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FEDERAL SUBSISTENCE BOARD
PUBLIC REGULATORY MEETING

OFFICE OF SUBSISTENCE MANAGEMENT BOARD ROOM
SEPTEMBER 5, 2006
1:30 o'clock p.m.

MEMBERS PRESENT:

- MIKE FLEAGLE, CHAIR
- JUDY GOTTLIEB, Acting Chair, National Park Service
- NILES CESAR, Bureau of Indian Affairs
- GEORGE OVIATT, Bureau of Land Management
- STEVE KESSLER, U.S. Forest Service
- GARY EDWARDS, U.S. Fish and Wildlife Service
- WAYNE REGELIN, State of Alaska Representative
- KEITH GOLTZ, Solicitor's Office
- KEN LORD, Solicitor's Office

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

2
3 (Anchorage, Alaska - 9/6/2006)

4
5 (On record)

6
7 CHAIRMAN FLEAGLE: Good afternoon. I'd
8 like to welcome everybody to my first official meeting of
9 the Federal Subsistence Board. My name is Mike Fleagle,
10 recently appointed as Chairman of the Board by the
11 Secretary of the Interior on his visit up here. And I've
12 been jokingly told that I'm going through my first
13 meeting as a trial by -- or baptism by fire and we'll
14 see.

15
16 Anyways, before we get started on the
17 agenda I would like to give an opportunity, especially
18 for my sake, but for other people in the room, if we
19 wouldn't mind just going around the table and introduce
20 ourselves and then I'd also like to extend that to the
21 members of the audience present.

22
23 MR. PROBASCO: Thank you, Mr. Chair. My
24 name's Pete Probasco. I'm from the Office of Subsistence
25 Management currently acting as the assistant regional
26 director.

27
28 MR. BUKLIS: Larry Buklis, Office of
29 Subsistence Management.

30
31 MR. GOLTZ: Keith Goltz, Solicitor's
32 Office.

33
34 MR. LORD: Ken Lord, Solicitor's Office.

35
36 MR. EDWARDS: Gary Edwards, Fish and
37 Wildlife Service.

38
39 MR. SIMMONS: Rod Simmons, Fish and
40 Wildlife Service representing Jerry Berg who normally
41 performs functions for fisheries for Fish and Wildlife.

42
43 MR. OVIATT: George Oviatt, Bureau of
44 Land Management's representative on the Board.

45
46 MR. TOL: I'm Dennis Tol, Bureau of Land
47 Management and I'm standing in for Chuck Ardizzone from
48 BLM.

49
50 MR. MCBRIDE: Doug McBride, OSM Staff

1 member.

2

3 MR. REGELIN: Wayne Regelin, Alaska
4 Department of Fish and Game.

5

6 MR. KESSLER: Steve Kessler, U.S. Forest
7 Service. I'm acting for Denny Bschor, the Forest
8 Service's Board member for the Federal Subsistence Board.

9

10 DR. CHEN: Glenn Chen with the Bureau of
11 Indian Affairs.

12

13 MR. CESAR: I'm Niles Cesar, Regional
14 Director for the Bureau of Indian Affairs.

15

16 MS. GOTTLIEB: Judy Gottlieb, National
17 Park Service, Board member.

18

19 MR. JACK: Carl Jack, OSM.

20

21 CHAIRMAN FLEAGLE: Thank you. And I
22 wonder if we could just start over here and just work our
23 way around until we get to the other end.

24

25 MS. ARMSTRONG: I'm Helen Armstrong. I'm
26 the cultural anthropologist assigned to the Southcentral
27 Council.

28

29 MS. WILLIAMS: Liz Williams, Fish and
30 Wildlife Service, anthropologist.

31

32 MS. ORZECOWSKI: Kathy Orzechowski with
33 the Fisheries Information Services Division.

34

35 MR. RABINOWITCH: Sandy Rabinowitch,
36 National Park Service, Staff Committee to the Federal
37 Board.

38

39 MS. WILKINSON: Ann Wilkinson, OSM. I
40 oversee the Regional Council system.

41

42 MR. HILSINGER: John Hilsinger with the
43 Department of Fish and Game. I'm a member of the liaison
44 team.

45

46 MR. KLEIN: Steve Klein with OSM. I'm
47 the Chief of Fisheries Information Services.

48

49 MR. MCCOY: Ron McCoy, Department of the
50 Interior.

1 MS. MCKINLEY: Diane McKinley, National
2 Park Service.
3
4 UNIDENTIFIED VOICE: (Away from
5 microphone) BLM.
6
7 MR. BELL: Larry Bell, Assistant Regional
8 Director, External Affairs, United States Fish and
9 Wildlife Service.
10
11 MR. OLSON: Warren Olson here
12 representing the AOC, Alaska Outdoor Council.
13
14 MR. VANIA: Tom Vania, Alaska Department
15 of Fish and Game, Division of Sportfish.
16
17 MS. CLARK: Maureen Clark, Office of
18 Subsistence Management.
19
20 UNIDENTIFIED VOICE: (Away from
21 microphone) Anchorage Daily News.
22
23 MR. CAMPBELL: Rod Campbell, OSM.
24
25 MR. DOUGHERTY: Steven Dougherty,
26 Department of Law, State of Alaska.
27
28 MR. LINGNAU: Tracy Lingnau, Fish and
29 Game, Commercial Fisheries.
30
31 MR. CANNON: Richard Cannon, OSM.
32
33 MR. MIKE: Donald Mike, Regional
34 Coordinator, OSM.
35
36 MR. SCHLEUSNER: Cliff Schleusner, OSM,
37 FIS Staff member.
38
39 MR. WILLIAMS: Darrel Williams, Ninilchik
40 Traditional Council.
41
42 MS. CROAS: Carmen Croas, OSM, FIS Staff
43 member.
44
45 MR. RAINEY: Ron Rainey, I'm Chairman of
46 the Kenai River Sportfishing.
47
48 MR. BUCY: Rik Bucy, I'm a Board member,
49 Kenai River Sportfishing.
50

1 MR. CASE: I'm Dave Case, I'm attorney
2 for the Ninilchik Traditional Council.
3
4 MR. STARKEY: Sky Starkey, attorney for
5 Ninilchik.
6
7 MR. ENCELEWSKI: I'm Greg Encelewski and
8 I'm with Ninilchik Tribe and I also serve on the
9 Southcentral Regional Advisory Board but I'm here for the
10 tribe right now.
11
12 MR. ENCELEWSKI: Ivan Encelewski,
13 Ninilchik Traditional Council.
14
15 MS. PETRIVELLI: Pat Petrivelli,
16 anthropologist for the Bureau of Indian Affairs.
17
18 MR. BOS: Greg Bos, Fish and Wildlife
19 Service, Staff Committee member.
20
21 MR. RIVARD: Don Rivard, one of the
22 Division Chiefs here at OSM.
23
24 CHAIRMAN FLEAGLE: Thank you. Okay,
25 well, I appreciate that. It helps to know who we have
26 present at the meeting.
27
28 MR. PROBASCO: Do we have anybody on
29 line?
30
31 CHAIRMAN FLEAGLE: Pardon?
32
33 MR. PROBASCO: Do we have anybody on
34 line?
35
36 CHAIRMAN FLEAGLE: Oh, do we have anybody
37 on line, that's a good question. Anybody phone in?
38
39 MR. USTASIEWSKI: This is Jim Ustasiewski
40 with the U.S. Department of Agriculture, Office of the
41 General Counsel.
42
43 MR. KRON: Mr. Chair, Tom Carpenter, Vice
44 Chair Southcentral Regional Council.
45
46 CHAIRMAN FLEAGLE: Okay, thanks, welcome.
47
48 MR. JOHNSON: Dave Johnson, Forest
49 Service, Tongass National Forest.
50

1 MR. WEST: Robin West, Kenai National
2 Wildlife Refuge, and joined by Ken Harper with Kenai Fish
3 and Wildlife Field Office.
4
5 CHAIRMAN FLEAGLE: Is there anybody else?
6
7 (No comments)
8
9 CHAIRMAN FLEAGLE: All right, thank you.
10 It looks like we have a full compliment of Board members
11 so is roll call necessary for a work session?
12
13 (No comments)
14
15 CHAIRMAN FLEAGLE: Okay, no, we'll just
16 go ahead and move on.
17
18 First, before we start into the agenda I
19 wanted to get a feel from members that are present for
20 the meeting today, if there's any interest in having
21 testimony on this subject that the Board might hear?
22
23 Judy.
24
25 MS. GOTTLIEB: Mr. Chair. I think that
26 would be very valuable.
27
28 CHAIRMAN FLEAGLE: Thank you. I'm trying
29 to find out if members of the public want to testify.
30 Does anybody here want to have a chance to speak before
31 the Board on the issues?
32
33 (Nods affirmatively from audience)
34
35 CHAIRMAN FLEAGLE: Well, we'll go ahead
36 and pass a sign up sheet and when we get to that point on
37 the agenda, if there's names on the sign up sheet we'll
38 call you up, and we'll set a three minute time limit, one
39 testimony per person, and that will happen at about the
40 third item.
41
42 MR. STARKEY: Mr. Chairman. As the
43 proponent of the action request, Ninilchik would only
44 volunteer to be here to answer any questions the Board
45 members might have. We're prepared to stand on what
46 we've submitted, and if people do testify and raise
47 questions we would appreciate an opportunity to answer
48 any questions or respond. That would be our only
49 request.
50

1 CHAIRMAN FLEAGLE: Okay, I'll take your
2 request into consideration. Obviously I'm not sure of
3 the protocol, we've got our legal counsel present that
4 can advise us to whether they have the chance to rebut
5 testimony and we'll raise that up if the situation
6 arises, I'll just keep that in mind for possible
7 consideration.

8
9 Okay, so we have a sign up sheet going
10 around if people do want to have a chance to testify.
11 And you folks on the telephone, I guess we'll just have
12 to do it by voice.

13
14 All right, we have the agenda before us
15 and obviously the main action today is Board action on
16 FSA06-01 submitted by the Ninilchik Traditional Council
17 and the other agenda item, the Board direction on process
18 for draft petition on license fee requirement. And at
19 this time I'm open to any information exchange, how does
20 this go?

21
22 Board members.

23
24 (No comments)

25
26 CHAIRMAN FLEAGLE: All right, hearing
27 none, then we'll go ahead and move on to the first item
28 -- or the second item on the agenda, the Board action on
29 FSA06-01 and first I'd like to turn it over to legal
30 counsel, Ken Lord, for clarification on what is before
31 the Board, please.

32
33 MR. LORD: This is a temporary special
34 action that was submitted by Ninilchik Traditional
35 Council. We have two types of special actions in our
36 regulations. One is an emergency special action under
37 Subpart 19(D) which can only extend for 60 days; and then
38 the other is a temporary special action, which is what
39 this is, which can extend no longer than the end of the
40 regula -- I'm sorry, the calendar year.

41
42 The process requirements for a temporary
43 special action are that the Board is required to consult
44 with the State and the affected Regional Advisory
45 Council, and that there be notice and a public hearing,
46 which is what we're doing today.

47
48 The Board has to make a determination
49 that the proposed action will not interfere with the
50 conservation of healthy fish and wildlife populations;

1 that's one requirement. The second is, is that it will
2 not be detrimental to the long-term subsistence uses.
3 And the third is, that it is not an unnecessary
4 restriction on subsistence uses. If the Board makes the
5 determination that it meets all three of those criteria
6 then it may choose to adopt the special action.

7
8 I can answer any further questions later
9 on as we get into this. We just thought we'd start off
10 with that to help clarify the process.

11
12 CHAIRMAN FLEAGLE: Pete.

13
14 MR. PROBASCO: Mr. Chair. If I may,
15 could I ask Larry Buklis to just, for the record, to go
16 through what's in our packets so everybody's aware of
17 what's in there.

18
19 CHAIRMAN FLEAGLE: Great idea, please do
20 Larry.

21
22 MR. BUKLIS: Thank you, Mr. Chairman.
23 The folders are organized. On the left side is your
24 meeting agenda, followed by the request for special
25 action from Ninilchik Traditional Council dated August
26 2nd, supplemented by an August 17 letter from the Council
27 through their attorneys. And then the back of the left
28 side is the other agenda item, the Southeast Council's
29 interest in license petition.

30
31 On the right side of the folders are
32 supporting materials for the main agenda item, the Staff
33 analysis on the request for special action, followed by a
34 corrections statement. There's an editorial change in a
35 word in the analysis that's been amended here this
36 morning. Followed by the recommendation of the
37 Southcentral Alaska Regional Subsistence Advisory
38 Council. Followed by the InterAgency Staff Committee
39 recommendation on the request. Followed by two letters
40 from the State of Alaska, one dated September 1st and
41 attached to it, all in one packet, is the initial letter
42 dated August 8th. Following that is an affidavit by
43 Robert J. Wolfe, followed by a letter from the Kenai
44 Peninsula Borough, Mayor John Williams. And finally a
45 letter from the Kenai River Sportfishing Association.

46
47 Mr. Chairman.

48
49 CHAIRMAN FLEAGLE: Thank you, Mr. Buklis.
50 Appreciate having all the information in addition to the

1 stuff that you've sent by email. I did have quite a bit
2 of studying to do, quite a bit of homework in pretty
3 short order.

4

5 Are there any questions for Larry Buklis
6 on the information.

7

8 Wayne Regelin.

9

10 MR. REGELIN: Yeah, I had a question, and
11 maybe there's different kinds of special action requests.
12 But I thought that for the Board to take up a special
13 action request there had to be new information presented
14 that wasn't available before or there had to be some kind
15 of a real crises that needs -- that subsistence needs
16 were going to be met, am I mistaken there? I guess
17 that's a question for Ken.

18

19 CHAIRMAN FLEAGLE: Ken Lord.

20

21 MR. LORD: Under our special action
22 regulations there is a requirement for extenuating
23 circumstances, that's the phrase that's used, that
24 necessitates a change before the next regulatory cycle.
25 Then that's a Board decision as far as what constitutes
26 an extenuating circumstance, there's some flexibility in
27 the regulation there.

28

29 To my way of thinking, the Board could
30 make that decision in this case based on the fact that
31 there is no -- currently any subsistence use on public
32 lands in this area. But the Board would need to explain
33 why it's not -- so the Board, if it's not going to take
34 up this action would need to explain why it's not meeting
35 its charge under Title VIII, and there might be reasons
36 for that, but it would be the Board's obligation to
37 explain that.

38

39 I hope that answered your question.

40

41 CHAIRMAN FLEAGLE: Dr. Regelin.

42

43 MR. REGELIN: Well, I guess I -- if the
44 law says, extenuating circumstances, I guess is pretty
45 vague and broad. But I would say that -- I wouldn't say
46 that there's no subsistence use on this river, I think
47 that there's educational fisheries, and there's personal
48 use fisheries that people take a lot of fish, there is no
49 Federal subsistence fishery.

50

1 MR. LORD: I'd suggest you discuss that
2 with the Board and see where, you know, how the decision
3 goes. That's not a decision I make, of course.

4
5 CHAIRMAN FLEAGLE: Okay, thank you.
6 Other questions for the information passed out by Larry
7 Buklis.

8
9 (No comments)

10
11 CHAIRMAN FLEAGLE: Okay, I lost my
12 agenda. All right, we're going to go ahead and call on
13 Doug McBride to give the Staff analysis on the request.

