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FEDERAL SUBSISTENCE BOARD
PUBLIC MEETING

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VOLUME I

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January 14, 2003
Egan Convention Center
Anchorage, Alaska

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P R O C E E D I N G S

(Anchorage, Alaska - 1/14/2003)

(On record)

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.

MS. WILKINSON: Ann Wilkinson. Subsistence Management Office, Southcentral Regional Coordinator.

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1 MR. PROBASCO: Good morning, Board. My
2 name is Pete Probasco. I work for the Office of
3 Subsistence Management. I'm here to present the issues on
4 customary trade.

5
6 MS. SEE: Good morning. My name is
7 Marianne See. I'm the Assistant Director of the Division
8 of Subsistence at the Alaska Department of Fish and Game.

9
10 MR. VINCENT-LANG: Good morning. My name
11 is Doug Vincent-Lang. I'm with the Alaska Department of
12 Fish and Game.

13
14 MR. CAMPBELL: Rod Campbell. Alaska
15 Department of Fish and Game, Commercial Fisheries.

16
17 MR. WILDE: Harry Wilde. Yukon-Kuskokwim
18 Council Chair.

19
20 MS. TRUMBLE: I'm Della Trumble. Chair,
21 Kodiak/Aleutians.

22
23 MR. LOHSE: Ralph Lohse. Chair,
24 Southcentral.

25
26 MR. THOMAS: Bill Thomas. Chair,
27 Southeast.

28
29 MR. EDWARDS: Gary Edwards. U.S. Fish and
30 Wildlife Service.

31
32 MR. TERLAND: Gene Terland. Bureau of Land
33 Management.

34
35 MS. GOTTLIEB: Judy Gottlieb. National
36 Park Service.

37
38 MR. LORD: Ken Lord. I'm one of two legal
39 advisors to the Federal Subsistence Program.

40
41 CHAIRMAN DEMIENTIEFF: Thank you one and
42 all for being here. I hope everybody enjoyed their holiday
43 break. I remember the last time we were meeting everybody
44 was anxious to get out of here and I find myself just as
45 anxious in the new year to get actively engaged again. So
46 I guess what does go around does come around, I guess. I'm
47 looking forward to the opportunity to meet today.

48
49 We do have one request for public comment
50 on a non-agenda item. Nicholas Tucker who is also going to

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1 be testifying with regard to customary trade later. So
2 Nick -- where'd Nick go -- yeah, come on up.

3

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

7

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

11

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

21

22 I've been able to have experienced the very
23 life of our people when I was very young. I had not been
24 able to speak English or I didn't even know White people
25 existed then. And so I came in -- I became aware that our
26 Yup'ik way of life has become not controlled by ourselves
27 now but with the other regions in the world. And that's
28 kind of perplexing, very troublesome. I believe that the
29 control -- I have observed my elders and what I've seen,
30 they were able to take care of themselves by taking care of
31 the resources, making sure that they regenerate for -- or
32 save for the future. And anything done well, is thought
33 out well and taken in very slow steps. And what has built
34 over 10,000 years, I don't think we can make any changes in
35 15 minutes.

36

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

45

46 I don't think Yup'ik way of life is an
47 arena of politics. I think it's a special way to look at
48 the Native culture in our state and look at it something as
49 an asset to the state, rather than what has been perceived
50 over the centuries as a liability. We people think, we

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1 feel, we hurt, we cry and even the government even ask us
2 to risk our life for this country.

3

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

16

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

21

22 Thank you, very much.

23

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

28

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

32

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

37

38 I think it's important that we acknowledge
39 some of the effort that has gone into this process since
40 the Board started it in the fall of 2000. And particularly
41 I'd like to recognize the Council members that are sitting
42 here that helped initially with defining customary trade.
43 People here that are sitting as Chairs that served on this
44 task force and assisted were Bill Thomas from Southeast,
45 Mr. Ralph Lohse from Southcentral, Della Trumble from the
46 Kodiak/Aleutians, Ray Collins from the Western Interior,
47 Gerald Nicholia from the Eastern Interior and Grace Cross
48 from the Seward Peninsula. Those are specific Council
49 members that served and assisted with customary trade.

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1 In addition, I think I'd be remiss if I
2 didn't recognize a key person that helped me throughout the
3 process and was a sounding board, and that was Ann
4 Wilkinson. She proved very valuable in assisting me and
5 the task force in going through this process.

6
7 Board members I'd like to have you focus
8 your attention, I'll be referencing page numbers, this
9 yellow booklet, Customary Trade. I do have an overhead
10 presentation but maybe we're -- the distance here, we may
11 not be able to see it so I'll reference specifically pages
12 in here.

13
14 Mr. Chair, the objectives of my
15 presentation today, I am purposely going to keep it brief
16 to allow more time for questions. Many of you have -- all
17 of you have heard this topic on customary trade and the
18 points that I'm about to make in previous meetings. The
19 objective to my presentation, I will briefly go over the
20 regulatory background; outline why the customary trade is
21 being addressed by the Federal Subsistence Board, summarize
22 the process that the Board initiated to help develop the
23 information the Board is looking for in defining customary
24 trade, briefly hit the high points of the proposed rule
25 that you passed in December of 2001, and then review the
26 Office of Subsistence Management Staff recommendation that
27 your Staff Committee looked at last week and then
28 subsequently provided recommendations from them.

29
30 Customary trade, I think it's important we
31 first establish the baseline. ANILCA identifies customary
32 trade as a subsistence use. And for clarification when we
33 talk about customary trade, it's different from barter, in
34 that, customary trade describes and defines cash sales.
35 It's also important to understand that Federal regulations
36 provide for a very limited sale of subsistence taken fish.
37 Those are two important factors that the Board had prior to
38 the start of this process and the important underlying
39 theme is customary trade is recognized as a subsistence
40 use.

41
42 Why is the issue before the Federal
43 Subsistence Board? Well, first Federal regulations provide
44 for a limited sale as long as the sale does not constitute
45 significant commercial enterprise. And the problem is,
46 neither legislative history, nor the regulations define
47 what significant commercial enterprise means or it doesn't
48 go and specify allowable level of customary trade. And
49 this is where, when we first started this process, that the
50 Federal Subsistence Board found that the regulations, based

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1 on input received from Staff, that the regulations were
2 unenforceable, the interpretation of significant commercial
3 enterprise was unclear and they felt that it was important
4 that we try to define the parameters of customary trade and
5 still safeguard traditional practices.

6

7

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

20

21

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

30

31

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

36

37

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

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1 The proposed rule defining customary trade was adopted in
2 December of 2001.

3

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

9

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

14

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

19

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

23

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

33

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

41

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

48

49 Now, Mr. Chair and the Board, we've
50 actually had two comment periods through this process.

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1 Initially from the proposed rule and then as a result of
2 that comment period, Staff took the proposed rule along
3 with comments and developed three alternatives. And that
4 comment period on that paper that was released in August of
5 2002 ended in November of 2002 and from those comments,
6 from the Regional Councils, from the various agencies and
7 the public, we have an Office of Subsistence Staff
8 recommendation. This was purposely drafted for the purpose
9 to have the Staff Committee's recommend -- to have a
10 recommendation before the Staff Committee from which they
11 could work from.

12

13 And Mr. Chair, this can be found on Page
14 10, and I'll just briefly walk you through it.

15

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

20

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

28

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

37

38 And this is the key.

39

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

47

48 And already in Federal regulations we have
49 a definition for personal or individual and a definition
50 for family.

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1 What this Section 12 does is it provides an
2 unlimited sale to non-rural residents, however, non-rural
3 individuals who purchase the fish have to use it for
4 personal or family consumption. So in other words you can't
5 have a resale of that product.

6
7 Section 13 was expanded. It still covers
8 fishery businesses but it also covers the seller or the
9 buyer on Section 13.

10
11 Mr. Chairman, the final comments and
12 recommendations, as I stated, reflect a wide array of
13 input. Ranging from recommendations to take no action, to
14 dollar specific limitations or caps regarding cash exchange
15 between rural and non-rural users.

16
17 What I was able to, and it's easy to
18 decipher from the comments is the rural subsistence users
19 concern focuses on the unknown of the potential impact of
20 regulating this complex issue and what it may have on the
21 rural communities of Alaska and their subsistence way of
22 life. Their concern over the potential negative impacts of
23 a hastily crafted regulations that are too broad and far
24 reaching are their concern. They emphasize the need to
25 move slowly and cautiously, and this has been echoed
26 throughout the process, both comment periods.

27
28 However, the Board from the onset and the
29 charge that they've given me, as well as other Staff, our
30 task was to develop a regulation that would preserve
31 traditional customary trade practices and they're
32 consistent with traditional cultural values.

33
34 Regional Councils and rural subsistence
35 emphasized that in most cases the traditional practices
36 involving customary trade are self-limiting and they
37 believe this concept should be utilized as a cornerstone in
38 developing regulations.

39
40 The proposed regulation as modified would
41 establish a regulation preventing the cash exchange of
42 subsistence harvested fish where the greatest potential for
43 abuse could occur. In other words, commercial entities.
44 Other transactions would be permitted to occur safeguarding
45 traditional and customary practices.

46
47 In conclusion, Mr. Chair and Board, history
48 has shown us that when a regulatory body elects to tackle
49 a complex issue, such as customary trade, we have found
50 that the final results or a perfect regulation is rarely

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1 achieved in the first attempt. In fact, the refinement of
2 the regulation or regulations is not fully realized until
3 numerous revisitations of the issue. It is recommended
4 that an approach be used to define customary trade, where
5 the first attempt is to develop a regulation that addresses
6 the area of greatest potential for abuse and defers any
7 further action for future consideration by the Board if
8 deemed necessary.

9

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

15

16 Thank you, Mr. Chair.

17

18 CHAIRMAN DEMIENTIEFF: Ken.

19

20 MR. LORD: Well.....

21

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

26

27 MR. SAMUELSEN: Thank you.

28

29 CHAIRMAN DEMIENTIEFF: Go ahead.

30

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

35

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

38

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

47

48 The second point is one about which the
49 Staff Committee expressed a concern there may be some
50 misunderstanding about. The point is this, generally the

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1 Federal Subsistence regulations apply only within or
2 adjacent to conservation system units and other Federal
3 lands as described in Section III of the regulations. We
4 believe, however, that Federal regulations governing
5 customary trade of subsistence taken resources, and this
6 includes the current regulations as well as the proposed
7 regulations, extend to any customary trade of legally taken
8 subsistence fish regardless of where the actual cash
9 transaction takes place. However, State officials may
10 disagree with that view.

11
12 What this means is that if a Federal
13 subsistence user catches a fish in Federal waters then
14 takes it to State lands to sell it, there is the
15 possibility that he or she could be charged in State court
16 for violating the State prohibition on sales of subsistence
17 caught fish. There are no court decisions that speak
18 directly to this point and there are arguments to be made
19 both for and against what we call the Federal preemption of
20 State law.

21
22 Only the courts will be able to
23 definitively resolve this issue but we thought that the
24 reminder was important to have today.

25
26 Thank you, Mr. Chair.

27
28 CHAIRMAN DEMIENTIEFF: Thank you. Before
29 we do the summary of written public comments there are a
30 number of people that want to testify, if there are other
31 people in the group that's assembled here that wish to
32 testify, the blue forms are available at the table right
33 outside the middle door here and you can get them and
34 they'll make sure we get them here so we can call on you.

35
36 With that, Ann, summary of written public
37 comments.

38
39 MS. WILKINSON: Mr. Chairman, Board
40 members. The summary of written public comments is on Page
41 24 in that buff colored pamphlet. As a result of the
42 extended comment period we received an additional 41
43 written comments from Federal and State agencies, tribal
44 organizations, commercial fisheries organizations and
45 interested individuals.

46
47 Three comments stated a distinct preference
48 for Alternative 2, and two for Alternative 1. The rest of
49 the comments either stated that they opposed all customary
50 trade of subsistence caught fish or made comments and

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1 recommendations related to the proposed rule and the
2 alternatives. At least 10 of the comments we received were
3 a direct response to the article published in the Anchorage
4 Daily News on October 18th, 2002. Of these 10 comments,
5 nine were opposed to all cash sales of subsistence caught
6 fish and one supported Alternative 2. A copy of the news
7 article is included in the supplemental document entitled
8 Public Comments January 2003.

9

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

25

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

30

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

41

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

46

47 Regarding enforcement, without
48 documentation this regulation is completely unenforceable.
49 Enforcement officers and fisheries managers will be
50 stretched beyond their limited manpower making regulation

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1 of customary trade ineffective.

2

3 And their concerns regarding research.

4 Without studies to support documentation of customary trade

5 and how new regulatory language might affect current and

6 traditional activities, it is premature to create new

7 regulation.

8

9 There were general recommendations from

10 these written comments and I will just go through those

11 rather quickly.

12

13 Adopt the proposed rule as published.

14

15 Do not restrict customary trade

16 transactions.

17

18 Prohibit all cash transactions.

19

20 Ban sales between rural residents and non-

21 rural residents.

22

23 Some cash exchange should be allowed but

24 not enough that it will be appeal to potential

25 entrepreneurs.

26

27 Wherever cash transactions are allowed

28 record-keeping must be required.

29

30 Require permits for anyone participating in

31 customary trade.

32

33 All fish which will be sold under customary

34 trade regulations must be marked immediately upon harvest.

35

36 Be clear that this regulation applies to

37 individuals, groups, association, co-ops, villages and

38 regions.

39

40 Balance the traditional practices with a

41 regulation that does not allow the commercialization and

42 expansion of subsistence resource uses.

43

44 There were some specifically recommendation

45 changes to the proposed rule.

46

47 In Paragraph 12, transactions between rural

48 residents, it was recommended that we allow limited cash

49 sales and limit cash transactions to \$500 per household.

