FEDERAL SUBSISTENCE BOARD
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CHAIRMAN DEMIENTIEFF: We'll go ahead and call the meeting to order. Maybe we'll go around the table here and have all the Regional Council people and the other people from the State and what not that are going to be speaking today with regard to this issue, introduce themselves. My name is Mitch Demientieff. I guess nine years now I've been Chairman of the Federal Subsistence Board.

So with that, maybe with Tom and we'll just go right around, okay.

MR. BOYD: I'm Tom Boyd. I'm the Assistant Regional Director for the Subsistence Management with the U.S. Fish and Wildlife Service.

MR. CESAR: My name is Niles Cesar. I'm the Regional Director for the Bureau of Indian Affairs for the last 12 years.

MR. BSCHOR: I'm Denny Bschor. I'm the Regional Forester for the USDA Forest Service.

MR. BROWER: Good morning. My name is Harry Brower. I'm chairman of the North Slope Regional Advisory Council.

MR. NICHOLIA: Good morning, gentlemen and ladies. I'm Gerald Nicholia. I'm a Yukon fisherman, better known as subsistence fisherman.

MR. STONEY: Good morning, I'm Raymond Stoney. I'm from the Kotzebue area as a RAC member. I've been with this committee since it began for nine years. Thank you.

MS. CROSS: I'm Grace Cross. Chair of Seward Peninsula Regional Advisory Council.

MR. COLLINS: Ray Collins representing the Western Interior Advisory Council.

Good morning, Board. My name is Pete Probasco. I work for the Office of Subsistence Management. I'm here to present the issues on customary trade.

Good morning. My name is Marianne See. I'm the Assistant Director of the Division of Subsistence at the Alaska Department of Fish and Game.

Good morning. My name is Doug Vincent-Lang. I'm with the Alaska Department of Fish and Game.

Rod Campbell. Alaska Department of Fish and Game, Commercial Fisheries.

Harry Wilde. Yukon-Kuskokwim Council Chair.

I'm Della Trumble. Chair, Kodiak/Aleutians.

Ralph Lohse. Chair, Southcentral.

Bill Thomas. Chair, Southeast.


Ken Lord. I'm one of two legal advisors to the Federal Subsistence Program.

Thank you one and all for being here. I hope everybody enjoyed their holiday break. I remember the last time we were meeting everybody was anxious to get out of here and I find myself just as anxious in the new year to get actively engaged again. So I guess what does go around does come around, I guess. I'm looking forward to the opportunity to meet today.

We do have one request for public comment on a non-agenda item. Nicholas Tucker who is also going to
be testifying with regard to customary trade later. So Nick -- where'd Nick go -- yeah, come on up.

MR. TUCKER: Good morning. Is this for the public comment or general -- for the customary trade or for the general comment?

CHAIRMAN DEMIENTIEFF: I'll call you back for customary trade specific, but this is just general on non-agenda items.

MR. TUCKER: Yes. The only thing that I came in -- this is my first opportunity to address the Board. I'm a Yup'ik from Emmonak, Alaska, and also I'm a former military man. I had the opportunity both to protect, you know, and to risk my life for the Western culture as well as the survival of my own people. And that makes it a very flesh and blood to me. I'm able to live both worlds and able to taste both of them. I came -- I'm also a subsistence hunter and fisherman from my region.

I've been able to have experienced the very life of our people when I was very young. I had not been able to speak English or I didn't even know White people exited then. And so I came in -- I became aware that our Yup'ik way of life has become not controlled by ourselves now but with the other regions in the world. And that's kind of perplexing, very troublesome. I believe that the control -- I have observed my elders and what I've seen, they were able to take care of themselves by taking care of the resources, making sure that they regenerate for -- or save for the future. And anything done well, is thought out well and taken in very slow steps. And what has built over 10,000 years, I don't think we can make any changes in 15 minutes.

So what I'm asking, I came in here as a member of Alaska Native. I came in here and I look around and I see mostly non-Natives and that hurts. What happened to my people. We can't even afford to come over here to speak directly to you because you are going to affect the very core, the basis of my life, my Yup'ik spirit, the way I eat, the way I think and the way I try to form myself and for my people in the future generations.

I don't think Yup'ik way of life is an arena of politics. I think it's a special way to look at the Native culture in our state and look at it something as an asset to the state, rather than what has been perceived over the centuries as a liability. We people think, we
I feel, we hurt, we cry and even the government even ask us to risk our life for this country.

I want you to think that as you deliberate on any of the Native issues, that none of us, none of you are sitting there for us. I don't know how to express it but I think -- and it was never understood how our way of life touches our soul, our mind and our heart. You can conceive it. You can try to make pictures of it but I don't think you're able to have lived it. But the only thing that I plead for is that as you deliberate on these issues there are souls and hearts hunger and crying, crying for help behind the pens, the computers the deliberations that you are making. There are people trying to make this dying cultures alive.

I pray for you to give your utmost respect, consideration and in the way that we try to ask you to make our live a liveable and to be contributing citizens of this country.

Thank you, very much.

CHAIRMAN DEMIENTIEFF: Thank you, Nick. We'll be calling you again as we start to deliberate the issue for public testimony with regard specifically to customary trade. Thank you.

With that, we'll move on to customary trade, the proposed rule. Staff analysis, Pete, I guess you're going to give that.

MR. PROBASCO: Thank you, Mr. Chair. Good morning to the Board. Before I start into my presentation I think it's important to at least recognize some of the people that put a great deal of effort into this process.

I think it's important that we acknowledge some of the effort that has gone into this process since the Board started it in the fall of 2000. And particularly I'd like to recognize the Council members that are sitting here that helped initially with defining customary trade. People here that are sitting as Chairs that served on this task force and assisted were Bill Thomas from Southeast, Mr. Ralph Lohse from Southcentral, Della Trumble from the Kodiak/Aleutians, Ray Collins from the Western Interior, Gerald Nicholia from the Eastern Interior and Grace Cross from the Seward Peninsula. Those are specific Council members that served and assisted with customary trade.
In addition, I think I'd be remiss if I didn't recognize a key person that helped me throughout the process and was a sounding board, and that was Ann Wilkinson. She proved very valuable in assisting me and the task force in going through this process.

Board members I'd like to have you focus your attention, I'll be referencing page numbers, this yellow booklet, Customary Trade. I do have an overhead presentation but maybe we're -- the distance here, we may not be able to see it so I'll reference specifically pages in here.

Mr. Chair, the objectives of my presentation today, I am purposely going to keep it brief to allow more time for questions. Many of you have -- all of you have heard this topic on customary trade and the points that I'm about to make in previous meetings. The objective to my presentation, I will briefly go over the regulatory background; outline why the customary trade is being addressed by the Federal Subsistence Board, summarize the process that the Board initiated to help develop the information the Board is looking for in defining customary trade, briefly hit the high points of the proposed rule that you passed in December of 2001, and then review the Office of Subsistence Management Staff recommendation that your Staff Committee looked at last week and then subsequently provided recommendations from them.

Customary trade, I think it's important we first establish the baseline. ANILCA identifies customary trade as a subsistence use. And for clarification when we talk about customary trade, it's different from barter, in that, customary trade describes and defines cash sales. It's also important to understand that Federal regulations provide for a very limited sale of subsistence taken fish. Those are two important factors that the Board had prior to the start of this process and the important underlying theme is customary trade is recognized as a subsistence use.

Why is the issue before the Federal Subsistence Board? Well, first Federal regulations provide for a limited sale as long as the sale does not constitute significant commercial enterprise. And the problem is, neither legislative history, nor the regulations define what significant commercial enterprise means or it doesn't go and specify allowable level of customary trade. And this is where, when we first started this process, that the Federal Subsistence Board found that the regulations, based
on input received from Staff, that the regulations were unenforceable, the interpretation of significant commercial enterprise was unclear and they felt that it was important that we try to define the parameters of customary trade and still safeguard traditional practices.

Federal Subsistence Fisheries implementation plan in -- one of the 14 issues addressed in the Federal Subsistence Fisheries implementation plan is the need to characterize customary trade practices and to determine the need for regulation of allowable levels. Federal regulations that became effective October 1st, 1999 recognized the importance of customary trade to rural Alaskan subsistence communities. While Federal regulations permit the exchange of subsistence harvested fish for cash on a limited sales, these regulations also prohibit individuals, businesses or organizations from purchasing or receiving through barter subsistence taken fish for use and resale to a significant commercial enterprise.

As stated earlier, the regulations failed to define significant commercial enterprise. However, in our research and reviewing legislative history from the '96 Congress, Congress' intent is clear. The report states that the Committee did not intend for customary trade to be construed to permit the establishment of significant commercial enterprises under the guise of subsistence uses. The important point, though, is it did recognize cash sales and defined it as customary trade.

The Board, in reviewing regulations that allow customary trade expressed concerns that these regulations are ambiguous, allow for more than one interpretation and hamper effective law enforcement to prevent abuses.

The process that the Board implemented to assist in developing regulatory language, they first established a customary trade task force. This customary trade task force consisted of one representative from each of the 10 Regional Advisory Councils, had Federal agency Staff consisting of fishery biologists, cultural anthropologists, Council coordinator, enforcement personnel and we had an invitation for a State of Alaska ADF&G rep. This process was initiated in the fall of 2000 and after numerous meetings, not only with the task force but with the Regional Advisory Committees, tribal governments, public and Federal and State agencies, along with the Staff Committee and the Federal Subsistence Board addressed this, not only in their 2001 meeting, but during work sessions.
The proposed rule defining customary trade was adopted in December of 2001.

The proposed rule, Mr. Chair, is found on Page 2 and the reason I want to present that to you is to establish a framework that we can work from today. The proposed rule specifically identifies three practices, if you will, in customary trade.

Section 11 addresses transactions between rural residents. And this concept was developed in the task force and presented to you prior to the December 2001 meeting.

Section 11, transactions between rural residents, is rural to rural, and under the proposed rule this is allowed with no limitations.

Section 12 addresses transactions between a rural resident and others and others are defined as those people that are non-rural. And I'll just read it.

Customary trade for fish, their parts or their eggs legally taken under the regulation in this part from a rural resident to commercial entities other than fisheries businesses or from a rural resident to individuals other than rural residents is permitted as long as the customary trade does not constitute a significant commercial enterprise.

If you recall in your December 2001 meeting, this is the section that a lot of comments and concerns were raised and the Board felt that the best way to proceed was to put this Section 12 out as written with the words significant commercial enterprise still in there for the purpose of gathering more information, particularly from the Councils on hopefully better defining Section 12.

Section 13, no purchases by fishery businesses. Fishery businesses are identified in Alaska Statute and this section specifically prohibits the sale of subsistence harvested fish to fishery businesses.

Now, Mr. Chair and the Board, we've actually had two comment periods through this process.
Initially from the proposed rule and then as a result of that comment period, Staff took the proposed rule along with comments and developed three alternatives. And that comment period on that paper that was released in August of 2002 ended in November of 2002 and from those comments, from the Regional Councils, from the various agencies and the public, we have an Office of Subsistence Staff recommendation. This was purposely drafted for the purpose to have the Staff Committee's recommendation -- to have a recommendation before the Staff Committee from which they could work from.

And Mr. Chair, this can be found on Page 10, and I'll just briefly walk you through it.

Section 11, as is written in the proposed rule. Comments received supported. All the Councils and the majority of the public supported a proposed rule for Section 11 that supported no limitations on rural to rural.

Section 12, again, even in the second comment period, there was a wide array of comments, recommendations and the Councils -- some Councils looked at specific dollar amounts, some Councils looked at a percentage or a combination, percentage of the harvest. This Section 12, in my opinion, represents a happy medium between all the recommendations. And what it states is:

Customary trade for fish, their parts, their eggs legally taken under this regulations in this part from a rural resident to commercial entities other than fishery businesses or from a rural resident to individuals, other than rural residents is permitted subject to the following conditions:

And this is the key.

Subsistence harvested fish, their parts or their eggs purchased or otherwise acquired by individuals other than rural residents or commercial entities other than fishery businesses must be used for personal or family consumption of the individual who purchased the fish and cannot be resold.

And already in Federal regulations we have a definition for personal or individual and a definition for family.
What this Section 12 does is it provides an unlimited sale to non-rural residents, however, non-rural individuals who purchase the fish have to use it for personal or family consumption. So in other words you can't have a resale of that product.

Section 13 was expanded. It still covers fishery businesses but it also covers the seller or the buyer on Section 13.

Mr. Chairman, the final comments and recommendations, as I stated, reflect a wide array of input. Ranging from recommendations to take no action, to dollar specific limitations or caps regarding cash exchange between rural and non-rural users.

What I was able to, and it's easy to decipher from the comments is the rural subsistence users concern focuses on the unknown of the potential impact of regulating this complex issue and what it may have on the rural communities of Alaska and their subsistence way of life. Their concern over the potential negative impacts of a hastily crafted regulations that are too broad and far reaching are their concern. They emphasize the need to move slowly and cautiously, and this has been echoed throughout the process, both comment periods.

However, the Board from the onset and the charge that they've given me, as well as other Staff, our task was to develop a regulation that would preserve traditional customary trade practices and they're consistent with traditional cultural values.

Regional Councils and rural subsistence emphasized that in most cases the traditional practices involving customary trade are self-limiting and they believe this concept should be utilized as a cornerstone in developing regulations.

The proposed regulation as modified would establish a regulation preventing the cash exchange of subsistence harvested fish where the greatest potential for abuse could occur. In other words, commercial entities. Other transactions would be permitted to occur safeguarding traditional and customary practices.

In conclusion, Mr. Chair and Board, history has shown us that when a regulatory body elects to tackle a complex issue, such as customary trade, we have found that the final results or a perfect regulation is rarely
achieved in the first attempt. In fact, the refinement of the regulation or regulations is not fully realized until numerous revisitations of the issue. It is recommended that an approach be used to define customary trade, where the first attempt is to develop a regulation that addresses the area of greatest potential for abuse and defers any further action for future consideration by the Board if deemed necessary.

And Mr. Chair, I'm looking at Mr. Lord here and I made a mistake, he was supposed to go first. I guess I'm too eager to get out of the chute here, but I apologize and I think it's important before we ask questions to have Mr. Lord speak first.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Ken.

MR. LORD: Well.....

CHAIRMAN DEMIENTIEFF: Before, maybe you get started, I'd just like to welcome Robyn Samuelsen, vice-Chair of Bristol Bay to the meeting. So welcome Robyn.

MR. SAMUELSEN: Thank you.

CHAIRMAN DEMIENTIEFF: Go ahead.

MR. LORD: Well, we thought it might be helpful today to include in the discussion a brief reminder about the limitations on the scope of Federal jurisdiction with regards to this issue.

There are two main points that I'd like to make today.

The first point, which I suspect most people in this room have heard before is that the Federal Subsistence Board has no power or authority to make decisions that change the scope of Federal jurisdiction. Most Federal regulations adopted under Title VIII apply only to Federal lands and waters and only Congress or the Secretary of the Interior can change that. The Board cannot.

The second point is one about which the Staff Committee expressed a concern there may be some misunderstanding about. The point is this, generally the
Federal Subsistence regulations apply only within or adjacent to conservation system units and other Federal lands as described in Section III of the regulations. We believe, however, that Federal regulations governing customary trade of subsistence taken resources, and this includes the current regulations as well as the proposed regulations, extend to any customary trade of legally taken subsistence fish regardless of where the actual cash transaction takes place. However, State officials may disagree with that view.

What this means is that if a Federal subsistence user catches a fish in Federal waters then takes it to State lands to sell it, there is the possibility that he or she could be charged in State court for violating the State prohibition on sales of subsistence caught fish. There are no court decisions that speak directly to this point and there are arguments to be made both for and against what we call the Federal preemption of State law.

Only the courts will be able to definitively resolve this issue but we thought that the reminder was important to have today.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Thank you. Before we do the summary of written public comments there are a number of people that want to testify, if there are other people in the group that's assembled here that wish to testify, the blue forms are available at the table right outside the middle door here and you can get them and they'll make sure we get them here so we can call on you.

With that, Ann, summary of written public comments.

MS. WILKINSON: Mr. Chairman, Board members. The summary of written public comments is on Page 24 in that buff colored pamphlet. As a result of the extended comment period we received an additional 41 written comments from Federal and State agencies, tribal organizations, commercial fisheries organizations and interested individuals.

Three comments stated a distinct preference for Alternative 2, and two for Alternative 1. The rest of the comments either stated that they opposed all customary trade of subsistence caught fish or made comments and
recommendations related to the proposed rule and the alternatives. At least 10 of the comments we received were a direct response to the article published in the Anchorage Daily News on October 18th, 2002. Of these 10 comments, nine were opposed to all cash sales of subsistence caught fish and one supported Alternative 2. A copy of the news article is included in the supplemental document entitled Public Comments January 2003.

The writers expressed the following concerns regarding user conflicts. They stated that allowing customary trade will create aggressive competition among rural subsistence fishermen as well as between subsistence fishermen and licensed commercial fishermen. Particularly they mentioned, better equipped modern subsistence fishermen will have advantage over those who use traditional methods. The commercial fishing industry will lose market share and customers. Subsistence fishermen do not pay fish tax, nor is a license required. Permitting unlimited sales between rural residents would allow the rural buyer to put unlimited quantities into the commercial marketplace. Subsistence processing methods pose a health threat and could demolish established commercial fisheries markets.

The expressed concerns regarding conservation, specifically, allowing customary trade will lead to overharvest and decimation of entire stocks of fish.

Regarding rural economy, restricting customary trade will further weaken the already fragile economy in rural areas. Household limits do not take into account that in rural Alaska, multiple generations may live in one house and that such restrictions would make it more difficult to support one’s family. Subsistence fishing requires cash for equipment and gas, et cetera. Stores and gas stations do not accept barter as a method of payment and in many rural communities customary trade is the only source of cash for most residents.

Regarding public health, the concern was that subsistence fish entering the public market poses a threat to public health, specifically methods of processing may cause botulism.

Regarding enforcement, without documentation this regulation is completely unenforceable. Enforcement officers and fisheries managers will be stretched beyond their limited manpower making regulation
of customary trade ineffective.

And their concerns regarding research. Without studies to support documentation of customary trade and how new regulatory language might affect current and traditional activities, it is premature to create new regulation.

There were general recommendations from these written comments and I will just go through those rather quickly.

Adopt the proposed rule as published.

Do not restrict customary trade transactions.

Prohibit all cash transactions.

Ban sales between rural residents and non-rural residents.

Some cash exchange should be allowed but not enough that it will be appeal to potential entrepreneurs.

Wherever cash transactions are allowed record-keeping must be required.

Require permits for anyone participating in customary trade.

All fish which will be sold under customary trade regulations must be marked immediately upon harvest.

Be clear that this regulation applies to individuals, groups, association, co-ops, villages and regions.

Balance the traditional practices with a regulation that does not allow the commercialization and expansion of subsistence resource uses.

There were some specifically recommendation changes to the proposed rule.

In Paragraph 12, transactions between rural residents, it was recommended that we allow limited cash sales and limit cash transactions to $500 per household.
he other recommendation was to prohibit cash sales altogether.

Paragraph 12, transactions between rural residents and others, the recommendations were allow sale of fresh or frozen fish only.

No processed fish may be sold or bartered under this subsection.

Limit to personal or family consumption by the purchaser.

Fish may not be resold.

Prohibit all cash transactions between rural residents and others.

Limit the pounds of fish allowed to be sold.

Do not limit cash transactions.

Limit cash transactions to $400 per household.

Adopt region specific language.

