FEDERAL SUBSISTENCE MANAGEMENT PROGRAM
FEDERAL SUBSISTENCE BOARD
WORK SESSION MEETING

VOLUME I

OFFICE OF SUBSISTENCE MANAGEMENT BOARD ROOM
1011 East Tudor Road, Room 231
Anchorage, Alaska

July 16, 2009
8:30 o'clock a.m.

MEMBERS PRESENT:

Mike Fleagle, Chair
Gary Edwards, U.S. Fish and Wildlife Service
George Oviatt, Bureau of Land Management
Sue Masica, National Park Service
Wini Kessler, U.S. Forest Service
Kristin K'eit, Bureau of Indian Affairs

David Bedford, State of Alaska Representative

Keith Goltz, Solicitor's Office

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Welcome to the Federal Subsistence Board work session on July 16. Maybe we should go around the room and do some introductions. I see some people in the audience I don't recognize. Start with the Board.

Mike Fleagle, Chairman.

Pete Probasco, assistant regional director for the Office of Subsistence Management.

I'm Polly Wheeler with the Office of Subsistence Management.

Keith Goltz, Solicitor's Office.

Jerry Berg, staff member for Fish and Wildlife Service.

Gary Edwards, Fish and Wildlife Service.

Kristin K'eit, Bureau of Indian Affairs.

Good morning. I'm Glenn Chen with Bureau of Indian Affairs.

David Bedford, deputy commissioner, Alaska Department of Fish and Game.

George Oviatt, Bureau of Land Management.

Nancy Swanton, Interagency Staff Committee, National Park Service.

Sue Masica, National Park Service.

Wini Kessler representing Board member Denny Bschor.
MR. JACK: Carl Jack, OSM.

CHAIRMAN FLEAGLE: Can we just go around the perimeter.

MR. GOLDBERG: Gary Goldberg with OSM.

MS. SYKES: Carrie Sykes with Tlingit-Haida Central Council.

MR. LARSON: Robert Larson with the Forest Service.

MS. WILKINSON: Ann Wilkinson, OSM.

MR. KRON: Tom Kron, OSM.

MR. PAPPAS: George Pappas, Department of Fish and Game, Subsistence Liaison Team.

MS. WILLIAMS: Christy Williams, legal intern to Senator Begich's office.

MS. ZELCREST: Tiffany Zelcrest, aide for Senator Begich.

MR. RABINOWITCH: Sandy Rabinowitch, staff for Park Service.

MS. COOPER: Deb Cooper, assistant regional director for resources, Park Service.

MR. MILLS: Dave Mills, National Park Service.

MR. SHARP: Dan Sharp, staff committee for BLM.

MR. CASIPIT: Cal Casipit, staff committee member, Forest Service.

MR. EASTLAND: Warren Eastland, ISE member, BIA.

CHAIRMAN FLEAGLE: All right. Great, everyone. I did have a request -- looking at the agenda, I did have a request from one of the members of the audience for a brief opportunity to address the Board on subsistence activities in southeast Alaska. That's Carrie Sykes. We decided that we can fit that
in under other business. She wants to just present to
the Board for about five minutes. Is there anybody
else that would like to have that opportunity?

(No comments)

CHAIRMAN FLEAGLE: All right. Other
review of the agenda. Pete.

MR. PROBASCO: Thank you, Mr. Chair.
The one item based on recommendations from the
Solicitor's Office is to move our review of the annual
report replies to the Regional Advisory Councils.
Because they are in draft stage, we need to move them
into the executive session, so those will not be
addressed during the open workshop.

CHAIRMAN FLEAGLE: So item number 4 is
deleted from this agenda.

MR. PROBASCO: Correct.

CHAIRMAN FLEAGLE: All right. So
ordered. Others.

MR. PROBASCO: Just info exchange or
just agenda?

CHAIRMAN FLEAGLE: Agenda.

MR. PROBASCO: Okay. That's it.

CHAIRMAN FLEAGLE: Note the change to
the agenda and then we'll go ahead and move on. The
next item on the agenda is information exchange. Pete.

MR. PROBASCO: I'll go first and this
is just an FYI. As everyone is aware, the North
Pacific Fisheries Management Council has been dealing
with some very important issues that affect a lot of
our subsistence communities particularly in western
Alaska. They have recently formed a rural community
outreach committee consisting of members throughout
Alaska and I was asked to serve on that committee,
which will first meet in August.

The purpose of the committee is to
advise the Council and provide opportunities for better
understanding the participation from Alaska Native and
rural communities, to provide feedback on community
impact sections of specific analysis and/or proposals, and to provide recommendations regarding which proposed Council actions need a specific outreach plan and prioritize multiple actions when necessary.

I thought that was a good plan by the Council to try to better reach out to our rural communities. Everybody is aware that they sent -- on four of our Councils they sent representatives to deal with the pollock issue last fall and I think as a result of that that's where this committee came from.

CHAIRMAN FLEAGLE: Thank you, Pete.

Other items, information exchange.

(No comments)

CHAIRMAN FLEAGLE: Moving on. We're going to move right into the RFRs. Pete, do you want to lead off on that, please.

MR. PROBASCO: Thank you, Mr. Chair. Actually I'm going to pass the baton to Polly. She's take us through these five RFRs. Go ahead.

DR. WHEELER: Thank you. Good morning, everybody. You remember from the May 15th meeting, which seems like an eternity ago, but at that meeting we did hand out the full analyses of each of the five RFRs. These RFRs were submitted in response to Board action in December of 2007, so you have to reel back a little bit to remember where we were and what was going on.

In your Board packets there's a very brief summary of each of the five RFRs and I'm going to speak to the claims contained within each of the five RFRs. We'll just go through one by one. I'll read my summary and the Board can take action.

Just as a reminder, this is a request for reconsideration, the threshold step. There's three criteria for reviewing the claims. The first criteria is new information is provided that was not previously considered by the Board. The second criteria would be the existing information used by the Board is incorrect. The third would be the Board's interpretation of information, applicable law or regulation is in error or contrary to existing law.
Any claims accepted by the Board at this step are advanced for further analysis. Council recommendations are sought and the Board addresses the claims in a public meeting. Any claims rejected by the Board at this step are considered concluded and a letter to the requester is prepared for the Chair's signature, ending the administrative process.

The numbering system for claims consists of the criteria category one, two or three, as I just read through. There's a decimal point separator and then the sequence number for claims in that category.

So the first fisheries request for reconsideration is FRFR 08-01. It was submitted by the State of Alaska. The issue in sum is that in December of 2007 the Board rejected Proposal 08-04, which requested that a fisheries no Federal subsistence priority determination be made for the Juneau road system. The Southeast Alaska Subsistence Regional Advisory Council had recommended rejection of this proposal.

There were six claims included in the request for reconsideration. Claim 3.1 is that the Board acted contrary to the ANILCA Section .802 mandate for subsistence, quote, to be consistent with sound management principals and the conservation of healthy populations of fish and wildlife, close quote, by continuing to cause significant conservation of all stocks of fish in waters connected to the Juneau road system.

Claim 3.2. The Board is unnecessarily jeopardizing the availability of stocks of fish for non-subsistence uses in waters connected to the Juneau road system. This is in violation of Section .815 of ANILCA.

Claim 3.3. The Board acted arbitrarily and capriciously when it based its rejection of Proposal 08-04 solely on the unsubstantiated erroneous conclusion that such action would be unnecessarily restrictive for subsistence users.

Claim 3.4 is that in rejecting Proposal 08-04, the Board ignored its own regulations which require a community or area to, quote, generally exhibit, close quote, eight factors with regard to,
Claim 3.5 is that in rejecting Proposal 08-04, the Board ignored its own regulations and established precedent without any supporting evidence by retaining an unsupported region wide customary and traditional use determination despite a record demonstrating that the Board has adopted numerous location specific customary and traditional use determinations consistent with its regulatory requirements for other fish stocks and wildlife populations throughout Alaska and has even maintained location specific customary and traditional use determinations for fish stocks in other portions of southeast Alaska.

