocks in Southeast Alaska. Just to make a mention, you know, Chatham Straits, you know, is having problems, you know, having the sockeyes getting into the areas for spawning.

A real big issue in the Yakutat area, you know, I'm just going to throw out a couple numbers here, I know Fish and Game has tried to make a quota of 19,000 fish beyond the weir a year for sockeye and the sockeyes just didn't show up this year. And when it was late in the season we only had 9,000 up to the spawning areas and so they shut it down for the rest of the season so we need to address the reasons why these are happening and so forth.

So moving on then.

Subsistence wildlife regulations.

Wildlife regulations need to be reviewed to identify situations where changes are needed to implement the
subsistence priority. The Council would like the
wildlife Staff to be more proactive in identifying
situations where the Council may be asked to provide a
recommendation on regulatory solutions. The Council
cannot provide adequate counsel when long anticipated
concerns are presented to the Council with meager
information and the expectation of an immediate
response. And so, I think, you know, I could add on to
this is that we really think that the Board should
really give honest deference to the Councils. It is
down at the Council, at the local levels where a lot of
the information and data are gathered and we spend a
lot of time in making sure, you know, that these
proposals, you know, are scrutinized as we consider
them on the Council level and when we make a
recommendation to the Board we would like to see more
positive action in those areas. I could mention a few
of the other problems that we've had but that can come
out later.

Another issue that we're concerned with
is the in-season management of wildlife. The Southeast
region has been faced with a number of situations in
the past two years where special actions were necessary
for conservation of wildlife resources. The last
couple years, particularly in Unit 4, you know, along
the northern part of Chichagof Island we've had
tremendous amount of snowfall and this has impacted the
deer population severely in those areas and so we would
like to see an opportunity for the district rangers to
make emergency openings and closures in these areas if
they feel it necessary. The Council's aware of the
differences of in-season management authorities between
fish and wildlife resources and any solution should
satisfy the needs or appropriate land management
agencies.

And then I'd like to ask, Mr. Chairman,
if the Board is going to consider the rural
determination issue, you know, with Saxman and
Ketchikan, you can answer that question, you know,
after I'm done here with my presentation.

I still feel -- our Council still feels
and I feel very strongly that RACs should be able to
submit RFRs. Again, I emphasize, you know -- I might
sound like a broken record here, but, again, I
emphasize that we represent the people in our areas and
in some cases where smaller communities are aggrieved
about, you know, a proposal that does not fit their
needs and the Board turns it down for some reason and
who's going to represent them. You know we were
fortunate enough to have, you know, some people step
forward with the rural determination issue with Saxman
and, of course Ketchikan, but that's not going to be
always happening, you know, for smaller communities who
have no ability to submit RFRs, and I think the RACs
are the best equipped body to represent those people;
we do represent them, we're supposed to.

The RAC is also concerned about Board
executive sessions. We would like to see more
transparency. Excess use of executive sessions by the
Subsistence Board are problematic for the Council.
There is a concern that the Board may have discussions
during these private sessions that are more appropriate
for public meetings. The Council recommends that the
need for Board executive sessions be minimized and
occur only when there's a clear legal requirement. And
I know in other bodies, you know, I served as the
tribal president for the Yakutat Tlingit Tribe for
about 12 years and we go into executive sessions, we
always have to make public the reasons why we are going
into executive sessions. It doesn't mean that we are
to come out explaining every little detail that we
discussed in those meetings but at least a decision had
been made and, you know, we think that transparency
with the Board, you know, falls within that same line.

The Southeast Regional Advisory Council
is also concerned about Council meeting locations. You
know the OSM recently or a couple years ago mandated
that -- well, I wouldn't say mandated but suggested
that we try to have our meetings in an area where it's
easier for Alaska Airlines or transportation to be met.
One of the reasons that we have in the past had had
meetings in areas like Kake and Angoon and, you know,
Hoonah and those are areas that are sometimes very hard
to get to in the wintertime is to -- the reason is to
be able to meet with those people and get their
feelings and get their input as to subsistence issues
that really affect their lives. And it's going to
cause, you know, some transportation problems for them
if we have it in Juneau or Ketchikan or Sitka, you
know, to come to these meetings and make their wishes
known. So we think that Councils should be able to
meet in any community that they determine appropriate.
Meetings in locations with daily jet service may be
fiscally responsible but it does not serve the interest
of the Council and the public. And so, you know, we
I would like to see this addressed.

Another issue that we are concerned with is the sea otter management problems. Sea otter populations need to be controlled and the animals used responsibly. Allowing the sale of raw pelts is appropriate and current population levels are necessary to justify the expense of harvesting these animals. Sea lions are increasing in abundance and they're influencing the ability of users in some communities to harvest fish for subsistence. The Council would like a report on any management measures and consideration to control the numbers of sea otters and sea lions. The Council also recommends that the Federal Subsistence Program assist in changing sea otter harvest regulations to allow the sale of raw pelts.

Just an example, in my area in Yakutat area, we see all of our subsistence foods disappearing. The clams and the cockles, the sea urchins, the crabs and it's attributed, you know, to the increase of sea otters in that area. So, you know, we think that there needs to be some kind of a management plan that will cover the balance so that our subsistence foods can be with us for many years to come.

I'm almost done here, Mr. Chairman.

Another thing that we talked about in the past was alternate Council members. I know that in our region, and I also serve on the Wrangell-St. Elias Subsistence Resource Commission -- Council and there are only a couple of times in the last 10 years that I have been a member of both parties when we've been without a quorum to do business. And both bodies think that, you know, think that it would be beneficial if we had alternate Council members so that if for some reason somebody can make it then that seat will be filled for that meeting and we can do business.

One of the issues and I think when Sue comes, she wanted me to mention the fact that she wants a discussion about the State compliance with ANILCA. And I have a letter here that addresses the fact that she won't be here until tomorrow afternoon, but I'll just read a statement here. She says I have a very strong feeling about this continuing conversation that you started about compliance with the State on Federal lands. I want to make sure if I miss this morning discussion of RAC concerns, which is not sure -- is not
sure if I miss the morning session of RAC concerns on
the agenda early like usual, that you would make note
for me that I want to continue discussion at this
meeting. And so, probably, you know, later on during
the agenda if the Board so feels we could bring that up
for discussion.

I also want to make mention about the
MOU that the Federal Board has -- or is about to sign
with the state of Alaska. I've talked to a lot of
other Board members and RAC Chairs and they feel very
unhappy in the fact that even though the MOU, in my
opinion, I've read it, is much better than the previous
one due to the fact that it also addresses very clearly
that the State will come in compliance with ANILCA and
that subsistence priorities would be met. However, I
think there is a matter of respect here that needs to
be given to the Councils at least an opportunity to
look at them and possibly, you know, share some
comments about it. As far as I was concerned I thought
it was a good one and, you know, but I'm also
expressing some concerns that other Council members and
RAC Chairs have on this issue.

I don't know whether this is true or
not, Mr. Chairman, but understand that mail was going
around to the Board members, you know, encouraging
that this be signed as soon as possible and I thought
I'd bring that up as a matter of concern as well and if
I need to be corrected in that issue then please feel
free to do so. And I understand, you know, probably
the reasons why, we're going into a new administration
and it would have been really beneficial if that were
signed at that time, but I also don't think that it was
appropriate to try to push that.

Mr. Chairman, that's about the extent
of what I have for you. I want to thank you for
considering my comments on behalf of the Southeast
Regional Advisory Council. These are concerns that we
are really trying to address and hopefully, you know,
we'll be able to get some good cooperation from the
Board as we further move this process forward.

Gunalcheesh.

Thank you.

CHAIRMAN PLEAGLE: Thank you, Bert.

There's several items that I think warrant a response
from your discussion. Before I go there I just wanted
to make an announcement that I wasn't really clear on
at the beginning of the meeting, by looking at the
agenda, that the Board -- the RAC Chairs and the
Federal Board have a longstanding practice of
discussing regional, statewide administrative matters
in conjunction with the Board's regulatory meetings and
usually these meetings are held at the beginning of the
Board meeting, and for this meeting, however, the
Council Chairs and Board discussion will occur at the
end of the meeting so we're going to have this open
dialogue session that we generally have now so I think
a lot of the topics that you raise will probably be --
generate some good discussion among other Council
Chairs as well. I don't want to get too far into that
at this time. We made this change to accommodate a
request made by the Eastern Interior Council Chair at
the Board's May meeting for an open discussion between
Council Chairs, the Board, the Department of Fish and
Game, regarding ways to improve the dual management
system and in scheduling the topic at the end of the
meeting should provide ample opportunity for discussion
without impeding the regulatory portion of the meeting.
So we didn't want to get too far into discussing issues
that we're going to be addressing through proposals or
regulatory action later in the meeting.

I did manage to stop the discussion on
one area that I think was going to go there and
appreciate your comments but just want to point out
that we will have an opportunity to fully discuss these
issues later.

In response to several points that you
raised though I think it would be appropriate to
address some of those and one is the harvesting of --
incidental harvest of chinook in the open seas. This
Board is fully aware of that issue. Very concerned.
When we read the report a little better than a year
ago, that reported 130,000 counted chinook that were
taken out on the drift seas fisheries, and very
concerned that that number of fish were being taken
from our rivers and our subsistence users. And we
spoke at that time as to how to best address the issue
and uncertain of the protocol of one department
addressing another department and Federal agencies. We
kind of left it up to the Board and Staff to come up
with the best way and we came up with there was a
public process by NMFS that was open for public
comments, the Office of Subsistence Management drafted
a comment letter that we signed and sent to them, and
Pete and other Staff attended that meeting in Kodiak
and, Pete, do you want to talk briefly about that.

MR. PROBASCO: Thank you, Mr. Chair,
and thank you, Mr. Adams, for bringing this up.

I think we want to add this on other
business towards the end of the meeting as well because
the North Pacific Fishery Management Council will be
taking, what may be perceived as final action at the
April meeting, and we need to discuss as a Board how we
want to comment on the various options that will be
before the North Pacific Fishery Management Council.
And my Staff, with Don Rivard as the lead, will be
ready to brief you at that point.

What Mr. Fleagle is speaking to is this
past summer in Kodiak, along with myself we had four
Council Chairs or their representatives attend that
meeting and testify, it went very well. It was well
received. And we plan on doing that also for the April
meeting.

Mr. Chair.

CHAIRMAN FLEAGLE: All right, thank
you, Pete. Thanks for bringing that up, too, yeah,
we'll definitely have more discussion.

I don't have anything to update on the
rural determination process regarding Saxman, and I
think we can maybe have a little more discussion on
that at the later Council Chairs talking point.

Board executive sessions, it's timely
that you mention that, I mean we do have one scheduled
momentarily here. And I share your concerns on
executive sessions. I believe in a fair and open
process. And since I've been the Chair have worked
hard to minimize the amount of executive sessions that
we do and try to do business at least in work sessions,
which are open, but don't involve all of the public
testimony and everything like that. Items that aren't
required to be processed through that process. But I'd
just like to ask Keith if he would just briefly
describe the nature of our executive sessions and why
we hold them.

MR. GOLTZ: Generally it's either for
personnel matters or legal matters. I share your concerns. I think they're always received poorly and whatever comes out of it people are going to blame on the executive session. We'll try to keep this next one brief. But I would be reluctant to say the Board can have never have them, I think there are some matters that just can't be fully aired in public and that usually revolves, from my point of view, around legal questions, very rarely around personnel ones.

CHAIRMAN FLEAGLE: Thank you, Keith.

The topic about Council meeting locations. That was a decision made by OSM Staff, when we're faced with a half a million dollar budget reduction a year and a half ago and I don't think that our budget situation has improved, in fact, the crystal ball might indicate otherwise.

Pete, do you have anything to add to that.

MR. PROBASCO: Mr. Chair. For fiscal year 2009 we're still under a continuing resolution, which means we're still under the same financial constraints as FY 2008. Bert said it very well. He understands the decision was based on our ability to address the budget reductions and actually when the dust settled it was closer to 900,000 than a half million because of other reductions.

So, Mr. Chair, we're proceeding for FY 2009 in the same manner. We are encouraging our Councils to help us fiscally with this issue. Bert brings out very good points. Southeast is one of our few RACs where we do have a lot of public participation at their meetings. Southcentral is also another place that has a great deal of public participation. We don't see that across the Board though at our Councils, but it is basically on trying to meet our budget.

So, thank you, Mr. Chair.

CHAIRMAN FLEAGLE: All right, thank you, Pete. And the final item that I had for response is the memorandum of understanding. And I think that that would be an appropriate discussion to hold at the end of the meeting when we have other Council Chairs because I think that your concerns will probably be shared by other Councils and I'd like to have an open discussion about that as well at that time.
So I appreciate you raising the issues, though, Bert, and also look forward to your involvement in our process and you add considerably to it.

MR. ADAMS: Thank you, Mr. Chairman. I appreciate your responses as well. So look forward to the rest of the meeting going smooth.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Ralph, opening comments.

MR. LOHSE: Well, Bert his a couple of the ones that I would echo but I'll wait until the end. I don't have anything particular to bring to your attention at this point in time.

CHAIRMAN FLEAGLE: Thank you. And good morning to you.

Let's see where was I.

(Pause)

CHAIRMAN FLEAGLE: Okay, I got a lot of cheat sheets up here and I got to get them organized. I think as I use them I need to turn them upside down maybe. All right, so we're going to go ahead and move on to the next item in the agenda and that's consensus agenda and we have one regulatory proposal on the consensus agenda, it's listed on Page 2 of the Board meeting book, as follows, it's Cook Inlet Management Area, Fisheries Proposal 09-08, the recommendation is to oppose, it's on Page 4 -- the recommendation, I assume is on Page 4. As described on Page 2 of the Board meeting book, this is a proposal for which agreement exists among the Federal Subsistence Regional Advisory Councils, the Federal InterAgency Staff Committee and the Alaska Department of Fish and Game concerning Board action. Anyone disputing the recommendation on a proposal may request that the Board remove the proposal from the consensus agenda and place it on the regular agenda. The Board retains final authority for removal of proposals from the consensus agenda. The Board will take final action on the consensus agenda after deliberation and decisions on all other proposals.

With that I'd like to open the
opportunity for public comment on the consensus agenda.
Pete, do we have any comment.

MR. PROBASCO: Mr. Chair, this is a
Cook Inlet proposal and Mr. Ricky Gease -- no, Mr.
Gease is shaking his head so I have no public testimony
at this point.

CHAIRMAN FLEAGLE: Okay, great, thank
you. And I'd like to welcome to the table Tina
Cunning, hi Tina, and also I recognize Hans Neidig who
is now back in the room -- I recognized you earlier, I
think when you were probably out getting coffee, from
the Office of the Interior, good morning.

At this point this is where we've
decided to insert the brief executive session to
discuss legal issues and I'd like to step down and take
a 10 minute break and when we reconvene it'll just be
Board members only and legal counsel.

Thank you.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good morning. The
Federal Subsistence Board is back on record and I don't
know if it was from having the doors closed but it got
chilly in this room. I don't know, maybe it was the
discussion.

(Laughter)

CHAIRMAN FLEAGLE: Anyway, just I know
there was concern raised about executive sessions of
the Board and I just wanted to briefly state for the
record that we did not deliberate on any issues that
the Board has before it. We were briefed on the -- on
a recent court decision that may have some
implementations in process that we talked about, but
not substantive decisions or even directions were
formed in the executive sessions. For disclosure
purposes, our talking legal issues.

And before we continue on with the
agenda I'd like to recognize former Board member Judy
Gottlieb who, there she is in the back, welcome, Judy,
it's good to see you. And also we have been joined by
Commissioner Lloyd at the table and I'd like to turn it over to him for introductions -- I mean -- yeah, go ahead.

COMMISSIONER LLOYD: Thank you, Mr. Chairman. Appreciate the opportunity to be here with you and commiserate as well as participate with the regional directors at your full session of the Federal Subsistence Board.

With your indulgence, Mr. Chairman, I would like to introduce two new senior staff within the Alaska Department of Fish and Game. With us today we have Deputy Commissioner Patrick Valkenburg, Pat, would you stand up for a second. And we also have, not so newly but perhaps since the last meeting, hired subsistence director, Craig Fleener, Craig. So I assume there have been some previous introductions of staff so I'll leave it at that.

Thank you, Mr. Chairman.

CHAIRMAN PLEAGLE: All right, thank you. And, welcome, both, Pat and Craig, to the meeting, and look forward to our involvement with you guys as well in our process.

Before we move on to the regulatory issues that we have, there's a question on the consensus items that was raised. I understand that there is one proposal that was not on the consensus agenda because the State wasn't in agreement, that has since changed, and I'd like to give an opportunity to Commissioner Lloyd to explain that and then we'll talk about process.

COMMISSIONER LLOYD: Well, thanks, again, Mr. Chairman. With regard to Fishery Proposal 09-06, we would like to add that to the consensus agenda. And, again, with your indulgence I'll read some comments that lead us to that conclusion and hopefully recognize good work between the State and Federal Staffs.

The Department submitted Proposal FP09-06 because the Federal Subsistence regulations could be misinterpreted by the public and, in fact, were misinterpreted by some Federal fishery managers in Cook Inlet fisheries last summer. The regulations also had potential unintended impacts on the conservation of
rainbow steelhead trout, grayling and burbot populations. The problems with these Cook Inlet area regulations are addressed in detail in the Department's written comments on Pages 159 through 166 of the Federal Subsistence Board book. The Department's intent in submitting this proposal was to reduce confusion in the regulations for users and managers and to clearly capture the Federal Subsistence Board's intent when it adopted the regulations. The Department, the Office of Subsistence Management and the InterAgency Staff Committee worked throughout this Federal fisheries cycle to come to an agreement regarding the problems and a mechanism to clarify the regulations. During the October 2008 meeting, the Southcentral Regional Advisory Council members expressed that these types of regulatory changes should be done administratively instead of as proposals. There also was confusion regarding the intent of the proposal so the Council voted to oppose that proposal.

In the spirit of our memorandum of understanding and commitment to avoid dueling government agencies, the Department and the InterAgency Staff Committee continued to work and were able to reach an agreement, if implemented, will result in clarifying the language in the regulations for managers and in the handy-dandy summary booklet for the public as follows:

First, the fact that grayling and burbot may not be taken for subsistence purposes will be stated twice in the general section and the Kenai section of the public booklet beginning in 2009/2010.

Second, the Federal Board's prohibition of accumulation of harvest limits in the Cook Inlet area with State harvest limits was already provided and will be clarified within the public booklet for 2009/2010 permits -- and permits.

Third, administrative clarifying language will be made in Kenai Peninsula Federal subsistence fishing regulation section 27(i)(10)(iv).

Fourth, the clarification in regulation of the Board's prohibition of
accumulation on a statewide basis,
except where the Board specifically
authorizes accumulation will be brought
to the Board in the near future.

Personally, I commend the Federal and
State Staff effort that reached the above agreements,
Mr. Chairman, to resolve the issues in our proposal.
And, based on the solution, we're willing to change our
position and oppose our own proposal so that this
proposal could be moved to the consent agenda.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you,
Commissioner Lloyd. Just a process question for me,
is, that I know that we have a process for pulling an
item off the consensus agenda, how about putting one on
it, Pete.

MR. PROBASCO: Mr. Chair. I think for
the record it would be wise that we reverse the process
and just have a Board member make a motion and second
and then the Board act upon that to move it to the
consensus agenda. And as with other items we would
still provide opportunities for public comment, et
cetera.

CHAIRMAN FLEAGLE: All right, thank
you. Geoff.

MR. HASKETT: Mr. Chair. I'd like to
make that motion to place Proposal 09-06 on the
consensus agenda. The Alaska Department of Fish and
Game's revised position to address the issues Denby
just mentioned, and I can speak to those issues if I
get a second.

MR. LONNIE: Second.

CHAIRMAN FLEAGLE: Thank you. Go
ahead.

MR. HASKETT: It's my understanding
that we're going to make an administrative change to
clarify our fishing regulations on the Kenai Peninsula,
that they're not in addition to State's regulations
this could be interpreted in Section 10(iv). We also
intend to restate that grayling and burbot may not be
taken for subsistence purposes in the Kenai River
section of the public book. The Board has already clarified our intent regarding accumulation of harvest limits during our last work session and will be inserting wording in our public book and on our permits stating that accumulation of harvest limits is not allowed for the Cook Inlet area.

In addition, Staff will be working to better to find the accumulation of harvest limits issues for our statewide regulations that will be brought before this Board in the near future.

I would suggest that it may be good to have a multi-agency work group to tackle the accumulation issue. The work done between our respective agencies in this proposal is a great example of cooperation and coordination between the State and Federal programs and I hope will continue with that on other issues with our respective mandates in the future.

CHAIRMAN FLEAGLE: All right, thank you. Discussion Board members.

(No comments)

CHAIRMAN FLEAGLE: Is there any objection to moving that proposal to the consensus agenda.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, the Board will act accordingly.

Thank you.

Now, before we move into proposals there's one other announcement I meant to make when we reconvened and that is evidently due to logistic reasons several of the RAC Chairs are not going to be present at the meeting, and so we're working to try to accommodate telephonic participation, especially on the Yukon River proposals by the Lower Yukon Advisory Council and also for the Council Chairs discussion, we want to invite all of the Council Chairs to participate telephonically for that so by tomorrow we should have an idea of when we're going to establish times for those so that we can get telephone lines connected, and we're going to have to figure out the -- how to set up
the equipment to do that. But that's just to inform
you that evidently there are several Council Chairs
that aren't going to be present in attendance.

So okay I do see that we do have
another Chair that has joined us, Ray Collins, from
McGrath, welcome. And I provided an opportunity for
other Chairs to introduce and make brief opening
statements and welcome you as well.

MR. COLLINS; Thank you, Mr. Chairman.
I have no comments to make at this time but I'm Ray
Collins, I'm the vice-Chair of Western Interior RAC and
reside in McGrath, Alaska.

Thank you.

CHAIRMAN FLEAGLE: All right, thank
you, Ray, and welcome. I hope you survived your cold
snap out there in tact, it looks like you have.

All right, Pete, comment.

MR. PROBASCO: Yes, Mr. Chair. I
wanted to sort of go in off of the comments that Mr.
Haskett made. I wanted to address, before we got into
Proposal 2, regarding the accumulation of limits and
just to remind the Board where we're at based on
earlier assignments given to us.

In going through the 12 proposals
before you at this meeting you'll notice that there are
four that address accumulation of harvest limits.
During the November 2008 executive session the Board
directed OSM Staff to review all subpart D regulations
to identify any regulations concerning accumulation
that need clarity, clarity to find specific
expectations by the Board and identify any regulations
on accumulation that may be more restrictive than State
regulations. In addition the Board directed that upon
completion of that review, OSM Staff would report back
to the Board on the findings and present options which
may include, but are not limited to, submission of
proposals, administrative corrections, just like we
talked about with Mr. Lloyd and Mr. Haskett reviewed
and then public outreach to clarify existing
regulations. My Staff is currently working on this
issue and while the proposals before you are specific
to areas in fishery resources, you'll have the
opportunity to address accumulation of harvest limits
on a much larger scale at your next meeting.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete.

I guess one more last announcement, perhaps not the final last announcement, but one more.

Those of you that were kicked out of the room for the executive session will have noticed in the lobby a number of posters covering the Fisheries Monitoring Program funded projects, and I want to encourage Board members that haven't had a chance to look at those, check them out, review the important work that is being done through that Fisheries Monitoring Program. And as a reminder the 2010 request for proposals closed last night and we received 60 proposals in response to this RFP, which identified a number of high priority issues for which information is needed to better manage subsistence fisheries throughout the state. Work on reviewing those proposals will begin shortly and at the January 2010 Federal Board meeting we'll be voting on the projects that comprise the 2010 Monitoring Program. So I thank Staff for setting those up, I happened to glance at them walking by and it looked like a pretty good presentation so I encourage anybody interested to take a look at those.

All right. We're going to move into non-consensus agenda proposals and we're going to start out with the Southeast and Yakutat areas and I see we have at the table Larry Buklis from Fish and Wildlife Service and Robert Larson from the Forest Service, welcome, gentlemen, and we're going to start you out with Proposal 09-02. And who's leading, okay, Bob.

MR. LARSON: Good morning. My name is Robert Larson. I work for the Forest Service, I reside in Petersburg. The executive summary for FP09-02 can be found on Page 19 of your Board books. The Staff analysis will begin on Page 21.

The issues contained in FP09-02 apply to accumulation of limits. The proposal would prohibit the accumulation of Federal subsistence harvest limits with any daily or annual sportfishing harvest limit. Action on this proposal will address the accumulation of harvest limits component of Proposal FP09-03.
The only freshwater State sportfishery with an annual harvest limit in Southeast Alaska is the steelhead fishery. In the Federal subsistence fisheries the annual harvest limits for subsistence salmon on the mainstem of the Stikine River, there is a general steelhead fishery that occurs in Southeast Alaska that occurs away from Prince of Wales Island and then there are 17 locations that are specified on subsistence fishing permits for the subsistence sockeye salmon fisheries. There are two subsistence steelhead fisheries on Prince of Wales Island, both the winter and the spring fishery, and they have seasonal harvest limits.

Due to management from the Alaska Department of Fish and Game that has provided a very conservative program for harvest of these fish the populations are generally healthy but they remain vulnerable to overharvest.

Statewide Federal regulations do not allow the accumulation of Federal subsistence harvest limits with State of Alaska harvest limits.

In the Southeast Alaska area that regulation is modified by specifying that once a subsistence annual limit is taken a person may subsequently participate in the State authorized sportfishery. In addition that person cannot possess subsistence taken and sport taken salmon at the same time.

The question before the Board is, is there intent to allow the accumulation of annual and seasonal harvest limits in the Federal subsistence fishery with annual, daily or possession harvest limits in the State's sportfishery.

The Staff analysis conclusion is to support the proposal with modification. And the modification would allow the accumulation of Federal annual or seasonal harvest limits with State sportfishing harvest limits as long as they are not possessed at the same time.

The effects of this modified language can be found on Page 26 of your Board book, is that, this language would prohibit the accumulation of Federal subsistence harvest limits with any harvest limit in the State subsistence or personal use.
It would prohibit the accumulation of Federal subsistence harvest limits with the daily or possession limits in the State's sportfishery but it would allow the accumulation of annual or seasonal Federal subsistence harvest limits with State sportfishing harvest limits provided that they are not possessed at the same time.