And for Paragraph 13, no licensed fishery business, seafood processor or seller of food to the public under other State laws may purchase, barter for or solicit for subsistence taken fish, their parts or their eggs.

Mr. Chairman, that is the conclusion of the written summary.

CHAIRMAN DEMIENTIEFF: Thank you, very much. It's now time for public comments and I'll take them in the order that they were turned in. Nicholas Tucker.

MR. TUCKER: Mr. Chairman and members of the Board. How much time do I have for addressing the Board? I feel that we have very few people from the villages that are directly affected by this rule.

CHAIRMAN DEMIENTIEFF: Currently we have five requests for public comment and I think I'll -- you know, sometimes when we have a lot of requests then, you know, I'm a little bit more limiting, but I think we could go with five minutes probably.
MR. TUCKER: Yeah, I would feel much more comfortable and at peace with myself if I was allowed to be able to express myself freely and five minutes, coming all the way up from across the state and finally to address the Board, and in respect to the life of my people I feel very, very somewhat troubled here. This is unlike any other board process anywhere in the United States. This has to do with the very people that live here as unique indigenous people in Alaska.

CHAIRMAN DEMIENTIEFF: I guess, Nick, as we pursue on with this, you know, we have to have -- people have to understand that people have had opportunities to participate in this decision, you know, two different times prior to it coming this far. So maybe with that we'll just go ahead and move on. I just wanted to note for the record that there has been ample opportunity for people to participate in the process. This is not something that just happened.

MR. TUCKER: Yes, Mr. Chairman, I appreciate the ample time. But I do not think after 10,000 years that we did not have ample time to take this into very deep thinking at our own people.

So I begin, Mr. Chairman, I'm not certain how, at this point, whether or not this proposed rule should be adopted. It's too troubling. And a number of things that I have with regard to any dealing with customary trade is that I think one of the things that is very important is that first and foremost, any resource that we have for survival of our people we should have for human consumption.

And today our subsistence way of life as you have witnessed and it's been demonstrated throughout the state is declining as well as the resources. The resources are very hard -- they're more and more difficult to go after.

And looking at the choices in looking at how we're going to handle adopting this proposal, I think the Board may have overlooked one area. As I look at the summaries of written public comments, never in my life have I ever seen such opposing, differing and opposite views and conflicting views regarding the customary trade. It seems to me, I don't know if the Board is going to feel comfortable adopting something for the people of Alaska when the entire state is demonstrating very, very different views. And if you are dissecting each one of these
expressed concerns, I don't know if anyone in the world
would be able to feel comfortable adopting some kind of
rule.

My safest approach I will take, I think the
concern of the Federal government is how are we going to
enforce something so to prevent abuse. I agree with that
there should be some sort of enforcement to prevent abuse,
of any abuse that would hurt our subsistence way of life
and customary trade.

I think while the answer may be right in
front of our nose here, rather than trying to revamp 10,000
years of effort and development of our customary trade and
getting it down the drain in a few minutes, I think the
Board should think about in the process of defining
specifics, take a look at the wording, significant
commercial enterprises and take a look at each one and
define those further in detail and you might recognize what
those exactly mean and bring it back to the people.

I think the safest approach would be to
have a rule with sort of a sunshine [sic] clause which
means that the people of Alaska have not decided exactly
how we're going to approach these without hurting somebody
else. I'm afraid to hurt the Interior. I'm afraid the
northern people with their effort my hurt the way my Yup'ik
people live. You have to think about that.

You also have to keep in mind that a lot of
things always look good in written paper, but when you have
inspiration and thoughts of nice things, when you get down
to practical living it's a completely different world.
It's a world of hurt feelings and experience and this is
where my people are. You have to think about that.

So short of maybe sunset clause with the
new proposed rule, make it temporary, and never stop
working on the customary trade. Take it point by point but
come up with a temporary law enforcement to prevent
excessive abuse. I think that would be one of the answers
that you could come up with.

As Yup'ik to Yup'ik, Indian to Indian and
so forth, I don't want to hurt your special way of rituals,
your beliefs, your traditions and the way you pass on the
things that you love so much for 10,000 years and I don't
want you to do the same thing to me. It's too much, it's
going to destroy my generation.
Thank you, very much.

CHAIRMAN DEMIENTIEFF: Thank you.

MR. NICHOLIA: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes. Where did that come from? Gerald.

MR. NICHOLIA: Mr. Chair, I just noticed something, Nicholas Tucker, you guys been looking at your papers and not really listening to him. And when you look at your papers and not really listen to the people who is speaking, you guys ain't even doing nothing, you're going to mismanagement just like the State did for the last 20 years.

MR. TUCKER: I'm glad to hear that. I'm glad to hear somebody from another region is listening to me. I hope that you were doing the same thing, too.

Thank you.

MR. SAMUELSN: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

MR. SAMUELSN: Over here.

CHAIRMAN DEMIENTIEFF: Yes.

MR. SAMUELSN: Cami, Nicholas.

MR. TUCKER: Hi Robyn.

MR. SAMUELSN: Your message to us was that, if I understood what you said was that you want us to protect the customary and traditional lifestyle of rural Alaskans and their subsistence. What you were saying to us, that if we do allow cash sales there may be mischief within the subsistence community that may jeopardize subsistence way of life and the C&T finding. Is that what you were trying to say?

MR. TUCKER: If I understand you correctly, the customary trade throughout the state is something -- it's quite different from one region to another, I think that's already understood. And certainly there will be people, and we're not going to discount this, that will make the effort to undermine our good intentions as trying
to keep our customary trade in good standing. Is that clear enough?

Thank you.

MR. SAMUELSEN: And then you want possibly us to study it more, do you have any idea or timeframe that when this issue should be brought up again?

MR. TUCKER: I think for purposes to prevent abuse for the time being is to come up with a temporary -- I don't know what you would call it, proposed rule, probably as recommended by the Staff but with a sunset clause. But I don't think there will ever be an end for something that is within us Native people of Alaska. There's no end to that. I think there will never be an end to the discussion or living experience in our way of life. So I think the customary trade should be taken for a hundred more -- two, three four-hundred more years in taking -- we'll never make it perfect today.

Thank you.

CHAIRMAN DEMIENTIEFF: I think it's important for us to know that the way the Federal process works, is that these regulations are up for review annually. If there is a proposal that's made, the Board will deliberate that proposal. So it's not something, irregardless of what action the Board may or may not take today, it's something that will be up for review, could be up for review every year depending on whether or not we have people who propose a change in the regulation. So that's just important to note. So I'd just point that out.

Thank you, very much. Any other questions for Mr. Tucker?

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much. David Bedford.

MR. BEDFORD: Mr. Chairman. Members of the Federal Subsistence Board. Representatives of the Regional Advisory Councils. I appreciate the opportunity to come and speak with you folks today.

My name is David Bedford. I'm the executive director of Southeast Alaska Seiners. I'm the Chair of the Subsistence Committee of United Fishermen of
I want to start by saying that I appreciate the effort that's gone into this. I know that you folks have been grappling with this for some time. And, again, you know, I've read through all of the public comments on this and I can see that, as was mentioned by the previous speaker, that this is a subject that raises a considerable amount of discord among people. And I have to say that from my perspective as a representative of commercial fishermen, we've been grappling with how do we deal with this?

Now, first as a fundamental matter, United Fishermen of Alaska and Southeast Alaska Seiners support providing for subsistence as being the first priority use of the resource. And secondly, we support the State of Alaska coming into compliance with ANILCA and we've been grappling with this issue on the State level for some time.

And I would suggest at this point in your deliberations that maybe we drop back for just a moment and look at Title VIII. Because as your attorney as suggested, you guys do not have the authority to change the jurisdiction that you've been granted under Title VIII, and that doesn't only apply to where your regulations take effect but also in terms of what you regulate. And if we go back and we look at Title VIII of ANILCA, what we see is first off the preference by rural Alaskans for subsistence uses and, second, the definition of subsistence uses. And the key jurisdictional term there is customary and traditional uses. And amongst those customary and traditional uses of the resource we find customary trade.

And that is the fundamental legal foundation on which you're currently operating and one which, again, you folks and many people have put in a tremendous amount of effort in trying to deal with this.

When we look at the policy objectives that you're striving for here, one of those being to try to provide for the existing uses, customary trade uses that people have of the resource. Another one being to prevent abuse of the resource or to prevent practices that might interfere with subsistence. Another one being to have effective management of the resources with which you have been charged with the role of being stewards.

Now, it seems to me in looking at the
proposed rule that you have in front of you that there are some pitfalls in terms of the objectives that you want to achieve.

In our original written comments, I didn't submit a second set of written comments because I felt that our initial set of written comments pretty much captured what it is we wanted to say. And in our original set of comments what we suggested is that the language that you were contemplated was overbroad and that it's overbroad because what it does is authorize, not only whatever sorts of current practices might take place but also any number of practices that are not customary and traditional practices and therefore are not subsistence. And so in looking at all the various iterations of the rule that have come out and quite frankly, I mean, I have to admit being a little bit confused as to what's on the table right now. I mean Mr. Probasco presented one that's in the materials that were handed out out front. I've seen some other iterations of the rule that are apparently in consideration in some area. But in each and every one of these, it seems to me that there's a threshold question that should be raised in the regulations and that is very simply that we should narrow what it is we're talking about to customary and traditional uses. And I think that this does a number of things. It protects the people who are the subsistence users. It says, you have a determination of a customary and traditional use for customary trade and you then, at that point, have authorized something that is clearly applicable under ANILCA. By the same token you've created a record for the world to see that this practice takes place and that this practice is cognizable under ANILCA.

And so when people are talking about the fear that over time, that perhaps something will be done to disrupt their use of the resource, that which they have done since time and memorial, in creating the record, albeit with some level of administrative inconvenience, of what customary and traditional customary trade is I think that you do the maximum at that point, not only to comply with the terms of the law but also to protect the people that you are charged with trying to serve.

That concludes my comments.

CHAIRMAN DEMIENTIEFF: Thank you, very much. Questions.

MR. THOMAS: Thank you, Mr. Chairman.

Dave, I always appreciate your presentations. Toward the
end there and speaking with so much confusion around the 
customary trade, you mentioned that you're the subsistence 
representative for the Seiners Association or facsimile 
thereof, how close am I to who you represent?

MR. BEDFORD: I'm employed as the executive 
director of Southeast Alaska Seiners. I am also the chair 
of the Subsistence Committee for United Fishermen of 
Alaska.

MR. THOMAS: Okay, thank you. I have a 
question, those people that you represent in your duties of 
subsistence rep, do any of those people exercise customary 
trade in a subsistence fashion?

MR. BEDFORD: I can't speak for all of the 
folks in the association.

MR. THOMAS: Do any of them?

MR. BEDFORD: To my knowledge, no. 
However, I've never asked them that question.

MR. THOMAS: Thank you.

CHAIRMAN DEMIENTIEFF: Gary, did you have 
a comment or question?

MR. EDWARDS: I guess in trying to follow 
your presentation, is that, when I review ANILCA it makes 
the clear that it does allow the cash sale of subsistence 
cought fish and I think we've been operating from the 
assumption that customary trade, based upon the definitions 
that's spelled out in Title VIII is synonymous with cash 
sale. But what I think I heard you say is that you don't 
agree with that assumption.

MR. BEDFORD: Not at all. I think that -- 
I agree completely with what you said. However, I don't 
believe that it also authorizes the cash sale of all fish 
harvested by all rural residents. I think that the 
question there is what are the customary and traditional 
practices of cash sale? I mean frankly, if what you 
authorize is that any rural resident may sell whatever they 
harvest under subsistence, then I think that at that point 
you open the gates to abuse. If, however, you go through 
the somewhat inconvenient process of determining what 
stocks of fish are used at what levels in what kinds of 
sales, and then specifically authorize those kinds of 
things, then what you've done is not only protect the
traditional practices but then also limited the potential for abuse.

I mean let me just -- I'm answering kind of at length and I apologize for this, but let me just speak personally for a moment. I used to be a resident of rural Alaska. I lived in Petersburg, Alaska. Petersburg is pretty much a commercial fishing town. The regulations that I see in front of me right now, if I still lived in Petersburg, I look at this as authorizing me to go down to Thom's Creek put a net in the water in front of people who are harvesting for their own personal consumption, maybe take my kids down there and teach them how to fish, take those fish, take them back, can them up, open up a website and offer that stuff for sale to somebody for their own personal and private consumption. If I did that, that would fall within the terms of the regulations that you're looking at. I don't think that that's what you want and it's not what I would want to see happen. However, again, if I was still living in Petersburg and I was a commercial fisherman at the time, I would look at these and I would say this is what is allowed by the law, there is no abuse in doing what the law permits.

CHAIRMAN DEMIENTIEFF: Gerald.

MR. NICHOLIA: Yeah, Mr. Chair, it seems like this guy's always going -- you're always assuming, you have no data, you're always assuming something that these two percent subsistence user, between 110 percent commercial, sport and personal use, two percent man. Two percent, that's all we're going to put on our table. And this other little joke you had, this catch and release subsistence fish, man, you guys just.....

CHAIRMAN DEMIENTIEFF: Any other questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much. Sue Aspelund.

MS. ASPELUND: Good morning and thank you for this opportunity to testify to you. My name is Sue Aspelund and I am the executive director of Cordova District Fishermen United representing the commercial fishing families of the Copper River and Prince William Sound. And I would like to note for the record that a substantial percentage of our membership are Federally-qualified subsistence users. I don't know if any of them
embark on cash sales of subsistence caught fish but we are Federally-qualified users.

CDFU has followed the activities of the customary trade task force and we support your efforts to draft regulations that recognize and authorize existing customary trade practices while not encouraging expansion of them.

We believe that there are several very important issues that must be addressed in any effort to draft regulatory language on customary trade.

These are: The sustainability of the fisheries resources must come first and all draft regulations must be evaluated for resource impacts. Any consideration of uses by any user groups simply must consider the impact of that use on the sustainability of the resource. Sound biological principles must be the highest priority.

Draft regulations must require accountability of harvests so that we have the ability to ensure evaluation of impacts to the resource. Without adequate information on removals it's impossible to evaluate uses for sustainability.

While current levels of use are not likely a threat to the resource in most situations, a newly associated cash value may motivate some not currently engaged in customary trade to become so or for those already involved to increase their harvest.

The regulations must be enforceable. Regulations that are unenforceable will provide opportunities for abuse of the system and therefore unintended commercialization and resource impacts.

Public health and safety standards must be assured for all products sold to the public. Commercially sold products, as you're aware, are held to high health and safety standards in order to protect the public and the hard earned markets of the commercial fishing industry all sales of products must adhere to minimum health and safety standards. You're all very well aware, I'm sure of the devastation which occurred to canned salmon markets a few years ago due to just a single taste of botulism.

The regulations should disallow any sales to a commercial entities, fisheries business or otherwise.
Sales should occur only between individuals, not between individuals and a business. Again, it's our understanding that the legislative intent behind the initial Federal definition of customary trade was that the practice would be non-commercial in nature and that subsistence harvests would not become part of the commercial stream.

CDFU supports the language utilized in the Majority Staff report recommendation in Subsection 13 dated 1/10/03. We believe that it supports extensive public testimony and recommendations of the Regional Councils and it provides important distinctions between customary trade and commercial enterprises. We urge you today to take action at a minimum to adopt Subsection 13.

We appreciate the difficulty of crafting a workable regulation that acknowledges the variety of important practices developed over time that have come to comprise customary trade and we thank you for your serious consideration of all of these issues.

CHAIRMAN DEMIENTIEFF: Thank you.

Questions? Gary.

MR. EDWARDS: What is your view on the other sections? You said you supported Section 13, what about....

MS. ASPELUND: I don't believe our organization -- our organization doesn't believe that it's up to us to determine what rural users do as long as it doesn't constitute a commercial sale and would prefer to leave that to the Regional Councils and the folks directly impacted.

MR. THOMAS: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

MR. THOMAS: Ms. Aspelund, thank you for your presentation. And I understand everything that you've mentioned, the concerns that you've raised and they're all very valid. I did have a question but I scratched it because you answered it, because in your closing remark you didn't feel that subsistence use by itself was a threat to the resource; is that correct?

MS. ASPELUND: At current levels.

MR. THOMAS: Right. Okay. Oh, at current
levels. Now, subsistence, you understand is for personal consumption, and do you feel that the subsistence community at some point could be responsible by increasing their consumption to pose a threat to the sustainability of a resource?

MS. ASPELUND: I suppose it could in some discreet stock situations, I wouldn't feel comfortable making a blanket statement that it never would. I believe that if the commercialization issue is dealt with then probably not.

MR. THOMAS: Okay. You also expressed a concern that many people that aren't familiar with customary trade and subsistence uses and that resulted in a negative speculation about possibilities of some real evil things that could occur or may occur in this process. And as far as I know, there isn't any history that suggested that ever occurred in the past and I'm wondering why people come up with speculation that there's a monster someplace in the middle of this process that will allow the conservation concerns of a resource to be jeopardized. But I don't expect you to answer that, it's just an observation that I had to one of your comments. Again, I do appreciate your comments.

MS. ASPELUND: If I may, I'd like to respond to that.

MR. THOMAS: Go ahead.

MS. ASPELUND: I was able to participate in all but one of the customary trade task force meet -- I was present at most of those and I also have participated in our Southcentral RAC meetings and those were concerns that were expressed by members of the RACs, that's not coming specifically from outside of that process, but was very much a part of those discussions.

MR. NICHOLIA: Mr. Chair.

CHAIRMAN DEMIENIEFF: Yes.

MR. NICHOLIA: I'd like to ask you a question, have you ever sat on the bank of the Yukon where this issue came up and actually ate a fish with my grandma, do you speak for the people I represent?

MS. ASPELUND: No, I clearly speak for the commercial fishing industry. But I sat on the banks of the
Kvichak and cast my subsistence net many a year. My daughter is a fifth generation Alaska Native from Naknek and we have subsistence fished for over 20 years on the Kvichak. So a person my heart is very much in subsistence fisheries and I do, to the extent that someone who's only participated for 25 years can understand it. But my comments today are reflected of the commercial fishing industry group that I represent.

CHAIRMAN DEMIENTIEFF: Any other questions?

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much for your testimony, appreciate it. Mike Smith.

MR. SMITH: Thank you, Mr. Chair. My name is Mike Smith and I'm here on behalf of Tanana Chiefs Conference today. As you all are aware Tanana Chiefs Conference represents roughly three-quarters of the Yukon River. And we cannot compartmentalize and condense the cultural practices of our people along that river. Trying to do so in a three section regulation is -- just confounds us.

The Board -- it's our understanding that the Federal Subsistence Board is responsible for the protection of our subsistence way of life. In doing so, we feel that the Board should do as little as possible as far as restrictions on that subsistence way of life.

The issues of the customary trade as well as the ceremonial taking that you recently took up were all being pursued by perceived problems of enforcement. Nowhere have I seen any indication or evidence that there is problems and, if it is, it's a very insignificant problem and limited to certain cases. Trying to encapsulate the cultural practices of the state in regards to a perceived problem just doesn't seem like it's going to work.

The issue, basically from what I understand and certainly from what most of our region understands is that there was a problem with the term significant commercial enterprise. I dare say had we put the effort into trying to define that as we have done in trying to define the cultural practices of the Natives of Alaska, I dare say we could have come up with something.

Having said that we are opposed to any
changes in the existing regulation and that the Board should seriously consider a different approach and that is to go ahead and try to define significant commercial enterprise. It's our understanding that when this issue came up that it was -- you know, somewhere along the line somebody decided that, you know, the better approach would be to try to define the cultural practices of Alaska Natives and to combine that into one concise and comprehensive regulation. We just don't think that's going to be an effective process.