50

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1 he other recommendation was to prohibit
2 cash sales altogether.

3
4 Paragraph 12, transactions between rural
5 residents and others, the recommendations were allow sale
6 of fresh or frozen fish only.

7
8 No processed fish may be sold or bartered
9 under this subsection.

10
11 Limit to personal or family consumption by
12 the purchaser.

13
14 Fish may not be resold.

15
16 Prohibit all cash transactions between
17 rural residents and others.

18
19 Limit the pounds of fish allowed to be
20 sold.

21
22 Do not limit cash transactions.

23
24 Limit cash transactions to \$400 per
25 household.

26
27 Adopt region specific language.

28
29 And for Paragraph 13, no licensed fishery
30 business, seafood processor or seller of food to the public
31 under other State laws may purchase, barter for or solicit
32 for subsistence taken fish, their parts or their eggs.

33
34 Mr. Chairman, that is the conclusion of the
35 written summary.

36
37 CHAIRMAN DEMIENTIEFF: Thank you, very
38 much. It's now time for public comments and I'll take them
39 in the order that they were turned in. Nicholas Tucker.

40
41 MR. TUCKER: Mr. Chairman and members of
42 the Board. How much time do I have for addressing the
43 Board? I feel that we have very few people from the
44 villages that are directly affected by this rule.

45
46 CHAIRMAN DEMIENTIEFF: Currently we have
47 five requests for public comment and I think I'll -- you
48 know, sometimes when we have a lot of requests then, you
49 know, I'm a little bit more limiting, but I think we could
50 go with five minutes probably.

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1 MR. TUCKER: Yeah, I would feel much more
2 comfortable and at peace with myself if I was allowed to be
3 able to express myself freely and five minutes, coming all
4 the way up from across the state and finally to address the
5 Board, and in respect to the life of my people I feel very,
6 very somewhat troubled here. This is unlike any other
7 board process anywhere in the United States. This has to
8 do with the very people that live here as unique indigenous
9 people in Alaska.

10
11 CHAIRMAN DEMIENTIEFF: I guess, Nick, as we
12 pursue on with this, you know, we have to have -- people
13 have to understand that people have had opportunities to
14 participate in this decision, you know, two different times
15 prior to it coming this far. So maybe with that we'll just
16 go ahead and move on. I just wanted to note for the record
17 that there has been ample opportunity for people to
18 participate in the process. This is not something that
19 just happened.

20
21 MR. TUCKER: Yes, Mr. Chairman, I
22 appreciate the ample time. But I do not think after 10,000
23 years that we did not have ample time to take this into
24 very deep thinking at our own people.

25
26 So I begin, Mr. Chairman, I'm not certain
27 how, at this point, whether or not this proposed rule
28 should be adopted. It's too troubling. And a number of
29 things that I have with regard to any dealing with
30 customary trade is that I think one of the things that is
31 very important is that first and foremost, any resource
32 that we have for survival of our people we should have for
33 human consumption.

34
35 And today our subsistence way of life as
36 you have witnessed and it's been demonstrated throughout
37 the state is declining as well as the resources. The
38 resources are very hard -- they're more and more difficult
39 to go after.

40
41 And looking at the choices in looking at
42 how we're going to handle adopting this proposal, I think
43 the Board may have overlooked one area. As I look at the
44 summaries of written public comments, never in my life have
45 I ever seen such opposing, differing and opposite views and
46 conflicting views regarding the customary trade. It seems
47 to me, I don't know if the Board is going to feel
48 comfortable adopting something for the people of Alaska
49 when the entire state is demonstrating very, very different
50 views. And if you are dissecting each one of these

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1 expressed concerns, I don't know if anyone in the world
2 would be able to feel comfortable adopting some kind of
3 rule.

4

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

11

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

21

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

29

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

36

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

43

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

50

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1 Thank you, very much.

2

3 CHAIRMAN DEMIENTIEFF: Thank you.

4

5 MR. NICHOLIA: Mr. Chair.

6

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

9

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

17

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

21

22 Thank you.

23

24 MR. SAMUELSEN: Mr. Chair.

25

26 CHAIRMAN DEMIENTIEFF: Yes.

27

28 MR. SAMUELSEN: Over here.

29

30 CHAIRMAN DEMIENTIEFF: Yes.

31

32 MR. SAMUELSEN: Cami, Nicholas.

33

34 MR. TUCKER: Hi Robyn.

35

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

44

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

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1 to keep our customary trade in good standing. Is that
2 clear enough?

3

4 Thank you.

5

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

9

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

21

22 Thank you.

23

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

34

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

37

38 (No Questions)

39

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

42

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

47

48 My name is David Bedford. I'm the
49 executive director of Southeast Alaska Seiners. I'm the
50 Chair of the Subsistence Committee of United Fishermen of

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1 Alaska. And I am an attorney licensed to practice in the
2 state of Alaska.

3

4 I want to start by saying that I appreciate
5 the effort that's gone into this. I know that you folks
6 have been grappling with this for some time. And, again,
7 you know, I've read through all of the public comments on
8 this and I can see that, as was mentioned by the previous
9 speaker, that this is a subject that raises a considerable
10 amount of discord among people. And I have to say that
11 from my perspective as a representative of commercial
12 fishermen, we've been grappling with how do we deal with
13 this?

14

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

21

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

35

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

40

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

49

50 Now, it seems to me in looking at the

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1 proposed rule that you have in front of you that there are
2 some pitfalls in terms of the objectives that you want to
3 achieve.

4
5 In our original written comments, I didn't
6 submit a second set of written comments because I felt that
7 our initial set of written comments pretty much captured
8 what it is we wanted to say. And in our original set of
9 comments what we suggested is that the language that you
10 were contemplated was overbroad and that it's overbroad
11 because what it does is authorize, not only whatever sorts
12 of current practices might take place but also any number
13 of practices that are not customary and traditional
14 practices and therefore are not subsistence. And so in
15 looking at all the various iterations of the rule that have
16 come out and quite frankly, I mean, I have to admit being
17 a little bit confused as to what's on the table right now.
18 I mean Mr. Probasco presented one that's in the materials
19 that were handed out out front. I've seen some other
20 iterations of the rule that are apparently in consideration
21 in some area. But in each and every one of these, it seems
22 to me that there's a threshold question that should be
23 raised in the regulations and that is very simply that we
24 should narrow what it is we're talking about to customary
25 and traditional uses. And I think that this does a number
26 of things. It protects the people who are the subsistence
27 users. It says, you have a determination of a customary
28 and traditional use for customary trade and you then, at
29 that point, have authorized something that is clearly
30 applicable under ANILCA. By the same token you've created
31 a record for the world to see that this practice takes
32 place and that this practice is cognizable under ANILCA.

33
34 And so when people are talking about the
35 fear that over time, that perhaps something will be done to
36 disrupt their use of the resource, that which they have
37 done since time and memorial, in creating the record,
38 albeit with some level of administrative inconvenience, of
39 what customary and traditional customary trade is I think
40 that you do the maximum at that point, not only to comply
41 with the terms of the law but also to protect the people
42 that you are charged with trying to serve.

43
44 That concludes my comments.

45
46 CHAIRMAN DEMIENTIEFF: Thank you, very
47 much. Questions.

48
49 MR. THOMAS: Thank you, Mr. Chairman.
50 Dave, I always appreciate your presentations. Toward the

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1 end there and speaking with so much confusion around the
2 customary trade, you mentioned that you're the subsistence
3 representative for the Seiners Association or facsimile
4 thereof, how close am I to who you represent?

5

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

10

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

15

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

18

19 MR. THOMAS: Do any of them?

20

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

23

24 MR. THOMAS: Thank you.

25

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

28

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

37

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

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1 traditional practices but then also limited the potential
2 for abuse.

3

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

24

25 CHAIRMAN DEMIENTIEFF: Gerald.

26

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

35

36 CHAIRMAN DEMIENTIEFF: Any other questions.

37

38 (No Questions)

39

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

42

43 MS. ASPELUND: Good morning and thank you
44 for this opportunity to testify to you. My name is Sue
45 Aspelund and I am the executive director of Cordova
46 District Fishermen United representing the commercial
47 fishing families of the Copper River and Prince William
48 Sound. And I would like to note for the record that a
49 substantial percentage of our membership are Federally-
50 qualified subsistence users. I don't know if any of them

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1 embark on cash sales of subsistence caught fish but we are
2 Federally-qualified users.

3

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

9

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

13

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

21

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

27

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

33

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

38

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

48

49 The regulations should disallow any sales
50 to a commercial entities, fisheries business or otherwise.

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1 Sales should occur only between individuals, not between
2 individuals and a business. Again, it's our understanding
3 that the legislative intent behind the initial Federal
4 definition of customary trade was that the practice would
5 be non-commercial in nature and that subsistence harvests
6 would not become part of the commercial stream.

7
8 CDFU supports the language utilized in the
9 Majority Staff report recommendation in Subsection 13 dated
10 1/10/03. We believe that it supports extensive public
11 testimony and recommendations of the Regional Councils and
12 it provides important distinctions between customary trade
13 and commercial enterprises. We urge you today to take
14 action at a minimum to adopt Subsection 13.

15
16 We appreciate the difficulty of crafting a
17 workable regulation that acknowledges the variety of
18 important practices developed over time that have come to
19 comprise customary trade and we thank you for your serious
20 consideration of all of these issues.

21
22 CHAIRMAN DEMIENTIEFF: Thank you.
23 Questions? Gary.

24
25 MR. EDWARDS: What is your view on the
26 other sections? You said you supported Section 13, what
27 about.....

28
29 MS. ASPELUND: I don't believe our
30 organization -- our organization doesn't believe that it's
31 up to us to determine what rural users do as long as it
32 doesn't constitute a commercial sale and would prefer to
33 leave that to the Regional Councils and the folks directly
34 impacted.

35
36 MR. THOMAS: Mr. Chairman.

37
38 CHAIRMAN DEMIENTIEFF: Yes.

39
40 MR. THOMAS: Ms. Aspelund, thank you for
41 your presentation. And I understand everything that you've
42 mentioned, the concerns that you've raised and they're all
43 very valid. I did have a question but I scratched it
44 because you answered it, because in your closing remark you
45 didn't feel that subsistence use by itself was a threat to
46 the resource; is that correct?

47
48 MS. ASPELUND: At current levels.

49
50 MR. THOMAS: Right. Okay. Oh, at current

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1 levels. Now, subsistence, you understand is for personal
2 consumption, and do you feel that the subsistence community
3 at some point could be responsible by increasing their
4 consumption to pose a threat to the sustainability of a
5 resource?

6
7 MS. ASPELUND: I suppose it could in some
8 discreet stock situations, I wouldn't feel comfortable
9 making a blanket statement that it never would. I believe
10 that if the commercialization issue is dealt with then
11 probably not.

12
13 MR. THOMAS: Okay. You also expressed a
14 concern that many people that aren't familiar with
15 customary trade and subsistence uses and that resulted in
16 a negative speculation about possibilities of some real
17 evil things that could occur or may occur in this process.
18 And as far as I know, there isn't any history that
19 suggested that ever occurred in the past and I'm wondering
20 why people come up with speculation that there's a monster
21 someplace in the middle of this process that will allow the
22 conservation concerns of a resource to be jeopardized. But
23 I don't expect you to answer that, it's just an observation
24 that I had to one of your comments. Again, I do appreciate
25 your comments.

26
27 MS. ASPELUND: If I may, I'd like to
28 respond to that.

29
30 MR. THOMAS: Go ahead.

31
32 MS. ASPELUND: I was able to participate in
33 all but one of the customary trade task force meet -- I was
34 present at most of those and I also have participated in
35 our Southcentral RAC meetings and those were concerns that
36 were expressed by members of the RACs, that's not coming
37 specifically from outside of that process, but was very
38 much a part of those discussions.

39
40 MR. NICHOLIA: Mr. Chair.

41
42 CHAIRMAN DEMIENTIEFF: Yes.

43
44 MR. NICHOLIA: I'd like to ask you a
45 question, have you ever sat on the bank of the Yukon where
46 this issue came up and actually ate a fish with my grandma,
47 do you speak for the people I represent?

48
49 MS. ASPELUND: No, I clearly speak for the
50 commercial fishing industry. But I sat on the banks of the

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1 Kvichak and cast my subsistence net many a year. My
2 daughter is a fifth generation Alaska Native from Naknek
3 and we have subsistence fished for over 20 years on the
4 Kvichak. So a person my heart is very much in subsistence
5 fisheries and I do, to the extent that someone who's only
6 participated for 25 years can understand it. But my
7 comments today are reflected of the commercial fishing
8 industry group that I represent.

9

10 CHAIRMAN DEMIENTIEFF: Any other questions?

11

12 (No Questions)

13

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

16

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

25

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

31

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

41

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

49

50 Having said that we are opposed to any

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

11

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

20

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

31

32 Thank you, Mr. Chair.

33

34 CHAIRMAN DEMIENTIEFF: Questions.

35

36 (No Questions)

37

38 CHAIRMAN DEMIENTIEFF: Thank you. Steve

39 Vanek.

40

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

46

47 I came here last year and spoke about our
48 group. Maybe some of you remember that. The Kenai
49 Peninsula Resource Management Coalition is a non-profit
50 corporation composed of 27 board members representing

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1 subsistence users, sportfishermen, commercial fishermen,
2 local businesses, Alaska Natives, fish processors, the Cook
3 Inlet Aquaculture Association, commercial organizations and
4 a State legislator.

5
6 We have met over the course of the last
7 four years to come up with a resource management plan for
8 our area. Our plan solves the subsistence question for our
9 area and should be a model for solving it elsewhere. A
10 Constitutional amendment will not solve it. Continued
11 Federal management will not solve it. State and Federal
12 shared management will not solve it. Local control is the
13 only way it can be solved.

