MEMBERS PRESENT:

Mike Fleagle, Chair
Geoff Haskett, U.S. Fish and Wildlife Service
George Oviatt, 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
Ray Collins - Western Interior 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

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CHAIRMAN FLEAGLE: Good morning. Federal Subsistence Board is back on record. And we're starting a little late this morning due to the treacherous icy road conditions out there. I'm glad that everybody that's here made it here safely and avoided the accidents and hope that everybody else that's on their way is having the same luck.

We left off with Proposal 5 last night, but before we go there we have some opening comments to make again for testimony. And I'd like to welcome everybody and we've got a couple new people sitting at the Board table. I'd like to have you introduce yourself down there, please.

MR. OVIATT: George Oviatt from the Bureau of Land Management.

CHAIRMAN FLEAGLE: Welcome, George.

MR. CASIPIT: Cal Casipit with the Forest Service and I'm sitting in for Denny until he can get here. And as soon as Steve and Denny get here I'll vacate my seat and I'll go be back there.

CHAIRMAN FLEAGLE: Okay. Thank you, Cal, welcome. And before we get started, Pete, do you have any announcements this morning?

MR. PROBASCO: No, Mr. Chair. Maybe you have it on your list as well, we also give an opportunity for consensus of agenda item and an opportunity to speak on items that are before the Board.

CHAIRMAN FLEAGLE: All right. So we now turn to the first opportunity for public comment period and this is a comment on non agenda items. Pete, do we have anybody signed up to comment?

MR. PROBASCO: No, I don't, Mr. Chair.

CHAIRMAN FLEAGLE: All right. That moves us on to the consensus agenda. We now open the opportunity for public comment on consensus agenda which
is two proposals that are on the consensus agenda, Proposal 8 and Proposal 6. Pete, do we have anybody that wants to testify on those?

MR. PROBASCO: No, I don't, Mr. Chair.

CHAIRMAN FLEAGLE: All right. Great.

Thank you.

MR. PROBASCO: Sure.

CHAIRMAN FLEAGLE: I'd like to say good morning to all the Council Chairs that are with us here in the meeting. And as we discussed yesterday, they'll be an opportunity for the ones that couldn't make it to attend telephonically once we establish the schedule for the Council Chairs' discussion and if there are any issues that we need to have Council members from their area attending, we'll schedule those in with teleconferencing as well.

With that we're going to go ahead and move on to Proposal 5 where we left off yesterday. And leading off the discussion on this, I'm going to turn it over to Bob Larson. You can give the introduction, please.

MR. LARSON: Good morning, Mr. Chair.

The Staff analysis would -- for 05 will be presented by Terry Suminski.

CHAIRMAN FLEAGLE: Good morning, Terry, welcome.

MR. SUMINSKI: Good morning, Mr. Chairman. The -- my name's Terry Suminski, I'm with the U.S. Forest Service. The Proposal FP09-05, the Executive Summary starts on Page 116 of your books and the analysis starts on Page 118.

Proposal FP09-05 was submitted by the Sitka Tribe of Alaska and seeks to close the Federal public waters in the Makhnati Island area near Sitka to the harvest of herring and herring spawn except for subsistence harvest by Federally qualified subsistence users. The proponent believes the closure of these waters is necessary to ensure the continuation of subsistence uses by Federally qualified subsistence users and to provide a meaningful preference for qualified subsistence users of herring.
The proponent states that the commercial harvest of herring displaces subsistence users from traditional harvesting sites, disrupts herring spawning such that good quality deposition of herring eggs does not take place at traditional sites and may seriously reduce the biomass of spawning herring upon which subsistence users depend.

Under existing Federal regulations all rural residents of Alaska are eligible to harvest herring and herring roe from Federal waters in Southeast Alaska. There's no season or harvest limit in regulation.

The Federal Subsistence Program has jurisdiction over approximately 800 acres of marine waters near Makhnati Island near Sitka. The short regulatory history is that the Board rejected a similar proposal in the 2008 regulatory cycle, that was Proposal FP08-18. The Board's rationale for rejection was that there's not substantial evidence of a conservation concern or a need for a closure to ensure the continuance of subsistence uses.

The OSM conclusion is to oppose this proposal. The just proposal is effectively the same proposal considered by the Board in December of 2007. At that time the Board determined there is no conservation concern in this area for herring at recent biomass levels and that closing Federal public waters to non Federally qualified users may not be effective in benefiting subsistence users. The biomass in Sitka Sound has been try -- trending higher since 1978 with the highest biomass levels recorded in recent years. There have been no restrictions on subsistence uses, no commercial harvest occurred in Federal public waters in 2007 or 2008 and the vast majority of commercial harvest was taken well away from Federal public waters and traditional subsistence harvest areas. In years when subsistence needs were not met, it is unlikely that a closure to other users in Federal public waters would have made a difference. Adoption of this proposal would result in an unnecessary closure to non Federally qualified users and also the Alaska Board of Fisheries will meet in February, 2009 to discuss southeast fin fish issues and will be another forum to discuss Sitka Sound herring issues.

Public testimonies during the Council meeting in September of 2008 and Council recommendations have been carefully considered, but the OSM conclusion
remains unchanged. Thank you.

CHAIRMAN FLEAGLE: Thank you, Terry.

Questions by Board members.

(No comments)

CHAIRMAN FLEAGLE: All right. Move to Bob Larson for a summary of public comments.

MR. LARSON: Mr. Chairman. We have two public comments, both in opposition to this proposal. The first is from the Sitka Herring Association and they note that this is the third consecutive year that this proposal's been before the Board. It's unnecessary and burdensome to affected parties. Withdrawal and closure of the Makhnati Island group would have no affect on the outcome of subsistence efforts.

The United Fishermen of Alaska also submitted written comments. And the main points of their comments was that this proposal does little or nothing for subsistence users while usurping State jurisdiction in the commercial fishery and it's an unnecessary intrusion in the State fisheries management.

CHAIRMAN FLEAGLE: Thank you, Robert. You know, we go to public testimony. Pete, have we gotten anybody that wants to testify on this proposal?

MR. PROBASCO: Yes, Mr. Chair. We have three and I'll shuffle them so there's no particular order. And the first one is you, Mike. Mr. Mike Miller.

CHAIRMAN FLEAGLE: Thank you. Would you please come to the vacant seat at the table next to Dr. Polly Wheeler and -- oh, is he not in the room?

MR. PROBASCO: I just saw him.

CHAIRMAN FLEAGLE: I did too. Well, let's call the next one.

MR. PROBASCO: Okay. The next person will be Victoria -- excuse me, Victoria. Oh, here's Mike.

CHAIRMAN FLEAGLE: Okay. We do have Mike. Mike, there's a vacant seat up here in the middle
table. If you could please state your name and -- for
the record and go ahead and begin your testimony.
Thanks.

MR. MILLER: Thank you, Mr. Chair. Sorry
for the -- being out in the hallway there, I was getting
a cup of tea.

For the record my name is Mike Miller.
I'm here representing Sitka Tribe of Alaska. I'm a
Council member with the Sitka Tribe and I'm here to speak
to Proposal 05.

I want to take the time to just thank
everybody for the opportunity to come here and talk to
you guys again, it's becoming a bit of an annual
pilgrimage to come here and talk about herring issues
before you. So we're here once again.

The reason I -- we're here, of course, is
that indicates that we've had another failure of
subsistence harvest of herring eggs in Sitka sound. The
proposal you have is a proposal to close the Federal
waters in Sitka Sound. It's a small portion of waters in
the greater Sitka Sound area where the -- a lot of the
Sound gets herring eggs there which we harvest for
traditional uses, not just for Sitka, but for all around
the state. And right in the middle of that area is a
portion of Federal waters and that is what the proposal
speaks to.

Mr. Chair. I -- I realize there's some
new members here who haven't been -- been here for the
discussions in previous years and I don't know if you
want me to go into much historical depth or for the speed
of the meeting if I should just cut to the chase here.

CHAIRMAN FLEAGLE: It's your time, Mike,
whatever you feel is appropriate to edify us with.

MR. MILLER: So, Mr. Chair, I'll go back
to about the 1700s and.....

(Laughter)

MR. MILLER: Actually, Mr. Chair, there's
-- there is history, historical documents that go back to
the earliest recorded harvests of subsistence uses and
cultural harvest. The earliest Russian writings spoke to
these very same waters basically, the earliest
photographs of -- of harvest of -- traditional harvest of herring eggs show the same islands that we're talking about in the expanded Federal waters in -- in Sitka area which is right around the airport area if any -- anybody's been to Sitka.

I'll jump from the 1700s to recent -- recent years. And the Tribe has been very concerned about starting in 2001 especially about what was viewed as a failure of the subsistence harvest in Sitka. So we went to the State Board of Fish and worked through a fairly long process there to try to address those concerns. We came out with a MOU with the State that is a good document, but admittedly -- admittedly by the State and ourselves there's -- it -- it lacks teeth and so the discretion still for the fishery is something that's up to the fishery manager there. And that's where we've been at odds a bit and -- and concern there -- there might not be enough protection for subsistence in the State Tribe documents. So we're working -- continuing to work with the State to try to fix that situation.

I want to focus really just on the subsistence numbers. And just briefly the State Division of Subsistence herring egg harvest numbers for Sitka for the last five years go from 381,000 pounds in 2004 to 72,000 pounds in 2005. In 2006 we had a -- a fairly good year again, 212,000 pounds. 2007, 84,000 pounds. 2008, last year, 71,000 pounds.

When we went to the Board of Fish in 2002 -- 2001, 2002, we had -- knew we had to quantify the numbers of eggs. That's something we take very seriously. We work with Division of Subsistence to make sure we get a accurate representation of the eggs that are being harvested in Sitka. But at that time we -- we'd only had two surveys that we could -- we could use as a baseline for what's considered a reasonable harvest. That number was only on Sitka households, it wasn't expanded to reflect the other communities that we share herring eggs with which go from Barrow to Washington, D.C. They're -- they're -- those eggs from Sitka go everywhere, it's the last place in the State of Alaska to get herring eggs on branches.

That number was set -- we came out with a number of about 137,000 pounds. So the State set a range of expectation for the amount necessary for subsistence at 105 to 158,000 pounds. So that's based on
that data that was kind of the -- the low line of -- of
what we agreed to would be a reasonable harvest. At that
time we agreed with the State that when we got better
data of how many eggs go around the State that we'd --
we'd raise the amount necessary for subsistence. And we
do have a proposal in at the State Board of Fish at this
time to raise the amount. We have commitments from over
80 tribes now that are going to provide testimony or
people coming to that meeting. We have requests from
other communities outside of Sitka at this time for
228,000 additional pounds showing their patterns of usage
in other villages around the State.

But the bottom line is the needs aren't
going met. And I know both from the State side, the
industry side and our side, we're working very hard to
find out what -- what's the problem. And it -- there's,
you know, lots of different ideas for what it is. And,
you know, specifically I don't think we fully know or
else we could come up with a specific proposal to fix --
fix it.

The one thing that we always know though
is if -- if we've got a problem that seems to be getting
worse, if we don't do anything that it probably won't get
better on its own. And I think that's not just in the
fishery issue, but just everything in life shows that
that seems to be the case.

It's been a bit frustrating to go through
the -- I guess we went to the RAC meeting and presented.
And I -- I don't think all the public testimony got into
your minutes from the Southeast RAC. There was a lot of
people that did testify there in -- in favor of support
of this proposal.

The State asked -- actually said and
there was Staff here that said there's no new
information. And it is a bit frustrating to me that, you
know, we can have subsistence representatives make the
statement that there's no new information when we had
another complete failure we're looking at of the
subsistence harvest. To us that's -- that's very much
new information, very pertinent to the -- to the issue.

But for additional information the Tribe
is continuing to work on research. And we're finding
some very, very interesting things on the status of the
stock of herring in Sitka. We do have working with
funding from BIA with some independent researchers that
are working on -- on the stock status, working to verify
the ASA modeling the State uses to predict herring.
We're seeing a lot of changes in herring in Sitka that
are unprecedented, I don't think anybody has ever seen
what's going on with the herring, aging of the fish and
lack of recruitment into the stock or as is being
proposed the fish are getting older and older before they
return to spawn which is -- is virtually unprecedented in
the Sitka area.

And definitely what we're thinking is
that -- we're scared that maybe the subsistence
harvesters are the canary in the coal mine essentially,
the showing beforehand or the -- the early warning signs
of some bigger issues with the herring stock in Sitka.
So we feel that it's definitely a time to be
conservative.

I -- I don't want to diminish the urgency
of the issue here because it's very, very important to
us, but, I guess, at this time for the Proposal 05, in
spite of the comments made here we are going to ask that
you defer action on this to -- we'd prefer the --the
January wildlife meeting. There's a couple reasons for
that. First of all there -- there is a lot of ongoing
studies that we have preliminary information, but I've
specially requested of our Staff that we not be releasing
preliminary information of independent studies until it's
gone thorough -- gone through a thorough review, a peer
review and -- and published information so that we don't
have the -- the impression from some of the outside
groups that's tainted information or just steered towards
-- towards -- or any kind of inaccurate information out
there. So we certainly want the information to be valid
when we present it to you.

And we do have three proposals that are
before the State Board of Fish in February. And those
proposals reflect raising the amount necessary for
subsistence and then some proposals that are geared
toward the fishery itself that we -- the Tribe has felt
that might be helpful in resolving this situation.
Certainly I think the State Board of Fish would if you
were to act negatively on this, they -- they would
possibly take that as a message that -- that you don't
feel that there's a concern there. So I'm hoping that --
that if you do decide to defer this in addition to that
that you could send some correspondence to the State
urging the Board of Fish to strive to provide a good
solution to this overall problem. And -- and I guess if
the overall problem gets fixed then -- then this -- this problem here goes away as well. So we're hoping for that.

We're -- we're getting a lot of support for our proposals to the Board of Fish. I was reminded this morning that raising the amount necessary for subsistence to reflect that these eggs go all around the state was a resolution that was passed by AFN this year as well. And there was a couple other comments that just slipped my mind I guess.

So I guess I'll go ahead and end my testimony here. Again thanking you for your time listening to this, I know it's -- probably gets long in the tooth to have to come here every year and hear the same -- same things, but if we're hearing the same things it -- it shows that things are still broken there and that we need to try to find the best solution. So definitely the Tribe feels that like, you know, we want to keep this right at the forefront, but we realize we have other processes going on and are getting more information and feel that'll be very relevant to a future meeting and hopefully you'll move on this deferral to next winter.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Mike. Any questions.

(No questions)

CHAIRMAN FLEAGLE: All right. Thank you for the testimony. Pete.

MR. PROBASCO: Thank you, Mr. Chair. The next person, and I apologize, Victoria, if I mispronounce your last name, but Victoria Demmert.

MR. ADAMS: Mr. Chairman. Mr. Chairman. If I -- while she's walking up here I'd like to take an opportunity to make a few comments about Ms. Demmert if I might.

CHAIRMAN FLEAGLE: Go ahead.

MR. ADAMS: Thank you, Mr. Chairman. Victoria Demmert is, of course, the President of the Yakutat Tlingit Tribe which position I held for about 12
years there. And -- and when I decided not to run in
2006, you know, she took over the seat. And when I think
that I told her -- oh, I've had previous experience with
her, she served as the General Manager when I was serving
as the President and so we've already got a pretty good
working -- had a pretty good working relationship. And
so I told her one time that if there was anyone that I
wouldn't mind losing to in an election it would be her.
She's a woman of high quality and -- and -- and good
character. And -- and I think, you know, I -- I want to
thank her for coming here, I invited her to be here and
-- and she responded to that request.

Mr. Chairman. Members of the Board.
Please meet Ms. -- Mrs. Victoria Demmert, President of
the Yakutat Tlingit Tribe.

CHAIRMAN FLEAGLE: All right. Thank you.
With that introduction welcome, Victoria.

Ms. DEMMERT: Thank you. My name is
Victoria Demmert and for those who are taking the audio
minutes, it's D-E-M-M-E-R-T. I'm the President of
Yakutat Tlingit Tribe of Yakutat, Alaska. As Mr. Adams
said I was previously a General Manager of the Yakutat
Tlingit Tribe. I have been an owner of Raven's Table,
which we have recently had to shut down due to economic
reasons of high fuel costs and therefore high electricity
costs. Raven's Table was a fish processing and fish
smoking facility. I have been the Mayor of Yakutat and
the Magistrate there. I've probably had every job that
you can have. The only job I haven't held there is Store
Clerk and I'm thinking of doing that just so I can say I
did.

But it's -- it's the way it is living in
a small town. That's my hometown, I grew up there and I
was taught by my grandparents to give back to the
community. And in small communities we all have to help
and aid one another. And that goes not only to the
community that we live in, but the -- to the communities
around us. Yakutat to the north has Cordova which we are
-- have been working with to find out ways that we can
partner as a Tribe. And to the south of us we've been
talking with Sitka and looking at ways we can partner.
And other things that whenever we can help one another we
attempt in every way that we can to do so. And that is
why I'm here is to speak to this -- to this
recommendation before you from the Sitka Tribe.
It's been many, many years that we have enjoyed herring eggs from Sitka. And we notice when there aren't so many eggs. We're -- the Federal law and also our traditional laws provide for bartering and trading and that is what we do among the different communities. We've bartered for herring eggs, we barter for abalone, things that we may not have, different seaweeds and we barter back and forth as I know the people up north do and throughout Alaska in the -- all of the communities. It's something that is just part of the Alaskan spirit. So we really care what is happening in Sitka with the subsistence.

Come springtime everyone in our community is excited, have you heard, have you heard about the herring eggs, have you heard whether or not they've started spawning yet. And then, you know, making sure that you're friends with whoever's going to be getting in a box of herring eggs. And those boxes come off the plane and, of course, other boxes with items from Yakutat are going down. And it's an exciting, wonderful time and it's just part of who we are. And we don't want to see that stop and it doesn't have to stop.

The concern that we have is you have a commercial user group and you have a subsistence user group. There's no reason that you have to say one group has to step back for the other group. We're absolutely not against the commercial fishing. I'm a commercial fisherman myself, I grew up commercial fishing, I still do it and my son and my husband are commercial fishermen. So I understand that. And in Yakutat we have a river called the Situk River. We have three user groups that are really concerned about that little river. They are the commercial user group, the subsistence user group and the sport fishermen. And I sit on a Board that oversees what happens there. And the one thing that we always say is this is going to work as long as no one user group gets greedy. There's room for all of us.

And there's -- as we go forward and progress we don't have to give up those things that are good. I think this is one of the things that is so important. I don't know how to stress to you that there are things that are important that you can't put a money value on and this is one of those things.

We have concern because we had herring in Yakutat in I think it was the late '70s. Fish and Game opened it up because they thought that there was enough
there to do a commercial harvest. And we were so concerned we begged them to shut it down and after approximately four days, and I could be wrong so don't anybody hold my feet to the fire about exactly how many days it was because that was a while ago, but approximately four days they shut it down. It totally wiped out, excuse me, our -- our herring harvest and so therefore we depended even more on Sitka. And we have. And our little herring spawn is just starting to make its way back. And now we're really nervous because we think are they going to open it back up again. Because there's enough for us to go out and get some subsistence which is used immediately. People have big gatherings and parties and they use them at pot latches. It's necessary for us, but we worry about will the dollar value, will -- will someone say that is worth so many dollars and therefore you people don't really need it. You don't need to eat it and it's something you can just wish for because it has dollar value.

And I think that it's real important that we as a State not go the way some other states have in saying everything has a dollar value. There are some things that have value that you cannot put a dollar amount on. And therefore I ask you to really consider this. Don't consider it in just one box, consider it as a whole, as a necessary part of our way of life.

The fish eggs that Sitka provides go all over the State as Mike said and -- and everywhere else. And we really want to see it continue. I know that when my husband and I first got married way back in 1969, so don't anybody try to figure out how old I am, it was a wonderful time because it was April, it was spring. We went to Sitka, we got -- my husband had a big boat and he and his dad, it was their tradition, to go and set branches. And then they went throughout Southeast Alaska handing out herring eggs. Before we would even get to the community, when we were on our way to Kake, there was a movie going on and everybody in Kake was at the movie theater. And they heard we were coming and they all ran down to the float. And the float started sinking because everyone had emptied out and the town was down there waiting for their herring eggs.

So I just want to leave you with that thought. It creates a wonderful happiness, it is a tradition, it's cultural and it's Alaskan. So I ask that you please hear Sitka Tribe and defer this without negative remarks to your January meeting so that we can
1 gather more information for you. And I thank you for
2 your time.
3
4 CHAIRMAN FLEAGLE: Okay. Thank you.
5 Questions.
6
7 (No questions)
8
9 CHAIRMAN FLEAGLE: Thanks for the
10 testimony. Pete.
11
12 MR. PROBASCO: Thank you, Mr. Chair. The
13 last person that we have signed up is Mr. Chip Trinan.
14
15 MR. TRINAN: Good morning. Good morning,
16 Mr. Chairman. Members of the Board. Thank you very much
17 for the opportunity to testify. For the record my name
18 is Chip Trinan. I'm speaking today as one of 50 State of
19 Alaska Commercial Fisheries Entry Commission, Southeast
20 Sac Roe Herring Seine Permit Holders. And I'm also
21 representing other -- the other permit holders through
22 Sitka Herring Association, a Federally authorized
23 fishermen's marketing association.
24
25 I'd like to point out that most of the
26 permit holders and crews in the southeast herring fishery
27 in Sitka live in various rural Alaskan communities and
28 some of those take part in subsistence harvest activities
29 for herring spawn in Sitka Sound. In fact, the Demmert
30 name is -- and -- and family is pretty well represented
31 in the ranks of permit holders and it's always been a
32 pleasure to associate with members of that family. And
33 I appreciate their participation in the commercial
34 fishery and -- and understand their interest in
35 subsistence activities as well.
36
37 This is the third consecutive year that
38 I've been before you speaking on this particular issue
39 and as you might expect my comments will -- today will
40 pretty much mirror previous comments on -- on our
41 opinions on this proposal. Our comments are also written
42 in the comment -- in the -- in a letter that was
43 submitted earlier and was referenced by Mr. Larson.
44
45 Briefly our position is that we would
46 like you to vote this proposal down just as you did last
47 year. And any new forthcoming, incredible information or
48 changes that result from next month's Board of Fish
49 meeting can be dealt with as they come through and with
50 newly crafted proposals that deal with the situation in
the way is necessary and -- and appropriate for whatever Board of Fish decisions are made.

The reasons that we as commercial operators oppose this proposal is first of all it's difficult to understand how a closure of the Makhnati Island area can have much of an impact on subsistence activities. The area is a bit sandy and prone to ocean swell, not the ideal environment for subsistence roe on branches or activities. Also the herring seem to spawn in the area only some of the time. And from our observations it appears that subsistence activity is much more prevalent in other areas. So restricting this area from commercial use has a minimal affect in -- from what I can observe and what others in the commercial fishery can see.

Secondly it seems that a closure of the particular area limits management flexibility to direct commercial activities away from the more populous subsistence areas.

And as indicated by increasing stocks and record levels of stock estimates this year, it seems like the management plan is working as it should. There's more effic -- there should be more roe available for subsistence harvest as well.

And it -- and fourth it seems that the correlation between the commercial guideline harvest and subsistence harvest is weak at best and I guess one has to infer that other factors are coming into play in determining what the subsistence success is. And our issue is that we don't see how restricting commercial harvest from the Makhnati area will have any affect at all.

As commercial users of the herring resource we're acutely aware of our position that's subordinate to subsistence use under State law. And so we are very concerned about making sure that subsistence opportunity is there and available for those who are interested in -- in undertaking that activity. As a result we have -- we're always working and have a standing offer to assist subsistence harvesters in whatever way we can. And we're sympathetic to those interests, as I said earlier some of our members and crewmen are subsistence users themselves and so -- so they in particular have an interest in maintaining subsistence opportunity.
We've offered the -- to the Sitka Tribe whatever assistance we can give them. In 2008 along with some herring buyers, Sitka herring buyers, we actually chartered a vessel that could be used to transport subsistence users to subsistence areas. It's not exactly clear to me how well that worked. And but we're prepared to continue assistance with our assistance offers and -- and activities as it is requested and -- and in a way that we can be of real assistance.

As a user group with a critical interest in maintaining healthy herring stocks, the commercial fleet supports any new research that would assist in determining what the stock status is. But we're certainly reluctant to rely on scientific and statistical methods that haven't really stood the test of time or had any peer review. Had a lot of illusions it -- or it's been alluded to that new information is available, but it's not clear that that information has any validity at this point. And until it does I guess we have to rely on the Department's estimates of stock size.

So in conclusion I urge the Board to reject the proposal just as you did with the -- almost the same proposal last year. And appreciate the opportunity to speak with you and let you know what our opinion is on this issue. Thank you.

CHAIRMAN FLEAGLE: Thank you, Chip, appreciate the testimony. Questions.

(No questions)

CHAIRMAN FLEAGLE: All right. Thank you. We'll now move to -- that's it for public testimony, right, Pete?

MR. PROBASCO: That's correct, Mr. Chair.

CHAIRMAN FLEAGLE: All right. We'll now move to the Regional Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. Even though there's, you know, a buzz in the air that this proposal will be deferred for another year so I have to, you know, go by what the Council has said. And the Council supports this proposal.

The Council determined that there was significant new information presented at the meeting by
the Sitka Tribe that was not available to the Council when this issue was previously discussed in 2007. The thing that was so impressive to me about this new information was that the Sitka Tribe hired a biologist and she conducted some research surveys in that area and came up with this new information that we have available to us now. The new information indicated that the Council -- to the Council that it was necessary to close the waters of Makhnati Island to non-subsistence users for both conservation of herring in the Sitka Sound area and to protect the continuation of subsistence uses of herring -- herring spawn.

You know, this has always been our position that this is the third time this has come before the Board. The Southeast Regional Advisory Council, you know -- you know, is in favor of -- of the closure. It's evident that in 2007 and 2008 the needs have not been met as far as subsistence harvest of herring roe are concerned. And, you know, this has been repeated over and over the past two or three times that it's been before us and it doesn't seem like, you know, people want to listen. I can say personally that being a recipient of some of the Sitka roe from friends in Sitka as Ms. Demmert indicated that we barter back and forth one with another, that -- in the last couple years the -- the roe that we have been receiving personally into our household has been getting thinner and thinner. And, you know, maybe some new data will figure out or help us understand why that is happening, but it tells me that, you know, the -- the testimonies that were born before the Board where many, many years ago the herring roe used to be knee deep. I have pictures, I should have brought it with me, about the herring spawns, you know, in Douglas Island area. People were actually bathing in it, you know, in the early 18-1900s. And -- and now we see, you know, since more user groups have gotten involved in that fishery, there has indeed been a decline over the years.

The -- the Council concluded that closing Makhnati Island area is the only means available to the Council to provide a meaningful subsistence priority for the waters under Federal jurisdiction. And it is under Federal jurisdiction, members of the Council. I'm going to bring your attention to a regulation in the CFR. This came out in May of 2006. It's 50 CFR Part 100. And it says in summary this proposed rule revised the jurisdiction of Federal subsistence management programs by adding some rich lands and waters in the area of...
Makhnati Island near Sitka, Alaska. This would then allow Federal subsistence users to harvest marine resources in this area under -- under season's harvest -- harvest limits. And -- and the method's specified in Federal subsistence management pro -- regulations.

So this is a five -- four and a half, five acre of waters that are under Federal jurisdiction. And -- and you do have the authority to open, close it or do whatever you want with it. And -- and this proposal has come before us three times already and I think, you know, with the new information that is going to be provided that, you know, the -- the Board really should listen to what is happening in Sitka and -- and the people that it's being affected by.

I know just as a matter of, you know, review and information, the MOU between Sitka Tribes and the State of Alaska, we determined that it would be necessary, and I don't know if -- and I don't think it's ever happened, is that a Federal manager needs to be included in that -- in that MOU. And I think that's still ongoing, but I would like to encourage that as well. The Council believes that this is gravely needed.

As I was listening to other people speak here, we need to remember that subsistence is the priority. And that if there is a need to close any of the other user groups then commercial and sport, you know, would go first, but sub -- subsistence should always be there for us.

Let me see if I can find another thing here to read to you, Mr. Chairman. They kind of just alluded to what I've talked to already before. The affect of closing Makhnati Island in Federal waters. Makhnati Island Reserve comprises the only Federal water in Sitka Sound where herring spawn and where subsistence harvest take place. This area has been occasionally open to commercial harvest sac roe harvest. Closing this area would provide at least one small area where subsistence herring harvesting can take place undisturbed by commercial harvesting.

And so, you know, we sympathize, you know, with Sitka Tribe and the people of Sitka and throughout all of Alaska who benefit from the herring roe that comes out of Sitka. That we are seeing more and more that their needs aren't being met and it's affecting, you know, a lot of people as a result of it.
So with that, Mr. Chairman, the Council, you know, stands by its position. You know, I just can't pull my Council aside, you know, and reconsider, you know, whether we want to defer or not. And so I have to stand by the position that they took at the time of our last meeting. So we do not -- we support this proposal and -- and ask that the Council -- the Board, you know, listen -- listen once again to the concerns of the Sitka Tribal -- Tribal people. Thank you.

CHAIRMAN FLEAGLE: Thank you, Bert. And I appreciate that comment. That's expected of -- of all your Councils -- of all the Councils as well, I mean, you can't speak on behalf of the Council an action that they didn't take and I respect -- I -- I thank you for recognizing that. And we do appreciate your -- your statements on this issue. Thanks.

Next we have Department of Fish and Game comments. George Pappas.

MR. PAPPAS: Good morning. George Pappas, Department of Fish and Game. Summarizing the Department's full comments that are in your Board books at Pages 140 to 142. And these full comments will be entered into the record following this verbal testimony.

No new information or peer reviewed data accepted by the scientific community are available to support a change in the overall management of the Sitka Sound herring stock since the last time the Federal Board rejected this closure proposal. The information presented at the Southeast Regional Advisory Council meeting is not new information or peer reviewed scientific data pertinent to the management of the herring fisheries within the vicinity of Makhnati Island area within the Sitka Sound.

The Department agrees with the OSM analysis and recommends that the Federal Board oppose this proposal.

Thank you, Mr. Chair.

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STATE OFFICIAL WRITTEN COMMENTS
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Alaska Department of Fish and Game
Comments to the Federal Subsistence Board
Introduction:

Proposal FP09-05 requests closure of marine waters of Makhnati Island and Whiting Harbor, which are subject to federal claims of jurisdiction, to harvest of herring by non-federally qualified users. The closure would only allow subsistence herring fishing by federally-qualified users and would bar state subsistence, sport, and commercial fisheries for herring or herring spawn in the area. The proposed closure area is not where the primary subsistence herring fishing has occurred, and commercial harvest rarely occurs in the area. In addition, no new information has been provided that would support the proposed closure.

Impact on Subsistence Users:

Adoption of this proposal would be potentially detrimental to subsistence fisheries, depending upon where and when herring spawn each year. The commercial fishery is managed to minimize harvests near heavily used subsistence areas. Actions by the Alaska Department of Fish and Game (Department) commercial fishery managers must be taken in a timely manner to be effective. The proposed closure would limit options for where a commercial fishery could occur, potentially resulting in adding a commercial fishery in other areas important to subsistence users. The proposed closure would also prohibit subsistence and sport harvest in this area by non-federally qualified individuals. A closure in this small area (560 acres) would have little or no impact on the total subsistence, sport, or commercial harvests.

