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FEDERAL SUBSISTENCE BOARD
PUBLIC WORK SESSION MEETING
VOLUME I
GORDON WATSON CONFERENCE ROOM
U.S. FISH AND WILDLIFE SERVICE BUILDING

ANCHORAGE, ALASKA
November 12, 2009
8:30 o'clock a.m.

- MEMBERS PRESENT:
- Mike Fleagle, Chairman
 - Charles Bunch, Bureau of Indian Affairs
 - Geoff Haskett, U.S. Fish and Wildlife Service
 - Wini Kessler, U.S. Forest Service
 - Sue Masica, National Park Service
 - George Oviatt, Bureau of Land Management
 - David Bedford, State of Alaska Representative
 - Keith Goltz, Solicitor's Office
 - Jim Ustasiwski, Department of Agriculture

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1 P R O C E E D I N G S

2
3 (Anchorage, Alaska - 11/12/2009)

4
5 (On record)

6
7 CHAIRMAN FLEAGLE: All right, good
8 morning. I'd like to say good morning to everybody as
9 we start off this work session. I'd like to call it to
10 order. And I see we have either all of the Board
11 members or a representative of the Board members
12 present. And maybe we'll just go around the table and
13 issue a brief introduction; good morning everybody.
14 And let's go ahead and start right there at that end.
15 Good morning.

16
17 MR. EASTLAND: Good morning. I'm
18 Warren Eastland, the ISC member for the Bureau of
19 Indian Affairs.

20
21 MS. K'EIT: Good morning. I'm Kristin
22 K'eit, Bureau of Indian Affairs.

23
24 MR. BUNCH: And I'm Charlie Bunch,
25 Bureau of Indian Affairs. Ed is down in Rocky
26 Mountain.

27
28 MR. CASIPIT: Cal Casipit. I'm the
29 Staff Committee member for the Forest Service.

30
31 MR. USTASIWSKI: I'm Jim Ustasiwski,
32 U.S. Department of Agriculture.

33
34 DR. KESSLER: Morning. I'm Wini
35 Kessler. I'm representing the Regional Forester, Denny
36 Bschor.

37
38 MR. GOLTZ: Keith Goltz. Solicitor's
39 office.

40
41 MR. PROBASCO: Good morning, Pete
42 Probasco. I'm with the Office of Subsistence
43 Management.

44
45 MR. JACK: Carl Jack, OSM.

46
47 MR. OVIATT: George Oviatt. I'm
48 representing Tom Lonnie for the Bureau of Land
49 Management.

50

1 MR. SHARP: Dan Sharp, BLM.
2
3 MS. MASICA: I'm Sue Masica. I'm the
4 Regional Director for the Park Service.
5
6 MR. RABINOWITCH: Sandy Rabinowitch.
7 Staff Committee for Park Service.
8
9 MR. HASKETT: Geoff Haskett. Regional
10 Director, Fish and Wildlife Service.
11
12 MR. BERG: Jerry Berg. Staff Committee
13 member for Fish and Wildlife Service.
14
15 MR. BEDFORD: David Bedford. Alaska
16 Department of Fish and Game.
17
18 CHAIRMAN FLEAGLE: And we have Nancy
19 Swanton with the Park Service, too. Sorry you don't
20 have a microphone back there.
21
22 But, anyway, good to see everybody here
23 this morning.
24
25 I'm Mike Fleagle, the Chairman.
26
27 And we're going to start out with the
28 agenda. First, I'd like to recognize Pat Pourchot, the
29 Special Assistant to the Secretary for Alaskan Affairs
30 present with us, and he's indicated that he's going to
31 take a spectator position in this meeting but we do
32 have a spot on the agenda to have him address the
33 Board, which will be forthcoming.
34
35 We're going to go ahead and look over
36 the agenda. This is the opportunity for adoption or
37 modification if anybody has anything else they need to
38 add.
39
40 Pete, have you got anything.
41
42 MR. PROBASCO: Mr. Chair. A couple of
43 things before we get into the agenda. I just want to
44 note that we do have a call in line, and, has anybody
45 called in, Gary, to your knowledge?
46
47 MR. GOLDBERG: No.
48
49 MR. PROBASCO: So we do have a call in
50 line, so let's keep that in mind as we work through it.

1 CHAIRMAN FLEAGLE: Okay.
2
3 MR. PROBASCO: We do have two agendas
4 in our packet. The one for this morning, and then this
5 afternoon, the MOU signatories agenda is on the left-
6 hand side of your packet in the back and that's also a
7 draft agenda and we can review that at that time.
8
9 Mr. Chair. I have nothing to add to
10 the agenda.
11
12 CHAIRMAN FLEAGLE: Thank you, Pete.
13 Just for clarification, that draft MOU discussion
14 agenda is the Item 7 on the main agenda, time certain
15 for 1:00 p.m. Everybody's understood.
16
17 (Board nods affirmatively)
18
19 CHAIRMAN FLEAGLE: Okay, thank you.
20 Other discussion on the agenda.
21
22 (No comments)
23
24 CHAIRMAN FLEAGLE: All right. With
25 that, we'll move ahead. Information exchange. Pete.
26
27 MR. PROBASCO: Thank you, Mr. Chair.
28 Just a couple things real quick. I just wanted to
29 alert the Board, and we're going to report back to the
30 Board -- okay, is there anybody on line?
31
32 MR. MATHEWS: This is Vince in
33 Fairbanks.
34
35 MR. PROBASCO: Good morning, Vince.
36 Anybody else on the line?
37
38 (No comments)
39
40 CHAIRMAN FLEAGLE: Okay. I just wanted
41 to let the Board know of the intent regarding the
42 nomination process for the Federal Subsistence Board as
43 far as the Subsistence Regional Council membership. As
44 everybody's aware, since about 2004 membership has
45 declined statewide. This has resulted in fewer options
46 for recommendations and has resulted in numerous vacant
47 seats on the Councils. The InterAgency nominations
48 panels have not applied the Board's rating standards
49 consistently statewide, often disregarding the
50 standards or adding their own; the length of time for

1 review in Washington, particularly these past couple
2 years seems to be taking longer each year. Because of
3 these factors the Office of Subsistence Management
4 wants to take a fresh look at our Council member
5 selection process with the goal of developing a more
6 efficient, streamlined and effective process. We're
7 preparing to focus effort to begin in the spring of
8 2010 and intend to have a final product in place by the
9 2011 cycle. The review will cover every part of the
10 process, which includes outreach, application forms,
11 composition and training of the InterAgency nomination
12 panels, the panel reports, the five criteria and the
13 rating standards. And once we develop this draft,
14 we'll bring the findings and recommendations to the
15 Board for their review and action probably sometime in
16 the summer of 2010.

17

18 But that's just an FYI, Mr. Chair.

19

20 CHAIRMAN FLEAGLE: Thank you, Pete.

21 Discussion.

22

23 (No comments)

24

25 CHAIRMAN FLEAGLE: All right, hearing
26 none, we'll go ahead and move on. Is there any other
27 items for general discussion under information
28 exchange.

29

30 DR. KESSLER: Mr. Chair.

31

32 CHAIRMAN FLEAGLE: Wini.

33

34 DR. KESSLER: Thank you. A couple
35 things. A month ago the Forest Service was able to
36 host representatives from our Washington office in a
37 review of our subsistence program. They came up here
38 and were able to be present for a Southcentral Council
39 meeting and meet with key people in the program and in
40 the communities. And I want to particularly thank
41 Polly Wheeler and Pete Probasco for their help with
42 this effort and we can only hope that it'll have a
43 positive effect on the budget challenges that we've
44 been experiencing.

45

46 Also I want to share that we have
47 filled our Tongass Subsistence Coordinator position and
48 the person is Terry Suminski, who is well known to a
49 lot of you.

50

1 Thank you.

2

3 CHAIRMAN FLEAGLE: Great. Appreciate
4 the news, thank you. Any other items.

5

6 (No comments)

7

8 CHAIRMAN FLEAGLE: Hearing none, at
9 this time I'd like to call forward Mr. Pat Pourchot,
10 Special Assistant for Alaska Affairs. Welcome Pat,
11 appreciate your attendance to the meeting.

12

13 MR. POURCHOT: Thank you, very much. I
14 appreciate the opportunity to update the Board on an
15 announcement, which I'm sure that everyone here is
16 knowledgeable about, when the Secretary of Interior
17 Salazar announced during the AFN Convention, his
18 intention to conduct an overview review of the Federal
19 Subsistence Program, with an eye of looking at --
20 looking now that -- under the assumption that Federal
21 management of subsistence resources on Federal lands
22 and certain waters is here to stay, or for the
23 foreseeable future, and now would be an opportune time
24 to look back to see whether the Federal Program is
25 acting and taking actions that are in line with what
26 was envisioned of Title VIII of ANILCA, as well as
27 envisioned in the early '90s when the Federal
28 government took over and established the Board and the
29 RAC system and the other components that we see today,
30 whether or not those are continuing to function and to
31 serve subsistence users in a way that was envisioned
32 then and then subsequently in the '90s, late '90s when
33 the Federal government took over certain fishery
34 subsistence managements -- oppor -- authorities.

35

36 So since that time some of us have been
37 scrambling and talking to many of you about what that
38 might look like, how to do a credible job based on
39 experience of many people, if not most people in this
40 room, and still try to maintain some, not necessarily
41 objectivity, but some distance from the actual
42 decision-makers and process itself and, obviously that,
43 in itself, sets up a bit of a challenge to the folks in
44 this room, the Board members, the Staff Committee, the
45 RAC membership all are kind of the repository of most
46 of the knowledge and experience in the Federal
47 Subsistence Program. And a review certainly has to
48 include all input from all of you and all those folks
49 to be credible and to have that kind of experience and
50 knowledge brought into the system.

1 At the same time we're attempting to
2 try to do a Secretarial level review and try to -- as
3 the Secretary wanted, to start with a bottom's up, or
4 I'm told that that's not necessarily a term of art, but
5 based on input from subsistence users and so in this
6 last week we've sent out a press release announcing the
7 review, setting up a website, which hopefully today
8 we'll have a website and putting out a special email
9 address so that folks that are -- the mailing list of
10 the subsistence office goes out to four or 500 people
11 and then we followed up with -- that went out primarily
12 by email, I think, and knowing that email is limited,
13 that was followed up with, you know, hard -- I don't
14 even know what we call it anymore, a hard copy piece of
15 paper that got in the real mail to people. Hopefully
16 that went out early this week.

17
18 And so what will follow next will be,
19 hopefully we'll solicit some input that way but clearly
20 that can't be the end of it and we'll -- we're planning
21 on going out to as many rural areas as we can within
22 limited time. I think the Secretary indicated his
23 desire to conduct this review in a fairly expeditious
24 way. I don't think there's any time certain dates on
25 that but certainly we want to be largely completed on
26 this review within several months, two or three months
27 or so. And I think the first part of that, the
28 outreach part, trying to communicate, solicit input
29 from folks in this room, folks out there involved in
30 subsistence uses, hopefully that would be in the next
31 month or month and a half or so.

32
33 Maybe -- I don't know if -- for folks
34 on line or people who know these things, the website is
35 www.doi.gov/subsistencereview, all one word, and that
36 has links to all of your agencies, it has links to the
37 Secretary's speech, links to Title VIII of ANILCA,
38 basic background plus how to communicate with the
39 review in submitting input. The email address for
40 submitting any and all comments and recommendations,
41 subsistence@ios.doi.gov. We did test that, it is
42 working. We're already starting to get some input in,
43 which is good.

44
45 I think the only other thing
46 specifically planned at this time, we are working to
47 bring in the Chairs or representatives of each of the
48 10 RACs into Anchorage, hopefully December 3rd to
49 specifically get their input on this review, not on
50 agenda items that may be before the Board in the future

1 or other items, but specifically on their thoughts and
2 their experiences on how the Federal Subsistence
3 Program has been working and, hopefully, their
4 suggestions to how to improve -- how to improve Federal
5 management from their standpoint.

6

7 I would add a lot of the things, I
8 guess, all of our departments are egocentric or self-
9 centered in a way organizationally and I wanted to add
10 to Wini and to Cal and others with the Forest Service
11 and the Department of AG, that the Secretary obviously
12 recognizes the vital role of the Department of
13 Agriculture and Forest Service in this also and it's
14 kind of interesting that it kind of dove-tails or comes
15 on the heels of your own internal review, which we
16 obviously support for budgetary and other reasons, and
17 I've been in contact with Cal and Steve, the former
18 Staff coordinator, and we look forward to working
19 closely with AG and with the Forest Service in this
20 review and appreciate your support of this also.

21

22 So, Mr. Chairman, that concludes kind
23 of a status report. I'd be happy to answer any
24 questions.

25

26 CHAIRMAN FLEAGLE: Thank you.

27 Questions.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: We met a couple days
32 ago, Pat and I, and talked about this meeting and I
33 said that there would probably be questions.

34

35 (Laughter)

36

37 CHAIRMAN FLEAGLE: I've got a couple.

38

39 (Laughter)

40

41 CHAIRMAN FLEAGLE: The input, like I
42 told Pat and others, since I surely welcome a review of
43 the Program, I think that any bureaucratic process
44 should be reviewed periodically to see that it's
45 meeting its original intent. I mean these things have
46 a tendency to grow and become what they become through
47 evolution, and our program is defined largely by
48 lawsuits and challenges, legal challenges and others
49 that have put us where we are at today. And I know
50 that this process that brought us to the review is

1 driven by those that have a negative view of the
2 program, that think that it is not meeting the needs
3 and its intent; and I would just hope that we would be
4 open to welcome discussion or comments from people that
5 do see it as working as intended. I'd just like to ask
6 that, if you do intend to try to look for what does
7 work with the program, as well in the review.....

8

9 MR. POURCHOT: Yeah.

10

11 CHAIRMAN FLEAGLE:not what
12 doesn't work.

13

14 MR. POURCHOT: Absolutely. I think
15 that's important. And the things that are believed to
16 not work, I mean obviously that is by some people and
17 there may be other people on the same topic that feel
18 otherwise, and you sure get a taste of that, some of us
19 -- I was -- I appreciated the opportunity to be asked
20 along, for example, on a trip last June, we went to the
21 Lower Yukon and as everybody knows there's lots of
22 issues down there and, you know, it's clear where you
23 live is sometimes where you stand on issues and things
24 look different in the Lower Yukon on the same issues as
25 in the Middle Yukon or the Upper Yukon; no secret
26 there. And so I think we do have to be mindful of that
27 and talk to, you know, as many people as we can. And,
28 by the way, we're not limiting this just to, you know,
29 only subsistence users or subsistence groups, obviously
30 we're going to be talking to commercial fishermen and
31 sport groups and others, I mean that would be just a
32 normal part of any kind of fair review. And as you
33 point out, Mr. Chair, there is lots of different
34 viewpoints on things. And so I think, yeah, we have an
35 obligation to look at all those things.

36

37 I don't claim to be a personal expert
38 at all and am still reading stuff and learning things
39 all the time on this.

40

41 I was reminded by a few people that in
42 the early '90s when the Federal Program was set up it
43 wasn't just arbitrarily, you know -- the structures
44 weren't just arbitrarily arrived at, there was a lot of
45 discussion and a lot of thought and regulatory process
46 associated with the structure that was chosen and there
47 were other structures possible, but -- you know, so
48 there was some thought that went into that structure at
49 the time, just speaking on that point.

50

1 So I mean I think we have to go back
2 and, you know, not just assume that something -- some
3 other structure will work better. I think that's
4 definitely part of the review.

5
6 CHAIRMAN FLEAGLE: Great, I appreciate
7 that. I just was a little concerned when I heard the
8 term, broken, and it appears that there's some sense
9 that it needs to be repaired or overhauled, and I'm
10 glad to hear that it's going to be a fair review and
11 see where the process can be improved. Appreciate
12 that.

13
14 The other question I had was on the
15 meeting of the RAC Chairs or representatives, is that
16 -- do you intend to have that as an open meeting or is
17 that going to be informal? For instance, can I attend?

18
19 MR. POURCHOT: My attorney or
20 attorneys, who are here, have advised us, that because
21 it is a FACA committee that, yes, it is -- it must be
22 duly noticed and it is open to the public, notwith --
23 even though I would quickly add the Chairs are not
24 being expected nor would they be speaking on behalf of
25 the whole Council, that they're speaking, by
26 definition, for themselves. Notwithstanding that, it
27 is still -- because they are the Chairs, it would be
28 considered a public meeting and I think we're in the
29 process now of putting out that formal notice and we
30 are in contact and, hopefully, today we'll be
31 contacting all the RACs and -- Chairs and soliciting to
32 see if, you know, inviting them to the meeting. But,
33 yes, you may come.

34
35 CHAIRMAN FLEAGLE: Good answer, thank
36 you. Other questions.

37
38 (No comments)

39
40 CHAIRMAN FLEAGLE: Discussion. Carl.

41
42 MR. JACK: Yeah, Pat, my name's Carl
43 Jack. Obviously the review's going to be within the --
44 will be within the so-called box, the statute itself,
45 if, for example, a recommendation is made that would be
46 outside of the box of Title VIII, how would that -- how
47 is that going to be handled or the other question is,
48 if what can be done administratively and since the
49 structure is structure of the Federal Program was done
50 through extensive public process, EIS, would that --

1 would your review -- would you revert to like the EA to
2 make some -- to address those changes that may occur.

3

4 Thank you.

5

6 MR. POURCHOT: Carl, those are great
7 questions and those are things that have been spinning
8 through my mind also, exactly that, and I've talked to
9 -- for one -- okay, for starters I think it would be
10 unrealistic to solicit all of this input and not expect
11 comments and suggestions that lay outside of Title
12 VIII. I mean there's just so -- you know, there's too
13 many interconnections not to expect that and the
14 example that, you know, comes to lots of people's mind
15 that has been raised, is by -- you know, bycatch in the
16 Bering Sea. The Secretary of Interior and Agriculture
17 have almost no direct authority on bycatch in the
18 Bering Sea. I mean there's, you know, the North
19 Pacific Fishery Management Council, Secretary of
20 Commerce, NOAA, others have direct input to that, but
21 -- but that obviously has affects on the Board's work
22 and Federal subsistence management of Yukon River kings
23 and chums so I mean it would be hard to ignore comments
24 on that. I think the question you raise is a good one
25 and I would see -- I mean as I've kind of struggled to
26 simplify this in my own mind is, you know, kind of
27 three boxes at the end of a process. You have a box of
28 things that have been recommended and -- or studied and
29 thought about and perhaps recommended that are within
30 -- directly within the Secretary of Interior and
31 Agriculture's authorities for their policy things, or
32 appointments or things that he has direct control on
33 and may want to pursue. Then you have another category
34 and you referenced, regulatory, the Secretary of
35 Interior and Agriculture can certainly promulgate
36 regulations that alter structures or policies of the
37 Subsistence Program, that's a public process and
38 obviously there's a whole, you know, scheme of how that
39 happens, but the Secretary theoretically could, if he
40 desired, start a regulatory process to change things
41 that -- in the same way that the Board was created
42 originally. Then you have this third pile, and that's
43 things that are not necessarily or probably aren't
44 within the authorities of the Secretaries but are
45 mentioned and have influence or have some sort of just
46 position with the Federal Program -- or the Subsistence
47 Program, and whether or not things like Bering Sea
48 bycatch or Treaty obligations with Canada or, you know,
49 a host of other things, I think some of those maybe are
50 flagged, they're discussed, some of the -- statutory

1 changes, that would be another category where certainly
2 the Administration, not necessarily the Secretary of
3 Interior, but through OMB, it is possible to introduce
4 legislation in Congress. Whether or not that is
5 advisable or practical, I don't know. And some of
6 those sorts of recommendations, you know, may or may
7 not be passed along to the Secretary but those are the
8 kinds of things that would be probably his decision to
9 pursue or not to pursue.

10

11 But those are -- I mean those are the
12 big tough questions.

13

14 CHAIRMAN FLEAGLE: So I think I heard
15 you say this, but just maybe to gel it to, to clarify,
16 the question was whether or not ANILCA might be amended
17 through the process or recommended, you're envisioning
18 a process that would look at the potential for ANILCA
19 to be amended and recommend one way or another if you
20 think that's appropriate.

21

22 MR. POURCHOT: Yeah.

23

24 CHAIRMAN FLEAGLE: Whether -- I think
25 what I heard you say is that you were but you couldn't
26 guarantee it would get past a certain level if you were
27 to recommend it.

28

29 MR. POURCHOT: Yeah, I think that there
30 -- you know, it's no secret to all the Federal folks
31 here, I mean, once you get into the Washington realm
32 you have a whole other solicitor's office and you have
33 an Office of Congressional Affairs and people that may
34 weigh in on the advisability of introducing legislation
35 or the legalities of doing certain things and then you
36 have Secretarial decision-making that, you know, is
37 just, you know, the Secretary's best judgement as a
38 high ranking appointed official within an
39 administration. And at that level is where you're
40 dealing with the Secretary of Commerce or the Secretary
41 of Agriculture or the White House, and, you know, the
42 decision-making certainly gets more complex.

43

44 CHAIRMAN FLEAGLE: All right. And
45 maybe -- I know there was another press release and
46 maybe this is the elephant in the room but.....

47

48 (Laughter)

49

50 CHAIRMAN FLEAGLE:but how about

1 if we talk about that process for a minute. I know
2 we've had a private discussion about the intent and,
3 you know.....

4
5 MR. POURCHOT: Yeah.

6
7 CHAIRMAN FLEAGLE:the question is
8 am I still the Chair and so would you just touch on
9 that real quickly?

10
11 MR. POURCHOT: You are still the Chair.

12
13 (Laughter)

14
15 MR. POURCHOT: In all of our eyes.
16 Yeah, I, too, had gotten a couple of questions by
17 telephone early on and, no, the Secretary has announced
18 at the AFN and then we followed up with a press release
19 that he is seeking nominations or applications
20 submitted to the same email address for the Chair of
21 the Subsistence Board. I think he indicated to Kim
22 Elton and I that, you, Mr. Chair, are welcome to submit
23 your application for that, there's no predecision made
24 in that selection process. It was something, though,
25 he felt that, you know, it -- the -- the Chair, as
26 everyone knows, serves at the pleasure of the Secretary
27 of Interior with consultation with the Secretary of
28 Agricul -- Agriculture -- am I doing okay here.....

29
30 (Laughter)

31
32 MR. POURCHOT:and it is just --
33 probably for the same -- same rationale and reasons as
34 the review, that he felt it was time to at least review
35 the Chair of the Subsistence Board. That -- the call
36 for nominations or applications went out and it is
37 December -- the deadline for submitting, and I'm using
38 application and nominations, they're certainly
39 different, but people are -- have been submitting other
40 people's names for consideration, so we're accepting
41 both, but the deadline for that would be December 4th,
42 which is a Friday, for the -- the first -- obviously
43 first week in -- first week of December. There's no
44 timeframe on a selection process. As you know, Mr.
45 Chair, and others before you and some of us in the
46 room, there is a clearance process now for appointed
47 officials that seems like with every year and every
48 administration it gets more and more complex and
49 lengthy and so if someone were to be chosen, I mean
50 there would be certainly a security process part of

1 that, so it'd be very difficult to determine when a
2 nominee or selection would be made. But I'm -- I'm
3 assuming the Secretary has a similar timeframe for the
4 Chair appointment as is for the review.

5

6 CHAIRMAN FLEAGLE: Thanks, appreciate
7 that. Other discussion.

8

9 (No comments)

10

11 CHAIRMAN FLEAGLE: Questions.

12

13 (No comments)

14

15 CHAIRMAN FLEAGLE: All right. It
16 sounds like you're -- oh, we do have one, David
17 Bedford.

18

19 MR. BEDFORD: Yeah, Pat. I really
20 appreciate the opportunity to get some further
21 information on the Secretary's perspective on this and
22 intent.

23

24 We have, of course, in the provision
25 for subsistence in Alaska, a relatively complex system
26 that involves the Federal authorities and processes and
27 so on and also, State, I mean the State has a priority
28 for subsistence uses as well. Do you have an intent to
29 involve State folks in a discussion on where you're
30 going with this, I'm thinking that the Boards of Fish
31 and Game are often making decisions that are directly
32 pointed at providing for subsistence, the Alaska
33 Department of Fish and Game is, of course, engaged in
34 this, and so if you could help me on that I'd
35 appreciate it.

