BOARD MEMBERS PRESENT:

Tim Towarak, Chairman
Kristin K'eit, Bureau of Indian Affairs
Geoff Haskett, U.S. Fish and Wildlife Service
Beth Pendleton, U.S. Forest Service
Sue Masica, National Park Service
Bud Cribley, Bureau of Land Management

Bertrand Adams - Southeast RAC
Rosemary Ahtuangaruak - NS RAC
Peter Buck - Seward Peninsula RAC
Molly Chythlook - Bristol Bay RAC
Andrew Firmin - Eastern Interior RAC
Ralph Lohse - Southcentral RAC
Jack Reakoff - Western Interior RAC
Walter Sampson - NWA RAC
Mitch Simeonoff - Kodiak RAC
Lester Wilde - YK RAC

Charlie Swanton, State of Alaska Representative
Keith Goltz, Solicitor's Office

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CHAIRMAN TOWARAK: We'll call this meeting to order. We are into proposals. We concluded most of the Yukon River issues yesterday and are beginning this morning with Fish Proposal 11-11. The proposal requests that the annual harvest limit for king crab in the Kodiak Management area be changed from six per household to three per household. Submitted by the Kodiak Aleutian Subsistence Regional Advisory Council. We begin the.....

(Whispered conversation)

CHAIRMAN TOWARAK: Okay. We will begin the process. Did you want to recognize someone?

MR. PROBASCO: Yes, thank you, Mr. Chair. Going into the Kodiak Management Area I have up front Ann Wilkinson, she's our division chief for the coordinators. Dr. Steve Fried, he's the lead analysis and Larry Buklis again, our division chief for Fisheries.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Welcome to the sessions. We will begin then with the lead Staff analysis. Mr. Fried.

MR. FRIED: Good morning. Mr. Chair and members of the Board, Regional Council Chairs. My name is Steve Fried, I'm a fisheries biologist with the Office of Subsistence Management and I'm going to try to briefly summarize the Staff analysis for FP 11-11.

This was a proposal submitted by the Kodiak Aleutians Regional Advisory Council for king crab for the Kodiak area. And it -- the affected Federal public waters would be the sub-units of the Alaska Maritime National Wildlife Refuge in this area which are Women's Bay, Karluk and Afognak and you can refer to maps one and two on Pages 198 and 199 of your books to get a better idea of where these are and where they are in relation to the Kodiak road system also.

As the Chair had noted, the proponent is
requesting a change in the household annual harvest limit
from six to three king crab. This would align the
Federal with the State subsistence harvest limits.

Kodiak area king crab abundance has been
very low since the early 1980s. The commercial fishery
has been closed since 1983 and there's no open season for
the State's sport or personal use fisheries. So
currently there are only State and Federal subsistence
fisheries that are allowed to take king crab in the
Kodiak area. Federal waters have been closed to the
taking of king crab by non-Federally-qualified users
since 1994. The Alaska Department of Fish and Game
conducts an annual trawl survey to monitor the status of
crab stocks in the area and so far there has been no
indication that the king crab stock is rebuilding at all.
Annual subsistence king crab harvest from the Chiniak
area which includes the Women's Bay sub-unit were about
1,000 king crab during 1990 to 1995. This ranged from
about a little over 900 to maybe 1,500 and then this
decreased to 100 or less during 1996 to 2009 and it's
ranged from 42 to about 204. And there's a table on Page
203 with more details on the harvests. As far as the
harvest per permit from the area, it was about -- it was
generally above one king crab during 1990 to 1995 and now
it's below one king crab per permit since 1996. In
addition to a lowering of the annual household harvest
limit there was discussions about a total closure of king
crab fishing to all users in the Women's Bay sub-unit to
protect juvenile king crab.

The pros for doing this is that the
stocks aren't rebuilding and it is a nursery area and
harvests are very small and it's very easy to access from
Kodiak City. The cons for not doing this is that it's
not really clear that a complete closure is needed or
would be an affective conservation measure to do so. And
during the September, 2010 Council meeting there was
quite a long discussion about this. We had testimony
over the phone by Peter Kaminski who is a crab biologist
with the NOAA lab in Kodiak and he was there to answer
questions that people had. Actually his main concern was
ghost pot fishing and I think they flat out asked him,
you know, well, what do you think about a closure and he
said NOAA really doesn't have a position on that. And
there are other nursery areas, it's not like Women's Bay
is the only nursery area for king crab.

So after some discussion it really wasn't
-- there really wasn't a convincing argument made, the
Council wasn't convinced and OSM Staff wasn't convinced, that a total closure to all users of Women's Bay was needed. Adopting the submitted proposal would reduce king crab harvest opportunity for Federally-qualified subsistence users in principle, although if you look at the data the average harvests have been much less than one so, you know, an actual affect, I'm not sure.

The OSM conclusion is to support the proposal even though it's difficult to predict the affect on king crab resource. Adopting it would at least highlight conservation efforts, it would provide a more realistic indication of what people might expect to harvest. And just as an aside if the proposal wasn't adopted a joint permit with the State or a separate Federal permit might be needed since the harvest limits would be different.

That concludes my summary at this point. Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Fried. Are there any questions from the Board or the Advisory Council. Mr. Sampson.

MR. SAMPSON: Thank you very much for the report. Is there any justification in regards to what the cause may be in regards to the decline of king crab?

MR. FRIED: Well, it's been -- it's actually been a decline -- there was a decline statewide, it wasn't just Kodiak, but I don't think anybody's really put their finger on what one cause was. A lot of people talk about a regime shift where it moved from more of a shellfish based system to more of a fish based system, but there's -- you know, everybody has a lot of theories, but nobody's ever shown why.

MR. SAMPSON: So you're telling me that even though the agency knows there's a decline nothing is being done?

MR. FRIED: Well, most of the fisheries are closed, I don't know what else people -- I mean, there have actually been some efforts to, I think, harvest some king crab and try to raise the eggs and the larvae in hatcheries and introduce them back into the wild, but, I mean, other than that I'm not -- I'm not sure what else people could do.
MR. SAMPSON: Would there be any difference, I guess maybe would be the word, if there's king crab that were taken out -- further out in the -- in the deeper waters versus what would be taken within the community area, would you be able to tell the difference, what stocks are for where or where the king crab goes or migrates to?

MR. FRIED: I'm not sure, I haven't really seen any studies as far as what the population structure is in Kodiak, I don't know if there's -- if they consider it one large population, several populations, I would -- I would think it's probably some different populations. I think on the southern end of the island I've been told the populations are doing a little bit better than the other ones survey wise and everything. Those aren't in Federal waters. But the only thing I can say is in some of the bays there are younger king crab because the bays are nursery areas so you get a mix of these young crabs and maturing crabs.

CHAIRMAN TOWARAK: Any further questions of the Staff? Ms. K'eit.

MS. K'EIT: Mr. Chair. Thank you. Mr. Fried, so just to verify the State regs have been at a limit of three since 1997?

MR. FRIED: Yeah, they've had that limit for several years.....

MS. K'EIT: Okay.

MR. FRIED: .....so, yeah.....

MS. K'EIT: Thank you.

MR. FRIED: .....that's correct.

MS. K'EIT: Thanks. Mr. Chair.

CHAIRMAN TOWARAK: Further questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you very much for your report.

We'll next move to the summary of public comments by the Regional Council Coordinator.
MS. WILKINSON: Mr. Chair. There were no written public comments for this proposal.

CHAIRMAN TOWARAK: Thank you.

MR. PROBASCO: And, Mr. Chair, we have no one signed up from the public to testify on this proposal.

CHAIRMAN TOWARAK: Thank you. We have -- the next step on the process is the Regional Council recommendations. Mr. Simeonoff.

MR. SIMEONOFF: Thank you. Mr. Chairman. The Regional Council's recommendation is on Page 206 of the big book. I'll just read the recommendation.

The Kodiak Aleutians Regional Advisory Council supports Proposal FP 11-11. This proposal addresses conservation concerns and would continue to provide fishery opportunity for elder subsistence users from Kodiak City. Only a few crab are taken out of all of Chiniak Bay and there is no information about how many are taken from Women's Bay in particular. However the observations of local fisheries managers are that the population of crab in Women's Bay are -- has remained stable over the years and Women's Bay is one of the few crab fishing places on the island that are road accessible and is the most accessible location where elders from Kodiak City can continue to fish.

Thank you. Mr. Chairman.

CHAIRMAN TOWARAK: Thank you, Mr. Simeonoff. Any questions of the Regional Council Chairs.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. We will continue on then to the Department of Fish and Game comments.

MR. PAPPAS: Thank you. Mr. Chair. Good morning. George Pappas, Fish and Game.

This proposal was submitted to reduce household possession and annual harvest limits for red king crab in Federal subsistence fisheries near Kodiak Island from six to three male red king crabs. If adopted a Federal subsistence user's possession and annual
harvest limits of red king crab would be reduced from six to three. The proposed reduction does not anticipate to have a significant impact on the harvest due to the low levels of harvest reported in Chiniak Bay which includes Women's Bay and Gibson Cove.

If you take the time to look at Page 199 we'll discuss this map in further detail. The State subsistence fishery harvest limit for red king crab around Kodiak is three per year per household. The Alaska Department of Fish and Game surveys in the waters near Kodiak Island on an annual basis and the 2009 survey indicates the population is at historically low levels. Adoption of the proposal may benefit the depressed king crab populations near Kodiak and ongoing research reveals that Women's Bay and Gibson Cove are important nursery areas within the greater Chiniak Bay for juvenile red king crab and reducing the annual household limit may reduce injuries and mortality to juvenile red king crab that is incurred while being handled, measured, sorted and returned to the water in the Federal -- by Federal subsistence users. And keep in mind this is closed -- the area is closed to non-Federally-qualified users. Detailed maps are needed in order to assure non-Federally-qualified and Federal subsistence users can identify the boundaries and avoid risk of enforcement.

The Department supports this proposal with modification. One, the Department recommends closure of Women's Bay and Gibson Cove to the harvest of red king crab based on conservation concerns over handling mortality for juvenile red king crabs that are returned to Women's Bay and Gibson Cove under the legal minimum size limit. Now if you look at this map the research that has been conducted there for years indicates there are a lot of -- it's a nursery area, it's a shallow area, a lot smaller crabs and the -- during testimony at the Kodiak Aleutians RAC meeting the scientists indicate that they track these crabs as they grow up and they leave the area, they go to deeper water. So as Mr. Sampson was indicating there, that was part of his question, I believe, can you tell the difference between what's in Women's Bay and what's maybe a little further offshore. Well, you might be able to tell the difference not genetically in stock, but actual age classes, you'll have larger, more mature harvestable animals outside of that nursery area. And that's the primary concern here the Department has, though there's, you know, 100 crabs caught in this entire area per year on average by subsistence users, how many small crabs do
you have to go through for the -- you know, the double
digit harvest per year in that area. How much effort --
you have to ask how much more effort does it take to take
a skiff another half mile outside of that area to deeper
water to fish for crabs.

Number 2, as part of our recommendation
the Department supports reducing the household in
possession annual limit from -- of red king crab in the
remaining Federal subsistence fishery areas around Kodiak
Island from six to three male red king crab.

Thank you. Mr. Chair. Those are our
comments.

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

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

Fisheries Proposal FP11-11: Reduce
federal subsistence annual and possession limits for red
king crab near Kodiak Island.

Introduction: The Kodiak-Aleutians
Regional Advisory Council proposal was submitted to
reduce household possession and annual harvest limit of
red king crab in the federal subsistence fisheries near
Kodiak Island from six to three male red king crabs.
Adoption of this proposal would align the federal and
state harvest limits, although most waters where federal
subsistence jurisdiction is claimed have been closed to
non-federally qualified subsistence users since 1996.

Impact on Subsistence Users: If adopted,
federal subsistence user possession and annual harvest
limits of red king crab per household would be reduced
from six to three. The proposed reduction is not
anticipated to have a significant impact on harvest due
to the low levels of harvest reported in Chiniak Bay,
which includes Womens Bay and Gibson Cove.

Opportunity Provided by State: The state
subsistence fishery harvest limit for red king crab near
Kodiak is three male crabs per year per household: 5 AAC
02.420 Subsistence King Crab Fishery (1) the annual limit
is three king crab for a household;
Conservation Issues: The red king crab stocks near Kodiak Island have been depressed for three decades. In 1996, the Alaska Board of Fisheries lowered the daily/possession/annual harvest limits from six per person to three crabs per household per year. The Alaska Department of Fish and Game surveys the waters near Kodiak Island on an annual basis, and the 2009 survey indicates the population is at historically low levels.

Commercial fisheries began in the 1930s and peaked in the 1960s when over 94 million pounds of crab were harvested. Harvests declined in the late 1970s. Commercial fishing closed in 1983/84 and has not reopened. Since 1988, the Alaska Department of Fish and Game conducted trawl surveys to assess king and Tanner crab populations around Kodiak Island, along the Alaska Peninsula, and in the eastern Aleutian Islands. The Kodiak Area remains closed because the abundance estimates of female king crabs are well below threshold levels. The Kodiak red king crab population remains at historically low levels. The 2009 Kodiak red king crab population was estimated at 28,257 crabs, down from an estimated 71,877 crabs in 2008.

Adoption of this proposal may benefit the depressed red king crab population near Kodiak. On-going research reveals that Womens Bay and Gibson Cove are important nursery areas within the greater Chiniak Bay for juvenile red king crab. Reducing the annual household bag limit may reduce injuries and mortalities to juvenile red king crabs incurred while being handled, measured, sorted, and returned to the water by federal subsistence users.

Jurisdiction Issues: The Federal Subsistence Board authorized a subsistence red king crab fishery near Kodiak Island in the marine waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line mile on either side of the mouth of the Karluk River, extending seaward 3,000 feet. Additionally, federal subsistence users can fish for red king crab in the marine waters within three miles of Afognak Island, and the waters within 1,500 feet seaward of the Afognak Island shoreline are closed to red king crab harvest by the non-federally qualified users. Detailed maps are needed in order to assure non-federally qualified and federal subsistence users can identify the boundaries and avoid risk of enforcement actions.

Recommendation: Support with modification.
1. Close Womens Bay and Gibson Cove to harvest of red king crab based on conservation concerns over handling mortality of juvenile red king crabs that are returned to Womens Bay and Gibson Cove that are under the minimum legal size limit.

2. Support reducing household possession and annual harvest limit of red king crab in the remaining federal subsistence fisheries near Kodiak Island from six to three male red king crabs.

CHAIRMAN TOWARAK: Thank you. Are there any questions of the Board or the RACs with the State's testimony. Ms. K'eit.

MS. K'EIT: Mr. Chair. Thank you. Thank you for your testimony. I had a little confusion with when you referred us to map two and then you had a statement regarding it showing the numbers in the area. I may have misheard or can you clarify, please?

MR. PAPPAS: Through the Chair. Ms. K'eit. The harvest information available for Chiniak Bay, the whole bay on map two, is located in the Federal analysis. In recent years it's averaged under 100 animals or so or right about that level. That's for the entire bay. Our permitting system that is reported upon does not separate out Women's Bay and Gibson Cove which is just a smaller area of Chiniak Bay. So even though maybe 100 crabs are harvested in this entire area, we don't know if half, a quarter or all are caught inside there. It's unlikely that 100 percent of those crabs are caught inside there. So my point was it's likely the harvested area's in double digits and in that area it's known that there's a lot of small crab so how many small crabs do you have to handle and throw back over the side to catch the 50, 60, 80, 90 crabs per year.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Go ahead.

MS. K'EIT: Thank you. Mr. Chair. So a follow on question. So these numbers in Table 2 of our book, it refers to Chiniak area including Women's Bay and so I'm just wanting to make sure that these numbers -- you don't have a way to distinguish between Women's Bay and the Chiniak area and then also if you can just give us a little more detail on the handling mortality information?
Thank you.

MR. PAPPAS: Through the Chair. And maybe Dr. Fried can assist with this. At the RAC meeting, the Kodiak Aleutians RAC meeting in Cold Bay, we had the scientists -- the National Marine Fisheries or NOAA scientists on line and they -- the question came up what about handling mortality studies for subsistence users in skiffs or smaller boats. We don't know if there are -- such studies exist. There have been studies at sea, large boats, wintertime, commercial gear, heavy pots, what have you. And I don't have that number -- that information in front of me and I'm not sure how applicable that is toward someone in a 16 foot Lund pulling one single pot. The concern is when you do pull a pot up that has, you know, 50 or 100 juveniles and maybe one or two retainable crabs, bring it up over the side, clipping legs off, tossing it back, there is handling mortality associated. We haven't had a study on that and that was -- that would -- that was a very tough question that no one could answer.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: So I'm just -- I think it's a really good thing that the Regional Council recognizes that something needs to be done, has taken this step to go ahead and make the reduction. And I understand your concerns, but I've just been talking to our folks and I know we -- we're working with NOAA on this too and NOAA, I don't know if they have a position, but I don't know that they're -- they've gone as far as the State has in terms of being concerned about whether going to three as opposed to closing would be a problem. And my understanding is the amount of crabs that were actually being taken there, I mean, it's not a large number so I guess the question I'm trying to get to to the State is if we were to go from six to three, you're to continue to monitor, it's obviously a step in the right direction, you'd continue to make studies where if there was a major problem with the juveniles would we know in a -- like within the next year or two or, I mean, I'm not sure of the status of your studies I guess is what I'm trying to figure out?

MR. PAPPAS: Through the Chair. Mr. Haskett. The Department doesn't do surveys in that area, the NOAA lab has divers that have been actively studying
the population there for years. The divers would not commit to one way or the other. All they'd say there is a presence and that the -- they have tagged adults that have migrated out of the area, some 90 percent of the adults migrate out of the area. So that potentially is a seed population. So I really don't have an answer for you. The concern that we have is not for the adults, if you see the catch per unit effort is what, less than one, it's how many small crabs do you have to handle to get that one crab per year. We don't know, we don't have any information on that. I believe some future studies are planned through NOAA, but I'm not sure -- they're not designed to address that particular issue so I don't have a good answer for you.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Go ahead.

MS. MASICA: Mr. Chair. For Mr. Pappas.

MR. PAPPAS: Through the Chair. The overlying State regulations would be what, three crabs per year per household, but it has been closed to non-Federally-qualified users in that area since before the Federal subsistence process got into fisheries.

Thank you. Mr. Chair.

MR. PROBASCO: And, George, it may be -- it might be helpful to the Board to clarify the other subsistence crab fisheries in Women's Bay, i.e., is the State's tanner crab subsistence fishery closed in Women's Bay?

MR. PAPPAS: Through the Chair. Mr. Probasco. I don't have that information in front of me right now regarding the tanner crab fishery or the Dungeness fishery either.

MR. PROBASCO: Mr. Chair. I believe the State's tanner crab season is still open in Women's Bay and I think what we have now is closed for king crab, unless that's changed in the recent years. So it might be something we need to clarify because they use both the same gear for tanner crab and king crab.

Mr. Chair.
CHAIRMAN TOWARAK: Thank you. If you want to research that while we continue our deliberations when you're ready to come back I'll be willing to give you the floor to explain an answer to the question.

Are there other questions? Mr. Lohse.

MR. LOHSE: Mr. Pappas. Through the Chair. Did -- Mr. Pappas, did you by any chance at the -- that science symposium that they had upstairs, did you by any chance get a chance to look at the research that was done on handling mortality of juvenile snow crab that was in that symposium upstairs?

MR. PAPPAS: Through the Chair. Mr. Lohse. I did not. Now I'm aware of Dan Urban's work, I believe Dr. Chin is also familiar with the work in that particular situation. They have live tanks on board, wintertime, high seas, totally different conditions temperature wise.....

MR. LOHSE: Yeah.

MR. PAPPAS: .....leg drop, et cetera. And I don't recall what their estimation was, but I believe it was fairly high for snow crab.

Thank you. Mr. Chair.

MR. HASKEET: Mr. Chair. I'd like to address a question to Steve Fried, if I could.

CHAIRMAN TOWARAK: Sure. Go ahead.

MR. HASKEET: So through the Chair. So could you address -- I'm trying to figure out, I mean, I really like the fact that the RAC has come forward and asked for, you know, reducing from six to three and I totally understand the concerns too the State has on the juvenile population out there. But could you give us what we think is going on, I mean, as well as you can on the -- with the population of juveniles out there?

MR. FRIED: Well, all I can do is relate when I spoke to Peter Kaminski, I mean, he was involved in the review process from the beginning. And they do do dive surveys in Women's Bay and part of the reason they use Women's Bay is it's accessible from the road system so it's very easy and, you know, very -- you know, less expensive to do a lot of studies there every year than go
someplace else. So yes, it's a juvenile area, but it's not the only one. And, you know, we asked him, you know, if NOAA had a position, you know, did they -- did they think a closure would be helpful and he said they didn't have a position on that. He did say that, you know, when they look at the pots of crab that are -- you know, there's a mix of juveniles, maturing adults that are leaving, he did notice that there's been a decline, but, you know, that was in response to the whole decline of crabs over the years in Kodiak, you know, I mean, it wouldn't be -- it wouldn't -- you wouldn't pin it to, you know, the take in Women's Bay from subsistence fisheries, he just said that that population's declined as the entire population has declined. He -- there's still juveniles in the bay, I mean, it's not -- you know, good numbers he thought, you know, maybe not as good as in past years, but nothing that's super concerned him.

What his main concern is is ghost pot fishing, there's a lot of old pots down there that don't have escape mechanisms so people lose the pot, they keep fishing and one of the things they do in their dives is try to cut the meshes out of king crab pots or bend the metal pots they use for, you know, other species to try to let crabs escape. And even though by regulation you can't use a pot that doesn't have an escape mechanism, he's more concerned that maybe some people are still using these old pots and if they lose them they're going to keep fishing. That's a pretty good, large -- you know, that's what his concern about mortality was, ghost pots.

And as George mentioned there aren't any studies about mortality of -- you know, handling mortality for juveniles in the bay and, you know, it's a lot shallower, people are only using one pot, you're not catching tons of -- I mean, if people have -- anybody that's aware of, you know, the Bering Sea crab fishery and Bristol Bay crab fishery is a very different animal than that subsistence fishery in Women's Bay, they use big, heavy metal pots, you got heavy seas, it's very cold. So yeah, there's some damage to any crabs that come up and they get thrown over the side and get crushed by the pots and it's cold, they get frozen. So it's real different. To say that there's no mortality, I mean, that's -- there's got to be some, but it didn't seem to be anything that NOAA was concerned about at this point especially since there seems to be very low harvest, very low use, just a few people. And that was the Council's point, I think, was the fact that it doesn't have a lot
of high use, but it is so easy to get to that it is one of the few places that some of the more elderly subsistence users can go and catch, you know, a king crab. So and they didn't think that would really harm the population, I mean, the commercial fishery's closed, all the other fisheries are closed, you know, that's one small bay.

MR. HASKETT: Thank you.

CHAIRMAN TOWARAK: Thank you. Any further questions? Mr. Pappas.

MR. PAPPAS: Through the -- Mr. Chair. State regulation 5 AAC 024.25, there is a subsistence tanner crab fishery and it does not look like it is closed in that area. I did not find in regulation that it's closed, but there is a tanner crab subsistence fishery there.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Any further questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your presentation.

The next step is for InterAgency Staff Committee comments. Dr. Wheeler.

DR. WHEELER: Thank you. Mr. Chair. The InterAgency Staff Committee found the Staff analysis to be a complete and accurate evaluation of the proposal and the recommendation of the Regional Advisory Council to be supported by substantial evidence consistent with recognized principles of conservation and appropriately allows for the continuation of subsistence uses.

Mr. Chair.

CHAIRMAN TOWARAK: Okay. Thank you. Any questions of Dr. Wheeler.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your comments.
The next step is a Board discussion with Council Chairs and State liaison. I have a question for Mr. Simeonoff. I notice that in your comments you pointed out that the Women's Bay is one of the few road accesses to a crabbing area and you point out that to keep it open it would leave -- it would provide an opportunity for elders to subsist for crab. Do the -- and someone else might be able to answer this, is -- are those permits restricted to elders or is it an open permit process?

MR. SIMEONOFF: Would you say that again, please, I.....

CHAIRMAN TOWARAK: I was wondering if the permits in -- for the Women's Bay crab -- subsistence crab fishing is restricted to elders or is it open to everyone?

MR. SIMEONOFF: Oh, it's not restricted to elders. It's just that Women's Bay is in close proximity to Kodiak and elders who can launch their boats in the boat harbor, they don't have to go out into the deep waters of Chiniak Bay, they can just go into Gibson Cove and Women's Bay in a relatively safe area for them to subsistence fish.

CHAIRMAN TOWARAK: Thank you. Any other questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. We will continue on to the Board action. Mr. Haskett.

MR. HASKETT: Mr. Chair, I'd like to make a motion to adopt Proposal 11 as recommended by the Kodiak Aleutians Regional Council and I'll provide my justification if I get a second to the motion.

MS. MASICA: Second.

CHAIRMAN TOWARAK: The motion has been seconded by Ms. Masica. Continue, Mr......

MR. HASKETT: Thank you. Mr. Chair.

CHAIRMAN TOWARAK: .....Haskett.

MR. HASKETT: So this has been a really
interesting discussion this morning for me. It's clear that by doing this we'll reduce the harvest opportunity for subsistence users, but it appears necessary to help protect the crab stocks in the area. And like I said I very much appreciate the RAC taking this action and doing the best they can for trying to take the steps necessary to conserve the crab population there. I do understand the concerns of the State, but I guess for now what I'm hearing is that we're not getting a major concern from NOAA and I think that's in the analysis and I think we need to continue to monitor the situation, it's clearly something we need to continue to watch, but I think the analysis essentially provides a good summary of the information provided by NOAA which did confirm that Women's Bay is a king crab nursery area, but did not say that we should go so far as to close it. So I am going to go ahead and agree with the council to continue to allow for these lower levels of subsistence harvest, but again to continue to monitor. And I think we can take this up again at a later time if the concerns stated by the State actually are something that we can get better information on.

CHAIRMAN TOWARAK: Thank you. Are there any other comments by the Board members.

(No comments)

CHAIRMAN TOWARAK: Is there a call for the question?

MR. HASKETT: I call for the question.

CHAIRMAN TOWARAK: The question's been called for. Final action, please.

MR. PROBASCO: Thank you. Mr. Chair. Final action FP 11-11, to support the Regional Advisory Council's recommendation on this proposal. And we're starting out with Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.
MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Yes.

MR. PROBASCO: And Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Mr. Chair. Motion carries 6/0.

CHAIRMAN TOWARAK: Thank you, everyone, for participating. The next proposal on our agenda is Fish Proposal 11-13.

MR. PROBASCO: Mr. Chair.

CHAIRMAN TOWARAK: Go ahead, Mr. Probasco.

MR. PROBASCO: Thank you, Mr. Chair. With the -- with your permission we did make -- we always have an opportunity at the beginning of the meeting for the public to testify on non-agenda items. I did not have any cards when the meeting started however after we started on Proposal 11 we did get one person wishing to testify before the Board on a non-agenda item and you may want to take that up right now before we get into 13.

CHAIRMAN TOWARAK: Let's go ahead and do that.

MR. PROBASCO: Okay. Thank you, Mr. Chair. Would Mary Ann Mills please come forward. Mary Ann Mills.

MS. MILLS: Thank you. My name is Mary Ann Mills, I am vice chair of the sovereign nation of the Kenaitze and Chair of the Cook Inlet Treaty Tribes which is a consortium of eight tribes.

We are not blessed in this great land we call Alaska. We have been here since time immemorial. This is our home land that we inherited from our ancestors. The Treaty of Session signed on March 30, 1867 by Czarist Russia and the United States of America
formally transferred the trading post and the land the
trading post stood from the Russian American Fur Company
into the possession of the United States. It did not
transfer the title of the land because Russia did not
have dominion over Alaska. Prior to its purchase of the
Russian trading post the United States had strongly
opposed Russia's dominion over Alaska. The memorandum
described what the Russians -- what Russia was
transferring and suggestions for managing the property as
requested by Secretary of State William Seward. Included
in the memorandum were the measurements of the property
transferred to the United States which totaled 117,600
square feet. That is 117,600 square feet.

Under international law there are three
ways a country may be absorbed by another established by
the law of nations. A country can be absorbed into
another as follows. One, by conquest via a just war.
Indians were subject to just war if, A, they deny free
passage in their territory; B, they prevent merchants
from making profits; C, they hindered the propagation of
Christianity. Two, Treaty of Session. The right to
possess a certain territory given by one sovereign to
another. Three, relinquishment or voluntary abandonment.
Alaska was never conquered. The indigenous peoples of
Alaska have never ceded its land nor have we relinquished
or voluntarily abandoned our land.

The United States of America and nation
states that joined the United Nations acknowledged,
accepted and obligated themselves to the international
status of Alaska by placing us on the list of non-self
governing territories via General Assembly Resolution
66(i), proclaiming (indiscernible) as a sacred trust as
an occupying force the complete obligation to promote to
the utmost and to ensure with due respect and regard of
the culture of the peoples concerned, their political,
economic, social and educational advancement, their just
treatment, their protect -- and their protection against
abuses and to assist them in the progressive development
of their free political institutions.

The United States voluntarily listed
Alaska as a non-self governing territory with the right
of nationhood under Article 73 of the United Nations
Charter. The United States agreed to conditions for how
the territory of Alaska would be administered, how its
citizens would be treated and how the process of
decolonization would take place. One of the requirements
was for the original inhabitants of the territory be
brought from their preliterate state to be educated and fully informed of their status prior to the plebescite or the vote of the original inhabitants to determine their political status and future. The United States failed to inform the Alaska indigenous peoples of their rights to nationhood and failed to fund a territory wide education system that would allow the indigenous peoples to determine our own destiny. The institutional framework and money for the political discussions to take place once we had become literate and were deemed via vote from the United Nations Assembly to be literate, fully informed of our status and acting accordingly free of political interference by the governing nations has never occurred.

The United States ratified the International Covenants on Civil and Political Rights. Article 1, Section 1 states all people may for their own ends freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation based upon principle of mutual benefits and international law. And Article 1, Section 2 states in no case may a people be deprived of its own means of subsistence. Article 27 of the International Covenant on Civil and Political Rights state in those states in which ethnic, religious or linguistic minority exist persons belonging to such minority shall not be denied the right in community with other members of their groups to enjoy their culture, to profess and participate their own religion and to use their own language.

The territory of Alaska's removal by General Assembly Resolution 1469, December 12th of 1959, violated our right to self determination. The United States of America and the United Nations allowed our political rights to be almost entirely stamped out. We have become overall the poorest inhabitants in one of America's richest states.

The United States manifests racial discrimination against the indigenous peoples of Alaska by governmental policies that has been and continues to be based on racial superiority, including political policies of apartheid. Article 2 of the Convention of Prevention and the Punishment of the Crime of Genocide states in the present convention genocide means any of the following acts committed with the intent to destroy in whole or in part a nation -- a national, ethnic, racial or religious group such as causing serious bodily or mental harm to members of the group; C, deliberately
inflicting on a group conditions of life calculated to bring about its destruction in whole or in part.

In reality what has transpired in the shameful tragedy of social engineering and human rights violations which is reflected in our suicide rates which is 10 times the national average in some communities and four times the national average in the least affected communities. New studies show Alaska Natives have the highest unemployment rates in the United States and suffer among the highest disease rates in the nation. We pay the highest price for fuel than any other state in the United States while oil and gas and the gas industry made record profits in Alaska. We are being robbed via State and Federal statute of our land, our food and our children. Because of high grocery and energy costs it is common to see single family homes housing up to three families or in some cases three generations. State Fish and Game are raiding the freezers of the poorest of the poor, taking subsistence fish and moose and caribou that are meant to support and feed our families and enable us to conduct our pot latches with are sacred and tied to our religious beliefs. Subsistence has enormous health and social impacts on our people and to be denied has been devastating.

It is impossible to manage subsistence if the resources are not managed wisely. Tourists who come to the Kenai are rarely checked for licenses or fined for having over limits of fish and clams. During the summer the Kenai Airport is swamped with thousands upon thousands of freezer boxes filled with fish all being shipped out to the south 48. There was a sting operation that caught people from the Lower 48 selling Alaska caught fish in flea markets in Arizona and other states. State Fish and Game did nothing to them, no fine or jail time. They said they had to let them go. Yet when I fish subsistence to feed my family I was arrested and put in jail six times and in most of my arrests I didn't even have a fish in my net. I was put in jail for attempted fishing. Huge problem -- a huge problem is the factory trawlers who are destroying our ocean floors as well as throwing away millions of pounds of bycatch. Why don't the authorities call bycatch wanton waste, that's what it is. How bycatch be considered good management of our resources.

The Kenaitze have been deprived of our right to subsistence since 1987. The Village of Eklutna and the Chickaloon Tribe have also been denied their
subsistence. ANILCA has never been implemented for us. Article 15(1) of the International Covenant on Economic, Social or Cultural Rights state the state parties to the present covenant recognize the rights of everyone A, to take part in cultural life. Article 25 states nothing in the present convention -- covenant shall be interpreted as impairing the inherent rights of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

The State of Alaska is very hostile towards Alaska Natives and for this the United States allowed them to micro manage us in almost every facet of our life. Under these circumstances it would behoove us, the indigenous people, to request Alaska be relisted to the status of non-self governing territories and to move towards decolonization.

Thank you.

CHAIRMAN TOWARAK: Thank you for your comments. Are there any questions from the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you very much.

We will continue our.....

MS. MILLS: You're welcome.

CHAIRMAN TOWARAK: .....process. We were on Federal Proposal 11-13. Our first step is to get the Staff analysis. Mr. Fried.

MR. FRIED: Thank you. Mr. Chair. Just for the record my name is Steven Fried, a fishery biologist for the Office of Subsistence Management. I'm going to provide the Staff analysis for Proposal 11-13 submitted by the Kodiak Aleutians Regional Advisory Council for the Kodiak area.

Affected public waters, you could take a look at map one on Page 216 in your books, would be the fresh waters of the Kodiak National Wildlife Refuge and the salt waters of the Alaska Maritime National Wildlife Refuge which would the Women's Bay, Karluk and Afognak sub-units.
The proponent is requesting the following changes in household annual harvest limits and reporting for salmon. One is do not associate a household annual harvest limit with permits issued to Federally-qualified users fishing in Federal public waters not accessible from the Kodiak road system. And on the slide we're going to refer to these users as remote users, it's just for brevity sake. Second is to change the requirement from recording harvests on permits immediately upon landing fish to before leaving the fishing site. So those are the two main issues that the proponent is requesting. These changes would align Federal with State regulations.

And the salmon stocks in Kodiak are generally considered healthy. If you look at Table 1 on Page 218 for the harvest information, even so though there have been subsistence salmon fishing restrictions to attain escapements in fairly recent years. This has occurred for sockeye in the Afognak system from 2002 to 2004 and again in 2006 and 2007. And for sockeye in the Buskin system in both 2009 and 2010. For chinook in the Karluk system there have been restrictions 2009 and 2010 and Ayakulik in 2009.