14
15 MR. MCBRIDE: Mr. Chairman. Members of
16 the Board. Thank you. Just for the record, again, my
17 name is Doug McBride, I'm with the Fisheries Information
18 Services within the Office of Subsistence Management and
19 as such my primary duty is to oversee the Fisheries
20 Resource Monitoring Program and administer that program
21 in the Southcentral and Southeast regions of the state.
22 Also one of my duties is to be part of the regulatory
23 team, so I've certainly had experience commenting and
24 helping with analysis in the past, however, I don't know
25 whether it was the short straw or not, but I was assigned
26 to take the lead on this analysis. So, Mr. Chairman,
27 with your indulgence I'll go through what I hope is a
28 brief presentation but there is a lot of material to
29 cover here and I think we'd be better off to error on
30 being more complete than less.

31
32 CHAIRMAN FLEAGLE: Excuse me, Doug.

33
34 MR. MCBRIDE: Sure.

35
36 CHAIRMAN FLEAGLE: Will you be following
37 the written report that we have in the packet?

38
39 MR. MCBRIDE: Mr. Chairman, yes, I will.
40 And then trying to clarify, you know, trying to add to
41 some of that. But, yes, I will be following that
42 material in the packet.

43
44 CHAIRMAN FLEAGLE: Okay, thank you.
45 Board members, the packet provided has the analysis that
46 he'll be following if you want to read along or follow
47 along.

48
49 MR. MCBRIDE: Thank you, Mr. Chairman. I
50 think -- well, in the packet is the letter dated August

1 17th, which is the final special action request and as
2 I'm sure you're aware there are two parts to this
3 request.

4
5 One is for a winter gill net fishery,
6 that is not addressed at this time, that will be
7 addressed at a later time.

8
9 But obviously of immediate concern is the
10 request for the coho dip net fishery that is the subject
11 of this analysis and what we'll go through here today.

12
13 In presentation, Mr. Chairman, I'd like
14 to do three things. One, is to just briefly summarize
15 what is in the request for the coho fishery. Second of
16 all then to go through the background and analysis that
17 is contained in your document here. And then I will end
18 with going through point by point the proposed
19 regulations, and I think by going through it in that
20 manner you can see where the points of the regulations
21 come from and at least the rationale for why they're
22 there.

23
24 Speaking to the original request dated in
25 the August 17th letter and a summary of which is also in
26 the middle of Page 1 immediately under the subtitle
27 discussion. The Ninilchik Traditional Council requested
28 a temporary dip net fishery for coho salmon this fall.
29 In their request they requested several specifics that
30 really addressed sustainability issues with the fishery.
31 As part of their request they suggested a harvest
32 guideline of 500 coho salmon, family permits, a permit
33 limit of 20, non-lethal gear, i.e., dip nets, and the
34 reason for that gear type was to address the release of
35 species for which there were management concerns, notably
36 late run chinook and steelhead.

37
38 You'll also notice in that letter there
39 are some other specifics, for instance, like permits
40 being issued on specific days and only being good for a
41 day that are not addressed in the analysis nor in the
42 proposed regulations, and the reason for that is that
43 Staff did meet with NTC Staff on August 10th, and the
44 point of that meeting was to clarify this request so some
45 of those issues were addressed at that time and the
46 proposal that you see in front of you contains the
47 results of that interchange of information.

48
49 The first thing then I'd like to do in
50 following with the analysis is to clarify the Federal

1 waters at question for this proposal. So if you go in
2 your analysis to the map, which is the second to the last
3 page, that's a map of a portion of the upper part of the
4 Kasilof River drainage. The Federal waters in this
5 drainage for purposes of this proposal include Tustumena
6 Lake and the drainages of Tustumena Lake and the upper
7 part of the Kasilof River approximately seven miles down
8 to a location called Hongkong Bend. And so you can see
9 on your map where the Kasilof River takes off out of
10 Tustumena Lake, it goes down for a distance of about
11 seven miles, it makes that sharp bend, that's Hongkong
12 Bend, and that is the lower boundary of the Refuge. So
13 Federal waters, for purpose of this analysis are from
14 Hongkong Bend up river on the mainstem Kasilof and then
15 the Tustumena Lake and it's drainages.

16

17 Now.....

18

19 MR. EDWARDS: Mr. Chairman, if I could
20 ask one question on that. Doug, does that include just
21 the waters and the shoreline on the Refuge side or does
22 it include the water and shoreline on both sides?

23

24 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
25 It's my understand that it includes the waters of the
26 river and the uplands on the north side for the north, I
27 guess north and east side of the Kasilof, but on the
28 south side it does not include the uplands on that side.
29 And if I'm incorrect on that, Robin's on line and I'm
30 sure can correct me.

31

32 (No comments)

33

34 CHAIRMAN FLEAGLE: Seeing no objection.
35 Doug, how about that section of river that dips out to
36 the west of the boundary there before it gets down to
37 Hongkong Bend, would that -- that obviously wouldn't be
38 included?

39

40 MR. MCBRIDE: Mr. Chairman, that is
41 correct. There is a.....

42

43 REPORTER: Your mike's not on.

44

45 MR. MCBRIDE: Sorry. Mr. Chairman, that
46 is correct. There is a bend of that river that is not
47 included so the Refuge boundary would go down about seven
48 miles, then there'd be a small section of river that's
49 not in the Refuge and then the boundary would be below
50 that. For practical purposes just above this bend is a

1 place called Silver Salmon Rapids, and the practical
2 boundary for the considerations here today would be
3 Silver Salmon Rapids, and, in fact, again, based on the
4 discussion on August 10th, the location of the fishery
5 would just be the upper Kasilof River, it would not
6 include Tustumena Lake and it's drainages. So for
7 practical purposes it would be the outlet of the lake,
8 down river about seven miles to Silver Salmon Rapids, is
9 what's under consideration for the fishery today.

10

11 The next thing that I'd like to summarize
12 for you is the regulatory history, and that actually
13 starts on Page 3, excuse me it starts on Page 4.

14

15 I'm going to very briefly talk about the
16 first two sections there being the pre-statehood, early
17 statehood and contemporary State fisheries. And the
18 reason for that is they are already very well documented
19 in a report that's referred to throughout this analysis
20 as Fall, et al., 2004. This is a report by the Alaska
21 Department of Fish and Game, Division of Subsistence.
22 Dr. Jim Fall is a member of their staff. And I'll speak
23 more to this report later but this report was requested
24 by the Board and commissioned through the Fisheries
25 Resource Monitoring Program, specifically to provide
26 community and area specific harvest pattern information
27 for Cook Inlet.

28

29 The key points of those two sections, I
30 think, are that first of all dating back to 1952 so a
31 little in excess of 50 years, there have been no legal
32 subsistence fisheries in the fresh waters of the Kenai
33 Peninsula.

34

35 The second point is that there are
36 subsistence fisheries in -- State subsistence fisheries
37 in the Cook Inlet area, however, they are in other parts
38 of Cook Inlet from the area that we're considering here.
39 They're in non-roaded accessible areas, such as across
40 the Inlet in Tyonek and they really have no bearing on
41 the matters here.

42

43 The third point is there are existing
44 State personal use and educational fisheries. Again,
45 they're documented in this report. They're summarized
46 here in this analysis. I think the major point, though,
47 is all of those fisheries occur either in marine waters
48 or in the lower intertidal portions of the, for instance,
49 the Kasilof River and well outside of any Federal waters
50 for our purposes here.

1 The next thing I'd like to then summarize
2 are the Federal subsistence fisheries. That section is
3 on Page 5 of your analysis. And I think that provides an
4 important, the regulatory backdrop for this request. And
5 probably the best way to get through this information is
6 the Federal regulatory history really is in three
7 timeframes. The first one would be from 1999 to 2001, so
8 the first two years of the program for which the Board
9 had dealt with subsistence fisheries. And during that
10 timeframe, what was largely going on was that subsistence
11 fishery regulations were being adopted from existing
12 State regulations. But in the case of Cook Inlet you've
13 got to remember that there were no subsistence fisheries
14 so there was nothing to adopt. So during this timeframe
15 all that was done was that there was no customary and
16 traditional use determination for salmon and what I would
17 term, the other major species, for this area, so salmon
18 fishing, coho salmon fishing was available to all rural
19 residents since there was no determination. However,
20 since there was no fishery, there were no harvest
21 regulations in place during that timeframe.

22
23 Then the next timeframe would be from
24 2002 to 2005. In 2002, the Board did receive regulatory
25 proposals for customary and traditional use
26 determinations and harvest regulations. And the Board,
27 at that time, recognized that there were unique
28 challenges presented by the Kenai Peninsula for this
29 program, and that taking action would require community
30 and area specific harvest use information and, hence, the
31 report I referred to earlier, the report, Fall, et al.,
32 is entitled Cook Inlet Customary and Traditional
33 Subsistence Fisheries Assessment. Staff received
34 direction from the Board to, I'm going to use the word,
35 contract, but it wasn't a contract, it was a cooperative
36 agreement, basically contract to have this work
37 completed, so we worked with Alaska Department of Fish
38 and Game Subsistence Division to collect this information
39 and create this report, and it took a period of several
40 years. And as you can see from the size of the report
41 and you've been through the analysis, the report, there's
42 a lot of information here. And the reason that the Board
43 did that, those unique challenges, again, are summarized
44 in the analysis here, and they are that this area is very
45 different than any other of the state that the Board
46 deals with and the Board recognized that and those
47 differences include that the rural communities of this
48 area are relatively small and dispersed amongst much
49 broader non-rural communities and that the Federal lands
50 in this area are not the predominate feature of land

1 ownership and, are, in fact, confined to the upper parts
2 of the drainages, again, very different than any other
3 area of the state, and the third reason being what we
4 said earlier, there were no existing State subsistence
5 fisheries, at least, within the Kenai Peninsula. And so
6 for those three reasons they needed this information and
7 actually deferred all the proposals that were before them
8 at that time until completion of this information.

9
10 That brings us to the third time period,
11 which is this calendar year, 2006. And in January of
12 2006, the Fall, et al., report was completed and
13 analyzed. At the January Board meeting, the Board took
14 action on customary and traditional use determinations,
15 those determinations are summarized at the top of Page 4,
16 I believe, yes, at the top of Page 4, and there were no
17 active proposals at the time to consider harvest
18 regulations for take.

19
20 I forgot one really important thing
21 during the previous time period, during the 2002 through
22 2005 time period, while the Board was waiting for that
23 information, they created a subsistence fishery in Cook
24 Inlet where the regulations mirrored State sportfishing
25 regulations. That was done as an interim measure pending
26 collection of this information.

27
28 So since there were no additional active
29 proposals in place in January, what was in place then and
30 what is in place as we speak today for subsistence
31 opportunity is a subsistence fishery where the
32 regulations mirror harvest regulations as listed out
33 under the State sportfishery. In the case of the Federal
34 waters for Tustumena for coho that is two fish per day
35 and in possession.

36
37 Mr. Chairman.

38
39 CHAIRMAN FLEAGLE: Excuse me, Judy, you
40 have a question.

41
42 MS. GOTTLIEB: Yes, thank you, Mr. Chair.
43 Doug, I mean didn't we have proposals but we had just
44 decided to defer them for seasons and bag limits for
45 2006, if you could just clarify please, thank you.

46
47 MR. MCBRIDE: Mr. Chairman. Ms.
48 Gottlieb. Yes, that is correct, I'm sorry if I was
49 unclear about that.

50

1 MS. GOTTLIEB: Thank you.

2

3 MR. MCBRIDE: Mr. Chairman. What I'd now
4 like to do, that concludes the summary of the regulatory
5 history, what I'd now like to do is summarize the
6 biological background and harvest history.

7

8 And you can really -- when you look at
9 the fish species that are available, there's sockeye,
10 then there's everything else. And the reason that I say
11 that is because pretty much without question, sockeye are
12 the most abundant species, the State has a very good
13 program on estimating their abundance, we know how many
14 fish there are, we know what sustainable levels look like,
15 there is an escapement goal. For those of you who are
16 not familiar, there's a sonar counter just above the
17 Kasilof Highway bridge that counts sockeyes into the
18 system throughout the season, and so our information on
19 that species is very, very good. However, for the other
20 species, obviously we have far less information. In
21 fact, there's little information on abundance,
22 particularly in Federal waters for most other species.
23 However, there is a harvest history, a sport harvest
24 history in the Tustumena Lake area that Federal Staff
25 think can be used as, at least, a very rough
26 approximation of a sustainable level of harvest, and I'm
27 going to explain that in more detail in just a moment.

28

29 What I'd like to do now is go through,
30 for coho salmon, and the other two species of interest,
31 those being late run chinook and steelhead, what we know
32 and what we don't know about those species and how
33 Federal Staff reached the conclusions that they did, so
34 that you can see then in the proposed regulations at
35 least the rationale behind those.

36

37 The section on coho salmon begins on Page
38 6. And what we primarily know about coho salmon is some
39 information about the harvest of those fish, and what I'm
40 going to do is I'm going to start sort of distant from
41 the area we're talking about in large picture and then
42 move in to exactly where we're talking about.

43

44 Coho salmon are harvested commercially in
45 Cook Inlet, there's a large harvest of coho salmon. It
46 is generally -- it obviously varies year by year, but it
47 generally is on the order of hundreds of thousands of
48 fish, and Kasilof River coho salmon contribute to that
49 harvest. There is no program to estimate their
50 contribution to that fishery and so we don't know how

1 many Kasilof coho are harvested there. I would add that
2 there's really little reason to think that the Kasilof is
3 a major contributor to the mixed stock coho harvest of
4 Cook Inlet.

5
6 Next, as you start moving in now to the
7 Kasilof River there are personal use fisheries that occur
8 there. There's a gill net fishery that happens early in
9 the season, early being June. I would be -- I don't
10 believe any coho salmon are harvested in that fishery.
11 There's also a dip net fishery that happens in July. And
12 while that fishery is targeted sockeye salmon there is
13 some incidental harvest of coho and that is generally
14 numbers in the hundreds of fish.

15
16 As you now move into the Kasilof River
17 drainage itself, there are two sportfisheries that occur.
18 There's a sportfishery that occurs in the mainstem of the
19 Kasilof River largely below the Sterling Highway bridge,
20 and that fishery varies year by year but harvest on the
21 order of single thousands of fish. And then there is a
22 very small sportfishery in the Tustumena Lake drainage
23 that harvests hundreds of fish and there's a table of
24 those harvest, that's the tables in your analysis and
25 we're going to talk about that in just a minute.

26
27 So looking at those sport harvests, you
28 need to put those in context of what's actually -- what
29 we know and what we don't know about spawning
30 distribution and abundance. We know that Crooked Creek,
31 which is a tributary to the Kasilof River is a major
32 spawning location for coho in the drainage. If you look
33 at your map, Coho Creek [sic] is down river from the
34 Federal waters, and only a tiny portion of the headwaters
35 are within the boundaries of the Refuge. So for all
36 practical purposes Crooked Creek is not in Federal waters
37 and certainly the fish that return to Crooked Creek are
38 not available for harvest on Federal waters. There is
39 some recent assessment of those fish, and there is good
40 reason to think that they are a significant contributor
41 to the mainstem sportfishery that occurs in the mainstem
42 of the Kasilof River.