36

37 MR. POURCHOT: Yeah, absolutely we view
38 the State as, you know, obviously a key component of
39 anything the Federal Program does. And for no other
40 reason -- I mean lots of reasons, but obviously the
41 State has, you know, has the bulk of the research and
42 the data that goes into the decision-making for -- at
43 all levels, Federal and State, and, so, yes, we intend
44 to -- I've already started discussions with State Fish
45 and Game and we intend more discussions and we would
46 invite anybody from Fish and Game to, you know,
47 participate in that.

48

49 You raised the question of the Board of
50 Fish and Board of Game, I confess, I hadn't thought of

1 them as separate entities, and I just -- if you have
2 suggestions as how those contacts -- or what that would
3 look like for input, but, certainly to the extent that
4 they have different input, which obviously they're
5 appointed people and probably would, we would certainly
6 pursue that.

7

8 MR. BEDFORD: Yeah, the Boards of Fish
9 and Game have independent regulatory authorities. I
10 mean the Commissioner has some regulatory authorities
11 and the Boards of Fish and Game have independent
12 authorities, so I think it might be a good idea to try
13 to engage them in a dialogue as well. And one means to
14 approach them might be to contact the Board Support
15 Section, which is housed in the headquarters -- Fish
16 and Game headquarters, but, again, as I was saying
17 independent. So if you'd like we could talk later on
18 about that.

19

20 MR. POURCHOT: That'd be great.
21 Thanks, David.

22

23 CHAIRMAN FLEAGLE: All right, thank
24 you. Other discussion.

25

26 (No comments)

27

28 CHAIRMAN FLEAGLE: Questions.

29

30 (No comments)

31

32 CHAIRMAN FLEAGLE: All right, thank
33 you.

34

35 MR. POURCHOT: Mr. Chair. Thank you
36 very much.

37

38 CHAIRMAN FLEAGLE: Thank you.
39 Appreciate your time. I heard a couple of people chime
40 in on the telephone or at least I've heard some tones,
41 I'm just checking, are there anybody -- is there
42 anybody else attending that has joined us by telephone?

43

44 MR. PELTOLA: Gene Peltola, Yukon-Delta
45 National Wildlife Refuge, Bethel.

46

47 CHAIRMAN FLEAGLE: Gene Peltola in
48 Bethel, welcome. Anybody else.

49

50 MR. MATHEWS: Yes, Vince Mathews, Fish

1 and Wildlife Service in Fairbanks.

2

3 CHAIRMAN FLEAGLE: Vince Mathews, Fish
4 and Wildlife Service in Fairbanks, welcome.

5

6 Do we have others.

7

8 (No comments)

9

10 CHAIRMAN FLEAGLE: All right, thank
11 you. And we'll periodically check back and see who's
12 here. We'll crank that up as loud as it will go and
13 maybe switch the microphone -- that's why I was
14 repeating.

15

16 Anyways, Pete, you had another item for
17 information exchange.

18

19 MR. PROBASCO: Thank you, Mr. Chair. I
20 should have looked at my notes a little bit more
21 carefully.

22

23 On November 30th, which is the Monday
24 right after Thanksgiving. Gary Edwards, Polly Wheeler
25 and myself will be traveling to D.C., for the purpose
26 of briefing Mr. Tom Strickland and Mr. Sam Hamilton on
27 the Subsistence Program. I wanted to let the Board be
28 aware of that so if there's an opportunity that you
29 would like us to brief any of your people back there we
30 can extend our stay and provide that briefing as well.

31

32 The focus of the briefing will be on
33 the Federal Subsistence Program and, of course, we will
34 be looking at the issues that have come forward to us,
35 Office of Subsistence Management and the Federal
36 Program, as far as it pertains to their view, we've
37 been getting questions on that as well. So we'll be
38 doing that starting on the 30th of November. So if you
39 have suggestions, please contact me sooner than later.

40

41 Thank you.

42

43 CHAIRMAN FLEAGLE: Okay, appreciate
44 that.

45

46 MS. MASICA: Pete.

47

48 CHAIRMAN FLEAGLE: Sue.

49

50 MS. MASICA: Since the Park Service

1 reports to Strickland, do you all have a time for when
2 that meeting's going to happen, if your Director's
3 involved, I'd like to make sure our Director knows
4 about that too.

5
6 MR. PROBASCO: You bet. And, Sue,
7 probably the best thing to do is there is a time
8 certain already, I don't have it in my head.

9
10 MS. MASICA: Okay.

11
12 MR. PROBASCO: I think it's.....

13
14 MS. MASICA: If we could.....

15
16 MR. PROBASCO:2:00 o'clock
17 that.....

18
19 MS. MASICA:maybe talk about
20 that.....

21
22 MR. PROBASCO:afternoon but.....

23
24 MS. MASICA:today.

25
26 MR. PROBASCO:I will share what
27 we have as far as.....

28
29 MS. MASICA: That'd be great.

30
31 MR. PROBASCO:the agenda already.

32
33 MS. MASICA: That'd be great.

34
35 MR. PROBASCO: We'll do that.....

36
37 MS. MASICA: Thanks.

38
39 MR. PROBASCO:by tomorrow.

40
41 MS. MASICA: Okay.

42
43 CHAIRMAN FLEAGLE: Thank you, Sue.

44 Other discussion.

45
46 (No comments)

47
48 CHAIRMAN FLEAGLE: All right, thank
49 you, Pete. And did I hear another person join us on
50 the telephone.

1 (No comments)

2

3

CHAIRMAN FLEAGLE: Evidently not.
4 Thank you. All right, Item No. 4 on the agenda is the
5 Proposed Revisions to Special Action Regulations,
6 status report on the process. And I welcome, Polly
7 Wheeler, Dr. Polly Wheeler, thank you.

8

9

DR. WHEELER: Thank you, Mr. Chair.

10

In your packet there's a one page, on
11 the right-hand side of your packet, there's a one page
12 briefing document on the proposed revisions to the
13 regulations governing special actions and I will not
14 read it to you, but I will touch on a few key points
15 that I think you might want to be aware of.

16

17

As you are all probably aware or maybe
18 I can remind you of, we have been working on this issue
19 for quite awhile, that is, revising the regulations
20 governing special actions. We put together a proposed
21 rule that finally got published on October 14th in the
22 Federal Register and, again, the proposed revisions to
23 the special action regulations. We have briefed all 10
24 Regional Advisory Councils on these proposed changes
25 beginning August 28th in Barrow at the North Slope RAC
26 meeting and following through to the Bristol Bay
27 meeting at the end of October, so all 10 Regional
28 Advisory Councils are aware of this. It took awhile --
29 for some reason it took awhile for the actual proposed
30 rule to get published in the Federal Register, but it
31 did get published October 14th. The public comment
32 period is open until January 12th, which amazingly
33 coincides with the first day of the January 2010
34 Federal Subsistence Board meeting, so you all will be
35 taking public testimony on the proposed rule at that
36 time. I want to caution that this is a proposed rule,
37 the public comment period is wide open and is wide open
38 until January 12th. So there's lots of opportunity to
39 weigh in for people that have concerns, I know there
40 have been some concerns raised to me and my response,
41 again, is that this is a proposed rule, it's not a
42 final rule, it's a proposed rule, there's lots of
43 opportunity for public comment.

44

45

Just as a reminder that the proposed
46 revisions are for -- the purpose of the proposed
47 revisions are four-fold. It's to accommodate the new
48 biennial regulatory cycle, which after the review that
49 we go through, perhaps we'll be going back to an annual

50

1 cycle so then we'll have to have another proposed rule,
2 but that's down the road. Keith just grimaced, but
3 sorry Keith.

4

5 (Laughter)

6

7 DR. WHEELER: Just keeping everybody on
8 their toes.

9

10 The second reason is to improve clarity
11 with respect to the Board's process for accepting and
12 addressing special actions.

13

14 Update the public notice requirements.
15 As you probably are all aware, we're now making the,
16 for some of us what is an uneasy transition from
17 accepting things in paper form to accepting things in
18 electronic form, or submitting them in electronic form,
19 we had that experience last week with on November 5th,
20 the closure of the window to submit wildlife proposals
21 and www.regulations.gov is not always the easiest
22 vehicle through which to submit things, but it is what
23 it is, so we are updating our regulations to bring them
24 in line with the practices of the digital age.

25

26 And the fourth reason for revising the
27 special actions regulations is to bring clarity to the
28 role of the Regional Advisory Councils.

29

30 The third paragraph of that rule lays
31 out some of the changes that were made. And the final
32 paragraph reminds everybody that, again, the proposed
33 rule's out for public comment until January 12th. At
34 the January 12th meeting we expect that we will provide
35 you, the Board, with a summary of the public comments
36 that we've received thus far and then you, as a Board,
37 will also take public comments. And should the Board
38 decide to go forward with a final rule, the Office of
39 Subsistence Management will draft such a rule, taking
40 the public comments into consideration, and then that
41 will undergo local review before it gets pushed to
42 Washington. But there are other options, the Board can
43 decide not to do anything, obviously at the January
44 meeting as well, or not to provide further direction at
45 this time.

46

47 Somebody had asked, well, what are the
48 options.

49

50 Well, the options are to do nothing, I

1 suppose, or to develop a final rule. And keep in mind,
2 the Board as a meeting in January, there's a meeting in
3 April, April 13th and 14th to deal with the deferred
4 Yukon proposals, and then a meeting May 18 through 20th
5 to deal with the wildlife proposals, so the Board will
6 be meeting in public session in three different times
7 in the first five months of 2010, so there's plenty of
8 opportunity to look at this proposed rule or final rule
9 or think about it.

10

So that's all I have on that, Mr.

11 Chair.

12

13 CHAIRMAN FLEAGLE: All right, thank
14 you, Polly. Questions.

15

16 (No comments)

17

18 CHAIRMAN FLEAGLE: Discussion.

19

20 (No comments)

21

22 CHAIRMAN FLEAGLE: So because the
23 public comment period closes on January 12th, we will
24 be taking public comments at that first day of the
25 January meeting, on January 12th?

26

27 DR. WHEELER: That's correct.

28

29 CHAIRMAN FLEAGLE: And with the process
30 laid out, obviously that would be too short a time to
31 deal with at that meeting, that's why you mentioned the
32 subsequent meetings, that we may have this on the
33 agenda for a subsequent meeting in 2010?

34

35 DR. WHEELER: That's correct, Mr.

36 Chair.

37

38 CHAIRMAN FLEAGLE: All right. So look
39 forward to seeing that in your inbox, if it's
40 acceptable by then, electronic.

41

42 (Laughter)

43

44 CHAIRMAN FLEAGLE: That was almost a
45 joke.

46

47 (Laughter)

48

49 CHAIRMAN FLEAGLE: All right, thank

50

1 you, Polly.

2

3 We now move on to Item No. 5 on the
4 agenda, and that's the special actions, and we have
5 four before us for discussion. Pete, would you like to
6 lead off, please.

7

8 MR. PROBASCO: Actually Polly will take
9 us through them. But I just wanted to let the Board
10 know that our Refuge Manager, Gene Peltola, is on line
11 and he can answer questions as it pertains to that
12 first special action.

13

14 Thank you, Mr. Chair.

15

16 CHAIRMAN FLEAGLE: Great, thank you,
17 Pete. And, Polly, go ahead.

18

19 DR. WHEELER: Thank you, Mr. Chair. In
20 your packets, again, the right-hand side, there is the
21 full analysis of each of the four wildlife special
22 actions. I will go through and just touch on some of
23 the -- I'm not going to -- I'll spare you reading the
24 analysis again, I'm just going to touch on a few key
25 points with regard to each of the special actions and
26 we'll go through, as the agenda lays out, Mr. Chair,
27 I'll provide a brief summary of each special action
28 request and the analysis, and then the Board votes, so
29 we'll just do one at a time, that would probably be the
30 best way to do it and then I know for the first one
31 Gene Peltola is on, he probably will want to speak to
32 that as well.

33

34 So the first one is Wildlife Special
35 Action 08-13 dealing with an increase in the harvest
36 limit to two moose.

37

38 This was submitted by the Scammon Bay
39 Traditional Council, and it asks to change the harvest
40 limit to two moose per regulatory year with one in the
41 fall season and one in the winter season in a portion
42 of Unit 18 on the Yukon side. The Yukon Kuskokwim
43 Delta Regional Advisory Council was presented the
44 analysis on this special action and they supported, the
45 Council supported the request believing that Scammon
46 Bay's request is reasonable and appropriate. The
47 Council also stated, and is outlined in the analysis,
48 the affected moose population can support additional
49 harvest and the local subsistence users are in need of
50 additional harvest.

1 The Seward Peninsula Regional Advisory
2 took no action on this proposal. Just as a reminder,
3 some of the villages that are covered in the Seward
4 Penn Regional Advisory Council area have a positive
5 customary and -- are included in the customary and
6 traditional use determination for moose in this area
7 which is why that Council was presented with that
8 information, but they opted to not take action.

9
10 The OSM conclusion is to oppose the
11 request with the thought that the Board has already
12 taken multiple actions during the regular wildlife
13 cycles to increase harvest opportunity in the affected
14 area.

15
16 The Staff Committee on the other hand
17 supported the request. The Staff Committee felt that
18 the wildlife biologist at the Yukon Delta National
19 Wildlife Refuge believed the moose population in the
20 area in question has or will in the near future exceed
21 carrying capacity and additional harvest would help to
22 assure the continued viability of the moose population
23 in the affected area as well as provide additional
24 subsistence opportunity which is being requested in the
25 request.

26
27 That's all I have on this one, Mr.
28 Chair.

29
30 CHAIRMAN FLEAGLE: All right, thank
31 you, Polly. Let me just step back for a second on our
32 process just so -- I know there's some people here that
33 are new to the process and just a brief explanation of
34 how we deal with special action requests. I know that
35 some are handled by Staff at the Staff level without
36 coming to the Board, some are handled by the Board via
37 email, and some are handled in an open meeting like
38 this. Can you describe the variances as to why things
39 are handled in those ways -- or Pete, do you want to do
40 that?

41
42 MR. PROBASCO: Thank you, Mr. Chair. I
43 think you hit the categories. Keep in mind that the
44 Board, depending upon fisheries or wildlife have given
45 certain authorities to the in-season manager to make
46 decisions rapidly on the grounds. We also have special
47 actions that come in and which usually fall into an
48 arena where the Board isn't going to have the
49 opportunity any time in the near future to meet to
50 discuss these and consequently we go through a review

1 and analysis, work with the Staff Committee and then
2 that's forwarded to the Board for final action.

3

4 In this case, and looking at the date
5 that this special action would be taken up, along with
6 the other three, the opportunity is here where the
7 Board can take a look at them collectively, discuss
8 them and make their recommendation and final decision
9 on these special actions.

10

11 Mr. Chair.

12

13 And keep in mind a special action is --
14 there's two of them. There's one that's 60 days or
15 less and then there's temporary emergency regulation,
16 which is greater than 60 days.

17

18 Mr. Chair.

19

20 CHAIRMAN FLEAGLE: Thank you. I just
21 wanted to clarify the process.

22

23 Some may feel that because we're
24 dealing with a special action request in open session
25 it has some higher level of importance and I just
26 wanted to make sure that it's well understood that it
27 was just a scheduling thing, that if we did have a
28 meeting coming that's why we have them before us. So I
29 appreciate that explanation.

30

31 Polly.

32

33 DR. WHEELER: And one more point, Mr.
34 Chair. If it's a special action that's greater than 60
35 days we do have a requirement to have a public hearing,
36 which the Yukon Kuskokwim Delta Regional Advisory
37 Council, that provided an opportunity for a public
38 hearing.

39

40 The other thing is, is just to remind
41 people, special actions are something that we're doing
42 that we're being requested to do outside of the normal
43 regulatory cycle. With this special action, and I
44 believe the other three that are in front of you, yes,
45 we have also received proposals, so the proposal cycle
46 includes these to put them into regulation as well. So
47 we've sort of got a double -- a dual approach, or a
48 parallel approach here, so we'll be able to take action
49 before the next regulatory year but then we have these
50 things in the mill for the regulatory cycle so then if

1 they're supported then they would become part of the
2 regulatory process.

3

4 CHAIRMAN FLEAGLE: And so hopefully I
5 won't take us off the rabbit trail too far off here,
6 but that brings up another comment. We have an open
7 period for proposals for the wildlife meeting now,
8 right, and we're up to over 100 proposals?

9

10 DR. WHEELER: Mr. Chair. The fortun --
11 well, fortunately, from my perspective, the window
12 closed on November 5th. We received 115 wildlife
13 proposals, which has many of us quaking in our boots in
14 terms of how we're going to process these things, these
15 proposals by -- I mean the end point is May 18-20, I
16 will tell you that we've added -- we've contacted the
17 location of the Federal Board meeting in May and I'm
18 happy to report that they can accommodate us for an
19 extra day so what is proposed for a three day meeting
20 could be a four day meeting.

21

22 Dead silence.

23

24 (Laughter)

25

26 DR. WHEELER: Just giving you a head's
27 up because this is the largest number of proposals that
28 we have had. A lot of them are focusing on the same
29 issue, we have, I think 20-plus, dealing with wolves
30 across the state, so there is some redundancy there but
31 I will tell you that it's a massive load and bigger
32 than we've had to-date. The good news is some of them
33 have been already analyzed in the form of special
34 actions, but it is -- the window's closed and we have
35 115.

36

37 CHAIRMAN FLEAGLE: All right, thank
38 you. I heard somebody else join us by telephone.
39 Pete, would you.....

40

41 MS. SYKES: This is Carrie Sykes from
42 Central Council.

43

44 CHAIRMAN FLEAGLE: Welcome, Carrie,
45 appreciate you joining us.

46

47 MS. SYKES: Thank you.

48

49 CHAIRMAN FLEAGLE: All right. I thank
50 you, everybody, for your indulgence for the extra

1 questions and just explanation of the process. I think
2 it's important for those that are new to the process
3 and I also think that it's important for Pat, sitting
4 in here, to just get a little more understanding of how
5 our process works and how it's planned out, et cetera,
6 so appreciate that.

7

8 With that, let's go ahead and turn back
9 to Special Action 08-13, and we've completed the Staff
10 presentation. Let me find my agenda.

11

12 (Pause)

13

14 CHAIRMAN FLEAGLE: Are we open for
15 questions to the Staff presentation -- I mean we are
16 open, are there questions.

17

18 (No comments)

19

20 CHAIRMAN FLEAGLE: Discussion.

21

22 (No comments)

23

24 CHAIRMAN FLEAGLE: Now, Pete, you said
25 that Gene Peltola was available, was he going to
26 address this proposal or just to answer questions?

27

28 MR. PROBASCO: Definately to answer
29 questions, Mr. Chair. You might want to give him an
30 opportunity to say something.

31

32 CHAIRMAN FLEAGLE: Sure.

33

34 MR. PROBASCO: Gene.

35

36 MR. PELTOLA: Thank you, Mr. Chair,
37 Board members for the opportunity to add a couple
38 things that I'd like to point out.

39

40 Is that the area in question is the
41 Lower Yukon is which of one of five areas here on Yukon
42 Delta we monitor with population surveys. We have some
43 knowns about the population, that being one, is that,
44 the survey area is 1,192 square miles, which is part of
45 our 20 million acre Refuge, it was last surveyed in the
46 spring of 2008, and here in the last three years we've
47 had local reports of localized die-off of calves,
48 yearlings and this last past winter on the main stem of
49 the Yukon adult moose. So in knowing -- with having
50 five moose surveys we have to rotate those so we are

1 not able to address this particular area every year,
2 but the 2008 estimate we came up with a sightability
3 correction factor population estimate of 3,320 moose,
4 which represents a density of 2.8 moose per square
5 mile. This population has been growing at a rate of
6 roughly 30 percent per year. In order to get to where
7 we are at in the present time we have to do some
8 projections. And if we assume annual rate of increase
9 of 37 percent, our February 2009 population 4,216,
10 which is 3.5 moose per square mile and our projection
11 for 2010 would be 5,354 moose or 4.5 moose per square
12 mile.

13

14 Now, moose densities, you know, vary
15 with habitat quality, quantity, predation harvest,
16 winter severity and everything else, but comparing it
17 to other Alaskan areas we know something about moose
18 density is we can look at the Kenai moose range where
19 they reached their highest density approximately four
20 moose per square mile for which in 17 to 26 years,
21 post-burn in a couple areas there, after that
22 population reached the four moose per square mile, they
23 then declined by approximately nine percent per year
24 for several years. If you look at the literature
25 throughout published moose densities themselves, they
26 vary from .3 moose per square mile in Wyoming to 6.5
27 moose per square mile in Sweden, and while more popular
28 -- more popular, I guess -- more known more population
29 about moose in -- went through an increase in decline
30 would be Island (indiscernible - phone cutting out) and
31 those populations varied from 2.6 to 5.8 moose per
32 square mile in the 60s to 80s.

33

34 Another Alaska population you'd look at
35 would be 20A (ph - phone cutting out), and that's been
36 very well published and the highest density ever
37 reached in 20A was -- those were between four and 4.5
38 moose per square mile. Once they attained those
39 densities then they had a marked and very precipitous
40 decline over the years. Granted the 20A area is an
41 area with more frequent fires and in theory would have
42 better overall habitat than we would have on the lowest
43 part of the Yukon. The lowest portion of the Yukon is
44 that it is very narrow bands of appropriate habitat
45 which we have -- we had planned on initiating some
46 brows work four to five years out but due to our
47 concerns population are upping that schedule. The
48 problem being with brows work is that once we got them
49 initiated and determined the status of the range it may
50 be a tad too late. In our approach -- the approach

1 from our biological staff and the Refuge here is that
2 it's better to be proactive rather than reactive to
3 this population because of the significance of the
4 population itself and the resource which it provides
5 for the Lower Yukon.

6

7 That's all I had in summary.

8

9 CHAIRMAN FLEAGLE: Thank you. Gene,
10 I'd like to ask a question since you're out there and
11 probably have some knowledge of the subsistence uses.
12 If this proposal, this special action request were to
13 be granted and the opportunity were there for somebody
14 to harvest two moose, do you think that there would be
15 a great deal of participation and people actually doing
16 that, actually harvesting two moose?

17

18 MR. PELTOLA: I think we would have an
19 increase in harvest. We would most likely have an
20 increase in reported harvest, would be a tangential
21 benefit in addition to we would probably have a lot
22 more people outside of the area going down to
23 participate in that harvest.

24

25 Now, Bethel is quite a ways away but
26 last year with snow conditions the way they were, we
27 had -- I personally know 30 to 40 to people that took a
28 snowmachine from Bethel down to that neck of the woods
29 to go harvest moose and I actually do think we would
30 have a significant increase in the amount of harvest we
31 have if we went from the bull in the fall or additional
32 moose -- or a moose in the spring to the two moose bag.

33

34 CHAIRMAN FLEAGLE: Okay. But just for
35 clarification, if for instance, using your example, the
36 people from Bethel that would snowmachine over in the
37 spring, if they haven't harvested a moose in the fall,
38 they would still be eligible to harvest a moose anyway,
39 which is, I think, the bulk of the people that we're
40 probably talking about. I mean it wouldn't be a dual
41 harvest for those people, would it?

42

43 MR. PELTOLA: We did have some
44 localized harvest opportunities here on the main stem
45 of the Kuskokwim this fall but if you look at what's
46 available on the Kuskokwim drainage, we had, you know,
47 four to 500 people that did not get a Tier II for 19A,
48 which has been traditionally harvested from the
49 Kuskokwim drainage, we had 1,400 people apply for
50 registration permits to har -- to have a limited

1 opportunity to harvest 75 bulls on the Kuskokwim, the
2 -- granted, you know, the Kuskokwim communities are --
3 and harvesting from the Kuskokwim population is a lot
4 closer to home with the way gas prices are, but there
5 is still a demand and desire and need for meat out here
6 on the Kuskokwim and the remainder of the Delta, and I
7 think we would have an increase in harvest.

8

9 And the reason I think this special
10 action request right now is more appropriate than
11 waiting for the regulatory cycle is that this is and
12 can be very time sensitive. And the amount of growth
13 we've seen on this population over the last couple
14 years, we could be, you know, approaching 4.5 moose per
15 square mile which is kind of a trigger, if you look
16 through the literature on all the other Alaskan
17 populations just before we started seeing declines.

