FEDERAL SUBSISTENCE BOARD

PUBLIC MEETING FOR CONSIDERATIONS REGARDING EXTRATERRITORIAL JURISDICTION IN THE ALASKA PENINSULA/ALEUTIAN ISLANDS COMMERCIAL SALMON FISHERIES

VOLUME II

EGAN CONVENTION CENTER
ANCHORAGE, ALASKA

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8:30 o'clock a.m.
Mr. Chairman. My name is Lance Nelson. I'm an assistant attorney general with the Department of Law here in Anchorage. And I'm going to address the legal standards for the application of the extraterritorial jurisdiction as already stated by Counsel for the Board, Mr. Goltz, and as found in the regulations.

Before I get started on that, just one
point, and that is without meaning any disrespect or lack
of concern for the fisheries in Northern Norton Sound,
the standards that you're looking at clearly state that
only a failure to provide a subsistence priority on
Federal public lands may be considered by the Federal
Subsistence Board or the Secretaries and as has been
explained already, in Northern Norton Sound, there is
very little Federal land or water and existing
subsistence fisheries are not subject to Federal
jurisdiction. As much as we might share concern about
those fisheries, this isn't the forum to address those
concerns.

Also Yukon fall chum are subject to
Federal subsistence fisheries, but the available data
shows there's no significant presence of Yukon fall chums
in the Peninsula fisheries. So we won't be presenting
information on that stock.

A failure to provide subsistence for a
subsistence priority connotes more than just an impact on
Federal subsistence fishing, it connotes more than
speculation. As Secretary Norton has explained, it
requires a clear demonstration of the State's action
constitutes a substantial and impermissible interference
with the Federally-protected right. We know from the
Ninilchik case in the Ninth Circuit that that court
agreed with the Federal Subsistence Board that ANILCA's
subsistence priority is not an absolute priority or a
guarantee but rather a meaningful preference over other
uses and that elimination of other uses is not required
before subsistence uses can be restricted in any way.
The Court also stated in that decision that subsistence
is not a per se preempting statutory priority. The idea
that ANILCA prohibits any restriction at all on
subsistence fishing regardless of whether a meaningful
preference is still being provided is unfounded in the
law.

An absolute priority would result in
basically no non-subsistence fishing, period, and
subsistence fishing probably only in terminal natal
streams, even the fishing in most traditional fishing
areas would be precluded under a strict reading of the
subsistence priority.

The current and proposed State and
Federal regulations managing Western Alaska salmon stocks
currently provide a meaningful preference for subsistence
fishing. The State of Alaska has an extensive regulatory
program that ensures that subsistence uses will continue to receive a meaningful preference over other uses of fishery resources.

Before the Federal Subsistence Board can recommend extension of Federal jurisdiction, it must be demonstrated that an identified failure to provide a meaningful preference for subsistence fishing was directly caused by the State's regulatory program for fishing occurring beyond Federal public lands. Even assuming for a moment that a failure to provide a meaningful preference for subsistence has occurred somewhere in the subsistence fisheries in Western Alaska, there's nothing that demonstrates direct causation preceding from the management of any fishery off of Federal public lands. Proof of direct causation requires more, again, than mere speculation.

We believe that there's no sound basis for concluding that the South Peninsula June fishery or the post-June fishery have caused or directly caused or will directly cause any failure of the subsistence priority on Federal public lands in Western Alaska. While the fishery harvest of some salmon from stocks taken in subsistence fisheries in Western Alaska, the State of Alaska agrees with the conclusions of the Federal Staff report that the regulation of the fisheries does not interfere with the meaningful preference accorded subsistence under the current State and Federal regulations.

The petitions filed before this Board focus on only one regulatory decision rather than the range of factors that might lead to the failure to provide for subsistence. The State believes that assuming a failure of a subsistence priority occurs, it's more appropriate that the Federal Subsistence Board and the State, together, examine the entire range of fisheries in State and Federal regulations that impact the stocks in question to find the most effective approach to the problem. We don't believe it's consistent with principles of Federalism and mutual respect between fishery resource managers for the Federal government to focus on one particular aspect, a complex State regulation and as Secretary Norton noted in her letter, in my four C's approached to management, I stress the importance of coordination and consultation with the State. In dealing with this issue, I expect you to work constructively with the State of Alaska. I will not intervene in the State-managed fishery occurring outside
Federal jurisdiction without first attempting to reach a joint resolution with the State of Alaska.

While the State would not be inclined to consider a joint resolution that focuses on only one narrow factor in a complex fishery management question, the State, of course, is always ready to cooperate in joint efforts to address subsistence fishery challenges with the Federal Subsistence Board.

Those are the end of my comments, Mr. Chairman.

CHAIRMAN DEMIENIEFF: Thank you.

MR. BRUCE: Mr. Chairman. My name is Geron Bruce. I'm the Deputy Director for the Division of Commercial Fisheries and my comments will briefly summarize the prominent aspects of the State's fisheries management program that provide a meaningful preference for subsistence on Federal public lands.

There is not a failure to provide for a subsistence preference on Federal public lands because the State of Alaska provides a meaningful preference for subsistence use through regulations of the Board of Fisheries and in-season management by the Alaska Department of Fish and Game. While the specific means of providing this preference varies somewhat according to local circumstances, in general, the subsistence preference is provided by allowing more fishing time in an area for subsistence fishing and the use of a broader array of subsistence fishing gear than allowed in commercial, sport or personal use fishing. Furthermore, subsistence fisheries are free from substantial restrictions that are applied to commercial, sport and personal use fisheries.

Federal subsistence regulations basically duplicate the State subsistence fishing regulations and through a Federal, State and State Memorandum of Understanding, State management plans are used by both management systems. Coordination between the State and Federal management systems during the fishing season continues its progression of providing a meaningful preference for subsistence fisheries.

I'll briefly describe the specific measures implemented by State regulations and in-season management within the subsistence and commercial
fisheries for summer chum salmon within the Kuskokwim and
Yukon River drainages and for sockeye salmon with the
Kwichak River drainage. The regulations themselves may
be found Title V of the Alaska Administrative Code,
primarily within Chapters 1, 5, 6 and 7.

The subsistence fishing windows enacted
by the Board in 2001 within the Yukon and Kuskokwim River
drainages have come up a number of times during public
testimony. The primary importance of these windows is
for chinook salmon, secondarily for chum salmon. These
windows were developed to spread the subsistence fishing
opportunity more evenly over the run and throughout the
drainage. This was an attempt to provide equitable
subsistence harvest opportunity to users both in the
lower and upper portions of these lengthy river systems.
The other purpose of the schedule was to improve the
quality of the spawning escapement, especially for
chinook salmon in the upper reaches of these rivers. The
Board determined in adopting the windows that they
provided a reasonable opportunity for subsistence
harvest.

In the Kuskokwim area, while subsistence
fishing is allowed within the entire Kuskokwim drainage,
this is a river length of 931 miles, commercial fishing
is restricted to the extreme lower portion of the river,
which corresponds to Districts 1 and 2, a river mile
length of 183 miles. However, commercial fishing has not
occurred in District 2 since 2000 because of market
conditions. So essentially the fishery is limited to
about 20 percent, the commercial fishery of the entire
drainage while subsistence fishing can occur throughout
the drainage.

Subsistence regulations, again, in the
Kuskokwim, authorize the use of gillnets, beach seines,
hook and line attached to a pole, hand line or fish
wheel. Although, commercial gillnet gear is restricted
to six inches and stretch mesh, subsistence fishing gear
is unrestricted. Additionally, because of the
subsistence need there is no directed commercial chinook
salmon fishery in the Kuskokwim River.

Subsistence fishing in the Kuskokwim
begins before commercial fishing commences. We only
start a commercial fishery after a sufficient percentage
of the run has entered the river, that we can assess that
the run is large enough to meet subsistence needs and
also meet our escapement goals and then we open a
commercial fishery assuming that there's markets available to take the fish. That usually results in a quarter of the run entering the river before we would ever start a commercial fishery. During that period of time subsistence fishing is going on.

Once commercial fishing begins, fishing periods are spread out to limit exploitations of the various components of the chum salmon run. The periodic closures of the commercial fishing allow continued utilization by subsistence harvesters throughout the duration and on the various components of the entire chum salmon run. When the summer chum salmon run is projected to be inadequate to meet escapement and subsistence needs, the Board has directed the Department to manage the commercial coho salmon fishery to minimize the incidental harvest of chum salmon and to provide coho for subsistence needs. So essentially substituting coho for chum salmon.

The Kuskokwim River Salmon Rebuilding Management Plan clearly provides the conservative management strategy for meeting salmon escapement goals, providing for subsistence use and only allowing commercial fishing if a surplus above escapement and subsistence uses is identified.

Turning to the Yukon River. Many of the regulations in the Yukon River are similar to the kind of approach taken in the Kuskokwim. More time is provided for subsistence fishing than commercial fishing, a wide array of fishing gear may be utilized for subsistence fishing, most of which are more efficient than the gear allowed for sport fishing and in some cases virtually efficient as commercial fishing gear. And, again, like in the Kuskokwim, we don't begin the commercial fishery for chum salmon until we've got a sufficient number of fish in the river that we can project that we're going to meet escapement goals and we will also have enough surplus available to meet subsistence needs, then we would open a commercial fishery based on markets, again, which is a consideration. And, again, about a quarter of the run will be -- will have entered the river and be available for harvest by subsistence fishers before we would start the commercial fishery. And, again, like in the Kuskokwim, the commercial fishing periods are spread out with breaks in between and subsistence fishing can occur between those commercial periods.

The harvest of Yukon River summer chum
salmon is conducted under the terms of the Yukon River Summer Chum Management Plan. This provides a meaningful preference for subsistence by opening subsistence fisheries under circumstances in which the commercial fisheries are closed. Subsistence fishing is allowed when the summer chum salmon run size is projected to be between 600,000 and one million fish. A river wide commercial fishery is not allowed until the run projection is greater than one million fish. Although limited commercial fisheries in some tributary systems may be allowed if escapement goals and subsistence needs are met within those tributaries.

The Board of Fisheries provided this preference for subsistence fishing by setting aside the lower end of the biological escapement goal for the Yukon summer chum salmon which was 800,000 fish and adopting an optimum escapement goal of 600,000 fish to provide a meaningful preference for subsistence. The lower escapement resulting from the use of an OEG is likely to result in reduced harvest in the future for commercial fisheries, that is, it will be below the MSY production. But it is expected to provide adequate surpluses and future uses for subsistence. This demonstrates -- this aspect of this plan demonstrates a clear preference for maintaining subsistence harvest on an ongoing basis instead of maximizing production through an MSY approach for commercial fisheries.

In some subdistricts of the Yukon River drainage subsistence is allowed concurrent with low effort commercial fisheries and further, unrestricted subsistence fishing is allowed in the Koyukuk River drainage where commercial fisheries are not allowed at all.

Now, in Bristol Bay, the Kvichak River system, the approach is somewhat different, again, dictated by the local circumstances, but there are some similarities. Subsistence fishing in Bristol Bay opens before commercial fishing ends and it extends after commercial -- it opens before commercial fishing does and it extends after commercial fishing is closed. There's more area open. And there are also provisions made within the fishery to allow subsistence fishing to occur within the commercial fishing districts when subsistence -- when commercial fishing is going on. And in the case of the Nushagak River, if there are extended closures for the commercial fishery, the Department is directed to allow, by emergency order, subsistence fishing in the
Nushagak commercial fishing districts, even though we might not have a commercial fishery going on.

Although in recent years the Kvichak sockeye run has often not met its escapement goal, subsistence fishing has not been restricted. Furthermore, there are no seasonal limits or closed periods in regulation nor has there ever been an emergency order closure or restriction on the subsistence fishery. On the other hand, commercial fishing in the Naknek/Kvichak district has been heavily restricted in recent years to provide for escapement and subsistence fishing. Furthermore, the sportfishing regulations also give the Department guidance to minimize allocation conflicts between sport and subsistence fishing on the Kvichak stock. This regulation specifies a reduced bag and possession limit when the sockeye salmon escapement for the Kvichak is expected to be below two million fish. It also calls for closures in four specific areas that were identified in the Board of Fisheries process where there could be conflicts between sport and subsistence fishing.

And in summary, the State subsistence statute and the regulatory measures adopted by the Alaska Board of Fisheries and the in-season management practices of the Alaska Department of Fish and Game, ensure that the subsistence fisheries on the Yukon, Kuskokwim, and Kvichak Rivers are accorded a meaningful preference over other uses of the fishery resources. However, while State regulations are relevant to determining whether the Federal standard for the subsistence priority is met, these regulations were adopted to implement the subsistence priority created by State law. An additional measure of the ethicacy of the State's regulatory program in providing the subsistence priority is the determination of the amount of salmon reasonably necessary for subsistence and assessment of whether the management program is successful in delivering this amount to the subsistence fisheries. The State's management program is successful in both providing a meaningful priority as called for in Federal law and when run size exceeds conservation requirements in providing the amounts necessary for subsistence under State law.

And Mary Pete will now describe some of the provisions of the ANS regulations.

CHAIRMAN DEMIENTIEFF: Go ahead.
MS. PETE: Thank you, Geron. Thank you, Mr. Chair. My name is Mary Pete. I'm the Director of the Division of Subsistence for the Alaska Department of Fish and Game. Good morning to other Board members and RAC members.

As both Lance and Geron mentioned, State law has two measures to ensure implementation of the subsistence priority. One is identification of the amounts reasonably necessary for subsistence uses or ANS for short, of each stock and game population and the other is that regulations provide a reasonable opportunity to attain this ANS. State management boards are required to determine the ANS for subsistence uses for each stock and game population subject to customary and traditional uses. These determined amounts provide a target for management to reach much like escapement goals.

With this general statement regarding the State subsistence law, I will focus on stocks at issue for this meeting, mainly Kvichak sockeye, Kuskokwim chums and Yukon summer chums.

In the case of salmon in the Arctic, Yukon, Kuskokwim regions, the Board of Fisheries updated and refined the customary and traditional use salmon stocks and amounts necessary for subsistence use determinations for these stocks in 2001. The Board updated its findings with more complete recent surveys and a fuller examination of the historical harvest records.

For the Yukon and Kuskokwim updates, the quantities of fish necessary for subsistence use was determined based on harvest levels of the most recent 10 years, 1990 through 1999, excluding 1993 for Yukon chum salmon and 1997 for Kuskokwim chum. Those were years of closures or voluntary reductions. The low production of those years were excluded from the ANS calculation in order to show harvest under good returns with little or no restriction on the subsistence fishery.

The Board of Fisheries has identified 15 salmon stocks in Western Alaska north of the Alaska Peninsula with customary and traditional subsistence uses. Most have specific ANS findings associated with them. Of the chum stocks, Kuskokwim subsistence harvests have been consistently above the lower bound of the ANS determination. These determinations are generally in the
form of a range of a lower bound to an upper bound.

In the Bristol Bay region, Kvichak sockeye harvests have averaged at 78 percent of the lower bound of the ANS in the past five years, 1998 to 2002. And as you heard Geron Bruce say, that fishery has no restrictions, it's allowed to occur 24 hours a day, seven days a week. And what we have found is that effort has not reduced -- we get the same number requests for permits so it seems to be an abundance based production.

Yukon River summer chum salmon harvest have been within the ANS range for three of the five years, from 1998 to 2002 and just below ANS for two of those years. In some of those years Yukon and Kuskokwim managers and regional organizations have asked for voluntary reductions in subsistence harvest under disaster declaration management. Note, also that the harvest numbers are estimated well after the close of the season and serve as a report card of the previous season's harvest productivity. And as Mr. Bruce mentioned the Kuskokwim chum salmon stock is under a rebuilding plan.

Another feature as I mentioned of the State regulatory program that guides implementation of the State subsistence priority law is the standard to provide a reasonable subsistence opportunity. This is not a guarantee of harvest success but an opportunity to get the amount reasonably necessary for subsistence.

The Board of Fisheries instituted the windows fishing schedule in 2001 that Mr. Bruce described in order to provide opportunity for all fishing communities throughout the Yukon and Kuskokwim Rivers and to ensure a conservation measure for discreet stocks on those rivers. The windows schedule was established so that reasonable opportunity is afforded throughout the drainage to its up river reaches where salmon numbers have been reduced from being subject to down river fisheries as well as each salmon stock by verging into its spawning tributary.

The Kuskokwim schedule is thesimplest to explain as it allows for four days of subsistence fishing and three days of closure as each run progresses up the river. The lower portion of the river is subject to the schedule by June 1st and each up river portion assumes the schedule the following week.
The Yukon schedule is similar with multiple windows each week. Prior to this windows fishing schedule up river communities often expressed frustration about consistent fishing productivity in even years of high returns, high runs.

In summary, the ANS determinations provide a target to assess a reasonable opportunity for subsistence uses of these stocks and the windows subsistence fishing schedule allows distribution of reasonable opportunity and a conservation measure of discreet stocks.

That concludes my comments, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you.

MR. BEDFORD: Mr. Chairman, I wanted to address a couple of specific subjects. The first one is how we intend to monitor the fisheries in Area M this coming summer.

The Fisheries Monitoring Program that the State has just as a customary matter is an intensive one. We, in the ordinary course of business, we're looking at the fishery performance, the conduct of the fishery by the fleet, what the harvest is by species, by area, by gear type, however, for this coming summer there's a couple of additional things that we're looking at.

One of them is recognizing that the decision by the Board of Fisheries with Area M was predicated to some extent on the notion that a change in management would actually provide an opportunity for the fleet to reduce its harvest of chum salmon and that that was based on the notion that with longer fishing periods that the fleet would be able to pick up its gear and move when it found itself on a concentration of chum salmon.

We think that there's some opportunity here to monitor deliveries within a longer fishing period. If you have a four day fishery, for example, fishermen will deliver more than once and we would expect to see a reduction in the number of chum salmon as compared to sockeye salmon over the course of the fishing period.

So that's one of the things that we intend to have a look at.
We also want to see if it's possible for us to monitor how the fleet moves within the area to see if there's some way to see the fleet shifting from locations where there might be concentrations of chum salmon to seek out areas where there's a better ratio of sockeye salmon. So those are two things that we want to try to accomplish this summer to help us see how effective the regulatory structure is in meeting some of the objectives that the Board had in mind, and that in fact the fishermen from Area M have brought to you here in the course of this meeting.