43
44 Now, as you move up into the Federal
45 waters up in the Tustumena Lake drainage, there is a
46 sportfishery that occurs there. And as stated earlier,
47 Federal Staff feel that we can use this harvest history
48 as, at least, a rough approximation for a sustainable
49 harvest level. And so let me just take a moment, if you
50 will and I'll explain what we're looking at and why we

1 would think that.

2

3 If you look at Table 1, which is in your
4 analysis, what this is are annual estimates of harvest by
5 species for the Tustumena Lake drainage. These data come
6 from the Alaska Department of Fish and Game from what
7 they call the statewide harvest survey or a postal
8 survey. That's a survey of licensed sportfishing
9 anglers. They contact and survey a fraction of the total
10 licensed anglers across the state and then they use that
11 information to expand the total and get estimates of
12 harvest. I would also add that there's been an
13 incredible amount of work, and I can speak with some
14 knowledge of this because I used to do this in a previous
15 life, but there's been a lot of work that has gone on
16 looking at on-site krill surveys comparing them to these
17 estimates of these harvest and with very, very few
18 exceptions, they've been shown to be very accurate. Now,
19 in this particular case when you look at the data for the
20 Tustumena Lake drainage you see two things. You see the
21 estimates of harvest by species and you see the angler
22 days, the column on the far left. Angler days are
23 estimates of effort. What all of this speaks to is a
24 very small fishery by any standards, certainly by the
25 standards of Cook Inlet. A sportfishery on the order of
26 one to 2,000 angler days, very small fishery, harvest in
27 the hundreds, very small fisheries. Looking at the coho
28 harvest data, the way we interpret this and certainly the
29 way I would interpret this, is that there's a small
30 harvest, order of magnitude of hundreds of fish. When
31 you get these very small fisheries like this and when
32 you're surveying a fraction of licensed anglers, it isn't
33 important, for instance, like the 2004 harvest of 248, I
34 mean that is the best estimate of harvest, but the
35 important thing there is that the harvest was in the
36 hundreds of fish. And what you see is a 20-plus year
37 history of harvest that bounces around hundreds of fish
38 and there's no particular pattern to it, it's not
39 increasing, it's not decreasing, it's just kind of
40 bouncing around. The way I would interpret this, both in
41 my current job and in my former job, which was as the
42 manager of this fishery, is that this is a small fishery
43 and that this has proven to be sustainable. Harvest in
44 the hundreds for 20-plus years has been sustainable, even
45 without specific information about distribution and
46 abundance of those fish.

47

48 Given that, it's our recommendation that
49 without additional information, harvests in the hundreds
50 of fish are sustainable and we're within sustainable

1 guidelines. So that's why in the analysis you see the
2 concluding statement for coho salmon, which is on Page 7,
3 that based on the sportfishery performance in Tustumena
4 Lake, a sustainable harvest level for coho salmon in
5 Federal waters is likely in the hundreds of fish. That's
6 the basis for that statement.

7
8 Mr. Chairman, what I'd like to now do is
9 summarize the companion information for the other two
10 species and you'll see how we reach very different
11 conclusions about late run chinook and about steelhead.

12
13 CHAIRMAN FLEAGLE: Before we go there,
14 are there any questions on the material we've just
15 covered.

16
17 (No comments)

18
19 CHAIRMAN FLEAGLE: Hearing none, go
20 ahead.

21
22 MR. MCBRIDE: Thank you, Mr. Chairman.
23 The late run chinook section is on Page 7 and I think the
24 first major point that we make about late run chinook is
25 late run chinook are a rare event, if you will, for
26 chinook salmon. Certainly in Cook Inlet the vast
27 majority of the chinook salmon returns are what are
28 called early run, that means they return in late May, in
29 June, primarily. Late run fish only occur in two places
30 in Cook Inlet, one's the Kenai River, which I'm sure
31 you've all heard about and the other one is here, in the
32 Kasilof River.

33
34 Kasilof River late run chinook largely
35 return to the area under consideration for this fishery,
36 that being the upper part of the Kasilof River and the
37 outlet of Tustumena Lake so they will be present in terms
38 of both time and space when a lot of this fishery would
39 occur that's under consideration.

40
41 We don't know the abundance of late run
42 chinook salmon in the Kasilof. The Alaska Department of
43 Fish and Game Sportfish Division is attempting to
44 estimate the abundance of the spawning fish through a
45 tagging study. They tried it for the first time last
46 year, it was not successful. It's my understanding that
47 an attempt is being made this year but it's way too early
48 to say whether it will be successful or not.

49
50 About harvest, we really do not have any

1 estimates of harvest that are specific to late run
2 Kasilof River chinook salmon. Some fish are, most
3 likely, harvested commercially incidental to the sockeye
4 commercial fisheries of Cook Inlet, but they are co-mixed
5 with Kenai River late run chinook and there is no program
6 to differentiate between the two. I would also add that
7 there is little reason to think that Kasilof is the
8 driving force behind those chinook harvest in the
9 commercial fishery.

10

11 As you move into the mainstem of the
12 Kasilof River -- oh, excuse me, there is no personal use
13 fishery for chinook.

14

15 As you move into the mainstem of the
16 Kasilof River, again, there is a mainstem sportfishery in
17 the Kasilof River below the Sterling Highway bridge,
18 however, that fishery is largely targeted on early run
19 chinook which contain a very significant stocked
20 component, hatchery fish that are added to that fishery.
21 And those fish are, again, all bound for Crooked Creek,
22 so kind of a similar story to what we just talked about
23 for coho salmon.

24

25 After July 1, above the Sterling Highway
26 bridge, then there is no legal sportfishing opportunity
27 for chinook salmon above the Sterling Highway bridge in
28 July or after July for chinook salmon, so that means
29 there is no sportfishery in Federal waters for chinook
30 salmon.

31

32 So when you take all of that in
33 combination, that we don't know the abundance of the
34 spawning fish and we have no estimates of harvest
35 anywhere that are specific to late run chinook salmon, we
36 really don't know much of anything. We don't know their
37 abundance. We don't know how many are harvested. And
38 that's the reason why at the bottom of Page 7 you see the
39 statement, the Staff assessment, without any estimates of
40 spawning abundance or sport harvest specific to the late
41 run, there is insufficient information to make a
42 recommendation for sustainable harvest level for late run
43 chinook salmon.

44

45 MR. CESAR: Doug, there is a targeted
46 sportfish for late run chinook below the Sterling Highway
47 bridge?

48

49 CHAIRMAN FLEAGLE: You need to turn on
50 your microphone Niles.

1 MR. CESAR: Oh, that's what that is.

2

3 CHAIRMAN FLEAGLE: Thanks.

4

5 (Laughter)

6

7 MR. CESAR: Doug, is there a targeted
8 sportfishery for late run chinook below the Sterling
9 Highway bridge?

10

11 MR. MCBRIDE: Mr. Chairman. Mr. Cesar.
12 Yes, there is. However, there are not estimates of
13 harvest specific to the late run component of that.
14 Again, speaking from memory and past experience, there is
15 a huge program in the Kenai River to differentiate
16 between the early run chinook harvest and late run
17 chinook harvest and that has consisted of not only of
18 this postal survey but an on-site krill survey to verify
19 all that. For the Kasilof, there are estimates of
20 mainstem sport harvest, however, it's not specific to
21 early run and late run, and the early run fishery I
22 think, first, without question, is the larger of the two
23 by lots, so there's just no way to tease out the late run
24 harvest out of that fishery.

25

26 MR. CESAR: Thank you.

27

28 MR. EDWARDS: Mr. Chairman, I have a
29 question. Doug, I'm assuming that given that there is a
30 coho sportfishery, the full length of the river and
31 including the upper river, even though it might be a
32 limited one, there would be some incidental catching of
33 chinook that would be spawning at that time in that area
34 even though it might be small, I'm assuming that
35 occasionally people fishing for sockeye -- I mean fishing
36 for coho would catch either spawning chinook or spawning
37 sockeye?

38

39 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
40 I think that's a reasonable presumption, but I don't know
41 specifically. I mean I would guess the answer to that is
42 yes.

43

44 Mr. Chairman. I'd like to just briefly
45 summarize then the information for steelhead, the other
46 species with some management concern. And steelhead, I
47 think I can summarize pretty quickly. It's, in a lot of
48 respects, a similar story to what we just went through
49 for late run chinook.

50

1 In this case there is some information
2 about abundance. Steelhead are known to spawn in two
3 places in the Kasilof drainage, one is in Crooked Creek,
4 again, and there are some recent estimates of abundance
5 there and the other location is Nikolai Creek, which is a
6 tributary to Tustumena Lake and, again, there are some
7 estimates -- recent estimates of abundance there. Both
8 of those spawning stocks are very finite, and by that I
9 mean we're talking about populations in the hundreds of
10 fish in total, so these are very finite populations of
11 fish. As far as -- and there is no, for all practical
12 purposes any fisheries out of marine waters that have any
13 estimates of harvest for steelhead. And even within the
14 Tustumena Lake drainage, if you go back to Table 1,
15 you'll see there for steelhead, it's just a column of
16 zeros for both harvest and for catch. And it is legal to
17 fish for steelhead in the drainage but the way I would
18 interpret that is that the fishery for steelhead there is
19 so small that the harvest is so close to zero that this
20 program can't tell the difference between whatever it is
21 and zero. Whatever the harvest of steelhead is there,
22 it's small and it's so small that this program simply
23 can't pick it up.

24
25 So, again, when you look at all of that
26 information where we have some recent estimates of
27 abundance but it's very finite and no documented history
28 of harvest that is shown to be sustainable, that's why
29 you see the statement on Page 8 that says there's
30 insufficient information to make a recommendation for
31 sustainable harvest level for steelhead.

32
33 Mr. Chairman. What I'd like to do now is
34 go into the last part.....

35
36 MR. EDWARDS: I just have one question.
37 Doug, you indicated that there wasn't any estimate of
38 harvest in the commercial fishery but I'm assuming that
39 there are some steelhead that are caught in the
40 commercial fisheries that are headed for the drainages in
41 Tustumena Lake and if so, if you do catch one while
42 you're commercial fishing are you allowed to keep that or
43 do you have to release it or what takes place?

44
45 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
46 There are certainly State Staff here that are much better
47 qualified to answer that than I but I'll just take a shot
48 at it and I am sure they will correct me if I'm wrong.
49 But it's legal to retain, you don't have to release. But
50 I'm not aware of ever seeing an estimate of their

1 harvest, I mean whatever it is, is very, very small,
2 there are not many steelhead in upper Cook Inlet. In
3 fact, I believe, in Kasilof River would be probably be he
4 northern most stock of steelhead that I'm aware of in
5 upper Cook Inlet. There are steelhead in Anchor, Deep
6 and Ninilchik but like I say the fishery is largely
7 occurring there and points north.

8
9 Mr. Chairman. The part of the analysis
10 I'm referring to now starts at the bottom of Page 2, the
11 proposed Federal regulation and it also -- when I switch
12 over to Page 3 then there's a corrected page in your
13 packet. The proposed regulation maintains the existing
14 subsistence fishery that mirrors State sportfishing
15 regulations but then would say, additionally, in the
16 Kasilof River. And then this Subpart (A) lays out where
17 the fishery would occur, which, again, is the upper
18 mainstem of the Kasilof River from the lake outlet of
19 Tustumena Lake down to Silver Salmon Rapids. It lays out
20 the legal gear type and it says only dip nets may be used
21 at the bottom of Page 2. And then it lays out the annual
22 harvest quota as recommended in the original request,
23 which is a total harvest quota of 500 coho salmon.

24
25 Then you get into more specifics of the
26 fishery, Subpart 1, it lays out a season; you may take
27 coho salmon from September to December 31st. This is in
28 keeping with a temporary special action which limits it
29 to the calendar year. And I think for all practical
30 purposes, this fishery will end about November 1, with
31 the usual onset of ice up, however, we just made it for
32 the calendar year in case we have a goofy winter where
33 ice-up happens substantially later which does, on
34 occasion, happen.

35
36 Then it lays out that each household
37 member on the permit, these would be household permits
38 remember, may operate the gear. The correction is the
39 word, daily. It should read, the harvest limit is 20
40 coho salmon per household. And there was a little bit of
41 confusion over the original request and where we ended up
42 here. If you go back to the original request, what you
43 see is a request for daily permits, permits were to be
44 issued only for specific days of the week and they were
45 only good for a day and as discussed at the meeting on
46 August 10th and the information exchange, as far as
47 Federal Staff are concerned, having a permit is obviously
48 mandatory, having accurate reporting is mandatory, having
49 the total quota is mandatory, but we were trying to
50 interpret what was originally requested and where we

1 ended up. So having a permit limit of 20 seemed like the
2 best place to land on that and so that correction was
3 just found here recently.

4

5 CHAIRMAN FLEAGLE: Okay. Doug, I think
6 you got another one, too. In your extent of Federal
7 public waters, based on the discussion we just had
8 earlier, you'd want to replace Hongkong Bend with Silver
9 Salmon Rapids, correct?

10

11 MR. MCBRIDE: Mr. Chairman. I would
12 defer that question to Robin West, who's the Refuge
13 manager. I'll leave it at that.

14

15 MR. WEST: Do you want me to speak now?

16

17 CHAIRMAN FLEAGLE: Sure. Go ahead,
18 please.

19

20 MR. WEST: I think that would be a
21 logical choice, is to make Silver Salmon Rapids rather
22 than Hongkong Bend more identifiable and you don't stray
23 out of the Federal waters as you go down stream for that
24 last little bit. So that's a good recommendation in my
25 opinion.

26

27 CHAIRMAN FLEAGLE: Thank you.

28

29 MR. MCBRIDE: Mr. Chairman. Going on to
30 Subpart (A)(2). It says incidentally fish may be
31 retained except for chinook salmon and rainbow
32 trout/steelhead, which must be released. And, again, I
33 think you can see based on the information we presented
34 before how that's in keeping with Staff assessment of
35 what's sustainable for those species.

36

37 MS. GOTTLIEB: Mr. Chair.

38

39 CHAIRMAN FLEAGLE: Judy.

40

41 MS. GOTTLIEB: If I can ask you, Doug,
42 because we have that exception, where you just read it,
43 why was it deleted from the very beginning where it's
44 talking about Cook Inlet in general?

45

46 MR. MCBRIDE: Thank you. Judy, what
47 you're referring to is on the previous page, on Page 2,
48 and if you go to the very first part of the proposed
49 Federal regulation, you'll see crossed out; if you take
50 rainbow/steelhead incidentally in other subsistence net

1 fisheries, you may retain them for subsistence purposes.

2

3 The reason we took that out is -- I guess
4 two reasons. If we left it in and then said it was okay,
5 I mean it becomes this kind of weird conundrum in
6 regulation. But the other thing is, there are no other
7 -- certainly this fall, there are no other net fisheries
8 that Staff was aware of in Cook Inlet where this might
9 even be the case. This would be the only net fishery in
10 this area this fall so that's why we thought it made the
11 most sense and the clearest to take that out and then put
12 in the specifics in the only net fishery that would be in
13 place.

14

15 MS. GOTTLIEB: Okay for now, maybe we'll
16 talk about it again later. Thanks.

17

18 MR. MCBRIDE: Mr. Chairman. Subpart
19 (A)(3). The permits would be issued by the Federal
20 fisheries manager, which is Mr. Gary Sonnevile, who's
21 with the Fisheries Office in Kenai. As we stated
22 earlier, they'd be good through the calendar year or
23 unless the season would be closed by special action,
24 through special notice.