The final claim included in this request for reconsideration is that the Juneau land status map presented to the Board shows most waters connected to the Juneau road system were specifically excluded from the Tongass National Forest before Statehood and thereby are effectively outside the boundary of the forest.

Based on the threshold analysis conducted by the Office of Subsistence Management staff, there does not appear to be merit to any of these claims and the recommendation of the Interagency Staff Committee was to oppose the request for reconsideration.

Mr. Chair, that's all I have for RFR 08.

CHAIRMAN FLEAGLE: Thank you, Polly. Appreciate that summary. Deputy Commissioner, you have indicated you want to speak to one of these proposals. Will you chime in or let me know which one you want to speak to, please.

MR. BEDFORD: Mr. Chairman. If I could speak to FRFR 08-02, please.

CHAIRMAN FLEAGLE: Okay. We'll hold off comments then from the State. Going back to FRFR 08-01. Discussion, Board members, questions. Pete, go ahead.

MR. PROBASCO: I was just consulting.

Mr. Chair, I was just trying to clarify with Keith and
Polly if we should take each claim and address them separately. We do not need to do that. We can do them in the aggregate. Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you. First, any questions, Board members, for the presentation.

(No comments)

CHAIRMAN FLEAGLE: Hearing none. I'm open for discussion on the presentation. Let's stand down for a couple minutes. I want to have a discussion with Keith off the record. Thanks.

(Off record)

(On record)

CHAIRMAN FLEAGLE: I know it hasn't been five minutes, but we got this resolved. What I wanted to do is confer with Keith about what we wanted to have on the record as far as the vote for this action goes and I think that it behooves us to at least have a discussion. We all know that this information was distributed to the Board and we've all reviewed it sometime between May and now, but I think it would be appropriate to at least address the concerns in some discussion before we put it to a vote. I just don't want to have the presentation given and then a vote without some kind of supporting statements behind it.

Polly, would you like to speak further to that, please.

DR. WHEELER: I just needed to make clear or wanted to make clear that, again, the full analyses for each of the five RFRs were provided to everybody at the May 15 meeting, so there's been two months to go through. The reason why we did that is because the analyses are fairly lengthy, fairly complex. This first one that we're talking about has the most claims of all of them, I believe, but there's a thorough analysis of each of the six claims in the OSM Staff analysis. So just to make clear that the reason we provided it in May was to give everybody ample opportunity and time to go through it and digest this complex lengthy analyses.

CHAIRMAN FLEAGLE: Thank you, Polly. With that, is there anybody that would like to speak to
the validity or the merits of the claims. Wini.

DR. KESSLER: Having gone through that information, I find that this does not meet the threshold with respect to the three factors. There's not new information that wasn't previously considered by the Board, there's not existing information that's incorrect and that the Board did not err in its interpretation of the information. In my viewpoint, this does not meet the threshold for reconsideration.

CHAIRMAN FLEAGLE: Other discussion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for a motion one way or the other. Wini.

DR. KESSLER: I'm ready. I move to accept Committee's recommendation to reject the request for reconsideration.

MS. MASICA: Second.

CHAIRMAN FLEAGLE: Ready for the question. Pete.

MR. PROBASCO: Thank you, Mr. Chair. Final action on FRFR 08-01 to accept the Staff Committee's recommendation to reject. Dr. Kessler.

DR. KESSLER: Aye.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.
CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Mr. Chair. Motion carries.

CHAIRMAN FLEAGLE: Thank you, Pete. That moves us on to RFR 08-02. Polly.

DR. WHEELER: Thank you, Mr. Chair. Fisheries request for reconsideration 08-02 was also submitted by the State of Alaska. The issue for this request for reconsideration is as follows: The Board rejected again in its December of 2007 meeting Proposal 08-07, which requested that the Federal steelhead subsistence fishery on the ABC islands, otherwise known as Admiralty, Baranof and Chichagof, be closed. The Southeast Alaska Subsistence Regional Advisory Council had recommended rejection of this proposal.

There were three claims included in the request for reconsideration. Claim 1.1 is as follows. Presented as new information was that ADF&G has submitted a proposal to the Alaska Board of Fisheries that would result in non-retention of steelhead in all but 16 streams in southeast Alaska.

Claim 3.1 was that the decision to reject Proposal 08-07 was inconsistent with ANILCA's requirements that subsistence fishing be consistent with sound management principals in the conservation of healthy populations of fish and wildlife.

Claim 3.2 was that reconsideration is required because the decision to reject 08-07 will cause unnecessary restrictions on other uses. The Office of Subsistence Management threshold analysis found that there does not appear to be any merit to these claims and that recommendation of the Interagency Staff Committee was to oppose the request for reconsideration. Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Polly. Before I go to the Board, I'm going to offer the State Deputy Commissioner an opportunity to have a couple comments here. David.

MR. BEDFORD: Thank you, Mr. Chairman. Thank you for the opportunity to speak to this issue. Since 2000 the Federal Board had incrementally
liberalized the southeast steelhead regulations. For example, reducing size limits that protects spawners, allowing the use of bait and increasing bag limits. As required by regulations, the State has provided evidence referenced in this RFR that such liberalization is inconsistent with recognized principals of fishery management and may jeopardize the sustainability of steelhead stocks.

Before the Board takes an official vote, I would ask that you consider two process-related issues and then some new information that has become available after we filed this RFR. First to the process questions.

In December 2007 the Federal Board rejected FP08-07 despite the increasing conservation concerns. The final regulations were published in March 2008. The State filed this RFR in May 2008. Today is July 2009, 14 months and two steelhead fishing seasons later. Regardless of whether there's agreement on the existence of a valid conservation issue, we urge the Federal Board to adopt a process that provides a more timely response to an RFR that involves a conservation issue raised by the State.

Secondly, during this year-long delay in acting on the RFR another fisheries proposal cycle of the Federal Board has passed and both the Federal Board and the State Board have evaluated additional substantive evidence on the southeast steelhead conservation issues. The Federal Board in December 2007 and thus was not referenced in our RFR.

We recommend that you request that the State and the Federal Staff analyze the additional substantive information brought before both the Federal and State Boards. The State Board of Fisheries adopted new restrictions in February 2009 to protect steelhead, which underlines the significance of this new information. We request that you either accept our RFR because there's new information or postpone taking action until you've had an opportunity to delve further into the new evidence.

Additional information that's become available. At the December 2007 Federal Subsistence Board meeting, the Department provided information on the results of a subsistence study of the harvest of steelhead on Prince of Wales Island. That study
clearly demonstrated that residents are not reporting
harvests on Federal permits. Despite apparent limited
compliance with the Federal permit requirements,
Federal Staff have continued to argue that the permit
system shows low participation and that the permit
reporting would detect any problems of overfishing on
small stocks. These two sources of data are in direct
conflict.

The Office of Subsistence Management
initiated a study over a year ago to conduct a Federal
household survey of Prince of Wales Island. The Board
and the State should be provided the results, which
will give us an opportunity to test the assertions on
both sides of the question.

As a preventative measure, the Board
should request that the Federal southeast staff provide
a breakdown on a weekly basis. Information acquired
from each permit holder so that we can test again how
effectively Federal procedures will detect harvest of
small susceptible stocks in advance of any damage being
done.

I would note on that point though that
the Federal administrator in Sitka does a very good job
of collecting information on the road system. We
suggest that the Board request information from State
and Federal law enforcement for the past two years to
see whether there is data that confirms the study
results that residents are not acquiring the Federal
permits or not reporting accurately.

Again, a non-user report is a source of
data that would allow testing of the efficacy of the
permit system. Rarely do Federal Staff analyses
acknowledge the significant discrepancy the State
subsistence household survey revealed between the
results and the permits reports. We would think that
this information would be important in reviewing the
management system for its precautionary features and
its ability to deal with uncertainty.

