FEDERAL SUBSISTENCE BOARD

PUBLIC REGULATORY MEETING

VOLUME I

SHERATON HOTEL
ANCHORAGE, ALASKA

APRIL 30, 2007
8:30 o'clock a.m.

MEMBERS PRESENT:

Mike Fleagle, Chair
Gary Edwards, U.S. Fish and Wildlife Service
George Oviatt, Bureau of Land Management
Judy Gottlieb, National Park Service
Wini Kessler, U.S. Forest Service
Niles Cesar, Bureau of Indian Affairs

Bertrand Adams - Southeast RAC
Ralph Lohse - Southcentral RAC
Speridon Simeonoff - Kodiak/Aleutians RAC
Randy Alvarez - Bristol Bay RAC
Lester Wilde - Yukon-Kuskokwim Delta RAC
Jack Reakoff - Western Interior RAC
Mike Quinn - Seward Peninsula RAC
Victor Karman - Northwest Arctic RAC
Sue Entsminger - Eastern Interior RAC
Harry Brower - North Slope RAC

Ken Taylor, State of Alaska Representative

Keith Goltz, Solicitor's Office

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CHAIRMAN FLEAGLE: Good morning. We'll call the meeting to order of the Federal Subsistence Board wildlife issues. Today is April 30th, we're meeting at the Sheraton, Anchorage, Alaska. And first I'd like to start out with the introductions and it looks like we have all of the Board members present and I'm going to start at my left and work this way.

Mr. Oviatt.

MR. OVIATT: George Oviatt. I represent BLM.

MR. CESAR: Niles Cesar with the Bureau of Indian Affairs.

MS. GOTTLIEB: Judy Gottlieb, National Park Service.

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

CHAIRMAN FLEAGLE: Good morning. Mike Fleagle, Chairman.

MR. PROBASCO: Pete Probasco, Office of Subsistence Management.


MR. TAYLOR: Good morning. Ken Taylor from the Department of Fish and Game.

CHAIRMAN FLEAGLE: Good morning, Ken, and welcome.

I'd like to start with introductions at the back row tables, at that level, please.

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

MR. RABINOWITCH: Sandy Rabinowitz, National Park Service.

MR. EASTLAND: Warren Eastland, Bureau of Indian Affairs.

MR. LORD: Ken Lord, Solicitor's office.

MR. JACK: Carl Jack, OSM.

MR. BOS: Greg Bos, Fish and Wildlife Service.

MR. KESSLER: Steve Kessler with the Forest Service.

CHAIRMAN FLEAGLE: Thank you. And then let's start with the inner table over here, good morning, Jack.

MR. REAKOFF: I'm Jack Reakoff, Western Interior Regional Advisory Council.

MR. QUINN: Mike Quinn, Seward Peninsula Regional Advisory Council.

MS. ENTSMINGER: Sue Entsminger, Eastern Interior Regional Advisory Council.

MR. BUKLIS: Larry Buklis, Office of Subsistence Management, acting Chair of the Staff Committee.

MR. HAYNES: Terry Haynes, Department of Fish and Game.

MS. CUNNING: Tina Cunning, Department of Fish and Game.

MR. DAUGHERTY: Steven Daugherty, Department of Law.

MR. WILDE: Mr. Wilde, Yukon-Kuskokwim Regional Advisory Council.

MR. ALVAREZ: Randy Alvarez, Bristol Bay RAC.
MR. SIMEONOFF: Speridon Simeonoff, Kodiak/Aleutians.

MR. LOHSE: Ralph Lohse, Southcentral.


CHAIRMAN FLEAGLE: Thank you. Good morning. And I wouldn't mind if we just went through the crowd just so everybody'd stand up and have a chance and introduce yourself to the Board and folks present. Let's start at the table back here.

MR. MATUSKOWITZ: Theo Matuskowitz, OSM.

MS. CHIVERS: Michelle Chivers, OSM.

MR. LAPLANT: Dan LaPlant, OSM.

MS. WILLIAMS: Liz Williams, OSM.

MR. BANKS: Tom Banks, Defenders of Wildlife.

MS. SEE: Marianne See, Fish and Game.

MR. MATHEWS: Vince Mathews, OSM.

MS. WILKINSON: Ann Wilkinson, OSM.

MS. REAKOFF: Kristen Reakoff, Fish and Wildlife.

MR. RISDAHL: Greg Risdahl, OSM.

MS. GREFFENIUS: Laura Greffenius, OSM.

MR. WENTWORTH: Kevin Wentworth, Fish and Wildlife.


MR. KRON: Tom Kron, OSM.

MR. BERG: Jerry Berg, Fish and Wildlife Service.
MR. MIKE: Donald Mike, OSM.

MS. WRIGHT: Sherry Wright, Fish and Game.

MR. WHITWORTH: Kevin Whitworth with Forest Service.

MR. ANDREW: Tim Andrew, AVCP.

MR. IVANOFF: Art Ivanoff, AVCP.

MR. MCCOY: Ron McCoy, Department of Interior.

MS. CLARK: Maureen Clark, OSM.

MR. EDENSHAW: Cliff Edenshaw with OSM.

MR. NICK: Alex Nick, OSM.

MR. SCHROEDER: Bob Schroeder, Forest Service.

MR. WATERS: Elijah Waters, BLM.

MR. WRIGHT: Jeffrey Wright with U.S. Forest Service law enforcement.

MR. CHEN: Mark Chen, Forest Service.

MS. H. ARMSTRONG: Helen Armstrong, OSM.

MR. CAMPBELL: Rod Campbell, OSM.

CHAIRMAN FLEAGLE: All right, well, thank you, everyone. Appreciate getting to know who we have in the audience. I'm still learning people, obviously, relatively new yet. So we do have a compliment of Board members present, a quorum is established. And in way of just introduction to the meeting, I'm still learning the process obviously and at the last meeting I guess an oversight was not recognizing at the beginning of the meeting, the ability of RAC Chair representatives that are here to participate in the deliberations as they go on. So if we're discussing an item that is not in your area you still have the ability to weigh in on the issue, and I thank you, Judy, for bringing that up. And also I understand that typically at the end of the meeting, again, the RAC representatives are brought back into the
discussion for closing comments, and I didn't do that at the last meeting. So we'll do a couple changes like that. And as things come up we'll definitely make the process better.

I do want to recognize Ken Taylor for the State Department of Fish and Game. Ken, welcome to the table, and, again, you weren't here when we had the discussion at the last meeting but the State liaison is given the privilege to participate in the deliberations as well at the recognition of the Chair.

So I appreciate everybody's willingness to participate in the process.

And with that we're going to go ahead and move on with the agenda and the first thing is corrections and additions to the agenda and I'm going to turn that over to Larry Buklis.

Larry.

MR. BUKLIS: Thank you, Mr. Chairman. I wanted to note for the record that in addition to the Federal Subsistence Board wildlife meeting materials, April 30th to May 2nd, 2007, which we often call the Board book, in addition to that material we have a folder of supplemental material. And for the public we have copies of the supplemental material at the back table. There should be five items in your supplemental material folder.

The first item is an amended or revised agenda, which I'll speak to in a moment.

The second item is the Alaska Department of Fish and Game final written comments.

The third item is an addendum page for the Staff Committee comments on WP07-56. It should go in at Page 538. In production of the book the last two paragraphs had been cut off, so this addendum page includes what is on your Page 538 and on the back side are the missing two paragraphs.

Fourth, you have the Staff analysis for fishery RFR 06-09 which comes up later on your agenda this week.

And, finally, fifth, you have the
InterAgency Staff Committee comments on fishery RFR 06-09, again, later in your agenda this week.

Going back to the top on the amended or revised agenda you will note that it includes on Page 2 of that supplemental item, not the agenda in your binder but in your folder, Page 2 shows 14 proposals on consensus and Pages 3 and 4 show 50 proposals on non-consensus. I will note that Proposal WP07-08 is correctly shown on the consensus agenda but it is also shown on Page 3, the non-consensus, it didn't -- just in terms of production, didn't get moved over, it's shown in both places, so it should not be appearing on Page 3. That's WP07-08 should appear on Page 2 only and it should not appear on Page 3. It is on the consensus agenda, and it's double listed. So with that correction, you should have 14 on consensus and 50 on non-consensus.

Mr. Chairman, that concludes my review of the materials.

CHAIRMAN FLEAGLE: Thank you, Larry.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I had two items, please, one concerns the agenda, but first I wanted to mention the passing of Gilbert Dementi, who has been a long time Regional Advisory Council representative as well as part of the National Park Service Subsistence Resource Commission, and we'll miss his service quite a bit.

In terms of agenda, we did have a request to withdraw Proposal 07-50, and I would like to suggest that we do so.

CHAIRMAN FLEAGLE: Is there any objection to just removing 07-50 from the agenda? Do we need a motion?

MR. PROBASCO: We should have a motion.

CHAIRMAN FLEAGLE: Well, we should probably just do it when we get to it then, right.

MR. PROBASCO: Uh-huh.

CHAIRMAN FLEAGLE: Right, okay, let's
leave it on the agenda and just take it up then.

Other comments.

MS. KESSLER: Mr. Chairman.

CHAIRMAN FLEAGLE: Go ahead.

MS. KESSLER: I will only be here to represent the Forest Service today and tomorrow and then Steve Kessler will be taking my place. One of the non-consensus agenda proposals that's likely to come up on Wednesday is WP07-56 concerning the proposal to lift the closure for sheep in Arctic Village Management Area. And I anticipate this might be somewhat controversial so if possible I'd like to have that come up before 5:00 o'clock tomorrow, if possible.

CHAIRMAN FLEAGLE: Request noted.

MS. KESSLER: Thank you.

CHAIRMAN FLEAGLE: And we'll see how the scheduling goes, Wini. Thank you.

MS. KESSLER: Thank you.

CHAIRMAN FLEAGLE: Other comments, Board members.

(No comments)

CHAIRMAN FLEAGLE: RAC representatives.

(No comments)

CHAIRMAN FLEAGLE: State.

(No comments)

CHAIRMAN FLEAGLE: None, okay.

All right, at this time we'd like to go ahead and open up public comment period on non-agenda items, and as noted on the agenda that we will provide this opportunity at the beginning of each day of the meeting. Is there anybody that would like to address the Board on any issue that is not on the agenda.

(No comments)
CHAIRMAN FLEAGLE: All right, thank you for those non-comments.

Now, we move into the public comment period on the consensus agenda items. And as noted we have, I think, Larry said there were 14 total, if I remember the count. I'd like to welcome comments on the consensus agenda proposals.

(No comments)

CHAIRMAN FLEAGLE: All right, we don't have any there either -- oh, we do, Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. Before you start your deliberations I do have some opening remarks from the State that I hope will help move the meeting along.

Mr. Chairman, I'd like to thank you for the opportunity to provide these comments on the proposals you'll be deliberating this week.

The Department has submitted copies of our detailed comments on these proposals and Staff will summarize key points during the Board's deliberations. But at the outset, however, I'd like to discuss the Department's positions on particular types of proposals that are on your agenda.

CHAIRMAN FLEAGLE: Mr. Taylor.

MR. TAYLOR: Yes.

CHAIRMAN FLEAGLE: If these comments are just general in nature I'll accept them now but we do provide an opportunity at each proposal for comment as well so -- comments that are specific to proposals.

MR. TAYLOR: Thank you, Mr. Chairman. These are general comments.

CHAIRMAN FLEAGLE: Okay, thank you.

MR. TAYLOR: And they have to deal with a couple of the policy issues that I'm sure you've heard of before. I thought it might speed things up to cover those general policy issues now so that we don't have to bring them up time after time during the proposals.
We have a couple of overarching concerns. We mention these concerns in most of our comments but we've tried to keep them short and have left out discussion on a few proposals where the policy issues are applicable in order to avoid undue repetition and help move things along.

One of our overarching policy concerns regards duplication of State regulations. I'm sure you've heard of this before. The State law requires the subsistence priority on most lands in Alaska and where the harvestable surplus is sufficient State regulations adequately provide the subsistence preference for all Alaska residents, including rural residents while also allowing other beneficial uses consistent with ANILCA and State law. Numerous proposals on your agenda would modify current Federal regulations to match the corresponding State regulation. In most of these cases the Federal regulation is not needed to provide a subsistence preference on Federal public lands because the current State regulation is already providing the requested opportunity.

Furthermore, the Federal Board doesn't need to adopt duplicate regulations because Federal regulations already incorporate State hunting and trapping regulations by reference.

In cases where Federal regulation would mirror State regulations, the Department's preferred alternative is the deletion of duplicative Federal regulations allowing the Federal incorporation by reference of State regulations to apply. Reliance on State regulations through Federal incorporation by reference would prevent inadvertent regulatory drift and divergence. State regulations that have been incorporated by reference could be reflected in your Federal handy-dandy.

Another area where we have consistently discussed our concern has to do with customary and traditional use determinations. The Department recommends the Federal Board defer action on customary and traditional use determinations until criteria are established pursuant to the October 27th, 2005 directive issued by the Secretary of Interior. This will better enable the public to evaluate the underlying principles used by Federal Staff to recommend that a new positive C&T finding be made where one didn't exist previously or that an existing finding be expanded to include more
rural residents.

Under the current process it's difficult to determine the basis for Federal Staff recommendations on several C&T proposals on the agenda. In some cases the Federal position appears to be based on the view that any use, no matter how low the use or how it is documented is sufficient to demonstrate a long-term consistent pattern of community use and to support a positive customary and traditional use determination. This approach contradicts State regulations and is inconsistent with the Alaska National Interest Lands Conservation Act which established a policy of providing a preference only for continuation of subsistence uses and which defines subsistence uses as customary and traditional uses.

A third area is the closure of Federal public lands and as I understand it you have a draft policy in the works right now. We have several proposals on the agenda that address closures of Federal public lands to non-Federally-qualified subsistence users. Under ANILCA, Section .815 paragraph 3, Congress prohibits authorizing restriction on the taking of fish and wildlife for non-subsistence uses on the public lands unless necessary for the conservation of healthy populations of fish and wildlife or to continue subsistence uses of such populations unless proposed or existing closures are shown to be consistent with Section .815 of ANILCA the closures should be rescinded.

We understand that the Board has completed work on a draft proposed closure policy and we look forward to its completion so that the public will better understand the basis for future Board action on proposals to close State public lands to non-Federally-qualified subsistence users.

In summary, although the Department has objections to the adoption of the following proposals and these are, and I'll just abbreviate them as 09, 10, 11, 12, 33, 39 through 45, 46/47, 48/49, 51/54, 57, 60, 61 and 62, our objections on these proposals are based on the policy issues that I've just discussed. And depending on how the Board addresses these issues and gives the Department an opportunity for comment, we may agree to these proposals being voted on as a block.

Thank you, Mr. Chairman.
CHAIRMAN FLEAGLE: Okay, thank you, Ken. Appreciate the comments. And, you're right, those are pretty consistent.

Other -- Pete Probasco.

MR. PROBASCO: Thank you, Mr. Chair. Mr. Taylor, just for clarification, based on the list of proposals that you just read into the record, are we to assume that those would go on to the consent agenda or do you still want them to be brought up individually and dealt with in that manner?

CHAIRMAN FLEAGLE: Mr. Taylor.

MR. TAYLOR: Mr. Chairman. I think we are considering the possibility that they may go on the consent agenda but it depends a bit on how we work through some of those other issues through the course of the meeting.

MR. PROBASCO: Thank you, Mr. Chair. So then each of those proposals would still be dealt with on an individual basis.

Thank you.

CHAIRMAN FLEAGLE: Board members. Gary.

MR. EDWARDS: Mr. Chairman. Just clarification. You can request at any time an issue be taken off the consent agenda, we don't have to do it at this point; is that correct?

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. Mr. Edwards, that is correct. The proposals that I was speaking to to Mr. Taylor would be in addition to the ones already on the consent agenda.

MR. EDWARDS: But if I have one that I may want to take off, pending also actions on other ones, I can do it at that point?

MR. PROBASCO: That's correct.

MR. EDWARDS: Thank you.

CHAIRMAN FLEAGLE: Ken Taylor.
MR. TAYLOR: Mr. Chairman. Just for my clarification, you can take proposals off the consent agenda at any time, can you put them on the consent agenda at any time?

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. Mr. Taylor.

The purpose of the consent agenda item is to help expedite the meeting and by placing items on the consent agenda usually the assumption is made that the majority of those we won't take up individually and we'll just hold them until the end of the meeting and then get concurrence. Without the proposal specifically placed on the consent agenda requires the Board to take each one up individually.

MR. TAYLOR: Thank you, Mr. Chair. I guess then I would defer to the Department of Law as to whether or not we should place these items on the consent agenda at this time and then remove them, if necessary.

MS. CUNNING: A little consultation back here, we do want those moved to the consent agenda now that those statements are on the record.

CHAIRMAN FLEAGLE: Okay, for the record that was Tina Cunning. Thank you, Tina. Pete.

MR. PROBASCO: Thank you, Mr. Chair. So Ms. Cunning with the statements that Mr. Taylor read into the record, to clarify the State's position, and as well as comments on the various policies, we can now, with those comments, move those proposals listed to the consent agenda.

CHAIRMAN FLEAGLE: Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. And thank you for that, I hope that does help speed up your meeting.

CHAIRMAN FLEAGLE: Thank you.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I was just wondering if Ken could please read the list again.
CHAIRMAN FLEAGLE: Ken Taylor.

MR. TAYLOR: Thank you. The list I had was Proposals 9, 10, 11, 12, 33, 39 through 45, 46/47, 48/49, 51/54, 57, 60, 61 and 62.

CHAIRMAN FLEAGLE: All right, thank you. And just for clarification, the reason that they are on the main agenda is because the State objected during the consent agenda discussions, correct?

MR. PROBASCO: Mr. Chair. I would say that the State wanted to, before putting those items on the consent agenda, Staff wanted to go back and discuss it within house and then come back so they could make these type of statements and then move it to the consent agenda.

CHAIRMAN FLEAGLE: All right. I was just making sure that there wasn't any other reason to not move those to the consent agenda. We have Larry Buklis, comments.

MR. BUKLIS: Yes, thank you, Mr. Chairman. In further response to your comment, I've checked that list just announced against our records and I presume from the State saying that they're in a position to move them to the consensus agenda, they agree with the existing position of record of the relevant Regional Advisory Council and the Federal InterAgency Staff Committee, and so with them joining that position it would make it consensus.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. That was the answer I was looking for. Do we have any objection from the Board for moving those listed proposals to the consensus agenda.

(No comments)

CHAIRMAN FLEAGLE: No objection. We'll adopt that as action by the Board. Thank you.

Okay, with that, that now moves us to the next item on the agenda and that is the announcement of the consensus agenda.

Larry.
MR. BUKLIS: Mr. Chairman. The consensus agenda would consist of the 14 proposals listed on the revised agenda dated April 27th, 2007, Page 2, there's 14 proposals listed there numbers 8, 18, 19, 20, 21, 25, and then 27, 28, 31, 64, 35, 38, 52 and 53, and the positions of the recommendation are as shown on that page, I won't read them all.

And joining that list of 14 are the additional proposals Mr. Taylor read off, number 9, 10, 11, 12, 33, 39 through 45, 46, 47, 48, 49, 51, 54, 57, 60, 61 and 62. And the positions would be as recommended by the Regional Advisory Councils on those proposals.

We can develop a revised printed consensus agenda showing all these proposals and the positions recommended well before you get to returning to that agenda item at the end of your meeting, Mr. Chairman.

CHAIRMAN FLEAGLE: Appreciate that, Larry, that'd be great.

Comments. Wini. You microphone's not on.

MS. KESSLER: Sorry. I'm not asking this to be removed from the consensus agenda, but I would like this subsistence council, the Southcentral Council to provide an explanation or clarification as to the reasons for its recommendation on WP07-21 concerning the C&T determination for certain communities in Unit 15 for moose.

CHAIRMAN FLEAGLE: Mr. Ralph Lohse.

MR. LOHSE: Thank you, Ms. Kessler. I think that what we're talking about was the request for consideration for C&T for -- I'm going to get the list of the names of the communities, I had it right here just a second ago.

MR. EDWARDS: Mr. Chairman. Maybe to save Ralph some trouble, that was the one that I was thinking about taking off and I'm willing to go ahead and take it off and then you could save your discussion for when it comes up. Would that work for you?

MR. LOHSE: It's your choice.
MR. EDWARDS: I mean that's the one I was referring to and it seems like somebody else has a concern for it and so I'd just go ahead at this point then and move that it be taken off because I'd like to have more lengthy discussion probably of it and I don't want to get it out ahead of anything.

I didn't mean to interrupt you but.....

MR. LOHSE: That's fine, Gary.

CHAIRMAN FLEAGLE: Okay. So we do have a motion to remove WP07-21 from the consensus agenda for discussion during the normal deliberations. Is there a second to that.

MS. GOTTLIEB: Mr. Chair. I think, help me procedurally, if a Board member asks for withdrawal from the consensus agenda that's all it takes.

CHAIRMAN FLEAGLE: That's all it takes, okay. So one person can rule this process at this point.

(Laughter)

CHAIRMAN FLEAGLE: All right, so noted. Thank you, Judy. 21 is now to be considered off of the consensus agenda and during the normal deliberations and we'll have to determine exactly where to insert that during the course of the actions.

MR. PROBASCO: Southcentral.

CHAIRMAN FLEAGLE: So keep that in mind Staff.

All right, so we're going to get ready to move into the proposals and if we have people that are interested in commenting on these proposals, we have the cards that need to be filled out and brought forward and we allow a comment period on each proposal so I just want to give the head's up that if you want to address any specific proposal, please fill out a card and state your interest in doing so.

MR. PROBASCO: We'll start with statewide.

CHAIRMAN FLEAGLE: Here, right.
MR. PROBASCO: Yes, statewide.

CHAIRMAN FLEAGLE: All right. We now move into the proposals under consideration and we're starting with the statewide proposals. The first up on the list is WP07-01 definitions and utilizations of wildlife, and who am I turning this over to for the lead analysis.

MR. PROBASCO: Liz Williams.

MS. WILLIAMS: Good morning, Mr. Chair. Members of the Board. I'm Liz Williams with OSM.

Proposal WP07-01 was submitted by the Alaska Department of Fish and Game and it requests that claws be removed from the Federal definition of fur and that sales of handicraft articles made from claws, bones, teeth, sinew or skulls of black and brown bears be allowed for sale only between Federally-qualified subsistence users statewide.

The proponents submitted this proposal because, in their view, if the definition of fur is not changed it will allow for unconstrained commercial sale of handicrafts made from bear parts and create market incentives for poaching. And I apologize, this is on Page 18 of your book.

Between 2002 and 2006, the Federal Subsistence Board considered six proposals regarding the sale of handicrafts made from some of the non-edible parts of bears. The Board has consistently supported the sale of handicrafts made from the skin, hide, pelt, fur, claws of black bear, statewide, and brown bear in three regions of the state, including claws by Federally-qualified subsistence users. Under current Federal regulation brown bear hides with claws can only be used in handicrafts for sale if the bears were harvested from Eastern Interior, Bristol Bay and Southeast Alaska. Other parts such as bones, teeth, sinew or skulls can only be used from brown or black bear taken in Southeast Alaska.

So the effects of this proposal would be that they would remove the unit-specific restrictions that I just mentioned and would negate the intent of the Board and the Regional Councils in recognizing the diverse customary and traditional uses of bears and bear parts throughout the state. So in other words, each RAC
decided what would and wouldn't happen in their region
based on the opinions of their communities, and it was
specifically set it up so that certain things would
happen only in certain places and some places nothing.

The proponents description for persons
eligible to sell handicrafts from bear parts mentioned
above would narrow sales only to Federally-qualified
rural residents. This proposal would unnecessarily
restrict the subsistence users of Federally-qualified
subsistence users as specified in ANILCA, Section .803.

The preliminary conclusion of OSM is to
oppose the proposal.

The State has conservation concerns
related to this proposal, which are very valid, but so
far there's been no evidence provided to indicate that
Federal regulations adversely affect bear populations.
There's been no evidence provided to indicate that these
regulations have led to an increased legal or illegal
harvest of bears. And, again, these bear parts that are
used would only be taken from bears that are already
legally harvested under Federal subsistence regulations.
As I just said current Federal regulations apply only to
bears harvested under Federal subsistence regulations on
Federal lands and, of course, all meat from bears
harvested under Federal subsistence regulations must be
eaten.

That's it.

CHAIRMAN FLEAGLE: Okay, thank you.

MR. MATHEWS: Yes, Mr. Chairman. I'm
Vince Mathews, Regional Coordinator for Eastern and
Western Interior.

Public comments are found on Page 30 and
31. There was six written public comments, they were all
in opposition. There were four of those six from the
Subsistence Resource Commissions.

Aniakchak National Monument, Lake Clark
oppose it for the same justification, because this
proposal restricts the opportunity for subsistence users
to maximize the value they can derive from selling
handicrafts made from parts of legally harvested bears. 
Wrangell-St. Elias National Park and Denali National Park Subsistence Resource Commissions also opposed it for the same reasoning -- they had the same reasoning, excuse me, and their reasoning was based on the preliminary Staff conclusion. And that was that the proposal would unnecessarily restrict subsistence uses of Federally-qualified subsistence users as specified in ANILCA. There has been no evidence provided to indicate that the current Federal regulations adversely affect bear populations or have led to increase legal or illegal harvest of bears, and the proponents language for the Federal definition of fur would require the removal of claws from all hides such as fox, mink, not just bear, and lastly, this proposal, if adopted, would broaden the use of some of the non-edible parts of brown bears into regions where it is not allowed under current Federal regulations.

The two additional written comments in opposition were from David McHoes of Skwentna. He opposes this proposal because nowhere in the reasons for the for the recommended change are there any biological reason for the recommended change. Most bear populations in the State are harvested well below sustainable levels. Passage of this proposal would be like telling a trapper he can sell only his pelts to other trappers. Most handicrafts are intended for sale to non-local residents to provide income from outside sources for the subsistence user and to bring money into rural areas. Subsistence harvest does not just relate to personal consumption, but also has always provided a limited amount of cash income to provide for things that a subsistence life might require.

The AHTNA Tene Nene' Subsistence Committee also opposed this proposal and their representative is here if I capture this wrong, and they can correct it.

They do not support this proposal to change the definition of handicrafts. They don't support changes to 25(j)(6)(i) or 25(j)(8). The definition of 25(a) includes all animals, which is too broad of a definition. They oppose 25(j)(6), which would reopen a statewide selling of handicraft articles made from black bear to only another Federally-qualified subsistence user, which includes the skin, hide, pelt, fur, of a black bear; and it also eliminates claws, which is fine, but we do not support the selling any bear parts. They also oppose 25(j)(6)(i), which a State
proposal that would allow the Federally-qualified subsistence user to sell handicraft articles from claws, bones, teeth, sinew or skull of brown bear to only other qualified subsistence users. It also eliminates skin, hide and fur of brown bear, which is fine, but we do not support the selling of any brown bear parts.

Mr. Chair. That concludes the written comments for Proposal 1.

CHAIRMAN FLEAGLE: Thank you, Vince. Do we have any public testimony.

MR. PROBASCO: No, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete. Okay, since this is a statewide proposal I'm going to open it up, Regional Advisory Council recommendations, raise your hand if you have comments.

Bert Adams.

MR. ADAMS: Thank you, Mr. Chairman. Wow, it must be about 3:00 a.m. in the morning, that's when I normally have my nightmares and I just kind of feel nervous today, maybe I had a cup of regular coffee this morning, but excuse me if my voice shakes a little bit as I go through my presentation here.

The Southeast Regional Advisory Council opposes this proposal. We find that, you know, as regulation is in place now that there are no problems with it. We have gone through this before and have always come up with the same conclusion. We don't see any conservation concerns. And we also feel that it would be detrimental to subsistence users.

According to the ADF&G, Division of Wildlife Conservation for the region there are no conservation concerns with bears in Southeast Alaska. This proposal addresses a punitive, possible, hypothetical problem rather than real management issues or concerns and should a demonstrable problem arise from the selling of handicrafts incorporating claws and other of the non-edible parts of bears, the Council will urge action to protect bear resources. So passage of this proposal would be detrimental to the interests of subsistence users.

And so for this reason the Council, you
know, opposes this proposal.

The Council recognizes that in some regions in Alaska, the sale of bear parts may be culturally inappropriate, however, use of bear parts, including bear claws for handicrafts is an acceptable practice in Southeast Alaska and for that reason we don't think it should be curtailed.

The Council's on record supporting regulations that allow full utilization of bears taken for subsistence purposes, use of bear parts and traditional regalia and craft items and appropriate handicraft sales of items made from bear parts.

To summarize all this, Mr. Chairman, I'll just conclude by saying that the recommendation modified -- the recommended modified proposal will have minimal affect on Federally-qualified hunters. Black bears are abundant in Southeast Alaska existing and potential subsistence harvests are low relative to the harvest levels that may be maintained over time. Brown bear harvests are closely managed. The subsistence component of this harvest has been very low and is expected to remain at current levels. Region-wide data show that only a small number of bears are taken for consumption by Federally-qualified subsistence hunters. The Council believes that only a small subset of Federally-qualified hunters taking bears will use non-edible parts for handicrafts. The Council does not believe that this regulation will affect future harvest levels significantly.

And that's about the extent of my comments, Mr. Chairman, thank you.

CHAIRMAN FLEAGLE: Thank you, Bert.

Other Advisory Council comments.

MR. SIMEONOFF: Mr. Chairman.

CHAIRMAN FLEAGLE: Speridon.

MR. SIMEONOFF: Speridon Simeonoff from Kodiak/Aleutians.

The Kodiak/Aleutians Advisory Council opposed this proposal and their justification was that the Council members stated that it was hard to make recommendations for other regions. The current Federal
regulations were carefully developed to consider regional
subsistence practices.

Thank you.

CHAIRMAN FLEAGLE: Appreciate those comments. Sue Entsminger.

MS. ENTSMINGER: Yeah, thank you, Mr. Chair. The Eastern Interior RAC also opposed this proposal. And I won't read everything in the book.

But I did want to add since our meeting I received a book that -- I'm a skin sewer and I've been sewing furs and things for years and I attend a lot of shows inside Alaska, like Anchorage Fur Rendezvous and winter shows where we sell our fur hats and stuff and I've walked around during shows and seen people with a little bear claw, prior to all of this being made legal, a little bear claw in a little item that they made and a Native gal from, you know, the Interior and I said, do you know that you shouldn't have that for sale here because it's illegal. And here's little examples, where you can go around these shows, that isn't hurting anything for them to take that bear claw and make an item but often I'd see this over and over again. And then since our meeting I got a book in the mail from Inna's Furs out of Idaho and in that book, it's countless bear claws that are for sale, countless places where it's for sale and I guess I mean I have -- due respect to the State, I really appreciate our State Fish and Game, but at the same time I feel like we're -- in our neck of the woods we call it hand-wringers, you worry yourself silly about something that really is a non-issue, and I just wanted to add that here.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Other Advisory Council comments. Randy Alvarez.

MR. ALVAREZ: Thank you, Mr. Chair. The Bristol Bay RAC opposed this proposal as does two of the SRCs in our region, Aniakchak and the Lake Clark and their reasons were discussed earlier. But we feel strongly that there is no problem with this right now, and to make a handicraft it takes more than just drilling a hole and tying a piece of string on it, you know, it takes craftsmen to do it and, you know, it takes time and it provides an opportunity, you know, for people in rural
Alaska to supplement their income. And we feel that there's no -- in the Bristol Bay area, our bear population is reasonably high, as was discussed at the Board of Game meeting a couple of months ago that was -- you know it was pretty contentious issues there. We don't see a problem with this. Maybe at a later time there might be a problem, and it could be brought up later but for now we are opposed to the proposal.

CHAIRMAN FLEAGLE: Thank you, Randy.

Other RAC comments. Jack Reakoff.

MR. REAKOFF: Mr. Chairman. The Western Interior Regional Council opposed the proposal. Our Council's not been in favor of the sale of bear parts for cultural reasons. People in our region have respect for the bears and don't feel that it's appropriate to sell the parts from bears but we're not opposed to the other regions and their cultural practices from the sale of bear parts. And as most people are aware the bear population in Alaska is very high in most of the state and so we didn't feel that it was appropriate to exclude other regions from allowing the sale of bear parts. But our Council opposed the proposal and feel that other regions should be able to sell.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Mike Quinn.

MR. QUINN: The Seward Peninsula RAC opposed this proposal also. We look forward to the increase in opportunities for rural residents to profit from their legal kills and we certainly hope we see them using other markets, such as the internet and eBay to do so.

CHAIRMAN FLEAGLE: Thank you. Michelle.

MS. CHIVERS: Mr. Chair. The Northwest Arctic Council did support this proposal with no discussion so there wasn't a reasoning behind here and the Chair is not here.

I'm also going to read the recommendation for the North Slope. They took no action on this proposal.

Thank you, Mr. Chair.
CHAIRMAN FLEAGLE: Thank you. Lester Wilde.

MR. WILDE: The YK-Delta also opposed this proposal. I'm the newly appointed Chair of the YK-Delta and they got me a little bit off guard there and I can't really remember exactly what the recommendations were or what the reasoning was behind the proposal or the opposition to this proposal. But for the record we did oppose it.

CHAIRMAN FLEAGLE: Okay, thank you.

Ralph Lohse.