Now if you look at Tables 2 and 3 on Page 219 the total reported salmon harvests are much greater from communities that are on the Kodiak road system, but the average household harvests are greater in remote communities. So even though the total harvest is greater on the road system, if you look at it by household basis it's actually higher in communities that are not on the road system.

If this proposal is adopted Federally-qualified users fishing in off road Federal public waters which really is everyplace except for the marine waters in front of the Buskin River could use one permit all season. So right now the regulations read that once you reach, I think it's 25 per household head plus 25 for each additional person, you have to take your permit, return it and then get a new permit to catch more fish. And basically it's pretty difficult for people living -- that don't live in Kodiak because the only place to get a permit is at the Department of Fish and Game office in Kodiak. So this would make it a lot easier to do and, in fact, as I mentioned before the State has already allowed this to occur for remote users. Remote users fishing under just State regulations can just have one permit for the entire year without having to go back and get another
one.

It should not affect -- if we adopt -- if the Federal program adopts this it's not expected to affect the actual harvest and it actually could make harvest reporting more accurate. And as proof of this, if you look at Table 4 you can see that if you look at harvest estimated from permit report they're lower than the harvest that are actually obtained when people do household surveys. So it appears that people really aren't accurately reporting what they're catching under permits and there could be, you know, several reasons for this.

So basically if this proposal was adopted Federally-qualified users in the Kodiak area could also record their harvest on a permit upon leaving the fishing site instead of just immediately catching a fish. And the State Board has just adopted a similar change in their regulations so that now -- it used to you have to record on the permit immediately upon landing, now the State regulations are after -- you can record it before leaving the fishing site. So basically if we -- if the Board adopted these two things it would similar to what the State regulations are now in effect.

What else can I say. We -- the OSM conclusion is to support the proposal and we did suggest several modifications to wording. We felt that adopting these modifications would achieve the proponent's intent to -- for the two main things that they had actually asked for, the remote users being able to use a single permit all season and not having to record your harvest for all the users until you've left the fishing site. There are a few other administrative things that our wording had also suggested and I'm not sure I need to go into that at this point.

Adopting the regulation would make it less burdensome to users, might improve reporting accuracy and I think those are really the main points I wanted to cover. I could answer questions if anybody had any other questions about it, but I think I'll leave it at that.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Fried. Are there any questions of the Staff from the Board or the Regional Chairs.
(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your presentation.

We will then move on to a summary of public comments by the Regional Council Coordinator. Ms. Wilkinson.

MS. WILKINSON: Mr. Chair. There were no written public comments for this proposal.

CHAIRMAN TOWARAK: Thank you. We will open the floor to public testimony.

MR. PROBASCO: Mr. Chair. I have no one signed up to testify on Proposal 13.

CHAIRMAN TOWARAK: Thank you. We will then move on to Regional Council recommendations. Mr. Simeonoff.

MR. SIMEONOFF: Thank you. Mr. Chairman. The Kodiak Aleutians Regional Council's recommendation can be found on Page 226. The Regional Council supports Proposal FP 11-13 with modification. The Council modified the proposal -- the proposed regulatory language to remove references to herring which allows Section 27(i)(9)(4) to revert to existing regulatory language. And use -- and to use the word Federal in paragraph A instead of fresh as a descriptor for relevant waters.

The modifications will clarify the regulatory language for the benefit of subsistence users and it is understood that the intent of the proposal was to address salmon annual harvest limits and reporting, but not deal with herring.

Thank you. Mr. Chairman.

CHAIRMAN TOWARAK: Thank you, Mr. Simeonoff. Are there any questions of the Board or the other Regional Chairs. Mr. Haskett.

MR. HASKETT: So through the Chair. And I understand there's a fairly minor difference between what OSM Staff came up with on the wording and what -- the wording you came up with on the modifications. And I think the intent's the same and I'm assuming we can just all work that out later and not worry about it now,
but I wanted to make sure that you've seen it and you're in agreement with that.

MR. SIMEONOFF: That we -- we intend to, you know, be as concise with the agencies as possible.

MR. HASKETT: Okay. That's helpful. I mean, I'm assured that the differences are negligible and the intent's the same. So that's good, that helps me.

Thank you.

MR. SIMEONOFF: Yeah. There were no differences intended.

CHAIRMAN TOWARAK: Thank you. Are there further questions.

(No comments)

CHAIRMAN TOWARAK: Well, if not then we will continue on with the Department of Fish and Game comments.

MR. PAPPAS: Thank you, Mr. Chair. This proposal was submitted to remove the annual limit for harvest -- annual limit for salmon harvested in Federal subsistence fisheries in Kodiak Island that are not adjacent to the Kodiak road system. This proposal also requires herring harvest to be recorded on subsistence fishing permits consistent with State regulation. And the proposal requests the Federal reporting requirement allow fishermen to record harvest prior to leaving the fishing site.

If adopted Federal subsistence users who choose to fish the waters of Kodiak not adjacent to the road system will no longer have an annual harvest limit -- annual limit for salmon which is consistent with State regulations. Federally-qualified subsistence fishers will be required to record subsistence harvested herring if adopted. The requirement to record harvest prior to leaving the fishing site is partially consistent with the regulations approved by the Alaska Board of Fisheries last week during their meeting in Kodiak. If the Federal Board adopts modified harvest recording requirements identical to the ones adopted by the Board of Fisheries, Federal subsistence users will not be at risk of citation. The harvest recording requirement contained in the modified proposal supported by the Kodiak Aleutians
RAC requests recording prior to leaving the fishing site as the Board of Fisheries approved regulation, but the Board of Fisheries added the requirement to record harvest prior to concealing subsistence harvest from plain view and I believe they also required that the recording be done in ink. This provision is mirrored in many state subsistence and personal use fisheries statewide.

Subsistence fishermen who harvest fish from the road system streams are limited to 25 salmon for those named on the permit and additional permits are available depending upon needs of a permit holder. There's no annual harvest limit for subsistence fishermen who harvest waters that are not adjacent to the system, but fishermen are required to record harvest and submit the permit to the agency Staff by February 1 of the following year. Subsistence fishermen may also harvest up to 500 pounds of herring per calendar year under the same State subsistence permit.

Currently Kodiak does not designate salmon stocks of concern, however the Karluk River chinook salmon has not met its minimum escapement goal and has had commercial, sport and subsistence fishery restrictions for the past three seasons. The Karluk River early run sockeye salmon stock has not met its minimum escapement goal and has had commercial, sport and subsistence restrictions for the past two seasons. The Ayakulik chinook salmon stock has not met its minimum escapement goal and had commercial, sport and subsistence restrictions for the last three of four past seasons. And subsistence from both Karluk and Ayakulik River is minimal or has been restricted.

Under other issues the Kodiak Aleutians RAC supported a modified proposal including the removal of references to herring under Section 27(i)(9)(4) through (6). The Department has concerns about removal of this reference to herring in this section of regulation as the resulting regulations might, and it might that is, inadvertently eliminate the permitting and reporting requirements for Federal subsistence herring fisheries near Kodiak. The Department requests clarification from the Federal subsistence process as the Council meeting transcripts clearly request the removal of herring references out of the regulations, but we do not understand the illustrate -- or do not the intent that was illustrated for doing so.
The Department recommendations. One, support the proposed limits of fish that can be harvested on and off the Kodiak road system. Two, support the proposed requirements of recording herring harvested in Federal subsistence fisheries on a permit. Three, support a modified reporting regulation which requires subsistence fishermen to record harvest before they leave a fishing site and before the harvest is concealed from view and use ink. That would make it parallel with the State regulations. And four, oppose elimination of the permitting and reporting of Federal subsistence herring fishery, if applicable, we are seeking clarification.

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

Fisheries Proposal FP11-13: Remove harvest limit for non-road system federal subsistence salmon fisheries on Kodiak Island, require a permit and recording of Pacific herring harvested under federal subsistence regulations, and require harvest recording prior to leaving the site.

Introduction: The Kodiak-Aleutians Regional Advisory Council submitted this proposal to remove the annual limit for salmon harvested in federal subsistence fisheries on Kodiak Island from waters that are not adjacent to the Kodiak Island road system. A total annual household limit for salmon harvested in any Kodiak federal subsistence salmon fisheries exists in federal regulations and not in state subsistence regulations. This proposal also requires herring harvest be recorded on the subsistence fishing permit consistent with state regulations. It proposes to change reporting requirements to allow fishermen to record harvest prior to leaving the site, whereas the state requirement is to record harvest immediately. Except for the reporting requirement, the federal regulations would be consistent with existing state regulations.

Impact on Subsistence Users: If adopted, federal subsistence users who choose to fish in waters of Kodiak not adjacent to the road system will no longer have an annual harvest limit for salmon, consistent with
state regulation. Federally qualified subsistence
fishers fishing in waters where federal subsistence
jurisdiction is claimed will be required to record
subsistence-harvested herring. The requirement to record
harvest prior to leaving the site is inconsistent with
state regulations and may put fishers at risk of
citation, depending on location of harvest. If the
harvest recording requirements contained in the modified
proposal supported by the Kodiak-Aleutians Regional
Advisory Council is adopted, the US Fish and Wildlife
Service will need to provide federal subsistence
fishermen with subsistence permits. The state issued
subsistence permits require recording subsistence
harvested fish immediately upon landing.

Opportunity Provided by State: State
subsistence regulations for Kodiak salmon fisheries have
different annual household limits depending upon location
of harvest. Subsistence fishermen who harvest fish from
road system streams are limited to 25 salmon for those
named on the permit, and an additional permit is
available based on needs of the permit holder. There is
no annual harvest limit for subsistence fishermen that
harvest in waters that are not adjacent to the road
system, but fishermen are required to record harvest and
submit the permit to agency Staff by February 1 of the
following year. Subsistence fishermen may harvest up to
500 pounds of herring in a calendar year under the same
state subsistence permit.

Conservation Issues: Kodiak currently
has no designated salmon stocks of concern. However, the
Karluk River Chinook salmon stock has not met its minimum
escapement goal (3,600) and has had commercial, sport,
and subsistence fishery restrictions for the past three
seasons. The Karluk River early-run sockeye salmon stock
has not met its minimum escapement goal (110,000) and had
commercial, sport, and subsistence restrictions for the
past two seasons. The Ayakulik River Chinook salmon
stock has not met its minimum escapement goal (4,800) and
had commercial, sport, and subsistence restrictions for
three of the past four seasons. Subsistence harvest from
both the Karluk and Ayakulik rivers is minimal or has
been restricted.

Jurisdiction Issues: The federal
subsistence salmon fisheries on or near Kodiak Island can
take place in the fresh and marine waters of the Pacific
Ocean enclosed by boundaries of Womens Bay, Gibson Cove,
and an area defined by a line one mile on either side of
the mouth of the Karluk River extending seaward 3,000 feet. Additionally, federal subsistence users can fish for salmon in marine waters of Afognak Island within 1,500 feet seaward of shoreline.

Other Issues: The Kodiak Aleutians Regional Advisory Council supported a modified proposal included the removal references to herring under ^U_27(i)(9)(iv)-(vi). The department has concerns about removal of references to herring in this section of regulations as the resulting regulations might inadvertently eliminate permitting and reporting requirements for the federal subsistence herring fishery near Kodiak. The department requests clarification from the federal subsistence process, as the council meeting transcripts clearly request the removal of herring references but do not illustrate the intent of the council for doing so.

Recommendations:

1. Support the proposed limits of fish that can be harvested on and off the Kodiak road system.

2. Support the proposed requirement to record herring harvested in federal subsistence fisheries on a permit.

3. Oppose reporting requirements that allow subsistence fishermen to be in possession of harvest but not record it until leave the fishing site.

4. Oppose the elimination of permitting and reporting for the federal subsistence herring fishery (if applicable).

MR. SWANTON: Mr. Chairman. One correction, during last week’s deliberations with the Board of Fisheries the Karluk chinook salmon stock is a stock of concern and they deliberated on that particular issue last week.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you for that explanation. Are there any questions of the Board or the Regional Council Chairs?

MR. PROBASCO: Mr. Swanton, maybe just
brief us so the Board can understand what is meant by
stock of concern?

MR. SWANTON: Mr. Chairman. Mr.
Probasco. Briefly the Alaska Department of Fish and Game
has regulations under the sustainable fisheries
management policy to give broad instruction with regards
to management of the salmon stocks for sustainability.
Elements of that are in essence when escapements have not
been met over the course of a life cycle, there are
various levels of, I guess, concern, one of which is a
yield concern, then it goes to a management concern,
followed by a conservation concern in that order and it
has to do with whether escapements are being met, whether
yields over the course of time are being maintained or
diminished. And in this case there has been concern and
subsequently escapements not met for the Karluk chinook
salmon stock, even with some as Dr. Fried pointed out,
some in-season restrictions made to multiple fisheries,
multiple user groups, to try and maintain that
escapement. And so the Board of Fisheries deliberated on
that and took some fairly stringent restrictive actions
to try and arrest that trend.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you for that
explanation. Are there further questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any.
Thank you for your presentation.

We will continue then on with the
InterAgency Staff Committee comments. Dr. Wheeler.

DR. WHEELER: Thank you. Mr. Chair. The
InterAgency Staff Committee found the Staff analysis to
be a complete and accurate evaluation of the proposal and
the recommendation of the Kodiak Aleutians Regional
Advisory Council to be supported by substantial evidence
and consistent with recognized principles of
conservation. The proposal is intended only to address
salmon harvest limits and permit requirements. The
Council did not specifically address proposed
stipulations concerning to whom and by what date permits
are to be returned. The analysis presented by Dr. Fried
does address this and the modified language provides an
administratively preferred approach.
Mr. Chair. Thank you.

CHAIRMAN TOWARAK: Thank you. Are there any questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any questions from the Board or the Chairs. Thank you for your presentation.

We will next move to the Board discussion with Council Chairs and State liaison. Ms. Masica.

MS. MASICA: Mr. Chair. Thank you. Mr. Simeonoff, would you be able to clarify for me the reason why herring was specifically removed from the proposal?

Thank you.

MR. SIMEONOFF: Yeah, a little on that. The Kodiak Aleutians Board was under the impression that we were dealing with the subsistence limits of salmon and not dealing with herring. And that herring was -- had its own regulatory language and we were changing the numbers of subsistence caught salmon only.

CHAIRMAN TOWARAK: Go ahead. Mr. Haskett.

MR. HASKETT: Thank you. Mr. Chair. So I'm kind of lost in the differences -- for the concerns the State has on this one. I'm sorry, I'm just trying to figure this out. And one of them is that you'd like to -- I guess what the Board of Fish last week called for is a subsistence permit holder shall record all harvested fish on the permit in ink before concealing the fish from plain view or transporting the fish from the fishing site. For the purpose of this paragraph fishing site means location where fish were removed. So I guess my question then is to the RAC. Is that something that would cause you concern if we made that clear it has to be done in ink?

MR. SIMEONOFF: Say that again, please. Repeat your question.

MR. HASKETT: Well, I'm trying to -- we seem to be a lot more together on this one than we are
apart for the most part and there seems to be a couple places where there's some differences and one of them that I can see, that I think I understand, is that the Board of Fish last week has this requirement for making the recording in ink which seems like a fairly -- I mean, that seems like an okay thing to me to ask for. Is that a concern to you if when I make a proposal later that I add that to the modification, would that be a big deal?

MR. SIMEONOFF: Well, as a subsistence user I go out and catch my fish and before I leave the fishing ground I got to mark on a piece of paper how much fish I got and if I need more fish and there's more fish on that paper than I -- you know, I got to go all the way back and get another permit. But to do that, that's the end of the day, you know. It's -- I can't fill out my paper, go back and get another one and come back. It's -- it takes too long. But to have 25 for myself and 25 for my other household members, that -- I can take care of that, but then the next day I got to do it again. You know, a family will harvest more than 100 fish for their subsistence use. And, you know, even this regulation might be a step in the right direction in recording the number of subsistence fish caught, but it's still a hinderance to subsistence users because subsistence users like to gather what they need, take it home, prepare it and be done.

Does that answer your question?

MR. HASKETT: Maybe. I guess I understand the concern there, but I'm not sure it's the -- like I say I've got to think about this a little bit.

Thank you. Appreciate that.

CHAIRMAN TOWARAK: Are there further questions? Mr. Adams.

MR. ADAMS: I'd just like to make a comment. Thank you. Mr. Chairman. I know in Yakutat, you know, we're understate State regs to take care of our fish, our fish take. And what we do is we go to the State office and we ask for a permit, we fill it out and we indicate on there how many king salmon do we want. I always put 20, 25 or 30, you know. The same way with the other species. And then you're kind of held accountable to that to report, you know, at the end of the season and everything. Now it doesn't mean that if you go over those, you know, they're going to throw you in jail for
it, it's a matter of record keeping and it really worked well for us, you know, that way we can tell, you know, what our household needs are for each of those species and it -- the jail time, you know, comes if you don't turn in that permit at the end of the season. And so I think it's a real good system and I think it really should be uniform throughout Fed and State's.

Thank you.

CHAIRMAN TOWARAK: If I could ask the Staff, is there anyway to reconcile this difference? Mr. Buklis.

MR. BUKLIS: Yes. Mr. Chairman. Thank you. Larry Buklis, OSM.

Just to reemphasize the proposal and the Council recommendation to support modification, the Staff work, the State's comments, all are in alignment on a couple of key points. One is to liberalize the situation on limits for those off the road system so that relaxes the limit issue when you're off the road system. Secondly, all three parties are in agreement as to liberalizing the situation for on and off the road system users, to liberalize the situation as to recording information on the permit. It had been immediately upon landing the fish. The Council's recommendation of record, the Staff work and the State are all in the area of relaxing that to recording it before leaving the fishing site which is a relaxed standard and accommodates the users. The only difference is in very minor points which often are not even in regulation, points about where on the form to record information, ink or not ink, those minor points we feel we can resolve administratively consistent with the intent of the Council and that will work with the State permit. So we think we can address that administratively.

And finally the point about herring is the way the -- it's the way the proposal came in, raised that issue inadvertently because the proponent, which was a Council member, was working off the State regs which have herring mentioned there. So in platforming off the State regs instead of ours herring came up inadvertently. So the Council at their meeting was saying remove herring. They don't mean remove herring from the permit system, they mean remove that from this issue, we didn't mean to raise it.
Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Thank you. Actually that's very helpful and I -- I think I probably complicated it by asking the question because it does appear that we're a lot closer together on almost all the issues. And actually the question I asked about the ink is actually a State requirement on their permit anyway which we don't have any control over. So I kind of withdraw that whole question and just -- that was very helpful, Larry. Thank you. I'm sorry for confusing it.

CHAIRMAN TOWARAK: That's what the process is intended for. And it's working. Mr. Adams.

MR. ADAMS: Just another comment here. You know, it's -- it varies also in Southeast Alaska where in the southern part of Southeast Alaska, you know, you're only allowed 15 fish I believe. And I don't know why they're so liberal in Yakutat, maybe it's because we know how to manage our resources a little bit better or maybe there's more salmon coming in. But again, you know, I just would like to reemphasize the fact that, you know, I think these -- this permitting system needs to be more consistent across the board. It eliminates a lot of confusion and it holds the subsistence user accountable for the amounts of products that he is taking into his household.

CHAIRMAN TOWARAK: Thank you. Any further questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing or seeing any. Thank you for all of the comments.

We will then go on to InterAgency Staff Committee report. Dr. Wheeler.

DR. WHEELER: Mr. Chair. I know I talk fast, but I think I -- I believe that I already gave that report and I think you're further down on the agenda. I can do it again if you want, but I.....

CHAIRMAN TOWARAK: It was my mistake. I was thinking that we were under the -- continuing the State discussion, but I am out of order.
Our next schedule is to do the Federal Subsistence Board action, if there are no further discussion with the Chairs or the State liaison. Mr. Haskett.

MR. HASKETT: So I'd like to make the motion to adopt Proposal 13 with modification as recommended by the Kodiak Aleutians Regional Council. And I'll provide my justification if I get a second.

MS. PENDLETON: Second that.

CHAIRMAN TOWARAK: The motion has been seconded. Please continue.

MR. HASKETT: Thank you, Mr. Chair. So I think this is a change that should help with reporting accuracy for salmon harvests and will align with most of the changes recently made by the State in the Kodiak area. Some of the wording on the reporting requirements in the regulation are Section 9(v)(i) is not the same as the OSM recommendation, but I think we can work that out together and I'll quit asking such specific questions. I think it does make a lot more sense for our Staffs to work these out together in some of the smaller administrative details. I think what we're doing here and the Council's recommendation is very close to what the Board of Fish did last week and we can work out the final administrative wording on reporting requirements without changing the intent.

CHAIRMAN TOWARAK: Thank you for that justification. Are there any other comments by the Board members, any opposing views of that?

MS. K'EIT: Mr. Chair. I concur with Mr. Haskett's comments and just want to expand that. I appreciate the RAC's work in this effort, it just really demonstrates that our on the ground users really have a lot of the key knowledge and understanding about what's happening with the resources and how they can assist in managing them for their best use.

Thank you.

CHAIRMAN TOWARAK: Thank you, Ms. K'eit. Any further discussion.

(No comments)
CHAIRMAN TOWARAK: Is there a call for the question?

MS. MASICA: Call for the question.

CHAIRMAN TOWARAK: The question's been called for. Final action, please.

MR. PROBASCO: Thank you. Mr. Chair. Final action of FP 11-13 as modified by the Kodiak Aleutians Regional Advisory Council. And we're starting with Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Yes.

MR. PROBASCO: Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: And, Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Mr. Chairman. Motion carries 6/0.

CHAIRMAN TOWARAK: Thank you. 11-13 has been completed. And I think it's a good time for a 15 minute break here. So we will reconvene at 10:15.

(Off record)

(On record)

CHAIRMAN TOWARAK: I'd like to begin to reconvene. We're waiting for Mr. Haskett to get back to the table.
I will call this meeting back to order.

We just completed Federal Proposal 11-13 and we're moving into Federal Proposals 11-16 and 17.

Mr. Probasco, would you explain that.

MR. PROBASCO: Thank you. Mr. Chair.

We're now moving down to Southeast and we have our Forest Service biologist here, Mr. Robert Larson, who also serves as the coordinator and Jeff Reeves is our fish biologist. And I believe Mr. Reeves is the lead analyst on 16, 17.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Just for my explanation, would you explain the reason for combining two proposals?

MR. PROBASCO: Go ahead, Mr. Reeves. But it's -- they're talking about the same.....

MR. REEVES: Good morning. Board members. Council Chairs. For the record my name's Jeff Reeves, I'm a biologist with the Forest Service.

You'll notice yes, this -- there's two proposals that are combined in this analysis. And once I get into it you'll see that their request for -- they're requesting season changes and -- for the same drainage and they're basically the proposals are -- or the requests are so close that it was easy to just go ahead and take care of it in one analysis.

CHAIRMAN TOWARAK: Okay. Thank you for that explanation.

With that we will then begin the procedure for considering this non-consensus agenda proposal. We will begin with the Staff analysis. Mr. Reeves.

MR. REEVES: Thank you. The analysis if you haven't found it is located on Page 230 in your Board materials.

Proposal FP 11-16 was submitted by Mike Douville and it requests that the season closing date for the Federal subsistence sockeye fishery on the Klawock River be extended from July 31st to August 15th and asks
that the Monday through Friday fishing schedule be
removed from the regulation.

Proposal 11-17 was submitted by the
Southeast Regional Advisory Council and it requested that
the season closing date for the Federal fishery on
sockeye be changed from July 31st to August 7th, but it
would still retain the Monday through Friday fishing
schedule.

The proponent of FP 11-16 requested that
the Federal season be extended and allow fishing
opportunity on the weekends. The proponent also
indicated that the fishing schedule had been implemented
by the State Board of Fisheries in the 1980s to address
local concerns that sockeye were being over harvested by
non-local residents that were fishing during the
weekends. The proponent believed that by removing the
fishing schedule from Federal regulation that it's going
to allow Federally-qualified users more opportunity to
fish within Federal jurisdiction. And they also believe
that harvest by these individuals would be minimal when
compared to the harvest occurring in State waters.

The proponent of FP 11-17 requests that
the Federal season be extended by a week and this action
will align the State and Federal harvest seasons.
Aligning the regulation would prevent any more need for
special action by this Board as -- similar to what
occurred in 2009 and 2010.

The Klawock drainage drains into District
3B where Prince of Wales Island residents have a positive
customary and traditional use determination for Fishing
District 3. The Alaska Department of Fish and Game
issues subsistence salmon permits for Klawock Lake
sockeye. The current permit conditions allow for
individual and household limits of 20 sockeye daily with
no annual limit. And legal subsisting -- subsistence
fishing gear in this area under this permit would include
purse seines, beach seines and dipnets.

In 1986 the July 7th to July 31st season
and the Monday to Friday fishing schedule was set in
State regulation due to the concerns that too many
sockeye were being taken on the weekend by people from
urban areas. In 2009 the Board of Fisheries extended the
closing date of the State managed sockeye fishery to
August 7th.
In 1999 when the Federal subsistence fishing management began the existing State regulations were adopted for Southeast Alaska. Because of this the Klawock is the only drainage in Southeast Alaska with a specific season and fishing schedule for sockeye under Federal regulations. Although the regulation defines a season and schedule of directed subsistence fishing for sockeye, there are no Federal seasons for the remaining species of salmon within the Klawock River drainage. Federal regulations also allow for the retention of incidentally harvested salmon, trout and char with the requirement that any salmon, trout or char taken in this manner be recorded on the subsistence fishing permit.

In 2000 and 2007 two separate proposals had been submitted to the Board requesting changes to the season and the fishing schedule. One of these proposals was rejected and the other was tabled as these proposals at the time were asking for changes that were meant to happen outside of Federal jurisdiction thus requiring Board of Fisheries action. In 2009 and 2010 the Board had to approve special action requests to extend our Federal season to match the State season following the State Board of Fish action which both actions extended the season from July 31st to August 7th.

Prince of Wales Hatchery Association maintains a weir on the Klawock River and recent escapements have ranged from 15,000 to 21,000 sockeye. On Page 235 in your Board materials is a table that lists historic sockeye escapements.

State subsistence harvests have been reported on permits issues by Fish and Game since 1969. Although the entire Klawock lake drainage is open for subsistence fishing, the majority of the sockeye harvested under this permit are taken in marine waters. The directed harvest of sockeye within the river and lake is very low due to the sediment bottom, the heavy amounts of large, woody debris making it nearly impossible to seine within the few deep -- large, deep holes on the river.

Since 2005 the run timing of Klawock sockeye has seemed to be later than normal with larger numbers of sockeye returning near the last week of the regulatory season dates. In years of late returns ADF&G has been asked to extend the subsistence fishery. The fishery has been extended in the past when it was determined that although late indications were that the
return would at least be of average size. Directed
direct fishing effort for sockeye in August is not typically as
high as that in July as pink salmon are more abundant
during this time frame.

The reported harvest of sockeye and the
total number of permits issued can be found in Table 2 of
your materials found on Page 237. And on site harvest
surveys during the period of 2001 to 2009 have suggested
that only 60 percent of the actual harvest is being
reported on the State subsistence permits.

Other than the Klawock Federal
subsistence regulations for Southeast do not have defined
seasons for harvesting sockeye. The Klawock drainage
currently in Federal regulation has a season of July 7th
to July 31 for directed harvest of sockeye and as I
mentioned earlier the Board in 2009 and '10 approved
special action requests to extend the season to August
7th.

Since 2002 the sockeye harvest reported
under Federal subsistence fishing permits has ranged from
a low of seven to a high of 321 sockeye and this harvest
has been reported taken with dipnets, seine and handline
gear.

Adoption of either of the proposals will
provide additional fishing time on the Klawock River for
Federal subsistence -- during the Federal subsistence
sockeye fishery during peak run timing.

FP 11-16 will create differing State and
Federal regulations while FP 11-17 will realign the State
and Federal regulations.

Extending the season as requested by both
proposals will result in some additional sockeye being
harvested. The additional harvest should not cause any
conservation concerns since the Federal harvest will most
likely be minimal when compared to the harvest occurring
in marine waters under State regulation. Removal of the
Monday to Friday fishing schedule may increase some
fishing pressure on the weekends, but this fishing
pressure would be limited to Federally-qualified
subsistence users.

The OSM preliminary conclusion is to
support Proposal FP 11-16 with a modification to remove
the defined season and fishing schedule for subsistence
fishing of sockeye in the Klawock Lake river drainage
from the regulation and to take no action on Proposal FP
11-17. Removal of the Klawock fishing season and
schedule will bring consistency to the Federal management
of subsistence sockeye fisheries in the Southeast area.
Removal of the season from Federal regulation will also
take away the need for the in-season manager to continue
to submit formal special action requests to this Board.
Removal of the fishing schedule will allow only
Federally-qualified users some extra time to harvest
sockeye and with the majority of the current subsistence
sockeye harvest occurring in the State managed marine
waters, the harvest in Federal waters again should be
minimal. Sockeye escapement since 2001 have been
considered above average and the Klawock sockeye return
can easily be monitored with the weir at the fish
hatchery. And if sockeye escapements do appear to be
below average during the season the Federal manager is
delegated to address the problem if necessary.

Thank you.

CHAIRMAN TOWARAK: Thank you for that
report. Are there any questions from the Board or the
RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: If not then we will
thank you for that report.

We will continue on with the summary of
public comments.

MR. LARSON: Mr. Chairman. Robert Larson
with the Forest Service. I'm the Southeast Council's
coordinator and there are no written public comments.

CHAIRMAN TOWARAK: Thank you. We will
then continue on to -- we will open the floor for public
testimony.

MR. PROBASCO: Thank you. Mr. Chair. I
have one person that would like to testify and that's Mr.
Willard Jackson.

MR. JACKSON: Good morning. My name is
Willard Jackson. I'm the Tribal Council secretary for
the Ketchikan Indian Community. I'm also the -- a drain
campaign B (ph) executive officer. I have family that
I just want to share a short story that's been passed down to us as Tlingit people. And it talks about the beginning of time. There was a gathering just like we are in today, making the decisions about those that follow behind us, my children, my grandchildren and the ones that are yet unborn. My brother said it perfectly yesterday when he made the statement that those follow appreciate that.

There was a gathering of elders and they were talking about planting the trees up on the mountain. And this grandmother was in the circle and then she spoke on behalf of her grandchildren and try and figure out how they're going to plant the tree on the mountain. Her young granddaughter was pulling away on her (in Tlingit) belongings, her blanket. And the young granddaughter would say I have an answer, grandma, I have an answer. And the grandmother would say (in Tlingit) go away, go away. They sent the first tree up on the mountain, it planted itself up on the rock and the wind blew it down. And it came back down to the circle and they continued to discuss as we're discussing today. The granddaughter continued to pull on her grandma's (in Tlingit), I have an answer, grandma, I have an answer. Grandma would say (in Tlingit) go away. They sent two trees up on the mountain this time and they planted themselves. And the wind and the snow and the rain blew them down. They came back to the circle and they discussed it further. In the meantime the little granddaughter is just tugging and tugging on her grandma's dress. Grandma, grandma, I have an answer. And finally grandma allowed her into the circle and grandma opened her ears to what her granddaughter was saying. And this is what her granddaughter said to her elders. Grandma, if we all go up on the mountain together and hold hands and support these trees that are going to be supporting us in the future, we'll have a life.

If we can all hold hands together today and look at the future and those that are coming behind us, they'll have a life in the future.

I want to thank you for allowing me to speak. The report I got back from the doctor is that I'm fine. I appreciate those of you that were praying for me and I appreciate my elders that are praying for the use of tomorrow.
Thank you very much.

CHAIRMAN TOWARAK: Thank you, Mr. Jackson. Are there any questions from the Board or the RAC Chairs of Mr. Willard. Mr. Haskett.

MR. HASKETT: I don't have a question, I just -- you know, thank you for sharing that with us and actually that's great news that you got so thank you for sharing that with us too.

CHAIRMAN TOWARAK: We echo that sentiment. Any other public comments?

MR. PROBASCO: Mr. Chair. That was the only one that signed up for this proposal.

CHAIRMAN TOWARAK: Thank you. Then we will move on to our Regional Council recommendations.

MR. ADAMS: Thank you. Mr. Chairman. My name is Bert Adams, I'm the Chair for the Southeast Regional Advisory Council. And I appreciate Mr. Willard's story about the young girl, you know, and standing and holding hands together to -- for a common cause. I really appreciate that.

I'd also like to recognize people who work behind the scenes, you know, like Mr. Reeves and Mr. Larson over there who provide a lot of, you know, valuable information to the RACs so that we can come before you and they're the ones who do all of the work and I make a comment here now and then and I get all of the credit for all of the good work that's being done, you know. So I just wanted to recognize them as well.

The Southeast Regional Advisory Council as explained earlier is accepting with modification number 16, FP 11-16 and taking no action on FP 11-17. As already explained, you know, I don't think I need to go into that further.

I'll just need to emphasize the fact that the reason why Mr. Douville submitted this proposal is he saw where there was an opportunity for non-local users coming in and, you know, over using the stock. And he felt that if the season was opened up for the weekends more subsistence users would be able to go in and take advantage of those opportunities. So in a sense it allowed more additional opportunities for subsistence...
users to take advantage of those resources. It also aligns with State regs. And anytime we see that happening it eliminates a lot of confusion to the subsistence user, you know, as to which law or which regulation am I going to violate or which one am I in align with. So anytime that the State and Feds came come together on any of these issues, you know, I think is really good. It also eliminates, you know, the need for special actions. We see over and over, you know, where special actions are used, you know, year after year after year after year after year after year. There has to become a point where, you know, you can eliminate those and then make them permanent. And I think that's what we're doing here.

Mr. Chairman. That's the extent of my report and I thank you very much for this opportunity.

CHAIRMAN TOWARAK: Thank you, Mr. Adams. Are there any questions from the other RAC Chairs or the Board.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your report.

We will then move on to the State Department of Fish and Game comments.

MR. PAPPAS: Thank you. Mr. Chair. Our comments are found on Page 240 and later on I'll reference to the map on Page 242. Excuse me. Yes, Page 240 and Page 242.

FP 11-16 would remove the daily hour restrictions and seasonal -- and season closure dates for the Federal subsistence sockeye salmon fishery in the Klawock River and Lake and rescind our restrictions implemented in 1986 at the request of the local Klawock area residents to provide subsistence fishing opportunity for local residents during the week. Adoption could potentially increase competition for local residents who harvest sockeye salmon for subsistence in the Klawock River.

FP 11-17 proposes to change the Federal subsistence fishery season closing date for sockeye salmon in the Klawock River from July 31st to August 7th in order to match the State subsistence fishing season
regulation adopted by the Alaska Board of Fisheries at the February, 2010 meeting. If FP 11-17 is adopted Federal subsistence users will have the same fishing season as State subsistence users participating in the State subsistence fishery which extends the opportunity to fish for one additional week past the current Federal subsistence season which closes a week earlier.

Conservation issues. No salmon stocks in the area have been determined by the Alaska Board of Fisheries to be a stock of conservation or management concern and adoption of these proposals will not likely cause conservation or management concerns.

