

1 FEDERAL SUBSISTENCE BOARD
2
3 PUBLIC REGULATORY MEETING
4
5 VOLUME IV
6
7 SHERATON HOTEL
8 HOWARD ROCK BALLROOM
9 ANCHORAGE, ALASKA
10
11 JANUARY 13, 2006
12 8:00 o'clock a.m.
13
14 MEMBERS PRESENT:
15
16 MITCH DEMIENTIEFF, CHAIR
17 JUDY GOTTLIEB, Acting Chair, National Park Service
18 CHARLIE BUNCH, Bureau of Indian Affairs
19 GEORGE OVIATT, Bureau of Land Management
20 DENNY BSCHOR, U.S. Forest Service
21 GARY EDWARDS, U.S. Fish and Wildlife Service
22
23 KELLY HEPLER, State of Alaska Representative
24
25 KEITH GOLTZ, Solicitor's Office
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44 Recorded and transcribed by:
45
46 Computer Matrix Court Reporters, LLC
47 3522 West 27th Avenue
48 Anchorage, AK 99517
49 907-243-0668
50 jpk@gci.net

1 P R O C E E D I N G S
2
3 (Anchorage, Alaska - 1/13/2006)
4
5 (On record)
6
7 ACTING CHAIR GOTTLIEB: Good morning
8 everybody.
9
10 MR. LITTLEFIELD: Good morning.
11
12 ACTING CHAIR GOTTLIEB: Well, we're on
13 Day 4 of our three day meeting, so I want to thank all of
14 you, all of you, especially people who aren't employed by
15 the State and Federal government for volunteering and
16 donating this extra day for this meeting. We're still on
17 some very important issues. And the ones we've tackled
18 so far have indeed taken time but that's been very
19 important to do so.
20
21 I wanted to mention to you something Andy
22 Bassich who was representing the Eastern Interior RAC
23 said to me after the end of the meeting yesterday, and
24 that is that he'd had several conversations with Yukon-
25 Kuskokwim Delta people because they had all come to this
26 meeting because we'd created a forum and they'd been very
27 productive discussions. In fact, he thought he was very
28 positive they might be able to have some suggestions or
29 some sort of proposal to bring to the YRDFA meeting early
30 next month.
31
32 So I think those kinds of positive
33 results, bringing together people and having a dialogue
34 make it worthwhile to spend this extra time.
35
36 Good morning, Mitch, we know you're on
37 the phone.
38
39 CHAIRMAN DEMIENTIEFF: Yes, ma'am, I am.
40 And I just want to express my appreciation for getting
41 those tapes over here, it made for a long night's work
42 but so be it, in trying to get caught up. I want to
43 thank Staff for the extra effort to help to get me
44 prepared for this.
45
46 ACTING CHAIR GOTTLIEB: Well, that's
47 great and we know the court reporter and company did a
48 great job in helping us out there. So I'm glad you had
49 an opportunity to hear all the tapes.
50

1 To review the record then on Proposal 9,
2 we did hear Staff analysis. We heard summary of written
3 comments. We had public testimony. We've heard the
4 Regional Council recommendation. Interagency Staff
5 Committee recommendation. And Department of Fish and
6 Game comments. We started Board discussion.

7
8 And Mitch, just so you're aware, several
9 of the Regional Advisory Council Chairs did have to
10 leave, but this morning so far we have Nanci from Bristol
11 Bay, Ralph and John. I'll let you know if anyone else
12 comes in. And we have Steve Kessler representing Denny
13 Bschor for Forest Service. Denny had to be back in
14 Juneau.

15
16 Okay, with that I'll move to Board
17 discussion.

18
19 MR. EDWARDS: Madame Chairman. Maybe as
20 a mechanism to get our discussion going and our
21 deliberation started I'll start and put a motion on the
22 table and that will provide maybe the opportunity for us
23 to further discuss it.

24
25 Before I start, I know we spent quite a
26 few days here with a lot of lengthy discussion and all
27 but with regards to this proposal, from my standpoint,
28 and I really appreciate the folks who came long distance
29 to bring their concerns in front of us. I found it both
30 interesting from a historical perspective, and to some
31 extent from a philosophical perspective, and so I really
32 appreciate that. And I think that, personally, the time
33 was well spent. I'm not sure I want to go into next week
34 but I do appreciate the time that we spent on that.

35
36 With regards to Proposal 9, I think I
37 personally spent a lot of time trying to get my hands as
38 well as my head around this proposal. I attended the
39 Southcentral RAC meeting that was held in Kenai, and I
40 listened to all the discussion and the testimony. I even
41 spent some time reviewing some of the transcripts. I've
42 gone through Dr. Fall's report and the Staff analysis
43 numerous times. I've listened, now, I think it's three
44 times to the folks from Ninilchik provide their
45 presentation on the findings from the two BIA studies, so
46 I feel, to use a phrase that our Chairman often uses, is
47 that I've done due diligence on this proposal. So Mitch
48 I just wanted you to know that that I have done due
49 diligence from my standpoint.

50

1 Because the Board received the assignment
2 from the Secretary to review our current practices
3 regarding C&T determinations and requested us to develop
4 a policy to clarify how the decisions were made, I
5 initially felt and as the State and some folks testified
6 the other day, that the appropriate action for this Board
7 would be to defer the C&T determination until the policy
8 is completed. However, I do recognize that we've already
9 delayed this for four years in making this determination
10 as a result have also delayed acting on any proposals
11 addressing methods and means. So despite I think what my
12 personal views are, I think the Board really needs to
13 move forward with this proposal.
14

15 One of my concerns with the proposal that
16 I have wrestled with kind of throughout all the things
17 that I've done in trying to understand it centers
18 around, and certainly that I still have and I find with
19 regards to subsistence use of fish by the rural
20 communities within the various drainages on the Kenai
21 Peninsula. As I reviewed the Council's recommendation,
22 the Staff material, the study that we commissioned that
23 was produced by the Subsistence Division of the Alaska
24 Department of Fish and Game and the information provided
25 by the surveys conducted by the Ninilchik Tribal Council
26 and the information provided by the Cooper Landing Fish
27 and Game Advisory Committee and the testimony that we
28 heard over the last couple of days, it's still unclear to
29 me that there is substantial evidence to confirm a
30 definitive pattern of use of fish in the Kenai River
31 drainage by the residents of Ninilchik or in the Kasilof
32 River drainage by the residents of Cooper Landing and
33 Hope.
34

35 With regards to the Kenai River, I agree
36 that there is evidence of the use of fish by some
37 Ninilchik residents in this drainage, however, the data
38 from a statistical standpoint, at least, from my
39 perspective indicates relative minor use by just a few
40 households and reveals very little about the frequency
41 and levels of such use by these residents.
42

43 Based on that data and the analysis
44 presented, I cannot conclude at this time that this
45 constitutes a long-term consistent pattern of use by
46 residents of Ninilchik. Moreover, when I review Chapter
47 2 in the report that we commissioned which addresses a
48 historical use of this area, there's no specific mention
49 of the uses of the Kenai River drainage by the residents
50 of Ninilchik. I have no doubt that the Kenai River was

1 used historically for subsistence purpose. I think
2 there's good evidence that Native and other Alaskans
3 living in this region travel to the upper reaches of the
4 Kenai River and fished in areas that are now within the
5 Kenai National Wildlife Refuge and Chugach National
6 Forest. However, specific use by Ninilchik residents of
7 this area is not mentioned. Some have inferred that the
8 descendants of Ninilchik residents probably participated
9 historically in these fisheries. We simply don't have
10 sufficient information, I think, in front of us to
11 support this inference.

12
13 With regards to the residents of Cooper
14 Landing and Hope utilizing the fishery resources of the
15 Kasilof River drainage and the residents of Ninilchik
16 using the Kenai drainage, we heard from the Cooper
17 Landing Fish and Game Advisory Committee, that they don't
18 believe that residents outside of the Kenai River
19 drainage came to the upper Kenai River to do their
20 subsistence fishing when they had better fishing and more
21 plentiful and fresher resources near their communities.
22 Neither do they believe that before the road was built
23 that people of Cooper Landing, went to the Kasilof River
24 drainage for their subsistence fishing.

25
26 Before I can feel comfortable with
27 supporting this proposal, particularly with regards to
28 the controversial aspects of integrating subsistence
29 fishing in this area, the development of more definitive
30 information relative to Ninilchik's use of waters in the
31 Kenai River drainage and the use of Cooper Landing and
32 Hope in the Kasilof River drainage would have to become
33 available.

34
35 In short, I feel that the lack of
36 substantial evidence supporting a C&T finding for
37 Ninilchik in the waters of the Kenai River drainage and
38 waters to the north of this drainage and the lack of
39 substantial evidence supporting C&T for Cooper Landing
40 and Hope in the waters of the Kasilof River drainage
41 compels me to offer an amendment to the Southcentral
42 Regional Advisory Council's recommendation.

43
44 Before I offer my amendment I want to
45 provide some additional context given that my amendment
46 is going to address more than just C&T determination.

47
48 Management of Kenai Peninsula fisheries
49 has long been controversial as we heard through some of
50 the testimony over the last couple days. Allocation

1 disputes between sport and commercial users as well as
2 between factions of commercial users has long been a
3 dominate part of managing these fisheries. Existing
4 commercial fisheries and expanding recreational use of
5 rainbow trout, Dolly varden, chinook, sockeye, coho
6 salmon over the last several decades, particularly in the
7 Kenai River, is the basis for a large portion of the
8 Kenai Peninsula's economy. This sets the stage for
9 extreme controversy once C&T determinations are made and
10 when introducing new allocations for the subsistence use
11 of these resources which we must do at some point. In my
12 mind this cries out for the need to proceed with extreme
13 caution as the Board addresses the integration of
14 subsistence uses of fish in this area.

15
16 I believe this must be done with the full
17 participation of those directly affected by the Board's
18 decision. This is the basis for a portion of my motion
19 that will address establishing a stakeholder subcommittee
20 made up of all affected interests to address how
21 subsistence should be integrated in this area and develop
22 recommendations prior to Board actions regarding methods
23 and means, seasons and bag limits.

24
25 With that for background, Madame
26 Chairman, I'll go ahead and proceed with my motion. This
27 is a rather lengthy motion so if you kind of would bear
28 with me.

29
30 You know, in making this motion I
31 certainly appreciated the time and the effort and the
32 diligence that the Southcentral RAC has placed in it and
33 I certainly want to try to support as much of their
34 motion as I can. So what I'm going to do is move that
35 the Board adopt their recommendation, the Southcentral
36 Regional Advisory Council with the following
37 modifications.

38
39 On the Kenai Peninsula for the
40 communities of Hope and Cooper Landing an
41 interim C&T determination is made for all
42 fish species for waters north of and
43 including the Kenai River drainage within
44 the Kenai National Wildlife Refuge and
45 the Chugach National Forest.

46
47 For the community of Ninilchik an interim
48 C&T determination is made for all fish
49 species for waters within the Kasilof
50 River drainage within the Kenai National

1 Wildlife Refuge.

2
3 For the west side of Cook Inlet, for the
4 residents of Tuxedni Bay area, a positive
5 C&T determination is made for salmon for
6 waters within Lake Clark National Park
7 drainage into and including that portion
8 of Tuxedni Bay within the Park.
9

10 Included within this motion is a request
11 that the Southcentral Regional Advisory
12 Council establish a subcommittee to the
13 Council composed of representatives of
14 the various stakeholders who have
15 interests in Kenai Peninsula fisheries to
16 explore and develop recommendations on
17 how to integrate subsistence harvest and
18 use of fish on the Kenai Peninsula. The
19 Board will defer making decisions on the
20 regulations of subsistence fish harvest
21 in these waters contingent upon the
22 development of a Council recommendation
23 based upon the subcommittee's
24 deliberation.
25

26 In summary this motion modifies the
27 Council's recommendation by deferring that portion of the
28 Council recommendations that would include a customary
29 and traditional use determination for Ninilchik for
30 waters within and north of the Kenai River drainage and
31 defers that portion of the Council recommendation that
32 would include a customary and traditional determination
33 for Hope and Cooper Landing for the Kasilof River
34 drainage.
35

36 In my mind, Madame Chair, this motion
37 accomplishes several things regarding the C&T
38 determination. By establishing interim C&T.
39

40 1. It recognizes that Hope, Cooper
41 Landing and Ninilchik have a
42 long-term consistent pattern on
43 the Kenai River, particularly use
44 within their respective
45 drainages.
46

47 2. It provides the Board the
48 opportunity to gather information
49 that may provide a more
50 definitive picture of historic

1 and current use patterns on
2 Federal lands throughout the
3 various drainages on the
4 Peninsula. Particularly this
5 would allow an opportunity to
6 better integrate the information
7 from the two BIA funded studies
8 that were not fully available
9 when Dr. Fall's study was
10 completed.

11
12 3. From my perspective, having an
13 interim C&T will allow the Board
14 to complete the review of its
15 current practices regarding C&T
16 determinations and then develop a
17 policy that, hopefully, I think,
18 may help guide the Board when
19 further considering the final C&T
20 determination.

21
22 With regard to the stakeholder's process,
23 the stakeholder subcommittee should be made up of Kenai
24 Peninsula residents who are directly involved with Kenai
25 Peninsula fisheries and could be affected by these
26 decisions. Stakeholder participants should include
27 members of the Southcentral RAC, the Ninilchik
28 Traditional Council, members of any of the local Advisory
29 Committees and representatives of recreation and
30 commercial fishery interests. I would also encourage the
31 involvement and support of both State and Federal fishery
32 biologists, social scientists and other professionals to
33 assist in this effort by providing technical and
34 administrative support to the subcommittee and the
35 Council. The Fish and Wildlife will provide such support
36 and I would call on the Forest Service to be equally
37 willing to help support this. A similar effort was
38 recently completed addressing the management of deer on
39 Prince of Wales Island and I would encourage a similar
40 approach for this effort. This would include the
41 involvement of an independent private sector facilitator
42 and the Service is committed and would provide the
43 necessary funding to contract for a facilitator for this
44 effort.

45
46 And, Madame Chair, that's sort of my
47 motion and the context in which I made it in and the
48 background for why I reached what I reached.

49
50 ACTING CHAIR GOTTLIEB: Thank you, Gary.

1 There's a motion on the table, is there a second.
2
3 MR. OVIATT: I'll second.
4
5 ACTING CHAIR GOTTLIEB: Thank you,
6 George. Board discussion on the motion.
7
8 Steve -- I'm sorry, Charlie, go ahead.
9
10 MR. BUNCH: No, after Steve.
11
12 MR. KESSLER: Gary, I just have a
13 question, I guess, and maybe you could describe what and
14 how interim C&T would function. Would that be as a -- we
15 would write that interim C&T into our regulations and it
16 would look in the book and in that regulation as if it
17 was a regular customary and traditional use
18 determination, it's just that your intent would be that
19 we would come back to it later as a -- keep it,
20 essentially on the table, in some way as a Board
21 generated C&T proposal for further decision at a later
22 date, or how would that work?
23
24 Thank you.
25
26 MR. EDWARDS: Well, I guess the way I
27 would envision it, I think what it does initially it
28 recognizes that those rural communities on the Peninsula,
29 you know, have a positive identification and recognition
30 of this longstanding use, subsistence use on the
31 Peninsula, so it does that.
32
33 It then would allow us, in my mind, to --
34 two primary initiatives. I think it would allow us to
35 provide some additional information to help us make a
36 more informed decision about how broad that C&T should
37 be. And secondly it would allow the completion of that
38 policy. So it would be still sitting there to be further
39 visited.
40
41 In my mind, I have no visions that it
42 would be any less than what I have stated. I think what
43 we're looking at is, is there enough information to
44 expand C&T throughout the whole Peninsula or should it be
45 more segmented by drainages as we heard in some of the
46 testimony. Whether it's -- so it's not like we're, in my
47 mind we're not tabling it, it's sitting there and at the
48 completion of that, at some point in time, we would
49 revisit that and see whether the information is
50 sufficient enough and compelling enough to expand it.

1 ACTING CHAIR GOTTLIEB: Charlie, you had
2 a comment, and I see Ralph wants to speak also.

3
4 MR. BUNCH: Well, yes, thank you, Madame
5 Chairman. Like, Gary, I, too read Dr. Fall's
6 interpretation and his history of the use of that and
7 while he seems to feel that the historical descendants of
8 those people that utilized that were the Kenaitze because
9 I have access to the Alaska Native Enrollment, also the
10 tribal enrollment of Ninilchik and Kenaitze, I can tell
11 you that the descendants of the Kenaitze people are
12 thoroughly integrated into Salamatof and Ninilchik and as
13 a matter of fact many Kenaitze tribal members are
14 residents of Ninilchik. So I think that you try to
15 separate the Kenaitze folks and their historical use from
16 Ninilchik's ties to that at least as far as the Native
17 population of the user goes. I think that there's plenty
18 of history that shows that they are still closely
19 connected.

20
21 People from Ninilchik haven't been able
22 to legally subsistence fish using traditional methods for
23 the last 54 years so I think that the study that
24 Ninilchik did back in '99 or '94 showed that there was a
25 great use, traditionally, when it was legal of using the
26 Kenai.

27
28 So I think that the comment that there
29 wasn't very substantial use, back in 54 years ago I think
30 those figures would be quite a large amount, would be a
31 substantial amount of use for those folks that were on
32 the Ninilchik and Kenai Peninsula at that time.

33
34 But I guess my biggest problem with this
35 is that we've listened to a lot of data. I understand
36 that there's controversy involved with a C&T
37 determination on the Kenai, but the fact is, is as Mr.
38 Littlefield stated yesterday we've made C&T
39 determinations on a lot less evidence and I'm concerned
40 that if we don't make a positive C&T determination in
41 this instance, it will just add fuel to the State's
42 argument that we should have something pretty concrete.

43
44 ACTING CHAIR GOTTLIEB: Thank you,
45 Charlie. Sorry, John, Ralph had asked to speak, you'll
46 be next. Ralph, and then you.

47
48 MR. LOHSE: Thank you, Madame Chair. I'd
49 just kind of like to get some explanation on what
50 somebody else brought up on the idea of interim.

1 Personally I prefer that you either voted it up or voted
2 it down, whatever your motion is. Because to me interim
3 or deferring puts the stakeholders, do they wait then in
4 the future for you to decide -- does it preclude them
5 making another proposal and do they wait until you bring
6 it back on the table or does it just sit there until it
7 gets around to your timing or if you vote it down they
8 can put another proposal in.

9
10 And if you feel that there is
11 insufficient evidence to put the whole thing in, vote on
12 what you feel that there is evidence to vote on and they
13 can put another proposal in requesting C&T on the part
14 that you reject. But the idea of having it as an interim
15 that's going to sit there until sometime in the future
16 when, and I don't mean this bad either, but sometime in
17 the future when you decide to work on it or you decide
18 that you've gotten enough information, that cuts the
19 stakeholders out from putting another proposal in. I
20 mean if they disagree with your proposal they're going to
21 put another proposal in.

22
23 So I really think that, you know, if
24 you're going to vote on C&T, don't vote on interim C&T,
25 vote on C&T and either vote it up or vote it down, it's
26 on the table, and that way your stakeholders know where
27 they have to proceed from there.

28
29 Thank you.

30
31 ACTING CHAIR GOTTLIEB: Thank you, Ralph.
32 John.

33
34 MR. LITTLEFIELD: Thank you, Madame
35 Chair. My question is on process. What we've done here
36 by this motion is we bypassed the recommendation of the
37 Regional Advisory Council. I understand what it says
38 here, consistent with the recommendation of that and then
39 you threw in 45 different amendments. That is not the
40 way to show deference to the RAC. The way that this
41 should proceed forward, by your own previous decision, is
42 you should show deference to the RAC. Bring the RAC
43 motion forward, move to amend or substitute the language
44 of this and let it stand on its own. Because if this
45 motion were to fail, this is over with. There will not
46 be a second attempt to go back and bring up the RAC's
47 because it's been voted on and it's done. And so I think
48 if you can't substitute this language then you have the
49 chance to go back to the RAC motion and make an amendment
50 or further amendments or whatever portion you may wish.

1 But I think that this does not show
2 deference to the RAC. That's clearly required in ANILCA.
3 It's in your own manuals to show deference to the RAC and
4 I think that you should withdraw this motion, and bring
5 the motion of the RAC forward and either move to amend it
6 with substitute language or something like this so that
7 you don't lock yourself into a one-shot failure here.

8
9 Madame Chair.

10
11 ACTING CHAIR GOTTLIEB: Thank you.
12 Keith, comments, please.

13
14 MR. GOLTZ: It's my custom and tradition
15 to grasp every opportunity I have to be silent and you'll
16 notice that during the course of these meetings I tend to
17 go around to various members and to Bill when I see
18 something that needs correction rather than make it
19 public. But in this case I think I'm going to be more
20 fully involved and when I do speak I like to be both
21 candid and complete.

22
23 With that introduction I'll speak to what
24 John's question really is and I think also to that which
25 is behind that of the BIA's last comment.

26
27 As to the deference on the RAC, it's my
28 opinion that deference is not due on this. I come to
29 that conclusion for two reasons. First, the plain
30 meaning of the word, take, generally does not include
31 that pool of people who are eligible. Also if you put
32 this into the arena of deference then you have to look at
33 the .805(c) criteria and it's not a very close fit.
34 Especially the portion of that which has to do with
35 conservation. How does conservation really relate to the
36 pool of users.

37
38 So that's my opinion.

39
40 This came up though in an executive
41 session with the Board and there is another opinion, and
42 that is that if you take a look at some of the aspects of
43 the Legislative history you might say that we ought to
44 give deference to the RACs. The way the Board left that
45 is that we would listen to the RACs respectfully as we
46 always do and that we would not try to resolve this
47 particular minor question. The risk of doing that, of
48 course, is it gives opportunity for attack and we've had,
49 at least one of those attacks before and it's still going
50 on and the nature of that attack is that we are too

1 deferential to the RACs and not fulfilling our
2 responsibilities to the whole of Alaska.

3

4 The way I would approach that at this
5 meeting is to say let's proceed as if deference was
6 required and analyze it in that context.

7

8 Technically I think that .805(c) is being
9 honored by this motion. The RAC recommendation is not
10 being rejected in any part. It's being accepted in part
11 and deferred in part, and that's the point of the
12 interim. That this is what Mitch likes to call a work in
13 progress.

14

15 That's the technical part of it.

16

17 There's more to it. The purpose of
18 .805(c) is to assure that Federal decisions are not
19 remote and abstract and removed from the process of the
20 land. The purpose of .805(c) is to promote the
21 devolution of decision-making to those most affected by
22 the decisions made. And it seems to me a stakeholder's
23 group does that.

24

25 The other purpose of .805(c) is to make
26 management responsive. We want managers who listen
27 before they speak and it seems to me that a stakeholder's
28 group does that also. So I think the purposes of .805(c)
29 are honored by a stakeholder's group, particularly in
30 this case.

31

32 As to the evidence and the quantum of
33 evidence. Evidence -- well, let me back up a minute. We
34 have heard implications, particularly in some of the
35 State comments that this program does not have standards
36 and is, therefore, not quite as legal as that of the
37 State and I have to bite my tongue because it's
38 representative of a confusion between bureaucracy and
39 what is legal. Having a bunch of data points, check
40 points and checklists is not the law. They can be
41 helpful. They can sometimes be useful in the formation
42 of a record, but we're here to do a job. And when we
43 start hovering over these eight points or eight factors
44 and whether one factor is more important than another,
45 we're likely to be distracted and to lose sight of what
46 this program is really all about, which is to address
47 real problems that address real people in the state of
48 Alaska.

49

50 As to evidence, it's always judged in

1 context, it's the only thing that makes any sense. And
2 in an easy case, in a remote area of the state you
3 probably do need very little evidence and we have
4 certainly acted on evidence that is less in quantity than
5 we have in front of us here today. In this case,
6 however, the context is complicated. The landscape is
7 contentious. We have two groups of eligible users who
8 disagree. And we also have at least three sets of data
9 that are unanalyzed. And in my experience with the Board
10 that's the first time we've ever faced that situation
11 where we actually have stuff but we haven't put it
12 together yet.

13
14 So on that basis, I would say that the
15 deferral can certainly be defended and is well within the
16 parameters of the law.

17
18 ACTING CHAIR GOTTLIEB: John.

19
20 MR. LITTLEFIELD: I'll respectfully
21 disagree on the take and leave it at that, but, you know,
22 the application of that word and whether deference is
23 due. Nevertheless, we have a motion before you that has
24 so many different changes and amendments to it that some
25 of the members may or may not like.

26
27 The word, interim, has already brought up
28 one. If we were to vote this up or down, and I have no
29 idea how you're going to vote and I'm not talking about
30 that at all. But what would happen, say, if somebody
31 agreed with one point, another member disagreed with
32 another, some member disagreed with this, you'll end up,
33 you're going to have the vote fail and you have no fall
34 back position. Because once you vote on this and if it
35 doesn't go forward it's done.

36
37 So the proper way to bring something
38 forward is to make a main motion to adopt something and
39 then to adopt amendments and do whatever's necessary and
40 get the feeling of the Board. I'm not speaking to any
41 part of this. I'm not saying anything's wrong with
42 interim. I'm not saying anything's wrong with this task
43 force. I've always supported task forces. I'm not
44 saying -- it's the process of this. You've made a motion
45 that encompasses -- it's gotten far away from what's in
46 the paperwork, and I'm not saying any of those are bad
47 and whether or not to support it. I'm just saying if you
48 start with a main motion, make your amendments to that,
49 it will follow a process, you'll come back have a final
50 vote in the end and not throw the baby out with the

1 washwater because you're going to have one vote on this
2 and it's done with.

3

4 Madame Chair.

5

6 ACTING CHAIR GOTTLIEB: Keith.

7

8 MR. GOLTZ: One of the joys of this job
9 is that I'm asked to speak extemporaneously and then we
10 get sued and I'm always wrong and in this -- as I said
11 here, I'm dealing with two pieces of litigation, one,
12 from a conservation groups who takes my words out of
13 context and says I lean too strongly towards Native
14 interests and we recently got one from a Native group
15 which does just the opposite and says I lean too strongly
16 towards the other interests.

17

18 So I'm always going to be wrong and in
19 this case I was wrong, I'm told, not to address the
20 question of interim. And here, again, I think we're
21 getting distracted by our language. I think the intent
22 of Mr. Edwards is simply to use that word as a signal to
23 everybody who is concerned that we're not done yet, we're
24 just starting, and that's all it's meant to do. And to
25 get hung up on that word, I think is a serious mistake.

26

27 We've got real problems here. The
28 question before us is how we're going to address them.
29 We've got real interests here that are going to be
30 allocated. I think that at some point in this proceeding
31 the Board should assure the proponents that we take
32 seriously their concerns and that there is going to be a
33 meaningful use preference on the Kenai Peninsula. I
34 think we heard that same pledge from the Commissioner.
35 We're probably not smart enough right now to know how
36 that's going to be done. That's why we're bringing
37 together a stakeholder's group.

38

39 And as long as I'm rambling on let me
40 just add one little point. One of the defects, I think,
41 in our program, is that we do not have a Kenai Council,
42 and this is said with full respect for Ralph and for his
43 Council, it's just the way it's structured. Ralph has
44 two members who are on the Kenai Peninsula. They deal
45 with a wide variety of interests, of which the Kenai
46 Peninsula is only one. The stakeholder's group,
47 hopefully, will find a way, peacefully, to integrate an
48 important subsistence use in with the ongoing uses on the
49 community.

50

1 I've seen this work personally for about
2 35 years. Where we go into areas that seem absolutely
3 impossible to reach any agreement and if I went around
4 this room, especially if I interviewed the bureaucrats I
5 would find reason after reason why this thing isn't going
6 to work. I don't think it's going to be simple. I don't
7 think it's going to be easy but I do think it's going to
8 work.

9
10 ACTING CHAIR GOTTLIEB: Thank you, Keith.
11 George had a comment.

12
13 MR. OVIATT: Madame Chair. I wanted to
14 extend my deep appreciation for the individuals that came
15 here to testify and have really hung in on a three day
16 meeting that has extended into a fourth day.

17
18 I have a few concerns maybe we could
19 discuss. I, too, have struggled with the full extent of
20 what was proposed. And I think that we are on the verge,
21 can almost touch some answers by letting the people who
22 have done these studies do some further analysis and
23 bring forth that information to us to help us in this
24 determination. And to stop short of having that
25 information, I believe, would not serve us very well.

26
27 And the interim part doesn't bother me
28 too bad, too much, because I believe what we are saying
29 is that there are rights out there and we're establishing
30 those and this is a work in progress. And I'm really
31 encouraged by the stakeholder's group, the idea of having
32 stakeholders brought together to help us with some
33 answers or at least give the Southcentral RAC some advice
34 as to which to advise us.

35
36 But I've got just a slight concern with
37 the process as we move forward and that is are we
38 expecting a stakeholder's group to help us with our C&T
39 final determination or are we looking at bringing these
40 studies together and finalizing the policy? In other
41 words, when is it that we would decide that we would no
42 longer make this interim and I'm not talking about time,
43 I'm talking about events, what events? Could we have
44 discussion about that?

45
46 ACTING CHAIR GOTTLIEB: I think that's a
47 good point, George. Gary.

48
49 MR. EDWARDS: George, I guess my vision,
50 to some extent was that they were sort of two different

1 processes. I see, you know, the responsibility of the
2 Board to sort of deal with the C&T. But what I was
3 looking for is to this stakeholder's group wrestling with
4 this issue of how do we integrate these two legitimate
5 issues and particularly recognizing the priority that
6 needs to be given to the subsistence. So I saw that as
7 their primary charge.

8
9 What I thought would help the Board was
10 the completion of this work, you described it as work in
11 progress, I think one thing that was very unfortunate was
12 that these two BIA studies, although they were -- there
13 was some knowledge of them, they sort of entered the
14 picture very late in the process and I don't think that
15 they have really received the sort of the rigor that I
16 think would be helpful. You know, yesterday this Board
17 unanimously voted in the case of Gustavus to delay that
18 one when we had information and were actually told by
19 Staff that we wouldn't be provided even any additional
20 information and these folks were only asking for C&T of
21 waters that were directly in their backyard, which, in my
22 mind was, you know, at a minimum, even intuitively you
23 would assume that people would have been fishing there,
24 so I think that is an example of where we've also
25 acknowledged that if there was some additional
26 information it would be helpful in really forming an
27 opinion and in the case of them, maybe even expanding
28 what their use area would be.

29
30 So I really think that that information
31 would be helpful.

32
33 I'm probably the strongest opponent also
34 of looking at the value of getting this policy done that
35 the Secretary has requested us to do. Of all the things
36 we deal with on this Board, I wrestle with C&T personally
37 more than anything else because I think it, at times, is
38 very elusive and I'm not going to give Keith my, that
39 it's like grabbing a hold of smoke speech, but it is, so
40 I think those two things from my standpoint, I think,
41 will be helpful in helping me make an informed decision.

42
43 Now, whether as part of the stakeholder's
44 process some of this might also come out or not, I don't
45 know, but certainly if it does, we could utilize that.
46 But to some extent I see them as two different processes.

47
48 I understand Ralph's concern about, you
49 know, how can the stakeholder's group go forward without,
50 you know, having some definitive. I mean I think you can

1 do that with the assumption that there is going to be
2 positive C&T, we don't know at this point exactly how
3 broad that is and who all it involves, but I think you
4 can go with some assumptions and in my mind I think the
5 group can work around that and I don't think it will be
6 all that difficult.

7

8 So that's how I sort of see it.

9

10 CHAIRMAN DEMIENTIEFF: We have a long
11 record of accomplishment when we get stakeholders to the
12 table. And for me, the way I think of it, and the
13 testimony and all the discussions that I have had with
14 regard to this issue, people are willing to continue to
15 work on it. It's not something that just -- an issue
16 that was just invented yesterday, it's something that's
17 been in the mills for awhile. But I am encouraged by the
18 fact that people are willing to continue to work on it.
19 And we've seen it over and over again, that that's how we
20 get a resolve to issues.

21

22 So with that, you know, I speak in favor
23 of your motion Gary. And we've still -- I also sense
24 your commitment for us to continue to work on this until
25 we can work it out. But as far as an interim measure,
26 yes, I can agree with it at this particular point in time
27 because we know that there are C&T utilizations by
28 certain parts so if we get them then we can work on
29 everything else when we get all of our criteria in place.

30

31 I don't see this going on for 16 years, I
32 see us, just like we normally pragmatically do, attack an
33 issue and go after it, which I sense there is a
34 commitment here that all of are going to continue to do
35 that, so I speak in favor of your motion, Gary.

36

37 ACTING CHAIR GOTTLIEB: Thank you, Mr.
38 Chair. I certainly support the idea and the
39 implementation of a stakeholder's task force. I think
40 it's incumbent upon us, very quickly to be very clear on
41 exactly what the charge is, what our desire is for that
42 stakeholder's task -- well, a subcommittee of the RAC, I
43 assume it would be, what this group would work on. I
44 think the charge needs to be developed and made very
45 clear in a short amount of time so that we can, as Mitch
46 says, attack this problem and go forward on it.

47

48 Ralph.

49

50 MR. LOHSE: Yeah, I guess I'm going to

1 have to ask then what the definition of the interim is,
2 especially if there's going to be a task force. Does the
3 interim mean that we're saying that parts of the C&T
4 aren't decided but the part that we vote on today is
5 decided? In other words, the part that you're saying
6 today, Ninilchik in the Kasilof, Cooper Landing and Hope
7 in the Kenai, that part is decided so the stakeholders
8 when they get together to decide how to use the resource
9 can at least start from that assumption that they are not
10 going to change that part but that the interim means that
11 there would be possible further study to see whether that
12 C&T is expanded, not contracted?

13

14 MR. EDWARDS: I think that was well said.

15

16 ACTING CHAIR GOTTLIEB: And do we agree
17 with that?

18

19 MR. EDWARDS: I guess the answer is yes
20 then.

21

22 ACTING CHAIR GOTTLIEB: Okay.

23

24 MR. EDWARDS: In my mind that's what it
25 does, it recognizes that those communities have this
26 positive C&T. I mean I think that's -- in my mind that
27 goes without question.

28

29 What I'm wrestling with is the
30 expansiveness of that C&T, and particularly when we
31 heard, as Keith mentioned, you know, we heard one
32 component of that, basically come in and said we don't
33 have C&T over there and I think it will allow us to
34 wrestle with that, maybe even look at other communities.
35 I know Happy Valley -- is it Happy Valley is another
36 close community, you know, might even provide an
37 opportunity to further look at that. I know I did ask
38 you that question about them yesterday, I think one of
39 the realities was is nobody from Happy Valley showed up
40 and if somebody from Happy Valley had showed up at your
41 RAC meeting, I believe your motion would have probably
42 been different because if I'm not mistaken they were
43 actually included the day before and then that motion, I
44 think got amended on the second day if I'm not mistaken.

45

46 MR. LOHSE: Thank you. So then basically
47 what you're saying then is the part that's voted on has a
48 positive C&T if the motion passes.

49

50 Thank you.

1 ACTING CHAIR GOTTLIEB: I guess my
2 understanding also would be that no doubt there'd be
3 discussions at any meetings that might include
4 information that would be helpful to us in making further
5 determinations but most of the charge to the group would
6 be to look at seasons, bag limits, methods and means.
7
8 George, you had a comment.
9
10 MR. OVIATT: That's my understanding,
11 too, is that we're making a determination and what we're
12 putting on hold is the extent of what that would be.
13
14 I'd like to get back to the process a bit
15 more if I could delve into it. When is it that we would
16 decide we have enough information that we would make a
17 final C&T and how would that be brought to the Board? Do
18 we bring it to ourselves? Do we say, okay, we think it's
19 done, can somebody help me with that?
20
21 ACTING CHAIR GOTTLIEB: Keith, please.
22
23 MR. GOLTZ: Well, procedurally, the way
24 this would have to work is it would go through the
25 Southcentral Council. This would be a subcommittee of
26 the Council. If there is a report from a stakeholder's
27 group it would go back to the Council and the Council
28 would then act on that and make a recommendation to the
29 Board based on that, that document.
30
31 The way it worked in Prince William Sound
32 [sic] was even simpler, we had a situation as you recall
33 where we didn't even think we could get the stakeholders
34 into the same room. Once they got done it was on our
35 consent agenda and we never even saw it again. And
36 that's the hope here.
37
38 MR. BOYD: Prince of Wales.
39
40 MR. GOLTZ: Oh, excuse me, Prince of
41 Wales.
42
43 MR. EDWARDS: I'm not sure that was what
44 George asked, I think what he was asking was in reference
45 to the C&T and I don't know what the process is.
46
47 In my mind and I would hope what our next
48 step would be to do is to work with Dr. Fall and the
49 folks from Ninilchik and get those studies together and
50 let us, and it would probably require a new charge, I

1 don't know if it would require a new contract or what,
2 Tom, but it's going to require some additional work that
3 somebody's going to have to do and so I would encourage
4 that we would get that started immediately and we are,
5 although we do not have drafts of the C&T policy and
6 everything as was asked about yesterday, I believe that
7 Staff has been charged and is starting to work on that
8 process and hopefully that process will move very
9 forward, you know, judicially as well as the one on the
10 closures. And in my mind, once that, you know, I'm
11 personally willing to look at this and I don't know
12 whether that leaves it with the stakeholder's group or
13 not, I don't know. In my mind, I don't think they both
14 have to be completed at the same time, but others might
15 disagree.

16

17 ACTING CHAIR GOTTLIEB: Keith.

18

19 CHAIRMAN DEMIENTIEFF: I just want to
20 note, too, for the record that we have danced this dance
21 before about the necessity for the Kenai to have their
22 own RAC. But I just want to compliment and, Ralph, you
23 can take that back to your Council, I know you guys have
24 a wide variety of issues, like the rest of the Councils
25 do, that you have to deal with in a wide variety of
26 areas, and a wide variety of circumstances that you have
27 to deal with. But I just want to say that I appreciate
28 the work that the Council has done and I understand that
29 the role that the Council will have to do in order for us
30 to accomplish, hopefully, at the end a favorable decision
31 that satisfies people.

32

33 So I just want to say that I am confident
34 in the system that we currently have in place to move
35 forward.

36

37 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
38 Keith.

39

40 MR. GOLTZ: Let me make sure that
41 nobody's spooked by a legal constraint that doesn't
42 exist. You can make your charge to a stakeholder's group
43 as broad or as narrow as it would be to the RAC. This is
44 going to be a subcommittee of the RAC. And if you have
45 RACs taking testimony and making recommendations on C&T
46 you can also have the subcommittee do that. My own
47 personal recommendation that you not constrain these
48 people too closely. You're giving them a problem, you're
49 asking for their suggestions. It's going to come back to
50 the RAC. And if we need to narrow their findings we can

1 do it at that time.

2

3 ACTING CHAIR GOTTLIEB: Thank you, Keith.
4 I guess I'm with George here. We worked a little bit
5 through the process, subcommittee works with the RAC, the
6 RAC has a recommendation, are we talking about waiting
7 until the next regulatory cycle to put this forward or
8 can we keep working on the data regardless of calendar?

9

10 MR. EDWARDS: Well, Madame Chair, I'm
11 under the assumption that we are going to move post haste
12 to work with the data as we're moving post haste to work
13 with the policy.

14

15 In answer to one of Ralph's questions, I
16 said I believe that the stakeholder's group can go
17 forward with, this is not definitive, but I would also
18 agree that the more clear the landscape is and you know
19 who the players are, I think there's also -- that's also
20 advantageous -- will be advantageous to the stakeholder's
21 group. So I guess in my mind I see probably the
22 stakeholder's group, which would ultimately deal with
23 methods and means and all and it will allow this Board
24 then to start addressing those proposals. My
25 understanding is we have four that we have had put off
26 until the next cycle which would be January of 2007.

27

28 I personally can see the C&T ultimate
29 final decision made before the stakeholder's group has
30 completed their work. I mean I think in my mind that's
31 how it would work and I certainly, as a Board member, I
32 think, will be comfortable with being able to go forward
33 with the C&T much more sooner, then I'd be comfortable
34 with going forward with accepting proposals on harvest
35 and bag limits and seasons and that type of thing, which
36 I really think that that's really where -- in my mind is
37 where the stakeholder's group is going to be extremely
38 helpful in helping us work through that.

39

40 ACTING CHAIR GOTTLIEB: Thank you.
41 Ralph.

42

43 MR. LOHSE: Thank you, Gary. I'd like to
44 thank you for that because that's what I've been trying
45 to get across and that's why I hope if you're going to
46 make this an interim thing, you set a date that you're
47 going to decide when the interim is over and you're going
48 to look at this data and make the final decision.
49 Because I'm hoping that down the line, something like
50 what we have on the Yukon River could be developed for

1 the Kenai, something like YRDFA, where you have a working
2 group and it doesn't have to be connected to a RAC. But
3 until there is standing there's no reason to come
4 together to try to work out bag limits, methods and
5 means. It's a lot easier and more profitable to fight
6 the standing.

7
8 And so as long as one group of players
9 has no standing in, you know, it has no preference or
10 something that you can say that there is a reason to give
11 them something, it's a lot easier to spend your effort
12 and spend your money and spend your energy fighting them
13 getting them standing. That's what you're doing when
14 you're deciding C&T. You're giving a group standing. It
15 has a place at the table. It can be part of the working
16 group. And then the rest of the working group recognizes
17 that they have to work with them. No one part of the
18 working group controls it, but they have to work
19 together. As long as you can keep a player out of the
20 working group you can ignore him.

21
22 And so that's why to me when you decide
23 or if you decide a positive C&T, at that point there's
24 standing that you can have a working group. And if you
25 have that C&T as interim sometime out in the future,
26 until that date happens, not much is going to happen in
27 the working group because there is no incentive to come
28 down to the table if it's easier to work at keeping
29 somebody off the table.

30
31 Thank you.

32
33 ACTING CHAIR GOTTLIEB: Charlie.

34
35 MR. BUNCH: Madame Chair. I think I
36 fully support this idea of a working group. I think that
37 any other idea would just fail. It's the C&T, it's the
38 interim C&T that gives me the problem with the motion. I
39 think probably a more correct term would be a halfway
40 determination.

41
42 Ralph's right, while it gives folks
43 standing, they're actually only standing on one leg with
44 this motion.

45
46 I would go ahead and make a full C&T
47 determination at this time but I need to clarify one
48 item, too, that Gary mentioned. The studies that
49 Ninilchik did were not BIA studies, those were studies
50 that Ninilchik asked for a grant from the Bureau and the

1 Bureau gave them a grant, because it wasn't a contract,
2 we don't have the end product out of that. That's
3 Ninilchik's end product. They give a copy to the Bureau
4 and the Bureau did a peer review on it. But because when
5 they fulfill the terms of the grant, I don't even know
6 that we still have a copy. So Ninilchik is the party
7 that we're going to have to work with on this to get
8 access to those studies and I haven't spoken with them
9 but I'm sure that they would be willing to provide those
10 so that we could get the information to do that final
11 C&T.

12

13 ACTING CHAIR GOTTLIEB: George.

14

15 MR. OVIATT: Madame Chair. So Gary if I
16 understand what you're saying and I think I could agree
17 with this, let me paraphrase it, I guess.

18

19 So we would, I assume, move forward with
20 bringing these studies together and doing that further
21 analysis. That, I think we would want to move as fast as
22 we could and it sounded like from Dr. Fall that that
23 should not take too much time.

24

25 The policy and final on it, probably
26 we're looking at what, the fall, early winter of this
27 year?

28

29 ACTING CHAIR GOTTLIEB: Tom.

30

31 MR. OVIATT: Let me just complete this
32 and then we can answer it. So then what would be the
33 process, would Staff bring this forward and say here's
34 the information for us to look at or would this be -- I
35 think I would like to see this completed as soon as
36 possible. I think that would help with some of Ralph's
37 concerns, too.

38

39 Okay.

40

41 ACTING CHAIR GOTTLIEB: Tom.

42

43 MR. BOYD: Thank you, Madame Chair. I've
44 been sitting here listening and trying to sort all this
45 out in my head and I'm not going to be able to do that
46 sitting here before you. In many ways you've thrown a
47 lot of balls at the Staff and we're sitting here trying
48 to pick them up off the floor and start juggling.

49

50 There are four or five elements of tasks

1 that I'm trying to capture here and obviously one is the
2 policy which we've already gotten to develop a draft on,
3 and the timeline on that right now is to have a draft
4 available for the fall Council meetings and then a Board
5 adoption of a policy sometime following the Board fall
6 meeting, so the end of the year is the timeline on that.

7
8 The other tasks, and I may not have them
9 in the exact sequence, that I'm hearing, are the C&T
10 determination sort of process, and then the additional
11 analysis on the data that leads into that C&T
12 determination. The stakeholder's committee and a
13 subcommittee and the getting that effort off the ground
14 working with Ralph and the Regional Advisory Council.
15 And then the harvest regulations themselves and those are
16 obviously tied to the regulatory processes.

17
18 I'm going to have to have some time to
19 look at all these tasks and see how they're interrelated
20 and also talk to those beyond the Office of Subsistence
21 Management and understand their ability to fit within
22 whatever timelines we create. For example, the Alaska
23 Department of Fish and Game. You know, if we're going to
24 go back and work with Dr. Fall, I'm sure he's already got
25 a program of work and we're going to have to discuss with
26 him the feasibility of integrating that into his program
27 of work. And so all of this is fairly complicated, so we
28 need a little time to sort this out and I need to have
29 time to see how all of this sort of fits together and
30 then I can report back to you.

31
32 I, too, am interested in making sure that
33 this is expedited but we don't want to rush and make
34 mistakes and not have this carefully done. So I'm a
35 little reluctant to give you a time certain sitting here
36 today but I think with some thought we can come back to
37 you and report to you. I would certainly like to have
38 some idea of what we're doing by the time we get to the
39 Regional Advisory Council meetings because they're going
40 to need to know how all of this plays out and how this is
41 going to work, and we'll do the best we can. But that's
42 the best I can give you right now.

43
44 Madame Chair.

45
46 ACTING CHAIR GOTTLIEB: Thank you. And
47 I believe one thing for the Board to perhaps direct today
48 is, as Tom mentioned before, the Southcentral Regional
49 Advisory Council meeting in March, I think the Board
50 needs to develop a very clear and direct guidance to any

1 subcommittee of exactly what we'd be interested in
2 seeking and perhaps some suggestions on members other
3 than the RAC who could participate in the subcommittee.
4 And perhaps that's something we could discuss at our
5 February work session.

6
7 Keith.

8
9 MR. GOLTZ: Yeah, in reference back to
10 Ralph's concern, I detect no legal difference between an
11 interim C&T and a C&T. So if you want to drop the word,
12 interim, or if you want to keep it in it makes no
13 difference as far as I can see.

14
15 MR. LOHSE: Thank you, Keith. I probably
16 agree with you from a legal standpoint. But I'll just
17 speak as a user and as a member of the public and
18 somebody who's not legal -- well.....

19
20 (Laughter)

21
22 MR. LOHSE: Well, somebody who is not
23 involved in legalities.

24
25 You know perception is a lot more
26 important to most people than reality. And to a lot of
27 people the word, interim, means this can be changed, this
28 isn't set in stone and we can change this and usually
29 it's not just changing it, meaning that we're going to
30 add something to it, it's we can tweak this for our
31 benefit. And from that standpoint, I would feel
32 personally for the users involved I would feel better if
33 they had a -- and I'm saying this -- I'll probably get
34 myself in trouble, I would feel better if they had a
35 positive C&T on a smaller amount than an interim C&T with
36 a possible bigger amount at the end. At least they would
37 know where they are and they can bring back proposals
38 asking for more.

39
40 And from that standpoint -- and when they
41 get down and sit at the table with other people to
42 discuss bags, methods, means, it would be a lot nicer to
43 sit there, you know, it's a lot nicer to sit there with a
44 signed check than a check that's got a million dollars on
45 it but the guy hasn't got around to signing it yet.

46
47 So thank you.

48
49 MR. EDWARDS: Ralph, I mean I guess I
50 agree with you completely and actually that's what I was

1 trying to do. And I guess I thought by -- I mean option,
2 and I think is what you're suggesting is that we do the
3 final C&T for -- that would go along with my motion would
4 be for Ninilchik for the Kasilof drainage and for Hope
5 and Cooper Landing for the Kenai River drainage and north
6 of that, which would include for Hope those streams that
7 would go into Cook Inlet. That was one of my options.

8

9 But my view was is that I didn't want it
10 to appear that it just might end at that and so that's
11 why I felt that sort of the term, interim, does, is that
12 there might be an additional check in the mail and the
13 check you got is just not the only one you got.

14

15 So I guess I'm not really hung up on
16 either one and I think I was trying to accomplish the
17 same thing that you just stated. So whether it does it
18 or not I don't know.

19

20 ACTING CHAIR GOTTLIEB: I guess following
21 on that point, Gary, yeah, I don't think -- let's see,
22 what's the best way to say that. If we eliminate the
23 word, interim, I think that's as clear on our intent for
24 these specific C&Ts as you want to be. And having our
25 commitment that future data is coming in, future analysis
26 and we need to be very specific about what kind of
27 analysis we want done does indicate there could be future
28 other C&T determinations.

29

30 CHAIRMAN DEMIENTIEFF: Yeah, I just
31 really agree with the whole process as far as it's going.
32 We know there are utilizations. We know it's a work in
33 progress. We have commitments by the stakeholders to
34 work together so let's just let the process work is
35 basically the way I look at it.

36

37 But we do know that there are
38 utilizations according to our existing rules of
39 engagement. We know there are utilizations and highly
40 justifiable. So in terms of the interim, we're
41 recognizing that, but we're going to keep working on this
42 thing until we can come up with some resolve.

43

44 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
45 Charlie.

46

47 MR. BUNCH: Madame Chair. While I've
48 expressed my displeasure with the word, interim, I'm
49 going to say that I would prefer that it would be left in
50 because I think the end result of taking it out would

1 have a broader effect than leaving it in, it would have
2 the effect of delineating something in a manner in which
3 I don't think would be in the best interest of the folks
4 in Ninilchik.

5
6 ACTING CHAIR GOTTLIEB: Do you want to
7 just expand on that a little, Charlie, please.

8
9 MR. BUNCH: Well, yeah, if you take
10 interim out then their determination is only for the
11 Kasilof drainage and I think that then they would have to
12 make additional appeals to the Board to expand that to a
13 greater area.

14
15 CHAIRMAN DEMIENTIEFF: So basically
16 Charlie, instead of by using interim, we're saying, okay,
17 we're this far and we're willing to look at farther,
18 we're not limiting. Is that what you're getting at
19 Charlie?

20
21 MR. BUNCH: Yes. I think that if you
22 leave interim in there it doesn't limit it exactly to the
23 Kasilof River drainage and it leaves it open to expand it
24 if that's what the C&T proves.

25
26 MR. EDWARDS: Madame Chairman. You know,
27 I was looking at how we would change the motion to do
28 what Ralph was suggesting and it would be an easy change,
29 it would just go for the communities of Hope and Cooper
30 Landing as opposed to saying an interim C&T determination
31 is made for the Kenai River and north of that, it would
32 just say a positive C&T determination is made. But I
33 agree with you that that sort of then becomes a finite
34 decision.

35
36 Because the way the current motion is, if
37 you went on in the motion and looked at it, it basically
38 said this interim and then in way of explanation I said
39 that what it really does is defer that portion of the
40 Council's recommendation that involves these other
41 drainages. So in my mind it does leave it really more
42 open.

43
44 Maybe technically it doesn't matter one
45 way or the other and particularly with Keith's
46 acknowledgement that in his mind interim also means
47 positive, so I think it accomplishes, Ralph, what you'd
48 like for it to accomplish and at least certainly that's
49 my intent.

50

1 ACTING CHAIR GOTTLIEB: I guess I also
2 believe that certainly the issue that the Council has
3 brought to us about a fuller C&T determination, it's not
4 going to be lost and I don't think it has to be brought
5 back in front of us again, it's clearly in front of us
6 and we will continue to work on gathering what people
7 seem to feel is needed in terms of more specific analysis
8 or more specific data or more traditional knowledge to
9 make those further decisions so we don't want this to
10 become a burden that has to be repeated and repeated,
11 this is something that the stakeholder's task force can
12 help us address as well as the other upcoming issues.

13

14 Ralph, did you have a comment.

15

16 MR. LOHSE: Well, I've just trying to
17 listen to what everybody says and I know that everybody's
18 trying to do the best, so we have an understanding on the
19 table that this interim is a positive -- if it passes,
20 this interim is a positive finding and that what we have
21 is a commitment by the Board to continue to address this
22 until they decide that this is a final, and at some point
23 in time this will no longer be called an interim positive
24 determination but will be called a positive determination
25 or a final positive determination, and at that point in
26 time will be as soon as it -- within the constraints of
27 how long it takes to look at the data and everything,
28 this is something that's going to happen in as short a
29 time period as possible.

30

31 What I'm getting at, this is the
32 commitment of the Board, this commitment has been put
33 down, it's on the record and everything else, and so we
34 can basically count on this then and we can go into a
35 working group with the standing that this interim
36 determination is a positive determination covering the
37 areas mentioned but that there's a possibility that these
38 areas will be expanded when the rest of the data is
39 looked at.

40

41 Am I correct in that?

42

43 MR. EDWARDS: That's my commitment.

44

45 MR. LOHSE: Thank you. Then I think
46 you've probably -- if that understanding is clear and on
47 the record, I think we've.....