MR. LOHSE: Southcentral took no action. Those of you that were at our last meeting realize how long the meeting took and we just plain ran out of time. In the past we've probably supported this but at the same time the culturally ambience of our community is basically that, like Western Interior, it's like you heard with the AHTNA thing, it's a respect of the bears and so we have mixed feelings on it. But we took no action for this meeting.

CHAIRMAN FLEAGLE: Thank you. And yet another nuance of the Federal system that I'm beginning to be more and more acquainted with, I was calling those comments when they're, in fact, Council recommendations. Duly noted, thank you for the correction.

With that we'll move on to the Alaska Department of Fish and Game for comments.

Ken Taylor, or is this Tina Cunning.

MS. CUNNING: This is Tina Cunning. And because this is so important to us I'm going to read a fair amount of our statement into the record.

This proposal, submitted by the Department of Fish and Game would revise the definition of skin, hide, pelt or fur, to exclude claws and would authorize only the sale of handicraft articles made from allowable bear parts to other Federally-qualified subsistence users. This proposal addresses potential commercial sales of bear handicrafts but does not prohibit sales between Federally-qualified subsistence users who use these handicrafts for ceremonial, religious and cultural purposes. Adoption of this proposal will make the Federal regulations more enforceable and
consistent with sound management principles and will reduce the incentive for illegal harvest and overharvest of bear populations in Alaska and elsewhere.

Last year the Federal Subsistence Board rejected a proposal to limit sales of bear part handicrafts and constrain the sale of bear parts. Instead of taking action to prohibit commercial exchanges or put reasonable and enforceable limitations on such exchanges as has been done in the fisheries context, the Federal Board adopted only an unenforceable generalized prohibition against sales of handicrafts that are "significant commercial enterprises." The unenforceable revisions created incentives for new commercial enterprise and illegal harvest of bears potentially jeopardizing a species recognized under the Endangered Species act in other states and undermining State conservation. The State filed a request for reconsideration on August 25, 2006, which the Federal Board concluded did not meet the criteria to warrant further reconsideration.

The current regulations:

1. Authorize unconstrained sales as a customary and traditional activity despite a record demonstrating that only limited non-cash exchanges were traditional and that cash sales did not traditionally occur;

2. Allow the commercial sale of bear parts handicrafts including internet based sales;

3. Provide no tracking mechanism for sales or the source of bear parts used in making handicrafts, and;

4. Have been interpreted to allow purchase of claws, teeth, skulls and bones by non-Federally-qualified subsistence users despite the fact that such purchase is prohibited under State law.

Through its actions the Federal Board created and is perpetuating a new market for bear claws,
skulls and bones that will mask illegal sales. This action compounds problems with the international trade of endangered species and contributes to the illegal harvest, overharvest, and waste of bears in Alaska and in other states and countries. With the North American brown and black bears listed in appendix two of the Convention on International Trade and Endangered Species of Wild Fawn and Flora and brown bear populations in the 48 contiguous states listed as threatened under the Endangered Species Act, regulations allowing unlimited and untracked sales of bear claws, teeth, bones and skulls violate sound management principles.

By permitting internet and eBay sales the Federal regulations potentially create a commercial market for bear claws. As a result in addition to increased levels of legitimate subsistence hunting, illegal hunting and illegal use of bears taken in other hunts likely will also increase creating an entirely "commercial" market.

The Department supports this proposal. Adoption of this proposal is necessary in order to:

1. Reduce incentives for illegal harvest of bears in Alaska and other states;

2. Prevent sales of high value parts of bears taken for subsistence purposes from becoming "significant commercial enterprises" because the current Federal regulation is unenforceable, and;

3. Improve the enforceability of the Federal regulations by eliminating differences in permissible uses based on area of harvest, which is particularly important in the absence of a harvest tracking mechanism.

The Department did not intend for this proposal to apply to species other than bears, so the Department would support minor revisions to the proposed changes to eliminate possible unintended consequences. This can be accomplished by modifying the language proposed for addition to Section .25(a) to read: "but
does not include bears claws."

Another modification option is to modify the wording proposed for deletion from Sections .25(j)(6) and .25(j)(7) to read: "excluding claws" instead of "including claws."

We believe the proposal as modified, these modifications addresses the concerns of several of the Regional Councils and we have copies of this available to distribute to you so you could actually see what it would read like if you'd like us to pass those out.

CHAIRMAN FLEAGLE: Okay, thank you. Okay, we now turn to the -- okay, I left a question hanging there, why don't you go ahead and pass them out and the Board can have those for their review for deliberations in case anybody's interested in going there.

Now, we'll turn it over to the InterAgency Staff Committee comments and that's Larry Buklis.

MR. BUKLIS: Thank you, Mr. Chairman. Larry Buklis acting Chair of the Staff Committee. Just as a reminder, this is our first Board meeting at which the Staff Committee is presenting their comments instead of a recommendation consistent with the procedures enacted by the Board.

Our comments will speak to the proposal or the analysis of it or the recommendations of the Council or the State comments, but we won't be making a concluding recommendation.

Mr. Chairman.

On this proposal, WP07-01, the Staff Committee comments are on Page 30 of your Board book and I'll highlight some key points from it. Of the eight Subsistence Regional Advisory Councils making recommendations, we note that seven Councils opposed and one supported, Northwest Arctic, there is some concern by Staff that the Northwest Arctic Council may have misunderstood the proposal, in part, because their meeting was held by teleconference. The Council members did not discuss the proposal nor did they provide any rationale for their position. However, the Council has
been on record as opposing some of the proposals allowing
the selling of handicrafts from bear.

The proposal as submitted by ADF&G
includes an unintended consequence as the State noted, it
would broaden the allowance for using some of the non-
edible parts of brown bears into regions where that use
is not allowed under current Federal regulations. At
many of the meetings ADF&G stated on the record that this
effect is unintended and that they would support language
eliminating this unintended consequence. None of the
Councils proposed modifications to the proposal.

ADF&G is concerned, we note, that the
current Federal regulations "provide no tracking
mechanism for the sales or the source of bear parts used
in making handicrafts." But the Staff Committee notes
that ADF&G by regulation approved by the Alaska Board of
Game in 2006 issues permits allowing hunters to sell bear
untanned hides with claws attached and skulls, after
sealing, in predator control areas. For hides sold under
these State regulations there also is no methodology for
tracking bear parts such as claws if a person chooses to
sell them from the hide if a person chooses to
separate them from the hide. We note that the Department
of Fish and Game permit states that persons who resell
the hide must possess a valid fur dealer license, claws
may not be sold separately and the hide may not be sold
after it is tanned, however, it is unclear what would be
allowed after the hide is sold to a fur dealer who then
may resell the hide.

Mr. Chairman, that concludes the comments
from the Staff Committee.

CHAIRMAN FLEAGLE: Thank you, Larry.
Now, I'll open it for Board discussion. Gary Edwards.

MR. EDWARDS: Mr. Chairman. I have a
couple questions of the State. I know our enforcement
folks haven't put a lot of effort down in the Southeast
and it's my understanding that the Forest Service
enforcement folks haven't been able to detect anything as
a result of this but the question would be to the State
is that since this regulation has been in effect, are you
aware of any evidence sales of handicraft articles that
contain bear claws or any evidence of increased harvest
as a result or this as an incentive for taking more bears
or any increase in illegal harvest as a result of this?
MR. DAUGHERTY: Through the Chair, Steven Daugherty with State of Alaska Department of Law. We are not aware of any cases that have been made as a result of this, however, we are aware of increased sales that are occurring. Sales are occurring on the internet, you can go down to the Anchorage Saturday Market and see products made with bear claws that are being sold in an urban area.

We are concerned on the precautionary principle. Once a commercial market has developed, it's hard to put the cat back in the bag and you've got all these items out there that have been illegally sold once then you have a takings issue when you restrict the ability to resell those items, it just becomes a real nightmare trying to address the problem once it develops so this is a precautionary measure at this point. We can see it becoming a problem in the future.

Thank you, Mr. Chair.

MR. EDWARDS: Mr. Chairman. As a follow up question, I mean, why doesn't when that applies to now what you have done to allow people to get permits that are taking bears, both brown and black on, you know, on their predator permits, then to get a permit then to turn around and sell them, I'm assuming you can sell those skins on eBay?

MR. DAUGHERTY: Mr. Chair. You have to have a permit for the sale of those items and they cannot be resold, that's the main difference in the system, is that there is no resale allow. So it's a one time sale, it is monitored and you don't have something floating around in the chain of commerce after the initial sale.

Thank you, Mr. Chair.

MR. EDWARDS: So can you clarify. So if I have a permit so I can go out and take a bear under -- for predator control, so to speak, then I can apply to you for a permit, do you know how many permits have been requested for brown and for black bear this year?

MR. DAUGHERTY: Mr. Chair. We don't have that information.
MR. EDWARDS: I think it's 12 for black bear and two for brown bear. But if I'm one of those and I take those I'm allowed to sell that skin as long as it's not tanned with the claws attached, can I put that up on the -- if I'm one of those 12 people that have gotten those permits then can I put that up on eBay and sell it to anybody who wants to buy it?

MS. CUNNING: Mr. Chairman. We have a copy of the permit here, we're studying it.

CHAIRMAN FLEAGLE: While they're studying that why don't we go ahead and take our first break, 10 minute break and stand down.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right, good morning we're back in session and I understand the State has answers to questions that were raised just prior to the break. Would that be Steven.

MR. DAUGHERTY: Thank you, Mr. Chair.

There is nothing that would prohibit a sale over the internet in State regulations. However we note that it is covered by an individual permit for each sale and so we do have an enforcement mechanism because if a sale is not covered by that permit, which contains the sealing information for that bear, it is an illegal sale, Mr. Chairman.

Thank you.

CHAIRMAN FLEAGLE: Go ahead, Gary.

MR. EDWARDS: Okay, but then to follow up, then it could be sold on the internet, you certainly know who is doing the selling but then once it gets on the internet it fully goes out into commerce and can be done with it whatever the person who receives it wants to do with it, right?

MR. DAUGHERTY: Mr. Chair. Our regulations specifically prohibit resale and they also prohibit removal of the sealing data so we do believe that there a mechanism for enforcement.

And Mr. Haynes can also cover this, but
the areas in which we -- and the number of permits is
very low, the areas which are done are also very
limited,, Mr. Chair.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Let me just follow up. I
mean so somebody puts it on the internet and I'm in
Peoria, Illinois on eBay and I buy this and are you
trying to imply that you're going to be able to follow
what I do with that bear skin once I get it?

MR. DAUGHERTY: Mr. Chair. We may not be
able to actively follow what's going on, however, any
additional sale would be a violation of State law and
would also be a Federal violation of the Lacey Act
because it is a violation of State wildlife law.

Mr. Chair.

Questions.

MS. KESSLER: Mr. Chair.

CHAIRMAN FLEAGLE: Wini.

MS. KESSLER: So how would the
enforcement aspect work?

MR. DAUGHERTY: Mr. Chair. If we have a
sale, if we note a sale on the internet and there's no
permit information or anything listed, our enforcement
officers could serve a warrant on that person and check
for a permit. If they do not have a permit, that
proposed sale would be in violation of State law. And
also if a hide is being sent through the mail or through
some other shipping mechanism there should be a copy of
the permit attached with that hide and if someone were to
open it up and inspect it and not find a copy of that
permit there would be a violation, Mr. Chair.

CHAIRMAN FLEAGLE: Terry Haynes.

MR. HAYNES: Thank you, Mr. Chair. Just
so the record shows this, that regarding the permit,
State permit that's being discussed, it applies only to
the bears taken from the Unit 19D East Black and Brown
Bear Controlled Area and from the Upper Yukon Tanana
Brown Bear Controlled Area in a portion of Unit 20E. So
those are the only two areas in the state to which this predator control permit applies.


MS. ENTSINGER: Mr. Chair. I assume it's appropriate that I interject here. I was talking to the State at break here, and I'm probably am one of the ones that put this proposal in that involved into this situation.

And your intent as a user is to see things not be so invasive for the user and it's been uncanny to me to watch the process between the State system and the Federal system, in that, how you put a proposal forward and the State doesn't include claws and then in this proposal it did include claws and it just gets so bloody confusing sometimes, but I guess it's job security for the attorneys sometimes. But at any rate I can see the State's concern about brown and grizzly bears but I cannot see the State's concern on conservation on black bears when there's three black bears per person in many of the units of the state.

I guess I have to see clear examples, to me, to understand that it's a real problem and I haven't. I hear some questioning here but I haven't heard clear examples of where the problem lies, if they could help me out on that, I'd appreciate it.

CHAIRMAN PLEAGLE: Steven Daugherty.

MR. DAUGHERTY: Mr. Chair. Most of our concern does surround brown bear, grizzly population. And we believe that this population should be managed on a precautionary principle. It's much like elephant ivory, when you're talking about the value of grizzly bear claws and the way that they have controlled the trade in elephant ivory is to prohibit sales in elephant ivory. And there may be other mechanisms as well but that is the mechanism that has proven to be effective.

Mr. Chair.

CHAIRMAN PLEAGLE: Sue Entsminger.

MS. ENTSINGER: Yeah, thank you, Mr. Chair. In my history in this life I have noticed that making an illegal market some take -- or making something
illegal creates an illegal market and in this case I think that we should make a legal market and how the State can help us out in that I would like us to work this out hand in hand. I believe that we can make a legal market for this, and I believe it would be real helpful to the people, the users out there, because when someone's out making a fur hat out of a black bear claw or want to put a -- like me, myself, I make black bear -- I call them Mountain Man hats, but I actually make a lot of hats that are sold to Native people for regalia. My wolf hats go to Southeast Alaska and I have a lot of people wanting to do this and the same for my black bear hats. And I would have to cut out, cut all the claws off the feet when I put them in the hat and I think it's -- I want to see the users, I know in the Yukon River they feel real strongly about the use of these claws and I think that we need to figure out a way to make a legal market so it can be done and I think it should be able to be done -- we should be able to sell it to -- the user should be able to sell it to somebody that's a non-subistence user.

CHAIRMAN FLEAGLE: That really -- I mean that's interesting discussion but we have a proposal here that would either curtail or not and you're talking about a compromise. Do you have a proposed solution?

MS. ENTSMINGER: Well, I guess maybe if I hear it clearly with the State, is it possible that we work these details out and then bring it forward to the Board and then look at it again?

CHAIRMAN FLEAGLE: Okay, I'll take that request into consideration while I call on other Board members.

MS. GOTTLIEB: Mr. Chair. Well, I was going to suggest we kind of get back to the proposal at hand here and remind everybody that what this Board is doing is looking at the ANILCA mandates, which does include the making and selling of handicrafts. The number of brown and black bears legally taken and the number of brown and black bears allowed for in our regulations do not, in our view, present a conservation concern.

So I would like to move consistent with the four Subsistence Resource Commissions and the Regional Advisory Councils who did oppose this proposal. I move to oppose the proposal.
CHAIRMAN FLEAGLE: I have a motion.

MS. KESSLER: I'll second.

CHAIRMAN FLEAGLE: All right, we do now have a second. Discussion. Do you want to add to that Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. Well, I think we've heard from almost all the Councils and from those SRCs that particularly limiting the sales between only Federally-qualified subsistence users is quite a restriction on subsistence users and that would be inconsistent with .805(c) principles that the RACs are following. So I don't think we should support something that would be more restrictive to subsistence users.

CHAIRMAN FLEAGLE: Niles Cesar.

MR. CESAR: I agree with Judy and I plan to oppose this. The State mentioned there have been some increase in take but as I understand it, that increase was within the long-term variation harvest numbers and never exceeded harvest goals. So, you know, again, I feel like we're restricting when we don't need to be restricting, in my mind. I think the sale of handicrafts is important to our people. I think that -- I purchase handicraft stuff and certainly my wife does, she bought this for me, you know, and to curtail that on the notion that we're trying to be conservative, I think is fine, and when we reach that point that it becomes a conservation issue then I think we have the ability to go back and change it.

CHAIRMAN FLEAGLE: George Oviatt.

MR. OVIATT: Thank you, Mr. Chairman. It will always be a concern of ours that the sale and limited commercial sale of bear parts, especially bear claws could create an increase in the legal or illegal harvest of the bear.

However, as has been pointed out there's no evidence to indicate that the current State regulations adversely affect bear populations and there's been no evidence provided to indicate the current Federal regulations have led to an increased legal or illegal harvest of the bears. And I think until we begin to see an indication in that arena that I would oppose this.
Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Gary Edwards.

MR. EDWARDS: Mr. Chairman. I think as most people on the Board knows that I've been opposed to the selling of bear claws from the very beginning and, in fact, sometimes have probably been the lone voice to do that and I'm maybe one of those hand-wringers that Sue referred to. But I think we certainly know that parts of wildlife have led to overharvest, bear gallbladders, I think, is certainly a good example. And we know here even in Alaska we have had illegal harvest as a result of people taking bears just for their gallbladders.

However, saying that, the continued actions of the Board of Games, from my perspective, makes it increasingly difficult to kind of maintain that same position. I mean if the Board of Game, quite frankly, in my view hadn't opened it up to the selling of brown bear parts we probably wouldn't have even have been in this because that was the action that caused this Board to follow suit to that and because we had differences in definitions, it included and then that implied -- and then that rolled over to black bears. And there does not seem to be the evidence that are there, and certainly we do have the mechanisms as has been said and I think we heard it repeatedly from all of the Councils that if, in fact, there was evidence of either increased illegal harvest, increased harvest or increased sales then folks seem to be willing to do that, so I guess for the first time I'm going to vote in opposition to the motion.

CHAIRMAN FLEAGLE: Thank you, Gary. I have Wini, and then Ken Taylor.

MS. KESSLER: Thank you, Mr. Chair. I plan to vote in support of the seven Regional Advisory Councils who opposed the proposal. There's been no evidence provided to indicate that current Federal regulations adversely affect bear populations or have led to an increased legal or illegal harvest of bears and so I find there's no conservation concern for adopting this proposal.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Ken Taylor.
MR. TAYLOR: Thank you, Mr. Chairman. It's pretty evident from what the Board members have said how this vote's going to go. I think it should be evident to all of you that since this is the third year, I think, in a row that we've brought some form of this proposal to this Board that it is a concern, a great concern of the State. And Sue is correct it's a conservation concern for brown bears. It may be true that we haven't reached the point yet where take under the Federal system is causing a concern but this does open the door to abuse by potentially non-subsistence hunters and I think you will see a modified proposal at your next meeting.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Mr. Taylor. And, Sue, it sounds like there's adequate interest in the Board to just reject the proposal so your comment, suggestion was a good one, appreciate that willingness to enter into some type of a compromise on that but it sounds like we have enough votes to not want to go there. Appreciate the comments though.

Just from my perspective, of course, I've been involved with this issue before I came to the Federal Board and I think I've gone against the wishes of the State in that time as well, where I've never seen the potential problems that were raised by both the Department of Fish and Game and the Alaska Bureau of Wildlife Enforcement or Division of Fish and Wildlife Protection, whoever they might be at any given day. I think that's still in flux with the new Governor.

But anyways my feeling has always been that laws are often written trying to make somebody not do something wrong. And we don't consider the 95 percent or 99 percent or whatever that percentage is, I don't think it's been defined, that go out there and do use the law correctly. We try to make the laws for that small percentage that are going to violate them. And I don't see adequate reasoning or rationale to limit the sale of these claws for either brown or black based on the fact that it might be abused.

I'm going to follow the recommendations and vote for the motion as presented.

Any other comments.
(No comments)


MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal 07-01 to oppose.

Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Motion carries, six/zero.

CHAIRMAN FLEAGLE: Okay, thank you, Mr. Probasco. We now move on to Proposal 07-02 -- oh, hang on, George Oviatt, thank you.

MR. OVIATT: Mr. Chairman. I'm going to have to step out for a couple hours. Chuck will sit in for me.

CHAIRMAN FLEAGLE: Thank you. Appreciate that. Enjoy your break. Enjoy the sunshine.

(Laughter)

MR. ALVAREZ: Mr. Chair.
CHAIRMAN FLEAGLE: Randy.

MR. ALVAREZ: Can I make a comment on the last proposal. Ken Taylor had mentioned that probably the State will come back with an amended proposal concerning bear claws. And at our last RAC meeting, when we discussed that, it came up that, for instance, when big game hunters are allowed to take brown and grizzly bears and take them back to another state that some of the states allow that those hides be sold after it's been tanned, mounted in some way and if that's the case I don't understand why if those non-residents in another state are allowed to do that, why the State is asking the subsistence user not be able to do the same thing. In other words, my view of this -- and the Lacey Act was mentioned, Federal regulations that it's not supposed to happen -- at our last meeting we had asked our State rep on that and he didn't know so I guess with the appropriate State people here, the law, and maybe they could give me some information on that during recess or something, but what the Federal law says and if other states are actually doing that and if the State is asking those other states to not allow that to happen, if they're going to come back with another proposal to not allow sale of bear parts.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy. And Steven, would you just get with Randy some time and explain that.

I believe I heard you during the deliberations there that the Lacey Act would prohibit any law of any state being -- would prohibit -- something that's prohibited in one state from carrying out in another and I think that's the answer to the question there. Would you just go ahead -- oh, you want to speak to it Steven.

MR. DAUGHERTY: Yes, Mr. Chair, we'll discuss it further and I can do some research later but we have in other context to look to this issue and the State's wildlife laws have continued to be enforceable when products are removed from Alaska under the Lacey Act.

Mr. Chair.

CHAIRMAN FLEAGLE: Okay, that was the
question, appreciate that. And now we'll go ahead and move on to Proposal WP07-02, and the lead on this.

MR. PROBASCO: Tom Kron.

CHAIRMAN FLEAGLE: Tom Kron.

MR. KRON: Mr. Chairman. Members of the Board. The analysis for Proposal 2 begins on Page 32 of your book. Proposal WP07-02 was submitted by BLM and would change the regulatory wording for the permit reporting penalty clause from calendar year to regulatory year.

The proponent believes that this change would increase compliance with the regulatory requirement, facilitate improved harvest data collection and lead to better management that will result in a positive impact on the resource.

The existing Federal regulation reads as follows:

If the return of harvest information necessary for management and conservation purposes is required by permit and you fail to comply with such reporting requirements you are ineligible to receive a subsistence permit for that activity during the following calendar year unless you demonstrate that failure to report was due to the loss in the mail, accidents, sickness or other unavoidable circumstances.

This proposal would affect all Federal public lands and waters in Alaska where Federal permits are used for subsistence hunts and fisheries. The consequence for failing to report was originally derived from the State regulations and has been in Federal regulations since the inception of the Federal Subsistence Management Program in 1990. The Federal regulatory year for wildlife begins on July 1st and runs through June 30th of the subsequent year, while the Federal regulatory year for fisheries runs from April 1st through March 31st. The current situation allows individuals that did not comply with the permit reporting requirement in a regulatory year to legally participate in subsistence harvests later in the calendar year during open seasons through December 31st.
The State of Alaska has different penalty clause regulations for hunting and subsistence fishing permits. Current State of Alaska hunting regulations use the regulatory year wording in the parallel hunting regs. Current State of Alaska subsistence regulations use the calendar year wording in the parallel regulatory provision.

Since the inception of the Federal Subsistence Management Program in 1990 there has been very limited enforcement of this Federal regulation. The BLM Glennallen Field Office has begun enforcement of this regulation for hunting permits recently. Federal Subsistence Management Program regulations provided for 77 different hunts and fishery permits across Alaska in regulatory year '05 and '06. These hunts and fisheries involved brown bear, caribou, elk, goat, moose, sheep, muskox, salmon, trout, char, eulachon and freshwater fish. That regulatory year a total of 5,117 permits were issued and 92.7 percent of the permit reports were returned.

Good harvest data is critical for sound management of fish and wildlife resources. BLM, the Fish and Wildlife Service, the National Park Service and the U.S.D.A. Forest Service field staff across the state are working closely with subsistence users to facilitate subsistence harvest reporting. The proposed change would have the most affect on situations where Federal subsistence permits overlap the calendar year. There are Federal permits for brown bear, caribou, goat, moose, sheep, muskox, salmon and trout that overlap the calendar year. If adopted, this proposal would not change the regulatory consequences for failing to comply with permit conditions.

There is not a clear understanding among all subsistence users about the fish and wildlife regulations, permit reporting requirements or what the harvest reports are used for. Rural Alaskans continue to subsistence hunt and fish to feed their families as their forefathers did for generations prior to government regulations. There are concerns about the effect of strict application of the ineligibility provisions on the subsistence way of life. Application of the penalty clause in some areas of rural Alaska will defeat the primary objective of this regulation, it will result in the loss of harvest data.

The ineligibility provision allows
flexibility for Federal field staff and enforcement
officers to consider the importance and time sensitivity
of harvest information and the wide range of rural Alaska
issues, traditions and cultures. There's some
flexibility to adjust wording on the permits to the
situation. The current regulations also allows field
staff and enforcement officers to be responsive to, other
unavoidable circumstances.

Mr. Chairman, the preliminary OSM Staff
conclusion is to support the proposal.

Thank you, Mr. Chairman. I'd be happy to
answer any questions you may have.

CHAIRMAN FLEAGLE: Thank you. Questions.

(No comments)

CHAIRMAN FLEAGLE: Hearing none. Summary
of written public comments. Vince.

MR. MATHEWS: Yes, thank you, Mr. Chair.
They're found on Page 46 and 47 of your book. There were
four in support as written; one support with
modification.

The Aniakchak National Monument and the
Lake Clark National Park Subsistence Resource Commissions
support the proposal. They support changing permit
compliance from a calendar year to a regulatory year to
courage more timely returns of harvest reports.

The Denali -- I mean, excuse me, the
Wrangell-St. Elias National Park Resource Commission
unanimously supports the proposal. The proposal would
simplify regulations associated with harvest reporting,
specifically the penalties for failure to report. This
will help facilitate the collection of harvest data that
are needed to manage subsistence resources.

The one written comment that supported
with modification came from the Denali National Park
Subsistence Resource Commission. They support the
proposal with the Staff modification to change the
wording from you are, to you may be ineligible to hunt.
This proposal was proposed by the BLM Glennallen office,
which had helped Denali work out the Cantwell permits.
This proposal would simplify potential confusion that
ensues between a calendar year versus regulatory year.
The caribou season is most affected by this confusion because caribou season straddles the new year. Another recommendation was made not to use the calendar year but to use the regulatory year which is a fixed period from July 1 to the 30th.

The other comment that was in support of the proposal as written came from the AHTNA Tene' Subsistence Commission. They support to change wording from calendar year to regulatory because it would clean up confusion -- clear up, excuse me, clear up confusion of ineligible provisions for those failing to turn in a moose and caribou permit at the end of the hunting season to BLM.

Thank you, Mr. Chair. That concludes the written comments.

CHAIRMAN FLEAGLE: Thank you. Any public testimony.

MR. PROBASCO: No, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete. RAC recommendations. Bert Adams.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Regional Advisory Council unanimously supported this change. And the reason is that this proposal would improve management and harvest reporting for species whose hunting seasons cross calendar years and for that reason we support this change.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Other RAC recommendations. Jack.

MR. REAKOFF: Mr. Chairman. The Western Interior Council voted to support the proposal.

The Council discussions revolved around least adverse impact to the subsistence users and regulatory processes can be trying for subsistence users to try and comply with all these regulations and so forth. The Council did express concern about there's some terminology that's unclear for not completing on time other unavoidable circumstances. There needs to be clarification of what those circumstances might be and, you know, why, if you did not complete the permit
requirements on time, we felt that it should be more
clear as to what those circumstances are. The Council
understands the need for permitting and compliance and
there's a lot of regulatory hunts that go through into
the next calendar year and so we're in support of the
proposal.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Other RAC
recommendations.

MR. SIMEONOFF: Mr. Chairman. Speridon.

CHAIRMAN FLEAGLE: Speridon.

MR. SIMEONOFF: Kodiak/Aleutians RAC
supported this proposal. And the Advisory Council voted
unanimously to support this proposal. The Council felt
it was important to have consistency and it is important
to have information for proof of use.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. I'd really
like to hear why the Eastern Council suggests making a
change to the wording.

MS. ENTSMINGER: Yeah, thank you, Mr.
Chair. They wanted to change it that you're not
permanently going to get ousted by it, you know, that you
may, so there would be a choice if they're going to not
allow them to have a permit next year, if that helps.

CHAIRMAN FLEAGLE: Basically that the
discretion would be there to not reissue the permit the
following year.

MS. ENTSMINGER: Right. That they --
it's real hard to say -- yes. I'm just trying to look at
it here.

CHAIRMAN FLEAGLE: I'll give you a
moment, we can come back to that during the deliberative
portion.

Other RAC recommendations. Randy.

MR. ALVAREZ: The Bristol Bay Council
supported this proposal. It would make it easier to
understand and I think it would also be more timely because of the way the bag limit seasons are, go over the year, they don't stop at the end of the year so we felt -- we feel that it would make it a lot better so we were in support of the proposal.

CHAIRMAN FLEAGLE: Thank you, Randy. We have Lester Wilde.

MR. WILDE: The YK-Delta Council supported this proposal. We felt that there's a need to communicate with the affected subsistence users because they needed to know what was going on in this area.

CHAIRMAN FLEAGLE: Thank you. Ralph Lohse.

MR. LOHSE: Southcentral took no action on this proposal.

CHAIRMAN FLEAGLE: Thank you. Sue.

MS. ENTSMINGER: Yeah, I'm stumbling, I'm sorry. In looking at what is written in the book, the Council modification gives additional flexibility to be responsible to the subsistence needs that provide need to feed families in communities.

So they wanted that flexibility of law enforcement, so if the person didn't, for whatever reason didn't turn it in, mail or how difficult it is to speak to any of the people from that region they did not want them to definitely lose their opportunity to take an animal that year because they didn't turn in their permit.

MR. REAKOFF: Mr. Chairman.

CHAIRMAN FLEAGLE: Yeah, just a sec. I was just going to point out that there are extenuating circumstances listed in the regulation that cover mail, accident, sickness or other unavoidable circumstances, so I was just curious why the additional leeway would be requested. Any way we can discuss that more in deliberations.

Jack Reakoff.

MR. REAKOFF: Mr. Chairman. The Western Interior Council also discussed the rigidity of
regulations and the importance to subsistence users. There's people who do not fully understand the compliance aspects. These permit report cards get thrown in a drawer, they're lost for a while. For a sporthunter it can be, you know, the ineligibility to hunt the next year may or may -- for a species of animal may or may not be very much of an impact, to a subsistence user, to lose their right to harvest moose or so forth, the rigidity of these regulations needs to be contemplated by the Federal Board. These harvest of resources is very important, we understand the necessity for proper harvest reporting and I'm a proponent of that, but the rigidity issue was discussed by the Council, and there are concerns about being too rigid.

Thank you.

CHAIRMAN FLEAGLE: Thank you. I see Michelle Chivers at the table, do you have comments.

MS. CHIVERS: Thank you, Mr. Chair. The Northwest Arctic, they did support. And also the North Slope took no action.

Thank you.

CHAIRMAN FLEAGLE: Thank you. It looks like we got everybody. Alaska Department of Fish and Game comments. Terry Haynes.

MR. HAYNES: Thank you, Mr. Chairman. The Department supports this proposal.

Accurate and timely harvest reporting and harvest data are important components of wildlife management and often are necessary for timely management decision-making. This is equally true for hunts that are administered under either the State or Federal regulations. If this proposal is adopted, Federally-qualified subsistence users who fail to comply with Federal permit reporting requirements will be ineligible to receive Federal permits following the regulatory year instead of following the calendar year. Adoption of this proposal would improve consistency with the State's failure to report program.

The need for harvest reporting and adherence to permit reporting requirements are not well understood through rural Alaska as Mr. Reakoff pointed out. Consequently Federal Staff believes that
application of a penalty in all cases will defeat the objective of this regulation and have suggested that Federal field Staff and enforcement officers exercise some discretion in determining when to apply penalties. The Department recommends further discussion of when, where and how such discretion would apply so that flexibility and application of penalties is administered consistent with the regulation and does not undermine the purpose of the failure to report program.

We point this out because there are inconsistencies already in the administration and enforcement of the Federal subsistence hunts that require Federal registration permits.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Terry.

Board discussion.

MS. ENTSMINGER: Mr. Chairman.

CHAIRMAN FLEAGLE: Sorry, I moved ahead one too fast, but we still have a RAC interaction. Sue Entsminger.

MS. ENTSMINGER: Yeah, I just remembered one of the things that was discussed at the meeting. And that is, often times -- there was some study taken some time back about you get these little harvest reports and you're supposed to send them in and often times there's a percentage of them that don't even come into the Department, or come in, they get lost in the mail, and I think that was a discussion that we were concerned about.

CHAIRMAN FLEAGLE: Okay, appreciate the clarification. Now we have InterAgency Staff Committee comments. Larry.

MR. BUKLIS: Thank you, Mr. Chairman.

The Staff Committee comments can be found on Page 46 of your Board book, I'll highlight a few key points.

We note that seven Councils recommended supporting the proposal as written. Two Councils took no action. And, one, the Eastern Interior Council supported the proposal with modification to the penalty clause of the regulation as you've been discussing.

The current regulation provides that a
permittee who fails to comply with the reporting requirements of the permit will be ineligible to receive a permit the following year. The Eastern Interior Council recommended changing the wording from you are ineligible to you may be ineligible. Other Councils considered such a change but decided that if such a change were warranted it should be addressed as another proposal in a future regulatory cycle.