Having said that, if the Board feels compelled to impose further restrictions upon our subsistence way of life we would support the provisions as proposed by the Federal Staff. We are also opposed to any restrictions that would impose a percentage of fish caught or monetary value attached to customary trade. We are also opposed to any restrictions or regulations that would impose permits, reporting requirements, et cetera.

And with that, Mr. Chairman, I wish you luck. We feel that this is, once again an unduly burdensome process for a perceived problem that we see happening all the time now. We saw it, like I indicated earlier, with ceremonial taking. We didn't see the need for this type of regulation to be imposed upon us nor do we see it in regards to customary trade. We haven't seen -- I haven't seen any evidence that shows there has been a problem. And once again it would be very insignificant if there was one.

Thank you, Mr. Chair.

CHAIRMAN DEMIENTIEFF: Questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you. Steve Vanek.

MR. VANEK: Thank you, Mr. Chairman. My name is Steve Vanek. I'm here representing the Kenai Peninsula Resource Management Coalition. We did not submit any written comments to the process here, but I'm here to give some oral testimony from our group.

I came here last year and spoke about our group. Maybe some of you remember that. The Kenai Peninsula Resource Management Coalition is a non-profit corporation composed of 27 board members representing
subsidence users, sportfishermen, commercial fishermen, local businesses, Alaska Natives, fish processors, the Cook Inlet Aquaculture Association, commercial organizations and a State legislator.

We have met over the course of the last four years to come up with a resource management plan for our area. Our plan solves the subsistence question for our area and should be a model for solving it elsewhere. A Constitutional amendment will not solve it. Continued Federal management will not solve it. State and Federal shared management will not solve it. Local control is the only way it can be solved.

The 10 Federal regions are themselves too big. They need to be broken down into smaller areas even down to the village level in some cases. We, ourselves, have dealt only with the central Kenai Peninsula. Homer and lower Peninsula need to develop their own plan. The Seward area should develop its own. Your question today is customary trade.

I will read part of our mission statement and then give you our position on customary trade.

The Kenai Peninsula Resource Management Coalition supports only historical, traditional, cultural and spiritual use of the fish and wildlife resources here on the Kenai Peninsula. Management for all users shall be in the order of priorities, subsistence, commercial fishing and recreational.

The primary mission for this organization is to ensure that the needs of those residents of the Kenai Peninsula who have historically, traditionally, culturally and spiritually depended on the resources of the Kenai Peninsula are met.

To fulfill this mission it is imperative that we protect the habitat, the land and the resources that live, spawn, breath and die on the Kenai Peninsula. This is not limited to all species of salmon, halibut, shellfish and wild game, but includes all flora and fauna.

Our primary goal is to support and promote only maximum sustained yield management. This shall be accomplished by supporting and promoting only sound biological management which utilizes the best scientific data available. One of our goals is to create and maintain harmony among all the people who live and make their home
The people and organizations that support this mission statement are ready and more than willing to work with the State of Alaska or the United States Federal government in order to accomplish the goals of the Kenai Peninsula Resource Management Coalition.

Our position on customary trade is as follows: Subsistence shall be defined to mean the following: A way of life which is customary, traditional, culturally and spiritually dependent on Alaska's wild resources for food and for personal use and in no way whatsoever shall be gifted, bartered or traded except for food or personal use and may not be sold or utilized for monetary or economic gain. Thus, for our area, we don't want any subsistence fish sold at all to anyone for money. However, this does not mean that in other areas of the state, subsistence caught fish should not be sold. That is why we believe that this Board should not make a statewide determination on the cash sale of fish. We don't want any cash sales in our areas but other areas may need it.

The parts of our mission statement I didn't read define seasons and bag limits for subsistence. They outline management priorities for commercial fishing and they include statements regarding recreational fishing opportunities. I have copies of our mission statement for your use which I can leave here with you.

In conclusion, we feel that we have given everyone a reasonable opportunity to harvest the state of Alaska's wild resources in our area. We have given subsistence users a season and bag limits, we allow commercial fishermen an opportunity to make a living and we allow recreational fishermen a chance to fish with a priority for residences in times of shortages.

If all local areas will follow this lead, we shall save the State and Federal government money and do away with troublesome boards and political influences regarding the management of the wild resources and solve the subsistence issue.

A Constitutional amendment needs to be passed that gives local communities control over fish and game resources, not one that gives subsistence a priority.

Thank you.
Questions.

MR. THOMAS: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes, Bill.

MR. THOMAS: Thank you, Mr. Vanek. Good presentation. I'm encouraged by your organizations commitment to have a balance like that in using the resource. I think I detected a conflict, it might have been inadvertent. In your mission statement you include historical, cultural and spirituality use of the resources with regard to subsistence, and then later on in your comments you indicated that you don't support the sale or anything of any subsistence caught resources or subsistence harvested resources. In this state that is a violation of every cultural group of the indigenous people of the state. And so I find that a conflict.

So another observation I had was how successful are you folks with your habitat protection on the Kenai River?

Another question is, do you have any idea of what percentage of use of the resource there is used by subsistence users?

If I gave you too many questions at one time I'll be glad to go back to them. But I wanted to give you an opportunity to mull it over for a second before you responded. Again, I appreciate your comments.

MR. VANEK: Mr. Chairman. Yes, in my comments if I don't cover everything you've asked then please ask it again.

MR. THOMAS: I think what we were trying to do there, and as I pointed out, is to have local control over what goes on in our area. We have Natives from our area who participated in this process that we did there. And what we've come up with may not be legal throughout the state or may not even be legal where we're at. Part of the problem that makes it illegal is having too much government interference with the process.

One of the things you asked about was the habitat on the Kenai River. Many of us have been fighting the habitat issue and we fight with the Board of Fish who controls that, and you are probably familiar with that kind
of situation. So we're basically sort of an ad hoc group 
made up of people that are concerned about the subsistence 
and about the habitat and about making a living commercial 
fishing. We have commercial fishermen there and this area 
there and that industry is very important in our area and 
we want to protect that, too, as well as subsistence uses. 
So for that reason that we're just an ad hoc committee and 
we have no power.

So I come here today offering this as a 
solution to the situation over the entire state and I 
listened very intently to Mr. Nicholas Tucker when he was 
talking because I felt he was saying something very 
similar, that you can't have a blanket wide regulation over 
a place as large as Alaska and as many different peoples 
there and different things that people do in these 
different areas.

The local people need to be in charge.

MR. THOMAS: Sure. I agree with that and 
I have no argument with your presentation and thanks for 
responding to my questions.

Thank you.

CHAIRMAN DEMIENTIEFF: Any other questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very 
much.

MR. VANEK: I have copies of our mission 
statement and I also have copies of the members and the 
groups that they represent or themselves that they 
represent.

CHAIRMAN DEMIENTIEFF: Okay, that's fine. 
And we'll take it and enter it into the public record.

MR. VANEK: Thank you.

CHAIRMAN DEMIENTIEFF: Maybe on the break 
or something you could give it to -- or Tom will get it 
right now.

MR. VANEK: Okay, thank you.

CHAIRMAN DEMIENTIEFF: Jill Klein.
MS. KLEIN: Good morning. Mr. Chairman.

Members of the Board. Regional Council members. My name is Jill Klein. I’m the current executive director of the Yukon River Drainage Fisheries Association, also known as YRDFA. I’m here today representing our board of directors, our members and local residents of the Yukon River villages that rely on the salmon fishery for both their commercial and subsistence issues.

YRDFA has worked over the past 10 years on regulatory and management issues that concern Yukon River fishermen. Currently YRDFA supports a slight amendment to the original language which can be found as Alternative 1, which suggests taking no action. When looking at Paragraph 11, the slight change that we would make to the current language is that the Board shall recognize regional differences and define customary trade differently for separate regions of the state. We suggest this option at this time as we do not want the subsistence harvest to change significantly due to new regulatory language. YRDFA understands that this regulatory language continues to contain unenforceable language about significant commercial enterprises and we do not want so see the persistence of subsistence abuses.

But the creation of new regulatory language without proper documentation to support potential changes towards subsistence activities is of high concern to Yukon River fishermen.

The Federal Subsistence Board had requested that the public help address the following issues. These issues were around creating a definition of a significant commercial enterprise determining what limitations should be placed on the exchange for cash between rural and non-rural residents. If there should be a limit on the exchange of cash between rural residents, as well, how any limitations set on customary trade will affect subsistence needs, traditions and the values of the subsistence way of life.

These issues, as we have been hearing are still unresolved, quite complex and regionally different throughout the state. The Regional Advisory Councils have carried out valuable work to date in addressing customary trade regulatory language. While their hard work should not go unrecognized, we realize it has been a challenging process.

We would like to support proper studies
through research that will support documentation of
customary trade and how new regulatory language might
affect current and traditional activities. Without doing
proper research, we feel it is premature to create any new
regulatory language. We support that this research be
carried out and would like to reiterate the importance of
recognizing regional differences when creating any new
regulatory language.

YRDFA is an organization that can assist in
gathering valuable information from Yukon River residents.
Under direction of the Federal Subsistence Board more can
be learned about the customary and traditional uses of fish
in trade and barter before making any decisions that might
adversely affect the Yukon River salmon fishery.

If new language is adopted today, YRDFA
would still like to suggest that research be carried out.
As Nick Tucker has stated, customary trade is something
that is continually evolving and research should continue
to see what effects of new regulatory language will be.

Thank you.

Questions. Gary.

MR. EDWARDS: Do you have any examples of
where you think that if we would pass the regulations that
are being proposed, would have impacts based upon your
knowledge and your discussions up and down the river?

MS. KLEIN: If I understand your question,
you're asking where you think there would be impacts from
new regulatory language?

MR. EDWARDS: Right. You said that you
were concerned that unless we had more knowledge of what
the actual customary practices were up and down the river,
that by passing a blanket regulation we might be impacting
some of those customary and traditional uses and I just
wondered if you had any specific examples that you think
that might be impacted as a result of this recommendation.

MS. KLEIN: Some of the information that
I've heard is in the Lower Yukon River, there may not have
historically been trade for cash sales and so there could
be adverse effects if some people -- as some people have
raised that there could be -- there will be an increase in
subsistence sales for cash. I've heard that being raised
as a concern as well, people on the Yukon River are concerned that there could end up being a reallocation basically if subsistence fish are allowed to be sold, then it's creating a reallocation of the fishery perhaps. That different regions that do not commercially fish might start selling their subsistence cash and there will be questions raised as to how that will affect the commercial fishery as well.

MR. EDWARDS: Maybe as a follow-up, as I understand it, whether it is being practiced or not, it is authorized under ANILCA. So no action that we would take one way or another would either prevent that from occurring or allow it occur since it's allowed now. And it may not be a practice and you would assume then that if it wasn't a practice it may not become a practice, but if it did become a practice, under Title VIII it is something that people are allowed to do.

MS. KLEIN: Yeah, as I think as some people have stated earlier such as Mike Smith, that there are current historical and current practices that are going on with trade and barter among rural residents and with rural residents to others and originally there was the question of defining of significant commercial enterprise and questions had come up over defining customary trade. And we would just like to see, before any new language take place, which could potentially lead to new activities, that somehow there be further documentation and research and public awareness about what the violations are and the abuses are that do take place and try to work on stopping those and creating language to stop the abuses that enforcement has brought up instead of trying to redefine customary trade, which new regulations might do.

CHAIRMAN DEMIENTIEFF: Thank you. Bill.

MR. THOMAS: Thank you, Mr. Chairman. Ms. Klein, you mentioned in your comments a historical practice, these people that have raised the question regarding historical practice on the Lower Yukon, would you say those are typical, traditional subsistence harvesters in that area?

MS. KLEIN: I'm sorry, could you repeat the first part of your question?

MR. THOMAS: Yeah. With regards to people questioning the historical practice of customary trade on the Lower Yukon, those people that raised those concerns,
would you consider them as traditional, historical
subsistence users of a subsistence community?

MS. KLEIN: On one hand I'd rather let that
question be answered by some of the local residents from
the AY-K region that are here. But in my opinion, from the
people that I've worked with, most of the people that we
represent that are both commercial and subsistence users on
the Lower Yukon, they're integrally connected to the
historical practices that have taken place. And while some
of them are commercial fishermen, the commercial and
subsistence fisheries are very interconnected and
interwoven and based on what I think are cultural and
historical practices of working within the fishery, yet as
well moving into, you know, the modern world, and those two
areas becoming connected.

CHAIRMAN DEMIENTIEFF: Any other questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very
much. Bob Henrichs.

MR. HENRICHS: Good morning. My name is
Henrichs. My name is Henrichs, Bob Henrichs. I'm
president of the Native Village of Eyak. Thank you for the
opportunity to testify today.

Our tribe has been in existence for 10,000
years, our traditional home land is the Copper River Delta,
Gulf of Alaska and Prince William Sound. We have, you
know, done without a name, customary trade, we've traded
for years, forever, as long as we've lived. And we will
continue to do that. We see that the Board of Fish made
customary and traditional for the dipnetters from the
cities. We saw that happen recently. We see these
Winnebagos headed south, loaded down with sport caught
salmon. Around Eyak, Cordova in the fall you go out and
the streams are filled with carcasses of fillet out salmon.
Sportfishermen that have flown in there are in the bars
bragging about catching over a 100 salmon in a day.

We don't support any regulation for
customary trade.

Our people have operated the way we have
for 10,000 years and we neither seek nor need your approval
to continue our traditional lifestyle.
That's all I have to say.

CHAIRMAN DEMIENTIEFF: Thank you, very much. Questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you. Vince Tutiskoff.

MR. TUTIAKOFF: Thank you, Mr. Chair. My name is Vince Tutiakov. I'm a board member for Kodiak/Aleutians. I'm also the president of the Aleut Corporation.

Customary and traditional trade has been an issue for the Aleut people and Native people of Alaska for 20 years since the passage of the Alaska Native Claims Act. We now have a new regulation, ANILCA, Title VIII that defines or proposes to define our traditional use. I think many of us who have been around the table discussing this issue, I think, come to the conclusion that regulation dropped on top of customary and traditional use is beginning to become an issue that we do not want to address anymore.

I think this Board, Federal Subsistence Board is trying to define those issues that are going to make the Native people continue to survive. I think that's the whole point.

The issues regarding commercial uses of fish, licensing and all those other issues, permitting and the ability for the Native people to go and get food within their communities has become a real problem.

I don't know if it's been addressed here, I think I've heard some of it here today and I appreciated the comments of the first individual, I believe Nicholas, that he was very clear that the Native people within various regions of Alaska have continuing problems with how we deal the Federal issues, the State issues.

The Kodiak/Aleutians Regional Advisory Council proposes, and I believe that I could be truthful in saying that we are at a split on how we're going to decide what is a cash value, what is the -- how do you define commercial use, those kinds of issues.

We, at the Kodiak/Aleutians level, propose
a $500 per household cash value trade. I myself and a
couple other Board members discussed the issue at length,
at what point, when did cash become part of traditional
use. I believe it happened when money became an issue
within our region. We went from oars to outboards to
gasoline and now big 200-foot vessels running around within
our subsistence hunting and fishing areas now, that we have
to -- in order to compete with that kind of industry,
fishing, commercial as subsistence users we have to go out
and barter for money to buy gas, to buy oil or whatever we
need to get to a certain location.

I live in -- I grew up in Unalaska, Dutch
Harbor area. I remember when I used to be able to go a
half a mile to get all the fish we needed for all of the
community. Now, in order to get commercial or subsistence
fish, I'm traveling 25, 30 miles from outside of Unalaska.

Sports fishermen, sports entities have
closed off traditional use, lakes, streams within the
community to subsistence use. I know this is happening in
other communities also. And I think that this issue,
regarding trade in commercial -- subsistence use needs to
be resolved, and I agree with some of the comments of the
individual, that locally we need to take charge of what we
have to do to make food available for our elder people, for
those people who have traditional uses and who continue to
want fresh salmon.

Your proposal in regards to what is being
presented by the Staff recommendations, I believe 13 is the
only one that I would agree with. I think all Native
people agree that we are not out there to make a commercial
investment in a subsistence lifestyle. All the rest of it,
I believe, has to be defined by individuals within the
community. And it's going to be very hard for those Board
to come up with a regulation that's going to enforce within
all the regions of Alaska, all 10 regions.

And with that, I think Option 1 that's been
proposed, I feel should be looked at and possibly even
voted on to give the opportunities for the various regions
who have submitted money values to relook at it.

Other than that, I guess, my position is
that for our region we want to continue to have
subsistence, traditional use and we'll continue to do it as
we have done it for tens of thousands of years in the
Aleutians.
Thank you.

Questions. Yes, Gary.

MR. EDWARDS: Thank you for your presentation. I was trying to -- so is your primary concern with what is being proposed is that it's too restrictive or not restrictive enough, if you had to characterize it?

MR. TUTIAKOFF: Too restrictive. I mean we have been put under, for the last 20 years, built up regulations that have harmed our lifestyles, our culture and our language. all of that is part of subsistence use and the regulations that you propose seem to cut deeper and deeper into our culture and our history.

MR. EDWARDS: Thank you.

MR. TUTIAKOFF: Too restrictive. I mean we have been put under, for the last 20 years, built up regulations that have harmed our lifestyles, our culture and our language. all of that is part of subsistence use and the regulations that you propose seem to cut deeper and deeper into our culture and our history.

MR. EDWARDS: Thank you.

CHAIRMAN DEMIENTIEFF: Any other questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much. Joe Hicks.

MR. HICKS: Thank you, Mr. Chairman. Good morning to everyone. Ladies and gentlemen of the Board. My name is Joe Hicks. I presently work for Chistochina as their grant administrator and also as their natural resources director. I come from Mentasta. Katie John is my grandmother, which I'm sure you're familiar with. My testimony here is to oppose the initiative, we pretty much agree with Alternative No. 1, and i.e., Section 13.

Anyhow, I have been going to several meetings regarding customary trade. I know Ralph knows who I am there. I see some people, hello. But anyhow, I'm kind of familiar with what -- I guess you could say the game plan is in regards to customary trade. I know it is a very complex issue and there are many deals or many things to deal with in this regard in order to figure out how to go about doing this. But anyhow, this is what I wrote down this morning just by gathering all my thoughts and trying to put everything together on paper.

And that is, I agree with the gentleman who spoke earlier, in other words the first person who was here. I did not get his name but I do agree with him in
that customary trade is most traditional in the practice of aboriginal Alaska Natives, it is their way of life. And I say aboriginal because that particular term specifically applies to the indigenous inhabitants of this particular area and they have exercised that practice since time and memorial. It is a practice that has been used over many years and thus, developed as a mechanism that allows for communication, building relationships, et cetera. In other words, -- well, it's just a means -- in other words, it's a means of how we get by. How we live from day to day, who we meet, how we talk to people.

The name, in other words, was basically used again as in communications, building relationships. The name customary trade in my view or in my opinion and probably those of many others is an English term and it confuses the whole meaning of what customary trade is to the Alaska Native. To us, again, it means sharing, gathering, friendship building. It is something that is rooted in our system, in the lives of us as Alaska Natives.

Now, you say that customary trade must be applicable to all subsistence users, not just Alaska Natives. Therefore, again, the confusion, the complexity, the issue that you are faced with.

