FEDERAL SUBSISTENCE BOARD

WORK SESSION

VOLUME I

U.S. FISH AND WILDLIFE SERVICE
GORDON WATSON CONFERENCE ROOM

NOVEMBER 16, 2006
10:00 o'clock a.m.

MEMBERS PRESENT:

MIKE FLEAGLE, CHAIR
NILES CESAR, Bureau of Indian Affairs
GARY EDWARDS, U.S. Fish and Wildlife Service
JUDY GOTTLIEB, National Park Service
WINI KESSLER, U.S. Forest Service
GEORGE OVIATT, Bureau of Land Management
SARAH GILBERTSON, State of Alaska Representative
KEITH GOLTZ, Solicitor's Office
KEN LORD, Solicitor's Office

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CHAIRMAN FLEAGLE: Good morning. It's November 16th. The Federal Subsistence Board work session will be called to order and can we get a roll call, Pete, please.

MR. PROBASCO: Yes, good morning, Mr. Chair. Roll call for Board members. I'll start, good morning, Mr. Bedford, State of Alaska. Go ahead.

MR. OVIATT: George Oviatt, Bureau of Land Management.

MR. KESSLER: Good morning. Steve Kessler with the Forest Service. And I'll be just sitting in for a short period of time. Wini Kessler, who will be acting as our Board member for Denny Bschor will be here shortly. Her flight was supposed to land from Juneau at 9:59, so we'll be trading out pretty quickly.


MR. PROBASCO: I'm Pete Probasco, acting Assistant Regional Director for OSM.

CHAIRMAN FLEAGLE: Mike Fleagle, Chairman.

MS. GOTTLIEB: Judy Gottlieb representing National Park Service.

MR. CESAR: Niles Cesar with the Bureau of Indian Affairs.

CHAIRMAN FLEAGLE: Okay, it looks like we have all six seats filled, a quorum is established. And we have an agenda before us that has been proposed to be modified by the Staff and the Chair just to fit some concerns that people probably have as far as travel from the Kenai so we decided that it would probably be in the best interest to juggle the agenda a bit to allow the Kenai issues to come up first.

And with that, if you look at the
1 proposed agenda, we propose to take up Item 5, which is
2 the Special Action request on Tustumena Lake fishery
3 first.

4 After that would be the Item No. 2 which
5 is the Kenai Peninsula Subsistence Region.

6 Next will be Item 4, which is the RFR
7 0602/03/08 which is the Kenai River customary and
8 traditional request for reconsideration.
9
10 No. 4 would be No. 3, the RFR for
11 Gustavus C&T.
12
13 Pete, did you have anything you wanted to
14 add?
15
16 MR. PROBASCO: Just, Mr. Chair, when we
17 reviewed the agenda, we were discussing it yesterday, it
18 became quite evident that the issues that we're dealing
19 with have the probability of taking some time and to
20 adjust for that time we have this meeting room all day
21 and into the evening, if necessary, and as a back up we
22 have it for tomorrow, until noon only. So we felt that
23 if we, did, indeed, run out of time, it would be in the
24 Board's best interest to first deal with the Kenai
25 issues, hopefully get through them and if we had to
26 reschedule any item, it'd be easier to reschedule
27 Southeast versus a portion of the Kenai issue.
28
29 Mr. Chair.
30
31 CHAIRMAN FLEAGLE: Thank you, Pete.
32 Board members, is there any objection to modifying the
33 agenda as suggested?
34
35 (No comments)
36
37 CHAIRMAN FLEAGLE: All right, hearing
38 none, that's how we'll proceed then.
39
40 First of all, the first item on the
41 agenda then is to review the agenda, which we just did
42 and information exchange, and just briefly, real quickly,
43 we do intend to allow public testimony. As you see,
44 we're already receiving sign ups. These are available in
45 the back, fill one out and we'll be going down the list
46 in the order that they're received. And consulting with
47 Staff, it's apparent that there's probably going to be a
48 lot of interest at this meeting so we will put a time
limit on testimony and that time limit, I think, will be five minutes, which probably should be adequate for discussion on the issues. We'll be doing testimony before we take up any of the items, so, you know, a person could come up and testify on any issue or all of the issues if you want to, and we'll do that as soon as we finish information exchange.

Board members, any information exchange items.

(No comments)

CHAIRMAN FLEAGLE: Boy, it looks like we're ready to get to work. I want to just welcome everybody for coming to the meeting and appreciate your participation in the process and I think we have a few announcements as far as restrooms. They're down the hall to the left, just right down the hall.

MR. PROBASCO: Twenty feet or so.

CHAIRMAN FLEAGLE: Twenty feet or so.

And then Pete, do you have some announcements as far as eating establishments and stuff like that.

MR. PROBASCO: Yes. Whenever you take a call for lunch, Mr. Chair, there are some restaurants that are fairly close that you can go to during our lunch break. You can just walk through the parking lot heading towards Tudor, there's a Kentucky Fried Chicken. Over at the Saddler's Mall, there's a restaurant in there. And then across the street, kitty-corner across the street there's New Sagaya's and there's multiple restaurants in there. So there are eating facilities close by.

And, Mr. Chair, if I may, I just wanted to add to what you said about public testimony. The gentleman in the corner, Theo, Theo will provide you with the testimony request forms. And if I'm understanding that you're going to do testimony before we get into the issues so this will be your opportunity to testify.

CHAIRMAN FLEAGLE: Okay. I guess there's one way or another to do this and I understand that we can take testimony on each individual issue as it comes before the Board or just establish -- I don't know that it's been done, but could establish testimony -- Gary.

MR. EDWARDS: Mr. Chairman. I mean my
preference would be that the testimony could accompany
the particular item. I think that, at least from my
perspective, would provide a better opportunity to ask
questions and all.

CHAIRMAN FLEAGLE: Oh, okay.

MR. EDWARDS: And otherwise I might
forget what people say if they do it all at the start.

CHAIRMAN FLEAGLE: I think we provided
you with a tablet there, Gary.

(Laughter)

CHAIRMAN FLEAGLE: That's fine with me.
I just hadn't encountered that before. All right, so
it's my understanding then what we'll do is take up,
first of all, Item No. 5 on the agenda, have the Staff
analysis and then public testimony.

MR. PROBASCO: That's how I would
recommend doing it, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, Pete, we'll do
that, for each individual issue. So then how do we.....

MS. GOTTLIEB: We'll separate those out.

CHAIRMAN FLEAGLE: Okay. It sounds like
you guys have done this before, I haven't.

MR. PROBASCO: Yeah.

CHAIRMAN FLEAGLE: I apologize. We'll
make this thing work as well as we can for everybody.

MR. PROBASCO: Okay. And to help the
Board and me, particularly, when you fill out your green
form, there's a list there, it says agenda items you'd
like to speak to, please identify those and just fill out
one card. If you're going to speak to multiple issues, I
will circle it and then just put it back in the pile.

CHAIRMAN FLEAGLE: Okay.

MR. PROBASCO: So please do that, thank
you.

CHAIRMAN FLEAGLE: Other items for
information exchange.

(No comments)

CHAIRMAN FLEAGLE: I guess not. Yes.

MR. KLEIN: Mr. Chair. We have about 10 people on line. I wanted to just verify that they're hearing okay. So, Vince, are you picking all this up okay?

MR. MATHEWS: Yes. It's good.

CHAIRMAN FLEAGLE: We're good to go.

UNIDENTIFIED VOICE: You're coming in loud and clear.

CHAIRMAN FLEAGLE: All right, thank you.

With that then let's go ahead and take up the first item on our agenda, which is now Item 5, FSA06-01b. Pete, would you like to head off with the Staff analysis portion.

MR. PROBASCO: Yes, Mr. Chairman. I'm going to turn the mic over to Doug McBride, he's the lead on this analysis and he will provide the information to the Board.

CHAIRMAN FLEAGLE: Good morning, Doug.

MR. MCBRIDE: Good morning, Mr. Chairman.

Members of the Board. My name is Doug McBride. I'm a fishery biologist with the Office of Subsistence Management, Fishery Information Services. And what I'll be doing this morning is summarizing the analysis. It's contained in this document dated November 1, 2006, Staff analysis, Request for Temporary Fisheries Special Action FSA06-01b.

Mr. Chairman. When I go through this what I would like to do is first of all just briefly summarize what was requested, the request for special action. Then -- and I'll be following through this document but I'm going to skip over the regulatory part of it and get then into the analysis of the regulatory history and the biological background, and then I'll end the presentation by coming back to the proposed regulation because there's a bunch of specifics in the proposed regulations that you can see, hopefully you'll
be able to see why we have the specifics in there that are there, and where those specifics in the regulatory language come from.

Mr. Chairman. In terms of the special action that was received, and that's pretty much summarized in the discussion in the middle of Page 1 of that analysis, we received a request for a temporary special action from the Ninilchik Traditional Council back in August of this year. And that request actually came in two parts. The first part was a request for a coho fishery on the Kasilof River, the Board deliberated on that in early September and that's not the subject of what we're doing here today. The second part of that request was a request for a temporary special action for a winter gillnet fishery and then subsequently that was clarified to also include a jig fishery, so basically a line fishery through the ice. And in that request there really were no specifics for the fishery except that the proponent stated that they wanted to work out the specifics with Staff, and so we have met with the proponents and the proposed regulation that you see in front of you, which is what we presented to the Southcentral Council, was worked out in consultation with the proponents.

Moving now into the analysis. If you turn the page, the second page is the map of the Federal waters in question. And, again, this is a request for a fishery specifically in Tustumena Lake, so if you look at the map you can see that the Federal land in question is the Kenai National Wildlife Refuge and the boundaries of that encompass the entirety of Tustumena Lake and actually the upper seven miles of the Kasilof River, but the subject of this request and of this proposal are just the waters of Tustumena Lake, it does not include the flowing waters of the Kasilof River, nor does it include the tributaries that enter into Tustumena Lake, so it's just the body of Tustumena Lake.

I'm now going to skip ahead in the analysis to Page 4 and just very briefly touch on the customary and traditional use determination. This is the regulatory guidance of who then would get to participate in this proposal and as I'm sure you all remember, in January, you conducted or deliberated on customary and traditional use determinations and it's very straightforward for this drainage, there's only one community that has a positive C&T finding for the Kasilof and that is the community of Ninilchik. So this fishery
would be pertinent only to the community of Ninilchik.

Mr. Chairman. I'm now going to go into, just very briefly, the regulatory history, that begins on the bottom part of Page 4 and I'm just going to touch on a couple of points. In terms of contemporary State fisheries that are in place for these species, and since this is a winter fishery this is not about salmon, this is completely about resident species, specifically rainbow trout, lake trout, and Dolly Varden. In terms of contemporary State fisheries, the only opportunity that exists are State sportfisheries for these waters.

We spent some time in the analysis, at least, summarizing other contemporary State fisheries, particularly the personal use fishery down in the marine waters, and at the mouth of the Kasilof River and the educational fisheries that are available to Ninilchik, and unless you have questions about those I'm not going to cover those, and the reason for that is all of those fisheries are completely about salmon. They only cover salmon, they do not cover these resident species in question.

If you go to the middle of Page 5, I will spend just a minute talking about the Federal subsistence fisheries, and this provides basically within this system, within the Federal system, the regulatory backdrop for this request. And there's really three timeframes to think about in terms of the Federal subsistence fishing regulations dating back to 1999 through 2001, the early days of this program as it relates to fisheries. The program, in general, was largely adopting existing State regulations, but for the waters of the Kasilof River and the Kenai Peninsula there were no State sportfisheries, there was nothing to adopt. So during this timeframe the Board did not make a C&T determination for these waters, so that meant that any subsistence fishing was open to all rural residents, but there, for all practical purposes, were no regulations for take during this timeframe.

Then the second timeframe basically starts in 2002. And in 2002 this program did receive proposals, both for customary and traditional use determinations for Kenai Peninsula and proposals for take. And the Board, at that time, recognized that there were some very unique circumstances trying to deal with the Kenai Peninsula, and so all of those proposals were deferred pending collection of information, which we
subsequently pursued with the Alaska Department of Fish and Game, Subsistence Division. I think you're all very familiar with what we call the Fall Report, but that was a report looking at subsistence harvest use patterns for present day rural residents on the Kenai Peninsula. And then the other action that the Board took at that time was they created an interim, what they described as an interim subsistence fishery, and so that fishery mirrored State sportfishing regulations so that fishery was put in place in 2002 and exists to this day. And that fishery in the absence of a C&T determination was available to all rural residents.

And then the third timeframe then basically is this calendar year. In January we had the requested information, you made the customary and traditional use determination that we talked about just previous, and so Ninilchik does have a C&T use finding for these waters, but there were no active proposals for take, for harvest, if you will, for the Board at that time. And so the first time a regulatory proposal came up for harvest was this special action.

Mr. Chairman. What I'd now like to do is then summarize the biological background and harvest history. That begins at the bottom of Page 5. And what we know about the fish species in the waters of Tustumena Lake, it's really a tale of two stories, if you will, there's sockeye salmon which we actually have very good estimates of abundance and timing, that comes from the Alaska Department of Fish and Game, there's a sonar counter on the Kasilof River. So we know a fair amount about sockeye salmon in these waters. But about all the remaining species we know very, very little.

In terms of the species in question, there have been some dated inventory type studies where the U.S. Fish and Wildlife Service looked at what we call relative abundance. They're not estimates of absolute abundance but how they look at how the various fish species relate in abundance to each other and the results of those studies show that Dolly Varden are most likely the most abundant resident species in the lake, and then there are lesser numbers of lake trout and rainbow trout, which are the three species in question here.

As a winter fishery, none of those species spawn in the winter, per se, lake trout and Dolly Varden, they're fall spawners, rainbow trout are spring spawners, so they would be outside, largely of the ice
covered period, however, it is likely that these species
do congregate in the winter, probably off of tributary
and river mouths to feed, so there are very likely
feeding and overwintering concentrations near other, you
know, sources of flowing waters in the lake.

The other thing we know about these
species is, in general, they cannot withstand a lot of
exploitation, certainly not the levels of exploitation
that are commonly applied to salmon populations in the
state. All these species have complex age structures.
They generally are long lived, slow growing. They have,
usually, a prolonged, usually on the order of four to six
years until age of recruitment and that means is age
until they spawn, age until they would recruit to the
fishery, so in general, exploitation on these species is
low and there is reason to be cautious on these species,
particularly for lake trout. There's a very well
documented history of over exploitation in other parts of
the state, particularly the Copper drainage and the
Tanana drainage and the Upper Susitna drainage.

What we do know specific about these
species in this drainage and now, Mr. Chairman, I'm
referring to Table 1 which goes on Pages 7 and 8 of the
analysis, there is a fairly long history of sportfishing
in the waters of Tustumena Lake, and that's what's
summarized here. And what we know about that fishery is
that it's small. And what you see in Table 1 is
estimates of sport harvest by year. Well, let me
actually start at the beginning of the table. By year,
and that's in the far left column. We have annual
estimates of effort, that's what that angler days fished
is. And then we have estimates of harvest and catch.
Catch is both harvest and release, that's all by species.
These data come from the Alaska Department of Fish and
Game, Sportfish Division. These are estimates that come
from what they call their postal survey or statewide
harvest survey, and so these are surveys of licensed
anglers, asking about, you know, where they fished and
how many fish they caught and harvested on an annual
basis. It's a longstanding program. You can see that
the data here dates back over 20 years. And there's
several things we can glean out of this information.

First of all, by any measure in the state
of Alaska, this is a small sportfishery. Those angler
days of effort, those are small numbers in comparison to
other, larger fisheries around the state, and
particularly on the Kenai Peninsula. The other thing
that we see here if you look at the species in question, rainbow trout, and lake trout are on the far right of Page 7 and Dolly Varden are the first column on Page 8, is that the harvest for all of these species has been sustained over a 20 year period of time in generally the low hundreds of fish. The catch, obviously, is a little bit more than that. And, again, that catch includes both harvest and released fish. But the way we looked at this information is that this fishery has shown itself to be sustainable, even with a lack of very specific stock status information and the harvest bounces around. There's on clear trend in any of these data, the harvest just bounces around in the low hundreds. And we used this information to get what we call sustainable harvest, total harvest quotas and you'll see that when I get into the specifics on the regulations. But that's where those harvest quotas come from, is the demonstrated performance history of the sportfishery.

Mr. Chairman. I'm going to finish my presentation now by going back to the proposed regulatory language for the -- or the proposed regulation for this fishery that starts in the middle of Page 3. And if you look at the language that's there, you go down to where things start happening in bold, and so the proposal now as we modified it in conjunction with the proponents is as follows:

We support the proposal to have a winter gillnet and jig fishery in the waters of Tustumena Lake.

And if you look in paragraph A, the total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden. Those numbers come from the performance history, the sportfishery that we just talked about in Table 1. Those would be the total harvest quota as proposed by Staff for this fishery.

A1. You may only harvest fish under the ice.

And it just specifies that this is only about the waters of Tustumena Lake. It does not include the Kasilof River nor does it include the tributaries that enter into the lake, and it also closes the lake waters within a quarter mile of those flowing waters, and that comes from the likelihood that there are concentrations in the winter near those locations.
You would need a permit to fish this fishery, that's in A2. That would be issued by the Federal fisheries manager, which is Mr. Gary Sonnevil, with the U.S. Fish and Wildlife Service in Soldotna. And since this is a temporary special action it would only be for this winter. This is not a permanent regulation, it would only be for the winter of 2006/2007.

Paragraph A3 talks about timely harvest reporting. Staff certainly recognize that that harvest quota, the 200, 200, 500 by species, I mean those are very finite numbers and that we would need to know on a very timely basis what's going on in this fishery. As originally proposed, we had a 24 hour reporting requirement. What that means is that anybody engaged in this fishery would be fishing their net and then once they leave the fishing site, they would be required to report to the Federal manager within 24 hours. You're going to hear later, there certainly was discussion with the Council and with the proponent that a longer reporting time might be desirable and certainly from Staff's perspective, what we need is timely reporting harvest, it doesn't have to be 24 hours. I think you're going to hear 72 hours and that would certainly be timely in our opinion.

A4 states that the gillnets must be checked at least once every 48 hours. There's a fair amount of time and effort that's going to go into setting gillnets under the ice, and so there's a soak time associated with that, but what this requires is the fishers to check that net at least every 48 hours. They can leave the net in longer than that but they have to check it at least every two days.

Then A5 is about marking the gear. I think that's very straightforward.

A6 talks about incidentally caught fish. We have harvest quotas for those three species. Obviously any fish that gets caught in a gillnet, comes through the ice, release of that fish is not likely. We don't anticipate a lot of other species. There may catches of whitefish in particular, but during the time of year this fishery is being prosecuted, salmon and steelhead should not be an issue.

A7 talks about regulations that are actually specific to the Kenai National Wildlife Refuge. And as proposed here we've got that as a regulation, that
could also be handled as a permit condition.

And then finally A8 talks about filling out the permit and making sure that that's returned to the Federal manager.

Mr. Chairman. That concludes my presentation, and I would be happy to answer any questions.

CHAIRMAN FLEAGLE: Thank you, Doug. I'd like to welcome Wini Kessler to the table, appreciate you being able to attend. And with that, do we have questions from Board members for the presentation Doug just gave?

MR. EDWARDS: Mr. Chairman, I just have a couple.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Doug. Do we have -- I know there was limits set for each of the species, but is there any kind of projection whether we anticipate this to be a successful fishery or not? Certainly we don't know what the level of participation would be but assuming there will be participation, do we think folks will be successful?

MR. MCBRIDE: Mr. Chairman. I presume if gillnets get set, I mean, some fish will get caught. I don't know that we have a real clear idea how successful they'll be. I mean this activity hasn't happened in a very long time. But I would certainly anticipate if nets are set that there will be certainly some harvest.

MR. EDWARDS: Okay. And then one other question. Given that this is an ice fishery, obviously it's tied to the ice, what kind of historical period will this run from, do we have any idea there?

MR. MCBRIDE: Mr. Chairman. I don't know if Kenai National Wildlife Refuge Staff are here, they could probably answer that better. But I do know that, I mean, the winters here have been variable. I mean as things are going right now, I would anticipate a fairly long ice season if this weather pattern holds. But, you know, I mean things can warm up. But that's the whole reason for those Refuge regulations that were in A7, that's all about the Refuge looking at ice conditions and
it's more of a safety kind of thing.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, thanks for the report. At this time we're prepared to take testimony from the public on the issue, and we only have two at this time. I don't see any reason to set a time limit then.

MR. PROBASCO: Okay.

CHAIRMAN FLEAGLE: Okay. We've got two testifiers on this issue. First up is David Case.

MR. CASE: I waive my testimony. I'm not going to testify.

CHAIRMAN FLEAGLE: All right, Dave doesn't want to testify on this issue. And we have Mayor John Williams.

MAYOR WILLIAMS: Thank you, Mr. Chairman. Members of the Board. I do have with me my special assistant, Mr. Popp, who may be called upon for advice during the discussion period.

Let me say that I'm not here to testify in a major manner with regards to the materials and studies that have been made, although I do applaud the effort of the agencies in their effort to do that. I'm here more to talk about the merit and excuse me if I mix the two issues, the merit of the RAC, as well as the merit of the Tustumena Lake fishery, and I do that -- it kind of caught me off guard by reversing the order of the testimony that we'll be doing, so I'll try to limit it to the Tustumena Lake fishery itself. But I have to kind of blend the thought of the RAC in with it.

It seems as though that if there truly is merit in forming the RAC, which many of us believe there are -- there is, then it would also seem to follow that decisions of a major nature of this sort that are perceived to be the -- in the purview of the RAC should be left until that RAC was formed. Now, there are many people here to talk about the issue of whether the RAC should be formed or not, but we'll leave that until the next.
I recently wrote a letter regarding the fishery itself, and I will just read an excerpt from that letter for the record, and I believe Mr. Fleagle that you do have a copy of this letter.

I'm writing to you today in opposition to the proposed winter subsistence fishery in the Tustumena Lake area. As well as any proposed boundary changes to areas designated rural within the Kenai Peninsula Borough that will be under consideration at the November 16th meeting.

There again that blends the RAC back in with it.

Now, I want it clearly understand -- and I state this unequivocally in the letter.

I do not offer these objections based on the proposals themselves.

We're not looking at the veracity of the proposal or whether they're good or bad.

Rather, I believe that it is premature and inappropriate for the Federal Subsistence Board to approve any proposals related to subsistence activities within the Kenai Peninsula Borough until the proposal to form the Kenai Peninsula Subsistence Rural Advisory Council is fully addressed by the Federal Subsistence Board.

I realize that you're under a time constraint for this winter's fishery but then again, you know, time is a matter of nature.

So I would very much appreciate your full consideration in the delay of these decisions until the more important decision is made, and that's whether or not to form the RAC in which the local citizens and the local experts in this area have the opportunity to review it.

Thank you.
And I'll have questions.

CHAIRMAN FLEAGLE: Thank you. Questions.

Thank you. I should just leave that on.

(Laughter)

CHAIRMAN FLEAGLE: Questions, Board members.

(No comments)

CHAIRMAN FLEAGLE: All right, thank you for the testimony.

MAYOR WILLIAMS: Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Ricky Gease.

MR. GEASE: Hi. My name is Ricky Gease. I'm the executive director of Kenai River Sportfishing Association and I've been in that position for about three years. I've lived on the Kenai Peninsula for about 15 years. I came to the Peninsula as a Park Ranger with the Kenai Fjords National Park and after that I moved -- was the museum manager and executive director of the Kenai Visitor's and Cultural Center, so I've been on the Peninsula a long time.

Just two concerns. If you do do this fishery, I know in other Federal fisheries, when you have the use of nets and you're looking at harvest limits, caps on species. If you catch 200 lake trout and you haven't caught 500 Dolly Varden, the question is does the fishery close at that point, and I think that's a -- typically in other Federal fisheries, when you reach the limit on one of the species, the fishery closes.

So I would suggest that you followed the lead in other Federal fisheries in following that.

Just one of the concerns with integrating in a net fishery, which is indiscriminate with age, sex and length of a fish, is that, the State has spent a very long time on the issue on their wild trout policy where they do try to integrate in the wild trout. A policy that has how many fish over 20 inches you can keep and how many fish under 20 inches, it has to do with the sustainability of the fisheries. And one other thing, when you're looking at the data there, in terms of
harvest and catch, a lot of the fish, if you look at lake
tROUT, on the different years, a lot of the fish may have
been released in guidance in following of that wild trout
policy. And with a gillnet fishery you're not
necessarily -- there's no option really to -- the fish
will be dead basically, so there's no real option to do a
catch and release on something in accordance with the
wild trout policy. So that would be a concern, you know,
relying on gillnets in fisheries where there are size
concerns.

CHAIRMAN FLEAGLE: All right, questions.

(No comments)

CHAIRMAN FLEAGLE: Thank you. Is that
it?

MR. PROBASCO: Mr. Chair, that's all the
green cards I have for public testimony on this issue.

CHAIRMAN FLEAGLE: Okay, thank you. Then
we'll go to the Council recommendation. Mr. Klein.

MR. KLEIN: We may have some members on
line that would wish to testify so I would ask, is there
anybody on line that would like to provide testimony on
the Tustumena Lake proposal?

(No comments)

MR. KLEIN: There's no telephone
testimony, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you for
reminding me to remember to look to the members that are
attending by phone.

All right, then we'll go on to the
Council recommendation. We have at the table Tom
Carpenter from the Southcentral Regional Advisory
Council. Good to see you, Tom, welcome.

MR. CARPENTER: Thank you, Mr. Chairman.
Members of the Board. My name is Tom Carpenter from
Cordova. I'm actually the vice-Chair. Ralph Lohse, the
Chair, was unable to attend the past meeting in Homer due
to some problems he had with the flooding so I was the
Chair of that meeting so I came to this one to represent
the Council.
The Council supported this proposal with modifications. One of the modifications was that instead of a 24 hour reporting period, that it be extended to a 72 hour reporting period to give the subsistence users adequate time to report back to the Refuge manager in regards to harvest. We felt that this would lessen the potential of legal implications due to holidays, weekends, things like that when Refuge managers are harder to get a hold of.

We also felt that it was critical to limit the length of the gillnets to 10 fathoms. We felt that this is a new fishery -- a recently new fishery and you would much lessen the potential of overharvesting any one of the three species that have harvest levels.

The Council supported the proposal from Ninilchik. The Council stated that there were no -- not any affected other users, that there are no conservation concerns in the Tustumena Lake fishery, and the Council also heard testimony from the Kenai National Wildlife Refuge manager and the Federal in-season manger stating that he saw no conflicts with other conservation issues.

We were also very comfortable with the way that the Federal manager and the Staff had proposed that the fishery be managed in regards to that if any one of the three species harvest levels were met, that the gillnet fishery would be closed and that it would just be a jigging fishery. So we felt that the overharvest concern that some people had voiced were lessened due to that.

So thank you, Mr. Chairman. If there's any questions I'd be happy to help you.

CHAIRMAN FLEAGLE: Okay, thank you Tom. Questions, Board members.

(No comments)

CHAIRMAN FLEAGLE: Looks like you gave your recommendation. And next we have the Alaska Department of Fish and Game recommendation, and seated at the table is Deputy Commissioner David Bedford. Welcome, David.

MR. BEDFORD: Thank you, Mr. Chairman.

As stated in previous letters that have
been delivered to the Federal Subsistence Board on August 8 and September 1st, the State of Alaska opposes the request for a special action made by the Ninilchik Traditional Council requesting a winter fishery through the ice in Tustumena Lake.

The Department's opposition is based on first, the State's continuing assertion that the Board's decision to grant the community of Ninilchik C&T use of the Kasilof River drainage on Federal public lands was arbitrary and capricious.

Second. Already existing opportunities to harvest fish exist under State regulations.

And, finally, we believe that there's a lack of extenuating circumstances that would be necessary under Federal regulation to entertain this kind of request.

Speaking to the first of those, the State continues to assert, as indicated in its request for reconsideration, FP06/09 dated May 5, 2006, and more recently in a letter to Federal Subsistence Board Chairman, Mike Fleagle, dated October 26th, 2006, that the customary and traditional determinations for Ninilchik, Hope, and Cooper Landing are arbitrary and capricious and contrary to law.

Furthermore, the creation of a new and expanded subsistence fisheries for these communities are likely to result in unnecessary restrictions to other existing users.