Opportunity Provided by State:

For the majority of subsistence herring egg harvest, the Department does not restrict fishing periods, seasons, or amounts of herring harvested for subsistence purposes in this area. Harvest of spawn on hemlock boughs or spawn on hair kelp is unrestricted, and no State permit is required. Post-season evaluation of subsistence harvest is accomplished by a harvest monitoring program conducted by Sitka Tribe of Alaska in cooperation with the Department’s Division of Subsistence. The Alaska Board of Fisheries found that 105,000 to 158,000 pounds of herring spawn is the amount reasonably necessary for subsistence uses in Section 13-A
and Section 13-B north of Aspid Cape. The Department requires a permit that may limit harvest of spawn on Macrocystis kelp and requires harvest reporting following the season. (See 5 AAC 01.730(g)) Harvest of spawn on Macrocystis kelp accounts for an average of only two percent of the subsistence harvest on all substrate types, so State requirements for spawn on kelp harvest is not a significant limitation.

The limited non-commercial exchange for cash of subsistence-harvested herring roe on kelp, harvested in Districts 1-16 under terms of a permit, is allowed as customary trade. The annual possession limit for spawn-on-kelp is 32 pounds for an individual and 158 pounds for a household of two or more people. The Department has authority to issue additional permits for herring spawn-on-kelp above the annual possession limit if harvestable surpluses are available. Commercial herring vessels, permit holders, and crew members may not take or possess herring 72 hours prior to or following a commercial herring fishing period.

Conservation Issues:

Currently, there are no conservation or management concerns for the Sitka Sound herring stock that potentially spawn in waters of the Makhnati area. From 1979 through present, the Sitka Sound herring resource has been above the current 20,000 ton threshold every year, with only one exception, and the run has averaged 75,342 tons per season in the recent five-year period (2003-2007). Herring are managed under a conservative management strategy that sets threshold biomass levels below which commercial harvest is not allowed and limits harvest rates to 10-20 percent of total mature spawning biomass. This is a time-proven strategy that provides for conservation of the resource. The area proposed for closure is so small that it is unlikely to provide conservation benefits above the threshold level and harvest rate, especially given the highly variable nature of herring spawning behavior.

Jurisdiction Issues:

The Federal Board does not have authority to close this area solely to commercial herring fishing as suggested by some closure proponents. Instead, the Federal Board would have to close the area to herring harvest by all non-federally qualified users, which would include all subsistence, personal use, sport, commercial,
or other harvests occurring under State regulations. Such a closure is not necessary to provide for continued federal subsistence and would violate section 815 of ANILCA. Such a closure may also be detrimental to subsistence uses by unnecessarily limiting options for management of commercial fisheries and, thereby, potentially increasing impacts to areas that are more important as subsistence use areas.

**Other Issues:**

Herring biomass in Sitka Sound has shown a long-term increase and is considered healthy. The 55.3 total nautical miles of spawn in Sitka Sound in 2008 was consistent with the recent five-year average of 54.8 nautical miles and above the long-term (1964-2007) average of 42.4 nautical miles. The spawning biomass after the 2008 fishery, as estimated by spawn deposition surveys, is not available at this time, although preliminary assessment of spawn deposition indicates a record high level. The estimated average spawning biomass from 1964-2007 is estimated at 30,617 tons, and the recent five-year average spawning biomass (2003-2007) is estimated at 75,342 tons. The 2008 season forecast biomass of 87,715 tons was the highest on record. In contrast to the 2007 spawning event, in 2008 a significant portion of the biomass spawned on Kruzof Island shoreline on the west side of Sitka Sound. The Kruzof Island shoreline is not considered a viable opportunity for setting subsistence branches due to the distance from town, exposure to ocean surge, and generally unfavorable shoreline structure for setting branches. Significant spawning also occurred along islands near the road system, including heavily used subsistence areas of Kasiana and Middle Islands. Unlike the 2007 season, very limited spawning occurred within the federally claimed waters of Makhnati Island in 2008. During the 2008 season, bad weather generally did not impact subsistence users from accessing fishing sites, and commercial harvests during the 2008 season occurred well away from the Makhnati area. The 2008 commercial sac roe GHL of 14,723 tons was harvested on three separate days. Two openings occurred March 25, harvesting 1,147 tons in an area over 4 nautical miles distant from the Makhnati area. On March 26, two one-half hour openings occurred harvesting 9,380 tons. The fishery boundaries for the March 26, 2008, openings were just over 3 nautical miles from the Makhnati area, though the actual harvesting occurred over 7 nautical miles west on Kruzof Island shoreline. The third opening occurred
March 31 harvesting 3,973 tons with the nearest open
waters being 5.5 miles distance from the Makhnati area.

Recommendation: Oppose.

CHAIRMAN PLEAGLE: Thank you, George. We
now turn to Dr. Polly Wheeler for the InterAgency Staff
Committee comments.

DR. WHEELER: Thank you, Mr. Chair. The
InterAgency Staff Committee found the Staff analysis for
Proposal FP09-05 to be a thorough and accurate evaluation
of the proposal. However consistent with the Southeast
Alaska Subsistence Regional Advisory Council's
recommendation, a minority of the Staff Committee
suggested that the Federal Subsistence Board consider new
information presented at the Council's meeting and that
this information could be used to draw a different
conclusion than that reached by OSM. The majority
suggested the new information presented to the Council is
mostly not new, is preliminary in nature, mostly without
peer review and even with the new information the OSM
conclusion remains relevant to the analysis and is still
valid.

Two parts of ANILCA for the Board to
consider are one, does the Board have rationale to choose
to not follow the Council's recommendation. That's
Section .805(c). And two, would the Board's closing of
Makhnati Island be consistent with Section .815(3) as
further refined through the Board's closure policy. The
majority, consistent with the OSM analysis and
conclusion, suggest that closure of Makhnati Island area
to non Federally qualified users is not needed for
conservation of the herring stock nor to continue
subsistence uses and is not supported by substantial
evidence. The minority suggest that a closure could be
an effective action, enable rural residents to continue
their subsistence uses of herring eggs which is
consistent with the Council's recommendation in Section
.815(3).

The Council's position is supported by
newly revised information on insufficient egg harvests in
2008, and that would be a second consecutive year, as
well as long term data which document the frequent,
consistent use of Makhnati Island waters for spawning by
Sitka Sound herring. This particular locality has been
especially valuable to subsistence users as it is an
important area for collecting highly prized herring roe
on kelp, has protected conditions for safe gathering and
was one of the few places where rural residents were able to obtain good quantities of herring eggs during some of the low harvest years.

Commercial fishing closures to protect herring during their spawning activities have been employed by fisheries managers in Washington and British Columbia. While the Makhnati Island Federal waters are of limited extent, the closure could nevertheless increase the likelihood that herring are able to successfully spawn with reduced disruption at a site documented to be important for both herring reproduction and subsistence harvests.

That concludes my comments, Mr. Chair.

CHAIRMAN FLEAGLE: All right. Thank you. I think it's a good time to step down for a break for those of us that were able to get here at 8:30 it's been a little while. So -- I know we started late, but we're going to take a 10 minute break.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good morning. The Federal Subsistence Board is back on record. And we're at the point of Board discussion on Proposal 5 and I'd like to open that up for Board discussion. First of all we turn to Bert.

MR. ADAMS: Mr. Chairman. I just want to make mention that I just got a fax in from Central Council Tlingit and Hyda. And I think it was passed around to everyone. So I just want to bring to your attention, you know, that they have comments on all of the proposals that has been before us so far and particularly with Proposal number 5 which is what you are now.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Appreciate that. And welcome back to Denny.

MR. BSCHOR: Thank you, Mr. Chair. I'm sorry I was late, but I wasn't about to drive on that slick of roads with a rental car and no studs. And -- and I went a block and I turned around, I figured it
wasn't worth it. So I was rescued by Steve Kessler. Thank you.

CHAIRMAN FLEAGLE: Thanks, Steve. Well, it's better that you're here late than show up in the paper as a casualty. I'm sure there's going to be several on the news tonight.

All right. Discussion on Proposal 5.

George.

MR. OVIATT: Thank you, Mr. Chairman. This -- this proposal has been in front of us now for about three years and I've always had difficulty justifying the Council's recommendation under the Board's closure policy in ANILCA, Section .805(c) and 815. I've had trouble tying the commercial fishing when there hasn't been any since '02 with the needs on -- and the subsistence in the Federal waters.

Having said that, I kind of feel like right now with this proposal we're sort of in between, I think we have some information that we don't fully maybe understand or hasn't been completed, it certainly hasn't been peer reviewed. And I think the -- maybe you need to take an opportunity to pause to have some of that done.

The Council determined there was significant information presented by the Sitka Tribe biologist regarding the chemical composition of herring offalus (ph). The use of offalus -- microchemistry to distinguish herring stocks may hold some promise for discrete stock management. But I believe additional time and research needs to occur to confirm the premise and to demonstrate consistent, stable results.

We all know that this issue is broader in scope than just the Federal waters around Makhnati Island. And we've heard testimony from a, I think, Sitka Tribe member or residents of Sitka that they have a number of proposals in front of the State Board of Fish. And I believe that this Board should take the opportunity to let that process happen before we continue with hearing this proposal.

So for those reasons, Mr. Chairman, I believe I'm leaning toward deferring this for a year, but before I put a motion on the table I would like to hear from the rest of the Board members.
CHAIRMAN FLEAGLE: Thank you, Niles.

MR. CESAR: We also lean towards deferral. Obviously we have funded some research into this and we don't know what that's going to turn out. I don't know if there's going to be any great revelations, but without seeing that, without having it peer reviewed, without all of the process taking place I just believe it would be in our benefit to defer this too. And I -- the timing of that deferral I'm not -- I won't speak to because I just don't know. But our vote will be to defer.

CHAIRMAN FLEAGLE: Thank you. I'll add a few comments. I think that that's probably the best route because I don't see any evidence that -- that the closure -- I -- I'm not going to say I don't see any evidence that the closure is not needed, I see no evidence that it's going to help. And I think that's a position that this Board has taken in the past.

It's -- it's really interesting to note that in the analysis where we look at the -- the past years when there were the sac roe herring fishing in the area that were opened near Makhnati Island were only open in a small portion of those years. And in the last two years there were no fishing in the waters that we're discussing closing yet the harvests for subsistence uses were below what they anticipated. So whether we closed the area around Makhnati or not because there was no commercial fishing there they would have still been below their harvest. That's the conclusion I can jump to with the data here.

So it indicates that there's a larger problem. What is the larger problem, are -- are the herring simply going to other areas to spawn, are the spawners that would normally be in the Makhnati Island area being captured before they get there, I mean, there's a number of -- of potential causes. We -- we heard that herring eggs are getting lighter or smaller, whatever the term used. I mean that -- I -- although it's not scientific data before us, I do rely heavily in this job on anecdotal information because that's how native people, subsistence users relay information, they -- by years and years and centuries of -- or of -- or even millennia of observation that's passed on down. So I don't discount that, but the fact is that if we were to have closed this area around Makhnati two years ago it wouldn't have made a difference because there
hasn't been fishing there.

So I don't see any reason -- I don't see any substantial evidence to close it now. And -- but with all these other circumstances that -- that haven't been fully meshed out, I think that it's worthy to set it aside and see what the -- the Board of Fish does to react and what other science that may come in. So I think I'm supporting the idea of deferral.

Other Board members. Denny.

MR. BSCHOR: Mr. Chair. I don't need to repeat everything that's said, I'll just say ditto. But because I -- I think at this point anything we can do to get better information or whatever is -- is going to be beneficial in the long run. I would say though that we'd probably -- and I'm -- I'm tending towards deferring here, I am interested in deferring this issue for a period of time. That period of time though I would think would be better if it were on a -- on the cycle, the next fish cycle. But I don't know, I wasn't here for all the testimony, I don't know if that fits with other's desires, but that would be my -- my input on that part of it.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Geoff.

MR. HASKETT: I'm not going to be a whole lot different than anybody else, Mr. Chair. I -- my Staff had originally proposed that we oppose this based upon there being not substantial evidence to support the closure at least for the reasons asked for. It appears to me that other factors may be responsible, but we don't know. And so until we have better information, better data, I think it probably does make sense to go ahead and defer this.

CHAIRMAN FLEAGLE: Thank you. I have Sue and then Denby.

MS. MASICA: I would just concur with what's been said previously. I was -- I didn't that we'd met the thresh -- the thresholds for closure were met, but I think a deferral is appropriate in light of the additional information, the need for further review and peer review of that. So.....
CHAIRMAN FLEAGLE: Commissioner Lloyd.

COMMISSIONER LLOYD: Well, thank you, Mr. Chairman. Following on what appears to be some sentiment to potentially deferring the proposal, I'd like to echo what Mr. Bschor was indicating though in terms of timing of that. It would certainly be easier for Staff to accommodate and I think for the Board to accommodate if this were deferred to your next fisheries meeting rather than complicating issues and deferring it for a single year into your wildlife cycle. And it's not just a simple consideration in that regard, there's a lot of Staff work that goes into preparing for these meetings, it's not just the meeting itself.

So I believe unless you've got reason to schedule it otherwise we'd certainly appreciate from our perspective, let alone what we think would help your perspective, that you defer it to the next fishery cycle meeting in your schedule, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. George.

MR. OVIATT: Well, that would defer this for what, two years. It -- it's hard to put an estimate of time. I was thinking of deferring it for one year and that it be heard during the wildlife cycle in 2010. And I wonder if we couldn't put a time frame of one year on it and then at that time if we need more time for studies or -- I hate to see this linger on for one year and two years and three years if we have the information and it's been peer reviewed in time for consideration during that cycle.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. George, what's the likelihood that given the amount of concern that you hear about this area, what's the likelihood that the state will voluntarily not open this area for the next couple of years just based on the last two years that you haven't opened it. I mean it hasn't -- well, maybe you're not the right person to answer, but you can pass it off, but I'm just looking for maybe some kind of a verbal commitment that you recognize this as a concern that the Sitka residents are not meeting their subsistence needs, not by anything that you're not doing obviously or apparently, but it would seem like it would be a real tough situation to defer this for two years and then have a fishery in the area while we're waiting.
COMMISSIONER LLOYD: Well, thank you, Mr. Chairman. I guess we'll hesitate to make a commitment at this meeting. However we do have an ongoing MOU with the Sitka Tribe. On a day to day basis the area managers of the fishery are attempting to communicate with the Tribe. And I think we'll continue that effort. So to the extent that in any particular year or any particular day that, you know, we understand where the biomass is being made available, we'll have those conversations locally to best locate the fishery. But to make that kind of commitment now I think would be inappropriate because we wouldn't have that kind of in-season knowledge to understand how best to manage the fishery.

CHAIRMAN FLEAGLE: I appreciate the response. It was worth asking though. Niles.

MR. CESAR: The only problem I see with delaying to the next fish cycle would be of May 2010. So we'd be looking at two full cycles of fishery. So I'm concerned about that. And so, you know, the notion of picking it up during the wildlife cycle or some even special meeting. I mean I don't know and I -- and I'm -- it's tough to say that's exactly what I want, but it seems to me like you're going to miss two herring cycles, that's more than anybody I think was originally thinking.

CHAIRMAN FLEAGLE: Thank you. Comment on the process. Pete, I think the -- as I understand it the Board can set its own schedule so, I mean, we certainly have the ability to postpone it until next year, but we also have the ability to take it up whenever we want to, I mean, not that we would hold a special meeting, but we do have the subjectivity to take it up when we want to, right?

MR. PROBASCO: That's correct, Mr. Chair. And you're not confide to -- confined just to these meetings that we have in the winter and spring, you could actually have one anytime you wish, we just have to have proper notice. So with that, Mr. Chair, it's the Board call. You do have to take into consideration preparation by the Staff. So when we get to that point as far as a time I'll speak up if I see problems.

CHAIRMAN FLEAGLE: Okay. Denny.

MR. BSCHOR: I don't want to prolong this
discussion on the timing, but maybe a suggestion would be not -- not longer than two years. Put an outside limit to it, we want to hear it within two years.

CHAIRMAN FLEAGLE: Thank you. George.

MR. OVIATT: I suppose we could do that. What would be the trigger to cause us to -- I guess if the information is there in time for the wildlife meeting we would move forward with it at that time. And we would have to be done in -- in appreciation of what Pete is saying we would have to know that well in advance of January of 2010 in order for the Staff to prepare what they need to. But, I guess, you know, leave it up to OSM to kind of -- kind of lead us in that direction. I guess I -- in reference to that I would be willing to make a motion that we defer for a time period of not -- no longer than two years and sooner if possible.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: I recognize that as a motion.

MR. OVIATT: What process, do I have to put the original motion on the table first?

CHAIRMAN FLEAGLE: Yeah, that's what we've been doing. Yeah, good point. Good catch.

MR. OVIATT: Mr. Chairman. I'm prepared to make a motion.

CHAIRMAN FLEAGLE: Please do.

MR. OVIATT: Mr. Chair. I move to adopt FP09-05 as submitted by the Sitka Tribe of Alaska and supported by Southeast Regional Advisory Council as shown on Page 116 of our Board book. Given a second I would like to place a motion before this Board to defer.

MR. BSCHOR: Second.

CHAIRMAN FLEAGLE: All right. You have your second. George, continue.

MR. OVIATT: Mr. Chair. I move to defer Proposal FP09-05 as submitted by Sitka Tribe of Alaska as shown on Page 116 of our Board book for a period not to exceed two years and sooner if possible. Given a second
I'll speak to this motion.

MR. BSCHOR: Second.

CHAIRMAN FLEAGLE: You have a second. Go ahead.

MR. OVIATT: Real quick. This will allow additional time for research to occur and the State Board of Fish to consider the proposal submitted by the Sitka Tribe.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Board members. Pete, you're not a Board member. Niles.

MR. CESAR: Well, I support George's motion and amendment I think for all the reasons that he's talked about. I will vote to -- vote for a deferral.

CHAIRMAN FLEAGLE: Pete, comments.

MR. PROBASCO: Mr. Chair. And what we'll do is we'll keep the Board apprised of the issue during our work sessions and then we'll use that as a compass when you would like to take it up.

CHAIRMAN FLEAGLE: That sounds good. That will allow opportunity to see what the State Board of Fisheries does to their proposals and any other additional information that might come out of the fishery next year. So -- okay. I'm for it as well. Are we ready for the question? The question's called. Pete, please poll the Board on 05.

MR. PROBASCO: Mr. Chair. To defer Proposal FP09-05. And you're first, Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Yes.
MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Yes.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: And Mr. Haskett.

MR. HASKETT: Yes.

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

CHAIRMAN FLEAGLE: All right. Thank you. And that wraps up southeast area. I want to thank you gentlemen that came north from the southeast to help us out on these issues and also the testifier from Yakutat, appreciate your attendance, other testifiers.

We'll give a few moments to change the Staff as we move into the Cook Inlet suite of proposals and grab a cup of coffee. Let's just stand down for five minutes while we switch out Staff.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right. We're back in session. Before we start with the Cook Inlet area proposals I do have a -- Commissioner Lloyd wishes to speak to the Board.

COMMISSIONER LLOYD: Thanks, Mr. Chairman. I appreciate your action on that last proposal. And to follow-up briefly I invite and request that you, the Board, request the pertinent Staff, the pertinent Federal Staff to attend the Alaska Board of Fisheries meeting on this issue so that they're fully apprised of the information that our Board process will be listening to and also all the public testimony that comes forward at that Board of Fisheries meeting. So again kind of in the spirit of cooperation and cross-pollination I'm hoping that the pertinent Federal Staff will join us at that Board of Fisheries meeting. I'm not sure when that -- it's next -- it's in March. Yes.

CHAIRMAN FLEAGLE: Thank you,
Commissioner, appreciate the comments. And I see Staff
taking notes. All right. I see we have another Council
Chair, Lester Wilde from the Yukon Kuskokwim Delta
Advisory Council, welcome to the meeting.

MR. WILDE: Thank you.

CHAIRMAN FLEAGLE: With that we're going
to go ahead and move into our next proposal. Proposal 6
has been added to the consensus agenda so we're going to
skip to Proposal 7 and I see we have at the table Helen
Armstrong and Donald Mike. And, Helen, you're going to
lead off.

MS. ARMSTRONG: Thank you, Mr. Chair.
Members of the Board. Regional Council Chairs. My name
is Helen Armstrong and I'm an anthropologist for OSM.

Proposal FP09-07 begins on Page 168 in
your Board book. This proposal was submitted by the
Ninilchik Traditional Council. It requests that
Ninilchik be added to the communities with a positive
Customary and Traditional Use Determination for all fish
in the Kenai Peninsula district waters north of and
including the Kenai River drainage within the Kenai
National Wildlife Refuge and the Chugach National Forest.
For the rest of this analysis I will refer to this area
as the Kenai River area. A map of this area can be seen
on Page 172 of your Board book.

In the Kenai River area the Federal
Subsistence Board has recognized the customary and
traditional uses of salmon, but not resident species by
Ninilchik residents. Ninilchik also has a positive
Customary and Traditional Use Determination for all fish
in the Kasilof River drainage.

The proponent of Proposal FP09-07
requests that the Board recognize the community of
Ninilchik's customary and traditional uses of all fish in
the Kenai River similar to its uses of salmon and
comparable to the Customary and Traditional Use
Determination finding for the Kasilof River drainage.
Hope and Cooper Landing have a positive C&T for all fish
in the Kenai River area. So Hope and Cooper Landing have
all fish and Ninilchik has only salmon.

Such concerns are properly addressed
through the implementation of seasons -- I'm sorry. This
issue is not a conservation issue and such concerns are
properly addressed through the implementation of seasons, harvest limits and methods and means of harvest.

The issue of C&T for fish on the Kenai Peninsula has been before the Board off and on since 2001. I won't go through the whole history, but it's in your -- in the analysis in your books.

Specific percentages regarding the use of the area and use of resident fish species is included in the analysis on Pages 180 to 188. Different studies have been done by the ADF&G Subsistence Division as well as the Ninilchik Traditional Council. There are different methodologies used, some of them were lifetime uses, some were just specific to one year. But the information that we have is that somewhere between 1 and 28 percent of the people of Ninilchik have harvested resident species in the Kenai River area. Based on the holistic application of the eight factors presented in the analysis, Ninilchik residents have a pattern of use of customarily and traditionally using resident species in the Kenai River area.

The Southcentral Council's recommended modification to the proposed regulation for C&T for resident species of fish for the community of Ninilchik would exclude burbot, Arctic grayling and pike. The recommendation if adopted by the Board is not anticipated to have any affect on the community of Ninilchik's use of resident species in the Kenai River area. There is no Federal open season for burbot and Arctic grayling and no regulation for pike. There are no limits for harvesting pike under State regulations.

Adopting the Southcentral recommendation would result in a regulation broken out by species for Ninilchik while Hope and Cooper Landing would have a C&T for all fish, but the net effect would be the same for all communities.

Contrary to the Southcentral Council recommendation OSM Staff have chosen to recommend keeping the C&T consistent for Hope, Cooper Landing and Ninilchik and not break out Ninilchik's C&T by species because breaking the C&T out by species is contrary to the opportunistic nature of subsistence fishing. In this case if grayling or burbot are harvested current regulations would require that the fish not be harvested thus the net effect is the same.
The OSM conclusion is to support Proposal FP09-07.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Okay. Thank you for that. Summary of public comments. Donald.

MR. MIKE: Thank you, Mr. Chair. Donald Mike, Regional Council Coordinator. You'll find your written public comments on Page 200 of your Board book. We received one written public comment from the Kenai River Sportfishing Association opposing the proposal.

Based on the prior analysis of the historic pattern of use and eight criteria that are required under ANILCA and the decision to not grant C&T for freshwater species to residents of Ninilchik, Kenai River Sports Fishing Association strongly opposes this expansion of subsistence opportunity. As is the case in this situation, we cannot simply afford additional opportunity to a community that cannot demonstrate a pattern of use of those resources present within the Federally managed waters. Adoption of this proposal will detrimentally impact other users and other uses of these resources.

Subsistence opportunities for residents of Ninilchik exist under State regulations. This proposal revisits decisions already made by the Federal Subsistence Board in November of 2006 and would grant residents of Ninilchik a Federal subsistence priority for freshwater species occurring in the Kenai River within the Kenai National Wildlife Refuge and the Chugach National Forest. Central to those earlier decisions was the fact that C&T could not be demonstrated for freshwater species within the Federally managed waters. The justification provided for this proposal recognizes this activity did not occur on the allowable Federal property, but asks it be allowed anyway because the Federal boundaries are not consistent with their historic patterns of use.

That concludes the written part of the comments, Mr. Chair. Thank you.

CHAIRMAN FLEAGLE: Thank you, Donald. Now we're opening the floor for public testimony. Pete, do we have anybody who wants to testify on this?
MR. PROBASCO: Yes, Mr. Chair. At this time I have one public member and that's Mr. Ricky Gease.

CHAIRMAN FLEAGLE: Ricky Gease, please step forward.

MR. GEASE: My name is Ricky Gease, I'm speaking on behalf of the Kenai River Sportfishing Association of which I am the Executive Director. I've had the privilege also of serving on the Southcentral RAC for the past year. I want to thank you for the opportunity to speak today on this issue. It's an interesting issue. It deals with C&T Determinations.

Kenai River Sportfishing Association joined -- provided an amicus brief to the case in the Chistochina case. We were concerned with C&T determinations for fish stocks in that so we provided an amicus brief on that.

FP09-07 concerns a C&T Determination for the community of Ninilchik for resident species in the Kenai River watershed and waters north in the Federal lands of the Kenai National Wildlife Refuge and the Chugach National Forest. An overview of my testimony today, I'm going to touch on four topics. One speaks to the problem with legal advice to the Federal Subsistence Board, agencies, OSM, the RACs, subsistence and other users in regards to the C&T process. And those problems were described specifically in the court case itself. The reason why I'm going to go into that is that it speaks to the determination process and what should be used as a rationale for making positive C&T determinations. I'm also going to speak to the history of decision making in regards to the C&T determinations for salmon and resident species that we have in these waters today. I'll speak to the data that is pertinent to this specific C&T determination in the packet. I think there's data in regards with this court case now, there's specific data that is pertinent and data that is not. Then I'll speak lastly to some remaining unresolved issues on the C&T determinations for the Kenai Peninsula as was touched on yesterday.

Specifically first I want to talk to the court case itself because I'm in -- I think it's important to go through some of the points that were in the court case and so we're clear about what a C&T determination process actually is. On Page 13442 of the case, it's -- we're talking about, we will find an agency
action arbitrary and capricious if it offers an
explanation for its decision that runs counter to the
evidence before an agency. I think that's an important
point to it.

The second area that -- point two on Page 13445, Section (b)(5), when making C&T determinations the
Federal Subsistence Board must determine which fish
stocks and wildlife populations have been customarily and
traditionally used for subsistence. Additionally the
regulations provide that C&T determination shall identify
the specific community or area's use of specific fish
stocks and wildlife populations. The point being in
these points that I'm bringing up is that it's a specific
community or area, it's a specific fish stock and it's on
Federal lands in a specific area.

We go on to Page 13446, Section (b)(4),
point seven. The addition of the term stock or
population denotes a smaller group than a species.
Specifically the regulation directs the Federal
Subsistence Board to identify a community's use of
specific fish stocks and wildlife populations. In order
for the FSB to make -- consider the relevant factors when
making C&T determination the Federal Board must have
considered Chistochina subsistence use of specific moose
populations and not Chistochina's use of moose in
general. So the same thing points to here when you're
making this determination for resident species, it has to
be on a specific fish stock and not on these resident
species in general.

Continuing on, Page 13447, Section (c)
where it points out the decision was not arbitrary and
capricious, the second paragraph. The Federal defendants
first contend that the FSB properly extended Chistochina
C&T determination for moose to the whole of the area
because the Board in its discretion may grant a C&T
determination for a species in any area as long as the
community requesting the determination can demonstrate
subsistence use for that species anywhere. In order --
in other words the Federal defendants contend that
neither ANILCA nor its implementing regulations require
the FSB to limit C&T determinations to the area in which
the community has demonstrated subsistence use.

Point nine is the court found no merit to
this argument. The regulations clearly tie C&T
determinations to the specific location in which wildlife
populations have been taken. So in this process the
wildlife populations and the data are specifically tied to harvests on Federal lands.

Point 10 in that same section, each C&T determination must be tied to a specific community or area and a specific wildlife population or fish stock. C&T determination shall identify the specific community or area's use of the specific fish stocks and wildlife populations. Throughout this decision it's a specific community, a specific fish stock and a specific area to make a positive C&T determination.

Specific communities and areas and specific fish stocks and wildlife populations are by definitions limited to specific geographic areas. The FSB has determined that rural Alaska evidence -- residents and the list of communities, areas and individuals have C&T -- have customary and traditional use of the specific specified species on Federal public lands in the specified areas. A C&T determination is not a determination that a community or area has used a species for subsistence purposes, rather a C&T determination is a determination that a community or area has taken a species for subsistence use within a specified area.

Going on on Page 13450, second paragraph there. Thus the six of the eight factors direct the FSB to consider use relative to the specific wildlife population or fish stock and by extension relative to its geographic reach of that population or stock.

Point 12, Federal defendants further content that requiring a geographic basis for the C&T determination works at cross purposes with ANILCA because ANILCA was enacted to protect the subsistence lifestyle enjoyed by rural Alaskans, not to limit subsistence use to the traditional reach of those rural -- and not to limit subsistence use to the traditional reach of those rural communities. We do not find this argument convincing. Further in that section it says the geographic limitation protects the subsistence activities traditionally practiced by rural Alaskans and protects species by ensuring that only those communities that have traditionally taken from a population are given priority to do so in the future. Again it comes back to specific communities, specific fish stocks and specific areas.

Point 13 on Page 13451, in fact, the alternative proposed by the Federal defendants would give
the Federal Subsistence Board discretion to grant a rural community a statewide C&T determination for a species as long as that community could demonstrate a subsistence use for that species. There is no support in ANILCA or its implementing regulations for such unfettered discretion.

So throughout the decision making process -- and again point 13 continues on. The record shows that the entire purpose of the C&T determination process was to determine whether Chistochina residents demonstrated C&T use of moose within the areas. If the Federal Subsistence Board had not found so we doubt they would have granted the C&T determination for moose in those areas.

So the Federal -- the reason why it's a problem, I know in deference to the Chair, he likes issues, looking at problems, the problem is both legal advice I believe in this argument and in this court case is both the legal advice with all due deference to lawyers and legal opinions is that we've had problems with the legal advice to the Federal Subsistence Board, to the OSM, to the agencies, to the subsistence users and to the RACs about what a C&T determination actually is. And this court case clearly defines it as a specific community or area harvesting a specific species, not a, you know, species, but specifically a stock of that species, on specific Federal lands. That's what a positive C&T determination is and that's what the issue is before you today.

So with that clarity that the court case and decision provides to this Board, I'd like to continue on with the second point which is what data are we looking at today. The data that you're looking at on Pages 180 through 188, the most relevant data to this point, there's a lot of data that's relevant to -- in regards to the legal advice is did Ninilchik have -- show a customary and traditional use of the resident species for subsistence purposes. Clearly they did. However that is not the point of a positive C&T determination. The point of a positive C&T determination is where was that harvest pattern documented.