While standing on State or private lands, including Stated owned submerged lands and shore lands, persons must comply with State laws and regulations regarding subsistence harvest. The uplands and all the shorelines for the Klawock River and Lake are private lands. No Federal public lands exist within the fishable Klawock River watershed which you can see on the map on Page 242 which is a land status map.

Most sockeye salmon are numerated through the weir into the Klawock system, but the escapement data are not utilized as a primary tool for in-season management of the State personal use and subsistence fisheries. The Department utilized the sockeye salmon patches (ph) data postseason.

The Department's recommendation. The Department opposes FP 11-16 which would eliminate the hour restrictions for the subsistence salmon fishery in Klawock River and opposes the extension of the season fishery closure date to August 15th. The Department recommends submitting this proposal to the Alaska Board of Fisheries public process to ensure the issue is evaluated by a majority of users from the affected Prince of Wales Island communities. The Department opposes the Office of Subsistence Management proposed modified language to eliminate the season dates of the Klawock salmon fishery. The Department does support FP 11-17 which extends the subsistence salmon -- sockeye salmon season to August 7th.

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

Fisheries Proposal FP11-16 and FP11-17:
Eliminate daily hour restrictions for the Klawock river
and lake federal subsistence sockeye salmon fishery and
extend the closure date of the Klawock River sockeye
salmon fishery to August 15.

Introduction: FP11-16, submitted by
Michael Douville, would remove the daily hour
restrictions and season closure date for the federal
subsistence sockeye salmon fishery in Klawock river and
lake, rescinding hour restrictions implemented in 1986 at
the request of local Klawock area residents. If adopted,
the proposal would allow all federally-qualified
subsistence users to fish 24 hours per day, seven days
per week through August 15, in Klawock river and lake.
Current federal subsistence fishery hours are from 8:00
am Monday until 5:00 pm Friday during the July 7 through
July 31 season.

FP11-17, submitted by the Southeast
Regional Advisory Council, proposes to change the federal
subsistence fishery season closing date for sockeye
salmon in the Klawock river and lake fishery from July 31
to August 7 in order to match the state subsistence
fishing season regulations adopted by the Alaska Board of
Fishing during the February 17 through 26, 2010,
meeting. The department supported both FSA09-03 and
FSA10-01, which were identical requests also approved by
the Federal Subsistence Board.

Impact on Subsistence Users: If FP11-16
is adopted, federal subsistence users will be allowed to
participate in the federal subsistence fishery for
sockeye salmon during evenings and weekends and during an
extended federal subsistence fishing season. The
restriction to the hours of the fishery was originally
put in place to provide subsistence fishing opportunities
for local residents during the week. If adopted as
proposed, all residents of Prince of Wales Island will be
able to fish for sockeye salmon in those waters of the
Klawock River where federal jurisdiction is claimed.
This may increase competition for local residents who
harvest sockeye salmon for subsistence in the Klawock
River. If FP11-16 is adopted, the federal and state
subsistence users would have a different fishing season
closure dates. Adjusting the closure date of the federal
subsistence sockeye salmon fishery to a date different
than the state subsistence fishery will create inconsistency between state and federal regulations and increase risk of enforcement actions on subsistence users fishing under different regulations.

If FP11-17 is adopted, federal subsistence users will have the same fishing season as state subsistence users participating in the state subsistence fishery, which extends the opportunity to fish for one additional week past the federal season, to August 7. Adjusting the closure date of the sockeye salmon fishery will provide consistency between state and federal regulations and reduce risk of enforcement actions on subsistence users fishing under different regulations.

Opportunity Provided by State: Salmon may be harvested under state subsistence regulations in the Klawock River from 8:00 am Monday until 5:00 pm Friday, from July 7 through August 7. The time limitations were adopted in 1986 by the Alaska Board of Fisheries in response to a proposal submitted by local residents of Klawock, who expressed concern that sockeye salmon were being taken on weekends by people from urban areas. The sockeye salmon harvest limit in the state managed subsistence fishery is 20 sockeye salmon per day, per household, there is no annual limit. Personal Use and Subsistence permit conditions prohibit the retention of incidentally caught sockeye salmon when the fishery is closed. Legal subsistence fishing gear in this area includes hand purse seines, beach seines, and dip nets. State regulations for this fishery include other time, area, and gear provisions as follows:

5AAC 01.710(e) From July 7 through August 7, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

5AAC 01.750 In the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

Conservation Issues: No salmon stocks in this area have been determined by the Alaska Board of Fisheries to be a stock of conservation or management concern, and adoption of these proposals will not likely
cause a conservation or management concern. Adoption of these proposals, however, is expected to increase federal subsistence harvest of sockeye salmon to an unknown degree. Currently, approximately 95% of the subsistence harvest effort takes place in the state subsistence fishery in state marine waters.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations regarding subsistence harvest. The uplands and all shorelines for the Klawock river and lake are private lands. No federal public lands exist within the fishable Klawock River watershed (see attached map). The department requests that federal subsistence administrators provide detailed maps that depict land ownership and specific boundaries of areas where federal regulations are claimed to apply. The maps provided with FP07-20, FSA 09-03, and FSA 10-01 federal analyses are not detailed enough for use by fishermen in the field.

Other Issues: Most sockeye salmon are enumerated through a weir into the Klawock system, but the escapement data are not utilized as a primary tool for the in-season management of the state personal use and subsistence fisheries. The time between sockeye salmon passing through the personal use and subsistence fisheries and passing the weir can be lengthy and variable depending up on environment conditions. Additionally, the weir does not consistently operate during the entire sockeye salmon run on some years. The department utilizes sockeye salmon passage data post season.

Recommendations: Oppose FP11-16, elimination of the hour restriction for the subsistence sockeye salmon fishery in Klawock river and lake and oppose extension of the season fishery closure date to August 15. The department recommends submitting this proposal to the Alaska Board of Fisheries public process to ensure this issue is evaluated by the majority of users from the affected Prince of Wales Island communities.

Oppose the Office of Subsistence Management proposed modified language to eliminate season dates of the Klawock sockeye salmon fishery.

Support FP11-17, extending the subsistence sockeye salmon season to August 7.
CHAIRMAN TOWARAK: Thank you for that report. Are there any questions from the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your report.

We will then continue on with the InterAgency Staff Committee comments. Dr. Wheeler.

DR. WHEELER: Thank you, Mr. Chair. The InterAgency Staff Committee found the Staff analysis to be a complete and accurate evaluation of the proposal and the Southeast Regional Advisory Council's discussion and recommendation on the analysis to be complete and clear. The InterAgency Staff Committee would also like to point out that as noted in this analysis the Klawock sockeye return can be easily monitored with the fish hatchery's weir and if sockeye escapements appear to be below average during the season or if harvest patterns change such that conservation concerns arise, the Federal in-season manager could issue a special action within Federal jurisdiction to address conservation concerns.

Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Are there any questions of the InterAgency Staff Committee comments.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your report.

We will continue then with Board discussion with Council Chairs and State liaisons. The floor is open. Ms. K'eit.

MS. K'EIT: Thank you, Mr. Chair. Just a comment really that we often talk about at this Board that our Board and working with the State, we want to try to align our regulations as much as possible to benefit the users. So I just see a tremendous value in doing that in this case and I appreciate the work of the RAC and of the Staff in helping to create the proposal with modification to benefit our users.
Thank you.

CHAIRMAN TOWARAK: Thank you. Any other comments.

(No comments)

CHAIRMAN TOWARAK: Not hearing any then we will continue the process with the Board actions.

MS. MASICA: Mr. Chair. I'd like to make a motion.

CHAIRMAN TOWARAK: The floor is yours.

MS. MASICA: I move to adopt the Southeast Alaska Subsistence Regional Advisory Council's recommendation to remove the defined season and fish schedule from regulation and after a second I'll provide some rationale.

MS. K'EIT: Second.

CHAIRMAN TOWARAK: Seconded by Ms. K'eit. Please continue.

MS. MASICA: And just to clarify, this is for 16.

CHAIRMAN TOWARAK: Thank you.

MS. MASICA: I don't feel that I need to go into a lot of detail with my rationale because I feel that excellent rationale has been given by both the Staff justification on Page 238 as well as the Council's rationale also in our book on 239 as well as the comments from the InterAgency Staff Committee. But there are a few key points that I'd like to include. The first of those is that this regulation remains from a time where it in effect provided an important local preference and conditions have changed and it's no longer needed. Secondly, there -- as we've heard there's no conservation need for this regulation and should there -- should that arise our local in-season managers can quickly address that conservation concern if and when it should arise. Monitoring for conservation in Federal waters is not difficult given the nearby location of the hatchery weir as we've heard about. And then finally the State recommends that we do not eliminate this regulation, but instead align with the State and the State in their
comments on Page 241 recommended submitting this proposal to the Board of Fisheries.

Thank you.

CHAIRMAN TOWARAK: Thank you for that rationale. Are there any further discussions on the motion? Mr. Adams.

MR. ADAMS: Thank you. Mr. Chairman. I just thank Beth for her bringing up the issue that there's a criteria, you know, in -- that she brought out that there is no conservation issue. When we consider, you know, proposals we use four. Number 1 is there substantial data to support the proposal. Number 2, is there a conservation issue, how does it affect adversely, you know, subsistence users. And we take into consideration as well the non-subsistence users. In all of those four criteria you found that there was no problem with those. So we felt then that we had a very strong proposal to submit to the Board on those issues. So I just thought I'd bring that out as a matter of information for you as well.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Adams.

Any other comments.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any other comments. Are we ready for Board action?

MS. PENDLETON: I'd like to call for the question.

CHAIRMAN TOWARAK: Call for the question. And I'm -- I apologize, the motion was already made and it was seconded, we were in discussion. The question has been called for. Final action, please.

MR. PROBASCO: Thank you. Mr. Chair.

Final action on FP 11-16 to support the Southeast RAC's recommendation with modification. Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Mr. Haskett.
MR. HASKETT: Yes.
MR. PROBASCO: Ms. K'eat.
MS. K'EIT: Yes.
MR. PROBASCO: Mr. Cribley.
MR. CRIBLEY: Yes.
MR. PROBASCO: Ms. Masica.
MS. MASICA: Yes.
MR. PROBASCO: And Ms. Pendleton.
MS. PENDLETON: Yes.
MR. PROBASCO: Motion carries 6/0.
CHAIRMAN TOWARAK: Thank you. Go ahead, Mr. Probasco.
MR. PROBASCO: Thank you. Mr. Chair. That was action on Proposal FP 11-16. And if you note in your book that the Council also took no action on 17, it would be appropriate for the Board to address Proposal 17 at this time and clarify how they'd like to deal with that.
CHAIRMAN TOWARAK: Okay. The floor is open for discussion on FP 11-17.
MS. MASICA: I'd like to note that I support the Southeast Regional Council's recommendation to take no action on number 17.
CHAIRMAN TOWARAK: Is there any objection to that recommendation by the Regional Council for the Board -- by the Board?
(No objection)
CHAIRMAN TOWARAK: Not hearing any then that will be noted in our records that the Board is not going to take any action on FP 11-17.
Thank you. This concludes FP 11-16 and 17. And before I move on to the next proposal which is 11-18, there's been a request that -- for those of us
that are sitting up here with the microphones that we speak a little bit louder so that our actions can be heard a little bit better by the -- by the people -- the public. So if we could get a little closer to the mics and speak a little bit louder I think that will be appreciated by those listening.

We will then continue on with FP 11-18. And with the analysis by the Staff. Mr. Larson.

MR. LARSON: Thank you. Mr. Chairman.

For the record my name is Robert Larson, I work with the Forest Service. In this case I'll be presenting the Staff analysis for FP 11-18. And that is a proposal submitted by the Southeast Alaska Council that requests all waters draining in Sections 1C and 1D be closed to the harvest of eulachon. The Sections 1C and 1D can -- is also referred to as the Unuk River area. And you can see that description of the area on a map on Page 248 of the Board book.

Populations of eulachon in these -- in this area are at critically low levels and there will likely not be a harvestable surplus in the foreseeable future. The area has been closed to all fishing for eulachons during the last five years, essentially one eulachon life cycle without any signs of stock recovery. With the stock size at this level there's few options available for conservation other than closing the fishery. The suggested regulatory language will provide clear direction to the public that the area will be closed to fishing for eulachon by all users.

The existing Federal regulations require that a permit be obtained prior to fishing for eulachons. The State has similar regulations in that they require a fishing permit. The State has a C&T determination, a positive, for this area. It is a subsistence fishery. All waters of this area are Federal waters, they're within the exterior boundary of the Tongass National Forest. Our customary and traditional use designation is all rural residents of both Southeast Alaska and Yakutat. The State has closed the fishery since -- beginning in 2001. That is the State's commercial fishery that was in place. The State's subsistence fishery has been closed since 2005. Under Federal rules we had our first fishery under a Federal jurisdiction in 2002. The area's been closed under Federal rules since 2006.

The Forest Service has had a fisheries
monitoring program on the Unuk River since 2001. The results of this monitoring and assessment work indicate that there's been almost no eulachon return to spawn in the Unuk River since 2004.

There's been a long history of use of the eulachons in the Unuk River. It's poorly documented prior to 1969, but it's well known in the -- there's been extensive harvests prior to that time. From 1969 to 2000 the Unuk River eulachons were sold under a commercial fishing program managed by the Department of Fish and Game. The commercial fishery -- the stock collapsed in 2000 and the commercial fishery was subsequently closed in 2001. The eulachon in the Federal fishery that started in 2001 are generally harvested by the same individuals that participated in the State's commercial fishery. The harvest history can be found on Page 250 of the Board book in a tabular format.

The proposal will close the Unuk River area to the harvest -- as modified it will close the Unuk River area to the harvest of eulachons by all users. In accordance with Board policy on closures, the closure will be reviewed by the Board no more than three years from establishment of the closure and at least every three years thereafter.

Because of the nature of spawn in the lower sections of the river any management actions by the Board, by the Federal program, will need to have continuous and coordination, you know, with the Department of Fish and Game and that's expected no matter what the Board action is.

Our conclusion is to support a proposed regulation that is slightly different than the original proposal. The modification is essentially the same intent, but it makes it clear that the river is, in fact, closed to all users.

Thank you. Mr. Chairman.

CHAIRMAN TOWARAK: Thank you, Mr. Larson. Are there any questions of the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, thank you for that report.
We will continue on then with the summary of public comments by the Regional Council coordinator.

MR. LARSON: Yes. Mr. Chairman. Robert Larson, the Southeast Council's coordinator. And there were no written public comments regarding this proposal.

CHAIRMAN TOWARAK: Thank you. We will then proceed on to the open -- we will open the floor for public testimony. Mr. Probasco.

MR. PROBASCO: Thank you. Mr. Chair. We have three individuals who'd like to testify on this proposal. The first one is Mr. Louie Wagner, Jr. Mr. Louie Wagner, Jr.

MR. WAGNER, JR.: Good morning. Mr. Chair. Board members. My name is Louie Wagner, Jr., from Metlakatla, Alaska, the only reservation in Alaska as you've been told and surrounded by a body of water and the only one surrounded by a body of water in the United States as a reservation. I'm here with my son, Louie Wagner, III and we're the users, we're -- as we're called, we are the eulachon people, that's been our life for thousands of years. And also here from Metlakatla is counterpart Tom Lang and Saul Atkinson who's at another meeting right now. But like my son and I we had to pay our own way up here and that's -- I'm sad to see not enough of our people can afford to come up here, very expensive for the trip and then the hotel and the eating every day. And our last paycheck was end of August and we will not have another paycheck until July when we go back to our fishing business again on the salmon. So it's difficult for our Native people to make it to these meetings and all I see is government people around here who have everything paid for and their paychecks. So I don't feel our villages get represented fairly at all, we don't have a voice and meeting up here has changed so much from 2000, 2001. I recognize one person, Mr. Adams, over there.

But we -- our family has never given up the right to fish the Unuk River on the eulachons. We have a petroglyph up there, it's a painted red sun down in the salt water on the rock bluff. That was painted thousands of years ago. There's another one like 30 miles up river into the Lake Creek area, marking that part of the river. And as long -- I'm -- I'm of the Bear Clan, as long as one has never sold, that river belonged to my family forever. It's like the deed to your
people's home and the title to your cars and boats. That was the Indian way.

So it's been a long tough battle, it's been going on for like 20 years now. And all we want to do is continue our way of life and when the eulachons, if and when they do come back, to bring them back for the people like we always have. It's just there's so much has happened since the decline of the eulachon that I'll try to get to here a little bit later. And let's see if I can read some of this stuff.

The U.S. Forest Service management of subsistence rights and use. In 2000 U.S. Forest Service took over from the State of Alaska the lands and fresh water lakes and rivers and we thought relief was on the way. And I was trying to work with the State Department of Fish and Game, it was impossible and that is -- was the purpose of the Federal Subsistence Board development.

In 2001 we attended Federal Subsistence Board meeting in Anchorage. We were given the right to fish eulachon in our river, Unuk River, as we forever had. We were given caretaker status, we were told that it would take an act of congress to change it after that vote was passed in 2001. We were given government to government status with the Federal government, the Forest Service. And then I believe in September at the AFN 2010 I spoke with a Forest Service subsistence supervisor planner who informed me that the Unuk River fishery was to be permanently closed, that's the Forest Service proposal to the Federal Subsistence Board and the Board was in high favor of it. And he also said if I agreed to the permanent closure of my eulachon fishery the Board would be very grateful. Our government to government relationship ended in 2001.

We read in the paper that the Forest Service has again closed the Unuk to eulachon fishing, we can't even pick up a dead one, we would be prosecuted. We have complained and demanded to meet, but to no good. There's been such a change over in the Forest Service Staff down in the Ketchikan area, we started out with Mr. Engersal who was the head forester and after this went through he was transferred to Washington, D.C. with his family who enjoyed living in Ketchikan. And then Glen Colin came as head forester, he was there two or three years and then he transferred to the Black Hills in I think South Dakota. And then Jerry Engersal he was transferred out -- no, no, I'm -- Todd Tisler. And so
pretty much all the connections have disappeared, there's no more contacts, no more information.

And then here's something else that is going on in the meantime here, the U.S. Forest Service is holding meetings in the Ketchikan Ranger District to make regulations for giving 50 percent of fish and wildlife use, special use of beaches, streams and lakes in the Tongass National Forest, Beam Canal to the charter boat industry without regard to subsistence users or personal recreational users. These charter permits, two year permits, will allow holder exclusive use to the area, non-paying users will not have access and be told to leave. We cannot allow this as it is, there is not enough resource and subsistence always comes first. The information the Forest Service gathered on the Beam Canal subsistence use given freely by our traditional users who told where their people hunted and gathered, buried their dead, to try to protect these traditional use areas.

I oppose this proposal, the FP 11-18 by Robert Larson, former State of Alaska Fish and Game employee now a Forest Service employee. And we just -- we cannot give the control back to the State. And the Federal Subsistence Board was formed to work for the people, to protect our way of life, not give it back to the State who is still denying subsistence and over regulating it. Now claiming the State waters are mixed with Federal waters when in the 2000 meeting up here in Anchorage there was a issue on, I think, Red Fish Bay out of Sitka where the subsistence users were having trouble getting the sockeye in because of the fishing out in the salt water. And at the time it was claimed that the Federal government had the right to extend out 600 feet out into the salt water to protect the subsistence and not be claiming that they can follow the tide all the way up into the river.

And this eulachon decline has been -- it all started approximately 20 years ago and a lot has happened in that meantime. The huge hatchery in Neeks Bay was developed and releasing all of that salmon and that's in West Beam Canal. They released millions of salmon that -- that will eat eulachons or whatever's available. It was proven in Canada that lights were overhead on the net pens, it attracted the eulachon fry and that the salmon were eating them up right in the pens. And also in Canada they put observers on the draggers that were dragging and they were -- they were killing a lot of eulachons. And they tried to regulate
when they were -- so they wouldn't fish when the
eulachons were migrating. And I haven't heard any more
on that.

And then we also approximately 20 years
ago the navy submarine test station had moved into West
Beam Canal and has been proven that their testing kill
small fish and is harmful to mammals. And I know for a
fact that the eulachon decline is not from over fishing.
Before all this activity took place and people started
building cabins on the river and flying their airplanes
in there where you have water like about this deep, it
drives them right up on the bank where they dry up and
can't get back in the water. They have nowhere to go and
there's been way too much air traffic in that river and
now they're even flying a huge twin Otter that is not --
I don't think can land safely in there, but they manage
to get it in that short stretch of water in and out for
the tour industry, I guess.

And all these things are adding up to the
decline of the eulachon and we just been very patient and
hoping we would continue as we have and just monitor it
the best we can and if they come back then we could look
at fishing them again. But to permanently close it and
the State claiming they're going to have control and open
it again and -- and that the waters are mixed there, I
don't believe that.

And like I say that petroglyph marks that
river as ours and we never sold it. We've had people --
the property owners call the State Troopers on us. One
time we were sitting there, we're roasting hotdogs
waiting for eulachons to come in the way we would pass
the time and wait for and watch for the eulachons. And
we were sitting there and here comes the State Trooper.
He comes across a bunch of private property and he comes
right to us and he says you guys shot a seal, I see it
floating down there. And someone said well, you just
crossed several properties there where you trespassed and
he got a little bit nervous. And then someone said well,
we're allowed to shoot seals and if we did shoot a seal
we certainly wouldn't leave it down there floating down
at the mouth of the river, we would have taken it,
skinned it, eat the liver, check the stomach for
eulachons, but we certainly wouldn't have left it
floating. So after he listened to that and then he
realized there was a mistake made, somebody made a bad
call there.
Another time one of the property owners
they -- they called the cops on us again. My son and I
were up hunting and we're floating down the river and I
see a strange boat over there, brand new jet boat sitting
over there and it looked like enforcement to me. So we
sat there a while, waited to see what they would do.
They didn't do nothing so I started up and I idled over
by them and asked them what was up. He said well, we got
a complaint, guy said you were harassing them. Well, we
weren't harassing them, we were busy hunting.

And here we are being treated this way
when our family have made grease on that river and fished
that river forever and other people could not come and
fish the eulachon on that river, our people would have to
fish it and give them the eulachon. That was the Indian
way.

I really need people to listen to those
of us that can come up here and are willing to give
testimony. It's not a easy thing to do, most of us are
just -- we're fishermen and we grew up with our elders
who taught us never to waste so we learned that the hard
way immediately because everything that we harvest is --
we use it. That was what the children nowadays miss is
growing up with the elders, times have changed to much.
The fish camps are gone in our area, we had fish camps
where we could spend time with the elders and help get
the firewood, get the fish, minus tides we'd spear the
Dungeness crab and they would cook them in a 50 gallon
drum on the beach, we'd all share it, they were wonderful
times and we didn't have the alcohol abuse or the drug
abuse that we have today.

And I have all the maps here from what I
mentioned earlier on what the Ranger District wants to do
to give up all our traditional subsistence areas to
leases to charter industry. And we dig clams and cockles
in all these places, we get our seaweed, we hunt.

I'd like to read you a little piece here
that's got the Federal taxes thing on it here, but it's
Indian fishing rights. The United States treaties,
Federal statutes and executive orders reserve to Indian
tribe the right to fish for subsistence and commercial
purposes, both on and off the reservation lands. And
that's under 78,734. And if the Chair would like to have
this there's more on it, I would like to give it to him.

I think that's all I have. Thank you.
CHAIRMAN TOWARAK: Thank you, Mr. Wagner.

Are there any questions of -- from the Board? Mr. Firmin.

MR. FIRMIN: Mr. Wagner, what --
historically what type of subsistence users utilize this
resource, do they come from all over or mainly from your
village and your tribe or do they come from Ketchikan
and, you know, do they flock to the area from different
places or.....

MR. WAGNER: On the eulachons?

MR. FIRMIN: Yes.

MR. WAGNER: It was the ones under the
Bear Clan, under my family, the Teikweidi, we're allowed
to fish this river. And I am basically the only one left
being that I'm from rural village and -- well, and my son
and we didn't participate in the land claims. And I'm
sorry if I offended anybody, I apologize, but we feel
that we are -- people get upset with us because we didn't
participate in the land claims. It was a tough choice,
our elders made this choice for us. And if we wanted to
take the land claims we were immediately to leave the
island, give up our membership. And we had to make that
choice for our children and I had to make it for my son.
And it was tough watching the people participate in all
of this and have a nice time and we were poor, you know,
and they got money and land and we sat and watched all
this happening. But we liked what we had and I'm very
grateful that our elder -- our elders could see the
future and we kept our reservation, we didn't expand it.

But over the years we've -- to ans --
back to your question, we -- my family we've kept the
tradition up of fishing the eulachons and it's mainly
been us. And when it was still under State jurisdiction
there the State was looking at trying to make it limited
entry for a while which it wasn't, it's not near big
enough, it's just a one time thing that's the people's
fish. And we always believed we were the caretakers of
this fish. And the reason there isn't the documentation
there covering all this is nobody paid any attention to
us, we continued as we always have to fish that river and
bring the eulachons home. And it seemed like after the
Kashake's herring fishery died off then we started
getting attention on what we were doing up the river.
We'd come in with a boat load of eulachons and sell them
in Ketchikan and Metlakatla, but we would call in at that
time and we would use Rat's Mouth and use the marine
radio so the people from Craig and Klawock and Hydaburg
and Kasaan, they could -- if they couldn't make it into
Ketchikan to meet the boat they would have relatives in
Ketchikan come down and get the fish. In that one
delivery we made in 2001, I believe, that there were so
many people, maybe 1,000 plus people waiting for the
eulachons and the women, all the women were singing and
I believe it was a Tlingit song and they were so happy to
have the fish come in. And so many of the people have
passed on now, they're not alive any more. And we've
gone so far in the past as getting signatures, we have
all this information yet we had to get signatures, I
don't know, 1,000 of them or more and so many of them
aren't here, but we had to bring that to the Fish and
Game to try to pressure them to allow us to continue our
way of life and be the caretakers. That's -- that's all
we want. We don't want to live in the big cities and --
we just want to stay in our village.

MR. FIRMIN: Thank you. Mr. Chair. One
more if I may. Would -- so is right now -- like is your
tribe basically has like a voluntary moratorium over the
fishery currently or is it.....

MR. WAGNER: No. No, in that 2001
meeting we were given the caretaker status and to
government to government with the Forest Service to
decide, you know, because the run was starting to weaken
and take it year by year and monitor it that way. And
that hasn't happened, that's all disappeared early on.

CHAIRMAN TOWARAK: Mr. Sampson.

MR. SAMPSON: Thank you very much for
your testimony, Willy, I guess I don't have any question,
but comments. Based on what the Chairman and the Board
had asked hopefully tomorrow we can have a good sit down
talk and have a good dialogue with the Federal Board in
regards to raising some of the issues that's before the
Native communities throughout the state. And I think and
the time would be an ideal time is tomorrow to raise
those things as I understand it. But there's reason for
you to apologize in a public setting like this. All
you're doing is expressing your views in regards to
protecting your way of life. And there's others that are
also viewing their -- giving their views in regard to
taking of resources. So I want to say that you don't --
there's no reason for you to apologize.
Thank you.

MR. WAGNER: Thank you.

CHAIRMAN TOWARAK: Ms. K'eit.

MS. K'EIT: Mr. Chair. Thank you. Mr. Wagner, thank you for your comments. I really appreciate the history that you gave us and the traditional knowledge that you shared about the Bear Clan's caretaking responsibilities for that area. And I don't have a question, but I do want to share my appreciation for that and my own appreciation for eulachon grease and seeing my uncle and the Tlingit Clan way, my brothers in the white way, my cousins making the oil and, in fact, we were talking about it this week and talking about our people as much as possible are adaptive and using whatever tools we could to make our processes efficient and effective and purposeful. And I just wanted to share when early in the week Mr. Atkinson testified in the -- on the non-agenda items, the first time I heard, but really appreciated his comment about Tsimshian being three-quarters eulachon grease and one-quarter salmon. So I hadn't heard that before and I look forward to sharing that with family and friends.

So gunalcheesh. Thank you.

MR. WAGNER: Thank you.

CHAIRMAN TOWARAK: Any further comments?

Mr. Adams.

MR. ADAMS: Thank you. Mr. Chairman. Mr. Wagner, appreciate your testimony today. I had a little opportunity to talk with you yesterday and I really appreciated that encounter as well. And, you know, I'd heard, you know, that you and Mr. Lang over there had some reasons why the decline was happening on the Unuk River. And so I was really curious, you know, to hear your reasons, you know, particularly the decline that was taking place over the past 20 years, the hatcheries and the navy submarines, you know, having some affect on the stocks in that area.

But I just, you know, wanted to ask you, you know, were you aware of the Regional Advisory Council meetings that were -- that we had in your area over the past few years, you know, we had one in Ketchikan a few year ago, another one in Saxman and most always, you
know, the -- this issue had been brought up to us. And I'm curious, you know, as to why, you know, you did not get the word, I'm sure that you would have attended if, you know, the word had gotten out to Metlakatla. I have relatives in Metlakatla and I told them, you know, I'm coming down to Ketchikan, I'll be in Saxman, it would be nice to have an opportunity to visit with you and I told them the reasons why I was there. So, you know, just from family to family, you know, the word got -- you know, out in that way. But I really feel it important, you know, that you people, the Metlakatla people, you know, get involved in the Regional Advisory Council meetings. And even as Mr. Lang said, I guess, you know, submitted several applications, you know, to be on this Board. And I think it would be well, you know, if you also did that.

But anyhow appreciate your comment about the reasons why you think the decline was happening and a little bit later on I'll give you the reasons we're -- why I have to support, you know, our Regional Advisory Council's recommendation on this issue. But gunalcheesh once again for your being here and sharing your experience with us.

MR. WAGNER: Thank you. But no, I have not received any information. I was fortunate to go to Fairbanks to the AFN meeting and that's where I was told that this was happening and by then it apparently was already too late. And all we want to do is continue as we were from 2001 there, that's all we're asking and not to make this permanent change. When things are permanent they're permanent. And that's just too strong, that proposal is just too strong and I don't feel with us being informed of any of this here that -- that it really needs to be reconsidered.

Thank you.

CHAIRMAN TOWARAK: Mr. Adams.

MR. ADAMS: Follow-up, Mr. Chairman. Thank you for that. But let me just reemphasize, you know, the fact that I think it's important that you do get involved, you know, with the Regional Advisory Council because it's through this avenue where people in the villages and communities, you know, can get their voices heard. You can come to our meetings, you can argue out your situation with us and we will certainly take them into consideration, you know.
This particular Federal Subsistence Board meeting is designed specifically to reach out to tribal organizations. And I hope that we see you tomorrow, you know, when that avenue happens because as Mr. Sampson said a lot of good information should be shared back and forth between us. But I really encourage you, you know, to get more people -- get somebody on this Council, the Southeast Regional Advisory Council and in that avenue we'll be able to hear your voice a lot stronger.

Gunalcheesh.

MR. WAGNER: Yes, and one more thing on that. We've had, I think, five or six people for certain apply to serve on the Council and to no avail, we've yet to have one picked and it's a little past due, I think. We need representation.

Thank you.

CHAIRMAN TOWARAK: Any further questions.

MS. K'EIT: Mr. Chair. I need to apologize to Mr. Lang, Sr., in the audience. He was actually the one that referenced (indiscernible) being three-quarter eulachon. So I apologize, Mr. Lang. And for non-eulachon oil users, you can think of it like eulachon oil to a lot of our Southeast people is like olive oil to the Italians. So it's very, very important.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Thank you. Mr. Chair. Just a point of clarification because I want to make sure because I heard you say a couple of times that you think this is something that's going to close it permanently and forever and, of course, this Board can re-look at any proposal, any decisions we make. When -- so nothing is forever, I mean, it can be open to revision again depending upon what we do. And I'm not predisposing what the decision will be, but would like to have that clarified.

CHAIRMAN TOWARAK: As far as I know the only thing that's forever is death and taxes.
(Laughter)

CHAIRMAN TOWARAK: Not far off. Mr. Probasco.

MR. PROBASCO: Thank you. Mr. Chair.

And thank you, Mr. Haskett for the segue. In fact, the Board has a policy where all closure reviews, both wildlife and fisheries, are even if a proposal isn't submitted, are reviewed every three years.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Sampson.

MR. SAMPSON: I guess this question would be more for your solicitor there. Because of the reservation status and that recognition, does this mean there's some exclusionaries in Federal law that would prohibit them from being part of a Council? I'm just trying to find out something that.....

MR. GOLTZ: Mr. Chairman. No, nothing that I know of would prohibit them from being on the Council. They're Alaska rural residents. I think the uniqueness of the reservation is that our regulations do not apply on reservations lands. But they could come on a Council and administer the rest of the Federal public lands.

MR. SAMPSON: Now when you refer to land, does that also encompass portions of those waters as a reservation?

MR. GOLTZ: Anything within the Metlakatla reservation is excluded from our jurisdiction. They have a unique land status that nobody else in the state has.

CHAIRMAN TOWARAK: But it's my understanding that this proposal is beyond the boundaries of the Metlakatla.....

MR. GOLTZ: Correct.

CHAIRMAN TOWARAK: .....Indian reservation.

MR. GOLTZ: They could be on the Council and administer the rest of the Federal jurisdiction. But
the reservation is a unique place.

CHAIRMAN TOWARAK: Any further questions.

(No comments)

CHAIRMAN TOWARAK: Thank you, Mr. Wagner.

MR. WAGNER: Thank you.

CHAIRMAN TOWARAK: We will proceed to the next public testimony.

MR. PROBASCO: Thank you, Mr. Chair. There's two more people that wish to testify on this proposal. And the next individual is Mr. Thomas Lang, Sr.

MR. LANG, SR.: You got to remember I'm the stander. I stand to make my speech and I really don't need this because once I get going they can hear me upstairs.

Your point that nothing's permanent, I spent 50 years of my life as a purse seiner in Southeast Alaska, Gulf of Alaska, I've fished all the way up to north of Bristol Bay in the Togiak area out to the Aleutians and in Area M around Sand Point, Gulf of Alaska, all the way down to Washington State. I had licenses and permits to do that. And when I first started fishing we were a territory. I'm leading up to your point that nothing's permanent anymore. I bought a $25 license to go fishing, I could fish the whole water from the Canadian border all the way up to the ice in Alaska for a $25 license. Fish and Game come along, we became a State, they divided it into areas, made it limited entry.

Limited entry was a real weird thing and in those days almost 90 percent of the fisheries were owned by Natives, every Native community that Louie mentioned a little while ago also had salmon canneries, salmon fishing fleets, it was a Native issue. Limited entry has taken it out of there, now it's a bankable industry and the Natives no longer control it, we're the only Native owned fish processing plant in Alaska. In Metlakatla we have a little cold storage left, we had a cannery. We still have a fishing fleet. But in like 50 years it went from fishing in the bays out into the straits, they pushed us out into the ocean saying that
we'll close this bay, this area like they want to close now, and when the fish come back in three years I imagine there will be billions in there and you can fish them again. But whenever the close an area the State -- they never open it again. Icy Straits, the whole area there, the Hoonah fishermen were there, the best fishermen in the world, best seiners in the world. They've told them to close it down for three years, we'll open it up again, they'll be so much salmon you don't have to worry about it. That was 25 years ago. The closure in our area was 45 years ago. They've moved us out into the ocean and now they don't let us fish in the ocean because the Canadians claim some of the fish so we don't even have a place to fish anymore hardly. Closed forever, they never open again once they close something. That's why we're opposing this.

