MEMBERS PRESENT:

MIKE FLEAGLE, CHAIR
NILES CESAR, Bureau of Indian Affairs
JERRY BERG, U.S. Fish and Wildlife Service
JUDY GOTTLIEB, National Park Service
DENNY BSCHOR, U.S. Forest Service
GEORGE OVIATT, Bureau of Land Management
SARAH GILBERTSON, State of Alaska Representative
KEITH GOLTZ, Solicitor's Office
KEN LORD, Solicitor's Office

Recorded and transcribed by:

Computer Matrix Court Reporters, LLC
3522 West 27th Avenue
Anchorage, AK  99517
907-243-0668
jp@gci.net/sahile@gci.net
CHAIRMAN FLEAGLE: Good morning. I'd like to call the Federal Subsistence Board meeting to order. We have an agenda prepared for us, it's in the binder. And I understand that there's a couple of stand-ins on the Board right now due to regular fill-in's not being able to attend. We'll just go ahead and start with introductions of who's here, and I'd like to start down on the left side of the table, Mr. Oviatt.

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

DR. CHEN: Good morning. My name is Glenn Chen. I'm representing our Regional Director, Mr. Niles Cesar, who will be arriving shortly after he concludes some medical appointments.

MS. GOTTLIEB: Hi. I'm Judy Gottlieb representing the National Park Service.

MR. GOLTZ: Keith Goltz, Solicitor's office.

CHAIRMAN FLEAGLE: Good morning. I'm Mike Fleagle, Chairman. I live here in Anchorage.

MR. PROBASCO: Good morning. My name's Pete Probasco. I'm the ARD for the Office of Subsistence Management.

MR. BERG: Good morning. Jerry Berg representing Fish and Wildlife Service for Gary Edwards this morning. Gary's stuck in Seattle trying to get out on the first flight up here so I'll be standing in for him until he does make it.

MR. BSCHOR: And I'm Denny Bschor with the U.S. Forest Service.

MS. GILBERTSON: Good morning. I'm Sarah Gilbertson with the State of Alaska, Department of Fish and Game.

CHAIRMAN FLEAGLE: Our Advisory Council
MR. ADAMS: Good morning. I'm Bert Adams, Sr., Southeast Regional Advisory Council.

MR. LOHSE: Ralph Lohse, Southcentral Regional Advisory Council.

MR. HILSINGER: Thank you, Mr. Chairman. John Hilsinger with the Alaska Department of Fish and Game.

MR. ALVAREZ: Good morning. My name is Randy Alvarez. I'm Chairman of the Bristol Bay RAC.

CHAIRMAN FLEAGLE: Okay, good morning. Welcome everybody and we've got Staff behind us also, could you just stand up and introduce yourself as well, please.

MR. USTASIWSKI: Jim Ustasiwski with the U.S.D.A., Office of the General Counsel.

MR. KESSLER: Steve Kessler with the Forest Service.

MR. KLEIN: Steve Klein with Fish and Wildlife Service.

MR. JACK: Carl Jack, OSM.

MS. SWANTON: Nancy Swanton with National Park Service.

MR. ARDIZZONE: Chuck Ardizzone, Bureau of Land Management.

CHAIRMAN FLEAGLE: All right, thank you. And appreciate everybody coming out into what, for Anchorage, is rather cold temperatures to come join us here in the warm hospitality of the Egan Center. I understand we also have some issues with the agenda as a result of folks not being here, and I'd like to open it up to you, Pete, for explanation -- well, you probably have some opening comments anyway.

MR. PROBASCO: Yeah.

CHAIRMAN FLEAGLE: And then maybe just talk about how you'd like to propose changes to the
MR. PROBASCO: Thank you, Mr. Chair. As I looked across the audience, I noticed a friend that I haven't seen in awhile, and I just think it's important that we recognize him and welcome him home. Elijah Waters, who works for the Bureau of Land Management has recently just returned home from serving our country and, Elijah, welcome back and it's good to see you.

(Applause)

MR. PROBASCO: Mr. Chair. Because of the problems with flights and some Board members not here, there's been a request to maybe rearrange our agenda, that will be at your call and the Board's call. But it was requested by Mr. Edwards that we take the Fisheries Resource Monitoring Plan for 2007 and move that to the end of the agenda, that would be our first order of business.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you, Pete, appreciate that. Judy, you had a suggestion as well concerning the agenda.

MS. GOTTLIEB: Yes, for Proposal 18, I believe people from Sitka were trying to travel up here and so I'd request, perhaps that we move that to after lunch as well, and hope that they get here by then or monitor the arrival time.

CHAIRMAN FLEAGLE: Any other suggested changes?

(No comments)

CHAIRMAN FLEAGLE: Any objection to those suggestions from Board members.

Go ahead, please, Jerry.

MR. BERG: Yeah, Mr. Chair, in addition to moving the FRMP study discussion until the end of the agenda, the reason that Gary wanted to move that was to discuss the Unalakleet project. So, I guess, maybe just to let people know that he'd like to remove that from the
consent agenda to have a discussion on the Unalakleet project. I'm not sure what number that is right off the top of my head, but, just so everybody's aware of what Gary would like to discuss.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. On Page 9 that would be Project 07-103.

CHAIRMAN FLEAGLE: Okay. Any objection to those recommendations.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, the Board will adopt those changes to the agenda.

All right, before we begin public comment period, are there any other announcements to be made.

Bert.

MR. ADAMS: Thank you, Mr. Chairman. I just want to thank Judy for her suggestion in moving No. 18, you know, I don't see any Sitka people here yet and -- although I think I can convince you on my own it'd be better to have their support.

Thank you.

CHAIRMAN FLEAGLE: Thank you. And will you let us know when the people from your region arrive, I guess there was a problem with a flight overheading yesterday, but were they able to get out later on last night or something?

MR. ADAMS: Mr. Chairman. That's what I understand and when I see them popping in the door I'll give you a signal or make an announcement somehow to you.

Thanks.

CHAIRMAN FLEAGLE: Okay, you bet. I just went and helped my wife get established for the legislative session down in Juneau and I came home Sunday night and the plane out of Sitka was about two minutes into the flight, they got hit by lighting and so when it landed at Juneau they had to unload everybody off the plane and give it a thorough once over. So it sounds
like they have some interesting weather there for jet travel in the winter. I was surprised, lightening, in January.

Pete.

MR. PROBASCO: Mr. Chair. Mr. Kessler was whispering in my ear here that the bulk of the proposals dealing with Southeast do affect Sitka, Proposals 22 through 26, so maybe for further consideration on the agenda, maybe we should just take Southeast and put Bristol Bay next, Randy, on the agenda, and that should allow time for other people to get here and we'll start out with Bristol Bay first.

CHAIRMAN FLEAGLE: Okay, that's a good idea. Any objections, Randy.

MR. ALVAREZ: No, that's fine with me. I was -- I'd like to leave on the 11th if we were -- I was kind of hoping to be done and that would be better to do that, I've got other plans coming up on the 11th so I was hoping to get out of here by then.

Thank you.

CHAIRMAN FLEAGLE: All right, thank you for that suggestion. We'll go ahead and make note that we'll deal with Bristol Bay issues before.

All right, obviously this meeting is my first for a proposal meeting and the agenda's working a little different than what I've been used to so far so Pete is going to be helping me work through this.

There's comment periods for each proposal. So when we look at the agenda for Item No. 3, now, public comment period, on non-agenda items, this is just basically open discussion from the public to the Board?

MR. PROBASCO: That's correct. It's an opportunity for the public to speak to the Board directly on non-agenda items.

Mr. Chair.

CHAIRMAN FLEAGLE: All right. And do we have a sign-up list for that or is it just open mic?
MR. PROBASCO: Same process. People can turn in cards to Di as you enter the door there at the front desk or you can just ask for, are there any comments, and have them identify themselves by name on the record.

CHAIRMAN FLEAGLE: Okay. That brings me to the next question, we don't have any cards yet, right?

MR. PROBASCO: That's correct.

CHAIRMAN FLEAGLE: Is there anybody here that would like to comment before the Federal Subsistence Board on non-agenda items?

(No comments)

CHAIRMAN FLEAGLE: Okay, that dispenses with that agenda item.

MR. ADAMS: Mr. Chairman, right here.

CHAIRMAN FLEAGLE: Bert Adams.

MR. ADAMS: You know, maybe I can offer a suggestion here. One of the things that SERAC does when they go over their agenda for adoption is they adopt it as a guide, that way, you know, in situations where something doesn't happen then you can move those agenda items back and forth so just food for thought for you, Mr. Chairman, if you would like to consider that.

CHAIRMAN FLEAGLE: You bet, thank you. And that's definitely what we're doing in this case, appreciate that.

(Pause)

CHAIRMAN FLEAGLE: Pete Probasco.

MR. PROBASCO: Thank you, Mr. Chair. The next agenda item is an opportunity for the public to comment on the consensus agenda items. And what a consensus agenda item is, is when all entities line up and agree on the recommendation of the Regional Advisory Council. So in other words you have consensus by the Regional Advisory Council, consensus by the Staff, and consensus by ADF&G. The purpose of this agenda item is for public to comment on those consensus agenda items found on Page 3 and it's also an opportunity if the
public feels that these items should be discussed fully before the Board to make a request to have them removed off the consensus agenda item.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, than you, Pete. And Page 3 shows that the consensus agenda contains Proposals 19 and 20 from Southeast Alaska, 14 and 15 and 16 for Prince William Sound; that's it.

So do we have anyone interested in commenting on those consent agenda proposals.

We do have one hand in the audience, would you like to come up and give your testimony, please.

MS. REBNEY: Thank you, Mr. Chair. Brenda Rebney, AHTNA Incorporated. Am I just requesting that these be brought to the agenda or am I actually making comment on them?

CHAIRMAN FLEAGLE: Pete, either or, right?

MR. PROBASCO: Either or.

MS. REBNEY: Okay. On the first one -- well, actually not 14, FP07-15, you have our comments from the AHTNA Subsistence Committee in writing in front of you -- well, they're actually in your book. But I would just like to add that we recognize that there is -- between both these proposals, 15 and 16, the consensus has been that it creates a hardship on Federal subsistence users only and not State. However, I would like you to -- I recognize that you won't reconsider this but the issue here is over and above this. This is not just a social issue between both of these items, there's been a fishery that's created here that has created a hardship on the local traditional users and that's the point that the AHTNA people would like to emphasize. There are traditional use for means and methods on this, and having the fishwheels 200 feet apart, they're -- I guess what I'm trying to say here is there's always a difference in some ways traditional is used against us is the way it feels, and I don't want to mix game and fish here but, you know, in terms of like for the four-wheelers, it's not traditional but for fishwheels, you know, for them to be a certain distance away from each
other, the actual way that the AHTNA people use the fish and the way they clean them, it does make a difference to have them more than 75 feet apart. And I’d like you to consider that. I'm not sure how that would work because I recognize that the State system is different and there are more State users. But the fact is, is they're probably -- and I hope I'm not going to get in big trouble here, you know, I don't think 30 years ago there was 700 fishwheels on the Copper River, so I just would like you to take that into consideration.

So I kind of mixed two things here. It's not just a matter of it being visually unsightly to have fishwheels floating down the river. We do think that eventually, you know, as the numbers increase, that that will have an ecological impact on the fishery, although that is a big river and the consensus seems to be that there's not that many that are floating down the river. And I guess I recognize that obviously in this particular area most of the land that is above the high water mark is AHTNA property and we recognize that, but still if some consideration could be taken by the Department, Staff or something, to somehow address this particular issue and that is the -- and I did mix two proposals together here, I apologize, removing the fishwheels above the high water mark or figuring out some kind of system to address that issue because at this point it's probably not an ecological issue, it will be probably down the road if this continues to be a problem. And so we would appreciate it if you could take some consideration into addressing this further, even though I recognize that by consensus everyone has agreed that this would create a hardship on Federal users and not State users.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Brenda. Your concerns are noted and will be considered.

Thank you. Any comment -- any questions or comments.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Yeah, Judy, go ahead.

MS. GOTTLIEB: Yes, Mr. Chair. Thanks, Brenda, for coming in. I know in the past AHTNA and others has been really instrumental in pulling together meetings and bringing together all the appropriate
parties to discuss some very difficult fisheries issues,
so I guess I'd encourage AHTNA and State and Park Service
would be willing to help to just try to talk over these
issues.

MS. REBNEY: Thank you.

CHAIRMAN FLEAGLE: Okay, thank you,
Brenda, for your comments.

Are there any other comments for the
consent agenda proposals?

(NO comments)

CHAIRMAN FLEAGLE: Hearing none, we'll
move on.

Okay, the next item on the agenda is the
Fisheries Resource Monitoring Plan which we have already
agreed to wait until the end.

Pete.

MR. PROBASCO: Thank you, Mr. Chair. Our
next step now will be, based on Board's action, to move
Southeast after Bristol Bay. We'll go into the Bristol
Bay proposals on Page 2 of your agenda. Those are
Proposals 5, 6 and 7. And the procedure that we will
follow in dealing with each proposal individually is
outlined on Page 4. We'll have the analysis by the lead
author, a summary of written public comments, then we'll
open the floor to public testimony; and, please, if you
want to testify on any of these proposals, please sign up
and see Di at the front desk there, and then we'll have
our Regional Advisory Council recommendation, Alaska
Department of Fish and Game comments, InterAgency Staff
Committee recommendation, and then the Board's discussion
and action.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you. So
we're looking at Proposals for the Bristol Bay region, 5,
6 and 7, none of which are included in the consensus
agenda.

MR. PROBASCO: That's correct.

(Pause)
CHAIRMAN FLEAGLE: All right, so the first proposal we have before us then would be Proposal 07-05, and who am I turning to for the analysis.

MR. PROBASCO: Rod.

MR. CAMPBELL: Thank you, Mr. Chairman. Members of the Board. My name is Rod Campbell. I'm with the Office of Subsistence Management. I am not the lead author on these proposals but I will be providing an overview of the three Bristol Bay area fishery proposals, starting with 08-05, which begins on Page 301 in your Board book.

FP07-05 was submitted by the Twin Hills Village Council and requests that drift gillnets be permitted as a legal gear type for Federally-qualified subsistence users in the Togiak River.

The proponent is seeking this regulation change to allow subsistence users to harvest fish more efficiently. The recognized practice of subsistence harvesting is to take only what is needed, therefore, the use of drift gillnets should not lead to an increase in the amount of fish harvested. In fact, the use of drift gillnets may reduce harvest in some cases by providing subsistence fishermen with more flexibility in the amount of fish harvested compared to set gillnets, which may be left unattended for varying lengths of time.

Due to the smaller size of tributaries in the upper reaches in the Togiak River, salmon spawning in these locations are more vulnerable to over exploitation with drift gillnets but the proponent and a Regional Advisory Council member familiar with the area agreed that restricting the use of drift gillnets to the lower portion of the river should protect most spawning salmon from any over exploitation without placing an undue burden on subsistence users.

The Department of Fish and Game, I'm sure will address this later, but the Alaska Board of Fisheries adopted a proposal at their December 2006 meeting in Dillingham to allow the use of drift Department of Fish and Game no more than 10 fathoms in length between the mouth of the Togiak River and upstream approximately two miles to where there will be Fish and Game regulatory markers.

The current Federal regulations were
adopted from existing State regulations in 1999 when the
Federal Subsistence Management Program expanded to
include fisheries on all Federal public lands and waters.
There is a provision in the regulations for the Bristol
Bay area, and in this case the Togiak district, that
allows the use of drift gillnets in any district, those
are commercial fishing districts, however, State district
boundaries only include the marine waters. When this
provision was adopted into Federal regulations, the
Federal district boundaries were modified to include
freshwater drainages that flow into the district. The
unintentional affect was to allow the use of drift
gillnets in all Federal districts of the Bristol Bay. As
I said this was definitely unintended. This oversight
was first noticed in November 2006 and will need to be
addressed by the Board at this meeting. Any action taken
by the Board will better define where or if drift
gillnets are to be allowed in the Togiak District.

As far as the biological background.
There are no conservation concerns that we're aware of.
All salmon stocks in the Togiak River appear to be
healthy. No Togiak River salmon stocks are currently
designated as a stock of concern by the Alaska Board of
Fisheries. Togiak River salmon are being maintained at a
relatively high level of abundance. If adopted, this
proposal would provide subsistence users with an
additional gear type and the use of drift gillnets would
allow subsistence users to harvest salmon in a more
efficient manner than set gillnets and provide more
flexibility in the amount of harvest. It would also make
Federal regulations comparable to new State regulations
and reduce regulatory complexity.

The potential impacts for the use of
drift gillnets appear to be primarily social. There may
be some conflict between user groups, sportfish groups
and subsistence, that has been pointed out. But right
now there is no evidence to indicate the use of drift
gillnets in the lower Togiak River pose a risk to this
river's fishery resources.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Okay, do
we have any questions for Rod's statements there, Board
members.

(No comments)
CHAIRMAN FLEAGLE: All right, hearing none, we'll go ahead and move on to summary of written public comments and is this Cliff.

MR. EDENSHAW: Thank you, Mr. Chairman and Board members. There weren't any written public comments.

CHAIRMAN FLEAGLE: Okay, thank you. Very short summary then.

(Laughter)

CHAIRMAN FLEAGLE: And now we're open to public testimony on this proposal. We don't have any cards, so are there anybody here that would like to testify on the proposal that we're dealing with, Proposal 07-05?

(No comments)

CHAIRMAN FLEAGLE: Okay, hearing none, we'll move on to the Regional Advisory Council recommendation, Randy Alvarez.

MR. ALVAREZ: Thank you, Mr. Chair. On Page 303 is our Council recommendations.

We discussed this proposal for quite a while, and I'm not going to go into any of that unless later on during your deliberations, unless you want me to comment on specific things, I will.

Thank you.

CHAIRMAN FLEAGLE: Okay, would you just go ahead and describe what your Regional Council, you mentioned that it should be modified?

MR. ALVAREZ: What do you mean modified, pardon me?

CHAIRMAN FLEAGLE: I'm sorry, I'm just reading from your recommendation on Page 303 that the Bristol Bay Subsistence Regional Advisory Council supported 07-05 with modification.

MR. ALVAREZ: Okay. Yes, we suggested that two miles following the river because it's so bendy -- windy, that it would be better to use the map that was
provided to us at the meeting. It was in the boundary of the map, it was in squared about one mile for each square and it was -- we decided it would be better just to go up to the sections or whatever -- but it was about two miles up by the map instead of trying to follow the river because it was so windy, trying to figure out where two miles was, it was a lot easier just to go up two sections on the map.

CHAIRMAN FLEAGLE: All right, thank you.

Questions for Regional Advisory Council.

Judy.

MS. GOTTLIEB: Mr. Chair. Randy, it looks like maybe the RAC also set the limits on the length and depths of the net?

MR. ALVAREZ: The proposal was for 10 fathoms and for that depth, we didn't -- I don't believe we changed that but what we probably should have did was not put a recommendation on the depth because as most of the people over there that utilize the subsistence fishery utilize Bristol Bay drift nets, which are set at a certain depth and that's all they have to use and so we probably should have just not recommended the depth on that but this -- the depth following to the limit of the size that are being used.

CHAIRMAN FLEAGLE: Excuse my ignorance on fathoms, I'm not a fisherman. I mean I have participated in a driftnet fishery down on the Kuskokwim with other family members but what's the difference between 15 feet and two and a half fathoms? What is a fathom, exactly?

MR. ALVAREZ: Each fathom is six -- Mr. Chair, it's the same thing, two and a half fathoms is 15 feet.

CHAIRMAN FLEAGLE: Okay, got it, thanks. So that doesn't change anything then, not substantially anyway.

All right, thank you for that clarification.

Any other Board questions or comments to Randy. (No comments)
CHAIRMEN FLEAGLE: Hearing none, we'll move on to the Department of Fish and Game comments. And is this going to be you Sarah?

MS. GILBERTSON: For the first part of it, yes, thanks, Mr. Chairman.

What I'd like to do is just maybe make a few brief comments that are policy themes that show up throughout the State of Alaska's comments. And I'm only going to say these once and then John Hilsinger will go through each proposal as they come up and give our technical comments, and then this way you're not hearing the policy element of this over and over again.

But one of the primary themes throughout our comments was jurisdiction. And several times throughout the process, both at the RAC meetings and in meetings with Federal Staff we asked for better maps, and we feel that this is beneficial, not just for State managers, but for Federal Staff and also for Alaskans so that folks can tell where, exactly, Federal regulations would apply. You'll hear, or at least read in our comments that with respect to closures and customary and traditional use determinations, that we requested that the Federal Subsistence Board adopt policies and procedures for making those determinations as requested by the Secretary in October of 2005. We also repeat throughout these proposals, or comments on them, that the Federal Subsistence Board should follow its own regulations and court direction. And then, finally, we take issue with the Federal Subsistence Board adopting duplicate regulations. Especially in areas where the State is already providing for a subsistence opportunity under the State regulations. The State does not see a need for the Federal Subsistence Board to adopt duplicative regulations because it's confusing for Alaskans.

And, one more thing, and then I'll turn it over to John on this proposal, but I wanted to bring to your attention that the liaison team did take all of these fishery proposals to the Alaska Board of Fish and we briefed a subcommittee of the Board of Fish on these proposals. We brought them to their attention and explained each and every one of them and last -- at the end of last year, in 2006, the Board of Fisheries met and the Bristol Bay proposals, all three of these were within their cycle, because as most of you know our State Boards take up areas of the state every three years. So the
Bristol Bay cycle was up and the Board of Fish did consider these three proposals and in this case they did take action and it was after the RAC meetings and after the original proposal had been submitted to the Board and that's why you see the Board of Fish action is different and is actually more liberal in some ways than the original proposal.

So I'll turn it over to John, but I did want you to know that the liaison team did make an effort in this case to take all of these to the Board of Fish to facilitate cooperation between the State and Federal government on these, and in this case the Board of Fish did take action. It was much more liberal than the original proposal and I'll turn it over to John to make some technical comments.

CHAIRMAN FLEAGLE: Hang on. Before we go there, Sarah, I have a question and maybe other Board members do, I'm not real familiar with your objection to adopting duplicate regulations. In the case here, like Proposal 07-05 that we're dealing with, you said that the Board of Fisheries has adopted somewhat more liberal guidelines. If the Board were to adopt something we would want to match that so there wasn't a confusion. But your suggestion is that we shouldn't adopt this regulation at all because the State already did and the issue therefore is resolved?

MS. GILBERTSON: Thank you, Mr. Chairman. Yes, that's correct.

Essentially when the Board of Fish acted at the end of 2006 they adopted this regulation, and you have some notes on what was adopted, and John can discuss that further, but that regulation adopted by the State Board applies to all Alaskans. So right now if you take action, you're putting something into regulation that applies only to rural Alaskans under the Federal system, but it's unnecessary because the State Board just took action at the end of last year after the liaison team took this proposal to them and they made a determination that it applies to all Alaskans. So we don't think it's necessary for the Federal Board to take action, you know, we have two different regulatory books right now that Alaskans have to look at. And if the State regulations apply to all Alaskans, and there's no problem with that, then we don't see a need for the Federal Board to expand its regulations and, therefore, the handy-dandy Federal book, it's just -- it's confusing to Alaskans.
Thank you.

CHAIRMAN FLEAGLE: Thank you. And that goes to a larger discussion that I know that the State has been having with the Federal system and that's in the whole concept of adopting the entire suite of State regulations when the Federal Board resumed jurisdiction for game first, and then fish, and so without trying to solve that right now, would it be inconsistent on our behalf, the Federal system, to begin to take issues like this independently and not acting on them, based on past practices where the Federal Board has put their own regulations in place? Do you understand the question?

I mean I understand that the State would like to fix the overall, I guess the better way to ask the question would be is it -- would it be beneficial to anybody to take the recommendation just based on single proposals as this one?

MS. GILBERTSON: Thanks, Mr. Chairman. I'm not sure I understand the question completely but, you know, if we can't go back and fix the difference that exists between the State and Federal government and we have been disagreeing on whether or not you should adopt duplicative regulations, you know, at this point I'm not asking you, I don't think, to go back and fix everything that's been done, but perhaps moving forward, consider whether it's really necessary to adopt this into regulation since the State just adopted something that applies to all Alaskans.

CHAIRMAN FLEAGLE: Okay, thank you, that was a good explanation, good clarification.

And, again, I, too, don't wish to go to the overall discussion that the agencies are having on the -- let's see, anyway other Board members, questions or comments to Sarah on that issue?

(No comments)

CHAIRMAN FLEAGLE: Hearing none, we'll go ahead and now turn it over to John for your comments, please.

MR. HILSINGER: Thank you, Mr. Chairman. Again, for the record, my name is John Hilsinger. As Sarah noted the State recommendation is to take no action on this proposal, FP07-05. You will find our detailed
The Board of Fisheries did just take action to allow drift gillnets in the lower two miles of the Togiak River. Nets would be limited to 10 fathoms in length. The Board did not put a depth restriction on the nets because testimony at the committee meeting, at the Board, and particularly from the Department of Fish and Game was that they did not see a need to have a depth restriction.

Also under the new State regulations, all fish must be marked by removing both lobes of the caudal fin or the dorsal fin and this would, we feel, help alleviate the State's concerns about the potential of those fish moving into the commercial market.

The Department does not see a conservation issue with this change in the gear based on testimony at the Regional Advisory Council that this would be a relatively little used provision, probably not more than 100 king salmon a year would be taken under this regulation, and, so, therefore, we did not see a conservation issue arising from it.

Sarah mentioned the jurisdiction issues. And Togiak is one area, just so you're aware, that there are, I think, significant disagreements on the jurisdiction, both in the lower river because of the land ownership along both sides of the lower river as well as some of the bays in that area. And the State did raise these issues at the InterAgency Staff level, and some of the maps in the analysis were corrected, and I want to say that we appreciate that, and I think it helps with the understanding of the public as to where they can fish and according to what regulations.

In conclusion, again, the Board of Fisheries has adopted a regulation we believe that allows all people to fish with the drift gillnets and provides for that use that was requested by the local people. And by taking no action the Federal Subsistence Board would avoid the redundancy of regulations, which becomes a problem because you get into this leapfrogging situation of our regulations changing, then your regulations change, then ours change and we're always trying to play catch up and it's very confusing for the public.

We also recommend that if the Federal Subsistence Board does deem it necessary to adopt the
regulation that it not be different. We run into the
permit problem, which I'd like to talk about a little
bit. This was discussed considerably in the InterAgency
Staff Committee and I just want to explain, I think some
people were kind of shaking their head and wondering
about the State's position. But we have been advised by
our Department of Law that we cannot issue a State
subsistence fishing permit that allows people to fish in
ways that are not legal under State regulations. And
that seems, I think, pretty self-evident, that if the
State doesn't allow a certain gear type or fishing in a
certain area that you can't then have State personnel out
issuing permits allowing people to do that.

The other issue there is the fact that
then doing so would also require State personnel to sort
among rural residents, and the State does not choose to
try to sort out and issue permits or not issue permits to
different rural residents based on the Federal criteria.
We feel that that's a job for the Federal Program.

So in order to avoid these problems of
duplication and confusion with the public and the extra
burden on the public of multiple permitting and that kind
of thing, we would encourage you to take no action on
this proposal.

Thank you.

CHAIRMAN FLEAGLE: All right, thank you.
Board members questions on that.

Jerry.

MR. BERG: Yes, thank you, Mr. Chair. I
first wanted to commend the Department for the liaison
team taking this up with the Board of Fish because I
think it does help facilitate cooperation with our
program, to have the Board of Fish take these up during
the Bristol Bay cycle, rather than waiting for three
years, so I do think it will help our programs work
closer together.

The one part of the action that the Board
of Fish did take that I have questions about and I don't
know, John, if you would be the best one to answer or,
Randy, if you guys were there at the committee meeting,
was the requirement to have all fish marked that are
cought with these drift gillnets, was there much
discussion from the public or did people perceive that as
being any kind of a burden to them?
I don't know who can best answer that
question.

MR. ALVAREZ: Mr. Chair. I can't.....

CHAIRMAN FLEAGLE: It looks like Randy's
going to try.

MR. ALVAREZ: Mr. Chair. I was at the
meeting, although, I was in a different committee when
that one was going on and I didn't have a representative
-- we didn't have a representative to go to the other one
so I'm not familiar with that. But we did discuss a
little bit on that but it didn't go very far, that having
to remove a fin, at our RAC meeting.

CHAIRMAN FLEAGLE: Thank you. Rod.

MR. CAMPBELL: Thank you, Mr. Chairman.
I was at that committee meeting and I don't recall any
significant discussion on that. There was discussions,
just general discussions about it was already required
for coho salmon and felt that with the drift gillnet
fishery, especially down at the lower part of the river,
that they felt that all drift gillnet caught salmon
should also be marked the way the current regulations are
for coho. But there wasn't a lot of discussion on that,
that I recall, and I don't recall seeing that in the
summary of the committee report either, where normally
they'll point out any significant issues.