18

19 CHAIRMAN FLEAGLE: Thank you, Gary.
20 Pete.

21

22 MR. PROBASCO: Thank you, Gene, for
23 that information.

24

25 CHAIRMAN FLEAGLE: Gene, sorry.

26

27 MR. PROBASCO: And in addition, I just
28 wanted to add to your question there, is that, if a
29 hunter did not harvest in the fall, he would only be
30 allowed to harvest one moose. The total is two per
31 regulatory year.

32

33 CHAIRMAN FLEAGLE: Right.

34

35 MR. PROBASCO: So you had it correct.

36

37 CHAIRMAN FLEAGLE: Thanks, Pete,
38 appreciate that. Other questions for Gene -- I
39 apologize for misstating your name there, Gene, it
40 started with a Gene, but, anyway, any other questions.

41

42 (No comments)

43

44 CHAIRMAN FLEAGLE: At this point I
45 would entertain a motion to put this on the table for
46 adoption and then we can take action appropriately with
47 discussion.

48

49 Geoff.

50

1 MR. HASKETT: Thank you, Mr. Chair.
2 I'd like to make a motion to adopt Special Action 08-
3 13. I think Gene Peltola did a really good job
4 explaining the rationale of why we'd like to support
5 this and I'm not going to repeat everything he said,
6 and Polly mentioned this as well, our biologists at the
7 Yukon-Delta Refuge believe that the moose population in
8 the Lower Yukon River has or will in the near future
9 exceed carrying capacity. Additional harvest would
10 help to assure the continued viability of this moose
11 population.

12
13 I think we're all very aware of the
14 problems on the Yukon River over the last year and this
15 also gives the ability for those people who had low
16 returns of salmon this summer and reduced commercial
17 fishing opportunities to actually have some subsistence
18 opportunities they wouldn't otherwise have.

19
20 So bottom line is this motion provides
21 additional subsistence harvest opportunities; the moose
22 population is close to over carrying capacity; there's
23 too many moose, the moose density's too high; and it
24 benefits the people on the river immediate and needed.
25 So, again, I would like to make a motion to adopt this
26 special action.

27
28 CHAIRMAN FLEAGLE: Thank you, Geoff.
29 Do we have a second.

30
31 DR. KESSLER: Second.

32
33 CHAIRMAN FLEAGLE: Okay, we have a
34 second from the Forest Service, thank you.

35
36 Further discussion.

37
38 (No comments)

39
40 CHAIRMAN FLEAGLE: Did we have somebody
41 else join us by telephone?

42
43 MR. NICK: Yeah, this is Alex Nick,
44 coordinator at Fish and Wildlife, Bethel.

45
46 CHAIRMAN FLEAGLE: All right, welcome,
47 Alex, appreciate you joining us.

48
49 Okay, continuing discussion. Wini.

50

1 DR. KESSLER: Yes, Mr. Chair. This one
2 is pretty clear to me that I will support. The
3 population is either rapidly approaching or is at
4 carrying capacity and the people really need this food
5 source.

6
7 So this is going to be an easy one for
8 me.

9
10 CHAIRMAN FLEAGLE: Mr. Oviatt.

11
12 MR. OVIATT: Thank you, Mr. Chairman.
13 Yeah, there doesn't seem to be a conservation concern
14 out there and in support of the YK-Delta Subsistence
15 RAC and the Fish and Wildlife Service, I, too, would be
16 able to support this.

17
18 CHAIRMAN FLEAGLE: Others. Charlie.

19
20 MR. BUNCH: Mr. Chair, thank you. Yes,
21 we would be able to support this one. We think that
22 the carrying capacity is going to be reached quickly
23 and certainly the people in that neck of the woods can
24 use the subsistence foods, so we would definitely
25 support that.

26
27 CHAIRMAN FLEAGLE: All right. I, too,
28 will vote in the affirmative on this request. I think
29 that the question that I was asking about, whether or
30 not there would be an increase in harvest was fairly
31 moot because there's such a large number of animals
32 available, but I wanted to have it clear that we
33 weren't going to put ourselves in a situation where
34 there was a potential for overharvest of, let's say a
35 certain component of that population, and I think that
36 the fact that we already have a liberal season that
37 people may participate in and I think that hearing the
38 participation may come from people that have not
39 already harvested a moose there, I don't see any danger
40 in overharvest, potential for overharvest, so I'm
41 supporting it as well.

42
43 Other discussion.

44
45 (No comments)

46
47 CHAIRMAN FLEAGLE: Are we ready for the
48 question.

49
50 MR. OVIATT: Question.

1 CHAIRMAN FLEAGLE: Question's called,
2 thank you, George. Pete, on the special action
3 request, would you pull the Board.
4
5 MR. PROBASCO: Thank you, Mr. Chair.
6 Final action on Special Action 08-13. Mr. Oviatt.
7
8 MR. OVIATT: Yes.
9
10 MR. PROBASCO: Mr. Fleagle.
11
12 CHAIRMAN FLEAGLE: Yes.
13
14 MR. PROBASCO: Ms. Kessler.
15
16 DR. KESSLER: Yes.
17
18 MR. PROBASCO: Mr. Bunch.
19
20 MR. BUNCH: Yes.
21
22 MR. PROBASCO: Mr. Haskett.
23
24 MR. HASKETT: Yes.
25
26 MR. PROBASCO: And Ms. Masica.
27
28 MS. MASICA: Yes.
29
30 MR. PROBASCO: Mr. Chair, motion
31 carries, six/zero.
32
33 CHAIRMAN FLEAGLE: All right, thank
34 you. With that we'll go ahead and move on to Special
35 Action 09-03, Polly.
36
37 DR. WHEELER: Thank you, Mr. Chair.
38 Again.....
39
40 CHAIRMAN FLEAGLE: Just a sec --
41 somebody who's on line has a radio going or a
42 discussion on the telephone that we can hear in the
43 board room here, please be mindful that we are hearing
44 what's going on. Thanks.
45
46 Polly.
47
48 DR. WHEELER: Thank you, Mr. Chair.
49 The full analysis is in your packet on the right-hand
50 side, and I'll just touch on a few key points here.

1 This is for Wildlife Special Action 09-03 and it deals
2 with Unit 3, closure of the marten trapping season on
3 Kuiu Island in Southeast.

4

5 This special action was submitted by
6 the Southeast Alaska Subsistence Regional Advisory
7 Council. It requests a closure of the Federal
8 subsistence marten trapping season on Kuiu Island in
9 Unit 3 for the period -- basically for the 2009/2010,
10 December 1, 2009 to February 15, 2010. And this, as I
11 said earlier, this has been also submitted as a
12 proposal so you'll be seeing this in May.

13

14 This was put before the Southeast
15 Regional Advisory Council, which voted to support this
16 request. It was based on conservation concerns for the
17 season and they also support the development of a
18 regulatory proposal, which, again, they submitted by
19 November 5th.

20

21 The Staff Committee comments are
22 basically they support the request. The recent studies
23 indicate that the marten population index on Kuiu
24 Island is among the lowest in Southeast Alaska and they
25 think the population has declined more in the past
26 couple of years, although trapping pressure is
27 relatively light and marten harvest has been low, the
28 combination of high natural mortality rate and recent
29 hard winters has resulted in a conservation concern for
30 the population. So basically the low population
31 density, isolation, indications of decline in this
32 population over the past three winters suggests that an
33 approach that minimizes risk and errs on the side of
34 conservation is the best approach to manage this
35 population.

36

37 Mr. Chair.

38

39 CHAIRMAN FLEAGLE: All right, thank
40 you. And with that we're open for questions.

41

42 (No comments)

43

44 CHAIRMAN FLEAGLE: Discussion. Wini.

45

46 DR. KESSLER: Mr. Chair, I'll make a
47 motion. The motion is to support Wildlife Special
48 Action 09-03, the closure of marten trapping on Kuiu
49 Island, Unit 3.

50

1 MR. OVIATT: Second.
2
3 CHAIRMAN FLEAGLE: Okay, we do have a
4 second. I'm going to pause just for a moment, I hear
5 some action on the telephone, do we have other people
6 joining us by phone.
7
8 (No comments)
9
10 CHAIRMAN FLEAGLE: I'm not sure of that
11 tone, those might be departing tones.
12
13 (Laughter)
14
15 CHAIRMAN FLEAGLE: Okay, it doesn't
16 sound like we have anybody new. So we do have a motion
17 and a second. Wini, do you want to go ahead and speak
18 to your rationale for adoption.
19
20 DR. KESSLER: Yes. We really have had
21 some very severe winters the last three years and this
22 does suggest that when you look at the numbers we
23 possibly have a conservation concern here, and the
24 prudent thing to do is to close to trapping.
25
26 CHAIRMAN FLEAGLE: Further discussion.
27 George.
28
29 MR. OVIATT: Well, I think because of
30 the trapping pressure and the high mortality rate and
31 the recent hard winters that we do have a conservation
32 concern and I am going to support this.
33
34 CHAIRMAN FLEAGLE: Anybody else.
35 Geoff.
36
37 MR. HASKETT: I'd pretty much just
38 repeat what George has said, I mean clearly there's
39 some concerns out there and so I'll be inclined to
40 support as well.
41
42 CHAIRMAN FLEAGLE: Was that a call for
43 the question?
44
45 MR. HASKETT: (Nods affirmatively)
46
47 CHAIRMAN FLEAGLE: Pete, we're ready
48 for the poll on 09-03, please poll the Board.
49
50 MR. PROBASCO: Thank you, Mr. Chair.

1 Final action on Special Action 09-03. Mr. Fleagle.

2

3 CHAIRMAN FLEAGLE: Yes.

4

5 MR. PROBASCO: Ms. Kessler.

6

7 DR. KESSLER: Yes.

8

9 MR. PROBASCO: Mr. Bunch.

10

11 MR. BUNCH: Yes.

12

13 MR. PROBASCO: Mr. Haskett.

14

15 MR. HASKETT: Yes.

16

17 MR. PROBASCO: Ms. Masica.

18

19 MS. MASICA: Yes.

20

21 MR. PROBASCO: And, Mr. Oviatt.

22

23 MR. OVIATT: Yes.

24

25 MR. PROBASCO: Mr. Chair, motion

26 carries, six/zero.

27

28 CHAIRMAN FLEAGLE: All right, thank
29 you. That now provides us an opportunity to look at
30 Wildlife Special Action request 09-05. Polly.

31

32 Do we need a break -- okay, it's a good
33 time to stand down. Let's stand down for 10 minutes,
34 grab a cup of coffee, the restrooms are over here in
35 the hallway, and I think we've unlocked the door to get
36 back in now.

37

38 (Off record)

39

40 (On record)

41

42 CHAIRMAN FLEAGLE: We're back in
43 session and back on record?

44

45 REPORTER: (Nods affirmatively)

46

47 CHAIRMAN FLEAGLE: Okay, we had
48 somebody join us while we were on break, would you
49 please introduce yourself, please.

50

1 MR. ADAMS: Hi, good morning. This is
2 Bert Adams.
3
4 CHAIRMAN FLEAGLE: Oh, hi, Bert,
5 anybody else.
6
7 MR. NAOROS: Yeah, this is Peter
8 Naoroz, he's joined the phone call and I'm going to go
9 to mute.
10
11 CHAIRMAN FLEAGLE: Would you repeat the
12 name, please.
13
14 MR. NAOROS: Peter Naoroz, N-A-O-R-O-Z.
15 I'm with Kootznoowoo, the village corporation for
16 Angoon.
17
18 CHAIRMAN FLEAGLE: Okay, great, thank
19 you. Welcome to the meeting.
20
21 MR. NAOROS: Thank you.
22
23 CHAIRMAN FLEAGLE: And, Bert, is the
24 Chair of the Southeast Regional Advisory Council for
25 those that don't know. And during the break, the
26 question was asked about the camera in the back and
27 we've learned that this is the NorthStar Television
28 Network, KACN TV, KACN TV broadcasts on Channel 38 and
29 GCI Channel 1, so appreciate that.
30
31 CAMERA PERSON: Channel 95.
32
33 CHAIRMAN FLEAGLE: Pardon?
34
35 CAMERA PERSON: Also Channel 95 24/7.
36
37 CHAIRMAN FLEAGLE: 95, 24/7. All
38 right. Let's go ahead and return to the order of
39 business. And we left hanging 09-05. Polly.
40
41 DR. WHEELER: Thank you, Mr. Chair.
42 Wildlife Special Action 09-05 deals with Unit 4 deer
43 closure to non-Federally-qualified users. Again, the
44 full analysis is on the right-hand side of your packet.
45
46 This special action was submitted by
47 the Southeast Alaska Regional Advisory Council, and it
48 requests that Federal public lands in Unit 4 draining
49 into Chatham Strait, Peril Strait, and Icy Strait,
50 including Tenakee outlet be closed to the harvest of

1 female deer by non-Federally-qualified users for the
2 month of December 2009. The Southeast Alaska Regional
3 Advisory Council supported the request. In contrast
4 the InterAgency Staff Committee did not.

5
6 The Staff Committee felt that the
7 proposed closure of these areas of Unit 4 to non-
8 Federally-qualified users does not conform with Section
9 .815 of ANILCA and the policies set by the Federal
10 Subsistence Board for closing Federal public lands to
11 non-Federally-qualified users. Specifically existing
12 population of harvest information indicate that overall
13 the deer population in the proposed closure area is not
14 at risk and is sufficient for harvest by both
15 Federally-qualified and non-Federally-qualified users.

16
17 Mr. Chair.

18
19 CHAIRMAN FLEAGLE: Thank you, Polly.
20 Questions. Discussion. Charlie.

21
22 MR. BUNCH: Mr. Chair. Would you
23 explain to me what a non-Federally-qualified user would
24 be?

25
26 CHAIRMAN FLEAGLE: Pete. Polly.

27
28 DR. WHEELER: A Federally-qualified
29 user, Mr. Chair, would be, depending on the customary
30 and traditional use finding, and if you can see in your
31 analysis on Page 2, it outlines the customary and
32 traditional use determination and that is the rural
33 residents of Unit 4, Cape Gustavus, Haines, Petersburg,
34 Point Baker, Klukwan, Port Protection, Wrangell and
35 Yakutat, they all have a positive customary and
36 traditional use determination for deer in Unit 4;
37 anybody that I didn't just name does not and they would
38 not be a Federally-qualified user for this resource in
39 this area.

40
41 Mr. Chair.

42
43 CHAIRMAN FLEAGLE: So it's just point
44 specific to the area, anybody that does not have a
45 positive C&T and does not live in a village that has a,
46 well, yeah, a positive C&T -- all right, thank you.

47
48 Discussion.

49
50 (No comments)

1 CHAIRMAN FLEAGLE: Questions. Wini.

2

3 DR. KESSLER: Mr. Chair. Procedurally
4 the thing to do here, as I understand, is I need to
5 propose this motion in the affirmative, so I'm doing
6 so. If I get a second then I will discuss some
7 concerns I have about it which will probably lead me to
8 vote in -- to not support it.

9

10 CHAIRMAN FLEAGLE: That's true, thank
11 you. We've modified the process a little bit to where
12 we accept motions in the affirmative, therefore, when a
13 vote is taken the person making the vote knows they're
14 either voting for the proposed action or regulation or
15 whatever it is or against it, vote a yes or no. It's
16 just standard Robert's procedures. And you do have the
17 entire right to, once this motion has been made and put
18 on the table and all the discussion, to vote against
19 your own motion. I mean that's just part of the
20 process.

21

22 So we'll go ahead, we do have the
23 motion to adopt Wildlife Special Action 09-05. Is
24 there a second.

25

26 MR. OVIATT: Mr. Chairman. For the
27 sake of discussion I'll second the motion.

28

29 CHAIRMAN FLEAGLE: Thank you, George.
30 We do have it before you. Wini, would you like to
31 speak to the motion, please.

32

33 DR. KESSLER: Yes, thank you. Section
34 .815 of ANILCA and our policies make it quite clear the
35 conditions under which we would close an opportunity to
36 non-Federally-qualified users. Those situations don't
37 pertain here. The deer population is not at risk.
38 There appears to be an adequate supply such that
39 closure to other users is not warranted.

40

41 CHAIRMAN FLEAGLE: Further discussion.
42 George.

43

44 MR. OVIATT: Thank you, Mr. Chairman.
45 Well, from everything I've read and listening to the
46 Forest Service it seems that the deer population
47 proposed closed area is not at risk and is sufficient
48 for harvest. There doesn't seem to be a conservation
49 concern here. So I will probably not support the
50 motion.

1 CHAIRMAN FLEAGLE: Appreciate that. We
2 do have the Chairman of the Southeast RAC on line,
3 without objection I'd like to hear what the
4 justification for the proposal would be. Any
5 objection.

6
7 (No objection.)

8
9 CHAIRMAN FLEAGLE: Hey, Bert, would you
10 speak to the issues that you put forward in this
11 request, please.

12
13 MR. ADAMS: Yeah, well, I was kind of
14 unprepared to -- because I don't have the document
15 before me, but judging from what has been said so far,
16 I think maybe I might be able to shed some light on it.

17
18 As many people may know, you know, that
19 that portion of the unit where Chichagof Island, you
20 know, has been bombarded with tremendous amount of
21 snowfall over the past couple of winters and it has
22 taken its toll on deer. And in an attempt to try to,
23 you know, build the stocks up we feel, you know, that
24 there should be some limitations as to the amount of
25 hunting that is taken out of there.

26
27 And so that, you know, in a nutshell,
28 is just where the RAC is coming from. Other than that,
29 I don't have much more to say on it, Mr. Chairman.

30
31 CHAIRMAN FLEAGLE: All right, I
32 appreciate that, Bert.

33
34 Further discussion.

35
36 (No comments)

37
38 CHAIRMAN FLEAGLE: Can we get an
39 explanation as to why it is felt that this doesn't
40 conform to Section .815?

41
42 Somebody.

43
44 Polly.

45
46 DR. WHEELER: Mr. Chair. The closure
47 policy that the Board works from is specific to the
48 criteria for when a closure is appropriate and the
49 Staff Committee felt that this one falls outside of
50 that. There are -- the conservation concerns are not

1 to the extreme that it would provide for closure to
2 non-Federally-qualified users. And the conditions set
3 forth in this particular area that have resulted in doe
4 season closures don't occur in other portions of the
5 proposed area but existing management authorities are
6 in place and have been implemented to address the
7 specific concerns. So it's sort of a step-down
8 approach rather than going full closure; there are
9 other actions that have been taken to address these
10 issues, conservation issues.

11

12 Mr. Chair.

13

14 CHAIRMAN FLEAGLE: Okay. So
15 specifically Section .815, Subsection III, authorizing
16 a restriction on the taking of fish and wildlife for
17 non-subsistence uses on the public lands, other than
18 National Parks and Park Monuments, unless necessary for
19 the conservation of health populations of fish and
20 wildlife, et cetera. I think that's probably the
21 specific language that's being referred to?

22

23 DR. WHEELER: That's correct, Mr.
24 Chair.

25

26 CHAIRMAN FLEAGLE: So the justification
27 is that this would not be necessary for the
28 conservation of healthy populations. And just looking
29 at the Board's policy, I know that we determined that
30 these will be taken on a case by case basis, and I just
31 want to make sure that if we're talking about rationale
32 for not excepting it, we should explain that rationale.
33 And we do, these two documents are mentioned, and
34 should be referred to in our discussions and our
35 debate.

36

37 Further discussion.

38

39 Charlie.

40

41 MR. BUNCH: Mr. Chair. I'll have to
42 admit, I'm somewhat confused here by this proposal.
43 I'm certainly hesitant to go against the suggestion or
44 the recommendation of the RAC, however, you know, I
45 think we need to follow our rules. I mean does our
46 process, are we working outside of the closure
47 requirements for under .815?

48

49 CHAIRMAN FLEAGLE: Well, that's a good
50 question. I think that's what we're trying to

1 determine here.

2

3 And we've heard from the Forest Service
4 that feels that there isn't a conservation concern, so
5 if we vote for this we would definitely be operating
6 outside of that -- their recommendation because this
7 would not be addressing a conservation issue in their
8 eyes and in others eyes obviously.

9

10 Pete.

11

12 MR. PROBASCO: Thank you, Mr. Chair.
13 Mr. Bunch, I would also add based on Ms. Kessler's
14 comments, that the Forest Service also feels that
15 there's sufficient resources left for the harvest, in
16 other words harvestable surplus, to meet the needs that
17 have been identified without restricting further the
18 Federal users.

19

20 Mr. Chair.

21

22 MR. BUNCH: Thank you.

23

24 CHAIRMAN FLEAGLE: Thank you. Further
25 discussion.

26

27 MR. ADAMS: Mr. Chairman, this is Bert
28 here.

29

30 CHAIRMAN FLEAGLE: Go ahead, Bert.

31

32 MR. ADAMS: Yeah, when our RAC
33 considers a proposal or any special action such as
34 this, there's some criteria that we follow in order for
35 us to determine whether it's a valid proposal or not.
36 And, of course, you know, it's already been determined
37 by you people, or by Ms. Kessler, that there is no
38 conservation concern, but that's one of the real
39 important things that we talk about when we discussed
40 this, we feel that there is a conservation concern.
41 And we think that there is enough data to support that,
42 and we also don't feel, you know, -- we also feel that
43 it's going to be detrimental to subsistence users, and
44 it's going to be an advantage, you know, to the non-
45 subsistence users. So, you know, I just want to make
46 that comment and, you know, clarify where we were
47 coming from on this issue.

48

49 Thank you.

50

1 CHAIRMAN FLEAGLE: I appreciate that.
2 I see David Bedford's not here, but in the analysis
3 there's a reference to a communication with the
4 Department of Fish and Game that supports portions of
5 the request. Is there somebody from the State that can
6 speak to that.

7
8 George. George Pappas.

9
10 MR. PAPPAS: Thank you, Mr. Chair. In
11 our communication to the Office of Subsistence
12 Management on September 15th, 2009, the Department
13 supported portions which included closing the harvest
14 of female deer, doe deer by non-Federally-qualified
15 users during the month of December.

16
17 And that's what I have here. So
18 there's portion of it that the Department supported,
19 but not an entire closure of the area.

20
21 Thank you, Mr. Chair.

22
23 CHAIRMAN FLEAGLE: And that's on Page 4
24 of the analysis. Appreciate that George.

25
26 Other discussion.

27
28 (No comments)

29
30 CHAIRMAN FLEAGLE: I'm like Charlie on
31 this one. I think that the fact that it's presented by
32 the RAC, who we rely heavily on in these areas for our
33 eyes and ears on the ground, gives certain level of
34 credence to me and I'm not convinced that it's -- hang
35 on. Somebody's got music playing on the phone.

36
37 (Off record comments regarding music on
38 teleconference)

39
40 CHAIRMAN FLEAGLE: Okay, as I was
41 saying, I think that there needs to be a little more
42 discussion on this as to whether or not a conservation
43 concern truly exists, and our policy and Section .815
44 of ANILCA address that question. So whether we
45 determine -- how we vote on this will determine whether
46 we agree that there's a conservation issue or not and I
47 think that's got to be the driving line because it's in
48 statute and policy.

49
50 But I don't think that we've truly

conservation concern. I just wonder if we could
3 flesh that out a little more before we take this to a
4 vote.

5

6 Wini.

7

8 DR. KESSLER: Mr. Chair. With your
9 permission I'd like to ask Mr. Casipit to talk to the
10 data that we have.

11

12 CHAIRMAN FLEAGLE: That'd be perfect.
13 Thank you, Cal, I was waiting for somebody to jump in.

14

15 MR. CASIPIT: Thank you, Mr. Chair. I
16 guess let me -- I'll try to be -- put this in simple
17 terms. Unit 4 is a really broad geographical area in
18 Southeast. There's varying weather conditions
19 throughout the whole unit. I mean some areas seem to
20 be pretty hard hit by the three past winters, other
21 areas seem to be okay.

22

23 For the areas that had the most concern
24 for local users about the deer harvest, we've already
25 taken care of that, that's the Northeast Chichagof
26 Controlled Use Area. And there are, you know, the
27 Board, through Board polling last week already dealt
28 with that core area of NECCUA, NECCUA is highly roaded,
29 accessible road system to Hoonah and the Alaska Marine
30 Highway System, so there's a lot of use there, a lot of
31 harvest there in the NECCUA, we've taken care of that
32 issue of conservation of the does in the NECCUA.

33

34 This area, area outside of the NECCUA
35 but still in Unit 4, again, I want to say we don't have
36 the timber harvest and roading issues there. All the
37 access is by boat from saltwater, so most of the area's
38 already kind of inaccessible to users to begin with.