And what is relevant to your decision making process today is on Page 188 and if you would please turn to that page. If you look at 188 it's divided into two points. There are Federal public lands and waters and there are other lands and waters. To the
decision making process other lands and waters are not pertinent. The documented use on Federal public lands and waters is what is pertinent. And if you look to the right-hand column you'll see Dolly Varden, zero, zero, zero; rainbow trout, 1 percent, 1 percent, 0 percent; steelhead, zero, zero, zero; lake trout, 1 percent, zero, zero; hooligan, zero, zero, zero on Federal lands. So this in the -- when you're going through when the Staff was looking at this survey which is a one year snapshot, they found similar evidence and documentation of levels of use consistent from year to year. So it's showing that resident species are not -- there is not a documented use of these resident species on Federal public lands. However, there is documented use on the Kasilof River, 4 percent and off on -- for Dolly Varden in Ninilchik and in the Deep Creek area.

If you go back to your decision for finding a positive C&T for Ninilchik in the Federal waters on the Kenai River you will remember to look on the right-hand side. On the right-hand side of the column for salmon in your decision making process schnook salmon was zero, sockeye salmon was 4 percent, coho was zero, chum salmon was zero, pink salmon was zero. In your decision making process what you articulated was that those fish stocks migrated and they migrated past Ninilchik. And if you go down into the other lands and waters you'll look at for chinook salmon, for example, 12 percent, 9 percent, 4 percent, 4 percent, 19 percent. So what you had is coming up to harvest rates of 50 percent for chinook salmon on those fish stocks that you said migrated past in the marine waters of Cook Inlet and in the fresh water tributaries that were going up into Federal lands. And you accepted that as a rationale. So harvest on non-Federal lands of fish stocks was part of your rationale. However if you go down sockeye salmon, if you go down coho salmon, you had use levels coming up into the 50 percent range in your decision making process. Now that's a different court case whether or not harvest on -- off Federal lands should be a factor versus harvest on Federal lands. That's a separate issue and you guys can revisit that issue with clarification on this court case. And I would suggest that you would go back and do that.

However with this positive C&T determination here for resident species, Page 118 doc -- 188 documents there is no use on Federal public lands, documented positive for that positive determination if you consider those three factors, community, area and the
specific fish stocks.

Resident species by definition for the rainbow trout and the lake trout are not migrating Ninilchik in State waters. So the same kind of loophole if you want to call it that cannot be used for the resident species determination as has been used in the salmon determination.

Lastly I'll point out -- and thus it's based on the evidence that is before you that we say that no, we don't think that this community, this specific community has demonstrated a positive C&T determination. So that's why we're against that determination process.

Yesterday you had some issues when you were talking about C&T determinations around the Juneau road system and some other areas. I want to point out how that issue also affects other areas on the Kenai Peninsula relative to C&T determinations. Kenai Fjords National Park is not a subsistence area however it butts up next to the Chugach National Forest, the Resurrection River, it goes along that, it bisects the boundary between the Chugach National Forest and the Kenai Fjords National Park. You do have salmon species in that river system. Currently right now there's no C&T determination for that. In my reading of what your opinion is, that area's open to subsistence fishing for salmon stock such as coho which are up in that region. That's another area which I think in your -- when you're tasking Staff to look at areas of the State that are open that haven't had positive C&T determinations for fish stocks, that's an area that should be listed on as is 4th of July Creek which headwaters are in the Chugach National Forest area.

One of the things that's an issue in terms of why is it important for communities to have specific areas listed is you have a changing State as time goes on. The rationale that you use to make your decisions is important. If you allow a positive C&T determination for a 1 percent use of a community for resident species, you're setting the default bar for one person in a small community. Cooper Landing has 100 people, I'm going to walk you through a little bit of logic here. Where I see the downfall is for other rural communities in the State, and I believe this is an important issue that's going to affect this Board through time, I can move to Cooper Landing and I'm a qualified Federal user. If your bar for use or a pattern of use is set at 1 percent, one person from a rural community, two
people or a group of people could go hunting or fishing in an area, build up a pattern of use through State measures and say I want to go outside that area, I'm a Federally qualified user. I -- our community may not do it a lot, but I want a positive C&T determination. You're seeing a migration from rural communities into urban areas, but you're also seeing the reverse, you're seeing migrations of people from urban areas to rural areas. And on -- we're seeing that on the Kenai Peninsula. You're seeing people with wealth and means moving for retirement into rural communities just establishing their residency and then looking for other areas of the State where they can go hunting and fishing specifically for that. The question posed to this Board when ANILCA was established and you set up the specific process for positive C&T determinations, it's an area, it's a community on specific stuff. If you set that bar too low you're going to have more migration into areas from other qualified rural residents that may not have demonstrated that use. And that's the danger of setting precedent of the bars too low in these specific instances.

Thank you for your time and opportunity to speak before you.

CHAIRMAN FLEAGLE: Thank you, Ricky. Any other testifiers, Pete?

MR. PROBASCO: No, Mr. Chair.

CHAIRMAN FLEAGLE: All right. Thank you. We'll then move to the Regional Council recommendation, turn to Ralph Lohse. Welcome, Ralph.

MR. LOHSE: Thank you, Mr. Chair. As was noted before, I think this is about the third time we've had this same recommendation before the Board. I think the last time the Board dealt with it it was a tie vote. All three times that the -- this recommendation or this proposal was before the Board the Council supported it, this last time we supported it was a modification by a 10, zero vote. We as a Council felt that there was documented use of fish by residents of Ninilchik. We also felt that we had heard enough personal testimony from residents in Ninilchik and from elders in Ninilchik about previous patterns of use in the area and previous use of it.

We did look at the survey, we looked at
the survey at -- the same survey that's on Page 188 and we considered that as a snapshot, that's a snapshot in current time, but we also looked at the fact that we're dealing with a -- we're dealing with an area where the pattern of use, the historical pattern of use has been interrupted since 1952. We don't say that there's a lot of use on the Kenai River, but it's our understanding that what we're looking at for C&T is use, not lots of use and that there is no threshold. It's the nature of subsistence to be opportunistic, we have lots of testimony from elders and older people and old written testimony and stores that showed that people from Ninilchik did go up into the Kenai River for other purposes and we felt that during that time they would have harvested the fish or the -- they would have harvested I'll say the resources that are available for their daily living. Harvest of resources is opportunistic, it's the nature of subsistence to do that and it's often associated with other subsistence activities.

While we never had any testimony that anybody went to the Kenai River to get fish to put up for the winter or to store or to -- or to fill their winter's needs, we did have testimony of people going up there on moose hunting and trapping trips and other kind of traveling trips and things like that and taking the resource for the use of daily food or for a week's food or for camping food. The Council therefore recommended that the Customary and Traditional Use Determination be limited to freshwater species that were historically harvested prior to the closure in 1952 when subsistence as allowed.

We do not think that a low threshold is a danger if what it's connected to is a long term, meaning historical use of C&T resource. We have little problems with what long term is at times, but I doubt if long term would equal somebody moving in today and using a resource for two or three years.

So with that I would like to say that the Council -- Southcentral Regional Advisory Council supports this proposal by Ninilchik and in the -- in the interest of making sure that we're dealing with fish that were available and were used, we limited it to Dolly Varden, Arctic char, lake trout, rainbow and steelhead trout. That was not a unanimous vote. We had members of the Council who voted against that because they felt that that was limiting subsistence users, but we put it in
anyhow. But the vote for the proposal was 10, zero. Thank you.

CHAIRMAN PLEAGLE: All right. Thank you, Ralph. We now turn to the Alaska Department of Fish and Game for comments. George.

MR. PAPPAS: Good afternoon. George Pappas, Department of Fish and Game. Summarizing the Department's full, formal comments that are in your Board books, Pages 198 to 199. Those full comments were also entered into the record following this testimony.

This proposal, FP09-07 is identical in intent to the proposed portion of the Proposal FP06-09 which the Federal Board rejected in September 13th, 2007, based on insufficient evidence to support a determination of customary and traditional use of resident species within the Kenai River area by residents of Ninilchik and Happy Valley.

The Federal Board decision was the outcome of a lengthy public process and intense examination lasting over a year. They observed that the Federal Staff analysis of this proposal mirrors its analysis of that portion of the rejected Proposal FP06-09. The proposal and Federal Staff analysis provide no new or substantial evidence of Ninilchik or Happy Valley customary and traditional taking of discrete resident fish stocks of the upper Kenai River area with Federal public lands.

The September 23rd, 2008 opinion of the Ninth Circuit Court in the State of Alaska versus the Federal Subsistence Board, commonly called the Chistochina case supports the correctness of the Federal Board's prior C&T determination in this instance. In its decision on September 13th, 2007, the Board found no C&T use of the resident fish stocks within the Federal lands on the Kenai River area by Ninilchik and Happy Valley residents. In its Chistochina decision the court held the Federal Board's C&T determination must be supported by substantial evidence or specifics -- substantial evidence of a specific rural community or area's demonstrated customary and traditional taking of specific fish stock or wildlife population, not general species, within specific geographic locations. The Federal Board's determination must have a quote, substantial basis in fact, unquote for C&T determination. The court added that the Federal Board's quote, regulations clearly
tie C&T determinations to the specific location in which
the wildlife population have been taken, unquote. And
quote, each C&T determination must be tied to a specific
community or area and a specific wildlife population,
unquote.

As previously determined by the Federal
Board, resident species fish stocks found within the
Federal boundaries of the Kenai River area constitute
distinct stocks and residents of Ninilchik and Happy
Valley have not quote, customarily and traditionally
quote -- unquote, taken significant numbers of those
distinct stocks in that area. Any evidence of these
communities' take of the same general species or fish in
other waters closer to Ninilchik or Happy Valley cannot
be used to grant these communities C&T determinations to
that specific fish stock in the upper Kenai River area.

Ninilchik and Happy Valley are located
far away from the upper Kenai River, they have not
historically relied on the discrete resident fish stocks
for their subsistence needs. No new information is
presented in the proposal or in the Federal Staff
analysis which justifies reversing the 2007 Federal
Board's C&T determination. Granting a customary and
traditional finding without substantial evidence of a
prior pattern of take of specific fish stocks in specific
geographic areas by a specific community would be in
direct conflict with the September 23rd, 2008 opinion in
the Alaska versus the Federal Subsistence Board. There's
no substantial evidence that the use of specific resident
stocks in the Kenai River area by Ninilchik and Happy
Valley residents satisfies the Federal Board's regulatory
definition of customary and traditional use or the
Board's regulatory factors for making a positive C&T
determination for any specific resident fish stock.

The Federal Board's previous --
previously properly concluded those communities have
rarely harvested or fished from those specific stocks in
those Kenai waters. The Department urges the Federal
Board to oppose this proposal.

Thank you very much. That concludes my
comments.
Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-07 Ninilchik Customary and
Traditional Use Determination for Resident Species in the
Kenai River Area

Introduction:

Proposal FP09-07 requests that recent customary and traditional use (C&T) findings by the Federal Subsistence Board (Federal Board) for the communities of Ninilchik and Happy Valley be changed to allow those residents to harvest resident fish stocks under federal subsistence regulations from federal lands within and north of the Kenai River drainage (Kenai River area). Proposal FP09-07 is identical in intent to the portion of Proposal FP06-09 which the Federal Board rejected on September 13, 2007, based on insufficient evidence to support a determination of customary and traditional use of resident species within the Kenai River area by residents of Ninilchik and Happy Valley after a lengthy public process and intense examination lasting over a year. The federal staff analysis of this proposal mirrors its analysis of that portion of the previous proposal that the Federal Board rejected. The proposal and federal staff provide no new or substantial evidence of Ninilchik or Happy Valley customary and traditional taking of discrete resident fish stocks of the upper Kenai River area within federal public lands.

Background:

Application of the September 23, 2008, Ninth Circuit Court opinion in State of Alaska v. Federal Subsistence Board, 544 F.3d 1089, reinforces the correctness of the Federal Board’s prior C&T determination regarding nonuse of the resident fish stocks within federal lands in the Kenai River area by Ninilchik and Happy Valley residents. The Court held that 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 fish stock or wildlife population, not general species, within specific geographic locations. Alaska v. Federal Subsistence Board at 1094-99. The Federal 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). As previously determined by the Federal Board, resident species fish stocks found within federal boundaries in the Kenai River area constitute distinct stocks, and residents of Ninilchik and Happy Valley have not customarily and traditionally taken significant numbers of those distinct stocks from that area. Any evidence of those communities take of the same general species of fish in other waters closer to Ninilchik and Happy Valley cannot be used to grant Ninilchik or Happy Valley C&T determinations to the specific fish stocks in the upper Kenai River area at issue. Ninilchik and Happy Valley are located far away from the upper Kenai River area. They have not historically relied on those discrete resident fish stocks for their subsistence needs. Given the Federal Board’s prior analysis and recent pronouncements by the Ninth Circuit Court in Alaska v. Federal Subsistence Board, a C&T determination for the communities of Ninilchik and Happy Valley to take the specific resident fish stocks of the upper Kenai River area cannot be supported. No new information has been provided that would support reversing the Federal Board’s recent determination that insufficient evidence exists to support a determination of customary and traditional use of the specific resident fish stocks within the Kenai River area by residents of Ninilchik and Happy Valley.

Opportunity Provided by State: The Kenai River area is located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under State law. The State provides a broad array of personal use, recreational, and educational fisheries to meet needs for personal and family consumption as well as cultural purposes. In addition to personal use and educational fisheries for salmon, State sport fishing regulations provide adequate opportunities for harvest of rainbow/steelhead trout, lake trout, and Arctic
char/Dolly Varden in addition to salmon.

**Conservation Issues:**

No separate harvest proposal was submitted by the proponent, but, if this proposal is adopted, presumably Ninilchik and Happy Valley residents would become eligible to harvest resident species under existing federal subsistence harvest regulations which apply to residents of Hope and Cooper Landing for taking resident species in the Kenai River area. The State previously documented that resident species are easily over-harvested, and a conservative management approach has been developed by the State over time to assure harvest opportunity while sustaining these distinct, vulnerable resident stocks in the Kenai River area. Most trout fishermen in that area practice catch-and-release fishing, and the proportion of rainbow trout that are harvested in the State fishery is only about 2.4 percent. Current federal regulations providing for use of dip nets and multiple baited treble hooks and for high daily harvest and possession limits for these Kenai River area resident stocks already raise serious conservation issues that are amplified by inadequate reporting requirements. Adding a new subsistence harvest of these resident fish by Ninilchik and Happy Valley to existing federal subsistence harvests of these fish by Hope and Cooper Landing residents would significantly increase these concerns.

**Department Recommendation:** Oppose.

No new information is presented in the proposal or in the federal staff analysis which justifies reversing the 2007 Federal Board C&T determination. Granting a customary and traditional finding without substantial evidence of a prior pattern of take of specific fish stocks in a specific geographic area by a specific community would be in direct conflict with the September 23, 2008, opinion in Alaska v. Federal Subsistence Board. The recent federal staff analysis contains the same information, taken from the same surveys and data compilations reported in 2003-2006, that the federal staff reported before. No substantial evidence that use of the specific resident stocks in the Kenai River area by Ninilchik and Happy Valley residents satisfies the Federal Board’s regulatory definition of customary and traditional use, see 50 C.F.R. 100.4, or the Board’s regulatory factors for making a positive C&T determination for any specific resident fish stock. See
50 C.F.R. 100.16(b). The Federal Board previously carefully concluded those communities had rarely harvested or fished from those specific fish stocks in those Kenai waters.

CHAIRMAN FLEAGLE: Thank you, George.

InterAgency Staff Committee Comments. Dr. Polly Wheeler.

DR. WHEELER: Thank you, Mr. Chair. The InterAgency Staff Committee found the Staff analysis for Proposal FP09-07 to be a thorough and accurate evaluation of the proposal. The majority of the Staff committee noted that a holistic application of the eight factors demonstrates that residents of Ninilchik do have a customary and traditional pattern of use of resident fish in the Federal public waters of the Kenai Peninsula district while a minority of these Staff committee noted that there is not a pattern of use by the community of resident fish species in these same waters. The majority also believed that there is insufficient information to distinguish between individual species and that use of a species cut off date -- and that use of a species cut off date prior to 1952 could be detrimental to Federally qualified subsistence users. In reaching its conclusion the minority believes the Customary and Traditional Use Determination for residents of Ninilchik for any resident fish species in this area is not supported by substantial evidence, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. And we now open it for Board discussion. George.

MR. OVIATT: Thank you, Mr. Chairman. Helen, I have a couple of questions maybe you can help clear up for me. I refer to the book on Page 187, I think it's Dr. Fall's report. He reports 1 percent of harvested rainbow trout, lake trout in the Kenai Lake or Kenai Mountains. I refer to Page 189 where it talks about 8 percent down to 2 percent. Could you help me understand your 1 to 27 percent that you talked about that use this. I mean, it's a wide variance for me and I just -- could you help me understand?

MS. ARMSTRONG: Thank you, Mr. Oviatt, for your question. What we have is Dr. Fall did two studies in 1998 and in 2002. Both of those were as Mr. Gease referred to them, a snapshot -- those were snapshot years. Those were studies of one year of use and so you -- and you get these really low levels of use for the
resident species. The Ninilchik Traditional Council, because this has been an issue for a long time before the Board and, I mean, it was -- it had come up in the early '90s in terms of other uses for Ninilchik. So they did a study in 1994 and in that one they because they were concerned about historical levels of use and recognizing that things had changed significantly in the past, you know, couple of decades on the Kenai Peninsula, so Ninilchik Traditional Council had done a survey where they asked households what their lifetime use was. And when they looked at the lifetime use those numbers were much higher. The study was -- there have been as those of you who have been around for a long time on this, there's been a lot of controversy about whether or not their methods were appropriate or not.

I think in November of 2006, I believe it was, there was a lengthy discussion with Dr. Robert Wolfe who was on teleconference, he used to be the Subsistence Director at the ADF&G Subsistence Division, who testified that their methods were the type of methods -- they were comparable to what the Subsistence Division has done in the past. And what they do is they sit down with a number of people and ask, you know, where -- what are your traditional use areas. I did get the maps, the actual surveys -- responses from that. The quality of the printing was not good enough that I felt I could actually reproduce what they had done, but they did have a map that they ended up drawing and it showed that they had used pretty much all the Kenai Peninsula area. Now they also did not break out non salmon and resident species so that was a problem.

In Dr. Fall’s study in 2002 he did a -- asked a question that was not in his original report, but he produced for us later on of lifetime uses. And again that wasn't broken out from resident species from salmon. And in that one -- that table is on page -- just a second, sorry, I didn't have the page number memorized, but that table of his lifetime uses and this is from Dr. Fall, was on Page 182. And it didn't break it out between salmon and resident species, but it did break it out by Kenai River and Swanson River. And there were questions on, you know, total use and then -- and then the breaking out Kenai River and Swanson River. And in that one -- and this was Federal public waters as well, this was a study that was funded by OSM to ADF&G. You can see that their frequent use and then intermittent use, that those percentages are actually fairly significant.
The position that we have is that as Ralph was saying is that fishing is opportunistic and if people are going to get salmon and they actually harvest a rainbow trout instead they're not going to throw it back, they're not sport fishermen who are just, you know, going fishing to, you know, with hook and release, they're going to harvest that rainbow trout. So I think it's actually quite telling that that wasn't broken out between salmon and resident species, that they asked the question about -- just about fish in general.

So that's where we get some of the differences. I mean there are different methodologies and it could be argued, you know, that -- that maybe some of them aren't as rigorous as others, but they were asking different questions between lifetime use and more recent use.

And then Ninilchik, I should add that the Ninilchik Traditional Council also did a study in 1999 because the Board wanted to know about their harvest between okay, we know what lifetime use was, what are they doing today. And in that study there was significant reduction in what they were harvesting and where. That table is on Page 185 and you can see that they did it by unit rather than by looking at the -- this was a study that was done on all species, it wasn't just done on fish and this was actually before we had our Fish Program, it was prior to that. So they recorded the information by unit. But 15C is basically the Kenai River area. It also did not say whether it was on Federal public lands or not. So but it does demonstrate that they -- people were harvesting those resources.

Does that help, do you have any other questions?

MR. OVIATT: It does. In other words we've got a lot of studies and the -- and they go from anywhere from 1 percent to 27 percent of the different studies.....

MS. ARMSTRONG: Well.....

MR. OVIATT: .....and different methods and different ways they've done those?

MS. ARMSTRONG: Well, and what you're -- what question you're asking. Whether you're asking about lifetime uses, have you ever gone there or whether --
what you did last year. And I think the really critical
factor is that if you look at -- or a thing to remember
is that factor one of the eight factors says a long term,
consistent pattern of use excluding interruptions beyond
the control of the community or area. And there were
some big interruptions that occurred. So do you look at
what they harvested in 2002 and you base your Customary
and Traditional Use Determination on that one year use
when, in fact, their historical use was something very
different. And I -- our regulations don't say well, look
at one year of use from 2002, they say, you know, long
term, consistent use excluding the interruptions beyond
the control of the community or area.

MR. OVIATT: Thank you, Ms. Armstrong.

CHAIRMAN FLEAGLE: Other discussion.

Ralph.

MR. LOHSE: Mr. Chair. As is shown by
these surveys and the variance in the surveys and the
variance in the methods, the Council couldn't really rely
on the surveys. And I'd like to read -- I've got a few
notes here, I'd like to come across a couple of things,
but one of the things Mr. Henrichs brought up at our last
meeting is that in the absence of a written history, oral
history is admissible evidence in courts and has been
used in many native American cases. And the one thing
this Council has done is heard a lot of oral history, we
sat in a lot of meetings on this now, we've heard from a
lot of members from the community of Ninilchik, we've
heard from elders, we've heard from tribal leaders, we've
heard from all kinds of things and the one thing that
we've consistently heard was that in the past people from
Ninilchik made use of the Kenai River.

Now right in our own things that we have
in front of you guys, it says right here testimony
presented at the October, 2006 Southcentral Council
meeting in Homer noted that the Kenai River was preferred
over the Kasilof River prior to the prohibition for
subsistence fishing in 1952 because the Kenai River is
slower moving than the Kasilof and easier to pole up.
Those are the kind of things we don't take into affect
anymore today. We've got kickers, we've got cars, we
drive here, we drive there, we're not traveling by dog
sled, we're not traveling on winter trails, we're not
pushing boats up the river. But when we're supposed to
as a council look at the long term use and a consistent
pattern without interruption we have to go and we listen
to the people and we listen to Council members who live
in the area who have other people that don't come to our
meetings, but that they know because they live there.
And we listen to their oral testimony and the only
conclusion we could come down to as a Council was that
the people of Ninilchik have used the Kenai River for
subsistence purposes in the past. We also admit that
they do not use it to a large extent in the present.
Part of that's competition, part of that's easier access
to places closer to them, part of that's due to new
equipment that makes it easier to do things in a
different area.

And we -- you know, I could go through my
notes here, I mean, the testimony from the meeting and
time after time we're basing our decision on this one
here as a Council on what we hear from people. We
recognize that there's data that shows use, it doesn't --
some of it doesn't show much use, but from what we've
understood there is no threshold of use. And I might be
corrected on that, but there is no threshold of use,
subsistence is about use, customary and traditional is
about use. And from that standpoint we as a Council have
felt in the past and probably still feel -- I mean, still
feel and probably will feel in the future no matter what
your decision is, that the people in Ninilchik deserve
customary and traditional use findings on the Kenai
River.

And I don't know how better to say it and
I don't -- I can't sit here and repeat everything I've
heard at all of these meetings, but I've listened to a
lot of people and I've listened to people from the area
and I thought that's what the idea of a Council was, we
deal with people who live there, who've used the
resource, who remember people who've used the resources,
whose fathers and grandfathers have done the different
things there or great grandfathers or even farther back
than that. And from that we make a decision and our
decision as a Council has been that we had to support
Ninilchik as having customary and traditional findings
for the Kenai River.

And with that I'm going to shut up and
let you guys make the decision.

CHAIRMAN FLEAGLE: Thank you, Ralph.
Discussion, Board members.

(No comments)
CHAIRMAN FLEAGLE: Well, does somebody want to -- if we're done with preliminary discussion we're open for a motion to put the issue on the floor and begin deliberation. Steve.

MR. KESSLER: Thank you, Mr. Chairman. I move to adopt Proposal FP09-07 as originally proposed.

CHAIRMAN FLEAGLE: Thank you.

MR. CESAR: I second.

CHAIRMAN FLEAGLE: We have a second. The proposal is before the Board for deliberation. Steve, would you like to lead off.

MR. KESSLER: I can do that, yes, Mr. Chairman. The -- first of all I would like to say that the proposal is somewhat different than the recommendation of the Regional Advisory Council. That the Regional Advisory Council recommends limiting of this Customary and Traditional Use Determination to -- and I'm just make sure I get it right, to salmon which already exists, Dolly Varden, Arctic char, lake trout and rainbow slash steelhead trout.

I at this point plan to support my original motion which includes all the species not just the limited species that the Council is recommending. My rationale is laid out quite well in the OSM conclusion on Page 192 of our Board book, it's a very complete justification for their conclusion. Some key points that I've considered in this recommendation or my motion, residents have consistently harvested all fish on the Kenai Peninsula since the community was settled in the mid 1800s. Information and analysis shows that a lifetime use of fish species by Ninilchik residents in the Kenai River area is about 28 percent of the households. That's a pretty high number actually. Recent use has decreased some, but that may be due to regulations and competition with other users. Although recent use of resident fish has been relatively low, the data also show what I consider to be a consistent pattern of use. Further as explained in the analysis there are no unimportant uses. The holistic view using the eight factors leads me to the resident fish customary and traditional use. We know that people fishing are opportunistic. They will fish when doing other activities such as hunting, berry picking, fishing for anadromous fish, for salmon, et cetera.
We must -- we really should allow that opportunistic uses to continue and it generally makes little sense to limit it to just specific species. We could adopt the Council's recommendations, but my rationale really doesn't make sense to me there because of sort of this opportunistic nature. I think it would be detrimental to subsistence users and is not based on substantial information. And that's referring to the Council's recommendation. Further it doesn't make sense to allow Hope and Cooper Landing to have a Customary and Traditional Use Determination for all resident fish while those people from Ninilchik would be excluded from taking some species like burbot, grayling and pike. However I also would like to point out that though it's not directly relevant to a Customary and Traditional Use Determination, that there is currently no season for burbot and grayling and that we have o Federal regulations for pike.

That pretty much covers my rationale.

CHAIRMAN PLEAGLE: Thank you, Steve.


MR. HASKETT: So being as new as I am to the Board, if I get the way to do this wrong, please, I guess, bear with me and correct me and let me know how to do this. This is one I've had just really a lot of questions about and a lot of interest in and still have a lot of questions that I don't think have been answered here. I look and see -- again if it's not okay for me to talk about this stop me, but I look and see how the vote's gone the last three times and it's worked out based upon the information that have been given that this did not go forward. And, you know, when I look at what Staff has made available here, I guess, I don't see anything new or any major new information that would change my position on that. I have questions though because I keep hearing these different percentages of use and questions about, you know, which fish we're talking about and when it was fished for and when you ask the question if that makes a difference because people were precluded from being able to go out or if you need to be looking at the current use as opposed to the past use. Again I apologize for my ignorance on this, but just really does leave me with lots and lots of questions about have we even done the right or the ultimate studies to figure this out, to figure out what the actual use would be.
So at this point I think it's okay for me to go ahead and say what I intend to do? Okay. That being the case based upon the past decisions we've made as a Board and looking at what I think is still lots of questions and no new information, my intent would be to not vote in favor of this.

CHAIRMAN FLEAGLE: Thank you, Geoff.

Niles.

MR. CESAR: My intent is to support the motion. I believe that Steve laid out the rationale very clearly in my mind and so I intend to support it.

CHAIRMAN FLEAGLE: Thank you. George.

MR. OVIATT: Thank you, Mr. Chairman. I think BLM's stand has been similar to what Geoff had just stated that there's been an awful lot of information put out and it's, you know, what is substantial evidence that they use those fish. I've gone back and studied reports written of the conditions in the -- in the Kenai prior to 1952, I've read Peter Kalforhony, a number of other folk and these -- you know, these people they said that the Ninilchik was intrusive to the Kenaitzes and the Kenaitzes to me really owned the Kenai River. I went back and looked again at trapping patterns and it was reported they gave who trapped in what river drainages. And they said the Ninilchik area was in the Ninilchik area, not in the Kenai area. And they said that this was the conditions in the '30s, '40s and '50s. It just seems to me that Ninilchik and when the -- Ninilchik was formed by the Russians they told them that they were to remain within themselves and not get involved into the communities of the Kenaitzes. So when I read all of that, we've got a huge break in between and I get confused with the 1 percent and all of these percentages.

But we have opposed this proposal in the past and I don't see where there's any new information so I'm probably not going to change our vote in support of this. Thank you.

CHAIRMAN FLEAGLE: Thank you, George.

Sue.

MS. MASICA: Mr. Chairman. As with Geoff I'm new to all of this and still finding my way through it and trying to understand all the pieces of these
issues. I go back to the law and the deference to the subsistence -- the Regional Committees, the Councils rather and the thresholds for which we would not act in a way consistent with what their recommendations have been. I understand the opportunistic and doing slightly different, but I come out in a different place which is to be in favor of the -- what Steve put on the table in terms of the motion.

CHAIRMAN FLEAGLE: Thank you, Sue. Go ahead, Keith.

MR. GOLTZ: I should put on the record that we have not been granting deference to Councils on this question of C&T, only on the question of take.

CHAIRMAN FLEAGLE: Duly noted, thank you. My position -- I want to lead out by saying it's not based on the personalities or the politics of the area, I know that there are a lot of politics around this area because of the extreme competitive uses of fish on the Kenai River. But I'm going to support the Board's decision in the past based on the rationale that we used for the prior decisions.

And I'd also like to add that with the -- I know that both sides of the issue have raised the recent court decision as to how it should apply to this and my take from the Chistochina decision is that the Board still retains the authority and the discretion to grant C&Ts according to the method that they have been using. We were affirmed that the methodology that we used were correct. And in the case of the Chistochina moose in Unit 12, obviously there was a demonstrated use of moose in Unit 12 by residents of Chistochina. And using that same logic we were able to extend a customary -- a positive customary and traditional use to the residents of Ninilchik on the Kenai River for salmon because those were a moving stock that went beyond the community of Ninilchik that they showed that they did harvest from outside of the public waters. They were not able to convince the Board or the majority of the Board at the time that that same use -- pattern of use were was extended to the portion of the Kenai River that's Federal -- under Federal authority. And I want to be really careful, I heard percentages thrown out, we're discussing 1 percent. I think that we need to maintain the discretion that the Board has used, that we use common sense when we're applying these C&T decisions and determinations and that if we tie ourself to a percentage
that may work in one area and we're stuck with it in another area that just has no bearing, I mean, we're going to be a point -- I think that it was said before, we could find ourselves to a point where all rural residents qualify for all species everywhere based on some of the rationale that I've heard presented on this case. And if that's the case then we don't need to C&Ts anymore, we just need to open it wide up. And I don't think that that's the right track to go on either.

I think that the Board has demonstrated really good common sense use of their C&T determinations and I think that the C&T determination that we made in the past on this resident species for Ninilchik on the Kenai River are substantiated and defensible and I don't see any compelling evidence to suggest we reverse our decision. So that's my decision and it sounds like that shows where the vote is going to go.

Are we ready for the question?

MR. CESAR: Question.

CHAIRMAN FLEAGLE: The question's called. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP09-07, the motion. And first is Ms. Masica.

MS. MASICA: We're voting on the proposal originally not modified by.....