48

49 CHAIRMAN DEMIENTIEFF: Ralph, that's also
50 my commitment is that I think -- and I think that's what

1 we're all committed to, it's not like we haven't looked
2 at this issue and we've been paining over it for -- not
3 paining, that's not a right word, we've been looking at
4 it for months in trying to prepare some way to take care
5 of it.

6
7 But like your people who are affected,
8 who are committed to working with the process, and I have
9 heard it, I think what basically our message is we're
10 willing to look at the process. And I'm not pretending
11 to speak for the Board, I guess from my own point of view
12 continue to work.

13
14 ACTING CHAIR GOTTLIEB: Ralph.

15
16 MR. LOHSE: Thank you, Mitch. And I'd
17 like to thank the rest of the Board members. And I guess
18 for the people of Ninilchik then I have my colleagues
19 word that says that we have a solid maybe.

20
21 (Laughter)

22
23 CHAIRMAN DEMIENTIEFF: Call for the
24 question on the motion, we're dancing around here.

25
26 ACTING CHAIR GOTTLIEB: Mitch, just a
27 couple more comments here and then we'll be ready.

28
29 George.

30
31 MR. OVIATT: Well, you do have my
32 commitment, too, Ralph, and I am going to support this
33 motion.

34
35 ACTING CHAIR GOTTLIEB: Thanks. Steve.

36
37 MR. KESSLER: I like what I hear in this
38 motion and I will also vote in favor of it. As I
39 mentioned, the first question out, what does this interim
40 mean, and I'm a little more comfortable with what interim
41 means now. I still just think there's some process
42 things to be worked out on that. But I think as we have
43 now said, if we pass this motion, then we would commit to
44 working through to a final, "final customary and
45 traditional use determination" as quickly possible using
46 the data that we now know is available and going through
47 an analytic process with that.

48
49 I think it makes sense talking about this
50 as a work in progress and certainly a stakeholder's group

1 makes abundant sense in this process.

2

3

4 So I think that the motion and the
5 solution that has been talked to, at this point in time,
6 is something that can work quite well, and, therefore, I
7 do intend to vote for the motion.

7

8

9 ACTING CHAIR GOTTLIEB: Thank you, Steve.
10 I just had a few things to say as well.

10

11

12 Customary and traditional use
13 determination is a recognition of a community's use of
14 resources by areas. A customary and traditional does not
15 allocate resources to subsistence users, or between
16 subsistence users and others. The decision today has no
17 immediate affect on the number of fishers, fish
18 harvested, when, or how fish are taken in Federally-
19 managed waters.

19

20

21 Allocations and methods and means are
22 dealt with separate from and usually at a later time from
23 C&T. But this process, as maybe has been evident over
24 the last several days or weeks or months, is not well
25 understood. Perhaps if it is understood it's not being
26 accepted by some. And it's been disturbing to me that a
27 lot of inaccurate information continues to be passed
28 along that has the effect of feeding fears or
29 insecurities regarding this process or this
30 determination.

30

31

32 Purpose of Proposal 9 is to establish C&T
33 findings in the Cook Inlet area. When faced with similar
34 proposals, a similar proposal years ago, we commissioned
35 a study from the Department of Fish and Game, Subsistence
36 Division, we heard a summary of that study, we heard a
37 lot of discussion, the Board has benefited from having a
38 thorough Staff analysis that looked at the eight factors
39 that our regulations require to be evaluated and
40 incorporated TEK and scientific information. We've been
41 provided with those conclusions. The RACs and
42 Interagency Staff Committee have done diligence in
43 reviewing and analyzing the proposal. We heard a great
44 deal of testimony which included firsthand TEK as did the
45 Southcentral RAC. We have heard comments related to
46 specific use areas, harvest sharing, passing along
47 traditions. I started writing down some of the names of
48 places we heard that people used, Snug Harbor, Skilak
49 Lake, Kenai River, Sterling area, et cetera.

49

50

51 This proposal is different from most or

1 maybe all of our other C&T proposals in that there are
2 many non-Federally-qualified users living in the area,
3 many visitors who use the resources and commercial
4 fisheries as well. And our challenge is and will be to
5 provide for subsistence opportunity as provided for in
6 ANILCA in the context of these existing uses and the
7 balance that we've heard about per the Ninth Circuit
8 Court Decisions.

9
10 So I need more evidence to address and
11 clearly understand this opposition and controversy.

12
13 Hearing the potential for a mechanism of
14 a subcommittee of the Regional Advisory Council which
15 include potential subsistence users, current sport and
16 commercial users and others to communicate with each
17 other, to educate each other within the context of
18 respectful collaboration is appealing. The various
19 interests can provide insights and information to us on
20 how to avoid confrontation on allocations, methods and
21 means and seasons. But remember in the interviews
22 conducted by Dr. Fall's staff, when asked most people
23 requested only the same quantities as provided for under
24 State or current regs.

25
26 I repeat my request that the charge to
27 this subcommittee needs to be clear and timely. Once we
28 develop a timeline and if the subcommittee and
29 participants are able to meet it, if it happens to be a
30 little out of cycle with our regulatory process, I hope
31 we'll give consideration to a more timely look at this.
32 And the concept of more studies and analysis needs to be
33 very clear and exactly what we desire and what we want so
34 that they can be accomplished in a timely fashion.

35
36 We need information coming from the
37 Federal Subsistence Management Program and others that is
38 accurate and understandable. And we need a commitment
39 from the agencies as we heard today, and ours will be one
40 of them, to assure that a stakeholder group will be
41 supported and aim to get feedback to this Board in a
42 timely and meaningful manner.

43
44 Other comments.

45
46 (No comments)

47
48 ACTING CHAIR GOTTLIEB: Question's been
49 called. All those -- do we want to do a roll call or do
50 we want to try voice vote first?

1 CHAIRMAN DEMIENTIEFF: I think we're
2 there at a consensus point, let's just do a voice vote.
3
4 ACTING CHAIR GOTTLIEB: Okay, thank you.
5 Can I just clarify, this proposal includes a positive,
6 not an interim C&T determination, for the west side of
7 Cook Inlet?
8
9 MR. EDWARDS: (Nods affirmatively)
10
11 ACTING CHAIR GOTTLIEB: Thank you.
12 That's in the proposal. All those in favor signify by
13 saying aye.
14
15 IN UNISON: Aye.
16
17 ACTING CHAIR GOTTLIEB: All those opposed
18 same sign.
19
20 MR. BUNCH: Aye.
21
22 ACTING CHAIR GOTTLIEB: Motion carries.
23 Five, one.
24
25 Thank you all for your participation in
26 this and we'll take a 10 minute break.
27
28 (Off record)
29
30 (On record)
31
32 ACTING CHAIR GOTTLIEB: No. 30,
33 Southeast, we'll have Staff presentation and Mitch will
34 join us a little bit later, but go ahead, please.
35
36 MR. VANALEN: Good morning. I'm Ben
37 VanAlen with the Forest Service, a fisheries biologist in
38 Juneau. I'm looking at Page 387.
39
40 Proposal FP06-30 was submitted by
41 Patricia Phillips of Pelican and would allow the use of
42 subsistence taken pink salmon for bait.
43
44 The proponent does not propose or seek
45 any restriction on who can use these pink salmon for bait
46 or what fisheries this bait can be used for. The
47 proponent wants changes in Federal subsistence fishing
48 regulations to allow the use of subsistence harvested
49 pink salmon to bait pot, longline or jig gear for
50 commercial crab, halibut and other shellfish or finfish

1 fisheries.

2

3

4 Section .803 of ANILCA does not include
5 the use of subsistence resources as bait in its
6 definition of subsistence uses.

7

8 The main issue with this proposal is the
9 appropriateness of modifying Federal subsistence
10 regulations to specifically allow for non-consumptive use
11 of an edible subsistence resource.

12

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Thanks.

ACTING CHAIR GOTTLIEB: Thank you. Were
there any questions.

Are there written public comments.

MS. HERNANDEZ: Madame Chair. Melinda
Hernandez with the Forest Service. There was one written
public comment in support of the proposal. It was from
the Chilkoot Indian Association.

At the present time there's an
overabundance of pink salmon in Southeast and other
regions of Alaska. Price levels for pink salmon are at
historic lows to the point that commercial harvest
permits are no longer being used -- are not being used.
It would serve a benefit of all pink salmon, which would
otherwise go to waste in the stream could be used as bait
fish for more desirable species of fish and shellfish.

That concludes the written public
comments.

ACTING CHAIR GOTTLIEB: Thank you.
There's no one signed up for public testimony so if we
could get Regional Advisory Council recommendation,
please, John.

MR. LITTLEFIELD: Thank you, Madame
Chair. Page 385 has the Regional Advisory Council
comments. SERAC supported the proposal.

SERAC disagreed with the Staff's
interpretation that ANILCA does not provide for the use
of bait. The Council noted that bait has traditionally
been used in many subsistence fisheries. This would
include but not be limited to fisheries for trout, Dolly
varden, steelhead and other freshwater species, salmon,

1 bottom fish, including halibut, shrimp and crab. Many of
2 these species cannot be caught effectively without the
3 use of bait.

4
5 The Council heard from members that pink
6 salmon have been used for bait on ongoing basis. The
7 Wrangell-St. Elias Resource Commission supported allowing
8 for this use. The Council notes that there is an
9 overabundance of pink salmon in the region and that
10 allowing pink salmon to be used as bait would utilize a
11 resource that otherwise would be wasted.

12
13 The Council heard from the Interagency
14 Staff Committee that Federal jurisdiction might only
15 allow use of bait on Federal lands and waters. The
16 Council disagrees with this opinion. Federal regulation
17 providing for subsistence harvest does not require that
18 the use of subsistence harvest take place on Federal
19 lands and water. Fish and wildlife harvested under
20 Federal subsistence regulations may be consumed or
21 otherwise used away from Federal lands and waters. The
22 Council believes that ANILCA authorizes consumption,
23 trade and barter and handicraft use of subsistence
24 resources harvested under Federal regulations wherever
25 these uses might occur, both on and off Federal lands and
26 waters. Pink salmon caught for bait under subsistence
27 regulations may be used wherever subsistence users need
28 the bait, not only on Federal lands and waters.

29
30 The Council heard substantial evidence
31 that pink salmon have been traditionally used for bait
32 and that there is an overabundance of this species.
33 Sound management principles support non-wasteful use of
34 this species. The proposed regulatory change would
35 benefit subsistence users by authorizing what has been a
36 common practice. And no effects are expected on non-
37 subsistence users.

38
39 Madame Chair.

40
41 ACTING CHAIR GOTTLIEB: Thank you.
42 Questions or comments for John.

43
44 (No comments)

45
46 ACTING CHAIR GOTTLIEB: Interagency Staff
47 Committee, Pete. Thank you.

48
49 MR. PROBASCO: Thank you, Madame Chair.
50 The Interagency Staff Committee opposes the proposal

1 contrary to the recommendation of the Southeast Alaska
2 Regional Advisory Council. Allowing the edible portions
3 of salmon harvested under Federal subsistence regulations
4 to be used for bait in commercial and sportfisheries is
5 not a subsistence use described in Section .803 of
6 ANILCA.

7
8 This proposal should be opposed to avoid
9 compromising the consumptive uses emphasis of the Federal
10 Subsistence Management Program and avoid blurring the
11 lines between subsistence, sport and commercial
12 fisheries.

13
14 It is unlikely that many Federally-
15 qualified subsistence users would choose to go up into
16 the freshwater portions of rivers and streams to harvest
17 pink salmon for bait.

18
19 Madame Chair.

20
21 ACTING CHAIR GOTTLIEB: Thank you. Any
22 other comments.

23
24 (No comments)

25
26 ACTING CHAIR GOTTLIEB: Department
27 comments.

28
29 MR. HILSINGER: Madame Chair. For the
30 record, my name is John Hilsinger. The State has
31 concerns about this proposal. We agree that ANILCA does
32 not provide for use of subsistence caught fish as bait
33 and so the State considers that the Federal Subsistence
34 Board does not have the authority to authorize such
35 usage.

36
37 The Federal program also does not have
38 jurisdiction over State fisheries and therefore cannot
39 authorize subsistence caught fish to be used in those
40 State fisheries.

41
42 Only a small harvest of pinks has
43 occurred in State subsistence fisheries and very little
44 harvest has occurred in Federal subsistence fisheries.
45 Currently fishers desiring bait for used in sport,
46 personal use and subsistence fisheries can obtain those
47 fish in the marine waters under State fisheries
48 regulations.

49
50 So the State's recommendation is to not

1 support this proposal.

2

3

Thank you.

4

5 ACTING CHAIR GOTTLIEB: Thank you. Any
6 other questions or comments.

7

8

(No comments)

9

10 ACTING CHAIR GOTTLIEB: Board discussion.
11 Jim, maybe we could get some clarification about ANILCA
12 and use of bait, please.

13

14 MR. USTASIEWSKI: Thank you, Madame
15 Chair. I'll try to provide that. For the record my name
16 is Jim Ustasiewski, and I'm an attorney with the
17 Department of Agriculture.

18

19 The question was raised about Title VIII
20 and the use of bait. Section .803 of ANILCA does not
21 specify bait as a subsistence use. That doesn't
22 necessarily mean using bait is in conflict or contrary to
23 Title VIII, especially where you have a subsistence use
24 of that bait. And, in fact, the Board has passed
25 regulations. There was one passed yesterday that allowed
26 the use of bait in a subsistence fishery. And, of
27 course, that bait itself would probably be coming from a
28 subsistence taken fish.

29

30 So it's not necessarily a conflict to use
31 bait. Where the conflict arises here is with the use of
32 that bait outside of Federal subsistence fisheries. The
33 purpose as stated is to allow the use of it in commercial
34 and other non-Federal subsistence fisheries. And that
35 sets up an interference with those fisheries. It's an
36 interference that is not written into Title VIII and the
37 Board has had other issues like this in the past where
38 there's been discussion of interference or other
39 conflicts with State operations, State fisheries. And
40 when you get into a situation like that you always need a
41 showing of necessity for such an interference, a good
42 reason or even more than just what someone might accept
43 as a good reason, but a strong showing of necessity. And
44 I think you also need to have that showing in the context
45 of Federal subsistence use.

46

47

48 Here the purpose would be for a
49 commercial use and not for Federal subsistence. So it
50 seems to me anomalous to allow the use of bait for not
subsistence but for commercial fishing. I don't think,

1 based on this record, that that would be supportable.
2
3 Madame Chair.
4
5 ACTING CHAIR GOTTLIEB: Thank you. Gary.
6
7 MR. EDWARDS: I guess what I'm trying to
8 understand, in my mind the issue wasn't the use of bait,
9 but taking subsistence fish, in this case, for the
10 purpose of using them for bait. I mean it seems to me
11 that's a difference than using bait. You know it says --
12 the way I read it, you know, taking for these purposes
13 including barter, so I guess in my mind you could catch
14 pink salmon and you could barter them for bait. But do
15 we have to have a specific that says that the only
16 purpose that you are taking them for is for bait, not the
17 fact that you can use them for bait.
18
19 Is there any difference there?
20
21 ACTING CHAIR GOTTLIEB: John.
22
23 MR. LITTLEFIELD: Madame Chair. Let's be
24 clear and look at the executive summary on Page 384. The
25 effect of the proposal is in 27(i)(12) and (13)(xxx),
26 whatever all those X's are.
27
28 It says: You may use subsistence taken
29 pink salmon as bait. It doesn't say that we're going to
30 use it as bait for wholesale running in any Federal
31 fishery, any State fishery or anything else like that.
32 It says you can use it as bait. We had a discussion on
33 where bait was used. That's not within the purview of
34 this Board to determine whether State allows it or not,
35 that's -- it's like saying I can take subsistence salmon
36 but I can't eat it in my home. I mean, you know, that
37 was our discussion. We just said here, you may use
38 subsistence taken pink salmon as bait.
39
40 And that was simply the statement that's
41 made in the regs. It doesn't say where we'll be using
42 it, how we'll be using it, whether you cut it in half, so
43 whatever, it just says it will be bait. So I'd like to
44 make that clear for the record.
45
46 ACTING CHAIR GOTTLIEB: Thank you. Jim.
47 Then Steve.
48
49 MR. USTASIEWSKI: Thank you, Madame
50 Chair. Yes, if I may follow up with Mr. Edwards'

1 question.

2

3 Section .803 specifies the purposes for
4 which subsistence taken fish may be used. And one of
5 those purposes is direct personal or family consumption
6 or sharing. Another purpose is barter. So it has to fit
7 into one of those purposes.

8

9 You might also say that subsistence is
10 non-wasteful. There's reference to non-wasteful uses.
11 And so the use of subsistence taken fish as bait is a
12 non-wasteful way to use -- fully utilize the resource.
13 But the way this is proposed with the purpose of being
14 used in a commercial fishery, that's what I say, if it's
15 interpreted to apply to commercial uses then it goes
16 beyond what's set out in, at least, in the text of Title
17 VIII, and when you get into that area that's where you
18 need to show a strong justification, a necessity tied to
19 subsistence, not to commercial fishing, not to what might
20 make sense in a larger context to someone, but you're
21 using something because, you know, frankly this is an
22 issue that may need to be addressed with the State.

23

24 The State is managing its fisheries.
25 There's no reason why someone couldn't go to the State
26 Board of Fish and say -- and maybe they have, but they
27 should seek to get the use of bait in those commercial
28 fisheries in that jurisdiction.

29

30 ACTING CHAIR GOTTLIEB: Let's see, we had
31 Steve, Ralph and John. Steve.

32

33 MR. KESSLER: Well, I guess, John,
34 respectfully, as far as what your previous comment was, I
35 look at the language on the same page you were, 384 for
36 27(c)(15) you may not use fish taken for subsistence use
37 or under subsistence regulations in this part as bait for
38 commercial or sportfishing purposes, and then the new
39 language, except may be authorized in this part.

40

41 And so as I understand this proposal,
42 this proposal would, if it were to pass, it would now
43 allow bait to be used for commercial or sportfishing
44 purposes. And from what I understand from Mr.
45 Ustasiewski, that it seems that that's a conflict that we
46 don't want to go to.

47

48 ACTING CHAIR GOTTLIEB: Thank you.

49 Ralph.

50

1 MR. LOHSE: I'd just like to ask him, one
2 of the authorized uses for subsistence fish is barter.
3 And isn't bait the ultimate form of barter. I trade a
4 small piece of fish for a large fish.
5
6 (Laughter)
7
8 ACTING CHAIR GOTTLIEB: Jim.
9
10 MR. USTASIEWSKI: Was that a rhetorical
11 question?
12
13 (Laughter)
14
15 ACTING CHAIR GOTTLIEB: I don't know.
16
17 (Laughter)
18
19 MR. LOHSE: No, that was a question. I
20 mean could you class that as barter?
21
22 MR. USTASIEWSKI: Well, again, as I've
23 said, that if you are using bait for one of those
24 purposes set out in .803, then I think you're following
25 .803 but you're still extending this to a commercial
26 fishery where you're going to have an interference and
27 there should be some subsistence purpose for doing that.
28
29 Madame Chair.
30
31 MR. LOHSE: Well, just as a follow up on
32 that, I thought one of the reasons you were allowed to
33 barter subsistence taken fish was for purposes of --
34 well, we call it trade, that's right, we don't barter it,
35 we trade it, for purposes of obtaining what you need to
36 live and that's what you'd be doing in a commercial
37 fishery.
38
39 MR. USTASIEWSKI: Madame Chair. I'm not
40 disagreeing with you, Ralph, what I'm saying is that's
41 not what this proposal is.
42
43 This is not a proposal to barter pink
44 salmon, it's a proposal to allow the use of pink salmon
45 as bait in commercial and sportfisheries.
46
47 MR. LOHSE: Okay, thank you.
48
49 ACTING CHAIR GOTTLIEB: John.
50

1 MR. LITTLEFIELD: Okay. I'm looking at
2 .803. I mean it's silent. .803 is silent on a lot of
3 stuff. And it talks about the customary and traditional
4 uses of the wild renewable resources by rural Alaskans.
5 That's what we -- we keep talking about this, and Ralph
6 was exactly right, barter means the exchange of fish and
7 wildlife for their parts for a bigger fish or a bigger
8 part, that's what it says.
9
10 And to say that because it doesn't say
11 something means it's not allowed is not what the clear
12 language says. Because there's a whole bunch of things
13 in there, we use bait to catch mink and martin. What, is
14 that illegal, too, now. I mean we use a salmon egg to
15 catch a steelhead, is that illegal, no, it isn't. And it
16 just recognizes -- the key of .803 is customary and
17 traditional uses and there's substantial evidence this is
18 a customary and traditional ongoing practice and one that
19 will continue no matter what you do. It's a customary
20 and traditional practice.
21
22 We're asking this Board to authorize that
23 and recognize a long-term use that's been going on
24 forever and not make criminals out of people. There's no
25 need for it. The resource is extremely strong.
26
27 So I don't buy that .803, just because
28 it's not in there you can't do it. That's not a good
29 defense.
30
31 MR. USTASIEWSKI: Madame Chair. If I may
32 follow up briefly, too.
33
34 ACTING CHAIR GOTTLIEB: Jim.
35
36 MR. USTASIEWSKI: I don't buy it either,
37 John, that's not my statement. I said that it wasn't
38 specified in there and so you have to look and see what
39 purpose it fits into.
40
41 This is not being presented as a barter
42 proposal. And further, it's setting up commercial use.
43 Commercial use is not customary and traditional use. Not
44 significant commercial use. And so if the desire is to
45 set this up as barter then that's what the proposal
46 should say, that's what the language should say in the
47 regulation ultimately, but it doesn't say that. It's an
48 open-ended use that would allow significant commercial
49 use of the pink salmon, which is outside the scope of the
50 Federal Subsistence Program.

1 ACTING CHAIR GOTTLIEB: John.
2
3 MR. LITTLEFIELD: I just want to give you
4 a little bit of history of -- I started fishing when I
5 was barely able to walk and in those days and continuing
6 to today and will be continuing this next summer, it was
7 extremely routine for us, when we were halibut fishing,
8 we would pull -- if we didn't have enough fish we would
9 go get some bait and they would be pinks and chums, to
10 speed things up, we would pull up to a boat and say, we
11 want to buy 50 dogs for bait, the use of bait is a
12 customary and traditional long-term practice. And that's
13 what we're asking for here, a customary and traditional
14 use of the fish and wildlife resource by rural residents,
15 and it's been used as bait forever. And I'll use the
16 words, time and immemorial, which is like 1884 according
17 to the government.
18
19 But anyway, we've used this bait forever
20 and we continue to use it, and we will continue to use it
21 regardless of what you do. I'm asking for some help
22 here.
23
24 ACTING CHAIR GOTTLIEB: Other comments.
25 Questions. Discussion.
26
27 (No comments)
28
29 ACTING CHAIR GOTTLIEB: I guess not being
30 a lawyer, I just assumed that barter was between people,
31 but that's my interpretation.
32
33 Charlie.
34
35 MR. BUNCH: Well, my problem with the
36 proposal is while it may be allowed it certainly doesn't
37 seem to be the highest and best use of that subsistence
38 resource. I would think that if you're going to take
39 that fish and use it for bait that's going to be a fish
40 that isn't available for pure subsistence uses.
41
42 ACTING CHAIR GOTTLIEB: Thank you. Gary.
43
44 MR. EDWARDS: I have a question for the
45 State. Under sportfish regulations, if I'm out fishing
46 anywhere in the state let's say and I catch a pink
47 salmon, what parts of it can I utilize to fish? Can I
48 put it on my hook as a whole, can I use some of its eggs,
49 can I use its fins, can I use any of it, what can I or
50 can't I do?

1 MR. HILSINGER: Madame Chair. We're
2 going to look up the exact language but I believe it's
3 the head and guts and not the flesh that you would
4 normally eat.
5
6 ACTING CHAIR GOTTLIEB: We'll give you a
7 minute to find it.
8
9 (Pause)
10
11 ACTING CHAIR GOTTLIEB: Charlie.
12
13 MR. BUNCH: Well, John, yeah, it was my
14 assumption that that was the proposal, was to use the
15 entire fish. I mean I'm assuming that was the intent
16 behind that; is that correct?
17
18 MR. LITTLEFIELD: Yes. And I think we're
19 talking about pink salmon used as bait here, I think
20 there's a separate State reg that talks about the use of
21 pink salmon.
22
23 You know, we have people who are throwing
24 away millions, discarding millions of pounds of pinks in
25 Southeast as wanton waste and have been cited for it and
26 I don't want to mention names of who they are but I can,
27 and they're throwing this stuff overboard by the barge
28 loads, and we're asking you that you let us use what we
29 catch to catch a bigger fish. I mean that exchange for
30 barter is there. We're using a smaller piece of a fish
31 that is less desirable to catch a bigger fish that is
32 more desirable.
33
34 Thank you.
35
36 (Pause)
37
38 ACTING CHAIR GOTTLIEB: Thanks, John.
39
40 MR. HILSINGER: Madame Chair. Under the
41 State regulations 5 AAC 75.026 use of sport caught fish
42 as bait, it specifies that unless provided in this
43 section sport fish caught taken under 5 AAC 47 through 5
44 AAC 75 may not be used as bait. It further specifies
45 that whitefish, herring and other species of fish for
46 which no seasonal or harvest limits are specified in
47 those regulations, as well as the head, tail, fins and
48 viscera of legally taken sport caught fish taken under 5
49 AAC 47 through 5 AAC 75 may be used for bait other
50 purposes.

1 Thank you.

2

3 MR. EDWARDS: So can you summarize what

4 that says, so if I catch a pink salmon, what can or I

5 can't do with it?

6

7 MR. HILSINGER: Madame Chair. The way I

8 read that, if you catch a pink salmon you could use the

9 head, tail, fins and viscera for bait.

10

11 MR. EDWARDS: That would include eggs and

12 all so, okay.

13

14 MR. BUNCH: Tom, you said sport caught

15 fish, would subsistence caught fish fall under that

16 regulation?

17

18 ACTING CHAIR GOTTLIEB: Excuse me,

19 Charlie, our regulation is on 384.

20

21 Jim, is the point where this bait fish is

22 caught or under which regulations, i.e., subsistence?

23

24 MR. USTASIEWSKI: Madame Chair. I think

25 that is important. Maybe to flesh this out a little bit

26 further. I found a useful discussion of what the State

27 regulations allow in the Staff analysis at Page 388.

28 There's a paragraph just over halfway down the page, it

29 starts out State regulations concerning the use of salmon

30 for bait depends on the fishery. And the rest of that

31 paragraph describes what's allowed, at least the Staff's

32 understanding of what's allowed in those State fisheries.

33

34 Just to sort of jump ahead, there is an

35 allowance for the use in the commercial fishing, if most

36 all of these pink salmon are being taken in commercial

37 fisheries the statement towards the end of that paragraph

38 says, salmon harvested in commercial fisheries may be

39 used as bait although there is a statewide regulation

40 prohibiting the waste of salmon.

41

42 There are other fisheries covered there

43 as well.

44

45 So I mean in terms of what's already

46 allowed, I think there's some coverage of this. It's not

47 as though these salmon are going to be wasted if this

48 regulation doesn't pass.

49

50 Madame Chair.

1 MR. LOHSE: Madame Chair.
2
3 ACTING CHAIR GOTTLIEB: Go ahead, Ralph.
4
5 MR. LOHSE: Yes, I wanted to bring that
6 out that under current law, commercially caught pink
7 salmon that have a ticket written on them can be used for
8 bait and it's not considered wanton waste to cut up a
9 salmon and use it for bait, it's done all the time in the
10 longline fisheries and it's not just pink salmon. I mean
11 longliners will buy dog salmon, depending on the
12 longliner, they'll buy red salmon, they'll buy dog salmon
13 and they buy them straight out of the commercial
14 fisheries, they have to have a pink ticket written on
15 them, you know, they have to be a reported part of the
16 harvest to have bought by a cannery, but they're used for
17 bait all of the time and it's not considered wanton waste
18 to use them for bait in that instance. And so the same
19 fish that's being cut up out of a commercial fishery,
20 just because it's been paid for and is used for bait is
21 not considered wanton waste so why would it be wanton
22 waste to use it out -- and I'm not advocating one way or
23 another on this proposal, but it seems obvious to me that
24 from State regulations that they consider that not wanton
25 waste so it wouldn't -- you couldn't apply wanton waste
26 to using it out of a subsistence fishery.
27
28 You could decide that that's not the best
29 use of a subsistence fish, but it's not wanton waste.
30
31 ACTING CHAIR GOTTLIEB: John.
32
33 MR. LITTLEFIELD: I have a request of the
34 State to read their exception again so that I'm clear
35 that I heard what I thought I did and then I have a
36 follow up question for Mr. Casipit.
37
38 ACTING CHAIR GOTTLIEB: John.
39
40 MR. HILSINGER: Madame Chairman. Could
41 we have a little clarification, please, exactly what
42 section you would like us to read again?
43
44 MR. LITTLEFIELD: The section that talks
45 about herring and whitefish and other species for which
46 there are no limits.
47
48 MR. HILSINGER: Through the Chair, thank
49 you. Section B of that paragraph reads whitefish,
50 herring and other species of fish for which no seasonal

1 or harvest limits are specified in 5 AAC 47 through 5 AAC
2 75 as well as the head, tail, fins and viscera of legally
3 taken sport caught fish taken under 5 AAC 47 through 5
4 AAC 75 may be used for bait or other purposes.

5
6 MR. LITTLEFIELD: Thank you, Madame
7 Chair. Follow up will be for Mr. Casipit. Taking that,
8 I don't like to follow the State regulations, we don't
9 have to, but somebody seems to think they're important so
10 let's use them.

11
12 That says for species where there are no
13 harvest limits or seasons, bag limits and I would like
14 Mr. Casipit to comment, please, on the seasons and bag
15 limits for pinks in particular and chums if he wants to,
16 Federal fish Southeast Alaska.

17
18 MR. CASIPIT: Thank you, Madame Chair.
19 Mr. Littlefield.

20
21 You know as you know last year the Board
22 passed a regulation that basically specified that at
23 least for pink and chum salmon in Southeast Alaska there
24 is no closed -- the season is all year long, there are no
25 harvest limits for pink or chum salmon in the regulations
26 for Southeast, however there is a list of gear,
27 restricted gear for it, but -- that's all we have.

28
29 ACTING CHAIR GOTTLIEB: So right now if I
30 understand it correctly, subsistence users are allowed to
31 use subsistence caught pink salmon for bait but only
32 head, tail or viscera; is that correct, in our program?

33
34 MR. USTASIEWSKI: Madame Chair. That's
35 my understanding, yes.

36
37 ACTING CHAIR GOTTLIEB: Okay, thank you,
38 Jim. So the request is to use the rest of the salmon?

39
40 MR. LITTLEFIELD: Yes. And if you want
41 to look at it as non-edible, some people, and we had
42 testimony that said humpies weren't edible, I disagree
43 with that completely because we use them. But I mean
44 it's a -- you say tomato, I say tomato, what's edible to
45 you and edible to me is not.

46
47 I mean this is an issue that's simply
48 stated as simply stated as recognition by this Board of a
49 long-term historic practice that's ongoing continuous to
50 this day and will continue tomorrow, that what we're

1 asking you to do, is to not make criminals out of us.
2 That's how we got halibut subsistence, is recognition of
3 things that are going on, customary and traditional use.
4 And if you want to use the State analogy, that's why I
5 asked for that, they said you can use anything for which
6 there are no limits. In our particular case, in
7 Southeast, there are so many pinks we do not have any
8 limits and so it is the highest and best use of that
9 fish, not wanton waste, to try to catch a bigger fish
10 that you can do more with, one that's 10 times bigger or
11 100 times bigger.

12
13 ACTING CHAIR GOTTLIEB: It was my error
14 to say non-edible, that's really not appropriate to this
15 discussion. So I was just trying to read the regulation
16 of what parts are currently legal to use.

17
18 Other discussion.

19
20 (No comments)

21
22 ACTING CHAIR GOTTLIEB: Are we ready for
23 a motion.

24
25 Keith.

26
27 MR. GOLTZ: It seems to me the
28 conversation has drifted a little and I want to
29 reemphasize something Jim said because if I were still an
30 attorney for the State, this is one I might want to sue
31 over.

32
33 The question is not what's right or wrong
34 or what's customary and traditional in this instance.
35 The question is, are we going to interfere with the State
36 program fisheries. If we do, we have to have findings
37 and evidence on the record that a failure to enact this
38 interference will result in a detriment to Federal
39 subsistence users on Federal lands. We have to connect
40 that dot, otherwise we're taking an action that would not
41 be sustainable in my opinion.

42
43 ACTING CHAIR GOTTLIEB: Steve.

44
45 MR. KESSLER: I guess I'm ready to make a
46 motion here.

47
48 I'll move to adopt the Southeast Regional
49 Advisory Council's recommendation. And after a second, I
50 will give some rationale, but I will let you know that I

1 do plan to vote against this motion then.

2

3 ACTING CHAIR GOTTLIEB: Is there a
4 second.

5

6 MR. BUNCH: Second.

7

8 ACTING CHAIR GOTTLIEB: Thank you. Go
9 ahead, Steve.

10

11 MR. KESSLER: Well, first of all we do
12 know that there are plenty of pink salmon at least right
13 now in Southeast Alaska pink salmon are in excess.
14 However, the use of fish as bait as described in our
15 current regulations is currently limited in scope.

16

17 Current regulations do not allow Federal
18 subsistence caught fish to be used in commercial or
19 sportfisheries. I believe that prohibiting the
20 subsistence caught fish be used in commercial or
21 sportfisheries is consistent with the intent of ANILCA.
22 And we've heard from the attorneys some of the hoops that
23 would be needed to be jumped through to make sure that
24 before we were to authorize the subsistence caught fish
25 to be used in some of those other fisheries, there would
26 be other steps that would need to be gone through.

27

28 I would suggest that the proponent could
29 narrow the proposal to subsistence uses only or otherwise
30 that the proponent would then petition the State Board of
31 Fisheries to allow pink salmon to be used as bait as
32 requested in this proposal, but that that would need to
33 go to the Alaska Board of Fisheries.

34

35 ACTING CHAIR GOTTLIEB: John.

36

37 MR. LITTLEFIELD: Okay, thank you for
38 making that motion to show deference to the RAC, I
39 appreciate that.

40

41 But let's look at 25(j)(4) on Page 384
42 and even in our regulations they kind of mimic what the
43 State says here. It says you may not intentionally waste
44 or destroy any subsistence caught fish or shellfish,
45 however, which is the State's exception, you may use for
46 bait or other purposes whitefish, herring, and species
47 for which bag limits, seasons and other regulatory
48 methods and means are not provided. In other words,
49 there are no bag limits as Mr. Casipit said on pink
50 salmon, they're in overabundance in Southeast Alaska. So

1 you already have a regulation that, in effect, kind of
2 says that you can do this.

3
4 As far as the effect -- the detrimental
5 effect to subsistence users. It is detrimental to them
6 to not recognize an ongoing customary and traditional
7 practice.

8
9 And the regulations are not law. Nothing
10 in ANILCA prohibits the use of a smaller fish to catch a
11 big fish or a piece of bait to catch a martin, nothing in
12 there says anything about that.

13
14 This is a regulation and regulations can
15 be changed or amended and they can't be in conflict with
16 that law either. So I wouldn't let the regulations -- we
17 can make the regulations read whatever is needed here.
18 But I think the language of (j)(4) already allows the use
19 of bait, we just want to make it clear, the use of the
20 whole salmon as bait because there are no bag limits.

21
22 ACTING CHAIR GOTTLIEB: Thank you. Gary.

23
24 MR. EDWARDS: But I guess there are
25 methods and means associated with it, and it does go on
26 to refer to methods and means, so you do have -- it's not
27 clear. I agree with you there's no bag limits and all,
28 but that's only a portion of that sentence. So if you
29 read on, there's other clarifying restrictions, at least
30 the way I read it.

31
32 MR. LITTLEFIELD: Correct. We cannot use
33 dynamite to take them.

34
35 ACTING CHAIR GOTTLIEB: Steve, did you
36 have a comment.

37
38 MR. KESSLER: No, I was going to say
39 something similar to what Gary just said, I have a
40 similar understanding of what this regulation says now.

41
42 ACTING CHAIR GOTTLIEB: Charlie.

43
44 MR. BUNCH: Well, I guess that would be
45 my question from reading that is if there isn't a bag
46 limit for subsistence uses, couldn't they use them
47 already under the terms of that regulation?

48
49 ACTING CHAIR GOTTLIEB: Jim.

50

1 MR. USTASIEWSKI: Madame Chair. I agree
2 with the interpretation that Gary and Steve have
3 enunciated, no, because there are methods and means
4 specified. And so the last part of that section, dealing
5 with the head, tail and fins and viscera would apply.
6
7 ACTING CHAIR GOTTLIEB: Charlie.
8
9 MR. BUNCH: Madame Chair. Well, not to
10 be argumentative here, but the word it says, or, not and,
11 so I would think that if you had to meet one or the other
12 of those.
13
14 ACTING CHAIR GOTTLIEB: Jim.
15
16 MR. USTASIEWSKI: Madame Chair. I think
17 that the more specific one applies and that's the one
18 that I just mentioned, the last section.
19
20 ACTING CHAIR GOTTLIEB: John.
21
22 MR. LITTLEFIELD: Are you suggesting, and
23 I don't know if I want to ask Cal to do this or not, but
24 we're talking -- it says whitefish, herring and other
25 species, are you suggesting then that there are no
26 methods, means or anything on any of those other species?
27 I mean herring, we already know there's some kinds of
28 methods and means on those, gillnets and I don't know, I
29 think all of those things have some kind of methods and
30 means attached to them. But they may be -- oh, I'm
31 reminded of an old Army definition but I better not bring
32 it up, but, however so slight, so anyway I don't know, I
33 think you're reading this out of context of what ANILCA
34 says.
35
36 I believe ANILCA does allow it and I
37 think the regulation kind of allows it now too.
38
39 ACTING CHAIR GOTTLIEB: Gary.
40
41 MR. EDWARDS: I don't know, one observ --
42 the way I read the State's regs, under sport regs, I can
43 go out and catch all the pink salmon, well, within my
44 limits, and then I can utilize the heads, and the tails
45 and the fins and viscera of them for basically any
46 purposes I want. I can go out and bait crab pots or
47 shrimp pots or what; is that correct?
48
49 MR. HILSINGER: That's correct.
50

1 MR. EDWARDS: So I mean would one option
2 be to allow at least the same for subsistence caught fish
3 that you could use heads, fins and viscera for them, I
4 mean what would be the difference, if you're allowing it
5 for rec fishermen to do that, why wouldn't we allow at
6 least the minimal, the same for subsistence fishermen, I
7 don't know.
8
9 ACTING CHAIR GOTTLIEB: Excuse me, let me
10 just mention, I think Mitch is on the phone and, Mitch,
11 we're on Board deliberation with No. 30.
12
13 CHAIRMAN DEMIENTIEFF: Yeah, uh-huh.
14
15 ACTING CHAIR GOTTLIEB: Okay. I think
16 it's a question to the Department, Gary?
17
18 MR. EDWARDS: Yes.
19
20 ACTING CHAIR GOTTLIEB: Steve.
21
22 MR. KESSLER: I think, Gary, that what
23 you've just asked for is allowed already as part of the
24 regulations. It says as well as -- in our regulation
25 25(j)(4), as well as the head, tails, fins and viscera of
26 legally taken subsistence fish. So I think.....
27
28 MR. EDWARDS: Essentially all this does
29 is allow using all parts of pink salmons as opposed to
30 selected parts?
31
32 ACTING CHAIR GOTTLIEB: That's correct.
33 Further discussion. John.
34
35 MR. LITTLEFIELD: Once you subtract the
36 head, the tail, the fin, and the viscera of a pink salmon
37 there is not much left.
38
39 ACTING CHAIR GOTTLIEB: Steve.
40
41 MR. KESSLER: I guess maybe we need to
42 hear from Counsel again, but I think still with this
43 language here, the head, tail, fins, and viscera, legally
44 taken subsistence fish is not the intent of this -- still
45 that this would be to allow these parts to be used in
46 subsistence fisheries or would that then extend to, in
47 some way to commercial or sportfisheries, I mean I think
48 that we're still narrowed to where we have the authority,
49 which is in the subsistence fisheries.
50

1 Maybe, Jim, if you could help me there.
2
3 ACTING CHAIR GOTTLIEB: Jim.
4
5 MR. USTASIEWSKI: Madame Chair. I'm not
6 sure if I understood the question.
7
8 But if the activity is subsistence taken
9 fish used in Federal public waters, I think you don't
10 have a conflict. When you go beyond that you start
11 getting into areas that I'm not the expert on State law,
12 I pointed you to the paragraph that purports to summarize
13 State law and it seems to me there's not necessarily a
14 conflict there, but that may be something for the State
15 really to address if there's a need to clarify that.
16
17 ACTING CHAIR GOTTLIEB: I think you're
18 right. We need to look at this proposed regulation, all
19 three parts of it, and I think that's what I was hearing
20 Keith saying.
21
22 And we have said, the existing regulation
23 says you can't use this for commercial or sportfishing
24 purposes. The proposal goes on to revise that. What I
25 hear you saying is that's beyond our authority.
26
27 MR. GOLTZ: I think maybe the State wants
28 to jump in here, either Steve or Kelly.
29
30 ACTING CHAIR GOTTLIEB: Kelly.
31
32 MR. HEPLER: Who's on first. This is
33 another one of those proposals that the practicality, it
34 doesn't mean a hell of a lot to be candid, but it does
35 for legal reasons for the reasons that the Counsel said,
36 so this is why we're spending time on this.
37
38 I will let you people know before I give
39 you my answer is that the Board of Fish also has a
40 proposal in front of it from Southeast that deals with, I
41 think, chums and pinks, and so this discussion is going
42 to happen within a week and a half in front of the Board
43 of Fish, the same discussion. And Staff honestly is
44 split on that one, too.
45
46 But in answer to this question, I think
47 the question came up, if you were out right now in a
48 sportfishery and you have a whole pink salmon and you're
49 fishing for halibut you're going to get cited. Now, if
50 you're in a commercial fishery and you have a fish that

1 you can prove where that fish came from and you're using
2 it for longline bait or something, you're not going to
3 get cited. And I assume that's correct, John, and that's
4 a positive affirmation from John, so it's just that
5 simple.

6
7 So it's just this question of trying to
8 take regulations as -- and I know it must be frustrating
9 for people like John Littlefield to think about this, but
10 you're taking from the Federal regulations and then
11 putting them on top of a State regulation. Now in a
12 perfect world if we could do the same back then we do a
13 tit-for-tat and it'd be interesting but we can't, so
14 we'll trade, we'll give you this one for another one, and
15 I'm being somewhat facetious, and I don't mean to be,
16 this is a serious topic.

17
18 But that's what would happen, you'd get
19 cited.

20
21 ACTING CHAIR GOTTLIEB: I'm just
22 wondering actually if that's barter or trade, but we'll
23 figure that out later.

24
25 (Laughter)

26
27 ACTING CHAIR GOTTLIEB: Steve, go ahead,
28 please.

29
30 MR. DOUGHERTY: Thank you, Madame Chair.
31 I would just add that this is a jurisdictional issue,
32 it's not really a substantive issue. But the State does
33 take the position that the Federal Subsistence Board does
34 not have the authority to adopt regulations for our
35 commercial and sportfisheries. As long as it's limited
36 to use in the subsistence fisheries we don't have a
37 problem with it and I think there might be some way
38 around this as far as the substance goes, as well as --
39 as long as we don't have a regulation that purports to
40 affect State sport and commercial fishery regulations.

41
42 Thank you, Madame Chair.

43
44 ACTING CHAIR GOTTLIEB: Thank you, Steve.
45 And I mean I agree, I'm uncomfortable with the
46 jurisdictional aspect of this. I think there's some
47 potential to work more on this proposed regulation and
48 let's perhaps figure out a solution that does acknowledge
49 customary practices and keep them within the legal arena.
50

1 Any other comments.
2
3 MR. LOHSE: Judy.
4
5 ACTING CHAIR GOTTLIEB: Ralph.
6
7 MR. LOHSE: Well, Madame Chair, with that
8 being said, I don't think there are any commercial -- I
9 don't think there are any commercial fisheries in Federal
10 waters, at least in Federal waters over which you have
11 jurisdiction, and I don't think that the subsistence
12 halibut fishery comes underneath your jurisdiction
13 either.
14
15 So with that in mind, I don't know
16 whether there's much to be gained here then.
17
18 ACTING CHAIR GOTTLIEB: Thank you. All
19 right, all those in favor of the motion, and, Mitch, the
20 motion is to adopt the proposal consistent with the
21 recommendations of the Southeast Regional Council. All
22 those in favor signify by saying aye.
23
24 CHAIRMAN DEMIENTIEFF: Aye.
25
26 ACTING CHAIR GOTTLIEB: All those
27 opposed, same sign.
28
29 IN UNISON: Aye.
30
31 ACTING CHAIR GOTTLIEB: Motion fails.
32 We're going to switch the order just very slightly and go
33 to Proposal No. 34, and we're changing the order because
34 it will make more logical sense to us, we hope.
35
36 (Laughter)
37
38 ACTING CHAIR GOTTLIEB: John.
39
40 MR. LITTLEFIELD: Madame Chair. Before
41 we go I'd like to clear up something from yesterday.
42 There was a question asked, a couple of them, actually,
43 on Proposal 23 by Member Edwards and it had to do with
44 what the intent of our Board was.
45
46 Well, I need to tell you, the information
47 that was given to me, and it actually kind of made me
48 look silly because they said here's your transcript, I
49 didn't have my own, well, as I mentioned, we had two
50 votes on Proposal 23, so this transcript that you gave me

1 was on the first vote, and we brought it back up for
2 reconsideration. So if you will give me a second here, I
3 will give you the vote so that it's clear for the record
4 what we did on Proposal 23.

5
6 And this was on Proposal 23. There's a
7 motion to table 23 and a second. There's a second. The
8 motion to table is not debatable. All those in favor
9 please signify by saying aye. Aye. Those opposed, same
10 sign. No opposing. The motion to table is adopted and
11 that is our recommendation to the Federal Subsistence
12 Board, that they table this motion with the background
13 information provided to them that we will prepare an all
14 encompassing and fully substantiated proposal at the next
15 fisheries proposal period which is a year from now.

16
17 Mr. Chairman, do you need that in a form
18 of a motion. I believe the record should be clear enough
19 that we intend that Staff will generate this proposal for
20 us and I guess, Dr. Schroeder, do you think that we've
21 captured the directions to Staff to craft that proposal
22 for the next period. Mr. Chairman, I think the record is
23 quite clear. You will have a chance to submit that
24 proposal at your next meeting because fishery proposal
25 period will be open at that time and Staff will have a
26 draft proposal before you and you can modify it and send
27 it in as a Council proposal at that time.

28
29 Okay.

30
31 CHAIRMAN DEMIENTIEFF: And the Council is
32 going to be able to look at it prior to bringing it to
33 the Board's attention, right?

34
35 MR. LITTLEFIELD: That's correct. And
36 the last statement I said is, I think our directions are
37 clear to Staff, and that we expect next year to see a
38 full blown analysis of District 14 and those communities
39 that are in that area.

40
41 So in answer to your question, I was kind
42 of caught unaware as we moved into 23 without being
43 prepared for it because I thought it was today and I just
44 want to make it clear that I kind of went out on a limb
45 saying something and I was -- the papers she gave me were
46 inadequate to back it up, so my memory is still somewhat
47 intact.

48
49 Thank you, Madame Chair.

50

1 ACTING CHAIR GOTTLIEB: And we're glad to
2 hear that. No, thank you for putting that on the record.
3 And I also wanted to mention that as the most current RAC
4 Chair who has experience working with subcommittees of
5 the RAC, I hope Ralph or others may be able to call on
6 you on how the process has worked from the RAC's
7 viewpoint and you can share your insights.

8
9 MR. LITTLEFIELD: Madame Chair, in my
10 free time I would be willing to do that at any time.

11
12 ACTING CHAIR GOTTLIEB: We appreciate
13 that.

14
15 Okay, we're on to Proposal 34, please.

16
17 MR. CASIPIT: Thank you, Madame Chair.
18 For the record, my name is Calvin Casipit. I'm the
19 subsistence fisheries biologist for the Forest Service in
20 Juneau.

21
22 Your executive summary for this proposal
23 begins on Page 34, the analysis itself begins on Page 417
24 -- did I say that right, 414 is where you see the
25 executive summary for 34.

26
27 I'll say right off that much of the
28 information that you've reviewed in this particular
29 analysis you've seen before. The issue of steelhead in
30 Southeast Alaska has been discussed by this Board and the
31 Council for many years now so I'm going to try to
32 truncate this and save some time. If I gloss over
33 something, I'll be happy to answer questions.

34
35 Proposal FP06-34 was submitted by Mr.
36 Mike Vaughn of Sitka, Alaska. He requested the Federal
37 Subsistence Board repeal 36 CFR 242 Section
38 27(i)(13)(xxii). This is the regulation that the Board
39 put into place last year that allows the harvest of one
40 steelhead per day, two per year per household between
41 January 1 and May 31 in Southeast Alaska except for
42 Prince of Wales and Kosciusko Island where there is an
43 existing fishery.

44
45 The proponent of FP06-34 is concerned
46 that the existing Federal subsistence regulations may
47 allow more harvest than steelhead populations can handle
48 so he requests the change the minimum size restriction of
49 36 inches along with a two fish annual harvest limit
50 which is the same as State sport regulations for the

1 species. The proponent feels that steelhead have not
2 been an important subsistence resource since other salmon
3 are available in larger numbers to fill subsistence users
4 needs.

5
6 Just to -- I'll just point out some
7 things in the analysis here as I flip through the pages.
8 The regulatory history, the biological background is much
9 the same that you've seen before. However, I did want to
10 point out that as far as harvest history we do have
11 information from our 2005 fishery for Southeast Alaska
12 other than Prince of Wales Island. I'll call your
13 attention to Page 421 of your analysis. It's the
14 paragraph right above sport harvest. I say there that
15 the 2005 spring fishery harvest was six steelhead. I just
16 talked with Mr. Bob Larson who handles our permit
17 database and we still had a few more steelhead permits
18 that are out, they're due back to our offices on January
19 15th, which is in a couple days, but so far as with all
20 the permits we've gotten, we've got eight steelhead, not
21 six steelhead.

22
23 I also wanted to point out that based on
24 concerns expressed by the Alaska Department of Fish and
25 Game, our local Federal fisheries managers restricted
26 harvest in 16 steelhead streams near Petersburg,
27 Ketchikan, Wrangell, Sitka and Juneau for the spring 2005
28 Federal fishery. Restrictions ranged from no retention
29 of steelhead to 30 or 32 inch minimum size limits with
30 mandatory 24 hour reporting of harvest. Again, I call
31 your attention to Page 426 of your book, there is a
32 summary table of the restrictions that we put in place on
33 our Federal subsistence permits for Prince of Wales,
34 small road accessible streams, Ketchikan road system
35 streams, Wrangell and Petersburg road systems, Petersburg
36 Creek, Hoonah road system, Sitka road system and the
37 Juneau road system. All this, that summarizes the
38 regulations, the harvest limits, the minimum sizes that
39 we may have put in place, the methods and reporting
40 requirements. There's also a summary of the number of
41 streams that have those particular restrictions on them.

42
43 I'd be happy to answer any more specific
44 questions if you would like.

45
46 I also wanted to call your attention to
47 Table 3. Table 3 is much unchanged from previous years
48 that the Board and Council has reviewed, except that we
49 do have harvest and catch information for the
50 sportfishery for steelhead in Southeast Alaska for the

1 year 2003, that came from the Department.

2

3

4 The effect of this proposal would be to
5 restrict the Federal -- this proposal, if adopted, would
6 restrict the Federal subsistence harvest of steelhead in
7 Southeast Alaska and reverse the Board's decision
8 establishing the current regulation. The Board's action
9 in January 2005 was designed to accommodate harvest as
10 documented in community harvest surveys.

11

12

13 An annual harvest limit of two fish over
14 36 inches does not meet subsistence users needs. This
15 comes from testimony before the Southeast Regional
16 Advisory Council in 2002, 2003 and 2004. This would be an
17 unnecessary restriction to subsistence users. With a
18 minimum size limit of 36 inches a small proportion of the
19 steelhead population is available for harvest, and I
20 refer you to Table 1 for that length distribution which
21 does not meet the need of subsistence users, again, as
22 described in the Southeast Alaska Regional Advisory
23 Council in 2000, 2001, 2002, 2003 and 2004.

24

25

26 Harvest opportunity for Federally-
27 qualified subsistence users would be greatly reduced and
28 catch and release mortality may increase with minimum
29 size limits.

30

31

32 Based on the low report of harvest from
33 our Federal fisheries little or no effects would result
34 for other user groups by restricting this fishery.

35

36

37 Thank you, Madame Chair. I'd be happy to
38 answer any questions.

39

40

41 ACTING CHAIR GOTTLIEB: Thank you, that
42 was very good. Questions for Cal.

43

44

45 MR. BUNCH: Cal, with the regulations
46 that we passed yesterday allowing bait in there, if we
47 pass this proposal, wouldn't that increase the mortality
48 rate because if you're allowing bait you'd have to
49 release everything that you caught under 36 inches; is
50 that correct?

51

52

53 MR. CASIPIT: Madame Chair. Mr. Bunch.
54 Yes, you are right. However, because this regulation, if
55 passed, this regulation would go away, we would still
56 allow the use of bait, we'd probably want to -- I mean as
57 a manager I probably wouldn't want to see that go on and
58 we would probably, as permit conditions, prohibit the use

1 of bait everywhere in Southeast for steelhead because we
2 wouldn't want to see that kind of catch and release
3 mortality with bait.