25

26 Subpart (A)(4) states that all retained
27 fish must be recorded and harvest reported within 24
28 hours so we would be working with the people that get the
29 permits to report on a daily basis, and, again, this is
30 very much in keeping with the original request.

31

32 And finally Subpart (A)(5), there is a
33 provision that additional harvest above 500 may be
34 allowed by the Federal fisheries manager after review of
35 available information. Certainly our Staff assessment
36 that the possibility of that are low, I mean you got to
37 look at the information that we have available to us and
38 that information is largely about harvest, so there would
39 have to be some incredible harvest, not only in this
40 fishery but likely in a whole series of other fisheries
41 to indicate that there was just a monster coho return
42 going on. So there is the provision for that but the
43 chances of that I would certainly view is quite low.

44

45 Mr. Chairman, that concludes my
46 presentation and I'm certainly available to take any
47 questions. Thank you very much for your indulgence.

48

49 CHAIRMAN FLEAGLE: Thank you. We've got
50 Gary Edwards.

1 MR. EDWARDS: Doug, with regards to
2 (A)(2) on the incidental caught fish may be retained
3 except; what would we anticipate would be the other
4 species that might be caught and do we have any feel for
5 how many that might be?
6

7 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
8 The other species that are at least potentially available
9 would be sockeye, there may be, you know, some other
10 salmon, you know, like pinks available and then certainly
11 some resident species are possible like lake trout and
12 Dolly Varden. Without any experience of dip netting in
13 this area, I don't know that we have any official
14 estimates of what those harvests might be but I would
15 certainly expect that it would be quite low.
16

17 MR. EDWARDS: So would we see any problem
18 with that, you know, particularly, I mean are sockeye at
19 the time that this fishery occur, is the spawning pretty
20 much over with or would there be a potential to take
21 sockeye that had yet spawned?
22

23 MR. MCBRIDE: Mr. Chairman. Mr. Edwards.
24 Sockeye, I'm sure are available in that area and I'm also
25 sure that they're spawning in that area. However, I mean
26 there's no lack of abundance of sockeye, particularly
27 this year in that area and so if they get picked up, if
28 people don't want them, it's just simply a matter of
29 dumping them back out of the gill net and they're going
30 to be fine and if they retain a few of them it's
31 certainly not jeopardizing any sustained yield that we're
32 aware of.
33

34 CHAIRMAN FLEAGLE: Steve Kessler.
35

36 MR. KESSLER: Thank you. Just a couple
37 of questions to follow up on that one. Section (A)(4)
38 says all retained fish must be recorded so all of these
39 incidentally caught fish would be recorded on the permit
40 also or just coho we're talking about on (A)(4)?
41

42 MR. MCBRIDE: Mr. Chairman. Mr. Kessler.
43 No, it would be all fish retained, including incidentally
44 caught fish. So for instance if they retained a lake
45 trout or a sockeye or whatever, anything but chinook or
46 steelhead they would be recorded on the permit and there
47 would be a place to do that.
48

49 MR. KESSLER: And may I continue?
50

1 CHAIRMAN FLEAGLE: Yes.

2

3 MR. KESSLER: Also in (A)(4) it talks
4 about recording on the permit, now, if I understand
5 correctly you have to do that before leaving the fishing
6 site, is that already in our regulations?

7

8 MR. MCBRIDE: Mr. Chairman. Mr. Kessler.
9 Yes, it is. I don't have the codified's in front of me
10 but I mean you can go to the subsistence regulation book
11 and on Page 16 there are general regulations for any
12 subsistence fishing permit. And, for instance, it states
13 in here you must complete and validate any harvest
14 tickets, permits or other required documents before
15 removing your fish from the harvest site. Before fishing
16 you must get the permit and keep it in your possession
17 and available for inspection. So there are some general
18 background regulations that deal with any subsistence
19 fishing permit that are in addition to these changes
20 listed here.

21

22 MR. KESSLER: So, therefore, if somebody
23 were to catch these fish and then continue to float down
24 stream out of Federal waters and through the State
25 waters, there would be a record of what fish were caught,
26 where and so if somebody had these fish in their boat,
27 they had their permit, it was all recorded on there, it
28 would be clear that those were Federal subsistence fish?

29

30 MR. MCBRIDE: Mr. Chairman. Mr. Kessler.
31 Yes, that is correct.

32

33 MR. KESSLER: A couple other questions.
34 One of the ones is we just had this discussion about
35 Hongkong Bend and I don't think I see in these
36 regulations, unless I'm missing something where it
37 specifically says Hongkong Bend in the -- but to the
38 extent of Federal public waters is not regulation, the
39 section that says extent of Federal public waters is not
40 regulation, the section that says, extent of Federal
41 public waters, the regulation is where it says proposed
42 Federal regulations and so we just -- you say in the
43 Kasilof River and it's always assumed that that's just
44 the Federal public waters part of it. If there's a
45 concern that it should be just above, what did we call
46 it, Silver Salmon Rapids, then I suppose that ought to be
47 in regulation because that would be a closure of some
48 Federal waters below there.

49

50 Is that true, I mean because it's not in

1 the regulation the way it is now?

2

3 MR. MCBRIDE: Mr. Chairman. And, again,
4 I'd certainly ask Robin West to add to what I'm about to
5 say but the fishery is to occur in the upper Kasilof
6 River consistent with Federal waters. As a practical
7 matter that's going to go down to Silver Salmon Rapids
8 and as I understand how the permits -- how permits are
9 already distributed in Cook Inlet, and certainly how
10 these permits would be distributed, the permit would be
11 accompanied with a map and an explanation of exactly
12 where this place is. And then on the upper end it goes
13 to the lake outlet. But, again, as a practical matter, I
14 mean, you know, trying to drag a dip net through the open
15 waters of Tustumena Lake is not likely to be terribly
16 productive, so there's a practical upper boundary as
17 well. So it would be within that area clarified with a
18 map that accompanies the permit as well as an explanation
19 from the Staff distributing the permit.

20

21 Mr. Chairman.

22

23 CHAIRMAN FLEAGLE: Go ahead.

24

25 MR. KESSLER: And one last question. The
26 discussion was that the dates would be September through
27 December 31st, which is probably plenty of time, but if I
28 read the regulation under Section 19(E), it says a
29 temporary opening or closure will not extend beyond the
30 regulatory year for which it is promulgated so I think
31 it's -- I think that's regulatory year, I don't know
32 where it says calendar year in our regulations. So the
33 December 31st would be a limitation, I think, on Subpart
34 (E).

35

36 CHAIRMAN FLEAGLE: Keith Goltz.

37

38 MR. GOLTZ: That's correct.

39

40 CHAIRMAN FLEAGLE: And is the regulatory
41 year the same as the fiscal year or is it like State's
42 July 1 to June 30?

43

44 Go ahead, Larry.

45

46 MR. BUKLIS: Mr. Chairman. The
47 regulatory year is April 1st through March 31st. So for
48 the current issue the regulatory year would end March
49 31st, 2007.

50

1 CHAIRMAN FLEAGLE: Okay, thank you. Any
2 other questions for the Staff analysis?

3
4 (No comments)

5
6 CHAIRMAN FLEAGLE: All right, we did get
7 some interest in public testimony sign up and I didn't
8 hear over the telephone whether there were interest in
9 any of those. I think, Tom, were you going to speak on
10 behalf of your Advisory Council when that time comes up?

11
12 MR. CARPENTER: Yes, Mr. Chair, I just
13 would read the recommendation from the Southcentral
14 Council into the record. And if I would at this time,
15 and I don't know if it's pertinent or not, but one of the
16 last lines in our recommendation is that these
17 subsistence caught coho be somehow identified, either cut
18 tail, cut adipose fin or something like that, and I don't
19 know if the Federal Staff had taken that into
20 consideration or not or if they were leaving that up to
21 the Board.

22
23 CHAIRMAN FLEAGLE: Okay, I see a nod from
24 the end of the table, go ahead, Doug.

25
26 MR. MCBRIDE: Mr. Chairman. Mr.
27 Carpenter. We were certainly aware of that
28 recommendation and Staff certainly wouldn't object to
29 marking the fish but we didn't include it as a
30 requirement because the marking of subsistence caught
31 fish is largely to keep them out of the commercial -- or
32 the potential of having them enter the commercial market.
33 And for the fishery to occur basically now until the end
34 of the calendar year, there is no practical commercial
35 market in this area, so we didn't view it as anything
36 necessary for this fishery. Again, we wouldn't object if
37 that was the wishes of the Board but we didn't see it as
38 a requirement for this fishery.

39
40 Mr. Chairman.

41
42 CHAIRMAN FLEAGLE: Thank you. Wayne
43 Regelin.

44
45 MR. REGELIN: Mr. Chairman. I think, you
46 know, there's going to be a State sportfishery going on
47 with a different bag limit at the same time if you adopt
48 this regulation so I think it would probably be wise to
49 mark the fish just so that there's not confusion and
50 enforcement personnel can know who's catching what.

1 CHAIRMAN FLEAGLE: Thank you, Wayne.

2

3 All right, we have -- let me turn on my
4 mike. We have four people signed up to testify and we'll
5 take a 10 minute break and we'll return and allow those
6 people to testify and we'll start working on the rest of
7 the agenda.

8

9 This Board will stand down for 10
10 minutes.

11

12 (Off record)

13

14 (On record)

15

16 CHAIRMAN FLEAGLE: All right, we're back
17 in session. And as promised we're going to pick up with
18 public testimony and we've got the end microphone
19 available. There's a push button on there that says
20 microphone on and off, when I call you up, please come up
21 and when I call on you state your name -- well, turn the
22 microphone on and state your name for the record and
23 we'll give you three minutes and we don't have a timing
24 system but we'll keep an eye on it. Pete will nudge me
25 when your time is up and I'll cut you off.

26

27 So first up we have John Sky Starkey.

28

29 MR. STARKEY: Thank you, Mr. Chairman. I
30 just wanted to address a couple of the issues that have
31 been raised. I wanted to definitely point out the
32 affidavit of Robert Wolfe, Bob Wolfe, was submitted by
33 the tribe to the Regional Council at their meeting.

34

35 I think if there are any questions as to
36 whether or not personal use or sportsfisheries meet
37 subsistence needs, customary and traditional subsistence
38 needs, this affidavit by Bob Wolfe, who is widely
39 acknowledged for his expertise in subsistence, would
40 answer those questions quite in a definitive manner.

41

42 I'd just like to also point out that it's
43 ironic that the State would argue that personal use
44 fisheries would satisfy subsistence uses because I'm
45 going to quote to you from the regulations. Personal use
46 fisheries, Chapter 77, Alaska Administrative Code, 77.001
47 (4)(B), it says:

48

49 It is necessary to establish a personal
50 use fishery because (c), since this use

1 is not a customary and traditional use,
2 this fishery cannot be classified as a
3 subsistence fishery.

4
5 So I mean the State's own regulations
6 recognize the difference between customary and
7 traditional use as a fishery and a State fishery,
8 personal use fishery.

9
10 Finally, I would, you know, like to
11 compliment the Staff and just highlight that in the Staff
12 analysis it demonstrates that there are no personal use
13 fisheries for coho salmon, and that something that
14 perhaps was on the Regional Council record but you
15 haven't had the opportunity to know is that for the
16 Ninilchik Tribe coho is a -- coho and chinook are their
17 primary, and always have been, their primary subsistence
18 salmon species of use and they're essential fish for
19 them.

20
21 So with that, Mr. Chairman, I would just
22 like to thank you for taking this issue up and answer any
23 questions if there are any.

24
25 CHAIRMAN FLEAGLE: Okay, thank you,
26 appreciate the testimony, Mr. Starkey.

27
28 Questions Board members.

29
30 (No comments)

31
32 CHAIRMAN FLEAGLE: Hearing none, thank
33 you.

34
35 MR. STARKEY: Thank you.

36
37 CHAIRMAN FLEAGLE: Next we have Warren
38 Olson.

39
40 MR. OLSON: Mr. Chairman. Members of the
41 Committee. I'm a 46 year resident. I'm a plaintiff in a
42 lawsuit right now with the Secretary of Interior. The
43 Alaska Constitutional Legal Defense Conservation Fund
44 versus Secretary of Interior Gale Norton filed in June of
45 2000. We have received decisions by the district court,
46 also by the Ninth Circuit Court of Appeals as of August
47 22nd, and we have a 90 day window to file application on
48 ANILCA, Title VIII and the Secretary of Interior the
49 Supreme Court of the United States.

50

1 We object to this action creating
2 discrimination among Alaskans. We have never veered from
3 that course. And the Federal Subsistence Board action
4 continues to violate the Alaska Constitution as well as
5 decisions by the Supreme Court of Alaska.

6
7 So very briefly our plan is to be before
8 the -- the application to be before the Supreme Court of
9 the United States no later than mid-November.

10
11 CHAIRMAN FLEAGLE: Thank you, Warren.
12 Board members, questions.

13
14 (No comments)

15
16 CHAIRMAN FLEAGLE: Thank you.

17
18 MR. OLSON: Thank you.

19
20 CHAIRMAN FLEAGLE: Next up we have Steve
21 Dougherty.

22
23 MR. DOUGHERTY: Thank you, Mr. Chair.
24 Members of the Board. I just want to -- I believe that
25 the handout of 50 CFR 100.19 was handed out to the Board
26 members, but I want to read some of the text.

27
28 It says:

29
30 The Board will accept a request for a
31 change in seasons, methods and means,
32 harvest limits and/or restrictions on
33 harvest under this 100.19 only if there
34 are extenuating circumstances
35 necessitating a regulatory change before
36 the next annual Subpart D proposal cycle.

37
38 Extenuating circumstances include unusual
39 and significant changes in resource
40 abundance or unusual conditions affecting
41 harvest opportunities that could not
42 reasonably have been anticipated and that
43 potentially could have significant,
44 adverse affects on the health of fish and
45 wildlife populations or subsistence uses.

46
47 It's the State's position that there has
48 been no change in circumstances. There was no
49 subsistence fishery at the January meeting other than the
50 regulations that mirror the State regulations and that

1 provide a preference in the form of not having to buy a
2 State sportfishing license when you're fishing on Federal
3 lands. Nothing has changed since that time. There is no
4 extenu -- there are no extenuating circumstances.

5
6 Thank you, Mr. Chair.

7
8 CHAIRMAN FLEAGLE: Thank you. Board
9 members, questions.

10
11 (No comments)

12
13 CHAIRMAN FLEAGLE: Hearing none, thank
14 you. Up next is Ron Rainey.

15
16 MR. RAINEY: Mr. Chairman. Members of
17 the Committee. You have read what Kenai River
18 Sportfishing has submitted, and I won't go over that
19 since it would be redundant.

20
21 What we object to and what the Kenai
22 Peninsula Borough objects to is the process. The process
23 is flawed. This process has completely ignored the
24 Borough. It's completely ignored fishing organizations,
25 such as mine. Had no hearings on the Kenai Peninsula.
26 And it's very suspect that after a return of over 200,000
27 sockeye to the Kasilof someone now wants to target
28 silvers, that's just -- blows my mind.

