MEMBERS PRESENT:

Mike Fleagle, Chair
Thomas Melius, U.S. Fish and Wildlife Service
Thomas Lonnie, Bureau of Land Management
Marsha Blaszak, National Park Service
Denny Bschor, U.S. Forest Service
Niles Cesar, Bureau of Indian Affairs
Ralph Lohse - Southcentral RAC
Randy Alvarez - Bristol Bay RAC
Bertrand Adams - Southeast RAC
Virgil Umphenour - Eastern Interior RAC
Victor Karmun - Northwest Arctic RAC
Robert Aloysius - Yukon-Kuskokwim Delta RAC
Jack Reakoff - Western Interior RAC
Commissioner Denby Lloyd, State of Alaska
Representative
Keith Goltz, Solicitor's Office

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CHAIRMAN FLEAGLE: Good morning. The Federal Subsistence Board reconvenes on Day 2. Today is the 12th of December, downtown Anchorage. And before we resume deliberations on proposals, we need to go through a couple of other public comment periods.

But first, before we go there, I just want to welcome everybody back. Thank you for being here. Thanks. Good to see you, Jack. Welcome. We had a lively discussion with your other representative yesterday, and also we have Virgil at the table. Good to see you, Virgil. But I'll give you guys an opportunity to say good morning in a minute.

I just wanted to ask Pete if there's any announcement before we proceed.

MR. PROBASCO: No, Mr. Chair. I think the only announcement we have is that you and I agreed based on Commissioner Lloyd's request that we'll reevaluate where we're at right before lunch, and may or may not make an adjustment to our agenda based on where we're at.

CHAIRMAN FLEAGLE: Right. Thanks. All right. With that, I'd like to turn it over to our Advisory Council Chairs that have joined us.

Jack, would you like to say a few comments.

MR. REAKOFF: Thank you, Mr. Chairman. This is Jack Reakoff. I'm Western Interior Chair. Sorry I'm late to the meeting. And I'm very anxious to enter into the discussions here at -- on our agenda items and see how the motor is working. So appreciate all your hard work here, and looking forward to a good meeting. Thank you.

CHAIRMAN FLEAGLE: Thank you, Jack, and welcome. Virgil, would you like to say a few comments?

MR. UMPHENOUR: Well, not much for me to say. I showed up late yesterday. My name is Virgil
Umphenour. I'm from the Eastern Interior RAC. I'm the vice chair. Our Chair, Sue Entsminger, was here yesterday, and she's at the Big Game Commercial Services Board meeting right now. Thank you.

CHAIRMAN FLEAGLE: Thank you, Virgil. Welcome. With that we go to public comment period on non-agenda items. Oh, just a second, let me back up.

Other Council Chairs.

Ralph.

MR. LOHSE: Mr. Chair. I'm sorry to have to ask that I be excused from about 9:00 o'clock until noon today. I have a prior doctor appointment that I couldn't reschedule. And it looks like the Southcentral will possibly come up during that time.

If it's at all possible and the people in the audience that with to testify would agree to it, I would request that you would put it off until I be back at 1:00 o'clock.

If that's not possible, I'd like to bring to the Board's attention that Southcentral supported both of those proposals, but we had no consensus on it. It was a majority of 1. And I think you're going to have some work ahead of you on coming up with something to meet the needs of those two proposals. And I would like to be here for it, but if I can't, I'll turn it over to you guys.

CHAIRMAN FLEAGLE: Okay, Ralph. Thanks for that heads up, and certainly a doctor's appointment is very important and we understand, and we'll see where we're at after we complete this proposal 18 and if the time looks good to shift some other regions around, we may try to accommodate that. We'd certainly want to have all the discussions and masterminds available. So thanks for that.

Other Council Chairs, opening comments.

(No comments)

CHAIRMAN FLEAGLE: All right. Hearing none, we'd now go to public testimony on non-agenda items. And again this is not specific to the agenda. This opportunity is provided each morning before we start the other portion of the Board meeting. And do we have any comments, Pete?
We do have two, and the first person is Don Brenner [sic].

Mr. Bremner.

Mr. Probasco: Bremner. Excuse me.

Chairman Fleagle: Don Bremner. Good morning.

Mr. Bremner: Mr. Chairman and members of the Board. Good morning. My name is Don Bremner. I'm the natural resource coordinator for the Southeast Alaska Intertribal Fish and Wildlife Commission. I want to take a few minutes to comment on why we're here as a Federal Subsistence Board and as members of tribes.

We're here -- as Natives, we're here to preserve our rights to practice our Native way of life on paper. The western world calls it subsistence, but in Tlingit we say, Haa Atxaayi Haa Kusteeyix Sittee, our food is our Tlingit way of life. This is what we're doing here.

Look at some of our own history and your history. In 1899 George Grinnell with the Harriman Expedition, he went to Yakutat. And when he saw my ancestors, this is what he said. The changing seasons give them their seal, their salmon, their berries, their fish, their fowl, and their deer. He says, they fish, they hunt, they feast and they dance. This is our culture. This is our way of life. This is what we're doing here.

He went on to say that these dwellers along the coast depend on their subsistence wholly on their exertions and draw their food wholly from the sea. We're still doing that. That was 108 years ago when he said that. We're still doing this.

It was written about the Harriman Expedition, they chronicles an Alaska on the cusp of the inevitable, and in some instances, devastating change to the environment. What he didn't write there was that the Alaska Native people are part of that environment being affected by that devastating change. That's why we're here. We didn't ask for that devastating change. We're still here trying to protect
our way of life.

Haa Atxaayi has always been our core value of our existence. Our Native food, land, culture, customs, and traditions and language has defined us. We can't change that, and it can't be taken from us.

Our Tlingit history and relationship to our way of life is understood to be from time immemorial. You've heard our elders say that. It's just not something we dreamt up yesterday.

We know how hard our ancestors worked to preserve our way of life, and we honor our ancestors and promise to ourselves we'll continue to value this inheritance. It's not viewed by us as some kind of law, rule, a policy or a permit. Our Tlingit world is firmly established, our Tlingit being isn't optional. We can't go home after you're done deliberating here if you deprive us of our right to subsistence.

Our ancestors and our people have always told western governments that subsistence as you know it, it's a matter of survival. You hear it at every AFN convention. It's a matter of survival.

And now look, the State of Alaska and special interest groups have been and continue to be reluctant to recognize the importance of our Haa Atxaayi way of life. And we fight every day to preserve this way of life. If you look in the room here, not all of our native people could afford to come here to be here. To the State of Alaska and many others, our subsistence way of life has become a political and legal issue in a western sense. Now to the point where Congress has intervened to protect Native subsistence in Alaska. And the role of this Federal Subsistence Board is to carry out that intervention and Congressional mandate.

Congress recognized that when Native subsistence is subject to Alaska laws, it isn't secure. Congress worked to entrench Native subsistence rights so they could not be placed in jeopardy by any future State action. ANILCA of 1980 is that entrenchment tool. That's the law. We're stuck with even as Natives to trying to follow the law.

The State has tried numerous schemes to
implement subsistence in Alaska, filed numerous lawsuits to prevent Native subsistence, but they all failed. They failed because they do not meet the Congressional mandate. And they spend time trying to define our subsistence eligibility based on rural/urban determinations. And that's just not us. It's not Native. It's just a reflection of the State trying to expand state's rights outside of that Congressional mandate.

Congress took measures to protect our way of life and that's this Board's job.

I'll close by saying as my ancestors have said, Haa Atxaayi Haa Kusteeyix Sittee, our food is our Tlingit way of life. This is not just my reality and my world, but it's all of my clansmen and tribesmen. All of Alaska Natives. This is our reality. It's not just on paper. And that's why we're here.

So I want to thank you for letting me remind us as managers and as a user group, this is why we're here.

And I'll close by what my elders usually say during this kind of deliberation or in times of challenge. They always say, Yi gu.aa yax X'wan, courage to you all. Courage to you all. We know it's not easy, but we're here to try to preserve and protect our rights.

So, Mr. Chairman, thank you.

CHAIRMAN FLEAGLE: Appreciate those comments, Don. Thank you.

Pete, who do we have next.

MR. PROBASCO: Mr. Chair. We have one more individual. Merle Hawkins.

CHAIRMAN FLEAGLE: Good morning, Merle.

MS. HAWKINS: Good morning. Merle Hawkins, Ketchikan Indian Community. I'm also a member of the Southeast RAC Committee.

I wanted to discuss Ketchikan's -- Ketchikan Indian Community's request for
reconsideration to classify Ketchikan area as non-rural, and hopefully get an idea of when that decision will be made or where that is at.

In reading the request for reconsideration, I think my feeling about the decision that was made, a lot of the information that we provided I don't think was taken into consideration. And I think the Board failed to accord deference to the recommendation of the Southeast Regional Advisory Council and failed to provide written findings to the Southeast RAC in a timely fashion. The Southeast RAC's recommendations were based on facts as presented by overwhelming testimony and recent subsistence harvest data. There was new and relevant information presented regarding the use of fish and wildlife. It was unclear what information the Board was actually using to make their findings.

Because Ketchikan has historically been designated as an urban community, it's inappropriate to compare harvest levels in Ketchikan to that of rural areas. Subsistence use in Ketchikan has been increasing in response to the harder economic times. In a 2000 survey, the Alaska Department of Fish and Game estimated that 33 pounds of salmon and deer were used, but in the survey that KIC did with funding from the BIA, that was in 2006, we got that number up to 73 pounds. That was a community-wide survey of both Native and non-Native.

Also KIC strongly supports Saxman's position that the Board erred in putting Saxman and Ketchikan together. Saxman has always been a separate community. It's kind of like the situation with Ketchikan. Ketchikan originally was a Tlingit fish camp, and the community has just grown around them. And it's the same situation that Saxman's in. And both of those are beyond our control.

In regards to the development and diversity of the economy, I think the Board failed to properly consider the change in economic conditions in Ketchikan. Ketchikan was once a center for industrial logging. After the closure of the Ketchikan pulp mill, that was a direct loss of 516 jobs that were high-paying jobs year round and with benefits. A lot of those people that once worked in tourism (sic) are now bus drivers for tourism or started their own tour businesses, but those jobs are just seasonal and they
don't pay as well. And also the majority of people that work in tourism just come there for the summer, for five months, and then they take all their profits and leave the community. So a majority of the tourism jobs don't benefit us.

I myself work in tourism for 11 seasons now, and there's very few people -- because I'm single and don't have any children, I'm able to make about $10,000 in tourism, and then supplement my income through working for the tribe and other things that I pick up, but not many people can work in tourism and make a living.

The Board's findings point to fishing as a support of a healthy economy in Ketchikan. I don't believe that's true, because of the farmed salmon that we must now compete with. The declines in salmon prices have seriously hurt the local fishermen.

Also unemployment has been a major problem with Ketchikan residents. In January 2007 United Way of Southeast Alaska released the Ketchikan/Saxman Compass two community building assessment. It took into account the Ketchikan Gateway Borough and it was to identify issues that are important to the community. Among the themes identified was the fact that Ketchikan has an economic identity crisis, and that a diverse year-round economy is needed in order to thrive and resolve many of its social ills. Poverty remains a root cause of many community problems.

As far as transportation goes, the Board failed to truly consider that despite the existing small road system, Ketchikan has limited transportation options and most importantly the road system does not connect to any other communities. Access in and out of Ketchikan, you have to go by ferry, plane, or private boat, and that includes bringing any of our food in and out of Ketchikan. We do have daily jet service, but it takes five hours to get up here from Ketchikan, so that's an all day ordeal to get to Anchorage and an hour and almost two hours to get to.....

CHAIRMAN FLEAGLE: I'm sorry. I did that. I was going to ask you to -- if you could just please summarize.....
MS. HAWKINS: Okay. Sure.

CHAIRMAN FLEAGLE: .....where you're
at. We have time constraints, please. Thanks.

MS. HAWKINS: Yeah. I think the main
concern is I think that the Board's actions were
arbitrary in the application of the rural criteria and
was not being uniformly applied to communities across
Alaska. If you look at Kodiak and Ketchikan side-by-
side, they're almost identical in all the criteria,
except for Ketchikan might have a few hundred more
people in population, but also in Kodiak they did not
take into consideration the Coast Guard base, whereas
in the population for Ketchikan they added in Saxman,
which was over 400 people.

So I hope the Board seriously looks at
our reconsideration and takes all those details into
heart when they make their decision. And if you have
any information on when that might happen, that would
help.

Thank you.

CHAIRMAN FLEAGLE: Thank you.

Appreciate the comments. The Board is not going to
deliberate the request for reconsideration at this
meeting, but the process questions I think we can
certainly answer. Pete or Larry. Larry.

MR. BUKLIS: Thank you, Mr. Chairman.
Yes, the Federal Subsistence Board received six
requests for reconsideration regarding your rural/non-
rural review process. And I'm leading a team of Staff
that are conducting the threshold analyses of those
requests. We prioritized working on the 10 fisheries
RFRs we had received, and there was also three wildlife
RFRs we had received. So those 13 RFRs are in various
stages of completion, but the six rural are next to be
addressed by the team I'm speaking of that I'm leading.
And we are working to have threshold analysis
assessments for the Board's review in the new year. I
can't give you an exact time frame for when that work
will be completed. But it is in progress.

Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Larry.
And the information that she was presenting here is
available in what you're working with?

MR. BUKLIS: Yes, Mr. Chairman. What I was hearing reported is familiar to me from the request for reconsideration.

CHAIRMAN FLEAGLE: Okay. Appreciate that. Thank you. Thank you for your comments. Would you go ahead and turn the microphone off, please.

MS. HAWKINS: Yes.

CHAIRMAN FLEAGLE: Thanks. Pete.

MR. PROBASCO: Mr. Chair. That concludes the people that have signed up for this portion of the public testimony prior to getting into the proposals.

CHAIRMAN FLEAGLE: All right. Thank you. And we do have one more public comment period on the consensus agenda items, including both the Fisheries Resource Monitoring Plan and Subpart B and C proposals, which I believe there were three proposals, 01, 03 and 06. Do we have any comments on that portion of the meeting?

MR. PROBASCO: No, Mr. Chair. We took care of the Resource Monitoring, so all we have left is the subpart C and D regulations consensus agenda. That's all that remains.

CHAIRMAN FLEAGLE: Thank you. Okay. With that, we will now move back into the deliberative portion of the meeting. And we're moving on to Proposal 08-18. And for the Staff analysis we turn to -- is this Terry? Good morning.

MR. SUMINSKI: Good morning. I'm Terry Suminski, a fisheries biologist with the U.S. Fish and Wildlife Service in Sitka.


Proposal FP08-18 is the result of the Federal Subsistence Board deferring action on their January 2007 meeting on Proposal FP07-18 which was submitted by the Southeast Subsistence Regional
Advisory Council. The Board took no action on an identical proposal, FP07-19, which was submitted by the Sitka Tribe of Alaska.

Both proposals asked to close the Federal public waters in the Makhnati Island area near Sitka. You can find maps 1 and 2 on Pages 248 and 249. This was a closure to commercial herring fishery fishing during the months of March and April.

The Board also directed Staff to work with the Council to form a subcommittee to study the situation and report their findings to the Board at this meeting.

The Council believes that a regulatory change is needed to insure that subsistence needs for herring and herring roe are met. The proponent feels commercial fishing activities displace subsistence users from traditional harvest sites, and may disrupt herring spawning such that good quality deposition of herring does not take place on traditional sites, and may cause herring to spawn away from subsistence sites, and may also seriously reduce the biomass of spawning herring upon which subsistence users depend.

The proponent stated that excluding this area from commercial fishing would provide a refuge for herring in Sitka Sound, which would increase the number of herring produced in this area, and ultimately increase the population of herring within Sitka Sound.

Subsistence users in the area would be protected from competition from commercial activities both for herring, and space to conduct harvest activities.

The existing Federal regulations, all rural residents of Alaska are eligible to harvest herring, herring roe on Macrocystis 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 the Sitka Sound. They also make up a small but important part of the subsistence herring -- of where subsistence herring eggs are gathered.
Evaluating the effect of a closure in a small area of Federal public waters is extremely difficult due to the large yearly fluctuations and the intensity and location of herring spawning activity in Sitka Sound. Some areas are more consistent than others, but spawn is not guaranteed in every year -- every area every year. Spawn and subsistence harvest occur in most years within the Federal public waters, but there's no way to know how much of the harvest comes from only Federal public waters.

The traditional harvest of eggs in substrates is affected by many natural factors such as weather, where and when and how much the herring spawn. Subsistence users are allowed to harvest herring and herring eggs anywhere in Sitka Sound.

The area from the commercial -- or, I'm sorry, the area where the commercial sac roe herring fishery occurs also varies widely from year to hear. From 1992 to 2007, the Federal public waters near Makhnati Island have made up a part of the areas open to commercial sac roe herring fishery 6 out of 16 years. No commercial herring harvest occurred in Federal public waters in 2007.

In 2002 a memorandum of agreement was signed between the Sitka Tribe and the Alaska Department of Fish and Game in response to poor spawn harvest in 2001. Since the agreement was signed, amounts necessary for subsistence as determined by the Alaska Board of Fisheries were met in 2003, 2004 and 2006, but not in 2005, and it looks like probably not in 2007.

A Federal closure of a fishery may only be exercised when it is necessary to conserve fish stocks or to continue subsistence uses. In most years subsistence needs for herring spawn and subsistence -- or substrates have been met. In years when subsistence needs were met, a permanent closure in regulation would not have been necessary. In the years when the subsistence needs were met, it is unclear is a closure to commercial fishing in public waters would have made a difference in the success of the subsistence fishery.

The OSM preliminary -- or the OSM conclusion is to oppose Proposal FP08-18. This is the original proposal for an outright closure, a permanent closure.
Then during their meeting in Haines on September 25th, the Council received the subcommittee report and accepted it as their own. The Council used the recommendations in the report to formulate regulatory recommendations, along with some non-regulatory recommendations.

And a summary of that report can be found on Page 268 of your books. And Mr. Adams will present that report in his testimony.

So, thank you.

CHAIRMAN FLEAGLE: Thank you, Terry.

Summary of written public comments. Robert.

MR. LARSON: Yeah. Mr. Chairman. We have four written public comments. You'll note in your Board book that there's listed at none, but subsequent to the formulation of the book we've had four. One in support and three in opposition.

The letter in support is from the Sitka Tribe of Alaska. It's a Federally-recognized tribe, tribal government based in Sitka. This organization supports a 40,000-ton threshold for Makhnati Islands. A summary of their written statements. The Sitka Tribe of Alaska has changed their position and does not support a complete closure of the Makhnati Islands as written in the original proposal. Their current recommendation is to adopt a regulation that closes the Makhnati Islands when the Sitka Sound spawning biomass falls below 40,000 tons. The Sitka Tribe also recommends that the Federal Subsistence Program become a signatory to a memorandum of agreement with the tribe and the Alaska Department of Fish and Game regarding management of herring in Sitka Sound.

The Sitka Herring Association is a trade organization representing the interests of the commercial sac roe herring seine permit holders for Southeast Alaska. That organization submitted a letter in opposition to
Proposal FP08-18.

A summary of their document is that the Federal public waters around Makhnati Island provides a very minimal portion of the subsistence harvest, and is likely to provide substandard product when used. The closure due to -- is due to a subjective spawning aggregation threshold as presented in this latest RAC-approved proposal. That number is arbitrary and capricious. The Sitka Herring Association requests that the Federal Subsistence Board rule against Proposal FP08-18, maintaining the State of Alaska's management control over Federal waters of the Makhnati Island complex, providing for flexible commercial fishing management strategies that best preserve options for meeting subsistence needs.

The United Fishermen of Alaska is a trade organization made up of 36 Alaska commercial fishing organizations as well as individual members who collectively represent commercial fishing interests throughout the state. That organization is opposed to Proposal FP08-18 as well.

The United Fishermen of Alaska is aware of ANILCA mandates for protection of Federally-qualified subsistence users. They are concerned that Proposal FP08-18 regarding potential closer of Federal waters near Makhnati Islands in Sitka Sound to commercial herring fishing in March does little or nothing to protect subsistence users while potentially closing historically fished commercial areas.

A more recent version of Makhnati Island proposal approved by the Southeast Alaska Subsistence Regional Advisory Council goes further in restricting State management by establishing an arbitrary 35,000-ton
threshold for closure of the Federal waters around Makhnati Island as well as participation as -- in in-season management decision-making for the entire Sitka Sound herring fishery. While the above referenced RAC proposal clearly exceeds Federal authority by imposing constraints to State management of State waters, they're also recommending actions that are marginally, if not at all, useful in fulfilling ANILCA mandates in Federal waters.

And finally we have a letter from Mr. Ron Porter. Mr. Ron Porter is a Southeast Alaska purse seine commercial fisherman. He speaks in opposition to Proposal FP08-18.

Mr. Porter believes the proposal does nothing to address valid issues relating to subsistence use. The original proposal called for complete closure of the Makhnati Island group. It did not meet the standards for closure set forth by ANILCA. The new proposal is just a way of getting around the intent of that rule. There's no evidence that harvesting causes depletion of local herring stocks, since herring do not home to one beach or area as salmon do, nor can you infer that fishing for herring causes the fish to come and go from a particular beach or shoreline. The area we are talking about is in the middle of a major spawning area.

That completes the summary of written comments.

CHAIRMAN FLEAGLE: Thank you, Robert.

We now go to public testimony, and, Pete, do we have people wanting to testify on this issue?

MR. PROBASCO: Yes, Mr. Chair. Right now I have a total of seven individuals, and I shuffled them, and the first person up is Jessica Perkins.

CHAIRMAN FLEAGLE: Okay. Thank you. Jessica, would you please come forward, and push the button on the microphone to turn it on.
And I would ask that people testifying try to confine their comments to within five minutes.
Thank you.

MS. PERKINS: Good morning. My name is Jessica Perkins. I'm an attorney. I work for Sitka Tribe of Alaska in Sitka. I've been fortunate in going first.

I guess I just wanted to start out with that the Federal Subsistence Board closure policy points that proposed closures of Federal public lands and waters will be analyzed to determine whether such restrictions are necessary to provide a meaningful preference for qualified subsistence users. And under the closure policy there were several different types of things that the Board can look to to figure out if it is in fact necessary to provide for meaningful subsistence preference.

The current State management plan is pretty complex. The State has taken some efforts to enact regulations to protect subsistence. We have entered into a memorandum of agreement which was referred to this morning, as well as is in your materials. This -- the tribe has worked really hard to work with the State on this issue, and the current regulations, you know, set an amount reasonably necessary for subsistence at 105,000 to 158,000 pounds per year. And they require the State fish and game manager to disperse the commercial harvest of herring if he finds it necessary to protect subsistence resources or subsistence opportunity.

These regulations unfortunately have not resulted in the results that the Sitka Tribe feels is necessary, meaning that we have not been meeting the amount necessary for subsistence. In two of the past three years, the amount necessary for subsistence has not been met under the State management scheme. We have been conducting a survey according to the memorandum of agreement since 2002, and during those years, like I said, two of the last three years, we have not met the amount necessary for subsistence.

And I think that the crux of what I am here to kind of talk about is that, you know, the State system as well as the Federal system both say they have a subsistence priority, but what we're seeing is with the State management system, the way it is, that the
1 commercial fishery is able to get their quota every
2 single year, but the subsistence fishery is not. And
3 that doesn't equal a subsistence priority in my mind.
4 I know that the State is trying. We're trying, too.
5 And I think that something further, and in this
6 instance a closure, is warranted under ANILCA.

7 This past year during our herring
8 survey, in addition to the numbers we collect, which
9 are being analyzed by Fish and Game right now, but our
10 preliminary numbers show that during 2007, only 66,378
11 pounds of herring eggs were harvested, which is well
12 below the 105,000 to 158,000 threshold.
13
14 The survey comments, which these are
15 harvesters -- these are subsistence harvesters that go
16 out on the grounds each year, this is what I would
17 consider traditional ecological knowledge, because
18 these people have been harvesting year after year.
19 They've learned this from their families, from their
20 ancestors.

21 And the comments that we got, there's
22 at least 40 comments that speak to the fact that the
23 spawn this year was not as plentiful in years past.
24 Some of the -- I'm going to read a couple of the
25 comments, because I think that they're worth listening
26 to, worst ever spawn, lots of milky water, but no eggs.
27 There used to be hundreds of miles of spawn. This year
28 was a lot of hard work. This year the spawn is very
29 thin and not as heavy, and the spawn was not as
30 extensive or prolific. It was not a big spawn this
31 year. Light branches and not very high quality. I was
32 very sad about this year and last year. And the last
33 one I wanted to relay was that it was not very thick
34 eggs, very short spawning time and it was
35 heartbreaking.

36 And I think that what we're asking the
37 Board is to implement some type of regulation here that
38 is going to insure a meaningful subsistence preference.

39 There's been some discussion about the
40 insignificance of the Makhnati waters to the
41 subsistence herring harvest. In 2007 according to the
42 Fish and Game spawning map, which they distribute each
43 year, generally kind of on a daily basis, the last one
44 that I pulled up, which I realize didn't show all of
45 the spawning in the sound, but as of April 12th, which
was a bulk of the spawn in 2007, there were, let me see -- there was, sorry, 36 nautical miles of spawn, and according to Fish and Game and their little map, the Makhnati area, excuse me, has 5.7 nautical miles of spawn, and all of those nautical miles were -- in fact, had spawn recorded on those areas. So if you say it's insignificant, because Makhnati Island area is only this small area compared to this huge area of the sound, well, in this year particularly, it was not that small of an area. I mean, I can do math, and that's about one-sixth of the area. And one-sixth of the area is a pretty significant area. And so.....

CHAIRMAN FLEAGLE: Would you please wrap up your comments. You're over the five minutes. Thanks.

MS. PERKINS: Uh-huh. So I guess to summarize, subsistence needs are not being met under the current regulatory scheme under the State standard. Federal law, of course, has a higher standard than State. This Board is responsible to management the Federal waters around Makhnati, and the RAC is due deference in their recommendation, and it's very important that you realize that according to your policy the Board will adopt closures to fishing by non-Federally-qualified users when one or more of the following conditions is met. Closure is necessary to insure the continuation of subsistence users (sic) by Federally-qualified subsistence users.

Thank you.

CHAIRMAN FLEAGLE: Thank you for the comments. Pete.

MR. PROBASCO: Thank you, Mr. Chair. The next individual is Mark Vinsel.

CHAIRMAN FLEAGLE: Mark Vinsel.

MR. VINSEL: Hello, members of the Board and members of the RACs. Thank you for the opportunity to testify. My name is Mark Vinsel, and I'm executive director for United Fishermen of Alaska. You've heard the summary of our written comments, and you have those in your books, so I won't belabor reading those.

First off, I have a comment that it was
a little difficult to provide clear written comment on
this proposal, because the proposal as it was put on
the subsistence web site isn't the proposal that we
have before us now. And we weren't able to really have
that available in the proper -- or the timing that we
would like to have to really provide valid comments.
So I recommend that if possible when RACs make major
changes to the proposals, that they be posted on the
web site well in advance of the meeting time and
comment deadlines.

I also was unclear on the comment
deadline for written comments to be included in this
meeting.

Anyways, what we have is a new thresh
-- a new proposal. It has a threshold in it that we
don't see the basis or this threshold. A basis in
science. I've reviewed the recommendations of the
subcommittee, and I don't see any mention of it in
there, although the -- it is clear that the RAC adopted
the subcommittee report as their own.

So getting to the closure policy, we
don't feel that this proposal -- or this situation
really warrants or meets the qualifications of the
closure policy. I don't think -- it doesn't appear
that it's necessary for conservation or to continue
subsistence uses of these populations, or for public
safety or administrative reasons.

Now, I'm a little confused, because I
understand with the closure policy that you would have
to go by that if you were to close a fishery. But then
there's also the justification that the Subsistence
Boards needs to not adopt a -- or abide by the
recommendation of the Council. I understand that that
criteria would be -- you would be required to see that
it was either detrimental to the satisfaction of
subsistence needs or is not supported by substantial
evidence, or violates recognized principles of fish and
wildlife management. And I think --- actually I think
all three cases apply here. Or, actually, I'm sorry,
two of them. I don't think it would be detrimental to
satisfaction of subsistence needs, but I don't see that
the proposal, and in particular the threshold, does not
appear to be supported by substantial evidence. And we
do feel that unless there's presented a valid
scientific basis for this threshold, then it seems to
violate recognized principles of fish and wildlife
management.

That's the gist of our comments at this time.

CHAIRMAN FLEAGLE: Thank you. Appreciate the comments. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

The next person is Eric Morrison.

CHAIRMAN FLEAGLE: Eric Morrison.

MR. MORRISON: Thank you. It's a pleasure to be here to testify.

And I want to thank the State of Alaska for the memorandum of agreement. It's something that Sitka Tribe has been very concerned about and we're glad to be in an agreement. And we're all looking for the same intent, and that's to recognize and preserve the subsistence rights of the Sitka Natives, as well as other people in Sitka, to harvest herring eggs. It has been very important.

I think what we look for, our harvest as you've heard from earlier testimony that two out of the last three years our herring harvest have not been met. This is of very concern to us from the beginning. One quarter -- at least one quarter of the areas where commercial fishing goes on has been in areas that has been subsistence harvesting areas in the past. And we look at 20 percent has been a worldwide accepted numbers for harvesting. But when you look at other areas within the Pacific Rim, British Columbia as well as Washington State, Washington State harvests at six percent. But both British Columbia and Washington State protect spawn areas. And that's very unique. And I think that's something that we should look at and that's something certainly the tribe is advocating here.

What impact will it have on commercial fishery and subsistence fishery is -- it really isn't known, but we do know that this is a well-known area for herring spawn in Makhnati Island, as well as other areas that are very important to us. But this is a beginning. All we're asking for is for you to take one small step forward in order to protect our subsistence harvest, so that we can -- and I appreciate the
scientific -- your giving us a grant so we can look into this and do some scientific research. That's really what's needed.

The agreement on its face, it should work, but when we get to the ground, it doesn't work. Oftentimes our agreement -- when we look at the Council as it's made up, for a subsistence user, this was the intent where -- to address subsistence concerns. The Council that reviews the fishing that goes on each year, is -- has six commercial fishermen and two subsistence fishermen that review each day. Is that fair? Well, I'll leave it for you to look into that and formulate your own ideas.

On the other hand when we -- when the on-the-ground manager addresses us and asks for our concerns, he can take them, but does he have to utilize our concerns and issues? No. Sometimes he doesn't. So what does that do to the agreement?

So it obviously needs some work, so we're invoking on you to take this and become involved more with the herring harvest in the Sitka area. It's very important.

As you well know, the herring stock throughout the Pacific Rim has been reduced, and we're very concerned about that. We don't want to be included in other areas such as Lynn Canal where somebody can come in and say it's endangered. We realize it's a healthy harvest. The commercial harvest has never not been met. But the subsistence harvest, at least 50 percent over the last seven years as not been met. And that's our concern. I think that should be a priority. That should be looked at.