Speaking to the second of the issues. Ninilchik is located within the Anchorage, Mat-Su, Kenai non-subsistence area. However, the state of Alaska provides substantial opportunities for residents of Ninilchik to harvest fish for personal use and for cultural and educational purposes. These fisheries provide adequate opportunity to harvest salmon. A winter fishery through the ice in Tustumena Lake would primarily target trout and char. There may be a bycatch of salmon associated with that. The harvest of trout and char, as well as salmon in Tustumena Lake and its tributaries, is provided by State sportfishing regulations. The State has a longstanding history of sustained yield management.
for trout and other resident species. These species have
been, in the past, subject to overharvest, and a
conservative approach has been developed over a long
period that assures harvest opportunities while
sustaining these stocks.

The Department believes that there are
already adequate opportunities to harvest trout under
current sportfish regulations and in accordance with a
conservative management approach.

Now, speaking to the third issue, we
believe that there's a lack of extenuating circumstances
necessary under Federal regulation to entertain this kind
of request. Board action on a special action request is
only appropriate if there are extenuating circumstances
necessitating the regulatory change before the next
regulatory cycle. According to 50 CFR 100.19(d)
extenuating circumstances include unusual and significant
changes or unusual conditions affecting harvest
opportunities that could not have been reasonably
anticipating and that could have significant adverse
effects on the health of fish and wildlife populations or
subsistence uses. Federal regulations clearly indicate
that requests for special action that do not meet these
conditions will be rejected.

Ninilchik Traditional Council's request
for a special action does not explain any basis for an
argument that the request meets these requirements under
the regulations cited. Nothing has changed since the
Board's meeting in January 2006. And there have been no
significant changes in resource abundance or unusual
conditions affecting harvest opportunities that could
have significant adverse effects on the health of fish
and wildlife populations or subsistence uses.

The United States District court upheld
this reasoning in its ruling on a preliminary injunction
motion regarding the first part of FSA06-01.

The Court stated:

The argument that there were extenuating
circumstances is that there was no
subsistence use fishery for the residents
of Ninilchik on the Kasilof River despite
the fact that their customary and
traditional use of the Kasilof River had
been recognized in a regulation published
in March of 2006.

That is true but it is hardly something that was not foreseen when the regulation was published. Rather, it is something that will have to be addressed by the Board in its annual regulator cycle.

Similarly, nothing has changed warranting acceptance of the second part of that request.

The failure of the Southcentral Regional Advisory Council to form a Kenai stakeholder group does not constitute significant new information justifying consideration of a special action request for immediate action.

And finally with the Federal Board considering the creation of a new Kenai Peninsula Regional Advisory Council, it is at this time premature for the Board to address these issues prior to addressing the question of whether or not to create the Regional Advisory Council.

Thank you, very much.

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

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Well, I wonder if we could ask one of our attorneys to discuss extenuating circumstances and clarify for us, please.

CHAIRMAN FLEAGLE: Ken.

(Laughter)

CHAIRMAN FLEAGLE: Don't go far, Keith.

(Laughter)

CHAIRMAN FLEAGLE: Ken Lord.

MR. LORD: Ken Lord with the Solicitor's Office.
I guess the best way to start is to talk about the regulatory requirements for a temporary special action under 19(e), which is what this is. And there are certain requirements that are clear and one that is a little less clear.

The clear requirements are that if you decide to adopt this proposal, the Board is obligated to make requisite findings first and those findings are that the temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and it is not an unnecessary restriction on subsistence uses. So those three findings are necessary before you -- or if you choose to take this action.

On to the question of extenuating circumstances. The extenuating circumstances requirement is set forth in subsection C of that same part 19. Now it's clear that that requirement applies to emergency special action but it's less clear as to whether or not it applies to temporary special actions. In fact, in Judge Sedwick's slip opinion on September 20th, which is the only legal advice we have on this issue, he expressed some frustration about the lack of clarity in our regulations on that particular issue. So he didn't determine whether the Board is required to make a finding of extenuating circumstances or not with regard to a temporary special action.

So we are left with a situation where the Board has some discretion to interpret its own regulations.

I'm sure you're all aware that courts give strong deference to an agency's interpretations of their own regulations as long as that interpretation is reasonable.

One permissible interpretation and the one that the lawyers prefer is that the extenuating circumstances requirement of Subsection C does apply to both emergency special actions and temporary special actions. However, it's important to keep in mind that the extenuating circumstances requirement of C really was intended, when it was adopted, to be a screening tool. Something to sort of educate our constituents about what constitutes a special action as opposed to something that would come in under the regulatory cycle, less, it sets
out some examples of things that the Board would be 
looking for to consider something to be a special action 
and it was really intended to be a tool for the Board to 
prevent abuse of the special action process. 

So even though Subsection C sets out 
these examples of extenuating circumstances, we don't 
believe it was intended to be a limit on the Board's 
discretion so in this case, I believe the Board has the 
discretion to find extenuating circumstances here and to 
act on this action today.

CHAIRMAN FLEAGLE: Questions for Ken. 
(No comments)

CHAIRMAN FLEAGLE: All right, thank you. 
MR. LORD: You're welcome.

CHAIRMAN FLEAGLE: Up next we'll here 
from the Staff Committee for their report, 
recommendation, Steve Klein.

MR. KLEIN: Thank you, Mr. Chair. The 
Staff Committee recommends that you support the special 
action request with modification, and this is consistent 
with the Southcentral Council's recommendation.

The modifications that the Staff 
Committee recommends, there were six of them and those 
are in your handout, I'd like to briefly go over those.

The first modification is to clarify that 
gillnets would not be allowed after a 
harvest quota for any species has been 
met. So this meets the Council concerns 
and the concerns of Ricky Gease there.

Secondly, we clarify that it's one 
gillnet per permit.

Thirdly, the regulatory language 
explicitly states that the Kasilof River 
is open to fishing with rod and reel.

Fourthly, we revised the description 
regarding the mouth and tributaries and 
the outlet of Tustumena Lake to provide a 
quarter mile closure around both the
outlet of Tustumena Lake in addition to
the tributaries.

Fifthly, a modification to allow
unattended gear to have the name and
address of the fisher at either end of
the net in a draft language that was at
the outside end of the net.

The sixth recommendation was to remove
language regarding use of the Kenai
National Wildlife Refuge and that was
item A7 in the draft language, that's
removed. In the Staff Committee's
modification, those will be put on the
permit themselves that's issued to any
fishers for a gillnet and it's really not
necessary to be in the regulatory
language.

So with those six changes, the Staff
Committee recommends that this special action request be
supported. The conditions, we think, do not --
effectively manage the fishery and there's no
conservation concerns, so we're recommending supporting
the special action request with those six changes.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Okay, thank you,
Steve. Questions, Board members.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, I guess
we're at the point of deliberations. Does anybody want
to start out.

MR. EDWARDS: Mr. Chairman. As I stated
during my vote on the recent coho fishery special action,
I would prefer for us not to address this as a special
action but really wait and have it go through the normal
process that we would have in April. I say this because
a vote for this would certainly appear inconsistent with
how I had previously voted and certainly would beg the
question, well, why did you vote for this one and why
didn't you vote for the coho.

With that said, I do think there are some
differences here. I do think one of my personal concerns
with the coho proposal was that I did think it came very
quickly, that we didn't have ample opportunity for the
public to be involved at all and I do think that we have
a much -- we had a much larger opportunity for folks to
vet this one, to discuss it, to look at the merits of it,
and I don't feel that -- I think it's a very modest
proposal. I don't feel and I think we've been told that,
we shouldn't expect any conservation concerns added, and
although I don't disagree with the Mayor, that I would
also prefer if we were going to ultimately end up with a
new RAC that it come before the RAC, but I think given
where -- our decisions that we made in January, I think
it would be appropriate for us to go forward and approve
this, and I'm prepared to make a motion to that effect.

CHAIRMAN FLEAGLE: Go ahead.

MR. EDWARDS: I would move that we adopt
this special action with modification consistent with the
recommendation of the Southcentral Regional Advisory
Council. I don't think I need to read the six provisions
that were already put in there. I certainly could do
this. I do think that so doing this will provide this
one year winter fishery with gillnets and jigging gear.
I think this is very important for us to do based upon
the decisions that we made back in January when we
provided C&T to the folks in Ninilchik.

The fact that we do have provisions in
there that once the harvest quota for any species is
reached then the use of gillnets will be discontinued,
and I think this is a good proposal, and I think that
even strengthens it. Like I said, I don't see that
there's going to be any conservation concerns and
certainly the reporting within the 72 hour time period, I
think, seems sufficient.

I just think it's a good proposal and
like I said, I think it's a very modest proposal and we
should go forward with it.

CHAIRMAN FLEAGLE: Thank you. Can I get
a second.

MR. CESAR: Yes, Mr. Chairman, I second
what I think was the motion, which was at the beginning,
before we got into the dialogue. So the motion to
support the InterAgency Staff Committee recommendation.
The RAC -- would you propose the motion again so I can
understand it.
MR. EDWARDS: Well, my understanding is that there is some modification to what the Regional Advisory Council recommended, which was a modification from what the proponent originally submitted; is that correct?

MR. KLEIN: That's correct.

MR. CESAR: So it would be characterized as the InterAgency Staff Committee recommendation.

CHAIRMAN FLEAGLE: Pete.

MR. EDWARDS: I would like to characterize it as the Southcentral Regional Advisory Council's recommendation with modification, consistent with what the Staff Committee recommended.

MR. CESAR: I still second it.

CHAIRMAN FLEAGLE: All right. It sounds like we know what we're moving and seconded on here. Any further discussion.

MS. KESSLER: Mr. Chair. Just so I understand clearly. The proponents and the Council agree with those modifications; is that correct?

MR. KLEIN: When the Staff Committee was deliberating, yes, we had consensus of both the proponent and the Council. And in your handouts there is the Staff Committee recommendation, there's a two page handout and that includes both the Council recommendations and these basically housekeeping issues by the Staff Committee.

MS. KESSLER: Okay.

CHAIRMAN FLEAGLE: Thank you. Steve -- George, I'm sorry.

MR. OVIATT: That's all right. I agree with Gary's reasoning. Before I did not support the first proposal, but I believe that we have given this proposal an opportunity to go through, at least, a piece of a normal schedule and that is it -- it was heard before the Southcentral RAC, which was a scheduled -- normal scheduled opportunity and it's a modest proposal. Although I prefer things like this going through the normal process, I, too, support this proposal and feel like we have given it due diligence.
CHAIRMAN FLEAGLE: Niles.

MR. CESAR: I support the motion. I think that in a perfect world we deal with things in a certain way. I think the people in Ninilchik have proposed a modest proposal and I think that rather than sitting on it for another regulatory cycle, it doesn't seem to me, to create any concerns, small or large in terms of conservation of the species. And I think they have negotiated into it those kind of fail safes that I think are necessary, so I intend to support it.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. I agree that these are reasonable harvest limits. I think this is a cautious and conservative fishery, limited -- the limits are conservative for these resident species. There's no conservation concern. The reporting requirements to seem reasonable and timely. And I want to commend everybody who worked on this proposal and these modifications to make it so.

I think the details in the permit is appropriate, that's how we handle these situations in other parts of our program. And we also know it's going to be watched very carefully. It will be managed with attention and care and it will be fished in the same way, I'm sure. So my understanding is fishing might begin perhaps in January and so I think this is the right thing to do rather than to wait another year.

Thank you.

MS. KESSLER: Mr. Chair.

CHAIRMAN FLEAGLE: Yes.

MS. KESSLER: Yes, I also want to commend the Staff and the affected parties that have worked together to arrive at modifications that everybody agrees to. And I'm satisfied that these modifications allow the Board to make the determination that's called for in the regulations, that the proposed temporary change, will not interfere with the conservation of healthy fish populations; not be detrimental to the long-term subsistence use of fish or wildlife resources and is not an unnecessary restriction on non-subsistence users.
So I believe that test is met and I will support this motion.

CHAIRMAN FLEAGLE: Other comments.

(No comments)

CHAIRMAN FLEAGLE: All right, I'll add mine. I appreciate everybody's discussion and it sounds like the proposal has no problem with passing.

I will be casting a dissenting vote. And my reasoning is not -- again, is similar to the argument on the first half of this request, and that was the coho fishery on the Kasilof, is not with the conservation or the intent of the proposal but with the process that it's being brought before the Board. And I'd like to be consistent in requiring a definable predictable process as much as possible, and would really personally prefer not addressing issues through a special action request. And, again, it's not pertinent to the intent of the proposal, but to the process itself.

I understand the legal counsel's consideration on what the definition of extenuating circumstances and how that applies here, does tend to give the Board latitude to make its decision; I still feel that we're in the same boat as we were when we didn't pass the other half of the proposal. I don't see that anything has changed, although a little more time has gone by, I would prefer to see all of the fisheries issues before the Board in its normal cycle.

So with that said I'm confident that the proposal's going to pass.

Any other discussion.

MR. CESAR: Call for the question, please.

CHAIRMAN FLEAGLE: Question's called.

Pete.

MR. PROBASCO: Thank you, Mr. Chair.

Final action on Special Action 06-01b as the motion was made by Mr. Edwards and seconded by Mr. Cesar to support the Southcentral RAC's recommendation with modifications as proposed by the Staff Committee -- in addition to.
Mr. Edwards.

MR. EDWARDS: Aye.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: Aye.

MR. PROBASCO: Mr. Oviatt.

MR. OVIATT: Aye.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: Aye.

MR. PROBASCO: Mr. Cesar.

MR. CESAR: Aye.

MR. PROBASCO: Mr. Chairman.

CHAIRMAN FLEAGLE: Nay.

MR. PROBASCO: Mr. Chairman, motion carries, five, one.

CHAIRMAN FLEAGLE: Thank you, Pete. Motion passes with five affirmative and one nay.

MR. LORD: Mr. Chairman.

CHAIRMAN FLEAGLE: Go ahead, Ken.

MR. LORD: Excuse me. I'd like to ask for a clarification from the Board and to ensure that we have a complete record I'd like to ask the Board to describe what the extenuating circumstances were in this case.

Now, when I said that I thought that the Board could find in this case, my thinking was that this was close enough to a failure to provide a harvest opportunity, or the circumstances were close enough that the Board could make that decision, but I'm not the decision-maker, you are, and I need for you to put that on the record, please, or put some -- your reasoning on the record, if you could.

CHAIRMAN FLEAGLE: All right. Gary.
MR. EDWARDS: Well, I may have tried to allude to it as part of my motion and I may not have done it properly so I'll try.

I think I said based upon our decisions that we made back in January when we did provide the opportunity for -- or provided C&T for Ninilchik, certainly there implies with that is at some point the opportunity of getting to go out and exercise that C&T and I realize that you can look at time different ways and one could argue that the time has only been 11 months, my guess is the folks from Ninilchik would say that it's been many, many -- the time could be measured in years, not in days, so, again, I certainly, like you, Mr. Chair, would have preferred during the process, but I do think that providing the opportunity for harvest is important, I think that's what's explicit with C&T, and that there's an opportunity to provide this harvest, it's gone through, I feel, comfortable sufficient vetting, public input and that was my -- why I think that we should address it as a special action, and I was willing to support it as a special action.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: To me, a failure to provide an opportunity is a failure and it is a time sensitive thing, where we got to have five years to provide -- we failed to provide -- I think that an affirmative vote on this is allowing the necessary ability to subsistence harvest and that's why I voted for it.

CHAIRMAN FLEAGLE: Okay, are you happy, it doesn't seem to.....

MR. LORD: Thank you, yes.

CHAIRMAN FLEAGLE: .....apply to what the extenuating circumstances are that are listed, but if you're happy then we'll go ahead and move on.

All right, this is a good point for a break, how about a 10 minute break and we'll resume at 20 after.

(Off record)

(On record)

MR. CESAR: Mr. Chairman. Could I have a
1 housekeeping question.
2
3 CHAIRMAN FLEAGLE: All right, the Federal
4 Board is called back to session. Niles.
5
6 MR. CESAR: Just a housekeeping question,
7 Mr. Chairman. In terms of lunch, my assumption is that
8 we're going to break for lunch and come back afterwards,
9 I just wondered if you had a time for the break so we
10 could arrange.
11
12 CHAIRMAN FLEAGLE: There was a little bit
13 of discussion during the break, it was suggested that
14 maybe we even go to lunch now and beat the lunch crowd
15 and get back in an hour or so and then there's another
16 suggestion to work maybe an hour and take a break at
17 12:30. which again would beat the lunch rush, so that's
18 kind of where I was going.
19
20 Any preference.
21
22 MR. CESAR: Well, my preference is
23 against taking a break now because it would screw up my
24 stuff so.....
25
26 (Laughter)
27
28 MR. CESAR: .....12:30 to 1:30 would be
29 fine, Mr. Chairman.
30
31 Thank you.
32
33 CHAIRMAN FLEAGLE: Okay, let's just count
34 on that being the plan and we'll get as much as we can
35 before that time, and if it goes over a few minutes one
36 way or the other we'll just adjust.
37
38 All right, next we have on the agenda,
39 Item No. 2 on the agenda and that's the proposed
40 formation of a Kenai Peninsula Subsistence Region.
41
42 Pete.
43
44 MR. PROBASCO: Thank you, Mr. Chair.
45 I'll turn the mic over to Ann Wilkinson. She's been our
46 lead on this issue for OSM, and she will take you through
47 the public comments and we'll go from there.
48
49 CHAIRMAN FLEAGLE: Welcome Anne.
MS. WILKINSON: Good morning, Mr. Chair.
Members of the Board. Today I'm going to present a summary of the written public comments, comments from the two public hearings and Regional Advisory Council comments. In the interest of time I combined the written public comments and the oral testimony received at the two public meetings.

Since the summary of comments was distributed we received two more and a clarification of one I had received previously and then there was one that was just passed out, so this will be a little different than what you have before you.

Five people provided verbal comments at the November 1st meeting in Homer, nine provided comments at the November 2nd meeting in Soldotna. Verbal comments were made on behalf of the Anchorage, Central Peninsula, Cooper Landing, and Homer Fish and Game Advisory Committees, the Kenai Peninsula Borough, the Kenai River Sportfishing Association and the Ninilchik Traditional Council. Additional comments were provided by people speaking on their own behalf.

The Board received 76 written public comments. Of these seven were from tribal governments, two from the Kenai Peninsula Borough, one from the Alaska Federation of Natives, one from the Native American Rights Fund on behalf of clients, two from commercial fishermen's organizations, two from State Fish and Game Advisory Committees, one from the Wrangell-St. Elias Subsistence Resource Commission, and four were from -- well, five, from sportfishing or hunting organizations. The remaining comments were primarily from individuals who sportfish on the Kenai Peninsula, about half of those individuals identified themselves as either sportfishing guides or owners of sportfishing dependent businesses.

Commenters who oppose a Kenai Peninsula Subsistence Resource Region and Council include the six tribal governments, the Alaska Federation of Natives, the Wrangell-St. Elias Subsistence Resource Commission, the Cook Inlet Fishermen's Fund, the Native American Rights Fund, the Anchorage, Central Peninsula, Homer and Matanuska Valley Fish and Game Advisory Committees, the Kenai Peninsula chapter of Safari Club International, the Alaska Outdoor Council and four individuals.

They expressed the following concerns.
The Board’s use of executive sessions, and the haste to establish the proposed Council has averted the public process and caused mistrust of the Federal program. People have not been allowed sufficient time to consider potential consequences of the Proposed Rule. The same level of care should be given to creating this Council as was given when creating the original 10 Councils. The Board should start over with an open process that works toward consensus.

The Proposed Rule promotes the interest of non-subsistence special interest groups and does not have support of subsistence users. AFN adopted a resolution in October 2006 opposing the Proposed Rule and the Ninilchik Traditional Council requested a court injunction to halt creating a new region and Council until the process is done properly.

The proposed region and Council are unnecessary. The current 10 region structure is sufficient to manage Federal subsistence resources. The system works well and the Southcentral Council has proven able to address subsistence proposals for the entire region. Since there are only six communities designated as rural on the Kenai Peninsula the Southcentral Council can effectively address subsistence regulatory issues for these rural users.

There are adequate ways in place for the public to address the Board.

The Council would be dominated by nonrural commercial and sport users, Federally-qualified subsistence users would be a minority on the proposed Council and would not be heard.

The Council composition question should be settled before forming a new Council.

A new environmental impact study should
be conducted before any action is taken. Southcentral Alaska has experience many changes since the creation of the program and any decision about a new region or Council needs to be based on up to date information.

This action may set a precedent for establishing Councils focused on one particular issue in one area of a region. The additional expense of an 11th Council is unnecessary and unjustified. Some commenters oppose subsistence management on the Kenai Peninsula stating it causes division between rural and nonrural residents.

Comments in support of a Kenai -- excuse me. The remaining commenters, including the Kenai Peninsula Borough, three sportfishing organizations, the Kenai Peninsula Fishermen's Association, the Cooper Landing Fish and Game Advisory Committee and many individuals express support for establishing a Kenai Peninsula Subsistence Resource Region and Council. The stated that:

The new region would reduce the time, distance and expense required to attend Council meetings, which would increase public participation in the Federal process.

A Council of 10 members would provide more accurate knowledge of fish and wildlife issues on the Kenai Peninsula than can the three members currently seated on the Southcentral Council.

Splitting the Southcentral region into two smaller regions would allow the Southcentral Council to focus on other areas such as the Copper River and Susitna River drainages.

The change would double the efficiency of the system by increasing the number of people with important local knowledge to
Contribute through the Council process.

The proposed Council would provide equal representation of all users.

The timing of this process in summer and fall was inappropriate for Alaskans and provided insufficient opportunity for discussion of the issue.

And the new subsistence fisheries will impact existing fisheries, therefore, OSM should conduct an economic impact study before creating a new region.

None of the commenters who addressed the proposed boundaries support including Anchorage in the proposed region.

Those who commented on the boundary were concerned that such a large urban area may overwhelm the Council membership.

Recommendations were to either follow the Peninsula Borough boundary or to include Unit 7 and 15 only.

And that's the summary of public comments.

The summary of Regional Advisory Council comments is as follows:

The Southeast Alaska Regional Advisory Council unanimously voted against formation of the proposed Council. At its fall 2006 meeting, the Council received a Staff update regarding the possible formation of a Kenai Peninsula Council. The Council also reviewed the Federal Register notice and received a report from the Wrangell-St. Elias Subsistence Resource Commission.

In a letter addressed to the Board the Council brought forward the following concerns. The Southeast Alaska Council believes that the formation of a new Regional Advisory Council is unnecessary and would be detrimental to the Federal Subsistence Management Program. The Southcentral Council has done an exemplary job of representing the subsistence users of its region and fulfilling its ANILCA responsibilities. The Southeast Alaska Council is concerned that the small
rural subsistence communities on the Kenai Peninsula would be submerged in the sea of nonrural communities on the Peninsula if a Peninsula only Council were formed. The expense and program effort that would be involved in the proposed additional Council at a time when funding is limited is highly questionable. The Council wonders whether the plan for a new Council for the Kenai is politically motivated and aimed at getting a Regional Advisory Council in place that would be more compliant with non-subsistence interests.

The Southcentral Alaska Regional Advisory Council met on August 24th, 2006 and heard public testimony before deliberating on this issue. The Council voted unanimously to oppose the formation of the Kenai RAC in light of significant adverse comments that it heard during the meeting and to urge the Secretaries to withdraw both the direct and Proposed Rules, and further that before the Secretary pursues formation of any other Regional Advisory Councils, that he engage in the same level of rulemaking with public process that created the existing Regional Advisory Councils. At its fall 2006 meeting in Homer, the Council confirmed its August recommendation.

The Yukon-Kuskokwim Delta Regional Council heard a briefing about the 11th Council and discussed it during its fall meeting. The Council took no formal action but decided to remain neutral and include a note that some members do not support formation of an 11th Council.

Western Interior Regional Advisory Council members expressed concern that this proposal was not generated by the Southcentral Alaska Council or the public. The meeting Chair stated that the Regional Council concept revolves around a regional interpretation of subsistence. If you go into a finite group it doesn't lend to a larger perspective. He suggested that rather than break the cohesiveness of the whole region, it would be better to bolster the number of Council members from that part of the Southcentral Region.

That concludes the Council comments.

CHAIRMAN PLEAGLE: Thank you, Ann.

Questions for Ann Wilkinson. (No comments)
CHAIRMAN FLEAGLE: All right, we'll move into public testimony then and we have eight people that want to speak to this issue and maybe more by telephone which we'll check when we run through the cards.

First up we'd like to call.....

MR. PROBASCO: We've got eight so.....

CHAIRMAN FLEAGLE: Yeah, we got eight, we'll go ahead and put the five minute time limit on this, good point. First we'll call David Case.

(Pause)

CHAIRMAN FLEAGLE: He declines, okay.

MR. CASE: Nope.

(Laughter)

CHAIRMAN FLEAGLE: Welcome, David.

MR. CASE: Thank you, Mr. Chairman. My name is David Case and I am one of the attorneys for the Ninilchik Traditional Council, and I suppose you already know that we've addressed this as was mentioned, in a pending lawsuit, but I won't talk about that.

And I think the comments that were summarized by the Staff adequately represent a broad range of opposition to this proposal. Even the people that support it don't like parts of it, including Anchorage, for example, as a part of being represented on the proposed RAC.

But the point I want to emphasize is that this process that you've gone through to develop the RAC has been a top down process. And in my view ANILCA is set up to be a bottom up process. And if it's going to function as a bottom up process -- and that's what sets it apart, really, from the State regime is that it genuinely is designed and could function to afford people, the users, the subsistence users out in the state, at the bottom of this whole system, a real effective voice through their committees and the Regional Advisory Councils. But if the Board and the Secretaries impose top down regimes on this system, it squelches that whole structure. And one of the fundamental purposes of ANILCA was to provide a meaningful role for subsistence
users in this regulatory process. And to the extent that
you rule it from the top it defeats that purpose.

That's my comment, thank you.

CHAIRMAN FLEAGLE: All right, thank you, David. Questions, Board members.

(No comments)

CHAIRMAN FLEAGLE: Appreciate it. All right, up next, we have Mayor John Williams.

Sorry, you may begin.

MAYOR WILLIAMS: Thank you, Mr. Chairman. Members of the Board.

First I want to compliment you for your abilities and your expediency and all of your tenacity in continuing to deal with these problems. I can't help but marvel at the fact that after 40 years of public testimony and watching Boards evolve since statehood that we do things in a seemingly more legitimate manner as time goes on.

I would also like to comment briefly that when we started out in this process, part of our deep concern at the Borough was the lack of the bottom up issues, the lack of the ability of the people to enter into discussions with the upper echelons of both the Federal and State Boards and discuss these matters. And I think that if anything comes out of this is the fact that we have created that atmosphere for the people at the grassroots level to begin to comment on these things, and I do want to thank you for, again, going forward with the process of having the public input, both in Homer and in Soldotna and, again, here today. I think we've accomplished a lot in doing that.

Having said all that, I once again come before you as I have in the past, and I previously noted in my letter to you dated November 2nd of this year that I fully support the formation of the Kenai Peninsula RAC with modifications to the proposed Kenai Peninsula RAC boundaries, which has been talked about here already, that they should encompass only the Kenai Peninsula Borough, as the best way to provide the broadest public input on any of the many subsistence-related proposals involving the Kenai Peninsula Borough and its people and
the users of its subsistence commodities.

It is only logical that the Kenai Peninsula RAC and the public should be given the opportunity to review any pending proposals related to subsistence within the Kenai Peninsula Borough before they're acted upon by the Federal Board. And I want to restate that. If, in fact, we are here to examine and propose that a RAC be put together for the Kenai Peninsula and if we have any plans at all of moving ahead in the development of that RAC, if it appears that that is the action. And it is truly my belief occupying the theory that these sorts of issues should be brought from the bottom up, that the people of the Kenai Peninsula that will be served by that RAC should have the opportunity to review any and all pending regulations that would be related in any way to that RAC.

So thank you very much, again, for your work in this effort and I'd be glad to take any efforts.

CHAIRMAN FLEAGLE: Thank you, Mr. Mayor.

Questions for John.

(No comments)

CHAIRMAN FLEAGLE: Hearing none, thank you for your testimony.

MAYOR WILLIAMS: Thank you.

CHAIRMAN FLEAGLE: Rod Arno. Welcome Rod.

MR. ARNO: Thank you, Mr. Chairman Board members, for the opportunity to give public testimony for the Alaska Outdoor Council.

Alaska Outdoor Council has participated in these deliberations before the Federal Subsistence Board and actions taken because of ANILCA since before statehood and up until when all of this happened. The Outdoor Council opposes the creation of a new Region 11.