14
15 The 10 Federal regions are themselves too
16 big. They need to be broken down into smaller areas even
17 down to the village level in some cases. We, ourselves,
18 have dealt only with the central Kenai Peninsula. Homer
19 and lower Peninsula need to develop their own plan. The
20 Seward area should develop its own. Your question today is
21 customary trade.

22
23 I will read part of our mission statement
24 and then give you our position on customary trade.

25
26 The Kenai Peninsula Resource Management
27 Coalition supports only historical, traditional, cultural
28 and spiritual use of the fish and wildlife resources here
29 on the Kenai Peninsula. Management for all users shall be
30 in the order of priorities, subsistence, commercial fishing
31 and recreational.

32
33 The primary mission for this organization
34 is to ensure that the needs of those residents of the Kenai
35 Peninsula who have historically, traditionally, culturally
36 and spiritually depended on the resources of the Kenai
37 Peninsula are met.

38
39 To fulfill this mission it is imperative
40 that we protect the habitat, the land and the resources
41 that live, spawn, breath and die on the Kenai Peninsula.
42 This is not limited to all species of salmon, halibut,
43 shellfish and wild game, but includes all flora and fauna.

44
45 Our primary goal is to support and promote
46 only maximum sustained yield management. This shall be
47 accomplished by supporting and promoting only sound
48 biological management which utilizes the best scientific
49 data available. One of our goals is to create and maintain
50 harmony among all the people who live and make their home

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1 on the Kenai Peninsula.

2

3 The people and organizations that support
4 this mission statement are ready and more than willing to
5 work with the State of Alaska or the United States Federal
6 government in order to accomplish the goals of the Kenai
7 Peninsula Resource Management Coalition.

8

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

23

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

30

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

38

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

44

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

48

49 Thank you.

50

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1 CHAIRMAN DEMIENTIEFF: Thank you.

2 Questions.

3

4 MR. THOMAS: Mr. Chairman.

5

6 CHAIRMAN DEMIENTIEFF: Yes, Bill.

7

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

20

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

24

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

28

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

33

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

37

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

46

47 One of the things you asked about was the
48 habitat on the Kenai River. Many of us have been fighting
49 the habitat issue and we fight with the Board of Fish who
50 controls that, and you are probably familiar with that kind

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1 of situation. So we 're basically sort of an ad hoc group
2 made up of people that are concerned about the subsistence
3 and about the habitat and about making a living commercial
4 fishing. We have commercial fishermen there and this area
5 there and that industry is very important in our area and
6 we want to protect that, too, as well as subsistence uses.
7 So for that reason that we're just an ad hoc committee and
8 we have no power.

9

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

18

19 The local people need to be in charge.

20

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

24

25 Thank you.

26

27 CHAIRMAN DEMIENTIEFF: Any other questions.

28

29 (No Questions)

30

31 CHAIRMAN DEMIENTIEFF: Thank you, very
32 much.

33

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

38

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

41

42 MR. VANEK: Thank you.

43

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

47

48 MR. VANEK: Okay, thank you.

49

50 CHAIRMAN DEMIENTIEFF: Jill Klein.

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1 MS. KLEIN: Good morning. Mr. Chairman.
2 Members of the Board. Regional Council members. My name
3 is Jill Klein. I'm the current executive director of the
4 Yukon River Drainage Fisheries Association, also known as
5 YRDFA. I'm here today representing our board of directors,
6 our members and local residents of the Yukon River villages
7 that rely on the salmon fishery for both their commercial
8 and subsistence issues.

9
10 YRDFA has worked over the past 10 years on
11 regulatory and management issues that concern Yukon River
12 fishermen. Currently YRDFA supports a slight amendment to
13 the original language which can be found as Alternative 1,
14 which suggests taking no action. When looking at Paragraph
15 11, the slight change that we would make to the current
16 language is that the Board shall recognize regional
17 differences and define customary trade differently for
18 separate regions of the state. We suggest this option at
19 this time as we do not want the subsistence harvest to
20 change significantly due to new regulatory language. YRDFA
21 understands that this regulatory language continues to
22 contain unenforceable language about significant commercial
23 enterprises and we do not want to see the persistence of
24 subsistence abuses.

25
26 But the creation of new regulatory language
27 without proper documentation to support potential changes
28 towards subsistence activities is of high concern to Yukon
29 River fishermen.

30
31 The Federal Subsistence Board had requested
32 that the public help address the following issues. These
33 issues were around creating a definition of a significant
34 commercial enterprise determining what limitations should
35 be placed on the exchange for cash between rural and non-
36 rural residents. If there should be a limit on the
37 exchange of cash between rural residents, as well, how any
38 limitations set on customary trade will affect subsistence
39 needs, traditions and the values of the subsistence way of
40 life.

41
42 These issues, as we have been hearing are
43 still unresolved, quite complex and regionally different
44 throughout the state. The Regional Advisory Councils have
45 carried out valuable work to date in addressing customary
46 trade regulatory language. While their hard work should
47 not go unrecognized, we realize it has been a challenging
48 process.

49
50 We would like to support proper studies

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

9

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

16

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

22

23 Thank you.

24

25 CHAIRMAN DEMIENTIEFF: Thank you.

26 Questions. Gary.

27

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

32

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

36

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

44

45 MS. KLEIN: Some of the information that
46 I've heard is in the Lower Yukon River, there may not have
47 historically been trade for cash sales and so there could
48 be adverse effects if some people -- as some people have
49 raised that there could be -- there will be an increase in
50 subsistence sales for cash. I've heard that being raised

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1 as a concern as well, people on the Yukon River are
2 concerned that there could end up being a reallocation
3 basically if subsistence fish are allowed to be sold, then
4 it's creating a reallocation of the fishery perhaps. That
5 different regions that do not commercially fish might start
6 selling their subsistence cash and there will be questions
7 raised as to how that will affect the commercial fishery as
8 well.

9

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

19

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

35

36 CHAIRMAN DEMIENTIEFF: Thank you. Bill.

37

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

44

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

47

48 MR. THOMAS: Yeah. With regards to people
49 questioning the historical practice of customary trade on
50 the Lower Yukon, those people that raised those concerns,

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1 would you consider them as traditional, historical
2 subsistence users of a subsistence community?

3

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

17

18 CHAIRMAN DEMIENTIEFF: Any other questions.

19

20 (No Questions)

21

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

24

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

29

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

43

44 We don't support any regulation for
45 customary trade.

46

47 Our people have operated the way we have
48 for 10,000 years and we neither seek nor need your approval
49 to continue our traditional lifestyle.

50

00037

1 That's all I have to say.

2

3 CHAIRMAN DEMIENTIEFF: Thank you, very
4 much. Questions.

5

6 (No Questions)

7

8 CHAIRMAN DEMIENTIEFF: Thank you. Vince
9 Tutiakoff.

10

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

15

16 Customary and traditional trade has been an
17 issue for the Aleut people and Native people of Alaska for
18 20 years since the passage of the Alaska Native Claims Act.
19 We now have a new regulation, ANILCA, Title VIII that
20 defines or proposes to define our traditional use. I think
21 many of us who have been around the table discussing this
22 issue, I think, come to the conclusion that regulation
23 dropped on top of customary and traditional use is
24 beginning to become an issue that we do not want to address
25 anymore.

26

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

31

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

36

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

43

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

49

50 We, at the Kodiak/Aleutians level, propose

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1 a \$500 per household cash value trade. I myself and a
2 couple other Board members discussed the issue at length,
3 at what point, when did cash become part of traditional
4 use. I believe it happened when money became an issue
5 within our region. We went from oars to outboards to
6 gasoline and now big 200-foot vessels running around within
7 our subsistence hunting and fishing areas now, that we have
8 to -0- in order to compete with that kind of industry,
9 fishing, commercial as subsistence users we have to go out
10 and barter for money to buy gas, to buy oil or whatever we
11 need to get to a certain location.

12

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

18

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

29

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

39

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

44

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

50

00039

1 Thank you.

2

3 CHAIRMAN DEMIENTIEFF: Thank you.

4 Questions. Yes, Gary.

5

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

11

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

18

19 MR. EDWARDS: Thank you.

20

21 CHAIRMAN DEMIENTIEFF: Any other questions.

22

23 (No Questions)

24

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

27

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

36

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

47

48 And that is, I agree with the gentleman who
49 spoke earlier, in other words the first person who was
50 here. I did not get his name but I do agree with him in

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1 that customary trade is most traditional in the practice of
2 aboriginal Alaska Natives, it is their way of life. And I
3 say aboriginal because that particular term specifically
4 applies to the indigenous inhabitants of this particular
5 area and they have exercised that practice since time and
6 memorial. It is a practice that has been used over many
7 years and thus, developed as a mechanism that allows for
8 communication, building relationships, et cetera. In other
9 words, -- well, it's just a means -- in other words, it's
10 a means of how we get by. How we live from day to day, who
11 we meet, how we talk to people.

12

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

21

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

26

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

36

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

46

47 Further, and in my opinion customary trade
48 will continue as always has been regardless of the laws
49 that you're going to make.

50

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1 Finally, and again I'm opposed to any
2 changes in customary trade due to the fact that, again, it
3 is a way of life. Customary trade is not just applicable
4 to fish, it applies to everything else as in birch bark, as
5 in berries, as in moose and other food gathering
6 activities, everything including hunting areas and more.

7
8 I understand that this issue is for salmon
9 or for fish is what you refer to in particular. What's
10 next, a customary trade determination on the use and
11 harvest of willow? If anything, customary trade needs to
12 be more applicable. In other words, if you're going to
13 deal with customary trade you should make it applicable to
14 everything that's associated with it. And even more so made
15 applicable to only those indigenous people who practice it
16 and use it.

17
18 I guess the bottom line is whose rights are
19 you trying to protect here. And that's my testimony.

20
21 Thank you.

22
23 CHAIRMAN DEMIENTIEFF: Thank you.
24 Questions.

25
26 (No Questions)

27
28 CHAIRMAN DEMIENTIEFF: Thank you, very
29 much. Helen McNeil.

30
31 MS. McNEIL: Good morning. My name is
32 Helen McNeil and I am Tlingit and Nishka (ph). My family
33 is originally from Klukwan and with the customary trade
34 being that I do live in Anchorage -- I'm an artist and I
35 trade a lot of my work with people from Southeast for food
36 which would include salmon, hooligans, hooligan oil, deer
37 meat, seaweed, whatever I can find because with all of the
38 new health studies that are coming about now, there's a lot
39 of medical validation that our traditional foods allow us
40 to live comfortably in this environment. With the sea
41 mammals, the seals, the whales, it allows our body
42 temperature to raise.

43
44 I have arthritis in both my knees so I'm
45 not able to get my own food and maintaining the ability to
46 trade for food from family and friends all over the state,
47 I think is very critical, not only for your soul, because
48 it helps me maintain my physical and emotional health. And
49 to put a dollar amount on the amount of trade that I do
50 would be very difficult. Then I wouldn't have enough

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1 traditional food to make it through each year. And finding
2 different people to trade with us is difficult at best
3 because what you do trade for actually ends up barely
4 covering the cost of the hunters and the fishermen for
5 their fuel, for their nets, for the upkeep of what they use
6 to get what they trade me for and I have done trades that
7 -- with weavings that were in the neighborhood of 15 to
8 \$20,000. And I take about half of that amount in trade for
9 food and I spread it over time so I'm having a very
10 difficult time in accepting any limits on a dollar amount
11 on what I need to live.

12

13 CHAIRMAN DEMIENTIEFF: Thank you, very
14 much. Questions. Gary.

15

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

21

22 MS. McNEIL: Well, if you consider,
23 comparatively speaking, when you start putting any
24 constraints on the trade then it's easy to move it in any
25 direction, not unlike the State did with the income tax.
26 It would have been much easier to have the income tax at no
27 tax needing to be paid for anyone who made less than
28 \$150,000 and then adjusting it as the State needed income
29 would have been much easier. And I see without -- it just
30 puts a fear in my heart. From past experience when you
31 start playing with different parameters then it would be
32 easier to go in a very negative direction. In my
33 definition and someone else's definition, even though the
34 English words are the same they have different meanings.

35

36 CHAIRMAN DEMIENTIEFF: Thank you.

37

38 MR. SAMUELSEN: Mitch.

39

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

42

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

45

46 MS. McNEIL: All over the state.

47

48 MR. SAMUELSEN: You don't pay for it you
49 trade your art work, right?

50

00043

1 MS. McNEIL: Some of it I'll pay for.

2

3 MR. SAMUELSEN: Oh, okay.

4

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

10

11 MR. SAMUELSEN: Okay, thank you.

12

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

17

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

22

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

31

32 MR. SAMUELSEN: Okay, thank you.

33

34 CHAIRMAN DEMIENTIEFF: Okay, thank you.
35 That concludes public testimony. At this time we'll take
36 a break and we'll come back with Regional Council
37 recommendations.

38

39 (Off record)

40

41 (On record)

42

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

47

48 MR. LAKE: (In Native)

49

50 Good morning. My name is Ole Lake. I'm

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

11

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

18

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

31

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

39

40 I've read some of the things that were done
41 with the Federal Subsistence Board and there's a lot of
42 fairness involved in it. Since there is an open process as
43 much as they could depending on the monies they receive I
44 suppose, to reach out and talk to somebody out there in the
45 rural communities. And I think in looking at the room in
46 here, we have very small representation from where I came
47 from and that's very threatening all by itself. But I
48 admire the courage of the Native groups that came out here
49 to represent their people from where they came from and
50 that's very admirable.