4

5 MR. BUNCH: So then the regulation that
6 we passed yesterday would just be null and void?

7

8 MR. CASIPIT: I guess we would be
9 violating Federal Subsistence Board direction, but as a
10 manager I can't see the point in catch and release with
11 bait, it's just not, in my opinion as a manager, is not
12 the right thing to do.

13

14 ACTING CHAIR GOTTLIEB: Thanks. Melinda,
15 were there written comments.

16

17 MS. HERNANDEZ: Madame Chair. There were
18 three written public comments.

19

20 The first is from the Chilkoot Indian
21 Association. They write in favor of the proposal. This
22 action should be taken in order to preserve the wild
23 steelhead stocks. Dietary needs of subsistence users can
24 be met by substituting other species of salmon in place
25 of the steelhead so that no detrimental effect should
26 come to subsistence users.

27

28 The second written public comment was
29 from Mr. Jeff Rice. He writes in support of the
30 proposal. I would simply like to add my support to what
31 Mr. Vaughn has proposed. As fragile as many of the
32 steelhead populations are, I believe it could prove a
33 costly error to allow such harvest.

34

35 And the third written public comment is
36 from Joseph Stratman. He wrote a letter to show strong
37 support for Proposal FP06-34.

38

39 Thank you.

40

41 ACTING CHAIR GOTTLIEB: Thanks very much.
42 We have no one signed up for public testimony. So if we
43 could have the Regional Advisory Council recommendation,
44 please, John.

45

46 MR. LITTLEFIELD: Thank you, Madame
47 Chair. In the words of Yogi, it's deja vu all over
48 again, we've been on steelhead ever since I've been on
49 the Council.

50

1 So our recommendation is on Page 415.
2 The Regional Council opposes this proposal. The proposal
3 would roll back Federal regulations adopted in the 2005
4 Fishery Regulatory Cycle concerning steelhead in the
5 region. Neither data presented at the Staff analysis or
6 information provided by the proponent showed a need for
7 this regulatory change. Staff provided the Council with
8 data on this past year's subsistence steelhead fishery.
9 Based on permit returns the estimated steelhead harvest
10 under the present regulation are 24 fish for the Prince
11 of Wales winter and spring fisheries and as just amended
12 by Mr. Casipit, eight fish in the remainder of Southeast
13 Alaska. This harvest is definitely sustainable and is
14 less than the catch and release mortality in the
15 sportfishery.

16
17 Madame Chair.

18
19 ACTING CHAIR GOTTLIEB: Thank you.
20 Gary.

21
22 MR. EDWARDS: John, I don't know anything
23 about the Chilkoot Indian Association, are they an active
24 member, do they come to your meeting, are they in an area
25 that would harvest steelhead. I mean they did support
26 the proposal, I was just curious because this is -- I'm
27 assuming this is a Native Association.

28
29 MR. LITTLEFIELD: I believe it is. They
30 commented on everything, and some they agreed with us and
31 some they didn't. And perhaps Chilkoot and Chilkat are
32 two separate areas. The area of Skagway, which I assume
33 is the Chilkoot area, there's no Federal waters in that
34 area because it's all State area. The Chilkat has Federal
35 waters. I don't know, maybe some others could offer -- I
36 don't know who they are. I know most of the
37 organizations, I guess I just don't know who these people
38 are.

39
40 ACTING CHAIR GOTTLIEB: Cal.

41
42 MR. CASIPIT: Just to answer the
43 jurisdictional question, the area in question, the
44 extreme upper northern end of Lynn Canal in the area of
45 Skagway and Haines and those waters draining into that
46 marine waters is beyond the jurisdiction of the Federal
47 Subsistence Program. It's beyond the exterior boundary
48 of the Tongass National Forest.

49
50 MR. EDWARDS: So in answering that then I

1 guess could you somewhat argue that these folks don't
2 really have standing because they're not in a position
3 that they really use these waters, I mean they have
4 standing, but assuming they're Federally -- they're a
5 rural community but I'm just trying to understand their
6 connection with the resource.

7
8 MR. CASIPIT: Madame Chair. Mr. Edwards.
9 I don't think I would want to use the word, standing, the
10 area -- the two communities Skagway and Haines are rural
11 communities. They do have -- they are identified as
12 customary and traditional users in various areas of
13 Southeast for both game and fish. So I don't want to say
14 that they don't have standing, but the areas where they
15 live there are no Federal lands, there is no Federal --
16 there are no Federal waters in the areas that they live,
17 however, they do -- you know, they do rely on
18 subsistence, I believe, it just doesn't happen to be
19 under our regulations for the most part.

20
21 ACTING CHAIR GOTTLIEB: Thank you, Cal.
22 John.

23
24 MR. LITTLEFIELD: Thank you, Madame
25 Chair. To Mr. Edwards, everyone is allowed to comment to
26 us and we allow anyone to testify and we consider all of
27 their comments. As was stated yesterday the analogy, the
28 painting the picture, we consider those comments but we
29 need to temper this by, like I said, deja vu all over
30 again, we have tons of substantial data on this fishery
31 that have been presented to us over the years by Staff
32 and as well as you've seen a lot of it because of the
33 proposals, I can't even count how many proposals came up.

34
35 When we analyze things at our Regional
36 Council level, we try to do four different points at
37 every opportunity when we can analyze them and that is
38 the amount of substantial data that's submitted, whether
39 it is a conservation concern, whether it's good for the
40 subsistence users or bad, and whether it's good or bad
41 for the non-subsistence users. We look at those and we
42 flesh those out. In this particular case, it's obvious
43 we've done that many, many times and that's why we're
44 opposing this proposal.

45
46 I'm sorry we didn't make a big, long
47 statement, but I didn't think this needed to be gone over
48 again. But the data is there and we did not just dismiss
49 their comments. I don't know who they are, but they
50 certainly are comments that we looked at and read. I

1 might note for the record one time I read 142 comments
2 that were submitted on one proposal, so we go through all
3 of them and we give them their deference. Madame Chair.

4

5 ACTING CHAIR GOTTLIEB: Thank you.
6 Department's comments, please.

7

8 MS. SEE: Thank you, Madame Chair. This
9 is one of four proposals that relate to these issues
10 about steelhead and the real challenge here is the lack
11 of critical information about stock sizes and harvest
12 rates in a multitude of small streams with small stocks.
13 As John Littlefield has noted, this issue has been before
14 the Council several times and there has been a vast
15 amount of testimony offered by the Department on the
16 points that I'll now summarize.

17

18 The analysis in this particular proposal,
19 the Federal analysis, concludes that a harvest rate of
20 about 10 percent is likely the highest sustainable
21 harvest rate for the stocks in question. Analyses that
22 we'll speak to when we pass through this proposal and go
23 to the others speak to harvest rates that may be as high
24 as 50 to 60 percent. With no size limit, as there is in
25 this particular proposal, the harvest rates would be even
26 higher. I'm sorry, not in this proposal, but under the
27 current Federal regulatory regime.

28

29 As is noted in the analysis, steelhead in
30 this area, because of these small stocks, harvest of even
31 a small number of those fish could, in fact, exceed the
32 10 percent harvest rate that we feel would be
33 sustainable. This has been stated several times in the
34 past. It's well substantiated on the record that the
35 Department has serious substantive concerns about this
36 point. Therefore, we note that the State's 36-inch size
37 limit and other regulations have been set based on
38 achieving what we consider to be a sustainable harvest
39 rate.

40

41 The Federal analysis we feel fails to
42 explain how less restrictive regulations provide for
43 conservation of the resource. We continue to object to
44 the fact that these Federal regulations are currently in
45 place.

46

47 If Federal personnel intend to take
48 special actions in season to protect stocks from over-
49 fishing, the standards and criteria for determining those
50 actions should be provided. We've made that request

1 before.

2

3 Regarding the permit information, we note
4 that it's really not clear whether that reflects a lack
5 of harvest or a lack of reporting. If it's a lack of
6 harvest, then, in fact, the State regulations would, in
7 fact, provide for opportunity. If the information
8 presented, in fact, is a lack of reporting, then we
9 question the permit system's effectiveness in capturing
10 those users of the resource.

11

12 We have consistently maintained that
13 there needs to be education and outreach to engage the
14 users in the need to obtain Federal permits under the
15 current Federal rules so that there is an accurate
16 portrayal of the harvest in these small streams.

17

18 We also note that we've had some
19 questions about the accuracy of the information contained
20 in Table 2, which is noted on Page 421, especially the
21 harvest numbers for Sitka, given the lack of steelhead
22 streams in that area. We consider that additional
23 community harvest information would help address these
24 questions and we recommend that that be done.

25

26 Therefore, we still conclude that the
27 State regulation should be used to help ensure
28 sustainability of the resource because we simply do not
29 have the stock size and harvest information. Neither the
30 State nor the Federal system have that information.
31 Thank you.

32

33 ACTING CHAIR GOTTLIEB: Thank you. Any
34 questions for the Department. John.

35

36 MR. LITTLEFIELD: Thank you, Madame
37 Chair. In the first paragraph you say that FP06-31, 32,
38 33, which we're going to talk about in a minute, have the
39 smaller size limits and a harvest rate of 50 to 60
40 percent, which would imply that there's a conservation
41 concern. Is that what you're characterizing, that
42 there's a conservation concern because of the 50 or 60
43 percent, as you say, the harvest rate of 50 to 60
44 percent?

45

46 MS. SEE: Through the Chair. I believe
47 that's a point on record in our previous testimony about
48 those limits, that we feel that those do basically lead
49 to a conservation concern at those levels of projected
50 harvest.

1 MR. LITTLEFIELD: Okay. Then a follow up
2 if I could. I believe that the number of eight
3 steelhead, and I will ask Mr. Casipit to clarify that,
4 includes those areas that are covered by Proposals 31, 32
5 and 33, so we're talking about eight steelhead, is that
6 correct, in this 50 to 60 percent harvest rate? Those
7 eight steelhead are included there?

8
9 ACTING CHAIR GOTTLIEB: Cal.

10
11 MR. CASIPIT: Thank you, Madame Chair,
12 Mr. Littlefield. There's several things going on here
13 and there's a bunch of things in the last few minutes
14 I've got to respond to. Let me answer Mr. Littlefield's
15 question directly. Those eight fish came from Southeast
16 Alaska other than Prince of Wales Island and they also
17 happen to come from the areas other than the areas where
18 we have those restrictions. So these eight fish came
19 from places other than Prince of Wales, Ketchikan road
20 system, Wrangell-Petersburg road system, Petersburg Creek
21 and the Juneau road system and the Sitka road system.

22
23 ACTING CHAIR GOTTLIEB: Cal, I thought it
24 was six fish.

25
26 MR. CASIPIT: In my oral presentation
27 here I had talked about the permits aren't due back to us
28 until January 15th and permits are coming in and at the
29 time I wrote this it was six, but here recently we've had
30 a couple more come in and I modified that to be eight.

31
32 ACTING CHAIR GOTTLIEB: I'm sorry. Go
33 ahead then.

34
35 MR. CASIPIT: Ms. See mentioned the Sitka
36 numbers there in Table 2. I wanted to say to the Board
37 that this information came from the Alaska Department of
38 Fish and Game. What that 650 number represents, I don't
39 know. You would have to ask the authors of the study
40 that found that. I have some suspicions, but it's only
41 speculation. I would refer to the author to talk about
42 that number.

43
44 The other issue I heard was -- and this
45 is probably skipping ahead to 31 through 33, but I'm
46 going to say it anyway. The issue of a 50 or 60 percent
47 harvest rate, I think what we're confusing here is
48 harvest rate with harvest potential. In some locations
49 there was a potential that 50 to 60 percent of the fish
50 could be harvested. As it turns out, none were harvested

1 based on the restrictions we put on the permit. So I
2 think there's a big difference between potential harvest
3 and what really gets harvested in this potential
4 exploitation rate. Our intention still is to try and
5 manage these fisheries so that less than 10 percent get
6 harvested. We've been achieving that through our
7 restrictions on our permits.

8
9 Also, for comparison purposes, for
10 instance let's take the sports chinook fishery in
11 Southeast Alaska. The existing sportfish regulations are
12 two chinooks a day, no closed season. If we were to
13 evaluate the harvest potential of that regulation, we'd
14 be quickly into a conservation concern. If every person
15 in Southeast Alaska that had a sportfishing license took
16 two chinooks a day every day for the entire season, we'd
17 be in trouble, but it doesn't occur. I think it's
18 important to look at the difference between potential and
19 what actually is happening based on restrictions on our
20 permits. Thank you, Madame Chair.

21
22 ACTING CHAIR GOTTLIEB: Thank you, Cal.
23 John.

24
25 MR. LITTLEFIELD: Thank you, Madame Chair
26 and thank you, Mr. Casipit. The point I was trying to
27 make here is they talk about a harvest rate and it would
28 seem to imply and scare you that, wow, 50 to 60 percent
29 and only 10 percent is what they calculate. If you
30 really look at a 36-inch fish, whether it's .6 or .7,
31 there's less than 1 percent of the fish that reach that.
32 So the harvest rate is not what we're talking about here.
33 We're talking about the numbers that Mr. Casipit gave you
34 and I would like you to keep that in mind when you look
35 at these numbers that seem to imply in the State that
36 there's a huge problem here.

37
38 ACTING CHAIR GOTTLIEB: Steve.

39
40 MR. KLEIN: Thank you. I do have a
41 question of the State. On Page 426 there's a list of
42 areas that have special permit stipulations for steelhead
43 that's in line with the regulation that was passed last
44 year, that the Federal manager needs to consider what
45 sort of special conditions need to be added for this
46 fishery and to do that in consultation with the State.

47
48 I guess my question is, are these the
49 areas here that, in fact, the State would have the most
50 concern with? I mean I understand the State has concern

1 for the steelhead fisheries throughout Southeast Alaska,
2 but here, are these the ones that do have the most
3 potential for overharvest as far as you're concerned?

4

5 MS. SEE: Through the Chair. I'll make
6 an initial response to this and Kelly Hepler may wish to
7 add as well. All the road systems, all the accessible
8 areas are of great concern to the Department and we've
9 said that on the record before. Without further detail
10 from the experienced manager who works in that area, I
11 would say the road systems are characterized in this
12 table for the very reason that they are of concern.

13

14 ACTING CHAIR GOTTLIEB: Thanks. Kelly,
15 something to add?

16

17 MR. HEPLER: I'm still thinking about
18 Cal's comments. It's my understanding, Cal, that when
19 Brookover was down there he worked with you on this list.
20 In fact, this was done in combination. This wasn't done
21 just in a vacuum by the Forest Service. This was done
22 with Sportfish Staff in addition. So it would be my
23 understanding that probably most of the concerns we have,
24 you know, are probably included in this. But, in
25 fairness, Tom is over in the regional office and I didn't
26 ask him to come over this morning. So if that's critical
27 to deliberations, I can certainly get you a more
28 definitive answer fairly shortly. Madame Chair.

29

30 ACTING CHAIR GOTTLIEB: Thank you. I
31 guess a question on Table 3 on 422 showing sport harvest
32 and catch, which is for Southeast, so I guess maybe it's
33 a greater set of numbers, but certainly those numbers are
34 quite a different magnitude than eight. Can you explain
35 that table a little bit more to us, Cal?

36

37 MR. CASIPIT: Table 3 displays the sport
38 harvest and catch for Southeast Alaska, different than
39 our subsistence fishery. So, for instance, for the year
40 2003, the first column there is Southeast Alaska sport
41 harvest, those were 62 steelhead were harvested by the
42 sportfishers in Southeast Alaska. There are some caveats
43 there, but these are based on the mail-out surveys that
44 Sportfish Division does.

45

46 The second column there is Southeast
47 Alaska sport catch. Those are fish that are caught. So
48 to get the fish that are released, you have to subtract
49 62 from 3,172 and you have an approximation of the fish
50 that are released in the sport fishery, 62 are the

1 numbers that were harvested, taken home.

2

3

4 I'll also point out that third column
5 there is commercial harvest. This is harvest that were
6 caught in commercial fisheries and, as you see the data
7 ends in 1990 and that's due to changes in Board of Fish
8 regulations that I think you all are aware of. We've
9 talked about several times before.

10

11 ACTING CHAIR GOTTLIEB: Thank you.

12 George.

13

14 MR. OVIATT: This has probably been
15 brought up, but what is the mortality rate on the catch
16 of the smaller fish? If somebody could help me with
17 that.

18

19 ACTING CHAIR GOTTLIEB: I think it's
20 generally recognized as five percent for the steelhead.
21 Other discussion. John.

22

23 MR. LITTLEFIELD: Madame Chair. As long
24 as you brought up Table 3 and Mr. Casipit explained
25 what's going on there, I'd just like to note for the
26 record that there is a Board of Fish proposal that would
27 require the commercial harvest to either at the
28 discretion or mandatory, I don't know how this is going
29 to come out because there's some sideboards, requiring
30 the commercial members to report that. It disappeared
31 back in '91. Our Regional Advisory Council has gone on
32 record supporting that.

33

34 Because we've come before you it seems
35 like every year with some steelhead proposals, I think it
36 would be wise for the Federal Subsistence Board to
37 consider laying their support to that, too. This is a
38 numbers game. Mr. Oviatt just asked for numbers. We
39 always look at these numbers for more data. I think
40 having better steelhead data is something that we'll
41 hopefully have a bigger picture of this in the future.

42

43 If you could lend your support to that as
44 the Council does, I think that would be appropriate.
45 Madame Chair.

46

47 ACTING CHAIR GOTTLIEB: Thank you. Kelly
48 had a comment, then Gary.

49

50 MR. HEPLER: Madame Chair. John, I agree
with you 100 percent on this one. When you look at these

1 numbers -- I mean the question I asked Tom yesterday is
2 sustainability. Cal, this wasn't an attack just on your
3 program, our program or anybody else. This is all
4 managers, a collective we, are concerned about
5 sustainability. So any time we have a large gap like
6 that we ask about it. Now there's some reasons why that
7 gap is there and there's some discussions around why that
8 information is there and then we have an old season
9 manager behind you that can probably help that. But the
10 discussion we had in-house about a week ago is that we
11 strongly support, at least between Denby and I, the
12 Director of Commercial Fish, ways of getting that
13 information.

14
15 I think there's some sideboards, as John
16 mentioned, but that's going to be our recommendation
17 going to the Board of Fish. So I think anybody interested
18 in conservation of any species would want the best
19 information in front of them. Certainly that's going to
20 be our position, too.

21
22 This discussion between us is probably
23 not going to go away, obviously, but at least the Board
24 Members will have the best available information for both
25 Boards perspective to know where you want to go and
26 that's really the best thing we can do. Madame Chair.

27
28 ACTING CHAIR GOTTLIEB: As you know, this
29 Board has a representative who does attend all the Board
30 of Fisheries meetings, so with this Board's concurrence,
31 we'll make sure those comments get conveyed. But back to
32 this proposal. Steve.

33
34 MR. KLEIN: I think we're still on State
35 comments if I'm not mistaken, right?

36
37 ACTING CHAIR GOTTLIEB: Yes.

38
39 MR. KLEIN: So I guess I do have one
40 further question and there may very well not be an answer
41 to this. I think we've all recognized that there's
42 harvest that's occurring that's not reported, so it's
43 harvest of fish that are no doubt less than 36 inches in
44 length, so these are fish that would not be harvested
45 legally under the Federal system, nor are they harvested
46 legally under the State system. Do you have any idea on
47 the magnitude of that, this so-called illegal harvest?

48
49 MS. SEE: Through the Chair. All harvest
50 that we know of in terms of community harvest is

1 reflected in the current state of our community harvest
2 survey information. That's where we're seeing there is
3 harvest. It doesn't square with reported harvest very
4 well. An additional level of work on community harvest
5 would probably be worthwhile to try to get a better
6 handle on this.

7
8 There has been that study information
9 that's summarized in the Staff analysis about community
10 harvest. But that's by no means definitive. As we noted
11 earlier in our comments, that area, I think, would help
12 get at the actual harvest better because it appears to be
13 harvest that doesn't square with the regulatory regime.
14 Thank you.

15
16 ACTING CHAIR GOTTLIEB: Steve, any other
17 comments or are we ready to move to Board discussion.

18
19 MR. KLEIN: In that case, one of the
20 things that I would like to have is Mr. Myers from our
21 Forest Service law enforcement just to come forward and
22 just talk about our law enforcement efforts Southeast-
23 wide as far as how much patrol they've been doing, what
24 they've observed, what sort of problems have been
25 observed with implementation of this new fishery.

26
27 ACTING CHAIR GOTTLIEB: Sure. Marty,
28 that would be great.

29
30 MR. EDWARDS: Madame Chair. Maybe as a
31 matter of process, I don't think we've heard from the
32 Staff Committee yet, and I think we need to do that maybe
33 before we get into Board deliberation and discussion.

34
35 ACTING CHAIR GOTTLIEB: You're correct.
36 Sorry I skipped over it. No harm intended. Pete, if
37 you'd give the Interagency Staff Committee position,
38 please.

39
40 MR. PROBASCO: Thank you, Madame Chair.
41 Our comments for the Interagency Staff Committee is on
42 415 and I'll just briefly go through those, summarize
43 them.

44
45 Interagency Staff Committee opposes the
46 proposal consistent with recommendation from Southeast
47 Regional Advisory Council. As already noted, this
48 proposal would repeal the steelhead trout regulations
49 implemented by the Board in 2005-2006. Cal has already
50 gone over the updated harvest figures updated to eight.

1 The key here is there's no substantial evidence of a need
2 to change the Federal regulations because of fish
3 conservation concerns. Adoption of proposed regulatory
4 change would result in very few fish available for
5 harvest by Federally-qualified subsistence users and,
6 therefore, would be detrimental to the satisfaction of
7 their subsistence needs. Madame Chair.

8

9 ACTING CHAIR GOTTLIEB: Thank you very
10 much. Questions for Staff Committee.

11

12 (No comments)

13

14 ACTING CHAIR GOTTLIEB: Marty, if you'd
15 go ahead, please.

16

17 MR. MYERS: Thank you, Chair. Marty
18 Myers with the U.S. Forest Service law enforcement in
19 Juneau. I wanted to bring to the attention of the Board
20 some of the work that we do. We've got people that are
21 out in the field in the areas making contacts with all
22 users of the National Forest and public lands in the
23 Southeast. We've got some figures. Our people are
24 basically out there on a daily basis, not necessarily on
25 subsistence, but we do keep quarterly records of some of
26 the contacts we've made.

27

28 Just for your information, our job in law
29 enforcement is somewhat different than the State's
30 because when we go out there and deal with the users, the
31 public, we have to define whether they're a subsistence
32 user or a sports fisherman or whatever because different
33 rules apply. We also have the jurisdiction to apply the
34 regulations on both sets of users.

35

36 In the spring season in the Southeast we
37 had 153 contacts with forest users in either the fishing
38 or hunting regime. Fifty-four of those were subsistence
39 users and the majority of those, of course, were in the
40 Prince of Wales area and Petersburg. What's important to
41 note about those particular contacts is that's part of
42 the winter steelhead season. Our officers patrol the
43 heavily-used steelhead areas during that part of the
44 season. Out of those contacts in that area only six
45 individuals claimed that they were subsistence fishing,
46 so the majority were sport.

47

48 Some of the violations or incidents that
49 occurred there that are interesting to note is
50 subsistence-wise we had one person given a warning for

1 not documenting a catch. That went for snagging and
2 another for over limit. But on the sports side we had
3 issues with no licenses and possession use of treble
4 hooks in single hook areas and also some other controlled
5 substance issues.

6
7 One important thing to note overall is
8 that the subsistence effect out there, their use effect,
9 both hunting and fishing, probably only amounts to about
10 24 percent of the total use. Fishing probably only
11 amounts to 10 percent. Subsistence fishing 10 percent of
12 the fishing use out there. Of those 10 percent, only
13 five percent of those have any kind of compliance issues.

14
15 In the late spring, April through June,
16 out of 38 days of patrol, 87 contacts were made for
17 subsistence use, only one subsistence fisherman was
18 observed out there at that time and they were steelhead
19 fishing and that individual was contacted and said he
20 only catches and releases his fish, he doesn't take them
21 home.

22
23 In Petersburg there were 26 fishermen
24 contacted, two were subsistence, and they were given
25 warnings because they were from Sitka, fishing outside
26 their C&T area. But other than that, the use that we've
27 come across is very small when it comes to subsistence
28 use.

29
30 Lastly, for the summertime, I want to
31 note that in the Juneau or Admiralty area there were 54
32 contacts made, but we found no subsistence use there.
33 Now keep in mind, of course, we're not out there every
34 day and every place on every stream, so this is basically
35 a sampling. Hearing that there's eight steelhead caught
36 in areas outside of POW and 24 I guess in POW, we have a
37 couple that we actually contacted during that incident.
38 So we don't get to see a lot, but our sampling kind of
39 gives an indication of how much use there is out there by
40 the subsistence users and how much take they're taking.
41 Thank you.

42
43 ACTING CHAIR GOTTLIEB: Thanks very much.
44 Any comments or questions. John.

45
46 MR. LITTLEFIELD: Thank you, Mr. Chair.
47 I believe Mr. Oviatt talked about mortality. I think you
48 had a question on that. I looked in the record and I
49 think for our deliberations the records show we used
50 approximately five percent mortality, recognizing that it

1 could vary by half of that either way and no one really
2 knows. For our discussion, we used the five percent
3 mortality on catch and release.

4
5 ACTING CHAIR GOTTLIEB: Cal, are you
6 satisfied with the reporting system on the permits and do
7 you do follow-up calls if you haven't gotten all your
8 permits back?

9
10 MR. CASIPIT: Madame Chair. Yes, we do
11 follow up and try and get all our permits back. In fact,
12 that's a major part of Ben, Terry and Bob's duties, is to
13 ensure that we get our permits back and everything is
14 recorded in our database. A very important part of their
15 job.

16
17 ACTING CHAIR GOTTLIEB: Thank you. Other
18 Board discussion. John.

19
20 MR. LITTLEFIELD: I just want to note for
21 the record I know Marty, Mr. Myers, looked at me when he
22 said they were from Sitka, but it wasn't me.

23
24 (Laughter)

25
26 ACTING CHAIR GOTTLIEB: We didn't think
27 so. Are we ready for a motion.

28
29 MR. BUNCH: Madame Chair. I move that we
30 accept the Southeast Regional Council's recommendation on
31 FP06-34.

32
33 ACTING CHAIR GOTTLIEB: Is there a
34 second.

35
36 MR. KLEIN: Second.

37
38 ACTING CHAIR GOTTLIEB: Steve, thank you.
39 Is there Board discussion.

40
41 MR. EDWARDS: Ms. Chairman. I plan to
42 vote in favor of the motion. I continue to have concerns
43 about those stocks down there for anybody that's using
44 them. I do echo what Mr. Littlefield said. I think it's
45 very important for this Board to address with the Board
46 of Fish and support this issue of trying to get a better
47 handle on what's taking place in the commercial catch.
48 My view is we're probably penalizing both the
49 sportfishers as well as subsistence fishers because we
50 don't have that data. Once we have much better data, we

1 might be able to make some better management decisions
2 that would actually allow broader catches for everybody
3 down there.

4
5 ACTING CHAIR GOTTLIEB: Thank you.
6 Charlie.

7
8 MR. BUNCH: Yes. A point of
9 clarification for John and Gary. Chilkoot Indian
10 Association is the tribal government for Haines, Alaska.
11 I plan on supporting this motion, but I too am concerned
12 about the policy. It's my understanding when ADF&G does
13 their household surveys that they don't split the
14 classification of whether it's sport caught or commercial
15 or subsistence, so I think if they were to do that, that
16 would give us some better data on this stuff.

17
18 And it seems silly to give a resource on
19 Thursday and then essentially take it back away on
20 Friday, so I intend on supporting that motion.

21
22 ACTING CHAIR GOTTLIEB: Thank you,
23 Charlie. Steve.

24
25 MR. KLEIN: I, too, intend to support the
26 motion. I'm going to give maybe a little bit of
27 rationale here and I think that some of this rationale
28 will also be appropriate to the other proposals that
29 we're going to be talking about and maybe by going
30 through some of this here it won't be necessary to go
31 into quite so much detail on the ones we're going to be
32 subsequently looking at.

33
34 One of the largest issues facing the
35 steelhead fishery is the ease of access to small road-
36 accessible steelhead systems. This issue and other
37 conservation issues were of concern to the Board last
38 year and, therefore, the local fisheries managers were
39 provided the authority to place permit conditions on
40 systems needing special protection.

41
42 The Federal managers consulted with
43 Department of Fish and Game and also with the Southeast
44 Alaska Regional Advisory Council and restrictions were
45 placed on the streams near Sitka, Juneau, Ketchikan,
46 Wrangell and Petersburg. These are non-Prince of Wales
47 I'm talking about, and that was on Page 426. There was a
48 chart that showed what those restrictions are.

49
50 These are annual stipulations which will

1 be looked at each year for their effectiveness in
2 providing for conservation while being the least
3 intrusive possible on subsistence users. I don't believe
4 there's any substantial evidence of a need to change the
5 Federal regulations because there just aren't any fish
6 conservation concerns at least resulting from the legal
7 harvest of fish that we're looking at here. Only eight
8 steelhead are known to have been harvested in 2005 at
9 this point under the Federal regulations for Southeast
10 Alaska, not including the Prince of Wales.

11

12 Adopting the proposed regulatory change
13 would result in very few fish available for harvest by
14 Federally qualified subsistence users and, therefore,
15 would be detrimental to the satisfaction of their
16 subsistence needs. Thank you.

17

18 ACTING CHAIR GOTTLIEB: Thank you, Steve.
19 And I'll mention that I think we have been talking about
20 and dealing with steelhead issues for many years now and
21 I really want to commend the Federal and State managers
22 and law enforcement for doing an excellent job in making
23 this a situation that has been workable and where you do
24 bring information back to us that's very useful to the
25 Board. But I think the proposal would be to the
26 detriment of subsistence users, so I'm ready to support
27 the motion as proposed.

28

29 All right. So the motion is to reject
30 the proposal consistent with the recommendation of the
31 Southeast Alaska Regional Advisory Council. All those in
32 favor please signify by saying aye.

33

34 IN UNISON: Aye.

35

36 ACTING CHAIR GOTTLIEB: All those opposed
37 same sign.

38

39 (No opposing votes)

40

41 ACTING CHAIR GOTTLIEB: Motion carries.

42

43 MR. LOHSE: Madame Chair.

44

45 ACTING CHAIR GOTTLIEB: Yes.

46

47 MR. LOHSE: Madame Chair. Before we get
48 started on something else, with my apologies to the Board
49 and to my colleague here who still has some proposals on
50 the table, I'd like to ask to be excused. I have to

1 catch a ferry in Whittier this afternoon and I'd like to
2 get out of the hotel and grab a couple things on the way
3 out of town.

4
5 ACTING CHAIR GOTTLIEB: We understand and
6 we appreciate you spending this extra time with us and
7 really want to especially thank you for all the work
8 you've done relating to the issues that were in front of
9 the Board for this particular Board meeting. We know
10 we'll be working closely with you and your Council
11 members on many issues shortly. Thanks. Have a safe
12 trip home.

13
14 MR. LOHSE: Thank you and thank you for
15 your work. Tom and I have already made arrangements to
16 get together on the phone and work on that working group
17 down there.

18
19 ACTING CHAIR GOTTLIEB: Excellent. Thank
20 you.

21
22 MR. LOHSE: We will see you.

23
24 ACTING CHAIR GOTTLIEB: Okay. Proposal
25 31, please. John.

26
27 MR. LITTLEFIELD: Madame Chair. I'd like
28 to say also a thank you to my colleague here, Ralph, and
29 I want to make sure he knows that my offer of help was
30 not going to be to co-chair or anything else on this.

31
32 (Laughter)

33
34 MR. LITTLEFIELD: I wish him a safe trip
35 and he certainly is a valuable member of this process
36 here. But before we go on, I just wonder if it's
37 appropriate to do something about this steelhead. I was
38 just given a letter from the Tongass Forest supervisor,
39 Mr. Forrest Cole, and they're going to support that
40 steelhead proposal requiring mandatory reporting and I'm
41 just wondering if this is the time for the Federal Board
42 to go on record saying that they do that. It should be
43 fairly simple to do that. I think it's important that
44 you support that proposal. I don't know if this is the
45 time or not, Madame Chair.

46
47 ACTING CHAIR GOTTLIEB: So, John, you're
48 referring to the proposal that will be in front of the
49 Board of Fisheries? Just for everybody's clarification,
50 is the Board -- and maybe we've already worked up

1 comments, I don't know, but is the Board supportive of
2 making this a Federal Subsistence Board comment that we
3 ask for help on reporting?
4

5 MR. EDWARDS: I guess I would prefer to
6 say it actually in a letter signed by the chairman as
7 well as when we have an opportunity to speak to it
8 through our representative at OSM. I would encourage us
9 to do both.
10

11 ACTING CHAIR GOTTLIEB: That's a good
12 suggestion. Any objections. Steve.
13

14 MR. KLEIN: I believe we have provided
15 comments to the Board of Fisheries already on a number of
16 proposals and I think those have been signed by Tom and I
17 think we did provide comments on this proposal. It looks
18 like Pete is ready to talk about it.
19

20 ACTING CHAIR GOTTLIEB: Pete, if you can
21 help us out, please.
22

23 MR. PROBASCO: Yes, Madame Chair. Tom
24 did submit comments to these proposals. I'm going to go
25 on memory here on Proposal 169.
26

27 MR. LITTLEFIELD: It's Proposal 198, not
28 169. 198 is the mandatory reporting of steelhead.
29

30 MR. PROBASCO: I'm referring to the
31 letter, John. Proposal 169, where they're asking the
32 State Board of Fisheries to establish the task force on
33 the Chatham Straits. So which one were you referring to,
34 John? Proposal 198, again on memory, we were in support
35 of that proposal. Madame.
36

37 ACTING CHAIR GOTTLIEB: I think perhaps
38 Gary what you're suggesting is based on the discussions
39 we've had today, jointly, with the Department it may be
40 good for Mitch to sign a letter updating the comments
41 we've already submitted.
42

43 MR. EDWARDS: I don't mean to minimize
44 what Tom has already sent by comments. In my mind, this
45 is a very, very important issue and I think as much
46 support as we can demonstrate for it all the better.
47

48 ACTING CHAIR GOTTLIEB: Steve.
49

50 MR. KLEIN: I will certainly support

1 that. This is a very important way to start trying to
2 answer some of the questions about steelhead. Until we
3 know more about the incidental harvest of steelhead in
4 Southeast Alaska, we're going to be discussing these
5 issues forever and ever and ever. Hopefully this will
6 start getting towards some of those answers, be able to
7 start filling in some of those holes and I certainly
8 support the Board in a letter signed by Mitch to the
9 Alaska Board of Fisheries to support that proposal.

10

11 There's a little bit of question on that
12 proposal at this point the way it's worded. It gives the
13 Commissioner flexibility to decide by emergency order
14 whether the Department would require this reporting. I
15 really don't understand the details of that, but I think
16 it ought to be a position that we would ask for the
17 requirement for reporting, not to make it optional by
18 emergency order of the Commissioner.

19

20 ACTING CHAIR GOTTLIEB: Well, Mitch, with
21 your concurrence, it sounds like we'll be putting a
22 letter together for you to sign to the Board of
23 Fisheries.

24

25 CHAIRMAN DEMIENTIEFF: Yeah, I'm okay
26 with that.

27

28 ACTING CHAIR GOTTLIEB: Kelly, anything
29 to add.

30

31 MR. HEPLER: Certainly you can send
32 whatever letter of support. How you want to word it is
33 obviously in your purview. The only thing I would just
34 say, we've had quite a bit of discussion, you know, and
35 without getting into a lot of detail, there's concerns
36 around some discussion as far as treaty ramifications, so
37 we were looking for the flexibility to have the
38 Commissioner have that authority. I'm certain when we
39 had those discussions I didn't hear the Commissioner say
40 he didn't want the authority. From our perspective, we'd
41 rather see you supporting the Commissioner asking for
42 that information. Madame Chair.

43

44 ACTING CHAIR GOTTLIEB: And we realize
45 the Department does have to work with those treaty
46 negotiations on everybody's behalf, so we'll let you work
47 through that technicality too. Any other comments.

48

49 (No comments)

50

1 ACTING CHAIR GOTTLIEB: Okay. Staff,
2 please.

3
4 MR. VanALEN: Good morning, Madame Chair
5 and Board. I'm on FP06-31. The executive summary is on
6 Page 391. Proposal FP06-31 was submitted by Mark Vinsel.
7 He's the president of Raincountry Flyfishers in Juneau.
8 It would apply State sport fishing regulations to all
9 Federally qualified persons who subsistence fish for
10 steelhead, Dolly Varden and trout in streams on or
11 adjacent to the Juneau road system. The proponent did
12 not want the new region-wide Federal subsistence
13 regulations for steelhead, Dolly Varden, and cutthroat
14 trout to apply to waters accessible to the non-rural
15 Juneau road system.

16
17 The proponent was not aware that the new
18 Federal subsistence regulations for harvesting steelhead
19 and Dolly Varden, brook trout, grayling, cutthroat, and
20 rainbow trout both state that The permit conditions and
21 systems to receive special protection will be determined
22 by the local Federal fisheries manager in
23 consultation with ADF&G.

24
25 So Federal Staff recognized with aid of
26 discussions with ADF&G that the steelhead, Dolly Varden
27 and trout stocks in the Juneau area could sustain only a
28 low rate of exploitation and that they are already
29 subjected to relatively high sportfishing pressure by
30 Juneau residents.

31
32 Consequently, in 2005, the local Federal
33 fisheries manager placed special restrictions on the
34 Federal subsistence fishing permits for both steelhead
35 and for salmon, Dolly Varden and trout to address
36 conservation concerns for streams crossed by the Juneau
37 road system. The proponent felt that he and others would
38 not be so alarmed by the new steelhead, trout, and char
39 regulations if this option of putting special permit
40 conditions on the permits was better known, especially if
41 the special permit conditions prove effective over time.

42
43 The special conditions on the 2005
44 Federal Southeast Alaska Spring Steelhead permit included
45 a minimum size limit of 30 inches, gear restricted to dip
46 net or rod and reel without bait, and a mandatory
47 reporting of harvest within 24 hours. The size limit was
48 set less than the State sport fish limit of 36 inches to
49 give Federally qualified subsistence users a subsistence
50 priority, yet protect at least 40 percent of the

1 steelhead from potential harvest, recognizing that the
2 actual percent harvested would depend on if anybody
3 fished and if any fish were harvested.

4
5 The 24-hour reporting requirement was
6 made so harvests could be monitored. Federal staff were
7 prepared to take special actions in-season to protect
8 stocks from over-fishing if any appreciable harvest
9 occurred. The size limit and reporting requirement was
10 used in part to discourage subsistence fishing on the
11 non-rural Juneau road system. As it turned out, there
12 were no steelhead harvested under Federal permits in
13 Juneau in 2005. It's unlikely that rural subsistence
14 users would choose to fish in non-rural Juneau.

15
16 Special permit conditions will be looked
17 at each year for their effectiveness in providing
18 conservation while being the least intrusive as possible
19 on subsistence users and least likely to result in
20 disruptions to non-subsistence uses.

21
22 If this proposal were implemented, there
23 would be little opportunity for Federally qualified
24 subsistence users to harvest legal size steelhead or
25 trout on the Juneau road system. This could be
26 detrimental to the satisfaction of subsistence needs if a
27 Federally qualified subsistence user desires to harvest
28 steelhead or trout on the Juneau road system. Thank you.

29
30 ACTING CHAIR GOTTLIEB: Thanks very much.
31 Are there comments or questions.

32
33 (No comments)

34
35 ACTING CHAIR GOTTLIEB: Are there written
36 public comments, please.

37
38 MS. HERNANDEZ: Madame Chair, there was
39 just one written public comment from the Chilkoot Indian
40 Association. They write in support of the proposal. It
41 does not seem that this change would impact subsistence
42 users in Juneau as it does not affect traditional fishing
43 areas. Preservation and enhancement of fishing stocks
44 are paramount to the Chilkoot Indian Association.

45
46 ACTING CHAIR GOTTLIEB: Thank you. No
47 one signed up to testify, so with that we'll go to
48 Regional Advisory Council recommendation, please.

49
50 MR. LITTLEFIELD: Thank you, Madame

1 Chair. In the Board book on Page 393 are the Regional
2 Council's recommendation on FP06-31. We oppose the
3 proposal. This proposal would roll back the subsistence
4 steelhead regulations adopted in the 2005 regulatory year
5 for the Juneau road system area. The SERAC
6 agrees with staff that adopting the proposed regulatory
7 change would result in few or no fish available to
8 Federally qualified subsistence users who might use the
9 Juneau road system.

10

11 Staff has worked with the Department of
12 Fish and Game to include permit conditions for fishing
13 off the Juneau road system. These permit conditions
14 address conservation concerns adequately and provide for
15 subsistence opportunity. This fishery is closely
16 monitored, and no management problems exist that would
17 call for regulatory change at this time. Madame Chair.

18

19 ACTING CHAIR GOTTLIEB: Thank you. Any
20 questions for John.

21

22 (No comments)

23

24 ACTING CHAIR GOTTLIEB: Interagency Staff
25 Committee, please.

26

27 MR. PROBASCO: Thank you, Madame Chair.
28 The Interagency Staff Committee opposes the proposal
29 consistent with the recommendation of the Southeast
30 Alaska Regional Advisory
31 Council. Our justification is pretty much in line with
32 what Mr. Littlefield just read.

33

34 ACTING CHAIR GOTTLIEB: Thank you. If we
35 could have Department comments, please.

36

37 MS. SEE: The State has several concerns
38 with this Federal fishery in the Juneau area. We
39 consider that ANILCA does not provide for subsistence
40 uses in areas that are non-rural. The Juneau area is not
41 near or reasonably accessible to rural residents of
42 Southeast Alaska for the purpose of subsistence fishing.
43 As the Department has previously noted, evidence should
44 be provided that shows whether or not steelhead, trout,
45 and char in the Juneau area have been customarily and
46 traditionally used by rural residents who live outside
47 the Juneau non-rural area.

48

49 In addition, we think the Federal
50 analysis should explain why subsistence opportunity along

1 the Juneau road system would be needed for subsistence
2 harvest. If such documentation is not possible, then the
3 Juneau non-rural area should be exempted from the
4 regionwide Federal regulations. In this case, an
5 area-specific or community-based C&T determination should
6 be considered rather than a regionwide determination.

7
8 We also have concerns about the
9 sustainability of this fishery and we've spoken to those
10 in the previous comments. The 30-inch size limit that's
11 specified for this fishery would allow potential harvest
12 rate that we consider unsustainable. There's no
13 biological justification that was provided for that. It
14 was stated that this was a way that the Federal program
15 was attempting to provide a subsistence priority.

16
17 Those limits in the State fisheries were
18 set based on achieving what we consider sustainable
19 harvest rate and we don't think the Federal analysis has
20 really explained how the other limit will provide for
21 conservation to resource. We raise again our concern
22 about the lack of reported harvest. We don't know
23 whether this is a lack of reporting or a lack of
24 harvesting and we continue to say that we think that
25 effort needs to be made to engage subsistence users in
26 getting the permits in the first place.

27
28 I won't repeat a lot of these other
29 comments. They're on record. I will note that, again,
30 in the absence of critical information about the stocks
31 sizes and harvest rates, and that's the real data that we
32 need for these small streams, the Department believes the
33 State regulations should be used to help ensure
34 sustainability of the resource.

35
36 Our recommendation on this is that we
37 oppose any Federal fishery in this non-rural area. We do
38 support the proposal.

39
40 ACTING CHAIR GOTTLIEB: Thank you. Any
41 other State comments or questions.

42
43 (No comments)

44
45 ACTING CHAIR GOTTLIEB: Board discussion.
46 Steve.

47
48 MR. KLEIN: I guess I'd like legal
49 counsel to address this question in the State's comments.
50 It was right in the beginning. We consider that ANILCA

1 does not provide for subsistence uses in areas that are
2 non-rural. Maybe we could see what counsel has to say on
3 that.

4
5 ACTING CHAIR GOTTLIEB: Sure. Go ahead,
6 please.

7
8 MR. USTASIEWSKI: Madame Chair. Jim
9 Ustasiewski again. ANILCA applies to Federal public
10 lands or public lands, which are defined as Federal
11 lands, so even non-rural areas that are public lands
12 would be subject to Title VIII of ANILCA.

13
14 ACTING CHAIR GOTTLIEB: Thank you for
15 that clarification. Cal or others, maybe you could
16 provide info again on harvest and your sense of reporting
17 in this area.

18
19 MR. CASIPIT: Thank you, Madame Chair.
20 I'll take a shot at this. If I misspeak, I'm sure Mr.
21 VanAlen will correct me, but no permits were issued for
22 the Juneau road system and no harvest was reported for
23 the Juneau road system.

24
25 ACTING CHAIR GOTTLIEB: Thank you. Other
26 questions. Gary.

27
28 MR. EDWARDS: I have one for John. Take
29 it in the light that I'm asking it. Why does this
30 fishery for subsistence really make any sense at all? I
31 mean nobody uses it, it's in an area of people who are
32 not rural and it just doesn't seem to make a lot of
33 sense. I have trouble wrapping my mind around it and
34 even why we have it, I guess, other than we can.

35
36 MR. LITTLEFIELD: Madame Chair, Member
37 Edwards. I thought we covered this years ago about why
38 this fishery came up, but my interpretation of it, and
39 maybe the lawyers could correct me, is our job is to
40 provide an opportunity for continued uses by people who
41 have in the past done, in my opinion, a significant
42 amount of subsistence fishery and sportfishing under
43 regulations that were not so draconian as the ones that
44 are in place now under the State.

45
46 I believe the State is on record stating
47 themselves at one of these meetings that the 36-inch
48 limit was not a meaningful priority and I could be
49 corrected on that, but the 36-inch limit in the State
50 fishery limiting you to one out of every 160-some fish

1 you catch to have one you could take home to the market
2 was not meaningful.

3
4 We're providing that opportunity for
5 those who have done this in the past. I can't force
6 anybody to go fishing and I don't know whether they're
7 going or not reporting. I think the longer we have this,
8 the better reporting we will get. It was to provide that
9 opportunity and that that opportunity be meaningful.
10 Maybe the lawyers could comment on that.

11
12 It's certainly something that I've had
13 comments and calls from people in Juneau that were -- I
14 guess I shouldn't say elderly because they're only a
15 couple years older than me, that were just thankful as
16 could be that we would do stuff like this because they
17 used to do it when they were kids and when the State took
18 it over they were prohibited from doing it. They
19 eventually got shut out completely out of that steelhead
20 fishery. But it's a fishery that we utilized in the
21 past. It was a custom and tradition. I guess I'll leave
22 it at that. Madame Chair.

23
24 ACTING CHAIR GOTTLIEB: Someone else?
25 Kelly.

26
27 MR. HEPLER: I know the legal arguments
28 on both sides of this. This is going back. We touched
29 on the common sense again that I heard from Keith.
30 There's a lot of areas of tension between the State and
31 this Board and we're just going to agree to disagree and
32 we understand that on important discussions, like maybe
33 the positive C&T in the Upper Kenai.

34
35 This is one of those ones, and I agree
36 with what Gary is saying, and I can appreciate the elders
37 want the opportunity to fish, and I do, John, and I
38 wasn't around to hear all those discussions, so I'm just
39 looking at this at face value, but this is just one where
40 they're not participating, you know. Maybe they are and
41 we're not getting reporting. I'm not sure.

42
43 It just doesn't make sense to me to have
44 this type of an irritant where we can eliminate some of
45 these and then we could actually focus our time on more
46 important issues between the State and the Board. That
47 leaves out the discussion of legal concerns. This is a
48 common sense comment. Madame Chair.

49
50 ACTING CHAIR GOTTLIEB: Is there another

1 comment. Jim.

2

3

4 MR. USTASIEWSKI: I'm a little unsure
5 about stepping into that. I would respond to something
6 John said about an opportunity. ANILCA provides for
7 meaningful priority. I don't believe the word
8 opportunity is in Title VIII and I don't believe anybody
9 has ever fed their family on an opportunity. Of course,
10 you've got to have an opportunity before you can feed
11 your family, so it's maybe relevant to discuss it, but
12 the real issue is meaningful preference. That's the way
13 the Federal courts have interpreted priority.

14

15 ANILCA's priority means meaningful
16 preference and I think the question is a valid one, is it
17 necessary to provide a preference in this situation. I
18 don't have the answer to that question, but I think it's
19 a valid question to ask.

20

21 MR. EDWARDS: Could you argue in the case
22 of the elders? The elders that live in Juneau aren't
23 eligible anyway because they're not rural residents, so
24 the question is, are the people that are now rural
25 residents that are actually eligible, do they really --
26 was that a place they historically fished in or not? I
27 mean it's one of these unfortunate things where you can't
28 really reach the people who actually have the connection
29 with the resource.

30

31 ACTING CHAIR GOTTLIEB: John.

32

33 MR. LITTLEFIELD: Thank you, Madame
34 Chair. We can get into this before the United States,
35 before America or wherever you want to go on this stuff
36 and, obviously -- you know, where do you want to draw the
37 line on this baseline. Right now, for our purposes,
38 we'll do it on subsistence purposes. The way I read
39 ANILCA is in its entirety and Title VIII is part of it.
40 If you look under policy of Congress, it says the purpose
41 of this title is to provide the opportunity for rural
42 residents engaged in a way of subsistence life to do so.
43 If you don't provide the opportunity, how can you
44 possibly provide the meaningful priority. If there's no
45 opportunity to go, there's no way you could possibly
46 provide a meaningful priority.

47

48 That fishery used to be open, I guess,
49 Member Edwards, is what I would say before all these
50 measures came in. We talked about things that were
outside of the control of the local residents. When we

1 talked about the Ninilchik people and the areas there,
2 how they were decimated. The same thing happened in
3 Southeast. In the 1918 small pox epidemic, it decimated
4 great numbers of people in Southeast.

5
6 So, if you look back at history, we've
7 done these things in the past and that's what I'm telling
8 you and we continue to do them now. I don't know whether
9 they did them under the table. This gentleman said he
10 stopped when the State instituted those measures. He
11 said he stopped and he lived in Juneau, but before that
12 he was able to participate.

13
14 So I think opportunity is tied in there
15 and without an opportunity you cannot have a meaningful
16 priority. Madame Chair.

17
18 ACTING CHAIR GOTTLIEB: Thank you. And I
19 would certainly agree with John. We don't want to start
20 arguing what's in or not in ANILCA, but certainly Section
21 801 starts out with the continuation of the opportunity
22 for subsistence uses by rural residents of Alaska. It's
23 unfortunate that steelhead in Southeast Alaska has become
24 contentious. It certainly has not been our intention by
25 any means, but I do believe it is our job to provide for
26 the opportunity and I think, as it turns out on this
27 particular proposal, there hasn't been harvest, there
28 hasn't been use, but it still is our mandate or our job
29 to provide that opportunity and have it be well managed
30 in terms of harvest and limits and law enforcement, et
31 cetera, and work in cooperation with the Department on
32 it. Charlie.

33
34 MR. BUNCH: I wholeheartedly concur with
35 your analysis.

36
37 ACTING CHAIR GOTTLIEB: Steve.

38
39 MR. KLEIN: Madame Chair. Respectfully,
40 I'd just like to put out the State's position here that
41 we agree with the solicitor's previous comments on common
42 sense and we also, looking at the 9th Circuit decision in
43 the Ninilchik case believe that the Board can do some
44 balancing here and the Board is not required to provide
45 for a priority on every stream. What the Board is
46 required to do is to provide a meaningful preference for
47 rural residents on the Federal public lands. That does
48 not mean that the same preference has to apply on every
49 piece of Federal public land. There has to be a
50 meaningful preference for rural users on the Federal

1 public lands.

2

3 Respectfully, that does not mean that
4 there has to be a preference under ANILCA in the non-
5 rural area of the Juneau road system when the rural
6 residents of Southeast Alaska have access to the
7 resources closer to home. Thank you, Madame Chair.

8

9 ACTING CHAIR GOTTLIEB: Thank you. John.

10

11 MR. LITTLEFIELD: Hopefully my last
12 comment on this. It may be as simple as the application
13 of the restrictions that were put on these people are
14 enough to discourage their use and the meaningful
15 priority is not being applied. When we had the
16 discussions with Federal Staff on which streams to be
17 closed, I participated in those and I argued as hard as I
18 could that there were no restrictions necessary on these
19 streams, no size restrictions, because we should have
20 defaulted to our general regulation.

21

22 And I still feel that way because it
23 allowed you to go catch a smaller steelhead. You could
24 catch any one of them that you wanted to. That may be
25 part of the problem here why we're not having any
26 harvest. Maybe 32 inches or 30 inches are still not
27 allowing a person to go out there and have any chance of
28 being successful and they're not doing it. I don't know
29 the answers, but it hasn't been proven to me that the
30 smaller limit provides for a meaningful priority. So I
31 guess I'd just like to leave it there.

32

33 ACTING CHAIR GOTTLIEB: Steve.

34

35 MR. KLEIN: I would think that the way to
36 deal with this maybe in the future is if someone wants to
37 come forward with a proposal for customary and
38 traditional use determination in this area. That's the
39 way we generally deal with these types of issues. That's
40 not in front of us right now and I don't think the Board
41 can take any regulatory action without going through our
42 full proposal process. So if, for instance, the State
43 wishes to or Rain Country Flyfishers or someone else
44 would like to put a proposal in front of the Board for a
45 customary and traditional use determination in the Juneau
46 area for steelhead, that could be done.