Another area where there'll be some activity will be in enforcement. The Alaska Bureau of Wildlife Enforcement is, at this time, developing a Comprehensive Peninsula Salmon Program. This is going to involve assets in both air, land and sea to monitor compliance with a regulatory program both for reporting catches and also with the full retention requirement that's in regulation. I can't speak really in great detail on this. It's something that's in draft form. It hasn't been finalized by the Department, but there is an awareness on the part of wildlife enforcement that there's an important issue that needs to be dealt with in that area, and so they are looking very closely at that.

Another area that has -- or issue that's come up a lot in the course of the discussions here and that, actually we were talking about internally prior to the time that I came up here, was -- is what kind of research do we need to do in the future in order to try to assure that we are effectively managing the stocks and the fisheries that are at issue, not only here, but with the Board of Fisheries and with the Department.

Our current take on it is that probably the best methods that we could develop for looking at stock composition and then also at migratory patterns for the stocks that are of concern, would be to develop genetic stock identification. That's something that we've already started with sockeye for Bristol Bay. It's not something that we've made a great deal of progress with on chum, I mean we've made some but we haven't been able to develop a full set of markers that would permit us to distinguish between all of the various salmon runs from Western Alaska. So there's certainly baseline work that needs to be done and then also fisheries sampling that would have to be done so that we can actually track those stocks through the fisheries.
So this is the kind of thing that we're certainly willing to discuss with the Federal agencies, with non-governmental organizations from Western Alaska and from the Alaska Peninsula, to see how we might go about doing this. Needless to say, one of the things that we run into with any sort of research priority is the availability of resources to do it. So we'd also want to be exploring opportunities for funding for something like that as well.

In any event, I'd be pleased to deal with any questions.

CHAIRMAN DEMIENTIEFF: Thank you. We will get to that. Let me just lay out our plan this morning so everybody understands. I'm going to have the Regional Council Chairs make their opening statements, and then we will engage in discussion where they will be free to ask questions.

One of the things that happened, you know, since we scheduled this meeting is the Secretary's in town, Secretary Norton is in town so the Board is going to have to leave, they have a luncheon, they have a responsibility, so we're going to be adjourning, actually, about 11 or 11:15 at the absolute latest, so we need to keep that in mind as we begin these discussions. So as the RAC's get into their issues, we need to keep that timeframe in mind. We may not take a break to allow opportunity because I do want, after you make your opening statements, I do want you to have the opportunity to engage in discussion. In keeping with my Athabascan tradition, we go with the sun, Virgil, go ahead and open up.

MR. UMPENHOUR: Thank you, Mr. Chair. Yesterday I provided some documents to the Staff and so what I'm going to start out by saying is this, I'm the one that made the motion for the Eastern Interior RAC to do this. I went to the Board of Fish meeting in February and I represented the Fairbanks Advisory Committee. When I got off the airplane, I ran into Dr. Eggers, when I ran into Dr. Eggers I said, Dr. Eggers, what are you doing here and he says, well, I'm leaving, I just presented my '87 tagging study and I says, well, that's amazing to me because it was withdrawn after the mistakes were found in it right after it was presented to the Board in November of 1991, and then Mr. Edfelt -- after Mr. Edfelt found another mistake in it in February of '95 it was withdrawn by the Department and never used again.
So you'll find in the stuff that I gave you, a piece of paper from Dr. Ray Hillborne of the University of Washington. If you look on the first page and read the bottom paragraph, I'm just going to read it real quick:

However, one cannot state with any certainty that the False Pass fishery does not often intercept large numbers of Yukon bound chums, that is, the Board of Fisheries cannot as a result of the '87 tagging study results, dismiss the Yukon fishermen's concerns.

He goes on further about that. Then I got to the meeting and I looked at the GSI study that had been presented by Dr. Lisa Seeb. The GSI study was lacking three pages, I've included those pages in your information.

These are from the GSI study that was presented to the Board of Fisheries at the meeting in 1998.

Okay, on Page 32, which is not in the one presented to the Board this year, it says:

That the actual numbers of fall chum salmon in test period June 12 and 13 was 10 percent.

It then goes on to say that in the first commercial period where it was tested, June 15th through 20th, the composition of Yukon fall chums was six percent. Then in June 21 through 25 commercial fishery, fish tested, five percent were Yukon fall chum, and then it goes on June 26 through 30 period, it was three percent. I'm absolutely dismayed that the Department of Fish and Game told the Board of Fisheries there were no fall chums in that fishery.

Now, you're also going to find in this group of stuff I gave you, excerpts of transcript of Board of Fisheries deliberations on the False Pass June issue, one through three, March 1995. That was a 15-day Board meeting, that was the last three days of the Board meeting. I've highlighted just a little bit of things in there. If you turn to Page -- I highlighted it but I've messed up just a little bit, what I want to speak to -- I'll just start at the front, it's what Mr. Edfelt said,
Mr. Edfelt, who was the Vice Chair of the Board at the time -- Mr. Edfelt said, on the very first page if you go down to the -- it will be the third paragraph, the second paragraph is only one sentence, read the last sentence; it says: Chums out of the South Peninsula fishery, in order to put a few more fish into the Norton Sound area as Mr. Kron said, every fish counts in Aniak, that's Edfelt talking about that, that was Dr. Kron, who is now your administrator for the Office of Subsistence Management. He spoke about every fish counts. He was speaking about the Aniak River, he was also speaking about Norton Sound.

Then if you get to Page 2, Chair Larry Ingle says, at the very bottom, this last year we heard the pink salmon helped replace some of the lost chum salmon. He's talking about and -- northern Norton Sound, if the people can eat pinks instead of chums because their chum salmon subsistence fishery was totally closed.

Then you get to Edfelt again and he talks about, and this is on Page 3, Edfelt talks about northern Norton Sound and he talks about large scale commercial fisheries and then if you turn to Page 4 he does the same thing again, he says, that doesn't mean that there aren't weak stocks in Southeast Alaska or Kodiak Island or Prince William Sound. As we've gone around the state we've certainly seen areas of concerns in those areas as well, but for the most part the salmon management program in the state of Alaska has been extremely successful and I'm not about to turn that successful program on its ear at this time in order to manage for the weakest, smallest stock, any mixed stock fishery under the guise of managing sustained yield. I think we're providing for sustained yield.

If you turn over to Page 5 it's me talking, you go down to the bottom and I say, in Norton Sound their fisheries are closed. Escapements have not been met and it should have been northern, but it says western, Norton Sound with the exception of this last year for a number of reasons, nine of them to be specific for in the neighborhood of 10 years. To me, that is not sustained yield. The subsistence fishery has been totally shut off or severely restricted for the last five years. To me that's not meeting subsistence priority if people are allowed to fish period.

That same holds true for Moses Point, which is also a Norton Sound subdistrict C, they've been
closed down. That river's not met escapement for a number of years. The Department even went to far when Demby Lloyd was the head of commercial fisheries to lower the escapement goal by 6,500 fish. And then in the following year they got 11,000 fish up the river past the counting tower and that's the best counting tower in the state of Alaska.

Ingle, at the very end, he says, on Page 6, he says, so the point is yield is also a very different term to define, but one level this sustained yield is at the highest possible level for maximum utilization. At the lower level, that's difficult to define, the species can no longer sustain itself and there's no yield, and that's defined. I guess in my mind when -- by when a fish fits this category of threatened and endangered species -- threatened and/or endangers and then he goes on to talk about that.

He then goes on to talk about, and I don't even know where I've marked it, he talks about yield and he's saying that there may be -- that yield is only the amount of fish necessary for bears to eat, such as in the McNeil River or for people to view or to have catch and release sport fishery. And so I closed by saying, I just want to reemphasize one thing, escapement was met in northern Norton Sound this year, it was met at the expense of a zero directed commercial fishery for an area that used to have a very viable fishery. It was met with subsistence closures and when I say subsistence closures I mean people had not fished there for four years.

To me it's a travesty, it's criminal to assume that the burden of conservation that those people are bearing is spread equally throughout the migration route of these fish.

What this prompted me to do when I got back from the meeting, I called up Robin Samuelsen, who, at that time was on the North Pacific Fisheries Management Council and was a past member of the Board of Fisheries and is currently a member of the Bristol Bay RAC, and I says, Robin, we have to have a definition of sustained yield and we says, I totally agree with you, so myself and an attorney by the name of Bill Caldwell from Alaska Legal Services, who's a good friend of mine, we sat down and we wrote what we thought was a good definition of sustained yield. Then I talked to Dr. John White who was on the Board with me at the time and he
says, no, that's not what we need, that's not going to do any good. What we have to have is a sustainable fisheries, salmon fisheries policies, so that's included in here.

We came up with a sustainable salmon fisheries policy, it took a long time to do it. It went through extensive public review. I had lunch with Duncan Fields yesterday, that attorney from Kodiak, he spent time as one of the public members on it, several years. This thing was peer reviewed by science, it was out to the public, it was changed, many, many times, I was involved in that. I wasn't on the direct committee, but I was one of the people that made lots of changes -- effected lots of changes in that thing.

Okay. I just want to say one little comment about the Staff report. And that is that the State says that tripling the amount of fishing time in the Area M fishery is probably only going to double the harvest, well, I really strongly object to that. Because I tried at every Board meeting practically to reduce the depth of the gear in Area M, I was always unsuccessful. But during those pursuits I obtained every bit of scientific data I could find on vertical distribution of sockeye salmon and chum salmon. I've included part of that. One of them, is it's a thesis for a master's degree for the University of Washington in 1969. This individual had been involved in all kinds of test fisheries, with the Fisheries Research Institute, which was the people under Dr. Rogers, used to be the guy in charge of it, that did this stuff in Bristol Bay, that forecasted Bristol Bay runs, and so they did all these studies, I've enclosed a couple pages of that.

I'll just read a tiny bit of it. It says, he found that sockeye and chum salmon ascended toward the surface during the night and descend during the day. And then he speaks some more about this guy, Mitch Adory, in 1966, studied the vertical distribution of salmon in the Northwest Pacific Ocean in June '62, mid-July to early August '63, he found that almost 90 percent of immature sockeye were in the upper 10 meters at night and almost none were below 20 meters.

There's another thing here and it says at the top of it, it says Life History of Sockeye Salmon, I've got one paragraph in there, it's up in the upper left-hand corner. It says Mitch Adory, 1966 analyzed data from operations in the Northwest Pacific Ocean and
Bering Sea. He made variously -- in June to August, the same thing.

Anyway, fish ascend towards the top at night, as the commercial fisherman that I used to be, I know that you catch many more fish at night and it's for a number of reasons. One reason they come up closer to the top at night because predation is not as bad; the next reason is during periods of limited visibility they can't see the nets and swim away from them as easy so you fish -- you catch more fish at night.

Okay. I think I've pretty much covered what I wanted to cover in my opening statement. I have some other questions, some other things that I want to bring up but I will say this, that the things I've presented, information from Dr. Ray Hillborne about the '87 tagging study, it shouldn't be used, you can't do those kind of things. I've got a memo from John Hellsinger, who at the time was the Regional Director of AYK region to Dr. Eggers dated 10/14/91 with his concerns. I've got my concerns as the Co-Chairman of YR DFA, in 1991 a letter that I wrote on 12/December of '91 pointing out things like the same day after the main tagging effort was a commercial opening, 30 percent of the tagged fish were caught during this opening, 30 percent. There was no commercial fishery on the Yukon River for fall chums in 1987. I've got newspaper articles over here that tell that -- and Mr. Demientieff very well knows about what happened in 1987 because he lives in Nenana and normally and they're quoting Fred Andersen in the newspaper article, by this time, there would have been 50,000 summer chum salmon caught but only 3,000 have been caught in 1987 because the fishery was so poor in 1987 they totally closed the damn fishery. The people that live on the Tanana River, that live in Nenana and Fairbanks didn't get to commercial fish, they had one opening and caught 3,000 fish.

But anyway, I wanted you to take a look at that. I wrote that to the people at UAF to do an analysis of the '87 tagging study, that's on the very last page, they concur with Dr. Hillborne.

So to have this '87 tagging study brought up, resurrected after it had been pulled and the Board never was allowed to consider it again and that happened in 1995, to use it again in 2004 and say there's no fall chums there and that it's not going to impact any streams in the AYK region by increasing this fishing time by this
much, which I figure is going to increase the effort or
the harvest by about triple because they're increasing
the fishing time by triple, to me, is unconscionable.

One last item, and, that is, that there's
always been rumors of discarding of chums and that the
accountability of the chum harvest reported in the Area M
was not accurate. And so I had asked the Department on
numerous occasions, can't we just look at the harvest
records, the fish tickets, no, you can't do that. So I
talked to Lance Nelson that's sitting over there and this
was in the year, I guess it would have been late 2000,
and I talked to him, I says, Lance, look, we're
regulators, we're making -- we're promulgating
regulations for the conservation and the development of
our fisheries. I don't feel our regulations are being
complied with. I had one Bristol Bay fisherman tell me
that he had a relative working in Area M on a drift
gillnet vessel and that there's this one guy bragging
that he's never, ever sold a chum salmon, he just throws
them overboard. So I says, can't we somehow look at the
records and I also spent a lot of time talking with
Captain Kaine, who was the trooper representative for the
Board. I convinced him, I says, Captain Kaine, you need
to do like we did in Vietnam when I was a sniper officer,
you need people with good optics, you need to insert them
prior to the fishing season so they can observe the
fleet. Well, they attempted it one time and they failed
because they screwed up their insertion. But then they
did it again. They did it in 1999, and this time they
videotaped off Popoff Head the absolute evidence they
needed. The one person went to trial in Sand Point and
was found not guilty. So the State decided, and I got
all this information from Captain Kaine, now, by the way,
at this Board meeting in February, just this last
February, what happened to the disposition of the other
two people that they video'd discarding chum salmon, the
other two went ahead and plea-bargained, so they did get
two convictions out of it.

So anyway, what ends up happening is I --
as Captain Kaine tells me, now, this is back in 2000, he
tells me, look, we can print -- to a print off, the
troopers can, of the harvest records, these fish tickets,
and the fishermen will be just numbers and we can make it
so that year after year it's the same number is the same
fisherman, and I said, great, that's what I need. I want
to analyze those fish tickets, so Mr. Nelson, I assume
okay'd it, anyway, it got presented as a record copy at
the Board of Fish meeting in 2001. Mr. Mike Stanley,
who's attorney for the fishermen in Area M objects and says this violates the confidentiality statute, and I said, no it doesn't, but somehow he convinced the director of commercial fisheries that it did because -- and I'll tell you why they pulled it. They pulled it and this was the explanation given by Mr. Stanley, the attorney for the Area M commercial fishing fleet, he says, look, these fishermen signed contracts with their processor, the contracts states that they will sell 100 percent of their fish to that processor, some of these fishermen sold part of their fish to other processors and so the processors will be able to take these fish tickets, now, we're talking about a stack of records this thick, over 800 pages and compare them to their fish tickets that they have and they will be able to figure out who these fishermen were and they'll be mad at them because they breached their contract to them, so the State pulled them.

And so at the Board meeting in February, it was a 4/3 vote. Remember the Board passed -- the reason why we're here by a 4/3 vote, so there was a minority of three people. The minority people, which was the two Nelsons that are currently sitting on the Board, one of them that's term expires here real quick, and Dr. Bass from Fairbanks, we had talked -- Dr. White and I, we were both at the meeting, and so we discussed this with those three Board members, that are current Board members, we discussed this with Captain Kaine, and so what we wanted to happen at the Board meeting, which didn't happen, was Captain Kaine to give an analysis and a review of those records, and so that didn't happen. But I can tell you one thing, the sockeye to chum salmon ratio, when the Board upped the cap to 900,000 in November of 1991 and the newspaper articles are on the wall back there to document this, the reason they raised the chum cap to 900,000 was because the Bristol Bay forecast was going to be very high and at the current chum cap of 600,000, based on the fact that historically for every 100 sockeye caught there were 40 chums caught, that they would have to increase the chum cap to 900,000 in order to allow the Area M fleet to harvest the 8.3 percent of the Bristol Bay forecast. That's why they upped it to 900,000.

After that happened, which was in '91, we petitioned the Board, unsuccessfully two times, YRDFA did. I wrote the petitions, my wife and I and a guy named Ed Rutledge from Tanana Chiefs. That didn't work. So then we started a petition drive. After we got over
10,000 signatures and sent them to the Governor, the Governor directed the Commissioner of Fish and Game to direct -- to call a special Board meeting and we did have that special Board meeting and they lowered the chum cap to 700,000. But after that happened, and all that attention was placed on the harvest of chum salmon, somehow the sockeye to chum ratio jumped up to as high as seven to one instead of two and a half to one and it was that way until the Board made the changes in 2001, which I was one of the people that really argued like hell to get those changes made, to give them three 16 hour periods a week, no nighttime fishing so they couldn't chuck the chums overboard in the periods of limited visibility, and because that was just part of a conservation plan to address nine stocks of concern in the AYK region we put conservation measures in the terminal areas and conservation measures in Area M.

This new Board left all conservation measures.....

CHAIRMAN DEMIENTIEFF: Virgil, I'm going to ask you to summarize your opening comments out of respect for your fellow RAC representatives because they do have opening comments as well. We will have the opportunity to engage, so if you would, please, it's been about 20 minutes and that's -- the other people have things to say, too, I know that, so, please.

MR. UMPENHOUR: Okay. I will summarize. And sorry if I seem inconsiderate, it's just that I have a very long background in this issue.

So, anyway, what has happened is that the sockeye to chum ratio jumped way up until the actions were taken in 2001 the conservation measures put throughout the migratory range of the fish, now the sockeye to chum ratio for the last two years is less than two to one, so that alone indicates that the reporting of the chum salmon harvest between 1992 and 1999 is totally flawed.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Thank you, Virgil. We appreciate the information and I don't mean to cut you off but the other people have to have a chance to talk too.