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1 (In Native) The way of trading things for
2 food is very sacred to us also. And sometimes when we add
3 monetary level to anything that we do it's also very
4 threatening and sometimes, how would I say this, sometimes
5 disrespectful. But in any case, the Native way of doing
6 things out there need to be understood beyond these two
7 mountains by the people that do things commercially. And
8 when we commercialize anything, I think, we limit a
9 possibility of another to practice what they do. That has
10 been the history of commercialization all over the world as
11 you know.

12
13 I'm not going to patronize you on that
14 aspect, but I will tell you coming from the rural
15 communities and having been a commercial fishermen myself
16 and a subsistence fishermen most of my life, there's always
17 some discomfort in who needs what, who needs more of what
18 than whom. But when you look at it from my perspective out
19 there, to 70, 80, 90 percent unemployment, with no monetary
20 gain to cover the rest of the needs for the rest of the
21 year this economic interpretation, if you will, on
22 subsistence is very, very delicate. It's very important
23 for us. If we haven't replaced the subsistence way of
24 doing things, if you want to interpret it in economic
25 standpoints, if you haven't replaced 70, 80 and 90 percent
26 of their capability then we should not make any rules and
27 regulations hindering anything that the rural people do.

28
29 Rural people is starting to include other
30 cultures from around the world and we need to respect that
31 also. It's all in fairness and I hope justice because
32 justice demands fairness.

33
34 And we all need to be educated on the way
35 of doing things out in the rural communities, on those
36 aspects also. And the hardest part to educate to anyone is
37 the spiritual importance of the people out there, that is
38 the subsistence way of living or their way of living or
39 their way of making prayers or the way they feed their
40 families and how they go about it. So those aspects are
41 very hard to understand when you are in between two
42 mountains I find. Because a lot of times the policies the
43 State and Federal people make are between two mountains and
44 not beyond and with the technologies that we have today it
45 would be easier, I think if -- it's human effort to go --
46 we can go out there and find out what this is all about.

47
48 I think with the money and jets and
49 everything that you have available to your way of doing
50 things it's very, very possible.

00046

1 And I just came this morning without
2 papers, just things that are in my mind and I hope you
3 respect me for that.

4
5 Thank you.

6
7 CHAIRMAN DEMIENTIEFF: Thank you. Any
8 questions.

9
10 (No Questions)

11
12 CHAIRMAN DEMIENTIEFF: Thank you, very
13 much. Keith Curtis.

14
15 MR. CURTIS: My name is Keith Curtis. I'm
16 a furrier in Anchorage, I own Arctic Midnight Furs. I grew
17 up hunting and fishing and trapping in Montana. I came up
18 here, basically this is supposed to me, the Last Frontier,
19 to me it's become the Lost Frontier.

20
21 It's become a very selfish state in a lot
22 of ways. My wife is born and raised out in the Bethel
23 area, Bethel and Holy Cross, and we've adopted four Native
24 children because she's part Native and I'm totally opposed
25 to any subsistence sales of the fish and I'm totally
26 opposed to any subsistence priority given to the rural
27 residents. I am totally supportive of subsistence as it is
28 for all people in Alaska.

29
30 I've been up here 17 years now and the last
31 four to five years I've killed a moose, you know, a large
32 bull moose, I have to shoot 50-inch or bigger so I killed
33 a lot of big 60-inch bulls, I got three freezers on my back
34 deck. One is completely full of fur. I spent this morning
35 fleshing wolf hides. I don't know how many of you done
36 that but that's what I did all this morning before I got
37 up, I fleshed wolf hides out. I got another freezer that's
38 completely full of fish. Another freezer that's completely
39 full of moose. I don't understand people leaving out in
40 the bush in these rural areas, why they're having such a
41 hard time filling their freezers when I can go down to Ship
42 Creep where there are thousands of people down there and I
43 can limit out for four months, four to five months, I can
44 take a hundred and some pounds of fish. And I heard about
45 the person talking about 100 fish a day, well, I've caught
46 fish like that, haven't been able to keep them, there's a
47 limit to what you can take and what you can't take.

48
49 I'd just like to -- just, you know, I hear
50 this Native thing going back and forth, I just want to live

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

15

16 That's all I have to say.

17

18 CHAIRMAN DEMIENTIEFF: Thank you. Any
19 questions.

20

21 (No Questions)

22

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

27

28 MR. WILDE: Mr. Chairman.

29

30 CHAIRMAN DEMIENTIEFF: Yes.

31

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

35

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

43

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

49

50 Mr. Chairman, member of Council. I have

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

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

19
20 Mr. Chairman, also the escapement and try
21 to spread the subsistence harvest opportunity along entire
22 Yukon and Kuskokwim. There are a lot of times when I
23 become Council -- subsistence Council, I did -- I say to
24 myself and to others, I think about not only myself, not
25 only my people, I think about people also up river.
26 Sometimes those up river people have a hard time, one time
27 one person told, Harry, all I have is five fish. If
28 there's a shortage of fish in Yukon-Kuskokwim continue --
29 if the customary trade comes up, you might as well say
30 right now and you listen to what I'm saying, you're going
31 to be short the subsistence as long as the customary trade
32 is occur.

33
34 Thank you, Mr. Chairman.

35
36 CHAIRMAN DEMIENTIEFF: Thank you. Other
37 Regional Council recommendations.

38
39 MR. NICHOLIA: Mr. Chairman.

40
41 CHAIRMAN DEMIENTIEFF: Yes, go ahead.

42
43 MR. NICHOLIA: Yeah, thank you, Harry. you
44 know, I respect you, your Kuskokwim and Yukon region for
45 thinking about us up river people because we do have a very
46 hard time.

47
48 You know, it's hard for me to imagine you
49 guys putting laws on us that was going on for what we were
50 doing since time and memorial, I can't see it. I can't see

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1 you guys regulating us. What I see is you guys
2 manipulating subsistence to support other uses, commercial,
3 sport and everything. I don't see you guys, I don't. I
4 don't see you guys really standing to the words of ANILCA
5 supporting the little guy. You guys are supposed to be my
6 big brother supporting me in my subsistence uses but -- but
7 you are, seems like, against me and my people trying to
8 support the other uses. And what it looks like to me is
9 you guys are just supporting commercial, sport and
10 everything. It seems like every time I come down here it
11 seems like the same thing.

12

13 CHAIRMAN DEMIENTIEFF: Thank you.

14

15 MR. THOMAS: Mr. Chairman.

16

17 CHAIRMAN DEMIENTIEFF: Yes, go ahead.

18

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

21

22 The Regional Council recommendation, I'll
23 read it, it's very brief. With respect to
24 11, transaction between rural residents,
25 the exchange for cash between a rural
26 resident and customary trade of
27 subsistence harvested fish, their parts or
28 their eggs legally taken under the
29 regulations in this part are permitted.

30

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

41

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

48

49 13. Excise in its entirety.

50

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1 That's our recommendation, Mr. Chairman.

2

3 CHAIRMAN DEMIENTIEFF: Thank you. Della.

4

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

8

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

14

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

17

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

28

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

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

45

46 In looking through a lot of the written
47 testimony and the public testimony today, I honestly feel
48 there is a lack of understanding and education in regard to
49 this issue. I think people don't realize the full impacts
50 of this. That at this point there -- that it appears to be

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1 some issues or driving forces and concerns and I strongly
2 feel there just is a lack of good education on this issue.

3

4 I also have concerns with the issue of
5 whether or not this resource can be sold outside the
6 Federal lands. If it's taken on Federal lands can it be
7 sold outside of those lands. And it appears that there's
8 a lot of questions that do need to be answered yet. And I,
9 overall, looking through all this feel that -- and I say
10 this without consulting my Council but in looking at the
11 other regions recommendations, when we had our fall
12 meetings we didn't have all of those in front of us, that
13 I would recommend that -- as much as I know it probably is
14 not going to be liked is to put this off until our fall
15 meeting this year.

16

17 Thank you.

18

19 MS. CROSS: Mr. Chair.

20

21 CHAIRMAN DEMIENTIEFF: Grace.

22

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

25

26 In our last meeting our council decided to
27 support Alternative 1, that is, not to take any action.
28 The reasons why we did that is because we feel that there
29 is not enough information regarding what violations are
30 occurring within the state to address it at this point.

31

32 There has been no specific examples other
33 than the Cabela example, which was not related to Alaska
34 given to us by law enforcement. And we also felt that
35 within our region, because due to our lack of salmon, it's
36 not really applicable to us. We will still trade because
37 some parts of our rivers are practically depleted from
38 salmon so we need to trade with -- and we consider trading
39 for cash as trade, not buying, because it's sort of like an
40 exchange for service because those people that trade for
41 cash with us in areas where we have no fish, they utilize
42 that to provide for their outboard motors and stuff and so
43 forth.

44

45 But we think that perhaps there needs to be
46 more information gathered before any regulatory or any
47 definitions are made. And we kind of look at it this way,
48 the state is too big to have one specific definition. If
49 any definitions are going to come we feel that those should
50 be done region by region. Because in each of our regions

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

6

7 Thank you.

8

9 CHAIRMAN DEMIENTIEFF: Thank you. Go
10 ahead, Harry.

11

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

15

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

22

23 Thank you.

24

25 CHAIRMAN DEMIENTIEFF: Thank you. Ray.

26

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

34

35 I guess the general feeling is that as soon
36 as you try to define, there's a real problem in trying to
37 come up with something that fits all the situations, even
38 within a region there could be a problem, because in some
39 cases, let's say from the standpoint of the seller now,
40 they may be the only one or one of the few people who are
41 continuing to go to fish camp and put up fish so if you put
42 a limit on how much they can do they can't meet the needs
43 maybe even in their own village or areas let alone outside
44 of the area. And yet, they may not be causing a problem,
45 they're not depleting the resource, it's just the fact that
46 there are fewer people that are doing that now and more
47 people are becoming dependent on them and that may not be
48 the case in another village or another situation so it's
49 really hard in trying to put limitations and I was looking
50 at the final one and I know how much effort went into this

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1 but on the Page 10 one where we were trying to define
2 subsistence harvest fish and their parts and so on,
3 purchased or otherwise acquired -- must be used for
4 personal or for family consumption by the individual who
5 purchases the fish and cannot be resold. What happens when
6 you have, let's say a Native family in the urban area now
7 who has been dependent on fish for a long time and it may
8 be like the Tlingit lady that was here who now has to buy
9 those fish, if she buys those, what about a friend of hers
10 now that says, I would like some of those, too, well, if
11 she passes them on or the individual passes them on and
12 gets money for that, they've violated this. And yet,
13 they're just meeting a need of another person who has a
14 customary and traditional dependence on that.

15

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

26

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

29

30 Thank you.

31

32 CHAIRMAN DEMIENTIEFF: Thank you. Yes,
33 Robyn.

34

35 MR. SAMUELSEN: Thank you, Mr. Chairman.
36 Robyn Samuelson with the Bristol Bay Regional Advisory
37 Council. You see our comments on Page 20 and 21.

38

39 What I want to focus in on is that our
40 comments on -- or our note to the Regional Council on Page
41 21. Bristol Bay says without a tracking system, the
42 Bristol Bay Subsistence Regional Advisory Council does not
43 support the actions on 11 and 12. We feel very strongly
44 that a tracking mechanism needs to be put in place similar
45 to the state of Alaska regulations concerning giving away
46 moose meat. Any program that we adopt we feel there's got
47 to be a way for enforcement -- there will be abuses and
48 there's got to be a way for enforcement to document the
49 cases.

50

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1 On a personal note, Mr. Chairman, I sat
2 three years on the Board of Fish. I remember while I was
3 a Board of Fish member that three individuals from
4 Southeast Alaska decided to take herring roe through Canada
5 with pickup trucks and sell them in the Lower 48. When
6 that case went to court, if my memory serves me correctly
7 and that's quite awhile ago, about 12 years ago, the judge
8 said \$9,000 -- since there was no definition of significant
9 commercial enterprise, the \$9,000 value was not significant
10 because there was no regulation put in place and basically
11 them three individuals got off.

12

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

16

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

25

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

39

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

47

48 And I think that puts the whole subsistence
49 situation into grave jeopardy. Subsistence is created
50 under Title VIII of ANILCA. Title VIII of ANILCA could be

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1 changed next month in Congress. Any Federal statute could
2 be changed. And by and large, those of us that have been
3 in the regulatory process and read the press and keep trace
4 of current events, we know that Title VIII of ANILCA has
5 been a subject throughout the state for the last -- in a
6 heated debate for the last 12 years.

7
8 Native people in Alaska are defined by
9 subsistence. If you take subsistence away from the Native
10 people you've killed a culture, plain and simple.

11
12 Our RAC spent many hours debating this
13 issue. Should we allow or should we not allow? There is
14 subsistence users that will abuse subsistence. By and
15 large most people in rural Alaska, both Native and no-
16 Native do not abuse it. But there are folks out there that
17 will abuse it. In the economic downturn that we're facing
18 along coastal communities in our salmon fisheries, in our
19 herring fisheries, you know, my Grandmother who's dead and
20 gone probably never sold one dollar's worth of fish, one
21 dollar worth of moose meat or caribou meat, seal oil, dried
22 squirrels because it was all for family consumption. She
23 did probably trade with people. But I would bet my life
24 she didn't take one dollar in. And that's the way I grew
25 up in my household. You didn't sell things, you gave them
26 away or you traded them.

27
28 The day before yesterday, before I came
29 into Anchorage I got a call from an elder in my community
30 that ran out of dry fish and was really craving dry fish so
31 I went out to my freezer and brought her dry fish. That's
32 standard practice in any rural community throughout Alaska.
33 But it isn't right when Tom Boyd's out in Dillingham and he
34 calls Robyn Samuelson up and says, hey, Robyn, you got some
35 fish, you bet Tom, \$25 a pound, three bags, you know, that
36 isn't right, that isn't subsistence. And I'm speaking from
37 a personal perspective.