The Staff Committee agrees with those Councils because it would allow a more thorough analysis of this proposed modification and would allow for public input and would result in recommendations to the Board from all Councils on that aspect.

The Staff Committee noted that the current wording of the regulation already allows considerable flexibility to consider the importance and time sensitivity of the harvest information and the wide range of rural Alaska issues, traditions and cultures when addressing the ineligibility provision in this regulation.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Larry. All right, now, we'll move into Board discussion with Council Chairs and State liaison. Any Board members ready to discuss the issue. Gary.

MR. EDWARDS: Mr. Chairman. I guess I would just say in response to the Western Interior, probably the more vague the term unavoidable circumstances is the better. I would say that it might not be beneficial to define that, because I think the way it's written it provides a lot of latitude to the manager to make the argument, well, it was never received and those types of things.

CHAIRMAN FLEAGLE: Other comments.

Chuck.

MR. ARDIZZONE: Well, I guess for discussion purposes, I'd like to make a motion to adopt the proposal as recommended by eight of the 10 Subsistence Regional Advisory Councils.

CHAIRMAN FLEAGLE: Okay.

MS. KESSLER: Second.
CHAIRMAN FLEAGLE: All right, we have a motion and a second to adopt. Do you want to speak to the motion, your supporting statement for it.

MR. ARDIZZONE: I will. Obviously BLM submitted this and we support this proposal. BLM, Glennallen Field Office issues well over 2,000 permits for caribou and this would just make it a cleaner, better for the subsistence users. We do believe there is flexibility in the regulation. Currently we don't strictly enforce this, we actually send out three letters, they're spaced about a month apart, so that's why our compliance, if you look at the tables in the book, our compliance is about 98 percent. And I don't think we've actually denied any permits at the moment, we're just trying to get compliance up because the Nelchina Herd does have conservation concerns, but we do take that flexibility into account.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy Gottlieb.

MS. GOTTLIEB: Thank you. I would intend to support the motion but I do think since this is a major change, those individuals who are issuing permits need to really have either standard information available across our program or, of course, as you're making contact with everybody that you issue your permits to, really carefully explain this. So I do think it warrants a good amount of outreach and have discussions with people about what kinds of things could occur or have occurred in the past that has prevented them from returning permits so that you understand what some of those extenuating circumstances could be in the future.

CHAIRMAN FLEAGLE: Thank you. I got a question for Chuck on that discussion about this regulation not being entirely forced yet, is there -- do you have some kind of a grace period that your agency is looking at fully enforcing this regulation? Again, I guess the question I'm getting to here is why we would we want a regulation, a definitive regulation on the books that we don't intend to support, I mean I understand the need to change it to regulatory that's a good move, but I'm just trying to find some justification for the Eastern Interior's comment, which I think is a good one.

Chuck.
MR. ARDIZZONE: Currently, like I said we issue the three letters, the last one's certified and I don't think we're going to go into full-blown mode, we're going to deny everybody a permit, it's -- there are some people that just refuse to return the permit and we've had law enforcement go to the door and knock on the door and ask for, you know, their permit and what they've harvested, if at all, I don't think -- I think that's where we're exercising our flexibility so we don't have to deny permits, if at all possible. I'm unaware of any denials at the moment, I guess I should say.

CHAIRMAN FLEAGLE: Which -- Devil's Advocate here, it sounds like a real inconsistency to me that we, the Federal agencies establish a regulation that we choose not to follow, and I'll just throw that out for further discussion I guess I'm.....

MR. EDWARDS: I'm not sure that you can make that broad of a statement, you know, I can't.....

CHAIRMAN FLEAGLE: Okay, Gary, go ahead.

MR. EDWARDS: .....give you.....

CHAIRMAN FLEAGLE: Enlighten me.

MR. EDWARDS: .....any specific examples, but my assumption is that there could be certainly cases where the feeling is it's the deliberate unwillingness to do it for no good reason or no good extenuating circumstances and my assumption is, is that we would follow through.

CHAIRMAN FLEAGLE: Appreciate that.

Chuck.

MR. ARDIZZONE: Mr. Chair. I think that's where BLM stands, too, is if there's, you know, deliberate lack of reporting I think we might enforce. But, you know, there are a lot of reasons people don't mail their things in like Mr. Reakoff said, you know, they're put in a drawer and they forget about it and those are the things we're taking into account at the moment.

CHAIRMAN FLEAGLE: All right, thank you. Well, my dilemma, as Chairman, I don't get to make motions or amendments and I like the amendment from the Eastern Interior. I think that it gives you the
flexibility that you're already exercising while not
making us look like we have a strong tooth regulation
that we just choose not to enforce.

So that's my only comment.

Further discussion on the motion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the
question.

(No comments)

CHAIRMAN FLEAGLE: It sounds like we are.

Question, Pete, is now recognized on Proposal 07-02.

Please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Proposal WP07-02 to adopt the proposal as
recommended by the seven on the 10 Subsistence Regional
Advisory Councils.

Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt. Mr.

Ardizzone.

MR. ARDIZZONE: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Motion carries, six/zero.
CHAIRMAN FLEAGLE: Thank you. We now move into Proposal 07-03 and it looks like we’ve got Liz Williams coming back to the table for the analysis.

MS. WILLIAMS: Thank you, Mr. Chair. Members of the Board. Proposal WP07-03 is the combination of three separate proposals submitted by the Eastern Interior Alaska Subsistence Advisory Council, the Upper Tanana Fortymile Fish and Game Advisory Committee and the Wrangell St-Elias National Park Subsistence Resource Commission.

The proponents request Federal regulations that allow the sale of raw untanned hides and capes of goat, sheep, caribou or moose that have been legally harvested on Federal public lands by Federally-qualified subsistence users. The people that would harvest these animals would already have C&T to harvest these animals. The proponent states that the adoption of this proposal would align Federal subsistence harvest regulations with State of Alaska hunting regulations which allow for the sale of raw untanned hides and capes from legally harvested goat, sheep, caribou and moose.

Current Federal subsistence regulations do not allow the sale of unmodified, non-edible byproducts of fish and wildlife. They must have been made into handicrafts. So raw untanned hides and capes don't meet the Federal definition of handicraft. They may be, however, consistent with the definition of customary trade, and the Federal definition of customary trade is the exchange of cash for fish and wildlife resources regulated in this part not otherwise prohibited by Federal law or regulation to support personal and family needs and does not include trade which constitutes a significant commercial enterprise.

There's been a long history of trade of untanned hides and capes that began prior to the arrival of Europeans in Alaska and continues today. It's legal for State of Alaska residents to harvest ungulates under State of Alaska hunting regulations on Bureau of Land Management, National Wildlife Refuge, National Preserve and National Forest Service lands and sell the raw or untanned hides and capes from these animals. However, the State of Alaska hunting regulation does apply to National Park or National Monument lands.
The proponent state that adoption of this proposal would not increase harvest but would allow Federally-qualified subsistence users to fully utilize the animals they harvest for food and to obtain cash needed to access traditional hunting areas.

The adoption of this regulation would allow Federally-qualified subsistence users to sell raw untanned hides and capes of goat, sheep, caribou or moose that have been legally harvested under Federal subsistence regulations on Federal public lands.

Regional variation in uses of raw untanned hides and capes can be addressed by regional specific regulations such as those for brown bear handicrafts and customary trade of fish. Current harvest limits are not affected by this proposal and there don't appear to be conservation concerns associated with this proposal. The proposal shouldn't affect other user groups.

Our OSM preliminary conclusion is to support the proposal.

Thanks.

CHAIRMAN FLEAGLE: Thank you. Questions Board members.

(No comments)

CHAIRMAN FLEAGLE: None. All right.

Summary of written public comments. Vince.

MR. MATHEWS: Yes, Mr. Chairman. I need to explain to the Board how I present these so you don't get confused. The way we do it in the Council meetings is we give deference to the Subsistence Resource Commissions. So instead of giving you all the ones support as written, I'm trying to hit those first and then move to other comments if that's okay with you, I'm not trying to lose the Board.

Mr. Chairman, the summary of public written comments are found on Page 63 and 64. Again, I'll start off with the Subsistence Resource Commissions.

There were, in total, three that support as written, two support with modification, that's the total amount. The Wrangell-St. Elias National Park
Subsistence Resource Commission unanimously supports this proposal with the modification that the provisions apply to deer and elk in addition to the species listed in the original proposal. State regulations allow the sale of untanned capes and hides. Passage of this proposal will allow Federally-qualified subsistence users the same opportunity to fully benefit from the animals harvested.

Following on that theme there of fully benefit from animals harvested, the Lake Clark National Park and the Aniakchak National Monument Subsistence Resource Commissions support the proposal. Lake Clark with modification that the reference to raw, untanned hides should be deleted to allow the sale of any hide so subsistence users may maximize the value they can derive from selling parts of legally taken animals. The Aniakchak just supported it as written.

Okay, now we have the Denali National Park Subsistence Resource Commission supports this proposal as written. The justification for supporting the proposal is that the change in regulation will allow for the sale of raw hides taken from animals for subsistence needs. This proposal is consistent with Federal definition of customary trade. Adoption of this proposal would result in an alignment with existing State regulations and is within the intent of the existing Federal regulations regarding customary trade.

The other written comment in support was from -- well, it's from the AHTNA Incorporation and they support the proposal. We favor Federally-qualified subsistence users being able to earn money from a legally harvested goat, sheep, caribou, or moose.

And I just received a written letter here that was sent to the Southeast Subsistence Regional Advisory Council from Mr. Tom Banks, Alaska Associate, and I haven't had a chance to read it so I'll try to cover it -- oh, Southcentral, it was sent to the Southcentral Subsistence Regional Advisory Council March 9th, from Mr. Tom Banks, Alaska Associates.

The Defenders of Wildlife appreciate this opportunity to comment on the proposals to be considered by the Southcentral Regional Advisory Council at its March meeting. Established in 1947 the Defenders is a National non-profit organization dedicated to protect all Native wild animals and plants in their natural communities. Comments regarding WP07-03 and 04 oppose.
These statewide subsistence wildlife proposals seek to allow the sale of untanned hides of goat, sheep, caribou and moose and allow the sale of horns and antlers from goat, sheep, deer, elk, caribou, muskox and moose. These proposals would allow the commercial sale of wildlife parts without first converting them to handicrafts which is the current restriction for subsistence under Title VIII of ANILCA. This is inconsistent with State law which also permits the buying and selling of horns and antlers that have been naturally shed or completely removed from any part of the skull. Historically there have been longstanding reluctance by game management agencies in this country to commercialize wildlife. This was based on past abuses that led to poaching and bootlegging of wildlife for commercial gain. The only exception has traditionally involved conversion and alteration to handicrafts in the case of subsistence authorized under special Federal legislation and naturally shed parts. Naturally shed horns or antlers or horns or antlers that have been removed from the skull plate disqualifies the trophy from any record book which is in turn dramatically depreciates its Black Market value.

Defenders agree with the conservative policy that is currently in place.

Defenders also oppose these proposals for the following reasons.

1. Adopting a Federal regulation allowing commercialization of wildlife that is inconsistent with State regulation presents serious resource conservation issues because it will invite illegal harvest of game animals on State lands for the purpose of sales of parts with the claim that they were taken on nearby Federal lands. This presents unacceptable enforcement problems;

2. Allowing the sale of game animal parts without first converting them to handicrafts creates a precedence that will likely lead to pressure for the sale of other lucrative parts like bear gall
bladders, et cetera. Such trade would foster illegal activity to supply the worldwide demand for parts used for medicinal purposes.

Thank you for these comments. Tom Banks, Alaska Associate Defenders of Wildlife.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Vince.

Public testimony.

MR. PROBASCO: No public testimony, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete.

Regional Council recommendations. Randy.

MR. ALVAREZ: Thank you, Mr. Chair. The Bristol Bay Council supports the proposal. Our justification is that it is consistent with the Federal definition of customary trade, the exchange for cash for fish and wildlife resources regulated in this part not otherwise prohibited by Federal law or regulation to support personal and family needs and does not include trade with significant commercial enterprise.

The adoption of this proposal would result in alignment with existing State regulations and is within the intent of other Federal subsistence regulations regarding customary trade of fish and wildlife resources by Federally-qualified subsistence users.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Bert Adams.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Regional Advisory Council supports the proposal with a modification to include tanned and untanned hides and to add deer and elk to the list of species covered.

The modified proposal should read:

You may sell the tanned or raw untanned hide or cape from a legally harvested
deer, elk, goat, sheep, caribou or moose.

The Council reviewed the Staff report for this proposal pretty thoroughly and the report documented the long history of selling of both tanned and non-tanned hides and it falls within, you know, the Section .803 of ANILCA which defines customary trade as subsistence use. Council members also provided additional information concerning a long-term trade of hides along traditional routes during both pre- and post-contact periods so this tells us that this has been happening, you know, since time immemorial.

After reviewing information presented, the Council concluded that the modified proposal was supported by historical and TEK evidence and was consistent with principle wildlife conservation and that it would be beneficial to subsistence users by allowing them to fully utilize the animals they take. No change in harvest levels and no effect on non-subsistence users is anticipated from this regulatory change.

For this reason, Mr. Chairman, we support the proposal as I have identified to you.

Thank you.

CHAIRMAN PLEAGLE: Thank you. Sue Entsminger.

MS. ENTSINGER: Yeah, thank you, Mr. Chair. This was a proposal brought forth by the Eastern Interior RAC and we ditto the Southeast addition to add tanned and untanned hides and deer and elk.

And I'd also like to add it was brought to our attention that under State regulations which allows the sale of hides, raw and tanned, actually, the State system is somewhat different than the Federal system and when this intent to allow the sale of handicrafts made from other species besides bear was brought forth by the Federal Board then, it in turn, made this sale illegal only on Park Service lands because you have to have a subsistence permit from the Federal government there and we didn't want to see subsistence more restrictive than what was allowable by State land and that's why it came forth.

Thank you.
CHAIRMAN FLEAGLE: Speridon.

MR. SIMEONOFF: Thank you, Mr. Chair. The Kodiak/Aleutian RAC took no action on this proposal.

MR. REAKOFF: Mr. Chairman.

CHAIRMAN FLEAGLE: Jack Reakoff.

MR. REAKOFF: Western Interior supported this proposal.

Our justification was that there was discussion about various people who had sold capes and skins and I discussed the Nunumiut people from Anaktuvuk Pass traded caribou skins and so forth to the coast in pre-contact times and so the sale is a long and customary use for customary trade and so we supported the proposal.

CHAIRMAN FLEAGLE: Thank you. Mike Quinn.

MR. QUINN: Seward Peninsula supported the proposal also.

We welcome increase in opportunities for Federal subsistence users to profit from their legal kills and takes.

CHAIRMAN FLEAGLE: Thank you. Michelle Chivers.

MS. CHIVERS: Thank you, Mr. Chair. The Northwest Arctic did support this proposal because it will allow full utilization of legally harvested of wildlife. The sale and trade of untanned hides has always been a customary practice in this region.

And then the North Slope Council took no action.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Lester.

MR. WILDE: The YK RAC supported this proposal also.

CHAIRMAN FLEAGLE: Thank you. Ralph Lohse.
MR. LOHSE: Southcentral didn't take action on this due to time constraints.

CHAIRMAN FLEAGLE: Okay, appreciate the comments. ADF&G comments. Tina.

MS. CUNNING: Thank you, Mr. Chairman.

The intent of this proposal is to align State and Federal regulations. However, the Federal Board does not have jurisdiction over general sales.

Under ANILCA provisions and the Board's framework regulations the Board, Federal Board only has jurisdiction over subsistence uses and thus may only authorize sales where such sales are customary and traditional and qualify as customary trade. The Board has appropriately reflected this jurisdictional limitation in its regulations at Sections .7(a) which establishes a bright line rule prohibiting sale of fish or wildlife except where specifically provided. And in the context of customary trade authorizations for fish in Section .27(c) through 12 has been careful to set limits on those transactions to prevent them from becoming significant commercial enterprises. Federal provisions allowing sale as customary trade should only be adopted on area by area basis where the Board first make a factual finding that such sales are customary and traditional. Federal users who wish to engage in sales do not qualify as customary trade, without violating Federal law may do so by conducting harvest activities under State law.

The Department opposes this proposal in the absence of evidence that the sale of untanned hides of goat, sheep, caribou and moose is a customary and traditional use statewide. Rural residents wishing to sell untanned hides can do so under the State regulations without the use having to constitute a subsistence use. The proposal as modified by several Regional Councils to authorize the sale of tanned or processed hides also would conflict with State regulations when such hides fall under the definition of a trophy.

If the Federal Board moves forward with this proposal the Department recommends customary and traditional use determinations be made consistent with the eight factors listed in 50 CFR Section 100.16(b) that would limit the scope of the Federal regulation to those areas of the state where selling raw and untanned hides of legally harvested goat, sheep, caribou and moose is a
customary and traditional activity and further recommends that limitations be established to prevent such sales from becoming significant commercial enterprises.

CHAIRMAN FLEAGLE: Thank you. Questions.

(No comments)

CHAIRMAN FLEAGLE: InterAgency Staff Committee comments.

MR. BUKLIS: Thank you, Mr. Chairman. The Staff Committee comments are found on Page 63 of your Board book. The Staff Committee noted that three of the Councils modified the proposal to include tanned capes and hides to be sold as part of customary trade and two Councils expanded the list of ungulates in the proposal to include deer and elk. And overall the majority of the Councils supported the proposal.

The rationale for the inclusion of deer and elk was that they are ungulate species used for subsistence purposes. Although not part of a formal modification or recommendation one Council Chair did not that muskoxen are also used for Federal subsistence hunting in some areas and should be included along with deer and elk.

The Staff Committee finds that these reasons are consistent with the intent of the original proposal and consistent with Section .805(c), however, it should be noted that at least two Councils were aware of the other Council's modified proposals and chose not to include any modifications but to support the proposal in its original form.

Staff Committee noted that the state of Alaska currently allows the sale of both tanned and untanned capes and hides of ungulate species as long as they are not part of a trophy mount.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Questions.

(No comments)

CHAIRMAN FLEAGLE: Discussion. It looks like Keith Goltz has a comment, it probably pertains.....
MR. GOLTZ: Not yet.

CHAIRMAN FLEAGLE: No. Not yet, not yet, but he's brewing one, I see him highlighting over here.

Get ready.

Gary Edwards.

MR. EDWARDS: Mr. Chairman. I guess I have a couple of questions and maybe for Staff now. A couple of things. One, currently on furbearers under Federal subsistence regulations you can sell the complete tanned skin including claws; is that correct?

MR. EDWARDS: Okay. So if you can do that with furbearers what has been the rationale why we haven't been able to do that with the species that are listed, that would be one question. And then the other question is if you can currently do it under State law, what does this do that you can't do currently under State law.

MR. EDWARDS: Okay. So if you can do that with furbearers what has been the rationale why we haven't been able to do that with the species that are listed, that would be one question. And then the other question is if you can currently do it under State law, what does this do that you can't do currently under State law.

MS. WILLIAMS: Yes.

MR. EDWARDS: Okay. So if you can do that with furbearers what has been the rationale why we haven't been able to do that with the species that are listed, that would be one question. And then the other question is if you can currently do it under State law, what does this do that you can't do currently under State law.

MS. WILLIAMS: In response to your first question, Mr. Edwards, I think that it just hasn't been brought up yet, that no one has submitted a proposal before about this. And when it comes to customary trade each instance is specific and the Board has to consider it specifically, like the customary trade of fish and of bear handicrafts, those are all very specific amendments or additions to the customary trade regulations.

And then what was your second question?

MR. EDWARDS: Well, if you can currently sell skins of legally taken, then why doesn't that, what does this do for you that you can't do under the State law?

MS. WILLIAMS: These would be animals that are harvested under Federal subsistence regulations so currently you can't sell the hide of an animal that you harvest under Federal subsistence regulations so it would be a different harvest regulation that you would be harvesting under.

MR. EDWARDS: Does -- I guess ask the State, does the State agree with that answer?
Mr. Chair.

Mr. Chair. There would be no violation of State law if a Federal subsistence user sold a hide that was taken in a Federal subsistence hunt.

Mr. Chair.

So if that is the case then why do we need this regulation if you can currently do it now under State law, we have to do it because we don't have it under our law?

CHAIRMAN FLEAGLE: It's now allowable under certain Park lands -- let's see we got somebody else coming up here. Dan LaPlant.

MR. LAPLANT: Yes, Mr. Chairman. Section .7 of our Federal subsistence regulations specifically states that sales of subsistence harvested products are prohibited unless specifically authorized in these regulations and as was pointed out before the Board has made those specific provisions in some areas sale of furbearers, customary trade of fish, sale of handicrafts but without any specific reference to these products, Section .7 says it's unauthorized.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Gary looks like he's got it figured out now. Judy Gottlieb.

MS. GOTTLIEB: Okay, if Gary's finished.

MR. EDWARDS: I am.

MS. GOTTLIEB: Okay. I guess I was wondering since we heard from some of the Regional Councils that would like to include tanned hides in this regulation and so I wondered if we could get some feedback from those other RAC Chairs if we saw any problem if we were to include that statement.

CHAIRMAN FLEAGLE: Jack Reakoff.

MR. REAKOFF: Mr. Chairman. Western Interior didn't deliberate that but it's my impression that from my history in the upper portion of the Western Interior region that people traded tanned and untanned...
hides and so I would not be opposed to the inclusion of
tanned hides into the regulation.

I would like to comment to the State's
comments, in that, there is a customary and traditional
use determination for the species for the people of these
regions and the Federal Subsistence Board has made these
various customary and traditional use determinations and
so I don't see where that needs to be done on a case by
case basis. Are the Councils supposed to prove these
longstanding practices of sales which are basically -- a
lot of those have taken place within the region and out
of the region, I feel that would be an undue burden on
the subsistence users and so I feel that the Federal
Board's determinations that there is a customary and
traditional use of these species suffices for the
allowances of the sale of the skins or bones or other
non-edible byproducts.

Thank you.

CHAIRMAN FLEAGLE: Thank you.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Again, ready for Staff.

CHAIRMAN FLEAGLE: Go ahead.

MR. EDWARDS: There's nothing to prohibit
the exchange of either tanned or untanned furs between
rural residents either for barter or for cash or exchange
of food or other products, right, I mean we don't have to
pass a regulation to do that, I mean that's something
that people can currently do now. I mean what this
really does is allow people to either sell, exchange,
barter or -- what, either tanned or untanned fur with
non-rural residents; isn't that correct?

MR. LAPLANT: Mr. Edwards, through the
Chair. The Federal regulation currently prohibits the
sale of these items so it would prohibit -- without this
provision, prohibit the sale of these items. Bartering
is allowed without restriction but it's the sale, the
cash sale, the cash exchange that's currently prohibited
that this provision would therefore allow.

MR. EDWARDS: So if I was a rural
1 resident and I shot a caribou and I tanned it, I couldn't
2 sell it to Jack is what you're telling me, but I could
3 trade it to him for services or for berries or some of
4 his handicraft or what?
5
6 MR. LAPLANT: Yes, Mr. Edwards, that's
7 our understanding, correct.
8
9 CHAIRMAN FLEAGLE: Other questions.
10 Comments. Wini.
11
12 MS. KESSLER: Mr. Chair. If at all part
13 of the State's perspective is that the Board needs to
14 make customary and traditional use determinations on area
15 and species basis consistent with the eight factors, I
16 know that's not how we interpret the requirement but it's
17 real helpful to me, maybe, if Mr. Goltz would help me
18 with that one and, again, explain how we differ on our
19 perspectives there.
20
21 CHAIRMAN FLEAGLE: Keith Goltz are you
22 prepared to address the issue?
23
24 MR. GOLTZ: I better be. I'm told by the
25 reporter that this mic doesn't work very well so -- is it
26 working?
27
28 REPORTER: Yes, for recording but the
29 volume is not....
30
31 MR. GOLTZ: Anything. Anything.
32
33 REPORTER: Yes. Now.
34
35 MR. GOLTZ: Anything.
36
37 (Laughter)
38
39 MR. GOLTZ: Okay. All right, if I turn
40 that one off and.....
41
42 CHAIRMAN FLEAGLE: Here.
43
44 MR. GOLTZ: Use this one?
45
46 REPORTER: Yes.
47
48 MR. GOLTZ: All right, are we working
49 now?
CHAIRMAN FLEAGLE: Yeah, you don't need
to be that close.

(Laughter)

MR. GOLTZ: All right. I'm looking over
at the reporter to.....

REPORTER: (Nods affirmatively)

MR. GOLTZ: Okay. I kind of thought this
might come up when I heard Mr. Taylor's statements this
morning, and I was puzzling over some of Tina's last
comments. We actually may be [sic] agreement on some
points. But when the question is can I deal with the
differences between the two systems that's something I
can do and I think I can do that fairly clearly.

When the Federal government assumed
subsistence management, it tentatively adopted the
State's C&T determinations but it did not adopt the
State's process. In fact that process was changed in
three major ways.

The first change was that the Regional
Councils became the foundation of the Federal Subsistence
Program. And the concept of C&T was made a part of the
Council's operation manual, so when the Council makes a
recommendation on C&T, the Board considers that very
seriously.

The second thing that happened was that
the State's criteria were renamed into factors and the
whole such concept was reapplied as a general framework
for consideration. This was done to assure that C&T
wouldn't turn into a barrier, something the users might
have to overcome. The purpose of C&T is to protect
subsistence use, not limit it.

But thirdly, and probably the most
important change was that the starting point was
reversed. Under the State system nothing happens until a
C&T is made, that's a necessary antecedent, a precursor
to a subsistence allocation. Under the Federal system
the situation is entirely reversed. If the Board has not
made a C&T determination then all Alaskans who are
residents of rural areas may harvest for subsistence.

So the sum of it all is but this, Title
VIII is more than a museum piece. Historical uses are
important and the law protects them. But Title VIII is also much broader than that, and it's entitlements go to rural residents who seek a subsistence harvest on Federal public lands in Alaska.

Now, this whole issue is now in litigation in the Chistochina case and what I've just stated was the Federal position, the State has a different one, which is very narrowly defined and I'm sure Steven can elaborate on that if you ask him to, but the position of the Federal Board has been established in the Department of Justice briefing and what I've just said is an exposition of that position.

MS. KESSLER: Thank you.

Comments.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Ralph Lohse.

MR. LOHSE: I'd just like to, while our Council took no action on this, looking at the proposed changes by some of the other Councils, then I would just like to speak in favor of the ones on the tanned hides.

As we all know one of the biggest trade items that there used to be in tanned hides was in smoked tanned moose hide. It enters into a lot of handicrafts and things like that. And the way I read the original language here, the trade in smoked tanned moose hide would be illegal and currently I know you end up having to get it in Canada or someplace like that, but under State law it's legal and I think it should be legal under Federal law, too.

CHAIRMAN FLEAGLE: Thank you, Ralph.

Other comments. Questions. Discussion. Randy.

MR. ALVAREZ: Thank you, Mr. Chair. In regard to Ms. Gottlieb's comment that she wanted to hear about that issue, looking at Lake Clark SRC, they asked for a modification that while untanned has been deleted so it's just hides. And then the Aniakchak which is also in the Bristol Bay Council area, they support it but they also support other opportunities to maximize the value of those. So basically they prob -- from reading that they would also be in support of that amendment.
And I can't speak for the Council but as myself I would also be in support of it.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy.

Terry Haynes.

MR. HAYNES: Thank you, Mr. Chairman. I think we would appreciate some further discussion of what uses are not being provided under the current State regulations, kind of following up on some of Mr. Edwards earlier questions. It's unclear what this proposed Federal regulation would do that isn't already allowed under State regulation.

Now, I understand some earlier comments that Federal regulations don't authorize certain things to happen but that doesn't preclude use of the State regulations for those activities, unless I'm missing something. So we're still a little unclear as to what is actually going to be accomplished in terms of uses of resources by adoption of this proposal that already can't happen under State regulations.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I think for those who were at this Board's fisheries meeting a year ago in January, Drue Pearce, Special Assistant to the Secretary, provided the information on, I get what was generally called duplicative regulations, and she explained that our process is different, as Keith is explaining, that even though our regulations might read the same, the process by which we get to them is quite different. And so I guess I'd like to ask Keith to explain one more time on this issue and I guess, I hope that, you know, since I know this is a comment that may come up over and over again during this meeting maybe we can have one discussion and not have it for each proposal.

So, Keith, if I could ask you to explain a little bit further, please.

CHAIRMAN FLEAGLE: Keith Goltz.

MR. GOLTZ: All right, I'm becoming a feature again. As some of you know I think the best
meeting is the one when the lawyer doesn't speak.

(Laughter)

MR. GOLTZ: I think the program ought to be run by biologists, not lawyers.

But this is an issue that I did pick out of the comments which I received at 4:30 on Friday, and it's probably something we should address as a whole because they relate directly to some of Mr. Taylor's earlier comments.

The issue was raised in 2005 in the State's white paper and it was rejected by the Secretary in January of 2006, as Judy's just pointed out. And for the Board that disposes of the matter. But for the audience, I guess including the State, it may be worthwhile to go through some of the specifics.

First, what the State is calling duplicate regulations are not so. There are no State, Federal -- or State regulations that comply with Federal law. And in particular they were adopted without deference to the Regional Advisory Councils. Now, this is critical because Title VIII demands an administrative structure that is built from the bottom up. And the foundation of that structure is the Regional Advisory Councils. So until the State puts Councils in place and gives them deference it simply doesn't have any regulations that comply with Title VIII.

Secondly, the suggestion, even the surface suggestion that there's a similarity between State and Federal regulations is really superficial, I think. Some of the numbers might be the same, but the rules regarding designated hunters, customary trade and wildlife utilization are all substantially different. So if you rubberstamp a State season you're going to get a substantially different result.

Thirdly, it's been suggested that the confusion might be a factor here. But if confusion's a factor the State is in complete control, it can adopt the Federal regulations or it can simply publish the Federal regulations as it has done in some cases. There is no copyright issue involved.

Lastly, I think it's important to realize that you just can't change direction of the Federal
system without public notice and comment under the APA procedures. The Federal rulemaking procedures have been in place for 15 years now, they've become established policy. In order to change them would require the Board to go through a specific set of processes so even if everything I said weren't true this still wouldn't be a proper subject for the Board at this meeting.

CHAIRMAN FLEAGLE: Thank you. I'll get right to you Ken. I just want to point out, I heard this in the overview and it's on Page 58, the net effect of the regulation if adopted, would allow the sale of goat, sheep, caribou and moose hides on National Park lands and National Monuments that are not covered under the State regulations, that would be the net effect. I think that's the simplest way to put it out.

Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I'm not certain that the State agrees with the State regulations not being applicable to National Park lands or Monuments but that's a different issue.

I think what I want to make clear here is that the State supports the sale of tanned and untanned hides by rural residents. That's not the issue. I think the issue here is the process the Federal Board is using to establish this regulation consistent with ANILCA. And I'm not an attorney but I think our argument is that in order for it to be consistent with ANILCA you have to follow certain steps and if you want any elaboration on that I think Steven probably could provide it.

Thank you, Mr. Chairman.

elaboration.

(No comments)

CHAIRMAN FLEAGLE: I'm not hearing any request for it so we'll just go ahead and move forward.

I think the issue -- I do -- I think it's pretty clear where the State is coming from, Ken, and I don't mean any disrespect to Steven in that. I think the Board does understand the State's resistance, but I think we're ready to continue discussion. Further discussion.
We've got Jack Reakoff.

MR. REAKOFF: Mr. Chairman. It'd also be my perception it would not only be Park lands it would also be other Federal administered permits that are specific to Federal subsistence users, there are various Federal permits that are issued that are not issued by the State of Alaska and those would be drawing permits for moose down on the Kuskokwim and various other permits. So those would be falling under Federal hunts that Federal subsistence hunters that would be taking game on that aren't a State hunt so it would be my impression that it would also include those.

Thank you.

CHAIRMAN FLEAGLE: Thank you.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: When somebody passes a motion -- or makes a motion I'm probably going to vote in favor of the motion but I guess what maybe concerns me and maybe it's some of my concerns with bear claws is coming from, we seem to be, over the last few years or few months -- I guess it'd be years because we seem to operate that way, we seem to be getting more and more proposals that focus in my mind more on the commercialization of fish and wildlife as opposed to, you know, what I always believed was, you know, subsistence really wasn't about so much commercialization of the products but the utilization that it's for substance and handicraft and traditional ways and customary ways, but more and more we're having these proposals that seem to be driven to some extent to be able to further use the products taken in a more commercial venture. And I recognize we certainly have -- part of our regulation says that, you know, it cannot be a significant commercial enterprise but it just seems to me the more and more that we allow these we tend to be going in that direction.

I'm certainly not opposed to the utilization, that's why I asked the question about what could be done between subsistence users because we had that argument with the folks in the Southeast on bear claws and that all the things that folks were describing that they wanted to do with bear claws, you know, our
response was well you can currently do that now, this
doesn't provide you anything different that you couldn't
do.

So, I don't know, that's just kind of a
general concern and maybe I'm alone in thinking about
that. But if you look at all of these, they all seem to
be kind of driven by the opportunity to expand, and
particularly the cash value of these fish and wildlife
resources.

CHAIRMAN FLEAGLE: Thank you, Gary.
Niles.