39

40 And then the other thing is the
41 variable winter conditions.

42

43 Now, the issue of limiting doe harvest
44 in the rest of Unit 4 here is not so much for
45 conservation, but so that the herd recovers quicker if
46 we get mild winters.

47

48 In my mind as a Staff Committee rep
49 that doesn't rise to the level of conservation concern
50 that's in that closure policy. In my mind providing

1 more does so that the herd can recover more quickly, if
2 you get some mild winters, that's not the same level of
3 concern.

4

5 Hopefully I've explained. If anybody
6 has questions I can try to answer them.

7

8 CHAIRMAN FLEAGLE: Well, I think that's
9 a good characterization of your position. I appreciate
10 that -- having that on the record.

11

12 I'm going to ask that -- well, this
13 noise is really kind of interfering with us over here
14 and I'm going to just tell everybody that can hear us
15 on line, we're going to hang up on you, please call
16 back in.

17

18 Thanks.

19

20 MR. PROBASCO: Okay, we're hanging up.

21

22 CHAIRMAN FLEAGLE: The person that's on
23 hold will discover that they're not on line anymore and
24 will call back in.

25

26 MR. PROBASCO: Now, Gary's ran off with
27 the phone number for me to call back in.

28

29 (Laughter)

30

31 CHAIRMAN FLEAGLE: Okay. Well, in
32 regards to the discussion that Cal just laid out, so I
33 hear basically what was said was that there is a
34 potential for this having a positive impact but not to
35 the degree that we feel that we should grant it under
36 the policy, so I think that's a fair summarization.

37

38 Discussion.

39

40 (Pause - redialing conference phone)

41

42 CHAIRMAN FLEAGLE: All right, so thank
43 you folks for doing that. There's the music again.

44

45 (Laughter)

46

47 CHAIRMAN FLEAGLE: Uh. All right, I
48 guess we're just going to have to live with it.

49

50 (Laughter)

1 CHAIRMAN FLEAGLE: It's not our system
2 is it?

3
4 (Laughter)

5
6 CHAIRMAN FLEAGLE: Okay, well, we're
7 still dealing with the hold music on our phone system,
8 we'll try to work around it. I want to recognize
9 everybody that is attending by phone, their ability to
10 participate.

11
12 So, anyway, we're left hanging with the
13 question about whether or not this actually does fall
14 short of the requirement in Section .815 and the
15 closure policy; I think that's the hang up here. And
16 if we can determine that it, indeed, does not meet
17 those requirements then we go with what has been laid
18 out on the table so far as a negative vote against it
19 or, you know, vote for this, so just want to have a
20 little more discussion in that regard.

21
22 Wini.

23
24 DR. KESSLER: Yes, I do agree that
25 there could potentially be a beneficial effect from
26 this motion, but, again, the critical thing in my
27 decision will be whether it meets the requirements of
28 .815 and our own policies for a closure and I do not
29 feel that it does.

30
31 CHAIRMAN FLEAGLE: Further discussion.

32
33 (No comments)

34
35 CHAIRMAN FLEAGLE: Are we ready for the
36 question.

37
38 (No comments)

39
40 (Music continues - laughter)

41
42 CHAIRMAN FLEAGLE: I think that's got
43 everybody distracted, let's stand down for a few
44 minutes and try to sort this out, I want to make sure
45 everybody votes without that.....

46
47 (Off record)

48
49 (On record)

50

1 CHAIRMAN FLEAGLE: We're back on
2 record, back on line, yes.

3
4 REPORTER: (Nods affirmatively)

5
6 CHAIRMAN FLEAGLE: And going back to
7 09-05, I think the hang up in my mind has been the
8 question, on Page 2 of the Board's policy, it says:

9
10 The Board will adopt closures to
11 hunting, trapping or fishing by non-
12 Federally-qualified users or Federally-
13 qualified subsistence users when one or
14 more of the following conditions are
15 met:

16
17 Closures are necessary for the
18 conservation of healthy populations of
19 wildlife -- fish and wildlife.

20
21 When a fish or wildlife population is
22 not sufficient to provide for both
23 Federally-qualified subsistence users
24 and other users, use by non-Federally-
25 qualified users may be reduced or
26 prohibited.

27
28 And I'll stop there because that's
29 where we're hanging up right now. And I think I've
30 convinced myself on that short break that with the data
31 presented by the Forest Service it appears that we
32 still have a population that can provide for both user
33 groups and I think we've heard the Forest Service
34 affirm that and with that in mind I'm going to follow
35 the recommendation and vote against this.

36
37 Any other discussion.

38
39 (No comments)

40
41 CHAIRMAN FLEAGLE: Ready for the
42 question. Pete, poll the Board, please.

43
44 MR. PROBASCO: Thank you, Mr. Chair.
45 Final action on Special Action 09-05.

46
47 Ms. Kessler.

48
49 DR. KESSLER: No.

50

1 MR. PROBASCO: Mr. Bunch.
2
3 MR. BUNCH: I'm going to vote no.
4
5 MR. PROBASCO: Mr. Haskett.
6
7 MR. HASKETT: No.
8
9 MR. PROBASCO: Ms. Masica.
10
11 MS. MASICA: No.
12
13 MR. PROBASCO: Mr. Oviatt.
14
15 MR. OVIATT: No.
16
17 MR. PROBASCO: And, Mr. Fleagle.
18
19 CHAIRMAN FLEAGLE: No.
20
21 MR. PROBASCO: Mr. Chair, motion fails,
22 zero/six.
23
24 CHAIRMAN FLEAGLE: All right, thank
25 you. Appreciate your indulgence while we work through
26 some of those questions. Let's go ahead and move on to
27 Special Action Request 09-09.
28
29 Polly.
30
31 DR. WHEELER: Thank you, Mr. Chair.
32 Wildlife Special Action 09-09 deals with Unit 18
33 prohibition of lead shot size T or smaller for the
34 taking of wildlife. And, Mr. Chair, if this looks
35 familiar it's because the Board has dealt with this
36 through special action before, and just as a reminder
37 this has actually been submitted as a proposal so
38 you'll see it again in May.
39
40 This special action was submitted by
41 the Yukon-Delta National Wildlife Refuge. It request a
42 prohibition on the possession or use of shot shells
43 containing size T lead shot or smaller for the taking
44 of wildlife in Unit 18. This was presented to the
45 Yukon Kuskokwim Delta Regional Advisory Council, that
46 Council supported the request based on human health
47 concerns and resource conservation issues.
48
49 The InterAgency Staff Committee also
50 supported the request. The Staff Committee noted that

1 adoption of this special action would continue to
2 provide added protection to threatened eider
3 populations in Unit 18 and would align also with State
4 regulations. Eliminating the use of lead shot in
5 spectacled and Steller's eiders breeding habitat is a
6 high priority of the recovery efforts for these
7 species. Adoption of the Council's recommendation
8 would also provide conservation benefits to other
9 waterfowl species that utilize these same habitats.

10

11 Mr. Chair.

12

13 CHAIRMAN FLEAGLE: Thank you.

14 Questions.

15

16 MR. BUNCH: Mr. Chair.

17

18 CHAIRMAN FLEAGLE: Charlie.

19

20 MR. BUNCH: You know I've been hunting
21 for some time now but I have no idea what a size T is
22 in, Tango shot is, can you clarify that for me?

23

24 CHAIRMAN FLEAGLE: Well, it says in the
25 documentation here it's .20 inch in diameter and
26 smaller, but, I, like you, have never heard of size T
27 shot, I mean I've never used it, but what's that --
28 how's that relate to .0 and .00?

29

30 MR. PROBASCO: T shot is bigger than
31 .00. It's become very popular particular for geese
32 species as we moved into steel, so that's what it is.

33

34 MR. BUNCH: And T is a lead shot as
35 opposed to a steel shot?

36

37 MR. PROBASCO: No, it can be either,
38 lead or steel.

39

40 CHAIRMAN FLEAGLE: Thanks, Pete.

41 Polly.

42

43 DR. WHEELER: Mr. Chair. I know that
44 Gene Peltola was on earlier, I don't know if he would
45 want to speak to this special action or if he was the
46 source of the music, I don't know.

47

48 (Laughter)

49

50 DR. WHEELER: But if he's on, I don't

1 know if he wants to speak to it or not.

2

3 MR. PROBASCO: We're hoping it wasn't.

4

5 (Laughter)

6

7 DR. WHEELER: We're hoping he wasn't,

8 yeah.

9

10 CHAIRMAN FLEAGLE: Did that sound like
11 government hold music?

12

13 (Laughter)

14

15 CHAIRMAN FLEAGLE: Gene, are you still
16 with us?

17

18 (No comments)

19

20 CHAIRMAN FLEAGLE: Uh-huh.

21

22 MR. HASKETT: Oh, Gene, please be

23 there.

24

25 (Laughter)

26

27 CHAIRMAN FLEAGLE: Okay, well, thank
28 you, appreciate that opportunity but it sounds like
29 that's not available.

30

31 Are we ready for a motion, Geoff?

32

33 MR. HASKETT: Yes.

34

35 I'd like to go ahead and make a motion
36 to adopt the Special Action Request 09-09, eliminating
37 the use of lead shot is a high priority for recovery
38 efforts for spectacled and Steller's eiders.

39

40 Over the last year, probably one of the
41 things I've worked the most on is spectacled eiders,
42 efforts up on the North Slope, we've worked really,
43 really closely with the Native people there, the Native
44 groups, and there's only five or 600 Steller's eiders
45 specific to Alaska that are in existence, and anything
46 that helps that I think is a good thing. Removal of
47 lead shot, just over all, I think, is good, regardless
48 of the size; whether it's for wildlife health, or human
49 health.

50

1 So adoption of the Council's
2 recommendation provides all kinds of conservation
3 benefits to other waterfowl species as well as these
4 two, so I make a motion to adopt the Special Action
5 Request.

6
7 CHAIRMAN FLEAGLE: Is there a second.

8
9 MR. OVIATT: I'll second it.

10
11 CHAIRMAN FLEAGLE: Okay, we do have a
12 second from George.

13
14 Further discussion. Justification.
15 Rationale.

16
17 Wini.

18
19 DR. KESSLER: Again, I see a number of
20 benefits following from this proposal, the obvious ones
21 reducing threats to imperiled species, but the general
22 benefits to the waterfowl in general, the health of
23 those populations and to my knowledge there's not
24 really a problem that's been identified with doing
25 this. So I'm inclined to support.

26
27 CHAIRMAN FLEAGLE: George.

28
29 MR. OVIATT: We, too, are going to
30 support this. We think that it's a conservation
31 benefit to threatened spectacled Steller's eiders and
32 other waterfowl and helping to assure the continued
33 viability of wildlife population.

34
35 This was supported, I think,
36 unanimously by the YK-Delta RAC, so I think we have
37 support for this all the way around.

38
39 CHAIRMAN FLEAGLE: Was that the
40 question?

41
42 MR. OVIATT: Question if you want it.

43
44 CHAIRMAN FLEAGLE: All right, the
45 question's called -- okay, Charlie, sorry, question.

46
47 MR. BUNCH: We certainly support the
48 proposal as far as it goes to the conservation of
49 wildlife, however, our -- you know, my concern would be
50 that the cost of steel shell -- while I haven't hunted

1 with them I have priced them and I know that there's a
2 considerable price difference and to a subsistence
3 hunter I would think that that would have an impact.
4 We're going to support this, I believe, but I'm
5 thinking that there is going to be a substantial cost
6 in the long run for subsistence hunters.

7
8 CHAIRMAN FLEAGLE: Thanks appreciate
9 that reservation on the record.

10
11 Go ahead, George.

12
13 MR. OVIATT: For the record I'll
14 withdraw my question until it's proper time for it to
15 be called for.

16
17 CHAIRMAN FLEAGLE: That's okay, I
18 overrode it anyway.

19
20 (Laughter)

21
22 CHAIRMAN FLEAGLE: Other discussion.
23 Geoff, go ahead.

24
25 MR. HASKETT: So I just want to add, I
26 recognize the additional cost but I think you need to
27 look at the cost to people's health as well and I mean
28 for a whole lot of reasons, whether it's waterfowl,
29 other wildlife, people definitely, just -- I mean it's
30 something I've just got to strongly make a pitch for,
31 there's a lot of reasons to go ahead and vote in the
32 affirmative for this one.

33
34 CHAIRMAN FLEAGLE: All right. Are we
35 now ready for the question.

36
37 (Council nods affirmatively)

38
39 CHAIRMAN FLEAGLE: Question's now
40 recognized. We -- Myron, did.....

41
42 MR. NANENG: Can I ask a question?

43
44 CHAIRMAN FLEAGLE: Well.....

45
46 MR. NANENG: Myron Naneng from.....

47
48 REPORTER: Myron. Myron. Myron, you
49 need.....

50

1 CHAIRMAN FLEAGLE: Hang on. Let's --
2 any objection to having Myron -- he's a resident of the
3 YK region that's affected by this, come forward and
4 make a comment?

5
6 (No objection)

7
8 CHAIRMAN FLEAGLE: Any objection.

9
10 (No objection)

11
12 CHAIRMAN FLEAGLE: None. Come on up
13 Myron.

14
15 MR. NANENG: Thank you. Yes, good
16 morning, my name is Myron Naneng, Sr., I'm the
17 president of the Association of Village Council
18 Presidents representing 56 villages on the Yukon
19 Kuskokwim Delta -- I'm also the Chair of the Waterfowl
20 Conservation Committee for YK-Delta.

21
22 We support the reduction of lead shot
23 use, however, there are some shotguns that are still
24 available for many of our people that they have not
25 switched to steel shot yet, and that's like the .410
26 gauge. And many of our young people use those guns as
27 the -- the .410s to experience and learn how to hunt
28 out in the region. And, you know, we know that there's
29 a lot of concerns regarding lead shots, but a total
30 elimination of this is going to have an impact on many
31 of the families in the YK-Delta.

32
33 And unless there is availability of
34 steel shots for the 10 gauge shells, which can -- which
35 will hang like trophies or something like that, for --
36 and useable, especially when they can be used by young
37 people -- our younger people, complete elimination of
38 lead shots will not be a real benefit to our people in
39 the YK-Delta.

40
41 I know that we support not using them
42 for waterfowl but during the wintertime some of our
43 young people use them to hunt ptarmigans out in the
44 tundra, that's pretty much out more on the highlands
45 than they are in the lowlands; and we know that with
46 all the studies that have been done over the years lead
47 shot is a major concern for spectacled eiders and other
48 ducks that feed in these shallow waters or in the
49 lakes. And I know that in some instances the geese use
50 the lead shot or the shots to grind their foods in

1 their gizzard but a total elimination of lead shots
2 until such time that we're able to have this available
3 -- or steel shots are available to our people, I think
4 a total elimination of it right now will create more
5 criminals out in the region than it would benefit.

6

7 With that, thank you.

8

9 CHAIRMAN FLEAGLE: Well, appreciate
10 that, Myron, and welcome to the meeting. Thank you for
11 that comment.

12

13 That's a good consideration. I
14 remember this similar discussion being made when the
15 North Slope banned lead shot, all lead shot, and it was
16 -- well, how does affecting shooting grouse in the
17 uplands of the Brooks Range compare with shooting
18 waterfowl in waterfowl habitat, and I think that the
19 debate kind of was settled by, well, if you just
20 eliminate lead shot totally you won't have people
21 taking -- having lead shot to go use for waterfowl
22 because it is happening.

23

24 I appreciate the comments, it does it
25 raise, you know, it raises a legitimate concern where
26 the lead that's being used for the taking of like Myron
27 said, of ptarmigan or maybe even rabbits or hares, I
28 mean, may not have an affect on the waterfowl
29 populations.

30

31 So further discussion on that.

32

33 (No comments)

34

35 CHAIRMAN FLEAGLE: Now, this has been
36 in effect for a year already?

37

38 DR. WHEELER: Mr. Chair, yes, there was
39 a previous special action and the Board supported it.

40

41 CHAIRMAN FLEAGLE: All right. Further
42 discussion. Charlie.

43

44 MR. BUNCH: Did I understand that they
45 have banned this for some time up on the North Slope,
46 the use of lead shot?

47

48 CHAIRMAN FLEAGLE: Geoff.

49

50 MR. HASKETT: Thank you, Mr. Chair.

1 Yes, it's been banned for quite some time, but up until
2 this last summer, though, there were still some stores
3 that were selling lead shot and actually we had a very
4 successful working relationship with a number of groups
5 there on the North Slope and the last store that had
6 lead shot has now taken it out so it's not even being
7 sold there anymore.

8

9 CHAIRMAN FLEAGLE: Go ahead, Charlie.

10

11 MR. BUNCH: Well, I guess my question
12 would relate to that, you know, what has been the
13 economic impact upon the subsistence users and, you
14 know, what are the health concerns, if they've quit
15 using lead shot entirely?

16

17 CHAIRMAN FLEAGLE: Geoff.

18

19 MR. HASKETT: Well, I mean as I said
20 before, I think -- personally, I just have a general
21 concern about lead shot, period, being in the
22 environment; it's not good for people, it's not good
23 for wildlife. I can't answer specifically the question
24 on, you know, the economic impact; I'm not aware of a
25 huge economic impact and people are working with us
26 there. But I can't speak for the people on the North
27 Slope either.

28

29 CHAIRMAN FLEAGLE: All right. Further
30 discussion. Jerry.

31

32 MR. BERG: Yeah, thank you, Mr. Chair.
33 I just wanted to also clarify that the Board of Game
34 also took this same action two years so it's been in
35 place on State lands for two years now so this is to
36 get our regulations in alignment with State regulations
37 on the YK-Delta.

38

39 CHAIRMAN FLEAGLE: All right, thank
40 you. Appreciate that.

41

42 Further discussion.

43

44 (No comments)

45

46 CHAIRMAN FLEAGLE: I shoot a .410,
47 they're a great little gun. But I guess I wasn't aware
48 that you can't find steel shot for a .410, therefore,
49 you know that I'm still shooting lead shot.

50

1 (Laughter)

2

3 CHAIRMAN FLEAGLE: But I'm not doing it
4 where it's illegal, it is just for grouse and for hare
5 on occasion.

6

7 So I mean this does raise a real
8 legitimate question in my mind as to whether or not
9 maybe -- I don't know if this would make it too
10 confusing if we had it with just -- with a .410 gauge
11 exception from the regulation, but if that were
12 allowable and enforceable and available, at least,
13 until we get this all sorted out, I know we have this
14 proposal before us for the May meeting. I'd consider
15 some kind of an exception.

16

17 Geoff.

18

19 And, Jerry, your mic's still on.

20

21 MR. HASKETT: Actually my Deputy just
22 pulled me over and gave me some more information that I
23 probably should have had. Steel shot is available for
24 .410s. We've also had exchange programs in the past
25 where we've allowed people -- or worked out where
26 people would come in and exchange lead shot for steel.
27 There is a cost difference but it's diminishing, it's
28 getting smaller and smaller, the difference all the
29 time.

30

31 I think we'd be more than willing to
32 continue to work to figure out ways of doing future
33 exchange programs, I'm not sure exactly what that would
34 be, but we've certainly been involved in those in the
35 past and we can explore those in the future.

36

37 But, again, although there's a cost
38 difference it is shrinking all the time, the difference
39 between it, .410s especially.

40

41 CHAIRMAN FLEAGLE: Sounds like I might
42 have to go buy some steel shot for my .410 and walk the
43 example here.

44

45 (Laughter)

46

47 CHAIRMAN FLEAGLE: Further discussion.

48

49 Charlie.

50

1 MR. BUNCH: Did I understand Geoff to
2 say that they have an exchange program that would allow
3 people who had lead shots to exchange it for steel shot
4 of the same caliber?

5
6 CHAIRMAN FLEAGLE: Geoff,
7 clarification.

8
9 MR. HASKETT: Yeah, actually what I
10 said is we've done it in the past. I don't think we
11 have one currently.

12
13 CHAIRMAN FLEAGLE: Jerry.

14
15 MR. BERG: Yeah, actually I asked that
16 question of Gene Peltola during the YK Council meeting
17 and he said that they have bought some and given it to
18 Fish and Game so that they could hand it out, that was
19 -- I'm not sure of the reason why they did that but so
20 they're not actively exchanging it themselves right now
21 but he said they did buy a case or two that they gave
22 to Fish and Game to exchange with folks out there.

23
24 CHAIRMAN FLEAGLE: Great, thanks.
25 Geoff.

26
27 MR. HASKETT: But for further
28 clarification, I'd be more than willing to go ahead and
29 continue to explore ways that we could do that, working
30 with other partners to go ahead and do those kinds of
31 exchanges; I recognize the concern. So I'm not exactly
32 sure what that would be or how we'll do it but I guess
33 I'll give you assurance that we will figure out how to
34 do that in the future more.

35
36 CHAIRMAN FLEAGLE: Well, Myron Naneng
37 is right here, he's probably the lead guy to start
38 those discussions with, and so I think that'd be a
39 great opportunity to work. Myron, do you want to come
40 and speak to that.

41
42 MR. NANENG: Thank you, Mr. Chair and
43 members of the Board. AVCP and Fish and Wildlife
44 Service have worked in the past to do steel shot, lead
45 shot exchange with villages that don't have any steel
46 shots available, and we've tried to work with the
47 Natures Conservancy and other groups and even AVCP has
48 bought steel shots to bring out to the villages and
49 work with the Fish and Wildlife Service Staff,
50 including Refuge Information Technicians to do the

1 steel shot exchanges at the villages. And the reason
2 why I make that comment regarding .410 is I have yet to
3 see any steel shots come out to the villages for the
4 .410 gauge shotguns; that's why I made that comment.
5 And if there's some available and if Fish and Wildlife
6 can find that, we'd welcome that through lead shot
7 exchange. My .410 gauge is kind of rusting away at
8 home so thank you.

9

10 CHAIRMAN FLEAGLE: Appreciate those
11 comments. Geoff.

12

13 MR. HASKETT: So for my good friend
14 Myron Naneng, I do not want your .410 to be rusting
15 away at home, so I assure you we'll try and figure how
16 to make that work, and get an exchange program going
17 again. Again, I don't know what the details of that
18 would be but we'll work with you to make that happen.

19

20 CHAIRMAN FLEAGLE: Great. I appreciate
21 that, Geoff, I think that allays my concerns on the
22 proposal and I'm willing to support it as presented.

23

24 Any other discussion.

25

26 (No comments)

27

28 CHAIRMAN FLEAGLE: Are we ready for the
29 question.

30

31 (No comments)

32

33 CHAIRMAN FLEAGLE: All right, I'm not
34 hearing anything so we will accept that as the
35 question.

36

37 Pete, poll the Board, please on Special
38 Action 09-09.

39

40 MR. PROBASCO: Final action Special
41 Action 09-09. Mr. Bunch.

42

43 MR. BUNCH: Well, I think based upon
44 the recommendation of Fish and Wildlife I would approve
45 it.

46

47 MR. PROBASCO: Mr. Haskett.

48

49 MR. HASKETT: Yes.

50

1 MR. PROBASCO: Ms. Masica.
2
3 MS. MASICA: Yes.
4
5 MR. PROBASCO: Mr. Oviatt.
6
7 MR. OVIATT: Yes.
8
9 MR. PROBASCO: Mr. Fleagle.
10
11 CHAIRMAN FLEAGLE: Yes.
12
13 MR. PROBASCO: And, Ms. Kessler.
14
15 DR. KESSLER: Yes.
16
17 MR. PROBASCO: Motion carries six/zero.
18
19 CHAIRMAN FLEAGLE: All right, thank
20 you. That concludes Special Action requests. We now
21 move to Item 6 on the agenda, the fisheries request for
22 reconsiderations 09-01.
23
24 Polly.
25
26 DR. WHEELER: Thank you, Mr. Chair.
27 If we could get a little -- we're just reorganizing a
28 little bit, Staff wise.
29
30 (Pause)
31
32 DR. WHEELER: Helen Armstrong is here,
33 she's the chief of the Anthropology Division at OSM and
34 she will present a brief summary of the RFR that's
35 before you.
36
37 CHAIRMAN FLEAGLE: Great, thank you.
38 Welcome Helen.
39
40 MS. H. ARMSTRONG: Thank you, Mr. Chair.
41 Members of the Board. Helen Armstrong. I am going to
42 do the short version of this analysis, I know you all
43 have it in your book. If you have additional questions
44 and need more information I'm happy to provide that for
45 you.
46
47 The Ninilchik Traditional Council, I'll
48 refer to them as NTC, submitted a request that the
49 Board reconsider its decision of January 14th, 2009 on
50 Proposal FP09-07, which requested that the community of

1 Ninilchik be added to the communities with a positive
2 customary and traditional use determination for all
3 fish in the waters north of and including the Kenai
4 River drainage, within the Kenai National Wildlife
5 Refuge and Chugach National Forest within the Kenai
6 Peninsula District; and I'll refer to that long
7 sentence as the Kenai River area.