38
39 Being a former State regulator and
40 traveling around, I did all -- with the other Board
41 members, we did all the C&T findings in Southeast Alaska.
42 We spent 32 days doing the C&T findings in Alaska and I
43 could write a book on C&T.

44
45 Without a tracking system there will be
46 abuses.

47
48 This body created the Nushagak Peninsula
49 Caribou Herd, which is a very successful transplant project
50 for about seven villages on the Nushagak Peninsula. The

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1 tribes, which I'm a tribal chief, we control the harvest.
2 The Federal U.S. Fish and Wildlife Service gives us a
3 number, we divide it amongst the villages, we got a
4 permitting systems. The tribal office gives out the
5 permits. Still there's abuses in that. You know, Sno-Go's
6 now a days will go 120 miles an hour, they travel vast
7 distances. We can't control all the Young Turks. The way
8 we control them is when we do find out that there's abuse,
9 they lose their hunting privileges and they're ashamed by
10 the community and word gets out.

11
12 There's got to be accountability. I don't
13 care who it is. Subsistence users or anybody else got to
14 be accountable. And we're going to develop something, I
15 hope that you have a tracking system in place and my
16 Regional Council hopes that there's a tracking system in
17 place that if I decide to sell Pete Probasco 10 salmon I
18 will sign a permit and Pete will sign the permit that he's
19 received them. So when a law enforcement agency comes in
20 rumor in my community is Robyn Samuelsen is abusing his
21 subsistence rights and privileges, that that enforcement
22 officer could come to my house and demand that permit and
23 I have to show factually who I gave fish to. He could go
24 and see Pete Probasco and see that Pete signed the same
25 permit that he received them. That's the kind of
26 permitting system we think we need to start with if we're
27 going to develop such a program and then over time relax.

28
29 That's a pretty stringent move coming out
30 of my region. But we feel in today's day and age that
31 there will be abuses and there will be a few bad apples
32 that are going to spoil the whole box of apples. And what
33 better target is rural Alaskans in today's day and age.
34 We're getting short-changed whether it's the school funding
35 program, building roads or whatever. And you look at the
36 composition of the politicians in our own State of Alaska
37 who haven't looked too kindly on rural Alaskans.

38
39 I think we've got to be very, very careful
40 because what we may be doing is adding fuel to the flame
41 and turning our ancestors over in their graves. There's
42 always been customary trade. My uncle, Dutoo, who lives in
43 Bethel was a mail carrier by dog team. He ran from the
44 Kuskokwim Yukon, Harry knows him real well, all the way
45 over to above Chignik picking up the mail from the
46 sailboats. I'm sure he bought -- or the U.S. Government
47 bought food for them dogs along the mail routes. So it's
48 been around for a while, but I think we need to be extra
49 careful and if we delay taking action, I think we're going
50 to leave the door open for abuses. And what I see we're

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1 trying to do here is to protect. We've got a lot of
2 testimony that seems to be saying that we want to -- that
3 this body, you guys, along with us want to take away
4 subsistence, to me, people don't understand what we're
5 trying to here is really protect their long traditional
6 practices.

7

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

18

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

23

24 Thank you.

25

26 CHAIRMAN DEMIENTIEFF: Thank you. Bill.

27

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

32

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

43

44 Subsistence in its true sense, as I've
45 always said, is the most responsible use of natural
46 resources. Typically subsistence doesn't harm the habitat
47 because people know that the environment is responsible for
48 harboring subsistence opportunities. We got enforcement
49 agencies built into the system that will deal with
50 infractions. And for the most part, the subsistence

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1 community police their own infractions because there isn't
2 a user group in the world that is more in tune or that
3 identifies more physically, spiritually, culturally with
4 the resources than a subsistence user.

5

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

8

9 Thank you, Mr. Chairman.

10

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

23

24 Ralph, do you have comment.

25

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

42

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

49

50 MR. LOHSE: Well, thank you, Mr. Chair.

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

13

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

21

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

33

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

36

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

48

49 And I thank you.

50

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1 CHAIRMAN DEMIENTIEFF: Thank you. Mr.
2 Stoney.

3
4 MR. STONEY: Thank you, Mr. Chairman. I'll
5 introduce myself, Raymond Stoney. I'm from Kotzebue area.

6
7 In the last 25 years and plus there was a
8 lot of commercial fishing happening in the Kotzebue area.
9 Today there's no longer commercial in the Kotzebue area.
10 Some of the people in the history of buying salmon when
11 they were not able to go fishing themselves, they usually
12 bought it from the commercial fishing people there doing
13 commercial business in Kotzebue. Of course, they paid
14 dollar a fish. On the last meeting in Kotzebue after going
15 through all the documentation about the cash value of fish,
16 like I said, there's no longer commercial fishing happening
17 in Kotzebue, so the Kotzebue area on their last meeting
18 decided -- it says, in the Kotzebue area, cash sales for
19 subsistence caught salmon between rural residents and
20 others shall not exceed \$1,000 per year per person.

21
22 I'm saying that because I represent 11
23 villages. The elders in Kotzebue and the villages who are
24 not able to go fishing and they do buy from the commercial
25 fisheries.

26
27 Thank you, Mr. Chairman.

28
29 MR. NICHOLIA: Mr. Chair.

30
31 CHAIRMAN DEMIENTIEFF: Thank you. Yes.

32
33 MR. NICHOLIA: Yeah, I'd like to give the
34 Eastern Interior recommendation. We agreed to pretty much
35 to 11. But on 12 we got -- we had a big problem with that
36 commercial enterprise so what we did at the end of 12, is,
37 it says, as long as it's used for personal or family human
38 consumption. That's how we got rid of that commercial
39 enterprise, whatever, that was a big issue with us. And
40 the last part, 13, we just excluded it. It was unnecessary
41 because what you're writing down on paper you can't even
42 enforce.

43
44 CHAIRMAN DEMIENTIEFF: Thank you. I think
45 that completes the Regional Council recommendations. With
46 that we'll go to the Staff Committee recommendation.

47
48 MS. FOX: Thank you, Mr. Chair. I'm Peggy Fox with
49 the Office of Subsistence Management and I serve as the
50 Chair of the Staff Committee.

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1 The Staff Committee represents two views
2 for the Board's consideration.

3
4 The majority of the Staff Committee
5 recommended that the Board adopt the Staff recommendation
6 with modifications to prohibit customary trade with any
7 business enterprise and to simplify the regulatory wording.

8
9 If you'd like to look at the majority
10 recommendation it is on Page 13 of the handout.

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

16
17 Justification for the majority
18 recommendation includes that the regulatory language
19 recommended by the majority view more effectively addresses
20 the objectives of the Board and the Regional Advisory
21 Councils. It establishes enforceable regulations that
22 provide for and protect traditional practices of customary
23 trade of subsistence harvested fish while minimizing the
24 potential for commercialization of subsistence fish. The
25 recommended language provides for unlimited customary trade
26 between rural residents which encompasses the majority of
27 customary trade exchanges. The language is simpler than the
28 existing regulation and eliminates the troublesome wording
29 significant commercial enterprise at Section 11.

30
31 It also prohibits sale to and purchase by
32 businesses of subsistence harvested fish as well as sale of
33 subsistence harvested fish to anyone by non-rural
34 individuals, and it requires that non-rural purchasers of
35 subsistence harvested fish use the fish for their own or
36 their family's personal consumption. This provision is
37 faithful to the views expressed by many of the Regional
38 Councils, that the use of fish obtained through customary
39 trade be consistent with the precepts of subsistence
40 articulated in Title VIII.

41
42 The recommended language does not include
43 region specific provisions recommended by several Regional
44 Councils. In most cases effective administration of the
45 provisions on dollar limits and percentages of harvest to
46 be retained would entail harvest and sales record-keeping
47 requirements that would be burdensome to subsistence users
48 and the administering agencies.

49
50 The recommended regulatory wording

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1 prohibiting transactions with, by businesses and sale of
2 subsistence fish by non-rural individuals should accomplish
3 the intent of the Regional Council recommendations without
4 undo intrusion into the practices of subsistence users.

5
6 If a need for region specific regulations
7 is identified following implementation of new customary
8 trade regulations the regulations can be revised through
9 the annual regulatory review cycle.

10
11 The task force and the Councils worked
12 diligently on difficult task and their efforts should be
13 affirmed by the Board.

14
15 The recommended regulatory language
16 preserves the principal elements identified by those
17 participants, effectively addresses the objectives of the
18 Board and should be adopted.

19
20 The Staff Committee minority recommendation
21 is to adopt language which would clearly prohibit customary
22 trade exchanges with licensed fisheries and other
23 businesses. This would replace existing language in
24 subsections 12 and 13 of the current regulations. The
25 minority Staff Committee recommendation also advised the
26 Board to defer action on exchanges among rural residents
27 and from rural residents to others, subsections 11 and 12.

28
29 The minority Staff Committee recommendation
30 does three things. First it recognizes that there is
31 agency and public consensus on prohibiting commercial sales
32 of subsistence caught fish. Second, it identifies a need
33 to obtain more research data on actual customary trade
34 practices, and third it takes into consideration the range
35 of Regional Advisory Council recommendations regarding
36 customary trade.

37
38 There is wide spread consensus among
39 Federal agency representatives and subsistence users that
40 clear and enforceable language is needed to prevent sale of
41 subsistence resources to commercial entities. Extensive
42 public testimony and recommendations of the Regional
43 Councils support this action to establish a clear
44 separation between the commercial sector and subsistence
45 harvest and exchanges. While much discussion has occurred
46 in the past two years regarding the issue of regulating
47 customary trade, the need to obtain more research data is
48 recommended so that any proposed regulations accurately
49 reflect actual practices. At present, little information
50 exists which adequate documentation of customary trade

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1 sufficient to refine current regulations and provide for
2 and protect such practices.

3

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

11

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

22

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

26

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

29

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

32

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

42

43 We understand that it's the cash sale of
44 fish and wildlife resources to support personal or family
45 needs. It's a longstanding practice which is an integral
46 part of Alaska's family based subsistence tradition that
47 occurs within a mixed economic system of barter, trade and
48 cash. Some level of customary trade occurs commonly
49 throughout Alaska and usually presents no conservation or
50 enforcement issues. Customary trade is a way for families

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1 to distribute subsistence harvests to people outside of
2 their usual sharing and bartering networks for limited
3 amounts of cash. This practice also provides traditional
4 foods to individuals or families, as we've heard in
5 testimony, to those who are unable to harvest. Many of the
6 exchanged foods, such as dry whitefish and many others are
7 not available in commercial markets. Customary trade is
8 not conducted for profit nor is it conducted in isolation
9 from other subsistence activities.

10

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

13

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

29

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

37

38 We considered that a main goal of the
39 proposed Federal regulation is to clearly describe the
40 scope of customary trade of subsistence caught fish on
41 Federal lands and waters as a traditional and customary
42 practice wholly distinct from business and commercial
43 interest. We note this point again, because as has been
44 mentioned, the current regulations, Federal regulations
45 about significant commercial enterprise have not been
46 sufficiently clear to make this distinction nor have they
47 been enforceable. Crafting enforceable language on this
48 issue would substantially help prevent this potential
49 problem.

50

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1 We consider the resale of items involved in
2 customary trade transactions should be prohibited, yet
3 other subsistence exchanges can still occur, such as
4 barter.

5
6 Key provisions are needed that are not
7 addressed in the current regulatory proposal. We feel that
8 specific elements should clarify ways that customary trade
9 fits within the overall subsistence use of fish. One of
10 the key concerns we have is to provide a measurable ceiling
11 or limitation on the extent of the trade. We note that
12 several Regional Councils and others have provided some
13 specific ways to do this and they could include percent of
14 total cash or a dollar amount of numbers of fish or perhaps
15 other measures or combinations. Examples that have been
16 mentioned we feel are really important to consider more
17 closely.

18
19 Limitations should be defined regionally as
20 relevant way to ensure the customary nature of the trade
21 does not start to expand to provide new sources of
22 increased harvest pressures on fish stocks allocated to
23 subsistence uses. And this is a really important concern
24 to us. It's fundamentally a conservation related concern.
25 We are concerned about the potential for expanding pressure
26 on smaller water systems with limited stocks of fish and we
27 also are concerned about fish stocks that may already be
28 depressed. In those cases of limited resources, additional
29 language may be needed to focus the subsistence priority
30 on fish for personal and family food consumption.
31 Thresholds may be needed to restrict customary trade in
32 cases of limited or restricted harvest opportunity for
33 subsistence. Some Regional Councils have also noted these
34 points.

35
36 We also, as has been noted in our previous
37 comments and others made today, we have a substantial
38 concern about the extent and regional nature of customary
39 trade needing to be documented. Agency information doesn't
40 currently provide an accurate measure of the importance of
41 this practice to subsistence users and it does not document
42 customary or current practices adequately. There is some
43 information available but it's not very comprehensive at
44 all. Thus it's challenging to craft a regulatory approach
45 to provide for this practice if we don't really know much
46 about what it is. Some of the Councils have also noted
47 this issue and in addition it does also make it very
48 difficult to prevent potential abuses that could adversely
49 impact subsistence users.

50

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1 There are at least three distinct and
2 potentially complimentary approaches to consider as
3 possible ways to remedy this information gap.

4
5 One of them is to look at specific regional
6 case studies of customary trade which could be developed
7 using priorities requested from the Regional Advisory
8 Councils and supported with Federal subsistence research
9 funds.

10
11 Another approach is to use the annual
12 subsistence fish surveys, specifically salmon surveys, by
13 including a question about customary trade.

14
15 Also in some parts of the state and in
16 specific situations permits or other tracking mechanisms,
17 and we've heard that word before today, may be warranted to
18 add resource management and enforcement purposes.