Mr. Stoney, do you have opening comments.
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1 MR. STONEY: Mr. Chairman. This is
2 Raymond Stoney. I don't have too much comment, but I
3 certainly want to thank you and the Federal Subsistence
4 Board for taking time for yesterdays very, very strong
5 testimony from Southeastern [sic] Alaska, and then
6 evidently it came to where the subsistence and commercial
7 fishing in Bethel area, it's real highly impacted and I
8 want to congratulate that people from Bethel and
9 Southeastern gave very strong testimony that the -- in
10 the Federal Board of Game [sic]. Like, for instance,
11 myself, I'm from the Kotzebue area, there is no -- not
12 too much commercial fishing at all for about four or five
13 years, and subsistence fishing in that area has been very
14 highly return fish in the last couple of years.
15
16 Again, Mr. Chairman, I want to thank the
17 members of the Board, you know, for all that time
18 yesterday, and heard very strong testimonies.
19
20 One thing I'd like to say is that from
21 Southeastern and all the way up to the Arctic Slope
22 Interior, that we need to just sit down and make a plan
23 that will fit all commercial fisheries throughout the
24 state of Alaska. Again, Mr. Chairman, thank you very
25 much.
26
27 CHAIRMAN DEMIENTIEFF: Thank you, Ray.
28
29 MS. CROSS: Good morning. I'm going to
30 begin by reading something that really bothered me and it
31 comes from the comments by the State of Alaska and they
32 were the very first words that they used this morning.
33
34 In southern Norton Sound, there is
35 Unalakleet Wild and Scenic River, a variety of non-
36 navigable waters and Federal BLM lands, but in northern
37 Norton Sound there is very little Federal land or water,
38 existing subsistence fisheries are not subject to Federal
39 jurisdiction, therefore, all references in the petitions
40 to Norton Sound salmon fisheries may not be considered by
41 the Federal Subsistence Board because they are not
42 Federal subsistence fisheries and the Federal public
43 lands.
44
45 In other words, the State is saying to
46 you, is urging to you to discriminate between rural
47 subsistence users depending on the amount of Federal land
48 there is out there.
In other words, they are saying, I just didn't realize that ANILCA's intent is to discriminate between rural subsistence users, depending on how much Federal lands you have within a given region.

I don't think so.

Throughout, the decades of problems we have in our fisheries, we have looked upon both the State Board and the Federal Board for assistance. From our region we have testified for decades to have something be done with our depleting fisheries. We are now at the situation we may not recover. When there are nine chum salmon in a small stream, is there hope of recovery?

Or perhaps the State does not want the Federal Board to look at their management schemes that they have applied in our region for decades to the point that we have streams and rivers that have no chum stocks. Maybe they don't want to have you look at Unalakleet Wild and Scenic River, which is experiencing problems at this very moment, subsistence has curtailed and it is spreading, and maybe we are very fortunate that an unfortunate to Yukon, Kuskokwim and Bristol Bay that those large schemes of water are also being affected by what has been happening to us for decades.

Maybe the Federal Board should look at it this way, maybe the Federal Board should look at the management -- what management has been done to Norton Sound that have failed, that have succeeded and is that same scale of management being applied to large scales of land where Federal waters are and how will it -- will the impact be the same?

You know, I am not much of a person to be angry about things, but even from some of the testimony that you heard from my region, there's a certain amount of anger that's coming out, resentment maybe, despair, we are in an area, we have -- we have areas where we have no more subsistence fishing. How much does it take? When there's none, there isn't any. We have Tier II situation, is that working? I think those are some of the things that the Federal program better look at because it may be the future of the Yukon, Kuskokwim, and Bristol Bay and other areas of Alaska. In the future there may be more Tier II fishermen.

And what happened to those individuals, those fisher people that didn't get Tier II fishing
permits, maybe somebody is right, those of you who have plenty, perhaps we should start buying from you or maybe you can start sharing, giving us what you have. We are already doing that, you know, through our CDQ. During the summertime, the CDQ buys fish and we are handed fish, chums. The most I think we can get is six chums, but, chums just the same.

I really hate to see the situation that we have in Nome subdistrict expand to other regions of Alaska, but it is, unfortunately it is, unless the State and the Federal government work together to resolve what is happening, to look at realistically and different constructive studies to see what is happening to our salmon, the future is as bleak as we are in Nome subdistrict. Norton Sound, period. The small river streams that we've got under Federal management are also being affected.

I would really urge this Board to make strong recommendations that one of the things that needs to be done is to take a look at Norton Sound fisheries and see what kind of management was applied, what worked, what did not work, whether those same kind of management schemes are going to be utilized in other parts where there's a lot of Federal lands. Should those be avoided?

I think I'm going to conclude with that and I will still be making some comments later on. But if somebody doesn't do anything, regardless of whether or not the State of Alaska or the Federal government wants to close their eyes in what happened to Norton Sound, it's going to happen to the rest of the country.

And I guess lastly, it's really appalling and disheartening when you have to be made to feel because of the few Federal lands that we got, to get the feeling that you might be an unwanted child in the Federal Subsistence Program. I hope that's not the case.

Take a look at our region and learn from it, do not let the same things happen to areas that are starting to crash.

Thank you.

CHAIRMAN DEMIENTIEFF: Appreciate the comments, Grace. You probably know it, but my son works over there for Fish and Game and that's one of the things that he does, he does the counting in the area, and I'm
going to do everything I can to try to get a trip up there this summer to try to get a -- you know, to see for myself. The Board is already committed to their summer schedule for their trips and they're going to the upper Yukon this year. And, of course, I've been all through that, but I kind of would like to go and see, too, so I'm just going to do the best I can to try to get up there even if it's only myself and maybe Carl.

But, yeah, I kind of would like to see firsthand myself, yeah, he's told me some of the stories, I'm really -- I really want to see, so thank you very much for your opening comments.

Jack.

MR. REAKOFF: Thank you, Mr. Chairman. I want to thank the Board for their deliberation on this very contentious issue. I can feel your pain also for listening to all that testimony and the decisiveness.

I felt that starting off with the Staff Committee presentation, that there are flaws in that Committee presentation. The Board of Fisheries and Staff assume that the Bristol Bay forecast is accurate, that's the premise of this expansion of the Area M fishing time, whereas, therefore, the harvest of a significant portion associated risk to the Area M -- or in Area M of the AYK chums in a non-terminal area fishery, far outweigh the fact that the Bristol Bay forecast are routinely plus or minus 50 percent off. And especially in an unstabilized marine situation where we have not realized a recovery of the marine system. And so I feel that that's the basis of this expansion, as it revolves around that forecast. I feel that that forecast should not be looked at absolute fact.

The Staff downplays the extension of basically three times the fishing amount of time with 14 nights to be fished and calls it really a 100-fold increase in harvest, potential because of the darkness. Having fished in a marine system with drift gillnet gear in Bristol Bay, we caught thousands of fish at night. The weather is a primary factor, fishing with the gillnet gear will have full effectiveness during the night fishing. Fish don't quit swimming just because it gets dark out.

Summer AYK chum salmon have not demonstrated a recovery to date. Neither has the Kvichak
River sockeye to warrant such an optimism and to throw caution to the wind is very risky, especially to the subsistence users who rely on those resources.

The State’s presentation revolves around the in-river subsistence managements and that’s not the question here. The question is in regard to not the management regimes of how we manage fish once they enter the river, including subsistence, this meeting revolves around the tripling of fishing time in Area M and the concern for chum salmon passage through this ventura and the preemption of their reaching the subsistence management regimes in-river.

I’m the designated representative from the Western Interior Regional Advisory Council, therefore, I am compelled to stand by my Council's unanimous vote to support the extraterritorial intervention by the Federal Subsistence Board and the deregulation of the Area M salmon fishery. To take a silent position on the State Board of Fisheries recent action for commercial salmon harvest in Area M would violate the more weightier portions of ANILCA, Title VIII. Disregarding scientific principles for conservation of an AYK salmon stocks of yield and management concerns shall have the greatest adverse impact to rural residents subsistence users who must conserve in-river.

The justification that insufficient data regarding chum salmon destination and their composition within the Area M harvest somehow validates the deregulation, holds high risk for the AYK subsistence users. Insufficient data is prima facia evidence that caution is required to assure escapement and subsistence needs.

As one Council member, who has listened to all the public comment, I would advise:

That the Federal Subsistence Board find that the Board of Fisheries has violated the Sustained Salmon Policy for conservation of stocks of concern in a non-terminal mixed stock harvest area.

Prudence of the dual management system requires a request for a joint meeting of the Board of Fisheries and the Federal Subsistence Board, focus of the meeting would strategize an execution of the Area M fishery with assurances for true protection of the AYK.
chum salmon passage.

Scale back harvest windows or chum caps with verification by observers on some vessels, for example.

The need for genetic stock apportionment of the Area M chum salmon harvest and with questions as to what timeframes are various chum salmon passage correlated to destination river systems and amplitude. What stocks are represented on a yearly basis, whether summer and fall chum, and the genetic stock analysis should be accomplished by a neutral entity.

We don't want to put the fox in the chicken coop.

And so that's my opening comments and I thank you for your attention, thank you.

CHAIRMAN DEMIENTIEFF: We've been kind of passing notes around up here. And this is obviously one of the most important issues, you know, to deal with, so we are going to either have people that feel compelled, Board members, you know, they have Staff Committee, we work very close together -- I work very close together with my representative, Carl, so I'm going to revise my earlier statement, and that we are going to sit here and do diligence. We are going to make sure that everything gets heard, and if it goes through the afternoon, so be it, yeah, we will one way or the other be here. And don't feel if some of the directors feel like they have to go, their Staff Committee gives them the information, so we will go as long as we have to. So I just wanted to revise my earlier comment, just kind of, this is our priority right now, so, please, you know, that's the way we'll go. We will take the time. We will do diligence because next week we have a decision point and we want to make sure that everybody has their say. So we will just do this, this is our priority.

Okay, John, do you have comments.

MR. LITTLEFIELD: Thank you, Mr. Chairman. I think that's a wise decision, and I don't believe you're going to be held here overly long because of my statement.

My name is John Littlefield and I'm the Southeast Chair. When I said that, when I introduced
myself the other day, I had several people say what are you doing here? What's Southeast doing here, that Area M is a long way away. But when we look at Southeast, the major land holding, of course, is the Tongass National Forest. And the Tongass National Forest is virtually surrounded by marine waters. Marine jurisdiction has raised its head before in Southeast and it's quite likely that it could happen again. So we're interested in the process. I've sent an e-mail to all the members of the RAC to get their ideas and we haven't taken a position on Area M and I'm not going to take a position on that at this meeting.

But we are very interested in this process, of how we get to extending extraterritorial jurisdiction.

One of the things that I did when I looked at this report, and I wish I'd gotten it earlier, that we could have shared it, but when I did read through it, it has complete reliance on the Alaska Department of Fish and Game, Comm Fish Division reports. Every bit of literature that's cited in the back of that report is from Comm Fish or personal communications of the Comm Fish director. I'm not going to refer to the Department by names as some might have done, but I'm certain that most of you are aware that forecasting fish returns is an imprecise science at best and a person with a crystal ball could sometimes do just as well. We're making wild guesses here. Blind faith acceptance that the take in Area M will double when fishing time is tripled is voodoo science at its best. It's totally unsupportable by the test of ANILCA, which is substantial evidence. There is no substantial evidence.

Further, it's not supported by clear and unambiguous and scientific proof that some people have asked you to provide before you can exert -- exercise extraterritorial jurisdiction.

Federal Staff used that unsupported doubling factor to justify their conclusions in the report, that increased fishing times will not interfere with the subsistence fisheries. I don't know the affect of tripling the time and exactly what it will be, but this issue is of such magnitude that the Federal Staff -- the Federal biologist should have been making a report to you based upon their research and their best professional judgment instead of relying so heavily on the State.
And I found that quite troubling. Because most of what the State said earlier I disagree with, but that's nothing new. We have two different programs here, the State has their program, which calls for reasonable opportunity. You will find that nowhere in ANILCA or amounts necessary for subsistence. Those are words that are not in ANILCA. And we're here because this is the Federal program we're talking about. This is a Federal solution to something that was thrown in our lap.

If you read through this report it says we don't have any information now, we won't have any after the season's over and what do you do next year if this is before you. That's ridiculous. Somewhere in here somebody's got to have a plan on how to get that information to the State and to the Federal Subsistence Board.

And some ideas that were brought up by previous speakers have lots of merit. I would urge you to do the very most that you could to make sure that funding is secured for those that have good ideas and work with the biologists, work with the State and try to get these forward.

I have some other things I'd like to talk about, too, and that's the -- and if you'll refer to Page 4 of the Federal Staff report, I'll talk about that in a couple times [sic] here.

I support the Staff interpretation of the application of Federal regulations that were described on Page 3. In other words, the Secretary can exercise extraterritorial jurisdiction, I believe that to be indisputable. Although some do and say it can't be done, personally I believe that it is and the law and regulations cited in this book support that.

I didn't agree with the summary that was on Page 12 that demanded a very high threshold to justify extraterritorial jurisdiction. 50 CFR 100, Section 10(a) as cited on Page 4 does not require any such extraordinary high threshold, only that the activities interfere with the subsistence activities to such an extent as to result in a failure to provide the subsistence priority. That's what's required.

The exercise of extraterritorial jurisdiction would be to protect the purposes of ANILCA.
In other words, if we were to do this we would be protecting the purposes of ANILCA. The mandate of ANILCA is often said that it's to provide the subsistence priority on Federal public lands and associated waters. What we're seldom reminded of is to read the whole text, which is on Page 4, Section .802 (2). In there towards the last third of that, it says, or the continuation of subsistence uses of such population. And when we talk and if you substitute from ANILCA subsistence as customary and traditional, what you've got is you've got to, in addition to providing the subsistence priority, you've got to make sure that the customary and traditional uses that have been established continue.

That's the difference between the State and the Feds.

They're talking about a reasonable opportunity where you can go from Stream A to Stream B and if it's only 30 miles away, that's a reasonable opportunity, and that applies under State regs. It does not apply under ANILCA. If you've established a customary and traditional practice at that stream, then you need to be able to continue it under the mandate of ANILCA. And I think quite often that's one of the things that's neglected, it's certainly neglected by the State because they don't address that.

I guess I would just close in saying that many of the previous speakers had a lot of the points I thought I was going to cover and there's no sense to go on with them, I don't want this to go until 4:00 o'clock either, but they had some really good ideas, and hopefully everybody got them down, genetics, tagging, and all of these things and you're doing exactly what the regs require, that you consult with the RACs, you consult with the State and in summary if you decide that this interferes with subsistence and is not a direct cause as some say, it doesn't say that anywhere in this document, but if it interferes with the subsistence priority then you have a duty to recommend to the Secretary that she exercise that authority for extraterritorial jurisdiction. I'm not saying that you want to do that here in this case, but I'm saying that that's what I believe the process to be, and, hopefully we can get that defined sometime, of, what standard is to be applied to exercise extraterritorial jurisdiction.

I just don't believe that the bar as set out in this report is correct. I think it's way too
1 high, and I'd like to see that discussed by the Board.
2
3 That's all I have for now. Thank you,
4 Mr. Chair.
5
6 CHAIRMAN DEMIENTIEFF: Thank you, John.
7 I just want to point out one thing. I do know that we
8 are mobile, you know, in response to your, why are you
9 here? We are a lot more mobile than we were, you know,
10 years ago. And there are Tlingit people and non-Native
11 people, rural residents that fish near my home, and they
12 still have relatives at home. And I'm sure they're in
13 Area M, you know, and all other areas, people move
14 around. I do know that. You know, I know a lot more
15 than I let on about that. But they still have family in
16 your region, of course, they're represented by other
17 Regional Councils, but, you know, where they're currently
18 living now, but they're still family. So you have every
19 right to be here in my estimation because it does affect
20 families of rural residents in Area M and AYK. So if
21 they are unable to provide then that burden is going to
22 fall back on to the families in Southeast.
23
24 So I just want to point that out. I do
25 know that for fact. Because I stay with them, you know,
26 at home, and I know there are other people in other
27 places. So I just wanted to point that out.
28
29 Thank you, for your comments.
30
31 Della.
32
33 MS. TRUMBLE: Thank you, Mr. Chair. I
34 would like to defer at this time to the proponents of
35 these petitions. I spent a lot of time last night going
36 through and typing up some of what I have taken a list
37 of. So what I'd like to do is defer to Bristol Bay and
38 then continue after John is done.
39
40 CHAIRMAN DEMIENTIEFF: Sure.
41
42 MR. O'HARA: She sounds like a lawyer or
43 something, I was going to get even with her, talk after
44 her, but she by-passed me. Darn.
45
46 (Laughter)
47
48 MR. O'HARA: Anyway, my name is Dan
49 O'Hara, Chair of Bristol Bay. Federal Subsistence Board,
50 Staff and State of Alaska and the public, it's been a
I think, Mr. Chairman, that one of the things that we need to kind of keep in mind with the State of Alaska is Mrs. Pete, you mentioned that the subsistence was doing quite well in the Bristol Bay area. But I think there's a couple areas we need to maybe just think a little bit about and that is in the in-season part of the harvest where subsistence is taking place in all the major river systems, that's fine. But when you get to Lake Iliamna and you only have a certain amount of fish going up the Lake Clark system and then you have maybe some going to Gibraltar over there, Kohkonak, the Ilimana people, at their proper residence that they are at and Pedro Bay and places like that, can't move 30 or 40 miles to get subsistence fish, they're not getting it. So I think you need to take into consideration that subsistence is not well with the State of Alaska as far as providing the needs that these people have.

And the Interior, these people can't move 40 miles even with an outboard motor on a skiff to go do subsistence. And if you're catching one too many chums in the Area M, then that's one too many chums for subsistence needs met up in the Norton Sound and Yukon area.

So whereas we can catch a good number of fish in the Kvichak system, the outlying areas are not having their needs met.

Also the people in the Lake Clark area, they have decided, a lot of them, to not even do subsistence in that lake and bring their fish in from Bristol Bay itself. You know, if you have a 206 that works fine. If you're at Nondalton with a 18 foot Lund it doesn't work that way.

So I think you need to reconsider the statements that you make when you talk about satisfactory subsistence in the Bristol Bay region even though the other five river systems have met their escapement goals and harvest as well and subsistence. But the Kvichak and Lake Clark, as you well know in the last five years, that has not happened. And so I want to point that out to you.

Also there's a problem that lies in reference to lack of fishing time. I heard the Area M guys mention this a lot, that, you know, their lack of
fishing time. For the last five years we have been in the river. You've had 800 boats in the Egegik River and if you had a 12 hour opening, you probably got the fish six hours and the tide's out, that river is about -- when the tide goes out is about as wide as this building. You can't put 800 boats in there and expect to have 12 hours of fishing because if the tide goes out there's just a little stream. So, you know, we have been really hampered by trying to get the Kvichak run back and that's why we're sitting here today, and the AYK and the Norton Sound as well, Yukon, you know, and their chums.

So we have gladly fished, I think gladly fished in the river, just to try to get the Kvichak run back and it hasn't come back yet.

So there's been lack of fishing time on Area M's part and our part, too, and I must give Area M credit that, you know, they haven't gotten any fish in the last five years either. They really have -- you know, there hasn't been any fish and so we haven't gotten the fish.

That leads, I think, into the reason that our Advisory Board, Council made a recommendation for requesting the Federal Subsistence Board to exert extraterritorial jurisdiction and reverse the action of the Fish Board of the year 2004, because they bypassed the system of 2001, which was giving some protections.