And to set aside one small acreage, 560 acres, over what, 70 miles of fishing, commercial fishing? Can you imagine that 70 miles that's available to them, and yet they're concerned about a footstool of 560 acres. Does that make a whole lot of sense? Is that really going to destroy commercial fishing? I don't think so. So I look for you to take a conscious effort, and at least take a small progressive assertive step in looking at the herring harvest and the subsistence rights of the Natives in the Sitka area.

Thank you.
CHAIRMAN FLEAGLE: Thank you.
Appreciate the comments.

Next, Pete.

MR. PROBASCO: Next, Mr. Chair, is Don
Bremner. Don Bremner.

MR. BREMNER: Mr. Chairman and members
of the Council. My name is Don Bremner. I'm the
natural resource coordinator for the Southeast Alaska
Intertribal Fish and Wildlife Commission.

We speak in support of this proposal.
Looking at the historical Tlingit, Haida, and Tsimshian
use of the area prior to Russian and America influence,
in the springtime thousands and thousands of Tlingit
and Haida and Tsimshian people came to this area in
cooperation with the Sitka Tribes. The Sitka Tribes
have been protectors and stewards of preserving this
Native way of life from that time. And we've honored
and respected their stewardship here.

The Sitka Tribe is our Native eyes and
ears regarding this way of life, and their traditional
knowledge should be heavily considered in this
proposal.

Looking at the implementation of the
proposal, and using closed land and water areas as
management tools isn't new to the Federal Government or
State of Alaska. The Federal Government has national
parks and wilderness areas. The State uses fish and
game refuges. The Federal Government with the
Migratory Bird Commission has closed areas to
subsistence hunting and gathering when there are other
predators competing for the resource, when the resource
or species is reaching to the point where it's
threatened, the Federal Government through the
Migratory Bird Commission doesn't hesitate to use that
tool. So it's an appropriate tool, it's an appropriate
proposal, and a vital way to protect this resource as
requested by the Sitka Tribes and others.

Thank you.

CHAIRMAN FLEAGLE: Thank you for the
comments, Don. Pete.

MR. PROBASCO: Next, Mr. Chair, is Mike
Mr. Miller: Thank you, Mr. Chair.

Good morning, everybody. My name is Mike Miller. I'm representing Sitka Tribe of Alaska. I'm a council member with Sitka Tribe. I spend a lot of times on subsistence issues with them. I'm also one SEA Alaska's two subsistence representatives to AFN subsistence committee.

What I've got there is a bag of herring eggs. Actually it's not from last year, because I didn't get any last year, to keep for myself at least. It's from two years ago. Feel free to eat some if you want. There we go. So just a little bit of hands on there so you can look and see what we're talking about.

Some of you might not be familiar with what herring eggs are, how we harvest them or such. For lack of time, I guess I won't really go into the how we harvest specifically with the trees and the kelp, but just I think it goes without saying that one of the longest standing traditional fisheries in the state that's been documented for hundreds of years is the herring egg harvest in Sitka. The earliest Russians talked about thousands of Natives coming to Sitka to harvest herring eggs, and that continues on today.

In my comments I want you to really think about the problem that we're presenting. It's a very real problem in harvesting subsistence. We are facing a problem. And I hope that you'd reflect on the comment that, you know, if a problem is known, if you are not a part of the solution, then you're part of the problem.

Subsistence needs are not being met. Two out of the last three years we've not been able to get even the low expectations of ANS. And that's very much troubling to us. Since 2001 we've also had -- actually 2001 we had a year that was very similar to that. And to be honest, I'm not fully sure exactly why that is. You know, there's obviously competition for
the resource out there, a commercial fishery that takes 
the fish prior to them laying the eggs. But there's 
also -- I man, we're dealing with fish, so there's a 
lot of unseen things and climate and other changes 
there that we don't know. I don't know if we ever 
will. And I think sometimes we're trying to say that 
at some point we're going to figure it out to the point 
where we can guarantee things. And I don't think we -- 
any of us ever will. So I think we need to make the 
best decisions based on trying to fix the problem.

We have a proposal from the tribe that 
really is a compromise situation. We came here last 
year, we asked for full closure, and you directed us to 
work with the State, with the RAC to come up with a 
solution to this. And once again we went with a good 
faith effort to try to work through this and create a 
proposal that's a compromise. The State did not work 
in that process. They refused to work in the process. 
They showed up at the meetings, and essentially 
provided early on, in my eyes it was testimony against 
this. They really were gumming up the process, but 
they officially refused to work in that process.

In spite of that, the tribe did back 
away from that and came to what they felt was a 
reasonable compromise, 40,000 tons is what the tribe 
was asking, although it's supporting the 35,000 
threshold that the RAC produced. We have heard 
testimony that -- from the commercial industry that 
possibly that wouldn't fix things, and so maybe we were 
low in the threshold estimate. Maybe there's a higher 
number that they feel would be better at providing 
subsistence needs being met.

I remember, Mr. Chairman, your comments 
last year, that you're hoping that we could work with 
the State, and eventually we're going to have to work 
with the State to fix subsistence issues in the State. 
And I really feel that when the State says, no, we're 
not going to work in this process, no, you can't tell 
us how we should be managing your Federal waters. By 
just saying, okay, you're not helping the State. 
You're not helping fix the situation. So eventually we 
are going to have to work together, and your role right 
now can help insure that that takes place.

Again, there's a lot of unknowns, but 
some of the known things are, you know, before us, is 
that we have the problem of not meeting the subsistence
needs. This proposal is a step in protecting subsistence needs. It is right in the middle as the one -- Mr. Porter's letter said. It's right in the middle of a major spawning area, a traditional spawning area. And, of course, it's important then. It's even recognized by the commercial industry.

There's a lot of other repercussions. By not acting on this, we're having real problems getting people to do surveys on other species now. They feel that the process is not working, and I testified in our Pacific council last week, speaking to that issue. And I really think it's because of the herring is what I testified, because we're providing the data that says we have a problem, and nothing's being done. So just allowing things to continue like that, I don't think is the answer.

There's four of us that came up from the tribe.

CHAIRMAN FLEAGLE: Our time is running out.

MR. MILLER: Okay. I'm sorry.

CHAIRMAN FLEAGLE: Would you please summarize?

MR. MILLER: Yeah, I'm gabbing away.

CHAIRMAN FLEAGLE: Thanks.

MR. MILLER: There are probably -- you know, it's very important. There's four of us that came up here. If we had the budget, we probably would have brought more. In hindsight, if we'd maybe cut coffee and tea out of our meetings last year, we could have brought a whole bunch more people up.

All things being equal though, you have an area. The commercial harvest in there historically is low, the traditional harvest has been low in recorded years recently. So what do you do? You know, you have this proposal. Virtually no negative impact on the commercial, and arguably it can help subsistence, which is having a problem.

So we're saying that the State process does -- is not working well enough. We enjoy working
with the State. We're going to continue to do that, ut
we need your help, too. So all things being equal,
what side are you going to lean towards? Towards the
commercial, the State interest, or towards subsistence.
So I hope that you'll lean towards subsistence, because
that's your name.

Thanks.

CHAIRMAN FLEAGLE: Thank you. Pete.

MR. PROBASCO: Next, Mr. Chair, is
Charles Trinan. Chip.

MR. TRINAN: Mr. Chairman. Members of
the Board. And the RAC Council Chairmen. I appreciate
the opportunity to testify here today. My name,
Charles Trinan.

And I'm representing the Sitka Herring
Association. That's a trade association of State of
Alaska Commercial Fisheries Entry Commission permits
specific to Southeast herring seine fishery. And there
are approximately 50 permit holders. I say
approximately a handful of them are under adjudication.

But as a group, Sitka Herring
Association has -- and I also want to point out that
I'm a permit holder myself. So as well as representing
that group, I'm also a permit holder and representing
my own interests.

As a group, the Sitka Herring
Association has taken steps to assist the subsistence
users, and we're fully aware of a subsistence priority
and do what we -- whatever we feel is reasonable and
productive in helping the subsistence users in
fulfilling their desires.

As Mr. Larson pointed out, we did send
in a letter that -- in opposition of this proposal,
FP08-18, consistent with our opposition to the previous
one in nine -- last year's meeting.

I would just like to point out that
some of the efforts that we -- in this letter we point
out that -- some of the efforts that we've made in
trying to assist the Sitka Tribe, and to work together
with them to meet their needs, and we found that it's
been very difficult, and that it's often been a moving
target, and so most of the time we're not really sure
what the Sitka Tribe wants as far as assistance in
getting their needs met. And often it seems like their
proposals are designed just to throw -- just to do
something regardless of its effect on subsistence.

As some of the reports show, like, you
know, we've had increasing biomasses in recent years
that have been recorded by the Department of Fish and
Game, and still the Sitka Tribe is complaining that
their subsistence needs have not been met. And that is
reflected the InterAgency Staff comments on the
modified proposal. That's Page 270 of the sheet, and
the one, two -- third paragraph, it specifically states
a successful subsistence harvest is not guaranteed even
at a high biomass level.

So what can we do as commercial
fishermen to help them get that -- their subsistence
needs met, and it's not clear to us what we can do, and
it's certainly not clear that there would be any effect
if there was a closure in the Makhnati Island area.
And some of the comments from the agency comments, Fish
and Game comments indicate that it's questionable
whether that would have any effect, and it could
feasibly have a negative effect on the ability of the
subsistence users to fulfill their needs.

Just a little bit of information on
what the situation is our liaison with -- and the MOU
that the State has. This is based on Ron Porter, one
of our members, who attended the meetings with the
advisory group that talks with the tribe and Fish and
Game. He states that it should be noted that in the
'07 sac roe fishery, prior to each opening the tribe
objected to the fishery going forward unless certain
areas were excluded from the fishery. And all the
major spawning areas were included with the exception
of Whiting Harbor and the Makhnati Island group. So in
nine -- in 2007 the tribe didn't even care whether that
was excluded from the commercial harvest or not,
according to what -- how they objected to any openings
that were scheduled.

Also I want to point out a little bit
of history on threshold levels. In.....

CHAIRMAN FLEAGLE: Excuse me. Can I
have you summarize your comments, please. Your five
minutes are up.
MR. TRINAN: Okay. Excuse me for exceeding my time. I'd just like to say that the threshold that has been proposed at 35,000 tons is hardly based on any kind of biologic justification. It's not supported by recognized principles of fish and wildlife management, and we think that this proposal has no merit and it won't help the subsistence users in fulfilling their needs.

Thank you.

CHAIRMAN FLEAGLE: Okay. Thank you. Appreciate the comments.

Pete, we have one more?

MR. PROBASCO: Yes, Mr. Chair. The last person is Michael Baines.

CHAIRMAN FLEAGLE: Mike.

MR. BAINES: Good morning. Mr. Chairman. Members of the Board. And RAC committee members and Chairmen. My name is Michael Baines. I'm on the Sitka Tribal Council representing at least 4,284 tribal citizens, and I'm also the chairman of the Sitka Tribe of Alaska's herring committee.

There's a lot of concern that this proposal won't help our subsistence use or anything, but I think if you look back at some of our elders, they'll say that the stocks are not in good shape. One of our Tlingit elders, Herman Kitka, says that all of Sitka Sound used to turn white with -- during the spawn. All the bays and coves in the whole area, and, you know, it's -- I'm sure you've all been to Sitka, and it's a pretty big area. And we're only talking about a small area, Makhnati Island, but we only used traditionally certain small areas, because Sitka Sound is exposed to all the waves and swells and breakers of the Pacific Ocean. And so there are only small areas that we use traditionally, because other areas will -- or herring eggs will get sandy and muddy and everything. So it will just be a refuge for the herring.

And just the actual fishing, whether they catch anything or not, the fishing disrupts the herring spawn. There's 51 seiners and 51 skiffs. Maybe some of them are in jail or whatever, but during
the fishery there's also 50 -- up to 50 packers I'd
estimate, I've never counted them because there are so
many boats out there. And also I'd guess another 50 to
100 other boats, you know. Enforcement. Coast Guard.
And observers and people holding up their corks to keep
their seines from sinking, because they catch so much
fish it sinks their seine. Just the fishery itself
disrupts the herring. It scares the herring away.

There's a big biomass in the channel
area. Last year I went out with one of the fishermen,
Jamie, I can't remember his last name. He had some
fancy electronics. You could see a pretty big biomass,
but they fished a little later that day or the next
day, and it scared them all away. They -- nobody knows
where they spawned or anything. So just the fishery
itself scares the fish away.

And the thing is, they say the fish
have tails, and that that's not their problem. But the
thing is, their boats have propellers, and they can
chase after the fish. If the fish move, they just move
the boundary and reopen it. And they're just about
guaranteed their catch. And our branches that we set
during the fish -- to get our herring eggs, they're
pretty much set, they -- you can't move them. It's --
we could tow them a little ways, but it takes hours and
hours to tow them very far. And it's not very
practical to do that. And nobody seems to care. The
fishermen are guaranteed their fish, and the processors
process it, and they catch so much they can't even
process it all during one opening. They have to
disburse it during three or four openings.

And that's another thing. For this
next year their GHL is 14,000 tons approximately. And
I predict another disastrous years for our subsistence
gathering. Just from the fishery itself, just from so
many boats running around they scare the herring away,
and they won't spawn on our branches.

And this isn't just a Sitka issue.
Historically for thousands of years we've shipped --
people would come from other places to harvest herring
eggs and they ship them home and we locals also ship
them all over on Alaska Airlines.

I'm pretty convinced that they're going
to over-fish the stocks just from -- they say the
stocks are in good shape, but they're going to catch
14,000 tons again next year. And like I said, I predict a bad year for our harvest, and herring egg harvest.

And I'd just like to say that although there's a cordial relationship with the State and the fishermen, Ron Porter comes to our herring committee meetings and tells us where the herring are spawning and everything. Everything's cordial and everything, but it's just not working. The herring happens -- the fishery happens before the herring egg harvest, and they get their herring, but we're -- we just don't our herring eggs, at least for two out of the last three years, and also for three out of the last seven years we haven't had -- it was very poor herring egg harvest.

You know, the State has even -- at one of our preseason meetings, the State's own scientist said that there's evidence that the biomass is shrinking, but the GHL keeps going up. And they say they're managing it conservatively, but they're catching 14,000 tons next year, and things just don't seem to add up.

And I guess that's all I had. I'd be open to any questions if anybody has any questions.

CHAIRMAN FLEAGLE: Okay. Thank you.

MR. BAINES: Thanks.

CHAIRMAN FLEAGLE: Appreciate your comments.

Denny, go ahead.

MR. BSCHOR: I have a quick question. Do you support the RAC recommendation or only the closer?

MR BAINES: I guess I don't understand that question. You mean with the 35,000 pound (sic) -- yeah, I think there should be some limit, because like i said before, there used to be -- the whole Sitka Sound area used to turn white during the spawn, and there should be some number, because 35,000 tons is actually a pretty small number compared to the amount of fish that used to spawn there.

MR. BSCHOR: Thank you.
CHAIRMAN FLEAGLE: All right. Thank you. Thanks for the comments.

Before we move on, I think I'll go ahead and call the first morning break. And we'll reconvene in about 10 minutes.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good morning. We're back in session, and I guess I should apologize to the Board members that haven't been with us in this level of process for a long time yet. And I kind of just moved right quickly through those people that testified, just given the lot of stacks of people signing up to testify. And it's going to be even more evident when we reach the Yukon proposals. But there is an opportunity for Board members to ask questions of the testifiers, and I was calling the next testifier right up, having not heard anybody jump out and request the asking of questions until Denny did at the last there, but I should just pause and ask Board members, so if there are any of the testifiers that have just testified, any of the six or seven I guess it was, that you feel may have more information on this based on these issues -- on this issue here, I'd entertain calling them back up for questions I just want to open it up, because I think I may have slighted the board. So if there's any interest in that, I'd like to do that at this time.

(No comments)

CHAIRMAN FLEAGLE: All right. Thank you then.

So with that, we'll go ahead and continue, and we move to the Regional Council recommendation. Bert, please. Good morning.

MR. ADAMS: Good morning. Mr. Chairman and members of the Board. Thank you.

I want to thank the Board for deferring this issue. You know, we had this on the table last year, and you deferred it to give an opportunity for more information to come forth, and hopefully we have done that today. The Board authorized the RAC to form a
subcommittee, and as a result of the meeting of that subcommittee, the RAC in Haines accepted the subcommittee's report, and now, you know, it belongs to the RAC.

The Council recommendation is to support the proposal. I'm going to have Chuck, who is responsible for gathering the subcommittee together, you know, give a report on that here in a little bit. But I just want to say that the Council concluded that the proposed regulation would conserve herring and benefit subsistence users by providing a meaningful subsistence priority for the waters under Federal jurisdiction. This action will have no effect on non-subistence users as the area under consideration is a very small fraction of the total herring spawning area within the Sitka Sound.

The Council thought that there was substantial evidence regarding the importance of this area to the subsistence fishery and the need to conserve herring in this area to identify and justify the needs for this action.

There's a long drawn-out process in how the Council also came to this conclusion, but I think one of the most important ones, that we listened to the people from Sitka, and other areas as well, because all of Southeast benefits from the herring spawn from the Sitka area, as well as in their own areas, but Sitka is the producer of the most herring in the Southeast area, and so we listened. We listened to the people who were the most affected by it.

We listened to the tribe. It's a tribal government, a Federally-recognized tribe. And we took their rec -- we took their issues very seriously.

I'd just like to mention the importance of a tribal government, and think we need to get more of them involved in the process here in the future. Felix Cohen, who is an expert at Indian law said, and I don't know it word for word, but I can just paraphrase it, said that self-governance in the true send of the form is -- is formed not by anyone from heaven or from some throne in Washington, but they are derived by people who are most affected by those decisions. In other words, it comes from the people themselves. And that's why I've always advocated and reminded the board
that deference should be given to councils, because of
the fact that we gather all of the information from
experts and then we come to conclusion. And for that
reason, you know, the Board really should listen to
these issues. And I've said it before, I'm just
reminding us all again, when it comes from the bottom
up and works its way up. And ANILCA was designed for
that purpose as well.

But the subcommittee, you know, met in
Sitka, and I want to give Chuck an opportunity to
report on what happened there, and then I'll also make
some comments afterwards.

Chuck.

CHAIRMAN FLEAGLE: Chuck, go ahead,
please.

MR. ARDIZZONE: Mr. Chair. Board
members. And RAC Chairs.

Based on the deferral of last year, the
RAC formed a subcommittee which met on September 5th in
Sitka. On Page 268 and 269 there's a brief summary of
what happened at the subcommittee. On Page 268 you can
see the subcommittee members and other attendees. We
actually had a facilitator at the meeting to help
facilitate and capture all the comments at the meeting.

We had agency presentations. We had
the Federal Staff present background relevant to the
Makhnati Island proposals. We had State Staff present
data from the commercial and subsistence fisheries.
And then the subcommittee went into discussions,
discussed all the information that was presented, had
interaction between all the subcommittee members. And
in the end we came up with three recommendations which
start on Page 268.

The Federal Government should become a
party to the MOA that provides for in-season
consultation between fishery managers and harvesters.

The second was that fishery managers
and participants in the MOA need timely annual data on
subsistence egg harvest in Sitka Sound.

The third was that in-season fishery
managers and biologists, the Sitka Tribe, and representatives of the commercial seine fleet and others with knowledge of the Sitka herring population and fisheries should work together to determine what may have been the cause of low subsistence harvest in the three years out of -- three of the seven past years.

The subcommittee also discussed an alternative to the regulatory proposal which as we know is a full closure. This substitute language didn't reach consensus, but it is listed on Page 269 and basically it is where the Council pulled their language from for their recommendation.

If there's any questions, I can try and answer those, but that's a brief synopsis of what happened.

CHAIRMAN FLEAGLE: Thank you, Chuck. I have one. The number 35,000 tons, did that come up from the subcommittee or was that inserted by the Regional Advisory Council?

MR. ARDIZZONE: I believe the number that was discussed at the subcommittee was 30,000 tons, but there was no consensus reached on that number, and then the 35,000 came from the RAC itself.

CHAIRMAN FLEAGLE: Thank you, Chuck.

Bert.

MR. ADAMS: Let me address the threshold there a little bit. There was a long discussion, no one could agree. Sitka Tribe came forth with a 40,000 threshold, and we just, you know, accepted the 35,000. And then it was included in the subcommittee's reported. The Council accepted that and adopted it as its own. So that's where that came from. There was no discussion among the Council members about that threshold, so I'm assuming that it's okay with them, otherwise it would have been brought up as an issue.

I'd just like to say a few more things, Mr. Chairman, if I might be, in regards to this issue.

You've listened to testimonies from, you know, six or seven people here, and they pretty much, you know -- the ones who are in favor pretty much
said the same thing that the ANS is not being met, you
know, and they're concerned about that. One of the
things that I've learned is that most of the herring
harvesters have to go further and further away to meet
their needs, and then they're out there competing, you
know, with the commercial industry as well. And
sometimes the weather does not permit them to, you
know, meet their needs and I know that, you know,
there's the commercial industry in Sitka who is
offering to help in that effort by also using their
vessels, you know, to help with the subsistence fisher
-- meet the subsistence in Sitka, but as far as we have
determined, you know, that hasn't really happened. And
you heard the gentleman mention earlier that he was
saying that he could not understand what Sitka is
asking for, but I think those people need to meet and
discuss this issue some more so that there can be some
meeting of minds.

The eggs are not being thick, as
mentioned, and there are shorter spawning periods. We
received, you know, a 50-pound box of herring spawn
from Sitka from friends every year. We live in
Yakutat. And we've noticed over the past few years,
you know, they have been a lot thicker, and the people
who supply those for us are saying that they're getting
harder and harder to get. So hearing from the users
themselves and being a part of that user group, I can
feel comfortable in saying that their needs aren't
being met.

Okay. Let me see. The MOU with the
State, we thought is a real good idea. However, we
also think that a Federal manager needs to be a part of
that signatory. And I think that's what we are
requesting here as well.

The small area which we're talking
about is Federal waters, Mr. Chairman and members of
the Board. You do have the authority to open or close
or do whatever you want with that area, because it is
under our -- under your jurisdiction. And I know we
can get a lot of testimony and pressure, you know, from
the commercial user groups, but when it comes right
down to it, I'm a commercial fisherman as well, okay.
I am a subsistence fisherman. I'm a sport fisherman.
I sit on the RAC Council representing the subsistence
issues. And when it comes time to -- comes down to
making decisions, it's good to have a good background
on all of these user groups as well, but the
subsistence issue that is on the table needs to be thought of thoroughly and made -- and the decision should be made, you know, on the best interest of the subsistence users rather than the other user groups, and I would encourage the Board to look at it in that direction. You have the authority to do what is being asked for, but you should look at it from the subsistence user's point of view rather than any other user group.

So thank you, Mr. Chairman. I appreciate the opportunity to comment.

CHAIRMAN FLEAGLE: Thank you, Bert.

Department of Fish and Game comments.

Tina.

MR. BUKLIS: Excuse me, Mr. Chairman.

CHAIRMAN FLEAGLE: Oh, Larry.

MR. BUKLIS: I think we need -- Robert Larson wanted to supplement the Council Chair's comments if he could.

CHAIRMAN FLEAGLE: That didn't sound like that needed much supplementing.

MR. ADAMS: Well, if Robert Larson has something to supplement there, I would go for it.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Okay. You bet.

Robert.

MR. LARSON: Yeah. Mr. Chairman. I just wanted to make it clear that sitting in the audience that Bert was referencing the proposal, and I wanted to make sure that the Board understood, and I think that Bert would, of course, correct me if I'm wrong, but the -- his testimony at the last when he referenced the proposal, he's speaking of the modified proposal as adopted by the RAC.

CHAIRMAN FLEAGLE: I think that was pretty clear.

MR. ADAMS: Was it? Okay. If I
1 didn't make it clear, I'm sorry, but that was the case.
2 Thank you. Thank you, Bob, for making that clear.
3
4 CHAIRMAN FLEAGLE: All right. Now the
5 State Department of Fish and Game. Tina.
6
7 MS. CUNNING: Consistent with the
8 agreement we reached yesterday, we would like to
9 request permission to enter our full Department
10 comments into the record, and George is going to
11 provide just a summary.
12
13 CHAIRMAN FLEAGLE: Okay. Great. Thank
14 you. George.
15
16 MR. PAPPAS: For the record my name is
17 George Pappas, Department of Fish and Game, subsistence
18 liaison team.
19
20 Adoption of this proposal could be
21 detrimental to both subsistence and commercial
22 fisheries depending upon where and when the herring
23 span in a given year. The commercial fishery is
24 managed to minimize commercial harvest near heavily
25 used subsistence harvest areas, but is a very short and
26 fast fishery. So effective action must be taken in a
27 timely manner. The proposed closure would limit the
28 options for where commercial fishery could occur,
29 potentially resulting in a commercial fishery in higher
30 subsistence use areas. The proposed closure would also
31 prohibit subsistence harvest in that area by other
32 Alaskans that are not Federally-qualified.
33
34 A closure in small area is expected to
35 have little or no impact on the total commercial or
36 subsistence harvest. Yet this proposal as modified by
37 the Southeast RAC, if adopted, non-Federally-qualified
38 users could be prohibited from participating in the
39 Makhnati Island and Whiting Harbor area herring
40 fisheries if the ANS was not met for two prior years
41 due to factors that are not based on the health of the
42 herring stock for reasons of conservation. Excuse me.
43 For -- excuse me. Based on the health of the herring
44 stock or for reasons of conservation.
45
46 The 2007 season is an example where the
47 herring stocks were considerably healthy, the core
48 herring spawning areas was observed to be in the
49 vicinity of the Sitka road system, but the timing of
50 the event and the unfortunate pursuing bad weather
likely prevented subsistence users from collecting --collectively achieving the ANS. During the 2007 herring fishery season, the Alaska Department of Fish and Game commercial fisheries managers widely distributed the commercial herring fishing fleet, which effectively reduced competition with subsistence user.

The proposed closure is not necessary to provide for the continued Federal subsistence and would violate Section .815 of ANILCA. Such a closure may also be detrimental to subsistence uses by unnecessarily limiting options for the management of the commercial fisheries and thereby increasing the likelihood of impacts to higher subsistence use areas.

Herring biomass in the Sitka Sound has shown a long-term increase and is considered healthy. In 2005, the year that ANS was not met, the biomass was at record or near record levels since the biomass estimations were first reported in 1978. The commercial sac roe harvest of 11,366 tons in 2005 was about 14 percent of the total estimated spawning biomass, a very conservative harvest rate. The difficulty in meeting subsistence needs that year was primarily due to a large portion of the herring biomass spawning in areas inaccessible to subsistence fishermen. The estimated 50.2 nautical miles of span in Sitka Sound in 2007 was close to the average range, which the short-term average was 53.4 nautical miles, and the long-term range -- long-term average was 55.9 nautical miles. The spawning biomass after the fishery, as estimated by spawning deposition surveys, remained at a high level of an estimated 84,501 tons. The severe weather occurred during the peak of the spawning event in 2007, which likely limited many subsistence harvesters access to the spawning grounds during that critical time.

Collective harvest success can be diminished during any particular season when one or more of the factors do not favor subsistence users, including inclement weather, spawning time, spawn location, loss or theft of sets, subsistence harvesters' schedules, and the amount of participation by a limited number of individuals known as high harvesters who harvest for distribution to others. If one or more of these factors is unfavorable, the amount harvested can drastically fluctuate and remain below ANS. It is important to note that how the commercial
fishery is managed, either inside or outside Makhnati Island area, may be less of a factor for the subsistence fishery than these other factors.

Also, poor harvests are not necessarily linked to the health of the Sitka Sound herring stocks, or the management of the commercial fishery.

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

FP08-18 MAKHNATI ISLAND AREA HERRING

Introduction: Proposal FP07-18 was deferred by the Federal Subsistence Board (Board) at the January 2007 meeting. That proposal has been renumbered and resubmitted for consideration to close marine waters in the Makhnati Island and Whiting Harbor area, which are subject to federal claims of jurisdiction. The closure would apply to commercial herring fishing during March and April and only allow subsistence herring fishing by those federally-qualified. Commercial harvest rarely occurs in the proposed closure area, and the area is not the primary subsistence herring fishing area used by federally-qualified local residents. The Southeast Regional Advisory Committee (RAC) supported modification to proposal FP08-18. These modifications included closing the harvest of herring and herring spawn except for subsistence harvests by federally qualified subsistence users when the forecast spawning biomass for the Sitka Sound herring spawning area is less than 35,000 tons or when the Amounts Necessary for Subsistence (ANS), was not reached in the two prior consecutive years.

Impact on Subsistence Users: Adoption of this proposal could be detrimental to both subsistence and commercial fisheries, depending upon where and when herring spawn in a given year. The commercial fishery is managed to minimize commercial harvests near heavily used subsistence harvest areas but is a very short and fast fishery, so effective actions must be taken in a timely manner. The proposed closure would limit the options for where a commercial fishery could occur, potentially resulting in a commercial fishery in higher subsistence use areas. The proposed closure would also prohibit subsistence harvest in this area by non-federally qualified individuals. A closure in this small area (560 acres) is expected to have little or no impact on the total...
commercial or subsistence harvests.

If this proposal, as modified by the RAC, is adopted, non-federally qualified users could be prohibited from participating in the Makhnati Island and Whiting Harbor area herring fisheries if the ANS was not met the two prior years due to factors that are not based on the health of the herring stock or for reasons of conservation. The 2007 season is an example where the herring stocks were considered healthy, the core herring spawning areas were observed to be in the vicinity of the Sitka road system, but the timing of the event and the unfortunate pursuing bad weather likely prevented subsistence users from collectively achieving the ANS. During the 2007 herring fishing season, the Alaska Department of Fish and Game (Department) commercial fisheries managers widely distributed the commercial herring fishing fleet which effectively reduced competition with subsistence users.

Opportunity Provided by State: For the vast majority of the subsistence herring egg harvest, the Department does not restrict fishing periods or seasons and does not restrict amounts of herring harvested by individuals for subsistence purposes in this area. The harvest of spawn on hemlock boughs or spawn on hair kelp is unrestricted, and no state permit is required. Post season evaluation of the subsistence harvest is accomplished by a harvest monitoring program conducted by the Sitka Tribe of Alaska (STA) in cooperation with the Division of Subsistence in the Alaska Department of Fish and Game (Department). The Alaska Board of Fisheries has found that 105,000 to 158,000 pounds of herring spawn is the amount reasonably necessary for subsistence uses (ANS) in Section 13-A and Section 13-B north of Aspid Cape.

The Department does require a permit that may limit harvest of spawn on kelp and requires harvest reporting following the season. (See 5 AAC 01.730(g)) The harvest of spawn on kelp accounts for an average of only 2% of the subsistence harvest on all substrate types, so state requirements for spawn on kelp harvest is not a significant limitation.