State management of steelhead stated
that the opportunity for harvest under the
incrementally liberalized Federal regulations cannot
sustain the stocks without intensive stock assessment
and monitoring, programs which are not at this point in
place.
In 1994, the Department and Board of Fisheries initiated major changes in State fishery regulations in order to restore steelhead throughout southeast Alaska to sustainable levels. Since 1994 those regulations have been further refined to reduce interception by commercial fisheries and to reduce harvest by personal use, recreational and subsistence users in order to protect the mature spawning stock. Size restrictions and methods and means restrictions have been implemented as well. Those steps have proved successful so that recreational, subsistence, personal use and commercial fisheries continue under the State's management regime.

At the December 2007 Federal Subsistence Board meeting, the Department cautioned the Board that rejection of FP08-07 would perpetuate an increasing conservation concern for small steelhead stocks that are vulnerable to overharvest under Federal regulations and would likely result in additional restrictions that could be avoided. At the December 2007 meeting, the Federal Subsistence Board rejected the proposal.

To improve Federal Agency understanding of our successful management of steelhead, the Department stepped up its efforts to coordinate with Federal Staff to explain the many steps taken over the past 15 years. We also put more effort into working with the Southeast Regional Advisory Committee to explain the Department steelhead management program, all of which reflect an ongoing commitment by the Department to assuring the Federal subsistence opportunity continue. However, we do need cooperation from the Federal level as well.

Significant effort by State Staff in 2008 resulted in an evaluation of known waterways to document sustainable and vulnerable stocks that were addressed in a new proposal that we put forward. Despite all these efforts, the Federal Board substituted its judgment about steelhead management and rejected both our 2008 proposal and any of the other alternatives that were put forward.

As a consequence of the Federal Subsistence Board rejection, the Board of Fisheries adopted additional restrictions on non-subsistence uses in February 2009. The Department did not file a request for reconsideration on the January 2009 Federal
Subsistence Board rejection of the State proposal because the Board agreed to form a technical fisheries working group to review steelhead data and make recommendations to the Regional Advisory Council and the Federal Subsistence Board and the State Board of Fisheries.

In July 2009, after the deadline for the State to file an RFR, the Federal Subsistence Board withdrew the offer to assign a technical fisheries staff to review the conservation issues. The threshold analysis before the Federal Board on this RFR is based on Federal Staff analysis of information provided before the new information that I've referenced was provided at the January 2009 Federal Board meeting and the February 2009 Alaska Board of Fisheries meeting.

In conclusion, additional information on steelhead stocks and management concerns has become available since we filed this request for reconsideration in May 2008, including information that resulted in action by the Board of Fisheries to address the conservation concerns.

We urge you to either accept the request for reconsideration or postpone a vote until there's been an opportunity to review what really is a substantially different informational landscape. Thank you.

CHAIRMAN FLEAGLE: Thank you, Deputy Commissioner. Questions, Board members. Wini.

DR. KESSLER: Just some clarification. The Board of Fish proposal that Dr. Wheeler referenced, that was withdrawn or didn't pass, correct?

MR. BEDFORD: There were a number of steelhead proposals. The Department had one steelhead proposal that we were going to put forward but that we withdrew, looking forward to having a more intensive and collaborative dialogue on the technical merits of various management strategies to deal with steelhead. So we withdrew that from the Board of Fish consideration.

The Board of Fish, nonetheless, acted on two other proposals that constrained fishing opportunities for non-subsistence, non-Federally qualified subsistence users, one of those being to
eliminate harvest on the Juneau road system and the
other to require catch and release only on, I believe,
31 different systems throughout southeast Alaska,
particularly those that have fall run stocks.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Can you elaborate, at
least I think I heard you say that there's a difference
between what's being reported in the household surveys
and based upon the number of permits issued and what's
being reported on the permits, can you elaborate a
little more on that.

MR. BEDFORD: I can't provide you with
the specific numbers, but the household surveys that we
do, of course, go out to individuals and families and
ask them how much steelhead have you consumed, and what
we find is that there's fairly substantial use of
steelhead, yet what we find with the permit reporting
system is that we have very, very small numbers of
steelhead that are effectively reported on permits.

MR. EDWARDS: I guess can somebody in
OSM then address that if that was looked at, that
difference between those two. Do we have concerns
about the differences?

MR. PROBASCO: Mr. Chair. I think
that's an appropriate question to Cal.

CHAIRMAN FLEAGLE: Cal.

MR. CASIPIT: Thank you, Mr. Chair.
Mr. Edwards. From what I remember of those household
surveys, those interviews were done in the mid '80s. I
think one was in the early '90s. They were different
communities on Prince of Wales Island. What we did is
we took those data tables and we subtracted out
steelhead retained from commercial catches and we only
looked at steelhead taken by rod and reel and other
non-commercial means and that totaled up to around 600
fish for Prince of Wales Island. At the time, that was
the only thing we were looking at and those household
surveys were only for Prince of Wales Island.

I think the thought back then was that
these household surveys are indicating 600 steelhead
being taken by non-commercial means or rod and reel
basically for a long time and at that time I think the
Board figured that 600 fish has to be sustainable because people have been taking this level of fish for years and years and they're still there. I think that was one of the reasons.

I want to go back to these household surveys and the Mike Turk report that was referenced earlier by Deputy Commissioner Bedford. That particular study really didn't look at the difference between household surveys and permit returns. That was not the focus of the research that was documented in that report. The focus of that research was how people take steelhead on Prince of Wales Island for subsistence uses.

There was some respondents in that research that talked about these permits and how some people didn't like having to get these permits. If I recall, most of those comments that were like that came from one community on Prince of Wales Island.

First of all, the study does not look at the issue of household surveys versus permit returns. Any information that comes out of that along those lines were just responses to an interview question that was presented by the researchers. It wasn't a systematic questioning of every user do you get a permit or what have you.

Now the issue of household surveys versus permit returns, yes, that is currently being researched by the Organized Village of Kasaan and Hydaburg Cooperative Association. This is the final year of the work and they have some time to prepare the final report. That would be available to us and at some point in the future we can work with that. I guess that's all I have.

MR. EDWARDS: So there's no current household surveys being done? That's what I'm trying to understand, the relationship between the two.

MR. CASIPIT: No, the last household surveys that were done in southeast Alaska were commissioned by the Forest Service in support of the Tongass Land Management Plan and that's the truck studies and most of that work was done in the late '80s, early '90s. There's nothing contemporary.

MR. EDWARDS: As I was going through
the analysis, we brought up the issue of illegal harvest and we make a statement that illegal harvest likely occurs, but it's not appropriate to assign these fish to any fishery, whether sport or subsistence, since fish were taken outside the regulation of either fishery. I guess I'm not sure whether we can totally ignore the illegal harvest. Certainly in an incidence with Stellar's Eiders up on the North Slope it's illegal to take them, but we're very concerned with the fact they've been taken.

So I think from a conservation standpoint there's a lot of illegal harvest going on, whether it's within the sport, commercial or subsistence fishery. I don't see how we can ignore that from a conservation standpoint. I don't know whether that's a significant number, if we think it's a significant number, but I don't think you can just say, well, the regulation says it's illegal, so we can basically ignore the illegal harvest from a conservation standpoint, but that's high under any of those. It seems to me is a conservation issue.

DR. KESSLER: We do have information about how many fish we think are being taken and we don't have evidence to my knowledge that there's illegal -- a significant or a conservation concern that might possibly revolve around illegal take, but I'll let Cal comment on that. Why don't you talk about what we know about, the levels of take that are occurring there.

MR. CASIPIT: Mr. Chair, with your permission. Thank you. Dr. Kessler. Let me put it this way. Our law enforcement officers spend about 7,500 hours patrolling on Prince of Wales Island and southeast Alaska during the steelhead seasons. Up until now they haven't been very successful in finding very many subsistence users. Mostly sport users they're running into.

There was an incidence of illegal harvest on one stream on Prince of Wales Island in 2005. We immediately closed that stream to harvest. As soon as we found the heads, the local manager closed the system and I think the State followed suit soon after.

If we find illegal activities, we try to react to them and do what's right. Quite frankly,
our law enforcement officers spend 7,500 hours out on the ground during these seasons and they're not finding subsistence users. They're finding sport users.