CHAIRMAN FLEAGLE: Thank you, Robert.

Question's Board members.

(No comments)

CHAIRMAN FLEAGLE: All right, next we'll move into summary of public comments.

MR. LARSON: Mr. Chairman, there are no written public comments.

CHAIRMAN FLEAGLE: Thank you. At this time we'll open the floor to public testimony on this proposal. Pete.

MR. PROBASCO: Mr. Chair, I have no one signed up for Proposal 09-02.

CHAIRMAN FLEAGLE: Thank you. This is a good time to remind folks that are here, if you want to comment on any of the proposals that we're going to be hearing you need to fill out a request for testimony -- a testimonial request form that's out on the table out in the lobby and turn those in and we're accepting testimony on this issue -- I mean on proposals, on the consensus agenda and on just general items as well. So at any rate we'll go ahead and continue. We'll move to the Regional Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. I think the issue has been pretty well covered by Mr. Larson so I don't have any comments on this particular issue at this time.

Thank you.

CHAIRMAN FLEAGLE: Thank you. We know have the Alaska Department of Fish and Game comments. Commissioner -- going to George Pappas, George, welcome.

MR. PAPPAS: Thank you, Mr. Chair. My
Current Federal subsistence regulations for the Southeast region could be misinterpreted to allow the accumulation of stacking of annual and daily Federal subsistence limits and State sportfishing limits. In this proposal, the Department requests a clarification of Federal prohibition against accumulating annual and daily Federal subsistence harvest limits with the State of Alaska sportfishing harvest limits in Southeast Alaska.

The intent of our submitting in FP09-02 was simply to clarify the accumulation regulations in the Southeast Alaska region. A portion of our proposal, FP09-03, was submitted to address the accumulation of harvest limits between Federal subsistence fisheries and State sportfisheries only for steelhead trout in Southeast Alaska and we request the Board to separate the steelhead portion of FP09-02 and address that in the Southeast Alaska steelhead proposal, which will be up next, FP09-03.

If this proposal is adopted, a Federal subsistence user would still be able to go sportfishing on a different day after filling their Federal daily or annual limits as long as the sportfishing annual limit does not exist in that fishery. So adoption of this proposal would eliminate a source of confusion and only restrict non-salmon Federal subsistence fisheries who want to transfer possession of their catch to another person and go fishing again so they can accumulate harvest limits of Federal subsistence and State fisheries.

The Federal regulations are not as clear as they should be for enforceability of the Federal prohibition on lifeboat. This lack of clarify puts the Federal subsistence fisher at risk of being cited under State enforcement regulations. In Southeast Alaska none of the four types of the State fisheries allow possession of different harvest limits on the same day, therefore, you cannot accumulate...
harvest limits from multiple State fisheries on the same day.

The Department has conservation concerns regarding stacking daily and/or annual accumulation limits in the State and Federal subsistence fisheries because of potential for over exploitation of small stocks in small systems such as stacking harvest limits taken in a single fishing hole in a small stream in the same day.

In summary, this proposal is not intended to prohibit Federal subsistence users from filling their annual or seasonal harvest limit on one day and sportfishing for the same stock with legal sportfishing gear and a sportfishing license on a different day as long as the user has not achieved the annual State harvest limit for the year. A cooperative evaluation by Federal and State Staff on the proposal's language, confusion evident at the Southeast Alaska Regional Advisory Council meeting, and subsequent consultation with InterAgency Staff Committee resulted in the Office of Subsistence Management proposing a modification that satisfactorily resolves the lack of clarity in the existing Federal regulations which was the basis for the State's proposal, therefore, we recommend adopting the proposal with the modification proposed by the Office of Subsistence Management.

Thank you, that concludes my comments.

**********************************************************************************************
STATE OFFICIAL WRITTEN COMMENTS
**********************************************************************************************

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-02 Accumulation of Harvest Limits in Southeast Alaska

Introduction:

Proposal FP09-02 requests a clarification of the federal prohibition against accumulating annual and daily federal subsistence harvest limits with State of Alaska (State) sport fishing harvest limits in Southeast Alaska. Current federal subsistence regulations for the Southeast Region could be misinterpreted to allow accumulation of
federal annual subsistence limits and State sport fishing limits. Current federal language which allows accumulation of annual harvest limits should be revised to clearly prohibit harvest from the same stock or species in a sport fishery once the user has reached the permitted federal subsistence daily or annual harvest limit.

Background:

During the recent Southeast Regional Advisory Council meeting, Forest Service staff reminded the Council of federal subsistence program legal counsel advice that the federal subsistence harvest limits should be set high enough to meet the subsistence user’s needs (where there is no conservation concern) without having to accumulate federal and State harvest limits. The federal subsistence program has no authority to regulate State sport fishing except to close federal lands to non-subsistence use, and the Federal Board should not attempt to rely on accumulation of State sport fishing limits to provide the federal subsistence priority.

Impact on Subsistence Users:

Adoption of this proposal should have little or no effect on federal subsistence uses because it would not prevent a federal subsistence user from sport fishing on a different day after filling their federal daily/annual limit as long as a sport fishing annual limit does not exist in that fishery. Southeast regional federal subsistence regulations already prohibit federal subsistence users from possessing federal subsistence and sport-taken salmon on the same day, effectively prohibiting accumulation of daily harvest limits for salmon. State sport fishing regulations already prohibit possession of more than the sport fishing harvest limit while sport fishing. Other than eliminating a source of confusion, adoption of this proposal would only impact non-salmon federal subsistence fishers who desire to transfer possession of their catch and then accumulate harvest limits of federal subsistence and State fisheries.

Enforcement Issues:

Adoption of this proposal will reduce the likelihood of State enforcement actions being taken against federal subsistence users who might otherwise
incorrectly believe that they can possess and/or harvest additional fish in a State fishery the same day after filling their federal limit. The lack of clarity in current federal regulations may impair enforceability of the federal prohibitions on accumulation while also putting federal subsistence fishers at risk of being cited under State enforcement regulations. These unclear regulations and enforcement risks create concerns where effective daily limits are needed for effective management and conservation.

Jurisdiction Issues:

Many streams in Southeast Alaska flow through non-federal land. The State disputes many of the federal reserved water right claims in Southeast Alaska. The State also disputes application of federal subsistence regulations in numerous streams and rivers that are not within federal lands. Detailed maps are needed of lands where federal jurisdiction is claimed, and the basis of each claim should be explained. In addition, fishers need to be provided copies of these detailed maps and warned that the State will enforce its regulations on fishers standing on nonfederal land.

Opportunity Provided by State:

Personal use fisheries are generally established for areas which are considered non-rural or non-subsistence areas by State of Alaska regulation although they may extend into other areas. Personal use fisheries are differentiated from commercial fisheries because the sale of personal use harvest is not appropriate or permissible under State law. Personal use fisheries are differentiated from subsistence fisheries because the personal use is not customary and traditional use and is not prioritized. Furthermore, the personal use fisheries are differentiated from the sport fisheries because the gear types used for personal use fisheries are usually different from that historically associated with sport fishing. Statewide sport fishing regulations (5 AAC 75.010) prohibit a person engaged in sport fishing from possessing more than the limit of fish allowed for the water on which the person is sport fishing. The State also explicitly prohibits possessing sport and personal use caught salmon (5 AAC 77.682 (e)) or sport and subsistence caught salmon (5 AAC 01.730) on the same day.
Conservation Issues:

Adoption of this proposal may protect fish populations from over-exploitation by preventing development of conservation concerns due to excessive harvest that could occur in federal subsistence fisheries if users are allowed to accumulate daily and seasonal harvests from both the federal subsistence and State fisheries. The Department, through the Alaska Board of Fisheries, has invested decades into developing conservative fisheries management plans, sustainable exploitation rates, and time-proven fishery regulations which establish daily and annual limits ranging from sweeping regional limits and gear restrictions applicable to specific sections of river tributaries. The evolution of each conservative fishing regulation is either based upon historic and scientific data or, where such data are not available, is based upon the best information available, including long term average harvest information which indicates levels of harvest of a fish stock with a high probability of being sustainable.

The Department has conservation concerns regarding daily and/or annual accumulation limits between the State and federal subsistence fisheries. These concerns revolve around the potential for over-exploitation of diminutive stocks in small systems by allowing federal subsistence users to accumulate daily harvest limits from a single fishing hole on a small stream on a single day. An example is a federal subsistence user fishing for cutthroat trout in a high use area harvesting the daily bag limit of 10 trout or one steelhead trout, then transferring possession and continuing to fish under sport fishing regulations to harvest another daily limit.

Other Issues:

Proposals FP09-02 and 09-03 contain language which is similar in intent but different in scope and specificity. FP09-02 was submitted to clarify regional accumulation regulations in Southeast Alaska. A portion of FP09-03 was submitted to address accumulation of harvest limits between federal subsistence fisheries and State sport fisheries for steelhead trout only in Southeast Alaska.

State of Alaska fisheries in Southeast Alaska do not allow possession of both sport and
subsistence or sport and personal use harvested salmon on the same day. The State sport, subsistence, and personal use fishery structure precludes exceeding more than one harvest limit by targeting a single stock with the same gear under separate fishery regulations. The personal use and subsistence fisheries are normally in different areas and require different gear types, and the prohibition on possessing more than the sport fish limit while sport fishing acts as a significant barrier to accumulating limits across fisheries.

This proposal is not intended to prohibit federal subsistence users from filling their annual or seasonal harvest limit on one day and sport-fishing for the same stock with legal sport-fishing gear and with a sport-fishing license on a different day as long as the user has not achieved the annual State harvest limit for the year.

A cooperative evaluation by federal and State staff of the proposal’s language, confusion evident at the Southeast Regional Advisory Council meeting, and subsequent consultation with the Interagency Staff Committee resulted in Office of Subsistence Management proposing a modification that satisfactorily resolves the lack of clarity in the existing federal regulations, which was the basis for the State’s proposal.

Recommendation:
Support the modification proposed by Office of Subsistence Management.

CHAIRMAN FLEAGLE: Thank you, George.

Questions, Board members.

(No comments)

CHAIRMAN FLEAGLE: I have one. I note your comment in there, the example you gave was a person that -- a Federal subsistence user fishing for cutthroat in a high use area harvesting a daily bag limit of 10 trout or one steelhead then transferring possession, which you referred to, and continuing to fish under sport regs to harvest another daily limit. Is that something that actually occurs that we have, you know, observed or is this just trying to foresee a problem, a conservation issue and head it off before it becomes an issue?
MR. PAPPAS: The intent is simply for

clarity.

CHAIRMAN FLEAGLE: Just clarity, okay,

thank you.

MR. ADAMS: Mr. Chairman.

CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Thanks for your

recognition, Mr. Chairman. I failed to mention that,
you know, the Southeast Alaska Regional Advisory
Council opposed this proposal. So for the record I'd
like to make that clarification.

CHAIRMAN FLEAGLE: Thank you. I had to

glance at the screen and see that was the
recommendation, but I appreciate that Bert. And I'm

sure that we're going to drag you into the discussion

on it. I'd also like to point out that we've been

joined by a new person at the Board and I'd like to

have you introduce yourself please, sitting in for Sue

for the Park Service.

MS. COOPER: Good morning, my name is

 Deb Cooper. I'm the associate regional director for

natural resources for the National Park Service and

I'll just be sitting in for an hour or so while the
director's away taking a conference call with the
Secretary this morning.

CHAIRMAN FLEAGLE: Thank you, Deb,

welcome. All right, with that we're going to go ahead

and move on to the InterAgency Staff Committee

comments. Polly.

DR. WHEELER: Thank you, Mr. Chair.

Again, I'm with the Office of Subsistence Management.
As of about a month ago I'm the deputy to Pete, and I
also serve as the Chair of the Federal InterAgency
Staff Committee.

The Staff Committee found the Staff
analysis for Proposal FP09-02 to be a thorough and
accurate evaluation of the proposal. The Staff
Committee discussed two substantive issues regarding
09-02.

The first issue is whether the primary
The intent of the proposal was simply to provide clarity to the current Federal subsistence regulations regarding accumulation of limits or if the proposal was simultaneously intended to change regulations to address an imminent fishery conservation issue.

There was agreement that users will benefit from having the Board provide clear, unambiguous regulatory language regarding harvest accumulation, however, contrary to the proponent's views the general perception among the committee members was that current levels of use by Federally-qualified subsistence users is very low and has not created any fish resource conservation problems. Staff Committee members felt that the proposal is not responding to conservation problems that currently exist.

The second issue discussed by the Staff Committee concerned the modifications to OSM's conclusion. Some Staff Committee members questioned whether there was a need to deal with same day possession of subsistence taken and sport taken fish, which is Section xi because of the wording which would restrict accumulation of limits in Section vii, some ISC members felt that the new language in Section xi was unnecessary.

The Southeast Alaska Regional Advisory Council opposed the original proposal as submitted by the state of Alaska and did not vote on the modified language put forth in the OSM analysis. Nevertheless there was some discussion by the Staff Committee that Section 11 as modified was potentially being viewed as too restrictive towards Federally-qualified subsistence users and not simply a modification of the existing regulation.

The Staff Committee agreed that Federal subsistence regulations were designed to allow subsistence users to meet subsistence needs without having to accurate State and Federal harvest limits and that participation in subsistence activities should not preclude an individual from engaging in lawful sportfishing at a future time.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. We're now prepared to have Board discussion on the proposal.
At this time, while we're in open session I encourage participation by both the Department and by the Council Chairs.

Board members, discussion. Denny.

MR. BSCHOR: Mr. Chair, just a clarification on the OSM language on Page 26. What does item xi do or not do? What effect does it have?

CHAIRMAN FLEAGLE: Robert.

MR. LARSON: Mr. Chairman. Mr. Bschor. Item xi is a leftover provision, it's one of the items that came with the initiation of our program and in State regulations there is this prohibition that you shall not possess subsistence taken and sport taken salmon, we've adopted that, and this new language includes steelhead, Dolly Varden, brook trout, grayling, cutthroat and rainbow trout; those species where we have a subsistence fishing permit or regulations. It is, in addition, and a change to regulations that we currently have. So it does quite literally what it says, that you cannot possess those species if they are taken under different management regimes.

CHAIRMAN FLEAGLE: Thank you. Further discussion.

MR. BSCHOR: I guess as a follow-up, Mr. Larson, from your perspective, is that language necessary? Is the language in the other modification above, .27(i)(13) enough if it stood alone?

MR. LARSON: I don't mean to presuppose what the Board thinks is necessary or not, but I could further explain that the items under 13 are for harvest regulations that are taken on the same day. The expansion under xi are those species, they cannot be possessed at the same time without regard to when they were taken. So the clarification that we see is contained under (i)(13), the new regulations or expanded regulations would be under xi, a different -- a slightly different concept, yes.

CHAIRMAN FLEAGLE: All right, any other comments.

(No comments)
CHAIRMAN FLEAGLE: I know this one is kind of a tough one to start out on because it's just trying to make a determination whether there's a real issue or not, first off, and then trying to clarify what the issue may be. I think that if the Board wants to consider substitute language we'd need to have a motion to that effect, but I don't know that we've adequately discussed before us to even get there so I'd just like to open it up for further discussion.

Ralph.

MR. LOHSE: Mr. Chair, thank you. I look at xi right there and I'm just going to talk from Southcentral standpoint with some of the regulations that we have for Southcentral. When you say possessed under State regulations. If I understand right, a fish quits being in your possession when it's at your place of residence or when it's prepared in such a way that it will keep, in other words, smoked or frozen or canned or something like that. Basically what xi would do, is if somebody was not going home to their residence, if they were staying on a boat, if they were camping out and they took their subsistence fish, until they returned home, they would not be able to do any sportfishing. I think number xi changes -- I think number xi is a totally new regulation in line with what we were talking about, accumulation of daily bag limits or season bag limits. And I would think that you would need some further discussion on that because this could limit subsistence fisher people who have gone out and made a special trip to go get their subsistence fish and that are still in the area and haven't returned home yet.

And I may be wrong on that and I'd like clarification from the State on that if I am. But I would think you'd have to look very seriously at number xi.

CHAIRMAN FLEAGLE: Thank you, Ralph.

Keith.

MR. GOLTZ: Under Federal regulations, Ralph, it doesn't strictly say you have to be home but it does say that the fish have to be canned, salted, frozen, smoked, dried or otherwise preserved so that they will hold for 15 days.

MR. LOHSE: But what we're talking
about is clarifying regulations so that if a subsistence user is taking part in a State fishery on State land, after he's taken part in a Federal fishery on Federal land, that he doesn't get in trouble, we're trying to clarify things so that we have no legal conflicts here, that's the idea with the accumulation to begin with. And from that standpoint I could see where number xi could cause a problem.

CHAIRMAN FLEAGLE: Commissioner Lloyd.

COMMISSIONER LLOYD: Thanks, Mr. counsel.

CHAIRMAN FLEAGLE: Certainly. Steven.

MR. DAUGHERTY: Mr. Chair. The Department may have further comments or clarifications on this but just two issues that I would like to present.

First, this regulation should be ready by species. You might want to add those words where it might just make it clearer that that is the intent. But this would not prohibit someone from engaging in trout fishing while they have subsistence taken salmon. It would only keep them from fishing for the same species that they have taken in the subsistence fishery.

Mr. Chair.

The other point that I would like to make is that the State law on possession is that you may not possess more than the State possession limit while engaged in sportfishing. So this would be a clarification that would prevent citations of people who might possess subsistence taken salmon and then tried to engage in sportfishing for salmon; they would be cited under State law if they were in possession of more than the State sportfishing bag limit.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, I understand that attempt to clarify the regulations in case this happens but I guess I go back to the question has it happened and are we trying to fix a problem that doesn't exist. I'm not sure that we have a real
clarity here by making this change, if it's going to do a positive thing or not for the subsistence program; and I just want to throw that out, maybe get a little more discussion as to the overall purpose of this regulatory change.

Comments.

George, no, okay.

I'm desperate for a hand here.

(Laughter)

CHAIRMAN FLEAGLE: All right, I'm going to just summarize where we're at, just try and see if we can get moved off the dime. We have a proposal that proposes to change the way we deal with the accumulation of Federal and State annual limits. We have a modification presented by OSM Staff, and the Board can choose to vote on the proposal as it is, kill it, or you can vote to support it as it is or we can move to amend it with the OSM's modification and pass it that way. So there's three options. If we need further discussion, clarification, I encourage questions and more discussion.

Denny.

MR. BSCHOR: Mr. Chair, where I am is just a question over item xi and that's, you know, I don't think we should just kill this, I think we've got some general agreement on the wording, except item xi. And if there's any more discussion on that I tend to think that that's -- you know, we've heard from the State they're concerned about what that does regulatory wise or enforcement wise is what I've heard, and I'd like more, if there's any more discussion on the importance of that, whether that should stay in there or not, I'd like to know.

CHAIRMAN FLEAGLE: All right. And that whole discussion of xi that adds all the individual species of fish is not in the original proposal, so we're talking about whether or not it has merit to be added as part of an amendment.

Okay, I'm open to that, if the
amendment doesn't include that piece and if there's justification, we can certainly move forward with that as well.

Further discussion.

MR. BSCHOR: Yes, that's where I was heading as far as my thoughts.

MR. PAPPAS: Mr. Chair.

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: George Pappas, Department of Fish and Game. Yes, in item xi, Mr. Larson correct me or help me out here, originally this language was lifted or used -- utilized from the Department's -- State's regulations for the formation of these Federal subsistence fisheries, and since the State fisheries do not have a subsistence fish [sic] for steelhead, Dolly Varden, brook trout, grayling, cutthroat and rainbow trout they're not in State regulation, so this -- the intent of number xi, does the Federal Subsistence Board want to allow possession of subsistence harvested, these species as listed and State sportfish harvests or not; that's part of the main intent. We don't have these specific fisheries, so what is the intent of the Board.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, on that point, Board members, discussion.

(Pause)

CHAIRMAN FLEAGLE: Let's stand down for five minutes while we gather our wits and make some sense of what we're trying to accomplish here.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right, we're back on record on Proposals 02 and it looked like we had a few huddles going on as to possible clarifications and I'd like to open it back up for discussion.
Denny.

MR. BSCHOR: Mr. Chair. I want to unduly make this complicated, that's not my intent here, I just want to make sure that what we do is deliberate as far as the changes if we go this way and what effect item xi has and it seems to me that we're mixing a little bit of possession with accumulation and with harvest and we're talking about a restriction on the same day so that covers item xi in a way if we had the old language we wouldn't need item xi anymore, with the new language that's being proposed, that OSM's proposing. And there's a potential that it could be detrimental to subsistence users. We don't know that for sure. I don't know if we have any examples that is has been. And anything that -- if there was a problem, if we did have a problem with that the in-season manager could add permit stipulations to handle that. So I tend to think that we could just eliminate item xi and still be okay with it, or I could be okay with the rest of the language that's proposed.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay. My understanding of what you just said is that you could support the modification that OSM provided with the understanding that the entirety of clause xi is removed, not just the bold?

MR. BSCHOR: Mr. Chair. I'd also like to hear from Mr. Adams to see if he has any input on this because even if we go to this modification it's still not what the Council wanted so I'd like to hear his input.

CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Thank you, Mr. Chairman. You know the Council recommendation is on Page 20 in your book and one of the things that we were concerned about was the fact that we didn't want to restrict, you know, the taking of these species in any way. And item number xi in the proposal does that for us and so, you know, I'm in complete agreement with Denny if we take that out of there that it will probably, you know, bring us back to a good and wise management regulations here. So, you know, that's our position here.

Let me see, is there anything else that
I need to say, yeah, it says here that no evidence is presented to show that the restrictions contained within this proposal are necessary for conservation and, you know, the Council feels that the less restrictions that we put on our resources the better off it is, so that's kind of where we're coming from at this point, Mr. Chairman, I hope it clarifies your deliberations here.

CHAIRMAN FLEAGLE: It does, thank you.

MR. BSCHOR: Mr. Chair, I'll ask what's your preference as far as a motion, do you want a board members.

Denny.

CHAIRMAN FLEAGLE: Yes, that would be my preference is that the proposal be moved and then any amendments added to that motion afterwards and then that amendment would be voted on and the final adoption of the proposal as amended. And this is a good time, I know we've had the back and forth discussions on how motions are formed, and I've kind of asked in the last couple of meetings that we start changing from the current practice, which was to voice the motion in the form of the RAC's position, therefore, a motion might go like this; I vote to support the Regional Advisory Council's recommendation to oppose Proposal yada-yada and that is just -- you're voting affirmative to take a negative action in a roundabout way and it's really confusing and, you know, the best way to do these issues is to put forward a motion on its face on an issue that you have before us, just put it forward as a motion to pass and then the discussion and the vote should be yes I vote to pass it, no I don't vote to pass it. So this is what we've come up as the way to do that and I'm going to read the talking points and we want to still be clear that we're operating in deference to the Regional Advisory Council where it's appropriate, and so we still want to have some comment to that in the motion.

So when we're making a motion it should address the proposal and be made in the positive, that
is to adopt the proposal, that is what I just stated, the motion should be clear and understandable, then provide your position in terms of how you plan to vote and this should be followed by a statement as to how your position relates to the Regional Advisory Council recommendation, whether it's contrary to or consistent with and that way we're recognizing the Regional Advisory Council's recommendation and position on the issue without turning the motion around to accommodate the position. If your position is contrary to a Council's recommendation you must support your position with rationale that addresses at least one of the three criteria from Section .805 (c), which are: you may reject a Council's recommendation when it is:

1. Not supported by substantial evidence
2. Violates recognized principles of fish and wildlife conservation
3. Would be detrimental to the satisfaction of subsistence needs

And I appreciate Staff putting the little handy card on the back of our name plates with the procedure for the proposal process and it also contains those three criteria so you can glance at them if you need a little extra support there, but I appreciate that being available.

Section .815 authorizes restrictions to non-subsistence uses only when necessary for the conservation of healthy population of fish and wildlife or to continue subsistence uses of such populations for reasons of public safety, administration, or pursuant to other applicable laws. So that's another point.

Basically where that puts us now is I would entertain a motion to adopt Proposal FP09-02, and once that is seconded then I would open it for an amendment. And that amendment may take the form of the conclusion -- the modification presented or however you feel is appropriate and we'll discuss that amendment and if it needs further amendment after that amendment is dealt with and voted on then we'll open it up for that process as well.
And one thing I want to be careful is the process does allow for amendments on amendments. I don't mind one level amendment on an amendment but if we get farther than that we just need to just shut it down, vote on that and then open it up for a new amendment process and it just makes for a lot easier process to follow and understand and to keep track of. And my job is to keep track of it so I'm trying to keep it simple.

Denby.

COMMISSIONER LLOYD: Well, thank you, Mr. Chair. Out of recognition that -- if I remember correctly, once you have a motion on the table you're not inviting further comments from the State of Alaska. My concern of where.....

CHAIRMAN FLEAGLE: Not just the State of Alaska, but also the Regional Advisory Councils.....

COMMISSIONER LLOYD: Thank you for that clarification.

CHAIRMAN FLEAGLE: .....we close it down to just Board, but, yeah, go ahead.

COMMISSIONER LLOYD: So it seemed like you were about to entertain that motion and I'm concerned that you are headed into a direction that -- and you may know this but just to make sure that it's clear, a direction that may put Federal subsistence users in a vulnerable position with regard to State regulations and also at odds with some of the Staff work that came to you that directly recommended language in section xi. But further, if I understood correctly, one of the actions that you may take as an amendment here would be to eliminate all of section xi, not just the bolded text, which means you would actually be taking action to amend an existing Federal regulation, dealing with sport taking salmon which was passed at some presumably previous Federal Subsistence Board meeting. So I guess I'd request that those three items be reviewed for you by your Staff and whether that's Robert Larson or somebody else, I guess that's your discretion, but there are a number of aspects and issues here that I'm wondering how they're going to be included in a motion and whether you really do have a clear understanding of how that could put you -- could put subsistence users at odd between the Federal and
State regulatory regimes.

Mr. Chairman.

CHAIRMAN FLEAGLE: Well, I, for one, will readily admit that I do not have a clear understanding of what the issue -- how the issue is a conflict now and how the proposed proposal fixes that conflict or prevents a future conflict and how the modified language does either or those either so that's what we're trying to get at and I think in our discussion we will get there. But you do raise a good process point though and I'm going to ask this to our legal counsel. My understanding is that we have an open public process where we invite proposals to amend regulations, we get those proposals in and the Board has the opportunity to modify the proposed change, you know, to regulation to fit the intent or to meet what it feels is the best decision for subsistence users. And so with that we would have the opportunity to either add to or take away, repeal various sentences or sections of regulation to meet that end; is that correct, Keith?