CHAIRMAN FLEAGLE: That's correct. The motion is to adopt a positive C&T for those fish.

MS. MASICA: In favor, yes.

MR. PROBASCO: That's yes?

MS. MASICA: Yes.

MR. PROBASCO: Okay. Mr. Oviatt.

MR. OVIATT: No.

MR. PROBASCO: Mr. Kessler.

MR. KESSLER: Yes.
MR. PROBASCO: Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: No.

MR. PROBASCO: And Mr. Fleagle.

CHAIRMAN FLEAGLE: No.

MR. PROBASCO: Three, three, motion fails.

CHAIRMAN FLEAGLE: All right. Thank you. Appreciate everybody's time on the issue and heartfelt testimony and good work. I'd like to call for a lunch break and we'll return at 1:00 o'clock.

MR. LOHSE: Just for future reference as a Council member and we're dealing with C&T and we're dealing with long term consistent use, but if we have surveys that take place in the last 10 years that disagree with what we see as long term, we should put more credence on the surveys that are from the last 10 years than in the long term then. Because what you're saying -- but what I've heard today was the fact that we have surveys in the last 10 years that show 1 to 2 percent use overrides surveys that show that lifetime use is 27, 28 percent.....

CHAIRMAN FLEAGLE: Well.....

MR. LOHSE: .....and overrides historical thing. I -- it just.....

CHAIRMAN FLEAGLE: I appreciate your frustration and your -- you know, you're not happy with the Board decision, but the decision has been made and obviously this is an issue we can discuss in a Council Chairs' discussion later if you'd like. But at this time I -- you know, the decision has been made and I'd like to go ahead and call for the lunch break.

Sorry for cutting you off, but -- Pete.

MR. LOHSE: Thank you, Mr. Chair.

MR. PROBASCO: Just real quick.
Commissioner Lloyd corrected that the Board of Fish dealing with Sitka is not in March, but February 17th through the 26th.

CHAIRMAN FLEAGLE: In Sitka. 1:00 o'clock we'll resume. Thanks.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon. We're back on record. And yesterday we mentioned that today we would probably have a better idea of when the Council Chairs' issue was going to come up. And because of the telephonic deal I see that's not as much of a problem now as we've got of the Council Chairs here, but I still don't see that I'm going to be able to make it to a time certain. Maybe if we proceed for a couple more hours today and see how the proposal rate of proposals works out we might be able to establish a time certain. If not we can set it for first thing in the morning, something like that. I'm anticipating that at the rate we're moving we probably will need some time tomorrow. But we may surprise ourselves, we just -- it's kind of unknown right now. We dealt with some -- what with the Executive Session yesterday and then some issues that took a lot of discussion. So these other -- these remaining four proposals may not require as much discussion. We'll know that as we move along.

With that, are there any announcements or comments. Denny.

MR. BSCHOR: Mr. Chair, yes. Just so everyone knows, about 2:30 I'm going to have to excuse myself for a doctor's appointment I've been trying to get for several months and was able to do so. So I'll be gone I imagine the -- maybe the rest of the afternoon if it's minor, if not I'll hopefully be back tomorrow morning. And Steve will sit in for me.

CHAIRMAN FLEAGLE: You bet. Thanks, Denny. Appreciate the heads up. Other comments, announcements. Pete.

MR. PROBASCO: No.

CHAIRMAN FLEAGLE: Okay. Looks like we're prepared to continue moving forward with our Cook
1 Inlet proposals. And up next is Proposal 09. And we
2 have at the table Steve Fried and Donald Mike. Good
3 afternoon.
4
5 MR. FRIED: Good afternoon, Mr. Chairman.
6 For the record my name is Steven Fried, I work as a
7 fisher biologist for OSM. And I will summarize the Staff
8 analysis for regulatory Proposal FP09-09 which was
9 submitted by the U.S. Fish and Wildlife Service and can
10 be found on Pages 203 to 211 of the Board books.
11
12 This proposal requests that Cook Inlet
13 area regulations be modified to better define
14 requirements for marking fish and entering harvest
15 information on permits, to clarify the lower boundary for
16 the Kasilof River fishing area and to align permit due
17 dates so only one permit could be used for both the
18 salmon and resident species fisheries in each drainage.
19 So if adopted the proposal would clarify existing Federal
20 subsistence regulations concerning where — when and
21 where harvested fishes must be recorded on permits and
22 must be marked to show it was harvested in a Federal
23 subsistence fishery, would better describe the location
24 of the lower boundary of the Kasilof River fishing area
25 which is currently described just by a place name and it
26 would require that a return date be printed on fishing
27 permits to reduce the amount of paperwork for subsistence
28 users and management agencies since only one permit could
29 be used for all the fisheries in each drainage.
30
31 The proposal would not affect fish
32 populations or other uses and the OSM conclusion is to
33 support this proposal for the previously cited reasons.
34 And this concludes my presentation. Thank you.
35
36 CHAIRMAN FLEAGLE: All right. Thank you.
37 And for a summary of public comments, Donald Mike.
38
39 MR. MIKE: Thank you, Mr. Chair. You'll
40 find your summary of written public comments beginning on
41 Page 216. The Kenai River Sportfishing Association is in
42 support of the proposal. This proposal seeks to address
43 ambiguity in the regulatory language regarding reporting
44 requirements, clarify management area boundaries and
45 adjust reporting dates. Specifically the proposal states
46 the reporting and recording requirements are worded in a
47 way that makes it difficult for officers to enforce the
48 regulations as currently written. The lower boundary
49 limit on the Kasilof River will not change, but there has
50 been confusion because of different maps available that
show Silver Salmon Rapids at different locations. And
the permit due dates need to be aligned so that only one
permit is needed to -- for salmon and one for resident
species. The seasons end dates are different for the
dipnet season versus the rod and reel fishing season
which would require multiple permits for the same species
caught with different gear types.

We believe the changes help clarify
implementation of the existing fisheries and will adjust
Federal regulations following the Alaska Board of
Fisheries' actions. We view these things as principally
housekeeping and therefore recommend the Board pass them.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Donald.

Public testimony. Pete, do we have anybody signed up to
testify on this proposal?

MR. PROBASCO: Yes, Mr. Chair. Mr. Ricky
Gease.

CHAIRMAN FLEAGLE: Ricky.

MR. GEASE: I'll pass on comments.

CHAIRMAN FLEAGLE: Okay. He passes.

Thank you. And Regional Council recommendation. Ralph
Lohse.

MR. LOHSE: Through the Chair. Mr.
Chair. Southcentral Regional Advisory Council supports
this proposal. Southcentral Regional Council has always
been in support of clarifying regulations. We've also
been in support of timely and accurate reporting and
boundaries that are clear and consistent. We feel that
this would simplify permit requirements by allowing a
single permit and we think the changes will benefit
subsistence users, will not affect fish populations or
other users and will help in the aid of enforcement.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Ralph.

Appreciate those comments. And Department of Fish and
Game, George Pappas.

MR. PAPPAS: Thank you. George Pappas,
Department of Fish and Game. Summarizing the
Department's full comments that are in your Board books
Proposal FP09-09 is intended to streamline the Federal subsistence fisheries permitting process, improve enforceability of permit reporting requirements and further define regulatory boundary limits of the fisheries. The Department supports the intent of the proposal submitted by Fish and Wildlife Service, but we are requesting additional modifications to better achieve the intent without creating unintended ambiguities and conflicts.

I'll ask you that you look at Pages 214 and 215 of your Federal Subsistence Board book. The OSM proposed language is shown in bold and the modified State language is shown in bold and underlined. I'll explain or suggest some modifications so that you can follow along with me.

First under Section 27(i)(10)(ii) Cook Inlet on Page 214, fourth paragraph down on the -- I apologize for the inconvenience here. The additional requested modification is intended to help ensure that first harvests are properly allocated to a specific gear type and location of a subsistence fishery. This changes are needed because different limitations and requirements apply to the different gear types, areas and fisheries of which these -- there are often several fisheries occurring at the same time. Current Federal subsistence fishery regulations do not have the reporting resolution necessary to accountably manage the multiple fisheries. Improvement in reporting resolution will assist with the management of individual fisheries by year or season, will help with tracking of harvest allocations among fisheries, communities and gear types and will assist with fisheries management decisions when necessary by both Federal and State Staff. The Department -- additional modifications are offered to assist with the improvement -- improving the manageability of the multiple Federal subsistence fisheries on the Kenai Peninsula. In addition the provisions clarifying the requirements that harvest must be recorded on site should help prevent Federal subsistence users from being cited while in possession of unmarked and/or unrecorded fish in areas outside of the Federal jurisdiction or away from the fishery.
I'd like to give a brief scenario to follow on this Power Point presentation and to assist in the understanding of the problems that we are trying to manage these fisheries and the need for recommended changes as stated. This brief presentation should illustrate the necessity of clear and concise fishery regulations. As all of us know the fisheries on the Kenai Peninsula are likely the most complex managed regulated fisheries in Alaska, thus the following scenario was made complex. Please bear with me as I run through the following scenario of a rurally qualified fisherman who was contacted in season while participating in multiple fisheries in the Kasilof River watershed while in possession of 54 fish.

Next slide, please.

Here's an example of the confusion which results from the management of complex fisheries. A Federally qualified subsistence user is contacted at the outlet of Tustumena Lake while fishing from the bank on Federal public lands with a rod and reel in hand, standing next to a skiff with a large dipnet on board which would be out of this picture. The date is August 7th and the fish harvested have been three rainbow trout over 24 inches, 27 sockeye, seven coho, nine Dolly Varden, three schnook salmon over 20 inches and five lake trout.

Next slide, please.

Some questions need to be answered in this scenario. Which fishery limits apply. There are 10 Federal subsistence fisheries in regulation for the Kenai Peninsula and four on the Kasilof and Tustumena watershed. The two Kasilof rod and reel only fisheries, the dipnet slash rod and reel slash fish wheel fishery and the Tustumena Lake fishery and the State sport fishery. Different limits and types of limits apply to the different gear types or the same gear types can be used for more than one fishery at the same time on the same -- or excuse me, at the same day on the same site.

How do enforcement officers know what's legal. With multiple fisheries comes multiple harvest limits, multiple interchangeable gear types, different permits, various reporting and recording requirements and multiple season dates.

When will each of these harvested be reported. Since there's four different types of Federal
harvest limits and quotas and some fisheries require 72
hours reporting while others require end of season
reporting, this can be confusing. Current Federal
subsistence fishermen can choose when to report depending
on which fishery the harvest is attributed to.

What's the best means for ensuring
harvests are allocated to the right harvest limits,
fisheries and communities quotas. This question can only
be answered with accurate permitting and reporting
requirements. Without an accurate and timely reporting
mechanism the harvest accounting alone for the Federal
subsistence fisheries will develop into a nightmare as
the fisheries potential is developed on the Kenai
Peninsula.

What's the best means of removing risk of
citation or confusion to the subsistence user,
enforcement personnel and the public. Clear, defendable
and citeable regulations are the foundation of accurate
fisheries management. Additionally publication of
concise and easy to follow handy dandy regulation
summaries as well as understandable permit stipulations
are also key in addressing confusion. Of course the
education element is key to the program's success which
we assume takes place when the Federal subsistence users
are issued permits by Federal Staff.

This is a very difficult question to
answer in the scenario. The fisherman could have
participated in five fisheries to fill his stringer.
Most of these fisheries have different sets and types of
harvest limits and harvest limits include household
limits, daily limits, annual limits, annual limits with
fish with different size limits and provisions for
incidental harvest which in some situations eliminates or
authorizes unlimited harvest. The -- to illustrate
further confusion with this example, some of the limits
of the different Federal and State fisheries may be
legally combined in accordance to regulation. So let me
explain that. Some of the Federal limits between the
different Federal subsistence fisheries can be combined
by regulation and also some of the State and Federal
limits can also be accumulated in accordance to current
regulation.
This is -- these are the sport fishing limits and we don't have the time to go through all the different limits so let's just stick with resident species. Highlighting the resident species, specifically rainbow trout, you'll see the State limit in the Kasilof, you're allowed two fish per day, one over 20 inches and two over 20 inches per year. In the Dolly Varden you'll see two per day, two in possession and no annual limit.

Next slide, please.

Now for the Federal subsistence fisheries limit for dipnet slash road and reel slash fish wheel combination fishery, the rainbow trout are 200 total fish and that's through August 15th of no size limit. So 200 people can catch one fish or one person can catch 200 fish of any size. And though there is an annual limit for rainbow and steelhead trout and since there is no size limit in place for this particular fishery so Federal subsistence users can accumulate over the State 20 inch, two fish per year regulation. I'll also note on this particular fishery there is no limit for Dolly Varden.

Next slide, please.

The Federal subsistence fisheries limits for rod and reel only fisheries which is one for salmon and one for resident species, you'll note that the -- for rainbow/steelhead trout you're not allowed to retain fish over 20 inches. So that's a third type of regulation.

Next slide, please.

Bringing us back to this exercise in confusion, after a quick matrix exercise of the fish in possession versus the fish -- the different fisheries -- the harvest limits, it appears that the fisherman could have legally participated in all available fisheries if permitted and licensed properly. Accumulation of harvest limits between the different Federal subsistence fisheries, such as between the dipnet fishery and the rod and reel only fishery, in addition to accumulation of both Federal and State sport fish fishery limits such as harvesting one coho in the sport fishery and the rest in the dipnet fishery that day, could have legally taken place in one form or another. Now I do not have an answer for how many of the 54 fish were allocated to what fisheries' limits and I don't have the answer of how this broke out, there's multiple different options that could
have happened.

Some options to address this scenario for the benefit of users and managers include A, clarify regulations to avoid current and future issues of confusion and that's what we're trying to do here with our modifications to the Forest Service proposal -- excuse me, fish -- Refuge proposal. Work with the ADF&G to address complex fisheries management issues through regulation which will happen over time and the Department's doors are always open for that, that's what we do for our business. Educate users on how to figure out which fisheries to allocate their harvest under current regulations. It appears that combination of 54 fish was legal, just to figure out the mathematics or the accounting procedure, it was an option, but that is a short term solution. Or no action due to low participation to date thus no need to address current or future concerns until it's actually unavoidable.

Next slide, please.

At this point I assume the majority of the folks here are wondering how this presentation is applicable to this proposal. The answer is it is imperative to have accurate harvest recording and reporting mechanisms and they must be developed for the multiple Federal subsistence fisheries on the Kenai Peninsula. The Department's proposed modification should assist with orderly management of the fisheries from the early stages of the fishery where only a few folks were fishing and they catch only a handful of fish to the more developed stages where the harvest allocations are achieved in short order. Unlike the non road system fisheries, the management of the Kenai Peninsula fisheries will be complex and will continue to demand extreme detailed attention of regulatory -- extreme attention to detail. Specifically to regulations if you want to allow -- if we want to continue sustainability of the fisheries. This scenario was not intended to disrespect anyone involved with this process, but rather the approach was chosen to illustrate what can go wrong when a complex set of dueling regulations fall on the shoulders of a user who just wants to put fish up for the winter. The Department is attempting to share holistic insight for the management of multiple fisheries with the complex allocation strata, diverse user groups and weak stock management components.

And I'll shift back to the -- thank you
very much, shift back to our main comments.

Next if you turn to Page 215 of your Board book, the first sentence in the first paragraph. This modification that we request will assist the users in locating the regulatory marker located approximately 2.8 miles below the boat ramp. With this slight modification the proposed physical definition of the Federal subsistence fishery on the Kasilof River is more clearly described and the boundaries -- excuse me, the Kasilof River or more clearly describes the claimed boundary which should help Federal subsistence users identify the physical limits of the fishery and avoid citation for illegally fishing in waters closed to Federal subsistence fishing. For example, fishing from State or private shorelines located outside of the Kenai Refuge boundaries alongside the upper Kasilof River is subject to State violations or State regulation.

Last on Page 215, third paragraph at approximately the middle of the paragraph, the proposed modification is intended to ensure that the due date listed on the permit is for the same year as the fishing season while retaining the administrative benefits of having only one permit.

Adoption of these modifications to this proposal should not impact subsistence users. It chiefly provides for streamlined processes, eliminating the need for separate seasonal permits while also providing the clarification of regulatory requirements to aid in the enforcement and prevent unnecessary enforcement actions. The proposed changes, if accompanied by the State recommended additional changes, will make it easier for Federal subsistence users to obtain the necessary permits and better understand Federal regulations and avoid violating the law or being charged with a violation.

The Department supports this proposal with our recommended modifications.

Thank you, Mr. Chair.

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STATE OFFICIAL WRITTEN COMMENTS
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Alaska Department of Fish and Game
Comments to the Federal Subsistence Board
Proposal FP09-09 is intended to streamline the federal subsistence fishery permitting process, to improve enforceability of permit reporting requirements, and to further define fishery regulatory boundary limits of the fisheries. The Alaska Department of Fish and Game (Department) supports the intent of the proposal but proposes modifications to better achieve this intent without creating new unintended ambiguities and conflicts.

Additionally, current federal subsistence fisheries regulations do not allow for the reporting resolution necessary to accountably manage multiple fisheries which may take place concurrently at the same location targeting the same species, with the same or different gear types, seasons, reporting requirements, and varying individual household, seasonal, community, and fishery quota limits. Improvement in reporting resolution will assist with management of individual fisheries by year or season, will help with tracking of harvest allocations among fisheries, communities, and gear types, and will assist with fisheries management decisions when necessary. Current federal subsistence regulations do not provide inseason managers with the tools necessary to make informed decisions.

The Department’s recommended modifications are offered to assist with improving the manageability of the multiple federal subsistence fisheries on the Kenai Peninsula.

Impact on Subsistence Users:

Adoption of this proposal should not result in significant impacts on federal subsistence users. It chiefly provides for streamlined processes, eliminating the need for separate seasonal permits, while also providing clarification of regulatory requirements to aid enforcement and prevent unnecessary enforcement actions. The intent of proposal FP09-09 is to increase permitting efficiency and clarify regulations. The proposed changes, if accompanied by the modifications suggested below to avoid unintended conflicts and ambiguities in the proposal, will make it easier for federal subsistence users to obtain necessary permits.
better understand the federal regulations, and avoid violating the law or being charged with a violation.

In particular, the provisions clarifying the requirement that harvests must be recorded on site should help prevent federal subsistence users from being cited while in possession of unmarked and/or unrecorded fish in areas outside of claimed federal jurisdiction or away from the fishery. With slight modification, the proposed physical definition of the federal subsistence fishery on the Kasilof River is a clearer specification of the claimed boundary, which should help federal subsistence users identify the physical limits of the fishery and avoid citations for illegal fishing in waters closed to federal subsistence fishing.

Opportunity Provided by State:

Kenai and Kasilof rivers are located in the Anchorage-MatSu-Kenai Nonsubsistence area designation under state law. The State provides a broad array of opportunities to participate in personal use, sport, and educational fisheries in these rivers and nearby areas to meet needs for personal and family consumption as well as cultural purposes.

Conservation Issues:

No stocks of salmon or resident species from the Kenai or Kasilof rivers have been designated as a stock of concern by the Alaska Board of Fisheries. However, extensive Department comments previously submitted during 2006-2008 to the Federal Subsistence Board and Southcentral Regional Advisory Council described conservation issues that could develop for the Kenai and Kasilof rivers with implementation of the federal subsistence fisheries.

Jurisdiction Issues:

The Department requests detailed land status maps that distinctly illustrate land ownership, easements, and exact boundaries within which it is claimed that federal regulations would apply and justification for claiming those boundaries. Portions of both the upper and lower Kenai and Kasilof rivers are bordered by state, private lands, and claimed areas of federal jurisdiction. While standing on state and private lands (including state-owned submerged lands), persons must comply with state law and cannot harvest.
under conflicting federal regulations. Fishers need to be provided copies of these detailed maps and advised that the State of Alaska will enforce its regulations on fishers standing on nonfederal land.

Recommendation:

Support the proposal with modification (shown as underlined), as follows:

The following requested modification under .27(i)(10)(ii) Cook Inlet Area is intended to help ensure that fish harvests are properly allocated to a specific gear type and location of a subsistence fishery. These changes are needed because different limitations and requirements apply to different gear types, areas, and fisheries and, as stated above, there are often several fisheries occurring at the same time. The modification qualifies language regarding the fishing site to avoid misleading fishers into incorrectly believing that all shorelines adjacent to claimed federal public waters can be fished from under federal regulations. For example, fishing from state and private shorelines located outside of the Kenai Refuge boundaries alongside the upper Kasilof River is subject to state regulation.

^U__.27(i)(10) Cook Inlet Area.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section). For all fish that must be marked and recorded on a permit in this section, they must be marked and recorded by species, harvest site, fishery, and harvest method (such as dipnet or rod and reel), prior to leaving the fishing site or switching to a different method of harvest or fishery. The fishing site includes the particular Federal public waters, and/or adjacent shoreline where allowed, from which the fish were harvested.

The following additional modification is requested to assist users in locating the regulatory marker located approximately 2.8 miles below the boat ramp.

^U__.27(i)(10) Cook Inlet Area.

(iv)(A) Residents of Ninilchik may take
sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from a Federal regulatory marker on the river below the outlet of Tustumena Lake downstream to a marker on the river approximately 2.8 miles below the Tustumena Lake boat ramp in the vicinity of Silver Salmon Rapids (strike at Silver Salmon Rapids). Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. The following modification is intended to ensure that the due date listed on the permit is for the same year as the fishing season, while retaining the administrative benefits of one permit. ^U_.27(i)(10) Cook Inlet Area. (E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager that year by the due date listed on the permit (strike at the end of the fishing season). Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means (including motor boat restrictions) for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56, 5 AAC 57 and 5 AAC 77.54), except for the following bag and possession limits:
NOTE: The Department's comments and support for clarifying federal regulations and better defining the permitting and harvest recording requirements and fishery area boundaries represented by this proposal do not indicate Departmental support for the content of the regulations as a whole. The past and present record, including requests for reconsideration still pending, documents the State's objections to and concerns with many of the regulations.

CHAIRMAN FLEAGLE: All right. Thank you, George. InterAgency Staff Committee comments. Polly.

DR. WHEELER: Thank you, Mr. Chair. In addition to the standard comments that I referenced yesterday, the Staff committee noted that the proposal as supported by the Regional Council recommendation would provide clarification in the Cook Inlet area of Federal subsistence fishing regulations and more flexibility to the Federal in season manager.

That's it, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Board discussion.

(No comments)

CHAIRMAN FLEAGLE: I'm wondering the question has OSM Staff had an opportunity to review the State's recommended modifications and how would -- how -- what would your reaction be to those. I know your analysis didn't address them, but would you speak on that, Steve?

MR. FRIED: Yes, I can, Mr. Chair. The Staff looked at these and they felt that some of the State's recommendations are requesting very specific instructions to be added into the regulations as to what specifically would be required on permits, in other words specific due dates, species, harvest site. A lot of this information is already on the permits. If you put it in regulation it takes a way a little bit of regulatory flexibility from the managers. It -- any kind of -- if you want to revise the permits we might have to come in front of the Board again and have a formal rule making process to change those. I mean right now it doesn't appear that there's any information that's being lost in the way the permits are -- you know, are being issued and the information being reported. And so it's sort of, I
guess, maybe a little difference in philosophy as to
whether or not you want to put -- try to put every little
thing specified in the regulations or allow, you know,
the agencies and their managers to take care of this and,
you know, allow them to collect the information that they
need.

And, you know, as far as the -- whether
or not when you -- changing to the lower boundary of the
Kasilof River fishing area, part of the confusion there
was some of the maps showed Silver Salmon Rapid in two
different places or at least it might be two areas that
are called the same thing. And so the U.S. Fish and
Wildlife Service recommendation provided a mileage, 2.8
miles and there's also a marker there. And they got rid
of the Silver Salmon Rapids designations within the
proposed regulations. And the State is saying that well,
but along with the mileage and the marker keep, you know,
Silver Salmon Rapids. So like I said we -- the Fish and
Wildlife Service got rid of it because there was some
ambiguity and they thought that just a mileage and a
marker would be sufficient.

CHAIRMAN FLEAGLE: Okay. Thank you. I
just wanted to kind of get a comparison there. We don't
have that modification before us for consideration at
this time, I mean, while we're still open to discussion.
Sorry, we don't even have the motion yet.

But Board members, discussion.

Geoff.

MR. HASKETT: Well, I was going to -- I
think actually that was covered pretty well. The
differences -- I was going to offer up Jerry Berg if
there was more specific questions on the differences. I
think we're more in agreement than we're not overall and
it's mostly places we're different are things that we
think are essentially unneeded or already covered other
ways.

CHAIRMAN FLEAGLE: So you're happy with
the language as proposed in your proposal?

MR. HASKETT: Yes, Mr. Chair, we are
happy with our proposal as proposed.

CHAIRMAN FLEAGLE: I'll just say thanks.

Other discussion.
CHAIRMAN FLEAGLE: Are we ready for a motion?

MR. HASKETT: Okay. Mr. Chair. I'd like to make a motion to adopt Proposal 09 consistent with the Regional Council recommendation that was covered before and I'll provide my rationale if I get a second.

CHAIRMAN FLEAGLE: Okay. You have your second. Go ahead.

MR. HASKETT: Thank you, Mr. Chair. These changes are mostly administrative and they'll make it easier for subsistence users, they will need to have fewer permits, will clarify the fishing boundary on the Kasilof and will better define when and where subsistence users need to mark their fish. This will also make administration of the permits easier for our in season manager. These changes would define when and where subsistence caught fish need to be marked and recorded on the permit. It allows flexibility on permit due date to benefit the users and the in season manager. As I said before the -- Fish and Game supports us with their modifications. Some of their modifications are already being done and others are not needed.

CHAIRMAN FLEAGLE: Further discussion.

MR. PROBASCO: Thank you, Mr. Chair. Final action of FP09-09. Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Yes.

MR. PROBASCO: Mr. Cesar.
MR. CESAR: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: And Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Motion carries six/zero.

CHAIRMAN FLEAGLE: All right. Thank you, Pete. And now — go ahead, Denby.

COMMISSIONER LLOYD: Thanks, Mr. Chairman. Similar to some of my other comments on other proposals, I appreciate the action you've taken here and given some of the amendments that we had proposed that Staff had indicated -- Federal Staff had indicated may well be administratively dealt with, we'd ask that there be some consideration of contacting and working with Fish and Game staff on whether or not these conditions could or should be placed in the permits since at this point you're not placing them in the regulation. So rather than let the issue die at this point, I guess I'm holding out the hope that by virtue of this discussion we will have Federal Staff work with State Staff to see if some of these are warranted in some of the permit conditions, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Commissioner. And maybe I can get some words of response from Geoff and maybe from Pete.

MR. HASKETT: Yeah, I'm -- we're definitely more than willing to work with you and see what we can get to.

COMMISSIONER LLOYD: Great. Thank you.

MR. PROBASCO: Mr. Chair. Commissioner Lloyd. Most definitely. And I'd also like to offer you a current copy of the permit so you can see what's currently being done for these vast fisheries.
Mr. Chair.

CHAIRMAN FLEAGLE: All right. Thank you.
Moving on to Proposal 10. We have the same Staff at the table so, Steve, would you go ahead and lead off with the analysis, please.

MR. FRIED: Thank you, Mr. Chair. For the record my name is Steven Fried, I work as a fisher biologist for OSM. I will summarize the Staff analysis for regulatory Proposal FP09-10 that was submitted by U.S. Fish and Wildlife Service and can be found on Pages 219 to 230 of the Board books. I'll probably be taking a little bit more time than I took on the other one, it's a little bit more complex. This proposal requests that Cook Inlet area regulations be modified so that they are realigned with two changes that were made to State regulations in February, 2008 by the Alaska Board of Fish. And these refer to the slot limit, the slot size limit for early run chinook salmon in the Kenai River and daily harvest and possession limits for lake trout in Hidden Lake.

As far as early run chinook salmon, both State and Federal regulations do specify a slot size limit that's meant to protect age seven early run chinook salmon which are the most abundant spawning component, but have been declining in abundance. Federal subsistence regulations initially incorporated the State's slot limit by reference and then they specifically were included in Federal regulations in 2007. The State changed the slot limit in 2008 to allow retention of early run chinook salmon less than 46 inches or greater than 55 inches in length. And so the Federal regulations are no longer in alignment. The proposal before you would align the Federal slot limit with the new State slot limit and this would -- what this would entail would be a two inch increase to the lower retention size limit.

In 2008 the State also adopted a regulation that allowed sport anglers to harvest early run chinook salmon less than 28 inches long without including them as part of the annual harvest limit. The proposal before you would not allow this under Federal regulations. The Staff discussed this and it just seemed -- most of the Staff seemed to feel that there were very few chinook salmon in this size, it would unduly complicate Federal regulations, they didn't really see this as providing a real good opportunity to Federal...
users plus the fact that the Federal annual limits are already double those of the state.

Early run chinook salmon escapement since 1996 have been within or above the optimal range of 5,300 to 9,000 chinook salmon. If you take a look at table 1 on Page 225, Federally qualified subsistence fishers have not reported any harvest of chinook salmon from the Kenai River during either 2007 or 2008.

Moving to lake trout, the State daily bag limit in the Kenai River drainage was 10 lake trout through 1996. In 1997 it was reduced to two lake trout of any size in Hidden Lake and to two lake trout over 20 inches long in the remainder of the drainage and this was done due to size that these populations had been overexploited. Federal subsistence regulations initially incorporated the State lake trout daily harvest limits by reference and then they specifically included daily harvest limits that were double those for sport fishing in 2007. The State reduced the Hidden Lake bag limit to one in 2008 to allow for continued rebuilding of this population which was overexploited in past years and has apparently not yet recovered. And you can take a look at figure 1 on Page 227 and table 3 on Page 228 if you want to see some statistics and get an idea of what the population numbers have been and catches have been. Actually not the population numbers, the catches. The proposal before you would reduce the Federal harvest limit from four to two and this would assist in rebuilding efforts, but it would still maintain the opportunity for qualified Federal subsistence fishers to harvest double the daily limit, allow sport fishers. Federally qualified subsistence fishers have not reported any harvest of lake trout from the Kenai River drainage in either 2007 or 2008.

So in summary if adopted the proposal would align Federal slot size limit regulations for early run chinook salmon in the Kenai River with those recently adopted by the State to allow this run to continue to rebuild. And it would also be consistent with recently adopted State regulatory changes and the original Federal Subsistence Board intent for lake trout in Hidden Lake and allow rebuilding of the population.

The OSM conclusion is to support this proposal for these previously cited reasons. And this concludes my presentation. Thank you.
MR. MIKE: Thank you, Mr. Chair. You'll find your written public comments starting on Page 235 on your Board book. We've received public comment from the Kenai River Sportfishing Association in support of the proposal. The Alaska Board of Fisheries recently passed a regulatory change affecting the measurement of chinook salmon and lake trout in upper Cook Inlet waters. This proposal would help bring into alignment the Federal and State regulations.

Lake trout harvest limits are proposed to be reduced by this proposed action. This is necessary to address conservation concerns for this stock. It is our understanding that a study is being conducted by the Kenai Fish and Wildlife Field Office during the 2008 field season, results of which will be helpful in assessing the population status of lake trout in Hidden Lake.

We support the changes to king salmon and lake trout regulations proposed.

Thank you, Mr. Chair.


MR. PROBASCO: Mr. Chair. We have no one signed up for this proposal.

CHAIRMAN FLEAGLE: Thanks. Regional Council recommendation. Ralph.