Saul is not here because he has a real important meeting at the council -- I think it's with the Denali Committee involving money so it's real important and he'll be here. But the executive and him as a council gave me the right to go ahead and propose it even though they haven't had council action on it because we've never been at any meeting until this one, we've never seen this issue until here. I've never read the proposal until I got to here the other day just like I told you. So they gave me the right to ask you to in their -- we are having meetings on this to oppose it, please, please. The Southeast representative who should be fighting for my rights had -- they had several meetings like he said without us eulachon people and he has to oppose it now because their Council already decided to oppose -- to support the closure. I kind of -- I know you guys want to kind of ask me questions, what I want to know from you people that aren't from there that I heard you fighting for the Yukon issue real bad because a lot of your guys fish there, you get to fight for yourself, but I don't have nobody on this Board. I tried to -- I applied for this Board, got refused. Some guy from Petersburg interviewed me and Petersburg and Metlakatla are clashing, there's no way I would have got on here anyway, but we're going to try again. You keep saying try, but try and try again, but we've tried and we couldn't get on this Board.

The reservation status that you asked -- the gentleman asked about water, we have 3,000 feet of water around -- in the surrounding islands around our little island, the island's about say about 15 by 12 miles wide. It's not very big, we have a small
reservation, but we're real good at fishing, we make
money on it. We still run the herring issue, salmon, we
still make money off of our small reservation. It's real
tiny, one one-hundredth of a thousandth of a percent of
Alaska. But people think it's big because we're
successful, we're good business men.

Now the grease that Madam Kristin there
was referring to for thousands of years we've been
rendering -- our tribe goes past the border almost 200
miles down all the mainland rivers down halfway to
Seattle to Queen Charlotte Sound up to here. That's
Tsimshian territory on the mainland. So eulachon was the
basis of our trade. We had the large canoes, we traded
up and down the coast. Rendering eulachon grease was the
gold standard even if they didn't have no contact with
white people or no -- you're still going good because you
know what, here's the opposite point of what she made,
she said it's like olive oil, but do you know that one
gallon of grease is worth in our deal, starts at $500 up
to $800 for a gallon of rendered grease. A pretty good
gold standard, but it kept our people going for 15,000
years, that was a gold standard and it is today. We've
been doing it for 15,000 years until the State and
different people, the territory, the Federal government
took over the river.

Louie has the maps, I hope he makes a lot
of copies if you're going to discuss it again tomorrow,
the maps are what the Forest Service is planning for the
unit. All -- they've had several -- seven meetings in a
row discussing the Unuk without asking us to be at the
meeting. We found out by accident, we go to the meeting
and say what are you guys doing. And it's like the
gentleman said the other day, no Indians allowed. Maybe
dogs are allowed, but no Indians. That us, we're the
people. So we're opposing it because that three year
thing it's a joke, they're not going to do anything in
three years, every three years. Eulachons come every
year, we've been doing it on the rivers for years,
thousands of years, annually taking only what we needed.

One of the things that caused the
decline, you asked about the causes of the decline and
Louie iterated on a little bit was that at one time the
State was going to make it a limited entry process. Now
limited entry is a bankable product. You get a limited
entry permit, you get it by getting into the fishery and
if you get fish so long they give you a limited entry
permit then you could sell it, you can sell your right,
you could sell it. And some of them you -- in herring,
like in Sitka herring, the guys bought them for $50 when
they first started, they can sell them from 500,000 to $1
million now, that little permit. So when the State said
well, we're going to make eulachons in the Unuk a limited
entry process, hundreds and hundreds of people came,
large companies -- fishing companies came and went to
fish it because they wanted to get the permit which they
could own and probably sell, not even use. And they
decimated the run that year. The fish processors
especially in the Ketchikan area. The damn fools didn't
have a market, they didn't know what to do with -- they
had van loads of eulachons they took out of the river,
decimated that run and they didn't know what to do
with them because they didn't want the eulachons, they
wanted the permit. From that time on the place has never
recovered. They over fished it. We don't know whether
it ever will again. But to close it permanently, it'll
be permanent, guarantee you that, it'll be permanent if
you do that action.

Louie in his round about way, Louie's
family they have fishing boats and large packers, they
have the ability to go get the fish for the people.
That's about 40 miles away from our reservation in State
-- you know, State waters, it's about 40 miles up Beam
Canal from our reservation. And they do it for the whole
area. Like he said every -- they catch it for everyone,
there's seven villages down there in our area. So their
-- it's been in their family forever, but they do it for
us, the Tsimshian, the Tlingit and the Haida that live in
there, all profit from it. And the Tlingit in Saxman
they were in before statehood or before any discovery,
they were in kind of Tsimshian territory, but the
Williams family out of Saxman had the same right that
Louie -- the Williams family also got eulachons, Joe
Williams. They had permission from the tribe, from the
clan, I mean, the clan that ran it. They had to get
permission and they got it. So Joe Williams is a very
famous family, the Williams family in Saxman is very
noted. And that's how they got it. So it was our
people's but they only got what they needed and if the
run was poor, they knew it was poor so they'd bring in
very little. They'd say sorry, we couldn't fish too much
because they've done it for thousands of years. We know
how to take care of it.

Now the map that he's going to show you,
it -- planes landing in there, tourists landing in there,
sport fishermen going there, all guides, all for tourism
and now you're saying no Indians allowed. That -- I
didn't know I -- I'm going to have a hard time here
because I'm an old fisherman and I have a hard time
expressing myself without being mad when things like this
happen to me. So I might say something wrong because I'm
representing the Council now and I'm representing my
people, I'm not just representing Tom Lang. So I have to
be real careful, but they have given me permission to
request that you refuse this permanent closure. We could
look at it every year, they all know they should, in
fact, like Louie said, let Louie take care of it, let his
family take care of it. If the fish come back let them
do it, not the State, not the Federal government, they're
really in there decimating it with tourists and trying to
keep the people out that know how to manage it.

So we -- I'm really pleading with you to
just regardless of what our Southeast Council did without
us, he has to do what they decided. I'm begging the rest
of you, you don't have to, you don't have to vote for it,
vote against this thing. I'd like to hear from some of
these people instead of you asking me questions, I'd like
to hear what they have to say about what's happening.

And that's it, I better stop before I get
too carried away.

CHAIRMAN TOWARAK: Thank you, Mr. Lang.
Are there any questions from the Board or the RACs to Mr.
Lang? Mr. Adams.

MR. ADAMS: Mr. Lang, again I appreciate
your testimony today. And I found out the reason why the
decline was taking place was because of the -- it was
over fished. And that was kind of what I was looking for
and, you know, there might be some people who might have
some different ideas about that, but it's really helpful,
you know, to meet at this point in time. And like I said
I'm going to have to, you know, represent the Council,
but again I would encourage you as I did with Mr. Wagner
over there, get involved in this Regional Advisory
Council and your voice will be much stronger and well
heard at that time and hopefully you'll be able to find
somebody that can represent you from Metlakatla on the
Council.

So gunalcheesh. Thank you.

CHAIRMAN TOWARAK: Mr. Firmin.
MR. FIRMIN: Thank you. It says here on the map that this would only affect Unit 1C and 1D, but historically or do you have any eulachon streams in 1E that would supplement your tribal uses in the meantime?

MR. LANG, SR.: You'd have to ask Louie that, he's the fisherman. I -- I'm representing the council and he's the fisherman.

MR. WAGNER: Wrangell, the Stikine.

MR. LANG, SR.: The Stikine River.

MR. WAGNER: But it's a different river, we tried working it, it's not the same.

MR. LANG: There are several rivers, smaller one, I think, Louie, but not enough to satisfy the needs of the whole area.

MR. FIRMIN: Okay. Thank you.

CHAIRMAN TOWARAK: Any further questions? And when you answer the questions if you could speak into the mic that way the rest of the people could will hear your comments.

MR. REAKOFF: Thank you. Mr. Chairman. You mentioned the valley of the eulachon oil. I was wondering if customary trade is part of using the eulachon. And we talked about customary trade on the Yukon River, I was wondering if customary trade is practiced with eulachon oil.

MR. LANG: Yes. Yes, it is. Like I say it's the basis of our clan, the eulachon is the basis. Salmon is the next byproduct and then the cedar. The reason we hadn't gotten any further north on the cedar issue because cedar trees don't grow very big north of the Unuk which means the canoes and the cedar homes and the totem poles and things like that, there was no value, they had to be together in order to keep our tribe going. So further south we had the canoe things. I got pictures of canoes that are 65 feet long and they're freighter canoes they call them. They loaded them up with grease in watertight boxes, one piece boxes. And it is a real trade. You call it subsistence and user subsistence, but it's also a -- was a commercial entity even before money. We did it to survive, we had to go to where other people couldn't get it and, you know, people in the river can't
get crabs and halibut and things like that and we travel all the way up and down the coast trading. So it was a monetary issue, that's why I said the gold standard and it still is today. It still is today.

CHAIRMAN TOWARAK: Any further questions?

Go ahead.

AHTUANGARUAK: This proposal gives a lot of concern to me. There's a lot of discussion from the tribal people in that area of their lack of involvement to this process. There isn't enough information to help us see that there has been efforts to really look at this fishery and look at other things that may be incorporated into the process to help manage this fishery. And the impacts are to the local area, the people -- the tribal people of this area. It's -- this is a very difficult one for us to deal with. I would have liked to have seen more information in our process showing the interaction and discussion that we're getting here today and yet we're into this process where we're moving forward to make some decisions. We have had a lot of discussion over other areas that have been closed over the years and the generations of closure has showed us that we're having problems within our process. We're in a limited venue of what we're trying to discuss, but we have so many additional variables that are affecting us that are not included into this process so we're so limited in our scope that impacts our tribal people. This is very hard, I don't know what the answer is, I don't have enough information with what's been presented today to show that we should impact them so much.

Thank you.

CHAIRMAN TOWARAK: Thank you for your comments and we will continue with the process, but I -- personally I think we have options still available to us that we can probably review at a later time after we hear the rest of the -- after we go through the rest of the process that we have assigned to us at this point.

Mr. Haskett and Ms. K'eit, did you have your hand up too?

MR. HASKETT: So just I guess two questions for you. And I understand your concerns about once something is closed maybe it never gets opened, but I got to go back and look at why we're talking about doing this. It's because the population there is
actually at a critically low level so I -- I guess my first question for you is there any disagreement that there's a problem with the population levels there right now?

MR. LANG, SR.: No, we could handle that, we've done it before. Like I say with the clan that runs the area, they can handle it. When there's no fish -- the fishermen don't fish when there's no fish. And especially Natives do not over fish when there's few fish. We know when to leave it alone and we know when to use it. But to permanently close it, you take that away from us, you take the management away from us. There is a problem, but we're not working on the problem. Closing an area is not answering a problem, it's creating one.

MR. HASKETT: Okay. Then a second -- thank you. I mean, the second point, I guess, I need clarified is that -- so my understanding is that it's been closed by special action by the Forest Service for the last five years, was that something that you were able to work with or did you have a concern with that as well?

MR. LANG, SR.: We kind of leave it up to the fishermen to come to the Council and see what they -- what they're going to do and so far as I know as long as there was no permanent closure I think they were working on something. And to close it means you're not going to work on it anymore until some damn fool comes up three years later and say hey, there might be a eulachon in there. That's the wrong approach.

MR. HASKETT: Okay. So -- and I'm almost done here, I'm just trying to figure out the whole kind of gambit of solutions we're looking at. So an alternate solution, and again I'm not predisposing anything this Board might end up doing, would be if we left it as is now where the closures continued, but people were working on this the way you're looking at it, that would be an acceptable or at least more acceptable than what's being proposed here?

MR. LANG, SR.: Yes. That's -- we thought that's the way it was going to go. Otherwise we would have been deeply involved really from the start if we didn't know that this was going to happen.

MR. HASKETT: Okay. Thank you. I'm not
trying.....

MR. LANG, SR.: No.

MR. HASKETT: .....to predispose anything, I just want to get some clarification.

MR. LANG, SR.: I appreciate that. You're bringing out some points that I.....

MR. HASKETT: Okay.

MR. LANG, SR.: .....probably forgot anyway.

MR. HASKETT: Okay. Thank you.

MR. LANG, SR.: Thank you.

CHAIRMAN TOWARAK: Ms. K'eit.

MS. K'EIT: Thank you. Mr. Chair. Mr. Lang, you said that you had -- you wanted us to share with you our thinking or.....

MR. LANG, SR.: Yes.

MS. K'EIT: .....answer some of your questions. And something I am thinking about that hasn't come up yet is that -- and actually Mr. Towarak kind of referred to it, that we do have other options besides if the Board were to vote and approve the proposal based on our RAC's recommendations. So to clarify maybe for you and your tribe that you're representing and for Mr. Wagner that also spoke, one of the other options is that -- I mean, there's several different options the Board can take, they can take no action, they could vote to approve or reject, they could defer the action and say, you know, we don't feel there's enough information, let's come back to it. But they could also -- well, for any of those the Board could say well, you know, there's been other fisheries, they have special actions on them for many, many years before we finally took an action to either close or to change the regulation and in this case we're saying special actions had to be taken for three, four, five years.

And, you know, in my view I don't -- I don't see a lot of harm in saying, you know, let's do what Mr. Haskan even recommended of, you know, let's see
what -- or he recommended as a possibility, let's not act
and see what happens or let's defer and see what happens
rather than do a permanent closure which is a big concern
that you've shared. And, I mean, that's just -- and
information I provide to you as what the Board can do,
but then also just for my colleagues on the Board to
think about. One area that we have some responsibility
in is the law says that we're to provide deference to our
Regional Advisory Councils, in this case the Southeast
RAC. And so, you know, we -- or myself, I'll speak for
myself, you know, that makes it a difficult issue just as
the Yukon issues were and the Kodiak issues even. So we
have to keep that in consideration and balance that in
our decision making.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Thank you. Mr. Chair. The
only clarification I'd like to make on that, I wasn't
making a recommendation, I'm just trying to get that on
the table so that I'd like -- before we're done I'd also
like to hear from the Forest Service on this too to get
some kind of sense of kind of where they're in this as
well.

I'd like to -- Mr. Chair. I'd like to ask a legal question to your attorney.

MR. GOLTZ: Go ahead.

MR. LANG, SR.: Yeah, if things go bad
for us and don't go our way do we have any recourse to
come back to the.....

MR. GOLTZ: The answer is yes, you could
file an RFR and.....

MR. LANG, SR.: Yeah, what is RFR, I've
heard the word, but I don't know what it means.

MR. GOLTZ: That lady on your left is
writing a note right now that will be transmitted to the
Staff and we'll get you the information.

CHAIRMAN TOWARAK: That's the lady on
your right.

(Laughter)
MR. LANG, SR.: Anything else?

CHAIRMAN TOWARAK: Any further questions of Mr. Lang.

(No comments)

MR. LANG, SR.: Thank you.

CHAIRMAN TOWARAK: We want to thank you for.....

MR. LANG, SR.: Thank you, sir.

CHAIRMAN TOWARAK: .....your comments and we hope you'll stay with us through the end of this process.

Further public comments.

MR. PROBASCO: Mr. Chair. We have one last individual that would like to speak on public testimony. And for your consideration after this is done we had a Board member request that we break for lunch after public testimony. Mr. Richard Jackson.

CHAIRMAN TOWARAK: While he's on his way up are there any objections to taking a lunch break after we listen to Mr. Jackson.

(No comments)

CHAIRMAN TOWARAK: If that's the case we will break for an hour and 15 minutes.

MR. JACKSON: Thank you. By custom I will thank the people from this area who are traditional settlers here for allowing me to be on their land. I thank the hospitality of the RAC Committee and especially Mr. Sampson in greeting me and to the Federal Subsistence Board for allowing me to speak today, also the RAC Advisory Committee Regional.

Looking at this issue here -- I am from the Teikweidi, I am from the Tundaquan from Kadohnoca (ph), Tongass Island. Mr. Wagner I believe is from the Sanuquan. That's from Gosh and Kirk Point. And also before I speak again I'd like to recognize my father's people, Kristie from Kaagwaantaan, from Klawock.
We look at this issue of the Unuk River which means a place of dreams (in Native). That's when the Teikweidi had fish camps up that way and the Unuk was a melting pot for our grease, eulachon grease. Now there isn't any left, I heard there was only 24 caught last year and we look at the page here and there's thousands of pounds that were caught some years. And before this dry spell there was -- at one time there was four years of no fish, but now we're at six.

The Tongass Tribe or Tundaquan more properly called. The -- now we have to go to other resources, we go to Canada, they have the Nass River, Nass Cau meaning the Nass Man. He comes up and sells the grease. Sometimes they put it in sealed cans because they don't want the jar to break because it's fermented, quite strong.

My Auntie Emma Williams she went through the flu epidemic in 1918, locked herself in an apartment up by Deermont Street and watched them cart coffins of children down the hill. She said she drank that eulachon grease with her husband and she survived. I would say this eulachon grease is -- that -- like -- to a Tlingit it's the highest commodity for value you could possibly eat. And now we have to call my nephew here in Anchorage, he's a jet pilot for Alaska Airlines, Joe Jackson, and they go down the river and get eulachons here and they ship them to us when we came from one of the richest areas where eulachons were. Do I blame the commercial fisheries, I don't think so. I see these years of decline that happened prior to the six years. Mismanagement from the State or the Federal, I don't know, I don't think so, because it showed that precedence before then, that we had these years where there were zero, no one can explain it. I talked to Dr. Dolly Garza, she taught at the University of Alaska in Ketchikan as a biologist and she said possibly a catastrophic, you know, act of god or nature, which somehow these eulachons did not come back.

Up in that area where Mr. Wagner's referred to that's where we had a fish camp. Well, my grandfather had a camp there and the Forest Service burned it down. They apologized years later, a couple years ago I think for, you know, influencing the social economy of the traditional people irregardless of whether they're from the Tsimshian or the Tlingit or the Haida or the Inishka, we shared these things with permission, Teikweidi did share with the Teikweidi -- the Tonga
shared with the Teikweidi of the Cape Fox, usually
trough marriages where you married into the families,
someone on the other side and then we'd share that area.
And for -- they used to return time immemorial now all of
a sudden we're without this resource and it's very
discerning.

And I looked at your proposal here and I
generated some questions which I hope that you can answer
for me today. Why would you want to regulate this, to
close these waters when you already have closed permit
process. There's no permits here, no permits you can't
fish. Am I wrong, you know, so what are aiming for, you
can't fish. It's almost like you're in a wait and see
mode so let's see what happens. Without those permits
you're breaking Federal law or State law, whatever.

But on the other side of it I -- as a
traditional user, my family was -- would go up there and
Joe, Sr. was a (in Native) from the Hoburt house in
Saxman and would come to the village from the Unuk River
and they would produce this grease on the beach I
remember when I was a little boy. And he was a (in
Native) share with the village. And Saxman was a
combination of Tundaquan from Tongass Island and Cape Fox
who came from Kirk Point, they moved to the Ketchikan
area in 1893. And if you look at the possessory rights
of that area done by Goldschmidt and Haas in 1946, I'm
sure you're seen it, it shows these areas to in effect be
under the Teikweidi of the Tlingit, of the Cape Fox which
Louie Wagner is.

And Mr. Lang was correct that we do share
our resources in a very conservative way which holds
regard to what's there and available.

The -- my biggest concern that I heard
from my tribal members on both the (indiscernible) side,
not only from Tlingit or the Haida and the Tsimshians we
were concerned with the commercial harvests. Now that
might have an affect of zero on us, but I saw precedence
where there was four straight years of no fishing then he
showed up so I'm not sure it was quite the cause, but it
could have been. Could have been from the.....

So I'm at a quandary here as far as how
to respond to this because I'm only responding for the
Tongass Tribe. I'm Teikweidi, we have a traditional
council in Ketchikan. And my brother, he's on the
council. I would say that given that I can't remember
the questions I asked him now, I said what and why would
you want to have a recommendation of closing it, you
could just probably maintain the status quo, what harm
would that do. They're in a wait and see mode. Get your
researches out there, count the eulachons and when they
come back you call us up and I'll go harvest them.

That's pretty much what I have to say.

CHAIRMAN TOWARAK: Thank you, Mr. Jackson. Are there any questions of Mr. Jackson.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you.....

MR. JACKSON: Thank you.

CHAIRMAN TOWARAK: .....for your testimony. Any -- is that the final testimony?

MR. PROBASCO: Mr. Chair. For this proposal that is the final public comment. Just for
those on-line as well as others, I still have green
sheets for other proposals that will be taken up after
lunch.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Okay. If that's the case then we will take a break for lunch. It's five
after 12:00. We will reconvene at 1:15.

(Off record)

(On record)

CHAIRMAN TOWARAK: I'm going to call this session back to order. At the time we broke for lunch we
were in the process of listening to public testimony. And I believe that we've completed that.

MR. PROBASCO: Mr. Chair. We did complete public testimony and we would then go into
Regional Councils. If you wouldn't mind I do have one
clarification from yesterday's actions that.....

CHAIRMAN TOWARAK: Sure. Go ahead.
MR. PROBASCO: Thank you. Mr. Chair.

And for Board members I just wanted to get a head nod because I was looking at my notes last night and when we requested the YK, Eastern and Western Councils to form a subcommittee, you'll note that the Western Interior Council had nominated or forwarded two names and two alternates, but we didn't envision the size of that committee and so my intent was to follow the Western Interior's lead to work with the three Councils and have two representatives from each Council to serve on that subcommittee and also recommend that they appoint alternates. Is that okay?

MR. REAKOFF: Mr. Chair. If I could speak to that issue. The -- and we also appointed people that were fishers on the Yukon River. Councils can be made up of membership that's not on the Yukon River and so we -- our member -- our appointed members are from -- fishers from the Yukon River itself, mainstem.

CHAIRMAN TOWARAK: I'm envisioning six people there and what would you do in a three to three tie?

MR. PROBASCO: Mr. Chair. Subcommittees as the intent is to work towards a consensus and a recommendation and I think that's something that we would tackle, but the whole purpose of this is to work towards consensus and develop a recommendation. And I don't think -- if the three councils couldn't reach a consensus we wouldn't have a proposal to go forward. So the goal is to reach a recommendation that all three Councils can agree upon.

CHAIRMAN TOWARAK: Okay. That sounds reasonable. I've just been involved in so many meetings where there's been a tie and you're deadlocked and no one will move, but in this case it sounds like it will move.

MR. L. WILDE: Mr. Chairman.

CHAIRMAN TOWARAK: Mr. Wilde.

MR. L. WILDE: If I may, Mr. Chairman.

We have three different areas in our region and we were envisioning and we would like to request three Council members so that all areas of our area is covered.
MR. REAKOFF: Mr. Chair. In response to that, our Council was fairly firm on we wanted to have equal representation on working or on the subcommittee. And so we would -- there has to be an equal amount from each Council for this to -- for the process to work correctly.

CHAIRMAN TOWARAK: If each Council had three each that would be nine, that would resolve my odd issue.

(Laughter)

CHAIRMAN TOWARAK: Mr. Firmin.

MR. FIRMIN: Thank you. Mr. Chair. The Eastern Interior Council has three chosen people already, all three are fishermen and two live on the river. However we do not have alternates, but as the Western and Eastern Interior both sent letters of request to the Yukon Kusko RAC to already have members sent, I was hoping this would be expedited by our next RAC meeting so that we could possibly get something in place by summer instead of waiting any longer for these conservation measures.

Thank you.

MR. PROBASCO: Mr. Chair. I didn't want to take up a lot of time on this, the wishes of the Board could either be two or three. I was not aware of Mr. Firmin's Council's actions because it wasn't in the booklet, but I appreciate that. This still has to go back to the Councils this winter meeting to make those appointments because we don't have anything from the YK at this point.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: Mr. Chair. I guess my suggestion is it sounds like two already have three and so I think allow each one of the groups to decide up to three and still allow the two alternates. That would work equally well.

CHAIRMAN TOWARAK: Any objections to that?

(No objection)
CHAIRMAN TOWARAK: That will be the process then.

MR. HASKETT: Okay. Thank you.

CHAIRMAN TOWARAK: Okay. We are now to the fourth step in our process of Regional Council recommendations. Mr. Adams.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Regional Advisory Council supports this proposal with a modification. The modified proposed regulation should read you must possess a subsistence fishing permit to take salmon, trout, grayling or char and all fresh water streams flowing into Section 1C and D are closed to the harvest of eulachon by all users.

This is where the Council stands and as we listened to many of the people -- well, listened to testimonies from people from Metlakatla and, of course, from the Ketchikan area this morning, I really sympathize, you know, with their problems. However, you know, the Council has been watching this particular river for many, many years. I remember in -- six or seven years ago we had been getting little reports about how the eulachons were not showing up very well there. And personally this was a real big concern to me because I saw some evidence up in our area in Yakutat where the Situk River eulachons were beginning to not come as plentiful as they used to. And so I kind of took an interest in what was happening down there and we see, you know, over the years how it diminished almost down to nothing. And with that I think the Council, you know, really felt that we needed to close it to all user groups.

And so, you know, I stand by that even though I do, you know, recognize the testimonies that have taken place this morning, I have to do what the Council has asked me to do.

Let me also if I might, Mr. Chairman, just explain some of the reasons why I became concerned, you know, with the eulachons and not only in that area, I thought it was a place where we could start to do -- to monitor that particular river to see if there's a pattern that might be happening, you know, all up and down the coast. And, of course, you know, as I said earlier it got to a point where there's hardly anything coming into that river at all. And then I also mentioned, you know,
the problems with our Yakutat stock on the Situk River. I have complained so much about it, you know, over the years since this monitoring or since our concern of the Unuk River took place and I just didn't want to see this happen in other areas. And because of my, you know, concern for the Situk River particularly we were able to have a four year survey approved, you know, and that survey started last year and it encompasses 18 rivers, all the way from Taca Creek right near the airport in Yakutat, all the way down to Dry Bay which expands about 60 miles or so. So there's 18 rivers that this survey is going to encompass.

And I've had the privilege of flying a couple, it's air surveys, flying about three of those flights. And I remember the very first flight that we took, we flew right over the Situk River and it was, you know, probably about oh, in the afternoon sometime. And I saw -- we saw some evidence of some eulachons right along the beach there, right along the river bank rather. And then we made our flight down to the Dry Bay and came back. And when I got home I called one of my sons and I told him you better get out there and see what -- see if you can catch some of those eulachons. And he's oh, okay, I'll go out on Thursday. This was Monday. And I said no, go out there right now. And, of course, you know, he half obeyed me, he went the next day instead.

(Laughter)

MR. ADAMS: But by the time that he -- when he got out there, you know, they were gone. And then some other trips that we made down there, you know, showed some real strong evidence -- not real strong evidence of eulachons, but the strongest display of eulachons was on the Auke Bay River. We have the Situk, Arhnklin, Dangerous, Auke Bay, you know, Italio, Auke Bay and then the Dry Bay area. And I never saw so many eulachons in all my life, I never saw so many sea lions in all my life, all the way up and down the Auke Bay River. But that was the only river that had any real strong concentration of eulachons. And it lasted maybe a few days and then they were all gone again. And there was some weak displays, you know, on the Dangerous. The Italio River I think we probably got down there a little too late, that run was all over and then just spatters of eulachons, you know, in some of the other areas. And so hopefully this survey, you know, over the next four years will be able to tell us a little bit about what is happening.
I did notice one thing about the eulachons in the Situk River, they were all males, didn't have any evidence of any females in that group. And so I think, you know, that's a serious concern to us.

But here's something that was enlightening to me. Many, many years ago there was a big barge that had broken loose from a tug and it washed up on the beach there between the coast guard station and the Situk River. And the -- the -- it had real big, you know, holes in the side and everything and the tide would come in and it would fill that barge up with water and eulachons would go in there. And when the tide went out, you know, the people of the town used to go out there and they'd get their fill. And so I'm really -- and this might relate, you know, to the Unuk River as well. I'm really concerned that maybe the habitat there is not suitable for eulachons to go through and go to, but they were, you know, out on the ocean, okay, they just weren't going into the places where they normally spawn and do their business.

But I just, you know, wanted to share that with you because eulachons is an important part of our diet and we look forward to them coming every year. I remember when I was just a young boy the young men would go out to the Situk River and they didn't have the transportation that we have right now so they would take their sleds, you know, and tow it all out -- tow that sled out. And it's 10 miles long, you know, from the community to Yakutat and they would get their eulachons, just oodles and oodles of it. And then they would bring it in and share it with the community. We saw that happening up to maybe six or seven years ago and then I really noticed that there was a real serious decline on the -- on the Situk River. I'm using that as a monitor, but some of the other rivers, you know, in that area, you know, are like the Ayakulik River is having real good returns of eulachons. I realize, you know, that eulachons don't -- they're not like salmon, they don't go back to the river that they were spawned in. And so I'm thinking, you know, maybe there's something wrong with the habitat and as maybe testimony a little earlier said, you know, the hatchery, you know, competition with the hatchery fish, you know, eating the eulachons and, of course, a navy submarine testing that took place there. And, you know, probably the over fishing, you know, but I'm just kind of curious, you know, to see what happens -- what's going to happen with these surveys that take place in the next few years. It's a four year survey,
we're going to start our second one this year and I think it's going to start next month at which time I may be able to go out and fly a little bit.

But I just thought I'd share those thoughts with you and, you know, I like, you know, the people from Metlakatla and Ketchikan and people who use that Unuk River for eulachons, I'm just as concerned as you are. And I do hope and it's in my sincere prayer that somehow or other those little fishes will come back so they can bless us with our very first fresh fish in the season.

So that's about all I have to say, Mr. Chairman, and I thank you for listening to me.

CHAIRMAN TOWARAK: Thank you, Mr. Adams.

MR. L. WILDE: If I may. Thank you. Mr. Chairman. If I may just a bit of information concerning the eulachon also on the -- in Hooper Bay. In the last three years we've had kids go down there with gunnysacks and along the -- as the wave breaks they dip the gunnysacks and dip them up like -- I've never seen anything like that before. So they're -- I know there's a lot of them running out there in the sea. And it might be a good project for some biologist to come out and give it a study to see what's going on out there.

I thought I'd share that also with you.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you, Mr. Wilde.

MR. LOHSE: Mr. Chair. Through the Chair. It's kind of interesting what you're talking about eulachon there because I'm wondering is it just that river or is the whole area having problems with eulachon because we've noticed in Cordova that one year you'll have them in one stream so thick that you -- you know, that you can just down and catch them by hand and the next year or maybe for six or seven years they won't be in that stream, but they'll be in one of the other sloughs or they'll be in the river. They don't seem to be very consistent and they don't -- and even the runs aren't consistent as to the time, you know, one year we'll have a February run in Elganic Slough, the next
year we'll have a June run in Elganic Slough. And I was just -- you know, and we know that we have eulachon in the ocean and I was just wondering if they were having the same kind of issues down in Southeastern or is it just a general decline in eulachon district wide.

CHAIRMAN TOWARAK: Do any biologists, either State or the Federal biologists have a response to that question? Mr. Larson.

MR. LARSON: Mr. Chairman. Mr. Lohse.

The stocks of eulachon, there's a general stock composition, it's -- if you group them as a whole south of the Unuk River, this southern stock is a threatened species, it's very, very low numbers in a whole bunch of different populations south of the Alaska border. That being said there was reported in 2010 a fairly good return to the Skeena River down by Prince Rupert just across the border south of Ketchikan. In Southeast Alaska there are eulachons that occur near Haines, Taca River behind Juneau, Stikine River between Wrangell and Petersburg and in the Unuk River. Other than that there are no real persistent populations of eulachons. And we do not have a -- other than the Unuk River we do not have a -- any real indexing or stock monitoring program with the exception of -- and I didn't mention this, the Berners River near Juneau just on the north side. We've been doing some work up there, the Forest Service has been cooperating with the Fish and Game to investigate methods of doing stock assessments. And there is -- you know, there seems to be some methodologies out there that we could use especially on smaller systems. On larger system, for instance, the Taca or the Stikine River or the Copper River, the scope of that -- you know, the size of the water body is really difficult to deal with and we're dealing with ice and that kind of that. But we don't really have a -- what I could say is a definitive way of describing the size of our populations.

CHAIRMAN TOWARAK: Thank you. Mr. Sampson.

MR. SAMPSON: I guess a question to the State of Alaska. When the State commercialized the take of that source and put a closure because of the potential dive of that resource, did the State attempt to do any studies of that stock where you've commercialized then when the stock's numbers start coming down you knew that it was happening, was there any attempts to do any studies at all?
CHAIRMAN TOWARAK: If I could inject here for a second. We're going to be hearing from the State next, perhaps you'll have some comments in your -- and in the interests of time we will get back to the Regional Chair, Mr. Adams.

MR. ADAMS: My comment is going to be really short. Mr. Chairman. I understand the eulachons, you know, spawn their eggs at night. So maybe their GPS's aren't working or, you know, maybe they lost their way or something. I just thought maybe to inject a little bit of humor into this situation that I'd share that with you.

CHAIRMAN TOWARAK: Thank you, Mr. Adams. If there aren't any further comments -- I assume that none of the other regions have any need to -- we will move on to the Department of Fish and Game from the State.

MR. PAPPAS: Thank you. Mr. Chair. Our comments are located on Page 253 in your book, I'll be summarizing from them.

If this proposal's adopted Federal and State subsistence users cannot harvest eulachon in the drainages of Sections 1C and 1D until stocks rebuild and the fishery reopens. The State eulachon fishery in Section 1C and D have been closed by emergency order since 2006 due to conservation concerns. Since 2004 there have been minimal returns. The eulachon stocks within Sections 1C and 1D are at critically low levels right now. The personal use, commercial and subsistence fisheries have been closed for several years in anticipation of rebuilding. Eulachon frequently mill in estriol areas of a system moving in and out of water bodies with the tide. A fishery closure to all users and waters claimed under Federal subsistence jurisdiction exposes participants in the open State fishery to enforcement by Federal officers. Determining exact locations of mean high tide boundary of the Tongass National Forest would be challenging while fishing from a boat. The Department requests Federal subsistence administrators provide detailed maps that depict land ownership and specific boundaries of areas where Federal regulations are claimed to apply.

The Department supports this proposal with modification to be no Federal season for the harvest of eulachon in Sections 1C and 1D. This modification
would remove the procedural burden of opening a closed
fishery when eulachon numbers rebound in these sections.
Because the water in which the eulachon move include an
intermixture of State waters and waters where Federal
regulations are claimed to apply, it would be less
onerous on the Federal subsistence users if the
modification read Section 27(i)(13) subpart 22, all
drainages of fishing Sections 1C and D, no Federal season
for eulachon. Thus if eulachon numbers rebound
sufficiently that the State is able to open up a
subsistence fishery, opportunity to all subsistence users
could occur without delay due to the process necessary to
reopen an area that's closed by Federally-qualified and
non-qualified users. If the waters are closed where
Federal jurisdiction is claimed and the State opens a
fishery all fishermen would need to know -- would need to
assure they are fishing in State waters.