MR. GOLTZ: Correct. I think Denby's point is do we have an adequate record to do that and that's a question that always is in front of the Board.

CHAIRMAN FLEAGLE: And, yeah, that's a good point and we want to make sure that we do address that as we move forward.

Denby.

COMMISSIONER LLOYD: Mr. Chairman.

That largely was my main point. In addition, however, there had been some talk at the table that perhaps one thing you were trying to do with clarifying regulations but not creating new regulations and I was also trying to point out that if you eliminate the portion xi that deals with salmon in a way you'd be creating a new regulations, just so you understand that it's a new regulatory action that reverses one that you had previously taken, it's not just taking out this suggested language that is new to you at this meeting.

CHAIRMAN FLEAGLE: Okay. Just to entertain that idea, would the -- would we not have a duplicative regulation saying essentially the same thing if we adopted the portion in section 13 and kept
section xi in place? I mean wouldn't the language in
13 sort of make section xi moot, I think that's the
discussion, but I'd like to hear from your perspective
what you think of that.

COMMISSIONER LLOYD: Well, thank you,
Mr. Chairman. I probably ventured further into an area
that I don't feel completely fluent in than I should
have which is why I actually framed my remarks with a
request to seek Staff clarification on these three
possible ramifications of your action. And so rather
than me commenting on that I'd still recommend we go
back to Staff one more time and see if they can help us
through this -- help you through this.

CHAIRMAN FLEAGLE: Okay, if you want to
just take us back to a clean starting point before I
muddled it up with all my comments would you restate
those three questions?

COMMISSIONER LLOYD: Mr. Chairman. We
have laid out some concerns about the potential
conflict between State and Federal regulations and the
vulnerability that that may place Federally-qualified
subsistence users in if you take the action that it
sounds like you may take.

There's also the issue of whether or
not section xi, 11, actually is necessary in order to
help clarify the amended language in digital section
13.

And then finally there was the question
of whether or not elimination of all of xi, 11,
including the existing language constitutes taking new
regulatory action at this meeting which seemed to be
the -- something that this Board -- some Board members
had said they didn't want to do at this meeting, that
doesn't mean you can't, but it's just an observation
that given that kind of record you'd want to clarify
yourself.

So those were the three items that I
was making observations about that perhaps the Staff
could help you sort through, Mr. Chairman.

CHAIRMAN FLEAGLE: Larry Buklis.

MR. BUKLIS: Thank you, Mr. Chairman.

Larry Buklis. I'm now the Fisheries Chief for OSM.
And I'll try to provide some framework for your understanding on this. I won't speak specifically to enforcement issues. I think the Forest Service and the Council are closer to the resource use than I am.

Section 13, the existing regulatory language says quite clearly you may accumulate annual limits, I'm going to paraphrase, you may accumulate annual. On Page 26 of the Board book, the OSM Staff work, the effect of that would say quite clearly, you may not accumulate any harvest limits except as follows, so it says you may not accurate except, and what are the exceptions. The bolded language says you may accumulate, the exception is annual and seasonal. So what we've accomplished with that is we've made clear that seasonal is part of this allowance now. But it goes on to say so long as these limits we're speaking to aren't accumulated on the same day.

You drop down to section xi, and that goes further because it talks about possession limits. I had spoken only to salmon but we've come to realize, as the State has identified, we have subsistence fisheries that they don't on certain species, so while salmon only was listed as a carryover from the State system, the Federal system has more species involved, so to parallel that approach from the past you would include the other species. We heard testimony from the Council, I believe, and it might have been Southcentral Council, that possession should not be a hinderance to subsistence use. So while the State is correct that the Staff work leading to today is what you see, you did hear input that possession limits should not be a further burden to the harvest limit regulation you're working with.

So section xi goes further because it brings into play possession which deals with that 15 day preservation factor.

I hope that provides some context for 13 being a clearer enunciation of seasonal and annual are the exceptions, and xi which we came to you with talks about possession but you've heard some testimony about possession and subsistence uses.

Thank you.

CHAIRMAN FLEAGLE: Further
consideration. Bob.

MR. LARSON: Mr. Chairman. Mr. Bschor asked earlier about whether or not these regulations were necessary and during the break I had this discussion with some of the other Staff and we could find no recollections that we have any specific instances where the regulatory change in xi would address an enforcement issue or would be necessary. We believe that the clarification involved in 13 would certainly be beneficial for subsistence users, in that, they would understand exactly. Now, we have to remember that this issue is primarily steelhead in Southeast Alaska so whether or not we want to branch into all species is really not germane to this particular issue and it wasn't the reason for the original proposal. So we're talking about whether or not you can continue to fish for steelhead once you've taken a season limit, there's already a provision for allowing a person to sportfish for steelhead if they've taken an annual limit, however, the Board has passed seasonal harvest limits for steelhead which then there's the question, and we believe it would be the Board's intent to allow sportfishing after a season limit as well as an annual limit. So there's the context of this question.

Thanks.

CHAIRMAN FLEAGLE: Thank you. Further discussion Board members.

(No comments)

CHAIRMAN FLEAGLE: I guess the first step would be to put a motion on the floor to adopt Proposal 09-02.

MR. BSCHOR: Mr. Chair. I move to adopt to Proposal 09-02.

MR. CESAR: I'll second it.

CHAIRMAN FLEAGLE: Speak to your motion, please.

MR. BSCHOR: Well, my motion is to clarify that it is not consistent with Regional Advisory Council. I think with some wording of an amendment to that would be helpful and it would
increase our ability to manage the program, I'm still not sure whether that amendment would include item xi or not and I think the issue comes down to whether it would be detrimental to subsistence users, put them at risk as far as enforcement or whether if we leave it in does that reduce their ability to practice subsistence. And I don't know what the risks are there, I don't think they're very high either way personally. I think they may -- as I listen to the discussion it sounds like -- well, that's the nature of the issue so I'm still not clear what my amendment might be there. I can propose an amendment and we can vote on it, that's the other thing. I'm prepared to do that. But if you need more discussion, I don't know, maybe we've talked it out all we can.

CHAIRMAN FLEAGLE: Excuse me, why don't we just go ahead and give it a try, put an amendment on the table and let's talk it up or down.

MR. BSCHOR: Well, I move to amend the motion by substituting the language in paragraph .27(i)(13) as shown in the conclusion on Page 26 of our Board book. My substitute language would not include the modification on xi.

Do you need my rationale?

CHAIRMAN FLEAGLE: Let's get a second first.

MR. CESAR: I'll second it.

CHAIRMAN FLEAGLE: Okay, we got a second to the amendment, go ahead, rationale.

MR. BSCHOR: Mr. Chair. I'm leaning towards the fact that we don't know if we have a serious problem, that there would be a problem with enforcement, therefore, you know, I would rather err on the side of not being detrimental to the satisfaction of subsistence needs. I think by having accumulation of harvests that don't occur on the same day that speaks to conservation reasons. I also think that if there is an enforcement problem we have the ability through in-season managers to manage that through the permit system. And so, therefore, I don't think there's a problem with conservation with the species relative to this language.
Mr. Chair.

CHAIRMAN FLEAGLE: All right, thank you, Denny.

So what we have now is we have an amendment to replace language in Proposal 09-02 with that in the first section of the OSM recommendation, completely ignoring the change in the second section and we can take action on this first one and I would still be open to further action to address the second language if we need to after this portion.

Discussion on Denny's amendment.

Niles.

MR. CESAR: Well, I'm still not real clear on item xi. And, Denny, are you suggesting that item xi be stricken in its entirety or are you saying that item xi would say you may not possess subsistence taken sport or sports -- and sports taken salmon, period.

CHAIRMAN FLEAGLE: On the same day.

MR. CESAR: On the same day.

CHAIRMAN FLEAGLE: It would remain unchanged.

MR. CESAR: Unchanged, right.

CHAIRMAN FLEAGLE: At this point, that's open for further discussion.

MR. CESAR: Yeah.

CHAIRMAN FLEAGLE: Pete, do you want to.....

MR. PROBASCO: Mr. Chair, I'll save my comments on xi if there's an amendment to that, at this time I have no comments.

CHAIRMAN FLEAGLE: Okay, at this point we do have amended language that does not address subsection -- or section xi, 11, is there any objection to the amendment that Denny provided that would substitute language with that provided in the first
section of the OSM's modifications.

(No comments)

CHAIRMAN FLEAGLE: Any objection.

MS. COOPER: Mr. Chairman. I have no objection, a comment and that is the sticking point that I hope we address at some point of Section .805(c) the three areas where we need to justify if we're in opposition to a RAC's position and I wasn't -- and now that I'm thinking about it, I wish I would have asked a follow-up question to Mr. Adams to find out if the modification would -- if they would support that language or if we're still at different -- looking at it from different perspectives.

CHAIRMAN FLEAGLE: Sure. And by making the motion and eliminating the opportunity for them to have free discussion to just jump in, it doesn't mean that we can't invite them and we certainly do and we can certainly do that. And that's a good point, we do need to address that, I mean it is our requirement to address .805(c) so -- hang on.

(Pause)

CHAIRMAN FLEAGLE: Are we okay with a non-objection on this or do you want a full voice vote?

MR. PROBASCO: Mr. Chair, your action is adequate for the record at this point.

CHAIRMAN FLEAGLE: All right, I just want to make sure.

Is there any objection?

(No comments)

CHAIRMAN FLEAGLE: All right. So we do have the proposal as modified, further discussion. Deb.

MS. COOPER: Mr. Chair. I'd like to address a further request for clarity from Mr. Adams of the Resource Advisory Council and that is I think I understood you to say that if we did not change the wording in section xi and narrowed the modification just to what is shown in 27(i)(13) by the support with
modification that the RAC would be -- would no longer 
be opposed, did I hear that correctly?

CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Thank you, Mr. Chairman.

What was your name, again?

MS. COOPER: It's Deb.

MR. ADAMS: Deb. I announced the 
policy many, many years ago that I don't answer hard 
questions, and that is a hard question but I'll do my 
best.

Yes, the Council feels, you know, that 
eliminating that and then keeping, you know, the other 
portion of it would be fine so I hope that answers your 
question.

MS. COOPER: It does, thanks.

MR. ADAMS: Thank you.

CHAIRMAN FLEAGLE: All right, so we do 
have the amended proposal that incorporates the 
modification provided by Staff without addressing any 
change to the second portion and I would just want to 
turn back to Commissioner Lloyd, how much heartburn 
would the State have with making only half of this 
amendment, which is what we just did?

COMMISSIONER LLOYD: Well, thank you, 
Thank you, Mr. Chairman. If I can I'd defer my 
comments either to George or Steve Daugherty.

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. There would 
be a danger that this would be detrimental to 
subsistence users in that State Fish and Wildlife 
enforcement officers would enforce possession limits 
and they frequently do inspections in Southeast Alaska 
at boat harbors when people come in.

5 AAC 75.010 regulates possession of 
sport caught fish and provision (B) provides that a 
person may possess only the limit of fish allowed for 
the water on which the person is fishing as the 
sportfishing limit and as a subsistence user who
possessed a -- was engaged in sportfishing and
possessed more than the limit for that fishery would be
cited under State law, Mr. Chair, so this regulation,
if adopted, could be detrimental to subsistence users
in that it would open them up to enforcement action by
the State.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you for that
clarification. Further consideration, Board members.

(No comments)

CHAIRMAN FLEAGLE: Tina, further.

MS. CUNNING: Just to further clarify
because it does get difficult. The language that's up
here that has been proposed is good language and we do
support that. Your question was was there any
heartburn about not fixing the possession piece too,
and Steven has just pointed out what the detriment is
for the subsistence user by not having it clear in the
Federal regs to match what is going to happen under the
State regs, and that was something that OSM brought to
our attention, which is why we agreed to support that
modification.

CHAIRMAN FLEAGLE: All right, thanks.
Let's let that stew over lunch and we'll come back at
1:15.

Pete.

MR. PROBASCO: Thank you, Mr. Chair.
Mr. Edwards did you want to say anything -- Mr. Haskett
had to step out because of a medical appointment he has
and so we get to have Mr. Edwards after lunch.

CHAIRMAN FLEAGLE: Yeah, welcome, Gary,
sorry I didn't recognize that. All right, let's stand
down for lunch.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right, good
afternoon. The Federal Subsistence Board is back on
record and we left a proposal hanging with an amendment
but before I go back to that I'm going to invite
Maureen to give a slight presentation on the artwork
that you see over on the wall over there.

Maureen.

MS. CLARK: Thank you, Mr. Chairman.
The art here in the room is part of our subsistence
student art contest. I'm sorry that no Council Chairs
are here right now because the Council Chairs are the
judges and they will pick a work from over there that
will go on the cover of our fisheries regulations book.
What you see here in the room has been selected for
honorable mention, we got about over 250 entries from
around the state and we have 40 honorable mentions.

We put the art, in addition to on the
cover, inside the book. It makes the book look nicer
and also, I think, people are picking up the book that
might not normally if neighbors and friends and
children they know have contributed to the art, so I'm
hoping that the Council Chairs will be available to
judge for us, if not, I may call on some folks for
help.

CHAIRMAN FLEAGLE: All right, well,
when we get them back at the table maybe you can give a
mention to that again. Well, thank you, Maureen. It
turns those otherwise once a year useful documents into
something worth saving in the archives, maybe framing
and hanging even.

All right, Pete, do you have anything
to open with after the break.

MR. PROBASCO: Yes, Mr. Chair, if I may
speak to Proposal 09-02 as far as roman numeral xi?

CHAIRMAN FLEAGLE: You bet, that is
where we're at, go ahead.

MR. PROBASCO: Okay, Mr. Chair, there's
been quite a few sidebar comments on this part of the
regulation and I think Mr. Adams started out very well
saying that his concern and his Council concern is that
they didn't want to adopt a regulation that would
result in being more restrictive. And if you really
take a look at xi and the way it's written it does
become more restrictive if it were adopted in this
manner, in that, and I'll just use a hypothetical case,
in that, if you were to go out subsistence fishing for steelhead, that limited, and harvested that limit would affect your ability to fish on any of those other species as well in that given day and I don't think in talking with Staff, both Forest Service and OSM, that's not the intent of that language. The intent of that language is to address species individually. In other words if you're out Dolly Varden fishing for subsistence you wouldn't accumulate a Dolly Varden sportfish limit. And so with that, both Robert Larson and Larry Buklis were working on -- you know the Board can deal with it in whatever manner they so choose, leave it as is or whatever, but they have provided some language that would get at that to take the species and treat them individually, and so when we get to that point Staff will be ready to speak to that.

Mr. Chair.

CHAIRMAN FLEAGLE: All right, thanks. We are at that point. Well, why don't we go ahead and talk to the Staff suggested fix for this and then we'll come back to the Board and see if the Board wants to further address by a second amendment and go from there.

Larry.

MR. BUKLIS: Thank you, Mr. Chairman. As Mr. Probasco said the construction of the language there is perhaps deficient and the intent would be better captured by what I'm going to read now, we've got paper copies if you want it.

It would read:

You may not possess subsistence taken and sport taken fish of a given species on the same day.

And, again, we have paper copies here if you'd like to see that, we'll pass those out now.

(Pause)

CHAIRMAN FLEAGLE: And just to recap what would this do, what would the intent of this change be?

MR. PROBASCO: Mr. Chair. If it's the
Board's wish the intent would deal with the possession, which is not a take regulation, it's a possession, whereas harvest limits are a take, this clarifies what an individual fishing either under sportfish or Federal subsistence could do with their possession limit and would take it species by species with this language.

Mr. Chair.

CHAIRMAN FLEAGLE: Board members, discussion.

If this is viewed as a change that has merit, beneficial purpose then we would need an amendment on it. If there are no amendments we're back to the original proposal as previously amended for action. That's where we're at.

Denny.

MR. BSCHOR: Well, Mr. Chairman, to move this along, I'll make the motion to amend item xi to read that:

You may not possess subsistence taken and sport taken fish of any given species on the same day.

MS. MASICA: Second.

CHAIRMAN FLEAGLE: Okay, we got a second from Sue. Would you like to speak to that amendment, please.

MR. BSCHOR: I think this is more specific to more than just one species and I think that might -- hopefully might take care of some of the concern that the State has and still would not be detrimental to the practice of subsistence.

CHAIRMAN FLEAGLE: Steven Daugherty, does that address some of your concerns?

MR. DAUGHERTY: Mr. Chair, yes, I believe that would address most of the State's concerns.

CHAIRMAN FLEAGLE: Further discussion on the amendment.
CHAIRMAN FLEAGLE: Any objection to the amendment.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, that amendment carries.

Now, we're back to final action on Proposal 09-02 as twice amended and now I think it's probably appropriate to have the discussion addressing .805(c) that Sue brought up earlier as how it applies to this case because we do have on record a Council recommendation to oppose and I think it would be appropriate to have a brief discussion as to why we would vote in opposition to that recommendation.

Board members.

Denny.

MR. BSCHOR; Mr. Chair. I think the wording is beneficial to subsistence users and it agrees, actually it helps with the con -- it takes care of any conversation concerns, apparently would be more enforceable and I think that's about the reasons I would come up with, if anybody else has anything to add.

Mr. Chair.

CHAIRMAN FLEAGLE: Further discussion, Niles.

MR. CESAR: Mr. Chairman. Maybe it might be appropriate to ask Mr. Adams, you know, to weigh in at this point even though it's before the Board.

CHAIRMAN FLEAGLE: Bert.

MR. ADAMS: Mr. Cesar is getting back at me for all of the bad articles I wrote about him a long time ago.

(Laughter)

MR. ADAMS: This simplifies everything
in my view, Mr. Chairman, so I am okay with that.

CHAIRMAN FLEAGLE: All right. Any further discussion on Proposal 02.

(No comments)

CHAIRMAN FLEAGLE: All right, we're ready for action, is somebody ready to call the question.

MR. NILES: Question is called, Pete, on Proposal 02, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair. And before I poll the Board, for the benefit of our new Board members it's our policy that we rotate who gets to go first and so as we go through our votes you'll notice the next one will have a different person on step for the first vote.

So this one starts out with Mr. Lonnie.

MR. LONNIE: Yes.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: And Ms. Masica.

MS. MASICA: Aye.

MR. PROBASCO: Motion carries, six/zero.

CHAIRMAN FLEAGLE: All right, thanks. Well let's see 1:30 and we did one proposal, at this
rate what's everybody doing until Saturday.

(Laughter)

CHAIRMAN FLEAGLE: I'm kidding. It always takes a little while to get used to the process again on the first proposal and this was kind of a difficult one in that it had a lot of intricacies that needed to be vetted out and so it took a little extra time. I don't anticipate that all of our issues are going to be as lengthy in time.

With that we're moving on to Proposal 09-03. Larry Buklis -- okay, I'll call on Jeff Reeves who has just joined us, welcome, Jeff, good to see you.

MR. REEVES: Thank you, Mr. Chairman. Board members. My name is Jeff Reeves, I'm with the Forest Service, I'm based out of Craig. I'll be presenting the analysis of FP09-03. The executive summary is on Page 32. And the analysis begins on Page 34 of the Board book.

This proposal was submitted by the Alaska Department of Fish and Game and it would alter various management components of the Prince of Wales/Kosciusko and the Southeast Alaska Federal subsistence steelhead fisheries. The proponent believes that the Federal fisheries will lead to overharvest. These changes along with anticipated State regulation changes are said to ensure steelhead conservation while continuing to provide a preference to Federally-qualified subsistence users.

The proposal addressed six items of concerns and these have either been considered before through the Federal regulatory process or covered under the consultation process that was directed by the Federal Board when the fisheries were created.

This analysis is only going to cover the use of bait, locations of harvest, handline use and the fin clipping of subsistence taken steelhead as daily and annual accumulation was already addressed in the previous proposal.

Prior to the first Federal subsistence fishery for steelhead, all steelhead harvest had occurred under State of Alaska sportfishing regulations or was incidental to subsistence or commercial
fisheries. Although there are customary and traditional use determinations for steelhead in State subsistence regulations for portions of District 3 and of all of District 7 and 8 in Southeast Alaska, the State regulations prohibit the issuing of subsistence permits of steelhead but still allow the incidental harvest under those permits -- or under permits for salmon, excuse me. Permitholders are required to report any steelhead taken but they're not required to mark those fish.

The regionwide sportfishing regulations allow for the harvest of one fish daily, two annually, 36 inches greater in length. During 2003 the Board of Fish revised the sport regulation specifying that a two day harvest limit would only apply to the Klawock Rivers and Ketchikan Creek where at that time adipose clip steelhead could be found. In 2006 the Board of Fish adopted a regulation giving authority to the Commissioner to require steelhead harvested in the commercial net fisheries and retained for personal use to be reported on fish tickets. To-date the Commissioner has only implemented the requirement in the District 8 Stikine chinook salmon fishery. Currently the Board of Fish has a steelhead related proposal that they'll consider in February of 2009. The proposal submitted by the fisheries would limit retention of steelhead to 16 systems in Southeast Alaska.

The Federal Subsistence Board established the first Federal subsistence fishery for steelhead in 2002 on Prince of Wales Island. The following year the Board added Kosciusko Island to the same fishery. In 2005 the Board allowed for the subsistence steelhead fishery in the remainder of Southeast Alaska. Rather than implementing separate regulations by drainage in those fisheries the Board directed that permit conditions in systems to receive special attention would be determined by the local Federal fisheries manager through consultation with the ADF&G. Federal managers have applied stipulations to Federal permits following consultation and examples of those restrictions can be found in Appendix B.

Currently subsistence users are not required to mark trout or steelhead or char by fin clipping. Federal subsistence users must only remove the caudal fin of salmon when taken. The primary purpose of marking was to prevent subsistence taken
salmon from mixing -- with commercially taken salmon in
the marketplace. There is no commercial market for
tROUT or char except for a very limited sale of
steelhead taken in the troll fishery. in 2003 the
Board rejected a proposal which would have required fin
clifting of subsistence taken trout and char and
prohibited the accumulation of Federal and state
sportfishing limits for trout on the same day. The
Board did not discuss the proposal as it became a
consent agenda item. in 2005 the board further defined
the handline use for subsistence harvesting. Although
the proposal's intent was for harvesting salmon the
Board approved the Council's modification to add this
as a legal gear for harvesting steelhead. Prior to
2006 the use of bait was only allowed with rod and reel
gear from September 15th to November 15th in both the
State sportfishing and the Federal subsistence salmon
fishery. in 2006 the Board removed the prohibition of
bait to increase the harvest efficiency of rod and reel
gear. To eliminate catch and release mortality of
tROUT in steelhead language was added requiring the
fisher to retain all fish caught with bait and that
once a daily or annual limit of steelhead was harvested
that you could no longer fish with bait for any
species. Concern over particular drainages would be
covered through permit conditions as set by the local
Federal manager.

A three year steelhead assessment
project funded by the Fisheries Resource Monitoring
Program occurred from 2005 to 2007 on Prince of Wales.
Data from those joint agency study has helped to manage
the Prince of Wales fishery. Management changes
following the results of those studies can be found in
Appendix B.

Preliminary length data has suggested
that 1.4 percent of 1,029 steelhead sampled during
those projects met the sport size minimum.

There are three Federal steelhead
fisheries. Local Federal managers monitor harvest
during these fisheries. Law enforcement assists by
checking anglers to ensure that they have proper
permits or licenses. Using the monitoring information
the local Federal managers have the authority to close
down the fisheries when and if a conservation concern
arises. Federal permit returns for these three
fisheries has been nearly 100 percent reporting low
harvest and effort. The present Federal management is
commensurate with the level of harvest. Table 1 on Page 42 summarizes the three Federal steelhead fisheries by year, method -- gear type and harvest locations.

From 1989 to 1994 the average sport harvest was 2,700 steelhead per year for Southeast Alaska. Since 1994 when the more restrictive sportfishing regulations went into effect, the yearly sport harvest in Southeast Alaska has averaged 138 steelhead. From 2001 through 2004 the average reported sport harvest in Southeast has been 168 steelhead. The average reported catch during the same time was 3,903 steelhead per year. If five percent of those fish caught died after release the resulting mortality average would be approximately 195 steelhead per year during that same period. There are no directed commercial fisheries for steelhead. Incidental harvest in the commercial salmon fishery does occur and has ranged from 533 to a high of over 11,000 for all of Southeast Alaska. Since 1994 only steelhead taken in the troll fishery could be sold. From 1997 to 2002 commercial trollers sold about 50 per year. Since then the number has ranged from three to 108. Since 2006 the Commissioner has only required steelhead reporting in the Stikine terminal chinook fishery, 14 were reported taken in 2006 and eight reported in 2007.

Adopting the proposal would add unnecessary restrictions to the Federal subsistence harvest of steelhead in both the Prince of Wales, Kosciusko and the Southeast Alaska subsistence steelhead fisheries.

The OSM conclusion is to oppose the proposal. The reported harvest from the Federal steelhead fisheries has been small with the current Federal management being commensurate to this level of harvest. Heavily restricting the Federal steelhead fisheries while other fisheries remain open does not recognize subsistence use as a priority.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Jeff. Questions.

(No comments)

CHAIRMAN FLEAGLE: Alrighty. Summary
of public comments, Robert.

MR. LARSON: Yeah, Mr. Chairman, the public comments for 03 are found on Page 62 of your Board book. There is one in opposition and one in support.

The comment in opposition is from a resident of Sitka. The focus of his comments is that this proposal would be an unnecessary restriction and may be potentially dangerous to the resource. Focusing all of the regional harvest on a handful of streams is moving in the wrong direction as there are very few systems that produce large numbers of steelhead.

The one comment in support is from the Kenai River Sportsfishing Association. And they feel that the proposal balances realities of managing small fragile stocks of steelhead where the budget and infrastructure does not exist to allow for comprehensive monitoring. They believe that this proposal would ensure conservation and reflects anticipated changes that may be made by the Board of Fish this spring.

CHAIRMAN FLEAGLE: Okay, thank you. Public testimony on this proposal, Pete.

MR. PROBASCO: Mr. Chair, we do not have anyone signed up for this proposal.

CHAIRMAN FLEAGLE: Regional Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Alaska Regional Advisory Council opposes this proposal. Again, as in the previous proposal the Council disagreed with the State’s comments regarding the potential for a conservation concern and it also puts more restrictions on the subsistence users.