MR. BERG: Thank you.

CHAIRMAN FLEAGLE: Thank you. Other
questions. Bert Adams.

MR. ADAMS: Thank you, Mr. Chairman. I'd
like to know what the difference is between duplicating a
regulation and one that mirrors a regulation? I know
that in many cases, you know, we have dealt with
regulations that mirrors the State regulations, and that
always manages, you know, to pass, you know, with flying
colors. But now we come up with another term here, on
duplication, and so I'd like to know what the difference
is, if maybe Sarah or John can answer that question for
me.

CHAIRMAN FLEAGLE: Sarah Gilbertson, and
then I think Keith would like to take a stab at it as well.

Sarah.

MS. GILBERTSON: Okay, thank you, Mr. Chairman. Well, Bert, I, you know, don't think it's a new concern. I think it's one that's been echoed by previous Governors and previous Commissioners. And as John was alluding to, the problem is not so much immediately where you have two of the same regulations. The problem becomes when we change our regulation or the Federal one changes and then we're always, as John said, playing catch up with one another and then it causes confusion for residents.

So I guess just from a practical standpoint, it doesn't make sense to us, you know, I'm thinking about the Alaskans out there on the ground and having worked at Fish and Game for three years I know how difficult it is to take those books, to look at which land, if you can even figure that out, that you're hunting or fishing on and then which regulations apply, and for something as simple as, you know, hunting bear someplace in a unit in Southeast, it's very difficult to figure out. So I'm thinking, one, in terms of managers on the ground, two, in terms of Alaskans on the ground, and, just, three, in terms of those regulatory books, if the State has a regulation that applies to all users across the state, you know, my suggestion or the suggestion of the State would be if, and when that State regulation becomes a problem, if rural subsistence users, which is the responsibility of this Board, to provide for them, if it becomes a problem and their needs aren't being met, then maybe the Board should take action to change that State regulation, put it in on the Federal side and change it. But until then I don't see a need, and the State doesn't see a need to duplicate or mirror regulations.

I hope that helps.

CHAIRMAN FLEAGLE: Keith Goltz.

MR. GOLTZ: Thank you. Bert, you've raised a point that has been an item of discussion for about two years with the State. And the State's position is that if the words are the same in the State and Federal regulations then the Federal program should recede and allow the State's regulation to take
precedence. Our position, though, is quite different.
We say that just because the words are the same does not
mean the regulations are the same.

The critical element in the Federal
program is the Federal Regional Advisory Councils. The
difference between the State regulation and the Federal
regulation is that the Federal regulation has been vetted
through the Councils, it comes from the bottom up. Now,
if the Councils decide that they want a State regulation
to take precedence then this Board is perfectly free to
do that, and, in fact, we did start with the State
regulations. But once a Council brings us a regulation,
there's a statutory matrix that we have to consider and
the fact that the State may have a similar regulation is
not part of that matrix.

So the essential difference between the
State program and the State program is the Regional
Advisory Councils and it's for that reason that we have
two regulation books.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you, Keith, for
providing that clarification because this has been an
ongoing discussion and, actually, I think, maybe it was a
couple meetings ago Drue Pearce spoke to this
specifically. I think there's also a couple of other
two examples where the same words aren't going to necessarily
work for rural users as opposed to all Alaskans and that
has to do with the C&T is different, has to do with times
of shortage as well as State managers provide reasonable
opportunity, which is quite different than what the
Federal mandates require. And, lastly, in particular in
the case of Bristol Bay, customary trade. If a person
were in the State program they would not be eligible to
do customary trade as designed by the Regional Council
from Bristol Bay.

So I think those are reasons why this
Board needs to make a regulation per the request.

Thank you.

CHAIRMAN FLEAGLE: All right, thank you.
And I appreciate this discussion, having not been privy
to all the prior discussions for the last couple years or
however long the program has been in effect.

Sarah, you have additional comments.

MS. GILBERTSON: I guess I don't want to
belabor this, but -- and I would like to get through
these proposals as much as the rest of us but, you know,
maybe this is something for consideration and discussion
further down the road. We have a new Governor, we have
new leadership at Fish and Game, also, you know, here at
the Board, and I think it is an issue, maybe not in this
forum, but that we do need to discuss down the road. And
I don't disagree with Judy that the Federal system offers
different interpretations for C&T and reasonable versus
meaningful subsistence opportunity and customary trade,
those are key differences between the systems. However,
in a case like this where you're considering a regulation
that would be exactly the same as the one that the State
has, you know, perhaps it's worth consideration or
discussion down the road that the Board does not take up
-- does not allow proposals that are exactly the same as
these State regulations on gear types and methods and
means down the road.

So just food for thought. I don't want
to belabor it but I think there's room for communication
and cooperation down the road and this might be one area.

Thanks.

CHAIRMAN FLEAGLE: Thank you, Sarah, I
appreciate that. I agree that any type of open
communication our systems can have that would simplify or
better the program for the Alaskan users would be
beneficial and I'm in support of that.

Back to the proposal itself, on the State
Board of Fisheries action, was there any discussion as to
how this may apply to State users from other areas? I
mean was there any discussion about the potential for
people coming to Kodiak -- or, I'm sorry, not Kodiak,
Togiak, to participate in this drift fisheries?

John.

MR. HILSINGER: Thank you, Mr. Chairman.
I'm a little bit handicapped on that, too, because I was
not at the meeting either and Rod may be able to provide
some enlightenment on what they actually talked about.
But I would point out that by needing to get to Togiak with a boat and an outboard motor and all the gear to fish, I think that would -- you wouldn't get the average person from Anchorage flying up there to go subsistence fishing, having to put that kind of operation together, and if you did it's highly likely that they would be a close relative of a person who already lived in Togiak.

Thank you.

CHAIRMAN FLEAGLE: All right, that's fair. Rod.

MR. CAMPBELL: Mr. Chair. I really don't recall much discussion on that. For all these proposals there were general discussions about State regulations applying to all state residents, but I don't recall any specific concerns about that issue coming up in Togiak.

CHAIRMAN FLEAGLE: All right, thank you.

Any other questions, okay, we have Ralph. Ralph Lohse.

MR. LOHSE: Thank you, Mr. Chair. I'd just like to make a comment on some of the things that have been said. And one of the things that does come out of this is the fact that the Federal regulation is limiting. It's limited to local users, it's limited to rural residents and so there probably would never be any developed fishery that would take part in it. But if you want to see what can happen with a State subsistence fishery and whether or not you could have an increase in pressure on it, go up to the Copper River, look at the boats that charter to take people from other places down the river to dip for salmon and to run fishwheels for salmon. If we're talking about going up here to Togiak, and it's true, nobody could afford to take their boat, their skiff and their kicker, and their driftnet up there just to go catch a couple of king salmon, but it's a perfect opportunity for somebody to set up a business, like on the Copper River, where they provide the boat and the gillnet and all anybody has to do is get up there, and then they can, as a state resident, participate in that subsistence fishery. This could increase pressure on the Togiak River to the point where it would have to be shut down and that would adversely affect subsistence users in the area. Where if there was a Federal subsistence fishery there, the Federal subsistence fishery would still remain open for rural residents.
Thank you.

CHAIRMAN FLEAGLE: Thank you, Ralph. That was the intent of my questioning exactly. I mean if there were ever a -- and I realize that I'm stepping into the area of deliberations here, which we'll probably hold off on a little bit, but that was the intent of the question and I appreciate you giving that analogy.

Other Board members, I guess, without jumping into deliberations before we conclude the report period.

Question's on the State. I saw the hand, I was looking for the Board. Randy, go ahead.

MR. ALVAREZ: Mr. Chair, thank you. I agree with Ralph on that comment he made but also I would like to bring up the two and a half fathoms deep restriction on this proposal.

We didn't discuss too much on that because we didn't think of -- I just thought of something that it would make a big affect on -- I'm a commercial fisherman in Bristol Bay and we are restricted to 28 meshes deep, 29 counting the salvage, for our driftnets, and with two and a half fathoms or 15 feet deep restriction a rednet, say at five and a half inch mesh is about a little over -- is about 14 feet, I was just doing the math on it, about 14 feet deep, but if we go to king gear, now if you get a seven inch king mesh, now we're looking at about 17 feet deep, so we didn't -- nobody thought of this at our RAC meeting or it was -- I don't know if it was even brought up at the Board of Fish meeting in Dillingham, but if you were to pass the two and a half fathoms deep restriction then most king gear that's being utilized in Bristol Bay would be more than 15 feet deep and if you figure the math out it would be about 17 feet deep for a seven inch mesh, king net, so just wanted to bring that up.

We -- nobody thought of that at our RAC meeting but I suppose we wouldn't support -- we'd probably support the Department of Fish and Game's no restriction for the depth because most of the king nets would be what Bristol Bay drift salmon fleet uses, so that's what's available.

Thank you.
CHAIRMAN FLEAGLE: Thank you, Randy. Any other questions while we're on the State's discussion.

Denny.

MR. BSCHOR: Mr. Chair. Just for a clarifying question here since I'm not familiar with the area and the land status in the area and that sort of thing and I thought I understood Mr. Hilsinger to say that there is other jurisdictions or I'm assuming maybe private lands or other lands within the area and I do agree with Sarah, we need to have good maps, and I'm not able to -- I have to make assumptions on the maps in the folder here, Page 307, is that a map of the wildlife refuge, the grey area?

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. Referring to the map -- Mr. Bschor, referring to the map on Page 308, the dotted line on the bottom that follows Togiak Bay is the exterior boundary of the Refuge.

Mr. Chair.

MR. BSCHOR; Okay. I was looking at the lighter dotted line of Togiak River and it led me to nowhere so -- but, anyway, I did want to know that. My concern is if there's other -- if there are ways, as far as enforcement of regulations we ought to be looking at the simplest method that way also when it comes to this proposal.

CHAIRMAN FLEAGLE: Okay, thank you, Denny. Keith Goltz.

MR. GOLTZ: Yeah, I was going to wait for a couple of these comments for Board discussion but I probably.....

CHAIRMAN FLEAGLE: Okay, well, we're still just addressing questions to the State's comments so if you want to hold off, that's fine.

MR. GOLTZ: Okay.

CHAIRMAN FLEAGLE: Any other questions or discussion with the State.

(No comments)
CHAIRMAN FLEAGLE: Hearing none, we'll go ahead and move on to the InterAgency Staff Committee recommendation, and we got Steve Klein at the table.

Steve.

MR. KLEIN: Thank you, Mr. Chair. For the record I'm Steve Klein with the Office of Subsistence Management and currently the acting Chair of the InterAgency Staff Committee, and I'll be presenting the Staff Committee recommendations today.

For this proposal, Proposal 07-05, the InterAgency Staff Committee supports the proposal with modification consistent with the Bristol Bay Council. This would allow use of drift gillnets in the lower two miles of the Togiak River. The modification from the Staff Committee is a slight change to specify the upper boundary as the north section line of Section 35, which is consistent with the lower two miles.

The justification for the Staff Committee recommendation is that it would provide Federally-qualified users an additional gear type to improve efficiency and it's not likely to result in an increase in harvest. By restricting this fishery to the lower two river miles of the Togiak River it should protect spawning stocks. It would also legalize a method that is currently in use in the lower Togiak River and further by restricting it to the lower two miles it would reduce potential conflicts between sport anglers and subsistence users.

And that concludes the Staff Committee recommendation and justification.

But subsequent to the Staff Committee meeting, as Rod Campbell and Mr. Hilsinger have noted, the Board of Fish did meet and we did prepare a handout for the Board to kind of summarize in one area the differences between all these different recommendations and hopefully make a little more sense of it and perhaps even steer this a little bit.

We didn't have time for the Staff Committee to meet and discuss these, but subsequent to the Board of Fisheries meeting, Staff, Rod Campbell and I worked with the Staff Committee members that were available to put together this table and draft a recommendation so this would not be a Staff Committee
recommendation because we couldn't convene the Staff Committee, but I would characterize it as a Staff recommendation with Staff Committee input, and at the pleasure of the Chair I would like to explain this in more detail, the different recommendations and the recommendation of this kind of informal group, if that were okay.

CHAIRMAN FLEAGLE: (Nods affirmatively)

MR. KLEIN: Okay, I'll proceed.

Everybody should have a handout that says FP07-05 on the top and it's a comparison of the original proposal, the Bristol Bay Council, Staff Committee and Board of Fisheries actions. And all the Board members should have this, these are also available on the outside table for members of the audience.

CHAIRMAN FLEAGLE: Hang on just a second, Steve, do we have it Board members, it was on the table when we came in.

(Board nods affirmatively)

CHAIRMAN FLEAGLE: Okay, everybody's got it, go ahead.

MR. KLEIN: Okay, so the Staff recommendation is that we adopt the regulation with, first the clarifying language on the upper boundary to the ADF&G markers. Secondly, to remove the gillnet depth restriction. And, thirdly, to add the marking requirement for salmon. And this is basically what the Board of Fish recommended.

If you look at the boundary, which is one of the three differences we have. In the original proposal it was -- the proposal was to allow this drift gillnet fishery for the entire Togiak River, the Bristol Bay Council recommended the first two miles, Staff Committee the north section line, those are basically the same thing. The Board of Fish action was to limit the fishery to the lower two miles and they were going to place markers at that two mile junction on the river to clearly delineate the area. So the three recommendations from the Council, Staff, and Board of Fish are essentially the same. The clearest definitely is the ADF&G regulatory markers and that's what Staff would recommend to the Board.
Secondly, was the -- there is a difference in the depth. The original proposal, the Council and the Staff Committee all recommended 10 fathoms in length, two and a half fathoms in depth, 15 feet, the Board of Fish action was to remove that depth restriction. They didn't see a need for it, and the Staff would also recommend removing that. And, in addition, the recommendation from the Council, that actually the gear, at least for king gear would exceed 15 feet, the removal of the depth restriction would be more flexible and allow all gear by subsistence users.

And then the third difference among these different recommendations is the marking of salmon. And currently coho salmon is required to be marked under Federal and State regulations and the Board of Fish recommended that this be for all subsistence caught salmon in this drift gillnet fishery. And given potential for subsistence caught fish to move into commercial markets, the Staff felt that that would be a good, thoughtful recommendation to the proposal to preclude that from happening.

And that concludes both the Staff Committee and the Staff recommendations and I'd be happy to take any questions, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thanks, Steve. I, for one, appreciate the work that you did comparing all of the different recommendations and then coming up with one that kind of combines them all into one real good one. I appreciate that.

Other Board members, questions on the ISC report.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. This does help us to see it all in one place, which is really useful.

Is there a marking requirement then for any sport users, Steve or maybe John.

CHAIRMAN FLEAGLE: John Hilsinger.

MR. HILSINGER: Mr. Chairman. Ms. Gottlieb. No. The sport harvest is not required to be
The number of fish that they would take at any one time is very small and doesn't represent, I guess, the opportunity movement of those fish into the commercial market, and that's why typically, and even under State regulations, any of the fisheries that harvest large numbers of fish at one time, be they subsistence fisheries or personal use fisheries, normally require a marking of the fish to prevent that.

CHAIRMAN FLEAGLE: Okay, it looks like we're complete with that. Before we start moving into discussion on -- further discussion on this proposal I'm going to go ahead and call for a break. Let's stand down for 10 minutes.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good morning. We're back on record, and we're prepared to begin Board discussion on Proposal No. 07-05, open for discussion, Board members.

Jerry.

Keith.

MR. GOLTZ: Okay, there's just a couple of points that have been brought up in the discussion that I'd like to address.

One of them has to do with Bert's original question, and I'd like to take another run at that. Because it points out an essential difference between the State system as it's now being administered, and the Federal system.

In spite of the fact that the State does have some Advisory Councils, it's system, in our view, tends to be a top down system. It's imposed on the users, whereas the Federal system is centrally a bottom up system. Proposals come from and come through Regional Advisory Councils, this Board is constrained in how it reacts to Council recommendations, and it can only reject a Council recommendation under certain very, very narrow circumstances.

And that is a difference between the two systems that has never been resolved, in fact, in our
discussions over the past two years it's my impression
that we haven't even made any progress in that. And
until we get resolution on that essential issue, it's
going to be very difficult to bring the two systems
together.

I think it's important to understand that
background when assessing whether or not there are
duplicate regulations. A regulation that comes from the
top down is likely to be perceived very differently than
the same words that come from the bottom up. It's a
difference, it's familiar to my dogs, they know the
difference between being tripped over and being kicked.
So it's not enough to say the words are the same, the way
these regulations are formed is critically important.

During the break I also discovered
several people also pointed out several important
differences between the State and Federal regulations.
As Bill Knauer points out, the definitions are different.
So that even if you do have the same technical words,
they're going to have different applications because the
words are defined differently. The customary trade rules
are different. So that under the State system you could
take salmon but you couldn't enter them into customary
trade, while in the Federal system you could. The
licensing requirements are different. And the pool of
users is dramatically different. And as Ralph points
out, this can have an enormous difference in your
conservation considerations because the State has such a
much larger pool and that has certain unintended
consequences. Ralph has pointed out one, but I'm sure we
could come up with others.

So I think this discussion of duplicate
regulations is not likely to be very productive. The
policy-makers on the Federal side have looked at this and
decided that there will be a distinct set of Federal
regulations and they will continue to be responsive to
the Regional Advisory Councils.

On that we differ.

And we differ, also, on how the Federal
Reser -- the Federal Reserved Water Rights, and those
differences are now in Federal District Court and
probably not a productive topic of conversation here.
But one thing there shouldn't be any difference on is the
effect of latorial ownership. Under Federal regulations
it simply doesn't make any difference who owns the
uplands. Federal regulations apply to all waters within the external boundaries of the Togiak National Wildlife Refuge. There are legal reasons for this, it has to do with the nature of Federal Reserved Water Rights. There are also very practical reasons for this, the Federal system has made the judgment that you simply can't manage fisheries with a checkerboard pattern of jurisdiction. This is different for land mammals. For land animals we do pay very close attention to land ownership, but not for waters, all waters within the Togiak National Wildlife Refuge are subject to Federal jurisdiction.

CHAIRMAN FLEAGLE: Thank you, Keith. And I appreciate other Board members putting up with having to listen to all these explanations but it's very beneficial for me to know where, you know, what the past history has been being the new Board member.

I also want to -- before you jump back in, I want to welcome Niles to the table. I appreciate having you here with us, and welcome.

Keith, go ahead.

MR. GOLTZ: You just apologized to the Board for listening to their attorney, is that.....
(Laughter)

CHAIRMAN FLEAGLE: For making them listen to the.....
(Laughter)

CHAIRMAN FLEAGLE: .....subjecting them yet to another diatribe.
(Laughter)

CHAIRMAN FLEAGLE: Board members ready to tackle the issue at hand.

Jerry.

MR. BERG: Thank you, Mr. Chair. Again, I really appreciate the Board of Fish trying to coordinate some of these proposals with us. I think it probably helped that we had one of our outstanding former Bristol Bay RAC members on the Board of Fish now, Robert Heyano, I think he probably helped try to coordinate some
of this. And coming out of that Board of Fish meeting.

I think there are two main differences that really, I think, come to the forefront, and that is that they didn't place a depth net restriction on the fishery, and it does seem like it would be a benefit to subsistence users to not place that restriction on them, especially after hearing what Randy talked about people using king nets that could go over two and a half fathoms. And it does sound like most people would be targeting kings going down to drift.

And then the other one is marking fish, to mark all fish caught with drift gillnets. And I did talk to our in-season manager, Jim Larson, out in King Salmon, about this and he did say that he thought that that's why the restriction was in place for coho salmon, to mark coho salmon, was to prevent them from entering the commercial market. And he felt that since this fishery would take place in the lower two miles of the river, that it would be closer to a commercial market and that it would help law enforcement to have that in place. And I think it would be good to try to coordinate with the State as best we can on this one and I think the Board of Fish has done a good job and they had a public process out in Dillingham that it seems like they came up with a pretty reasonable approach to this.

I'll wait until I hear more discussion and I'm prepared to make a motion when the time comes.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Jerry.

Board members.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. I think the suggestion made by the Board of Fishery to specifically have markers will be helpful for clarity for this proposal. And also eliminating the depth specificity will also be helpful as Randy explained.

I'm a little less comfortable with the marking. I know it's done in other fisheries, but it doesn't sound as though the RAC really had much of a chance or much reason to discuss it, and so it might be a
bit of an undue burden on subsistence users in this particular case.

Thank you.

CHAIRMAN FLEAGLE: Other Board members.

(No comments)

CHAIRMAN FLEAGLE: Jerry.

MR. BERG: Well, with that I guess I'm prepared to make a motion.

I, too, am a little bit uncomfortable requiring people to mark their fish, however, you know, I, as well as probably many people in this room, have dipnetted on the lower Kenai and you're also required to mark your fish there and it is a pretty simple and easy task to just chop the two lobes of the tail caudal fin off and I really don't think it will be a significant burden, although, I'm sure, you know, it will be a little bit of an additional requirement. But I do think it's worth coordinating with the State on this.

And so with that I'll make a motion to support the Bristol Bay Regional Council with the modification to allow drift gillnets no more than 10 fathoms in length without any depth net restrictions and to allow these drift gillnets in the lower two miles of the Togiak River from the mouth upstream to the ADF&G regulatory markers and also require that all salmon caught with drift gillnets be marked either by cutting both lobes of the caudal fin or removing the dorsal fin.

And I could provide some justification if there's a second.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Do we have a second.

MR. BSCHOR: I'll second that.

CHAIRMAN FLEAGLE: Okay, we got a second from Denny.

Now, I'll turn it over to, for further clarification, but just essentially what you're doing is taking the ISC's recommended language that's been
prepared in the document, this would be the new regulatory language, Jerry?

MR. BERG: That's correct. Just as you read it on the one page handout that Steve Klein went over.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you. Go ahead, if you wanted to give some supporting statements for your motion, please.

MR. BERG: Thank you, Mr. Chair. I do think that this will increase opportunity for subsistence harvest of salmon in the Togiak River by allowing drift gillnets. Marking all salmon caught with drift gillnets should not be a significant burden. And it would align with State regulations. And there are no conservation concerns so I do think that this is a wise approach to go at this point.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Jerry. I'd like to add that I sincerely appreciate the State's comments in suggesting that the Board doesn't need to adopt the regulations because the State already applies for a much broader, liberal application, but I do hear the caution that Keith raises, that we do have a Council recommendation and within the confines of the system we should continue to honor those recommendations.

But I also have a real concern that I was alluding to earlier in the questioning of the State and I appreciate Ralph jumping in there and voicing those concerns, and that is the potential for exploitation, I guess, exists, and maybe it doesn't exist to a large degree but it does exist, that there could be more use that's concentrated on that river than what is anticipated because the State's regulations are so liberal, I mean it allows for any state resident to participate. There could be an industry, or a mini-industry that's established to meet the demands from other state residents other than in the region to participate in the fishery. I don't know that there will be but there could be, I mean I'm just saying that the possibility exists.

Having the Federal regulation in place
would protect the local subsistence users in the event that there is an over exploitation and there needs to be restrictions in place on that harvest.

I think for that reason I'm going to support the motion as well.

Is there any other comments, Board members.

George.

MR. OVIATT: Mr. Chairman. I think with the recommended changes from the Staff and the proposal that's put before us, which begins to mirror more closely with what the State has put forth really makes sense, and, I, too, will have a tendency to support this motion.

CHAIRMAN FLEAGLE: Thank you, George.

Other comments.

Randy.

MR. ALVAREZ: Mr. Chair, thank you. When we discussed this proposal there was one -- one of our members brought up that having to clip the fin, but there was no -- it was just a short statement. We didn't discuss having to do this to any length and there was no second -- or no motion as having it be part of the proposal, so we really didn't have any discussion on the user having to be able to do this, and I don't know how well received it would be. If they know how -- what to do or have to do when they're -- to utilize this fishery, but another comment I was going to -- that -- if somebody from out of the area wanted to go utilize this fishery, drift fishery, you know, what is the difference if they wanted to go over there and put a setnet out for a subsistence net, if they couldn't drift or right now at the present time, could they not go over there and put a subsistence net out that was tied to the beach in the same area as it would be drifting, I don't think it would make -- in my opinion that would make -- put any more effort than there already is on the resource. Because if, what I understand, is if somebody from Anchorage or wherever, wanted to go over there and drift for kings, if the proposal passes, couldn't they do the same with a subsistence setnet where you have to have it anchored out, where they could do that? So what I'm saying is, I don't think it would make any more effort on the resource.
CHAIRMAN FLEAGLE: Thank you, Randy, appreciate that. It helps with some of my concerns.

Denny.

MR. BSCHOR: Yeah, Mr. Chair. I think we've dealt with this marking issue before in other areas if I'm not mistaken. It has been very advantageous to the conservation of healthy fish populations, and I appreciate what was said by the Advisory Council, but I tend to think that's still a good idea.

CHAIRMAN FLEAGLE: Additional comments.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question. All right, the Chair will recognize the question, although I didn't hear a call, go ahead, Pete, poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal FP07-05. The motion was made to follow the recommendation by the Regional Advisory Council as modified and further modified by the Staff and that was in the handout FP07-05, I won't read it, I'll just reference it.

Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: And Mr. Oviatt.
MR. OVIATT: Aye.

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

CHAIRMAN FLEAGLE: Okay, thank you Pete.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. Because this is different than what the RAC discussed or might have expected so I'm sure Cliff and perhaps the in-season manager and Randy will give feedback right away to the Regional Council so that they're familiar with the changes and know what to expect for the coming season.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Judy.

(Pause)

CHAIRMAN FLEAGLE: All right, we're ready to move into Proposal 07-06. And we're going to have the analysis by Rod again.

MR. CAMPBELL: Yes, sir, Mr. Chairman.

Again, Rod Campbell with the Office of Subsistence Management. And this next overview is on Fishery Proposal 07-06, which begins on Page 315 in your Board book.

FP07-06 was submitted by the Lake Clark Subsistence Resource Commission and requests that snagging with rod and reel, spear or arrow and hand capture be permitted as legal methods and gear types for use in Lake Clark by Federally-qualified subsistence users. The proponent stated that snagging, spear or arrow and hand capture would not occur regularly but would be more of a selective method to be used opportunistically when camping or providing a fish to eat immediately.

The recognized practice of subsistence harvesting is to take only what one needs, therefore, the use of these alternative harvest methods should not lead to an increase in the amount of fish harvested.
The Alaska Board of Fisheries adopted a proposal at their December 2006 meeting to allow the taking of salmon by spear in Lake Clark, excluding its tributaries. However, the Board of Fisheries did not adopt regulations to allow the taking of salmon by snagging, by arrow or by hand capture as also requested in this proposal.

The current Federal regulations were adopted from existing State regulations as I previously mentioned in 1999 when the program expanded to include fisheries on all Federal public lands and waters. The general provisions of the Federal Subsistence Management Regulations lists spear as a legal gear type, however, specific Bristol Bay area regulations prohibit the use of spears within Lake Clark.

In 2003, the Alaska Board of Fisheries elevated the Kvichak River sockeye salmon stock to a stock of management concern due to its chronic inability despite use of specific management measures to meet management objectives. And the average sockeye salmon escapement for the Kvichak River from 2000 to 2005 was approximately 2.1 million fish, while the average escapement for the Lake Clark area, Newhalen River was a little over 310,000 sockeye during that same period.

During the period of 1994 to 2003, the average subsistence harvest for residents of the resident zone communities for the Lake Clark National Park, that's Iliamna, Lime Village, Newhalen, Nondalton, Pedro Bay and Port Alsworth was approximately 32,000 sockeye salmon and in 2004 the average harvest was 37,000 sockeye salmon.

If adopted, this proposal would provide Federally-qualified subsistence users with additional gear types that are less expensive to purchase than set gillnets. As I previously mentioned, a recognized practice of subsistence harvesting is to take only what a person needs and we do not anticipate an increase in the amount of fish harvested.

These gear types would allow fishermen to target specific fish and/or species and should reduce the take of non-target fish. When used opportunistically, these methods are not likely to cause any conservation concerns. The potential impacts for use of these gear types appear to be primarily social, which could cause conflicts between user groups, to point out subsistence and perhaps sportfishermen, it would create a divergence.
between State and Federal regulations, which may require 
a separate Federal harvest permit and complicate 
collection of harvest data.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Rod. Board 
members, questions.

(No comments)

CHAIRMAN FLEAGLE: Okay, hearing none, I 
note from the page here we don't have any written public 
comments on this one either?

MR. EDENSHAW: (Nods affirmatively)

CHAIRMAN FLEAGLE: Okay, thank you, 
Cliff. No public testimony cards have been turned in, is 
there anybody in the audience that does wish to testify 
on this issue.

(No comments)

CHAIRMAN FLEAGLE: All right, hearing 
none, we'll go ahead, Randy, for the RAC's 
recommendation, please.