Now, lastly, and we've heard it all, I think that one of the greatest concerns that we have and the reason that we are doing this as a Council, is because they're projecting as many as 46 million fish coming back to Bristol Bay next year. You know, we shouldn't even be here. We should be hiding behind a rock somewhere saying, oh, we hope they do show up and not make any noise, you know, but that's not necessarily the case. Last year, Egegik had a projected harvest and we harvested 50 percent of what the State of Alaska projected would be our harvest, 50 percent off at 35 cents a pound, you know, you could sell pencils on Fourth Avenue and make more money than that. It's a joke. So we're not necessarily going to the bank with 46 million fish.

Now, here's the issue, in my closing remarks, the issue is that all the Advisory Committees from the State of Alaska, and you people represent the State of Alaska, all the Advisory Boards for the State
Advisory Boards went to the Board of Fish and said we do not want you to take June 3rd to June 27th three miles off shore from Ugashik all the way to Togiak and open it up completely to unrestricted fishing. Why? The first run that comes in is the Kvichak run. Ahead of the Kvichak run come the Lake Clark run. That's Federal lands, and that's Federal waters. We wanted to put that restriction upon ourself, that Board just arbitrarily and absolutely with no regard for our concerns and our wishes and even have an advisory committee just did total absolute reversal of what we asked them to do.

And if this is the way they're going to handle this fishery then I think we need to sit down with a very serious negotiation with these people and work this out.

I don't know what's going to happen there if the numbers don't come back. Here, you know, we're in trouble again and the biologists, the State of Alaska in the Bristol Bay area are very, very good. They're just exceptionally fine people and they do a good job and they could monitor that fishery, they have an emergency order, they could handle that fishery without any problem at all.

So those are the concerns that we have, and thank you very much, Mr. Chairman, for the comments.

CHAIRMAN DEMIENTIEFF: Thank you, Dan.

MR. HANSON: Yeah, thank you, Mr. Chairman. I'd like to thank all the people that testified yesterday, even the Area M people, they gave a good testimony.

And my comment, if I read this I'm pretty sure the Board -- the Federal Subsistence Board has a copy of it. I met with the four villages on the lower Yukon, below Mountain Village, Kotlik, Emmonak, Alukanuk and Nunam Iqua, which is Sheldon's Point about a week before I came here. And each one of those villages wanted me to write my comments and I took the comments from the meeting and I had them written down. I normally don't do this, even when I was on the Fish Board, I normally don't write I just put it all in my computer up in my head and then that's it.

Well, Mr. Chairman, Members of the Board,
and public. My name is John Hanson. I'm from Alukanuk. I'm the Vice Chair of the Yukon, Kuskokwim-Delta Regional Advisory Council. I'm a long life subsistence fisherman at the mouth of the Yukon River. I commercial fish commercial king salmon -- fish commercially for king salmon whenever they open it for commercial. I am amazed at what the Board of Fish did on Area M fisheries and opening the lucrative fishery wide open.

The Board took the 350,000 chum cap off, they also took three percent of Bristol Bay sockeye cap off so now that gives Area M 286 percent fishing time with no chum cap and three percent of sockeye cap off of Bristol Bay. This is going to hurt subsistence on the Yukon/Kuskokwim region, the Bristol Bay region, the Norton Sound region, the northern Norton Sound region also. For the past 10 years our summer chum, fall chum and coho have been steadily declining. Our escapements of summer chums, fall chums and coho have not met their escapement goals. Last summer our summer chums were way below average or at the low end. We do not commercially fish on them but when we commercial fish king salmon we catch very few chums incidentally but we keep them for ourselves.

Summer chum, fall chum and coho are the salmon mainly for subsistence use for the Yukon/Kuskokwim region. Last summer the Koyukuk River residents never saw summer chums up their river they had to travel about 40 miles to get their subsistence chums. With Area M fishing 286 percent, you and I know what is going to happen to the summer chums, fall chums and cohos, they'll be gone and subsistence will have to be closed for a couple of years. Past years we have had subsistence closed a few times so more chums can escape to the spawning streams. At the mouth of the Yukon River we have had conserve every year for more than 15 years, but because our spawning streams have not reached their escapement goals except for a couple of years. All the summer chums, fall chums and cohos migrate through False Pass and Unimak Pass in June and July.

We are asking the Federal government, Secretary of Interior and Agriculture to put Federal interference on Area M fisheries until we start seeing our summer chums, fall chums and coho salmon return back to satisfactory returns.

And this is the ones that the four villages wanted me to write so the Board has it.
Last summer our summer chums were way below average. There's a sonar at Pilot Station that counts the salmon and the sonar at Pilot Station didn't get 500,000 summer chums. According to the report from Fish and Game, I think their report is from the year before because I looked at the report at our St. Mary's meeting with the Subsistence Council and it wasn't, to me, it wasn't there, but there was no -- Emmonak, biologist at that meeting, only one that was there was a Kuskokwim biologist.

And here, I don't know how the Board of Fish decided to take the caps off of Area M, the chum cap and the 3.0 percent Bristol Bay sockeye. If they had kept those caps on we wouldn't be here battling Area M fisheries. When I got out of the Fish Board I thought I was done with Area M but here I am sitting with the Federal and I'm talking about Area M.

(Laughter)

MR. HANSON: I got friends in Area M, but one thing we have to remember is the escapement goals for Kuskokwim, Yukon or Norton Sound have to be achieved, that's number 1, otherwise if we don't get our escapement goals every year, what's going to happen, we're going to be just like Norton Sound. Look how many years Norton Sound has never got their escapement goals and now they're on Tier II. The Yukon is almost there. If we don't get our escapement goals on summer chums, fall chums and cohos, we're going to be just as bad as Norton Sound, they'll put us on Tier II. And our C&T will be tripled.

Norton Sound's C&T is tripled to half now because they got the Tier II.

I think this Federal Board, Federal Subsistence Board that we have here are the ones to make the decision after all these meetings is done, and the 10 Regional Councils are their backbone. The 10 Regional Councils advise the Federal Subsistence Board. They get their advice from the 10 Regional Councils. They're not like the State, the State side, they're different from State.

And the last thing I want to say on this State of Alaska comments, I was going through them yesterday and it hit me pretty hard, I'm on the Federal side, I was born with Federal when I was born with one
biologist that took care of the whole Yukon from Circle
all the way down to Chris Point at the mouth of the Yukon
River, one biologist, you see him once and no more. Now,
we have 15, 20 biologists, maybe six at Emmonak, maybe 10
of them up the Yukon River, this one here, reason Board
of Fisheries action will not cause a failure of the
subsistence fishing priority, well, how does the
Department of Fish and Game know that. With the
decreasing escapement goals and a lot of them haven't even
reached their escapement goals, well, they're -- I think
they're speaking before the rotten apple, to me.
And then back at the end of it, I'll
quote the wording here, the State of Alaska respectfully
requests that the Federal Subsistence Board recommend to
the Secretaries of Interior and Agriculture that the
petitions calling for Federal extraterritorial
jurisdiction be denied. The State of Alaska cannot tell
the Federal Board to deny. The 10 Regional Councils can
tell the Federal Subsistence Board to deny because we're
the ones that's being hurt. We're using what they give
us and we're being hurt, every one of the people that's
sitting here. Not the people that's in Anchorage or not
the biologists that's in Anchorage. I'm not a biologist
but I can always tell how the fish are running, just by
looking at them, because I live with them, every person
Native person that's along the rivers, along the creeks,
they know exactly how the runs are and they're better
biologists that the ones that went to college and get a
DH or Ph or anything.
(Laughter)
MR. HANSON: I never went to college, but
I'm pretty sure if I took my college test I'll get a D
maybe.
(Laughter)
MR. HANSON: Thank you, Mr. Chairman.
CHAIRMAN DEMIENTIEFF: Thank you. Now,
that we've gotten our priorities together we're going to
go ahead and take a little break and then I'll come back
with Della after the break, you know, give her some --
anyway, but listen up now, don't be running off. I just
want to caution us as we proceed with our dialogue. I
think we have to take -- follow the leadership of all the
people that testified yesterday and how polite they were.
If we get to the point where we're starting to badger
people, I will cut you off, I do have the button right here to do that, I will not allow that.

We are going to proceed on after Della's presentation and we are going to go for points of clarification and we will keep focused on that. So I just urge you all to take that leadership from that, you sat all through yesterday and you saw how, even though people had different points of view they were very polite, your opening comments was fair game, but then when we get into the point of discussion it's going to be focused on clarification. And, again, I remind you that I will cut you off if I don't think that that's what's going on. I hope you don't mind me being a heavy-handed Chairman but I do want to keep us focused on the issue and clearly that's it, if I see something else it will get cut off.

Okay, so thank you.

(Off record)

(On record)

CHAIRMAN DEMIENTIEFF: Before Della gets into this, we are going to break at 11:30 to 1:00 o'clock to allow people to go to the Secretary's deal, and we will come back at 1:00 o'clock, so that's going to accommodate that particular meeting, just so people know what we're going to do and then if we go on into the afternoon then we will resume at 1:00 o'clock.

Okay, Della.

MS. TRUMBLE: Thank you, Mr. Chair. I thank you for the opportunity and I really appreciate the testimony yesterday given by everybody. I think that was very insightful. There was a sense of a willingness to want to work together and I think that was great.

I've asked the Chair from Bristol Bay to keep me in line here so if I miss something on a page he's going to point it out.

(Laughter)

MS. TRUMBLE: Just to give you some sense of my involvement with this Board. I've been a member on the Kodiak/Aleutian Federal Subsistence Advisory Council
for the past seven years. I've been the Chair for the past four years. I'm also the president of Eastern Aleutian Tribes which represents all of the health and behavior health and elderly work for our communities within the Aleutian East Borough and that includes the communities of False Pass, Sand Point, Nelson Lagoon, Cold Bay, Akutan and King Cove where I was born and raised. I attended high school in Kodiak and college in Fairbanks. I'm also as a real paid job, the administrator of the Agdaaguz Tribe in King Cove and do all the BIA, the child care, social work, that's the education with the people of our community.

I would like to maybe just state that some of the history in these past four years of my involvement and I think following the 2001 Board of Fish determination, at which time we believed this decision had been based on political pressure, not on the facts and science as presented. Our communities did suffer extensively.

The past three years, as you've heard from testimony, some of our, most of our -- a lot of our families have lost their boats, they can no longer participate in other fisheries that have help sustain them, and that is other cod fisheries and other small fisheries that help them keep their boats and maintain their livelihood and to remain in our region.

This has also resulted in an increase on dependency of Welfare which has been high in our region, that's never been something that people have utilized before.

We heard yesterday in testimony about people moving from our region, our smaller communities, like False Pass, Nelson Lagoon, can hardly keep enough students in those schools to keep those doors open and may have to -- there's been a couple times over the past couple of years that they may have had to close.

We've heard by testimony yesterday from someone that testified that the increased dependency on alcohol, domestic violence, suicide and an increase in major medical complications that have resulted in a high number of deaths in our region.

Later in 2001, and I mean later, this is the exact same year, and it was about the spring of 2001, the Regional Councils from Eastern Interior, Western
Interior and YK signed resolutions asking the Federal Board to exert the extraterritorial jurisdiction beginning from the north side of the Aleutians, the Chigniks all the way through the Shellikof Straits for all commercial fisheries for a period of one year. Following that request, an expanded effort was made, both financially by Fish and Wildlife and cooperatively to work closely with these Councils so that we better educate ourselves to the needs and lifestyles of our respective regions and to try to work together. I have attended a number of tri-Council meetings, I've had that opportunity, I very much appreciate it, the interaction, the education and I think the underlying need that all of have to maintain, to survive within our regions is the bottom line.

And I think we've also, at one point, had a presentation by NMFS that basically showed what they're doing over the years to lower the by-catch of chum salmon.

The Kodiak/Aleutians has numerous times requested financial support and having the Chairs from the other regions come to our region so they can better understand exactly what our region is about and how we actually survive.

You know, you've heard testimony from various fishermen from our region as to what they do to limit the incidental harvest of chum salmon and that this is not a targeted species, it basically -- an underlying statement that when you fish for sockeye you're fishing for yourself, when you fish for chums you're fishing for your fleet. The work, the trying to limit this incidental catch is extensive. There was another one -- when I go through this -- when I continue on with my testimony I just want us to hopefully focus that we are here today, not because this is a Board of Fish meeting, but that we are here before us with a question before the Federal Subsistence Board and the Secretaries as to whether there is a failure of the subsistence priority to justify the extraterritorial jurisdiction, and I would hope that we don't get into issues of chum chucking and roe stripping, because they're not pertinent to this question.

You've read our resolution, 04-01 that was passed by the Kodiak/Aleutians in their meeting in March and we basically do support the Board of Fisheries actions in the Area M commercial fishery and the
Governor's position upholding, and further and later understand that the Governor -- it was stated by the State that they would monitor this fishery closely this year. Our Council understands the concerns expressed by Eastern Interior, Western Interior, Bristol Bay and YK, and we feel that there is a substantial misunderstanding regarding the perceived efforts of the Area M commercial fishery on Western Alaska salmon stocks, harvest by subsistence users. We strongly support further education of this matter, because I think that is what's going to help us be able to work together to resolve these issues.

The allegations made to the State Board of Fish is disheartening in my mind and I'll explain why. It has been my experience with my involvement with this Board, and a number of incidents, and I'll use the caribou in Unit 90 and 10, it's been stated yesterday and it's been a fact that we weren't able to hunt caribou for a period of two years because our numbers were too low, we worked cooperatively and closely with our RAC, the Advisory Council, the State of Alaska and the Fish and Wildlife to be able to hunt these caribou, and we are, in fact, at this point we've got an increased subsistence caribou hunt which we very much appreciate. Those caribou are rebounding. And recent efforts in Kodiak on the goat issue, that was another joint effort by all involved. And as to the harvest of goats and who had access to them, it was an issue that could have been fairly serious because of the issue between the subsistence users, the sports guides and just then the system that was set in.

Also, because of my involvement with the Councils and because of the prior request for extraterritorial jurisdiction I've been involved and I do get the daily reports from both the State and the Federal on the management along those systems, the openings, the closures, the numbers and the escapement. The co-management efforts of the State of Alaska, Fish and Wildlife, Regional Council, Advisory Councils and the Native entities on the Yukon/Kuskokwim is another good example. In reviewing the 2003 preliminary Yukon area chinook and summer chum salmon fisheries summary, subsistence reports from fishermen indicated satisfaction with the summer chum salmon catch. It appears that subsistence needs were met and that commercial fishing was open in both 2002 and 2003. I've heard testimony from the elders and it's not the first time I've hear it, I heard it at the Tri-Council and I know they don't like having to fish the windows and that it imposes problems
with them when those windows are not in the weather that
they are looking for, the dry fish or to be able to
harvest and put away their fish as they would like to.
But unfortunately this is what allows more fish to
continue through these river systems so that more
communities will share in the taking of salmon for
subsistence.

You need to realize that our region has
been managed, regulated and for so long and looking to
2004 even more so, and this is, technically, our way of
life, we don't know any other way. We work with it, we
abide by it, we do the best we can.

We, too, share the hardships with Mother
Nature when she does not cooperate and the weather is
bad. We miss out on fishing time and we live in a harsh
environment where the weather is not too kind the
majority of the time.

This issue of wanting to utilize the
extraterritorial jurisdiction by selection of a certain
region and not to involve the whole migratory path of
these salmon is questionable. Especially since there
does not appear to be a crash of these systems, but only
in theory as to continue to severely restrict our area.
The decision recently made by the Board of Fish was based
on information that they haven't had. It is in essence,
was a responsible decision, because it was based on
factual information presented at the time. It has been
stated by many people, and also by the Chairs in their
statements that we need good information, that we need to
put the time, effort, and the money into the cooperative
effort amongst all the regions in order to produce that.

I believe that this will, at least, put a
lot of the regional differences to rest and will allow us
to make better decisions.

Mr. Osterback and others have expressed a
need and desire to do so and working together. I know
following the Alaska Board of Fish meeting I had the
opportunity to watch the show in Dillingham that Harvey
Samuelsen does, where Harvey and David and Myron and I
know Sam Cotton and others were participating, and even
at that time there was a sense to be able to try to work
together so we can try to resolve some of the issues and
answer some of the questions, whether it's environmental
or other as to what is happening to our salmon.
I also, unfortunately, did follow -- hear some statements that were made that don't apply to our region and I know they've been used year after year and decade after decade and they're wrong. Some of the continued misconceptions that I've heard from testimony in regard to Area M continues today as it has over the decades and technically is a perception and not reality. We are Eastern Aleuts and want to continue to live and survive off the land and waters as our ancestors have for thousands of years.

In the very center of King Cove, where I live, these past four years, we've been working on an Aleut Village site each summer for two months. This site has been carbon-dated over 4,000 years old. What we're taking out of this cite is fish and wildlife that our ancestors have survived off for thousands of years as your ancestors have. In some cases in village sites it is as far back as 9,000 years, and we truly feel that we deserve the same trust responsibility as under any other Native group in Alaska or in the United States. We are small in numbers and we've got a population of 2,600 when you're looking at 20,000 in some other regions.

We subsist, by, as it was mentioned a lot of times, by commercial take, but also we subsist by State permit, not because we want to but mainly because we have to. Our areas for taking on Federal lands of fish is very minimal. In fact, if you look at the Kodiak/Aleutians there's only two cases, I think that it's being done and that is on the Buskin River in Kodiak and for king crab in Woman's Bay in Kodiak.

In closing, we support the Board of Fish process and ask that the Federal Board continue to work closely with the State of Alaska. We ask that the Federal Board direct the Secretary of Interior and Agriculture to not exert the extraterritorial jurisdiction on Area M and in the future, truly weigh the consequences of this action -- that this action would have in the future.

This is not a solution to be easily justified that it can be utilized so easily. It should not be a tool, it should be taken seriously.

We ask the Federal Board work toward continued efforts that our regions better understand each others cultures and work together as expressed by so many who have testified to find the answers and solutions,
whether it be cooperatively by region, by government agencies.

And then last but not least, I think, we believe we have shared the burden of conservation and would like -- but we would, and only in proportion to our impact, please don’t -- this continuing finger pointing to our region when it's so minimal when there are other questions and other things out there that may be more so and bigger of an impact is what we need to all take a look at and consider because it's to the best of all of our interests.