The great majority of steelhead harvested in Southeast Alaska is taken in the commercial fishery and the ADF&G has shown no interest in documenting the troll harvest of steelhead. Subsistence harvest at the current level is too small to be considered a conservation issue at this point. And so local managers can specify more restrictive management measures as a permit condition as needed for conservation purposes.
Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Bert.

Department of Fish and Game comments. George.

MR. PAPPAS; Thank you, Mr. Chair.

George Pappas, Department of Fish and Game. And I'm
summaring the Department's full formal comments that
are in your proposal book at Pages 57 through 61 and
these full comments will also be entered into the
record. Additionally you should have two handouts,
that'd be Proposal 290 that has been submitted to the
Alaska Board of Fisheries and also you should have a
color copy of the brief PowerPoint presentation I'll
insert into these comments.

The State has repeatedly raised
concerns for steelhead stocks in Southeast Alaska
created by the Federal subsistence regulations.
Residents in Southeast Alaska and area managers went
through great lengths to have stocks rebound to
sustainable levels after they were significantly harmed
by liberal methods and means and harvest limits prior
to 1994, overall the current steelhead harvest levels
could probably be sustained but the potential for
overharvest that exists by the allowed harvest
opportunity in the Federal regulations causes serious
concern for the small stocks on unmonitored streams.

Some of the streams may consist of
populations of 10 or fewer returning adult steelhead.
In very small steelhead stocks, say 10 or less fish,
may not be able to be sustained if more than 10 percent
or one or two fish in this case are removed from the
population. Active steelhead monitoring in Southeast
Alaska occurs annually only 16 streams and the
necessary information required to evaluate increased
subsistence harvest levels is not available. The
current Federal subsistence regulations and permit
conditions are not conservative enough -- not
conservative enough to ensure conservation of steelhead
stocks in Southeast Alaska freshwater systems.

Under State regulations the 36 inch
length restriction is especially effective when applied
to smaller systems which tend to produce smaller
steelhead. In some small Southeast systems, less than
one percent of the steelhead may reach 36 inches in
length or longer. Additional restrictions are bait and
snagging prohibitions in the sportfishery, minimum size
limits of 11 inches which protects steelhead juveniles
and kelts and restrictions on harvest in the net
fisheries that reduce bycatch of steelhead including
prohibitions on the sale of steelhead captured in net
fisheries. In the absence of restrictive methods and
means and harvest limitations similar to those provided
by the State regulations Federal subsistence harvest of
steelhead trout should only be authorized in waters
with active stock assessment programs or documented
annual escapement large enough to with stand an
increased harvest.

Because the Federal Board has continued
to allow Federal harvest we believe could be
unsustainable, the Department has presented a
restrictive conservation base set of regulations to
both the Federal Board and the Alaska Board of
Fisheries. Proposal 290 going to the Alaska Board of
Fisheries for your consideration -- excuse me, for
consideration at the February 2009 meeting parallels
the proposal in front of you. It would close all but
16 streams to steelhead retention. This would result
in focusing harvest opportunities on larger monitored
streams with more robust populations.

Most steelhead populations in Southeast
Alaska receive an annual escapement of 200 or fewer
fish with only a handful of systems regularly receiving
escapements over 500 fish. Fisheries managers believe
that steelhead populations in Southeast Alaska need to
be managed very conservatively and may only sustain a
small harvest rate of say 10 percent or less. History
has shown that the levels of harvest opportunity
provided by the current Federal regulations cannot be
sustained. If this proposal passes people will still
be able to harvest other species of fish from streams
not listed within the 16 streams, they just won't be
able to retain steelhead. Regulations this restrictive
would be unnecessary and some additional harvest would
be allowed if the Federal Board mirrored more stringent
State regulations on smaller streams. Because the
Federal Board has not done so, those more restrictive
retention closures are needed in order to protect the
small stocks exposed to more efficient methods and
means and harvest limits approved by the Federal Board.
We would prefer the Federal Board adopt more
conservative limits and methods and means such as we've
proposed over the last few years. Because the Board
has been unwilling to make some of the modifications to
existing regulations this proposal is necessary to
provide for conservation of small steelhead stocks. If this proposal is adopted, the Federal subsistence steelhead fishery in Southeast Alaska will continue to be -- will continue to provide a meaningful preference for subsistence use of steelhead but the harvest should be focused on monitored or surveyed streams where sustainability can be assured. The use of bait may also be reduced in some of the streams in order to protect both juvenile and adult steelhead trout but should not significantly impact subsistence users.

And I have a brief PowerPoint presentation to support this.

I have a few slides which will assist with understanding the scope of the conservation based proposals which have been submitted to both the Federal Subsistence Board and the Alaska Board of Fisheries. Next slide, please.

The proposal -- the proposed -- the purpose behind the Department's proposal to both Boards is to ensure the sustainability of steelhead stocks in Southeast Alaska. The Department has submitted or supported steelhead conservation based proposals to the Board beginning in the year 2000. The series of proposals that have been presented to the Board over the years contain a wide variety of regulatory options to assist with ensuring steelhead populations in Southeast Alaska or remain sustainable including small and unmonitored steelhead streams. The Department remains open for discussion for regulatory options to address our conservation concerns.

Next slide, please.

This slide contains the Federal subsistence proposals involving steelhead in Southeast Alaska from 2000 through 2008. You'll notice the retyped-face word, rejected, following the majority of the proposals during this timeframe and many of these rejected proposals contain requests for conservation based regulations which include request for minimum size, conservative harvest limits, specific methods and means, seasons, reporting frequency, bait restrictions amongst other conservation based requests. Very few of the Department's concerns have been addressed through this process although we've been consistent with our attempts in every opportunity to alert the Board to our
concerns and provide the Board with more conservative options consistent with the Board's procedural procedures and legal responsibilities. The Department cannot ensure sustained yield management without cooperation of this Board and the Department's ideas for regulatory options that would further sustain yield management all have been virtually exhausted. Given the Board's rejection of prior alternatives, at this point the Department's regulatory options have been narrowed down to and required submitting FP09-03 and the Alaska Board of Fisheries proposal 290 as a final administrative avenue for attempting to ensure that conservation of steelhead stocks is provided for and that the State's constitutional sustained yield management -- mandate is achieved.

Next slide, please.

This brings us to Proposal FP09-03. This is a slide of Southeast Alaska regional streams which contain steelhead stocks which the Department has determined could sustainably provide significant harvest opportunity under conservation based regulations. On this slide 16 streams the Department proposes to allow steelhead harvest are identified with the red lines. Other streams are not currently known to support steelhead stocks robust enough to withstand any significant harvest and it is clear that the stocks could be threatened by harvest of only a few fish in many small streams. The list of stream names that could support conservation conservative harvest strategies can be found on Page 2 of the Alaska Board of Fisheries proposal 290 which was handed out earlier. In reviewing both sport and Federal subsistence harvest reports and statewide harvest survey estimates approximately 60 percent of both the Federal subsistence and State sport steelhead fishery harvest takes place within these identified 16 streams, thus, if this proposal was adopted by both the Federal and State Boards all users would potentially share a 40 percent reduction in harvest from the Southeast region.

Next slide, please.

This slide identifies the communities in the vicinity of the streams identified by the Department to have conservation based harvest opportunities and I believe this map includes all communities within 20 miles of the identified 16 streams.
Next slide, please.

This brings us to Proposal 290 submitted to the Alaska Board of Fisheries. The above effects are listed on Page 58 of your Board meeting materials. If Proposal 290 is adopted sport anglers will have their steelhead harvest restricted to the 16 identified streams. Additionally, the sport fishers will have bait, seasons, gear type and accumulation restrictions placed upon Southeast Alaska steelhead sportfisheries.

Next slide, please.

In conclusion if both the Federal Subsistence Board and the Alaska Board of Fisheries adopted the submitted proposals the burden of conservation will be shared between user groups and a meaningful preference for Federal subsistence can be provided through preferences on those streams where harvest is allowed. If the Federal Subsistence Board finds the Department's proposal too restrictive the Department is open for discussions to other options for attempting to meet the different users needs without detrimentally impacting the fisheries resources.

That concludes my comments, thank you, Mr. Chair.

************************************************************
STATE OFFICIAL WRITTEN COMMENTS
************************************************************

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-03 Southeast Alaska Steelhead Conservation

Introduction:

Southeast Alaska steelhead conservation has continuously arisen as a divisive issue between the Alaska Department of Fish and Game (Department) and the Federal Subsistence Board (Federal Board). While the Department believes that overall Southeast steelhead harvest levels could probably be safely sustained at current levels, it has serious concerns regarding harvests from smaller stocks on unmonitored streams. The Department unwaveringly continues to submit
proposals, comments, correspondence, presentations, requests for reconsideration, data, and data request responses with the overall intent of conserving vulnerable steelhead populations in small streams in Southeast Alaska, while allowing some limited harvest on most streams and focusing harvest opportunities onto larger monitored streams with more robust steelhead populations. The Department has submitted or supported proposals advancing selective restriction options, such as minimum length restrictions, harvest limits, seasons, single hook requirements, limited stream closures, and prohibitions on use of bait, which are similar to those found in State of Alaska (state) regulations to provide for the conservation of these small stocks. Some streams may consist of populations of 10 or fewer fish which could be decimated by fishing under federal regulations with highly efficient gear types and less restrictive harvest limits. The Department believes that the meaningful priority for subsistence use of steelhead should be provided by mirroring protective state regulations on smaller unmonitored streams and by providing enhanced harvest opportunity greater than that allowed under state regulations only on larger monitored streams.

The Department has continually expressed concern to the Federal Board regarding the importance of conservative regulations for the steelhead fisheries in Southeast Alaska, and particularly for those fisheries in small unmonitored streams. The Department has exhausted all administrative and procedural processes to install conservation-based regulations allowing limited harvest of steelhead with lower efficiency gear in the federal subsistence fisheries. Due to continuously expansive federal subsistence harvest provisions, the Department has been forced to submit a more restrictive conservation-based set of regulations disallowing steelhead retention to the Alaska Board of Fisheries and the Federal Board. Regulations this restrictive would be unnecessary, and some additional harvest could be allowed, if the Federal Board mirrored more stringent state regulations on smaller streams.

Because the Federal Board has not done so, these more restrictive retention closures are needed in order to protect small stocks exposed to the more efficient methods and means and higher harvest limits approved by the Federal Board.

This conservation-based proposal
essentially mirrors and complements the restrictive proposal (#290) submitted to the Alaska Board of Fisheries for the February 17-26, 2009, meeting. This proposal would modify federal subsistence regulations regarding steelhead trout harvest in freshwaters on federal public land in Southeast Alaska. It would help ensure conservation of steelhead trout stocks in small unmonitored streams throughout Southeast Alaska. These proposed modifications to the federal regulations, which have not been directly considered before, are necessary to address the state’s conservation concerns with existing federal harvest limits and methods and means. The proposed provisions include:

- Restricting harvest of steelhead to designated systems and seasons.

- Allowing harvest of steelhead only from streams that contain harvestable surpluses as determined by the Department, e.g., by monitoring or surveys.

- Prohibiting use of bait in all freshwaters where steelhead may be present from November 16 through September 14, except in designated systems and seasons where retention of steelhead is authorized.

- Restricting use of bait in the designated systems and seasons when a daily, seasonal, or annual limit of steelhead trout has been harvested by a subsistence user.

- Prohibiting snagging where a size limit applies to a species present in the area.

- Prohibiting possession of subsistence and sport-harvested steelhead on the same day.

- Prohibiting accumulation of federal and state sport fishing harvest limits for steelhead.

If the Federal Board does not enact one or more of the above conservation measures previously recommended by the Department, then unnecessary impacts on other uses will occur. This would be contrary to the intent and spirit of ANILCA ‘U815. The Alaska Board of Fisheries may conclude it has no choice but to protect steelhead by closing most freshwaters of Southeast Alaska to all retention of steelhead, and, if
subsistence harvest of steelhead continues to grow, perhaps to other fishing, to protect steelhead stocks. Adoption of this proposal is not the ideal solution, but if the Federal Board continues to allow higher harvest limits and more efficient methods and means in its general regulations, this proposal will be necessary to provide for conservation of small steelhead stocks.

Impacts to Subsistence Users:

The 2007 federal staff analysis to the Southeast Regional Advisory Council (pp. 126-127) and Federal Board reported only 100 steelhead were harvested under federal subsistence permits in the past three years. Although this number is not high, the actual recent numbers of steelhead taken may be higher because a recent study indicates that permit and reporting compliance rates are low (Turek 2005). On the other hand, if the federal subsistence harvest of steelhead is in fact low, adoption of this proposal should have no significant impact on subsistence. If this proposal is adopted, the federal subsistence steelhead fishery in Southeast Alaska will continue to provide a meaningful preference for subsistence use of steelhead, but the harvest effort will be focused on monitored or surveyed streams where permit conditions could be developed to prevent overharvest. If this proposal is adopted, the use of bait may be reduced in some streams in order to protect both juvenile and adult steelhead trout, but should not significantly impact subsistence harvests.

Opportunity Provided by State:

Steelhead trout, where taken incidentally by gear operated under terms of a state subsistence permit or combined subsistence/personal use permit for salmon, may be legally harvested and possessed. Reported incidental harvest from Southeast Alaska personal use and subsistence fisheries from 2003-2007 was a total of seven fish. The holder of a state subsistence salmon permit must report any steelhead incidentally taken in this manner on his or her permit calendar. The State has a comprehensive package of sport, personal use, commercial, and subsistence regulations that work together to conserve steelhead and provide a limited opportunity for subsistence harvest and use. These include a length restriction of 36 or more, which is 2% to 3% of the
steelhead stocks in most Southeast systems and up to 5% of the steelhead in the larger Situk system. The 36 length restriction is especially effective when applied to smaller systems, which tend to produce smaller steelhead. In some small Southeast systems, less than 1% of the steelhead may reach 36 or more. Additional restrictions are bait and snagging prohibitions in the sport fishery, and restrictions on harvest in net fisheries that reduce bycatch of steelhead (including prohibitions on the sale of steelhead captured in net fisheries).

A state subsistence fishery for steelhead in the Situk River was established in 1988 by the Alaska Board of Fisheries (5 AAC 01.680 (d)). One state subsistence permit was issued in the last 20 years for the Situk River, and that permit was not fished. Although this state steelhead subsistence fishery allows directed harvest of steelhead, the Situk River is among the best understood and studied steelhead rivers in Alaska. The Situk River is an excellent example of a monitored steelhead stock which will continue to allow harvest of steelhead under proposed regulatory changes submitted to the Alaska Board of Fisheries and the Federal Board as long as continued monitoring evidences a harvestable surplus is available.

Conservation Issues:

Current federal subsistence regulations and permit conditions are not conservative enough to ensure conservation of steelhead trout stocks in Southeast Alaska freshwater systems, especially the smaller (<100 annual escapement), easily accessed systems that may receive intensive pressure. Steelhead fisheries with less conservative regulations than current regional sport fishery steelhead regulations may not be sustainable. The only active steelhead monitoring program in Southeast Alaska occurs annually on 16 systems, and the necessary information required to evaluate increased subsistence harvest levels is simply not available. To compensate for potential cumulative overexploitation of steelhead stocks, the Department submitted proposal number 290 to the Alaska Board of Fisheries to severely restrict the sport fishery on all unmonitored steelhead stocks. Proposal 290 (Attachment 1), which would close all but 16 systems in Southeast Alaska to steelhead retention, will be considered by the Alaska Board of Fisheries at
its February 2009 meeting.

Declines in steelhead population were evident in Southeast Alaska prior to 1994 under the sport fishing regulations then in effect, which were similar to current federal subsistence regulations. In 1994, the Alaska Board of Fisheries enacted more conservative regulations for steelhead in Southeast Alaska, and these more restrictive regulations have successfully contributed to reversing the decline in steelhead populations observed in the late 1980s and early 1990s.

Most steelhead populations in Southeast Alaska receive an annual escapement of 200 or fewer fish, with only a handful of systems regularly receiving escapements over 500. Nearly all Southeast Alaska steelhead stocks are difficult or impossible to assess accurately or monitor on a regular basis. Without basic specific stock status information available, the steelhead stocks in Southeast Alaska need to be managed conservatively and may only be sustained with very low harvest rates of 10 percent or less. History has shown that levels of harvest opportunity provided by the federal subsistence regulations cannot be sustained in absence of an intensive stock assessment program.

In the absence of restrictive methods and means provisions and harvest limitations similar to those provided in state regulations, federal subsistence harvest of steelhead trout should only be authorized in waters with an active stock assessment program or a documented annual escapement large enough to withstand an increase in harvest. Federal authorization to allow the use of bait for subsistence steelhead users and required retention of steelhead caught with bait effectively eliminates any minimum size limit and does not protect steelhead smolt as they emigrate to saltwater. State regulations protect nearly all steelhead smolt under the no-bait and minimum size limit (11 inches) regulations. Federal officials are currently attaching stipulations to permits matching state regulations concerning size limits and prohibiting bait use for the streams crossing the Sitka road system. Federal officials currently prohibit the use of bait where a minimum size limit is established by federal permit stipulation. Other Southeast Alaska road systems that are crossed by streams with steelhead have minimum size limits, though...
not as conservative as in State regulations, and bait
prohibitions. Little impact to federal users would
result from changing the regulation to mirror existing
bait and size restrictions along the Southeast Alaska
road system federal subsistence steelhead fisheries.
On the other hand, there are some small systems on
Prince of Wales Island that do not have any size
limitations attached to the permit. This illustrates
the State's concern that the federal designated
official for these systems, for example, is not taking
a conservative enough approach to protect these small
accessible steelhead fisheries. If these restrictions
were in regulation rather than dependent on the
discretion of area officials to apply as stipulations
on permits, the State's concern for conservation of
these small systems would be reduced.

As previously discussed, permit
conditions establish less of a community standard for
compliance than do regulatory standards. The existing
federal regulations are inconsistent with the sound
management of these discrete steelhead stocks and will
likely result in unnecessary restrictions on other
uses. Adoption of this proposal would provide for
necessary conservation, would still provide a
meaningful subsistence priority, and would prevent
unnecessary restrictions on other users.

The Department urges the Federal Board
to respect the Department's concerns for stock
conservation. Federal subsistence limits and
regulations are creating the potential for
unnecessarily impacting the sustainability of distinct
Southeast steelhead stocks. Stock assessment and the
acquisition of reliable stock status data for numerous
small steelhead stocks are necessary before continuing
to authorize an expanded federal subsistence take of
these unique fish in Southeast Alaska under federal
fishing and harvest regulations.

Due to the continuation of the federal
take provisions, the Department has been forced to
present a more restrictive conservation-based set of
regulations to the Alaska Board of Fisheries and the
Federal Board. Although less restrictive alternatives
are preferable and some additional harvest could be
allowed if the Federal Board mirrored more restrictive
state regulations on smaller streams, absent that
response from the Federal Board, more restrictive
provisions including closures to retention are needed
to protect small stocks.

Enforcement issues:

Enforcement issues often create conservation issues, and there remains a question whether the federal permit system reflects actual participation and harvest of steelhead throughout Southeast Alaska. Low numbers of permits issued may reflect a lack of compliance with the requirement to have a permit and taking fish outside permit stipulations. Data from recent studies indicate that not all subsistence users are obtaining permits (Turek 2005), so permit stipulations may not be effective even if well-designed. Some fishers who may ignore permit provisions may be more likely to comply with regulatory harvest limits and restriction requirements on methods and means.

Jurisdiction Issues:

Many streams in Southeast Alaska that support steelhead flow through nonfederal land. The State disputes many of the federal reserved water right claims in Southeast Alaska and the application of federal subsistence regulations in numerous streams and rivers that are not within federal lands. Detailed maps are needed of lands where federal jurisdiction is claimed and the federal basis for each of these claims should be explained. In addition, fishers need to be provided copies of these detailed maps to help ensure they are not cited for standing on State or private lands while using federal methods and means.

Recommendation: Support.

The Department would also consider supporting less restrictive alternatives, previously rejected by the Federal Board, that address the concerns resulting in this proposal and provide for the conservation of small steelhead stocks.

CHAIRMAN FLEAGLE: All right, thank you, for that informative discussion.

We'll next move to the InterAgency Staff Committee comments. Polly.

DR. WHEELER: Thank you, Mr. Chair.

The InterAgency Staff Committee found the Staff
analysis to be a thorough and accurate evaluation of
the proposal and provides sufficient factual basis for
the Regional Council recommendation and the Federal
Subsistence Board action on the proposal. And, Mr.
Chair, you'll note, if you've gone through the book,
which I assume you have, that this same general comment
is provided for a number of proposals as the entirety
of the Staff Committee comment or as the opening to the
comment. From this point on I will emphasize any
additional points the Staff Committee comments may
contain and skip reading this boilerplate comment. The
Board meeting book provides the Staff Committee in full
for the record.

The Staff Committee recognizes the
importance of sound management approaches for Southeast
Alaska steelhead populations. The low levels of
subsistence effort and harvest as indicated by permit
returns and extensive field surveys are currently
focused on a few systems which are recognized as having
numbers of fish sufficient to sustain such uses. Data
also demonstrate the concerns about substantial harvest
creases from recently approved gear types have not
been realized.

Managers have evaluated different
approaches to enumerate adult steelhead in the region
and have concluded that there are significant trade-
offs in technical complexity, effort, cost and data
accuracy associated with each methodology. Such
factors should therefore be considered in any
management strategy incorporating stock assessments,
collection of data on harvest levels and evaluations of
the effectiveness of site specific regulations.

We also share Alaska Department of Fish
and Game's interest in ensuring the viability of
steelhead found in many Southeast Alaska systems,
however, questions arise as to whether these groups of
fish and individual streams actually constitute
discreet populations. Field observations from studies
in the region indicate that adult fish appear to move
between different watersheds during their spawning
migrations. Further research is needed to verify if
managing these fish across a suite of shared streams
rather than management which is based on the assumption
that each stream is occupied solely by a separate and
isolated population may more accurately reflect the
ecology of Southeast Alaska steelhead.
That concludes our comments, Mr. Chair.

CHAIRMAN FLEAGLE: Well, thank you.
And next we'll move on to Board discussion and open it up for Board members to ask questions or to begin discussing the proposal.

MR. BSCHOR: Mr. Chair, I have a couple questions.

CHAIRMAN FLEAGLE: Denny.

MR. BSCHOR: First of all for Forest Service Staff, are you aware of any fisheries that have been closed by us because of conservation concerns with the use of our permit system?

CHAIRMAN FLEAGLE: Jeff.

MR. REEVES: Mr. Chairman. Mr. Bschor.
We've taken action once and that was back in 2006, I believe, it is mentioned in the analysis, at Cable Creek, which is managed as a smaller system and a noted harvest of, I think it was 10 or 11 fish was caught right at the beginning, and so immediate action was taken to shut the drainage down to all fishing to further protect the stock.

MR. BSCHOR; Mr. Chairman. I'd ask the State also if they agree with the figures or have seen the figures that our Staff has indicated as far as the sport catch per year, are your figures the same, estimated sport catch per year?

MR. PAPPAS: Mr. Chairman. Mr. Bschor.
The sport catch, yes, the -- the only difference we -- the sportfish managers in Southeast and a lot of places that use two to three percent catch and release mortality, yes, that is also mentioned, a range from two to five percent, but we use two to three percent mortality -- catch and release mortality.

Thank you.

MR. BSCHOR: Does anyone have an indication of the amount of use on small versus large streams? I know the large streams I've read is -- it sounds like they're more impacted with -- because of the -- I would guess because they have bigger stocks but do we have any figures on small versus large stream
use, and I'll ask both of you that question.

CHAIRMAN FLEAGLE: Jeff, go ahead.

MR. REEVES: Mr. Chairman. Mr. Bschor.
From the Federal subsistence fishery I can definitely
speak for Prince of Wales Island since I live down
there, there is a very minute amount of subsistence
reported, particularly the harvest, and that does show
in the table on Page 43, and our permit does ask that
if a fisher is even un -- if they fish but they're
unsuccessful to report their location of fishing, and I
don't recall if we had a whole lot of reports of the
small systems, but you can tell that basically a lot of
-- or looking at this list most of these are bigger --
managed bigger systems, unless you start seeing like
handline or spear, some of those are considered smaller
systems.

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Mr. Chairman. Mr. Bschor.
Regarding the large versus small streams, the
information I have in front of me is, you know, 60
percent of the harvest from recent years has come from
those 16 streams and it depends upon effort, the
statewide harvest survey may not have the resolution
for one person.

Thank you, Mr. Chair.

MR. BSCHOR: And then one last question
for Forest Service Staff again. An estimate of -- this
may be in here, maybe I missed it, but what percentage
of the permits that we issue would be considered to be
on small stream systems, or maybe number of permits,
whatever figure you might have there.

MR. REEVES: Mr. Chairman. Mr. Bschor.
We do not issue the permit, you know, the -- by the
drainage, it's a blanket permit. But when the permits
come back like I said the amount of small systems
showing up is really -- it's actually fairly small.
One thing off the top of my head, I keep a spreadsheet
each year of, you know, how the permits report and
typically what I can tell you is about two-thirds to
three-quarters of the permits come back to us reporting
they had no fishing effort or they did not fish.

CHAIRMAN FLEAGLE: Further comments,
discussion. Gary.

MR. EDWARDS: I appreciated putting up that one slide, I knew we had looked at this issue many times but I hadn't realized that many and just as a comment, in looking at it, it almost begs the question is what part of rejected don't you understand because I didn't realize how many times we had rejected this issue but it was kind of interesting to see it all at once.

You know I think this Board and I know, I, personally, I've always had conservation concerns about down there, in fact, it almost begs the question, why do we allow any fishing at all, whether it's subsistence or even catch and release sportfish on many of these populations but, you know, the question still continues to come up is the amount of fish that are taken in the commercial fishery and, you know, several times when this issue has come in front of the Board, you know, we've raised that question just as the RAC has raised the question and I know there's been an effort to go back to some level of reporting but it seems to me that before, you know, we take this issue on that we ought to have a much better understanding of exactly what's taking place out in that commercial fishery and what impact that is having and every time we raise that there seems to be a general acknowledgement of it but then there doesn't seem to be any follow through and it seems to me that if we had that information in front of us it might make it easier for this Board to try to maybe share that same level of conversation that the State has.