MR. ALVAREZ: Thank you, Mr. Chair. The 
RAC supported the proposal and it was another proposal 
that we had quite a bit of discussion on this one also.

Although that it was not a unanimous vote 
as were the other two proposals that you're going to take 
up were, this one here snagging was an issue that why it 
was not unanimous.

I talked to the writers of the proposal. 
The reason why they asked for this is because when 
they're out camping, whether hunting or picking berries 
or whatever, to utilize all these methods would be -- 
instead of having to bring along a subsistence net and to 
-- for subsistence harvesting, and it's -- this would not 
be their main subsistence means, it would be just being 
able to utilize these methods whenever they're out 
camping, picking berries or hunting or whatever they 
might be out doing. So we did support this. We felt 
that it would not be utilized that much so -- but it was 
-- it was not a unanimous vote on this proposal, as I 
said.
Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy.
Board members questions for the RAC's position.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, we'll now turn to the State of Alaska for comments. Is that John -- John Hilsinger.

MR. HILSINGER: Thank you, Mr. Chairman.
Again, the State's detailed comments are found on Page 323 in the book.

ADF&G recommends that the Federal Subsistence Board take no action on this proposal since the Alaska Board of Fisheries just took action to allow the use of spears in Lake Clark, excluding its tributaries. The Board of Fisheries considered, but did not allow use of bow and arrow, snagging, or hand capture. The State and the Board recognized that in some years when runs are very low in that area and especially those years, 2000 through 2003, when Kvichak escapement goals were not met, that people did have a more difficult time meeting subsistence needs, and after reviewing the use of those other gear types, decided that adding the use of spears would be a reasonable improvement and improvement in the ability to provide subsistence opportunity.

As Rod noted the Kvichak River sockeye has been a stock of management concern. We note that escapements have been increasing in recent years and we hope that that management concern will be lifted.

But this proposal also allows targeting of the other species besides just sockeye.

The Department feels that there was not sufficient information to justify the use of snagging, bow and arrow and hand capture. Snagging, as noted, potentially would create some significant social problems and user conflicts. And we understand that the intent of this may be that people use it while they're camping, during hunting or berry picking or those types of activities, but the proposal is not limited to that. There's no season associated with it. There's no requirement that you have to camp overnight before you can snag a fish. It would be allowed any time for any
species in any part of the area. So we do have concerns about that potential for conflict.

Bow and arrow seems to negate the desire to have an inexpensive means of harvesting fish. I'm not a bow and arrow user but I get my Cabela's catalog and I see that bow and arrow set ups for fishing, probably quite expensive.

And, finally, the hand capture. The State has concerns about hand capture and the potential for molesting fish which would be in violation of State law. We've talked to numerous people that actually have experienced hand capturing fish, and while there may be ways of doing it without a lot of disturbance, most of the people that we've talked to indicated that the final method that they used was quite disruptive.

And we believe that using a spear in those situations would be equally or more effective and could allow the harvest of those fish. I think, many of us have been in a sockeye stream and the fish are very close off and around your feet, you could spear one quite easily but chasing it down and grabbing it with your bare hands may be a different matter. And so we felt that use of spears would fulfill that need for that additional opportunity and an inexpensive simple gear type.

So, again, in conclusion, as with the previous proposal, we would recommend that you take no action.

Thank you.


MS. GOTTLIEB: Yes, thank you, Mr. Chair. On the State regulation that was just passed, now, Federal regulations close waters within 300 feet of a stream mouth used by salmon, does the new State reg do that as well?

CHAIRMAN FLEAGLE: John.

MR. HILSINGER: Mr. Chairman. Not as far as I'm aware, no, it simply excludes tributaries.
(No comments)

CHAIRMAN FLEAGLE: So just to one ambiguity in my mind that still exists, you said that there is the potential for a conservation concern on the sockeye because the additional use of snagging would increase the take, right?

MR. HILSINGER: Mr. Chairman. Sockeye salmon are designated as a conservation concern, and so that's been quite a subject with the Board of Fisheries and they've taken numerous actions throughout fisheries in Bristol Bay to try to deal with that. And I think the prospect of having additional harvest due to snagging and the potential for illegal harvest through snagging by people who would not be qualified, I think, in some situations could raise a conservation issue.

Now, I have to explain that the State defines conservation concern, and a conservation concern under the State's definition is roughly equivalent of a threatened or endangered species listing. I mean it's extremely severe, and so we don't tend to use that term unless it meets our definition. And so as Rod noted Kvichak sockeye are a management concern, which means, that there's a chronic inability to meet the escapement goals, and so that's a different level of concern. And so this would not raise it, in our language, to a conservation concern. But I think it would be an issue that would be raised if there was widespread use of snagging. Particularly on certain tributaries. I mean I doubt, you know, out of a two million run into the Kvichak River you're not going to probably put much of a dent in that but on individual tributaries I think that possibility could exist.

Thank you.

CHAIRMAN FLEAGLE: All right, thanks for the clarification.

Randy.

MR. ALVAREZ: Thank you, Mr. Chair. I just wanted to comment on John's testimony. I also serve the Lake Iliamna -- Chairman of the Fish and Game Advisory Committee up there. And the Kvichak drainage is a stock of concern, but the last three years it's gotten well over the minimum escapement and it's going to take five years, I believe, of successful returns to take it
off that stock of concern.

Last year the Kvichak escapement was a little over three million and of that Lake Clark received about 700,000 sockeye, which is about a half a million more than what is needed up there, so there is no concern in our opinion with Lake Clark not getting enough sockeye.

And then last year was about 700,000, the year before that was about 450 and then the year before that was about 300,000, so it's been -- from what I understand, Lake Clark needs about 10 percent of two million, which is about 200,000 sockeye, the minimum for Lake Clark so it's gotten well above minimum and we didn't feel there was a concern. Although it is still a stock of concern but it's going to take a certain amount of time for that to go away, and I think it needs to have a five year cycle from what I understand.

And we also discussed hand capture, you know, and also snag -- being able to snag with rod and reel, you know, and if you -- it was brought up at our RAC meeting that the sportfishermen are fishing sockeye, most of those sockeye aren't biting, they're being snagged and there's just so many out there they can't help but catch them and if you'd look at the guys that are standing there, the sportfishermen in the streams for six, eight hours a day, what kind of impact are they making on the stream beds as somebody that's trying to catch a fish for five minutes where all the bears that are running around and chasing the fish around, we didn't feel that hand capture would make that much more impact on the river, than what's already going on.

And so I just wanted to bring those two issues forward, what we discussed at -- you know, we discussed this at the meeting, that's why we supported the proposal.

CHAIRMAN FLEAGLE: Appreciate that Randy.

Other questions from Board members for the State's comments.

Denny.

MR. BSCHOR: Yes, very quickly. As we get to the next proposal, the Board of Fish adopted a use of beach seines. Can you tell me the difference between the numbers of fish caught by that method versus by hand...
or by snagging, would it be more or less or what?

CHAIRMAN FLEAGLE: John.

MR. HILSINGER: Mr. Chairman. Mr. Bschor. It would really depend on the area you were fishing. Beach seines are known to have the potential to be very effective as do the set gillnets that they would replace. So certainly the overall harvest by set gillnets and beach seines would likely exceed the harvest by these other methods. I think the difference is that where those harvests might take place. You're probably more likely, and I think the way the proposal was adopted, the beach seines would be limited to use in the lakes and not in the tributaries, whereas you would be more likely to see the other methods used in the tributaries.

Thank you.

CHAIRMAN FLEAGLE: Other questions. We have Ralph Lohse.

MR. LOHSE: Thank you, Mr. Chairman.

It's always interesting to see how things are portrayed. Myself, having known a few subsistence fishermen, I can't imagine anybody chasing a salmon up and down a stream, trying to catch a salmon by chasing it up and down the stream. Everybody I know that ever took a salmon by hand stands very quietly, let's the salmon come to him, reach down, tickles it under the stomach and lifts it out of the water, you know, I mean it's not a case of destroying a bunch of spawning grounds just to try to get a salmon.

We can always look at the worst case scenarios and we always seem to do that when it applies to subsistence. We don't do that when it applies to sport or commercial. We look at it from the standpoint, you know, what kind of damage can they do, what kind of impact can they have; and that's what I was trying to point out before when I was talking about the difference between a State subsistence fishery and a Federal subsistence fishery.

A State subsistence fishery works just like any other fishery that the State has, whether it's a sportfishery or whether it's a commercial fishery, it affords economic opportunity. Somebody can find a way to exploit that fishery to make money off of it, yet, we worry about whether some Federal subsistence fisherman
might sell a fish as opposed to selling the opportunity to catch a fish, which is what we do under the State system. And it's the same thing here, you know, nobody is going to go out and impact two million salmon by catching salmon by hand, if they're allowed to snag, nobody's going to probably try to catch one by hand anyhow, but if they do catch one by hand they're not going to catch one by chasing it up and down the stream and running it down and wearing the salmon out, they're going to quietly sit there, throw a salmon on the bank and cook it for supper.

It just doesn't make sense to me to always look at, you know, this is what could happen as opposed to, this is probably what will happen.

CHAIRMAN FLEAGLE: Are we allowed to look at these regulatory changes with reason, Keith?

(Laughter)

MR. GOLTZ: I'm a big fan of common sense.

(Laughter)

MR. GOLTZ: Put it on the record.

CHAIRMAN FLEAGLE: Sarah Gilbertson.

MS. GILBERTSON: Thanks, Mr. Chairman. I guess I just want to point out, you know, one other difference, we're talking about differences today between the State and Federal system. And, you know, on the State side under our Constitution we're required to manage for sustained yield, we're required to look at conservation of the species and I think that, too, is a reason that we see differences between what the Board of Fish may do and what this Board does here today because your primarily responsibility is to subsistence users and under ANILCA you're supposed to consider these other things, but we have different priorities; and so that just speaks, I think, to maybe some of the differences that Ralph was alluding to.

CHAIRMAN FLEAGLE: Appreciate that, thank you. Judy, did you have a comment or question for the State?

MS. GOTTLEIB: No.
CHAIRMAN FLEAGLE: Okay. Any other questions for the State's recommendations.

(No comments)

CHAIRMAN FLEAGLE: Okay, with that we'll go to the InterAgency Staff Committee recommendation, Steve Klein.

MR. KLEIN: Thank you, Mr. Chair. For Proposal FP07-06, the InterAgency Staff Committee supports the proposal with modification consistent with the Bristol Bay Council recommendation.

And the slight modification is to specify rod and reel and handline as the allowable gear types for snagging and adding the word, bow, to arrow to read bow and arrow. And on Page 315 in the middle in bold is that clarifying language.

So it adds:

By handline or rod and reel in parenthesis after snagging and the words, and arrow.

And the justification for the Staff Committee recommendation is that this would provide additional methods and means for Federally-qualified subsistence users, it would not present a conservation concern but expand opportunities. The expectation is that these methods would be used to harvest salmon to provide food while camping or otherwise out in remote locations. Users would be able to harvest individual fish as compared to setting a net. And our expectation is that this would be a very low harvest.

So the Staff Committee supports the Bristol Bay Council with the clarifying language.

Again, the Board of Fish acted on this proposal after the Staff Committee met. Staff worked with members of the Staff Committee that were available and in the handout I previously referenced, there's a page for this proposal, 07-06, and a table summarizing the differences among all these various recommendations.

Here there's two differences. One is with the methods. The original proposal, the Council and the Staff Committee all recommended a snagging, spear,
arrow and hand capture be permitted. Again, the Staff Committee added some clarifying language. The Board of Fish action there just recommended spears only. So the Board of Fish did not recommend snagging, bow and arrow and hand capture as Mr. Hilsinger alluded to.

Then in terms of area, again, the original proposal, the Council and the Staff Committee recommended Lake Clark and its tributaries. The Board of Fish action included Lake Clark but excluded tributaries.

And Ms. Gottlieb brought up the 300 foot buffer around spring mouths, the net effect of this would be for — if we include the tributaries, Federally-qualified subsistence users would be able to harvest in the tributaries 300 feet above the stream mouth, whereas with the Board of Fish action, no fishing in the tributaries would be permitted.

The Staff and the Staff Committee members that worked on this, again, this is not a Staff Committee recommendation that all gear types be included, consistent with the Staff Committee and Council, and that tributaries be included rather than excluded.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Steve.

Board members questions on the ISC recommendations.

(No comments)

CHAIRMAN FLEAGLE: All right, appreciate that. We're ready to begin discussions between -- or discussions on the Board action. Board members.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. I was fortunate enough to be at the Lake Clark Subsistence Resource Commission as they discussed and devised and crafted this proposal and so I think this is, yet, again, a really good example as Keith was saying before of, from the ground to our meeting in terms of crafting regulations. People spoke to their personal experiences and to this need that provides food while perhaps while camping or out in remote locations. These methods target individual fish, and certainly not going to be a way that
people fill their freezer, it's more a fishery of convenience shall we say.

I wanted to make one clarification on the Staff analysis as to eligible people for this fishery. We did name the resident zone communities and their residents are eligible for this fishery. The fishery would also include people who live in Lake Clark National Preserve, not necessarily within any of those communities, but also people who have what we call a 1344 subsistence permit, so for eligibility, just so that we have that on the full record.

I think I'll stop there. I'll be prepared to make a motion after we have some discussion.

CHAIRMAN FLEAGLE: Other discussion Board members.

Sarah Gilbertson.

MS. GILBERTSON: Thanks, Mr. Chairman. Just to reiterate what John was speaking to earlier and that is, to the extent that the Federal Board adopts something different than what the Board of Fish just adopted, the State cannot put those -- require those elements to be on its permit and so, therefore, we would recommend that there be a Federal permit associated with a fishery that's different than the State fishery.

Thanks.

CHAIRMAN FLEAGLE: Thank you. More discussion.

Niles Cesar.

MR. CESAR: Thank you, Mr. Chairman. I'm just having a problem with the numbers, I guess, in terms of what the take would be. And as a guy who grew up chasing salmon up and down a stream, I tell you I don't think I ever did catch one but I hit one with a rock one time and I probably broke the law, but it tasted good.

(Laughter)

MR. CESAR: It just seems to me like the Federal Board is approaching this with thinking, well, you know, there are times when folks are out there camping, very often, you know, in the summertime to early
fall and to be able to get a salmon to eat, you know, is a treat out there and I want to give the subsistence user every opportunity I can to do that without, you know, causing a conservation concern out there. I just don't see the numbers telling me that, quite frankly. I think if you took every resident of Lake Clark and sent them all out there with a spear and they all got one fish, you know, I think that pales in comparison to setting a net. And I've drifted on the Kuskokwim and you don't even see any fish and all of a sudden you come up with 30 fish, you know, I mean there's a big difference between using hand gear of whatever type, whether it's your hands or rod and reel, snagging, to using a net in a lake.

So I guess I don't understand the numbers concern.

And I've been unfortunate enough to fish the Kenai at the Russian River there and, you know, I grew up on a boat, my dad was a commercial troller for 30 years and someone told me, after I moved up here, that sockeye were biting and I said, geez, I never seen a sockeye bite, where do they do that at. What I see is, you know, fish who get annoyed and hit at something because it's flashed in front of their face and when you're on the Russian and there's 10,000 of things flashing in your face, they snag a lot of fish. That, too me, is snagging, it's not fishing. So I think we have a problem in terms of definitions about what is real out there. And, you know, I don't think we're going to cure that today, and, probably never will because the person with the most money usually wins those kinds of decisions, not the person who's living out there in the village and so I, hopefully, will be able to support whatever proposal -- motion is made, because, again, I just don't see us spending this much time over something that makes ultimate sense to the person out there in the Bush.

Thank you.

CHAIRMAN FLEAGLE: Other comments. Judy.

MS. GOTTLIEB: Well, I will move then, consistent with the Bristol Bay RAC recommendation and with slight clarification that's been provided by the Staff and InterAgency Staff Committee, that outside the boundaries of any district, you may take salmon by set gillnet only, except that you may also take salmon by spear in the Togiak River excluding its tributaries.
Salmon may also be taken in Lake Clark and its tributaries by snagging, by handline, or rod and reel using a spear, bow and arrow and capturing by bare hand.

CHAIRMAN FLEAGLE: Is there a second.

MR. OVIATT: I'll second.

CHAIRMAN FLEAGLE: Thank you, George.

Judy, do you want to lay out some more supporting statements to support your motion.

MS. GOTTLIEB: Sure. I think this provides additional opportunity for people who may not be hauling their setnet with them as they're out hunting. It does not present a conservation concern to the Park, and targets individual fish so we don't expect that this would result in a large harvest by any means.

Thank you.

CHAIRMAN FLEAGLE: Other discussion.

MR. LOHSE: Mr. Chair. I'd just like to address something about this proposal that I've been seeing the subsistence community trying to do, and that's to take common practices that are in effect, that are probably going to continue whether it's legal or not legal and put them on the table and make them legal so that the next generation can get used to abiding by the law.

And we've had some real good ones before us in the past that we've turned down, where subsistence users have come and said, you know, this is what we do, this is what we're going to continue doing, this has had no conservation impact on the species over the centuries, but let's make it legal so that we can do it and we can abide by the law, and that's the same thing that what this proposal is trying to do right here. I mean somebody that's up in that area that's out camping is going to take a salmon to eat for supper, whether they use a spear, whether they use a hook that they've got in their pocket and snag it, whether they reach out and grab it or I'll even go so far as to say whether they shoot it with a 30.06, and they're going to eat a salmon, and what they're doing is saying, let's make this -- let's put this on the books, this is a practice that takes place, let's make it legal as long as there's no conservation
impact, so that we and our children can learn to abide by the law. Let's make the law applicable to the people that are out there.

And from that standpoint I'd have to -- if I was in your position I'd have to support this proposal, simply because what it's doing is it's saying -- they're saying this is common practices, this is what we do, let's make it legal so that we can do it legally. And if there's a conservation issue, the subsistence community has come before you time and time again and said there's a conservation issue on something, let's put some regulations in place to protect it. And just like the thing with the marking of the fish, the subsistence community has come before you before and said, yes, it's a hardship but we recognize the fact that we need to mark and keep track of what's going on. And so from that standpoint when something like this comes, we should just look at it and say, does this adversely impact the resource? What they're saying is this is what we do, let's make it legal so that we can do it legally.

Thank you.

CHAIRMAN FLEAGLE: Jerry Berg.

MR. BERG: Thank you, Mr. Chair. If we do pass this motion it would be unfortunate that we might diverge from the State regulations because then we might have to have a State [sic] permit, and that's, you know, somewhat of a burden on our program and the public, the subsistence users as well and it could create some law enforcement problems, some social problems that John mentioned. But really, I think, Ralph hit it on the head that, you know, what are really the numbers we're talking about.

I think it's most likely that these methods would be used to catch an occasional fresh fish and they're not likely to be used to harvest large quantities of salmon, and for those reasons I'm going to support the motion.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Judy.

MS. GOTTLIEB: I'm not sure if this has to be in the motion or in the regulation but since this would not then be managed under a State permit anymore, I
assume we would work with the in-season manager and the
Park is ready to assist in distribution of any Federal
permits then.

CHAIRMAN FLEAGLE: Pete Probasco, can you
answer that.

MR. PROBASCO: I think technically Ms.
Gottlieb we do not need it in regulation but to help
clarify to the public we may want to say that a Federal
permit would be required.

CHAIRMAN FLEAGLE: Okay, thanks. I'll
let you think about that for a minute as to how we want
to do that and turn to Niles for comments.

MR. CESAR: I would just like to say that
I support the comments that were made by Jerry Berg,
Denny, and our Chairman earlier when we were discussing
this. That, you know, it just seems to me like this is
a way for us to try to clear up some issues for the
people out there who, on a day to day basis, would, you
know, like to catch a fish or, you know, it just makes
common sense to me and for the reasons that everyone has
listed out before, I intend to support the motion.

CHAIRMAN FLEAGLE: All right, thank you.

MS. GOTTLIEB: I guess I'm waiting
regulatory advice to see if we specifically need to say
Federal permit will be required.

CHAIRMAN FLEAGLE: Okay. Why don't we
just take a brief break, five minutes, and then we'll
come back to the issue.

MR. GOLTZ: Our regulations already
provide for the permitting and that would be in our book,
so you don't have to put it in this specific regulation.

CHAIRMAN FLEAGLE: Okay. You didn't turn
your mic off. All right, so it's good to go then.

Other discussions.

Randy.

MR. ALVAREZ: Mr. Chair, thank you. All
three of these proposals that came before the Bristol Bay
RAC are issues that have -- the subsistence users have utilized all these methods and means and we've supported them because it makes them legal and it's like Ralph had said before and Niles, that, you know, we want to make it easy to -- as -- you know, for the user to get their subsistence fish and we -- during our RAC meeting we realized and it was discussed that it has been and that it is a way that people have been utilizing these methods and means, these three proposals will just make it legal for us to do it.

Thank you.

CHAIRMAN FLEAGLE: Alrighty, appreciate all the comments that have been made. And I guess I'll weigh in, I'm going to support the proposal.

I think I, just personally, I have a little issue with allowing snagging as an allowable harvest, and I know that it used to be legal back in the olden days. But, you know, we've pretty much gotten away from that, allowing that as a common practice. I have a little problem with that.

I also have a little problem with the bow and arrow portion. It just seems like we're tending to go away from what we've established over long-term, and I say, we, collectively, as a population in the state of Alaska, whether it's under the Federal program or the State program is irrelevant at this point. It's just that we've established fair methods and means, and I think this tends to deviate from those in my mind. But I find that those concerns don't negate my obligation to accept the RAC's recommendation, I even looked up the statute here, and, you know, it's pretty clear as to what I can apply, and I asked about the conservation issue. I know that there could be a conservation issue in some areas, although I don't hear it here, where if snagging would be allowed because that is a pretty efficient way to catch fish.

But with those reservations, my personal reservations, I am going to support the proposal.

So I think we're ready for the vote, do I hear the question.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: All right, the
question is called.

Pete, on the action, please, poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal FP07-06, the motion is outside the boundaries of any district you may take salmon by set gillnets only except that you may also take salmon by spear in the Togiak River, excluding its tributaries, salmon may also be taken in Lake Clark and its tributaries by snagging, by handline, or rod and reel, using a spear, bow and arrow and capturing by bare hand.

Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Chair. Motion carries six/zero.

CHAIRMAN FLEAGLE: All right, thank you, Pete. We're now prepared to.....

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy, go ahead.

MS. GOTTLIEB: Sorry, one more comment having to do with the permit and the reporting system.
Certainly the Park is more than willing and will work with the State on coordinating permits and coordinating reporting and having communication with the communities and the RAC about how we're going to work the permit system.

CHAIRMAN FLEAGLE: Okay, thanks. Okay, we're now moving on to Proposal 07-07, and we're going to go to the analysis. Rod.

MR. CAMPBELL: Thank you, Mr. Chair. Members of the Board. Again, my name is Rod Campbell with the Office of Subsistence Management. And as Chairman Fleagle said the next overview is for Fishery Proposal 07-07, which begins on Page 326 in your Board book.

FP07-07 was submitted by the Lake Clark Subsistence Resource Commission and requests that beach seines be permitted as a legal gear type for use in Lake Clark by Federally-qualified subsistence users. The proponent is seeking this regulatory change to provide an additional gear type and to allow subsistence users to harvest fish in a more selective manner.

Beach seining is a traditional method, which unlike gillnets can be non-lethal and allows fishermen to take the salmon they need and release the surplus salmon or non-target species. And as I previously mentioned this recognized practice of subsistence harvesting is to take only what a person needs, therefore, the use of this alternative method should not lead to an increase in the amount of fish harvested.

As in the previous discussion the Alaska Board of Fisheries did adopt a proposal at their December 2006 meeting to allow the taking of salmon by beach seine in Lake Clark and in addition to that Six Mile Lake and Iliamna Lake, excluding all their tributaries. So these new State regulations would allow the use of -- also allow the use of a set gillnet as a beach seine and beach seines may not exceed 25 fathoms in length.

Also as I previously mentioned the current Federal regulations were adopted from existing State regulations in 1999 and under Federal subsistence regulations you may take salmon by set gillnet only within the Lake Clark area. You may not fish, subsistence fish from waters within 300 feet of a stream.
mouth used by salmon.

The biological background and harvest history is the same as in the previous proposal so I’d just refer to my comments that I provided in FP07-06 as far as stocks of concerns and harvest in that area.

If adopted, this proposal would provide Federally-qualified subsistence users an additional gear type that is more selective and in some cases more efficient than set gillnets. The recognized practice of subsistence harvesting is, again, is to take what a person needs and we do not expect any increase in harvest or any significant increase. These gear types, again, would allow fishermen to target specific fish and reduce the take of non-targeted fish. And if adopted as proposed, to allow the use of beach seines in the tributaries, however, it could place some groups of spawning and salmon staging near the mouth at risk of over exploitation. Those are concerns that have been brought up to me. Reports indicate that beach spawning populations are genetically well mixed and do not appear to be at as much risk of over exploitation using beach seines as tributary spawning populations.

And another potential impact for the use of this gear types is social, as we mentioned in some of the others where subsistence and sportfishermen may be targeting -- be fishing in the same areas.

Thank you, Mr. Chair.

CHAIRMAN PLEAGLE: Thank you. I have a question. Being not familiar with beach seines, my people come from the upper Kobuk, yeah upper Kobuk and upper Koyukuk River where they did seine but they used a small net for whitefish that they tossed out, so I'm trying to picture somebody tossing out a 150 foot net if 25 fathoms is -- can somebody explain to me what the process for beach seine? I guess by definition it doesn't include the use of a boat, right?

Randy.

MR. ALVAREZ: Thank you, Mr. Chair. Yes, it does. When you -- the method of beach seining is you -- it takes more than one person, you got to have somebody on the beach holding the end of the net, the rest of the net's in the boat and then you kind of feed it out and go around in a circle around a school of fish,
and that's kind of how beach seining, and then you just go back to the beach so you're kind of circling fish there close to the beach. It's -- you're not beach seining -- this kind of seining is not out in open water where you just make a circle, it's just off the beach and back to the beach.

CHAIRMAN FLEAGLE: Excellent. Thank you.
Haven't seen it.

Other questions for Rod Campbell's presentation, Board members.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, we'll go ahead and move to the summary of written comments and we don't have any for that, right?

MR. EDENSHAW: No, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Cliff.

Public testimony, we don't have any cards. Is there anybody here that wishes to testify to this issue.

(No comments)

CHAIRMAN FLEAGLE: Regional Advisory Council recommendation, Randy.

MR. ALVAREZ: Thank you, Mr. Chair. Our Council supports the proposal with the modification that exclude the tributaries, as Mr. Campbell has stated, concerned about the over exploitation of the fish that are already in the tributaries, we would -- we support seining but fish that are kind of moving around in the lake, basically what this -- what this amounts to, not fish that are staged in a little tributary. And we -- we kind of wanted to not jeopardize individual streams, so we support the proposal excluding the tributaries to kind of protect that.

We did not put a limit on the length as the State of Alaska recommends. Most people use -- utilize Bristol Bay nets, which are 50 fathoms longs -- a 25 fathom net is kind of short for doing this and at the meeting over in Dillingham, the Board of Fish meeting, Dr. Fall, the subsistence -- of the Subsistence
Department had a picture of seining in Lake Iliamna in the late 60s and it was -- it was probably about a 50 fathom net, which was up by -- across from Pile Bay up in Iliamna Lake, so there had been evi -- he just showed that for evidence that there was seining done in Iliamna Lake by subsistence people but it's -- we did not support a length because having it too short, it'd just make it a lot more work, you'd have to do it a lot more -- a lot more seining to catch what you want. And this method would just -- just to try to catch all your -- what you -- your -- how much you would like with, you know, least amount of effort.

So, thank you.

CHAIRMAN FLEAGLE: Thank you, Randy.

Questions.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Randy, I was going to ask because this is going to come up in a little bit, whether there was any discussion when you were talking about area of whether you were including Six Mile Lake when you were talking about Lake Clark?

MR. ALVAREZ: Yeah, that was basically the -- what was my understanding, Six Mile lake, the Preserve takes in part of that so I think we -- my understanding and feeling is, yes, that was, but not Iliamna Lake because that is not State and our -- our comments were just related to Lake Clark and Six Mile Lake, not the Iliamna Lake, but we would support that -- we supported that, too, at the Board of Fish, that -- when the Board did for Lake Iliamna although we did not support their 25 fathom limit.

MS. GOTTLIEB: Thank you.

CHAIRMAN FLEAGLE: Jerry.

MR. BERG: Thank you, Mr. Chair. Yeah, Randy, my understanding was that the 25 fathom length came about because setnets are required to be no longer than 25 fathoms and that's why the Board of Fish went along with that because a lot of people would use their set gillnets kind of as beach seines. Did you guys discuss that at all, that connection?
CHAIRMAN FLEAGLE: Randy.