It's not -- you know, I think the important thing that people need to understand for the Kenai Peninsula is that the majority of the population in the area proposed for GMU -- State GMU's 14(C) and 7 and 15, that 95 percent of the population in that area wouldn't qualify for Federal rural subsistence. So the
idea that you're going to have representation on a Regional Advisory Council, it's still a very small minority of the people in that area, and regardless of whether or not the 70/30 split, you know, goes through and the courts allow that, that ANILCA makes it pretty clear in Section .805(2) that what they're looking for is rural representation, rural residents to have representation on these RACs.

So the concept in a number of the pieces of testimony that were sent in by people is that they looked at this as an opportunity of increased opportunity for representation of residents of the area, you know, is to the contrary.

The other thing is, is our concern, you know, would be the proliferation of the Federal oversight by splitting up the Regional Council, Southcentral. And it was suggested at the Southcentral RAC meeting when they took this issue up, that if the Kenai was able to be separated out then why shouldn't the Copper River Basin have that same opportunity and separate it out so they could deal specifically with their issues, so here we go again, more Federal oversight, more subdividing of the Regional Councils that are out there now, more cost, and more time for organizations such as the Outdoor Council to have to participate in these proceedings.

Thank you for your time.

CHAIRMAN FLEAGLE: All right, thank you, Rod. Questions.

MR. EDWARDS: Yeah, I have one question.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: In reading your letter and both listening to your testimony, I'm still -- I'm a little unclear, were you suggesting that Councils should only be made up of rural residents?

You know you make the -- you know, the statement here is about that it's supposed to -- for rural residents -- a meaningful role in the management of fish and wildlife, and then you say that would exclude all Alaska residents from Federal nonrural areas from membership in the Kenai Peninsula RAC. I'm not quite sure what that means.
I mean because the proposal, using the boundaries that are currently being looked at, includes both rural and nonrural, so are you -- I’m a little unclear what you’re suggesting.

CHAIRMAN PLEAGLE: Rod.

MR. ARNO: Through the Chair. Mr. Edwards. Well, I think that, you know, this idea that there would be representation from nonrural areas has yet to be challenged even more in court than it is now. You know, clearly as you read what Section .085(2) says, it says representation, you know, should be by rural residents, and whether or not through the -- you know, if the Department of Interior and through the Federal Register says, well, okay we’re going to go with the 30/70 split, giving 30 percent of that to sport and commercial, you know, I would contend that based on what ANILCA says and I think that Judge Holland would agree with me, that those would be representation of rural residents, and, you know, that as this goes out and as we followed this, you know, since the passage of ANILCA, that I think that that could yet be challenged in court, whether or not you could have representation on these RACs by Federally-non-qualified rural residents.

MR. EDWARDS: So I guess I kind of get back to the start of my question, so by extension then, if you would follow that through then that would mean that that Regional Advisory Councils would only -- membership would only be rural residents. And, of course, the majority of our Councils right now, that is the case, but certainly those -- you know, originally when this was put together everybody had to be somewhere and those Councils included boundaries that included nonrural as well as rural areas.

But what I hear you’re suggesting is that maybe when they drew the boundaries they should only be drawn in such a way that it would have addressed rural residents, I mean nonrural residents?

MR. ARNO: Mr. Chair. Mr. Edwards. Well, that’s, I think, clearly the intent of ANILCA and if there’s a question and the Outdoor Council has provided comments on that then it’s a matter of the rural/nonrural determinations. And if the Federal managers would match what the State has for non-subistence areas, you wouldn’t be in the quagmire that you are on the Kenai right now anyway.
CHAIRMAN FLEAGLE: Other questions. We have Keith.

MR. GOLTZ: Let me just clear up one thing. ANILCA does suggest that our RACs should not be dominated by large urban areas. But we have not taken that to mean that urban residents couldn't be represented on Councils. They can be a part of it, not the bulk of it, is the way we've interpreted that.

So we, in fact, on our present Councils have representatives from Anchorage, Fairbanks and Ketchikan, at least, who are serving on our Councils right now.

CHAIRMAN FLEAGLE: Rod.

MR. ARNO: Mr. Chairman, I'd like to comment to that. Yeah, I'm perfectly aware of that and I'm perfectly aware of what Judge Holland has said in his decision there on the SCI suit challenging, you know, the Federal Subsistence Board and I believe that if that was further challenged it would be real interesting to see if they'd remain on there, nonrural representation.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: All right, appreciate your testimony, Rod.

Up next we have Ricky Gease.

MR. GEASE: Hi, my name is Ricky Gease, again, I'm the executive director of the Kenai River Sportfishing Association.

We recommend -- we support the minority recommendation which supports the formation of a new Kenai Peninsula Subsistence Resource Region and Advisory Council. We think it would provide more local participation and input onto the issues specific to the Kenai Peninsula. I think this would allow for more robust discussions on complex issues in the Kenai Peninsula region and that would lead to well thought out and sound recommendations to the Board.

We think it would increase the number of Council members who have knowledge of fish and wildlife
1 issues on the Peninsula. Currently there are three
2 people on the Southcentral RAC from the Peninsula, and of
3 the three rural regions on the Kenai Peninsula, which is
4 Hope, Cooper Landing and Ninilchik, there's no
5 representation on the Southcentral RAC from residents of
6 Hope and Cooper Landing. So those are -- we just think
7 through the formation of a Peninsula RAC aided get more
8 interest in those areas and -- and get more local
9 knowledge. If this is truly going to be a bottom up
10 process, we think the formation of the Peninsula RAC
11 supports the idea of a bottom up process.
12
13 It also increases representation and more
14 members within the existing Southcentral RAC so you get
15 more voices on the Southcentral RAC for those regions
16 that are affected there.
17
18 I think it would also -- establishing a
19 Peninsula RAC, reduces the time, distance and expenses
20 involved in the public to attend the Council meetings,
21 and if you had a Peninsula RAC most of those meetings
22 could be on the Council -- a lot of the meetings are
23 either directly right in the summer fishing season or
24 they're in the fall and winter when travel times -- it
25 can be difficult to move around the Peninsula. So we
26 would appreciate the formation of the Kenai Peninsula
27 RAC.
28
29 Thank you.
30
31 Questions.
32
33 (No comments)
34
35 CHAIRMAN FLEAGLE: I notice that the next
36 testimony is from the same organization, is there any
37 objection to allowing -- you don't have a limitation on
38 that.....
39
40 MR. PROBASCO: (Shakes head negatively)
41
42 CHAIRMAN FLEAGLE: ......okay, let's go
43 ahead and call them up, Ron Rainey.
44
45 MR. RAINEY: Mr. Chairman. Members of
46 the RAC -- the Regional Advisory Council, I'm sorry, I
47 didn't know Ricky was going to talk about the formation
48 of the new RAC this morning, so it's going to be hard for
49 me to find things that Mayor Williams and Ricky have not
already covered but I will try to do so.

Our main concern at Kenai River Sportfishing is local representation on the RAC. Right now we have two commercial fishermen on the Southcentral RAC and one of those being a subsistence user also. And we have on the Kenai Peninsula the largest sockeye sportfishing area in the world. 55,000 angler hours are spent on sockeye at the confluence of the Russian and Kenai River each year, that was the count in '05, some years it's been higher. And we have the largest king salmon fishery in the world with the largest king salmon, the Kenai River. To say that an area should only be represented by subsistence users of a certain class, I think is wrong, it's pitting neighbor against neighbor. It's pitting the rest of the areas economy against subsistence use. It's driving a wedge in our communities, we do not want that. The subsistence users should have priority in the areas of abundance. To take a fishery that is of unknown abundance and of unknown strength and provide a fishery I think is questionable, what you did this morning.

I do think that the State fishery provides adequate fish for us all. My goodness, as I've stated before this Board before, we have to stop catching fish early in the year because we have too many fish. So this isn't a question of is there enough resource, there's plenty of resource. It isn't a question, is there a certain group that's being excluded, yes, they are right now, the sportfishing group is being excluded on the Kenai Peninsula and we would like the formation of a Kenai Peninsula RAC that represents our area.

Our area is not rural Alaska. It's as urban as Anchorage in many ways because we have a third of Anchorage down on some weekends fishing on the Kenai, so we are very, very much urban. And I would like for you to seriously consider a Kenai Peninsula RAC to represent our area properly.

And I'd be happy to answer any questions if you have any.

CHAIRMAN FLEAGLE: Thank you, Ron.

Questions.

MR. EDWARDS: Yeah, I have one question.

CHAIRMAN FLEAGLE: Gary.
MR. EDWARDS: Ron, the process, the application process for memberships on the RACs is a very wide open process and, in fact, I think our Staff would say that they often have to beat the bushes to get good people to apply to those. Do you have any reason why there seems to have been a lack of interest on the sportfishing community to apply?

MR. RAINEY: I have to plead ignorance. I do not know why we haven't applied in the past. I'm fairly new to the process. I've only been coming to your meetings for approximately two years now. And we didn't realize the impact that it could have on our entire area. We're awake to that fact now and I think there's going to be many sportfishing people that would be happy to serve in an advisory capacity or on the Regional Advisory Council.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: All right, thanks for your testimony.

MR. RAINEY: Thank you very much.

CHAIRMAN FLEAGLE: Up next we're going to call Connie Wirz or -- you pass, okay, thank you.

Mary Ann Mills. Welcome.

MS. MILLS: Thank you. I'm a council member for the Kenaitze Indian Tribe and also the chief tribal judge.

I am opposed, as well as our tribe is opposed to the new proposed Kenai Peninsula RAC. I think with the amount of fish that goes to the subsistence users on the Kenai Peninsula, it might be a half a percent or maybe even less, and so I feel that having an RAC on the Kenai Peninsula that would include the commercial and, of course, the sportsfishermen or -- also commercial user group would be detrimental to those who still fish for our sustenance.

And another concern I have is with the Southcentral RAC, I feel they've done an excellent job, a very good job representing us. And if the Kenai Peninsula has an individual or a special new RAC that it
would also divide the tribal peoples.

Thank you.

CHAIRMAN FLEAGLE: Hang on, let me check and see if there's questions.

MS. MILLS: I'm sorry.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: It looks like you're free to go.

(Laughter)

CHAIRMAN FLEAGLE: Thank you. Up next we have Nelson Angapok. I don't know if I said that right -- Nelson's not here. Okay, that concludes everybody that we had cards for.

Is there anybody, Steve, can you check on line there.

MR. KLEIN: Do we have anybody on line that wishes to testify?

MR. BLOSSOM: I guess I might say a few words, Doug Blossom from Clam Gulch.

MR. KLEIN: Doug Blossom from Clam Gulch.

CHAIRMAN FLEAGLE: Okay, we'll go ahead and hear from Doug, go ahead Doug.

MR. BLOSSOM: I'm Doug Blossom from Clam Gulch, I sit on the Southcentral RAC.

I guess I just want to say that we think we can handle the problems on the Kenai without forming a new group and I'll let it go at that.

I live on the Kenai and I've been here for 60 years and I think we can handle it, I don't think we need a new RAC. So I'm going to let it stop there.

CHAIRMAN FLEAGLE: All right, thank you, appreciate the comments. Board members, questions.
CHAIRMAN FLEAGLE: Thank you. Hearing none, we'll go ahead and conclude testimony on this issue.

All right, now we do have opportunity for the Southcentral Advisory Council to weigh in on the issue, Council recommendations, and you said there were two Chairs.

MR. PROBASCO: Bert Adams from Southeast Alaska.

CHAIRMAN FLEAGLE: Okay, different, right got you. Tom Carpenter.

MR. CARPENTER: Thank you, Mr. Chairman. Ann Wilkinson read the Southcentral Council recommendations in her summary. But the Council does have a couple other comments besides what's printed on your page, and I'd just like to bring that to your attention.

I think we heard some very interesting testimony today and it was one that the Council wanted to stress to the Board, and that is that ANILCA is a bottom up process. And we want the Board to consider that greatly when it makes its determination about this proposal. We feel that the Southcentral Council has been more than adequately able to handle the work load and the different proposals that have come before the Council in the last several years.

Understanding that the work load is getting greater, we feel that the work load isn't necessarily any greater for the Council but it's actually, the Staff that probably has the increased work load more than the Council does. We feel that we've been able to move the proposals as they come to the Council to the Federal Board in a timely manner. So we'd just like to bring that to your attention.

I think just to talk a little bit about the Southcentral RAC make up. We do have good representation from both the Kenai, Copper River and northern Copper River, Susitna areas. This Council has been together, you know, for several years now. I think we've grown as a Council. I think we've obviously learned from mistakes that we've made. I think that
we've turned our meetings into a more meaningful and
quicker than we used to be. I think that we represent
the subsistence users in the entire region as it stands
now, as well as the commercial and sport users
adequately. And I truly believe that if we felt as a
Council that we were not able to move this process
forward in a timely manner, that we would have let the
Federal Board know that.

So I think that, you know, the biggest
concern that we've heard, especially from the people that
are on the Kenai Peninsula that serve on the RAC is that
if the Kenai RAC was formed, that the subsistence users
in the Kenai region, they feel that if the 70/30 split
were to be followed that the special interest groups
would weigh too significantly into the process and that
subsistence users would ultimately be affected in a
negative way, and we do not feel that ANILCA has -- wants
the process to move in that direction.

So those are our comments, and I'll
answer any questions if you have any. Thanks.

CHAIRMAN FLEAGLE: Thank you, Tom.

Questions.

(No comments)

CHAIRMAN FLEAGLE: All right, we
appreciate your comments.

And we have another RAC Chairman on line,
Bert Adams, would you like to comment on this issue.

MR. ADAMS: Yes, thank you, Mr. Chairman.
Bert Adams, Sr., the Chairman of the Southeast Regional
Advisory Council.

Ann Wilkinson, you know, did a good job
in representing our views, but I'd just like to add
another thought or two here.

SERAC is really concerned about the
fragmentation of existing Councils. And we don't think
that another Council to represent only Kenai Peninsula
is, you know, in order here. With the Federal budget
program, you know, facing reductions, we think also that
a new Council will cost a lot and it will begin to
stretch the overall program. And it also could mean, you
know, less Staff, Staff support, you know, for our
Councils.

So, you know, those are some additional comments that I'd just like to say on behalf of the Council and I think that's about it.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you very much, Bert. Questions.

(No comments)

CHAIRMAN FLEAGLE: Okay, moving on then we'll go to the ADF&G comment, David Bedford.

MR. BEDFORD: Mr. Chairman. The State has no comments on this.

CHAIRMAN FLEAGLE: Okay, thank you.

InterAgency Staff Committee recommendations, Steve.

MR. KLEIN: Thank you, Mr. Chair. Steve Klein from OSM and Chair of the Staff Committee.

The Staff Committee, just like the public comment, was divided, we could not reach consensus on this issue. We had a majority recommendation that opposes formation of a new Kenai Peninsula Region and Council. And that's consistent with both the Southcentral and the Southeast Councils. The justification for the majority was that the meaningful role from rural residents would be diluted with a Kenai Peninsula Council. The majority noted that the percentage of rural residents would decrease from four percent in the current Southcentral Council to two percent in the new proposed Kenai Peninsula region. The majority also noted that in the current application process for the Kenai Peninsula Council, if it were formed, 10 of the 12 applicants were from nonrural communities. The majority notes that the Board has dealt with controversial and complex issues in the past, including Southeast steelhead, Unit 2 deer and Kenai Peninsula moose and the majority believes the Board could continue to do so without revising the program structure or creation of a new Council.

As you've heard from the Southcentral Council, the majority believes the Southcentral is exercising due diligence in dealing with Kenai Peninsula
proposals, and would continue to do so. For the
Southcentral RAC, it has concerns -- if they do have
concerns about meeting their responsibilities for the
Kenai they are -- they’ve indicated that they would bring
that back to the Board propose to develop alternative
strategies.

So finally, the majority believes that
the process used in proposing a new Kenai Peninsula
region is perceived as expedited and non-inclusive by the
Councils and the public, and while the creation of a new
Kenai Peninsula region may appear to be a solution, there
were strong concerns that there could be long-term
negative consequences including diminished credibility
with rural residents and increased costs to the program.

That was the majority recommendation and
their justification.

There was a minority that did support
formation of a new Kenai Peninsula Council.

And the minority view was that this would
provide more local participation and input on issues
specific to the Kenai Peninsula allowing for more robust
discussions as well as well thought out and sound
recommendations to the Board. The minority believe that
establishing a new Council would increase the number of
Council members who have knowledge of fish and wildlife
on the Kenai Peninsula from the current three seats on
the Southcentral to 10 seats on the new Kenai Peninsula
Council and that would lead to increased community
involvement as well. And by forming a Kenai Peninsula
Council, that would allow what’s left of the Southcentral
Alaska Council to deal with the Copper River and Susitna
drainages.

Finally, the minority believe that
establishing a new region for the Kenai Peninsula would
reduce the time, distance and expense required for the
public to attend Council meetings and that would lead to
public involvement in the process.

And that concludes the minority and
majority Staff Committee recommendations.

CHAIRMAN FLEAGLE: Thank you, Steve.
Board members questions.

MR. EDWARDS: Mr. Chairman. Mr. Klein.
In looking at the majority recommendation and their justification, I'm just trying to get some clarification and maybe you can help me with that. I don't understand the significance, the difference between four percent and two percent, they're both significantly very low numbers if you look at the majority of our RACs are 100 percent, so we're talking two percent, I don't know -- if, for example, we would make the decision to eliminate Anchorage out of this new RAC then that would increase it to six percent, is six percent better than four percent? I guess I would argue that if four is better than two, then six is better than four. I still would argue that both of them are significantly pretty low and certainly those Regional Advisory Councils that have large rural metropolitan areas such as Anchorage and Fairbanks certainly have, you know, the percentage is much smaller so I don't quite understand, you know, the rationalization of that kind of justification. You know the fact that it also says that 10 out of the 12 applicants were from nonrural areas, could you characterize the qualifications of those 10 nonrural people that applied.

You know, my understanding is, is that this was one of the more -- somewhat better group of applicants that we have and the majority of these 10 people actually had a subsistence background and a historical involvement in subsistence and most came from the Kenai area. So, again, I'm having trouble, you know, understanding that as a justification.

There's a statement here about the Southeast [sic] Regional Advisory Council would develop alternative strategies for the Federal Subsistence Management Program. And, you know, I'm unclear what those are, maybe you could help address those.

One example that was used is the Unit 2 deer hunt as an example of how one of our Regional Advisory Councils has been able to address. But the reality is, is that because of the complexity of that issue, we did ask that Council to put together a stakeholders group involving both rural and nonrural participants so the people who are most affected by the decisions could get involved with that. So in my mind I'm not sure that that's really a good example.
questions and answer them in the order or feel free to ask for repetition.

Steve.

MR. KLEIN: Thank you, Mr. Chair and Mr. Edwards. In terms of the percentage going from four percent to two percent, I mean you could view that as a 50 percent decrease, and that's the way the majority took that. On the flip side you could say, well, we're comparing 96 percent versus 98 percent, that doesn't look like a big change. To the majority it was going from four percent to two percent was a 50 percent reduction. So that addresses the percentage question.

On your second question, the qualifications of the applicants from the -- and I think you're speaking specifically to the 10 nonrural applicants, I really cannot speak to their qualifications. I don't even know if that's appropriate given those are just applications and they would have considerable vetting before final selections were made. I'm unfortunately not prepared to discuss this, the qualifications of those applicants.

CHAIRMAN FLEAGLE: That's okay, Ann's shaking her head behind you so we don't have to go there.

MR. KLEIN: On your third item, Mr. Edwards, on alternative strategies. Again, the Council feels that they can handle these issues. Given all the concerns that these are too complex and you need local people from the Kenai Peninsula to address it, my take was if they did feel overwhelmed they would come back to the Board and perhaps one of the alternatives would be a new Kenai Peninsula region. I think they feel very qualified based upon how they've handled the issues in the past.

And I guess would invite Mr. Carpenter to speak to the issue through the Chair if that was appropriate.

CHAIRMAN FLEAGLE: I think you already did, Tom, do you want to add anything there.

MR. CARPENTER: Mr. Chairman. Yeah, I think I spoke to that in my comments. The Council, it does feel that it adequately represents all users in this region and that at this time we don't feel that there's a
need for a new Council because we do not feel that we
have not been able to adequately move proposals forward
to the Board with recommendations for actions. So we
feel very comfortable at this time.

CHAIRMAN FLEAGLE: Thank you, Tom.
Steve.

MR. KLEIN: I have been advised by
counsel that we could review the communities of the
applicants that applied for the potential Kenai Peninsula
region if that would help the Board or Mr. Edwards, but
the qualifications.....

MR. EDWARDS: Well, you know, it's not my
desire to disclose any information but if we're trying to
make the argument that we shouldn't do this is because it
would not get good representation that had an interest in
assuring that the subsistence preference was made, I just
-- again, my understanding is that we had very excellent
applicants who applied who did have -- many of them had a
strong history of -- association with subsistence and I
would certainly think that that's what we should be
looking at and not whether a person was from Kenai or
Cooper Landing or Ninilchik. And so I don't see how -- I
think it's somewhat of a disservice to say that, you
know, somehow point these 10 folks out and say somehow
they were not going to be doing a good job just because
they were not from a rural community. And I'm not
suggesting that it says that but you could argue that it
somewhat implies that.

CHAIRMAN FLEAGLE: Do you have a
response, Steve.

MR. KLEIN: The majority recommendation,
it just spoke to location and not qualifications at all.
And if I implied that, the majority did not speak to the
qualifications of the applicants.

CHAIRMAN FLEAGLE: Okay, thanks for the
clarification. Up next we have Niles.

MR. CESAR: Thank you, Mr. Chairman. I
did not look at the qualifications of the 10 applicants
and, again, I don't think that is really the relevant
question. The relevant question is can the existing RAC
provide for all of the concerns of the Kenai Peninsula as
well as their other duties. And I haven't heard the RAC
suggest that they were opposed to the formation of a
committee to deal with a specific issue that they felt
they needed more local involvement in. So, you know, I
think for us to take the perception that, number 1, these
10 applicants, whoever they were, are somehow so much
more qualified than the RAC is not a good suggestion, nor
do I think for us to predispose that the RAC isn't
capable of identifying issues that they need some support
on is reasonable either.

So we can go round and round this issue,
it really comes down to, does the Board feel that the
current RAC can deal with all of the issues for the
region, you know, and we start getting off into these
other issues and I think we lose sight of what we're here
for.

CHAIRMAN FLEAGLE: Okay, thank you,
Niles. With that it sounds like we're ready to get into
deliberations but first I'm going to call a lunch break.
Return at 1:30.

(Off record)

(On record)

CHAIRMAN FLEAGLE: All right, we're going
to call back to session, I appreciate everybody being
back and ready to work. And we're ready to begin
deliberations on the proposed formation of a Kenai
Peninsula subsistence region.

Niles, you had the last comment before we
broke for lunch, do you want to start us off.

MR. CESAR: Thank you, Mr. Chairman. I
don't have additional new comment. But are you
saying then that it's ready for Board deliberation?

CHAIRMAN FLEAGLE: Yes, sir.

MR. CESAR: Okay. I'm not prepared to
make a motion at this point but I would like to signal
that from what I've heard and what I understand the
rationale behind the proposal, that I find it difficult
for myself to vote for the formation of a new RAC. I
think I've been convinced that the present RAC is able to
handle both the amount and the diversity of the proposals
that come forward to it, but like the tide, it goes in
and out of every 12 hours, I can be convinced. So I'm
sitting back and listening to Gary.

CHAIRMAN FLEAGLE: Thanks, Niles. And I
do have Gary, Gary go ahead.

MR. EDWARDS: Mr. Chairman, with your
approval, I'd like to ask Bill Knauer to come forward.
Bill was one of the few folks that was here when we
originally put together the 10 RAC and the boundary lines
were drawn, maybe Niles was too, but I certainly wasn't
and I do think it would be helpful for maybe Bill to shed
some light on how all this came about. I mean we've
talked about it being a bottom up process, some folks
think there was a lot of magic to how it was all put
together and like Paul Harvey says, maybe Bill can give
us really, the rest of the story.

CHAIRMAN FLEAGLE: Any objections.

MR. EDWARDS: So Bill what I'd just kind
of like you to do is just to, you know, based upon some
of our discussions, you know, I know you and some other
folks kind of played, I don't know if you want to
characterize it as a major role, maybe you're responsible
for the whole thing, I don't know, but to, you know,
share us with how it came about, why the boundary lines
were drawn the way they did, what was taken into
consideration and so on and so forth.

CHAIRMAN FLEAGLE: Thank you, Gary.

Bill.

MR. KNAUER: Thank you, Mr. Chairman.
And I do acknowledge that Mr. Cesar has me in seniority
by two weeks in the program and he's, I think, the only
one left from that very initial period.

Back in the early '90s there was an
environmental impact statement prepared and at that time
it examined the whole structure of the Federal
Subsistence Program. It had in it a number of
alternatives. One alternative looked at six regions, one
at eight, one, I believe at 12 and there was one, it
might have been at 15. And as you recognized 10 wasn't
in that number that I mentioned. But in early '92, after
the final EIS came out, Mr. Rod Kuhn from the Forest
Service and I were advised that the Secretary was going
to select an option of 10 regions and asked us to draw
the lines for a map to appear in the Record of Decision.
So we got together and looked at things, and what we
tryed to do was delineate regions based on a number of, just informally discussed criteria.

The first was, what are the common resources and we were dealing with wildlife at that time, in an area.

Secondly, are there similar cultures in the area.

And then thirdly, are the users exhibiting harvest patterns that rely on those common resources. A real good example here is the North Slope, you've got essentially a defined area that have got essentially some common resources, primarily your caribou, although they do migrate out, and you've got a group of people that rely on those resources in the region. In other words, there's not a lot of cross regional differences.

And then the fourth thing that we looked at was we wanted to try and follow the Alaska Department of Fish and Game, Game Management Unit boundaries, because all of the harvest data and surveys were essentially utilized, these areas of delineation, and the public was familiar with them. Another aspect is we thought that in the event that it did go back to the State in a rather quick manner, the Game Management Unit boundaries would work for the State too, whether or not they retained those same number of Regional Councils.

And so Rod Kuhn and I met and we played around, we tried to divide it out and -- but the limitation we had was that there could only be 10 regions, and so that was how we came up with it and those were established in April of '92. Well, later that year and into '93 and '94, at various times, there have been discussions at the Staff level, at the Staff Committee level and at the Board level, over the years, about a concern and need to establish a separate region for the Kenai Peninsula because there is a situation where you have got a common set of resources, a defined user group that exhibits similar cultures and so it is not a new idea, by any means. It's been out there and discussed a number of times, sometimes with intensity, sometimes just in passing.

So that's the historical breakdown.

CHAIRMAN FLEAGLE: Thank you, Bill.
MR. EDWARDS: And a follow up question. You know, given the fact that in the early '90s that wildlife was only taken into consideration, if fisheries would also have been part of the program at that time, would you have seen the whole -- could we have expected to actually have something totally different than what we have today? I know, at times, you know, we have talked about the Yukon River where we have three RACs crossing that and, you know, there's been discussion, but I mean would you have seen it -- I'm somewhat asking you to kind of speculate here but do you think that would have changed your approach or how you might have drawn the lines?

MR, KNAUER: Mr. Chairman. Mr. Edwards. I think it might have entered in. There might have been discussion as to whether or not there would have needed to have been separate Councils dealing with wildlife versus separate Councils dealing with fishery issues, but at that time we didn't have that situation to complicate the establishment of those.

So, you know, it would be speculation and I don't know if it would be -- I couldn't really say.

MR. EDWARDS: And just one other follow up. Then the fact that trying to stick with the hunting units that were already established, that played a pretty significant role in the decision-making or was that secondary to these other criteria?

MR. KNAUER: That was secondary to the other criteria.

The main thing was looking at the resource base first and then the people that depended on it. And using those as, okay, where do we draw the line and that's always the case, there's going to be people on one side of the line and on the other side of the line, whether they're rural residents or whether they're nonrural residents, and the nonrural areas, you know, had to go in a particular region and I will have to say that the representatives that we've had over the years that have come from those nonrural areas have been extremely supportive and have been excellent members and have frequently Chaired our Councils.

CHAIRMAN FLEAGLE: Other questions for Bill.