I ask if this is fair to the Alaska Native in that the practice has been followed on and has been going on for generations on end. We've never really had particularly any problems with this and how we exercise it. And now you're telling us, or me or them or my grandma, that no I can't do that anymore, I have to follow your law, you're going to change my ways, you're going to tell me what to do. Again, it seems to me like you're pressing me into doing something that I don't want to do.

In essence, this particular meaning of customary trade or this discussion of customary trade would not have occurred had subsistence users been more clearly defined as who it is applicable to. Like the Treaty of Session, there was a clause in there that made clear who should be protected and not disturbed. It is my opinion that this vision should continue. And to attempt to make customary trade as applicable to all rural residents demeans the whole purpose of what customary trade is.

Further, and in my opinion customary trade will continue as always has been regardless of the laws that you're going to make.
Finally, and again I'm opposed to any changes in customary trade due to the fact that, again, it is a way of life. Customary trade is not just applicable to fish, it applies to everything else as in birch bark, as in berries, as in moose and other food gathering activities, everything including hunting areas and more.

I understand that this issue is for salmon or for fish is what you refer to in particular. What's next, a customary trade determination on the use and harvest of willow? If anything, customary trade needs to be more applicable. In other words, if you're going to deal with customary trade you should make it applicable to everything that's associated with it. And even more so made applicable to only those indigenous people who practice it and use it.

I guess the bottom line is whose rights are you trying to protect here. And that's my testimony.

Thank you.

Questions.

(No Questions)

Thank you, very much. Helen McNeil.

Good morning. My name is Helen McNeil and I am Tlingit and Nishka (ph). My family is originally from Klukwan and with the customary trade being that I do live in Anchorage -- I'm an artist and I trade a lot of my work with people from Southeast for food which would include salmon, hooligans, hooligan oil, deer meat, seaweed, whatever I can find because with all of the new health studies that are coming about now, there's a lot of medical validation that our traditional foods allow us to live comfortably in this environment. With the sea mammals, the seals, the whales, it allows our body temperature to raise.

I have arthritis in both my knees so I'm not able to get my own food and maintaining the ability to trade for food from family and friends all over the state, I think is very critical, not only for your soul, because it helps me maintain my physical and emotional health. And to put a dollar amount on the amount of trade that I do would be very difficult. Then I wouldn't have enough
traditional food to make it through each year. And finding different people to trade with us is difficult at best because what you do trade for actually ends up barely covering the cost of the hunters and the fishermen for their fuel, for their nets, for the upkeep of what they use to get what they trade me for and I have done trades that -- with weavings that were in the neighborhood of 15 to $20,000. And I take about half of that amount in trade for food and I spread it over time so I'm having a very difficult time in accepting any limits on a dollar amount on what I need to live.


MR. EDWARDS: I just have one question. Why do you feel that what is being proposed will actually impact what you have been doing all along because it's my understanding it would not address that and you would be able to continue to do just as you have been doing.

MS. McNEIL: Well, if you consider, comparatively speaking, when you start putting any constraints on the trade then it's easy to move it in any direction, not unlike the State did with the income tax. It would have been much easier to have the income tax at no tax needing to be paid for anyone who made less than $150,000 and then adjusting it as the State needed income would have been much easier. And I see without -- it just puts a fear in my heart. From past experience when you start playing with different parameters then it would be easier to go in a very negative direction. In my definition and someone else's definition, even though the English words are the same they have different meanings.

CHAIRMAN DEMIENTIEFF: Thank you.

MR. SAMUELSEN: Mitch.

CHAIRMAN DEMIENTIEFF: Robyn, go ahead. I think you had another question.

MR. SAMUELSEN: Over here Helen. You said you trade with people in Southeast.

MS. McNEIL: All over the state.

MR. SAMUELSEN: You don't pay for it you trade your art work, right?
MS. McNEIL: Some of it I'll pay for.

MR. SAMUELS: Oh, okay.

MS. McNEIL: Because there are times when I trade with other artists but their husbands hunt and fish as most of the people that I know are artists. Then if that's the only place I can get it then, yes, I will pay for it.

MR. SAMUELS: Okay, thank you.

MS. McNEIL: And the payment includes, not only the cost of the food but the shipping up here, too, and will the shipping costs be included in the whole dollar amount.

MR. SAMUELS: But I think as this gentleman formerly stated that if you're trading there's no limit to the amount of trading it's only the monetary aspect that kicks in if the Board decides.....

MS. McNEIL: Well, I don't see that clear enough defined within what I've read. I mean we were told when Alaska was a state that our traditional food gathering would be protected and that's been bombarded continuously in the last 20 years. And I get the feeling that well you make a promise to me now are your children going to honor that promise and it has to be very clearly defined and I don't feel comfortable with it the way it is.

MR. SAMUELS: Okay, thank you.

CHAIRMAN DEMIENTIEFF: Okay, thank you.

That concludes public testimony. At this time we'll take a break and we'll come back with Regional Council recommendations.

(Off record)

(On record)

CHAIRMAN DEMIENTIEFF: We'll go ahead and call the meeting back to order. We did have a couple more requests for public testimony and I'm just going to go ahead and allow those. Ole Lake.

MR. LAKE: (In Native)

Good morning. My name is Ole Lake. I'm
originally from Hooper Bay. I just recently moved to your
camp between these two mountains and I spend most of my
life subsisting out from where I came from. It's Yup'ik
country but I've had the fortunate vehicle to go around the
state in these most recent years and had a lot of contact
with different regions, different ways of doing things,
different ways of speaking and also the background of the
elders up there in the Interior and the fringes of Alaska.
So I think I'll give myself credence to what I am talking
about right now.

The things that I read about in this
regulatory process is very difficult for a lot of people
out there that have to live with it. But knowing that the
in flux of different contacts and different people coming
around we have to compromise a few things but I hope they
don't.

Personally, customary trade has been going
on since I can remember growing up. With those people that
can't afford their own vehicles like snowmachines, boats
and other tools, and the widows and I tell you we do have
many widows out there. Those that are able to trade
services and help to gain the food for the rest of the
year, it's not written in any regulatory procedures or
rules that you have to have compassion to deal with these
things but I hope you keep in mind when we write rules and
regulations that there are many out there that don't have
the means, economically, monetarily to fill their freezers
for the rest of the year.

(In Native) The way of trading things.
Services rendered for monetary gain is very familiar to us
in the urban world and the Western way of doing things.
But we do have many ways of helping each other out there,
and that needs to be understood. It is not written
down in regulatory procedures or in any educational systems
and we need to keep that in mind.

I've read some of the things that were done
with the Federal Subsistence Board and there's a lot of
fairness involved in it. Since there is an open process as
much as they could depending on the monies they receive I
suppose, to reach out and talk to somebody out there in the
rural communities. And I think in looking at the room in
here, we have very small representation from where I came
from and that's very threatening all by itself. But I
admire the courage of the Native groups that came out here
to represent their people from where they came from and
that's very admirable.
(In Native) The way of trading things for food is very sacred to us also. And sometimes when we add monetary level to anything that we do it's also very threatening and sometimes, how would I say this, sometimes disrespectful. But in any case, the Native way of doing things out there need to be understood beyond these two mountains by the people that do things commercially. And when we commercialize anything, I think, we limit a possibility of another to practice what they do. That has been the history of commercialization all over the world as you know.

I'm not going to patronize you on that aspect, but I will tell you coming from the rural communities and having been a commercial fishermen myself and a subsistence fishermen most of my life, there's always some discomfort in who needs what, who needs more of what than whom. But when you look at it from my perspective out there, to 70, 80, 90 percent unemployment, with no monetary gain to cover the rest of the needs for the rest of the year this economic interpretation, if you will, on subsistence is very, very delicate. It's very important for us. If we haven't replaced the subsistence way of doing things, if you want to interpret it in economic standpoints, if you haven't replaced 70, 80 and 90 percent of their capability then we should not make any rules and regulations hindering anything that the rural people do.

Rural people is starting to include other cultures from around the world and we need to respect that also. It's all in fairness and I hope justice because justice demands fairness.

And we all need to be educated on the way of doing things out in the rural communities, on those aspects also. And the hardest part to educate to anyone is the spiritual importance of the people out there, that is the subsistence way of living or their way of living or their way of making prayers or the way they feed their families and how they go about it. So those aspects are very hard to understand when you are in between two mountains I find. Because a lot of times the policies the State and Federal people make are between two mountains and not beyond and with the technologies that we have today it would be easier, I think if -- it's human effort to go -- we can go out there and find out what this is all about.

I think with the money and jets and everything that you have available to your way of doing things it's very, very possible.
And I just came this morning without papers, just things that are in my mind and I hope you respect me for that.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Any questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much. Keith Curtis.

MR. CURTIS: My name is Keith Curtis. I'm a furrier in Anchorage, I own Arctic Midnight Furs. I grew up hunting and fishing and trapping in Montana. I came up here, basically this is supposed to me, the Last Frontier, to me it's become the Lost Frontier.

It's become a very selfish state in a lot of ways. My wife is born and raised out in the Bethel area, Bethel and Holy Cross, and we've adopted four Native children because she's part Native and I'm totally opposed to any subsistence sales of the fish and I'm totally opposed to any subsistence priority given to the rural residents. I am totally supportive of subsistence as it is for all people in Alaska.

I've been up here 17 years now and the last four to five years I've killed a moose, you know, a large bull moose, I have to shoot 50-inch or bigger so I killed a lot of big 60-inch bulls, I got three freezers on my back deck. One is completely full of fur. I spent this morning fleshing wolf hides. I don't know how many of you done that but that's what I did all this morning before I got up, I fleshed wolf hides out. I got another freezer that's completely full of fish. Another freezer that's completely full of moose. I don't understand people leaving out in the bush in these rural areas, why they're having such a hard time filling their freezers when I can go down to Ship Creep where there are thousands of people down there and I can limit out for four months, four to five months, I can take a hundred and some pounds of fish. And I heard about the person talking about 100 fish a day, well, I've caught fish like that, haven't been able to keep them, there's a limit to what you can take and what you can't take.

I'd just like to -- just, you know, I hear this Native thing going back and forth, I just want to live
in a state where you have equality for all instead of this division that's being -- it's just separating us. I've stood on the street out there for weeks on wildlife initiatives that would benefit all Alaskans when I can't get some Native people to actually hold a sign and help me out and although they have endorsed these initiatives at the AFN Conventions, we've offered them a sign but they won't help out. I really want to live in a state where we all come together and basically the people that really care about the resources here in Alaska come together and manage the resources we have. And I think we can fight the other side that doesn't want us to ever manage the resources if we come together but we can't do it if we're all in different boats.

That's all I have to say.

CHAIRMAN DEMIENTIEFF: Thank you. Any questions.

(No Questions)

CHAIRMAN DEMIENTIEFF: Thank you, very much. That completes our request for public testimony. And at this time we'll go into Regional Council recommendations.

MR. WILDE: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes.

MR. WILDE: Mr. Chairman, I am Chairman of Yukon-Kuskokwim Regional Advisory Council. There's two things I have this afternoon.

Yukon-Kuskokwim Advisory Council never has been -- put anything on paper. When I see some of these papers -- on the paper, like on Page 5 in Kuskokwim fishery management area in the Kuskokwim River drainage upstream from Kasigeluk, all these things that it never been presented Yukon-Kuskokwim Councils. Anything that's written here, it never has been presented to our Council.

Therefore, our Council, they say that they're not agree with what's on this paper. I don't know where they come from. Last time when we have meeting in Bethel, we put ourself on the record that we never put nothing on the paper like this.

Mr. Chairman, member of Council. I have
been with Yukon-Kuskokwim Councils over 10 years. Me, myself, I'm not speaking on behalf of my Council because I'm not -- I haven't met with them with what I'm going to say.

Me, and from the people that I -- around Yukon itself and Kuskokwim, Lower Kuskokwim. Mr. Chairman, we like to see regulate in our area, regulate in Yukon-Kuskokwim Delta, not the whole region of Alaska for this reason. Mr. Chairman, 2000, 2001, 2002 subsistence fishing was scheduled -- was put down a subsistence reduction in Kuskokwim and Yukon, half of the normal subsistence allowed because salmon run was look -- looks very poor. Fish schedule given, some fishermen hard time. Not only Lower Yukon or Lower Kuskokwim, include up river, especially people up river like in the Y-4, 5 and 6. We tried to work with those people but sometimes it's very hard because of the high water, a lot of wood and all that.

Mr. Chairman, also the escapement and try to spread the subsistence harvest opportunity along entire Yukon and Kuskokwim. There are a lot of times when I become Council -- subsistence Council, I did -- I say to myself and to others, I think about not only myself, not only my people, I think about people also up river. Sometimes those up river people have a hard time, one time one person told, Harry, all I have is five fish. If there's a shortage of fish in Yukon-Kuskokwim continue -- if the customary trade comes up, you might as well say right now and you listen to what I'm saying, you're going to be short the subsistence as long as the customary trade is occur.

Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you. Other Regional Council recommendations.

MR. NICHOLIA: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes, go ahead.

MR. NICHOLIA: Yeah, thank you, Harry. You know, I respect you, your Kuskokwim and Yukon region for thinking about us up river people because we do have a very hard time.

You know, it's hard for me to imagine you guys putting laws on us that was going on for what we were doing since time and memorial, I can't see it. I can't see
you guys regulating us. What I see is you guys manipulating subsistence to support other uses, commercial, sport and everything. I don't see you guys, I don't. I don't see you guys really standing to the words of ANILCA supporting the little guy. You guys are supposed to be my big brother supporting me in my subsistence uses but -- but you are, seems like, against me and my people trying to support the other uses. And what it looks like to me is you guys are just supporting commercial, sport and everything. It seems like every time I come down here it seems like the same thing.

CHAIRMAN DEMIENTIEFF: Thank you.

MR. THOMAS: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yes, go ahead.

MR. THOMAS: Thank you, Mr. Chairman. Bill Thomas from Region 1, Southeast.

The Regional Council recommendation, I'll read it, it's very brief. With respect to 11, transaction between rural residents, the exchange for cash between a rural resident and customary trade of subsistence harvested fish, their parts or their eggs legally taken under the regulations in this part are permitted.

12. Transactions between a rural resident and others. The exchange for cash between rural residents and individuals other than rural residents and customary trade of subsistence harvested fish, their parts or their eggs legally taken under the regulations in this part from a rural resident is permitted. Subsistence harvested fish shall not enter commerce at any point.

For Southeast fishery management area the customary trade of ulecon or hooligan -- I love that word no matter how you say it -- ulecon to others is permitted as long all sales are to individuals and the fish to not enter commerce at any point.

13. Excise in its entirety.
That's our recommendation, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Thank you. Della.

MS. TRUMBLE: Thank you, Mr. Chair. The Kodiak/Aleutians, on Page 29, basically outline what their recommendations were to Section 11.

And that is limited the cash value per household of salmon taken in Kodiak/Aleutian exchange and customary trade or barter between rural residents may not exceed 500 annually.

12. They included that, the not to exceed that 500 annually.

I want to just talk a little bit about when we discuss this issue. One of our members from Ahkiok basically made the statement that subsistence is a way of life and not a means of monetary value. And we used that general statement as a rule of thumb when we discussed this issue. That deep within our hearts this is what we honestly believe. We also talked in great length and detail the need of having to account for the means and ways of getting this and trying to limit that so it does not just constitute a commercial or a significant dollar value.

Sitting on the Council and then also on the task force, when we first took this issue upon us, one of our major and first reasons and concerns was the issue of enforcement. It appeared that as the way this would -- the current law was written there was some discrepancy in how to enforce -- basically enforce it. So that's basically where this all started. That task force, I mean we've gone through many, many of the issues that are written before us and what's been taken in public testimony, all of these were discussed at great length, but we came back to the one big thing or issue that, to some degree was the driving force and that issue is the protection of the resource.

If we look at as RACs, it is our responsibility to protect the resource, number 1; number 2, to provide for subsistence; number 3, to prevent potential abuse of the resource when we took this task upon us.

In looking through a lot of the written testimony and the public testimony today, I honestly feel there is a lack of understanding and education in regard to this issue. I think people don't realize the full impacts of this. That at this point there -- that it appears to be
I also have concerns with the issue of whether or not this resource can be sold outside the Federal lands. If it's taken on Federal lands can it be sold outside of those lands. And it appears that there's a lot of questions that do need to be answered yet. And I, overall, looking through all this feel that -- and I say this without consulting my Council but in looking at the other regions recommendations, when we had our fall meetings we didn't have all of those in front of us, that I would recommend that -- as much as I know it probably is not going to be liked is to put this off until our fall meeting this year.

Thank you.
we may have different problems, if there are any, and we kid of thought that regardless of what happens it will have not much impact within our region. At this point we don't need a regulation within our region we felt because of our special needs in that area.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Go ahead, Harry.

MR. BROWER: Thank you, Mr. Chair. My name's Harry Brower, Chairman of the North Slope Regional Advisory Council.

My Council recommended the same option as Seward Peninsula, take no action is our first comment. If there is going to be changes to the regulation by the Board to adopt Staff recommendation we would recommend a slight word change but the Council recommended no changes to the regulations, stay status quo.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Ray.

MR. COLLINS: Yes, Mr. Chairman. Ray Collins Western Interior. Our Council has addressed this two times. The first time we were looking towards putting some monetary limits on and then when we met again in the fall they basically reversed that and have taken the same option as the last two speakers to recommend no action at this point.

I guess the general feeling is that as soon as you try to define, there's a real problem in trying to come up with something that fits all the situations, even within a region there could be a problem, because in some cases, let's say from the standpoint of the seller now, they may be the only one or one of the few people who are continuing to go to fish camp and put up fish so if you put a limit on how much they can do they can't meet the needs maybe even in their own village or areas let alone outside of the area. And yet, they may not be causing a problem, they're not depleting the resource, it's just the fact that there are fewer people that are doing that now and more people are becoming dependent on them and that may not be the case in another village or another situation so it's really hard in trying to put limitations and I was looking at the final one and I know how much effort went into this
but on the Page 10 one where we were trying to define subsistence harvest fish and their parts and so on, purchased or otherwise acquired -- must be used for personal or for family consumption by the individual who purchases the fish and cannot be resold. What happens when you have, let's say a Native family in the urban area now who has been dependent on fish for a long time and it may be like the Tlingit lady that was here who now has to buy those fish, if she buys those, what about a friend of hers now that says, I would like some of those, too, well, if she passes them on or the individual passes them on and gets money for that, they've violated this. And yet, they're just meeting a need of another person who has a customary and traditional dependence on that.

It's very hard to put these things into words that are going to meet all the situations. And we're missing the fact that we're trying to stop abuses. I think there needs to be a better documentation and if there are cases out there where somebody thinks it's a significant commercial enterprise let's go after that and try to document it and try to make it stand up or try to define that and get at the abuses rather than put limitations on people who are just trying to support and continue a customary way of life.

So I guess for that reason we're saying no action at this time.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Yes, Robyn.

MR. SAMUELSenn: Thank you, Mr. Chairman. Robyn Samuelsen with the Bristol Bay Regional Advisory Council. You see our comments on Page 20 and 21.

What I want to focus in on is that our comments on -- or our note to the Regional Council on Page 21. Bristol Bay says without a tracking system, the Bristol Bay Subsistence Regional Advisory Council does not support the actions on 11 and 12. We feel very strongly that a tracking mechanism needs to be put in place similar to the state of Alaska regulations concerning giving away moose meat. Any program that we adopt we feel there's got to be a way for enforcement -- there will be abuses and there's got to be a way for enforcement to document the cases.
On a personal note, Mr. Chairman, I sat three years on the Board of Fish. I remember while I was a Board of Fish member that three individuals from Southeast Alaska decided to take herring roe through Canada with pickup trucks and sell them in the Lower 48. When that case went to court, if my memory serves me correctly and that's quite awhile ago, about 12 years ago, the judge said $9,000 -- since there was no definition of significant commercial enterprise, the $9,000 value was not significant because there was no regulation put in place and basically them three individuals got off.