MR. ALVAREZ: At our RAC meeting, no, we did not discuss that because we didn't know that the Board of Fish was going to be taking up this issue over -- in December over in Dillingham so we did not discuss the limit and as I was saying, I've seined before and 25 fathoms is kind of short, it's hard to -- hard to catch seined fish with a too short of net.

CHAIRMAN FLEAGLE: All right, thank you. We'll now turn to.....

MR. PROBASCO: Rod Campbell.

CHAIRMAN FLEAGLE: Oh, Rod Campbell, please.

MR. CAMPBELL: Thank you, Mr. Chair. I just might add a little bit to that. I was at the Dillingham Board of Fish meeting and participated in the committee. And as Mr. Alvarez said, the Subsistence Division was very clear that they wanted to have set gillnets to be used -- be allowed to be used as a drift gillnet, and they went in and made special clarifications in their regulations, and the State can address that much better than I can, but that was a specific thing that was brought up, to allow people that already had set gillnets, which is already mentioned in this area as a maximum of 25 fathoms, to be able to use those as a drift gillnet, that was discussed and I don't believe there was -- and besides that, I can't recall any other discussions on that except people were using this type of gear as a beach seine.

Thank you.

CHAIRMAN FLEAGLE: Thanks, Rod. We'll now turn to the State Fish and Game for comments, John Hilsinger.

MR. HILSINGER: Thank you, Mr. Chairman. The ADF&G recommendation on this proposal found on Page 333 with our detailed comments is, again, to take no action because of the Board of Fisheries just took action to allow beach seines and gillnets to be used as seines in Lake Clark, Six Mile Lake and Lake Iliamna, excluding all tributaries. Under the new State regulation, which will go into effect this coming 2007 season, the beach seines are limited to 25 fathoms in length. And I agree
with Mr. Campbell that that was done because that's the
length of the set gillnets in that area.

It also was brought up at the Bristol Bay
Regional Advisory Council that people that had experience
with these beach seines in some of these lakes felt that
they could be very effective and I suspect, although I
don't know, that the 25 fathom length would help
alleviate any concerns about the effectiveness of this
type of gear on schools of fish in the lakes.

So there was considerable documentation
of seining as traditional gear type in Bristol Bay, so in
conclusion the Department supports the idea of allowing
seining and, again, suggests that the best way to
accomplish this is by taking no action.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: Thanks, John.

The InterAgency Staff Committee
recommendation, Steve Klein.

MR. KLEIN: Thank you, Mr. Chair.
InterAgency Staff Committee supports the proposal with
modification consistent with the Bristol Bay Council,
which would allow use of beach seines in Lake Clark but
not its tributaries.

And our justification was that this would
provide an additional gear type for harvest and not
present a conservation concern. It would provide users a
selective way to harvest salmon and avoid harvest of more
salmon than desired and if there was too many they could
be released. It would also probably result in better
quality of salmon harvested compared to gillnets.

The Staff Committee also supported the
Council's recommendation that it exclude tributaries to
protect spawning and staging fish.

And, again, with this proposal the Board
of Fish met after the InterAgency Staff Committee met.
In your handout on the last page is the summary of
Fisheries Proposal 07-07, here's there's two differences
among the various recommendations, both have been discussed.

In terms of seine length the original proposal, Council recommendation and Staff Committee recommendation was to not limit length. Board of Fish action was to limit length to 25 fathoms for both gillnets and seines.

And then in terms of area, the original proposal, Council and Staff Committee recommendation addressed Lake Clark and excluded its tributaries in the case of the Council and the Staff Committee. Board of Fish action was taken on Lake Clark, Six Mile Lake, Iliamna Lake and excluded all tributaries. The Staff working with the Staff Committee members available during the holidays recommended that we include Six Mile Lake in addition to Lake Clark and that we limit beach seines to 25 fathoms.

In terms of the 25 fathoms, we didn't have the benefit of Mr. Alvarez' testimony provided here today. The Staff Committee members that worked on this, it was basically the rationale to adopt the 25 fathom maximum was to be consistent with the Board of Fish action. As Mr. Alvarez' testified that may actually be too short and, in fact, at least in Iliamna 50 fathom seines have been utilized so we would -- I would encourage the Board to take that up under their deliberation.

In the case of Lake Iliamna, that's outside Federal jurisdiction and no action would -- we recommend no action.

That concludes the Staff Committee recommendation and the subsequent Staff analysis.

Mr. Chair.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Ready to start discussions. Judy.

MS. GOTTLIEB: Mr. Chairman. Just for clarification, since we don't really have a very good map
of Six Mile Lake in our book, I have one page here I'll just maybe back and forth -- distribute it briefly with Six Mile Lake circled. It's basically on the southern end of Lake Clark Lake and has approximately one-half mile of Park land owned that's adjacent to it, so it's a little bit complicated and up until now, to some extent, hadn't unanimously been considered part of the Federal Program.

(Pause)

CHAIRMAN FLEAGLE: Thank you, Judy.

Niles.

MR. CESAR: Thank you, Mr. Chairman. I was a little concerned about the, and I guess I still am, about the length of the net, you know, the original proposal was not to limit the length of the net. I don't know if I would support that either but, you know, I do think that the testimony by Mr. Alvarez in terms of the efficiency of a 25 fathom gillnet or beach seine as opposed to a 50 fathom, I mean obviously, I think there's some validity there because you never can tell how close they are, you know, to running to the shoreline and extending out there further does give you that -- more opportunity, if the fish are there. Again, this is one that we don't really have numbers on and we don't really -- haven't been told there is a conservation concern about, so I wonder why the Staff Committee -- I mean I hear what they said, they had a discussion on it and decided to adopt, you know, or try to match the Board of Fisheries. And in the discussion that the State had as well as their documentation. I don't see a reason that we would necessarily limit ourselves to 25 fathoms.

I think the issue is what is in the best interest of the subsistence fishermen. How can we allow them to get their take in the most efficient, productive way and get on with it. So I'm a little concerned about that, and maybe further discussion will clarify that for me.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. I guess a couple other thoughts and comments about the beach seine. The way I understand it is the quality of the fish would be higher versus using a gillnet and that in a beach seine, because the fish are pretty much taken live, you can sort out any incidental catch of fish that
you wouldn't want. So it's a type of net that would do
less damage than the gillnet.

CHAIRMAN FLEAGLE: Steve Klein.

MR. KLEIN: Mr. Chair. I'd like to try
to provide a little clarification here.

First, for the Staff Committee, their
recommendation was to have no limit on the seine length,
and it was only the subsequent discussion among select
Staff Committee members that were around during the
holidays and Rod and myself, where we recommended the 25
fathom maximum.

I think part of the discussion -- so I
want to make that clarification. Part of the discussion
is the use of gillnets as the seine, and if you're -- and
you could fish it still the way where Mr. Alvarez talked,
where somebody's holding it on shore and circle the fish
and then bring it in, you would have some gilling if you
used your set gillnet because of the mesh size versus a
seine, which typically has a smaller mesh and it would be
totally encircled. So there would be some concern in
terms of the length with some gilling, now, how much
gilling occurs I really can't answer that when you use a
gillnet mesh as the seine. And I would ask Mr. Campbell
if he had anything else to add to it.

CHAIRMAN FLEAGLE: Rod Campbell.

MR. CAMPBELL: No, Mr. Chair, I think he
covered it very well. Thank you.

CHAIRMAN FLEAGLE: Sarah Gilbertson and
then I have a couple other hands, Bert, and then Jerry.

MS. GILBERTSON: Thank you, Mr. Chairman.
It's a little bit off the subject but having seen the map
of Six Mile Lake, I think -- I understand that these
jurisdiction questions are being currently litigated in
court but I wouldn't be doing my job if I didn't express
concern. Six Mile, there's a portion of the lake that is
adjacent to the Park land. But just on behalf of the
State expressing jurisdiction concerns.

CHAIRMAN FLEAGLE: Thank you for that
Sarah. The side discussion, can we not do this, please,
while we're discussing.
UNIDENTIFIED VOICE: Sorry.

CHAIRMAN FLEAGLE: Thank you. I have Bert Adams, and then Jerry and then Pete, and then Denny. It sounds like we got a full slate here. Go ahead, Bert.

MR. ADAMS: Okay, thank you, Mike. I kind of find it impractical to see something here that would put a limit of 25 fathoms on a beach seine. That's a very short, you know, length of net to try to encircle, you know, a school of fish, you know, close to shore. So I don't know if Randy has, you know, tried that or if he knows of anybody in his area that have done that and have been successful, but I don't think that would be very practical, you know, to put a limit there.

There's such a thing as a dime set that you can make real quick, you know, around a school of salmon. Normally for sockeye, because they travel, you know, pretty fast, you know, I'm sure Niles might be familiar with a dime set but it's very quick, and you could easily, you know, chase, you know, the salmon away if you're trying to do it with a lot shorter net. So I'm just kind of concerned about that.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Jerry.

MR. BERG: Yeah, you know, the whole discussion around the 25 fathoms centered around the Board of Fish action and the length of set gillnets is my understanding, so I was just going to ask Randy if he thought people would actually go out and buy nets that were longer than 25 fathoms or are they more likely to just use their existing set gillnets that are already required to be 25 fathoms, do you think people would actually go out and buy separate seines?

CHAIRMAN FLEAGLE: Randy.

MR. ALVAREZ: Mr. Chair, thank you. Jerry, our nets are 50 fathoms long. When they make a subsistence net they cut if in half. So most of the nets -- well, all the nets start out at 50 unless you cut it down.

So, you know, thank you.

CHAIRMAN FLEAGLE: All right, thanks. I
had Pete Probasco, and then after that Denny and then Ralph.

MR. PROBASCO: Mr. Chair. For the Board's consideration on our Federal regs, as they deal with gear, we do have a definition in our regs for set gillnet gear which says a set gillnet is 25 fathoms. On beach seines we are silent on the mesh size that constitutes a beach seine. And so consequently if we were to adopt a greater length for a beach seine and remain silent on the mesh size for that beach seine, we, essentially increase the length of a legal set gillnet as well.

Mr. Chair.

CHAIRMAN FLEAGLE: That would have to be clarified then because it doesn't appear to be the intent of the proposal, so I guess we would have to go there when we get there.

Denny.

MR. BSCHOR: I think Pete just covered one of my concerns on that, is the size of the mesh, and if gillnets are going to be used, you know, the conservation issue raises higher in my mind, whatever the length is, especially if the length's longer.

CHAIRMAN FLEAGLE: Okay, appreciate that.

Ralph.

MR. LOHSE: Thank you, Mr. Chair. Well, I'm kind of a visual person so I'll just give you guys a point of reference. If you took this circle right here, right now, this circle is what a 25 fathom gillnet -- I mean a 25 beach seine will go. These tables, around this corner, right now is 25 fathoms. So if you want to see how far 25 fathoms would go, add those tables to the end of these and that's the kind of circle you'll have.

CHAIRMAN FLEAGLE: Is it enough?

(Laughter)

MR. LOHSE: It's been way past the statute of limitations that I ever used a beach seine, I think it's been close to 40 years ago and we used a lot less than this but we were beach seining a small amount of fish for a village, and in small waters. But I don't
know, I would think personally that I could catch all the
fish I needed to eat with a beach seine that was this
long, that would be my personal opinion.

CHAIRMAN FLEAGLE: Thank you. I was just
curious as to, you know, the visual is good, but what the
intent, whether it was good or bad, enough or not enough.

Randy.

MR. ALVAREZ: Thank you, Mr. Chair. You
can -- 25 fathoms will work but as I was saying you got
to do it a lot more times and, you know, there's only so
many areas. You know, once you get those fish pretty
spooked, the more you do it the less you're going to --
the less you're going to catch, you know, because they're
going to be -- the size -- you have to be so close to the
fish when you're seining them, try to keep them inside
your seine and with 25 fathoms you're going to be right
by them trying not to spook them and the more you have to
try the harder it's going to be. And most people, when
did this, they're trying to do -- catch what they
need in one set and most of the time you've got more than
one person so there's probably two people that are trying
to catch subsistence fish.

And as for our committee, we -- under the
assumption to use gillnets and probably a little --
probably more than half of the fish are probably going to
be gilled when you're using a gillnet, when you're doing
this, but this, what we supported, being able to use a
regular gillnet, what -- what the commercial fishery
uses, the same size and depth is what's available to
everybody. And to have to order special nets and seines
from -- well, the net companies would be a bigger cost,
and most of the time when this seining is going on it has
been -- not all the time, but most of the time it's been
with gillnets that's what's available.

CHAIRMAN FLEAGLE: Okay, thank you,
Randy. I think before we take a motion on this issue it
sounds like we need to think a little bit about the
definitions of seine or whether we're going to allow the
use of gillnets, et cetera, et cetera, I think that it's
probably a good thing to do over lunch. Why don't we
break and with the cold temperatures, why don't we take a
little longer than normal lunch break.

MR. PROBASCO: How does that affect
Randy's flight?
CHAIRMAN FLEAGLE: Randy, do you have to get out of here?

MR. ALVAREZ: No, I wasn't planning on leaving until Thursday, so I'm available today, tomorrow and, you know, if you need me Thursday I could stay longer, too, but I'll just -- I'll be here as long as I have to be here.

CHAIRMAN FLEAGLE: Okay, thanks. I know there's, at least, a few people in the audience that might want to go cycle their vehicle for awhile, let it warm up so that it's not totally stone cold when we leave here this evening. So why don't we plan on returning to session at 1:15, that gives us a little longer lunch break to accommodate.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon. The Federal Subsistence Board is now back in session. And we left hanging the issue Proposal 07. And I understand, Randy, you want to start us out with some more discussion, Randy Alvarez.

MR. ALVAREZ: Thank you, Mr. Chair. This relates back to the first proposal for driftnetting in the Togiak River. My question was, that with having to cut the fins off, the fish, is that consistent with the current regulation where the setnet subsistence fish, are they having to cut those fins off those fish also? If you have to cut the fins off the fish when you're driftnetting, it would be a different regulation than what it is now, wouldn't it?

CHAIRMAN FLEAGLE: I'm not sure. Hang on, why don't we just store that question for a minute and let's go ahead and finish up on Proposal 7 and then I'll open up discussion on the suite of on the whole area, again, Randy. But Pete's got an answer for you.

But back to Proposal 7 that we're working on, on the seining issue, we had some questions in Board member's minds about whether the mesh size should be different than that of setnet, whether the length should be limited to 25 fathoms or unlimited as the State says [sic] and we don't have a motion on the table at this time, but if somebody would like to have some more
discussion or if we're ready for a motion, then at any rate that's where we're at.

Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. Yeah, I think we do have a few questions that still seem unresolved.

One would be, if we were talking about beach seines, I don't think I would have a problem if it were 50 fathoms, but if it sounds like what we're talking about is using gillnets, then I think the 25 fathom limit is, in fact, appropriate, because we do know those are more effective and result in higher mortality.

The second issue has to do with Six Mile Lake. It really hadn't been clear up to now and maybe it still isn't 100 percent clear, but it hadn't been clear that Six Mile Lake was, if you will, within Federal jurisdiction and hasn't really been managed that way up until now. The in-season manager has not really attended to that area. So I'm wondering if perhaps we could defer that part of the proposal, that just affects Six Mile Lake, perhaps until maybe we could take it with the Kenai proposals or defer it next year, but still address the proposal with respect to Lake Clark at this meeting? I guess the concern is, I don't think we've really spent enough time analyzing what the potential impacts are to Six Mile Lake from this. Our Lake Clark SRC, I don't believe, talked that much about Six Mile, I'm not sure, so, again, this would be new information for them to review. And I think maybe most importantly the boundaries are not clear, to me, what we're talking about for Federal management in Six Mile Lake and that could have some effects on the Newhalen or Lexie Creek and so on and so forth.

CHAIRMAN FLEAGLE: Okay, thank you, Judy, good comments.

Now, I'm not sure, I think I asked this question after the break, but I think it'd be good to ask because I think I got a couple of different answers. When the State established its seining regulation for Lake Clark did it define a mesh size for the net.

John.

MR. HILSINGER: Mr. Chairman. No, it did
not. And it's my understanding that the Board of
Fisheries intended that people could use their gillnets
in order to seine, that's typically, when you talk about
seining in Western Alaska, that's typically what you're
talking about. We have other areas that I'm familiar
with, like Norton Sound, where people seine and they
seine with their gillnets, and so that's what the Board
intended and they did not set any mesh size.

Thank you.

CHAIRMAN FLEAGLE: Okay. I think there
may have been some impression here that we're discussing
a whole different net gear then with a special net. So
if we're discussing gillnets then I just want to make it
clear that that is what we're discussing since that's
what the State did, unless we want to go to a defined
seining net with a different mesh.

Randy, you have a question or comment.

MR. ALVAREZ: Yes. The RAC, when we
discussed the proposal, we supported the proposal as
written by the SRC, which didn't state mesh size or
length of the seine. And talking to Lee Fink earlier, a
little while ago, I guess most of the seining is done
with 25 fathoms, but they do use gillnets also but there
also is seine nets available sometimes, they have in the
past, so I think we supported the no mesh size on that as
it was written.

Thank you.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Thank you, Mr. Chair. And
thank you for your questions. The concern is when we
look at exceeding 25 fathoms and we're trying to address
beach seines. Right now our restrictions are for
gillnets not to exceed 25 fathoms. And because we don't
define beach seines by mesh size and if we wanted to
increase the length of the beach seine, like Judy
suggested, to 50 fathoms, without a definition of mesh
size, then we're technically allowing a beach seine to
whatever length the Board decides on to be gillnet width.

Mr. Chair.

CHAIRMAN FLEAGLE: Right. I think we
understand that. All right, other discussion, questions,
deliberations, motions. Are we ready for adjournment?

(Laughter)

(Pause)

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. I'll move that we amend our current regulation and this is consistent with the Bristol Bay Regional Advisory Council and the InterAgency Staff Committee recommendation with a little bit of modification, amend the current regulation to read:

You may also take salmon by beach seine in Lake Clark excluding its tributaries.

And then I think we ought to have a statement in there that the beach seines or nets may not exceed 25 fathoms in length.

CHAIRMAN FLEAGLE: Do we have a second.

MR. OVIATT: I'll second the motion.

CHAIRMAN FLEAGLE: All right, we do have a second. We have discussion. And basically I think the best document to use for the language would be that provided by the ISC that was on the table, the second page, the comparison, the language there would fit your motion with the deletion of the reference to Six Mile Lake. So it does include the statement on the net length. Would you like to speak to your motion, Judy, supporting statements.

MS. GOTTLIEB: Sure. This continues the prohibition in tributaries so that this regulation would, therefore, protect some of the spawning aggregations.

The harvest is basically dictated by the need and this increased efficiency would not expect then to create a larger harvest than usually happens but also creates better use of people's time and fuel money, and if possible any incidental takes can be released pretty quickly from this method.

CHAIRMAN FLEAGLE: Other Board members.

Jerry.
MR. BERG: Thank you, Mr. Chair. It does seem like most people are going to be using their set gillnets for beach seines so it does seem like it makes most sense to stick with 25 fathoms. And somebody could still submit a proposal next year to allow greater length with different size mesh if they so chose to do that. And it does seem like it's a more selective harvest method, and so for that reason I'll support the motion.

I do think, you know, we do need to address the Six Mile Lake issue at some point so I think it's a good idea maybe to just defer it at this time and just address it when we figure out some of those boundary issue details at a later date.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you. Once we vote on this I'll ask Staff as to what the appropriate procedure of what deferral of just a small portion since this wasn't a part of the original proposal but is basically a Staff recommendation, I'm not sure what the process would be. You could think about it for a minute. Let's work on the motion that we have before us.

Did you have a comment Denny.

MR. BSCHOR: Yes, Mr. Chair. With that caveat that Jerry just explained, that we could revisit this, these items that he just mentioned, although in one place we go with Board of Fish action and other places we don't. We do -- we aren't going with the RAC's recommendation at this point but they have the opportunity to come back and say that -- give their further consideration of this, I can go along with this proposal.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: I also will support this proposal. I would just hope that Staff Committee can address the issue of Six Mile Lake in a reasonable time. I think that it's February and we're probably looking at July and I don't know if there's a possibility to take this up at our May meeting somehow, but I just want us not to let this fall off the table too far.

CHAIRMAN FLEAGLE: Okay, sounds good. We'll definitely address the issue as to how to deal with procedurally on that portion.
George.

MR. OVIATT: With the modifications that have been talked about, and reducing the size -- or not reducing the size but limiting the size of the net. And, I, too, encourage Staff to work on the Six Mile as soon as possible. I think it's important that we try and move this forward. But with what has been said before by other members I intend to support this, too.

CHAIRMAN FLEAGLE: Was that the call for the question?

MR. OVIATT: (Nods affirmatively)

CHAIRMAN FLEAGLE: Question's called on the proposal, on the as motion, Pete, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal FP07-07, motion reads as follows:

Outside the boundaries of any district, you may take salmon by set gillnet only, except that you may also take salmon by spear in the Togiak River, excluding its tributaries.

You may also take salmon by beach seines in Lake Clark, excluding their tributaries.

Beach seines may not exceed 25 fathoms in length.

Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.
1. MR. OVIATT: Aye.
2. MR. PROBASCO: Mr. Bschor.
3. MR. BSCHOR: Aye.
4. MR. PROBASCO: Mr. Berg.
5. MR. BERG: Aye.
6. MR. PROBASCO: Mr. Chair. Motion carries, six/zero.
7. CHAIRMAN FLEAGLE: Thank you, Pete.
8. MS. GOTTLIEB: Mr. Chair.
9. CHAIRMAN FLEAGLE: That appears to conclude the suite of proposals for the Bristol Bay area, however, I do have a few issues that still need to be raised.
10. One is the consideration of Six Mile Lake and how the procedure would relate to that. And then after that we will go back to providing an answer to Randy's question on clipping the fins in the Togiak driftnetting issue. And then I was prenoticed that there was going to be a request for reconsideration of a prior action this morning. So we'll do that in that order.
11. First is the process for bringing the Six Mile Lake portion of this proposal back, Pete, you had a comment as to the process.
12. MR. PROBASCO: Well, first, Mr. Chair, if I may a question, I think that what Ms. Gottlieb was asking for Staff to clarify boundaries and jurisdiction issues dealing with Six Mile Lake; is that correct, Ms. Gottlieb?
13. MS. GOTTLIEB: (Nods affirmatively)
14. MR. PROBASCO: Mr. Chair, that can be done as directed by the Board through OSM and the Staff Committee and we can report back to the Board at a Board work session and then the Board can reschedule on how they would like to deal with that issue based on the information that's provided at a work session.
15. CHAIRMAN FLEAGLE: Well, assuming that
that information would support the Board adding Six Mile to this action, how would the process look like after that.

Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. The Lake Clark Subsistence Resource Commission meets about mid-February, Lee?

MR. FINK: (Nods affirmatively)

MS. GOTTLIEB: About mid-February. So that would be, I think a really ideal time to aim for in terms of information on a Staff analysis on Six Mile Lake from this kind of fishery. So that's one option and a great place to start and then it would go through the RAC after that.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. Ms. Gottlieb. I guess we got two issues then.

First, was the question of jurisdiction which we would look at regulations and review and discuss those. The second point that you're making then is getting that information to the public for their comments, correct?

MS. GOTTLIEB: (Nods affirmatively)

MR. PROBASCO: Okay.

CHAIRMAN FLEAGLE: Basically I think what I heard interest by Board members was that they don't have any objection to adding Six Mile Lake to this action, we just need to have the justification -- I mean the jurisdiction issue explained and then how to correctly bring this back to the Board. Because if we dispense with this proposal now we don't have the vehicle to do it under this proposal, how would we then defer just this minor portion of it, and that's my procedural question. I'm just not familiar with your process.

You know, would it be redrafted as another proposal that we would accept at the next winter fisheries meeting or, you know, Niles has expressed an interest of bringing it back sooner than that. Would it be a fisheries proposal at the game meeting or, you know,
these are the questions that I'm trying to throw out there and see what the process would look like.

MR. PROBASCO: Mr. Chair. You are correct, this would take final action on Proposal 7, and that's why I was alluding to the work session. We could look at that information and assuming that it does recommend to include Six Mile Lake, then we would have Staff generate a proposal and it could go into our regular fishery proposal process which would result in us dealing with it at our next fisheries cycle, which is next fall.

I think the important thing to note that we're talking about jurisdiction, the practical -- what's happening on the grounds, if you look at the Board of Fish action, Alaskan residents will still be able to subsistence fish in Six Mile Lake with 25 fathom gear. So what we're trying to clarify is the jurisdiction point at this time.

MR. CESAR: Well, the sense that I get from, you know, this end of the table, the three of you keep whispering in my ear here, is that, we would really like to see if we could accomplish something to affect the fishery which would begin, we assume, in July. But, you know, with the action we've taken we don't have a vehicle. To bring forth a new motion throws it into the regulatory cycle for next year, it seems to me that we've wasted one opportunity that we may not need to do. I mean I don't know, maybe if we had voted to table that one portion of, you know, the motion probably would have been the most effective way, to table it until May, we could have done that but we didn't. So I'm not real positive what the -- how to do it from here.

CHAIRMAN FLEAGLE: Okay, thank you, Niles. Well, I understood where you were coming from and I understood your sense of wanting to do something quickly to get this accomplished, but Pete just, you know, I mean like hit me on the side of the head and made me realize that no matter what we do everybody is still going to beach seine on Six Mile Lake because the State
has already allowed it. And so it's kind of moot.

I mean we would come in with our mirrored regulations which would doubly allow it, I guess, I mean not double-harvest, but allow it on the Federal portion of Six Mile Lake, wherever we have jurisdiction, but right now it will be allowed for anyone anywhere. So it's kind of moot as to whether we do it now or in the next cycle. And so I think that relieves mine a little bit about trying to do it expeditiously.

Judy.

MS. GOTTLIEB: Mr. Chair. I guess I hear what you're saying but this is kind of exactly what we were saying earlier in the meeting, that it is different if it's a Federal regulation than a State regulation. You're right, on the ground for this particular summer season there may not be a practical difference, but there is a difference in how this regulation is formed. Who's eligible, so on and so forth.

So I think I bet the Lake Clark SRC would be more than willing to put together a proposal that just addresses Six Mile Lake, although, to be honest I'm not sure if that was their original intent or not. But I think it would be good to go back to them and find that out, if they want to pursue it, they can pursue it.

But that's why it would be really good to have information for them, you know, in about five weeks.

Thank you.

CHAIRMAN FLEAGLE: All right, that's a good point, too. Pete, go ahead.

MR. PROBASCO: Mr. Chair. Ms. Gottlieb.

We can have, as far as the jurisdictional question answered by that period of time. I'm still technically sticking to our process because we've done final action on Proposal 7, we would have to have another vehicle so that all parties, the Council, the SRCs, the public, the State, et cetera, would have an opportunity to comment on that, and the best vehicle for that is our call for proposals through the fisheries cycle.

CHAIRMAN FLEAGLE: I concur. I think that's the cleanest way to do it and we stay within a defined process.
MR. CESAR: Mr. Chairman. That's probably the way we probably should do it, but let me just throw this wrinkle out there because it's there. What's to stop a Board member, who voted in the affirmative, which we all did, for asking for reconsideration of that motion and amending that motion to simply table that part of the motion until May, at which time a decision would be made?

CHAIRMAN FLEAGLE: That's certainly an option. And we're going to be moving into a section shortly here where we are going to be entertaining a reconsideration motion, so if that's the intent then that would be appropriate.

Thanks, Niles.

All right, let's go ahead and move on to the next question and that's Randy Alvarez asked a question about clipping the fins on the driftnet subsistence fishery on the Togiak versus the setnet subsistence fishery and Pete you were going to answer that. Go ahead.

MR. PROBASCO: Thank you, Mr. Chair. Mr. Alvarez asked this question during our lunch break and it's a very good catch on Mr. Alvarez' part. Currently the way the regulation is drafted, as passed by the Board, we are all inclusive on the species of coho as far as subsistence harvested coho salmon have to have either both lobes of the caudal fin or dorsal fin removed. However, when we got to the issue of salmon harvested under a drift gillnet, that would include all species of salmon, coho, sockeye, chinook, et cetera, and that would require those additional species in addition to coho to have their fins removed, but would not require that for set gillnets.

And if that's the intent of the Board then that's what was passed. If that was not the intent of the Board we should have removed the section of marking from Subsection B and reworded it so it addressed all salmon.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, I guess I'm not real clear as to what's best here. But I thought I
understood the language as being presented as the intent and that all fish caught with the drift process would require trimming because it was a different method of harvest. I don't know, maybe it shouldn't be different, but I thought that's what it was there for.

Pete.

MR. PROBASCO: Mr. Chair. If we could clarify the Board's intent that they wanted to have all Federal subsistence harvested salmon have either both lobes of the caudal fin or the dorsal fin, we could get clarification on that intent and then just rewrite that accordingly to the regulation.