MR. CESAR: And I don't disagree with
that Gary, you know, but the reality of life in the Bush
is it's costing a hell of a lot of money to partake in
subsistence, and that people are not getting rich, what
they're doing in my estimation is being able to pay for
their ability to subsist and the cost of handicrafts is
going up. I mean I don't even know what this cost my
wife, but I know it's probably 10 times more than a tie.
And people take hours and hours and hours to try to make
their handicrafts, there has to be some recognition of
the increased cost of doing that. So rather than I think
there's more commercialization, I think there's a
realization by the rural people that they really got to
take advantage of everything in order to survive out
there and I see what they're doing is simply that.

CHAIRMAN FLEAGLE: Jack Reakoff.

MR. REAKOFF: Mr. Chairman. I would like
to point out that the Federal program has recognized a
mixed subsistence cash economy and the high cost of fuel
in rural Alaska, I'm very concerned about the demise of a
lot of the elders in rural Alaska in my region, the fuel
costs are exorbitant. I got people that are paying
between six and seven, almost $8 a gallon, $12 a quart
for oil. The State has recognized the use of the sale of
these resources, these skins forever, so this is all just
fluff. The bottom line is rural Alaska is very expensive
at this point, I'm very concerned about the decline and
the high cost of fuel and so forth, the sale of these
items by rural residents allows them to continue their
mixed subsistence cash economy and this is very important
to many people to supplement their high cost.

So I would like to point that out to the
Board.
Thank you.

MR. EDWARDS: Mr. Chairman. Maybe a
to both of those.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: I don't disagree with any
of that. Then I guess my question is maybe we ought to
look for opportunities to more liberalize the sale of
these instead of putting restrictions on it. Maybe we
shouldn't be using the term, you know, significant
commercial enterprise, you know, you can get what you can
get for it.

CHAIRMAN FLEAGLE: I got Mike Quinn and
then Lester Wilde. Mike.

MR. QUINN: Okay, thank you, Mr. Chair.
I think our members don't see subsistence as just hunting
or just eating some meat, subsistence is providing for
your family and in that respect maximum benefit from our
harvest is important. As Mr. Reakoff's pointed out, the
expense of living in these areas, what you're seeing is
these proposals blurring the line between what many
people consider commercial and what many people consider
subsistence, and you're going to see more of these
proposals in the future as it gets harder and harder to
live in rural areas.

There's a lot of people who live in these
areas because of family and traditional ties, but there's
a lot of people, like me, who live there by choice,
although everybody technically lives there by choice, and
people like me are going to continue to support proposals
like these because it helps us to live in that region and
provide for our families. And I can tell you myself and
whatever work I can do with the RAC I'm on will continue
to push for and support proposals that blur the line
between commercial and subsistence.

CHAIRMAN FLEAGLE: Thank you.

MR. ARDIZZONE: Mr. Chair.

CHAIRMAN FLEAGLE: Just a second Chuck, I
got Lester Wilde recognized. Lester.

MR. WILDE: Yeah, I agree with Mike, you
know, the days that we, where we go out subsistence -- I
come from an area where it's totally subsistence mainly, and anything that's being put up we got to go out and get and going out subsisting and going out doing our subsistence hunt we get a lot of byproducts from the animals that we go out and hunt, like the skins that are no longer being used for muk-luks and parkas and clothing that we used to manufacture those from the byproducts from the subsistence animals that we are getting now. So we have a lot of surplus of the byproducts of the subsistence animal that we go out and acquire. And as Mike said a lot of those sales that are being done out in the villages are in support of other and further subsistence activities in the area.

CHAIRMAN FLEAGLE: Thank you. Chuck.

MR. ARDIZZONE: I was going to say we're concerned about commercialization of the resource also but there are already harvest limits in regulation for all these species, so it's not like the subsistence user is going to go and harvest 35 caribou and sell all the hides. I think that is some control on this issue. And then I'd just like to say it would allow the full utilization of the resource by the subsistence user and allow them to make some money from what they already have so it doesn't go to waste.

CHAIRMAN FLEAGLE: It sounds like I'm ready to hear a motion.

MR. PROBASCO: Sue.

CHAIRMAN FLEAGLE: Sue. Sue Entsminger, you can't make a motion.

MS. ENTSMINGER: I can't make a motion, okay. But I would like to just reiterate the short of this and that is all our Council wanted to do was to make it legal under Federal regs which is already legal under State regs and understanding how it comes across on your system that's what we had to do. So to me we're not making any more new things at all, it's just allowing what's already been done.

CHAIRMAN FLEAGLE: But look what you started.

(Laughter)

MS. ENTSMINGER: Look what the government
started.

(Laughter)

MS. ENTSINGER: Excuse me.

CHAIRMAN FLEAGLE: We're ripe for a motion, Board members.

MS. KESSLER: Mr. Chair.

CHAIRMAN FLEAGLE: Wini.

MS. KESSLER: I move to adopt the recommendation of seven Regional Advisory Councils which is to support the proposal. I suggest that any proposed modifications that the Councils have recommended could be considered by amendment to this main motion if desired by the Board and after a second I'll provide my rationale.

CHAIRMAN FLEAGLE: Is there a second.

MS. GOTTLIEB: Second.

CHAIRMAN FLEAGLE: We do have a second. Go ahead.

MS. KESSLER: I'm voting to support this because the Board has the authority to allow these sales under customary take, which is within the definition of subsistence in ANILCA. The main opposition is coming from the State but it's based on a concept of customary and traditional use that doesn't apply to the Federal program.

So that's why I support this.

CHAIRMAN FLEAGLE: Okay, thank you.

There is an invitation for amendment. Anybody willing to jump there -- Niles.

MR. CESAR: I would like to amend the main motion to also include deer, elk and muskox. I believe that the same should apply for those species.

CHAIRMAN FLEAGLE: Do I hear a second.

MR. ARDIZZONE: I'll second.

CHAIRMAN FLEAGLE: All right, we do have
a motion, the amendment is now seconded. Is there a --
do you want to add anything to the record, Niles, in
support of the amendment.

MR. CESAR: No. I think the several
Regional Councils felt that that was appropriate and I
think that I see no reason not to go along with those
Councils. And I think the same applies, the same
rationale applies why I would support that as well as the
other species, so that's the reason.

CHAIRMAN FLEAGLE: Are we ready for the
question on the amendment.

(No comments)

CHAIRMAN FLEAGLE: Further discussion.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Bert Adams.

MR. ADAMS: Mr. Chairman. I was
wondering if you were going to consider, maybe through
another amendment, you know, tanned and untanned hides.

CHAIRMAN FLEAGLE: I was preparing to do
that after we dispense with this one, Bert.

MR. BERT: Okay, thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: At least open the
invitation. I can't obviously make the amendment. Judy.

MS. GOTTLIEB: Mr. Chair. I know muskox
wasn't specifically mentioned by Seward Penn but I was
hoping maybe we could ask the representative if there had
been some discussion or if it just hadn't come up, how it
might work.

CHAIRMAN FLEAGLE: Mike Quinn.

MR. QUINN: Well, I guess that didn't
come up but I want to thank Mr. Cesar for bringing it up.
There's actually very little muskox hunting done around
there on the Federal level, it's mostly through Tier II
and registration hunts, but I certainly can see a benefit
to having muskox on it and I would support that.

CHAIRMAN FLEAGLE: Ready for the question
on the amendment.

It sounds like we are, Pete, on the amendment to add deer, elk and muskox, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on the amendment to Proposal WP07-03 to add deer, elk and muskox. Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt -- I mean Mr. Ardizzone.

MR. ARDIZZONE: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: And Mr. Edwards.

MR. EDWARDS: Aye.

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

CHAIRMAN FLEAGLE: All right, thank you, Pete. We're now back to the main motion to support the passage of the proposal with the addition of deer, elk and muskox. There was one other item raised during the heated debate prior to this point and that would be whether or not there's some consideration for tanned hides as well and I heard a couple of different options. One would be to add the word tanned hides and the other one would be to delete the word, untanned hides, and just make it hides. So I'll leave that open for discussion.

Board members is there any intent to add a further amendment.

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

MS. GOTTLIEB: I would like to offer an amendment that would include tanned hide or cape from legally harvested animals. And I don't have a preference on the wording.

CHAIRMAN FLEAGLE: Do we have a second.

MR. CESAR: Second.

CHAIRMAN FLEAGLE: Niles, seconded it. Would you like to speak to your amendment, Judy, please.

MS. GOTTLIEB: Well, thank you. I believe that between several of the Subsistence Resource Commissions and some of the Regional Councils who made that suggestion, it does seem to be a reasonable and practical amendment to have.

CHAIRMAN FLEAGLE: Further discussion.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question. It looks like we're ready for the question on the question -- the question on the amendment to add tanned hides to the definition of hides that are available to be sold. Pete.

MR. PROBASCO: Thank you, Mr. Chair. Final action on amendment number 2. Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Ardizzone.

MR. ARDIZZONE: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.
MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Amendment carries, six/zero.

CHAIRMAN FLEAGLE: Thank you. That now brings us back to the main motion, WP07-03 as amended twice to add deer, elk and muskox and to add tanned hides to the untanned hide portion.

Further discussion.

Judy.

MS. GOTTLIEB: Mr. Chair, thank you. I think what we usually do is since the deer and elk and muskox are not found statewide, perhaps as this gets firmed up then our regulation's specialist will list exactly which units that this part would apply to.

CHAIRMAN FLEAGLE: I was going to ask Jack how that deer and elk was going to work up there in Wiseman.

(Laughter)

CHAIRMAN FLEAGLE: If that's normal procedures I'm fine with that. Just having the statewide regulation that allows it seems to me, by deference, it allows it where they are.

UNIDENTIFIED VOICE: In case one wandered up there.

(Laughter)

CHAIRMAN FLEAGLE: Okay, further discussion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the question.

(No comments)

CHAIRMAN FLEAGLE: Hearing no objection to the question, final action on Proposal 07-03 as
amended twice, Pete.

MR. PROBASCO: Final action on Proposal WP07-03 to read:

You may sell the tanned and raw untanned hide or capes from a legally harvested deer, elk, goat, sheep, caribou, muskox and moose.

Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Ardizzone.

MR. ARDIZZONE: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

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

CHAIRMAN FLEAGLE: Thank you, Pete. At this time the Chair would like to go ahead and call a lunch break and I know there's eating facilities within the hotel but if anybody wants to leave I think we'll go ahead and add a little extra time, return at 1:00 o'clock.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon, the Federal Subsistence Board will resume business.
Before I start out, any announcements Pete.

MR. PROBASCO: I have none, Mr. Chair.

CHAIRMAN FLEAGLE: Board members.

(No comments)

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

We've got Proposal 07-04. The last statewide proposal before us now and is this Liz again -- okay, Liz, welcome, thank you.

MS. WILLIAMS: Thank you, Mr. Chair. Proposal WP07-04 is the combination of two similar proposals submitted by the Eastern Interior Alaska Regional Advisory Council and the Upper Tanana Fortymile Fish and Game Advisory Committee.

The proponents request Federal regulations that allow the sale of antlers or horns of goat, sheep, deer, elk, caribou, moose or muskox that have been naturally shed or removed from the skull of an animal harvested on Federal public lands under Federal subsistence regulations by Federally-qualified subsistence users. The proponents state that adoption of this proposal would align Federal subsistence harvest regulations with the State of Alaska hunting regulations which allow for the sale of antlers or horns that have been naturally shed or if legally harvested completely removed from any part of the skull of the animal, except in Unit 23.

State regulations specifically prohibit the sale of caribou antlers from Unit 23 unless the antler is not naturally shed or made into a handicraft. And this prohibition is due to local conservation concerns about the Western Arctic Caribou Herd because of the Asian antler market.

Federal subsistence regulations don't include the gathering of naturally shed antlers because they're not a product of a harvested animal. Gathering of naturally shed antlers is prohibited on National Park lands.

The current subsistence regulations do
not allow the sale of unmodified, non-edible byproducts of fish and wildlife. They must first be made into handicrafts. And as you can tell this is similar to the previous proposal. Unmodified antlers or horns do not meet the Federal definition of handicraft. The proposed sale of antlers or horns from animals harvested under Federal subsistence regulations, though, may be consistent with the Federal definition of customary trade, which is the exchange of cash for fish and wildlife resources regulated not otherwise prohibited by Federal law or regulation to support personal and family needs and doesn't include trade which constitutes a significant commercial enterprise.

There's a long history of trade in unmodified horns and antlers in Alaska that began prior to the arrival of Europeans and continues today.

The proponents state that adoption of this proposal would not increase harvest but would allow Federally-qualified subsistence users to fully utilize the animals they harvest under Federal subsistence regulations for food and to obtain cash needed to get access traditional harvesting areas.

If adopted, this proposed regulation would allow hunters to sell horns and antlers from animals harvested under Federal subsistence regulations. However, as I noted before, shed antlers are not regulated under Federal Subsistence Board jurisdiction.

The gathering of naturally shed antlers is specifically prohibited on National Park Service lands, it's also prohibited on Fish and Wildlife Service lands without a special use permit from the Refuge manager. Authorization to collect animal parts from animals not harvested within the approved subsistence harvest limits would not be consistent with Federal subsistence harvest regulations.

So we propose that the regulation or the proposal be modified to exclude reference to shed antlers or collections from animals obtained outside of Federal subsistence harvest regulations.

Regional variation in uses of horns and antlers can be addressed by region specific regulation such as those used for bear handicrafts and customary trade of fish. Current harvest limits of animals will not be affected by this proposal. The proposal should not
affect other user groups. The adoption of this proposal
would not lead to an increase in subsistence harvest, but
would allow Federally-qualified subsistence users to
fully utilize the animals they already have C&T for that
they harvest for food and also for cash needed to access
third traditional harvesting areas.

The preliminary conclusion from OSM is to
support the proposal with modification to address only
horns and antlers from animals harvested under Federal
subsistence regulations.

Thanks.

CHAIRMAN FLEAGLE: Thank you. Questions
Board members.

(No comments)

CHAIRMAN FLEAGLE: Hearing none. Summary
of written public comments, Vince.

MR. MATHEWS: Yes, Mr. Chair. The
written comments summaries are found on Page 80 and 81.
There were five written comments, they supported the
proposal as written.

Lake Clark and Aniakchak National
Monument Subsistence Resource Commission supported the
proposal because they feel that measures that allow for
subsistence users to maximize the value they derive from
legally taken animals.

The Wrangell-St. Elias National Park
Subsistence Resource Commission unanimously supports the
proposal as written. The proposal would allow Federally-
qualified subsistence users to more fully make use of the
animals they harvested. The allowance to sell antlers
and horns should apply to shed antlers and horns as well
as those legally harvested animals.

The Denali National Park Subsistence
Resource Commission aligned with the Wrangell-St. Elias
in their support and their justification.

The other written comment came from the
AHTNA Tene’ Subsistence Committee. They support the
statewide proposal to allow the sale of shed horns,
antlers and antlers -- well, the sale of shed horns and
antlers or horns and antlers that have been separated
from the skull from a legally harvested goat, sheep, deer, elk, caribou, moose or muskox.

Mr. Chairman, that’s a summary of all the written comments.

CHAIRMAN FLEAGLE: Okay, thank you very much. Public testimony.

MR. PROBASCO: Mr. Chair. We have no public testimony at this time.

CHAIRMAN FLEAGLE: Thank you. Regional Council recommendations. Mike Quinn.

MR. QUINN: Seward Peninsula supported it. It's pretty similar to the previous proposal on the capes and hides and we're all for increasing opportunities for using our subsistence resources.

CHAIRMAN FLEAGLE: Randy Alvarez.

MR. ALVAREZ: Thank you, Mr. Chair. The Bristol Bay RAC supports the proposal with modification to address those that have been legally harvested under the Federal regulations.

And our justification here, the sale of antlers and horns from animals harvested under Federal subsistence regulations is consistent with the Federal definition of customary trade. The exchange of cash for a fish and wildlife resources regulated herein not otherwise prohibited by the State -- Federal law or regulation to support personal and family needs and does not include trade which constitutes as a significant commercial enterprise. Adoption of this modified proposal is within the intent of other regulations regarding sales by Federally-qualified subsistence users.

The new modified Federal regulation would be consistent with State regulations relative to harvested animals.

The collection of naturally shed antlers is not under Federal Subsistence Board jurisdiction, the opportunity to sell shed antlers will continue under State of Alaska regulations and can be applied to those resources found on Federal public lands only to the extent consistent with specific Federal land management regulations.
Thank you.

CHAIRMAN FLEAGLE: Thank you, Randy. Sue Entsminger.

MS. ENTSMINGER: Yeah, thank you, Mr. Chair. The Council supported this and there was one opposition with the modification as suggested by the Staff Committee and I'm just going to read that -- that person was me, one to six.

And basically I felt that because you did have the authority to do so, to allow the subsistence user to also sell a shed antler. And more of that is because of the Park Service. Since 1980 since the Park Service came in our area there's been just a long history of things you can and can't do and we just felt that it would be, that we, or you the Federal Board, I apologize, could allow that, we don't feel like the Park Service should be saying that, no, you can't be picking up a shed antler. That'd be me, one person, I'm sorry, and a few others in our area.

CHAIRMAN FLEAGLE: Jack Reakoff.

MR. REAKOFF: Thank you, Mr. Chairman. The Western Interior Advisory Council voted in favor of this proposal with the modification for the animal to be harvested so that we -- the Gates of the Arctic Resource Commission has discussed this issue of antlers being picked up to be utilized for customary handicrafts and so forth and has a recommendation before the Park Service regarding that issue for various uses of those non-commercial and not to be sold in the raw state.

The Western Interior Council felt that under our authority we can deal with the harvested antler and so there's been many people in our region speak to the high cost of fuel and how these antlers are cut off and sold to be -- to buy gasoline and so these -- we feel that the State of Alaska allows the sale of antlers that have been cut from the skull and we feel that that's reasonable for the -- the subsistence users have been doing that for many, many years and utilizing them for handicrafts also.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Speridon and then I'll call on Bert and then Lester after that.
MR. SIMEONOFF: Thank you, Mr. Chairman. The Kodiak/Aleutians RAC opposed Proposal WP07-04. And the justification was that there was already regulations that allowed for the proposed action.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Bert Adams.

MR. ADAMS: Thank you, Mr. Chairman. Just to make note here that I'm also on the Wrangell-St. Elias Subsistence Resource Commission and while the Commission, you know, accepted this proposal as written, on the other hand the Southeast Regional Advisory Council also supports this proposal with modification. We accepted -- or we accepted the modified portion of it on the advice of Staff and that was to eliminate the shed antlers and horns. It's also noted that shed horns and antlers are not under the jurisdiction of the Federal Subsistence Program. But the modification of this proposal that we submitted should read as such:

You may sell the horns and antlers that have been separated from the skull from legally harvested goat, sheep, deer, elk, caribou except caribou harvested in Unit 3 [sic], moose or muskox.

The Council found that the modified proposal was supported by substantial evidence, that it was consistent with wildlife management principles and that it would be beneficial to subsistence users by allowing them to fully utilizing the animals they take. And it also noted that there was no adverse affects on non-Federally-qualified users. We also determined that there was no real conservation concern here.

So that's the extent of my comments on this issue, Mr. Chairman. Thank you.

CHAIRMAN FLEAGLE: Thank you. Lester Wilde. Just a second, microphone, please.

MR. WILDE: Thank you. The Yukon-Kuskokwim RAC supports this proposal with modification to
address only the horns and antlers from animals harvested under the Federal subsistence regulations except for Unit 23 caribou. And for the life of me I'm trying to remember why we didn't include Unit 23 caribou, one of our Staff members probably can enlighten you on that.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Michelle Chivers.

MS. CHIVERS: Thank you, Mr. Chair.

Northwest Arctic, they opposed this proposal because they support utilization of legally harvested wildlife and they are concerned about the potential of want and waste. And the North Slope Regional Advisory Council took no action.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Ralph Lohse.

MS. LOHSE: We also took no action on this one due to lack of time.

CHAIRMAN FLEAGLE: Alaska Department of Fish and Game. Tina Cunning.

MS. CUNNING: Thank you, Mr. Chairman.

The sale of horns or antlers is allowed under current State law and there are no seasonal or area restrictions on gathering of naturally shed antlers.

Only a State hunting license is required, which is also required for subsistence hunting under Federal subsistence regulations, consequently the opportunity requested in the portion of the original proposal related to naturally shed antlers is already provided in State regulations. And since there are no seasons or area restrictions under State law, Federal regulations regarding gathering are not needed. Sales are also authorized where a Federal subsistence user conducts harvest activities pursuant to State law.

Regarding a conservation concern. The proposed regulation would diverge significantly in some cases from State regulations. In Unit 23, for example, the State, at the request of local residents who are...
concerned about waste specifically prohibits the sale of
separated caribou antlers unless they're made into a
handicraft. The proposed regulation would create
incentives for illegal or wasteful harvest in Unit 23
where caribou can easily be taken in large numbers under
high daily harvest limits while migrating and
particularly when crossing rivers. Because of the
significant commercial market for antlers generally and
the high market value of antlers containing blood, unless
enforceable limits on sales are added to this proposal,
sales of antlers could easily be significant commercial
enterprises.

As far as our other comments go, the
intent of this proposal is to align State and Federal
regulations, however, the Federal Board does not have
jurisdiction over general sales. Under ANILCA's
provisions and the Board's framework regulations the
Federal Board only has jurisdiction over subsistence uses
and, thus, may only authorize sales where such sales are
customary and traditional and qualify as customary trade.
The Board has appropriately reflected this jurisdictional
limitation in its Federal regulations as we stated in the
previous regulation.

The Department supports the modification
to exclude caribou antlers in Unit 23 from the scope of
this proposal, however, before authorizing use in all of
the other units, the Department recommends that the
Federal Board make customary and traditional use
determinations on an area and species basis consistent
with the eight factors listed in Federal regulations.
Such determinations should be made based on substantial
evidence demonstrating that this use of each of these
species is customary and traditional, and if no such
evidence exists, that the regulation be limited to those
areas which is found to be a customary and traditional
use.

In conclusion, the Department opposes
this proposal in the absence of evidence that the sale of
antlers that have been removed from the skulls of goat,
sheep, deer, elk, caribou, moose and muskox are customary
and traditional uses statewide. The proposal, as
modified to exclude shed antlers and horns and antlers of
caribou taken in Unit 23 could be interpreted to align
with current State regulations. However, it is possible
that it could also be interpreted differently than State
regulations unless the phrase "that have been separated
from the skull" is replaced with "not attached to any
part of the skull."

If the Federal Board moves forward with this proposal, the Department recommends that its language be modified as I just described, that its scope be limited to those areas of the state where the Federal Board has found such sales to be customary and traditional uses and that limitations be established to prevent such sales from becoming significant commercial enterprises.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Tina. And Ralph, I noticed your microphone is still hot.

Questions for the State. Gary.

MR. EDWARDS: Could you differentiate between separated from and not attached to?

CHAIRMAN FLEAGLE: Steven Daugherty.

MR. DAUGHERTY: Mr. Chair. Separated from could be interpreted to mean that part of the skull is still allowed to be attached, while not attached to any part of the skull is crystal clear and that is the regulatory language that is used in the State regulations.

Mr. Chair.

MR. EDWARDS: So I guess by your definition like a European mount would be classified as separated from as opposed to not attached to?

MR. DAUGHERTY: Mr. Chair. That is correct. That could be interpreted in that manner.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: Thank you.

InterAgency Staff Committee comments. Larry.

MR. BUKLIS: Thank you, Mr. Chairman.

The Staff Committee noted that five Councils recommended regulatory wording as presented in the OSM preliminary conclusion to address only horns and antlers taken from legally harvested animals of the listed species and excluding antlers of caribou harvested in Unit 23.
If adopted by the Board this recommendation would be consistent with State regulations regulating to these species.

The Staff Committee also noted that the Eastern Interior Council, the proponent of the proposal, recommended inclusion of the naturally shed horns or antlers in the regulation providing for sale.

Kodiak/Aleutians Council opposed the proposal.

And we noted that the Northwest Arctic Council opposed the proposal due to its concerns with potential excessive harvest and waste resulting from the commercial incentive provided by sale similar to conditions experienced in the past with regards to sale of caribou antlers in Unit 23 in their area.

The exclusion of caribou in Unit 23 in the modified regulation as recommended by five of the Councils would mirror State regulations which have been effective in preventing exploitation of caribou experienced in past years in that unit. So the Staff Committee noted that that concern could be addressed with the exclusion.

Thank you, Mr. Chair.

Questions. Judy.

MS. GOTTLIEB: Actually I had a question for Michelle, if she wouldn't mind, about the Northwest recommendation.

CHAIRMAN FLEAGLE: Go ahead.

MS. GOTTLIEB: The question was, and I'm not sure if you were there Michelle or remember what the exact transcript was, was the Northwest RAC, their only concern was caribou then and not some of the other species that would be found up there?

MS. CHIVERS: Yes - (microphone not on)

MS. GOTTLIEB: Okay, thanks.

CHAIRMAN FLEAGLE: All right, other Board discussion.
MS. GOTTLIEB: Excuse me, Mr. Chair, I guess just because we're off mic, the answer I got was yes.

CHAIRMAN FLEAGLE: Thank you. Other Board discussion.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I guess I'll also just clarify for the record because there have been a couple comments here in terms of where the Federal Subsistence Program regulations stand and where Park Service regulations stand. Our own regulations through the Federal Subsistence Program say that the regulations in this part do not supersede agency specific regulations, and the Park Service regulations, you'll find in Page 71 in our book, which does say one cannot pick up shed antlers. That's a summary of it anyhow.

Thank you.

CHAIRMAN FLEAGLE: So the proposed amendment that several RACs have brought would totally address that?

MS. GOTTLIEB: Yes, it would.

CHAIRMAN FLEAGLE: Other Board discussion. George.

(No comments)

CHAIRMAN FLEAGLE: No. We're ready for a motion.

MR. EDWARDS: I have one more discussion.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Getting back to my eBay question. So if this passes then you can sell horns on eBay, is that right, or any other through the internet to whoever wants to buy as long as they're not a significant commercial enterprise; is that correct?

89
MS. WILLIAMS: Yes.

CHAIRMAN FLEAGLE: And that was Liz Williams. Thank you. Judy, your microphone is still on, I thought you wanted to talk.

MS. GOTTLieB: Sorry.

CHAIRMAN FLEAGLE: Others.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for a motion.

(No comments)

CHAIRMAN FLEAGLE: I can't make them. Judy.

MS. GOTTlieB: Mr. Chair. I will move that the proposed regulation should read:

You may sell the horns and antlers that have been separated from the skull from legally harvested goat, sheep, deer, elk, caribou, except those caribou harvested in Unit 23, moose, or muskox.

And upon getting a second I'll make a few other comments.

MS. KESSLER: Second.

CHAIRMAN FLEAGLE: Okay, we do have the second, thank you.

MS. GOTTlieB: Thank you, Mr. Chair. I believe this recommendation is consistent with the majority of the Regional Advisory Councils. I would have a suggestion, as we've done before, that since a couple of the regions out right oppose -- or at least one region out right opposed it, that perhaps we say except for the Kodiak/Aleutian region. We have the exception here for Northwest and caribou, but Kodiak/Aleutian doesn't want to be included in it, we may want to note that in the regulation as well.

CHAIRMAN FLEAGLE: Yeah, it would have to be a motion as Pete just pointed out, but in the
1 regulation you would want to -- anyways, we can further
2 discuss that if you want.
3
4 Right now we do have a motion before us
5 to basically lift the language right off of Page 75 in
6 the OSM preliminary conclusion. That would add the
7 words, legally harvested, and the rest of the language is
8 pretty much consistent.
9
10 Is there any discussion on the motion.
11 Gary.
12
13 MR. EDWARDS: Well, I guess in my
14 discussion it will sort of address what the State raised
15 about the language separated from as opposed to attached
16 to. Certainly separated from would allow people to sell
17 full European mounts on plaques and all that, it would
18 significantly, I think increase the value of those horns
19 and I don't know if that was the intent was but -- and,
20 again, I don't know whether you can interpret separated
21 from to mean what I just said but if it does, then I
22 guess the point they made, attached to [sic], would be
23 better language to have.
24
25 CHAIRMAN FLEAGLE: Or not attached to?
26
27 MR. EDWARDS: Not attached to.
28
29 CHAIRMAN FLEAGLE: Ken Taylor.
30
31 MR. TAYLOR: Thank you, Mr. Chairman.
32 The proponents of this proposal wanted this proposal to
33 align the Federal subsistence harvest regulations with
34 the State of Alaska's hunting regulations, and they went
35 on to say to completely remove from any part of the skull
36 of the animal. So if you are looking to adopt the
37 modified regulation by including, after antlers that have
38 been separated from, the words, all parts of the skull,
39 you would meet the intent of the proponent.
40
41 Thank you, Mr. Chair.
42
43 CHAIRMAN FLEAGLE: All right. So we have
44 two options of accommodating the State's desire here and
45 it sounds like Ken's words would be probably simpler, not
46 although entirely consistent with the State regulation.
47 How to proceed, Board members. Judy.
48
49 MS. GOTTIEB: Mr. Chair. I guess I was
50 just wondering if there's an explanation from Staff as to
why this particular language was used, if there was a
special reasoning for that.

CHAIRMAN PLEAGLE: Liz Williams.

MS. WILLIAMS: Yes, Mr. Chair. Ms.
Gottlieb. It was to prevent the sale of anything
remotely resembling a trophy.

CHAIRMAN PLEAGLE: Pete Probasco, can you
clarify.

MR. PROBASCO: Yes, Mr. Chair. I think
this is Staff language. It can be modified. The intent
of the language that was presented by OSM Staff was to
have the antlers or horns removed from the skull.

Mr. Chair.

MS. WILLIAMS: (Nods affirmatively)

CHAIRMAN PLEAGLE: She's nodding so
apparently an affirmative. I think we can move this on
pretty quickly if somebody just wants to throw an
amendment on the floor that would either add those words
or change the words.

Gary.

MR. EDWARDS: Mr. Chairman. Then I guess
I would amend the proposal to -- let me see exactly what
it said. Well, where we had separated from we would not
-- and just replace it by not attached to. I think we
could certainly do what was proposed by the State but I
think the other would be a little cleaner just by putting
not attached to.

CHAIRMAN PLEAGLE: All right. So it
would read:

You may sell the horns and antlers that
are not attached to the skull, et cetera.

Right, is that your amendment?

MR. EDWARDS: Yeah, well, I'm just
replacing.....

CHAIRMAN PLEAGLE: Your microphone.
MR. EDWARDS: .....that's how it was when
it said separated from the skull, not attached to the
skull (no microphone on).

MR. TAYLOR: Mr. Chairman. I'm on the
wrong page, but I think the State regulation says not
attached to any part of the skull and it makes it crystal
clear.

MR. EDWARDS: That would be my intent.

CHAIRMAN FLEAGLE: All right, so maybe we
don't have to worry about the exact language right now in
the amendment and if it would just match it to what the
State's regulatory language, so we can do that, is that
okay with your intent?

MR. EDWARDS: That's my motion.

CHAIRMAN FLEAGLE: All right, we do have
a motion for amendment.

MR. OVIATT: I'll second.

CHAIRMAN FLEAGLE: Seconded by George.
And do you want to speak any further to that Gary.

MR. EDWARDS: Other than what I said, I
think, then that would clearly make what the intent of, I
think, are the people who proposed it, I think it would
make it consistent with State law and the proper thing to
do.

CHAIRMAN FLEAGLE: Further discussion on
the amendment.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question
on the amendment. The question is recognized, Pete, on
the amendment to change the wording as noted, please
signify -- excuse me, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair. The
amendment:

Not attached to any part of the skull
And we start with Mr. Cesar.
MR. CESAR: Yes.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Yes.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Amendment carries, six/zero.

CHAIRMAN FLEAGLE: We now have Proposal 07-04 as amended before the Board for final consideration. Comments. Deliberation. Further consideration.

(No comments)

CHAIRMAN FLEAGLE: Ready for the question.

It looks like we're ready for the question on the proposal as amended, Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Proposal WP07-04 as amended:

You may sell the horns and antlers not attached to any part of the skull from legally harvested goat, sheep, deer, elk, caribou, except caribou harvested in Unit 23, moose or muskox.

Mr. Oviatt.

MR. OVIATT: Aye.
MR. PROBASCO: Ms. Kessler.
MS. KESSLER: Aye.
MR. PROBASCO: Mr. Edwards.
MR. EDWARDS: Aye.
MR. PROBASCO: Mr. Fleagle.
CHAIRMAN FLEAGLE: Aye.
MR. PROBASCO: Ms. Gottlieb.
MS. GOTTLIEB: Aye.
MR. PROBASCO: And Mr. Cesar.
MR. CESAR: Aye.
MR. PROBASCO: Mr. Chair. Motion as amended carries, six/zero.
CHAIRMAN FLEAGLE: Okay, thank you. That concludes the proposals that we have under the statewide grouping. Do we need a few minutes to regroup, Larry Buklis, you have comments.
MR. BUKLIS: Thank you, Mr. Chairman, yes. Since your morning session we have updated the printed agenda to capture your discussion this morning on consensus/non-consensus and I can have those distributed now if you'd like.
CHAIRMAN FLEAGLE: You bet, we'd like.
MR. BUKLIS: And I'll comment as we hand them out, as we noted before there are a total of 64 proposals or parts of proposals, some are (a) and (b) and we counted those as individual elements, so 64 total, that remains the total, given the discussion this morning we now have 35 consensus, 29 non-consensus and you've addressed the first four of those, so you have 25 more non-consensus at this point, Mr. Chairman.
CHAIRMAN FLEAGLE: Thank you, Larry. Let's take a five minute at ease while this is going around.
(Off record)
CHAIRMAN FLEAGLE: Okay, we're back in session and we do have the hand out, the new agenda. And Larry do you want to go ahead and speak any further to it.