As a rural subsistence user all my life and for generations within my family, I felt that was a real slap in the face to rural subsistence users.

Our Council is here to protect the resource and to preserve the subsistence lifestyle. We feel that preserving the subsistence lifestyle needs documentation, especially in this day and age. Somebody got up and talked about selling fish on the internet, our modes of transportation have changed drastically in the last 30 years, 40 years, we've got airports, roads within communities in Southeast.

I've also sat nine years on the North Pacific Fishery Management Council. I was the lead person to develop the halibut subsistence regulations and that Federal forum, subsistence users were not allowed to harvest or keep subsistence halibut. Subsistence was defined under a sportfish regulation, two a day. I worked with many communities from Southeast to out west developing them regulations and finally implementing them regulations and passing them regulations. We were at the stages of -- and we had many arguments, both within the Native community and at the Council table and the advisory panel that said that there shouldn't be any sale of subsistence caught halibut.

However, with that judge ruling that there was no clear definition and if we sit here today and don't have a definition, nothing prevents me from taking the chance of going out and harvesting $12,000 worth of salmon and start selling them under the current regulations. My risk is am I going to be able to afford a good attorney to defend my action if I do get caught?

And I think that puts the whole subsistence situation into grave jeopardy. Subsistence is created under Title VIII of ANILCA. Title VIII of ANILCA could be
changed next month in Congress. Any Federal statute could be changed. And by and large, those of us that have been in the regulatory process and read the press and keep trace of current events, we know that Title VIII of ANILCA has been a subject throughout the state for the last -- in a heated debate for the last 12 years.

Native people in Alaska are defined by subsistence. If you take subsistence away from the Native people you've killed a culture, plain and simple.

Our RAC spent many hours debating this issue. Should we allow or should we not allow? There is subsistence users that will abuse subsistence. By and large most people in rural Alaska, both Native and no-Native do not abuse it. But there are folks out there that will abuse it. In the economic downturn that we're facing along coastal communities in our salmon fisheries, in our herring fisheries, you know, my Grandmother who's dead and gone probably never sold one dollar's worth of fish, one dollar worth of moose meat or caribou meat, seal oil, dried squirrels because it was all for family consumption. She did probably trade with people. But I would bet my life she didn't take one dollar in. And that's the way I grew up in my household. You didn't sell things, you gave them away or you traded them.

The day before yesterday, before I came into Anchorage I got a call from an elder in my community that ran out of dry fish and was really craving dry fish so I went out to my freezer and brought her dry fish. That's standard practice in any rural community throughout Alaska. But it isn't right when Tom Boyd's out in Dillingham and he calls Robyn Samuelsen up and says, hey, Robyn, you got some fish, you bet Tom, $25 a pound, three bags, you know, that isn't right, that isn't subsistence. And I'm speaking from a personal perspective.

Being a former State regulator and traveling around, I did all -- with the other Board members, we did all the C&T findings in Southeast Alaska. We spent 32 days doing the C&T findings in Alaska and I could write a book on C&T.

Without a tracking system there will be abuses.

This body created the Nushugak Peninsula Caribou Herd, which is a very successful transplant project for about seven villages on the Nushugak Peninsula. The
tribes, which I'm a tribal chief, we control the harvest. The Federal U.S. Fish and Wildlife Service gives us a number, we divide it amongst the villages, we got a permitting systems. The tribal office gives out the permits. Still there's abuses in that. You know, Sno-Go's now a days will go 120 miles an hour, they travel vast distances. We can't control all the Young Turks. The way we control them is when we do find out that there's abuse, they lose their hunting privileges and they're ashamed by the community and word gets out.

There's got to be accountability. I don't care who it is. Subsistence users or anybody else got to be accountable. And we're going to develop something, I hope that you have a tracking system in place and my Regional Council hopes that there's a tracking system in place that if I decide to sell Pete Probasco 10 salmon I will sign a permit and Pete will sign the permit that he's received them. So when a law enforcement agency comes in rumor in my community is Robyn Samuelsen is abusing his subsistence rights and privileges, that that enforcement officer could come to my house and demand that permit and I have to show factually who I gave fish to. He could go and see Pete Probasco and see that Pete signed the same permit that he received them. That's the kind of permitting system we think we need to start with if we're going to develop such a program and then over time relax.

That's a pretty stringent move coming out of my region. But we feel in today's day and age that there will be abuses and there will be a few bad apples that are going to spoil the whole box of apples. And what better target is rural Alaskans in today's day and age. We're getting short-changed whether it's the school funding program, building roads or whatever. And you look at the composition of the politicians in our own State of Alaska who haven't looked too kindly on rural Alaskans.

I think we've got to be very, very careful because what we may be doing is adding fuel to the flame and turning our ancestors over in their graves. There's always been customary trade. My uncle, Dutoo, who lives in Bethel was a mail carrier by dog team. He ran from the Kuskokwim Yukon, Harry knows him real well, all the way over to above Chignik picking up the mail from the sailboats. I'm sure he bought -- or the U.S. Government bought food for them dogs along the mail routes. So it's been around for a while, but I think we need to be extra careful and if we delay taking action, I think we're going to leave the door open for abuses. And what I see we're
trying to do here is to protect. We've got a lot of testimony that seems to be saying that we want to -- that this body, you guys, along with us want to take away subsistence, to me, people don't understand what we're trying to here is really protect their long traditional practices.

We have decisions from the Regional Councils that's a mixed bag right now. You guys are faced with a real hard decision. But as you said, Mr. Chairman, early on that regulations adopted can be reviewed on a yearly basis and not every regulation that this body is going to adopt is going to be a good one. We're never going to hit a home run on 100 percent of the regulations. We could come back and revise regulations if we see that the regulation doesn't have the -- or is not getting the effect that we all envisioned.

So with that, Mr. Chairman, I'll sum up. I think that without a tracking system, my Board has again stated that they do not support actions on 11 and 12, they voted unanimously to support Option 13.

Thank you.

CHAIRMAN DEMIENTIEFF: Thank you. Bill.

MR. THOMAS: Thank you, Mr. Chairman. I think we covered more than one ball field in this last exchange. We're dealing now with the provision of a customary trade.

I don't care what industry you're in, what activity you're in, there's going to be infractions. That's why in a basketball game you've got people with whistles, on a football field you got people with flags in their pocket, and they address those infractions. You're not going to stop everybody. And to spend this much time worrying about abuses within the subsistence community, how much impact can abuse represent in a subsistence community anyway? You'd be hard pressed to find a means of measuring that with any accuracy or any consequence.

Subsistence in its true sense, as I've always said, is the most responsible use of natural resources. Typically subsistence doesn't harm the habitat because people know that the environment is responsible for harboring subsistence opportunities. We got enforcement agencies built into the system that will deal with infractions. And for the most part, the subsistence
community police their own infractions because there isn't
a user group in the world that is more in tune or that
identifies more physically, spiritually, culturally with
the resources than a subsistence user.

So I would encourage us to address just the
fact of customary trade.

Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yeah, I'm going to
ask at this part of the Regional Council comments that we
are particularly looking for Regional Council
recommendations. After that we're going to go to the Staff
Committee recommendations. We're going to get comments
from the Department. And then we will begin to debate the
issue. And what we're doing now, some of us are doing now
is we're debating the issue and I don't want to do that.
I'm looking for your specific Regional Council
recommendation and the Chairs, as usual, will have ample
opportunity when we go to debate the issue to participate
in that debate.

Ralph, do you have comment.

MR. LOHSE: Yes, Mr. Chair, I'd like to
give Southcentral's Regional Council's recommendations and
some of the reasons behind it. I hope that you are correct
that we have the opportunity to present other ideas from
our background and from our experiences and from what we've
observed as a member of the Regional Council at a later
date. Also as, I hope, that we have a chance as members of
the task force to present some of the things that are
important to this discussion. I had planned on combining
all three of them in my thing right now but if I have the
opportunity to do so at a later date, I will present our --
my observations as a task force member and my observations
as a Regional Council member, not just presenting Regional
Council views but things that I have observed as a student
of history and a student of human nature and a member of
the Council.

CHAIRMAN DEMIENTIEFF: Yes, Ralph, you be
rest assured that we will be looking for those, that type
of discussion. Right now I'm just really focused on
getting the Regional Council recommendation. You will have
ample opportunity, I assure you during this afternoon's
debate.

MR. LOHSE: Well, thank you, Mr. Chair.
Well, as you know Southcentral Regional Council represents the largest area impact in the state from different cultures and different things. It's hard to find a place in Southcentral that's isolated. We used to think that Cordova was isolated because we could only get there by ferry but as Mr. Henrichs pointed out, today on the streams that 10 years ago you wouldn't have seen anybody fishing you have bank to bank fishermen, it almost looks like the old pictures of the Kenai, not the current pictures, but the old pictures. So consequently we are an impacted area. We have to recognize the fact that Southcentral is impacted.

As a Regional Council we felt the need to protect traditional practices. This is why we supported No. 11, that there would be no limitation on exchanges between rural residents. We also, like Southeast, supported no commercialization, nothing entering the fisheries markets because we saw that as a travesty of subsistence. Where we probably disagree is on No. 12.

Just to show you the concern that Southcentral Regional Council sees in the possibility for commercialization of subsistence and the consequential pressure on the resource and the true subsistence user is best reflected by our request for a change from our original request that 50 percent of a subsistence users resources would have to be used for their own family. And we requested that that be changed to 70 percent because we recognize that subsistence is for use for people's food first. If there's something left over then it can be traded and bartered. But for people's use first.

And with that, I think I've pretty well covered what the Regional Council recommends.

As you can see we did put a cash value on it. Because like Bristol Bay expressed, we felt that there was a need for tracking and a cash value although we recognize the problems with it because we are trying to define significant commercial enterprise and that's what we were here for and that's why we're all here at the table. We're not here to define subsistence use, we're here to define significant commercial enterprise and we felt that in defining that we put a dollar value and we would state that the majority of the product had to be used for family consumption.

And I thank you.
CHAIRMAN DEMIENTIEFF: Thank you. Mr. Stoney.

MR. STONEY: Thank you, Mr. Chairman. I'll introduce myself, Raymond Stoney. I'm from Kotzebue area.

In the last 25 years and plus there was a lot of commercial fishing happening in the Kotzebue area. Today there's no longer commercial in the Kotzebue area. Some of the people in the history of buying salmon when they were not able to go fishing themselves, they usually bought it from the commercial fishing people there doing commercial business in Kotzebue. Of course, they paid a dollar a fish. On the last meeting in Kotzebue after going through all the documentation about the cash value of fish, like I said, there's no longer commercial fishing happening in Kotzebue, so the Kotzebue area on their last meeting decided -- it says, in the Kotzebue area, cash sales for subsistence caught salmon between rural residents and others shall not exceed $1,000 per year per person.

I'm saying that because I represent 11 villages. The elders in Kotzebue and the villages who are not able to go fishing and they do buy from the commercial fisheries.

Thank you, Mr. Chairman.

MR. NICHOLIA: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Thank you. Yes.

MR. NICHOLIA: Yeah, I'd like to give the Eastern Interior recommendation. We agreed to pretty much to 11. But on 12 we got -- we had a big problem with that commercial enterprise so what we did at the end of 12, is, it says, as long as it's used for personal or family human consumption. That's how we got rid of that commercial enterprise, whatever, that was a big issue with us. And the last part, 13, we just excluded it. It was unnecessary because what you're writing down on paper you can't even enforce.

CHAIRMAN DEMIENTIEFF: Thank you. I think that completes the Regional Council recommendations. With that we'll go to the Staff Committee recommendation.

MS. FOX: Thank you, Mr. Chair. I'm Peggy Fox with the Office of Subsistence Management and I serve as the Chair of the Staff Committee.
The Staff Committee represents two views for the Board's consideration.

The majority of the Staff Committee recommended that the Board adopt the Staff recommendation with modifications to prohibit customary trade with any business enterprise and to simplify the regulatory wording.

If you'd like to look at the majority recommendation it is on Page 13 of the handout.

These regulations would replace the current regulations for 11, 12 and 13. And the italicized version of 12 indicates the difference between -- the primary difference between the Staff Committee recommendations.

Justification for the majority recommendation includes that the regulatory language recommended by the majority view more effectively addresses the objectives of the Board and the Regional Advisory Councils. It establishes enforceable regulations that provide for and protect traditional practices of customary trade of subsistence harvested fish while minimizing the potential for commercialization of subsistence fish. The recommended language provides for unlimited customary trade between rural residents which encompasses the majority of customary trade exchanges. The language is simpler than the existing regulation and eliminates the troublesome wording significant commercial enterprise at Section 11.

It also prohibits sale to and purchase by businesses of subsistence harvested fish as well as sale of subsistence harvested fish to anyone by non-rural individuals, and it requires that non-rural purchasers of subsistence harvested fish use the fish for their own or their family's personal consumption. This provision is faithful to the views expressed by many of the Regional Councils, that the use of fish obtained through customary trade be consistent with the precepts of subsistence articulated in Title VIII.

The recommended language does not include region specific provisions recommended by several Regional Councils. In most cases effective administration of the provisions on dollar limits and percentages of harvest to be retained would entail harvest and sales record-keeping requirements that would be burdensome to subsistence users and the administering agencies.

The recommended regulatory wording
prohibiting transactions with, by businesses and sale of
subsistence fish by non-rural individuals should accomplish
the intent of the Regional Council recommendations without
undo intrusion into the practices of subsistence users.

If a need for region specific regulations
is identified following implementation of new customary
trade regulations the regulations can be revised through
the annual regulatory review cycle.

The task force and the Councils worked
diligently on difficult task and their efforts should be
affirmed by the Board.

The recommended regulatory language
preserves the principal elements identified by those
participants, effectively addresses the objectives of the
Board and should be adopted.

The Staff Committee minority recommendation
is to adopt language which would clearly prohibit customary
trade exchanges with licensed fisheries and other
businesses. This would replace existing language in
subsections 12 and 13 of the current regulations. The
minority Staff Committee recommendation also advised the
Board to defer action on exchanges among rural residents
and from rural residents to others, subsections 11 and 12.

The minority Staff Committee recommendation
does three things. First it recognizes that there is
agency and public consensus on prohibiting commercial sales
of subsistence caught fish. Second, it identifies a need
to obtain more research data on actual customary trade
practices, and third it takes into consideration the range
of Regional Advisory Council recommendations regarding
customary trade.

There is widespread consensus among
Federal agency representatives and subsistence users that
clear and enforceable language is needed to prevent sale of
subsistence resources to commercial entities. Extensive
public testimony and recommendations of the Regional
Councils support this action to establish a clear
separation between the commercial sector and subsistence
harvest and exchanges. While much discussion has occurred
in the past two years regarding the issue of regulating
customary trade, the need to obtain more research data is
recommended so that any proposed regulations accurately
reflect actual practices. At present, little information
exists which adequate documentation of customary trade
sufficient to refine current regulations and provide for 
and protect such practices.

Additionally, there is substantial 
divergence among the Regional Advisory Councils regarding 
specific regulations governing exchange between rural users 
and rural to non-rural residents. Such diversity of 
approaches is reflected in the region specific proposed 
regulations that have been developed by the individual 
Councils.

Based on these factors a deferral on any 
revisions for Section 11 is recommended. This 
recommendation addresses concerns regarding commercial 
sales. It provides an opportunity to adequately document 
actual customary trade practices and allows time for more 
thorough consideration of the extensive input received from 
the Councils. It did not present additional burdens to law 
enforcement personnel or hamper their activities nor will 
it result in decreasing any of the current protections 
afforded to users.

Deferral is not likely to increase existing 
customary trade on Federal lands and waters and so will not 
increase risk to fisheries resources.

Thank you, Mr. Chair. That concludes my 
comments.

CHAIRMAN DEMIENTIEFF: Thank you. Who's 
going to provide the Department comments? Marianne.

MS. SEE: Thank you, Mr. Chair. In 
listening to all the discussion this morning and I 
appreciate particularly the comments from those who have 
come a long way to make their comments, the members of the 
public. It seemed like it might be helpful if be prefaced 
our remarks today with our understanding, within the 
agency, of what customary trade is. I hope this isn't too 
redundant but I think it's important to set what it is that 
we think the trade practice really is.

We understand that it's the cash sale of 
fish and wildlife resources to support personal or family 
needs. It's a longstanding practice which is an integral 
part of Alaska's family based subsistence tradition that 
occur within a mixed economic system of barter, trade and 
cash. Some level of customary trade occurs commonly 
throughout Alaska and usually presents no conservation or 
enforcement issues. Customary trade is a way for families
to distribute subsistence harvests to people outside of their usual sharing and bartering networks for limited amounts of cash. This practice also provides traditional foods to individuals or families, as we've heard in testimony, to those who are unable to harvest. Many of the exchanged foods, such as dry whitefish and many others are not available in commercial markets. Customary trade is not conducted for profit nor is it conducted in isolation from other subsistence activities.

Again, we feel it's important to just set our context for our remarks on that understanding.

Throughout this process in which we and so many others have participated to develop regulatory comments, we continue to support provisions that define the scope of this practice that I've just described and clearly distinguish it as a specific type of subsistence exchange which is distinct from commercial or other business related activities. Because the regulation of customary trade raises so many complex issues, we also support an incremental approach that closely involves the public in addressing other specific provisions through annual review. We agree with many of the comments that more information is needed, both on the practice itself as well as the enforcement issues. Incremental progress on this could also potentially help the State consider a more comparable approach than currently exists in State regulation.

At present the State has authorized customary trade only in a limited manner specifically approved by the Alaska Board of Fisheries. Under dual management of subsistence, the State shares with Federal agencies a responsibility to address timely issues of public interest and to coordinate those efforts to the extent possible.

We considered that a main goal of the proposed Federal regulation is to clearly describe the scope of customary trade of subsistence caught fish on Federal lands and waters as a traditional and customary practice wholly distinct from business and commercial interest. We note this point again, because as has been mentioned, the current regulations, Federal regulations about significant commercial enterprise have not been sufficiently clear to make this distinction nor have they been enforceable. Crafting enforceable language on this issue would substantially help prevent this potential problem.
We consider the resale of items involved in customary trade transactions should be prohibited, yet other subsistence exchanges can still occur, such as barter.

Key provisions are needed that are not addressed in the current regulatory proposal. We feel that specific elements should clarify ways that customary trade fits within the overall subsistence use of fish. One of the key concerns we have is to provide a measurable ceiling or limitation on the extent of the trade. We note that several Regional Councils and others have provided some specific ways to do this and they could include percent of total cash or a dollar amount of numbers of fish or perhaps other measures or combinations. Examples that have been mentioned we feel are really important to consider more closely.

Limitations should be defined regionally as a relevant way to ensure the customary nature of the trade does not start to expand to provide new sources of increased harvest pressures on fish stocks allocated to subsistence uses. And this is a really important concern to us. It's fundamentally a conservation related concern. We are concerned about the potential for expanding pressure on smaller water systems with limited stocks of fish and we also are concerned about fish stocks that may already be depressed. In those cases of limited resources, additional language may be needed to focus the subsistence priority on fish for personal and family food consumption. Thresholds may be needed to restrict customary trade in cases of limited or restricted harvest opportunity for subsistence. Some Regional Councils have also noted these points.