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

Conservation Issues: There currently are no conservation or management concerns for these
healthy stocks. From 1979 through present, with only
one exception, the Sitka Sound herring resource has
been above the current 20,000 ton threshold, and the
run has averaged 71,000 tons in the past five-year
period. Herring are managed under a conservative
management strategy that sets threshold biomass levels
below which commercial harvest does not occur and
limits harvest rates to 10-20% of the total mature
spawning biomass. This is a time-proven strategy that
provides for conservation of the resource. The area
proposed for closure is so small that it is unlikely to
provide conservation benefits above the threshold and
harvest rate, especially given the highly variable
nature of herring spawning behavior.

Jurisdiction Issues: The Board does not have authority to close this area solely to
commercial herring fishing as suggested by the
proposal. Instead, the federal Board would have to
close the area to herring harvest by all non-federally
qualified users, which would include all subsistence,
commercial, or other harvests occurring under state
regulations. In this case, such a closure is not
necessary to provide for continued federal subsistence
and would violate section 815 of ANILCA. Such a
closure may also be detrimental to subsistence uses by
unnecessarily limiting options for management of
commercial fisheries and thereby increasing the
likelihood of impacts to higher subsistence use areas.

Other Issues: Management of the
commercial fishery involves a Memorandum of Agreement
(MOA) between STA, the Alaska Board of Fisheries, and
the Department. The MOA provides in-season
collaboration that includes: 1) daily contact between
STA and the Department; 2) Department consultation with
STA regarding whether a proposed opening might affect
subsistence opportunity; and 3) verbal and written communication from STA explaining its reasoning to the Department if STA concludes there is potential for a proposed opening to negatively impact the subsistence fishery. A formal objection by STA to a proposed opening does not necessarily result in a commercial closure, and the Department maintains discretion regarding whether or not to open the fishery. However, STA’s objections are thoroughly considered by the Department. The in-season consultative process provides STA an opportunity to provide input for consideration by the Department and may affect the decision regarding whether to open an area for a commercial fishery. Any changes to the MOA would require approval by all of the signatories, including the Alaska Board of Fisheries.

The state’s regulatory management plan for the Section 13-B sac roe fishery is: distribute the commercial harvest by time and area if the Department determines that it is necessary to ensure subsistence users have a reasonable opportunity to harvest. Closing a fixed area will provide less opportunity for the Department to distribute the harvest and may increase the chance of commercial fishing taking place in the vicinity of better traditional egg harvesting areas. Since the management plan has been in effect (2002-2006), subsistence ANS was not met in 2005. Preliminary information recently provided to the Department indicates subsistence harvest in 2007 again was below the ANS range. Reasons that cumulative harvests may be below ANS are only partly understood as described below.

Herring biomass in Sitka Sound has shown a long-term increase and is considered healthy. In 2005 (the year that ANS was not met) the biomass was at record, or near record, levels since biomass estimates were first reported in 1978. The commercial sac roe harvest of 11,366 tons in 2005 was around 14% of the total estimated spawning biomass, a very conservative harvest rate. Difficulty in meeting subsistence needs that year was primarily due to a large portion of the herring biomass spawning in an area inaccessible to subsistence fishermen. The estimated 50.2 total nautical miles of spawn in Sitka Sound in 2007 was close to the average range (short-term 53.4 nm and long-term 55.9 nm) averages. The spawning biomass after the fishery, as estimated by
spawn deposition surveys, remained at a high level of an estimated 84,501 tons (1997-2006 average = 54,321 tons, 2001-2006 average = 65,116 tons). Severe weather occurred during the peak of the spawning event in 2007, which likely limited many subsistence harvesters access to the spawning grounds during that critical time.

Collective harvest success can be diminished during any particular season when one or more factors do not favor subsistence users, including: inclement weather, spawn timing, spawn location, loss or theft of sets, subsistence harvesters schedules, and the amount of participation by a limited number of individuals known as high harvesters who harvest for distribution to others. If one or more of these factors is unfavorable, the amount harvested can drastically fluctuate and remain below ANS. It is important to note that how the commercial fishery is managed, either inside or outside of the Makhnati Island area, may be less of a factor for the subsistence fishery than these other factors.

Department Recommendation: Oppose.

MR. PAPPAS: And Tina has some additional comments for us.

MS. CUNNING: In addition to our official Department comments in your Board book, which George just summarized, I'd like to make three observations for your.

Someone testified earlier that the State did not attend the subcommittee meeting which was held in September at the request of the RAC, and that is simply not true. We had Staff participate extensively for the full morning, giving presentations and historical information on herring stock, harvest locations, and work clear back 20, 30 years. This was done right in the middle of a fishery when other fisheries were going on. It was a hardship for our Staff. We were very understaffed right in the middle of that fishery, and they were able to be there and they participated as much as they could for that full day. We had one staff person stay the whole day, as well as the one doing the presentation.

As Chuck summarized, there is a need to do further work on why the State's ANS is not being met by the local subsistence harvesters, and we are just as
concerned about that as they are. There's -- when the
spawn is increasing like it has been, and it's healthy,
there's a number of other factors that have played into
it. One is that the weather -- both years ANS wasn't
met, the weather was a significant contributing factor,
and in the meetings that have been held which -- the
communication has been I think particularly helpful on
this issue, in those meetings when the -- some of the
commercial fishermen who were participating in those
meetings learned that it was the access due to size of
boats, being unable to get out during heavy weather
conditions, there was an offer made to use the
commercial boats to help transport the subsistence
harvesters to the spawn sites. And that's the kind of
cooperation and help that we want to see in the future.
That's a step, it's a good step.

Another problem that we have related to
that is that the amount of harvest -- the actual
information on the amount of harvest for ANS is done
late after the season. The data is not collected right
during the time that the harvest is occurring. It's
done through surveys later, and there's a lot of work
going on to try to perfect that information. Sitka
Tribe has got some money and investment in that. We're
working with OSM on trying to get better data on those
needs.

The third observation I'd like to be
sure you're aware of is that our Staff have worked
particularly hard. There was only one bad year where
the commercial fishery was probably conducted too close
to town. They're worked very hard to have these weekly
openings away from town and away from where the favored
harvest locations are for the Sitka Tribe. And, in
fact, every time we do an emergency opening, this is
how we do those fisheries, and the Sitka Tribe
petitions us related to what they want us open or not
open, the areas that they have expressed the most
concern in the last number of years have not included
Makhnati Island.

So I just wanted to add these
additional points for your consideration.

We agree with both Bert's comments and
Chuck's, that this is an on-going matter that involves
some close cooperation between the various entities.
We're committed to that. We have excellent Staff down
there. And it's probably one of the best run herring
fisheries in the State. And they will continue to be committed to working closely with the Sitka Tribe as they have.

CHAIRMAN FLEAGLE: Okay. Thank you.

MR. MELIUS: Mr. Chair.

CHAIRMAN FLEAGLE: Tom.

MR. MELIUS: You mentioned the offer to utilize the larger boats. Is that being utilized or taken advantage of?

MS. CUNNING: As far as we know, this is the first year this has come up in which the -- I don't think there was an awareness that it was really the size of boats during inclement weather that was limiting their access, and a couple of the herring fishermen made it clear during those meetings that they were willing to offer their boats. So I think you're going to see some effort toward doing that this next year.

MR. MELIUS: Thank you.

CHAIRMAN FLEAGLE: Okay. Thank you for the comments. Can I hold this for the next session, which is Board discussion with Council Chairs and State liaison?

MR. ADAMS: Mr. Chairman. I just wanted to make a comment about, you know, I failed to observe the fact that the State were involved in this process here, and I just wanted to let you know we recognize that and appreciate it. George's participation at the RAC meeting was very valuable to us, and I'd just like to emphasize that. So that's it.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Okay. Thank you, Bert. Appreciate it.

Now move to the InterAgency Staff Committee comments. Larry.

MR. BUKLIS: Thank you, Mr. Chairman. The Staff Committee comments on FP08-18 can be found on Page 270 and 271. I'll summarize the main points.
The Council believes -- the Staff Committee noted that the Council believes that forecasted biomass and non-attainment for two consecutive years of the State's amounts necessary for subsistence are two criteria that could be used to close the area in a given year. The Council's recommendation is to place these two criteria into formal regulation.

The Staff Committee discussed those criteria and the difficulty justifying the Council's recommendation under the Board's closure policy, and ANILCA Sections .805c and .815. Currently a successful subsistence harvest is not guaranteed even at a high biomass level. There are also no apparent correlations between ANS not being met in one year and the following year's subsistence harvest.

The Staff Committee discussed the need for regulatory action. Some of the Staff Committee felt that there is no reason regulatory action should be taken since the forecasted biomass is usually determined in February and the subsistence harvest from the previous is reported before the sac roe fishery occurs in March and April. Currently the in-season manager has the delegated authority to close the area around Makhnati Island to non-Federally-qualified uses before the season for conservation reasons or for the continuation of subsistence uses.

Conservation of herring was also discussed. It has been mentioned that the area around Makhnati Island, if closed, could provide a sanctuary for herring spawning. The State's management threshold of 20,000 tons seems to take into consideration conservation of the resource as well as some level of subsistence herring roe harvest.

Consistent with the Council's recommendation, some of the Staff Committee felt that having a higher threshold to trigger a closure to non-Federally-qualified users in waters under Federal jurisdiction would provide a meaningful subsistence preference, and a higher standard for protection of the resource for subsistence use in that area.

Finally, others have talked about the size of the area. The Staff Committee noted that the area under Federal jurisdiction is approximately 610 acres. Of that, approximately 537 acres are water,
with a lesser amount suitable for herring spawning.
The Staff Committee discussed the effects of closing
this small area and whether it would actually make a
difference to the resource or to commercial or
subsistence users.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Larry.

We're now ready for Board discussion,
including the State liaison and Council Chairs. Open
for comments. Denny, you look like you're leaning
forward.

MR. BSCHOR: Mr. Chair. I just wanted
to say thanks to everybody for the efforts this past
year. All in all I see some progress, and that's what
we intended by our action last year. And maybe it's
not perfect from everybody's perspectives, but I see
some progress.

I guess relative to the ANS question,
which this Board doesn't normally deal with by the way,
the -- I guess I need more information about what's
significant about the 20,000 figure versus the 35,000
figure, and what's the science behind that. That's for
anybody who thinks they want to answer. I'm not going
to specifically ask -- I'll just throw it open to the
group.

MR. ADAMS: Shame on you, that's a hard
question.

CHAIRMAN FLEAGLE: Terry.

MR. SUMINSKI: Mr. Chairman. Mr.
Bschor. I can speak more towards where the 35,000-ton
number came from. Maybe the State can help with the
20,000-ton number.

But basically the 20,000-ton number
comes from the State's management plan for the
commercial fishery. It's a threshold below which there
would be no commercial fishing. And the 35,000-ton
number is I think the Council's attempt to reach a
compromise between different numbers that were being
discussed. In the subcommittee the Sitka Tribe
presented a number of, you know, 40,000 tons.
Talking to one of the Council members about where he came up with the 35,000-ton number, it was the average between the 40,000-ton number and the 30,000-number that was kind of talked about in the subcommittee, not really as a scientific number, but just to start discussion. And then he also looked at the long-term forecasted average for the fishery, which is about 37,000 tons, so he just used that number of 35,000 tons. But we don't have an analysis, a scientific analysis that that's the magic number.

I'm not sure if that helps, but that's pretty much where that number came from, and maybe the State can help you with where the 20,000-ton number came from.

CHAIRMAN FLEAGLE: Tina.

MS. CUNNING: Regarding the 20,000 figure, it's in our comments under the conservation issues where we say, from 1979 through present, with only one exception, the Sitka Sound herring resource has been above the current 20,000-ton threshold. That's the threshold at which we would open it. That's -- there has -- it's closed unless we know there's above 20,000 tons out there. And the average run in the last five hears has been 71,000 tons.

CHAIRMAN FLEAGLE: Is that good, Denny?

Other discussion. Marsha.

MS. BLASZAK: Yeah. First of all, I want to commend everybody who's been I think diligently working on a very complex and difficult issue.

And some of the recommendations that I wanted to point to that came out in the discussion already is the suggestion that the Federal Government become a party to the MOA with the State also with the Tribe, that perhaps -- you know, not that we're any better at collaboration than the rest of you, but perhaps having another voice in the mix that can help sort through these issues would be of benefit.

And, you know, I also want to appreciate the volunteering of members of the Sitka Herring Association to transport in larger vessels. I think that -- and I guess I'd like to hear what kind of feedback from that offer, if there was any discussion on whether that was meaningful to members of the tribe.
or not for fulfilling their concerns.

It just seems like there's a lot of collaboration going on on this topic, and is there a solution other than us regulating a number that we apparently can't quite figure out how we got to.

CHAIRMAN FLEAGLE: On the question of whether the offer to use larger vessels to assist, I think that was addressed by one of the testifiers, but I don't remember which one, from Sitka. Can you raise your hand if that was -- they said basically it was.....

MS. BLASZAK: Excuse me, Mr. Chairman. I heard that there was an offer. I didn't hear that there had been an acceptance of the offer, or if there was a discussion amongst those who would potentially accept or decline that offer as to why they might or might not accept that offer. Is that unfair to.....

CHAIRMAN FLEAGLE: No, I think that would fit in our discussion mix here, and we had either Mike Miller or Mike Baines, if I could ask one or the other to come forward. Mike Miller. Would you go ahead and restate your question?

MS. BLASZAK: Yeah. Thank you, Mr. Chairman. And perhaps it's -- because it was only offered this year -- no? I'm getting a reaction. I know that the offer and the concern that was raised about the vessel size and getting out in rougher waters, the question I have is whether that is an offer that is potentially acceptable to members of the tribe, if the alternative is not getting enough herring eggs.

MR. MILLER: Mr. Chair. That offer has been on the table for quite some time. There actually is a fair amount of commercial seiners that harvest herring eggs also, and they share with the communities, and also take it to a lot of other communities. We've talked about that as a solution, you know, a stop-gap thing or last resort thing, but there's a lot of complexities to that. I think anybody that owns a vessel can appreciate the liability that arises from bringing somebody else on board to -- if they twist a foot or break a leg or something like that. So we have had other vessel owners that said they would not do that for that reason. I wouldn't recommend that.
And one of the other things that we're doing is -- you know, this is an on-going fishery. The kids are embracing it. It's a food that's being used more and more, and it's really hard for us as a group to say, if you complain about something or if you have problems, just complain and somebody will give you -- take care of it for you. They'll just bring it to you. I mean, we're really trying to teach the younger kids to go out and work for these things, and, you know, it means so much more to learn about protecting resources in general if they're hands on. And so we really don't like to go that route of saying, well, somebody will just give it to us later on.

So it is a generous offer and we do at times take it on. We've even had boats transport eggs for us to different communities. But it certainly doesn't fix the situation.

Thank you.

CHAIRMAN FLEAGLE: Thanks, Mike.

MR. CESAR: I'd just like to amplify the point that Mike made. I mean, many vessels who may be home-ported in Ketchikan or Craig, somewhere of Prince of Wales Island, have in fact taken eggs every year. They generally provide eggs to their relatives and friends in those locations. But I think I agree with Mike in terms of is that a long-term solution? Probably not in my estimation.

CHAIRMAN FLEAGLE: Thanks, Niles. Tom

MR. LONNIE: Thank you, Mr. Chairman. I think I'd direct this question to Terry. But there's been quite a bit of discussion regarding the 35,000-ton cut-off.

The proposal also calls for a cut-off after two consecutive years of not reaching ANS. Is there a correlation between what happens one year, and what may happen the next year in terms of the harvest?

MR. SUMINSKI: Mr. Chairman. Mr. Lonnie. And if -- I think what you're leaning towards is what is really the core of the issue, is what is the connection between the commercial fishing activity and
And if you look at the numbers on the table on Page 252, there's years where there's fairly high biomass estimates and needs weren't met. And, you know, we haven't done a statistical, you know, analysis of correlation, but, you know, just looking at those numbers, you would see, no, maybe not, you know. But on the other hand, there could be other reasons that explain why the fishery didn't -- the subsistence fishery didn't perform other than just the overall biomass that was in Sitka Sound.

And I think overall in general, as with most fisheries, the more fish that are available, the better chance that people have of catching fish.

So, you know, that really is the issue. What is that connection there, and I don't know if we know that. So I hope -- does that help?

MR. LONNIE: Yes, thank you.

CHAIRMAN FLEAGLE: Thanks, Mike. I thought maybe the question was going to be directed at you, but appreciate you coming back up.

Continued discussion, Board members.

COMMISSIONER LLOYD: Thank you, Mr. Chairman. I guess I'm presuming that there will be a motion on the table to accept the RAC's recommendation, and I wanted to reaffirm some comments from the InterAgency Staff Committee and some of those from the Department, but in a more general way.

Certainly closures of areas are very serious steps to take. And in this regard, although we don't believe that your closure policy is specific enough to utilize the existing -- your new existing closure policy to make a few remarks.

Closures are stated to be necessary for the conservation of healthy populations. And in this case, it's fairly clear from the data that there's no concern, no real concern for the health of this population, and in act we're slated to have a
fishery this coming year, based on established fishery
management principles, of a very high harvest. And
it's indicative of a very high biomass.

The second criterion in your new
closure policy is that closures must be necessary to
ensure the continuation of subsistence uses. And
there's been no assertion here that there's a threat to
the continuation of the subsistence uses. They will
continue.

The issue at hand seems to be whether
or not the amount that is being accessed by the
subsistence users is satisfactory by one measure or
another. And one measure is the State's ANS
requirements, and maybe we need to fall back on those,
because there is no Federal subsistence use amount
program, but also it's clear from public testimony that
there's some concern more generally that subsistence
uses haven't been satisfied at least in a few
identifiable years.

What has come -- what is pointedly of
interest to me is that even the subcommittee that was
put together at the request of the Southeast RAC, as
one of their main recommendations, indicates that
agency managers and biologists, the tribe, commercial
seine representatives and others knowledgeable of the
fishery should work together to determine what's been
the cause of the low subsistence harvest. So there's
no indication that the closure of the Makhnati Island
area would serve to solve that unidentified problem.
And, in fact, you've heard testimony from the
Department that it's possible that a closure like that
would displace effort that would actually increase
competition in other areas where subsistence users
might be trying to access the resource. So in that
case, an action in this regard might have unintended
consequences and actually produce a negative result
rather than a positive one.

I'm also reminded that the primary
focus of your program is the regulation of subsistence
uses. We've heard some suggestions here that a closure
at Makhnati Island might be a prudent move to establish
a conservation zone, and that is not the regulation of
subsistence uses, but rather would be an entirely
different management action, and not that we in the
State of Alaska believe is under the purview of the
regulation of subsistence uses.
And finally I'm concerned, and I hope you'll take my concern to heart, that a closure such as this does not follow reasonable fishery management approach to a question such as this where we have spawning herring that in any particular year could be found to spawn in different locations around Sitka Sound. So establishing one particular closed area is not a responsive management approach to that kind of fishery management problem. And I would suggest that, in fact, this type of closure would violate recognized fishery management practices for this type of fishery.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Commissioner Lloyd.

Further discussion. Bert.

MR. ADAMS: I have a question for Commissioner Lloyd. I appreciate your comments, but last year when we were deliberating this, there was a commercial harvester, I don't see him in the audience now, but he came and gave a testimony, and he was also asked a question that if that particular area was left open for commercial fishing, would he go in there and harvest herring out of that area, and his answer was, yes. And being such a small area, you know, this really concerned me and a lot of other people when that statement was made, and it won't take very much of a sweep, you know, to wipe out that area completely.

I'll use Yakutat as an example. Way back in the 1950s, you know, we used to have herring in abundance there, but it was only enough to meet our local needs. And we had a commercial herring boat come in there and they made about three sweeps off of Knight Island, and they wiped out that whole herring stock out there, and it took nearly 50 years for it to come back again.

And so, you know, I think this is a concern that needs -- for me, needs to be addressed, a statement like that, if a commercial did open, would any commercial activity be taken there, and, you know, and the answer was in the affirmative. So I think my question would be, you know, how would you handle a situation like that if it occurred.
CHAIRMAN FLEAGLE: Thanks, Bert.
Denby, do you want to respond?

COMMISSIONER LLOYD: Well sure, I mean, he asked me a direct question. I don't necessarily have a direct answer. But we don't manage the Sitka herring fishing on a site specific basis in terms of permanent closures. We're responding to annual conditions as we see them on the grounds. And that same type of question I suppose could be applied to any place along the coastline of Sitka Sound. It could be applied to other islands groups, it could be applied to various portions of the road system. But what we are managing there is the whole stock within Sitka Sound that we do know rotates its areas of spawning year to year. So I guess I don't have an immediate response to why, you know, a particular fisherman might want to go in a certain area and whether or not that in and of itself is a risk. But I would suggest that our current management program has kept the spawning stock at a fairly high and productive level, and we're enjoying productive fisheries.

Mr. Chairman.

CHAIRMAN FLEAGLE: Further discussion.
Randy.

MR. ALVAREZ: Thank you, Mr. Chair.

I've got a question. I don't know who can answer it, but -- and I'll provide a little information of the herring fishery that I'm familiar with is the Togiak fishery. And I believe it's the biggest in the state. My question is that are there any areas in the Sitka herring fishery that are closed currently? Because in Togiak, the fishery over there, there are a couple of areas that are usually closed. And my memory is one area has been open a few times, Maribek Bay, and Ungalikthluk Bay I think it's -- somebody said it was open once since '80, and it's closed to commercial fishing or commercial harvest. And people, I assume they're allowed to gather subsistence kelp, eggs from there when it's closed.

But another comment I wanted to make is, you know, it's when you're gathering, it needs to be protected waters, because you can't harvest sub -- you know, eggs on kelp or branches if it's muddy or sandy, it's just no good to you. You know, it has to
be clean eggs and kelp, and, you know, have protected areas. So not every area in the whole fishery is going to be suitable for gathering. And I just wanted to make that comment, and -- if there an area that is closed in the Sitka fishery, because, you know, in my opinion, having a closed area, or a couple of closed areas like we do in Togiak, everybody still gets their -- you know, catches their quota, or just about, you know.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy. Is there somebody that can answer the question about closed, current closed areas in the Sitka Sound fishery? Tina.

MS. CUNNING: We're working on that over here.

One thing I would observe in response to Randy's comments is that the herring fishery in Sitka is opened by emergency order, and it's -- the areas that are preferred areas for harvest for subsistence are relatively easily accessible by the community are well known by our staff. And as each of those weekly openings comes up under emergency order, the fishery is distributed. It's moved around to protect those spawning areas. And that's why that fishery's managed so tightly and so carefully that it's got an increasing biomass. It's probably even more tightly regulated to protect biomass than the Togiak fisheries, which is an excellent fishery.

Steven, do you have something you want to add to that?

MR. DAUGHERTY: I would just add that the regulatory areas that can be opened for the Sitka Sound herring stock do not include all of the area in which that stock is found. We've had testimony before the Alaska Board of Fisheries that that stock can be found extending into other subdistricts that are not open -- or that cannot even be opened, or they're not included in the list of places that be opened by emergency order.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Bert.
MR. ADAMS: I was just going to say, you know, I forgot to mention this, you know, at the beginning of the meeting, for the benefit of Tom and Marsha and Tom over there, I made it pretty clear, you know, on previous meetings that I don't answer hard questions. It's a policy of mine. And that's why I have excellent staff members such as the coordinator and, you know, staff people like Terry Suminski. And I wonder if Terry might have an answer for that question. Or Bob.

CHAIRMAN FLEAGLE: Terry.

MR. SUMINSKI: Mr. Chairman. Mr. Adams. There are no areas within Sitka Sound that have -- that are permanently closed to either commercial or subsistence fishing. There may be areas outside of the authorize fishermen -- or fishery like the State has offered, but, no, there's no -- nothing that's off limits within Sitka Sound.

CHAIRMAN FLEAGLE: All right. Thank you. Marsha.

MS. BLASZAK: It strikes me with the tight management that Tina's described that this fishery in combination with the voluntar -- or, excuse me, the collaborative work under the MOA, is there any way to perhaps voluntarily through your opening process, try a closure in this Makhnati area for two seasons to see if there is a significant difference in the subsistence success rather than having this Board regulate?

MS. CUNNING: We're not aware that there's been any directed subsistence harvest in that area in the last couple of years. The preferred areas for the subsistence harvest have been other accessible areas off the road system, and not within the Makhnati area.

CHAIRMAN FLEAGLE: Other discussion.

MR. BSCHOR: No, I'm just curious about the question, and maybe I should ask clarification. Were you talking about closure relative to not allowing commercial harvest in there, or just closing everything?
MS. BLASZAK: Because we're considering a proposal specific to Makhnati Island, and my understanding is it would be closed to commercial harvest, if I understand the proposal correctly. Yes, that's the answer. Or, yes, that's my assumption, Denny.

CHAIRMAN FLEAGLE: Commissioner Lloyd.

COMMISSIONER LLOYD: Well, Mr. Chairman, I'm becoming confused now, because the original proposal did refer directly to a closure of commercial harvest, but as I understood it, the amended proposal talked about a general closure. So is there a Staff member that can help clarify that potential distinction?

CHAIRMAN FLEAGLE: Terry.

MR. SUMINSKI: Mr. Chairman. Mr. Lloyd. Yeah, the original proposal was phrased with not allowing commercial fishing in March and April, but since we're -- we don't regulate state fisheries, it would -- the closure that we would implement would be one that would be to all by Federally-qualified subsistence users. That would be the actual technical way of doing it.

Thank you.

MR. BSCHOR: Which is our only authority.

MR. SUMINSKI: Right. If I could offer one point of clarification on the use of Makhnati by subsistence users, there is subsistence use in there every year. So I'm not -- not to conflict with Tina, but I -- and maybe she was talking about something different.

Thank you.

CHAIRMAN FLEAGLE: I saw heads shaking negative behind her as well, and I think that we heard in testimony that people have used that area.

Other comments. Marsha.

MS. BLASZAK: I just want to acknowledge Commissioner Lloyd's comment that we don't
regulate commercial fishing.

MS. CUNNING: We'd like to clarify our comment.

CHAIRMAN FLEAGLE: Tina, go ahead, please.

MS. CUNNING: Do you want to do it? Go ahead.

MR. PAPPAS: Yes. At this time I'm not sure -- the Department's not aware of a survey that estimates amount of harvest in that area by subsistence users. That's what we were trying to get towards. Not that it's not used. Okay.

CHAIRMAN FLEAGLE: Thanks for the clarification.

We got the round robin discussion to where we're ready to start deliberating. Somebody ready to put a motion out? Tom.

MR. LONNIE: Mr. Chair. I'm prepared to put out a motion. Mr. Chair. I move to adopt Southeast Regional Advisory Council's recommendation on Proposal FP08-18.

MR. CESAR: I'll second that. Mr. Chairman. Did you get that?

CHAIRMAN FLEAGLE: Yes, we do. Thanks, Niles.

We have a motion and a second. Mr. Lonnie, would you go ahead and speak to your motion, please.

MR. LONNIE: Mr. Chairman. I'm having difficulty justifying the Council's recommendation under the Board's closure policy and ANILCA Sections .805c and .815. I do not believe there's substantial evidence that a conservation concern exists or that the closure's needed to insure the continuity of subsistence uses. Based on those reasons, I do not intend to support this motion.

It is obvious to me through testimony and data presented that there are years where...
subsistence needs have not been met. But it is unclear to me what the reason is. Therefore, I do not believe we have substantial evidence to support the Regional Council's recommendation at this time.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Tom.

Other discussion. Denny.

MR. BSCHOR: Mr. Chairman. I'm right where Tom is. But that said, I still think there is a lot more room for figuring out what criteria might be. We do have the capability on a case-by-case basis on the Federal waters for in-season closures, you know, and it sounds like we still don't have really good criteria yet to even make such a decision. And that decision-maker I believe is sitting in the room, Carol Gallark (ph), our ranger there, would be responsible for that. For her sake, I would hope that if this motion is not -- or is defeated, that we would still work together to manage this fisheries in a way that's coordinated and continues to improve the situation with the resource.

CHAIRMAN FLEAGLE: Tom.

MR. MELIUS: Mr. Chair. Likewise I appreciate everybody's testimony and comments on this particular proposal. We're now at a point where we're having proposals being made by an author that's not supporting the proposal, so maybe that's going to avoid our confusion that we had yesterday with some of these.

I do though believe that in listening to the testimony and information that there is not a conservation concern with the biomass information that we've heard. I do have some concern though about the conservation -- or the subsistence need not being met, but due to weather or areas where the spawn is for that particular years could lead towards the ANS not being achieved. I do -- I am aware of the efforts going on with other ways to use vessels to maybe get the subsistence need, and I hope that those continue. But at this particular point, I don't believe there's a conservation concern, and I would not be supportive of Council's proposal.

CHAIRMAN FLEAGLE: Thank you. Marsha.
MS. BLASZAK: Yeah. I really appreciate the difficulty of this issue, but I'm also having a hard time reaching the conclusion that we're meeting the criteria laid out for us in ANILCA to vote in favor of a closure at this time.

I would highly recommend, and I think it's already underway and ongoing, that the continued collaboration and problem solving that I see, a strong willingness on everybody's part to accomplish continue, and continue in earnest as, you know, hopefully there will be some relief in the amount of take that's available for subsistence. But I don't see the conservation concern here, and I'm not going to be able to support the proposal.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: Well I certainly think we hit one criteria, which is the subsistence take. I think there was some real concern by the folks from Sitka about that ability to get as much as they need. And I think the last -- three of the last seven years it's been demonstrated.

And I would remind the Board that we are here to protect the subsistence opportunity. We're not here to protect any other things that I'm aware of but that opportunity within conservation of the stock. And I'm concerned that I hear talk of the State and the tribe and the RAC trying to come to some agreement on this, but I'm not certain in my mind it's reaching any help to the subsistence user in the Sitka Sound. So I -- although obviously I'm not very good at science, but I can count the numbers as far as I know, so I know that this is not going to pass. But I just remind the Board that we do have in fact a responsibility to protect, as you all know and more than I, that we need to press on with making sure that the subsistence use is protected.

And for that reason, I intend to support the proposal.

CHAIRMAN FLEAGLE: Thank you, Niles.

I'll weigh in. I want to first of all say that I am sympathetic to the folks in the Sitka area that bring this issue forward. And just based on the information that we were looking at last year,
which was again provided for us as Appendix A in the Board book this year, the waters around Makhnati Island, while not entirely always used, sometimes it's the whole portion or just the north portion or south portion, have been fished 6 out of 15 of the years prior to last year. And when you break those numbers down, according to the report, a lot of those harvests occurred in the recent years, 2001, 2003, 2005, 2006. So, I mean, it just stands to reason that, yeah, there is probably a correlation in the fishing -- the commercial fishing occurring and the problems with the harvest. So I do recognize that.