MR. EDWARDS: Well, Mr. Chairman, maybe just on follow up. I guess one of the points I wanted Bill to make and the fact that this is not a new idea. I mean I certainly recognize a lot of folks see the timing of this and they're very suspect that, well, there's something that's got to be going on here but the reality is, that this isn't something new, you know, we've looked at the idea of having a Council representing the Kenai Peninsula for a long time. So, again, even though the timing is bad, certainly I think the rationale behind it, you know, as Bill said, goes all the way back until 1992 and was looked at. And certainly, you know, this Board itself, you know, early on, you know, has come forward with this, this is a Board proposal, you know, to make this -- to sit this Council and, you know, one of the things that Bill said was trying to get folks, you know, that have common resources sort of to work together. And earlier on I used the example of the Unit 2 deer. It's not that we felt we needed a separate Council to address Unit 2 deer, but there, I think, was a recognition that this was a very difficult problem and the best way to solve that was to get those folks who are involved in it, both rural and nonrural users, to sit down and try to address it and the reality is is that's what we tried to do, you know, originally with the Southcentral Council. There was an initial push to do those, you know, because we thought to really deal with this issue we needed an environment with people who had a common interest and a common understanding and bring the issue right to the people who were mostly involved and that's why this Board, in a motion back in January passed, you know, asking the Council to put that together.

So I just think that if you look at the original intent of the Councils and what they were trying to achieve, I don't see there's any -- really any difference.

I know that there's been some concerns expressed, you know, about Anchorage and whether it should be in or should be out, I guess personally I'm not sure I even have an opinion. I mean it appears that everybody has to be somewhere. Now, some argue that maybe Anchorage should be nowhere and not part of this process, but our current process puts everybody somewhere
so you have to be somewhere. If there are concerns about
the representation from Anchorage or the lack of
representation from rural communities, certainly I think
this Board has the flexibility, like we have done with
the Kodiak/Aleutian Regional Advisory Council, where we
have designated X amount of positions have to be from
Kodiak, I don't think, unless I'm advised otherwise that
there is nothing that prevents us to say, of this
Council, and if Anchorage is included, there could be no
more than one representative from Anchorage or zero
representatives or by the same token there is nothing
that would prohibit us from saying out of the 10 members
or whatever the number is we come up with, you know, X
amount of those have to be from rural communities. I
mean I think there are those options out there that we
have an opportunity to apply in this situation, that
those are some of the reasons that folks are opposing
this.

As I said earlier, the difference between
two percent and four percent, in my mind, is pretty
insignificant. I mean Steve pointed out it is 50
percent, but my point is if four percent's okay and if we
eliminate Anchorage then we got six percent, so six
percent is better than four percent.

So, I don't know, I just think there are
ways that we could address this to address some of the
concerns that we have heard.

You know, and we haven't talked about
those and we haven't kind of put those on the table as a
proposal, but certainly I think we have a lot of options
out there, it's my understanding, is that once the RAC is
formed how we sort of charter that RAC.

CHAIRMAN FLEAGLE: Yeah, thank you.

George.

MR. OVIATT: Mr. Chairman. You know, I
look at the Southcentral RAC and it covers a very large
area with the majority of the population of the state in
that area. And it just appears to me that with the
complex issues that we have in the Kenai and the complex
issues we have in the Susitna drainage and the Copper
River Valley, and those issues are, I think, very
complex, but I think the issues are quite different, too.
And it just appears to me that if we had local people
dealing with those local issues that we would have a
better grassroots resolution to, I think, what is going
to be a very difficult situation of introducing subsistence into the Kenai area.

Gary has certainly answered some of the questions that I had too about the flexibility that the Boar would have in establishing numbers of representations and where they're from, and I think we do have that flexibility. Maybe someone from the Solicitor's Office could answer that from the legal standpoint. But it just kind of appears to me that we would be able to resolve issues better if we were able to separate these areas.

Thank you.

CHAIRMAN FLEAGLE: Okay, Keith, the question is if we do decide to form the 11th RAC, can we limit or design its make up by residency, rural, nonrural, number from communities, et cetera, et cetera.

MR. GOLTZ: I think the basic answer to your question is yes. There are some constraints. Right now we have a 70/30 mix. So we are committed at this point to a 70 percent subsistence representation, 30 percent sport and commercial.

I also think we could limit the number of people from Anchorage. I'd be uncomfortable saying zero, but I think we could defend one or two.

I think also we could write in some assurances that the rural subsistence users are adequately represented.

We have done this in the past in Kodiak/Aleutians. The mechanism for doing that in that case was the charter, and I think that would be the appropriate mechanism here too.

CHAIRMAN FLEAGLE: Is that good, George?

MR. OVIATT: (Nods affirmatively)

CHAIRMAN FLEAGLE: Okay. Other discussion.

MR. CESAR: Mr. Chairman.

CHAIRMAN FLEAGLE: Niles.
MR. CESAR: Yes, thank you, Mr. Chairman.
I hear what you're saying Keith and I agree with it and I
agree with George.

But I think if we spent this time looking
at the existing RAC and how we could work within that
framework, I think we'd basically come to the same
conclusion, that there are avenues within the existing
RAC to deal with these specific issues, and the formation
of another RAC to give legitimacy to the notion that the
Kenai is so complicated that the RAC can't deal with it,
I don't think really is giving enough deference to the
RAC's opinion.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Thank you. You know, I
agree because I trust our current process.

I think the Southcentral RAC has done a
good job, has pledged that they can do the job or ask for
help, and the kinds of help that they could ask for are
the kinds of things that maybe Gary and others are
outlining, we could assure a full membership on the RAC,
which I don't think we have right now, we could adjust
the number of members from the Kenai Peninsula on the RAC
to further assure that local representation -- the
Southcentral RAC has an excellent track record they have
built over the years with a tremendous amount of
controversy on the Kenai Peninsula, including a C&T
proposal from the Ninilchik on the Kenai National
Wildlife Refuge. So for those people who worked through
that, and for the many other complicated issues they
worked on, I think we do acknowledge that they've done an
excellent job.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: Mr. Chairman. I don't want
any of my remarks to imply that, you know, the
Southcentral RAC isn't a strong RAC. I mean I think it's
-- and I don't want to offend the other RACs, but I think
they have done an excellent job, they have an excellent
Chair, who often brings wisdom and sorts through some of
our tough issues and really has done a good job, so
that's not my issue.

I just think in this situation, given the
nature of it, with a -- as we go down with new proposals and all, I just think, you know, our goal is to try to -- you know, we talk about a bottom up process, and I think the goal is to try to have the folks who are most closely involved with the situation, you know, help provide the solutions. It has worked well across the state on many other occasions. One could argue, well, then, you know, we didn't form RACs for all of those situations, we didn't form a new RAC for Prince of Wales Island just to address Unit 2, but again it was part of the recognition that we needed to get those people together. And I think the Kenai presents a, maybe unique is not the right word, but a situation that I think kind of begs for this. And as we have said, it's not a new idea and this Board and Staff have discussed it for the last 15 years is -- is, would this be a better approach for addressing these. And particularly, I think with fisheries, I just think it's the right thing to do.

CHAIRMAN FLEAGLE: George.

MR. OVIATT: Mr. Chairman. I, too, don't want anything that I said to reflect that I was disappointed in the performance of the Southcentral RAC because they have done an excellent job, superior job, and I've enjoyed working with them. I don't want anything that I've said to reflect that I didn't feel like they were doing a decent job, but I do believe that we are mixing complex issues with people who are not at the grassroots of these issues, and it just might be better served by having two different RACs.

Thank you, Mr. Chairman.

MS. KESSLER: Mr. Chair.

CHAIRMAN FLEAGLE: Yes, Wini.

MS. KESSLER: A creation of a new region and a new Council has been proposed on the hope that it may be helpful in resolving a very thorny and lingering issue.

The problem is I find it difficult to support such a major change on the basis of a hope of solving one issue. Particularly in light of a couple factors.

One is, this program has certainly faced other thorny and lingering issues and these have been
resolved through means much less drastic than a change in
our basic structure of regions and Councils. And as
well, I don't see a logical pathway of how taking this
action would lead us to a successful resolution. Now,
it's presumed by many to be helpful and beneficial but as
has been pointed out by others, it could go the other
way.

So I'm not comfortable here in that I
think it's an awfully big step to take in the face of a
great deal of uncertainty whether the action would
actually be helpful or hinder the resolution.

CHAIRMAN FLEAGLE: Okay, thanks. Next up
I have Niles.

MR. CESAR: Yes, I'd just like to point
out to the Board we find ourselves in a situation where
we're telling the RAC you've done such a good job we're
going to take away, you know, some of your purview. So
that seems a little strange way to do business to me.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Well, thank you, Mr.
Chair.

I guess I wanted to comment too that
recognizing that the Southcentral does cover such a large
area we increased the number of members on it several
years ago. Also the number of the proposals that they'll
be facing, at least with respect to the Kenai Peninsula
this next cycle, if we don't approve a new RAC, would not
be overwhelming, it's eight. Certainly the Council has
fac...
recommendations regarding subsistence take of fish and
wildlife resources being made with as much public input
as the public wishes to provide. And I think this
meeting today and several of the recent meetings that the
RAC has had on the Kenai Peninsula have demonstrated
that, that we do want to have as much public input as
possible and involvement and that kind of goes back to
some of the applications for the RAC membership as well.

I think this Board and program has been
proud to be a bottom up program, and meaning we start at
the local level. And I feel, unfortunately, while the
idea of the Kenai RAC has been discussed on and off over
the years and may be a good idea, the way we've gone
about it has not been through this bottom up process.
If the Southcentral RAC had proposed this, I think it
would have been pretty smooth sailing, but it hasn't
happened that way, unfortunately, and that's created a
lot of the suspicion, the suspicion about the motives or
the reasons behind it, even though perhaps, you know,
that may not be correct, maybe it's all well intentioned
but we haven't been able to cut through those suspicions
and perceptions.

I think what speaks most -- a great deal
to me is the diversity of the comments. Many different
groups who maybe hardly ever line up together, many
different groups are opposing this. And I think it would
be a mistake for this Board to do something that creates
such a controversy in hopes of solving some controversy.
When the idea is perhaps more ripe and when it's more
acceptable to this diversity of user groups, we could be
then more successful.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Keith.

MR. GOLTZ: I just want to announce that
Niles isn't the only fossil on this Board, I was here at
the very beginning also.

(Laughter)

MR. GOLTZ: And before this comes to a
vote, I just want to point out that we seem to be
addressing this issue as if it were merely a matter of
dispute resolution. But ANILCA is constructed in such a
way that our decision-making process is from the bottom
up and we generally, over the years, have taken this to
mean that to the maximum extent possible we will initiate
our decision-making process in a pool of people who have
their hands on the resource. This is not always
possible. And in the case of Southcentral, we sometimes
end up discussing the Kenai Peninsula issues in
Glennallen, and that's a problem for ANILCA and I think
it's also a problem for the Secretaries. I can't speak
for the Secretary of Agriculture but I think I can for
the Secretary of Interior, they're committed to a bottom
up process.

Now, I know that to some people this
whole thing looks suspicious, we got this wrapped around
our silver issue on Ninilchik, and that's unfortunate.
But this has been in the process of discussion for years
and I wouldn't want anybody to be mislead about the
legality of the Board's decision here today. The Board
is operating under delegated authority and if the
Secretaries of Agriculture and Interior should decide
that in this case a bottom up process is best built on
the Kenai Peninsula then they can make that decision. So
whatever the Board decides here today may not be final.

CHAIRMAN FLEAGLE: Thank you, Keith. I'd
like to make a couple of comments.

First of all this is one issue that
obviously just doesn't fall on one side of the fence or
other for me.

I've heard some really good arguments for
the creation of it, which I tend to agree with, the
majority of them, but I've also heard some really good
arguments against creating the new RAC. And I see the
merits on both sides. So until, I think the deliberative
process is complete here, I probably won't know how to
vote until I get to my name being called. I asked Pete
to mix my name up in there a little bit so I'm not the
doggone deciding vote on everything here.

(Laughter)

CHAIRMAN FLEAGLE: That's kind of not
fair. And the other unfair is having, not only the
coincidence, I guess that everything is coming up now,
and just being the new guy, wow, all these difficult
decisions are coming up, however, I'm up to the task.

Now, I've got a couple of concerns or
questions that I'd like to pose on the proposed new RAC,
and I think the first one that was raised out of the majority recommendation from the InterAgency Staff Committee recommendation, and that concerns the OSM budget for the RAC system. Gary, you're probably the one that would answer that, how would that impact the OSM budget for operations and would you be able to swing an 11th RAC with the current budgeting levels.

MR. EDWARDS: Well, currently Pete's the one we're holding accountable for managing that budget and as the person closest to the bank account and checkbook, maybe he ought to describe, and I do think that would be helpful. You know, what is the -- you know, maybe he could cover, you know, what does it cost us to operate our RACs, what would this new RAC cost, would it be the same amount, would it be less, where would the funding come for that; and I'm not trying to put you on the spot, but you can probably do it better than I can.

CHAIRMAN FLEAGLE: No, you're probably right. Pete, you're probably more appropriate. I just called on him because his agency funds you.

MR. PROBASCO: He is my boss. Thank you, Mr. Chair. Mr. Edwards.

As far as the Office of Subsistence Management, if the Board were to make a decision to form an 11th Council, where would the funding come from?

Well, first I think the approach that I would take would be to work with Gary and contact the Secretary's office to see if additional appropriations could be secured to operate that Council, that's an unknown. However, if I had to work within my existing budget, the cost, just off the cuff, in talking with Staff, we spend for the Southcentral, probably in the neighborhood of $8,000 per meeting. I would not bring additional Staff on. The Staff that I have within my office would be sufficient to deal with the issues that this 11th Council may take up, with the exception of the unknown how many proposals would be generated. Right now my office handles on a -- in the wildlife cycle close to 70 proposals. We have been able to deal with that but it's been very difficult to make those ends meet.

To come up with, if you're looking at two meetings per year, you're looking in the neighborhood of -- somewhere in the neighborhood of 16 to $20,000
depending on the location of the meeting, where our Council members reside, this would be funding for OSM Staff and Council members only. It would not include the other agencies. Those funds, because of the regulatory process within OSM is the priority, I would look towards my research or monitoring side to look at those funds if I could not secure funds from the -- additional funds through Gary through the Secretary's office.

So it's doable and we could make it happen, but we would have to take some money elsewhere to form a Council.

CHAIRMAN FLEAGLE: All right, that's a fair response, thank you.

The other issue that I see right away is we've already applied for -- I mean we've already solicited for applications for the membership of this committee. A 10 member committee, we have 12 applicants, 10 of which are from nonrural communities, which already seems to be, if we were to go along with these applicants, we would already be setting up this new RAC in matters that would be in opposition to some of the testimonies that we've had, of people that are concerned with having the new RAC. So I think that if we were to move forward with this -- I like Gary's idea of trying to establish some guidelines on membership, but I think that also you would have to redo your application process. And this would obviously put the whole process down the road, somewhere, and we may be done with all of these real controversial issues by that time. So that might be a moot argument. I don't know, I just want to throw it out, though, that with the 10 of 12 applicants coming from nonrural communities seems to go against the intent of the creation of the RAC in my mind.

Anyway, I'm still struggling with this.

Other comments. Judy.

MS. GOTTLIEB: Mr. Chair, thank you.

Well, I guess following up on both of your comments.

Yes, I would be concerned about the membership as well.

Secondly, we haven't had this discussion yet on budget. You know, previously we were told a much higher number as to the cost of this, but we have not
discussed in detail what does the program give up. You know, might those be some pretty valuable monitoring studies that we need for other key decisions we're making. We haven't had a full discussion.

And I would just add to that we have not had a full discussion on the comments reflecting the boundaries and we don't have an analysis of that here either.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: Yes, Mr. Chairman. I think there have been good points on both sides of the issue and it seems like every comment that's made brings up another fresh question and one that isn't easily resolvable.

So given that and uncertainly at least on the part of several of us, I would like to move that we table this until our fall meeting of 2007.

CHAIRMAN FLEAGLE: I'm waiting to hear for a second, Pete, before you ask questions. If we don't have a second the motion dies, if we do have a second the motion is non-debatable.

MR. EDWARDS: Well, I'm not going to do either. Can you -- I guess if you would elaborate on what you feel that that would accomplish.

CHAIRMAN FLEAGLE: Okay, without a second then if you would just go ahead and explain what you hope to.....

MR. CESAR: Well, I'm not going to get a second, is that what you're saying?

CHAIRMAN FLEAGLE: Well, you may. You may if you explain what the intent of tabling would be.

MR. CESAR: Okay, let me be a little clearer in terms of timeframes. Okay, and I struggled when I was thinking about this, do you put a timeframe.

I think there are enough questions out there, concerns, that people would like more information on those concerns to be able to understand them better. In terms of a timeframe, generally you make a tabling motion, you do with some timeframe out there. And that's
what I was struggling with, what timeframe would suffice.

Now, before making the motion and asking for a second, if I could ask Pete what would he think would be a reasonable timeframe.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. That's why I raised my hand, is what you meant, Mr. Cesar, by fall of 2007. Normally our Board meets for fall issues in January to discuss those.

Mr. Chair.

MR. CESAR: Well, let me have a follow up question to you Pete. Given the questions raised and given some of the concerns, when do you think the Staff Committee could come back to the Board with a review and some position from the Staff Committee, given these new questions raised, so that we could deal with it at that point?

MR. PROBASCO: Mr. Chair. Mr. Cesar. Do you mean OSM Staff or the agency Staff Committee?

MR. CESAR: Mr. Chairman. I mean OSM Staff reviewing the issues that were raised so they could be vetted through the Staff Committee, they could review them and come back to the Board and give us an assessment and/or some recommendation.

CHAIRMAN FLEAGLE: So I guess maybe for further clarification would be, too, the issue about cost of budget, membership and how it would be or could be formulated, the reapplication process, boundaries.

MR. PROBASCO: Thank you, Mr. Chair. Mr. Cesar. Let me first explain what's on our plate and then if the Board wanted to reprioritize that then, of course, that would depend upon when we could get it to you.

Currently OSM Staff is working on a closure policy and a C&T policy. The closure policy will be coming your way, it's been completed, we've had these issues so it hasn't been put on your plate.

The C&T policy goal is to have that draft completed by early January and then your review would occur during the month of January with the goal of
getting that out to the Regional Advisory Councils and then final action sometime in spring, hopefully the May meeting.

Bill, I believe, we have 72 proposals, somewhere in that neighborhood.

MR. KNAUER: We have 64 wildlife proposals and we have.....

MR. PROBASCO: Eight.

MR. KNAUER: Well, there are eight Kenai proposals which break down into about 12 actually.

MR. PROBASCO: Okay. 70 plus proposals that we're currently doing analysis on, Mr. Chair, and no telling what other issues will come out of this meeting. So we do have a full plate and my Staff is -- plus we also have the monitoring process that Mr. McBride and Mr. Klein are working on. So if you were to add this to our issues along with that we're probably looking at sometime after the Board deals with the May issues as far as us having a reasonable amount of time to deal with that.

Mr. Chair.

MR. CESAR: Mr. Chairman. Would it be fair to say that regardless of what we do today, either we vote it up or down, and especially if we voted it up, you'd still have all those issues that arise out of that decision that you'd have to deal with at some point, regardless.

MR. PROBASCO: Mr. Chair. Mr. Cesar. If the decision was to form the 11th Council, then there's a process to get that in place which has been, as the Board directed, underway. We've solicited nominations, you have not acted on those nominations, haven't even reviewed them.

MR. CESAR: Right.

MR. PROBASCO: We would have to do that. And that packet would have to go down to Washington and get approval, and that will take some time.

CHAIRMAN FLEAGLE: Right.

MR. PROBASCO: So that's what remains if
you were to make a decision to form the 11th Council.

MR. CESAR: Right. And I would suggest it'd be a lot longer than that, given the fact that we got 10 out of the 12 coming from nonrural areas and other issues, including budget, I think it would take longer than that.

So what I am suggesting then, Mr. Chairman, and I move that we table this issue until after the May 2000 [sic] meeting, and in the meantime the Board will -- I mean the Staff will suggest back to the Board a time to meet in early to mid-Autumn of 2007 to come to a decision on this.

CHAIRMAN FLEAGLE: Okay, so after May 2007 and sometime further meeting in autumn of....

MR. CESAR: September, October.


Do we get a second.

MR. EDWARDS: Does that mean no more discussion.

CHAIRMAN FLEAGLE: It hasn't been seconded yet.

MR. EDWARDS: All right.

CHAIRMAN FLEAGLE: Go ahead, Gary.

MR. EDWARDS: Well, what I'm a little unclear in, and Judy brought it up, the discussion on the boundary, is that -- assuming that we would vote this up, does that mean we'd go with the existing boundary or is that discussion still a valid discussion. I'm a little unclear there.

And the other thing, I do think there is some misunderstanding about the applicants and all of that, and maybe you can help us, but my understanding was that the three folks on the Kenai -- or on the Southcentral RAC would move over so I don't -- we shouldn't be leaving the impression that -- it's more like out of 16, right, applicants, and it's not like this will end up with, if it's a 10 person RAC, that it's going to be somewhere eight from, you know, nonrural areas and only two from rural areas -- well, can you
explain kind of how you would see the process working,
particularly moving people off of the Southcentral onto
this new RAC.

CHAIRMAN FLEAGLE: Okay, hang on. Can I ask you to just withdraw your motion to table, again, until we finish some more discussion here, Niles. I didn't get a second.

MR. CESAR: Sure. So moved.

CHAIRMAN FLEAGLE: Okay, thanks. Now, Ann, would you go ahead and respond to his question, please.

MS. WILKINSON: Thank you, Mr. Chair. Mr. Edwards. Yes, the plan is to move over the Council members on the Southcentral Council who reside in the Kenai Peninsula simply because you have to live in the region that you serve. How many of those it would be is not determined yet because we haven't gotten the packet signed by the Secretary yet. But the current three members, two of those are nonrural residents also. So that's something to consider.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Well, I guess I would add, too, the number moving over will also depend on boundaries, whether Anchorage is in or out.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I've got Ann's list. The ones that would be moving over are from Anchorage, Clam Gulch and Ninilchik. Of the applicants, there were none from Anchorage, there were six total from Kenai, two from Homer, two from Soldotna, one from Fritz Creek, one from Cooper Landing, one from Ninilchik, and one from Seldovia. None of the applicants for the new Council were from Anchorage.

CHAIRMAN FLEAGLE: Further discussion. Deliberations.

MS. KESSLER: Mr. Chair, I have a question for Mr. Cesar to help me understand his concept of delay.
MS. KESSLER: We've heard kind of two ideas or two themes prominent in favor of having the new Council. One of them seems to be specific issue driven, the other seems to be more -- Gary brought it up, invited Bill Knauer to talk about this, Keith talked a little bit about it, a bigger picture that these -- that the original 10 was not necessarily meant to be carved in stone but rather that's the way the chips fell and maybe this idea -- maybe from time to time it's good to look at more broadly, whether that structure should be changed.

So is your intention in delaying, to take that broader approach, is that what you're asking Staff to do, I wasn't clear about that?

MR. CESAR: I'm not sure I was clear at that moment when I made it, but, yeah, I believe that's true. You know, and as I recall in '91 and '92 when we were going through this process, there was a big push for 12, that 12 was a number that almost everybody was settling on. But we knew we couldn't get 12, we knew the Secretary wasn't going to go for that. And so we took 10 and we tried, as Bill has suggested, to match that, and it turned out fairly well, but there was no real magic to the number 10, it was just a number, the number that was supported by the Secretary. The other numbers were all over the place, and almost all of us, I think, was Fish and Wildlife then, I forget who was all here, you know, but as it -- I am in favor of having the Staff Committee take a whole look at the whole ball of wax and coming back to us and giving us, at least their review of this thing and I'm not necessarily asking for their recommendation but a review certainly. And what I'm doing is essentially that, a delay.

I'm not trying to influence it one way or another, because quite frankly I think with some thought we may have the votes to defeat it on its merit right now. But I'm willing, rather than -- to get this thing started in what I would consider a tenuous difficult position, to delay it and to give it some more thought and I don't think that that, keeping it in play, would hurt the RAC at this point. The RAC would still function as the RAC and we would continue on into the year.

MS. GOTTLIEB: Mr. Chair. I guess, another point of clarification then, if we were to table this discussion and focus on at least the three points that have come up here, the funding, the applications and...
the boundaries, I would only support that if we have a
commitment to address the proposals that are currently in
the que regarding the Kenai Peninsula. We haven't talked
about that part, but my assumption is we would stay
status quo while we looked at those particular factors.

CHAIRMAN FLEAGLE: That would be my
intent. And I think your fourth point would be the
composition of the RAC.

Other comments.

MR. EDWARDS: Yes, I guess further
clarification from Keith. If we would vote to do that,
that still doesn't -- is not binding on the Secretary to
delay making any decisions that they might want to do,
that's correct?

MR. GOLTZ: This Board has no power to
bind the Secretary.

CHAIRMAN FLEAGLE: Doesn't mean we can't
try.

(Laughter)

CHAIRMAN FLEAGLE: Tom Carpenter.

MR. CARPENTER: Thank you, Mr. Chair.
One of my concerns was one that Judy brought up in
regards to if you do table this proposal, that it seems
like there have been some proposals in the pipeline for
quite awhile that seem to have been delayed in the past
waiting for an outcome, if this Council was going to be
created or not created, and our Council felt very
strongly at the last meeting that these proposals need to
be acted on and we would hope that if they were tabled,
unless the Secretary were to make a determination, that
we would have the confidence of the Board that there
would be some sort of action taken on these.

The one other thing I'd just like to
bring up is, you know, this region is very large and
something that Keith brought up, is, that it is very
possible that you could take up a fisheries proposal in
Glennallen, for example, when you're dealing with
something on the Kasilof River. But I would like to
bring to the Board's attention, that it has been the
choice of the Southcentral Council as to where we have
held our meetings, and the last five meetings we have
choice to have either in Anchorage or on the Kenai Peninsula because the concerns on the Peninsula were so much greater at the time than they were in the Copper River region. So I think the Southcentral Council has been responsible in making sure that people that are going to be affected the most, depending on what the current proposals are, have had the most ability to participate.

So, thank you.

CHAIRMAN FLEAGLE: Thank you, Tom. From where I'm sitting now, I don't have enough comfort with this proposal as it stands before us for the formation of the 11th RAC and if it were to come to a vote I would vote against it, just based on the discussions we've had.

However, I'm not opposed to the idea of delaying the process to get those answers or those problems that I see with the -- moving forward with this, resolved, and if that's the intent that the Board wants to go, I think I'd like to make it clear with Tom as well, that we shouldn't continue to defer action on issues that are before us on the Kenai because we do have an appropriate venue for those decisions to be vetted to right now, and that's the Southcentral RAC.

So I guess I have decided where I am at right now, but that may change.

Keith.

MR. GOLTZ: Well, just to confirm the last part of your statement there, the U.S. District Court, in dealing with the Ninilchik proposal, has given us strong motivation to move ahead and not to delay on these.

CHAIRMAN FLEAGLE: I knew that. Judy.

MS. GOTTLIEB: Thank you. Good point.

Tom, I guess I just wanted to confirm, I mean here today, we have people on line for our meeting who weren't able to come here, do you have that same capability when you hold meetings?

MR. CARPENTER: Yes, we do. Through the Chair. We generally -- sometimes we have people that want to testify telephonically. The last meeting in Homer we had a couple, we actually had a couple Council
members that were out of town that participated in some
of the discussion. So we do have basically the same
capabilities that the Board has right here.

CHAIRMAN FLEAGLE: Niles.

MR. CESAR: Thank you, Mr. Chairman. I
guess I'm kind of torn between two motions here.

Because, you know, by moving to table,
which I haven't done yet will go to an immediate vote and
it will either go or not go. On the other hand, you
know, I still maintain from my personal opinion that not
enough evidence to justify my vote in favor of this. And
I'm not very good at most things except maybe counting,
and it may appear that I may not make a motion to table.

CHAIRMAN FLEAGLE: Other Board members.

(No comments)

CHAIRMAN FLEAGLE: I understood him loud
and clear.

(Laughter)

CHAIRMAN FLEAGLE: Do we need to step
down.

(Laughter)

CHAIRMAN FLEAGLE: 10 minutes.

(Board nods affirmatively)

CHAIRMAN FLEAGLE: Let's take a break, a
10 minute break.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Okay, we're back on
record. Gary.

MR. EDWARDS: Well, Mr. Chairman, we've
discussed this a lot and I think we need to move forward
and I guess see where we stand on the issue.

So I'm going to move that we support the
formation of a new Kenai Peninsula Regional Advisory Council. As I've said throughout this discussion, I think it's the right thing to do. I think it's a vehicle that would provide more local participation and input into the issues. I think it would allow us to have a Council with people who are intimately familiar and knowledgeable of the resource and the issues surrounding it. I think it would also help the Southcentral RAC to also focus on other issues and not get totally tied up with Kenai River and the drainage and Peninsula issues.