We also, as has been noted in our previous comments and others made today, we have a substantial concern about the extent and regional nature of customary trade needing to be documented. Agency information doesn't currently provide an accurate measure of the importance of this practice to subsistence users and it does not document customary or current practices adequately. There is some information available but it's not very comprehensive at all. Thus it's challenging to craft a regulatory approach to provide for this practice if we don't really know much about what it is. Some of the Councils have also noted this issue and in addition it does also make it very difficult to prevent potential abuses that could adversely impact subsistence users.
There are at least three distinct and potentially complimentary approaches to consider as possible ways to remedy this information gap.

One of them is to look at specific regional case studies of customary trade which could be developed using priorities requested from the Regional Advisory Councils and supported with Federal subsistence research funds.

Another approach is to use the annual subsistence fish surveys, specifically salmon surveys, by including a question about customary trade.

Also in some parts of the state and in specific situations permits or other tracking mechanisms, and we've heard that word before today, may be warranted to add resource management and enforcement purposes.

Our overall recommendation is really two-fold.

We strongly endorse the language that clearly distinguishes between customary trade and commercial and business transactions and that's proposed subsection 13. It's in both the majority and minority recommendations and it's widely supported in Council comments. We think that by doing this the subsistence context for customary trade is unequivocally specified and distinguishes from commercial activities and transactions.

We do recommend one amendment to the language of 13 be as follows, and this is in our written comments but I'll read it for those who may not have those.

Where it says, if you are required to be licensed as a fisheries business under Alaska Statute, and there's the citation or are a business as defined under Alaska Statute, you may not purchase, receive and then we suggest this following language, with intent to sell or hold for sale or sell subsistence harvested fish, their parts or their eggs.

Now, regulatory language is often sort of bulky and this is. But what this does is it allows the processing of subsistence harvested fish by processors for a subsistence harvesters own personal use. In other words they get the fish back and the processor does not get into
trouble for having had the fish in the first place. But it does, in fact, prohibit the sale of that fish by the processor that was processing it. So we think that that is a benefit to subsistence users and clears up what could otherwise be an unnecessary prohibition.

We also concur with the minority recommendation to defer further definition of customary trade that occurs between rural to rural and rural to other persons, subsections 11 and 12.

The issues we have consistently raised, which I've covered already, have not been adequately addressed in the proposed language at this point, nor, do we feel that specific regional recommendations have been adequately incorporated from Regional Councils. Thus, while we agree there should be an incremental approach to these regulations, we recommend deferring and addressing the issues in 11 and 12 in the near future and that that would be the most appropriate course of action at this time.

We understand this would leave in place the existing language that's in subsection 11 until revised language is proposed and adopted.

Further more we strongly recommend Federal support and funding to develop case studies using regional priorities offered by the Regional Councils which will improve our understanding of customary trade and ways to provide for it within the context of subsistence management and uses. We would very much appreciate the opportunity to collaborate further to refine these ideas and related recommendations to improve information about regional patterns of customary trade. In fact this has been an issue before the Department in the past, where there had been proposals several years ago now to do just this sort of series of studies but they were never funded. We do have some specific ideas that we can contribute about this and would welcome the opportunity to do so.

We do comment the Office of Subsistence Management and the Board for providing the additional time so far for meaningful public involvement. Additional work on these issues, we feel, will help ensure that ideas and continuing discussion from the Councils, agencies and other interests will be more fully incorporated into future rulemaking.

We are certainly willing to answer any
questions you may have but we also want to add as a piece
of our testimony today, some comments from one of our
assistant attorney general's Lance Nelson, if the Chair
will allow. Lance.

CHAIRMAN DEMIENTIEFF: Sure.

MR. NELSON: Mr. Chairman, members of the
Board. Thank you. I just have a couple of comments on the
issue raised by Mr. Lord of the Regional Solicitor's office
concerning the applicability of Federal customary trade
regs off of Federal public lands.

We would just state that we think the
written opinion by the Regional Solicitor's office of June
6th, 2000 that concluded that it was unlikely that a court
would find Federal preemption to the extent that Federal
regs would be found to apply off of Federal public lands,
we think that was a reasonable interpretation of the law
especially given the latest rulings by the U.S. Supreme
Court on the clarity needed for Federal preemption.

We also agree that there's no clear-cut
legal precedent on that issue that gives the final word.
And we would just like to state that we haven't -- although
we haven't taken a formal legal position on whether the
State would file a challenge on that issue, I don't think
the Attorney General has had a chance to review that issue
at all, he's pretty busy with the transition right now, but
we would just note for the record that we reserve the right
to disagree with the application of Federal customary trade
regulations off of Federal public lands and also to enforce
State subsistence regulations on State lands.

That's all.

CHAIRMAN DEMIENTIEFF: Thank you. Actually
the agenda is a little bit misleading in terms of like
calling for Regional Council Chair comments and then move
on to Board discussion. Those will be done together as I
promised earlier. The Regional Council Chairs will
participate in the Board deliberation. I'm not going to
let you vote but we'll let you talk with us.

With that we're going to go ahead and
recess for lunch and we'll be back at 1:00 o'clock.
Chairman Demientieff: Okay, we'll go ahead and call the meeting back to order and we'll enter into Board discussion at this particular point. And I think along those lines it's clear, I think, to all of us, I know for myself, personally, that whatever action that we do happen to take this afternoon, the whole issue is a work in progress. So I'm just going to open by saying that as we continue to work this issue in the coming months, years and develop the issue, you know, that I'm sure we're going to all pledge to due the diligence in terms of working it because there are a number complexities that are coming out and we certainly have had excellent work -- I compliment the Councils for taking the time, the Staff certainly has done the time in terms of preparing the issue. I know the Board is actively tracked this issue as well. And the Department, and of course as evidenced earlier, the public is very keenly interested in this issue.

But however it goes this afternoon, it's clear to me that it's going to be something that's going to be on our plate for some time as we continue to fine tune and make this because there are a lot of risks that are out there. And you know, we all recognize that customary trade is something that has happened, is an important part of subsistence and as we endeavor to try to get regulations, you know, the big fear is that we don't change something accidentally.

So we do have a lot of work to do and I just know that whatever, irregardless of what happens this afternoon, we're going to be spending more and more time with regard to this issue, I think. I think that's what we'll see.

So anyway, thanks everybody for all their hard work and does anybody want to discuss this issue? Gary.

Mr. Edwards: Mitch, I'll start. I'd like to ask the State a couple questions if I could. In both your written and your oral testimony you spoke to the fact that you are concerned about customary trade does not start to expand and to provide new sources of increased harvest. And I guess my first question would be why do you think that Section 12 does not address that and by itself will not be limiting and prevent further expansion?

And then the other question I would like to address is there's been questions raised about the amount of abuse that has or has not occurred or will or will not
occur in the future and I just wondered if the State had
any examples of in the past where that has occurred and
they have had to react to that?

MR. VINCENT-LANG: Well, in response to
your first question, Mr. Edwards, I guess a good example
would be the one that was raised by a public testifier this
morning, David Belsfrod [sic]. In our eyes there's nothing
under the current regulation as proposed by the Staff
Committee that would not allow an individual to take a fish
under subsistence fishing regulations process them and then
set up a web page for instance, and sell those across the
web page to anybody with the only stipulation is that they
would be used for their personal or family consumption.
And that could be viewed as an expanded subsistence harvest
opportunity above what's currently allowed in terms of
significant commercial enterprise.

So, yeah, we think there are clearly some
loopholes in how you could expand that customary trade and
barter outside of what is currently being practiced out
there.

Kind of the way we're looking at it is it's
kind of like ordering the house without knowing the size of
the foundation. And what we have here is we don't know the
size of the foundation because we haven't done the work to
describe those current practices. Clearly the State is on
record in saying we support those current practices that
are occurring out there, but until you fit that house on
the foundation you don't know one, whether it's going to be
larger than the foundation and expand what's currently
occurring out there or potentially even smaller than that
foundation and restrict some activities of customary trade
and barter that's going on out there.

With respect to your second question, I
think Lance has done a couple of different cases in the
past where the State has seen those abuses and will talk to
you about them.

CHAIRMAN DEMIENTIEFF: Go ahead.

MR. NELSON: Mr. Chairman. Mr. Edwards.
I'd like to just touch on a couple of experiences that I've
had and that I'm aware of. Already mentioned in the
earlier discussion was a case involving herring roe on kelp
in Southeastern Alaska being sold in fairly large numbers.
Besides that case there was sort of -- obstructed, if you
will, by the court's ruling, there were a number of rulings
by the courts where prosecutions were successful against people selling herring roe on kelp in large amounts including over $100,000, the Skina case, the Sacarie (ph) case, a number of other cases that involved the subsistence taking of herring roe on kelp for large amounts of money are documented in court decisions.

Also on the Upper Yukon in 1987, I was involved in some enforcement action against several processors involving the purchase of subsistence -- during that year in 1987 there was no fall chum commercial season because the numbers were too low to allow that so the only fishing that took place was subsistence fishing. In that year, there were a number of processors bought tens of thousands of pounds of herring roe -- or I'm sorry, chum salmon roe and coho roe and it was sold on the international markets. One case that I'm familiar with, one subsistence fisherman sold over 30,000 of chum roe to one of the processors during a closed commercial season.

Also in the Lower Yukon in 1992 there was a processor that was buying, among other things, subsistence taken king salmon and selling it on the international market to a Japanese company. We documented from the processors own records that that activity took place over a number of years and involved hundreds of thousands of dollars worth of fish during that time. In both on the Upper Yukon and Lower Yukon, a number of the participants were rural residents and a number of them were not and were CFEC permit holders from other areas of the state that were fishing during the subsistence season and taking fish.

We've seen historically that there's the possibility, and there's evidence that rural residents have harvested subsistence fish and sold it into the commercial markets, although I'm sure that's not representative as a whole but it does take place.

CHAIRMAN DEMIENTIEFF: Mr. Edwards, if I might just, I don't think -- your question has to do with Item 12 didn't it?

MR. EDWARDS: That's correct.

CHAIRMAN DEMIENTIEFF: Because your response was actually to Item 13 and addressing those issues. But I think the question that Gary had is can you address it in terms of Item 12 and -- I'm sorry, I don't want to -- Gary, maybe you can just re.....
MR. EDWARDS: I had two questions. I mean my first one dealt with the issue that in the State's oral and written testimony they expressed concerns that they did not want subsistence to provide a new source of increased harvest and I was asking why you felt that item in -- the language in Item 12 wasn't sufficient to reduce that. Because I believe that the example that you used would be covered either in those two sections, particularly by the fact that if an individual freezes or cooks or salts or smokes fish and then offers to sell them then that is a fisheries business under State law and so therefore they would be prohibited from doing that. So that would not be a mechanism for harvest to be expanded.

CHAIRMAN DEMIENTIEFF: Yes.

MR. NELSON: Mr. Chairman, my understanding of Mr. Edwards question was two parts. One was the Section 12 and the other part was other examples. If I was off base, I apologize.

CHAIRMAN DEMIENTIEFF: Bill.

MR. THOMAS: Thank you, Mr. Chairman. I've been battling with this concern for 10 years. When I first started in this process the only information we had was from the Department. And 100 percent of it was negative characterization, unwarranted speculation and non-historical as far as the community of subsistence was concerned. And in dealing with customary trade, regardless of how much -- regardless of what happens to what's harvested subsistence wise, still doesn't exceed a single digit in the total amount of the resource that's being used.

But still it's getting more attention than other user groups that do the same thing with a lot more volume of, let's say eggs for a resource. The market has demonstrated that there's more money to be made from the roe than there is from the fish.

Last year at our meeting, people were saying well they give the carcass to the subsistence fishermen and nothing was said about the eggs that were taken out before the carcass was determined to be a carcass. So I'm speaking again with respect to respect for the subsistence community. A lot of this is speculation, it isn't a practice that isn't practiced by other user groups with a lot less fuss.
So I would really like to confine our discussions to customary trade and get away from the speculation. Everything is a may, a might, a could, you know, that's a horrible dialogue.

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MS. GOTTLIEB: I also want to thank everybody who has put a considerable amount of time into this overall effort and particularly today that the RAC Chairs were able to come in for this meeting and to the public who also took the time to attend and provide us testimony and information.

I think we have, in fact, gathered a great deal of information by virtue of all those task force meetings that took place where the RAC Chairs or their designees provided a huge body of information on what customary trade is and tried really diligently to develop several kinds of definitions.

We embarked upon this process because it was felt that the current regulation is not clear. And I would like to ask, and perhaps Pete or others could help answer this, whether the proposed wording we have in front of us is the majority and/or the minority recommendations; are those, in fact, providing more clarity?

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CHAIRMAN DEMIENTIEFF: Pete.

Mr. Chair.

CHAIRMAN DEMIENTIEFF: Maybe a follow-up to that. As I recall a lot of the impetus to start this came from enforcement personnel. And my understanding, they
have been involved with the task force throughout the process?

MR. PROBASCO: Mr. Chair, yes, in deed that is correct. We had two enforcement personnel from U.S. Fish and Wildlife Service and an enforcement representative from the Forest Service on the task force and once the task force work was completed, we still kept in contact, bounced comments, drafts, request interpretations throughout the process both with U.S. Fish and Wildlife Service and Forest Service Staff.

Mr. Chair.

CHAIRMAN DEMIENTIEFF: Ralph.

MR. LOHSE: Mr. Chair, I guess -- I guess I have to agree with Bill on some things and I have to disagree with Bill on some things and I guess that's what we mostly always do with each other anyhow.

I see this process as trying to hit a moving target. And the target's moving. And what I see people trying to do is trying to get a lead on the target and trying to find out where the target is going so that they can get a lead on it.

We have had speculation. We've had speculation in our Regional Council meetings on whether these proposals or this process that we're going through would lead to overuse or danger to the resource or even an impact on the lifestyle, on the subsistence lifestyle.

And Bill is right, that true subsistence as traditionally practiced does no harm to the resource. And like somebody else said, you know, their grandma and their great-grandma and their mom probably didn't have much of an impact on it. But the problem is grandma and mom are still there but they're not the ones having the impact on it. People who observe human beings and human nature or study history or even archeology find that there's one thing that's comment and that is change. We don't live in a constant world. We don't live with constant cultures. We don't live with constant environmental factors. We don't live with constant resources. They're all changing. We're changing. We live in a time as never before when more change has taken place in the last 20 years than in the last 100 years.

Twenty years ago nobody would have been
saying anything about selling fish on the internet. Twenty
two years ago most of us probably wouldn't have been able to
afford a computer, let alone the internet hook up. We
definitely wouldn't have had it in rural Alaska. Today
it's in rural Alaska.

It would be nice if we had lots more data
and lots more research but you're having data and research
on something that's in flux, it's changing all of the time
so the data and the research that you get isn't on a
constant, it's on something that's moving. And while
you're doing the research it's changed. It'd be nice if it
was only for indigenous people. But what does the word
indigenous mean and how is that changing?

We have a tremendous movement, tremendous
opportunities in our culture today. I have many Native
Alaskan friends who's kids live in Tucson, Los Angeles,
Tacoma, Seattle. We had a person from Hooper Bay talking
about moving between the mountains here to Anchorage. We
move. We go to school in different places. We're all
accessible to TV all over the state, we get our information
from all over the world. I don't know about the rest of
you, but I get catalogs on every subject you can think of
getting catalogs on. We have this tremendous volume of
information on hand. We have the ultimate change in
culture and that ultimate change in culture is marriage.
Four generations ago, five generations ago, my relatives
married their first and second cousins. If they'd have
married out of the village they'd have thought something
was wrong. Four generations ago if they'd have married out
of the country they'd have thought something was wrong.
Three generations ago if they'd have married out of the
church that they went to they'd have thought something was
wrong. My mother wanted to go out with somebody of a
different race and my grandfather said no and put his foot
down on it. My mother's brothers and sisters all married
people of the same culture and the same religion. But my
mother's -- our family of six kids at one time was in
Alaska, Texas, Los Angeles, Florida and the midwest. Out
of six brothers and sisters. We've married totally out of
the church, the race and everything else.

Now, I have six kids. What do I expect?
I expect my kids are going to do the same thing, even on a
greater scale than I am. Robyn used the words, Young
Turks, it was really funny, he said Young Turks and I
recognized what he meant right now we deal with them all
the time in the commercial fishery. We call them Young
Turks. The kids that grew up getting their attitudes, not
from their mom and dad, not from the cultural around them, they got their attitudes from watching the ball players on TV, from watching the TV, from the video games, totally aggressive and have total different values on how they fish and how they hunt than those of us of our generation which probably have different values than the generation before.

So we run into that. We run into the change in culture. At one of our subsistence task force meetings one of the representatives from up in the Yukon, you know, we live in a total different world when you hunt caribou on a snowmachine with a cell phone and it's true.

Technology. Somebody in Cordova discovers that Mephasis Net and Twine sells prehung gillnets, monofilament gillnets that work for smelt, instantly we've got 20 monofilament gillnets for smelt in the harbor because the technology is there, the materials are there.

We are shooting for a moving target. We're trying to put something in place that protects past practices and prevents things that will damage the resource, the people and the lifestyle in the future. I think we've hit the target on some of it, I'm not sure on some of the rest of it. But I don't see any reason not to speculate about what might happen. I would think that we would be negligent if we didn't speculate on what might happen because we're not dealing with something that's static. We're dealing with something that's moving.

And I know I've stepped on a few toes with some of the things that I've said but that is the nature of the world we live in today. We live in a world of change. Nothing is the same for me as it was 30 years ago, nothing is going to be the same for your children as it was for you and you can't stop it.

My folks -- my mother's parents tried to, they did it for one generation, it didn't stop it after that.

Thank you.

CHAIRMAN DEMIENTIEFF: I can't, you know, help but not agree with your thinking. I think that was what I was trying to address in my opening remarks this afternoon. We're just starting this. We're going to be doing this for a long time, as our world changes our regulations are going to have to change with the world. And the protection of our resource, we heard over and over
again, is number 1, and making that resource so that it is available to continue to feed the generations that come behind us. So that's basically what I was trying to hit, you did it a little bit more eloquent than I, Ralph, and even if you disagree with Bill, that's fine by me, too.

Bill, go ahead. Defend yourself Bill.

MR. THOMAS: I can't believe that. Now, somebody's trying to take my mike -- who's pulling my mike out.

Okay, everything that Ralph said was true. Everything you said was true, for change. And we realize it, we understand that. But to the indigenous peoples of Alaska that have exercised the use of this resource farther back than time can record is not going to change. It's still going to be there, the importance is still going to be there. It's going to be important to their existence. It's going to be important to their development. It's going to be important to their being. The changes that you'll see are the people that come into this world and enjoy and learn to enjoy that same resource.

Thank you, Mr. Chairman.

MR. WILDE: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Yeah, Harry.

MR. WILDE: Yeah, Mr. Chairman. It was hard, customary trade to translate it in English or in Yup'ik in my area.

They don't understand what is customary trade. We tried to translate in English, translate it in Yup'ik, still they don't understand. Elderly people, mostly, some of them they say we have one already. No you don't have customary trade, you have -- that trade that you have start from long time ago -- they mix up with that. That's why it's hard to understand to them. And some of -- one time one of them asked me, Harry, when you guys talk you guys always say ANILCA, you could learn some things from ANILCA and one woman ask me, Harry, how many people in our area here know about ANILCA? How many read ANILCA? How many they know ANILCA? There is a lot of problem out there.

One time that man was at AFN Convention when he came back, it was before I even started serving,
they find out the Federal is supporting subsistence. He was really happy. Finally we had someone on our side. Now we could have a few days more to have our way of life.