Mr. Chair.

CHAIRMAN FLEAGLE: Well, we need to have a little discussion of the Board members to see if that was indeed the intent.

Jerry Berg.

MR. BERG: Thank you, Mr. Chair. That was the intent of my proposal, and I realize that fish caught with a set gillnet, you're only required to mark coho salmon currently and if you catch them with a drift gillnet now, you'd be required to mark all salmon and I realized that when I made the motion, and it is a difference, Randy's right, in the regulation. But I think the intent was to try to cover this new gear type and for chinook salmon specifically that would be caught with the drift gillnet, and that's my understanding.

And I don't know the history of why only coho salmon are covered under a set gillnet, I don't know if the State can provide any information on that, but I was certainly aware of that in my motion.

Mr. Chair.

CHAIRMAN FLEAGLE: John Hilsinger. The question is why just coho?

MR. HILSINGER: Mr. Chairman, thank you. I believe that the reason that that requirement only applies to coho is because of the problem they had in the past there, in the Togiak area, with salmon -- coho salmon that were taken under the subsistence regs in the river, that were then sold commercially. And I know that
that occurred in 1998 and the Department actually closed
the commercial fishery there in order to help stop that
activity and we had a discussion of that at the Regional
Advisory Council meeting and that history of that. And
the subsistence salmon fishermen in Togiak were not happy
when that happened either, I mean everybody viewed it as
an illegal activity. And so I don't know for sure but I
suspect that that's the genesis of this regulation that
only requires the coho to be marked.

Thank you.

CHAIRMAN FLEAGLE: Okay, thanks. Is that
okay. I mean I know it's inconsistent on the method of
catching the fish, but I think it's pretty clear that the
Board did understand that if you got a setnet you cut
only the silvers, but if you're drifting you cut them
all. And I'm not sure that I can provide you a
justification why it's inconsistent, but it sounds like
that's what we meant to do.

Randy.

MR. ALVAREZ: Okay, thank you. I was
just concerned that it would be different. And it's the
Board's intent for it to be different, from what I
understand, so I'll -- that's why I raised the question,
if it was the Board's intent that it would be different
and I didn't know that -- what I didn't understand is if
it was to be different, that's why I brought it up.

CHAIRMAN FLEAGLE: Okay, thank you.

Niles.

MR. CESAR: Thank you, Mr. Chairman. I
know, you know, from listening to that, that there was a
problem in '98, which eventuated in having to clip the
coho, you know, and I don't know, how does one judge when
there's no longer that problem. I guess what I'm
thinking, do we then assume it will be a problem forever
and just keep something in place forever or after nine
years now, is it worthy of another look. It seems to me
like we're placing more work on the subsistence user, and
additionally now we're asking him or her to do further
steps, not just for the coho, but the other species of
salmon. And I wonder at what point do we look at that
again so we don't find ourselves having reports or
activities go on because they've always gone on.

So I just bring that out because it's
kind of like when George Custer was in charge of the Bureau of Indian Affairs and we got called back to Indian country to suppress all the issues that were going on, he got all the folks together in the Interior Building and he said, okay, I want you guys not to do anything until I return.

(Laughter)

MR. CESAR: And, you know, we've been suffering from that the last 150 years.

(Laughter)

MR. CESAR: So let's not just do stuff because we've done it, you know, thank you.

CHAIRMAN FLEAGLE: Caution duly noted, than you, Niles.

Okay, now we do have a request for a reconsideration motion. And what's required for a reconsideration is that a member of the prevailing vote can ask for reconsideration on any action, and with the concurrence of a second from the prevailing vote that action -- that request then comes to the Board and at that point since we're all on the prevailing side, anybody can make the reconsideration request and anybody can second it and then the likelihood of a need to have a vote to record a split vote or anything is probably nil. I would just ask if there's any objection at that point.

The motion, as it was passed at final action at the vote would then be before the Board again, not the original proposed action, but the final action that was either amended or however the motion, in its final form, when it was voted on, and it would stand before the Board for one, either further amendment or, two, for a new vote based on different information that was received.

So with that, Jerry, you had a desire to reconsider an action before.

MR. BERG: Thank you, Mr. Chair. Yes, I think I've talked to most Board members and some Staff, Tom Kron was helping me over lunch, regarding Proposal 6, for the methods of snagging, bow and arrow, hand capture and spears to take salmon in Lake Clark and its tributaries, we thought we ought to revisit that and
address the permit requirement for those methods. And after talking to Pete I’m not so sure it's a wise move, but I think maybe we ought to at least have a discussion amongst the Board to see what the Board members would like to do.

So I would like to make a motion to reconsider Proposal 06, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Is there a second.

MS. GOTTLIEB: I'll second.

CHAIRMAN FLEAGLE: Okay, we do have a motion to reconsider Proposal 6.

Is there any objection.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, the motion carries. We now have Proposal 6 before the Board for further action.

Jerry.

MR. BERG: Thank you, Mr. Chair. As I mentioned there's a -- in Bristol Bay you're required to have a permit if you're going to harvest salmon and so those methods that we just approved under Proposal 06, snagging, bow and arrow, hand capture and spears, would require a permit, and as the State has said they don't want to -- they would not allow Federal users to use a State permit with those methods, which would require us to have a Federal permit. And it just doesn't seem like we would get many people that would want to go snag a fish or hand capture that would want to actually go get a permit, a Federal permit to do that. And it doesn't seem like the harvest would be very, that there would be much harvest at all.

So I passed out some wording, and I was thinking that Theo might have some wording that he could flash on the screen that would show an amendment to that. You can't see it very well.

But basically I would make a motion that we would amend Judy's language to insert the words, without a permit, basically using those methods in Lake
Clark and its tributaries, and that way people using
those methods would not be required to have a permit.

CHAIRMAN FLEAGLE: All right. And that
was the motion for amendment, Jerry, or are you just
throwing it out for.....

MR. BERG: That is a motion to amend
Judy's language, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Do we have
a second.

MS. GOTTLIEB: I'll second it.

CHAIRMAN FLEAGLE: All right, it sounds
like we have a second. For discussion, Jerry, would you
-- I guess you already did lay out why you wanted to do
this, maybe we'll just go ahead and open it up for
discussion unless you have anything to add.

Go ahead, Jerry.

MR. BERG: Well, I guess I'll bring up
Pete's point as to why not to do it, which I think is a
pretty valid point as well, is if we don't have a Federal
permit, then State users from Anchorage or anywhere in
the state could also go out there and use snagging and
hand capture and say well, I'm fishing under Federal regs
and I don't know how you would tell the difference
between a Federal or a State user, so that would be
somewhat of a problem, I suppose, if it became a wide use
-- if these became wide use methods. But still it just
seems like it's a little bit burdensome to require people
that are going to catch an occasional fresh fish to have
a Federal permit before they go out to do so. So I guess
I'm still inclined to not require the permit.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: We do have our Chief
Ranger from Lake Clark here, and I did ask him at lunch
time the same question, how are you going to know who's a
qualified Federal user and who isn't and I guess the
relatively easy answer is you find out where they live
and then we know their eligibility. So if we have any
other questions, Lee, is here in the audience.
CHAIRMAN FLEAGLE: But is that a producible -- you know, I mean I could say that I live in Lake Clark, is that all it takes or do you have something that.....

MS. GOTTLIEB: I guess Lee would probably want to see something that show where you lived, driver's license, fishing -- not necessarily fishing license, because subsistence users don't have to have one. But some sort of proof of residency.

CHAIRMAN FLEAGLE: Thanks, Judy. Sarah.

MS. GILBERTSON: Thanks, Mr. Chairman. I guess from the State's perspective, you know, paramount to us is the harvest data and the permit's important in terms of, number 1, identifying who qualifies to participate in your fishery, and then number 2 for collecting harvest data. But not that it matters but I think that, you know, we would object to that, it's not responsible, it's not in the best interest of the resource.

CHAIRMAN FLEAGLE: Other Board discussion. Randy, do you want to weigh in on this at all?

MR. ALVAREZ: Sure. Couldn't the harvest be recorded on the State subsistence report, then there would be a record of it. That's -- but I guess if it doesn't need to be -- the Lake Clark residents don't need to have a subsistence -- to get a State subsistence -- I'm not real familiar because I don't utilize that area. I'm a resident of Igiogik and we get State subsistence permits and all our catch goes on that. So I'm not real familiar with the users up at Lake Clark.

CHAIRMAN FLEAGLE: John Hilsinger, do you have an answer to that?

MR. HILSINGER: Thank you, Mr. Chairman. Currently the way that the harvest is recorded is on the permit. But the permit specifies legal gear, and that would be State legal gear under State regulations and so we would not issue a State permit that said you could snag, use bow and arrow, or hand capture in Lake Clark, so you either would have a person with a State permit and if they were using one of those three methods they would have no legal authorization as far as the State was concerned, to do that.
You know, they could write their catch data on their State permit. I don't know how we would ever distinguish how they got it, but they would not be legally fishing under a State permit.

The other reason, as I mentioned, the other problem with the State doing that is that only certain people are eligible to fish in this area and particularly with certain types of gear and the State is not in the -- when a state resident comes in and gets a permit, all we have to do is ascertain that they're a state resident. We don't ascertain whether they live in a particular community or not and we don't want to be in the situation of having to do that according to Federal criteria for who can fish and who can't. And so the person wouldn't have a State permit that would allow them to use one of those three gear types. You know the best solution, I think, is to have a Federal permit.

Now, one thing we could think about and Ms. Gottlieb talked about cooperation in the harvest reporting is there's, I think, the potential, at least to consider separating the harvest reporting from the permit. That would still required, I guess, depending on what you decided, a Federal permit, but, you know, there may be some opportunity for some kind of joint harvest reporting.

I did discuss this issue with our protection people and they were fairly adamant that they would like to see the people fishing under Federal regulations have some kind of identification that says that they're a qualified Federal subsistence user so that when they walk up to a group of people and one person in the middle is snagging, they could easily ascertain that, yeah, this person is doing it legally under Federal regulations and they're qualified to do that and these other six are under State regulations and if they're doing it they're in trouble.

Thank you.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair, if I may, Mr. Hilsinger, if in that situation you had six or seven people and one in the middle was snagging, what would State enforcement do with that person, what's your speculation?
MR. HILSINGER: Mr. Chairman. If he did not have a permit, a Federal permit or some kind of identification that identified him as a legal Federal subsistence user, I don't know that they would arrest him but I think they would certainly investigate it and he may have to stop his fishing activities until they could ascertain that he was doing that legally.

CHAIRMAN FLEAGLE: Other discussion.

Judy. George.

MR. OVIATT: It appears that we're talking about a small group of people who are out camping and wanting to catch some fish to eat. But I can certainly understand and picture in my own mind a situation that is being talked about here and that could be rather uncomfortable, too. I just wonder how difficult it would be for those people who do go out and camp and recreate to pick up a permit. You know, administering a permit, how difficult would that be?

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I think it would be good if we have Lee come up here, please, and talk about, you know, what is happening practically on the shores of Lake Clark.

CHAIRMAN FLEAGLE: There's been a summons.

(Laughter)

CHAIRMAN FLEAGLE: Yeah, there's a microphone up by Steve, we just don't have a name tag for you so introduce yourself, please.

MR. FINK: My name is Lee Fink. I'm the Chief Ranger at Lake Clark National Park and Preserve.

Well, there's some good points here. I think that requiring a permit for this limited use would be a burden to the average subsistence user. I mean a lot of people do things spontaneously, you know, if they're going to go camping tonight, well, they might not think about it until 6:00 o'clock at night and they may or may not have a permit from a previous venture. I
think we're talking about a very small catch. If you wanted a lot of fish why would you snag them or shoot them with a spear when you can use or a net or a seine -- a gillnet or a seine. I mean if you're going to be putting up numbers of fish, I think there's better catch techniques available than maybe the three techniques, or catch methods that we're speaking of here. So there is some confusion. We do have State enforcement -- we're talking about a relatively small population, and while we don't know everybody on sight, you know, it's pretty easy to determine local rural residents in the Lake Clark area. Even if they don't have I.D., I suppose there is a -- you know if we weren't sure, if somebody did have no documentation and we didn't know them as a local rural resident, you know, we may ask them to stop that activity also. So for the protection of a subsistence user, it would not be bad if they were carrying some type of identification because if a State enforcement officer was to contact them in the field, certainly they don't have the local knowledge that we do of, you know, a few hundred residents. So that could be encouraged for the subsistence user, it's not a huge burden to carry some form of I.D., it's certainly easier than getting a permit. Whether that would be -- you know, then would it be a seasonal permit or a -- you know, just that whole permit process for maybe, I don't know, a dozen fish a year or something, seems like it would be cumbersome and quite a big bureaucratic nightmare.

CHAIRMAN FLEAGLE: So, Lee, you don't see this as ever having the potential for being anything other than an incidental opportunity to hook a fish, to snag a fish, I mean the situation that John described sounds like some of the typical fishing opportunities you have here in Southcentral, where people line up virtually shoulder to shoulder, you don't see this as being a problem?

MR. FINK: We don't have that, you know -- we don't have the same level of use that say the Russian River or the Kenai has, you know, I mean a busy day at the mouth of the Kijik River might be a dozen people and they probably all came from a lodge, and it's pretty easy to distinguish the lodges; they have the table clothes and the umbrellas....

(Laughter)
MR. FINK: .....from the local subsistence users, who usually don't travel with that. So, you know, it's not a huge problem. We do have some snagging problems with some folks that would not be qualified if this regulation was set in place, but it's fairly easy to distinguish usually in the field and I think the number of local folks that would do this as a supplemental subsistence activity, they would be catching, you know, very limited fish. Most people in the Lake Clark area have kind of a family tradition, they pick a time of the season, they spend, you know, the majority of that timeframe, very consistently catching fish and putting them up, however they're going to do it whether they're smoking them or canning them but, you know, they do it in large numbers, get the job done and then they're done with it. And then, you know, this would supplement basically when they're out in the field doing something else, just getting a fish for the day.

I think that was certainly the intent that I understood and I've been to several of the Regional Advisory Council meetings when they -- or the Subsistence Resource Commission meetings when they discussed this at work sessions and in public meetings that they've had at Lake Clark.

CHAIRMAN FLEAGLE: Okay, thank you. I think I'm willing to try it, support the amendment. I first, I think, had some opposition to it, but there comes a point where you do have to draw the line between what you think people are going to do what's right or you're going to have the law to remind them of what's wrong. And this is a case where I'm willing to try on a small basis to, you know, we've heard testimony from both the Staff and from Lee that it's a very limited opportunity that people are going to take advantage of. If it does prove to be a problem it can always be revisited through the form of another proposal or some type of action.

I'm willing to go along with the amendment.

Other discussion, George.

MR. OVIATT: Yeah, I appreciate your comments. And, you know, it seems like we're talking about something that isn't a big deal except for the people that would maybe have to get a permit to do this.
I think I'd be willing to try this and see how it works. We're just not talking about a lot of people, a lot of a concern.

Thank you.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. I mean I agree. I think the level of harvest here is expected to be so low as to probably not even be noticeable on our reporting systems or just the general harvest within the Bristol Bay area.

I think I might suggest some slight wordsmithing just to make the whole regulation read one sentence less.

We could just say, our addition last time was salmon may also be taken, and we could just add the words, without a permit, in Lake Clark and its tributaries by snagging, by hand line or rod and reel, using a spear, bow and arrow and capturing by bare hand.

You wouldn't have to have a whole new sentence, if that's okay, Jerry.

CHAIRMAN FLEAGLE: Yeah, that is the intent, they just gave the whole language with that change inserted, but, yeah, that's what we mean.

Other comments. Denny.

MR. BSCHOR: Yeah, it seems to me we're making a whole lot of discussions on these discussions we've been having today and those assumptions may be true and I'd like to have a practical approach also.

However, we have created a situation where the State has a permit, the State has different wording as far as what they allow and what don't allow now than we do or we have different wording than they do, however you want to put that. And we have a difference. If it was the same, we wouldn't have to worry about a permit. It isn't though. So since it isn't, to me, if I was the one that didn't have a permit out there and got a ticket for that confused situation I don't know if I'd be too happy about that.
In that respect it seems to me that we've created a situation where we need some sort of a permit to enforce what's out there. So I think that's the way I'm going to vote on this one.

CHAIRMAN FLEAGLE: Okay. I have Niles and then Jerry.

MR. CESAR: Well, Mr. Chairman thank you. I was hoping we'd be able to discuss this for another three or four hours because we're talking.....

(Laughter)

MR. CESAR: .....because we're talking about a significant catch of a few fish here. And so, you know, if we would spend this much time on some of our real fisheries, you know, then I guess I could be more excited about this.

I don't think we need a permit. I think someone who lives in a village should carry some kind of an identification card that demonstrates he lives in a village, flash that, that should be it. If you can't flash it then you're not eligible. I just don't see, you know, setting up a permit system to do an occasional thing. Like the Park Manager said, you know, we're talking here guys who go out there and get all their subsistence fish, that's all put away or even before it's put away, they go out there camping, snag a fish, grab a fish, however they get the fish, and they cook it and eat it, I would venture to say that we're not talking a harvest of more than several hundred fish a year, you know, even if you -- like I said earlier, gave everybody one fish and we're done with it, we're still not talking a great number of fish. And I'm opposed to putting in processes that require more for a subsistence fisherman to do unless it makes some kind of sense, some, you know, some common sense. And I don't think our regulations preclude us from making proposals and accepting proposals that make common sense, and that's where I'm coming down.

I'm going to vote for it.

Thank you.

CHAIRMAN FLEAGLE: Jerry Berg.

MR. BERG: Thank you, Mr. Chair. Yeah, I think in general I do support -- whenever we deviate
significantly from the State and I think these regulations are a pretty significant deviation that we ought to have some way to try to track who the users are and what the harvest is, but in this case it just seems like the harvest is just going to be so small.

And I was intimately involved in administering the rainbow trout permit we had out in Bristol Bay the last few years and it was a fair amount of work, not a lot, to come up with the permit, issue it, and send it out there and we paid people in the villages to distribute the permits and we issued some news releases here and there, and so there was a fair amount of administrative actions that we went through to put that in place and in the end we ended up withdrawing the requirement for that permit. And so I think even if we did require this permit, I think in a few years we'd end up retracting the requirement for a permit, so I'm inclined to just do it at this time.

Mr. Chair.

CHAIRMAN FLEAGLE: Are we ready for a vote on the amendment.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: Okay, on the amendment, Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Amendment to Proposal FP07-06:

You may also take salmon without a permit in Lake Clark and its tributaries by snagging, by handline or rod and reel, using a spear, bow and arrow and capturing by bare hand.

Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.
MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: No.

MR. PROBASCO: Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Mr. Chair, motion carries -- or amendment to the motion carries, five/one.

CHAIRMAN FLEAGLE: Thank you. We now have before us the motion as amended for final action, any other discussion before we take the final vote. Ready for the question, question is recognized on final action for Proposal 6 as amended, Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action. Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

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

CHAIRMAN FLEAGLE: Okay, thank you. That
dispenses with Proposal 6, once again. Was there another possible reconsideration request. Niles.

MR. CESAR: Yes, Mr. Chairman. I would like to move that we reconsider Proposal No. 7.

CHAIRMAN FLEAGLE: Is there a second.

MS. GOTTLIEB: I'll second it.

CHAIRMAN FLEAGLE: Okay, Niles, we have a motion and a second, would you like to speak to your motion for reconsideration.

MR. CESAR: Yes, Mr. Chairman. I didn't have any problem with motion 7 except that it didn't deal with Six Mile Lake, I thought, appropriately. And I thought by bringing this motion back we could make an amendment to it saying that we would table that portion of Motion 7 dealing with Six Mile Lake until the May -- meetings of the Board in May at which time all the information relative to boundaries and enforcement, those kinds of issues would be known and will have been seen by the RAC.

CHAIRMAN FLEAGLE: All right. So the motion for reconsideration, the intent would be if we vote in the affirmative to reconsider, you would then make a statement -- I don't think it would necessarily take another -- I don't know that it would take an amendment, but that you would move to table that portion that referred to Six Mile Lake to a subsequent meeting outside of the call for proposals. So is everybody clear of that intent for reconsideration.

Is there any objection to reconsideration motion.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, we now have Proposal 7 back before the Board as voted on. Niles.

MR. CESAR: Yes, Mr. Chairman. I just think that by putting it back in the regular process, we would more than likely put it out there a year and even though it may not have any practical effect on the
ground, as explained earlier, I still believe that it's an opportunity to put in place our regulation in a timely fashion, which would address the same issue.

Clearly it doesn't sound like it's a difficult thing to compile the information, and get it to the RACs, have them absorb it, make a recommendation back to us and have us deal with it and that would still give us time to have the motion affect our summer fishery.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Other discussion. I'm just trying to think of the best way to -- we discussed adding Six Mile and we had a recommendation from the ISC to add Six Mile, but the motion we passed did not include any reference to Six Mile, so we do need to.....

MR. PROBASCO: Make an amendment.

CHAIRMAN FLEAGLE: I guess you're right, we do need to make an amendment, Peter is saying. Let's just take a minute to see how that amendment would sound. We would restate the motion to read it as it was presented by the Staff Committee and then take a motion to table the portion that refers to Six Mile Lake, right, Pete?

MR. PROBASCO: To a time certain date, 07.

CHAIRMAN FLEAGLE: All right, so that would be appropriate. We would -- let's take a little break. We need to think this out, procedurally, how you put it back in to set it aside. Five minute break.

(Off record)

(On record)

CHAIRMAN FLEAGLE: The Federal Subsistence Board is back on record. And I think we just decided that the best way to do this would be to make an amendment to have the language include Six Mile Lake and then a motion to defer that portion that refers to Six Mile Lake. So would somebody like to move for that amendment.

MS. GOTTLIEB: Mr. Chairman.
CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: So I would like to move that the regulation read:

You may also take salmon by beach seines in Lake Clark, in Six Mile Lake, excluding its tributaries.

Beach seines may not exceed 25 fathoms in length.

However, I'd like to suggest that the Board defer action on the Six Mile Lake aspect of this regulation until such an opportunity as we have to sort out actual boundaries and locations and affects that this regulation might have on Six Mile Lake and that would be deferring it for about six months so we address it in the May cycle.

CHAIRMAN FLEAGLE: Does that work for you, Pete?

MR. PROBASCO: Mr. Chair, that works for me, because the intent is very clear what the Board would like to do. They would like, as Judy mentioned, provide Staff the opportunity to research the jurisdiction issues of Six Mile Lake and report back to the Board at their May 2007 meeting, which would provide ample opportunity for Councils, publics and SRCs to review.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay. Do I have a second to the amendment.

MR. OVIATT: I'll second it.

CHAIRMAN FLEAGLE: The motion has been seconded. We now have the language as amended, well, actually that was the amendment. Let's take the vote on the amendment and then we'll talk about the rest of it, Pete.

MR. PROBASCO: Okay. I'm not going to repeat myself.

Motion FP07-07 as amended.....

CHAIRMAN FLEAGLE: No, the amendment.
MR. PROBASCO: The amendment to FP07-07.
Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Yes.

MR. PROBASCO: Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: The amendment carries, Mr. Chair, six/zero.

CHAIRMAN FLEAGLE: Thank you. We now have the motion as amended for final action, ready for the vote on that. Pete.

MR. PROBASCO: Thank you, Mr. Chair. Final action on the amended motion FP07-07. Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.
MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Motion carries, six/zero,

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you, we now have apparently completed the Bristol Bay area proposals, and it looks like we're ready to move into the Southeast Alaska region. As promised we did get to it today, thanks for hanging out and we do have folks present from Sitka that were hoping to be here. I do have some testimony cards.

And, Keith, you have something to say.

MR. GOLTZ: Yeah, I'd like to make one correction for the record. This morning I said that my dogs know the difference between kicked over and being tripped, and during the break somebody said that made it sound like I kicked my dogs.

(Laughter)

MR. GOLTZ: I was only trying to make the point that even though the physical effects can be the same, the impact is sometimes quite different. And I want to state on the record that, no, I was only speaking as dogs in general. I think they all know the same thing. And I do not kick my dogs.

(Laughter)

CHAIRMAN FLEAGLE: Okay.

MR. PROBASCO: Unless they don't retrieve his.....

(Laughter)

CHAIRMAN FLEAGLE: All right, I'd like to go ahead and turn our attention to the first page of the agenda now. We're back at the area dealing with Southeast Alaska proposals, and our first proposal out of the chute is No. 17. I'd like to turn to the Staff for analysis and we have at the table a new fellow helping us out, not new to the system, but new to this meeting, and
that's Bob Schroeder. Bob, welcome.

DR. SCHROEDER: Thank you, Mr. Chairman.

Proposal FP07-17 begins in your book on Page 146 and it continues on until Page 190 or so. There's a good deal of information presented in this Staff analysis. What I'd like to do is present a general summary and then open for any questions that might arise.

FP07-17 was submitted by the Southeast Alaska Subsistence Regional Advisory Council. SERAC requested review and revisions to customary and traditional use determinations for all fish species used by residents of the Icy Strait-Cross Sound communities and remote locations within this area. The fishing districts in question are Districts 12, 13 and 14.

The Council requested that determinations should reflect all customary and traditional subsistence use of fish by residents of this area.

The current regulations, when the Council submitted the proposal recognized customary and traditional use of fish in District 14, Sections 14(B) and 14(C) only by Hoonah residents. All rural residents of Southeast Alaska and Yakutat at that time could fish in the other parts of this area.

SERAC considered FP06-23 on October 11, 2005, cycle meeting, in Wrangell. This proposal requested a customary and traditional use determination for fish for the community of Gustavus in Sections 14(B) and 14(C). At that time the Council recommended tabling that proposal and wanted this Council generated proposal to go forward in this cycle. Map 1 shows the fishing districts that we're talking about here as well as the location of communities.

Under the C&T determinations that were on the books last year, residents of the city of Hoonah proper and in Chichagof Island drainages on the east shore of Port Frederick between two points, Gartina Creek and Port Sofia had recognized customary and traditional use determinations for salmon, Dolly Varden, trout, smelt and eulachon in Sections 14(B) and (C). This determination didn't include the residents of nearby Game Creek, located just a few miles from Hoonah in Port Frederick and it also didn't include any other rural residents in the Hoonah, Port Frederick area.
With current events, we should refresh our memory of request for reconsideration that the Board decided just recently. Chuck Burkhart, who was the proponent for FP06-23 requested a reconsideration of the Board decision on that proposal. He requested that May -- that reconsideration was on basically a separate track from this current proposal. Based on additional analysis provided by Staff, the Board made a positive customary and traditional determination for Gustavus for fish in Sections 14(B) and (C). This determination took place just this last November, and so that last Board action in this area took place after the Regional Council met this year, this cycle in 2006.

The current regulations are shown on Page 154. We've included the customary and traditional use determinations for Angoon and Sitka. These communities are not major users of the Icy Strait-Cross Sound area, but they do have customary and traditional use determinations, they're on the books, and we wanted to make sure that action on this particular proposal didn't adversely affect the existing customary and traditional use determinations.

The proposed regulations as submitted simply called for recognition of customary and traditional use of all fish in Districts 12, 13 and 14 by all residents of those districts. All freshwaters that drain into fisheries Districts 12, 13 and 14 that are within the exterior boundaries of the Tongass National Forest, as well as the marine waters of the Makhnati Island Reserve are considered Federal public waters for the purposes of Federal subsistence fisheries management. The marine waters in this area are managed by the State of Alaska, and the waters of Glacier Bay National Park are closed to subsistence uses under present regulation.

The existing customary and traditional use determinations for this area, there now are two of them that exist. One is the customary and traditional use determination for Hoonah, which is one which was adopted when the Federal Program assumed management of fisheries. This was a determination made by the Alaska Board of Fisheries in 1989 or '90, and it applied only to Hoonah and only into Districts 14(B) and (C). The other customary and traditional use determination that's on our books right now is the one I just mentioned, which was the result of Board action in November for the community of Gustavus.
On the State side, the Board of Fisheries has not reviewed customary and traditional use determinations for this area since it's '89/90 decisions, and the Federal Subsistence Board, apart from the proposal last year concerning customary and traditional use of fish by Gustavus also has not looked at its customary and traditional use determinations in this area. So a positive Federal Subsistence Board action on this proposal, FP07-17 would provide Federal customary and traditional use determinations for all residents of the proposed districts. Residents of other parts of Southeast Alaska and Yakutat would no longer be able to fish in these particular districts.

Fishing District 14, again, referring to your map on Page 153 includes the communities of Hoonah, Gustavus, Elfin Cove, Excursion Inlet and Game Creek. Game Creek is located just southwest of Hoonah and is not labeled on that map. The community of Pelican located in District 13, Section 13(A) also fishes in District 13. There are also other residents who live outside the named communities in the Icy Strait-Cross Sound area at Excursion Inlet, Home Shore across from Hoonah on the mainland side, Game Creek, Gull Cove, Swanson Harbor and perhaps other locations. Again, referring to the map, the communities of Angoon and Tenakee Springs are located in District 12, Section 12(A), some portion of which is also part of Hoonah's traditional fishing area.