47

48 I think something similar was done, of
49 course this was before my time here, in the Berners Bay
50 area for moose and Berners Bay is just to the north of

1 Juneau. I'm just looking at the wildlife regulations
2 where it says for Unit 1(C) Berners Bay drainage, no
3 Federal subsistence priority. I suspect and think that
4 this was somewhat of a similar situation and the Board
5 took an action there. If someone brings a proposal
6 forward, we can deal with it then and figure this out.

7
8 ACTING CHAIR GOTTLIEB: Other comments,
9 questions, commitments into looking into this further.

10
11 (No comments)

12
13 ACTING CHAIR GOTTLIEB: Do we have a
14 motion.

15
16 MR. BUNCH: Madame Chair.

17
18 ACTING CHAIR GOTTLIEB: Charlie.

19
20 MR. BUNCH: I move that we accept
21 Southeast Alaska Regional Council's recommendation on
22 FP06-31.

23
24 ACTING CHAIR GOTTLIEB: Thank you.
25 There's a motion. Is there a second.

26
27 MR. KLEIN: I'll second it.

28
29 ACTING CHAIR GOTTLIEB: Steve seconds.
30 Board discussion. I think once again we do understand
31 this is a divergence in our opinions and I would like to
32 see if it is possible that we have some further
33 discussions between the agencies and the Department and
34 the RAC and see if we can come up with some other kind of
35 mechanism to address some of the concerns that have been
36 brought up here. No guarantees that we might, but we can
37 further the discussion and bring about some fruitful
38 perhaps solutions that might be more satisfying and maybe
39 more understandable to everybody.

40
41 MR. KLEIN: Well, at this point I will
42 vote in favor of the motion. Streams on or adjacent to
43 the Juneau road system are Federal public waters to which
44 our regulations do apply and I believe they should
45 continue to apply. There isn't any substantial evidence
46 of a need to change the regulation in that area and
47 there's the potential that it could be detrimental to the
48 satisfaction of subsistence users needs who do want to
49 fish in that Federal public waters.

50

1 ACTING CHAIR GOTTLIEB: Thank you. Other
2 comments. Well, I'll also assume that the monitoring
3 that's been described here will continue in future years
4 and we'll get good reports back on harvest, but I would
5 hope that there could be further discussion on this
6 amongst interested parties. Gary.
7
8 MR. EDWARDS: I plan to vote against the
9 motion. From my standpoint, it doesn't really seem
10 logical. It just seems to me it's contrary to good
11 public policy. For some of the previous reasons I stated
12 I just think that it doesn't seem to make a lot of sense
13 to me that we continue to try to provide an opportunity
14 in an area where people can't take advantage of the
15 opportunity. Maybe, as suggested, the better approach is
16 the proponent of this to come in with a different angle
17 and that might ultimately solve this, but I'm going to
18 vote against the motion.
19
20 ACTING CHAIR GOTTLIEB: Thank you. I
21 guess some ways it's the opposite of where we do provide
22 opportunity and people want more opportunity, but every
23 situation proposal is different and opportunity is no
24 guarantee of harvesting any resources either. George.
25
26 MR. OVIATT: Madame Chair. I'm going to
27 vote against this proposal, too. Somewhere we've got to
28 reach some common sense in some of this. This just
29 doesn't make sense. I'm going to vote against this
30 proposal, too.
31
32 ACTING CHAIR GOTTLIEB: Mitch, do you
33 have any comments or are we ready for a vote.
34
35 CHAIRMAN DEMIENTIEFF: I'm ready for a
36 vote.
37
38 ACTING CHAIR GOTTLIEB: All those in
39 favor please say aye.
40
41 IN UNISON: Aye.
42
43 ACTING CHAIR GOTTLIEB: All those opposed
44 same sign.
45
46 MR. OVIATT: Aye.
47
48 MR. EDWARDS: Aye.
49
50 ACTING CHAIR GOTTLIEB: Motion carries 4

1 to 2. Okay. We're on Proposal 32, please.
2
3 MR. LITTLEFIELD: Madame Chair.
4
5 ACTING CHAIR GOTTLIEB: Yes.
6
7 MR. LITTLEFIELD: I might ask when we're
8 taking a break. These are my proposals and I would like
9 to take a break for lunch sometime today and find out
10 what we're doing. It's a question of privilege.
11
12 ACTING CHAIR GOTTLIEB: Okay. Here's the
13 situation. We can vote on it. We have two proposals
14 left, we have the consent agenda to adopt or not adopt
15 and any closeout comments from -- hopefully there will be
16 two remaining chairs if, Nanci, you can bear with us yet.
17 So it's up to the wishes of the Board, if you care to
18 take a break or you care to keep on plowing through or
19 take a short break and continue.
20
21 CHAIRMAN DEMIENTIEFF: For myself, it's
22 only my personal conviction because we're getting ready
23 to leave. I've already had to give up some of my other
24 schedules, so my inclination is to push on. I don't
25 think we're that far away, are we?
26
27 ACTING CHAIR GOTTLIEB: I don't believe
28 so, but I can't claim much accuracy in predicting timing.
29 Perhaps people need a five-minute break and then try to
30 come back. Does that help, John? Okay.
31
32 CHAIRMAN DEMIENTIEFF: Also, I wasn't
33 able to get through to my other party yet, where I was
34 supposed to be in 10 minutes, so something I have to
35 work on.
36
37 ACTING CHAIR GOTTLIEB: Okay. Well,
38 Mitch, we'll let you sign off then and if you'll let us
39 know when you're back on and we'll aim to come back in 10
40 minutes.
41
42 (Off record)
43
44 (On record)
45
46 ACTING CHAIR GOTTLIEB: If we could have
47 Staff report, please.
48
49 MR. LARSON: Madame Chairman. My name is
50 Robert Larson. I work for the Forest Service as a

1 fisheries biologist. I'd like to direct your attention
2 to Proposal FP06-32. The executive summary starts on
3 Page 401 of your Board book. The Staff analysis for
4 FP06-32 begins on Page 404 of your Board book.
5

6 This proposal was submitted by Mr. Mike
7 Stainbrook of Petersburg, would implement a 36-inch size
8 limit and a rod and reel only restriction for steelhead
9 fishing on streams that cross or are adjacent to the
10 Petersburg road system. Petersburg road system occurs
11 entirely on Mitkof Island.
12

13 The community of Petersburg is rural with
14 an extensive road system. There are at least four
15 steelhead streams that cross or are adjacent to the road
16 system. There are no reliable estimates of steelhead
17 population sizes or sustainable harvests for any of these
18 streams. Total steelhead returns range from unknown,
19 presumably too low to estimate, to over 100 adult
20 steelhead. Based on the uncertainty regarding
21 sustainable harvests and the accessibility of these
22 streams, Federal subsistence permits contained three
23 additional fishery restrictions for the 2005 season.
24 Restrictions included a 32-inch minimum size limit,
25 24-hour reporting of any subsistence harvest, and the use
26 of rod and reel only.
27

28 There was previous discussion of a table
29 on Page 426. Page 426 puts the restrictions for Mitkof
30 Island in context with the restrictions available for the
31 rest of Southeast.
32

33 The dilemma faced by the subsistence
34 management program for these streams and similar
35 situations on Prince of Wales Island, Wrangell Island,
36 Sitka, road systems in Juneau and Sitka, and the dilemma
37 is how to implement a subsistence fishery on steelhead
38 stocks that only have a few fish available for harvest.
39 For most of these streams, a 36-inch size limit would
40 result in a catch and release subsistence fishery as
41 fishermen are targeting trout and char.
42

43 Madame Chairman, that completes my oral
44 report.
45

46 ACTING CHAIR GOTTLIEB: Thank you. Any
47 questions.
48

49 (No comments)
50

1 ACTING CHAIR GOTTLIEB: If we could have
2 summary of written comments, please.
3
4 MS. HERNANDEZ: Madame Chair. There were
5 three written public comments for FP06-32. The first was
6 from the Chilkoot Indian Association. They write in
7 support the proposal. It appears that as the law is
8 currently, easy access to fishing areas is becoming
9 detrimental to the health of steelhead fish stocks in
10 this area. Preservation of fish stocks should be the
11 main goal of this regulation.
12
13 The second was from Mr. Jeff Rice. He
14 writes in support of the proposal. I would simply like
15 to add my support to what Mr. Stainbrook proposes. As
16 fragile as many of these steelhead populations are, I
17 believe it could prove a costly error to allow such
18 harvest.
19
20 The third is from a Mr. Joseph Stratman.
21 He writes in strong support of Proposal FP06-32.
22
23 ACTING CHAIR GOTTLIEB: Thanks very much.
24 We have no one signed up for testifying, so we could have
25 Regional Council recommendations, please.
26
27 MR. LITTLEFIELD: Regional Council
28 recommendation on FP06-32 is on Page 402 and I can
29 summarize it by saying ditto. The comments are exactly
30 like they were previously. They're very short. I'll
31 read them, but they're the same. It's a similar
32 proposal.
33
34 We oppose the proposal. This proposal
35 would roll back the subsistence steelhead regulations
36 adopted in the 2005 regulatory year for the Mitkof Island
37 area. Staff has worked with the Department of Fish and
38 Game to include permit conditions for fishing for the
39 Mitkof Island area. These permit conditions address
40 conservation concerns adequately and provide for
41 subsistence opportunity. This fishery is closely
42 monitored, and no management problems exist that would
43 call for regulatory change at this time. Madame Chair.
44
45 ACTING CHAIR GOTTLIEB: Thank you. Any
46 comments or questions.
47
48 (No comments)
49
50 ACTING CHAIR GOTTLIEB: Interagency Staff

1 Committee, please.

2

3 MR. PROBASCO: Madame Chair. The
4 Interagency Staff Committee opposes the proposal
5 consistent with the recommendation of the Southeast
6 Alaska Regional Advisory Council, as with the other
7 proposals dealing with steelhead. By reference, our
8 justification is on Page 402. Madame Chair.

9

10 ACTING CHAIR GOTTLIEB: Thanks very much.
11 Department comments, please.

12

13 MS. SEE: Thank you, Madame Chair. Our
14 comments, in fact, are closely similar to those offered
15 for the preceding proposal with respect to the size limit
16 issue. I will actually ask you to turn to Page 399
17 momentarily, which was for the preceding proposal but in
18 fact applies to discussions in this proposal and others
19 regarding the size limit issue.

20

21 There's a figure at the top of that page
22 which speaks to this issue of length and there are curves
23 there with respect to different sampling events. The
24 point I want to note here is that if you look to the 36-
25 inch line, which is the horizontal axis, you'll see that
26 the data cluster up at the top of that figure, which is
27 near 100 percent of the fish, and it drops off very
28 sharply if you look left on the trend of the information
29 there and there's a vertical line drawn at 30 inches.
30 Arguably, it's hard to say exactly where that hits given
31 these different curves and different data sets here. But
32 if you look to the left, you'll see that there's a 50
33 percent level here and that's the proportion of fish.

34

35 So this graph is all about if you go
36 below the 36-inch size limit, then what in fact are you
37 potentially taking out of the total population of fish.
38 That is where our concern comes in and this comment and
39 others where the potential harvest could affect a large
40 proportion of the available fish. That's where that
41 whole concern comes from, is these data, and I want to
42 make sure people realize there was a basis for that
43 concern.

44

45 We also noted that there appears to be
46 that there would be a total allowable harvest set for
47 each stream in the future, but the analysis provides no
48 insight into how that will be done.

49

50 Our comments about special actions in-

1 season criteria are the same as we've previously said and
2 concerns about enforceability of the 24-hour reporting
3 requirement is the same, as our comments are about the
4 lack of reported harvest, where we've continued to think
5 that that does not reflect the actual amount of effort
6 being made out there, nor the harvest that may, in fact,
7 be occurring.

8

9 In sum, we are still faced with absence
10 of critical information about the stock sizes and harvest
11 rates in this area and we feel that the State regulation
12 should be used to help ensure sustainability of the
13 resource in that circumstance.

14

15 We support this proposal. That is our
16 recommendation. Thank you, Madame Chair.

17

18 ACTING CHAIR GOTTLIEB: Thank you. I
19 just wanted to mention I think Mitch is on the phone.
20 We're on Proposal 32, Department's comments. Are there
21 additional Department comments or questions.

22

23 CHAIRMAN DEMIENTIEFF: Yes, ma'am. I've
24 been on the phone.

25

26 ACTING CHAIR GOTTLIEB: Right. So we're
27 on 32. Cal, do you want to address some of the questions
28 again on monitoring or on the level of harvest?

29

30 MR. CASIPIT: Thank you, Madame Chair.
31 We had no harvest reported from Mitkof Island steelhead
32 systems. I know Mr. Larson spent quite a bit of time
33 cruising the road looking for subsistence fishermen.
34 Maybe he might be able to answer that. But as far as
35 harvest, there was no harvest reported for the Mitkof
36 Island road system.

37

38 ACTING CHAIR GOTTLIEB: Thank you. Any
39 other questions or are we ready to have Board discussion.
40 Charlie.

41

42 MR. BUNCH: Cal, was that just for 2005
43 data?

44

45 MR. CASIPIT: Madame Chair, Mr. Bunch.
46 Yes. We've only had this fishery in 2005.

47

48 MR. EDWARDS: Just one quick question. I
49 sort of understood why we had the data we did with
50 regards to the Juneau road system, but do we have any

1 explanation why there hasn't been some utilization here
2 when it is in closer proximity to people who are eligible
3 to utilize it?

4

5 MR. CASIPIT: Thank you, Madame Chair,
6 Mr. Edwards. I could probably speculate why we didn't
7 get any harvest there. We had some fairly restrictive
8 permit stipulations for the Mitkof Island road system and
9 maybe people in Petersburg decided, you know, they could
10 go somewhere else nearby with their skiff and harvest
11 without having to deal with minimum size, whatever.
12 That's merely speculation.

13

14 ACTING CHAIR GOTTLIEB: Steve.

15

16 MR. KLEIN: Maybe we could ask Mr.
17 Larson. How many permits were issued to people who would
18 be fishing on the Mitkof Road system?

19

20 MR. LARSON: Madame Chairman. I have
21 that number exactly with me, but as best as I can recall
22 -- let me just back up a second. The permit system, it's
23 the same permit that's issued to all residents of
24 Southeast Alaska. If you were to look at a subset of the
25 people that obtained those permits, there were
26 approximately seven that were Federally qualified to fish
27 on Mitkof Island.

28

29 ACTING CHAIR GOTTLIEB: Steve.

30

31 MR. KLEIN: And did you have contact with
32 these people and did you talk to them about why they
33 obtain these permits or whether they fished or any
34 questions like that?

35

36 MR. LARSON: Madame Chair. Yes, I did.
37 Because 2005 was the first year of the fishery, as you
38 can imagine, there was quite a bit of questions and
39 speculation exactly what we were trying to accomplish and
40 what these new rules were. So I had an occasion to speak
41 with most of those people that obtained a fishing permit
42 from the Petersburg Ranger District. That's the location
43 where I live.

44

45 I also had an occasion to call and to
46 track down fishing permits that were not returned on
47 time. By and large, the numbers of people that I talked
48 to when I queried them about why they obtained a fishing
49 permit, and the next question was why was there not more
50 people that got fishing permits, but the query that I

1 made, most of the responses were that because of the
2 unfamiliarity they had with the program and this new
3 opportunity that was around, they obtained a permit
4 without the express purpose of killing two steelhead in
5 the immediate area.

6
7 What they were concerned about, these
8 seven people, were that they would -- they enjoyed
9 steelhead fishing and they had some history of steelhead
10 fishing and that there are some steelhead that are more
11 suitable to eat than other ones, so they did not want to
12 kill a hen steelhead, for instance. But if there was a
13 steelhead that was injured, then they did not want to
14 discard that fish.

15
16 So there was some interest in the newness
17 of the program, so they wanted a permit because it was a
18 new permit and they wanted to see what it was like and
19 they wanted to enter into the program. There were some
20 that were concerned about wasting the resource.

21
22 There were some that had an interest in
23 killing a steelhead but never really did prosecute that
24 kind of a fishery. So there were a number of reasons.
25 The subset of people that I talked to that were issuing
26 the permits were small. The number of people I talked to
27 that were late was fairly small.

28
29 ACTING CHAIR GOTTLIEB: John.

30
31 MR. LITTLEFIELD: Thank you, Madame
32 Chair. I believe the discussion in Wrangell was somewhat
33 along that line, that perhaps 32 inches is wrong, maybe
34 it should be 30, maybe there should be none, maybe there
35 should be use of bait. We struggle with what that word
36 meaningful means and its come up before a lot of times
37 and we don't know if we have the right answer.

38
39 I argued as hard as I could for no
40 restrictions on this particular stream and I can't
41 remember, there was 300 fish or something in the stream
42 survey, and I'm going to try again to let them have it,
43 as I would in Juneau and others. Let's see what the real
44 -- let the land manager react to many fish. That's what
45 I'd like to see. Especially on this stream where there
46 is quite a few fish. If we were to allow the use of bait
47 and they could go catch two fish of any size in that
48 stream and be done for the year, maybe we'd see some
49 better numbers here.

50

1 It may well apply that if we do that in
2 these other areas, we're going to see that. We're going
3 to have some areas where there's probably no fish and I
4 will agree to those. There are some areas where no
5 fishing should be allowed. This particular one I don't
6 believe the restrictions are justified. I think that
7 weighs somewhat on why you see the lack of numbers there.

8
9 ACTING CHAIR GOTTLIEB: Thanks, John.
10 Steve.

11
12 MR. KLEIN: John, we're not on Petersburg
13 Creek yet. This is the Mitkof Island stream. I think
14 you're absolutely right, Petersburg Creek is different,
15 but that's the next proposal that's coming.

16
17 ACTING CHAIR GOTTLIEB: Are we ready for
18 a motion. Steve.

19
20 MR. KLEIN: I'll move to adopt the
21 recommendation of the Southeast Alaska Regional Advisory
22 Council, which is to reject this proposal. Following a
23 second, I'll give a little rationale.

24
25 ACTING CHAIR GOTTLIEB: Is there a
26 second.

27
28 MR. BUNCH: I'll second.

29
30 ACTING CHAIR GOTTLIEB: Thank you,
31 Charlie. Go ahead, Steve.

32
33 MR. KLEIN: The rationale is quite
34 similar to the discussions we've had on the previous two
35 proposals. Of course, streams on or adjacent to the
36 Petersburg road system are Federal public waters and, as
37 such, we have fairly qualified subsistence users who are
38 eligible to fish in those Federal public waters.

39
40 The Federal managers have worked through
41 a special protection for these systems and we've taken a
42 look at the chart that's on Page 426 and we can see what
43 those special restrictions and stipulations are that have
44 been put into place for methods and means, minimum size
45 limits, et cetera, to provide for fisheries conservation.
46 These are annual stipulations that will again be looked
47 at for their effectiveness in providing for conservation
48 and being as least intrusive as possible in subsistence
49 users in the coming year.

50

1 We also know that there is active law
2 enforcement and monitoring of this fishery on Mitkof
3 Island, so I think from a conservation standpoint we're
4 trying to keep a good handle on what's going on there. I
5 don't believe there's any substantial evidence that we
6 need to change the regulations because of fish
7 conservation concerns and adopting this proposal could be
8 detrimental to the satisfaction of subsistence users
9 needs.

10
11 Again, I recommend that we adopt this
12 recommendation.

13
14 ACTING CHAIR GOTTLIEB: Thank you, Steve.
15 Other comments.

16
17 (No comments)

18
19 ACTING CHAIR GOTTLIEB: I guess once
20 again I would rely on the local agencies to be in good,
21 close communication and then do the act of monitoring on
22 any permit holders so that this Board has the best
23 information and you have the best information for any on-
24 site or in-season decisions.

25
26 We have a motion before us. All those in
27 favor please signify by saying aye.

28
29 IN UNISON: Aye.

30
31 ACTING CHAIR GOTTLIEB: All those opposed
32 same sign.

33
34 (No opposing votes)

35
36 ACTING CHAIR GOTTLIEB: Motion carries.
37 We're on No. 33.

38
39 MR. LARSON: Madame Chairman. Again, for
40 the record, my name is Robert Larson. I work in
41 Petersburg. I'd like to direct your attention to the
42 executive summary for FP06-33 that begins on Page 409 of
43 your Board book.

44
45 The Staff analysis for FP06-33 begins on
46 Page 411. Proposal FP06-33 was also submitted by Mr.
47 Mike Stainbrook. This proposal would implement a 36-inch
48 minimum size limit and the use of rod and reel only for
49 steelhead fishing on Petersburg Creek. Petersburg Creek
50 is a popular sportfishing location. It's physically

1 located directly across Wrangell Narrows from the city of
2 Petersburg and readily accessible and has a well-
3 maintained trail and is in the center of the city of
4 Kupreanof.

5
6 The Alaska Department of Fish and Game conducts a series
7 of snorkel surveys for stock assessment and have noted a
8 healthy and stable stock of steelhead, approximately 300
9 or more adult steelhead. Current sportfishing
10 regulations require a 36-inch minimum size limit for
11 steelhead in this area.

12
13 Federal subsistence permits contained
14 three provisions for Petersburg Creek during the 2005
15 season very similar to Mitkof Island, a 32-inch minimum
16 size limit, 24-hour reporting, the use of rod and reel.
17 The one difference between Mitkof Island and Kupreanof
18 Island is that there is a regulation that has been on the
19 books since the implementation of the subsistence program
20 that says use of dipnets will not be allowed on road
21 systems in Petersburg. Therefore, the use of dipnets
22 would be allowed or it was allowed in 2005.

23
24 The seven same subsistence permits for
25 Federally qualified users were in place for Petersburg
26 Creek as there is for the Mitkof Island. No steelhead
27 reported taken from Petersburg Creek, although in this
28 case there was a few steelhead that were reported that
29 were caught but released. That was not the case on
30 Mitkof Island. That concludes my oral report.

31
32 ACTING CHAIR GOTTLIEB: Thank you very
33 much. Any questions.

34
35 (No comments)

36
37 ACTING CHAIR GOTTLIEB: If we could have
38 summary of written comments, please.

39
40 MR. BUNCH: Madame Chair.

41
42 ACTING CHAIR GOTTLIEB: Charlie, go
43 ahead, please.

44
45 MR. BUNCH: Robert, did I understand you
46 correctly that you can use a dipnet in one of those
47 fisheries and not the other?

48
49 MR. LARSON: That's correct. When the
50 program adopted regulations essentially from the State,

1 contained in those regulations is a prohibition to the
2 use of nets on Mitkof Island for subsistence and we've
3 retained that prohibition. That is not the case for
4 Kupreanof Island or other places in that vicinity, so you
5 are allowed to use a wider range of gear and we've
6 allowed uses of dipnets because it was a non-lethal
7 method of taking these fish.

8

9 ACTING CHAIR GOTTLIEB: Okay. Melinda.

10

11 MS. HERNANDEZ: Madame Chair. There was
12 three written public comments for FP06-33. The first is
13 from Chilkoot Indian Association. They write in support
14 of the proposal. This measure should assist in
15 preserving stocks of steelhead in areas that have easy
16 access and thus are prone to being over-fished.

17

18 The next two comments from Jeff Rice and
19 Mr. Joseph Stratman read exactly the way they did for
20 FP06-32. They both write in support of the proposal.

21

22 ACTING CHAIR GOTTLIEB: Thanks very much.
23 We have no public testimony at this point in time. If we
24 could have the Regional Advisory Council recommendation.

25

26 MR. LITTLEFIELD: Thank you, Madame
27 Chair. Our Proposal FP06-33 is on Page 410 and, again,
28 the words are the same. You just substitute Mitkof and
29 Petersburg Creek and whatever. They're all the same, but
30 I'll go ahead and read it for the record anyway.

31

32 We oppose the proposal. This proposal
33 would roll back the subsistence steelhead regulations
34 adopted in the 2005 regulatory year for Petersburg Creek
35 and have Federal subsistence regulations for size and
36 method of harvest match State of Alaska sport fishing
37 regulations. Staff has worked with the Department of
38 Fish and Game to include permit conditions for fishing
39 for Petersburg Creek. These permit conditions address
40 conservation concerns adequately and provide for
41 subsistence opportunity. This fishery is closely
42 monitored, and no management problems exist that would
43 call for regulatory change at this time. Madame Chair.

44

45 ACTING CHAIR GOTTLIEB: Thank you. Any
46 questions for John.

47

48 (No comments)

49

50 ACTING CHAIR GOTTLIEB: Interagency Staff

1 Committee.

2

3 MR. PROBASCO: Thank you, Madame Chair.
4 The Interagency Staff Committee opposes the proposal and
5 by reference our justification is as is found on Page
6 410. Madame Chair.

7

8 ACTING CHAIR GOTTLIEB: Thank you.
9 Department comments, please.

10

11 MS. SEE: Thank you, Madame Chair. In
12 this particular case we note that we do have information
13 about the stock and the reason that the stock we feel is
14 in the shape it's in is that it's been managed very
15 conservatively.

16

17 Our comments do follow very closely with
18 those offered on the previous steelhead proposals with
19 respect to the fact that the size limit at less than the
20 32 inch of the State regulations was set, evidently, to
21 protect about 50 percent of the steelhead stock from
22 potential harvest. It is not clear why this set when 30
23 inch was chosen for Juneau streams. There's no
24 biological justification that's ever been provided to us
25 about this. Again, we feel that the potential for
26 harvest here is a significant concern.

27

28 We have similar comments here, as we've
29 already noted, about the in-season actions needing to be
30 more clearly articulated and the 24-hour reporting
31 requirement, the enforceability of that. As well, we
32 have a similar comment about the lack of reported
33 harvest, whether or not this does reflect effort and an
34 actual harvest or not.

35

36 We still maintain that the State
37 regulations should be used to ensure sustainability of
38 the resource at this time and we support the proposal.
39 Thank you.

40

41 ACTING CHAIR GOTTLIEB: Thank you. Any
42 additional comments or questions. Steve.

43

44 MR. KLEIN: I guess it's not a question
45 directly to the State, but it's sort of a follow up on
46 their comment and maybe this is for Mr. Larson or Mr.
47 Casipit. Maybe you could describe why the limit here,
48 the minimum size, and it's actually for Petersburg Creek,
49 Wrangell and Petersburg road system, is 32-inches and why
50 for the Juneau road system it was a smaller number, 30

1 inches.

2

3 MR. LARSON: Madame Chair. The size
4 limits were applied consistently for process in that in
5 the Juneau road system the data set that we had available
6 to us last spring was for Petersburg Creek, the primary
7 stream within the Juneau road system that has steelhead.
8 Now that has a significant portion, approximately 50
9 percent or so, that is below 30 inches.

10

11 Petersburg Creek, those fish appear to be
12 a little larger. So if we use that same standard for
13 Petersburg Creek and the nearby area of Mitkof Island,
14 then you would end up with a 32-inch fish.

15

16 In Ketchikan, the data set was steelhead
17 from the hatchery program down there in Ward Lake and
18 primarily that was the only system that has steelhead on
19 the Ketchikan road system and that similar percentage
20 was, again, around 30 inches. So the thought process was
21 the same. The result was a little bit different in each
22 case.

23

24 ACTING CHAIR GOTTLIEB: Steve.

25

26 MR. KLEIN: I think, Bob, for Juneau you
27 said Petersburg Creek and I think you meant Peterson
28 Creek, is that correct?

29

30 MR. LARSON: Yeah, that's correct.

31

32 ACTING CHAIR GOTTLIEB: I have a follow-
33 up question from last time as well. Do you have a sense
34 of why there wasn't a harvest there last year?

35

36 MR. LARSON: Madame Chair. No. I think
37 that the reasons are the same as I articulated
38 previously. Those people that wanted to harvest the
39 steelhead with that in mind did not go to Petersburg
40 Creek. I'm specifically referencing some permits we
41 issued in Kake that were qualified for Petersburg Creek
42 but in fact took a steelhead in streams near Kake.

43

44 The other instances where there were
45 permits issued and they did not kill a fish that they
46 meant to release. So they did not keep that fish and
47 report it to us, they released it unharmed. Thank you.

48

49 ACTING CHAIR GOTTLIEB: Thanks. Any
50 other comments or questions. Charlie.

1 MR. BUNCH: Robert, as a follow up, I
2 know one of the State's concern is the 24-hour reporting
3 requirement. I'm assuming that most of these folks are
4 from the Petersburg area, somewhere close to the area.
5 There's seven of them. I'm suspecting that those folks
6 are probably known to most of the law enforcement people.
7 Would that be a correct assumption?
8
9 MR. LARSON: Madame Chair. The 24-hour
10 reporting requirement was a permit condition for 2005.
11 Subsequent discussions we've had with the Department of
12 Fish and Game and within the subsistence fishing program
13 and the RAC, Southeast Regional Advisory Council, has
14 brought into question whether or not that is a reasonable
15 permit condition. In fact, it may not be conducive to
16 accurate reporting. It's very likely that condition will
17 not be in effect in 2006. We didn't need to exercise
18 that last year because there was no fish harvested, but
19 that condition may not be there in 2006 and subsequent
20 years.
21
22 MR. BUNCH: Well, if there were no fish
23 harvested, I would imagine that that would be the event
24 that kicks off the reporting. So if none were caught,
25 there wouldn't be a need to report, would there.
26
27 ACTING CHAIR GOTTLIEB: Comments,
28 questions.
29
30 (No comments)
31
32 ACTING CHAIR GOTTLIEB: Are we ready for
33 a motion. Steve.
34
35 MR. KLEIN: Thank you. I'll move to
36 adopt the recommendation of the Southeast Alaska Regional
37 Advisory Council, which is to reject the proposal.
38 Following a second, I'll give some rationale for that.
39
40 ACTING CHAIR GOTTLIEB: Is there a
41 second.
42
43 MR. BUNCH: I will second that.
44
45 ACTING CHAIR GOTTLIEB: Thank you,
46 Charlie. Go ahead, Steve.
47
48 MR. KLEIN: Once again, the rationale is
49 very similar to the previous three proposals. Petersburg
50 Creek is Federal public waters and the Federal

1 subsistence fishing regulations should apply to those.
2 We shouldn't need to default to the State regulations.
3 The Federal regulations require special protection on the
4 systems. We went through those protections. The
5 stipulations and protections on Page 426 shows those for
6 all of Southeast Alaska.

7
8 These stipulations include methods and
9 means, minimum size limits, harvest reporting and other
10 items to ensure conservation. Petersburg Creek is
11 actually named as a special line on that chart. There
12 are annual stipulations to be taken a look at every year
13 for their effectiveness to see if any changes might be
14 needed based on experience. We also have law enforcement
15 monitoring in Petersburg Creek.

16
17 I see no reason for a need to change the
18 regulation. A change back to the previous regulation,
19 the State regulation, could be detrimental to the
20 satisfaction of subsistence needs. Thank you.

21
22 ACTING CHAIR GOTTLIEB: Thank you, Steve.
23 Is there other Board discussion.

24
25 (No comments)

26
27 ACTING CHAIR GOTTLIEB: I guess,
28 likewise, I don't see substantial evidence of the need to
29 change the Federal regulations because of conservation
30 concerns. I think there's very few fish available for
31 harvest for Federally-qualified subsistence users and,
32 therefore, this proposal could be detrimental to the
33 subsistence users and meeting their needs.

34
35 The motion before us is to reject the
36 proposal consistent with the recommendation of the
37 Southeast Regional Advisory Council. All those in favor
38 signify by saying aye.

39
40 IN UNISON: Aye.

41
42 ACTING CHAIR GOTTLIEB: All those opposed
43 same sign.

44
45 (No opposing votes)

46
47 ACTING CHAIR GOTTLIEB: Motion carries.
48 We have the consent agenda to go over. Gary.

49
50 MR. EDWARDS: Madame Chairman. Before

1 you do that I'd like to have maybe a brief discussion
2 about reconsidering one of the proposals. It's my
3 understanding of the rules that the only way we could
4 reconsider something on the next day would be for us to
5 suspend the rules, so let me share a little bit with you.

6
7 John, that refers to Proposal 24. The
8 way I read that proposal, and I discussed some of this
9 yesterday, was that the purpose of the proposal was to
10 allow subsistence folks to use bait to harvest steelhead
11 and the reason for that was that it's a more efficient
12 method. In that same proposal, also recognizes that
13 there are impacts associated with using the bait,
14 particularly the difficulty of releasing fish once
15 they're caught with bait and the high mortality
16 associated with that. So they put language in there that
17 basically precluded that once you have gotten your daily
18 bag limit or annual limit on steelhead, it would preclude
19 you from continuing to fish with bait.

20
21 The point I made yesterday and I
22 recognize that the bag limits and annual limits on trout,
23 cutthroat and other species that fall under that general
24 category of trout are higher, but it just seems to me
25 that the same conservation concerns as this proposal has
26 with regards to steelhead should apply to trout.

27
28 So my amendment, assuming that we would
29 suspend the rules and were allowed to, I would just add
30 to the language that's in there now, average daily limit
31 of steelhead or trout is harvested, you may no longer
32 fish with bait for any other species. So that's what I
33 would propose.

34
35 I think you could argue if it's good for
36 steelhead, why isn't it good for trout and the same kind
37 of conservation concerns there. Like I said, it's my
38 understanding in order to do that we would need to
39 suspend the rules that would allow the amendment to occur
40 the day after the proposal was handled.

41
42 I don't know, John, if you want to
43 respond at all or you think that's a bad idea.

44
45 ACTING CHAIR GOTTLIEB: John, you had a
46 comment.

47
48 MR. LITTLEFIELD: Yeah. It's a bad idea.
49 Madame Chair, I believe Member Edwards was opposed to
50 this, were you not? If you were opposed to it, you have

1 absolutely no standing to ask for a reconsideration. I
2 think that needs to be made clear.

3
4 MR. EDWARDS: I believe I voted in favor
5 of it.

6
7 MR. LITTLEFIELD: I thought you were
8 opposed to it. I think the record should be clear. Then
9 the procedure would be to ask for reconsideration on the
10 proposal. At that time the proposal would come back
11 before you as if nothing had happened on it. It would be
12 before you as if the motion was made to adopt the RAC
13 motion and then you would debate it all over again.
14 That's the procedure for a motion for reconsideration,
15 not to be adding amendments. You need to first satisfy
16 that it can be brought forward for reconsideration and
17 assuming that happens it's before you as if the original
18 motion was made and I believe it was to support the
19 Regional Council. You'd have to look in the record, but
20 that would be the process. You can't just add words by
21 suspending rules.

22
23 ACTING CHAIR GOTTLIEB: Tom, go ahead.
24 You've been studying this.

25
26 MR. BOYD: Madame Chair. Looking at
27 Robert's Rules, the motion to reconsider must be done on
28 the same day that the original motion was made.
29 Therefore, since that motion was made and carried
30 yesterday, prior to that we would have to suspend the
31 rules, so that would require a motion to suspend the
32 rules. The rule for being suspended was the same day
33 rule. That would require a second and a two-thirds vote
34 of the Board to do that. It's not debatable. Then
35 assuming we have a motion approved to suspend the rules,
36 then we would go to the motion to reconsider and Mr.
37 Littlefield is correct, that motion would have to be made
38 by an individual of the Board that had supported the
39 previous motion. Then beyond the motion to reconsider,
40 this is where I get a little lost, but I think we need
41 another motion to entertain with regard to the specific
42 merits of the proposal. Madame Chair.

43
44 ACTING CHAIR GOTTLIEB: Comments or
45 thoughts from Board members. John.

46
47 MR. LITTLEFIELD: Then you need to make a
48 motion to suspend the rules that interfere with this,
49 which means it can't be reconsidered. If you get two-
50 thirds vote, then go for it, just like I told you. But

1 if you don't get those, let's not go there. I told you it
2 was a bad idea, but that's up to you. I'm not up there,
3 you are.

4
5 MR. EDWARDS: Madame Chair. I'm going to
6 make that motion in just a second and, again, my
7 rationale is that the language was put in there for
8 steelhead because of conservation concerns with regards
9 to steelhead. My position is that that same rationale
10 would apply to trout. So, at this point I'll make a
11 motion that we move to suspend the rules that address the
12 requirement that reconsideration can only be made on the
13 same day that the motion was made.

14
15 ACTING CHAIR GOTTLIEB: There's a motion.
16 Is there a second to suspend the rules.

17
18 MR. OVIATT: I'll second.

19
20 ACTING CHAIR GOTTLIEB: George has
21 seconded it. Just a question. If you're referring to
22 language, can you point us all to the specific page and
23 maybe we can ask Steve whether you see if there's a
24 conservation concern for trout in this particular
25 proposal or this particular area. Yes.

26
27 MR. LITTLEFIELD: I believe the motion
28 before you is to suspend the rules and that's what you
29 should deal with, not the merits of whether to do it or
30 not. If you can't pass that test, don't debate it.
31 That's what I would recommend.

32
33 ACTING CHAIR GOTTLIEB: Okay. Thank you
34 for that course correction there. Mitch, are you still
35 on?

36
37 (No response)

38
39 ACTING CHAIR GOTTLIEB: Okay. There's a
40 motion to suspend the rules to continue discussion on
41 Proposal 24. All those in favor signify by saying aye.

42
43 MR. EDWARDS: Aye.

44
45 MR. OVIATT: Aye.

46
47 ACTING CHAIR GOTTLIEB: All those opposed
48 same sign.

49
50 IN UNISON: Aye.

1 ACTING CHAIR GOTTLIEB: Motion fails.
2 Okay. Do we have a motion to adopt the consent agenda?
3 Those proposals were read into the record at the start of
4 the meeting.
5
6 MR. BUNCH: Madame Chair.
7
8 ACTING CHAIR GOTTLIEB: Please, Charles.
9
10 MR. BUNCH: I move that we accept the
11 concept agenda as read into the minutes previously.
12
13 ACTING CHAIR GOTTLIEB: Is there a
14 second.
15
16 MR. KLEIN: Second.
17
18 ACTING CHAIR GOTTLIEB: Thank you, Steve.
19 Any discussion on the consent agenda besides our normal
20 but not to be taken as routine thanks to everybody who
21 made considerable effort to get these proposals on the
22 consent agenda. John.
23
24 MR. LITTLEFIELD: Thank you, Madame
25 Chair. I probably missed it in the discussion, but I
26 look at the Prince William Sound 17, 18, 19 and 22 as not
27 listed as on the consent agenda, but maybe I wasn't here.
28 Maybe there was consensus given later, but I missed that
29 part. If you could just clarify that for me, whether
30 everybody agreed.
31
32 ACTING CHAIR GOTTLIEB: We'll check our
33 records here. Tom.
34
35 MR. BOYD: Madame Chair. I believe you
36 listed 17, 18 and 19, is that correct, Mr. Littlefield?
37
38 MR. LITTLEFIELD: 17 and 18 had to do
39 with allowable gear and I don't believe we had that
40 discussion, and 19 was seasons, harvest and possession
41 limits in Prince William Sound, and 22 was the fyke nets
42 that we talked about. I remember some discussion on
43 that, but I don't see them as being on the consent agenda
44 in my book.
45
46 MR. BOYD: Madame Chair. The Board
47 addressed Proposals 18, 19 and 22. The Board put on the
48 consent agenda number 17, so that would be considered in
49 the motion for the consent agenda. Madame Chair.
50

1 ACTING CHAIR GOTTLIEB: John, did you
2 have another comment?
3
4 MR. LITTLEFIELD: 17, 18, 19 and 22 are
5 all in the consent agenda?
6
7 ACTING CHAIR GOTTLIEB: No.
8
9 MR. LITTLEFIELD: 17 only. What's the
10 status of 18, 19 and 22?
11
12 MR. BOYD: The status of 18, 19 and 22, I don't
13 remember the exact votes, but the Board has considered
14 them and voted on them and made a decision. Madame
15 Chair.
16
17 MR. LITTLEFIELD: The only one I missed
18 was 19. I guess I missed when that vote took place on
19 19. I forgot to put a check mark on 19.
20
21 ACTING CHAIR GOTTLIEB: It does appear we
22 have it covered, but thank you for double checking with
23 us. Cal.
24
25 MR. CASIPIT: According to my notes, the
26 Board supported the recommendation of the Southcentral
27 Regional Advisory Council on a 5-1 vote to oppose the
28 proposal, so they supported the RAC on that.
29
30 ACTING CHAIR GOTTLIEB: Are there any
31 closing comments people would like to make, our RAC
32 Chairs or State liaison.
33
34 MR. LITTLEFIELD: My comments are there
35 aren't many RAC Chairs left.
36
37 ACTING CHAIR GOTTLIEB: Just a second,
38 John. I jumped ahead too quickly here and we do need to
39 vote on the consent agenda. So all those in favor of
40 adopting the consent agenda please signify by saying aye.
41
42 IN UNISON: Aye.
43
44 ACTING CHAIR GOTTLIEB: All those opposed
45 same sign.
46
47 (No opposing votes)
48
49 ACTING CHAIR GOTTLIEB: The consent
50 agenda is adopted. Nanci, did you have any comments for

1 today?

2

3 MS. LYON: No. Thank you, Madame Chair.
4 It's been a pleasure to sit here and join you. A lot of
5 learning was done and I appreciate all the due diligence
6 also by all of you up there and careful deliberations.
7 Thank you.

8

9 ACTING CHAIR GOTTLIEB: Thanks. I can't
10 say this was a typical meeting, but I don't know if we
11 ever have a typical meeting. John, you have some
12 comments.

13

14 MR. LITTLEFIELD: Mr. Goltz, have you
15 been over here by my desk again?

16

17 (Laughter)

18

19 MR. LITTLEFIELD: I had a list and I
20 don't know where it went and one of them is, it's
21 unfortunate all the RAC Chairs aren't here, but there
22 were several things that I can remember that I had on my
23 list. I really apologize for not having it.

24

25 Number one was the submerged lands issue
26 in the McNaughton Island in the Southeast Regional area.
27 There's been some interest in Southeast that has been
28 expressed to me by people of how they could submit
29 proposals on that. I told them they could submit a
30 proposal, but there's no regulation. So I just want to
31 make sure that the Board continues to -- it's my
32 understanding they're moving along on this. I just want
33 to make sure that it continues to move along and I can
34 tell people that it's moving through the process. It
35 would be real helpful if we knew whether it was this year
36 or next year or five years or 16 years, whether this
37 proposal would come out, so that I could tell them when
38 they could submit a proposal. There's a real significant
39 interest in that proposal.

40

41 One of the other things I had on the list
42 was the amounts necessary for subsistence proposal.
43 That's before the Board of Fish. I do not know if the
44 Federal Board took a position on that. Maybe Mr.
45 Probasco could help me. I should have asked him earlier
46 when he was talking about it. But there's a proposal
47 about amounts necessary for subsistence. Our Council
48 took a stand against that and will do so at the Board of
49 Fish and what I'd like to see from the Federal Board is
50 some comment on this. We've always looked at our charter

1 that requires us to look at needs, but nowhere in there
2 does it say anything about the amounts necessary for
3 subsistence.

4
5 So, if we look down the road 10 years or
6 100 years when the State takes back the management of
7 this, it should be clear that the amounts necessary for
8 subsistence that the State has in their system do not
9 meet the requirements of ANILCA because they're two
10 different things. They're simply number of permits times
11 the number of users or potential users, make some simple
12 divisions. So I don't know if you've taken a position on
13 that. Maybe Mr. Probasco could help me on that one.

14
15 MR. PROBASCO: Madame Chair, Mr.
16 Littlefield. Again, on memory and checking with Cal, we
17 believe our comments, as you know, we're in the process
18 of developing ANS and subsistence use amount protocol
19 with the State that hasn't been completed yet. Our
20 recommendation on that proposal is to wait until that was
21 completed. This winter meeting the Councils will be
22 looking at the protocol, the draft protocol during the
23 winter meeting.

24
25 MR. LITTLEFIELD: Okay. So the
26 recommendation of the Board will be that they'd hold off
27 on this. I believe that's what we're asking. Just hold
28 off, these things go through a process and we actually
29 look at those. I'm trying to remember what else I had on
30 my notes.

31
32 Oh, serving for free. Let's talk about
33 that. When I checked into the hotel here and the guy
34 says you got a credit card and I said why are you asking
35 me that and he said because you can't sign in without a
36 credit card. I said I have a credit card, but isn't this
37 charged to the Fish and Wildlife Service, and he said,
38 yes, it is. I said what are you asking me for a credit
39 card for then. He said you either give him 50 bucks or
40 you give him a credit card, so I gave him a credit card.

41
42
43 When I went to Wrangell, we appeared 24
44 hours plus before the meeting and any opportunity to get
45 money. In other words, the only way to get into some of
46 these communities. I suspect in other communities it's
47 probably even worse. For me, I had a credit card in my
48 pocket, but at least one Council member had no money for
49 24 hours. I made it the very first order of action at
50 noon was to get that money distributed to those Council

1 members so they could go buy a meal. I really think the
2 Council members don't need to be put to that.
3
4 I think there has to be some method where
5 you can travel on an unrestricted ticket so you can make
6 changes. They charged me \$195 in Wrangell to change my
7 ticket. I need to be able to have some money when I get
8 to town so that I'm not waiting 24 hours until I get a
9 per diem check. There needs to be some means that no one
10 is charged any money to have a credit card because I
11 suppose most of the people that showed up here, I don't
12 know if you were asked, but that's unnecessary.
13
14 We do serve for free. We're volunteers.
15 So we should be given some latitude on these Federal
16 requirements that apply to other employees so that there
17 is no unnecessary restrictions on people for serving on
18 the Board because I think it's a burden on them. So if
19 you could look into those, I would really appreciate
20 that.
21
22 I'm trying to think of any other things I
23 had. Yeah, I have to look for my paperwork because
24 that's all I have right now. Madame Chair.
25
26 ACTING CHAIR GOTTLIEB: I'm sure there
27 will be an opportunity for you to provide your input to
28 us next time or in the interim. Charlie.
29
30 MR. BUNCH: I think Keith has his notes.
31
32 (Laughter)
33
34 MR. LITTLEFIELD: Madame Chair, there was
35 28 pages if you're looking for it.
36
37 (Laughter)
38
39 ACTING CHAIR GOTTLIEB: That's the usual,
40 right? Kelly, Marianne.
41
42 MR. HEPLER: Madame Chair. Mitch isn't
43 still on the phone, is he?
44
45 ACTING CHAIR GOTTLIEB: I don't think so.
46 Mitch, are you on?
47
48 (No response)
49
50 MR. HEPLER: I just wanted to extend my

1 appreciation not only to the Staff but also to the
2 Federal Board making me feel welcome. I was a little
3 apprehensive when Wayne Reglin called me on my Christmas
4 vacation and said you're it. It's been a while since
5 I've been in this process. I mean Cal and I cut our
6 teeth together many, many years ago. You look younger,
7 by the way, Cal. I don't, but you do.

8
9 I know how much time it takes to put
10 these meetings together. I put a lot of them together
11 myself, so the Staff on both sides I do appreciate that
12 and certainly my Staff. I'm saying my Staff like I'm the
13 Commissioner. Staff, thank you. I know the support
14 staff that are here. You have a lot of support going on
15 in this meeting and I appreciate that.

16
17 In particular, I've enjoyed the last few
18 days, some comments that Keith made, and they're
19 intriguing to me. Also, it's always intriguing to see a
20 lawyer kind of step out of the fairly regimented
21 discussion about the law, but I think after all these
22 years he deserves some of that.

23
24 I haven't had a chance to listen to John
25 before, but I came to the conclusion that if I was you,
26 Madame Chair, I'd split up those two Council members
27 because they're both way too bright and way too
28 articulate to be sitting together. It's definitely meant
29 as a compliment because you both challenge, you're both
30 very logical and practical how you approach things and
31 you make people think. There's many times we'll probably
32 disagree on some of the issues, but you do make people
33 think and that's good and that's good for me. So I
34 wanted to thank you.

35
36 MR. LITTLEFIELD: (In Tlingit).

37
38 ACTING CHAIR GOTTLIEB: Thank you.
39 Likewise. Yeah, we can't take for granted the amount of
40 work and effort that's gone into producing these books,
41 to having this room here, to having this set up. I
42 think, as Mitch would say, we may not always agree on
43 everything, but it's really important that we walk away
44 as colleagues, as professionals and continue to work
45 towards as much consensus and to meeting the mandates of
46 both of our programs that we can, so we thank you all for
47 your participation.

48 After having filled in very unexpectedly with a
49 lot shorter notice for him, I have a great deal of
50 respect and admiration for what it does take to run these

1 meetings. They're very complicated. But, with that, he
2 still kind of has the last laugh because the gavel has
3 been taken away from me, but I think we will still
4 respect that we can adjourn after John has his message.

5
6 MR. LITTLEFIELD: Madame Chair. I didn't
7 find my paperwork, but I did happen to notice my magic
8 marker. That was one thing I had on my list. Here's a
9 piece of paper with a yellow line drawn through it. I
10 want each of you, and I'm going to send seven of these
11 around, and I want you to sign your name on that yellow
12 line. This is a blank sheet of paper and you just sign
13 your name on there and then I'll take it back.

14
15 I really take offense at that happening
16 to me. It happened at Wrangell, it happened again at the
17 last meeting. They gave me a paper and said sign here.
18 A blank sheet of paper with yellow on it, which doesn't
19 show up on a copier and says sign here. I challenge any
20 of our legals up there or anybody else to sign a paper
21 like that. The thing was so I could get my per diem
22 check. I think that's uncalled for. I don't know if
23 you're doing this in other regions, having people sign
24 their names on blank sheets of paper. To me, it's
25 offensive and I would like to see that stopped.

26
27 Now, having said that, let's get to some
28 good stuff. What I said to Kelly (in Tlingit) means
29 thank you for your words, and I do thank you for your
30 words. In our culture, if I was in a cultural situation,
31 not a bureaucratic situation like this, many times I
32 would use the phrase, let's see if I can get it right
33 here (in Tlingit). That means forgive me. If I say
34 something that offends you, it's not my purpose.
35 Sometimes things have to be said and you have to say
36 things that may be hurtful to somebody or may be
37 perceived by somebody as hurtful. They're not meant to
38 be. We all have a job to do. I have a job to do, to
39 represent the RAC. I do appreciate those comments.

40
41 The State, we've argued ever since I've
42 been on this and I expect it to continue, but (in
43 Tlingit), which means forgive me for saying those words
44 that I have because there's no harm intended there. It's
45 because I have a job to do and I expect that out of you.
46 You have a job to do and we'll carry on. The tension
47 that he talked about hopefully goes away and you still
48 remain friends at the end of the day.

49
50 (In Tlingit) Thanks, all of you. I

1 tried to teach you this one time. Do you remember?
2 Anybody remember? (In Tlingit) That's all I have in the
3 bowl. That means that's it, the end. Thank you.
4
5 ACTING CHAIR GOTTLIEB: Thank you, John.
6 While it's true we all feel we have a job to do, I think
7 particularly with these kinds of issues there's also a
8 passion behind it and that's why feelings run deep,
9 statements run strong, but we've had a very productive
10 meeting and thank you all for that. The meeting is
11 adjourned, gavel or no gavel.
12
13 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 495 through 607
contain a full, true and correct Transcript of the
FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME IV taken
electronically by Nathan Hile on the 13th day of January
2006, beginning at the hour of 8:00 o'clock a.m. at the
Sheraton Hotel in Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 23rd day of
January 2006.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 03/12/08



Joe Kolasinski
<jpk@gci.net>

08/21/2006 01:04 PM

To: Jerry_Berg@fws.gov
cc: Larry_Buklis@fws.gov, Theo_Matuskowitz@fws.gov,
Tom_Kron@fws.gov
Subject: RE: FSB January Transcript

Attached is the corrected version of 1/13/06 transcript.

I think this fulfills everyone's needs. Let me know if you'd prefer something different. SEE FRONT PAGE OF TRANSCRIPT

Thanks -- Joe

Theo, let me know if you want me to print the front page and page 510 and forward to you.

-----Original Message-----

From: Jerry_Berg@fws.gov [mailto:Jerry_Berg@fws.gov]

Sent: Monday, August 21, 2006 9:38 AM

To: Joe Kolasinski

Cc: Larry_Buklis@fws.gov; Theo_Matuskowitz@fws.gov; Tom_Kron@fws.gov

Subject: RE: FSB January Transcript

Hi Joe,

Thank you for checking on this, especially since you guys had it right all along. I did talk with Gary Edwards and he did intend to say proponent instead of opponent. So we would like to get that change made at the request of USFWS. I am not sure of the process to make that happen but will cc folks in OSM. If I need to do anything more to make the change please let me know and I will get it done.

Thanks,

Jerry

Jerry Berg
Subsistence Fisheries Coordinator
U.S. Fish and Wildlife Service, Mailstop 361
1011 East Tudor Road
Anchorage, AK 99503
907-786-3519
FAX 907-786-3350
Jerry_Berg@fws.gov

Joe Kolasinski
<jpk@gci.net>

08/18/2006 01:36
PM

jerry_berg@fws.gov,
Larry_Buklis@fws.gov

To

cc

Subject

RE: FSB January Transcript

Gentlemen:

We checked the tape and Gary indeed says "OPPONENT".

Now we can make a correction with a [sic] after opponent, however there would have to be a caveat put in that the sic was done at the request of Fish and Wildlife Service.

Let me know what you would like us to do.

Have a great weekend.