I personally think it sends a very strong signal that demonstrates this Board's commitment to providing a meaningful subsistence priority and preference on the Peninsula by doing that. I think it's a very positive signal. And I think it's the right thing to do.

CHAIRMAN FLEAGLE: Thank you, Gary. Are we going to get a second.

MR. CESAR: I'll second that.

CHAIRMAN FLEAGLE: Okay, we got a second, and he gave pretty good rationale for making the motion, is there further discussion from Board members.

Niles.

MR. CESAR: I'll just call for the question.

CHAIRMAN FLEAGLE: Question's called.

Pete.

MR. PROBASCO: Thank you, Mr. Chair. The motion before you is to support the formation of a Kenai Peninsula Subsistence Region.

Mr. Cesar.

MR. CESAR: No.

MR. PROBASCO: Ms. Gottlieb.

MS. GOTTLIEB: No.

MR. PROBASCO: Mr. Fleagle.

CHAIRMAN FLEAGLE: No.

MR. PROBASCO: Mr. Oviatt.
MR. OVIATT: Yes.

MR. PROBASCO: Ms. Kessler.

MS. KESSLER: No.

MR. PROBASCO: Mr. Edwards.

MR. EDWARDS: Yes.

MR. PROBASCO: Motion fails, Mr. Chairman, two/four.

CHAIRMAN FLEAGLE: Okay, thank you. We'll dispense with that item on the agenda. Appreciate all the good discussion.

Next up we have, which is labeled No. 4 on the original agenda, which is FRFR06-02/03/08, which is commonly known as the Ninilchik Kenai River customary and traditional use determination reconsideration, and we'll start out with Staff analysis. Pete.

MR. PROBASCO: Mr. Chair. Just give us a minute and we'll get Ms. Armstrong up here and then I'd like to make a few opening remarks.

CHAIRMAN FLEAGLE: You bet.

(Pause)

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Mr. Chair. As we move into FRFR06-02/03/08, I think it's important that we just briefly go over our process that we have undertaken to deal with this request for reconsideration.

I think it's important to state that the RFR has followed according to our subsistence management regulations. We have had appropriate public involvement throughout the process. If you go back to when the original proposal was submitted FP06-09, throughout that process and deliberating on that proposal we had extensive public involvement. OSM Staff sought public comments, both written and orally to the Board. This proposal was presented to the Southcentral Council in October 2005 and then the proposal with the recommendations from the Council and others was presented to the Board in January of 2006. Public testimony was
given at both the Council and Board meetings. And then
after the Board's decision in January '06, the issue we
have before us, both the State and the Ninilchik
Traditional Council submitted requests for
reconsideration of Proposal FP06-09. And in accordance
with Federal subsistence regulations, we conducted a
threshold analysis and that was presented to you, as a
Board, on August 31st of 2006. At that time the Board
determined that there were some claims that warranted the
Board's reconsideration of their determination made in
January of 2006. OSM Staff, on behalf of the Board sent
letters to the State and Ninilchik Traditional Council
noting which claims would be addressed and those are
going to be before you today. A new analysis was written
and posted on the OSM web site on October 3rd of 2006, as
well as mailed to 105 individuals and agencies on the OSM
mailing list for the Council, the Southcentral Regional
Advisory Council. Analysis was presented to the Council
at their fall October 18th, 2006 meeting in Homer, and
public at that meeting testified on this issue. In
addition written comments were accepted on the RFR and
analysis throughout this process up to today. Staff has
reviewed the State comments in their letter that they
submitted to us on October 26th, 2006 on the RFR
analysis. As a result of these comments and others, a
revised analysis dated October 31st which addresses the
State's comments, which we felt were appropriate were
included. This revised analysis was mailed to all
agencies and the specific individuals as noted above on
November 1st, 2006, as well as the Council members on
November 2nd, 2006. And, again, we posted it on the web
site on November 3rd.

Before you in your packet, the State has
provided 14 pages of comments on the October 26th
analysis. I want to state that the majority of these
comments were incorporated into the revised analysis.
These comments did improve the document by adding clarity
and removing subjectivity. We do appreciate the State's
dedicating significant staff time to review this draft
RFR and providing these constructive comments back to us
as we go through this issue. Of the 34 specific comments
provided by the State we incorporated 21 of these into
the revised analysis.

And, to conclude, Mr. Chair, I believe
the OSM Staff has provided an excellent and thorough
analysis that's going to be before you for your review
and deliberations and this analysis provides more
detailed information than what we normally see when the
Board conducts C&T analysis, and Mr. Board -- or Mr. Chair, we look forward to answering your questions as we go through this issue and Ms. Armstrong will take us through the Staff analysis.

CHAIRMAN FLEAGLE: Thank you, Peter.

Helen, welcome.

MS. H. ARMSTRONG: Thank you, Mr. Chair.

My name is Helen Armstrong, I'm a cultural anthropologist with the Office of Subsistence Management. I'm presenting the analysis for FRFR06-02/03/08, and this is a request for reconsideration analysis of the Federal Subsistence Board's action on Proposal FP06-09 that they made in January of 2006. The original proposal was submitted by Ninilchik Traditional Council, which I'm going to refer to as NTC, Stephen Vanik, Fred H. Bahr and Henry Kroll.

The original proposal requested a positive customary and traditional use determination for all residents of the Cook Inlet area for salmon, Dolly Varden, trout, char, grayling and burbot in the Cook Inlet area and a positive C&T for all residents west of a line due southeast of the Crescent River mouth and intersecting another line drawn northeast of the south side of Tuxedni Bay for herring, smelt, whitefish and salmon in Tuxedni Bay. None of the RFRs addressed the Tuxedni Bay portion of the Board's decision, therefore Tuxedni Bay will not be included in the analysis.

The Board's decision that they made in January of 2006 that is being requested for review was that for the Kenai Peninsula district which is defined as the waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest, and this area will from here forward be referred to as the Kenai River area, for all fish, residents of the communities of Hope and Cooper Landing for waters within the Kasilof River drainage within the Kenai National Wildlife Refuge, all fish residents of the community of Ninilchik.

The request for reconsideration that's numbered 02/03, these were submitted by the State of Alaska and FRFR06-8 was submitted by NTC.

As Pete said, we did a threshold analysis and the Board accepted four claims. These claims were, briefly, that the State requested review of new
information from them regarding the subsistence use of fish by Ninilchik residents in the Kasilof River drainage and the Kenai River area. The State and NTC requested further analysis of studies conducted by NTC regarding Ninilchik's use of fish. And NTC provided new information regarding the methodology and study results of research conducted in 1994 and 1999. NTC claimed that the Board needed to take affirmative action towards establishing a Kenai River subsistence fishery for Ninilchik, and this analysis that we're doing today, this RFR addresses the accepted claims for the regulatory aspects of a fishery on the Kenai Peninsula that were before the Board in January of '06 and other proposals not addressed at that time are to be addressed prior to the 2007 fishing season. They're being taken out of cycle.

NTC also claimed there is no statistical threshold that a community must reach in order to have a customary and traditional use determination. To date the Board has not relied upon an absolute standard to define use but, rather, has examined use in the context of the eight factors.

Thus, the new information that was provided to us, I'll just briefly go over this, I'm sure there will be lots of discussion about it. ADF&G provided new information from Dr. Fall and his staff regarding the estimated percentage of Ninilchik households fishing in the Kasilof and Kenai River drainages and the Swanson River. Lifetime uses of the Kasilof River drainage/the Tustumena Lake area indicated that 30 percent of Ninilchik households had fished some portion of the Kasilof River drainage in their lifetime, however, they noted in this paper that there were limitations to these data and that the data couldn't be used to infer lifetime uses of Federal waters. Thus the new information provided by ADF&G does not provide anything new that would change the Board's decision in January 2006 on Ninilchik's uses of the Kasilof River drainage. Therefore, we do not have any further analysis of the Board's decision on Ninilchik's use of Kasilof and none is required since the new information does not provide contradictory information.

The Board determined in January 2006 that Hope and Cooper Landing had a positive C&T for all fish in the Kenai River area. There was also no new information provided by the ADF&G or by NTC about Hope and Cooper Landing, thus no further analysis on the
Board's decision regarding C&T for Hope and Cooper Landing is required.

NTC provided supplementary new information regarding their research conducted in 1994 and 1999 that validated the methodology used by NTC in conducting their research as well as provided copies of the original individual use area maps and survey responses from their research. NTC's new information also did not add anything that would change the Board's decision in the Kasilof River drainage, nor any new information on Hope and Cooper Landing. Therefore, this analysis only addresses Ninilchik's use of the Kenai River area. Hope and Cooper Landing are not included, nor is the Kasilof River.

So in the interest of time, because I have, I think, it's 28 pages of analysis, and I know that everybody has read and reread this more than probably any other analysis ever before, perhaps, I'm not going to go through everything in here. I'm just going to make a couple of comments. I want to emphasize that the eight factors do not have to be fulfilled by drainage. We do not do C&T that way. It is not the way the research is done, we don't have that kind of data on each factor by drainage. It also is not the way we do C&T's generally, we don't have to fulfill every factor for C&T as well, although we do have information in this case, on all of the eight factors, but we don't do it by drainage.

What we do, when we make C&T determinations, when we do an analysis, is that we take the eight factors together to describe a pattern of use.

I also wanted to emphasize that there are not unimportant uses in subsistence, as described on Page 17 in the analysis. Our program was designed to accommodate all uses and was not meant to restrict subsistence uses. When there's a shortage then we go to an .804 analysis determination. When we do C&Ts it's really meant to be more inclusive than exclusive, and we look at all uses.

The majority of the information in this analysis was drawn from the analysis presented to the Board in January of '06 with the exception, of course, of the new information, so I'm not going to repeat it. Probably the information people have focused the most on is Table 1 on Page 12, which is a summary of the lifetime use information as adapted from Fall's new report done in...
2006. So in the interest of time, rather than going through everything, I'm going to leave it up for questions.

Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Great, thank you.

Questions for Helen Armstrong, her report.

(No comments)

CHAIRMAN FLEAGLE: Okay, thank you. Oh, Gary, go ahead.

(Laughter)

CHAIRMAN FLEAGLE: Go ahead, Gary.

MR. EDWARDS: I don't want to always be first, I was waiting to see if anybody else was going to ask any questions.

Helen, I understand we're also going to have an opportunity to maybe ask Dr. Fall some questions, given that an awful lot of this information was provided by the State and as well, what I think we've been wrestling with, but one of my questions is that there does seem to be discrepancies between lifetime use levels and the single year study use levels by species. You know, the lifetime use information for Ninilchik residents was -- who frequently fish in the upper Kenai is over 12 percent, while if you look at the three single year studies show a use level of less than four percent of any species, do you have any explanation for that?

MS. H. ARMSTRONG: I think it's probably anybody's guess on that but I will defer to Dr. Fall because he did do the research and we have talked about it and I think it would be more fair to let him respond than for me to respond since he was the author of all of that research.

MR. EDWARDS: We can wait for him to come up. But I guess I wanted to follow up on one other question, again, referring to Dr. Fall's study and also what we have heard throughout the various meetings that we've had and where we have discussed this, you know, there is information available showing how people historically used fish with nets for coho, for sockeye, and trout in the upper Kenai River and some of it was in
conjunction when trappers were coming, even from Seward and other places to do that and I think obviously that's something that you would expect, I mean there weren't any grocery stores so you obviously -- if you were in that area you were going to be living off of the land, but most of that, at least the way I read it, focused on that these Kenaitze people who were using that and certainly there are historical sites up there, but are you aware of any information or did you find as you were going through your studies regarding people from Ninilchik specifically using the upper Kenai for subsistence prior to the road being built, other than through a -- and I do acknowledge, we certainly heard public testimony to that fact, but in any of the referenced materials or the literature you looked at, were there some very good -- some good specific references?

MS. H. ARMSTRONG: As I think you all know there's not a lot of information in the literature about that. But there is a small paper that's in your packet that Dr. Bob Wolfe put together that does talk about the use of the upper Kenai from the research that the Ninilchik Traditional Council did in 1994. And they did submit the actual maps from each one of the surveys and I do have them here. And -- I think those were in their packets but maybe not -- no, they weren't, okay, sorry. But there is some information and I think Dr. Wolfe is on line; is that correct?

MR. KLEIN: Yes.

MS. H. ARMSTRONG: So I think maybe it'd be better to have him talk about it than to have me talk about it since he put it together, or if you have questions. But in that study they did find that 32 percent, I'm trying to -- I think it was 32 percent of the households -- of the 25 people that they interviewed used the Kenai River, Kenai Lakes for harvesting fish.

MR. EDWARDS: But was that more recent data or is that just......

MS. H. ARMSTRONG: That was their lifetime use.

MR. EDWARDS: .....historical data -- I was trying to get at if we looked back into the early 1900s and even before, were there historical trails that people used to move, let's say, from Ninilchik, over the
MS. H. ARMSTRONG: No, not that I know of. Although Dr. Fall and Dr. Wolfe know this area better than I do so if they have information they can -- you know, they certainly can provide that. I would like to note that we don't -- the Board, in the past has not depended on traditional use areas as a way to determine whether or not to give people a customary and traditional use determination. A good example of that is Slana, who has been given C&T for a number of resources and they're a new community, they moved in in the '60s and they do not have traditional use areas. And I can give other examples. I've been thinking about this since this issue has come up, I mean I've been in many Council meetings where there's been discussion about, you know, one particular community having C&T, one that came to mind to me was Unalakleet going up and taking caribou in -- they're in 22(A) and going up into 22(B) and people in 22(B) not wanting them to come in there because that's outside their traditional territory, but because there had been intermarriage between those two communities ultimately the people in 22(B) said, well, we really don't want to keep them out, and so they went ahead and they gave them C&T. I think there are numerous examples of that kind of discussion that's gone around all over the state where there are crossovers between traditional territories.

So it's not something that we, as anthropologists have used to say that one group should be excluded from another area or not because subsistence is -- I mean ANILCA says it's for all rural users and we can't exclude one group from another based on whether or not they have traditional use areas. Then it would become a Native program and that's not what it is.

MR. EDWARDS: But I guess in the case of the Kenai, I mean a lot of the data shows that a lot of the early use by trappers and all were anglo-saxons coming out of Seward and other places.

But getting back to your comment, I'm trying to -- regardless of what decisions the Board has made or hasn't made, how does that reconcile under the eight factors about, you know, a long-term consistent pattern of use, I mean is that -- I mean if you have long-term consistent patterns of use in Southeast, does that mean that you would have C&T for the North Slope,
for example?

MS. H. ARMSTRONG: I don't -- not if.....

MR. EDWARDS: I'm trying to understand,
you seemed to indicate that it was just a matter of use,
not where that use occurred, and I'm trying to understand
the difference there.

MS. H. ARMSTRONG: No, it is where the
use occurs.....

MR. EDWARDS: Right.

MS. H. ARMSTRONG: ....of course. Maybe
I said something wrong to mislead you, I don't know.

MR. EDWARDS: All right. So it is the
long-term pattern of use in an area?

MS. H. ARMSTRONG: In an area, that's
right.

MR. EDWARDS: Okay.

MS. H. ARMSTRONG: But what's not been
defined, you know, we have -- we have -- and I think that
the Board -- I know the Board's seen this before, but we
have a guide that we use, the anthropologists do when we
do C&Ts and there is no definition of what long-term
means, and that's not been something the Board has
defined, and we -- I mean obviously if Slana has been
given C&T and they've only been there since the '60s,
then there's not a magic number of years that you have to
have used an area in order to have C&T.

I don't know if Keith wants to add
anything to any of that.

CHAIRMAN FLEAGLE: Any more questions.

MR. GOLTZ: I may have more later.

But I think what we may be missing here
is that C&T refers to uses, not to users. So if we have
a resource that has been used for subsistence, new people
can come in, this is not a closed system.

CHAIRMAN FLEAGLE: Other questions.
CHAIRMAN FLEAGLE: Hearing none, okay, we'll thank you for the report. We'll go ahead and move into -- oh, Mr. Bedford.

MR. BEDFORD: Yeah, referring back to the comment that you made about the study that Mr. Wolfe -- or Dr. Wolfe had done, you said that 32 percent of 25 people who had been interviewed had been engaged in fishing on the upper Kenai River; is that correct, at some time in their lifetime?

MS. H. ARMSTRONG: That's what the study said, yes.

MR. BEDFORD: Okay. And would that be an inconsistent finding from 17 percent in Dr. Fall's work? In other words I think the sample was a little bit different in the two studies; is that correct?

MS. H. ARMSTRONG: Well, I think it's a little bit difficult to compare in some ways because they were done differently. And, in fact, it says at the very end of this, if you've had a chance to read it, that because -- I mean they're really different methodologies. Dr. Fall did a very -- you know, it was a thorough survey where they did a random sample of the whole entire community. The study that NTC did was strictly of Natives or of the NTC members, and it was not done in a random necessary -- I don't believe -- maybe they can correct me on that, I'm not sure if it was totally random. What they were trying to do was to describe long-term patterns of use and so they used it, you know, they sat down and they took maps and had them draw where they'd ever gone in their lifetime. So they're different types of studies.

But in terms of the fact that -- I mean there's no -- nobody here is saying that the Ninilchik people used the Kenai River area to a great extent. I mean that's a fact that it's not a really heavily used area, they're harvesting most of their resources close to the community. So in that sense I think it's consistent in the fact that they're not showing that, you know, that that's their primary use area or something like that.

I think maybe you might want to ask Dr. Wolfe some more questions about that, too.
MR. BEDFORD: Thank you.

CHAIRMAN FLEAGLE: Okay, thank you. At this time we'll go ahead and start taking public testimony on the topic so I'll give you guys a moment to clear the table. And I've got 10 cards so we'll go ahead and do the five minute limit and also we'll check and see if there's anybody on line that wants to testify at the end of the 10 cards.

(Pause)

CHAIRMAN FLEAGLE: In no certain order.

(Laughter)

CHAIRMAN FLEAGLE: We're they're not random anymore, I got them stacked but I stacked them randomly.

(Laughter)

CHAIRMAN FLEAGLE: Anyway okay first up will be Clare Swan. Welcome Clare.

MS. SWAN: Thank you. Is that -- that's on?

CHAIRMAN FLEAGLE: Yes.

MS. SWAN: Thank you, Mr. Chairman and the rest of the Board. My name is Clare Swan. I am here today representing myself. I'm going to speak as a tribal member and a tribal elder, and I am not here representing any other organization, but I'm a member of the Kenaitze Tribe.

I've been involved with the tribe, I worked with the tribe for over 30 years. And I worked very hard on the -- we have the net, we have our -- what's called an educational tribal net, it took nine and a half years and it's a good thing. I have to add that I didn't do it all by myself but I did -- although I wondered why I was doing it a lot of times. But right now -- and when I was with the tribe for -- 15 years I was the Chair as well as the CEO and I've been back home 30 years -- I know which time before that I worked with Kenai Native Association. So most of my life has been my tribe which I am here today to not talk about, statistics, I just want to talk about what's going on.
I might add that I do not support the C&T for Ninilchik.

Before 1941, before the Kenai Moose Range was the wildlife -- moose range was made, customary and traditional uses -- or customary and traditional in regards to the tribe includes respecting boundaries. And when you wanted as a tribe, when you needed to do something, you asked permission if you could come on someone's use lands. They have -- the Kenaitze did do that, they -- for example the Tyonek people didn't have moose for a long time, until the early '30s so they were allowed -- they had a special place they called the Tyonek Hills to fish -- or to hunt, just to hunt moose, and tribes certainly can give permission for others to use their boundaries and their resources but in doing so,, they have to consider very well what the consequences of that will be -- of that use will be because the tribes -- tribal council, the governing mandates and -- is that they protect their tribe and it's protect and preserve the tribe. Now, because Kenaitze owns -- all the Kenaitze owned land is what they have bought, they own it privately, and they don't have any other land that's out there in the woods, this is what we called our stewardship, we have -- because we believe that the best ownership of land is to be stewards of it. And so that results -- has resulted in part in working with the Forest Service, as well as the Park Service and we have two interpretive sites, one the Kenai River and one at the Russian, and one across from the Russian River campground and one at -- they're called Beginnings and Footprints and we got -- we worked with those in conjunction with the Park Service and Forest Service.

I just -- you know there's a lot of words going on around here and we just talk and talk and talk and talk and talk and, you know, the tribal members, many, many Kenaitze members throw their hands up in the air and they say, why do we have to prove customary and traditional, that's what we've done, why do we have to prove that? They ask us over and over and over again. And it just seems that -- it seems that that's true and there's all these other labels made, so now what we have and it's a little scary, and I think it's on the bottom of the first page, Claim 3(8), the Ninilchik saying that there is no quote, statistical threshold" or absolute standard to define use. Now, can you just see that, if we do this there's going to be snowdrifts, snowstorm of proposals from everybody. So what are we going to have to do first, decide whether use is going to be a noun or a
verb, and you can see where I'm getting at with this, is
that, I believe that if we do this, that history doesn't
bear this out, the written history doesn't bear out C&T
for Ninilchik. And this doesn't have anything to do with
-- and I -- you know, I'm a tribal person, I care what
they do, I don't want them to starve or anything, this
has nothing to do with that, but if we revise history by
making rules, I mean what happened, happened. And
Kenaitze have used -- Dena'ina people, that was
originally our homeland. Lots of things went on there.
There's a village up there. There's an old -- all the
way across from Russian River and it's Dena'ina, there's
a Dena'ina burial ground there, there's a Dena'ina
cremation place. And so if we -- what bothers me is that
we -- if we begin to do this, we will lose -- we'll have
nothing, anybody can come and just say, if you have the
right wordage, if you want to sit long enough and listen,
we can change this.

In a world now where this river -- you
know, our river is impaired. Many, many people use the
river. And I just want to end with an old, old story
that my mother used to say and the elders and it's old
because I've lived around here for a long time, I'm old.

But they used to say that when the men
went trapping at Skilak Lake they wondered if they would
come back because -- if you would ever come back because
if you fall in that lake and drown nobody finds you, it's
very rare. But the story is that there's an old lady,
old woman who lives in the river bed, and she lives in
the lake and she watches the river, and if at any time,
when she gets to where she can't see the sky because the
water's so dark, she can't see the spruce trees that
shade the smolt, and she can't hear ice cracking on the
river, or the river running then she'll shrug turn over
and go to sleep and she will never wake up. So that
makes me think that something happened to the river like
that once long ago because people don't have stories like
that if they don't -- and I think that it's -- my feeling
as a tribal person and I am, is that we need to look at
ourselves and see what we need to do because we all use
the river and we need to look at what -- to keep the
river healthy.

And we're pretty high on talking about
sharing and caring and all that stuff for each other,
well, let's go do it then.

Thank you very much, Mr. Chairman.
CHAIRMAN FLEAGLE: Thank you, Clare. Hang on, we might have questions. Judy.

MS. GOTTLIEB: Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Thank you.

MS. GOTTLIEB: Thank you, Clare for coming forward. I know you have served many years and assisted the Board in the past so we appreciate seeing you.

MS. SWAN: Uh-huh.

MS. GOTTLIEB: You mentioned, but I don't think I quite heard you that you have an educational tribal net and then you said something about nine and a half years but I don't think I got what you.....

MS. SWAN: Well, it took us that long to get it because we had to go the scenic route so to speak.

MS. GOTTLIEB: Okay.

MS. SWAN: First we had to prove that we were rural and then the court said we were rural and we were rural for five minutes and then we had to figure out another way to keep the net. So.....

MS. GOTTLIEB: Okay, thank you.

CHAIRMAN FLEAGLE: Other questions.

Gary.

MR. EDWARDS: Clare, if I may. I'm assuming from what you said that you were raised in the Kenai area and your parents were and your grandparents before them. And at the start of your testimony you talked about use patterns and, you know, who used the area.

MS. SWAN: Uh-huh.

MR. EDWARDS: And I guess what I thought you said is that from your perspective and from what you were told, that was primarily used by the Kenaitzes and the Dena'ina people and other folks did not use that unless they were given permission and I don't know if whether....
MS. SWAN: That's right.

MR. EDWARDS: .....that was frequently or infrequently or.....

MS. SWAN: Well, only if -- I mean most of the time that I know is that when they helped each other out with -- there would be trading and the people from Susitna, for instance, would come down in the winter and bring caribou and then they would trade fish with them, they would give them fish because they'd come down, you know, after the lakes froze, and the Tyonek moose and we -- and we -- that's how we did it but it was done by permission, you did not -- until the immigrants came, of course, and I say the people who are non-Native, I don't -- you know, when they came then, there were -- they trapped and fished and they intermarried with Dena'ina women and then so -- I don't know if you're familiar with it but in Peter Kalifornisky's book when he talks about where I trapped, he says, and the other people, the other people who trapped there were also and he names many non-Native people, some Native people, but many non-Native people also who eventually just stayed and lived in the village. I was born in Kenai, in the village.

CHAIRMAN FLEAGLE: All right, thank you for your testimony.

David Case.

He declines, okay.

(Laughter)

MR. CASE: Thank you, Mr. Chairman. Members of the Board. Really I'm just going to speak to a couple of process concerns that we've got.

This is not a proceeding that is in your normal regulatory cycle as I view it. This is not an annual regulatory cycle proceeding or need it be, although the State has suggested that it should be treated that way. This is a request for reconsideration and we view it as a quasi -- what I'd call it, an adjudicative process. It's an administrative proceeding, or an administrative hearing. We're a little confused by the process because it seems like it was set up to have the public process at the RAC, where there would be public testimony that would then form the record for your decision. But now this -- and I gather you have some
flexibility in how you arrange this process, you are now
taking testimony and having a hearing essentially with
two parties who are opposed to each other, the State and
Ninilchik, we both submitted opposing requests for
reconsideration and to deny the others and so forth, but,
yet the State is at the table, is able to ask questions
of the witnesses or the people who give testimony here
and we are confined to a very narrow five minutes of
speaking, testimony, and no ability to ask questions of
the people that come before you. And that seems to me to
be inconsistent with what I would consider to be due
process. I don't use that term very often but I do think
that if you're having a hearing in which you're hearing
between opposing parties, who are opposing highly
contended issues and you only allow one side to have the
opportunity to address the testimony, the witnesses
before you, ask questions of them, then that doesn't seem
to me to be a very fair process.

And I'd like to mention that for sure,
and to suggest that we either need to afford -- well, I
think the preferable way would be to afford both parties
a seat at the table to be able to participate equally.
And so I'd like you to consider that. And if that is not
possible, and I'm not sure it's a substitute, frankly, so
I don't want to suggest that we are waiving, if that's
the term I have to use, anything, but we would at the
very least be allowed to speak at the last and to respond
to testimony that's been raised. Again, I'm not sure
that I believe that's a substitute for a real, what I
would consider to be a fair proceeding.

Thank you.

CHAIRMAN FLEAGLE: Thank you, David.

Appreciate those comments and we'll make a determination
on your request prior to entering into deliberations. I
think you raised some good points, but I don't want to
raise them up right now and interrupt public testimony.

MR. CASE: Okay.

CHAIRMAN FLEAGLE: But we will raise it
up.

Thank you.

MR. CASE: Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Next up is Ricky
MR. GEASE: Hi, my name is Ricky Gease. I'm the executive director of Kenai River Sportfishing Association.

I would like to just talk about traditional use areas. I do think it is important. I find it interesting that we're talking about subsistence uses of an area and then that's the implication that that might be the only thing that needs to be determined, if there was ever subsistence use in a region, and then somehow a specific user group does not have to show a consistent pattern of use in a region to qualify for C&T. If that's the case why have C&T dependent upon an area, why have the whole process in place, it's a logical inconsistency, then anybody in the state in a rural area could say -- could qualify for C&T on the upper Kenai because the Kenaitze Indians traditionally have used that region.

I don't think that's why the eight criteria are in place.

I would say that four out of the five agencies that are sitting at the table have legal agreements between a Federal government and a tribal government arrangement that recognizes the Kenaitze Indian Tribe as the tribe that historically had customary and traditional use of the Kenai River watershed and had customary and traditional use of the Kasilof area. Tribal boundaries define the areas of tribal jurisdiction and are based in a large part upon customary and traditional use areas. Tribal boundaries are legally defined in the tribal documents such as tribal constitutions and in Federal law and form the legal basis of government to government relations and service areas between the Alaska Native tribes and the Federal government. Within the Kenai Peninsula Borough tribal boundaries of the Ninilchik Tribe and the Kenaitze Indian Tribe are based on customary and traditional subsistence use areas, as are other tribal entities in the Borough. For the Ninilchik tribal boundaries these generally extend from the Kasilof River south to Kachemak Bay and over to Mount Redout and to the Harding ice fields of the Kenai Mountains to the east. The Kenaitze tribal boundaries in general extend from the Kasilof River north to Point Possession and from Mount Redoubt to the headwaters of the Kenai River in the Kenai Mountain areas.
The Kenai River watershed is within the tribal boundaries and jurisdiction area of the Kenaitze Indian Tribe. There are no lands and waters within the Kenai River watershed that lie within the tribal boundaries or jurisdiction of the Ninilchik Tribe. Tribal membership is exclusive, dual memberships are not allowed. For example, the constitution of the Kenaitze Indian Tribe states no person shall enroll as a member of the Kenaitze Indian Tribe who is a member of another Indian tribe [sic]. I reference that because there's some in the historical -- in the Staff analysis, there's some mention that because there's some intermarriages between groups, somehow that becomes a surrogate for consistent and long-term use.