19
20 Our overall recommendation is really two-
21 fold.

22
23 We strongly endorse the language that
24 clearly distinguishes between customary trade and
25 commercial and business transactions and that's proposed
26 subsection 13. It's in both the majority and minority
27 recommendations and it's widely supported in Council
28 comments. We think that by doing this the subsistence
29 context for customary trade is unequivocally specified and
30 distinguishes from commercial activities and transactions.

31
32 We do recommend one amendment to the
33 language of 13 be as follows, and this is in our written
34 comments but I'll read it for those who may not have those.

35
36 Where it says, if you are required to be
37 licensed as a fisheries business under
38 Alaska Statute, and there's the citation
39 or are a business as defined under Alaska
40 Statute, you may not purchase, receive and
41 then we suggest this following language,
42 with intent to sell or hold for sale or
43 sell subsistence harvested fish, their
44 parts or their eggs.

45
46 Now, regulatory language is often sort of
47 bulky and this is. But what this does is it allows the
48 processing of subsistence harvested fish by processors for
49 a subsistence harvesters own personal use. In other words
50 they get the fish back and the processor does not get into

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1 trouble for having had the fish in the first place. But it
2 does, in fact, prohibit the sale of that fish by the
3 processor that was processing it. So we think that that is
4 a benefit to subsistence users and clears up what could
5 otherwise be an unnecessary prohibition.

6
7 We also concur with the minority
8 recommendation to defer further definition of customary
9 trade that occurs between rural to rural and rural to other
10 persons, subsections 11 and 12.

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

22
23 We understand this would leave in place the
24 existing language that's in subsection 11 until revised
25 language is proposed and adopted.

26
27 Further more we strongly recommend Federal
28 support and funding to develop case studies using regional
29 priorities offered by the Regional Councils which will
30 improve our understanding of customary trade and ways to
31 provide for it within the context of subsistence management
32 and uses. We would very much appreciate the opportunity to
33 collaborate further to refine these ideas and related
34 recommendations to improve information about regional
35 patterns of customary trade. In fact this has been an
36 issue before the Department in the past, where there had
37 been proposals several years ago now to do just this sort
38 of series of studies but they were never funded. We do
39 have some specific ideas that we can contribute about this
40 and would welcome the opportunity to do so.

41
42 We do comment the Office of Subsistence
43 Management and the Board for providing the additional time
44 so far for meaningful public involvement. Additional work
45 on these issues, we feel, will help ensure that ideas and
46 continuing discussion from the Councils, agencies and other
47 interests will be more fully incorporated into future
48 rulemaking.

49
50 We are certainly willing to answer any

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1 questions you may have but we also want to add as a piece
2 of our testimony today, some comments from one of our
3 assistant attorney general's Lance Nelson, if the Chair
4 will allow. Lance.

5

6 CHAIRMAN DEMIENTIEFF: Sure.

7

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

13

14 We would just state that we think the
15 written opinion by the Regional Solicitor's office of June
16 6th, 2000 that concluded that it was unlikely that a court
17 would find Federal preemption to the extent that Federal
18 regs would be found to apply off of Federal public lands,
19 we think that was a reasonable interpretation of the law
20 especially given the latest rulings by the U.S. Supreme
21 Court on the clarity needed for Federal preemption.

22

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

34

35 That's all.

36

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

44

45 With that we're going to go ahead and
46 recess for lunch and we'll be back at 1:00 o'clock.

47

48 (Off record)

49

50 (On record)

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1 CHAIRMAN DEMIENTIEFF: Okay, we'll go ahead
2 and call the meeting back to order and we'll enter into
3 Board discussion at this particular point. And I think
4 along those lines it's clear, I think, to all of us, I know
5 for myself, personally, that whatever action that we do
6 happen to take this afternoon, the whole issue is a work in
7 progress. So I'm just going to open by saying that as we
8 continue to work this issue in the coming months, years and
9 develop the issue, you know, that I'm sure we're going to
10 all pledge to due the diligence in terms of working it
11 because there are a number complexities that are coming out
12 and we certainly have had excellent work -- I compliment
13 the Councils for taking the time, the Staff certainly has
14 done the time in terms of preparing the issue. I know the
15 Board is actively tracked this issue as well. And the
16 Department, and of course as evidenced earlier, the public
17 is very keenly interested in this issue.

18
19 But however it goes this afternoon, it's
20 clear to me that it's going to be something that's going to
21 be on our plate for some time as we continue to fine tune
22 and make this because there are a lot of risks that are out
23 there. And, you know, we all recognize that customary
24 trade is something that has happened, is an important part
25 of subsistence and as we endeavor to try to get
26 regulations, you know, the big fear is that we don't change
27 something accidentally.

28
29 So we do have a lot of work to do and I
30 just know that whatever, irregardless of whatever happens
31 this afternoon, we're going to be spending more and more
32 time with regard to this issue, I think. I think that's
33 what we'll see.

34
35 So anyway, thanks everybody for all their
36 hard work and does anybody want to discuss this issue?
37 Gary.

38
39 MR. EDWARDS: Mitch, I'll start. I'd like
40 to ask the State a couple questions if I could. In both
41 your written and your oral testimony you spoke to the fact
42 that you are concerned about customary trade does not start
43 to expand and to provide new sources of increased harvest.
44 And I guess my first question would be why do you think
45 that Section 12 does not address that and by itself will
46 not be limiting and prevent further expansion?

47
48 And then the other question I would like to
49 address is there's been questions raised about the amount
50 of abuse that has or has not occurred or will or will not

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1 occur in the future and I just wondered if the State had
2 any examples of in the past where that has occurred and
3 they have had to react to that?

4

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

18

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

23

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

36

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

41

42 CHAIRMAN DEMIENTIEFF: Go ahead.

43

44 MR. NELSON: Mr. Chairman. Mr. Edwards.
45 I'd like to just touch on a couple of experiences that I've
46 had and that I'm aware of. Already mentioned in the
47 earlier discussion was a case involving herring roe on kelp
48 in Southeastern Alaska being sold in fairly large numbers.
49 Besides that case there was sort of -- obstructed, if you
50 will, by the court's ruling, there were a number of rulings

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1 by the courts where prosecutions were successful against
2 people selling herring roe on kelp in large amounts
3 including over \$100,000, the Skina case, the Sacarie (ph)
4 case, a number of other cases that involved the subsistence
5 taking of herring roe on kelp for large amounts of money
6 are documented in court decisions.

7
8 Also on the Upper Yukon in 1987, I was
9 involved in some enforcement action against several
10 processors involving the purchase of subsistence -- during
11 that year in 1987 there was no fall chum commercial season
12 because the numbers were too low to allow that so the only
13 fishing that took place was subsistence fishing. In that
14 year, there were a number of processors bought tens of
15 thousands of pounds of herring roe -- or I'm sorry, chum
16 salmon roe and coho roe and it was sold on the
17 international markets. One case that I'm familiar with,
18 one subsistence fisherman sold over 30,000 of chum roe to
19 one of the processors during a closed commercial season.

20
21 Also in the Lower Yukon in 1992 there was
22 a processor that was buying, among other things,
23 subsistence taken king salmon and selling it on the
24 international market to a japanese company. We documented
25 from the processors own records that that activity taken
26 place over a number of years and involved hundreds of
27 thousands of dollars worth of fish during that time. In
28 both on the Upper Yukon and Lower Yukon, a number of the
29 participants were rural residents and a number of them were
30 not and were CFEC permit holders from other areas of the
31 state that were fishing during the subsistence season and
32 taking fish.

33
34 We've seen historically that there's the
35 possibility, and there's evidence that rural residents have
36 harvested subsistence fish and sold it into the commercial
37 markets, although I'm sure that's not representative as a
38 whole but it does take place.

39
40 CHAIRMAN DEMIENTIEFF: Mr. Edwards, if I
41 might just, I don't think -- your question has to do with
42 Item 12 didn't it?

43
44 MR. EDWARDS: That's correct.

45
46 CHAIRMAN DEMIENTIEFF: Because your
47 response was actually to Item 13 and addressing those
48 issues. But I think the question that Gary had is can you
49 address it in terms of Item 12 and -- I'm sorry, I don't
50 want to -- Gary, maybe you can just re.....

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1 MR. EDWARDS: I had two questions. I mean
2 my first one dealt with the issue that in the State's oral
3 and written testimony they expressed concerns that they did
4 not want subsistence to provide a new source of increased
5 harvest and I was asking why you felt that item in -- the
6 language in Item 12 wasn't sufficient to reduce that.
7 Because I believe that the example that you used would be
8 covered either in those two sections, particularly by the
9 fact that if an individual freezes or cooks or salts or
10 smokes fish and then offers to sell them then that is a
11 fisheries business under State law and so therefore they
12 would be prohibited from doing that. So that would not be
13 a mechanism for harvest to be expanded.

14
15 CHAIRMAN DEMIENTIEFF: Yes.

16
17 MR. NELSON: Mr. Chairman, my understanding
18 of Mr. Edwards question was two parts. One was the Section
19 12 and the other part was other examples. If I was off
20 base, I apologize.

21
22 CHAIRMAN DEMIENTIEFF: Bill.

23
24 MR. THOMAS: Thank you, Mr. Chairman. I've
25 been battling with this concern for 10 years. When I first
26 started in this process the only information we had was
27 from the Department. And 100 percent of it was negative
28 characterization, unwarranted speculation and non-
29 historical as far as the community of subsistence was
30 concerned. And in dealing with customary trade, regardless
31 of how much -- regardless of what happens to what's
32 harvested subsistence wise, still doesn't exceed a single
33 digit in the total amount of the resource that's being
34 used.

35
36 But still it's getting more attention than
37 other user groups that do the same thing with a lot more
38 volume of, let's say eggs for a resource. The market has
39 demonstrated that there's more money to be made from the
40 roe than there is from the fish.

41
42 Last year at our meeting, people were
43 saying well they give the carcass to the subsistence
44 fishermen and nothing was said about the eggs that were
45 taken out before the carcass was determined to be a
46 carcass. So I'm speaking again with respect to respect for
47 the subsistence community. A lot of this is speculation,
48 it isn't a practice that isn't practiced by other user
49 groups with a lot less fuss.

50

00073

1 So I would really like to confine our
2 discussions to customary trade and get away from the
3 speculation. Everything is a may, a might, a could, you
4 know, that's a horrible dialogue.

5
6 Thank you, Mr. Chairman.

7
8 MS. GOTTLIEB: Mr. Chair.

9
10 CHAIRMAN DEMIENTIEFF: Yes.

11
12 MS. GOTTLIEB: I also want to thank
13 everybody who has put a considerable amount of time into
14 this overall effort and particularly today that the RAC
15 Chairs were able to come in for this meeting and to the
16 public who also took the time to attend and provide us
17 testimony and information.

18
19 I think we have, in fact, gathered a great
20 deal of information by virtue of all those task force
21 meetings that took place where the RAC Chairs or their
22 designees provided a huge body of information on what
23 customary trade is and tried really diligently to develop
24 several kinds of definitions.

25
26 We embarked upon this process because it
27 was felt that the current regulation is not clear. And I
28 would like to ask, and perhaps Pete or others could help
29 answer this, whether the proposed wording we have in front
30 of us is the majority and/or the minority recommendations;
31 are those, in fact, providing more clarity?

32
33 CHAIRMAN DEMIENTIEFF: Pete.

34
35 MR. PROBASCO: Thank you, Mr. Chair. Ms.
36 Gottlieb, the language that was developed by the Office of
37 Subsistence Management Staff, as we worked through the
38 Interagency Staff Committee and the final majority motion
39 that you find on Page 13 essentially captures what OSM
40 Staff came up with but it's presented in, in my opinion, a
41 much better format where it's easier [sic] understood and
42 it separates commercialization from Chapters 11 and 12. So
43 in my opinion it states the same intent but in a much
44 better fashion.

45
46 Mr. Chair.

47
48 CHAIRMAN DEMIENTIEFF: Maybe a follow-up to
49 that. As I recall a lot of the impetus to start this came
50 from enforcement personnel. And my understanding, they

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1 have been involved with the task force throughout the
2 process?

3

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

12

13 Mr. Chair.

14

15 CHAIRMAN DEMIENTIEFF: Ralph.

16

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

21

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

27

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

33

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

49

50 Twenty years ago nobody would have been

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1 saying anything about selling fish on the internet. Twenty
2 years ago most of us probably wouldn't have been able to
3 afford a computer, let alone the internet hook up. We
4 definitely wouldn't have had it in rural Alaska. Today
5 it's in rural Alaska.

6
7 It would be nice if we had lots more data
8 and lots more research but you're having data and research
9 on something that's in flux, it's changing all of the time
10 so the data and the research that you get isn't on a
11 constant, it's on something that's moving. And while
12 you're doing the research it's changed. It'd be nice if it
13 was only for indigenous people. But what does the word
14 indigenous mean and how is that changing?

15
16 We have a tremendous movement, tremendous
17 opportunities in our culture today. I have many Native
18 Alaskan friends who's kids live in Tucson, Los Angeles,
19 Tacoma, Seattle. We had a person from Hooper Bay talking
20 about moving between the mountains here to Anchorage. We
21 move. We go to school in different places. We're all
22 accessible to TV all over the state, we get our information
23 from all over the world. I don't know about the rest of
24 you, but I get catalogs on every subject you can think of
25 getting catalogs on. We have this tremendous volume of
26 information on hand. We have the ultimate change in
27 culture and that ultimate change in culture is marriage.
28 Four generations ago, five generations ago, my relatives
29 married their first and second cousins. If they'd have
30 married out of the village they'd have thought something
31 was wrong. Four generations ago if they'd have married out
32 of the country they'd have thought something was wrong.
33 Three generations ago if they'd have married out of the
34 church that they went to they'd have thought something was
35 wrong. My mother wanted to go out with somebody of a
36 different race and my grandfather said no and put his foot
37 down on it. My mother's brothers and sisters all married
38 people of the same culture and the same religion. But my
39 mother's -- our family of six kids at one time was in
40 Alaska, Texas, Los Angeles, Florida and the midwest. Out
41 of six brothers and sisters. We've married totally out of
42 the church, the race and everything else.