CHAIRMAN FLEAGLE: Other Board questions, comments, discussion.

MR. LOHSE: Mr. Chair. I was just listening to both sides and I just had a couple questions I'd like to ask and one of the things that I'm wondering is what is the current Federal reporting periods for our permits, what's our time -- how timely is our reporting and what are the current State reporting permits, State reporting requirements for the sportfishery, what kind of timelines do both of those have?

CHAIRMAN FLEAGLE: I'm scanning for
1 responses, we got Jeff for the Federal side it looks
2 like.
3
4 MR. REEVES: Mr. Chair. Mr. Lohse.
5 For the Federal permits they have a season on them and
6 we ask -- or require that the permit be returned within
7 15 days of the end of the season or of completion of
8 the harvest limit and in the analysis, and I think I
9 mentioned this, it's at nearly 100 percent and I
10 believe since then we are at 100 percent permit
11 returns. And with the few that we do have that just
12 don't come right back we do take the time to track
13 those permits down.
14
15 MR. LOHSE: But there is no in-season
16 reporting, there's no way to keep track of what's going
17 on as the season progresses?
18
19 MR. REEVES: We have no requirements
20 other than, I believe, one year we asked that people
21 fishing small systems, you know, get a hold of us if
22 they harvested. Since then we -- I, personally, make
23 contact via phone calls to permitholders during the
24 course of the fishery to keep track and we spend a lot
25 of time on the ground on these drainages, at least on
26 Prince of Wales Island, and depend on law enforcement
27 also to report into myself, you know, every -- as they
28 make comments. Because at 85 drainages and one of me
29 it's hard to get everywhere.
30
31 MR. LOHSE: Thank you. Mr. Chair,
32 could you ask the Alaska Department of Fish and Game
33 what they have for in-season monitoring?
34
35 CHAIRMAN FLEAGLE: Sure. Just a brief
36 comment on Jeff's response, I like that he said it's
37 hard but not impossible, 85 streams, right.
38
39 George.
40
41 MR. PAPPAS: Yes, reporting
42 requirements at this time are you're merely required to
43 record the steelhead harvest on the back of your
44 license, sportfish license once retained.
45
46 CHAIRMAN FLEAGLE: But that's not
47 reported, that's recorded but not reported, correct?
48
49 MR. PAPPAS: That is correct. The
50 harvest is estimated through the statewide harvest
survey post-season and the conservative regulations that are established by the Department of Fish and Game that less than one percent of the fish being over 36 inches solves the need for in-season management in most streams.

CHAIRMAN FLEAGLE: Okay, and there's the difference Ralph.

MR. LOHSE: Thank you. And I had one other question. I was just -- we've been talking about small streams and small stocks and possibly we have someone here that can enlighten me on the biology of that. Are steelhead prone to stray, I mean do steelhead return to their original stream or do they do like Dolly Varden and cutthroats and go up streams of opportunity and maybe these small streams only can support so many fish and those fish aren't necessarily the same fish that were raised there, and I was just wondering if anybody has any information on that?

CHAIRMAN FLEAGLE: Charlie.

MR. SWANTON: Mr. Chairman. Mr. Lohse.

I think that Dr. Wheeler said it best in her summary comments that steelhead by and large are a very complex multi-life history species that that's sort of a question that would be very difficult. I think that one thing to keep in mind is that if they didn't do some straying then there'd be very few drainages with them in them but I think that Mr. Pappas cited that there were 331 given drainages in Southeast Alaska so I think that that gives you some indication with regards to the fidelity. But, you know, there are spring runs, fall runs, they show up at different periods of time. There were references earlier to, you know, fish showing up in different drainages pre- and post-spawning. You know the life history characteristics of steelhead are fascinating but at the same time for somebody such as myself that's a little bit more salmon centric, they're frustrating at the same time.

MR. LOHSE: Thank you. Mr. Chair, can I make a comment on that?

CHAIRMAN FLEAGLE: (Nods affirmatively)

MR. LOHSE: I do know from personal experience that one year you can have Dolly Varden in a stream and nobody catches them and the next year you
don't have Dolly Varden in the stream and two years 
later you've got Dolly Varden in the stream and I was 
just wondering if steelhead possibly did the same 
thing, whether there was enough migration that the fact 
that you've only got 10 pair of spawners in a stream 
this year really doesn't mean that that stream's only 
supporting 10 pair of spawners, that you might have 
more the next year or you might have none the next 
year.

CHAIRMAN FLEAGLE: That didn't sound 
like it wanted a response but thank you for the 
comment.

MR. LOHSE: I would have liked a 
response if somebody had anything that they could add 
to that. Because I think it really enters into this 
discussion when we start talking about these small 
streams and small populations. Many of these small 
streams go directly into the ocean, many of these small 
streams go into larger streams that have viable 
populations. You can't -- when you have a fish that 
doesn't return necessarily to its natal stream, you 
can't decide whether a stream is in trouble or not by 
how many fish are there every year because they're 
still viable streams and some years they're not viable 
because food conditions -- some years are not viable 
because of water conditions, now do -- and I know --
I'm just talking Dollys and cutthroats, I don't know 
what happens with steelhead but I do know that they 
will go to other -- you know, if the conditions are 
wrong they'll go to another stream instead of to that 
stream and when the conditions are right they'll go to 
that stream and that affects this idea of protecting 
our small streams. You can't protect something that's 
a constant moving target and that's why I was wondering 
about it.

CHAIRMAN FLEAGLE: Any additional 
comments. Niles.

MR. CESAR: I'd like to ask Dr. Glenn 
Chen to comment on this as he was one of the principal 
authors for the Staff Committee.

CHAIRMAN FLEAGLE: Glenn, welcome.

DR. CHEN: Mr. Chair. Members of the 
Board. Glenn Chen with the Bureau of Indian Affairs. 
As the Department has mentioned steelhead have a very
complex life history and we were looking at the question of whether the issue of small populations, or "populations" in some of these streams. Some indications that there are a lot of straying in some of these -- between these streams. These observations come from some existing studies of steelhead in Southeast Alaska. So this brings the question, are these truly discreet populations, a stream with 10 or 20 fish or is it truly a closed population. A couple things would argue against that.

If you look at the conservation biology literature, there's this notion of minimum viable population size and under conditions where there's absolutely no harvest or any human impacts a population of 10, 20 or 30 individuals of animals would eventually go extinct through factors such as genetic and so forth. This notion that there's -- or this observation that there's straying where fish go between streams suggests that there actually might be something such along the lines of what's called a meta-population (ph) going on here so you might have fish that are ascending a series of streams for spawning, not necessarily the same stream every year but perhaps a different stream, but that they're using a collection of streams and this then would imply that a meta-population approach where you manage a series of streams as a suite with this "meta-population" might be more appropriate than just looking at a single stream and it's "individual" isolated population.

Thank you.

CHAIRMAN FLEAGLE: Thank you, appreciate the comments. Other Board discussion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready to place a motion on the floor. Denny.

MR. BSCHOR: Before we do that, Mr. Chair, I have one more just point that we've -- since we've heard this, how many years, five years in a row now or something like this, we've discussed these issues, I think we all have a pretty good idea of what's really happening and what isn't. One of the issues that didn't come up today is the size limit situation on the sportfishing, and why not do that in the Federal regs, and we have quite a -- for the new
members of the Board, I want to make sure you understand we've had a lot of discussion about that and there was -- I remember testimony in the past where there was concerns about, you know, catching a smaller fish, not being able to take it and then trying to catch that 36 incher and the likelihood of that is less and that sort of thing, and I think in the past we've looked upon that as being quite a limit to getting the subsistence fish and being done. So I just wanted to reiterate that for the new Board members.

But I also have not -- I'm still where I have always been as far as the amount of use, I mean 30 fish on average a year for subsistence users throughout Southeast Alaska I can't see that that's a major problem. Now, we can speculate a whole lot about, well, maybe more are taken, there probably are but even if it was twice as many it wouldn't be many compared to sportfishing and commercial fishing so I'm still right where I was the last five years we've dealt with this, or the last four years we've dealt with this.

So, yes, Mr. Chair, I'm prepared to make a motion.

CHAIRMAN FLEAGLE: Please do.

MR. BSCHOR: In line with the Chair's request, I move to adopt Proposal FP09-03, however, I need to mention that I plan to vote against that proposal and that would be in line with the Regional Advisory Committee -- Southeast Regional Advisory Committee's position -- recommendation.

CHAIRMAN FLEAGLE: I have a motion, is there a second.

MR. CESAR: I'll second.

CHAIRMAN FLEAGLE: Got a second. Do you want to speak further to that motion, Denny.

MR. BSCHOR: Yes, Mr. Chair, I will. I said some of that already but just to reiterate reported Federal harvest is extremely low Southeast wide, as I said 30 fish, or I made that point as far as the differences in harvest. The Federal Program has the ability to determine how many fish are being taken where and I don't see that the State systems are that
specific. Federal managers can make in-season adjustments and we have done that if conservation problems arise -- conservation concerns arise. We have adjusted permit stipulations to reduce conservation concerns and there is information in Appendix B that talks about that. I think we've been operating in an adaptive way and I don't see that that has caused any conservation problems.

I will say again as I have said every time I've spoken on this issue, that I am very concerned that we have steelhead management that's effective and that maintains the resource because I think steelhead is an extremely important fisheries resource. I want to make sure everyone understands my position on that.

I do think the proposal would burden the subsistence users without a demonstrated need.

I don't believe -- I probably should have asked this question, but I don't believe our Federal law enforcement officers have experienced any problems, although I can't say that for certain, that's what I think has happened but I could be corrected on that issue. If there have been I don't think there have been major ones or a lot of them.

And then lastly requiring fin clipping, once, again, is unnecessary for identification of subsistence taken fish in my opinion.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Denny. Other Board members.

(No comments)

CHAIRMAN FLEAGLE: Well, I'd like to agree with Denny's assessment on the proposal. And in addition to what he said I want to recognize the State's insistence in bringing this issue forward. I mean there's obviously some concern to be forward looking in their management of steelhead in Southeast and I do recognize that, you know, strong desire to be proactive in a conservation manner and I do acknowledge that without some type of oversight or regulation scheme to protect some of these smaller streams there could be a small chance that a local stock could be
harmed but I think I've heard that we have adequate protection through the in-season management with the closure authority. I also find that in agreement with Denny that we're trying to address a problem that hasn't yet occurred and that, to me, to use the same words, I haven't been shown that there's a demonstrated need to institute a regulation change that would cause some restriction on subsistence uses. And finally this one would be a hard issue to go against the Council recommendation under .805(c) the three criteria. So I think that I'm going to go along with Denny and vote against this proposal.

Any other comments.

Gary.

MR. EDWARDS: Again, Mr. Chairman, just to kind of echo what you said, obviously the State feels very concerned -- is real concerned about this issue otherwise they wouldn't keep bringing it back and I think Board certainly has a good track record when it comes to putting conservation first and I think the same could be said of the RAC and I guess the question is is there something we're missing here, you know, the fact that obviously, you know, each time we handle this the State is obviously not satisfied with the decision so they keep bringing it back because of the concerns they have and I don't know if there's something in between here that we're missing that we could come up with collectively that addresses their concerns, addresses the subsistence concerns and more importantly ensures the conversation of the species. Because I'm like you and I think Denny said if very well in all the points he made, I can certainly support, but it just seems to me we haven't kind of reached the right resolution and I don't know if there is this magic silver bullet out here that we could all come together on and say that's the answers, but.....

CHAIRMAN FLEAGLE: Thank you. These are the types of issues that I think the Board is trying to be able to work a little more closely with the State on in proactive measures and I think that's kind of one of the major intents of the recently signed memorandum of understanding, is that we want to have the managers work more closely together and not come to the Boards with competing issues that -- competing biology and et cetera, et cetera. And this might be a good opportunity for our State and Federal managers in
the area to just sit down and say what is it that we can address, you know, which is real favorable from the Board's perspective. I'm not going to say that I don't want to see this coming back to us, I think that Gary's right I mean there's obviously some concern and if that concern could be worked out to where there's some type of positive change, but for right now I think I'm going to vote against the proposal as I stated before.

Any other comments.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question.....

MR. CESAR: Question.

CHAIRMAN FLEAGLE: Hang on, question's called but not recognized. Bert.

MR. ADAMS: Okay, thank you, Mr. Chairman. I just want to make a point here that, you know, the Board uses three criteria to determine, you know, whether you're going to vote this way or that way. I want to, you know, apprise you of the fact that the Council, the Southeast Regional Advisory Council uses four criteria. And all of the three that you have here but we also add to it, you know, is there any adverse or, you know, effect on non-subsistence users as well as subsistence and conservation and, of course, is it -- is the proposal substantiated with good data and so forth. But I just thought I'd make that point to you and, you know, that gives us good reason then that the Board, we think, you know, will give us deference in the fact that we use four criteria.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Bert.

The question's now recognized on Proposal 3. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP09-03. Mr. Bschor.

MR. BSCHOR: No.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: No.
MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: No.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: No.

MR. PROBASCO: Ms. Masica.

MS. MASICA: No.

MR. PROBASCO: And, Mr. Lonnie.

MR. LONNIE: No.

MR. PROBASCO: Mr. Chair, motion fails zero/six.

CHAIRMAN FLEAGLE: All right, thank you, Pete. Commissioner.

COMMISSIONER LLOYD: Thank you, Mr. Chairman. I was trying, again, to respect your process where you weren't really looking for State comments within your deliberation and your vote but I wanted to follow-up since I think the offer or the entreaty was made of further cooperative work, especially between our Staff prior to the State potentially coming back with yet another invitation for you to say no, and there may well be some room for better collaboration particularly if this Board made it known to their Staff that that type of attitude in terms of looking for potential positive means of collaborating on the conservation concerns that the State continues to have on these small populations in Southeast. So I'm wondering if you're willing either to give the Federal Staff a sense of the Board or even some form of direction to work specifically on steelhead conservation issues in Southeast prior to your next fishery meeting with the goal of coming back to the Board, if warranted, with a joint proposal with the State of Alaska.

CHAIRMAN FLEAGLE: That's a good suggestion. And I think, we, as a Board, talked about the newly negotiated memorandum of understanding, that was -- not to be that specific but it was our intent to try to have this stuff largely worked out before it comes to this level and I think that's a really good
idea. I don't know how much directive authority we have over our Staff but I'm going to ask Board members if there's any opposition to at least the idea to give it to Pete and to Dr. Wheeler to work with OSM Staff on it.

(No comments)

CHAIRMAN FLEAGLE: None. Pete, what are your thoughts?

MR. PROBASCO: Mr. Chair. I think the way to tackle this, there's two parts to it. One, my Staff needs to work very closely with Mr. Bschor's Staff, since this is Forest Service and I think what we need to do along with working with the State is draft a charge statement so that we're clear on both sides what we're trying to tackle and then we go from there on each respective side, we'll look at it, and once we get agreement on that then we could best utilize our resources towards something that can be resolved by the next fishery meeting.

Mr. Chair.

CHAIRMAN FLEAGLE: Would that be something that we have to do formally here or just by a nod of consent and you and I work up that, from this side, what our understanding would be?

MR. PROBASCO: Mr. Chair. I think with hearing no objections from the Board members as well as Commissioner Lloyd's willingness I think we can at least work towards reaching some type of charge statement. We do have this smaller group that you and Mr. Oviatt along with Ms. Cunning and others that we can probably get to that step initially and then bring it back to our side to review on how the State would like to do it.

CHAIRMAN FLEAGLE: Okay. Is there any objection from Board members that we handle this at our level and try to work at least towards some positive goal here. Denny.

MR. BSCHOR: My light is not on to object.
MR. BSCHOR: It's to support doing that. Because I think if we don't start looking for that common ground every cycle of fish we will have this issue coming back to us so why not work on it and see if we can make some headway.

CHAIRMAN FLEAGLE: Great. Okay, that will be our charge at this level anyway. Thank you for the suggestion Commissioner.

COMMISSIONER LLOYD: Well, thank you, Mr. Chairman. And I do appreciate the sense of the Board in this regard and as we go along I'll be looking for further opportunities for that kind of cooperation between the Federal and State systems.

Thanks.

CHAIRMAN FLEAGLE: Only one per cycle.

(Laughter)

COMMISSIONER LLOYD: We'll see how that goes.

CHAIRMAN FLEAGLE: Okay, comment withdrawn. Okay, and real quick response to Mr. Lohse's comments. I knew I heard it in some discussion somewhere and I finally found it and they did state it in the InterAgency Staff Committee comments that field observations from studies in the region indicate that adult fish appear to move between different watersheds during their spawning migrations. So we did have a -- it was said it just was -- I couldn't identify where and how specific but at any rate just to answer that hanging question.

MR. LOHSE: Thank you, Mr. Chair. I was pretty sure I had read that but I just wanted it on the table because I think it was very applicable to what we were discussing.

CHAIRMAN FLEAGLE: All right, okay, thank you. At this time I want to recognize some new Council Chairs with us. We have -- I'll just let you guys introduce yourselves because I'm not sure I could pronounce the last name.
MR. BROWER: Thank you, Mr. Chair. My name is Harry Brower, I'm the Regional Council Chair for the North Slope.

MS. ENTSMINGER: I'm Sue Entsminger and I'm Chair of the Eastern Interior.

MR. SAVETILIK: Myron Savetilik.

CHAIRMAN FLEAGLE: Welcome. And I also recognize Ray and I gave everybody an opportunity for opening statements if anybody wants to have just an opening comment.

Sue.

MS. ENTSMINGER: Yeah, I just wanted to comment on the discussion you just had. I'm really excited to hear stuff like this. And this working together, to me, is critical. I think Alaska has a lot of growing pains and maybe government has gotten too big and it sometimes becomes very frustrating for the user and I really appreciate it and I'd like to see us go forward in steps like that.

Thank you.

Thanks. And right after we came back from lunch we had Maureen give a little discussion on the student art contest posters in the back of the room and she was saying that she wished that there were some Council Chairs present to hear her discussion because you guys are going to help her decide the winner. And, Maureen, would you like to just address that again real quickly and the expectation from the Council Chairs.

MS. CLARK: Thank you, Mr. Chairman. Just very quickly, if the Council Chairs would take a look at the student art and hand me your ballots when you get a chance to pick. You'll be picking the cover art for our fisheries regulation book.

Thank you.

CHAIRMAN FLEAGLE: Great, thank you.

We'll now move on with our agenda. And we have Proposal 15. I see we have a changing Staff.
CHAIRMAN FLEAGLE: We have now joining us Pippa Kenner who's going to do the analysis for Proposal 15, welcome.

MS. KENNER: Thank you, Mr. Chair. Members of the Board. I am Pippa Kenner, anthropologist with OSM. The Staff analysis for FP09-15 begins on Page 65 of your book.

FP09-15 submitted by the Alaska Department of Fish and Game requests that a fisheries no-Federal subsistence priority customary and traditional use determination be made for the Juneau road system. A companion proposal, FP09-04 requests that no Federal subsistence fishing permits be issued for any streams flowing across or adjacent to the Juneau road system.

The proponent submitted FP09-15 because in its view the Board did not evaluate the eight factors concerning customary and traditional use of each fish stock within fishing Districts 11 and 15 by specific rural communities. The Juneau Road System lies within Districts 11 and 15 as indicated on Map 1 on Page 66 of your book. This is a similar request as in FP08-04 last year which addressed the State's conservation concerns.

Both the Council and the Board did not support FP08-04. The Council determined, and I quote from the Council recommendation:

That there was no information presented that indicated that subsistence fishing in the Juneau area waters was inappropriate. No need was seen to make a location specific customary and traditional use determination for the Juneau Road System.

No new information has become available since last year that would create a reason to change the conclusion.

The OSM conclusion as presented in the Board materials is to oppose Proposal FP09-15.

Thank you.

CHAIRMAN FLEAGLE: Thank you.
Questions.

(No comments)

CHAIRMAN FLEAGLE: Next we hear summary of public comments. Robert Larson.

MR. LARSON: Mr. Chairman. We have no written public comments.

CHAIRMAN FLEAGLE: Thank you. Do we have any public testimony, Pete.

MR. PROBASCO: We have no public testimony, Mr. Chair.

CHAIRMAN FLEAGLE: All right, we'll move to the Regional Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. The Council recommendation is found on Page 64 of your handbook. The Council opposes this proposal. The Council determined that subsistence fishing in the Juneau area waters was appropriate and would not result in a conservation concern for any species. The proposal would not affect non-subsistence users but would be potentially detrimental to subsistence users. There was no evidence presented that a conservation concern currently exists or would potentially exist in the future.

Title VIII specifies the taking of public lands of fish and wildlife for non-wasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife or other purposes, there is a continuing sportfishery on streams adjacent to the Juneau Road System. Now, if this proposal was adopted continued road construction in the Juneau area would increase the area closed to subsistence without action by the Council. The narrow interpretation of the eight criteria was described by the State, we don't believe it's very valid. The Council interprets the regulation more boldly and agrees that there is sufficient evidence to support the continued customary and traditional use of this area by rural residents.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Bert.
Department of Fish and Game. Oh, sorry, Pete, go ahead.

MR. PROBASCO: I apologize to the Board, Staff just handed me a public testimony on Proposal 15 and it's Mr. Frank Woods.

CHAIRMAN FLEAGLE: Frank Woods, come on up to the table. There's a blank spot to the table, there we go. Thank you, please identify yourself for the record and go ahead with your testimony.

MR. WOODS: Good afternoon. My name is Frank Woods and I'm from Dillingham. And I'm interested in the subsistence priority because I am a subsistence user and I come from a long generation of subsistence users and without this priority in place, a lot of our people in our region wouldn't be able to sustain themselves with the economy and the way it is within the state of Alaska. There is no Carrs, there is no Safeway and there are no supermarkets in a lot of the villages that I represent. They hunt off the land. And I take it this is within Juneau boundaries, this could set precedence for how we look and manage subsistence in Alaska. The priority keeps people fed, it keeps people being able -- it keeps their ability to sustain their families, and that's all subsistence is.

I'm here to testify on behalf of that user group that this group has a priority to protect and I appreciate -- this is my first Federal Subsistence Board so I'm just getting involved because it's time for me to speak up to protect my family and my family's right to subsist off of this great land of ours.

But appreciate -- I was late, the weather's been bad, we were stranded -- good to see you, Pete. Thanks for the intervening and letting me testify.

Thank you.

CHAIRMAN FLEAGLE: Thank you.

Appreciate the comments. Questions.

(No comments)

CHAIRMAN FLEAGLE: Thanks. Fish and Game comments. George.
MR. PAPPAS: Thank you, Mr. Chairman.

George Pappas, Department of Fish and Game. I'm summarizing the Department's full comments that are in your Board book on Page 94 through 99 and these full comments will be entered into the record following my verbal comments.

FP09-15 requests the Federal Subsistence Board demonstrate customary and traditional findings for individual communities use of fish stocks within Fisheries Districts 11 and 15 and the waters crossed by the roads within the current boundaries of the city and borough of Juneau, what we'll call the Juneau Road System. We request the eight regulatory factors concerning customary and traditional use of each specific fish stock by each community for each stream be evaluated and be reviewed by the Federal Board.

The Juneau non-rural area has no specific customary and traditional use determination and currently falls under the Federal regulation category of remainder of Southeast Alaska area. Under this designation the Juneau Road System area is open to the Federal subsistence harvest of Dolly Varden, trout, smelt, eulachon by all residents of Southeast Alaska and Yakutat areas and to subsistence harvest of salmon by all rural residents of Alaska. This overly broad designation provides a Federal priority -- a Federal subsistence preference for the far northern residents of Barrow to fish for salmon on the streams in a southeastern urban community over 1,000 air miles away. This designation also provides a preference to rural residents of -- for example, the southern Southeast community of Hydaburg an urban northern Southeast community over 225 air miles from home. These priorities are unnecessary, unsupportable and contrary to both common sense and the law as recently interpreted by the Ninth Circuit. The Federal Staff analysis does not provide substantial evidence to support a customary and traditional use finding for any specific fish stock in these waterways by any residents from rural communities living outside of the Juneau area. There is nothing in the Staff analysis that would support an argument that a taking of any fish stock on the Juneau Road System constitutes as stated in your regulations, a long established consistent pattern of use incorporating beliefs and customs which have been transmitted from generation to generation for any rural community or that taking of any fish stock on
the Juneau Road System plays an important role in the economy for any rural community.

Because there are no substantial evidence it is clear that the use of the Juneau Road System fish stocks falls outside the regulatory definition of customary and traditional use under 50 CFR Section 100.4. There’s no evidence presented in the Federal Staff analysis that indicates a subsistence opportunity along the Juneau Road System would ever be used by any community in Southeast Alaska.

Application of the September 23rd, 2008 Ninth Circuit Court Opinion in the state of Alaska versus Federal Subsistence Board makes it clear that an adequate record to support C&T determination for a fisheries on the Juneau Road System has not been developed and cannot be established. The Court Decision held the Federal Board's C&T determinations must be supported by substantial evidence of a specific rural community or areas demonstrated customary and traditional taking of a specific fish stock and not a general species within a specific geographic location.

According to the Court, the Board's determination must have substantial basis and fact. The Court added the Federal Board regulations clearly ties C&T determinations to a specific location in which the wildlife population have been taken and each C&T determination must be tied with specific community or area and a specific wildlife populations.

The Court further emphasized that specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas and a C&T determination is a determination that a community or area has taken species for -- a species for subsistence within a specified area.

The Ninth Circuit pointed out that six of the Federal Board's eight factors refer to a pattern of use of a specific fish stock or wildlife populations and a seventh factor also imposes explicit geographic limitations by directing the Board to consider whether there is a consistent harvest or use of fish or wildlife near or reasonably accessible from the community or area.

Available information cannot support a
determination that any rural community has a pattern of
use for any fish stocks on the Juneau Road System.
There has been no consistent harvest of fish stocks on
the Juneau Road System by any rural community and the
Juneau Road System fish stocks are not near or
reasonably accessible to any rural community.

The Federal Staff analysis failed to
provide substantial evidence to support arguments that
use — that the use of the isolated Juneau Road System
stocks can satisfy the Federal Board’s regulatory
definition of customary and traditional use and
likewise fails to provide any substantial evidence to
support any argument that the communities in the area
generally exhibits the Board’s regulatory factors for
making a positive C&T determination for any specific
stocks of fish on the Juneau Road System.