Another difficulty with the determinations that are on the books at the present time is that although Hoonah residents have had a positive customary and traditional use determination for Sections 14(B) and 14(C), much of their fishing is known to take place outside these two sections in Sections 14(A) in northern Chatham Strait and Sections 12(A) and 12(B) and in Outer Coast Section 13(A).

As we'll see in this analysis the use areas for the Icy Strait-Cross Sound communities frequently overlap with each other and with neighboring communities.

In the southern end some of these use areas may overlap areas used by Angoon, Kake and Sitka -- may also overlap. This analysis, however, we're focusing on the Icy Strait-Cross Sound area and the uses in Federal public waters in Districts 12, 13 and 14.

Table 1 on Page 157 gives an overview of
population based on the census data. What you'll note is
that Hoonah is by far the largest of the Icy Strait-Cross
Sound communities. I've also included Sitka in there.
Sitka's really outside this area. And we have at least
two of the listed communities or census places are really
quite small, Elfin Cove and Excursion Inlet would be in
the micro community category.

The analysis provides thumbnail sketches
of communities, I won't go through those at this time.

I would like to give an overview of what
sources of information are available for these
communities. Really, there are quite a bit of
subsistence research that has been done, unfortunately
not all of it is not very current. Ethnographic baseline
studies were done in Angoon, Hoonah, and Tenakee in the
mid-80s. These were done mainly focusing on timber
management effects. The Tongass Resource Use Cooperative
Survey was a region-wide survey which was done in 1988
and it collected harvest data and mapping data as it was
at the 1987 harvest year. The maps that were done at
that time were based on map biographies wherein someone
interviewed, drew on maps, the areas where they hunted,
fish, et cetera, about five or six research categories.
Those individual map biographies were aggregated to come
up with community subsistence maps. Division of
Subsistence did much of this work. It was published in
the early '90s. Note that with these maps we're talking
about original work that was done fully 19 years ago.

Other household surveys were done in
Angoon, Hoonah and Sitka in 1996 and that was basically
updating harvest level research that had been done
earlier.

Further work has been done funded by the
Federal Subsistence Management Program looking at
traditional ecological knowledge projects which did focus
on geography of use. That work took place in Angoon and
Hoonah and Sitka.

Let's see where we are here.

We also have subsistence salmon permit
data from Department of Fish and Game and that provides
another indication of what areas are used by communities.

Additionally, Federal Staff made field
visits to some of the affected communities in the year
2005 and 2006 in developing the analysis for the earlier proposal and then for this one.

The main question before the Council, when it requested deferral of the proposal last year for Gustavus was where do we have information showing that people actually fish. Staff spent a fair amount of time preparing the analysis for this proposal looking through these sources of information that I just outlined and doing a best attempt at drawing maps that showed where fishing by each community was documented in these data sources. These maps are presented in this analysis as an appendix starting on Page 167.

And I'd just point out at this time that this is -- these are not exactly research projects, they're the best attempt of Staff to summarize the information available in written sources and from the field studies and that the Council reviewed these and possibly was able to verify them from the experience of Council members who are familiar with this area.

We've provided descriptions of the use areas in the analysis.

Let's see where we are here.

As a summary table, on Page 163, that tries to make some -- a little -- tries to make sense of the different sources of information available showing where people from each community fish, and also provides the data sources that Staff were able to look at. Not surprisingly we have better data for Angoon, Hoonah and Sitka where there's been a lot of work done and our information sources for the other places aren't quite as rich.

The harvest amount data is presented in a series of tables, which are also in the appendix starting on Page 173. Table 3 presents the familiar percentage of households using, harvesting, receiving and giving wild resources, again, focusing on the communities in the Icy Strait-Cross Sound area. To note there that there is a really high level of participation in hunting fishing activities based on -- and, these, again, would be based on available survey data which may be a bit dated at this time.

Table 4 presents a harvest level data. Everyone's familiar with the summaries of subsistence
harvest per capita, that would be the second column, all
resources per capita and the range there would be from
187 pounds per capita in Game Creek up to over 300 pounds
per capita, or 385 pounds in Hoonah in the various times
that Hoonah was studied.

If I could ask one of my colleagues to
pass out to the table, that's inadvertently missing from
the text, Steve. We did break out the table to see what
fish harvests were in these communities and the handout
table breaks out -- it looks at fish as -- per capita
harvest levels of fish and looks at salmon, non-salmon
fish and then also breaks out Dolly Varden and trout.
Not surprisingly fish are a major component of the
overall subsistence harvest level, salmon is generally
the most used fish in terms of pounds per capita with
non-salmon fish also being quite high, that's typically
halibut with some rock fish and some other things. And
substantial harvest, but at a much lower level, of Dolly
Varden and trout.

Let's see, Table 6 presents detail --
excuse me. I think we may have a labeling problem.
The table that begins on Page 174
presents the subsistence salmon permit data by community
and year. This is from Alaska Department of Fish and
Game sources, of course. This is broken out in a couple
of ways. The one way just shows the overall number of
permits issued and fish reported, and then as you move
along and look at Table 6, particularly starting on Page
182, there's a listing of all the streams where people
from each community in this area have said that they have
caught fish under the terms of subsistence permits.

Let's see where we are here.

Looking at other criterias, the other
customary and traditional use determination criteria,
these aren't particularly different for the different
communities in this area since there is a high level of
subsistence use, wide level -- a high level of
distribution and exchange of fish and wildlife resources.
We do provide detail on methods and means. These are the
typical ones for this area, there isn't anything
particularly unusual there. Also concerning the methods
and means of preparing -- handling, preparing and
preserving and storing fish, we note that the ways that
knowledge of fishing skills, values and lore are
transmitted, pointing out that the community of Hoonah
has particularly rich heritage in this area as being the main Native community in this area. And also that other communities have been there quite a while and passed the knowledge of fish and wildlife use inter-generationally. We've provided data on the sharing within families and within community networks.

Just moving ahead to the effects of the proposal, accepting the proposal as written would recognize the customary and traditional use of all of the Icy Strait-Cross Sound rural residents of all the fish resources found in Federal public waters in Districts 12, 13 and 14. The determination also needs to consider neighboring rural communities that may use these districts. We've mentioned Angoon, Funner Bay, Hawk Inlet, as well as residents living outside named communities use portions of Districts 12 and 14. Angoon presently has a positive customary and traditional use determination for the southern portion of Section 12(A). Sitka uses Section 13(A) and has a positive customary and traditional use determination for a portion of that area.

Dolly Varden, steelhead and other trout species are the primary species likely to be harvested under Federal Subsistence Management regulations in the Icy Strait-Cross Sound area. Some harvest of eulachon, herring and salmon may also occur, however, fishing for these species generally takes place in marine waters under State of Alaska jurisdiction.

No resource conservation issues are anticipated with any of these species that would require restrictions placed on subsistence harvesters or discrimination among eligible subsistence harvesters through Section .804 procedures.

Mr. Chair, that completes my summary of the information available and I'm open for questions.

CHAIRMAN FLEAGLE: Thank you, Bob. Questions, Board members.

Judy.

MS. GOTTLIEB: Well, Mr. Chair, just a quick comment, Bob, and others who contributed. I thought this was a really good and thorough analysis and I thought the maps were very helpful also.

Am I understanding that there might be a
review for C&T for Angoon and Sitka in the future, just kind of to be as thorough as this and make sure that we have everything covered?

DR. SCHROEDER: Mr. Chair. Judy. The Council isn't saying that it wants to submit a proposal and generally Staff don't submit proposals on these things, we just are noting that the situation for the customary and traditional use determinations that we have on our books for those communities don't really reflect all the places that people actually fish.

CHAIRMAN FLEAGLE: All right, we'll now turn to summary of written public comments, and I see you have one, Bob.

DR. SCHROEDER: Mr. Chairman. We've got one written public comment. Wanda Culp, who's also been involved in other issues concerning this area wrote a letter on behalf of the customary and traditional users of Hoonah, Alaska. This October 26th letter was signed by four people, possibly more, the copy I received had four signatures.

She does not support a positive customary and traditional use determination as recommended by the Regional Advisory Council. The letter says that Hoonah, Angoon and Sitka were unaware of this proposal, that this proposal was under discussion. Her letter quotes ANILCA sections and points out that the subsistence provisions were intended to address Native cultural patterns. The letter questions the adequacy of the information presented. She points out that traditional management of thinning the trout populations to protect salmon runs. And she objects to the protection of trout for sportfishermen. She does not believe that Elfin Cove, Gustavus and Tenakee Springs have a customary and traditional use history.

She also requested that her letter be read into the record in its entirety.

And, Mr. Chairman, that's the only written public comment we have.

CHAIRMAN FLEAGLE: Thank you, Robert. Public testimony, we do have one card turned in for Proposal 17, and at this time I'll go ahead and call that person forward. Danielle Dinovelli-Lang.
CHAIRMAN FLEAGLE: I can't hear, please, come up to the mic.

MS. DINOVELLI-LANG: If possible I would like to delay that comment for the general procedural comments in the morning tomorrow.

CHAIRMAN FLEAGLE: Okay, let me back at the -- you're referring to the public comment period for non-agenda items at the beginning of the day?

MS. DINOVELLI-LANG: Yes.

CHAIRMAN FLEAGLE: And you'll withdraw your comment card for this portion and you'll make a comment tomorrow morning?

MS. DINOVELLI-LANG: Correct.

CHAIRMAN FLEAGLE: Okay, duly noted, thank you.

MS. DINOVELLI-LANG: Thank you.

CHAIRMAN FLEAGLE: Okay, we'll now turn to Bert Adams for the Regional Advisory Council recommendation. Bert.

MR. ADAMS: Thank you, Mr. Chairman. I'd just like to make a comment about a statement that Dr. Schroeder made earlier, he had, you know, this piece of paper distributed and he said that he wanted a colleague of his to pass it out, in Southeast Alaska Tlingit, Tsimshians and Haida, you know, don't like the word, pass out, and if you're sitting in an ANB, ANS Grand Camp Convention, anyone who uses that is heavily fined. We prefer mostly the word, distribute. So I just wanted to chastise Dr. Schroeder on that here in public.....

(Laughter)

MR. ADAMS: .....so he'll know better the next time.

DR. SCHROEDER: Mr. Adams, I promise I'll never pass out in a public meeting.
MR. ADAMS: Good. Thank you. Council recommendation for this proposal is to support it as modified. And that modification is found, you know, as Dr. Schroeder alluded to on Page 146. The modification, more precisely, specifies the determinations recommended for each fishing district or section. And the existing positive customary and traditional use determinations for Sitka and Angoon are not reduced by this modification in no way.

Last year there was a proposal, it was Proposal -- I think Dr. Schroeder alluded to it, 23, and this concerned Gustavus residents, customary and traditional use of fish in Sections 14(B) and 14(C). At that time the Council found that data presented and the public testimony showing that there were used for subsistence purposes by Gustavus residents were very limited, and the Staff analysis for Proposal 23 also noted that other communities used the Icy Strait Sound area and that all of Hoonah's traditional territory was not recognized as Dr. Schroeder also made mention of. The Council stated that it would submit a customary and traditional proposal for this area that would call for more comprehensive determination and, you know, I was in on a teleconference, you know, I think it was in November when the Council [sic] took up the Gustavus issue and I was kind of disappointed in the fact that the Council [sic] moved on this, I felt, prematurely because the Gustavus issue would have been included in this proposal, which is, you know, the one we're going through, Proposal 17, which the Council has submitted.

The Staff analysis for Proposal 17 included new sources of information and more thorough analysis of data were considered for 06-23, in particular, this analysis examined Tongass Resource Use Cooperative Study intensity of use of maps and the State of Alaska subsistence salmon harvest permit data and the State of Alaska subsistence sensitivity to disturbance maps. In addition, Staff made field visits to Elfin Cove and Pelican and were able to do limited interviewing with fishers in these communities.

All of the communities of the area show high levels of subsistence use of fish and wildlife and a reliance on a wide variety of resources and subsistence patterns of sharing and exchanging of subsistence foods. And they more than meet the criteria that the Council has
used as a guidelines in making its recommendations. So
the analysis provides the basis for a positive customary
and traditional use determination for rural residents
using the Icy Strait-Cross Sound.

I'd just kind of like to, you know, make
a comment in regards to Mrs. Culp's statement and her
letter. And I'll just say it in this way, the Council
recognized that Icy Strait-Cross Sound area is part of
the traditional territory of the Hoonah Tlingit (In
Native) Kaagwaantaan and (In Native) clans. Their long-
term pattern of use stretches of millennia, perhaps into
the earliest human habitation of this area. The shared
outer coast areas with Sitka Tlingit and Upper Chatham
Straits and Tenakee Inlet with Angoon as well as, you
know, the Yakutat people. In fact the (In Native)
people, you know, came from the Yakutat area, they're a
branch of the (In Native) from that area. These clans
have accommodated a few -- the newer residents in their
traditional territory whose history of use is much more
limited.

Now, the subsistence protections in
ANILCA does not consider ethnicity, therefore, the
Council recommendation covers all of the rural residents
of this area.

And, you know, Mr. Chairman I thank you.
I tried to make this short and sweet as I possibly could
and I still carry that policy, you know, that I'll answer
any questions as long as you don't make it a hard one.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Bert.
Board members questions for Bert's testimony -- or his
analysis.

(No comments)

MR. ADAMS: Thanks.

CHAIRMAN FLEAGLE: Those are easy. Oh,
Denny.

MR. BSCHOR: Yes, Mr. Chair. Just a
quick question, you referred to the proposal that you
support is on Page 146, did you mean 148?

MR. ADAMS: Yes.
MR. BSCHOR: Okay, thank you.

CHAIRMAN FLEAGLE: Okay, 148 is the amended version. All right, Department of Fish and Game comments, John Hilsinger.

MR. HILSINGER: Thank you, Mr. Chairman. The Department of Fish and Game recommendation for this proposal is to defer action and consistent with comments that we've made over the past year. We believe that actions on these customary and traditional use determinations should occur after the Board adopts its written policies and criteria for adoption of C&T determinations.

In this case, we note that the original proposal appears to be overly broad. Many of the communities in the area do not show, at least, according to the data in the analysis, a usage of some of the sections that are included, and so when this does come up for determination, we would support a much narrower view of it than the original proposal. And in particular we would like to see documentation of customary and traditional use of the Federal waters in these areas. It appears from the data presented, that much of the harvest that occurs, occurs in waters under State regulations. I look at Table No. 4 that Dr. Schroeder passed out, the non-salmon fish harvest, in many cases exceeds the salmon harvest, which leads me to believe that it's probably halibut and -- but I don't see any documentation of the catch of halibut in waters subject to Federal jurisdiction.

The other issue is making the determination for all fish and, of course, we discussed this at length at the InterAgency Staff Committee and the State's position is that the C&T determinations should be made for those fish species for which there's data to support making it. And we're somewhat concerned that this may be confusing because many of the fish species may not even occur in waters subject to Federal jurisdiction.

So in conclusion, I just would reiterate that the State's recommendation is to defer action until the criteria and policies are done and then proceed forward according to those criteria and policies.

Thank you.
CHAIRMAN FLEAGLE: Thank you, John. Questions.
(No comments)
CHAIRMAN FLEAGLE: Hearing none, we'll move to the InterAgency Staff Committee recommendations, Steve Klein.

MR. KLEIN: Thank you, Mr. Chair. The InterAgency Staff Committee recommendation is found on Pages 150 and 152, and the Staff Committee supported the proposal with modification, and exactly as outlined by the Southeast Alaska Council. So you'll note Pages 150 and 148 mirror each other.

And the Staff Committee felt that the proposed determination accurately reflects the customary and traditional uses of fish by Icy Strait-Cross Sound rural residents. It also recognizes the uses in these areas of other rural residents in the nearby Chatham Strait, of other rural residents living in Sitka and remote locations on the outer coast of Baranof and Chichagof Islands.

The Council's recommendation is consistent with the intent of the original proposal by recognizing C&T use of fish for communities in the areas where available information show that community residents have fished. The modification recognizes C&T use of fish in a district or section for community if available information sources show fishing in that district or section. And using a fishing district or section allows for clear and concise regulations consistent with most other determinations in Southeast Alaska.

All communities discussed in the analysis were considered with regard to the eight factors for determining C&T uses and were found to meet the criteria. The Staff Committee felt that the analysis, public testimony at the Council meeting and personal knowledge of Council members provided substantial information to support the Southeast Alaska Council recommendation.

And I would add that it's an excellent example of local rural residents working with Staff on C&T determinations.
So there's our recommendation on Page 150, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you. Any questions.

(No comments)

CHAIRMAN FLEAGLE: All right. We're at the stage where we're open for discussion on the issue. (Pause)

CHAIRMAN FLEAGLE: Anybody want to lead off. Denny.

MR. BSCHOR: Yes, Mr. Chair. I want to thank the Staff and the Council for the effort they've put into this, realizing that with this sort of determination and the eight factors that they have to look at, the information is -- what you've found is extensive, although you never have all the information, but I do want to thank them for the work they've put into this.

We've also -- this is a follow up to actions we had earlier in other meetings with RFRs on Gustavus and so forth and I think, from what I've seen of the presentations and the information that that has been accomplished.

CHAIRMAN FLEAGLE: We have Ralph Lohse.

MR. LOHSE: Mr. Chairman. I just have a question because it came up in the State's comments. And I just wondered, does C&T have to be based on the use of resources on Federal land or is it proper to show that the usage of multiple species demonstrates the usage of subsistence resources, even if they are unavailable on Federal land, and if they're not available on Federal land, even if you have C&T that uses those as proof that you are using subsistence resources, you're not going to be getting them under Federal regulations anyway, but the idea was that to be a subsistence user you had to use a broad spectrum of resources, and those resources aren't necessarily all available on Federal land, but it's still a broad spectrum of resources? Am I correct on that or am I wrong?

CHAIRMAN FLEAGLE: I'm looking at an
MR. LOHSE: Negative. My comment, it was based on the comment by the State that it's possible that some of these fish that are on this chart right here aren't even available on Federal waters or Federal land, but this chart to me is just showing a multiple use, a broad spectrum of use of subsistence resources, whether they're available on Federal land or whether they're not available on Federal land to show that these communities use subsistence resources. And so the fact that these resources aren't taken in Federal waters, in this case, really shouldn't affect the fact that these communities use subsistence resources. And so that -- I mean if we have to -- in order to show C&T show that all of the resources that are used in proving that a community uses C&T are taken on Federal land, then that means that in a lot of cases a lot of the things that we use to show that a community uses a broad spectrum of resources just isn't available because it's not available on either Federal lands or Federal waters.

And to me, what we're using these for is to show that these communities do use subsistence resources, so it's customary and traditional for them to use, in this case, all species of fish, whether they take them on Federal land or Federal waters or State waters. Now, any regulations that you make are only going to apply to Federal waters, but the determination is based on the fact that they use a broad spectrum of resources.

And that's what I was wondering, if in the future, if we have to look at whether these resources are used on Federal lands or whether the community uses this broad spectrum of resources?

CHAIRMAN FLEAGLE: Did you understand the question, Keith, do you want to try to give an answer to that.

MR. GOLTZ: Yes. I think the proper inquiry is whether the community uses that broad spectrum of resources. We should remember that Federal lands in this state are not static, they change. We have certain occasions where lands come into Federal ownership, we have more occasions when lands go out of Federal ownership. We can't chase that.

What our regulations do is say that the
Title VIII priority applies to Federal lands, wherever they are, at the present. And that's the way our regulations are written, both for land and for water.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Yeah, go ahead.

MR. LOHSE: Can I ask Keith -- through the Chair, can I ask Keith a question on that then?

CHAIRMAN FLEAGLE: Go ahead, you may.

MR. LOHSE: While we recognize, Keith, that the actions and the regulations only apply to current Federal land or Federal water, the actions or the regulations that are made only apply to current Federal land and Federal water, when it comes to determining C&T, which is to basically say that this community or that community uses a broad spectrum of subsistence resources, do we only have to use subsistence resources that are available on Federal land or Federal water, or can we consider all subsistence resources that they use?

MR. GOLTZ: For the purposes of C&T determination under the present regulations we're considering all resources that they use. And I just happen to have, just by luck, a copy of the Federal Register where we discuss a similar issue.

And this is dated April 4th, 1996, and what we said was, that land ownership patterns within CSUs are complex. Most of the land has not been surveyed and ownership is still changing as land selections are conveyed to the State of Alaska and Alaska Native corporations. So the way it works is, under the present system, we make a determination, much as Dr. Schroeder has done, and then the application of that will vary within units depending on the land patterns.

This is especially clear when we're talking about wildlife species, because land ownership will be the ultimate determination. Within water it's not quite so clear because what we -- well, it's clear but it's a little bit different. Waters within CSUs are subject to Federal jurisdiction as are adjacent waters.

But if we were to try to sharpen our pencil as finely as the State would have us sharpen it it would be an impossible task, we would be making
determinations which we would then find ourselves
undercut as land patterns change, and we have never taken
that approach.

CHAIRMAN FLEAGLE: Okay, thank you. I
think it's pretty easy to determine, in my mind, whether
or not those long-term customary and traditional uses
occurred at Point A geographically or Point B, the point
is that it occurred, so I don't see where that makes a
real big issue.

But here's a question that I have along
the same vein, and that's under our regulations of 100.16
customary and traditional use determination process where
it says, the Board shall determine which fish stocks and
wildlife populations have been customary and
traditionally used for subsistence. Next sentence
states, that these determinations shall identify the
specific community or area's use of specific fish stocks
and wildlife populations.

So I think that my read on that
regulation there is that we wouldn't be able to, for
instance, find a positive determination for one species
of fish just because we found a positive determination
for another species of fish, am I clear on that? I mean
just the fact that people have subsisted there, if that
particular species wasn't among their subsistence uses,
we can't find for a positive on that, right?

MR. GOLTZ: I think that's correct. I
think what you're saying is we do it by stocks and
population and if a stock and population has not been
used then it would not be subject to a C&T determination.

I think as an intellectual matter, that's
correct. I've yet to discover a stock or population in
the state yet that hasn't been at some time used for
subsistence. I think Ralph's question was a little bit
different. I understood it to be focused on the location
of take. But the C&T determinations are, in fact, made
on stocks and populations, that's correct.

CHAIRMAN FLEAGLE: No, I'm not confused
at all about Ralph's question. I think we dispensed with
that okay. But I just raise a minor concern, I'm not
sure. If we go to the statement all fish, what are we
adding that's not already allowable under the salmon,
Dolly Varden, trout, smelt and eulachon and is it
something that the Board has found a positive customary
and traditional use for, you know, for whatever we're adding?

Why go to all fish, I guess, that's the.....

MR. GOLTZ: I think I'd defer to Dr. Schroeder on that. I don't think halibut or rock fish appear, generally, in fresh waters, but I think that there are some small portions of Federal marine waters that are within our jurisdiction and those species may occur in those, I don't know.

CHAIRMAN FLEAGLE: Bob.

DR. SCHROEDER: Mr. Chairman. I don't have a lot to add to this part of the discussion. I may pass the ball a little bit to my colleague, Cal Casipit. We did look at just the way we have our C&T determinations on the books for Southeast, and we do have determinations for all fish and I can't say exactly how those got there. I think it's a certain economy of effort also following Keith's remarks, that any fish that can be used is likely to be used somewhere around the state.

We also have this situation, which should be apparent from my presentation of data for this C&T that the major work in this area was done fully 19 years ago, we're not funding research for studies and neither is the State to provide in-depth documentation for each and every of the dozens, if not, hundreds of species that occur in Southeast Alaska, so we may be up against this issue of what's practical to accomplish and what serves the interest of ANILCA.

CHAIRMAN FLEAGLE: All right, thanks. I'm not in any way trying to find reason to vote against this proposal, I just want to make sure that whatever action the Board does is in compliance with the statutes and regulations that we have to operate under. It's just kind of a nebulous question, I realize, but it has little bearing on, I guess the overall -- Keith.

MR. GOLTZ: I think one point we want to keep in mind is that the introduction to our regulations are the introductory sections. Make it clear that Federal regulations apply only where the Federal government has jurisdiction. So that would be inland waters within CSUs, it would be certain selected marine
waters and it would be Federal public lands within CSUs and it's basically -- there are a few others but basically our regulations apply only where the Federal government has jurisdiction and nowhere else.

CHAIRMAN FLEAGLE: Thank you. Other Board members. John Hilsinger, comments.

MR. HILSINGER: Thank you, Mr. Chairman. It seems like there's an issue of transference.

If you determine that a community has a customary and traditional use of a resource in the State area and then if you provide -- use that to give it a C&T for the area of Federal jurisdiction, you've sort of transferred that usage that occurred under State jurisdiction over to an area where it may have never occurred before under Federal jurisdiction. And when you do that you cut out other users. If there's no C&T finding, for instance, all rural residents of Alaska can harvest those species on Federal public lands, and once there's a C&T determination they can't.

So I think it's more than just sort of academic to try to be sure that that usage occurred on those Federal public lands before you make a C&T finding that excludes -- potentially excludes other users.

And the other part is just, I think, we've talked a lot about common sense here today but it seems like we ought to be sure that a species exists before we find that there's been a customary and traditional use of it in that area.

Thank you.

CHAIRMAN FLEAGLE: Yeah, go ahead Keith Goltz.

MR. GOLTZ: I don't want to make this an extended legal debate but I do want to point up one thing. We have never contended that the subsistence harvest must always takes place where it had traditionally or historically occurred. There can be good legitimate conservation reasons for a shift, and there can be accommodation reasons for a shift, which we will be facing probably in May. But what we're dealing with are stock or population, not historical location of harvest.
CHAIRMAN FLEAGLE: Yeah, and I know I'm
the one that's asking a lot of these questions because
I'm not intimately, you know, aware of the Federal
system's processes and procedures yet so, again, I
apologize if I'm belaboring a lot of these issues, you
know, because most of you have gone through them, but
it's important for me to have my head wrapped around an
item or issue before I make a decision on it and that's
part of it.

But, anyway, on that issue, I just don't
have any problem with that question at all. I recognize
the State's objection and that they don't want to have us
find a C&T on -- you know, what we're doing is we're
cutting out other users by our process, and I recognize
that, that's the intent of this process, though, is the
Federal Board's process. And whether or not that harvest
occurred on a piece of State land or Federal land is
irrelevant. I mean before time immemorial, you know,
before this state was divvied up between the State and
the Federal governments, people were free to travel
wherever and whenever, they did whatever they wanted to
within confines of running into an opposing band or
something. But I just have a really hard time trying to
make any justification based on a specific geographic
location.

But the regulations do talk about
specific populations and species, that's what I'm kind of
having a little struggle with. So the whole issue about
whether a positive C&T can be found based on harvest off
of Federal lands, I have no problem with that.

I just want to treat carefully, though,
you know, like John did say, you don't want to
necessarily find a positive C&T for a species that hasn't
existed in that customary and traditional use
determination. Which, in today's climate change could be
a possibility, we could have a new species of fish moving
into these waters that has never been seen by the
indigenous peoples of the area, ever, or even a
terrestrial mammal, and, are we going to find a positive
C&T based on that just because they used anything and
everything that was before. That's a little more
nebulous to me.

I think that one person could make the
stretch and say, yes, because indigenous people have made
use of those resources, no matter what they were, when
they were available. And, you know, we harvested
muskoxen and wooly mammoth, they're not around anymore,
that doesn't mean that we didn't, or the wood bison in
the Interior of Alaska, I mean these things were
harvested.

Anyway, you know, I'm just postulating
here.

Niles.

MR. CESAR: We used to harvest
Athabascans, too, but we gave that up.

(Laughter)

CHAIRMAN FLEAGLE: I resemble that
remark.

(Laughter)

CHAIRMAN FLEAGLE: Jerry.

MR. BERG: And we had some of these same
discussions in our InterAgency Staff Committee and I was
wondering also, at that time, why we made the leap from
salmon, Dolly Varden, trout, smelt and eulachon to all
fish and I asked some of the same questions, about what
other fish species do people harvest there and I see that
they did add in herring into the effects of the proposal,
that those were -- it was one other species that they
listed. And I don't know if it really makes a difference
whether you just list all fish and they're allowed to
take any fish that's there because people always say, for
subsistence they take whatever they can get, or whether
you list it by species, you know, we're just trying to
list all the species that they take so it's just kind of,
you know, half dozen to one, six the other, I guess. But
it would be good to just list all species, I guess,
because they're only going to take what's available in
the Federal waters.

CHAIRMAN FLEAGLE: Thanks, Jerry.

Further discussion.

Ralph Lohse.