Thanks -- Joe

-----Original Message-----

From: Jerry_Berg@fws.gov [mailto:Jerry_Berg@fws.gov]
Sent: Wednesday, August 16, 2006 3:48 PM
To: jpk@gci.net
Subject: Fw: FSB January Transcript

Hi Joe,

I understand Theo already talked to you about this significant and potentially sensitive error in the FSB transcript from Jan. 13. The details are mentioned below in Larry's message.

I am sure that Gary Edwards said proponent and not opponent and that it was most likely a simple typo from it sounding similar. Could you please double check that portion of the tape for us and then we will need to do whatever to make the correction in the official transcript.

Thanks and hope all is going well.

Jerry

Jerry Berg
Subsistence Fisheries Coordinator
U.S. Fish and Wildlife Service, Mailstop 361
1011 East Tudor Road
Anchorage, AK 99503
907-786-3519
FAX 907-786-3350
Jerry_Berg@fws.gov

----- Forwarded by Jerry Berg/R7/FWS/DOI on 08/16/2006 01:40 PM -----

Larry
Buklis/R7/FWS/DOI

08/15/2006 02:35
PM

Jerry Berg/R7/FWS/DOI@FWS

Pete Probasco/R7/FWS/DOI@FWS, Tom
Kron/R7/FWS/DOI@FWS, Helen

To

cc

Armstrong/R7/FWS/DOI@FWS, Theo
Matuskowitz/R7/FWS/DOI@FWS
Subject
FSB January Transcript

Jerry,

While researching a point raised in a draft RFR threshold analysis this morning, I referred to the 13 January 2006 FSB meeting transcript. I was able to resolve my question from the transcript, but in doing so I came upon what I believe is a transcription error on a key point made by Gary Edwards. The following is found on page 510:

33 I'm probably the strongest opponent also
34 of looking at the value of getting this policy done that
35 the Secretary has requested us to do. Of all the things
36 we deal with on this Board, I wrestle with C&T personally
37 more than anything else because I think it, at times, is
38 very elusive and I'm not going to give Keith my, that
39 it's like grabbing a hold of smoke speech, but it is, so
40 I think those two things from my standpoint, I think,
41 will be helpful in helping me make an informed decision.

From the context, and knowing Gary's point of view on the subject, he must have said, or meant to say, "proponent" not "opponent" of getting the policy done as the Secretary has requested. Both the C&T process in general, and the Kenai Peninsula fish determinations in particular, are under intense scrutiny. This is a subject area where a correct record is especially important. Also, the current record suggests that Gary was asserting his opposition to a Secretarial request, which would reflect negatively on him but which was not the case.

I suggest that if FWS is concerned about the accuracy of this record, you request an opportunity to listen to the audio tape. If Gary said "proponent," then the typed record should be corrected, and the corrected version placed on the OSM website in place of the current version. If the audio tape indicates that Gary did indeed say "opponent," then I recommend that the notation "(sic)" be added to the typed record, and that version be posted.

Larry Buklis, Subsistence Policy Coordinator
Office of Subsistence Management, USFWS
3601 C Street, Suite 1030
Anchorage, AK 99503
907-786-3822 (Voice) / 786-3333 (Fax)
larry_buklis@fws.gov



011306FSB.day4.doc

1 FEDERAL SUBSISTENCE BOARD
2
3 PUBLIC REGULATORY MEETING
4
5 VOLUME IV
6
7 SHERATON HOTEL
8 HOWARD ROCK BALLROOM
9 ANCHORAGE, ALASKA
10
11 JANUARY 13, 2006
12 8:00 o'clock a.m.
13
14 MEMBERS PRESENT:
15
16 MITCH DEMIENTIEFF, CHAIR
17 JUDY GOTTLIEB, Acting Chair, National Park Service
18 CHARLIE BUNCH, Bureau of Indian Affairs
19 GEORGE OVIATT, Bureau of Land Management
20 DENNY BSCHOR, U.S. Forest Service
21 GARY EDWARDS, U.S. Fish and Wildlife Service
22
23 KELLY HEPLER, State of Alaska Representative
24
25 KEITH GOLTZ, Solicitor's Office
26
27
28
29
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31
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33
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35
36 **NOTE: 8/21/06 - CORRECTED VERSION. At the request of USFWS we**
37 **relistened to Page 510, Line 33. The transcript was**
38 **correctly typed, and we were asked to [sic] the word**
39 **opponent, Mr. Edwards meant to say proponent.**
40
41 **Note added by Joseph P. Kolasinski, Partner**
42
43
44 Recorded and transcribed by:
45
46 Computer Matrix Court Reporters, LLC
47 3522 West 27th Avenue
48 Anchorage, AK 99517
49 907-243-0668
50 jpk@gci.net

1 P R O C E E D I N G S
2
3 (Anchorage, Alaska - 1/13/2006)
4
5 (On record)
6
7 ACTING CHAIR GOTTLIEB: Good morning
8 everybody.
9
10 MR. LITTLEFIELD: Good morning.
11
12 ACTING CHAIR GOTTLIEB: Well, we're on
13 Day 4 of our three day meeting, so I want to thank all of
14 you, all of you, especially people who aren't employed by
15 the State and Federal government for volunteering and
16 donating this extra day for this meeting. We're still on
17 some very important issues. And the ones we've tackled
18 so far have indeed taken time but that's been very
19 important to do so.
20
21 I wanted to mention to you something Andy
22 Bassich who was representing the Eastern Interior RAC
23 said to me after the end of the meeting yesterday, and
24 that is that he'd had several conversations with Yukon-
25 Kuskokwim Delta people because they had all come to this
26 meeting because we'd created a forum and they'd been very
27 productive discussions. In fact, he thought he was very
28 positive they might be able to have some suggestions or
29 some sort of proposal to bring to the YRDFA meeting early
30 next month.
31
32 So I think those kinds of positive
33 results, bringing together people and having a dialogue
34 make it worthwhile to spend this extra time.
35
36 Good morning, Mitch, we know you're on
37 the phone.
38
39 CHAIRMAN DEMIENTIEFF: Yes, ma'am, I am.
40 And I just want to express my appreciation for getting
41 those tapes over here, it made for a long night's work
42 but so be it, in trying to get caught up. I want to
43 thank Staff for the extra effort to help to get me
44 prepared for this.
45
46 ACTING CHAIR GOTTLIEB: Well, that's
47 great and we know the court reporter and company did a
48 great job in helping us out there. So I'm glad you had
49 an opportunity to hear all the tapes.
50

1 To review the record then on Proposal 9,
2 we did hear Staff analysis. We heard summary of written
3 comments. We had public testimony. We've heard the
4 Regional Council recommendation. Interagency Staff
5 Committee recommendation. And Department of Fish and
6 Game comments. We started Board discussion.

7
8 And Mitch, just so you're aware, several
9 of the Regional Advisory Council Chairs did have to
10 leave, but this morning so far we have Nanci from Bristol
11 Bay, Ralph and John. I'll let you know if anyone else
12 comes in. And we have Steve Kessler representing Denny
13 Bschor for Forest Service. Denny had to be back in
14 Juneau.

15
16 Okay, with that I'll move to Board
17 discussion.

18
19 MR. EDWARDS: Madame Chairman. Maybe as
20 a mechanism to get our discussion going and our
21 deliberation started I'll start and put a motion on the
22 table and that will provide maybe the opportunity for us
23 to further discuss it.

24
25 Before I start, I know we spent quite a
26 few days here with a lot of lengthy discussion and all
27 but with regards to this proposal, from my standpoint,
28 and I really appreciate the folks who came long distance
29 to bring their concerns in front of us. I found it both
30 interesting from a historical perspective, and to some
31 extent from a philosophical perspective, and so I really
32 appreciate that. And I think that, personally, the time
33 was well spent. I'm not sure I want to go into next week
34 but I do appreciate the time that we spent on that.

35
36 With regards to Proposal 9, I think I
37 personally spent a lot of time trying to get my hands as
38 well as my head around this proposal. I attended the
39 Southcentral RAC meeting that was held in Kenai, and I
40 listened to all the discussion and the testimony. I even
41 spent some time reviewing some of the transcripts. I've
42 gone through Dr. Fall's report and the Staff analysis
43 numerous times. I've listened, now, I think it's three
44 times to the folks from Ninilchik provide their
45 presentation on the findings from the two BIA studies, so
46 I feel, to use a phrase that our Chairman often uses, is
47 that I've done due diligence on this proposal. So Mitch
48 I just wanted you to know that that I have done due
49 diligence from my standpoint.

50

1 Because the Board received the assignment
2 from the Secretary to review our current practices
3 regarding C&T determinations and requested us to develop
4 a policy to clarify how the decisions were made, I
5 initially felt and as the State and some folks testified
6 the other day, that the appropriate action for this Board
7 would be to defer the C&T determination until the policy
8 is completed. However, I do recognize that we've already
9 delayed this for four years in making this determination
10 as a result have also delayed acting on any proposals
11 addressing methods and means. So despite I think what my
12 personal views are, I think the Board really needs to
13 move forward with this proposal.
14

15 One of my concerns with the proposal that
16 I have wrestled with kind of throughout all the things
17 that I've done in trying to understand it centers
18 around, and certainly that I still have and I find with
19 regards to subsistence use of fish by the rural
20 communities within the various drainages on the Kenai
21 Peninsula. As I reviewed the Council's recommendation,
22 the Staff material, the study that we commissioned that
23 was produced by the Subsistence Division of the Alaska
24 Department of Fish and Game and the information provided
25 by the surveys conducted by the Ninilchik Tribal Council
26 and the information provided by the Cooper Landing Fish
27 and Game Advisory Committee and the testimony that we
28 heard over the last couple of days, it's still unclear to
29 me that there is substantial evidence to confirm a
30 definitive pattern of use of fish in the Kenai River
31 drainage by the residents of Ninilchik or in the Kasilof
32 River drainage by the residents of Cooper Landing and
33 Hope.
34

35 With regards to the Kenai River, I agree
36 that there is evidence of the use of fish by some
37 Ninilchik residents in this drainage, however, the data
38 from a statistical standpoint, at least, from my
39 perspective indicates relative minor use by just a few
40 households and reveals very little about the frequency
41 and levels of such use by these residents.
42

43 Based on that data and the analysis
44 presented, I cannot conclude at this time that this
45 constitutes a long-term consistent pattern of use by
46 residents of Ninilchik. Moreover, when I review Chapter
47 2 in the report that we commissioned which addresses a
48 historical use of this area, there's no specific mention
49 of the uses of the Kenai River drainage by the residents
50 of Ninilchik. I have no doubt that the Kenai River was

1 used historically for subsistence purpose. I think
2 there's good evidence that Native and other Alaskans
3 living in this region travel to the upper reaches of the
4 Kenai River and fished in areas that are now within the
5 Kenai National Wildlife Refuge and Chugach National
6 Forest. However, specific use by Ninilchik residents of
7 this area is not mentioned. Some have inferred that the
8 descendants of Ninilchik residents probably participated
9 historically in these fisheries. We simply don't have
10 sufficient information, I think, in front of us to
11 support this inference.

12
13 With regards to the residents of Cooper
14 Landing and Hope utilizing the fishery resources of the
15 Kasilof River drainage and the residents of Ninilchik
16 using the Kenai drainage, we heard from the Cooper
17 Landing Fish and Game Advisory Committee, that they don't
18 believe that residents outside of the Kenai River
19 drainage came to the upper Kenai River to do their
20 subsistence fishing when they had better fishing and more
21 plentiful and fresher resources near their communities.
22 Neither do they believe that before the road was built
23 that people of Cooper Landing, went to the Kasilof River
24 drainage for their subsistence fishing.

25
26 Before I can feel comfortable with
27 supporting this proposal, particularly with regards to
28 the controversial aspects of integrating subsistence
29 fishing in this area, the development of more definitive
30 information relative to Ninilchik's use of waters in the
31 Kenai River drainage and the use of Cooper Landing and
32 Hope in the Kasilof River drainage would have to become
33 available.

34
35 In short, I feel that the lack of
36 substantial evidence supporting a C&T finding for
37 Ninilchik in the waters of the Kenai River drainage and
38 waters to the north of this drainage and the lack of
39 substantial evidence supporting C&T for Cooper Landing
40 and Hope in the waters of the Kasilof River drainage
41 compels me to offer an amendment to the Southcentral
42 Regional Advisory Council's recommendation.

43
44 Before I offer my amendment I want to
45 provide some additional context given that my amendment
46 is going to address more than just C&T determination.

47
48 Management of Kenai Peninsula fisheries
49 has long been controversial as we heard through some of
50 the testimony over the last couple days. Allocation

1 disputes between sport and commercial users as well as
2 between factions of commercial users has long been a
3 dominate part of managing these fisheries. Existing
4 commercial fisheries and expanding recreational use of
5 rainbow trout, Dolly varden, chinook, sockeye, coho
6 salmon over the last several decades, particularly in the
7 Kenai River, is the basis for a large portion of the
8 Kenai Peninsula's economy. This sets the stage for
9 extreme controversy once C&T determinations are made and
10 when introducing new allocations for the subsistence use
11 of these resources which we must do at some point. In my
12 mind this cries out for the need to proceed with extreme
13 caution as the Board addresses the integration of
14 subsistence uses of fish in this area.

15
16 I believe this must be done with the full
17 participation of those directly affected by the Board's
18 decision. This is the basis for a portion of my motion
19 that will address establishing a stakeholder subcommittee
20 made up of all affected interests to address how
21 subsistence should be integrated in this area and develop
22 recommendations prior to Board actions regarding methods
23 and means, seasons and bag limits.

24
25 With that for background, Madame
26 Chairman, I'll go ahead and proceed with my motion. This
27 is a rather lengthy motion so if you kind of would bear
28 with me.

29
30 You know, in making this motion I
31 certainly appreciated the time and the effort and the
32 diligence that the Southcentral RAC has placed in it and
33 I certainly want to try to support as much of their
34 motion as I can. So what I'm going to do is move that
35 the Board adopt their recommendation, the Southcentral
36 Regional Advisory Council with the following
37 modifications.

38
39 On the Kenai Peninsula for the
40 communities of Hope and Cooper Landing an
41 interim C&T determination is made for all
42 fish species for waters north of and
43 including the Kenai River drainage within
44 the Kenai National Wildlife Refuge and
45 the Chugach National Forest.

46
47 For the community of Ninilchik an interim
48 C&T determination is made for all fish
49 species for waters within the Kasilof
50 River drainage within the Kenai National

1 Wildlife Refuge.

2
3 For the west side of Cook Inlet, for the
4 residents of Tuxedni Bay area, a positive
5 C&T determination is made for salmon for
6 waters within Lake Clark National Park
7 drainage into and including that portion
8 of Tuxedni Bay within the Park.
9

10 Included within this motion is a request
11 that the Southcentral Regional Advisory
12 Council establish a subcommittee to the
13 Council composed of representatives of
14 the various stakeholders who have
15 interests in Kenai Peninsula fisheries to
16 explore and develop recommendations on
17 how to integrate subsistence harvest and
18 use of fish on the Kenai Peninsula. The
19 Board will defer making decisions on the
20 regulations of subsistence fish harvest
21 in these waters contingent upon the
22 development of a Council recommendation
23 based upon the subcommittee's
24 deliberation.
25

26 In summary this motion modifies the
27 Council's recommendation by deferring that portion of the
28 Council recommendations that would include a customary
29 and traditional use determination for Ninilchik for
30 waters within and north of the Kenai River drainage and
31 defers that portion of the Council recommendation that
32 would include a customary and traditional determination
33 for Hope and Cooper Landing for the Kasilof River
34 drainage.
35

36 In my mind, Madame Chair, this motion
37 accomplishes several things regarding the C&T
38 determination. By establishing interim C&T.
39

40 1. It recognizes that Hope, Cooper
41 Landing and Ninilchik have a
42 long-term consistent pattern on
43 the Kenai River, particularly use
44 within their respective
45 drainages.
46

47 2. It provides the Board the
48 opportunity to gather information
49 that may provide a more
50 definitive picture of historic

1 and current use patterns on
2 Federal lands throughout the
3 various drainages on the
4 Peninsula. Particularly this
5 would allow an opportunity to
6 better integrate the information
7 from the two BIA funded studies
8 that were not fully available
9 when Dr. Fall's study was
10 completed.

11
12 3. From my perspective, having an
13 interim C&T will allow the Board
14 to complete the review of its
15 current practices regarding C&T
16 determinations and then develop a
17 policy that, hopefully, I think,
18 may help guide the Board when
19 further considering the final C&T
20 determination.

21
22 With regard to the stakeholder's process,
23 the stakeholder subcommittee should be made up of Kenai
24 Peninsula residents who are directly involved with Kenai
25 Peninsula fisheries and could be affected by these
26 decisions. Stakeholder participants should include
27 members of the Southcentral RAC, the Ninilchik
28 Traditional Council, members of any of the local Advisory
29 Committees and representatives of recreation and
30 commercial fishery interests. I would also encourage the
31 involvement and support of both State and Federal fishery
32 biologists, social scientists and other professionals to
33 assist in this effort by providing technical and
34 administrative support to the subcommittee and the
35 Council. The Fish and Wildlife will provide such support
36 and I would call on the Forest Service to be equally
37 willing to help support this. A similar effort was
38 recently completed addressing the management of deer on
39 Prince of Wales Island and I would encourage a similar
40 approach for this effort. This would include the
41 involvement of an independent private sector facilitator
42 and the Service is committed and would provide the
43 necessary funding to contract for a facilitator for this
44 effort.

45
46 And, Madame Chair, that's sort of my
47 motion and the context in which I made it in and the
48 background for why I reached what I reached.

49
50 ACTING CHAIR GOTTLIEB: Thank you, Gary.

1 There's a motion on the table, is there a second.
2
3 MR. OVIATT: I'll second.
4
5 ACTING CHAIR GOTTLIEB: Thank you,
6 George. Board discussion on the motion.
7
8 Steve -- I'm sorry, Charlie, go ahead.
9
10 MR. BUNCH: No, after Steve.
11
12 MR. KESSLER: Gary, I just have a
13 question, I guess, and maybe you could describe what and
14 how interim C&T would function. Would that be as a -- we
15 would write that interim C&T into our regulations and it
16 would look in the book and in that regulation as if it
17 was a regular customary and traditional use
18 determination, it's just that your intent would be that
19 we would come back to it later as a -- keep it,
20 essentially on the table, in some way as a Board
21 generated C&T proposal for further decision at a later
22 date, or how would that work?
23
24 Thank you.
25
26 MR. EDWARDS: Well, I guess the way I
27 would envision it, I think what it does initially it
28 recognizes that those rural communities on the Peninsula,
29 you know, have a positive identification and recognition
30 of this longstanding use, subsistence use on the
31 Peninsula, so it does that.
32
33 It then would allow us, in my mind, to --
34 two primary initiatives. I think it would allow us to
35 provide some additional information to help us make a
36 more informed decision about how broad that C&T should
37 be. And secondly it would allow the completion of that
38 policy. So it would be still sitting there to be further
39 visited.
40
41 In my mind, I have no visions that it
42 would be any less than what I have stated. I think what
43 we're looking at is, is there enough information to
44 expand C&T throughout the whole Peninsula or should it be
45 more segmented by drainages as we heard in some of the
46 testimony. Whether it's -- so it's not like we're, in my
47 mind we're not tabling it, it's sitting there and at the
48 completion of that, at some point in time, we would
49 revisit that and see whether the information is
50 sufficient enough and compelling enough to expand it.

1 ACTING CHAIR GOTTLIEB: Charlie, you had
2 a comment, and I see Ralph wants to speak also.

3
4 MR. BUNCH: Well, yes, thank you, Madame
5 Chairman. Like, Gary, I, too read Dr. Fall's
6 interpretation and his history of the use of that and
7 while he seems to feel that the historical descendants of
8 those people that utilized that were the Kenaitze because
9 I have access to the Alaska Native Enrollment, also the
10 tribal enrollment of Ninilchik and Kenaitze, I can tell
11 you that the descendants of the Kenaitze people are
12 thoroughly integrated into Salamatof and Ninilchik and as
13 a matter of fact many Kenaitze tribal members are
14 residents of Ninilchik. So I think that you try to
15 separate the Kenaitze folks and their historical use from
16 Ninilchik's ties to that at least as far as the Native
17 population of the user goes. I think that there's plenty
18 of history that shows that they are still closely
19 connected.

20
21 People from Ninilchik haven't been able
22 to legally subsistence fish using traditional methods for
23 the last 54 years so I think that the study that
24 Ninilchik did back in '99 or '94 showed that there was a
25 great use, traditionally, when it was legal of using the
26 Kenai.

27
28 So I think that the comment that there
29 wasn't very substantial use, back in 54 years ago I think
30 those figures would be quite a large amount, would be a
31 substantial amount of use for those folks that were on
32 the Ninilchik and Kenai Peninsula at that time.

33
34 But I guess my biggest problem with this
35 is that we've listened to a lot of data. I understand
36 that there's controversy involved with a C&T
37 determination on the Kenai, but the fact is, is as Mr.
38 Littlefield stated yesterday we've made C&T
39 determinations on a lot less evidence and I'm concerned
40 that if we don't make a positive C&T determination in
41 this instance, it will just add fuel to the State's
42 argument that we should have something pretty concrete.

43
44 ACTING CHAIR GOTTLIEB: Thank you,
45 Charlie. Sorry, John, Ralph had asked to speak, you'll
46 be next. Ralph, and then you.

47
48 MR. LOHSE: Thank you, Madame Chair. I'd
49 just kind of like to get some explanation on what
50 somebody else brought up on the idea of interim.

1 Personally I prefer that you either voted it up or voted
2 it down, whatever your motion is. Because to me interim
3 or deferring puts the stakeholders, do they wait then in
4 the future for you to decide -- does it preclude them
5 making another proposal and do they wait until you bring
6 it back on the table or does it just sit there until it
7 gets around to your timing or if you vote it down they
8 can put another proposal in.

9
10 And if you feel that there is
11 insufficient evidence to put the whole thing in, vote on
12 what you feel that there is evidence to vote on and they
13 can put another proposal in requesting C&T on the part
14 that you reject. But the idea of having it as an interim
15 that's going to sit there until sometime in the future
16 when, and I don't mean this bad either, but sometime in
17 the future when you decide to work on it or you decide
18 that you've gotten enough information, that cuts the
19 stakeholders out from putting another proposal in. I
20 mean if they disagree with your proposal they're going to
21 put another proposal in.

22
23 So I really think that, you know, if
24 you're going to vote on C&T, don't vote on interim C&T,
25 vote on C&T and either vote it up or vote it down, it's
26 on the table, and that way your stakeholders know where
27 they have to proceed from there.

28
29 Thank you.

30
31 ACTING CHAIR GOTTLIEB: Thank you, Ralph.
32 John.

33
34 MR. LITTLEFIELD: Thank you, Madame
35 Chair. My question is on process. What we've done here
36 by this motion is we bypassed the recommendation of the
37 Regional Advisory Council. I understand what it says
38 here, consistent with the recommendation of that and then
39 you threw in 45 different amendments. That is not the
40 way to show deference to the RAC. The way that this
41 should proceed forward, by your own previous decision, is
42 you should show deference to the RAC. Bring the RAC
43 motion forward, move to amend or substitute the language
44 of this and let it stand on its own. Because if this
45 motion were to fail, this is over with. There will not
46 be a second attempt to go back and bring up the RAC's
47 because it's been voted on and it's done. And so I think
48 if you can't substitute this language then you have the
49 chance to go back to the RAC motion and make an amendment
50 or further amendments or whatever portion you may wish.

1 But I think that this does not show
2 deference to the RAC. That's clearly required in ANILCA.
3 It's in your own manuals to show deference to the RAC and
4 I think that you should withdraw this motion, and bring
5 the motion of the RAC forward and either move to amend it
6 with substitute language or something like this so that
7 you don't lock yourself into a one-shot failure here.

8
9 Madame Chair.

10
11 ACTING CHAIR GOTTLIEB: Thank you.
12 Keith, comments, please.

13
14 MR. GOLTZ: It's my custom and tradition
15 to grasp every opportunity I have to be silent and you'll
16 notice that during the course of these meetings I tend to
17 go around to various members and to Bill when I see
18 something that needs correction rather than make it
19 public. But in this case I think I'm going to be more
20 fully involved and when I do speak I like to be both
21 candid and complete.

22
23 With that introduction I'll speak to what
24 John's question really is and I think also to that which
25 is behind that of the BIA's last comment.

26
27 As to the deference on the RAC, it's my
28 opinion that deference is not due on this. I come to
29 that conclusion for two reasons. First, the plain
30 meaning of the word, take, generally does not include
31 that pool of people who are eligible. Also if you put
32 this into the arena of deference then you have to look at
33 the .805(c) criteria and it's not a very close fit.
34 Especially the portion of that which has to do with
35 conservation. How does conservation really relate to the
36 pool of users.

37
38 So that's my opinion.

39
40 This came up though in an executive
41 session with the Board and there is another opinion, and
42 that is that if you take a look at some of the aspects of
43 the Legislative history you might say that we ought to
44 give deference to the RACs. The way the Board left that
45 is that we would listen to the RACs respectfully as we
46 always do and that we would not try to resolve this
47 particular minor question. The risk of doing that, of
48 course, is it gives opportunity for attack and we've had,
49 at least one of those attacks before and it's still going
50 on and the nature of that attack is that we are too

1 deferential to the RACs and not fulfilling our
2 responsibilities to the whole of Alaska.

3

4 The way I would approach that at this
5 meeting is to say let's proceed as if deference was
6 required and analyze it in that context.

7

8 Technically I think that .805(c) is being
9 honored by this motion. The RAC recommendation is not
10 being rejected in any part. It's being accepted in part
11 and deferred in part, and that's the point of the
12 interim. That this is what Mitch likes to call a work in
13 progress.

14

15 That's the technical part of it.

16

17 There's more to it. The purpose of
18 .805(c) is to assure that Federal decisions are not
19 remote and abstract and removed from the process of the
20 land. The purpose of .805(c) is to promote the
21 devolution of decision-making to those most affected by
22 the decisions made. And it seems to me a stakeholder's
23 group does that.

24

25 The other purpose of .805(c) is to make
26 management responsive. We want managers who listen
27 before they speak and it seems to me that a stakeholder's
28 group does that also. So I think the purposes of .805(c)
29 are honored by a stakeholder's group, particularly in
30 this case.

31

32 As to the evidence and the quantum of
33 evidence. Evidence -- well, let me back up a minute. We
34 have heard implications, particularly in some of the
35 State comments that this program does not have standards
36 and is, therefore, not quite as legal as that of the
37 State and I have to bite my tongue because it's
38 representative of a confusion between bureaucracy and
39 what is legal. Having a bunch of data points, check
40 points and checklists is not the law. They can be
41 helpful. They can sometimes be useful in the formation
42 of a record, but we're here to do a job. And when we
43 start hovering over these eight points or eight factors
44 and whether one factor is more important than another,
45 we're likely to be distracted and to lose sight of what
46 this program is really all about, which is to address
47 real problems that address real people in the state of
48 Alaska.

49

50 As to evidence, it's always judged in

1 context, it's the only thing that makes any sense. And
2 in an easy case, in a remote area of the state you
3 probably do need very little evidence and we have
4 certainly acted on evidence that is less in quantity than
5 we have in front of us here today. In this case,
6 however, the context is complicated. The landscape is
7 contentious. We have two groups of eligible users who
8 disagree. And we also have at least three sets of data
9 that are unanalyzed. And in my experience with the Board
10 that's the first time we've ever faced that situation
11 where we actually have stuff but we haven't put it
12 together yet.

13
14 So on that basis, I would say that the
15 deferral can certainly be defended and is well within the
16 parameters of the law.

17
18 ACTING CHAIR GOTTLIEB: John.

19
20 MR. LITTLEFIELD: I'll respectfully
21 disagree on the take and leave it at that, but, you know,
22 the application of that word and whether deference is
23 due. Nevertheless, we have a motion before you that has
24 so many different changes and amendments to it that some
25 of the members may or may not like.

26
27 The word, interim, has already brought up
28 one. If we were to vote this up or down, and I have no
29 idea how you're going to vote and I'm not talking about
30 that at all. But what would happen, say, if somebody
31 agreed with one point, another member disagreed with
32 another, some member disagreed with this, you'll end up,
33 you're going to have the vote fail and you have no fall
34 back position. Because once you vote on this and if it
35 doesn't go forward it's done.

36
37 So the proper way to bring something
38 forward is to make a main motion to adopt something and
39 then to adopt amendments and do whatever's necessary and
40 get the feeling of the Board. I'm not speaking to any
41 part of this. I'm not saying anything's wrong with
42 interim. I'm not saying anything's wrong with this task
43 force. I've always supported task forces. I'm not
44 saying -- it's the process of this. You've made a motion
45 that encompasses -- it's gotten far away from what's in
46 the paperwork, and I'm not saying any of those are bad
47 and whether or not to support it. I'm just saying if you
48 start with a main motion, make your amendments to that,
49 it will follow a process, you'll come back have a final
50 vote in the end and not throw the baby out with the

1 washwater because you're going to have one vote on this
2 and it's done with.

3

4 Madame Chair.

5

6 ACTING CHAIR GOTTLIEB: Keith.

7

8 MR. GOLTZ: One of the joys of this job
9 is that I'm asked to speak extemporaneously and then we
10 get sued and I'm always wrong and in this -- as I said
11 here, I'm dealing with two pieces of litigation, one,
12 from a conservation groups who takes my words out of
13 context and says I lean too strongly towards Native
14 interests and we recently got one from a Native group
15 which does just the opposite and says I lean too strongly
16 towards the other interests.

17

18 So I'm always going to be wrong and in
19 this case I was wrong, I'm told, not to address the
20 question of interim. And here, again, I think we're
21 getting distracted by our language. I think the intent
22 of Mr. Edwards is simply to use that word as a signal to
23 everybody who is concerned that we're not done yet, we're
24 just starting, and that's all it's meant to do. And to
25 get hung up on that word, I think is a serious mistake.

26

27 We've got real problems here. The
28 question before us is how we're going to address them.
29 We've got real interests here that are going to be
30 allocated. I think that at some point in this proceeding
31 the Board should assure the proponents that we take
32 seriously their concerns and that there is going to be a
33 meaningful use preference on the Kenai Peninsula. I
34 think we heard that same pledge from the Commissioner.
35 We're probably not smart enough right now to know how
36 that's going to be done. That's why we're bringing
37 together a stakeholder's group.

38

39 And as long as I'm rambling on let me
40 just add one little point. One of the defects, I think,
41 in our program, is that we do not have a Kenai Council,
42 and this is said with full respect for Ralph and for his
43 Council, it's just the way it's structured. Ralph has
44 two members who are on the Kenai Peninsula. They deal
45 with a wide variety of interests, of which the Kenai
46 Peninsula is only one. The stakeholder's group,
47 hopefully, will find a way, peacefully, to integrate an
48 important subsistence use in with the ongoing uses on the
49 community.

50

1 I've seen this work personally for about
2 35 years. Where we go into areas that seem absolutely
3 impossible to reach any agreement and if I went around
4 this room, especially if I interviewed the bureaucrats I
5 would find reason after reason why this thing isn't going
6 to work. I don't think it's going to be simple. I don't
7 think it's going to be easy but I do think it's going to
8 work.

9
10 ACTING CHAIR GOTTLIEB: Thank you, Keith.
11 George had a comment.

12
13 MR. OVIATT: Madame Chair. I wanted to
14 extend my deep appreciation for the individuals that came
15 here to testify and have really hung in on a three day
16 meeting that has extended into a fourth day.

17
18 I have a few concerns maybe we could
19 discuss. I, too, have struggled with the full extent of
20 what was proposed. And I think that we are on the verge,
21 can almost touch some answers by letting the people who
22 have done these studies do some further analysis and
23 bring forth that information to us to help us in this
24 determination. And to stop short of having that
25 information, I believe, would not serve us very well.

26
27 And the interim part doesn't bother me
28 too bad, too much, because I believe what we are saying
29 is that there are rights out there and we're establishing
30 those and this is a work in progress. And I'm really
31 encouraged by the stakeholder's group, the idea of having
32 stakeholders brought together to help us with some
33 answers or at least give the Southcentral RAC some advice
34 as to which to advise us.

35
36 But I've got just a slight concern with
37 the process as we move forward and that is are we
38 expecting a stakeholder's group to help us with our C&T
39 final determination or are we looking at bringing these
40 studies together and finalizing the policy? In other
41 words, when is it that we would decide that we would no
42 longer make this interim and I'm not talking about time,
43 I'm talking about events, what events? Could we have
44 discussion about that?

45
46 ACTING CHAIR GOTTLIEB: I think that's a
47 good point, George. Gary.

48
49 MR. EDWARDS: George, I guess my vision,
50 to some extent was that they were sort of two different

1 processes. I see, you know, the responsibility of the
2 Board to sort of deal with the C&T. But what I was
3 looking for is to this stakeholder's group wrestling with
4 this issue of how do we integrate these two legitimate
5 issues and particularly recognizing the priority that
6 needs to be given to the subsistence. So I saw that as
7 their primary charge.

8
9 What I thought would help the Board was
10 the completion of this work, you described it as work in
11 progress, I think one thing that was very unfortunate was
12 that these two BIA studies, although they were -- there
13 was some knowledge of them, they sort of entered the
14 picture very late in the process and I don't think that
15 they have really received the sort of the rigor that I
16 think would be helpful. You know, yesterday this Board
17 unanimously voted in the case of Gustavus to delay that
18 one when we had information and were actually told by
19 Staff that we wouldn't be provided even any additional
20 information and these folks were only asking for C&T of
21 waters that were directly in their backyard, which, in my
22 mind was, you know, at a minimum, even intuitively you
23 would assume that people would have been fishing there,
24 so I think that is an example of where we've also
25 acknowledged that if there was some additional
26 information it would be helpful in really forming an
27 opinion and in the case of them, maybe even expanding
28 what their use area would be.

29
30 So I really think that that information
31 would be helpful.

32
33 I'm probably the strongest opponent [sic] also
34 of looking at the value of getting this policy done that
35 the Secretary has requested us to do. Of all the things
36 we deal with on this Board, I wrestle with C&T personally
37 more than anything else because I think it, at times, is
38 very elusive and I'm not going to give Keith my, that
39 it's like grabbing a hold of smoke speech, but it is, so
40 I think those two things from my standpoint, I think,
41 will be helpful in helping me make an informed decision.

42
43 Now, whether as part of the stakeholder's
44 process some of this might also come out or not, I don't
45 know, but certainly if it does, we could utilize that.
46 But to some extent I see them as two different processes.

47
48 I understand Ralph's concern about, you
49 know, how can the stakeholder's group go forward without,
50 you know, having some definitive. I mean I think you can

1 do that with the assumption that there is going to be
2 positive C&T, we don't know at this point exactly how
3 broad that is and who all it involves, but I think you
4 can go with some assumptions and in my mind I think the
5 group can work around that and I don't think it will be
6 all that difficult.

7

8 So that's how I sort of see it.

9

10 CHAIRMAN DEMIENTIEFF: We have a long
11 record of accomplishment when we get stakeholders to the
12 table. And for me, the way I think of it, and the
13 testimony and all the discussions that I have had with
14 regard to this issue, people are willing to continue to
15 work on it. It's not something that just -- an issue
16 that was just invented yesterday, it's something that's
17 been in the mills for awhile. But I am encouraged by the
18 fact that people are willing to continue to work on it.
19 And we've seen it over and over again, that that's how we
20 get a resolve to issues.

21

22 So with that, you know, I speak in favor
23 of your motion Gary. And we've still -- I also sense
24 your commitment for us to continue to work on this until
25 we can work it out. But as far as an interim measure,
26 yes, I can agree with it at this particular point in time
27 because we know that there are C&T utilizations by
28 certain parts so if we get them then we can work on
29 everything else when we get all of our criteria in place.

30

31 I don't see this going on for 16 years, I
32 see us, just like we normally pragmatically do, attack an
33 issue and go after it, which I sense there is a
34 commitment here that all of are going to continue to do
35 that, so I speak in favor of your motion, Gary.

36

37 ACTING CHAIR GOTTLIEB: Thank you, Mr.
38 Chair. I certainly support the idea and the
39 implementation of a stakeholder's task force. I think
40 it's incumbent upon us, very quickly to be very clear on
41 exactly what the charge is, what our desire is for that
42 stakeholder's task -- well, a subcommittee of the RAC, I
43 assume it would be, what this group would work on. I
44 think the charge needs to be developed and made very
45 clear in a short amount of time so that we can, as Mitch
46 says, attack this problem and go forward on it.

47

48 Ralph.

49

50 MR. LOHSE: Yeah, I guess I'm going to

1 have to ask then what the definition of the interim is,
2 especially if there's going to be a task force. Does the
3 interim mean that we're saying that parts of the C&T
4 aren't decided but the part that we vote on today is
5 decided? In other words, the part that you're saying
6 today, Ninilchik in the Kasilof, Cooper Landing and Hope
7 in the Kenai, that part is decided so the stakeholders
8 when they get together to decide how to use the resource
9 can at least start from that assumption that they are not
10 going to change that part but that the interim means that
11 there would be possible further study to see whether that
12 C&T is expanded, not contracted?

13

14 MR. EDWARDS: I think that was well said.

15

16 ACTING CHAIR GOTTLIEB: And do we agree
17 with that?

18

19 MR. EDWARDS: I guess the answer is yes
20 then.

21

22 ACTING CHAIR GOTTLIEB: Okay.

23

24 MR. EDWARDS: In my mind that's what it
25 does, it recognizes that those communities have this
26 positive C&T. I mean I think that's -- in my mind that
27 goes without question.

28

29 What I'm wrestling with is the
30 expansiveness of that C&T, and particularly when we
31 heard, as Keith mentioned, you know, we heard one
32 component of that, basically come in and said we don't
33 have C&T over there and I think it will allow us to
34 wrestle with that, maybe even look at other communities.
35 I know Happy Valley -- is it Happy Valley is another
36 close community, you know, might even provide an
37 opportunity to further look at that. I know I did ask
38 you that question about them yesterday, I think one of
39 the realities was is nobody from Happy Valley showed up
40 and if somebody from Happy Valley had showed up at your
41 RAC meeting, I believe your motion would have probably
42 been different because if I'm not mistaken they were
43 actually included the day before and then that motion, I
44 think got amended on the second day if I'm not mistaken.

45

46 MR. LOHSE: Thank you. So then basically
47 what you're saying then is the part that's voted on has a
48 positive C&T if the motion passes.

49

50 Thank you.

1 ACTING CHAIR GOTTLIEB: I guess my
2 understanding also would be that no doubt there'd be
3 discussions at any meetings that might include
4 information that would be helpful to us in making further
5 determinations but most of the charge to the group would
6 be to look at seasons, bag limits, methods and means.
7
8 George, you had a comment.
9
10 MR. OVIATT: That's my understanding,
11 too, is that we're making a determination and what we're
12 putting on hold is the extent of what that would be.
13
14 I'd like to get back to the process a bit
15 more if I could delve into it. When is it that we would
16 decide we have enough information that we would make a
17 final C&T and how would that be brought to the Board? Do
18 we bring it to ourselves? Do we say, okay, we think it's
19 done, can somebody help me with that?
20
21 ACTING CHAIR GOTTLIEB: Keith, please.
22
23 MR. GOLTZ: Well, procedurally, the way
24 this would have to work is it would go through the
25 Southcentral Council. This would be a subcommittee of
26 the Council. If there is a report from a stakeholder's
27 group it would go back to the Council and the Council
28 would then act on that and make a recommendation to the
29 Board based on that, that document.
30
31 The way it worked in Prince William Sound
32 [sic] was even simpler, we had a situation as you recall
33 where we didn't even think we could get the stakeholders
34 into the same room. Once they got done it was on our
35 consent agenda and we never even saw it again. And
36 that's the hope here.
37
38 MR. BOYD: Prince of Wales.
39
40 MR. GOLTZ: Oh, excuse me, Prince of
41 Wales.
42
43 MR. EDWARDS: I'm not sure that was what
44 George asked, I think what he was asking was in reference
45 to the C&T and I don't know what the process is.
46
47 In my mind and I would hope what our next
48 step would be to do is to work with Dr. Fall and the
49 folks from Ninilchik and get those studies together and
50 let us, and it would probably require a new charge, I

1 don't know if it would require a new contract or what,
2 Tom, but it's going to require some additional work that
3 somebody's going to have to do and so I would encourage
4 that we would get that started immediately and we are,
5 although we do not have drafts of the C&T policy and
6 everything as was asked about yesterday, I believe that
7 Staff has been charged and is starting to work on that
8 process and hopefully that process will move very
9 forward, you know, judicially as well as the one on the
10 closures. And in my mind, once that, you know, I'm
11 personally willing to look at this and I don't know
12 whether that leaves it with the stakeholder's group or
13 not, I don't know. In my mind, I don't think they both
14 have to be completed at the same time, but others might
15 disagree.

16

17 ACTING CHAIR GOTTLIEB: Keith.

18

19 CHAIRMAN DEMIENTIEFF: I just want to
20 note, too, for the record that we have danced this dance
21 before about the necessity for the Kenai to have their
22 own RAC. But I just want to compliment and, Ralph, you
23 can take that back to your Council, I know you guys have
24 a wide variety of issues, like the rest of the Councils
25 do, that you have to deal with in a wide variety of
26 areas, and a wide variety of circumstances that you have
27 to deal with. But I just want to say that I appreciate
28 the work that the Council has done and I understand that
29 the role that the Council will have to do in order for us
30 to accomplish, hopefully, at the end a favorable decision
31 that satisfies people.

32

33 So I just want to say that I am confident
34 in the system that we currently have in place to move
35 forward.

36

37 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
38 Keith.

39

40 MR. GOLTZ: Let me make sure that
41 nobody's spooked by a legal constraint that doesn't
42 exist. You can make your charge to a stakeholder's group
43 as broad or as narrow as it would be to the RAC. This is
44 going to be a subcommittee of the RAC. And if you have
45 RACs taking testimony and making recommendations on C&T
46 you can also have the subcommittee do that. My own
47 personal recommendation that you not constrain these
48 people too closely. You're giving them a problem, you're
49 asking for their suggestions. It's going to come back to
50 the RAC. And if we need to narrow their findings we can

1 do it at that time.

2

3 ACTING CHAIR GOTTLIEB: Thank you, Keith.
4 I guess I'm with George here. We worked a little bit
5 through the process, subcommittee works with the RAC, the
6 RAC has a recommendation, are we talking about waiting
7 until the next regulatory cycle to put this forward or
8 can we keep working on the data regardless of calendar?

9

10 MR. EDWARDS: Well, Madame Chair, I'm
11 under the assumption that we are going to move post haste
12 to work with the data as we're moving post haste to work
13 with the policy.

14

15 In answer to one of Ralph's questions, I
16 said I believe that the stakeholder's group can go
17 forward with, this is not definitive, but I would also
18 agree that the more clear the landscape is and you know
19 who the players are, I think there's also -- that's also
20 advantageous -- will be advantageous to the stakeholder's
21 group. So I guess in my mind I see probably the
22 stakeholder's group, which would ultimately deal with
23 methods and means and all and it will allow this Board
24 then to start addressing those proposals. My
25 understanding is we have four that we have had put off
26 until the next cycle which would be January of 2007.

27

28 I personally can see the C&T ultimate
29 final decision made before the stakeholder's group has
30 completed their work. I mean I think in my mind that's
31 how it would work and I certainly, as a Board member, I
32 think, will be comfortable with being able to go forward
33 with the C&T much more sooner, then I'd be comfortable
34 with going forward with accepting proposals on harvest
35 and bag limits and seasons and that type of thing, which
36 I really think that that's really where -- in my mind is
37 where the stakeholder's group is going to be extremely
38 helpful in helping us work through that.

39

40 ACTING CHAIR GOTTLIEB: Thank you.
41 Ralph.

42

43 MR. LOHSE: Thank you, Gary. I'd like to
44 thank you for that because that's what I've been trying
45 to get across and that's why I hope if you're going to
46 make this an interim thing, you set a date that you're
47 going to decide when the interim is over and you're going
48 to look at this data and make the final decision.
49 Because I'm hoping that down the line, something like
50 what we have on the Yukon River could be developed for

1 the Kenai, something like YRDFA, where you have a working
2 group and it doesn't have to be connected to a RAC. But
3 until there is standing there's no reason to come
4 together to try to work out bag limits, methods and
5 means. It's a lot easier and more profitable to fight
6 the standing.

7
8 And so as long as one group of players
9 has no standing in, you know, it has no preference or
10 something that you can say that there is a reason to give
11 them something, it's a lot easier to spend your effort
12 and spend your money and spend your energy fighting them
13 getting them standing. That's what you're doing when
14 you're deciding C&T. You're giving a group standing. It
15 has a place at the table. It can be part of the working
16 group. And then the rest of the working group recognizes
17 that they have to work with them. No one part of the
18 working group controls it, but they have to work
19 together. As long as you can keep a player out of the
20 working group you can ignore him.

21
22 And so that's why to me when you decide
23 or if you decide a positive C&T, at that point there's
24 standing that you can have a working group. And if you
25 have that C&T as interim sometime out in the future,
26 until that date happens, not much is going to happen in
27 the working group because there is no incentive to come
28 down to the table if it's easier to work at keeping
29 somebody off the table.

30
31 Thank you.

32
33 ACTING CHAIR GOTTLIEB: Charlie.

34
35 MR. BUNCH: Madame Chair. I think I
36 fully support this idea of a working group. I think that
37 any other idea would just fail. It's the C&T, it's the
38 interim C&T that gives me the problem with the motion. I
39 think probably a more correct term would be a halfway
40 determination.

41
42 Ralph's right, while it gives folks
43 standing, they're actually only standing on one leg with
44 this motion.

45
46 I would go ahead and make a full C&T
47 determination at this time but I need to clarify one
48 item, too, that Gary mentioned. The studies that
49 Ninilchik did were not BIA studies, those were studies
50 that Ninilchik asked for a grant from the Bureau and the

1 Bureau gave them a grant, because it wasn't a contract,
2 we don't have the end product out of that. That's
3 Ninilchik's end product. They give a copy to the Bureau
4 and the Bureau did a peer review on it. But because when
5 they fulfill the terms of the grant, I don't even know
6 that we still have a copy. So Ninilchik is the party
7 that we're going to have to work with on this to get
8 access to those studies and I haven't spoken with them
9 but I'm sure that they would be willing to provide those
10 so that we could get the information to do that final
11 C&T.

12

13 ACTING CHAIR GOTTLIEB: George.

14

15 MR. OVIATT: Madame Chair. So Gary if I
16 understand what you're saying and I think I could agree
17 with this, let me paraphrase it, I guess.

18

19 So we would, I assume, move forward with
20 bringing these studies together and doing that further
21 analysis. That, I think we would want to move as fast as
22 we could and it sounded like from Dr. Fall that that
23 should not take too much time.

24

25 The policy and final on it, probably
26 we're looking at what, the fall, early winter of this
27 year?

28

29 ACTING CHAIR GOTTLIEB: Tom.

30

31 MR. OVIATT: Let me just complete this
32 and then we can answer it. So then what would be the
33 process, would Staff bring this forward and say here's
34 the information for us to look at or would this be -- I
35 think I would like to see this completed as soon as
36 possible. I think that would help with some of Ralph's
37 concerns, too.

38

39 Okay.

40

41 ACTING CHAIR GOTTLIEB: Tom.

42

43 MR. BOYD: Thank you, Madame Chair. I've
44 been sitting here listening and trying to sort all this
45 out in my head and I'm not going to be able to do that
46 sitting here before you. In many ways you've thrown a
47 lot of balls at the Staff and we're sitting here trying
48 to pick them up off the floor and start juggling.

49

50 There are four or five elements of tasks

1 that I'm trying to capture here and obviously one is the
2 policy which we've already gotten to develop a draft on,
3 and the timeline on that right now is to have a draft
4 available for the fall Council meetings and then a Board
5 adoption of a policy sometime following the Board fall
6 meeting, so the end of the year is the timeline on that.

7
8 The other tasks, and I may not have them
9 in the exact sequence, that I'm hearing, are the C&T
10 determination sort of process, and then the additional
11 analysis on the data that leads into that C&T
12 determination. The stakeholder's committee and a
13 subcommittee and the getting that effort off the ground
14 working with Ralph and the Regional Advisory Council.
15 And then the harvest regulations themselves and those are
16 obviously tied to the regulatory processes.

17
18 I'm going to have to have some time to
19 look at all these tasks and see how they're interrelated
20 and also talk to those beyond the Office of Subsistence
21 Management and understand their ability to fit within
22 whatever timelines we create. For example, the Alaska
23 Department of Fish and Game. You know, if we're going to
24 go back and work with Dr. Fall, I'm sure he's already got
25 a program of work and we're going to have to discuss with
26 him the feasibility of integrating that into his program
27 of work. And so all of this is fairly complicated, so we
28 need a little time to sort this out and I need to have
29 time to see how all of this sort of fits together and
30 then I can report back to you.

31
32 I, too, am interested in making sure that
33 this is expedited but we don't want to rush and make
34 mistakes and not have this carefully done. So I'm a
35 little reluctant to give you a time certain sitting here
36 today but I think with some thought we can come back to
37 you and report to you. I would certainly like to have
38 some idea of what we're doing by the time we get to the
39 Regional Advisory Council meetings because they're going
40 to need to know how all of this plays out and how this is
41 going to work, and we'll do the best we can. But that's
42 the best I can give you right now.

43
44 Madame Chair.

45
46 ACTING CHAIR GOTTLIEB: Thank you. And
47 I believe one thing for the Board to perhaps direct today
48 is, as Tom mentioned before, the Southcentral Regional
49 Advisory Council meeting in March, I think the Board
50 needs to develop a very clear and direct guidance to any

1 subcommittee of exactly what we'd be interested in
2 seeking and perhaps some suggestions on members other
3 than the RAC who could participate in the subcommittee.
4 And perhaps that's something we could discuss at our
5 February work session.

6
7 Keith.

8
9 MR. GOLTZ: Yeah, in reference back to
10 Ralph's concern, I detect no legal difference between an
11 interim C&T and a C&T. So if you want to drop the word,
12 interim, or if you want to keep it in it makes no
13 difference as far as I can see.

14
15 MR. LOHSE: Thank you, Keith. I probably
16 agree with you from a legal standpoint. But I'll just
17 speak as a user and as a member of the public and
18 somebody who's not legal -- well.....

19
20 (Laughter)

21
22 MR. LOHSE: Well, somebody who is not
23 involved in legalities.

24
25 You know perception is a lot more
26 important to most people than reality. And to a lot of
27 people the word, interim, means this can be changed, this
28 isn't set in stone and we can change this and usually
29 it's not just changing it, meaning that we're going to
30 add something to it, it's we can tweak this for our
31 benefit. And from that standpoint, I would feel
32 personally for the users involved I would feel better if
33 they had a -- and I'm saying this -- I'll probably get
34 myself in trouble, I would feel better if they had a
35 positive C&T on a smaller amount than an interim C&T with
36 a possible bigger amount at the end. At least they would
37 know where they are and they can bring back proposals
38 asking for more.

39
40 And from that standpoint -- and when they
41 get down and sit at the table with other people to
42 discuss bags, methods, means, it would be a lot nicer to
43 sit there, you know, it's a lot nicer to sit there with a
44 signed check than a check that's got a million dollars on
45 it but the guy hasn't got around to signing it yet.

46
47 So thank you.

48
49 MR. EDWARDS: Ralph, I mean I guess I
50 agree with you completely and actually that's what I was

1 trying to do. And I guess I thought by -- I mean option,
2 and I think is what you're suggesting is that we do the
3 final C&T for -- that would go along with my motion would
4 be for Ninilchik for the Kasilof drainage and for Hope
5 and Cooper Landing for the Kenai River drainage and north
6 of that, which would include for Hope those streams that
7 would go into Cook Inlet. That was one of my options.

8

9 But my view was is that I didn't want it
10 to appear that it just might end at that and so that's
11 why I felt that sort of the term, interim, does, is that
12 there might be an additional check in the mail and the
13 check you got is just not the only one you got.

14

15 So I guess I'm not really hung up on
16 either one and I think I was trying to accomplish the
17 same thing that you just stated. So whether it does it
18 or not I don't know.

19

20 ACTING CHAIR GOTTLIEB: I guess following
21 on that point, Gary, yeah, I don't think -- let's see,
22 what's the best way to say that. If we eliminate the
23 word, interim, I think that's as clear on our intent for
24 these specific C&Ts as you want to be. And having our
25 commitment that future data is coming in, future analysis
26 and we need to be very specific about what kind of
27 analysis we want done does indicate there could be future
28 other C&T determinations.

29

30 CHAIRMAN DEMIENTIEFF: Yeah, I just
31 really agree with the whole process as far as it's going.
32 We know there are utilizations. We know it's a work in
33 progress. We have commitments by the stakeholders to
34 work together so let's just let the process work is
35 basically the way I look at it.

36

37 But we do know that there are
38 utilizations according to our existing rules of
39 engagement. We know there are utilizations and highly
40 justifiable. So in terms of the interim, we're
41 recognizing that, but we're going to keep working on this
42 thing until we can come up with some resolve.

43

44 ACTING CHAIR GOTTLIEB: Thank you, Mitch.
45 Charlie.

46

47 MR. BUNCH: Madame Chair. While I've
48 expressed my displeasure with the word, interim, I'm
49 going to say that I would prefer that it would be left in
50 because I think the end result of taking it out would

1 have a broader effect than leaving it in, it would have
2 the effect of delineating something in a manner in which
3 I don't think would be in the best interest of the folks
4 in Ninilchik.

5
6 ACTING CHAIR GOTTLIEB: Do you want to
7 just expand on that a little, Charlie, please.