The salmon and trout found on the
individual streams on the Juneau Road System repr —
represent distinct stocks. Evidence to take —
evidence of take of the same general species of fish in
other districts or even in other portions of the same
district cannot be used to establish historic taking of
a specific fish stock on the Juneau Road System. The
Juneau stocks are different stocks than — of fish than
any — historically taken by any Southeast rural
community. The Federal Board has not developed a
customary and traditional use determination specific to
freshwaters for Districts 11 and 15. It is extremely
unlikely that any rural community would be able to
provide substantial evidence of customary and
traditional use factors for any of the fish stocks on
the Juneau Road System.

Separating out this non-rural area as
having a no demonstrated customary and traditional use
of its fish stocks by Southeast rural communities also
— would also allow the Board to carry out its
responsibilities of balancing the competing purposes of
ANILCA and avoiding unnecessary restrictions on non-
subsistence users.

In summary, the current Federal Staff
analysis provides no evidence of customary and
traditional takings of any specific fish stock along
the Juneau Road System by any specific rural community.
Based on the Board’s regulatory factors and the
September 23rd, 2008 Ninth Circuit Court Opinion in the
state of Alaska versus the Federal Subsistence Board we
I think you would agree that including the Juneau Road System fish stocks in the current remainder of -- remainder area of C&T determination is overly broad and unsupportable. We urge the Federal Board to correct this determination by evaluating the evidence of any takings of specific fish stocks from the Juneau Road System streams by specific rural communities within the Fisheries Districts 11 and 15. If it does so, the Board will find there’s no substantial evidence to support subsistence C&T priority for Federally-qualified rural residents of any rural community in Southeast Alaska or any rural community in other areas of Alaska to fish under Federal regulations in these limited freshwater streams for any of these streams sensitive and tightly restricted Juneau Road System stocks.

We recommend the Federal Board adopt this proposal.

Thank you, Mr. Chair.

***********************************************************************
STATE OFFICIAL WRITTEN COMMENTS
***********************************************************************

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-15 Juneau Road System Customary and Traditional Use Determination

Introduction:

Proposal FP09-15 requests that the Federal Subsistence Board (Federal Board) demonstrate customary and traditional findings for individual communities for fish stocks within Fisheries Districts 11 and 15 on waters crossed by roads within the current boundaries of the City and Borough of Juneau, consistent with the course of action suggested by a member of the Federal Board on January 13, 2006. The proponent requests the eight regulatory factors concerning customary and traditional use of each specific fish stock by each community for each stream be evaluated and reviewed by the Federal Board. The Juneau non-rural area has no specific customary and traditional use determination and currently falls under the federal regulation category Remainder of the Southeastern Alaska Area. Under this designation, the
Juneau road system area is open to the federal subsistence harvest of Dolly Varden, trout, smelt, and eulachon by all rural residents of the Southeast Alaska and Yakutat areas, and to subsistence harvest of salmon by all rural residents of Alaska. These overly broad designations which provide a federal subsistence preference for the far north rural residents of Barrow to fish for salmon on streams in a southeastern urban community over 1000 air miles from home, and which provide a preference to rural residents of the southern southeast community of Hydaburg, in an urban northern southeast community over 225 air miles from home, are unnecessary, unsupportable, and contrary to both common sense and the law as recently interpreted by the Ninth Circuit.

Background:

The waters that would be subject to this determination constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. They are very important to the residents of the Juneau area but are not important to rural residents and are rarely used for any purpose by rural residents of any community. In acting on previous proposals, the Federal Board suggested it would be appropriate to adopt a determination of no Federal subsistence priority. But later, in December 2007, the Federal Board rejected the State’s proposal (FP08-04) requesting such a determination, without evaluating the eight regulatory factors concerning customary and traditional use of each fish stock by each community. As early as 2000, the Interagency Staff Committee informed the Federal Board that there was a lack of substantial evidence to show that communities in the region have customarily and traditionally harvested and used the stocks of rainbow trout, cutthroat trout, and Dolly Varden along the Juneau road system. The current federal staff analyses does not provide substantial evidence to support a customary and traditional use finding for any specific fish stocks in these waterways by any residents from rural communities living outside the Juneau area. There is nothing in the staff analysis that would support an argument that the taking of any fish stock on the Juneau road system constitutes a long established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation for any rural community, or that the taking of any fish stock
on the Juneau road system plays an important role in the economy for any rural community. Because there is no substantial evidence for these arguments, it is clear that any use of Juneau road system fish stocks falls outside the regulatory definition of customary and traditional use, see 50 C.F.R. §100.4. No evidence is presented in the federal staff analysis that indicates a subsistence opportunity along the Juneau road system would ever even be used by any community in Southeast Alaska.

Application of the September 23, 2008, Ninth Circuit Court opinion in State of Alaska v. Federal Subsistence Board, 544 F.3d 1089, makes it clear that an adequate record to support a C&T determination for the fisheries on the Juneau road system has not been developed and cannot be established. As the Court held in its decision, Federal Board C&T determinations must be supported by substantial evidence of a specific rural community or area’s demonstrated customary and traditional taking of a specific wildlife population or specific fish stock, not general species, within specific geographic locations. Alaska v. Federal Subsistence Board, at 1094-99. The Board’s determination must have a substantial basis in fact. Id. at 1094. The Court held: Under 50 C.F.R. §100.16, C & T determinations should identify the specific community’s or area’s use of specific fish stocks and wildlife populations, and not Chistochina’s use of moose in general. Id. at 1096. The Court added that the Federal Board’s regulations clearly tie C & T determinations to the specific locations in which wildlife populations have been taken and each C & T determination must be tied to a specific community or area and a specific wildlife population. Id. at 1097 (emphasis in original). The Court further emphasized: Specific communities and areas and specific fish stocks and wildlife populations are, by definition, limited to specific geographic areas and a C & T determination is a determination that a community or area has taken a species for subsistence use within a specific area. Id. at 1097-98 (emphasis in original).

The Ninth Circuit pointed out that six of the Federal Board’s eight C&T factors refer to a pattern of use of specific fish stocks or wildlife populations and a seventh factor also imposes explicit geographic limitations by directing the Board to consider whether there is consistent harvest and use
of fish or wildlife . . . near, or reasonably accessible from the community or area. Id. at 1098; see also 50 C.F.R. 100.16(b). Available information cannot support a determination that any rural community has a pattern of use of any fish stock on the Juneau road system. There has been no consistent harvest of fish stocks on the Juneau road system by any rural community, and the Juneau road system fish stocks are not near or reasonably accessible to any rural community. Federal staff reports fail to provide any substantial evidence to support arguments that use of the isolated Juneau road system stocks can satisfy the Federal Board s regulatory definition of customary and traditional use, see 50 C.F.R. 100.4, and likewise fail to provide any substantial evidence to support an argument that any community or area generally exhibits the Boards regulatory factors for making a positive C&T determination for any specific stock of fish on the Juneau road system. See 50 C.F.R. 100.16(b).

In Alaska v. Federal Subsistence Board, the Court upheld a C&T determination for Chistochina residents to take moose upon all federal lands within Game Management Unit 12 based on: (1) the assumption, which the Court thought had support in the record, that the populations of moose which had been historically taken by Chistochina residents within a 2500 square mile area were the same populations of moose on other federal lands within the Unit; and that (2) the alternate rationale, somewhat dependent on the first, that the Federal Board was justified by a benefit to management in designating a C&T area for Chistochina to take those moose within all 5900 square miles of federal lands within the Board s pre-determined areas A, B and C, rather than being required to carve out a new area for Chistochina limited to just the 2500 square miles of that community s actual historic use. Id. at 1096-97, 1099-1100.

On the Juneau road system, the situation is far different from what the Ninth Circuit Court believed the situation to be for moose in GMU 12. First, the salmon and trout stocks found in individual streams on the Juneau road system represent distinct stocks. Evidence of take of the same general species of fish in other districts, or even in other portions of the same districts, cannot be used to establish historic taking of the specific stocks on the Juneau road system. The Federal Board has not developed a
customary and traditional use determination specific to fresh waters of Districts 11 or 15. It is extremely unlikely that any rural community would be able to provide substantial evidence of the customary and traditional use factors for any fish stock on the Juneau road system.

Second, because there has been no historic customary and traditional taking of the specific fish stocks on the Juneau road system by any Southeast rural community, a perceived benefit to management cannot justify including these Juneau fresh waters within the rest of Districts 11 and 15. The Juneau stocks are different stocks of fish than those which any Southeast rural community has historically taken. Moreover, federal and state fisheries management both benefit by utilizing a separate regulatory framework for these easily accessed high use waters where fish stocks must be managed through much more conservative regulations than are required in other areas of the districts. Separating out this non-rural area having no demonstrated customary and traditional use of its fish stocks by Southeast rural communities also allows the Board to carry out its responsibilities of balancing the competing purposes of ANILCA and avoiding unnecessary restrictions on non-subsistence users. Even if the Board were to conclude that there has been customary and traditional taking of other fish stocks by some rural communities within Southeast Alaska and were to mistakenly believe that it has discretion to lump the specific fish stocks of the Juneau road system together with those other fish stocks taken within Districts 11 and 15, there would be good reason for the Board to decline asserting that perceived discretion.

Impact on Subsistence Users:

Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. In fact, only two sport-caught fish were reported as having been caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. There is no evidence of
customary and traditional taking of specific fish stocks for subsistence use by any rural resident in freshwaters that cross the road system within the City and Borough of Juneau boundaries. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on Juneau roads, and such harvest would not be cost effective. Based on the lack of documentation of any subsistence use, the Federal Board should exempt the fresh waters of the Juneau City and Borough road system area from region-wide regulations by making a negative customary and traditional finding for all communities for all fish stocks in freshwaters that cross the road system within the City and Borough of Juneau boundaries. This action would have no impact on federally qualified rural subsistence users.

Opportunity Provided by State:

State regulations provide for a variety of sport fishing opportunities in freshwaters and adjacent shoreline areas, but these opportunities are more restricted than elsewhere in Southeast Alaska. Most people fish for subsistence and recreational use in marine waters. The Department's sport fisheries website for the Juneau road system lists only 15 freshwater streams and, although saltwater shoreline areas are also available for anglers to fish, fishing in saltwater for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (roughly 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). Fish populations in these streams are relatively small. Given Juneau's relatively large human population and road access, the potential exists for over harvesting local fish resources if additional harvest opportunity is provided. Several small roadside streams are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species as well. Juneau roadside bag limits, possession limits, and size requirements differ in several respects from regional regulations. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. In addition, cutthroat trout size limits are more conservative in the Juneau area than in other
areas of Southeast Alaska. These restrictions on Dolly
Varden and cutthroat trout are also effective in all
salt water adjacent to the Juneau City and Borough road
system to a line mile offshore.

Because Juneau is a non-rural area,
residents of Juneau who historically used fish stocks
in the area are ineligible to participate in the
federal subsistence fishery and cannot qualify for a
federal customary and traditional use determination.
The existing federal subsistence regulations could lead
to even more restrictions on non-federally qualified
users (e.g., Juneau residents) in the non-rural area
along the Juneau road system on both state and federal
lands. These further restrictions -- which are
unnecessary since there are no existing subsistence
uses in need of continuation -- could potentially force
Juneau residents to travel long distances to rural
areas to participate in freshwater sport fisheries.
They might also result in increased state subsistence
and personal use participation in these areas. They
could thus create increased competition and be
detrimental to the satisfaction of subsistence needs in
those rural areas. Further state restrictions along
the Juneau road system would also impact opportunities
for those who relocate from rural areas to Juneau and
rely upon opportunity in the Juneau area to continue
their fishing activities.

Conservation Issues:

While conservation concerns are not a
factor in the Federal Board’s C&T analysis, they do
provide a common sense rationale for separating the
Juneau Road system and specific stocks in the area from
other remainder areas of Southeast Alaska and for
making sure that only communities with established
customary and traditional use of the specific stocks in
the area receive a federal subsistence priority on
those stocks. The Department has continually expressed
conservation issue concerns to the Federal Board about
sustainability of highly accessible fisheries on the
Juneau road system if these fisheries are subjected to
any participation under liberal federal subsistence
harvest regulations. This proposal specifically
requests a Customary and Traditional determination for
specific fish stocks in a specific area. Comments
illustrating the Department’s ongoing concerns and
conservation issues were previously presented both in
writing and orally to the Federal Board for proposals
FP06-31, FP08-04, and the Department’s Fisheries Request for Reconsideration 06-05, these prior comments are incorporated by reference. Additional concerns are published in the Department comments for FP09-04 contained in this Federal Board meeting book.

Jurisdiction Issues:

According to the Department’s Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal lands. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership and are not within the Tongass Forest boundary prior to crossing Juneau roads to enter marine waters. Other streams along the Juneau road system flow entirely on non-federally owned land. The federal analysis in the September 2007 Southeast Regional Advisory Council Fisheries Meeting Materials book, page 84, incorrectly states:

Federal waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of Chilkat Peninsula (near Haines) . . . all within exterior boundaries of the Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

We requested this statement be corrected before providing the 2008 analysis to the Regional Advisory Council, Federal Board, and subsistence users. We also requested that the federal maps be corrected to accurately portray the Tongass Forest boundary which specifically excludes a significant portion of the Juneau area. To date these corrections have not been made.

In order for rural residents to know where they can legally participate in federal subsistence fisheries, and to aid enforcement personnel in determining whether activities are legal, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not claimed under
federal jurisdiction. Significant portions of lands surrounding the Juneau road system are bordered by state or private lands, where there either is no federal jurisdiction or where persons cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated to the Federal Board the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations and the individual is on State or private lands, including State-owned submerged lands, the person may be cited. A negative C&T determination for fish stocks on the Juneau road system will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along that road system.

Recommendation: Support.

The current Staff Analysis provides no evidence of customary and traditional takings of any specific fish stock along the Juneau road system by any specific rural community. Based on the Board's regulatory definitions and factors, and on the September 23, 2008 Ninth Circuit Court opinion in State of Alaska v. Federal Subsistence Board, the current remainder area C&T determination including Juneau road system fish stocks is overly broad and unsupportable. The Federal Board should correct this determination by specifically evaluating the evidence of any takings of specific fish stocks from the Juneau road system streams by specific rural communities. If it does so, the Board will find there is no substantial evidence to support a subsistence C&T priority for federally qualified residents of any rural community in Southeast Alaska or any rural community in other areas of Alaska to fish under federal regulations in these limited freshwater streams for any of these small, sensitive, and tightly restricted Juneau road system stocks.

CHAIRMAN FLEAGLE: Thank you, George. Are there any questions.

(No comments)
CHAIRMAN FLEAGLE: I have one, I'm just trying to figure out how to ask it.

I was just curious, now, I know we've asked about this Juneau road system before and I know it does strike me as somewhat odd that we have a stream system that's accessible to a large -- the third largest community in Alaska that aren't allowed to fish there but yet somebody from Kotzebue can fish there. Does -- I do see the point. We had some pretty good discussion on this the last time this was before the Board. Now, I'm just curious, why would the State make this claim just for the Juneau Road System and not for the entirety of the remainder of the -- of Southeast, the other districts that aren't mentioned, the 11 and 15, there's 4, 6, 7 and 8, they're still, under this, going to still be open to any other rural user? I mean is there some reason that you're focusing just on the road system other than the access to Juneau?

Tina.

MS. CUNNING: These stocks, as you know, are in a high use area and are already tightly regulated. In fact, most of the streams along the Juneau Road System are closed to harvest. But one of the things that we heard a lot of discussion at the Southeast RAC meeting was the people that live in the Juneau area are very concerned about having the fishery closed. And they are a lot of residents that live in the Juneau area that may have lived in other places of Southeast Alaska that now live there and this is their opportunity to go fishing.

That is not the issue. Conservation is not the issue before you in this proposal. The conservation issue is before you in Proposal 4, which you are going to take up next, depending on how you vote on 15, but 15 is a C&T proposal. And this is a remnant of the transfer and the adoption of regulations when you moved into fisheries and because it is an area that has a lot of competing uses, we are really concerned about this and we've tried to go at it in a couple different ways, and there needs to be a C&T for this specific area. That doesn't mean that there isn't a need to address the fish stocks and C&Ts for the remainder of 11 and 15 but this is the most imminent issue in front of us.

CHAIRMAN FLEAGLE: Okay, I appreciate
That's a good explanation. But at some point I suppose we can foresee that these broad areas that we just accepted from the State when the Federal Program started will eventually all need to be sorted out and I guess that's where we're going. But I can understand the explanation, thanks.

All right, then with that we're going to go to the InterAgency Staff Committee comments. Dr. Polly Wheeler.

DR. WHEELER: Thank you, Mr. Chair. I referenced the boilerplate statement that I referenced on the previous statement so I won't read that to you.

But I would add that FP09-15 seeks a finding of no subsistence priority for fish along the Juneau Road System because of concerns over conservation should the existing customary and traditional use finding be retained. However, customary and traditional use determinations are for the sole purpose of recognizing the pool of users who demonstrate a customary and traditional pattern of use and not for resource management or restriction of harvest. Conservation concerns are best addressed through the imposition of harvest limitations or seasonal restrictions rather than by limiting the customary and traditional use finding.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you.

Questions.

(No comments)

CHAIRMAN FLEAGLE: All right. Now, I'm going to lead off with some discussion. This is one of those issues as the State made a very good comment toward, that the Ninth Court Decision on the Chistochina case could have implication on this decision and it's my understanding that the Staff Comments that were prepared on this issue were prepared prior to the handing down of that decision so it appears that we could probably benefit from further analysis on the State's -- or not the State but on this issue based on the court case and -- and I think that's just a brief summary of my understanding of how that court case could be applied. It appears that we don't have adequate recommendations or discussion on that new
court case on this issue right now.

Is that a clear character -- or a fair characterization, Pete?

MR. PROBASCO: I won't repeat, Mr. Chair, what you said, but the decision on the Chistochina occurred, if you will, part way through our process as we deal with this proposal and before this meeting. And so a lot of this analysis was written prior to that, so you are accurate, Mr. Chair, in that context.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: Good time for me to express my appreciation to the State for its comments during this cycle, they were timely, they're, I think, well written and they help, me, at least, understand what the issues are and where the conflicts sometimes are. And I found them particularly helpful in this case because we do have sort of a time warp. We had the State proposal, then we had a Staff analysis and a Council meeting and then we got a Court decision and then we got your comments. And the comments, I think, raise some important questions, but they're not really directed toward the original proposal, they're more toward an exposition of the Court case and as I read them they're really asking for a C&T analysis in 11 and 15. The first proposal I read differently, it was framed in the C&T language but it's really not asking for a C&T analysis, it's asking for an area where there is no C&T, which could, in fact, be the result, but it's a little different characterization.

My recommendation would be that we respond to both, to both the first proposal and to the comments but what we do is take the comments as our starting point and my recommendation would be that based on those comments we direct the Staff to do a C&T analysis for these two subdistricts 11 and 15.

CHAIRMAN FLEAGLE: Process-wise that would be, obviously not available at this meeting now so process-wise, Pete, if we were to take counsel's recommendation to further the analysis, to put more information in front of us in light of that Court case, what would the process look like?
MR. PROBASCO: Well, Mr. Chair,
following the proposal process since we're in a two
year cycle, our next opportunity for fishery related
proposals would be 2011, and so that when we would
prepare that. However, the Board can set their own
agenda and we will respond accordingly and if it's too
compressed then we will tell you that and ask for some
leniency.

Mr. Chair.

CHAIRMAN FLEAGLE: All right, so I'm
not trying to lead the discussion on this but I am.

(Laughter)

MR. PROBASCO: You're the Chair.

CHAIRMAN FLEAGLE: But what I'm
suggesting is the process, just based on the
understanding that I've heard and the concerns laid out
by Staff and by legal counsel, probably the best course
of action would be to put this proposal on the floor
and then take a vote to defer to the next fisheries
meeting or if somebody wants to speed it up maybe
assign it to the wildlife meeting next year, but that
may not be the appropriate place to put it since we
have Staff that come up from the far reaches of
Southeast for this meeting. I guess that doesn't
really matter but it sounds like I -- I would prefer
that we step back and make sure that we have a clear
understanding of what we need to do to be in compliance
with the Court case and that would be a good
recommended track that I'm going to put out there.

Commissioner.

COMMISSIONER LLOYD: Well, thank you,
Mr. Chairman. I'm wondering if you'll entertain some
comments from our legal counsel given that this does
seem to be, you know, not simply a biological or a
regulatory issue but a legal one as well and without
getting too far into the weeds, I think Mr. Daugherty
has a number of comments to add to those of Mr. Goltz
and the rest of the Board.

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. A couple of
points.
First, the Board already has an existing C&T. That C&T is not supported by available evidence. That C&T provides a preference, it will continue to exist if the Board defers this proposal. And deferral of the proposal is effectively allowing an unsupported C&T to remain in place so the State objects to that deferral, Mr. Chair.

The second issue is that the State did not ask for a C&T for the districts, it asked for a C&T for the portion of the districts on the Juneau Road System. And while the State would not object to a separate C&T done for the entire subdistricts, it does believe that the Juneau Road System warrants its own analysis and that an analysis, as far as just the district would not be sufficient, Mr. Chair. We don't believe that the C&T would be found for the districts for most communities, however, in parts of that district there may be a couple of communities in northern Southeast Alaska such as Haines that might have a C&T for part of the district, but we do not believe that a just -- a C&T could be justified for the Juneau Road System and we believe that a separate analysis is needed for that, Mr. Chair.

And the third point, Mr. Chair, is the State has continuously raised this issue of specific stocks and asked for the Board and for Staff to analyze those specific stocks. They have had adequate opportunity to do so, the Court decision was issued over four months ago, Mr. Chair, and we believe that the Board should go ahead and apply the standards that were set forth by the court and make a determination based on the fact that there are -- is no substantial evidence of use of any specific fish stock on the Juneau Road System, Mr. Chair, by any rural community. And if the Board believes that further information might change that analysis, it's certainly free to come back in the future if there is a community that additional evidence can be found for and propose a C&T for that community, Mr. Chair, but at this point the State believes that there is no reason for the Board to defer action and believes that it should apply the criteria set forth in its regulations. They're not just something that the Court came up with that are new, these are requirements that have always existed in the Board's regulations, Mr. Chair, and we don't see any need for additional analysis.

Thank you, Mr. Chair.
CHAIRMAN FLEAGLE: Appreciate those comments. And before I come back to the Board I just got another question, I think -- well, I'm sure it's in here but how much harvest is there by rural subsistence users on these streams, currently? George.

MR. PAPPAS: Mr. Chair. Maybe better answered by Mr. Larson but during previous meetings the statement was Federal subsistence permits were issued for Southeast Alaska as a whole and there hasn't been any reported harvest from the permitting system at this time.

MR. LARSON: Mr. Chairman, that is correct.

CHAIRMAN FLEAGLE: So basically we don't know of any subsistence harvest on these Juneau Road System streams?

MR. LARSON: Mr. Chairman. The question that I was answering was from our subsistence fishing permits, now they've been in place only since 2004 so since we started that process we have had no returns from permits for the Juneau Road System -- for streams crossing the Juneau Road System, yes.

CHAIRMAN FLEAGLE: Okay. So from my perspective it doesn't sound like we have a glaring conservation issue that we're trying to correct. And I'll be straight up in saying it it's jurisdictional struggle just to establish a, you know, and I don't disagree with the justification for it, but it -- again, we're trying to fix a problem that hasn't presented itself as a problem yet and I don't see where jumping to try to take immediate action is that necessary. I'm just responding to Department of Law's comments.

Anyway those are my comments and now I'm going to open it up to the Board and I'm going to shut up.

Gary.

MR. EDWARDS: Okay. I just kind of need some clarification, so currently for the road system, do we have or do we not have C&T or is it open statewide to any rural resident can fish there if they so desire, and so do we have -- and the State's
proposal, putting aside the Court's decision, the
original proposal which basically says no one should
have C&T for that area and therefore it wouldn't be
open to any rural resident, right, and then do we have
other places in the state that that would apply to, for
example, the Anchorage area, can -- well, let's say
Campbell Tract, you got a stream running through
Campbell Tract, so right now is that open or close to
subsistence harvest? We don't have any C&T for it, I
know, so I'm assuming that -- or we don't have any
regulations but I'm assuming that anybody, any rural
resident can go and fish Campbell Tract, subsistence, I
mean I'm just trying to understand how this applies to
other areas within the state.

MR. GOLTZ: Should we go in executive
session?

(Laughter)

MR. EDWARDS: No, I mean I'm just.....

MR. GOLTZ: I think the answer is, yes,
it could apply to Campbell Tract, it could apply to
areas in Fairbanks, it could apply to Mat-Su Borough.

CHAIRMAN FLEAGLE: Road system in Nome.

MR. GOLTZ: It's an anomaly that is a
result of the way our present regulations are written.
We have excluded from the reach of the term Federal
lands, our military bases, we did not exclude urban
areas. It's probably something we should look at. But
because we didn't, we're in this situation where we
have an area that we have designated as Federal lands
that has this urban overlay which technically we're
allowing subsistence use on. It has not been a problem
yet, even in Juneau as far as I know, but it's probably
-- if we want to be forward looking, it's probably
something we should address soon.

CHAIRMAN FLEAGLE: So I'm breaking my
promise already by speaking. But the State's way to
get around this is they have non-subsistence use areas
and we don't utilize that concept in the Federal
system, we just have.....

MR. GOLTZ: That's correct.

CHAIRMAN FLEAGLE: .....communities,
1 place of residence that qualify.
2
3 MR. GOLTZ: We designate non-rural
4 areas and then everything else that's Federal is within
5 the system with the exception of military basis.
6
7 CHAIRMAN FLEAGLE: Sue.
8
9 MS. ENTSMINGER: Could I add into this
10 discussion, how would you determine which -- I mean I
11 know it's all in the courts, but isn't some of the
12 waters in Alaska not Federal, and maybe some waters
13 here in Anchorage are not considered Federal?
14
15 MR. GOLTZ: I think the State wants to
16 argue. Yes, that's true, waters. That's a different
17 analysis though. What we're......
18
19 MS. ENTSMINGER: But my question in my
20 mind is then you have to determine which waters that
21 you have Federal jurisdiction over so if he's asking
22 about this place in Anchorage, I mean do you know for
23 sure if you have Federal jurisdiction over it?
24
25 MR. GOLTZ: He was asking about the
26 Campbell Tract which is -- if BLM wants to jump in here
27 it's.....
28
29 MR. LONNIE: I don't think the Campbell
30 Tract's been determined to be navigable.
31
32 MR. GOLTZ: Well, the way we do our
33 analysis is different. We identify Federal lands and
34 then the waters that are associated with those lands
35 are what we manage, we don't start with waters we start
36 with lands.
37
38 MS. ENTSMINGER: So there is waters
39 that do not come under Federal jurisdiction is what I'm
40 trying to point out, correct?
41
42 CHAIRMAN FLEAGLE: Right. But not
43 waters.....
44
45 MS. ENTSMINGER: Yes.
46
47 CHAIRMAN FLEAGLE: .....that are either
48 in, adjacent to or, yeah, those are Federal but, you
49 know, it's interesting that you raise that because that
50 is another case that we're waiting to see the result of
too and that's what we call the which waters case.