29
30 And I'll end -- I'll be brief, I'll end
31 with a very personal note. I am the elder in my family
32 and by middle of August, I say, whoa, don't catch any
33 more fish, you can't bring any more to the freezer, we've
34 smoked all we can smoke and we've canned all we can can
35 and all we use is a fishing line and I don't even go dip
36 netting because we get too darn many fish. Now, for
37 somebody to say that their elders don't have the fish
38 this time of year is suspect. I just cannot buy into
39 that. They're fishing the wrong place then because
40 there's more fish right out in front of Ninilchik and
41 there's more fish in the dip net fishery in the Kasilof
42 River and more fish in the dip net fishery in the Kenai
43 River than you could possibly use. Why in the world
44 would you do this?

45
46 And so the process is flawed. The need
47 is flawed. And we object to it.

48
49 CHAIRMAN FLEAGLE: Thank you, Ron. Board
50 members.

1 (No comments)

2

3 CHAIRMAN FLEAGLE: All right, thank you.
4 That concludes testimony from everybody that's signed up.
5 We'll now turn it over to the State of Alaska, our rep on
6 the Board for comments on the proposed action. Wayne.

7

8 MR. REGELIN: Thank you, Mr. Chairman.
9 We -- the State has filed -- sent a letter into the
10 Office of Subsistence Management and I think it's gone to
11 all of the Board members expressing our concerns about
12 the process and the need for going ahead and doing this
13 at this time and in a rather rapid order. We just don't
14 feel like there's any kind of an emergency or a special
15 need right now. And there certainly isn't any crises for
16 a lack of opportunity to take fish. So we would urge you
17 to slow down and take this up in a normal cycle and give
18 it a lot of thought, and that would give you time to
19 figure out to act on our request for reconsideration on
20 the customary and traditional finding, which we still
21 think needs to be have another look taken at it -- you
22 should take another look at that finding.

23

24 Thank you.

25

26 CHAIRMAN FLEAGLE: Thank you, Wayne
27 Regelin. Board members questions for Wayne.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: Hearing none, we'll
32 move on to the next, we'll want to hear from the Staff
33 Committee for comments, and who is doing that?

34

35 MR. PROBASCO: Dr. Chen.

36

37 CHAIRMAN FLEAGLE: Dr. Chen.

38

39 DR. CHEN: Thank you, Mr. Chair. My name
40 is Glenn Chen from the Bureau of Indian Affairs.

41

42 The InterAgency Staff Committee came to a
43 consensus recommendation on this proposal and we
44 supported the position of the Southcentral Regional
45 Advisory Council to support this special action request.

46

47 Our justification is as follows:

48

49 The Board provided a customary and
50 traditional use determination for

1 Ninilchik in the Kasilof River drainage
2 in January 2006. This proposal provides
3 a subsistence dip net fishery for coho
4 salmon, which is consistent with
5 sustainable harvest guidelines
6 recommended by the Federal Staff. The
7 2006 coho salmon return to the Kasilof
8 River appears to be healthy and able to
9 sustain this proposed fishery.

10
11 Thank you.

12
13 CHAIRMAN FLEAGLE: Thank you, Dr. Chen.
14 questions Board members.

15
16 (No comments)

17
18 CHAIRMAN FLEAGLE: Hearing none, we'll
19 now move on to the Regional Advisory Council
20 representative comments. Tom.

21
22 MR. CARPENTER: Thank you, Mr. Chair.
23 Tom Carpenter, Vice Chair of the Southcentral Regional
24 Council. I'll just read our recommendation into the
25 record.

26
27 The Southcentral RAC unanimously
28 supported the Ninilchik Traditional
29 Council's request for a special action
30 for a coho salmon fishery for the Kasilof
31 River. There appears to be no
32 conservation issues for the fishery and
33 this RSA will provide for subsistence
34 harvest of coho salmon.

35
36 The Council supported the coho dip net
37 fishery and took no action on the request
38 for a subsistence gill net fishery for
39 lake trout in Tustumena Lake.

40
41 The Council stated that it will address
42 and develop recommendations on Tustumena
43 Lake fishery at the fall October '06
44 meeting.

45
46 The Council listened to stock, status
47 briefing on coho in the Kasilof drainage,
48 no potential concerns related to the fish
49 in that area.

50

1 Currently there is no biological concern
2 for coho population in the Kasilof
3 drainage and the coho salmon fishery
4 should not have an adverse impact on
5 other users.
6

7 The Council commented that any
8 subsistence harvest of coho should be
9 marked and identified them as subsistence
10 harvest salmon under this special
11 provision.
12

13 That is the recommendation, Mr. Chairman.
14 Just a couple of comments.
15

16 One that I brought up earlier about the
17 coho salmon being marked. One of the concerns -- well,
18 it's kind of a Catch-22, but there was some concern from
19 potential subsistence users, that there would be a
20 problem, potentially, with law enforcement with
21 identifying or differentiating between sport caught fish
22 and subsistence caught fish, and we just thought that it
23 would be a reasonable idea to mark the subsistence caught
24 fish at the time of harvest so that there wasn't any
25 confusion.
26

27 We also recognized that, while dip nets
28 are not a warranted fishery everywhere, they do fit the
29 proposed fishery for coho while safeguarding the late run
30 chinook and the steelhead.
31

32 So that's all the comments we have at
33 this time.
34

35 Thank you.
36

37 CHAIRMAN FLEAGLE: Thank you, Tom. Board
38 members, discussion, questions for Tom Carpenter.
39

40 (No comments)
41

42 CHAIRMAN FLEAGLE: Okay, hearing none,
43 we'll prepare to move into deliberations. Before we do
44 that, you know, a reminder for motions that may come out
45 of this meeting, as you make a motion, the motion should
46 address the Regional Advisory Council recommendation. A
47 motion may be made to adopt, reject or modify a Council's
48 recommendation and your motion should be clear and
49 understandable.
50

1 If you move to reject a Council's
2 recommendation, you must support your motion with
3 rationale that addresses at least one of the three
4 criteria from Section .805(c). You may reject the
5 Council's recommendation when it is:

6

7 1. Not supported by substantial
8 evidence;

9

10 2. Violates recognized principles of
11 fish and wildlife conservation; or

12

13 3. Would be detrimental to the
14 satisfaction of subsistence needs.

15

16 Section .815 authorizes restrictions or
17 closures to non-subsistence uses only
18 when necessary for the conservation of
19 healthy populations of fish and wildlife
20 or to continue subsistence uses of other
21 populations.

22

23 With that, we're ready to move into Board
24 deliberations. I open the floor for discussion. Board
25 members.

26

27 Niles Cesar.

28

29 MR. CESAR: Yes, in order to get this on
30 the table for discussion, I move that we support the
31 Regional Advisory Council recommendation to accept the
32 proposal. And I make that motion and I'll reserve my
33 comments until it's either seconded or we get -- when we
34 get time.

35

36 CHAIRMAN FLEAGLE: Thank you, Niles. We
37 have a motion on the floor to accept the recommendation
38 by the Advisory Council.

39

40 Steve Kessler.

41

42 MR. KESSLER: I'll second it.

43

44 CHAIRMAN FLEAGLE: All right, we do have
45 a second.

46

47 Discussion. Niles, do you want to go
48 ahead and give your position.

49

50 MR. CESAR: Yes, I've listened very

1 carefully to the testimony by the proponents and the
2 opponents, and looking back over the history of our
3 program since 1990 and incidentally I'm a 65 year
4 resident of this state, not that in my mind that is a
5 controlling factor, but it is true that I am, I think
6 that unless the recommendation goes against those three
7 principles and I didn't hear anything go against that, I
8 think that Ninilchik has been forthright. They have
9 wanted this. They have wanted some action from us since
10 1999. And, I think, in fact, it was only just recently
11 that we've come to some consensus, both by the proponents
12 as well as the agencies, looking at how we would address
13 this, and so I think the timing is good to do it.

14

15 I think that if we reject this we are, in
16 fact, impeding subsistence on the Kasilof, and I don't
17 think that that is what we should be doing.

18

19 Thank you.

20

21 CHAIRMAN FLEAGLE: Thank you, Mr. Cesar.
22 Other comments, Board members.

23

24 Gary Edwards.

25

26 MR. EDWARDS: Mr. Chairman. I would
27 agree that this proposal that we have before us, I think,
28 is a very thoughtful proposal, I think it's a very modest
29 proposal, and I certainly don't feel that, you know, as
30 the land management agency that we see any conservation
31 concerns associated with it, and I also think as far as
32 implementing it, we can certainly implement it in such a
33 way that we would address many of the issues that the
34 State raised about reporting and that type of thing, and
35 I'm very confident that our folks will be able to do
36 that.

37

38 But saying all of that, I'll go back at
39 our January meeting when we addressed the issue of
40 customary and traditional use on the Kenai. For those of
41 you who were there, that was a very long and in some way
42 taxing meeting. And out of that meeting came a motion
43 that was also very long and complicated and, I think, to
44 some folks a very confusing motion. But in making that
45 motion, since I was the maker of it, I can somewhat maybe
46 speak to it. There was recognition that starting a
47 subsistence fishery on the Kenai Peninsula was going to
48 be a very -- could be a very challenging and a difficult
49 decision to make. And part of that motion included the
50 motion that we would defer making any decisions on

1 regulations with regards to subsistence fishing until
2 such time as we could have a stakeholder's group formed
3 under our existing RAC, and that would be the process.

4
5 And I think one of the things -- and I
6 think we made that motion because we've recognized that
7 stakeholder's groups have served us very well in the
8 past. We've used them in many other areas within the
9 state. Our former Chairman was very supportive of those
10 because I think he felt they worked and I think we felt
11 that -- the one interesting thing that's different
12 between the Kenai and the other ones, we usually formed
13 the stakeholder process after we were marred in
14 controversy and couldn't work out and we felt that in the
15 Kenai we had a real opportunity here to basically start
16 anew and not having to use it to maybe get us out of a
17 problem, but to help us solve a problem, and that's why,
18 you know, the language that we were going to defer
19 proposals until such time as a stakeholder group, you
20 know, took place.

21
22 Well, I think folks that have been
23 following this know that our Regional Advisory Council
24 didn't kind of agree with, I guess, the assignment that
25 we gave them and basically said that they felt that they
26 could do that. As a result of that, we have gone forward
27 with the idea of actually establishing a new Regional
28 Advisory Council that would maybe represent the Kenai
29 Peninsula and it would provide mechanisms under which, in
30 turn that, you know, we could involve kind of the folks
31 that were going to be directly impacted in that, and the
32 outcome of that is still in question.

33
34 But we did make that decision that, like
35 I said, that we were going to defer these, and I guess
36 one could argue, well, your stakeholder's group never got
37 formed so deferring it is somewhat null and void, I don't
38 know how that falls within Robert's Rules or as motions
39 go, but certainly that's the background behind this.

40
41 So now here, from my perspective, we're
42 faced with the situation that we've been trying to avoid
43 in January and that is to go forward without, maybe,
44 fully involving all of the folks who are affected on the
45 Peninsula, you know, in this decision-making process.
46 And so, you know, sort of where we -- and why are we
47 doing this, I guess I have to ask myself. We do know
48 that we have had other proposals that we have made the
49 decision to continue on and have them go through the
50 regulatory cycle as would be set, whether it will be with

1 the existing Council or with a new Council, I think is
2 yet to be decided, but, you know, that was the decision
3 we -- so I guess I'm having difficulty understanding why
4 we would take this proposal at this time.

5
6 I recognize that this has been a long
7 time coming, and, again, the proposal itself, I think is
8 an excellent proposal, and I said I think it's a very
9 modest proposal and I think it would be a good start to
10 provide a fishery that certainly I think this Board has
11 agreed is long overdue, but I don't feel that there are,
12 you know, extenuating circumstances out there that would
13 say that we have to do this at this time.

14
15 The letter that we received from the
16 Mayor from the Peninsula, you know, did not take a
17 position on whether the proposal was a good proposal or
18 not but really kind of questioned the process that we're
19 going through to do this. You know, his kind of comment
20 is that -- and I think we would all agree that this is
21 not the process that we would prefer because it has moved
22 very quickly. It came in, it went quickly through the
23 RAC and now, you know, we're hearing the -- we made the
24 decision last week that we were going to take this up,
25 you know, the day after a three day holiday, really, I
26 don't think has provided the public an adequate
27 opportunity to address this issue.

28
29 And in saying that, you know, I don't
30 feel that there are, you know, the extenuating
31 circumstances; one might question our recent action that
32 we did on Red Sheep Creek, where we kind of made the same
33 decision, and that's kind of interesting on the State's
34 behalf because they kind of made the same argument why we
35 should do that as opposed to why we shouldn't do that at
36 this time, but that's beside the point. In my mind that
37 was a different issue when the Board took up Red Sheep
38 Creek. We had concerns that we had not had any recent
39 surveys done on the population and there was concern with
40 conservation. At that time the commitment was made by
41 the Board that once these surveys would be done, then we
42 would look at that information and then revisit this
43 issue, and that did occur and then the Board took it up
44 and opened that hunt to both subsistence and non-
45 subsistence users. So in my mind those are two different
46 things.

47
48 But I guess based upon that, Mr.
49 Chairman, I'm going to vote against the motion.
50

1 CHAIRMAN FLEAGLE: Thank you, Gary.
2 Other Board members, comments, discussion.

3
4 George.

5
6 MR. OVIATT: Mr. Chairman. I, too,
7 believe this is a very modest proposal and I'm not having
8 a real problem with the proposal. But when I began to
9 see the Kenai Borough and other letters come in just of
10 late, it makes me wonder if we are doing due process with
11 this and if we're not -- by speeding this up,
12 circumventing the opportunity for the communities to
13 speak to this issue giving us the time to do what I think
14 we started or tried to begin the process of doing back in
15 January and that is to have these decisions, these tough
16 decisions on the Kenai come from the grassroots, from --
17 and getting the full community's involved.

18
19 And I attended the Southcentral Board
20 meeting, and I listened to all of the deliberation and
21 all of the comments, but I think since that meeting we
22 are seeing the communities in the Kenai express concern
23 that we are moving too fast with this process.

24
25 I don't believe -- I'm not sure that we
26 have circumstances here that meets the threshold of a
27 special consideration. You know there's testimony pro
28 and con as to whether people are getting the fish that
29 they need or whether they're not. Should this be based
30 upon need, I don't know. But I just really believe that
31 this is -- this is asking us to slow down and go through
32 the normal process. We have four other proposals that we
33 have put off in this area and going through the normal
34 process with them and I think they are just as important
35 as this one.

36
37 So unless there's something that changes
38 my mind I, too, will probably oppose this proposal.

39
40 CHAIRMAN FLEAGLE: Thank you, Mr. Oviatt.
41 Do we have other Board member comments.

42
43 Judy Gottlieb.

44
45 MS. GOTTLIEB: Mr. Chair, thank you.
46 Well, I guess by nature this type of request is one that
47 we do relatively quickly and we actually received this
48 request months and months ago as part of the request for
49 reconsideration and, therefore, it was kind of widely
50 distributed at that time and since that time it's been

1 refined and put into this modest proposal.

2

3 I guess I wanted to make a few comments
4 relating to the public work that the Board has done.
5 When the Board traveled to the Kenai Peninsula we had a
6 press release and advertised that we're having public
7 meetings in Cooper Landing as well as in Ninilchik and
8 attendance was low in numbers at both of those meetings
9 but that was an ample opportunity for interested parties
10 to express a variety of their concerns and interests.