8
9 MR. BUNCH: Well, yeah, if you take
10 interim out then their determination is only for the
11 Kasilof drainage and I think that then they would have to
12 make additional appeals to the Board to expand that to a
13 greater area.

14
15 CHAIRMAN DEMIENTIEFF: So basically
16 Charlie, instead of by using interim, we're saying, okay,
17 we're this far and we're willing to look at farther,
18 we're not limiting. Is that what you're getting at
19 Charlie?

20
21 MR. BUNCH: Yes. I think that if you
22 leave interim in there it doesn't limit it exactly to the
23 Kasilof River drainage and it leaves it open to expand it
24 if that's what the C&T proves.

25
26 MR. EDWARDS: Madame Chairman. You know,
27 I was looking at how we would change the motion to do
28 what Ralph was suggesting and it would be an easy change,
29 it would just go for the communities of Hope and Cooper
30 Landing as opposed to saying an interim C&T determination
31 is made for the Kenai River and north of that, it would
32 just say a positive C&T determination is made. But I
33 agree with you that that sort of then becomes a finite
34 decision.

35
36 Because the way the current motion is, if
37 you went on in the motion and looked at it, it basically
38 said this interim and then in way of explanation I said
39 that what it really does is defer that portion of the
40 Council's recommendation that involves these other
41 drainages. So in my mind it does leave it really more
42 open.

43
44 Maybe technically it doesn't matter one
45 way or the other and particularly with Keith's
46 acknowledgement that in his mind interim also means
47 positive, so I think it accomplishes, Ralph, what you'd
48 like for it to accomplish and at least certainly that's
49 my intent.

50

1 ACTING CHAIR GOTTLIEB: I guess I also
2 believe that certainly the issue that the Council has
3 brought to us about a fuller C&T determination, it's not
4 going to be lost and I don't think it has to be brought
5 back in front of us again, it's clearly in front of us
6 and we will continue to work on gathering what people
7 seem to feel is needed in terms of more specific analysis
8 or more specific data or more traditional knowledge to
9 make those further decisions so we don't want this to
10 become a burden that has to be repeated and repeated,
11 this is something that the stakeholder's task force can
12 help us address as well as the other upcoming issues.

13

14 Ralph, did you have a comment.

15

16 MR. LOHSE: Well, I've just trying to
17 listen to what everybody says and I know that everybody's
18 trying to do the best, so we have an understanding on the
19 table that this interim is a positive -- if it passes,
20 this interim is a positive finding and that what we have
21 is a commitment by the Board to continue to address this
22 until they decide that this is a final, and at some point
23 in time this will no longer be called an interim positive
24 determination but will be called a positive determination
25 or a final positive determination, and at that point in
26 time will be as soon as it -- within the constraints of
27 how long it takes to look at the data and everything,
28 this is something that's going to happen in as short a
29 time period as possible.

30

31 What I'm getting at, this is the
32 commitment of the Board, this commitment has been put
33 down, it's on the record and everything else, and so we
34 can basically count on this then and we can go into a
35 working group with the standing that this interim
36 determination is a positive determination covering the
37 areas mentioned but that there's a possibility that these
38 areas will be expanded when the rest of the data is
39 looked at.

40

41 Am I correct in that?

42

43 MR. EDWARDS: That's my commitment.

44

45 MR. LOHSE: Thank you. Then I think
46 you've probably -- if that understanding is clear and on
47 the record, I think we've.....

48

49 CHAIRMAN DEMIENTIEFF: Ralph, that's also
50 my commitment is that I think -- and I think that's what

1 we're all committed to, it's not like we haven't looked
2 at this issue and we've been paining over it for -- not
3 paining, that's not a right word, we've been looking at
4 it for months in trying to prepare some way to take care
5 of it.

6
7 But like your people who are affected,
8 who are committed to working with the process, and I have
9 heard it, I think what basically our message is we're
10 willing to look at the process. And I'm not pretending
11 to speak for the Board, I guess from my own point of view
12 continue to work.

13
14 ACTING CHAIR GOTTLIEB: Ralph.

15
16 MR. LOHSE: Thank you, Mitch. And I'd
17 like to thank the rest of the Board members. And I guess
18 for the people of Ninilchik then I have my colleagues
19 word that says that we have a solid maybe.

20
21 (Laughter)

22
23 CHAIRMAN DEMIENTIEFF: Call for the
24 question on the motion, we're dancing around here.

25
26 ACTING CHAIR GOTTLIEB: Mitch, just a
27 couple more comments here and then we'll be ready.

28
29 George.

30
31 MR. OVIATT: Well, you do have my
32 commitment, too, Ralph, and I am going to support this
33 motion.

34
35 ACTING CHAIR GOTTLIEB: Thanks. Steve.

36
37 MR. KESSLER: I like what I hear in this
38 motion and I will also vote in favor of it. As I
39 mentioned, the first question out, what does this interim
40 mean, and I'm a little more comfortable with what interim
41 means now. I still just think there's some process
42 things to be worked out on that. But I think as we have
43 now said, if we pass this motion, then we would commit to
44 working through to a final, "final customary and
45 traditional use determination" as quickly possible using
46 the data that we now know is available and going through
47 an analytic process with that.

48
49 I think it makes sense talking about this
50 as a work in progress and certainly a stakeholder's group

1 makes abundant sense in this process.

2

3

4 So I think that the motion and the
5 solution that has been talked to, at this point in time,
6 is something that can work quite well, and, therefore, I
7 do intend to vote for the motion.

7

8 ACTING CHAIR GOTTLIEB: Thank you, Steve.
9 I just had a few things to say as well.

10

11

12 Customary and traditional use
13 determination is a recognition of a community's use of
14 resources by areas. A customary and traditional does not
15 allocate resources to subsistence users, or between
16 subsistence users and others. The decision today has no
17 immediate affect on the number of fishers, fish
18 harvested, when, or how fish are taken in Federally-
19 managed waters.

19

20

21 Allocations and methods and means are
22 dealt with separate from and usually at a later time from
23 C&T. But this process, as maybe has been evident over
24 the last several days or weeks or months, is not well
25 understood. Perhaps if it is understood it's not being
26 accepted by some. And it's been disturbing to me that a
27 lot of inaccurate information continues to be passed
28 along that has the effect of feeding fears or
29 insecurities regarding this process or this
30 determination.

30

31

32 Purpose of Proposal 9 is to establish C&T
33 findings in the Cook Inlet area. When faced with similar
34 proposals, a similar proposal years ago, we commissioned
35 a study from the Department of Fish and Game, Subsistence
36 Division, we heard a summary of that study, we heard a
37 lot of discussion, the Board has benefited from having a
38 thorough Staff analysis that looked at the eight factors
39 that our regulations require to be evaluated and
40 incorporated TEK and scientific information. We've been
41 provided with those conclusions. The RACs and
42 Interagency Staff Committee have done diligence in
43 reviewing and analyzing the proposal. We heard a great
44 deal of testimony which included firsthand TEK as did the
45 Southcentral RAC. We have heard comments related to
46 specific use areas, harvest sharing, passing along
47 traditions. I started writing down some of the names of
48 places we heard that people used, Snug Harbor, Skilak
49 Lake, Kenai River, Sterling area, et cetera.

49

50

This proposal is different from most or

1 maybe all of our other C&T proposals in that there are
2 many non-Federally-qualified users living in the area,
3 many visitors who use the resources and commercial
4 fisheries as well. And our challenge is and will be to
5 provide for subsistence opportunity as provided for in
6 ANILCA in the context of these existing uses and the
7 balance that we've heard about per the Ninth Circuit
8 Court Decisions.

9
10 So I need more evidence to address and
11 clearly understand this opposition and controversy.

12
13 Hearing the potential for a mechanism of
14 a subcommittee of the Regional Advisory Council which
15 include potential subsistence users, current sport and
16 commercial users and others to communicate with each
17 other, to educate each other within the context of
18 respectful collaboration is appealing. The various
19 interests can provide insights and information to us on
20 how to avoid confrontation on allocations, methods and
21 means and seasons. But remember in the interviews
22 conducted by Dr. Fall's staff, when asked most people
23 requested only the same quantities as provided for under
24 State or current regs.

25
26 I repeat my request that the charge to
27 this subcommittee needs to be clear and timely. Once we
28 develop a timeline and if the subcommittee and
29 participants are able to meet it, if it happens to be a
30 little out of cycle with our regulatory process, I hope
31 we'll give consideration to a more timely look at this.
32 And the concept of more studies and analysis needs to be
33 very clear and exactly what we desire and what we want so
34 that they can be accomplished in a timely fashion.

35
36 We need information coming from the
37 Federal Subsistence Management Program and others that is
38 accurate and understandable. And we need a commitment
39 from the agencies as we heard today, and ours will be one
40 of them, to assure that a stakeholder group will be
41 supported and aim to get feedback to this Board in a
42 timely and meaningful manner.

43
44 Other comments.

45
46 (No comments)

47
48 ACTING CHAIR GOTTLIEB: Question's been
49 called. All those -- do we want to do a roll call or do
50 we want to try voice vote first?

1 CHAIRMAN DEMIENTIEFF: I think we're
2 there at a consensus point, let's just do a voice vote.
3
4 ACTING CHAIR GOTTLIEB: Okay, thank you.
5 Can I just clarify, this proposal includes a positive,
6 not an interim C&T determination, for the west side of
7 Cook Inlet?
8
9 MR. EDWARDS: (Nods affirmatively)
10
11 ACTING CHAIR GOTTLIEB: Thank you.
12 That's in the proposal. All those in favor signify by
13 saying aye.
14
15 IN UNISON: Aye.
16
17 ACTING CHAIR GOTTLIEB: All those opposed
18 same sign.
19
20 MR. BUNCH: Aye.
21
22 ACTING CHAIR GOTTLIEB: Motion carries.
23 Five, one.
24
25 Thank you all for your participation in
26 this and we'll take a 10 minute break.
27
28 (Off record)
29
30 (On record)
31
32 ACTING CHAIR GOTTLIEB: No. 30,
33 Southeast, we'll have Staff presentation and Mitch will
34 join us a little bit later, but go ahead, please.
35
36 MR. VANALEN: Good morning. I'm Ben
37 VanAlen with the Forest Service, a fisheries biologist in
38 Juneau. I'm looking at Page 387.
39
40 Proposal FP06-30 was submitted by
41 Patricia Phillips of Pelican and would allow the use of
42 subsistence taken pink salmon for bait.
43
44 The proponent does not propose or seek
45 any restriction on who can use these pink salmon for bait
46 or what fisheries this bait can be used for. The
47 proponent wants changes in Federal subsistence fishing
48 regulations to allow the use of subsistence harvested
49 pink salmon to bait pot, longline or jig gear for
50 commercial crab, halibut and other shellfish or finfish

1 fisheries.

2

3

4 Section .803 of ANILCA does not include
5 the use of subsistence resources as bait in its
6 definition of subsistence uses.

7

8 The main issue with this proposal is the
9 appropriateness of modifying Federal subsistence
10 regulations to specifically allow for non-consumptive use
11 of an edible subsistence resource.

12

13

14

15 Thanks.
16
17 ACTING CHAIR GOTTLIEB: Thank you. Were
18 there any questions.

19

20

21

22

23

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1 bottom fish, including halibut, shrimp and crab. Many of
2 these species cannot be caught effectively without the
3 use of bait.

4
5 The Council heard from members that pink
6 salmon have been used for bait on ongoing basis. The
7 Wrangell-St. Elias Resource Commission supported allowing
8 for this use. The Council notes that there is an
9 overabundance of pink salmon in the region and that
10 allowing pink salmon to be used as bait would utilize a
11 resource that otherwise would be wasted.

12
13 The Council heard from the Interagency
14 Staff Committee that Federal jurisdiction might only
15 allow use of bait on Federal lands and waters. The
16 Council disagrees with this opinion. Federal regulation
17 providing for subsistence harvest does not require that
18 the use of subsistence harvest take place on Federal
19 lands and water. Fish and wildlife harvested under
20 Federal subsistence regulations may be consumed or
21 otherwise used away from Federal lands and waters. The
22 Council believes that ANILCA authorizes consumption,
23 trade and barter and handicraft use of subsistence
24 resources harvested under Federal regulations wherever
25 these uses might occur, both on and off Federal lands and
26 waters. Pink salmon caught for bait under subsistence
27 regulations may be used wherever subsistence users need
28 the bait, not only on Federal lands and waters.

29
30 The Council heard substantial evidence
31 that pink salmon have been traditionally used for bait
32 and that there is an overabundance of this species.
33 Sound management principles support non-wasteful use of
34 this species. The proposed regulatory change would
35 benefit subsistence users by authorizing what has been a
36 common practice. And no effects are expected on non-
37 subsistence users.

38
39 Madame Chair.

40
41 ACTING CHAIR GOTTLIEB: Thank you.
42 Questions or comments for John.

43
44 (No comments)

45
46 ACTING CHAIR GOTTLIEB: Interagency Staff
47 Committee, Pete. Thank you.

48
49 MR. PROBASCO: Thank you, Madame Chair.
50 The Interagency Staff Committee opposes the proposal

1 contrary to the recommendation of the Southeast Alaska
2 Regional Advisory Council. Allowing the edible portions
3 of salmon harvested under Federal subsistence regulations
4 to be used for bait in commercial and sportfisheries is
5 not a subsistence use described in Section .803 of
6 ANILCA.

7
8 This proposal should be opposed to avoid
9 compromising the consumptive uses emphasis of the Federal
10 Subsistence Management Program and avoid blurring the
11 lines between subsistence, sport and commercial
12 fisheries.

13
14 It is unlikely that many Federally-
15 qualified subsistence users would choose to go up into
16 the freshwater portions of rivers and streams to harvest
17 pink salmon for bait.

18
19 Madame Chair.

20
21 ACTING CHAIR GOTTLIEB: Thank you. Any
22 other comments.

23
24 (No comments)

25
26 ACTING CHAIR GOTTLIEB: Department
27 comments.

28
29 MR. HILSINGER: Madame Chair. For the
30 record, my name is John Hilsinger. The State has
31 concerns about this proposal. We agree that ANILCA does
32 not provide for use of subsistence caught fish as bait
33 and so the State considers that the Federal Subsistence
34 Board does not have the authority to authorize such
35 usage.

36
37 The Federal program also does not have
38 jurisdiction over State fisheries and therefore cannot
39 authorize subsistence caught fish to be used in those
40 State fisheries.

41
42 Only a small harvest of pinks has
43 occurred in State subsistence fisheries and very little
44 harvest has occurred in Federal subsistence fisheries.
45 Currently fishers desiring bait for used in sport,
46 personal use and subsistence fisheries can obtain those
47 fish in the marine waters under State fisheries
48 regulations.

49
50 So the State's recommendation is to not

1 support this proposal.

2

3

Thank you.

4

5 ACTING CHAIR GOTTLIEB: Thank you. Any
6 other questions or comments.

7

8

(No comments)

9

10 ACTING CHAIR GOTTLIEB: Board discussion.
11 Jim, maybe we could get some clarification about ANILCA
12 and use of bait, please.

13

14

15 MR. USTASIEWSKI: Thank you, Madame
16 Chair. I'll try to provide that. For the record my name
17 is Jim Ustasiewski, and I'm an attorney with the
18 Department of Agriculture.

18

19

20 The question was raised about Title VIII
21 and the use of bait. Section .803 of ANILCA does not
22 specify bait as a subsistence use. That doesn't
23 necessarily mean using bait is in conflict or contrary to
24 Title VIII, especially where you have a subsistence use
25 of that bait. And, in fact, the Board has passed
26 regulations. There was one passed yesterday that allowed
27 the use of bait in a subsistence fishery. And, of
28 course, that bait itself would probably be coming from a
29 subsistence taken fish.

29

30

31 So it's not necessarily a conflict to use
32 bait. Where the conflict arises here is with the use of
33 that bait outside of Federal subsistence fisheries. The
34 purpose as stated is to allow the use of it in commercial
35 and other non-Federal subsistence fisheries. And that
36 sets up an interference with those fisheries. It's an
37 interference that is not written into Title VIII and the
38 Board has had other issues like this in the past where
39 there's been discussion of interference or other
40 conflicts with State operations, State fisheries. And
41 when you get into a situation like that you always need a
42 showing of necessity for such an interference, a good
43 reason or even more than just what someone might accept
44 as a good reason, but a strong showing of necessity. And
45 I think you also need to have that showing in the context
46 of Federal subsistence use.

46

47

48 Here the purpose would be for a
49 commercial use and not for Federal subsistence. So it
50 seems to me anomalous to allow the use of bait for not
subsistence but for commercial fishing. I don't think,

1 based on this record, that that would be supportable.
2
3 Madame Chair.
4
5 ACTING CHAIR GOTTLIEB: Thank you. Gary.
6
7 MR. EDWARDS: I guess what I'm trying to
8 understand, in my mind the issue wasn't the use of bait,
9 but taking subsistence fish, in this case, for the
10 purpose of using them for bait. I mean it seems to me
11 that's a difference than using bait. You know it says --
12 the way I read it, you know, taking for these purposes
13 including barter, so I guess in my mind you could catch
14 pink salmon and you could barter them for bait. But do
15 we have to have a specific that says that the only
16 purpose that you are taking them for is for bait, not the
17 fact that you can use them for bait.
18
19 Is there any difference there?
20
21 ACTING CHAIR GOTTLIEB: John.
22
23 MR. LITTLEFIELD: Madame Chair. Let's be
24 clear and look at the executive summary on Page 384. The
25 effect of the proposal is in 27(i)(12) and (13)(xxx),
26 whatever all those X's are.
27
28 It says: You may use subsistence taken
29 pink salmon as bait. It doesn't say that we're going to
30 use it as bait for wholesale running in any Federal
31 fishery, any State fishery or anything else like that.
32 It says you can use it as bait. We had a discussion on
33 where bait was used. That's not within the purview of
34 this Board to determine whether State allows it or not,
35 that's -- it's like saying I can take subsistence salmon
36 but I can't eat it in my home. I mean, you know, that
37 was our discussion. We just said here, you may use
38 subsistence taken pink salmon as bait.
39
40 And that was simply the statement that's
41 made in the regs. It doesn't say where we'll be using
42 it, how we'll be using it, whether you cut it in half, so
43 whatever, it just says it will be bait. So I'd like to
44 make that clear for the record.
45
46 ACTING CHAIR GOTTLIEB: Thank you. Jim.
47 Then Steve.
48
49 MR. USTASIEWSKI: Thank you, Madame
50 Chair. Yes, if I may follow up with Mr. Edwards'

1 question.

2

3 Section .803 specifies the purposes for
4 which subsistence taken fish may be used. And one of
5 those purposes is direct personal or family consumption
6 or sharing. Another purpose is barter. So it has to fit
7 into one of those purposes.

8

9 You might also say that subsistence is
10 non-wasteful. There's reference to non-wasteful uses.
11 And so the use of subsistence taken fish as bait is a
12 non-wasteful way to use -- fully utilize the resource.
13 But the way this is proposed with the purpose of being
14 used in a commercial fishery, that's what I say, if it's
15 interpreted to apply to commercial uses then it goes
16 beyond what's set out in, at least, in the text of Title
17 VIII, and when you get into that area that's where you
18 need to show a strong justification, a necessity tied to
19 subsistence, not to commercial fishing, not to what might
20 make sense in a larger context to someone, but you're
21 using something because, you know, frankly this is an
22 issue that may need to be addressed with the State.

23

24 The State is managing its fisheries.
25 There's no reason why someone couldn't go to the State
26 Board of Fish and say -- and maybe they have, but they
27 should seek to get the use of bait in those commercial
28 fisheries in that jurisdiction.

29

30 ACTING CHAIR GOTTLIEB: Let's see, we had
31 Steve, Ralph and John. Steve.

32

33 MR. KESSLER: Well, I guess, John,
34 respectfully, as far as what your previous comment was, I
35 look at the language on the same page you were, 384 for
36 27(c)(15) you may not use fish taken for subsistence use
37 or under subsistence regulations in this part as bait for
38 commercial or sportfishing purposes, and then the new
39 language, except may be authorized in this part.

40

41 And so as I understand this proposal,
42 this proposal would, if it were to pass, it would now
43 allow bait to be used for commercial or sportfishing
44 purposes. And from what I understand from Mr.
45 Ustasiewski, that it seems that that's a conflict that we
46 don't want to go to.

47

48 ACTING CHAIR GOTTLIEB: Thank you.

49 Ralph.

50

1 MR. LOHSE: I'd just like to ask him, one
2 of the authorized uses for subsistence fish is barter.
3 And isn't bait the ultimate form of barter. I trade a
4 small piece of fish for a large fish.
5
6 (Laughter)
7
8 ACTING CHAIR GOTTLIEB: Jim.
9
10 MR. USTASIEWSKI: Was that a rhetorical
11 question?
12
13 (Laughter)
14
15 ACTING CHAIR GOTTLIEB: I don't know.
16
17 (Laughter)
18
19 MR. LOHSE: No, that was a question. I
20 mean could you class that as barter?
21
22 MR. USTASIEWSKI: Well, again, as I've
23 said, that if you are using bait for one of those
24 purposes set out in .803, then I think you're following
25 .803 but you're still extending this to a commercial
26 fishery where you're going to have an interference and
27 there should be some subsistence purpose for doing that.
28
29 Madame Chair.
30
31 MR. LOHSE: Well, just as a follow up on
32 that, I thought one of the reasons you were allowed to
33 barter subsistence taken fish was for purposes of --
34 well, we call it trade, that's right, we don't barter it,
35 we trade it, for purposes of obtaining what you need to
36 live and that's what you'd be doing in a commercial
37 fishery.
38
39 MR. USTASIEWSKI: Madame Chair. I'm not
40 disagreeing with you, Ralph, what I'm saying is that's
41 not what this proposal is.
42
43 This is not a proposal to barter pink
44 salmon, it's a proposal to allow the use of pink salmon
45 as bait in commercial and sportfisheries.
46
47 MR. LOHSE: Okay, thank you.
48
49 ACTING CHAIR GOTTLIEB: John.
50

1 MR. LITTLEFIELD: Okay. I'm looking at
2 .803. I mean it's silent. .803 is silent on a lot of
3 stuff. And it talks about the customary and traditional
4 uses of the wild renewable resources by rural Alaskans.
5 That's what we -- we keep talking about this, and Ralph
6 was exactly right, barter means the exchange of fish and
7 wildlife for their parts for a bigger fish or a bigger
8 part, that's what it says.
9
10 And to say that because it doesn't say
11 something means it's not allowed is not what the clear
12 language says. Because there's a whole bunch of things
13 in there, we use bait to catch mink and martin. What, is
14 that illegal, too, now. I mean we use a salmon egg to
15 catch a steelhead, is that illegal, no, it isn't. And it
16 just recognizes -- the key of .803 is customary and
17 traditional uses and there's substantial evidence this is
18 a customary and traditional ongoing practice and one that
19 will continue no matter what you do. It's a customary
20 and traditional practice.
21
22 We're asking this Board to authorize that
23 and recognize a long-term use that's been going on
24 forever and not make criminals out of people. There's no
25 need for it. The resource is extremely strong.
26
27 So I don't buy that .803, just because
28 it's not in there you can't do it. That's not a good
29 defense.
30
31 MR. USTASIEWSKI: Madame Chair. If I may
32 follow up briefly, too.
33
34 ACTING CHAIR GOTTLIEB: Jim.
35
36 MR. USTASIEWSKI: I don't buy it either,
37 John, that's not my statement. I said that it wasn't
38 specified in there and so you have to look and see what
39 purpose it fits into.
40
41 This is not being presented as a barter
42 proposal. And further, it's setting up commercial use.
43 Commercial use is not customary and traditional use. Not
44 significant commercial use. And so if the desire is to
45 set this up as barter then that's what the proposal
46 should say, that's what the language should say in the
47 regulation ultimately, but it doesn't say that. It's an
48 open-ended use that would allow significant commercial
49 use of the pink salmon, which is outside the scope of the
50 Federal Subsistence Program.

1 ACTING CHAIR GOTTLIEB: John.
2
3 MR. LITTLEFIELD: I just want to give you
4 a little bit of history of -- I started fishing when I
5 was barely able to walk and in those days and continuing
6 to today and will be continuing this next summer, it was
7 extremely routine for us, when we were halibut fishing,
8 we would pull -- if we didn't have enough fish we would
9 go get some bait and they would be pinks and chums, to
10 speed things up, we would pull up to a boat and say, we
11 want to buy 50 dogs for bait, the use of bait is a
12 customary and traditional long-term practice. And that's
13 what we're asking for here, a customary and traditional
14 use of the fish and wildlife resource by rural residents,
15 and it's been used as bait forever. And I'll use the
16 words, time and immemorial, which is like 1884 according
17 to the government.
18
19 But anyway, we've used this bait forever
20 and we continue to use it, and we will continue to use it
21 regardless of what you do. I'm asking for some help
22 here.
23
24 ACTING CHAIR GOTTLIEB: Other comments.
25 Questions. Discussion.
26
27 (No comments)
28
29 ACTING CHAIR GOTTLIEB: I guess not being
30 a lawyer, I just assumed that barter was between people,
31 but that's my interpretation.
32
33 Charlie.
34
35 MR. BUNCH: Well, my problem with the
36 proposal is while it may be allowed it certainly doesn't
37 seem to be the highest and best use of that subsistence
38 resource. I would think that if you're going to take
39 that fish and use it for bait that's going to be a fish
40 that isn't available for pure subsistence uses.
41
42 ACTING CHAIR GOTTLIEB: Thank you. Gary.
43
44 MR. EDWARDS: I have a question for the
45 State. Under sportfish regulations, if I'm out fishing
46 anywhere in the state let's say and I catch a pink
47 salmon, what parts of it can I utilize to fish? Can I
48 put it on my hook as a whole, can I use some of its eggs,
49 can I use its fins, can I use any of it, what can I or
50 can't I do?

1 MR. HILSINGER: Madame Chair. We're
2 going to look up the exact language but I believe it's
3 the head and guts and not the flesh that you would
4 normally eat.
5
6 ACTING CHAIR GOTTLIEB: We'll give you a
7 minute to find it.
8
9 (Pause)
10
11 ACTING CHAIR GOTTLIEB: Charlie.
12
13 MR. BUNCH: Well, John, yeah, it was my
14 assumption that that was the proposal, was to use the
15 entire fish. I mean I'm assuming that was the intent
16 behind that; is that correct?
17
18 MR. LITTLEFIELD: Yes. And I think we're
19 talking about pink salmon used as bait here, I think
20 there's a separate State reg that talks about the use of
21 pink salmon.
22
23 You know, we have people who are throwing
24 away millions, discarding millions of pounds of pinks in
25 Southeast as wanton waste and have been cited for it and
26 I don't want to mention names of who they are but I can,
27 and they're throwing this stuff overboard by the barge
28 loads, and we're asking you that you let us use what we
29 catch to catch a bigger fish. I mean that exchange for
30 barter is there. We're using a smaller piece of a fish
31 that is less desirable to catch a bigger fish that is
32 more desirable.
33
34 Thank you.
35
36 (Pause)
37
38 ACTING CHAIR GOTTLIEB: Thanks, John.
39
40 MR. HILSINGER: Madame Chair. Under the
41 State regulations 5 AAC 75.026 use of sport caught fish
42 as bait, it specifies that unless provided in this
43 section sport fish caught taken under 5 AAC 47 through 5
44 AAC 75 may not be used as bait. It further specifies
45 that whitefish, herring and other species of fish for
46 which no seasonal or harvest limits are specified in
47 those regulations, as well as the head, tail, fins and
48 viscera of legally taken sport caught fish taken under 5
49 AAC 47 through 5 AAC 75 may be used for bait other
50 purposes.

1 Thank you.

2

3 MR. EDWARDS: So can you summarize what

4 that says, so if I catch a pink salmon, what can or I

5 can't do with it?

6

7 MR. HILSINGER: Madame Chair. The way I

8 read that, if you catch a pink salmon you could use the

9 head, tail, fins and viscera for bait.

10

11 MR. EDWARDS: That would include eggs and

12 all so, okay.

13

14 MR. BUNCH: Tom, you said sport caught

15 fish, would subsistence caught fish fall under that

16 regulation?

17

18 ACTING CHAIR GOTTLIEB: Excuse me,

19 Charlie, our regulation is on 384.

20

21 Jim, is the point where this bait fish is

22 caught or under which regulations, i.e., subsistence?

23

24 MR. USTASIEWSKI: Madame Chair. I think

25 that is important. Maybe to flesh this out a little bit

26 further. I found a useful discussion of what the State

27 regulations allow in the Staff analysis at Page 388.

28 There's a paragraph just over halfway down the page, it

29 starts out State regulations concerning the use of salmon

30 for bait depends on the fishery. And the rest of that

31 paragraph describes what's allowed, at least the Staff's

32 understanding of what's allowed in those State fisheries.

33

34 Just to sort of jump ahead, there is an

35 allowance for the use in the commercial fishing, if most

36 all of these pink salmon are being taken in commercial

37 fisheries the statement towards the end of that paragraph

38 says, salmon harvested in commercial fisheries may be

39 used as bait although there is a statewide regulation

40 prohibiting the waste of salmon.

41

42 There are other fisheries covered there

43 as well.

44

45 So I mean in terms of what's already

46 allowed, I think there's some coverage of this. It's not

47 as though these salmon are going to be wasted if this

48 regulation doesn't pass.

49

50 Madame Chair.

1 MR. LOHSE: Madame Chair.
2
3 ACTING CHAIR GOTTLIEB: Go ahead, Ralph.
4
5 MR. LOHSE: Yes, I wanted to bring that
6 out that under current law, commercially caught pink
7 salmon that have a ticket written on them can be used for
8 bait and it's not considered wanton waste to cut up a
9 salmon and use it for bait, it's done all the time in the
10 longline fisheries and it's not just pink salmon. I mean
11 longliners will buy dog salmon, depending on the
12 longliner, they'll buy red salmon, they'll buy dog salmon
13 and they buy them straight out of the commercial
14 fisheries, they have to have a pink ticket written on
15 them, you know, they have to be a reported part of the
16 harvest to have bought by a cannery, but they're used for
17 bait all of the time and it's not considered wanton waste
18 to use them for bait in that instance. And so the same
19 fish that's being cut up out of a commercial fishery,
20 just because it's been paid for and is used for bait is
21 not considered wanton waste so why would it be wanton
22 waste to use it out -- and I'm not advocating one way or
23 another on this proposal, but it seems obvious to me that
24 from State regulations that they consider that not wanton
25 waste so it wouldn't -- you couldn't apply wanton waste
26 to using it out of a subsistence fishery.
27
28 You could decide that that's not the best
29 use of a subsistence fish, but it's not wanton waste.
30
31 ACTING CHAIR GOTTLIEB: John.
32
33 MR. LITTLEFIELD: I have a request of the
34 State to read their exception again so that I'm clear
35 that I heard what I thought I did and then I have a
36 follow up question for Mr. Casipit.
37
38 ACTING CHAIR GOTTLIEB: John.
39
40 MR. HILSINGER: Madame Chairman. Could
41 we have a little clarification, please, exactly what
42 section you would like us to read again?
43
44 MR. LITTLEFIELD: The section that talks
45 about herring and whitefish and other species for which
46 there are no limits.
47
48 MR. HILSINGER: Through the Chair, thank
49 you. Section B of that paragraph reads whitefish,
50 herring and other species of fish for which no seasonal

1 or harvest limits are specified in 5 AAC 47 through 5 AAC
2 75 as well as the head, tail, fins and viscera of legally
3 taken sport caught fish taken under 5 AAC 47 through 5
4 AAC 75 may be used for bait or other purposes.

5
6 MR. LITTLEFIELD: Thank you, Madame
7 Chair. Follow up will be for Mr. Casipit. Taking that,
8 I don't like to follow the State regulations, we don't
9 have to, but somebody seems to think they're important so
10 let's use them.

11
12 That says for species where there are no
13 harvest limits or seasons, bag limits and I would like
14 Mr. Casipit to comment, please, on the seasons and bag
15 limits for pinks in particular and chums if he wants to,
16 Federal fish Southeast Alaska.

17
18 MR. CASIPIT: Thank you, Madame Chair.
19 Mr. Littlefield.

20
21 You know as you know last year the Board
22 passed a regulation that basically specified that at
23 least for pink and chum salmon in Southeast Alaska there
24 is no closed -- the season is all year long, there are no
25 harvest limits for pink or chum salmon in the regulations
26 for Southeast, however there is a list of gear,
27 restricted gear for it, but -- that's all we have.

28
29 ACTING CHAIR GOTTLIEB: So right now if I
30 understand it correctly, subsistence users are allowed to
31 use subsistence caught pink salmon for bait but only
32 head, tail or viscera; is that correct, in our program?

33
34 MR. USTASIEWSKI: Madame Chair. That's
35 my understanding, yes.

36
37 ACTING CHAIR GOTTLIEB: Okay, thank you,
38 Jim. So the request is to use the rest of the salmon?

39
40 MR. LITTLEFIELD: Yes. And if you want
41 to look at it as non-edible, some people, and we had
42 testimony that said humpies weren't edible, I disagree
43 with that completely because we use them. But I mean
44 it's a -- you say tomato, I say tomato, what's edible to
45 you and edible to me is not.

46
47 I mean this is an issue that's simply
48 stated as simply stated as recognition by this Board of a
49 long-term historic practice that's ongoing continuous to
50 this day and will continue tomorrow, that what we're

1 asking you to do, is to not make criminals out of us.
2 That's how we got halibut subsistence, is recognition of
3 things that are going on, customary and traditional use.
4 And if you want to use the State analogy, that's why I
5 asked for that, they said you can use anything for which
6 there are no limits. In our particular case, in
7 Southeast, there are so many pinks we do not have any
8 limits and so it is the highest and best use of that
9 fish, not wanton waste, to try to catch a bigger fish
10 that you can do more with, one that's 10 times bigger or
11 100 times bigger.

12
13 ACTING CHAIR GOTTLIEB: It was my error
14 to say non-edible, that's really not appropriate to this
15 discussion. So I was just trying to read the regulation
16 of what parts are currently legal to use.

17
18 Other discussion.

19
20 (No comments)

21
22 ACTING CHAIR GOTTLIEB: Are we ready for
23 a motion.

24
25 Keith.

26
27 MR. GOLTZ: It seems to me the
28 conversation has drifted a little and I want to
29 reemphasize something Jim said because if I were still an
30 attorney for the State, this is one I might want to sue
31 over.

32
33 The question is not what's right or wrong
34 or what's customary and traditional in this instance.
35 The question is, are we going to interfere with the State
36 program fisheries. If we do, we have to have findings
37 and evidence on the record that a failure to enact this
38 interference will result in a detriment to Federal
39 subsistence users on Federal lands. We have to connect
40 that dot, otherwise we're taking an action that would not
41 be sustainable in my opinion.

42
43 ACTING CHAIR GOTTLIEB: Steve.

44
45 MR. KESSLER: I guess I'm ready to make a
46 motion here.

47
48 I'll move to adopt the Southeast Regional
49 Advisory Council's recommendation. And after a second, I
50 will give some rationale, but I will let you know that I

1 do plan to vote against this motion then.

2

3 ACTING CHAIR GOTTLIEB: Is there a
4 second.

5

6 MR. BUNCH: Second.

7

8 ACTING CHAIR GOTTLIEB: Thank you. Go
9 ahead, Steve.

10

11 MR. KESSLER: Well, first of all we do
12 know that there are plenty of pink salmon at least right
13 now in Southeast Alaska pink salmon are in excess.
14 However, the use of fish as bait as described in our
15 current regulations is currently limited in scope.

16

17 Current regulations do not allow Federal
18 subsistence caught fish to be used in commercial or
19 sportfisheries. I believe that prohibiting the
20 subsistence caught fish be used in commercial or
21 sportfisheries is consistent with the intent of ANILCA.
22 And we've heard from the attorneys some of the hoops that
23 would be needed to be jumped through to make sure that
24 before we were to authorize the subsistence caught fish
25 to be used in some of those other fisheries, there would
26 be other steps that would need to be gone through.

27

28 I would suggest that the proponent could
29 narrow the proposal to subsistence uses only or otherwise
30 that the proponent would then petition the State Board of
31 Fisheries to allow pink salmon to be used as bait as
32 requested in this proposal, but that that would need to
33 go to the Alaska Board of Fisheries.

34

35 ACTING CHAIR GOTTLIEB: John.

36

37 MR. LITTLEFIELD: Okay, thank you for
38 making that motion to show deference to the RAC, I
39 appreciate that.

40

41 But let's look at 25(j)(4) on Page 384
42 and even in our regulations they kind of mimic what the
43 State says here. It says you may not intentionally waste
44 or destroy any subsistence caught fish or shellfish,
45 however, which is the State's exception, you may use for
46 bait or other purposes whitefish, herring, and species
47 for which bag limits, seasons and other regulatory
48 methods and means are not provided. In other words,
49 there are no bag limits as Mr. Casipit said on pink
50 salmon, they're in overabundance in Southeast Alaska. So

1 you already have a regulation that, in effect, kind of
2 says that you can do this.

3
4 As far as the effect -- the detrimental
5 effect to subsistence users. It is detrimental to them
6 to not recognize an ongoing customary and traditional
7 practice.

8
9 And the regulations are not law. Nothing
10 in ANILCA prohibits the use of a smaller fish to catch a
11 big fish or a piece of bait to catch a martin, nothing in
12 there says anything about that.

13
14 This is a regulation and regulations can
15 be changed or amended and they can't be in conflict with
16 that law either. So I wouldn't let the regulations -- we
17 can make the regulations read whatever is needed here.
18 But I think the language of (j)(4) already allows the use
19 of bait, we just want to make it clear, the use of the
20 whole salmon as bait because there are no bag limits.

21
22 ACTING CHAIR GOTTLIEB: Thank you. Gary.

23
24 MR. EDWARDS: But I guess there are
25 methods and means associated with it, and it does go on
26 to refer to methods and means, so you do have -- it's not
27 clear. I agree with you there's no bag limits and all,
28 but that's only a portion of that sentence. So if you
29 read on, there's other clarifying restrictions, at least
30 the way I read it.

31
32 MR. LITTLEFIELD: Correct. We cannot use
33 dynamite to take them.

34
35 ACTING CHAIR GOTTLIEB: Steve, did you
36 have a comment.

37
38 MR. KESSLER: No, I was going to say
39 something similar to what Gary just said, I have a
40 similar understanding of what this regulation says now.

41
42 ACTING CHAIR GOTTLIEB: Charlie.

43
44 MR. BUNCH: Well, I guess that would be
45 my question from reading that is if there isn't a bag
46 limit for subsistence uses, couldn't they use them
47 already under the terms of that regulation?

48
49 ACTING CHAIR GOTTLIEB: Jim.

50

1 MR. USTASIEWSKI: Madame Chair. I agree
2 with the interpretation that Gary and Steve have
3 enunciated, no, because there are methods and means
4 specified. And so the last part of that section, dealing
5 with the head, tail and fins and viscera would apply.
6
7 ACTING CHAIR GOTTLIEB: Charlie.
8
9 MR. BUNCH: Madame Chair. Well, not to
10 be argumentative here, but the word it says, or, not and,
11 so I would think that if you had to meet one or the other
12 of those.
13
14 ACTING CHAIR GOTTLIEB: Jim.
15
16 MR. USTASIEWSKI: Madame Chair. I think
17 that the more specific one applies and that's the one
18 that I just mentioned, the last section.
19
20 ACTING CHAIR GOTTLIEB: John.
21
22 MR. LITTLEFIELD: Are you suggesting, and
23 I don't know if I want to ask Cal to do this or not, but
24 we're talking -- it says whitefish, herring and other
25 species, are you suggesting then that there are no
26 methods, means or anything on any of those other species?
27 I mean herring, we already know there's some kinds of
28 methods and means on those, gillnets and I don't know, I
29 think all of those things have some kind of methods and
30 means attached to them. But they may be -- oh, I'm
31 reminded of an old Army definition but I better not bring
32 it up, but, however so slight, so anyway I don't know, I
33 think you're reading this out of context of what ANILCA
34 says.
35
36 I believe ANILCA does allow it and I
37 think the regulation kind of allows it now too.
38
39 ACTING CHAIR GOTTLIEB: Gary.
40
41 MR. EDWARDS: I don't know, one observ --
42 the way I read the State's regs, under sport regs, I can
43 go out and catch all the pink salmon, well, within my
44 limits, and then I can utilize the heads, and the tails
45 and the fins and viscera of them for basically any
46 purposes I want. I can go out and bait crab pots or
47 shrimp pots or what; is that correct?
48
49 MR. HILSINGER: That's correct.
50

1 MR. EDWARDS: So I mean would one option
2 be to allow at least the same for subsistence caught fish
3 that you could use heads, fins and viscera for them, I
4 mean what would be the difference, if you're allowing it
5 for rec fishermen to do that, why wouldn't we allow at
6 least the minimal, the same for subsistence fishermen, I
7 don't know.
8
9 ACTING CHAIR GOTTLIEB: Excuse me, let me
10 just mention, I think Mitch is on the phone and, Mitch,
11 we're on Board deliberation with No. 30.
12
13 CHAIRMAN DEMIENTIEFF: Yeah, uh-huh.
14
15 ACTING CHAIR GOTTLIEB: Okay. I think
16 it's a question to the Department, Gary?
17
18 MR. EDWARDS: Yes.
19
20 ACTING CHAIR GOTTLIEB: Steve.
21
22 MR. KESSLER: I think, Gary, that what
23 you've just asked for is allowed already as part of the
24 regulations. It says as well as -- in our regulation
25 25(j)(4), as well as the head, tails, fins and viscera of
26 legally taken subsistence fish. So I think.....
27
28 MR. EDWARDS: Essentially all this does
29 is allow using all parts of pink salmons as opposed to
30 selected parts?
31
32 ACTING CHAIR GOTTLIEB: That's correct.
33 Further discussion. John.
34
35 MR. LITTLEFIELD: Once you subtract the
36 head, the tail, the fin, and the viscera of a pink salmon
37 there is not much left.
38
39 ACTING CHAIR GOTTLIEB: Steve.
40
41 MR. KESSLER: I guess maybe we need to
42 hear from Counsel again, but I think still with this
43 language here, the head, tail, fins, and viscera, legally
44 taken subsistence fish is not the intent of this -- still
45 that this would be to allow these parts to be used in
46 subsistence fisheries or would that then extend to, in
47 some way to commercial or sportfisheries, I mean I think
48 that we're still narrowed to where we have the authority,
49 which is in the subsistence fisheries.
50

1 Maybe, Jim, if you could help me there.
2
3 ACTING CHAIR GOTTLIEB: Jim.
4
5 MR. USTASIEWSKI: Madame Chair. I'm not
6 sure if I understood the question.
7
8 But if the activity is subsistence taken
9 fish used in Federal public waters, I think you don't
10 have a conflict. When you go beyond that you start
11 getting into areas that I'm not the expert on State law,
12 I pointed you to the paragraph that purports to summarize
13 State law and it seems to me there's not necessarily a
14 conflict there, but that may be something for the State
15 really to address if there's a need to clarify that.
16
17 ACTING CHAIR GOTTLIEB: I think you're
18 right. We need to look at this proposed regulation, all
19 three parts of it, and I think that's what I was hearing
20 Keith saying.
21
22 And we have said, the existing regulation
23 says you can't use this for commercial or sportfishing
24 purposes. The proposal goes on to revise that. What I
25 hear you saying is that's beyond our authority.
26
27 MR. GOLTZ: I think maybe the State wants
28 to jump in here, either Steve or Kelly.
29
30 ACTING CHAIR GOTTLIEB: Kelly.
31
32 MR. HEPLER: Who's on first. This is
33 another one of those proposals that the practicality, it
34 doesn't mean a hell of a lot to be candid, but it does
35 for legal reasons for the reasons that the Counsel said,
36 so this is why we're spending time on this.
37
38 I will let you people know before I give
39 you my answer is that the Board of Fish also has a
40 proposal in front of it from Southeast that deals with, I
41 think, chums and pinks, and so this discussion is going
42 to happen within a week and a half in front of the Board
43 of Fish, the same discussion. And Staff honestly is
44 split on that one, too.
45
46 But in answer to this question, I think
47 the question came up, if you were out right now in a
48 sportfishery and you have a whole pink salmon and you're
49 fishing for halibut you're going to get cited. Now, if
50 you're in a commercial fishery and you have a fish that

1 you can prove where that fish came from and you're using
2 it for longline bait or something, you're not going to
3 get cited. And I assume that's correct, John, and that's
4 a positive affirmation from John, so it's just that
5 simple.

6
7 So it's just this question of trying to
8 take regulations as -- and I know it must be frustrating
9 for people like John Littlefield to think about this, but
10 you're taking from the Federal regulations and then
11 putting them on top of a State regulation. Now in a
12 perfect world if we could do the same back then we do a
13 tit-for-tat and it'd be interesting but we can't, so
14 we'll trade, we'll give you this one for another one, and
15 I'm being somewhat facetious, and I don't mean to be,
16 this is a serious topic.

17
18 But that's what would happen, you'd get
19 cited.

20
21 ACTING CHAIR GOTTLIEB: I'm just
22 wondering actually if that's barter or trade, but we'll
23 figure that out later.

24
25 (Laughter)

26
27 ACTING CHAIR GOTTLIEB: Steve, go ahead,
28 please.

29
30 MR. DOUGHERTY: Thank you, Madame Chair.
31 I would just add that this is a jurisdictional issue,
32 it's not really a substantive issue. But the State does
33 take the position that the Federal Subsistence Board does
34 not have the authority to adopt regulations for our
35 commercial and sportfisheries. As long as it's limited
36 to use in the subsistence fisheries we don't have a
37 problem with it and I think there might be some way
38 around this as far as the substance goes, as well as --
39 as long as we don't have a regulation that purports to
40 affect State sport and commercial fishery regulations.

41
42 Thank you, Madame Chair.

43
44 ACTING CHAIR GOTTLIEB: Thank you, Steve.
45 And I mean I agree, I'm uncomfortable with the
46 jurisdictional aspect of this. I think there's some
47 potential to work more on this proposed regulation and
48 let's perhaps figure out a solution that does acknowledge
49 customary practices and keep them within the legal arena.
50

1 Any other comments.
2
3 MR. LOHSE: Judy.
4
5 ACTING CHAIR GOTTLIEB: Ralph.
6
7 MR. LOHSE: Well, Madame Chair, with that
8 being said, I don't think there are any commercial -- I
9 don't think there are any commercial fisheries in Federal
10 waters, at least in Federal waters over which you have
11 jurisdiction, and I don't think that the subsistence
12 halibut fishery comes underneath your jurisdiction
13 either.
14
15 So with that in mind, I don't know
16 whether there's much to be gained here then.
17
18 ACTING CHAIR GOTTLIEB: Thank you. All
19 right, all those in favor of the motion, and, Mitch, the
20 motion is to adopt the proposal consistent with the
21 recommendations of the Southeast Regional Council. All
22 those in favor signify by saying aye.
23
24 CHAIRMAN DEMIENTIEFF: Aye.
25
26 ACTING CHAIR GOTTLIEB: All those
27 opposed, same sign.
28
29 IN UNISON: Aye.
30
31 ACTING CHAIR GOTTLIEB: Motion fails.
32 We're going to switch the order just very slightly and go
33 to Proposal No. 34, and we're changing the order because
34 it will make more logical sense to us, we hope.
35
36 (Laughter)
37
38 ACTING CHAIR GOTTLIEB: John.
39
40 MR. LITTLEFIELD: Madame Chair. Before
41 we go I'd like to clear up something from yesterday.
42 There was a question asked, a couple of them, actually,
43 on Proposal 23 by Member Edwards and it had to do with
44 what the intent of our Board was.
45
46 Well, I need to tell you, the information
47 that was given to me, and it actually kind of made me
48 look silly because they said here's your transcript, I
49 didn't have my own, well, as I mentioned, we had two
50 votes on Proposal 23, so this transcript that you gave me

1 was on the first vote, and we brought it back up for
2 reconsideration. So if you will give me a second here, I
3 will give you the vote so that it's clear for the record
4 what we did on Proposal 23.

5
6 And this was on Proposal 23. There's a
7 motion to table 23 and a second. There's a second. The
8 motion to table is not debatable. All those in favor
9 please signify by saying aye. Aye. Those opposed, same
10 sign. No opposing. The motion to table is adopted and
11 that is our recommendation to the Federal Subsistence
12 Board, that they table this motion with the background
13 information provided to them that we will prepare an all
14 encompassing and fully substantiated proposal at the next
15 fisheries proposal period which is a year from now.

16
17 Mr. Chairman, do you need that in a form
18 of a motion. I believe the record should be clear enough
19 that we intend that Staff will generate this proposal for
20 us and I guess, Dr. Schroeder, do you think that we've
21 captured the directions to Staff to craft that proposal
22 for the next period. Mr. Chairman, I think the record is
23 quite clear. You will have a chance to submit that
24 proposal at your next meeting because fishery proposal
25 period will be open at that time and Staff will have a
26 draft proposal before you and you can modify it and send
27 it in as a Council proposal at that time.

28
29 Okay.

30
31 CHAIRMAN DEMIENTIEFF: And the Council is
32 going to be able to look at it prior to bringing it to
33 the Board's attention, right?

34
35 MR. LITTLEFIELD: That's correct. And
36 the last statement I said is, I think our directions are
37 clear to Staff, and that we expect next year to see a
38 full blown analysis of District 14 and those communities
39 that are in that area.

40
41 So in answer to your question, I was kind
42 of caught unaware as we moved into 23 without being
43 prepared for it because I thought it was today and I just
44 want to make it clear that I kind of went out on a limb
45 saying something and I was -- the papers she gave me were
46 inadequate to back it up, so my memory is still somewhat
47 intact.

48
49 Thank you, Madame Chair.

50

1 ACTING CHAIR GOTTLIEB: And we're glad to
2 hear that. No, thank you for putting that on the record.
3 And I also wanted to mention that as the most current RAC
4 Chair who has experience working with subcommittees of
5 the RAC, I hope Ralph or others may be able to call on
6 you on how the process has worked from the RAC's
7 viewpoint and you can share your insights.

8
9 MR. LITTLEFIELD: Madame Chair, in my
10 free time I would be willing to do that at any time.

11
12 ACTING CHAIR GOTTLIEB: We appreciate
13 that.

14
15 Okay, we're on to Proposal 34, please.

16
17 MR. CASIPIT: Thank you, Madame Chair.
18 For the record, my name is Calvin Casipit. I'm the
19 subsistence fisheries biologist for the Forest Service in
20 Juneau.

21
22 Your executive summary for this proposal
23 begins on Page 34, the analysis itself begins on Page 417
24 -- did I say that right, 414 is where you see the
25 executive summary for 34.

26
27 I'll say right off that much of the
28 information that you've reviewed in this particular
29 analysis you've seen before. The issue of steelhead in
30 Southeast Alaska has been discussed by this Board and the
31 Council for many years now so I'm going to try to
32 truncate this and save some time. If I gloss over
33 something, I'll be happy to answer questions.

34
35 Proposal FP06-34 was submitted by Mr.
36 Mike Vaughn of Sitka, Alaska. He requested the Federal
37 Subsistence Board repeal 36 CFR 242 Section
38 27(i)(13)(xxii). This is the regulation that the Board
39 put into place last year that allows the harvest of one
40 steelhead per day, two per year per household between
41 January 1 and May 31 in Southeast Alaska except for
42 Prince of Wales and Kosciusko Island where there is an
43 existing fishery.

44
45 The proponent of FP06-34 is concerned
46 that the existing Federal subsistence regulations may
47 allow more harvest than steelhead populations can handle
48 so he requests the change the minimum size restriction of
49 36 inches along with a two fish annual harvest limit
50 which is the same as State sport regulations for the

1 species. The proponent feels that steelhead have not
2 been an important subsistence resource since other salmon
3 are available in larger numbers to fill subsistence users
4 needs.

5
6 Just to -- I'll just point out some
7 things in the analysis here as I flip through the pages.
8 The regulatory history, the biological background is much
9 the same that you've seen before. However, I did want to
10 point out that as far as harvest history we do have
11 information from our 2005 fishery for Southeast Alaska
12 other than Prince of Wales Island. I'll call your
13 attention to Page 421 of your analysis. It's the
14 paragraph right above sport harvest. I say there that
15 the 2005 spring fishery harvest was six steelhead. I just
16 talked with Mr. Bob Larson who handles our permit
17 database and we still had a few more steelhead permits
18 that are out, they're due back to our offices on January
19 15th, which is in a couple days, but so far as with all
20 the permits we've gotten, we've got eight steelhead, not
21 six steelhead.

22
23 I also wanted to point out that based on
24 concerns expressed by the Alaska Department of Fish and
25 Game, our local Federal fisheries managers restricted
26 harvest in 16 steelhead streams near Petersburg,
27 Ketchikan, Wrangell, Sitka and Juneau for the spring 2005
28 Federal fishery. Restrictions ranged from no retention
29 of steelhead to 30 or 32 inch minimum size limits with
30 mandatory 24 hour reporting of harvest. Again, I call
31 your attention to Page 426 of your book, there is a
32 summary table of the restrictions that we put in place on
33 our Federal subsistence permits for Prince of Wales,
34 small road accessible streams, Ketchikan road system
35 streams, Wrangell and Petersburg road systems, Petersburg
36 Creek, Hoonah road system, Sitka road system and the
37 Juneau road system. All this, that summarizes the
38 regulations, the harvest limits, the minimum sizes that
39 we may have put in place, the methods and reporting
40 requirements. There's also a summary of the number of
41 streams that have those particular restrictions on them.