MS. K'EIT: Mr. Chair.

CHAIRMAN FLEAGLE: Kristin.

MS. K'EIT: Cal, of the legal subsistence harvest, do we have any estimates of what we're getting per year?

MR. CASIPIT: Ms. K'eit. Yes, we take total southeast Alaska about no more than 50 steelhead a year under the Federal subsistence permitting system and we get the reports back. For comparison purposes, excluding Yakutat, the southeast Alaska sport catch for steelhead in southeast Alaska has averaged 139 fish per year since 2006. That doesn't include catch and release mortality of a catch of somewhere I think around 3,000 in southeast Alaska and you have to apply catch and release mortality figure and there's some debate about that, two or three percent, something like that.

Also there's this out there that I have to say has really bugged the Southeast Regional Advisory Council as the level of unreported, undocumented commercial catch in the commercial fisheries. This is something that has really bugged the Councils since the beginning and some of the Board members too.

CHAIRMAN FLEAGLE: Cal, in your comments you refer to the law enforcement activity on Prince of Wales and you refer to the harvest report surveys being done on Prince of Wales. How do you tie that into the ABC islands? Is it comparative or what's the correlation?

MR. CASIPIT: I think the analysis talks about the reported harvest from the ABC islands, but it's no more than a few dozen for ABC on an annual basis. I would guess probably less than 10, but it's in the analysis.

MR. BERG: Thirty-six.

MR. CASIPIT: Thirty-six over the past.....
MR. BERG: That's what it says.

CHAIRMAN FLEAGLE: I understand. I was just wondering about the 7,500 hours of law enforcement on Prince of Wales applied to the discussion on ABC fisheries.

MR. CASIPIT: That's 7,500 hours in all of southeast. Admittedly most of it occurs on Prince of Wales because that's where the issues are.

CHAIRMAN FLEAGLE: Other discussion. Keith.

MR. GOLTZ: David, I couldn't hear the first part of your presentation because of the fan. Can you just give me bullets on what the new information is that you were talking about?

MR. BEDFORD: There's the region-wide assessment.....

CHAIRMAN FLEAGLE: You need to turn your microphone on.

MR. BEDFORD: I'm sorry. Keith, can you hear me better now?

(Laughter)

MR. BEDFORD: There was a region-wide assessment that the Department Staff conducted on a watershed by watershed basis to look at what kind of information we have and try to categorize stocks by those which we are confident have harvestable surpluses. Those which we are not very satisfied with the levels of information we have those where we think there's some potential conservation issue. Then there are the questions about how effectively we're accounting for the harvest with the Federal permits and the kinds of information that is available, but I went through that at the tail end of what I was discussing, which I'm assuming the fan was not interfering with that.

MR. GOLTZ: Thank you.

CHAIRMAN FLEAGLE: Further discussion or questions. Pete, go ahead.
MR. PROBASCO: Deputy Commissioner Bedford, since I was involved in assisting in drafting
the workgroup charge for the steelhead workgroup and
the State was an integral part in assisting in drafting
that, your statement towards the end of your
presentation left me in question on where we stand with
that. I'm sort of curious. Mr. Chair.

MR. BEDFORD: By your leave, Mr.
Chairman. At this point we're still reviewing the
secondary document that came through. It is a dramatic
departure from the initial draft and we'll be providing
comments on that presently.

CHAIRMAN FLEAGLE: All right. Just for
clarification of the record then, the Federal
Subsistence Board did not withdraw its offer to
participate in this process. We just got involved with
it on a higher level and amended it. So the offer is
out there, although, as Deputy Commissioner Bedford
states, it has changed significantly, but it is still
out there.

Other questions or discussion. Gary.

MR. EDWARDS: This seems like one issue
that just won't go away. I'm not sure for how many
years we have addressed this. I think I've said this
before. I think the reality is some of these streams
probably ought to be closed to all uses from a
conservation standpoint, but it doesn't seem one the
State is certainly willing to bite the bullet because
we still have catch and release, which certainly has
some level of mortality with it and I think as is
pointed out in the analysis I don't think we're in any
position to restrict subsistence harvest while we have
other uses taking place.

I know I've said it numerous times and
Cal just repeated it, until the State is willing to do
a better job on managing that commercial harvest at
least from the standpoint of at least reporting so we
know what level is being taken there. I think the
Forest Service has done an excellent job of trying to
monitor this and taking actions when necessary. I just
think hopefully this group, if we can ever get it
started, might be able to bring it up, but it just
keeps coming back and coming back and we seem to have
the same arguments with the same analysis over it. So
I'm certainly going to not support this thing for
reconsideration.

CHAIRMAN FLEAGLE: I appreciate those statements. I want to remind the Board too that we are dealing with just the merits of the request for reconsideration and not the details of the fishery itself or the biology or the harvest. I understand that it was important to have the discussion in light of new information, but I want to get back to focusing on the merits of the request and whether we feel it meets the criteria. Carl.

MR. JACK: This RFR raised the question of whether we were going down the path of prioritizing subsistence over the uses and whether that would be consistent with Title VIII of ANILCA. Question to the solicitor.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: You mean prioritizing other uses over subsistence?

MR. JACK: Prioritizing subsistence over other uses.

MR. PROBASCO: I think Gary made a good statement on that. As long as there are the uses on it, it raises real questions about whether we should be restricting subsistence.

CHAIRMAN FLEAGLE: Sue Masica.

MS. MASICA: Mr. Chairman. There was a question raised by the State about sort of the timing of the reconsideration. The calendar was laid out. I'm just curious, being new to this process, is there a time frame normally associated with RFRs or is that something that we might want to put on our to do list to have some discussion about so that these are taken up in a slightly more timely way than this seems to be.

MR. PROBASCO: Mr. Chair. Sue, thank you for that question. It is indeed correct through Mr. Bedford's comments that it's been over a year on this RFR. What's not put in the proper context is that this RFR was submitted along with 17 other RFRs and so it's just a managing workload and getting the Board members, getting the analysis completed, et cetera. Granted, I wish we could do it more timely, but when
you take the RFR load on top of the special action load on top of the proposal load, we're not as efficient as we would like to be.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thanks. I appreciate the comment though. If there's an opportunity that we can review the process and see if there's a way to streamline it by getting more money maybe, that's the other part of the mix, is reduced budget. I agree, if there is a way that we can speed up the process, I think we should look for those. I appreciate your statements. Wini.

DR. KESSLER: Thank you, Mr. Chair. These discussions have been very helpful. Considering all the points, I'm prepared to make a motion. I move to reject the request for reconsideration of FRFR 08-02 or to reject this request because the three points of the threshold are not met.

MR. EDWARDS: Second.

CHAIRMAN FLEAGLE: Further discussion on the motion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the question. Pete, would you please poll the Board on 08-02.

MR. PROBASCO: Thank you, Mr. Chair. Final action on FRFR 08-02 to reject. Ms. Masica.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Aye.

MR. PROBASCO: Mr. Edwards.
MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Dr. Kessler.

DR. KESSLER: Aye.

MR. PROBASCO: Motion carries 6-0.

CHAIRMAN FLEAGLE: All right. Thank you. That moves us to 08-03. Polly.

DR. WHEELER: Thank you, Mr. Chair.

Fisheries request for reconsideration 08-03 was also submitted by the State of Alaska. The issue on this RFR was the Board adopted Proposal 08-09 with modification at its December 2007 meeting. The proposal requested that temporary community fishwheels be established on the Kenai and Kasilof Rivers to the take of salmon.

Board action established a temporary fishwheel fishery only on the Kasilof River and included other modifications as well. The Southcentral Alaska Subsistence Regional Advisory Council had recommended support with modification but to also include the Kenai River.

There were two claims included in the request for reconsideration and the claims were under two separate criteria. The second criteria, the existing information used by the Board is incorrect. The third criteria, the Board's interpretation of information, applicable law or regulation is in error or contrary to existing law.