MR. LOHSE: Mr. Chair, I have another
question and I guess I'm getting things thrown at me this
meeting that I've never heard before.
I know that when you find a C&T for a community or a group, you're recognizing their usage of a resource, but finding a C&T doesn't necessarily cut out other users, in fact, I think the only time that that C&T ever has the possibility of cutting out other users is in times of shortage if you go to an .804. And I may be wrong on that and I'd like to be corrected on that if I am wrong, but I was under the impression that C&T did not necessarily -- I mean I can think of a lot of things that we have C&T for in Southcentral that we have an awful lot of people using despite that certain groups are the ones that have C&T on them.

C&T only sets a priority system up, it does not necessarily cut out other users by finding C&T, am I correct on that, Keith?

CHAIRMAN FLEAGLE: Go ahead, Keith Goltz.

MR. GOLTZ: You're absolutely correct and it's something I probably should have mentioned, too. The allocations are made later. And you can make a pretty good argument that what C&T really is, is a restriction on other subsistence users, and not on anybody else because the immediate effect of C&T is to take what is generally the whole state and to reduce it down to a local area. So, right, C&T does not restrict other users in and of itself.

MR. LOHSE: Thank you. And then along that same lines, Mike, you brought up something and I know this came up quite a few years ago, it dealt with moose in Nome. And I mean I sat here in this Board meeting and I listened to it being discussed, the fact that we have a C&T for moose in Nome when there weren't moose in Nome, not that long ago. But exactly what you brought up was the fact that they used a broad spectrum of subsistence resources that were equivalent to the moose and if the moose would have been there, they would have used them. And the Board found a C&T for moose in Nome.

They found a C&T for deer in Prince William Sound based on the same criteria, which was, that, if they would have been there they would have been used, they are now used by the current community that's there, and the current community is what counts, not what happened a thousand years in the past, not what happened a hundred years in the past, but what is the current subsistence community using. And the current subsistence
community in Prince William Sound uses deer and they
would have used them in the past if they would have been
there.

But that was the argument, that was the
discussion that came from this Board, I don't remember if
this was 10 years ago or 12 years ago or where it was in
the process but it was a long time ago and that's what
the finding was, that there was a C&T for moose in Nome
and there's a C&T for deer and moose in Prince William
Sound.

CHAIRMAN FLEAGLE: Appreciate that,
Ralph. And I do know that those decisions were not
without controversy because of that application. And,
you know, that's just part of the reason why I raise it,
I'm curious as to what belies that philosophy or, you
know, is it regulation or is it just an unspoken
philosophical understanding that the Board has made a
determination on.

In fact, I'm comfortable with it either
way, honest, even on the State Board, we -- when I was on
the State Board we made a positive determination for
muskoxen on the Seward Peninsula that a lot of people
thought was a stretch so I mean these things are not cut
in stone, so I'm not trying to pick apart or oppose this,
I just want to understand it. So I guess I'll shut up
after Keith talks and then I'll let somebody else go.

MR. GOLTZ: ANILCA refers to wild,
renewable resources. And the position we've taken is
that once, usually a game animal is released, it becomes
wild and, therefore, it's susceptible to subsistence
harvest.

I remember Sidney Huntington has a
chapter in his book on when moose first came into the
Koyukuk Valley and it didn't take the subsistence users
very long to figure out what to do with a moose, and
that's sort of the history that we've keyed in to.

CHAIRMAN FLEAGLE: I appreciate the
discussion. All right, let's then get back to the
proposal at hand, Proposal 17. Are we ready for a motion
or do we want to have a little more discussion on the
presentations we've heard.

Denny.
MR. BSCHOR: Well, Mr. Chair, this has been an interesting discussion and as you said lots of situations will come and go and we've got to respond to those accordingly but at the moment, unless we want to list all the species that we can think of that are on Federal lands and stick to that, and we might forget one, I'd rather error on the other side and keep all in here. But I am prepared to make a motion.

CHAIRMAN FLEAGLE: Go ahead.

MR. BSCHOR: Okay, I move to adopt the Southeast Alaska Regional Advisory Council recommendation for Proposal FP07-17 and following a second I'll provide my rationale and that relates to the items on either Page 148 or 150 since they're the same. I won't read through all of that.

CHAIRMAN FLEAGLE: All right, we do have a second. Go ahead, Denny, rationale.

MR. BSCHOR: Okay, once again as far as following through with the instructions we had for the Council to take a look and try to define this and refine it more, I think they've done that to the best of our ability at this time. I think it's in line with the eight criteria as best as we can do at this time, and it also -- we've asked them to modify the original proposal, they've done that. The analysis examined all sources of information for this area of the north part of Southeast Alaska and based on the maps, 2 through 7, in appendix A, I believe that the Council's recommendation is a correct one.

I do want to make the point, and reiterate and emphasize that we're just talking about the use of subsistence resources in Federal jurisdiction.

CHAIRMAN FLEAGLE: Thank you, Denny.

Board members further discussion.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.
MS. GOTTLIEB: Thank you. Likewise, I think this was a thorough analysis. I think the RAC has been working on this for several sessions and done a really good job on it. And I guess if there's any concern for species by species, once it came time to do species specific allocations, then they would be named, so I'm comfortable with saying all at this point in time.

CHAIRMAN FLEAGLE: I appreciate the fact that the Regional Advisory Council amended their own proposal based on objections raised by communities in their district and left those alone, amended them out, I appreciate the work there.

I agree with the intent of the proposal as it's before us in its new form that we have before us by motion.

Other discussion.

(No comments)

CHAIRMAN FLEAGLE: Question's called on the motion to adopt Proposal 17, Pete, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal FP07-17 and that motion is as presented on Page 148.

Mr. Berg.

MR. BERG: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.
MR. PROBASCO: And Mr. Bschor.

MR. BSCHOR: Aye.

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

CHAIRMAN FLEAGLE: Thank you, Pete. All right, let's go ahead and take up Proposal 18. We'll get started on it at any rate, I'm not sure if we'll be able to finish it by day's end but we'll go ahead and do the analysis, and we have a new person at the table to do the analysis.

MR. PROBASCO: Terry Suminski.

CHAIRMAN FLEAGLE: Terry Suminski.

Welcome Terry.

MR. SUMINSKI: Thank you, Mr. Chairman. Members of the Board. My name is Terry Suminski, I'm a fisheries biologist with the U.S. Forest Service stationed in Sitka.


Proposal FP07-18 was submitted by the Southeast Alaska Regional Advisory Council. Proposal FP-19, which is on your consent agenda was submitted by the Sitka Tribe of Alaska, these are almost identical. Both proposals would close the Federal public waters of Makhnati Island area near Sitka to commercial herring fishing during the months of March and April.

The Council and STA believe that a regulatory change is needed to ensure that subsistence needs for herring and herring roe are met. The proponents feel that commercial fishing activities displace subsistence users from traditional harvesting sites, may disrupt herring spawning such that good quality deposition of herring eggs does not take place at traditional sites, may cause herring to spawn away from subsistence sites, and may seriously reduce the biomass of spawning herring upon which subsistence users depend.

The proponents feel that closing Federal marine waters to commercial harvesting during March and April will be a constructive step in ensuring that
subsistence needs may be met.

Under current Federal regulations all rural residents of Alaska are eligible to harvest herring, herring roe on macrocytic kelp, herring roe on hemlock or herring roe on other substrates from Federal waters in Southeast Alaska. There are no seasons or harvest limits in regulation.

The Federal public waters near Makhnati Island comprise a small part of the spawning area of herring in Sitka Sound and also make up a small part of where subsistence herring eggs are gathered. Evaluating the effects of a closure in a small area of Federal public waters is extremely difficult due to the large yearly fluctuations and intensity and location of herring spawning activity in Sitka Sound.

From 1978 to 2006 the nautical miles of beach in which herring spawn has varied from 13 to 104 nautical miles and is not in the same area every year. Some areas are more consistent than others, but spawn is not guaranteed in any area every year. Spawn and subsistence harvest occurs in most years within the Federal public waters but there is no way to know how much of the harvest comes only from the Federal waters. The traditional harvest of eggs in substrates is affected by many natural factors such as weather, where and when and how and how much the herring spawn.

Subsistence users are allowed to harvest herring and herring eggs anywhere in and around Sitka Sound. Established in a small area for only subsistence use may not provide additional benefit to subsistence users if herring lack spawning fidelity and simply don’t spawn in that area in a given year, where people that harvest herring eggs is ultimately determined by where herring spawn.

The area where commercial sac roe herring fishery occurs also varies widely from year to year. From 2002 to 2006 the Federal public waters near Makhnati Island have made up a part of the area’s open to commercial sac roe herring fishing six out of the 15 years. Since the area of Federal public waters has been a part of larger areas open to commercial fishing, there’s no way to apportion harvest from only Federal public waters. The closure of a relatively small area of Federal jurisdiction would probably not affect whether the commercial quota is reached, but it would reduce the
1 area available for commercial fishing and may increase
2 the chance of commercial fishing taking place in better
3 traditional egg harvesting areas.
4
5 In 2002 a memorandum of agreement was
6 signed between the Sitka Tribe of Alaska and the Alaska
7 Department of Fish and Game in response to poor spawn
8 harvest in 2001. Since the agreement was signed, amounts
9 necessary for subsistence as determined by the Alaska
10 Board of Fisheries were met in years 2003, 2004 and 2006,
11 but were not met in 2005.
12
13 A Federal closure of a fishery may only
14 be exercised when it's necessary to conserve fish stocks
15 or to continue subsistence uses. The spawning biomass of
16 Sitka Sound herring has shown a strong upward trend since
17 1978. In most years subsistence needs for herring spawn
18 on substrates have been met. In years where subsistence
19 needs are met a permanent closure in regulation would not
20 be necessary. An alternative to a permanent regulatory
21 closure would be for Federal managers to continue to work
22 closely and coordinate with ADF&G and Sitka Tribe of
23 Alaska. During the 2006 herring harvest, the
24 coordination and communication between Sitka Tribe and
25 ADF&G was quite successful. Supporting and building upon
26 this success is key to ensuring subsistence harvests are
27 as successful as possible.
28
29 While in-season action by Federal
30 managers would be difficult to implement in a timely
31 manner since commercial fishery largely takes place first
32 and subsistence harvest may not be known for months
33 afterwards, it is more practical for Federal managers to
34 take action pre-season based on previous year's harvest
35 trends and predicting herring abundance.
36
37 Thank you.
38
39 CHAIRMAN FLEAGLE: Questions.
40
41 (No comments)
42
43 CHAIRMAN FLEAGLE: All right, thank you
44 for that overview.
45
46 And let's see, we don't have any written
47 public comments; is that correct?
48
49 DR. SCHROEDER: Mr. Chair. No written
50 public comments for this proposal.
CHAIRMAN FLEAGLE: Thank you. We now turn to public testimony and I do have three people indicated a desire to testify before the Board on this issue and I'm not going to set any time limits, we obviously don't have a huge rush of testifiers here. So the first one I'm going to call up is Mike Miller. (Pause)

CHAIRMAN FLEAGLE: There's a space right up here next to Steve Klein with a microphone at the front table.

MR. MILLER: Thank you, Mr. Chairman. Board members. So I can talk for a long time then. (Laughter)

CHAIRMAN FLEAGLE: When you have made your point I'll suggest that you stop. (Laughter)

MR. MILLER: Just throw something at me or whatever and I'll stop. So thanks again, my name is Mike Miller from Sitka, representing Sitka Tribe of Alaska. I'm here to talk about Proposal 18. I speak in favor of that proposal and extend the support of the Sitka Tribe and it's 4,000 enrollees from the tribe. I actually could go on for quite some time but I'll try to make it a little bit brief, try to condense several hundred years of history of herring egg harvest in Sitka Sound, for not just Sitka but for all of the state and quite a few other states, too.

But I guess, briefly, to start, Sitka has had one of the longest standing histories, the most well documented histories of herring egg harvest. The earliest Russian people that came there documented the large gathering of people that came there in the spring to harvest herring eggs, and actually there's a lot of people in this room that eat herring eggs from Sitka. There's -- I'm not pointing any fingers, but some of the older people also ate herring eggs from Auke Bay, they ate herring eggs from Kashakes (ph), they ate herring eggs from Prince of Wales Island, but if they're eating herring eggs now, they're eating herring eggs from Sitka, because of the demise of the other herring eggs -- or
herring fisheries and the lack of harvest from those areas.

It's a very, very important fishery for, not just Sitka, but there's lots of people that come from other communities throughout the state during herring eggs time to harvest for their own selves.

As I said I'm a member of Sitka Tribe of Alaska and I am a harvester of herring eggs, I harvest as much as I can physically, ship it out to people, I ship about -- just airlines alone, about 60 boxes a year. I lose a lot of money doing it but people -- it's so important to people, it's absolute amazing to hear the response of people who get it. I'm reminded of an elderly lady from Metlakatla one time and she stopped me and she said that when she gets her box of fish eggs, that that's only time each year that she doesn't worry that she doesn't have any money, and that's how it made her feel. I think a lot of people have that same feeling about the cultural importance and I guess it's a comfort food for a lot of people.

I've been involved with the tribe for quite some time now, since 2001, representing the tribe on fisheries issues. The tribe, itself, has been involved in the herring fishery issue for years prior to that, but we had an incident in 2001 that I got involved with, because of that, and that was the collapse on our part of the subsistence fishery and our concern that the way that the commercial fishery was being prosecuted was having a dramatic impact on the subsistence fishery. As a result of that involvement from the tribe and we had representation from all the tribes in Southeast, we had representation from SeaAlaska, we had representation from APN supporting our argument to work with the State, approach the State Fish Board and try to find some resolution to this problem. As a result of that the State Fish Board directed the Department to enter into an MOA with the tribe, memorandum of agreement, we did that, and in doing that we came up with an amount reasonably necessary. The State had asked for some numbers there of 105,000 to 158,000 pounds. Obviously the State was concerned when we went to them and we just said we have a problem, and they said well, what -- how much did you harvest, and we said, well, not as much as we normally do. The State needed numbers and we realize that that was the route we had to go. So as a part of this agreement we took to heart that request from the State to document this fishery better and so that when future
problems happened we could definitively say that the
numbers are going up or down.

The amount reasonably necessary was based
on previous survey information. And just quickly, 2002,
the amount that we harvested was 170,000 documented.
2003, 269,000 pounds. 2004, 293,000 pounds. 2005, 75,000
pounds. There was quite a drop, and actually that came
in well under the amount reasonably necessary set by the
State.

Now, this is just a little bit of history
that's the overall background to getting to where we are
now. It might not seem like the Makhnati thing is a
great big part of it, but realistically it's a very
important part of an essential core harvest area for
subsistence. There's a lot of weather issues that we
presented to the State previously. There's quality
issues that the Makhnati area is an area that is
essential, it's part of a bigger area but it is an area
that the tribe recognizes as an area that's safe, an area
that produces good quality eggs, and also an area that
provides opportunities for harvest on kelp that are
limited in other areas, kelp and seaweed that seem to
favor that rocky beaches around there.

So in the overall picture we really feel
that it's very important that we protect this area around
Makhnati.

Again, the equivalent of what the value
is of the subsistence fisheries is very hard to -- like I
say, I can't hardly have enough time here to go over the
importance of it to people and what it works out to be,
but I would encourage you to, I guess -- where was I
going with that. I guess I'll just leave it at the point
that it is very, very important to people.

When we look at conservation issues with
the herring in Sitka, the Sitka Tribe has been taking to
heart again it's role in the management of the -- or
pseudo-management of the herring, and doing its own
research so when you talk about conservation of herring,
a lot of times people just view Sitka Sound as just one
great big bunch of herring, but the information that our
biologists have been finding out in collaboration with
the University of Alaska-Fairbanks, and the University, I
think BC, Victoria, is that, we don't have final results
on the Makhnati area, but the areas that we have results
for which is Salisbury Sound are showing a really
interesting thing that even I didn't believe was true before, but that those herring from that area were born there and actually return to that same area to spawn. And so that shows a pretty high fidelity rate to a natal area for fish. And we're still a bit out from getting the results back from Makhnati Island but we started this study prior to this proposal being put forward.

So there's definitely some questions that could be raised in the conservation issues of even the Makhnati fish, are they separate or part of a smaller sub stock instead of the overall stock of Sitka Sound, which the State is presently managing it as one big group.

After our -- the collapse basically, the documented collapse in 2005, we went to the Fish Board and our agreement early on in the MOA was if things don't work, we can go back and revisit it if we need to fine tune it, which, you know, any MOA only works as good as the partners want to work it. We went to the Fish Board and asked for any kind of adjustment to the MOA, to help remedy the problem, the numbers were there and no one denied that we were well under the amount reasonably necessary. We didn't get any response. It was very frustrating. We were told from the Department of Law that they felt that just one year doesn't make a trend so there's no need for any change, and to me that's -- I don't feel like that's really putting subsistence at any stage of priority when that's your response, when you admit that there's a problem but you're not really wanting to change anything, just hoping it will get better on its own and that's basically why we're here.

I could go on and on. I talked about this lots and lots of times but I realize it's been a pretty long day and there's other people that want to talk.

I think the question here is what do we do in this situation, identified Federal waters. To the tribe there certainly is a question as to whether the opportunity that's being provided by the State is reasonable. We've had experiences where on the two problem years where the State said you could go other places, it's not a problem of not having enough fish, but the fish are spawning further away and you could have gone and got your subsistence harvest there, but realistically that wasn't reasonable for subsistence people. The skiffs couldn't go there, the weather conditions were adverse there and the quality of eggs
wouldn't have been any good. So there definitely is the
question in the tribe's mind as to whether the
opportunity being provided is reasonable. With the
present management, without any stronger teeth in our
MOA, at any given year, we could have a failure of the
subsistence fishery. The Department of Law went further
at the Fish Board meeting and said that they felt that
the MOA was doomed to failure because of the lack of --
well, they didn't say because of the lack of teeth in it,
that's me adding that, but that was basically my
perception of what they meant.

And so that being the case, I mean we're
questioning the reasonable opportunity as certainly is a
far stretch from meaningful preference, and I believe
that's something that this Board should take to heart. I
think it's well within your charge to want to manage the
Federal waters that you have under your authority in a
way that really does protect the priority in a meaningful
way and I'm just hoping that this Board would move to act
on that until its own standards of meaningful preference
are met.

I've taken probably enough of your time,
I'll stop there.

CHAIRMAN FLEAGLE: Okay, don't go away,
you may have questions.

Questions, Board members, Judy.

MS. GOTTLIEB: Thank you, Mr. Chairman.
Thanks, Mike. You certainly raised a lot of questions in
my mind. Are you the rep from STA who works with Fish
and Game and the Board of Fisheries on that MOA?

MR. MILLER: Yes, Mr. Chair. I have been
one of the representatives. I actually did -- I did work
on the language of the MOA, I was a representative at
that Fish Board meeting, and I don't know if it's one of
those things where they just picked the dumbest one and
send him there, go get beat up or what, but I have been
representing the tribe for quite some time. We do have
another representative here today, though, so.....

MS. GOTTLIEB: I guess, if I may, one of
the reasons I was asking, in our write up, it says that
the MOA's successful, and so I don't want to put words in
your mouth but what I'm hearing from you is that there is
dissatisfaction from STA about how the MOA is working, or
would you call it successful?

MR. MILLER: Mr. Chair. There are parts of the MOA that are very successful. I mean we brought the State and the tribe together to address issues. I had this same discussion with the fishery manager from Sitka the other day and where it becomes unsuccessful is one party raises questions and the other party doesn't act on them; that the whole thing starts disintegrating at that part of it. It's only as strong as both sides are willing to follow through on what they said and we have several concerns. I didn't want to get specifically into them but there's quite a few things that did go wrong.

But the main thing is when we came in well under the amount reasonably necessary set by the State and the State itself was unwilling to change anything, to me, there's a problem then.

MS. GOTTLIEB: Thanks, Mr. Chair. And so have you, or are you planning to go to the Board of Fisheries to try to raise that ANS and if so when would you anticipate they'd act on that?

MR. MILLER: Mr. Chair. The cycle would be 2009 for the Board of Fish. Our intention was at the last board meeting to go in and raise the amount reasonably necessary but because as we got better in our surveying we felt that we were getting all the harvesters and the number was coming up appropriately with that and so we're in the mid-250 to 300,000 pound range and our intent was to be, at that meeting, asking for a raise to that amount reasonably necessary and then we came in at 75,000 pounds and it just really threw everything out of whack there. And I mean we're hoping to go in and ask for a higher amount but it's yet to be seen for the future harvest in the next couple of years.

MS. GOTTLIEB: Thank you.

CHAIRMAN FLEAGLE: Other Board members. I have Jerry Berg and then I'll call on you Sarah.

MR. BERG: Yeah, I have a couple questions for you Mike. Thanks for coming up from Sitka, I think it's great to have you because you're intimately involved with that fishery, to get your perspective, and I've worked on a couple of other working groups around the state where they get the local people involved, and I
I think that always serves the public in the best interest.

I did have a question about, you guys coordinate with the State basically on a daily basis during the season; is that right?

MR. MILLER: The -- as outlined in the MOA, there is a liaison position, kind of a central point of contact with the tribe and that person's role is to be on call basically and be updated constantly by the Fish and Game as to the status of the fishery and potential openings and provide comment from the tribe on those openings.

MR. BERG: And the MOA's been in place since 2002; is that right?

MR. MILLER: Yes, that's correct.

MR. BERG: And how many times has there been the Fish and Game and the tribe actually disagreed on an opening that was scheduled or suggested by the State?

MR. MILLER: That, Mr. Chairman, we've had one instance and that was in the year that the 75,000 pound harvest occurred, that was 2005. We'd been informed from the Department that after the second fishery occurred in the core areas -- or the third fishery had occurred in the core area of subsistence harvest, and this is commercial fishery mind you, that they were getting ready for the last fishery and that there was no opportunities in other places, the tribe chose to agree with that, unbeknownst to us there actually was a bunch of fish someplace else but it wasn't reported to us or no one knew they were there, whatever the case. Once we found out that we felt the harvest was compromised, they went up into essentially a clean up fishery after that opening. At that point they called for that clean up fishery the tribe did oppose it but there was communication problems as to cell phones and the Fish and Game's line and apparently the Fish and Game manager didn't get the message until after he'd returned from actually the fishery, so the one time that we did oppose the fishery, it didn't affect the fishery.

MR. BERG: Okay. I'm just trying to get a sense -- and approximately how many openings do they have in an average year? I'm just trying to get a sense of how many.
MR. MILLER: It really depends on the quota and processing capacity, so it seems to average in the -- I think 2,500 tons and 3,000 tons per day processing capacity so they usually try to -- it might be a little bit higher than that but they usually try to have an opening based around what that capacity is and the amount of openings is dictated by overall GHL, guideline harvest, which last year was around -- between 10 and 11,000 pounds -- or tons, sorry, and this year is in excess of 11,000 tons. And those are actually the years that we feel are the -- the ones that have probably the greatest potential for damage to the subsistence fishery because you have a large area, I mean you're talking, with that big of biomass of 40 to 80,000 tons of fish running around, you're talking 40 miles to 70 miles of area that's having spawn on it as reported by the Fish and Game. Our proposals have always been just to protect the -- and not even eliminate commercial fishing from it, but to protect the areas that are safely accessible to the skiffs and it's about seven lineal miles. And so actually we're facing that same issue again, where this year it's going to be, at least, probably four openings and our real hope, which we always ask, is that, just don't take everything from the spot that -- which is actually just adjacent and including Makhnati Island waters, please, you know, spread it out, disperse it as best possible. But clearly we've seen that that has room for error in that.

MR. BERG: One more question, Mr. Chair.

CHAIRMAN FLEAGLE: Go ahead.

MR. BERG: So in 2005, do you think if the Makhnati area had been closed during that one opening that you guys disagreed with in 2005, do you think that would have had much of an impact on the subsistence harvest?

MR. MILLER: The -- actually in 2005 the areas in Makhnati weren't opened anyway. The fish, it was -- the areas that were directly adjacent to Makhnati waters were opened but the Makhnati waters, as defined for your purposes, weren't a part of the openings that year. The fish that probably would have been there, I'm sure were amongst the ones that got caught right next to it but not specifically in those waters.

MR. BERG: Thank you.
CHAIRMAN FLEAGLE: Okay, next I have Sarah, and then Denny.

MS. GILBERTSON: Thanks, Mr. Chairman.

Mike, as you and I discussed at the Southeast RAC meeting, this proposal and the concerns and the level, I guess, of frustration on the part of the Sitka Tribe did come as a surprise to Fish and Game because we believed then and continue to believe that the MOA that we have in place is working. And so I guess I have two questions for you.

You mentioned concerns about funding at the time and concerns about this MOA when we spoke in Sitka and my suggestion to you was that you talk to the Commissioner and elevate those concerns within Fish and Game. So first question is, have you elevated those concerns within Fish and Game? And then secondarily, what changes, short of the State of Alaska seating management authority to the tribe, would you suggest go into that MOA?

MR. MILLER: Thanks. So the first question was about contacting the State?

CHAIRMAN FLEAGLE: Have you elevated the concern in the Department up to the Commissioner level?

MR. MILLER: Right. Commissioner Campbell, I did talk directly to him. Obviously that -- we weren't able to follow through on that because he's not there now. In the mean time we have raised the concerns to the local area manager. We asked that they, in an upcoming meeting, send people from Juneau to that meeting. They have indicated that they don't intend to do that, they don't feel it's necessary, and I'm not quite sure -- I haven't asked them why that's the case.

I know the State feels that this was a surprise to them, but I was looking back at the records from the Fish Board meeting and I was the representative in the working group, there was, I think, 17 other commercial interests on that group and I was the lone duck there, but I said in support of Proposal 81, it wasn't the tribe's proposal, but we just had to grab something, I told the Board, very specifically, and if you'd like to go back to the records there it's very clearly written out, that we supported that proposal or anything that will help protect subsistence.
We had, already, the evaluation from the Department of Law that something had to change in the MOU because it would not work. And I said, very clearly, that unless there is some change to help protect subsistence, I cannot go back to Sitka and tell the tribe that the process is working. And that's specifically what I said. And I don't know how to make it more clear that -- nothing changed and so obviously we had to go back and say, in spite of our rather disastrous year we're viewed as it's not enough of an anomaly, just one year, the State says that's okay, and by not acting on it, that's what they're saying, that it's okay. And I went further to say that our only other recourse would be to go, and at least seek some relief at the Federal Board, and that's all in the record from the Ketchikan meeting, the Fish Board meeting.

So I'd have to disagree that it should be that much of a surprise. There's people that weren't there, maybe it's a surprise to them, but somehow or another the message got lost, I guess.

As to the question as to, you know, what the relief is, I -- I think the only thing that we could say is go back to the MOA and look at some of the stronger points that we have in there. The language was something at the Fish Board that we wrestled over quite a bit. There was language early on that said that the Department shall distribute the fishery to protect subsistence. That was fairly controversial. And it ended up being changed to the Department may distribute the fishery to protect subsistence and citing other criteria of quality and quantity and things like that.

Our recommendation last year was that probably there needs to be some kind of strengthening of that and get back away from the Department may, because even the fishery manager himself has said, I've got no direction to do this, it's not mandated that I have to do it, I just do it, you know, as best I can, but it's a tough call for him because he's got all the commercial interests and everyone else telling him you got to do it different, you know, and they're not necessarily -- and rightly so they're looking out for their own interests, but obviously there needs to be some strengthening of the language there to mandate that it has to happen.

So that's basically our response, and we're still trying to work through that, you know. The tribe for a long time had a stand that actually was a
moratorium on that fishery and I didn't think that was the right answer, you know, we're not trying to wipe out, get rid of commercial fishing, we're just hoping that it gets prosecuted in a way that doesn't impact subsistence. And when we're starting to see a pattern of a big fishery displacing a subsistence fishery that's wrong as far as I know, as far as I feel, according to the law, so that's my impression there.

CHAIRMAN FLEAGLE: Sarah, excuse me, go ahead.

MS. GILBERTSON: Thanks. Just a follow up question. It was my understanding that the commercial fishery rarely occurs in the area that this proposal talks about closing and that, in fact, if you did close this area to that commercial fishery, then you have less area to be able to disperse that commercial fishery; is that not true?

MR. MILLER: Mr. Chair. The fishery does move around some, that's correct. Last year the fishery was actually -- one of the fisheries was directly in these waters, the previous year not, this isn't going to fix everything. This isn't going to kill the commercial fishery, it's not going to save the subsistence fishery. But when we're talking to our tribal citizens -- I got in trouble last year because we, early on, when things were looking pretty good with our subsistence fishery we said, well, it's okay to let the commercial fisheries go and not watch them as closely and I had a lot of people that came and said, look, we have these core areas, there's not one of them that's any less important than the other one. These are core areas because they're safe and they provide the eggs that we need. Saying Makhnati Island waters is any less important than the waters right next to it is inaccurate for us and I certainly hope it's not treated as anything less important.

CHAIRMAN FLEAGLE: Okay, thank you.