11

12 I also wanted to mention in terms of
13 extenuating circumstances. As Ken said, there isn't a
14 current Federal subsistence use in this particular area
15 and that it says that things we couldn't reasonably have
16 anticipated. Well, maybe we couldn't anticipate that per
17 testimony, per the affidavit that we have for a community
18 that prefers to take coho and they haven't been able to
19 have that opportunity through the Federal program, have
20 that priority guaranteed by ANILCA, that that has been to
21 the detriment of subsistence users, and so through this
22 special action, which has been worked on very carefully
23 so that it would hopefully not be controversial,
24 hopefully not be something that negatively impacts the
25 coho or other populations, I think as we've all said it's
26 been well crafted and done with consultation and
27 communication; this isn't a large fishery. And the fact
28 that the sport or educational, the personal use fishery
29 does not provide either adequate number for traditional
30 practices that the community of Ninilchik, since we've
31 given a C&T determination to, deserves to have.

32

33 And I also wanted to note that this
34 concept of meeting with the proponent is not something
35 unusual, I mean we do that on many, many proposals, so I
36 just wanted people in the audience to be aware of that.

37

38 I guess lastly we hear a lot about moving
39 too quickly but I think we've also heard a lot over the
40 years about moving way too slowly, so both ways to look
41 at it.

42

43 Thank you.

44

45 CHAIRMAN FLEAGLE: Thank you. Steve.

46

47 MR. KESSLER: Thank you. First, I guess,
48 maybe a question for our attorneys about the requirements
49 of .19 Part (C) versus the .805 requirement, sort of
50 follow the direction of the Regional Advisory Councils

1 unless one of three criteria are met, and I'm just trying
2 to weigh in my own mind how these balance. And whether,
3 as Judy well pointed out, even in Part (C) of the
4 regulations that, in fact, there may be extenuating
5 circumstances that would allow us to take action under
6 this section right now.

7
8 So I don't know, can you provide any
9 advice on how we deal with those two parts, what's in the
10 Act itself versus what's in our regulations and how
11 extenuating circumstances would play into this?

12
13 CHAIRMAN FLEAGLE: Keith Goltz.

14
15 MR. GOLTZ: Thank you. I thought I could
16 get through this meeting without speaking.....

17
18 (Laughter)

19
20 MR. GOLTZ:but that didn't happen.
21 And I want to thank our friends at the Department of
22 Agriculture for that.

23
24 I always love this number game. I've
25 only been here 38 years so I can't out-pioneer Warren
26 Olson and I'm only 64, so I can't out-pioneer Niles. I
27 guess I don't have any personal authority, you'll have to
28 go with the strength of my weak words.

29
30 The answer to your first question is we
31 have a Council proposal and the statute sets out three
32 criteria for dealing with that proposal, they're well
33 known to the Board members and I think to everybody in
34 the room so I needn't dwell on that.

35
36 The fact that it's brought before us in
37 the context of a special action makes no legal difference
38 that I can discern.

39
40 So when the Board acts it's going to have
41 to act according to those criteria.

42
43 As to this extenuating circumstances, I
44 think we're really talking about quids and quilllets of
45 lawyers. If you read 19(C) and apply it to the entire
46 Section 19, which it seems to say you should do, then you
47 do need to find extenuating circumstances. However,
48 there's another interpretation and one I tend to favor
49 and that's that Section 19(C) deals only with permanent
50 changes in regulations, whereas Section (E) refers only

1 to temporary changes. That's something that I think can
2 be best left to lawyers when they talk in the back room
3 with their green eye shades on. It's probably best to
4 take a step back and look at what this whole process is
5 all about.

6
7 We've got an annual regulatory cycle that
8 is intended to make the process orderly and to maximize
9 public participation. We also have another section
10 dealing with special actions which is intended to allow
11 the Board to operate in the context, the practical
12 context where action is required, and I would suggest
13 that that's where we are today.

14
15 We have a proposal, a modest proposal, as
16 I think everybody has said, that addresses the
17 conservation concerns. That's brand new. We didn't have
18 that in January. We have a harvest window that's going
19 to close, probably October 30th. If we don't take that
20 opportunity it's going to be gone forever. And we have a
21 statutory mandate that requires us to provide a
22 meaningful use preference on the Federal lands. And I
23 think the confluence of those factors would be enough to
24 satisfy a court that is reviewing this for extenuating
25 circumstances.

26
27 So in short it's not a great moment to me
28 whether the lawyers, they land on (C) or they land (E), I
29 think you've got sufficient facts in front of you to act
30 if you want to.

31
32 The other point, I think that needs to be
33 addressed, is something that keeps popping up and that's
34 the standards of Title VIII. And although I think
35 everybody in the room has heard this, it doesn't seem to
36 soak in, maybe because people are too busy reloading and
37 they're not listening, but I'm going to try it again.

38
39 Need is not the standard. The standard
40 is customary and traditional use of wild, renewable
41 resources. If we were talking about need, if we were
42 talking only about calorie count we could satisfy it with
43 sides of beef, but we're talking much, much more and this
44 was addressed by the Ninth Circuit in the Quinhagak case,
45 very similar set of facts to what we have in front of us
46 now, and in that case the proponents, in that case, the
47 Village of Quinhagak presented evidence that the Federal
48 and State regulations interfered with their way of life
49 and their cultural identify. And the court said, simply,
50 they need prove nothing more. So it's just another way

1 of saying that need is not the standard, the standard is
2 customary and traditional use of wild resources.

3

4 CHAIRMAN FLEAGLE: Thank you, Keith. You
5 want to continue Steve.

6

7 MR. KESSLER: Well, thanks, Keith, I got
8 a lot more than I bargained for with that answer.

9

10 (Laughter)

11

12 MR. KESSLER: But I certainly appreciate
13 it.

14

15 In my opinion, Ninilchik has been waiting
16 for a long time for this. I think that Niles and Judy
17 said it quite well. And that it is time for action by
18 the Federal Board to provide for a fishery that meets
19 customary and traditional uses.

20

21 And I do plan on voting favorably for
22 this motion.

23

24 One of the things I do want to cover,
25 though, is in our regulations in Part 19(E), and it says
26 that the Board -- let's see, in addition, a temporary
27 change may be made only after the Board determines that
28 the proposed temporary change will not interfere with the
29 conservation of healthy fish and wildlife populations. I
30 believe that that case has been made, that there will be
31 no interference with the conservation of healthy fish
32 populations in the Kasilof River.

33

34 Will not be detrimental to the long-term
35 subsistence use of fish or wildlife resources. I think
36 that case has also been made.

37

38 And is not an unnecessary restriction on
39 non-subsistence users, and I don't believe this is an
40 unnecessary restriction on non-subsistence users, in
41 that, we don't plan to limit the ability of non-
42 subsistence users to harvest.

43

44 So I think that the requirements in Part
45 (E) then are covered.

46

47 Thank you.

48

49 CHAIRMAN FLEAGLE: Thank you.

50

1 MR. USTASIEWSKI: Mr. Chair. This is Jim
2 Ustasiewski with the Department of Agriculture, could I
3 have a brief moment.

4
5 CHAIRMAN FLEAGLE: Jim Ustasiewski, go
6 ahead, Jim.

7
8 MR. USTASIEWSKI: Thank you. Just maybe
9 for the record, if there is one, I would defer to what
10 Keith Goltz had said previously about the regulation,
11 actually all that Keith said. And deferring just because
12 I'm only 43.

13
14 (Laughter)

15
16 MR. USTASIEWSKI: Alaskan for a mere 17
17 years. But also because I think the wisdom of what he
18 said was really self-evident.

19
20 Maybe just to amplify something, I think
21 that there is a reading that doesn't require a showing of
22 extenuating circumstances. (E) could be read on its own,
23 separate from (C), which could be read to apply to (A)
24 and (B), and this is in Section 19, that I'm talking
25 about, special actions. And I think that that's a
26 reasonable interpretation. It's a legal question, if the
27 Board members, some of them have already addressed the
28 issue of extenuating circumstances, I think that's okay
29 because if those other sections do apply then there's no
30 reason not to address it. But I think as Keith outlined
31 it, there is an alternative reading.

32
33 Thank you.

34
35 CHAIRMAN FLEAGLE: Okay, thank you. I
36 guess before I open it back up to further round table
37 discussion from Board members, I'd like to go ahead and
38 weigh in as a Board member and traditionally in my other
39 roles as Chairs, I do hold off on calling on myself until
40 pretty much everybody has had the opportunity to speak so
41 it does put the Chair in an unfavorable position of being
42 perhaps the deciding vote, but if the vote were taken
43 before discussion that vote would come out however it
44 may, irregardless of the position of people speaking.

45
46 With that said, I -- first of all, I like
47 what Gary said about the intent of the proposed action to
48 open this subsistence fishery on the Kasilof, I don't
49 have a problem with that at all. I think that that's a
50 great move given the new customary and traditional

1 finding for Ninilchik. But, I, too, have a problem with
2 process, and this is probably a carryover from my State
3 Board of Game days, in just being a real -- trying to be
4 real fair to as many affected user groups as possible, to
5 stick to an established process that the public knows and
6 is aware of and is used to for promulgating regulations.

7
8 And, again, maybe another throwback to my
9 Board of Game days, we, in that arena often found that we
10 -- well, actually we had it written in policy that we
11 found emergencies to rarely exist just so that people are
12 encouraged to use the regulatory process as laid out.

13
14 With that my intent is to not support the
15 request and I know I'm going against the deference of the
16 Regional Advisory Council, but my objection is not
17 against the request as written, but the timeliness and
18 the process, and what I would prefer to do as it does
19 spell out further in 19, paragraph (C), that the Board
20 could defer this proposal to its regular regulatory
21 cycle, and that would be my preference. It would allow
22 the process to work. I know that we have argument that
23 we do have an extenuating circumstance that the tribe did
24 not know that they would be given a positive C&T, that
25 this fisheries would not be available to them for this
26 year and I recognize that argument. But on the other
27 hand we do have a history of no subsistence fishery on
28 the Kenai Peninsula since 1952 and we've only been
29 managing fisheries on the Federal level since 1999 and
30 that's when the tribe has been trying to get a
31 subsistence season open, so we have a long history of not
32 having this fishery. I personally don't see the harm in
33 foregoing one more regulatory opportunity, one more year
34 to allow an established process to work.

35
36 I think that it's incumbent on us to have
37 a process that is recognizable and fair. I like the idea
38 of the stakeholder group, hopefully we can pull that back
39 together, whether it's the form of the 11th RAC or not, I
40 think that it's important that there be some stakeholder
41 input. And like I say if this comes back to us in the
42 next regulatory session with the concerns that have been
43 raised, addressed, I'm likely to support the request.
44 But at this time just a process problem, and that's my
45 position.

46
47 Niles Cesar.

48
49 MR. CESAR: Yes, Mr. Chairman, I would
50 like to, for the record, remind the Chair that this is a

1 Federal program, and that's what we're dealing with.
2 We're not dealing with my past history as a
3 sportfisherman, my past history as anything, we are
4 dealing with this as our charge to enforce a Federal law.
5 And so I would hope that this is the last time that I
6 have to hear about anybody's past performance about being
7 on other boards that are not relevant to the situation
8 we're dealing in.

9
10 I believe that this is clear, we should
11 support this and we are in the state of analysis
12 paralysis as we speak and I think that's a major mistake.

13
14 CHAIRMAN FLEAGLE: Thank you, Mr. Cesar.
15 Objection's duly noted. I shall not bring up my past
16 anymore.

17
18 George.

19
20 MR. OVIATT: Mr. Chairman. You know, our
21 annual cycle maximizes public participation, and I really
22 believe we've heard enough from the public. It is
23 telling us that they would like to have that opportunity,
24 defer to that opportunity. And we're not denying this
25 proposal. All I am suggesting is that we not deal with
26 it in a special circumstance, but that we do this under
27 an annual regulatory process.

28
29 That's all I have, thank you, Mr.
30 Chairman.

31
32 CHAIRMAN FLEAGLE: Thank you, George. We
33 have Steve Kessler -- and, Wayne, your mike is still on,
34 would you reach up and turn it off, please. Thanks.

35
36 MR. KESSLER: I guess just a comment
37 about following the regulatory process. We are following
38 the regulatory process. The regulatory process allows us
39 to take emergency action, temporary special actions, this
40 is part of what we do. So if proposals come forward, we
41 look at them, give them full analysis and according to
42 our regulations we follow a public process, in this case
43 we've consulted with the State, we consulted with the
44 appropriate Regional Advisory Councils, we give adequate
45 notice and public hearing, and the Board has the
46 authority to make these sort of changes without awaiting
47 for another regulatory cycle. So I think that this is
48 part of the regulatory cycle that we're in.

49
50 MS. GOTTLIEB: Mr. Chair.

1 CHAIRMAN FLEAGLE: Judy Gottlieb.

2

3 MS. GOTTLIEB: Thank you. I guess a
4 couple of comments also. I mean I really appreciate what
5 Ken and Keith and Jim have told us, and I would think
6 that would go a long way to assuring all of those who are
7 unsure about whether we're following the process or not.

8

9 I mean I think you've made some really
10 good strong statements that we have circumstances here
11 where we would be fine to take action. It's not -- and I
12 know you're getting used to the new terms, et cetera,
13 this is not an emergency action so it is a little bit
14 different. And as Steve has just said, we followed our
15 regulatory process. And I also heard comments about
16 being fair to other user groups or having them involved
17 in the process, and as Keith has said to us every time,
18 our job is to provide a meaningful preference for
19 subsistence uses while not unnecessarily restricting
20 other uses. We haven't heard any testimony how this
21 would be impacting or restricting other uses or users,
22 nor have we heard that there's any conservation problem.
23 So we're talking about a really short time fishery that
24 would provide that customary and traditional use of
25 resources. And I just have a sense that by deferring
26 this people lose a season of fishing.

27

28 CHAIRMAN FLEAGLE: Thank you, Judy. I
29 got -- Gary before I go to you, I got a request from Dr.
30 Regelin to speak and I know that Wayne has a seat at the
31 table in a non-voting capacity and so I'm going to
32 recognize him for matter of adding something to the
33 discussion.

34

35 Wayne.

36

37 MR. REGELIN: Thank you, Mr. Chairman.
38 You know it's been said by several people that this is a
39 very modest proposal, only 500 fish, and I certainly
40 agree. But the other thing you have to realize is the
41 harvest in this stretch of river has been a very modest
42 harvest, as the data show, it's been a sportfishery
43 that's taken a few hundred fish a year for the past 20
44 years. And most of those fish have already been taken by
45 the sportsfishermen this year. And now to, you know, to
46 double -- or to take another 500 on top of that, or
47 potentially take them, if they did, I'm not sure what
48 would happen, what impact that might be on the
49 population. We know that there are a lot of cohos that
50 come up the Kasilof, and we know a lot of them are

1 caught, but most of them are caught in the lower river
2 around Crooked Creek and then they go up Crooked Creek to
3 spawn. And I think we have a very small coho run that
4 goes on up that river and to say that we aren't concerned
5 about that, I think is not true, we are concerned about
6 it. I would think that the State would very likely have
7 to close that season in that seven miles of stream just
8 to make sure that the harvest would stay about the same
9 as it has because it's a small fishery, we don't have all
10 of the information we do about other fisheries where we
11 have, you know, lots and lots more information and can
12 separate things.

13

14 So I think -- so this year, if you do
15 this in the normal cycle then we would have time to close
16 that fishery, if necessary for conservation purposes,
17 with the -- before the harvest occurred, but we certainly
18 can't do that this time. So I think that's something to
19 consider and it should be considered.