MR. LOHSE: Thank you, Mr. Chair. The Regional Council -- Regional Advisory Council supports this proposal. We feel it's -- aids conservation needs and provides the opportunity for the subsistence user.

CHAIRMAN FLEAGLE: Okay. Thank you.

InterAgency -- no, sorry. Alaska Department of Fish and Game comments. George.

MR. PAPPAS: Thank you, Mr. Chair. George Pappas, Department of Fish and Game. Once again the Department's full comments I'm summarizing from and will be in your -- in your Board book, Page 232 through 234. And the full comments are also entered in the record following this presentation.
The Department agrees with the Fish and Wildlife Service intent for the Federal regulations concerning the Kenai River early run chinook salmon slot size and Hidden Lake lake trout harvest limits to mirror the changes to State regulations by the Alaska Board of Fisheries in February, 2008. We support the Service's proposed changes, but ask for some additional changes in order to fully address our mutual conservation concerns.

First, regarding Chinook salmon, please refer to your Board book on Page 234, paragraphs 1 through 6, under Sections 27(i)(10)(e)(2) through (6). Please note the bold and underlined portions of these paragraphs are the additional modifications that we propose. We support the slot size limit liberalization for the Kenai early run chinook salmon, but are requesting modification of the daily harvest limits to be reduced from two to one. The Department does not support the more Federal liberal subsistence fisheries early run chinook daily harvest limit of two fish per day. The Department strongly requests the Federal Board to consider taking a conservative approach that mirrors the Alaska Board of Fisheries by adopting one fish daily harvest limit.

In addition, the Department added clarifying language that ensures that all references to the term bag limit are changed to harvest limit which matches the proponent's language in number 2 of this regulation.

The Department also added clarification language under paragraph (4) and (5) which states that chinook salmon less than 20 inches in length daily harvest and possession limits are 10 per day and 10 in possession. And the annual harvest limits do not include chinook salmon under 28 inches long as long as they're harvested between May 1 through June 30th. And chinook salmon less than 20 inches long harvested between July 1 and July 31st.

According to OSM's analysis, no chinook salmon have been harvested to date in the Kenai River drainage by Federal subsistence users. Therefore they should be little or no affect on Federally qualified subsistence users if these more conservative harvest limits are adopted.

Second regarding Hidden Lake lake trout. We agree with the OSM analysis which indicates the
The proposed reduction to the daily harvest limit is expected to have little or no affect on Federally qualified subsistence users since there have been no reported harvest or effort for the species in Hidden Lake in 2007, 2008 in the Federal subsistence fisheries.

Please refer to your book on Page 234, last paragraph under Section 27(i) and (g)(1) which is basically the last paragraph. The Department recommended changes are in bold and underlined. We support reducing the lake trout harvest limits at Hidden Lake from four to two fish per day, but we request a further modification so that only one of the two allowed harvest is over 20 inches in length. Because of over exploitation concerns the Alaska Board of Fish recently reduced the State harvest limits of lake trout from two to one fish of any size.

Little is known about the lake trout population size and appropriate harvest levels in Hidden Lake. The Department is very concerned that with good stock assessment information – without good stock assessment information and reporting, excessive harvest may not be detected in time. Lake trout which are known to be a long living and slow growing species are susceptible to overexploitation and require many, many years to rebuild after populations have been depleted. Last, the word harvest has been substituted for the word bag to be consistent throughout this section’s language.

The Department supports the proposal with these additional modifications to address our mutual conservation responsibilities.

Thank you, Mr. Chair.
regulatory changes made in February 2008. It proposes
the following specific changes:

1. Reduce the slot limit for Kenai
River early-run Chinook salmon from 44 - 55 in length
to 46 - 55 in length. This will allow retention of any
fish that are less than 46 in length or greater than
55 in length, thus increasing opportunity of retaining
Chinook salmon.

2. Reduce the federal subsistence
daily harvest and possession limit for Hidden Lake lake
tROUT FROM 4 fish per day of any size down to two fish
PER day of any size. (Note: The new State limit is
one fish per day, which is half the proposed federal
limit)

Impact on Subsistence Users:

The Kenai River slot limit reduction
will provide additional opportunity to harvest early-
run Chinook salmon. Decreasing the Hidden Lake lake
tROUT DAILY harvest limit from four fish per day to two
fish per day will reduce the amount of fish a federal
subsistence user can harvest on a daily basis.

Opportunity Provided by State:

The Kenai and Kasilof Rivers are
located in the Anchorage-MatSu-Kenai Nonsubsistence
area designation under state law. The State provides a
broad array of personal use, sport, and educational
fisheries in these areas to meet needs for personal and
family consumption as well as cultural purposes.
Adequate opportunities for harvest of lake trout and
Arctic char/Dolly Varden presently occur under State
sport fishing regulations.

Conservation Issue:

1. The early-run Kenai River Chinook
salmon stock is currently considered healthy and is
managed for sustainability through a myriad of
conservative regulations developed by the State over
decades of managing the stock. The extensive list of
restrictions placed upon the sport fishery is credited
for the current sustainable stock level. The sport
fishery is presently managed by using a combination of:
1) a slot limit that prohibits harvest of early-run
Chinook salmon between 46 inches and 55 inches in
length to protect seven-year-old spawners and help preserve genetic characteristics and diversity of the Kenai River Chinook salmon stocks; (2) a daily harvest limit of one such fish; and (3) a two-fish annual limit (excluding fish less than 28 inches in length before June 30). The Alaska Department of Fish and Game (Department) supports the federal staff recommendation to mirror the Alaska Board of Fisheries February 2008 decision to reduce the early-run Kenai River Chinook salmon slot limit from 44 -55 to 46 -55 in length. The Alaska Board of Fisheries reviewed all available data and the Department analysis of this issue and determined slightly liberalizing the sport fishery by adjusting the slot limit was appropriate. This slight liberalization of the sport fishery was intended to provide additional opportunity to harvest available fish which have been determined to be in surplus of established escapement goals.

Although the Department supports the intent of the proposed modification of the early-run Kenai River Chinook salmon slot limit in the federal subsistence rod and reel fishery, the Department does not support maintaining the liberal federal subsistence fishery early-run Chinook salmon daily/annual harvest limit of two fish per person, which will be easier to achieve with the reduced slot limit and which could create conservation concerns if widely utilized. The Department strongly requests the Federal Subsistence Board (Federal Board) to consider all the information previously submitted to the Federal Board and take a conservative approach that mirrors the Alaska Board of Fisheries by adopting the one fish daily harvest limit. This action would be consistent with the proponent s stated intent to adopt changes corresponding to those in the State regulation.

2. Because of over-exploitation concerns, the Alaska Board of Fisheries recently reduced the State harvest limit for lake trout in Hidden Lake to one (from two) fish of any size. The Department recommends that the Federal Board adopt a corresponding reduction to two (from four) lake trout as the harvest limit and place a maximum size restriction of 20 in length for one of the two lake trout. Little is known about lake trout population sizes and appropriate harvest levels in Hidden Lake. The Department is very concerned that, without good stock assessment information and reporting, excessive harvest may not be detected in time. Lake trout, which
are known to be a long-lived, slow-growing species
susceptible to over-exploitation, require many years to
rebuild populations after depletion, if they are able
to do so at all.

Jurisdiction Issues:

Department requests detailed land
status maps that distinctly illustrate land ownership,
easements, and exact boundaries within which it is
claimed federal regulations would apply and
justification for claiming those boundaries. Portions
of both the upper and lower Kenai and Kasilof rivers
are bordered by state or private lands including areas
where federal claims of jurisdiction exist. Fishers
need to be provided copies of these detailed maps
because the State will enforce its regulations on
fishers standing on nonfederal land while fishing.

Recommendation:

Support with modification as explained
above, consistent with the proponent’s intent to
complement the Alaska Board of Fisheries changes and
with ANILCA’s conservation purposes, as follows:

1. Support the slot limit
liberalization for Kenai early-run Chinook salmon but
request modification of the daily harvest limits from
two to one.

2. Support reducing lake trout harvest
limits in Hidden Lake from four to two fish daily and
request modification to allow harvest of 2 lake trout
per day of which only one can be over 20 in length.

The Department’s recommended modified
regulation language (strike should read):

^U_.27(i)(10) Cook Inlet Area. (E) For
Federally managed waters of the Kenai River and its
tributaries, in addition to the dip net and rod and
reel fisheries on the Kenai and Russian rivers
described under paragraph (i)(10)(iv)(D) of this
section, residents of Hope, Cooper Landing, and
Ninilchik may take sockeye, Chinook, coho, pink, and
chum salmon through a separate rod and reel fishery in
the Kenai River drainage. Before leaving the fishing
site, all retained fish must be recorded on the permit
and marked by removing the dorsal fin. Permits must be
returned to the Federal fisheries manager at the end of the fishing season. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56), except for the following (strike bag) harvest and possession limits: (2) For early-run Chinook salmon less than (strike 44) 46 inches or 55 inches or longer, daily (strike bag) harvest and possession limits are (strike 2) 1 per day and (strike 2) 1 in possession.(3) For late-run Chinook salmon 20 inches and longer, daily (strike bag) harvest and possession limits are 2 per day and 2 in possession.

(4) For all Chinook salmon less than 20 inches in length, daily harvest and possession limits are 10 per day and 10 in possession.(5) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder.

Annual harvest limits do not include Chinook salmon less than 28 inches long harvested May 1 through June 30 and Chinook salmon less than 20 inches long harvested July 1 through July 31.(strike 5) (6) For other salmon 16 inches and longer, the combined daily (strike bag) harvest and possession limits are 6 per day and 6 in possession, of which no more than 4 per day and 4 in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than 2 per day and 2 in possession may be coho salmon.

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50

(Strike (G)) (1) For lake trout 20 inches or longer, daily (strike bag) harvest and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily (strike bag) harvest and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily harvest and possession limits are (strike 4) 2 per day and (strike 4) 2 in possession of which only one can be (strike over) 20 or longer (strike regardless of size).

CHAIRMAN FLEAGLE: Thank you, George. I'd like to turn to Polly for the InterAgency Staff Committee comments.
DR. WHEELER: Mr. Chair. Nothing beyond the standard comments that I referenced earlier yesterday. Thank you.

CHAIRMAN FLEAGLE: Yesterday was a long time ago. I think -- well, never mind. Never mind.

DR. WHEELER: I'm happy to enter them into the record, but for the record they are a part of the Board book on Page 231. And I can.....

CHAIRMAN FLEAGLE: Thanks.

DR. WHEELER: .....I can adlib.

CHAIRMAN FLEAGLE: All right. We're moving on to Board discussion and I'm going to ask the same question of Staff as to -- you know, that the analysis was presented on the proposal that was before us and I just wonder if you had an opportunity to review the State's proposed changes to what are proposed here and how those might interact with what we're already doing or -- same question as last time.

Steve.

MR. FRIED: Thanks, Mr. Chairman. Yes, well, one of the changes is actually a request to lower the daily harvest and possession limit for the early run chinook from the -- currently it's two per day, two in possession to one per day, one in possession. And the two per day, two in possession actually was adopted by the Board I think in 2007 where their -- they had actually doubled the sport fishing bag limit to make a subsistence, you know, harvest limit of two instead of one to provide some extra opportunity for subsistence users. As indicated nobody's -- none of these subsistence users have reported a harvest of chinook salmon from the Kenai River in either 2007, 2008, but it does provide an additional opportunity to these users above those of State sport fish users.

I think on Page 234 there was a suggestion for all chinook salmon less than 20 inches in length, the daily harvest possession limits are 10 per day, 10 in possession. I believe that's -- currently would be our regulation, and our regulation is by reference to State regulations. Because I think that's currently what's allowed under State sport fishing regulations for these small chinook salmon. So
it just depends on whether or not to specifically put it in our Federal regulations or just do it by reference.

The next point was the not including chinook salmon less than 28 inches harvested during a certain date within the annual limit for chinook salmon, I already touched on that one in the Staff analysis. It does -- by not including it is does make Federal regulations actually more restrictive than State regulations, but there's a quite a bit of discussion as to whether or not they're really provided much of an opportunity for Federal users. So the Board can decide whether or not they think it too should be included in the Federal regulations.

And the last one was for Hidden Lake lake trout. And for this one the State modification was that out of the two per day, two in possession for Federal users, that only one of them could be 20 inches or longer. The State regulation if you recall is one per day, one in possession and there's no size limit. There haven't been any harvests reported by Federal subsistence users, doesn't seem like this is needed as a conservation measure. I don't know if I could -- you know, there's not much more I can say about it, nobody's reporting a harvest, that doesn't seem like a problem at this point in time.

CHAIRMAN FLEAGLE: Thank you.

Appreciate that. Board members, discussion. Denny.

MR. BSCHOR: Mr. Chair. I believe we've talked about this before at times where, you know, whether we reference the State regs if we're trying to match, I think that's a better way than trying to match them through regulation every time because if the States changes we'd have to change again. So I think -- but I don't know if these all match totally. So I think you -- some of them would by reference. But that would be my thoughts on how to do this with -- every time we make it specific to the State's in our regs then if it changes -- the State changes then we've got to change our regs again. So I think that I'd rather see them by reference if we're truly trying to match.

CHAIRMAN FLEAGLE: Thanks, Denny.

Steven Daugherty.
MR. DAUGHERTY: Mr. Chair. Steven Daugherty, State of Alaska, Department of Law. I would just like to note that where you reference the State's regulations, that's usually done in a place where the regulations for that species mirror the State's regulations. And where they don't and you try to reference the State's regulations it causes confusion both for the users and for the enforcement officers and may lead to citations of users who if they are operating under State sport fishing regulations and they also have a Federal limit in possession, our State officers would cite them if they're -- if it's not clear that they are operating under Federal Regulations, Mr. Chair.

CHAIRMAN FLEAGLE: All right. Appreciate that clarification from the State. Yes, Pete, go ahead.

MR. PROBASCO: Steve, this is a question as far as -- I saw in your comments and you've stated that the State's recommendation changes limits, you've mentioned lake trout, is there other areas where the limits are recommended to be changed from the State's recommended changes to what is being proposed? In other words there -- is there a recommendation to reduce the lake trout limit from the State's.....

MR. FRIED: No, it was a recommendation to reduce the early chinook salmon possession and -- the harvest and possession limit from two to one. The lake trout would stay what -- the same as we've recommended. We're reduce -- we were recommending that we reduce from four to two.....

MR. PROBASCO: Okay.

MR. FRIED: .....and the State's not arguing with that part. But what they we were asking for is that only one of those lake trout of those two be 20 inches or longer. That would be the different in what the Fish and Wildlife proposal is and what the State's asking.

MR. PROBASCO: Okay. And that's the only difference then as far as limits?

MR. FRIED: Yes. Just the -- one's for chinook and then it's just the other one for -- it was just a size restriction on the lake trout.
MR. PROBASCO: Thank you.

CHAIRMAN FLEAGLE: Further discussion.

Denny.

MR. BSCHOR: I'm just not clear. And are you saying that those changes would match the State regulations?

MR. FRIED: If we reduce the early chinook harvest and possession limit from two and two to one to one then that would match the sport fishing limits. The lake trout limits are -- would -- we're actually asking that they be reduced from four to two. They still don't match, they're still double what the State limit would be, but the State's already reduced theirs from two to one so it's just sort of keeping that parity between the two. And in addition the State was asking that if we allow users to take two lake trout at Hidden Lake that only one of those be 20 inches or longer.

MR. BSCHOR: And their regulations don't say that last -- that last one where it would be 20 inches or longer, one of them would have to be 20 -- 20 inches or longer?

MR. FRIED: Well, the State's recommended modification was that it would be, you know, as -- in addition to our saying two per day, two in possession of which one can be 20 inches or longer.

MR. BSCHOR: And does that match the State regulation?

MR. FRIED: No, there's no size restrictions on it, but it's one per day, one in possession, any size for the State's sport fishing.

MR. BSCHOR: Then I would ask the State why isn't yours that way.

CHAIRMAN FLEAGLE: Hang on. It's just that Larry Buklis who -- you wanted to jump in here before that question was posed and then I'll -- then I'll reference back to the State for you, Denny.

Larry.

MR. BUKLIS: Thank you, Mr. Chair.

Thank you, Mr. Chairman. Just a little context. When
the Board developed the fishery regulations for the
Kenai Peninsula initially they were completely a match,
they paralleled to the State's sport fishing
regulations entirely by reference. Then in 2007 when
you liberalized the subsistence regulations you
retained that phrase about parallel to sport fishing by
reference except as follows. And then you developed
some exceptions. So if you haven't specified an
exception, then the general premise of as per sport
fishing regulations applies. So we don't have to get
into all the terminal, tackle and all the other
features, just your exceptions. And typically your
exceptions focused on harvest limits and recall you
typic -- I think generally doubled them.

So if you go now with that context --
if you go to Page 234, the State comments if I
understand correctly have tried to highlight where they
would further modify. And so, for example, that
feature in clause number 2, it has the number 2
stricken and the number 1 bold underlined. So the
underlined text is the State's additional language they
would have you adopt. So if you look on Page 234 the
underlined numbers or text are the additional features
the State would have you adopt. So if you're looking
at numbers, the two per day, two in possession chinook
have been stricken and an underlined 1 is shown. So
that is a difference, a reduction the State would have
you adopt and so forth. And for lake trout they are
not striking the number 2 and replacing it with
something smaller, but they're adding a feature of a
limit on the size of the fish for one of those fish.

CHAIRMAN FLEAGLE: But they are
reducing -- proposing reducing the limit -- the
possession limit -- harvest and possession limit from
four down to two. So there is a change there in the
numbers.

MR. BUKLIS: Mr. Chairman. If you'll
note the number 2 is not underlined so it's not a State
additional term. They're taking.....

CHAIRMAN FLEAGLE: I get your -- I get
your clarification.

MR. BUKLIS: .....they're taking our
package of changes.....

CHAIRMAN FLEAGLE: Right. Right.
Right. Right.

MR. BUKLIS: .....and adding yet more.
And what they've added as yet more is underlined. So focus on the underlined terms and numbers for the State's additional features.


MS. CUNNING: Mr. Chairman. The reason why that we suggested that one be limited to size is because the Board of Fish did limit just to one take and we're accepting the two, but we would like to respect the conservation issues that the Board of Fish went through at great length. And by suggesting that one of those two be long enough to be providing spawn into the -- back into the population.

CHAIRMAN FLEAGLE: Geoff.

MR. HASKETT: I really have nothing to add now. It seems to me that it's -- the proposal out there, there's some differences between us and the State. So if you ask for a motion I'm ready to do that.

CHAIRMAN FLEAGLE: You may do so.

MR. HASKETT: Okay. Thank you, Mr. Chairman. I'd like to make a motion to adopt Proposal 09-10 consistent with the Regional Council recommendation and I can provide rationale if I get a second.

MR. CESAR: I'll second.

CHAIRMAN FLEAGLE: Go ahead.

MR. HASKETT: Okay. The intent of these changes if fairly straightforward, actually it's really straightforward, to bring Federal and State regulations closer to alignment where possible, where we agree. While we have not been able to go as far as the State would like us to, we're trying to be responsive to changes made by the Alaska Board of Fisheries and this proposal does get us closer to being in alignment.
CHAIRMAN FLEAGLE: Further discussion.

(No comments)

MR. OVIATT: Call the question.

CHAIRMAN FLEAGLE: Hang on before I recognize that. All right. We've got pretty good discussion on the table about possible amendments that the State has provided to the discussion. We do have a motion that I believe encapsulates the intent of the questions and the discussion prior to the motion and would support the proposal as presented. And I just want to -- I don't like it when we have an issue that just goes slam dunk without any discussion because our lawyer might need to refer to some discussion that's not there if it's necessary to defend. And something like this may not need defending, but I still prefer to have some justification for it. And rather than just having the motion. And I think I did a little bit on the last one and it would be good if somebody maybe would just add a little more justification for the proposal as presented and then I'll go with it. Denny.

MR. BSCHOR: Mr. Chair. While we haven't totally met all the State's desires, I still don't see what we've done would have any negative affect on the principles of wildlife and fish conservation. So I would like to put that on the table that I don't think if we vote for this proposal as worded that we would affect that in a negative way. And I don't think it would be detrimental to the satisfaction of subsistence needs either.

CHAIRMAN FLEAGLE: All right. Thank you. Niles.

MR. CESAR: I would agree with both Denny and Geoff. I believe that the proposal as outlined is supportable and defensible and that I am little concerned that making an amendment to more -- to completely align us with the State may, in fact, be a restriction on subsistence. And so I propose to support the proposal as.....

CHAIRMAN FLEAGLE: All right. With that justification I do now recognize the question, Pete, on the proposal. Please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.
Final action on FP09-10. Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: And Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Motion carries six/zero.

CHAIRMAN FLEAGLE: All right. Thanks.

Let's take a -- thank you I meant. Let's take a brief stand down, 10 minute break. Thanks.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon.

We're back on record. Before we move into the last couple of proposals the big question hanging was whether we anticipated going into tomorrow or not and how we would deal with the -- how much time the Board discussion with Council Chairs would take and discussion on the Yukon River fisheries proposals. And I understand that at least one of our Council Chairs has to leave for a funeral in McGrath tomorrow. So -- and I talked to at least one other Board member about just timing and I think that we can do it, I think that we can wrap up today. And even if it means staying just a little overtime, we've only got two proposals left, we did the last two in an hour.

UNIDENTIFIED VOICE: You need to check
CHAIRMAN FLEAGLE: Overtime. Well, what I meant was the meeting may go overtime, not -- you may not get overtime. And I was just looking at the agenda, we do have the remaining two proposals, we do have a DVD of the fisheries monitoring process, Board counsel discussion, deferred proposals, consensus agenda items, but even with that looking at three hours, I think that we should be able to do it. If it takes a little extra time we'll get there. So the plan now is to just go ahead and move through the agenda with the intent that we're going to wrap up today.

So with that we're going to take of running. And we have Proposal 11 and we have new Staff at the table. I'd like to welcome Beth Spangler and we also have Donald Mike back with us.

Welcome, Beth.

MS. SPANGLER: Good afternoon, Mr. Chair. Members of the Board. My name is Beth Spangler with the Office of Subsistence Management. And I'm going to summarize fisheries Proposal 09-11, that starts on Page 236 of the Board book. Proposal 09-11 was submitted by the Bristol Bay Regional Advisory Council. And the proposal requests Federal subsistence fishing regulations be more aligned with State subsistence fishing regulations for the Chignik management area.

Fisheries Proposal 09-11 would allow subsistence salmon fishing in the Chignik Lake tributaries of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile. And maps can be found on Pages 240 and 241 of your books.

The proposed regulation would provide Federally qualified subsistence users the opportunity to continue long established fishing practices while providing additional fishing areas in Clark River and Home Creek currently allowed under State regulations. This regulation could potentially create enforcement concerns between Federal and State regulations regarding methods and means of harvest in this area. Federally qualified subsistence users are required to have a State subsistence permit to take salmon with
seines and gill nets in the Chignik area. However federally qualified users are not required to have a permit to take salmon by snagging with hand line, rod and reel, spear, bow and arrow or capture by hand in the Chignik area. State regulations do not allow subsistence take of salmon by these methods. However additional fishing opportunities by snagging with hand line, rod and reel, spear, bow and arrow and capture by hand are not expected to greatly impact subsistence harvest levels or the sockeye salmon population within the Chignik management area. These opportunities are intended to provide late season sockeye and an occasional fresh fish for immediate consumption. The proposed Federal regulation states that you may not take salmon in the Chignik River from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1st through August 31st in Black Lake or any tributary of Black or Chignik Lakes except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile.

The Office of Subsistence Management conclusion is to support Proposal 09-11 with modification. The modification is to change linear mile to mile to clarify the areas open to subsistence fishing, reduce regulatory complexity and enforcement concerns.

Mr. Chair. This concludes my presentation.


MR. MIKE: Thank you, Mr. Chair. There were no written public comments received for Proposal FP09-11.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Pete, public testimony.

MR. PROBASCO: I believe I have -- we have no one here to testify on this proposal.

CHAIRMAN FLEAGLE: All right. Thanks. While we're on the topic of testimony, there was a question raised during the break that I failed to
address clearly. But when we do take up the topic of
the deferral of the Yukon River proposals, we do intend
to listen to public comment on that issue. So if
somebody's in the audience that has a -- has something
they want to say on that topic, please sign a card and
turn it in.

Anyway so we'll move on with this
proposal. The Regional Council recommendation. Let's
see, who's going to give that. Donald.

MR. MIKE: Thank you, Mr. Chair.
Chairman Alvarez couldn't make this meeting, Mr.
Chairman. You'll find the Council recommendation
starting on Page 237 of your Council book. The Bristol
Bay Regional Advisory Council support Proposal FP09-11
with modification to remove the word linear from the
proposed regulatory language. And you can see the
modified regulation that the Council's supporting in
italics.

And the justification, the Council
supported the proposal with modifications to remove the
word linear from the proposed regulatory language and
they describe the area only as one mile. Conflicting
interpretation as to who has jurisdiction of the
resource should not hinder subsistence users. The
Council supported the proposal with the caveat that the
Federal Subsistence Board will address the issue of
State and Federal jurisdiction.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Donald.
Department of Fish and Game comments. George.

MR. PAPPAS: Yes, thank you, Mr. Chair.
George Pappas, Department of Fish and Game. Again I'm
summarizing the Department's full comments that are in
your book -- Board book on Page 246 through 250. And
these comments will be entered into the record
following this testimony.

This proposal would open Federal
subsistence fishing for one linear mile of water in
both Clark River and Home Creek upstream from the
confluence at Chignik located in the State Chignik
fisheries management area. This proposal purports to
align a Federal regulation with recent actions taken by
the Alaska Board of Fisheries to liberalize the State's
subsistence fishery, however it does not do that and creates numerous serious issues.

First is a significant conservation issue. Last year the Federal Board liberalized methods and means for the Federal subsistence fisheries, allowing Federally qualified users rod and reel, bow and arrow, spear, bare hand capture and snagging. The Federal Board eliminated permits and reporting requirements. The combination of no reporting and liberal methods in these important spawning areas causes the Department serious concerns that any significant increase in harvest could cause depletion of sockeye salmon stocks in the Clark River and Home Creek. Since the Federal Board does not monitor the Federal subsistence fishery in this area, authorizing additional freshwater subsistence fisheries that target unmonitored wild stocks is not consistent with principles of sound management and conservation of fish resources.

The second issue is a serious enforcement dilemma that this proposal creates for rural residents. Please refer to the land status map on Page 250 of your Federal Board book so you can visualize the problem with adoption of this proposal. Current Federal regulations allow methods and means that are significantly different from what's allowed under State regulations in Clark River and Home Creek without requiring a Federal subsistence permit or harvest report. This causes confusion, exposes Federally qualified users to State citations because there is no Federal public lands in or near the area identified in this proposal. Federally qualified subsistence users using methods and means not authorized under State regulations are at risk for being cited if they're standing on State and/or private lands including State owned submerged lands when fishing under Federal subsistence fishing regulations in this area.

The third serious issue is that there's no subsistence need for the Federal Board to further expand methods and means by authorizing nets. The Alaska Board of Fisheries' regulations allow for the use of gillnets and purse seines, but also require permits and reporting. The State provides a subsistence preference in all lands and liberal State subsistence fisheries for salmon are provided throughout the Alaska peninsula. The subsistence
fisheries in Chignik area provide an annual household limit of 250 fish and subsistence fishermen can be authorized to take more fish if they need it. Legal gear types allowed for the Chignik area subsistence fishery including gillnets and seines except for the Chignik Lake itself purse seines may not be used. Additional gear types can simply be added to the State's subsistence permit under Alaska regulations.

To further explain our conservation concern with the opportunity to over harvest provided by liberal methods and means, let me explain that no salmon runs on the Alaska peninsula are currently listed as a stock of concern by the Alaska Board of Fisheries. However in recent late run sockeye salmon returns which are -- which preliminary or primarily migrate to Chignik Lake and its tributaries, have slightly decreased over time. Both Clark River and Home Creek are the primary spawning beds for the tributary bound portion of the late run sockeye salmon which return to Chignik River watershed. Significant increases of harvest could incur in these easily accessible Clark River and Home Creek waters and because the Federal Board does not require a permit or reporting conservation issues could not -- would not be detected until after the damage is done, if at all.

Several of the Federal Board members are relatively new so I'd like to be sure to -- sure you are aware of that when FP08-11 was adopted by the Federal Subsistence Board last year which significantly liberalized the methods and means and removed harvest and reporting mechanisms, the Federal Board deliberated and concluded that the proposal should not significantly increase subsistence harvest because the proponent's intent was to harvest only one or two fish at a time. I -- you can read these deliberations in the Federal Board transcripts from December 20th, 2007 on Pages 228 through 229. The Federal Board and Regional Advisory Council Chairs focused their deliberations on liberalizing the Federal subsistence user's methods and means to allow for harvest of salmon while -- for immediate subsistence in traveling in light or say when they're going on a course of camping, picking berries or hunting.

Discussions at the Federal Board meeting did not consider the impacts of FP08-11 would have on the fish stocks within the spawning areas of Clark River and Home Creek because both were closed to
Federal subsistence fishing at the time of the Board meeting. Unfortunately during 2008 the Department received reports of Federal subsistence users harvesting their winter supply of salmon from these tributaries of concern by Federal methods and means without a permit and harvest reporting. It should be noted that the winter supply of fish is significantly higher than more than one or two fish at a time and it's in the hundreds of fish and it would be occurring on the spawning beds.

The Department continues to have serious conservation concerns with unreported harvests and methods and means allowed that are Federally authorized by last year's regulations when they were liberalized. Those concerns, increasing with the possible adoption of this proposal -- those concerns will increase with the possible adoption of this Proposal FP09-11 and the disclosure that significant Federal subsistence harvest occurred in Home Creek and Clark River.

One additional technical edit is needed if this proposal is to be adopted. During the Bristol Bay Regional Advisory Council meeting the Council recommended modifying the proposed regulation to read, those waters of Clark River and Home Creek from their confluence with the Chignik Lake upstream one mile which is on Page 236 of your Board book. The Department agrees that the description of one mile should match -- should match the State regulatory language to avoid confusion. However changes -- changing the regulations to also match and only allow the same gear types allowed by the State regulations would address any confusion, reporting and potential conservation concerns.

I ask you to please look in your Board book on Pages 248 and 249 at our proposed modified language. The Department recommends modification to the proposed regulations to address the RAC's modification and our conservation concerns as follows. First look under Chignik area salmon, Section 27(i)(8)(ii) which is at the bottom of Page 248. After Black Lake or Chignik Lake change -- changing the words to read, except those waters of Clark River and Home Creek with their confluence of Chignik Lake upstream one mile, not one linear mile, one mile. Then after the prohibition of use of purse seines change it to read, in the waters of Clark River and Home Creek from
their confluences with Chignik Lake upstream one mile you may only use gillnets. In other words you may also take salmon, but only with a subsistence permit by -- by snagging -- excuse me, with a subsistence permit. With these changes the distance of one mile would be the same as the State -- as in State and Federal regulations. The unnecessary liberal methods and means would be removed, but the use of gillnets would be allowed so long as a subsistence permit was required in order to track harvest.

In summary the Department opposes the proposed as written, but it could support it with these modifications so Federal subsistence users are authorized to use only the same methods and means in Clark River and Home Creek waterways as authorized in State regulations. Adopting a modified version of the proposal would allow Federally qualified subsistence users to fish in the lower mile of Clark River and Home Creek with gillnets and it would mirror the State subsistence fishery regulations. Federally qualified users who participate in the Federal subsistence fishery while using a gillnet would be required to obtain a permit and report harvests. The Department would support the above proposed modified regulations which ensure the same gear type usage and annual reporting of harvest in order to allow these fisheries consistent with sound management principles.