And last, but not least, I really have a lot of respect for this process, I have a lot of respect for the Chairs, the RACs that I've been involved with and their want and need to continue to do what's best for their region, and I think that continued effort and as we grow and move forward to try to work together to find a solution is what we need to do, not extraterritorial jurisdiction.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you, Della. Now, as we begin this other open dialogue between the Board and the RAC Chairs, the one thing that we do, for those of you who are unfamiliar with the process, is, you know, we had a lot of good testimony yesterday. The Board members do have the ability to call upon anybody, including somebody who may have testified yesterday for points of clarification, but that is limited to Board members only. So if you see that happening, that's why that will be happening, and we have the ability to call people back up.

So with that, we'll just go ahead and open the dialogue.

MR. O'HARA: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Dan.

MR. O'HARA: I need to make a correction on a statement I made earlier about subsistence, and if Mary Pete would help me on this, I think I misrepresented you on the take of subsistence on Lake Iliamna, could you repeat that again if you would, please, kind of help me clarify that.
MS. PETE: Mr. Chair. Dan, what I said was that the Kvichak sockeye harvest was 78 percent of the lower bound of the ANS, but it was within the ANS range.

CHAIRMAN DEMIENTIEFF: Virgil.

MR. UMPENHOUR: Thank you, Mr. Chair. Well, I would like to refer to the preseason forecast put out by the Alaska Department of Fish and Game. But if you look at the part where it says Yukon -- summer chum salmon fishery for the Yukon River, at the very bottom it says, if in-season qualitative indicators of run strengths suggest sufficient abundance exist to have a commercial fishery, the commercial harvest in Alaska could range from zero to 50,000 summer chum, you turn the page over and it says, management strategies. Management for escapement and to spread out subsistence harvest opportunity along the entire Yukon River. And then it says based on evaluation of in-season indications of run strength. If a poor run develops, reduce the subsistence salmon fishing schedule to meet escapement goals. And then if you turn it over it has the steps in the management plan, the little blocks there, it's going to tell you that you have to have a million chum salmon into the Yukon River, it's over on the last page, they have a -- it says chum salmon actions based on projection run sizes and it says below 600,000 no one gets to fish.

Anyway, you don't get to have a directed commercial fishery until there's a million fish. So that leads me to believe or assume that the Department can now forecast to within 95 percent accuracy. Because if there was a 50,000 fish harvestable surplus above the needs for escapement and subsistence that would be a million and 50,000 fish. I don't think they can do that within 95 percent accuracy.

I have one other table that I presented in there, it's Table 10 from the report of the Board of Fisheries by the Alaska Department of Fish and Game date 2003. The Department is saying they can forecast within 95 percent of being accurate, we're not going to have a problem with reasonable amount necessary for subsistence but you got to remember that this is the parent year, the main parent year, the four year old fish return to spawn in the year 2000, if you look at this Table 10 you will find that 457,687 chum salmon passed the Pilot Station sonar, the lowest ever recorded. That's the main parent year.
They also speak about productivity in the marine environment being low, I don't agree with that, but what I'm saying is they're talking about there's a lot of uncertainty, if you read all the text, about what's going to come back. And you look at what happened this year, this year it says they had 1,234,553 chum salmon pass the sonar but if you go to the East Fork Andreafsky River it's the lowest escapement ever recorded, only 20,000 something fish whereas they have had escapements of over 200,000 fish. You go to the Anvik River, which the Department likes to say normally produces approximately 50 percent of the summer chums produced on the Yukon, there was only 251,000 fish, the second lowest escapement on record, with the record lowest escapement being the year 2000, the parent year for the next coming season. If you go to Kaltag River tower, which I know the guy that runs the tower personally, very conscious individual, here that river has had runs of 77,000, 51,000, 48,000, he told me they had a super accurate count this year, only 3,056 fish. Less of 10 percent of what they average. You go to the Nulato River tower, the same thing there, it's had runs of over 200,000 fish, only 23,000. Gisasa River has had runs of over 150,000, 28,000. You go to Clear Creek tower which runs into the Hogatza River and the Koyukuk drainage, they've had runs of over 100,000 only 5,000 fish.

All these speak to uncertainty and the precautionary principle in the Sustainable Salmon Policy. I don't think the Department can predict the number of summer chums coming back to the Yukon within ’95 percent accuracy.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Thank you. One other thing that I failed to point out is Larry Buklis who is the primary -- or headed up the writing of our report on the issue as well as any of the State people sitting here, you know, Mr. Bedford or your Staff, if there are points that you want to respond to, it is an open dialogue so you are more than welcome to just signal and we, you know, because we're trying to learn.

Larry.

MR. BUKLIS: Thank you, Mr. Chairman. I do respect the views of the Council Chairs and the Board and the public in giving their testimony and I do not
want to engage in a debate or get into areas where views can reasonably differ. But a few things that were said that I wanted to just point to the Staff report on and try to clarify but I don't mean to engage debate by doing that.

First, regarding the composition of the Area M chum catch relative to Yukon River fall chum salmon, we stand by our reference to the research. The Staff report says on Page 2, and I quote, Yukon area fall chum salmon were found by Seeb, Crane and Debevec, 1997, to be a small component or absent in catch samples collected from the Area M June fishery in a 1994 to 1996 genetics study. I go to the referenced report and I quote, estimates for China, southern Russia fall Yukon, Prince William Sound and Susitna River indicated these reporting groups were a small component or were absent in the fisheries sampled, period.

Secondly, there was a lot of discussion about variation in Bristol Bay return forecasts. Page 6 of our Staff report acknowledges confidence interval levels. I think I said in my oral report that Bristol Bay lends itself to a more statistical interpretation as compared to Yukon and Kuskokwim River outlooks. Page 6 of our Staff report says, an 80 percent confidence range of 36 to 58 million sockeye salmon for the 2004 return point estimate was constructed based on deviations of actual returns from forecasted levels for 1999 through 2003. So if the Board doesn't want to rest on a point estimate there's an 80 percent confidence range provided for you for Bristol Bay sockeye salmon return ranging from 36 million on up through the mid-point to 58 million sockeye. That's based on actual performance of the forecast program, these last five years.

Third, there has been a lot of testimony about the doubling factor. I won't try to get into the nuances of the fishery, the ability of the fleet to go around the clock, and the behavior of the fish in those waters. I will point to the Staff report on Page 11 that says, absent experience with the fishery operating under the new regulations, the ADF&G assessment represents the best available information. That being said, if a factor of 2.9 were used and all other assumptions remained unchanged the harvest of chum salmon of the Northwest Alaska summer, quote/unquote, stock group, that one would estimate as due to the change in the regulations would be 239,000 to 377,000 fish instead of the estimate of 126,000 to 199,000 fish used in this report. The point
being that this is provided to the Board if you want to
to look at the potential effect of that on your evaluation
of the situation. The Board will need to evaluate the
petitions and develop their recommendation to the
Secretaries taking into account these and other
uncertainties.

Fourth, there was a comment about the
preponderance or all of the references about these
fisheries and their management and research, drawing upon
the Department of Fish and Game work, that is because the
Department of Fish and Game is the agency that manages
and studies these fisheries.

Fifth point, there was comment about the
fact that we won't know after the fishery what the
composition was in the Area M fishery. This is mentioned
on Page 12 of the Staff report where we say, however,
even then we will not have the information needed to
attribute for any run shortfalls that may occur the
component of the cause that may be due to downturns in
natural productivity and the component that may be due to
interceptions in the Area M June fishery and elsewhere.

This, Mr. Chairman, is what we'd call a
gap analysis statement. It's not meant to say that it's
good that we don't know and I don't have the authority as
Staff to press that we will have a study mounted in the
next 60 days in that fishery, it's simply identifying the
gap in knowledge.

And finally, there's a statement on Page
5 that talks about the primary concern before this Board.
And we say that while regulations that provide an
increased commercial salmon harvest in the Area M June
fishery are a reallocation of fish from other fisheries,
such reallocations among State managed fisheries are not,
in themselves, the issue to be addressed here. A lot of
the comment is about how, you know, will there be any
impact, or the Staff report says there will be no impact,
the Staff report doesn't say there will be no impact.
The Staff report concludes limitations of available
information make it difficult to reliably anticipate --
Page 12, in advance, the outcome of regulation changes in
the Area M June fishery, however, making reasonable use
of the best available information there does not appear
to be a high likelihood of a failure to provide the
subsistence priority on Federal public lands in 2004, and
then it's very specific as to what places and what
species of fish. It's not saying there won't be any
impacts, that perhaps local commercial fisheries may be
smaller because of catches elsewhere, it's talking about
Federal lands and the subsistence priority for the runs
of those fish, and the relative likelihood in the face of
the uncertainty.

Thank you, Mr. Chairman.

MR. BRUCE: Thank you, Mr. Chairman. I'd
just like to make a couple comments. First, I think I'd
like to address the comment that was made just a little
while ago about the nature of the outlook for the Yukon
River summer chum salmon, it is not a prediction and we
don't maintain that it is a prediction. We've identified
it as an outlook, sort of it's an advisory. And that, of
course, is the reason why, as I said earlier, we don't
allow any commercial fishing until we have enough fish in
the river, in-season to assess based on actual data, what
kind of run strength we have.

So that's just a clarification.

And then I would like to say a little bit
about the 1987 tagging study as well. Before the 1987
tagging study there was virtually no information about
the chum salmon composition in the Area M fishery and
there were lots of rumors. Said people said it's all
Asian, some people said it's all Northwest Alaska, some
people said it's -- a lot of different things, there was
no information.

Legislators from Western Alaska actually
were the ones that initiated the tagging study. They
went and got money through a CAP that the State made
available and I assume that they were doing this because
residents of Western Alaska wanted better information and
wanted to have a tagging study. We went out and did the
tagging study to the best of our ability, we worked with
a contractor. I think the Department stands behind a lot
of the information collected in the tagging study. It
certainly did advance the knowledge of the fishery beyond
what it had been before. There were some issues with --
and there are still are some issues with deriving exact
harvest rate information from that study for individual
stocks in the Northwest Alaska summer chum complex. And
I believe that is the particular thing that Mr. Umpenhour
was referring to that was withdrawn at the Board meeting,
not the entire tagging study and the work associated with it, but that particular harvest rate analysis. That was reworked, we tried to improve it, it's not perfect, we put it out there with the caveats and assumptions clear to everybody but it certainly provides better information than existed before.

Now, when you put the tagging study -- there are difficult technical issues involved with a large scale tagging study such as this, we knew that when we undertook this project, but we were directed by our State Legislature to do it, so we went out and did it the best we could. But we do not think tagging studies are the best tool to use for determining stock composition in a fishery like that and this is why we are moving towards genetic stock identification. And in the early '90s or early to mid-90s we actually conducted a genetic stock identification program out there and you've heard -- you have the information from that, you've reviewed it, and there is some correlation between things that were determined from the tagging study and things that were determined from the genetic stock studies. There are some differences, but there also are correlations.

You put the two together and you have an even better picture and more reliable picture of what the stock composition is in that fishery than you did certainly before the 1987 tagging study and with only the 1987 tagging study.

So, you know, we're interested in getting the best information we can in managing these fisheries with the directives and towards the policy and allocative ends that our Board directs us to do. And I believe that we are doing that within our best of our ability and I think we're making progress. We're interested in further utilization of genetics to carry this effort ahead but it's not an easy task, and it's an expensive task, it's something that we're more -- would be very eager to talk to you and the Federal agencies and this Board, the users, anybody that's interested in advancing the knowledge of this fishery and its impact on the various stocks that are harvested in it.

Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: In the nine, plus, years, I think I've Chaired this Board, you know, my participation actively in the State system, you know, has been limited although I continue to serve on the Advisory
Committee but I haven't been able to go, you know, this takes too much energy and I just don't have -- there's only so many hours in a day. But in years back, as I recall, we looked, I think, if I remember right and I don't know if this is still the practice, five year studies -- five consecutive year studies before you get a reading on, you know, what's going on with stocks; is that still the case?

MR. BRUCE: Mr. Chairman. Yes, certainly to have a series of years gives you a lot better information and that's what we did with the genetics work. But with the tagging study, the funding we had was a one year shot so we went out and did the best we could. That was a several hundred thousand study as I recall and simply that's all we could do with the funding that was provided and -- but you are correct, multiple years give you a much better definition. In fact, if we could do it continuously that would be what we would like to do but that's dependent on funding and other resource allocation issues.

Mr. Chairman, if I could add one other thing about why the tagging study and the GIS work was presented to the Board again in 2004. And the reason for that was the Board requested it. Most of those Board member were not familiar with this issue and the fisheries involved and they were seeking all the background information that they could get, which I think is appropriate for policymakers to do and so they requested it, and that included people who voted eventually for the change in the Area M and people who voted against it. People on both sides of the issue requested the information. We, initially weren't planning on presenting it. But when we had the request from the Board, we scrambled, were able to come up with the authors of the studies, get them to do oral presentations and then we provided the historic written documents as well, just trying to provide, to be responsive to our Board, provide them as much information as we could for their decisions.

CHAIRMAN DEMIENTIEFF: How much would it cost to run a genetics study per year at this time, does anybody have an idea?

MR. BRUCE: Mr. Chairman, I can't give you an estimate for the Area M fishery, but I can -- we are looking within the Bristol Bay -- within Bristol Bay itself and with just sockeye salmon, we are interested in
applying genetic techniques to better allocate catch to rivers of origin within fishing districts where we are catching both -- more than one stock, and the estimate to do that program and there's some development work to get the appropriate markers, I'm not including that cost in this, but the annual cost of operating a program like that would be something -- we're estimating right now would be something in the nature of 200 to $300,000 a year.

CHAIRMAN DEMIENTIEFF: Because the reason I bring that up and focus on that in particular, is that, yesterday is we heard testimony from several people who were interested or several organizations that were interested in contributing to the study. And in the spirit of cooperative management, then I think we need to seriously consider putting together a package and seeing who is willing to commit the resources for several years to do this, and I think that would be really important for us all. And I think if we do, in fact, cooperatively contribute towards this effort and, you know, genetics are the best way to go then that's fine. You know, we just need the information, I think we all need the information. And so we did hear that, so we need to -- maybe that's one of the things, Mr. Bedford that we ought to think about is just seeing who can put forward what and is willing to commit so that we can get that information, you know, finally to really -- because, you know, over and over again, too, in the public testimony I noted yesterday the people talked about the weakness of the biological information that we have and quite frankly, you know, I bought that argument because it is true, and I know that from being in that forum before, you know, on the Fish Board forum and it is weak information.

And so if we could make an effort to do that, maybe it's too late for 2004, I don't know. I know, certainly we, the Federal side, we have already committed to our programs, you know, for research for 2004 so it's late for us to enter into that. But certainly, it's something, you know, we may want to consider for 2005 and just try to come up with some accurate information so we know exactly what we're dealing with. So it may be something we want to consider. And I don't know if we can put something together, I just know it's too late for us we've already committed, but it's something that we ought to work together on because we -- it's going to help all of us to make better decisions.
MR. BEDFORD: Mr. Chairman, I definitely endorse that. As I said in my own comments, this is the kind of thing the State was looking at independently. I would think where this will have to start though will be gathering some baseline information so that we're able to distinguish between different stocks from Western Alaska. At this point we're only able to distinguish that as a very large stock grouping. So in terms of being able to get more discriminatory information out of the Area M fishery, I would think it's unlikely.

However, I would concur with the notion that we should get started, if we can. We can look at our budget and see if we have anything available. As I said earlier, our chief fisheries scientist is already looking at this in conjunction or in coordination with the area management biologist so it's definitely something that's on our radar screen.

CHAIRMAN DEMIENTIEFF: We do have -- Grace, I'll be with you in just a minute. We do have, you know, of course, a close relationship with our RACs. I mean I think it was John Hanson put it the best in terms of that they're the backbone of our program, I think it was John, but we do have a Memorandum of Agreement with the State and it's not like we haven't been engaged but it's pretty much with the policymakers and stuff, but we do have a Memorandum of Agreement, and, you know, we should continue to use that tool and maybe think seriously about expanding it, you know, that's all my point is.

Grace.

MS. CROSS: I was just going to mention it, too, along with other agreements that the State and the Feds have worked on very serious problems. Remember when that Western Caribou Arctic Herd crashed, it was a very big disastrous situation, but the people that were concerned, the State government, the Federal government, the tribal entities, everybody worked together on something that seems like a really major disaster. It took a number of years, but look where we are at now with that herd, it's huge, to the point that people are scared it might crash again, it's overpopulated. But things do work out, but it just takes a number of years.

And I really want to urge everybody, when it comes to a solution other than extraterritorial jurisdiction, that all those that are affected,
regardless of how much land they have, Federal land or no Federal lands, would work together. Because take a look at Yukon/Kuskokwim, they consist of many lands, it's not going to just take the Federal lands and the State lands to resolve that, there's other entities that are involved. It's going to take a whole statewide effort to recovery from some things. And if the Board is going to go in the direction of making recommendations and I would urge the Board to say if there are certain recommendations are made, that all those that are affected by this be included, that no one person be left behind.

It really saddens me to see us pitting at one another, but we have, all of us have been in situations where something happened and we all worked together and the solution comes. It may take years but I think this is a very good beginning and I just wanted -- maybe I'm just having after effects from earlier statements about my region that I feel really defensive about, perhaps being left out, but I know that will not happen and I have expressed my concern regarding that. But if other efforts are going to be made make sure that everybody involved in this work together, and not one area is left behind.

I just wanted to express that.

CHAIRMAN DEMIENTIEFF: Thank you. We're going to be breaking soon for lunch, we're going to come back right after and we'll open up with your comments, John, at 1:00 o'clock. But in the meantime, I would hear you out right now but Gary, unfortunately is not going to be able to get back after lunch and has a couple of questions so I'll let him ask, but 1:00 o'clock, you have the floor, is that agreeable with you, John?

MR. HANSON: This wouldn't take long.

CHAIRMAN DEMIENTIEFF: Well, yeah, I mean.....

MR. HANSON: Well, somebody's ahead of me?

CHAIRMAN DEMIENTIEFF: No. I'll I'm saying is that if you.....

MR. HANSON: Okay.
CHAIRMAN DEMIENTIEFF: .....at 1:00

o'clock if we open up with your comments or questions or
whatever, you know, right at 1:00 o'clock, you'll be the
first one up. Gary has to go so he's going to have his
alternate. Go ahead.

MR. EDWARDS: Thank you, Mr. Chairman.

And I thank you for yielding your time. I guess my first
question I would ask to maybe Mary Pete, would probably
be the best one to respond. Since we don't use amounts
necessary here on the Board I always get confused as to
exactly what it refers to. And I do know enough, I
guess, to understand that the range of numbers that the
State uses coming up with that has more to do than with
just sort of the amount of protein that subsistence users
have to receive, that it includes a lot of other things.