8
9 NTC maintains that reconsideration of
10 the Board's decision is required because the Board's
11 interpretation of information, applicable law or
12 regulation was in error or contrary to existing law.
13 The Board did not support Proposal FP09-07 and the
14 effect of that was, because I know we have this long
15 history and it's in your analysis, but the effect of
16 that was that Ninilchik only has a customary and
17 traditional use determination for salmon for the Kenai
18 River area and not for all fish. The NTC maintains
19 that reconsideration is required because the Board's
20 interpretation of information, applicable law or
21 regulation was in error or contrary to existing law on
22 nine different claims.

23
24 There are three criteria that the Board
25 uses to determine if the RFR meets the threshold for
26 further consideration.

27
28 Criteria 1 is information previously
29 not considered by the Board.

30
31 Criteria 2 is the existing information
32 used by the Board is incorrect.

33
34 And there were no claims by NTC that
35 meet the first two criteria.

36
37 NTC presented -- the nine claims that
38 they presented all related to Criteria 3, which is the
39 Board's interpretation of information, applicable law,
40 or regulation is in error, or contrary to existing law,
41 as I said.

42
43 In Claims 3.1 and 3.2, Ninilchik states
44 that the Board's application of its customary and
45 traditional use determinations regulations is
46 inconsistent with the intent of Title VIII of ANILCA,
47 which is to provide rural residents an opportunity for
48 subsistence on Federal public lands.

49
50 However, the subsistence management

1 regulations governing customary and traditional use
2 determinations, which is found in 36 CFR and 50 CFR
3 state that:

4

5 The Board shall determine which fish
6 stocks and wildlife populations have
7 been customarily and traditionally used
8 for subsistence. These determinations
9 shall identify the specific communities
10 or areas use of specific fish stocks
11 and wildlife populations.

12

13 The Board is, therefore, required to
14 follow applicable regulations as stated in our regs and
15 they did so in this instance.

16

17 All of the other issues raised by NTC
18 in Claims 3.2 through 3.9 were discussed thoroughly in
19 the administration during the regulatory process and
20 are clearly documented.

21

22 There does not appear to be any merit
23 to any of Ninilchik's claims.

24

25 So if you want more information on each
26 of those claims, I'm happy to give it, but I, you know,
27 I thought a short summary might be worthwhile.

28

29 CHAIRMAN FLEAGLE: Appreciate that.
30 And I will open the floor for questions in a moment.
31 But I just want to remind Board members that what we're
32 dealing with on this request is procedure, not content.
33 We're not trying to redecide whether or not the C&T
34 exists or should exist or does not exist at this time.
35 We're only trying to determine whether the Board did
36 not follow its process thoroughly and that is the
37 challenge before us now. And the OSM draft conclusion,
38 or recommendations here are that the Board did act
39 accordingly in the entire process and support that the
40 Board did so in according to its regulations and,
41 therefore, the nine claims are not valid.

42

43 That is what we're determining here
44 today, not the content. We're not discussing whether
45 or not we agree with the decision about the C&T, just
46 the process.

47

48 I just wanted to make that clear.

49

50 Geoff.

1 MR. HASKETT: Mr. Chair. I hope this
2 is the appropriate time for me to do this.

3
4 I probably caused a lot of confusion.
5 I'm actually the person that asked to have this be
6 considered again, and I'm going to try and do this in a
7 way without relooking at, like you said, what we talked
8 about last time.

9
10 But I did end up having some questions
11 after our last meeting. And I think that the analysis
12 that we just heard from OSM, I have no disagreement
13 with that or any question about, in fact it was well
14 done, I believe it was an accurate assessment of our
15 regulations for evaluating a request for
16 reconsideration. However, and this part is the part
17 that will probably come as a surprise to some people, I
18 still had some questions in my mind after the last
19 meeting, and, again, I don't want to talk about the
20 specifics of what we did, but just the information
21 presented to us at our last January Board meeting, you
22 know, I was fairly new to the group, I was very new to
23 the group and I came away, after we voted, still with a
24 lot of questions, still looking to reassess some
25 interpretations of the interpretation that was given,
26 and so -- and at that time OSM had actually recommended
27 that we adopt, so I put them kind of in a bizarre
28 position here, where, you know, their last
29 recommendation they made was that we should adopt the
30 motion and now, of course, they've correctly said,
31 well, in terms of how you do the analysis we shouldn't
32 be looking at this again. However, I did go to the
33 Solicitor's Office since I had those questions and made
34 sure whether I'm even on good ground here for doing
35 this, and I'm not going to do it yet, and I'm not
36 predisposing what the action would be at our next
37 meeting, but I had enough questions, that I guess I
38 would like to see us be able to rereview this at the
39 next meeting. Again, not questioning what OSM has
40 done, but just based upon, I think, lots of open
41 questions still.

42
43 CHAIRMAN FLEAGLE: Thank you, Geoff.
44 That's a good explanation of process. And I think
45 before we move forward, I want to get an opinion from
46 our Solicitor, if we are to take -- if we are to find
47 that any one of these nine claims does have validity
48 and we're willing to reconsider this, in my mind that
49 brings the whole issue back to the table at our next
50 meeting, or I mean when we schedule it, and then we

1 would have the entire discussion available for review,
2 not just the single criteria that's being granted here;
3 is that correct?

4

5 MR. GOLTZ: I think so but I haven't
6 heard Geoff's motion yet.

7

8 CHAIRMAN FLEAGLE: Okay. I wasn't
9 quite ready to go a motion, just -- yeah, discussion,
10 go ahead.

11

12 MR. HASKETT: Just additional
13 clarification, I'm not ready to make the motion yet
14 either, but I do -- what I'm talking about specifically
15 is 3.7, and that's the area, actually the one that --
16 not the entire, so I think it's 3.7 that I'm actually
17 proposing to look at here.

18

19 CHAIRMAN FLEAGLE: Okay. All right.
20 And, Keith, standby, I guess on your response then when
21 you're a little more clear as to what it may be. I'm
22 just laying out, I think, procedurally, if we do accept
23 one claim it puts the whole issue back in front of the
24 Board again, it's a reconsideration of the decision,
25 but it doesn't mean that we have to meet all the
26 claims, just one of them is adequate. That's what I
27 was just trying to clarify, if we do move this way,
28 this issue will be back on the table at a future
29 meeting for further discussion and a revote, and that's
30 what a reconsideration vote is.

31

32 So with that are there any questions of
33 the analysis as presented by Helen Armstrong.

34

35 Charlie.

36

37 MR. BUNCH: Well, I don't have anything
38 on Helen's very well put analysis. My problem is, is
39 in the process or procedure. You know, I heard the
40 Special Assistant to the Secretary talk about reviewing
41 the Subsistence Board processes here and it looks to me
42 like -- it sounds to me like Geoff is thinking about
43 putting off a vote on this to some future date and that
44 would be my concern, because if we're operating off of
45 a draft analysis, you know, should we be doing that,
46 should we be making a vote based upon a draft analysis?

47

48 CHAIRMAN FLEAGLE: Yes. This is an
49 administrative procedure that the Board is in control
50 of and the OSM analysis that is brought before us for

1 consideration, and which I might add, I'm just -- I
2 think what I'm hearing from Geoff is that he intends to
3 dispute at least one of these claims and I think the
4 process, though, is whether or not we agree whether or
5 not one of these claims has been not thoroughly vetted
6 out in our previous processes and it is our
7 determination to make and based on my discussions with
8 both Pete and Polly as to our timelines, if we continue
9 to delay this, we're having some trouble, I understand
10 in some of the debates about, you know, at the Staff
11 level about the validity of some of the claims, and the
12 process was taking such a long time, that if we
13 continued to take that track this would come up way
14 down the road, farther along than we care to, we've got
15 a really busy schedule, we've got, like Polly said, 115
16 wildlife proposals to review; we've got this special
17 meeting in April for the fisheries issues on the Yukon
18 that's got to be evaluated and so it was felt by OSM
19 Staff, and I concurred, that we should bring it forward
20 now with what information we have.

21

22 Pete, do you want to add anything to
23 that, did I miss anything?

24

25 MR. PROBASCO: Mr. Chair. The only
26 thing I'd add here, Mr. Bunch, technically analysis
27 like this is always draft until the Board's final
28 action. So this is OSM's technical analysis of the
29 claims.

30

31 I think what you're referring to or
32 indirectly is the process where the Staff Committee
33 comes into this. And I think the Staff Committee has
34 reviewed this on two different occasions and at this
35 time were unable to provide their review of the OSM
36 analysis.

37

38 Mr. Chair.

39

40 CHAIRMAN FLEAGLE: Appreciate that.

41 Geoff.

42

43 MR. HASKETT: Mr. Chair, thank you. I
44 may not have to do this, but I want to be real clear
45 about what it is I'm proposing.

46

47 And that's that I don't disagree with
48 the analysis that OSM has done, I mean based upon the
49 criteria, I mean essentially they're saying we should
50 not be taking this up again. I'm very specifically

1 saying on 3.7 that for additional reasons I think we
2 should take this up again at our January meeting.

3
4 And I'm not -- I mean you said dispute,
5 I'm not saying what I'm going to do one way or another,
6 I'm not predisposing a decision, I'm saying we should
7 have that discussion again as opposed to actually
8 what's been brought up by OSM.

9
10 So I'm specifically saying that we
11 should be looking at 3.7 at our January session, and
12 not predisposing what the motions would be.

13
14 CHAIRMAN FLEAGLE: Okay. No, I
15 appreciate that clarification. And I guess I owe one
16 too, when I said, dispute, I'm suggesting that you
17 would dispute that the OSM conclusion, that there's no
18 merit to Claim 3.7, that's all I meant. And, again,
19 we're just talking about procedure, not content at this
20 point.

21
22 And I think that it would be beneficial
23 if you were to make your motion now.

24
25 MR. HASKETT: Thank you, Mr. Chair.

26
27 So then I will make a motion to accept
28 Claim 3.7. At our last January meeting I had a number
29 of questions during the review of the information on
30 this issue and I feel it's appropriate to go ahead and
31 accept this claim. This will provide an opportunity to
32 reassess my interpretation, the Board's interpretation
33 of the information that's available. I do not believe
34 any of the other eight claims merit criteria for
35 reconsideration.

36
37 CHAIRMAN FLEAGLE: Is there a second.

38
39 DR. KESSLER: I'll second.

40
41 MR. OVIATT: I'll second that.

42
43 CHAIRMAN FLEAGLE: Okay, we'll take
44 Wini's second.

45
46 All right. Moved and second. Would
47 you like to speak further to the motion, Geoff.

48
49 MR. HASKETT: Mr. Chair. I'm afraid if
50 I speak further I'm just going to confuse beyond belief

1 so, no, I would prefer not to.

2

3 CHAIRMAN FLEAGLE: All right. We do
4 have a motion to accept Claim 3.7, in that, the Board's
5 decision was not supported by substantial evidence and
6 that the Board's action was arbitrary and capricious
7 and that it ignored the Council's recommendation, OSM
8 Staff support for the proposal and the information
9 presented in the Staff analysis and I'm just reading
10 from the claim that the NTC brought in this request.

11

12 So basically an affirmative vote here
13 would accept Claim 3.7 and would bring Fisheries
14 Proposal, well, it's 09-01 -- would be given a new
15 number, I guess in the fisheries meeting, but would
16 accept it for reconsideration to be brought back at a
17 future meeting.

18

19 Is everybody clear on the process, what
20 we're doing.

21

22 (Board nods affirmatively)

23

24 CHAIRMAN FLEAGLE: And then we can now
25 discuss the rationale of the motion.

26

27 George.

28

29 MR. OVIATT: Mr. Chairman. Speaking on
30 behalf of my Board member, BLM has questions about our
31 interpretation of past information and would like the
32 opportunity to reassess this information. It does not
33 mean that there's an indication here of which way we
34 would vote. But we would certainly, because of those
35 questions that we have of past interpretation, we would
36 like to, like I said, reassess the information and we
37 would be in support of this motion.

38

39 Thank you, Mr. Chairman.

40

41 CHAIRMAN FLEAGLE: All right, thank
42 you. Sue.

43

44 MS. MASICA: I just wanted to make sure
45 I was clear on what the consequence of, if the motion
46 is adopted, which is that the entirety of FP09-07, if
47 it's given a new number, that that's what would be
48 before the Board in January. And then I guess my other
49 clarification would be is there, in terms of any
50 additional Staff work to get ready for January, would

1 we have that by that January meeting.

2

3 CHAIRMAN FLEAGLE: Pete.

4

5 MR. PROBASCO: Well, Mr. Chair, Ms.
6 Masica, you heard what we have before us, the 115
7 proposals.

8

9 MS. MASICA: But that's in May.

10

11 MR. PROBASCO: But we still have to
12 analyze them.

13

14 I would say that it's possible but I
15 would need to talk with my Staff first. We would want
16 to review the analysis. It would not be to the degree
17 that if we were starting anew, but I think we could
18 make that date, but I'm not going to say with
19 definitely until I talk with Helen and with Polly.

20

21 CHAIRMAN FLEAGLE: So irregardless of
22 whether it's available by January or not, by accepting
23 this claim we are putting it on the docket for a future
24 meeting, and that'll be to be determined, but as far as
25 process goes it is setting it up to be addressed, we
26 just have to determine the best time.

27

28 MS. MASICA: It's just not a guarantee
29 for January, I just want to make sure we're clear.

30

31 CHAIRMAN FLEAGLE: It's not guaranteed
32 at this point.

33

34 MS. MASICA: Okay.

35

36 CHAIRMAN FLEAGLE: All right.

37

38 MR. PROBASCO: Mr. Chair, if I may.

39

40 CHAIRMAN FLEAGLE: Pete.

41

42 MR. PROBASCO: Just for clarification
43 we do have other meetings where the Board could act and
44 based on when they act, through other procedures, if
45 they were to vote in the affirmative, we could
46 technically meet a summer deadline for the summer
47 fishing season, but it all depends on when we address
48 it.

49

50 Mr. Chair.

1 CHAIRMAN FLEAGLE: All right. Further
2 discussion.

3
4 DR. KESSLER: Mr. Chair.

5
6 CHAIRMAN FLEAGLE: Wini.

7
8 DR. KESSLER: I'm more comfortable with
9 accepting at least one claim here and reconsidering
10 than I would be rejecting this request for
11 reconsideration.

12
13 Looking at the background material
14 here, it points out that the Board voted a certain way
15 and it looks like it was real crisp and clear but, of
16 course, thinking back the Board struggled a lot with
17 some of the complex issues in here and if I recall
18 right we had kind of a split vote on it which affirms
19 that there were differences of interpretation and
20 viewpoint and we did struggle with it so in cases like
21 that I think the prudent thing to do is give it some
22 more consideration. So I would support that motion.

23
24 CHAIRMAN FLEAGLE: Okay, appreciate
25 that. I'll throw a comment in here before we take a
26 vote on the claim. I agree with the OSM's statement
27 that the Board did consider all the evidence and I'm
28 real comfortable with my vote in that action. I think
29 that's incumbent upon me and any other Board member to
30 have a firm grasp on the issue that's before them in
31 any vote, but in this case I do understand that, you
32 know, we've had some change over in Board members,
33 we've had some -- this has been going on since early
34 '07, I believe was the first time this issue was
35 brought before us, and maybe even it was in '06
36 actually. I was appointed to the Board in late '06 so
37 it might have been prior to then. So it has been going
38 on a long time, it is a controversial and complicated
39 issue.

40
41 And I'm going to vote in support, I'm
42 just going to show support here for my fellow Board
43 members. It doesn't hurt to reevaluate a decision,
44 especially when I hear the agency that's land and
45 waters affected by it, supporting the review, I'm going
46 to support that request.

47
48 Any other discussion.

49
50 MR. BUNCH: Mr. Chair. I have a

1 question.

2

3 CHAIRMAN FLEAGLE: Charlie.

4

5 MR. BUNCH: Thank you. If we vote in
6 favor of this proposal does this mean that all of the
7 proposal is going to be before the Board at some point
8 in the future?

9

10 CHAIRMAN FLEAGLE: Yes. And what we're
11 voting on, just procedurally, again, here, is we're
12 just voting on whether or not the NTC has a valid claim
13 that the Board did not act with all the information
14 that it could have. If we vote affirmatively here
15 we're agreeing to that claim, which then puts the
16 proposal back in front of the Board for
17 reconsideration, and all of the debate about the
18 content of that proposal will be taking place at that
19 time. We're just dealing with the procedure here.
20 But, yes, that entire question of whether or not a
21 positive customary and traditional use determination
22 exists for resident species of fish on the Upper Kenai
23 for the Ninilchik residents; that's the question that
24 will be discussed.....

25

26 MR. BUNCH: Thank you.

27

28 CHAIRMAN FLEAGLE:at a future
29 meeting. Keith.

30

31 MR. GOLTZ: Yeah, I think the Board's
32 in charge of this process and it could vote to limit
33 their consideration to a smaller aspect of this
34 proposal, but I don't think Geoff's motion does that.
35 And the way I'm looking at it is that a vote today
36 would open up this particular issue for the Board's
37 reconsid -- the entire issue for the Board's
38 reconsideration.

39

40 CHAIRMAN FLEAGLE: Thank you. George.

41

42 MR. OVIATT: Thank you, Mr. Chairman.
43 And that certainly would be the intent from BLM's
44 standpoint, too.

45

46 CHAIRMAN FLEAGLE: Ready for the
47 question.

48

49 (No comments)

50

1 CHAIRMAN FLEAGLE: All right, hearing
2 no question, I'm going to go ahead and call, Pete, on
3 the motion to accept NTC's Claim 3.7 on the RFR, please
4 poll the Board.
5
6 MR. PROBASCO: Mr. Chair. Just as you
7 stated motion FRFR09-01, Claim 3.7. Mr. Haskett.
8
9 MR. HASKETT: Yes.
10
11 MR. PROBASCO: Ms. Masica.
12
13 MS. MASICA: Yes.
14
15 MR. PROBASCO: Mr. Oviatt.
16
17 MR. OVIATT: Yes.
18
19 MR. PROBASCO: Mr. Fleagle.
20
21 CHAIRMAN FLEAGLE: Yes.
22
23 MR. PROBASCO: Ms. Kessler.
24
25 DR. KESSLER: Yes.
26
27 MR. PROBASCO: And, Mr. Bunch.
28
29 MR. BUNCH: Yes.
30
31 MR. PROBASCO: Mr. Chair, motion
32 carries six/zero.
33
34 CHAIRMAN FLEAGLE: All right, thank
35 you.
36
37 MR. PROBASCO: Any there any other
38 issues that.....
39
40 CHAIRMAN FLEAGLE: Oh, that's a good
41 question.
42
43 MR. PROBASCO: That'd be in the.....
44
45 CHAIRMAN FLEAGLE: That's a good
46 question. All right, so I think it would be rather
47 moot at this point, but I'll go ahead and ask the
48 question anyway.
49
50 Pete just raised the issue that there

1 may be other claims that the Board might feel have
2 merit that would lead to reconsidering this, which
3 we've already done, so it would be somewhat redundant,
4 but is there any other discussion on any of the other
5 claims?

6

7 MS. MASICA: Mr. Chairman. I just want
8 to be clear. My understanding is that the motion that
9 was just agreed to puts everything on the table for
10 whenever this gets scheduled so.....

11

12 CHAIRMAN FLEAGLE: That's affirmative.
13 We're not.....

14

15 MS. MASICA:even if there's not a
16 detailed discussion at this point in time about any of
17 the other claims, if there are issues that are embedded
18 in the conversation when.....

19

20 CHAIRMAN FLEAGLE: Exactly.

21

22 MS. MASICA:that occurs at the
23 next meeting.....

24

25 CHAIRMAN FLEAGLE: The entire
26 decision.....

27

28 MS. MASICA:whenever it's
29 scheduled.

30

31 CHAIRMAN FLEAGLE:is back before
32 the Board for future consideration not.....

33

34 MS. MASICA: Thank you.

35

36 CHAIRMAN FLEAGLE:just what is
37 encapsulated in 3.7.

38

39 MS. MASICA: Right.

40

41 CHAIRMAN FLEAGLE: Charlie.

42

43 MR. BUNCH: Mr. Chair. For the record,
44 yeah, we did have some concerns over Claim 3.1 and we
45 want to make sure that those will be able to be
46 discussed at some future point.

47

48 CHAIRMAN FLEAGLE: Well, yeah, the --
49 maybe I'm not being real clear. What we did was we
50 just voted to reconsider the positive C&T -- or

1 negative C&T for Ninilchik for all fish in the Upper
2 Kenai. It's all on the table. Everything. We're not
3 now -- now, we're not negotiating process anymore, the
4 entire -- we've completed that. We are now going ahead
5 with our schedule and this issue of the C&T for
6 resident fish for Ninilchik in the Upper Kenai is back
7 for us for a new vote.

8

9 MR. BUNCH: I knew that, I just wanted
10 to get our claim, that we had some concerns over 3.1
11 that we want to discuss.....

12

13 CHAIRMAN FLEAGLE: Okay.

14

15 MR. BUNCH:down the line.

16

17 CHAIRMAN FLEAGLE: All right, thank
18 you, appreciate that head's up. We'll have ample
19 opportunity or somebody will, anyway, on this issue
20 when it comes back up.

21

22 Any other discussion.

23

24 (No comments)

25

26 CHAIRMAN FLEAGLE: All right. We do
27 have the MOU meeting with the signatories at 1:00
28 o'clock and I'd like to, with everybody's permission,
29 just jump down to Item 8 and if there's other business
30 we can dispense with that now instead of waiting until
31 this afternoon; if there's anything else that maybe has
32 been -- any other discussions.

33

34 MS. MASICA: Mr. Chairman. Can you
35 maybe -- can maybe Pete or Polly could confirm the
36 January dates, it's the 12th?

37

38 CHAIRMAN FLEAGLE: Polly.

39

40 DR. WHEELER: Mr. Chair, thank you.
41 You read my mind, Sue, I was just thinking probably for
42 everybody's benefit it would probably be helpful to put
43 out the dates that we have scheduled, at least, at this
44 point, whether or not they're fully utilized, I guess,
45 that remains to be seen.

46

47 But the January meeting is currently
48 scheduled for January 12th to 14th, 2010. Keep in mind
49 that meeting was scheduled when we thought -- that
50 meeting was scheduled before the proposed wildlife rule

1 was pulled and withdrawn and before we had to extend
2 the window so that meeting was scheduled thinking that
3 we'd have the wildlife proposals before us but then we
4 got an additional five extra months to get wildlife
5 proposals, so that is, again, January 12th to 14th.
6 And all these meetings are at the West Coast
7 International Inn.

8

9 We also have a meeting scheduled right
10 now for April 13/14/2010 to take action on the deferred
11 Yukon chinook proposals.

12

13 And currently we have a meeting
14 scheduled for May 18-20 and we have reserved the West
15 Coast International Inn for the 21st as well to address
16 the wildlife proposals.

17

18 CHAIRMAN FLEAGLE: Can you repeat those
19 April dates again, Polly, and that's for the fisheries
20 -- the Yukon fisheries proposals?

21

22 DR. WHEELER: That's correct. Those
23 are for the two Yukon deferred fisheries proposals.
24 And just to remind you, the Board of Fish is meeting
25 on the -- the AYK Board of Fish is meeting the last
26 week of January, January 26th to February 1, I think,
27 is the dates of that meeting, so we had scheduled the
28 Board meeting to deal with the deferred Yukon proposals
29 after the Board of Fish meeting, so it's April 13 and
30 14, 2010.

31

32 CHAIRMAN FLEAGLE: Great, thank you.
33 Pete.

34

35 MR. PROBASCO: Since we're talking
36 about schedules, and just a head's up for Board
37 members, when we meet with the State this afternoon,
38 Tina gave me a head's up that the Board of Fish would
39 like to discuss with the Board members their possible
40 attendance at that January Board meeting that deals
41 with the Yukon proposals, not for the entire meeting,
42 but for a certain portion of it. So something to think
43 about over lunch just before we meet again.