But I also recognize that I think we've heard ample evident that a closure of this area would probably not have any significant benefit to either the commercial industry or the sac roe -- I mean, the herring roe harvest. And when we look at our reasons that we're authorized to make closures, it's based on the conservation of the resource, and in this case I feel clearly that with an increasing biomass of herring, we don't have a conservation issue.

I recognize your argument, Niles, that we are primarily responsible to look at subsistence, but when it comes to closures, our charge is more pointed, and that's the conservation of the resource.

One last item I do want to touch on though, and that's the deference to the RAC recommendation, and I know that we have Section .805c that gives -- that says that we shall -- the Secretary may choose not to follow any recommendation which he determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs I think that it's pretty clear in my mind at least that we don't have substantial evidence that this closure would in fact produce the results that are being requested.

And I am encouraged that the State is willing to step up their efforts to work with the Sitka Tribe in this area and with the commercial fishers' interest in helping out in any way they can. And I think that with that, we should see some improvement in this harvest.

I guess that's all I have to say. I intend to vote against the proposal as well.
Further comments.

(No comments)

CHAIRMAN FLEAGLE: We're ready for the question?

MR. MELIUS: Call the question.

CHAIRMAN FLEAGLE: The question's called. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP08-18 to adopt the proposal with modifications as recommended by the Southeast Alaska Subsistence Regional Advisory Council. Mr. Bschor.

MR. BSCHOR: No.

MR. PROBASCO: Mr. Melius.

MR. MELIUS: No.

MR. PROBASCO: Ms. Blaszak.

MS. BLASZAK: No.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: No.

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: No.

MR. PROBASCO: And Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Motion fails, 1/5.

CHAIRMAN FLEAGLE: Okay. Thank you.

That concludes our discussion on the Southeast area proposals. And I want to thank Bert for all your hard work in helping us move through those, and for the Southeast Staff.

Now, we did have a request from Southcentral Chair Lohse, who is not going to be able to be back with us until 1:00 o'clock, that he would
like to be present for those Southcentral issues, and
I'd like to honor that request. So I'm wondering if --
we've got 40 minutes before we break for lunch, if we
should just go ahead and move down the agenda and take
up the Proposal 11, which is the Alaska Peninsula and
Chignik areas.

MR. PROBASCO: We're ready.

CHAIRMAN FLEAGLE: Do we have Staff
that would -- okay. Let's stand down for five minutes
while we change out Staff, and then we'll come back on
with Proposal 11.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good morning. The
Federal Subsistence Board reconvenes. And we're taking
Proposal 08-11 slightly out of cycle to give the Chair
of the Southcentral RAC an opportunity to be present
for his area concerns.

And we have new Staff ready to do the
presentation. And I'd like to welcome both Cliff and
Liz to the table. And I'll turn it right over to you,
Liz, for the presentation.

MS. WILLIAMS: Thank you, Mr. Chair and
the Council. My name is Liz Williams. I'm an
anthropologist at the Office of Subsistence Management.

And the analysis for Fisheries Proposal
08-11 begins on Page 323 in the book. And this
proposal was submitted by the Aniakchak Subsistence
Resource Commission, and they request the addition of
snagging to the legal methods of harvesting salmon for
the Alaska Peninsula and Chignik areas. Communities in
these two areas include Chignik, Chignik Lagoon,
Chignik Lake, Port Heiden, Perryville, Ivanof Bay,
Meshik, Sand Point, Port Moller, Nelson Lagoon, False
Pass, Cold Bay and King Cove.

According to the proponent, snagging
provides an efficient and selective method for the
harvest of individual salmon. The proponents would like
to harvest one or two salmon for a camp meal, or one or
two salmon at specific spawning stages. This proposal

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is not intended to replace or supplement fisheries in which the bulk of the subsistence harvest occurs.

The practice of harvesting individual salmon for immediate use is a customary and traditional practice throughout rural areas of South Coastal Alaska.

Last January at a Board meeting a similar proposal, FP07-06 was approved by the Board with modification, and that proposal requested the legalization of these same methods, snagging, spear or arrow, and hand capture, as legal methods and gear types for the harvest of salmon in Lake Clark and its tributaries by Federally-qualified subsistence users, and that's adjacent to the Chignik and Alaska Peninsula areas in this proposal.

The intent of this proposal, like that proposal from last year, is to legalize a traditional method of harvesting salmon.

It's not standard procedure for a proposal analysis to expand upon a proposal request. However, I consulted with several of the proponents, members of the Aniakchak SRC, and they confirmed that modification to include the same types of harvest methods, spear or arrow, hand capture, that were adopted through FP08-06 is also consistent with their proposal, which is to provide for varied harvest methods for harvest of individual specific salmon. The Bristol Bay RAC also supported the modifications to this proposal.

The areas affected by this proposal as I mentioned before are the Federal public waters within the Alaska Peninsula and Chignik areas. Federal jurisdiction includes all navigable and non-navigable waters within the exterior boundaries of the Aniakchak National Monument and Preserve and the Alaska Peninsula National Wildlife Refuge, and inland waters adjacent to the exterior boundaries of the Aniakchak National Monument and Preserve and the Alaska Peninsula National Wildlife Refuge.

If you look at the map on pages 330 and 331, you can see that this is a cross-over proposal, because the Bristol Bay and the Kodiak/Aleutians RAC boundaries straddle the boundaries of the Alaska Peninsula and Chignik areas and the Alaska Peninsula.
National Wildlife Refuge. So the eastern Aleutian Island communities of Sand Point, Port Moller, Nelson Lagoon, False Pass, Cold Bay and King Cove are within the Alaska Peninsula area, and these communities would also fall under the proposed regulations if this proposal is adopted by the Board.

Currently there isn't a representative from these communities on the Kodiak/Aleutians RAC, which took no action on this proposal, because they felt they didn't have enough information to make an informed decision.

If these regulations aren't agreeable to these communities, however, they don't have to participate in the type of fisheries proposed.

If this proposal is adopted, Federally-qualified subsistence users could legally engage in snagging, spear/arrow, or hand capture to harvest salmon in more efficient and selective manner. These proposed gear types might affect the efficiency of the harvest, but they probably won't increase the overall harvest.

When the Board approved FP07-06, ADF&G stated its inability to allow harvest by these methods to be reported on the State subsistence fishing permit, because these methods of harvest are illegal under State law. In response to ADF&G concerns about the permit, the Board decided that salmon may also be taken without the State subsistence permit in Lake Clark and its tributaries by snagging, and this same language has been added to this modified proposal. And this is because it's expected to be a very small harvest.

So the OSM preliminary conclusion is to support Proposal FP08-11 with modification to allow harvest without a permit of salmon by snagging, using a spear, bow and arrow or capturing by bare hand. And the regulation should read, in the Chignik and Alaska Peninsula areas, you may also take salmon without a permit by snagging, using a spear or bow and arrow, or capturing by bare hand.

Thank you, Mr. Chair. That concludes my analysis summary.

CHAIRMAN FLEAGLE: Thank you, Liz. Do we have a summary of written public comments on this,
MR. EDENSHAW: Mr. Chair and Board members. There weren't any written public comments.

CHAIRMAN FLEAGLE: Thank you. Any interest in public testimony, Pete.

MR. PROBASCO: Mr. Chair, I have no one signed up for Proposal 11.

CHAIRMAN FLEAGLE: Okay. Thank you. And we now turn to the Regional Advisory Council. As stated, Kodiak/Aleutians did not take any action. They're not represented here. But we do have Randy from the Bristol Bay. Randy.

MR. ALVAREZ: Thank you, Mr. Chair. Our Council supports the proposal with modification as it states here. And will discuss it later on at the discussion period, if that would be appropriate. Thank you.

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

MR. PAPPAS: Thank you, Mr. Chair. George Pappas, Department of Fish and Game.

This proposal would add snagging with a hook and line as a legal means to harvest all species of salmon in freshwaters in the State of Alaska Peninsula and Chignik fisheries management areas. Federal Staff recommends the proposal be expanded to include additional methods and means recently adopted in Lake Clark. Federal Staff also recommends expanding the original proposal to include communities and areas which have not requested liberalization of Federal subsistence fisheries.

The Alaska Board of Fisheries recently considered and decided not to allow snagging as a means of harvest in freshwaters of Alaska.

If this proposal's adopted, a separate Federal permit will be required because this method is not allowed by the State. Federally-qualified subsistence users would be required to use a separate Federal permit to sue the proposed methods because
such cannot be authorized by State permits. Federally-qualified subsistence users would also have to be sure they are on -- standing on Federal lands or in a boat if they are using the proposed methods.

And, Federal Staff, if you don't mind putting up our map there that's on Page 337 and 338 of your book.

MS. CUNNING: Theo.

MR. PAPPAS: He's working on it.

MS. CUNNING: Is he?

MR. PAPPAS: Yeah. Okay. Travel to use this method on Federal lands would be costly in some situations. Liberal State subsistence fisheries are allowed on all lands, so the methods are not needed for meaningful subsistence harvest and would be confusing for users and complicated for enforcement -- complicating -- excuse me -- complicated for enforcement personnel.

To see an example, here's a map that's also on Page 338 of your books. You'll see the Chignik watershed there, and you'll notice that the tan area is not Federal properties. And for someone from Chignik Lagoon, Chignik Lake or Chignik Bay to actually travel to Federal properties to fish from shore, it would be a significant investment of time and effort, energy, to actually get up past the delta, up in the Black Lake area and up into a tributary to fish from Federal lands.

The use of snagging as a legal method may increase harvest and, incidently, mortality of salmon throughout the drainages of the Alaska Peninsula by an unknown amount. It is not known whether such harvest would be large enough to raise any conservation concerns or issues on individual tributaries of on creeks and streams with small salmon populations.

We'd also reiterate Trooper Waldron's comments yesterday that a person standing on State or private land, using methods prohibited by State regulations would likely be cited.

If the Federal Subsistence Board allows snagging the Federal agencies would be responsible for
permitting, reporting and monitoring the fishery.
Issuing multiple permits and requiring separate
reporting would be confusing and cumbersome for
Federally-qualified subsistence users. Discussions at
the Regional Council level indicated that if this
proposal is adopted, Federal subsistence permits would
not be required for Federally-qualified users who
choose to snag, spear, use a bow and arrow or hand
capture as methods of harvest. If Federal Staff are
not going to require permits, there will be no
mechanism to advise Federally-eligible users where they
can fish under Federal regulations. No information
would be available on effort and annual harvest
information would not be collected.

The Department's recommendation is to
oppose this, and we have some more comments from Tina.

MS. CUNNING: I just want to reiterate
in summary with George's comments that we have an
objection to the efforts that are made to expand the
original proposals to include methods and means and
areas that are not being originated by the subsistence
users.

Secondly, with this proposal, it's
really important that the Federal responsibility to
monitor the harvest and effort be conducted, because
otherwise, with little monitoring and little
enforcement, we'll have no idea what actual uses are
occurring or what kind of harvests are happening on the
ground.

Thank you.

CHAIRMAN FLEAGLE: Thank you. I have
InterAgency Staff Committee comments. Larry.

MR. BUKLIS: Thank you, Mr. Chairman.
The Federal InterAgency Staff Committee found the Staff
analysis to be a complete and accurate evaluation of
the proposal, and the recommendations of the Regional
Advisory Councils to be consistent with ANILCA Section
.805c.

CHAIRMAN FLEAGLE: Thank you, Larry.

Board discussion. Marsha.

MS. BLASZAK: Mr. Chairman. I have a
question. Because we approved a similar proposal last year in FP07-06 for Lake Clark. Do we have any information from that harvest if there were any problems with the adoption of that regulation for Lake Clark?

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Sorry. No comment.

CHAIRMAN FLEAGLE: Okay. Larry.

MR. BUKLIS: Mr. Chairman. Ms. Blaszak. Permits were not required for that incidental, small scale harvest method, and so we don't have permit report data. I think your question included something about permits or information. As Ms. Williams said, with this sort of use, there wasn't a permit required.

CHAIRMAN FLEAGLE: So basically we can jump to the conclusion that there -- without any reporting, we have no idea of what the results of allowing this method to go. I think that was the gist of the question, what kind of harvest and problems that were maybe associated with it.

MS. BLASZAK: Mr. Chairman, this is understood to be a very small scale opportunity, and we're not aware of any problems enforcement-wise.

CHAIRMAN FLEAGLE: Thank you. I'm just curious. The proposal is presented by the Aniakchak Subsistence Resource Commission, and what communities are represented on that council? I don't know, Marsha, if you have that information or if somebody else does.

MS. BLASZAK: I think Liz provided that in her remarks. Do you want to.....

CHAIRMAN FLEAGLE: Thanks, Liz.

MS. WILLIAMS: It's the Chigniks, and then Chignik Lake -- well.....

MR. ALVAREZ: Mr. Chairman and Board members. The Aniakchak SRC submitted the proposal so proponents must be living in the preserve, and Chignik Lake is the only one within the preserve.
CHAIRMAN FLEAGLE: Okay. Thanks.

Marsha.

MS. WILLIAMS: I did want to add, the adoption of the proposal would align harvest methods for the Chignik and Alaska Peninsula areas within the Bristol Bay area. And allowing these harvest methods would not increase the total harvest. In fact, the proposal could reduce total harvest, because in some situations, harvesting individual fish could replace the harvest of multiple fish with a seine or gillnet. So the proposal from the SRC doesn't appear to provide any conservation concerns.

CHAIRMAN FLEAGLE: Other discussion.

Randy.

MR. ALVAREZ: Thank you, Mr. Chair.

You passed this -- a similar proposal last year for the Lake Clark area, and we discussed this one here at our last RAC meeting. And as was during the first -- during the Lake Clark proposal, you know, our RAC, it was no unanimous. There was people that didn't feel that snagging should be allowed, but our Council supported the proposal mainly because it was -- it is going -- it would be very small harvest, mainly done when -- it would not replace the subsistence gillnet fishery. It's mainly done when they are camping, picking berries, or hunting to allow them another method that some feel that they've always had so that they can get something to eat. And it would be in our opinion very small. That's why we did not support needing a permit, because the reasons for that I believe was there is no Federal permit. And so we went along with not having to need a permit. And we supported it because you had passed it, this pro -- in the Lake Clark area, which is part of the Bristol Bay water, our committee, Council jurisdiction.

So if there's any questions, I would like to -- I can try to answer or Cliff or Liz who were also at the meeting, so they can probably help.

Thank you.

CHAIRMAN FLEAGLE: Thanks, Randy.

Tina.

MS. CUNNING: Mr. Chairman. I would like to point out that the salmon may be harvested
under the Alaska Board of Fisheries regulations using
gillnets and purse seines, and the State provides a
subsistence preference on all lands and liberal State
subsistence fisheries for salmon are provided on the
Alaska Peninsula. For example, the subsistence
fisheries in Chignik and Alaska Peninsula have a
liberal household limit of 250 fish, and subsistence
fishermen can be authorized to take more if they need
it.

This is an expansion of a methods and
means that just -- we don't believe necessary. It's
going to create additional problems with no monitoring
and no enforcement. The subsistence preference is
already adequately being provided. And we would urge
you to consider that.

CHAIRMAN FLEAGLE: Thank you. I wanted
to kind of explore the issue you raised about a local
issue raised by Chignik that's being applied to a
broader range. And it's not real clear from the maps,
but if the proposal were to be passed as recommended,
how many other communities on the Peninsula would this
change apply to. Liz.

MS. WILLIAMS: The SRC communities were
the Chigniks as I mentioned, and Port Heiden,
Perryville, Ivanof Bay and Meshik. It's the eastern
Aleutian communities that you're talking about I
believe, Sand Point, Port Moller, Nelson Lagoon, False
Pass, Cold Bay and King Cove.

CHAIRMAN FLEAGLE: Thank you. Other
discussion. Marsha.

MS. BLASZAK: I'm able to provide the
resident zone communities for Aniakchak include
Chignik, Chignik Lagoon, Chignik Lake, Meshik, and Port
Heiden.

CHAIRMAN FLEAGLE: Thank you. Other
discussion. Commissioner Lloyd and then Virgil.

COMMISSIONER LLOYD: Thank you, Mr.
Chairman. Again, with regard to the general nature of
the proposal here, I'm concerned that given the State's
testimony that there is a -- the issue has been put
before this Board that this is not a recognized method
of managing fisheries, and particularly in salmon
spawning areas in the State of Alaska. To encourage
the use of methods and means that accentuate the
potential to disturb spawning areas, to injure fish
without taking them, and to do so in a subsistence area
that has very liberal subsistence opportunity provided
by other methods and means, and to encourage people in
at least large land areas to potentially fish in
violation of State law on non-Federal lands I think is
a general violation of recognized principles of fish
and wildlife conservation, and I would urge you to
consider that in your deliberations. Thank you.

CHAIRMAN FLEAGLE: Thank you. Virgil
Umphenour.

MR. UMPHENOUR: Thank you. Our RAC did
not address this, and so the comments I'm making are
just from my personal experiences.

The State used to -- it used to be
legal to snag sockeye salmon in the Copper River
drainage down by Copper Center in the 70s, and a lot of
people participated in that. I can fully -- and in my
tenure on the Board of Fisheries, the Board of
Fisheries almost always rejected these type of
proposals. And I can appreciate the Department's
concerns.

However, I can also appreciate the
proposer's concerns where they're out camping. It's
not convenient to haul a gillnet around or a seine if
you're out backpacking and camping and you want to
catch a fish to eat. That is an efficient method to do
it, and it used to be on the books with the State where
you could snag in the ne case I know for sure.

Thank you.

CHAIRMAN FLEAGLE: Jack Reakoff.

MR. REAKOFF: Thank you, Mr. Chairman.
I would agree with Virgil there. I'm on the Gates of
the Arctic Subsistence Resource Commission, and when
you're afield harvesting subsistence resources, the
lightness of your gear, and especially looking at this
map, that it actually reiterates the need for this type
of proposal, because it's distant from where their
village is and where they can utilize a gillnet.

These are -- you have to realize these
are -- there's a limited eligibility to hunt and fish
in these areas. And there's a limited pool of people that will actually be doing it would be like a nominal effect on the resource. And catch and release fishing is allowed by State regulations, so that's hurting fish and releasing them in spawning areas.

And so from my personal perspective, I would agree with the subsistence users that a method and means that facilitates lightness of gear as you're travelling is -- would be -- have a nominal effect on the population, and it would be beneficial to the subsistence users.

CHAIRMAN FLEAGLE: Bob Aloysius.

MR. ALOYSIUS: Thank you, Mr. Chairman. This method of harvesting fish of any species has been our way of life for thousands of years.

CHAIRMAN FLEAGLE: Thank you. Further open discussion.

(No comments)

CHAIRMAN FLEAGLE: Ready to move forward with a motion? Marsha.

MS. BLASZAK: Mr. Chairman. I would like to move to adopt Proposal 08-11 as recommended by the Bristol Bay Regional Advisory Council. The original proposal request to take salmon by snagging, and I think the Council's recommendation was to adopt and also modify that proposal to allow the harvest of salmon by snagging, by use of a hand line or rod and reel, and by spear, bow and arrow, or by hand capture. The Council recommendation also provided no permit would be required to snag fish. The language in the Council's motion can be found on Page 322 of the Board book. And following second, I'll speak more to the motion.

MR. MELIUS: I'll second the motion.

CHAIRMAN FLEAGLE: You got it.

MS. BLASZAK: Thank you. This proposal was originally submitted by the Aniakchak Subsistence Resource Commission. The SRC requested the harvest methods in the Alaska Peninsula and Chignik fishery management area be expanded to allow the take of salmon.
by snagging.

The intent was so that subsistence users in the field, we've discussed that, in camping could harvest individual salmon with readily available gear.

Adoption of the Council's recommendation would align harvest methods for the Chignik and Alaska Peninsula areas with those of the Bristol Bay area. The lack of a permit requirement for snagging would also be the same.

I agree this harvest method should be provided for, and also the Bristol Bay Council's modification to the original text of their proposal that I summarized a few minutes ago. And allowing these harvest methods would not be expected to increase the harvest. I don't see a permit as necessary as the number of salmon harvested by these types of gear would be reasonably expected to be very small. And I will be supporting the recommendation of the Bristol Bay Council.

CHAIRMAN FLEAGLE: Further discussion,

MR. MELIUS: Mr. Chairman.

CHAIRMAN FLEAGLE: Tom.

MR. MELIUS: I also believe that we've heard from the testimony that there's a traditional use here to catch an occasional fresh fish. I don't believe that the intent of the harvest would be in any way a large quantity of salmon. I don't really believe that there's a conservation concern here with such a low harvest anticipated. So I would be supporting the motion.

CHAIRMAN FLEAGLE: Denny. Oh, I thought you looked like you were ready to speak.

I'll speak. I'm going to vote for the motion, took but I do want to recognize the cautions that the State presented, and that, one, we do have the proposal being presented basically by Chignik where this may not even be used their residents unless they travel quite a ways from their locale. But, you know, rural people do travel, and it's likely that they may.
The other concern is that taking a proposal and applying it to people who didn't request it, I kind of have a little merit to that concern as well.

But I think I'm convinced that we're talking about a very low level of harvest. It's just an additional subsistence opportunity for somebody who may need it while out, travelling light, doing subsistence things or checking the hills or whatever you've got going on. And I see that it's not going to be a major problem. And that goes with the lack of permitting as well. So I'm going to support it.

Are we ready for the question.

MR. CESAR: Question.


MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP08-11, to support with modification the Bristol Bay Subsistence Regional Advisory Council's recommendation. And the reference was to Page 322.

Mr. Melius.

MR. MELIUS: Aye.

MR. PROBASCO: Ms. Blaszak.

MS. BLASZAK: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: And Mr. Bschor.

MR. BSCHOR: Aye.
MR. PROBASCO: Motion carries six/zero.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. All right. That concludes the Alaska Peninsula and Chignik area suite of proposals. And as advertised, we will return from the lunch break with Cook Inlet area proposals.

And looking at how we're tracking on the agenda, those Cook Inlet and the Bristol Bay will probably consume most of the afternoon, if not all. And just to give a time line for people that are here for the Yukon fisheries proposals, I think that we will go ahead and establish tomorrow morning at the first start of business as the -- when we will take up Proposal 13 and 14. I know there's some folks that have got travel concerns, and this will guarantee that the first out of business, first order of business tomorrow will be the Yukon Proposal 13/14, and that will be at 8:30 tomorrow.

So with that, we're going to go ahead and stand down for lunch and.....

MR. ALVAREZ: Excuse me, Mr. Chairman.

CHAIRMAN FLEAGLE: And return at 1:00 o'clock.

MR. ALVAREZ: Mr. Chair.

CHAIRMAN FLEAGLE: Randy.

MR. ALVAREZ: Are you going to take up the other Bristol Bay proposal next, or are you going to switch back to Cook Inlet?

CHAIRMAN FLEAGLE: We're going to switch back to Cook Inlet, unless I'm compelled otherwise.

MR. ALVAREZ: We're all ready, but.....

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. May I. We have one more proposal that deals with the area that Mr. Alvarez in part represents, and that's Proposal No. 12. And, you know, that would probably take, as far as
amount of time, equal to what we just did with the Chignik.

CHAIRMAN FLEAGLE: So you're asking me to be reasonable?

MR. PROBASCO: Indirectly.

CHAIRMAN FLEAGLE: Thank you. Yeah, I failed to notice that, Randy. We would be basically holding you hostage through all of Cook Inlet area until we brought up one your one remaining proposal. So I'll go ahead and entertain that, and let's go ahead and deal with Proposal 12 right after the lunch break and then we'll go into Cook Inlet issues, and we'll for sure have Chairman Lohse here at that time.

Bob.

MR. ALOYSIUS: Could you extend the lunch break, because the roads are very hazardous and some people have further to go than others do.

CHAIRMAN FLEAGLE: I usually try to give an hour and 10 or an hour and 15 for the reason that we're downtown and it's hard to get a place to eat at lunch time. So with that, let's return at 1:15.

MR. ALOYSIUS: Thank you.

(Off record)

(On record)

CHAIRMAN FLEAGLE: There we go. The Federal Subsistence Board is back on record. And I'd note that Chairman Lohse is back. Thanks, Ralph, but we made another executive decision in your absence. You get to wait since we waited for you.

MR. LOHSE: Thank you, Mr. Chair. I'm more than willing to wait for as long as it takes.

CHAIRMAN FLEAGLE: Okay. What it was, Ralph, is we went ahead and skipped over the Cook Inlet area proposals, because we finished up on Southeast before the lunch break, and we took the Alaska Peninsula proposal up before lunch. And we were going to jump right back into Cook Inlet, and then Randy jumped up and said, hey, wait a minute, I've only got
one more proposal. So we're going to go ahead and take his before we go into Cook Inlet.

Pete, announcements.

MR. PROBASCO: Yes. Thank you, Mr. Chair. In keeping with the holiday and Christmas spirits here, building management felt sorry for us, listening to our plight. We find ourselves with a lack of coffee and tea and stuff like that. And so Greg Spears, the person that manages this office, has offered us coffee and it's on behalf of the building. So I thank the building.

So, Keith, you're going to do okay this afternoon.

CHAIRMAN FLEAGLE: I thank the building, too.

MR. GOLTZ: Well, that's great. Thank you, but where some see problems, others find solutions. I was fine.

CHAIRMAN FLEAGLE: All right. With that, let's go ahead and move back into our proposals. And we're dealing with Fisheries Proposal 08-12 at this time. And I'd like to turn it over to Staff for the Staff analysis. Liz.

MS. WILLIAMS: Thank you, Mr. Chair. Liz Williams again, anthropologist at the Office of Subsistence Management.

And the analysis for Fisheries Proposal 08-12 begins on Page 342 in your book. This proposal was submitted by the Lake Clark Subsistence Resource Commission, and it requests the addition of traditional small scale subsistence fish traps and weirs made of wooden stakes to the list of legal subsistence fishing gear in the Federal regs for the Naknek/Kvichak district, which is the Kvichak/Iliamna/Lake Clark drainage of the Bristol Bay area. And their requesting the use of this type of equipment specifically in tributaries of Lake Clark, not the lake itself.

The Federal definition of fyke net and lead already includes fish traps and fences or weirs. So we don't need to add that to regulation. However, there are several general Federal subsistence reg --
fishery regulations, and some specific Bristol Bay Federal subsistence fishery regulations that apply if this proposal is adopted.

And the two most important ones are, you may not obstruct more than one-half of the width of any stream with gear used to take subsistence fish. And you may not take fish from waters within 300 feet of a stream mouth used by salmon. So those will apply to the use of this type of gear.

The areas affected by this proposal include the Federal public waters within the Bristol Bay area that are in the Kvichak/Iliamna/Lake Clark drainage. Federal jurisdiction includes all navigable and non-navigable waters within the exterior boundaries of the Lake Clark National Park and Preserve, and inland waters adjacent to the exterior boundaries of the Lake Clark National Park and Preserve.

All residents of the Kvichak/Iliamna/Lake Clark drainage have a positive customary and traditional use determination for all species of fish. Communities in this drainage affected by this proposal include Iliamna, Lime Village, Newhalen, Nondalton, Pedro Bay, and Port Alsworth. And these are the resident zone communities of Lake Clark National Park, and they're also the Lake Clark SRC member communities.

As I noted, the proposal asks for the use of fyke nets and leads for all fish. And I attended the Lake Clark SRC meeting in September to clarify several aspects of this proposal. The SRC specified that their target species were suckers, whitefish, grayling, Dolly Varden, pike, an occasional salmon and no rainbow trout. The only species for which there appears to be any biological concern is the Kvichak River sockeye salmon. But again salmon are sort of the last priority for use with these types of gear.

At the SRC meeting I asked the proponents to draw a picture of what they're proposing, because there are many types of fyke nets and leads. And if you look on Page 343 and 344, I took the hand drawing that the SRC did back to our office, and a skilled person recreated it on the computer, and those are the images you see on those two pages. And so you can see that the fyke net and lead is very small and
would not go across more than one-half of the stream.

The SRC said that these are small temporary devices, and they included the provisions that the fyke nets and leads must be attended at all time, and that all materials used to construct them should be and would be removed once fishing has stopped.

The specified that they submitted this proposal because the legal use of small scale fyke nets and leads will allow them to teach younger generations how to use and construct fyke nets and leads. And they said specifically that this is how they can teach traditional conservation ethics that must be learned by doing, and learned by fishing, and using these devices as a community.

Adoption of this proposal would allow subsistence users to harvest fish in a more selective manner in tributaries of Lake Clark. It would also allow subsistence users to harvest only selected species, which will reduce bycatch, because they would release unwanted fish unharmed, and that's one aspect of the traditional conservation ethic that they spoke of.

There's a long history of the use of fyke nets and leads to harvest fish in the Lake Clark/Iliamna area.

In order to insure conservation of fishery resources in this area, a permit from the Federal in-season manager will be required if this proposal is adopted. And these permits can also serve as harvest reports which could be shared with ADF&G to add to their subsistence salmon harvest data base if salmon are even harvested with these types of gear.

Several other topics were discussed at the Lake Clark meeting on September 21st, and those included the use of wood only for Fyke nets and leads, and the addition of Sixmile Lake to the area included under this proposal. The Lake Clark SRC and the superintendent of the park both specified that they wanted only locally available wood to be the material used for fyke nets and weirs. However, OSM staff has discussed this matter several times, and we concluded that specifying the materials to be used is sort of unnecessarily restrictive under the broad sort of
flexible guidelines of ANILCA.

As we worked through this analysis, we've also realized that the adoption of this proposal would necessitate changes in other aspects of the Bristol Bay regulations. And these were regs that said you can only take salmon under the authority of a State subsistence salmon permit. And we wanted to say that you can take salmon under the State permit as well as the Federal permit for using the fyke net. We didn't want people to be stuck with just one or the other. That's not the intent.

The other one was that only -- each household can only get one permit per year, and again we just wanted to state that people can get one of each per year.

So the Office of Subsistence Management conclusion is to support Proposal FP08-12 with modification to specify regulations for the use of fyke nets and leads in tributaries of Lake Clark, but not to add the term fish trap or weir, because it's not necessary, nor to specify the materials used in their construction. So the proposed regulation that's modified should read, for Bristol Bay area fish, you may also take salmon with a fyke net and lead in tributaries of Lake Clark unless otherwise prohibited. You may only use a fyke net and lead with a permit issued by the in-season manager, the Federal in-season manager. All fyke nets and leads must be attended at all time while in use, and all materials used to construct the fyke net and lead must be removed from the water when the fyke net and lead is no longer in use.

Thank you. That concludes my presentation.

Questions?

(No comments)

CHAIRMAN FLEAGLE: All right. Any written public comments, Cliff.

MR. EDENSHAW: Thank you, Mr. Chair and Board members. There was one.....
CHAIRMAN FLEAGLE: I'm sorry, I turned off your mic accidently. I wish I didn't learn how to do that.