MR. BSCHOR: Thank you, Mr. Chair. Mike, once again thanks for coming up here for the meeting and appreciate your time.

I'm just curious, as I have studied this issue in preparation for this meeting, in approaching life even, I look at what's the problem, what can we find a problem specifically and are we talking about what the
causes are, are we talking about what the problem is, et
cetera. So in that vein, I'm just curious about a couple
of things. Maybe you can answer this, maybe you can't.

But as we look at the detail of the 2005
harvest of herring roe charted on Page 208, it's going
pretty well from 1997 to 2004 and then 2005 drops
significantly, then 2006 the projections are it's going
to be better, I don't know if that's the case, but I
think that estimate is still in draft form, but it's back
to where it was previous 2005 roe harvest levels were.
Now, when you compare that to the chart in 2010, which is
a chart of herring harvest and herring spawn information,
it appears to me that 2005 was a record year for the
resources there.

So, you know, what would cause that, I
guess I'm looking for the problem again, what would cause
-- in fact you got very little roe when you had that many
herring harvested, and was it a spawning problem, was it
weather, was it some other factor, help me out with that,
please?

MR. MILLER: Right. Mr. Chair, thank
you. Yeah, 2005, you look at that and it really doesn't
make any sense and I think that's getting closer to our
problem there. It was a huge amount of fish, but the
subsistence harvest was very small, the commercial
harvest was great. The subsistence harvest was one of
the lowest, certainly the lowest since we started
recording it. And so all of a sudden you say, well, how
can that be, you know, and I think that's where we start
getting into that whole -- the concept that the
commercial harvest, if it's not properly prosecuted, is
could have a very negative effect.

If you say that -- I've used this kind of
before, the core areas, that the skiffs can go to, and
you have to use skiffs because you got to go get them to
go cut trees down and drag them in the water, and anchor
them out, your near shore areas and your in and out on
the beaches and the areas that are close to Sitka that
are accessible to the skiffs and not having to cross open
areas of water, the areas that are close to Sitka that
are kind of rocky areas, not next to big sand stretches
are preferred areas for the quality of eggs, but when you
look at all these tables together and you say that that's
the entire Sound, what's going on spawning, and when
you're talking seven miles out of 70, those are the
important ones that are essential for subsistence so you
take a couple of these tables and say that that's the area that is the important part for subsistence. In 2005, which actually mirrored 2001, which was our other trouble year, they had a big quota and so out of all those fish, out of all those tables, they took the entire quota from these two, which were the subsistence areas and we had a correspondingly bad year for harvest.

So we feel that the subsistence harvest was compromised because of that directed fishing in its entirety based on all the tables, just all on that one group of fish. Now, in 2001 and 2005 we would get the reports back from the Department, that they'd say, well, over there there's opportunity at Kruzeof, you could have got fish there, that's not reasonable for -- it's impossible for the skiffs. In 2001 we had tribal citizens that went to the Department's office and they said you could go to Goddard, it's only 40 miles away, but it's all exposed water getting there and that's not reasonable.

So the numbers, you know, we're not saying that it's -- that there's just no fish to go around, but in the areas of Makhnati and the areas right next to it, there's, at times, we feel, too much effort there and at least this proposal goes -- again, it's not fixing everything but it's a step in that direction of protecting some of it.

Did I answer your question or was I just off on that.....

MR. BSCHOR: Well, to a certain extent, I think, but I'm just still curious as to what would have helped for to close just the Makhnati area when that's a bigger problem than just in that particular place? Where does Makhnati fit in that whole scheme, you did say that it's one of the core areas.

MR. MILLER: Right.

MR. BSCHOR: Were there eggs in other core areas?

MR. MILLER: There was but just the quality was not -- I mean there's eggs that are scattered all through that but I think you want to keep as much of that core area as possible because on any given year there is some variation, some fluctuation on the quality of eggs and I don't know if it's because of a school that
was intended to go to that area gets caught or whatever
the case, but, again, it's really hard to measure exactly
how much it's going to be because there's enough
variables in there. But, again, I just go back to the --
especially the elders saying that don't ever say that
it's less important than the area right next to it
because we're still looking at a really small area in
comparison to everything that's going on there and,
again, it's not -- we're not saying it's going to fix
everything but it certainly is a step in helping out.

CHAIRMAN PLEAGLE: George.

MR. OVIATT: Hi, Mike, and thanks for
coming up. We appreciated the help you gave us when we
were in Sitka and let us look at the area.

Going back to this 2005, is it my
understanding that the herring spawned but just in
different areas than where you normally subsist that you
couldn't get to or was it a factor of commercial
preventing the herring from coming into the waters that
you normally subsist from? I'm trying to understand
really because the chart on Page 210 shows the spawning
disposition estimates to be double of what a normal year
would be, so I'm just trying to understand what may have
caused this drop in 2005.

MR. MILLER: Okay, in 2005, and I don't
know if you're looking at your charts or not, you'll
notice that there was some spawn in the areas that we
consider, which are right next to Makhnati, that we
consider important and then there was a major spawn that
happened on Kruzeof Island, which is -- it's the opposite
shore, it's exposed, it's sandy, there was a big spawn
there, that's essentially useless to us for harvesting on
branches. It's just not feasible from safety issue and
for quality, it just would not work.

Again, the fish obviously had to have
been a big bunch of fish in our area next to Makhnati
because the commercial fishery caught over 10,000 tons
there. Our contention is that those were the fish that
were going to spawn in that area but they got caught up.
All this time there was a whole 'nother huge biomass at
the other location but for our purposes they were not
fishable. There's debate amongst the commercial industry
if they were fishable for them or not, some people say
definitely they were and others, you know, feel that they
weren't. But, again, my overall analysis of that was
that the subsistence fishery was precluded by the -- or
displaced by the commercial fishery, and that's the same
as what happened -- it was a different area for the big
mass of fish in 2001 but same circumstances, which we
actually are facing again quota-wise this year.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. So I guess
I've heard you say and we really appreciate all the
information that you're providing to us, that you feel
that the commercial boat, industry, displaced the
subsistence fish and, of course, by harvesting then that
takes them out of the spawning pool, so to speak, are
there other impacts from the commercial fishery that you
feel are affecting this area?

MR. MILLER: That one's a little bit more
-- I mean I don't think that they're nearly the impact
that just taking the fish are from, you know, there's --
we have tribal citizens that are worried about fishing in
the -- say like in the Makhnati's, the people that were
going out there last year to look for kelp, we had
reports from our tribal citizens that the opening there
tore up the kelp. And, I, personally didn't check that
out but I was fishing at the time actually so, tearing up
the kelp, but so there's some of those concerns but the
actual, you know, the biggest concern is just the removal
from the fish that appears to be headed to these spawning
areas and that -- I mean if the fish aren't there they
can't spawn there.

CHAIRMAN FLEAGLE: It looks like we're
through with you, Mike, thanks for your testimony.

MR. MILLER: Thank you very much.

CHAIRMAN FLEAGLE: Up next is Jessica
Perkins.

MS. PERKINS: Good afternoon. My name's
Jessica Perkins. I'm the attorney for Sitka Tribe. I
took that position in July of this year, prior to that
time I was the resource protection director for the tribe
and I've been working on the herring issue since 2001 as
a staff person, sometimes supervising the in-season
herring liaison, sometimes supervising the person who's
the traditional foods coordinator for the tribe, who is
technically a high harvester in the fishery.

I think that Mike did a pretty good job explaining the fishery and explaining our current concerns. And I thought it would be really useful, when I've been looking at all this, to highlight, I guess the legal part of what we think is going wrong here. And when the question comes, is the MOU working, well, it works, in that, yes, we communicate with Fish and Game. Yes, they give us a seat at the table. Yes, we get information from them on a daily basis. But it is not ensuring that subsistence is getting the priority when it comes to the herring and the herring eggs in Sitka Sound. And I think that's, to me, the core of the argument, the core of the problem, the reason why we're here.

And, you know, when we are here, I realize that the Federal system has different standards than the State system. Sitka Tribe, you know, under the State system really does not feel that the State is meeting its responsibility to provide a reasonable opportunity for subsistence for herring eggs in Sitka Sound.

And the reasoning behind that is because, you know, in the past six years there were two years where the tribe did not get enough eggs but the commercial fishery got their harvest, they got their quota. And, you know, to me, that's not providing for a subsistence priority.

And under the Federal system, you know, subsistence also gets a priority and my understanding is that it's supposed to be a meaningful preference and under the Federal system, I think that that's what the Board's charged with, is forgetting about all the politics, forgetting about the money involved with the commercial fishery, forgetting about all that other stuff, about how the State and the tribe are getting along, or how we're able to manage what's going on with the commercial fishery, but our subsistence users getting a meaningful preference for herring eggs in the Federal waters. That's the question in my mind about what's going on here with whether the Board should support a closure of the Makhnati Island waters.

You know, the RAC has recommended to the Board that these waters be closed to the commercial fishery and, you know, I understand that you can't just close them to the commercial fishery, that you would be
closing them to what I understand as non-Federally qualified subsistence users. And when the RAC makes a recommendation like that, you know, that recommendation is due deference unless the Board can find one of three things.

They could find that the recommendation of the RAC is not supported by substantial evidence.

You could find that the recommendation of the RAC violates fish and wildlife conservation principles.

Or you could find that the RAC recommendation is detrimental to satisfaction of subsistence needs.

In each of those cases, I don't see where the record shows that the RAC recommendation doesn't meet those criteria. The RAC report lists very clearly what the conservation concerns were that were brought to them. The conservation concerns were, as reported in the RAC report, and I'm sure will be provided when the RAC gives their summary, you know, is that, in Sitka Sound there used to be a year-round herring, herring used to be in Sitka Sound year-round. There used to be spawn in Sitka Sound up to a foot thick. Today, when we do our 2006 herring report, when we do our subsistence monitoring survey with tribal citizens and harvesters we get comments, and the State -- this is one of the things in the MOA that we disagree upon, is that, when the State crunches our surveys they will not process the comments that were received. They won't write them up, they won't put them into the system. They say that they're just -- to the tribe it's important because it's telling us the qualitative information, how do people really feel and the State will only take the quantitative information, how much people are getting and what can we crunch.

So in the 2006 subsistence survey, you know, there's at least 22 comments from subsistence harvesters that speak to either the fact that there's no spawn south of Sitka anymore; where did it go, or that there's a shorter spawn than they can ever remember and that there was no, what they call secondary spawn or just in general that where is the herring, where is the herring and where is the spawn. And I have a copy of the draft report from the 2006 survey which kind of speaks to these things.
And then the second point I wanted to raise about substantial evidence is that there's also substantial evidence in that RAC recommendation regarding how important this is for continued subsistence uses because as you guys all know in order to have a closure, you either need to find that there's a conservation concern, which are the issues I just covered, or that it's necessary for continued subsistence uses.

And under that, you know, vein, you know, historically as Mike pointed out, herring eggs were able to be gathered in lots of locations throughout Southeast Alaska and a lot of those places you can't harvest them anymore. And even in the Sitka Sound fishery there's reports, historical reports, which I find really hard to believe, but it's been recorded, that there are upwards 20,000 subsistence harvest herring eggs harvesters that would harvest the eggs in Sitka Sound. And today if you look at the eggs that are in the Makhnati area, if you look at the subsistence harvest there, you know, I don't see how you can ensure that there's a meaningful preference for the herring eggs in Makhnati unless you close them, unless you close the waters to the commercial fishery because otherwise it's not a meaningful priority. Under the State system where the current regulations require if the Fish and Game manager believes it's necessary to protect subsistence, it requires the manager to disperse the fishery, there's still been times when we don't get our subsistence needs met. And so I think it's very -- there's evidence in the record that's contained in the RAC recommendations that this closure is necessary for continued subsistence uses.

And so I guess, in summary, I read ANILCA to require the Federal Subsistence Board to provide a meaningful preference for subsistence users, and that's not just in ANILCA, it's also the Ninth Circuit's interpretation of what it means in .804 when it says that subsistence users are to be given the priority, the Ninth Circuit says that that means it's a meaningful preference for subsistence users. And what that means is, an actual preference, a real preference. A real preference subsistence users are supposed to be given in the Federal waters.

And, you know, in reading through the InterAgency Staff Committee recommendation, and where they say that the majority report says that the RAC recommendation does not show substantial evidence, and when they say that, there's a lot of discussion about how
the Makhnati Island waters are only a small portion of the fishery, they're only a small portion of the subsistence fishery, they're only a small portion of the commercial fishery, that this isn't going to make a big effect, but the Federal government can't rely on the State to fulfill your ANILCA mandate, I mean that's why we're here. I mean the Federal government has to fulfill its own ANILCA mandate. And ANILCA says a meaningful preference. And so to say, well, the tribe subsistence users, go work it out with the State because that's who your beef is really with, it doesn't address what I understand ANILCA says that this Board is supposed to be doing.

And I don't see any reason for the Board to reject the RAC's recommendation. And, you know, in ANILCA it says you've got to accept it unless you find that there's not substantial evidence, you know, unless you find that it violates fish and wildlife principles, or it's detrimental to the satisfaction of subsistence needs. And I don't see where any of those things have been triggered here. And so I guess on behalf of Sitka Tribe, I urge the Board to accept Proposal 07-18, which would close the Makhnati Island waters to commercial fishery for the months of March and April.

Thank you.

CHAIRMAN FLEAGLE: Thank you, for the testimony. Board members, questions. Judy.

MS. GOTTLIEB: Mr. Chair. Thanks very much for your thoughtful testimony and got me thinking about a few different things but maybe just sort of to go back to the context of the actual subsistence use area.

We heard it's really close to town and so maybe you could just describe -- my understanding is, sure, there are some subsistence users who have big boats and can go where the herring eggs are, but my understanding is and so some clarification from you, that there are -- that the majority of subsistence users have relatively small skiffs and this area then -- I don't know how far it is to run out in a skiff, and that it's accessible because young people, old people can go and continue traditions.

MS. PERKINS: Uh-huh.

MS. GOTTLIEB: Maybe you can just talk a
little bit about the area itself.

MS. PERKINS: Of the Makhnati Island area. It's actually, I mean, you wouldn't necessarily need to have a skiff, I mean you could get there off the road system. I mean it's one of the few areas that you could. Makhnati Island is the area around the Sitka airport. It's the area around the back side, the north side, the south side, it even actually incorporates part of the Sitka airport. And those are the waters that are close to town, they're very close to town and very accessible to anybody, I mean, who would want to be able to lay a branch or their trees or gather kelp without having, maybe some of the bigger rigs that some people do have.

CHAIRMAN FLEAGLE: George.

MR. OVIATT: Thank you, Ms. Perkins, appreciate your testimony.

In your estimation is Makhnati Island one of the major areas for subsistence? How does it compare with where most of the people subsist from?

MS. PERKINS: Mr. Chair. That's actually one of the questions that we'd like to be able to answer but we don't have the data specific to the Makhnati Island area. We know that it is a major area for folks to get kelp, that there's good kelp beds there. And we also know that in 2006, that not as many people actually got kelp, eggs on kelp, according to the survey, and so it shows that only two people harvested from the Makhnati Island waters according to the '06 surveys, but it also showed that we had a significant reduction in the amount of kelp that was gathered this year. And so this was the first year that we had on the survey any type of site specific information about where people were harvesting or what they were harvesting. And we'd like to be able to actually be able to answer that question.

CHAIRMAN FLEAGLE: Are you done, George -- go ahead and continue until you are finished.

MR. OVIATT: Just kind of a follow up. So this is a work in progress is what you're saying, through your studies that you have ongoing through the tribe; is that right?

MS. PERKINS: The annual harvest
monitoring survey is supposed to be a joint project between Fish and Game and the tribe and it is ongoing, we just did add, this last year, the question at the request of the Commercial Fishing Division, that we ask harvesters for site specific information. It's not something that harvesters really want to actually divulge to the public, they don't really want to divulge it to CommFish, they don't really want to divulge it to the State, but we actually, in addition to asking them the information, asked if it was okay if we shared that, and so yes it's a work in progress. And we've talked about trying to get more site specific information about historical and current and harvest in that area so we can have better harvest data for that area.

CHAIRMAN FLEAGLE: Okay. Niles.

MR. CESAR: Yeah, I was wondering about the cystic surface (ph) kelp fishery on Makhnati. The pond right, you know, where the airport is, as you're headed out, it's on the left-hand side, is a big kind of ponding area and I know that they used to gather quite a bit of cystic surface there and I wondered, I thought that that was closed now. That it was either under city control or something, is.....

MS. PERKINS: Are you talking about Whiting Harbor?

MR. CESAR: Yeah, right in the harbor there as you head out, going on the runway headed towards Juneau it's on the left-hand side.

MS. PERKINS: Uh-huh, I don't think it's closed. I know that there is a commercial oyster farm in there. But besides that, I don't think that there's any other -- I think that it's open for folks to get eggs on kelp.

MR. CESAR: Oh, really, well, I'll be there.

(Laughter)

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I guess give one key difference between the way the fishery's operated now is,
the focus is on the harvest and how much is taken, but in
terms of what ANILCA provides for, it's that opportunity
to go out, and whether there's a harvest or not, we don't
make any guarantees on harvest of course. So maybe to
ask George's question in a different way, how important
is this area to subsistence users in terms of opportunity
for subsistence use.

MS. PERKINS: I think that's a hard
question to answer. I think, you know, Mr. Oviatt's
question was almost, you know, probably equally as hard.
And I think it's a personal kind of thing and even when
we do the harvest monitoring survey, you know, we know we
don't talk to every harvester. I mean I know we're not
getting information from every single person that goes
out and gets eggs and so, you know, as far as the area
that the core subsistence area or the core subsistence
zone, the herring committee has spent a lot of time
trying to define that and, you know, what is the most
important area for the subsistence harvester, and
Makhnati's in there. I mean it's part -- it's the
characteristics of the place. It's the, you know, can
you get there, does it have the right kind of shoreline,
you know, do the herring usually spawn there, those types
of things.

CHAIRMAN FLEAGLE: Jerry.

MR. BERG: Thank you, Mr. Chair. Thanks,
Jessica, for coming up to help us work through this
issue.

Yeah, I'm just trying to get a hold of,
you know, how a blanket closure is going to help the
situation when it sounds like, you know, according to
Mike there was that just one closure that -- or there was
one opening, I guess, that the tribe disagreed with and
then that opening was really in another area, so for the
most part it sounds like the tribe agrees with most of
the commercial openings that have occurred for, it sounds
like, you know, maybe 90 percent of them and, so, you
know, to just have a blanket closure when the tribe does
agree for the most part, I'm just trying to come to terms
with, you know, how that's going to all of a sudden solve
the subsistence harvest situation there.

MS. PERKINS: I think that's a good
question. And I guess when you ask it, what I think of
is a question, unfortunately, but I can't figure out
another way to ensure that there's a meaningful
preference for subsistence users in those waters without
a closure. And the reason why I say that is because the
commercial fishery happens very rapidly and it happens
directly in front of when the subsistence fishery
happens. And so if Fish and Game says on Thursday, do
you mind if we make this opening here, today, and we're
not even going to lay our branches until the following
Thursday, it's hard to say no because we don't know. And
so, to me, you know, that's not my own quest -- I mean
it's almost unanswerable or it's only answerable with a
question because I don't know how else you can ensure
that there's an actual subsistence priority on those
waters.

CHAIRMAN FLEAGLE: All right, it looks
like we're through with your questions, thank you for
your testimony. And Board members we got one more person
that wishes to testify before us, I'll allow that last
testimony with a question period and then we'll break for
the evening. And with that I'm going to go ahead and
call up Chip Treinen.

MR. TREINEN: Thank you, Mr. Chairman and
members of the Subsistence Board. Appreciate the
opportunity to testify here. I'm testifying on behalf of
the Sitka Herring Association, it's a trade group of
commercial herring, seine permit holders for Southeast
Alaska, Sitka is the only area that's presently open for
seine harvesting. There are 51 permits in that fishery.
And it's a seine fishery and they have -- and so, you
know, it's larger vessels, have larger crews, and there
are all kind of support vessels that are used, tenders,
small skiffs that hold up corks and help out during the
fishery.

And a lot of the -- some of the permit
holders live outside of the Southeast Alaska area. The
majority live in the Southeast area. I'm, as a permit
holder myself, I'm the only one who lives here in
Anchorage, most are from -- there's a few -- a
concentration of permit holders from the Puget Sound area
who are outside of Alaska, and there's a few from Homer,
a few from Kodiak, but primarily they're Southeast
people, and a lot of them are subsistence users. A lot
of the permit holders as well as their crews.

So the point is as commercial fishermen,
we generally don't have any interest in compromising the
subsistence harvest ability -- users in that fishery.
I'd like to just point out that in looking at the majority recommendation, I think that there were some people that realized there that there isn't -- trying to act on this proposal to restrict a small area in effect limits the flexibility to accommodate the needs of subsistence users. So I'm just -- I kind of have difficulty in understanding the world that's represented at times because it seems like closing that specific small area doesn't really do anything to support or assure that subsistence needs are met.

To, I guess, reiterate some of the statements that have been made about the fishery, it occurs quickly and needs to occur quickly because of the way that the product that we're trying to get -- is a roe from the fish, that's close to -- that's ripe and within a few days of when the fish will actually spawn, so, of course, it's prior to when they actually start spawning, but it's critical to get them at the right time.

I've fished in that fishery, have owned a permit since 1994 or '95, I can't remember exactly which one, and we don't always get fish in the prime. I remember two out of those years that I fished, we've missed the bulk of the fish and had to fish a less desirable product. So what I'm trying to point out here is it's important for the managers to have flexibility to allow the harvest of those fish for our commercial purposes, and to allow that to occur in -- as flexible of a way as possible so that we can take the fish and get out.

I'd like to point out and -- also point out that this is a resource that has generally been increasing over the years, certainly over the years that I've been in the fishery, and I'm having a hard time figuring out why the commercial fishery is blamed for reduced subsistence harvest when there's an increasing number of -- increasing biomass of fish that's there.

So I think that as a commercial fisherman, I'm interested in allowing the Department of Fish and Game to have the most flexibility they can to accommodate the MOU and be able to provide for subsistence uses and I think that restricting one area that's only marginally useful -- or marginally preferred for subsistence uses, I think is -- doesn't really accomplish a goal that the subsistence people claim to have.
I've worked a lot in trying to figure out just what it is that the Sitka Tribe is asking for when they want to change the MOU but I guess I'm -- after spending quite a bit of time at a Board of Fish meeting last fall, I'm not really sure what changes they actually want and I haven't been able to get a clear picture of what that might be.

I guess I'm going to conclude by saying I agree with the majority recommendation of the InterAgency Staff Committee in saying that they oppose FP07-18. I think that it will do little to improve the prospects for subsistence users, if there is a problem at all. I'm not sure what that problem is, there have been a few years where they claim not to have gotten their full amount, but those are years where fish may not have spawned in the areas that they expected them to spawn in and, you know, that's a fact of herring behavior. Sometimes they spawn in the places you expect, sometimes they don't, and, you know, they move, they're not -- they don't come back to the same barn every night like milk cows or anything. They're going to go where they want to go and it's not clear how they make that determination.

So thank you, Mr. Chairman and Members of the Board.

CHAIRMAN FLEAGLE: Okay, thanks for your comments. Questions members.

(No comments)

CHAIRMAN FLEAGLE: None. No, okay, we got Denny, go ahead.

MR. BSCHOR: Yeah, I'm curious again I'll ask the same question of you from your perspective. What do you think happened in 2005?

MR. TREINEN: In 2005 there was very strong spawning activity in some of the areas that were a little farther away from the town of Sitka and in the area very close to Sitka where I have most often seen the subsistence activity, there wasn't as much spawning, you know, that was what the -- the herring went to a different location. In some of the locations where they did spawn it was -- you know, they were -- and had very thick spawn and very concentrated activity. I mean and it's borne out by Fish and Game surveys as well.
CHAIRMAN FLEAGLE: I have one question.

Staff may be able to answer it but I'll ask you since you're familiar with your fleet.

That does appear to be a really small area, oh, let's say a mile square, roughly, how much fishing -- how much of the fleet does fish in that area when they are fishing?

MR. TREINEN: If that area was open by Fish and Game it would be 100 percent of the fleet that would fish there and that is the case on last year -- we did have one opening out of three -- three openings, essentially three major openings, we had one of those openings that was conducted in that area and, yes, the fleet fished there and, you know, when -- and it was a restricted area and that's -- whatever's open is where the fleet's going to be.

CHAIRMAN FLEAGLE: Thank you. George.

MR. OVIATT: Chip, is that right?

MR. TREINEN: Yeah.

MR. OVIATT: In 2005, where did you do most of your commercial fishing?

MR. TREINEN: Where it was open. I mean the -- I -- if I recall right we had -- it was -- in contrast to 200 -- the previous year we did most of our fishing near the road system, if that -- and that is typically closer to the areas that are used for subsistence or at least that I observed being used for subsistence. In contrast in 2004 the fish showed up in areas away from the road system and where the fish are is where we need to fish otherwise you can't catch them. I'm sorry. And I only fish where it's open and that's what Fish and Game needs to have flexibility to determine where those openings are because the fish show up in different places in different years.

MR. OVIATT: Just a follow up question. Was 2005 a successful commercial fishing for you guys, was it a good year?

MR. TREINEN: I guess you can look at a number of different factors for a good year, one is market price, and then I guess there's no control over that that anyone here would have. I believe the quota
was 10,000 tons or something and that's a relative -- any
time it gets over 10,000 tons that's a significant amount
to catch and it's also a limiting factor, in that -- in
being able to conduct a successful fishery is the
processing capacity. You can't process all of that fish
in a one day opening window. So it has to take place
over a period of time and there's a limited period of
time when those fish -- when the main body of fish would
be in prime condition and the most marketable.

CHAIRMAN FLEAGLE: Go ahead, Judy.

MS. GOTTLIEB: Thank you. And I think
especially -- I mean some of your comments about, well,
you need to go where the fish are and sometimes there had
been high biomass and the commercial fleet was able to
use that. I guess, again, my understanding is if
subsistence users are in smaller skiffs it's not as easy
to get to some of the areas where the herring might be,
so that may be reflected in what their take is.

But I guess I wanted to ask you in
response to Mike's question, if all of the fleet goes to
this particular area if it's open, if the herring are
there, how do you navigate through smaller boats that may
be there at the same time, how does that all work, if
subsistence users are there at the same time?

MR. TREINEN: Well, I guess most of the
fishermen, all of the fishermen there are adept at
navigating through crowded areas. In a seine operation
you've got your own -- you know, the bigger boat and then
a seine skiff that -- I mean you have to be adept at
getting through there and I mean I guess the subsistence
fishermen aren't necessarily in their skiffs during an
opening in the place where it would be opening. If
there's -- in fact, I guess when there is a lot of
subsistence activity, it's pretty typical that Fish and
Game would not be opening that area so there generally is
not a conflict. The people who are supporting that
commercial fishery generally have enough understanding of
what's going on so that they stay away until the fleet
has -- until nets have been set and the initial scramble
is over, and that can be pretty exciting when the gun
goes off and there's a lot of black smoke and, you know,
half a million dollar, million dollar vessels playing
bumper boats, so it can get -- it's pretty exciting at
times.
CHAIRMAN FLEAGLE: Yeah, just one more question from me and I'm not a herring fisherman so I apologize if I ask stupid questions about how it's done, where it's done, that sort of thing, but as you look at -- if you get a chance to look at the map on Page 202 of the actual are, and what I'm curious about is, if we had a permanent closure there and the fish did show up there, would you still harvest fish outside of that area and how close to that would you be, can you fish that reasonably or do you have to be in places like Whiting Harbor to be successful in harvesting the herring?

MR. TREINEN: Clearly, I think the fishery would be able to harvest the quota without ever going into Whiting Harbor. But Whiting Harbor is a reasonable option at times for harvesting those fish. And if you don't harvest them in Whiting Harbor you might go somewhere else that may be more -- you know, in order to get that quota that's available and conservatively managed by Fish and Game, you might have to go somewhere else that compromises the subsistence fishery, more favorable subsistence areas, so, you know, what that accomplishes, closing that area, doesn't appear to me to really compromise my ability to harvest the fish but it might be more likely to compromise the subsistence fishery that does occur.

Certainly I'd prefer to allow Fish and Game managers to have maximum amount of flexibility so that we can take our fish in at the most marketable time and giving us the highest value.

CHAIRMAN FLEAGLE: Okay, it looks like we're done with questions for you, appreciate your testimony.

Thank you.

MR. TREINEN: Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: And with that the Board will recess until 8:30 tomorrow morning, same location.

(Off record)

(PROCEEDINGS TO BE CONTINUED)
CERTIFICATE

UNITED STATES OF AMERICA

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 153 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME I taken electronically by Nathan Hile on the 9th day of January 2007, beginning at the hour of 8:30 o'clock a.m. at the Egan Convention Center 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 16th day of January 2007.

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