43
44 Now, I have six kids. What do I expect?
45 I expect my kids are going to do the same thing, even on a
46 greater scale than I am. Robyn used the words, Young
47 Turks, it was really funny, he said Young Turks and I
48 recognized what he meant right now we deal with them all
49 the time in the commercial fishery. We call them Young
50 Turks. The kids that grew up getting their attitudes, not

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1 from their mom and dad, not from the cultural around them,
2 they got their attitudes from watching the ball players on
3 TV, from watching the TV, from the video games, totally
4 aggressive and have total different values on how they fish
5 and how they hunt than those of us of our generation which
6 probably have different values than the generation before.

7
8 So we run into that. We run into the
9 change in culture. At one of our subsistence task force
10 meetings one of the representatives from up in the Yukon,
11 you know, we live in a total different world when you hunt
12 caribou on a snowmachine with a cell phone and it's true.

13
14 Technology. Somebody in Cordova discovers
15 that Mephasis Net and Twine sells prehung gillnets,
16 monofilament gillnets that work for smelt, instantly we've
17 got 20 monofilament gillnets for smelt in the harbor
18 because the technology is there, the materials are there.

19
20 We are shooting for a moving target. We're
21 trying to put something in place that protects past
22 practices and prevents things that will damage the
23 resource, the people and the lifestyle in the future. I
24 think we've hit the target on some of it, I'm not sure on
25 some of the rest of it. But I don't see any reason not to
26 speculate about what might happen. I would think that we
27 would be negligent if we didn't speculate on what might
28 happen because we're not dealing with something that's
29 static. We're dealing with something that's moving.

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

37
38 My folks -- my mother's parents tried to,
39 they did it for one generation, it didn't stop it after
40 that.

41
42 Thank you.

43
44 CHAIRMAN DEMIENTIEFF: I can't, you know,
45 help but not agree with your thinking. I think that was
46 what I was trying to address in my opening remarks this
47 afternoon. We're just starting this. We're going to be
48 doing this for a long time, as our world changes our
49 regulations are going to have to change with the world.
50 And the protection of our resource, we heard over and over

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1 again, is number 1, and making that resource so that it is
2 available to continue to feed the generations that come
3 behind us. So that's basically what I was trying to hit,
4 you did it a little bit more eloquent than I, Ralph, and
5 even if you disagree with Bill, that's fine by me, too.

6

7 Bill, go ahead. Defend yourself Bill.

8

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

12

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

24

25 Thank you, Mr. Chairman.

26

27 MR. WILDE: Mr. Chairman.

28

29 CHAIRMAN DEMIENTIEFF: Yeah, Harry.

30

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

34

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

48

49 One time that man was at AFN Convention
50 when he came back, it was before I even started serving,

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1 they find out the Federal is supporting subsistence. He
2 was really happy. Finally we had someone on our side. Now
3 we could have a few days more to have our way of life.
4 Something like a tree that grown, you know, roots are
5 coming up, only the Federal could keep the roots down.

6
7 Now, after they heard sell subsistence
8 catch salmon, you know, that person he really turn away
9 because he didn't understand. And I told him that, well,
10 maybe that's the only way that Federal could protect
11 subsistence, no, they can't -- that's what she says, they
12 can't protect it like that, they just putting us in
13 trouble. Because we had buyer in Lower Yukon. We didn't
14 know the people that -- few people are selling subsistence
15 catch. Once those people find out they urged their
16 enforcement, like people, police working in the village, go
17 after those guys and they did, what happened to that buyer,
18 he's no longer there. They moved out from the -- buying
19 from the lower Yukon, that's what they are afraid of today,
20 mostly elders.

21
22 They may people -- if they start
23 controlling or selling fish they wouldn't be -- it would be
24 controllable -- not controllable.

25
26 That's a problem that we're facing even
27 Advisory Council in Yukon and Kuskokwim.

28
29 CHAIRMAN DEMIENTIEFF: Thank you, Harry.
30 Go ahead.

31
32 MR. VINCENT-LANG: I wanted to answer
33 Gary's question. I think in the case where a person
34 processes his fish that's entirely true. But I think in
35 cases of Juneau, you could end up having an individual --
36 or Sitka, for instance, an individual coming in with fresh
37 fish and sell those fresh fish but because they're selling
38 fresh fish they're not covered as a fisheries business
39 under the State of Alaska regulation. So, yeah, you could
40 end up with fresh fish markets in a variety of communities
41 that weren't covered under the traditional practices, which
42 we're both very interested in protecting but could be a
43 significant expansion. Just by the way the definitions are
44 laid out.

45
46 CHAIRMAN DEMIENTIEFF: I think part of the
47 -- at least a very significant part of what Harry just had
48 to say is the involvement of local people and self-
49 policing. Some of these cases that you were talking about,
50 you know, I'm familiar with through the years. And I'm not

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1 belittling, you know, enforcement or, you know, the fact
2 these go into a court, that what -- had an impact -- but
3 further, the larger more significant impact was done by
4 self-policing. It's the same thing that Harry talked
5 about, we all know we have to protect that resource. And
6 if we see people in our villages that are abusing the
7 system, we're the first ones to go and straighten that up
8 and it's happened over and over again, I've seen it.

9
10 A few years back, also, some of the people
11 along the river got into dumping chums taking the eggs,
12 what they heck they -- I forget, whatever, but they cut the
13 eggs out sell the eggs and dumped the fish. And there was
14 a few bad apples that were doing that. We ran those people
15 out. They were the first ones out of the fishery. We ran
16 them out, the ones that didn't want to stop doing that.
17 Because it's a lot of work to cut fish.

18
19 The other thing is, and I'm struck by the
20 whole issue, the more things change, you know, the more --
21 also they stay the same. And I was just thinking about
22 that. In the early days, a fish wheel would feed six or
23 eight families. And the other five or seven families,
24 besides the person who -- the family that was operating the
25 fish wheel, they bartered labor and still a common practice
26 today, that not everybody fishes but a lot of people work
27 for that fish. And the equation is is that, you know, you
28 get 50 percent if I'm fishing for Tom, out at Tom's wheel,
29 I keep 50 percent of what I'm making and he gets 50 percent
30 for providing the site. So that hasn't changed. You know,
31 the equation changes now that -- with the tremendous cost
32 of having to do this, I mean because it was done in the
33 early days, just by row boats, basically. I mean it wasn't
34 -- it wasn't a huge monetary expense as it is now, just the
35 amount the effort what it cost. And that's where the
36 equations have changed by the tremendous costs of being
37 able to go out there and practice that practice.

38
39 But still, to this day, there is probably
40 six to eight families that I know on the Tanana River that
41 are still being fed out of one fish wheel and that hasn't
42 changed.

43
44 Niles.

45
46 MR. CESAR: Thank you, Mr. Chairman. I've
47 sat here all day and of course read all the information
48 that was provided to me and in the last 10 or 12 years have
49 listened to the dialogue go on about customary trade.
50

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1 The one thing that seems to me to be --
2 several things seem to me to be a constant. One is that
3 subsistence folks are not in favor of commercial
4 transactions. I don't see anybody standing up thinking
5 that that's a good idea that subsistence people should
6 engage in that.

7
8 I think there is sufficient testimony and
9 written documentation that says that they also do not
10 endorse a one approach fits all across this state. At
11 least the preponderance of testimony I've heard leads me to
12 believe that there should be movement for regionalization
13 or ability for regionalization to take place.

14
15 And in listening today I've heard folks
16 talk about, you know, what is it, it's a moving target,
17 what's really going to happen, is there going to be an
18 expansion of subsistence take using the regulations as a
19 loophole? I mean there's enough in here and enough
20 testimony that I've heard that leads me to think that from
21 my perspective and of course we're the author of the
22 minority opinion that we'd be better off to accept 13 for
23 no commercialization, no commercial enterprise in
24 subsistence and rework at 11 and 12. It seems to me like
25 that would give us the opportunity to, one, put some fears
26 about enforcement for commercialization but also give us
27 the ability to move forward and do the studies and do the
28 in depth reviews of the regions which would allow us to
29 even take it down to, if not a region, then maybe a
30 subregion like Kenai has proposed. It seems to me that the
31 best way for success in any of this is have the decision
32 driven by the local folks.

33
34 Now, you know, in areas which you get where
35 that is in conflict with other users, it's still the best
36 way to deal with it, is to deal with it on a local level
37 and to come to some agreement.

38
39 And for that reasoning that I've put
40 forward, I guess I'm in favor of, again, no commercial
41 transactions as proposed by the Interagency Staff Committee
42 majority [sic] report but to defer action on 11 and 12.
43 And Mr. Chairman, when it's appropriate I'll make such a
44 motion.

45
46 CHAIRMAN DEMIENTIEFF: Thank you. I think
47 in terms of your discussion, that's real significant to me,
48 is the desire to tailor a recommendation to a region. And
49 that's a partnership that we have with the locals through
50 the Regional Councils. Those Councils work very hard and

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1 we've seen it time and time again, know what's best, know
2 what's going to work in their region and where they differ.
3 You know, I, personally don't have a problem visiting that
4 as the Councils continue to come out with recommendations
5 for their own region. Because it's no one size is going to
6 fit it all, I don't think.

7

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

11

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

22

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

28

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

33

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

36

37 CHAIRMAN DEMIENTIEFF: In the next work
38 session or something?

39

40 MR. BOYD: Yeah.

41

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

47

48 MR. NICHOLIA: You see, you guys understand
49 what you're doing, what the local users, like what Harry
50 said, the local users don't understand what you're doing.

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1 There's got to be education between you and the users,
2 forget about the Staff and everything.

3

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

7

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

10

11 CHAIRMAN DEMIENTIEFF: Sure.

12

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

26

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

30

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

33

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

41

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

45

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

49

50 MR. LOHSE: Thank you.

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

8

9 CHAIRMAN DEMIENTIEFF: Della.

10

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

16

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

33

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

44

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

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1 CHAIRMAN DEMIENTIEFF: Robyn.

2

3 MS. SAMUELSEN: Thank you, Mr. Chairman.

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

18

19 And I think as we develop the regulation we
20 need to give a priority to what subsistence is really
21 about. It is to those individuals that are trying to fill
22 their freezers and not to sell fish to whoever. The person
23 that is in one of our regions, that's the people that we
24 need to look out for, not the person that wants to sell
25 fish to some other place to generate cash to conduct more.

26

27 That component is missing here. And if I'm
28 selling fish I shouldn't be on par with Grace, my neighbor
29 trying to fill her freezer. She should have a preference,
30 under Tier II, she doesn't have a preference over me.
31 Under Tier I, she doesn't have a preference over me and
32 that hasn't been fleshed out in this document and I think
33 that's very important. Because I wasn't in Nome but I was
34 at the Board of Fish meetings when they were going through
35 the Tier II situation and it reigned havoc on those
36 communities in the Nome district, who was going to get fish
37 and they were talking like 10 fish per family and they had
38 to make differentiations between different families and the
39 elders up there.

40

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

46

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

49

50 MS. CROSS: Thank you. What I was going to

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1 say is that I think the most important part of this
2 component to me is regional differences.

3

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

20

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

28

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

37

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

48

49 Thank you.

50

00086

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

5
6 MR. NICHOLIA: Yeah, Pete, correct me if
7 I'm wrong. You know, when we started out this task force,
8 I was on it, and Chuck Miller told me it was going to be
9 just for the Yukon -- after we figure out the Yukon we'll
10 go statewide, right, that was the start of the meeting,
11 right -- I thought it was just the Yukon. Because the way
12 I figure it, if we do something for the Yukon when it's
13 depleted -- I mean the stocks are in decline, then -- then
14 we could do something statewide. If you could fix one
15 problem from the problem area and fix that, I mean make it
16 comfortable where it's not -- then you could move
17 statewide.

18
19 But there's another thing. What the
20 Eastern Interior did, we had a big discussion on it, about
21 two and a half hours, just take that commercial out there,
22 put human family consumption there. Take that
23 commercialization out of there. It's that commercial that
24 brought everything down. Commercialization has ruined it.
25 You could sell everything.

26
27 So you buy a fish from the supermarket,
28 it's value added right. You get a fish from the Yukon,
29 it's not value added. You value at and then you put money
30 in your pocket so you could buy gas or whatever. It's not
31 like the way you go to the supermarket, but when you got a
32 -- what I really want to say is that you got to be down to
33 the people's level that you're trying to manage.

34
35 CHAIRMAN DEMIENTIEFF: Pete.

36
37 MR. PROBASCO: Mr. Chair, I just wanted to
38 address Mr. Nicholia's question. The Board has addressed,
39 and is currently addressing a couple issues that focus
40 strictly on the Yukon/Kuskokwim area and that was dealing
41 with how to interact with the State as far as special
42 action and that focused only on that area and then if that
43 worked then they were going to look at it statewide.
44 However, the Federal Subsistence Board specifically, and
45 that's the reason why they appointed a member from each of
46 the Councils, is they wanted to look at this on a statewide
47 basis and also look at regionalization.

48
49 Mr. Chair.

50

00087

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

12
13 Looking at the Majority, the difference
14 between the Majority and the Minority with those things
15 aside, appears to me that the Minority does deal with the
16 separate regions of the state, and I think we've heard a
17 lot of testimony today how important that is. Now, how we
18 deal with that as a Board has become some what possibly
19 complicated, maybe not, depending on how many regions need
20 to have their specifics identified, but I assume we would
21 have to deal with each one of those in some form as a
22 Board.