MR. EDENSHAW: Okay. We can set up a bypass, Mr. Chair.

The Lake Clark SRC supports the proposal with modifications suggested by the Office of Subsistence Management. As modified the proposal will allow subsistence fishers to use fykes made from wood stakes in tributaries of Lake Clark and Sixmile Lake.

And that was all.

CHAIRMAN FLEAGLE: Okay. Thank you.

Any public testimony requests, Pete.

MR. PROBASCO: Mr. Chair. We have no one signed up for Proposal 12.

CHAIRMAN FLEAGLE: Thank you.

Regional Advisory Council recommendation. Randy.

MR. ALVAREZ: Thank you, Mr. Chair. The Bristol Bay RAC supports the proposal with the modification to -- as Liz has stated.

And I believe it should be -- it says the tributaries of Lake Clark and then Sixmile Lake. I think it should be tributaries also of Sixmile Lake, not just Sixmile Lake as it says right here. That's what our recommendation was.

And I'll elaborate more on our reasoning more in discussion later before deliberation. Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy. I guess it's just all in a matter of how you read it. I read it as tributaries of Lake Clark and Sixmile Lake, tributaries of. I think that's the intent, right, Liz.
MR. GOLTZ: Our Federal jurisdiction applies only to Sixmile Lake and to waters within the external boundaries of the park. It would not apply to tributaries of Sixmile Lake on the west.

CHAIRMAN FLEAGLE: Thank you. Okay.

The Department of Fish and Game comments. George. Or Tina.

MS. CUNNING: Mr. Chairman, we request our entire Department's comments to be entered into the transcript for this proposal. And George will just hit some highlights, summary comments.


MR. GOLTZ: I want to ask Tina, because I was asked by the court reporter, how you prefer that? They can type those into the record or they can simply affix them as an appendix the way you've presented them. And I suggested the second, but it's really up to you.

MS. CUNNING: As long as they're electronically searchable.

MR. GOLTZ: Okay. Maybe you and I should talk to the court reporter. All right.

CHAIRMAN FLEAGLE: Okay. Thank you.

Go ahead, George.

MR. PAPPAS: For the record, George Pappas, Department of Fish and Game.

The Federal Board approved the use of spears, snagging, hand lines, drift gillnets, and beach seines at the January 2007 Board meeting. Discussions at the winter 2007 Bristol Bay Regional Advisory Council meeting focused on the RAC's concerns about improving the overall health of the Kvichak River and Lake Clark area sockeye salmon, which was determined by the Alaska Board of Fisheries to be a stock of concern in 2003. Use of a fish weir or trap as harvest methods may increase harvest in small tributaries on discrete stocks, compounding current conservation concerns. Adoption of this proposal would be inconsistent with
The concerns for sockeye salmon stocks previously expressed by the RAC and the State.

The Kvichak River sockeye salmon stock was determined by the Alaska Board of Fisheries to be a stock of management concern in 203 and previously as a stock of yield concern in 2000. Such harvest by fish weir or trap could be large enough to raise conservation concerns on individual tributaries because the complete stock status is unknown for all the tributaries of Lake Clark.

Conservation issues will exist if fish traps or weirs are installed in specific -- to specifically target salmon in tributaries or lakes that do not have established escapement goals, stock assessment projects, estimated exploitation rates or established abundance-based harvest limits per body of water. Installation of site-specific harvest gear types which could harvest most or all salmon migrating into a small tributary is not sound fisheries management.

Weir and fish traps with attached leads that obstruct the navigational channels would likely be the most effective gear type that a user could install in a small tributary, but strategic design and installation of such gear type could effectively limit salmon migration in specific tributaries.

Trapping, crowding and holding fish causes injuries and stress if fish are left in a fish trap for any amount of time, especially in small, shallow tributaries where water temperatures may be elevated. Injuries induced by passing through a trap may result in decreased spawning success depending upon the frequency of occurrence.

Small tributaries likely could not support a significant concentrated harvest. Even a moderate harvest from small tributaries with small or unknown salmon returns could result in localized depletion issues.

If adopted despite these serious conservation concerns, the Board will need to limit the number of weirs, traps operated on a single stream, establish how the limit amongst users will be implemented, and determine the number of households that could use a weir or fish trap. Harvest limits by
species are needed for each tributary where weirs or fish traps would be operated based on the best scientific assessment information available for each tributary, and should not be allowed in tributaries where recent stock assessment information is not available.

The Department also has concerns about the impacts weirs and fish traps may have on habitat of a salmon stream. Driving stakes into the bed of a creek or stream to trap or handle salmon and other species of fish will disturb riparian and river bottom habitat. Installing a weir can cause significant scouring and alter the river channel during high water events. Habitat damage may also occur if fish traps and weirs, including fyke nets, are authorized for use by multiple households.

Installing a structure such as a weir or trap will preempt other user groups wishing to fish in the vicinity or upstream of that structure.

The Department recommendation is to oppose this proposal. The proposal further exacerbates conservation concerns, necessitates new Federal permits, will intensify needs for Federal drainage-by-drainage limits and monitoring, and cause subsistence users unnecessary complications due to Federal/State jurisdictional claims without providing a use that is necessary to provide for Federal subsistence priority.

I would also like to refer to yesterday, to Trooper Waldron's comments about fishing from non-Federal lands or attaching non-approved equipment, fishing equipment or gear to non-Federal lands.

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

FP08-12 Lake Clark and Tributaries, Wood Stake Fish Traps and Weirs.

Introduction: This proposal allows use of fish traps or weirs constructed of wooden stakes as an additional method for take of all species of salmon by federally qualified subsistence users in Lake Clark and its tributaries. Both the Alaska Board of Fisheries and the Federal Subsistence Board (Board) recently took actions to liberalize methods used in

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The proponent originally requested fish traps and weirs. Authorization of a modified proposal is suggested by the federal staff in order to allow fyke nets and lead instead, but the federal definition of fyke net and lead includes fish traps or fences or weirs. Thus if fyke net and lead are allowed the designated federal official would have to limit the federal permit in order to not allow traps and weirs as a stipulation.
subsistence fisheries in Lake Clark. The federal Board approved use of spears, snagging, hand lines, drift gillnets, and beach seining at the January 2007 Board meeting. Discussion at the winter 2007 Bristol Bay Regional Advisory Council (RAC) meeting focused on the RAC’s concerns about improving the overall health of Kvichak River and Lake Clark area sockeye salmon, which was determined by the Alaska Board of Fisheries to be a stock of concern in 2003. Use of a fish weir or trap as harvest methods may increase harvest in small tributaries on discrete stocks, compounding current conservation concerns. Adoption of this proposal would be inconsistent with concerns for sockeye salmon stocks previously expressed by the RAC and the State.

In addition, if adopted, federally qualified fishers would need to use a separate federal subsistence permit and be certain they are standing on federal lands to operate fish traps and weirs (including fyke nets and lead), because these methods are prohibited by State statute. At the urging of federal staff during the fall 2007 meeting, the Lake Clark Subsistence Resource Commission recommended expanding the area that this proposal would apply to include Sixmile Lake and its tributaries. Sixmile Lake is outside of the park boundary and is not adjacent to any park lands, so subsistence users cannot participate in those waters under federal regulations.

Opportunity Provided by State: Salmon may be harvested under state regulations using set gillnets and beach seines with no limit on the amount harvested. To provide additional subsistence opportunity, the Alaska Board of Fisheries liberalized gear types for subsistence harvest beginning in the 2007 season to allow use of spears and beach seines. In 2000 through 2003, the Kvichak River drainage escapement goals were not met and the Amounts Necessary for Subsistence, as determined by the Alaska Board of Fisheries, were not met. During years of poor returns, people may fish more intensively in the Lake Clark area and also in other areas.

Conservation Issues: The Kvichak River sockeye salmon stock was determined by Alaska Board of Fisheries to be a stock of management concern in 2003 and previously as a stock of yield concern in 2000. Such harvest by fish weir or trap could be large enough to raise conservation concerns on individual tributaries because the complete stock status is

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2 Use of traditional basket traps is currently allowed under the state regulations in the form of an educational fishery permit in the Swanson River of Cook Inlet, and fyke nets are allowed as a gear type in subsistence and personal use to target species “other than salmon” in some parts of Alaska.
unknown for all of the tributaries of Lake Clark. The one stock assessment project that estimates passage of salmon near the Lake Clark watershed is the counting tower project on the Newhalen River at the outlet of Lake Clark watershed. The 2000-2006 average passage estimate for sockeye salmon entering into Lake Clark is approximately 366,000 fish. The destination, run timing, and spawning distribution of these salmon is unknown. Though the recent average harvest for all subsistence users upstream of the counting towers is about 10,000-20,000 salmon (about 3%-5%), the Department has serious concerns about focused exploitation on any particular components of the Lake Clark watershed. Conservation issues will exist if fish traps or weirs are installed to specifically target salmon in tributaries or lakes that do not have established escapement goals, stock assessment projects, estimated exploitation rates, or established abundance based harvest limits per body of water. Installation of site-specific harvest gear types, which could harvest most or all salmon migrating into a small tributary, is not sound fisheries management. Weirs and fish traps with attached leads that obstruct the navigation channels would likely be the most effective gear types that a user could install in a small tributary, but strategic design and installation of such gear types could effectively limit salmon migration in specific tributaries.

This proposal indicates a weir or trap would be operated to select the best fish for harvest but does not consider potential impacts this sorting will have on fish. Trapping, crowding, and holding fish causes injuries and stress if fish are left in a fish trap for any amount of time, especially in small shallow tributaries where water temperatures may be elevated. Injuries induced by being passed through a trap may result in decreased spawning success depending on the frequency of occurrence. If a trap or weir is installed in an area where the stream constricts, the flow/channel of the stream is concentrated, or at the base of a rapids or a current obstruction, the vast majority of fish attempting to migrate upstream likely could be handled by the federal subsistence users while sorting the weir/traps catch. Also, serial installation of weirs and fish traps in a concentrated area or tributaries may cause localized depletion. Small tributaries likely could not support significant and concentrated harvests. Even moderate harvests from small tributaries with small or unknown salmon returns
could result in localized depletion issues. If adopted
despite these serious conservation concerns, the Board
will need to limit the number of weirs or traps
operated on a single stream, establish how this limit
among users will be implemented, and determine the
number of households that could use a weir or fish
trap. Harvest limits by species are needed for each
tributary where weirs or fish traps would be operated,
based on the best scientific assessment information
available for each tributary, and should not be allowed
in tributaries where recent stock assessment
information is not available.

The Department also has concerns about
the impacts weirs and fish traps may have on the
habitat of a salmon stream. Driving stakes into the
bed of a creek or stream to trap and handle salmon and
other species of fish will disturb riparian and river
bottom habitat. Installing a weir can cause
significant scouring and alter the river channel during
high water events. Habitat damage may also occur if
fish traps and weirs (including fyke nets) are
authorized for use by multiple households.

Jurisdiction Issues: Under Section
.103(c) of ANILCA, federal regulations do not apply to
state or private lands within the exterior boundaries
of federal conservation system units. Further, the
State owns nearly all submerged lands in navigable
waters. Less than 40% of the Lake Clark shoreline is
non-federal ownership, including virtually all of the
shoreline from Port Alsworth south along both shores to
the Lake’s outlet, along with much of the northwestern
shoreline. The State requests that the Office of
Subsistence Management provide detailed maps of
specifically where federal subsistence users can fish
and where federal jurisdiction is claimed and the basis
of each claim. These requests for clarification of
ownership were most recently documented in the January
2007 Board meetings materials book on page 324 and in
the Request for Reconsideration of proposals FP07-06
and FP07-07 submitted to the Board on May 15, 2007.
Federal subsistence users who install and operate fish
traps in Lake Clark while standing on property that is
not federally owned could be cited for violation of
State regulations that do not authorize fish traps or
weirs.

The Department objects to the proposed
expansion to apply this proposal to include Sixmile
Lake and its tributaries. Little, if any, of the land or waters are under federal ownership or adjacent to federal land. See attached map. Expanding the application of this proposal to a large area outside of federal jurisdiction will result in federal subsistence users being unnecessarily subject to citation under State regulations with little or no added subsistence harvest benefit.

Other Comments: The Department agrees with the proponent that the proposed usage of a weir or fish trap may impact other user groups. Allowing the installation of a weir or trap for the purpose of harvest will create significant social conflict and allocation issues. Installing a structure such as a weir or trap will preempt other user groups wishing to fish in the vicinity or upstream of the structure. State regulations prohibit fishing within 100 yards of a weir. If consecutive weirs or traps are installed, all accessible and preferred fishing sites may be occupied and prevent other users from fishing in a creek or along the Lake Clark shoreline. This would be especially true if weirs or fish traps are installed in small tributaries which possess limited sections of water where anglers may successfully target and harvest fish.

Fish weirs have been documented to become an attractant to bears. A fish weir or trap that successfully captures, holds, or concentrates salmon in a small tributary could likely be considered a productive feeding ground that will attract bears over time. If this proposal is adopted, there is a great potential to increase interaction with bears.

In addition to displacing other users, altering fish behavior through holding, crowding, and handling trapped fish may impact the success of other users. Weirs and traps do alter fish behavior to different degrees. Weirs that are opened for fish passage for short periods of time tend to make fish congregate and build up behind a weir. Fish passing through a weir or passed by hand out of a fish trap have been observed to be spooked and/or stressed. Angler success will likely be impacted if the behavior of the fish they are targeting is altered. Anglers tend to sport fish in the most productive area available which will likely be down stream of a weir or trap. If an angler fishes down stream of a weir or fish trap and his location is deemed too close to the
weir or trap by the federal subsistence users, social
conflict will likely ensue.

Department Recommendation: Oppose.

This proposal further exacerbates conservation
concerns, necessitates new federal permits, will
intensify needed federal drainage-by-drainage limits
and monitoring, and causes subsistence users
unnecessary complications due to federal-state
jurisdictional claims, without providing a use that is
necessary to provide the federal subsistence priority.

MR. PAPPAS: And Tina has some other
comments, please.

MS. CUNNING: In addition, I'd like to
summarize that this is a very significant issue to the
Department. We don't want fish traps in the rivers
again. They may be being called fyke nets and leads to
avoid public outcry over fish traps and weirs, but the
Board, the Federal Board and the State Board already
took significant action to expand methods and means
this past year under both Federal and State
regulations, and we don't believe that this is
necessary to provide subsistence. Even moderate
harvests from some of the small tributaries with small
or unknown salmon returns could result in localized
depletion issues. Approval of this proposal will
likely create significant social conflict and
allocation issues, and we have serious concerns about
focused exploitation on any particular components of
the Lake Clark watershed.

In addition, we have to again raise our
objection to the expansion of this proposal to include
Sixmile Lake, the tributaries of Sixmile Lake. This
request for expansion to include Sixmile Lake came up
last year at the Federal Board meeting. It was raised
at the SRC meeting by a representative from a Federal
agency, and they were encouraged multiple times to make
it a part of their recommendation to the RAC. And it
was raised at least five or six times again by Federal
representatives at the RAC meeting and asked to expand
the proposal to include Sixmile Lake. Sixmile Lake
creates tremendous jurisdictional issues, enforcement
problems. We don't believe that it's necessary, and we
already expanded to include seining under State
regulations at Sixmile Lake. So we would ask that you
not expand it.
CHAIRMAN FLEAGLE: Thank you, Tina and George.

Okay. InterAgency Staff Committee comments. Larry.

MR. BUKLIS: Thank you, Mr. Chairman.

The Staff Committee comments are found on Page 353, and I'll summarize the main points.

The Staff Committee discussion centered on the proponent's request that fish traps and weirs be specified in regulation. We talked about this at some length, Mr. Chairman, and we did understand -- we do understand the connotation perhaps of fish traps in Alaska, but these are very small, hand constructed capture methods.

Some on the Staff Committee felt that since the definitions of fyke nets and leads, which are equivalent to fish traps and weirs, which are already allowed under our regulations, are broad and ANILCA allows advances in gear and techniques, there is no need to be specific for this proposal. In other words, some on the Staff Committee felt that since fyke net and lead are in the regulations, and allow for this specific request, we didn't need to get specific in the regulations. Others on the Staff Committee felt that the specification of materials was a well-considered provision of the proposal and should be thoughtfully considered.

The Staff Committee discussion also centered on a second main point which was the recommendation of the Council to support the proposal with modification to add the tributaries of Sixmile Lake to the proposal. At its September 2007 meeting, the proponent, the Lake Clark National Park SRC had expressed a desire to add Sixmile Lake to the proposal for consideration by the Council and by the Board. Our analysis does not include that additional feature following the Staff -- following the Council meeting, but that should not limit the Board's treatment of the subject.

The analysis, as Ms. Williams went over, focuses on the gear and how it would be operated and regulated, and there's nothing about the Sixmile Lake versus Lake Clark situation anthropologically or biologically that would limit the Board's decision-
making.

Since the Council is recommending that the tributaries of Sixmile Lake be included, the Board will need to consider that recommendation and respond consistent with ANILCA .805c.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Larry.

Board discussion with Council Chairs and State liaison present. Marsha.

MS. BLASZAK: There's merit in adopting this proposal, and particularly as modified by the RAC. I think it's important to note here that this is a very limited request in terms of the numbers of individuals or households who are proposing to use this harvest method, and that it will be through a permit process that would I think afford a level of regulation and attention that has been brought up as a concern.

The adoption of this proposal as amended would be consistent with the proponents' request that a fyke and lead be constructed with wooden stakes. It would be a non-lethal harvest method that would allow the release of unwanted or excess fish. Again, we'd track the harvest by requiring a permit and so any resource conservation concerns we believe would be not an issue.

And probably the most important aspect of this request is the ability to transfer the customary and traditional harvest methods to future generations.

The Park Service Staff is very willing to work with the Fish and Wildlife in-season manager to both design and monitor the permit and also willing to issue the permits from our Lake Clark office to make sure there's no additional burden on the Fish and Wildlife manager. And I will be supporting this request.

CHAIRMAN FLEAGLE: Thank you, Marsha.

Randy.

MR. ALVAREZ: Thank you, Mr. Chair.

Our Council, we discussed this proposal for quite a
while, and we did support the proposal. I believe it was unanimous. But we did discuss how it would work, because it hadn't been done in so long a time. And in my opinion, in our opinion, it probably isn't going to be very widely used, because of the amount it's going to take and the amount of sticks that you have to put in the ground, you know, to keep the fish from escaping after they go in there. And then, you know, it would -- also they can be real selective on what they wanted to keep and let the rest go. So that was basically, after that long discussion, that we supported it, you know.

And I think that the State's comments, you know, the Kvichak has been a management concern, because, you know, there was -- I believe it was five years in a row that the Kvichak was unable to make the minimum escapement. And this is another opportunity for the subsistence user to get their fish, be it not salmon, but other species. And because of this concern, it would allow the Board to restrict other user groups, which we are not asking to do. We would just elect to see that this means and method be allowed. And like I say, it's probably not going to be that widely used, but it would be excellent traditional knowledge that used to happen. And so we did support the proposal. In fact, it was less -- we had more support than the snagging issue on this one.

Thank you.

CHAIRMAN FLEAGLE: Thanks, Randy.

Other Board discussion. Council Chairs. Department. 

(No comments)

CHAIRMAN FLEAGLE: Ready for a motion.

Go ahead, Marsha.

MS. BLASZAK: Mr. Chairman. I move to adopt FP08-12 as recommended by the Bristol Bay Regional Advisory Council with one further modification. We would modify the Council recommendation to specify the gear be constructed with wooden stakes as requested by the proponent. Again, that's the Lake Clark SRC.

I would also clarify the use of fyke
net and lead would be allowed in the tributaries, I think we've covered that as well, but I want to make sure that's specific, of both Lake Clark and Sixmile Lake.

The language in the Council's motion -- the language for the Council's motion can be found on Page 341 of the Board book, and following a second of the motion, I'll speak additionally.

MR. CESAR: I'll second.

CHAIRMAN FLEAGLE: You have your second. Go ahead.

MS. BLASZAK: Thank you. Adopting this proposal has merit, and I will be supporting the Bristol Bay recommendation with the clarification and further modification I described when I made the motion.

Specifically, this regulation would allow for use of a fyke net and lead to harvest fish, except for rainbow trout, in the tributaries of Lake Clark and Sixmile Lake; allow a household to obtain two permits, one permit would be a State permit to allow the harvest of salmon under existing practices, and a second permit would be a Federal permit for a fyke net and lead obtained from the Federal in-season manager; require that the fyke nets and leads be attended when the gear is in use; provide that the fyke and lead are constructed with wooden stakes as originally requested by the Lake Clark Subsistence Resource Commission and affirmed by the SRC at its meeting this fall; require that the materials used in constructing the fyke and lead be removed when fishing with this gear type.

I believe the regulatory language in the Board book is not accurate in that it indicates that a fyke net and lead would be allowed in Sixmile Lake when it should be the tributaries of Sixmile Lake. Since flowing water is needed to use this type of gear, the tributaries of Sixmile Lake and not the lake itself is the appropriate location. I believe the transcript of the Bristol Bay Regional Advisory Committee meeting shows that the Council's intent was to provide for this gear in tributaries and not in the lakes.

Specifying that the materials would be wooden stakes is consistent with the proponent's
request, and a review of the transcript shows that Council members commented favorably about this aspect of the proposal. The Council did not provide rationale as to why this provision was not included in its recommendation.

Adoption of the Bristol Bay Council recommendation as clarified and further modified would allow qualified Federal subsistence users another gear type that is customary and traditional; provide a non-lethal harvest method that allows release of unwanted fish; facilitate the release of rainbow trout that would not be allowed to be retained; clarify that a household would be able to obtain two permits, one State and one Federal, which would provide for harvest monitoring; not create a resource conservation issue; and again allow the continuation and transfer of knowledge of this customary and traditional harvest method across generations.

The Park Service, which has in-season management authority for Lake Clark, would be quite willing to work with the U.S. Fish and Wildlife in-season manager for Sixmile Lake to design the Federal permit.

CHAIRMAN FLEAGLE: Thank you. Keith.

MR. GOLTZ: I'd just like to clarify once again that the tributaries that we're talking about are those that are within the external boundaries of the CSU, and we're not talking about the tributaries on the west.

CHAIRMAN FLEAGLE: Thanks. Your microphone's still on, Marsha. That's what I was trying to signal.

MS. BLASZAK: Sorry.

CHAIRMAN FLEAGLE: Other discussion.

MR. PROBASCO: Thank you, Mr. Chair. Just so we're all on the same sheet of music, Marsha, your motion is Page 341, and you've modified that motion further to re-specify that we're talking about tributaries for both Lake Clark and Sixmile, and that materials for the fyke trap is constructed of wooden materials. That's the two differences I see.
CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I just looked again at the map. My comments were directed to Sixmile. Waters within the external boundaries or adjacent to are where we are making a Federal claim. We are not claiming on Sixmile that the western tributaries are within Federal jurisdiction.


MR. MELIUS: Thank you, Mr. Chairman, for that recognition. I think as laid out by my colleague from the Park Service, along with the modification and the explanation by our OSM folks, I think the proposal has merit. It is a traditional gear type that has been used in the area in the past. I believe the quantity of harvest is going to be very low and selective. Requiring a Federal permit does provide us feedback if there is a particular problem in a tributary. So therefore I would be supportive of the motion.

CHAIRMAN FLEAGLE: Other comments.

(No comments)

CHAIRMAN FLEAGLE: I'm going to comment. Okay. I was just going to ask that it quiet down so I can speak and think.

UNIDENTIFIED VOICE: Sorry, sir.

CHAIRMAN FLEAGLE: This is kind of a tough one, but I'm not going to support the motion. I think that there's real convincing evidence that, of course, fish traps, fykes and leads were used traditionally in the past. But the overuse of them led to some real conservation concerns that led to the abolishment of the fish trap at about the time of statehood. And that I think had some real merit.

I think that we have demonstrated that there's adequate opportunities for subsistence take in this area with methods and means that are already allowed. And we just allowed additional methods and means for incidental harvest just to supplement a backpacker or somebody out in the field. And I don't see that allowing the use of a very controversial
Now, that's not speaking to the educational portion. I think that there's some valid argument for education and passing on knowledge to future generations. I just question why you would want to teach a method that's not allowable for use except in that small circumstance. And that's just my thinking. But I'm wondering if there's a possibility that the people that are interested in doing this would explore the possibility of getting an educational permit like the fishwheel, you know, fisheries down on the Kenai, and -- I didn't mean to say fishwheel, but, you know, for the Kenai. And that may more adequately address a simple request that would be really localized, and maybe one or two permits.

But I don't see any limitations on this. How many of these weirs, fish traps are we going to allow per stream. What's the overall impact. There may be some conservation concern with the red salmon as explained earlier. That's not fully explored in my mind. And I think that I can justify voting against this under .805c where to me it does violate recognized principles of fish and wildlife conservation.

So that's my position and that's where I'll be voting. And I realize that I'm in the minority, but the statements are now on the record, and that's how I feel.

MR. CESAR: Let me put you further in the minority if you will. I grew up on a fishing boat in Southeast both in the troll fishery and the seine fishery. And I'm probably the only one at the table who has pulled up the fish trap, saw their efficiency, in the early 50s that I'm aware of. So I abhor them. I don't think that that is the proper way to commercial fish.

But I think we're talking about a whole new different world here. I mean, those things would catch 100,000 fish, you know. We're talking about a weir or a fish trap that would be very selective, and be marginally used by a few people. So I think the benefit of passing that kind of information on to future generations in my mind is sufficient for me to
support the motion, and I intend to.

CHAIRMAN FLEAGLE: Thank you, Niles.

MR. ALVAREZ: Thank you, Mr. Chair.

I'd like to comment on your testimony there a minute ago. This method, it would do what a subsistence net wouldn't do, because in the area a subsistence net, you have to stay 300 feet away from the mouth and you can't fish up the river with that net, because mostly those systems are so small. And it would -- they would tend to -- what it would do is they would be able to harvest fish species they wouldn't otherwise be able to -- would be hard to get down below in the mouth, you know, mainly because of the size of the net or maybe they're not down there in concentrations like they would be in the stream. Did I kind of relate that fairly?

CHAIRMAN FLEAGLE: You did, you did well. But, yeah, I'm not changing my mind.

Bob.

MR. ALOYSIUS: Thank you, Mr. Chairman.

It really boggled my mind that you used the example of a commercial fish trap that was outlawed years ago. And this -- you know, if you take two blocks in Anchorage, that's about the size of the fish trap we're talking about -- I mean, that you're talking about. We're talking about maybe anywhere from 5 to 10 feet from the beach. And it's like a runway, a selective runway with a trap on the end of it. You know, we use them all the time. I mean, you can ask the guys from the lower Yukon and the Kuskokwim River, that we use them all the time. We never knew that they were illegal. And it's just one of those what you always refer to as customary and traditional. It's just our natural way of harvesting something that's there. And these things are very selective. You know, we take what we want to catch and then let the rest go.

So, I mean, when you talk about the size of those commercial traps, you know, like the sun compared to the earth, or a postage stamp compared to a basketball court. And, you know, they're not there to harvest hundreds of thousands of fish. They're just there to harvest whatever you might need.

And as far as the educational part,
that is something we do. We bring our children to set up these kind of traps. And I don't know where this word fyke net comes in, because I've never heard of that before, but, you know, we use, you know, small fish traps to harvest whatever we need. So, you know, I just want to comment on that.

Thank you.

CHAIRMAN FLEAGLE: I appreciate that, Bob. And I don't see any danger of my position prevailing here, so go ahead and object to it. But I think that it's important that concerns that are involved in an issue be spoken whether they're in the minority or not. I think it's in a better -- it makes the decision-making process better, more defensible, and people can disagree all they want. But in the end of it, my viewpoint's not going to prevail on this, but I felt it was important to lay out.

Denny.

MR. BSCHOR: Yeah. Mr. Chair. I also want to express concern about the conservation issue. I think though as proposed, this can be managed to not be a conservation issue if it's closely managed and there's -- the size and all that can be dealt with, the number of fish, that sort of thing. But I am concerned about that.

But as a traditional method that happened in the past, that education's I think important, but it's also important to make sure that along with that along with that education that it's known that that use on non -- in the non-Federal waters would not be appropriate, and that should be part of the education.

With those conditions, I will support the proposal.

CHAIRMAN FLEAGLE: Was that a call for the question? Oh, Niles, go ahead.

MR. CESAR: Mike, I just wanted you to know that I feel your pain, because I was on the losing end of a five to one decision this morning, and so I know where you're coming from, buddy.

MR. MELIUS: Call the question
CHAIRMAN FLEAGLE: I appreciate that.

Well, you know, at some point I guess, just philosophically speaking, there's a line that at some point, you know, an individual has to make that determination within his own mind. But we make that decision, and that decision is going to have ramifications outside of what we're trying to do, and sometimes you have to question whether it's appropriate to poke that hornets nest with the stick for something in this case. And that's my reasoning. But, again, that's where I'm at.

And I have Commissioner Lloyd I guess, do you have something to add to the discussion.

COMMISSIONER LLOYD: Well, Mr. Chairman, thank you for recognizing me, and I'm still kind of -- well, I'm trying to come to grips with your process here. I know in a previous action, once the motion was made, I was asked not to enter comments for deliberation, and I was concerned about your recognition of other liaisons, and that's certainly within your purview.

But in this case, I do have a couple of points to add, although I don't want to aggravate your indulgence in this regard.

CHAIRMAN FLEAGLE: No, that's fine. And I did -- you're right, I did recognize Council Chairs, and it's appropriate, if you have something to add to the discussion, I feel at this point. Go ahead.

COMMISSIONER LLOYD: Well, thank you, Mr. Chair.

With that, I don't want to reiterate all the State comments that have gone on before, but I do want to add my concern with some things I've heard expressed since the motion was made. And that's in regard to possible consideration of limitations to size of these structures that may be permitted, and whether or not there's consideration of limitations to the number that may be permitted, per drainage, depending on the size of the drainage, and where there's been consideration to the numbers of fish that might be taken within any particular drainage compared to the population that we believe might be in those drainages. Those are all relatively simple, fundamental conservation issues that I think are involved in the
decision you're about to make.

Thank you.

CHAIRMAN FLEAGLE: Lohse.

MR. LOHSE: Thank you. I'm not taking
sides one way or another on this. I just have a
question. And I may be wrong on this, but I was under
the impression that under our Federal subsistence
regulations we had a regulation that said that no net
or weir could block more than half of a stream. Am I
correct on that?

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I think that's correct.
Liz, do you have it in front of you?

MS. WILLIAMS: It's cited in the regs,
and it's also on the picture on Page 343. We did take
that into consideration, but it's 50 CFR 27(c)(4),
except as otherwise provided for in this election, you
may not obstruct more than one-half of the width of any
stream with any gear used to take fish for subsistence
purposes. And there's also the other one that I
mentioned, that you can't take fish from waters within
300 feet of a stream mouth.