20

21 And I guess -- well, that's all I'll say
22 right now, thank you.

23

24 CHAIRMAN FLEAGLE: Thank you, Wayne. We
25 got Gary Edwards next.

26

27 MR. EDWARDS: Well, before I guess I'll
28 say what I was going to say, I do think that if this
29 proposal gets passed, it would not preclude our in-season
30 manager of making decisions if for some reason that we
31 would feel that it looked like this was a very, very
32 successful harvest and for some reason if we felt that it
33 needed to be capped at 300, I think we would have the
34 mechanism to do that.

35

36 So I guess that's why I -- you know, I
37 feel extremely comfortable that we could manage this
38 fishery and manage it in a proper manner. And certainly,
39 you know, I would like to think that if this goes forward
40 we would get assistance from the State, and hoping to use
41 your expertise and all in trying to do that, I mean
42 whether that would happen or not, but I mean that would
43 be my desire and that's what I would encourage our folks,
44 both our Refuge manager and our fishery folks to, you
45 know, use the expertise that also rests in the State in
46 doing that. So I'm very comfortable with managing that.
47 And, again, I don't think there's a conservation concern.

48

49 I kind of think it's the right proposal
50 and the wrong decision, and I know that sounds

1 contradictory, but, you know, I think we've recognized
2 for some time that as we proceed down here it's important
3 and that, you know, we get folks together. And, you
4 know, despite our best efforts, you know, that hasn't
5 been successful. I am a little troubled, quite frankly,
6 as to if this comes up in the regulatory cycle whether
7 we're still going to be in that position or not. I mean
8 I think that's a real concern because I'm unclear, you
9 know, whether what's going to happen with the new RAC and
10 whether we will have it in place, that it could deal with
11 this or will the existing RAC have to, so in my mind, I
12 guess, that's a little troubling because I'm afraid in
13 December we're going to find ourself in the same position
14 and I don't want to be in that same position, you know, I
15 was hoping we weren't going to be in this. And I think
16 -- as I said earlier I think we have found ourself in a
17 position where we do not want to be.

18

19 So, you know, that -- so as far as the
20 regulatory process goes, I don't question, I do think we
21 did, I guess I wouldn't agree with Steve that we did it
22 in a timely, it's been done very quick and there has been
23 very short periods between each one of these steps in
24 order to, I think, this fully vetted among the public.
25 But I just think that as we start down this road and, you
26 know, this is the first step and sometimes how you take
27 that first step has a lot of -- you have a lot of
28 consequences for how the future steps are being taken,
29 and I just think that when we take this, that we need to
30 have -- my sense is we're not going to get buy in with
31 this, but on all sides, and there's going to be
32 disagreements as we go through it but at least we're --
33 we're, I think, step -- taking the steps with others sort
34 of kind of hopefully taking them with us, together, and
35 so I think that's very important from my perspective.

36

37 CHAIRMAN FLEAGLE: Niles Cesar.

38

39 MR. CESAR: I'd like to call for the
40 question, please.

41

42 CHAIRMAN FLEAGLE: Call for question is
43 heard but not recognized. Just a moment. Based on
44 everybody weighing in, it sounds like you don't have
45 enough votes to pass the proposal, and I just wanted to
46 provide an opportunity for the Board to discuss the
47 matter of deference, deferring the issue. I'd hate to
48 reject the proposal and have it disappear.

49

50 Judy.

1 MS. GOTTLIEB: Mr. Chair. I guess I'm
2 not entirely clear of what you're asking in terms of
3 deference. I don't think this Board has given deference
4 to the Southcentral Council's recommendation. I don't
5 think we've heard reasons why we would deny their
6 recommendation.

7
8 CHAIRMAN FLEAGLE: I'm sorry, I probably
9 used the word wrong. I was referring to the language in
10 100.19(C) that says that requests for special action that
11 do not meet these conditions, and, again, I know that's
12 subjective to the Board members because we've heard from
13 the legal team that it would probably take a lot of
14 argument to sort out which section of this is correct or
15 not.

16
17 But basing it on Section (C), it says:

18
19 That requests for a special action that
20 do not meet the conditions laid out above
21 will be rejected, however, a rejected
22 special action request will be deferred
23 if appropriate to the next annual
24 regulatory proposal cycle.

25
26 And that's where I was using the term
27 deference, which is not appropriate here. But I think
28 there should be some discussion as to the deferring of
29 the proposal.

30
31 Niles Cesar.

32
33 MR. CESAR: Thank you, Mr. Chairman. I
34 believe that we have deferred. We have been deferring
35 these questions for at least seven years and I would have
36 trouble supporting a motion to defer.

37
38 Thank you.

39
40 CHAIRMAN FLEAGLE: Thank you, Niles. The
41 question is now recognized. And this part of the
42 process, do you poll the Board, Pete?

43
44 MR. PROBASCO: Yes, we do Mr. Chair.

45
46 CHAIRMAN FLEAGLE: Please poll the Board.

47
48 MR. PROBASCO: Okay. Thank you, Mr.
49 Chair. I'll start from my left here. The motion on the
50 table as motioned by Mr. Cesar and second by Mr. Kessler.

1 Gary.
2
3 MR. EDWARDS: Nay.
4
5 MR. PROBASCO: Mr. Oviatt.
6
7 MR. OVIATT: Nay.
8
9 MR. PROBASCO: Mr. Kessler.
10
11 MR. KESSLER: Yes.
12
13 MR. PROBASCO: Mr. Cesar.
14
15 MR. CESAR: Yes.
16
17 MR. PROBASCO: Ms. Gottlieb.
18
19 MS. GOTTLIEB: Yes.
20
21 MR. PROBASCO: Mr. Fleagle.
22
23 CHAIRMAN FLEAGLE: Nay.
24
25 MR. PROBASCO: The vote's 3-3, the motion
26 does not carry.
27
28 CHAIRMAN FLEAGLE: Pete Probasco.
29
30 MR. PROBASCO: Mr. Chair. Based on the
31 action that just took place on the proposal, or the
32 request, Staff here will seek guidance on what to do with
33 the Part II of the proposal, which was to establish a
34 winter fishery on Tustumena Lake, which we purposely
35 pulled out to deal with at a later date. So the Staff
36 would seek guidance from the Board.
37
38 Mr. Chair.
39
40 CHAIRMAN FLEAGLE: Thank you, Pete.
41 Discussion Board members.
42
43 Gary.
44
45 MR. EDWARDS: Pete, I'm unclear what
46 you're asking. I mean is that proposal in front of us?
47
48 MR. PROBASCO: Mr. Chair. Mr. Edwards.
49 The proposal is not in front of us. The strategy that we
50 were using that we felt because we had time, we did not

1 have to act as quickly on that proposal, would take some
2 time to put the information together and we were also
3 hoping to take that request before the Southcentral
4 Regional Advisory Council before the Board took action.
5 Now, based on the action that you just took here, do you
6 want us to proceed in that manner or do we hold off?

7

8 Mr. Chair.

9

10 MR. EDWARDS: Well, I guess I was just
11 assuming that it was automatically going through the
12 process with the other proposals, but apparently that was
13 the wrong assumption.

14

15 MR. PROBASCO: Mr. Chair. There's been
16 somewhat of a misunderstanding here. The call for
17 fishery proposals for the Kenai Peninsula is for the
18 winter cycle, which means we would not see those
19 proposals until your May meeting and the Councils would
20 not see those proposals until their February/March
21 meetings. So if, indeed, it is your wishes that along
22 with this proposals and the other half of the proposal
23 then we would add it to the winter call for proposals.

24

25 Mr. Chair.

26

27 MS. GOTTLIEB: Mr. Chair.

28

29 CHAIRMAN FLEAGLE: Judy.

30

31 MS. GOTTLIEB: Thank you. This request
32 for the winter fishery came as part of the request for
33 special action and I guess was divided up so we could
34 handle this first because it's a fall fishery and then
35 the second part later. Now as part of the comments
36 today, people said they wanted more public process, well,
37 we are going to have a RAC meeting, it's going to be on
38 the Kenai Peninsula, I guess I'd like to see us be a
39 little more responsive and not delay this to the next
40 regulatory cycle but work on it as expeditiously as
41 possible.

42

43 Thank you.

44

45 MR. EDWARDS: So does that mean we would
46 add it to the four that will go forward in front of the
47 RAC?

48

49 MR. PROBASCO: Mr. Chair. Mr. Edwards.
50 Ms. Gottlieb. Those four deferred proposals, along with

1 the call for proposals are all for the winter cycle of
2 meetings. We will not see those proposals this fall, and
3 you would not act on them in December. That would be for
4 the following February/March Council meetings, and final
5 action at the Board meeting in May.

6

7 CHAIRMAN FLEAGLE: Okay. So the intent
8 here would be to not ignore that portion that was left
9 out of the discussion here for the Tustumena Lake ice
10 fishery but that that would be deferred, this is what
11 you're trying to find out, is to get the intent of the
12 Board, do we want to defer that for further action at the
13 next cycle?

14

15 MR. PROBASCO: That would be one
16 guidance, Mr. Chair.

17

18 MR. EDWARDS: Well, I guess, you
19 know.....

20

21 CHAIRMAN FLEAGLE: Go ahead, Gary.

22

23 MR. EDWARDS:consistent with what
24 we did or didn't do here today, it just seems to me that
25 if we are taking those four why wouldn't we want to do
26 the same? I guess the only maybe reason would be is that
27 we could -- it would still allow a fishery this winter or
28 by the time the actions take place, would it be too late
29 to have a fishery as described in the proposal.

30

31 MR. PROBASCO: And I would call that
32 option two. You could actually use your fall Council
33 meeting as a public forum, if you will, and then take
34 action after that Council meeting on the winter fishery.

35

36 CHAIRMAN FLEAGLE: Steve Kessler.

37

38 MR. KESSLER: Well, I think that would
39 make sense to me, is to carry forth with the proposal
40 from Ninilchik for this winter fishery because we just
41 said we'd separate it out and make two different
42 decisions, but we need to be on a shorter timeline for
43 the one that we did, slightly longer for the lake
44 fishery. I think that it should be vetted through the
45 public process as part of the Regional Advisory Council
46 as soon as possible. So in my mind we need to keep
47 moving on this and hopefully by sometime this winter
48 provide a subsistence fishery as requested, if it's
49 appropriate from a conservation standpoint, et cetera, et
50 cetera.

1 CHAIRMAN FLEAGLE: So we've heard a
2 couple of options and the latest, as supported by Mr.
3 Kessler, is to go with Plan B, to have that addressed in
4 the meeting cycle as soon as we can and not in the long
5 process cycle. Is there any objection to that approach.

6
7 (No comments)

8
9 CHAIRMAN FLEAGLE: No objection. Then
10 that's what we'll.....

11
12 MR. EDWARDS: Just one comment.

13
14 CHAIRMAN FLEAGLE: Go ahead, Gary.

15
16 MR. EDWARDS: And I guess I don't really
17 object to it. I guess my fear is we're going to be right
18 back sort of where we are today, and I guess I find that
19 somewhat troubling to me personally, and I don't know how
20 we try to avoid that. I mean the one thing it would do
21 is certainly give us more opportunity for outreach and
22 involvement between now and the RAC meeting, in between
23 the RAC meeting and the Board meeting, so that would
24 certainly give folks an opportunity to weigh in. That
25 certainly is not going to provide the vehicle I was
26 hoping we were going to have in place as we started down
27 this road. So I guess I don't really oppose it, I'm just
28 sort of wondering does it leave us in the same position
29 we are today.

30
31 CHAIRMAN FLEAGLE: George Oviatt.

32
33 MR. OVIATT: Mr. Chairman. The fact that
34 we're going to have a Southcentral fall RAC meeting and
35 it's well publicized and I assume this could be a part or
36 would be a part of that agenda, you know, I think the
37 motion that we just worked on was fast-tracked without a
38 lot of, perhaps public awareness, it was a special
39 meeting called by the Southcentral Board, where they have
40 well announced meeting times for their Southcentral RAC
41 at the end of -- I believe it's the end of October, and I
42 just think that we will provide the communities plenty of
43 opportunity to testify and weigh into this and for the
44 RAC to have a full compliment of that information. I
45 think the circumstances are different for moving forward
46 on this for this winter proposal.

47
48 Thank you, Mr. Chairman.

49
50 CHAIRMAN FLEAGLE: Does that help you,

1 Gary.

2

3 MR. EDWARDS: (No response)

4

5 CHAIRMAN FLEAGLE: Judy Gottlieb.

6

7 MS. GOTTLIEB: Mr. Chair, thank you. I
8 guess I would encourage those Board members who were
9 concerned about the public process this time to be
10 involved as we develop the scheduling for this next
11 proposal and make sure your concerns are taken care of in
12 advance of our meeting.

13

14 Thank you.

15

16 CHAIRMAN FLEAGLE: Pete.

17

18 MR. PROBASCO: I'd just like to summarize
19 what I heard. My understanding is that the Board would
20 like Staff to develop a Staff analysis that will be
21 viewed by the leadership team as well as the InterAgency
22 Committee. That Staff analysis will go forward to the
23 Southcentral Council at their fall October meeting and
24 after the fall October meeting, the Board will schedule a
25 work session to take final action on that item, and we'll
26 publish -- yep, we'll have the word out.

27

28 And just one other clarification, based
29 on the action that was just taken on the coho fishery,
30 that proposal, if you will, is -- we've taken final
31 action and that one will not go forward. That's my
32 understanding.

33

34 CHAIRMAN FLEAGLE: That was our
35 understanding too.

36

37 MR. PROBASCO: Thank you.

38

39 CHAIRMAN FLEAGLE: All right, any
40 objection to that approach.

41

42 (No comments)

43

44 CHAIRMAN FLEAGLE: Hearing none, that
45 will be the course of action that we recommend to you.

46

47 Thank you.

48

49 MR. PROBASCO: That's fine.

50

1 CHAIRMAN FLEAGLE: All right, next up on
2 the agenda is Board direction on the process for draft
3 petition on license fee requirement. Pete.

4
5 MR. PROBASCO: Thank you, Mr. Chair. I'm
6 going to just briefly introduce this and then bounce the
7 ball to Mr. Kessler. If I miss anything Steve, if not
8 we'll just go forward.

9
10 We've received a request from the
11 Southcentral [sic] Regional Advisory Council, they are
12 going to petition the Secre.....

13
14 MR. KESSLER: Southeast.

15
16 MS. GOTTLIEB: Southeast Council.

17
18 MR. PROBASCO: Southeast.

19
20 MR. KESSLER: Southeast Council.

21
22 MR. PROBASCO: What'd I say?

23
24 MS. GOTTLIEB: Southcentral.

25
26 MR. PROBASCO: Oh, I'm sorry. Thank you,
27 Judy. Southeast Regional Advisory Council. They are
28 going to petition the Secretary as far as the license
29 requirement for hunting for subsistence users.

30
31 They use, paraphrasing, that this is an
32 unnecessary burden for subsistence users to participate
33 in hunting. They have requested that this
34 letter/petition also be included on the other nine
35 Regional Advisory Council's agendas for their review, and
36 if they so elect to take action, either support or not
37 support.

38
39 We felt that this issue is -- or I felt
40 that this is an issue that I needed guidance from the
41 Board on how to proceed since it was going beyond just
42 Southeast and was going to involve the other nine
43 Councils.

44
45 Thank you.