Claim 2.1 was that the Board's determination to adopt a 72-hour fishwheel harvest reporting requirement rather than a shorter 24-hour requirement was based on incorrect information because in making that determination the Board did not adequately address conservation issues.

Claim 3.1 was that the Board's determination to adopt a 72-hour fishwheel harvest reporting requirement rather than a shorter 24-hour requirement was based on an interpretation of
information that was in error or contrary to existing
law because the Board did not adequately address
conservation issues.

The Office of Subsistence Management
threshold analysis found that there does not appear to
be merit to either of these claims. The recommendation
of the Interagency Staff Committee was to oppose the
request for reconsideration. Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Dr.

MR. EDWARDS: It's my understanding
that Ninilchik has submitted a request and my
understanding also is that they actually are working on
developing a wheel. I'm assuming then with that
request there was a plan submitted, which I think got
submitted probably to the refuge and to our fisheries
office.

My question in there, I don't know if
OSM has reviewed that plan or not, but does that plan
address hours of operation because in this analysis
there are statements made that it won't operate like a
Copper River wheel, it won't be running 24 hours a day,
seven days a week, and it's going to be stopped a lot
of times. I guess I'm just curious if the plan
actually supports that assumption.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Thank you, Mr. Chair.
Both OSM, Jerry Berg, the refuge manager, the in-season
manager of Kenai, were all involved in drafting the
conditions of the permit for the fishwheel. Just to
quickly summarize the concern that you've raised or
addressed, it's not a 24/7 type fishwheel operation.

Mr. Chair.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: Do you want to make
a motion. Gary.

MR. EDWARDS: I move that on request
for reconsideration 08-03 I move that we reject the
request given that it does look like there's adequate safeguards in place and actions will be taken that would ensure that conservation is certainly considered and that the harvest would remain within acceptable levels.

MR. PROBASCO: We need a second.

MS. MASICA: Second.

CHAIRMAN FLEAGLE: We have a second now. Thanks, Pete. Discussion.

No comments)

CHAIRMAN FLEAGLE: Ready for the question. Pete, on 08-03, please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FRFR 08-03. Mr. Oviatt.

Mr. Oviatt: Aye.

Mr. Probasco: Ms. K'eit.


Mr. Probasco: Mr. Edwards.

Mr. Edwards: Aye.

Mr. Probasco: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

Mr. Probasco: Dr. Kessler.

Dr. Kessler: Aye.

Mr. Probasco: Ms. Masica.

Ms. Masica: Aye.

Mr. Probasco: Motion carries 6-0.

CHAIRMAN FLEAGLE: Motion carries 6-0. Polly.

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Fisheries request for reconsideration 08-04 was submitted by the State of Alaska. The issue under this RFR is the Board adopted Proposal 08-11 with modification again at its December 2007 Board meeting and this proposal requested the addition of snagging to the legal methods of harvesting salmon for the Alaska Peninsula and Chignik areas. Modifications adopted by the Board allowed for capture by snagging with hand line or rod and reel and also by spear, bow and arrow, and hand capture, and to not require a permit for capture by these methods.

The Bristol Bay Subsistence Regional Advisory Council had recommended support with modification along the lines of subsequent Board action. There were two claims included in the request for reconsideration. Both of these were submitted under criteria for reviewing the claims and that is the Board’s interpretation of information, applicable law or regulation is in error or contrary to existing law.

Claim 3.1 was that Board adoption of Fisheries Proposal 08-11 is not consistent with Section .805(c) of ANILCA. Adoption of 08-11 was, quote, not needed to provide a meaningful opportunity for subsistence uses, close quote. Adoption of Proposal 08-11 is detrimental to the satisfaction of subsistence needs because it puts subsistence fishermen at risk of enforcement action if they attempt to take any fish using methods prohibited under State law while standing on non-Federal land.

Claim 3.2 was that Board adoption of 08-11 will cause conservation issues because, quote, liberal harvest limits are amplified by the fact that many fish hooked by snagging will not be landed, close quote, and others will be injured. This method of harvest should only be implemented with an associated monitoring program. Again, those are the claims contained in the request for reconsideration.

The Office of Subsistence Management threshold analysis found that there does not appear to be merit to either of these claims. The Interagency Staff recommendation is to oppose this request for reconsideration.

CHAIRMAN FLEAGLE: Thank you, again, Dr. Wheeler. I failed to welcome Ken to the table.
MR. EDWARDS: I just had a question for Keith or Ken. The State argues that by having this new method it's not needed and you can still meet subsistence needs. Just because needs can be met using other methods certainly is not a reason for rejecting new methods.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: No, it's not. Traditional methods and means are a part of the statutory intent and I recall the Board record that was the impetus behind this regulation.

CHAIRMAN FLEAGLE: Other discussion.

Park Service. Do you want to make a motion on the action? I invite you to anyway.

MS. MASICA: Mr. Chairman. The motion that I would make is to reject the request for reconsideration. The information provided does not meet any of the three threshold questions and for that reason make the motion to reject.

CHAIRMAN FLEAGLE: Is there a second.

MR. OVIATT: I'll second.

CHAIRMAN FLEAGLE: Further discussion.

(No comments)

CHAIRMAN FLEAGLE: Pete, hearing no discussion, calling for the question on 08-04. Would you please poll the Board.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FRFR 08-04. Ms. K'eit.

MS. K'EIT: Aye.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.
Mr. Probasco: Dr. Kessler.

Dr. Kessler: Aye.

Mr. Probasco: Ms. Masica.

Ms. Masica: Aye.

Mr. Probasco: Mr. Oviatt.

Mr. Oviatt: Aye.

Mr. Probasco: Motion carries 6-0.

Chairman Fleagle: Thank you, Pete. Our final FRFR for consideration at this meeting 08-05.

Dr. Wheeler.

Dr. Wheeler: Thank you, Mr. Chair. Fisheries request for reconsideration 08-05 was submitted by the State of Alaska. The issue is that at its December meeting the Board adopted Proposal 08-12 with modification. The proposal requested the addition of traditional small scale subsistence fish traps and weirs, termed fyke nets and leads in regulations, made of wooden stakes to the list of legal gear in the Kvichak/Iliamna-Lake Clark drainage. Modifications adopted by the Board provided for additional conservation controls.

The Bristol Bay Subsistence Regional Advisory Council had recommended support with modification along the lines of subsequent Board action.

There were three claims included in the request for reconsideration. All three fall under the third criteria that the Board's interpretation of existing information, applicable law or regulation is in error or contrary to existing law.

The first claim, Claim 3.1, was that Board adoption of Fisheries Proposal 08-12 is inconsistent with Section .802 of ANILCA, which requires subsistence use to be consistent with sound management principals in the conservation of healthy populations of fish and wildlife. The use of Lake Clark National Park and Preserve portion of the Bristol...
Bay region poses a threat to the health of the Kvichak River sockeye salmon run and to other fish species within the watershed.

The second claim, Claim 3.2, was that the Board's decision on Fisheries Proposal 08-12 was made contrary to Alaska State law, Alaska Statute 41.14.870, the Fishway Act, which requires a habitat permit from the Department of Natural Resources for, quote, anyone who intends to install a permanent or seasonal structure that is anchored or attached to the river bottom or within the habitat zone, close quote.

The State claims that the Department made nine references to concerns for habitat in its comments, but these concerns were not recognized, mentioned, referenced or deliberated upon throughout the entire Federal public process.

The third claim, Claim 3.3, was that Board adoption of Fisheries Proposal 08-12 is not consistent with ANILCA Section .805(c) and adoption of this regulation is detrimental to the satisfaction of subsistence needs as the regulation put subsistence fishermen at risk of enforcement action because it authorizes activities which are not legal in State regulations, quote, in waterways where there is little Federal land, close quote, as, quote, over 60 percent of the shoreline of Lake Clark is a non-Federal ownership, close quote.

The Office of Subsistence Management threshold analysis found that there does not appear to be any merit to these claims and the Interagency Staff Committee recommendation is to oppose the request for reconsideration. Thank you, Mr. Chair.