44

45 Mr. Chair.

46

47 CHAIRMAN FLEAGLE: Great, thank you.
48 Polly.

49

50 DR. WHEELER: For those of you who have

1 your 2011 calendar, I will tell you that the Federal
2 Board meeting to deal with the 2011/2013 fisheries
3 proposals has been scheduled for January 18 to 20,
4 2011. That's getting way ahead, but just to put it out
5 there.

6

7 (Laughter)

8

9 CHAIRMAN FLEAGLE: Appreciate that,
10 Polly, thank you.

11

12 And I think that we still reserve two
13 work sessions throughout the year, one in March and one
14 in November for items such as this here.....

15

16 MR. PROBASCO: Or more.

17

18 CHAIRMAN FLEAGLE: I mean we do reserve
19 the two but.....

20

21 MR. PROBASCO: Right.

22

23 CHAIRMAN FLEAGLE:but we open
24 opportunity for more.

25

26 Okay, is there any other business that
27 wants to come before the Board at this time.

28

29 (No comments)

30

31 CHAIRMAN FLEAGLE: None. We're going
32 to go ahead and recess until 1:00 p.m., thank you.

33

34 (Off record)

35

36 (On record)

37

38 CHAIRMAN FLEAGLE: All right, good
39 afternoon. We're going to go ahead and call to order
40 -- I know there's a little bit of confusion in the
41 seating arrangements but I think we've got it resolved
42 to where all the signatories and the Federal agencies
43 are at the table. And with that since we have a new
44 host of people at the table, I know most of us know
45 each other, but just for formality let's start with
46 introductions. And I'd like to start with this
47 gentleman in the blue shirt on that end of the table.

48

49 Push the microphone button.

50

1 MR. SPRAKER: Thank you, Mr. Chairman.
2 My name is Ted Spraker. I'm the Vice-Chair of the
3 Board of Game.
4
5 MR. JUDKINS: My name is Cliff Judkins.
6 I'm the Chair of the Board of Game.
7
8 MR. HASKETT: Geoff Haskett, Regional
9 Director of Fish and Wildlife Service.
10
11 MR. WEBSTER; Vince Webster, Chairman,
12 Board of Fish.
13
14 MS. MASICA: Sue Masica, National Park
15 Service.
16
17 MR. OVIATT: George Oviatt representing
18 the Bureau of Land Management.
19
20 MR. NELSON: Lance Nelson with the
21 State Attorney General's Office.
22
23 MS. CUNNING: Tina Cunning, Department
24 of Fish and Game.
25
26 MR. BEDFORD: David Bedford, Alaska
27 Department of Fish and Game.
28
29 CHAIRMAN FLEAGLE: I'm Mike Fleagle,
30 Chairman of the Federal Subsistence Board.
31
32 MR. PROBASCO: Good afternoon. Pete
33 Probasco, Office of Subsistence Management.
34
35 MR. GOLTZ: Keith Goltz, Solicitor's
36 Office.
37
38 DR. KESSLER: Wini Kessler, Forest
39 Service.
40
41 MR. USTASIWSKI: Jim Ustasiwski, U.S.
42 Department of Agriculture.
43
44 MR. BELL: Bob Bell, State Board of
45 Game.
46
47 MR. DELOW: Howard Delow, Board of
48 Fish.
49
50 MS. K'EIT: Kristin K'eit, Bureau of

1 Indian Affairs.

2

3 MR. JENSEN: Good afternoon. John
4 Jensen, Alaska Board of Fisheries.

5

6 CHAIRMAN FLEAGLE: All right, thank
7 you. And David and I consulted briefly before the kick
8 off of this meeting and the way that we understand that
9 it -- because it's a meeting of the signatories we're
10 both Chairs, we're co-Chairs.

11

12 MR. BEDFORD: (Nods affirmatively)

13

14 CHAIRMAN FLEAGLE: He agreed that I
15 should be the leading Co-Chair and I have accepted and
16 so I'll be leading the discussion and participation.

17

18 Before we move into that, though, I
19 want to check on line to see who's present on line.

20

21 Pete.

22

23 MR. PROBASCO: Thank you.

24

25 MS. SYKES: This is Carrie Sykes
26 calling from Central Council just joining
27 teleconference again.

28

29 CHAIRMAN FLEAGLE: Thank you, Carrie.
30 Anybody else.

31

32 (No comments)

33

34 CHAIRMAN FLEAGLE: All right, we
35 appreciate that. We'll refer back to the microphone as
36 we hear people roll in.

37

38 So the purpose of the meeting is to
39 undertake an annual review of the MOA, or MOU, excuse
40 me, as it's now called.

41

42 The signing of the MOU was completed in
43 December 2008 and as stated in the general provisions
44 of the MOU the signatories will meet annually or more
45 frequently if necessary to review coordinated programs
46 established under this MOU and to consider
47 modifications to this MOU that would further improve
48 interagency working relationships.

49

50 With that we have an agenda and we're

1 still in a duly noticed agenda, work session agenda,
2 that this falls under, so this is kind of a sub-agenda,
3 if you will, under our work session, the Federal
4 Board's work session. So the agenda before you is
5 review of agenda; information exchange; discussion
6 addressing the Secretarial review of the Federal
7 Subsistence Program and how this may relate to the MOU;
8 general discussion of the MOU; and Yukon River salmon
9 fishery proposals; review of schedules; other; and
10 adjournment.

11
12 Has everybody had a chance to review
13 the agenda and is that adequate; any suggested changes?

14
15 (No comments)

16
17 CHAIRMAN FLEAGLE: We do have that
18 other item under VI, Item 6, so if we think of
19 something as we move along we can get it there.

20
21 (No comments)

22
23 CHAIRMAN FLEAGLE: All right, hearing
24 no objection we're going to go ahead and move forward
25 with the agenda as presented and we'll start off with
26 information exchange.

27
28 I'll open it up for discussion.

29
30 (No comments)

31
32 CHAIRMAN FLEAGLE: Nothing.

33
34 MS. SYKES: This is Carrie Sykes. I
35 want to comment on the MOU.

36
37 As everybody is aware Central Council
38 and AFN has serious concerns about the MOU and we felt
39 that it needed to go through the public process,
40 through the Regional Advisory Councils prior to being
41 signed and so we strongly suggest that no action be
42 taken on this MOU and that this is included in the
43 Federal review of the Subsistence Management Program.

44
45 CHAIRMAN FLEAGLE: Appreciate the
46 comments, Carrie.

47
48 MS. SYKES: Thank you.

49
50 CHAIRMAN FLEAGLE: Any other

1 discussion, information exchange. All right, Cliff
2 Judkins.

3

4 MR. JUDKINS: Yeah, I just want to make
5 a brief comment that, you know, that as one of the
6 signators and one of the persons that spent some time
7 of going through the process of putting the MOU
8 together, my understanding the whole purpose is just to
9 provide a mechanism for which the Staffs of the various
10 agencies involved in management have a means of
11 discussing things with each other. It doesn't do
12 anything to change anybody's laws or rules or
13 regulations, it just establishes a means for people
14 mainly at the research and management level to discuss
15 issues and try and cooperate in the joint management
16 that we have to do and that's really the whole intent
17 of this MOU.

18

19 CHAIRMAN FLEAGLE: Thank you, Cliff.
20 All right, appreciate that comment. We're going to get
21 into the meat of this discussion pretty quick, i just
22 want to go to the next item on the agenda and that's
23 discussion addressing the Secretarial review of the
24 Federal Subsistence Program and how this may relate to
25 the MOU. And we had a brief presentation earlier at
26 the meeting from the Special Assistant to the Interior
27 Secretary on this review, and if signatories are open
28 I'd like to call him back up for just a brief recap of
29 that discussion this morning, just to let you all know
30 where we're at in that process or what that process may
31 look like.

32

33 Any objection.

34

35 (No comments)

36

37 CHAIRMAN FLEAGLE: Pat, would you come
38 up, please.

39

40 MR. POURCHOT: Mr. Chairman, I guess
41 I'm glad I came back after lunch, I wasn't expecting
42 this.

43

44 (Laughter)

45

46 CHAIRMAN FLEAGLE: Well, I saw you back
47 there so I was glad too.

48

49 (Laughter)

50

1 CHAIRMAN FLEAGLE: But if you weren't
2 here we would have just ad libbed.

3
4 (Laughter)

5
6 MR. POURCHOT: Right. For the benefit
7 of the Board of Fish and Game -- Board of Fish and the
8 Board of Game members and with your indulgence I'll
9 repeat some of the things, just very briefly, that I
10 presented this morning.

11
12 Basically as most of you probably know
13 the Secretary of Interior Salazar announced at the AFN
14 Convention his intention to conduct a review of the
15 Federal Subsistence Management Program and with the
16 participation and obviously concurrence of the
17 Secretary of Agriculture on Forest Service lands. And
18 we have started that -- most of that review work is
19 going to be headed in my office here in Anchorage in
20 the Office of the Secretary. And we have recently, for
21 example, sent letters out to a variety of subsistence
22 interest groups and individuals that have worked
23 through the Office of Subsistence Management over the
24 years and soliciting input for our review and it's our
25 intention of going out into rural areas and soliciting
26 input from folks in person and also to meet with a
27 variety of people who have a lot more experience in
28 this than I, certainly, and many of whom are in this
29 room and working with managers.

30
31 There was a question this morning, for
32 example, from the Board of Fish and -- I'm sorry a Fish
33 and Game employee who was attending the meeting this
34 morning about the State's involvement and we very much
35 want to solicit involvement with the State and he
36 reminded me of your clear interest in it as Board
37 members of both fish and wildlife and so we will
38 attempt to try to set up meetings or appropriate
39 contacts with you all for your input as to your views
40 of how the Federal Subsistence Management Program is
41 doing.

42
43 And obviously there is a couple of
44 checkpoints that we're utilizing in this review; is the
45 Federal Subsistence Management Program, the way that it
46 is working now, the way it's structured now; the way
47 it's funded now, is this what was envisioned under the
48 terms of Title VIII of ANILCA.

49
50 And then the second kind of base-

1 touching is, is the program that we now see, is that
2 what was envisioned when the Federal Government did
3 take over in the early '90s, first with wildlife and
4 then later with certain fisheries; was that -- is it
5 working the way that that original structure was set up
6 then as the Federal Government was taking over
7 subsistence management for wildlife on Federal lands
8 and certain fisheries.

9

10 And so those are the kinds of things
11 that we want to ask people about and to take their
12 viewpoints on.

13

14 We've, today, the website, we did set
15 up a website that's now operational for folks to go to
16 know where to contact, who to contact, links to various
17 Federal agencies, to OSM, to Title VIII of ANILCA so
18 people can have some background information so we're
19 going through that kind of process to make sure that
20 the word does get out and people have an opportunity to
21 comment.

22

23 Maybe, Mr. Chair, I would be happy to
24 pause there if people have specific questions.

25

26 CHAIRMAN FLEAGLE: Questions anyone.

27

28 MR. BELL: Tell us the website.

29

30 MR. POURCHOT: Thank you, Mr. Bell.

31

32 CHAIRMAN FLEAGLE: The website.

33

34 MR. POURCHOT: I was -- I knew somebody
35 would ask me, and I'm trying to memorize it and I
36 don't.

37

38 MS. K'EIT: Pat, I can offer it, it's
39 www.doi.gov/subsistencereview.

40

41 MR. POURCHOT: Very good, thank you,
42 Kristin.

43

44 CHAIRMAN FLEAGLE: Thank you, Kristin.

45

46 MR. POURCHOT: I would just add for
47 those copying the email address for any and all
48 comments is subsistence@ios.doi.gov. And I want to
49 say, as I did this morning, this is, as we all know,
50 not a substitute for getting out and talking to people

1 face to face, I mean it's just one of many ways people
2 can comment on this review.

3

4 Thank you.

5

6 CHAIRMAN FLEAGLE: Thank you, Pat. Any
7 other questions. Cliff.

8

9 MR. JUDKINS: Pat, I just wanted to
10 invite you to our Board of Game meeting and maybe you'd
11 have an opportunity to come by and sit in and see how
12 we work and handle issues. We're meeting, starting
13 tomorrow in Nome for four days and the last time I
14 looked at the flights there was a seat next to me still
15 open.

16

17 (Laughter)

18

19 MR. JUDKINS: And we'll be dealing with
20 some subsistence issues there, that are pretty well
21 involved and might be interesting to you.

22

23 MR. POURCHOT: Well, thank you, thank
24 you very much.

25

26 CHAIRMAN FLEAGLE: Thank you, Cliff.
27 Other questions.

28

29 Pete, a comment.

30

31 MR. PROBASCO: Just a comment based on
32 Mr. Bell's question. We'll make sure that everybody
33 here present gets those two news releases that came out
34 of Mr. Pourchot's office and that way you'll have
35 everything there.

36

37 CHAIRMAN FLEAGLE: The other news
38 release, of course, is the acceptance of nominations or
39 applications for Chairman, which we also addressed
40 briefly this morning.

41

42 So with that are there any other
43 questions.

44

45 (No comments)

46

47 CHAIRMAN FLEAGLE: Thanks, Pat. I want
48 to point out, too, this morning in part of the
49 discussion, one of the questions that I asked Pat was
50 although this process was driven from a -- I think from

1 a position of wanting to see this process changed, I
2 think the word used was, broken, I got assurance from
3 Pat and from the Department, that, indeed, the review
4 is going to be reviewing the whole program, not just
5 trying to concentrate on where it doesn't work but also
6 looking at the whole program, where it works and
7 everything so I appreciated that clarification. I
8 think what was out in the press was maybe a little more
9 negative than I think what your intent is, so just
10 appreciate that clarification for everybody here.

11
12 With that are there any further
13 questions.

14
15 (No comments)

16
17 MR. POURCHOT: Thank you very much.

18
19 CHAIRMAN FLEAGLE: Thank you, Pat.
20 Further discussion on the Secretarial review.

21
22 (No comments)

23
24 CHAIRMAN FLEAGLE: Hearing none. Now,
25 open for general discussions on the MOU itself, what's
26 working, what could be improved upon.

27
28 Now, I want to address briefly the
29 comment made by Carrie from the Central Council
30 Tlingit-Haida, I appreciate the words of caution that
31 we shouldn't move forward with stuff that may be viewed
32 as controversial. I understand that these are some of
33 the issues that are raised in the need for -- or the
34 request for review, but I also recognize that we have
35 embarked on a process that we are a policy driven
36 organization and that we do have things in motion, and
37 to question -- to decide whether or not that we just
38 stop everything we're doing until this review is done,
39 I don't think is appropriate or responsible. I think
40 that we do have -- that it's incumbent on us to
41 continue doing business as we have been doing. And
42 based on the outcome of the review, if it's determined
43 that we need to change course then perhaps that's the
44 time that course of action change should take place.

45
46 So I'm just recognizing the concern
47 brought by the Central Council but also suggesting and
48 encouraging that we continue to move forward as we have
49 signed this Understanding and we have agreed to annual
50 meetings. So I just lay that out for opening comments.

1 Anybody else, jump in as you feel --
2 oh, one other comment you may notice a television
3 camera in the back of the room and it's not marked but
4 it is a member of the press, North Star Television
5 Network, CA -- or KACN TV broadcasting on Channel 38
6 and GCI Channel 1 and there was another, 29 or
7 something, 95. Okay, so that's the camera in the
8 background, public camera.

9
10 So further discussion on, general
11 discussion on the MOU.

12
13 Vince.

14
15 MR. WEBSTER: Mr. Chair. We're here to
16 improve the system.....

17
18 REPORTER: Wait a second.

19
20 MR. PROBASCO: Mic.

21
22 REPORTER: Yeah, thanks.

23
24 MR. WEBSTER: We're here to improve the
25 system and that's where the MOU was derived from. We
26 recognized that we had two regulatory bodies and we
27 wasn't talking to each other, and certain proposals
28 we're stepping on each others toes. All this MOU is
29 trying to address, is to get us to recognize each
30 other's authority and to cooperate so we can have a
31 better system for the whole state of Alaska.

32
33 CHAIRMAN FLEAGLE: Okay, appreciate
34 that comment, Vince.

35
36 Did I hear somebody else ring in on the
37 telephone.

38
39 MR. ADAMS: Yeah, Mr. Chairman, this is
40 Bert Adams, I'm just listening in just for point of
41 interest so thank you for the call in.

42
43 CHAIRMAN FLEAGLE: Okay, Bert Adams has
44 joined us. Thank you, again, Bert.

45
46 Further discussion on the.....

47
48 MS. K'EIT: Mr. Chair.

49
50 MS. SYKES: Mr. Chair.

1 CHAIRMAN FLEAGLE: I'm hearing several
2 -- okay, Kristin.
3
4 MS. K'EIT: Thank you.
5
6 MS. SYKES: Mr. Chair.
7
8 MS. K'EIT: That wasn't me, that's.....
9
10 CHAIRMAN FLEAGLE: Okay, hang on, it
11 sounds like somebody's trying to request recognition
12 from the telephone but I'll go ahead and log that as a
13 request and go ahead, Kristin, please.
14
15 MS. K'EIT: Since we're under Agenda
16 Item 4, general discussion on the MOU, I just want to
17 -- I'm representing, you know, our Regional Director
18 and Deputy Regional Director. We recognize, we
19 acknowledge that ANILCA and our regulations don't call
20 subsistence a Native priority, we recognize it's rural
21 priority and we work with that because that's the law.
22
23 We do, as you know, work closely with
24 our 229 tribes in the state. We have a program
25 specifically for subsistence management and assisting
26 tribes with the technical pieces of the regulations and
27 we see that the spirit of having this Memorandum is to
28 help our subsistence users because we have acknowledged
29 as Board members and seen in the public comment how
30 complicated it can be for the user on the ground to
31 fish out am I under State regulations over here, am I
32 under Federal regulations; you know, even our Board
33 Chair has talked about that from his personal
34 experience.
35
36 So we want to be sure to acknowledge
37 that the spirit and the intent of the MOU is something
38 that we can support but we want to be clear also that
39 there's some concerns we have where there's discussion
40 of adopting or working with Alaska Statute, that in our
41 mind is in conflict with ANILCA, in conflict with
42 providing opportunity providing access to subsistence
43 resources for the users as compared to language of
44 providing reasonable opportunity.
45
46 There's some legalize in there that we
47 have to be cautious of that could have a negative
48 impact on our users.
49
50 We want to make sure that we're also

1 supportive of shared data, that we're working off the
2 same page or the same sheet of music, so to speak, when
3 we're talking about managing those resources with the
4 priority for subsistence users. So, again, there's
5 language that we are concerned that just a couple
6 pieces of the MOU are -- the State Statutes are in
7 conflict with the Federal regs and those may be some
8 areas we want to have some discussion and address.

9

10 Thank you.

11

12 CHAIRMAN FLEAGLE: All right, thank
13 you, Kristin. I think we're in agreement then.

14

15 I know that in particular there's one
16 paragraph where we both reference ANILCA and the State
17 Statutes and in review, from my perspective and others
18 that I've spoken with, it was in no way intended that
19 those be used in the same paragraph and that any one
20 could be applied to the other's program. And I think
21 that we should look at amending that somehow, whether
22 we would amend the document or adopt a letter of
23 agreement after we discuss that, I think is
24 appropriate, but I just want to point out from our
25 perspective there is no intent of seating any authority
26 or adopting any standards of the State's that don't
27 meet ours and I feel that it's probably incumbent, that
28 the State is in the same position.

29

30 Bedford.

31

32 MR. BEDFORD: Yeah, I was going to say
33 I think that what the MOU does is acknowledge a few
34 truisms. One of them is that there are resources,
35 natural resources out there that people depend on, that
36 those resources require some level of management in
37 order to assure long-term sustained use of those
38 resources. That we have two separate authorities that
39 are involved in this, the State and the Federal
40 Government, that both of these have independent
41 obligations created by independent bodies of law, but
42 that we have common purposes in the sense that we need
43 to make sure resource first so that those who depend on
44 the resource can continue to rely on it in the future.
45 That in order to do that it's a situation in which the
46 right hand necessarily must know what the left hand is
47 doing.

48

49 Then there are certain synergies that
50 flow from that as well as was referenced by Ms. K'eit.

1 That, for example, if we're doing
2 research we can assure that we don't duplicate the
3 efforts that are undertaken by the other. We can seek
4 certain efficiencies and so on. Again, with the notion
5 that we have a resource that people depend on and we
6 each have independent authorities to assure both the
7 resource and the use of the resource.

8

9 Thank you.

10

11 CHAIRMAN FLEAGLE: And I'd like to
12 throw on top of that, too, it is right out of ANILCA
13 that Section .812 says that we will cooperate with
14 State and other Federal agencies et cetera, et cetera,
15 for research purposes. And I think that this is just a
16 long awaited agreement to do that. I know we had the
17 interim Memorandum of Understanding -- or Agreement,
18 MOA, that was -- it had a bunch of problems, had a
19 bunch of issues, in fact, the Board of Game withdrew
20 from the Memorandum of Agreement and that's what led us
21 to the generation of this MOU language. But it's
22 clearly within what ANILCA demands or requests and I
23 think that it does a good job of doing that.

24

25 Now, before I go to the caller on the
26 phone, I want to just back up for a minute. We did not
27 advertise this as being a session where we would be
28 taking public testimony, right?

29

30 MR. PROBASCO: That's correct. It's at
31 your respective discretion.

32

33 CHAIRMAN FLEAGLE: And where I've done
34 that in the past at the Federal Board level, here, like
35 at the meeting, the work session prior to this stage,
36 is that when somebody requested to be heard or somebody
37 at the Board requested somebody to speak I asked for no
38 objection from the rest of the Board, and my concern is
39 that if we open it up to public testimony for only
40 those that are appearing either in person or on the
41 telephone, I think we may blur an area of proper notice
42 for public comment.

43

44 Keith, am I just stretching a little
45 too far there or how do you feel?

46

47 MR. GOLTZ: I think it's discretionary,
48 this was advertised as an open meeting.

49

50 CHAIRMAN FLEAGLE: Okay. With that,

1 then I do have a request, I think, coming in on the
2 telephone.

3

4 MS. SYKES: Yes. This is Carrie Sykes
5 again from Central Council. And I just wanted to make
6 a few comments.

7

8 First of all, you know, this MOU was
9 pushed through at the end of the Bush Administration,
10 and I've made it clear to people that I did a ballot
11 about top subsistence priorities and that ballot was
12 sent to all of the tribes in Alaska and it shows that
13 the Federal Subsistence Board taking State positions
14 was a very top priority, it was in the number 1 and
15 number 2 slots. And so I just really have some
16 concerns about that and I really think that this needed
17 to go through a public process, it needed to go through
18 the Regional Advisory Councils.

19

20 And the comment about public testimony.
21 I told the Regional Advisory Council in Southeast last
22 month that Central Council is a Federally-recognized
23 tribe and I reminded them that this is a Federal
24 Program, and so I really think that we need to be able
25 to provide comment.

26

27 CHAIRMAN FLEAGLE: And you have that
28 opportunity, Carrie, go ahead.

29

30 MS. SYKES: Well, those are my
31 comments, that I think that this MOU needs to go
32 through the public process, through the RACs.

33

34 CHAIRMAN FLEAGLE: Okay, appreciate
35 those comments.

36

37 MS. SYKES: Okay, thank you.

38

39 CHAIRMAN FLEAGLE: Other discussion.

40

41 (No comments)

42

43 CHAIRMAN FLEAGLE: What's working,
44 what's not working, Item 4 on the agenda.

45

46 MS. K'EIT: Mr. Chair.

47

48 CHAIRMAN FLEAGLE: Kristin.

49

50 MS. K'EIT: I am curious to know if we

1 could have an update of any committees or groups that
2 have been formed as a result of the MOU, what they've
3 been working on, their purpose, and what the results
4 have been.

5
6 CHAIRMAN FLEAGLE: Pete, I know you
7 didn't fully hear the question but I think Polly --
8 Pete.

9
10 MR. PROBASCO: I didn't hear the
11 question.

12
13 CHAIRMAN FLEAGLE: Okay. Polly.

14
15 DR. WHEELER: Polly Wheeler with the
16 Office of Subsistence Management. For the record, the
17 question was, Ms. K'eit asked for an update of any
18 committees that had been formed under the auspices of
19 the MOU and what they've been working on and I don't
20 believe that any committees have been formed under the
21 auspices of the MOU, but work has just gone -- so there
22 haven't been any subcommittees that have been formed
23 under the MOU or under the auspices of the MOU and,
24 therefore, there has been no work done by said non-
25 committees under the MOU.