CHAIRMAN FLEAGLE: All right. I heard
the question called earlier. If there's no further
discussion, the question will now be recognized. Pete,
on Proposal -- what are we on, 11?

MR. PROBASCO: 12.


MR. PROBASCO: Thank you, Mr. Chair.
Final action on FP08-12. The motion focused on the
Council's recommendation found on Page 341 with the
modifications noted by Ms. Blaszak to specify
tributaries only, and that the fyke trap had to be
constructed with wooden material or wooden stakes.

Ms. Blaszak.

MS. BLASZAK: Aye.

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

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Aye.

MR. PROBASCO: And Mr. Melius.

MR. MELIUS: Aye.

MR. PROBASCO: Mr. Chair. The motion carries five/one.

CHAIRMAN FLEAGLE: Okay. Thank you.

That now concludes the Bristol Bay area proposal. And I appreciate you bringing that up to us so that we could accommodate taking that before Cook Inlet, Randy, and thanks for hanging around with us.

We're going to go ahead and take a brief at least to allow the Staff to change out for the Cook Inlet area proposals, and we'll start working on those when we come back from break.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon, we're back on record. And we're now moving into the Cook Inlet area suite of proposals, starting out with Proposal 08-08. And with that, we're going to turn it over to Dr. Steve Fried from OSM for the analysis presentation. Welcome, Steve.

DR. FRIED: Good afternoon. For the record my name is Steve Fried. I'm a fisheries biologist with the Office of Subsistence Management.

And I'd like to direct the Board to Pages 277 to 284 for the Staff analysis for this proposal. It was a proposal submitted by Ninilchik
Traditional Council, and it requests that the salmon dipnet and rod and reel fishery allowed to occur from shore within the Moose Range Meadows side of the Kenai River. It sounds like a very simple request, you're soon going to learn it's kind of a complex issue.

Current regulations allow dipnetting at Moose Range Meadows site only from boats. The dipnetting site encompasses about 2 and a half miles of the river from river mile 29 downstream to about river mile 26 and a half, and there's a map on Page 279 that you can refer to. The site has a mix of private and Federal public lands on the north shore, and the south shore I think is all Federal public lands.

Household members can use a rod and reel to help fill the dipnet fishery annual limit. And actually using a rod and reel, they could have probably used the fishing platform that was in the boundaries of the fishing site, but it was destroyed by ice during the winter of 2006/2007. The existing platform is outside of the current dipnet fishing site.

Residents of Ninilchik, Cooper Landing and Hope all have positive customary and traditional use determinations for salmon in the Kenai River. And the salmon populations seem to be healthy and harvests seem to have been within sustainable limits to date.

The reason for the request basically was it was expressed that shore-based dipnetting could expand the subsistence opportunities. And this was because not all subsistence users have access to boats, so not everybody could participate, and there's some argument that could be made that dipnetting from a bank could be more effective than fishing from a boat, but this is probably more so for sockeye than any other salmon species since they're bank oriented.

The site does have very few good dipnetting areas. The water is generally deep, has very fast currents. The public can fish from the bank on public lands. And they'd have some difficulty accessing the bank on the Federal lands -- excuse me, the public can fish from the bank on the private lands, and they have difficulty accessing the bank on most Federal public lands, because there is a lack of trails and walkways.

In this area, and the near shore area
is quite important for salmon, and it's also prone to damage from excessive human use. Much of the riparian zone at this site provides rearing habitat for juvenile salmon, and I said, it can be degraded through human use. There was a sockeye sport fishery that developed during the 1980s at this area, and it caused extensive bank trampling and large sections of this trampled bank were lost during the 1995 flood.

The decision to allow dipnetting only from boats was made to balance subsistence opportunities with these kind of conservation concerns.

The Federal public lands at the site all have conservation covenants. These lands were actually purchased with Exxon Valdez oil spill funds, and it was land that was originally part of the Moose Range Meadows that was selected by Salamatoff Corporation as part of their land selections. And the land was purchased back from them to restore and protect fish habitat in the area. And these covenants preclude development on these public lands, and this includes construction of trails, walkways and fishing platforms.

Existing public access and sport fishing, there are closures to both to avoid bank damage during part of the year. This occurs during July 1 to August 15th in which -- at which time the refuge closes the public access easements on private lands. And this is the peak of the sockeye run, and also the peak of fishing for sockeye. And at the same time sport fishing in near shore areas of the Federal public lands is closed to sport fishing.

Subsistence and sport rod and reel fishing is allowed on the north bank fishing platforms during this time period, and this is because the associated walkways and the platforms provide protection to the riparian vegetation and the habitat.

As I mentioned before, there's currently no platform within the dipnet fishing site.

Now, the Staff and also the Council actually discussed various alternatives to just allowing dipnetting from shore. They discussed allowing dipnetting from fishing platforms. As I mentioned, right now there's no platform in the area. That platform was destroyed. It could be rebuilt, and
it could allow dipnetting on the platform, or a mix of
dipnetting and rod and reel fishing. Private lands
could be purchased and developed solely for dipnetting.

Another alternative that was discussed
was allowing dipnetting from shore only prior to July 1
and after August 15th, you know, on either side of the
bank closure time. There was some discussion of
whether or not this would actually provide any real
fishing opportunity, because there would probably be
few sockeye salmon available at that time, and chinook
and coho aren't really bank oriented, and so it might
be pretty difficult to catch them dipnetting from
shore. And there's still some concern that even this
low level use could possibly result in some riparian
habitat damage.

So the OSM Staff conclusion is to
oppose this proposal. And this was because trying to
direct the benefits of expanding opportunities against
the potential for habitat damage, you know, it could --
allowing dipnetting from shore could provide some
additional fishing opportunity, and this use should be
much less than the past sport fishing use that resulted
in the damage in which a lot of the bank areas were
lost, but even low level use over time could be
detrimental to this habitat.

Also there's some concerns the sites
might not be a very good one for dipnetting either from
boats or from shore. It wasn't one of the ones that
the Staff had recommended initially as a dipnetting
site. And I'm not sure there is much, if any,
dipnetting that occurred at this site last year.

Staff feels that taken as a whole, the
existing Federal subsistence salmon fisheries provide a
meaningful preference while also providing for healthy
fish populations. Dipnetting is allowed from boats at
the Moose Range Meadows site. It's allowed from boats
or standing in the river at the mile 48 site. And it's
allowed from the bank or standing in the river at the
Russian River site. In addition, a rod and reel can be
used during the dipnet fishery at all three sites to
help fill the household annual salmon limits. There's
also a separate salmon rod and reel fishery that
exists, and it can occur basically in other areas of
the river, anywhere, anytime sport fishing can occur in
Federal public waters. It has greater daily and annual
harvest limits, it has expanded use of bait. And in
addition, the next proposal that the board will hear would establish temporary community-based fishwheel fisheries, and that would provide additional opportunities.

That concludes my summary at this point in time. Thank you.

CHAIRMAN FLEAGLE: Thank you, Steve.

Question.

(No comments)

CHAIRMAN FLEAGLE: All right. Summary of written public comments. Donald Mike.

MR. MIKE: There are..... Chair.

(Pause)

CHAIRMAN FLEAGLE: Only the Board gets to talk now. Are we ready for a motion?

(Laughter)

CHAIRMAN FLEAGLE: Pete, go ahead.

MR. PROBASCO: While we're working on the mics, the written public comments that Donald has put together and summarized for us are on Page 289 and conclude on 290. I will not that there was three letters received from the Kenai River Sports Fish Association, the Alaska Outdoor Council, and the Kenai/Soldotna Fish and Game Advisory committee. All three oppose the proposal. And Donald may have some -- any other comments in addition to those three? Those are it, Mr. Chair. So I'd go by reference. You can see Donald's write-up that summarizes those comments, but all three are opposed.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete.

That's what we were looking for.

At this time we want to turn to the public testimony. Do we have any interested in testimony on this issue.

MR. PROBASCO: Yes.
CHAIRMAN FLEAGLE: How many do you have?

MR. PROBASCO: We have four individuals who would like to testify on Proposal 08. Mr. Chair.

CHAIRMAN FLEAGLE: All right. Is the microphone system still down? Let's stand down while they get this figured out before we call people up to a microphone that doesn't work

(Off record)

(On record)

CHAIRMAN FLEAGLE: The microphones are working, so Pete has four people that want to testify. We're going to ask you to confine your testimony to within five minutes, please, for time conservation. And Pete will call your name, and when you get called, please come up to the middle table, turn the microphone on, state your name for the record and commence. Thank you.

MR. PROBASCO: Okay. And these were shuffled. The first one up will be Mr. Ricky Geese, followed by Mr. Darrel Williams, followed by Mr. Sky Starkey, and we finish up with Mr. Andy Szczesny. Mr. Geese.

MR. GEESE: Good afternoon. My name is Ricky Geese. I'm the executive director of Kenai River Sport Fishing Association. We're a 501(c)(3) fishery conservation organization focused on habitat and fishery conservation issues on the Kenai River.

We're opposed to this proposal, if you note our written comments. Last year the Board looked at this issue of creating meaningful priority dipnetting areas on the Kenai River. The habitat issues last year were discussed. They're still in effect. Even small amounts of use in these areas over time can lead to habitat degradation. We've seen that in the past, and we don't want to repeat the mistakes of the past in the future.

There's a lot of different areas on the Kenai River that have habitat closures that affect sport fishing users. We abide by those closures, because we believe that a healthy habitat is important.
for healthy fish in the future.

So with all respect, we ask you to oppose this proposal.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Ricky. Appreciate the comments.

Questions.

(No comments)

CHAIRMAN FLEAGLE: All right. Pete.

MR. PROBASCO: Next is Mr. Darrel Williams.

CHAIRMAN FLEAGLE: And, Darrel, your microphone is already on, so don't worry about it.

MR. WILLIAMS: Mr. Chairman. Members of the Board. My name is Darrel Williams. I'm with Ninilchik Traditional Council. Just a second here.

We would like to ask that you support this proposal as written particularly.

There's quite a few things that I've read through as was submitted with this proposal. And we discussed it at length at the Southcentral Regional Advisory Council. And I hope everybody's had time to be able to review that so we don't do redundancy and have to repeat different issues.

One of the things that I was concerned about was the reference that I've seen to this riparian habitat degradation is from a technical paper of I believe his name is Lypits (ph) in 1994. And one of the questions I have about that is does this paper represent this type of degradation well. And it was kind of old, 1994, so I thought I would try to find some stuff a little more recent, and maybe reference to bring some good information for everybody to help them make good decisions.

And what I thought I would provide for everyone is a report from the Alaska Department of Natural Resources where they interpret this particular
technical paper. The report is Kenai River Habitat Restoration and Recreation Enhancement Project, Restoration Project 99180. And when they look at the Kenai River cumulative impact assessment of development impacts on fish habitat, their interpretation of this technical paper is that it was, and I quote, was designed to identify and evaluate the cumulative impacts of development actions, including public and private land use impacts on the Kenai River fish habitat.

And so one of my concerns that came from that is, subsistence really isn't about development, and maybe it's not as appropriate as it could be. So I did a little more digging to try to find something that was a little more recent. And the Division of Sport Fish did some research and technical work by Mary King, and it was really interesting. The title of the paper is Fishery Data Series No. 99-9. And this was done in 1997, so it's a little more recent. And the title of it, I think is a very good title, is The Assessment of Angler Impacts to the Kenai River Riparian Habitats. I think that probably clearly addresses what we're -- some of the concerns that have been brought up here.

And in the summary of this technical paper, so as to not to be redundant and read a whole bunch of it into it, and everybody can reference this paper, Mary King mentions that the data did not support a relationship between bank integrity variables with angler traffic.

So it's kind of interesting about where you look for different information and how you apply it. And these are the controversial issues that were brought up at the Southcentral Regional Advisory Council meeting about benefits of -- what is and what is not benefits to riparian habitat. And there was a lot of research like that. It's a little more recent. I thought I'd provide that for everybody. I thought this might help. Excuse me.

There have been some other issues that's been brought up during this particular Federal Subsistence Board meeting. One of them I've heard is the social conflicts. My understanding is it's not really our task to address the social conflicts.

I was very concerned and very alarmed
to have a state trooper sit here and tell the Federal Subsistence Board that they're going to cite tickets to people who are doing what they're supposed to do. In a lot of areas that's considered a bad thing. And for myself particularly, I was very alarmed.

I'm not sure if we can address the social issues that's going to come along with these kind of things, but I think it's going to be up to the user groups. And I think we can all get along if we're given the chance to do that.

I believe that it was already covered in the summary that was given earlier, too, that not all the folks down there have boats and access to boats to be able to dipnet out of a boat. And I think it would provide some opportunity for some folks to be able to go and have a little preference being able to fish in that area.

And those are the topics I wanted to cover.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Darrel.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Appreciate your testimony. Pete.

MR. PROBASCO: Next, Mr. Chair, is Mr. Sky Starkey.

CHAIRMAN FLEAGLE: Five minutes.

(Laughter)

MR. STARKEY: Thank you. Mr. Chairman and Board members. Sky Starkey representing Ninilchik Traditional Council in support of FP 08.

Just a few things. At the RAC meeting, it's my recollection that some of the reasons that the RAC supported this proposal was, in addition to the ones that are in the Staff report, are there was concern that dipnetting out of a boat in this stretch
of water is not safe. It's not a safe thing to do at
least for some subsistence users. So in addition to
need a boat, there's some safety concerns.

I mean, essentially you've got two
proposals before you that would expand the opportunity
in the Moose Range Meadows, and that's a dipnet fishery
and the fishwheel. The dipnet fishery by most accounts
is not going to provide significantly more additional
opportunity, but it will provide some. And it's our
view that along the Kenai River now there's not a
meaningful priority. Rod and reel, yes, but rod and
reel is not really considered subsistence gear in most
places in the state. It's an additional means, but
most people like to get their fish in a more effective
and efficient way.

Dipnetting is limited here to boats.
There's a small stretch of the river where you can
dipnet below Skilak Lake. And then to go to Russian
River Falls, you've got to hike in up to the falls and
carry your fish out. Now, that's not really a
meaningful opportunity for elders and other people who
are not going to be able to carry that burden.

So there needs to be some expansion of
the opportunity here, and you have two chances to do
it. Our view is that you should do both. You should
provide this possibility to explore the dipnet fishery
here in a meaningful way.

In addressing the concerns that Staff's
brought up, there's a few things to look at. People
talk about the habitat and how important it is, but the
State closure and the Federal closure for these lands
is only from June 15th -- excuse me, from July 1st
through August 15th. But the subsistence fishery is
open from June 15th through August 31st. Well, that
means that the subsistence fisherman is not allowed on
the banks while sports fishermen are allowed on the
banks for a significant part of the season. So how is
there a priority for subsistence and why is the habitat
so important that numerous sports fishermen can use it,
you know, before July 1st and after August 15th, but
subsistence users can't use it during any period of
time. I mean, there's a disconnect there. And it just
doesn't make sense, and we don't think it's legal to
keep subsistence fishermen off the bank if you're going
to allow sports fishermen during these periods of time.
Also, there's a corresponding Federal regulation which closes the access points along the power line, et cetera. It's our view that Section .811 of ANILCA would control there, and that requires subsistence users to have access to subsistence fishing sites. And so we don't think that regulation should be applicable to subsistence fishermen.

There's also the issue of the boardwalk and that only be used by sports fishermen. And perhaps that's a good idea to separate gear, but Section .810 of ANILCA again requires that whenever the Federal Government makes any use of public lands, including building a boardwalk, they would have to go through the 810 process and demonstrate that it's not going to have an impact on subsistence users. And this is, the boardwalk is, and so the 810 process hasn't been followed for the boardwalk.

So there's some legal concerns in the Staff analysis.

It's a modest proposal, and it's one that should be adopted in addition to a fishwheel, which will expand the opportunity there.

Thank you, Mr. Chairman. Did I make it?

Chairman Fleagle: You did great, Sky.

Thanks.

Questions.

(No comments)

Chairman Fleagle: All right.

Mr. Starkey: Thank you.

Chairman Fleagle: Next, Pete.

Mr. Probasco: Thank you, Mr. Chair.

Last is Mr. Szczesny.

Mr. Szczesny: Thank you, Mr. Chairman.

Board members. My name is Andy Szczesny for the record. I'm here representing Cooper Landing Fish and Game Advisory Committee.
We took up, at our last meeting, last Tuesday, these two proposals FP-08 and FP-09. Basically it was very easy and I'm not going to be redundant with a lot of the OSM office did because that's what we came to the conclusion of, too. It was easy to vote on, it was seven/zero to oppose this just because of the habitat issues.

There's already a dipnet fishery at the mouth of Russian River Falls. The people of Cooper Landing are utilizing that and they like it. The people of Ninilchik don't like it because they have to drive, and it's a long ways away. So this proposed fishery basically is logistics. It's closer to them to utilize the fishery, period. But when you take the habitat issues into it, this is the first time, I think I've ever been to a meeting where somebody wanted to argue habitat issues and go in and use them when we know for a fact that they're problem in these areas.

So that's about it and we have a lot of areas on the Kenai River from Cooper Landing all the way to the tide water that are closed for these habitat reasons and as far as I know no one has ever challenged them.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Andy. Questions. Appreciate the testimony. That concludes public testimony, right, Pete.

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

Okay. Regional Council recommendation.

Mr. Lohse.

MR. LOHSE: Thank you, Mr. Chair. I'm going to have to echo to start off with what Steve said, sounds simple, I assure you that it isn't. Our Council's got 65 pages of transcript right here in front of me where we tried to understand the limitations and ramifications that supposed habitat impact has on what appears to most of the Council to be a legitimate request for more general opportunity.

We ended up not coming to a consensus, we came to a majority vote, the majority vote was to support Proposal 08.
And I'd just like to close with two comments from the winning side just to show you some of the issues that were in front of us and also what we figure is going to have to happen.

I'd like to quote Ms. Stickwan, and like she said:

She'd like to say something about the degradation of the bank, it has to be watched. If we vote in favor of this proposal then, you know, that they watch and make sure that it isn't entirely ruined by the subsistence users, that it be monitored and I wouldn't vote in favor of this proposal unless, and she finished it off but it's not here in the transcript, unless I believe that would happen.

The majority of the Council felt that protection could be in place, could be put in place and it could be watched close enough that if there was any major problem it could be stopped before there was a major problem. Again, we're always dealing with the idea of what might happen and it's kind of like in this last one that we were talking about with the fyke traps and what Randy was trying to point out on the fyke traps. To make a fyke trap, it's a lot of work. You might do it once for educational purposes, but you're probably not going to do it on a daily basis and probably not a lot of people are going to do it, and I can say that from personal experience. We had a permit for a fyke trap once for burbot, cut a hole in the ice, by the time we did the work once and the return we got was small enough we never did it again. And that's the same thing here, we don't know what kind of impact the subsistence fisherman has.

This looked like a reasonable request to most of the Council, to the majority of the Council, but at the same time they recognized that there were problems in it that were going to have to be dealt with.

And with that I'm just going to quote Mr. Showalter to you:

He says: I'm going to have to vote for it and let them, and them means, you,
work out the final decisions after that.

And that's actually what's going to have to happen. We spent, like I said, 65 pages of transcript here trying to figure out all the ramifications of it and we came to the conclusion with the data that's there and the data that's going to be presented to you, you guys are going to have to make the final decision on it. The idea was it's a reasonable question, we voted for it, the proposal passed as written, but at the same time the recognition that there were problems in implementing it was very strong all the way through our discussion, and there were things like safety out of boats and stuff like that that took part of our discussion. But the big thing was we didn't know if we had the capability to tell you how to implement it. But as a Council we thought it was a good idea. And I'll repeat again, it was a 5/4 vote, it was one of the closest votes that our Council has, we usually work to try to get a consensus. We couldn't get a consensus on this one.

CHAIRMAN FLEAGLE: Thank you, Ralph.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Appreciate it.

Department of Fish and Game comments.

George.

MR. PAPPAS: Thank you, Mr. Chair. For the record, Department of Fish and Game.

Adoption of this proposal would create conservation, enforcement and confusion issues.

The State provides a broad array of personal use, recreational, educational fisheries to meet the needs for personal and family consumption as well as cultural purposes. The personal use and educational fisheries provide for more opportunity to harvest salmon more efficiently and closer to home than is used and adequate opportunities for harvest of rainbow and steelhead trout, lake trout, Arctic char and Dolly Varden occur in State recreational fishing regulations.
As for conservation issues. Adoption of this proposal would result in the impact on fish and their habitat in two ways.

Allowing fishing from shore will impact the riparian habitat closure areas. The Department's 1994 study which was talked about earlier identified and evaluated a variety of Kenai River habitat types and conditions. The study concluded that the riparian habitat zone for River Mouth 17.5 to 39.5, which includes this area in concern, Moose Range Meadows, contains the greatest amount, 42.3 percent of the total main stem of over hanging vegetation and under cut banks on the Kenai River. Testimony given by Staff -- by the OSM and the Fish and Wildlife Service Staff at the October 2007 meetings at the Southcentral RAC meeting indicated the riparian habitat within the Moose Range Meadows area is the significant and is the highest quality for rearing juvenile chinook and coho salmon in the Kenai River water shed. Additionally the study concluded the river substrait between Mile 17.5 and 39.5 contains the greatest amount of gravel and cobble materials within the entire main stem which supports the greatest opportunity for spawning and provides ample cover -- excuse me, cover habitat in the crevices between the cobbles for juveniles to rest, feed, and rear.

There would be an increased potential of the over-exploitation of Kenai River fish stocks, which is inconsistent with conservation purposes of the Federal lands and State management for sustainable fish. The Department is concerned that the Federal subsistence harvest levels may not commensurate with the availability of fish and their ability to withstand harvest. In particular, the harvest levels for the late-run Kenai chinook salmon and coho salmon are quite high comparison to their abundance in that area. No stock assessment information exists for Dolly Varden in that area and information has not been collected recently for rainbow trout below Skilak Lake. Given the lack of ongoing stock assessment programs, stock declines could not be identified in a timely enough fashion to prevent serious, possibly irreversible -- excuse me irreversible depletion of the stocks.

The Department position on this and recommendation is to oppose the proposal.

Thank you, Mr. Chair.
CHAIRMAN FLEAGLE: Thank you, George.

We now move to the InterAgency Staff Committee comments. Larry, please.

MR. BUKLIS: Thank you, Mr. Chairman.

The Staff Committee noted that adopting this proposal and allowing the dipnet and rod and reel salmon fishery to occur from shore could lead to damage of critical shoreline rearing habitat for salmon, however an alternative view was also expressed, that there would not be enough subsistence use in the area to warrant such a concern for habitat damage.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Larry.

Now, open for Board discussion with Council Chairs and State liaison. Ralph.

MR. LOHSE: Mr. Chair. I'd just like to bring out one thing that was not brought out and looking through the Council transcript I noticed it was never mentioned.

We talked a lot about the fact that the stream bank was closed for habitat protection. Never once in our transcript, never once was it brought out to us that -- well, maybe it was brought out, but it was never once was it noticed, that it's only closed for that period of the year and for the rest of the year sportfishermen can go up and down the bank and fish for other species. Which basically means that it's closed during the red season because recognizing how many personal use and sportfishermen there are in the Anchorage and Mat-Su area, the impact on the banks would be unsustainable. But obviously Fish and Game and other people concerned, feel that after the lure of the red salmon is gone, the lure of the other fish won't attract enough people to damage the bank so we can let other people trample up and down the bank.

Now, as a subsistence user, as somebody who recognizes how many people are involved in all of these things and has gone through this for so many years and sees how many people actually use the procedures that we put in place to give them access, I would be willing to bet that more sportfishermen trample the banks before and after the red season than subsistence fishermen will ever trample the banks during the red season. Just simply because of the
amount of people involved. And I'm sure that if that
would have come out to the Council, I'm sure -- I'm
sure of one thing, I'm sure the vote would have been
one vote higher in favor of it. And possibly more.

I really -- as I've said before, I
can't spit that word out tonight, but as I've said
before, if you can allow it for sportfishing, I really
can't see how you can close it for subsistence fishing.
And that goes to walking on the bank just as much it
goes to fishing on a particular stock.

And with that, I'll shut up.

CHAIRMAN FLEAGLE: Thanks, Ralph.

Other comments. Marsha.

MS. BLASZAK: I really appreciate you
bringing that point up because I was a little confused
by the earlier testimony that it was closed, but it was
open, and that clarification really helped me as well.

I have a question I have that I haven't
heard introduced into the discussion yet is if there's
some notion of the number of dipnet users that might be
involved in this and I don't know who the appropriate
is to ask that question of.

CHAIRMAN FLEAGLE: Steve.

MR. FRIED: I mean I suppose you could
look at the number of potential users from the three
communities, but that doesn't mean everybody's going to
do it. And like I said since there's no opportunity to
do this now, we have no idea, and I don't think anybody
-- or very few people used this site to dipnet even
from a boat last season that I know of. I might be
wrong. I haven't seen data since the end of August or
something, but I think there were only like four
sockeye reported caught out of this area, and I think
those were all rod and reel, so I have no idea. It
could be very few, could be, I suppose hundreds, but I
do doubt it.

MS. BLASZAK: Thank you.

MR. MELIUS: Mr. Chairman.

CHAIRMAN FLEAGLE: Tom.
MR. MELIUS: For the newer members on the Board, I would ask, as Steve indicated, a little bit of a complex issue, I would ask that our on the ground Refuge manager Robin West, who is in attendance and who, I think, Ralph had an opportunity to visit on this issue when you met, if he would come forward with the Board's indulgence to address a little bit of the issues that we had and answer any questions that Board members may have on this.

So with your approval.

CHAIRMAN FLEAGLE: Sure, Robin, please.

MS. CUNNING: While he's on his way up, can we add something?

CHAIRMAN FLEAGLE: Sure. I'll give the State, they had their hand up, I'll give them an opportunity to speak, and then I'll come over to you, Robin.

George.

MR. PAPPAS: Yes, Mr. Chair. George Pappas for the record.

As presented at the RAC meeting, the Southcentral RAC meeting and also contained in our comments, in addition to the reason that this time period was selected, it was also the most important part of the vegetation growing season, is that timeframe, where the vegetation is most sensitive to trampling.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Robin West, welcome.

MR. WEST: Thank you, Mr. Chair. Robin West, Refuge Manager, Kenai National Wildlife Refuge. And I'd be happy to give history and answer questions but there's been a few things that have been said that I'd just like to maybe clarify or add a little bit more clarity to, perhaps.

One, is the way the proposal is written, at least the way I read it, it's not just a
dipnet fishery and, you know, it also allows rod and reel activity, which is the historical use of that area and is probably -- has been a popular area in the middle of summer for rod and reel. So as the proposal is written, it would be dipnet or rod and reel with the rod and reel given bait, treble hooks and double bag limits, so that could definitely increase the use from folks trying to utilize a dipnet.

I think, you know, there was enough history given probably for you to generally understand the way the area was developed and some of the complexities of easements and private property. But one of the things that I think is important for the Board to also understand is as this proposal is written, we don't have jurisdiction to implement over approximately 53 percent of it. With the River Mile markers that were used last year for the dipnet fishery from a boat, where we do have Federal waters, if you just take those mile markers and take them to the shore as it's written, we don't have jurisdiction. Most of that is less than fee title interest, where we have easements over private property, so we couldn't implement really as written. We would have to rework this proposal to something far different.

With that said, it would take you then to the up river area that people are largely talking about. This EVOS acquisition that doesn't have much access except from the end of the road that is protected through a July 1 to August 15th State closure from fishing within 10 feet of the bank. And the volume of use is kind of unknown but the things that have been said need to be reemphasized here, is that, it was determined by the former Habitat Division of the Department, to be the highest quality king salmon rearing habitat remaining in the drainage and we know we're losing it. And at the time the Board of Fish granted authority to the Department to do closures to access on public lands, the Division of Sportfish was arguing to close all the private property below that as well where we had easements because of that nexus for public lands, because of the easement. So that should just give you an indication of how strongly the managers at the time felt about it, they were pushing to close to where an individual property owner couldn't be on it, one person, two person or whatever, for the damage that might occur. That did not happen because down stream we put in our -- closed all the public use for the same time period where then the Department put
up stream the closure to fishing within 10 feet of the
bank, but it basically accomplished the same thing.

So maybe I confused you a little bit
but I did want to emphasize some concerns with the
proposal as written on how you could possibly implement
it and it would be very difficult to impossible, I
think.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Robin.

Further discussion. Board. Tom.

(No comments)

CHAIRMAN FLEAGLE: I don't see anybody,
okay.

Denny.

(No comments)

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

MR. MELIUS: I can make a motion, Mr.
Chairman.

CHAIRMAN FLEAGLE: Tom.

MR. MELIUS: I would move to support
Proposal FP-08 as recommended by the Southcentral
Regional Council. I, though, have strong concerns that
this area is a prime chinook rearing habitat with bank
closures in place for habitat protection, plus this
area as we've heard, not a safe place to use dipnets on
this river. This area could easily manage with minimal
use and opening it to this gear type would not be
consistent with recognized principles of fish and
wildlife management, and I'll provide additional
justification on why I will not be supporting my motion
if I get a second.

MS. BLASZAK: Second.

CHAIRMAN FLEAGLE: Marsha seconds, go
ahead Tom, please.

MR. MELIUS: As we have heard from OSM
or others, that most of the Moose Range Meadows area is private lands and would fall outside Federal jurisdiction for dipnetting from shore. The area, though, that is within Federal lands, as I indicated, not conducive to the use of dipnets since people would have to be at least 10 feet from the shore.

It is a deep area, as I'm told, with large boulders and I would have concerns about the safety factor of folks using a dipnet in that area.

It's also important to keep in mind that we currently allow opportunities in this area that include a double bag limit with rod and reel for salmon and dipnetting from a boat for up to 25 sockeye, 10 coho -- I'm sorry 20 coho, and 10 chinook per household. In addition, we allow dipnetting from shore and a boat in the Kasilof, an area below Skilak Lake and up near the Russian River Falls.

Mr. Chairman, although we have yet to talk about another proposal, I think in the evaluation about a proposal using fishwheels, it might appear that that might be a more appropriate opportunity to help subsistence users meet their needs and so I would encourage support for rejecting of the motion.

CHAIRMAN FLEAGLE: Thanks, Tom. Other comments. Tom.

MR. LONNIE: I have concerns similar to what has just been expressed by Tom Melius and will also be opposing the motion.

CHAIRMAN FLEAGLE: Other comments.