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

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STATE OFFICIAL WRITTEN COMMENTS
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Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP 09-11 Opening Fishing in Tributaries of Chignik Lake

Introduction:

This proposal would open federal subsistence fishing for one linear mile of water in both Clark River and Home Creek upstream from their confluence with Chignik Lake, located within the state Chignik Fishery Management Area. This proposal purports to align the federal regulations with recent
actions taken by the Alaska Board of Fisheries to liberalize the State subsistence fishery. However, modifications to the proposal are needed in order to align federal and state regulations as intended. The Alaska Department of Fish and Game (Department) opposes the proposal as written, but could support it with modifications outlined below.

Impact to Subsistence Users:

If adopted as proposed, federally qualified subsistence users would be allowed to subsistence fish in the lower mile of Clark River and Home Creek, currently closed under federal regulations. The Federal Subsistence Board recently authorized expanded methods and means and eliminated permit and reporting requirements in the Chignik watershed. If this proposal were adopted, current federal regulations would allow federally qualified subsistence users to utilize methods and means significantly different from what is allowed under State regulations (rod and reel, bow and arrow, spear, bare-hand capture, and snagging) in Clark River and Home Creek without a federal subsistence permit. State regulations prohibit using the above-listed means for subsistence fishing. Adoption of FP09-11 would cause confusion and expose federally qualified users to State citation because there are no federal public lands in or near the area identified in this proposal. Federally qualified subsistence users using methods and means not authorized under State law would risk being cited if they are standing on State and/or private land, including state-owned submerged lands, when fishing under federal subsistence regulations in the area. (See attached land status map.) Liberal State subsistence fisheries are allowed on all lands (state, federal, and private), so adoption of this proposal is not necessary for meaningful subsistence opportunity.

Opportunity Provided by State:

Salmon may be harvested under Alaska Board of Fisheries regulations using gillnets and purse seines. The State provides a subsistence preference on all lands, and liberal state subsistence fisheries for salmon are provided on the Alaska Peninsula. The subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if they need it. Legal gear types allowed for the Chignik area...
subsistence fishery include gill nets and seines, except that in Chignik Lake purse seines may not be used. Additional gear types can be specified and added to the state subsistence permit (5 AAC 01.470).

Each management area has specific stipulations on the respective area's subsistence permits, e.g., timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas open to commercial fishing, and closed waters. A commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder may subsistence fish for salmon during a commercial salmon fishing period (5 AAC 01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. If a commercial salmon license holder or a Commercial Fisheries Limited Entry Salmon Permit holder in the Chignik Management Area goes subsistence fishing in Chignik Lagoon, Lake or River, that holder is required to contact Department staff at the Chignik weir in order to separate subsistence and commercial harvests.

The Alaska Board of Fisheries established the combined amounts necessary for subsistence for communities in the Alaska Peninsula area as 34,000-56,000 salmon annually. The amounts necessary for subsistence for the Chignik Area (Chignik Bay, Central, and Eastern Districts of Chignik Management Area) is 5,900 - 14,250 salmon annually.

Conservation Issues:

No salmon runs on the Alaska Peninsula are currently listed as a stock of concern by the Alaska Board of Fisheries. However, the recent late-run sockeye salmon returns, which primarily migrate to Chignik Lake and its tributaries, have slightly decreased over time. Both Clark River and Home Creek are the primary spawning beds for the tributary bound portion of the late-run sockeye salmon which return to the Chignik River watershed. Increases in undocumented in-tributary exploitation would not be detectable due to the lack of a federal reporting requirement. Significant increases of unreported harvest in Clark River and Home Creek may lead to conservation issues which might not be detected in a timely manner and might require severe fishery restrictions when detected.
The Federal Board recently liberalized allowable methods and means for federal subsistence fisheries and eliminated permitting and reporting requirements for federally qualified users who choose to utilize rod and reel, bow and arrow, spear, bare-hand capture, and snagging. The elimination of permitting and reporting requirements by federally qualified users causes the Department to have serious concerns about the potential for localized depletion of sockeye salmon stocks in Clark River and Home Creek if a significant increase of harvest results. Since the Federal Board does not monitor the federal subsistence fishery in this area, authorizing additional freshwater subsistence fisheries that target unmonitored wild stocks is not consistent with principles of sound management and conservation of fish and wildlife resources.

Deliberations on FP08-11 at the December 2007 Federal Board meeting included specific discussions by three Federal Board members who were in support of adopting the proposal because the expected increase in harvest was estimated to be reasonably small and the proponent's intent was to harvest one or two fish at a time (Federal Board Transcripts, December 20, 2007, pages 228 and 229). Further discussion by the Federal Board and Regional Advisory Council chairs also focused on liberalizing Federal subsistence users methods and means to allow for harvests of individual salmon for immediate sustenance while traveling light in the course of camping, picking berries, or hunting. Discussions at the Federal Board meeting did not consider the impacts adoption of FP08-11 would have on the sockeye salmon stocks within Clark River and Home Creek, because both were closed to federal subsistence fishing at the time of the Board meeting. Cumulative unreported harvest from creeks that are near communities and easily accessible was also not considered by the Federal Board at the December 2007 meeting when the methods and means were liberalized to allow snagging, bare-hand capture and similar means for light travelers within the federal subsistence fisheries on the Alaska Peninsula.

At the December 2007 meeting, the Federal Board approved FP08-11, which liberalized methods and means and eliminated reporting requirements while using those methods and means, based on information suggesting the level of harvest would be a small number of individually harvested fish by
subsistence users traveling light in the field. During 2008, the Department received reports of federal subsistence users harvesting their winter supply of salmon from these tributaries of concern by federal methods and means without permits and harvest reporting. As stated in objections to FP08-11, the Department has serious conservation concerns with unreported harvests and the methods and means which were allowed. Those concerns have increased with FP09-11 and the recent disclosure of significant federal subsistence harvests in Home Creek and Clark River.

Jurisdiction Issues:

In order for rural residents and enforcement personnel to know where they can legally participate in federal subsistence fisheries, the Department requests 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 area 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 (Federal Board Transcripts December 11, 2007 pages 89-91) illustrated 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 while on State or private lands, including State owned submerged lands, the person may be cited.

Other Issues:

During the Bristol Bay Regional Advisory Council meeting, the Council recommended modifying the proposed regulation language from those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one linear mile to those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile. The description change of one linear mile to one
1 mile was recommended by the Regional Advisory Council to match the existing State regulation description of one mile in order to reduce confusion. The Department agrees that the description of one mile should match the State regulatory language. However, changing the regulation to also match the gear type allowed by State regulations would address confusion, reporting, and potential conservation issues. The Department recommends the following regulatory language:

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   Area   Salmon

   - Chignik River/Black and Chignik Lakes areas. You may not take salmon in the Chignik River, from a point 300 feet upstream of the ADF&G weir to Chignik Lake from July 1 through August 31, in Black Lake, or any tributary to Black or Chignik Lakes, except those waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile.

   - You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake, you may not use purse seines and in the waters of Clark River and Home Creek from their confluence with Chignik Lake upstream one mile you may only use gillnets. In all other waters, you may also take salmon (strike without a permit) with a subsistence permit by snagging (by handline or rod and reel), using a spear, bow and arrow, or capturing by bare hand.

   Recommendation: Oppose.
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The Federal Board is urged to modify the proposal so that federal subsistence users are authorized to use only the same methods and means in the Clark River and Home Creek waterways as are authorized in state regulations. Adopting a modified version of the proposal which would allow federally qualified subsistence users to fish in the lower mile of Clark River and Home Creek with gill nets would mirror State subsistence fishery regulations. Federally qualified users who participate in the federal subsistence fishery while using a gill net would be required to obtain a permit and report harvests. The Department would support the above proposed modified regulation which ensures same gear...
type usage and annual reporting of harvests to allow
continuation of sound management of the fisheries.

CHAIRMAN FLEAGLE: Thank you, George.
InterAgency Staff Committee comments. Polly.

DR. WHEELER: Mr. Chair. I'll
reference the standard comments that I referenced
previously and that's that.

CHAIRMAN FLEAGLE: Okay. Thanks.
Board discussion. Questions. Discussion. Steve
Kessler.

MR. KESSLER: Well, I guess first of
all just a question here. The Bristol Bay Council
talked about jurisdiction. The Council supports the
proposal with the caveat that the Federal Subsistence
Board will address the issue of State and Federal
jurisdiction. And the State brings up the same sort of
jurisdictional questions. And I guess maybe a question
for the attorneys, is there a jurisdictional problem.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: Is there a jurisdictional
problem or a jurisdictional question.

MR. KESSLER: The Council supports it
if that -- with the caveat that the Board will address
the State and Federal jurisdiction. So it seems clear
to me that there is Federal jurisdiction in this area.
Is that -- is that true, it's within the boundaries of
the Refuge even though the land surrounding that area
is all non-Federal land.

MR. GOLTZ: Right.

MR. KESSLER: Is there a jurisdictional
question there.

MR. GOLTZ: Well, the larger question
is in litigation. As a part of that litigation the
State is claiming that we ought not be regulating these
waters at all. As we discussed yesterday our over
arching position is that if the waters are within the
external boundaries of a Federal reserve then we are
managing them as part of the Federal subsistence
program. The ultimate resolution of that is going to
be court driven and we don't know the answer. But I
I think for our purposes today we follow the Federal regulation.

But I think there's another question and it's been referred to several times by the State and that's what happens if part of an action takes place in Federal waters and part of an action takes place on State lands. The State Supreme Court in the Totemoff case is saying that if part of that action is criminal under State law and part is allowed under Federal law, we're going to prosecute under State law. And I think that probably the condition that we're dealing with right now. I don't think that's an unsolvable problem or that it's necessarily permanent. We will wait the court resolution of the larger issue, but if the court resolves that in the favor of the State then there's probably going to be a regulatory response by the Secretaries. But there is considerable uncertainty at this point.

The actual legal analysis was done skillfully by the Office of the General Counsel, I see Jim isn't here right now, but if you recall that opinion that -- that is our present guidance.


MR. LOHSE: This is just a question out of curiosity because I don't -- I'd like to ask the State in that mile on the Clark River and Home Creek you're objecting to the use of hand lines, rod and reel, spear, bow and arrow or capturing by bare hand, but at the same time you're suggesting the use of gillnets and you're worrying about over capture with the hand line and the rod and reel and spear, bow and stuff like that. I'm lost right there, I don't see the correlation because I would think that a gillnet would be a much more efficient way to take fish.

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Through the Chair. Ralph, the -- it's not the over harvest, it's the unreported harvest. The Board of Fish just liberalized the subsistence fishery to allow harvest in there, but there is strict reporting requirements and that'll come out in the reporting, permitting system. Looking at the Chignik area watershed harvest, a significant portion comes from that area. And if it suddenly goes
unreported because folks are catching one or -- more
than one or two, but they're actually catching 100 or
so fish that direction, that potentially could affect
the brood tables for forecasting.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Ralph.

MR. LOHSE: Mr. Chair. Can I ask
George another question then or through the Chair.
Then if that -- if it required a permit to
use -- and a reporting to use those other methods, it
isn't the methods that you would object to as much as
it's the fact that it goes as an unreported take?

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Through the Chair. Yes,
Ralph, that's -- our most important concern is
unreported harvest. The second concern as it says in
our comments is that we don't approve of those methods.

Mr. Chair.

MR. LOHSE: Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Ralph.

Other comments. Questions. Board members. Are we
ready to have a -- okay. Steve, go ahead.

MR. KESSLER: Thank you, Mr. Chairman.
I guess the follow-up to that is -- and I guess it's
sort of related to Ralph's question is it just seems
that the gillnet is so much more efficient that -- I
mean, what would we anticipate would be harvested by
these other methods. I mean it seems like it would be
an extraordinarily small amount, right, given that --
given that a gillnet is such an efficient method. Has
anybody made any estimates of the numbers that would be
harvested by these other methods. And I don't know if
that's a question to Staff or who.

CHAIRMAN FLEAGLE: Oh, I don't know if
Staff is prepared to jump forward with an answer, but I
do remember when we talked about this in the Lake Clark
area it was meant -- yeah, it was felt that it was
going to be very insignificant, somebody just happened
to be out with a hand line or a spear grabbing a fish
for dinner, of that nature. And that's the
recollection I have was that it wasn't going to lead to any major quantities of fish being harvested. Niles.

MR. CESAR: Well, the State made reference to that there was some reporting of people or a person or somebody getting their winter supply of fish there. And I -- I'm assuming that was not done by hand line and/or snagging, but it was, in fact, done by a gillnet. I mean I don't know that. George.

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Mr. Chair. Mr. Cesar.

It's a sensitive issue, but it was done with snagging, Mr. Chair, as I understand.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Ralph.

MR. LOHSE: Well, I -- having lived out in that area and been on some of those hunting trips and taken salmon with a t-shirt or a club which I don't see down here as official equipment, but it was 40 years ago so I'm not too worried about prosecution. But I can understand -- I can understand the reasoning behind putting this in place, but I can also see where the problem comes with this Clark and Home Creek. But if you're going to allow gillnetting in Clark and Home Creek, couldn't you just say that for Clark and Home Creek you have to have a subsistence permit and these -- and record it and everything else and all of these methods are legal in Clark and Home Creek. I mean because if you're going to go out there to take your winter supply I can understand somebody maybe getting them snagging, but it's a lot easier with a gillnet. And the idea I understood and maybe I'm wrong on that, was is these other methods were so when they were on a caribou trip or they were out duck hunting or something like that they could take one of these fish or two of these fish out of any stream on the -- any stream in the area. But you're having a subsistence fishery on Clark and Home Creek with a gillnet so why not include these other methods and means and just say that to fish in that area you have to have a permit and you have to record them.

CHAIRMAN FLEAGLE: That is part of the request and it sounds like a logical compromise, I mean, if the Board is ready to go there, but we don't
I even have a proposal on the table yet. I appreciate the round about discussion and I'm going to let it continue as long as it needs to, but I have Larry Buklis has a comment.

MR: BUKLIS: Mr. Chairman. I just wanted to clarify in case it wasn't clear that in this area we use the State permit for reporting. And where gillnets are used the State permit is used whether you're under the State or Federal systems. These other methods are ancillary methods which you recently allowed a year ago. The Board's decision was to not implement a Federal permit system for those other methods, to go with the State permit system for the primary method, gillnet, and to allow these other methods which only the Federal system allowed without a Federal permit. So you didn't have a Federal and State permit system, that was the background. And so if you wanted to introduce a permit requirement for these other methods either in your former geographic range or just these streams or both, then you'd have to implement a Federal permit because my understanding is the State wasn't going to allow their permit to be used to report catches under these methods.

CHAIRMAN FLEAGLE: Right. That's the same understanding I have too. And I think that the Board was comfortable doing that, I remember some round about discussion about it because it was so incidental and temporary and, you know, minor numbers. But now we're talking about -- I didn't realize that you were talking about a pretty substantial harvest by other methods than gillnets. So, I mean, that does warrant further discussion. Further discussion.

MR. COLLINS: Mr. Chairman. Would you entertain comment from.....


MR. COLLINS: Well, if the concern is the number under those means and methods and the fact that they're unreported, what if you just had a possession limit of five for those methods or something like that that would limit it as another way of getting at this, but still allowing them, but not going out and getting the whole year's supply that way, something like that.
CHAIRMAN FLEAGLE: Sue.

MS. ENTSMINGER: Yeah, I'd like to just add to his comments in -- you know, just the keeping it simple for people, government and the user, you could have the one permit, the State permit, and then you have a season and bag limit on the Federal side and you have a season and bag limit on the State side. And the people that get that one permit are saying how they took it. And it -- and it does get report to one permit.

CHAIRMAN FLEAGLE: Which is the -- we do only have the one permit now, it's a State permit, but they were not going to issue permits for the Federal fishery because it included snagging, hand grabbing, spearing and several other methods and means that they didn't support. And we agreed at the time to go ahead and allow those additional methods and means without a permitting reporting process because it was such an incidental take. That was the difference and I think I'm hearing that the State is still unwilling to permit this under their permit system and that's where -- what Larry's comments are saying is it would be -- if we needed to do this we would have to come up with our own permitting system.

MS. ENTSMINGER: I hear that, but I'm suggesting as a user it seems so simple to have one permit and agree that it could be reported in that manner. And, you know, they can separate out the harvest, this person said they took this. And I understand, I'm just asking the State, I don't see how -- why you have to be so rigid on how you report.

CHAIRMAN FLEAGLE: Thank you. We've got Polly Wheeler and then I'll go to Steve.

DR. WHEELER: Thank you, Mr. Chair. I did want to point out on Page 248 in the State's comments they talk about a report of Federal subsistence users harvesting their winter supply of salmon. My understanding is that that was discussed at the Bristol Bay Regional Advisory Council meeting. It was kind of somebody was talking about it, it was an anecdotal report. I mean I just want to make sure that it's not confirmed, it's not a certainty so lest it be less there be the perception that there's hundreds of thousands of fish being taken, we don't know that and it was based on one report, it wasn't followed up.
on, but I think there is still the perception with 08-11 that it's for a few fish. Oftentimes these methods are used to target a specific kind of fish that people prefer to eat. And I don't know that this concern over lots and lots of fishing being taken is -- has been verified.

Mr. Chair, thank you.

CHAIRMAN FLEAGLE: Thank you. Steven Daugherty.

MR. DAUGHERTY: Thank you, Mr. Chair. I would just like to note that on the State's side we do have legal issues, it's not just a policy issue with permitting methods and means that are not allowable under State law. We have equal protection concerns under the Alaska Constitution, we also have the open access provisions of the Alaska Constitution and as noted in the McDowell opinion. So we can't treat people differently based on whether or not they are a Federally qualified user or a State user.

Mr. Chair.

CHAIRMAN FLEAGLE: Thanks for that clarification. Commissioner Lloyd.

COMMISSIONER LLOYD: Thanks, Mr. Chairman. At the end of the meeting I may have some closing comments about future opportunities for us to iron some of these things out before we get to a Federal Board meeting per se. But in this case we are here and I'm wondering if we can take a 10 minute stand down or a five minute stand down because it seems like we're perilously close to a sense of agreement, but if we just forge ahead without a little bit of discussion we may not come to an amicable solution.

CHAIRMAN FLEAGLE: Yeah, that's a good suggestion. Let's go ahead and do that, 10 minute stand down.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right. We're back on record. I'm going to turn to Commissioner Lloyd for a comment.
COMMISSIONER LLOYD: Thank you, Mr. Chairman. I appreciate the opportunity for the break and hopefully the benefit of some of those less formal conversations will come to fruit in the motion that may be put before you. But regardless, again I want to thank you for the opportunity to work some of these out and maybe in future cases we'll be able to do more of this prior to the meeting rather than during the meeting.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Continued discussion. Oh, Sue, you had a question.

MS. ENTSMINGER: You're not going to handle it for me. I'm going to be precise and good and people understand my question. I had asked the State Attorney at break and he said he didn't understand my question when we went to break about the ability of the State to issue the permit. And he said he didn't understand what I meant, but I meant that a dual permit. And he says that -- I would like him to expound on it.

CHAIRMAN FLEAGLE: Sure. Steven.

MR. DAUGHERTY: Mr. Chair. The question was whether you could have a Federal permit and a State permit on the same piece of paper so one side would be the Federal permit, the other side would be the State permit rather than the State permit allowing something that isn't allowed in State law. And legally there would be no problem from the State's point of view with having a Federal permit and a State permit on the same piece of paper. There might be some administrative cost sharing type issues associated with that, but from a legal perspective you could have both permits on one piece of paper if the Federal side have a permit requirement.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay. So that does clarify I think your question, but it still leaves us right where we were and we don't have a Federal permit reporting requirement.

MS. ENTSMINGER: Oh, you don't have a requirement, but if you had a requirement it could be
on a dual permit and that's what I was trying to point out. It could be done because it is done in the Fortymile Country and it works great.

CHAIRMAN FLEAGLE: Okay. Great. Thanks. Thanks for the clarification.

Geoff.

MR. HASKETT: Thank you, Mr. Chairman. From the stand down I guess what I'd like to do if I -- if we can do it this way is go with our original motion I was going to do and follow-up with an amendment that I think works out the conflict between the State and us.

CHAIRMAN FLEAGLE: All right. Let's take a motion to put the proposal on the table first.

MR. HASKETT: Okay.

CHAIRMAN FLEAGLE: So, Steve. Geoff.

MR. HASKETT: Yeah. I'd like to put the motion on.

CHAIRMAN FLEAGLE: Okay. Go ahead.

MR. HASKETT: Okay. The motion's to adopt proposal with modifications consistent with the Bristol Bay Regional Council recommendations as shown on Page 237 of our books. I'll provide my justification if there's a second to the motion.

MR. KESSLER: Second.

CHAIRMAN FLEAGLE: And we do have a second.

MR. HASKETT: So can I now do the amendment?

CHAIRMAN FLEAGLE: Okay. Certainly.

MR. HASKETT: All right. The motion to amend the proposal to allow the harvest of salmon by gillnets in Clark River and Home Creek by State permit and allow the harvest of up to five salmon per day in possession in Clark River and Home Creek by snagging, spear, bow and arrow or capture by bare hand without a
permit.

CHAIRMAN FLEAGLE: Is there a second on the amendment.

MR. OVIATT: I'll second.

CHAIRMAN FLEAGLE: George. Thank you. Further discussion, justification.

Geoff.

MR. HASKETT: Okay. The justification -- original justifications that this opens up the same area recently opened by State regulation. The problem was that while doing that the State did not agree with some of the methods allowed in Federal Regulations for the area, those being methods traditionally used to catch occasional fresh fish. We didn't think it was likely those methods were likely used to harvest large quantities of salmon especially when nets can also be used in the same area. We don't really have any conservation concerns for what was anticipated to be a relatively low level of harvest. If we do get reports of widespread use of these methods or any problems associated with these methods then we would evaluate the issue again at some later time. The amendment is intended to maintain the original intent of the proposal while gathering harvest information while allowing users to harvest an occasional fresh fish using these other methods without having to get a permit to do so.

CHAIRMAN FLEAGLE: Further discussion, Board members. Steve.

MR. KESSLER: I'd just be hopeful you could maybe read that amendment one more time. We don't have it available on the screen I don't think. So could you read that one more time, please. Thank you.

CHAIRMAN FLEAGLE: Geoff.

MR. HASKETT: Okay. Motion to amend to allow the harvest of salmon by gillnets in Clark River and Home Creek by permit and allow the harvest of up to five salmon per day in possession from Clark River and Home Creek by spear, bow and arrow or capture by bare hand without a permit. Oh, and snagging. Sorry.
CHAIRMAN FLEAGLE: Steve.

MR. KESSLER: Thank you, Mr. Chairman. And I'm trying to figure out does that include the upstream one linear mile from Chignik Lake or one mile from Chignik Lake, is that included in that because it sounds like it's sort of almost a replacement amendment.

MR. PROBASCO: Say it again, Steve.

CHAIRMAN FLEAGLE: The question was whether it was inclusive of the one mile delineation of these two streams that were mentioned in the original motion which I am assuming is yes, but we do need clarification.

MR. HASKETT: Okay. Yes, that does cover the same area, that linear mile.

CHAIRMAN FLEAGLE: Not linear mile, right, the word linear was.....

MR. HASKETT: Mile without the -- without linear. Sorry. One mile.

CHAIRMAN FLEAGLE: One mile. Steve.

MR. KESSLER: Did that need a second still, I think -- did that -- that amendment needed a second; is that correct?

CHAIRMAN FLEAGLE: Correct.

MR. OVIATT: I seconded it.

CHAIRMAN FLEAGLE: George amend -- George seconded the amendment. Yeah, we did have a second to the amendment. Further discussion. Steve.

MR. KESSLER: To me this sounds like a very good amendment, a way to deal with sort of the current situation where we do want to allow under Federal regulation harvest in these systems, but to make sure that any harvest that -- with these other methods and means stays sort of within the numbers within the overall sort of process that was discussed for this whole regional area for using these other harvest means. So I think this is a good solution and certainly would be -- I'd vote favorable on the
amendment.

CHAIRMAN FLEAGLE: All right. I'll support the amendment as well. I think it still reaches the intent of the proposal while addressing the concerns about possible excessive harvest by the other methods that aren't reported which I don't see as a problem, but I know we had some anecdotal evidence or report as Polly pointed out that it might have been used at some point, but in my knowledge or just my understanding of subsistence taking, you're not going to go out there and spend 40 hours doing what you can do in a half an hour with a net I don't think. I'm -- I don't know, maybe I'm wrong there and some people like it -- doing it a little harder. But we already have ample opportunity to catch the fish in nets and this is just addressing the additional methods and means and I don't see it as being any reduction in subsistence opportunity or any restriction on harvest. So yeah, I support it. I think that it's a good compromise.

Any other discussion. George.

MR. OVIATT: Well, I took am going to support this amendment. I believe that we have addressed maybe all of the concerns on all of the sides and still allow the incidental take by those other methods and means. And kind of fits into that way of life by those people who are out hunting or doing whatever and want to catch some fish. So I too will support the amendment.

CHAIRMAN FLEAGLE: Ready for the question on the amendment.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: The question's called. Pete, on the amendment, please poll the Board.

MR. PROBASCO: Okay. Mr. Chair. If I may with your approval to just read the intent of the amendment so it's clear. Okay. The intent of the amendment is to allow by the methods stated by Mr. Haskett which includes snagging, hand line or rod and reel, spear, bow and arrow or capturing by bare hand in Home Creek and Clark River, five salmon per day or five in possession. The other regulations pertaining to gillnets are the same as proposed on Page 243 in the
1 OSM conclusion.
2
3 CHAIRMAN FLEAGLE: And the limit of
4 area open to one mile is still in the original.
5
6 MR. PROBASCO: That's in there, yes.
7 All right.
8
9 CHAIRMAN FLEAGLE: Go ahead, poll the
10 Board.
11
12 MR. PROBASCO: On the amendment to
13 FP09-11. And first is Mr. Cesar.
14
15 MR. CESAR: Yes.
16
17 MR. PROBASCO: Mr. Haskett.
18
19 MR. HASKETT: Yes.
20
21 MR. PROBASCO: Mr. Fleagle.
22
23 CHAIRMAN FLEAGLE: Yes.
24
25 MR. PROBASCO: Ms. Masica.
26
27 MS. MASICA: Yes.
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29 MR. PROBASCO: Mr. Oviatt.
30
31 MR. OVIATT: Yes.
32
33 MR. PROBASCO: And Mr. Kessler.
34
35 MR. KESSLER: Yes.
36
37 MR. PROBASCO: The amendment carries
38 six/zero.
39
40 CHAIRMAN FLEAGLE: Thank you.
41
42 MR. CESAR: Call the question on the
43 main motion.
44
45 CHAIRMAN FLEAGLE: Okay. We do have
46 the question called on the main motion. Pete, please
47 poll the Board.
48
49 MR. PROBASCO: Thank you, Mr. Chair.
50 Final action on FP09-11 as amended. Mr. Haskett. Main
motion as amended, final action.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Kessler.

MR. KESSLER: Yes.

MR. PROBASCO: And Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: FP09 as amended carries, six/zero.

CHAIRMAN FLEAGLE: That's FP09-11. But anyway now we're moving on to 14. I thank you, Beth, for coming up and for Donald for being here. And we'll just allow just a few moments for new Staff to join us. And Proposal 14 dealing with Norton Sound port clearance area is -- begins on Page 251.

Good afternoon. I see we're joined by new Staff and we have not Donald Mike anymore, but Barbara Armstrong and we have Karen Hyer. Welcome.

MS. HYER: Good afternoon, Mr. Chairman. Members of the Board. My name is Karen Hyer and I'm with OSM. I'm going to summarize for you fisheries Proposal 09-14. It begins on Page 251 in your notebook.

This proposal was submitted by the Native Village of Unalakleet and it requests a closure of Federal public waters to the taking of chinook salmon June 15th through July 5th by non-Federally-qualified subsistence users. The map for the river is on Page 255. And the Federal public waters of the
Unalakleet include the upper 81 river miles. The river is 106 miles in total length.

Currently assessment of chinook salmon escapement into the drainage is conducted by using a tower, counting tower on the North river, a tributary of the Unalakleet. Radiotelemetry work conducted by Alaska Department of Fish and Game showed 60 percent of the chinook salmon entering the drainage migrate up the Unalakleet River, the remaining 40 percent migrate up the North River. Chinook salmon returns to the Unalakleet River have been poor since 2000. Since 2003 the chinook salmon escapement goal has only achieved once and that was in 2007. Concerns over this stock led the Alaska Board of Fisheries to identify chinook salmon in the Unalakleet and Shaktoolik subdistricts as a stock of yield concern in 2004. This decision was reconfirmed in 2007 with the adoption of the new management plan. Several conservation measures were taken under this new management plan. A threshold -- execution of the commercial fishery was established, a subsistence fishing schedule was put into regulation and there was a reduction in the sportfishing bag limit to one fish and an annual possession limit of two fish.

Because of conservation concerns several management actions have occurred. A chinook salmon directed commercial fishery has not occurred since 2005. In 2006, 2007 and 2008 sportfishing in the Unalakleet River under State jurisdiction was closed to sport harvest of chinook salmon. During the same period of time subsistence chinook salmon fishing in the Unalakleet River under both State and Federal jurisdiction was closed to the harvest of chinook salmon.

While things could change in the future, currently subsistence harvest occurs entirely down river under State jurisdiction, BLM regulates commercially guided sportfishing in Federal public waters through special recreation permits and to-date no permits have been issued. Most sportfishing occurs near the mouth of the North River within the drainage, use of the up river by non-guided sportfishers is hard to determine but it is thought that little or no harvest occurs in Federal public waters.

OSM’s conclusion is to oppose Proposal 09-14 because subsistence fishing in the Unalakleet
River occurs entirely in the lower portion of the river, which is outside Federal jurisdiction, a closure to the upper Unalakleet River to chinook salmon fishing would not provide additional subsistence opportunity since there is little -- since there are little or chinook salmon harvested in Federal public waters, such a closure would only have meaning if it was done in concert with a closure to State public waters. Currently the Federal manager has been working with Alaska Department of Fish and Game to provide whole river closures for chinook salmon conservation.

This concludes my presentation.

CHAIRMAN FLEAGLE: All right, thank you. Summary of public comments. Barbara.

MS. B. ARMSTRONG: Thank you, Mr. Chair. There are no public written comments on Proposal 14.

Thank you.


MR. PROBASCO: Yes, Mr. Chair, we have two individuals. First one up is Michael Sloan.

CHAIRMAN FLEAGLE: Good afternoon, welcome.

MR. SLOAN: Yes, good afternoon. My name is Michael Sloan with Kawerak in Nome.

Kawerak would like to support this proposal as modified by the Regional Advisory Council. And I guess we feel like that we should do whatever we can to conserve the chinook salmon on the Unalakleet River and that the spawning areas, anything we can do -- we realize that the impact might be very slight on both the resource and the users and -- but we feel like even this little bit, given the situation there with chinook might be warranted for this.

But, anyway, we would like to support that.

CHAIRMAN FLEAGLE: Okay, thank you. Appreciate the comments. Pete.
MR. PROBASCO: Yes, Mr. Chair. The next individual is Kermit Ivanoff. Mr. Ivanoff, did you sign up twice?