Something like a tree that grown, you know, roots are coming up, only the Federal could keep the roots down.

Now, after they heard sell subsistence catch salmon, you know, that person he really turn away because he didn't understand. And I told him that, well, maybe that's the only way that Federal could protect subsistence, no, they can't -- that's what she says, they can't protect it like that, they just putting us in trouble. Because we had buyer in Lower Yukon. We didn't know the people that -- few people are selling subsistence catch. Once those people find out they urged their enforcement, like people, police working in the village, go after those guys and they did, what happened to that buyer, he's no longer there. They moved out from the -- buying from the lower Yukon, that's what they are afraid of today, mostly elders.

They may people -- if they start controlling or selling fish they wouldn't be -- it would be controllable -- not controllable.

That's a problem that we're facing even Advisory Council in Yukon and Kuskokwim.

CHAIRMAN DEMIENTIEFF: Thank you, Harry.

Go ahead.

MR. VINCENT-LANG: I wanted to answer Gary's question. I think in the case where a person processes his fish that's entirely true. But I think in cases of Juneau, you could end up having an individual -- or Sitka, for instance, an individual coming in with fresh fish and sell those fresh fish but because they're selling fresh fish they're not covered as a fisheries business under the State of Alaska regulation. So, yeah, you could end up with fresh fish markets in a variety of communities that weren't covered under the traditional practices, which we're both very interested in protecting but could be a significant expansion. Just by the way the definitions are laid out.

CHAIRMAN DEMIENTIEFF: I think part of the -- at least a very significant part of what Harry just had to say is the involvement of local people and self-policing. Some of these cases that you were talking about, you know, I'm familiar with through the years. And I'm not
belittling, you know, enforcement or, you know, the fact
these go into a court, that what -- had an impact -- but
further, the larger more significant impact was done by
self-policing. It's the same thing that Harry talked
about, we all know we have to protect that resource. And
if we see people in our villages that are abusing the
system, we're the first ones to go and straighten that up
and it's happened over and over again, I've seen it.

A few years back, also, some of the people
along the river got into dumping chums taking the eggs,
what they heck they -- I forget, whatever, but they cut the
eggs out sell the eggs and dumped the fish. And there was
a few bad apples that were doing that. We ran those people
out. They were the first ones out of the fishery. We ran
them out, the ones that didn't want to stop doing that.
Because it's a lot of work to cut fish.

The other thing is, and I'm struck by the
whole issue, the more things change, you know, the more --
also they stay the same. And I was just thinking about
that. In the early days, a fish wheel would feed six or
eight families. And the other five or seven families,
besides the person who -- the family that was operating the
fish wheel, they bartered labor and still a common practice
today, that not everybody fishes but a lot of people work
for that fish. And the equation is is that, you know, you
get 50 percent if I'm fishing for Tom, out at Tom's wheel,
I keep 50 percent of what I'm making and he gets 50 percent
for providing the site. So that hasn't changed. You know,
the equation changes now that -- with the tremendous cost
of having to do this, I mean because it was done in the
early days, just by row boats, basically. I mean it wasn't
-- it wasn't a huge monetary expense as it is now, just the
amount the effort what it cost. And that's where the
equations have changed by the tremendous costs of being
able to go out there and practice that practice.

But still, to this day, there is probably
six to eight families that I know on the Tanana River that
are still being fed out of one fish wheel and that hasn't
changed.

Niles.

MR. CESAR: Thank you, Mr. Chairman. I've
sat here all day and of course read all the information
that was provided to me and in the last 10 or 12 years have
listened to the dialogue go on about customary trade.
The one thing that seems to me to be -- several things seem to me to be a constant. One is that subsistence folks are not in favor of commercial transactions. I don't see anybody standing up thinking that that's a good idea that subsistence people should engage in that.

I think there is sufficient testimony and written documentation that says that they also do not endorse a one approach fits all across this state. At least the preponderance of testimony I've heard leads me to believe that there should be movement for regionalization or ability for regionalization to take place.

And in listening today I've heard folks talk about, you know, what is it, it's a moving target, what's really going to happen, is there going to be an expansion of subsistence take using the regulations as a loophole? I mean there's enough in here and enough testimony that I've heard that leads me to think that from my perspective and of course we're the author of the minority opinion that we'd be better off to accept 13 for no commercialization, no commercial enterprise in subsistence and rework at 11 and 12. It seems to me like that would give us the opportunity to, one, put some fears about enforcement for commercialization but also give us the ability to move forward and do the studies and do the in depth reviews of the regions which would allow us to even take it down to, if not a region, then maybe a subregion like Kenai has proposed. It seems to me that the best way for success in any of this is have the decision driven by the local folks.

Now, you know, in areas which you get where that is in conflict with other users, it's still the best way to deal with it, is to deal with it on a local level and to come to some agreement.

And for that reasoning that I've put forward, I guess I'm in favor of, again, no commercial transactions as proposed by the Interagency Staff Committee majority [sic] report but to defer action on 11 and 12. And Mr. Chairman, when it's appropriate I'll make such a motion.

CHAIRMAN DEMIENTIEFF: Thank you. I think in terms of your discussion, that's real significant to me, is the desire to tailor a recommendation to a region. And that's a partnership that we have with the locals through the Regional Councils. Those Councils work very hard and
we've seen it time and time again, know what's best, know
what's going to work in their region and where they differ.
You know, I, personally don't have a problem visiting that
as the Councils continue to come out with recommendations
for their own region. Because it's no one size is going to
fit it all, I don't think.

Ralph and then Della and Robyn and then
over here, Gerald -- oh, Gerald, you were first, I think --
yeah, go ahead.

MR. NICHOLIA: Thank you, Mr. Chair. What
I really believe -- I'm going to say this again and again.
What I really believe you guys need to do is, your Board
members have to go out there and like sit in Harry Wilde's
camp, sit in my dad's camp, sit in people's camps who you
really making decisions for. Because you're not -- you're
making decisions, you're not out there sitting down the
actual subsistence and how much fish I could take, and how
much fish my mom could I take, how much fish my uncle could
take, you're not there.

And you really have to understand that
those people, that's their only way now in this changing
world that they're going to make money to pay for the gas,
for that loaf of bread or that brick of butter. And you
guys are just manipulating this thing out of context.

CHAIRMAN DEMIENTIEFF: Is that still -- do
we have trips planned this summer again, because I know
we've done it for the last couple of years where we've
gone. Is that on the horizon again?

MR. BOYD: Mr. Chair, I believe we'll be
discussing that in the next couple of weeks.

CHAIRMAN DEMIENTIEFF: In the next work
session or something?

MR. BOYD: Yeah.

CHAIRMAN DEMIENTIEFF: Yeah. Because I
think your point is well taken, Gerald. But, you know,
we've been doing that for, I think the last two years
anyway, where Board members have gone and spent that kind
of time just to learn more.

MR. NICHOLIA: You see, you guys understand
what you're doing, what the local users, like what Harry
said, the local users don't understand what you're doing.
There's got to be education between you and the users, forget about the Staff and everything.

CHAIRMAN DEMIENTIEFF: Okay, Ralph, I think Della and then Robyn and then back over here to Grace.

MR. LOHSE: Mr. Chair, can I ask Mr. Cesar a question?

CHAIRMAN DEMIENTIEFF: Sure.

MR. LOHSE: I noticed on the Minority Staff recommendation, that they went along with the no commercial that's been pretty much approved by everybody. But I was wondering why the first part, where the exchange between the rural residents in customary trade of subsistence harvest of fish, their parts, their eggs legally taken under these regulations in this part is permitted. I was just wondering why was that part of it left out, because that doesn't seem to be a very controversial part with any RAC from any place. We felt that the exchange between rural residents should be permitted. And I was just wondering why that part was left out of your recommendation?

MR. CESAR: Thank you, Ralph. I really don't have a very good answer for that. I would ask that Dr. Glenn Chin give me some assistance in this.

MR. CHIN: Thank you, Niles. The Minority recommendation was based on a couple of things.

One is, as you've recognized, again, an agreement, a consensus that no commercial transactions be allowed. That is called Section 12 in the recommendation, it was previously Section 13, so 12 replaces 13. If you look at the original rule, 11 and 12, excuse me -- the original rule deals with 12 and 13 and so we replaced 12 and 13 with a new 12.

We decided to leave Section 11 and defer any action on this Section 11 pending further discussion by the Council and further deliberations by the Board.

So as it stands because we've recommended no action at this time, we decided to retain the current Section 11.

MR. LOHSE: Thank you.
MR. NILES: I think, Ralph, probably more in a direct answer to your question, I don't think that we were cemented in any position. It was rather looking at it and trying to craft it and change it a little. But I think that all the Staff Committee minority Staff included felt that the ability to use all parts of the fish and trade between rural people should be allowed.

CHAIRMAN DEMIENTIEFF: Della.

MS. TRUMBLE: Thank you, Mr. Chair. I just kind of wanted to make a couple comments. I think first of all in looking at the regulations proposed and I agree with Niles and yourself and everyone that we all agree that no commercial transactions should happen.

The other concern I have is just the issue of what we were tasked to do which was to set some sort of guidelines as to when those boundaries have been -- we've gone over those boundaries and I don't feel that that's really, to some degree, here. And the other part of it is, in listening to the discussion is the education. I walked in and started this process on this task force and I wished that more people in the state knew what I knew now about other regions of people and their practices. Because I have learned a tremendous amount coming into this just being from my region and learning the other regions. And I think more effort -- the point I'm making, documentaries of different regions and airing them, and people in the state really need to understand the importance in a realistic way of what it means, subsistence means to the various regions.

I think that, you know, in itself, is a big step. And the more I get into it more -- you know, I told Mitch earlier, I feel like I've come full circle this morning and he said, well, at least, we're not running around in circles, which is good. I mean we may need to make another circle but the more I get into this I feel like I have more questions myself, you know, the issue of putting a dollar amount on our region when IRS tells you at the point of $600 it's classified as income and you need to report it.

If you look at a household of five with a couple of parents and three kids, that dollar amount could be $3,000. Where are we in this whole process and, you know, what is going to need to be done and what more education and what more education of other people may have to happen before some of this stuff can be implemented.
CHAIRMAN DEMIENTIEFF: Robyn.

MS. SAMUELS: Thank you, Mr. Chairman. I agree with Mr. Cesar's assessment of where the Board should go. I think we need to differentiate between a person that is looking to generate cash sales and a person that is trying to fill his or her freezer. Grace, from Norton Sound area, that area up there has had tremendous problems with sustainability of the Norton Sound salmon stocks. If I was Grace's neighbor up there and Grace was trying to fill her freezer and her and her family were trying to fill her freezer, I had already filled mine and there's only a limited resource and we're facing a Tier II situation, or we may be in a Tier II situation, there's no difference between Grace and I. I could be sitting in Nome selling whatever amount of fish while she's trying to fill her freezer for her family for the winter to come.

And I think as we develop the regulation we need to give a priority to what subsistence is really about. It is to those individuals that are trying to fill their freezers and not to sell fish to whoever. The person that is in one of our regions, that's the people that we need to look out for, not the person that wants to sell fish to some other place to generate cash to conduct more. That component is missing here. And if I'm selling fish I shouldn't be on par with Grace, my neighbor trying to fill her freezer. She should have a preference, under Tier II, she doesn't have a preference over me. Under Tier I, she doesn't have a preference over me and that hasn't been fleshed out in this document and I think that's very important. Because I wasn't in Nome but I was at the Board of Fish meetings when they were going through the Tier II situation and it reigned havoc on those communities in the Nome district, who was going to get fish and they were talking like 10 fish per family and they had to make differentiations between different families and the elders up there.

So I think if we're going to adopt something like this, we got to make sure that the person that's trying to fill their freezer for the winter needs to have a priority over a Robyn Samuelsen that's trying to generate cash.

CHAIRMAN DEMIENTIEFF: Thank you. I think Grace was next.

MS. CROSS: Thank you. What I was going to
When Nome River crashed, the rivers in Nome crashed we started worrying about Unalakleet River because there were so many displaced Nome fishermen that were going to Unalakleet River to fish and the customary trade increased, so therefore the people in Unalakleet or areas that have more fish, started catching more fish so that they could trade and/or sell to Nome people. At the time that we were all talking about it, our main concern was not the amount of money a person who's selling the fish makes but the quantity. The number of fish that they would catch above and beyond what they would need for subsistence so they could either trade or sell the fish to an individual. The money part of it didn't concern us very much because there were some people that sold a little bit more than the others and some of them selling a fish for $5 and somebody might be selling a bundle for $20.

So in my region, and we've discussed it many times before, our main concern, when it comes to making some definition about customary trade is going to be the number of fish a person is trading away. Number of fish they're catching above and beyond what they need and trading away because we don't want any more of our rivers to crash because of overuse.

And to me the most important part would be, I think the reasons why we don't address the other parts is because there's no commercial transaction up there anymore because we don't commercial fish anymore, so that really doesn't matter anymore. There's no place for us to sell the fish, a commercial market, so that doesn't really impact our region. So that's why I wanted to encourage the Board to take into consideration the regional differences.

On top of that, when you look at our state, we pay $2.69 a gallon of gasoline in Nome, in some of the villages, they pay over $3 and something. So $500 in Southcentral has a totally different meaning than it does in, like in Shaktoolik, for example, $500 don't go much in Shaktoolik. It may here because you can go to Costco and I can get plenty of stuff for $500 versus if I go to Nome. So I think some of the things that you have to consider when you -- and I think those things should be considered because these are regional differences.

Thank you.
CHAIRMAN DEMIENTIEFF: Yeah, that goes for displaced Nenana fishermen by the way. I had a son that worked up there on the Unalakleet River and fished up there this past summer. Gerald.

MR. NICHOLIA: Yeah, Pete, correct me if I'm wrong. You know, when we started out this task force, I was on it, and Chuck Miller told me it was going to be just for the Yukon -- after we figure out the Yukon we'll go statewide, right, that was the start of the meeting, right -- I thought it was just the Yukon. Because the way I figure it, if we do something for the Yukon when it's depleted -- I mean the stocks are in decline, then -- then we could do something statewide. If you could fix one problem from the problem area and fix that, I mean make it comfortable where it's not -- then you could move statewide.

But there's another thing. What the Eastern Interior did, we had a big discussion on it, about two and a half hours, just take that commercial out there, put human family consumption there. Take that commercialization out of there. It's that commercial that brought everything down. Commercialization has ruined it. You could sell everything.

So you buy a fish from the supermarket, it's value added right. You get a fish from the Yukon, it's not value added. You value at and then you put money in your pocket so you could buy gas or whatever. It's not like the way you go to the supermarket, but when you got a -- what I really want to say is that you got to be down to the people's level that you're trying to manage.

CHAIRMAN DEMIENTIEFF: Pete.

MR. PROBASCO: Mr. Chair, I just wanted to address Mr. Nicholia's question. The Board has addressed, and is currently addressing a couple issues that focus strictly on the Yukon/Kuskokwim area and that was dealing with how to interact with the State as far as special action and that focused only on that area and then if that worked then they were going to look at it statewide. However, the Federal Subsistence Board specifically, and that's the reason why they appointed a member from each of the Councils, is they wanted to look at this on a statewide basis and also look at regionalization.

Mr. Chair.
MR. BSCHOR: Mr. Chairman, I've been looking at both the Minority and the Majority Staff Committee recommendations and considering what was mentioned a little bit ago about just going with Clause 12 under the Minority. And I just want to recognize that the Minority Staff Committee recommendation still doesn't take care of the concern that we came here to try to solve and that is, what is a significant commercial enterprise. So in that respect I would not want to go along just with Clause 12 in the Minority, although I can't go along -- I don't think I can go along with Clause 27.

Looking at the Majority, the difference between the Majority and the Minority with those things aside, appears to me that the Minority does deal with the separate regions of the state, and I think we've heard a lot of testimony today how important that is. Now, how we deal with that as a Board has become some what possibly complicated, maybe not, depending on how many regions need to have their specifics identified, but I assume we would have to deal with each one of those in some form as a Board.

Other than that the Majority still seems to be -- this Majority Staff Committee recommendation with maybe the caveat of having the -- or the condition of having the regional -- separate regions dealt with might be something we want to look at.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Gary.

MR. EDWARDS: Well, I would agree that the Majority recommendation is not perfect and it certainly doesn't cover or address everything that could be done with subsistence caught fish in exchange for cash and it certainly doesn't address all of the issues that the Regional Councils has raised as well as the people who have spoken today. But I do, personally, feel that it does provide a good job of trying to provide a fair and a balanced approach to what is obviously a very difficult issue.

I think it tries to respect traditional uses, while trying to ensure that those traditional uses can continue by placing fair and reasonable restrictions on sale. And I think it also tries to avoid, you know, a cumbersome process that could be associated with permitting or record-keeping. And while it is not perfect, I think it
certainly is significantly better than what we have and I think it's a good point of departure. And as you, Mr. Chairman, pointed out, what we're doing here today is not going to be written in stone. As we proceed and we find that it needs to be more restrictive or less restrictive, certainly the Board can address those issues.

But I do think it's an excellent starting point. I think it's been a very interesting journey. From my standpoint it's been one of the more interesting things to debate. I attended a couple RAC meetings where we discussed it and one late into the night, after Ray had us all over for dinner we continued to debate it, and I think we'll debate it from now until probably the cows come home or until the caribou come home, I don't know what's proper to say. But I do think the Majority opinion is a good balanced approach to start from.

MR. TERLAND: Mr. Chairman, I believe in going through this process one of the things we learned early on was the need for being able to address each individual region on a region by region basis. I think our regulation process allows for that. I believe the Staff Majority motion gives us the framework for overall guidance from which we can work and continue working than on a region by region basis taking however -- which ever region we feel is priority or the Regional Council feels a priority to refine those regulations.

Thank you.

CHAIRMAN DEMIENTIEFF: Bill.

MR. THOMAS: Thank you, Mr. Chairman. If I didn't learn anything else, I learned a new parliamentary procedure.

So after our next round of Regional Council meetings I'll be here with two opinions. I'll have the Majority opinion and the Minority opinion from the RAC.

Thank you, Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Grace.

MS. CROSS: I forgot to mention. On Page 13, number 13, I don't have any opposition to that. Like I said, it really doesn't affect us but I don't see any harm in it.
CHAIRMAN DEMIENTIEFF: Thank you.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Judy, I think and then -- was that you?

MS. GOTTLIEB: Go ahead, Niles.

MR. CESAR: Mr. Chairman, I am loath to offer a motion because my sense of it is that it may not succeed, but I would like someone to place a motion before us at this point so we, as a Board, can enter into Board discussion and make a determination.

CHAIRMAN DEMIENTIEFF: Judy.

MS. GOTTLIEB: Thank you, Mr. Chair. I guess I'm a little -- I'm certainly appreciative of what we've heard today, especially the part and the concern we've heard now at the end about the importance of having regional distinctions and we've started a process to try to explain and state clearly those regional differences but in terms of today we aren't, for most part, quite there yet to actually list them. But I do think it's important and I'm not exactly sure why it is in the Minority motion but not in the Majority, that it ought to be stated no matter how we end up today because that was something we clearly heard.

I certainly agree with what Della said, maybe we've fallen down on the education aspect. We do have an existing regulation on customary trade and customary trade, as we've discussed today, but maybe wasn't all that known was certainly something that was enabled to and recognized by ANILCA and not anything that had been sought to be restricted, if you will, and to me some of the clearer statements here where we've eliminated the mention of the vague words about what a significant commercial enterprise might be, I would hope would have enhanced what rural residents can do between each other, but I also feel like we've somehow missed the communication here and I think that's maybe what we're struggling to get at, so I'm hoping that Ralph can explain it here.