But given that, when I look at the charts
that were put together for the Board of Fish and the
specific one that I'm referring to was for the Yukon
River for all species. At least as a lay person looking
at this and, again, with not having a lot of background
in what comprises amount necessary it looks like for the
Yukon, that the numbers are identified as the amounts
necessary have not been reached since 1996, and that
means that they've been below the lowest range of the
amounts necessary. So, again, just quickly looking at
that and not understanding all the details, it would seem
that that would be saying that subsistence needs have not
been met in the Yukon River reference all species since
1996. Is that a correct reading of that table?

MS. PETE: Mr. Chair. Mr. Edwards, is
there a specific graph or table you're referring to?

MR. EDWARDS: This one. Can someone take
that over there.

(Pause)

MS. PETE: Yes, that would be correct.

The Board of Fisheries, as I said, update and refined
both customary and traditional use stocks, separated them
out by species on the Yukon and in doing that they
separated out each ANS by species, and once that happened
the big driver in the drop of attainment of ANS was Yukon
fall chum as you can see in the chart. The yellow
portion is the portion that has declined the most. Once
the ANS and C&T stocks were redefined, it showed that
certainly the biggest drop in attainment of ANS was Yukon
MR. EDWARDS: So then is it -- again, I'm just trying to understand what the chart says. So then is it fair to say that amounts necessary and therefore, subsistence needs have not been met in the Yukon River since 1996?

MS. PETE: It's the Board of Fisheries that determines whether reasonable opportunity has been provided by regulation. ANS -- attainment of the lower bound of ANS is one measure of that and it's the Board that determines what constitutes a C&T stock. If you look at this table, the C&T stock was all salmon until 2001 and then in 2001 the stock -- the stocks identified as C&T stocks were changed so the ANS determination for each stock was made on a species specific basis and once that happened, as I mentioned, the two species where the lower bound of the ANS was not attained, or the one species subject to this forum here, Yukon summer chum was attained three of the past five years and just below the lower bound in two of the past five years.

MR. EDWARDS: So I guess the answer is, yes, it has not been met or is it a qualified yes?

MS. PETE: In terms of the law and how it's implemented, by species, the two that -- the one that was not attained certainly is fall chum, but as we reported at the beginning of our presentation, fall chum is not subject to this forum. The other species where attainment of the lower bound of ANS has not happened in two of the past five years is summer chum.

MR. EDWARDS: So I guess for further clarification, the table -- the impact of fall chums are greatly -- are reflected in that particular table?

MS. PETE: That's correct.

MR. EDWARDS: Okay, thank you. Another question that I have and it was brought up by several of the people who testified, expressed concerns about the escapement goals, and I guess from my perspective that's the one thing I think we should all be concerned about because that really dictates whether we're going to continue to have ultimately subsistence fishing or Area M fishing or commercial fishing or any of that. And as Mr. Umpenhour brought up in part of his testimony in looking at the escapement goals for summer chums on the Anvik, it
does appear that over the last -- three out of the four
last four years we've been below the lower range of the
BEG; is that correct, and if so is that something we
should all be concerned about?

MR. BRUCE: Mr. Chairman, with your
indulgence, I'd like to ask Gene Sandone to respond to
that question.

CHAIRMAN DEMIENTIEFF: Sure.

MR. SANDONE: Mr. Chairman. Members of
the Board. RAC Chairmans. That is correct. I don't
have those numbers right in front of me. But the Summer
Chum Management Plan is based upon passage at Pilot
Station. Historically the Anvik River has contributed
about 50 percent of the Pilot Station run. Last year it
didn't. Last year -- for the last two years we had over
a million fish if I remember correctly, pass Pilot
Station, and last year only about 257,000 went into the
Anvik River. We were perplexed at that. We did a lot of
looking at Pilot Station. We did two separate research
trips to Pilot Station to understand if there was a
problem there and we discovered no problem. We just feel
the summer chum probably went to other places in the
drainage and we expect maybe the Tanana because there was
flooding in that drainage that we couldn't detect.

I know I got off your question a lot.

But the Summer Chum Management Plan, we
have a BEG for the river, or an escapement goal for the
river of 800,000 to 1.6 million and the Summer Chum
Management Plan allows for subsistence fishing down to
600,000 so it provides for subsistence fishing even below
the low end of the escapement goal.

And one other thing I want to mention is
that the biological escapement goal for the Anvik River
is based upon the escapement that will produce maximum
sustained yield. Now, going below that escapement goal
isn't disastrous, I mean it will hopefully provide for
subsistence -- it may not provide for a commercial
fishery three and four years later but probably would
provide for a subsistence fishery at that time.

MR. EDWARDS: Okay, thank you. Mr.
Chairman, just a couple more questions. I was pleased to
hear what Mr. Bedford said about what folks are planning
on doing under the Governor's charge that he expected
this new fishery or this increased fishery to be closely monitored and I was particularly pleased to hear that the public safety is looking like they're putting a plan together, because I know some folks have been concerned since the brown shirts have become blue shirts, that the wildlife and fish side of the house may not get addressed but it does appear in this case that they are actually planning on getting out there.

Can you give us a little more detail as to what, on the game and fish side, what are some of the -- you said you were going to monitor it and all, can you give us maybe a little more specific or are there some details worked out, actually what you going to be doing on the ground?

MR. BEDFORD: Are you speaking about our fisheries monitoring practices?

MR. EDWARDS: Yes, sir.

MR. BEDFORD: Again, as I was saying earlier, as an ordinary matter we look at what the harvest levels are by subdistrict and we're getting tender reports on a nightly basis. The area manager gets reports back from the tender men and the processors in terms of what the deliveries are. We can find out from those what the ratios are of sockeye and chum salmon.

What I was suggesting is kind of a different wrinkle on things for this year, is that, again, we expect to see a change in the ratio of chum salmon to sockeye over the course of a four day opening. Recall that the prior management practices for the last three years have limited to 16 hour openings, with they're then closed for a period of time and then another 16 hour opening. The problem that this created for the folks who are fishing out there is that they were saying that they couldn't move off of concentrations of chum salmon because there was too short of fishing period to do that. But they have said time and time again that, really, that's their intent. So what we should see is that over a course of over a four day opening, that if a person starts off, and again speaking for the fleet as a whole, I mean for any particular fishermen, their decisions may or may not be efficient of effective decisions, but for the fleet as a whole, what you should say over the period of a four day opening is that the ratio of sockeyes to chums should improve over that time so we're looking at monitoring that.
I think that we're going to be able to do that with the tender reports that we're receiving and also with fish ticket information, which is going to actually allow us, I think, to do a fairly fine grained analysis.

But then in addition to that we're looking at having our overflights of the area -- there's some areas of the state where we do overflights and we determine on a fairly regularly and frequent basis where the fleet is located at and we're looking at doing that in Area M this year. We haven't done that much of it in the past but we think that there's an opportunity then to see how the fleet is moving around and see if they're moving between districts. It's not clear that we're going to be able to tell within a district how efficiently the fleet is able to move off of chum and onto of sockeye but between districts we may be able to accomplish that.

MR. EDWARDS: Mr. Chairman, my last question has to do with one of the parts of the Staff report. When the report comes up with the numbers of fish estimated to be harvested, it downplays the fishing that's going to occur at night and it basically says it doesn't really think it's going to be an impact, and I think it references a purse seining based upon personal communications, but we heard a couple testimonies over here which would indicate that actually a lot of harvest would occur at night. Larry, was there any, other than personal communication, any other literature that can be cited that basically supports the report's belief that the fishing that occurs at night will not be that significant?

MR. BUKLIS: Mr. Chairman. Mr. Edwards, no there wasn't additional literature search on that. And my understanding of the Department's best estimate of a doubling, approximate doubling would be both the practical logistics of the fleet, needing to off load fuel and ability of the fleet to operate around the clock and also, although, I don't know that it's been studied a sense that the purse seine gear would be less effective during the night time hours than during the day time, recognizing, though, that in June it isn't going to be dark of night.

I think the Department could speak perhaps with more direct experience with the fishery than I can, but I would, as I did in my opening comments today
that the report also provides to the Board the working
through the numbers, all other assumptions being equal,
what the 2.9 multiplier factor would do and that is
available to the Board as they evaluate and consider
their recommendation.

MR. EDWARDS: But the report specifically
says the effectiveness of fishing during the night time
is dramatically reduced especially for purse seine gear.
As you pointed out, if it's not going to be night, how
does that occur?

CHAIRMAN DEMIENTIEFF: Larry.

MR. BUKLIS: Mr. Chairman, I didn't say
it's not going to be night, I said it's not going to be
dark of night and then I said we should look to the
Department of Fish and Game with their expertise.

Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Does that give you
the information you need at this point?

MR. EDWARDS: Well, I heard from two
folks here that said that they had fished at that time
and that that fishing that occurs during that time is
very effective and then we have a Staff report which says
that it will be dramatically reduced, I'm just trying to
understand what is the true answer.

CHAIRMAN DEMIENTIEFF: David, I think you
have follow up on this. I'll be with you in a minute,
Della, you want to speak to this issue as well?

MS. TRUMBLE: Yeah.

CHAIRMAN DEMIENTIEFF: Well, you were
actually first, go ahead.

MS. TRUMBLE: Yeah, if I may. I know
you've heard Virgil's statement, you've heard the
State's, you've heard the Federal Staff, and what I'd
like to recommend is that a couple of our fishermen come
up here and tell us if we need to -- and exactly how they
do this, because they're the ones that are being put on
the spot here and they're the ones that are going to be
the best to be able to respond to this as they're the
ones that are on the water fishing.
CHAIRMAN DEMIENTIEFF: David.

MR. BEDFORD: I'd just add a little bit of, I guess, it's anecdotal information to this. If you stand on the back deck of a purse seine vessel when the gear has been deployed after dark and there's an phosphorescence in the water, you can see a glowing lattice that goes out through the water. That's the phosphorescence being activated when it hits the net. Purse seine gear is very, very ineffective under those circumstances because the fish have no problem seeing it either.

CHAIRMAN DEMIENTIEFF: Okay, John Hanson has to go catch a plane at 2:00 o'clock so we're going to go ahead and hear his statement now.

MR. HANSON: Yeah, thank you, Mr. Chairman. I got a printout here that I asked for just for the Yukon, and it goes from 1960 to 2003. Like I mentioned in the testimony that I wrote, for the last 10 years our chums have been declining. Okay, for the whole Yukon, the 10 years that I mentioned, the chums every year were declining. 2003 the whole Yukon took 70,360 chums from the mouth to the border. That's how come the upper Yukon, a lot of the people didn't even get their subsistence needs. And then for fall chums, the whole Yukon took 80,000 fall chums from the mouth to the border.

So you can see that there's a -- well, I call it a disaster for the whole Yukon on chums, and fall chums, because a lot of people up above Holy Cross, starting from there a lot of them didn't even get their subsistence needs for the whole winter. And with 80,000 spread out that's not even -- we didn't take what we usually take down at the mouth, the four villages, so we were short on our subsistence.

And then on Unimak and Shumigan, well, those there they went way over what the Yukon took. In 2003, Unimak and Shumigan took 282,436 chums, those two areas. So you can see. I got this through the internet and it gives me a good idea how the chums went into the Yukon and the spawning streams are way down, their escapement goals by looking at this one.

Thank you, Mr. Chairman. I wanted to just bring it out to you.
CHAIRMAN DEMIENTIEFF: Thank you. Well, I know we've got some players that are going to be gone, I think David you're going to be gone after lunch, too, is that correct?

MR. BEDFORD: I'm going to see if I can change my schedule and stay.

CHAIRMAN DEMIENTIEFF: Well, what I'm getting at is that we need to -- this group that wants to get together to try to design a cooperative research mechanism for us, Tom will be there, and it's a decision-type of a meeting, by any stretch, but we just need to identify who wants to come forward. Because like I said, I know State does, obviously, you know, so all the players will just need to get a hold of Tom and we can get together and try to get our hands around what we want to do. But Tom will do that on our behalf and whoever the State wants and, you know, I know other organizations want to be involved with this so whoever does, we need to get the names of people so that we can get a hold of people, and the first meeting will just be trying to get our hand around the thing. It's not a decision meeting, but, I know there's a lot of interest so we need to just know who the players want to be.

So with that, we do have to break for lunch, honest. We'll be back at 1:00 o'clock or as soon thereafter as possible.

Thank you.

(Off record)

(On record)

CHAIRMAN DEMIENTIEFF: There's a gentleman here, Myron Naneng, who Board members have asked for some clarifying points and he's got to leave in the next few minutes so I'm going to call on Myron first to come up and give his clarifying points. Again, it's the privilege of the Board to call on anybody they want to.

MR. NANENG: Thank you, Mr. Chairman.

Members of the Board. This morning we heard the report for the State of Alaska stating that subsistence priority is a priority that they're supposed to uphold under the State Constitution as well as under Title VIII of ANILCA. A couple of years ago, AVCP, or in 2002 AVCP petitioned...
the Federal Subsistence Board with a special action request to open subsistence fishing around the village of Russian Mission, which is one of our villages within the AVCP region because the State of Alaska stated that there was no commercial openings in District Y3 therefore there is not going to be a subsistence opening for that village, which leads to the question:

Who is really determining within the State of Alaska subsistence opportunity for the people in the river system?

Is it the Division of Commercial Fisheries? Division of Subsistence? And in other words, who is in the world is trying to determine the subsistence priority on behalf of our people on the Yukon River?

And, you know, did we have to file a special action request to the Federal Subsistence Board to have them recognize that these people are subsistence fishermen and we're also within the jurisdiction of the National Wildlife Refuge, the Yukon-Delta National Wildlife Refuge, where subsistence priority is supposed to exist. I know that they've tried to make corrective changes since that time, but I don't think in the first place we should have had to file a special action request for our people who have customary and traditionally subsisted off that salmon, and not have to wait for a commercial opening to be allowed for the food that they might need on the table for the winter. And, you know, that kind of begs the question, does the State of Alaska really have a subsistence priority? And if they don't, then I would think that the Federal Subsistence Board would hold the fire to their feet to ensure that subsistence priority is lived up to. Because at the time ANILCA was passed, there was a promise by the State of Alaska that they would deal with and work with the people to protect their subsistence rights, and that's the question that I think needs to be clarified for all of us, including the Federal Subsistence Board, exactly what the State of Alaska subsistence priority is.

CHAIRMAN DEMIENTIEFF: Would you care to respond?

MR. BEDFORD: I think that both Geron Bruce and Mary Pete provided a response to that in the State's comments.
In particular, the subsistence priority that we have is realized through a number of regulations that provide a very substantial advantage for subsistence harvesters in terms of time, area and gear. Again, we have threshold levels in our escapement numbers for some streams where you have subsistence harvest in situations in which there will be no commercial harvest or for that matter where sportfisheries are also constrained.

Furthermore, you have a situation on the Yukon, as was presented earlier, where we're not managing for maximum sustained yield, but rather we have an optimum escapement goal that allows subsistence harvesting that will, of necessity then, reduce future returns and reduce future commercial harvests.

I mean it's hard for me to imagine that that is not a very substantial preference when you allow advantages in gear, more time to fish, more area to fish and where you have thresholds that start the fishery that are below what you require for starting a commercial fishery.

CHAIRMAN DEMIENTIEFF: Thank you. Any other discussion. John.

MR. LITTLEFIELD: Mr. Chair. That response kind of clarifies what I was talking about this morning when I gave my opening comments. Nowhere in that did you hear anything about continued use in the customary and traditional manner that the people have conducted their activities.

We heard complaints about windows, I don't know how they got to windows without eliminating the commercial fishery. In other words, if it's the custom and tradition of the people on the Yukon and the Kuskokwim, and it is to dry fish when the weather is good, that is their customary and traditionally use and the Federal system says that we need to protect that for them. Nowhere will you find that in the State system, that's not considered.

So there's a huge difference between the two things that we're talking about here and I just want to make sure that everyone understands, we're here as a Federal Board and a Federal system, and what we're talking about is to continue those opportunities for those people as best we can and that means that the other uses go first and that's our mandate.
CHAIRMAN DEMIENTIEFF: Thank you. In terms of that, John, we are planning on scheduling -- we had a request that was filed yesterday and we are planning on having a meeting to deal with that issue, and locals -- the Regional Councils and the AVCP and the village people will be putting forward a proposal that we will consider. So, you know, along those same lines we do have, at least a tentative plan to -- I mean that won't be 100 years down the road, we will address it fairly soon.

I think there was some interest in bringing it up at this meeting, but how large this issue is, I chose not to do it right here. But even if we did it within the next month it would still be timely for the fishing season. So there is something under foot, you know, we do have a request that was filed.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

MS. GOTTLIEB: I guess just a follow up on some of the earlier discussions, some of Gary's questions, Dan's comments. It does concern me when it said that the amount necessary for subsistence hasn't been met or haven't met the thresholds. And I know some of the rivers are both Federal and State managed, making things even more complicated, but it is the responsibility of this Board for those Federal waters, to provide that opportunity, and particularly the residents around Lake Clark National Park depend so much, as well as some of the streams we've discussed off of the Yukon and Kuskokwim.

CHAIRMAN DEMIENTIEFF: Thank you.

Virgil.

MR. UMPENHOUR: Thank you, Mr. Chair. I'm the one to blame for the windows. I take full responsibility. On the Yukon, Dr. John White did it on the Kuskokwim as a Board of Fisheries member. The reason why we did it was three-fold.

The first reason was for conservation of king salmon, to get the large female king salmon onto the spawning grounds, the older larger female king salmon. That was the first reason.

The second reason is because catch per
unit effort in the upper Yukon area, such as in the Fort Yukon area, specifically, is much, much lower than it is in the lower river, and so we did an analysis and we had a lot of committee that helped us do the analysis and we determined how much fishing time would be reasonable so that people could get their subsistence needs met. And that is how we came up with those windows and that's the reason why the windows, in the lower river they get -- on the Yukon, for instance, they get two 36 hour periods per week, but up at Fort Yukon above the bridge on the Yukon, from the village of Steven's Village to the Canadian border, they get to fish seven days a week unless they're further restricted because of conservation problems of not meeting escapement or the border passage that's in the Salmon Treaty with Canada.

That's the reason the windows are there, which brings me to the next subject and that is, the border escapement to Canada is a treaty between our two countries. And so if we're not going to get the border escapement the people that really get the short end of the stick are the people from Fort Yukon to the border, which takes in the village of Eagle and Circle and Central and a number of other villages.

CHAIRMAN DEMIENTIEFF: Virgil.