26
27 Mr. Chair.

28
29 CHAIRMAN FLEAGLE: Pete.

30
31 MR. PROBASCO: Mr. Chair. As far as
32 any formal committees, no.

33
34 If you recall, this MOU was drafted
35 with a subcommittee of each respective, both Federal
36 and State side, subsequently after that the, what we
37 call the mini-MOU working group, which consists of
38 Chair Mike Fleagle, myself and Mr. Oviatt and then on
39 the opposite side, Tina Cunning, Jon Hilsinger and
40 Charlie Swanton have met once to discuss some of the
41 concerns, I think, Carrie Sykes voiced them very
42 clearly, as well as written comments that we have
43 received from various entities addressing the MOU and
44 looking at ways, if directed by the signatories on how
45 we could clarify some of those sections. And that was
46 an informal meeting of those six that took place, oh,
47 I'd say approximately two months ago.

48
49 Mr. Chair.

50

1 CHAIRMAN FLEAGLE: Thank you, Pete.

2

3 Geoff.

4

5 MR. HASKETT: Thank you, Mr. Chair.

6 You asked for what's working and what's not working.

7

8 First of all, I think any time that we

9 can put together an MOU where you have all these

10 different parties trying to identify ways that we

11 communicate better, that we don't get on top of each

12 other, that we are not working across purposes; that's

13 a good thing.

14

15 But as far as what's not working, I'm

16 not sure it's done a lot so far. I mean I think mostly

17 the two committees I've heard of gotten together;

18 gathered together to go ahead and figure out how to

19 respond to concerns from AFN and others; it seems to me

20 what we need to figure out is how to respond to those

21 concerns and how to continue to have a document that

22 actually works to do those things that we want it to

23 do, which so far it's mostly a piece of paper we've all

24 signed, so I'm not sure that we've done all the things

25 people though we've done with it. There's a lot of

26 promise there but obviously we've got to work with the

27 Native community to get to a point where we've got

28 something actually does what we intended it to do.

29

30 CHAIRMAN FLEAGLE: Thank you, Geoff.

31 Ted.

32

33 MR. SPRAKER: Thank you, Mr. Chairman.

34 As a member of the State Board of Game, one of the

35 issues and one of the things that I've looked at in

36 this MOU is the exchange information. And when the

37 Board is faced with conservation concerns or issues in

38 local communities like we're going to be faced with

39 here in Nome the next four or five days, it's extremely

40 important that we have good information from both sides

41 of the issue, the Federal side and the State side. And

42 in the past that data hasn't always been there, but I

43 think it's getting better.

44

45 And I'm just hoping that in this

46 review, that one of your committees takes a very

47 serious look at the exchange of harvest information

48 which is very essential to the decisions the Board of

49 Game has to make.

50

1 Thank you, Mr. Chair.

2

3 CHAIRMAN FLEAGLE: Thank you, Ted.

4

5 Other discussion.

6

7 (No comments)

8

9 CHAIRMAN FLEAGLE: I'd like to -- I'll
10 recognize you next Kristin, thanks.

11

12 MS. K'EIT: Okay.

13

14 CHAIRMAN FLEAGLE: I'd like to agree
15 that although we haven't formed any formal committees
16 and we have talked about some of the concerns that were
17 raised, like Pete said, at a fairly semi-formal level,
18 and as I spoke to earlier, having reference to ANILCA
19 and Alaska Statutes might infer to some people that we
20 tend to want to mix the two which is not the case. I
21 think we can clarify that easily enough. But on the
22 ground level, I think I agree with what Ted just said,
23 that things have gotten better, and whether that is a
24 product of this MOU or just a new ideal that as the two
25 major land -- I mean fish and wildlife agencies in
26 Alaska, though we have differing statutory guidelines,
27 we have a similar response to a very different --
28 somewhat different public. And so this information
29 exchange that Ted just talked about, I think we've seen
30 it happen. Within the last couple of years, even,
31 we've got a little more cooperation, I think, between
32 our agency personnel at the ground level, at the
33 regional levels. And I was really impressed that the
34 Board of Game actually took some -- or the Board of
35 Fisheries actually took some of our issues that were
36 going to come before us at the Federal level in the
37 Lake and Pen Borough down there, some fishing issues,
38 and actually addressed those to where when it came to
39 us it was, you know, the State agrees, they took action
40 and it just seemed to make it easier at this level.

41

42 And I know that, like was just
43 suggested, this area up in the Northwest, I'm on that
44 Caribou Unit 23 User Conflict Group, and it's a really
45 complex issue. There's Federal agencies that are land
46 owners up there, there's State, there's BLM, there's
47 private -- BLM is Federal, they operate a little
48 differently sometimes, but there's just a mishmash
49 [sic] of regulatory regimes and it's a really
50 complicated issue as to how to reach some form of

1 workable solution for an area up there and we're doing
2 it, we're working together, the State and the Federal
3 people. There is some groundbreaking protocols that
4 are coming out of this working group and I think are
5 going to go forward within both of our regulatory
6 processes and bring us to where we can have a better
7 program for everybody. And one of those areas is, just
8 for instance, the Park Service up in the Northwest,
9 just taking and saying, okay, we're going to do a
10 moratorium on the number of permits that we issue for
11 hunting camps and, you know, there's these little
12 things that go a long way, I think, when we're talking
13 about how can we recognize what is different and what
14 we can't do, set that aside, and then recognize what is
15 similar and what we can do to benefit the subsistence
16 users; I think we're doing it.

17

18 And this just encapsulates it.

19

20 My comments.

21

22 And, then I go back to Kristin. Thank
23 you.

24

25 MS. K'EIT: Thank you, Mr. Chair.

26

27 I was wanting to ask -- I want to ask
28 what is our process for raising specific concerns and
29 perhaps suggesting methods of improvement to the MOU,
30 right now it seems like it's more -- this session, you
31 know, 20 minutes left in it, is more, you know, talking
32 about things, you know, how things look, how they're
33 going, but then what are the next steps, you know, I'm
34 not comfortable putting a lot of energy into comments
35 towards the MOU unless I know they're going to be
36 addressed productively, you know, that there's a
37 process we can go through. And I do notice that we
38 have, Section 5, general provisions, subsection 8, a
39 paragraph about that we're going to meet annually and
40 talk about it, that we're going to document any changes
41 but we don't really have a clear process for this and,
42 you know, I'd like to walk away from the meeting with
43 all of us knowing, you know, what are the next steps
44 and how we can participate.

45

46 CHAIRMAN FLEAGLE: Very good point.

47 And I think that this is the start of that process and
48 you're right it's not well defined.

49

50 I think when the group that Pete talked

1 about, talked about it earlier, I think we were ready
2 to recommend some changes via a letter of just
3 clarifying intent but, you know, we've come to this
4 meeting wide open and let's move out of here with that
5 process in place. And I think as we hold the
6 discussion that will start to take form.

7

8 Pete, you were going to comment briefly
9 there.

10

11 MR. PROBASCO: Well, you said half what
12 I was going to say. But I would hope that since this
13 is our first meeting since we've signed -- since the
14 Board and the State have signed the MOU I would hope
15 that we would come away from this meeting with a
16 process, just like you said, Kristin, on how do we deal
17 with the recommended changes for consideration by the
18 signatories at some future date.

19

20 CHAIRMAN FLEAGLE: Thank you, Pete.
21 David.

22

23 MR. BEDFORD: No, not at this time, not
24 on that.

25

26 CHAIRMAN FLEAGLE: Any other comments
27 on Kristin's comment. Go ahead, do you want to make
28 your other comment.

29

30 MR. BEDFORD: Just to step in, I guess.
31 I was going to drag us back to something we were
32 talking about a little bit earlier but maybe I'll just
33 set that aside for now.

34

35 It seems to me that we do need to have
36 a process in place, I mean I don't have a real clear
37 notion of what that is. I respect the notion that we
38 do have to have some sort of basis for creating the
39 agenda that we would discuss and giving the signatories
40 an opportunity to place things on that agenda and some
41 sort of fairly well -- well, fairly clearly laid out
42 means of doing that. I mean I don't have the notion of
43 what that is exactly. So I think we might consider as
44 an answer to that, asking the mini-team, which has
45 folks who talk with the State and work with the Federal
46 Subsistence Board to come up with some options for
47 consideration.

48

49 CHAIRMAN FLEAGLE: Other comments.

50

1 MS. K'EIT: Mr. Chair.

2

3 CHAIRMAN FLEAGLE: Kristin.

4

5 MS. K'EIT: I apologize if I'm stepping
6 on anybody's toes here, I hope nobody's missing their
7 opportunity to comment. I think it's common knowledge
8 among Southeast people, it's kind of in our blood to
9 step up to the mic, so I do have some suggestions.

10

11 Being in the Federal government for a
12 few years now, you know, there's a process for
13 everything and usually there's some kind of paperwork
14 to go along with it. So I understand that the agenda
15 for our meeting today was put together rather quickly
16 and perhaps not everyone had an opportunity to comment
17 on the topics of the agenda but it seems to be working
18 well.

19

20 I would suggest that we have a process
21 where all the signatories do have an opportunity to
22 provide our comments for the MOU for suggested
23 enhancements to it. I recommend that we have at least
24 30 days to do that.

25

26 I would further recommend that perhaps
27 this mini-semi-formal-MOU working group, whatever it's
28 called, collect those comments and provide the
29 signatories a summary of what they are and copies of
30 all the comments. And I would hope that as the
31 signatories provide comments that they would offer
32 suggestions to amend the MOU to meet those concerns so
33 that we -- not only do we come forward with a concern
34 but we come forward with a solution.

35

36 And before we leave today I think we do
37 need to talk about what our process will be of
38 including our Regional Advisory Councils, including our
39 subsistence users in this process considering that they
40 are the client that we are making decisions for, that
41 are directly impacted by our decisions.

42

43 Thank you.

44

45 CHAIRMAN FLEAGLE: Okay, thank you. I
46 remember when the MOU was being drafted, it was
47 circulating among agencies and signatories in draft
48 forms with draft changes and all this stuff and it was
49 a pretty tough way to do business. And whenever we
50 have an opportunity to make policy, this isn't policy

1 but it's somewhat similar to policymaking, yeah, the
2 process for participation is integral in that, but then
3 somebody has to sit down and try to write it to where
4 everybody agrees and that's, I think, where we could
5 potentially run into some issues with as many
6 signatories as we have.

7

8 So I think to add to your suggestion
9 for the process I would say that we would put it out
10 for public review, I appreciate that, you know, put it
11 out for RAC review and public review, look at those
12 review comments, try to encapsulate those into a final
13 document and then go back out. I mean I just want to
14 step away from trying to have a committee of 20
15 wordsmithing, maybe it could be formed to just a small
16 group that would try to encapsulate the intent while
17 not -- you know, while keeping the intent of the
18 document alive and then presenting that out to the
19 signatories for, you know, whether it's acceptable or
20 for minor change.

21

22 So I think that we're on the same page
23 but I just want to make sure that we don't get it to
24 where this gets out and it's got no chance of having
25 any meaningful change to it.

26

27 So since we agreed to an annual
28 process, I'm just going to throw out maybe we should
29 consider this our annual review, first annual review
30 and we have all of this stuff, and change in time for
31 our second annual review and that gives us a year to
32 use our individual processes for public input, for RAC
33 meetings, for AC Committees, for whatever public might
34 want to participate and adequate time to go through the
35 comments and do something. We're really busy on the
36 OSM side, I'm sure everybody in the state is as well,
37 but we're really stacked up on meetings that are coming
38 up. We got the special meetings on the fishery
39 proposals, we got 115 wildlife proposals that we're
40 going to be dealing with in May, which is unprecedented
41 for our program. So I think that it's probably
42 incumbent to take this on a little more slowly and not
43 try to rush into anything.

44

45 Cliff.

46

47 MR. JUDKINS: I'm thinking the same
48 way, some way to streamline this down a bit so get
49 things to point, maybe each of the signatories going
50 back to their people that are responsible to could

1 bring in their recommendations and suggestions and
2 summarize them themselves and bring that into a
3 committee of the group here who would then bring it
4 back in a manner that we could look at instead of all
5 these public comments coming into -- without some
6 control over them and some -- not really control, but
7 something herding them along so that it works, I think
8 it would work better that way than to come through
9 individual comments, say to you or to, you know, en
10 masse in front of this group here to try and make
11 changes would be difficult like you do with the regular
12 regulations, but get it streamlined into each of the
13 agencies that are represented, bring in the sum total
14 of their suggestions in and then have that come through
15 a subcommittee that would pull it together and come
16 back to the group here annually.

17
18 CHAIRMAN FLEAGLE: I know you're
19 speaking on behalf of the Board of Game, but would you
20 envision that being that all of your comments come in
21 through a central focal point with the State or are you
22 saying that the Board of Game comments should be dealt
23 with separately, from the Board of Fisheries, from the
24 Administration?

25
26 MR. JUDKINS: I think from the State's
27 standpoint I'd have to let somebody from Administration
28 talk but I think from the State's standpoint it would
29 come into a State person or individual that would then
30 take it forward to us, not to each Board; what would I
31 do with them?

32
33 CHAIRMAN FLEAGLE: Yeah, that makes
34 sense.

35
36 And I think that if that were the
37 course of action that we should look at something
38 similar on the Federal side. I know we've got the five
39 agencies and OSM but anyway we can get there when we
40 get there.

41
42 Pete, you had a comment.

43
44 MR. PROBASCO: Just a couple things as
45 far as process. Recognizing that this is your first
46 annual review and you're probably looking a year from
47 now, and at the same time if I understand nuances here
48 that we also wanted to incorporate some form of public
49 review including the Regional Advisory Councils.
50

1 CHAIRMAN FLEAGLE: Uh-huh.

2

3 MR. PROBASCO: So just for
4 clarification is it the intent to send out the current
5 MOU for comment or is it the intent to incorporate the
6 signatories redraft, if you will, of potential changes
7 and send that out for comment?

8

9 CHAIRMAN FLEAGLE: Well, first of all I
10 want to back way up. I just threw it out as a starting
11 point. I'm not saying that's our intent yet, but I
12 haven't heard.....

13

14 MR. PROBASCO: I'm thinking ahead
15 so.....

16

17 (Laughter)

18

19 CHAIRMAN FLEAGLE: You're thinking my
20 idea's a good one.

21

22 (Laughter)

23

24 CHAIRMAN FLEAGLE: Anyways I just threw
25 that out as a possible process, a starting point. Then
26 I think when we get to the second part of your question
27 as to whether we issue the existing MOU or another
28 document, I don't think that everybody has had an
29 opportunity to see that draft letter that we were
30 working on.

31

32 MR. PROBASCO: Mr. Chair. That,
33 indeed, is correct. That mini-group, that I call it,
34 the six of us, did come up with some clarifying
35 language that deals with the authorities as it pertains
36 to the regulations for that clarification and that was
37 the section we worked on. There may be other sections.
38 I think Kristin pointed to some other areas, so maybe
39 just broader than that.

40

41 Mr. Chair.

42

43 CHAIRMAN FLEAGLE: Okay. Well, with
44 that I'll go ahead and open it up to the floor again.
45 Kristin and then Tina.

46

47 MS. K'EIT: Mr. Chair. Rather than
48 reinvent the wheel here, we all have processes that we
49 use for getting public comment, for reviewing that
50 comment, addressing it. There's, you know, things that

1 are already out there we could adopt for this process.
2 For instance, you know, do think about our proposals,
3 they come in by a certain time, we have an InterAgency
4 Staff Committee that reviews it, they look at the
5 analysis, you know, which will support or not support
6 the proposal, we have a RAC that provides their
7 recommendation, and then we have a vote of it. I mean
8 there's a process there we could look at modeling
9 somehow.

10

11 A lot of my work has been with NEPA,
12 National Environmental Policy Act, there's a very clear
13 process for each different department. You put out a
14 draft document, you have so many days of public
15 comment, you bring those in, review and address those
16 comments, you put out a final -- ask for comments on
17 the final decision and then you decide if and when you
18 go forward.

19

20 I think there's, you know, definitely,
21 although, again everything with us is going to have
22 some level of bureaucracy, just the nature of the
23 beast, but there are things out there we can do so
24 we're not having to stumble around here and try to
25 think of something new.

26

27 Thank you.

28

29 CHAIRMAN FLEAGLE: Thanks for the
30 comments. Tina.

31

32 MS. CUNNING: Mr. Chairman. I know
33 you've been looking at me once in awhile to see if I
34 was going to chime in here.....

35

36 CHAIRMAN FLEAGLE: Oh, I thought you
37 wanted to.....

38

39 MS. CUNNING:since I helped work
40 on it. I think one of the things that the mini-working
41 group in their review of comments and looking at it was
42 real concerned about was two points of
43 misunderstandings.

44

45 One is, this MOU really is a clean up
46 and simplification of the original agreement that was
47 signed in 2000. And this was not a new agreement, per
48 se, this was a clean up in order to try to get the
49 agencies to work together better.

50

1 If you'll recall where there was a lot
2 of frustration in '06 and '07 because there wasn't data
3 sharing, something that Mr. Spraker spoke of here a few
4 minute ago, and I know that the Federal Subsistence
5 Board was very frustrated at the December 2007 meeting
6 where we actually had dueling biologists with the same
7 data at the same meeting testifying. And the whole
8 intent was to try to get away from that, to have better
9 cooperation so that the regulators on both the State
10 and Federal side could make better decisions.

11
12 In the clean up of that MOU one of the
13 things that we were looking at through the comments
14 that were coming in when we were assigned to do that
15 review a couple of months ago, we looked at it very
16 carefully and wanted to confirm that we understand the
17 MOU does not change State law or reduce the ANILCA
18 guarantee that provides a priority for subsistence for
19 rural residents on public lands. An MOU cannot do
20 that.

21
22 And an MOU doesn't change the State's
23 law that provides a priority for Alaska residents to
24 participate in subsistence on all lands.

25
26 That's recognized in that agreement and
27 is in no way intended to cause any problems under the
28 law.

29
30 And where there has been some suggested
31 revisions in language where there's lack of clarity we
32 actually have some options for cleaning up and in one
33 paragraph in particular where that misunderstanding has
34 come up, and I think that it wouldn't take much to
35 propose that out there, for resolution of that
36 confusion.

37
38 CHAIRMAN FLEAGLE: All right. Take
39 that one step further, do you think that would be an
40 appropriate action, like Kristin just laid out, to send
41 out the existing MOU with this as a draft changed
42 language or not -- or however it would be worded?

43
44 MS. CUNNING: Mr. Chairman. I think
45 that's doable but I would want to look to the other
46 three signatories for concurrence.

47
48 CHAIRMAN FLEAGLE: Geoff.

49
50 MR. HASKETT: Well, actually what I was

1 just thinking was the way to move forward in this would
2 be to take the existing document and send it out
3 through the public process and then come up with the
4 suggested language and have that go out as well. And I
5 think that's -- if that's proposed, I think that's a
6 good way of getting everybody's comments on the whole
7 gamut of what we're talking about here, and so that
8 would work really well.

9

10 CHAIRMAN FLEAGLE: I agree. I think
11 that the comments that we've received to date are, as
12 Tina suggested, I feel are misunderstandings of the
13 intent based on the way the language was written, and I
14 think that could be clarified really easily and if that
15 went out to the people with the MOU for further
16 discussion, you may -- I think it would be beneficial.

17

18 Any other of the State signatories,
19 Tina didn't want to volunteer you so.....

20

21 Cliff.

22

23 MR. JUDKINS: Yeah, I think that's
24 advisable to send it out for review along with these
25 clarifications that she's mentioned before, they don't
26 change anything, just clarify what the wording meant,
27 you know, send that out and then see what comments come
28 back in. I think that would solve a lot of the
29 problems that have been expressed by people, just, you
30 know, concerns of security in their nitch in the world
31 so to speak, so this would be helpful.

32

33 CHAIRMAN FLEAGLE: Fisheries.

34

35 MR. WEBSTER: Yes. I actually agree
36 with you. I think the complaints we've heard comes
37 from a misinterpretation of the document and if we
38 could send that out with an explanation, a coversheet
39 or however you want to do it, explaining what it means,
40 I think that would solve the problem.

41

42 CHAIRMAN FLEAGLE: Commissioner -- or
43 Deputy Commissioner -- sorry.

44

45 MR. BEDFORD: I agree with Tina.

46

47 CHAIRMAN FLEAGLE: I think that that's
48 a good starting point, but I want to throw it out to
49 our signatory agencies now for discussion. And if
50 everybody somewhat tentatively agrees to this approach,

1 sending out the MOU with a letter that clarifies
2 language that we would speak about, I think we have
3 that language available for review here.

4

5 MS. MASICA: Mr. Chairman.

6

7 CHAIRMAN FLEAGLE: Sue.

8

9 MS. MASICA: I think that -- it strikes
10 me that one of the issues we're sort of talking around
11 but it's been out there, sort of been, this whole
12 transparency discussion. And I absolutely agree with
13 you about writing by committee is not the way you want
14 to go, and, therefore, the mini-working group is a good
15 idea, but I think we're lacking in some transparency
16 between the mini-working group and the full Board, even
17 in terms of what those changes might be, so we need to
18 be attentive, I think, to our own internal transparency
19 as well as our external transparency with our public
20 constituents.

21

22 CHAIRMAN FLEAGLE: I appreciate that.
23 We were prepared to bring this document to this table
24 but we stepped back a little bit and said, well, maybe
25 we better have the discussion first and then with the
26 -- if everybody felt that this was a good direction we
27 do have some language that would implement this or help
28 start the process anyway.

29

30 Others. Other discussion.

31

32 Wini.

33

34 DR. KESSLER: Yes, Mr. Chair. I think
35 the more transparent we can be the better and open.

36

37 I know that the term cleaning up was
38 used, and I'm sure that's what the intention was but
39 the, in fact, it's my understanding that some of the
40 things that were cleaned up were actually -- might have
41 been things that had been suggested by the Council or
42 others for consideration and from their perspective,
43 again, perspective is very important, and might have
44 felt that those views were not considered or weren't
45 aware the way in which they were so, that, I think, has
46 contributed to some of the misunderstanding here.

47

48 CHAIRMAN FLEAGLE: Thank you. Other
49 comments.

50

1 (No comments)

2

3 CHAIRMAN FLEAGLE: At this time I
4 wonder if it wouldn't be appropriate if we did just
5 look at the -- we did throw together a draft with some
6 -- that addressed these primary concerns. We don't
7 have it available, like I said we withdrew, we held
8 back a little bit based on the discussion of the group,
9 but if it's at the group's pleasure we can produce that
10 as a starting point. We can shoot it full of holes or
11 we can say, yeah, send it out. And I understand that
12 there's probably going to be bigger issues than what it
13 addresses but it addresses the major issues that were
14 raised by -- as the testifier on the phone raised and
15 others. So if we could maybe just take a five minute
16 stand down we can gather that up and look at it as a
17 starting point.

18

19 MS. K'EIT: Mr. Chair.

20

21 CHAIRMAN FLEAGLE: Kristin.

22

23 MS. K'EIT: Can you clarify when we're
24 going to be done with our meeting here, our review
25 meeting, the agenda says 1:00 to 2:00 time certain.

26

27 CHAIRMAN FLEAGLE: Yeah, I think we
28 referred to the time certain as a starting time.

29

30 MS. K'EIT: Oh.

31

32 CHAIRMAN FLEAGLE: We're not confined
33 to the 2:00 o'clock part unless there's a majority of
34 the group that wants to overrule me and adjourn
35 earlier, but I think it's important that we go ahead
36 and continue and I think that we can probably have it
37 done by 2:30.

38

39 MS. K'EIT: Okay. I would support
40 that. I agree that while everybody's here let's make
41 the best use of our time. Unfortunately I have an
42 appointment, a month old appointment I have to get to.
43 But, we -- Bureau of Indian Affairs supports a process
44 for comment and we are -- you know, we definitely want
45 to have a chance to see the draft letter and provide
46 our comments before it gets sent out with any comment
47 process, but I will ask our Staff member, Mr. Eastland,
48 to come forward, on our behalf -- when I leave.