The Federal government, if we look at the Forest Service, the Forest Service has a cooperative agreement with the Kenaitze Indian Tribe for the interpretation of customary and traditional subsistence resources at the Kabeck (ph) and Footprint site, which is right at the Russian River area. The Kenaitze Indian Tribe is the recognized legal entity for consultation and planning and development with Cook Inlet Region for the visitor's center that's going in there that talks about subsistence use areas in the region there.

When it comes to looking at archeological remains, when our organization looks at Pacific cultural salmon recovery funds, we look to the Fish and Wildlife Service for archeological work and with the State but we consult the Kenaitze Indian Tribe as the recognized group that has the authority to -- over tribal remains in the region.

They're also the recognized tribal entity responsible for the preservation and caretaking responsibilities of K-Beach Village site, which is located on the north bank of the Kasilof River, which is one of the last purely traditional subsistence Native villages that disbanded around 1920.

Repatriation recognizes through the Park Service the Kenaitze Indian Tribe within the Kenai River watershed and at the K-Beach Village traditional site.

So in many ways the agencies represented here -- and BIA recognizes the Kenaitze Indian Tribe through health and human services within the tribal service boundaries -- so in many ways this would be the first time that the Federal government would recognize
the tribal jurisdiction of — I mean basically you're looking at reports from the — the Wolfe report and the Wolfe study [sic] that's looking at tribal use of an area and this would be the first time that the Federal government would recognize a customary and traditional long-term use pattern of the Ninilchik Tribe on the upper Kenai River. And I don't think the facts support that.

And there was also entered into the record, tribal territories on the Kenai Peninsula by Dr. Alan Boris of Kenai Peninsula College. He looked through 14 different historical resources documenting customary and traditional use areas on the Kenai Peninsula, references for it, none of them show a consistent pattern of use on the upper Kenai River by Ninilchik.

CHAIRMAN FLEAGLE: Thank you, Ricky.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.

MS. GOTTLIEB: Well, I wondered if Keith maybe would want to make a statement about — I mean some of the other examples you cited, Rick, are kind of not applicable to what we're doing here. The agreements that we may have or the agencies may have with the tribes is different than looking at a community's customary and traditional use.

CHAIRMAN FLEAGLE: I think it would be more appropriate to do that under deliberations when we're working with ourselves.....

MS. GOTTLIEB: Okay.

CHAIRMAN FLEAGLE: .....and not actually -- okay.

MS. GOTTLIEB: Okay.

CHAIRMAN FLEAGLE: All right, thank you Ricky, appreciate your comments. All right our next testifier is Greg Encelewski who is on by telephone. Steve.

MR. KLEIN: Greg, are you on line and ready to testify.

MR. ENCELEWSKI: Yes.
MR. KLEIN: Okay, go ahead.

MR. ENCELEWSKI: Can you hear me?

CHAIRMAN FLEAGLE: Yes, we can, go ahead.

MR. ENCELEWSKI: Okay. I hope I don't get no background from the radio here. Mr. Chairman. Federal Subsistence Board. And other members.

Greetings.

Thank you for the opportunity to say a few words here. Of course first of all I want to ask that you do take consideration of the Southcentral RAC's recommendations on this issue, as I know it's been debated publicly with a lot of public testimony, et cetera and I just hope that you give it consideration.

With that said I'd like to just talk on a couple items. You know, I find it puzzling that we got a sportfisherman telling us how the tribe's run, but, anyway I'm ont here to get into that argument. But I would like to tell you a little bit about use on the Kenai and myself, personally, I could testify to. You know, our tribal members are intermarried and myself, personally, you know, I was born actually raised in Anchorage and born in -- raised in Ninilchik -- I was born in Anchorage, raised in Ninilchik until third grade and grew up in Kenai. About '67 I was a member of the Kenaitze Tribe until just about six years ago when I transferred back to Ninilchik. And the reason I point that out is it just shows some of the ties between the tribes.

You know, my grandmother was a Darian (ph) from the Kenaitze Tribe. My aunt is a member of the Kenaitze Tribe. I got uncles that are members of the Kenaitze Tribe. The Kenaitze Tribe comes and fishes in the spring sometimes with us for early kings, we fish traditionally with them, side to side and we respect their areas, but we definitely have traditional use on those rivers.

And so I just wanted to point those few things out, you know, it's not always brought up that, you know, there is -- there is definitely a closeness there and there definitely is a respect. But there still is a joint usage there.

Let's see I had a couple other little
things here. I also wanted to just mention, you know, one of the reasons we moved around from river system to river system was basically because the timing of the runs, you know. Spring kings, early kings are in Ninilchik, later further up, of course, all the way from the rainbow trout later on, upper river, et cetera. But basically, you know, that was the history of you travel where the fish was and most of that traveling, of course, in the early days was by boat.

So let's see what else did I want to say. I guess I'm not going to be too long, I'm here at work and I probably need to get back but if you have a question for me I'd be glad to answer it.

CHAIRMAN FLEAGLE: Okay, thank you for your testimony. Board members, questions.

MR. EDWARDS: Yeah.

CHAIRMAN FLEAGLE: Gary.

MR. EDWARDS: This is Gary Edwards, Fish and Wildlife Service. Could you elaborate a little more on that historical use, you mentioned both for kings and for rainbows. You know as a young boy growing up or, you know, what you were told by your parents or grandparents. Where did most of that fishery occur, let's say for kings, for example?

MR. ENCELEWSKI: Well, Gary, you know, I'm not going to incriminate myself because I don't know about statute of limitations but.....

(Laughter)

MR. ENCELEWSKI: .....started at the lower part of the river and moved up as time went on.

You know everyone knows in the spring we start down there on the lower end, that's probably out of the area and then we move on up and you get fish as you can. I fished a lot from Skilak Lake, down floated on the river and caught fish in various ways from there, too.

MR. EDWARDS: And just one other question, you know, before the roads were completed and all, what was the means and sort of methods for getting up into, particularly, those upper waters?
MR. ENCELEWSKI: One way or the other, but, yeah, we used nets.

MR. EDWARDS: No, I meant modes of transportation, you know, getting up there.

MR. ENCELEWSKI: Well, basically by either hiking or over land or boats, whatever, to the river.

MR. EDWARDS: Okay, thank you very much.

CHAIRMAN FLEAGLE: All right, thank you for your testimony.

Up next is Connie Wirz.

MS. WIRZ: Hi, I'm Connie Wirz. I'm the executive director of Kenaitze Indian Tribe.

This is really difficult because earlier I heard someone speak about, you know, well, this is going to divide folks, and I don't know, he said, you know, this is going to divide us and I don't really know who us is anymore in a lot of ways. I'm not a member of Kenaitze Indian Tribe, I'm actually a member of Salamantof, which is, I guess, perhaps one of the ways you could think of it as a community within a community, we're small. And Kenaitze has definitely taken the lead in so many things for our people, and I've been blessed to have this opportunity.

But when I say -- it really chagrins me because this is dividing us and I truly don't know who us is, this has been very difficult. We've had meetings and we've looked at this. If we support, you know, the Sportsfishery Association -- and by the way this was very eloquently written by the sportsfishermen and it looks like they've done a very admirable job of speaking for us but we were not consulted in any of this by those sportsfisheries [sic], and please don't assume that they are speaking for us even though they cite us about 20 times in there. Thank you.

If we support the sportsfishermen, what we're doing is turning our backs on folks who are family members. Maybe they're not brothers and sisters, maybe they're cousins. But the bottom line is is they're the same, you know, whether they originated in a Russian
village -- they more than likely originated with Native women and they are our brothers and sisters in some sort of way.

There's one thing in here that's written by Alan Boris, and Alan actually did that for us at the tribe when we were looking at, you know, how do we work with Ninilchik and what are our responsibilities. And when we talk about, you know, forming these boundaries or Ninilchik shouldn't be part of us or something, when Ninilchik folks have a toothache they come to the Dena'ina Clinic, they come to Kenaitze. When there's a need for social services, they come to us. There are two places where I -- and I am new as the executive director, but it's my understanding there are two places where we don't treat them just like they're one of us. One is in education and the other is enrollment. And so otherwise we see them as us. And to come to the point where we say, well, you've been us, you know, I don't know how much they've fought our fight, you know, I don't have the history. There's some folks that say they haven't really been there for us but then I don't know, the bottom line is is that doesn't mean even if that were the case that we should do the same.

And if we support Ninilchik, then the painful thing is, is as Clare has said, she is a tribal elder and if we support Ninilchik, then are we turning our backs on a tribal elder. Her son-in-law is Ricky Gease, you know, we go to the same functions, you know, it is -- it's very dividing. It's going to divide us one way or the other.

With all that said, we support Ninilchik in this and hope that you would give them consideration. I think that whenever anybody's rights are eroded so are ours.

And, you know, the thing is, is my whole life, one of the really fun things that I remember about growing up in Kenai was going down to Ninilchik and clam digging, and I don't ever remember anybody stopping and telling us since we weren't Ninilchiks, we could not clam, you know, folks go where the resources are. And Ninilchik folks, whether they've wanted to our not, have shared with Native and non-Native folks their resources and then to turnaround and say, well, you know, we're going to change things this way and sharing has been, is cultural and I think that it's a very important thing to remember sharing is not just with your neighbors, but
I am just praying for your decision, I know it's not going to be easy and I know it's going to be very difficult for all of us because, you know, this right here today is dividing us and it is painful. And so I just hope that the best will happen.

Thank you.

CHAIRMAN FLEAGLE: Thank you, very much. Judy. Judy has a question for you. Thanks.

MS. GOTTLIEB: Thanks very much for your heartfelt and well thought out testimony.

I just wondered if you would give us an example of sharing, what kinds of resources had been shared or when are you talking about perhaps?

MS. WIRZ: Well, I guess, you know, what I can speak to because I'm not an anthropologist and -- but is growing up in a Native family, that when somebody came to your house and you knew they didn't have much, you gave out of, sometimes your need. I remember my mom giving my clothes away to my cousins and I thought that really was not great, you know, and I look back at it now thinking, you know, I thought she was just kind of peculiar, you know, but they needed more than I did. And whether it was food, -- and the thing is, you know, we'd get together and we'd work on things with each other. You know with the educational fisheries that we have now, you know, it's not well -- you know, there's elders that we take fish to, they're not down there fishing, but we're sharing.

And, you know, it's taking care of each other. And I guess that's the side that we wanted to come down on is saying.

And I guess the other thing, now that I'm back here, is, it's really great that the Sportsfishing Association supports Kenaitze Indian Tribe, we just wish they had done it before we were denied our rural status.

Thank you.

CHAIRMAN FLEAGLE: Thank you. Mary Ann Mills.
MS. MILLS: Yes, I'd like to make a
comment regarding the Kenai River Sportsfishing
Association.

I think they're pretty bold if they think
they can speak on behalf of the Kenaitze Indian Tribe or
the Ninilchik Tribe or our land or our relations.

We had a meeting yesterday with our
tribal council, the Kenaitze Indian Tribal Council
regarding Ninilchik's customary and traditional use and
we decided that we are going to support them. And we're
supporting them for a lot of reasons.

The first one being is they are our
relations, they're our relatives. And I don't think
anything shows it more plain than a book called the
Agrafina Children (ph), and even Clare Swan, her mother
was a Darian from Ninilchik, so we are all related. And
we always did and we still do respect boundaries. The
problem isn't with the indigenous people. Our boundaries
were violated by the non-indigenous people, even when
there was a scared trust to protect our lands for the
Indian, Eskimo and Aleut peoples. Even when the State
and its people forever disclaimed all rights and titles,
which subsistence was one of them, was violated.

So I do believe that ownership means
stewardship, and when I look at what's happening in the
Cook Inlet to the Beluga whale, it's really sad because
we're not able to protect these beluga or the sea otters,
and they're at a 90 percent decrease and that's our food.

I thought it was interesting when it was
brought out that customary and traditional use didn't
really mean customary and traditional use by the Federal
Subsistence Board. And that was pointed out when Slana
got their customary and traditional use. And I know the
indigenous people have been, in this land we believe for,
in our history, over 30,000 years.

I'd also like to mention about Cooper
Landing, a fact that I know, is the name Cooper Landing
came from a family from Ninilchik. And when it comes to
subsistence, what subsistence means to our people is
sometimes often very different as what it means to other
people. Subsistence means sharing. You share. You
share with those who need. Our people were so good at
sharing, today we have nothing. Those that have the fish
are not the subsistence people or the indigenous people,
So in closing, you know, I would just like to say that we were able to get a resolution passed with AFN, and I think it has come to the point where there's no resolving the issue of where do we fit in in this scenario. The one educational fishery is not enough to feed our tribe of over 1,000 tribal members. And AFN is backing by resolution the preference for Indian, Eskimo and Aleut peoples. And we know that we'll probably have to go into court but we are prepared to do that through AITC and it's a sad time when the communications are such and the coveting of resources are so that those with almost all of it still do not want to share.

Thank you.

CHAIRMAN FLEAGLE: Thank you, Mary Ann. Hang on, let me check and see if there's questions. Board members.

(No comments)

CHAIRMAN FLEAGLE: Okay, thank you very much. Next up is Dr. Robert Wolfe who's attending -- going to testify by telephone. Steve.

DR. WOLFE: Yes, thank you. Can you hear me?

MR. KLEIN: Yes, loud and clear.

DR. WOLFE: All right. My name is Robert Wolfe. I'm a self-employed anthropologist now living in San Marcos, California, just north of San Diego. But for about 20 years I was the research director of the Division of Subsistence in the State Departm -- Alaska -- of the Alaska Department of Fish and Game, so I had oversight responsibility for the State's subsistence resource program.

I'd like to thank the Board for the opportunity to comment on the Ninilchik Kenai River RFR. I've been asked by the Ninilchik Tribe's counsel to comment on the proposal. I'm happy to do this, but these
are my own observations as a subsistence researcher and not necessarily those of the tribe or any other group.

If one accepts that the Ninilchik area is rural then it's clear, I think, from information collected by the State and the tribe and some testimony at RAC meetings, that salmon has been consistently harvested for subsistence uses by its residents since the community's founding, which was about 1857 by Russian and Alutiq families. History shows that there has been hardship getting salmon and other wild foods because of competition by outsiders and because of changing and restrictive rules, and these hardships were documented by the State in Georgette in her 1983 report. But no one doubts that there has been a continuous harvest through the present day of salmon using a variety of gear types by Ninilchik residents.

Just looking at the 1998 data collected by the State, and this is in Fall's report, Fall, et al., 2000, we see these numbers that 90 percent of Ninilchik households use salmon in 1998; 64 percent harvested, 79 percent received it and 60 percent gave it away. Now these numbers on salmon are germane to the eight C&T factors that the Board uses. They are indicative of patterns of harvesting, caring and use within the community of Ninilchik.

Looking at that same study in 1998, residents harvested 59 resources categories, they used 67 resource categories, and Ninilchik residents harvested 164 pounds of wild foods per person, 164 pounds per person of wild foods in 1998. So that harvest level contains 106 percent of the protein requirements of the population, and 15 percent of the caloric requirements of the population. Harvest that year included 42 pounds per person of salmon, 48 pounds per person of moose, 32 pounds per person of halibut; those were three of the 59 resource categories used. So, you know, this small population, I think there are about 1,262 people living in the Ninilchik area, they participate in a local economy where fishing and hunting for food figure prominently and has figured prominently historically.

So the question, I think, before the Board today is whether fish harvested from the Kenai drainage are part of the community's pattern of customary and traditional uses. Is the upper Kenai one of the areas historically and currently fished by rural residents of the Ninilchik area for food. The tribe
asserts that it is.

I was reading RAC testimony and I saw older residents testifying there assert, that people took boats up the Kenai drainage and fished. They brought home those harvests to Ninilchik to share and eat.

Now, after road building in about 1950 people continued to go over there by truck and fish and -- truck and car to fish, but by then nets had been prohibited so fishing was by rod and reel, at least legal fishing. Still the fish was brought home to eat and probably part of the 42 pounds of salmon per person documented in the 1998 study probably came from the Kenai River.

Now, the Board is fortunate to have additional information on this question from a recent survey conducted by the State Division of Subsistence, it's the Fall, Davis and Williams 2006 survey that you've got there. The State survey found that 21 percent of Ninilchik area households had fished Federal Kenai River areas during their lifetime. That is 121 households had fished there. And that's of 577 households. Of the 121 households who had fished the upper Kenai stocks, 60 percent reported this to be a frequent use. 20 percent said it was intermittent use. And 20 percent said it was an infrequent use. Now, if you include the Swanson River then 28 percent of Ninilchik area households had fished Federal waters of the Kenai Peninsula district, I think it's 162 households, and 62 percent reported that fishing there was a frequent use. So that's the State's data on use.

Now, the Board, I think is doubly fortunate in this case because of additional information from a survey conducted by the Ninilchik Tribal Council of their tribal members, and that's the Encelewski 1999 report. The tribal members who were part of that survey are not newcomers to the area but long-term residents.

CHAIRMAN FLEAGLE: Okay, Dr. Wolfe.....

DR. WOLFE: Yeah.

CHAIRMAN FLEAGLE: .....I'm not able to signal you but your time has expired a little bit -- awhile back there, so I'm going to have to do it by microphone. Any other questions for Dr. Wolfe. We do have all your reports here and I know that you're
available for questions. Gary.

DR. WOLFE: Okay.

CHAIRMAN FLEAGLE: Gary has questions.

MR. EDWARDS: Dr. Wolfe, Gary Edwards, Fish and Wildlife Service. Recognizing your time may be up but I still would like you to -- maybe if you could address the question of -- you know, in my mind there is certainly no question of use of, and particular of salmon by Ninilchik or any of the communities, you know, rural communities down there on the Peninsula. You know, what I've personally been wrestling with is that pattern of use and where that pattern occurred. And as I have gone through, you know, the literature and Dr. Fall's report and some of yours, there is certainly evidence of use on the upper Kenai of subsistence use but, you know, I struggle with trying to, you know, find some -- again, you know, looking more historically, you know, identifying this as a common place that folks from Ninilchik went to carry out their subsistence and to meet their subsistence needs. Can you point to other cites, other literature that would tend to support that?

DR. WOLFE: Well, we've had testimony, and I've seen testimony from tribal members saying that they went up there historically by boat before the roads. But I think the numbers that are typically used, at least by the State in C&T findings are the ones that you have in front of you. The numbers that -- the State said 28 percent of households in their lifetime have gone up there, and the tribal survey, which I didn't get to, confirms that, that 32 percent of tribal member households over their lifetime have gone up there. That indicates a substantial level of use. And, you know, the State found that 60 percent reported this to be a frequent use. So I think that's what's required by the C&T findings, is that, you've got a -- you can't -- it can't just be a handful of households, you know, just one or two people or a handful of households then I think a negative finding is warranted. But when you get to be 28 to 32 percent of households of a group, that's not a handful anymore.

And as for the historic, how long this has been going on, I mean there's no doubt that Ninilchik has been using salmon historically. And we've just heard some testimony today that people intermarry between the
two groups and have used resources in what are joint use areas. So one can, I think, presume that people have been using these fisheries for -- I mean it's not just a recent use if that's the question.

MR. EDWARDS: And just if I can follow up. And I certainly recognize that, you know, people have discussed it and I'm not questioning, you know, the accuracy of that, I guess my question was more -- fundamentally, as you go through the literature and you look at some of the historical writings and things, are there other things that would point out, you know, use in that area, or substantiate, I guess is maybe the word I'm looking for.

DR. WOLFE: Yeah, the literature that I've seen has never attempted to ask these questions of people who know the answers, and I think that's why you have -- at least the Board's have this RAC process and public testimony process so that the Board isn't limited just by what is published. You can hear what people who come before you tell you what they did historically and they can fill in those gaps. But I don't have any additional published sources that you haven't probably already seen.

MR. EDWARDS: Thank you.

CHAIRMAN PLEAGLE: Niles.

MR. CESAR: Yes, Dr. Wolfe, Niles Cesar. I know we didn't have sufficient time for you to go through everything that might have been useful in this case. But I wondered about the survey that the Ninilchik Tribal Council did, did you find that it supported, at least, to your level of concern, about a consistent use up on the upper Kenai when you look at the Fall survey versus the NTC survey, do you see any real disparity between the two?

DR. WOLFE: Yeah, thanks for that question. No, I don't see any disparity between the two survey findings. In fact, I see that they tend to support one another. But there's a little bit more detail -- well, maybe not. The Ninilchik Tribe asked about salmon and they also asked about non-salmon species, they found that 28 percent of their tribal households had harvested non-salmon fish in the upper Kenai River, Kenai Lake area. But that's very similar to what the State found with their survey of all residents.
of Ninilchik, very -- they found that -- like I said, 28 percent of the households, 162 households had fished Federal waters in the Kenai district.

So I mean my -- looking at the two studies that they -- the tribal study tends to support the findings of the State studies in this case.

MR. CESAR: Thank you.

CHAIRMAN FLEAGLE: Other questions.

(No comments)

CHAIRMAN FLEAGLE: All right, thank you Dr. Wolfe.

Nelson Angapok (ph). He is here. Welcome Nelson. Yeah, just either one, just push the microphone on/off button to turn your mic on, there you go.

MR. ANGAPOK: Good afternoon, Mr. Chairman. Members of the Federal Subsistence Board. In the interest of time I'm going to focus on one aspect of these proceedings. And that is the issue of Regional Advisory Councils.

When we were lobbying for the passage of HR-39 which eventually became ANILCA, one of the tools that we were looking at was the concept of Regional Advisory Councils, and I think it has worked well within the management -- subsistence management scheme.

Having said that, Mr. Chairman, you attended the subsistence workshop that AFN had, and we appreciated your comments and your strong support on the Regional Advisory Councils. Having stated that, the Southcentral RAC has unanimously endorsed recognition of Ninilchik's C&T petition. AFN supports that. And we trust that you and the other members of the Board will follow the recommendation of the RAC.

Thank you very much.

CHAIRMAN FLEAGLE: Thank you, Nelson.

Questions.

(No comments)
CHAIRMAN FLEAGLE: Appreciate the testimony. Next we have John Sky Starkey.

MR. SKY STARKEY: Thank you, Mr. Chairman. I'm going to give the Board a little handout here and then I'm going to talk a little bit -- Board members.

CHAIRMAN FLEAGLE: It looks like stuff we've already seen before.

MR. SKY STARKEY: Probably. Hopefully. Thank you, Mr. Chairman, for the opportunity to testify.

The reason that I'm handing that out is because I was told by Federal Staff the other day that it's not necessarily true that the Board members would have seen the transcripts of the RAC proceedings, which we think are so important to this process.

So John Sky Starkey representing the Ninilchik Tribal Council. Thank you for the opportunity to testify today.

I just wanted to point out a few things in this brief five minutes. I think the point that your Council made and that we would agree with is that customary and traditional use determinations may be on an area basis but they're not on a traditional tribal territory business basis. There are many tribes that wish it was this way. If it was a Native priority, perhaps it would have been. I think many of us would have pushed for that, hoped for that, if it was, then tribes would have the jurisdiction to and talk across lines. Unfortunately we didn't get that. It's a bit disingenuous for the Kenai Peninsula Sportsfishermen to bring that forward. It's, as you've seen, quite a divisive and emotional issue.

But I would challenge any person to point to one place where either the State or the Federal government has made a C&T determination based on tribal territory, and, in fact, people from Akiachuk wouldn't be hunting in Sleetmute, you know, I could go on and on and on. If that was the case and, in fact, it wouldn't reflect reality or Native customs and traditions or their patterns of sharing.

Ninilchik is extremely grateful to the members of the Kenaitze Tribe for passing an official
tribal resolution which hopefully clarifies their support for Ninilchik, and washes away some of the last minute stuff that's been going on here.

I think it's very important also to note that in the request for reconsideration that we submitted, we submitted an affidavit by David Cooper of Cooper Landing and his family, his grandparents established Cooper Landing. I understand some Board members desire to have some anthropologist, some non-Native person who would have written about Native people and would have -- out of some -- whatever reason decided that he knew the future and there was going to be somebody that wanted to know about Ninilchik fishing on the Kenai and would have written about it, wouldn't that be great, we wouldn't be here, and it wouldn't have taken 21 years but, you know, the fact that a person from Ninilchik's grandparents settled Cooper Landing, I assume that, as most of us, that that means that was their family. They came from Ninilchik, they settled Cooper Landing, the grandchildren went up there, there was people moving back and forth. That demonstrates use of the upper Kenai River quite firmly.

The handout that I've given you I would like to point out that this is the testimony of the RAC. Now, you choose the RAC members. The reason that we have a RAC is because people with personal knowledge of the resources are on those RACs and they're there to fill in these kind of gaps and knowledge, and you choose them and they're your people. We don't expect Tom Carpenter to be an advocate for Ninilchik, all we expect is for them to listen to us and provide recommendations. But of your RAC members, there's not one person on that RAC that disagreed that there was customary and traditional use and in fact the old people on that RAC, the elders, and I hope they won't be offended by me calling them that if they're on the telephone, said the following on Page 225, Doug Blossom is asking how important it is to document uses pre-1952 and he says:

Well, it's a real blank spot and prior to 1950 Ninilchik's river of choice was the Kenai River because there was no road. They got in the boat in the Kenai and it was much easier to traverse than the Kasilof, I mean that's the history lesson for you. I lived there then. And that isn't in any of the data, so if we go back to then they were allowed to
subsistence fish the Kenai River was the
river of choice, not the Kasilof, it
flows much slower, they could go up it,
they pulled up to Skilak Lake and they
spent sometimes a month and a half up
there.

So that's just a little history for you
by a person there.

I wish he would have written a book.

Gloria Stickwan, I'm not going to read
hers but she's from the AHTNA region and she verifies the
idea that subsistence is opportunistic. Why did people
go to the Kenai, they went there because that's when the
fish were there when they needed them.

But I think another, on Page 228, if you
go to the very bottom paragraph, and this is Mr.
Showalter. Now, there are people from the Kenaitze Tribe
here who can verify this, but it's my understanding that
James Showalter is a tribal council member, he's an elder
and he's been a tribal court judge for the Kenaitzes.
And James Showalter at the bottom of 228 says:

No, I've got a comment going back to
subsistence which is this, and the use of
the Kenai River and from Ninilchik. As
you said in the past history of it, prior
to the restrictions and regulations, the
Kenai River used to be subsistence
outside, inside the river, up the river
and into the lakes because I've done it
myself until we were regulated out of
this fishery so there has been consistent
use of the area by Ninilchik and the rest
of the Peninsula until we were regulated
out of usage of the area, until now,
which we have rural and nonrural areas,
only able to fish on Federal lands and
waters.

That's James Showalter, Kenaitze tribal
member, an elder saying that he knows there was customary
and traditional use of those lands and waters by
Ninilchik.

If the RAC process and your regulations
are what they say they are, and if your commitment is to
the RACs what they say they are, this is evidence of that customary and traditional use.

I just -- I've looked at all the information in front of you and you've got two studies that document significant use, 28 and 32 percent long-time, long-term pattern of use. You've got Mr. Blossom, Mr. Showalter and the entire RAC going along with it. You've got Greg Encelewski who just testified, who's also an older man and testified to his personal uses. You've got the Cooper Landing affidavit demonstrating that it's people from Ninilchik that settled Cooper Landing. You've got the studies. I don't think there's anything on the other side that begins to shift that way.

This is a customary and traditional use determination not a rural determination. And the point of the significance and having other people use the resource, that's a problem, but this is a customary and traditional use determination.

I guess the only other thing I wanted to point out, going back to this exhibit that I handed out, the RAC transcript. I just wanted to point out that on Page 253 -- 252 actually. We have testimony from Marvin Peters, he's the Chairman of the Homer Fish and Game Advisory Committee, he's very much opposed to subsistence and the C&T determination, but it's because of the effect of the determination, and the use of the resources, but on Page 252 right in the middle, the page on the first full paragraph, last sentence, he says, basically:

It's just not beneficial to the fisheries or wildlife resources to do that and I don't doubt that Ninilchik, the Ninilchik Tribe especially would have unquestioned C&T use of these resources; that's not where we're opposed to it.