MS. ENTSMINGER: I understand.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: If I could ask one question of the State, you were talking about communities and I thought you said something that implied that Haines might have a legitimate claim or legitimate use of some of the road system waters in Juneau or did I misunderstand that?

MR. DAUGHERTY: Mr. Chair. We did not imply that Haines would have a legitimate claim to a C&T on the Juneau Road System, that's why we said the district should be considered separately from the road system. We do believe there might be a claim in part of District 15 around the area of Haines.

Mr. Chair.

CHAIRMAN FLEAGLE: Well, let's take a break, 10 minutes.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon. The Federal Subsistence Board is back in session. And we're still discussing Proposal 15 without a motion so I'm opening back up for comment discussion.

Keith Goltz.

MR. GOLTZ: I have a couple quick comments. First I was wrong about Campbell Tract. And the reason I was wrong is I had forgotten how we put the program together, and what we did when we formed this program is simply set out lines, basically around CSUs and other Federal reserves and say Federal lands within those lines are subject to Federal management jurisdiction. Then we said if there are other Federal lands, like isolated Federal tracts, like the Campbell Tract, you can come and petition the Board and if it's appropriate we'll put them in. And nobody's petitioned to have Campbell Tract in and so right now it's not part of our program. These are some of the things we just have to work out over time.
On the issue of Chistochina I was circulating and some people may have thought that I agreed with Mr. Daugherty's comments. I don't. We differ. The Federal Subsistence Board was affirmed on each of the four issues that the Court addressed and we do not see the case based on those isolated that are in the State comments. When I expressed my appreciation for the comments, I didn't want anybody to infer that I agreed with everything in them. I'm appreciative of the fact that they're there and that they're well done and I think, as a whole, even though I may not agree with them they're well done, and I was intending to be responsive to the underlying concern. I think you've raised, again, a point of legitimate concern and it's simply my intent to advise the Board that we should address that concern.

CHAIRMAN FLEAGLE: Thanks Keith.

Comments. Discussion. Denby.

COMMISSIONER LLOYD: Well, Mr. Chairman, I may have some further comments and discussion but I'm curious about Mr. Goltz' -- what the concern was you were referring to just at the end there.

MR. GOLTZ: I think your -- as I read your concern, it's the fact that we're applying a rural priority to a rural area that's particularly visible and may have conservation impacts. And that.....

COMMISSIONER LLOYD: Thank you, Mr. Chairman. And that is certainly part of our concern. A larger aspect of our concern is our desire to see the Federal Subsistence Board follow what we believe are the requirements of ANILCA and the regulations and that is to apply very specific analysis to findings of customary and traditional use and that's involved in our request for the Board to consider this particular area as not having that supporting documentation, and according to our view, the regulations and statutes that are binding on you, we believe that in this case the Board is in error in asserting that there's customary and traditional use for the Juneau Road System. So to us that's also a very important part of our concern in this regard.

MR. GOLTZ: Well, I don't think we're asserting that. The question at this point is, are we going to do a C&T -- we've never done a C&T analysis.
Where we are is we're sort of backed into this thing based on other regulations so I'm advising the Board, don't just throw this back and say, well, we don't do no Federal subsistence priority areas, I'm saying let's address the concern, and I think we now agree on it. I hope we do.

CHAIRMAN FLEAGLE: Other discussion.

(No comments)

CHAIRMAN FLEAGLE: Ready to move on this proposal. We need a motion.

MR. BSCHOR: Well, Mr. Chair, it just seems like there are questions about what reality is here relative to these issues and I don't think we can deal with that reality just with the Juneau part of 11 and 15, I think we need to deal with 11 and 15 with Juneau as a part of that analysis. And we need time to do that. And we only have two choices, we could oppose the proposal, and I don't know that that's the right thing to do, I don't know what the reaction would be to that or we could defer the proposal and give our Staff time to do a thorough analysis, I mean what would that hurt. I mean we're not showing any conservation concerns or problems that we know of right now so if conservation is not an issue at this point as far as taking more time it seems to me that that would be to work together again on an issue that keeps coming back to us and we're, in some cases, talking past each other, similar to the other issue and with the action included I think we might not be sitting here in two years arguing with each other -- or not arguing with each other but just not communicating or agreeing with each other in a way that's productive.

Mr. Chair.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Keith, let me ask one more question based on what you said about the Campbell Tract and what I heard you said that, yes, it's Federal lands but it's closed to subsistence use unless we got a proposal to open it. I mean could you have an equal proposal to close an area that is currently open. I mean what, in response to -- to the Commissioner's question, I mean the reason that we have a statewide C&T on the Juneau Road System is because by policy or
procedure or whatever, we say if there isn't any
specific C&T then there's a blanket C&T. Well, anybody
in the whole state can participate, so as you said we
didn't make that determination it is what it is because
of how we look at this. But by the same token, could
we entertain a proposal that would come in and try to
make the argument that this area should be closed
similar to these other areas that are apparently
currently closed until we get a proposal to open them?

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: Keith, I'm not sure it's
accurate to say Campbell Creek is closed, Campbell
Creek simply -- or Campbell Tract is simply not part of
the Federal Subsistence Management Program. To make it
part, somebody would have to come before actually the
Secretaries but they could go through this Board and
say we want that added to the list of Federal
jurisdiction. And that's -- we knew that there were
these scattered Federal tracts throughout the state, we
didn't know where they were and we didn't know how
important they were, we said to the users, if they are
important to you, you come to us at a later date and
then we'll consider it. That's how we set up the
program. That was done when we took over fisheries.

The default that you're talking about
was done in the beginning, in 1990, and there we saw we
had a choice, either we could take the State's position
which was no subsistence until we open it or we could
say it's open to everybody until we do our C&Ts. We
chose the latter, unfortunately we -- I think it's
unfortunate, we rejected the middle ground, which would
have said you can hunt and fish within the unit, Game
Management Unit in which you reside, and then we'll do
our refinements off that, either narrow it or expand it
from there.

But as of right now our regulations put
us in the position where, if we haven't done a C&T then
everybody within the state qualifies.

CHAIRMAN FLEAGLE: So I'd like to add
to Denny's option, so we do have three options. We do
have the option of moving forward with the proposal and
granting a positive -- you know, passing the proposal
with negative C&T, sorry, that still remains one of the
options.
Bert.

MR. ADAMS: Thank you, Mr. Chairman. You know, in Southeast, because of the economy and everything, in fact, throughout the state we see a migration of people moving from the rural areas into the urban areas and in Southeast we have seen people from Angoon and Hoonah, small villages like that move into Juneau and so how -- the question is for Keith, you know, how do they fit into this scheme, you know, would they be able to subsistence hunt in the Juneau area or not?

MR. GOLTZ: No, I don't think so. ANILCA's based on residency, and that can flow either way. You can go from Juneau to a rural area and become a subsistence user or you could lose that subsistence right if you migrate into Juneau. It's not based on personal history, it's based on residency.

MR. ADAMS: Follow-up, Mr. Chairman. Some of these people, you know, are going to move back to their communities so, you know, I think this is a concern that SERAC, you know, brought up at our last meeting and we were under the impression that they would be able to, you know, hunt and fish in the Juneau area because of the fact that they're there only temporary or nothing permanent, you know, so.....

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: That just brings up an interesting question. If you had a kid from Yakutat move to Juneau for two semesters University of Alaska-Southeast, and as a rural resident, if you were living in Yakutat on a full-time basis could come down and hunt and fish the Juneau Road System, so if the person were in school, still be a resident of Yakutat and intending to go back to Yakutat as soon as the school semester was out, could that person hunt and fish on the Juneau Road System?

CHAIRMAN FLEAGLE: Further defining residency.

MR. GOLTZ: Right. And Bert's very last comment tripped my interest, too. If you -- we have a very precise definition of what a resident is,
it's in our regulation, it's possible for someone to remain a resident of a rural area and be temporarily in Juneau and I suppose then they would qualify under our present regulations, which is really a default and is meant to be a temporary regulation.

MR. CESAR: And would that also might apply to a military person, so there are ways that people could hunt, fish that road system given the situation as it is now. Now, if we take and adopt this proposal that person would not be eligible then to hunt and fish the road system, so we would be restricting access for rural people in those specific conditions.

MR. GOLTZ: Yeah, the proposal would say no Federal subsistence at all.

MR. CESAR: Right.

MR. GOLTZ: Right.

CHAIRMAN FLEAGLE: Just for the streams in the road system, though, right, in this context, it wouldn't apply to hunting?

MR. GOLTZ: Right.

CHAIRMAN FLEAGLE: That would be another can of worms, or I mean issue.

MR. COLLINS: Mr. Chairman.

MR. GOLTZ: No, I think.....

CHAIRMAN FLEAGLE: Ray Collins.

MR. COLLINS: Yeah, I think there's another point that should be made here, too, that we need to remember that subsistence harvest is opportunistic and you're talking about closing an area to subsistence hunting that could potentially remain open and might be important in the future. And we've already mentioned some of the people there that -- I mean somebody may be working in Juneau for a week or something like that and want to use that to hunt or to fish and take the game home. The question is, do you have the right to close Federal lands to subsistence users because there is not use now and you don't even know if there has been in the past or not. Shouldn't that remain open unless there's a biological or some
other strong reason for closing it to subsistence, why
restrict subsistence opportunities on any Federal land
without some strong reason behind it.

CHAIRMAN FLEAGLE: Thank you, Ray.

Tina.

MR. COLLINS: Mr. Chairman. I'd like
to be sure we clarify on the record that this proposal
is very specific to fish in the waters that cross the
Juneau Road System, it is not related to hunting or to
any other harvesting on the land itself. We're very
specific. And the second part of that is this proposal
is specific to customary and traditional use
determination, it is not in any way related to the
conservation issues which are brought up in Proposal 4.
Proposal 15 is specific to C&T and this has come before
the Federal Subsistence Board before, the Federal Staff
analysis, very lengthy analysis shows that there has
never been any use of these stocks in these streams by
rural communities along the Juneau Road System. And
with no evidence of use, of customary and traditional
use determination we are simply asking that the Board
acknowledge that for the narrow boundaries of the
current Juneau Borough city boundary, not a future one,
the current one.

CHAIRMAN FLEAGLE: Thank you, Tina.

And the Board's aware of that, we're talking about
specific streams for fisheries. I think we were just
branching off into the bigger what if's and areas here
and I appreciate that discussion.

Back to the matter at hand, the Board's
desire. We don't even have a motion on the floor yet
for action or inaction and I'd like to just move back
-- get back to the proposal and see where we're ready
to go on it.

Denny.

MR. BSCHOR: Mr. Chair. I move to
adopt Proposal FP09-15, and need to mention that I
don't plan on voting for that. I would further move
afterwards to defer if that -- if we get a second.....

MR. LONNIE: I'll second.

CHAIRMAN FLEAGLE: All right, we got
your second. And one further comment is that the
motion to adopt is in competition with the Southeast Regional Council's -- okay, go ahead, Denny.

MR. BSCHOR: That's what I was going to say, it is in opposition to the Southeast Alaska Regional Advisory Council's recommendation.

CHAIRMAN FLEAGLE: Okay, with that, then further discussion.

(No comments)

CHAIRMAN FLEAGLE: Denny.

MR. BSCHOR: Mr. Chair. If I make a motion to move to defer this that also would be in opposition to the Southeast Alaska Regional Advisory Council's recommendation. But considering all the dialogue we've had today there's still questions and I still think that being able to look at a C&T of 11 and 15, which includes the Juneau area which is a part of it and currently we have very broad C&T for Dolly Varden, trout, smelt, eulachon and for all residents of Southeast Alaska and Yakutat and for all other fish including salmon for all rural residents of the state, I think there's a reason to take a look at this and see if we can refine, at least, it may not be refined as far as what the State's asking for right now or it may be, depending on what we come up with, but I think it's worth doing and like I say in the interim I think we -- I don't think time is a large factor although the State might disagree with me as far as the fish conservation but I don't think we have any documented use so I'm going to base my proposal on that assumption, or those facts if they're there.

And I think then I would also suggest that it would give OSM and Southeast Council a chance to work with that also. And I would expect to readdress this in not any longer than two years from now during the regular cycle again.

Mr. Chair.

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Go ahead, Niles.

MR. CESAR: I just want to be clear, Denny, so what you're suggesting or your motion would
be to place it before us and vote against it so we're
not -- so at this point we're not talking about a
deferral to do further study, this would be an out
right vote against it?

MR. BSCHOR: Or I could make another
motion to defer.

MR. CESAR: No, I'm happy with what you
did.

MR. BSCHOR: Okay.

MR. CESAR: I just want to be
clear.....

MR. BSCHOR: All right.

MR. CESAR: ......on how I'm voting
because I intend to vote against the motion as
presented the way you've presented it.

CHAIRMAN FLEAGLE: Denny.

MR. BSCHOR: Help me out, do I.....

CHAIRMAN FLEAGLE: Okay, well, the
point that Pete just.....

MR. BSCHOR: Do we have a second on the
motion to adopt?

CHAIRMAN FLEAGLE: We do.

MR. BSCHOR: And then -- now am I --
I've forgotten, do we have a motion to defer.....

CHAIRMAN FLEAGLE: No.

MR. BSCHOR: .....with a second.

CHAIRMAN FLEAGLE: Not yet.

MR. BSCHOR: If we did that and we
voted for that then would we be done?

CHAIRMAN FLEAGLE: For now.

MR. BSCHOR: For now.
CHAIRMAN FLEAGLE: Yes.

MR. BSCHOR: So that's what I was proposing to do if the Chair.....

CHAIRMAN FLEAGLE: And that -- rather than just out right dismissing this proposal I would prefer that we set it aside because looking at the proposal there is some justification for passage and if we do choose to lead into it, at least a vote to kill it, we need to go through the process. If we're prepared to do that then that's fine, I'm not going to try to stop that. But from my listening to the discussion that we've been having on this issue it would be wise to defer it because there's some larger questions that are not being answered. I know it's a really site specific specific proposal but it has some other implications in the program that I'm not sure that we're seeing right now and this would give us a chance to look at that. I think that there may be some concern that the Board would be seating authority in an area that is currently under our authority without clear justification or might be setting a precedent that may be detrimental to future decisions similar to this and I think that the Board -- what I'm hearing in discussions is that we want to make sure that we're careful in how we go about this decision. Not again, I'd like to state, I totally agree that it's a crazy situation that we have on this Juneau Road System where the residents of Juneau can't fish but somebody from Akiachak can. I mean it doesn't make sense but I'm not sure that just applying a no C&T determination is the right approach. And if we kill the proposal it's going to come back to us in two years anyway. This will give us an opportunity to look at it, bigger lenses, work out a solution that maybe we can start applying to other areas that come before us.

So I'm not trying to steer the process but if I were to be able to make a motion I think that's probably what I would do.

MR. EDWARDS: Mr. Chairman. I think I agree with your analysis. I think there is some legitimate issues here. I don't think this proposal is the proper format or vehicle to try to address those issues. Again, I'm not sure what is. Maybe in retrospect we should have done the same thing for the Juneau Road System that we did for Campbell Tract and we wouldn't be having this discussion but we mentioned
students but there's really no difference than students
going to school at UofA from rural communities that one
could legitimately say they ought to be able to go
subsistence fish up on the Campbell Tract. So I don't
know what the proper vehicle is to try to address the
issue but I don't think this proposal is the proper
approach.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair, if I may, I'm
just trying to get the Board to understand where
they're currently at. We currently have a motion on
the floor to adopt Proposal FP09-15 and we have no
motion at this time to defer.

CHAIRMAN FLEAGLE: Right. We're still
discussing the merits of a deferral action. And if we
don't have a motion to defer then we need to start
discussing the merits of the proposal on its face and
working toward a vote either up or down.

Denny.

MR. BSCHOR: Mr. Chairman. I move to
defer this proposal and as I said earlier it's not
consistent with the Southeast Alaska Regional Advisory
Council's recommendation but I do not support the
proposal itself. So this is an opportunity to have
some discussion on the merits of deferring and if we --
if this is passed, we're done, if it doesn't, we're
back to the original proposal as I understand the
process. And for the reasons I mentioned before, do I
need to go over those again, I think they're pretty
sufficiently on the record.

CHAIRMAN FLEAGLE: Yeah, we're good.
And just for clarification, you're talking deferral for
no more than two years, so you're leaving the
scheduling up to Staff, whether this should be done at
the next fishery meeting or before?

MR. BSCHOR: (Nods affirmatively)

CHAIRMAN FLEAGLE: Is there a second.

MR. EDWARDS: Second.

MR. LONNIE: Second.
CHAIRMAN FLEAGLE: All right, we got two seconds, take your pick. Discussion.

(No comments)

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. So there's no misunderstanding, the motion to defer as I understand it, is that this issue will be readdressed no later than 2011 by the Board and that it is sent back to the Staff to expand the analysis to look at Districts 11 and 15.

Mr. Chair.

MR. EDWARDS: Mr. Chair.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: One question, by expanding the analysis that wouldn't preclude at some point excluding a specific area or including it, right?

MR. PROBASCO: Unless I stand corrected that's how I understand it, Mr. Chair.

CHAIRMAN FLEAGLE: So the proposal would still be presented as written, that it would address the streams that cross the road in the Juneau area but the analysis will address a larger area including the specific zone. All right.

Niles.

MR. CESAR: Mr. Chairman. I guess I am not in support of the proposal but given what I've heard I'm not opposed to a deferral so it would seem to me that it's the middle ground that I could go with so I would support a deferral.

CHAIRMAN FLEAGLE: Are we ready for the question then.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: Question's called but not recognized. Bert.

MR. ADAMS: What happens -- Mr.
Chairman, what happens to the first proposal now, does that just automatically go away or do you have to address that too?

CHAIRMAN FLEAGLE: It's being deferred. By this action it'll be deferred. If the action -- if the vote passes it'll be deferred no later than two years. If it fails, the proposal is still before us.

MR. ADAMS: Okay, thank you.

CHAIRMAN FLEAGLE: All right, question is now recognized, Pete, on deferral.

MR. PROBASCO: Thank you, Mr. Chair. Motion to defer Proposal FP09-15, and we start with Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Yes.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: Yes.

MR. PROBASCO: And Mr. Bschor.

MR. BSCHOR: Yes.

MR. PROBASCO: Motion to defer carries, six/zero.

CHAIRMAN FLEAGLE: All right, thank you, Pete. That moves us on to Proposal 09-04 beginning on Page 101.

MR. CASIPIT: Thank you, Mr. Chair. For the record my name is Cal Casipit, I'm with the Forest Service in Juneau, Alaska. The executive
summary for this proposal begins on Page 101 of your book and the actual analysis begins on Page 103.

As Pippa mentioned before this is sort of a companion with the proposal that you just deliberated. Proposal FP09-04 was submitted by the Alaska Department of Fish and Game and requests that no Federal subsistence fishing permits be issued for streams crossed by or adjacent to the Juneau Road System.

The proponent is concerned that the streams crossed by or adjacent to the Juneau Road System support small populations of fish that can be easily over-exploited. This proposal is similar to proposals FP06-31, which was submitted to remove the Federal Subsistence Board's current area-wide Federal subsistence fishing regulations for steelhead, Dolly Varden and cutthroat trout in streams crossed by or adjacent to the Juneau Road System and replace them with State of Alaska sportfishing regulations.

At its January 2006 meeting the Board rejected this proposal, FP06-31.

I think the Board is familiar with the regulatory history with fishing on the Juneau Road System. A summary of that is provided on Page 104 through 105 of your book. The biological background and the current events are covered between 105 and 106 and I'm not sure I'm going to -- I'm not going to go through all that but I just wanted to say on the record that we do have permits. Our permits that we do issue for fishing on the Juneau Road System, like I said they're general permits for the entire area but we have special conditions on these permits for the Juneau Road System. Among them is a 32 inch minimum size limit and rod and reel without bait gear restrictions. This has likely discouraged participation by Federally-qualified subsistence users on the Juneau Road System. In addition we instituted for trout an 11 inch minimum size limit. Again, it appears that this is discouraging use on the Juneau Road System.

I did want to point out under harvest history that to-date no fish have been reported on Federal subsistence fishing permits from the Juneau Road side System since it's inception. Pippa did cover use of Districts 11 and 15 under the statewide sportfish harvest surveys and I won't go over that
The effects of this proposal. If this proposal were implemented there would be no opportunity for Federally-qualified subsistence users to harvest fish in Federal public waters on the Juneau Road System. This could be detrimental to the satisfaction of subsistence needs if a Federally-qualified subsistence user does desire to harvest fish on the Juneau Road System.

Known conservation concerns for steelhead and trout on the Juneau Road System are addressed by our restrictive permit conditions. And additional restrictions could be placed on the permit under our local Federal fisheries manager's authority if additional conservation concerns arise.

The OSM conclusion is to oppose this proposal.

Adopting the proposed regulation change would not provide subsistence users with a subsistence priority as required in Section .804 of ANILCA and could be detrimental to the satisfaction of their subsistence needs.

That concludes my presentation. Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Cal. Next we go to a summary of public comments. Bob.

MR. LARSON: Mr. Chairman. There are no written public comments on 04.

CHAIRMAN FLEAGLE: Thank you. We're open to public testimony. Pete.

MR. PROBASCO: No one's signed up for public testimony on this proposal, Mr. Chair.

CHAIRMAN FLEAGLE: Regional Advisory
Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. Again, the Southeast Regional Advisory Council opposes this proposal. We know that current regulations allow fishing -- allow subsistence fishing in the Juneau Road System but the gear is restricted by permit and rod and reel only. This management strategy provides for a subsistence use of the area while providing adequate safeguards necessary for conservation of local fishery resources. Title VIII requires a subsistence priority and if additional restrictions are determined to be necessary the non-Federally-qualified users should be restricted first.

The proponent did not adequately consider the historical use of the area adjacent to the current Juneau Road System when making or supporting this proposal and so the proposal would necessarily restrict access to local streams which have a long history of subsistence use. Opposing this proposal will have no effect on non-Federally-qualified subsistence users.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Bert.

Department of Fish and Game comments. George.

MR. PAPPAS: Thank you, Mr. Chair. Department of Fish and Game. Once again I'm summarizing the Department's full comments that are in your Board book, Pages 111 through 115, and those comments will be entered into the record following this presentation.

Proposal FP09-04 disallows issuance of Federal subsistence permits for streams crossing the Juneau Road System within the city and borough of Juneau based on concerns for these specific relatively small and vulnerable fish stocks. These streams constitute a very small portion, less than 10 percent of the freshwater fisheries in the Districts 11 and 15 of Southeast Alaska.

Although Southeast Alaska general Federal subsistence fishery permits in Southeast Alaska Federal spring steelhead permits allow for fishing on the Juneau Road System and require harvest by stream, no Federal subsistence harvest by rural residents have
ever been reported for the freshwaters of the road systems within the city and borough of Juneau boundaries.

If any Federal subsistence fishing were to occur these fish stocks could be impacted before evidence of unsustainable harvest would be available. In addition, testimony from the public and the Council members at the October 2008 Southeast Regional Advisory Council meeting expressed concerns about restricting the Juneau residents, non-Federally-qualified users if fishing pressure on the Juneau Road System increased. Public testimony requested that the Regional Advisory Council not approve regulations which would prohibit residents from the Juneau area from participating in the local fisheries. Adoption of this proposal would prevent further fisheries restrictions by removing the issuance of Federal subsistence permits on the Juneau Road System and preventing unsustainable future fishing pressure by non-local residents.

This proposal is similar to and consistent with the Federal regulations previously adopted in Petersburg, Wrangell and Sitka area under Section 27(i)(13)(ix) which prohibit the issuance of Federal subsistence permits for the use of nets along the road system.

Meaningful subsistence fishing priorities for rural residents exists in streams that are closer to the respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish a Juneau Road System even though daily air and ferry service, the Juneau Road System -- the Juneau area is not near or reasonably accessible to rural residents of Southeast Alaska for the purposes of subsistence fishing or for the purposes of sportfishing. In fact, the Federal Staff analysis indicates there is no evidence that the Juneau Road System is being utilized by rural residents outside the Juneau city and borough boundaries for subsistence.

State regulations provide for a variety of sportfishing opportunities in freshwaters and adjacent salt -- saltwater shoreline areas of the Juneau Road System but these opportunities are more restricted and elsewhere in Southeast Alaska. The Department lists only 15 freshwater streams along the Juneau Road System where anglers may fish. Nearly all
freshwater sportfishing activity approximately 80 percent along the Juneau Road System takes place in four primary streams, which are Kelly Creek, Montana Creek, Peterson Creek and Fish Creek. The fish populations in these streams are relatively small and several other road -- small road side streams in the area are closed to sportfishing altogether and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species. The Juneau road side bag and possession limits and size requirements differ and are more restrictive than the regional requirements or regulations. Bag and possession limits have been reduced for coho salmon, sockeye salmon and Dolly Varden. Cutthroat trout size limits are also -- may be -- be more restrictive than regional regulations, existing harvest levels on these small stocks can only continue if effort does not increase substantially, if most fishers continue to practice non-retention and if the streams are conservatively managed.

The Department has continually expressed concerns about the sustainability of the highly accessible and liberal Federal subsistence fisheries on the Juneau Road System. For example, the Federal steelhead 32 inch size limit in the area allows a harvest rate that is unsustainable. The Federal Staff analysis proposal FP06-31 at the January 2006 Federal Subsistence Board meeting provided no biological justification for the 32 inch size limit other than to state the size limit was set less than the State sportfishing limit of 36 to give Federally-qualified users a subsistence priority.