49

50 CHAIRMAN FLEAGLE: Okay, thank you,

1 Kristen. With that let's go ahead and take a five
2 minute at ease and we'll gather that up.

3

4 (Off record)

5

6 (On record)

7

8 CHAIRMAN FLEAGLE: We're waiting on
9 Geoff Haskett.

10

11 MR. PROBASCO: Gary said go ahead and
12 start.

13

14 CHAIRMAN FLEAGLE: Go ahead.

15

16 MR. EDWARDS: I'll listen for him.

17

18 (Laughter)

19

20 CHAIRMAN FLEAGLE: You'll listen for
21 him, okay, thank you.

22

23 Well, we're back under way then. And
24 we have the crafted language that could go out as a
25 letter with the Memorandum of Understanding that would
26 clarify the major concerns that were raised before.
27 And what I'd like to do is have somebody read that into
28 the record for the record's sake and also for those
29 attending on line.

30

31 Pete.

32

33 Tina.

34

35 MR. PROBASCO: Go ahead, Tina.

36

37 CHAIRMAN FLEAGLE: Whoever wants to do
38 it -- okay, Tina.

39

40 MS. CUNNING: Okay. The following is
41 proposed to supplement -- a supplement to clarify the
42 Memorandum of Understanding among the Federal
43 Subsistence Board, Alaska Board of Fisheries, Alaska
44 Board of Game and Alaska Department of Fish and Game.

45

46 A work group assigned by the Federal
47 Subsistence Board and State of Alaska reviewed the
48 Memorandum of Understanding, considered all comments
49 provided by Staff and correspondence provided by the
50 public. The work group concluded based on the

1 following:

2

3

That the MOU is achieving the desire of the signatories to improve coordination between our respective subsistence regulatory programs.

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The purpose and intent of the MOU is to recognize our respective legal mandates, authorities, responsibilities and obligations to provide a priority for subsistence uses.

The Federal Subsistence Board's authority, charge and obligations to rural Alaska residents come only from Title VIII of ANILCA and other applicable Federal Statutes.

The Alaska Department of Fish and Game and Alaska Boards of Fisheries and Games authority, charge and obligations to provide Alaska residents a priority for subsistence uses come only from Alaska Statutes.

This MOU does not change Federal law or reduce the ANILCA guarantee that provides a priority for subsistence uses for rural residents on public lands. It does not change State law that provides a priority for Alaska residents to participate in subsistence uses on all lands.

It does not change the decision-making authority of the Federal Subsistence Board or its obligations to rural residents and it does not change the decision-making authority of the Alaska Department of Fish and Game and Boards of Fisheries and Game or their obligations to Alaska residents.

This MOU is consistent with Section .802(3) of ANILCA that requires "the Federal land managing agencies in managing subsistence activities on the public lands and in protecting the continued viability of all wild

1 renewable resources in Alaska shall
2 cooperate" with appropriate State
3 agencies. This MOU is also consistent
4 with Section .809 of ANILCA which
5 authorizes the Secretary to cooperate
6 with the State to effectuate the
7 purposes and policies of this title.
8

9 We recommend that the signatories
10 confirm that improved cooperation among the State and
11 Federal regulatory entities as agreed in this MOU is
12 desired in order to benefit our respective abilities to
13 provide for the resources and resource users.
14

15 CHAIRMAN FLEAGLE: All right, thank
16 you. Now, the proposed intent that was suggested prior
17 to the break and prior to the deliverance of this
18 document is that we do embark on a year long process
19 for review and schedule a second annual review of the
20 signatories that would then make recommended changes
21 based on this review process, which will go out to our
22 respective publics and will be encapsulated by our
23 respective Staffs for our perusal at the next annual
24 review.
25

26 And the question about whether or not
27 it should go out, Memorandum of Understanding should go
28 out as written or including the proposed agreement --
29 letter of agreement, I think is what we can call it,
30 that would be attached to the MOU, I think is the issue
31 that we spoke to just before the break, and it sounds
32 like that may be a good course. I didn't finish
33 hearing from Federal agencies because we didn't have
34 this paperwork in front of us. If I could just get
35 some concurrence or concerns, if you have them.
36

37 Wini, please.
38

39 DR. KESSLER: I just want to get some
40 clarification because I'm not completely clear.
41

42 The second paragraph here, it says the
43 work group considered comments by Staff and
44 correspondence by the public, but that was ad hoc
45 correspondence, right, it wasn't a formal solicitation
46 at any point that was -- okay, so it was ad hoc --
47 okay.
48

49 All right, so the purpose of this, in
50 the interest of making it clear what an MOU does or

1 doesn't do, this would accompany a solicited proper
2 review of the document so that folks who were reviewing
3 it would not only be able to consider what it said but
4 have this companion to understand better, clear up
5 perceptions, misperceptions it might have had but this
6 would be all part and parcel of the formal review that
7 was not done before.

8

9 CHAIRMAN FLEAGLE: That's affirmative.

10

11 DR. KESSLER: Okay.

12

13 CHAIRMAN FLEAGLE: And what it
14 basically does, Wini, is takes these primary concerns
15 that were raised, like by the Central Council of the
16 Tlingit-Haida and AFN as she mentioned in her
17 testimony, the major concerns were raised by those two
18 groups and we've received letters and this addresses
19 those concerns that somehow the language of the
20 Memorandum of Understanding leaves a loophole into the
21 future for State Statutes to over-impose themselves
22 onto Federal law, which is clearly not the intent and
23 this language that's presented as, you know, a letter
24 of agreement or whatever it's going to be titled, will
25 just clarify that that is clearly not the intent of the
26 Memorandum and so, yes. Short answer, yes.

27

28 DR. KESSLER: So this review would take
29 place sometime in the very soon future so that all of
30 that input about this Memorandum would be brought to
31 bear and that a year from now we'd be in a position to
32 consider the possible future of this Memorandum or some
33 version of it.

34

35 CHAIRMAN FLEAGLE: Yes.

36

37 DR. KESSLER: All that input would be
38 used and worked on and put to use in the year that's
39 coming up.

40

41 CHAIRMAN FLEAGLE: Correct. And that's
42 where we have to -- each of our respective agencies
43 here has to determine what its process is going to look
44 like to do that. We don't have the same processes for
45 gathering public input and, you know, Cliff suggested
46 how their side is going to work, we may be different.
47 I know we have agreed here, tentatively at this level,
48 that we do want to put it out for Regional Advisory
49 Council review and for public review, so probably the
50 best way to do that would be to have this document

1 prepared by the time the Regional Advisory Councils
2 meet. And I know that we have a limited meeting
3 schedule because of our budgetary concerns and the
4 annual cycle, but -- so we're going to have to figure
5 out this process. And I think that once we do that and
6 once we get this document worded to where it's ready to
7 send out we're going to send it to the respective
8 agencies per Kristin K'eit's request prior to sending
9 it out that we all -- you know, all our agencies have
10 an opportunity to look at it and then send it out.

11
12 So, yeah, we're going to have to define
13 that part of our information gathering process that's
14 separate from what the State is going to do. But I
15 think we're pretty much in agreement that this is a
16 good course of action.

17
18 So with that I'd like to hear from
19 other Federal agencies.

20
21 Sue.

22
23 MS. MASICA: I just wanted to be clear
24 what I think I heard because it's a little bit
25 confusing to me and I think I'm where Wini is in many
26 respects, which is, what would be subject to the public
27 sort of review process is the MOU as it was signed,
28 with the addition of here are -- here is some verbiage
29 to provide clarification but at this point in time it's
30 not thought that there would be any suggested changes
31 to the MOU as part of that in terms of what the
32 signatories would have to offer, that it would be just
33 this clarification that goes with it.

34
35 And this process that you're
36 describing, before even that would begin, would provide
37 an opportunity if there are other concerns that any of
38 the signatories have, that those would be identified
39 and put forward in addition to the clarification that's
40 on the text that's on this page.

41
42 CHAIRMAN FLEAGLE: Right. And I think
43 with the understanding that, rather than trying to
44 recraft the MOU, which like I said before, you know, a
45 committee of 20 it's not going to be an easy process,
46 that we take it and look at issues and have addendums
47 of agreement to the MOU is the course that we're
48 suggesting. You know I suggest too that that's --
49 that's just a suggestion. If there's a strong feeling
50 that we should go ahead and recraft this MOU then

1 that's okay too, but I think the most -- the best
2 process will be to address issues and craft addendums,
3 letters of agreement or whatever we want to call them.

4

5 MS. MASICA: I would just -- in how we
6 craft what ultimately goes out with it suggests that we
7 be very clear that we're open to any suggestions on the
8 MOU. This could be perceived by some as a
9 defensiveness that the MOU doesn't need to be changed
10 at all and I think we want to be careful that that's
11 not the message that we're trying to send.

12

13 CHAIRMAN FLEAGLE: Point well taken,
14 thank you.

15

16 George.

17

18 MR. OVIATT: Okay, with the explanation
19 that's been given to Wini and to Sue, BLM would be
20 quite willing to follow along with those
21 recommendations as long as this is going to be reviewed
22 first by our agencies before we put it out for our RACs
23 to review, or before this becomes final, and with the
24 explanations that this is not in defense of the MOU but
25 we will tell them that basically things are wide open,
26 we want their comments.

27

28 CHAIRMAN FLEAGLE: Exactly. It just
29 addresses what we viewed as concerns that are
30 addressable at this point.

31

32 MR. OVIATT: Okay, with that, BLM would
33 certainly go along with that process.

34

35 CHAIRMAN FLEAGLE: Pete.

36

37 MR. PROBASCO: Mr. Oviatt, so your
38 intent, just for clarification, is we would hold off
39 until each of the signatories have reviewed this
40 document, this document, and provided their suggested
41 changes, edits? How would we finalize that?

42

43 Mr. Chair.

44

45 CHAIRMAN FLEAGLE: George.

46

47 MR. OVIATT: That is my intent. I
48 don't think BLM would be willing to agree upon this
49 right now to go out. We would like to have the
50 opportunity for our Staff to get together to look at

1 this and to finalize that. Now, if you want to give us
2 a 30 day turnaround in order to do that, I think it is
3 important we try to have this document ready for review
4 for our RACs at their next meetings, I think that's
5 very important. It isn't going to take us very long to
6 go through this, but I would be unwilling to agree with
7 what's written here without having the opportunity for
8 our Staff to look at this and talk about it.

9

10 CHAIRMAN FLEAGLE: Okay, from the
11 Federal side, though, I think Pete's question is good,
12 is, okay, so this goes out to all the agencies, we all
13 comment, how does it then come back into one document
14 without another meeting or some form of action or do we
15 just delegate, you know, somebody to take all of the
16 comments and do it by email. We've done this before.
17 We have sent documents around by email and I think
18 where Pete's coming from is just a clearer definition
19 of what that process would look like. Would we need to
20 hold a special meeting 30 days from now to review those
21 issues. I got Geoff and then Cliff.

22

23 MR. HASKETT: I don't think we need to
24 have a special meeting, just, you know, 30 days, I
25 think, is good, pull the comments together, send an
26 email out to everybody and make sure there's not
27 anything that just, you know, causes anybody major
28 problems and move forward from that.

29

30 CHAIRMAN FLEAGLE: Cliff.

31

32 MR. JUDKINS: I don't want to
33 complicate things but the back page of the document,
34 it's an appendix, it has the scope and protocol for
35 procedures that lists how we go about making changes in
36 this document. On the back page of it, called the
37 appendix.

38

39 CHAIRMAN FLEAGLE: Does it define what
40 we're trying to do here, I haven't looked at it in the
41 last 10 minutes.

42

43 All right, we'll take all that into
44 consideration, but I think that we did have requests
45 from at least three Federal agencies that they do want
46 to have some input into this letter before it goes out
47 for public review; I think that's valid. The process
48 we'll figure out from there.

49

50 Ted.

1 MR. SPRAKER: I'm good.

2

3 CHAIRMAN FLEAGLE: Good. All right.

4 Well, I think that's a good start.

5

6 So are there any further discussion on
7 this process of the MOU review.

8

9 Pete.

10

11 MR. PROBASCO: Mr. Chair. Just for --
12 since we're looking a year out and it's been stated
13 that each respective signatory would like to look at
14 this document that was just handed out, provide their
15 suggested edits, we would then take those suggested
16 edits, put it into one document and send it back out
17 for one final look. Once that's completed it'll go
18 before the Councils on the Federal side at their winter
19 meeting, along -- as well as to the public, we would
20 receive comments to the document, not only this -- the
21 original MOU but also the document accompanying it for
22 clarification, those comments would be received, and my
23 understanding is then we would take those comments and
24 summarize them and be prepared to whenever we meet, a
25 year from now, to present those comments.

26

27 CHAIRMAN FLEAGLE: That's a good
28 summary. All right, thank you, that will be the action
29 that we proceed with.

30

31 The next item on the agenda is the
32 Yukon River salmon fishery proposals, review of the
33 Board of Fisheries and the Federal Subsistence Board's
34 schedules. And is there somebody from us that wants to
35 lead this off.

36

37 Vince.

38

39 MR. WEBSTER: Thank you. I have our
40 tentative agenda for January 26th through the 31st AYK
41 meeting, I'll be handing these out, and the written and
42 oral reports that will be given at that meeting, and
43 I'd like to invite any of the Federal Subsistence Board
44 members, if they want to show up we'll make room for
45 you at the table.

46

47 I'd like to just tell you a little bit
48 how the Board of Fish works.

49

50 We take public testimony and our

1 Advisory Committees get extra time during public
2 testimony to give their reports. We accept the Federal
3 RAC representative, we give him the same respect and
4 time that we give our Advisory Committees. They are
5 also automatically on any of the committees that they
6 want to be on. So the Federal RAC members would -- or
7 not RAC members but RAC representatives would also be
8 automatically on those committees. We also have a
9 Federal Subsistence liaison representative at all our
10 meetings that sits at the table that gives us
11 information on what the Federal Subsistence Board, what
12 actions they've taken in the past that we consider when
13 we look at each proposal.

14

15 And these two proposals that's coming
16 up before us, I think is a direct response probably to
17 the MOU, how we're handling them. In the past these
18 web (ph) depth and mesh size restrictions has come up
19 before us in cycle and out of cycle, and we put it all
20 off until this cycle because we knew the State was
21 doing a review, mesh size study, and they will be
22 giving us an oral and a written report on mesh size in
23 this area. And I think, and you can correct me, but
24 you guys also altered your schedule to address these
25 two proposals to correspond with our meeting.

26

27 So that's all I have right now, thank
28 you.

29

30 CHAIRMAN FLEAGLE: Thank you, Vince.
31 We did. We got these proposals submitted to us after
32 we had dispensed with the prior proposals that we had
33 on the same issues, these were new proposals so we
34 addressed them as such and deferred them to this
35 meeting recognizing that you have similar proposals to
36 your regulatory agency that have a broader application,
37 if you will, ours is only limited to where the river
38 runs through or adjacent to the Federal lands, so we
39 wanted to deal with this after the Board of Fisheries
40 took action and your action may satisfy what the intent
41 of the proposals do and we may just follow suit. But I
42 mean I'm not trying to predispose what we're going to
43 do, but, yes, we did put this -- we did set this
44 special meeting to after your meeting to see where you
45 guys would come and it might help define where we need
46 to go.

47

48 Tina.

49

50 MS. CUNNING: Mr. Chairman. Deputy

1 Commissioner Bedford had to leave. He wanted to make
2 some additional remarks here.

3

4 In recognition that the Federal Board
5 did postpone work on those two proposals in order to
6 allow the completion of research studies being done by
7 Federal and State Staff and by -- through the Treaty
8 process completed this last year, as a consequence the
9 Board of Fisheries will be dealing with all Yukon fish
10 proposals up and down the river and all considerations
11 at that January 2010 meeting, and it is four days in
12 the dead of winter in the cold country, but I think
13 it's really important that as many Board members,
14 Federal Subsistence Board members as possible, sit in
15 on that process and hear all of the deliberations;
16 there will be extensive public comment, there will be
17 very thorough reporting by the Staff and the State
18 Staffs have been working very closely with a lot of the
19 different Federal Staffs to be sure that everyone has
20 access to everyone else's data, that the
21 interpretations and analysis have been well considered,
22 and then not only are the Staff reports going to be
23 there but there'll be the committee deliberations,
24 which are extensive and as Vince said, the RAC
25 representative can sit -- any of those three RAC
26 representatives can sit on those committees. We have a
27 commitment from the Board of Fisheries Chair that if a
28 Federal Subsistence Board member can attend any and all
29 portions of the Board of Fish meeting in January, that
30 they will make room for them at the table, along with
31 the Board of Fish members, and any and all Federal
32 Staff that can attend, we'll help you accommodate so
33 you can attend as much of that meeting as possible; it
34 will reduce the amount of effort our Federal and State
35 Staff have to provide in terms of Staff reports at the
36 April meeting on those same two Yukon proposals.

37

38 So, thank you.

39

40 CHAIRMAN FLEAGLE: Thank you. And I
41 failed to say thank you for the invitation to our Board
42 members to come and sit at your Board meeting, that's a
43 very generous offer and appreciate that.

44

45 I just want to ask a question, our
46 Board members are the Regional Directors of the
47 agencies in Alaska and sometimes those Regional
48 Directors are not available to act in their capacity so
49 we have a designee; does that invitation extend to the
50 designee level?

1 MR. WEBSTER: I believe it does.
2
3 CHAIRMAN FLEAGLE: All right. Do we
4 have that in writing?
5
6 (Laughter)
7
8 CHAIRMAN FLEAGLE: Is that on record?
9
10 REPORTER: (Nods affirmatively)
11
12 (Laughter)
13
14 CHAIRMAN FLEAGLE: All right, thank
15 you, Vince. I didn't mean to put you on the spot there
16 but even here at this meeting we do have some designees
17 for our Board members. They're just not -- they got
18 jobs way bigger than this and are not always available
19 so thank you.
20
21 Further discussion on the Yukon
22 fisheries issue.
23
24 MS. CUNNING: Mr. Chairman.
25
26 CHAIRMAN FLEAGLE: Go ahead, Tina.
27
28 MS. CUNNING: Mr. Chairman. We did
29 have just one point that David intended to bring to
30 your attention and that is our concern that the Yukon
31 proposals are going to be addressed by meeting set up
32 of the RACs. In one instance on the Yukon fish
33 proposals, with two of the RACs together and not the
34 third on the Yukon River, we are real concerned about
35 that. We've made some outreach and suggestions to that
36 third RAC, that we think that it's in their best
37 interest to participate jointly with the other two RACs
38 so that they get the benefit of all these same
39 discussions. Apparently there was a misunderstanding,
40 that they thought that RAC meeting, that joint RAC
41 meeting by Western and Eastern Interior was going to be
42 solely devoted to wildlife proposals, which is why they
43 weren't interested. But I just learned this morning
44 that if there's a portion of that joint meeting that
45 could be devoted to the Yukon proposals, they are
46 willing to participate together with the other two
47 RACs.
48
49 CHAIRMAN FLEAGLE: Pete.
50

1 MR. PROBASCO: Well, Mr. Chair, just so
2 there's not a misunderstanding. We've actually talked
3 to the YK Council, and at that time there was no
4 interest on their behalf to meet in a three-way
5 meeting. If you recall we did that a few years back in
6 Wasilla and had very mixed results but overall it was
7 not very successful. I'm not sure who you talked to
8 recently, Tina, but right now our understanding from
9 Chairman Wilde is that that RAC is not interested in
10 meeting, but we can check up on it again.

11
12 Thank you, Mr. Chair.

13
14 CHAIRMAN FLEAGLE: Well, to further
15 that, if they are interested, can we accommodate that?
16

17 MR. PROBASCO: Mr. Chair. The answer
18 would be yes, but, again, it's going to be dependent
19 upon schedules and we would do our best to accommodate
20 three separate RACs to meeting in one location. But
21 the answer is yes we can make it happen, but a lot has
22 to do with -- dependent upon our RACs, who are
23 volunteers, and their desire to meet.

24
25 Mr. Chair.

26
27 CHAIRMAN FLEAGLE: Okay, thank you,
28 Pete.

29
30 All right. Before I open it up for
31 other issues, we do have one unfinished business on
32 Item No. 4, and that's the implementation process.
33 It's like the Aesop Fable about who's going to put the
34 bell on the cat to warn him when the cat's going to
35 come eat him. So we talked about this great process
36 but we haven't compiled it to the point to where who's
37 going to compile these comments and make them -- put
38 them into a document that this Board is ready to work
39 off of, so we need to clarify that.

40
41 Is this going to be a Staff, you know,
42 a joint Staff effort or what would you envision as the
43 starting the point for a recommendation, Pete.

44
45 MR. PROBASCO: Well, Mr. Chair, as we
46 discussed at that informal group, that we call the
47 mini-work group, which consists of yourself, Mr.
48 Oviatt, Tina and the director of CommFish, Jon
49 Hilsinger, and the director of SportFish, Charlie
50 Swanton, that's who did the work in the past. Prior to

1 that the drafting of the MOU was a little bit larger
2 group that included representatives of the various
3 agencies as well as the Board of Game, Board of Fish
4 and the State of Alaska. So it's taken on two
5 different memberships, if you will. And I just wanted
6 to clarify because I have received criticism on where
7 we're at today and just so that there's not a
8 misunderstanding that we'd clearly state on the record
9 how this review will take place and who will compile
10 the work.

11

12 Mr. Chair.

13

14 So it's up to the signatories.

15

16 CHAIRMAN FLEAGLE: Thank you. I would
17 suggest that it be done by a joint effort, I think,
18 between the respective agency's Staffs, other than just
19 this working group because the working group doesn't
20 have -- maybe I'm the only one that doesn't have the
21 time to commit to doing all the work involved with
22 reviewing and making recommendations and stuff, but if
23 we can -- I don't have an objection to a group like
24 that reviewing these comments, but I'm not sure that if
25 it were me I would be able to.

26

27 So if -- you know I just raise that as
28 a possible problem and, really, in a year it might be
29 moot, based on earlier discussions, so if everybody is
30 okay with this group in whatever configuration it may
31 take form within the year, addressing these issues,
32 then we can probably go ahead with that.

33

34 I'm seeing nods of affirmation, no
35 objection.

36

37 Wini.

38

39 DR. KESSLER: I guess a couple things.
40 One is, so the first order of work would be simply
41 compiling and getting a gist for how broad the concerns
42 are and organizing them, which is a significant --
43 could be, potentially, a significant amount of work.
44 I'd just like to suggest that the -- I think currently
45 the group is all Department of Interior individuals and
46 I'd like to suggest that at least one Department of
47 Agriculture person join that and help out in that
48 effort.

49

50 MR. PROBASCO: As long as it's Cal.

1 (Laughter)
2
3 CHAIRMAN FLEAGLE: No, that's a good
4 suggestion, appreciate the input. Okay. Well, we'll
5 just go ahead with that then.
6
7 Pete.
8
9 MR. PROBASCO: Got it, thank you.
10
11 CHAIRMAN FLEAGLE: Now, Item 5, other.
12 Are there any other discussions that need to be brought
13 up at this meeting by anybody.
14
15 (No comments)
16
17 CHAIRMAN FLEAGLE: All right, hearing
18 none.
19
20 I just want to thank everybody for
21 making time in your busy schedules to be able to meet
22 with us, and I think that as we've said before these
23 opportunities to sit down together and talk about our
24 common issues as well as our common challenges always
25 produces a better working relationship, and I want to
26 welcome the new Board of Fisheries Chair to the
27 process, and everybody that's over -- Bob Bell, too --
28 the guys that have been here and are here, appreciate
29 your guy's efforts.
30
31 Any other closing comments.
32
33 MS. SYKES: Mr. Chair.
34
35 CHAIRMAN FLEAGLE: Go ahead, Carrie.
36
37 MS. SYKES: Mr. Chair.
38
39 CHAIRMAN FLEAGLE: Yes, go ahead.
40
41 MS. SYKES: I just want to thank the
42 Board members for agreeing to have this MOU go through
43 the public process, I really appreciate that and I just
44 wanted to say thank you.
45
46 CHAIRMAN FLEAGLE: You bet, thank you
47 for the comments.
48
49 Is there a motion for adjournment.
50

1 MR. HASKETT: I make that motion, Mr.
2 Chair.
3
4 CHAIRMAN FLEAGLE: All right, there's a
5 motion.
6
7 DR. KESSLER: Second.
8
9 CHAIRMAN FLEAGLE: Motion, seconded,
10 we're adjourned. Thank you. And that adjourns the
11 Federal Subsistence Board work session as well.
12
13 MR. PROBASCO: Thank you.
14
15 (Off record)
16
17 (END OF PROCEEDINGS)

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C E R T I F I C A T E

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