That's even people who are on the Advisory Committee who agree that it's not an issue of their customary and traditional use. Even they agree that it's unquestioned.

Thank you, Mr. Chairman.

CHAIRMAN FLEAGLE: Thank you, Sky.

(No comments)
CHAIRMAN FLEAGLE: All right, thank you for your testimony.

MR. SKY STARKEY: Thank you.

CHAIRMAN FLEAGLE: We got one more but we need a break, should we do the one more.

MR. CESAR: Let's do the one more.

CHAIRMAN FLEAGLE: Let's do the one more. Mac Minard.

MR. PROBASCO: And there may be somebody on line.

CHAIRMAN FLEAGLE: Oh, that's true. Go ahead.

MR. MINARD: Mr. Chairman. Board members. Thanks for the opportunity to address you today. For the record my name is Mac Minard. I'm employed as a fisheries staff member for the Kenai River Sportfish Association. I worked some 25 years for the Department of Fish and Game as a fisheries biologist and manager regional supervisor out of Fairbanks. I currently live in Helena and would like to comment today on the C&T findings for the Ninilchik in the upper Kenai.

I don't envy the position you're in. I've been to dozens of these kinds of meetings and I was moved, very much so, by the testimony of the traditional folks that have come forward. I don't think I have ever witnessed in a forum like this the trouble that people have with trying to separate fact from personal commitment, family lineage and just the camaraderie necessary. As a watcher of the proceedings I'm getting the sense that there's an awful lot of sort of rallying around the issue based predominately on my allegiance to my friend, my family, my culture. Unfortunately you guys are having to be faced with a decision that is colored by emotion but also has to be measured in the empirical side of it.

We've listened to the sociological experts. I was trained in a different forum. You know, my statistics and my approach to science, because of my training is decidedly different. There are things called significant differences and consequential differences. And I'm learning, I mean I'm listening. But when I
looked at the information, as I was asked to do for the Kenai River Sportfish Association, which a comment there, seems to be a lightening rod, because they want to be engaged, they want to work within this forum, it's all of a sudden viewed as a bad thing, it isn't. I mean their participation will bring balance to a proceeding like this, it's important. I mean the area we're talking about sustains the world's largest recreational fishery, period. They have an interest. They have a stake.

So when I was asked to look at this stuff, I kind of looked at this blizzard of information, both from the State side and the Federal side and frankly I couldn't get where the Staff Committee was with their recommendation. I'm very familiar with Jim Fall's work from 20 years of working in Bristol Bay, working on subsistence issues before the Federal system was involved, and I understand, to some extent, I mean limited, the proceedings that go in that, I find it interesting that that statistic of the 2002/2003 study is sort of summarily dismissed. It's a single year. Well, technically that's not correct.

Any one of those studies that is done well and you've seen them before has follow up questions with it, does it have some semblance of past historic use. The thing stumbles around at about four percent. We haven't heard that number, we've heard the 28, we've heard the 32. The 32 is a very narrowly focused number on a fairly narrow group of people and we all know that we're charged to look at this in a community level, not a traditional council level. I mean no offense by that. I mean no ill will to anyone. But that's the way it is.

So when you take a look at the technical numbers, the stuff you get, you're really charged with trying to figure out, is that sufficient to warrant significant use. And you don't have policies and procedures in place. You've been asked by the Secretaries to do that, it sounds like we're making some progress on that but you don't have it. So really the public's left in a quandary, they're left to bring emotion and lay that on the table, they're left to bring technical people and put the numbers on the table, and when the day is over it's dumped on you to make the decision. And you have to make that decision -- it's subjective, it's going to be a subjective call, a judgment call. Subjective. You color it with everything you can. So we were criticized in trying to bring in and not speak for other people but to address the history, the relationships that other State
and Federal agencies have had. It wasn't intended to
slam anybody, it was simply intended to open the door and
say, this is kind of how it is.

We looked at the four percent use level
that the Fall study reports and I don't find that to be
particularly compelling. Let's do a little math. 20
percent of the people in the state of Alaska sportfish.
Of those 20 percent, 20 percent of them participate in
the Kenai River -- upper Kenai River. That calculates
out to about four percent of the state population.
Ninilchik demonstrates no different use of the upper
Kenai River in sportfishing activity than any other
sportfisherman would. Context is lacking in virtually
every case of the analytical data that's provided to you.
That number is no different than some community outside
of Fairbanks. And actually you'd sort of think it would
be more.

The 28 percent number, I don't mean to be
flip but a little levity wouldn't work. I think you
could stand outside a Wal-Mart and ask that question of
people in Anchorage and get a higher number. Have you
ever in your life fished the upper Kenai River. I'm
surprised that it's that low for a community that depends
on it. I think the data's pretty clear, nobody's arguing
that these guys have participated heavily and depended
upon heavily resource use but I don't think it's
predominate here, in fact, I think it's been very small,
the record is replete with hard information to point us
in that direction.

This isn't the Interior. This isn't a
place where we can make this decision on little or no
good information, there are literally tens of thousands
of people involved. A decision to not provide C&T for
Ninilchik on the upper Kenai doesn't mean they don't
participate there. Of course not. They can still
participate. What it means is that you don't give a
prescriptive priority that could otherwise exclude other
Alaskans, other non-Alaskans from participating, that is
the C&T. It is the opportunity to exclude others in
times of shortage.

So when you choose to set the bar, you
need to consider other factors as well.

Mr. Chairman, thanks very much. I
appreciate the effort you guys are going to put into this
and I certainly mean no offense to anyone else. I
realize there's differences of opinions.

Thank you very much for your time.

CHAIRMAN FLEAGLE: Thank you. Questions.

(No comments)

CHAIRMAN FLEAGLE: All right, let's step down for a 10 minute.....

MR. EDWARDS: Mr. Chairman, before.....

CHAIRMAN FLEAGLE: .....before -- Gary,

go ahead.

MR. EDWARDS: .....you -- Sky you referred to this affidavit, I mean I personally have not seen that and I don't know if other Board members have either on Cooper Landing. Could you -- if you have copies of that, would you please provide it because I don't have a copy and I've been trying to search Google and everything else to sort of verify it because I keep hearing it but I can't -- so I'd like to see it if you have it.

MR. SKY STARKEY: I will do that Mr. Edwards with all due diligence. It was attached to our request for reconsideration so I was just thinking that you'd seen it but we will definitely make it available. Thank you.

MR. EDWARDS: Maybe other Board members have, I have not.

(Off record)

(On record)

CHAIRMAN FLEAGLE: Okay. The Federal Subsistence Board is back in session. And we just concluded the list of people that had signed up through Staff here but we want to exhaust any possibilities that somebody who might be on line that wants to talk. Steve, would you check please.

MR. KLEIN: Was there anyone on line that wished to testify.
(No comments)

MR. KLEIN: No.

CHAIRMAN FLEAGLE: Okay, sounds good, thank you. Now, the next question I need to run past just a brief discussion with Board members before we resume this issue, we kind of anticipated we wouldn't be able to finish in a day so the Staff has indicated that the room is available either tonight -- I shouldn't say either, it is available tonight and tomorrow morning from 8:00 to noon, only to noon. So I just want to get the wish of the Board as to how you want to proceed. Should we work awhile, take a dinner break, come back this evening. Should we work awhile, take a dinner break, come back tomorrow. I just want to get some ideas of where this Board wants to go.

Gary.

MR. EDWARDS: Well, I can only speak for myself. One of my biggest concerns was that we allow sufficient time at one time for people to come forward with their testimony, and it seems to me we have done that. I was concerned that we would break and then folks who have come a long distance would either, for various reasons, have to go back and therefore would not be able to take advantage of their opportunity. I mean I don't know how much longer this is going to go but at least that has satisfied one of my concerns, although that's not saying other people haven't traveled a long distance and are also interested in the potential outcome, but I was really concerned about that. I mean I certainly could come back fresh in the morning and start over again, and, I'm assuming, I guess, next will be the State and then the Council and then -- so I'm either way. But I've satisfied my primary concern that everybody who wanted to say something has been able to do that.

CHAIRMAN FLEAGLE: Okay, sounds good.

Others. Niles.

MS. KESSLER: Mr. Chair.

CHAIRMAN FLEAGLE: Wini.

MS. KESSLER: My preference would be to keep going.

CHAIRMAN FLEAGLE: All right.
MR. CESAR: That would be my preference. Wini and I traveled a long way to put this to rest so let's put it to rest.

CHAIRMAN FLEAGLE: I don't have a problem with that. You know in my past life I've been known to be a task driver, we've worked to 10:00 or 11:00 at night, oops, I wasn't going to mention that past life anymore, was I.

(Laughter)

MR. CESAR: Well, you know, it doesn't make any difference to me because I'm a Fed I don't work past 5:00 anyway.

(Laughter)

MR. CESAR: And I have got dinner reservations so I won't be here after 6:00 anyway and I'm going back to Juneau in the morning so.....

CHAIRMAN FLEAGLE: So you just.....

MR. CESAR: ......if we could finish in the next hour and a half, which I think we can, let's do it.

CHAIRMAN FLEAGLE: All right, just keep pushing on and then.....

MR. EDWARDS: Mr. Chairman.

CHAIRMAN FLEAGLE: .......we'll have an appropriate break then.....

MR. EDWARDS: One thing, at least it's been told to me that we may have an issue after 6:00 from a security standpoint of the building, not arranging for additional security. So I don't know what the answer to that is but, that might be problematic.

CHAIRMAN FLEAGLE: Okay, well, we can get that, right, while we're working. So let's go ahead and continue on then. It sounds like, at least, we want to just move forward from this point.

Keith.

MR. GOLTZ: A process question was raised
by Mr. Case and I think this should be factored into your
decision.

We have a situation where the State is
sitting at the table as a liaison, they are also as a
very practical matter a proponent. They have a side in
this issue. I'm going to recommend that Mr. Case be
given a chance to ask questions of any of the people that
have testified before and that they'd be given a chance
to reply to whatever the State may present.

If we don't do that, I think we do have a
process question. If we do, I think that we have allowed
a sense of fairness that would not be present if we
didn't allow that.

So what I'm saying is, that if you
adjourn and haven't heard from the State yet, I hope
you'll leave enough time for Mr. Case in case he wants to
ask questions of any of those people who have testified.

CHAIRMAN FLEAGLE: Okay.

MR. GOLTZ: I don't know if he does or
doesn't, but I would like that chance on the record.

CHAIRMAN FLEAGLE: All right. Well,
maybe I'd just want to explore that relationship a little
further, recognizing that the State is at the table as a
liaison and they do have a stake in the issue before us,
basically, what about the other option of just
recognizing that the conflict exists. Have them present
their position on the issue as any other testifier would
and then just have them be silent on the remainder of the
decision. Wouldn't that be equally fair?

MR. GOLTZ: Well, I'm not sure Mr.
Bedford would agree to the silence. And our guidelines
actually allow for State participation, so I think we
have to balance that here.

CHAIRMAN FLEAGLE: All right. So in the
event that we do have a request from the legal counsel
for the NTC to question people that have spoken or the
State, that we should allow that just to balance it?

MR. GOLTZ: Yeah. I think there are two
aspects to it. They should be allowed if they wish to
ask questions of people who have testified on this issue
and they should also be allowed to reply if they wish to

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the State's presentation.

CHAIRMAN FLEAGLE: Okay, thank you, Keith. I agree. I'll support that as Chair. I think my approach was simpler but.....

(Laughter)

CHAIRMAN FLEAGLE: .....all right we'll continue.

Mr. Bedford.

MR. BEDFORD: Mr. Chairman. There is a little bit of a chicken and egg question in my mind and that is that the Ninilchik Traditional Council and the representatives of the Ninilchik Traditional Council have had an opportunity to address the Board and present whatever kinds of information they felt was important and relevant to the question you have in front of you. I similarly will have an opportunity to do so. Will they then question me and then I in return question them in order to maintain a sort of parody on that?

CHAIRMAN FLEAGLE: Well, if you just gave your position and it was silent from then on out I think it would be the best but.....

(Laughter)

CHAIRMAN FLEAGLE: .....that doesn't sound like it's going to work.

Keith, can you answer the question.

MR. GOLTZ: Well, I don't know how this is going to develop. I haven't received word from Mr. Case if he even wants this opportunity. I just want to make the opportunity and make this proceeding just as fair as we can make, that's it.

CHAIRMAN FLEAGLE: All right. So if we get to that question we'll make a ruling.

Thank you.

All right, hearing all the testimony that we've had on the issue we now go to the Council recommendation. Tom.
MR. CARPENTER: Thank you, Mr. Chair.
I'll be brief. The Southcentral Council, at our meeting in Homer, found that we did not hear any substantially new or differing information to change our recommendation from 06-09 which was the original recommendation for finding for a positive C&T.

I think just from what I've heard at this meeting that the RAC would reaffirm, hearing some of the same testimony that it heard in Homer and in Kenai, that the Board just heard, that demonstrates that there was definitely Kenaitze Tribe, Ninilchik Tribe interaction on the Kenai River and that there is a justification for the C&T.

We do have the privilege of having two Council members, one being from the Kenaitze Tribe and one being from the Ninilchik Tribe on the Council. We also had testimony from a Council member that was born and raised on the Kenai Peninsula that this interaction and this area of use did take place. So we thought that that was substantial information and I believe that the Council would reaffirm what the Board has heard today.

CHAIRMAN FLEAGLE: Questions.

(No comments)

CHAIRMAN FLEAGLE: Okay, thanks. We now hear from the Alaska Department of Fish and Games, their comments.

MR. BEDFORD: Thank you, Mr. Chairman.
First I'd like to enter ADF&G's written comments into the record. They consist of three documents, which you should have received a few weeks. An October 26th, 2006 letter from Commissioner Campbell to Chairman Mike Fleagle. Secondly, a document entitled Attachment 1 ADF&G page by page detailed comments to Staff analysis FRFR06-02/03/08 dated October 31, 2006. And finally a document titled Attachment to ADF&G's specific comments on Dr. Wolfe's papers.

I'm not going to go through in any kind of detail the sorts of comments that the Department made. They're certainly well represented in those documents. There are a few major points that I would like to touch on. And then with the Chairman's permission I would like to have Dr. Jim Fall with the Department's Subsistence Division assist with answering any questions that the
Board might have about the Department's works.

I would also just make note of the handout that just came around. This, again, is a couple of pages out of the report that Dr. Fall did and that will be something that I'll refer to in specific, a little bit later in my testimony.

First off, I'd like to begin by reiterating the Department's strong objection to the statement in the Federal Staff analysis that new information provided by the Department substantiates the Board's previous customary and traditional determination for Ninilchik for the Kasilof drainage, and there is no new information to provide regarding -- and that there's no information to provide regarding the Board's previous C&T determination for Hope and Cooper Landing for the Kenai River drainage. For reasons that were outlined in our RFR is that the Department strongly disagrees with these conclusions and continues to assert that the Board's previous C&T decisions for Hope, Cooper Landing and Ninilchik were arbitrary, capricious and contrary to law. In the case of Hope and Cooper Landing, the Board did not consider all of the available information. In the case of Ninilchik there is no evidence indicating that subsistence use of fish from the Federal lands in the Kasilof drainage was ever part of a long-term consistent pattern of use recurring over many, many years for the community of Ninilchik. The Department continues to object to these previous Board decisions and objects to the Board's decision to consider the related question that's now before you.

Customary and traditional for the community of Ninilchik on the Kenai River drainage. The Federal Staff analysis concludes that further analysis of the Ninilchik uses of fish in the Kenai River area are warranted based on new information provided by the Department and the Ninilchik Traditional Council. The Department strongly disagrees with this conclusion for three reasons.

No evidence has been provided to demonstrate a long-term consistent pattern of use by the community of Ninilchik for the Federal lands and waters within the Kenai River drainage. The Federal Staff analysis misinterprets and misuses Department findings to incorrectly support a positive customary and traditional determination. The Board should delay making any additional customary and traditional determinations until
it has developed written policies and procedures for making such determinations as directed by the Secretary.

As to the first contention.

To the support a positive customary and traditional use determination, the Board's regulations at 50 CFR 116(b) and 36 CFR 242.16(b) require a community or area to generally exhibit eight factors. Six of those eight factors speak to a pattern of use. Although the Federal Staff analysis attempts to address those eight factors, it fails to incorporate all of the information previously presented with regard to FP06-09 and continues to fail to demonstrate based upon fact that the community of Ninilchik's uses of the Kenai River drainage generally exhibit the eight regulatory factors or that the community's use generally satisfy any of the eight factors with regard to fish stocks in the Kenai River drainage. And, again, speaking to Federal public lands within the Kenai River drainage. The analysis demonstrates that there is some level of use of the fishery resources under Federal jurisdiction in the Kenai River drainage by some members of the community of Ninilchik. However, there is nothing to indicate that this use represents anything other than occasional sportfishing. Unlike the net fisheries that occur in the lower river or in areas closer to Ninilchik, the fisheries in Federal waters of the Kenai River are not characterized by efficiency and economy of effort and cost. The eight factors listed in regulation have to count. The use demonstrated in the Federal Staff analysis for reasons I'm about to articulate is not characteristic of long-term consistent pattern of community use.

By way of background, the Department has conducted two studies, one published in 2000 and the most recent published in 2004 regarding Ninilchik's use patterns of fishery resources including, but not limited to use of the fishery drainage. Both studies were conducted at the request of the Office of Subsistence Management and both studies sought to characterize community uses using scientific methods and random samples. In conducting these studies the Department did significant public outreach during all stages of the study, study design, conducting the study, reviewing the findings prior to finalizing it. The Department subcontracted with the Ninilchik Traditional Council to assist with the household surveys and the more recent
1 study completed in 2004. The findings from both of these
2 studies are consistent.
3
4 The community of Ninilchik has high
5 levels of use for areas closer to the community, for
6 example the Ninilchik River and Deep Creek. The
7 community, both historically and still today tends to
8 focus much of its fishing effort in marine saltwaters
9 close to home. The findings did show some use of the
10 Kenai River but the use was highest closest to the
11 community in the lower Kenai River and lowest in the
12 upper Kenai River further from the community. The
13 Federal Staff analysis relies heavily on another study
14 commissioned by the Bureau of Indian Affairs and
15 conducted by the Ninilchik Traditional Council. However,
16 this study appears to have been an opportunity sample,
17 rather than a random sample, meaning that it pertains to
18 just tribal members not the entire Ninilchik community.
19 ANILCA provides a rural, not a tribal preference.
20 Nevertheless this study's findings were also consistent
21 with the Department's findings, in that, they
22 demonstrated low levels of use in the Kenai River
23 drainage.
24
25 Let's consider for a moment lifetime use
26 data. This data is the focus of the Federal Staff
27 analysis and the primary basis for the Federal Staff's
28 positive customary and traditional use determination.
29 The Department's lifetime use data indicates that 13
30 percent of Ninilchik households claim frequent use of
31 Federal waters in the Kenai River. Frequent use in the
32 survey was defined as just about every year but does not
33 specify how many times per year or the level of harvest
34 that may have been taken. Similarly four percent of
35 Ninilchik households claim intermittent use of Federal
36 waters on the Kenai River. Intermittent was defined in
37 the survey as on and off over the years. When combined,
38 the claims of frequent and intermittent use of the
39 Federal waters of the Kenai River for the community
40 Ninilchik total 17 percent.
41
42 Now, I would point to the handout that I
43 gave you, which, again, this is a couple of tables
44 excerpted from Cook Inlet customary and traditional
45 subsistence fisheries assessment so it was done by James
46 Fall and others.
47
48 The two tables in here, I'd refer to the
49 second of them first, which is locations used to harvest
50 fish for Ninilchik 2002/2003. And, again, we have
somewhat different data here in that what we're looking at is information for a specific year as opposed to someone's recollection of their uses of a particular area over their entire lifetime. What the Federal analysis does not include, however, is the information provided by Table 454, Page 113 of the same study and, again, that is the second of the two pages that I gave you. This table shows that when asked of the location used to harvest fish in the study year, no more than seven percent of those interviewed indicated that they caught fish in Federal lands and waters. This low percentage suggests that the lifetime use figures may be inflated above the annual use levels.

Then referring to the second table that I provided to you, or the first table that I provided that I'm going to refer to second, which then is locations used to harvest fish by Cooper Landing in 2002/2003.

The Federal Staff analysis also does not include Table 451, Page 110 of the same study. This table demonstrates that Cooper Landing's annual use levels for the upper Kenai River are at least as high as 40 percent or six times higher than the use levels for Ninilchik. While the Department, for all of the reasons addressed in our RFR, does not believe that Cooper Landing's annual use level support a customary and traditional use determination, it's illuminating when you consider that these recent annual use levels are significantly higher than the combined frequent and intermittent lifetime use levels for the community of Ninilchik for the same area.

It leads me to wonder that if we were going to conduct the same study on some of the avid fishing communities elsewhere around the state, whether or not we might find the same or similar or even greater levels of participation in fisheries on the Kenai River.

There are some other issues that I'd like to raise as well. I'd like to provide some further context.

First off, the notation of a regulatory closure and how that plays into a customary and traditional use determination. The Federal Staff analysis argues that the 1952 closure was an interruption beyond the community's control and that it interpreted use patterns. However, the Federal Staff analysis does not provide any evidence of subsistence use in Federal
public lands on the Kenai River by the Ninilchik community residents prior to the closure. And without that prior use then there can't be an interruption.

Secondly, changing demographics. The community of Ninilchik today bears little resemblance to the community in 1952. Today the community is seven times larger and has had an influx of new residents who brought with them an interest in sportfishing, and who can easily access the upper Kenai River by road.

And then of course the construction of the road itself in 1952, no doubt increased the accessibility of the upper Kenai River to the community of Ninilchik, and doubtless increased the kind of lifetime uses of that particular area that you might expect.

In conducting these recent studies, the uses of any Ninilchik resident in his 40s or 50s predated -- or postdated the construction of the road and therefore represents in all likelihood sportfishing uses.

The purposes of the Refuge is another factor that should be taken into consideration. The Kenai National Wildlife Refuge under Section 303 of ANILCA unlike other Refuges, does not include continued subsistence use, but does explicitly include opportunities for fish and wildlife oriented recreation.

And then finally, we believe that the Board should delay further customary and traditional use determinations until written policies and procedures have been developed. The Department has repeatedly raised concerns in the past regarding the Board's inconsistency and lack of standards in making customary and traditional use determinations. The Secretary of the Interior responded to these concerns and on October 27, 2005 directed the Board to develop written procedures and policies for customary and traditional use determinations and to review whether analytical thresholds and benchmarks for certain criteria are needed and appropriate for inclusion in the decision process.

The Board has yet to develop such written policies and procedures and continues to take action that is not consistent with its own regulations, therefore the Department urges the Board not to make any further customary and traditional use determinations until the Federal Subsistence Management Program establishes policy
and procedures for those analysis and findings as directed by the Secretary.

In closing, I would have to say that I appreciate how difficult this is. This is a very difficult decision that you have to grapple with at this point. And we recognize that this is something of great importance and great concern to many people in the public as well. However, at the end of the day, what we are all charged with administering here is Title VIII of ANILCA. And under Title VIII of ANILCA, the operative factors here are whether the community of Ninilchik exhibits the -- generally exhibits the eight specific factors that are provided for in regulation that demonstrate customary and traditional use.

Thank you, Mr. Chairman.

And, again, I would say that if you would we might allow Jim Fall to come forward if you have questions relevant to his expertise.

CHAIRMAN FLEAGLE: Why don't you want to come on up, Jim, just in case we do. Board members questions of the State's position.

Gary.

MR. EDWARDS: Yeah, maybe I'll direct this to Dr. Fall and it's the same kind of question that I asked when Helen was up here and she deferred to your expertise, and that has to do with this lifetime use information and -- versus the intermittent.

And, you know, when you look at one it shows a larger number and then when you look at the individual years, it's a smaller number and you would at least maybe assume that if there was, you know, a frequency of use at least in one of those three years it would have popped up but it doesn't seem to. So at least on the surface there seems to be a discrepancy, can you elaborate on that?

DR. FALL: Mr. Chair. Mr. Edwards. This is a really good question. And just as -- again, I just wanted to repeat a couple of things as background before I address the question.

First of all I will be referring to two studies that the Division of Subsistence did under
contract to the Office of Subsistence Management where we were asked to investigate patterns of contemporary and historical hunting and fishing by several communities on the Kenai Peninsula. We weren't focusing specifically on Kenai, we were focusing much more broadly and our goal was to describe community patterns of use because it is communities that establish use patterns. So we really can't talk about use patterns without talking about the communities that have established those and need to be associated with those.

In the more recent study, because one of our directives was to understand customary and traditional use patterns, we realized that just asking a question about a single year would not get us there. I think everybody recognizes that. Nevertheless we did want to update a single year, snapshot of what people in Ninilchik and the other study communities were doing. So early in the survey when we asked people about where -- about what fish they were fishing for and how much they got, we also asked them to point out on a map, which is in the report, where they fished for those fish in the study year, and the answers are in -- for Ninilchik in Table 4-54 that Mr. Bedford handed out to you before. And the first part of that table separates out the waters within the outer bounds of Federal conservation units and you can see from that that four percent of the Ninilchik sample said that they had fished for sockeye salmon in either the -- just in the Russian River, nobody had fished in Kenai Mountain streams, or Kenai Lake and Kenai Lake streams. In addition, one percent had fished for rainbow trout in some of these waters, one percent for -- or two percent had, and one percent for lake trout. Now, I can't say that these aren't the same households, I'd have to look further in this. what we basically get from this particular table is that no more than seven percent and perhaps a bit less than seven percent of the sample, which we believe is representative of the Ninilchik community fished in these waters in our study year.

Now, later in that same study we asked about lifetime use and we wanted to not just ask a general question about where have you ever fished while living in the study community, we wanted to qualify it a little bit more. So, again, household representatives were asked to point to the same map that we'd used before and we asked them have you ever fished here and if they said, yes, well, how -- and then we asked, how would you characterize this, is it frequent, and we had an operational definition of just about every year, is it
intermittent, every couple of years, or was it rare, did
you do this once or twice. And you have the results of
that which we didn't summarize in the technical paper in
Table 1 in the Staff analysis.

Getting back to the question now, 13
percent of the respondents said that they had frequent
use over their lifetime of the Kenai River, the same area
where we really can't say more than four or five percent
in the study year had used, so there appears to be a
contradiction or some poor fit there.

We can look further back because we did
do an earlier study, which Mr. Bedford mentioned, and
which we also cite several times in our more detailed
comments that you have and this is Technical Paper 253
where we asked basically the same question for the 1998
study year. We asked people, after learning what kinds
of fish they fished for in that year, where they fished
in that year and the areas were a little bit different
but we have for Ninilchik, and I'm referring to Table 52,
these data are in our comments by the way, but three
percent of Ninilchik -- and this was a random sample of
101 households, so very similar methodology from the more
recent study, three percent of Ninilchik households had
fished for salmon within the waters of the Kenai
Peninsula Wildlife Refuge, basically south of the Kenai
River. And in addition, about two percent had fished in
the waters above the Kenai River and maybe another two
percent or so in the upper Kenai. So we're getting,
four, five, six, seven percent fishing in those waters,
almost the same finding as a few years later.

To use that's a couple snapshots but
verifying each other.

Getting back to why, when people are
asked about lifetime use and frequency that percentage
goes up, we're talking, for one thing, about a memory
issue here, that people are probably generalizing a
little bit more when they're thinking back in time and
characterizing frequency. Again, the operational
definition was somewhat vague, we said just about every
year, whether that's -- it's probably not every year, we
can see that from the other results, it's probably every
couple years, every two or three years. But I would say,
as Mr. Bedford pointed out, that we would conclude that
the lifetime use information is probably a bit inflated
and probably is not the best information to look at for
annual levels of use of that portion of that river by the
Ninilchik community. The better number to focus on is somewhere around four, five, six percent of the community.

And I hope that -- that's a long answer to a short question but an important question, Mr. Edwards.

MR. EDWARDS: I mean are there other studies that would verify your justification that when people were asked about a lifetime, they tend to be inflated, or are we just assuming that for this particular study?

DR. FALL: Mr. Chair. Mr. Edwards. I don't think I'm assuming it. I think -- what I'm saying is that I think that the data from two studies and several different questions is basically suggesting that this is the case for this particular question that you have before you. Certainly lifetime use areas will be broader and you will get a broader response than for any particular year both in terms of area and probably in terms of frequency.