Thank you, Mr. Chair.

And your answer for the question have we
done research since the commercial fishery's closed.

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

Fisheries Proposal FP11-18: Close
fisheries Sections 1-C and 1-D in Southeast Alaska to the
federal subsistence harvest of eulachon in Southeast
Alaska.

Introduction: The Southeast Regional
Advisory Council proposes to close federal subsistence
fisheries for eulachon in all drainages of Sections 1-C
and 1-D in Southeast Alaska to provide clear direction
that the eulachon fisheries are closed due to recent
stock trends in the area.

Impact on Subsistence Users: If adopted,
federal and state subsistence users could not harvest
eulachon in the drainages of Sections 1-C and 1-D until
stocks rebuild and the fishery is reopened. In recent
years, the federal and state fisheries for eulachon have
been restricted or closed to all users by special actions
due to low returns.
Opportunity Provided by State: The state eulachon fisheries in Sections 1-C and 1-D have been closed by emergency order since 2006 due to conservation concerns.

Conservation Issues: Many eulachon spawning runs throughout the Pacific Coast, including Southeast Alaska, have had marked declines in recent years. Since 2004, there have been minimal returns in the Burroughs Bay and Behm Canal area. The eulachon stocks within Sections 1-C and 1-D are at critically low levels. The personal use, commercial, and subsistence fisheries have been closed for several years in anticipation of rebuilding. Stock status information for each of the above areas is limited, and a conservative approach is necessary for sustaining the health of these stocks.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations regarding subsistence harvest. The department requests federal subsistence administrators provide detailed maps that depict land ownership and specific boundaries of areas where federal regulations are claimed to apply.

Other Issues: Eulachon frequently mill in estuarial areas of a system, moving in and out of the water body with the tide. A fishery closure to all users in waters claimed under federal subsistence jurisdiction exposes participants in an open state fishery to enforcement actions by federal officers. Determining exact locations of the mean high tide boundary of the Tongass National Forest would be challenging while fishing from a boat.

Recommendation: Support with modification to be no federal season for the harvest of eulachon in Sections 1-C and 1-D. This modification would remove the procedural burden of opening a closed fishery when eulachon numbers rebound in these sections. Because the waters in which eulachon move include intermixture of state waters with waters where federal regulations are claimed to apply, it would be less onerous for federal subsistence users if the modification read: \(^{\text{U\_27(i)(13)(xxii)}}\) All drainages of fishing Sections 1-C and 1-D No federal season for eulachon. Thus, if eulachon numbers rebound sufficiently that the state is able to open a subsistence fishery, opportunity
to all subsistence users could occur without a delay due
to the process necessary to reopen areas closed to
federally-qualified and non-federally qualified users.
If the waters are closed where federal jurisdiction is
claimed and the state opens a fishery, all fishermen
would need to assure they are fishing in state waters
(i.e. below mean high tide).

MR. SWANTON: Mr. Chairman. I believe
that Mr. Sampson was referring to during the period of
limited entry which would have been taking place, my
recollection would have been somewhere in 1973, 1974. I
don't think that we've prepared that, I guess, in depth
look at the -- you know, eulachon back to those days and
whatever else. I do know that for those sorts of species
based upon my recollections and not necessarily in
Southeast Alaska, but it would probably be fairly limited
in terms of scope of what we've studied.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you. Okay.
We're getting word again that we're reverting back to
away from our microphones and we need to get a little
closer to our microphones when we're on.

Are there any questions of the State on
their report for this proposal.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any.
Did he answer your question? Okay. Thank you very much
for your report. Mr. Adams.

MR. ADAMS: I would like for Mr. Pappas
to repeat the statement he just made because, you know,
Mr. Wagner over there is concerned that if it's closed,
you know, it may never be opened again. But you made a
statement that I thought was pretty interesting that
might help in that effort. Mr. Pappas, if you would,
please.

MR. PAPPAS: Thank you, Mr. Chair.
Through the Chair. Mr. Adams. I believe you're talking
about the second half of -- the concluding paragraph of
our comments and that is if the eulachon numbers rebound
sufficiently and the State is able to open up a
subsistence fishery opportunity would be available for
all users -- all subsistence users, without delay due to
the process necessary to reopen areas closed to Federally qualified and non-Federally-qualified users.

Thank you. Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Does that answer your question?

MR. ADAMS: Thank you. Mr. Chairman. It does.

CHAIRMAN TOWARAK: Thank you again for your report, Mr. Pappas.

We will move on then to InterAgency Staff Committee comments. Dr. Wheeler.

DR. WHEELER: Thank you. Mr. Chair. The InterAgency Staff Committee found the Staff analysis to be a complete and accurate evaluation of the proposal and the recommendation of the Southeast Regional Advisory Council to be supported by substantial evidence and consistent with recognized principles of conservation. The InterAgency Staff Committee appreciates the Council's concern over this stock and shares its dismay at the proposed closure.

Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Are there any questions from the Board or the RAC Chairs. Mr. Firmin.

MR. FIRMIN: Thank you. Mr. Chair. I just wanted to point out that on some of the questions that were asked earlier about the eulachon on Page 247 the biological background gives a little sentence or two about where they -- they never generally spawn in one area year after year. That clarifies things, some of the questions from earlier.

CHAIRMAN TOWARAK: Thank you for pointing that out. Mr. Reakoff.

MR. REAKOFF: Mr. Chair. The affected users groups are concerned about a permanent closure. Well, we wrestled with the same thing. We had the moose annual review for cow moose hunting and when the 24B was annually reviewed we had the -- if you look at the data and approve whether the moose season could be -- support
harvest. It's apparent that that's not going to happen
for quite some time. I felt -- I took much testimony
from my predecessors in game management in the Middle
Yukon Advisory Committee. They were concerned about
doing away with cow moose hunting and trying to get it
back, they were concerned for the same reasons. But
after consideration of their -- again we're -- we look at
the State system as much disparate to the Federal system.
The reality is that we have a very defined user -- rural
subsistence users that have customary and traditional use
and it's actually much easier to reopen a population. So
I was more amicable to doing away with the annual review
until we get a moose population back to where it can
support winter cow hunting and then making a proposal to
the Federal Board. And I felt that that would be -- that
wasn't nearly as hard as the State system. And so I
wanted to interject that into this deliberation that we
also have wrestled with the same issue and I feel that
the Federal process will allow reopening of unsuppressed
populations for one reason or another, predation or
natural conditions, because of the make up of the
demographics of the user base.

Thank you.

MR. SAMPSON: Thank you. Question to the
biologist. We've heard information being provided by the
State of Alaska. So the information that is provided by
the State is that what the Federal biologist are going by
or are you folks doing your own studies too to look at
these resources?

MR. LARSON: Mr. Chairman. Mr. Sampson.
The -- after the stock collapsed in 2000 the Forest
Service has funded fairly in depth studies of the Unuk
River and we've had personnel on the grounds most of
those years and almost throughout the conceivable range
of spawning since about 2004. So I would characterize
the amount of information we have and the amount of
accuracy or the amount of validity in that information as
fairly high. The stocks indeed have collapsed and we
have spent a considerable amount of effort in documenting
that.

MR. SAMPSON: Thank you. Mr. Chairman.

CHAIRMAN TOWARAK: Thank you. Not
hearing any other questions we will move on then to Board
discussion with Council Chairs and the State liaison if
there still is a need to. Mr. Firmin.

MR. FIRMIN: Being as the Eastern
Interior Council has no position on this, but I.....

CHAIRMAN TOWARAK: Would you get a
little.....

MR. FIRMIN: Oh, I'm sorry.

CHAIRMAN TOWARAK: .....pull your mic a
little bit closer to you.

MR. FIRMIN: As the Eastern Interior
Council has no position on this issue, but I do keep
hearing from the testimony that this is a serious issue
and anytime a fishery is failing that something has to be
done. But as it stands there hasn't been any fishing
going on for the past few years and all they're asking to
not close the fishery. And I keep hearing that word that
time immemorial and that basically means forever.
They've been there since before time doing this and I
think that if they've been caretakers of that stock of
fish for forever, then I'm sure they can get by another
year with not fishing it and not taking action on this
proposal.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Firmin.

Any other comments.

(No comments)

CHAIRMAN TOWARAK: If not then we will
proceed onto Federal Subsistence Board action.

MS. PENDLETON: I'd like to call for the
question or the motion.

(Laughter)

MS. PENDLETON: I'd like to go ahead and
make a motion, Mr. Chairman. I move to defer the
Southeast Alaska Subsistence Regional Advisory Council's
recommendation to close Sections 1C and 1D to the harvest
of eulachon by all users. And after a second I will
provide my rationale.
MR. HASKETT: Second.

CHAIRMAN TOWARAK: The motion has been seconded. Please proceed, Ms. Pendleton.

MS. PENDLETON: Thank you. Mr. Chairman. First of all and for the record and I think it's been very well articulated this morning and again this afternoon that there's been a very severe decline in the eulachon fishery with no harvestable surplus in the foreseeable future for any users. But having said that and given, I think, the very heartfelt testimonies that were brought this morning and the discussion the ensued among the Board and the Regional Advisory Councils and also in recognition of where the Southeast RAC in your deliberations over this, that what I would like to recommend is that we continue, we have a tool in place and that is the -- that's available to us to continue the annual special action for closure annually of this fishery and that we continue to study and monitor for recovery. And you heard from Mr. Larson the work that has been done and will continue to be done. And I think as a result of our discussions this morning I think one of the things that became readily apparent is that there is a need for greater discussion with the people of Metlakatla and the Ketchikan area and for an opportunity for greater discussion with the Regional Advisory Council and the Board to bring a proposal forward -- back to the Board in the near future.

Thank you.

CHAIRMAN TOWARAK: Thank you, Ms. Pendleton. Are there any additional comments to be made on the rationalization of the -- Mr. Haskett.

MR. HASKETT: Thank you. Mr. Chair. I'd just -- for the record I'd like to make it clear I'm also going to vote to defer. I thought today's testimony was very, very compelling. I think there's clearly tools in place and it makes a lot of sense for us to have lots of additional discussions with the local Native people that have been so close to this resource for so long. So I -- I'm prepared to vote just as Beth has gone ahead and said she's going to.

CHAIRMAN TOWARAK: Any other comments from the rest of the Board? Ms. K'eit.

MS. K'EIT: Thank you. Mr. Chair.
Agreeing with Ms. Pendleton and Mr. Haskett, I'm going to vote to defer on this proposal.

Thank you.

CHAIRMAN TOWARAK: Thank you. Mr. Cribley.

MR. CRIBLEY: Well, I guess I would also like to support the position that Ms. Pendleton has taken. I think the discussions that we've had this morning and then this afternoon have been very compelling as far as the seriousness of the problem in that area and the need of taking action. But I think it also through the discussion and the comments, public comments or public testimony that the folk -- the people who are directly affected by this for some reason were not aware of what was going on and through these hearings have become aware and I think they need to get engaged with the Council and if the Council comes back that they come back together with their recommendation of what should take place in the future and then the Board can consider that and consider everybody's voice at one time when we make a -- or vote on a recommendation from the Council. I think -- like I say I think there is -- there's a serious issue here, but everybody needs to be involved with that decision making process and that's the whole point of this process here and very -- being the new -- again the new guy on the block here, new kid on the block, it's very apparent the reasons that we go through all of the steps that we go through in our consideration here. And I would say this is very evident of how this process works. And makes me feel good about participating in it.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Cribley. Personally I also agree with everything that's been said, but it also reminds me of the directive that we on the Board received from the Secretary of the Interior of making the tribes inclusive into the decision making process and see where there was a gap. And it was at no fault to anyone in particular that there was a group of people that felt that they were out of the loop until they got here. I think it's incumbent on us to get as wide a coverage and inclusive a coverage as possible. And I think deferring this proposal to get the involvement of the Metlakatla Tribe and the reservation would be worth the wait for the deferral.
Any other comments. Mr. Cribley.

MR. CRIBLEY: Well, I guess it's also --
we should make note that though we are deferring this
decision there's not a -- it doesn't cause a threat to
the resource. We still have tools or Fish and Game and
the Federal agencies have the tools in place to continue
to protect the resource if it's necessary on a yearly
basis until it's decided to come back with a different --
or a recommendation to us. So I don't think that by
deferring that we're cause -- creating a problem. I
think -- so I think it's a good direction to go in.

CHAIRMAN TOWARAK: Any further? Mr.
Haskett.

MR. HASKETT: Just one more thing for the
record. Mr. Chair. Because I think we have clear
direction and we all intend to do whatever possible to
defer to the recommendations of the RAC and I think this
time we're not doing that, but clearly we're doing that
because we think it is detrimental to the needs of the
subsistence users out there and I'm hoping the RAC
understands. I think they do. So we've gone a different
direction on this one. It's also -- we actually have
direction and I think we all are going to try as hard as
we can to do better on tribal consultation so we have
kind of a dual thing going on here as well that, I think,
this -- when we get to voting and we're done I think
we'll meet both of those things as well as we can.

CHAIRMAN TOWARAK: Thank you. Mr. Adams.

MR. ADAMS: Just a response to Mr.
Haskett's, you know, comment about the RAC. I came here
as a representative of the RAC and you all know that and
we have a position on this and I have to stick with it.
However, I feel that the Board is doing well and taking
the middle ground here and giving an opportunity, you
know, for a time in the next couple years or so, you
know, to look at this situation again. I would again
encourage, you know, the people from Metlakatla and, you
know, the Southeastern area of the state to really be
involved in these issues because I feel pretty bad about
this situation that they weren't able to come and make,
you know, their case known. Because I have been one not
only on the RAC, but also in the Wrangell-St. Elias
Subsistence Resource Commission meeting to reach out to
the communities and I've asked our coordinators to do
that and they've done the best they could. But I think,
you know, we need to do a better job. And we do want to get you involved, Mr. Wagner, and make sure, you know, that your participation in this process is included. So we -- and we will -- we will do that, I promise you.

Thank you.

CHAIRMAN TOWARAK: Keith, go ahead.

MR. GOLTZ: I want to quarrel a little bit with the suggestion that we're not responding to the Councils. I think we are. I think that the satisfaction of subsistence needs is more than simply material and protein and physical natural resources, there's also a spiritual and there's also a communication element. And I think that the testimony that we heard this morning was that the communication was not sufficient, we were not using the same words in the same tenses and that there was more to be done in that regard. So I think in regards to 805(c) I think the record of the decision is that this particular action taken at this particular time would be detrimental to subsistence needs.

As to the balancing I think we have to be careful to remember that what we're administering here is a statute that's written for the benefit of rural Alaska residents. There's a specific structure that's required. The RACs are the engine of that structure. And our attempts to reach out more to tribes does not minimize in any way our commitment to that structure, we're trying to do both, but if there's ever a conflict it's our responsibility to comply with the statute. And I think we're doing that.

CHAIRMAN TOWARAK: You're saying we could kill two birds with one stone, but the first stone is more important?

MR. GOLTZ: Correct.

(Laughter)

CHAIRMAN TOWARAK: Now I understand. Thank you. With -- if -- Mr. Adams.

MR. ADAMS: I like to pick a fight with Keith over there. Explain to me why you think that this will be detrimental to subsistence needs?

MR. GOLTZ: I think there's a temptation
to think of subsistence as merely protein, but I think if you
read the introductory language to ANILCA and if you
read the legislative history, there's a lot more to it.
And I think in this particular case as I heard the
testimony this morning, there wasn't really any conflict
over the physical facts and nobody's going to be getting
any more or less eulachon no matter what this Board did.
But the thrust of the testimony is that the subsistence
users in Metlakatla didn't have their spiritual and
communication needs met. And I think all we're doing is
saying that we're going to on the basis of our failure to
meet that need in this case we're going to defer and try
to do better the next time around.

MR. ADAMS: Thank you, sir.

MR. GOLTZ: I'm getting questions from
both my left hand and my right, I have to keep.....

CHAIRMAN TOWARAK: Thank you.

MR. ADAMS: .....we have to keep you
busy, Keith.

(Laughter)

CHAIRMAN TOWARAK: Thank you for those
explanations. I'm not hearing any further questions I
think we're ready for -- and we have -- do have the
motion on the floor.

MR. HASKETT: So I'd like to call for the
question.

CHAIRMAN TOWARAK: The question has been
called for. Final action, please.

MR. PROBABSCO: Thank you. Mr. Chair.
Final action on FP 11-18 to defer this proposal. Mr.
Haskett.

MR. HASKETT: Yes.

MR. PROBABSCO: Ms. K'eit.

MS. K'EIT: Yes.

MR. PROBABSCO: Mr. Cribley.

MR. CRIBLEY: Yes.
MR. PROBASCO: Ms. Masica.
MS. MASICA: Yes.
MR. PROBASCO: Ms. Pendleton.
MS. PENDLETON: Yes.
MR. PROBASCO: And Mr. Towarak.
CHAIRMAN TOWARAK: Yes.
MR. PROBASCO: Motion carries 6/0.
CHAIRMAN TOWARAK: Thank you. We originally had set aside an earlier proposal, Proposal number 11-10, that we will address at this point since Ms. Chythlook is back.
MR. PROBASCO: Mr. Chair. It may be wise, we said that we would take it up no sooner than 2:00 o'clock. It may be wise to finish Southeast because we're going to have to change Staff and bring them back.
CHAIRMAN TOWARAK: Okay. I agree. Mr. Larson, were you going to.....
MR. LARSON: Mr. Chairman. Thank you. Just a process question is -- and I didn't -- I didn't understand the will of the Board or do we have a time certain for the deferral, is it.....
MR. PROBASCO: Mr. Chair. Mr. Larson. On a deferral of this proposal we would entertain again two years from now on the normal fish cycle. There is no time certain so without a time certain we would automatically go to the next cycle.
Thank you. Mr. Chair.
CHAIRMAN TOWARAK: Okay. I'll be corrected then if it's okay with Ms. Gisler to continue the Southeast proposals so that we could have -- take some time to change Staff. So we will then proceed on with Fish Proposal 09-05 and ask for the Staff analysis.
MR. PROBASCO: Mr. Chair. If I may interject before we get into Staff analysis on FP 09-05. It's similar to the four proposals that we deferred based on a request by the proponent. This proposal also has a
request to further defer this proposal due to the fact that the information that they were hoping to have in time for this meeting has not yet been completed. So in the essence of trying to save time the Board may want to consider that request to defer this proposal further and I would look towards Ms. Pendleton for her direction.

CHAIRMAN TOWARAK: Mr. Cribley, did you have a question?

MR. CRIBLEY: No.

MS. PENDLETON: Thank you. Mr. Chair. I'd like to move to defer Proposal FP 09-05. This is consistent with the recommendation of the Southeast Alaska Regional Advisory Council as well as the Sitka Tribe of Alaska. The deferral would be to on or before the next fisheries cycle, that we meet back on this. And following a second I'd like to provide some brief rationale for the motion.

CHAIRMAN TOWARAK: There's a motion on the floor.

MS. MASICA: Second.

CHAIRMAN TOWARAK: And seconded by Ms. Masica.

MS. PENDLETON: Thank you. My rationale is mostly based on the Council's recommendation that's on Page 271 of our Board book. Simply this deferral would allow more time for peer review of the Sitka Tribe of Alaska research on the herring management population assessment for Sitka Sound herring fisheries. Additionally the Sitka Tribe of Alaska has started a herring research priority planning group which may provide additional recommendations regarding the proposal.

Thank you.

CHAIRMAN TOWARAK: Any further discussion on the motion.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, is there a call for the question?
MS. MASICA: Call for the question.

MR. CRIBLEY: Call for the question.

CHAIRMAN TOWARAK: The question's been called for. Final action, please.

MR. PROBASCO: Thank you. Mr. Chair.

Final action on FP 09-5 to defer the proposal no later than the next fisheries cycle. Ms. K'eit.

MS. K'EIT: Yes.

MR. PROBASCO: Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: And Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Motion carries 6/0.

CHAIRMAN TOWARAK: Thank you very much for that action. The next item on our agenda is Fish Proposal 09-15. And the -- for the -- I'm going to read the general description. Proposal 15 requests that in -- no Federal subsistence priority, customary and traditional use determination be made for all fish in the Juneau road system area. All waters crossed by or adjacent to roads connected to the city and borough of Juneau road system. In January, 2009 the Federal Subsistence Board deferred Proposal FP 09-15 to allow time to develop an analysis of the customary and traditional use of fish in District 11 and 15. Submitted by the Alaska Department of Fish and Game.

MR. PROBASCO: Thank you. Mr. Chair. I
would like to introduce to you Pippa Kenner who will be our lead analyst on this proposal.

CHAIRMAN TOWARAK: Thank you. Please proceed, Ms. Kenner.

MS. KENNER: Good afternoon. Mr. Chairman. Members of the Board and Council Chairs. My name is Pippa Kenner as you've been told and I'm an anthropologist with the Office of Subsistence Management or OSM. The analysis for the deferred Proposal 09-15 begins on Page 277 of your Board books.

This proposal was submitted by the Alaska Department of Fish and Game in 2008 and requests that no Federal Subsistence priority, customary and traditional use determination be made for all species for fish in the Juneau road system area. At its last fish meeting in January two years ago the Board deferred this proposal and directed Staff to analyze the customary and traditional uses of fish in all of Districts 11 and 15, not just in the Juneau road system area.

The existing use determination for fish in Districts 11 and 15 is nested or included in the determination of the remainder area of the Southeastern Alaska management area and includes Dolly Varden, trout, smelt and eulachon. Eligibility is for all rural residents of Southeast Alaska including Yakutat. This determination was recommended by the Council and adopted by the Board in the year 2000. For all other fish the determination is for all rural residents of the state.

Dolly Varden, steelhead, other trout and eulachon are the primary fish likely to be harvested under Federal subsistence management regulations in Districts 11 and 15. Some harvest of herring and salmon also occur, however fishing for these fish generally takes place in marine waters under the State of Alaska jurisdiction.

This proposal is the second submitted by the Alaska Department of Fish and Game concerning the use determination for fish in the Juneau road system area. Their initial request for a use determination of no Federal subsistence priority in the Juneau road system area, Proposal 08-04, was rejected by the Board at its meeting in December, 2007. The State Fish and Game subsequently submitted this proposal, 09-15, because in its view the Board did not evaluate the eight factors...
describing customary and traditional uses for each fish
stock used by specific rural communities when considering
Proposal 08-04. When the Board makes a customary and
traditional use determination, the uses of the resource
in the area are described and analyzed. In this case the
area includes the Federal public waters flowing into
Districts 11 and 15, of which the Juneau road system area
is estimated to be less than 10 percent. Fishing
districts are the typical geographic descriptors for
which the Board makes determinations in the Southeastern
Alaska area.

It's important to note that residents of
the Juneau area, including residents of Douglas and Auke
Bay, are not eligible to harvest fish under Federal
regulations. They reside in a non-rural area and are not
considered Federally-qualified subsistence users. You
can see the Juneau non-rural area on Map 1, Page 279 of
your Board book. Therefore their customary and
traditional uses of fish were not considered in this
analysis, however a description of the Juneau area is
included in the community descriptions on Page 288 of
your Board book. Let me be clear. Our Staff are aware
that Tlingit and others living in the Juneau area have
used the area to harvest wild resources. However Federal
subsistence regulations do not apply to residents of the
Juneau non-rural area.

Historically in Southeast Alaska people
took fish for subsistence from bays and streams that they
either traditionally owned or had permission to use, a
practice that continues in some form today. These clan
owned areas are documented in Goldschmidt and Haas' often
cited report, (in Native) our land. The maps from this
important report are included in the analysis as Maps 4
through 7.

Another source of information for the
analysis was the Tongass Resource Use Cooperative Survey
or TRUCS from the 1980s, was a survey of the subsistence
uses of wild resources by residents of many Southeast
Alaska communities. These findings can be seen on Maps
2 and 3, Pages 283 and 284 of your Board book. Of the
reported harvest of fish from Federal public waters
draining into Districts 11 and 15, none was reported by
people living outside the districts.

Based on the available information OSM's
conclusion is to include the residents of each district
and waters running into each district, in the customary
and traditional use determination for fish for each district. For District 11, residents of drainages running into District 11 and for District 15, residents of drainages flowing into District 15. And this includes Skagway, Haines and Klukwan. This OSM conclusion is on Page 303 of your Board book.

For District 11 most residents of the district reside in Juneau, Douglas or Auke Bay within the boundary of the non-rural area and therefore this customary and traditional use determination for fish will not affect them. However there are people residing outside of the non-rural area and there's no information available about their specific subsistence uses of fish.

As an effect of adopting this proposal other rural residents of Southeast Alaska including Yakutat, would be excluded from the existing customary and traditional use determination for Dolly Varden, trout, smelt and eulachon currently in place for Districts 11 and 15. All other residents of Alaska would be excluded from the harvest of other fish under Federal regulations also.

Reports exist of low level occasional harvest of salmon in District 11 Federal public waters using State subsistence personal use permits by residents from outside each district. For the purposes of this analysis these uses were not considered customary and traditional. It has been shown that subsistence fishing generally occurs closer to home. This is in contrast to the great distances traveled to harvest moose and deer which are not evenly distributed in the region. Fish are more widely and evenly distributed. The pattern of use for fish is different than the pattern of use for wildlife.

The OSM conclusion on Page 303 also indicates that a customary and traditional use determination of no Federal subsistence priority be adopted for fish in the Juneau non-rural area. This is because none of the subsistence uses of fish reported by Federally-qualified subsistence users in the analysis occurred in the Juneau road system area. Specifically there were no reports of harvest using a Federal subsistence fishing permit. Reports exist of the harvest of fish from the Juneau road system area by rural residents of Southeast under State sportfish regulations, but in this analysis these uses were not considered customary and traditional. These sportfishing uses
likely occurred during trips made to Juneau, the urban hub in the area, for purposes other than subsistence fishing. This conclusion was derived when considering the restrictive nature of the State's sport fishing regulations also.

Thank you. Mr. Chairman. Members of the Board and Council Chairs. This is the end of my presentation.

CHAIRMAN TOWARAK: Thank you, Ms. Kenner. Are there any questions of the Staff or of the Board or the RAC Chairs to the Staff.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your presentation.

We will then continue on to the summary of public comments by the Regional Council coordinator.

MR. LARSON: Thank you. Mr. Chairman. My name's Robert Larson, I'm the Southeast Council's coordinator. I would like to note that there were no written public comments received in 2009. There was one public comment for this year and that's located on Page 315 of your Board book, that's in the addendum section.

This comment was submitted by the Douglas Indian Association in opposition to the proposal. This letter noted there were historically eight Tlingit villages within the area of the Juneau road system that relied on subsistence resources for their survival. The Tribe objects to the characterization that there was no customary and traditional use of the fish stocks in this area.

Earlier in this meeting you received an additional written public comment. I note that it's logged in as comment 11-012 and that it's from the Central Council Tlingit and Haida Indian Tribes of Alaska. The Central Council strongly opposes this proposal which will curtail subsistence use by Federally-qualified rural users who choose to travel to Juneau and subsistence fish on the Juneau road system. There's no conservation concern or threat to this species, therefore no substantial evidence exists for a need to change the current regulations. There has been previous testimony by tribal citizens in which they have documented previous
use of the resource. In addition to the above concerns it is also noted that this proposal has previously been brought before the Board and it has been effectively opposed by the Southeast Regional Advisory Council.

That concludes written public comments.

CHAIRMAN TOWARAK: Thank you, Mr. Larson. Are there any questions from the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: If not, thank you very much for your report.

We will continue then on to open the floor for public testimony. Mr. Probasco.

MR. PROBASCO: Thank you. Mr. Chair. And we do have three people that would like to testify. One is on-line and I will go to that individual first. Mr. Ronald Leighton, are you on line?

MR. LEIGHTON: Hello.

CHAIRMAN TOWARAK: Yes.

MR. LEIGHTON: Can you hear me?

CHAIRMAN TOWARAK: Yes, we can hear you.

MR. LEIGHTON: I think what we have to do -- Mr. Chairman and Board members, my name is Ronald Leighton, spelling of the last name L-E-I-G-H-T-O-N. I'm vice president of the Organized Village of Kasaan. And I want to thank you for giving me this opportunity to testify today. I'm here to talk on Proposals FP09-15 and our culture.

We would request that you found -- you fathom what resource means to indigenous people. You will not be able to understand fully the effect your Board actions will have on tribes. In the remote areas where tribes are located, it is so expensive to get items at affordable cost. I heard that 10 gallons of gas costing of $150 and a gallon of milk as high as $10. It only makes sense to gather most of our needs in the immediate area, to make it possible to survive in that area.
Since the take-over of Alaska by the United States, tribes had been systematically taken apart by the taking of our land, language, and our resources. This affected our culture and to this day hinders us from freely partaking in our customary and traditional commerce. When you limit an area from subsistence to personal use, you are limiting tribes that are located in that area to freely partake in their culture without having to ask permission to gather food for the potlatch.

Potlatches to us are like Congress is to this country, and even more important. We regulate who could talk through the use of talking sticks. Only the person in possession of the stick could talk uninterrupted, and until they said what they need to say. On very short notice, potlatches will be called and this does not allow us time to get permission as the State only works for the most part 9:00 to 5:00 Monday through Friday.

Our congress is a major portion of our culture. It is what makes us strong. It enables us to obtain our needed resources that are not found in our traditional areas. It also gives us a barter's edge to trade for these needed items through items that may be readily available in our area which may be needed by tribes in other areas. That is why tribes should be accorded the opportunity to partake free and with great (ph) in our culture.

A good example is the Sitka herring. This is one of only areas left where we can obtain herring eggs, our sacred food. Sitka is not only providing for their needs, but this stock is providing all other areas with herring eggs spawn, which has over -- which was all over Southeast Alaska on beaches as far as you could see at one time. Now, because of over-fishing, they are reaching the end and will be extinct if something is not done. Particularly everything that swims, walks, flies and has been -- and has been dependent on herring.

Our security of our healthy (indiscernible, break up) goes through lends to whether or not we remain healthy. I was told by one of our elders that he is not a bona fide civilized Indian, because he has overweight and has diabetes. It described the truth. The further we get from our traditional foods, the more unhealthy we become. Is this going to be in your history books, that taking our resource is just
another method added to our genocide? I hope not. We have been partaking in our cultural congress since before Egypt. It should be allowed now more than ever to have free access so that our elders can teach our youth our way of life before they are no longer with us. Excuse me.

Our cultural food are given throughout our tribes to whomever may need it, and for whatever reason. If a tribe in Juneau area was to provide fish to elders, they would be technically breaking the laws. This goes against their tribal constitutions, which state that they will provide for their tribal citizens if they -- to keep them healthy, and for their needs.

The United States Constitution says that Congress and only Congress may regulate commerce of tribes. There's no state, board or task force that has the power to go outside this Constitution. The Congress itself cannot delegate this authority, and they must perform these acts themselves. The state of Alaska's own constitution states that they will forever disclaim any right over any Indian, Aleut or Eskimo's lands or fishing rights. And that they give management authority to the United States Government. This gives the ultimate authority to the United States through consultation with tribes to assure that our rights as indigenous peoples to act through our own tribal governments, through our constitutions to ensure that all our citizens have access to their customary and traditional resources.

The United States keeps their security locked up at Fort Knox. Our security is our resource, and just because it's left in the wild does not mean that it's not important to our culture, our culture's government, as your gold is to your government. You should digest this and recommend to the highest levels that Congress put into place tribal preference over our resource. Our customary and traditional congress is as important to our culture as Fort Knox is to the United States or as important as the Holy Bible is to the Catholic church.

I would like also for this board recommend to the highest levels that the trawlers interception by-catch that is needed by any tribe, that they are to process rather than discard this by-catch and deliver it to the tribes who are in need. This will serve as a deterrent for them not to intercept by-catch of our resource. It is simply too easy for them to say,
whoops, and then discard the dead by-catch. It should be
properly cleaned, gilled and froze and glazed, the fish
in the round, and deliver them to the affected tribes to
insure they have their customary and traditional needs
made available.

I would also recommend that employees,
Federal employees, be placed on these trawlers instead of
lupine (ph) employees. It will take at least four
employees to watch this fisheries activity 24/7 while
they are fishing, and supervise the processing and
delivery of the fish. All transport needs and expenses
should be absorbed by the fishing industry, including the
expense for the Federal employees on board. The industry
brought this on by themselves and should pay for
observation and the delivery expenses.

I would also recommend that the State
take the ultimate decision away from the Board of
Fisheries. I have witnessed too many of our fisheries
collapse through poor and greedy-driven decisions by --
of the Board. Even when the State scientist said, no,
don't do this. This Board makes decisions that affect
our resource, and they should have this power -- they
should not have this power. Tribes are not even
represented on the Board, and we should be running them.
We have been managing our resource since time immemorial,
and are expert in what must be done in order to keep them
healthy.

This concludes my testimony, and thank
you again for your time, and I will answer any of your
questions that you may have.

CHAIRMAN TOWARAK: Thank you for your
testimony, Mr. Leighton. Are there any questions of Mr.
Leighton from the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: I do not see anyone
raising their hand, so, Mr. Leighton, thank you very much
for your testimony.

MR. LEIGHTON: Thank you.

MR. PROBASCO: Mr. Chair. Our next
person that wishes to testify is Mr. Richard Jackson.
Mr. Richard Jackson. Mr. Richard Jackson.
MR. PROBASCO: I do not see him, Mr. Chair.

MR. ADAMS: Mr. Chairman, Pete. I think Mr. Jackson had an appointment about this time. He said he was going to be here about 1:00 o'clock, but it's way past that already, so I don't expect him to be back this afternoon.

Thank you.

MR. PROBASCO: Thank you, Mr. Adams. Our final person that has signed up is Mr. Willard Jackson. Mr. Willard Jackson.

(No comments)

MR. ADAMS: They're brothers. They're out doing things together.

MR. PROBASCO: Okay. Thank you, Mr. Adams. Mr. Chair, that completes our public testimony.

CHAIRMAN TOWARAK: Thank you, Mr. Probasco. We will then proceed on to the Regional Council recommendations from the Chair or designee. Mr. Adams.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Regional Advisory Council opposes this proposal. And I'm just going to go through a quick outline of some -- the minutes that I've taken from the meeting about this particular issue, so bear with me if I have to pause for a little bit and bring out a point.

When you determine customary and traditional use, you know, I mentioned earlier that we use, you know, about eight factors in the Council, and they really deliberated. This is one of the most, you know, controversial and I think discussed issue that took place on our Council at our previous meeting. And so, you know, and those were -- that's how you determine whether customary and traditional use is determined. And we noticed that there are an awful lot of rural residents who have moved to Juneau from the villages. And this was a real big discussion in our Council, because when you take, for instance, people from Haines or Kake, they're suffering real hard, and they have to go to a rural [sic]
area in order to find a job to support their families, and many of them have done that. And they would certainly like to be able to go back to their communities, you know, and participate in subsistence uses, or be able to participate in subsistence activities, you know, in the area in which they are living. And this was, you know, a real big concern to many of our Council members, that they were -- that this is happening.

We also noticed that there is a lot of sport activity taking place in the Juneau road systems, and many of them are not subsistence users and one of the discussions was how do you -- you know, how do you account for those as far, you know, taking everything is concerned. So the sport fishing, you know, we believe needs -- surveys need to be included in this subsistence report.