42
43 I'd be happy to answer any more specific
44 questions if you would like.

45
46 I also wanted to call your attention to
47 Table 3. Table 3 is much unchanged from previous years
48 that the Board and Council has reviewed, except that we
49 do have harvest and catch information for the
50 sportfishery for steelhead in Southeast Alaska for the

1 year 2003, that came from the Department.

2

3

4 The effect of this proposal would be to
5 restrict the Federal -- this proposal, if adopted, would
6 restrict the Federal subsistence harvest of steelhead in
7 Southeast Alaska and reverse the Board's decision
8 establishing the current regulation. The Board's action
9 in January 2005 was designed to accommodate harvest as
10 documented in community harvest surveys.

11

12

13 An annual harvest limit of two fish over
14 36 inches does not meet subsistence users needs. This
15 comes from testimony before the Southeast Regional
16 Advisory Council in 2002, 2003 and 2004. This would be an
17 unnecessary restriction to subsistence users. With a
18 minimum size limit of 36 inches a small proportion of the
19 steelhead population is available for harvest, and I
20 refer you to Table 1 for that length distribution which
21 does not meet the need of subsistence users, again, as
22 described in the Southeast Alaska Regional Advisory
23 Council in 2000, 2001, 2002, 2003 and 2004.

24

25

26 Harvest opportunity for Federally-
27 qualified subsistence users would be greatly reduced and
28 catch and release mortality may increase with minimum
29 size limits.

30

31

32 Based on the low report of harvest from
33 our Federal fisheries little or no effects would result
34 for other user groups by restricting this fishery.

35

36

37 Thank you, Madame Chair. I'd be happy to
38 answer any questions.

39

40

41 ACTING CHAIR GOTTLIEB: Thank you, that
42 was very good. Questions for Cal.

43

44

45 MR. BUNCH: Cal, with the regulations
46 that we passed yesterday allowing bait in there, if we
47 pass this proposal, wouldn't that increase the mortality
48 rate because if you're allowing bait you'd have to
49 release everything that you caught under 36 inches; is
50 that correct?

51

52

53 MR. CASIPIT: Madame Chair. Mr. Bunch.
54 Yes, you are right. However, because this regulation, if
55 passed, this regulation would go away, we would still
56 allow the use of bait, we'd probably want to -- I mean as
57 a manager I probably wouldn't want to see that go on and
58 we would probably, as permit conditions, prohibit the use

1 of bait everywhere in Southeast for steelhead because we
2 wouldn't want to see that kind of catch and release
3 mortality with bait.

4

5 MR. BUNCH: So then the regulation that
6 we passed yesterday would just be null and void?

7

8 MR. CASIPIT: I guess we would be
9 violating Federal Subsistence Board direction, but as a
10 manager I can't see the point in catch and release with
11 bait, it's just not, in my opinion as a manager, is not
12 the right thing to do.

13

14 ACTING CHAIR GOTTLIEB: Thanks. Melinda,
15 were there written comments.

16

17 MS. HERNANDEZ: Madame Chair. There were
18 three written public comments.

19

20 The first is from the Chilkoot Indian
21 Association. They write in favor of the proposal. This
22 action should be taken in order to preserve the wild
23 steelhead stocks. Dietary needs of subsistence users can
24 be met by substituting other species of salmon in place
25 of the steelhead so that no detrimental effect should
26 come to subsistence users.

27

28 The second written public comment was
29 from Mr. Jeff Rice. He writes in support of the
30 proposal. I would simply like to add my support to what
31 Mr. Vaughn has proposed. As fragile as many of the
32 steelhead populations are, I believe it could prove a
33 costly error to allow such harvest.

34

35 And the third written public comment is
36 from Joseph Stratman. He wrote a letter to show strong
37 support for Proposal FP06-34.

38

39 Thank you.

40

41 ACTING CHAIR GOTTLIEB: Thanks very much.
42 We have no one signed up for public testimony. So if we
43 could have the Regional Advisory Council recommendation,
44 please, John.

45

46 MR. LITTLEFIELD: Thank you, Madame
47 Chair. In the words of Yogi, it's deja vu all over
48 again, we've been on steelhead ever since I've been on
49 the Council.

50

1 So our recommendation is on Page 415.
2 The Regional Council opposes this proposal. The proposal
3 would roll back Federal regulations adopted in the 2005
4 Fishery Regulatory Cycle concerning steelhead in the
5 region. Neither data presented at the Staff analysis or
6 information provided by the proponent showed a need for
7 this regulatory change. Staff provided the Council with
8 data on this past year's subsistence steelhead fishery.
9 Based on permit returns the estimated steelhead harvest
10 under the present regulation are 24 fish for the Prince
11 of Wales winter and spring fisheries and as just amended
12 by Mr. Casipit, eight fish in the remainder of Southeast
13 Alaska. This harvest is definitely sustainable and is
14 less than the catch and release mortality in the
15 sportfishery.

16
17 Madame Chair.

18
19 ACTING CHAIR GOTTLIEB: Thank you.
20 Gary.

21
22 MR. EDWARDS: John, I don't know anything
23 about the Chilkoot Indian Association, are they an active
24 member, do they come to your meeting, are they in an area
25 that would harvest steelhead. I mean they did support
26 the proposal, I was just curious because this is -- I'm
27 assuming this is a Native Association.

28
29 MR. LITTLEFIELD: I believe it is. They
30 commented on everything, and some they agreed with us and
31 some they didn't. And perhaps Chilkoot and Chilkat are
32 two separate areas. The area of Skagway, which I assume
33 is the Chilkoot area, there's no Federal waters in that
34 area because it's all State area. The Chilkat has Federal
35 waters. I don't know, maybe some others could offer -- I
36 don't know who they are. I know most of the
37 organizations, I guess I just don't know who these people
38 are.

39
40 ACTING CHAIR GOTTLIEB: Cal.

41
42 MR. CASIPIT: Just to answer the
43 jurisdictional question, the area in question, the
44 extreme upper northern end of Lynn Canal in the area of
45 Skagway and Haines and those waters draining into that
46 marine waters is beyond the jurisdiction of the Federal
47 Subsistence Program. It's beyond the exterior boundary
48 of the Tongass National Forest.

49
50 MR. EDWARDS: So in answering that then I

1 guess could you somewhat argue that these folks don't
2 really have standing because they're not in a position
3 that they really use these waters, I mean they have
4 standing, but assuming they're Federally -- they're a
5 rural community but I'm just trying to understand their
6 connection with the resource.

7
8 MR. CASIPIT: Madame Chair. Mr. Edwards.
9 I don't think I would want to use the word, standing, the
10 area -- the two communities Skagway and Haines are rural
11 communities. They do have -- they are identified as
12 customary and traditional users in various areas of
13 Southeast for both game and fish. So I don't want to say
14 that they don't have standing, but the areas where they
15 live there are no Federal lands, there is no Federal --
16 there are no Federal waters in the areas that they live,
17 however, they do -- you know, they do rely on
18 subsistence, I believe, it just doesn't happen to be
19 under our regulations for the most part.

20
21 ACTING CHAIR GOTTLIEB: Thank you, Cal.
22 John.

23
24 MR. LITTLEFIELD: Thank you, Madame
25 Chair. To Mr. Edwards, everyone is allowed to comment to
26 us and we allow anyone to testify and we consider all of
27 their comments. As was stated yesterday the analogy, the
28 painting the picture, we consider those comments but we
29 need to temper this by, like I said, deja vu all over
30 again, we have tons of substantial data on this fishery
31 that have been presented to us over the years by Staff
32 and as well as you've seen a lot of it because of the
33 proposals, I can't even count how many proposals came up.

34
35 When we analyze things at our Regional
36 Council level, we try to do four different points at
37 every opportunity when we can analyze them and that is
38 the amount of substantial data that's submitted, whether
39 it is a conservation concern, whether it's good for the
40 subsistence users or bad, and whether it's good or bad
41 for the non-subsistence users. We look at those and we
42 flesh those out. In this particular case, it's obvious
43 we've done that many, many times and that's why we're
44 opposing this proposal.

45
46 I'm sorry we didn't make a big, long
47 statement, but I didn't think this needed to be gone over
48 again. But the data is there and we did not just dismiss
49 their comments. I don't know who they are, but they
50 certainly are comments that we looked at and read. I

1 might note for the record one time I read 142 comments
2 that were submitted on one proposal, so we go through all
3 of them and we give them their deference. Madame Chair.

4

5 ACTING CHAIR GOTTLIEB: Thank you.
6 Department's comments, please.

7

8 MS. SEE: Thank you, Madame Chair. This
9 is one of four proposals that relate to these issues
10 about steelhead and the real challenge here is the lack
11 of critical information about stock sizes and harvest
12 rates in a multitude of small streams with small stocks.
13 As John Littlefield has noted, this issue has been before
14 the Council several times and there has been a vast
15 amount of testimony offered by the Department on the
16 points that I'll now summarize.

17

18 The analysis in this particular proposal,
19 the Federal analysis, concludes that a harvest rate of
20 about 10 percent is likely the highest sustainable
21 harvest rate for the stocks in question. Analyses that
22 we'll speak to when we pass through this proposal and go
23 to the others speak to harvest rates that may be as high
24 as 50 to 60 percent. With no size limit, as there is in
25 this particular proposal, the harvest rates would be even
26 higher. I'm sorry, not in this proposal, but under the
27 current Federal regulatory regime.

28

29 As is noted in the analysis, steelhead in
30 this area, because of these small stocks, harvest of even
31 a small number of those fish could, in fact, exceed the
32 10 percent harvest rate that we feel would be
33 sustainable. This has been stated several times in the
34 past. It's well substantiated on the record that the
35 Department has serious substantive concerns about this
36 point. Therefore, we note that the State's 36-inch size
37 limit and other regulations have been set based on
38 achieving what we consider to be a sustainable harvest
39 rate.

40

41 The Federal analysis we feel fails to
42 explain how less restrictive regulations provide for
43 conservation of the resource. We continue to object to
44 the fact that these Federal regulations are currently in
45 place.

46

47 If Federal personnel intend to take
48 special actions in season to protect stocks from over-
49 fishing, the standards and criteria for determining those
50 actions should be provided. We've made that request

1 before.

2

3 Regarding the permit information, we note
4 that it's really not clear whether that reflects a lack
5 of harvest or a lack of reporting. If it's a lack of
6 harvest, then, in fact, the State regulations would, in
7 fact, provide for opportunity. If the information
8 presented, in fact, is a lack of reporting, then we
9 question the permit system's effectiveness in capturing
10 those users of the resource.

11

12 We have consistently maintained that
13 there needs to be education and outreach to engage the
14 users in the need to obtain Federal permits under the
15 current Federal rules so that there is an accurate
16 portrayal of the harvest in these small streams.

17

18 We also note that we've had some
19 questions about the accuracy of the information contained
20 in Table 2, which is noted on Page 421, especially the
21 harvest numbers for Sitka, given the lack of steelhead
22 streams in that area. We consider that additional
23 community harvest information would help address these
24 questions and we recommend that that be done.

25

26 Therefore, we still conclude that the
27 State regulation should be used to help ensure
28 sustainability of the resource because we simply do not
29 have the stock size and harvest information. Neither the
30 State nor the Federal system have that information.
31 Thank you.

32

33 ACTING CHAIR GOTTLIEB: Thank you. Any
34 questions for the Department. John.

35

36 MR. LITTLEFIELD: Thank you, Madame
37 Chair. In the first paragraph you say that FP06-31, 32,
38 33, which we're going to talk about in a minute, have the
39 smaller size limits and a harvest rate of 50 to 60
40 percent, which would imply that there's a conservation
41 concern. Is that what you're characterizing, that
42 there's a conservation concern because of the 50 or 60
43 percent, as you say, the harvest rate of 50 to 60
44 percent?

45

46 MS. SEE: Through the Chair. I believe
47 that's a point on record in our previous testimony about
48 those limits, that we feel that those do basically lead
49 to a conservation concern at those levels of projected
50 harvest.

1 MR. LITTLEFIELD: Okay. Then a follow up
2 if I could. I believe that the number of eight
3 steelhead, and I will ask Mr. Casipit to clarify that,
4 includes those areas that are covered by Proposals 31, 32
5 and 33, so we're talking about eight steelhead, is that
6 correct, in this 50 to 60 percent harvest rate? Those
7 eight steelhead are included there?

8
9 ACTING CHAIR GOTTLIEB: Cal.

10
11 MR. CASIPIT: Thank you, Madame Chair,
12 Mr. Littlefield. There's several things going on here
13 and there's a bunch of things in the last few minutes
14 I've got to respond to. Let me answer Mr. Littlefield's
15 question directly. Those eight fish came from Southeast
16 Alaska other than Prince of Wales Island and they also
17 happen to come from the areas other than the areas where
18 we have those restrictions. So these eight fish came
19 from places other than Prince of Wales, Ketchikan road
20 system, Wrangell-Petersburg road system, Petersburg Creek
21 and the Juneau road system and the Sitka road system.

22
23 ACTING CHAIR GOTTLIEB: Cal, I thought it
24 was six fish.

25
26 MR. CASIPIT: In my oral presentation
27 here I had talked about the permits aren't due back to us
28 until January 15th and permits are coming in and at the
29 time I wrote this it was six, but here recently we've had
30 a couple more come in and I modified that to be eight.

31
32 ACTING CHAIR GOTTLIEB: I'm sorry. Go
33 ahead then.

34
35 MR. CASIPIT: Ms. See mentioned the Sitka
36 numbers there in Table 2. I wanted to say to the Board
37 that this information came from the Alaska Department of
38 Fish and Game. What that 650 number represents, I don't
39 know. You would have to ask the authors of the study
40 that found that. I have some suspicions, but it's only
41 speculation. I would refer to the author to talk about
42 that number.

43
44 The other issue I heard was -- and this
45 is probably skipping ahead to 31 through 33, but I'm
46 going to say it anyway. The issue of a 50 or 60 percent
47 harvest rate, I think what we're confusing here is
48 harvest rate with harvest potential. In some locations
49 there was a potential that 50 to 60 percent of the fish
50 could be harvested. As it turns out, none were harvested

1 based on the restrictions we put on the permit. So I
2 think there's a big difference between potential harvest
3 and what really gets harvested in this potential
4 exploitation rate. Our intention still is to try and
5 manage these fisheries so that less than 10 percent get
6 harvested. We've been achieving that through our
7 restrictions on our permits.

8

9 Also, for comparison purposes, for
10 instance let's take the sports chinook fishery in
11 Southeast Alaska. The existing sportfish regulations are
12 two chinooks a day, no closed season. If we were to
13 evaluate the harvest potential of that regulation, we'd
14 be quickly into a conservation concern. If every person
15 in Southeast Alaska that had a sportfishing license took
16 two chinooks a day every day for the entire season, we'd
17 be in trouble, but it doesn't occur. I think it's
18 important to look at the difference between potential and
19 what actually is happening based on restrictions on our
20 permits. Thank you, Madame Chair.

21

22 ACTING CHAIR GOTTLIEB: Thank you, Cal.
23 John.

24

25 MR. LITTLEFIELD: Thank you, Madame Chair
26 and thank you, Mr. Casipit. The point I was trying to
27 make here is they talk about a harvest rate and it would
28 seem to imply and scare you that, wow, 50 to 60 percent
29 and only 10 percent is what they calculate. If you
30 really look at a 36-inch fish, whether it's .6 or .7,
31 there's less than 1 percent of the fish that reach that.
32 So the harvest rate is not what we're talking about here.
33 We're talking about the numbers that Mr. Casipit gave you
34 and I would like you to keep that in mind when you look
35 at these numbers that seem to imply in the State that
36 there's a huge problem here.

37

38 ACTING CHAIR GOTTLIEB: Steve.

39

40 MR. KLEIN: Thank you. I do have a
41 question of the State. On Page 426 there's a list of
42 areas that have special permit stipulations for steelhead
43 that's in line with the regulation that was passed last
44 year, that the Federal manager needs to consider what
45 sort of special conditions need to be added for this
46 fishery and to do that in consultation with the State.

47

48 I guess my question is, are these the
49 areas here that, in fact, the State would have the most
50 concern with? I mean I understand the State has concern

1 for the steelhead fisheries throughout Southeast Alaska,
2 but here, are these the ones that do have the most
3 potential for overharvest as far as you're concerned?

4

5 MS. SEE: Through the Chair. I'll make
6 an initial response to this and Kelly Hepler may wish to
7 add as well. All the road systems, all the accessible
8 areas are of great concern to the Department and we've
9 said that on the record before. Without further detail
10 from the experienced manager who works in that area, I
11 would say the road systems are characterized in this
12 table for the very reason that they are of concern.

13

14 ACTING CHAIR GOTTLIEB: Thanks. Kelly,
15 something to add?

16

17 MR. HEPLER: I'm still thinking about
18 Cal's comments. It's my understanding, Cal, that when
19 Brookover was down there he worked with you on this list.
20 In fact, this was done in combination. This wasn't done
21 just in a vacuum by the Forest Service. This was done
22 with Sportfish Staff in addition. So it would be my
23 understanding that probably most of the concerns we have,
24 you know, are probably included in this. But, in
25 fairness, Tom is over in the regional office and I didn't
26 ask him to come over this morning. So if that's critical
27 to deliberations, I can certainly get you a more
28 definitive answer fairly shortly. Madame Chair.

29

30 ACTING CHAIR GOTTLIEB: Thank you. I
31 guess a question on Table 3 on 422 showing sport harvest
32 and catch, which is for Southeast, so I guess maybe it's
33 a greater set of numbers, but certainly those numbers are
34 quite a different magnitude than eight. Can you explain
35 that table a little bit more to us, Cal?

36

37 MR. CASIPIT: Table 3 displays the sport
38 harvest and catch for Southeast Alaska, different than
39 our subsistence fishery. So, for instance, for the year
40 2003, the first column there is Southeast Alaska sport
41 harvest, those were 62 steelhead were harvested by the
42 sportfishers in Southeast Alaska. There are some caveats
43 there, but these are based on the mail-out surveys that
44 Sportfish Division does.

45

46 The second column there is Southeast
47 Alaska sport catch. Those are fish that are caught. So
48 to get the fish that are released, you have to subtract
49 62 from 3,172 and you have an approximation of the fish
50 that are released in the sport fishery, 62 are the

1 numbers that were harvested, taken home.

2

3

4 I'll also point out that third column
5 there is commercial harvest. This is harvest that were
6 caught in commercial fisheries and, as you see the data
7 ends in 1990 and that's due to changes in Board of Fish
8 regulations that I think you all are aware of. We've
9 talked about several times before.

10

11 ACTING CHAIR GOTTLIEB: Thank you.
12 George.

13

14 MR. OVIATT: This has probably been
15 brought up, but what is the mortality rate on the catch
16 of the smaller fish? If somebody could help me with
17 that.

18

19 ACTING CHAIR GOTTLIEB: I think it's
20 generally recognized as five percent for the steelhead.
21 Other discussion. John.

22

23 MR. LITTLEFIELD: Madame Chair. As long
24 as you brought up Table 3 and Mr. Casipit explained
25 what's going on there, I'd just like to note for the
26 record that there is a Board of Fish proposal that would
27 require the commercial harvest to either at the
28 discretion or mandatory, I don't know how this is going
29 to come out because there's some sideboards, requiring
30 the commercial members to report that. It disappeared
31 back in '91. Our Regional Advisory Council has gone on
32 record supporting that.

33

34 Because we've come before you it seems
35 like every year with some steelhead proposals, I think it
36 would be wise for the Federal Subsistence Board to
37 consider laying their support to that, too. This is a
38 numbers game. Mr. Oviatt just asked for numbers. We
39 always look at these numbers for more data. I think
40 having better steelhead data is something that we'll
41 hopefully have a bigger picture of this in the future.

42

43 If you could lend your support to that as
44 the Council does, I think that would be appropriate.
45 Madame Chair.

46

47 ACTING CHAIR GOTTLIEB: Thank you. Kelly
48 had a comment, then Gary.

49

50 MR. HEPLER: Madame Chair. John, I agree
with you 100 percent on this one. When you look at these

1 numbers -- I mean the question I asked Tom yesterday is
2 sustainability. Cal, this wasn't an attack just on your
3 program, our program or anybody else. This is all
4 managers, a collective we, are concerned about
5 sustainability. So any time we have a large gap like
6 that we ask about it. Now there's some reasons why that
7 gap is there and there's some discussions around why that
8 information is there and then we have an old season
9 manager behind you that can probably help that. But the
10 discussion we had in-house about a week ago is that we
11 strongly support, at least between Denby and I, the
12 Director of Commercial Fish, ways of getting that
13 information.

14
15 I think there's some sideboards, as John
16 mentioned, but that's going to be our recommendation
17 going to the Board of Fish. So I think anybody interested
18 in conservation of any species would want the best
19 information in front of them. Certainly that's going to
20 be our position, too.

21
22 This discussion between us is probably
23 not going to go away, obviously, but at least the Board
24 Members will have the best available information for both
25 Boards perspective to know where you want to go and
26 that's really the best thing we can do. Madame Chair.

27
28 ACTING CHAIR GOTTLIEB: As you know, this
29 Board has a representative who does attend all the Board
30 of Fisheries meetings, so with this Board's concurrence,
31 we'll make sure those comments get conveyed. But back to
32 this proposal. Steve.

33
34 MR. KLEIN: I think we're still on State
35 comments if I'm not mistaken, right?

36
37 ACTING CHAIR GOTTLIEB: Yes.

38
39 MR. KLEIN: So I guess I do have one
40 further question and there may very well not be an answer
41 to this. I think we've all recognized that there's
42 harvest that's occurring that's not reported, so it's
43 harvest of fish that are no doubt less than 36 inches in
44 length, so these are fish that would not be harvested
45 legally under the Federal system, nor are they harvested
46 legally under the State system. Do you have any idea on
47 the magnitude of that, this so-called illegal harvest?

48
49 MS. SEE: Through the Chair. All harvest
50 that we know of in terms of community harvest is

1 reflected in the current state of our community harvest
2 survey information. That's where we're seeing there is
3 harvest. It doesn't square with reported harvest very
4 well. An additional level of work on community harvest
5 would probably be worthwhile to try to get a better
6 handle on this.

7
8 There has been that study information
9 that's summarized in the Staff analysis about community
10 harvest. But that's by no means definitive. As we noted
11 earlier in our comments, that area, I think, would help
12 get at the actual harvest better because it appears to be
13 harvest that doesn't square with the regulatory regime.
14 Thank you.

15
16 ACTING CHAIR GOTTLIEB: Steve, any other
17 comments or are we ready to move to Board discussion.

18
19 MR. KLEIN: In that case, one of the
20 things that I would like to have is Mr. Myers from our
21 Forest Service law enforcement just to come forward and
22 just talk about our law enforcement efforts Southeast-
23 wide as far as how much patrol they've been doing, what
24 they've observed, what sort of problems have been
25 observed with implementation of this new fishery.

26
27 ACTING CHAIR GOTTLIEB: Sure. Marty,
28 that would be great.

29
30 MR. EDWARDS: Madame Chair. Maybe as a
31 matter of process, I don't think we've heard from the
32 Staff Committee yet, and I think we need to do that maybe
33 before we get into Board deliberation and discussion.

34
35 ACTING CHAIR GOTTLIEB: You're correct.
36 Sorry I skipped over it. No harm intended. Pete, if
37 you'd give the Interagency Staff Committee position,
38 please.

39
40 MR. PROBASCO: Thank you, Madame Chair.
41 Our comments for the Interagency Staff Committee is on
42 415 and I'll just briefly go through those, summarize
43 them.

44
45 Interagency Staff Committee opposes the
46 proposal consistent with recommendation from Southeast
47 Regional Advisory Council. As already noted, this
48 proposal would repeal the steelhead trout regulations
49 implemented by the Board in 2005-2006. Cal has already
50 gone over the updated harvest figures updated to eight.

1 The key here is there's no substantial evidence of a need
2 to change the Federal regulations because of fish
3 conservation concerns. Adoption of proposed regulatory
4 change would result in very few fish available for
5 harvest by Federally-qualified subsistence users and,
6 therefore, would be detrimental to the satisfaction of
7 their subsistence needs. Madame Chair.

8

9 ACTING CHAIR GOTTLIEB: Thank you very
10 much. Questions for Staff Committee.

11

12 (No comments)

13

14 ACTING CHAIR GOTTLIEB: Marty, if you'd
15 go ahead, please.

16

17 MR. MYERS: Thank you, Chair. Marty
18 Myers with the U.S. Forest Service law enforcement in
19 Juneau. I wanted to bring to the attention of the Board
20 some of the work that we do. We've got people that are
21 out in the field in the areas making contacts with all
22 users of the National Forest and public lands in the
23 Southeast. We've got some figures. Our people are
24 basically out there on a daily basis, not necessarily on
25 subsistence, but we do keep quarterly records of some of
26 the contacts we've made.

27

28 Just for your information, our job in law
29 enforcement is somewhat different than the State's
30 because when we go out there and deal with the users, the
31 public, we have to define whether they're a subsistence
32 user or a sports fisherman or whatever because different
33 rules apply. We also have the jurisdiction to apply the
34 regulations on both sets of users.

35

36 In the spring season in the Southeast we
37 had 153 contacts with forest users in either the fishing
38 or hunting regime. Fifty-four of those were subsistence
39 users and the majority of those, of course, were in the
40 Prince of Wales area and Petersburg. What's important to
41 note about those particular contacts is that's part of
42 the winter steelhead season. Our officers patrol the
43 heavily-used steelhead areas during that part of the
44 season. Out of those contacts in that area only six
45 individuals claimed that they were subsistence fishing,
46 so the majority were sport.

47

48 Some of the violations or incidents that
49 occurred there that are interesting to note is
50 subsistence-wise we had one person given a warning for

1 not documenting a catch. That went for snagging and
2 another for over limit. But on the sports side we had
3 issues with no licenses and possession use of treble
4 hooks in single hook areas and also some other controlled
5 substance issues.

6
7 One important thing to note overall is
8 that the subsistence effect out there, their use effect,
9 both hunting and fishing, probably only amounts to about
10 24 percent of the total use. Fishing probably only
11 amounts to 10 percent. Subsistence fishing 10 percent of
12 the fishing use out there. Of those 10 percent, only
13 five percent of those have any kind of compliance issues.

14
15 In the late spring, April through June,
16 out of 38 days of patrol, 87 contacts were made for
17 subsistence use, only one subsistence fisherman was
18 observed out there at that time and they were steelhead
19 fishing and that individual was contacted and said he
20 only catches and releases his fish, he doesn't take them
21 home.

22
23 In Petersburg there were 26 fishermen
24 contacted, two were subsistence, and they were given
25 warnings because they were from Sitka, fishing outside
26 their C&T area. But other than that, the use that we've
27 come across is very small when it comes to subsistence
28 use.

29
30 Lastly, for the summertime, I want to
31 note that in the Juneau or Admiralty area there were 54
32 contacts made, but we found no subsistence use there.
33 Now keep in mind, of course, we're not out there every
34 day and every place on every stream, so this is basically
35 a sampling. Hearing that there's eight steelhead caught
36 in areas outside of POW and 24 I guess in POW, we have a
37 couple that we actually contacted during that incident.
38 So we don't get to see a lot, but our sampling kind of
39 gives an indication of how much use there is out there by
40 the subsistence users and how much take they're taking.
41 Thank you.

42
43 ACTING CHAIR GOTTLIEB: Thanks very much.
44 Any comments or questions. John.

45
46 MR. LITTLEFIELD: Thank you, Mr. Chair.
47 I believe Mr. Oviatt talked about mortality. I think you
48 had a question on that. I looked in the record and I
49 think for our deliberations the records show we used
50 approximately five percent mortality, recognizing that it

1 could vary by half of that either way and no one really
2 knows. For our discussion, we used the five percent
3 mortality on catch and release.

4
5 ACTING CHAIR GOTTLIEB: Cal, are you
6 satisfied with the reporting system on the permits and do
7 you do follow-up calls if you haven't gotten all your
8 permits back?

9
10 MR. CASIPIT: Madame Chair. Yes, we do
11 follow up and try and get all our permits back. In fact,
12 that's a major part of Ben, Terry and Bob's duties, is to
13 ensure that we get our permits back and everything is
14 recorded in our database. A very important part of their
15 job.

16
17 ACTING CHAIR GOTTLIEB: Thank you. Other
18 Board discussion. John.

19
20 MR. LITTLEFIELD: I just want to note for
21 the record I know Marty, Mr. Myers, looked at me when he
22 said they were from Sitka, but it wasn't me.

23
24 (Laughter)

25
26 ACTING CHAIR GOTTLIEB: We didn't think
27 so. Are we ready for a motion.

28
29 MR. BUNCH: Madame Chair. I move that we
30 accept the Southeast Regional Council's recommendation on
31 FP06-34.

32
33 ACTING CHAIR GOTTLIEB: Is there a
34 second.

35
36 MR. KLEIN: Second.

37
38 ACTING CHAIR GOTTLIEB: Steve, thank you.
39 Is there Board discussion.

40
41 MR. EDWARDS: Ms. Chairman. I plan to
42 vote in favor of the motion. I continue to have concerns
43 about those stocks down there for anybody that's using
44 them. I do echo what Mr. Littlefield said. I think it's
45 very important for this Board to address with the Board
46 of Fish and support this issue of trying to get a better
47 handle on what's taking place in the commercial catch.
48 My view is we're probably penalizing both the
49 sportfishers as well as subsistence fishers because we
50 don't have that data. Once we have much better data, we

1 might be able to make some better management decisions
2 that would actually allow broader catches for everybody
3 down there.

4
5 ACTING CHAIR GOTTLIEB: Thank you.
6 Charlie.

7
8 MR. BUNCH: Yes. A point of
9 clarification for John and Gary. Chilkoot Indian
10 Association is the tribal government for Haines, Alaska.
11 I plan on supporting this motion, but I too am concerned
12 about the policy. It's my understanding when ADF&G does
13 their household surveys that they don't split the
14 classification of whether it's sport caught or commercial
15 or subsistence, so I think if they were to do that, that
16 would give us some better data on this stuff.

17
18 And it seems silly to give a resource on
19 Thursday and then essentially take it back away on
20 Friday, so I intend on supporting that motion.

21
22 ACTING CHAIR GOTTLIEB: Thank you,
23 Charlie. Steve.

24
25 MR. KLEIN: I, too, intend to support the
26 motion. I'm going to give maybe a little bit of
27 rationale here and I think that some of this rationale
28 will also be appropriate to the other proposals that
29 we're going to be talking about and maybe by going
30 through some of this here it won't be necessary to go
31 into quite so much detail on the ones we're going to be
32 subsequently looking at.

33
34 One of the largest issues facing the
35 steelhead fishery is the ease of access to small road-
36 accessible steelhead systems. This issue and other
37 conservation issues were of concern to the Board last
38 year and, therefore, the local fisheries managers were
39 provided the authority to place permit conditions on
40 systems needing special protection.

41
42 The Federal managers consulted with
43 Department of Fish and Game and also with the Southeast
44 Alaska Regional Advisory Council and restrictions were
45 placed on the streams near Sitka, Juneau, Ketchikan,
46 Wrangell and Petersburg. These are non-Prince of Wales
47 I'm talking about, and that was on Page 426. There was a
48 chart that showed what those restrictions are.

49
50 These are annual stipulations which will

1 be looked at each year for their effectiveness in
2 providing for conservation while being the least
3 intrusive possible on subsistence users. I don't believe
4 there's any substantial evidence of a need to change the
5 Federal regulations because there just aren't any fish
6 conservation concerns at least resulting from the legal
7 harvest of fish that we're looking at here. Only eight
8 steelhead are known to have been harvested in 2005 at
9 this point under the Federal regulations for Southeast
10 Alaska, not including the Prince of Wales.

11

12 Adopting the proposed regulatory change
13 would result in very few fish available for harvest by
14 Federally qualified subsistence users and, therefore,
15 would be detrimental to the satisfaction of their
16 subsistence needs. Thank you.

17

18 ACTING CHAIR GOTTLIEB: Thank you, Steve.
19 And I'll mention that I think we have been talking about
20 and dealing with steelhead issues for many years now and
21 I really want to commend the Federal and State managers
22 and law enforcement for doing an excellent job in making
23 this a situation that has been workable and where you do
24 bring information back to us that's very useful to the
25 Board. But I think the proposal would be to the
26 detriment of subsistence users, so I'm ready to support
27 the motion as proposed.

28

29 All right. So the motion is to reject
30 the proposal consistent with the recommendation of the
31 Southeast Alaska Regional Advisory Council. All those in
32 favor please signify by saying aye.

33

34 IN UNISON: Aye.

35

36 ACTING CHAIR GOTTLIEB: All those opposed
37 same sign.

38

39 (No opposing votes)

40

41 ACTING CHAIR GOTTLIEB: Motion carries.

42

43 MR. LOHSE: Madame Chair.

44

45 ACTING CHAIR GOTTLIEB: Yes.

46

47 MR. LOHSE: Madame Chair. Before we get
48 started on something else, with my apologies to the Board
49 and to my colleague here who still has some proposals on
50 the table, I'd like to ask to be excused. I have to

1 catch a ferry in Whittier this afternoon and I'd like to
2 get out of the hotel and grab a couple things on the way
3 out of town.

4
5 ACTING CHAIR GOTTLIEB: We understand and
6 we appreciate you spending this extra time with us and
7 really want to especially thank you for all the work
8 you've done relating to the issues that were in front of
9 the Board for this particular Board meeting. We know
10 we'll be working closely with you and your Council
11 members on many issues shortly. Thanks. Have a safe
12 trip home.

13
14 MR. LOHSE: Thank you and thank you for
15 your work. Tom and I have already made arrangements to
16 get together on the phone and work on that working group
17 down there.

18
19 ACTING CHAIR GOTTLIEB: Excellent. Thank
20 you.

21
22 MR. LOHSE: We will see you.

23
24 ACTING CHAIR GOTTLIEB: Okay. Proposal
25 31, please. John.

26
27 MR. LITTLEFIELD: Madame Chair. I'd like
28 to say also a thank you to my colleague here, Ralph, and
29 I want to make sure he knows that my offer of help was
30 not going to be to co-chair or anything else on this.

31
32 (Laughter)

33
34 MR. LITTLEFIELD: I wish him a safe trip
35 and he certainly is a valuable member of this process
36 here. But before we go on, I just wonder if it's
37 appropriate to do something about this steelhead. I was
38 just given a letter from the Tongass Forest supervisor,
39 Mr. Forrest Cole, and they're going to support that
40 steelhead proposal requiring mandatory reporting and I'm
41 just wondering if this is the time for the Federal Board
42 to go on record saying that they do that. It should be
43 fairly simple to do that. I think it's important that
44 you support that proposal. I don't know if this is the
45 time or not, Madame Chair.

46
47 ACTING CHAIR GOTTLIEB: So, John, you're
48 referring to the proposal that will be in front of the
49 Board of Fisheries? Just for everybody's clarification,
50 is the Board -- and maybe we've already worked up

1 comments, I don't know, but is the Board supportive of
2 making this a Federal Subsistence Board comment that we
3 ask for help on reporting?
4

5 MR. EDWARDS: I guess I would prefer to
6 say it actually in a letter signed by the chairman as
7 well as when we have an opportunity to speak to it
8 through our representative at OSM. I would encourage us
9 to do both.
10

11 ACTING CHAIR GOTTLIEB: That's a good
12 suggestion. Any objections. Steve.
13

14 MR. KLEIN: I believe we have provided
15 comments to the Board of Fisheries already on a number of
16 proposals and I think those have been signed by Tom and I
17 think we did provide comments on this proposal. It looks
18 like Pete is ready to talk about it.
19

20 ACTING CHAIR GOTTLIEB: Pete, if you can
21 help us out, please.
22

23 MR. PROBASCO: Yes, Madame Chair. Tom
24 did submit comments to these proposals. I'm going to go
25 on memory here on Proposal 169.
26

27 MR. LITTLEFIELD: It's Proposal 198, not
28 169. 198 is the mandatory reporting of steelhead.
29

30 MR. PROBASCO: I'm referring to the
31 letter, John. Proposal 169, where they're asking the
32 State Board of Fisheries to establish the task force on
33 the Chatham Straits. So which one were you referring to,
34 John? Proposal 198, again on memory, we were in support
35 of that proposal. Madame.
36

37 ACTING CHAIR GOTTLIEB: I think perhaps
38 Gary what you're suggesting is based on the discussions
39 we've had today, jointly, with the Department it may be
40 good for Mitch to sign a letter updating the comments
41 we've already submitted.
42

43 MR. EDWARDS: I don't mean to minimize
44 what Tom has already sent by comments. In my mind, this
45 is a very, very important issue and I think as much
46 support as we can demonstrate for it all the better.
47

48 ACTING CHAIR GOTTLIEB: Steve.
49

50 MR. KLEIN: I will certainly support

1 that. This is a very important way to start trying to
2 answer some of the questions about steelhead. Until we
3 know more about the incidental harvest of steelhead in
4 Southeast Alaska, we're going to be discussing these
5 issues forever and ever and ever. Hopefully this will
6 start getting towards some of those answers, be able to
7 start filling in some of those holes and I certainly
8 support the Board in a letter signed by Mitch to the
9 Alaska Board of Fisheries to support that proposal.

10
11 There's a little bit of question on that
12 proposal at this point the way it's worded. It gives the
13 Commissioner flexibility to decide by emergency order
14 whether the Department would require this reporting. I
15 really don't understand the details of that, but I think
16 it ought to be a position that we would ask for the
17 requirement for reporting, not to make it optional by
18 emergency order of the Commissioner.

19
20 ACTING CHAIR GOTTLIEB: Well, Mitch, with
21 your concurrence, it sounds like we'll be putting a
22 letter together for you to sign to the Board of
23 Fisheries.

24
25 CHAIRMAN DEMIENTIEFF: Yeah, I'm okay
26 with that.

27
28 ACTING CHAIR GOTTLIEB: Kelly, anything
29 to add.

30
31 MR. HEPLER: Certainly you can send
32 whatever letter of support. How you want to word it is
33 obviously in your purview. The only thing I would just
34 say, we've had quite a bit of discussion, you know, and
35 without getting into a lot of detail, there's concerns
36 around some discussion as far as treaty ramifications, so
37 we were looking for the flexibility to have the
38 Commissioner have that authority. I'm certain when we
39 had those discussions I didn't hear the Commissioner say
40 he didn't want the authority. From our perspective, we'd
41 rather see you supporting the Commissioner asking for
42 that information. Madame Chair.

43
44 ACTING CHAIR GOTTLIEB: And we realize
45 the Department does have to work with those treaty
46 negotiations on everybody's behalf, so we'll let you work
47 through that technicality too. Any other comments.

48
49 (No comments)

50

1 ACTING CHAIR GOTTLIEB: Okay. Staff,
2 please.

3
4 MR. VanALEN: Good morning, Madame Chair
5 and Board. I'm on FP06-31. The executive summary is on
6 Page 391. Proposal FP06-31 was submitted by Mark Vinsel.
7 He's the president of Raincountry Flyfishers in Juneau.
8 It would apply State sport fishing regulations to all
9 Federally qualified persons who subsistence fish for
10 steelhead, Dolly Varden and trout in streams on or
11 adjacent to the Juneau road system. The proponent did
12 not want the new region-wide Federal subsistence
13 regulations for steelhead, Dolly Varden, and cutthroat
14 trout to apply to waters accessible to the non-rural
15 Juneau road system.

16
17 The proponent was not aware that the new
18 Federal subsistence regulations for harvesting steelhead
19 and Dolly Varden, brook trout, grayling, cutthroat, and
20 rainbow trout both state that The permit conditions and
21 systems to receive special protection will be determined
22 by the local Federal fisheries manager in
23 consultation with ADF&G.

24
25 So Federal Staff recognized with aid of
26 discussions with ADF&G that the steelhead, Dolly Varden
27 and trout stocks in the Juneau area could sustain only a
28 low rate of exploitation and that they are already
29 subjected to relatively high sportfishing pressure by
30 Juneau residents.

31
32 Consequently, in 2005, the local Federal
33 fisheries manager placed special restrictions on the
34 Federal subsistence fishing permits for both steelhead
35 and for salmon, Dolly Varden and trout to address
36 conservation concerns for streams crossed by the Juneau
37 road system. The proponent felt that he and others would
38 not be so alarmed by the new steelhead, trout, and char
39 regulations if this option of putting special permit
40 conditions on the permits was better known, especially if
41 the special permit conditions prove effective over time.

42
43 The special conditions on the 2005
44 Federal Southeast Alaska Spring Steelhead permit included
45 a minimum size limit of 30 inches, gear restricted to dip
46 net or rod and reel without bait, and a mandatory
47 reporting of harvest within 24 hours. The size limit was
48 set less than the State sport fish limit of 36 inches to
49 give Federally qualified subsistence users a subsistence
50 priority, yet protect at least 40 percent of the

1 steelhead from potential harvest, recognizing that the
2 actual percent harvested would depend on if anybody
3 fished and if any fish were harvested.

4

5 The 24-hour reporting requirement was
6 made so harvests could be monitored. Federal staff were
7 prepared to take special actions in-season to protect
8 stocks from over-fishing if any appreciable harvest
9 occurred. The size limit and reporting requirement was
10 used in part to discourage subsistence fishing on the
11 non-rural Juneau road system. As it turned out, there
12 were no steelhead harvested under Federal permits in
13 Juneau in 2005. It's unlikely that rural subsistence
14 users would choose to fish in non-rural Juneau.

15

16 Special permit conditions will be looked
17 at each year for their effectiveness in providing
18 conservation while being the least intrusive as possible
19 on subsistence users and least likely to result in
20 disruptions to non-subsistence uses.

21

22 If this proposal were implemented, there
23 would be little opportunity for Federally qualified
24 subsistence users to harvest legal size steelhead or
25 trout on the Juneau road system. This could be
26 detrimental to the satisfaction of subsistence needs if a
27 Federally qualified subsistence user desires to harvest
28 steelhead or trout on the Juneau road system. Thank you.

29

30 ACTING CHAIR GOTTLIEB: Thanks very much.
31 Are there comments or questions.

32

33 (No comments)

34

35 ACTING CHAIR GOTTLIEB: Are there written
36 public comments, please.

37

38 MS. HERNANDEZ: Madame Chair, there was
39 just one written public comment from the Chilkoot Indian
40 Association. They write in support of the proposal. It
41 does not seem that this change would impact subsistence
42 users in Juneau as it does not affect traditional fishing
43 areas. Preservation and enhancement of fishing stocks
44 are paramount to the Chilkoot Indian Association.

45

46 ACTING CHAIR GOTTLIEB: Thank you. No
47 one signed up to testify, so with that we'll go to
48 Regional Advisory Council recommendation, please.

49

50 MR. LITTLEFIELD: Thank you, Madame

1 Chair. In the Board book on Page 393 are the Regional
2 Council's recommendation on FP06-31. We oppose the
3 proposal. This proposal would roll back the subsistence
4 steelhead regulations adopted in the 2005 regulatory year
5 for the Juneau road system area. The SERAC
6 agrees with staff that adopting the proposed regulatory
7 change would result in few or no fish available to
8 Federally qualified subsistence users who might use the
9 Juneau road system.

10

11 Staff has worked with the Department of
12 Fish and Game to include permit conditions for fishing
13 off the Juneau road system. These permit conditions
14 address conservation concerns adequately and provide for
15 subsistence opportunity. This fishery is closely
16 monitored, and no management problems exist that would
17 call for regulatory change at this time. Madame Chair.

18

19 ACTING CHAIR GOTTLIEB: Thank you. Any
20 questions for John.

21

22 (No comments)

23

24 ACTING CHAIR GOTTLIEB: Interagency Staff
25 Committee, please.

26

27 MR. PROBASCO: Thank you, Madame Chair.
28 The Interagency Staff Committee opposes the proposal
29 consistent with the recommendation of the Southeast
30 Alaska Regional Advisory
31 Council. Our justification is pretty much in line with
32 what Mr. Littlefield just read.

33

34 ACTING CHAIR GOTTLIEB: Thank you. If we
35 could have Department comments, please.

36

37 MS. SEE: The State has several concerns
38 with this Federal fishery in the Juneau area. We
39 consider that ANILCA does not provide for subsistence
40 uses in areas that are non-rural. The Juneau area is not
41 near or reasonably accessible to rural residents of
42 Southeast Alaska for the purpose of subsistence fishing.
43 As the Department has previously noted, evidence should
44 be provided that shows whether or not steelhead, trout,
45 and char in the Juneau area have been customarily and
46 traditionally used by rural residents who live outside
47 the Juneau non-rural area.

48

49 In addition, we think the Federal
50 analysis should explain why subsistence opportunity along

1 the Juneau road system would be needed for subsistence
2 harvest. If such documentation is not possible, then the
3 Juneau non-rural area should be exempted from the
4 regionwide Federal regulations. In this case, an
5 area-specific or community-based C&T determination should
6 be considered rather than a regionwide determination.

7
8 We also have concerns about the
9 sustainability of this fishery and we've spoken to those
10 in the previous comments. The 30-inch size limit that's
11 specified for this fishery would allow potential harvest
12 rate that we consider unsustainable. There's no
13 biological justification that was provided for that. It
14 was stated that this was a way that the Federal program
15 was attempting to provide a subsistence priority.

16
17 Those limits in the State fisheries were
18 set based on achieving what we consider sustainable
19 harvest rate and we don't think the Federal analysis has
20 really explained how the other limit will provide for
21 conservation to resource. We raise again our concern
22 about the lack of reported harvest. We don't know
23 whether this is a lack of reporting or a lack of
24 harvesting and we continue to say that we think that
25 effort needs to be made to engage subsistence users in
26 getting the permits in the first place.

27
28 I won't repeat a lot of these other
29 comments. They're on record. I will note that, again,
30 in the absence of critical information about the stocks
31 sizes and harvest rates, and that's the real data that we
32 need for these small streams, the Department believes the
33 State regulations should be used to help ensure
34 sustainability of the resource.

35
36 Our recommendation on this is that we
37 oppose any Federal fishery in this non-rural area. We do
38 support the proposal.

39
40 ACTING CHAIR GOTTLIEB: Thank you. Any
41 other State comments or questions.

42
43 (No comments)

44
45 ACTING CHAIR GOTTLIEB: Board discussion.
46 Steve.

47
48 MR. KLEIN: I guess I'd like legal
49 counsel to address this question in the State's comments.
50 It was right in the beginning. We consider that ANILCA

1 does not provide for subsistence uses in areas that are
2 non-rural. Maybe we could see what counsel has to say on
3 that.

4
5 ACTING CHAIR GOTTLIEB: Sure. Go ahead,
6 please.

7
8 MR. USTASIEWSKI: Madame Chair. Jim
9 Ustasiewski again. ANILCA applies to Federal public
10 lands or public lands, which are defined as Federal
11 lands, so even non-rural areas that are public lands
12 would be subject to Title VIII of ANILCA.

13
14 ACTING CHAIR GOTTLIEB: Thank you for
15 that clarification. Cal or others, maybe you could
16 provide info again on harvest and your sense of reporting
17 in this area.

18
19 MR. CASIPIT: Thank you, Madame Chair.
20 I'll take a shot at this. If I misspeak, I'm sure Mr.
21 VanAlen will correct me, but no permits were issued for
22 the Juneau road system and no harvest was reported for
23 the Juneau road system.

24
25 ACTING CHAIR GOTTLIEB: Thank you. Other
26 questions. Gary.

27
28 MR. EDWARDS: I have one for John. Take
29 it in the light that I'm asking it. Why does this
30 fishery for subsistence really make any sense at all? I
31 mean nobody uses it, it's in an area of people who are
32 not rural and it just doesn't seem to make a lot of
33 sense. I have trouble wrapping my mind around it and
34 even why we have it, I guess, other than we can.

35
36 MR. LITTLEFIELD: Madame Chair, Member
37 Edwards. I thought we covered this years ago about why
38 this fishery came up, but my interpretation of it, and
39 maybe the lawyers could correct me, is our job is to
40 provide an opportunity for continued uses by people who
41 have in the past done, in my opinion, a significant
42 amount of subsistence fishery and sportfishing under
43 regulations that were not so draconian as the ones that
44 are in place now under the State.

45
46 I believe the State is on record stating
47 themselves at one of these meetings that the 36-inch
48 limit was not a meaningful priority and I could be
49 corrected on that, but the 36-inch limit in the State
50 fishery limiting you to one out of every 160-some fish

1 you catch to have one you could take home to the market
2 was not meaningful.

3

4 We're providing that opportunity for
5 those who have done this in the past. I can't force
6 anybody to go fishing and I don't know whether they're
7 going or not reporting. I think the longer we have this,
8 the better reporting we will get. It was to provide that
9 opportunity and that that opportunity be meaningful.
10 Maybe the lawyers could comment on that.

11

12 It's certainly something that I've had
13 comments and calls from people in Juneau that were -- I
14 guess I shouldn't say elderly because they're only a
15 couple years older than me, that were just thankful as
16 could be that we would do stuff like this because they
17 used to do it when they were kids and when the State took
18 it over they were prohibited from doing it. They
19 eventually got shut out completely out of that steelhead
20 fishery. But it's a fishery that we utilized in the
21 past. It was a custom and tradition. I guess I'll leave
22 it at that. Madame Chair.

23

24 ACTING CHAIR GOTTLIEB: Someone else?
25 Kelly.

26

27 MR. HEPLER: I know the legal arguments
28 on both sides of this. This is going back. We touched
29 on the common sense again that I heard from Keith.
30 There's a lot of areas of tension between the State and
31 this Board and we're just going to agree to disagree and
32 we understand that on important discussions, like maybe
33 the positive C&T in the Upper Kenai.

34

35 This is one of those ones, and I agree
36 with what Gary is saying, and I can appreciate the elders
37 want the opportunity to fish, and I do, John, and I
38 wasn't around to hear all those discussions, so I'm just
39 looking at this at face value, but this is just one where
40 they're not participating, you know. Maybe they are and
41 we're not getting reporting. I'm not sure.

42

43 It just doesn't make sense to me to have
44 this type of an irritant where we can eliminate some of
45 these and then we could actually focus our time on more
46 important issues between the State and the Board. That
47 leaves out the discussion of legal concerns. This is a
48 common sense comment. Madame Chair.

49

50 ACTING CHAIR GOTTLIEB: Is there another

1 comment. Jim.

2

3

4 MR. USTASIEWSKI: I'm a little unsure
5 about stepping into that. I would respond to something
6 John said about an opportunity. ANILCA provides for
7 meaningful priority. I don't believe the word
8 opportunity is in Title VIII and I don't believe anybody
9 has ever fed their family on an opportunity. Of course,
10 you've got to have an opportunity before you can feed
11 your family, so it's maybe relevant to discuss it, but
12 the real issue is meaningful preference. That's the way
13 the Federal courts have interpreted priority.

14

15 ANILCA's priority means meaningful
16 preference and I think the question is a valid one, is it
17 necessary to provide a preference in this situation. I
18 don't have the answer to that question, but I think it's
19 a valid question to ask.

20

21 MR. EDWARDS: Could you argue in the case
22 of the elders? The elders that live in Juneau aren't
23 eligible anyway because they're not rural residents, so
24 the question is, are the people that are now rural
25 residents that are actually eligible, do they really --
26 was that a place they historically fished in or not? I
27 mean it's one of these unfortunate things where you can't
28 really reach the people who actually have the connection
29 with the resource.

30

31 ACTING CHAIR GOTTLIEB: John.

32

33 MR. LITTLEFIELD: Thank you, Madame
34 Chair. We can get into this before the United States,
35 before America or wherever you want to go on this stuff
36 and, obviously -- you know, where do you want to draw the
37 line on this baseline. Right now, for our purposes,
38 we'll do it on subsistence purposes. The way I read
39 ANILCA is in its entirety and Title VIII is part of it.
40 If you look under policy of Congress, it says the purpose
41 of this title is to provide the opportunity for rural
42 residents engaged in a way of subsistence life to do so.
43 If you don't provide the opportunity, how can you
44 possibly provide the meaningful priority. If there's no
45 opportunity to go, there's no way you could possibly
46 provide a meaningful priority.

47

48 That fishery used to be open, I guess,
49 Member Edwards, is what I would say before all these
50 measures came in. We talked about things that were
outside of the control of the local residents. When we

1 talked about the Ninilchik people and the areas there,
2 how they were decimated. The same thing happened in
3 Southeast. In the 1918 small pox epidemic, it decimated
4 great numbers of people in Southeast.

5
6 So, if you look back at history, we've
7 done these things in the past and that's what I'm telling
8 you and we continue to do them now. I don't know whether
9 they did them under the table. This gentleman said he
10 stopped when the State instituted those measures. He
11 said he stopped and he lived in Juneau, but before that
12 he was able to participate.

13
14 So I think opportunity is tied in there
15 and without an opportunity you cannot have a meaningful
16 priority. Madame Chair.

17
18 ACTING CHAIR GOTTLIEB: Thank you. And I
19 would certainly agree with John. We don't want to start
20 arguing what's in or not in ANILCA, but certainly Section
21 801 starts out with the continuation of the opportunity
22 for subsistence uses by rural residents of Alaska. It's
23 unfortunate that steelhead in Southeast Alaska has become
24 contentious. It certainly has not been our intention by
25 any means, but I do believe it is our job to provide for
26 the opportunity and I think, as it turns out on this
27 particular proposal, there hasn't been harvest, there
28 hasn't been use, but it still is our mandate or our job
29 to provide that opportunity and have it be well managed
30 in terms of harvest and limits and law enforcement, et
31 cetera, and work in cooperation with the Department on
32 it. Charlie.