CHAIRMAN PLEAGLE: Thank you, Polly. Questions. Discussion.

(No comments)

CHAIRMAN PLEAGLE: I want to just review that Claim 3.2 for a second. I know that the bulk of the claim is based on State law, which we didn't take into consideration in our meeting, I understand that, but the second half of that claim was that the Board didn't discuss or have any discussion on the habitat issues that were raised by the Department of nine references. Would that, Keith -- I'm just
trying to find the line between new information.....

(Operator announcing Rose Fosdick has joined)

CHAIRMAN FLEAGLE: Good morning.
Welcome.

MS. FOSDICK: Thank you.

CHAIRMAN FLEAGLE: So what I'm trying to do is the line that we find where there's new information -- the interpretation of information. I'm sorry. Can you just give us your view on -- I'm sorry, I'm not asking you the question very well, but I think you understand what I mean.

MR. GOLTZ: I think so. I don't know if it's really new information. You're saying that the Board did not correctly assess the material that was in front of it the first time. I think that the legal standard is, is there enough information on the record so that you could form a reasonable conclusion that's supportable by law. The argument is, well, you weren't reasonable for all these reasons. Your counter-argument is you were for other reasons.

You can strengthen the record, I suppose, by answering every claim, but the law does not require you to go on forever and ever and keep chasing claims around the same tree. What it requires is that you have a rational discussion that's based on the evidence that leads you to a reasonable conclusion. If you're asking whether I'm concerned about that claim, I'm not. I think that the RFR analysis deals with that.

One of the things missing in this discussion is the fact that these are very extensive analyses professionally done that the Board has reviewed before and is not really part of this discussion because we know it so well. When we get it in front of a Board, all of that material will be in front of us and I think the Board's action is defensible.

CHAIRMAN FLEAGLE: Thanks for that explanation. I just wanted it on the record that we don't debate every piece of information. The Board does make decisions that are sound and defensible. I
just wanted to point that out. I think that's the
first time I've seen a claim in one of these that we
didn't adequately give consideration to a small piece
of the discussion.

Further questions. Discussion.

(No comments)

CHAIRMAN FLEAGLE: I want to welcome
you, Rose, online. Sorry, I didn't give you a proper
recognition when you signed on. We were right in the
middle of discussion. We're just wrapping up our
fisheries requests for reconsideration, the last one,
and we're not going to be taking up item number 4 on
the agenda. During the work session we determined that
those need to be discussed in executive session later.
The only other business on the agenda is to schedule
the November meeting.

If there is something you would like to
address to the Board, I have offered that opportunity
to another member of the public here. Are you
interested in that?

MS. FOSDICK: No, but thank you. I do
have a question about number 4. (Indiscernible) not
necessary to review it (indiscernible)?

CHAIRMAN FLEAGLE: We'll hold that
question for just a minute. We'll wrap up the business
on this proposal. I was just giving our board member a
chance to formulate their motion and then we'll come
back to you with the answer for that. Thanks, Rose.
Sue.

MS. FOSDICK: Thank you.

MS. MASICA: Mr. Chair. I'd like to go
ahead and make a motion on 08-05, which is to reject
the request for reconsideration. The claims were all
made that we had not correctly interpreted the
information, applicable law or regulation, and I don't
find that to have any merit and recommend that we
reject the request for reconsideration.

CHAIRMAN FLEAGLE: Thank you, Sue.

Further discussion.

MS. K'EIT: Second.
CHAIRMAN FLEAGLE: Oh, yeah. Good discussion there. Thanks. Now other discussion.

(No comments)

CHAIRMAN FLEAGLE: Are we ready for the question. All right. Pete, would you please poll the board on 08-05.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on FRFR 08-05. Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: Aye.

MR. PROBASCO: Dr. Kessler.

DR. KESSLER: Aye.

MR. PROBASCO: Ms. Masica.

MS. MASICA: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. K'eit.

MS. K'EIT: Aye.

MR. PROBASCO: Mr. Chair. Motion carries 6-0.

CHAIRMAN FLEAGLE: That concludes item number 3 on the agenda, requests for reconsideration. We do have a question, although item number 4 is not going to be taken up at this meeting, I feel that's an appropriate question and I'd like to have somebody from OSM give a response. Dr. Wheeler, please.

DR. WHEELER: Thank you, Mr. Chair. Hi, Rose. This is Polly Wheeler with OSM. The Seward Peninsula Regional Advisory Council didn't submit an annual report, which is why there's no response to review.
MR. EDWARDS: Is that an option?

DR. WHEELER: That is an option and some Councils avail themselves of it.

CHAIRMAN FLEAGLE: Did you get that, Rose?

MS. FOSDICK: Yes. Thank you for the information.

CHAIRMAN FLEAGLE: Thank you for the question and thank you for joining us. Moving on, item number 5 is to schedule a November meeting. Pete.

MR. PROBASCO: Thank you, Mr. Chair. We would like to take this opportunity for the Board to schedule a work session in November. As I mentioned in May, we started to stray away from more frequent Board work sessions. If you recall, go back in time, we were actually doing one about every two months. I think it would be wise for us to schedule one in November based on the agenda items before our Councils and various other items before our program. I think taking this opportunity with everybody here in the room would be wise.

We have looked at our calendars and suggest that possibly the first week of November, 11/2, which is a Monday, to Friday, 11/6, is wide open. The second week of November there's only three days that are open, 9th, 10th or the 12th. Then the third week the days open are the 17th or the 20th. Mr. Chair, that's what I'm seeking, is to get....

(Operator announcing Harvey Kitka has joined)

CHAIRMAN FLEAGLE: Welcome, Harvey, for joining us. We're on our agenda on item number 5 scheduling our November meeting. We have opportunity under other business if you'd like to address the Board. I'd provide that opportunity to you.

MR. KITKA: Thank you. I mostly wanted to listen and hear what was going on. Thank you.

CHAIRMAN FLEAGLE: Okay. Thank you, Harvey. Back to the meeting schedule. I know a lot of times when we try to nail down a meeting time at a
1 meeting like this a lot of people don't have their 
2 schedules available or whatnot. We can try and see 
3 where we get. Otherwise the other option would be to 
4 try to do this by email again. I can say right away 
5 the first week is not available for me, so that limits 
6 it quite a bit already.

7 MR. EDWARDS: Mr. Chairman, later, in 
8 our executive session, we're going to discuss the Board 
9 field trip that we took. After taking that trip and 
10 given what went on this year and is going on this year 
11 in the river and the civil disobedience, I think it 
12 would be very helpful and informative to the Board to 
13 both have the Service's in-season manager as well as 
14 the State in-season manager to comment and maybe sit 
15 down and discuss with the Board what took place, what 
16 actions they put into place and why and what their 
17 thoughts are.
18
19 I don't know if this is more 
20 appropriate for a public meeting, a work session or an 
21 executive session, but I think it would be very 
22 beneficial to the Board and those who were on that 
23 field trip might also agree that to hear from the folks 
24 who are actually dealing with this on a day-to-basis 
25 because it seems to me this is going to be an issue 
26 that could certainly repeat itself next year.
27
28 If we should wait until November to do 
29 that or schedule something sooner, I just think it 
30 would be very helpful, particularly if we might want to 
31 even give some thoughts of the Board maybe taking some 
32 actions and doing things different than what's done 
33 this year.
34
35 CHAIRMAN FLEAGLE: Pete.
36
37 MR. PROBASCO: Thank you, Mr. Chair. I 
38 think your suggestion is a good one, Gary. I would say 
39 knowing in-season managers both on the Federal and 
40 State side, how busy they are, and then throwing in our 
41 RAC meeting schedule in the fall, like for the Yukon 
42 area, that officially goes well into September, so that 
43 puts us right on top of the RAC meeting window, so that 
44 forces us into November, but I think that would be a 
45 wise topic to have and do it in an open work session. 
46 Mr. Chair.
47
48 CHAIRMAN FLEAGLE: I agree. Now just 
49 looking at the schedule, are we willing to try to pick
a day. I just want to remind folks of that second week available, the 11th, which is a Wednesday, is Veteran's Day, a holiday. So I don't know if that would fit people's schedules to have a meeting either one side of that or the other. Which would leave Monday or the following -- anyway. Discussion. Pete.