And then one of the Council members brought out the fact that there was really no tribal consultation with, you know, the areas like -- you know, the areas that were affected by this. We did receive, you know, some comments from Douglas Indian Association. However, they weren't there to make any, you know, comments at the meeting.

So there are a lot of questions that was brought up by the Council, and I really, you know, don't want to, you know, bear down on so many of the things that we did talk about, but those are some of the highlights.

One of the Council members, you know, kind of reviewed the reason why the RAC took this position. She gave four reasons here, and I'll just go through them quickly, and then I'll concluded my comments. Actually I think this individual should be sitting right here. She's really sharp.

She says, number 1, certainly additional information exists regarding use of areas by residents of other communities. No harvest data does not mean -- does not equal no use. And, you know, I think I touched on that a little bit, that sport, you know, needs to be included in the subsistence surveys and so forth.

Number 2, determine use of sport fishing information as subsistence use. That's what I said earlier. We would prefer to use sport fishing
information as an indicator of subsistence use. So that needs to be reconsidered.

Number 3, allow the development of new and currently known -- unknown rules or regulations regarding customary and traditional use by the subsistence review process.

And, number 4, she says, reasons to continue to oppose, we do not know the outcome of the jurisdictional issues referred to in the State comments. And, of course, we did hear State comments, and she was referring, you know, to their comment.

Previous minutes contain evidence of subsistence use that were not recognized in the current Staff analysis. The intent of ANILCA does not require us to determine non-subsistence use areas or determine negative customary and traditional use. And she maintains that this is what this proposal is doing.

So, ladies and gentlemen of the Board, I just wanted to share that with you, and if you have any questions, I'll try to answer them, although I'll stick -- maintain to my policy that I'll answer hard questions.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Adams. Are there questions from the Board or other RACs? Mr. Haskett.

MR. HASKETT: So through the chair, I guess I'm struggling a little bit with looking at the recommendation from OSM and a lot of that's based upon that there's no data supporting subsistence use, because of what's been reported or not been reported. Can you help me again? You covered that a little bit, but can you talk a little bit more about that, Bert? That was one of the points, you lined out why the sport fishing ought to be utilized.

MR. ADAMS: Yeah. Because, you know -- excuse me, Mr. Chairman. Thank you.

Mr. Chair, Mr. Haskett. Sport fishing in our -- is an important part of that area; however, some people use their sport fishing, you know, permits to sport fish -- to get their products, and then we have a group of sport fishermen that come in and, you know, they
utilize their same gear types and so forth to do their
activities and so forth. And so we think you know, that
just because of that, that they need to include that into
the sport -- subsistence records as well, because we need
to know, you know, not only methods and means, but how
many are taken out and so forth, and that's a good record
keeping tool for us. Help you?

MR. HASKETT: Thank you. Yeah.

CHAIRMAN TOWARAK: Any other questions.

Mr. Firmin.

MR. FIRMIN: I just have more of a
comment. Under the regulatory history of the Staff
analysis here it says there are 12 Southeast communities
where recognized as having customary and traditional
pattern of use, and then it says 17 other communities
were recognized. And when you look at all these
communities on a map, it's just like a shotgun spread
right around Metlakatla, and I see that there is another
-- this is another one that that tribe has been left
completely out of this. And just -- there's other places
in here that I see that the areas of use explained in
here that I see that the areas of use explained in
here that would have been better off in the last
proposal, 11-18, of the traditionally owned streams and
how the clan leaders controlled access and areas of use.
And then also on Page 299 it says in District 11 and 15
that there are residents that have not been living
outside the area that there is no information on. So I
believe just based on those that there -- just because
there's no information on these people that may be using
it, there might be one old hermit out there that would be
made a criminal by some of these actions. It's just --
I'm just pointing out that there's a lot of holes in the
data here.

Thank you.

CHAIRMAN TOWARAK: thank you. Further
questions.

(No comments)

CHAIRMAN TOWARAK: If not, then thank
you, Mr. Adams.

We'll proceed then to the Alaska
Department of Fish and Game comments.
MS. YUHAS: Thank you, Mr. Chairman.
Proposal FP09-15 requests that the Federal Subsistence Board demonstrate customary and traditional findings for individual communities for fish stocks within Fisheries Districts 11 and 15 on waters crossed by roads within the current boundaries of the City and Borough of Juneau as was suggested by one of your board members in 2006. The proponents requests that the eight regulatory factors concerning customary and traditional use for each specific fish stock by each community for each stream be evaluated and reviewed by the Board.

The Juneau non-rural area has no specific customary and traditional use determination and falls under the Federal regulation -- sorry. Falls under the Federal regulation category remainder of the Southeastern Alaska area. We think this is overly broad and that this designation allows people as far away as Barrow traveling 1,000 air miles or south from Hydaburg, 225 air miles up, to have a priority in this area.

Because there's no substantial evidence for these arguments, it's clear that any use of Juneau road system fish stocks falls outside the regulatory definition of customary and traditional use.

In Alaska versus the Federal Subsistence Board at 1094 through 99, the Board's determination must have a substantial basis in fact, and under 50 CFR 100.16, C&T determination should identify specific communities or areas' use of specific fish stocks and wildlife populations. Each C&T determination must be tied to a specific community or area, and a specific population.

Available information cannot support a determination that any rural community has a pattern of use of any fish stock on the Juneau road system. There's been no consistent harvest of fish stocks reported on the Juneau road system by any rural community, and the Juneau road system fish stocks are not near or reasonably accessible to any rural community.

Separating out this non-rural area also allows the Federal Board to carry out its responsibilities for balancing the competing purposes of ANILCA and avoid unnecessary restrictions on non-subsistence users. No Federal subsistence harvest by rural residents have been reported for the fresh waters of this road system. And there's no evidence of
customary and traditional taking of a specific fish stock
for subsistence in fresh waters that cross this road
system.

The potential exists for over-harvesting
of local fish resources if additional harvest opportunity
is provided. It was mentioned that there were no
conservation issues, but the Department has continually
expressed conservation issues to the Federal Subsistence
Board about sustainability of highly accessible fisheries
on the Juneau road system if these fisheries are
subjected to any participation under liberal Federal
subsistence harvest regulations.

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conservation issues, but the Department has continually
expressed conservation issues to the Federal Subsistence
Board about sustainability of highly accessible fisheries
on the Juneau road system if these fisheries are
subjected to any participation under liberal Federal
subsistence harvest regulations.

According to the Departments fish
distribution database, the majority of fish habitat and
documented fish observations in these streams are not
located within Federal lands. We request that the
Federal subsistence maps be corrected to accurately
portray the Tongass Forest boundary which specifically
excludes a significant portion of the Juneau area. The
Juneau area was an exclusion from the Tongass Forest long
before statehood.

In summing up, we support that no C&T
finding for the Juneau road system as of 2010, and I have
Mike Sewright here from our Department of Law who can
answer some of the legal questions and provide
supplemental information.

STATE OFFICIAL WRITTEN COMMENTS

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

Deferred FP09-15: Juneau Road System
Customary and Traditional Use Determination

Introduction: Proposal FP09-15 requests
that the Federal Subsistence Board demonstrate customary
and traditional (C&T) findings for individual communities
for fish stocks within Fisheries Districts 11 and 15 on
waters crossed by roads within the current boundaries of
the City and Borough of Juneau, as suggested by a member
of the Federal Board on January 13, 2006. The proponent
requests the eight regulatory factors concerning
customary and traditional use of each specific fish stock
by each community for each stream be evaluated and
reviewed by the Federal Board. The Juneau non-rural area has no specific customary and traditional use determination and falls under the federal regulation category Remainder of the Southeastern Alaska Area.

Under this designation, the Juneau road system area is open to the federal subsistence harvest of Dolly Varden, trout, smelt, and eulachon by all rural residents of the Southeast Alaska and Yakutat areas, and the area is open to subsistence harvest of salmon by all rural residents of Alaska. These overly broad designations provide a federal subsistence preference for the far north rural residents of Barrow to fish for salmon on streams in a southeastern urban community over 1,000 air miles from home and provide a preference to rural residents of the southern southeast community of Hydaburg in an urban northern southeast community over 225 air miles from home.

Background: The waters subject to this determination constitute a very small portion (less than 10%) of the freshwater fisheries in Districts 11 and 15 of Southeast Alaska. They are very important to residents of the Juneau area but are not important to rural residents and are rarely used for any purpose by rural residents of any community. In acting on previous proposals, the Federal Board suggested it would be appropriate to adopt a determination of no Federal subsistence priority. In December 2007, the Federal Board rejected the State s proposal (FP08-04) requesting such a determination, without evaluating the eight regulatory factors concerning customary and traditional use of each fish stock by each community. As early as 2000, the InterAgency Staff Committee informed the Federal Board that there was a lack of substantial evidence to show that communities in the region have customarily and traditionally harvested and used stocks of rainbow trout, cutthroat trout, and Dolly Varden along the Juneau road system. Because there is no substantial evidence for these arguments, it is clear that any use of Juneau road system fish stocks falls outside the regulatory definition of customary and traditional use, see 50 CFR 8100.4.

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

The Ninth Circuit pointed out that six of the Federal Board’s eight C&T factors refer to a pattern of use of specific fish stocks or wildlife populations, and a seventh factor also imposes explicit geographic limitations by directing the Board to consider whether there is consistent harvest and use of fish or wildlife . . . near, or reasonably accessible from the community or area. Id. at 1098; see also 50 C.F.R. 100.16(b). Available information cannot support a determination that any rural community has a pattern of use of any fish stock on the Juneau road system. There has been no consistent harvest of fish stocks on the Juneau road system by any rural community, and the Juneau road system fish stocks are not near or reasonably accessible to any rural community.

In Alaska v. Federal Subsistence Board, the Court upheld a C&T determination for Chistochina residents to take moose upon all federal lands within Game Management Unit 12 based on: (1) the assumption, which the Court thought had support in the record, that the populations of moose which had been historically taken by Chistochina residents within a 2500 square mile area were the same populations of moose on other federal lands within the Unit; and that (2) the alternate rationale, somewhat dependent on the first, that the
Federal Board was justified by a benefit to management in designating a C&T area for Chistochina to take those moose within all 5,900 square miles of federal lands within the Board’s pre-determined areas A, B, and C, rather than being required to carve out a new area for Chistochina limited to just the 2,500 square miles of that community’s actual historic use. Id. at 1096-97, 1099-1100.

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

Second, there has been no historic customary and traditional taking of the specific fish stocks on the Juneau road system by any Southeast rural community. The Juneau stocks are different stocks of fish than those which any Southeast rural community has historically taken. Moreover, federal and state fisheries management both benefit by utilizing a separate regulatory framework for these easily accessed high use waters where fish stocks must be managed through much more conservative regulations than are required in other areas of the districts. Separating out this nonrural area also allows the Federal Board to carry out its responsibilities of balancing the competing purposes of ANILCA and avoiding unnecessary restrictions on nonsubsistence users.

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

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

Because Juneau is a non-rural area, residents of Juneau who historically used fish stocks in the area are ineligible to participate in the federal subsistence fishery and cannot qualify for a federal customary and traditional use determination. The existing federal subsistence regulations could lead to even more restrictions on non-federally qualified users (e.g., Juneau residents) in the non-rural area along the Juneau road system on both state and federal lands. These further restrictions could potentially force Juneau residents to travel long distances to rural areas to participate in freshwater sport fisheries. They might also result in increased state subsistence and personal use participation in these areas. They could thus create increased competition and be detrimental to the satisfaction of subsistence needs in those rural areas. Further state restrictions along the Juneau road system would also impact opportunities for those who relocate from rural areas to Juneau and rely upon opportunity in the Juneau area to continue their fishing activities.

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

Jurisdiction Issues: According to the Department's Fish Distribution Database, the majority of
fish habitat and documented fish observations in these streams are not located within federal lands. Some streams have relatively inaccessible headwaters on federal land, but they flow through State, private, and other land ownership and are not within the Tongass Forest boundary prior to crossing Juneau roads to enter marine waters. Other streams along the Juneau road system flow entirely on non-federally owned land. We request that the federal maps be corrected to accurately portray the Tongass Forest boundary, which specifically excludes a significant portion of the Juneau area. The Juneau area was an exclusion from the Tongass Forest long before statehood.

In order for rural residents to know where they can legally participate in federal subsistence fisheries, and to aid enforcement personnel in determining whether activities are legal, we request detailed land status maps depict specific boundaries of waters claimed to be within federal subsistence jurisdiction. Maps provided by the federal program are not accurate enough to ensure federal subsistence users do not inadvertently fish from lands not claimed under federal jurisdiction. Significant portions of lands surrounding the Juneau road system are bordered by state or private lands, where there either is no federal jurisdiction or where persons cannot participate in federal subsistence fisheries while standing on non-federal lands.

Recommendation: Support.

MR. SEWRIGHT: Mike Sewright from the State Department of Law. With your permission, Mr. Chairman, I'd like to make a few comments.

CHAIRMAN TOWARAK: Sure. Permission granted.

MR. SEWRIGHT: Thank you. The comments Ms. Yuhas just stated are taken from the State's comments on this proposal in your meeting materials. Those comments were submitted November 30, 2010 in order to meet OSM's publication deadline. My understanding is that since then OSM Staff posted its proposed modifications to FP09-15, also appearing in your meeting materials. That's the analysis and modified proposals in your meeting materials from OSM Staff, including the analysis addendum at Page 303.
I was requested as legal counsel to review these proposed modifications for legal effect, and the standards applicable to the Board's determinations.

OSM's proposed modifications are two-fold, and they haven't been addressed very much. The first modification would limit the road system, no Federal subsistence priority area being proposed, to a smaller Juneau non-rural area provided by Federal regulation in 50 CFR Section 100.23(a)(4). The problem with that proposed change, and it may be a minor one, is that the Juneau non-rural area designation provided by that regulation apparently does not include the last 10 miles of the connected Juneau road system ending at Berners Bay or all of the connected Juneau road system on Douglas Island.

According to Board regulation, the Juneau non-rural area is described as the Juneau area including Juneau, West Juneau, and Douglas, as further depicted, and I'm quoting from the regulation, by maps delineating the boundaries which may be obtained from the U.S. Fish and Wildlife Service, Office of Subsistence Management. The OSM map for the Juneau non-rural area appears in OSM's annual handy-dandy publication, Federal Subsistence harvest of fish and shellfish regulations. I can provide you with copies of the map that appears in that handy-dandy. I did bring extra copies, and with your permission, Mr. Chairman, I will bring them to you and you can pass them out?

CHAIRMAN TOWARAK: Yes.

MR. SEWRIGHT: And this map is familiar to a lot of the professional working with OSM. Please when handing out, please see that all Board members get a copy. I didn't make enough copies for everybody here, sorry.

Continuing on, if you compare that map with the map of the Juneau road system provided at Page 284 of your meeting materials, you will see that OSM's proposed modification does not include the last 10 miles or apparent last 10 miles of the existing Juneau road system ending at Berners Bay, or all of the connected road system on Douglas Island. If you simply compare those two maps, you will see that. Both maps have been prepared by the Office of Subsistence Management. Again, the Juneau non-rural area is a designation made for -- as between rural areas and non-rural areas for Federal
Subsistence Program purposes.

Now there are consequences to that proposed modification, the one that effectively eliminates 10 miles of roadway and part of the roadway on Douglas Island. It means, for example, that under OSM's second proposed modification, which I'll get to soon, residents of all of District 15, including Skagway, Klukwan, and Haines, 40 to 70 miles away from where the Juneau road system now ends at Berners Bay will still be entitled to fish under the Federal Subsistence Program within the 10 miles of the Juneau road system ending at Berners Bay despite there being no evidence of those communities customary and traditional use of fish from that area, according to OSM's analysis in your meeting materials.

Federal Staff's justification for proposing the smaller area, that is the Juneau non-rural area, in its analysis is its speculation that the Juneau road system may some day reach Haines and Skagway, 40 and 60 miles away from the existing Juneau road system. Under the Board's legal standards for C&Ts, that possibility some day does not justify establishing a C&T priority to far away rural residents of Districts 11 and 15 for portions if the existing Juneau road system as it exists now.

So after checking with Mr. Swanton and Ms. Yuhas, the State respectfully submits that ADF&G's proposal should be accepted by the Board as ADF&G proposed it, and OSM's actual information of no C&T use for that road system supports establishing a no Federal subsistence priority as to all fish reached by the existing connected Juneau road system. This can be accomplished by deleting the references to within and in the Juneau non-rural area, and also adding the description, existing in 2010 after Juneau road system where those phrases appear in the proposed modified regulations appearing in OSM's analysis addendum at Page 303 of your meeting materials. In other words, make it clear in the modified proposal that the road system being regulated are being designated by the regulation is the existing Juneau road system as of 2010, or it can be 2011. It's not going to make a difference. And thereby include the entire road system.

OSM's second proposed modification stems from the Board's direction, and that direction is referred to at your meeting materials by OSM Staff at
Page 278, that an analysis be developed that examine customary and traditional uses of fish in all of Districts 11 and 15 rather than just the Juneau road system are. And that was directed by the Board when it deferred the proposal at its January 2009 meeting. OSM's response, and that's at Page 303 of the meeting materials, is to propose modifying ADF&G's proposal by establishing positive C&T determinations (a) to all fish within District 11 and the waters draining into that district for all residents of drainages flowing into District 11, except for the Juneau area; and (b) to all fish within District 15 and the waters draining into that district for all residents of drainages flowing into District 15, except again for the Juneau area.

District 11 is an area extending over 80 miles, including inland -- especially if you include inland drainages into Lynn Canal, Stephan's Passage and Seymour Canal near Juneau. District 15, immediately north of District 11 and Juneau also extends over 80 miles including drainages, and includes Haines, Skagway and Klukwan. These broad C&T areas are proposed despite OSM's acknowledgement in its analysis and analysis addendum, that there is, and I'm quoting, no information available on individuals in District 11 living outside of the non-rural Juneau area harvesting any salmon or non-salmon species inside of District 11. OSM's additional conclusion that marine waters within Districts 11 and 15 are outside of Federal jurisdiction, which they are according to Federal subsistence regulation, the U.S. Supreme Court decision in Alaska v. United States in 2006, and Federal District Court Judge Holland's 2009 decision in Peratrovich v. U.S.

And, finally, these C&T areas are proposed by Board Staff despite the conclusion in the Staff's analysis that only Skagway, Klukwan, and Haines indicated harvesting fish from Federal public non-marine waters in District 15, and then in close -- and I'm quoting from the findings, in close proximity to those communities as opposed to 40, 50, 60 or 70 miles away, at least as to non-marine waters, and again the Federal subsistence jurisdiction is -- does not extend to the marine waters. Thus OSM's new recommended district-wide C&Ts for districts 11 and 15 are unsupported by this information.

Now, it is submitted that the logical alternative based on the proposal as originally submitted and the absence of evidence of subsistence use, according
to OSM's own analysis directed by the Board in January 2009, is to make a finding of no Federal subsistence priority for all of District 11 and all of District 15, except for those specific freshwater bodies at the head of Lynn Canal in close proximity to Skagway, Kluwan and Haines which actually may qualify as Federal public waters under OSM's analysis, which specifies those freshwater bodies in the vicinity of those communities.

However, it is also recognized that as O -- as the OSM analysis concludes, without the District 11-wide and District 15-wide C&Ts it proposed, the existing C&Ts for those two districts, which would remain, are much broader for all Alaska rural residents as to some fish, and all Southeast and Yakutat rural areas as to other fish. The focus is at least on those districts, and that's a positive.

Thank you.

MR. FIRMIN: Mr. Chair.

CHAIRMAN TOWARAK: Any questions. Are there any questions from the Board or from the Regional. Mr. Firmin.

MR. FIRMIN: Thank you, Mr. Chair.

According to some of this, that you don't want people flying from abroad to fish in this area, to exercise their subsistence rights and I've got 350 miles one way to exercise my subsistence rights to hunt caribou on my traditional hunting grounds, and it sounds to me like just because I haven't done that, because I can't afford the fuel to travel that far in the last 10 years, that maybe I shouldn't -- that shouldn't be my traditional hunting grounds any more? And I mean, again it just disgusts me that on this same page here it says, they'll fly as far south as Hydaburg, but Metlakatla's farther south than that, and it seems like the communities that are being surveyed in here, to ask if they're using an of this, they haven't been asked for 30 years if they haven't been doing that. At least according to the information in front of us, and I think that just solidifies the Southeast Alaska Council's opposition of this proposal.

Thank you.

MR. SEWRIGHT: I can respond. As an earlier speaker with the Board Staff pointed out, the
practices for subsistence hunting of wildlife and fishing are often very different. And fishing occurs generally very close to the communities that use that resource, and both the Alaska -- the Federal Subsistence Board decision in 2008 and OSM's analysis in this case recognize that. Those are the Board's legal standards.

Thank you.

CHAIRMAN TOWARAK: Mr. Firmin.

MR. FIRMIN: Thank you, Mr. Chair. Just in a retort there. My traditional fall fishing ground for chum salmon is approximately 180 miles from my home. And that's not so much any more, but that's where it traditionally is. Thank you.

CHAIRMAN TOWARAK: Ms. Ahtuangaruak.

MS. AHTUANGARUAK: I appreciate all the discussion that has gone into this area. It is something that is very concerning to look at, the longevity of the tribes that have been in these areas that have changed with land use changes and increased activities into the area, but to wipe out their history of traditional usage in this area is very concerning.

There was a study done in our area of which I was specifically impacted in which they said we had never camped at my fishing camp when they were trying to expand Alpine. Yet I had been out there with two adults, three snow machines, two sleds, six kids and a dog. And yet the study on our tundra said nobody had been subsisting in this cabin that we had been using, that my ex-husband's father had taught him how to harvest his first caribou, as well as there's history in our families with uncles traveling over 1,000 miles and efforts over two years to bring harvest back into various villages when the caribou were decimated in years past. There's action of interacting in our communities that we might not do every year, but our traditions may need to have some interactions in the future that show the importance of continuing our traditional and cultural uses. The stories of the harvesting in those areas are hard to find now, because of the death of these people that did those huntings, but they are still there. It is very important that we utilize the resources, but we also know about our resources and interact with them as they change, when we need to.
Thank you.

CHAIRMAN TOWARAK: Ms. K'eit.

MS. K'EIT: Thank you, Mr. Chair. I have a question for the State at this time. Regarding the various smaller streams within both of these districts, does the sport fishing survey that's required document the harvest in these -- in those smaller streams as well?

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Yes.

MR. SWANTON: Mr. Chairman. Ms. K'eit. Documentation based upon the statewide harvest survey largely is based on a statistical approach. Whether we are able to document in a very refined manner, smaller streams, or whether that -- where that estimation has to encompass a larger grouping of smaller streams. So specific reference, yes, we do, but I can't give you anything definitive with regards to the smaller streams, because in essence we need to have a certain number of respondents to that survey from that particular stream in order to generate a harvest estimate. And if we are not able to get those number of respondents, we broaden it to include a larger grouping of smaller streams. I don't know if that helps you or not.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you. Any further -- Mr. Sampson.

MR. SAMPSON: Thank you, Mr. Chairman. I think some of the issues that's been on my mind has also been said. But traditionally even within the northwest area where the traditional hunting areas, traditional fishing areas, traditionally was never documented. Never in any written form. And how those areas are utilized or are traditionally, they'd go out into certain areas, not only one certain time, but many times. When they go out to the site locations, in some cases some of the communities or some of the individual families follow the resources around. So traditionally there was never any written form in regards to where some of these site locations. It's just that recently that the State of Alaska have started mapping in regards to where do you hunt, where do you trap? Then without any clear thought process, people started outlining. The
younger kids started outlining these are the areas that we utilize when it's not. From those studies then or surveys, then State of Alaska and the Federal Government will say, well, sorry, these are the only areas that you've identified as a use area. So I want to put on the record that traditionally folks have never any written format, write any areas for traditional uses.

CHAIRMAN TOWARAK: Thank you, Mr. Sampson. Is there any need to respond. Ms. Chythlook.

MS. CHYTHLOOK: I just want to -- thank you, Mr. Chairman. Molly Chythlook. I just want to reiterate that traditional and customary uses, use determination, this brings back to when the land claims came to our region and wanting us to identify our traditional use locations. And what they determined was that if you identify a location, you have to prove that you have left a footprint there. And traditionally when we do any harvesting of any source, and when we use the lands that we respect, we don't leave footprints in those locations. We don't try to prove that we've used -- we use those locations. And so it's -- I guess with the surveys that have been done to try to determine customary and traditional uses of these areas, you know, it's like Mr. Sampson said, that we don't leave footprints and try to prove that those traditional areas have been used, and I just wanted to bring that out.

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Thank you, Mrs. K'eit.

MS. K'EIT: Thank you, Mr. Chairman. I have a general question for the Department. As you've been here the past couple of days and you followed our discussions and deliberations on things like the Yukon River Chinook and today the eulachon fishing on the Unuk River, and considering those issues, considering the conservation issues related to that, those two topics, and then coming to this proposal on this topic, where would you says there's kind of -- I mean, what -- if you were to compare those, sorry for the disjointed thoughts here. If you were to compare those, kind of what -- you know, on a scale of 1 to 10, how important would this proposal be to conservation in the Juneau road area compared to things like the Yukon fishery and the eulachon fishery. And I hope that's understandable.
Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Go ahead, Mr. Swanton.

MR. SWANTON: Mr. Chairman. Ms. K'eit.

I'm not sure that there's a scoring system available for any human being to be able to lay out on a scale of 1 to 10 where each one of these things compare to the other one. And I think that it would be unfair to the people that are invested in those particular resources in those particular areas. It would be -- to me it would be unjust to try and judge one regions concerns for one fish stock versus another region, so I would be apprehensive about putting a scale on that. Hopefully you understand my reservation.

Mr. Chairman.

CHAIRMAN TOWARAK: Thank you. Any further discussion.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Thank you for your testimony from the State.

We will proceed then onto our next step of the InterAgency Staff Committee comments. Doctor.

DR. WHEELER: Thank you, Mr. Chair. The InterAgency Staff Committee had multiple views on this analysis. Some felt that the analysis does not contain enough information to support a positive customary and traditional use determination for the Juneau road system, and that the analysis raised some concerns as to whether or not a positive customary and traditional use determination should be recognized by the Federal Subsistence Board in that area.

Others felt that additional evidence, including oral testimony presented at numerous Council meetings, including the most recent Council meeting in Hoonah, and written letters, point to a customary and traditional pattern of subsistence fishing in this area by subsistence users representing a broad range of Southeast rural communities.

Some InterAgency Staff Committee members also were concerned that a closure to harvesting of an entire group of animals, i.e. all fish, by Federally-
qualified subsistence users has never been adopted by the Federal Subsistence Board. It should be noted, however, that the Federal Board has used no Federal subsistence priority type closures for individual wildlife species in particular situations in specific areas of Alaska.

Mr. Chair.

CHAIRMAN TOWARAK: Thank you for adding to the confusion.

(Laughter)

DR. WHEELER: My pleasure. Glad to help.

CHAIRMAN TOWARAK: Are there any questions of the Staff.

(No comments)

CHAIRMAN TOWARAK: If not, then thank you.

We will proceed then to the next step, the Board discussion with Council Chairs and State liaison. Mr. Adams.

MR. ADAMS: Thank you, Mr. Chairman. I'd just like to maybe Add another tidbit of information. You know, when Mr. Haskett asked me about the sport issue in the Juneau road system, this -- I'm just taking this from the comments that Pippa made when she was making her presentation before the Board last fall in Hoonah.

There is some instances where sport fish harvest information has been used to document customary and traditional uses, but this only occurred when there was no other information available. So there's a little bit of history there about using, you know, this as a matter of fathering information.

However, currently in the most of -- in most of Southeast Alaska, other information is available, and the sport fish uses are not considered subsistence uses. However, further information is sought from the Council whether or not the sport fish use should be considered customary and traditional use. And this is where Ms. Phillips when she was making her reasons why we want to -- want this proposal, should be considered, is that, you know, the sport fish ought to be part of the
subsistence tally catch. So I just wanted to -- I hope that clarifies it a little bit for you, Geoff, but I just felt inclined to add that onto it so that can satisfy myself as well.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Adams. Further discussions. Ms, K'eit.

MS. K'EIT: Mr. Chair. Thank you.

Mr. Adams, I wondered in your deliberations this fall and then previously on the similar proposal in '08 I believe, what was -- was there any discussion among the RAC about subsistence users around Southeast traveling to gather up fisheries resource throughout Southeast. What -- if there was any discussion on that topic, what was it like?

MR. ADAMS: You mean the people who travel in Southeast Alaska, whether they subsist in other areas or what? Something like that?

MS. K'EIT: Yes. Correct.

MR. ADAMS: Yeah. Yeah, there was quite a bit of discussion about that, and one of the concerns that we did have was, and I gave Hoonah as an example, you know, and Kake probably, many of those people, you know, are moving from their rural areas and moving into urban areas like Juneau or Ketchikan, you know, so that they can obtain gainful work, because they can't support their families, you know, in their communities. But, you know, we were concerned that perhaps they needed to go back to their communities just for the purpose of engaging in their subsistence activities. You know, this was a real big discussion, and, yes, yep, just examples like that, you know, was thrown back and forth in our discussions.

Thank you.

CHAIRMAN TOWARAK: Just in that line, too, in our case, and I think it's true with most rural communities, we have tribal enrollment, and you don't need to be living in the community to be enrolled to a tribe. We have a lot of tribal members that live in Anchorage, but they come back to my home town and practice their tribal rights of subsistence.
MR. HASKETT: Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Mr. Haskett.

MR. HASKETT: So I have a question, if I
could get clarification from Pippa on a point. Would
that be okay?

CHAIRMAN TOWARAK: Sure.

MR. HASKETT: So my question is, I get
the argument about -- people are making about that
recreational use could very well be utilized to make a
subsistence determination. In fact I think this Board
has done that in the past. The analysis done by OSM I
think supported the State, recognizing there's a
difference of opinion there, too on the modifications
that were suggested. But in looking at recreational use,
and there are only some -- and maybe I'm asking the wrong
place. I mean, instead of asking you specifically, let
me just lay out a question here for people to think
about. It's only some of the communities have documented
recreational use, and not the entire area is being
proposed, so I guess I'm still struggling with kind of
that larger area as opposed to -- if you're using it as
a determination, looking at Skagway, Sitka, Wrangell,
Pelican, Haines and Gustavus -- I'm not doing a very good
job of asking this question, but it appears to me there's
an argument being made at least in part, that recreation
needs to be utilized, can be utilized to make the
determination, but there's a whole bunch of this area
that is not actually documented that way. So maybe you
are the right person to ask, because some clarification
on that for me.

Through the Chair.

CHAIRMAN TOWARAK: Pippa.

MS. KENNER: Mr. Haskett, through the
Chair. You've asked a couple of questions that are tied
together and I'm going to -- I'll try to address them
all.

One thing to remember is that the first
time this analysis was presented to the Council and to
the Board, it was this analysis. There have been changes
made. The question then was different. It was
concerning only the Juneau road system. And the uses on
the Juneau road system were the only uses that were
researched.

When the question was expanded to all of Districts 11 and 15, then we searched uses in those areas. And when we researched the uses in those areas, we didn't ask the question about the State -- we didn't ask the question when we -- from the State sport fish statewide survey.

I think that may have satisfied you?

MR. HASKETT: Yeah, that's very helpful. Thank you.

CHAIRMAN TOWARAK: Keith, can you clarify -- we'll recognize Ms. Pendleton first, and then perhaps we could hear from Keith next.

MS. PENDLETON: Thank you, Mr. Chair. This question is for the Office of Subsistence Management, and I'm still not quite seeing this in the analysis, so I need some help here. But can you tell me why you changed your recommendation on this proposal from two years ago to now support a finding of no customary and traditional use determination? And specifically, is there some new information that led you to change your recommendation for the Juneau road system?

MS. KENNER: Thank you, Ms. Pendleton, through the Chair. I think the change in recommendation is one indication of how difficult the analysis was. And once again when we were first looking at this proposal, the question was a little bit different. Because in the Southeast area it has been the custom for the Council and the Board to recommend and adopt customary and traditional use determinations for fish based on fishing districts. We were looking for customary and traditional uses in Districts 11 and 15. And were -- we were not specific -- we were not collecting data that specifically looked at the Juneau road system in a positive manner. We were looking at positive uses of Districts 11 and 15.

This question was a little different. We were making a determination of the subsistence -- customary and traditional use determination for fish in all of Districts 11 and 15. That required us to go into a lot more detail, and to look at the information we had differently. And in doing that, the characterization of the customary and traditional use determination looked different than the initial research, when we weren't
1 doing a determination for all of 11 and 15. This allowed
2 us to present this option to the Board.
3
4 MS. PENDLETON: Thank you. It's still a
5 little squishy for me.....
6
7 MS. KENNER: Should I.....
8
9 CHAIRMAN TOWARAK: Mr. Probasco.
10
11 MR. PROBASCO: Mr. Chair. Ms. Pendleton.
12 This is indeed a very difficult proposal, but I think the
13 way you need to look at it is that we have the two
14 districts, 11 and 15 as entirety, and contained with them
15 was the question of the Juneau road system. When you
16 tease out the Juneau road system is when you get into
17 difficulty trying to find sufficient data and information
18 that traditionally would have supported the Staff to come
19 back with a recommendation to find a positive C&T
20 determination. And that's why we're wrestling with sport
21 fish data and information like that.
22
23 The other thing to keep in mind is that
24 we've actually had some years now where we have issued or
25 had the potential to issue Federal subsistence permits on
26 the road system. To date my understanding is we have not
27 issued any. So the opportunity is there to fish under
28 Federal regulations, but that hasn't taken place.
29
30 So we look at the information, we start
31 teasing out and then pulling out the Juneau road system.
32 And that's where it gets squishy as you put it, because
33 of the lack of data.
34
35 Thank you, Mr. Chair.
36
37 CHAIRMAN TOWARAK: Any other comments.
38 We'll take Mr. Reakoff first and then Mr. Firmin.
39
40 MR. REAKOFF: Well, Mr. Chair, I'm just
41 observing this proposal from the exterior, but I feel
42 that I just point out some of my heartfelt convictions
43 regarding some of the issues in this proposal. Hook and
44 line fishing is never thought to be truly subsistence,
45 but in reality many subsistence users use hook and line,
46 because you can look at all the pictures the kids drew
47 back there, and a lot of them had hook and line fishing
48 involved in subsistence use.
49
50 Another, the over-arching issue is the
State's concern that subsistence priority use in the Juneau road area would affect the stocks by having a higher harvest level, but in reality the State's non-subsistence use areas actually violate the Alaskans' rights. Non-subsistence use area have non-resident and resident allocations without any priority. So the reality is the Juneau non-subsistence, State non-subsistence area has a tremendous amount of non-resident use competing with residents of Alaska in violation of the Alaskans' priority under State interpretation of subsistence. The minuscule number of rural subsistence users that would utilize subsistence regulations on the Federal lands in the Juneau routed area is minuscule compared to the non-resident of Alaska use. And so in reality the State of Alaska's non-subsistence areas are a violation, and really should actually be taken to court at some point. The Alaskans around Juneau, around Anchorage, around Fairbanks in the non-subsistence areas actually should have a priority use. Non-residents should actually be excluded. The issue of this proposal is that the few rural residents that may use the Federal lands under subsistence regulations is actually a minuscule number of the harvest. I just wanted to point that out.