46
47 CHAIRMAN FLEAGLE: Thank you. Steve
48 Kessler.

49
50 MR. KESSLER: Thank you, Mr. Chair. I'm

1 not sure I have much to add to that. I would request,
2 though, to see if Mr. Bert Adams is on line now because I
3 believe he was going to be on line representing the
4 Regional Advisory Council, and he could provide perhaps a
5 little bit more background and information to the Board.

6

7

Bert.

8

9

(No comments)

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not sure I have much to add to that. I would request,
though, to see if Mr. Bert Adams is on line now because I
believe he was going to be on line representing the
Regional Advisory Council, and he could provide perhaps a
little bit more background and information to the Board.

Bert.

(No comments)

MR. KESSLER: Bob Schroeder, are you on
line, is there any other information you could provide to
the Board?

DR. SCHROEDER: Yeah, Steve, I did try to
get in contact with Bert, he was doing a charter today
and so he may not be in yet.

This issue has come before -- the
Southeast Regional Advisory Council has raised this
license issue a number of times over the last few years.
It was brought up in the 2005 annual report to the Board,
and the response to the annual report from the Board was
that if the Council wished to submit a petition that
Staff would provide technical support in preparing that
petition. Staff did so. The petition was circulated to
the Board, not for action, but for information at the
last Board meeting by Dr. Dolly Garza, and she stated at
that time that she wished that the other Councils would
review this petition at their fall meetings.

The Board didn't take any particular
action at that time, but did hear her request.

And that's about all I've got.

CHAIRMAN FLEAGLE: Thank you.
Discussion. Gary.

MR. EDWARDS: The request is for it to go
forward?

MR. PROBASCO: The request is in two
parts, Southeast Regional Advisory Council have requested
to submit the petition to the Secretary, which they can
do, and the second part is they have now requested that
their letter/petition be included in the other nine
Regional Advisory Council's agendas for their discussion,
possible action.

1 So it goes from Southeast to a statewide
2 issue.

3

4 CHAIRMAN FLEAGLE: Steve Kessler.

5

6 MR. KESSLER: Thank you, Mr. Chair. I
7 think just to put this in the correct order, what the
8 Southeast Regional Advisory Council would like to do is
9 put this out to the other Regional Advisory Councils,
10 have them review it, make some recommendations for
11 changes in it, perhaps support or not support it, and
12 then based on all that information that comes forward
13 from the other Regional Advisory Councils, then they
14 would bring all that information to a special Council
15 meeting that would be proposed, a teleconference meeting,
16 and then they would figure out, based on the input of all
17 the different Councils how they want to go forward or
18 perhaps not go forward, but I assume go forward to the
19 Secretaries in a rulemaking.

20

21 So go out to the Councils, that's what
22 this request is, is to have OSM put this into the agenda
23 and packets for each of the different Council meetings
24 around the state, and then have those Councils provide
25 optional comments or not to the Southeast RAC before the
26 Southeast RAC makes a final decision on how to move
27 forward.

28

29 CHAIRMAN FLEAGLE: Pete.

30

31 MR. PROBASCO: The only thing I would add
32 to that, what Mr. Kessler stated, is that, if we do
33 include it in all 10 Regional Advisory Council booklets
34 then I will have to have Staff prepared to discuss what
35 the letter is, what the petition is, what are the hunt
36 license fees, how are they utilized, et cetera, et
37 cetera, so it's going to take some additional effort and
38 this is -- we've already started producing Council
39 booklets.

40

41 MR. EDWARDS: Mr. Chairman.

42

43 CHAIRMAN FLEAGLE: Gary.

44

45 MR. EDWARDS: I guess I'm kind of unclear
46 of what the ultimate outcome will be, you know, we've
47 discussed this before, I think on several occasions.
48 Philosophically I'm in full agreement. I've always
49 wondered why subsistence users are required to have a
50 State hunting license, and the same reasons why I wonder

1 why we require them to have migratory bird hunting --
2 bird stamps for them to subsistence bird hunt. But on
3 the case of migratory bird stamps, our learned attorneys,
4 not these attorneys, but those in D.C. have said that we
5 have none -- you know that this is what the requirement
6 seems to be, you know, and it's very difficult to explain
7 to people why you don't have to have one for fishing but
8 you got to have one for hunting. I know it's not a
9 sporthunting license it's a hunting license and I guess
10 those little nuances make the difference. But I'm
11 unclear where ultimately sort of this is going to go and
12 what is the expectations. I mean I don't see either
13 Secretary sort of unilaterally agreeing or disagreeing
14 with this and I don't know if it comes back to the Board
15 and if that's the case, should the Board sort of weigh in
16 on this? I know we've had previous letters, I'm just
17 trying to understand what the outcome is and whether we
18 -- either the Secretaries or this Board, you can -- has
19 -- I guess we do have the authority to, I guess, do what
20 we want on our own weigh-ins, but I don't know, Keith, I
21 mean what do you see as the possible outcome of this if
22 you had to predict.

23
24 CHAIRMAN FLEAGLE: I think the request is
25 simply to involve other Councils. So the immediate
26 outcome is just to get input.

27
28 What happens then is a question of what
29 is forwarded to the Secretaries exactly. And I suppose
30 if the future is like the past the Secretaries will ask
31 us for advice at that time.

32
33 MR. KESSLER: So it will come back.

34
35 MR. GOLTZ: It will come back.

36
37 MR. EDWARDS: So if that's the case why
38 don't we short-circuit the system, and have it come to us
39 and us go ahead and make a recommendation to the
40 Secretary? I mean I can't believe that no RAC is going
41 to oppose it.

42
43 CHAIRMAN FLEAGLE: Niles.

44
45 MR. CESAR: Thank you, Mr. Chairman.
46 It's a strange world we live in. I think there could be
47 a RAC that said no. But I think regardless the more
48 information you bring to the table would support whatever
49 decision we make at the Board level and I think, you
50 know, for purposes of having an established record I

1 think it would be helpful to have some indication from
2 the Councils. I would agree with you that it'd be pretty
3 strange if one came forth and said, no, let us -- give us
4 another license, you know, I agree, but for the record.

5

6 CHAIRMAN FLEAGLE: All right. Pete.

7

8 MR. PROBASCO: I think what I've heard
9 from Board members is that they would like us to include
10 it in all Council books. I will work with Mr. Kessler
11 and we'll get it in the booklets, and I think probably
12 best we are speaking the same at each meeting we'll
13 probably develop some talking points as well so we will
14 include it.

15

16 CHAIRMAN FLEAGLE: All right, thank you.
17 That sums up discussion on that item, agenda item then.

18

19 Steve Kessler.

20

21 MR. KESSLER: Thank you, Mr. Chair. I
22 guess the one other thing I think it would be interesting
23 to hear from Alaska Department of Fish and Game also
24 because, of course, if this were to go through there
25 would probably be fewer hunting licenses that were
26 purchased and I'm not sure if the Department feels that
27 there should be some information that would be valuable
28 to also be provided to the Councils as the Councils take
29 this matter up.

30

31 CHAIRMAN FLEAGLE: Wayne Regelin.

32

33 MR. REGELIN: Thank you, Mr. Chair. I
34 guess that this is something that's of a lot of concern
35 to the State and I think I would disagree completely. I
36 think if we go and present the information that most of
37 the RACs are going to oppose this. There's a long
38 tradition of hunters supporting good wildlife management,
39 and I think most hunters know good wildlife management
40 costs money. And I think they know that -- I guess how a
41 RAC could say that requiring a hunting license is an
42 undue financial and regulatory burden on rural residents
43 amazes me. I don't know how you get there when you --
44 it's been a requirement since statehood, since before
45 statehood by the territorial government so it's not
46 something new.

47

48 But I think that you need to think about
49 how that money is used. We get about \$15 million a year
50 that we spend on doing surveys for game species

1 throughout Alaska. Without regard to land ownership or
2 who harvests the game and I'd sure hate to see that
3 changed. We often do this work in cooperation with the
4 Federal agencies. And what you're going to do is not
5 just take away the hunting license fees, you'll take away
6 some of the match that the Federal agencies provide. You
7 know right now it's not too big of a financial burden,
8 it's \$25, but if you are a low income individual, you can
9 buy a license for \$5, and I think that that's essential
10 to regulate hunting and to do surveys, to know what's
11 harvested to have a license system, and it's a pretty
12 small investment in the future.

13

14 You know one of the things that the
15 petition that Southeast RAC complained about is that we
16 were using hunting fees to build viewing ramps and -- or
17 viewing platforms and watch for wildlife programs, and,
18 you know, that's not true, we don't -- that's other --
19 that's general funds that are used for that purpose and
20 special Federal funds, through a special Federal program,
21 it's not hunting license fees. But I bet you that most
22 people that are subsistence hunters like to watch
23 wildlife and participate in our education and our viewing
24 programs.

25

26 The other one was that they didn't want
27 to buy boat ramps -- or thought they shouldn't have to
28 pay for boat ramps. And boat ramps are built throughout
29 the state, again, with the Federal and State dollars and
30 sportfishing licenses, and anybody can use them whether
31 they're a personal use fishery or a sportfisherman or a
32 subsistence fisherman.

33

34 But I think that one of our bigger
35 concerns will be if you don't have to have a State
36 hunting license and then how are we going to regulate and
37 how are we going to enforce because a lot of the land
38 ownership is mixed, you know, throughout the state and it
39 would just be a regulatory -- or an enforcement, I should
40 say, not regulatory, enforcement nightmare to try to
41 figure out where we can do this and I certainly don't
42 think we need more obstacles for an effective regulatory
43 enforcement system.

44

45 So I think that we'll be at every RAC
46 explaining why we think that this would be a very bad
47 idea in spades if you do this and I'd urge you not to do
48 it. I think it's foolish.

49

50 CHAIRMAN FLEAGLE: Niles Cesar.

1 MR. CESAR: Well, I think we're putting
2 the cart before the horse. What we're suggesting is we
3 get some inputs from the RACs and that will tell us, you
4 know, whether or not we should even consider this. But I
5 think to be responsive to the Southeast RAC, I see no
6 reason why we shouldn't make this public knowledge to the
7 rest of the RACs. Let them comment on it. Obviously
8 we're going to have a huge discussion when it comes down
9 to actually doing something and I don't think anybody in
10 this room thinks that we're just going to say let's vote
11 for it and go for it. It's going to be contentious
12 because of all the things that Mr. Regelin says, I mean
13 I'm not disputing that at all, I'm just saying let's not
14 jump to the conclusion before we get the information.

15
16 MR. EDWARDS: Mr. Chairman. We don't
17 have to beat this but, Wayne, I think part of the reality
18 is, is that we'll find that it probably won't have as
19 much impact as you may think because I think a lot of, a
20 big bulk of the subsistence hunters also hunt off of
21 Federal lands and will do it. On the Kenai, for example,
22 you can get a subsistence permit so you can fish without
23 a license on the Kenai Peninsula. We gave away none this
24 year. So nobody basically took advantage of that
25 opportunity so that tells me that all the subsistence
26 users still bought a sport fishing license because they
27 probably fished other places. And I think the reality is
28 probably with the hunting you would find, because that
29 would not allow you to, you know, hunt on State lands so
30 I think people would still -- and, you know, obviously
31 one issue -- you could issue, you know, we could issue a
32 subsistence license, that would be no charge, in other
33 words it would serve as the same purpose for reporting in
34 all those, so I mean I think there is a mechanism.

35
36 I don't know, I just have always found it
37 kind of difficult to understand that if you had a program
38 that was designed to put food on the table and part of it
39 was to do that because, you know, the cost and all and
40 the opportunity, that why would you put -- you know,
41 you'd have to pay to do something that you're sort of
42 entitled to. Just in my mind it seems contradictory.
43 And like I said, the migratory bird stamp, and I
44 recognize that migratory bird stamps buys habitat and
45 other things and that's important, although we don't get
46 any of that up here, but, you know, there is some other
47 value to it, but anyway.....

48
49 CHAIRMAN FLEAGLE: George.
50

1 MR. OVIATT: Mr. Chairman. I think Niles
2 had a good idea and that's, let's let the process go
3 forward. I think we'll all have plenty of opportunity to
4 debate this issue. Let's find out what the RACs, what
5 the communities want.

6
7 Thank you, Mr. Chairman.

8
9 CHAIRMAN FLEAGLE: Is it short, Wayne?

10
11 MR. REGELIN: I wasn't going to say
12 anything except Steve poked me and I.....

13
14 MR. KESSLER: Sorry. Well, I just want
15 to make sure that the RACs can hear the two sides.

16
17 MR. REGELIN: Well, I decided the place
18 to talk to is at the RACs because we're going to ask them
19 what they think.

20
21 MR. PROBASCO: Mr. Chair.

22
23 CHAIRMAN FLEAGLE: Go ahead, Pete.

24
25 MR. PROBASCO: Probably the only Regional
26 Advisory Council that won't get the benefit of this is
27 Barrow, we leave tomorrow so that one might be difficult
28 to get ready for.

29
30 CHAIRMAN FLEAGLE: All right, if we've
31 exhausted discussion on that issue we'll look at item
32 four, other business, Board members. Pete.

33
34 MR. PROBASCO: Judy and I actually have
35 an item. Everybody on the 19th at noon we're going to
36 have the potluck for Mitch. The 10th at noon. It will
37 be here at OSM and it's a potluck, so that means
38 everybody bring something. And Gary's working on a
39 plaque, Judy's already purchased one gift. And I'm going
40 to ask a Staff Committee member to work with Staff
41 Committee to get donations. OSM will be doing the same.
42 And we're just going to recognize Mitch on the 19th.

43
44 Judy.

45
46 CHAIRMAN FLEAGLE: Judy.

47
48 MS. GOTTLIEB: We do have a work session
49 that day, too, and, yeah.....

50

1 MR. CESAR: It's in the morning, right?
2
3 MS. GOTTLIEB: Correct. And so I guess
4 as each of the agencies, as you collect your
5 contributions, you can give them to me or to Pete and
6 we're going to get gift certificates for Mitch as well as
7 for Kathleen once we have that. So I guess we'll need
8 those donations by the Friday before maybe, would that
9 work?
10
11 MR. PROBASCO: We'll have emails out and
12 we'll get that.
13
14 MS. GOTTLIEB: Okay, thanks, Pete.
15
16 MR. PROBASCO: Okay.
17
18 CHAIRMAN FLEAGLE: So it sounds like
19 we're going to have our work session done by noon on the
20 19th.
21
22 MR. PROBASCO: Have to.
23
24 CHAIRMAN FLEAGLE: Other items for
25 discussion, Board members.
26
27 Are we ready for a motion for
28 adjournment.
29
30 MR. OVIATT: Moved.
31
32 CHAIRMAN FLEAGLE: I heard a move, is
33 there a second.
34
35 MR. CESAR: Second.
36
37 CHAIRMAN FLEAGLE: Any objection.
38
39 (No objection)
40
41 CHAIRMAN FLEAGLE: Hearing none, the
42 Board is adjourned.
43
44 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 2 through 66 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING taken electronically by Nathan Hile on the 5th day of September 2006, beginning at the hour of 1:30 o'clock p.m. at the Office of Subsistence Management in Anchorage, Alaska;

THAT the transcript is a true and correct transcript requested to be transcribed and thereafter transcribed by under my direction and reduced to print to the best of our knowledge and ability;

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

DATED at Anchorage, Alaska, this 10th day of September 2006.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/2008