MR. BUKLIS: No.

CHAIRMAN FLEAGLE: No.

MR. BUKLIS: No, thank you, I think I've covered it Mr. Chairman. And unless you want us to read into the record what the consensus are, I think we covered that this morning, by reference.

CHAIRMAN FLEAGLE: We did. Okay, then we're ready to move into the next suite of proposals and that are dealing with the Southeast Alaska region. We see new Staff at the table, introductions, please.

MR. JOHNSON: Mr. Chairman. Board. My name is Dave Johnson, I'm the subsistence coordinator for the Tongass National Forest. To my right, immediately to my right is Bob Schroeder who is the Southeast Regional Advisory Council coordinator. And on his right is Melinda Hernandez, also subsistence staff and anthropology.

The proposal before you is WP07-05, which was submitted by the Southeast Regional Advisory Council and it would eliminate the requirement that a representative of ADF&G remove and retain the skin of a skull and front claws of brown bear hides at the time of sealing.

The Federal and State regulations differ with respect to harvest of brown bear and the use of non-edible parts. Federal regulations allow harvest of one brown bear per year by Federal registration permit. The meat must be salvaged. The skin is not required to be salvaged. The skin and skull are not required to be sealed unless they are taken from the Yakutat area. The skin and skull must be sealed before they are removed from the Yakutat area and at the time the skin of the head and the front claws must be removed. Federal regulations allow the skin, including claws and other non-edible body parts to be used in the making of regalia and handcrafts that may be sold.
State regulations allow the harvest of one brown bear every four regulatory years. The meat is not required to be salvaged, the skin and skull must be salvaged. And they must be sealed within 30 days after taking. Under State regulations all body parts must -- may be used to create regalia and handcrafts for personal use but may not be bartered or sold. Handcrafts for sale under State regulations may only be made from the bear fur, not including claws.

Rural residents of Yakutat have a positive C&T determination for brown bear in Unit 5. The Federal Subsistence Board passed regulations allowing the sale of handcrafts made from brown bear fur in 2004, including claws. In 2005 further modifications to the regulations were made including special provisions for Southeast Alaska allowing the use of bones, teeth, sinew, or skulls of both black and brown bears taken in the region.

Based on ADF&G harvest data bear populations appear capable of supporting current harvest levels and there appears to be no conservation concern. Figure 1 on Page 93 shows all of the known annual mortality including harvest from 1970 through 2005 as shown in the ADF&G sealing data base. All harvest data shown in Figure 1 refers to bears harvested under State general harvest regulations. Figure 1 also shows the harvest by Federally-qualified users that chose to hunt under State harvest regulations.

Table 2 on Page 94 shows number of permits issued and bears harvested for State registration hunt.

Most Federally-qualified users choose to harvest under State regulations.

The Federal subsistence harvest of brown bears in Units 5 is .5 percent of the total known mortality.

Adopting this proposal would eliminate the requirement to remove the front claws and skin of the skull when a brown bear is sealed before taking it out of the Yakutat area. This would allow Federally-qualified subsistence users to maintain possession of these items for use in making of handicrafts consistent with current Federal handicraft regulations.
Adopting this proposal would also allow the hides of bears harvested under Federal subsistence regulations to retain their value as trophies.

No substantial increase in Federal subsistence harvest rates is expected. If harvest increases occur they should be easily monitored by the current State registration permit and State sealing requirements.

The preliminary conclusion was to support the proposal. And the removal of the claws and skin of the skull is not consistent with current regulations permitting the use of these body parts and handcraft items. Existing permit and reporting requirements would be retained to facilitate identification of legally harvested bears and this proposal should not increase harvest levels, affect brown bear populations or result in conservation concerns.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Questions on the analysis.

(No comments)

CHAIRMAN FLEAGLE: Written public comments. Larry -- or excuse me, Bob.

DR. SCHROEDER: Mr. Chairman. We have one written public comment from the Wrangell-St. Elias National Park Subsistence Resource Commission.

The Commission unanimously supports the proposal for the reasons that are stated in the justification for the Staff recommendation, namely that removal of the front claws and skin of the skull is not consistent with current regulations, permitting the use of these body parts in handcraft items, that existing permit and sealing requirements would be retained to facilitate the identification of legally harvested bears and that this proposal would not increase harvest levels, affect brown bear populations or result in a conservation concern.

Mr. Chairman, that's the only public -- written public comment we've received.

CHAIRMAN FLEAGLE: Thank you, Bob. Any
public testimony.

MR. PROBASCO: No, Mr. Chair.

CHAIRMAN FLEAGLE: Bert Adams for the Regional Council recommendation.

MR. ADAMS: Thank you, Mr. Chairman. The Council recommends that we support the proposal.

Current Federal subsistence regulations provide for subsistence harvesting of brown bears in Unit 5 but requires that the skin of the skull and front claws of bears taken to be removed when hides are sealed. Hides must be sealed before being taken from Unit 5. This harvesting regulation was passed in 1994. Subsequently in 2002 to 2006 the Federal Subsistence Board passed regulations recognizing the handicraft use of brown bears within Southeast Alaska. The Federal handicraft regulations allow the use of brown bear hides, including claws as well as other non-edible parts of brown bears.

This proposal would make the Federal subsistence brown bear harvesting regulations for Unit 5 consistent with the Federal handicraft regulations concerning use of hides, claws and other non-edible parts of brown bears.

The Council reviewed the thorough Staff analysis for this proposal and since 1994, from 27 to 24 brown bears have been harvested annually in Unit 5. Almost all of these bears were taken under State registration permits. During this time period only two bears were taken under Federal subsistence registration permits. Hunters are required to salvage the meat from bears taken under Federal subsistence registration permits, State registration permits do not require salvage of the meat. No useful purpose is served by requiring removal of the skin of the skull and the front claws of bears taken under Federal subsistence regulations. This requirement limits subsistence harvester's ability to fully utilize the bears they take.

The Council reviewed substantial evidence supporting the proposed regulatory change, found that the changes were consistent with principles of wildlife management and that it would benefit subsistence users. And because of the low harvest of brown bears under Federal subsistence regulations no affect to non-
Federally-qualified hunters are anticipated.

So that's the extent of my comments, Mr. Chairman. Thank you.

CHAIRMAN PLEAGLE: Thank you, Bert.

Alaska Department of Fish and Game comments. Tina.

MS. CUNNING: For background, if a harvester utilizes existing State regulations rather than the Federal regulations which allow more liberal harvest, the proponent's desire to use brown bear parts for making traditional regalia and handicraft is allowed. A harvester does not lose the hide or the skull or the claws if the brown bear is harvested under State general hunting regulations and the bear is sealed within 30 days under the State sealing requirements. Thus, under current State regulations the entire brown bear is available to make Tlingit regalia and for other traditional uses. Similarly, a hunter does not lose the skull or claws of a bear taken under the more liberal Federal regulations and may utilize these parts so long as the bear is not transported out of Unit 5.

Our conservation issues. In response to declining brown bear populations, the State began conservative management in 1969 by reducing the bag limit to one bear every four regulatory years. Under the State's management for sustained yield, the brown bear population in Unit 5 has been relatively stable supporting a harvest of approximately 30 bears annually since the early 1980s. The Department does not believe that any significant increase in harvest would be sustainable.

The effect of this proposal is to authorize increased sale and barter outside of Unit 5.

In 1994, the Federal Subsistence Board authorized Yakutat residents to harvest one bear annually in Unit 5 by Federal registration permit, deleted the requirement for Federally-eligible residents to acquire a State tag and eliminated the requirement for the hide and skull to be sealed by the Department. The State filed request for reconsideration 94-05 contending that the Federal subsistence regulation for brown bear created numerous problems for the State sustained yield management of brown bears. In addition to authorizing a significantly higher harvest, one bear every year, the Federal regulation eliminated a means of obtaining timely
information on sex, age, size and location of harvested
bears and deprived the State of the tag fees needed to
fund bear management tasks. In response to the RFR, the
Federal Board modified its regulation to require brown
bears that are transported out of Unit 5 to be sealed by
the Department. The State regulations provide a similar
exception to the mandatory sealing requirement for brown
bears harvested, but not removed from several units, but
the State does not provide that exception for Unit 5. In
the last four regulatory years only seven Federal
subsistence registration permits were issued for the Unit
5 brown bear and only one brown bear was reported to have
been harvested.

Our other comments. The use of brown
bear parts including use of bear claws in handicraft so
long as the handicraft are not purchased, sold or
bartered is already legal under State regulations and
some bear handicraft may also be purchased, sold and
bartered under State regulations. The State does
recognize that some bartering of bear claw handicrafts
may be customary and traditional, would not oppose
regulatory changes to facilitate such barter if
enforceable prohibitions on sale were imposed.

The Federal Board adopted regulations in
2005 that allow sale of handicrafts from the skin, hide,
pelt, fur, claws, bones, teeth, sinew, or skulls of brown
bear. In 2006 the Federal Board rejected a proposal to
limit sales of bear parts and handicrafts and retained
unconstrained sale of bear parts which undermine the
State’s National and International Wildlife Protection
enforcement efforts and we described this in our earlier
regulation.

If a Federally-qualified subsistence
hunter wants to remove a brown bear from Unit 5, this
proposal would delete the Federal requirement that a
Department representative remove and retain the skin of
the skull and front claws of the bear. In Unit 5 the
State authorizes only one bear every four regulatory
years and requires that a harvested bear be sealed within
30 days. The Federal regulation authorizes one bear
every year. Thus allowing retention of the valuable
skull and claws, particularly if the Federal Board
continues to allow unconstrained sales of handicrafts
made from these parts will provide incentive for
significant increased harvest under the Federal
regulations.
We request the Federal Board focus on customary and traditional uses that are the basis of local practices in those local areas. In other words, handicrafts and regalia should be made in Unit 5 if the customary and traditional finding specifies that such uses exist in Unit 5 for brown bears that are harvested in the unit.

Because Proposal WP07-01 was not adopted this morning, the Department opposes this proposal. The Department cannot support a proposal that will make it easier to transport brown bear hides outside of Unit 5 and retain bear claws and other bear parts for sale. The ability to sell these desirable bear parts will result in increased incentives to harvest bears so that handicrafts made from bear parts can readily be sold. If the intent is to allow retention of all the bear parts for regalia and traditional uses, such uses are authorized under Federal regulation so long as the bear is not removed from Unit 5. Such uses are also authorized under State regulations so long as the regalia or handicrafts are not purchased, sold or bartered. Therefore, based on the stated intent of the proposal, there is no need for the Federal Board to take any action because the desired use is already authorized.


MR. EDWARDS: Yes, Mr. Chairman. When you use the terminology, so long as the bear is not transported out of Unit 5, is there a statute of limitation on that, is that all of the bear, or parts of the bear, what does that actually mean on the ground?

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. Under the common reading of our regulations a reference to a bear is a bear or any part of the bear, however, as far as practical enforcement goes, if the pieces are made in Unit 5, I don't think there would be any practical way we could enforce if someone was taking them out because we would have to prove where that part came from and that would be very difficult to do.

Mr. Chair.

MR. EDWARDS: Well, I guess that would apply if I lived in Unit 5 and I took a bear and made a
bear skin rug out of it, if I moved out of Alaska I could
take it with me even though your regulations say I can't.

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. In the case
of a bear skin rug, that would be enforceable because the
skull would still be attached. There is a sealing
requirement and if we checked and it was not sealed there
would be a violation.

Mr. Chair.

MR. EDWARDS: Okay, so the moral of this
story is that if you live in Unit 5, don't make a rug out
of your bear because if you leave Alaska you can't take
it with you.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: Thanks. InterAgency
Staff Committee comments. Larry.

MR. BUKLIS: Mr. Chairman. The
InterAgency Staff Committee found the Staff analysis for
WP07-05 to be a complete and accurate evaluation of the
proposal. And the Staff Committee believed the
recommendation of the Southeast Council was consistent
with ANILCA Section .805(c).

CHAIRMAN FLEAGLE: Thank you. Board
discussion.

Judy.

MS. GOTTLIEB: Well, Mr. Chair,
appreciate the information and the thorough analysis
that's been presented to us and I would support the
proposal because I believe that it is consistent with our
regulations and that it is to the benefit of subsistence
users and would not present any conservation concerns.

CHAIRMAN FLEAGLE: Go ahead, discussion.
Do I have any other Councils that want to be addressed on
this. Go ahead, Bert.

MR. ADAMS: Thank you, Mr. Chairman. The
real intent for this proposal to be brought before us at
this time was -- let me just give you a for instance.

In Yakutat we have a Teiku keidi Clan that
has the crest of the brown bear. If a member of that
clan wanted to make a regalia out of a brown bear they
had taken by subsistence means, they would have to take
that out to the Fish and Game Department as the law reads
now and they would have to remove the skulls and the
claws and then they would be able to use it, you know,
for their purpose. But to remove the skull and the
claws, particularly the claws, that particular hide would
be no use to them anymore because you have taken out some
pretty important parts of that bear. And I just wanted
to, you know, use that as an example.

Thank you, sir.

CHAIRMAN FLEAGLE: Thank you. Further
comments.

(No comments)

CHAIRMAN FLEAGLE: Ready for a motion.

Wini.

MS. KESSLER: Mr. Chair. I move to adopt
the recommendation of the Southeast Alaska Regional
Advisory Council, which is to support the proposal. And
after a second I'll provide my rationale.

MR. CESAR: I'll second.

CHAIRMAN FLEAGLE: We have a second from
Niles. Go ahead, please.

MS. KESSLER: The current requirement for
the removal of the front claws and skin of the skull is
not consistent with our current Federal regulations
permitting the use of the parts in handicraft items for
sale, and so in that respect it's no longer meaningful or
pertinent. And as well the proposal should not increase
harvest levels, effect brown bear populations or result
in a conservation concern based on the information that
we have gone over.

Thank you.

CHAIRMAN FLEAGLE: Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I
believe our attorney had something he wanted to impart to the group.

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Mr. Chair. On the example that was given, I just wanted to clarify that there are two ways that those parts could be used.

One, if the product is not removed from Unit 5, then there's no problem with retaining it. It does not need to be sealed and those parts do not need to be removed.

Two, if it's taken under State law, those parts would not be removed.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. Welcome, Victor.

Other discussion. Niles.

MR. CESAR: I'm just still a little confused with saying that it cannot be removed from Unit 5. What does that literally mean, you cannot take that hide out of Unit 5? I'm asking the State, is my interpretation correct?

CHAIRMAN FLEAGLE: Steven.

MR. DAUGHERTY: Yes, Mr. Chair, that's correct.

MR. CESAR: So any benefit that a subsistence user in making regalia and bringing it up to Southcentral Alaska for the Alaska Federation of Natives would be negated; is that correct?

MS. CUNNING: They still have the ability to do it under the State's regulation.

CHAIRMAN FLEAGLE: Do you have an opinion, Keith.

MR. GOLTZ: No.

CHAIRMAN FLEAGLE: No.
(Laughter)

CHAIRMAN FLEAGLE: Further comments.

MS. GOTTLIEB: Question.

CHAIRMAN FLEAGLE: Question. The question is recognized. Pete, on the proposal, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Proposal WP07-05 to adopt the proposal as recommended by the Southeast Alaska Subsistence Regional Advisory Council; if you remove the skin or skull of a bear taken in Unit 5 from the area you must first have it sealed by ADF&G representative in Yakutat.

Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

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

CHAIRMAN FLEAGLE: Thank you, Pete. We now have 07-06, Dave Johnson.

MR. JOHNSON: Thank you, Mr. Chairman.

Board. WP07-06 was submitted by Dick Stokes, Mark Armstrong and Mike Bangs of Wrangell and would increase
the harvest limit for deer in Unit 1B and most of Unit 3 and increase the length of the deer season for Unit 3 as well. The intent of this proposed regulation is to align the subsistence harvest limits and seasons of Units 1B and 3 with Unit 2.

One of the proponents, Dick Stokes believed that the all rural hunters should have the same hunting opportunity on the area around Wrangell that residents of Craig, Hydaburg, Klawock, Port Alexander, Port Protection, Point Baker, Thorne Bay and Coffman Cove and Wrangell and Petersburg have on POW. However, when contacted, Mr. Stokes did not want to include the Mitkof, Woewodski and Butterworth Islands, he was mainly concerned about the remainder of Unit 3.

During the '70s and late '60s, significant deer population declines occurred as a result of a series of severe winters. The population declines then led to restrictive regulations and harvest limits in 1973. Unit 1B remained open with one antlered deer limit from '73 to '80 and then was increased to two antlered deer from '81 to present. Additionally Unit 3 was closed to deer hunting from '73 through '79 and the area south of Sumner Strait had a harvest limit of only one antlered deer during the period 1980 to 1991. In 1991 a registration permit hunt with an October 15 to 31 season and a one antlered deer harvest limit was opened on parts of Mitkof, Kupreanof, Woewodski and Butterworth Islands.

Current regulations in Unit 3 allow the harvest of two buck deer from August 1 to November 30th. During its meeting in Wrangell, Alaska in November 2006 the Board of Game opened an archery season only within the city limits of Petersburg and changed the season to a two buck only deer limit. This was done to provide increased hunting opportunity adjacent to Petersburg where discharge of firearms is prohibited.

Deer population in most of Unit 3 is at current, moderate levels and has made a remarkable recovery since the population crash of the early '70s. The unit was closed to deer hunting until 1991 and then Zarembo Island is preferred hunting -- is a preferred hunting location for residents of Wrangell. From 1991 to 1994 deer harvest was below 200 deer annually and then from 1995 to 2001 deer numbers increased to over 400 deer annually. From 2000 to the present to the present, however, the number has, again, decreased. There may be several reasons that have resulted in this decline.
Second-growth stands on Zarembo Islands have matured and stands have gone from stand initiation stage to stem exclusion stage and while these stands may still maintain healthy deer populations, hunter effectiveness is much reduced due to hunters inability to see deer. Also the wolf population and wold predation on Zarembo Island has increased since the early '70s. Also, similarly, the number of deer harvested on Mitkof Island has decreased because of the same reasons.

ADFG describes what happened in Unit 3 by stating that over the last eight years deer harvest has ranged from 626 to 1,173 in the remaining portion of Unit 3. And while the number of hunters in the subunit has varied from 892 to 1,224, deer harvest declined between 1998 and 2002 and increased between 2002 and 2003. Trends in deer harvest and effort in this unit have been affected by regulatory changes that resulted in liberalization of deer hunting on the Lindenberg Peninsula beginning in 2003. This also resulted in an increased harvest in the fairly large but localized part of the unit.

Adopting this proposal may cause an increase in harvest throughout the two units. Unit 1B will probably get more use but because of inaccessibility of the area and low deer densities and high snow load, a significant increase in animals harvested is not anticipated nor likely. Deer harvest on Kupreanof Island will probably increase because the proximity of Petersburg and Kake and deer harvest on Edlund, Wrangell and Zarembo Islands will probably increase due to the proximity to Wrangell. Kuli Island will probably not be impacted because of the low deer numbers and the low hunter success rate.

The preliminary conclusion is to support the proposal with a modification to keep the harvest limit the same but to lengthen the season date by one month for the remaining portion of Unit 3.

The low deer density and potential for large accumulations of snow in Unit 1B are two important factors that do not support a change in the harvest limit from two to four deer for any of these units. The sporadic distribution of deer in Units 1B and 3 may result in conservation concerns if the proposal to increase harvest limits is adopted.

Further information, Mr. Chairman, since
the presentation that was given to the Council, during
the winter of '71 -- I'm sorry, a record snowfall event
occurred during the 2006/2007 winter season in several
locations in Southeast, the previous record snow season
in 1971 and '72 resulted in extensive deer mortalities
throughout Unit 3. As a result deer seasons and harvest
limits were severely restricted. During the winter of
'71, '72 221 inches of snow was recorded in Petersburg,
Alaska, the majority fell during the month of December,
51 inches, 48 inches, and 54 inches respectively with an
additional 35 inches in March. Snow covered almost all
of the brow species until late May. During 2006/2007
Petersburg recorded 225 inches of snow and this snowfall
occurred in a different pattern than that during the
'71/72 season. Again, the initial winter mortality may
be moderate to high in some locations but probably not as
severe as experienced during the '71/72 winter. There
were no deer mortalities due to starvation documented
during the single deer mortality transect conducted thus
far on Edlund Island by the area wildlife manager Rich
Lowell. Deer mortality and population monitoring is a
cooperative effort between the State and the Forest
Service, and during this week of April 30th, teams of
personnel from Wrangell, Petersburg and Juneau will
conduct deer mortality and deer pellet surveys throughout
Unit 3. The result of the monitoring effort will be
available in a written report during the summer or fall
of 2007.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Questions.
(No comments)

CHAIRMAN FLEAGLE: Summary of written
public comments. Bob Schroeder.

DR. SCHROEDER: Mr. Chairman. We
received one written public comment just a couple of days
ago from a Theodore Mataskaw -- excuse me, from Dave
Roundtree. And Mr. Roundtree is a long-term Petersburg
resident and he opposes this proposal basically on
conservation grounds. We believes that the deer
population will not be able to sustain further harvest at
this time and he also refers to the heavy winter that
we've just experienced.

And that's the extent of our written
public comments.
CHAIRMAN FLEAGLE: Thanks, Bob. Public testimony.

MR. PROBASCO: Mr. Chair. We have no public testimony at this time.

CHAIRMAN FLEAGLE: Bert Adams for the RAC recommendation.

MR. ADAMS: Thank you, Mr. Chairman. The Southeast Regional Advisory Council supports the proposal as modified.

SERAC modified the proposal to keep the harvest limit the same but to allow for a lengthier season and we didn't see any concerns with conservation there. We didn't see any data that would cause any adverse effect on it and wouldn't affect any other subsistence or other user groups.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Bert.

Alaska Department of Fish and Game comments.

Terry Haynes.

MR. HAYNES: Thank you, Mr. Chairman. The proposal to increase Federal harvest limits in Units 1B and 3 to more closely align with harvest limits in other units where deer densities are higher is not consistent with sustained yield management of these deer populations. Deer numbers in Units 1B and 3 are markedly lower than they are in Units 1C, 2 and 4.

Contrary to the intent of this proposal, the long-term consequences of increasing the harvest limit and extending the season may be a decline in the deer population and resulting conservation issues. lower deer populations will necessitate reduced hunting opportunities in the affected units. Because of the relatively stable but low populations, conservation concerns could also result in closing several areas within Units 1B and 3.

The Department opposes this proposal, both as proposed and as modified. The proposal as modified retains the current harvest limits for deer in Units 1B and 3, but adds the month of December to the current season in the remainder of Unit 3. The
Department supports retention of the current harvest limits but does not support the proposed season extension in the remainder of Unit 3 where the process of rebuilding the deer population is being impacted by habitat loss, predation and high snow accumulations. Adding a month of hunting opportunity may increase deer harvest in areas where higher harvest are not biologically desirable in a rebuilding population where it is not consistent with management of wildlife and accordance with recognized scientific principles and where it would be detrimental to the long-term satisfaction of subsistence needs. The addendum to the Staff analysis references the heavy snow fall this past winter that pushed deer on to the beaches in some areas of Unit 3. Had the December season been open last year, excessive deer mortality from hunting could easily have occurred so we are concerned about the cumulative effects of all these different activities; snowfall, a rebuilding population, habitat loss, and even though the -- you know, there is a need to really look and see what the research that's going to be done will reveal about the effects of this past winter's snowfall in Southeast.

Thank you, Mr. Chairman.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Go to the InterAgency Staff Committee for comments.

MR. BUKLIS: Thank you, Mr. Chairman.

The InterAgency Staff Committee noted that the Staff analysis for WP07-06 as prepared for review by the Southeast Council was a complete and accurate evaluation of the information and of the proposal, and that the recommendation of the Council at that time was consistent with ANILCA, Section .805(c). However, given the new information regarding winter conditions, the Federal Subsistence Board may wish to defer this proposal for one year.

As was noted, with the addendum material, winter 2006/2007 had one of the highest snowfalls on record throughout Southeast Alaska. Limited observations suggest that this year's high snowfall occurred throughout Units 1B and 3 but did not follow the same pattern as the deep snows recorded during the early
1970s. Forest Service Staff working with the Department of Fish and Game will conduct deer mortality and pellet group surveys this spring in these units and based on those results a more up to date evaluation of the effects of this proposal could be developed later.

Although the Council recommended a lengthening of the deer hunting season, based on the severe winter it may be prudent for the Board to defer this proposal for one year. This would allow the gathering and summarization of the data as I described and let Staff analyze the effects on deer conservation and allow for the Southeast Council to review these data and re-consider their recommendation based on the new information.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you. Board members open for discussion.

(No comments)

CHAIRMAN FLEAGLE: Bert Adams.

MR. ADAMS: Mr. Chairman. I just failed to, you know, include this in my comments earlier. But at the time that the Council, you know, was considering this proposal, we felt that, you know, the position that we took, you know, was proper but with new evidence coming out about the weather and so forth, I think that, you know, needs to be considered as you do your deliberations as well because you know that is still out there to do some research and study on before I think we could go any further.

So I just wanted to make that comment to you for when you go into your deliberations.

Thank you.

CHAIRMAN FLEAGLE: Discussion. Wini.

MS. KESSLER: I would like to make a motion.

CHAIRMAN FLEAGLE: Go ahead.

MS. KESSLER: I’d move to defer this proposal until the next regulatory cycle. If I can get a
second I'll explain a little more.

MR. CESAR: Second.

CHAIRMAN FLEAGLE: Got a second, go ahead.

MS. KESSLER: It's essentially the same comments that Mr. Adams was just sharing with us. When the Council considered this proposal, it really wasn't known how severe this winter would turn out to be and we still don't know the effects that this very harsh winter might have on the deer populations of this area. So I really believe the prudent thing is to defer the proposal and that will allow the gathering and summarization of data on the estimated deer winter mortality. We can analyze those data and this would allow Council to review the results and reconsider the recommendation in light of the new information.

CHAIRMAN FLEAGLE: Board discussion.

Judy.

MS. GOTTLIEB: Mr. Chair. Well, just sort of a procedural question. So maybe once your surveys and information are in and if there were not any signs of a significant decline, I guess the Council or others could ask for a special action for this Board to make some time later in the year then; is that correct?

CHAIRMAN FLEAGLE: Is that correct, Pete?

MR. PROBASCO: Mr. Chair. Ms. Gottlieb. That is, indeed, correct, the Board does have special action authority to make changes outside of the regulatory cycle.

CHAIRMAN FLEAGLE: Other comments.

(No comments)

CHAIRMAN FLEAGLE: I'm going to comment. I'm going to vote against deferring because I don't support the proposal, even with the proposed amendment.

My take on what has been presented here and I do give deference to the RAC's position but I do have a conservation issue with the fact that it sounds like the deer population in this 1B and Unit 3 is about maxed out at its utilization level currently. And even
with the elimination of the doubling of the bag limit,
we're still proposing to add a 25 percent increase in
time to the hunting season for the one portion in Unit 3.
And a review of the harvest data shows that we are
running roughly one deer per hunter and, again, it sounds
to me like we're at a pretty sustainable level there with
a lower population of deer than what we'd be happy with.

By increasing that season 25 percent, you
have an average of -- well, the range of hunters over the
last eight years has been 892 to 1,224, I think you could
potentially have a significant increase with that
extension of the season and I don't support that.

So I'm going to vote for the deferral
because even if this comes back I'm going to vote against
it. I guess that's a roundabout way to speak against the
deferral but that's where I'm at.

Other comments.

(No comments)

CHAIRMAN FLEAGLE: Question.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the
question, I meant.

(No comments)

CHAIRMAN FLEAGLE: It sounds like we are,
Pete, on the motion to defer Proposal 07-06, please poll
the Board.

MR. PROBASCO: Thank you, Mr. Chair. To
defer Proposal WP07-06.

Mr. Edwards.

MR. EDWARDS: Nay.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Nay.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.
MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Chair. Motion carries, four/two.

CHAIRMAN FLEAGLE: Thank you. Proposal 07-06 is deferred. We will now move on to Proposal 07-07, Dave Johnson.

MR. JOHNSON: Thank you, Mr. Chairman. Board. We're back to Unit 2 deer again. WP07-07 was submitted by the Klawock Cooperative Association, and requests changing the Black-tail deer antlerless hunting season to every other year or eliminate the hunting of antlerless deer in the unit completely.

The proponent expressed concern that the current Federal regulation, which allows harvest of female deer is having a negative effect on the overall deer population in Unit 2 and believes that the elimination of the antlerless deer season or hunting antlerless deer every other year would lead to an increase in the deer population and provide additional deer for subsistence users in the future.

On November 14th the Federal Staff met with the Klawock Cooperative Association and determined that eliminating the Unit 2 deer antlerless season was the priority for the Association's position, rather than every other year. The real issues include whether there is a decline in the deer population in Unit 2 and, if so, what role is being played in that decline by the harvest of antlerless deer and whether or not adopting the proposal would maintain increase or decrease subsistence opportunity, and also whether adopting the proposal would negatively impact subsistence users or other uses of deer in Unit 2.

The antlerless deer hunt in Unit 2 has been considered several times by this Board during the
2000, 2002, and 2004 regulatory cycles, and at that time it was determined there was no overall population concerns requiring elimination of the antlerless deer harvest in Unit 2.

The current regulation provides for five deer harvest from July 24th until December 31st with the stipulation that if the Forest -- if there is a decline, the Forest supervisor is authorized to reduce harvest to four deer based on conservation concerns in consultation with Department of Fish and Game and the Chair of the Southeast Regional Advisory Council.

The existing State regulation is for four bucks August 1 through December 31st. The Alaska State Game regulations permitted the harvest of antlerless deer from 1925 to 1978, that's Table 1. Between '78 and '95 antlerless deer were not legally harvested except 1987. There's currently no antlerless season in the Alaska State hunting regulations for Unit 2 and the current Federal regulation, which allows the harvest of one antlerless deer in Unit 2 was established in 1995.

Fish and Game and Forest Service Staff have expressed concerns for potential winter deer mortality throughout Southeast due to extreme high snowfall levels. Currently Unit 2 has received less snowfall and persistent snow accumulations than most of Southeast Alaska. However, local trappers and hunters have reported overall Unit 2 snow conditions do not appear to be severely limiting deer movement or winter feeding patterns. However, localized heavy snowfall conditions have been reported especially at higher elevations and on the north end of Prince of Wales Island.

The Forest Service and the Department of Fish and Game have collected deer pellet data since the early '80s, Figure 1. This long-term monitoring effort was designed to provide an indication of overall deer population trends throughout the region. Currently a study involving DNA analysis of surveyed deer pellets is being conducted on Prince of Wales Island to estimate deer population abundance and monitor trends.

Unit 2 has experienced a limited antlerless deer season in most years since 1955. At the present time Federal regulations allow subsistence hunters to take one antlerless deer between October 15th and December 31st. During the past 10 years, the
reported antlerless deer harvest has ranged from a low of 75 in 2004 to a high of 231 in 2000. Unit 2 deer hunter success rates from 2003 to 2005 have shown a slight increase from the 10 year average. Also the number of hunter days per unit deer effort declined from the 10 year average during those years which corresponds with and supports the slight increase in success rate. Harvest data from 2005 indicated a 63 percent hunter success rate and an average unit effort of 4.1 days per harvested deer.

The effects of the proposal. The adoption of WP07-07 would prohibit rural hunters from harvesting antlerless deer would occur on alternate years. There are eligible subsistence hunters who object to antlerless deer harvest for a variety of reasons.

The preliminary conclusion is to oppose the proposal. Variables such as road access, wolf and bear predation and weather patterns, levels of enforcement, public education and habitat changes are likely to impact the deer population and harvest levels much more than elimination of the antlerless season or allowing antlerless deer to be hunted every other year. The current information indicates the deer population across Unit 2 is imbalance with its habitat with areas reflecting stable or increasing deer populations in harvest and a few areas suggesting some level of decline.

The preliminary conclusion is to oppose the proposal. And, again, in 2006 and 2007 the winter on Prince of Wales Island in Unit 2 is experiencing a considerable amount of deer pellet -- I'm sorry, deer mortality surveys with the Department of Fish and Game. To date nine winter mortality transects have been conducted on Unit 2 and these transects average from zero deer mortalities to a high of six deer mortalities. At this time it is too early to make any assumptions or conclusions that this winter's mortality is equal to or higher than normal Unit 2 winter deer mortality. Upon completion of the winter mortality transects and Unit 2 deer pellet transects a further detailed report will be completed.

And one additional item, Mr. Chairman, as the Board knows and as the Board directed, the Forest Service and Department of Fish and Game have been -- this is now in the second year of the required harvest reporting for all hunters in Unit 2 and the current reporting rate for this year, which is not yet completed,
is 69.5 percent and that was of 2,612 hunters that picked up harvest tickets to hunt in Unit 2, 1,815 have returned those. We just want to say thanks to the Department of Fish and Game who's working to get this increased harvest reporting with the Forest Service biologist there on Prince of Wales Island and we should have further information for your later in the spring.