23
24 Other than that the Majority still seems to
25 be -- this Majority Staff Committee recommendation with
26 maybe the caveat of having the -- or the condition of
27 having the regional -- separate regions dealt with might be
28 something we want to look at.

29
30 MR. EDWARDS: Mr. Chairman.

31
32 CHAIRMAN DEMIENTIEFF: Gary.

33
34 MR. EDWARDS: Well, I would agree that the
35 Majority recommendation is not perfect and it certainly
36 doesn't cover or address everything that could be done with
37 subsistence caught fish in exchange for cash and it
38 certainly doesn't address all of the issues that the
39 Regional Councils has raised as well as the people who have
40 spoken today. But I do, personally, feel that it does
41 provide a good job of trying to provide a fair and a
42 balanced approach to what is obviously a very difficult
43 issue.

44
45 I think it tries to respect traditional
46 uses, while trying to ensure that those traditional uses
47 can continue by placing fair and reasonable restrictions on
48 sale. And I think it also tries to avoid, you know, a
49 cumbersome process that could be associated with permitting
50 or record-keeping. And while it is not perfect, I think it

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1 certainly is significantly better than what we have and I
2 think it's a good point of departure. And as you, Mr.
3 Chairman, pointed out, what we're doing here today is not
4 going to be written in stone. As we proceed and we find
5 that it needs to be more restrictive or less restrictive,
6 certainly the Board can address those issues.

7

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

18

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

29

30 Thank you.

31

32 CHAIRMAN DEMIENTIEFF: Bill.

33

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

37

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

41

42 Thank you, Mr. Chairman.

43

44 CHAIRMAN DEMIENTIEFF: Grace.

45

46 MS. CROSS: I forgot to mention. On Page
47 13, number 13, I don't have any opposition to that. Like
48 I said, it really doesn't affect us but I don't see any
49 harm in it.

50

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1 CHAIRMAN DEMIENTIEFF: Thank you.

2

3 MS. GOTTLIEB: Mr. Chair.

4

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

7

8 MS. GOTTLIEB: Go ahead, Niles.

9

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

15

16 CHAIRMAN DEMIENTIEFF: Judy.

17

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

30

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

45

46 Thank you.

47

48 MR. LOHSE: Mr. Chair, actually I really
49 don't have anything to clarify what she was talking about.
50 I was just going through what you have in front of you

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1 right here. I was looking at the Majority recommendation,
2 number 11 and 12 and I was trying to figure out what does
3 it restrict, and the only thing that I can see that it
4 restricts is that transactions between rural residents and
5 others has to be used for their personal or family
6 consumption. That's the only restriction that I find in
7 there.

8

9 Which goes along a lot with what
10 Southcentral was talking about when they were talking about
11 that they thought that subsistence should be for family
12 use, for the use of people and not for business. You've
13 all, pretty much it seems like accepted the 13 part or the
14 12 part, depending on which one you're looking at on the no
15 commercial transactions.

16

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

41

42 My recommendations would be to go with your
43 Majority motion but add what the Minority put in. Della
44 and I were talking about that, add that you need to be able
45 to recognize -- that you recognize that you need to be able
46 to recognize, you know, differences in different areas --
47 regional differences. And by putting it in there in words,
48 you're doing the same thing as what we tried to do as a
49 RAC.

50

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1 We weren't trying to say this is the dollar
2 amount we want or this is the percentage amount we want,
3 what we were trying to say is we need something that says
4 that this stuff is really for family and personal use and
5 that was our way of putting it on the table. But by
6 putting that into your proposal, you'll recognize that in
7 the future we need to adjust regional differences if they
8 come up so that somebody in the future doesn't forget that.

9

10 Thank you.

11

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

22

23 Gerald.

24

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

35

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

42

43 MR. EDWARDS: Mr. Chairman.

44

45 CHAIRMAN DEMIENTIEFF: Gary.

46

47 MR. EDWARDS: I guess I'm prepared to
48 follow-up on Mr. Niles [sic] suggestion, but Ralph has put
49 this issue of having subsistence food commercially
50 processed. And I know we spoke with our law enforcement

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1 people over lunch and I guess I'd just like for them to
2 maybe address it and if it would occur how would we do it
3 before we just maybe jump into accepting some language.

4

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

8

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

13

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

19

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

30

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

38

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

45

46 CHAIRMAN DEMIENTIEFF: Okay, Grace first
47 and then Robyn.

48

49 MS. CROSS: I have a question for, I forget
50 his name, I'm sorry.

00093

1 CHAIRMAN DEMIENTIEFF: Stan.

2

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

7

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

10

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

12

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

15

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

21

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

31

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

36

37 MR. LOHSE: It is. I would like to ask him
38 a question or the State a question at the same time,
39 because I think there must be regulations in place
40 governing that at this point in time because I know that we
41 have facilities in Cordova that handle commercial fish,
42 they pack sport caught fish and they pack subsistence fish.
43 In other words they custom process fish for
44 sportsfishermen, they custom process fish for subsistence
45 fishermen and they buy and sell commercial fish. And I'm
46 pretty sure that there's enough enforcement there that if
47 that was an illegal activity it wouldn't be taking place.
48 And I'd like to ask the Fish and Game if there isn't
49 already a process in place for that?

50

00094

1 MR. PRUSZENSKI: Yeah, you're entirely
2 correct. Even if you wouldn't be allowing this in the
3 Federal agency -- or the Federal system, it's allowed under
4 the State system currently right now. Under State
5 regulations, persons licensed under A.S. 43.75.011 to
6 engage in a fisheries business for commercial purposes or
7 barter or solicit to barter for subsistence taken salmon
8 and their parts, so you're entirely correct, that is
9 happening currently under the State system and will
10 continue to happen under the State irregardless whether you
11 prohibit it under the State system.

12
13 CHAIRMAN DEMIENTIEFF: Okay, Robyn and then
14 Gerald.

15
16 MR. NICHOLIA: Yeah, Mr. Chair.....

17
18 CHAIRMAN DEMIENTIEFF: Robyn first.

19
20 MR. NICHOLIA: Oh, okay.

21
22 CHAIRMAN DEMIENTIEFF: He had his.....

23
24 MR. SAMUELSEN: Thank you, Mr. Chairman.
25 I'm pretty concerned where we're going. I look on the
26 discussion paper that Staff provided for us and the
27 analysis and it said that the '96 Congress, the intent of
28 Congress was to prohibit the unlimited exchange for cash is
29 clear, the report states that the Committee did not intend
30 for customary trade to be construed to permit the
31 establishment of a significant commercial enterprise under
32 the guise of subsistence uses.

33
34 I look on Page 13 on the Staff
35 recommendations, read the proposed regulation language and
36 I got to the justification, number 1, provides for
37 unlimited customary trade between rural residents, which
38 encompasses a majority of customary trade exchanges.

39
40 On the thought train that we're going,
41 we're going -- you guys are going to adopt something here
42 today and then it's going to be kicked back to the Regional
43 Councils, who'll be meeting sometime next fall because by
44 the time your regulation comes out, I don't think we're
45 going to be able to react and promulgate a recommendation
46 back to you in time before the season, so basically what
47 we're going to have is an unregulated open-ended definition
48 that each individual, I guess, significant commercial
49 enterprise should be based on somebody's total income or
50 whatever because we surely haven't defined it here and it

00095

1 will be on a case by case basis. What is significant to me
2 may not be significant to you or vice versa. And I think
3 we're just as -- we haven't accomplished where we wanted to
4 go quite yet and we have to -- I would ask that you guys
5 consider putting in a dollar amount as a cap or something
6 that we could come back and make recommendations within
7 regions.

8

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

17

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

23

24 Gerald.

25

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

42

43 CHAIRMAN DEMIENTIEFF: Pete.

44

45 MR. PROBASCO: Mr. Chair, maybe we can
46 answer the question as far as what can take place at a
47 processor as far as marking other non-commercial catches
48 and we have Mr. Manny Soares with DEC here and he'll
49 address what's required by processor for identifying fish.

50

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1 CHAIRMAN DEMIENTIEFF: Go ahead.

2

3 MR. SOARES: Yes, Mr. Chair, Manny Soares
4 with the Alaska Department of Environmental Conservation
5 and the seafood processing regulations clearly define
6 requirements for processors to adhere to when processing
7 subsistence or sport caught fish that is not for commercial
8 sale.

9

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

12

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

18

19 Thank you.

20

21 CHAIRMAN DEMIENTIEFF: Is that a DEC
22 regulation?

23

24 MR. SOARES: Yes.

25

26 CHAIRMAN DEMIENTIEFF: Bill.

27

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

32

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

43

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

46

47 CHAIRMAN DEMIENTIEFF: Gary.

48

49 MR. EDWARDS: Mr. Chairman, given the
50 State's response to the issue that Ralph raised, I guess at

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1 this point I am ready to make a motion.

2

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

6

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

16

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

19

20 MS. GOTTLIEB: I'll second it.

21

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

33

34 So Bill.

35

36 MR. THOMAS: Mr. Chairman, thank you.

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

50

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1 CHAIRMAN DEMIENTIEFF: Thank you, Mr.
2 Chairman.

3
4 MR. CESAR: Mr. Chairman, I'd like to raise
5 a point of order.

6
7 CHAIRMAN DEMIENTIEFF: Yes.

8
9 MR. CESAR: One, we have raised this now to
10 a Board decision, not discussion. We have an active motion
11 on the floor and given that, I think you need to constrain
12 the remarks to the Board members while they go through the
13 voting process.

14
15 MR. THOMAS: Mr. Chairman.

16
17 (Laughter)

18
19 CHAIRMAN DEMIENTIEFF: What we're going to
20 do right now is take a little break.

21
22 MR. THOMAS: I want to defend myself.

23
24 CHAIRMAN DEMIENTIEFF: You can filibuster
25 while we're on break, Bill. But we will take a short
26 break.

27
28 (Off record)

29
30 (On record)

31
32 CHAIRMAN DEMIENTIEFF: We'll go ahead and
33 call the meeting back to order. But first of all I have to
34 -- I didn't respond to Niles point of order prior to break
35 and basically the way we have operated in the past is that
36 once we get the motion on the table, the discussion is
37 restricted to members of the Federal Subsistence Board,
38 however, any individual Board member can ask questions of
39 Staff or of the Regional Council or State or whoever, to
40 help them understand the issue. But it is a Board member
41 driven process. So your point of order is taken.

42
43 Niles.

44
45 MR. CESAR: Mr. Chairman, I'm trying to
46 find a way. I mean I agree with everything that the
47 Majority Staff Committee are doing here and I believe that
48 we are headed in the right direction. We do have some
49 differences in our approach to it but I think we're all
50 headed in the same direction.

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1 If there were a way to have a recognition
2 of the regional differences inserted in the Majority Staff
3 recommendation, then I think that I could support it. So
4 I don't see our great wordsmith here, either Taylor or
5 Sandy -- oh, there he is, if there is a way to do that.
6 gain, I think overall I agree with it and even if that
7 language wasn't in there, I think we're headed in the right
8 direction. It just seems it would give me a lot more
9 comfort if we could insert the Board shall recognize and
10 respond to regional differences in the implementation of
11 these regulations.

12

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

16

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

23

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

28

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

32

33 MS. GOTTLIEB: Mr. Chair.

34

35 CHAIRMAN DEMIENTIEFF: Yes.

36

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

48

49 CHAIRMAN DEMIENTIEFF: Your language is
50 basically recognizing that we recognize or that we -- taken

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1 out the may?

2

3 MR. CESAR: Mr. Chairman, there's a world
4 of difference between may and shall. And, you know, I'm
5 not going to get hung up on it but I do think it denotes a
6 more than just desire to go in a direction it says we will
7 go in the direction of recognizing those differences.

8

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

14

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

21

22 So was that an amendment?

23

24 MS. GOTTLIEB: Yes, Mr. Chair.

25

26 CHAIRMAN DEMIENTIEFF: There is a motion

27 to.....

28

29 MS. GOTTLIEB: An attempt.

30

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

33

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

36

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

40

41 CHAIRMAN DEMIENTIEFF: The Board.....

42

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

45

46 (Laughter)

47

48 CHAIRMAN DEMIENTIEFF: The Board recognizes
49 regional differences and may define customary trade
50 differently for separate regions of the state, I think is

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1 basically what we had. Okay.

2

3 That is a motion to amend?

4

5 MS. GOTTLIEB: That is my motion.

6

7 CHAIRMAN DEMIENTIEFF: Is there a second?

8

9 MR. EDWARDS: Second.

10

11 CHAIRMAN DEMIENTIEFF: Discussion on the
12 amendment.

13

14 (No Discussion)

15

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

19

20 IN UNISON: Aye.

21

22 CHAIRMAN DEMIENTIEFF: Those opposed same
23 sign.

24

25 MR. CESAR: Aye.

26

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

30

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

33

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

36

37 IN UNISON: Aye.

38

39 CHAIRMAN DEMIENTIEFF: Those opposed, same
40 sign.

41

42 (No opposing votes)

43

44 CHAIRMAN DEMIENTIEFF: Motion carries.
45 That completes our business today. We're going to adjourn
46 but before we do I'll just point out to the Board that it
47 will probably be, and it's not like we haven't been busy,
48 I mean we had a major regulatory meeting in December, and
49 of course the holidays and now it will probably be sometime
50 after January, but Tom, if you could, start contacting

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1 Board members because it will be about three months before
2 we have our regular work session that we were going to try
3 to have monthly, so maybe we could just start getting a
4 hold of the Board members and find out what's a good date
5 so that we can schedule a work session.

6

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

10

11 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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

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

THAT the foregoing pages numbered 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 □