MS. BLASZAK: I think I'm having difficulty, obviously a very complex proposal from all sides, but I'm still having difficulty if we're providing for that meaningful subsistence preference and I'm certainly very concerned about the issues regarding the habitat that have been brought up and it's a -- I think an important consideration that we make sure that we are providing that access to the resource for subsistence users. And I'm not -- I'm not confident that we're resolving that issue here. And for those reasons I'm going to vote supporting the proposal.
CHAIRMAN FLEAGLE: As will I. Just looking at the effort that has been expended through August 21st, 2007 is the data that we have available to us in our Board packet, and of the 33 permit holders for dipnet fishing on the Kenai, it appears that 99 percent of the salmon harvest was taken at the Russian River Falls and the remaining one percent, which is four salmon, were taken from the Moose Range Meadows site. It doesn't look like this is a real popular site to fish from and to maybe increase the availability for the people that do want to go there, the three or the two, yeah, from Ninilchik that went there to that site, I don't see it as being a really -- causing that much problem. I would guess that, as we have seen, in Ninilchik's stepped approach to providing subsistence preference in small areas spread around, that what they have told the Board in previous testimony is showing true, that the conflicts aren't there, that over use isn't there, the problems just are not evident that we were cautioned against. And I would suggest that we're probably in a similar situation here, to where the conservation issues with the bank, maybe more fish being taken, I don't feel are adequate to not allow this extra opportunity.

So I'm going to support it.

Denny.

MR. BSCHOR: Yeah, Mr. Chair. it's always a little difficult to try to second guess or try to just piece together what the situation is entirely on the ground, and it's been my experience that usually the on the ground manager has the best handle on that. And I've heard some pretty serious concerns, I think about the potential habitat damage from increased use on that bank. Now, that can be mitigated in some ways but I think it's sufficient for me to consider not supporting this.

CHAIRMAN FLEAGLE: Any other discussion. Niles.

MR. CESAR: Well, I don't think it matters which way I vote, you know, that if I vote to oppose it it will die, if I vote to support it it will die because it will be a three-three vote and it won't pass. So I agree with you, Mike, it doesn't seem to be -- it seems to be an area that we're all concerned about the habitat and I understand that, but at the
same time it seems like a reasonable approach by Ninilchik and I intend to support it.

CHAIRMAN FLEAGLE: Did I hear the question in that statement.

MR. CESAR: Yes, sir.

CHAIRMAN FLEAGLE: Thank you. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FP08-08 to adopt the proposal as recommended by the Southcentral Regional Advisory Council. And we're starting with Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Mr. Lonnie.

MR. LONNIE: No.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: No.

CHAIRMAN FLEAGLE: Mr. Melius.

MR. MELIUS: No.

MR. PROBASCO: And Ms. Blaszak.

MS. BLASZAK: Aye.

MR. PROBASCO: Mr. Chair. Motion fails three/three.

CHAIRMAN FLEAGLE: Thank you, Pete.

That now brings us up to Proposal 08-09. And, once again we turn to Steve Fried for the presentation of the analysis.

MR. FRIED: Thank you, Mr. Chairman. I guess I'd direct the Board's attention to Pages 297 to 311 in their books. This proposal was submitted by the Southcentral Regional Advisory Council and it requests
that a temporary community fishwheel salmon fisheries be established on the Kenai and Kasilof Rivers. As part of this request, the proponent also is asking that there be one fishwheel per river, that permits, live boxes, monitoring, fish marking and reporting be required. That the Kenai fishwheel site be in Federal waters below Skilak Lake and the Kasilof site be in Federal waters below Tustomena Lake. There are maps on both Pages 298 and 299 in your book. They're not very detailed, but just give you a general idea of the Federal waters in relation to those two lakes, those two systems.

The fishwheel fisheries would have the same seasons as the existing dipnet fisheries. This means on the Kenai they'd go from June 15th through September 30th, and on the Kasilof from June 16th through October 31st. The fishwheel fisheries would also share the annual harvest limits with the dipnet fisheries and this would mean that on the Kenai they'd share a limit of 4,000 sockeye, 500 late run chinook, 3,000 coho and 2,000 pink salmon, while on the Kasilof it would be 4,000 sockeye, 500 late run chinook, 500 coho and 500 pink salmon.

Rainbow and steelhead trout would be released on both rivers. And in addition to this, on the Kenai River Dolly Varden and early run chinook salmon would have to be released.

There'd be an evaluation of these fisheries so that the Board would be able to make a well-informed decision on how to proceed since these would be only temporary in nature if this proposal is adopted.

Residents of Ninilchik have a positive customary and traditional use determination for all fish on the Kasilof and for salmon on the Kenai.

Residents of Cooper Landing and Hope have a positive customary and traditional use determination for all fish on the Kenai.

In both rivers salmon populations appear to be healthy and harvest seem to be within sustainable limits.

This interest in fishwheel fisheries is because this could be an effective harvest method that
also serves to conserve fish populations. While the effectiveness of fishwheels on the Kenai and Kasilof Rivers really isn't known, the gear is used in subsistence fisheries in other Alaskan rivers, and on the Kenai River the Department of Fish and Game uses fishwheels to sample salmon. Fishwheels with a well designed live box and monitored regularly can keep fish mortality at a low level and most incidentally caught fish can be released unharmed.

The proposed temporary fishwheel fishery should have few effects on existing fisheries or fisheries resources since there would be no increase in the existing annual harvest limits. There would be only one wheel on each river and the operations would have to be approved by the Federal fishery and land managers.

A three year fishery would allow time to evaluate this gear type. Subsistence users and resource managers would have three years to evaluate the gear and develop community based fisheries. And the Board would then have three years of information to decide whether these fisheries should be continued on a temporary basis, on a permanent basis or be terminated. And the three year duration for each river would be based on the time the fishwheel was first installed on that river, that's when the clock would start counting.

The regulation should describe the responsibilities of the fishwheel owner, the fishwheel users and the fishery managers.

Suggested Council and Staff modifications to the propose, the original regulation were offered to clearly describe responsibilities for these owners, managers and fishwheel operators. For example, the Federal fishery manager in consultation with the Kenai Refuge manager would award the permits based on the operating plan merits and would consult with the owners of the fishwheels on construction, installation, operation, use and removal of the wheels. The fishwheel owners would have to provide a written operating plan to the Federal fishery manager, they'd have to have a fishing permit to operate the wheel for community members. The fishwheel would have to be marked as specified in regulation. And the fishwheel owners would also have to provide a written documentation, evaluation information to the Federal fishery manager. Fishwheel operators, if they are not
the owners, would also have to have a separate permit. They'd also have to mark the wheel as specified in regulations. The operator would have to be on site to monitor the wheel. Would have to remove all fish at least every two hours and you'd have to mark the harvested fish and record the harvest on the permit before leaving the fishing site and the reported harvest would have to be made to the Federal fishing managers within 72 hours of leaving the site.

One concern is that it might be difficult to serve three communities with only one fishwheel allowed on the Kenai River. Allowing one fishwheel is consistent with the temporary nature of the fisheries and would also simplify the situating monitoring and management of the wheels but the Kenai fishwheel owner would then have more difficulty in administering the fishwheel on this river than on the Kasilof because residents of three communities would have to have harvest opportunities, at least provide -- at least be provided with some opportunity on the Kenai whereas only one community would have to be provided with this on the Kasilof.

The OSM Staff conclusion is to support this proposal with modification as recommended by the Council. And we also have some -- a few further modifications just to clarify some issues.

You might notice there is an addendum that was provided in addition to the Staff analysis, and I think this begins on Page 305 of your book. And I guess this was done to capture the sequence of proposed regulatory language modifications. The Staff analysis itself contains suggested Staff modifications that provided to the Council, so the regulatory language that you'll see on Pages 305 to 307 is actually what the Council was provided with by the Staff as to how they would suggest their original proposal be modified.

The Council's recommended modified language, which is on Pages 294 to 296 was developed from the Staff modification presented at the Council meeting rather than from the original language. And so the addendum actually contains the further modification the Staff is suggesting, and these are really just minor ones. One is just to clarify the need to release Kenai early run chinook salmon, and this is done by saying that all chinook caught prior to July 16th would
be released, and this is consistent with the existing
dipnet fishery harvest regulations for chinook salmon
on the Kenai. And also it more clearly states that the
fishwheels must be stopped when they are not being
monitored or used.

That concludes my summary of the Staff
analysis.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Steve.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Summary of written
public comments. Donald.

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

You'll find your written public
comments starting on Page 316 of the Board book. We
received three written public comments. The Kenai
River Sportfishing Association. The Alaska Outdoor

The Kenai River Sportfishing
Association opposes the proposal. The
issue of a single site community based
Federal subsistence fishery on the
Kenai and Kasilof Rivers was considered
at the May 2007 Board meeting and was
rejected for a variety of reasons,
including significant fishery
conservation and logistical concerns.

Specifically the most important concern
brought up at the level of discussion
for a single site community based
gillnet subsistence fishery was that
it'd open the door to future widespread
use of gillnets in both drainages.
Since there is no legal basis available
to restrict the gear type amongst
users, while it may start as a single
site community based subsistence
fishery, the allowance of a fishwheel
as a method and means for one group of
individuals, even one on a community basis opens the door for its widespread use by any and all future users who want to make use of this same methods and means.

The KRSA does not support fishwheels as a method and means and as such adoption would, in due course, allow widespread use of fishwheels as a subsistence harvest methods and means on the Kenai and Kasilof Rivers. Whereas fishwheels have never been a customary and traditional harvest method in either drainage and the Board in May of 2007 provided for a subsistence priority through the use of individual and household means -- methods and means of subsistence fisheries in the Kenai and Kasilof River drainages, there is no basis for adoption of Proposal '09.

The Alaska Outdoor Council opposed the proposal.

A temporary fishwheel fishery would only increase the divisiveness among those Alaskan's living in Federally-qualified subsistence areas on the Kenai Peninsula.

And Mr. Keith Phillips opposes the proposal.

Thank you, Mr. Chair, that concludes the written public comments.

CHAIRMAN FLEAGLE: Thank you, Donald. Pete, do we have any public testifiers signed up.

MR. PROBASCO: Yes, we do, Mr. Chair. And I reversed the order from the last four and so we'll start with Mr. Szczesny.

CHAIRMAN FLEAGLE: Okay, we have four folks, and Andy if you'd come and turn the microphone on and comment, please, and I ask the testifiers again to confine their comments to within five minutes.

Thanks.
MR. SZCZESNY: Thank you, Mr. Chair.

My name is Andy Szczesny for the record representing Cooper Landing Fish and Game Advisory Committee.

This was a little bit more complicated when we went through this. Basically we just had more questions than answers to deal with this. It was just continuous. Who's going to manage it? Who's going to design it? Where is it going to be? Who's going to schedule this thing? I mean it just went on and on and on and I'm not going to bore you with more of them.

But one of our biggest concerns was, is that we have two distinct runs of sockeye. We have the first run that comes and goes only into the Russian River, and the second run goes to the whole river, utilizes the whole river. One of our concerns was is that's a very small run of fish and you put a fishwheel in there and there's a potential, not even a potential, it will happen, they're going to catch a lot of that first run sockeye if they start fishing that in June, and that's a pretty small run. And there's a reason why the commercial fishermen don't fish it, because it's a small run. And so that was one of our biggest concerns with the fishwheel on the Kenai.

If it's going to be -- we came to a conclusion that if you're going to have an experimental fishery, the easiest one to experiment would be in the Kasilof. You would have one user using it. You wouldn't have the schedule problems, but at the same time we did have a problem with the area that the fishwheel would go in in the Kasilof, it's king salmon spawning area, would be probably where it was put. So that was a concern with us.

But the lesser of two evils would be, if you were going to put an experimental one in, you're going to have one user utilizing it, put it on the Kasilof and see how it works.

And we were very concerned that if they were going to use the fishwheel that they stay and monitor it, don't leave it, because you're going to have a mixed stock fishery with steelhead and so forth in there. And we do know, even with Fish and Game's wheels, that if you leave them for any amount of time, the high rate of mortality is a lot.

So that's it, thank you very much.
CHAIRMAN FLEAGLE: Thank you, Andy.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Appreciate it.

Pete.

MR. PROBASCO: Mr. Chair. The next individual is Mr. Sky Starkey.

MR. STARKEY: Thank you, Mr. Chairman. This proposal seems one, in particular, where I would view it as a place where the RAC is due deference and I can't see that there's any reason to deny the RAC's recommendation. I don't know how many pages of transcripts Ralph will cite on this one but I will tell you that it was substantial, I was there. There are people on that RAC that have first-hand knowledge operating fishwheels, which I don't know anybody on OSM Staff or otherwise has. There's no habitat concerns. There's no conservation concerns. And the RAC found that it was necessary to provide a meaningful opportunity.

So I simply cannot find any valid reason why a person could choose to vote against it given the constraints of ANILCA, it's a taking regulation.

Ninilchik had talked in front of the RAC wanting the opportunity for three fishwheels on the Kenai, but the RAC didn't accept that and Ninilchik is very much supportive of what the RAC did, thinks it's well reasoned.

Are there a lot of questions about how to administer a fishwheel on the Kenai River for three communities, yes. But I guess we won't know how that will play out until we give it a try. And support the RAC's recommendation, fully, for both the Kasilof and Kenai River.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Sky.

Questions.

(No comments)
CHAIRMAN FLEAGLE: Thanks. Pete.

MR. PROBASCO: Mr. Darrel Williams.

MR. WILLIAMS: Mr. Chairman. Members of the Board. My name is Darrel Williams.

We would like to support the proposal for the fishwheel. This would be a good place to start and provide the meaningful preference and allow the subsistence users an opportunity to work on these issues or even identify some of these issues. I'm not even sure if these issues are going to be issues. And I'm afraid of a knee-jerk reaction because somebody may think, somebody may have an issue or not, on a maybe.

I guess as far as the history of this proposal, it might be -- it might help a little bit for everyone, when we got our C&T determination and tried to establish methods and means years ago, this has been an ongoing process. And Moose Range Meadows was one of the areas that was suggested by the Federal Subsistence Board to be considered because of the limited areas that we are allowed to use. And we ran into issues of delineation and who is allowed to harvest where and C&T determinations given to communities who didn't participate in the process and most of these things are outlined in the Southcentral Regional Advisory Council's notes from our meetings and, again, I hope everybody's had time to review those because there has been some changes here.

This efforts gone on and on and on and we've evaluated a lot of different methods and means and been used on the Kenai before and they've been condoned in other areas to be used. And we're really hoping that we can actually be able to put this forth and try to make some good use to it and make a more meaningful preference for everyone, and I think you'll have more subsistence opportunity and you'll have more people who will be able to harvest this kind of thing.

One example is, I don't have a boat. I can't go dipnet at Moose Range Meadows, and I'm not allowed to walk down on the bank, so what options do I have, as a Federally-qualified subsistence user I have none. Not only is it not a preference, it's not even an option. So it makes it much more difficult to be able to do something like this. And this could be a really meaningful good solution for everyone so I hope
you guys can consider that.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Darrel.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Thank you, Mr. Chair.

The last person to testify on Proposal 9 is Mr. Ricky Gease.

MR. GEASE: Good afternoon. Thank you once again for the opportunity to be able to speak in front of you. My name is Ricky Gease, Executive Director, Kenai River Sportfishing Association.

I participated in the subcommittee for the Southcentral RAC. We looked at this issue. In our comments we noted specifically the legal issue of your ability to authorize the use of one methods and means specifically at one area and if you can do that then that's no problem. But if you can't then I think there is a real concern of the widespread use of fishwheels popping up along the Kasilof and Kasilof Rivers -- I mean the Kenai and Kasilof Rivers over time. Now, this would authorize a temporary use of one location either on the Kasilof or two on the Kasilof and the Kenai, but what are we going to know after three years that you don't know now? What's the point to limiting it to just three years? What specific questions do you want answered over that three year period of time is something that I think you should ask yourself and have those really delineated out if you go ahead and approve the use of fishwheels. Because if you allow them in one area, you know, Ninilchik has already said they wanted to have them in three different locations. Well, speaking from the educational fishery side of things in Ninilchik there are already three different groups in Ninilchik who have, in the past, participated in the educational fisheries that the State provides. So I think over time you would see different people wanting to participate in fishwheels, the use of fishwheels as a methods and means.

In our subcommittee we didn't want to see the widespread use of gillnets along the Kasilof
and Kenai Rivers and we didn't want to see the widespread use of fishwheels along the Kenai and Kasilof Rivers and that subcommittee had members from across the Kenai Peninsula. So I think that, specifically, what are issues of, to see the widespread use of these. If it was in one location and you could just limit it to that, I think then some of our major concerns would be alleviated.

I would like to point out that these river beds and the fish patterns of how they migrate change over time, so although there might be a good fishwheel site right now, I think Fish and Game learned this year that after the flood that we had, the ice jams this winter, that a location that they had had a coho fishwheel for many years didn't track the same as it had in prior years. So over time you may get requests to say, well, this location isn't maybe producing enough because we had a winter event or a summer flood event so I want to try a different location also. So not only just for this year, but you may have a three year period of time where there's stability in the riverbed, but over time that stability may change and, again, it just opens up the consideration of, well, instead of just one location that's variable through time, I want three or four locations where we can have a fishwheel.

The other thing is, drawing from just my experience of participating in the educational fishery through the Kenaitze Indian Tribe, I would make a very strong recommendation that in order to participate, if you do authorize a fishwheel, that the head of household, who these fish are going to, participate in the fishery itself, that they be on site. I think it's important that that happen.

Thank you.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Thanks. Regional Council recommendation. Ralph.

MR. LOHSE: Thank you, Mr. Chair. And just so that somebody's happy we had 100 pages of transcript on this one. We put forth four amendments
in trying to come to a complete consensus. All the amendments failed except one minor which changed a few words in the end and set an ending date on it. Basically we ended up supporting this on a six/three vote as the original proposal with the minor word changes. This is a hard one too and we recognize the potential impact and ramifications of it but we also saw it -- at least the majority of the Council saw it as a legitimate way to do what we're trying to do which is to provide subsistence opportunity.

I'd like to answer a couple questions that have been brought up or a couple things that we actually dealt with as a Council. One of the things I hear all of the time is the potential to catch too many. I think we've set a conservative bag limit for the total, I think you guys have set a conservative bag limit for the total subsistence catch on the Kenai and on the Kasilof River and this fishwheel doesn't add anything to the bag limit, it just is a say of catching part of that bag limit. The fish that are taken with that fishwheel come out of the bag limit that's set aside or the allocation or whatever use you want to use that's been set aside for subsistence.

The question was asked, what can we learn in three years. Well, one of the things and that's one of the reasons that, I think, the Council ended up settling for one wheel on the Kenai instead of settling on three wheels, is, can this be done fairly, can the people -- can the subsistence community sit down and work together in a way that the subsistence community, the entire subsistence community can feel happy with the way it's administered. Is there somebody that's going to step up to the plate, say we'll build this thing, we'll administer it in a way that's fair to all.

Another question that can be answered in three years is can this be done without any adverse impact to the resource.

If, in the course of three years, being well-monitored and with conservative bag limits we see it as a potential adverse impact on the resource, three years from now we're going to have to vote on whether or not this fishwheel is renewed, whether the permit is renewed, whether we go forward from there. I think that's a legitimate -- and that's why the Council put that three year moratorium on there, I think it's a
legitimate concern. I think it's a legitimate way of saying, let's see what happens.

It's always interesting to me because there's some standard things that we hear, and this is not pointing fingers at anybody or anything else but there's some standard things we hear constantly when we deal with subsistence issues and one of my main gripes, as you all know, is that you can't take moose during the rut it's inedible. Well, that's a cultural preference, it depends on who you are. What's edible to one person is inedible to another and that can't be an argument against having a moose hunt for subsistence, I've said that before.

One of the ones that came up today was there's a safety factor involved. Subsistence users are totally capable of taking care of deciding whether or not it's safe for them to do something or not safe for them to do something, we don't need to take that factor into account. If you take a look at what goes on on the Copper River you see people hanging from cliffs by ropes so that they can dipnet over water that I'd be afraid to death to be over and they think it's great fun. They're out there drifting in boats, little dinky boats with great big nets drifting down the river that, you know, to those of us that handle boats all the time we think, wow, that's got to be as unsafe as you can get but they choose to do it. We don't make the decision to operate the fishery because somebody might do the fishery in an unsafe manner. Every time there's a storm on the Copper River flats somebody operates their boat in an unsafe manner. I may decide to go out through breakers and somebody else will decide not to go out through them, that's a choice of the individual. You can't use that for deciding -- you can't use that for a deciding thing on whether or not there should be a subsistence fishery.

Potential users, it comes up all of the time. How many potential users do you -- what's the potential impact on this. Every time we deal with subsistence we say, oh, let's see there's how many people in Ninilchik, Cooper Landing and Hope and they could take, you know, in other words 100 percent of the subsistence users are potential users, yet we have a State subsistence fishery on the Copper River that has 500,000 potential users of the Copper River with great big bag limits that if they all went out and went fishing there wouldn't be enough fish in the entire run.
to supply them. So let's look at what actually
happens.

We've talked about it on the steelhead
fisheries in Southeastern, what's the potential users
of the steelhead fisheries. The potential users are
there but what are the actual users. And that's why,
to us, we looked at this and we said we've put some
safeguards in place, we want monitoring, we want
reporting. We've put a conservative bag limit. All of
these things. Now, how do we give it a chance with
those kind of things in place and learn something from
it and maybe we'll learn that it's not a problem.
Maybe we'll learn that it's totally impossible for
everybody to work together. But if we don't do it
we're not going to learn anything.

And from that standpoint, like I said
our Council voted six/three in favor of it. We tried
to come up with all the answers and amendments, we
couldn't come up with it, we're leaving that -- we
ended up going back to the original proposal. We ended
up going back to the one wheel on the Kenai, one wheel
on the Kasilof. And it was brought up that maybe we
should just have a wheel on the Kasilof because that's
the one that is uncontroversial, if the Board feels
that we can learn enough from that, then that's their
choice. If they want to support what the Council did,
we voted for a wheel on both the Kenai and the Kasilof.

And with that I'm open to any questions
or I'll shut my mouth.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: Thank you, Ralph.

Department of Fish and Game comments. Tina.

MS. CUNNING: The State provides a
broad array of personal use, recreational and
educational fisheries that provide more opportunity
than is used by these communities to meet needs for
personal family consumption and cultural purposes.

The Department continues to express
serious conservation concerns about the fish stocks in
both the Kasilof and Kenai Rivers and these were
provided extensively to you at the May 8th through 10
In addition, locating a fishwheel near River Mile 46, which is a major late run chinook salmon spawning area will necessitate the Alaska Board of Fisheries evaluating whether changes to the late run management plan are needed. Placing a fishwheel near the vicinity of any tributary to the Kenai River may focus harvest on a particular stock and should be prohibited. The Department currently has little data about the stock contribution by tributary of the Kenai River with the exception of the Russian River watershed.

Incidental handling of rainbow steelhead trout, Arctic char, Dolly Varden and other resident species is a serious concern. Although harvest of rainbow steelhead trout will be prohibited in the fishwheels, handling mortality of resident species caught and released from a fishwheel may be greater than that caused in the sportfishery.

The Department is particularly concerned about the modification made to Proposal 09 by the RAC that would eliminate the requirement to continuously monitor the fishwheels. Continuous monitoring reduces the potential damage and injury larger fish inflict upon smaller fish held in a live box prior to harvest or release and reduces damage and injury larger fish inflict upon each other. A Southcentral RAC member suggested fishwheel design modification can effectively reduce the bycatch of smaller size fish and fishwheel use in the Copper River. If the proposal is adopted, installation of such modifications to a fishwheel should be required so only salmon are retained in the fishwheel boxes. The requirement in the modified proposal to empty the fishwheel live boxes every two hours does not address the Department's experience with fishwheels on the Kenai River which indicates hundreds of fish could be damaged or sustained lethal injuries in a short time during high salmon escapement periods. Fishwheels operated by the Department can and have caught over a thousand fish in one hour per fishwheel. Continuous monitoring of fishwheels is also important to address serious safety concerns due to the need to remove heavy debris loads, such as objects as large as 75 foot cottonwood and spruce trees that we catch.
Adding to our conservation issues there is a potential of handing mortality caused by the catch and release of captured rainbow steelhead trout during the migration timing of steelhead trout in the Kasilof River. Operation of a fishwheel for six weeks after the proposed season closure for the retention chinook salmon may induce unnecessary handling mortality of incidentally captured weakened chinook salmon well into their spawning phase.

The reporting of the number of chinook salmon released during the spawning season needs to be a permit stipulation.

Department Staff are currently conducting fisheries research projects on the Kasilof River. Requiring the reporting of captured tagged fish would assist the agencies with understanding the impacts of a new fishery will have on populations of fish about which little is known.

Operating a fishwheel on the Kenai River requires permitting and/or written permission by the Kenai National Wildlife Refuge, the Alaska Department of Natural Resources Division, Parks and Recreation and Office of Habitat and Permitting. Installing and operating a fishwheel for the specific purpose of subsistence fishing would be illegal if done from non-Federal properties or on 17(b) easements. Fishwheels should not be allowed within areas identified as critical habitat and closed to fishing within 10 feet of the shoreline.

The Department recommends language be inserted into regulation which would prohibit the installation of a fishwheel within 500 yards down stream of a Department fishwheel. The Department is concerned that if a fishwheel is installed within 500 yard down stream of a research fishwheel fish migration patterns may be altered which would impact project results and disrupt our long-term data sets.

The Department's recommendation is to oppose this proposal. The use of a fishwheel in the Kenai and/or Kasilof Rivers could create serious conservation problems, social conflicts and enforcement issues.

CHAIRMAN FLEAGLE: Thank you, Tina.

Questions.
CHAIRMAN FLEAGLE: Now go to the InterAgency Staff Committee, Larry.

MR. BUKLIS: Thank you, Mr. Chairman. The Staff Committee identified additional considerations relative to requiring an organization to plan and coordinate the use of a single fishwheel for up to three communities on the Kenai River. The Staff Committee saw this as a task that could be extremely complex and which could be considered detrimental to subsistence uses. The proposed operational plan would need to provide details of how all three communities would be able to participate using one fishwheel. This would include coordination of the building, deploying, operating and scheduling of fishing time for anyone interested in using a fishwheel from all three communities.

We looked at two alternatives.

One alternative would be to limit the use of fishwheels to only the Kasilof River since Ninilchik is the only community with a positive C&T use determination on the Kasilof River and residents of Ninilchik have been the ones requesting to try this type of gear.

The other alternative we discussed would be to expand the area where fishwheels could be used to include the upper Kenai River and allow up to three fishwheels, one per community. This would decrease the coordination required by any one community, reduce the possibility of conflicts among them and should provide more locations for possible fishwheel sites.

Thank you, Mr. Chairman.

Questions.

CHAIRMAN FLEAGLE: Thank you, Larry.

Questions.

(No comments)

CHAIRMAN FLEAGLE: All right. Before we get into discussions, I think this is an appropriate time to step down and take a break and we'll come back in 10 minutes and be in discussions.

(Off record)
On record

CHAIRMAN FLEAGLE: Good afternoon,
we're back on record and we have been notified that
there is one more individual who would like to testify
on this proposal that is present in the room and we're
going to go ahead and allow that to occur.

Pete.

MR. PROBASCO: Thank you, Mr. Chair.
The individual is Mr. Ed Moeglein. Ed.

CHAIRMAN FLEAGLE: Welcome. Now, you
need to push the button to turn the microphone on and
we ask you to confine your comments to within five
minutes, please.

Thank you.

MR. MOEGLEIN: Thank you, Mr. Chairman.
Subsistence, it's all about food. I mean it's what we
need to live on. I'm the subsistence member of the
Kenai River Fish and Game Advisory Committee. I
participate in a lot of the personal use and set net
fisheries and was quite successful even being a
handicapped citizen.

We heard numbers that could quite
easily be handled in a number that could be caught in a
fishwheel as well as -- I haven't been here for the
meetings, I just got out of the hospital, but I know
keeping in contact with Gary Sonnevil of Fish and
Wildlife Service with our committee, the large numbers
and the numbers that I reported to him, in the personal
use, the -- the education permit right off the mouth of
the Kasilof River, the two user groups from Ninilchik
that fish that, between the two groups they caught 600
king salmon. Now, that's a lot of fish for a lot of --
you know, for the people that were fishing in it and
the effort that was being done to fish it. We heard
how fast the fishwheel can catch fish, why not try one
on the Kasilof River to see how fast they can fish, but
how much fish do you need. How much fish do you really
need? I heard a quantity of what it takes for Federal
subsistence pounds per person and I was trying to put
those figures together before I went into the hospital
with Gary Sonnevil and I never got to the final reports
of the permits that are being turned in, but that's a
lot of pounds that they caught just in the educational
fishery and I just would not support a fishwheel in the
Kenai River, I would recommend they try one in the
Kasilof River and see if they can catch enough fish to
eat right there.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Ed.
Appreciate the comments. Questions.

(No comments)

CHAIRMAN FLEAGLE: All right, thanks.

Now, we'll open it for Board discussion with Council
Chairs and the State liaison. Go ahead, Commissioner.

COMMISSIONER LLOYD: Thanks, Mr.
Chairman. I'll ask for you to acknowledge me again
later on but for right now I understand that there
might be some restrictions to motorized boat access in
at least part of the area that we're talking about. I
don't have the details on that but it wasn't covered
under our State comments to the record and I'd like to
ask George or Tina to make that mention and inform the
Board about the details of that restriction.

CHAIRMAN FLEAGLE: George.

MR. PAPPAS: Thank you, Mr. Chair.

George Pappas for the record. The original proposal as
published was for the upper Kenai River and just
talking about the Kenai River itself, it was changed at
some point in time after that -- a long story short,
motorized boats are prohibited in the upper Kenai River
main stem, all vessels are maneuvered by either oars
or paddles. The Department would like to draw the
Board's attention to this fact that placement of a
fishwheel in a channel or part of a river heavily
traveled by vessels that are not under power should
generate safety concerns.

Additionally, the Board should take
into consideration requiring signage, news releases,
marking and installation of lighted warning buoys to
warn of new navigational hazards. This is practiced
currently by the Department even in motorized areas for
something that's new, introduced to an area that folks
have not seen before, just as a safety issue.

Use of a fishwheel in an area contained
in the original proposal that would be somewhat limited
in waters or Federal government claims its regulations
apply, unless it could be operated from a non-motorized
craft. State regulations 11 AAC 20.865 non-motorized
areas prohibits the use of motors year-round between
River Mile 80.7 and Skilak Lake and on the Kenai River
below the outlet of Skilak Lake and River Mile 47 from
March 15th to June 14th. And I believe that latter
closure is the Federal regulation.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, George.

Just to clarify you were talking that only applies to
the Kenai River and not the Kasilof?

MR. PAPPAS: That is correct, Mr.
Chair. That's the upper Kenai River.

CHAIRMAN FLEAGLE: Thank you. Other
discussion. Ralph.