Thank you.

CHAIRMAN TOWARAK: Mr. Lohse.

MR. LOHSE: Mr. Chair. Just a question. Is the request for this subsistence priority accompanied by any increase in bag limit or any special seasons?

CHAIRMAN TOWARAK: Did the Staff, any of the recognize or want to.....

DR. WHEELER: Mr. Chair. Polly Wheeler with OSM.

It's strictly a customary and traditional use determination, and the methods and means and seasons are separate. Mr. Chair.

CHAIRMAN TOWARAK: Mr. Firmin.

MR. FIRMIN: I just had a quick question. I was wondering which division of Alaska Department of Fish and Game submitted this proposal?

CHAIRMAN TOWARAK: Which division in the
Fish and Game Department.

MR. SWANTON: Mr. Chairman. In this context, we don't have divisions. It was the Department.

CHAIRMAN TOWARAK: It might be worth it -- in my mind, it would be worth it for me to hear from our attorney to remind us about our charge as Board members in setting priorities where we've come into a milky area. And if you have any insight or any foresight as to -- to give us a little direction, that might help us in reaching a final decision.

MR. GOLTZ: Well, I was going to raise my hand when the issue came to the Board. I'm not sure that I can help you in all of the milky areas. There are going to be difficult areas, and C&T is one of them. I see it's causing the State sill a lot of stress. We're going to be reviewing that whole issue, and hopefully we can clear it up in a short period of time.

But one thing that I think we have to concentrate on, and this is important today, it's going to be increasingly important tomorrow, no matter what we do with tribal involvement, we still have to administer the statute. And the statute is based on residency. Nothing else. So if a tribal member moves to Juneau and sets up a personal permanent place of residence, he loses his rural priority. The way he can regain it is to move back to a village. But he can't claim that I used to be a rural resident, therefore I retain the right. It's simply geographic. That's what the statute gave us. That's what we have to administer. So we have to be very disciplined in our use of language and in our thinking, even though there is a strong tribal interest in the subject, the beneficiaries of the statute are still based on rural Alaska residency.

And that's all I have on that subject. I might have to repeat it again tomorrow, but an executive order -- we're dealing with inconsistent concepts in some way. The primary driver of this program is the RACs, and we -- I think we have to maintain that at the same time we're trying to accommodate the new executive order.

CHAIRMAN TOWARAK: Thank you, Keith. Any other questions. Mr. Adams.

MR. ADAMS: I have a question for Keith
again. If I heard you correctly that if a person like --
I was giving an example a little while ago, moves from
Hoonah, who has T&C over there, into Juneau to obtain a
job, that he stays there for a period of time where he
establishes himself there, then he cannot go back to his
village and hunt and fish for his subs -- to supply his
subsistence uses?

MR. GOLTZ: Not without changing his
residency. ANILCA's a compromise statute. Nobody got
what they wanted. Everybody's got a grievance. And
that's part of the grievance that was written right into
the statute.

MR. ADAMS: A follow-up, Mr. Chairman.
Let me give you another example. Supposing a group of
people from Juneau comes up to Yakutat and subsistence
fishes. Now, I'd kind of like your answer on that one,
too.

MR. GOLTZ: It's based on residency.
It's based on a dot on the map. Where your dot is is
where your rights attach.

MR. ADAMS: So my son who moved from
Yakutat, moved to Juneau, can't come back to Yakutat and
subsistence fish?


CHAIRMAN TOWARAK: If his residence
is.....

MR. GOLTZ: Right. I'm talking about the
Federal law, and that he could -- there are State
opportunities for that, But we're talking about the
Federal law.

MR. ADAMS: I understand that. Okay.
Well, thank you.

CHAIRMAN TOWARAK: Ms. K'eit.

MS. K'EIT: Thank you, Mr. Chair. But
that doesn't apply if say the person goes to Juneau on
business, spends an extra day there, does some
subsistence fishing, or a person from Haines gets a
temporary road construction job on the beautiful new
interchange on Egan Highway, but their residency is still
Haines. Those cases, it's not applicable.
MR. GOLTZ: Correct.

CHAIRMAN TOWARAK: First Mrs. Pendleton.

MS. PENDLETON: Mr. Chair. Yeah. Also a question for Keith. If a person from a rural area goes to the University of Alaska Southeast for school or for State legislators who come into the Juneau area, are they still a rural resident if they say they're residence is in that rural area? Or their -- where is their residency?

MR. GOLTZ: We have a regulation on what's a resident and what isn't. I don't believe that going to school changes your permanent place of residence, but if anybody has the regulation book quickly at hand, we could check that.

CHAIRMAN TOWARAK: Mrs. Chythlook.

MS. CHYTHLOOK: Thank you, Mr. Chair. So I know that the State of Alaska, if you're a resident of Alaska, then any resident from Alaska can come to Bristol Bay and harvest salmon as a subsistence resource. So I guess my understanding with the Federal regulation is that's not true. So I guess if somebody comes to Bristol Bay, they could travel under State and not Federal. So is that how this is going to work?

MR. GOLTZ: Is that directed to me? I apologize, I was reading the residency regulations. Could you state your question again?

MS. CHYTHLOOK: Under the State anybody that lives in Alaska can come to Bristol Bay and do their fishing, their subsistence fishing. So my understanding from you is under Federal, if a person doesn't live in a rural community, and they move from Bristol Bay to Anchorage or in an urban location, when they come back to Bristol Bay, into rural, they can't hunt or fish. And I just made a statement then that I guess if they do come back to harvest and hunt, then they can come as a State resident instead of Federal?

MR. GOLTZ: Yeah, I'll leave the State rights to Mike Sewright or somebody from the State, but under the Federal system, the rights attach based on where your permanent place of residence is. You can certainly change your residence, permanent place of residence, and we have the rules for that set out in
regulation. But you can't become a permanent resident of Anchorage and still retain your Title VIII subsistence rights.

CHAIRMAN TOWARAK: Go ahead.

MR. PROBASCO: Thank you, Mr. Chairman. And that's the key. When we look at Title VIII it's specific to wildlife and fisheries with the exception of marine mammals and migratory birds. And there's a whole different slate of regulations under that, and I think Mr. -- our Chairman was speaking to that incident as it pertains to migratory birds. But keep in mind we're dealing with ANILCA and those regulations outside of marine mammals and migratory birds.

CHAIRMAN TOWARAK: Correct.

MR. GOLTZ: My comments are directed solely to Title VIII, subsistence.

CHAIRMAN TOWARAK: Mr. Sampson.

MR. SAMPSON: Than you, Mr. Chairman. I think we also need to consider what was reported to this very body your InterAgency Staff there who indicated that there is a lack of information. And that's what I heard anyway. So based on that, then this proposal would more than likely die.

CHAIRMAN TOWARAK: Any further questions.

Mr. Sewright.

MR. SEWRIGHT: Thank you, Mr. Chair. The problem I'm having is that we have a proposal where specific parts of it we can look at and make a determination fairly easily on whether there's rural use or not. There's this whole additional part of it where the information wasn't there, or we -- I mean, it's not as easy to discern it, so it's difficult to look at this entire proposal without dissecting it somehow. I haven't quite figured out how to do that based upon the conversation we're having here. That probably doesn't help any, it's just that I think that's the problem we're facing.

CHAIRMAN TOWARAK: Let me ask the State if they might have any suggestions in giving us direction.
MR. SEWRIGHT: This is Mike Sewright again, Mr. Chair. And everybody on the State side is looking at me, so I will try to respond. We did have suggestions, we do have suggestions that were perhaps lost somewhat in the longer explanation that I gave. First as to the Juneau area, we recommend adoption of the proposal as modified, but change it back to the entire existing Juneau road system. And I say existing as of this year, which meets OSM Staff's concern in their written comments. We're probably talking about an additional 10 miles leading to Berners Bay north of Juneau and an additional 5 miles of road on Douglas Island, so it's not a big change, but it would be a correct resolution of that issue. So accept the proposal, adopt the proposal with that revision.

As I pointed out at the end of my longer discussion, the State also recognizes that trying to limit the subsistence C&T for residents of District 11 to District 11 and the residents of -- rural residents I should say, of District 15 to 15, for those two districts, it's better than the present situation by default where, as was pointed out in Ms. Yuhas' comments and others have pointed out, anyone from Barrow could subsistence fish in District 11 or District 15 for salmon anyway, and rural residents many, many miles away in other portions of Southeast Alaska, even hundreds of miles away, could fish for resident species in those two districts, so the proposal, the modified proposal from OSM Staff, limiting District 11 C&T to District 11 rural residents and limiting District 15 C&T to residents in that district, is an improvement, and that was the request.

What we pointed out was there isn't substantial evidence to support C&Ts for those broad areas, each district being about 80 miles long, but we recognize the improvement. And I hope that didn't get lost in the message. So it's mostly -- that would be the suggestion. We think it would be better to not find C&T in District 11, because there's no evidence of it, but we understand the comments other people have made. At least I do, speaking as legal counsel, not as the policy makers for the State, but I think they -- I'm not saying they would disagree. And we recognize given the absence of evidence that District 11 and District 15 designations are better than the existing situation, but we don't -- we were just stating for the record we don't find evidence of C&T use by District 11 residents outside of Juneau in District 11, or by District 15 residents.
outside of the immediate areas of Klukwan, Skagway and Haines. So we pointed that out for the record. Am I being clear enough? I'm trying to be.

CHAIRMAN TOWARAK: It's giving me a better clarification. I'd like to ask the OSM Staff if they have a different thought. Pete.

MR. PROBASCO: Mr. Chair. Our recommendation, OSM comes to the table with an analysis of a proposal that is looking at the information that's available, and making a recommendation based on that. It's then given to the Staff Committee and the Board, and now the Board to make a determination based on additional information received both from the public, the Regional Advisory Councils.

So, Mr. Chair, I would stand by my Staff's recommendation. I think my answer to Ms. Pendleton's question also shows what the Staff struggled with as we try to tease out the Juneau road system, and that's where the Board has to wrestle with a very cloudy area.

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: And then finally I'd like to ask the Chair of the Southeast Council if he has final thoughts.

MR. ADAMS: Thank you, Mr. Chairman. I was wishing you wouldn't ask me to make any final thoughts.

(Laughter)

MR. ADAMS: You know, when we deliberated upon his, he Council felt that the Staff analysis was kind of incomplete, to be honest with you. And we didn't think the proposal is necessary and that it would be detrimental, you know, o the continuation of subsistence uses in that area.

Let me read a couple things here. There is a high degree of certainty that additional information exists regarding the use of this area by residents of various rural communities. We already covered that. You know, the sport fishing industry -- people and so forth. Because harvest data is difficult to obtain, that is not the same as a determination that there was no use. You
I know, there's a lot of activity going on there, but you just can't determine, you know, how much use is being there being used down there, but it -- we know that it's happening. Transcripts of the previous meeting contained evidence of subsistence use that was not recognized in the current analysis. The difficulty in documenting historical use is likely due to interruption of traditional activities due to recent regulations.

Sport fishing is a subsistence harvest method and the amount of that use should be better described. And we talked about that a little bit.

The Council does not know the outcome of relevant jurisdictional issues currently under consideration, but a court in the Katie John case I didn't mention that, but that was a consideration there.

In addition it is likely there will be new and currently unknown rules regarding the evaluation of customary use as a result of the Secretarial review of the subsistence program. The intent of ANILCA does not require the Council to determine non-subsistence use areas, or make a negative or customary use determination. The Council agrees that there are management challenges in this area, but there are management tools available to Federal managers to provide for conservation and sustainability of these stocks.

The Council heard public testimony citing economic factors that are bringing rural residents to Juneau as transient workers. We talked about that. There should be an opportunity for subsistence harvest of fish for rural residents that are forced by necessity to spend time in Juneau. We talked about that a little bit.

The proposal is detrimental to the satisfaction of subsistence needs and would be precedent setting. The Council has already rejected two similar proposals in previous years, and there should be no deference shown to the Council on this issue. There is no evidence to indicate that subsistence fishing in streams on the Juneau road system is inappropriate, and no evidence that Federal subsistence fishing regulations are not conservative and sustainable.

Thank you for allowing me to give this final report to you. Mr Chairman.

CHAIRMAN TOWARAK: Thank you for those
final comments. We'll proceed if there are no other comments.

(No comments)

CHAIRMAN TOWARAK: We will proceed then on to number 8, Federal Subsistence Board action.

MS. PENDLETON: Mr. Chair. I'm prepared to make a motion.

CHAIRMAN TOWARAK: There's a motion on the floor; is there a second. Pardon?

MS. PENDLETON: No, I'll make the motion.

CHAIRMAN TOWARAK: Oh, okay.

MS. PENDLETON: I'd like to frame this in the positive. I'd move to adopt Proposal FP09-15, and following a second, then I'd like to give some rationale for why I plan to vote against my motion, and thereby support the Southeast Alaska Regional Advisory Council's recommendation.

MS. K'EIT: Second.

CHAIRMAN TOWARAK: You heard the motion and the second. Proceed, please.

MS. PENDLETON: Okay. And bear with me for a few minutes. My rationale is mostly based on the Council's recommendation on Page 308 of our workbook, but I'd like to discuss some points concerning this proposal, because to some it might appear that adopting the proposal as proposed or the OSM conclusion on Page 303 would be logical given our regulations and the relatively small amount of data supporting a customary and traditional use determination for the Juneau road system.

First of all, I'd like to point out that in 2009 the OSM conclusion was to oppose the same proposal, and it's still not clear to me that sufficient new information now supports a determination of a no Federal subsistence priority on all of or a portion of the Juneau road system.

I agree with the OSM recommendation that there's relatively little information to show a current customary and traditional use determination of fish on
the Juneau road system, but I do believe that there are
a number of considerations that the Board needs to take
into account.

First of all, the entire area is a
traditional use area, and that's I think demonstrated in
the Board book on Page 289, particularly for the Auk and
the Taku people and in the illustration from Goldschmidt
and Haas.

Another point, there should not be any
Federal public lands under the jurisdiction of the
Federal Subsistence Board for which a complete
prohibition is placed on the taking of an entire group of
animals, such as fish, unless the evidence is
incontrovertible. There's nothing in the ANILCA statute
which would counter the provision in Section .804 that,
quote, the taking on public lands of fish and wildlife
for non-wasteful subsistence uses shall be accorded
priority over the taking on such lands of fish and
wildlife for other purposes.

The third point I wanted to make, that
there is evidence of current use on the Juneau road
system by rural residents. That information comes from
sport fish mail-out surveys rather than from subsistence
surveys. The data from those mail-out surveys represent
the minimum amount of use by rural residents on the
Juneau fresh waters. Because that survey is only a
limited sample, I would expect more communities and more
use of the Juneau road system if the survey sample size
were larger.

Another point I wanted to make was that
rural residents as we've discussed this afternoon may
come temporarily to Juneau for economic reasons, maybe to
attend school, to work for the legislature, to visit
relatives. For a number of different reasons. And it's
very likely that some of those rural residents would fish
while in Juneau, perhaps likely under sport fishing
regulations as shown in the mail-out surveys.

As far as the question, can sport fishing
be considered a subsistence use, I believe that users are
-- they're opportunistic. If there's no other way to
fish, or if it's the most convenient way to fish, it can
be a subsistence harvest. And users are fishing to put
food on the table. It's not necessary for a harvester to
say, now I'm subsistence fishing versus now I'm sport
fishing.
And then the last point that I wanted to make, I've mostly discussed the no Federal subsistence priority request for the Juneau road system, but I'd also like to discuss the findings for District 11 and 15 for which the previous Board requested more information. The Southeast Council in their recommendation states, there was a high degree of certainty that additional information exists, regarding the use of this area by residents of various rural communities. Well, I agree with that, and having lived in Juneau for more than a decade, and in my work traveled and interacted with a lot of neighboring communities, I believe that there are customary and traditional uses that are no represented in the recommendation for Districts 11 and 15. For instance, there are very close ties between Juneau and Angoon and Hoonah, with Tenakee Springs and Gustavus, and I just -- it's just difficult to believe that there is not significant fishing by individuals from those rural communities in both the Juneau road system and other areas in Districts 11 and 15.

So in my opinion, this information is sufficient for me to vote to oppose this proposal consistent with the recommendation of the Council.

Thank you.

CHAIRMAN TOWARAK: Thank you, Ms. Pendleton. Any further additions to any of her comments.

MR. HASKETT: Mr. Chairman. No real additions, but this has been a really interesting conversation where it's been very difficult to kind of get to it, and Beth I think just did an excellent job of very concisely kind of pulling together all the arguments I needed to figure out where I'm going to go. And I'm going to support where Beth is coming from on this. I appreciate the explanation you just gave.

CHAIRMAN TOWARAK: Any additional comments.

(No comments)

CHAIRMAN TOWARAK: Is there a call for.....

MS. K'EIT: Question.
CHAIRMAN TOWARAK: The question's been called for, the final action, please.

MR. PROBASCO: Thank you, Mr. Chairman. The final action on FP09-15. The motion is to adopt. And, Mr. Cribley.

MR. CRIBLEY: No.

MR. PROBASCO: Ms. Masica.

MS. MASICA: No.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: No.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: No.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: No.

MR. PROBASCO: And Ms. K'eit.

MS. K'EIT: No.

MR. PROBASCO: Mr. Chairman, the motion fails 0/6.

CHAIRMAN TOWARAK: Thank you. Let's take a 15-minute break for relief.

(Off record)

(On record)

CHAIRMAN TOWARAK: Can we get seated to get ourselves back in session. I will call this session back to order. Our next and I believe our final fish proposal is 11-10, which we had held off, and now we don't have Ms. Chythlook here. We will proceed with the Proposal FP11-10, and we will begin with Staff analysis. Is it Dr. Davis?

DR. DAVIS: Thank you, Mr. Chair. Board members. RAC Chairs. My name is Elisha Davis. I'm an anthropologist at the Office of Subsistence Management.
And before I begin, I just want to point out that there's some handouts that were put in front of you, and it's a white piece of paper on the top of several colored papers. And what these are are the existing Federal regulations are on the pink piece of paper; the proposed Federal regulations are on the blue paper; and the OSM recommended modifications on the green paper. And we did them in this way so you could put them all right in front of you.

And also there were some changes to the OSM recommended modification. The changes on the handout do not change the intent or the meaning of the OSM recommendations in the Board book at all, but what they do is to clarify some of the regulatory language.

The analysis for Proposal FP11-10 is found on Page 169 of your Board book and on the handouts in front of you.

The Chignik Lake Traditional Council submitted Proposal FP11-10, which requests lifting a number of closures, while specifying certain gear restrictions in the Chignik management area. In the proposal, the proponents ask for a number of things, which I'm going to list for you. To remove the July 1st through August 31st closure on the Chignik River, to restrict hook and line gear in the Chignik River, to limit power purse seine gear to the Chignik River from Menses point downstream, to limit seining to the Chignik River and Chignik Lake. to restrict gillnet use in only the Chignik River, Chignik Lake, Clark River and Home Creek. And, finally, the proponent includes language about gillnet use specifications.

Conversations with the proponent revealed that they are concerned with two main issues. The first and from their perspective most critical are the current closures on Black Lake and its tributaries, which are areas used by very few people, but where there are long-standing practices. The second is the rise of sport fishing in the area. Thus the intent of the proposal was to open up areas currently closed to subsistence fishing, but which are open to sport fishing, specifically Black Lake and its tributaries. This area again is used by very few people, taking occasional fish by jigging.

The proponents wanted to add more opportunity to the subsistence fishing calendar. They wanted to limit fishing by power seine above Menses
Point, and the proponents hope to prevent sport fishing in the area from increasing, and so put in language about restricting hook and line gear.

And, finally, the proponents wanted to limit where gillnets could be used.

The existing Federal regulations are on the pink handout and are also in your Board Book on Page 172.

Existing Federal regulations restrict the distance you can fish from a weir, restrict taking salmon in the Chignik River from 300 feet upstream of the weir between July 1st and August 31st, except fishing is allowed up one mile of Clark River and Home Creek with a state permit by gillnet or without a permit when snagging or using a spear, bow and arrow, or capturing by hand. For non-permit fishing there are possession limits of five per day and five in possession.

Existing Federal regulations disallow purse seines in Chignik Lake. They restrict where you can set gillnets. They restrict fishing in Black Lake and the tributaries of Black and Chignik Lakes. And they set harvest limits of 250 fish.

Existing Federal regulations were adopted that parallel State regulations. And the State Regulations are found on Page 173 and 174. The main exception is where fishing is allowed without a permit by snagging with a hand line or rod and reel under the Federal regulations. Fishing under State regulations is to be done only with a permit.

Sport fishing regulations are found in your Board book on Page 174. The entire area is open to sport fishing of salmon unlike Federal subsistence regulations. Notably, the Chignik River is open to Chinook salmon sport fishing from January 1st to August 9th, where under Federal subsistence regulations it is open, but closed above the weir from July 1st to August 31st. And Black Lake and its tributaries are closed to subsistence fishing entirely. Although the area is open to sport fishing, there are limits on size and number of fish, depending on species.

The Board of Fish met just this week about concurrent proposals put forth by Chignik Lake Traditional Council and Chignik Lagoon, Proposals No. 95
and No. 96. And the Board of Fish voted to take no
action on these proposals.

Subsistence fishing has not been allowed
in Black Lake or its tributaries and the State
regulations have been in place since 1985. There was an
adoption of State regulations to the Federal system in
1999. State and Federal regulations have been amended
several times. In the past decade State and Federal
regulations have been liberalized in the area as can be
found in the analysis.

In terms of escapement, both 2009 and
2010 escapement goals in the Chignik River system have
been met for both Chinook and sockeye. Chinook salmon
only spawn in the Chignik River, and escapement again was
met in 2009 and 2010. And this year it was above the 5-
year, but below the 10-year average. Sockeye salmon are
found in the Chignik River system, including in Black
Lake and its tributaries. In the Chignik River
escapement goals were also met, and in the Black Lake
they were met, but below the 10 and 20-year averages.
And Black Lake also has separate resident species.

In terms of subsistence harvest, the past
few years have been below the 10-year average.

To sum up the effects of this proposal,
the proposal inadvertently removed certain regulations
that allow subsistence opportunities by deleting some of
the subsections of the existing Federal regulations. And
you can see those on the blue handout. It also repeated
certain regulations that were in the general provisions
for the Chignik area. It accidently negated some of the
existing regulations that residents wanted to keep as
discussed with the proponents after their proposal was
submitted. It created some unnecessary restrictions for
subsistence users while failing to address some of the
concerns of the concerns of the proponents as I'll
explain.

Opening more areas for subsistence would
provide additional opportunities for subsistence harvest
and would allow for customary fishing practices to occur.
This would be done through lifting the closures on the
Chignik River and allowing fishing in Black Lake and its
tributaries. The harvest numbers in Black Lake and its
tributaries in particular are not expected to change
significantly, because very few people access many of
these areas.
If adopted as proposed, unrestricted subsistence fishing for salmon would be allowed in the Chignik River above the weir, potentially ignoring conservation concerns for Chinook that the Chignik Lake Traditional Council wanted to keep in place.

The proposal does not meet some of the intent. For example, hook and line is not language used in Federal regulations, but instead Federal regulations do allow hand line and rod and reel. So restricting this type of gear in the Chignik River would create more restrictions for subsistence users, not for non-Federally-qualified users.

Opening Black Lake and its tributaries to some, but not all gear types, is not expected to have significant effects on resident species; however, using gillnets has a potential to create a conservation concern for resident species. But the proponents did ask to restrict this type of year.

The proposal as submitted would actually require subsistence permits where none are currently required as it supplanted some of the subsections, allowing fishing without a permit in Clark River and Home Creek. The permits if adopted as proposed would need to be reconciles. The proposed regulations would lead to significant differences in Federal and State subsistence regulations. Separate Federal and State subsistence permits may be necessary. Requiring separate permits may complicate enforcement, increase confusion, and encumber Federally-qualified subsistence users. The Federal Subsistence Management Program would need to administer a permit if an additional one is needed. However, a dual Federal/State permit could be issued to reduce the burden to subsistence users.

OSM recommends supporting the Proposal FP11-10 with modification. And those modifications are found on your green handout. The modifications -- sorry, excuse me, are on your green handout.

Opening closures of Black Lake and its tributaries and Chignik Lake and its tributaries for subsistence fishing while keeping certain closures and gear restrictions in place. Subsistence users will be allowed to access areas in all drainages in the Chignik area to harvest salmon from January 1st through December 31st, but with certain gear and calendar restrictions as I'll lay out. Opening these areas would allow Federally-
qualified subsistence users access to areas currently
open under State sport fishing regulations while
upholding a subsistence priority.

The modifications include the removal of
hook and line language from the proposal as it does not
address spot fishing regulations, but does limit
subsistence fishing. Because of potential conservation
concerns of resident species in Black Lake and its
tributaries, gillnets will be restricted there and remain
gear that can only be used in Chignik River, Chignik
Lake, Clark River and Home Creek as requested. The
modifications leave in the current restrictions for
taking salmon in the Chignik River from upstream of ADF&G
weir. The modifications leave in restrictions for taking
salmon on the Clark River and Home Creek, because it
allows for both permit and non-permit fishing to occur
and is therefore less restrictive. Restrictions on hand
seines and purse seines in Chignik Lake and Chignik River
are consistent with the proposed regulation.

Though there may be a divergence in State
and Federal regulations, the modifications correct
inconsistencies in the language regarding fishing permits
so that we can implement State subsistence fishing permit
and/or Federal permit. Creating a Federal permit has
been discussed in the past by the Council and the Board.
The language in the modification provides the flexibility
and the type of permit to be used.

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

CHAIRMAN TOWARAK: Thank you, Dr. Davis.
Are there any questions of the Staff. Mr. Haskett.

MR. HASKETT: Just -- excellent
presentation. Just a question though. I know that we
don't think the changes are substantive in terms of what
was presented by the RAC. I wanted to make sure we've
had discussions with Molly and that we're in agreement on
those changes.

MS. CHYTHLOOK: Sorry. Yes. This is
Molly. Yes, those changes are in agreement with the RAC,
BBRAC.

MR. HASKETT: Okay. Thank you.

CHAIRMAN TOWARAK: Any further questions.
(No comments)

CHAIRMAN TOWARAK: If not, then thank you for your report. We will move on to the summary of public comments read by the Regional Coordinator.

MR. MIKE: Thank you, Mr. Chair. Donald Mike, Regional Council Coordinator.

Mr. Chair. Three written comments were received. The comments are recorded as administrative record FSB 0111-015, and are from the Native Village of Perryville, Mr. Al Anderson, and the Chignik Advisory Committee. And all Board members should -- each should have a hard copy in front of them.

Mr. Chair, these comments were submitted to the State Board of Fisheries addressing state fisheries proposals similar to FP11-10 and wrote in support of that proposal. The comments support the proposal to adopt the subsistence proposed regulations to include hook and line gear in the Chignik River.

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Thank you, Mr. Mike.

Any questions.

(No comments)

CHAIRMAN TOWARAK: I'm not hearing any. Then we will proceed to the open floor -- we'll open the floor to public testimony.

MR. PROBASCO: Thank you, Mr. Chair. We have two individuals that would like to speak to this proposal, and the first person up is Mr. Johnny Lind.

MR. LIND: A long two days. Good afternoon, Mr. Chairman. Members of the Board. RAC board members. My name is Johnny Lind. I'm a resident of Chignik Lake and president of council and I'm also the chairman for the Chignik AC. I'm here to try to answer any questions you have concerning Black Lake and Chignik Lake. I also have a comment from the AC on Board of Fish Proposal 96 if you want to hear it. And you should have the three -- I mean, there's from Perryville and then Chignik Lagoon and the AC.

CHAIRMAN TOWARAK: Could I ask you to
pull that microphone a little closer to your.....

MR. LIND: How's that? Better?

CHAIRMAN TOWARAK: That's better.

MR. LIND: I also have comments from Black Lake and do you want me to read our Proposal 96 comments from the AC? The proposal is to have traditional fishing patterns formally recognized by the State and in regulation. This proposal would not expand king salmon -- or Chignik subsistence fishing practice to be on the current -- that they occur when cooking (ph) occurs. It will encourage accurate subsistence harvest reporting. And we want to head off potential problems like somebody getting pinched or something, or, you know, somebody getting fined or getting -- interpret the law, so that's all the comments that were from the AC.

Concerning Black Lake, let's see, I have it somewhere. But anyway, Black Lake, you know, there's only like two or three people at the most go up there and, you know, first run, to pick red fish after they can stay there for a while. And the only thing they use is hook and line. They don't use no purse seine -- I mean, gillnet. I never did see anybody use it there, stuff up there, gear. And, let's see, and you can't get up there unless it's -- you have a jet unit to get up there nowadays, because it's so shallow. So it's hard, being used just by two or three locals, so -- what else I had down here.

Anyway, that's all I had I think, so if you've got any questions I'll try to answer them. Thank you.

CHAIRMAN TOWARAK: Thank you for your presentation. Is there any questions from the Board or the RACs to Mr. Lind. Mr. Firmin.

MR. FIRMIN: I have one question. The two or three people that do go up into these areas, do they provide fish for other members of the community?

MR. LIND: Yeah.

MR. FIRMIN: And how do you think this would benefit them because there's no bag limit increase or anything, but it is more of a year-round fishery now.
MR. LIND: Well, they've been using this -- those two, three people probably go out for years now, and they take like 20, 25 unless (ph) down to elders and people that want them, so the first red fish, you know, that's what they want, so.....

MR. FIRMIN: Thank you.

CHAIRMAN TOWARAK: Any further questions.

(No comments)

CHAIRMAN TOWARAK: Thank you, Mr. Lind.

MR. LIND: Thank you.

MR. PROBASCO: Mr. Chair, our final person wishing to testify on Proposal 10 is Mr. Frank Woods. Mr. Frank Woods.

MR. WOODS: Good afternoon, Mr. Chairman.

Members of the Board. My name is Frank Woods. I represent Bristol Bay Native Association and 31 villages in the Bristol Bay region.

Some history on Chignik. It's in Unit 9, and it's on Page 47 in the Federal regulation book, or in the map. Bristol Bay is about the size of Ohio. It has 8,000 residents. 47 of them live in the western side, Unit 17, and about 3,000 on the eastern side. And Chignik's on the Pacific side.

In the analysis and reading the State's position, as they mention it's a commercial fishing area, an out-migration of permits, and the collapse of the fishery, the co-op created an early return -- or an early catch of the return, and it inhibited some of the subsistence use activity during that time.

This proposal is to correct the mistakes I think, or oversight that was -- it looks like they adopted -- the Federal Subsistence Board adopted at that time a lot of regulations that closed the fishery for subsistence use instead of opening it and then closing it during times of concern. Because if Black Lake is closed and certain parts of Chignik Lake that aren't accessible to subsistence users. And I was raised by my grandmother, and she recommends that -- and she recognizes that sports fishing is playing with -- she calls it playing, and if to be playing with your food, is
a no-no.

It appalls me today that there's a sports regulation, we have a State of Alaska that -- and I'm going to -- I'm a little bit nervous, so bear with me, that we have a regulation in place that puts sports ahead of subsistence. That this region has a decline in the caribou population, a decline in the moose population, there's an overabundance of bears, and last winter we had a tragedy of a fatality because of the overabundance of wolves. The out-migration of residents in this area is devastating. The cost of living in this area is huge. And to give a sports priority before subsistence I think is almost criminal.

This opportunity, if you pass this today, would give ample opportunity for the residents to feed themselves.

In the Federal regulation book, State and Federal regulations on Page 3, it says only rural residents may fish under Federal subsistence regulations in this book. Non-rural residents and non-residents may fish on most Federal public lands and waters under the State of Alaska fishing regulations. We were dealing with that all afternoon.

I have records -- letters from the villages stating that they're requesting that you pass a regulation that mandates Federally-recognized subsistence users to access these areas. That right not it's a traditional practice and it's utilized by a few residents to help feed themselves, and that's mainly red fish. And that's -- you know, it's kind of a delicacy in our area, too, is that the fish that are going up to spawn certain times of year turn really white and they end up having to provide for, you know, the elders.

So with that, we have, I think it's Record Decision 39 -- are these all in one packet or are they separate? So it's RC 39 for the villages of Perryville, Chignik Lake and the Chignik Advisory Council, Johnny.

That's about all I had to say, other than the fact that this area needs a lot of help, and any access or additional help from your Board would help the villages help feed themselves would be greatly appreciated.
Thank you.

CHAIRMAN TOWARAK: Thank you, Mr. Woods.
Are there any questions of Mr. Woods from the Board or the RAC Chairs.

MR. REAKOFF: Yeah, Mr. Chairman.

CHAIRMAN TOWARAK: Mr. Reakoff.

MR. REAKOFF: I'd like to ask Mr. Woods, is the predominance of the fish that are taken, are they mainly spawn outs, those red fish?

MR. WOODS: Yes. In order to get that old, and the majority of the fish are males that I was taught. And I can tell most people want the big males, so they keep the females spawning, because they want the big males that are easier and they have a lot more meat on them, then it allows the females to continue the next generation.

But I see in here that there's a limit for five, and that's under State regs, 5 AAC 65.020, bag limits. The State already has bag limits for conservation concerns for king salmon. And my understanding is that subsistence is a rare -- is a small population that's going to be harvesting. And speaking with Johnny and the locals, that the bag limits are reimposed today -- well, the -- you know, the State already has them regulations in place, so I don't see no need to put limits on them, because they're such a small amount of Federally-qualified subsistence users from them four villages, or basically 23 villages that are accessing that resource. It would give them ample opportunity to fill their freezers with the fish they need.

The non-residents and the non-local residents, leave it up to the State of Alaska to help manage that fishery for conservation concerns, because I believe that if we put limits on it -- like I'll go fishing for my grandmother. Say that one year she -- nobody fishes for her all year. I'll get 15, 20, 25 reds, but I want some for myself. So I'm really -- 10 or 15 at the most for myself, and then my mom calls me and says, well, can you get me some, too? And I have 13 aunts -- or 8 aunts and 4, 5 uncles, so I have a big extended family, and they'll call me. So then I get 50, 50 up to 60 fish a day. So if we put a five limit number on
that, I think we're doing this area, in this subsistence
arena, a disservice by putting limits on subsistence use
when the State of Alaska already has a conservation
responsibility for those drainages. But at least for the
villages of Chignik Lake, Lagoon and Bay, you'll give
them ample opportunity to put fish in their freezer.

So, yeah, most of the fish will be reds up in the Black Lake they're opening up, and that's why they eliminated, hook, line and they requested through these letters and the proposal that they didn't want to allow jigging and hook and line snagging on the river for that purpose only, conservation.

Doi.

CHAIRMAN TOWARAK: Further questions.
Thank you, Mr. Woods.

MR. PROBASCO: Oops, we've got.....