33
34 MR. BUNCH: I wholeheartedly concur with
35 your analysis.

36
37 ACTING CHAIR GOTTLIEB: Steve.

38
39 MR. KLEIN: Madame Chair. Respectfully,
40 I'd just like to put out the State's position here that
41 we agree with the solicitor's previous comments on common
42 sense and we also, looking at the 9th Circuit decision in
43 the Ninilchik case believe that the Board can do some
44 balancing here and the Board is not required to provide
45 for a priority on every stream. What the Board is
46 required to do is to provide a meaningful preference for
47 rural residents on the Federal public lands. That does
48 not mean that the same preference has to apply on every
49 piece of Federal public land. There has to be a
50 meaningful preference for rural users on the Federal

1 public lands.

2

3 Respectfully, that does not mean that
4 there has to be a preference under ANILCA in the non-
5 rural area of the Juneau road system when the rural
6 residents of Southeast Alaska have access to the
7 resources closer to home. Thank you, Madame Chair.

8

9 ACTING CHAIR GOTTLIEB: Thank you. John.

10

11 MR. LITTLEFIELD: Hopefully my last
12 comment on this. It may be as simple as the application
13 of the restrictions that were put on these people are
14 enough to discourage their use and the meaningful
15 priority is not being applied. When we had the
16 discussions with Federal Staff on which streams to be
17 closed, I participated in those and I argued as hard as I
18 could that there were no restrictions necessary on these
19 streams, no size restrictions, because we should have
20 defaulted to our general regulation.

21

22 And I still feel that way because it
23 allowed you to go catch a smaller steelhead. You could
24 catch any one of them that you wanted to. That may be
25 part of the problem here why we're not having any
26 harvest. Maybe 32 inches or 30 inches are still not
27 allowing a person to go out there and have any chance of
28 being successful and they're not doing it. I don't know
29 the answers, but it hasn't been proven to me that the
30 smaller limit provides for a meaningful priority. So I
31 guess I'd just like to leave it there.

32

33 ACTING CHAIR GOTTLIEB: Steve.

34

35 MR. KLEIN: I would think that the way to
36 deal with this maybe in the future is if someone wants to
37 come forward with a proposal for customary and
38 traditional use determination in this area. That's the
39 way we generally deal with these types of issues. That's
40 not in front of us right now and I don't think the Board
41 can take any regulatory action without going through our
42 full proposal process. So if, for instance, the State
43 wishes to or Rain Country Flyfishers or someone else
44 would like to put a proposal in front of the Board for a
45 customary and traditional use determination in the Juneau
46 area for steelhead, that could be done.

47

48 I think something similar was done, of
49 course this was before my time here, in the Berners Bay
50 area for moose and Berners Bay is just to the north of

1 Juneau. I'm just looking at the wildlife regulations
2 where it says for Unit 1(C) Berners Bay drainage, no
3 Federal subsistence priority. I suspect and think that
4 this was somewhat of a similar situation and the Board
5 took an action there. If someone brings a proposal
6 forward, we can deal with it then and figure this out.

7
8 ACTING CHAIR GOTTLIEB: Other comments,
9 questions, commitments into looking into this further.

10
11 (No comments)

12
13 ACTING CHAIR GOTTLIEB: Do we have a
14 motion.

15
16 MR. BUNCH: Madame Chair.

17
18 ACTING CHAIR GOTTLIEB: Charlie.

19
20 MR. BUNCH: I move that we accept
21 Southeast Alaska Regional Council's recommendation on
22 FP06-31.

23
24 ACTING CHAIR GOTTLIEB: Thank you.
25 There's a motion. Is there a second.

26
27 MR. KLEIN: I'll second it.

28
29 ACTING CHAIR GOTTLIEB: Steve seconds.
30 Board discussion. I think once again we do understand
31 this is a divergence in our opinions and I would like to
32 see if it is possible that we have some further
33 discussions between the agencies and the Department and
34 the RAC and see if we can come up with some other kind of
35 mechanism to address some of the concerns that have been
36 brought up here. No guarantees that we might, but we can
37 further the discussion and bring about some fruitful
38 perhaps solutions that might be more satisfying and maybe
39 more understandable to everybody.

40
41 MR. KLEIN: Well, at this point I will
42 vote in favor of the motion. Streams on or adjacent to
43 the Juneau road system are Federal public waters to which
44 our regulations do apply and I believe they should
45 continue to apply. There isn't any substantial evidence
46 of a need to change the regulation in that area and
47 there's the potential that it could be detrimental to the
48 satisfaction of subsistence users needs who do want to
49 fish in that Federal public waters.

50

1 ACTING CHAIR GOTTLIEB: Thank you. Other
2 comments. Well, I'll also assume that the monitoring
3 that's been described here will continue in future years
4 and we'll get good reports back on harvest, but I would
5 hope that there could be further discussion on this
6 amongst interested parties. Gary.
7
8 MR. EDWARDS: I plan to vote against the
9 motion. From my standpoint, it doesn't really seem
10 logical. It just seems to me it's contrary to good
11 public policy. For some of the previous reasons I stated
12 I just think that it doesn't seem to make a lot of sense
13 to me that we continue to try to provide an opportunity
14 in an area where people can't take advantage of the
15 opportunity. Maybe, as suggested, the better approach is
16 the proponent of this to come in with a different angle
17 and that might ultimately solve this, but I'm going to
18 vote against the motion.
19
20 ACTING CHAIR GOTTLIEB: Thank you. I
21 guess some ways it's the opposite of where we do provide
22 opportunity and people want more opportunity, but every
23 situation proposal is different and opportunity is no
24 guarantee of harvesting any resources either. George.
25
26 MR. OVIATT: Madame Chair. I'm going to
27 vote against this proposal, too. Somewhere we've got to
28 reach some common sense in some of this. This just
29 doesn't make sense. I'm going to vote against this
30 proposal, too.
31
32 ACTING CHAIR GOTTLIEB: Mitch, do you
33 have any comments or are we ready for a vote.
34
35 CHAIRMAN DEMIENTIEFF: I'm ready for a
36 vote.
37
38 ACTING CHAIR GOTTLIEB: All those in
39 favor please say aye.
40
41 IN UNISON: Aye.
42
43 ACTING CHAIR GOTTLIEB: All those opposed
44 same sign.
45
46 MR. OVIATT: Aye.
47
48 MR. EDWARDS: Aye.
49
50 ACTING CHAIR GOTTLIEB: Motion carries 4

1 to 2. Okay. We're on Proposal 32, please.
2
3 MR. LITTLEFIELD: Madame Chair.
4
5 ACTING CHAIR GOTTLIEB: Yes.
6
7 MR. LITTLEFIELD: I might ask when we're
8 taking a break. These are my proposals and I would like
9 to take a break for lunch sometime today and find out
10 what we're doing. It's a question of privilege.
11
12 ACTING CHAIR GOTTLIEB: Okay. Here's the
13 situation. We can vote on it. We have two proposals
14 left, we have the consent agenda to adopt or not adopt
15 and any closeout comments from -- hopefully there will be
16 two remaining chairs if, Nanci, you can bear with us yet.
17 So it's up to the wishes of the Board, if you care to
18 take a break or you care to keep on plowing through or
19 take a short break and continue.
20
21 CHAIRMAN DEMIENTIEFF: For myself, it's
22 only my personal conviction because we're getting ready
23 to leave. I've already had to give up some of my other
24 schedules, so my inclination is to push on. I don't
25 think we're that far away, are we?
26
27 ACTING CHAIR GOTTLIEB: I don't believe
28 so, but I can't claim much accuracy in predicting timing.
29 Perhaps people need a five-minute break and then try to
30 come back. Does that help, John? Okay.
31
32 CHAIRMAN DEMIENTIEFF: Also, I wasn't
33 able to get through to my other party yet, where I was
34 supposed to be in 10 minutes, so something I have to
35 work on.
36
37 ACTING CHAIR GOTTLIEB: Okay. Well,
38 Mitch, we'll let you sign off then and if you'll let us
39 know when you're back on and we'll aim to come back in 10
40 minutes.
41
42 (Off record)
43
44 (On record)
45
46 ACTING CHAIR GOTTLIEB: If we could have
47 Staff report, please.
48
49 MR. LARSON: Madame Chairman. My name is
50 Robert Larson. I work for the Forest Service as a

1 fisheries biologist. I'd like to direct your attention
2 to Proposal FP06-32. The executive summary starts on
3 Page 401 of your Board book. The Staff analysis for
4 FP06-32 begins on Page 404 of your Board book.
5

6 This proposal was submitted by Mr. Mike
7 Stainbrook of Petersburg, would implement a 36-inch size
8 limit and a rod and reel only restriction for steelhead
9 fishing on streams that cross or are adjacent to the
10 Petersburg road system. Petersburg road system occurs
11 entirely on Mitkof Island.
12

13 The community of Petersburg is rural with
14 an extensive road system. There are at least four
15 steelhead streams that cross or are adjacent to the road
16 system. There are no reliable estimates of steelhead
17 population sizes or sustainable harvests for any of these
18 streams. Total steelhead returns range from unknown,
19 presumably too low to estimate, to over 100 adult
20 steelhead. Based on the uncertainty regarding
21 sustainable harvests and the accessibility of these
22 streams, Federal subsistence permits contained three
23 additional fishery restrictions for the 2005 season.
24 Restrictions included a 32-inch minimum size limit,
25 24-hour reporting of any subsistence harvest, and the use
26 of rod and reel only.
27

28 There was previous discussion of a table
29 on Page 426. Page 426 puts the restrictions for Mitkof
30 Island in context with the restrictions available for the
31 rest of Southeast.
32

33 The dilemma faced by the subsistence
34 management program for these streams and similar
35 situations on Prince of Wales Island, Wrangell Island,
36 Sitka, road systems in Juneau and Sitka, and the dilemma
37 is how to implement a subsistence fishery on steelhead
38 stocks that only have a few fish available for harvest.
39 For most of these streams, a 36-inch size limit would
40 result in a catch and release subsistence fishery as
41 fishermen are targeting trout and char.
42

43 Madame Chairman, that completes my oral
44 report.
45

46 ACTING CHAIR GOTTLIEB: Thank you. Any
47 questions.
48

49 (No comments)
50

1 ACTING CHAIR GOTTLIEB: If we could have
2 summary of written comments, please.
3
4 MS. HERNANDEZ: Madame Chair. There were
5 three written public comments for FP06-32. The first was
6 from the Chilkoot Indian Association. They write in
7 support the proposal. It appears that as the law is
8 currently, easy access to fishing areas is becoming
9 detrimental to the health of steelhead fish stocks in
10 this area. Preservation of fish stocks should be the
11 main goal of this regulation.
12
13 The second was from Mr. Jeff Rice. He
14 writes in support of the proposal. I would simply like
15 to add my support to what Mr. Stainbrook proposes. As
16 fragile as many of these steelhead populations are, I
17 believe it could prove a costly error to allow such
18 harvest.
19
20 The third is from a Mr. Joseph Stratman.
21 He writes in strong support of Proposal FP06-32.
22
23 ACTING CHAIR GOTTLIEB: Thanks very much.
24 We have no one signed up for testifying, so we could have
25 Regional Council recommendations, please.
26
27 MR. LITTLEFIELD: Regional Council
28 recommendation on FP06-32 is on Page 402 and I can
29 summarize it by saying ditto. The comments are exactly
30 like they were previously. They're very short. I'll
31 read them, but they're the same. It's a similar
32 proposal.
33
34 We oppose the proposal. This proposal
35 would roll back the subsistence steelhead regulations
36 adopted in the 2005 regulatory year for the Mitkof Island
37 area. Staff has worked with the Department of Fish and
38 Game to include permit conditions for fishing for the
39 Mitkof Island area. These permit conditions address
40 conservation concerns adequately and provide for
41 subsistence opportunity. This fishery is closely
42 monitored, and no management problems exist that would
43 call for regulatory change at this time. Madame Chair.
44
45 ACTING CHAIR GOTTLIEB: Thank you. Any
46 comments or questions.
47
48 (No comments)
49
50 ACTING CHAIR GOTTLIEB: Interagency Staff

1 Committee, please.

2

3 MR. PROBASCO: Madame Chair. The
4 Interagency Staff Committee opposes the proposal
5 consistent with the recommendation of the Southeast
6 Alaska Regional Advisory Council, as with the other
7 proposals dealing with steelhead. By reference, our
8 justification is on Page 402. Madame Chair.

9

10 ACTING CHAIR GOTTLIEB: Thanks very much.
11 Department comments, please.

12

13 MS. SEE: Thank you, Madame Chair. Our
14 comments, in fact, are closely similar to those offered
15 for the preceding proposal with respect to the size limit
16 issue. I will actually ask you to turn to Page 399
17 momentarily, which was for the preceding proposal but in
18 fact applies to discussions in this proposal and others
19 regarding the size limit issue.

20

21 There's a figure at the top of that page
22 which speaks to this issue of length and there are curves
23 there with respect to different sampling events. The
24 point I want to note here is that if you look to the 36-
25 inch line, which is the horizontal axis, you'll see that
26 the data cluster up at the top of that figure, which is
27 near 100 percent of the fish, and it drops off very
28 sharply if you look left on the trend of the information
29 there and there's a vertical line drawn at 30 inches.
30 Arguably, it's hard to say exactly where that hits given
31 these different curves and different data sets here. But
32 if you look to the left, you'll see that there's a 50
33 percent level here and that's the proportion of fish.

34

35 So this graph is all about if you go
36 below the 36-inch size limit, then what in fact are you
37 potentially taking out of the total population of fish.
38 That is where our concern comes in and this comment and
39 others where the potential harvest could affect a large
40 proportion of the available fish. That's where that
41 whole concern comes from, is these data, and I want to
42 make sure people realize there was a basis for that
43 concern.

44

45 We also noted that there appears to be
46 that there would be a total allowable harvest set for
47 each stream in the future, but the analysis provides no
48 insight into how that will be done.

49

50 Our comments about special actions in-

1 season criteria are the same as we've previously said and
2 concerns about enforceability of the 24-hour reporting
3 requirement is the same, as our comments are about the
4 lack of reported harvest, where we've continued to think
5 that that does not reflect the actual amount of effort
6 being made out there, nor the harvest that may, in fact,
7 be occurring.

8

9 In sum, we are still faced with absence
10 of critical information about the stock sizes and harvest
11 rates in this area and we feel that the State regulation
12 should be used to help ensure sustainability of the
13 resource in that circumstance.

14

15 We support this proposal. That is our
16 recommendation. Thank you, Madame Chair.

17

18 ACTING CHAIR GOTTLIEB: Thank you. I
19 just wanted to mention I think Mitch is on the phone.
20 We're on Proposal 32, Department's comments. Are there
21 additional Department comments or questions.

22

23 CHAIRMAN DEMIENTIEFF: Yes, ma'am. I've
24 been on the phone.

25

26 ACTING CHAIR GOTTLIEB: Right. So we're
27 on 32. Cal, do you want to address some of the questions
28 again on monitoring or on the level of harvest?

29

30 MR. CASIPIT: Thank you, Madame Chair.
31 We had no harvest reported from Mitkof Island steelhead
32 systems. I know Mr. Larson spent quite a bit of time
33 cruising the road looking for subsistence fishermen.
34 Maybe he might be able to answer that. But as far as
35 harvest, there was no harvest reported for the Mitkof
36 Island road system.

37

38 ACTING CHAIR GOTTLIEB: Thank you. Any
39 other questions or are we ready to have Board discussion.
40 Charlie.

41

42 MR. BUNCH: Cal, was that just for 2005
43 data?

44

45 MR. CASIPIT: Madame Chair, Mr. Bunch.
46 Yes. We've only had this fishery in 2005.

47

48 MR. EDWARDS: Just one quick question. I
49 sort of understood why we had the data we did with
50 regards to the Juneau road system, but do we have any

1 explanation why there hasn't been some utilization here
2 when it is in closer proximity to people who are eligible
3 to utilize it?

4

5 MR. CASIPIT: Thank you, Madame Chair,
6 Mr. Edwards. I could probably speculate why we didn't
7 get any harvest there. We had some fairly restrictive
8 permit stipulations for the Mitkof Island road system and
9 maybe people in Petersburg decided, you know, they could
10 go somewhere else nearby with their skiff and harvest
11 without having to deal with minimum size, whatever.
12 That's merely speculation.

13

14 ACTING CHAIR GOTTLIEB: Steve.

15

16 MR. KLEIN: Maybe we could ask Mr.
17 Larson. How many permits were issued to people who would
18 be fishing on the Mitkof Road system?

19

20 MR. LARSON: Madame Chairman. I have
21 that number exactly with me, but as best as I can recall
22 -- let me just back up a second. The permit system, it's
23 the same permit that's issued to all residents of
24 Southeast Alaska. If you were to look at a subset of the
25 people that obtained those permits, there were
26 approximately seven that were Federally qualified to fish
27 on Mitkof Island.

28

29 ACTING CHAIR GOTTLIEB: Steve.

30

31 MR. KLEIN: And did you have contact with
32 these people and did you talk to them about why they
33 obtain these permits or whether they fished or any
34 questions like that?

35

36 MR. LARSON: Madame Chair. Yes, I did.
37 Because 2005 was the first year of the fishery, as you
38 can imagine, there was quite a bit of questions and
39 speculation exactly what we were trying to accomplish and
40 what these new rules were. So I had an occasion to speak
41 with most of those people that obtained a fishing permit
42 from the Petersburg Ranger District. That's the location
43 where I live.

44

45 I also had an occasion to call and to
46 track down fishing permits that were not returned on
47 time. By and large, the numbers of people that I talked
48 to when I queried them about why they obtained a fishing
49 permit, and the next question was why was there not more
50 people that got fishing permits, but the query that I

1 made, most of the responses were that because of the
2 unfamiliarity they had with the program and this new
3 opportunity that was around, they obtained a permit
4 without the express purpose of killing two steelhead in
5 the immediate area.

6
7 What they were concerned about, these
8 seven people, were that they would -- they enjoyed
9 steelhead fishing and they had some history of steelhead
10 fishing and that there are some steelhead that are more
11 suitable to eat than other ones, so they did not want to
12 kill a hen steelhead, for instance. But if there was a
13 steelhead that was injured, then they did not want to
14 discard that fish.

15
16 So there was some interest in the newness
17 of the program, so they wanted a permit because it was a
18 new permit and they wanted to see what it was like and
19 they wanted to enter into the program. There were some
20 that were concerned about wasting the resource.

21
22 There were some that had an interest in
23 killing a steelhead but never really did prosecute that
24 kind of a fishery. So there were a number of reasons.
25 The subset of people that I talked to that were issuing
26 the permits were small. The number of people I talked to
27 that were late was fairly small.

28
29 ACTING CHAIR GOTTLIEB: John.

30
31 MR. LITTLEFIELD: Thank you, Madame
32 Chair. I believe the discussion in Wrangell was somewhat
33 along that line, that perhaps 32 inches is wrong, maybe
34 it should be 30, maybe there should be none, maybe there
35 should be use of bait. We struggle with what that word
36 meaningful means and its come up before a lot of times
37 and we don't know if we have the right answer.

38
39 I argued as hard as I could for no
40 restrictions on this particular stream and I can't
41 remember, there was 300 fish or something in the stream
42 survey, and I'm going to try again to let them have it,
43 as I would in Juneau and others. Let's see what the real
44 -- let the land manager react to many fish. That's what
45 I'd like to see. Especially on this stream where there
46 is quite a few fish. If we were to allow the use of bait
47 and they could go catch two fish of any size in that
48 stream and be done for the year, maybe we'd see some
49 better numbers here.

50

1 It may well apply that if we do that in
2 these other areas, we're going to see that. We're going
3 to have some areas where there's probably no fish and I
4 will agree to those. There are some areas where no
5 fishing should be allowed. This particular one I don't
6 believe the restrictions are justified. I think that
7 weighs somewhat on why you see the lack of numbers there.

8
9 ACTING CHAIR GOTTLIEB: Thanks, John.
10 Steve.

11
12 MR. KLEIN: John, we're not on Petersburg
13 Creek yet. This is the Mitkof Island stream. I think
14 you're absolutely right, Petersburg Creek is different,
15 but that's the next proposal that's coming.

16
17 ACTING CHAIR GOTTLIEB: Are we ready for
18 a motion. Steve.

19
20 MR. KLEIN: I'll move to adopt the
21 recommendation of the Southeast Alaska Regional Advisory
22 Council, which is to reject this proposal. Following a
23 second, I'll give a little rationale.

24
25 ACTING CHAIR GOTTLIEB: Is there a
26 second.

27
28 MR. BUNCH: I'll second.

29
30 ACTING CHAIR GOTTLIEB: Thank you,
31 Charlie. Go ahead, Steve.

32
33 MR. KLEIN: The rationale is quite
34 similar to the discussions we've had on the previous two
35 proposals. Of course, streams on or adjacent to the
36 Petersburg road system are Federal public waters and, as
37 such, we have fairly qualified subsistence users who are
38 eligible to fish in those Federal public waters.

39
40 The Federal managers have worked through
41 a special protection for these systems and we've taken a
42 look at the chart that's on Page 426 and we can see what
43 those special restrictions and stipulations are that have
44 been put into place for methods and means, minimum size
45 limits, et cetera, to provide for fisheries conservation.
46 These are annual stipulations that will again be looked
47 at for their effectiveness in providing for conservation
48 and being as least intrusive as possible in subsistence
49 users in the coming year.

50

1 We also know that there is active law
2 enforcement and monitoring of this fishery on Mitkof
3 Island, so I think from a conservation standpoint we're
4 trying to keep a good handle on what's going on there. I
5 don't believe there's any substantial evidence that we
6 need to change the regulations because of fish
7 conservation concerns and adopting this proposal could be
8 detrimental to the satisfaction of subsistence users
9 needs.

10
11 Again, I recommend that we adopt this
12 recommendation.

13
14 ACTING CHAIR GOTTLIEB: Thank you, Steve.
15 Other comments.

16
17 (No comments)

18
19 ACTING CHAIR GOTTLIEB: I guess once
20 again I would rely on the local agencies to be in good,
21 close communication and then do the act of monitoring on
22 any permit holders so that this Board has the best
23 information and you have the best information for any on-
24 site or in-season decisions.

25
26 We have a motion before us. All those in
27 favor please signify by saying aye.

28
29 IN UNISON: Aye.

30
31 ACTING CHAIR GOTTLIEB: All those opposed
32 same sign.

33
34 (No opposing votes)

35
36 ACTING CHAIR GOTTLIEB: Motion carries.
37 We're on No. 33.

38
39 MR. LARSON: Madame Chairman. Again, for
40 the record, my name is Robert Larson. I work in
41 Petersburg. I'd like to direct your attention to the
42 executive summary for FP06-33 that begins on Page 409 of
43 your Board book.

44
45 The Staff analysis for FP06-33 begins on
46 Page 411. Proposal FP06-33 was also submitted by Mr.
47 Mike Stainbrook. This proposal would implement a 36-inch
48 minimum size limit and the use of rod and reel only for
49 steelhead fishing on Petersburg Creek. Petersburg Creek
50 is a popular sportfishing location. It's physically

1 located directly across Wrangell Narrows from the city of
2 Petersburg and readily accessible and has a well-
3 maintained trail and is in the center of the city of
4 Kupreanof.

5
6 The Alaska Department of Fish and Game conducts a series
7 of snorkel surveys for stock assessment and have noted a
8 healthy and stable stock of steelhead, approximately 300
9 or more adult steelhead. Current sportfishing
10 regulations require a 36-inch minimum size limit for
11 steelhead in this area.

12
13 Federal subsistence permits contained
14 three provisions for Petersburg Creek during the 2005
15 season very similar to Mitkof Island, a 32-inch minimum
16 size limit, 24-hour reporting, the use of rod and reel.
17 The one difference between Mitkof Island and Kupreanof
18 Island is that there is a regulation that has been on the
19 books since the implementation of the subsistence program
20 that says use of dipnets will not be allowed on road
21 systems in Petersburg. Therefore, the use of dipnets
22 would be allowed or it was allowed in 2005.

23
24 The seven same subsistence permits for
25 Federally qualified users were in place for Petersburg
26 Creek as there is for the Mitkof Island. No steelhead
27 reported taken from Petersburg Creek, although in this
28 case there was a few steelhead that were reported that
29 were caught but released. That was not the case on
30 Mitkof Island. That concludes my oral report.

31
32 ACTING CHAIR GOTTLIEB: Thank you very
33 much. Any questions.

34
35 (No comments)

36
37 ACTING CHAIR GOTTLIEB: If we could have
38 summary of written comments, please.

39
40 MR. BUNCH: Madame Chair.

41
42 ACTING CHAIR GOTTLIEB: Charlie, go
43 ahead, please.

44
45 MR. BUNCH: Robert, did I understand you
46 correctly that you can use a dipnet in one of those
47 fisheries and not the other?

48
49 MR. LARSON: That's correct. When the
50 program adopted regulations essentially from the State,

1 contained in those regulations is a prohibition to the
2 use of nets on Mitkof Island for subsistence and we've
3 retained that prohibition. That is not the case for
4 Kupreanof Island or other places in that vicinity, so you
5 are allowed to use a wider range of gear and we've
6 allowed uses of dipnets because it was a non-lethal
7 method of taking these fish.

8

9 ACTING CHAIR GOTTLIEB: Okay. Melinda.

10

11 MS. HERNANDEZ: Madame Chair. There was
12 three written public comments for FP06-33. The first is
13 from Chilkoot Indian Association. They write in support
14 of the proposal. This measure should assist in
15 preserving stocks of steelhead in areas that have easy
16 access and thus are prone to being over-fished.

17

18 The next two comments from Jeff Rice and
19 Mr. Joseph Stratman read exactly the way they did for
20 FP06-32. They both write in support of the proposal.

21

22 ACTING CHAIR GOTTLIEB: Thanks very much.
23 We have no public testimony at this point in time. If we
24 could have the Regional Advisory Council recommendation.

25

26 MR. LITTLEFIELD: Thank you, Madame
27 Chair. Our Proposal FP06-33 is on Page 410 and, again,
28 the words are the same. You just substitute Mitkof and
29 Petersburg Creek and whatever. They're all the same, but
30 I'll go ahead and read it for the record anyway.

31

32 We oppose the proposal. This proposal
33 would roll back the subsistence steelhead regulations
34 adopted in the 2005 regulatory year for Petersburg Creek
35 and have Federal subsistence regulations for size and
36 method of harvest match State of Alaska sport fishing
37 regulations. Staff has worked with the Department of
38 Fish and Game to include permit conditions for fishing
39 for Petersburg Creek. These permit conditions address
40 conservation concerns adequately and provide for
41 subsistence opportunity. This fishery is closely
42 monitored, and no management problems exist that would
43 call for regulatory change at this time. Madame Chair.

44

45 ACTING CHAIR GOTTLIEB: Thank you. Any
46 questions for John.

47

48 (No comments)

49

50 ACTING CHAIR GOTTLIEB: Interagency Staff

1 Committee.

2

3 MR. PROBASCO: Thank you, Madame Chair.
4 The Interagency Staff Committee opposes the proposal and
5 by reference our justification is as is found on Page
6 410. Madame Chair.

7

8 ACTING CHAIR GOTTLIEB: Thank you.
9 Department comments, please.

10

11 MS. SEE: Thank you, Madame Chair. In
12 this particular case we note that we do have information
13 about the stock and the reason that the stock we feel is
14 in the shape it's in is that it's been managed very
15 conservatively.

16

17 Our comments do follow very closely with
18 those offered on the previous steelhead proposals with
19 respect to the fact that the size limit at less than the
20 32 inch of the State regulations was set, evidently, to
21 protect about 50 percent of the steelhead stock from
22 potential harvest. It is not clear why this set when 30
23 inch was chosen for Juneau streams. There's no
24 biological justification that's ever been provided to us
25 about this. Again, we feel that the potential for
26 harvest here is a significant concern.

27

28 We have similar comments here, as we've
29 already noted, about the in-season actions needing to be
30 more clearly articulated and the 24-hour reporting
31 requirement, the enforceability of that. As well, we
32 have a similar comment about the lack of reported
33 harvest, whether or not this does reflect effort and an
34 actual harvest or not.

35

36 We still maintain that the State
37 regulations should be used to ensure sustainability of
38 the resource at this time and we support the proposal.
39 Thank you.

40

41 ACTING CHAIR GOTTLIEB: Thank you. Any
42 additional comments or questions. Steve.

43

44 MR. KLEIN: I guess it's not a question
45 directly to the State, but it's sort of a follow up on
46 their comment and maybe this is for Mr. Larson or Mr.
47 Casipit. Maybe you could describe why the limit here,
48 the minimum size, and it's actually for Petersburg Creek,
49 Wrangell and Petersburg road system, is 32-inches and why
50 for the Juneau road system it was a smaller number, 30

1 inches.

2

3 MR. LARSON: Madame Chair. The size
4 limits were applied consistently for process in that in
5 the Juneau road system the data set that we had available
6 to us last spring was for Petersburg Creek, the primary
7 stream within the Juneau road system that has steelhead.
8 Now that has a significant portion, approximately 50
9 percent or so, that is below 30 inches.

10

11 Petersburg Creek, those fish appear to be
12 a little larger. So if we use that same standard for
13 Petersburg Creek and the nearby area of Mitkof Island,
14 then you would end up with a 32-inch fish.

15

16 In Ketchikan, the data set was steelhead
17 from the hatchery program down there in Ward Lake and
18 primarily that was the only system that has steelhead on
19 the Ketchikan road system and that similar percentage
20 was, again, around 30 inches. So the thought process was
21 the same. The result was a little bit different in each
22 case.

23

24 ACTING CHAIR GOTTLIEB: Steve.

25

26 MR. KLEIN: I think, Bob, for Juneau you
27 said Petersburg Creek and I think you meant Peterson
28 Creek, is that correct?

29

30 MR. LARSON: Yeah, that's correct.

31

32 ACTING CHAIR GOTTLIEB: I have a follow-
33 up question from last time as well. Do you have a sense
34 of why there wasn't a harvest there last year?

35

36 MR. LARSON: Madame Chair. No. I think
37 that the reasons are the same as I articulated
38 previously. Those people that wanted to harvest the
39 steelhead with that in mind did not go to Petersburg
40 Creek. I'm specifically referencing some permits we
41 issued in Kake that were qualified for Petersburg Creek
42 but in fact took a steelhead in streams near Kake.

43

44 The other instances where there were
45 permits issued and they did not kill a fish that they
46 meant to release. So they did not keep that fish and
47 report it to us, they released it unharmed. Thank you.

48

49 ACTING CHAIR GOTTLIEB: Thanks. Any
50 other comments or questions. Charlie.

1 MR. BUNCH: Robert, as a follow up, I
2 know one of the State's concern is the 24-hour reporting
3 requirement. I'm assuming that most of these folks are
4 from the Petersburg area, somewhere close to the area.
5 There's seven of them. I'm suspecting that those folks
6 are probably known to most of the law enforcement people.
7 Would that be a correct assumption?
8
9 MR. LARSON: Madame Chair. The 24-hour
10 reporting requirement was a permit condition for 2005.
11 Subsequent discussions we've had with the Department of
12 Fish and Game and within the subsistence fishing program
13 and the RAC, Southeast Regional Advisory Council, has
14 brought into question whether or not that is a reasonable
15 permit condition. In fact, it may not be conducive to
16 accurate reporting. It's very likely that condition will
17 not be in effect in 2006. We didn't need to exercise
18 that last year because there was no fish harvested, but
19 that condition may not be there in 2006 and subsequent
20 years.
21
22 MR. BUNCH: Well, if there were no fish
23 harvested, I would imagine that that would be the event
24 that kicks off the reporting. So if none were caught,
25 there wouldn't be a need to report, would there.
26
27 ACTING CHAIR GOTTLIEB: Comments,
28 questions.
29
30 (No comments)
31
32 ACTING CHAIR GOTTLIEB: Are we ready for
33 a motion. Steve.
34
35 MR. KLEIN: Thank you. I'll move to
36 adopt the recommendation of the Southeast Alaska Regional
37 Advisory Council, which is to reject the proposal.
38 Following a second, I'll give some rationale for that.
39
40 ACTING CHAIR GOTTLIEB: Is there a
41 second.
42
43 MR. BUNCH: I will second that.
44
45 ACTING CHAIR GOTTLIEB: Thank you,
46 Charlie. Go ahead, Steve.
47
48 MR. KLEIN: Once again, the rationale is
49 very similar to the previous three proposals. Petersburg
50 Creek is Federal public waters and the Federal

1 subsistence fishing regulations should apply to those.
2 We shouldn't need to default to the State regulations.
3 The Federal regulations require special protection on the
4 systems. We went through those protections. The
5 stipulations and protections on Page 426 shows those for
6 all of Southeast Alaska.

7
8 These stipulations include methods and
9 means, minimum size limits, harvest reporting and other
10 items to ensure conservation. Petersburg Creek is
11 actually named as a special line on that chart. There
12 are annual stipulations to be taken a look at every year
13 for their effectiveness to see if any changes might be
14 needed based on experience. We also have law enforcement
15 monitoring in Petersburg Creek.

16
17 I see no reason for a need to change the
18 regulation. A change back to the previous regulation,
19 the State regulation, could be detrimental to the
20 satisfaction of subsistence needs. Thank you.

21
22 ACTING CHAIR GOTTLIEB: Thank you, Steve.
23 Is there other Board discussion.

24
25 (No comments)

26
27 ACTING CHAIR GOTTLIEB: I guess,
28 likewise, I don't see substantial evidence of the need to
29 change the Federal regulations because of conservation
30 concerns. I think there's very few fish available for
31 harvest for Federally-qualified subsistence users and,
32 therefore, this proposal could be detrimental to the
33 subsistence users and meeting their needs.

34
35 The motion before us is to reject the
36 proposal consistent with the recommendation of the
37 Southeast Regional Advisory Council. All those in favor
38 signify by saying aye.

39
40 IN UNISON: Aye.

41
42 ACTING CHAIR GOTTLIEB: All those opposed
43 same sign.

44
45 (No opposing votes)

46
47 ACTING CHAIR GOTTLIEB: Motion carries.
48 We have the consent agenda to go over. Gary.

49
50 MR. EDWARDS: Madame Chairman. Before

1 you do that I'd like to have maybe a brief discussion
2 about reconsidering one of the proposals. It's my
3 understanding of the rules that the only way we could
4 reconsider something on the next day would be for us to
5 suspend the rules, so let me share a little bit with you.

6
7 John, that refers to Proposal 24. The
8 way I read that proposal, and I discussed some of this
9 yesterday, was that the purpose of the proposal was to
10 allow subsistence folks to use bait to harvest steelhead
11 and the reason for that was that it's a more efficient
12 method. In that same proposal, also recognizes that
13 there are impacts associated with using the bait,
14 particularly the difficulty of releasing fish once
15 they're caught with bait and the high mortality
16 associated with that. So they put language in there that
17 basically precluded that once you have gotten your daily
18 bag limit or annual limit on steelhead, it would preclude
19 you from continuing to fish with bait.

20
21 The point I made yesterday and I
22 recognize that the bag limits and annual limits on trout,
23 cutthroat and other species that fall under that general
24 category of trout are higher, but it just seems to me
25 that the same conservation concerns as this proposal has
26 with regards to steelhead should apply to trout.

27
28 So my amendment, assuming that we would
29 suspend the rules and were allowed to, I would just add
30 to the language that's in there now, average daily limit
31 of steelhead or trout is harvested, you may no longer
32 fish with bait for any other species. So that's what I
33 would propose.

34
35 I think you could argue if it's good for
36 steelhead, why isn't it good for trout and the same kind
37 of conservation concerns there. Like I said, it's my
38 understanding in order to do that we would need to
39 suspend the rules that would allow the amendment to occur
40 the day after the proposal was handled.

41
42 I don't know, John, if you want to
43 respond at all or you think that's a bad idea.

44
45 ACTING CHAIR GOTTLIEB: John, you had a
46 comment.

47
48 MR. LITTLEFIELD: Yeah. It's a bad idea.
49 Madame Chair, I believe Member Edwards was opposed to
50 this, were you not? If you were opposed to it, you have

1 absolutely no standing to ask for a reconsideration. I
2 think that needs to be made clear.

3
4 MR. EDWARDS: I believe I voted in favor
5 of it.

6
7 MR. LITTLEFIELD: I thought you were
8 opposed to it. I think the record should be clear. Then
9 the procedure would be to ask for reconsideration on the
10 proposal. At that time the proposal would come back
11 before you as if nothing had happened on it. It would be
12 before you as if the motion was made to adopt the RAC
13 motion and then you would debate it all over again.
14 That's the procedure for a motion for reconsideration,
15 not to be adding amendments. You need to first satisfy
16 that it can be brought forward for reconsideration and
17 assuming that happens it's before you as if the original
18 motion was made and I believe it was to support the
19 Regional Council. You'd have to look in the record, but
20 that would be the process. You can't just add words by
21 suspending rules.

22
23 ACTING CHAIR GOTTLIEB: Tom, go ahead.
24 You've been studying this.

25
26 MR. BOYD: Madame Chair. Looking at
27 Robert's Rules, the motion to reconsider must be done on
28 the same day that the original motion was made.
29 Therefore, since that motion was made and carried
30 yesterday, prior to that we would have to suspend the
31 rules, so that would require a motion to suspend the
32 rules. The rule for being suspended was the same day
33 rule. That would require a second and a two-thirds vote
34 of the Board to do that. It's not debatable. Then
35 assuming we have a motion approved to suspend the rules,
36 then we would go to the motion to reconsider and Mr.
37 Littlefield is correct, that motion would have to be made
38 by an individual of the Board that had supported the
39 previous motion. Then beyond the motion to reconsider,
40 this is where I get a little lost, but I think we need
41 another motion to entertain with regard to the specific
42 merits of the proposal. Madame Chair.

43
44 ACTING CHAIR GOTTLIEB: Comments or
45 thoughts from Board members. John.

46
47 MR. LITTLEFIELD: Then you need to make a
48 motion to suspend the rules that interfere with this,
49 which means it can't be reconsidered. If you get two-
50 thirds vote, then go for it, just like I told you. But

1 if you don't get those, let's not go there. I told you it
2 was a bad idea, but that's up to you. I'm not up there,
3 you are.

4
5 MR. EDWARDS: Madame Chair. I'm going to
6 make that motion in just a second and, again, my
7 rationale is that the language was put in there for
8 steelhead because of conservation concerns with regards
9 to steelhead. My position is that that same rationale
10 would apply to trout. So, at this point I'll make a
11 motion that we move to suspend the rules that address the
12 requirement that reconsideration can only be made on the
13 same day that the motion was made.

14
15 ACTING CHAIR GOTTLIEB: There's a motion.
16 Is there a second to suspend the rules.

17
18 MR. OVIATT: I'll second.

19
20 ACTING CHAIR GOTTLIEB: George has
21 seconded it. Just a question. If you're referring to
22 language, can you point us all to the specific page and
23 maybe we can ask Steve whether you see if there's a
24 conservation concern for trout in this particular
25 proposal or this particular area. Yes.

26
27 MR. LITTLEFIELD: I believe the motion
28 before you is to suspend the rules and that's what you
29 should deal with, not the merits of whether to do it or
30 not. If you can't pass that test, don't debate it.
31 That's what I would recommend.

32
33 ACTING CHAIR GOTTLIEB: Okay. Thank you
34 for that course correction there. Mitch, are you still
35 on?

36
37 (No response)

38
39 ACTING CHAIR GOTTLIEB: Okay. There's a
40 motion to suspend the rules to continue discussion on
41 Proposal 24. All those in favor signify by saying aye.

42
43 MR. EDWARDS: Aye.

44
45 MR. OVIATT: Aye.

46
47 ACTING CHAIR GOTTLIEB: All those opposed
48 same sign.

49
50 IN UNISON: Aye.

1 ACTING CHAIR GOTTLIEB: Motion fails.
2 Okay. Do we have a motion to adopt the consent agenda?
3 Those proposals were read into the record at the start of
4 the meeting.
5
6 MR. BUNCH: Madame Chair.
7
8 ACTING CHAIR GOTTLIEB: Please, Charles.
9
10 MR. BUNCH: I move that we accept the
11 concept agenda as read into the minutes previously.
12
13 ACTING CHAIR GOTTLIEB: Is there a
14 second.
15
16 MR. KLEIN: Second.
17
18 ACTING CHAIR GOTTLIEB: Thank you, Steve.
19 Any discussion on the consent agenda besides our normal
20 but not to be taken as routine thanks to everybody who
21 made considerable effort to get these proposals on the
22 consent agenda. John.
23
24 MR. LITTLEFIELD: Thank you, Madame
25 Chair. I probably missed it in the discussion, but I
26 look at the Prince William Sound 17, 18, 19 and 22 as not
27 listed as on the consent agenda, but maybe I wasn't here.
28 Maybe there was consensus given later, but I missed that
29 part. If you could just clarify that for me, whether
30 everybody agreed.
31
32 ACTING CHAIR GOTTLIEB: We'll check our
33 records here. Tom.
34
35 MR. BOYD: Madame Chair. I believe you
36 listed 17, 18 and 19, is that correct, Mr. Littlefield?
37
38 MR. LITTLEFIELD: 17 and 18 had to do
39 with allowable gear and I don't believe we had that
40 discussion, and 19 was seasons, harvest and possession
41 limits in Prince William Sound, and 22 was the fyke nets
42 that we talked about. I remember some discussion on
43 that, but I don't see them as being on the consent agenda
44 in my book.
45
46 MR. BOYD: Madame Chair. The Board
47 addressed Proposals 18, 19 and 22. The Board put on the
48 consent agenda number 17, so that would be considered in
49 the motion for the consent agenda. Madame Chair.
50

1 ACTING CHAIR GOTTLIEB: John, did you
2 have another comment?
3
4 MR. LITTLEFIELD: 17, 18, 19 and 22 are
5 all in the consent agenda?
6
7 ACTING CHAIR GOTTLIEB: No.
8
9 MR. LITTLEFIELD: 17 only. What's the
10 status of 18, 19 and 22?
11
12 MR. BOYD: The status of 18, 19 and 22, I don't
13 remember the exact votes, but the Board has considered
14 them and voted on them and made a decision. Madame
15 Chair.
16
17 MR. LITTLEFIELD: The only one I missed
18 was 19. I guess I missed when that vote took place on
19 19. I forgot to put a check mark on 19.
20
21 ACTING CHAIR GOTTLIEB: It does appear we
22 have it covered, but thank you for double checking with
23 us. Cal.
24
25 MR. CASIPIT: According to my notes, the
26 Board supported the recommendation of the Southcentral
27 Regional Advisory Council on a 5-1 vote to oppose the
28 proposal, so they supported the RAC on that.
29
30 ACTING CHAIR GOTTLIEB: Are there any
31 closing comments people would like to make, our RAC
32 Chairs or State liaison.
33
34 MR. LITTLEFIELD: My comments are there
35 aren't many RAC Chairs left.
36
37 ACTING CHAIR GOTTLIEB: Just a second,
38 John. I jumped ahead too quickly here and we do need to
39 vote on the consent agenda. So all those in favor of
40 adopting the consent agenda please signify by saying aye.
41
42 IN UNISON: Aye.
43
44 ACTING CHAIR GOTTLIEB: All those opposed
45 same sign.
46
47 (No opposing votes)
48
49 ACTING CHAIR GOTTLIEB: The consent
50 agenda is adopted. Nanci, did you have any comments for

1 today?

2

3 MS. LYON: No. Thank you, Madame Chair.
4 It's been a pleasure to sit here and join you. A lot of
5 learning was done and I appreciate all the due diligence
6 also by all of you up there and careful deliberations.
7 Thank you.

8

9 ACTING CHAIR GOTTLIEB: Thanks. I can't
10 say this was a typical meeting, but I don't know if we
11 ever have a typical meeting. John, you have some
12 comments.

13

14 MR. LITTLEFIELD: Mr. Goltz, have you
15 been over here by my desk again?

16

17 (Laughter)

18

19 MR. LITTLEFIELD: I had a list and I
20 don't know where it went and one of them is, it's
21 unfortunate all the RAC Chairs aren't here, but there
22 were several things that I can remember that I had on my
23 list. I really apologize for not having it.

24

25 Number one was the submerged lands issue
26 in the McNaughton Island in the Southeast Regional area.
27 There's been some interest in Southeast that has been
28 expressed to me by people of how they could submit
29 proposals on that. I told them they could submit a
30 proposal, but there's no regulation. So I just want to
31 make sure that the Board continues to -- it's my
32 understanding they're moving along on this. I just want
33 to make sure that it continues to move along and I can
34 tell people that it's moving through the process. It
35 would be real helpful if we knew whether it was this year
36 or next year or five years or 16 years, whether this
37 proposal would come out, so that I could tell them when
38 they could submit a proposal. There's a real significant
39 interest in that proposal.

40

41 One of the other things I had on the list
42 was the amounts necessary for subsistence proposal.
43 That's before the Board of Fish. I do not know if the
44 Federal Board took a position on that. Maybe Mr.
45 Probasco could help me. I should have asked him earlier
46 when he was talking about it. But there's a proposal
47 about amounts necessary for subsistence. Our Council
48 took a stand against that and will do so at the Board of
49 Fish and what I'd like to see from the Federal Board is
50 some comment on this. We've always looked at our charter

1 that requires us to look at needs, but nowhere in there
2 does it say anything about the amounts necessary for
3 subsistence.

4
5 So, if we look down the road 10 years or
6 100 years when the State takes back the management of
7 this, it should be clear that the amounts necessary for
8 subsistence that the State has in their system do not
9 meet the requirements of ANILCA because they're two
10 different things. They're simply number of permits times
11 the number of users or potential users, make some simple
12 divisions. So I don't know if you've taken a position on
13 that. Maybe Mr. Probasco could help me on that one.

14
15 MR. PROBASCO: Madame Chair, Mr.
16 Littlefield. Again, on memory and checking with Cal, we
17 believe our comments, as you know, we're in the process
18 of developing ANS and subsistence use amount protocol
19 with the State that hasn't been completed yet. Our
20 recommendation on that proposal is to wait until that was
21 completed. This winter meeting the Councils will be
22 looking at the protocol, the draft protocol during the
23 winter meeting.

24
25 MR. LITTLEFIELD: Okay. So the
26 recommendation of the Board will be that they'd hold off
27 on this. I believe that's what we're asking. Just hold
28 off, these things go through a process and we actually
29 look at those. I'm trying to remember what else I had on
30 my notes.

31
32 Oh, serving for free. Let's talk about
33 that. When I checked into the hotel here and the guy
34 says you got a credit card and I said why are you asking
35 me that and he said because you can't sign in without a
36 credit card. I said I have a credit card, but isn't this
37 charged to the Fish and Wildlife Service, and he said,
38 yes, it is. I said what are you asking me for a credit
39 card for then. He said you either give him 50 bucks or
40 you give him a credit card, so I gave him a credit card.

41
42
43 When I went to Wrangell, we appeared 24
44 hours plus before the meeting and any opportunity to get
45 money. In other words, the only way to get into some of
46 these communities. I suspect in other communities it's
47 probably even worse. For me, I had a credit card in my
48 pocket, but at least one Council member had no money for
49 24 hours. I made it the very first order of action at
50 noon was to get that money distributed to those Council

1 members so they could go buy a meal. I really think the
2 Council members don't need to be put to that.
3
4 I think there has to be some method where
5 you can travel on an unrestricted ticket so you can make
6 changes. They charged me \$195 in Wrangell to change my
7 ticket. I need to be able to have some money when I get
8 to town so that I'm not waiting 24 hours until I get a
9 per diem check. There needs to be some means that no one
10 is charged any money to have a credit card because I
11 suppose most of the people that showed up here, I don't
12 know if you were asked, but that's unnecessary.
13
14 We do serve for free. We're volunteers.
15 So we should be given some latitude on these Federal
16 requirements that apply to other employees so that there
17 is no unnecessary restrictions on people for serving on
18 the Board because I think it's a burden on them. So if
19 you could look into those, I would really appreciate
20 that.
21
22 I'm trying to think of any other things I
23 had. Yeah, I have to look for my paperwork because
24 that's all I have right now. Madame Chair.
25
26 ACTING CHAIR GOTTLIEB: I'm sure there
27 will be an opportunity for you to provide your input to
28 us next time or in the interim. Charlie.
29
30 MR. BUNCH: I think Keith has his notes.
31
32 (Laughter)
33
34 MR. LITTLEFIELD: Madame Chair, there was
35 28 pages if you're looking for it.
36
37 (Laughter)
38
39 ACTING CHAIR GOTTLIEB: That's the usual,
40 right? Kelly, Marianne.
41
42 MR. HEPLER: Madame Chair. Mitch isn't
43 still on the phone, is he?
44
45 ACTING CHAIR GOTTLIEB: I don't think so.
46 Mitch, are you on?
47
48 (No response)
49
50 MR. HEPLER: I just wanted to extend my

1 appreciation not only to the Staff but also to the
2 Federal Board making me feel welcome. I was a little
3 apprehensive when Wayne Reglin called me on my Christmas
4 vacation and said you're it. It's been a while since
5 I've been in this process. I mean Cal and I cut our
6 teeth together many, many years ago. You look younger,
7 by the way, Cal. I don't, but you do.

8
9 I know how much time it takes to put
10 these meetings together. I put a lot of them together
11 myself, so the Staff on both sides I do appreciate that
12 and certainly my Staff. I'm saying my Staff like I'm the
13 Commissioner. Staff, thank you. I know the support
14 staff that are here. You have a lot of support going on
15 in this meeting and I appreciate that.

16
17 In particular, I've enjoyed the last few
18 days, some comments that Keith made, and they're
19 intriguing to me. Also, it's always intriguing to see a
20 lawyer kind of step out of the fairly regimented
21 discussion about the law, but I think after all these
22 years he deserves some of that.

23
24 I haven't had a chance to listen to John
25 before, but I came to the conclusion that if I was you,
26 Madame Chair, I'd split up those two Council members
27 because they're both way too bright and way too
28 articulate to be sitting together. It's definitely meant
29 as a compliment because you both challenge, you're both
30 very logical and practical how you approach things and
31 you make people think. There's many times we'll probably
32 disagree on some of the issues, but you do make people
33 think and that's good and that's good for me. So I
34 wanted to thank you.

35
36 MR. LITTLEFIELD: (In Tlingit).

37
38 ACTING CHAIR GOTTLIEB: Thank you.
39 Likewise. Yeah, we can't take for granted the amount of
40 work and effort that's gone into producing these books,
41 to having this room here, to having this set up. I
42 think, as Mitch would say, we may not always agree on
43 everything, but it's really important that we walk away
44 as colleagues, as professionals and continue to work
45 towards as much consensus and to meeting the mandates of
46 both of our programs that we can, so we thank you all for
47 your participation.

48 After having filled in very unexpectedly with a
49 lot shorter notice for him, I have a great deal of
50 respect and admiration for what it does take to run these

1 meetings. They're very complicated. But, with that, he
2 still kind of has the last laugh because the gavel has
3 been taken away from me, but I think we will still
4 respect that we can adjourn after John has his message.

5
6 MR. LITTLEFIELD: Madame Chair. I didn't
7 find my paperwork, but I did happen to notice my magic
8 marker. That was one thing I had on my list. Here's a
9 piece of paper with a yellow line drawn through it. I
10 want each of you, and I'm going to send seven of these
11 around, and I want you to sign your name on that yellow
12 line. This is a blank sheet of paper and you just sign
13 your name on there and then I'll take it back.

14
15 I really take offense at that happening
16 to me. It happened at Wrangell, it happened again at the
17 last meeting. They gave me a paper and said sign here.
18 A blank sheet of paper with yellow on it, which doesn't
19 show up on a copier and says sign here. I challenge any
20 of our legals up there or anybody else to sign a paper
21 like that. The thing was so I could get my per diem
22 check. I think that's uncalled for. I don't know if
23 you're doing this in other regions, having people sign
24 their names on blank sheets of paper. To me, it's
25 offensive and I would like to see that stopped.

26
27 Now, having said that, let's get to some
28 good stuff. What I said to Kelly (in Tlingit) means
29 thank you for your words, and I do thank you for your
30 words. In our culture, if I was in a cultural situation,
31 not a bureaucratic situation like this, many times I
32 would use the phrase, let's see if I can get it right
33 here (in Tlingit). That means forgive me. If I say
34 something that offends you, it's not my purpose.
35 Sometimes things have to be said and you have to say
36 things that may be hurtful to somebody or may be
37 perceived by somebody as hurtful. They're not meant to
38 be. We all have a job to do. I have a job to do, to
39 represent the RAC. I do appreciate those comments.

40
41 The State, we've argued ever since I've
42 been on this and I expect it to continue, but (in
43 Tlingit), which means forgive me for saying those words
44 that I have because there's no harm intended there. It's
45 because I have a job to do and I expect that out of you.
46 You have a job to do and we'll carry on. The tension
47 that he talked about hopefully goes away and you still
48 remain friends at the end of the day.

49
50 (In Tlingit) Thanks, all of you. I

1 tried to teach you this one time. Do you remember?
2 Anybody remember? (In Tlingit) That's all I have in the
3 bowl. That means that's it, the end. Thank you.
4
5 ACTING CHAIR GOTTLIEB: Thank you, John.
6 While it's true we all feel we have a job to do, I think
7 particularly with these kinds of issues there's also a
8 passion behind it and that's why feelings run deep,
9 statements run strong, but we've had a very productive
10 meeting and thank you all for that. The meeting is
11 adjourned, gavel or no gavel.
12
13 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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

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THAT the transcript is a true and correct
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