MR. LOHSE: Yes. I have a couple
things I'd like to bring out. I'd like to remind the
Board that -- and that's for the new people,
especially, that our subsistence limits that we applied
on the Kenai and the Kasilof, the way they're written
up in the newspaper it's as if we gave them additional
fish, we have to remember that all of those subsistence
users were already qualified to take fish under State
personal use and one of the stipulations that we wrote
in our regulation was that any fish that they took in
the subsistence fishery came off of their State
personal use fishery. In other words they couldn't
catch fish on the subsistence and then go catch fish on
the State fishery, those weren't accumulative bag
limits. If you have 25 limit on the personal use
fishery from the State and I'm just picking a number
out of the air, and you caught 25 fish under the
subsistence fishery you no longer had a limit under the
State fishery. So all of those fish, that wasn't an
increase in take on the Kenai River, those fish were
already available for take.

And that's why I always have problems
with, you know, when we start talking about we have
stock concerns for these subsistence fish that are
captured in a limited subsistence fishery and at the same
time we have operating a sportfishery, a personal use
fishery that everybody in the state is entitled to and
a commercial fishery and we have stock concerns for the
fish that the subsistence fisherman is going to take
when he could have taken those under those other
fisheries anyhow. So that's just -- that's a hang up
for me and I'm sorry that it's a hang up but I really
hate to see that argument put forward unless you've got
concerns about the other ones, too, and if you've got
concerns about the other ones they shouldn't be
operating.

And then I'd like to address one things
because it reflects on the Council.

This Council has pushed for monitoring,
it's pushed for record keeping. I think we've done a
good job of trying to say that what we want is
information. And we did strike the word, continuously,
but if you look at where we struck the word,
continuously, we say, you have to remain on site to
monitor the fishwheel. The reason we struck the word,
continuously, is because some of our fishwheel users
from up on the Copper River said, you know, if we get a
real active enforcement agent down here and I have to
get off the fishwheel to go to the bathroom on the bank
I'm not continuously monitoring my fishwheel and we
want to remain on site, we want to monitor it but we
don't want to put that legal word in there that
somebody can come back on us and sting us because we
had to go get ourselves a bite of lunch or we had to go
make a sandwich on shore or go to the bathroom on shore
or something. So we definitely go along with the
State, the fishwheel needs to be monitored.

And like Ricky Gease was talking about,
we're talking about a fishwheel, not that's catching a
whole bunch of fish for everybody and then going out
and distributing it, the head of the family who's on
the permit needs to be on that fishwheel when whatever
they decide is his limit is caught the fishwheel is
stopped. And if the fishwheel is not operating to
catch somebody's fish, it's stopped, it's not sitting
there turning 24 hours a day accumulating a lot of fish
that you've got to go out and hand out here, there and
everywhere.

Those are the kind of stipulations --
there is one thing I'd like to say and we didn't put it
in ours and I can understand the concern. There's a
finite limit on the subsistence fishery, 4,000 reds, I
can't remember what it is on kings, I can't remember
what it is on coho's, but basically it's a finite limit. The fishwheel should be limited to a portion of that limit so that other subsistence users that want to make use of, you know, other methods and means have the opportunity to make use of that, too. We didn't put that in our proposal, and that might be something you guys want to deal with.

Thank you.

CHAIRMAN FLEAGLE: Further discussion.

MR. MELIUS: Yes, Mr. Chair.

CHAIRMAN FLEAGLE: Tom.

MR. MELIUS: I have several items I'd like to explore first with Ralph since the vote was a six/three on the final adoption, I want to explore a little bit of how it's envisioned with the three -- well, first off, was there a unanimous support of all three communities to move forward this proposal?

CHAIRMAN FLEAGLE: Ralph.

MR. LOHSE: One of the amendments that was put forward that failed was to have it for Ninilchik only because Hope and Cooper Landing at that time hadn't expressed an interest in the fishwheels. The majority of the Council felt that that was unfair, illegal or whatever and that amendment failed.

There was talk about -- there was talk, I don't think there ever was an amendment to include three fishwheels. We decided that that was expanding it farther than we wanted to expand it.

What we're counting on and I think if you look at our thing, we're counting on the fact that this is -- whoever is going to operate this fishwheel has to get a permit and it will probably be handled through -- oh, boy, my name's are bad, but it will be handled through Fish and Wildlife Service on the Refuge more than likely, and they're going to have to submit an application for the permit. And in that permit they're going to have to spell out how -- and there may be half a dozen people submit an application for a permit, and he's going to have to pick the one that basically does the best job of meeting the needs of all of the communities as fairly as possible. And that was
an understanding that we had when we discussed it, you
know, and somebody's going to have to come forward and
say we're going to pay for building this fishwheel,
we're going to manage this fishwheel and we'll put a
written application in spelling out what we're going to
do and the manager can say, you know, you haven't
answered this concern and that concern, how are you
going to do that. And so from that standpoint we just
decided to go with the one.

MR. MELIUS: Okay. But I guess the
question I was asking, Mr. Chairman, was that there was
consensus among all three communities, but I thought I
understood you to say that there was for several
communities, that this was not something that they were
pushing for.

MR. LOHSE: That was our understanding.

MR. MELIUS: Okay.

MR. LOHSE: That was debated and that
was an amendment that was put forward that failed and
part of the reason it failed was because of testimony
of people that were there.

And from that standpoint there was no
consensus on it, no.

MR. MELIUS: Okay. I'm just trying to
get my head wrapped around how it's envisioned to
operate one fishwheel with three communities where
there's equity among the three communities, but not
possibly the same equity in interest. So I'm just
trying to envision down the road if we are entering
into this arena, the rubric of how a manager would
look at how to analyze this, to show equity when there
wasn't equity in the originating request. So that's
where I was going with that question.

I'd also like to ask, Mr. Chairman, of
the OSM Staff, Steve, if you don't mind, could you go
over the season dates allowed to harvest the various
species of salmon on the Kasilof and if there are any
concerns for bycatch of other fish than salmon on that
river.

CHAIRMAN FLEAGLE: Steve.

MR. FRIED: Yes, I can. Since they're
the same as the salmon dipnet rod and reel fishery seasons then basically the season would extend from June 16th on the Kasilof through October 31st but there are specific ones for each species so that, you know, for chinook it would be June 16th through August 15th; sockeye is June 16th through August 15th; coho is June 16th to October 31st; pinks are June 16th through October 31st. And within the regulations I think all the rainbow steelhead that are caught have to be released in the fishwheel. So there's no retention.

MR. MELIUS: Thank you, Steve. That's it for me at this time. Thank you.

CHAIRMAN FLEAGLE: The key phrase there I caught, at this time, okay, thanks, Tom.

Virgil.

MR. UMPHENOUR: Thank you, Mr. Chair.

Our RAC did not discuss this issue but I've been involved in fishing with a fishwheel commercially on the Tanana River and the Yukon River for 23, 24 years and so I have a couple of questions or things that would be concerns of mine.

The first one is two hours on the live box, that's way too long. You're going to have mortality because of the fish being in the live box too long and there have been studies done on that. And so I know that two hours is too long, that's going to -- you're going to get mortality from that.

The other thing is the fish friendly fishwheel, and when I say fish friendly I mean is it going to have net -- is it going to have chicken wire baskets, what kind of a basket is it going to have because you're going to -- it's going to be located in the spawning grounds on the Kenai River and where it's going to be located so a lot of these fish are going to be in advanced spawning stages, especially the chinook salmon and so their teeth parts and stuff are going to get hooked on the webbing or the wire or whatever you have the fishwheel made out of so you're going to need some type of a chute system that's made so that fish are not going to be getting injured. And then the box itself, the live box, of course it's going to have to have hard sides up high where the fish slide in there and if they come sliding down the chute, flopping like crazy the way they do when they get caught in a
fishwheel and they smack head first into the side of a plywood box or on a post or something, now that's not doing them too much good.

But anyway, so I have a lot of concerns about the mortality and the fishwheel being a fish friendly fishwheel. I think I can honestly take credit for driving the train for having a personal use fishery that's meaningful on the Kenai River when I was a member of the Board of Fisheries because when I got on the Board of Fisheries they had one on the books but it was totally meaningless because the people never got to utilize it.

And so that brings me to the next point and that is the quality of the fish being harvested on the spawning grounds. I don't think the quality's going to be that good plus interrupting the fish on the spawning grounds, and I can also personally say that I'm partially responsible for some of the spawning closures on the Kenai River. I've heard lots -- I've been to meetings discussing these salmon stocks for, I know, more than 100 days just these salmon stocks we're talking about right now, and so those would be my concerns.

Plus one other concern, and that is when the water level rises and you get lots of debris in the water, fishwheels catch that debris. And so someone would have to be there constantly checking that fishwheel to get all the logs and the other debris that get on it because once you get a certain amount of debris on your fishwheel it destroys the fishwheel. The cable in the front is going to snap the front part of the fishwheel in half and it's going down the river. And so someone would also have to assume that responsibility.

I just wanted to bring up from being an experienced fishwheel fisherman some of my concerns.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Virgil.

Other discussion.

COMMISSIONER LLOYD: Thank you, Mr. Chairman. I don't want to, again, re-echo the detailed comments from the State of Alaska but I do want to remind the Board that the Department is the overall
manager for the health of these resources and
responsible for the overall conservation has outlined a
number of conservation concerns and possibilities for
damage to either individual fish or potentially to
stocks in this area. And I haven't heard much
discussion amongst Board members responding to those
concerns.

Secondly, during testimony and some of
the comments in front of the Board there seemed to be a
tacit equation developed that suggests that if there
are other fisheries allowed, for example, sportfishing,
then provision for an additional type or multiple types
of subsistence opportunity with alternative gear is
necessarily to be provided, and I don't believe that
that's your legal advice, it's certainly not our
interpretation of what provision of reasonable
opportunity or meaningful preference requires.

So our contention is so long as you,
the Board, under your jurisdiction conclude that there
is a meaningful preference and reasonable opportunity
required, the direct comparison or equation relating to
each particular location and each particular timeframe
between provision of one type of opportunity and
another doesn't have to be made.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you,
Commissioner. Other discussion.

(No comments)

CHAIRMAN FLEAGLE: Ready for a motion.

MR. MELIUS: Sure.

CHAIRMAN FLEAGLE: Tom Melius.

MR. MELIUS: Thank you, Mr. Chairman.

And I hope this doesn't get too confusing as we move
through this process of motions and any amendments that
might be offered but I'd like to move to adopt Proposal
9 consistent with the recommendations of the RAC with,
though, a modification, that would allow one fishwheel
to be located on the Kasilof River, also with the minor
changes to stop the fishwheel when it is not being used
as suggested by OSM; and also as Virgil just mentioned,
a removal of fish every hour. I think this would
establish a temporary fishwheel fishery for the
residents of Ninilchik to see how well this gear works.
One fishwheel for three communities on the Kenai River,
though, does seem to be -- does not seem to be a very
reasonable approach at this time.

I will expand and provide more
justification in support of the amendment if I get a
second.

CHAIRMAN PLEAGLE: Okay.

MR. LONNIE: Second.

CHAIRMAN PLEAGLE: Got your second.
Tom Lonnie seconds. Go ahead, Tom Melius.

MR. MELIUS: I guess in listening to
the discussions that we had and the testimony that
we've received that the Kasilof is really a closer body
of water to the community of Ninilchik, which would, I
guess make it more convenient to operate the fishwheel.
This would also allow the residents of Ninilchik to
meet their subsistence needs with the same household
harvest and possession limits that were established
last year.

But, again, for the Kenai, any proposed
operational plan as Ralph and I were talking, would
need to provide the details on how three communities
would have to operate to participate in just using one
fishwheel. This would include the coordination of the
building, the deployment, the operating, the scheduling
of fish time for anyone interested in using a fishwheel
from these three communities. And to do so in an
equitable fashion with three communities that I'm not
certain have an equitable interest in doing so. I
think this would place a manager in a very difficult
position at this time with a very extremely complex
issue to try to oversee through permitting process.

It makes sense, though, to provide
residents of Ninilchik the opportunity to try this new
gear on the Kasilof in kind of a temporary fishery
basis to see how well it works for the community.

I think, as Virgil mentioned, we can
through permitting process address the issues of
material used in the wheel. I guess, Mr. Chairman,
having said all of that, though, I would also like to
I offer an amendment to that motion, if you would allow me, of the -- basically the amendment would be to place for three -- place this regulation for a three year period when the gear is first installed in the river, there is a possibility that the gear may not be used and so I think we need to include a sunset date for what is supposed to be a temporary regulation.

So my amendment, and if seconded and adopted would basically be to sunset this regulation on December 31st, 2011 or three years from when this gear is first installed on the Kasilof, whichever would come first. This would give the users up to basically four years to try out this new gear and to see how well or how not well it's working.

Thank you, Mr. Chairman, and I guess the amendment is awaiting a second.

Mr. Lonnie: Second.

Chaired Fleagle: Okay, we got a second from Tom Lonnie. Now, just procedurally we need to address the amendment before we go back to the main motion. And it seems to be probably fairly non-controversial with the discussion we had prior to this motion and so I'm just going to ask is there any objection to the amendment as stated.

(No comments)

Chaired Fleagle: Hearing none, we'll just go ahead and include that amendment to the main motion.

Now, what I'd like to do now, though, procedurally, is we do have a fairly lengthy regulatory statement that's provided by the Regional Advisory Council that has been substantially changed by the motion, and I wondered if we could get Larry or Steve's assistance and just go through that motion that's provided -- the regulatory language that's provided for the motion by the Regional Advisory Council, paragraph by paragraph and just line out what's not appropriate and maybe add what is.

I think that would allay any confusion about what the Board has before itself, if we put it in writing.
If you look on Page 924 of the Board book is the proposed regulatory language. I would propose that we just go through starting with Paragraph H and just stating what remains or what needs to be lined out and then we have a paper to look at as we further work.

Does that sound reasonable. Okay, Steve.

MR. FRIED: Mr. Chairman. Starting with H. Basically you'd line out the second sentence where it says residents of Ninilchik, Cooper Landing and Hope may harvest various species of salmon through a temporary fishwheel in the Federal waters of the Kenai. Don't need that.

Then the very last sentence where it says residents of Hope and Cooper Landing may retain other species incidentally caught in the Kenai except for, we can line that sentence out.

And I think what remains then only speaks to the Kasilof in that one.

And then on No. 1, you would line out the second part of the first sentence where it says and only one fishwheel can be operated on the Kenai River. The next sentence would start with the fishwheel since there's not -- there's only going to be one. And I think that takes care of No. 1.

No. 2. It would be one registration permit will be available and I guess you can line out for each river since we're just talking about Kasilof.

Let's see, the second sentence where it says each permit would just be the permit, I think the rest of that on No. 2 is okay.

On i, I think that's fine.

MR. BUKLIS: Single community.

MR. FRIED: Where -- okay, and residents, okay, there you go, good catch Larry. Yeah, and at the end of that sentence it says description of how fishing time and fish will be offered and distributed among households and residents of the community or it could just read Ninilchik I suppose.
MR. BUKLIS: Yes.

MR. FRIED: And get rid of all that other one.

I don't see anything in the next two, ii, or iii.

So if we go to No. 3, people operating the fishwheel must, that might be fine the way that is. I don't think anything in that one needs to be changed unless anybody else sees anything. Oh, here we go on 3 and then iii, it's remove all fish at least every hour instead of every two hours.

No. 4. Again, that first sentence it talks about members of the communities, it would just be on behalf of residents of Kasilof or Kasilof residents -- excuse me, Ninilchik residents.

Good thing somebody's keeping me honest here.

And I think we get to No. 5 and that first part can be omitted because it talks about the Kenai and it would just be fishing would be allowed from June 16th to October 31st in the Kasilof River unless closed, so the other part, you know, that refers to the Kenai would be omitted.

The second one, salmon taken in temporary fishwheel fisheries would be included as part of dipnet, rod -- annual total for, I guess it could be just for the Kasilof River instead of for the river in which they are taken.

And then No. 8 it would just be the regulation expires, I don't think we have to say on the Kasilof and Kenai River, it could just say the regulation expires three years from the date the fishwheel is first installed in each river or December 31st, 2011. I don't know if you need to say whichever one comes first, or just state that, unless renewed by the Federal Subsistence Board.

And then I think the only other thing I missed is the thing about stop -- making sure the fishwheel is stopped. And that would be under H, No. 1, instead of each fishwheel -- it says must have a live box, be monitored when fishing and then have a
means to stop it, just say, and must be stopped from fishing when it's not being monitored and used.

Did you find something else?

CHAIRMAN FLEAGLE: Could you restate that?

MR. FRIED: Instead of saying, have a means to stop it from fishing when it is not being monitored and used, just say must be stopped from fishing when it is not being monitored or used.

In other words that's more -- that would be more direct than just -- you'd have to stop it, just having a means to stop it is not any good unless it's actually stopped.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Steve, you were asked a question earlier as far as specific seasons by species, is that covered in A through G or does that need to be included?

MR. FRIED: For the -- excuse me, that was for the limits, for the season limits in the.....

MR. PROBASCO: For the Kasilof by species, there's different seasons you can subsistence fish, is that covered in A through G?

MR. FRIED: I think that's the way it should work, yeah, it should be -- that's what we'd refer to.

MR. PROBASCO: I just wanted to clarify that on the record.

MR. FRIED: Yeah.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I just want to clarify that we do have a technical writing Staff and that they are generally given the authority to adapt the language to conform with the intent of the Board. So if we missed anything it can be picked up by our own Staff.

CHAIRMAN FLEAGLE: You bet. But this
is so substantially different than what was provided to
the Board I thought it was well worth the effort to go
through and modify it so we could actually see what's
changed. And I just -- I think Virgil's comments were
really good about the two hours being too long of a
time before emptying the live box, is an hour.....

MR. UMPHENOUR: An hour's good, but it
needs to be fish friendly as well materials.

CHAIRMAN FLEAGLE: I'm not sure how you
would write that in there but I guess the Staff.....

(Laughter)

CHAIRMAN FLEAGLE: .....I mean which
fish do you ask?

(Laughter)

MR. LOHSE: Mr. Chair. Don't you think
that that would be part of the manager's responsibility
to make sure that the plan that was presented to him
would be a fish friendly deal.

CHAIRMAN FLEAGLE: If it's.....

MR. UMPHENOUR: The Fairbanks Staff has
a lot of experience in that of Fish and Wildlife
Service with the fishwheels in the rapids area.

CHAIRMAN FLEAGLE: Thanks, Virgil. All
right, so we do have a motion with an amendment that
changes the expiration date.

Further discussion.

Denny.

MR. BSCHOR: Yes. Just one point and
maybe Mr. Lohse could respond to this. On Page 295
under No. 3, Item V, within 72 hours of leaving the
site, report their harvest to the Federal fisheries
manager, I guess that would be for either the State
and/or Mr. Lohse, I heard the State's concern that
reporting was important to do it fast, is that fast
enough, is that reasonable, give me some feedback.

MR. LOHSE: Well, the only thing I
could say on that is that it's a lot faster than any
State's reporting for any of their subsistence fisheries so I would consider 72 hours on a fishery that has a limit and everything quite sufficient. I mean that was the consensus of our Council, it's a lot better than having to report on a subsistence fishery that you make up in October and send in and try to remember how many fish you caught.

CHAIRMAN FLEAGLE: Marsha.

MS. BLASZAK: No.

CHAIRMAN FLEAGLE: No. Question, Commissioner Lloyd.

COMMISSIONER LLOYD: Mr. Chairman. I guess I would ask Staff, with your indulgence, to comment on the requirement for reporting. Plus, also, there was some discussion just now about one hour versus two hour attendance on the wheel and I'll just alert you back to our comments, in your written record, that in the Kenai some of our experience has been catch rates of up to a thousand fish per hour, so there's still some concern there.

Mr. Chairman.

CHAIRMAN FLEAGLE: Yeah, I was wondering about that myself. But if a person is monitoring this wheel and continuously removed but it still the intent is that somebody is at this wheel, I would guess that they would be removing those fish as they were caught until they got their number and then shut the darn thing down. I don't see anybody that's sitting there watching a wheel is going to let it fill until it's overflowing. I've run around wheels a little bit when I was a kid but I don't have the experience Virgil does, but you're pointing to whom?

COMMISSIONER LLOYD: The first part of my comment, Mr. Chairman, was whether you would allow Staff to respond to the reporting requirement, the 72 hour reporting issue?

CHAIRMAN FLEAGLE: Certainly. Tina.

MS. CUNNING: Denny asked about the reporting requirement. In our comments, which we didn't read into the record, we noted that 72 hours is not sufficient. Frequent catch reporting must be
required if this is going to go forward.

Given the lack of stock status information and the harvest potential of this fishery, given how many you can catch in a very, very short period of time, if the proposal is adopted the Department recommends 24 hour reporting requirement to ensure compliance with the established limits.

Remember that there is community limits that you've established for both rivers and a reporting period that's longer than 48 hours could result in significant overharvest of that community permit.

CHAIRMAN FLEAGLE: Thank you, Tina.

Board members another comment for consideration on the proposal. Actually two issues.

Further discussion.

(No comments)

CHAIRMAN FLEAGLE: How about any supporting or dissenting statements for the record.

Marsha.

MS. BLASZAK: I sincerely appreciate the amendment that my colleague from Fish and Wildlife has proposed but I think it's important that we understand the basis under .805c to reject the recommendation for Kenai.

It's a question.

CHAIRMAN FLEAGLE: Tom Melius.

MR. MELIUS: I guess the rationale, while it is not a strong conservation concern, I do feel that as the State has mentioned, some of those concerns, I guess it's the best use of fish and wildlife management to approach these things in a fashion that we can study at a rate to make sure that there isn't a conservation concern or that the management technique is indeed working and I believe that having it on two rivers, two wheels with a very complex process of trying to manage a permit for three communities just isn't the best fish and wildlife management practice that I would envision at this time, though, trying it on the one river with the stipulations that we've laid out in the motion, I
think, will help us, help the Board as we move forward on this issue.

MS. BLASZAK: Thank you.

CHAIRMAN FLEAGLE: More discussion.

Denny.

MR. BSCHOR: Yeah, Mr. Chair. It seems that you can assume that there's going to be less impact to the banks, I'm going to make this assumption, tell me if I'm wrong, with a fishwheel than having people dipnet off the banks.

There's also still the concern about the spawning beds in the location on the Kenai, I still have some concerns about that.

I do I think I would agree with Mr. Melius that this appears to be a way to do this on a smaller scale basis and to keep in mind that as we learn from this, that there's still the opportunity to look at it on the Kenai in the future and I didn't hear anything other than just what I said, as far as there's still some question but I think for those reasons I would be favoring this motion.

CHAIRMAN FLEAGLE: Thank you. And, Tom, your mic's still on as well.

Niles.

MR. CESAR: I intend to support the motion although I'm troubled by the deletion of the Kenai wheel. I think one thing for certain, by not placing a wheel on the Kenai it will give us no information, I mean it will give us no information about the Kenai because we're not going to have a wheel on the Kenai. It will give us information about the Kasilof and that's good and I guess you could extrapolate that knowledge somewhat to the Kenai but it still doesn't answer the Kenai issue. So the deletion of the Kenai troubles me. But, you know -- and, you know, I guess we're operating on a half loaf theory here, that half a loaf will maybe stir the bakery next year, I don't know.

CHAIRMAN FLEAGLE: I'll add my comments. The initial proposal caused some concern with me and it would have been hard for me to accept
the fishwheels on both rivers especially when you got
multiple communities on the Kenai, there's a lot of
issues there that I think are addresses in just
narrowing it down to the one community that's
requesting it, well, the Southcentral RAC is requesting
basically on their behalf.

But I think that all the safeguards
that have been put into the concept have diminished my
concern levels, especially the fact that we have a
limited number of fish allowable for subsistence
harvest under any of the methods and means that we've
allowed and this does not add to that limit, that if
may take over as being the better method of harvest but
we still are capped by what we've established as the
harvest limits, and that gives me some comfort knowing
that there isn't a potential to overstep that.

The one issue that still remains an
issue that I don't have firmly resolved in my mind yet
is the reporting period, 72 hours is three days, and if
you can drop a thousand fish in an hour into one of
these wheels where they're running them, there is a
potential that the fish could get caught a lot quicker
than what we realize and I don't see any problem with
the State's suggestion of a 24 hour reporting. People
are going to need to get that fish home anyway to
process it and I would be a lot more comfortable, I
think, if we had the 24 hour reporting at least for the
trial basis, for this three year trial basis.

Now, I'm the Chair, I can't move but I
would certainly open that back up for further amendment
if somebody wanted to address that one issue.

MR. BSCHOR: Mr. Chair. I think it
would be worth at least seeing where the Board is on
that issue so I'm prepared to propose an amendment to
the motion, to change the timeframe from 72 hours to 24
hours.

CHAIRMAN FLEAGLE: It's been moved, is
there a second.

MR. MELIUS: I second it.

CHAIRMAN FLEAGLE: And I laid out my
concerns, I don't know if we need any further
justification or rationale, but on the amendment,
MR. CESAR: You know I just -- the issue that Ralph raised in terms of this going to a 24 -- a 72 versus 24, that 24 would, at least, according to Ralph, would be the fastest reporting requirement that we have and I'm not sure, Ralph, if you wanted to comment on that, am I mistaken or.....

CHAIRMAN FLEAGLE: Mr. Lohse.

MR. LOHSE: Well, it's always interesting to me because our Council has pushed for reporting and it's pushed for record keeping, but it's always interesting to me that we want to put faster reporting on subsistence users than we do on anybody else. And the other thing is you're going to have a plan to operate this fishwheel, this fishwheel is going to be being operated under somebody's plan. You can only take -- whether the fishwheel has the potential to take that many fish in that time doesn't count, how many people can you get there in that time to take that many fish. This fishwheel is not going to be a fishwheel like on the Copper that's running 24 hours a day, seven days a week, 90 days for the summer, this fishwheel's going to be operated under a plan that's going to be obviously under the Ninilchik, either tribal council or one other organization in Ninilchik, they're going to be limiting who goes to the fishwheel, they're going to have a schedule of who's fishing on the fishwheel, they're going to have a means to stop the fishwheel. They said that they would report in 72 hours, which is plenty of time to stay within their bag limit if they're going to do all of that, and all of a sudden we want to have them have a reporting of 72 hours, when we have a reporting on the Copper River of five months.

You know, I'm sorry I shouldn't get all shook up about this but it just gets to me that we try to put reporting, we try to put record keeping in, but it's never enough. And if you need 24 hours, go 24 hours.

CHAIRMAN FLEAGLE: Well, I'd like to address Niles' concerns, which were echoed by Ralph there. In those other fisheries that are being referred to, we don't have a harvest cap and currently this method is unused on the Kenai and it's been demonstrated -- by Kenai, I mean the Peninsula, not the
river, and it's been demonstrated to be a highly efficient method and so I'm -- its justifiable in my mind and maybe after three years it turns out that if the Board wants to continue the practice of harvest by fishwheel, maybe by then that reporting rate, time period can be extended if it shows that it's unwarranted but at this time I have enough concern with a three day reporting time that we may exceed the allowable harvest.

I think it's different. I think we're talking apples and oranges.

Other comments.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question on the amendment.

(No comments)

CHAIRMAN FLEAGLE: Let's go ahead and do a poll vote on the amendment.

MR. LONNIE: Mr. Chairman.

CHAIRMAN FLEAGLE: Tom Lonnie.

MR. LONNIE: Are we talking about amendment No. 2 now or No. 1, okay, No. 2.

CHAIRMAN FLEAGLE: Just No. 2. Just shortening the reporting from 72 to 24 hours.

MR. LONNIE: Okay.

CHAIRMAN FLEAGLE: All right. On the amendment, Pete, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair. Amendment No. 2, harvest must be reported within 24 hours of leaving the site.

First up is Mr. Lonnie.

MR. LONNIE: No.

MR. PROBASCO: Mr. Cesar.
MR. CESAR: No.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: No.

MR. PROBASCO: Mr. Melius.

MR. MELIUS: No.

MR. PROBASCO: Ms. Blaszak.

MS. BLASZAK: No.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: No.

(Laughter)

CHAIRMAN FLEAGLE: All right, that's unanimous, how about that.

MR. PROBASCO: Motion fails.

CHAIRMAN FLEAGLE: I'm not going to be the lone ranger on that one.

All right, we have the proposal as stated and amended and then read into the record with the corrections, which are just a guideline for the Board to look at.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: We do now have the question. If there's no further discussion the question is recognized, Pete, on the final action on Proposal 9.

(No comments)

CHAIRMAN FLEAGLE: Please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair. Final action FP08-09, and this is to address the concept that was proposed by Mr. Melius, adopt the proposal with modification consistent with recommendations of the Southcentral Alaska Regional
Advisory Council with the modification to allow one fishwheel only for the Kasilof River and the requirements to stop the fishwheel from operating when it's not monitored or used and the requirement to remove all fish at least every hour. The fishery will sunset December 31st, 2011, or three years from the date when the gear is first installed, whichever comes first.

Mr. Cesar.

MR. CESAR: Yes.

MR. PROBASCO: Mr. Bschor.

MR. BSCHOR: Yes.

MR. PROBASCO: Mr. Melius.

MR. MELIUS: Yes.

MR. PROBASCO: Ms. Blaszak.

MS. BLASZAK: Yes.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: And Mr. Lonnie.

MR. LONNIE: Yes.

CHAIRMAN FLEAGLE: Mr. Chair, motion carries six/zero.

CHAIRMAN FLEAGLE: All right, thank you.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: And as stated at the beginning of the meeting Proposal 10 is no longer a valid proposal and there will be no action on it, no Staff presentation, no vote, it just goes away.

Okay, Mr. Lohse.

MR. LOHSE: Mr. Chair. I would like to apologize for getting so emotional on that and I
probably will quit getting emotional on that the day
that the State starts putting reporting requirements on
their subsistence and personal use fisheries that match
what they want to require on the Federal subsistence
fisheries, and when that day comes I probably will quit
being so emotional. But I apologize to you that I
raised my voice and got carried away on that. But it
is something important.

We've talked about it as a Council. We
would like reporting on the subsistence fisheries and
the personal use fisheries and we'd like reporting on
the State ones the same way.

CHAIRMAN FLEAGLE: Thank you, Mr.
Lohse. All right. That concludes the Cook Inlet area
suite of proposals. And concludes business for the
day. We will resume tomorrow morning, right out of the
chute at 8:30 with the Yukon River proposals which will
be starting with Proposal 13 and 14 on the fishnet
size.

And, Pete, do you have an announcement.

MR. PROBASCO: Thank you, Mr. Chair.
And Staff have posted by proposal the order which we
will start public testimony. Currently we have 29
people to testify on Proposal 13 and 14, six to testify
on Proposal 15/16 and seven to testify on Proposal 17.
That's how we will start out tomorrow, with the
anticipation of receiving more yellow cards.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. And with
that, we're recessed for the evening. See everybody at
8:30.

Thank you.

(Off record)

(PROCEEDINGS TO BE CONTINUED)
UNITED STATES OF AMERICA

STATE OF ALASKA

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