MR. UMPENHOUR: They're the ones that get the short end of the stick.

CHAIRMAN DEMIENTIEFF: Virgil, if I may. I don't want to enter this debate right now, it's off track of what we're doing. We're focusing, so I will not allow anymore, because we are going to schedule a meeting, you know, to get on with that issue, and that will be done in a public forum very soon, in time for the fishing season. So we'll debate those issues at that time. Mary.

MS. PETE: Thank you, Mr. Chairman. To address Ms. Gottlieb's questions that are sort of a follow up to Mr. Edwards questions, I'd like to provide more information on what ANS means in terms of State management if I could.

ANS is a term of art, it's in statute. It basically means a target that managers have to try to attain to provide reasonable opportunity for subsistence uses, it doesn't necessarily mean people have to get that much to fulfill the law, the spirit of the law, it just
means that that's what managers have to manage for, so
the lower end of the ANS.

There's a lot of reasons why communities
or areas of the river may not get to the lower bound to
an ANS. You know, they certainly, in a big picture,
speak to attainment of need, but when the Department used
to ask about either the quality of that particular season
or whether your needs were met there were many reasons
that people offered for not getting the usual amount, if
they didn't. I mean either they were busy, they had
equipment failure, or, you know, they decided they had
fish from last year or there were many reasons why
catches fluctuated. So just to remind the Board that
amount reasonably necessarily for subsistence is a term
of art in statute, it doesn't necessarily translate to
people not getting what they need.

The other measure that we do have is a
 crude measure, in-season, about the quality of that
particular fishing season, our in-season teleconferences.
On the Yukon, that YRDFA sponsors as well as Kuskokwim
River Management Working Group meetings for the Kuskokwim
River. And at those meetings, each community on-line
that's on-line for that particular teleconference has
representatives that address whether for that season they
feel like their portion of the river is getting their
needs met or has adequate opportunity to catch fish.
And, you know, the years that these teleconferences have
happened, when we hear -- when the Department and
managers hear that portions of the river are having
trouble, we certainly take that seriously. But in recent
years we certainly haven't gotten that indication in-
season.

And if I may clarify what the Board of
Fish did in 2001 in refining C&T stock, what a C&T stock
is as well as it's associated amount reasonably necessary
for subsistence determination. The findings on both the
Yukon and the Kuskokwim -- and Norton Sound refinement
was done in 1999, but for the Yukon and Kuskokwim, the
refinement was from all salmon stocks and the amount
reasonably necessary for all salmon stocks -- species, I
should say, to a species specific finding per drainage,
so there was a -- chinook salmon became its own C&T stock
as did summer chum, fall chum, coho and the same on the
Kuskokwim. So the Department could then manage that
specific -- that species as a C&T stock, rather than
being lumped with all the other salmon species. What
this allowed was a closer examination and focus on where
the problems were with not attaining the lower bound of the ANS. And the focus then on the Yukon became Yukon fall chum. You know, you can see that the other stocks were not doing as poorly, and the same on the Kuskokwim.

It allows management and the Board to focus on where the problems are. When you mask, you know, the complexity as a fishery that's as complex as subsistence salmon fishing on the Yukon that starts through late May and goes through early October, you can mask a lot of the complexity and a lot of the issues that managers need to focus on if you don't make those refined determinations.

So that's the first step the Board did in 2001 to help itself and the managers figure out where the problems were. And I'm hoping that clarifies some of the questions about what ANS means and how it translates to either provision of reasonable opportunity or having needs met.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Well, I can certainly identify with one part of that, that equipment failure. Basically that's what happened to the Board after yesterday's long day of testifying, I think we were all having a little equipment failure.

Judy.

MS. GOTTLIEB: Thanks, Mr. Chair. A couple other questions for the State. One is, I believe, in your statement or comments, mentioned that there will be some monitoring by the Board of Fisheries of the Norton Sound fishery and, so, one, I was curious about what that monitoring would be. And the second question is, several people in their comments yesterday suggested that the Area M be Alaska residents only and so I wondered if you would comment on the legality or potential of that, just to kind of clear the air on that.

MR. BEDFORD: Regarding the second question first, whether or not it would be possible to limit any Alaskan fishery to Alaska residents only, any commercial fishery. We're prevented from doing that by the Commerce Clause of the United States Constitution. There's just -- it's just something that is impermissible.
I'm not sure about the response on the question about Norton Sound, maybe I'll see if Staff has a response to that.

MR. BRUCE: Mr. Chairman. Ms. Gottlieb, could you direct me to the place in the Staff comments where you are referring to because I'm not really sure what your question is referencing.

MS. GOTTLIEB: Well, I'll have to look, too, I just jotted it down as a note so I thought it was said yesterday but I'll try to find it as a reference but I think having heard of concerns in and around Norton Sound, it may be useful for us to hear what sort of monitoring would be planned, either today or within the next few days.

MR. BRUCE: We can tell you what we're doing in-season. We have a number of escapement projects up there, and an area office with staff in Nome and I'll let Gene Sandone provide some of the details for you.

CHAIRMAN DEMIENTIEFF: Okay.

MR. SANDONE: Mr. Chair. Ms. Gottlieb, we have a number of -- as Geron said, we have a number of escapement projects in and around Nome. Nome River, Snake River and some of these projects are in conjunction with Kawerak. Also we have a tower up the Neukaluk (ph) River and farther to the east, the Quiniak River. We have, I think, Kawerak is manning a weir project on the Pilgrim with some assistance from ADF&G. So we're monitoring the runs as they come in.

We have historic run timing curves and we have escapement goals on most of these rivers for chum salmon so we can determine whether the escapement goal is going to be met or not around maybe the quarter point or a little bit later in the run. We start off with subsistence fishing, Tier II, in marine waters and then when we know that an escapement goal is going to be attained, we move subsistence fishers -- we open the rivers to subsistence fishing, Tier II. And then when we feel that we have enough for escapement we may actually go to Tier I where all Alaskan residents are eligible to subsistence fish.

CHAIRMAN DEMIENTIEFF: Thank you.

Anything else. Virgil.
MR. UMPENHOUR: I want to address fall chums and that is, earlier someone said, I don't remember who it was, someone from the Staff said there weren't really any tagging studies, I disagree with that. Tagging studies have been done in the Area M since 1923 when Dr. Gilbert started, but the one that I feel that is an important tagging study is the one done in 1961. You have that, it was part of the things I submitted. It was done by a guy named Thorstenson or Thortenson or something like that. And that tagging study, if you look at it, of the tags that were recovered 22 percent when to the Yukon River. Of course, that was before hatcheries. And if you look at this thing that I handed out, it came from Dr. Jack Helle, who's in charge of National Marine Fisheries Service at Auke Bay, what it indicates, because we've heard this in Staff reports that there's a productivity problem with the wild chum salmon in Western Alaska, which is true, but there really isn't a productivity problem if you look at that, this has the productivity of the ocean, the harvest from 1915 through the year 2000 and right now the productivity in the marine environment is just about the same as it was between 1915 and 1940, from 1985 until present. The only thing is about half the fish are hatchery produced fish and so the wild fish, it's true, are having productivity problems but the productivity is caused by wild fish.

And I think this is very relevant because the Eastern Interior RAC, two or three years ago sent a letter to the Federal Subsistence Board asking them to look into this problem.

And so that brings me to a letter here from Louis Barton, who's retired, research biologist for the Yukon River and it says that he found a spaghetti tag in the Toklat River, which runs out of Denali National Park, which is a stock of concern in the Yukon drainage and has been for a long time, two lawsuits over it, because of people not getting their subsistence needs met on the Kantishna River, which the Toklat River runs into, but he did find a tag there that was tagged in the '87 tagging study in the Shumigan Islands.

So I wanted to point those things out.

And then I want to go back again to the tables that were left out of the genetic stock identification study presented to the Board this last February that were presented to the Board of Fisheries in 1998 that indicate as high as 10 percent of the harvest
of chum salmon, and that was on the 12th and 13th test
fishery of 1966 of June were Yukon River fall chum
because the only chum salmon stock that is genetically
distinct is the Yukon fall, that's a single stock. And
so if we go back to what Dr. Hillborne says in the thing
that I submitted, the paper by Dr. Hillborne is that
these stocks, that's why one tagging study for one year
is worthless, practically, except it's going to show the
presence maybe or absence of fish.

What it does show and what he says in his
report is that the numbers of fish can vary from year to
year by a tremendous amount, so if you go by the
precautionary principle that's found in the Sustainable
Salmon Policy and you say, well, okay, if 10 percent of
the fish caught there are Yukon fall chums and then you
use my math instead of the Department's math and that
night time fishing really is effective, if you're a
gillnetter, not a seiner, and say that they catch three
times as many fish this year -- and you have to bear in
mind also that the same fleet the last couple of years,
instead of all 130 of them fishing like they were in the
'90s, only 23 did, I think last year, so with all this
increased fishing times many more of those people may
fish then they could harvest a million chums in that
fishery.

So let's take 10 percent, just a simple
number of those fish being fall chums, or even the low
figure, let's take three percent, that would be 30,000
fish. Thirty thousand fish if you're talking about fall
chums, border passage into Canada is the straw that
breaks or makes the camel's back as to whether the people
in Fort Yukon up river get shut down for subsistence or
not. So I mean we're really pushing the -- I think it's
pushing the edge as far as the precautionary principle
goes into saying that the action taken to triple the
amount of commercial fishing time in Area M is not going
to cause subsistence restrictions on the Yukon River,
especially with fall chums. And I already spoke to the
escapement objectives, the parent year and et cetera and
what escapement has taken place. And so if you just take
that 10 percent off the 22 percent from the Thortenson's
study in '61, I mean we're really pushing the envelope in
stating that we are not going to have an affect on
subsistence harvest in the Yukon River.

CHAIRMAN DEMIENTIEFF: Yeah, Della, Jack
and then Grace.
MR. UMPENHOUR: Thank you.

CHAIRMAN DEMIENTIEFF: Della.

MS. TRUMBLE: Thank you, Mr. Chair. Mr. Umpenhour, I'd like to, because prior to after lunch -- or before lunch this question came up and the answer to whether or not our fishermen fish at night time, they do not. They fish -- usually stop fishing around 11:00 p.m., and they start again at 6:00 a.m.

Another thing I'd like to address, maybe is a question. You've brought up the 30 percent, the 30 percent, this number, it's not been determined in reality what exactly of that 30 percent are chum that are going to an area, or whatever stock fish they are. There's nothing documented that says there's an actual number.

The other thing that we question in response to that, is what happens to that 90 percent, where does that 90 percent go? Where is it lost between those two regions.

The other thing, I think, in sitting through this -- I'm sorry, if I'm getting a little upset here -- sitting through this, is, I'm starting to think here, if we go through this process, even if it went to a determination of extraterritorial jurisdiction, that doesn't solve the problem. It doesn't answer the questions and that problem is still there. We've got to work to find a solution.

CHAIRMAN DEMIENTIEFF: Jack.

MR. REAKOFF: I am concerned that the Subsistence Division was not present at the Board of Fisheries meeting due to low personnel and budget cuts. And since we have a Federal liaison at that meeting, I was wondering what the Board had asked of that Federal liaison regarding the effects of the AYK subsistence users of this fishery. Were there dialogue in regard to the subsistence users in AYK.

CHAIRMAN DEMIENTIEFF: Pete.

MR. PROBASCO: Thank you, Mr. Chair. Mr. Reakoff, at that time I served as the Federal liaison to the State Board of Fisheries, and because of the proposals that the Board of Fisheries was addressing focused on commercial fisheries and there was only one
proposal that addressed subsistence, our involvement in
the Area M Board of Fisheries meeting was very little.
And, in fact, I was not asked those questions and I was
not in attendance during that time if those questions
were brought up.

Mr. Reakoff.

CHAIRMAN DEMIENTIEFF: Thank you. You
need to follow up, go ahead.

MR. REAKOFF: That gives me deep concern,
that the Board did not deliberate the subsistence aspect
for this commercial fishery that has a very far reaching
effect on subsistence users in AYK.

CHAIRMAN DEMIENTIEFF: Go ahead, Mr.
Bedford.

MR. BEDFORD: In terms of the Alaska
Board of Fisheries process, I think that it's important
to remember that the Board of Fisheries in the month of
January had a meeting dealing with AYK issues that they
were provided with comprehensive reports by the
Department of Fish and Game at that time, and so the
Board had all of that information to it, and that was
still part of what was available to them at the
subsequent meeting since they'd been through it just the
previous month.

In addition to that it should be noted
that there was a substantial amount of testimony from the
affected public, both people from the Alaska Peninsula
area and then there were also a number of people there
who were from Western Alaska.

CHAIRMAN DEMIENTIEFF: Thank you. Is
yours follow up to this issue -- okay, go ahead, I'll
allow that. Grace, we'll get to you in a minute -- oh,
do you have comments on this issue as well?

MS. CROSS: I missed it -- I was going to
comment a couple of things on the Nome subdistrict so you
can continue.

CHAIRMAN DEMIENTIEFF: Okay. I just want
to complete this issue, Virgil, go ahead.

MR. UMPENHOUR: Thank you, Mr. Chair. In
eight years on the Board of Fisheries, I was never at a
Board of Fisheries meeting where the locals, commercial fish staff was not present and where subsistence staff was not present. Neither staff was present at that Board meeting. So my question is this, because the standard procedure at every Board meeting before the vote's taken is that the Chairman goes around the table with the Staff and says is there anything we need to know about what the effects of this proposal will be on spawning escapements and subsistence. And so if the staff was not there, the local AYK staff to answer the questions about escapement and if no one was there from the Subsistence Division to ask questions about subsistence on that specific proposal -- because in the January Board meeting, there was no proposal -- what they did was not a proposal. That was a Board generated proposal at the meeting the night before they addressed it and the three minority Board members knew nothing about it until it was -- the motion was made that next morning.

So my question is this of Mr. Bedford, who answered those questions or were those questions even asked? It's a two part question.

MR. BEDFORD: I'm sorry, I wasn't at that Board meeting at that time. I'm going to have to pass that question off.

CHAIRMAN DEMIENTIEFF: Mary.

MS. PETE: Mr. Chairman, there was Subsistence Division Staff present. There are Subsistence Division Staff that have responsibility for Area M and Gene Sandone, the AYK regional supervisor for Commercial Fisheries Division was also there, so there was Staff, specific Staff for Area M from Subsistence Division. The AYK Staff for Subsistence Division were at a Board of Game meeting that was at the same time.

In terms of, and maybe Lance can help me out here, the Area M meeting was noticed for Area M action, not for AYK action.

CHAIRMAN DEMIENTIEFF: Thank you.

Virgil, you got follow up to that.

MR. UMPENHOUR: Thank you. The June fishery has no Area M salmon in it, only the AYK region does and so the question, the Staff that should have been there and has been there at every Board meeting that I've been to with the exception of this one, for final
deliberations, for the last 14 years, has been the Subsistence -- either yourself, the director and the predecessor of you, who later became the Deputy Commissioner, was either there plus their Staff from Nome was always there or Fairbanks, such as Ms. Wheeler that was here earlier today has always been at every one of those meetings to answer those questions.

And so my question is, please tell me the name of who that person was because I don't think there was anyone there.

CHAIRMAN DEMIENTIEFF: Okay. Well --

MS. PETE: Mr. Chairman, it was Dr. Jim Fall. And like I said, he's not AYK Staff, he's Area M subsistence Staff, but Gene Sandone was there and he is AYK Staff.

CHAIRMAN DEMIENTIEFF: Okay. Thank you very much. I think we resolved that issue and it's time to move on.

While I understand the inter-relationship between the two managers, you know, I want to try to get away from -- as much as we can from debating State Fish Board action, this is the Federal Subsistence Board and we need to keep focused on our issue.

Grace.

MS. CROSS: I'm sorry, I came in late when there was discussion of Nome subdistrict.

But I wanted to give two pieces of information. The Tier II fishing in Nome only occurs west of Cape Nome, it doesn't happen in all of the district, there's a division. Number 2, is that, there are subsistence fish take statistics as you are required, either in Tier I and Tier II, to submit a report of how much fish you caught. And I think at some point in time that may be useful information for whoever is looking what's happening to take a look at those permit recording requirements.

CHAIRMAN DEMIENTIEFF: Thank you. Keith.

MR. GOLTZ: Yeah, I was starting to get nervous. I think you've probably taken care of most of
it. But I want to reemphasize that we're not here to
weigh the evidence or substitute a Federal judgment for
that of the State's, our job is to determine if there's
been a subsistence failure and if so what the cause has
been.

CHAIRMAN DEMIENTIEFF: Thank you.
Further discussion. Della, go ahead.

MS. TRUMBLE: Thank you. And I don't
want to get into a dialogue where we're going to run
across the room here. But maybe just a point of
clarification, Virgil, you did state earlier that there
are definitely Area M stocks present in the June
fisheries, I mean you said that they're not, there are.
This is why I've been asking that the Chairs from the
other regions or representatives take the time to come
down to our region in June, look at our fishery, get on a
boat, fish at night time if they let you, but take that
time to better understand. Because this -- throwing
these allegations and things out is not only hurtful but
it doesn't solve anything, and that's all I ask.
Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Judy.

MS. GOTTLIEB: Mr. Chair. Well, thanks,
Della. And I'd like to really follow up on Della's offer
here. A couple of offers were made during the testimony
yesterday to do an exchange, whether it be people coming
to the region or people going from the Aleutian Peninsula
region and going to the Yukon or Kuskokwim, and so I'd
encourage maybe to work through Della on anyone who cares
to visit and vice versa, the other RAC Chairs, perhaps,
if people want to go to their region. I think that would
sure give us a good start.

CHAIRMAN DEMIENTIEFF: Thank you. I
think that the group that is being assembled that we
talked about prior to lunch, we could bring that before
that planning committee and they could discuss that so
we're all getting a handle on exactly what we're doing.
And I think also the other way around, you know, if
they're going to be doing work up in the other areas, you
might want to have a representative to go to those as
well, you know, just to increase understanding. I mean
there's got to be a point in time where we have to get an
understanding.
Anybody else.

Virgil.

MR. UMPENHOUR: I just have one other thing I want to point out and that is, I've learned a lot from these old Department of Commerce, Fur and Fishery industry reports, I have them, all of them from Federal times and Dr. Gilbert, the guy that did all these tagging studies back in the '20s that we refer to here, well, he did an investigation of the salmon fisheries of the Yukon River in 1920 and this was as a result of the salmon failure of 1919. And it's extremely interesting reading. I just want to point out one thing that he says in here.