MR. IVANOFF: What's that?

MR. PROBASCO: Did you sign up twice?

MR. IVANOFF: No.

MR. PROBASCO: Is there a junior there, a Kermit Ivanoff....

MR. IVANOFF: I'm sorry, I'm hard of hearing.

CHAIRMAN FLEAGLE: We have two testimony cards and they're both Kermit Ivanoff but one looks like it might be junior or maybe they're both you. You're the only Kermit Ivanoff here?

MR. IVANOFF: Yes.

CHAIRMAN FLEAGLE: Okay, thank you.

MR. IVANOFF: Mr. Chairman. Board members. Hello, my name is Kermit Ivanoff, Sr. I'm the vice-President of Native Village of Unalakleet Council and I thank you for allowing me to participate today.

I'm here to support Proposal FP09-14, that would close the taking of chinook salmon from the mouth of Chiroskey River and up stream from July 1 to July 31st to all users. The protection of Unalakleet River chinook stock listed as a stock of concern by the Alaska Department of Fish and Game is needed because escapement goals have not been met in the last three years and the low chinook runs continue. The Council feels ultimate protection of the chinook is required.

Two years ago the ADF&G biologist identified the high male ratio count compared to female and the large number of jack kings in the escapement numbers. In the next four to five years when the chinook return we anticipate another dismal year of abundance. The chinook salmon are extremely important to commercial, subsistence and sportsfishers in Unalakleet and all fishers have experienced in the last three years restrictions and closures. Subsistence
fishers for the first time in history have restrictions in the marine waters last summer. We have supported and written proposals to the ADF&G Board of Fish to close the commercial fishing, to place restrictions on sportsfishers who come from all parts of the United States to target chinook and coho salmon and work with Fish and Game biologists to place restrictions for subsistence users because we felt chinook are in danger. Our commercial fishermen refused except for four or more to fish three years ago when they realized that the chinook run was very weak and the commercial catches reflected that.

What used to take one or two days to harvest chinook salmon for subsistence use now takes one week or more trying to fulfill our subsistence requirements to feed our families. Historically one or two days fishing by gillnet in marine waters produce 30 to 60 chinook, now the same effort takes one week or more and a few families did not reach their goal because of weather, economics, lack of good sea worthy boats and motor. The elders are hit especially hard. Our 75 to 85 year old men still fish in the marine and river water and still have historically chosen when the weather was good but are now forced to fish when the window openings occur. Understandably some do not fish because of inclimate weather.

There are international and Lower 48 sportfishermen who pay high prices to catch chinook and coho, some arrive in mid-July when the pink salmon are in the rivers and the chinook are at or near their spawning grounds. Pink sportfishing is not challenging for most folks so there is a tendency to travel up river to find chinook. That practice is not done in high numbers but the potential exists to do so.

Subsistence fishers do not target chinook past Chiroskey, that's Chiroskey River, nor do they usually fish for chinook there. We have lived in the river most of our lives and recognize the spawners in that area perpetuate the return of future stocks and so they are left alone. Conservation concerns are acknowledged by the ADF&G, commercial and subsistence users of the area and by the local fishing lodges. And there is one critical area where no protection of the chinook salmon exists, the most important area, the place they spawn. The rivers and tributaries from Chiroskey and up stream are identified as chinook spawning areas by the ADF&G and by the elders and
fishers who live and camp there in the summer.

The reason for low returns of chinook salmon coming back to spawn are many and uncertain. Continuing restrictions and regulations of all uses have not proved sufficient to increase the returns. The downward trend continues. The ADF&G continues to improve a management approach which incorporates collaboration and cooperation that is good but restrictions on harvesting and fishing of chinook salmon who finally make it to their spawning grounds is required for the pure sake of conservation. That is the ultimate protection for the stock on a downward spiral and I have yet to hear a biologist or a fisher who does not support spawners and protection of spawning grounds.

We recognize the Federal Subsistence Board uses the best scientific data to help make decisions. While we do not have numbers and data to provide we have the local knowledge and where the spawners and where the spawning areas are and feel a vital tool is needed to help, to help sustain the most important fish we depend on for our livelihood.

Your help is greatly appreciated and I thank you all for the work you have done.

Thank you.

CHAIRMAN FLEAGLE: All right, thank you for the testimony. We do have any others, Pete, for this issue?

MR. PROBASCO: For this proposal that completes the public testimony, Mr. Chair.

CHAIRMAN FLEAGLE: All right, thank you. We'll go to the Regional Council recommendation. Barbara.

MS. B. ARMSTRONG: The Seward Peninsula Regional Council supported Proposal FP09-14 with modification. The modification would close the Federal public waters of the Unalakleet to all users instead of only non-subsistence users as written on Page 251.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Barbara.
Alaska Department of Fish and Game comments. George Pappas.

MR. PAPPAS: Thank you, Mr. Chair.

I'm summarizing the Department's full formal comments that are in your Board book on Pages 263 and 264. Those full comments will also be entered into the record following my presentation here.

This proposal as amended by the proponent and the Seward Peninsula Regional Advisory Council to close all fishing for chinook salmon in the Unalakleet River within Federal public lands from June 15th to July 5th. The area of proposed closure is the waters upstream of the confluence of Chiroskey River approximately 20 miles east of Unalakleet.

The stated intent of this proposal is to protect spawning chinook salmon that are migrating through these waters into this area. However, the majority of chinook salmon are not likely to reach the spawning grounds until July 5th.

The closure would provide little or -- would provide little benefit to Federally-qualified subsistence users because few, if any chinook salmon are harvested that far upstream in the Unalakleet watershed. Chinook salmon are primarily harvested closer to the village of Unalakleet or in marine waters. Few non-Federally-qualified users target chinook salmon in Federally public where the fish are more water marked than the brighter fish closer to the mouth of the Unalakleet. In addition travel upriver to fish on Federal public lands is increasingly cost prohibitive due to the high cost of fuel.

Under State of Alaska regulations all residents can subsistence fish with gillnets in both fresh and marine waters. Beach seines can only be used by emergency order and all chinook salmon must be released by regulation. The State subsistence chinook salmon fishery in the Unalakleet watershed is normally open all year and is limited by regulation, being June 1 to the use of -- use of set gillnets to July 15th. From June 15th to July 15th subsistence fishing is normally allowed twice a week for 36 hour fishing periods. Commercially fisheries targeting chinook salmon are not allowed unless midpoint of the escapement goal is projected to be met as determined in the Unalakleet River King Salmon Management Plan.
The Unalakleet River chinook salmon stock was designated as a stock of yield concern by the Alaska Board of Fisheries in 2004. Since 2002 the chinook salmon commercial fishery has been closed except for two 24 hour fishing periods in 2005. Since 2003 subsistence and sportfishing -- fisheries targeting Unalakleet watershed salmon -- or chinook salmon have been significantly restricted or closed to allow for escapement.

Under the conservative management plan adopted by the Alaska Board of Fisheries in February 2007 the State subsistence fishery has been restricted to in-river by reducing the fishery time periods to two 36 hour fishing periods during the week -- per week during the open season in freshwaters and two 48 hour fishing periods per week in the marine fisheries.

When escapement goals still are not projected to met in-season subsistence fishing has been further restricted or closed. When the lower escapement goals are projected to be met in-season the State subsistence fishery may be liberalized. The sportfishery has been closed by emergency order in early June -- or in early July for the retention of chinook salmon in 2003, 2004, 2006, 2007 and 2008, and that's due to conservation concerns. Management actions taken by the State managed fisheries include State, private and Federal public lands. Because of the migratory timing these actions are taken prior to any fishing effort occurring in the Federal claimed waters.

In summary, the Department opposes this proposal because it will not improve the health of the Unalakleet chinook salmon stocks and will not improve the opportunity for subsistence use. In years of low returns the State closures or restrictions are in place before chinook salmon reach the waters subject to Federal jurisdiction claims. Simply put, the proposed closed -- closure does not meet the requirements of the Federal Subsistence Board's closure policy adopted in August 2007.

Thank you, Mr. Chairman, those are the comments.
Alaska Department of Fish and Game
Comments to the Federal Subsistence Board

FP09-14 Unalakleet Chinook Salmon Closure

Introduction:

This proposal would close all fishing for Chinook salmon in the Unalakleet River within federal public lands from June 15 July 5, except by federally-qualified subsistence users. The area of proposed closure is the waters upstream of the confluence of Chiroskey River, located approximately 20 miles east of Unalakleet. This proposal was submitted with the stated intent of protecting spawning phase Chinook salmon that are migrating through the area. However, the majority of Chinook salmon is not likely to reach the spawning grounds by July 5.

Impact on Subsistence Users:

If adopted, the proposal would prohibit taking of Chinook salmon for subsistence purposes by Alaska residents and sport fishermen but not by federally-qualified subsistence users. The closure would provide little benefit to federally-qualified subsistence users because few, if any, Chinook salmon are harvested that far upstream in the Unalakleet watershed. Chinook salmon are primarily harvested closer to the village of Unalakleet or in marine waters. Few non-federally qualified users target Chinook salmon in federal public lands where the fish are more watermarked than the brighter fish closer to the Unalakleet River mouth. In addition, travel upriver to fish on federal public lands is increasingly cost-prohibitive due to high fuel costs.

Opportunity Provided by State:

Subsistence salmon fishing occurs in freshwaters of the Unalakleet River and surrounding marine waters of the Unalakleet Subdistrict. All Alaska residents can subsistence fish with gillnets in both fresh and marine waters under State of Alaska (State) regulations. Beach seines can only be used by emergency order, and all Chinook salmon must be
released by regulation. The State subsistence Chinook salmon fishery in the Unalakleet watershed is normally open all year and is required by regulation beginning June 1 to use only set gillnets until July 15. From June 15 through July 15, subsistence fishing is normally allowed twice a week for 36-hour fishing periods. Commercial fishery targeting Chinook salmon is not allowed unless the midpoint of the escapement goal is projected to be met, as described in the Unalakleet River King Salmon Management Plan. The Unalakleet River salmon sport fishery is normally open all year, and the daily bag and possession limit is 2 fish, only one 20 or longer. There is an annual limit of 2 Chinook salmon 20 or longer.

Conservation Issues:
The Unalakleet River Chinook salmon stock was designated as a stock of yield concern by the Alaska Board of Fisheries in 2004. This designation was due to the inability to maintain near average yields despite use of management measures to provide harvestable surpluses above the stock escapement needs during the previous 5-year period. Since 2002, the Chinook salmon commercial fishery has been closed, except for two 24-hour fishing periods in 2005. Since 2003, subsistence and sport fisheries targeting Unalakleet watershed Chinook salmon have been significantly restricted or closed to allow for escapement. Under the State Policy for the Management of Sustainable Salmon Fisheries, if the Unalakleet River Chinook salmon stock chronically fails to meet its escapement goal, Alaska Department of Fish and Game would recommend changing the stock of concern status from a yield concern to a management concern until the stock recovers.

Annual commercial fishery harvests of Chinook salmon in the Unalakleet Subdistrict have dropped from a long term annual average of 5,717 fish (1980-2000) to a recent average of 32 fish (2001-2007). The annual State subsistence fishery harvests of Chinook salmon in the Unalakleet Subdistrict during the last 14 years have ranged from 6,325 fish in 1997 to 1,665 fish in 2007 with a decreasing trend in recent years. The sport fish harvest from 2001-2007 has averaged 286 Chinook salmon and ranged from 97 to 544 fish annually. A trend of harvest transfer from commercial fisheries to subsistence fisheries has developed due to the severe restrictions or closure of
commercial fisheries in recent years in response to smaller returns of Chinook salmon to the Unalakleet River.

Under the conservative management plan adopted by the Alaska Board of Fisheries in February 2007, the State subsistence fishery has been restricted in-river by reducing the fishery time periods to two 36-hour fishing periods per week during the open season in fresh water and two 48-hour fishing periods per week in the marine fishery. When escapement goals still are not projected to be met inseason, subsistence fishing has been further restricted or closed. When lower escapement goals are projected to be met inseason, the State subsistence fishery may be liberalized. The sport fishery has been closed by emergency order in early July to retention of Chinook salmon in 2003, 2004, 2006, 2007, and 2008 due to conservation concerns. Management actions taken in State-managed subsistence and sport fisheries to conserve Chinook salmon include federal public lands upriver. Because of migratory timing, these actions are taken prior to any fishing effort occurring in those waters.

Jurisdiction Issues:

The majority, if not all, of subsistence and sport Chinook salmon harvest in the Unalakleet River watershed and nearby marine waters occurs within marine and freshwaters not subject to federal regulations. The lands and waters from the mouth of the Unalakleet River to river mile 22 are State, corporation, or other non-federal property. The area addressed in the proposal is within State waters in the lower extent of the Unalakleet Wild and Scenic River area. Detailed maps are needed, showing boundaries and areas where federal regulations are claimed to apply and justification for claiming those boundaries.

While standing on state and private lands (including state-owned submerged lands), persons must comply with State law and cannot harvest under conflicting federal regulations. If this proposal is adopted, enforcement difficulties and user confusion -- concerning where and how federal regulations that are different than State regulations apply -- will result unless detailed maps and explanations specific to the area are provided.
Recommendation: Oppose.

Adoption of this proposal will not improve the health of the Unalakleet River Chinook salmon stock and will not improve opportunity for subsistence use. In years of low returns, State closures or restrictions are in place before Chinook reach the waters subject to federal jurisdictional claims. The proposed closure does not meet the requirements of the Federal Subsistence Board's Closure Policy adopted August 2007.

CHAIRMAN FLEAGLE: Thank you, George.

InterAgency Staff Committee comments.

Polly.

DR. WHEELER: Thank you, Mr. Chair.

And this goes beyond the template that I mentioned earlier, the standard comments.

The InterAgency Staff Committee found the Staff analysis for Proposal FP09-14 to be a thorough evaluation of the proposal.

However, rather than adopting the OSM conclusion, some Staff Committee members suggested the Board could adopt the Regional Advisory Council's recommendation for closure based on the same information. The closure would be consistent with ANILCA .815(3) and Section .816(b) since there is clearly a conservation concern as evidenced by State and/or Federal fisheries managers restricting or closing subsistence, sport and/or commercial fishing repeatedly year after year.

The in-season manager currently has the authority to close Federal public waters during the season and has been so doing through special action authority delegated by the Board and in coordination with the Alaska Department of Fish and Game. Instituting a closure in Federal regulation would alleviate the in-season manager from having to continue issuing special actions each year and also would inform the public that Federal waters are closed to fishing for chinook salmon unless run strength improves enough to warrant opening by special action.

Sound fishery management principles suggest that when virtually the same in-season action
is taken repeatedly year after year a regulatory action may be warranted.

The Council is sufficiently concerned about the status of the Unalakleet River chinook salmon that it recommends modifying the proposal to restrict subsistence users as well as non-subsistence users. The Council acknowledged that a decision by the Federal Subsistence Board to close Federal waters to both subsistence and non-subsistence fishing may result in conservation of only a small number of chinook salmon because of the limited amount of fishing that occurs in these waters. Nonetheless, because of the continuing depressed nature of the run, any chinook salmon conserved is importance to restore the run to previous sustainable levels.

The Staff Committee discussed the Council's recommendation to further modify the proposal to allow the Federal in-season manager to relax the closure if run strength warrants. If the Board were to adopt the Council's recommendation the Staff Committee suggested the Board clarify the Council's wording associated with the in-season manager's authority to relax the closure. That new wording could be, and I quote here:

The in-season manager is authorized to open the closed area to Federally-qualified users or to all users when run strength warrants.

New information since the Council meeting is that the local Southern North Sound State Fish and Game Advisory Committee supports the Council recommendation.

And that concludes our comments, Mr. Chair.

Mr. OVIATT: Without a doubt there's -- everybody agrees that there's a shortage issue with salmon on the Unalakleet and we've had some issue, I believe we're talking about is -- is this regulation really necessary and that's one place I want to go. But I wanted to ask a question, if we allow the in-season manager to open or relax the closure of this, is
that open until closed again or has anybody put any
thought into that because I'm not sure this Board has
ever allowed an in-season manager to open a fisheries
that has been closed and I'm a little concerned that we
would do that by use of an in-season manager rather
than going through this Board. So that's one concern I
have with this proposal by the RAC. Could someone.....

CHAIRMAN FLEAGLE: Larry.

MR. BUKLIS: Mr. Chairman. If the
regulation was that the system is closed but there's
delegated authority to the manager, then that person's
action would be a special action with a 60 day life and
when that was over we would revert to the regulation,
which is a closure.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Thank you, Mr. Chair.
And add to what Mr. Buklis said, is that, the Board has
delegated to our fisheries managers in-season authority
to close and open already. But your specific question
is if the Board adopt a closure have we allowed in-
season managers to reopen, without looking at the regs
I'm not sure but if you were to look at the big picture
we already give them authority to open and close in-
season based on run strength.

CHAIRMAN FLEAGLE: Geoff.

MR. HASKETT: Just a question, what
I've got here is talking about the Federal waters or
upstream of most, maybe all the chinook salmon fishing,
so is there any kind of -- if that's true is there any
kind of study that's been done that identifies what we
think that we're actually going to be able to conserve
by doing this?

CHAIRMAN FLEAGLE: Karen.

MS. HYER: Through the Chair to Mr.
Haskett. The problem is there's not good documentation
of what is happening up river so the answer to that is
no, most of the information I got from was from talking
to either locals or agency people that work in that
area.

CHAIRMAN FLEAGLE: I think the point
that's pertinent here is that the people that are
asking for the closure recognize that the closure would prevent minimal numbers of fish from being caught but every fish conserved is another fish to help increase the spawning grounds so it's probably a very small number. If -- I mean I know we don't have the -- what that number may be but talking pretty small.

George.

MR. OVIATT: Thank you, Mr. Chairman. When I look at this from a practical standpoint and I try to do that whenever possible, it appears to me that the State has this fisheries well managed. And most of the fishing occurs in the State waters, not all of it except for an occasional fish that's caught up stream that maybe has been documented or not, I just think this is so well managed by the State and the State and the locals and BLM and -- and Park Service all are working together in this whole area, I just think this group works very well together. And to put regulations, additional Federal regulations in place when I'm -- I'm just not seeing the purpose, I'm not seeing what it's going to buy us. I think it's a -- I think it's not going to improve or take away, in fact, it may take away something -- may -- it could take away some possible subsistence uses.

So I guess I'm having really an issue here. I really believe that this is a situation that's being well managed. I think the State is doing a very good job. I'm really having trouble wanting to implement some regulations that I just don't think have a real purpose.

However, I did want to say one thing that BLM is working with the State to field an escapement monitor project in the mainstem of the Unalakleet River. We hope to put that in place this summer. So we will have additional information on the escapement upriver to help out. But I'm really having trouble supporting the RAC's recommendation because I just think it's a regulation that we're going to put on the books that is of no value, it isn't going to improve the situation at all.

CHAIRMAN PLEAGLE: Thank you. Steve.

MR. KESSLER: Thank you, Mr. Chairman. I guess I just find it real interesting that the proposal came from the Native Village of Unalakleet and
they support this closure and support a closure to both Federally-qualified and non-Federally-qualified users. So they support the closure to subsistence users also, recognizing that they just don't feel like anybody at this point should be fishing up in that upper area. That can occur right now through actions of the managers every season to close, both the State and the Federal in-season managers, but the proponent and the -- the proponents support this as does the Council, so I think we need to give a hard look at what they're saying and that they actually want to impose a closure on subsistence users.

And as discussed in the Staff Committee comments, it does seem like that that is consistent with Section .815 and .816.

CHAIRMAN FLEAGLE: Thank you, Steve.

I think when this proposal was first being discussed I questioned also whether the closure would be meaningful or if it would be purely symbolic and would it, therefore, then be necessary. What I think I'm finding is that like Steve suggested, that you have the subsistence users themselves suggesting the closure and by modification through the RAC are suggesting the closure should apply to themself therefore they're indicating a huge buy-in to the conservation of the species and I think that although the savings in fish may be minimal I agree that when you're down to trying to protect a stock every fish saved is, I don't know, how many more fish you can expect to come back from the one that gets to go spawn but I think that it is more than meaningful, and that you have a buy-in from the local users, and I would support that. But I mean not in its original form, it'd have to be modified per the RAC's amendment to fit the closure to the appropriate timing and to also include the subsistence users in it.

So that's where I'm at, any other discussion.

Sue.

MS. MASICA: I don't need to belabor what's been said previously, Mr. Chairman, but I would agree with you. I think the -- the issues related to healthy populations, there's obviously a problem up
there with the number of closures that have been having during the seasons and I'm -- I think the amendments are needed -- the refinements from the Council need to be included in whatever we work on.

CHAIRMAN FLEAGLE: Are we ready for a motion. George.

MR. OVIATT: Yes, Mr. Chairman, I'm ready to make a motion. I move to adopt Proposal FP09-14 as recorded in our book.

CHAIRMAN FLEAGLE: Is there a second.

MR. CESAR: I'll second that.

CHAIRMAN FLEAGLE: Got a second. Okay, George, go ahead.

MR. OVIATT: Mr. Chairman. With the concurrence of that second I'd like to offer an amendment to proposal language identical to that put forth by the Seward Peninsula Regional Advisory Council on Page 251 of the Board book.

MR. CESAR: And I'll second that.

CHAIRMAN FLEAGLE: Okay, you do have that amendment and seconded. George, you want to go ahead and speak to that.

MR. OVIATT: Sure. My understanding is that the RAC's modifications were crafted in cooperation of proponent's original proposal contrary to the recommendation of the Seward Penn RAC.

I'm presently opposed to this proposal and I'll address my reasons.

While it's quite clear that the Unalakleet River chinook salmon stock is experiencing poor returns, I don't believe there's substantial evidence of any chinook harvest occurring in the Federal public waters in the upper Unalakleet. A closure, therefore, would have little effect, if any, on restoring or conserving a viable chinook salmon resource. In five of the past six years the State has closed its chinook sport harvest in early July. The State's consistent and timely in-season action essentially duplicates the intent of the effect of this
I believe the most prudent approach would be to continue working with the State to focus appropriate conservation efforts on those fisheries and locations where chinook harvest does occur.

CHAIRMAN FLEAGLE: Appreciate that George. Other discussion on the amendment.

Polly.

DR. WHEELER: Mr. Chair, sorry to interrupt. I did want to point you to the language on the bottom of Page 262, the second to the last paragraph that the InterAgency Staff Committee offered, apparently, according to our reg specialist, the last sentence of the Regional Advisory Council modification is a little problematic from a regulatory standpoint so we would ask that you consider the language offered by the InterAgency Staff Committee, like I said the last sentence on the second to the last paragraph on Page 262.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you. At this time that is not included in the amendment, the in-season manager's discretion to open but appreciate the clarification if it is to be considered -- oh, it is, okay, my....

MS. MASICA: I think we just -- Mr. Chairman, isn't.....

CHAIRMAN FLEAGLE: I'm corrected.

MS. MASICA: Mr. Chairman. Isn't it just changing the wording to, rather than may be relaxed by the in-season manager it would be in-season manager is authorized to open the closed area; is that correct, Polly?

DR. WHEELER: That's.....

I'm.....

CHAIRMAN FLEAGLE: Yeah, I'm -- I'm.....

DR. WHEELER: .....correct.
CHAIRMAN FLEAGLE: .....sorry, I

totally missed your.....

MS. MASICA: So just substitute the
language on that paragraph on Page 262 to what's on
Page 251?

DR. WHEELER: Through the Chair, Member
Masica, that's correct.

CHAIRMAN FLEAGLE: And that's the
intent of the amendment, George.

MR. OVIATT: Could I have a quick stand
down, just time for me to consult, all I need is about
five minutes?

CHAIRMAN FLEAGLE: You bet.

MR. OVIATT: Thank you.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Okay, we're back on
record. Pete, statement.

MR. PROBASCO: Yes, Mr. Chair. I just
wanted to just go back in time a little bit for the
Board and to remind them that we try to avoid writing
actual regulatory language here. What we want on the
record is the clear intent and then we leave it up to
our legalize, solicitors and our regulatory specialists
to capture the language. If we try to write the
regulatory language like we'd see it in the book we're
going to add days to this meeting so I would say let's
clearly get our intent and then take it from there.

CHAIRMAN FLEAGLE: All right. And with
that I understand that the maker of the amendment to
the maker of the motion wants to make a further
amendment. Actually I'd prefer that we don't go a
double step on the amendment, maybe we can vote on the
amendment that's before us now and then further amend,
if that's where you want to go, George, or withdraw.

MR. OVIATT: I guess.....

CHAIRMAN FLEAGLE: I just.....
MR. OVIATT: .....I guess if we.....

CHAIRMAN FLEAGLE: .....it's just.....

MR. OVIATT: .....vote for the amendment and it passes then I would make an amendment to that.

CHAIRMAN FLEAGLE: Or we can -- well, I see where your point is, you're potentially amended language into the final action then that you'd want and then going to make some kind of a motion to reamend it out, it would probably be best to just withdraw the first amendment and then just start afresh.

MR. OVIATT: Okay, Mr. Chairman, I'd like to withdraw my first amendment.

MR. CESAR: I'll withdraw my second.

CHAIRMAN FLEAGLE: With concurrence that action has been taken. We now have the original motion before us ripe for a new amendment.

MR. OVIATT: Mr. Chairman. I'd like to make a new amendment -- or make an amendment to the motion according to -- that follows the language of the Resource Advisory Council [sic], and I don't remember what page it's on, with the exception, I would like to take out the in-season manager and replace that with the Bureau of Land Management's -- or field office manager as having that authority.

We are the ones that are on the ground, it's a wild and scenic river and I would -- and we're working very closely with the communities and the State. And so if we could replace that with the field -- BLM's field manager then we would be able to support this.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: All right. So just for clarity, the amendment would be the language provided on Page 252, which is the Regional Advisory Council recommendation but you would substitute the word in-season with BLM field manager -- yeah, BLM field?

MR. OVIATT: That's correct, Mr.
CHAIRMAN FLEAGLE: All right. And it is on the TV screen, thanks. Is there a second.

MR. CESAR: I'll second.

CHAIRMAN FLEAGLE: We do have the amendment before the Board, further discussion.

Niles.

MR. CESAR: Mr. Chairman. I'm opposed to giving BLM any more authority than they already predispose but I will support this motion.

(Laughter)

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

MR. KESSLER: Question.

CHAIRMAN FLEAGLE: Question's called on the amendment, Pete, please.

MR. PROBASCO: Amendment to FP09-14, Federal public waters, the Unalakleet River upstream from the mouth of the Chiroskey River are closed to the taking of chinook salmon from July 1 to July 31st by all users. The BLM field manager is authorized to open the closed area to Federally-qualified users or to all users when run strength warrants.

Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Kessler.

MR. KESSLER: Yes.
MR. PROBASCO: Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: And Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Chair. Amendment carries, six/zero.

CHAIRMAN FLEAGLE: Thank you. You now have before you the main motion as amended. Further discussion.

(No comments)

MR. CESAR: Question on the main motion.

CHAIRMAN FLEAGLE: The question is called on the main motion. I think that we've had adequate discussion as to the merits of the motion and the amendment and don't feel that we need any additional record and I will recognize the call for the question, and, Pete, will you please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action FP09-14 as amended. Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Kessler.

MR. KESSLER: Yes.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: And Mr. Fleagle.
CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Motion carries, as amended, six/zero.

CHAIRMAN FLEAGLE: Thank you, Pete. We need to take up the consensus agenda and at this time we have heard no testimony at both starting processes both days for Proposals 08 and 06. We need a motion to adopt the consensus agenda, right, Pete?

MR. PROBASCO: Correct.

CHAIRMAN FLEAGLE: Is there a motion.

MR. CESAR: I so move.

MR. OVIATT: Second.

CHAIRMAN FLEAGLE: Moved by Niles, seconded by George. Discussion.

(No comments)

MR. KESSLER: Question.

CHAIRMAN FLEAGLE: It appears that the rationale provided by all agencies are in agreement on those two proposals are adequate for the action and with that I'm going to recognize the question. Pete, on the consensus agenda, please poll the Board.

MR. PROBASCO: Final action on the consensus agenda, FP09-08 and 06. Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Kessler.

MR. KESSLER: Yes.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Mr. Fleagle.
CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: And Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Motion carries six/zero.

CHAIRMAN FLEAGLE: Great, thank you.

That concludes the regulatory portion of the meeting.

And we do have a Council Chair that has a time
constraint even tonight and has made a request that we
forego the viewing of the DVD until the Council Chair
discussion and -- I mean, not the Council Chair, but
the Yukon proposal discussion and with concurrence from
the Board I'm going to allow that.

No objection.

(No comments)

CHAIRMAN FLEAGLE: All right. Thank
you. I want to thank Staff and public and everybody
that was present for the regulatory proposals that were
before us.

Now, we're moving forward with the
discussion on deferral of the Yukon River fisheries
regulatory proposals and for a lead in I'd like to turn
to Pete -- Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Just a real brief reminder, in July 2008 the Board made
the decision to defer consideration of two regulatory
proposals seeking changes to the mesh size and the
depth of gillnets used for subsistence fishing for
chinook salmon on the Yukon River. These proposals
have been numbered FP09-12 and 13 and they were put on
a deferred track leading to their future consideration
by the Board in a special meeting that we called in
spring of 2009.

The State of Alaska has then sent a
letter to the Board requesting further deferral of the
Yukon regulatory proposals 12 and 13 to a point in time
after the Alaska Board of Fisheries meeting in January
of 2010. The Board agreed to discuss the State's
request following the regulatory agenda portion of this
meeting, this discussion will lead to a decision by the
Board as to whether consideration of these proposals
will be further deferred until after the Alaska Board of Fisheries meeting in January 2010 or to proceed ahead as scheduled, which would be to take up these proposals at the special meeting in April.

This discussion is to focus only on process, not the content of the analysis that Staff are working on, and we're ready to go forward if there are any questions.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: All right, this is a request from the State, Commissioner Lloyd, are you prepared to have some opening statements.

COMMISSIONER LLOYD: Thank you, Mr. Chairman. I hope you've all had a chance to read our letter of October 27th but we have laid out some detailed comments in that letter for why we believe your consideration of these proposals ought to be deferred and deferred until after the Alaska Board of Fisheries can act on information and some similar requests.

There are three major points, however, I won't go through the entire letter but there are three major points that we believe you ought to take into consideration.

First of all we think that taking the proposals up now, in fact, this season, would be counter-productive. Fish and Game and Fish and Wildlife Service are working with Yukon River fishers on pre-season management strategies to voluntarily reduce the subsistence harvest of chinook in 2009 because of a projected poor run. Low run size in 2008 emphasized the point that controlling the harvest is the most important management objective which these proposals really don't address. And we believe that jeopardize an agreement to reduce harvest will be, indeed, counter productive.

Secondly, allowing -- we believe that it would be good to allow more time for all of us and our respective Staffs and the public to review the Bromaghin report that's recently come out and also the upcoming results of the Fish and Game mesh size study.
This would allow more time to review potential effects as I suggested, for the Bromaghin report and the mesh size data. And also would respond to some initial indications, the data from net selectivity studies, Pilot Station Sonar indicate that, for example, a seven and a half inch mesh gillnet are more effective at harvesting chinook salmon than six and a half and eight and a half mesh sizes. And so until we get good study results I don't think the Federal Subsistence Board would like to make an interim decision that, in effect, exacerbates the potential problem.