    Thank you.

    CHAIRMAN FLEAGLE: Okay, thank you.

Summary of written public comments. Bob.

    DR. SCHROEDER: Mr. Chairman. There are none.

    CHAIRMAN FLEAGLE: Public testimony.

    MR. PROBASCO: Mr. Chair. We have no public testimony for this agenda item.

    CHAIRMAN FLEAGLE: Regional Council recommendation -- oh, sorry, Bert, I'm looking over the wrong way, Bert Adams, please.

    MR. ADAMS: Just briefly, the Council does have concerns with the accuracy of reporting of the number of does taken and we are requesting that Staff examine the options to improve reporting. And we are requesting that they report back to the Council at the fall 2007 meeting in Haines.

    That's about all I have, Mr. Chairman.

    Thank you.

    CHAIRMAN FLEAGLE: Thank you, Bert.

Alaska Department of Fish and Game comments. Terry Haynes.

    MR. HAYNES: Mr. Chairman, thank you.

The proposal to reduce or eliminate harvest of does is designed to increase deer populations and to provide additional deer for subsistence users in future years.

The proposal is consistent with the State's management for sustained yield which allows the harvest of only four bucks. The Southeast Regional Council and Federal Staff oppose both options proposed in this proposal.
The Department supports removal of the antlerless deer season in Unit 2 as requested consistent with management for sustained yield. The Department would also support the alternative proposal to change the antlerless deer season to every other year in Unit 2 which would be an improvement over the current Federal regulations which are inconsistent with recognized scientific principles. The Department has long been on record as opposing the harvesting of does in Unit 2. The State's management rationale for opposing doe harvest in this unit is based on information that wolves and black bears in the unit effectively keep the deer population below the carrying capacity of the available habitat. Harvesting does when more deer can be supported only serves to unnecessarily limit the numbers of deer, which ultimately leads to fewer deer being available for human harvest.

Typically the State regulations reserve doe hunts for situations where the goal is to reduce deer numbers because of the likelihood of compensatory deer mortality where populations are at or near carrying capacity. The latter situation was the case in Unit 4 where deer occur at much higher level in the absence of wolves or black bears.

While harvesting of does throughout Unit 2 may not affect the unit-wide status or trend of the overall deer population, harvest concentrated in and around easily accessible areas where resident hunters typically concentrate most of their hunting will undoubtedly reduce local deer numbers and their availability. As an example, harvesting does along the Prince of Wales road system may not be an issue for the island population, in general, but harvesting road accessible does could greatly affect numbers and availability of deer in heavily traveled parts of the island. Similarly, deer numbers may be affected near human population centers because of hunter focus and access. This issue was illustrated in the Unit 2 Deer Planning effort when several hunters testified that they either could not find deer or were having a harder time finding deer in some of their favorite hunting areas.

Current regulations are not consistent with management of wildlife in accordance with recognized scientific principles and are detrimental to the long-term satisfaction of subsistence needs, which would be resolved by adoption of this proposal.
Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Terry. Questions for the State.

Gary.

MR. EDWARDS: Mr. Chairman. Both for the State or the Forest Service.....

CHAIRMAN FLEAGLE: Microphone.

MR. EDWARDS: In looking at the data it appears that the doe harvest has contributed over the last 10 years somewhere around 5.6 percent of the total harvest, what -- and either one of you could answer this or maybe both of you could, what would you anticipate would take place with regards to the harvest if the proposal to not to have a doe hunt was -- occurred, would that -- would we expect the total harvest to remain the same and that difference to be picked up by bucks or what would we assume might happen as a result of going to this hunt?

CHAIRMAN FLEAGLE: Dave.

MR. JOHNSON: Gary. That's a good question, Gary, the variables involved with that, though, present some questions in terms of where the does are being harvested, which is another reason why the current cooperative harvest reporting is so critical that we know where antlerless deer are being taken.

Number 2, there are considerable questions about both wolves and bears in terms of the amount of predation that's occurring throughout the island.

Thirdly, the information that we're getting from the beach mortality transects hopefully will provide some additional information regarding overall condition of the herd, particularly with respect to the does as well as deer in general.

So you're talking about an area in Unit 2 that's two million acres, so I think these other variables raise questions about whether or not you'd be able to see that depending on where the harvest would be occurring.
Thank you.

CHAIRMAN FLEAGLE: Other questions.

MR. EDWARDS: I wondered if the State had a response, too.

CHAIRMAN FLEAGLE: Terry.

MR. HAYNES: Mr. Chairman. Mr. Edwards. The State doesn't allow the harvest of does so I wouldn't speculate how that might affect Federal harvest.

MR. EDWARDS: Let me just kind of follow up that question. So what you were saying is this annual roughly 136 does that are harvested, we don't really have good data showing where they came from within the unit, so we don't know if they are more heavily taken along the road system or more deeper into the interior. If you had that data, because in the analysis it indicates that in general the populations are stable with some declines in some areas, and if the data would show that that harvest is occurring in those areas, either along the road system or where you feel you have some declines, would that change your sort of view or your recommendation?

MR. JOHNSON: I still don't think it would change the recommendation because of the total number.

CHAIRMAN FLEAGLE: It does say on the analysis on Page 117 that the majority of the antlerless harvest occurs near the road system with 21 percent of the antlerless in wildlife analysis area 1422 Staney Creek, Naukati, Sarkar, 18 percent in wildlife analysis area 1315 Kasaan, Thorne Bay, 10 percent harvested in wildlife analysis area 1421 Sweetwater Lake, Logjam Creek and the other 51 percent are well distributed across Unit 2, so we do have some distribution data but I don't know if that's one year or if that's average.

And maybe while we're thinking for the answer to that, I've got a question as well. The data that we do have for harvest data and this was provided by the ADF&G shows from 2003 to 2005 total deer harvest in Unit 2 increasing by a thousand animals in two years, and that was following a three -- four year decline from roughly the same level of harvest as 2005, I just wonder, do you have any idea what the harvest might look like for 2006? I realize that data isn't in but any preliminary
guesstimates based on, you know, anecdotal reports or anything else?

MR. HAYNES: Mr. Chairman. I've not discussed this with Staff in Southeast Alaska. It wasn't even something that occurred to me to see if they had any sense of what the harvest was doing this year compared to previous years, but it's certainly too early for us to provide hard data.

CHAIRMAN FLEAGLE: Okay, thanks. Yeah, it's really hard for me to make a decision based on the data we do have, I mean we have a hugely increasing harvest but not knowing what the population is really doing or what the harvest is in this last year, which has had a lot more snow than previous years. I understand that the proposal would take a conservative approach, which may be appropriate if that harvest increase is contributing to a decline in deer numbers, but I don't know that.

Anyway, those are just questions that I have and it doesn't sound like we're going to get a clear answer to. When we get into deliberations maybe we can discuss it further.

InterAgency Staff Committee comments.

Larry.

MR. BUKLIS: Mr. Chairman. The Staff Committee comments are on Page 123. The Staff Committee found the analysis for this proposal to be complete and accurate and the recommendation of the Southeast Council to be consistent with ANILCA Section .805(c) but went on to note that winter 2006/2007 conditions might be a factor to consider. However, the Staff Committee noted that the winter conditions likely are less extreme south such as in Unit 2. And I think Mr. Johnson spoke to the extent he could on what we know about those conditions.

CHAIRMAN FLEAGLE: Board discussion.

Wini.

MS. KESSLER: How many miles are there of roads in this area, is it about 3,000, something like that?

CHAIRMAN FLEAGLE: Dave.

MR. JOHNSON: Mr. Chair. Ms. Kessler.
It depends on your definition of a road but currently there are about 1,500 miles as I understand it of system and temporary roads that are currently on the system -- 3,000 is probably the -- closer to the number of roads that have been built and are either in some state of no longer being a road, grown in, water barred, but may still have a place on the land.

MS. KESSLER: But this average 136 females taken is spread over that area?

MR. JOHNSON: That's my understanding.

MS. KESSLER: Okay.

MR. JOHNSON: Also I don't have the current numbers but at one point, not all that long ago, about 70 to 80 percent of the reported harvest to the State was within a 10 WAA area which is basically the -- I don't know if we could bring a map up on the screen here for Unit 2, would show that that's basically the center portion of Prince of Wales. And also Zumiez Island and Heceta Island Kosciusko also all have -- are heavily roaded as well.

MS. KESSLER: Thank you.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Mr. Chairman, one more question. If we look a little more long-term, could one say that what's going to take place with the habitat in Unit 2 and further development is probably going to have more impact on what takes place with regards to harvest either by subsistence or non-subsistence users.

MR. JOHNSON: Thank you, Mr. Chair. Gary. A couple things. There's a significant effort ongoing right now for a significant amount of restoration work that's actually already started. We just had a presentation this past week from the Nature Conservancy along with several other potential partners on work that has taken place and then additional work that's planned. So the other factors include the high-speed -- not, high-speed, but the increased use from the new ferry system that's both on the north end and on the west side, you know, from a negative standpoint. From a positive standpoint, a lot of the original concerns that were raised about effects on deer and deer habitat have not materialized because the two long-term sales that were
driving a lot of the volume -- or the harvest -- the
timber harvest are gone, so in terms of those effects,
you know, they've somewhat gone away. But in the future
there will be some additional opportunity for more
cooperation with the Native corporations as well on young
growth restoration work that will be needed.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Just maybe a little
history refresher on the idea of taking antlerless deer.
And I assume this is something -- it looks like something
that the Federal Board passed before we formed the
stakeholder's group for Unit 2, but then I assume but
this is where I'd like some verification, that those
discussions continued during that stakeholder's group and
was part of the package that was developed by the group.

MR. JOHNSON: What was the question,
again?

MS. GOTTLIEB: I'm just looking to find
out if the stakeholder's group kind of vetted this
concept of being able to take antlerless deer.

MR. JOHNSON: The answer is yes.

CHAIRMAN FLEAGLE: More discussion.

(No comments)

CHAIRMAN FLEAGLE: I guess I'll jump in.
I'm really nervous about this deer population and the
trends. And I think that the intent of the proposal is a
good one, it's to try to control a problem before it
happens.

Looking at some of the graphs, now these
graphs are not typically -- well, anyway, they're not as
clear as -- I won't even say that -- what I can ascertain
from the graphs here is that we have had a huge increase
in the harvest over two years that we know of, you know,
obviously I know that these are estimated but we do have
an increase from 2003 to 2005 of a thousand animals, from
1,800 to 2,800. Looking at another graph on Page 118,
what I was looking for was hunter numbers and we don't
have that in the graphs, evidently we use here hunting
trips versus successful trips, okay, so the hunting trips
increased by a thousand. So not knowing what the trends this year are showing, even anecdotally, I can only assume that because the hunter trips have increased by thousand and the harvest have increased by a thousand that we could be potentially doing an overharvest situation here. And with this year's unknown snow data my immediate wildlife conservation action would be to put the brakes on now, be cautious and if we find in a couple of years that it was unwarranted, maybe relieve it.

But anyway that's where I'm leaning, and I'm just real uncomfortable about this situation with the data that we have.

Gary.

MR. EDWARDS: Mr. Chairman. I appreciate that. But I guess what I was trying to get at in one of my earlier questions is, is if we would do that, would that 136 does still get taken up, so would the harvest number really not change, instead of killing 136 does, they kill 136 more bucks and you have the same harvest. That's what I was just trying to understand what would actually take place on the ground, what affect would this have on the overall harvest. I don't know if you could automatically assume that it's going to reduce the harvest by 136 animals because you still have -- you can still go out and hunt, so if you don't get your doe, why wouldn't you be taking -- you just got to hunt a little harder and you can get a buck, so you're harvesting the same number.

Ultimately it'd come down to what the ratio would be. And if we're interested that we're taking too many then it seems to me that we ought to be reducing the bag limit maybe more so than anything else, right.

CHAIRMAN FLEAGLE: Well, I can see where you would assume that but we don't know, we don't have adequate data to make that assumption. I think that the first step is to protect your breeding stock. And by eliminating the antlerless you're at least taking a proactive step.

I mean that's the way I see it, anyway. I don't know if it would change the overall harvest and I don't even know if we have a dangerous harvest level. I'm just seeing effort has increased, harvest has increased and we don't know what the population is doing.
It shows that it tends to increase over the last couple
of years by the deer pellet densities but I just don't
have a clear -- maybe Dave does.

Dave, go ahead.

MR. JOHNSON: Mr. Chairman. Board.

There's no discernible long-term trends here with the
deer populations in Unit 2. One of the factors that
could be considered by the Board is that part of the
reason for the increased harvest and the increased
numbers is because this is the first time we've had
required deer harvest reporting in Unit 2. So prior to
that you had volunteer reporting and I can't speak to the
numbers that the State got back during the voluntary
reporting but we feel much better with the numbers that
we do have more reflective of what's been going on
anyway in the past.

We don't know that either right now,

but.....

CHAIRMAN FLEAGLE: It gets muddier as we
go. Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I
think when the State is facing a situation where we have
a multi-predator single prey situation like we do in this
unit, and we have also winter mortality due to deep snows
and we're facing a record snowfall this winter, we tend
to be conservative.

I think the management of this particular
population has been -- we've recognized that this
population is under carrying capacity and when we have a
population in that state, we typically don't have a
harvest of the reproductive segment of the population.
If we do it's usually very limited and for specific
reasons.

Thank you.

MR. OVIATT: Thank you, Mr. Chairman.

Yeah, I have real questions. I mean this does sound like
a fairly conservative proposal, I mean to go with a doe
hunt every other year. And we increased the hunt to five
deer last year and you can see that they pretty much took
those five deer too. And with the heavy snowfall, I,
too, am questioning whether -- why we shouldn't support this proposal.

Thank you.

CHAIRMAN FLEAGLE: At this time we don't even have a motion in front of us so just still kind of deliberating the data, so are we prepared to have a motion or do you have some more questions Wini.

MS. KESSLER: I was going to have more discussion but he's got his hand up so I'll wait and be recognized.

CHAIRMAN FLEAGLE: Dave.

MR. JOHNSON: Mr. Chair. Board. I would just reiterate in terms of what the data shows thus far this year, nine winter mortality transects have been conducted on Unit 2 during April. These transects have averaged from zero deer mortalities being detected to a high of six deer mortalities. At this time it is too early to make any assumptions or conclusions about the winter mortality.

And, again, I would just reiterate that the Forest Service and ADF&G Staff are out there as we speak conducting the mortality transects with the protocols established by the State and by the end of the spring here we should have much better data to support what effect the winter had on the deer in Unit 2.

CHAIRMAN FLEAGLE: Thank you, Dave.

MS. KESSLER: I guess I look at the numbers a little different.

You know, if we had evidence that this population was declining, the biologist in me would scream that the first thing you want to do is cease the antlerless harvest but we don't have any evidence that the population is declining. It appears to be stable. So from that standpoint we don't have evidence of a conservation concern.

As well, when I put the numbers in perspective, 136 female deer per year, considering there's about 45,000, 55,000 deer in the population, so we're talking about less than one-half of one percent of
the total estimated population that is harvested is antlerless, I mean that's a pretty small figure.

As well, you know, I -- this is not scientific data I have to offer you, but I was on Prince of Wales Island last weekend, I guess I went there expecting the worst case scenario deer-wise, and I've got to say that the deer I saw and the deer sign I saw just made me feel a lot better. So for whatever that's worth that personal vignette.

CHAIRMAN FLEAGLE: There's the anecdotal information we were looking for.

(Laughter)

CHAIRMAN FLEAGLE: Ralph Lohse.

MR. LOHSE: Mr. Fleagle. I've been looking at these charts too and I read something totally different into them. I'll take that amount of deer, that female amount of deer that's taken right there and just knowing what actually happens out in the field, I'm just wondering if what you have here is you have a reported doe harvest that you might have had the same take if it was a bucks only season but the does wouldn't have been reported, which is, as we all know, something that does happen out in the field, people do shoot a doe when they were trying to shoot a buck, and if there's no doe season it goes down as buck or doesn't get reported at all. So you're looking at, like she said, less than one percent.

But let's take a look at those graphs on Page 119, hunter days per deer, top one, the success rate goes up, we have less hunter days per deer taken, that's usually not a symbol of a declining population. Deer per trip, we have more deer taken per trip, that's usually not a symbol of a declining population.

Both of these graphs indicate to me that you've got a population that's growing right there. And like she was saying before about the doe harvest, which is within that small percentage, that small percentage could be the amount of does that would have been taken anyhow or at least a portion of it.

So I don't see where you have a conservation concern. I'm not saying one way or the other how to vote on this, but those graphs don't tell me a bad story, they tell me a good story about the deer
down there.

CHAIRMAN FLEAGLE: Let's take a break, 10
minutes, and then we'll come back and see if we can't get
a motion on the floor.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Good afternoon, we're
back in session. And we are now still proceeding with
WP07-07 with much discussion but no motions yet.
Wini.

MS. KESSLER: I'm ready to make a motion.

CHAIRMAN FLEAGLE: Okay.

MS. KESSLER: I move to support the
Southeast Alaska Regional Advisory Council and oppose
this motion. And if there's a second I'll explain
further.

CHAIRMAN FLEAGLE: Can I get a second.

MS. GOTTLIEB: I'll second.

CHAIRMAN FLEAGLE: Okay, we've got a
second. Judy seconded, go ahead, Wini.

MS. KESSLER: Okay. Again, as I already
pointed out, you know, we really have a population that
for all indications appears to be stable. We don't have
evidence of a declining population which means there's
not a conservation concern here. And, as well, Ms.
Gottlieb brought this up, we've had a really successful
cooperative deer planning exercise here and this
antlerless doe -- or antlerless deer hunt was part of
that package. And I really do not see a reason, based on
the information we have to date, not to support the
recommendation of the Southeast Council.

Thank you.

CHAIRMAN FLEAGLE: Other comments. Judy.

MS. GOTTLIEB: Mr. Chairman. I want to
thank Diane for bringing me a copy of the report on Unit
Deer Management, which was by the Deer Planning Subcommittee of the Southeast Regional Advisory Council, which, you know, one of the recommendations that they made was that there be no major changes to Unit 2 deer harvest management. So, you know, in respect to that and I think we have very excellent information on Page 120 on the effects of this proposal, and that includes the communication from, not only, I assume Forest Service but Fish and Game folks that show about up to 450 to 550 antlerless deer could be harvested without impacting the populations and that, as it says in the third paragraph, although the buck only harvest may alter the buck/doe ratios and age structure of the male segment of population it does not reduce the reproductive potential of the population.

So I'm very comfortable with what the Forest Service is telling us and what the Regional Advisory Council has recommended as well.

CHAIRMAN FLEAGLE: Other comments.

(No comments)

CHAIRMAN FLEAGLE: My initial concerns have been relieved, somewhat, by a comment that was laid on the record just prior to the break. And that there has been an effort to increase reporting, and that the results in apparent increase in harvest and apparent increase in effort may have just been a reflection of that increase in reporting. So I'm willing to let things go and see how this plays out into the future. My concerns aren't as high as they were, but it still does raise some red flags when you start looking at those bars jumping like that.

Anyways, any other comments.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the question. Question on 07, Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Proposal WP07-07 to reject the proposal as recommended by the Southeast Alaska Subsistence Regional Advisory Council.

Mr. Fleagle.
CHAIRMAN FLEAGLE: Yes.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Eastland for Mr. Cesar.

MR. EASTLAND: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: And Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Motion carries, six/zero.

CHAIRMAN FLEAGLE: Thank you, Pete. We now move into Proposal WP07-15 and move to Dave Johnson for the analysis.

MR. PROBASCO: 08.

CHAIRMAN FLEAGLE: Oh, no. Okay, we got a problem here, we got two different agendas and the old agenda shows 08 and it wasn't shown as one being moved to the consent agenda, the new agenda does not show 08.

MR. BUKLIS: Mr. Chairman. I noted this morning with the original agenda that 08 should be shown on the consensus agenda only and it was shown on both listings. But regardless of that point, that's all been superseded by the April 30th, 9:30 agenda, handed out about an hour ago and that one shows that you're correct, the next non-consensus proposal after No. 7 is No. 15.

CHAIRMAN FLEAGLE: Okay, Pete, catch up.

(Laughter)
MR. PROBASCO: I will.

(Laughter)

CHAIRMAN FLEAGLE: Fifteen. Dave.

MR. JOHNSON: Thank you, Mr. Chairman.

Proposal WP07-15 was submitted by Elijah Winrod and requests that the Federal regulations for wolf trapping season in Unit 2 be changed from November 15th to March 15th to November 15th through March 31st. The proponent expressed concern that the current Unit 2 State wolf trapping regulations are not aligned with State wolf trapping regulations.

The existing Federal regulation has no limit for trapping in Unit 2 and, again, the Forest supervisor may close the Federal hunting and trapping season in consultation with the Department of Fish and Game and the Chair of the Southeast Alaska Subsistence Regional Advisory Council when the combined Federal/State harvest quota is reached.

Additional changes that we encountered when we began the analysis is the requirement on the State side for retaining the radius and ulna of the left foreleg was dropped some years ago and so we're also requesting that that provision be dropped as well in the current proposal.

The existing State regulation also provides for no limit but the season is from December 1st through March 31st. The Alexander Archipelago wolf has been identified as a potentially distinct sub-species of the grey wolf. Conservation concerns over the short-term and long-term viability of wolf populations in Southeast Alaska led to a petition to list the Alexander Archipelago wolf as a threatened species under the Endangered Species Act. The decision by the U.S. Fish and Wildlife Service not to list the wolf was based, in part, on species specific conservation strategies placed in the Tongass Forest Plan revision and this identified three strategies to address viability concerns. One was deer habitat capability, secondly a roadless reserve system, and third a road density management where wolf mortality concerns exist.

Wolf harvest data from trapping and hunting in Unit 2 is obtained from the Department of Fish and Game from required sealing of wolf pelts and harvest
data from Unit 2 from '91 to 2005 is presented in Table 2. The harvest quota has been used by the State since 1997 to ensure that only a certain percentage of the estimated wolf population is harvested in Unit 2 in order to maintain population viability.

This proposal would likely result in an additional two weeks of opportunity for subsistence trappers to harvest wolves. Accepting Proposal WP07-15 will align State and Federal Unit 2 wolf trapping and wolf hunting season closure dates.

The preliminary conclusion is to support the proposal with modification to remove the four leg requirements. Again, extending the subsistence trapping season should not increase the total number of wolves harvested in Unit 2 because subsistence trappers also operate under State regulations and the State wolf trapping season is opened under March 31st. This proposal will decrease complexity and confusion in the trapping regulations by aligning closing dates of the State and Federal wolf trapping regulations. The combined Federal/State harvest quota currently at 37 percent of the harvest of the estimated population will close hunting and trapping seasons in Unit 2 once the harvest quota is reached.

Currently there are no wolf research projects ongoing or planned that would require subsistence users to collect the radius and ulna of the foreleg of a harvested wolf.

Some additional items that should be noted is that under State trapping regulations it requires trappers to place a sign identifying the trap locations. Trappers wanting to trap the additional two weeks after the Federal season is closed may have to travel considerable distance to meet the requirements and with gas prices being as high as they are it may be somewhat prohibitive. Also wolf trappers by nature tend to avoid visiting trap sites except to remove an animal or to remake the set. Increased human presence to place signs in close proximity to the sets increases potential for human scent and causing wolves to avoid the location.

Thank you, Mr. Chairman.

Questions.

CHAIRMAN FLEAGLE: Thank you, Dave.
(No comments)

CHAIRMAN FLEAGLE: We now go to the
summary of written public comments. Bob Schroeder.

DR. SCHROEDER: Mr. Chairman. We have no
written public comments for this proposal.

CHAIRMAN FLEAGLE: Public testimony.

MR. PROBASCO: Mr. Chair. We have no
public testimony for this agenda item.

CHAIRMAN FLEAGLE: And Bert Adams for the
Regional Council recommendation.

MR. ADAMS: Thank you, Mr. Chairman. Mr.
Johnson did a pretty good job of explaining the rationale
for this proposal, we do support it.

The requirement to turn in the left
foreleg radius and ulna bones was put into place to allow
study of Unit 2 wolf populations, and so that portion of
the study is completed and the requirement is no longer
needed to serve its purpose.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Bert.

Alaska Department of Fish and Game. Terry Haynes.

MR. HAYNES: Thank you, Mr. Chairman.
The Department opposes the proposal as written because
lengthening the season is inappropriate in view of the
sensitivity and concerns associated with the Alexander
Archipelago wolf in Unit 2 and the previous petition to
list the species as threatened under the Endangered
Species Act.

Statewide State regulations at 5 AAC
92.008.1 require the Department to limit the total
harvest of wolves in Unit 2 to no more than 30 percent of
the unit-wide pre-season population as estimate by the
Department.

Although not the preferred option, the
Department would not object to modification of the
proposal to open the wolf trapping season in Unit 2 on
December 1 and to eliminate the requirement in Units 1
through 5 that the foreleg remain attached to the hide
until the wolf is sealed. This modification would align
the Federal and State wolf trapping seasons in Unit 2.
The Department is advised that the proponent informed
Federal Staff that he does not oppose the seasoning
opening date being changed from November 15 to December 1
if the closing date is extended from March 15 to March
31.

No evidence is presented in the Staff
analysis justifying the need to extend the Federal season
by two weeks to provide a meaningful preference for
Federally-qualified subsistence users. Additionally
opening the Federal season on December 1st instead of
November 15th will provide greater value to harvested
wolves because pelts are of higher quality in December.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Terry.
Questions for the State.

(No comments)

CHAIRMAN FLEAGLE: InterAgency Staff
Committee comments. Larry.

MR. BUKLIS: Mr. Chairman. The Staff
Committee didn’t have any specific comments other than to
find, again, that this analysis was complete and
accurate, and that the recommendation of the Southeast
Council was consistent with ANILCA Section .805(c).

CHAIRMAN FLEAGLE: Thank you, Larry.
Board discussion. Gary.

MR. EDWARDS: Mr. Chairman. I guess a
couple questions for the State. The process of
determining when the 30 percent threshold is reached is
what?

CHAIRMAN FLEAGLE: State. Terry.

MR. HAYNES: Mr. Chairman. In recent
years the Department has had a research project going on
in Unit 2 that was estimating the number of wolves that
were present so there would be a population estimate that
was available to use to determine what the 30 percent
would be.

MR. EDWARDS: I understand that. I guess
what I was asking is when you know you reach that, is
that just based upon the sealing information and is there
some lag time between that and actually then closing the
season, is that what you do, close the season when the 30
percent is reached?

MR. HAYNES: That's the intent.

MR. EDWARDS: Okay. So now I guess what
do we do when the 30 percent is reached, is the season on
wolves closed once that is reached by both -- under
Federal as well as under State?

CHAIRMAN FLEAGLE: Dave Johnson.

MR. JOHNSON: Mr. Chairman. Gary. Yes.
Again, through consultation Forest Supervisor, ADF&G and
consultation with the Chair of the Southeast Regional
Advisory Council closes the season once it reaches the
threshold of 30 percent.

MR. EDWARDS: Thank you, David. And then
one other question for the State. You had a -- you said
you could go along with kind of a modified proposal and
that was backing off the 15 days on the end of the season
and adding them to the front of the season; isn't that
correct, and what does that do for you in your overall
concerns about trying to keep the harvest down?

CHAIRMAN FLEAGLE: State.

MR. HAYNES: Mr. Chairman. We would
prefer that option because that would -- you know, the
proponent wasn't asking for additional time according to
the information we have, the proponent wanted to shift
the season dates. So we think that's the preferable
option. And it would correspond with the State seasons
if we had a December 1 to March 31 season. So that would
be our preference.

CHAIRMAN FLEAGLE: Other questions.

Discussion.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Okay, Judy and then
I'll come back to you Dave -- Judy.

MS. GOTTLIEB: No, go ahead.
You look on Page 161 in terms of reaching this harvest threshold you'll see by year the number of wolves that have been taken and I would just note that very few years has the quota been reached, if at all.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thanks. I guess it always seem like we get into what did the proponent mean or what did they originally say but at this point, I believe, Keith can help me out here if this is not right, I mean we're dealing with what the Council has recommended and so that kind of needs to be the focus of our discussion here.

CHAIRMAN FLEAGLE: And contained therein is a motion. Wini, are you ready for one.

MS. KESSLER: I'm ready.

CHAIRMAN FLEAGLE: Okay. Go ahead, please.

MS. KESSLER: I move to adopt WP07-15 with modification as recommended by the Southeast Alaska Regional Advisory Council, and that modification is to remove the foreleg requirement. And if there's a second I will explain further.

MR. CESAR: I'll second it.

CHAIRMAN FLEAGLE: Okay, we got a second by Niles. Welcome back. Go ahead.

MS. KESSLER: Well, quite simply the Council's recommendation is consistent with ANILCA Section .805(c). There really is no reason for conservation purposes to oppose the proposal and, further, because there is a guideline harvest level or quota established of approximately 30 percent of the wolves on Prince of Wales every year, this change in regulation would not result in any wolves being harvested beyond that guideline level.

CHAIRMAN FLEAGLE: Further discussion.

(No comments)
CHAIRMAN FLEAGLE: Sounds like you got a winner there, Wini.

Everybody ready for the question. Question's recognized. Pete, on the proposal, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Proposal WP07-15 to adopt with modification consistent with the recommendation of the Southeast Alaska Subsistence Regional Advisory Council:

Any wolf taken in Unit 2 must be sealed within 30 days of harvest.

Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Nay.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Motion carries, five/one.

CHAIRMAN FLEAGLE: Thank you, Pete. And before we dispense with the Southeast Alaska crew, Pete.

MR. PROBASCO: Mr. Johnson, I believe we're done; is that correct?

(No comments)

MR. PROBASCO: Are we done with
MR. PROBASCO: A while back I got this email from a gentleman that sometimes when he's on vacation you're not sure if he's serious or not but we found out that Dr. Schroeder has announced his retirement from Federal service to occur sometime this summer and Mr. Schroeder, Dr. Schroeder, on behalf of the Board, we'd like to recognize your work not only as a Council coordinator, which unsolicited comments from the Council members, greatly appreciate your service, but also as a Forest Service Staff anthropologist. You bring a degree of expertise from your past, and add to the science, that's greatly appreciated on this Board. I think you've been here almost seven years with our program and with the Federal Subsistence Program and we appreciate your dedication.

I know that your colleagues in the near future plan on the opportunity to get to roast you and Mr. Schroeder we wish you the best on your motorcycle trips and hopefully you'll be able to get that snow chariot one of these days.

Dr. Schroeder, thank you.

(APplause)

CHAIRMAN FLEAGLE: Comments.

DR. SCHROEDER: Well, just thanks very much and I've truly enjoyed my time with the Federal Subsistence Program, especially getting to know the Staff in Anchorage and the other people who work with the program. And then, in particular, just the opportunity that it's given me to get some perspective on what's going on in rural Alaska, both in my home region in Southeast Alaska, where I know I'll continue to interact with my friends down there, but also to have briefer contacts with folks from other regions around the state and I really appreciate the super volunteer work that people are doing to make this program a success.

And, finally, we do get balled up in
1 regulatory decisions, as we should, and in policy
2 questions, but I would point out that something is
3 working in the program and that from my perspective, and
4 working on subsistence for a couple of decades now,
5 somehow or another, possibly against the odds, things
6 seem to be alive and well in rural Alaska.
7
8 So I thank all of you for that.
9
10 CHAIRMAN FLEAGLE: Thank you, Bob. Let's
11 take a brief stand down -- okay, before we do that, let's
12 turn to Bert Adams.
13
14 MR. ADAMS: Thank you, Mr. Chairman. I'd
15 just kind of like to publicly also acknowledge the value
16 that Dr. Schroeder has provided, you know, to the
17 Southeast Regional Advisory Council. I really did not
18 fully understand the importance of a coordinator until I
19 became the Chair. Now, we are all volunteers and we
20 don't get paid for what we do although we do spend a
21 tremendous amount of time, you know, with preparation for
22 coming to meetings like this and also, you know, for the
23 Regional Advisory Council meetings, and that person is
24 very, very important, and I hope that his replacement
25 will be just as good as he is because he has provided me
26 with all of the information that I have been sharing with
27 you, you know, over the last couple of times that I have
28 been at your meetings. And being able to put those ideas
29 and concepts together, you know, is very, very important
30 and to be accurate is really crucial.
31
32 And I just wanted to let you know and Dr.
33 Schroeder know how I appreciate the great work that he
34 has done for us.
35
36 Gunalcheesh. Gunalcheesh.
37
38 CHAIRMAN FLEAGLE: Thank you. All right,
39 let's step down just briefly to allow the Staff change
40 and we'll come back in five minutes.
41
42 (Off record)
43
44 (On record)
45
46 CHAIRMAN FLEAGLE: Good afternoon, we're
47 back in session and we now move to the Southcentral
48 region of Alaska, Proposal 07-16a and we have new Staff
49 at the table and we'll call on Donald Mike, introductions
50 please.
MR. MIKE: Donald Mike, Council coordinator.

MS. WILLIAMS: Liz Williams, anthropologist, OSM.

MR. RISDAHL: Greg Risdahl, wildlife biologist, OSM.

CHAIRMAN FLEAGLE: Okay, welcome. Go ahead and give the Staff analysis for 16a please and is this Liz that's going to start out.

MS. WILLIAMS: This is Liz Williams.