The State's 36 inch size limit and other State regulations were adopted to rebuild depleted stocks and are based on biological standards to achieve a sustainable harvest rate. Likewise the sportfishing cutthroat regional minimum size limit is 11 inches in length, it was established to protect 60 percent of the trout population until they can -- can spawn at least once.

The regulations in the Juneau area are even more restrictive, they impose a 14 inch minimum size limit to allow all female cutthroat trout to spawn at least one time. In contrast the Federal regulations applicable to the area allow retention of cutthroat trout of less than 14 inches in length, which allows the harvest of juvenile cutthroat trout in areas of
These size regulations are not consistent with sound management and principles. The State's current regulations that protect such stocks were successfully developed utilizing the most current scientific knowledge and management methods. The Federal regulations could jeopardize the fish stocks because harvest limits are excessive for the size of the streams and damage would not be evident until after it was reported.

The Federal subsistence permit appears to be the foundation for the Federal's belief that they're assuring stock conservation but the Federal permit reporting requirements are too little and too late for small stocks.

Under the current Federal subsistence fishing regulations these small Juneau area fish stocks could be impacted if even a few rural residents chose to use the opportunity to subsistence fish under Federal regulations along the Juneau Road System within the current borough boundaries.

In addition to our significant conservation issues that could be alleviated simply by not issuing permits for this area, there's an additional enforcement problem created by the Federal regulations for the rural user. According to the Department's fish distribution database a majority of the fish habitat and documented fish observations in these streams are not located within Federal land. Some streams have relatively inaccessible headwaters on Federal land but they are -- they flow through State, private and other land ownerships to marine waters. Most of the lengths of these streams are also not within the Tongass Forest boundary and the Federal regulations can only apply to those waters within the exterior boundaries of the Tongass and the Juneau area. The Juneau area was specifically excluded -- excluded from the Tongass boundaries before statehood. Other streams along the Juneau Road System flow entirely on non-Federally owned land, however, the Federal analysis continues to incorrectly and overbroadly claim, as I quote, Federal public waters comprise all freshwaters draining into fishing -- fisheries Districts 11 and those freshwaters draining into fisheries Districts 15 south of Chilkat Peninsula near Haines but also
include eastern side of Chilkoot Inlet north to Skagway all within the exterior boundaries of the Tongass National Forest, which is Map 1 in the Federal analysis. These waters include all streams crossed by the roads, connected by the city and borough in Juneau -- road system. The latter statement is not only untrue but it sets up the Federally-qualified user to cited for violating State regulations while standing on State or private lands as well as lands outside the exterior boundaries of the Tongass Forest.

In summary, adoption of this proposal would be consistent with the previously adopted Federal regulations prohibiting issuance of permits for net fishing in Petersburg, Wrangell and for Sitka road system. The Federal Board should exempt the current Juneau and city -- the current Juneau city and borough boundary area from the region wide regulations by not allowing subsistence permits to be issued for the freshwaters accessible through the water system. This action will not have any impact on Federally-qualified rural subsistence users since none have ever fished for subsistence uses there. The protection would be afforded to the specific small and vulnerable stocks found along the Juneau Road System and, therefore, the Department urges the Federal Board to adopt this proposal.

That concludes my comments. Thank you, Mr. Chair.

****************************
STATE OFFICIAL WRITTEN COMMENTS
****************************

Alaska Department of Fish and Game
Draft Comments to the Federal Subsistence Board
FP09-04 Juneau Road System No Federal Subsistence Permits

Introduction:

This proposal disallows issuance of federal subsistence permits for streams crossing the Juneau road system within the City/Borough of Juneau based on concern for specific relatively small and vulnerable fish stocks. These streams constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska.
Although both Southeast Alaska general federal subsistence fishery permits and the Southeast Alaska spring steelhead permits allow fishing on the Juneau road system and require reporting of harvest by stream, no federal subsistence harvests by rural residents have been reported for the freshwaters of the road system within the City and Borough of Juneau boundaries. If any federal subsistence fishing were to occur, these fish stocks could be impacted before evidence of unsustainable harvests would be available. In addition, testimony from the public and Council members at the October 2008 Southeast Regional Advisory Council meeting expressed concerns about restricting non-federally qualified uses if fishing pressure on the Juneau road system increased. Public testimony requested that the Regional Advisory Council not approve regulations which would prohibit residents of Juneau from participating in the local fisheries. Adoption of this proposal would prevent potential fishery restrictions by removing the issuance of federal subsistence permits on the Juneau road system and preventing unsustainable future fishing pressure by non-local residents from developing. FP09-04 is similar to and consistent with federal regulations previously adopted in the Petersburg, Wrangell, and Sitka area under ^U.27(i)(13)(ix) prohibiting issuance of permits for the use of nets.

Impact on Subsistence Users:

No prior harvests by rural residents have been documented for subsistence use in fresh waters of the road system within the Juneau City/Borough boundary. There is no evidence of a customary and traditional use of fish stocks for subsistence by any rural resident in fresh waters that cross the road system within the Juneau City/Borough boundary. Most Juneau area fishing occurs within marine waters, just as most fishing throughout Southeast Alaska occurs in marine waters -- outside of claimed federal waters. Meaningful subsistence fishing priorities for rural residents exist in streams that are closer to their respective communities. Eligible rural residents would have to travel substantial distances by boat or airplane in order to fish on the Juneau road system. Though daily air and ferry service exists, the Juneau area is not near or reasonably accessible to rural residents of Southeast Alaska for purposes of subsistence or sport fishing. In fact, only two sport-caught fish were reported as having been
caught by rural residents of Southeast Alaska on the Juneau road system by responders to the Statewide Sport Fish Harvest Survey from 2004 through 2006. No evidence supports a contention that subsistence opportunity along the Juneau road system is utilized by rural residents living outside the Juneau City/Borough boundary.

Opportunity Provided by State:

State regulations provide for a variety of sport fishing opportunities in fresh waters and adjacent saltwater shoreline areas of the Juneau road system, but these opportunities are more restricted than elsewhere in Southeast Alaska. The Alaska Department of Fish and Game (Department) lists only 15 freshwater streams along the Juneau road system where anglers may fish. Although salt water shoreline areas are also available, fishing even in saltwater in the area for trout and Dolly Varden is more restricted and subject to lower bag limits than in other areas of Southeast Alaska. Nearly all freshwater sport fishing activity (approximately 80%) along the Juneau road system takes place in four primary streams (Cowee Creek, Montana Creek, Peterson Creek, and Fish Creek). The fish populations in these streams are relatively small. Several small roadside streams in the area are closed to sport fishing altogether, and others are closed to salmon or Dolly Varden fishing. Restrictive bag and possession limits are in effect for many species. Juneau roadside bag and possession limits and size requirements differ in several respects from regional regulations and are more restrictive. Bag and possession limits have been reduced for coho salmon, sockeye salmon, and Dolly Varden. Cutthroat trout size limits are also more restrictive than regional regulations.

Conservation Issues:

Two dozen Juneau area streams support small populations of fish and can be easily accessed from the local road system. Seven of the streams have been closed to all fishing and four streams have salmon retention prohibitions in order to assure continued sustainability. All other streams open to fishing are conservatively managed for high use and have severely restricted methods and means, size limits, harvest limits, fishing schedules (e.g., no bait, seasonal closures, slot limits, and species prohibitions).
Existing harvest levels can only continue if effort does not increase substantially, most fishers practice non-retention, and the streams are conservatively managed.

The Department has continually expressed concerns about sustainability within highly accessible, liberal-harvest federal subsistence fisheries on the Juneau road system. The federal steelhead 32 size limit in this area allows a harvest rate that is unsustainable. The Federal Staff Analysis for proposal FP 06-31 at the January 2006 Federal Subsistence Board meeting (pages 395-400 in the meeting materials book) provided no biological justification for the 32 size limit other than to state the size limit was set less than the state sport fish limit of 36 to give federally qualified users a subsistence priority. The State 36 size limit and other State regulations were adopted to rebuild depleted stocks and are based on biological standards to achieve a sustainable harvest rate. Likewise, the sport fishing cutthroat regional minimum size limit of 11 in length was established to protect about 60% of trout populations until they can spawn at least once. The regulations in the Juneau area are even more restrictive; they impose a 14 minimum size length to allow all female cutthroat trout to spawn at least one time. In contrast, the federal regulations applicable to the area allow retention of cutthroat trout less than 14 in length, which allows harvest of juvenile cutthroat trout in areas of high use.

The State fishing regulations in place near or within highly populated areas of Alaska for fish stocks exposed to elevated exploitation pressures were developed to conserve and rebuild a variety of fish stocks. The current regulations in place that protect such stocks were successfully developed through utilizing the most current scientific knowledge and management methods. When all of the required data needed to manage a fishery are not available or if a fish stock has been identified as potentially over-exploited, fragile, or of concern, the fisheries are managed conservatively through restrictive regulations. In the absence of critical information about stock sizes and harvest rates, the State regulations should be used by the Federal Board to help ensure sustainability of the resource. The federal regulations could jeopardize fish stocks because harvest limits are excessive for the size of streams.
and damage would not be evident until after it is reported. The federal subsistence permit appears to be the foundation for federal stock conservation, but its reporting requirements may be too little, too late for small stocks.

Under the current federal subsistence fishing regulations, these small Juneau area fish stocks could be impacted if even a few rural residents chose to travel to Juneau to subsistence fish. These federal regulations apply to the area where non-federally qualified Juneau residents and other users are subject to State sport fishing regulations. The current federal regulations provide an exemption from State sport fish license requirements, allow liberalized gear, and allow liberalized size limits. In contrast to other areas in Districts 11 and 15 open to subsistence fishing under the federal regulations, streams that cross the road system within the City/Borough of Juneau are relatively accessible to Juneau visitors, support small fish stocks, and receive increasing pressure from a large Juneau resident population, thus necessitating increased restrictions on size, gear, and limits in order to assure sustainability of those stocks while also retaining an opportunity for residents of the area to participate in fishing.

Jurisdiction Issues:

According to the Department’s Fish Distribution Database, the majority of fish habitat and documented fish observations in these streams are not located within federal land. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership to marine waters. Most of the lengths of these streams also are not within the Tongass Forest boundary. Other streams along the Juneau road system flow entirely on non-federally owned land. However, federal analysis (i.e., December 2007 Federal Subsistence Board Meeting Materials book page 181) continues to incorrectly and over-broadly claim:

Federal public waters comprise all fresh waters draining into fishing District 11 and those fresh waters draining into fishing District 15 south of the Chilkat Peninsula (near Haines), but also including the eastern side of Chilkoot Inlet north to Skagway, all within the exterior boundaries of the
Tongass National Forest (Map 1). These waters include all streams crossed by roads connected to the City and Borough of Juneau road system.

In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, we request detailed land status maps showing areas and specific boundaries of waters claimed to be within federal subsistence jurisdiction and the basis for those claims. Maps provided by federal staff to date are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not under federal jurisdiction. Significant portions of federal lands surrounding the Juneau road system are bordered by state or private lands, where there is either no federal jurisdiction or federally qualified subsistence fishers cannot participate in federal subsistence fisheries while standing on non-federal lands. During the December 2007 Federal Board meeting, State of Alaska Wildlife Trooper testimony illustrated to the Federal Board the importance of users understanding and knowing jurisdiction and land status. This testimony explained that when an enforcement officer encounters an individual conducting an activity that is prohibited by State regulations on State or private lands, including State-owned submerged lands, the person will likely be cited. Closing the Juneau road system area to the issuance of federal subsistence fishing permits will significantly decrease the likelihood that rural residents will be cited for violation of state law for subsistence fishing on non-federal lands along the Juneau road system.

Recommendation:

Support (if the Board fails to adopt FP09-15). This action is consistent with the previously adopted federal regulation prohibiting issuance of permits for net fishing in the Petersburg, Wrangell, and Sitka road system areas (^U.27(i)(13)(ix)). The Federal Board should exempt the current Juneau City and Borough boundary area from region-wide regulations by not allowing subsistence permits to be issued for fresh waters accessible through the road system. This action would not have an impact on federally qualified rural subsistence users, who would retain a meaningful preference for the harvest of species found along the Juneau road system in other more reasonably accessible locations near...
their communities and primary residences and even in
other portions of Districts 11 and 15; but protection
would be afforded to the specific small and vulnerable
stocks found along the Juneau road system. This
proposal will be unnecessary and would have no effect
if the Board accepts FP09-15.

CHAIRMAN FLEAGLE: Thank you, George.

We now look to the InterAgency Staff Committee
comments, Dr. Polly Wheeler.

DR. WHEELER: Thank you, Mr. Chair.

This is the same general comment I referenced earlier
so I don't have anything to add.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Board
discussion.

(No comments)

CHAIRMAN FLEAGLE: Questions.

(No comments)

(Pause)

CHAIRMAN FLEAGLE: Keith. In just in
referencing, I don't have a map that's just -- perhaps
I do in the information, but just in reviewing the
comments submitted by the Department of Fish and Game,
these streams originate in the Forest and flow down
through State and private lands to their termination
and we're -- we regulate -- we exercise authority over
those waters why?

MR. GOLTZ: We're talking a lot about
defaults today. Where is the map that just came up on
the screen, is it in this book?

CHAIRMAN FLEAGLE: Yeah, it's hard
to.....

MR. GOLTZ: It's a little hard to see
there. But we, generally, have said that waters within
the external boundaries of a CSU are Federal waters.
The State denies that and they have brought a case in
Federal District Court. That case has now been fully
briefed and we're simply waiting for Judge Holland's
decision. Until we're told otherwise by the court,
though, our position is that waters within the external
boundaries are Federal waters and we manage them. The
State's argument is that particularly in this case
that's not true because there's another competing type
of reserve. I don't have an answer for that. All I
can say is that our present position is the position
that's stated in the regulations.

The other sort of related question is
who gets to what on which lands.

Now, on private lands within the CSU,
we've never tried to assert jurisdiction. So you can
get a situation with somebody standing on, let's call
them State lands with a pole and line in Federal
waters, and what the State is saying is we're going to
cite you. That is, in fact, the way our regulations
read right now. Whether -- if that ever came to a
head, whether the Secretary would jurisdiction or not I
don't know. If the Secretary asked me I would advise
that he could do it but the fact is we haven't at this
time so this is another one of those tangles that we're
faced with in dual jurisdiction.

CHAIRMAN FLEAGLE: So to just more
clearly understand, the reason that we are claiming
jurisdiction over the waters that flow through non-
public lands is because the external boundary of the
Forest encompass a much larger area, including to the
west, even though that land is broken by marine waters
that we don't have authority over?

MR. GOLTZ: That's correct. We've not
asserted jurisdiction over marine waters generally. We
have a few specific areas which we do for very specific
reasons unique to those areas, but as a general matter
we do not manage marine waters.

CHAIRMAN FLEAGLE: All right. And this
is the matter that we're waiting for the court decision
to help clarify whether we have it all or we have some
part of -- and I know this is going to apply to some
major streams as the Yukon as well.

MR. GOLTZ: It applies to the Yukon.
It's a very large complicated piece of litigation. I
don't know if Steve wants to get in and add to it. But
it's what I would characterize is a broad general
attack on Federal jurisdiction and how we've done
things with waters. And at this point I don't think
anybody knows what the result is going to be.

CHAIRMAN FLEAGLE: All right. But
suffices to say that we do recognize our own authority
at this point.....

MR. GOLTZ: At this point we can do
nothing else, we have to -- as the Commissioner pointed
out, follow our own regulations.

CHAIRMAN FLEAGLE: Thank you. Pete.

MR. PROBASCO: Keith, just to follow up
on Mike's question, is this decision something in the
near future or is it a ways away?

MR. GOLTZ: It could be. I think that
final briefing was late July, early August, the final
brief.

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. Briefing
was completed in April.

CHAIRMAN FLEAGLE: All right, well, if
we're back -- if we're ready for some discussion. I
just had a little -- wanted to have a little discussion
as to why we're even doing this but it's because we can
so Denby.

COMMISSIONER LLOYD: Thank you, Mr.
Chair. Furtherance of that exploration, Mr. Goltz
indicated that we, which presumably is you, have
regulations that dedicate this area as being within
Federal jurisdiction. I guess I'm asking a little more
specific definition of we, was it the agencies, was it
the Federal Board, who was the Federal decision-maker
that is asserting that the appropriate interpretation
of the regulations would include this within Federal
waters?

MR. GOLTZ: I thought I heard your
question and now I'm not sure.

The initial decision was Secretarial. And we -- I guess we interpret the Secretary but you
know that we write them and the Secretary signs them
1 and they come back so in effect if was a collaborative
effort. And in this case it actually was. I mean
there was interchange and it was -- frankly it was done
largely because we didn't know how else to do it. We
did not think that we could responsibly manage
fisheries piecemeal. So we took a different approach
with fisheries than we took with land animals.

CHAIRMAN FLEAGLE: All right. Board
members, where do we want to go on this one. Gary.

MR. EDWARDS: Just one more question.

If this proposal was to pass, it still wouldn't
prohibit fishing, would it allow fishing but without
the need of a permit? You don't necessarily have to
have a permit to fish, not everywhere do you, in
Southeast, so that's the discriminator there, okay.

CHAIRMAN FLEAGLE: Ready to move.

(No comments)

CHAIRMAN FLEAGLE: We don't even have
the proposal on the table yet -- I mean on the floor.

Denny.

MR. BSCHOR: Just a couple of questions
for both Cal Casipit and the State, whomever wants to
answer these just for my information or our
information.

Is there evidence that rural residents
fish on the Juneau Road System even though we know that
no harvest has been reported with a Federal subsistence
permit so I don't care who goes first, Cal, you want to
go first.

MR. CASIPIT: Thank you, Mr. Chair.

Mr. Bschor. I guess what I'll do is I'll just go back
to the analysis and I'll just read into the record
what's written there, it starts on the Bottom of Page
107 and it ends at 108 but it basic -- but this is,
again, I'll -- I'll just read it into the record.

To-date no fish have been harvested on
Federal subsistence fishing permits in the Juneau Road
side system since the fisheries inception, however,
limited data are available from the statewide sportfish
harvest survey, a mail out survey conducted by ADF&G.
The survey was designed to provide statewide and regional estimates of effort and harvest of fish by sportfish license holders using sportfish gear under sportfish regulations. The statewide sportfish harvest survey is not designed to provide detailed harvest and effort estimates for individual streams. From 1996 to 2006 there were 107 responses to the statewide harvest survey from rural residents of Southeast Alaska who reported sportfishing in Districts 11 and 15. Of these 107 entries 32 fished in the freshwaters. A further examination of which streams were fished found that 24 of these entries were for waters crossed by the Juneau Road System including fishers from the communities of Skagway, Sitka, Wrangell, Pelican, Haines and Gustavus. A single survey respondent may have provided more than one of the 107 entries in the survey results. Although these harvests were reported under the statewide sportfish harvest survey, the intent and purpose of these harvests is unknown. It is possible that the fishers were harvesting for subsistence under sportfishing regulations and the absence of subsistence regulations.

MR. BSCHOR: Any comments or anything.....
CHAIRMAN FLEAGLE: George.
MR. BSCHOR: .....to add to that.
MR. PAPPAS: George Pappas, Department of Fish and Game. Can you please clarify your question again.
MR. BSCHOR: Just trying to get a feel for how many rural residents fish there under whatever conditions and then also I was wondering if there's any data as far as the amount of take and that sort of thing?
MR. PAPPAS; Mr. Chair. Mr. Bschor. The statewide harvest survey didn't provide the resolution to expand exactly how many fish were harvested by each community in Southeast Alaska. The statewide harvest survey provided information that folks from the rural area were licensed and sportfishing on the Juneau Road System during certain years. So I cannot provide you specific data on that. Thank you, Mr. Chair.
CHAIRMAN FLEAGLE: Tina.

MS. CUNNING: Mr. Chairman. We -- I think the key point there is that these are people who are sportfishing under sportfish regulations with a sportfish license and those regulations are very restrictive on sizes of fish and take. They provide an opportunity for people who live in the Juneau area as well as people who fish from rural areas under the sportfishing provisions.

What this proposal does is acknowledge a very serious conservation concern without diminishing a Federal subsistence priority. No one is participating under the Federal subsistence priority on those lands. It wouldn't impact that priority. It would -- it would protect those stocks crossed by the Juneau Road System in the same fashion that the Federal Program has adopted net restrictions for gear types in several other communities where there's high use. Our State regulations are much more restrictive on length of fish in order to protect spawning resident species in those small stocks.

One of the things that we heard at the Southeast RAC meeting eloquently stated by a number of Juneau residents was their concern that people moving into the system would hurt their opportunities to fish along the Juneau Road System, and you heard the Chairman speak to that earlier, that when they move into that area, coming and going, they want to have those opportunities to participate in fishing. We manage those high use area fisheries very restrictively in order to provide the maximum opportunity possible.

CHAIRMAN FLEAGLE: It sounds like we're getting close to at least putting a motion on the floor to work on this proposal.

Denny.

MR. BSCHOR: Mr. Chair. I move to adopt Proposal FP09-04 and following a second I'll get some rationale for that but plan to vote against my motion.

CHAIRMAN FLEAGLE: Do we have a second.

MR. LONNIE: (Nods affirmatively)
CHAIRMAN FLEAGLE: Tom seconds. Go ahead, Denny.

MR. BSCHOR: Mr. Chairman. My rationale is really the same as written in the Council's justification on Page 102 and OSM conclusion on Page 108 of our Board book. And Juneau residents who live in the non-rural area are ineligible to fish under the Federal regulations, therefore, people potentially fishing under Federal regulations are only visitors from rural areas and are relatively small numbers as far as what we know. There are some people who fish the Juneau freshwaters from some other communities, we've heard that. We don't know if they're subsistence fishermen, we don't have any permits for them so we don't think they are but that's the best information we have. And ANILCA still provides priority for rural residents to fish on Federal public lands. And I think not providing for fishing and a priority would be detrimental to the satisfaction of subsistence needs. If utilization of the resources becomes a problem, once again we have the Federal in-season manager who has authority to deal with that.

So those are some of the reasons why I would vote against it.

CHAIRMAN FLEAGLE: Other comments.

(No comments)

CHAIRMAN FLEAGLE: I'll make the observation that once again this is an interesting situation because on the one hand we have a positive C&T determination, therefore, requiring us to have a rural preference and we don't have a documented subsistence use as yet, but we have the opportunity. And I don't see where we have the legal ground to remove that opportunity while we have a positive C&T and I think that the Council's comments raise that issue well. If there are restrictions needed to be placed on that fishery -- on those fisheries, that it should come from non-subsistence. I mean granted we don't have any subsistence fishery and this is -- I know it's kind of a conundrum here but I can see the legal clarity that we don't have adequate reason to restrict subsistence uses, even though we don't have any right now.
I'm going to vote against the motion as Denny has laid out.

Other comments.

MR. EDWARDS: Mr. Chairman. Do we actually have a positive C&T, I thought we didn't have a positive C&T and that's why it's open statewide.

CHAIRMAN PLEAGLE: Isn't that a....

MR. EDWARDS: I don't know, I'm asking.

CHAIRMAN PLEAGLE: Isn't that a generic positive C&T for all rural residents?

MR. GOLTZ: Well, it's our default position. It acts like one, I suppose.

CHAIRMAN PLEAGLE: Other discussion.

(No comments)

CHAIRMAN PLEAGLE: Ready for the question.

MR. CESAR: Question.

CHAIRMAN PLEAGLE: All right, question's called on Proposal 04.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP09-04 and we start out with Mr. Edwards.

MR. EDWARDS: No.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN PLEAGLE: No.

MR. PROBASCO: Ms. Masica.

MS. MASICA: No.

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: No.
MR. PROBASCO: Mr. Bschor.
MR. BSCHOR: No.
MR. PROBASCO: And Mr. Cesar.
MR. CESAR: No.
MR. PROBASCO: Motion fails, zero/six.

CHAIRMAN FLEAGLE: Thank you. That concludes discussion on 04. We now move to Proposal 05, which is the Makhnati Island Sitka herring, and we have Staff change coming up.

(Pause)

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Go ahead.

MR. CESAR: It's now 4:30, and even in my wildest dreams I don't see us doing much with Makhnati in the next half hour, you know, and I would prefer for us to start fresh tomorrow on Makhnati Island.

CHAIRMAN FLEAGLE: I appreciate that. I seem to have gotten some indication that this may go fairly quickly.

MR. CESAR: Oh, really.

CHAIRMAN FLEAGLE: And we might be able to wrap up all of Southeast today and start fresh tomorrow or move on to the next area.

MR. CESAR: I'm glad to move my comments.

CHAIRMAN FLEAGLE: Well, no, your comments are valid and recognized, thank you.

Bert.

MR. ADAMS: Yeah, there is some people who are -- I know that we might move this, you know, quite quickly today but there is some people who will probably come in tomorrow because they can't be here today who would like to address this issue so would
they be given an opportunity to at least, for the
record, if we finish this proposal today, to address it
as well?

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. It's really
the call of the Board. We've done that in the past,
allowed people that came in late to speak. Just for
your record we have two people that have already signed
up to testify on this proposal.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Before
we get going down -- hang on.

(Pause)

CHAIRMAN FLEAGLE: All right, my short
process is still going to take a long time so I think
I'll take Niles' lead and we'll postpone this until
first thing in the morning. And no audience applause
please.

(Laughter)

CHAIRMAN FLEAGLE: I'm kidding. All
right, so we'll go ahead and put that first order of
business in the morning, appreciate the suggestion.

Are there any other comments or action
before we close for the evening.

MR. PROBASCO: Mr. Chair.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: I just want to check
with Di, can we leave stuff in this room?

MS. DI: Yes.

MR. PROBASCO: Okay. Board members
it's okay to leave your stuff.

CHAIRMAN FLEAGLE: All right, good,
well, with that we'll go ahead and stand down for the
day and reconvene.....
MS. ENTSMINGER: Quick question.

CHAIRMAN FLEAGLE: .....at 8:30 in the morning. Thank you, everyone -- oh, Sue.

MS. ENTSMINGER: Just one question. There was talk of the meeting taking just two days, does this mean that it's possible it will be over two days?

CHAIRMAN FLEAGLE: That was a rumor.

(Laughter)

CHAIRMAN FLEAGLE: Before we started. Now, that we're crawling along at three proposals per day I'm thinking we're going to go until Saturday. We'll know better tomorrow, probably by midday tomorrow.

All right, we'll stand down until 8:30 tomorrow.

(Off record)

(PROCEEDINGS TO BE CONTINUED)