Thank you.

MR. LOHSE: Mr. Chair, actually I really don't have anything to clarify what she was talking about. I was just going through what you have in front of you
right here. I was looking at the Majority recommendation, number 11 and 12 and I was trying to figure out what does it restrict, and the only thing that I can see that it restricts is that transactions between rural residents and others has to be used for their personal or family consumption. That's the only restriction that I find in there.

Which goes along a lot with what Southcentral was talking about when they were talking about that they thought that subsistence should be for family use, for the use of people and not for business. You've all, pretty much it seems like accepted the 13 part or the 12 part, depending on which one you're looking at on the no commercial transactions.

But I'm thinking of people in Cordova and probably other coastal communities and other communities around the state that do have processing facilities or do have people who process meat or fish and I've been giving some thought to what the Alaska Department of Fish and Game brought up when you look in Section B there where it says you may not purchase, receive or sell subsistence harvest fish or their eggs. And many of our subsistence users in Cordova end up taking their fish to the local processing plant to them vacuum-packed. Some of them take them there to have them canned. And I really think that little addition that the Fish and Game suggested that it says -- where it says you may not purchase or receive for future sale or sell subsistence harvested fish, their parts or their eggs. Because otherwise, a very common practice in any community that has processing facilities is taking -- and I know it happens up in Fairbanks or up in Nenana, too, you take your fish to somebody who is a dual-purpose person. He buys and sells fish commercially and he also custom processes for individuals. And I think that whichever one of these you take, that you need to give some thought of sticking that in there or you'll be ending up making a lot of local users into doing -- or processors into doing something illegal.

My recommendations would be to go with your Majority motion but add what the Minority put in. Della and I were talking about that, add that you need to be able to recognize -- that you recognize that you need to be able to recognize, you know, differences in different areas -- regional differences. And by putting it in there in words, you're doing the same thing as what we tried to do as a RAC.
We weren't trying to say this is the dollar amount we want or this is the percentage amount we want, what we were trying to say is we need something that says that this stuff is really for family and personal use and that was our way of putting it on the table. But by putting that into your proposal, you'll recognize that in the future we need to adjust regional differences if they come up so that somebody in the future doesn't forget that.

Thank you.

CHAIRMAN DEMIENTIEFF: Let me just respond to that real quick, Ralph. I think I kind of alluded to it earlier but let me just point it straight out, I think as far as myself and my participation as a Board member, I want to do that as the individual RACs bring us stuff. If they're not ready to bring it, if it isn't well enough understood in your region but when the RAC itself brings the regional specific proposals then I want to look at those on their own individual merits. But that goes as the RACs go.

Gerald.

MR. NICHOLIA: Concerning the Minority view and the Majority view. I think you guys have the power and everything to mix those two and whatever comments you heard today, to make it good. Because there are people from Tanana that knows how much fish was caught in this fish net and how much fish was caught in that fish wheel and they know who's catching it and they know who's going to do wrong and we'll chase them out, like you said, we'll chase them. But it's up to you guys, how you're going to put this down on paper.

But to me, what the biggest issue in my region was between me and Virgil was dogs. So we put family human consumption in there instead of commercial enterprise. It's just so simple. I really believe it has to be region specific. In the Eastern Interior you're going to need to do that.

MR. EDWARDS: Mr. Chairman.

CHAIRMAN DEMIENTIEFF: Gary.

MR. EDWARDS: I guess I'm prepared to follow-up on Mr. Niles [sic] suggestion, but Ralph has put this issue of having subsistence food commercially processed. And I know we spoke with our law enforcement
people over lunch and I guess I'd just like for them to maybe address it and if it would occur how would we do it before we just maybe jump into accepting some language.

So I don't know if Stan is still here, but maybe Stan you could address that issue because I know you did look at the State's language.

MR. PRUSZENSKI: Thank you, Gary. Mr. Chair. My name is Stan Pruszenski. I'm the special agent in charge for the Office of Law Enforcement with the Fish and Wildlife Service.

We did look at the language recommended by the state of Alaska dealing with fisheries businesses being able to acquire or possess presumably short-term and value added, so to speak, to fish as long as it's not received with the intent to sell.

And I would like just to throw out to you folks that for enforcement folks to prove intent is often difficult. Right now I think the way the Majority proposal is put together, it specifically and very succinctly has two systems. One is a commercial system and one is the subsistence process. And if this goes in, as the Fish and Game has proposed, I think we would start to have commingling, intermingling of fish, both commercial fish and subsistence fish. And from my perspective that would be very hard to control or regulate.

MR. EDWARDS: Mr. Chairman. Stan, maybe I could ask, do you see a way as Mr. Lohse has pointed out in his area it's a fairly common practice apparently to have subsistence caught fish vacuumed and maybe even smoked, would you see there would be a practical way that that could be addressed and permitted at the same time and not causing some of the issues that you raised?

MR. PRUSZENSKI: Again, that would potentially require additional regulation to include record-keeping. So if we had X amount of fish, X amount of pounds going into this facility, we, as enforcement officers would like to be able to document that same number or amount of fish going out to that same individual.

CHAIRMAN DEMIENTIEFF: Okay, Grace first and then Robyn.

MS. CROSS: I have a question for, I forget his name, I'm sorry.
CHAIRMAN DEMIENTIEFF: Stan.

MS. CROSS: What if, like on number 13, what if you just take out, you may not purchase and take out, receive, sell subsistence harvest fish? Would that work? I mean just take away receive?

CHAIRMAN DEMIENTIEFF: Hang on, let me -- Grace asked a question.

MR. NICHOLIA: Mr. Chair, I.....

CHAIRMAN DEMIENTIEFF: No, no, Gerald, let.....

MS. CROSS: On number 13 it says, you are required to be licensed blah, blah, you may not purchase, take out, receive, sell subsistence harvest fish, their parts and their eggs -- just take receive out, would that solve the problem?

MR. PRUSZENSKI: I think what I'm looking at are two different situations. If you take out receive under 13 b is where I'm at, is on 13 b and receive, if we go into a commercial setting, a commercial business and there are fish there and we are not able to document or prove that the business purchased those fish, but they are just there and they are subsistence fish, that's what we're looking at. We're trying to, again, keep the subsistence fish out of this commercial setting.

CHAIRMAN DEMIENTIEFF: Okay, let's see, Ralph is that -- I think I know where you want to go, is that a follow-up to the thing he just raised because I'm going to allow you to have a turn if that is.

MR. LOHSE: It is. I would like to ask him a question or the State a question at the same time, because I think there must be regulations in place governing that at this point in time because I know that we have facilities in Cordova that handle commercial fish, they pack sport caught fish and they pack subsistence fish. In other words they custom process fish for sportsfishermen, they custom process fish for subsistence fishermen and they buy and sell commercial fish. And I'm pretty sure that there's enough enforcement there that if that was an illegal activity it wouldn't be taking place. And I'd like to ask the Fish and Game if there isn't already a process in place for that?
MR. PRUSZENSKI: Yeah, you're entirely correct. Even if you wouldn't be allowing this in the Federal agency -- or the Federal system, it's allowed under the State system currently right now. Under State regulations, persons licensed under A.S. 43.75.011 to engage in a fisheries business for commercial purposes or barter or solicit to barter for subsistence taken salmon and their parts, so you're entirely correct, that is happening currently under the State system and will continue to happen under the State irregardless whether you prohibit it under the State system.

CHAIRMAN DEMIENTIEFF: Okay, Robyn and then Gerald.

MR. NICHOLIA: Yeah, Mr. Chair.....

CHAIRMAN DEMIENTIEFF: Robyn first.

MR. NICHOLIA: Oh, okay.

CHAIRMAN DEMIENTIEFF: He had his.....

MR. SAMUELSN: Thank you, Mr. Chairman. I'm pretty concerned where we're going. I look on the discussion paper that Staff provided for us and the analysis and it said that the '96 Congress, the intent of Congress was to prohibit the unlimited exchange for cash is clear, the report states that the Committee did not intend for customary trade to be construed to permit the establishment of a significant commercial enterprise under the guise of subsistence uses.

I look on Page 13 on the Staff recommendations, read the proposed regulation language and I got to the justification, number 1, provides for unlimited customary trade between rural residents, which encompasses a majority of customary trade exchanges.

On the thought train that we're going, we're going -- you guys are going to adopt something here today and then it's going to be kicked back to the Regional Councils, who'll be meeting sometime next fall because by the time your regulation comes out, I don't think we're going to be able to react and promulgate a recommendation back to you in time before the season, so basically what we're going to have is an unregulated open-ended definition that each individual, I guess, significant commercial enterprise should be based on somebody's total income or whatever because we surely haven't defined it here and it
will be on a case by case basis. What is significant to me may not be significant to you or vice versa. And I think we're just as -- we haven't accomplished where we wanted to go quite yet and we have to -- I would ask that you guys consider putting in a dollar amount as a cap or something that we could come back and make recommendations within regions.

Maybe some regions, because the resource is so low would only want to have a low dollar cap. Maybe it'd be $200. Maybe some regions with a lot of resources and their customary and traditional practices may recommend $600. But you guys could take that in consideration. But for the next year you have something in there to cap this because I don't looking at 13 is consistent with what Congress was saying.

CHAIRMAN DEMENTIEFF: I guess before we go to Gerald, I'll just point out the fact that if we don't do something this practice will go on because it is unregulated today. Okay, so if we don't do anything it is an unregulated practice at this current time.

Gerald.

MR. NICHOLIA: Thank you, Mr. Chair. We had a law enforcement officer at our meeting, he was a lieutenant or something. He said if we ever busted somebody and brought them to law or court or something they can't define significant commercial enterprise, that's why we submitted family human consumption. Personal use and family income, there's no way that you could put a dollar amount on any natural resource that we're -- that rural people are utilizing. There's no way that you could put a dollar amount on that piece of strip that my uncle sold to me for that price, and he sold it to somebody else for a different price. There's no way you could do that. There's only -- what you're trying to define here instead of customary trade, you're trying to define significant commercial enterprise and let's just stick to customary trade and say it's for family human consumption.

CHAIRMAN DEMENTIEFF: Pete.

MR. PROBASCO: Mr. Chair, maybe we can answer the question as far as what can take place at a processor as far as marking other non-commercial catches and we have Mr. Manny Soares with DEC here and he'll address what's required by processor for identifying fish.
MR. SOARES: Yes, Mr. Chair, Manny Soares with the Alaska Department of Environmental Conservation and the seafood processing regulations clearly define requirements for processors to adhere to when processing subsistence or sport caught fish that is not for commercial sale.

CHAIRMAN DEMIENTIEFF: Do we need more volume, is that what you're saying? There we go.

MR. SOARES: I said that the regulations specifically address what the processors must do to identify and segregate sport caught or subsistence fish and they must keep records of that while the product is at their facility.

Thank you.

CHAIRMAN DEMIENTIEFF: Is that a DEC regulation?

MR. SOARES: Yes.

CHAIRMAN DEMIENTIEFF: Bill.

MR. THOMAS: Thank you, Mr. Chairman. I was just looking over this Page 13 and it brings back some points I was trying to make all the time. I'll just read one of three of them.

The top of Page 13 says, some individuals may see customary trade as a way to participate in commercial fishing without a limited entry permit. Well, for one thing that's speculation again, that's unwarranted and now that you can buy a limited entry permit for the cost of a piece of pie -- the only thing that isn't ambiguous in this whole page is where it says we urge the Board to make clear to the public that customary trade rules do not exempt people from DEC regulations and FDA rules on the sale and processing of foods.

That's a good statement but I point out again that's the only one that's not vague.

CHAIRMAN DEMIENTIEFF: Gary.
this point I am ready to make a motion.

That motion would be that the Board adopt
the regulations on customary trade as recommended by the
Majority Interagency Staff Committee.

In doing so I think that we're going to
continue to be respectful of traditional uses by not
putting restrictions on the exchange between rural
residents. We're also going to clear up all the confusion
that's been surrounding significant commercial enterprise
by providing a much clearer definition. And above all, I
think it will eliminate the potential for abuse by not
allowing subsistence taken fish from entering into
commerce.

CHAIRMAN DEMIENTIEFF: We have a motion, is
there a second to the motion.

MS. GOTTLIEB: I'll second it.

CHAIRMAN DEMIENTIEFF: Okay. I think
probably that I could support that motion. And, you know,
that's one of the things that we're going to be looking for
is that dollar amount in the regions that feel like they
have to have it. And it's not something that I'm prepared
to support today. And the reason is that I'm basically
swayed by Grace's argument. If we put one number out
across the whole state it's not going to mean the same. So
that's part of, I think, our tailoring these things to fit
particular regions. Because the cost of living is -- you
now, is different, the cost as Grace pointed out.

So Bill.

MR. THOMAS: Mr. Chairman, thank you.

There's just one particular incident that I could recall
that will support your comment on disparity across the
state. Years ago I was at a Board of Fish meeting and it
was mentioned at the meeting that somebody on the Yukon
River had a permit for 40,000 chums. And so the Chairman
of the Board says 40,000 chums, well, that's pretty
excessive, and so then there was a motion made to cut that
number in half and this would have been statewide, cut
everybody's allotment in half. So while a person on the
Yukon River who got 40,000 chums, the permit for my area
was 25. So while he'd still be getting 20,000, I'd be down
to 12 and a half fish. So that kind of supports the
numbers concept from region to region.
CHAIRMAN DEMIENTIEFF: Thank you, Mr. Chairman.

MR. CESAR: Mr. Chairman, I'd like to raise a point of order.

CHAIRMAN DEMIENTIEFF: Yes.

MR. CESAR: One, we have raised this now to a Board decision, not discussion. We have an active motion on the floor and given that, I think you need to constrain the remarks to the Board members while they go through the voting process.

MR. THOMAS: Mr. Chairman.

(Laughter)

CHAIRMAN DEMIENTIEFF: What we're going to do right now is take a little break.

MR. THOMAS: I want to defend myself.

CHAIRMAN DEMIENTIEFF: You can filibuster while we're on break, Bill. But we will take a short break.

(Off record)

(On record)

CHAIRMAN DEMIENTIEFF: We'll go ahead and call the meeting back to order. But first of all I have to -- I didn't respond to Niles point of order prior to break and basically the way we have operated in the past is that once we get the motion on the table, the discussion is restricted to members of the Federal Subsistence Board, however, any individual Board member can ask questions of Staff or of the Regional Council or State or whoever, to help them understand the issue. But it is a Board member driven process. So your point of order is taken.

Niles.

MR. CESAR: Mr. Chairman, I'm trying to find a way. I mean I agree with everything that the Majority Staff Committee are doing here and I believe that we are headed in the right direction. We do have some differences in our approach to it but I think we're all headed in the same direction.
If there were a way to have a recognition of the regional differences inserted in the Majority Staff recommendation, then I think that I could support it. So I don't see our great wordsmither here, either Taylor or Sandy -- oh, there he is, if there is a way to do that. gain, I think overall I agree with it and even if that language wasn't in there, I think we're headed in the right direction. It just seems it would give me a lot more comfort if we could insert the Board shall recognize and respond to regional differences in the implementation of these regulations.

CHAIRMAN DEMIENTIEFF: Funny you mention that Niles, Tom and I were just going over some language that he had drafted up, maybe Tom could you.

MR. BOYD: Mr. Chair. Mr. Cesar, the language that you speak to almost quotes the language in the Part 11 in the Minority proposed regulation, the last sentence there, the Board may recognize regional differences and define customary trade differently for separate regions of the state.

I think we could start with that as the sentence that we could insert as a separate paragraph in the proposed regulation of the Majority motion if that would suffice to meet your concerns.

MR. CESAR: It goes a long ways. I think I'd be happier with the word, shall, I think that gives it some more strength, I think.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN DEMIENTIEFF: Yes.

MS. GOTTLIEB: I had wanted to offer a friendly amendment along these same lines and also recognizing what Niles just said, perhaps the wording could be something like, instead of the exact same language we have in the current language, we have come a long ways based on the discussions we've had with the RAC Chairs and the RACs and we could say something like the Board recognizes regional differences and may define customary trade differently for separate regions for the state. It's pretty similar to the current reg but recognizes what we've heard so far.

CHAIRMAN DEMIENTIEFF: Your language is basically recognizing that we recognize or that we -- taken
MR. CESAR: Mr. Chairman, there's a world of difference between may and shall. And, you know, I'm not going to get hung up on it but I do think it denotes a more than just desire to go in a direction it says we will go in the direction of recognizing those differences.

CHAIRMAN DEMIENTIEFF: I think it sets it up for me, Niles, that language does set it up because if a particular Regional Council isn't prepared to bring region specific concerns, that would be the difference between may and shall as far as I'm concerned.

I think what I was speaking to earlier, is when the Regional Council is ready to bring region specific concerns we will be looking at them then but if that takes a couple of years then I don't want to be in a position of getting too far in front of the Regional Council; when the Regional Council is ready.

So was that an amendment?

MS. GOTTLIEB: Yes, Mr. Chair.

CHAIRMAN DEMIENTIEFF: There is a motion to....

MS. GOTTLIEB: An attempt.

CHAIRMAN DEMIENTIEFF: Okay. We've got the language on the record -- okay -- you got the language?

MR. CESAR: Excuse me, Judy, are you suggesting that you'll stay with the original may?

MS. GOTTLIEB: Well, actually I think I got lost in the discussion between the two of you and so maybe, Mr. Chair, if you could suggest what I meant to say there.

CHAIRMAN DEMIENTIEFF: The Board.....

MR. CESAR: I can tell you what you meant to say.

(Laughter)

CHAIRMAN DEMIENTIEFF: The Board recognizes regional differences and may define customary trade differently for separate regions of the state, I think is
basically what we had. Okay.

That is a motion to amend?

MS. GOTTLIEB: That is my motion.

CHAIRMAN DEMIENTIEFF: Is there a second?

MR. EDWARDS: Second.

CHAIRMAN DEMIENTIEFF: Discussion on the amendment.

(No Discussion)

CHAIRMAN DEMIENTIEFF: Hearing none, all those in favor of the amendment please signify by saying aye.

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed same sign.

MR. CESAR: Aye.

CHAIRMAN DEMIENTIEFF: Okay. Motion carries. Now, we have the motion before us as amended. Is there any further discussion on the main motion as amended?

MR. CESAR: I call for the question on the main motion.

CHAIRMAN DEMIENTIEFF: All those in favor signify by saying aye.

IN UNISON: Aye.

CHAIRMAN DEMIENTIEFF: Those opposed, same sign.

(No opposing votes)

CHAIRMAN DEMIENTIEFF: Motion carries.

That completes our business today. We're going to adjourn but before we do I'll just point out to the Board that it will probably be, and it's not like we haven't been busy, I mean we had a major regulatory meeting in December, and of course the holidays and now it will probably be sometime after January, but Tom, if you could, start contacting
Board members because it will be about three months before we have our regular work session that we were going to try to have monthly, so maybe we could just start getting a hold of the Board members and find out what's a good date so that we can schedule a work session.

With that, thank you one and all for all your hard work and contributions to the meeting. With that we are adjourned.

(END OF PROCEEDINGS)
CERTIFICATE

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

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

THAT the foregoing pages numbered 2 through 102 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD PUBLIC MEETING taken electronically by myself on the 14th day of January 2003, 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 22nd day of January 2003.

Joseph P. Kolasinski
Notary Public in and for Alaska
My Commission Expires: 4/17/00