And that is, estimating the average dried king salmon at five pounds and the average chum at one and one-third pounds, there was 23,000 kings and one million chums put up on the Yukon in 1920 for local use, that's not counting the fresh fish. Because at this meeting and public testimony yesterday there were people that -- and I've heard this so many times before that say that the history of the fishery in the AYK region is short as far as the commercial fishery goes, that's not true. It's not short as far as a commercial fishery goes. That said for local use, a lot of those fish were for commercial use.

But anyway, that fishery was sustained up until -- when I say that fishery, I'm talking about earlier one of the people from Norton Sound pointed out that there was an old Federal report and I do know what the exact figure was, in 1956 there were 67,000 chum salmon harvested in the Nome subdistrict. I know that for a fact.

But anyway, these fisheries were sustainable at high levels all the way up until the '80s, when they started to decline and the first stocks to decline were the ones in Norton Sound. And there's a number of reasons for this, and one of the reasons I feel that is directly responsible is the Area M June and I feel the July fishery as well.

When the Department did an analysis for the 2001 Board meeting of the biological escapement goals, the BEGs, they wanted to lower them all the way from Norton Sound to the end of the Yukon. And the person that wrote this report this report, which was peer reviewed and Dr. Phil Mundy was one of the peer reviewers
and Ray Hillborne from the University of Washington was one of the peer reviewers, a number of top scientists, leading scientists in the world peer reviewed all of this. But anyway, the author said that in 1980 something happened to the Quiniak River, that's the river by Moses Point, and the productivity in the marine environment went down. That this also happened on the Andreafsky River in the fishing branch which is in the Yukon Territories. So here we have spawning grounds over 2,000 miles apart, something happened in 1980 that the marine productivity went down. Well, if you look at this chart that I passed out that shows the component that's hatchery and what's wild, that's one thing that happened. The second thing that happened was the Area M fleet expanded tremendously. It more than doubled in permit holders and it modernized. And a lot of the displaced fishermen from the Bolt Decision in Washington State bought these extra permits that the people in Area M sold. And a third thing happened, and that was the 200 Mile limit. That happened in 1976 or '77, the Stevens-Magnuson Act happened. The trawl fleet was no longer a foreign fleet, it was a joint-venture fleet. And a guy by the name of Larry Malloy, who's a retired biologist from Fish and Game that works in Kodiak, he's the guy that runs their hatcheries over there, the Aquaculture Association, he told me at a Board meeting in Kodiak, I believe in 1995 and we weren't even addressing Area M we were addressing Kodiak and Chignik, he told me, you know, when I worked for the Department, I think it was in 1979 or 1980 I was over at Dutch Harbor, because he had to go check these people that were running these factory trawlers that were joint-venture, he says, I don't know where they're headed, but he said he was talking to one of these guys that was the second, number 2 on this trawl vessel and he was an American and he was a fisheries biologist and he told them, he says, I don't know where they're going but someplace a bunch of chum are not going to show up because we're killing hundreds of thousands of immature chum salmon, this was in either 1979 or '80.

So those are the three things that I think happened that caused that -- the individual that wrote the -- did the analysis to redo all the BEGs in AYK or the ones in Yukon and in Norton Sound, those are the three things that happened. But that's why I hate the rickermuddle that they did that by because the rickermuddle totally ignores what happens in the marine environment, only what comes back to the river.

But anyway, I wanted to just kind of
bring this up because I'm not accusing Area M of being the only problem, they intercept a significant portion of the stocks headed to the AYK region and particularly the Yukon River. I've shown old studies that show that it could be as high as -- it was 22 percent of the study in 1961 but there were no hatchery fish involved then, now, there are hatchery fish involved. Okay, but in 1996 it was as high as 10 percent in one period. To me, that's substantial. And so there's, you know, three issues I just pointed out that could have caused this productivity to go down, all three of them something can be done but it can't be done unless the action -- someone has to start the action. It's like stopping the high seas driftnet fishing. Someone had to start the action. I'm hoping that this will be the forum to maybe take a look at the effect of hatcheries on the wild stocks. Maybe take a closer look at the by-catch because the by-catch sampling methods in the trawl fishery is an absolute joke.

When I was on the Board of Fisheries the Council wanted to, the National Marine Fisheries Service, they wanted to stop sampling the by-catch because when they did the normal sample and compared it to a full haul sample, there was no comparison, I mean they didn't correlate whatsoever, but the Board of Fisheries said, not, no, but hell no you're not going to do that we don't care if it's not perfect it's better than nothing. But something needs to be done about those two issues. We're only addressing one of the three issues that are affecting our wild stocks in the AYK, we need to address all three.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you, Virgil. I'd appreciate it if you would get your historical information to Pete so he can arrange to make copies because that's information that we also need to know and study.

Anybody else. Dan.

MR. O'HARA: Yes. Just to remind the Staff and the State of Alaska, too, that 40 percent of the lands in Bristol Bay are Federal and 40 percent are State and 20 percent is private owned. So the Feds do have a pretty big stake in the Bristol Bay interest. Granted the in-season fishery is taken and handled by the State of Alaska and then there's not much left for the
Feds to do once they get up -- because whatever's going
to come through the in shore fisheries into the spawning
grounds is already taken care of.

But it's, nevertheless, they're very big
players in this matter.

And Togiak and Chignik are really Federal
lands as we well know.

Another thing is, is I question the Staff
report, but I guess we've done that before, haven't we?
You know, I think about here about a year and a half ago
when we got rainbow trout as a subsistence use and I will
give people credit for, I think your Staff was split, at
least that's an improvement, you know, that was a big
issue and we said it's not going to hurt to have rainbow
tROUT as subsistence use, it's way up in these waters
and, of course, it just created a big hassle and we got
it and it worked fine. So I don't think that as an
advisor to the Board, that, you know, I'm going to fall
on my sword for the Staff and their reports when we first
started this business your computers were empty, I'm not
so sure they're very full yet, but we may be working on
it.

The last thing is, is I guess the Board
is going to vote right now within the next hour or so on
this issue?

CHAIRMAN DEMIENTIEFF: (Shakes head
negatively)

MR. O'HARA: So you guys are going to
wait?

CHAIRMAN DEMIENTIEFF: (Nods
affirmatively)

MR. O'HARA: I'd like to look you guys in
the eye when you say yes or no. Hello? Pardon, I asked
a question?

CHAIRMAN DEMIENTIEFF: Done.

MR. O'HARA: Okay, I'm done.

(Laughter)

CHAIRMAN DEMIENTIEFF: I was just making
CHAIRMAN DEMIENTIEFF: But I know I explained it yesterday, but maybe you didn't quite catch it or stepped out of the room or something, but we are going to complete our work in executive session, that's the purpose of this discussion and the testimony yesterday. And the reason that we do that is in protection of the Secretary's discretion. This is obviously not a decision point, we are here to make a recommendation. And when there's issues that get advanced to the Secretary's offices, we forward the information to them for their own consideration. We do not allow that information to go out and -- because it is totally, you know, the Secretary's choice, so it is beyond us.

And out of respect to the respective Secretaries we simply do not allow that information to go out. So that's exactly how the process has worked in the past and will continue to work in the future, including this one since it is entirely the Secretary's choice and we don't want that information to go out.

Go ahead.

MR. O'HARA: Could I ask the Counselor a question along that line then?

CHAIRMAN DEMIENTIEFF: Yes.

MR. O'HARA: You know, in executive session as you usually dealt with when you're dealing with personnel and maybe that has a great deal to do with it, I think maybe a little more of an open forum would be a little more satisfactory, what do you think there, Mr. Goltz.

MR. GOLTZ: This is an open forum.

MR. O'HARA: Now it is.

MR. GOLTZ: Now. The document that's forwarded to the Secretary will be obviously pre-decisional. The decision will be issued by the Secretary and by every indication it will be done before the season starts. That's as much as I know right now.
CHAIRMAN DEMIENTIEFF: Niles.

MR. CESAR: Well, I was just struck, you know, by your comment that we're doing this out of consideration for the Secretary's ability to make a decision, but I think also we're making it out of consideration of our jobs which would probably disappear if we were giving the information out too early.

(Laughter)

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Okay, in the interest of job security we'll follow Niles' lead.

(Laughter)

CHAIRMAN DEMIENTIEFF: Judy, go ahead.

MS. GOTTLIEB: Thank you. A few more questions, perhaps for the Department during the actual fishing. I mean whatever the facts may really be, which we may all in this room eventually get to agreement on but probably not today, it would seem, at least simplistically that there might be some things that could be done that would then further the communication of exactly what's happening as the fishing is about to start or as it starts.

And two thoughts there. People have mentioned a test fishery, so I'm wondering, whether there is normally a test fishery and whether there will be one this year and how that could be a benefit relating to the ratio of sockeye to chums. And secondly, and then dispersing that information, and Mary's mentioned those teleconferences, which, from what I've heard are very useful as tools for communication, but the second half of the question would have to do with the chum pooling that was also discussed. And it seems like, again, I'm not exactly sure of the timing, but you're getting some relatively real time information on the takes, and so whether this information could be disseminated so that AYK and Norton Sound people know how the chum take is progressing or the chum catches are progressing or whether there could be some self-monitoring if those numbers appear to be too high.

So just some thoughts, perhaps on how communication could be improved once the fishing starts
so everybody's more aware of the actual situation.

Thank you.

CHAIRMAN DEMIENTIEFF: David.

MR. BEDFORD: I'm going to pass the question on the test fishery off to Geron. But as far as chum pooling, we're going to have about as instantaneous information as you can get when the area manager gets the calls from the tender operators at about 8:00 or 9:00 or 10:00 o'clock at night. That's about as good as it can get.

Now, in terms of trying to disseminate that, I mean first off that's privileged information. I mean it's a proprietary, so we can't hand that out in any kind of -- in any sort of real -- I mean we might be able to aggregate something and pass it along. But furthermore, that information is really -- it hasn't gone through any kind of analysis yet so I'm not sure that we've got something at that point that really is very helpful.

I would think that we might have something at the end of a fishing period. I'm not sure in that area what kind of information goes out with the next notice for the opening, but there's often, in some areas of the state anyway, there's a description of what the harvest levels were in the previous fishing period. So if we have that kind of thing there's no reason why it can't be passed along.

But anyway, I'll pass the test fishing question on to Geron.

MR. BRUCE: Mr. Chairman. Just to add a little bit to what David was saying about the catch information. As soon as the Staff out there has what they believe is a complete picture of the catches for a period and they've gotten the fish ticket data, it's been entered, the information is available as a summary for -- even down to the district level, Unimak, Shumigans. And I believe we post that information on our web site. So it won't be available -- you know, it might be a week or, you know, some period of days after the fishery closes before we have all the fish ticket data in hand, have it tabulated and our confident that it's -- it's still preliminary, it's not final data, but it's
complete enough that we would publish it.

As far as the test fishery, we aren't planning on conducting any test fisheries this year. We have conducted a test fishery in the past in Area M as part of various management plans that existed there over the years, but it is not part of the management plan that this Board passed and I'm not really sure that it would give us any information. The fishery will give us the best information. And we will be, as David described earlier, monitoring the fishery as we always do, plus trying to do some extra things this year.

CHAIRMANT DIEMTIEFF: Thank you, Virgil.

MR. UMPENHOUR: Thank you, Mr. Chair. I would like to ask Mr. Nelson, from the Department of Law for the State a question about this chum pooling, if I may?

CHAIRMANT DIEMTIEFF: Go ahead.

MR. UMPENHOUR: Okay. Mr. Nelson, I know exactly what has to be on a fish ticket, so my question to you is this, I don't understand this chum pooling. I know that the buyer has to list the number of fish for each delivery, put it on the fish ticket, the number of fish by species, the number of pounds and the price paid. Is this chum pooling somehow going to generate all these fish tickets the way that the regulation says they're supposed to be and is this chum pooling even legal?

MR. NELSON: Mr. Chairman. Mr. Umpenhour, I don't know a lot about the details of the chum pooling situation, it's a voluntary thing. But I don't see anything in the regulations or statutes on fish tickets that would prevent the pooling program, as I understand it to be, that fish tickets will still be required to have the number of chums for each delivery listed on that fish ticket.

My understanding is that the processors, rather -- well, rather than paying individually out to the fishermen whose fish tickets record that number of chums will be looking at those fish tickets, keeping track of the number of chums, pooling the payment for those fish together and instead of dispersing it out as they normally would to, you know, per fish ticket, as for chums go they'll be waiting until the end of the year and
then calculating by participation, you know, what each
fisherman obtains from that. And my understanding it's
an equal share for the day that they participate as
opposed to how many chums they get.

There's nothing that prevents, in the
fish ticket regulation or the fish ticket statute, that
prevents that kind of contractual agreement between the
processor and the fishermen, to my knowledge.

CHAIRMAN DEMIENTIEFF: Go head Virgil,
follow up.

MR. UMPENHOUR: Follow up. I know that
in the past I've been told, by Staff at Area M, Board of
Fisheries meeting, that they were lucky to get the fish
tickets at the end of the season. Is the Department
going to be hard nosed to and require them to follow the
regulation and have the fish tickets into the Department
with in seven days, like the regulation states?

MR. BRUCE: Mr. Chairman. Mr. Umpenhour,
we're going to contact the processors and get the fish
tickets. I don't know where you heard that allegation
that we were lucky to get the fish ticket at the end of
the season. Maybe some, you know, I'm not familiar with
that, we have generally quite good compliance from
processors in getting fish tickets to the Department.
I'm not aware of the problem that you reference and if it
has been a problem in the past, I don't think it's going
to be a problem this year.

MR. UMPENHOUR: Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: John.

MR. LITTLEFIELD: Thank you, Mr. Chair.
I think I'd like to conclude my comments here. I want to
bring us back to why we're here, we're here as a Federal
Board and we need to quit talking about chum pools and
all that other stuff, it has nothing to do with what
we're here for.

I think if you follow the mandate of
ANILCA which mandates in .802, Section 1 that we first
look after the conservation and the health of the
resource, that's the number 1 job. And then secondly in
802 (2), it requires us to ensure the subsistence
priority and the continuation of C&T uses.
If you take those into effect, and again I refer you to Page 4 in your report, then answer the four question that we do as a Council before we make a decision, those four questions are:

Is there a conservation concern with the species that we're looking at, in other words we're asked to look at the Yukon River, Kvichak and others. Is there a conservation concern, and I think you can answer that whatever way you want. But I think you have enough information to do that.

Are the subsistence needs being met. From what I've heard from the users the answer is unequivocally obvious to me. I mean, any way you can -- but you have enough information before you to make that decision.

Third, what types of data were presented, and was it substantial evidence. Well, we can first off eliminate the personal conversation with the Director as substantial evidence, you don't need -- I mean let's just get rid of that. But there are other things that are available to you that can give you the information that you need to say, are there fish being intercepted in this area, are there fish being caught in the river by commercial fishermen that affected all throughout the whole, from Eagle on down. You have all of that that you can look at.

What are the effects on other users. Well, in the worst case, if you were to take Area M, and say we don't buy that and you should go back to what you were doing last year, there would be no effect, if you were to take effect now, well, obviously it would take a potential benefit that they have. But you have that information that you can make that decision right now.

If you look at the information on Page 4, Section 10 (D)(417), and what the duties of the Board

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are, it's to evaluate whether hunting and fishing or trapping activities which occur on land or waters in Alaska, other than public lands interfere with subsistence hunting, fishing or trapping on the public lands to such an extent, as to result in the failure to provide the subsistence priority. That's the question, I think you have enough information to answer that, it has nothing to do with what -- the other stuff that's going on here right now, throwing chums over, it just has nothing to with it.

And then further if you read on in that section it says, after appropriate consultation with the State of Alaska, the Regional Councils and other Federal agencies you could make that recommendation to the Secretary. I think you have all of that available to you right now. It doesn't say that you have to -- the State has to agree with you at all. It says, you're consulting with them, you're letting them know what's going on in a public forum. And I say you have enough information before you now to make that decision, and I wish you good luck.

CHAIRMAN DEMIENTIEFF: Thank you. Well, not only that but we are getting a little redundant here, and I don't know if we haven't beat this thing to death.

Della you have something.

MS. TRUMBLE: I'm hoping we are in the direction of closing here. But I did have a little bit of a heartburn, because I know Southeast tried to do this extraterritorial jurisdiction a few years ago, but I appreciate what you've said. I think in response to that I really hope that whatever decision is made, that everything is -- that all the factor are being considered. The impacts of Area M, and what those potential, that percentage and where the rest of that problem is. It needs to be heavily weighed before that decision is made, it needs to be considered.

Then the other part of it is. We're willing to work, I mean everybody that testified has made that statement. I know I'm willing to put more effort to it if I need to if people are busy and I'm willing to work with people if not me there will be somebody there. And I really appreciate the time and the effort taken.

Thank you.
CHAIRMAN DEMIENTIEFF: Anybody else have anything new. If not then I think I'll reinforce what I said earlier, about the possibility of getting together a working group, you know, and again I encourage you to get ahold of Tom if you want to be a part of that process. He's busy this afternoon, but we are easily accessible if anybody wants to be a part of that group, you know, because we are going to look to pool money for studies and do what we can, with the State.

I want to thank everybody for their wonderful participation. In particular I want to congratulate you as I have for tackling a thorny issue. In doing it in a way that is civil, we agreed to disagree, but we didn't get mean with each other any where. I think that is so very, very important to resolve issues, if you agree to disagree, fine, but if you start attacking each other all we do is just make it -- but I want to congratulate the Council Chairs, and all the people that testified again the only hostile one was Niles over here. We always pick on each other Niles and I, wouldn't be a Board meeting if we didn't get a shot at each other.

Go ahead retaliate.

MR. CESAR: No, not at all. I mean I appreciate the opportunity to be here and, you know, when the decision was made to cut the meeting earlier, I thought we I don't think that's a good idea, so I passed a note on and the meeting was extended, and I bailed out. So, I did my share.

CHAIRMAN DEMIENTIEFF: Okay, anyway. But it has been really good and we all know we still have a lot of work to do. But we will do diligence and we will -- not only this issue but every other one, that we tackle. Particularly the thorny ones like this one, and we found out years ago, in working on tough issues, that by working together we have a better chance of resolving these issues and by getting on one side or the other and fighting out, and that's the way it's always worked for us, on whatever issues.

I want to thank you all again for being here, and all the wonderful participation.

We stand adjourned.

(END OF PROCEEDINGS)
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 147 through 234 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING, VOLUME II taken electronically by Nathan Hile on the 28th day of April 2004, beginning at the hour of 8:30 o'clock a.m. at the Egan Convention Center in Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 2nd day of May 2004.

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