CHAIRMAN FLEAGLE: Okay.

MS. WILLIAMS: Proposal WP07-16a submitted by the Ninilchik Traditional Council requests a customary and traditional use determination for black bear in Unit 15 for Ninilchik residents. Currently there's no Federal subsistence priority in Unit 15A and B for black bear. There is a customary and traditional use determination for black bear in Unit 15 for residents of Port Graham and Nanwalek.

When the Federal Subsistence Management Program took over management in 1990 on Federal lands the State's customary and traditional use determinations were adopted but there were no State subsistence regs, really, on the Kenai Peninsula because they consider it a non-subsistence area and I'm talking about the road-connected part. In the beginning for black bear, because there was no determination, the regs read all rural residents were eligible to hunt black bear.

Eventually the Federal Subsistence Board had to address customary and traditional uses for large land mammals on the Kenai Peninsula and this started in 1994. It was deferred but it was addressed in May of 1996. And what happened is there was a proposal, 22, submitted by the Kenai Peninsula Outdoor Coalition, Chaired at the time by Elaina Spraker that specifically requested a subsistence priority or a customary and traditional use determination in 15C for Port Graham and Nanwalek only. This proposal passed and when it did, it led to the no determination status for Ninilchik and Seldovia to become a no subsistence status, which meant they didn't have a C&T. But the Board made that decision with very little information. They had a huge backlog of
proposals at the time, they had -- to show their
deliberations to all the RACs because the Kenai Peninsula
C&T determinations were so contentious and so there were
a lot of delays, there was a lot of rush work, also
Ninilchik moose was really the priority at the time. And
so several people have asked me, well, how did this
happen and why did it end up that way and what does it
mean as far as Ninilchik and Seldovia.

I'll read to you the May 3rd, 1996 Board
transcript and it was Dave Allen who sort of summed up
the fact that they were leaving the door open for
Ninilchik and Seldovia if more information became
available in the future, and he was the Fish and Wildlife
Representative on the Board at the time, and he said:

You know, I guess we've recognized this
issue before that there may be other
communities that might be eligible, but I
think we've also recognized that when
information is brought to us that
indicates such a determination is correct
for some communities, we have acted for
those communities, understanding that
should other information become available
that other communities are also eligible
and that the Board could consider
information in the future.

We also have to remember that Port Graham
and Nanwalek were not in the State non-subsistence area,
there were a lot of studies done on these places by the
Division of Subsistence, whereas Ninilchik there were
virtually none. So there just wasn't a lot of good
information for the Federal Staff to deal with at that
time.

I'm sure most of you know the history of
Ninilchik probably better than your own home town at this
point.

(Laughter)

MS. WILLIAMS: But I just want to say
that there's some key points I'd like to bring up.

Ninilchik was founded in 1847 in an
already inhabited part of the Kenai Peninsula, and we
know the Kenaitze were there, and who came were Russian
Aleut or Russian Alutiiq Creole's, and all three of these
cultural groups that came together, the Kenaitze, the
Russians and the Alutiiq and the blended people that were
part of that group all have a history of bear hunting and
harvest. There are no black bear on Kodiak but people
were used to eating bear, it wasn't out of the realm of
possibility at all. And there was a lot of contact
between the Kenaitze and the people of Ninilchik. In the
early census data, they are described in 1890 as
inhabited by 50 Russian Creoles and a small number of
Natives of the Dena'ina Tribe, they were described -- or
they were enumerated as 12 White, 53 mixed and 16 Indian,
so like most cultures, the culture of Ninilchik is a
blend of these, and also the subsequent people that came
to Ninilchik later.

As you go through this analysis, you'll
see a lot of examples of first Russian explorers or
comp any workers and then later American accounts, and
they don't talk about bear a lot but they all mention it.
And one thing we have to look at, as far as Ninilchik's
culture, is that they were definitely a subsistence-based
culture. The Russia America company wouldn't have been
able to do anything if they didn't live off the land
because they couldn't get enough supplies.

The local people adapted by harvesting or
they didn't adapt, they were forced to harvest furs for
the Russians but they also became involved in their own
trapping enterprises, later mining was a part of the
subsistence economy at Ninilchik, and most recently
commercial fishing. And what we need to keep in mind is
that all three of these, or really all four of these
economic pursuits are pursuits that caused people to move
all over the place, you know, they didn't just hang out
by Ninilchik, they were up at Susitna Station, they were
across the Inlet, they were all over the place, whether
they were just subsistence harvesting, trapping, mining
or commercial fishing. And so when we think about
Ninilchik's harvest history they were eating -- well,
they didn't have roads, but to say so, on the road, while
they were doing all these things as most people who were
indigenous to Alaska always did. They didn't always eat
the same thing, they ate what came to them.

So when we look, sort of reminiscent of
the fish proposals, too, there wasn't a specific closure
like the road in 1950 but from a Ninilchik person's
perspective you might see the road coming but it goes to
a narrow point for you because as the road, maybe from
Anchorage showed, a widening area for people, for
Ninilchik it started to narrow things because there were private lands, public lands, new regulations, the moose refuge, all these things that suddenly started putting boundaries where maybe they didn't have any or the boundaries were different.

So that's kind of the historical perspective I like to look at when I think about this.

As I said before there were a couple of Russian accounts that noted people eating bears and harvesting them. There was an American who came through in about 1887 who talked about people going into the mountains, all over the interior to harvest bear and other food, and also the uses of bear for bedding, for snowshoes and then we come to some more recent stuff.

Grassim Oskolkoff, a past president of Ninilchik Traditional Council, sent a letter in '92 to Curtis McFee, the Chair of the Federal Subsistence Board, and he listed the subsistence uses by Ninilchik residents, and he said regarding bear, bear is only hunted when dire need in any part of the year with pits and spears -- in pits with spears and the meat and hide used. Later he testified to the Federal Subsistence Board in 1995 and he talked about going into the Caribou Hills and people looking for young black bear as a delicacy and going up into the Caribou Hills is important for several reasons. It's Federal lands, it's part of the Refuge, most of it, but it's a very traditional hunting pattern of Native Alaskans to go up into the mountains, maybe on foot, harvest upland game, which a lot of people say taste better because it doesn't eat out of the rivers and then float your quarry down because you have this Deep Creek or some other river that takes you right back to your home.

There's a book called Agifina's Children by Wayne Leman, son of Nick Leman, brother of Loren, of Ninilchik and it's a family history or chronicle of the original people of Ninilchik, and throughout this book there are pictures of all the things that Ninilchik people have done including lots of fishing and moose pictures, there's also a picture of a bear, you can't tell if it's a black or brown, at least I can't. But it's probably in the '50s or the '60s, the guys have on lace-up boots with brace buckles and they're holding up a bear. Another thing, when you're looking for community-wide use pattern I just found by accident a Homesteader's Handbook which was prepared by the Ninilchik Parent...
Teacher Association in approximately 1951 according to Southcentral RAC member Blossom who had it on his shelf when I called him. But there's a recipe for bear ribs and there's also directions for canning meat and there's a drawing of a moose on one side and a bear on the other. And so it's not explicit but it's pretty clear that people were canning bear meat.

And now I'll just go quickly to recent subsistence studies because there just wasn't a lot of information, again, like I said for the Board in '96 when they made their decision, and so there are two Subsistence Division studies and two Ninilchik Traditional Council studies that I'll talk about. Two of each were already available in '96 and two came after. The commonality between all four of these studies is that Ninilchik residents talk about competition and increasing regulation as an impediment to their subsistence harvests. In 1982/1983 Subsistence Division did a study, Technical Paper 106 and they interviewed people or they surveyed people, rather, in Kenai, Homer, Ninilchik and Seldovia. There were an estimated 217 households in Ninilchik at the time of the study, the sample size was 11 percent of the community or 24 households, a very small sample. This study indicated no use of black bear during the study year of '82/83. The author noted, though, there appeared to be no stable seasonal-round and harvest quantities were relatively low, however, with such a small study population the representativeness of the findings were difficult to ascertain.

In 1998 Subsistence Division did another study, it's Technical Paper 253 and this information was not available to the Board in '96, and they looked at the communities of Ninilchik, NorthFork Road, Fritz Creek, and Nikolaevsk from the calendar year of 1998. There were 400 households in the study area at this point and it included the Happy Valley CDP, census designated place, and Clam Gulch in addition to Ninilchik. And this sample was larger and much more representative, it was 25.3 percent of the community or 101 households. This study showed, once they took the same size and expanded the numbers, that Ninilchik probably harvested about 12 black bear that year. It showed that five percent, approximately 20 households within the entire community of 400 households of Ninilchik residents used black bear, seven percent, approximately 28 tried to harvest it, three percent, approximately 12 households of 400 harvested it and two percent, approximately eight percent of households of 400 received it and one percent,
approximately four households of 400 shared it. In addition to harvest data, residents were asked about the location of their harvest, and I'm on Page 177. In Table 63 in that Technical Paper it showed that one percent, approximately four households of 400 reporting hunting black bear in Unit 15B within the Kenai National Wildlife Refuge, five percent approximately 20 reported hunting in Unit 15C outside of the Kenai National Wildlife Refuge and one percent approximately four households of 400 reported hunting black bear elsewhere. There were no other black bear hunt locations noted in this table by Ninilchik residents.

So just to repeat these date were not available, and it's a small amount of use but when you look at a subsistence repertoire of a community, especially a coastal community like Ninilchik that gets a lot of its wild food from the sea, everything's not used every day, a bear can be a supplemental food and still be a very important subsistence food.

The two studies by Ninilchik Traditional Council were very different from the Subsistence Division studies, they were a very targeted group of long-time tribal residents, as well as non-Native residents of Ninilchik who had lived there for a long time.

And the first one was done in 1994 and it included 26 households and they were supposed to talk about their lifetime harvest recollection of everything, and so the time data from that survey was 1994 to as far back as people could remember. The '94 surveys showed that approximately four households out of the 26 sampled used black bear, four tried to harvest, eight households received it and approximately eight households shared it. They reported attempting to harvest black bear at some point in their lifetimes in all units of 15.

In 1999 the survey sample included just 21 households similar, though, group of people, the targeted sample to the '94 survey. And they showed that 32 percent approximately seven households of the 21 sampled used black bear, 32 percent approximately seven households of 21 tried to harvest, 32 percent approximately seven received black bear and 32 percent approximately seven shared black bear.

When all of these C&T determinations in
the early '90s were going on, Alaska Legal Services took affidavits from 11 people in Ninilchik, one person of 11 that were spoken with reported taking a bear, presumably a black one.

We also looked at the Department of Fish and Game bear sealing database and this is just one piece of the data we should consider when looking at C&T. This database is not designed for a C&T determination, it doesn't show harvest effort, which, I think, when you're looking at populations as you just saw in that deer thing in Southeast, you really need to have both kill data and effort data to interpret what's going on with the population. So if you turn to Page 181 you can see what we did with the map there, again, Ninilchik residents take most of their black bear closest to home on State land, but there do appear to be black bear takes in other units in 15 -- or subunits of 15 and some of these appear to be comprised primarily of Federal lands. So if you look at 15A we divided the units into Uniform Coding Units so we could narrow the harvests better, the ones that this database does show and we note that it doesn't show them all. I don't really understand why but the Subsistence Division data showed 12 bears harvested in '98 and this sealing database shows just one, but I think you can see the distribution -- is that clear to everybody what we did with that map?

(No comments)

MS. WILLIAMS: So, again, when we look at this, it shows that there are bear taken on Federal lands, the majority are on State land, but they're harvested throughout the Peninsula by this community.

In the most recent Southcentral RAC meeting, Doug Blossom, who is a Southcentral RAC member talked about his life on the Kenai Peninsula, I think he moved there when he was 12 and I don't know how old he is now, 60-ish, but anyway, he said:

I've lived on the Kenai Peninsula about 60 years, we used to think nothing of shooting a brown bear or a black bear and, of course, you know, -- well, he goes off about brown bears, but I think last year's take of black bear was something like 450 or 420, something in 15 and 7. And personal history from me, back in the early '50s any black bear
that I ever took was usually up behind Tustumena Lake up on the Bench where blueberries. I was up sheep hunting and we'd take black bear for camp meat. In more recent years I've not taken a black bear, I've never sealed a black bear. That's just personal history. But the black bear that I have seen shot in the lower Kenai in 15C normally are shot above timberline and Caribou Hills where there's the berry crop.

So just to sort of reiterate what I've said before, black bear's not the most widely used resource in Ninilchik, however, it's part of the diversified subsistence repertoire of resources harvested in its community.

The additional studies on Ninilchik customary and traditional uses that have been conducted since the Federal Subsistence Board first made customary and traditional use determinations for black bear on the Kenai Peninsula in 1996 have added new information that indicates they're harvested in small numbers but it's clear that they have been and continue to be harvested in Unit 15 by Ninilchik residents for subsistence.

Thanks.

CHAIRMAN FLEAGLE: Thank you, Liz.

Questions.

MR. EDWARDS: Yeah, Mr. Chairman.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: I have a couple. I guess first of all I'm trying to understand in this proposal and in your analysis, are we talking about Ninilchik or are we talking about Ninilchik and Happy Valley and if we're talking about Happy Valley are we talking about all of Happy Valley or part of Happy Valley or what is it that we're talking about so that when we ultimately pass something will we have a good handle on who it will affect and who it doesn't affect?

MS. WILLIAMS: Yes, Mr. Chair. Mr. Edwards. We have been working internally on a memo to define this thing and what we've done is worked with the Refuge and looked at the moose residence eligibility
requirements for the Federal moose hunt and Helen's passing around a map that shows Falls Creek Road as the northern boundary and the Starichkof Radio Tower as the southern boundary which does include Happy Valley. I might have Helen speak more about it, it used to be that the Ninilchik CDPs were the boundary but with the recent census data the Ninilchik CDP boundary's have changed and they're different from what we used to describe as the exact CDP boundary.

But I understand that what happens with the moose hunt is that people go to the Refuge, and show on a map where they live and the Refuge either does or doesn't issue a permit based on the exact location of their residence.

MR. EDWARDS: Well, given that we have the Refuge here, they may also want to speak to that. But I guess from what you said, then, there would be some people who say that they live in Happy Valley that would be considered rural residents and some who live in Happy Valley would be considered non-rural?

MS. WILLIAMS: I don't think that's the case, I think it is in Ninilchik, though. I'm going to have Helen speak to you on this.

MS. H. ARMSTRONG: Helen Armstrong, OSM. What happened is that this -- we've been distributing moose permits since the mid-90s, I think, and these boundaries were created, the rural boundaries came from 1990, and it had been that people living within the CDP of Ninilchik but in 2000 the Census Bureau changed the CDP boundaries, so there are some people who may call themselves members of Ninilchik who actually live in a non-rural area and that happens up on the Falls Creek Road where you see the northern boundary up there. As far as we know it's just a couple of people, but it has to do more with the rural, non-rural boundaries than it does with the Ninilchik boundaries, if people are just living in the non-rural area.

MR. EDWARDS: Okay. So with that said, do we have definitive number of the number of households that would be affected in this proposal, and I guess the reason I ask that is that, you know, we throw around a lot of these studies used percentage of households and, you know, they do the survey and then they extrapolate it to a larger number, and if we've been dealing with the smaller number then you're going to get a larger
percentage, but, you know, is it 400 households or is it
700 households and I'm just trying to get at that so we
can put some of these studies in proper context.

MS. H. ARMSTRONG: I think the Refuge
might have a better handle on how many people live in the
non-rural area, but I think we're talking about a handful
of people, if that, so that you can -- the people who
live in Happy Valley and Ninilchik, and I don't know how
many households that is off the top of my head, it's
around 1,200 people, are the people we're talking about
who would qualify.

MR. EDWARDS: So then when we just use
some examples like when we're talking about 400
households, what 400 are we referring to in that case?

MS. WILLIAMS: Yes, Mr. Edwards, let's
see, that was, I think the second Division of Subsistence
study, which did include Ninilchik CDP and Happy Valley
CDP. I tried to really clearly write it out so let me
look and I will see.

MR. EDWARDS: Again, then why wouldn't
that be 1,200 households instead of 400.

MS. H. ARMSTRONG: No, that's 1,200
people.

MR. EDWARDS: 1,200 people.

MS. H. ARMSTRONG: Yes.

MR. EDWARDS: Roughly 400 households.

MS. H. ARMSTRONG: Yes.

MR. EDWARDS: Okay.

MS. WILLIAMS: Right. The 1998 Division
of Subsistence study includ -- there were 400 households
in the study area, which included Happy Valley CDP and
Clam Gulch in addition to the Ninilchik CDP. And the
sample size of that study was 25.3 percent of the
community of 400 households. Is that clear?

MR. EDWARDS: Yeah, as long as the -- so
the 400 households includes both Ninilchik and some folks
-- a majority of folks that consider themselves living in
Happy Valley, I guess is what you said?

MR. EDWARDS: 1998, okay. A couple more questions if I may, Mr. Chairman.

I was looking at the study that was done by the Ninilchik Traditional Council, and right at the ends of that it says that the folks were identifying lifetime use identified 15, 15A -- well, all of 15 where they had hunted over -- do you know if they identified any other units, such as maybe Unit 16 or Unit 7 or did we just put those units because that's what this proposal's about?

MS. WILLIAMS: Mr. Chair. Mr. Edwards. Mostly it was 15. There were a couple of people who referred to Unit 8, which is Kodiak, and it may be related to commercial fishing but there were, I think, some people that had gone to Unit 8 -- no, I may be confusing that with -- sorry, that's brown bear, I'm getting these two confused. These were the only ones I remember seeing but I might have just written these down because they were related to this proposal. I would have to check those surveys again, I'm sorry, Unit 8 doesn't have black bear.

MR. EDWARDS: Okay. Just one other, kind of as a side note, as I was running all these percentages, it seemed interesting where it said that 32 percent of the folks said that they received black bear but only 14 percent of people said that they used black bear, I don't know if that means that people received it and didn't use it or what or if I'm just looking at the percentages wrong, but they just seemed a little interesting in reading it.

Another question on the Alaska Legal Services, why did it's survey seem to kind of differ from both the State's and the Tribal Council in finding only one percent -- or one of the households of what they surveyed had expressed interest, although that is interesting that it coincides actually with the sealing data in 1991 so maybe those are the ones that got the only bear that apparently was taken.

MS. WILLIAMS: Mr. Chair. Mr. Edwards. That was just 11 people that gave affidavits. I'm not sure of the circumstances surrounding who was chosen to give an affidavit and who wasn't, but it was, essentially at the time that all of those C&T determinations for the
Kenai Peninsula were being worked on and I think Alaska Legal Services, in preparation for litigation, got whoever would volunteer, I'm imagining, I don't know. So it was just 11 people.

MR. EDWARDS: Thank you.

CHAIRMAN FLEAGLE: Other questions. Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. In your statement you said something to the effect that the Department of Fish and Game sealing data doesn't show harvest effort which should be a part of this determination, can you clarify that for me, please?

MS. WILLIAMS: Yes, Mr. Chair. Mr. Taylor. When -- I think when there is a permit hunt people fill out a permit before they go hunting and so you have an idea of how many people are a field, as we saw in that Southeast proposal where you could see hunter days and you could correlate it with kills, and I don't think that that data for black bear on the Kenai Peninsula are gathered, there aren't not permits, is that -- my colleague Greg Risdahl is doing the biological analysis and he can answer that better than I can. But there is no permit data so we don't have a lot of hunter effort essentially is what my conclusion is.

CHAIRMAN FLEAGLE: Go ahead, Ken.

MR. TAYLOR: I guess my question then is since none of your C&T determination regulations even address hunter effort but address consistent patterns of use why hunter effort would be important in making a C&T determination.

MS. WILLIAMS: Mr. Chair. Mr. Taylor. In response to some of the community comments about competition which, you know, it could mean a lot of different things, we would know how many people maybe are trying but are not actually harvesting. It would be a way to show how people are going out to maybe getting something that they don't for whatever reason.

I used to work for Subsistence Division and the surveys are always set up where, did you use it, did you try to harvest it, did you harvest it, did you share it, and it's a little bit different than just saying did you get one because then you can see the
effort involved, perhaps in pursuing something that you
don't get or maybe you get it from somebody else so it's
a more qualitative way of looking at the harvest data.
And like I said, with that Southeast proposal I just
think that if you know how many people are going out
there and you can correlate it with how many people are
actually harvesting and how many days they are applying
to their attempt to harvest, you get a much more
qualitative well-rounded picture.

MR. EDWARDS: Mr. Chairman, I had one
more question, if I may.

CHAIRMAN FLEAGLE: Go ahead, Gary.

MR. EDWARDS: On the harvest data that
you have on Page 181, do you know how many of those are
defense of life and property as opposed for taken for
subsistence purposes?

MS. WILLIAMS: Yes, Mr. Chair. Mr.
Edwards. Thank you, Mr. Edwards, that's a good question.
We would have to call the biologist and specifically find
out. The database that we have doesn't really show to us
which way that might have been and I would very much be
sure that some of these are DLPs. We talked to the
biologist in regard to the brown bear sealing database
and a lot of those that we saw as harvests were actually
DLPs because they were taken in years when there was no
season.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

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

MR. MIKE: Mr. Chair. There are no
written public comments. Thank you.

CHAIRMAN FLEAGLE: Public testimony.

MR. PROBASCO: Mr. Chair. We have no
public testimony for this agenda item.

CHAIRMAN FLEAGLE: Regional Council
recommendation. Ralph Lohse.

MR. LOHSE: Thank you, Mr. Chair. As you
know the Southcentral Regional Council supports Proposal WP07-16a.

As requested by the community of Ninilchik our Council, after considering the information provided by the Staff, and the information brought forward by the Ninilchik Traditional Council and provided by the information and anecdotal stories that were given to us by many Ninilchik residents who came forward in public testimony, we found that the community of Ninilchik has a longstanding harvest and customary and traditional use of black bear and so we believe this proposal should be supported.

CHAIRMAN FLEAGLE: Questions.

(No comments)

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Let's see, who am I hearing?

MR. PROBASCO: Mr. Lohse.

CHAIRMAN FLEAGLE: Oh, Ralph, go ahead.

MR. LOHSE: I have just two more little things that I would like to give you just to give you an idea as to why we came to that and these are by two of our different Council members, and I'm just taking them out of the testimony we had at the meeting or the questions we had at the meeting.

The first one's by Gloria Stickwan, and she says:

I just want to say that customary and traditional use is based on historical use. It's not based on numbers, it's based on historical use. I believe that Ninilchik has used bears, brown and black bears, I don't have any question in my mind that they do.

And Ms. Waggoner also said:

I also support the finding for customary and traditional use for Ninilchik.

They've shown a long-term use, you know,
low numbers specific location reporting
or the actual reporting of numbers and
the actual reporting of specific
locations has been a statewide problem,
but I believe they've basically met the
intent of the criteria that are
established.

And that's how our Council looked at it
and that's how our Council felt about it and I just would
like to share those two statements by members of my
Council with you.

Thank you.

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

MS. CUNNING: Mr. Chairman. As you've
heard from the Staff the Federal Board evaluated the
customary and traditional use determinations for all
large mammals on the Kenai Peninsula beginning in 1994
and in 1996 the Federal Board made a determination that
no rural communities had a customary and traditional use
of black bear in Units 15A and 15B and concluded that
only the communities of Port Graham and Nanwalek had a
customary and traditional use of black bear in Unit 15C.

The Staff analysis, Department
Subsistence studies and Ninilchik Traditional Council
surveys provide little new evidence, none of which
documents changes in the composition of the community or
its uses in the subsequent 13 years that would warrant a
reversal of the previous Federal Board decision. These
communities have continued to grow and become more non-
rural in character during the intervening years, so
changes within the community certainly would not warrant
a new customary and traditional use determination.

The Staff analysis discusses only some of
the eight regulatory factors that must be evaluated by
the Federal Board to determine if the community or area
generally exhibits the "long-term consistent pattern of
use" for a stock or population in a particular geographic
area. The Staff analysis does not include a detailed
analysis of the factors and includes very little, if any
substantive evidence that could be interpreted to show
that the community generally exhibits any of the factors,
thus, the Staff analysis provides no substantial evidence
that supports recommending the Federal Board reverse its
earlier findings and provides no basis for the Staff's preliminary conclusion to support the proposal.

The Staff analysis suggests that any documented use, no matter how small or infrequent within the community is a customary and traditional use. The Staff analysis also suggests that quantity of harvest of fish and wildlife for subsistence home use in Ninilchik is "greater than other rural communities in the area" but looks only at other road-connected communities in the area and ignores the fact that use is low compared to rural areas elsewhere in the state, including other areas on the Kenai Peninsula such as Seldovia, Port Graham, and Nanwalek. This approach of focusing primarily on uses of other resources is inconsistent with the Federal regulatory requirements for rendering a positive and customary and traditional use determination, which require a community to generally exhibit eight separate factors, most of which require a "pattern of use" with relation to particular fish stocks and wildlife populations.

The analysis accurately sites Division of Subsistence Technical Paper 253 which found in a 1999 household survey of one-quarter of all residents that in 1998 only seven percent of Ninilchik residents "tried to harvest" black bear. Only five percent used, only three percent harvested black bear and only one percent shared it. These levels of use are very low and are consistent with the findings of the Division of Subsistence 1982 survey. The Staff analysis presents little or no information about how black bear are currently hunted and does not provide details on how they are used by the community of Ninilchik. Even the non-representative samples conducted by Ninilchik Traditional Council among core users that are not reflective of the community at large showed very fairly low levels of black bear harvest. The Federal Staff comments properly notes that "only three bears were reported taken in 15A, none since 1976 and only four in Unit 15B, none since 1987" demonstrating the lack of substantial evidence for these subunits. However, the Federal Staff comments fail to make it clear that even within 15C where 59 bears were taken over this 31 year period, none of these were harvested on Federal public lands.

For the same reasons that the Department and Federal Staff oppose Proposal 21, which would give the communities, the Russian communities a customary and traditional use determination for moose in Unit 15, the
Department opposes the proposed determination and Federal seasons for black bear for Ninilchik.

1. The community of Ninilchik, as it exists today is just as much a new community as those communities are new communities, and the purpose of ANILCA is to insure customary and traditional subsistence use opportunities are allowed to continue, not to create new subsistence opportunities;

2. The few black bear that were harvested by residents of Ninilchik that could be argued to have any pattern of harvest, those in Unit 15C, were harvested in Uniform Coding Units that consist entirely or almost entirely of State and private lands, thus there is insufficient evidence in terms of frequency of use, area of use, community use or otherwise to support a determination that there has been a long-term consistent recurring pattern of customary and traditional use for subsistence harvest of black bear on the Federal public lands by residents of Ninilchik. The evidence of harvest of black bear on Federal public lands by the community of Ninilchik appears even weaker than the evidence of harvest of moose on Federal public lands by the Russian communities.

With regard to Proposal 21 and the Russian communities, the Federal Staff recommended against a customary and traditional harvest determination consistent with the Office of Subsistence Management instruction manual, which states, "is it appropriate to recommend approval of a C&T if the use is not on Federal public lands and waters, no, the C&T analysis would not recommend a positive determination if the C&T analysis determines that the use is not on Federal public lands or waters." That's from OSM's 2005 Technical Writing Guide
However, despite the fact that evidence of use of the Federal public lands for harvest of black bear by residents of Ninilchik is no stronger than the evidence of harvest of moose on Federal public lands by residents of the Russian villages, the Federal Staff make an inconsistent recommendation for Ninilchik.

In summary the Staff analysis includes no information that could reasonably be interpreted to support a positive finding that the community of Ninilchik has a customary and traditional use of black bear on the Federal public lands in Unit 15A, 15B or 15C.

The Staff analysis indicates support for the proposal based on the view that any use, no matter how low the use or how it is documented is sufficient to demonstrate a long-term pattern of community use and to support a positive customary and traditional use determination. This approach contradicts Federal regulations and is inconsistent with ANILCA which established a policy of providing a preference only for "continuation" of subsistence uses and which defines, "subsistence uses" as "customary and traditional uses."

It is also inconsistent with the Federal instruction manual and Federal regulations.

The Department questions the value and relevance of the reference that's included in the Staff analysis to the 1986 Secretary of the Interior letter and the extended quote therein. The circumstances, court guidance, and State's role were significantly different in 1986 than now after two more decades and establishment of Federal court direction. Significantly the Ninth Circuit Court rejected the idea that ANILCA provides an "absolute priority" in the Ninilchik Traditional Council case 2000. The State has previously pointed out that a 1986 Solicitor's analysis can no longer be reasonably relied upon, this quote is not relevant to the issue of determining whether or not Ninilchik residents have a customary and traditional use of black bear and not relevant to the harvest history that should be allowed if a positive determination is made.

In conclusion the Department opposes this proposal. The documented level of use of any Unit 15 black bear population by residents of Ninilchik does not generally exhibit a long-term recurring consistent pattern of customary and traditional community use as
required by Federal regulations. No substantial evidence is provided in the Staff analysis to support a reversal of the existing negative customary and traditional use finding by the Federal Board. Thus, the Department opposes Proposal WP07-16a in the absence of substantial evidence demonstrating that residents have a customary and traditional use of black bear in Unit 15.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: Thank you.

InterAgency Staff Committee comments.

MR. BUKLIS: Thank you, Mr. Chairman.

Our comments can be found on Page 185 in your Board book.

The Staff Committee found the Staff analysis for Proposal WP07-16a to be a thorough review of available information of historical and contemporary use of black bears by the community of Ninilchik.

In its review of the Southcentral Council recommendation, the Staff Committee discussed the application of the factors evaluated to determine customary and traditional use. In particular, the geographical scope of a determination is unclear, where the determination of past use is -- where the documentation of past use is limited or not available. Different perspectives may be held regarding the amount and pattern of use over time that supports a positive determination.

Some species such as bears may not be harvested in large numbers or consistently over time if they are not a heavily used resource or if they require specialized skills to harvest. In many of its customary and traditional use determinations for different species across the state, the Federal Subsistence Board has placed particular emphasis on a long-term consistent community or area pattern of use recurring in specific seasons for many years. The Board has exercised its discretion in making determinations for specific management units or portions of units where subsistence use has been shown on Federal public lands.

The Southcentral Council is recommending that the community of Ninilchik be determined to have customary and traditional use of black bears on Federal
public lands throughout Unit 15. The Council has concluded, based on the Staff analysis and on public testimony before the Council, that Ninilchik has a long-standing harvest and customary and traditional use of black bears. Although the Staff analysis presented very limited documented information on the harvest of black bears in Units 15A and 15B, the Council believes the customary and traditional use determination should be inclusive for all subunits of Unit 15. Division of Unit 15 into subunits can be viewed as useful for resource management purposes but may not be necessary for customary and traditional use determinations.

An alternative view is that the Staff analysis provides support for a positive customary and traditional use determination for Ninilchik on Federal public lands within Unit 15C. By far most of the documented use of black bears by Ninilchik has occurred in Unit 15C. And although the number of bears reported taken in most years is relatively small, the data demonstrates a long-term consistent pattern of use recurring in most years. The very limited use of black bears in Units 15A, and 15B could be considered to not provide substantial evidence of customary and traditional use in those units. Over a period of 31 years of black bear harvest documented in the State's bear sealing database presented in the Staff analysis, only three bears were reported taken in Unit 15A, none since 1976 and only four in Unit 15B, none since 1987; in contrast 59 bears were reported taken in Unit 15C over this period with only two years indicating no harvest.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Larry.

Questions.

(No comments)

CHAIRMAN FLEAGLE: Discussion. Gary, do you have -- Board discussion with Council Chairs and State Liaison.

MR. EDWARDS: I guess I'll start this off and to the relief of our Solicitor I won't give my C&T is like grabbing hold of smoke speech.

But, you know, as I look at the data I don't think that there's any question that -- that the data's not sufficient that shows that people in the
Ninilchik area certainly used -- used bear meat for various occasion, even though the -- their past president said when in dire need, which sort of implies that they didn't usually serve it for Sunday dinner, it was -- at least from his opinion it was in dire need. But they -- they certainly did use it, I think there's sufficient evidence. And then so it boils down to me is, you know, where does that use occur and how does it fit with what our responsibilities are to -- on determining customary and traditional use.

Unfortunately the way Unit 15 is broken up into UCUs, I don't think that there's one UCU that's either entirely -- or there's none that are within the Federal land that's not entirely within State land, at least those on the map that shows where bears were harvested, so, quite frankly, it's kind of hard to, I guess, know for sure, and it's my understanding the way the data is presented it doesn't really pinpoint, it doesn't give you a GPS location of where that particular bear was taken so, you know, you could argue, well, I added it up there could have been a maximum of 11 bears taken on Federal lands and a minimum of maybe eight bears but, you know, you could argue that it might have been even less than that but that, you don't know.

So as I look at it, trying to, you know, balance this idea of long-term consistent pattern of use and the patterns of use, you know, recurring in a specific season for many years, I guess, I find it difficult, particularly for Units 15A and 15B to find that that pattern did occur. I think it's clearly that, you know, harvest probably did occur in 15, 7 and I think we heard enough testimony to lead one to believe that it occurred on Federal lands there.

Why I asked the earlier question of when they did their study and they asked about 15, did they really ask about other areas because I thought I heard something that said that there was feeling that bears were taken up in Unit 7 and I know Unit 7 is not being discussed because that's not part of the proposal, but it would be interesting to know, you know, what people identified.