The third main point we'd like you to consider is that taking the proposals out of, kind of, the context of a larger review process and the State regulatory consideration would be divisive and would complicate management.

And, so, Mr. Chairman, I guess I'll cut my remarks to those three points and ask you to very seriously consider deferring consideration until the State process can be fully developed, full deliberation of a large suite of information that won't be ready until next year and the Board of Fisheries can consider the impact of these proposals, drainage and basinwide.

Thank you.

CHAIRMAN FLEAGLE: All right, thank you. Appreciate that lead in.

We are going to hear public testimony on this issue and like Pete suggested, we don't want the testimony to be pertinent to the biological data or reasons for the -- that the proposals address, but the process that we're proposing, or that is being proposed, is what we're looking for input on from public and from Council Chairs, if you want to jump in.

At this time I want to open it up to public comments. Pete, do we have anybody that wants to testify, no, okay.

(Laughter)

CHAIRMAN FLEAGLE: Oh.

MR. PROBASCO: We got a few here, Mr. Chair. And Polly just reminded me that Commissioner Lloyd, your letter is in the Board's packet so they can
CHAIRMAN FLEAGLE: Thank you.

MR. PROBASCO: So first up in batting order, is Mr. Ragnar Alstrom.

CHAIRMAN FLEAGLE: Good afternoon, welcome.

MR. ALSTROM: Good afternoon, Mr. Chairman. Thank you. My name is Ragnar Alstrom. I'm the executive director of Yukon Delta Fisheries Development Association. A community development quota group consisting of six villages on the lower Yukon River. I'm from the village of Alakanuk on the south mouth of the Yukon River.

YDFDA supports the letter from ADF&G in their request to defer action on Proposals 09-12 and 09-13 until after January of 2010. And to the issue of why we support that is in recent years the fishery has been subsistence driven and in the early -- the pre-season analysis of what's going to happen next year in the summer, 2009, the prediction is there may have to be -- ADF&G may have to take action to reduce subsistence harvest, our -- or at least the subsistence opportunity to try to conserve chinook salmon going up the river and at this point it doesn't look like there will be a directed commercial fishery on chinook salmon.

And to take up a discussion in April about possible mesh size restrictions, mesh size and depth restrictions I think would, you know, cause a lot of disruption and consternation among those subsistence users about what's going to happen this summer. And whether mesh size and depth restrictions are useful, I think there needs to be buy-in by the public, and one of the ways the public buys-in, and someone referenced here earlier the Bromaghin study, which is -- I don't know if it's a good study or a bad study, but it's a modeling study and what the public needs to see, you know, is what actually happens out there and ADF&G currently has a mesh size study ongoing and that's, you know, due to be completed this summer. And I think for the public to buy-in they need to see that and see the results from the study.

But my major concern is for what's
predicted this coming summer, to take up issues in
April concerning mesh size restrictions is very
disruptive to the commercial -- I'm sorry, I mean to
the subsistence fishermen on the lower river there.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Ragnar,
we appreciate your comments.

Pete.

MR. PROBASCO: Thank you, Mr. Chair.
And I apologize on my pronunciation of this last name,
Jack Schultheis. And following Jack will be Francis
Thompson.

MR. SCHULTHEIS: Mr. Chairman. Board
members. With all due respect, staying within the
parameters of what you requested concerning the process
here, I'd like you to consider that to bring this --
these proposals up again after, you know, we -- this
was addressed last year, now they're being brought up
again, you know, during a very difficult time for the
people who actually live on the river and participate
in the subsistence fishery, I think, you know, I'm
asking you all to understand the economic hardship that
the people have already in place out there, the cost of
fuel, you know, the cost of just living there and, you
know, with what's already been put out by the
Department on what they're going to do restrict
subsistence fishing, I think to throw this into the mix
would only further hurt the people out there, both, you
know, economically and socially.

I mean as it stands now with what they
go through I just thinking bringing something like this
out at this point in time would be awfully wrong for
the Board to look at it right now. You know, the
people there, they don't have money to come in and
testify. It cost $1,000 just to travel in here and,
you know, so I think this is something that should be
defered. There's studies going on now that I think
are going to shed some real scientific data to this. I
think it's pushing it way too quickly for what's
happening with the fishery. It's, you know, as stated
before, it's a subsistence driven fishery. And, you
know, I always understood your job as a Subsistence
Board is to protect the people's rights to be
subsistence fishermen and pro -- you know, I think this
would just put more hardships on the people already as it stands. And to me they have enough hardships out there and why bring this upon them at this in point with as difficult as it is there.

So, you know, with all due respect I think this should be deferred, and I think in time this -- you know, once these studies are completed, I think both the Board of Fish and the Fish and Wildlife Service who, to me, have been cooperating, you know, for years on this issue will come to a conclusion on what to do with this. So, again, one more time, I hope you will defer these until after 2010.

Thank you.

CHAIRMAN FLEAGLE: Appreciate your comments, Jack, thank you.

Pete.

MR. PROBASCO: Next is Francis Thompson and following Francis will be Timothy Andrew.

CHAIRMAN FLEAGLE: Francis.

MR. THOMPSON: Thank you, Mr. Chairman.

Members of the Board.

First of all I'd like to wish the Russian Orthodox Faithful a Happy New Year, today is January 14th, it's their new year, so Happy New Year.

My testimony is on supporting the deferral of FP09-12 ad FP09-13, I also included two other topics in there because they have a direct and indirect impact for why we have low salmon escapements to salmon streams in Alaska and lower returns to meet community obligations.

My name is Francis Thompson, I am a subsistence and commercial fishermen from St. Mary's which is located on the lower Yukon River. I'm a panel member of the US/Canada -- US-Yukon River Panel since 2001 to present and was an advisory member from 1996 to 2000.

I would like to support the recommendation to defer the mesh size mesh depth proposals that are brought before you every year by the
Eastern Interior RAC. I would like to recommend the Federal Subsistence Board defer these two proposals until after January 2010 when the State Board of Fisheries receives a report from the Yukon River Fisheries Drainage Association [sic] and the Alaska Department of Fish and Game.

Customary trade for cash. I had testified in opposition for allowing for the cash sale of subsistence caught Yukon chinook salmon. When the Federal Subsistence Board adopted this new policy in 2003 because it would make it hard for both the State and Federal fisheries managers to manage and rebuild the chinook runs. This has been abused and is in danger of depleting this precious salmon resource and further placing restrictions on the need for subsistence harvest for those that depend on salmon for food on the table. It has not been managed and regulated. This was an unfunded mandate and was not studied to see if it would harm the chinook salmon runs.

I am at this time recommending the Federal Subsistence Board to review the decision made in 2003 to allow for the cash sale of Yukon River chinook salmon under customary trade.

High seas salmon bycatch by the pollock fishery. The bycatch of salmon by the pollock industry is of great concern and the Federal Subsistence Board needs to address this matter in support of the subsistence users in the AYK region, please help us. We are recommending an annual cap of 29,700 for chinook salmon bycatch.

Thank you.

CHAIRMAN FLEAGLE: Thank you for the comments, Francis.

Pete.

MR. PROBASCO: Next we have Timothy Andrew, and following Timothy will be Billy Charles.

MR. PROBASCO: Timothy Andrew.

MR. ANDREW: Thank you, Mr. Chairman.

Members of the Board.
I like her smiley tab up here on the microphone.

My name is Timothy Andrew, I'm the director of natural resources for the Association of Village Council Presidents based out of Bethel. We have a total of 17 Yukon River communities that we represent of the 56 villages that we provide services for.

And in much of the 17 villages within the lower Yukon, many families there depend on both the subsistence and the commercial fisheries to sustain themselves and without the fishery it would be a very hard situation for people to live out in our small communities there. We are currently, actively pursuing an economic fishery disaster for our lower Yukon village due to the absence of the commercial fishery during this past year and what's projected in 2009.

The Eastern Interior has bombarded us with these proposals to severely restrict our fisheries for the last several years. And in many of our situations out in our area we believe that we are contributing to the escapement of fish into the spawning grounds we're restricted down to 36 hour openings for the subsistence fishery and sometimes we're restricted down to two 18 hour openings.

And we are -- AVCP totally supports the State's position to defer these proposals until after 2010.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: All right, thank you, Timothy, appreciate the comments.

Pete.

MR. PROBASCO: Thank you, Mr. Chair. Billy Charles, and after Billy is Judy Caminer.

CHAIRMAN FLEAGLE: Welcome, Billy.

MR. CHARLES: Good afternoon, Mr. Chairman. Members of the Board. I'm Billy Charles. I'm from Emmonak. I'm a long-time, lifetime commercial -- I mean subsistence user. And I'm here before you in favor of deferring the Yukon River fishery proposals.
I think you've heard, you know, there are some studies out there and the results of those tests might -- I mean -- excuse me -- the tests out there and the results of those tests may be forthcoming and I think we need to wait.

Mr. Chairman. Just recently we've been bombarded with regulations and I think this might be a break for us. In the Yukon Delta, like Timmy says, we're looking for assistance because of the economic crises out there. Compounded by the early freeze-up this year, we've had, I think our fuel prices are going to go up to about $11 and I think this would be a break. If you imposed -- if we imposed restrictions for commercial fishermen, that's going to create even more hardship, but, I think, you know, if you defer this it'll give us a little bit of break here and I think -- I just wanted to let you know or share with you the reasons we think that we should defer it and it's mostly the economic crises that we have out there.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Billy, appreciate your comments. Pete.

MR. PROBASCO: Next, Mr. Chair, is Judy Caminer, and our last, following Judy, will be Mike Smith.

CHAIRMAN FLEAGLE: Welcome, Judy.

MS. CAMINER: Thanks, Mr. Chairman, RAC Chairs, State of Alaska, Staff Committee, Staff and public. For the record my name is Judy Caminer, formerly known as Judy Gottlieb, Federal Subsistence Board member.

After retiring from the National Park Service last year I decided to go back to my family name, so either way, I'm still Judy and appreciate the opportunity to be here today.

I urge you to discuss the proposals in April as scheduled. There's no harm in doing so and the seriousness of this conservation issue warrant it. An April meeting is preferable to today's discussion where you might effectively be deferring the proposals for two years without hearing the merits of the proposals themselves.
Since, I believe it was 2003, and I take responsibility for those years I was a voting member, the Board rejected or deferred similar or nearly identical proposals. We wanted the Regional Councils to work more together, we responded to the State's earlier requests for additional cooperation and deferral, we wanted the Board of Fisheries to act, we wanted the Yukon River Drainage Fisheries Association to gather stakeholders, we wanted the Federal Program as well as the State Program to do more studies and for the North Pacific Management Council to do their part. Each year there seemed to be a valid reason for delay but in hindsight the cumulative effects of those decisions have not improved the run strength, the age structure, the size distribution of the fish population. In short the Board has already accommodated requests for delays so others could take action. While some actions like the fishing windows, the closures, the changing the mesh size have taken place, the health of the chinook salmon in the Yukon River continues to be of concern. I believe 2009 is the time for the Federal Subsistence Board to act, otherwise you're not scheduled to meet again on fisheries proposals until 2011.

In addition, I believe riverwise we are facing a conservation issue. There no longer should be any debate about that.

The proposals address the issue so I urge you to hear them in April of this year.

The Federal Subsistence Board has the responsibility and the jurisdiction. I felt there was some misunderstanding about that last year. You must fulfill your mandates today and throughout the year.

Several years ago the Board recognized the seriousness of the Yukon River situation. We took a field trip to the upper river to see fishing sites first-hand and to speak to affected users. Many of the trip participants are here today and still involved with the Federal Program. I hope in recalling what we learned on that trip and in consideration of the lengthy period of time proposals have been before this Board to address what is now clearly understood to be a legitimate conservation issue you would vote to hear the proposals in April.

If today's discussion turns into one of
who should act first, Board of Fisheries or Federal Subsistence Board. I remind you the proposals do have a phase-in proposals, so if you were to adopt them in April, you would have an opportunity to change them if the Board of Fisheries takes an action you believe is different than yours.

In conclusion, the Federal Subsistence Board may have a small part in the management scheme, but that does not relieve you of your ANILCA responsibilities and mandates for the conservation of healthy populations in Federal public waters.

A decision to defer these proposals until after the Board of Fisheries meets in another year will send a wrong message to the subsistence who rely on you to act in the interest of healthy resources and the subsistence priority, and a message to the Board of Fisheries that the conservation concern is not sufficiently serious for the Board to act now. The concern is serious and the Federal Subsistence Board should not defer your responsibilities.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Judy, appreciate hearing from you.

Pete.

MR. PROBASCO: Okay, we did get one more after Mike Smith, Mike, you're next, and after Mike is Jill Klein.

CHAIRMAN FLEAGLE: Mike Smith.

MR. SMITH: Thank you, Mr. Chairman. My name is Mike Smith and I'm the director of subsistence resources for Tanana Chiefs Conference. We represent 42 tribes in the Interior portion of Alaska, and as Judy indicated we've been coming before you for many years discussing the conservation concerns we've seen on the Yukon River.

The issue of deference of this particular proposal, I think, centers upon a question as to whether or not there is a conservation concern on the Yukon River. I think -- I was pleased to see all the downstream guys come up and express their concerns.
about the hardships we've been having on subsistence fishing and fishing on the Yukon River because that exemplifies exactly what we're talking about, there is a conservation concern on the Yukon River. We've been forced to endure the issue of windows for the last, who knows how many years, the issue of last year alone, we were asked to voluntarily redu -- or we were forced to reduce our subsistence time in half. Our Canadian counterparts were even more adversely affected as a result of the poor run next year.

The question I guess is whether or not there's going to be enough fish next year.

It's been mentioned to us and it's been mentioned in YRDSA teleconferences and on the Board that we need approximately 170,000 fish to make our escapement goal needs on the Yukon River as well as our subsistence needs. We had less than 140,000 last year, and they're projecting a run similar next year. I think that exemplifies a conservation concern that is affecting Yukon River king salmon. And then to sit back and ask the subsistence users to voluntarily reduce their subsistence time to come in and then request and solicit regul -- you will be asked to limit customary trade, subsistence users will be asked not to give fish to their family members and extended families and elders and stuff and to keep those fish to themselves next year while at the same time the Board of Fish and the Federal Subsistence Board are doing nothing as far as the subsistence users can see. So the issue of deference is just a matter of time.

You can either do it next or -- my thought was April might be a good time because at April at least we'll have an indication as to what the projection for the run next year will be and if it is as low as they are anticipating then there is a huge conservation concern.

And, of course, big nets take big fish.

I think the study that was originally this was deferred for, the Bromaghin study is pretty definitive and pretty much clarifying what every other net selectivity study on the books shows, that there is an effect, that it does have detrimental effects upon the integrity of that run. It's not rocket science, it's nothing new, it's been proven over and over again in various fisheries around the world. Why we cannot
accept that assumption on the Yukon River is beyond me.

But having said that, Mr. Chairman, I think that the deferral, the problem that we see for that is we wait for a year for the Board of Fish to act, we're not sure what the Board of Fish is going to do, we have asked them as little as six months ago to list the Yukon River king salmon as a stock of management concern and we were declined and so apparently it's not a management concern to the Board of Fish at this time.

Then you guys will have to wait for a year for your cycle to come around like Judy indicated.

But everyone of those net selectivity proposals has a three year phase-in period in it so in effect what you're going to be doing is waiting for five years before there's any definitive action done on net selectivity on the Yukon River king salmon and we just think that that's too long of a time and that the integrity of the run cannot sustain that.

So, Mr. Chairman, we urge you to take some positive actions in your responsibilities to protect conservation of Yukon River king salmon and just do it. It's too late, we can't wait any longer. It's just amazing, you know, we talk about the economic crises and stuff like that and, sure, there is, but why is that, because there's no fish and, you know, we have control over one thing and that is how many fish we take and how we take them. Now, there's a lot of other environmental considerations out there, I understand that, that have impacts on salmon, but what do we have control over, we have control over how many fish we take and what we use to take those fish with. And to be blunt, I think we're blowing it.

So, Mr. Chairman, with that, I thank you for your time and urge you to support and consider those proposals in April.

CHAIRMAN FLEAGLE: Thank you, Mike, for your eloquent statements, appreciate the comments.

Pete.

MR. SMITH: I just remembered, I'm sorry about this. But we talked about the studies and stuff and it's my understanding that those studies
won't be done, the studies that were commented on earlier as far as the net selectivity, it's my understanding that that wasn't done this year because of the low number of fish and if we're projecting the same run next year it's probably not going to be done next year. So the net selectivity study that's being done at Pilot Station, I'm betting will not be completed by the Board of Fish meeting.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Mike.
Pete.

MR. PROBASCO: The last person that I have is Jill Klein.

CHAIRMAN FLEAGLE: Welcome, Jill.

MS. KLEIN: Good afternoon. My name is Jill Klein. I'm the executive director for the Yukon River Drainage Fisheries Association also known as YRDF.

We work riverwide with both -- with all lower river, middle river and upper river fishermen and for better or worse we didn't take action on if we should defer these proposals, so I'm not going to address this at this time, but just want to mention that the proposals are very important to our board, they're very important to people along the river.

And I wanted to mainly inform you about a process that YRDFA will be embarking on next week through the support of the Yukon River Panel and that is to begin an outreach process through a few teleconferences. We'll be holding them in the lower river, middle river and up river, there'll be two teleconferences in each region and then we'll do an in-person meeting and try to bring people together to inform them and hear what people have to say about the potential poor return to the river next year and try to get people involved in the process of how to address the issue of conservation.

And I think adding these proposals into the mix in April could potentially -- it will add a layer of complexity to the process that we're already embarking on. There's a lot of meetings, a lot of people coming together already trying to address this
issue and I think the proposals do deserve the review by the Staff to the Federal Subsistence Board and to the members, yourselves, I think you all bring a lot of insight into the topic and the public should hear that and be a part of that process as well but I think that we'd like to, I guess, see what -- see the public go through the process as well and not just the Federal Subsistence Board and so I just wanted to let you know about that.

CHAIRMAN FLEAGLE: Okay, great, thank you.

MS. KLEIN: Thank you.

CHAIRMAN FLEAGLE: Appreciate your comments.

MR. PROBASCO: That's it for public testimony, Mr. Chair. And now you have the Chairs.

CHAIRMAN FLEAGLE: All right, thank you. There's been some question raised in testimony and I think that people here at the table may also have, as to the continuation of the studies, and I know that last year there was a report that the primary study had a problem because of the low fish run and the person that's primarily responsible for the studies is here and I'd like to just see if she'd give us an update on the State's studies down there in Emmonak.

MS. EVENSON: Thank you, Mr. Chair. My name is Dani Evenson. And I'm the AKY regional research biologist for Fish and Game. And I'm also the principal investigator for the mesh size study that was mentioned.

And we did pull that project last year in response to the poor runs. We were unsure in-season what was happening and we had to make a snap decision, and in retrospect, I think it was the correct decision, but this year we have made the determination that it is an important study. It's very important to the region, there's a lot of public support for it and we are going to go ahead and continue that study.

And through gracious study from the Yukon Delta Fisheries Development Association, they have offered to help bolster our sampling effort so we can ensure that we have an adequate sample size to make
some conclusions.

Thank you.

CHAIRMAN FLEAGLE: So the pulling of
the study last year, did that -- did you -- does that
mean that that year is out or did you catch enough fish
to at least have a partial sample or how does that fit
in?

MS. EVENSON: Well, what we're going to
do is we're going to pool all our samples from all the
years together and then stratify them by mesh size and
we'll do our statistics off of that and make
conclusions.

CHAIRMAN FLEAGLE: So the samples you
did take last summer are going to be included, yeah,
okay, thanks.

MS. EVENSON: Correct.

CHAIRMAN FLEAGLE: Questions, Board
members.

(No comments)

CHAIRMAN FLEAGLE: All right, thank
you, appreciate that.

I'd like to hear from the Eastern
Interior Council, as the proponent on these proposals,
we'll just start with you and maybe give an opportunity
for other Council reps to weigh in.

Sue.

MS. ENTSMINGER: This is a difficult,
difficult, difficult one. The Eastern Interior RAC
really never took up what's at hand here, to defer or
not to defer, so it's hard for me, you know, to give
you a big full report on just that. So all I can do is
speculate. And if that's what you want me to do I can
-- I'm a little bit confused on how I can report to you
here.

CHAIRMAN FLEAGLE: Yeah, that's a good
point. Speculate.

(Laughter)
MS. ENTSMINGER: I could probably speculate.

(Laughter)

MS. ENTSMINGER: As you know we have some very strong personalities on the Council and the feeling of the three-three vote brought forth, you know, a lot of push to put these proposals back and maybe they would pass this next time and that's why they got out.

And it's real hard, something you need to remember. If you look at unit -- our GMUs in the Eastern Interior, you have the road system and you have the river system, I'm part of the road system so I don't have first-hand knowledge of the river system. I have the knowledge of the people that come before us and I have to rely on that and I hear, I hear the cry that there's a conservation issue. So, you know, and sometimes the stronger personalities might not bring those out in a manner that people feel comfortable listening to, but as far as the Eastern Interior, they see the conservation issue.

And, actually, I'd like to maybe get a little help here if I could. A former Chair of the Eastern Interior is sitting here, he's now a State employee, and I don't know if the Commissioner would allow him to help me out in some of this.

(Laughter)

MS. ENTSMINGER: I think he could take his hat off and help me.

(Laughter)

MS. ENTSMINGER: No, seriously, Craig has a lot of first-hand knowledge because he spent a lot of time on the Council and he lives there and he knew the situation probably better than I and if it would.....

CHAIRMAN FLEAGLE: Commissioner.

COMMISSIONER LLOYD: Thank you. Before we get too far down the road and wrap ourselves around the axle, I'm going to suggest that we not go down this road.
Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, thank you. What I'm just looking for, and the Board has got -- you know the Board has wrestled over this, obviously. I mean the fact that we even deferred it to April was an exercise that was not real easy to go through, I mean we should be dealing with it now. But the problem is, is that, the Board acted on these two proposals last year and bam they're right back in the system and we don't have any mechanism to say, hey, we just dealt with this, let's let it rest, those proposals were reintroduced by the Eastern Interior Regional Advisory Council and, therefore, we're compelled to run them through the process. And we, at the Board level, made a decision and Staff was supportive of this, that we didn't have anything substantially different to present to the Board by this meeting now and hoping that by April we would have at least the results of the Bromaghin study, which we do, and get some indication as to what the State might be doing to further their studies.

So the State came with the letter asking that we further defer because the results that the State is working on and the Board of Fisheries meeting and all of these other reasons may give us more information to act on.

And so I'm not sure really what I was looking for when I called on you, I know that other Council Chairs are probably interested in the process and we're talking about process so, yeah.

MS. ENTSMINGER: Mr. Chair.

CHAIRMAN FLEAGLE: Yeah.

MS. ENTSMINGER: I'd like to point out some things then.

CHAIRMAN FLEAGLE: Go ahead.

MS. ENTSMINGER: In listening to this entire meeting that I have sat through, you took -- number 5 was a deferral to one year on the herring, and I listened to that and I thought, well, gee whiz, you know, and I'm not trying to be confrontational at all with the State but it just doesn't make sense to me why this one wouldn't come into the same schedule, one
year, if it was deferred, that it would be two years.
If we're going to take a Southeast proposal up
regarding a deferral that's fisheries and taking into
wildlife, then why not this one?

CHAIRMAN FLEAGLE: Yeah, it was up to
two years, I mean we could deal with it in the next
fisheries cycle or sooner, but I don't think that we're
setting a time certain to defer these issues now, I
mean that's open for discussion too.

MS. ENTSMINGER: I've written down a
lot of notes here.

Yeah, and now you've made it
complicated, you know, and I haven't talked to my
Council and I would say if I went back to them right
now they'd say take it up.

CHAIRMAN FLEAGLE: Yeah, and that's
what I anticipated, and I didn't realize that you guys
didn't have a chance to talk about it. But, all right,
I just want to open it up for comments from other
Councils, I mean just -- and then we're going to
discuss it as a Board.

MS. ENTSMINGER: Mr. Chair. If I could
add a couple more things.

CHAIRMAN FLEAGLE: Sue.

MS. ENTSMINGER: One of the things that
I like to see is this working together. And, you know,
I don't know what you're going to do here but, you
know, Lester Wilde is on the lower Yukon there and I
just feel like there's got to be a way to make the -- a
system for RAC Chairs to maybe get together and talk
about these hard issues and have some working
relationships so it isn't so contentious when you
start, and this is something that I've observed in
working in the process. And I think of a lot of
things, I write them down, and then I probably don't
have them really concise like I like to, but if you
give me the opportunity I can bring up other ones as I
think of what I've missed here.

Thank you.

CHAIRMAN FLEAGLE: Okay, we can
probably take those up in the subsequent discussion,
right, the Council Chair's discussion.

MS. ENTSINGER: Are you delaying this?

CHAIRMAN PLEAGLE: Well, I'm just looking for -- you know, I want to make that -- the reason we decided to do this in this public meeting was to get public input and just to do it out in the open because we know how contentious it is so I'm just affording that opportunity. I know we can go all night doing this but I still think it's important that we provide an opportunity to have it out in the open so any other comments. Lester, do you want to weigh in on it?

MR. WILDE: Mr. Chairman. When we made the decision to defer this in our Council, we weren't speculating on anything. We know what it is to go out and try and get our subsistence -- chinook subsistence resource to last us for the year. I, myself, this year, got one king salmon in Hooper Bay. And I think there was a total of 50 at the most caught for a village of 1,200 and whenever we're talking about the equipment that we use, first we -- prior to the time that the -- this -- the mesh size was cut down to 45 we were all able to fish with larger mesh size nets, but we all agreed to cut down to 45 meshes, but one thing that is never brought out is that the Yukon is not just one river with the same depth coming from the -- the depths in that river, it varies, from mile to mile. So in some areas you have to have deeper nets to get the fish that are swimming deeper. And we all know as fishermen that whenever there is any activity on the river the fish has a tendency to swim away from the activity to get down to the deeper waters.

And I feel -- this is not coming from the Council but this is my own feeling, is that, deferring these until such time that we do get the information to make a sound judgment, that is going to be affecting us in our subsistence way of life, is something that we should do, is to wait and get the information that is being investigated right now and that's the way I feel.

Mr. Chairman.

CHAIRMAN PLEAGLE: Thank you, Lester. And I appreciate having you state those concerns. And this is indicative of the situation this Board finds
itself, is that, we have one group of subsistence users saying do it, do it, do it, and we have another group saying don't do it, don't do it, don't do it, and so we're trying to give deference to subsistence users, well, which one, you know, so we need, in my opinion complete data and I think that's why we failed these two proposals last year and that's why I was supportive of deferring up to this meeting this time.

I guess we probably have enough discussion.

MR. COLLINS: Mr. Chairman.

CHAIRMAN FLEAGLE: Ray, please, go ahead.

MR. COLLINS: Yeah, I have an appointment, I have to leave here. But I would like to make -- the Western Interior RAC has discussed these issues many times. We are concerned about the conservation issues on the Yukon River and seriously concerned about the declining size of the salmon because those bigger ones, it isn't just a matter that they're bigger fish, they carry a lot more eggs, they have more impact on your spawning return than smaller fish.

So I'm hoping that this can be dealt with in a timely manner and we won't see this delayed for five years, if you see what I mean, if there's going to be time in implementing it. And the Councils are meeting again in mid-February so we will be able to discuss this at the local level and have input for you in April if you want to have a discussion on it in April then.

The other thing is that I'm on the Kuskokwim River Fisheries Management Group, and this year we had a limited commercial opening and they limited the gear size and as a result of that the catch in that was mostly jacks and males so we do have some information on what happens when you go to smaller, they were not catching the bigger fish, obviously, and so there was a more limited impact on escapement and run by those methods so there is some information out there that should be brought into this debate when you get to it.

And I just hope that if you do delay,
that it's not going to be for a long period of time, that it can be as timely as possible and get whatever data you need in a timely manner.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Ray, appreciate those comments.

Board members.

Ralph Lohse.

MR. LOHSE: Well, Mr. Chair, I've been sitting and listening to this and I listened to Judy and I listened to everybody else and the one thing that seems very obvious is you do have a conservation concern on the Yukon River.

Lester brought up a very good point and I think this is something that I think you have to consider is that one size doesn't fit all. If I'm fishing a 45 mesh net and I'm fishing down at the mouth in 80 feet of water I have a total different chance of catching fish than if I'm fishing up stream in 20 feet of water. So you have to take that into consideration.

Now, speaking from a commercial fisherman standpoint there's no question in my mind that larger mesh catches larger fish. In the Copper River we've been limited away from king gear for, what is it, 20 years now, almost, if we were allowed king gear I'd have king gear on. We're allowed small mesh now so that we can protect some of the kings.

But at the same time you've got to be fair to the different parts of the river and the different people who fish on the river.

If you're going to give the person who fishes down at the mouth of the river in deep water a shallow net and small gear he's not going to catch much. You can give the same gear, and the same size mesh to somebody that fishes up in the riffles (ph) or fishes upstream where the water is shallow and he'll do real good. So I think you need to -- I think when you sit down and you actually decide what you're going to do on net size and stuff like that, you need to realize one size does not fit all, that you have to take into account what actually works in the fishery.
Now, the other thing is that I personally think that if you've got a problem here and you're going to have a three year implementation period on it, it behooves you to get started on it because, you know, if you wait three years and there actually -- and you decide that there is effect with it, you've already missed half of a run cycle. If it takes you five years, you've missed a run cycle.

And my opinion would be that if you've deferred this before and this has been deferred before then take it up and work on it, and that'd be my opinion as a Council Chair.

CHAIRMAN FLEAGLE: Thank you, Ralph. Sue.

MS. ENTSMINGER: Mr. Chairman. I appreciate all of these comments from the other Chairs and I just want to reiterate conservation of this resource and, you know, having not known this area like a lot of these people that fish there, this whole process that you go through, the managers go through, windows, and then this whole built in thing, the waiting period, I know you look cross but.....

CHAIRMAN FLEAGLE: Go ahead.

MS. ENTSMINGER: Oh, okay. But you can't wait on something when there's a conservation issue.

And I'll give you an example, the bycatch fishery, when we had the National Marine Fisheries Management Council at our last meeting, they're telling us that their process takes four years to shut down and you just are flabbergasted that we've gotten into a mess like that and that's something that you don't want to get into here.

CHAIRMAN FLEAGLE: Thanks, Sue. Board members, you have a request where do you want to go with it.

Discussion.

(No comments)

CHAIRMAN FLEAGLE: Let's take a five minute break.
(Off record)

(On record)

CHAIRMAN FLEAGLE: The Board's back in session and Mr. Probasco's got some words of wisdom.

Mr. Probasco.

MR. PROBASCO: Thank you, Mr. Chair. I don't know, words of wisdom, okay. As I look what's ahead of us yet on this issue, as well as what's before us after this issue, I think from my view, my recommendation is to recommend to my Board to step down for the evening and then come back in the morning. We're starting to rush our discussion with the Chairs, we're starting to rush the discussion amongst ourselves and this is a very important issue and I would recommend we take some time.

Mr. Chair.

CHAIRMAN FLEAGLE: Sounds like the original focus of trying to focus of trying to finish tonight is, if we do, we're going to push into probably 6:30, 7:00 o'clock and I think we're already starting to lose steam. I'm okay with that. Any objection to stand down for the evening and return at 8:30 tomorrow.

(No comments)

CHAIRMAN FLEAGLE: So ordered.

(Off record)

(PROCEEDINGS TO BE CONTINUED)