MR. PROBASCO: Let's put it in OSM's court here. When we go through emails and make these similar requests, we get the same thing you're discussing. We get a whole bunch of dates and then we send numerous emails out and it's very hard to nail dates down because everybody has a different schedule. If everybody could just nail us down to a couple dates and say I want to get back and check my schedule, that would be better than us trying to throw a bunch of dates out and continuously try to narrow it down in that fashion. Mr. Chair.

CHAIRMAN FLEAGLE: Thank you, Pete. Let me just throw this date out. How about Tuesday, 11/17. Tentative. If anybody has a major problem.....

DR. KESSLER: Mr. Chair. The only major conflicts that my regional forester has is that week. The others are okay.

CHAIRMAN FLEAGLE: Thursday the 12th? Okay, let's tentatively schedule that.

MR. PROBASCO: Thank you, Mr. Chair.

11/12.

CHAIRMAN FLEAGLE: All right. Under other business there is one item and Carrie Sykes would like to give a brief presentation to the Board on subsistence activities in southeast Alaska. Carrie, Dr. Wheeler is giving a seat here for you so you can speak into the microphone.

MS. SYKES: Thank you. For the record, my name is Carrie Sykes. I'm the subsistence coordinator for Tlingit-Haida Central Council. I'm a Haida. I was raised in Ketchikan by my grandmother. I grew up very traditionally. I've been involved in subsistence all my life, so subsistence is very near and dear to my heart.

I've routinely participated in Regional Advisory Council meetings and both provided reports and
I testified on proposals. I've learned a lot about subsistence issues and regulations in my work at Central Council. There's a lot of issues going on. There has also been a lot of work in southeast Alaska to try to look for solutions to these issues.

As we know, there's the Yukon River salmon protest issue. There's the issues with the Sitka herring eggs and conservation that has been trying to be addressed by the Sitka Tribe of Alaska. So those are a couple of very major concerns.

In addition, there's been some other concerns that have been brought to my attention just recently. Kasaan has issues with the commercial opening of dungeoness crab. There's a lot of issues in addition to these management issues. We are also competing with sea otters. There's been a lot of discussion in that area. The sea otters consume a lot of food, so they are depleting resources, so we've been doing some work in that area, too. We're working with the Fish and Wildlife to get on that management committee and start making some changes in that.

I want to point out when I first started in this position we sent out a subsistence ballot to all of the Federally recognized tribes in Alaska to try to identify the top concerns. Some of you are aware of these efforts. I've distributed that information to some of you. I do have that information with me today. I'll leave copies here for the Board.

I want to point out that the two top subsistence concerns from the tribal ballots were Natives on commissions and Boards and providing a voice. This is something we've been actively working on. We are right now collecting a pool of qualified Natives to possibly be seated in these different positions and that's something I'm going to be following up on.

Another concern that has been brought up is the Federal Subsistence Board taking State of Alaska positions. This is an ongoing concern that I think we should provide more tribal consultation to get that voice into the process. With some decisions that have happened between the RAC and the Federal Subsistence Board, it's the feeling of some of the tribes that there is a break in the process. They believe that the RAC is a forum for public involvement.
and local input on subsistence issues.

Just for the record, I have been working with a subsistence workgroup. We had our first initial meeting and that's where some of these additional concerns have been raised. That is a very big concern for them, is that they want to make sure that the public involvement process is there.

They have concerns about RAC meetings being held in communities where Alaska Airlines flies. They think that they need to have these meetings in the rural communities where you have the high use subsistence harvesters. They also have concerns about the RAC getting due deference.

So those are pretty major concerns. We hope to work more with those processes to address those concerns. Another one too is the criteria for determining whether a community is rural or urban. You know about the Saxman decision. There was quite a bit of concern over that. I talked with Saxman and I know these people. I grew up in Ketchikan. So it's really upsetting to them about that determination. A suggestion from my workgroup is that that criteria be revisited to make sure that it's working for our communities where there's high subsistence use.

I've been working with several areas. With my efforts in southeast, I've been doing a lot of subsistence education outreach. I've been noticing that the Native people don't know enough about the regulations. There's a lot of confusion among the harvesters between the two jurisdictions, so I've really been doing a lot of education and trying to get more people to be involved. While they're not understanding the process, regulations are happening around them and then they find out afterwards and sometimes it ends up with a citation because they don't know. So I'm really working to educate people, our tribal people, so they know what is happening in two jurisdictions.

Another concern that was raised by the working group was the requests for reconsideration. They feel like the Regional Advisory Councils should be able to submit these requests also to have an equal standing. One other area that they've raised is they'd like to have more coordination among the RACs. I guess there used to be meetings prior to the Federal...
Subsistence meetings, but there was an issue with the Federal Advisory Council requirements. There was a suggestion that they could have those meetings, which is publicize the notice of those meetings in the Federal Register.

One last very big concern was the MOU that was signed between the Federal Subsistence Board and the State of Alaska. There were objections by AFN and also Central Council. A major issue was the lack of review by the Regional Advisory Councils. I think that was an area where there could have been more coordination and input at the Regional Advisory Council and local level. So that was an area where there was really concern.

There are a lot of issues and there's really been a decline in the push for subsistence rights and it's really upsetting. Like I said, regulations are happening around us. One of the Tlingit elders in Juneau, June Pease, stated that -- well, what happened is her doctor had recommended that she eat more traditional foods and she said that she didn't have access and that foods were being regulated out of their mouth.

So there's a real concern particularly in the urban areas where they don't have as many subsistence rights. There's not the opportunity for them to continue their traditional ways. I know adult people who don't know how to filet a fish. Native people. They don't get the opportunity. In Juneau, you end up buying fish. That's really taking away from our traditional ways and how we taught our future generations how to subsist. It's a major part of our traditional culture.

In addition, there's really a lot of health benefits from eating traditional foods, like I mentioned before. So I've been really working hard to try to educate more people. I have presented at the Central Council's southeast environmental conference and that was where I first kind of informally polled the group and asked them how many of you know about ANILCA? The lack of response was really upsetting to me. They don't understand the process and they're working in environmental programs which are very closely related to subsistence activities and whether there's going to be a resource to harvest. So I was very concerned about that.
After that conference I went and spoke at the National Native Fish and Wildlife Society and did a similar presentation. There were some other tribes from around the state that were very grateful for the overview. Basically I'm doing an overview of the State and Federal processes, talking about my activities and giving a report on the different issues or different projects that are going on. But there's really a need to educate more people. I really am finding that there's a break there. People are not paying attention of what regulations are happening.

In addition to those people, I also went to our own executive council and did the same presentation and also to our managers, so I've really been trying to educate more people. I was just down on Prince of Wales and I did a similar presentation in Hydaburg and I just did one in Kake.

So I'm trying to generate more interest and get more people involved so they can know about the processes, when they happen, when decisions are made so that they can provide comment and get some input into the process.

It's been a disappointment to me to see that Native people don't know. I have to admit before I started this job I knew there was ANILCA, I knew there was Title VIII, and there was the issue with the jurisdictions, so I knew about it, but I didn't know how the process worked myself. So I've had to do a lot of learning and I'm really trying to educate people about that.

In any case, people are not getting their subsistence needs met, especially in villages, a real economic disadvantages. This last year I had the opportunity to do two presentations. We called them Heat or Eat and I think all of you have heard about the dilemma with energy. Last winter we had a summit and was asked to do this talk because people were having to decide whether they were going to buy heating fuel or were they going to take a chance and get some gas in the boat and hope that they get some subsistence foods.

I did the same presentation at the BIA Providers Conference and there was a lot of people in the room when I did that presentation. There's really a lot of interest in what can be done so they can try
to address these issues and still be able to get their
subsistence foods.