But, Mr. Chairman, so I guess what I'm wrestling with is not so much the issue of whether bears were used, whether frequently or not, they were, I think a very important part of the culture and the use but then how far should that extend, and then as was pointed out,
particularly in Unit 15A, there was a maximum of three bears taken and none taken since 1976, so in my mind that doesn't demonstrate a very consistent pattern of use or an area that really was customary and traditionally used for the harvesting of black bears in this case.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thanks. I guess I'll ask Keith a question that I think I asked in November and that has to do with how much does C&T depend on the location where a species is taken? My understanding from the Department of Justice is we're just talking about that one doesn't have to show that one was standing in a particular spot that is now Federal land to meet our criteria.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: That's correct. The focus of our concerns is stocks and populations.

MS. GOTTLIEB: Mr. Chair, if I could follow up.

CHAIRMAN FLEAGLE: Yes.

MS. GOTTLIEB: What do you mean by stocks and populations then?

MR. GOLTZ: We're not talking about GPS locations. The purpose of ANILCA is to promote a subsistence lifestyle and the purpose of C&T is to protect ongoing historical uses. So those are the elements that you have to deal with.

MS. GOTTLIEB: Mr. Chair. So from what I heard from the presentation that Liz gave and other information that's been presented is that black bears were used probably from all over what we call the Kenai Peninsula. And, you know, normally we don't do C&T by subunits, we usually do it by Game Management Units, so I see that there's a consistent pattern of use that we have substantial information in front of us and that the RAC recommendation is supported by that substantial evidence.

MR. EDWARDS: Mr. Chairman. I guess.....
CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: ... in response to Mr. Goltz then, I guess the basic question is then why would we limit it to Unit 15. We talked about to people going over to Tyonek, why wouldn't we include Unit 6, why wouldn't we include Unit 7, and there's nothing magical about the boundaries, they just happen to be lines drawn on a map that both establish the overall boundary as well as establishing the various units within the boundary.

MR. GOLTZ: That's true. I think another way to approach the whole subject would be just to open a subsistence season. The qualified users would be rural residents, the limitations would be non-wasteful uses. The statute could probably be administered that way. However, we do have a set of regulations that set up a C&T process, the purpose of that process is largely administrative and that's -- it operates as a sort of rural zoning, it's just the way we've approached it.

In the next few weeks, perhaps we could take a look at entirely a new approach. But the reasons we're limiting it to units is because of administrative purposes.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Ralph Lohse.

MR. LOHSE: Well, I'll speak from a standpoint as the Chairman of the RAC. I know why we limited it to Unit 15, because that's what they asked for, that's what they provided the information for. They didn't provide information for Unit 6, they didn't provide information for Unit 7, they didn't ask for C&T for Unit 13 or 14, they asked for C&T for Unit 15 and we, as a RAC, looked at the information that was presented to us and I'll just say that as a RAC we voted unanimously, in other words, all members of the RAC were convinced that they had C&T for Unit 15. Not 15A, not 15B, not 15C, but for Unit 15, the Kenai Peninsula where they lived, and that's how we looked at it as a RAC.

Thank you.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I've just been shamed by my law partner, I think he gave a better answer than I did.
(Laughter)

CHAIRMAN FLEAGLE: Further discussion.

George.

MR. OVIATT: I've heard what you've said Judy, but I really have difficulty looking at the map and use, which is mostly on State land, very little on Federal lands, there seems to be a sustained use on 15C but not on 15A and 15B. I often wonder why we go down this road of determining customary and traditional use patterns when maybe that's better left up to the managing agencies and the people on the ground to determine how subsistence use should be used, and maybe it shouldn't be a part of our Board discussion as to why -- or to draw the boundaries but to simply say that a rural community has subsistence use of those areas and let the managing agencies and the RACs and the people on the ground determine how that is distributed.

I'm going to have difficulty going with C&T for this simply because there just doesn't seem to be a sustained and long-term use in a good share of Unit 15C.

Thank you.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: All right, before we get too far involved in deliberations, it sounds like we're getting to where we could -- should possibly have a motion to consider. Is there anybody willing to place something on the record.

Gary.

MR. EDWARDS: Well, since this falls within our jurisdiction as far as the land, I'll take a shot at it just to get the discussion.

Mr. Chairman, I would move that we would adopt the recommendation of the Southcentral Regional Council on Proposal 16a with modification, and that modification would be to provide a positive customary and traditional use determination for black bear in Unit 15C for the community of Ninilchik.
If I have a second then I can provide some additional rationale.

MR. OVIATT: I'll second that motion.

CHAIRMAN FLEAGLE: Okay, you do have your second. Go ahead, Gary.

MR. EDWARDS: Mr. Chairman. I guess most of my rationale follows what I previously said, you know, I think it's certainly clear that the community of Ninilchik did utilize black bear. I don't personally feel that the Staff analysis, you know, demonstrated that in those two units particularly that there was a, you know, long-term consistent pattern of use or use that recurred in a specific season over many years. I understand what our counselor said and I almost would argue that if what he says, if that's what we're going by, we shouldn't even probably be having these discussions because it seems to me the decision's already been made, but given that I have, I guess, the liberty, to make this motion, those are the rationale behind it.

CHAIRMAN FLEAGLE: Okay. Pete's requesting clarification on the motion before we hear any more, Gary, would you restate it.

MR. EDWARDS: It would be to give a positive C&T for Unit 15C for the community of Ninilchik. So that's a modification to the proposal by the Regional Advisory Council, which was for all of 15.

CHAIRMAN FLEAGLE: Okay, thanks, we got it now.

Discussion. Judy.

MS. GOTTLIEB: Mr. Chair, thank you. Well, I think people seem to be looking at the map on Page 180 which shows, yes, very few bears have been taken between 1973 and 2004 and as our Staff has told us, this is a small piece of the puzzle, and I think the analysis presents many other pieces, especially of the historical context of the puzzle and I also think our deference to the Regional Council is not something we should ignore here, where we have several statements from a variety of members, their personal use as well as the testimony that they heard at their Council meeting.

So I do disagree that the map is the only
Mr. Cesar: Mr. Chairman.

Chairman Fleagle: Go ahead, Niles.

Mr. Cesar: I agree with Judy. And when I look at not supporting the RAC recommendation it's got to be pretty clear to me that I feel they are going off in a direction they shouldn't be. I think that they're deliberations, their unanimous support for this proposal and not having what I would consider overwhelming evidence not to support them, I intend to support the RAC.

Chairman Fleagle: Which means that you're in opposition to the motion as stated?

Mr. Cesar: Yeah. As stated, yeah.

Chairman Fleagle: Thank you. Further discussion. Wini.

Ms. Kessler: Based on what Keith has explained to us it seems really important, the fact that this is one population we're talking about, I mean I really don't think the population of bears divides themselves up on these internal boundaries so I'm leaning with Niles and Judy about the need to look more broadly.

Chairman Fleagle: Gary.

Mr. Edwards: Mr. Chairman, if I could ask Ralph a couple questions if that's okay, to kind of follow up on your deliberation.

When you folks looked at it -- well, let me back up a little bit. You know, theoretically you could look at 15A and you might be able to argue that no bears were taken in there based upon this because both of -- where the bears were taken also include both Federal and State land, I don't believe that's true, I'm assuming that at least maybe one or two of them were. But let's say that we knew for a fact that there were no bears taken in 15A so when you folks looked at it, did you look at the harvest in those three areas or you just simply looked at 15 in its entirety?

Mr. Lohse: Well, first of all we had testimony that bears had been taken in 15A in the Federal
land by members of the Council. So while it doesn't show it on -- it doesn't show it exactly on that, like you said, it says one bear, two bears, you don't know for sure where they are in 15A, you don't know for sure where they're not either, you know, but we did, we looked at 15A, B and C as the Kenai Peninsula.

These were residents of the Kenai Peninsula, they were an old community on the Kenai Peninsula, and we had lots of anecdotal information that, you know, they went all over the Kenai Peninsula and they did things all over the Kenai Peninsula in the past -- probably more in the past -- like somebody said, they were probably more active and more mobile before the road than they were after the road as far as hunting and stuff was concerned. And to us, like Mrs. Kessler said, they're not different distinct stocks, you don't -- the same bear that you shot in 15C you could have shot in 15A, the same bear that's in 15A could be in 15C, anybody that's done any capturing of nuisance bears and releasing them knows how far they can go, how fast they can go. We've taken bears out of Cordova, hauled them to Montague Island or Hinchinbrook Island and had them show back up in Cordova in a very short time period. These aren't animals that just stay in one spot.

In the Chitina Valley, we have salmon at Long Lake where I live, we know for a fact that bears come all the way from T-Bay and the Bremner to Long Lake to take salmon, clean on the other side of the range, so if this is -- if you could say that these were three stocks of bear right here and the Kenai wasn't one Peninsula and the people on the Kenai didn't go all over the Kenai, I'd probably agree with you, but as a Council, looking at it as people who live in an area, we look at it and just say that, you know, this is the backyard, and these bears go all over. We're talking about the black bears of the Kenai Peninsula, not the black bears of Unit 15C, 15B or 15A. And that's how we looked at it as a Council.

MR. EDWARDS: So with that said, if the request, let's say, for example, would have included Unit 7, you would have probably supported that also?

MR. LOHSE: If information would have been provided that would have shown that they had an interest in it, that they did use it. Unit 7's on the other side of the mountain range. It's totally possible that they went through the Whittier Portage and used Unit
but it sounds to me pretty much like the Cook Inlet people stayed over on the Cook Inlet side.

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: It really doesn't help me to be including stuff we're not really dealing with. We're specifically dealing with Unit 15 and throwing in Unit 7 doesn't help my deliberation much.

CHAIRMAN FLEAGLE: Okay, point noted, thank you. Okay, more discussion. George.

MR. OVIATT: Thank you, Mr. Chairman. Mr. Lohse, I don't read this, this data necessarily as where the bears come from but more of where the people from Ninilchik traditionally hunted. And it seems like that they very seldom hunted up in 15A and 15B, but they did hunt in their backyard of 15C and, in fact, to me the data is overwhelming. Can you respond, please, thank you.

MR. LOHSE: I'll agree with you 100 percent on that, that they did hunt in 15C, it was in their backyard. They did also go to 15A and 15B to hunt other things and like has been pointed out, a subsistence hunter is an opportunistic hunter. And if they were hunting something else and they had the opportunity to take a bear and they wanted a bear, they took a bear, they didn't necessarily have to go there to look for them.

But if you go back and you listen, and we listened to a lot of testimony from people who've lived there or had fathers that lived there or grandfather's that lived there and they talked about where they went and what kind of hunting they did and things like that, and they didn't look at just hunting in their backyard, you know, they went for, like somebody pointed out, for other reasons, winter trapping, gold mining, work on the road, things like that, and they went to other areas on the Peninsula but they lived there. The Peninsula was their home range. The same as I would consider -- I would consider the fact that, you know, when I'm in Cordova and I go out on Prince William Sound and I go to Hawkins Island or Hin chinbrook Island, I don't live there but I go there to go hunting. But, you know, if I can do all of my hunting at Deep Bay right across from town, I
I don't bother to go to Hinchinbrook and I definitely don't
go to Montague unless I would happen to go there for some
other reason and I think it's the same thing with them.

And, to me, I can't imagine somebody
living in Ninilchik as a community, not as an individual,
as a long community that went for as long as Ninilchik's
been there and we talk about it being a new community,
just like we talk about the Russian New Believer's being
a new community, Ninilchik's been there a long time.
There's a core of people in Ninilchik that can trace
their ancestors back right to the first people moved to
Ninilchik. And that core group, which is what the core
of Ninilchik is has probably hunted the whole Kenai
Peninsula. And I -- I mean I just have to -- and I know
as a Council -- as a Council, it's like Gloria said,
you're looking at a historical use, you're not looking
and sitting, now, did they get enough of them in this
area to count, did they get enough of them to -- did they
hunt black bear on the Kenai Peninsula, did they eat
black bear on the Kenai Peninsula; the answer to that
should either be yes or no, they either traditionally
used black bear on the Kenai Peninsula or they
traditionally didn't use black bear on the Kenai
Peninsula. And that's pretty much what we looked at it
as.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I guess if I could also
remind Mr. Lohse one of the things that he mentioned at
the RAC meeting had to do with sealing, and we're putting
a lot of emphasis on this one chart that relies on people
having their bears sealed. And I think, Ralph, you
mentioned that it's certainly possible people at the time
didn't realize bears needed to be sealed, they maybe were
taking them for ceremonial purposes and, you know,
certainly not trophy and didn't get themselves on the
record, so I think we need to keep that in mind as well.

CHAIRMAN FLEAGLE: Additional comments.

Ralph.

MR. LOHSE: Was she asking for an
additional comment?

CHAIRMAN FLEAGLE: I think she was just
asking you to focus.
(Laughter)

CHAIRMAN FLEAGLE: No, I'm kidding.

MR. LOHSE: Okay, I will answer Judy.

CHAIRMAN FLEAGLE: Ralph.

MR. LOHSE: And I'll answer from the standpoint, we've talked about the fact that you went and you asked people for their long-term remembrance of what they did on the Kenai Peninsula, but you and I all know we have short-term memories if it comes to the fact that we're not comfortable with what we did and we're not sure, especially older people, we're not sure we want to tell somebody that we did something because maybe I didn't quite obey the letter of the law.

I used an example. I taught school in 1966 in an unknown village out on the Peninsula, we ate four brown bears the year I was there and I will guarantee you that not one of those brown bears ever got reported to the Fish and Game, and it wasn't the case that they were trying to be illegal or anything like that. It was the case the Fish and Game was in Anchorage, we were out, you know, 400 miles out on the Aleutian Peninsula and the bear was eaten, why bother to tell them. And anybody that's been in rural Alaska knows this is what happened, especially with bears. Bears were something that, if they shot them and ate them, they didn't bother to go tell somebody about them. And, in fact, in part of our culture, if we look in the Copper River Valley to tell somebody about killing a bear was bragging and it was against their culture. If you killed a bear, you treated it with respect, you didn't brag about the fact that you were going bear hunting and you didn't tell anybody that you went out and killed a bear afterwards.

And so, you know, with that I'll shut up.

(Laughter)

CHAIRMAN FLEAGLE: Okay.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN FLEAGLE: Well, we're going to bat this back and forth it sounds like, quite a bit here, but basically what I'm seeing here is two issues.
Number 1, should there be a C&T finding.
Number 2, should it be confined to just the small geographic area that Gary proposed in his amendment.

And just to state for the record, this amendment goes against the RAC's recommendation and therefore should be voted down, I do see that we have split rural determination, or C&T determinations by subunit previously in this same area, by existing regulation. And, you know, Section -- the section that says that we shall follow the recommendations -- the Secretary may choose not to follow the recommendations where determines are not supported by substantial evidence, I think refers to maybe where Gary's coming from for the motion that he made. But the question is now, if we vote on this as proposed and pass it, we eliminate the other two subunits from consideration. And just procedurally here, if we vote to reject the motion, then we're probably dispensing with the entire situation, unless I'm mistaken there, or would we be open for another motion to cover the entire area. I think that's a grey area, Keith Goltz.

MR. GOLTZ: I think you'd be open to another motion unless somebody else wants to comment.

MR. PROBASCO: That's correct.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: I see it the same way you do Keith. If the Board so elected they could provide another motion on this issue.

Mr. Chair.

CHAIRMAN FLEAGLE: Good enough. I'll now call back on you Gary.

MR. EDWARDS: Yes, Mr. Chairman. You know one thing first is that, at least it's my understanding on C&T there's no requirement for the Board to give deference to the Regional Advisory Council; isn't that correct?

MR. GOLTZ: That's our present interpretation.

MR. EDWARDS: All right, thank you. I just wanted to follow up on one thing Ralph said. I
I guess I'm a little bit concerned that while I recognize that all things don't get reported, I don't think we necessarily ought to overly state that somehow this harvest is three or four times what's being reported here. My assumption is probably on the Peninsula we probably have as good as compliance as probably anywhere in the state and even though that might not be the greatest, my guess is it's better than a lot of places just because of the nature of it and certainly probably since the 1973 when we started doing it. My guess is a lot of people were aware about it and, you know, there's maybe a tendency maybe more opportunity to get caught on the Peninsula or whatever. So I think we have to be careful somehow implying that this number of 59 ought to be 259 and that's really not accurate and I just would encourage us in our thinking not to totally throw this information out and say, well, it's not really accurate and somehow the harvest was much greater than this.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: Yeah, on the subject of numbers, I agree with Ralph, that this is a yes or no determination. But low levels of use, if that's what the Board determines could be reflected in low levels of allocation at a later time.

MR. LOHSE: Mr. Chair.

CHAIRMAN FLEAGLE: Other comments.

Ralph.

MR. LOHSE: I'll go along with Gary there and I was not suggesting that in recent history there was a lot of unreported use, but what I'm saying is when we start dealing with long-term memory and we start dealing with historical data, one of the things that you're dealing with is you're dealing with the fact that -- especially when you're dealing with older people, that you have a tendency not to want to remember things that possibly weren't right or weren't legal that you did or, you know, that your grandfather did or your father did.

And I know -- I mean I'll just say that I know for a fact from talking to people, and I talk to a lot of people, that sometimes you get around some people they like to talk about the things that were on the edge, but other people don't want to bring out the fact that, you know, we -- we lived off of this stuff, you know,
simply because they weren't sure whether they could or
couldn't. and this is -- I think if you talked to
Gloria, you'd find that this is even more true in a lot
of your Native culture in Alaska. The fear of reporting
something that might possibly be wrong even if you and I
understand the statute of limitations, but sometimes it's
hard to get that across to other people when you go out
to try to make a survey.

CHAIRMAN FLEAGLE: All right, the
discussion is becoming repetitive. We should move on to
more new information or bring this to a vote.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: Question. Are we
ready for the question.

MR. CESAR: Question.

CHAIRMAN FLEAGLE: The question is
recognized on the motion.

MR. PROBASCO: Thank you, Mr. Chair.
WP07-16a, adopt the proposal with modification to provide
a customary and traditional use determination for the
community of Ninilchik in Unit 15C only.

And up first, Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: No.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: No.

MR. PROBASCO: And Mr. Cesar.
MR. CESAR: No.

MR. PROBASCO: Motion fails, three/three.

CHAIRMAN FLEAGLE: Okay. So now we're back to square one with nothing before us and this is why it's most beneficial to start with what the proposal states or something large and try to pare it down to something that's smaller, because now I see a little conflict. We've already found that no C&T determination exists for 15C, but now we're proposing to put a motion back on the table that says one exists, you see the conundrum for doing it this way.

However, be that as it may, if it's the intent of the Board to propose a new motion which includes 15C and other areas then we'll go ahead.

Niles.

MR. CESAR: That would be my intention, Mr. Chair, is to forward a motion which would find a positive C&T for Ninilchik in Unit 15.

MS. GOTTLIEB: I'll second.

CHAIRMAN FLEAGLE: Okay. And do you want to give some supporting statements there for the entirety of the unit, Niles.

MR. CESAR: Well, I think it goes along with what I've said before and continue to say is that, like Mr. Lohse, I see where people are opportunistic in their take, and if you're in an area where you run across a bear, then you would do that. I mean one of the things we haven't talked about is the bear population in total moving, you know, maybe in future years, maybe we will see them more in A and B than we do in C, I mean I just don't know that. But I believe that if I am going to error, then I'm going to error on the part of the subsistence user.

Thank you.

CHAIRMAN FLEAGLE: Other comments.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.
MS. GOTTLIEB: I guess in keeping with many of the comments that we've read through the legal system, I mean the way I understand our ANILCA mandates, is that this Board is to be permissive and protective and not exclusionary or constraining. Our purpose is to protect subsistence, not limit it. And so when one of my colleagues mentioned, well, maybe we should just open this up to all rural residents, right now parts of this unit have no Federal priority. So if it is our intent to open it up, that's what we need to do through this customary and traditional use determination.

I think there's been a great deal of evidence, there's a lot of historical information in this write up that we have that supports a customary and traditional use determination for the entire unit.

CHAIRMAN FLEAGLE: Wini.

MS. KESSLER: Yes, I agree with that. And also I believe that the bears in all of Unit 15 and probably all of the Kenai are expectedly one population, that influences me as well.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Mr. Chairman. I'm going to vote against the motion obviously for a lot of things I previously said.

I mean I think it's clear, one, this is a species that's not overly sought, you know, assuming this number's correct, 59 bears taken in 30 years by over a thousand people and as the previous -- as I mentioned the previous president of the Council said only taken in dire need, so it's not a species that one is high, but certainly there is clear evidence that it certainly is used and maybe I want it kind of both ways. Maybe I want to find a positive C&T for the community of Ninilchik but at the same time limit that because I have difficulty, you know, getting around, you know, two requirements that talk about a long-term consistent pattern of use, I don't believe that it's there, whether that's important anymore, I'm unclear of that. And I don't think that there's a pattern of use that it's recurring in specific seasons for many years in those two particular areas, the data is just not there to support it.
CHAIRMAN FLEAGLE: George Oviatt.

MR. OVIATT: Well, I'm not going to reiterate what Gary has said, but I agree with what he said and I just have a real hard time figuring that there's a customary and traditional use by Ninilchik at any place other than 15C. We have divided units before.

I often wonder if we were talking about the Kenaitze Tribe out of Kenai then maybe it would be a different story about who really used the whole Kenai, but I think Ninilchik, historically, as we went through other issues of Ninilchik that they didn't necessarily utilize the whole Kenai as maybe the Kenaitze Tribe out of Kenai did.

So, I, like Gary have a very difficult time going beyond 15C.

Thank you, Mr. Chairman.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Well, I wondered if I might ask Keith a question whether there's some sort of statistical minimum that this Board is supposed to meet or a threshold that we're supposed to pass in terms of numbers.

MR. GOLTZ: No, we've never set a numerical minimum. In fact, the general standard has been that there are no unimportant subsistence uses. If they're low or documentation is remote then we can reflect that at the time of allocation. But as Ralph said, this is a yes/no decision.

CHAIRMAN FLEAGLE: All right, I'm going to jump in.

I find that we do meet the requirements of the eight factors for determining a customary and traditional use for the community of Ninilchik as laid out in information provided by Staff.

They have shown to me that we do have a long-term consistent pattern of use.

A pattern of use recurring in specific
seasons for many years, in fact the table presents that.

The pattern of use consisting of methods and means of harvest, which are characterized by efficiency and economy of effort and cost, and this does not refer to just a species in question.

A lot of these factors can apply broadly to just the lifestyle.

The consistent harvest and use of fish or wildlife is related to past methods and means; and I'm summarizing these.

Means of handling, preparing, preserving, storing fish or wildlife which has traditionally been used by past generations.

Pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore.

Pattern of use in which the harvest is shared or distributed within a definable community of persons.

And a pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area.

I do find that those conditions exist. And I think I would have more easily have found that they exist to 15C but now that the proposal includes all of Unit 15, basically the table blends now. I don't see 15A as having only three bears taken over the course of the last, well, 30 years. I don't see 15B as only having four bears. I see the total being, whatever it is, 66, for all of 15, you know, now we're looking at it as a larger geographical area.

So I will support the motion. And it sounds like I might be the tie-breaker, so are we ready for the question.

Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I think the difficulty that the State has is, in trying to determine what you use as a threshold for your C&T determinations. And when your policy manual says it's
not appropriate to recommend approval of C&T if the use
is not on Federal public lands and waters and while our
UCUs don't necessarily follow Federal land management
boundaries, it's pretty easy for us to determine that a
great percentage of the harvest in Unit 15 was not
conducted on Federal lands. So trying to develop a long-
term consistent pattern of use when you're looking at a
take of a handful of bears, perhaps, over the course of
two or three decades leaves us with some difficulty.

In looking through your criteria for
making those determinations, your eight criteria, they
talk about a pattern of use recurring in specific seasons
for many years, a pattern of use consisting of methods
and means of harvests which are characterized by
efficiency, economy of effort and cost. I didn't see
either one of those actually addressed in your analysis
here. A consistent harvest and use of fish and wildlife
as related to past methods and means of taking near or
reasonably accessible from the community or area. Most
of the area that's reasonably accessible to Ninilchik is
not Federal lands, you have to travel a good many miles
to get over into the Federal areas.

So I think we've talked, and probably in
previous Board meetings, and since I haven't been to one
of these since 1998, I am not current on the
conversations but one of the things the State, I think,
has repeatedly asked the Federal Board is to develop a
policy for making your C&T determinations that we can
actually follow through the steps, that it's not just a,
you know, that we can clearly see how you've addressed
each one of the steps that are in your regulations.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Ken,
appreciate the comments, and we have heard those comments
and have been dealing with that issue with the State, and
I'm speaking from the perspective of my role here as the
Federal Board Chairman. Now, I do know the process that
you refer to that the State uses, it is a different
process. They go through a checklist and each one of
these criteria are addressed individually in the
recommendation and the analysis, and each one is weighted
by that criteria and by the evidence against that
criteria and then the whole -- all eight criteria are
then addressed as a whole and the determination is based
on that.
And, you know, I remember that you don't have to find that -- if I remember correctly you didn't have to find that all eight of those criteria were fully met, you could have a -- I don't think you could kill -- not find a C&T if just one of those may be not met, some threshold, which I don't remember that there being a threshold.

Now, the difference is, under the Federal program, they have reduced these to factors and the Federal regulations state that the community or area shall generally exhibit the following factors, which exemplify customary and traditional use. And while I recognize the State's objections based on the State's system we are dealing with a different understanding and interpretation of those factors which were, I think, pretty much adopted from the State's criteria. And there is quite a bit more room for judgment in how these are applied.

Now, whether or not it would be wise to have, in the future, some policy that laid out a procedure for walking through each factor and identifying the level that it meets the factors, requirements for C&T, that may be a good suggestion, you know, it may bring some consistency to determining these based on more data, but is it necessary. At this point it appears that it's not.

One last comment, I know that the word significant seems to get used when we're talking about C&T determinations, and that's not anywhere in the regulation or the statute, it's a use. And I do see the difference, I do recognize the concerns, but I do see the difference, you know, from the program.

Gary.

MR. EDWARDS: Mr. Chairman. I wanted to respond, you used the number of 66 bears taken in Unit 15, but, you know, the reality is that a maximum of those 66, based upon the charts, only 11 of those were taken on Federal lands there, and that number could be smaller and some of those 11 could be in defense of life and property. So we really don't know if those are 11 or not. So I guess my only point is 11 bears taken over 30 years in my mind does not establish any kind of a pattern or a use or a demonstrated pattern, and I don't see how we can get there from here, you know, with that minimal of use. And I guess it kind of gets back to the
question, if it would have been only one bear, would we
still be at this same place.

I know Keith responded that there's no
number but I'm assuming that there's a number above zero.
Anything but zero apparently then would be okay for us to
find a C&T finding and there is -- it's true there isn't
a threshold, but I still have difficulties saying, you
know, 11 bears in 30 years demonstrates some kind of a
pattern and I don't see how a reasonable person would
look at that and say, yeah, this is a reasonable pattern.

CHAIRMAN FLEAGLE: But I guess from my
perspective, again, as a Board member, the people that
existed in, what is now known as the community of
Ninilchik, way back when, they didn't have these lines
drawn that said this is State and this is Federal, they
got out and they harvested those bears, and I think
that's what we're looking here, is for that long-term
consistent pattern of use, and I don't read in here and
I'm not sure that it's our charge to determine whether
that use occurred on the Federal land or not, but that
use occurred.

Now, am I wrong there? I don't read
that.

Keith.

MR. GOLTZ: I thought we were ready for a
vote.

(Laughter)

MR. GOLTZ: We're pushing the envelope
here. It seems to me that we're going to the point where
we're asking if a use could be established off Federal
lands but realized on Federal lands, as long as we had
the same stock and population. We've never directly
addressed that question. The portion that's in our
drafting manual, I think, was intended to acknowledge
that there are limits to Federal jurisdiction, but you're
asking to push those limits. I think it's arguable
either way. You could start with the purposes of ANILCA
and say that as long as that use is established on a
specific stock and population, it doesn't matter where
that use was, I think the State would probably object to
that and say we're intruding on State jurisdiction. I'd
rather not give a definitive statement at that time -- at
this time. If this becomes an issue we can research it
more and give a written opinion on this one.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I mean, I guess, again, this was my earlier question so I'm sorry if we are getting repetitive, but I mean I agree with what you said, Mr. Chair, because, again, as I understand the Department of Justice's position is that ANILCA and the priority afforded is not limited for specific species, only to the area where there's a record of that species having been taken. So, yeah, I don't think we need to make the distinction was it taken on Federal land or was it taken on State land, we're talking about the Kenai Peninsula here and Unit 15 in particular.

MR. EDWARDS: I guess just in response and....

CHAIRMAN FLEAGLE: Go ahead, Gary.

MR. EDWARDS: .....I just told Keith this earlier, I mean if that is the case then it seems to me we've wasted a lot of time this afternoon because it sounds to me like the Department of Justice has already decided what this Board's decision is and should be and is.

CHAIRMAN FLEAGLE: Well, I would disagree with that, I think we still have a vote here.

Ken Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I don't know how your Subsistence Management Instruction Manual figures into this, but it clearly states in there that you're supposed to be looking at uses on Federal lands and not uses off Federal lands.

Perhaps our attorney could help clarify this a bit.

MS. GOTTLIEB: Mr. Chairman.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: I guess, I mean we have our regulations which we're trying to put forward here
and the manual's a tool that helps us get there but it
certainly doesn't override our regulations. I think that
section can be construed in several different ways, and I
just don't know that it benefits our discussion and how
we cast our vote at this point.

CHAIRMAN FLEAGLE: That's true. I mean
that's a valid statement, whether the use occurred off of
Federal lands or not, we do have use and whether that
number is 11 or 66 we still do have a demonstrated use.
And, again, I don't find the regulation as saying that we
need to have a significant use, that's the problem, is
it's not really well defined as to -- you know, we could
find all kinds of reasons for it and we're going to get
some help right now.

Liz Williams.

MS. WILLIAMS: Thank you, Mr. Chair. I'd
like to point out that the two other communities on the
Kenai Peninsula that have C&T are Nanwalek and Port
Graham and they hunt primarily on State lands, but they
still have a Federal C&T recognition. Also Unit 7, which
I think isn't really relevant, there's a no
determination, which means all rural residents are
eligible. And I think we just really are stuck in our
time in our own lens, because Ninilchik people didn't
always have backyards or their backyard was everywhere
they went when they were doing all those -- I guess what
I'm trying to say is that factor about, you know, doing
it the most expeditious way, well, if you're out
trapping, if you're out subsistence harvesting, if you're
out mining, if you're out commercial fishing, nobody goes
to the grocery store for one package of sugar, they would
get whatever was out there while they were doing other
things.

And I regret now that I put this map in
here, I thought it would really support the proposal,
because this is an ephemeral epic in the lifetime of a
Ninilchik subsistence history, 30 years is just like that
when you think about the time that people have wandered
all over that land. And so this was intended just sort
of a supplemental thing to have the one, maybe, way of
modern day documentation to show that uses did occur all
over the Peninsula, that people were all over just in
these last 30 years. This is a tiny, tiny slice that
just is a little tiny bit of evidence for a much bigger,
longer term, deeper picture.
Thanks.

CHAIRMAN FLEAGLE: New information, Mr. Taylor.

MR. TAYLOR: Thank you, Mr. Chairman. I know our attorney has been wanting to say something but I'm not sure exactly what it is. If you'd recognize him I'd appreciate it.

CHAIRMAN FLEAGLE: New information, Steven.

MR. DAUGHERTY: Mr. Chair. Just a point of clarification. I believe that the State's arguments were mischaracterized and I just wanted to clarify them, that the State's objection is not based on an argument that the Federal factors should be interpreted in the same manner as the State's criteria. The State's objection is that the Federal regulations should be followed. The Federal regulations speak of a -- of patterns and they also speak of generally demonstrated, and we do not feel that a tiny bit of evidence for one or two factors generally demonstrates the eight factors.

Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, appreciate it. Ready for the question. Question's called -- or the question's recognized for final action on Proposal -- which one were we on, 16a. Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Proposal WP07-16a, adopt the proposal as recommended by the Southcentral Alaska Subsistence Regional Advisory Council for:

A positive C&T determination for Unit 15 for black bear for the community of Ninilchik.

Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Nay.

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

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: And Mr. Oviatt.

MR. OVIATT: Nay.

MR. PROBASCO: Motion carries, four/two.

CHAIRMAN FLEAGLE: All right, thank you.

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: If I may.

CHAIRMAN FLEAGLE: Yes.

MR. CESAR: I know we're getting ready to close for the evening, I would like to request a 15 minute executive session with the Board, either this evening or before we start tomorrow. And the issue would be the memorandum that our attorney has provided us earlier today and I want to clarify a couple of issues in there.

CHAIRMAN FLEAGLE: We'll do it tonight -- we'll do it now -- now. All right, that request is recognized, the Board will step down for 10 minutes to allow the public to clear the room and then we'll resume in the executive session briefly.

(Off record)

(Board Executive Session)

(End of Day One)

(PROCEEDINGS TO BE CONTINUED)
CERTIFICATE

UNITED STATES OF AMERICA

STATE OF ALASKA

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

THAT the foregoing pages numbered 2 through 184 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME I taken electronically by Nathan Hile on the 30th day of April 2007, beginning at the hour of 8:30 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 7th day of May 2007.

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