Mr. Chair.

CHAIRMAN FLEAGLE: Other questions.

MS. GOTTLIEB: Thank you, Mr. Chair.

CHAIRMAN FLEAGLE: Oh, okay, I'm sorry, go ahead.

MS. GOTTLIEB: Okay, I thought you were nodding. Okay. Thanks, Jim, we appreciate that.

I guess maybe sort of a two part question. We also see the weighted number, this 28 percent that's been tossed around and then I guess I also wondered whether Dr. Wolfe had a comment on Dr. Fall's statement.

CHAIRMAN FLEAGLE: Were you looking for a response from Dr. Fall first?

MS. GOTTLIEB: Please, yes.

CHAIRMAN FLEAGLE: Jim.

DR. FALL: Mr. Chair. Ms. Gottlieb. The
question is just to comment on the higher numbers that
are in Table 1.

I'll be frank, I think that some of these
numbers are being blown out of proportion in terms of
what they mean for characterizing a pattern of use. What
we have here is in Table 1 that in a random sample 28
percent of all Ninilchik households had said that at
least once in their lifetime while living in Ninilchik
they had fished in some portion of the Federal waters of
the Kenai Peninsula. Whether that characterizes a
consistent pattern of use is, of course, for this Board
to decide. But I do see in the Federal Staff analysis
that this number and the 21 percent in the Kenai River
are taken as fairly convincing evidence of a consistent
pattern of use.

The Department's comments are suggesting
that perhaps that isn't the case. That this number
needs to be, first of all, considered within the data we
have, the specific data about annual uses for specific
years where people were recalling what they'd done over
the past 12 months, very specifically, and secondly this
-- these highest numbers in Table 1 don't address how
many times a person may have fished within that area,
within a given year. It could have been one sportfishing
trip, whether they were catch and release fishing or what
they were doing. They most likely were sportfishing
because that's what's open now.

In addition, it's very, very important to
take these numbers, these percentages in context. And as
we also pointed out in the most recent study that we did,
if you look at Cooper Landing, for the specific study
year, which is Table 451, at least 40 percent of Cooper
Landing's households had fished for sockeye salmon in
some portion of Federal waters in the study year compared
to, what did I say, four or five percent for Ninilchik.
We don't have -- I didn't summarize the lifetime
questions for Cooper Landing, but the single year
estimate for Cooper Landing is higher than the lifetime
estimate for Ninilchik. So I'm very, very reluctant to
say that the numbers that we came up -- for the community
of Ninilchik, as it exists now are convincing evidence of
a consistent use pattern of those waters.

I hope that answered your question.

MR. EDWARDS: I'm going to continue
to.....
MR. EDWARDS: .....kind of repeat my
question. It's not that I'm from Missouri and I have to
be shown whether people used it or not, and, again, I
don't question the testimony we get, but, you know, as --
I read your report, you know, initially you kind of go
into the historic kind of history of that area and you
talk about people coming up there and trappers coming in
there and certainly as a matter of routine brought small
gillnets with them as they went up some of the
tributaries and they threw them out. I mean the reality
is I guess that's what you would expect, I mean you had
to eat while you were up there.

And I'm still trying to understand, kind
of the historical use and the patterns that people from
Ninilchik, you know, demonstrated for that area, and I
couldn't find any in your report. I did find it -- I
appreciate getting the affidavit of Joseph Cooper because
I've been trying to find out a lot more about Mr. Cooper
and haven't been able to and certainly I don't question
that when he was up there looking for gold, he certainly
was living off the land otherwise he would have gone
hungry, so I don't question any of that. I'm just trying
to, again, understand this kind of pattern of use for
that area.

DR. FALL: Mr. Chair. Mr. Edwards.
Again, our study focused on the community of Ninilchik
and not on the Ninilchik Tribe, and then of course you
have heard testimony from Ninilchik tribal members, from
Kenaitze tribal members and from Regional Council members
about personal or family history of some use of the Kenai
River, either directly or through their connections with
relatives and in other tribal entities.

What we did in our study was look at the
literature and look at some unpublished sources that are
summarized in Chapter 2 of our 2004 study, Technical
Paper 285, and what Mr. Edwards is referring to is
testimony that was presented by a number of Kenaitze
people and others about traditional uses of what became
the Kenai Moose Range and the displacement of people over
time because of a variety of regulatory actions that were
taken when that unit was established.

All of our information about -- the
documentation of use of that area and the displacement of
it pertained to people based out of Kenai and members of
the Kenaitze Tribe, those sources had no information that we found regarding Ninilchik residents. I believe there was some reference that we learned through some of our community meetings about fishing and trapping in Tustumena Lake. There was some information about that. But the vast amount of information that we summarized and learned about that area to the people of Kenai and the Kenaitze Tribe. And in addition as you prob -- you've seen the submission earlier today from Dr. Boris, which I only saw the other day myself, and again that's a pretty good compilation of variety of sources, by the way not just from anthropologist but from Native people, Native writers and others describing use patterns on the Kenai Peninsula and I think Dr. Boris concluded that that upper area was connected historically to communities, tribal communities and others from the upper portion of the Kenai Peninsula but I don't think he had a whole lot, if any evidence of historical connections by the Ninilchik community to that area.

In our earlier report, our report from -- 253, we do quote an anthropologist, an ethnohistorian, Katherine Arnt, who has written extensively about the history of Ninilchik, the early history, and it's pretty clear when that community was originally found -- now, I'm diving back 160 years now, but when that community was originally founded, what the Russian authorities -- and remember that community was established for a former Russian America company employees and their dependents, most of whom were Alaska Native people, and what they looked for is a place to settle people, was a place that would not conflict with established uses by other Alaska Native communities and other tribes and the Dena'ina population by the 1840s had been substantially reduced because of the smallpox epidemic and what the Russian authorities looked for was an area where they could settle people and establish a community where they could sustain themselves through hunting and fishing and agriculture and not interfere in the activities of other tribal entities. And of course as we've heard over time and not surprisingly relationships develop between that community and the other communities of the Kenai Peninsula. But right from the start there was that distinction that was deliberate, that was made and so all of this is a long way of saying that I'm not surprised that in looking through the literature we don't find very many mentions, or really any mention of a Ninilchik community 50, 60, 70 years ago because they're main activities were oriented to local streams and to marine waters, not to say that some uses didn't occur, but they
certainly were not the predominate or visible uses that others documented for the Kenai River.

Thank you.

CHAIRMAN FLEAGLE: Judy, I overlooked a question that you had asked Dr. Fall to respond to and then you had asked for a response from Dr. Wolfe, and do you want to restate that question just so Dr. Wolfe understands what the question was.

MS. GOTTLIEB: Sure. Dr. Wolfe, I had asked about the 28 percent figure because that's in some of the information you provided as well so I wondered if you would provide us an explanation please.

CHAIRMAN FLEAGLE: Dr. Wolfe.

(No comments)

MR. KLEIN: Dr. Wolfe, do we have you on line?

(No comments)

MR. KLEIN: Do we have anybody on line?

MS. CULP: Yeah, there's Hoonah on line. Dr. Wolfe got cut off.

MR. ADAMS: And I'm still on line.

CHAIRMAN FLEAGLE: Did you get the question Dr. Wolfe or do you want Judy to restate it.

MR. ADAMS: This is Bert Adams. Dr. Wolfe I think got off line here some time ago.

CHAIRMAN FLEAGLE: Okay, thanks Bert. We didn't understand who was piping up there.

All right, so we'll move forward. Any other questions for the ADF&G presentation.

(No comments)

CHAIRMAN FLEAGLE: All right. That brings us to the InterAgency Staff Committee recommendation.
MR. KLEIN: Mr. Chair. For the record
this is Steve Klein.

CHAIRMAN PLEAGLE: Steve.

MR. KLEIN: Acting Chair of the
InterAgency Staff Committee.

The Staff Committee supports a positive
determination for Ninilchik. The addition of Ninilchik
to the C&T use determination is consistent with the data
provided in the RFR analysis and with the testimony
provided by the residents of Ninilchik.

The new information regarding lifetime
areas of use by Ninilchik residents provided by ADF&G
indicated that 28 percent of Ninilchik households had
fished at least once in their lifetimes in the Federal
waters of the Kenai River or Swanson Rivers. Similarly
with the NTC information provided, we had 32 percent of
tribal members using the Kenai. The Staff Committee
found that compelling.

We noted that the Ninilchik residents
have been prohibited since 1952 from subsistence fishing
in the Federal waters of the Kenai Peninsula and as a
result their subsistence use of the areas have been
interrupted beyond the control of the community. Despite
this prohibition Ninilchik residents continue to use the
Kenai River area under consideration throughout the more
recent contemporary period under sportfishing regulations
as demonstrated by the new information from Fall, et al.,
2006.

So Staff Committee recommends adding
Ninilchik as a community eligible for subsistence harvest
in Federal waters of the Kenai Peninsula district.

Mr. Chair.

CHAIRMAN PLEAGLE: Thank you, Steve.

Questions.

(No comments)

CHAIRMAN PLEAGLE: Hearing none, that
brings us to deliberations. Board members, your
pleasure.

Somebody want to break the ice. George.
George.

(Laughter)

MR. GOLTZ: Before we get to Board deliberation.

CHAIRMAN FLEAGLE: Keith.

MR. GOLTZ: I think we should give Mr. Case a chance, sir.

CHAIRMAN FLEAGLE: Okay, good point. We did say we would do that.

Thank you.

David Case.

MR. CASE: Thank you, Mr. Chairman. I have a couple of questions for Dr. Fall but I need to see your studies. The 2002/2003 study, do you have it there, maybe we could sit up here together.

(Pause)

MR. CASE: In your 2002/2003 study, Dr. Fall, what was the oldest person that responded to it?

DR. FALL: Mr. Chair. I don't have these things memorized but I can answer the question.

(Pause)

CHAIRMAN FLEAGLE: Today Dr. Fall.

(Pause)

CHAIRMAN FLEAGLE: I'm not pressuring you.

(Laughter)

DR. FALL: Mr. Chair. I'm referring to Page 61 in my report, demographic characteristics of household studies communities, Ninilchik, the maximum age was 83.

MR. CASE: Okay. And is there a 2006 study, no, and the average age of residence of these
people.

DR. FALL: Mr. Chair. The average age.....

MR. CASE: No, length of residence, sorry, the length of residence.

DR. FALL: Well, I'll answer both. The mean age was 37 years, the median was 40. That means that half the population of our sample was under 40 and half was above. The length of residency average for household heads was about 17 years, with a maximum of 74 years, but the population counts kids, 14 years, with a maximum of 74 years.

And I should just add that these numbers, of course, are totally consistent with the demographic history of the community, that community has doubled and tripled in size in the last 30 years or so, so the average length of residency for a random sample is going to be in this range.

MR. CASE: Then it's your testimony that the median length of residency was about 14 years; is that right?

DR. FALL: Mr. Chair. I don't have a median length of residency, just a mean and it's 14 years for the population and 17 years for household heads so.....

MR. CASE: And it's also the testimony that this study for one single year, in 2002/2003 is predictive of the customary and traditional use or use of the upper Kenai 50 years ago; is that correct?

DR. FALL: Mr. Chair. No. No, that's not what the report is.

MR. CASE: Okay.

DR. FALL: Or the survey is addressing at all. The survey is addressing a single year, it is a snapshot of a single year's use of various resources and where people went.....

MR. CASE: Right.

DR. FALL: .....for the community of
Ninilchik overall. Our study also asked about -- through key respondent interviews, literature review that I mentioned before and scoping meetings and stakeholder meetings after the project was over about about historical use patterns. So I think the study itself, the whole report has a broader historical perspective to it. But we're not saying that the snapshot by itself indicates anything about customary and traditional uses. It has to be taken in context.

MR. CASE: Okay.

DR. FALL: We certainly agree with that. And we have the earlier study from five years ago that basically verifies that the patterns of contemporary use that we're talking about are pretty representative -- are representative.

MR. CASE: And they're patterns of contemporary use though, right, they're for contemporary use?

DR. FALL: The two studies that we did are describing -- the surveys are describing contemporary uses plus, of course, we asked about the lifetime use of various areas.....

MR. CASE: Right.

DR. FALL: .....as I went into with great detail a little earlier for Mr. Edwards.

MR. CASE: Thank you. That helps cover that. I guess then I have an opportunity to make some final comments?

CHAIRMAN FLEAGLE: Please.

MR. CASE: Okay. First, I think what you've got before you is certainly studies by an expert, by the Traditional Council of Ninilchik, of its own population, and including some other non-Natives, I am told. And Dr. Wolfe has verified that that is a properly performed and reliable study. And his testimony, his expert testimony was based on those questions that actually -- the respondents to those studies drew out on maps, which I think you've seen, the areas that they used. It wasn't just have you been there once, it was where did you go in your lifetime to harvest fish, and that documented use, extensive use, 32 percent of the
households surveyed used the upper Kenai River.

We think that is reliable information. It is substantial information. And with it you have the testimony that was uncontroverted at the RAC of elders from Ninilchik and Kenai who testified, as you heard earlier, to the use of the upper Kenai, and you've also seen the affidavit of David Cooper and his family which documents their use and, indeed, the name of Cooper Landing, being named after a family from Ninilchik.

There is substantial evidence for all of this that has been supported by the RAC.

The State's arguments that you have to satisfy all eight of these criteria that were voiced earlier is simply not true. It's well recognized that you must satisfy at least the three most significant criteria one, two and four, that show a pattern of use that is sufficient to document customary and traditional use. So we think that the standard has been met and more than met by both the expert testimony, the surveys that the community itself has done and the testimony before the RAC and the RAC's own recommendations.

I think much of the evidence that you've heard from Dr. Fall relates to contemporary use, it has no real bearing or much relevance to what happened, was happening 50 years ago when these users were -- uses were cut off by regulation, and that really is the question and what was the use then. The best evidence of that is the Ninilchik 1999 study that Dr. Wolfe testified to earlier.

As to the status of the Kenai National Wildlife Refuge, I have never understood what this argument was about so maybe I'm just missing the point. But it doesn't really matter for customary and traditional use determination purposes that the purpose of the Kenai National Wildlife Refuge does not include subsistence. They are public lands and they are clearly within the scope of Title VIII of ANILCA. And so that may be a fishery proposal question when it comes to it but of course a lot of this -- a good part of this land is also in the Chugach National Forest, which doesn't have that particular limitation. But in any event, my point is that the status of the Kenai National Wildlife Refuge is totally irrelevant to a customary and traditional use determination. It is public land, and if there is customary and traditional use of it, that's it.
There may be questions as to how you implement a fishery proposal there that may have some bearing on those other concerns.

And then as far as delaying the customary and traditional use determination until you have other policies, you've been doing this for a decade, presumably with policies that are sufficient in the regulations that enable you to exercise your discretion to make these decisions. Judge Sedwick has said that if you delay another year we'll have a good case, so we certainly hope you won't.

Thank you, very much.

CHAIRMAN FLEAGLE: Thank you, Mr. Case.

Questions.

MR. CASE: I yield my time to Sky.

MR. SKY STARKEY: Dave, I don't need to.....

CHAIRMAN FLEAGLE: John.

MR. SKY STARKEY: I don't need to follow up but I did want to let you know that Dr. Wolfe was cut off, he tried to call back two or three times, was unable to get through as was some other people. He's now on the line, I don't think that he got the benefit of anything that Dr. Fall said but I would encourage you to ask him and he'll answer questions as best as he can with -- you know, with not having heard what Dr. Fall said, I guess. But the phone system seems to have done its thing.

CHAIRMAN FLEAGLE: Okay, well, the question can be answered straight forwardly anyways as I understood the question. So we do have Dr. Wolfe on line, Judy would you care to restate your question to him, please?

MS. GOTTLIEB: Thanks. And welcome back, Dr. Wolfe. While you were off there was, of course, quite a bit of discussion about the four percent number or the weighted number of 28 percent and we were looking for some clarification on those two numbers.

DR. WOLFE: Yes, thank you, can you hear me.
MR. KLEIN: Yes, loud and clear.

DR. WOLFE: I'm sorry I got lost there, I got lost somehow.

Well, my understanding is that the numbers like four percent represent an estimate of the number of people going up there on any single year, whereas the weighted number like 28 percent represents what people say they have done during their lifetime. It's a long-term use -- I mean it's a measure of use over more than one year and in this case it's lifetime use.

And, I guess, you know, with my experience with how the C&T has been done on the State side, a person has to be very cautious making C&T findings just based on any one year because you never know what's going to happen on any particular year because subsistence systems are so variable. And we know that there are some patterns where there are areas that are used just by a handful of households on any one given year but over time, the cumulative effect is a significant, substantial number of households use that over time. So it's usually a better deal to get a better picture of what the long-term use is of an area by looking at the lifetime information.

Now, my understanding is that the four percent, 28 percent comes from the same group of people, so I would presume that if you record the one, the four percent correct, you've got to give equal weight to the 28 percent, it's just that they're measuring different timeframes. The timeframe for the 28 percent was the percentage of the Ninilchik residents -- or the households that have used it over their lifetime, the four percent is just the single slice in time of how many people were up there on that particular year.

And I guess, you know, if you wanted to find out, you know, what the pattern is about why people -- certain people go up there and in the numbers that they do, that'd be the kind of information you'd want to ask people from Ninilchik about because I looked at the State surveys and their reports, I don't see any explanation for those kinds of things. So I mean four percent does not look like a big number but the 28 percent over time, the cumulative use by Ninilchik is a substantial number. And like I said, the Board generally uses for their measure of long-term use, those kind of numbers rather than any single lifetime number.
Does that clarify. I didn't have a chance
to listen to what Jim Fall had to say but that would be
my general comment about it.

CHAIRMAN FLEAGLE: Okay, thank you. Next
question's from Niles.

MR. CESAR: Yes, Dr. Wolfe, Niles Cesar
again. It had been suggested that possibly that 28
percent number was as a result of inflated numbers, which
sometimes happen, and I wonder if you're familiar with
any studies relative to the Kenai and to what's going on
down there that you found that people were inflating
numbers?

DR. WOLFE: Well, I don't quite
understand how that would happen. I mean people who are
being surveyed individually, a household is being
surveyed one on one, face to face and being asked about
that household's use, so it's fairly simple question, you
know, have you used that lake up there or that river
system and it's part of a survey with a whole bunch of
other questions like that, so I mean it's either yes or
no. So there'd be no way really to inflate that unless
somehow everybody got together before the survey and knew
they were going to be asked that and decided they were
going to respond incorrectly, so I mean I don't see how
inflation would come into this.

And I think one thing that would lend, I
think support, for that 28 percent as being a valid
number is the fact that, you know, a second survey done
by the tribe, you know, of their own members, again, a
subset of the Ninilchik area, but they came out with 32
percent and that's very close to the 28 percent, so you
have two different surveys on two separate years coming
up with the same approximate estimate of the percentage
of households who are being surveyed who say they have
used this area. So I think that is sort of a test
reliability that tends to support that number. And maybe
it's -- you know, it's clear to me -- it seems clear that
not everybody's up there at the same time on any given
year, but over time, you add up everybody who goes up
there and brings fish back to the community, that it's
these higher numbers, it's a substantial portion of the
households at Ninilchik.

CHAIRMAN FLEAGLE: David Bedford.

MR. BEDFORD: Yeah, thank you, Mr.
Chairman. Dr. Wolfe, the 28 percent figures describes those figures who have responded that they've used the area at least once in their lifetime; is that correct?

DR. WOLFE: That's correct.

MR. BEDFORD: And so for people who have used it once in their lifetime, in your view, does that contribute to determining a long-term consistent pattern of use?

DR. WOLFE: Well, that's just it, there's -- no, the answer would be no, if they just went up there once, no, that would not be a long-term pattern of use, but.....

MR. BEDFORD: Yeah, so then -- I'm sorry, go ahead.

DR. WOLFE: An additional question was asked, you know, how frequent did you go up there and my understanding was 60 to 62 percent said it was frequent. I mean these are some of the limitations of subsistence surveys, I mean you wished you had asked a whole series of additional questions at the time you did the survey after you -- they didn't get the information you want, so you sort of have to guess on some of this, but that's when you, I think, you go then to the testimony of people like on the RAC and from the public, which you have to learn more details that weren't captured in the surveys.

And I guess one of the questions that I would want to know is to what extent shifts in regulations played a factor in people using this area, it may be that you had one set of patterns when net fishing was allowed, where the long-term residents of Ninilchik -- we heard some testimony about that, but then when nets were prohibited and there was -- you know, that traditional pattern, that historic pattern was interrupted because of the regulatory restriction so that -- and there are some things in the eight factors that speak to that, that if there's been an interruption of the use of an area because of facts beyond a person's control, such as the State passing regulations prohibiting nets, then that needs to be taken into consideration in applying the eight factors. That a person shouldn't lose a subsistence use because of those factors beyond their control.

MR. BEDFORD: Yeah, thank you. One other
question, now the survey that you did, I'm trying to
remember the number, it was 32 percent, I believe that
had used the area according to the survey that you did;
is that correct?

DR. WOLFE: Yeah, let me clarify I didn't
do that survey, that survey was done by the Ninilchik
Tribal Council and it was done by that group. I was
asked to look at that information, as well as all the
information collected by the State and other sources and
to interpret it. So that was -- my understanding is that
number comes from a survey that was done of 25 households
living in the Ninilchik area who were members of the
Ninilchik Tribe and it was done to represent that segment
of the Ninilchik community, that is the long-term tribal
members, and they did mapping very similar to -- using
methodologies similar to what the State uses and they
asked where people went and it was based on that, that
they found that 32 percent of that group used the upper
Kenai area.

MR. BEDFORD: And did that have anything
similar to what Dr. Fall's study had in terms of
frequency of use?

DR. WOLFE: No, they didn't ask about
frequency of use to my knowledge.

MR. BEDFORD: And then did that give
insight into what the use patterns were 50 years ago?

DR. WOLFE: No, they didn't do that. I
mean there are ways of doing that. We've done that on
some studies in Southeast where, for instance, in Hoonah
we did this. We asked people did they use Glacier Bay on
what years, so we had a timeline, and I mean it's very
interesting data that you can capture that way. What we
found, for instance using that is that you can get an
estimate of the number of households using a particular
area over time, a percentage of households each year.
And for instance, for Glacier Bay, just as an example, we
found that there was a fairly high percentage of
households who went to Glacier Bay for seal hunting out
of Hoonah and then when there were regulations passed to
prohibit that, that that number, because of the Parks
there, that that number began to fall and fall and fall
and fall and so you can track that use. It sounds like
none of these surveys, either by the State or by the
tribe has used that kind of question in order to document
the percentage of households over time, use of an area.
So we just don't have that information in that form.

MR. BEDFORD: Thank you.

CHAIRMAN PLEAGLE: Gary.

MR. EDWARDS: Dr. Wolfe, this is Gary Edwards. I wanted to get back to the first question about the differences between the lifetime use as opposed to the other kind of annual use. In your explanation, you know, you indicated that based upon one year and I think, you know, what you said seems to make a lot of sense but it was my understanding that there were three separate one year surveys all of which showed the same thing, so does that -- now, that you have three data sets and you compare it with the lifetime response, I guess, you would have thought that maybe one of those three years would be somewhat close to what folks said that they did lifetime so it wasn't just one year that was being compared.

DR. WOLFE: Yeah, I understand that but I guess what I would want to do is I'd ask the State to see if those four percent using it on one year were the same four percent of households using it on another year and the same four percent using it on a third year. Because somehow you've got to reconcile those numbers with the fairly substantial numbers that are being generated by asking this other question, you know, in your lifetime. I mean the sense that I get and this is just my opinion, is that the upper Kenai waters is just one of the areas that historically has been used by residents from the Ninilchik area. They go up there on certain years -- I mean house -- a particular household will go up there on certain years for whatever reason, maybe they missed the early run so they're going up there to catch the late run or maybe they were working during the times that fish were available in their area so they went up there to get fish, you know, to make up the difference. You know maybe they wanted a certain kind of fish that wasn't available in their area so the households are going up there, it's one of the areas that they fish in. And so over time what you have is that about, you know, 32 percent of the tribal households have taken fish from up there over time and if you consider tribal and non-Native households it's something like, you know, 28 percent have been going up there so it's one of the areas that people are using and that's probably the pattern that people are going up there and using it, and that's not an unusual pattern, I think, for other rural villages or communities.
that I've done research in. I mean there are places where
people go and take resources out of particular bays or,
you know, stream systems, you know, on particular years
but not other years and yet people still consider that to
be one of their options -- optional fishing areas and
it's part of their pattern of use.

So I guess that's how I would interpret
it, the four percent. I guess these other years where
they may have data as well. That's how I would reconcile
the numbers.

MR. EDWARDS: Okay, one other question,
going back to the Ninilchik survey. It's my
understanding it was 32 percent of 25 households which is
approximately eight households and then looking at the
community over the whole that's about less than two
percent of the community, how does that weigh in, I guess
you balance that against the 28 or, you know, in my mind,
the two percent is closer to what was identified during
the three annual surveys.

DR. WOLFE: Oh, I see, no, it would be 28
percent of -- no it would be 32 percent of tribal
households, so if you wanted to find out how many
households that actually represented you'd want to expand
that up to the number of tribal households there are. So
that's a percent -- eight is not the absolute number
you'd want to span that up and unfortunately I can't tell
you how many households there are in the Native tribe
that are local there, I did get numbers for the number of
-- of -- Native members but I didn't get the number of
households so I couldn't do that expansion for you. It's
sort of the same way, you take that 28 percent and if you
expand that up, you get number of 162 households report
that they have used that area during their lifetime, 162.

And I think I said earlier when you start
getting into numbers as big as 162 households that say
they go up there, then that's -- you know that's more
than just something that's not significant, I mean that's
a substantial number.

But as you point out, it sounds like
they're not all going up there every year.

MS. GOTTLIEB: Mr. Chair.

CHAIRMAN FLEAGLE: Judy.
MS. GOTTLIEB: Thank you. I guess I kind of anticipated we might get into the numbers game at some point in this discussion, but I guess I just wanted to clarify a few things for the record.

When we opened up this discussion, Pete, you mentioned that Staff and others had prepared kind of responses to some of the comments that had come in, the State comments, I hope that is then part of our written record. I also wanted to remind everybody at our January meeting we also had extensive testimony on historical and contemporary uses of the area so that is also part of our record. Even as far back as our transcripts from 2001 we were talking about this issue, too.

So I just want to make sure that's on our record before we start our deliberations.

CHAIRMAN FLEAGLE: Thank you. Niles.

MR. CESAR: Yes, Mr. Chairman, and it's about the use of this meeting place. Has it been clarified that we can have it for this evening.

MR. PROBASCO: 7:00.

CHAIRMAN FLEAGLE: We have it until 7:00 and then we'll have to break and resume tomorrow morning.

MR. CESAR: And tomorrow morning, what time are we looking at starting.

CHAIRMAN FLEAGLE: It's available at 8:00.

MR. CESAR: And I guess my point is, why beat this dead brain up for another hour if we can come back tomorrow morning at 8:00 and try to deal with this issue. It doesn't seem to me like it's a good use of my dinnertime to sit here for another hour.

MR. PROBASCO: Mr. Chairman.

CHAIRMAN FLEAGLE: Pete.

MR. PROBASCO: Staff just said that because of the security for this building if we do start tomorrow we should do it at 8:15, that will give the opportunity for the guard to open the doors and do all that stuff.
Mr. Chair.

CHAIRMAN FLEAGLE: Well, that's insignificant to the discussion but thank you.

(Laughter)

CHAIRMAN FLEAGLE: Anybody want to jump on the.....

MR. EDWARDS: If that was a motion, I second it.

(Laughter)

MS. GOTTLIEB: Can we leave stuff here?

CHAIRMAN FLEAGLE: Can we leave stuff here?

MR. PROBASCO: Yes.

CHAIRMAN FLEAGLE: All right, we're recessed until 8:30.

(Off record)

(PROCEEDINGS TO BE CONTINUED)
CERTIFICATE

UNITED STATES OF AMERICA

STATE OF ALASKA

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

THAT the foregoing pages numbered 2 through 148 contain a full, true and correct Transcript of the FEDERAL SUBSISTENCE BOARD WORK SESSION, VOLUME I taken electronically by Nathan Hile on the 16th day of November 2006, beginning at the hour of 10:00 o'clock a.m. at the Gordon Watson Conference Room, 1011 E. Tudor Road, Anchorage, Alaska;

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

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

DATED at Anchorage, Alaska, this 21st day of November 2006.

Joseph P. Kolasinski
Notary Public in and for Alaska