CHAIRMAN TOWARAK: Oh, I'm sorry. Geoff Haskett.

MR. HASKETT: Thank you, Mr. Chair. So I thought we were pretty much there until -- and this may not be a problem, but that you have a concern about the five per day and five in possession, because that's actually kind of worked its way through all the way through. So I'm going to need to go ahead and I guess some kind of response from both OSM and maybe from the State, too, on what kind of problems that would cause if we changed that.

CHAIRMAN TOWARAK: Pete.

MR. PROBASCO: Thank you, Mr. Chair. And, Mr. Woods is referring to Clark River/Home Creek, and that five per day, five in possession limits deals strictly with specific gear types. The larger 250 salmon limit for that area would still apply with the use of a gillnet. Mr. Chair.

MR. WOODS: I think you're right, and we were talking with Johnny, and those -- that five per day limit needs to be specified for them two drainages. It isn't on the -- and maybe on right before it, these regulations, but if you could add that to the language so it doesn't affect the other areas, like Black Lake, Chignik Lake, and then the river where they're catching
fish to fill their freezers, not just for the daily
intake of supper food I guess from right around the
village.

MR. HASKETT: So I guess I'd still -- I
think we can go ahead and do that. I guess I'd still
like to, you know, hear just -- at least from the State
then if that's going to be something that works for them.
It's a clarification point is all we really need to do
here.

MR. PAPPAS: Thank you, Mr. Chair.
Possibly Mr. Probasco can explain why the Federal
Subsistence Board adopted the five per day, five per
limit, and they have eliminated reporting and permitting
requirements for that fishery.

MR. PROBASCO: Mr. Chairman. Mr. Pappas
answered my question. If you're using that type of gear
in Home Creek and in Clark River, a permit is not
required so an individual could -- Home Creek and Clark
are just up from the village. They could go there with
a rod and reel. They don't have to go down to the weir
to get a permit. They can get their fish. If they want
to get larger quantities and use a gillnet, then they
get, the limits are.....

MR. WOODS: That make perfect sense. If
you're just going for supper food right in front of your
door, then that makes perfect sense to -- it's
acceptable. And just clarification is what we're looking
for. Thank you.

CHAIRMAN TOWARAK: Mr. Lohse.

MR. LOHSE: Mr. Wood, through the Chair.
I was just curious how many people are currently
wintering in Chignik Lake, Chignik Lagoon and Chignik?

MR. LIND: I haven't read the '10 census
yet, but it's under -- it was about 80 residents at the
max maybe, Johnny? Maybe all three villages, total
population. Winter. Under 80?

MR. WOODS: 80.

MR. LOHSE: Under 80.

MR. WOODS: Yeah.
MR. LOHSE: It was kind of interesting to me, because I almost taught school there in 1964, and I went out and taught school at Ivanoff in '66, and I just was wondering what the population was now.

MR. WOODS: The out-migration of rural residents has really impacted, you know, that, and as you read the reports, the subsistence decline in that area reflects that same out-migration.

MR. LOHSE: Yeah. 80 residents, it doesn't look like it would have much of an impact.

CHAIRMAN TOWARAK: Any further questions.

(No comments)

CHAIRMAN TOWARAK: Thank you, Mr. Woods.

MR. PROBASCO: That's it for public testimony, Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Then we will move on to the Regional Council recommendations.

Mrs. Chythlook.

MS. CHYTHLOOK: Okay. The Bristol Bay Subsistence Regional Advisory -- sorry. Thank you, Mr. Chair. Bristol Bay Regional Advisory Council recommendation was to support this proposal with modification as presented in the OSM conclusion. The Council supports the long-standing subsistence fishery and FP11-10 will provide additional harvest opportunities for rural residents for the Chignik area.

Subsistence uses have a long established customary and traditional use of salmon in the Black Lake and tributaries of Black and Chignik Lakes. The proposal will allow access with some restrictions to areas in all drainages in the Chignik area to harvest salmon from January 1 to December 31 and allow additional gear types.

CHAIRMAN TOWARAK: Thank you, Mrs. Chythlook. Are there any questions from the Board or from the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, thank you for your report, Mrs. Chythlook.
We will move on to the Department of Fish and Game comments.

MS. YUHAS: Thank you, Mr. Chairman. The Department's previous position or recommendation on this proposal for this Board was to defer to the Board of Fish, and the Alaska Board of Fish met earlier this week and decided to take no action on this proposal. Our position before the Board of Fish was neutral. And Mr. Pappas will speak to some of our specifics regarding that.

I received a report from the executive director of the Alaska Board of Fish, and he reported that 11 public panels members had participated in their discussion with several public comments, and that there was general support for allowing subsistence use of hook and line to harvest red fish, and that a majority of the Board members concluded that current State regulations already provided a reasonable subsistence opportunity for harvest.

We only recently received the green sheet here with the new modifications, but as I stated, our position before this Board was to defer to the Board of Fish, and before the Board of Fish was a neutral position.

CHAIRMAN TOWARAK: Any questions from the Board or the RACs.

(No comments)

CHAIRMAN TOWARAK: You had more statements, Mr. Pappas?

MR. PAPPAS: Thank you, Mr. Chair. Yes, I'd like to summarize our comments that begin on Page 193, but before I do so, I'd like to recognize three of my fisheries mentors in the room from Chignik. And they're not wearing ties, no offense, gentlemen that I worked for here at one point in time or another.

If adopted as proposed, Federally-qualified subsistence users would be allowed to subsistence fish in the Chignik River waters with gear types that include spear, hook and line attached to a pole, and other gear specified on subsistence fishing permits. The Federal Subsistence Board authorized expanding methods and means to eliminate some permit and
reporting requirements in the Chignik River watershed.
If this proposal is adopted, Federal regulations would allow Federally-qualified subsistence users to utilize methods and means significantly different from those allowed under State regulations in the tributaries of Chignik and Black Lakes with the exception of Clark River and Home Creek, neither of which require a Federal subsistence permit or reporting method.

Adoption of this proposal would expose Federally-qualified users to State citation, because there's no Federal public lands in the Chignik River watershed. Fishermen using methods and means not authorized under State law who fish in areas closed to subsistence fishing in State regulations would risk being cited while standing on State or private lands, including State-owned submerged lands and shore lands.

The State of Alaska provides a subsistence preference on all lands and provides liberal salmon -- subsistence salmon fisheries in the Alaska Peninsula. Subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if needed. Gillnets may be used in Clark River and Home Creek one linear mile upstream from the confluence with Chignik Lake, and additional gear types can be added to the State's subsistence permit requested.

No stocks -- salmon stocks on the Alaska Peninsula are currently listed as a stock of concern, but the Alaska Board of Fisheries -- by the Alaska Board of Fisheries, but recent late run sockeye returns to Chignik, primarily returning to Chignik Lake and its tributaries have recently slightly decreased.

If the Federal Subsistence Board approves this proposal, but does not require a Federal permit, an increase in undocumented in-tributary exploitation would not be detectable due to the lack of Federal reporting requirements. Significant increases in unreported harvest in the Chignik watershed may lead to conservation issues which will not be detected in a timely manner and may require severe fishery restrictions when detected.

The July 1 through August 31st subsistence fishery closure was established by the Alaska Board of Fisheries in the Chignik River many years ago to prevent inadvertent harassment and harvest of spawning Chinook salmon. Reopening the Chignik River to
subsistence fishing with gillnets and hand seines would immediately impact the Chinook salmon population which spawns in approximately 80 percent of the 1.8 river miles that extends from the outlet of Chignik Lake downstream to the Department's weir, near the weir.

Since the Federal Subsistence 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.

Jurisdiction. While standing on State and private lands, including State-owned submerged lands and shore lands, persons must comply with State laws and regulations. If this proposal is adopted, detailed maps are needed that depict the land ownership and specific boundaries of areas where Federal regulations are claimed to apply in order to reduce risk of violation for Federal subsistence fishermen.

And we discussed earlier what the Board of Fish did.

Thank you, Mr. Chair.

Alaska Department of Fish and Game
Comments to the Federal Subsistence Board
Fisheries Proposal FP 11-10: Remove closure for federal subsistence fishing in Chignik River watershed and liberalize legal gear types used for subsistence harvest of salmon.

Introduction: Chignik Traditional Council submitted this proposal to:

1. Open the entire Chignik River watershed to federal subsistence fishing, exception waters more than one mile upriver from Chignik Lake in both Clark River and Home Creek.

2. Expand legal gear types for federal subsistence fishing in tributaries of Black and Chignik lakes (except not in Clark River and Home Creek)
to include spear, hook and line that may be attached to a pole, or other gear as specified on a subsistence fishing permit.

3. Restrict use of hand seines to Chignik River and Chignik Lake and use of gillnets to Chignik River, Chignik Lake, and the lower one mile of Clark River and Home Creek.

4. Prohibit fishing with hook and line for federal subsistence in Chignik River and prohibit use of a power purse seine upstream of Mensis Point in Chignik River.

5. Eliminate the July 1 through August 31 subsistence fishery closure in Chignik River, which was originally established to protect spawning Chinook salmon.

6. Eliminate the 300-foot closure upstream of Chignik River weir, which was established for safety reasons and to prevent interference with weir operations.

Impact to Subsistence Users: If adopted as proposed, federally qualified subsistence users would be allowed to subsistence fish in the Chignik River watershed with gear types that include spear, hook and line attached to a pole, or other gear specified on a subsistence fishing permit. If adopted, federal subsistence users who choose to use a power purse seine would be restricted to fishing downstream from Mensis Point, and those who fish with a gillnet would be restricted to Chignik River, Chignik Lake, and the lower one mile of Clark River and Home Creek. The Federal Subsistence Board authorized expanded methods and means and eliminated some permit and reporting requirements in the Chignik River watershed. If this proposal is adopted, federal regulations would allow federally qualified subsistence users to utilize methods and means significantly different from those allowed under state regulations in the tributaries of Chignik and Black lakes (with the exception of Clark River and Home Creek, neither of which require a federal subsistence permit or other reporting method). Though this proposal does not request that all gear types be allowed for federal subsistence fishing in the tributaries of Chignik and Black lakes, as allowed in the Clark River and Home Creek, state regulations prohibit using spears and hook and line for subsistence fishing. Adoption of this
One proposal would expose federally qualified users to state citation because there are no federal public lands in the Chignik River watershed. Fishermen using methods and means not authorized under state law or who fish in areas closed to subsistence fishing in state regulations would risk being cited while standing on state and private land, including state-owned submerged lands and shorelands.

Opportunity Provided by State: Gillnets and purse seines are allowable gear under state subsistence regulations. The State of Alaska provides a subsistence preference on all lands and provides liberal salmon subsistence fisheries on the Alaska Peninsula. Subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if needed. For the Chignik area subsistence salmon fishery, gear types allowed include gillnets and seines, except purse seines may not be used in Chignik Lake. Gillnets may be used in Clark River and Home Creek one linear mile upstream from their confluences with Chignik Lake. Additional gear types can be added to the state subsistence permit (5 AAC 01.470).

State subsistence permits for each management area carry stipulations specific to that area, such as timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas open to commercial fishing, and waters closed to subsistence fishing. Commercial salmon license holders and Commercial Fisheries Entry Commission (CFEC) salmon permit holders may subsistence fish for salmon during a commercial salmon fishing period (5AAC01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. Commercial salmon license holders and CFEC permit holders in the Chignik Management Area that subsistence fish in Chignik Lagoon, Lake, or River are required to contact department Staff at the Chignik weir in order to separate the reporting of subsistence and commercial harvests.

The Alaska Board of Fisheries established a combined amount reasonably necessary for subsistence for communities in the Alaska Peninsula area as 34,000 56,000 salmon annually. The combined amount necessary for subsistence for the Chignik Area (Chignik Bay and the Central and Eastern districts of the Chignik Management Area) is 7,700 14,250 salmon annually. Liberal state subsistence fisheries are allowed on all
lands (state, federal, and private), so adoption of this proposal is not necessary to provide a meaningful subsistence opportunity.

Conservation Issues: No salmon stocks on the Alaska Peninsula are currently listed as stock of concern by the Alaska Board of Fisheries. Recent late-run sockeye salmon returns, which return primarily to Chignik Lake and its tributaries, have recently slightly decreased. If the Federal Subsistence Board approves this proposal but does not require a federal permit, 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 Chignik River watershed may lead to conservation issues that would not be detected in a timely manner and may require severe fishery restrictions when detected.

The July 1 through August 31 subsistence fishery closure was established by the Alaska Board of Fisheries in Chignik River many years ago to prevent inadvertent harvest and harassment of spawning Chinook salmon. Reopening the Chignik River to subsistence fishing with gillnets and hand seines would have immediate impacts on the Chinook salmon population that spawns in approximately 80% of the 1.8 river miles that extends from the outlet of Chignik Lake downstream to the department’s Chignik weir and near the outlet of Chignik Lake. Chinook salmon have not been found to habitually transit beyond Chignik Lake.

The Federal Subsistence Board recently liberalized allowable methods and means for federal subsistence fisheries and eliminated permitting and reporting requirements for federally qualified users who utilize rod and reel, bow and arrow, spear, bare-hand capture, and snagging. Elimination of permitting and reporting requirements by federally qualified users causes the department serious concern about localized depletion of sockeye salmon stocks in Chignik River watershed tributaries, especially if a significant increase of harvest results. Since the Federal Subsistence 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.

Three Federal Subsistence Board members
discussed their support of proposal FP08-11 at the December 2007 meeting 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 Subsistence Board Transcripts, December 20, 2007, pages 228 and 229). Further discussion by the Federal Subsistence 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, berry picking, or hunting. Discussions did not consider impacts that adoption of FP08-11 would have on sockeye salmon stocks within Clark River and Home Creek, because both were closed to federal subsistence fishing at the time. The impacts of cumulative unreported harvests from creeks that are near communities and easily accessible were also not considered by the Federal Subsistence Board.

The Federal Subsistence Board approved FP08-11, which liberalized methods and means to allow snagging, bare-hand capture, and similar means for light travelers on the Alaska Peninsula and eliminated reporting requirements, based on information that suggested the level of harvest would be a small number of 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 and without the benefit of permits and harvest reporting. As stated in objections to FP08-11, the department has serious conservation concerns with unreported harvests and the liberalized methods and means. Those concerns increase with consideration of FP09-11 and FP11-10 and the potential of significant federal subsistence harvests in Home Creek and Clark River.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations. If this proposal is adopted, detailed maps are needed that depict land ownership and specific boundaries of areas where federal regulations are claimed to apply in order to reduce risk of violation for federal subsistence fishermen. During the December 2007 Federal Subsistence Board meeting, Alaska wildlife trooper testimony (Federal Subsistence Board Transcripts December 11, 2007, pages 89-91) explained the importance of users understanding and knowing jurisdiction and land
status. When an enforcement officer encounters an
individual conducting an activity that is prohibited by
state regulations while standing on state or private
lands, including state-owned submerged lands, the person
may be cited.

Other Issues: An identical proposal was
submitted to the Alaska Board of Fisheries for
consideration during the January 16-18, 2011, meeting in
Anchorage.

Recommendation: Defer until the similar
proposal is addressed by the Alaska Board of Fisheries.

CHAIRMAN TOWARAK: Thank you for that
report. Any questions of the Board or the RAC Chairs.

(No comments)

CHAIRMAN TOWARAK: Not hearing any. Oh,
I'm sorry. Mr. Haskett.

MR. HASKETT: So I want to make sure I
understand what you were saying. So you don't -- so we
were waiting for action from the Board of Fish, and
obviously, I mean, that didn't come, but you're saying
that you don't believe we do need to do a Federal permit?
I might have misheard you. I'm not -- I'm just trying to
make sure I heard if we move forward with this, the State
thinks we do or don't need to do a Federal permit?

CHAIRMAN TOWARAK: Go ahead.

MR. PROBASCO: Thank you, Mr. Chair. And
Mr. Pappas. But my understanding of the regulations
here, and I spent part of my career managing this area,
is that currently we work jointly with the State in
issuing a permit. Based on some of the State's earlier
comments, we purposely took our language and struck the
State so it says permit. And if you look at the proposed
Regional Advisory Council's recommendation, the language,
we -- if we launch on Federal waters and there is not a
State permit available for that area, or the State -- we
have differences of opinion, we would be issuing a
Federal permit.

MR. HASKETT: Okay. Thank you. I guess
-- well, what I think we need to do, I just wasn't sure
what the State thought we needed to do, so I think I'm
good.
CHAIRMAN TOWARAK: Further questions.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, thank you for your reports. We will move on to the InterAgency Staff Committee comments. Oh, a new guy.

MR. BUKLIS: Thank you, Mr. Chairman. Larry Buklis. I've been asked to present the Staff Committee comments on behalf of the Staff Committee Chair.

The comments are found on Page 192, but I've amended those in light of the fact that the Alaska Board of Fisheries has concluded their meeting as you know, and these comments when they were written anticipated the meeting.

The InterAgency Staff Committee found the Staff analysis to be a complete and accurate evaluation of the proposal. The Alaska Board of Fisheries had a similar proposal before it at its January 2011 meeting which concluded earlier this week. The State Board of Fisheries did not take action on that proposal.

The InterAgency Staff Committee comments as presented on Page 192 go on to comment about State and Federal permit considerations. To clarify the situation, currently a State permit is required for State or Federal subsistence fishing with gillnets. The other subsistence methods allowed only under Federal regulations do not require a permit. The regulatory issue before you now does not change the existing current permit situation.

And if I could go on to comment, a little bit of background, when some of these other methods were introduced for capture, hand capture and some other methods that weren't in the State set of methods that were allowed, there was talk about whether a Federal permit would have to be implemented, and the decision was made by the Board to not require a Federal permit for those sort of ancillary methods. And so the State permit is used for gillnet fishing under either regime, and the special allowances for methods in the Federal system have not to this point required a Federal permit. If those methods are extended in range, it's your decision whether to now require a Federal permit, but it hasn't in the past.
Thank you.

CHAIRMAN TOWARAK: Any further comments or questions.

(No comments)

CHAIRMAN TOWARAK: Thank you for your report. We will move on to Board discussion with Council Chairs and State liaison. Any comments, questions.

(No comments)

CHAIRMAN TOWARAK: I think it's been pretty -- well, go ahead, Ms. Chythlook.

MS. CHYTHLOOK: Yeah. Thank you, Mr. Chair. My understanding, and this is the comment, and some of this was discussed during our RAC meetings, that the -- just like, and Johnny Lind just brought this out, too, is that the Black Lake area is only accessed by a couple of, two or three people. And it's because the location is hard to access. And I think because it's been traditionally used by a limited amount of people, I think that the purpose for this was to legalize the use so that when they're up there possibly berry picking, and harvesting one or two fish, that they won't get cited for this limited use. And that's the -- I guess the main purpose was to possibly legalize use of this area.

Thank you, Mr. Chair.

CHAIRMAN TOWARAK: Thank you. Any further comments.

(No comments)

CHAIRMAN TOWARAK: If not, then we will move to Item No. 8 Federal Subsistence Board action. Mr. Haskett.

MR. HASKETT: Mr. Chair. I'd like to make a motion to adopt Proposal 10 as modified by the Bristol Bay Regional Advisory Council, and I'll provide my justification if I get a second to that motion.

MR. CRIBLEY: Second.

CHAIRMAN TOWARAK: The motion has been seconded by Mr. Cribley. Go ahead with your rationale.
MR. HASKETT: Thank you, Mr. Chair. As I had clarified earlier, the modified regulatory wording in the OSM conclusion is slightly different than what the Bristol Bay Regional Advisory Council voted on; however, the intent has not changed. And the modified regulation is consistent with the Council's recommendation. We've also had some discussion about the Alaska Board of Fisheries taking no action on this proposal, opting to allow our Board to address it through Federal regulation.

This change will increase opportunity for subsistence users in the Chignik area while also clarifying the regulations. This will legitimize a traditional fishery that's been occurring for a long time, and recognizes subsistence use patterns for the few families who use this area. And I'd like to -- I think we've made it very clear there's only a very few people that we're talking about actually utilizing this. I think -- I want to make it real clear it would be a whole lot better if we could work it out where we had some kind of joint State/Federal permit on this, allowing for this fishery without having to start issuing separate Federal permit in the area. We'll continue to work with the State to figure out the best way to move forward on this; however, if, and it's a big if it sounds like, but if we determine that a Federal permit is needed and we're prepared to make that happen if necessary to make this happen.

CHAIRMAN TOWARAK: Thank you. Any further -- Ms. Masica.

MS. MASICA: Just a clarification. Your motion was to -- is adopt as modified by the RAC, which if I understand all these different colors of paper, that would have been what's in the book, and what we're really talking about is adopting the green sheet. So just so we're clear, it's the green sheet, right?

MR. HASKETT: Mr. Chair, if I may. Yes, I'm sorry, it is. Green is the one we're working from, that's the ultimate product.

(Laughter)

CHAIRMAN TOWARAK: We're going green. Any further discussion.

(No comments)
CHAIRMAN TOWARAK: Is there -- could we ask for the question.

MS. PENDLETON: I'll ask for the question.

CHAIRMAN TOWARAK: The question's been called for for final action, please.

MR. PROBASCO: Thank you, Mr. Chair. Final action on FP11-10 as modified by the Regional Advisory Council and presented in the green document. And, Ms. Masica.

MS. MASICA: Yes.

MR. PROBASCO: Ms. Pendleton.

MS. PENDLETON: Yes.

MR. PROBASCO: Mr. Towarak.

CHAIRMAN TOWARAK: Yes.

MR. PROBASCO: Mr. Haskett.

MR. HASKETT: Yes.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Yes.

MR. PROBASCO: And Mr. Cribley.

MR. CRIBLEY: Yes.

MR. PROBASCO: Motion carries 6/0, Mr. Chair.

CHAIRMAN TOWARAK: Thank you. I believe that's our last proposal. Did we receive any written public comments after -- no, this is, I don't know. Is that something that needs to be done? No?

MR. PROBASCO: Mr. Chair. At this time we would have dealt with the consensus agenda, but we've already taken care of that by withdrawing those proposals. We are -- as you stated, we are completed with the regulatory action, and we're now into other business. And I have a couple of.....
CHAIRMAN TOWARAK: Okay. We're down to item 7 on our agenda, other business. And, Mr. Probasco, if you could walk us through that.

MR. PROBASCO: Thank you, Mr. Chair. To save us time, I know it's getting late, I'll ask Staff to just, for the Board, so that we have an outlook and everybody's aware of it, our four months of meeting schedules, we do have a couple that are coming up. We have the work session on April 6th; we have that early May, 3rd and 4th I believe, date for the Board meeting. We'll put that summary together just so that everybody has it in case we have questions.

The thing tomorrow is, as everybody knows, is our tribal consultation meeting as we work towards developing a protocol, and Staff would like to know how would we like to set up this meeting. We are going to have the meeting transcribed. We will have a movable mic if you will. But we may want to consider having more of an open appearance in talking with the tribes. And my suggestion would be to open this up, do away with the TVs and the three tables there, and keep in mind it's to be a dialogue back and forth. We'll ask the tribes to just sign up, but it's pretty much going to be up to the Chair to recognize those people. We're not going to have cards.

That would be my suggestion really, Mr. Chair.

CHAIRMAN TOWARAK: Any comments. Any objections to the Staff setting it up so that it's more of a dialogue type. Ms. Chythlook.

MS. CHYTHLOOK: Thank you, Mr. Chair. My question would be with the tables removed, are the RAC Chairs and the Board going to be sitting as we are now or are we going to mingle with the public?

CHAIRMAN TOWARAK: Go ahead.

MR. PROBASCO: Mr. Chair and Ms. Chythlook, that's a very good question. And my intent unless I hear otherwise, and it's wide open, would be to open this up, but still have the Councils and the Board sitting like this, but open up. But it's entirely up to the Board on how they want to proceed.

CHAIRMAN TOWARAK: Go ahead.
MS. AHTUANGARUAK: I think it's very important to allow the open dialogue and communication back and forth. During this process of the last couple days, I've had people come to me and say that because we had to give a card to come and participate, adding additional comments is very difficult to put that in there when we're limited to giving a card to be able to speak. So I appreciate that.

CHAIRMAN TOWARAK: No green cards tomorrow.

(Laughter)

CHAIRMAN TOWARAK: Any other comments.

MR. PROBASCO: I have one. And I appreciate that comment. Keep in mind we're breaking new ground here, so we don't -- I don't think any of us have the right answer at this point in time. We're going to work towards that. And so I think patience and an open dialogue is the key as we move forward.

CHAIRMAN TOWARAK: We're going to have everyone sitting down. Ms. Masica. K'eit, sorry.

MS. K'EIT: Mr. Chair. Thank you. We did have some discussion on this at our last work session, our executive session. Does anyone want to speak to those, what we talked about, you know? Everyone's kind of looking at me with a blank stare.

I'm trying to remember myself, so we had some discussion about not having tables, having it be a lot more open and a lot less formal, although, you know, recognizing that it is tribal consultation, it's in that realm of government-to-government. We don't want it necessarily to look as if, you know, we're just one big group shielded behind the table. And, you know, not having tables does give it more of an open feeling in the room. That's the only one I can recall at this point.

CHAIRMAN TOWARAK: Go ahead.

MR. PROBASCO: Thank you, Mr. Chair. And I'm okay with that comment. The key is though that we are going to have this meeting transcribed. We do have a mobile mic. The dialogue is from the tribes to the Council and the Chairs, and so I'm just trying to facilitate the mic and the set-up. You can see the
hodgepodge of cords we have. So that's why I was thinking of open this up to get at a more open that you're speaking to, at the same time still retaining the microphones for the Board members and the Councils, and then have mobile mics for the tribes.

CHAIRMAN TOWARAK: Go ahead, Ms. Pendleton.

MS. PENDLETON: Mr. Chair. I like the idea of having an open format and a mobile mic, and not to have the formality of the tables, but to have it more in -- you know, chairs in a large circle. The reason why I say that is because if we are behind tables and our tribal government representatives are not, to me it just creates too much of an appearance of difference. I think it puts everybody more on an equal footing if either we all sit as we are now, more formally around the table, with, you know, everybody together, or given that we may have a number of people here, it may just be better just to do a large circle and then pass mics around.

CHAIRMAN TOWARAK: A talking stick.

MS. PENDLETON: Yeah, a talking stick, yeah. That's good.

MR. PROBASCO: I work for you. I look for direction.

CHAIRMAN TOWARAK: Go ahead.

MS. K'EIT: Thank you, Mr. Chair. I'd support Ms. Pendleton's suggestion, and I'd like to just reference our Alaska Command, Department of Defense, Army Corps folks. They do a listening -- a tribal elder listening session at the Alaska Forum on the Environment, and that's a method they use where the Federal folks and the tribal leaders and elders were all intermingled. They're all intermingled in a circle, and the mic is a sort of talking stick to let them, you know, each person speak, and there's nobody interrupting others, and everyone has ample opportunity. So I support that. Thank you.

CHAIRMAN TOWARAK: Go ahead.

MR. HASKETT: So I'm fine with that. I mean, I've seen everybody kind of nod their heads. It seems like let's just make a decision and do that. Let's
intermingle and make it less formal, and there's no
complaining.

CHAIRMAN TOWARAK: If there's no
objections to that, then we will ask the Staff to make it
as open as possible, but still with the microphone so
that our words can be heard.

MR. PROBASCO: Thank you, Mr. Chair, and
we will do that. And I think to help facilitate the
mics, that we have as many mics as possible, we'll place
these type of mics as well as the mobile mic throughout
the room. But my understanding is get rid of the tables,
make it more of an open, following the Chair's advice,
sitting down, but more intermingled and open. Okay.

CHAIRMAN TOWARAK: I'm sorry. Pardon?

MR. PROBASCO: Mr. Reakoff.

CHAIRMAN TOWARAK: Mr. Reakoff.

MR. REAKOFF: Mr. Chair. Peter Demoski
and myself are not going to be here, and I wrote comments
and I submitted those comments to Western Interior
coordinator to disseminate to the Board. There may be
other public members that may not be able to stay as long
for various reasons, and so the question is, can the
public submit comments also? Written comments.

MR. PROBASCO: Thank you, Mr. Chair. As
far as submitting written comments, that's fine, but this
is the opportunity for the Board and the Council
representatives to talk with the tribes, so we're not
going to have people outside of tribal entities
testifying on it. It's going to be that type of
structure. Mr. Chair.

CHAIRMAN TOWARAK: Any other discussions.
Is there any other new business or.....

MR. PROBASCO: Molly.

CHAIRMAN TOWARAK: Oh, I'm sorry.

MS. CHYTHLOOK: The time is going to be
the same, 8:30?

CHAIRMAN TOWARAK: It's going to be at
9:00 o'clock in the morning here. Mr. Firmin.
MR. FIRMIN: Thank you, Mr. Chair. I was wondering if there was going to be the ability for the tribes that aren't able to make it to be able to call in and make comments over the intercom.

CHAIRMAN TOWARAK: Yes, there will be.

MR. FIRMIN: Okay. Thank you.

CHAIRMAN TOWARAK: Go ahead.

MS. AHTUANGARUAK: In the category of other business, I have a large concern with the devastation in the Gulf and the migration of birds into our area from that area. Last year I was working, doing the whale census, and I was offered the opportunity to tour the Gulf early in the spill process. I saw birds that migrate to our area going into the oil slick, birds that were affected by the spill. I'm concerned about that. We haven't had any discussions on that. We haven't had any reports. We have no information about these species and if there's been any effects.

There needs to be a special effort to communicate this year, because of what we perceive is going to be happen in our area. We have species of birds that have not come back after the Exxon Valdez spill. There's traditional and cultural uses that are affected along this area. What precedence is that setting for us up here. There's a lot of concern with the use of dispersants down there, and those continued effects to their food and water.

We also have a big issue related to the polar bears and that designation. We need to have information related to that. We looked at what we can do for this process, but we've had a reality that this designation has failed subsistence users. We're very concerned about that.

I was informed today that there was some success in the Aleutian Canadian goose. I need information related to this, and how that helped. It is something that's really important.

We're concerned with the designation of the beluga in the Cook Inlet, how it led to restrictions to subsistence, but none of the other activities that could be affecting these species.
We think that it should not be -- we think what is happening should not be happening, but is this a tool that can be used with us or against us. We need more information.

Also there was some discussions about -- from one of the individuals about species, increasing of just one type, any current disruptors affecting our animals and our future generations are very important as we consume our animals, and these things affecting us. Those are very important issues that need to be looked at. These are big issues. We don't know what's going to happen.

We had the big GS-2 spill in the North Slope. I participated in many, many meetings. Where's our reports for that. Haven't had them. Don't know what's going on with that. Never got to tour the area after the clean-up effects. But our concerns are great in this area.

So, thank you.

CHAIRMAN TOWARAK: Any response.

(No comments)

CHAIRMAN TOWARAK: Thank you. We will note your concerns with the proceedings.

MR. PROBASCO: I would offer a response in that we could with your report, working with our coordinator and the rest of my Staff, we can help point in the right direction the entity that we should get answers from, so with you're help we'll try to direct it more.

MS. AHTUANGARUAK: Definitely willing to help. Thank you.

CHAIRMAN TOWARAK: Mr. Adams.

MR. ADAMS: Mr. Chairman. I know you've all been, you know, pretty new at this process, and I just want to compliment you all for a job well done, and say Gunalcheesh.

But let me also mention that, you know, in my opening remarks I always bring up certain issues that, you know, our RAC is involved with, and one of them
is the issue of the ability to be able to do RFRs. And
I just had a talk with Mr. Lord here earlier today, and
he offered some suggestions to me that might work. I'll
have to take it back to my Council and see what they
think, but what he essentially said is that RACs can have
the -- you know, will be able to help communities or
individuals in communities, you know, to set up their
RFRs, and we'll use our expertise and so forth, you know,
to help further that on, and develop that RFR on their
behalf. And I think, you know, that's a step forward,
and maybe I won't be talking about that so much any more.
But I just thought I'd share that with you, and thank
you, Mr. Lord, for coming to me and sharing that with me
this afternoon.

CHAIRMAN TOWARAK: Other comments. Mrs.
Chythlook.

MS. CHYTHLOOK: Thank you, Mr. Chair.
With her concerns regarding birds, we have -- there's
Alaska Migratory Bird Council that deals with birds, and
that Council has representatives from different regions.
And if -- I understand you're from North Slope area? We
have some representatives that come down from your region
that come with information on issues of birds.

And then regarding the belugas and marine
mammals, there's also a council that deals with those
under ice seals and Alaska beluga whale. And all these
different councils and committees have representatives
from each region. So I thought I'd put that out.

And I want to thank -- this is my first
Board of Fish -- that's not.....

(Laughter)

MS. CHYTHLOOK: Federal Subsistence Board
meeting. And I appreciate everybody's effort,
cooperation, and team, even though this is your first, I
think we all support you. I think we saw our
shortcomings. You know, when we as Regional Chairs, when
we first start our -- the process to try a chair, our
committees, we understand, you know, where you're coming
from, but I want to support your effort and I think you
did a great job.

Thank you.

CHAIRMAN TOWARAK: Thank you. I've got
a good buddy, Henry Ivanoff, that tells me whenever I get
into something new, he says, Tim, I'm behind you all the
way, but if you get in trouble, I'm way behind you.

(Laughter)

CHAIRMAN TOWARAK: Thank you for those
comments, and I appreciate everyone's work. Mr. Reakoff.

MR. REAKOFF: Mr. Chair. The Councils
are going to address the six items that the Federal Board
has directed the Councils to answer. I would like to see
the results from the other Councils, the products from
those other Councils, so that we can kind of be all on
the same sheet of music so to speak.

I have to return home tomorrow. I
enjoyed the relatively new members on the Board. I would
say that I really appreciate the conservation ethics that
the Federal Subsistence Board has displayed during this
meeting, and the dialogue with the Councils and tribes
was very instrumental to the results of this meeting, and
I was very satisfied with the process, and so hopefully
we'll see you next time.

Thank you.

CHAIRMAN TOWARAK: Thank you, Mr.
Reakoff. Any other comments.

MS. CHYTHLOOK: Thank you, Mr. Chair.
One thing that I forgot. You know, as RAC Chairs we
couldn't do what we do without our coordinators and with
our OSM support. So I want to thank -- my regional
coordinator is Donald Mike, and without his help I'd
probably really flub up more. So I want to thank him and
then the OSM Staff for their help to make this possible
for us.

Thank you.

CHAIRMAN TOWARAK: Thank you. If there
are no other items on the agenda, is there a motion to
adjourn this meeting.

MR. HASKETT: I so make that motion.

(Laughter)

CHAIRMAN TOWARAK: Is there a second to
the motion.

MS. PENDLETON: I'll second that.

CHAIRMAN TOWARAK: Is there any objections to the motion.

(No comments)

CHAIRMAN TOWARAK: Not hearing any, this meeting is adjourned.

(Off record)

(END OF PROCEEDINGS)
CERTIFICATE

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

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

THAT the foregoing pages numbered 248 through 429 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME III taken electronically on the 20th day of January 2011, beginning at the hour of 8:30 a.m. at the Egan Convention Center, Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 4th day of February 2011.

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