Another thing too is there's a lack of
resources for the tribes to be able to effect a change
in the subsistence regulation arena. So I'm trying to
address a lot of issues. It was really upsetting to me
too just before I came to this meeting I got a phone
call from Klawock and a lady was telling me that
there's been some really heavy-handed law enforcement
on subsistence.

When I was in Prince of Wales just
recently, I was sitting down to eat breakfast and I was
reading the newspaper and I noticed that there was a
lot of citations during subsistence. Of course, some
of them were for people who didn't have their proper
permit, but others were failing to record the number
fast enough. I heard about them being cited for failure
to remove the fin. I'm getting upset that this is a
little heavy-handed.

I'm wondering whether some of this
might be a result of the action on the Yukon River.
I'm not sure. But this is really upsetting. The lady
who called me from Klawock was really upset. She said
these people are just trying to get their fish. She
said they got 78 percent of the people in their
community that live below the poverty level. So this
is really upsetting when they don't have money and then
they can't get their fish. So there's real concern.

We've had a lot of out-migration from
communities. Like Kake has really been struggling.
Their population has really gone down and it's going to
start affecting their numbers in their school. A lot
of different impacts. There's really going to be a
snowball effect as far as those communities.

So there's lots of issues, but I don't
want to just come with issues. I want to offer
solutions. That's been a big thing about the
workgroup. I want people to get educated and learn to
work within the two systems and look for solutions. I
want to emphasize that Central Council can be a
resource. We are a regionally Federally recognized
tribe. We represent almost 27,000 members, so we have
a large tribal membership.

I did complete research about
subsistence and I've learned a lot about the process and I'm doing this education. In addition to that we have a lot of historical experience. One person that's on my subsistence workgroup is Harold Martin and he's been involved -- most of you probably know Harold. He's been involved for years.

My subsistence workgroup are volunteers. Right now I am looking to try to find some funding so that we can have regular meetings and discuss current issues and try to provide some valuable input. So that's a work in progress and hopefully I'll be able to get funding and get that workgroup meeting regularly to try to discuss these issues.

I was very pleased by my first initial meeting which was held June 30th. There was a lot of concern, like I just mentioned, that were raised. They have a lot of solutions that they want to work on and I think if we can start discussing these issues in the workgroup that maybe we can come up with some proposals or offerings.

We're looking for subsistence advocacy through government to government relationships. We've had quite a bit of success with the Forest Service. You've probably heard about the acknowledgment ceremony that we did in 2008 about the removal of smokehouses from Forest Service lands. We're really hopeful that we can foster better government to government relationships in this area and that other agencies can develop similar relationships with us.

We've talked with the Fish and Wildlife Service about this, our sea otter, and we met with Pete and Carl at one point. So this is something that we really want to foster. I think the government to government relationship is a strong area to promote collaboration in working together.

Another good thing that came of that acknowledgement ceremony was that the experimental forest and it's going to be looking towards incorporating traditional ecological knowledge. So those areas are very encouraging and I applaud the Forest Service for those developments. But we want to look for similar relationships with other Federal agencies and with the State too. We have a lot of work to do. We're very hopeful. There's a lot of changes going on, as everybody knows. We want to make those
changes big changes.

With the Obama administration, I spoke with Senator Begich at the Alaska Native Issues Forum on July 2nd. He advised that I contact Kim Elton's office with his new position as director of Alaska Affairs with the Department of Interior. I've made that initial contact and expect to be working with them too to talk about subsistence issues. There's a lot of things going on. You've all heard about Niles Cesar being reassigned. His seat at this Board is very important. We want to make sure we get a strong subsistence advocate in that position, someone that understands Alaska subsistence issues since they are so complicated.

Anyway, there's a lot of possibilities. We're looking for possible appointments. Like I said, I've been identifying people who could sit on different commissions and Boards and I'm going to be getting that information to the senator and to Kim Elton's office too.

We really want to be proactive instead of reactive. There's always so many issues and it seems like we're always reacting, so we're trying to look for solutions to be a part of the process so we can make sure that our Native people are getting their subsistence foods and giving input into the system.

I just would like to offer that Central Council is a resource and we really would like to work collaboratively to make improvements. Thank you.

CHAIRMAN FLEAGLE: Thank you, Carrie. We appreciate those comments. As you state, we have heard many of those concerns that you started out with before many times and I know that we and the OSM Staff and on the Board level are doing everything we can to at least reverse what we feel may be characterizations of the Board process. Other issues that you raised in your statement, we're aware of the concerns.

I'm not sure that we have the magic tool to just say, okay, we're going to change this or change that process or change that perception is the word I was looking for earlier. We're certainly aware of them and are working to become better at being more informative and getting information out and being more cooperative with as many organizations as we can.
A lot of the issues you raised have been addressed through legal means and legal opinions and stuff that we don't have any authority over, such as the rural determination thresholds. We don't set those numbers. We abide by them, but we don't set them. Other issues like that. We've certainly batted these around and hopefully with your input we can come to at least some understanding when we're faced with the law as it is, that when given the choice between complying with the law or not, I at least tend to try to comply with the law. That's why we're here. I appreciate the comments.

MS. SYKES: Thank you, Mr. Chair. I realize there's no magic fix for everything. These issues have been ongoing for quite some time. The Native people really do need to get their fish and there are so many impediments to them right now. The cost of fuel and access.

Like in Kake, that was one thing I forgot to mention, they were telling me that they have to go like 50 miles to get their fish and they have to go across some pretty rough waters. This summer they said that they were notified that they were only going to be able to get 25 fish instead of 50 and they didn't have any prior notification of that change. They are really upset that they're only going to get half the fish they normally get.

There's lots of issues and I understand that. I really think that we all need to work together to make sure our Native people are getting their subsistence food that's so important to them.

CHAIRMAN FLEAGLE: Thank you. Question, comments, Board members.

(No comments)

CHAIRMAN FLEAGLE: All right. Thank you. Appreciate you taking the time to come sit in the meeting.

DR. KESSLER: Mr. Chair. I'm sorry. I tried to get your attention when we were dealing with the scheduling and I wasn't assertive enough. I had a question. Since we were scheduling that in November, it brought to mind that I think our MOU with the State specifies a meeting every year, is that right, and if
so, do we need to be talking about that because those that have to travel for these meetings it's helpful if we can kind of combine them. Is that a requirement?

I'm trying to remember.

MR. PROBASCO: I'm not sure if you'd call it a requirement, Dr. Kessler, but it's encouraged. I'm not sure if Mr. Bedford has talked to Commissioner Lloyd on that yet, but I know Tina has mentioned that to me and I think it would be wise to try to find some time that we can do that.

CHAIRMAN FLEAGLE: David.

MR. BEDFORD: Well, in the spirit of great minds thinking alike, I was waiting for an opportunity to bring up the same subject. We think it would be a good idea to have a meeting of the signatories. To the extent that we can try to dovetail that with other Federal meetings that that would be a more efficient way to go about it. So we would encourage consideration of some time in November that would be coincide with the Federal meeting.

Now, that said, I haven't looked at my boss's calendar. I recommend that you move ahead in your own process and we would have to touch base at a later point to make sure that it would be possible to have an MOU meeting consistent with the Federal Subsistence Board meeting.

CHAIRMAN FLEAGLE: Thank you. I appreciate you bringing that up. I know that it was our intent to keep that document alive and available for review and that was partly -- I shouldn't say it was in response to similar concerns like Carrie just raised, but it was an answer to some of those concerns that this thing wasn't nailed down hard. It was going to be a document that was going to have reviews. I agree, I think I did hear that we somewhat committed to an annual review. That's a good point. Let's see if we can accommodate that.

Other business.

(No comments)

CHAIRMAN FLEAGLE: Motion for adjournment.

MR. OVIATT: So moved.
MS. MASICA: Second.

CHAIRMAN FLEAGLE: Thank you. We're adjourned.

(Off record)

(END OF PROCEEDINGS)
CERTIFICATE

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STATE OF ALASKA

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Salena A. Hile
Notary Public, State of Alaska
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